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17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 COUNTY OF SAN FRANCISCO

19 UNLIMITED JURISDICTION

20 ELIEZER WILLIAMS, a minor, by SWEETIE  
21 WILLIAMS, his guardian ad litem, *et al.*, each  
22 individually and on behalf of all others similarly  
situated,

23 Plaintiffs,

24 v.

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

27 Defendants.

No. 312236

**PLAINTIFFS' LIABILITY  
DISCLOSURE STATEMENT**

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## I. INTRODUCTION

1. The State of California has a constitutional duty to ensure that all public schoolchildren have equal access to the basic educational tools they need to learn. The State has failed to honor its duty. Indeed, during the course of the litigation, we have established what every newspaper reader knows — that there are far too many schools in the State in which students face intolerably unequal conditions: pervasive overcrowding, absences of textbooks and trained teachers, and dismal and decaying school facilities.

2. In the face of repeated warnings about shockingly poor school conditions and repeated calls for action, the State has failed to respond with remedies that are sufficient to cure the inequitable conditions. In the meantime, successive annual classes of students are deprived of the chance to attend decent schools, let alone schools that serve as doorways to a brighter future. Far from it, in the schools plaintiffs attend the State’s own documents show that: buildings have been recently condemned; students are housed within a decaying infrastructure; school years begin with more than 29 day-to-day substitutes in an 89-teacher school because teacher vacancies remain unfilled; students suffer a critical lack of textbooks; and raw sewage repeatedly floods a school during rainy seasons. These conditions persist in various permutations up and down the State.

3. This Liability Disclosure Statement responds to the reality of these school conditions by identifying specifically what the State has done to perpetuate — and has not done to redress — fundamental disparities in access to the minimally required conditions that constitute schooling.

4. This statement sets forth plaintiffs’ theory of the State’s liability in compliance with paragraph 4 of the Court’s October 22, 2001 Pretrial Scheduling Order, which resolved the State of California’s motion to compel further responses to the State of California’s First Set of Special Interrogatories. The Court has asked for a “detailed explanation of the actions which [plaintiffs] contend: (1) the State of California should have taken in the past but did not take in order to have a constitutionally adequate public school system; and/or (2) the State of California must take in order to render the public school system constitutionally adequate.” (Oct. 22, 2001 Pretrial Scheduling Order at 2.) In addition, plaintiffs respond in this statement to the Court’s comment at the December 18,



1 2001 hearing regarding what “steps are within the power of the Court to order the State to do that  
2 could correct” the conditions plaintiffs have identified. (Dec. 18, 2001 Court Tr. at 8:19-20<sup>1</sup>; *see also*  
3 Dec. 18, 2001 Court Tr. 11:27-12:12 (stating that plaintiffs must establish “that there are orders this  
4 Court could make directed to the State that would have the effect of addressing...that there was  
5 something the State could and should have done” and “that there is something that the Court can and  
6 should order”).)

7 5. In summary, plaintiffs contend that:

- 8 • The State holds a non-delegable constitutional duty to ensure that public school students  
9 in the State of California enjoy basic educational equality.
- 10 • Students in some schools have received and are receiving basically unequal educational  
11 opportunities, and the State has known of this inequality.
- 12 • The State’s actions have worsened inequality in public schools, and the State’s inaction  
13 has perpetuated inequality in public schools.
- 14 • The State has required some students to attend schools that are dangerous to their health  
15 and safety and that impede basic educational success.
- 16 • Low-income students and students of color have been disproportionately denied equal  
17 access to basic educational opportunities.
- 18 • This Court has the power to issue orders: (1) barring the State from worsening these  
19 inequalities; (2) requiring the State affirmatively to address these inequalities; and, (3)  
20 more generally, requiring the establishment of a system that will prevent or discover and  
21 correct such inequalities.

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25 <sup>1</sup> “The central issues, at least the central common issues of what the State did or failed to do  
26 to cause the conditions that are alleged to exist, what the State could have done and was required to  
27 do that might have avoided those conditions, what, if any, such steps are within the power of the  
28 Court to order the State to do that could correct any such conditions, if they exist, that’s the guts of  
what we are here talking about.” (Dec. 18, 2001 Court Tr. at 8:15-22.)

1                   **II. THE STATE<sup>2</sup> HAS A NON-DELEGABLE CONSTITUTIONAL DUTY**  
2                   **TO ENSURE THAT CALIFORNIA PUBLIC SCHOOL STUDENTS**  
3                   **ENJOY FUNDAMENTALLY EQUAL EDUCATIONAL**  
4                   **OPPORTUNITIES.**

5                   6. The State has known for decades that it has a duty to ensure that students are provided  
6                   with basic educational equality. *See Piper v. Big Pine Sch. Dist.*, 193 Cal. 664, 673 (1924)  
7                   (“Opportunities for securing employment are often more or less dependent upon the rating which a  
8                   youth, as a pupil of our public institutions, has received in his school work. These are rights and  
9                   privileges that cannot be denied.”). In *Serrano v. Priest*, 5 Cal. 3d 584, 619 (1971) (“*Serrano I*”), the  
10                  court confirmed that the State has an obligation to ensure that the “abundant gifts of learning” are  
11                  available to all students on equal terms.

12                 7. In *Serrano I*, the California Supreme Court struck down the then-existing scheme for  
13                 public school financing, in which the major source for school funding was local real property tax  
14                 revenue. The Court found that this funding scheme caused the amount of basic revenues per pupil to  
15                 vary substantially among school districts, depending on the property values within each district. *See*  
16                 5 Cal. 3d at 591-95. The Court held that such a scheme violated the equal protection guarantees of  
17                 both the California and U.S. Constitutions, because it discriminated against a fundamental interest —  
18                 education — on the basis of a suspect classification — district wealth — and could not be justified by  
19                 a compelling state interest. *See id.* at 596-619.

20                 8. The *Serrano* Court identified several “distinctive and priceless” functions that education  
21                 performs in our society. First, the Court noted that education serves as the “bright hope for entry of  
22                 the poor and oppressed into the mainstream of American society.” *Serrano I*, 5 Cal. 3d at 609  
23                 (footnote omitted). Second, education is “universally relevant” because, while not every person will  
24                 call the police or fire department, or receive welfare benefits, “[e]very person . . . benefits from  
25                 education.” *Id.* at 609 (citation omitted). Third, given the lengthy period required to complete a  
26                 public education, “[f]ew other government services have such sustained, intensive contact with the  
27                 recipient.” *Id.* at 609. Fourth, education is “unmatched” in the extent to which it molds a child’s  
28                 personality. *Id.* at 609-10. Finally, education is important because the State has made it compulsory

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<sup>2</sup> As used in this Liability Disclosure, the term “State” refers to all defendants in this lawsuit.

1 “not only in the requirement of attendance but also by assignment to a particular district and school.”  
2 *Id.* at 610. Thus, ““a child of the poor assigned willy-nilly to an inferior state school takes on the  
3 complexion of a prisoner, complete with a minimum sentence of 12 years.”” *Id.* at 610 (citation  
4 omitted). In light of its importance to the individual and society, the *Serrano I* Court held that  
5 education was a fundamental interest for purposes of equal protection analysis under the California  
6 and U.S. Constitutions.

7 9. The *Serrano I* court noted that the fundamental importance of education had been  
8 recognized in decisions of the U.S. Supreme Court, and the California courts.<sup>3</sup> *See* 5 Cal. 3d at 605.  
9 The Court found the “classic expression” of the significance of learning to be the statement of  
10 the U.S. Supreme Court in *Brown v. Board of Education*, 347 U.S. 483 (1954):

11 Today, education is perhaps the most important function of state and  
12 local governments. Compulsory school attendance laws and the great  
13 expenditures for education both demonstrate our recognition of the  
14 importance of education to our democratic society. It is required in the  
15 performance of our most basic public responsibilities, even service in  
16 the armed forces. It is the very foundation of good citizenship. Today  
17 it is a principal instrument in awakening the child to cultural values, in  
preparing him for later professional training, and in helping him to  
adjust normally to his environment. In these days, it is doubtful that  
any child may reasonably be expected to succeed in life if he is denied  
the opportunity of an education. Such an opportunity, where the state  
has undertaken to provide it, is a right which must be made available to  
all on equal terms.

18 5 Cal. 3d at 606 (quoting *Brown*, 347 U.S. at 493 (emphasis added)).

19 10. The California Supreme Court also pointed to several of its earlier decisions, each of  
20 which affirmed the importance of providing an education to all of California’s children on an equal  
21 basis. *See Serrano I*, 5 Cal. 3d at 606 (citing *San Francisco Unified Sch. Dist. v. Johnson*, 3 Cal. 3d  
22 937, 950 (1971) (“[unequal] education, then, leads to unequal job opportunities, disparate income,  
23 and handicapped ability to participate in the social, cultural, and political activity of our society”);  
24 *Jackson v. Pasadena City Sch. Dist.*, 59 Cal. 2d 876, 880 (1963) (“the opportunity to receive the  
25 \_\_\_\_\_

26 <sup>3</sup> Following *Serrano I*, a majority of the U.S. Supreme Court held that education was not a  
27 fundamental interest protected by the U.S. Constitution. *See San Antonio Sch. Dist. v. Rodriguez*,  
28 411 U.S. 1, 18-55 (1973). The California Supreme Court reaffirmed its reasoning in *Serrano I* with  
respect to the equal protection guarantees of the California Constitution in *Serrano v. Priest*, 18 Cal.  
3d 728, 760-768 (1976) (“*Serrano II*”).

1 schooling furnished by the state must be made available to all on an equal basis”); *Manjares v.*  
2 *Newton*, 64 Cal. 2d 365, 376 (1966) (“we must unsympathetically examine any action of a public  
3 body which has the effect of depriving children of the opportunity to obtain an education”) (footnote  
4 omitted); and *Piper*, 193 Cal. at 673 (“Opportunities for securing employment are often more or less  
5 dependent upon the rating which a youth, as a pupil of our public institutions, has received in his  
6 school work. These are rights and privileges that cannot be denied.”). In *Serrano I*, the Court  
7 specifically rejected the defendants’ attempt to characterize these earlier California Supreme Court  
8 decisions as merely establishing a “right” to have “access” to an education. 5 Cal. 3d at 607 (“surely  
9 the right to an education today means more than access to a classroom.”).

10 11. The Court rejected defendants’ contention that the system of public school financing  
11 based on property tax valuations was necessary ““to strengthen and encourage local responsibility for  
12 control of public education.”” *Serrano I*, 5 Cal. 3d at 610 (citation omitted). The Court concluded  
13 that, in the absence of a compelling State interest, the State’s public school financing scheme violated  
14 the equal protection guarantees of the both the California and U.S. Constitutions because it “made the  
15 quality of a child’s education depend upon the resources of his school district and ultimately upon the  
16 pocketbook of his parents.” *Id.* at 614.

17 12. Finding plaintiffs’ complaint legally sufficient for the reasons discussed above, the  
18 *Serrano I* Court returned the case to the trial court for further proceedings. *Id.* at 618. After a trial on  
19 the merits, the lower court entered 299 Findings of Fact and 128 Conclusions of Law. Significantly,  
20 Finding of Fact 221 stated:

21 Equality of educational opportunity between pupils of different school  
22 districts means that school districts must possess an equal ability in  
23 terms of revenue to provide students with substantially equal  
24 opportunities for learning, such as being exposed to experienced and  
effective teachers, comparable class sizes and teacher-pupil ratios,  
comparable selectivity in course offerings, modern equipment, high-  
quality materials and high-quality buildings.

25 School Support Committee (chaired by Robert Hanson), Cal. State Board Educ., Recommendations  
26 for Public School Support In Compliance with the California Supreme Court *Serrano v. Priest*  
27 Decision and the Los Angeles Superior Court Judgment, Findings of Fact and Conclusions of Law  
28 (1974) at 3 (“*Serrano v. Priest* Findings of Fact”). The California Supreme Court affirmed the lower

1 court's findings of fact in *Serrano II*. See 18 Cal. 3d at 744-50, 775-77. The Supreme Court  
2 concluded that the trial court properly held that California's school finance system violated the equal  
3 protection clause of the California Constitution. See *id.* at 775-77.

4  
5 **A. The State's Ultimate Duty to Ensure Basic Educational Equality  
May Not Be Delegated to Its School Districts.**

6 13. California courts have repeatedly held that the State has a non-delegable legal duty to  
7 provide a statewide public education system open to all on equal terms. *Kennedy v. Miller* 97 Cal.  
8 429, 431 (1893) ("Article IX of the constitution makes education and the management and control of  
9 the public schools a matter of state care and supervision."); see also *San Francisco Unified Sch.*  
10 *Dist. v. Johnson*, 3 Cal. 3d at 951 ("Education, including the assignment of pupils to schools, is  
11 plainly a state function."); *Hall v. City of Taft*, 47 Cal. 2d 177, 181 (1956) ("[t]he public school  
12 system is of statewide supervision and concern"); *Piper*, 193 Cal. at 669 (Public schooling "is in a  
13 sense exclusively the function of the state which cannot be delegated to any other agency. The  
14 education of the children of the state is an obligation which the state took over to itself by the  
15 adoption of the constitution."); *City of El Monte v. Comm'n*, 83 Cal. App. 4th 266, 278-79 (2000)  
16 ("[E]ducation is the ultimate responsibility of the state. The principle is undeniable . . ."); *Cal.*  
17 *Teachers Ass'n v. Hayes*, 5 Cal. App. 4th 1513, 1534 (1992) ("In this state, education is a matter of  
18 statewide rather than local or municipal concern."); *Johnson v. San Diego Unified Sch. Dist.*, 217 Cal.  
19 App. 3d 692, 698 (1990) (same); *Tinsley v. Palo Alto Unified Sch. Dist.*, 91 Cal. App. 3d 871, 903  
20 (1979) ("[I]t is clear that in California, . . . the responsibility for furnishing constitutionally equal  
21 educational opportunities to the youth of the state is with the state, not solely in the local entities it  
22 has created.").

23 14. The nondelegable nature and scope of the State's duty was reinforced by the Supreme  
24 Court's decision in *Butt v. State*, 4 Cal. 4th 668 (1992).

25 15. The underlying facts in *Butt* arose from an announcement by the Richmond Unified  
26 School District ("RUSD") that it would close all 44 of its schools six weeks prior to the close of the  
27 1990-1991 school year, due to financial insolvency. See 4 Cal. 4th at 673-75. A group of parents  
28 sued the Board of Education of the RUSD and the State for temporary and injunctive relief. *Id.*

1 at 674. In particular, the parents alleged that, under the equal protection guaranties of the California  
2 Constitution (art. I, § 7(a), (b); art. IV, § 16(a)), the State was “responsible for educating all  
3 California children, and the Board is the State’s agent for carrying out this responsibility in the  
4 [RUSD].” *Id.* at 674, 678. The parents further alleged that the closure of the RUSD schools would  
5 cause “serious, irreparable harm” to the students and “would deny them their ‘fundamental right to an  
6 effective public education’ under the California Constitution.” *Id.* at 674. Moreover, the parents  
7 alleged that the school closure in RUSD was an unjustified discrimination against students in that  
8 District, and thus violated the equal protection guarantees of the California and United States  
9 Constitutions. *See id.*

10 16. The State contended that it could fulfill its financial responsibility for educational  
11 equality by subjecting all local districts, rich and poor, to an equalized statewide revenue base. *See*  
12 *Butt*, 4 Cal. 4th at 679. Unless a district failed to provide the minimum six-month school term set out  
13 in the “free school” clause of the California Constitution (art. IX, § 5), the State contended, it had  
14 “‘no duty’ to ensure prudent use of the equalized funds by local administrators.” *Id.* According to  
15 the State, even if local mismanagement caused one district’s services to fall seriously below  
16 prevailing statewide standards, the resulting educational inequality would not be grounded in district  
17 wealth or involve a suspect classification. Thus, the State argued that the Court should not apply  
18 “strict scrutiny,” and instead should find the State’s refusal to intervene to be “rationally related” to  
19 its policy of local control and responsibility. *Id.* at 680. In the alternative, the State argued that, even  
20 if strict scrutiny were applied, the State’s local control policy was compelling enough to justify its  
21 inaction. *Id.*

22 17. The *Butt* Court rejected the State’s contentions. The Court noted that, since  
23 California’s admission to the Union, the State “has assumed specific responsibility for a statewide  
24 public education system open on equal terms to all.” 4 Cal. 4th at 680. The Constitution adopted in  
25 1849 directed the Legislature to “provide for a system of common schools, by which a school shall be  
26 kept up and supported in each district.” CAL. CONST. of 1849, art. IX, § 3. As the Court recognized,  
27 that constitutional command — with the additional proviso that the school maintained by each district  
28 be “free” — persists in the California Constitution to this day. *See Butt*, 4 Cal. 4th at 680 & n.12

(citing CAL. CONST. art. IX, § 5). The Court also noted that the Constitution creates State and county educational offices, authorizes formation of local school districts, and governs aspects of school financial management. *See id.* at 680 (citing CAL. CONST. art. IX, §§ 2-3.3, 4, 6, 6 1/2, 7, 7.5, 14; *id.* art. XVI, §§ 8, 8.5).

18. In light of these Constitutional provisions, the *Butt* Court found that California courts had adhered to the principle that “[p]ublic education is an obligation which the State assumed by the adoption of the Constitution.” 4 Cal. 4th at 680. “[M]anagement and control of the public schools [is] a matter of state[, not local,] care and supervision . . . .” *Id.* at 681 (citation omitted). Accordingly, the *Butt* Court held, “Local districts are the State’s agents for local operation of the common school system and the State’s ultimate responsibility for public education cannot be delegated to any other entity.” *Id.* at 681 (citations omitted); *see id.* at 685 (“the California Constitution makes public education uniquely a fundamental concern of the State . . .”). The Court found that notwithstanding the delegation of much of the governance of public schools to local school districts, “the State itself has broad responsibility to ensure basic educational equality under the California Constitution.” *Id.* at 681; *see id.* at 685 (“[T]he California Constitution . . . prohibits maintenance and operation of the common public school system in a way which denies basic educational equality to the students of particular districts.”)

19. The *Butt* Court rejected the State’s contention that its policy of allowing local districts to exercise budgetary freedom and responsibility was a “compelling” reason, sufficient to permit discrimination against the students of RUSD. *See* 4 Cal. 4th at 689-92. In so doing, the Court found the State’s practice of delegating management to local school districts, “though recognized by the Constitution and deeply rooted in tradition, is not a constitutional mandate, but a legislative choice.” *Id.* at 688. Rather, the California Constitution vests “plenary power” over education in the State, through its Legislature, not in local districts. *See id.* Consequently, the Court held that:

The legislative decision to emphasize local administration does not end the State’s constitutional responsibility for basic equality in the operation of its common school system. Nor does disagreement with the fiscal practices of a local district outweigh the rights of its blameless students to basic educational equality.

1 *Id.* at 688-89. Moreover, the “volume and scope of State regulation” of local districts indicated the  
2 “pervasive role” that the State had assumed in order to “ensure a fair, high quality public education  
3 for all California students.” *Id.* at 689. The Court found that this “long-established level of State  
4 involvement in the public education system” undermined the State’s claim that local control was a  
5 “paramount and compelling State policy.” *Id.*

6 20. Having held that the California Constitution guarantees all students in the State “‘basic’  
7 equality in public education, regardless of district residence,” the Court concluded that “denials of  
8 basic educational equality on the basis of district residence” to be subject to “strict scrutiny.” *Butt*,  
9 4 Cal. 4th at 692. Because the State had “ultimate responsibility” for equal operation of the public  
10 school system in California, and had not shown any compelling reason that negated its duty to  
11 intervene in RUSD, the Court affirmed the propriety of the trial court’s decision to issue a  
12 preliminary injunction, directing the State and its agents to act appropriately to ensure RUSD students  
13 received an education “equivalent basically” to that provided elsewhere in California for a full school  
14 term. *Id.* at 692.

15 **B. The State Has Acknowledged the Non-delegable Nature of Its Duty**  
16 **to Public School Students.**

17 21. The State has acknowledged its non-delegable duty to ensure “the basic standard of  
18 public education” for California’s schoolchildren in this very litigation. In explaining why the State  
19 of California had cross-complained against the school districts, the State’s counsel explained:

20 We think it is extremely simple and set forth in the cases. The State  
21 has a nondelegable duty to provide the basic standard of public  
22 education for children in California. The districts are the State’s agents  
23 for purposes of carrying out that nondelegable duty.

24 Nondelegable duty is also quite simple. What it means is that the  
25 actions or inactions of the districts are attributed to the State for  
26 purposes of judging whether the State has fulfilled its duties to the  
27 children; that is, the State cannot say it’s the district’s fault, the district  
28 must handle it. The duty is nondelegable.

(Apr. 11, 2001 Court Tr. at 24:11-21.)

22. This Court has also acknowledged the expansive, non-delegable nature of the State’s  
duty. The Court framed the State’s duty in this way:



1 The State of California has taken it on itself through its Constitution,  
2 statutes, and regulations to provide universal public education and to do  
3 so on a basis that satisfies basic standards of equality, among other  
4 legal requirements. That the State has chosen to carry out certain of its  
5 obligations through local school districts does not absolve the State of  
6 its ultimate responsibility. *Butt v. State of California*, 4 Cal. 4th 668,  
685 (1992). Plaintiffs' allegations, if believed, would demonstrate that,  
despite the State's legal obligations with respect to public education,  
these plaintiffs do not enjoy the level of educational opportunity to  
which they are entitled.

7 (Nov. 14, 2000 Order [on Demurrer] at 1-2.)

8 **C. The State and State Agency Defendants Are Jointly Responsible**  
9 **for Ensuring That California Has An Oversight System That**  
**Ensures Equal Educational Opportunities.**

10 23. The education of California's public schoolchildren "is in a sense exclusively the  
11 function of the state which cannot be delegated to any other agency." *Hall v. City of Taft*, 47 Cal. 2d  
12 177, 181 (1956) (citing *Piper*, 193 Cal. 664, 669 (1924)); see also *Butt*, 4 Cal 4th 668 at 681 (holding  
13 that "the state itself has broad responsibility to ensure basic educational equality under the California  
14 Constitution."). Although the State of California has ultimate authority over education, it carries out  
15 its obligations through its agents — both at the State and local levels. See *State Bd. of Educ. v.*  
16 *Honig*, 13 Cal. App. 4th 720, 750 (1993) ("In the educational setting, legislatures rarely control  
17 public school operations directly, but delegate authority which permits state, regional and local  
18 agencies to establish school policies and practices."). These state agents include the Board of  
19 Education, the State Superintendent of Public Instruction, and the Department of Education, among  
20 others, who have the authority and responsibility to establish educational policies and administer  
21 educational programs. Given the broad authority of the State Agency defendants as evidenced by the  
22 Education Code and case law, each of these State entities is liable for the State's failure to ensure that  
23 students have access to basic educational necessities.

24 **1. The Board of Education, Department of Education, and**  
25 **Superintendent of Public Instruction Have Broad**  
26 **Responsibilities Relating to the Policies and Administration**  
**of the State's Education System.**

27 24. The Board of Education and Superintendent of Public Instruction are constitutionally  
28 established entities whose roles and responsibilities are defined in the Education Code and

1 corresponding regulations. *See* CAL. CONST. art. IX, § 2 (establishing the elected position of the  
2 Superintendent of Public Instruction) and art. IX, § 7 (establishing the Board of Education whose  
3 members are appointed by the governor). The Board of Education and Superintendent of Public  
4 Instruction jointly administer the Department of Education, which is responsible for administering  
5 and enforcing laws related to education. CAL. EDUC. CODE § 33301.

6 25. The Board of Education, Department of Education and Superintendent of Public  
7 Instruction are therefore jointly responsible for the administration and policies of the State’s system  
8 of public schools. Pertinent Education Code sections demonstrate the numerous ways in which all of  
9 the Defendants are responsible for ensuring that schoolchildren receive equal educational  
10 opportunities.

11 26. California Education Code section 33000 et. seq. set forth the composition, powers and  
12 duties, and waiver authority of the Board of Education. Among its duties, the Board of Education is  
13 responsible for:

- 14 • Adopting rules and regulations “for the government of the day and evening elementary  
15 schools, the day and evening secondary schools, and the technical and vocational schools  
16 of the state.” *See* CAL. EDUC. CODE § 33031.
- 17 • Determining “all questions of policy within its powers.” *Id.* at § 33030.
- 18 • Studying “the educational conditions and needs of the state” and making “plans for the  
19 improvement of the administration and efficiency of the public schools of the state.” *Id.*  
20 at § 33032;
- 21 • Considering requests from districts “to waive all or part of any section of this [the  
22 Education] code or any regulation adopted by the State Board of Education that  
23 implements a provision” of the Education Code that may be waived. *Id.* at § 33050; and  
24 • Submitting to the Governor biennially a “report of its transactions for the preceding two  
25 years, together with recommendations of its needs for the coming biennium, and such  
26 recommendations as to changes in laws or educational legislation as may seem to it to be  
27 necessary.” *Id.* at § 33037.

1           27. As is evidenced above, the Legislature has provided the Board of Education with  
2 expansive authority to study, administer, and monitor the educational conditions of the public  
3 schools. The Board of Education is responsible for determining the policies governing California  
4 schools and for adopting rules and regulations for the supervision and administration of all local  
5 school districts. Pursuant to Education code sections 33030-33032, the Board is required to supervise  
6 local school districts and to ensure that they comply with state and federal requirements concerning  
7 educational services. *See* CAL. EDUC. CODE §§ 33030-33032. Given the evidence of unequal access  
8 to basic educational necessities, it is clear that the Board of Education has failed to perform its  
9 express duties.

10           28. Given the Board's broad authority set forth above, there are many steps that it could  
11 have taken to address unequal access to basic educational necessities. For example, the Board has  
12 failed to take steps to address inequality through policy decisions regarding granting of waivers,  
13 studying issues relating to unequal access to basic educational necessities, or making  
14 recommendations regarding changes in laws to improve the educational inequities. In addition, the  
15 Board of Education has failed to make "plans for the improvement of the administration and  
16 efficiency of the public schools of the state" in such a way that addresses educational inequality.  
17 CAL. EDUC. CODE § 33032.

18           29. California Education Code section 33110 et. seq. set forth the powers and duties of the  
19 Superintendent of Public Instruction. The code provisions broadly state that the Superintendent of  
20 Public Instruction shall "superintend the schools of the state." CAL. EDUC. CODE § 33112(a). The  
21 Superintendent is also responsible for establishing procedures for accomplishing Department  
22 responsibilities as follows:

23                   (a) Annually identify the critical needs for which effective educational  
24 programs and practices are to be identified, developed, and  
disseminated to public schools.

25                   (b) Coordinate the identification and development of effective  
26 programs and practices with appropriate offices in the State Department  
of Education, schools, school districts, county offices of education,  
27 institutions of higher education, the Legislature, business and industry,  
and the community.

28                   (c) Ensure that all programs developed under this article are objectively  
evaluated for impact on pupil learning, cost effectiveness, and the  
overall instructional program.

- (d) Develop and implement procedures to ensure that educators throughout the state are made aware of effective programs and practices identified under this article.
- (e) Periodically prepare and report information about project results to the Legislative Analyst.
- (f) Identify and coordinate appropriate federal and private funding to support the development and dissemination of projects and programs identified under this article.
- (g) Establish, where appropriate, project partnerships with other public and private agencies, including business and industry, for the purposes of this article.

CAL. EDUC. CODE § 33321.

30. As evidenced by the above provisions, the Legislature has provided the Superintendent of Public Instruction with broad authority by stating that she shall “superintend the schools of the State” and “identify the critical needs for which effective educational programs are to be identified, developed, and disseminated to public schools.” *See* CAL. EDUC. CODE § 33312(a) and § 33321. Given the evidence of unequal access to educational necessities presented in this Liability Disclosure, it is clear that the Superintendent has failed to perform her express duties.

**2. The Education Code Provides for the State Agency Defendants’ Involvement in Administration of Provisions Relating to Instructional Materials, Teachers, and School Facilities.**

31. In addition to the broad supervisory responsibilities set forth above, the State Agency Defendants are also involved in various aspects of the State’s system relating to instructional materials, teachers, and school facilities.

**a. The State Agency Defendants Have Responsibilities Relating to Instructional Materials.**

32. The California Constitution and Education Code allocate substantial responsibility to the Board of Education, the Department of Education, and the Superintendent of Public Instruction for the administration of instructional materials policies.

33. The California Constitution and corresponding Education Code sections explicitly assign the Board of Education responsibilities relating to instructional materials. Article IX of the California Constitution states that “[t]he State Board of Education shall adopt textbooks for use in grades one through eight throughout the State, to be furnished without cost as provided by statute.”

CAL. CONST. art. IX, § 7.5. Education Code sections 60000-60005 set forth the Board of Education’s responsibilities relating to the adoption of instructional materials.

34. Many sections of the Education Code establish the overlapping responsibilities of the Board of Education, Department of Education, and Superintendent of Public Instruction relating to instructional materials. The following are some examples:

- Education Codes sections 60040-60048 provide that the Superintendent of Public Instruction and the Board of Education develop and adopt guidelines regarding adoption of instructional materials.
- Education Code sections 60240-60252 establish the State Instructional Materials Fund and provide that the Department of Education and Superintendent of Public Instruction are responsible for administering and overseeing the fund.
- Education Codes sections 60450-60453 establish the Schiff-Bustamante Standards Based Instructional Materials Program and set forth the responsibilities of the Department of Education, Board of Education, and Superintendent of Public Instruction in administering the program.
- The Pupil Textbook and Instructional Materials Incentive Program Act, set forth in sections 60117 through 60119, also establishes responsibilities for the Superintendent of Public Instruction, the Department of Education, and the Board of Education. This legislation states:

SECTION 1. The Legislature finds and declares that the California Supreme Court, in its 1976 decision, *Serrano v. Priest* (18 Cal. 3d 728), reaffirmed the principle that education is a fundamental interest which is secured by the state constitutional guarantee of equal protection under the law, and held invalid a school financing system that resulted in disparate educational opportunity. The Legislature further declares that, to the extent that every pupil does not have access to textbooks or instructional materials in each subject, a pupil’s right to equal educational opportunity is impaired. SEC. 4. It is the intent of the Legislature that the Superintendent of Public Instruction administer this act as if it has been in effect for the entire 1994-95 fiscal year.

Assemb. B. (“AB”) 2600, ch. 927, § 1, 1993-1994 Sess. (Cal. 1999). As set forth above, the Superintendent is responsible for administering the act. The Board of Education participates in

1 administration of the act as well through its approval of waivers of the requirements of Education  
2 Code section 60119.

3  
4 **b. The State Agency Defendants Have Responsibilities  
Relating to Teachers.**

5 35. The Board of Education, Department of Education, and Superintendent of Public  
6 Instruction also have overlapping responsibilities relating to teacher credentialing and training.

- 7 • Education Code sections 44210-44239 establish the Commission on Teacher  
8 Credentialing and provide that the Superintendent of Public Instruction (or his or her  
9 designee) shall be a member of the Commission. Section 44239 provides that the  
10 “Commission, the State Board of Education, and the Superintendent of Public Instruction  
11 shall notify one another regarding proposed and adopted policies and regulations, in order  
12 to achieve consistency in state policies concerning the professional preparation of  
13 teachers, and curriculum and instruction in the public elementary and secondary schools.”
- 14 • Education Code sections 44250-44279 set forth various credentialing requirements.  
15 Education Code section 44253.10(b) provides that the Commission and the  
16 Superintendent of Public Instruction “shall establish guidelines for the provision of staff  
17 development” for instruction of English Language Learners (“ELL[s]”).
- 18 • Education Code sections 44279.1-44279.7 establish the Beginning Teacher Support and  
19 Assessment System. Education Code section 44279.1(b) provides for the Superintendent  
20 of Public Instruction and commission to administer the system jointly.
- 21 • Education Code section 44735 establishes the Teaching As A Priority Block Grant to be  
22 administered by the State Department of Education and approved by the Board of  
23 Education. Under this program, the Department of Education awards grants to low  
24 performing school districts for attracting and retaining credentialed teachers. The Board is  
25 also responsible for providing an evaluation of the program to the Legislature.
- 26 • Education Code sections 52120-52128.5 provide for the administration of the Class Size  
27 Reduction program. The Board of Education, Department of Education, and  
28

1 Superintendent of Public Instruction all have responsibilities for overseeing and/or  
2 administering this program.

- 3 • The Board of Education and Department of Education are considered the State  
4 Educational Agency (SEA) for purposes of federal oversight of programs involving  
5 students' access to qualified teachers (e.g., with respect to English Language Learner  
6 issues and the State's obligation under federal law and with respect to the State's  
7 obligation to ensure that all teachers are "highly qualified" in accordance with the No  
8 Child Left Behind Act).

9  
10 **c. The State Agency Defendants Have Responsibilities  
Relating to Facilities.**

11 36. The Board of Education, Department of Education and Superintendent also have  
12 overlapping responsibilities relating to school facilities.

- 13 • Education Code sections 17251-17253 set out the responsibilities of the Department of  
14 Education relating to the construction of new school facilities.
- 15 • Education Code section 33126.5 provides that the Superintendent of Public Instruction  
16 and State Allocation Board "shall develop and maintain an automated school facilities  
17 inventory that is capable of indicating the statewide percentage of facility utilization and  
18 projecting school facility needs five years in advance, in order to permit the board to study  
19 alternative proposals for the allocation of funds for new construction, maintenance, and  
20 rehabilitation."
- 21 • Education Code sections 42260-42268 contain provisions assigning to the Superintendent  
22 of Public Instruction responsibility for administering the Year-Round Grant Program.  
23 Education Code section 42260 provides for the Superintendent to establish selection  
24 criteria for grant applicants and to award grants to school districts. Education Code  
25 section 42269(a) provides for the Department of Education to conduct a study in  
26 cooperation with other State entities and affected parties "to develop an equitable method  
27 of phasing out the program over a multiyear period."

- Education Code sections 52120-52128.5 provide for the administration of the Class Size Reduction program. The Board of Education, Department of Education, and Superintendent of Public Instruction all have responsibilities for overseeing and/or administering this program.

**d. Other Statutes Allocate Broad Responsibility for School Conditions to the State Agency Defendants.**

37. In addition to assigning the State Agency defendants specific responsibility for administering the programs set forth above, the Education Code also assigns them broad responsibility for various accountability mechanisms relating to school conditions and the day-to-day operations of schools.

**i. School Accountability Report Card Provisions Allocate Broad Responsibility to the State Agency Defendants to Ensure Equal Educational Opportunities.**

38. Former Education Code section 33126 instructed the Superintendent of Public Instruction to develop a statewide model school accountability report card by March 1, 1989, which was then presented to the State Board of Education for adoption. Former CAL. EDUC. CODE § 33126 (amended in 1997). The objective of this provision was the promotion of a “statewide standard of instructional accountability and conditions for teaching and learning.” *Id.* In 2000, the Legislature instructed the Department of Education to “develop and recommend for adoption by the State Board of Education a standardized template intended to simplify the process for completing the school accountability report card and make the school accountability report card more meaningful to the public.” CAL. EDUC. CODE § 33126.1(a). The Department of Education must also monitor school district compliance with the requirements to prepare and distribute school accountability report cards. CAL. EDUC. CODE § 33126.1(l).

39. Education Code section 33126.2(b) requires that the Superintendent of Public Instruction and the State Board review these report cards for data concerning unequal educational opportunity:



1 The Superintendent of Public Instruction shall additionally review, and  
2 the State Board of Education shall consider, any empirical research data  
3 that becomes available concerning barriers to equal opportunities to  
4 succeed educationally for all California pupils, regardless of  
socioeconomic background. Upon obtaining this information, the  
board shall evaluate whether there is any need to revise the school  
accountability report card.

5 CAL. EDUC. CODE § 33126.2(b). The Superintendent and the State Board are therefore directly  
6 responsible for monitoring equality of educational opportunity.

7  
8 **ii. The Public Schools Accountability Act of 1999**  
9 **Allocates Broad Responsibilities to the State**  
10 **Agency Defendants to Ensure Equal**  
11 **Educational Opportunities.**

12 40. The Public Schools Accountability Act (PSAA) of 1999 also establishes broad  
13 responsibilities for the Superintendent, Board of Education, and Department of Education to ensure  
14 equal educational opportunities. The following are some examples of the State Agency defendants’  
15 responsibilities pursuant to PSAA:

- 16 • The Superintendent of Public Instruction is responsible for the development of an  
17 Academic Performance Index, which was designed to measure the performance of schools  
18 based on achievement tests and other indicators, to be approved by the Board of  
19 Education. *See* CAL. EDUC. CODE § 52052(a)(1).
- 20 • The Board of Education is responsible for adopting a statewide API performance target  
21 (CAL. EDUC. CODE § 52052(d)) and annual percentage growth targets developed by the  
22 Superintendent of Public Instruction for each school based on their API baseline score as  
23 measured in July 1999 (CAL. EDUC. CODE § 52052(c)). The statute gives the Board  
24 discretion to set differential growth targets for the lowest performing schools. CAL. EDUC.  
25 CODE § 52052(c).
- 26 • PSAA also establishes the Immediate Intervention/Underperforming Schools Program  
27 (“II/USP”) and the High Priority Schools Grant Program, which are both administered by  
28 the State Agency defendants. CAL. EDUC. CODE §§ 52053 through 52055.51. The  
Superintendent of Public Instruction and the Board of Education are responsible for  
selecting eligible schools for participation in the program (CAL. EDUC. CODE § 52053(h))

1 and reviewing school action plans (or summaries of the plans) along with the school's  
2 request for funding to implement the plan. CAL. EDUC. CODE § 52053(i) and (j). They  
3 are also responsible for determining appropriate interventions for schools that fail to show  
4 "significant growth" within the designated period of time. *See* CAL. EDUC. CODE  
5 §§ 52055.5, 52055.51. The legislation affords them broad responsibility to choose  
6 appropriate interventions to address school conditions that are impacting student  
7 achievement. *See id.*

8 **iii. The Board of Education, Department of**  
9 **Education and Superintendent Have Primary**  
10 **Responsibility for the Implementation of the**  
11 **High School Exit Exam.**

12 41. Pursuant to Education Code sections 60850-60859, the Board of Education, Department  
13 of Education, and Superintendent have primary responsibility for the implementation of the High  
14 School Exit Exam. Education Code section 60850(a) requires that the "Superintendent of Public  
15 Instruction, with the approval of the State Board of Education, shall develop" the high school exit  
16 exam; Education Code sections 60851, 60855, 60856, and 60857 assign various supervisory  
17 responsibilities to the State Agency defendants; and Education Code section 60859 authorizes the  
18 Board of Education to decide whether to delay the exam.

19 **iv. The Superintendent of Public Instruction and**  
20 **Board of Education Have Broad Control Over**  
21 **District Budgets.**

22 42. The Superintendent of Public Instruction and the State Board of Education also have  
23 extensive control over local budgets. *See Belanger v. Madera Unified Sch. Dist.*, 963 F.2d 248, 251  
24 (9th Cir. 1992) (stating that "[u]nlike most states, California school districts have budgets that are  
25 controlled and funded by the state government rather than the local districts"). Both entities are  
26 involved with the development of criteria to be used by local educational agencies in managing  
27 annual budgets:

28 **§ 33127. Standards and Criteria for development of annual**  
**budgets and management of expenditures.** The Superintendent of  
Public Instruction, the Controller, and the Director of the Department  
of Finance shall develop, on or before March 1, 1989, standards and  
criteria to be reviewed and adopted by the State Board of Education,  
and to be used by local educational agencies in the development of

1 annual budgets and the management of subsequent expenditures from  
2 that budget. During the development of the standards and criteria, the  
3 Superintendent of Public Instruction's Fiscal Management Advisory  
4 Committee composed of representatives from school districts, county  
5 offices of education, state agencies, the Legislature, and appropriate  
6 professional organizations, shall review and comment prior to the  
7 enactment of the standards and criteria. In addition, the standards and  
8 criteria shall be used to monitor the fiscal stability of local educational  
9 agencies as provided for in Sections 1240.1, 1240.2, 1621, 1623,  
10 1623.2, 33131, 35014.3, 42127, and 42127.1.

11 43. In addition, the Superintendent:

- 12 • Receives reports from the governing board of each school district as to the average daily  
13 attendance ("ADA"). CAL. EDUC. CODE § 41601.
- 14 • Issues allowances to each district based on the ADA. CAL. EDUC. CODE §§ 41790 and  
15 41800.
- 16 • Determines and certifies to the State Controller the amounts to be apportioned to each  
17 school district. CAL. EDUC. CODE §§ 41341, 41330 and 41376.
- 18 • Examines and either approves or disapproves each school district's budget. CAL. EDUC.  
19 CODE §§ 1622-1624.
- 20 • Can withhold state or federal money from county boards of education whose budgets do  
21 not conform to the requirements prescribed by the code. CAL. EDUC. CODE § 42120.
- 22 • Calculates the statewide average percentage of district expenditures, by type and size of  
23 district, allocated to salaries of administrative personnel and teachers. CAL. EDUC. CODE  
24 § 41409.
- 25 • Is authorized to provide assistance to school districts that are experiencing severe financial  
26 difficulty. CAL. EDUC. CODE § 41450.
- 27 • Has the authority to assume control of financially insolvent districts. CAL. EDUC. CODE  
28 §§ 41325 and 41326.

1                                   **3. Given the Interdependent Roles and Responsibilities of the**  
2                                   **State Agency Defendants, They All Should Be Held Liable**  
3                                   **for the States’ Failure to Establish an Accountability System**  
4                                   **to Ensure Equal Access to Basic Educational Necessities.**

5           44. The Education Code allocates responsibility to each of the State Agency defendants to  
6 ensure equal educational opportunity. However, there is such interdependence among them that  
7 where one entity can be found liable for educational inequities, the others should be held responsible  
8 as well. First, the Education code provides that the Superintendent of Public Instruction is both the  
9 “secretary” and “executive officer of the board” (CAL. EDUC. CODE § 33004), as well as the ex  
10 officio Director of Education vested with control of the Department of Education. *See id.*  
11 at §§ 33301, 33303. Second, the code provides that the Department of Education is jointly  
12 administered by the State Board of Education, “which shall be the governing and policy determining  
13 body of the department” and the Superintendent “in whom all executive and administrative functions  
14 of the department are vested.” *Id.* at § 33301.

15           45. The complexity of the overlapping powers, duties, and functions of the Board of  
16 Education, the Superintendent of Public Instruction, and the Department of Education is  
17 demonstrated in litigation between the Superintendent and Board of Education. In *State Board of*  
18 *Education v. Honig*, 13 Cal. App. 4th 720 (1993), the Board of Education sought a writ of mandate  
19 ordering the Superintendent to implement its policies on program guidelines, appointment of  
20 superintendents and staff, budget approval, and to process a legal services contract for the litigation.  
21 *See* 13 Cal. App. 4th at 729-30. In *Honig*, the court stated that “the Legislature clearly envisioned a  
22 Department administered jointly by the Board and Superintendent.” *Id.* at 765. The court concluded  
23 that the Board’s role is to “establish goals affecting public education in California, principles to guide  
24 the operations of the Department, and approaches for achieving the stated goal.” *Id.* at 766; *see also*  
25 *McLaughlin v. State Bd. of Educ.*, 75 Cal. App. 4th 196, 203 (1999) (stating that the “State Board  
26 exercises direct administrative control over local school districts by adopting rules and regulations  
27 consistent with state law for the governance of local schools and school districts.”). The  
28 Superintendent, on the other hand, is “responsible for day-to-day execution of Board policies,

1 supervision of staff, and more detailed aspects of program and budget oversight.” *Honig*, 13 Cal.  
2 App. 4th at 766.

3 46. Entities such as the Constitution Revision Commission, the California Research Bureau,  
4 and the California State Auditor have criticized the blurred lines of authority:

- 5 • The Constitution Revision Commission found in its 1996 report that “‘California has an  
6 educational system that provides no real focal point for responsibility, no flexibility for  
7 local districts and responsibilities are widely scattered, resulting in no single official or  
8 entity being accountable for the state’s education system either at the state or local level.’  
9 The Commission noted that California’s structure of K-12 governance at the state level  
10 was confusing, inefficient, and lacked a clear delineation of accountability between the  
11 Superintendent of Public Instruction, the State Board of Education, the Governor, and  
12 Secretary for Education. To correct this situation, it encouraged the Governor and  
13 Legislature to clarify K-12 governance at the state level. . . . The Commission’s  
14 recommendations were not acted upon.” Murray J. Haberman, Cal. Research Bureau, *A*  
15 *Double-Headed System: A History of K-12 Governance in California and Options for*  
16 *Restructuring* (1999) at 15.
- 17 • The California Research Bureau has stated that “‘California has long been plagued with a  
18 ‘two-headed’ system of K-12 governance. Under this system there have been  
19 longstanding disputes over who is responsible for statewide policy making and the  
20 administration of California’s public school system. Numerous reports and studies since  
21 1919 have recommended clarifying, redefining, or reinventing the roles and selection  
22 process for the Superintendent of Public Instruction and the State Board of Education.  
23 However, many of these recommendations were either not adopted by the legislature,  
24 were vetoed by the Governor, or were rejected by the voters. Since the State’s inception,  
25 California’s underlying structure of K-12 governance has remained virtually unchanged.”  
26 Murray J. Haberman, Cal. Research Bureau, *A Double-Headed System: A History of K-12*  
27 *Governance in California and Options for Restructuring* (1999) at 22.

- 1       • The California State Auditor’s report on the Standardized Testing and Reporting  
2       (“STAR”) program documents that conflict over authority and responsibility at the state  
3       level has directly interfered with the successful implementation of educational programs  
4       that are mandated by the Legislature. The State Auditor reported that “the decades-old  
5       conflict between these educational bodies continues and has negatively affected all aspects  
6       of the STAR program.” Cal. State Auditor, *STAR Program: Ongoing Conflicts Between*  
7       *the State Board of Education and the Superintendent of Public Instruction as Well as*  
8       *Continued Errors Impede the Program’s Success* (2000) at 13. The State Auditor further  
9       reported that: “No single mechanism is in place that allows the board and department to  
10      resolve their disputes concerning what constitutes an administrative versus policy issue for  
11      the STAR program. Until a mechanism is put in place that allows these parties to clarify  
12      and agree on their respective responsibilities, their disputes will continue to undermine the  
13      program.” *Id.* at 11.

14                                   **4. Plaintiffs Need Not Parse Responsibility for the State’s**  
15                                   **Failure to Address Basic Inequities in Education.**

16       47. In light of this interdependence, plaintiffs should not be required to delineate  
17      responsibility among the various governmental actors for violations of students’ rights to equal  
18      educational opportunities. *See e.g., San Francisco NAACP v. San Francisco Unified Sch. Dist.*,  
19      484 F. Supp. 657, 667 (N.D. Cal. 1979). In *San Francisco NAACP v. San Francisco Unified School*  
20      *District*, the court ruled that the management of public schools is “a matter of statewide supervision  
21      rather than a local concern” that is shared among state entities, including the State Board of  
22      Education, the State Superintendent of Public Instruction, and the State Department of Education.  
23      *See* 484 F. Supp. at 662. In support of its ruling, the court relied on “broad constitutional mandates”  
24      as well as various Education Code sections that reveal that the State educational agencies are  
25      assigned “numerous express ongoing responsibilities.” *Id.* at 663. The court held that “under  
26      California constitutional and statutory law, the State Board of Education, Department of Education,  
27      and Superintendent of Public Instruction are proper defendants in an action alleging discriminatory  
28      and segregative practices in a local public school system.” *Id.* at 667.

1           48. The court explicitly rejected the State agency defendants’ argument that they were not  
2 proper defendants in the action because (1) “only the Legislature has plenary authority, and that their  
3 own power is limited to acts authorized by the Legislature” and (2) the Legislature “has delegated  
4 much of its power to local districts, which have the primary responsibility for education in the State  
5 of California.” *Id.* at 665. In response to the State agency defendants’ first argument, the Court  
6 stated that “[i]t is the general and long-established rule that in actions for declaratory and injunctive  
7 relief challenging the constitutionality of a state statute, state officers with statewide functions under  
8 the challenged statute are proper parties defendant.” *Id.* The court further stated that:

9           Although the case at bar does not present a constitutional attack on  
10 legislation, it does, as in *Serrano*, challenge the administration of the  
11 educational system by state officers. If state officers are proper  
12 defendants in a challenge to legislation, the creation and existence of  
which is within the authority of the Legislature and Governor, a  
fortiori, they are proper parties in a suit challenging the administration  
of law, which falls within their own realm of authority.

13 *Id.* In rejecting the State agency defendants’ second argument, the court stated that the “State  
14 Defendants clearly have ongoing direct responsibilities [for the administration of education], the  
15 breach of which may expose them to liability” and that “the State Defendants might be liable under  
16 an agency theory.” *Id.*

17           49. The court referenced specific provisions of the California Education Code that, in its  
18 view, appeared to give rise to ongoing monitoring responsibilities on the part of the State Board. The  
19 court reasoned that while the Board was not assigned express enforcement powers, the intent of the  
20 legislation and the Board’s inherent authority seem to provide the Board with the power and duty to  
21 impose sanctions where necessary “to carry out the intent of [the] article.” *Id.* at 663. The Court  
22 further explained that:

23           Even absent enforcement power, a failure by the Department of  
24 Education to perform its express duties could conceivably contribute to  
25 the wrongs of which plaintiffs complain. Whether or not any such  
26 delinquency occurred, and if so, whether it played a causative role in  
the injury allegedly sustained by plaintiffs, are questions of fact central  
to the lawsuit.

27 *Id.*

1                   **D. The State Has a Duty to Ensure that All Public School Students**  
2                   **Receive Equal Educational Opportunities Regardless of Race,**  
3                   **Color, National Origin, or Economic Status.**

4           50. As early as 1924, the Supreme Court of California held that the State must provide all  
5 children an education “equal in all respects to that afforded persons of any other race or color.” *Piper*,  
6 193 Cal. at 669-70; *see also Butt*, 4 Cal. 4th at 680 (“Since its admission to the Union, California has  
7 assumed specific responsibility for a statewide public education system open on equal terms to all.”).

8           51. Forty years later, in *Jackson v. Pasadena City School District*, 59 Cal. 2d 876 (1963),  
9 the Supreme Court of California again held: “[t]he constitutional rights of children not to be  
10 discriminated against . . . on the grounds of race or color cannot be nullified by state action either  
11 openly and directly or indirectly by evasive schemes . . . .” 59 Cal. 2d at 880.

12           52. In *Crawford v. Board of Education*, 17 Cal. 3d 280 (1976), the California Supreme  
13 Court warned against seemingly neutral policies that create disparate educational opportunities:

14                   [A] school board in this state is not constitutionally free to adopt any  
15                   facially neutral policy it chooses, oblivious to such policy’s actual  
16                   differential impact on the minority children in its schools. . . . [T]he  
17                   importance of adopting and implementing policies which avoid  
18                   “racially specific” harm to minority groups takes on special  
19                   constitutional significance with respect to the field of education,  
20                   because, at least in this state, education has been explicitly recognized  
21                   for equal protection purposes as a “fundamental interest.”

22           17 Cal. 3d at 296-97.

23           53. In *San Francisco Unified School District v. Johnson*, the California Supreme Court  
24 further discussed the State’s obligation to provide equal educational opportunity. The court quoted  
25 *Brown v. Board of Education*, 347 U.S. 483, 493 (1954), which stated: “where the state has  
26 undertaken to provide it [education] is a right which must be made available to all on equal terms.”  
27 *Johnson*, 3 Cal. 3d at 950. The *Johnson* court instructed vigilance against both de jure and de facto  
28 discrimination in education, such that “racial discrimination would be eliminated root and branch.”  
3 Cal. 3d at 955 (quoting *Green v. County Sch. Bd.*, 391 U.S. 430, 437-39 (1968)).

          54. In *Serrano I*, the California Supreme Court made wealth a suspect classification for  
purposes of public education. 5 Cal. 3d at 617. The *Serrano II* court distinguished the State’s equal  
protection jurisprudence from federal doctrine: disparity in educational opportunity because of



1 district wealth, though “not in violation of the equal protection clause of the Fourteenth Amendment  
2 to the federal Constitution, . . . [was] invalid as in violation of . . . the California Constitution [art. IV,  
3 § 16 and art. I, § 7], our state equal protection provisions.” *Serrano II*, 18 Cal. 3d at 748-49 (citation  
4 omitted).

5 55. The State has recognized its obligation to ensure equal educational opportunities  
6 irrespective of race, color, national origin and economic status. California Education Code  
7 section 51004 provides:

8 The Legislature hereby recognizes that it is the policy of the people of  
9 the State of California to provide an educational opportunity to the end  
10 that every student leaving school shall have the opportunity to be  
11 prepared to enter the world of work; that every student who graduates  
12 from any state-supported educational institution should have sufficient  
13 marketable skills for legitimate remunerative employment; that every  
qualified and eligible adult citizen shall be afforded an educational  
opportunity to become suitably employed in some remunerative field of  
employment; and that such opportunities are a right to be enjoyed  
without regard to race, creed, color, national origin, sex, or economic  
status.

14 CAL. EDUC. CODE § 51004.

15 56. The California Government Code reinforces the State’s commitment to equal protection  
16 with respect to racial and ethnic minorities. Government Code Section 11135 states:

17 No person in the State of California shall, on the basis of ethnic group  
18 identification, [or] . . . color, . . . be unlawfully denied full and equal  
19 access to the benefits of, or be unlawfully subjected to discrimination  
20 under, any program or activity that is conducted, operated, or  
administered by the state or by any state agency, is funded directly by  
the state, or receives any financial assistance from the state.

21 CAL. GOV’T CODE § 11135(a) (2002).

22 **E. The State’s Failure to Address Gross Inequalities in Access to Basic**  
23 **Educational Necessities Is a Violation of the Equal Protection**  
**Clause as Set Forth in *Butt v. State of California*.**

24 57. Article I, section 7(a) and Article IV, section 16(a) of the California Constitution  
25 guarantee equal protection of the laws to all Californians.

26 58. The *Butt* decision discussed above was predicated on the California equal protection  
27 clause. The Court stated that “the California Constitution makes public education uniquely a  
28 fundamental concern of the State and prohibits maintenance and operation of the common public

1 school system in a way which denies basic educational equality. . . .” *Butt*, 4 Cal. 4th at 685. *Butt*  
2 explained that “the State’s responsibility for basic equality in its system of common schools extends  
3 beyond the detached role of fair funder or fair legislator,” and that when students are being denied the  
4 fundamental requisites of education, “the State ‘has a duty to intervene to prevent unconstitutional  
5 discrimination’ at the local level.” *Id.* at 688 (*quoting Tinsley v. Palo Alto Unified Sch. Dist.*, 91 Cal.  
6 App. 3d at 904). Accordingly, the Court upheld the trial court’s finding that “the District’s impeding  
7 failure to complete the final six weeks of its scheduled school term would cause educational  
8 disruption sufficient to deprive District students of basic educational equality.” *Id.* at 692.

9 59. As evidenced by the shocking conditions in plaintiffs’ schools, the State has clearly  
10 failed to meet its obligation under *Butt*. The gross disparities in access to basic educational tools  
11 result in “educational disruption” that is as severe as that experienced by the plaintiffs in *Butt*. *See id.*  
12 Students who do not have access to instructional materials, qualified teachers, and safe, clean  
13 facilities that support learning do not receive “an education basically equivalent to that provided  
14 elsewhere throughout the State.” *Id.* at 685. Indeed, the paucity of educational opportunities  
15 provided to these students “falls fundamentally below prevailing statewide standards” and should not  
16 be tolerated by any just society. *Butt, supra*, 4 Cal. 4th at 685, 687.

17 **F. The State’s Failure to Address Gross Inequalities in Access to Basic**  
18 **Educational Necessities Is a Violation of the Due Process Clause.**

19 60. The California Constitution (art. I., § 7.15) prohibits the state from depriving a person  
20 of property and liberty without due process of law. Plaintiffs have a protected property interest in  
21 education, created by the education clause of the California Constitution (art. IX, § 5) and by the laws  
22 and regulations surrounding public schooling, including compulsory attendance laws (CAL. EDUC.  
23 CODE §§ 48200, 48260-48273). *See Goss v. Lopez*, 419 U.S. 565, 572-74 (1975) (finding that Ohio  
24 had created a property right through laws that provided for free education and made attendance  
25 compulsory); *Swany v. San Ramon Valley Unified Sch. Dist.*, 720 F. Supp. 764, 773 (N.D. Cal. 1989)  
26 (plaintiff “as a California resident, had a protected property interest in a high school education”);  
27 *Debra P. v. Turlington*, 644 F.2d 397, 403-404 (5th Cir. 1981) (once a state establishes a system of  
28 education and requires school attendance, an “understanding” is created between the state and the

1 student “that secures certain benefits and that supports claims of entitlement to those benefits”). *See*  
2 *also Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972) (due process property interests “are created and  
3 their dimensions are defined by existing rules or understandings that stem from an independent  
4 source such as state law — rules or understandings that secure certain benefits and that support  
5 claims of entitlement to those benefits”); *Skelly v. State Personnel Bd.*, 15 Cal. 3d 194, 207 (1975)  
6 (same).

7 61. For purposes of this litigation, the court need not define the full contours of California  
8 students’ due process property interest in education. Whatever that may be, students’ property  
9 interest must, at a minimum, ensure that they have the most basic and fundamental educational tools  
10 at issue here, that is, qualified teachers, sufficient instructional materials, and safe, clean facilities that  
11 support learning. By failing to provide access to the bare minimum necessities that comprise an  
12 education, the State has interfered with plaintiffs’ property interest in education arbitrarily and  
13 without any constitutionally sufficient justification. *See Kavanau v. Santa Monica Rent Control Bd.*,  
14 16 Cal. 4th 761, 771 (1997).

15 62. The State requires plaintiffs to attend school full-time between the ages of 6 and 18  
16 years, subject to penalty. Cal. EDUC. CODE §§ 48200, 48260-48273. These compulsory attendance  
17 laws act as a restraint on plaintiffs’ liberty, thereby triggering the protections of the due process  
18 clauses of the California Constitution (art. I, §§ 7, 15). *See DeShaney v. Winnebago County Dep’t of*  
19 *Soc. Servs.*, 489 U.S. 189, 199-200, 201 n.9 (1989).

20 63. The due process clause protects citizens from arbitrary deprivations of liberty by the  
21 state without due process of law. *See Goss*, 419 U.S. at 574; *In re Roger S.*, 19 Cal. 3d 921, 935  
22 (1977). Through its compulsory attendance laws, the State has deprived plaintiffs of their liberty for  
23 the purpose of educating them. This deprivation of liberty triggers the State’s duty to provide  
24 plaintiffs with, at the very least, access to the basic educational necessities at issue in this lawsuit.  
25 *See Ala. Coalition for Equity v. Hunt*, 1993 WL 204083 at \*59 (Ala. 1993). The State’s failure to  
26 address gross inequalities in access to the most basic educational tools falls far short of what is  
27 required by due process.

64. Plaintiffs also have a protected property interest in obtaining a California high school diploma. *Swany*, 720 F. Supp. at 774. *See also Debra P.*, 644 F.2d at 404. Beginning with the class of 2004, this interest is now conditioned on passing the High School Exit Exam (“HSEE”). Cal. EDUC. CODE §60851(a). As it stands, the imposition of the HSEE on plaintiff class-members violates due process. To satisfy due process requirements, the State must show that all students have been provided with the tools and conditions required to learn the material tested on the HSEE. *Debra P.*, 644 F.2d at 404-408. Similarly, if students’ failure to meet state-imposed standards is directly attributable to state action, due process is violated. *See GI Forum v. Tex. Educ. Agency*, 87 F. Supp. 2d 667, 683, n.12 (W.D. Tex. 2000).

65. At a minimum, when the State subjects students to gross inequities in basic learning conditions, it is also depriving them of the most basic opportunities to learn the material tested on the HSEE. Thus, denying diplomas to members of the plaintiff class on the basis of this HSEE, given that class members have been subjected to protracted and on-going deprivations of basic educational tools, is fundamentally unfair. *See Debra P.*, 644 F.2d at 404, 405 n.11. In addition, the imposition of the exam on the plaintiff class under these circumstances constitutes an arbitrary process for denying diplomas. *See generally People v. Ramirez*, 25 Cal.3d 260, 263-68 (1969).

66. Moreover, the State’s compulsory attendance laws create a “special relationship” between the State and plaintiffs, which triggers heightened protection under the due process clauses of the California Constitution. *See DeShaney*, 489 U.S. at 199-200, 201 n.9; *Doe v. Taylor Indep. Sch. Dist.*, 975 F.2d 137, 147 (5th Cir. 1992); Because the State has failed to provide plaintiffs with the bare minimum necessities of an education, the State has impeded the basic educational success of plaintiffs and infringed upon their fundamental right to a basic education.

67. By restricting plaintiffs’ liberty, the State has also assumed a duty to protect and care for plaintiffs while they are in the State’s public schools. *See DeShaney*, 489 U.S. at 201 n.9. The State has failed to meet its duty to protect and care for plaintiffs because it has forced plaintiffs to attend schools that are dangerous to their health and failed to correct the dangerous conditions. By delegating responsibility to local districts without defining standards and creating a meaningful accountability system, the State has also contributed to the development and persistence of these

1 conditions. These dangerous conditions have infringed upon plaintiffs’ liberty interest in personal  
2 security. *See Youngberg v. Romeo*, 457 U.S. 307, 315-16 (1982); *Ingraham v. Wright*, 430 U.S. 651,  
3 673 (1977). Furthermore, the state’s maintenance of school facilities in such substandard conditions  
4 “shocks the conscience.” *See Rochin v. California*, 342 U.S. 165, 172 (1952).

5 **G. The State’s Failure to Address Gross Inequalities in Access to Basic**  
6 **Educational Necessities Is A Violation of Article IX, Sections 1 and**  
7 **5 of the California Constitution.**

8 68. Article IX, Section 1 of the California Constitution states: “A general diffusion of  
9 knowledge and intelligence being essential to the preservation of rights and liberties of the people,  
10 the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral  
11 and agricultural improvement.” Article IX, Section 5 of the California Constitution states: “The  
12 Legislature shall provide for a system of common schools by which a free school shall be kept up and  
13 supported in each district at least six months in every year, after the first year in which a school has  
14 been established” (hereinafter “Free and Common Schools Clause”). Accordingly, the plain  
15 language of these clauses guarantee that the State must have a “system of common schools” that are  
16 “free” and “kept up and supported” such that children may learn and receive the “diffusion of  
17 knowledge and intelligence essential to the preservation of the[ir] rights and liberties.” CAL CONST.  
18 art. IX, § 1. Although this Court need not define the full reach of these clauses for purposes of  
19 deciding the issues in this case, it is clear that gross disparities in access to basic educational  
20 necessities constitute a violation of the State’s constitutional duties pursuant to these sections.

21 69. California case law interpreting what constitutes a “system of common schools”  
22 supports plaintiffs’ position that the State’s persistent failure to address inequality amounts to a  
23 constitutional violation. In *Piper*, the court invalidated a law prohibiting American Indian children  
24 from attending state schools, forcing them to instead attend federally run schools. The court  
described the requirements of a common school system as follows:

25 The public school system of this state is a product of the studied  
26 thought of the eminent educators of this and other states of the Union,  
27 perfected by years of trial and experience. Its adaptability to the genius  
28 of western development and expansion makes it peculiarly important to  
those who choose to remain in this state where its influence will be felt.  
Each grade forms a working unit in a uniform, comprehensive plan of  
education. Each grade is preparatory to a higher grade, and, indeed,

affords an entrance into schools of technology, agriculture, normal schools, and the University of California. In other words, the common schools are doorways opening into chambers of science, art and the learned professions, as well as into fields of industrial and commercial activities. Opportunities for securing employment are often more or less dependent upon the rating which a youth, as a pupil of our public institutions, has received in his school work. These are rights and privileges that cannot be denied.

*Piper*, 193 Cal. at 673. See also *Wilson v. State Bd. of Educ.*, 75 Cal. App. 4th 1125, 1137 (1999) (stating that “the term ‘system’ has come to import unity of purpose as well as an entirety of operation, and the direction to the legislature to provide a system of common schools means *one* system which shall be applicable to all the common schools within the state. This means that the educational system must be uniform in terms of the prescribed course of study and educational progression from grade to grade.” (internal citation and quotation marks omitted)).

70. In light of the disparity in access to basic educational necessities experienced by plaintiffs, it is clear that the State has failed to establish a *system of common* schools. Indeed, some students in California attend schools where they are deprived of the very basics of an education. Far from attending schools that are “doorways opening into chambers of science, art and the learned professions,” (*Piper*, 193 Cal. at 673), plaintiffs do not have access to qualified teachers, instructional materials, and safe, clean, facilities. Further, the lack of basic educational necessities at some schools render the State’s system incapable of fulfilling the promise of uniformity “in terms of the prescribed course of study and educational progression from grade to grade.” *Wilson*, 75 Cal. App. 4th at 1136-37. Schools that do not have adequate instructional materials, qualified teachers or decent facilities cannot ensure uniformity of access to a prescribed course of study or educational progression.

71. The State has also failed to establish a “system of common schools” that are “kept up and supported.” Although courts have not yet interpreted the meaning of “kept up and supported,” the use of the term suggests that the constitutional delegates envisioned a system with some mechanism to ensure schools are supplied adequate instructional materials, qualified teachers, and school facilities that meet minimal standards of safety, cleanliness, and maintenance. If “kept up and supported” is to have any meaning at all, it must require the State to have a system that keeps schools free from unhealthful and unsanitary conditions and that ensures access to basic educational tools.

1           72. As plaintiffs set forth in detail in their opposition to the State’s summary judgment  
2 motion relating to the State’s role in ensuring that students are not charged impermissible fees, the  
3 State has also violated its obligations to provide a “system” of “free” schools. In *Hartzell v. Connell*,  
4 35 Cal. 3d 899 (1984), the California Supreme Court considered whether a school may charge fees  
5 for extracurricular activities (e.g., athletic teams, drama and music groups, cheerleading, etc.). The  
6 *Hartzell* court found that “[v]iewed in light of [the] constitutionally recognized purposes” of public  
7 education, extracurricular activities that are educational in nature (including drama, sports, etc.) “fall  
8 within the free school guarantee of article IX, section 5,” and that therefore schools cannot charge for  
9 participation therein. *Id.* at 911. Given the constitutional magnitude of charging fees for  
10 extracurricular activities, the State’s obligation under the Free and Common Schools Clause does not  
11 end with simply passing legislation or issuing a report prohibiting the charging of fees; the State must  
12 also have a “system” that ensures schools are indeed “free.”<sup>4</sup>

13           73. While plaintiffs are not asking this Court to explore the outer limits of Article IX  
14 Sections 1 and 5, decisions from other states regarding constitutional provisions similar to these  
15 clauses are instructive in that they illustrate how other state courts have interpreted the requirements  
16 of such clauses. As presented in this Liability Disclosure, the shocking conditions at certain of the  
17 State’s public schools establish that the State has not fulfilled its obligations.

18           74. The comparable provision in the Arizona Constitution provides that “[t]he legislature  
19 shall enact such laws as shall provide for the establishment and maintenance of a general and uniform  
20 public school system.” Art. 11, §1. In *Roosevelt Elementary School District Number 66 v. Bishop*,  
21 877 P.2d 806 (Ariz. 1994), school districts and a class of parents sued the state as well as the  
22 Superintendent of Public Instruction and alleged that the public financing scheme violated the  
23 Arizona Constitution. The Arizona Supreme Court noted various disparities in facilities among the  
24 state’s schools, including “schoolhouses that are unsafe, unhealthy, and in violation of building, fire,  
25 and safety codes” and “schools without libraries, science laboratories, computer rooms, art programs,  
26 \_\_\_\_\_

27           <sup>4</sup> Plaintiffs’ arguments and facts in support of this claim are set forth in greater detail in their  
28 opposition to the State’s summary judgment motion regarding fees. Plaintiffs incorporate this  
opposition by reference into the Liability Disclosure.

gymnasiums, and auditoriums.” *Id.* at 808. The Court held that Article 11 of the Arizona Constitution required that Arizona adopt a financing scheme that did not create substantial disparities. *See id.* at 817.

75. The relevant provision of the Alabama Constitution provides, “[t]he legislature shall establish, organize, and maintain a liberal system of public schools throughout the state for the benefit of the children thereof between the ages of seven and twenty-one years.” ALA. CONST. art. XIV, § 256. In *Ala. Coalition for Equity v. Hunt*, 624 So. 2d 107 (Ala. 1993), the Alabama Supreme Court issued an advisory opinion stating that the Legislature must comply with a circuit court’s order that it address the problems with the state’s school system.<sup>5</sup> Relying on expert and witness testimony, the circuit court held that deficiencies strikingly similar to those presented in this Liability Disclosure prevented the state from offering students an adequate education as required by the state constitution. *See id.* at 155. The court stated that “many Alabama schools fall below standards of minimal educational adequacy for facilities, curriculum, staffing, textbooks, supplies and equipment, and transportation that have been adopted by the state itself.” *Id.* at 136. With respect to school facilities, the court indicated that Alabama school buildings were “old and dilapidated” and that there was a “serious shortage of classroom space.” *Id.* at 129. In addition, the court referenced deficiencies such as lack of computer or science laboratories, auditoriums, gymnasiums, and playgrounds. *See id.* at 129-30. The court also noted conditions similar to those present in California schools such as leaking roofs, broken windows, termites, lack of air-conditioning, and lack of maintenance. *See id.* at 130-31. With respect to academic curricula, the court stated that many schools failed to offer basic educational courses and that there existed a shortage of educational staff. With respect to instructional materials, the court noted that students shared textbooks with their classmates and could not take textbooks home. *See id.* at 134. As in California, Alabama teachers often spent their own money for equipment and supplies. *Id.* at 135. Accordingly, because of the

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<sup>5</sup> While the Alabama Supreme Court subsequently held in *Ex Parte James*, 713 So. 2d 869 (Ala. 1997) that the legislature should be afforded “reasonable time” to provide an adequate system, it did not disturb the circuit court’s holding that the substantial and meaningful disparities in the school system were impermissible.



1 “stark record of education deficiencies,” the court ruled that the defendants did not provide plaintiffs  
2 with the adequate education required by the State constitution. *Id.* at 155.

3 76. The relevant section of the South Carolina Constitution states, “[t]he General Assembly  
4 shall provide for the maintenance and support of a system of free public schools open to all children  
5 in the State and shall establish, organize and support such other public institutions of learning, as may  
6 be desirable.” S.C. CONST. art. XI, § 3. In *Abbeville County School District v. State*, 515 S.E.2d 535  
7 (S.C. 1999), less wealthy school districts and their students challenged the constitutionality of South  
8 Carolina’s funding of public education. The court held that the State Constitution required the state  
9 to provide a “minimally adequate” education as including “adequate and safe facilities” in which  
10 students have the opportunity to acquire “the ability to read, write, and speak the English language,”  
11 “knowledge of mathematics and physical science,” “fundamental knowledge of economic, social, and  
12 political systems, and of history and governmental processes,” and “academic and vocational skills.”  
13 *Id.* at 540. As in South Carolina, students in California are entitled to adequate and safe facilities that  
14 will provide them with the opportunity to learn.

15 77. The Tennessee Constitution provides, “[t]he State of Tennessee recognizes the inherent  
16 value of education and encourages its support. The General Assembly shall provide for the  
17 maintenance, support and eligibility standards of a system of free public schools.” TENN. CONST.  
18 art. XI, §12. In *Tenn. Small School System v. McWhorter*, 851 S.W.2d 139, 141 (Tenn. 1993),  
19 plaintiffs alleged that the Governor and other state officials violated the Tennessee Constitution by  
20 failing to eliminate disparities in the public school system. With respect to disparities, the Court  
21 relied on the lower court’s findings of facts, which stated that certain students are “not afforded  
22 substantially equal access to adequate laboratory facilities, computers, current and new textbooks,  
23 adequate buildings, advanced placement courses, varied curricula, advanced foreign language  
24 courses, music and art courses, drama and television courses.” *Tenn. Small Sch. Sys.*, 851 S.W.2d  
25 at 144. Similar to the conditions in certain California schools, poorer school districts had “decaying  
26 physical plants,” inadequate heating, buckling floors, and leaking roofs. *Id.* at 145. Again, similar to  
27 the textbook situation in California schools, the textbooks and libraries in the poorer school districts  
28 in Tennessee were “inadequate, outdated, and in disrepair.” *Id.* Although the Court declined to state

1 the “precise level of education mandated” by the state constitution because it granted relief to  
2 plaintiffs under the state’s equal protection clause, the court’s examination suggests that the disparity  
3 in conditions did not comply with the state’s minimum standards. *See id.* at 152.

4 78. Finally, the Kentucky Constitution provides, “[t]he General Assembly shall, by  
5 appropriate legislation, provide for an efficient system of common schools throughout the State.”  
6 KY. CONST. § 183. In *Rose v. Council for Better Education*, 790 S.W.2d 186, 212 (Ky. 1989), the  
7 Kentucky Supreme Court relied on the state constitution to order the General Assembly to recreate a  
8 new education system that would guarantee children an adequate education. The Supreme Court first  
9 referenced evidence presented at trial, and explained that “[w]ithout exception, they [witnesses]  
10 testified that there is great disparity in the poor and the more affluent school districts with regard to  
11 classroom teachers’ pay; provision of basic educational materials; student-teacher ratio; curriculum;  
12 quality of basic management; size, adequacy and condition of school physical plants; and per year  
13 expenditure per student.” *Rose*, 790 S.W.2d at 198. Then, the Supreme Court interpreted the state  
14 constitutional provision to require: that the General Assembly maintain a system of common schools,  
15 which is a service that is vital to the well-being of the state; that the system of common schools be  
16 efficient; that the system of common schools be free; that the system of common schools provide  
17 equal educational opportunities for all students; that the state control and administer the system; that  
18 the system if not uniform, be substantially uniform, with respect to the state as a whole; and that the  
19 system be equal to and for all students. *See id.* at 208. Applying this interpretation to the disparity in  
20 the state, the Court found that the General Assembly “failed to establish an efficient system of  
21 common schools.” *Id.* at 215.

22 **III. THE STATE HAS KNOWN OR SHOULD HAVE KNOWN THAT**  
23 **INEQUALITY IN EDUCATIONAL OPPORTUNITY IS AND HAS**  
24 **BEEN A SERIOUS AND GROWING PROBLEM.<sup>6</sup>**

25 79. The State has known or should have known that there has been an ever-widening gap in  
26 educational opportunity for quite some time — and in some cases, for decades. Some California  
27 schoolchildren attend schools with (1) low percentages of qualified teachers; (2) low percentages of

28 <sup>6</sup> Although this Liability Disclosure cites to a considerable evidentiary record, it is not  
intended to be exhaustive in this regard.

1 teachers specially-trained to teach English language learners; (3) an inadequate supply of  
2 instructional materials; (4) unsafe, poorly maintained, overcrowded, and run-down facilities; and/or  
3 (5) such severe overcrowding that schools have resorted to multi-track year-round calendars or  
4 busing students away from their neighborhood schools.

5 80. Top California officials have admitted the seriousness of the gap in educational  
6 opportunities. For example, in 1998, Superintendent Delaine Eastin wrote: “If you truly believe we  
7 are adequately funding education . . . I strongly suggest you visit schools in your Assembly district.  
8 You will see the lack of textbooks, library books and access to technology . . . You will find facilities  
9 that impede our efforts to provide the finest instruction possible.” Dan Morain & Richard L. Colvin,  
10 *California and the West; Bickering Over School Spending Resumes; Legislature: Analyst Says*  
11 *Funding is Closer to National Average Than Widely Thought. Numbers Draw Criticism*, L.A. TIMES,  
12 June 11, 1998, at A3. She has also stated that bridging the racial and economic gap will be her  
13 successor’s most difficult challenge:

14 It’s our black and brown kids who are falling farther behind, and it’s  
15 not because they are intrinsically worse students, it is because we have  
chronically underperforming schools in our state.

16 Sarah Krupp, *Reforms Put Test Standards on the Spot*, CONTRA COSTA TIMES, Feb. 11, 2002.

17 81. In 2000, Lt. Governor Cruz Bustamante spoke eloquently about what California must  
18 do to ensure that all schoolchildren get a “fair deal”:

19 We must ensure that every kid gets a ‘fair deal.’ A fair deal so that we  
20 put a qualified, well-trained teacher in every classroom . . . And we  
eliminate the concentration of under-qualified teachers in low-income  
21 schools, in both urban and rural areas. A fair deal so that students go to  
class in schools that are safe and clean year-round, and warm in the  
22 winter . . . Eliminating leaky roofs and unspeakable filth that parents  
would not tolerate at home . . . A fair deal so that we provide basic  
23 instructional materials . . . So that students have updated textbooks and  
teachers aren’t scrambling for paper and pencils . . . This is no radical  
24 idea.

25 Lt. Governor Cruz M. Bustamante, Remarks of Lt. Governor Cruz M. Bustamante at the White  
26 House Discussion on Hispanic Education (June 15, 2000).

27 82. In a recent campaign letter, Governor Davis also acknowledged the seriousness of the  
28 problems in schools attended by some students:

Dear Fellow Democrat: . . .

You don't need a lecture about our problems in education. Politicians and educators have been talking about them for years.

Crowded classrooms. Uncredentialed teachers. No books for kids to take home. Inadequate funding. Low standards. Wasted taxpayer dollars. Schools that aren't held accountable for their performance.

*Letter from Gray Davis, Governor of Cal., to Fellow Democrat (n.d.).*

83. Indeed, many of the most shocking evidence of the poor conditions found in some of the State's public schools can be found in action plans that schools submitted to the Department of Education in order to participate in the Immediate Intervention/Underperforming Schools Program. The following are a few excerpts from these action plans:

- "Tweedy is experiencing extreme overcrowding. Due to a chemical hazard situation at the original site, Tweedy has no permanent location or buildings and has been in this condition for thirteen years." (DOE 37376.)
- School "buildings have been recently condemned." (DOE 32513.)
- "Lincoln has an extremely large population of emergency credentialed teachers (88%) without a school-wide or district-wide support structure in place for classroom management practices, student engagement and critical thinking strategies, and curriculum organizations." (DOE 44829.)
- "Classroom temperature was uncomfortable in 1/3 of the classrooms observed due to heat not working or thermostat being set too high. Numerous heating and air conditioning breakdowns were reported by teachers. Parents said that students are sent home when air conditioning doesn't work. Parents said that students are sometimes left outside in the morning." (DOE 36883.)
- It is "district practice to provide one text for social studies for every two students...Texts are not available to take home." (DOE 53585.)

1                   **A. The State Has Known or Should Have Known That Public School**  
2                   **Students Were Not Being Provided With Equal Access to Qualified**  
3                   **Teachers.**

4                   84. The education of low income students and students of color in California suffers  
5                   disproportionately from the lack of qualified teachers.

6                   **1. Qualified Teachers Are Basic to the Educational Process.**

7                   85. Strong evidence suggests that having a qualified teacher is essential for student  
8                   learning. Kati Haycock, *Good Teaching Matters . . . A Lot*, 13 THINKING K-16 (1998) at 1-14;  
9                   Patrick M. Shields et al., The Center for the Future of Teaching & Learning, *Teaching and*  
10                  *California's Future: The Status of the Teaching Profession: Research Findings and Policy*  
11                  *Recommendations* (1999) at 2; Bryan C. Hassel, Progressive Policy Inst., *Better Pay for Better*  
12                  *Teaching: Making Teacher Compensation Pay Off in the Age of Accountability* (2002) at 1 (“In the  
13                  contentious debate over American public education, there’s one thing everyone seems to agree is  
14                  vital: great teaching. It’s not only intuition that tells us that teachers matter; research shows that  
15                  teachers have a greater impact on student achievement than any other educational factor.”).  
16                  Plaintiffs’ expert, Dr. Linda Darling-Hammond relies on studies showing that student achievement  
17                  gains are much more influenced by a student’s assigned teacher than other factors such as class size.  
18                  *See* Expert Report of Dr. Linda Darling-Hammond (“Darling-Hammond Report”) at 14 *citing*  
19                  William L. Sanders & Sandra P. Horn, *The Tennessee Value-Added Assessment System (TVAAS):*  
20                  *Mixed-Model Methodology in Educational Assessment*, 8 J. PERSONNEL EVALUATION IN EDUC.  
21                  (1994) at 299-311; William Sanders & June C. Rivers, Univ. Tenn. Value-Added Res. & Assessment  
22                  Center, *Cumulative and Residual Effects of Teachers on Future Student Academic Achievement*  
23                  (1996) at 1-12; S. Paul Wright, Sandra P. Horn & William L. Sanders, *Teacher and Classroom*  
24                  *Context Effects on Student Achievement: Implications for Teacher Evaluation*, 11 J. OF PERSONNEL  
25                  EVALUATION IN EDUC. (1997) at 57-67.

26                  86. Studies cited by Dr. Darling-Hammond have also shown that students who are assigned  
27                  to several effective teachers in a row have greater gains in achievement than those who are assigned  
28                  to several ineffective teachers in sequence. *See* Darling-Hammond Report at 14 *citing* William  
29                  Sanders & June Rivers, Cumulative and Residual Effects of Teachers on Future Student Academic

1 Achievement, Univ. Tenn. Value-Added Res. & Assessment Center (1996) at 1-12. Accordingly,  
2 having an effective teacher in one year increases learning not only in that year, but also in subsequent  
3 years. *Id.*

4 87. Education leaders have confirmed that “the quality of a teacher is a critical component  
5 of how well students achieve.” *See, e.g.,* Press Release, United States Dep’t of Educ., Statement of  
6 Susan B. Neuman Assistant Secretary for Elementary and Secondary Education Before the House  
7 Subcommittee on Labor/HHS/Education Appropriations (Apr. 24, 2002). Governor Davis has  
8 repeatedly stressed the significance of qualified teachers to education. For example, he has stated  
9 that California will never regain its former prominence “without the most vital ingredient — a first-  
10 rate teacher for every classroom, in every school, in every neighborhood.” Gov. Gray Davis, State of  
11 the State Address (January 5, 2000). He has also stated that “the single best action we can take to  
12 ensure that every child receives a solid education is to provide a qualified teacher in every  
13 classroom.” Press Release, Office of the Governor, *Governor Davis Announces First Round of*  
14 *Teaching As a Priority Block Grant Awards* (Apr. 25, 2001).

15 88. The Superintendent of Public Instruction has commented that “[a]ccess to high-quality  
16 teaching — that is, teaching that is centered on the learners’ needs, based on a deep understanding of  
17 the subject area, and linked to the community — is the foundation of our democratic society.” CDE,  
18 *Learning . . . Teaching . . . Leading Report of the Professional Development Task Force* (2001) at v.  
19 Superintendent Eastin further commented:

20 Clearly, it will do no good to have instituted rigorous academic  
21 standards if we do not have skilled educators who can successfully  
22 impart this knowledge to our students. Access to high-quality  
teaching . . . is at the core of our successful economy and it is essential  
to equality and justice in America.

23 Press Release, CDE, *Schools Chief Delaine Eastin Releases Professional Development Task Force*  
24 *Report* (Oct. 23, 2001).

25 89. Secretary for Education Kerry Mazzoni has confirmed the strong correlation between  
26 qualified teachers and student achievement. In discussing the fact that California test scores have  
27 shown some improvements, she stated “[t]hese results would not would be possible without a strong  
28

1 focus on quality in the classroom, and that means qualified, well-trained teachers.” Letter from Kerry  
2 Mazzoni, Sec’y for Educ., to John Vasconcellos, Senator (Aug. 22, 2002).

3 90. The State agency charged with managing the teacher certification system, the California  
4 Commission on Teacher Credentialing (“CTC”), agrees about the importance of teacher quality. The  
5 CTC has stated that “[t]he quality of teachers is the single most important determinant of student  
6 success and achievement in school.” CTC, *California’s Future: Highly Qualified Teachers for All*  
7 *Students* (1997) at 35; see also CTC, *Teacher Education Standards Become a Reality* (2001) at 2  
8 (“[t]he most powerful factor in student achievement is the quality of the teacher.”); Correspondence  
9 from CTC Executive Director Sam Swofford to Assemblyman Jack Scott (March 14, 2000) at  
10 STATE 20880. (“As you know, research clearly shows that the preparation of a child’s teacher is one  
11 of the most potent factors in the child’s learning.”); and 12 CTC Newsletter 1, *Commission Promotes*  
12 *Comprehensive Strategy to Address California’s Teacher Shortage* (1998) at  
13 [www.ctc.ca.gov/aboutctc/novdec98newsletter/nov\\_dec\\_1998\\_newsletter.html](http://www.ctc.ca.gov/aboutctc/novdec98newsletter/nov_dec_1998_newsletter.html) (“research reinforcing  
14 the findings of Dr. Linda Darling Hammond . . . has clearly demonstrated the importance of teacher  
15 qualifications in improving student achievement.”). The CTC has further found that “[t]he  
16 educational rights of students should include the right to be taught by a competent teacher in every  
17 class.” CTC, *California’s Future: Highly Qualified Teachers for All Students* (1997) at 6. Similarly,  
18 the California Department of Education has stated that “[t]eacher quality and preparation can greatly  
19 impact student learning.” CDE, *Title I Improvement in California; Frequently Asked Questions*  
20 (2002) at [www.cde.ca.gov/iasa/titleone/faqs.html](http://www.cde.ca.gov/iasa/titleone/faqs.html).

21 91. The Legislature has also underscored the importance of qualified teachers. For  
22 example, Education Code section 44252.9(a) states:

23 The Legislature finds and declares that the effective education of pupils  
24 in kindergarten and grades 1 to 12, inclusive, depends substantially on  
25 the academic skills, content competence, and pedagogical preparation  
26 of classroom teachers.

27 CAL. EDUC. CODE § 44252.9(a).  
28

92. The Legislature measures the quality of a school’s teaching staff by the number of credentialed teachers on staff and considers emergency credentialed teachers, preinterns, and teachers on waivers as having a negative effect on staff quality. CAL. EDUC. CODE § 52055.625(b)(2) (listing “quality of staff” as a required component for a school’s action plan in order to receive funding under the High Priority Schools Grant Program); *id.* at (d)(1) (“The quality of staff component shall contain a strategy to attract, retain, and fairly distribute the highest quality staff at the school, including teachers. . . . At a minimum, this strategy shall include a plan to achieve the following goals: (A) An increase in the number of credentialed teachers working at that schoolsite . . . .”); *id.* at (d)(2) (“To achieve the goals of paragraph [(d)](1) a school may include in its action plan, among others, any of the following options: (A) Incentives to attract credentialed teachers . . . .”); Cal. Educ. Code § 52055.640(c) (“The report on the quality of staff component shall include, but not limited to, the following information: (1) The number of teachers at the schoolsite holding a valid California teaching credential or district or university intern certificate or credential compared to those teachers at the same schoolsite holding a preintern certificate, emergency permit, or waiver.”)

93. Most recently, the Joint Committee to Develop a Master Plan for Education stated the following regarding the importance of qualified teachers:

Research shows that teachers are the single most important school-based factor that affects student learning. Students who have access to highly qualified teachers achieve at a higher rate, regardless of other factors. Indeed, inconsistencies in the quality of teaching produce striking differences in student achievement throughout the state. Therefore, to meet its commitment to providing a high-quality education, the State must be committed to ensuring that every student has the opportunity to learn from a qualified and inspiring teacher.

Joint Comm. to Develop a Master Plan for Educ. — Kindergarten through University, *Master Plan for Education In California* (2002) at 23.

**a. The State Measures Teacher Quality Based on Attainment of a Preliminary or Clear Credential.**

94. The State measures qualifications of public school teachers through certification. Professional certification is meant to represent the minimum standard for responsible practice. Patrick M. Shields et al., The Center for the Future of Teaching & Learning, *The Status of the*



1 *Teaching Profession: Research Findings and Policy Recommendations* (1999) at 2 (“In California,  
2 the state has established minimum requirements for a regular teaching credential that combine  
3 coursework, practical experience in classrooms, and passing scores on basic skills and subject matter  
4 assessments. Successful completion of these requirements represents the minimum acceptable  
5 indication of quality and effectiveness to teach in the state’s classrooms.”); Joint Comm. to Develop a  
6 Master Plan for Educ. — Kindergarten through University, *Professional Personnel Development*  
7 *Working Group Final Report* (2002) at 6 (the PPD workgroup “recommends that credentials be  
8 retained for K-12 personnel as an indicator of initial preparation and competence.”).

9         95. Requirements for a preliminary or clear credential include time spent teaching in  
10 classrooms. A preliminary credential requires student teaching experience and must be supplemented  
11 by compliance with the full certification requirements within a limited period of years. Darling-  
12 Hammond Report at 7-8. A clear credential requires two years of teaching experience. S.B. 2042,  
13 Chapter 548, Statutes of 1998. Thus, the category of teachers defined by possession of these  
14 credentials includes teachers who have training in pedagogy and specific subject matters as well as at  
15 least a minimum level of experience.

16         96. The Legislature established the CTC in 1970 and delegated to it the duty of ensuring  
17 teacher competence. *See* CAL. EDUC. CODE § 44225 (b), (d) and (e). The CTC carries out this duty  
18 by issuing various credentials and has deemed the clear credential and the preliminary credential as  
19 benchmarks for preparation and competence. *See* Legislative Analyst’s Office (“LAO”), *Analysis of*  
20 *the 2000-01 Budget Bill, Education Chapter* (2000) at E-25 (“What the credential does certify is that  
21 the individual has received at least a basic level of preparation in subject matter and pedagogy.”).

22         97. The recently enacted federal No Child Left Behind Act of 2001 reinforces the use of the  
23 preliminary or clear credential or its equivalent as the measurement for teacher qualification for  
24 purposes of the federal programs created or modified by the Act. This legislation calls for “States to  
25 have a highly qualified teacher in every public school classroom by the end of the 2005-2006 school  
26 year.” Press Release, United States Dep’t of Educ., *Statement of Susan B. Neuman Assistant*  
27 *Secretary for Elementary and Secondary Education Before the House Subcommittee on*  
28 *Labor/HHS/Education Appropriations* (Apr. 24, 2002). “Highly qualified teacher” means:

1 (i) the teacher has obtained full State certification as a teacher  
2 (including certification obtained through alternative routes to  
3 certification) or passed the State teacher licensing examination, and  
4 holds a license to teach in such State, except that when used with  
5 respect to any teacher teaching in a public charter school, the term  
6 means that the teacher meets the requirements set forth in the State’s  
7 public charter school law; and

8 (ii) the teacher has not had certification or licensure requirements  
9 waived on an emergency, temporary, or provisional basis.

10 ESEA Section 9101 (23)(A).<sup>7</sup>

11 98. In this Liability Disclosure Statement, references to a “fully credentialed teacher” mean  
12 a teacher with a preliminary credential or a clear credential (or its predecessor, a life credential). In  
13 contrast, we will refer to teachers on emergency permits, waivers, or in intern or pre-intern programs  
14 as “undercredentialed” teachers.

15 **b. Research Has Demonstrated That Lack of Certified**  
16 **Teachers Correlates With Lower Student**  
17 **Achievement.**

18 99. According to plaintiffs’ expert, Dr. Linda Darling-Hammond, several recent studies in  
19 California have pointed to strong relationships between teacher certification and student achievement.  
20 See Darling-Hammond Report at 15-23; see also Patrick M. Shields et al., The Center for the Future  
21 of Teaching & Learning, *The Status of the Teaching Profession: Research Findings and Policy*  
22 *Recommendations* (1999) at 2 (“research in California has shown that students perform better in  
23 schools where most teachers” are fully certified). A Public Policy Institute study of student  
24 achievement across more than 7,000 California schools found that teacher qualifications variables  
25 were the strongest predictors of student achievement in a regression analysis, after controlling for the  
26 effect of socioeconomic status. The report noted:

27 Among the school resource measures, the level of teacher experience  
28 and a related measure — the percentage of teachers without a full  
credential — are the variables most strongly related to student  
achievement. Teachers’ level of education, measured by the percentage  
of teachers with a master’s degree or higher, in some cases is positively  
and significantly related to test scores but not nearly as uniformly as the  
measures of teacher experience. Similarly, a higher percentage of

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29 <sup>7</sup> See Darling-Hammond Report at 76-77 for a discussion of California’s definition of “highly  
30 qualified teacher.”

1 teachers with only a bachelor's degree within a given grade is  
2 negatively related to student achievement.

3 Julian R. Betts, Kim S. Rueben & Anne Danenberg, Public Policy Inst. of Cal., *Equal Resources,*  
4 *Equal Outcomes? The Distribution of School Resources and Student Achievement in California*  
(2000) at xxii.

5 100. Dr. Darling-Hammond has opined that studies show that students receiving instruction  
6 from teachers with emergency permits tend to have lower levels of achievement. *See* Darling-  
7 Hammond Report at 15-16. For example, a 1999 school-level analysis of test performance in 795  
8 California high schools found a significant negative relationship between average student scores on  
9 the state mathematics examination and the percentage of teachers on emergency permits. Mark  
10 Fetler, CDE, *High School Staff Characteristics and Mathematics Test Results*, 7 EDUC. POLICY  
11 ANALYSIS ARCHIVES, (1999) at <http://epaa.asu.edu/epaa/v7n9.html>. The study found that, “[a]fter  
12 factoring out the effects of poverty, teacher experience and preparation are significantly related to  
13 achievement.” *Id.*

14 101. Dr. Darling-Hammond has also opined that studies using national data and data from  
15 other states have found significant relationships between teacher certification measures and student  
16 achievement at the level of the individual teacher, school, school district, and state. *See* Darling-  
17 Hammond Report at 20-23 *citing* Dan D. Goldhaber & Dominic J. Brewer, *Does Teacher*  
18 *Certification Matter? High School Teacher Certification Status and Student Achievement*, 22 EDUC.  
19 EVALUATION & POLICY ANALYSIS (2000) at 129-145; Parmalee P. Hawk, Charles R. Coble & Melvin  
20 Swanson, *Certification: It Does Matter*, J. TEACHER EDUC. (1985) at 13-15; Public Policy Inst. of  
21 Cal., *Equal Resources, Equal Outcomes? The Distribution of School Resources and Student*  
22 *Achievement in California* (2000); Ronald F. Ferguson & Helen F. Ladd, *How and Why Money*  
23 *Matters: An Analysis of Alabama Schools*, in *HOLDING SCHOOLS ACCOUNTABLE* (Helen F. Ladd ed.,  
24 1996) at 265-298; M. Fetler, *High School Staff Characteristics and Mathematics Test Results*, EDUC.  
25 POLICY ANALYSIS ARCHIVES 7, (1999) at <http://epaa.asu.edu/epaa/v7n9.html>; Ronald F. Ferguson,  
26 *Paying for Public Education: New Evidence on How and Why Money Matters*, 28 HARV. J. LEGIS.  
27 468 (1991) at 465-498; Robert P. Strauss & Elizabeth A. Sawyer, *Some New Evidence on Teacher*  
28

1 *and Student Competencies*, 5 ECON. OF EDUC. REV. (1986) at 41-48; Linda Darling-Hammond,  
2 Center for the Study of Teaching and Policy, *Teacher Quality and Student Achievement: A Review of*  
3 *State Policy Evidence* (1999). These studies reinforce one another and strengthen the inferences that  
4 might be drawn from any single study.

5 A large-scale study of high school students' performance in mathematics and science using data on  
6 more than 3,400 teachers from the National Educational Longitudinal Studies of 1988 (NELS) found  
7 that fully certified teachers have a statistically significant positive impact on student test scores as  
8 compared to teachers who are not certified in their subject area, as do teachers who hold a degree in  
9 mathematics or mathematics education. *See* Darling-Hammond Report at 20 *citing* Dan Goldhaber &  
10 Dominic Brewer, *Does Teacher Certification Matter? High School Teacher Certification Status &*  
11 *Student Achievement*, EDUC. EVALUATION & POLICY ANALYSIS (2000) at 139.

12 102. Dr. Darling-Hammond has opined that among the studies of teacher quality, research  
13 demonstrates that teachers' content knowledge has an important impact on their effectiveness with  
14 students, and correlates to levels of student academic performance, especially at the middle and high  
15 school levels. *See* Darling-Hammond Report at 29-31 *citing* C.J. Byrne, *Teacher Knowledge and*  
16 *Teacher Effectiveness: A literature review, theoretical analysis and discussion of research strategy*  
17 (1983); P. Ashton and L. Crocker, *Systematic Study of Planned Variations: The essential focus of*  
18 *teacher education reform* (May-June 1987); C. Evertson, W. Hawley, and M. Zlotnick, *Making a*  
19 *difference in educational quality through teacher education*, *Journal of Teacher Education* 36(3) at 2-  
20 12; Center for the Future of Teaching and Learning, *Teaching and California's Future: Good*  
21 *Teaching Matters . . . A Lot* (1998) at 7; Craig D. Jerald, The Education Trust and Richard M.  
22 Ingersoll, University of Pennsylvania, *All Talk, No Action: Putting an End to Out-of-Field Teaching*  
23 (August 2002) at 1.

24 103. Many studies have shown that a teacher's subject matter knowledge and knowledge of  
25 teaching and learning positively influence student achievement. *See* Darling-Hammond Report at 29-  
26 31 *citing* Monk, D. H. and King, J.A., *Multilevel teacher resource effects in pupil performance in*  
27 *secondary mathematics and science: The case of teacher subject matter preparation in Choices and*  
28 *consequences: Contemporary policy issues in education* (1994) at 29-58; P. Ferguson and

1 S.T. Womack, *The Impact of Subject Matter and Education Coursework on Teaching Performance*,  
2 JOURNAL OF TEACHER EDUC. 44 (1), 55-63 (1993); E. Guyton and E. Farokhi, Relationships Among  
3 Academic Performance, Basic Skills, Subject Matter Knowledge and Teaching Skills of Teacher  
4 Education Graduates, JOURNAL OF TEACHER EDUC. 38 (5) (1987) at 37-42.

5 104. Formal empirical research points to certification and experience beyond a minimum  
6 level as predictors of the educational success of the teachers' students. Every fully credentialed  
7 teacher is required to possess both training and a minimum of teaching experience. Moreover,  
8 teachers who are fully credentialed, as a category, have both training and experience, that, according  
9 to the empirical research, provides a significant advantage to students, as compared to students in  
10 schools with a lower proportion of fully credentialed teachers. *See* Darling-Hammond Report at 15-  
11 29.

12  
13 **2. The State Has Known For Years That Some Students Have  
Not Had Equal Access to Qualified Teachers.**

14 105. Since at least 1977 when the State began systematically collecting data regarding the  
15 characteristics and distribution of credentialed teachers, it has been on notice of the unequal access of  
16 students to fully credentialed teachers. *See* CAL. EDUC. CODE § 10600 et seq.. Among the  
17 information to be collected pursuant to this data system is the “[g]eographical distribution of teachers  
18 by credential type.” CAL. EDUC. CODE § 10601(b)(4).

19 106. According to the CBEDS Data Users' Guide, CBEDS collects information annually  
20 from local school administrators and other professional staff. CDE, *CBEDS Data Users' Guide*  
21 (1983) at 1.

22 The CBEDS data base consists of three principal data sets or files. The  
23 data sets are (1) enrollment and staff data for school districts and  
24 offices of county superintendents of schools; (2) school enrollment and  
25 staff data; and (3) individual professional assignment and classroom  
26 population data. The data describe regular and special enrollments, staff  
27 characteristics and assignments, and student populations at the  
28 classroom level.

26 *Id.* Standard school profile reports “summarizing the staff, classroom, and enrollment data collected  
27 by CBEDS, with comparative summarizations of district, county, and statewide data” are released  
28

1 annually. *Id.* at 4. The State has therefore had the means with which to compare teacher  
2 characteristics among schools and districts across the State.

3 107. In 1996, the CSU Institute for Education Reform found that “the majority of  
4 emergency teachers work in urban districts, frequently in schools with high enrollments of at-risk  
5 youth.” Cal. State Univ. Inst. for Educ. Reform, *A State of Emergency . . . in a State of Emergency*  
6 *Teachers* (1996) at [www.csus.edu/ier/emergency.html](http://www.csus.edu/ier/emergency.html). The report also found that some rural school  
7 districts have had trouble recruiting fully credentialed teachers. *Id.*

8 108. In 1997, the report resulting from the California Education Policy Seminar attended by  
9 Sam Swofford and other state officials noted that the “greatest needs are in the toughest classrooms  
10 with the weakest support system for new teachers.” Cal. Educ. Policy Seminar, *Pipeline to the*  
11 *Future: A Statewide Teacher Recruitment Plan for California* (1997) at 3. Similarly, that year the  
12 California Research Bureau concluded that “[u]rban and rural districts experience more staffing  
13 difficulties than do their suburban counterparts. This is reflected in the number of emergency permits  
14 and waivers allotted to different counties.” Chloe Bullard, Cal. Research Bureau, *Qualified Teachers*  
15 *for All California Students: Current Issues in Recruitment, Retention, Preparation, and Professional*  
16 *Development* (1998) at 11.

17 109. Unequal access to fully certified teachers was also noted in the CTC’s 1996-97 Annual  
18 Report. The report found the following:

- 19 • “The majority of the large urban districts. . . exceeded the statewide average of 9% of  
20 certificated staff serving on emergency permits. . . .” Dale a. Janssen, CTC, *1996-97*  
21 *Annual Report: Emergency Permits and Credential Waivers* (1998) at 30.
- 22 • “Sixty-five districts or 6.5% of the districts in the state have 20% or more of their staff  
23 serving on emergency permits.” *Id.* at 31.
- 24 • “The tables and figures displayed in this report show that large urban school districts and  
25 small school districts located in rural agricultural counties have the greatest difficulty  
26 recruiting multiple subject and special education teachers. Although there are exceptions  
27 to this general conclusion, it is safe to say that California needs to recruit and prepare  
28 additional teachers for these high needs districts. Although the numbers are small in the

1 rural districts, the percentage of staff who are uncredentialed often times is high.” *Id.*  
2 at 37.

3 110. In 1997, Sam Swofford, Executive Director of the CTC, stated that:

4 [t]here are currently over 5,000 elementary school teachers in  
5 California working in classrooms under temporary emergency permits,  
6 and the CTC believes this number will increase to at least 8,000 as a  
7 result of the new demand generated by class size reduction.  
8 Meanwhile, more and more emergency permits are being processed  
without the expectation that the permittees will stay in the system and  
complete requirements for their teaching credentials. The need to  
recruit more teacher candidates into the career pipeline — and then  
retain them . . . has never been more immediate.

9 See Cal. Educ. Policy Seminar, *Pipeline to the Future: A Statewide Teacher Recruitment Plan for*  
10 *California* (1997) at 2. The report also noted that “[t]he greatest needs are in the toughest classrooms  
11 with the weakest support system for new teachers.” *Id.* at 3.

12 111. Also that year, the California Statewide Task Force on Teacher Recruitment on behalf  
13 of the CTC, CDE, and the California State Institute for Education Reform found that “[a]lready,  
14 California experiences chronic teacher shortages — in urban and rural areas, bilingual education and  
15 special education, and in subject matter fields such as science and mathematics — resulting in the  
16 hiring of thousands of teachers per year on emergency permits or waivers.” Cal. State Task Force on  
17 Teacher Recruitment, *Shaping the Profession that Shapes California’s Future: The California*  
18 *Statewide Teacher Recruitment Action Plan* (1997) at 6. The task force found that despite studies  
19 indicating a shortage of qualified teachers going back over a decade, the State had failed to take  
20 adequate steps to reverse the trend. *Id.* at 51-52. The task force called upon the State to “reverse this  
21 status quo equation.” *Id.*

22 112. In 1999, Superintendent Delaine Eastin recognized the urgent need for credentialed  
23 teachers in some schools and called for action. Richard L. Colvin, *Better Teachers are Key to*  
24 *Reform, Report Says Education: State Is Urged to Improve Training and Use Incentives to Put*  
25 *Qualified Instructors in Troubled Schools*, L.A. TIMES, Dec. 3, 1999, at A4. Superintendent Eastin  
26 stated that the “[t]he shortcomings of these [emergency] teachers end up shortchanging the students.”  
27 Cheryl Miller & Greg Winter, *Teachers Wanted*, CAL. J., Mar. 1, 1999.

28 113. With the passage of S.B. 573 in 2000, the Legislature made similar findings:

- (1) There is a shortage of experienced qualified teachers in schools that have been deemed hard to staff schools.
- (2) Large numbers of teachers at these schools currently have temporary or emergency credentials.
- (3) The pupils in these schools will benefit most from qualified veteran credentialed teachers who bring the wisdom of years of practical experience.

S.B. 573, ch. 986, § 1(a), 1999-2000 Sess. (Cal. 1999). In an attempt to address the gap in access to trained teachers, this legislation called for professional development institutes to accommodate at least 5% of participants through online courses and for the development of a one-year pilot project to offer professional development using an online, telecommunications based learning model.

S.B. 573, Legislative Counsel's Digest, Teachers § 1, 1999-2000 Sess. (Cal 1999).

114. In 2001, the Little Hoover Commission found that "[t]he number of unprepared teachers is growing — and most of those teachers are assigned to schools with students with the greatest academic challenges. Teaching talent is so anemic in one out of every 10 schools districts that experts say the education process in these schools is at risk of collapse." Little Hoover Comm'n, ("LHC") *Teach Our Children Well* (2001) at i. The commission also stated that "[m]ost schools report that the increased use of emergency permits and waivers is not by choice, but out of desperation. They cannot find enough fully prepared teachers to fill vacant positions." *Id.* at 3.

115. Similarly, the CDE's Professional Development Task Force found:

In 2000, more than 42,000 underqualified teachers worked in California's schools, substantially more than in any other state. In addition to 34,670 teachers working on emergency permits, 3,348 teachers were working on waivers without having passed even CBEST, the prerequisite for an emergency permit. In some schools, the proportion of underqualified teachers reaches well over half of the staff.

These numbers have risen steeply over the decade and have contributed to growing inequality in students' opportunity to learn.

CDE Prof. Dev. Task Force, *Learning . . . Teaching . . . Leading: Report of the Prof. Dev. Task Force* (2001) at 16.



1                                   **3. The State Has Known or Should Have Known That Low-**  
2                                   **Income Students and Students of Color Have Been**  
3                                   **Disproportionately Denied Equal Access to Qualified**  
4                                   **Teachers.**

5           116. The State has known that low-income students and students of color have been  
6           disproportionately denied equal access to qualified teachers. As early as 1974, the trial court in  
7           *Serrano v. Priest* found that variance in teacher quality across school districts was one manifestation  
8           of unequal educational opportunities. *See Serrano v. Priest* Finding of Fact 222. The court found  
9           that “because of lack of resources, low-wealth districts” were “denied equal access to the best  
10          teachers because of lower salary schedules.” *Serrano v. Priest* Finding of Fact 239.

11          117. In 1999, the Center for the Future of Teaching & Learning released a study entitled  
12          *The Status of the Teaching Profession Research Findings and Policy Recommendations* provided a  
13          detailed analysis of the growing inequality in access to qualified teachers. The report found that:

- 14           • “[T]hose students in greatest need of effective teachers are the most likely to be in  
15           classrooms with underqualified teachers. In fact, the distribution of qualified teachers is  
16           quite uneven across the state. Students in poor, inner-city schools are much more likely  
17           than their more advantaged suburban counterparts to have underqualified teachers.”  
18           Patrick M. Shields et al., The Center for the Future of Teaching & Learning, *The Status of*  
19           *the Teaching Profession: Research Findings and Policy Recommendations* (1999) at 9.
- 20           • “Urban districts serving large numbers of poor and minority students are most likely to  
21           have high concentrations of underqualified teachers. In some schools, the problem is so  
22           severe that the majority of students attend class after class, year after year, without being  
23           taught by a qualified teacher.” *Id.* at 30.
- 24           • “Not surprisingly, the schools with the highest concentrations of underqualified teachers  
25           share other characteristics besides low achievement. These schools have more poor  
26           students, more minority students, and more students from homes where English is not the  
27           primary language.” *Id.* at 33.
- 28           • “[S]chools with the highest student poverty levels have an average of 16% underqualified  
            teachers on staff. This compares with just 4% underqualified teachers in those schools

1 with the lowest student poverty levels.” *Id.* at 33. “[S]chools with more than 90%  
2 minority students have, on average, 19% underqualified teachers on staff . . . Schools  
3 with the fewest minority students have, on average, only 3% underqualified teachers.” *Id.*  
4 at 34.

- 5 • “These numbers make a compelling case: those students who currently are struggling in  
6 school and who are most likely to come from homes where, for economic and linguistic  
7 factors, parents are unable to compensate for poor schooling opportunities, are the least  
8 likely to be getting a high-quality instructional experience. In short, those students who  
9 are currently least likely to meet the new state standards are receiving the least help and  
10 therefore will be the most likely to fail to meet the new state graduation requirements in  
11 the future.” *Id.* at 36.

12 118. In 1999, the LAO also found that “[m]any low income urban and rural areas rely  
13 heavily on emergency permit teachers. These districts face special problems in recruiting and  
14 retaining quality teachers.” LAO, *Analysis of the 1999-00 Budget Bill, Education Chapter* (1999)  
15 at E-53.

16 119. In 1999, the Legislature made the following findings in passing SB 131:

- 17 69612 (a)(1) There is a growing shortage of high-quality classroom  
18 teachers, and there is a need for qualified teachers throughout  
19 California.  
20 (2) One of the most important elements in a pupil’s success at learning  
21 is the quality of the teacher.  
22 \* \* \*  
23 (4) Many school districts have difficulty recruiting and retaining high-  
24 quality teachers for low-performing schools, for pupils with special  
25 needs, for schools serving rural areas or large populations of pupils  
26 from low-income and linguistic minority families, and for schools with  
27 a high percentage of teachers holding emergency permits.

28 CAL. EDUC. CODE § 69612(a).

120. The LAO’s analysis of the 2000-2001 Budget Bill states that “[s]chools that face extra  
challenges in attracting and retaining qualified staff — which tend to be schools in poor  
neighborhoods and, to some extent, rural areas — have been especially hard hit [by rising levels of  
emergency credentialed teachers].” LAO, *Analysis of the 2000-01 Budget Bill, Education Chapter*  
(2000) at E-24. The analysis pointed to the “definitive” SRI study as evidencing “extraordinarily

high percentages of noncredentialed teachers in such schools.” *Id.* The analysis further noted that “the real problem of too few credentialed teachers is concentrated in about 20 percent of the state’s public schools. These are the schools where the systems for providing professional mentoring and support have been overwhelmed by the imbalance between veteran and novice teachers. These are also the schools that face the most serious problems in terms of poor academic performance.” *Id.* at E-27.

121. In 2000, the Pub. Policy Inst. of California also noted the systematic differences between the level of experience and education of teachers at schools based on the economic status of the students in attendance. Julian Betts, Kim Rueben, & Anne Danenberg, Public Policy Inst. of Cal., *Equal Resources, Equal Outcomes? The Distribution of School Resources and Student Achievement in California* (2000) at xv. “For example, the median percentages of teachers without a full credential are 21.7 and 2.0 percent in the bottom- and top-SES groups of schools, respectively.” *Id.* There is high variation in the distribution of low-experience teachers, and “they are concentrated in low-SES schools.” *Id.* at 77. The report further noted that:

the median percentage of teachers without full certification ranges from a mere 2 percent K-6 schools with the least-disadvantaged student populations to an alarming 22 percent in schools with the most-disadvantaged student populations. In grade 6-8 schools, the percentages range from 2 percent to 17 percent . . . Clearly, disadvantaged student populations have more teachers who lack full credentials.

*Id.* at 81.

122. Policy Analysis for California Education (“PACE”) published a similarly disturbing report in 2000. Among its findings, PACE concluded that:

- “California continues to be plagued by an escalating shortage that has placed thousands of emergency-permit teachers in the schools serving our poorest, most neediest students.”

Elizabeth Burr, Gerald C. Hayward, Bruce Fuller & Michael W. Kirst, Policy Analysis for Cal. Educ., *Crucial Issues in California Education 2000: Are the Reform Pieces Fitting Together?* (2000) at 5.

- “The surge in enrollment, combined with class-size reduction, has also resulted in a serious shortage of high quality teachers; in some California school districts — especially

1 those serving the neediest students — over 30 percent of the faculty are serving on  
2 emergency credentials. Such inexperienced, unprepared teachers often have a difficult  
3 time surviving from one day to the next, much less trying to implement reform policies  
4 they scarcely understand.” *Id.* at 3.

- 5 • “The shortage of fully qualified teachers is being most severely felt in the most challenged  
6 inner-city and rural schools with substantial poor and minority enrollments. In 37 percent  
7 of the state’s urban schools, 20 percent (one in five) of the teachers are under-qualified.”  
8 *Id.* at 97. “. . . [In the] inner-city schools . . . class-size reduction has all too often  
9 spawned a mad scramble for anyone willing to teach. The poorest, most challenged  
10 schools are often left with little choice other than to hire untrained or under-prepared  
11 people with emergency permits or waivers, while their most skilled and experienced  
12 teachers are often recruited away by more affluent districts.” *Id.* at 97-98.
- 13 • “National research indicates that in any time and place, the least effective teachers are  
14 delegated to teach the children most at risk and with the highest level of need for expert  
15 teaching. But the shortages in California, exploding under the pressure of class size  
16 reduction and exacerbated by years of deteriorating school settings, are particularly acute  
17 in the crowded, low-income, and culturally diverse inner city schools. As one researcher  
18 noted after on-site visits, even salaries of \$100,000 a year couldn’t induce people to work  
19 in such environments with so many challenges and so little support.” *Id.* at 108.

20 123. The gap in access to qualified teachers continued to grow in 2001. Key reports noted  
21 the disproportionate, high distribution of undercredentialed teachers in schools with high  
22 concentrations of poor students, students of color and/or English Language Learners. *See* Patrick M.  
23 Shields, *et al.*, The Center for the Future of Teaching & Learning, *Teaching and California’s Future:  
24 The Status of the Teaching Profession 2001* (2001) at 7 (“students who are poor, minority, or English  
25 language learners or who attend a low-performing school are much more likely than their advantaged  
26 peers to have an underprepared teacher.”); CDE Prof. Dev. Task Force, *Learning . . . Teaching . . .  
27 Leading: Report of the Prof. Dev. Task Force* (2001) at 4 (“over the last three years, the numbers of  
28

1 emergency permits have steadily increased and the inequality in the system has grown.”) The report  
2 of the CDE Professional Development Task Force found that:

3           Recent research paints a stark picture of inequities in the current  
4           system. In more than 20 percent of the state’s schools, more than 20  
5           percent of the teachers are under-qualified, and the schools are  
6           disproportionately in high-poverty communities with a large proportion  
7           of students of color and English language learners. These schools lack  
8           the human and material resources needed to create a productive  
9           learning environment. The unequal distribution of qualified teachers is  
10          a major source of the growing achievement gap in California.  
11          According to a recent analysis, ‘Over the past six years, this  
12          relationship (between socio-economic measures and achievement  
13          scores) has strengthened, not diminished.’

14 CDE Prof. Dev. Task Force, *Learning . . . Teaching . . . Leading: Report of the Prof. Dev. Task*  
15 *Force* (2001) at 5-6; *see also* Emelyn Rodriguez, *The Search for Qualified Teachers*, CAL. J., Aug. 1,  
16 2001 at 10 (quoting Education Secretary Kerry Mazzoni as stating: “We will not be able to close the  
17 gap between low-performing students and high-performing students if we’re not able to attract  
18 qualified teachers.”).

19           124. The disparity with respect to distribution of teachers also exists within districts. Julian  
20 Betts, Kim Rueben, & Anne Danenberg, Public Policy Inst. of Cal., *Equal Resources, Equal*  
21 *Outcomes? The Distribution of School Resources and Student Achievement in California* (2000)  
22 at 82 (“It is evident from the figures presented above that much disparity exists across schools both in  
23 the proportions and in the distribution of uncertified teachers across SES groups.”); *Id.* at 141  
24 (“Teachers are clustered in schools that have more co-ethnic students, both within and across school  
25 districts.”); *see also* *Do L.A. Public Schools Work?*, L.A. WEEKLY, Dec. 1, 2000, at 22. (quoting  
26 Superintendent Roy Romer as stating: “[L]et’s look at who teaches in which part of town. We have  
27 real inequality of who teaches in what portion of this town.”)

28           125. State officials also have been on notice that illegal out-of-field teacher assignments  
29 (“misassignments”) disproportionately impact schools attended by low-income students and students  
30 of color.<sup>8</sup> Misassigned teachers are, by definition, underqualified for the positions they hold. A

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31           <sup>8</sup> Misassignment is defined as “the assignment of a certified person to a [teaching] position  
32 not authorized by the credential or certificate or permit or by regulations or pertinent sections of the  
33 Education Code.” CAL. CODE REGS. tit. 5, § 80339(f). The term misassignment does *not* include the  
34 assignment of personnel who have only emergency permits, intern certificates, or credential waivers,

1 study conducted by the Public Policy Institute of California (“PPIC”) using data from the California  
2 Basic Education Data System (“CBEDS”) found that approximately 20% of teachers in grades 9-12  
3 did not have subject authorization for the core subject they taught in the fall of 1997. Furthermore,  
4 the results of this study revealed that as a school’s percentage of poor, nonwhite students rose, so did  
5 the percentage of faculty members teaching outside their credential authorization. *Equal Resources,*  
6 *Equal Outcomes?* Julian R. Betts, *et al*, Pub. Policy Inst. of California (2000) at xv, Table S1, 83-86.

7 126. According to the CTC’s most recent *Report on the Assignments of Certificated*  
8 *Employees By County Offices of Education for Four School Years, 1995-1999* (“Assignment  
9 Report”), the rate of misassignment of fully credentialed middle and high school teachers in  
10 California was 5.7% during the monitoring period 1995-1999 — equivalent to over 5,500 teachers.  
11 This percentage has fluctuated from a high of 8% in 1986 to a low of 4% in 1989-1992. Moreover,  
12 the State is aware “that schools widely underreport the practice of credentialed teachers’ teaching out  
13 of field,” making it likely that these numbers understate the true scope of the problem. See  
14 Patrick M. Shields, *et al*, *The Status of the Teaching Profession: Research Findings and Policy*  
15 *Recommendations. A Report to the Teaching and California’s Future Task Force*, Santa Cruz, CA:  
16 The Center for the Future of Teaching and Learning (1999) at 44 (citing to personal communication  
17 with the CTC).<sup>9</sup>

18  
19  
20 nor does it include teachers who are legally assigned to teach subjects outside their credentials or  
21 certificates through certain provisions of the Education Code. See *e.g.*, CAL. EDUC. CODE  
§§ 44256(b); 44258.2; 44258.3; 44258.7(c) & (d); and § 44263.

22 <sup>9</sup> In addition to these illegal misassignments, “[d]uring the monitoring period from 1995-99,  
23 there were a total of 12,593 assignments made under these Education Code options” that permit  
24 teachers with some coursework credits to teach outside their basic credential authorization. Of these  
25 assignments, 74% were made in the core academic subjects of English, mathematics, the sciences,  
26 and social science. CTC, *A Preliminary Report on the Assignments of Certificated Employees By*  
27 *County Offices of Education for Four School Years, 1995-1999* (2000) at  
28 [www.ctc.ca.gov/reports/assignment\\_rpt/1995\\_1999.html](http://www.ctc.ca.gov/reports/assignment_rpt/1995_1999.html). Among these assignments, the vast  
majority (77%) were made under options essentially the same as emergency credential subject matter  
authorizations, i.e. options that authorize teachers to teach a course upon completion of a minimum  
number of college credits in the subject in lieu of obtaining a degree or passing a subject matter  
examination as required for fully credentialed teachers. CTC, *A Preliminary Report on the*  
*Assignments of Certificated Employees By County Offices of Education for Four School Years, 1995-*  
*1999* (Nov. 10, 2000) at [www.ctc.ca.gov/reports/assignment\\_rpt/1995\\_1999.html](http://www.ctc.ca.gov/reports/assignment_rpt/1995_1999.html).

1                                   **4. Class Representatives Have Suffered Due to Lack of Access**  
2                                   **to Qualified Teachers.**

3           127. Class representatives have attended schools in which the majority of the teachers lack  
4 full, nonemergency teaching credentials. For example, the CDE reports that 70.8% of the teachers at  
5 Edison-McNair Academy and 63.6% of the teachers at Cesar Chavez Academy, both of which are in  
6 East Palo Alto, lacked full, nonemergency teaching credentials during the 2000-2001 school year.  
7 CDE 2000-2001 School Profile for Edison-McNair Academy in Ravenswood City Elementary  
8 School District; CDE 2000-2001 School Profile for Cesar Chavez Academy in Ravenswood City  
9 Elementary School District. (School Profiles available on Ed-Data website at [http://www.ed-](http://www.ed-data.k12.ca.us)  
10 [data.k12.ca.us](http://www.ed-data.k12.ca.us).) Likewise, 46.4% of teachers at Cahuenga Elementary, 43.1% of teachers at Fremont  
11 High School, 35.4% of teachers at Crenshaw High School — all in Los Angeles — and 32.3% of  
12 teachers at Helms Middle School in San Pablo lack full, nonemergency teaching credentials.  
13 (Teacher credential data available on CDE Dataquest website at  
14 <http://data1.cde.ca.gov/dataquest/dataquest.asp>.)

15           128. The high proportions of undercredentialed teachers on class representatives' campuses  
16 are compounded by other deprivations of access to trained teachers. For example, at class  
17 representative Alondra Jones's San Francisco high school — Balboa High School — which had 39%  
18 undercredentialed teachers when this litigation began, CDE Dataquest website (available at  
19 <http://data1.cde.ca.gov/dataquest/dataquest.asp>), the principal testified that approximately 75  
20 teachers, out of a staff of 59, had left the school in the three-year period before August 2000, with  
21 another 13 teachers leaving in the 2000-2001 school year. (Deposition of Patricia Gray ("Gray  
22 Depo.") at 83:20-85:13, 91:4-92:5; *see also* Deposition of Stephen Brady ("Brady Depo.") at 35:1-2  
23 ("The turnover is extremely high and I've seen the effects of that long-term . . .").) Balboa history  
24 teacher Shane Safir testified that a series of five Spanish classes had been taught for a substantial part  
25 of the year without a permanent teacher and that "on several occasions when I walked by, the  
26 students were in there and there was not a teacher." (Deposition of Shane Safir ("Safir Depo.")  
27 at 301:17-305:17.) Ms. Safir further testified that "[a] couple of times they sent a security guard in to  
28 just sit with the class. I sat in there a couple of times . . . [b]ecause I didn't want the kids to be there

1 by themselves.” (Safir Depo. at 303:16-24.) As Ms. Safir explained: “Those kids were really  
2 suffering. They weren’t learning for months. . . .again, there were multiple substitutes. There may  
3 have been one or two who spoke some Spanish, but the kids were not receiving a solid, consistent  
4 Spanish language program.” (Safir Depo. at 304:25-305:17.) Class representative Alondra Jones  
5 testified:

6 We had a numerous amount of substitutes in that classroom for a while.  
7 And during those times we had those substitutes we watched movies in  
8 class. We played games in class. We basically had a free period where  
we did whatever we wanted to. We had different substitutes almost  
every day.

9 (Jones Depo. at 421:2-7; *see also* Deposition of Antonio Lewis (“Lewis Depo.”) at 66:11-69:21  
10 (testifying to having had at least five different teachers during his period of Spanish class).)

11 129. The II/USP action plan for Cesar Chavez Academy in Ravenswood City Elementary  
12 School District identified high teacher turnover as a barrier to student achievement. (DOE 70624.)  
13 The Cesar Chavez principal testified that the teacher vacancy problem was “chronic”:

14 We started out with about five classes without teachers, and we  
15 couldn’t get substitutes, so we had to — the ed specialists had to take  
16 classes and the building sub, and I would take a class, but then there  
17 were still, sometimes, classes that were not covered, so we would have  
to split the classes. And sometimes teachers had as many as 45, if they  
had a 29 class size.

18 (Deposition of Carla Walden (“Walden Depo.”) at 120:11-121:2, 123:8-124:9; *see also* DT-RA 3924-  
19 27 (Cesar Chavez committee minutes note that the 2000-2001 school year began without six teachers  
20 and that students were being taught by substitutes or divided into other classrooms).) One Cesar  
21 Chavez student testified that “it was more than three months that we had substitutes” instead of a  
22 permanent teacher in one of her classes. (Deposition of Rebecca Ruiz (“R. Ruiz Depo.”) at 67:3-  
23 68:24; *see also id.* at 38:25-40:2 (“We had lots of [different] teachers for that one.”); *id.* at 61:3-16  
24 (“if the substitute didn’t come, we got split up, and half of the class went in to my social studies class  
25 and then the other half went in to the math and science class”).)

26 130. Similar to the Cesar Chavez experience, the daily teacher absentee logs from class  
27 representatives Delwin and D’Andre Lampkin’s school — Crenshaw High School in Los Angeles —  
28 list at least 60 school days during which teacher absences were not filled during the 2000-2001



1 school year and at least 35 school days during which as many as 10 teacher absences were not filled  
2 with substitutes during the 1999-2000 school year. (DT-LA 12712-12845.) These same daily  
3 teacher absentee logs show that Crenshaw had 10 unfilled teaching positions in December 1999, up  
4 to 12 unfilled teaching positions in each month of March through June 2000, eight unfilled teaching  
5 positions in September 2000, and one or two unfilled positions in each month of March through  
6 June 2001. (DT-LA 12712-12845; *see also* Deposition of Travis Kiel (“Kiel Depo.”) at 504:21-  
7 505:5, 587:23-588:8, 591:9-15 (principal testified that Crenshaw had math and Spanish teacher  
8 vacancies when the 2000-2001 school year began and that more than one substitute filled the  
9 vacancies).)

10 131. In another class representative’s school — Helms Middle School in San Pablo — “[a]t  
11 the beginning of the 1999/00 school year, there were 17 new teachers and 4 vacancies unfilled. The  
12 school did not have a full complement of teachers until December 1999, leaving those students taught  
13 by substitute teachers or regular teachers filling in on their planning periods.” (II/USP action plan for  
14 Helms Middle School in West Contra Costa Unified School District at DOE 48363.) The Helms  
15 principal testified that the school’s teacher turnover rate is high and that there had been occasions  
16 when the school had to use a string of temporary substitutes to cover classes because no permanent  
17 teacher could be found. (Deposition of Stephen Muzinich (“Muzinich Depo.”) at 67:20-23, 70:1-3.)

18 132. The II/USP action plan for still another class representative’s school reported that the  
19 school operated for much of the 2000-2001 school year without two classroom teachers.  
20 (DOE 34418-Luther Burbank Middle School in San Francisco Unified School District; *see also*  
21 Deposition of John Michaelson (“Michaelson Depo.”) at 138:13-24, 139:10-14 (principal testimony  
22 that Luther Burbank operated with day-to-day substitutes covering five science and math classes from  
23 the second day of school until sometime in November before a permanent substitute teacher could be  
24 found to replace the teacher who had left during the school year).)

25 133. Class representative Cindy Diego’s principal testified that at Fremont High School in  
26 Los Angeles, “as of today, in terms of unfilled positions, we probably have a total on all three tracks  
27 of twelve, and starting the new year — the new school year in July, we have four unfilled for just that  
28 track . . . .” (Deposition of Margaret Roland (“Roland Depo.”) at 174:16-20; *see also id.* at 252:10-

22 (testifying that after the new school year opened in July the school had six unfilled teacher vacancies); Deposition of Marcia Hines (“Hines Depo.”) at 483:20-24 (testifying to seven vacant teacher positions while school was in session).) When asked who fills a Spanish teacher vacancy, assistant principal Marcia Hines testified: “That’s a problem. . . . [W]e had a teacher in there teaching out of his subject area that was doing it, but now she’s [sic] not doing it anymore.” (Hines Depo. at 497:21-498:3.) Cindy testified that a math teacher taught her U.S. History class for the first two weeks of her junior year “[b]ecause — I don’t know. I guess they couldn’t find a U.S. History teacher for B track.” (Diego Depo. at 163:13-164:2.) Fremont teacher Joel Vaca testified that “there are several unfilled positions in which there is no teacher to be able to teach that, no permanent teacher that that would be their class. So in turn, what happens is that various teachers take up what is called ‘rainbowing.’ In other words, we would move over and fill that position during the time that we’re on vacation. Again, we’re offered extra pay for that. But that means you start right — one day you’re at school and you turn in your finals, and then the next day you would have to pick up another class.” (Deposition of Joel Vaca (“Vaca Depo.”) at 184:23-185:7.) Mr. Vaca further explained that, even though he is a math teacher, “[j]ust yesterday, I subbed a class which was a Spanish class. Before I was subbing, which is kind of ironic — I was subbing a substitute who was subbing for a teacher who never shows up. That’s one scenario.” (Vaca Depo. at 183:25-184:3.)

## **5. Other Class Members Have Suffered Due to Lack of Access to Trained Teachers.**

134. CDE data establishes that approximately 1,794 California public schools operate with 20% or more teachers who lack full, nonemergency teaching credentials. 2001 Base API Report, available at <http://api.cde.ca.gov/datafiles.htm>. As explained in the II/USP action plan from a school with only 53% of classroom teachers fully certified, “[t]he lack of an experienced staff is the main barrier to achievement. While this is a caring, involved and committed staff they are lacking in the skills necessary to raise achievement without intensive assistance.” (DOE 33809.) Another school’s II/USP action plan reported that:

Thirty-one percent of the teachers at Arvin High School are working with internship or emergency credentials. An additional 27% of the staff is fully credentialed but have worked at the high school for less

1 than two years. The high percentage of new staff and the high  
2 percentage of teachers without the benefit of a full teacher training  
3 program and a student teaching experience has a major impact on the  
4 consistent delivery of the instructional program for students.

5 (DOE 35174.)

6 135. In addition to the high percentages of undercredentialed teachers on school sites, in  
7 some class members' schools, teachers teach courses that do not fall within their credential areas.  
8 For example, in one school class members attend, "[t]he majority of teachers are teaching out of their  
9 teaching field." (DOE 39532.) In another school class members attend, "25% of teachers teach  
10 outside [of] their credentialed area." (DOE 47226.) The II/USP action plan for another school class  
11 members attend reported: "Last year there were . . . twelve [teachers] teaching outside their area of  
12 authorization." (DOE 40503 — Savanna High School in Anaheim Union School District.)

13 136. Many class members also attend schools with high teacher turnover. (*E.g.*,  
14 DOE 31237, 31309, 31472, 31502, 32736, 32857, 34554, 39753, 43258, 46637, 47665, 48133,  
15 48240, 48352, 48511, 48811, 52942, 56709, 69082, 71416, 73523.) The II/USP action plan for one  
16 school class members attend reported that the school "loses 25% of its new teachers each year."  
17 (DOE 62177 — Central Junior High in San Diego City Unified School District.) As one teacher  
18 testified:

19 [O]f the approximately 65 teachers — well, I can tell you when I came  
20 in as a new teacher to Hawthorne, I was in a group of, I think like 13  
21 new teachers, so there were 13 new teachers that year. The two  
22 following years, it was around ten new teachers and last year as  
23 well . . . . Having that many new teachers on the staff at any given time  
24 meant that there was less of a knowledge base. It meant that it was  
25 harder for families to be connected to the school because — you know,  
26 their child might get a new teacher every year. It meant there was less  
27 cohesion on the staff. It meant that every year, we had to recover  
28 ground in professional development that had already been covered and  
try to catch people up to sort of where the school was heading.

(Deposition of Amy Salyer ("Salyer Depo.") at 141:4-25.)

137. Class members attend schools that operate with teacher vacancies during the school  
year, often requiring the use of a series of substitute teachers who would cover the classes until  
permanent teachers could be found. (*E.g.*, Deposition of Jose Garcia ("J. Garcia Depo.") at 297:19-  
23, 298:13-16; Deposition of Beatriz Islas ("Islas Depo.") at 84:2-86:5, 162:18-164:10; DT-WC

1 1194; DOE 37637, 37648, 46985) “At the beginning of the school year there were more than 29 day  
2 to day substitutes” in an 89-teacher school class members attend; and by the end of that same year, 29  
3 of the teachers held emergency credentials, two were long-term substitutes, and three taught out of  
4 their credential areas. (DOE 38663 — II/USP action plan for Dorsey High School in Los Angeles.).  
5 “As late as November of 1999, there were two regular classroom teaching positions still filled by  
6 substitutes.” (DOE 71381 — II/USP action plan for Dorsa Elementary School in Alum Rock Union  
7 Elementary School District.) “Dorsa experienced this [lengthy placement of substitutes] in one 3rd  
8 grade classroom where a series of substitutes created an unstable learning environment for students.”  
9 (DOE 71382.) One class member testified that she “had at least 10” substitute teachers covering her  
10 English class between September 2000 and January 2001. (Deposition of Jackelyn Montes (“Montes  
11 Depo.”) at 80:10-82:2, 86:16-87:14.) According to the II/USP action plan for another school class  
12 members attend:

13 [t]he district has been unable to find teachers to fill the three faculty  
14 vacancies at Elmhurst, and the district shortage of substitutes (and  
15 reported unwillingness of substitutes to work at the schools in East  
Oakland) has meant that Elmhurst has to cover classes for the teacher  
vacancies and for absent teachers internally.

16 (DOE 31008 — Elmgurst Middle School in Oakland Unified School District.)

17 138. In some schools class members attend, no substitutes arrive to cover teacher absences.  
18 (E.g., Salyer Depo. at 437:1-9; DOE 47531.) One parent of a class member testified that on one  
19 school day in the 1999-2000 school year, 16 teachers were absent from her son’s school but only two  
20 substitute teachers came to fill those absences and that approximately five to ten teachers were absent  
21 from her son’s school each day, but only an average of one to two substitutes would come to the  
22 campus to replace the five to ten absent teachers. Deposition of Maria de los Angeles Gonzalez  
23 (“Gonzalez Depo.”) at 50:18-51:6, 102:2-103:6. According to the Elmhurst Middle School’s II/USP  
24 action plan, “[s]ubstitutes are not available to fill in for vacant staff positions, nor are there substitutes  
25 to cover classes for absent teachers” and as a result “[t]eacher vacancies throughout the year  
26 significantly impact teachers’ ability to plan or prepare during the course of the school day, because  
27 many are required to cover classes for vacancies or for absent teachers.” (DOE 31010.)  
28

1           139.   Some II/USP action plans reflect the shortage of substitute teachers. (*E.g.*,  
2   DOE 31075, 34555, 38979, 42031, 45012, 45155, 46411, 48255, 52266, 52836, 56564, 71382,  
3   71892, 73070.) According to the action plan for Grape Street Elementary School in Los Angeles,  
4   because of the substitute shortage, “[t]eachers are regularly assigned to cover classes during their  
5   scheduled prep periods, which adversely impacts their own class.” (DOE 38979.) Another action  
6   plan reported that “[t]he District has an extreme shortage of qualified substitute teachers and when a  
7   substitute cannot be provided, either teachers must give-up their preparation period to teach a class or  
8   the students are divided among similar classes. This latter strategy can result in a student to teacher  
9   ratio of 40:1.” (DOE 45158 — II/USP action plan for Ralph Bunche Middle School in Compton.)  
10   According to another school’s action plan, “[i]t was difficult for the school to obtain substitute  
11   teachers, and the principal often had to serve as substitute teacher in classrooms.” (DOE 48112 —  
12   II/USP action plan for Coronado Elementary School in West Contra Costa Unified School District.)

13                           **B. The State Has Known that Some California Schoolchildren Were**  
14                           **Not Being Provided Equal Access to Instructional Materials.**

15                                   **1. Instructional Materials Are Basic to the Educational**  
16                                   **Process.**

17           140.   California officials have confirmed the significance of instructional materials to  
18   education:

19                   The basics of education are quality school personnel, safe and  
20                   conducive facilities and sufficient quality instructional materials for  
21                   each student.

22           Jan Raymond, *Legislative History & Legislative Intent, Education Code: Section 60119 & Section*  
23   *41344.3* (n.d.) at 11.

24           141.   According to plaintiffs’ expert, Dr. Jeannie Oakes, research has demonstrated that  
25   instructional materials are central to the educational process. *See* Expert Report of Dr. Jeannie Oakes  
26   (“Oakes Textbook Report”) at 5-7 citing Arthur Woodward & David L. Elliott, *Textbook Use and*  
27   *Teacher Professionalism*, in *TEXTBOOKS AND SCHOOLING IN THE UNITED STATES* (David L. Elliott &  
28   Arthur Woodward, eds., 1990) at 178 (stating “that textbooks are ubiquitous and widely used in  
classrooms.”) Various studies have indicated that textbooks are used extensively in U.S. schools.  
*See* Educ. Prod. Infor. Exch. Inst., *Report on a National Study of the Nature and the Quality of*

1 *Instructional Materials Most Used by Teachers and Learners*, No. 76 (1977); Leonard S. Cahen et  
2 al., *Class Size and Instruction* (1983). For example, in a survey of several thousand teachers, the  
3 Educational Products Information Exchange Institute (EPIE) found that textbooks and other  
4 commercially produced instructional materials were the basis for 67% of classroom instruction, while  
5 an additional 22% of classroom instruction revolved around non-print materials. Educational  
6 Products Information Exchange Institute, *Report on a National Study of the Nature and the Quality of*  
7 *Instructional Materials Most Used by Teachers and Learners*, No. 76 (1977) at 22. Studies have also  
8 demonstrated that good curricular materials have a significant effect on student learning. Margaret C.  
9 Wang, Geneva D. Haertel & Herbert J. Walberg, *Toward a Knowledge Base for School Learning*,  
10 63 REV. OF EDUC. RES. (1993) at 249-294.

11 142. Dr. Oakes has found that a recent survey of nearly 1,100 randomly sampled California  
12 public school teachers also demonstrated the significance of instructional materials. Oakes Textbook  
13 Report at 20-24. Dr. Oakes reported that the Harris survey found that 92% of teachers reported that  
14 they use textbooks as part of their instruction. *Id.* at 20-21.

15 143. Dr. Oakes has also opined that the importance of instructional materials to education is  
16 recognized internationally. Oakes Textbook Report at 5-6. The Organization of Economic  
17 Cooperation and Development (OECD) views access to textbooks as an important international  
18 indicator of educational quality, and its standard for an adequate supply of textbooks is one textbook  
19 for each pupil in every subject. *See id.* at 5. This standard has also been adopted by the United  
20 Nations Educational, Scientific, and Cultural Organization (UNESCO) as it works toward the goal of  
21 universal education articulated in its World Declaration on Education for All. *See* United Nations  
22 Educ., Scientific & Cultural Org., *Basic Learning Materials Initiative*,  
23 [http://www.unesco.org/education/blm/chap\\_1en.php](http://www.unesco.org/education/blm/chap_1en.php), (n.d.). In its Basic Learning Materials  
24 Initiative, UNESCO asserts, “improvement in the quality of education depends to a great extent on  
25 whether relevant and high quality books and other learning materials can be made available to  
26 teachers and students.” *Id.* The World Bank has made the provision of textbooks a top priority in its  
27 efforts to improve education in developing nations. In October 2001, Alfonso de Guzman, World  
28 Bank Senior Education Specialist noted that “the World Bank considers textbooks a critical part of

education, as necessary as the classroom itself, as indispensable as the classroom teacher.” Oakes Textbook Report at 5-8 citing Alfonso De Guzman, *Statement by the World Bank in the Southeast Asian Ministers of Education Organization (SEAMEO), 35th Council Conference Proceedings* (2000) at <http://seameo.org/vl/library/dlwelcome/publications/appen101.ht>. See also Bruce Fuller and Stephen P. Heyneman, *Third World School Quality: Current Collapse, Future Potential*, 18 EDUC. RESEARCHER (1989) at 16; Bruce Fuller & Prema Clark, *Raising School Effects While Ignoring Culture? Local Conditions and the Influence of Classroom Tools, Rules, and Pedagogy*, 64 REV. EDUC. RES. (1994) at 127-129; Henry M. Levin & Marlaine E. Lockheed, *Effective Schools in Developing Countries* (1993) at 9; Stephen P. Heyneman, Joseph P. Farrell, & Manuel A. Sepulveda-Stuardo, *Textbooks and Achievement: What We Know*; World Bank Staff Working Paper No. 280 (1978).

144. Dr. Oakes has further noted that in January 2002, the U.S. Department of State’s U.S. Agency for International Development (USAID) announced its intent to move quickly to make “visible progress” in the reconstruction of Afghanistan. Oakes Textbook Report at 5 citing USAID, United States Agency for Int’l Dev., *USAID Outlines Afghan Reconstruction Programs*, at <http://www.reliefweb.int> (2002). One of the first efforts was the provision of 9.7 million science, math, and reading textbooks for Afghan students in grades 1-12 by the start of their school year in March 2002. First Lady Laura Bush noted, “Nothing is more important to Afghanistan’s future than giving its children the tools and skills they need to learn and succeed.” *Id.*

145. Dr. Oakes has concluded that access to instructional materials is particularly important when students are taught by new or under-prepared teachers. Oakes Textbook Report at 10-11. Given these teachers’ inexperience and/or lack of training, they must rely more heavily on texts than experienced and fully certified teachers. This finding is supported by studies concluding that teachers’ reliance on textbooks varies with training, experience, and convictions. See *id.* at 10 citing Deborah L. Ball & Sharon Feiman-Nemser, *Using Textbooks and Teachers’ Guides: A Dilemma for Beginning Teachers and Teacher Educators*, 18 CURRICULUM INQUIRY (1988) at 401-423; Donald J. Freeman & Andrew C. Porter, *Do Textbooks Dictate the Content of Mathematics Instruction in Elementary Schools?*, 26 AM. EDUC. RES. J. (1989) at 403-421; Susan S. Stodolsky, *Is Teaching*

1 *Really by the Book?*, FROM SOCRATES TO SOFTWARE: THE TEACHER AS TEXT AND THE TEXT AS  
2 TEACHER (Philip W. Jackson & Sophie Maroutunian-Gordon, eds. 1989) at 159-184. For example,  
3 Ball and Feiman-Nemser found that student teachers and beginning teachers were more likely to need  
4 the teacher's textbook and "Instructor's Guide" than were teachers with more developed skills and  
5 experience in classroom management and curriculum planning. Deborah L. Ball & Sharon Feiman-  
6 Nemser, *Using Textbooks and Teachers' Guides: A Dilemma for Beginning Teachers and Teacher*  
7 *Educators*, Curriculum Inquiry, 18:4 (1988) at 401-423.

8 146. Dr. Oakes has also opined that access to instructional materials is particularly  
9 important for students from low income communities and families because they are less likely to  
10 have access to other books and learning materials outside of school. Oakes Textbook Report at 11.  
11 World Bank textbook expert Alfonso de Guzman reasons that the conditions that students experience  
12 in low income California schools and communities make it likely that these students would  
13 experience the large positive impact of textbooks and materials on achievement that is found in  
14 developing countries. *Id.*

15 147. The Legislature has declared the fundamental importance of providing each student  
16 with instructional materials:

17 The Legislature finds and declares that the California Supreme Court,  
18 in its 1976 decision, *Serrano v. Priest* (18 Cal. 3d 728), reaffirmed the  
19 principle that education is a fundamental interest which is secured by  
20 the state constitutional guarantee of equal protection under the law, and  
21 held invalid a school financing system that resulted in disparate  
educational opportunity. *The Legislature further declares that, to the*  
*extent that every pupil does not have access to textbooks or*  
*instructional materials in each subject, a pupil's right to equal*  
*educational opportunity is impaired.*

22 CAL. EDUC. CODE § 60117 note (2002) (Stats 1994 ch. 927) (emphasis added); *see also*, CDE,  
23 *Instructional Materials Sunset Review Report* (1984) at 42 (recognizing CDE's obligation to  
24 determine whether instructional materials funding is adequate).

25 148. The California Supreme Court has also held that instructional materials are essential  
26 and fundamental parts of a student's education. The California Supreme Court stated:

27 The authorities are virtually unanimous in characterizing textbooks as  
28 having a central place in the educational mission of a school. They  
have been called "a basic educational tool"; (*Norwood v. Harrison*,



1 413 U.S. 455, 465(1973)); [and] it has been said that they . . . are the  
2 most essential tool of education since they contain the resources of  
3 knowledge which the educational process is designed to exploit.  
(Justice Black, dissenting in *Board of Education v. Allen*, 392 U.S. 236,  
252 (1968)).

4 *Cal. Teachers' Ass'n v. Riles*, 29 Cal. 3d 794, 811 (1981). Many other courts have agreed. *See*  
5 *Paulson v. Minidoka County Sch. Dist. No. 331*, 463 P.2d 935, 938 (Idaho 1970) (stating that  
6 "[t]extbooks are necessary elements of any school's activity"); *Cardiff v. Bismarck Pub. Sch. Dist.*,  
7 263 N.W.2d 105, 113 (N.D. 1978) ("It is difficult to envision a meaningful educational system  
8 without textbooks. No education of any value is possible without school books."); *Randolph County*  
9 *Bd. of Educ. v. Adams* 467 S.E.2d 150, 160 (W.Va. 1995) (stating that textbooks and materials are  
10 "an integral and fundamental part of the elementary and secondary education" and that "hindering  
11 access to necessary materials would make the educational process nearly meaningless." (*citing*  
12 *Bond v. Ann Arbor Sch. Dist.*, 178 N.W.2d 484, 488 (Mich. 1970)).

13 149. Most recently, the Senate Joint Committee reaffirmed the State's duty to provide  
14 California students equal access to adequate and current textbooks so they have the tools they need to  
15 master the State adopted content standards:

16 The State must also assure that every school has current textbooks,  
17 technology, and/or other instructional materials that are aligned with  
18 the content expected to be taught to each student, in sufficient quantity  
for each student to have access to these materials for home use. This  
requirement is of fundamental importance.

19 Joint Comm. to Develop a Master Plan for Educ. — Kindergarten through University, *Master Plan*  
20 *for Education in California* (2002) at 41.

## 22 **2. The State Has Known For Years That Some Students Have** 23 **Not Had Equal Access to Instructional Materials.**

24 150. For years the State has been on notice that some students do not have enough  
25 instructional materials and/or that some students must use instructional materials that are outdated,  
26 torn, or vandalized to the point that they are not readable. According to a 1984 report from the CDE  
27 to the legislature, one purpose of the State's textbook adoption program (SB 1155) was to "[e]nsure  
28 that adequate funds for the purchase of textbooks and instructional materials are available." CDE,

1 *Instructional Materials Sunset Review Report* (1984) at 42. The CDE noted that the “constitutionally  
2 mandated adopted program provides the opportunity to ensure that high quality textbooks and  
3 instructional materials are supplied to California’s students in an efficient manner.” CDE,  
4 *Instructional Materials Sunset Review Report* (1984) at 51. In that report, the CDE found that  
5 adequate instructional materials funds were not available (“[a]dequate funding is still an unmet need  
6 in the adoption program”), and that, in fact, funding for K-8 instructional materials had been well  
7 below the statutory limit since 1980. CDE, *Instructional Materials Sunset Review Report* (1984) at  
8 43, 46. The practical result of this shortfall was that primary school students were using obsolete  
9 books in core areas: “One such textbook being used . . . contains information that ‘many such  
10 landings may be necessary before a man is sent to the moon.’” CDE, *Instructional Materials Sunset  
11 Review Report* (1984) at 43.

12 151. In addition, the CDE conceded its ignorance regarding the impact a State allocation for  
13 high school instructional materials would have. Relying on anecdotal evidence, the CDE reported  
14 that the high school students were using geography texts from 1963 and civics texts from 1965 and  
15 were sharing instructional materials to do their homework at home. *See* CDE, *Instructional  
16 Materials Sunset Review Report* (1984) at 46. Acknowledging its need for data, the CDE concluded  
17 that further study was required to determine whether new funding measures would alleviate the  
18 problems in California’s high schools. *See* CDE, *Instructional Materials Sunset Review Report*  
19 (1984) at 46.

20 152. In light of its unmet needs findings, the CDE recommended that more instructional  
21 materials funding be provided to districts by making purchases for such materials tax-exempt and  
22 recommended that the State provide “full funding” of elementary school instructional materials.  
23 *See* CDE, *Instructional Materials Sunset Review Report* (1984) at 51. The LAO rejected both of the  
24 CDE’s suggestions. *See* LAO, *The Instructional Materials Program, A Sunset Review* (1985) at 20-  
25 23. Regarding the first CDE recommendation, the LAO suggested that rather than stretch districts’  
26 funding by exempting instructional materials from the sales tax, the same result could be achieved  
27 more directly by increasing the State’s apportionment for the purchase of such materials. *Id.* at 22-  
28 23.

1           153. In rejecting the second recommendation, the LAO pointed to several faulty  
2 assumptions on which the full funding suggestion rested. First, the CDE's cost estimate was based  
3 on the assumption that each student at each grade level would need materials for all subjects, when in  
4 reality, not all subjects are taught at all levels. Second, the full funding proposal failed to take into  
5 account local funding sources available to districts. Finally, full funding assumed that the legislature  
6 intended the State's materials allocations to be the sole funding source for districts' needs. *See* LAO,  
7 *The Instructional Materials Program, A Sunset Review* (1985) at 20-21. The LAO concluded: "we  
8 support the department's effort to determine the amount of funding required by districts to purchase  
9 needed instructional materials. In doing so, however, it should consider both the cost of textbooks  
10 required by each pupil and the resources available to districts for purchasing those materials." *Id.*  
11 at 22.

12           154. The LAO's recommendations imply that in 1984: (1) the CDE had the knowledge or  
13 belief that at least some districts did not have adequate funding to meet instructional materials needs  
14 at that time; and (2) the CDE assumed, without conducting a comprehensive analysis, that all districts  
15 needed help funding materials for all subjects at that time. Despite the LAO's recommendation that  
16 the CDE accurately determine the amount of instructional materials funding needed by districts,  
17 17 years later we are no closer to knowing the extent of districts' needs. In contravention of its duty  
18 to "ensure that adequate funds for the purchase of textbooks and instructional materials are  
19 available," the CDE has yet to inform itself whether districts have sufficient instructional materials or  
20 to figure out how much money it actually costs for districts to provide such adequate materials. (*See*  
21 Griffith Depo. at 122:16-23:5; 147:2-49:10; 188:7-89:22. *See also* State Agency Defendants'  
22 Responses to Plaintiffs' First Set of Special Interrogatories at 5 (stating that "[t]he extent of the  
23 availability of educational materials in all districts is unknown."); *id.* at 5 (stating that State Agency  
24 Defendants are "not in charge of monitoring the physical quality" of textbooks.))

25           155. In 1994, the Legislature passed AB 2600, which was codified as Education Code  
26 sections 60119 and 41344.3. The legislative history surrounding this bill further demonstrates the  
27 State's awareness of problems related to the quantity, quality, and currency of textbooks. For  
28 example, in the bill analysis worksheet, the Assembly Committee on Education noted that AB 2600

1 was needed because “[t]he state ranks 45th among other states in per pupil spending on instructional  
2 materials. Many students share books and the books they do have are often out-of-date.” Jan  
3 Raymond, *Legislative History & Legislative Intent, Education Code: Section 60119 & Section*  
4 *41344.3* (n.d.), at 9.

5 156. The Legislative Analysis of AB 2600 found:

6 By observation, by continued press reports, and by analysis, a large  
7 number of students in our schools do not have textbooks and other  
instructional materials in each subject.

8 Perhaps as important, when visiting schools it is not uncommon to find  
9 that one school might have textbooks and other instructional materials  
for all children, while a neighboring school does not.

10 \* \* \*

11 If students do not have materials, it is unlikely that their teachers can  
12 keep them on a solid academic program.”

13 Jan Raymond, *Legislative History & Legislative Intent, Education Code: Section 60119 &*  
14 *Section 41344.3* (n.d.), at 111. This Legislative Analysis was endorsed by the CDE among others.

15 157. Then Assemblyman Cruz Bustamante, who introduced the bill, stated the following in  
16 a letter to Governor Wilson:

17 AB 2600 is designed to move towards ensuring that each student in our  
18 schools has textbooks and other instructional materials in each subject.  
The fact that this basic goal has not yet been met troubles me greatly.

19 I discovered the existence of this problem when visiting schools in my  
20 district. Some schools had textbooks and other materials in each  
subject for each student. Many schools did not. I asked the experts in  
21 the California Department of Education if this scenario was true in  
other parts of the state. They told me that in their estimation, fully one-  
22 third of all students do not presently have textbooks and other  
instructional materials in each subject. I noted in the SACRAMENTO  
23 BEE a couple of months ago that you also received similar information  
when you visited schools.

24 I find it extraordinary that we spend some \$24 billion on our public  
25 schools and still, kids don’t have books. Frankly, my initial thought  
was to mandate that each student must have the textbooks and other  
26 instructional materials they need. But, I am told that the California  
State Constitution requires that if such a mandate is made, the cost of  
27 such action would have to be paid in full.

1 Jan Raymond, *Legislative History & Legislative Intent, Education Code: Section 60119 & Section*  
2 *41344.3* (n.d.), at 109. He reiterated these comments in a letter to the California School Employees  
3 Association: “My motivation for introducing AB 2600 is quite simple—I visit schools. Some  
4 schools provide textbooks; some do not. This is unfair. It denies many students of any semblance of  
5 equal educational opportunity.” Jan Raymond, *Legislative History & Legislative Intent, Education*  
6 *Code: Section 60119 & Section 41344.3* (n.d.), at 18.

7 158. The Senate Committee on Education’s analysis of AB 2600 found that “[a]t least one-  
8 third, and as many as two-thirds, of all public school students do not have adequate instructional  
9 materials. In 1989 California spent \$47.60 per student on instructional materials and ranked 10th  
10 among states. In only 4 years, California’s expenditure on instructional materials declined to \$30.30  
11 per student for a ranking of 45th among the states.” Jan Raymond, *Legislative History & Legislative*  
12 *Intent, Education Code: Section 60119 & Section 41344.3* (n.d.), at 58.

13 159. The CDE noted: “Historically, the Instructional Materials Fund has been  
14 underfunded. . . . [This bill] will alert the public as to the crisis in California’s classrooms and would  
15 add fiscal support for school district’s [sic] to purchase instructional materials.” Jan Raymond,  
16 *Legislative History & Legislative Intent, Education Code: Section 60119 & Section 41344.3* (n.d.),  
17 at 67.

18 160. In its analysis of AB 2600, the Legislature also noted that “when visiting schools it is  
19 not uncommon to find that one school might have textbooks and other instructional materials for all  
20 children, while a neighboring school does not. In Japan, each child has two sets of materials in each  
21 subject; one set for school and one set to take home. In California, many students do not even have  
22 materials for each subject.” Jan Raymond, *Legislative History & Legislative Intent, Education Code:*  
23 *Section 60119 & Section 41344.3* (n.d.), at 69-70.

24 161. In 1996, the Association of American Publishers (“AAP”) conducted a national  
25 teacher survey to determine whether there was a textbook shortage in America. This survey found  
26 that for the 1994-1995 school year 52.7% of California teachers did not have enough textbooks to  
27 send home with their students, and that more than a fifth of California teachers did not have enough  
28 books for each student to use in class. See Ass’n Am. Publishers, *School Division Survey*; AAP

1 *Instructional Materials Survey Data Reports* (1996) at 50-51. In addition, although 61.4% of  
2 California teachers indicated that it was very important that textbooks be replaced at least every five  
3 years, 30.8% reported that the newest textbook they used in 1994-1995 was five years or older, and  
4 40.5% indicated that the oldest textbook they used in 1994-1995 was between ten and fifty years old.  
5 See Ass'n Am. Publishers, *School Division Survey*; *AAP Instructional Materials Survey Data Reports*  
6 (1996) at 32, 43-47.

7 162. In 1997, the Los Angeles Times, relying in part on the AAP Survey, wrote about the  
8 severe book shortage experienced by Los Angeles Unified School District ("LAUSD"). See Amy  
9 Pyle, *Book Shortage Plagues L.A. Unified; Education: High School Students Often Don't Have Texts*  
10 *for Classes, Despite State Law*, L.A. TIMES, July 28, 1997, at A.1; Amy Pyle, *Textbook Shortage*  
11 *Sparks Outrage, Study of Spending; Education: The Mayor Calls for Change as School*  
12 *Administrators Review Supplies and Budgets*, L.A. TIMES, July 29, 1997, at B.1. Confirming the  
13 continued existence of problems such as those identified in the 1984 CDE report discussed above, the  
14 L.A. TIMES described the conditions faced by a Huntington Park teacher who, in 1996, taught with a  
15 1971 history text (Richard Nixon was President and the Cold War was a permanent reality), and, in  
16 1997, taught with 1985 history texts that were torn, tagged, and missing entire chapters. See Amy  
17 Pyle, *Book Shortage Plagues L.A. Unified; Education: High School Students Often Don't Have Texts*  
18 *for Classes, Despite State Law*, L.A. TIMES, July 28, 1997, at A.1.

19 163. The State's response to the L.A. TIMES expose was characteristically nonchalant:  
20 textbook shortages are problems for the districts. See Amy Pyle, *Book Shortage Plagues L.A.*  
21 *Unified; Education: High School Students Often Don't Have Texts for Classes, Despite State Law*,  
22 L.A. TIMES, July 28, 1997, at A.1 ("Gov. Pete Wilson's . . . administration views textbook shortages  
23 as each district's problem."). This abdication of responsibility is disquieting given that no one in  
24 California, at the state or district level, was or is tracking whether or not students have textbooks and  
25 instructional materials. This fact is underscored by the incredulous response of the Superintendent of  
26 LAUSD: "How could that be? . . . When it's all said and done, what's more important than a book  
27 for every child?" Amy Pyle, *Book Shortage Plagues L.A. Unified; Education: High School Students*  
28 *Often Don't Have Texts for Classes, Despite State Law*, L.A. TIMES, July 28, 1997, at A.1.

1           164.   Following the media disclosures, the Schoolbook Partners Action Committee  
2   (“SPAC”) evaluated the causes of the textbook shortage in LAUSD and suggested potential remedies.  
3   *See* Schoolbook Partners Action Comm., *No Bang for Our Books: Solving the Book Crisis in Los*  
4   *Angeles Schools* (1998) at 7 (hereinafter *No Bang for Our Books*). According to the SPAC study,  
5   87% of LAUSD high schools had an inadequate supply of currently adopted textbooks, where  
6   “adequate” was defined to mean “one book for each student in each class in which a textbook is  
7   used.” *Id.* at 41. The study further found that two-thirds of LAUSD middle schools and slightly  
8   more than half of LAUSD elementary schools had inadequate supplies of currently adopted  
9   textbooks. *Id.* at 44, 48.

10           165.   In addition, evaluations of school site book practices throughout the district revealed  
11   that over half of the textbook clerks described poor book condition as a significant problem and that  
12   thirty three principals described facilities problems, such as inadequate storage space or leaky roofs,  
13   as contributing to the deterioration of textbooks. *Id.* at 61. Evaluators “routinely found History and  
14   Health books from the 1970’s and American Government books dating from the 1960’s in book  
15   rooms across the district” and, particularly in schools with multi-track schedules, found new  
16   textbooks in storage that had arrived mid-semester, too late to introduce to the students. *Id.* at 61-62,  
17   65. Significantly, although the study concluded that increased state funding was necessary to remedy  
18   the book shortage in LAUSD, it emphasized that without inventory control and accountability,  
19   additional monies would be useless. *Id.* at 105-07.

20           166.   In 2002, the California State Auditor confirmed that LAUSD continued to have  
21   shortages of instructional materials. *See* Cal. State Auditor, *Los Angeles Unified School District:*  
22   *Outdated, Scarce Textbooks at Some Schools Appear to Have a Lesser Effect on Academic*  
23   *Performance than Other Factors, but the District Should Improve Its Management of Textbook*  
24   *Purchasing and Inventory* (2002). In auditing textbook practices at 16 schools in LAUSD, the State  
25   Auditor made the following observations:

- 26           • “LAUSD’s program and policies regarding textbooks and other instructional materials  
27           result in a disparity in the quantity and quality of textbooks for a sample of high-and low-  
28           performing schools.” *Id.* at 14.

- 1 • “We did uncover several classrooms in both the low- and high- performing schools using  
2 outdated texts; however, low-performing schools were more likely to have shortages in  
3 textbooks and to restrict textbook use to the classroom.” *Id.* at 20.
- 4 • “[W]e found widespread use by LAUSD schools of textbooks restricted to the classroom  
5 and not available for students to take home, commonly referred to as class sets.  
6 According to some teachers, they use class sets because there are not enough textbooks to  
7 assign one to each student. Schools that use class sets are not complying with LAUSD’s  
8 policy [requiring that students be provided with books to use at home as well as in the  
9 classroom].” *Id.* at 24.

10 **3. The State Has Known or Should Have Known that Low**  
11 **Income Students and Students of Color Are**  
12 **Disproportionately Denied Equal Access to Instructional**  
13 **Materials.**

14 167. The State has also known that the lack of access to instructional materials has  
15 disproportionately impacted schools serving low income students and students of color. *See* Jacques  
16 Steinberg, *Economy Puts Schools in Tough Position*, N.Y. TIMES, Nov. 26, 2001. (“It’s the poor  
17 schools that are so badly hit,’ said Delaine Eastin, the superintendent of education in California.  
18 ‘They were starved for a quarter-century. They were just starting to come back.’”); *see also No Bang*  
19 *for Our Books*, at 29 (“Surveys have shown that urban schools are worse off than their suburban and  
20 rural counterparts.”) The authors of *No Bang for Our Books* found that although all schools in  
21 LAUSD had roughly the same amount of money available to spend on textbooks, actual expenditures  
22 varied radically from school to school. Low income communities spent less on textbooks than more  
23 affluent areas. *Id.* at 31 (repeating L.A. TIMES finding of discrepancies in average textbook spending,  
24 from a low of \$13 per student at San Fernando High to a high of \$66 per student at North Hollywood  
25 High’s magnet for the highly gifted); *see also* Amy Pyle, *Book Shortage Plagues L.A. Unified;*  
26 *Education: High School Students Often Don’t Have Texts for Classes, Despite State Law*, L.A.  
27 TIMES, July 28, 1997, at A.1.

28 168. In 1998, the California Postsecondary Education Commission (“CPEC”) published a  
report entitled “*Toward a Greater Understanding of the State’s Educational Equity Policies*,



1 *Programs, and Practices*,” which highlighted the discrepancies in school spending and the  
2 availability of school resources that exist between schools in rich and poor communities. *See* Cal.  
3 Postsecondary Educ. Comm’n, *Toward a Greater Understanding of the State’s Educational Equity*  
4 *Policies, Programs, and Practices* (1998) at 27-34.<sup>10</sup> Regarding instructional materials, the CPEC  
5 reported that “[s]ubstantial differences with respect to the availability of consumable supplies and  
6 instructional materials permeate our elementary and secondary school system as well as disparities in  
7 facilities and access to computer technology.” *See* Cal. Postsecondary Educ. Comm’n, *Toward a*  
8 *Greater Understanding of the State’s Educational Equity Policies, Programs, and Practices* (1998)  
9 at 29. The most disturbing part about the existence of such unacceptable conditions, according to the  
10 CPEC, is “that many of the disparities . . . are consistently and pervasively related to the socio-  
11 economic and racial-ethnic composition of the student bodies in schools as well as the geographical  
12 location of schools.” *See* Cal. Postsecondary Educ. Comm’n, *Toward a Greater Understanding of*  
13 *the State’s Educational Equity Policies, Programs, and Practices* (1998) at 29.

14         169. The State has also known that low-income students are denied equal access to  
15 technology in school. *See, e.g.,* Press Release, CDE, *Student-to-Computer Ratio Improving in*  
16 *California Schools — But Not for All* (Sept. 20, 2001). Superintendent Eastin has stated: “I am  
17 encouraged that access to technology has increased in our schools,’ . . . ‘[b]ut I am disheartened that  
18 it is our poorest students who have the least access to these tools that could contribute to their  
19 academic success.” *Id.* The CDE press release continues:

20                 Schools serving the highest percentage of students on free and reduced  
21                 price meals also have the worst student-to-computer ratio. Specifically,  
22                 schools serving 81 percent or more of students eligible for free and  
23                 reduced price meals have a student-to-multimedia computer ratio of  
24                 9.96-to-1, compared to a student-to-multimedia computer ratio of 7.1-  
25                 to-1 in schools serving 20 percent or fewer students eligible for free  
26                 and reduced price meals.

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27                 <sup>10</sup> Senator Hayden relied on this report when he authored SB 81 (*see* AB Comm. on Educ.  
28                 Analyses, 1999-2000 Sess., pp. 5-6), a bill that would require (1) the CDE to develop guidelines for  
29                 indicators to measure equal opportunity for educational success; and (2) the Governor, the SPI, and  
30                 the Legislature to develop a multi-year plan to align educational funding and resources to provide a  
31                 more equal opportunity for educational success and to report annually on the status of equal  
32                 educational opportunity (SB 81, Governor’s Veto Message (Oct. 10, 1999)).

1 *Id.* Given these ratios attested to by the State, it is clear that the existence of computer technology in  
2 schools does not compensate for the lack of “traditional” instructional materials.

3 170. As set forth in Dr. Oakes’ Textbook Report, a recent teacher survey by the Harris  
4 Group also demonstrates that low income students and students of color are disproportionately  
5 impacted by lack of access to instructional materials. *See* Oakes Textbook Report at 33-35.<sup>11</sup>  
6 Dr. Oakes further found that a 2002 RAND study resulted in similar findings:

7 Data from RAND’s Class Size Reduction (CSR) survey underscore the  
8 Harris Survey findings (2002). The CSR survey asked teachers to  
9 report on the availability of resources at their school. . . . [S]chools  
10 serving a large population of students receiving free or reduced lunch  
11 (90% or greater), or a large population of minority students (90% or  
12 greater), had less access to instructional resources than did schools  
13 serving a population where fewer than 10 percent receive free/reduced  
14 lunch or with a minority population of less than 30 percent. These data  
15 make clear that for every category (except English Language  
16 Learner/Limited English Proficient materials), schools with a larger  
17 percentage of minority students or a large percentage of students  
receiving free or reduced lunch do not have the same access to these  
necessary educational inputs. For example, while almost 88 % of  
teachers working at schools serving fewer minority students (<30%),  
indicated that textbooks were always available, only 68% of teachers  
working at schools serving more minority students (>90%) indicated  
that they always had access to textbooks. Similarly, approximately  
83% of teachers working at schools serving a small percentage of low-  
income students indicated that they always had access to textbooks  
versus only 56.8 percent of teachers who worked at schools serving a  
large population of low-income students.

18 *Id.* at 36-37.

#### 19 **4. Class Representatives Have Suffered Due to Unequal Access** 20 **to Instructional Materials.**

21 171. Some class representatives lack current textbooks for academic subjects to use without  
22 sharing in class or to take home. For example, the II/USP action plan for Helms Middle School in  
23 San Pablo listed among barriers to student performance: “Lack of materials, current books and  
24 supplies: Students, teachers and parents lament the absence of current and appropriate materials.”

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25 <sup>11</sup> Plaintiffs note that the State has never attempted to conduct such a survey of its own.  
26 Griffith Depo. at 188:22-189:22. Indeed, plaintiffs requested that such a survey be conducted early  
27 on in this litigation (*see* Motion for Court-Appointed Neutral Survey Expert on Textbook Availability  
28 filed September 12, 2000) and the State refused to undertake it claiming that it would be “entirely  
inappropriate” for the State to bear the expense of such a survey. Defendant State of California’s  
Opposition to Plaintiffs’ Motion to Appoint an Expert at 2.

(DOE 48365; *see also* DT-WC 4506 (Helms 2001-02 Textbook Analysis says that Helms did not have enough money to buy a book for every student); DT-WC 7132-33 (January 2001 Helms Teacher Preference Form states that class needs include “newer math books”).) The mother of Moises Canel, the class representative from Helms, testified that Moises’ social studies “teacher did the best he could because he didn’t have the proper, you know, material to explain the kids and show them what they had to do because they didn’t have any books.” (Deposition of Sara Canel (“Canel Depo.”) at 77:20-23; *see also id.* at 121:1-18 (testifying that the social studies teacher did not have books). The Helms principal confirmed this information, testifying that “there’s not a textbook for every kid to take home” in “[p]robably most of the classes” because of “[l]ack of funds.” Deposition of Stephen Muzinich (“Muzinich Depo.”) at 54:1-16; *see also id.* at 59:20-24 (“I just had a meeting with my regional superintendent on, with some several parents from Helms, and she indicated at that meeting that there were insufficient textbooks, not just at Helms but at other schools in the District.”).)

172. The assistant principal at class representative Silas Moultrie’s middle school in San Francisco described a “dire need for textbooks” and noted that “[t]he textbook shortage is a serious problem at Burbank and many of our students are sharing textbooks. As the school works hard to improve teaching and learning, it is imperative that we have an adequate supply of core materials in the classrooms.” (DT-SF 1166.) The principal testified that “I believe there was a deficit this year in the social studies books” and that therefore the Luther Burbank students could not all take social studies books home for homework. (Michaelson Depo. at 75:12-22.) The principal continued that in general “I was concerned about the number of textbooks because I knew it was an issue.” (Michaelson Depo. at 83:12-13.) Class representative Silas Moultrie testified that his class had no textbooks at all in an English class and that in other classes he had to share textbooks in class “very often.” (Moultrie Depo. at 78:12-18, 92:5-14; *see also id.* at 110:2-6.) English and Social Studies teacher Cynthia Artiga-Faupusa testified that she never allowed her students to take the class textbook home for homework “[b]ecause I had one set for all of my students” to use in class. Deposition of Cynthia Artiga-Faupusa (“Artiga-Faupusa Depo.”) at 50:1-5. Ms. Artiga-Faupusa testified, however, that “Oh, yes, I would have, wholeheartedly [sent the books home with students

1 for homework]. I think grammar is something that they really needed to work on. And  
2 unfortunately, because I was limited with the supply that I had, I couldn't send it home. But if I had  
3 enough, I would have.” (Artiga-Faupusa Depo. at 50:21-51:3.) In addition, Ms. Artiga-Faupusa  
4 testified that the only social studies textbook available for use at Luther Burbank was published  
5 “when the USSR was still around, so at least 10 years [ago]. The map still even had it in the back of  
6 the book. It still had the USSR.” (Artiga-Faupusa Depo. at 71:8-16.)

7 173. Similarly, January 2000 teacher evaluation forms from a training session on social  
8 studies instructional materials for Cesar Chavez Academy in East Palo Alto uniformly note that the  
9 teachers did not actually have the materials they were being trained to use; one form noted: “Now I  
10 know what materials I’m supposed to have.” (DT-RA 3583-84, 3627-28, 3669-70, 3711-14, 3692-  
11 93, 3701-02.) Class representative Krystal Ruiz testified that she and “mostly all of the students” had  
12 to share language books in class “because there were like very few. There were like 10 or 13 books  
13 there. There were not enough for everybody. So we had to like — like each student — like half of  
14 the students would have to get — he would give you the book, and you would have to share with the  
15 person next to you.” (K. Ruiz Depo. at 139:13-19.)

16 174. Class representative Carlos Ramirez testified to having to share social studies and  
17 math textbooks in class because his school did not provide enough texts for all students. (Deposition  
18 of Carlos Ramirez (“Ramirez Depo.”) at 109:5-6, 204:14-24.) Carlos’s Bryant Elementary School  
19 peers wrote essays about not having enough books, with one fifth grader explaining, for example:

20 when its time for language arts time, we need to share books like now.  
21 We need to share with two or three people. The book we are sharing  
22 right now is called Stone Fox. I don't like to share reading books. I am  
23 an independent person so I like to have a book to myself. We don't  
24 have enough for everyone. My teacher bought these for us, but she just  
25 didn't buy enough.

26 (DT-SF 81.) Another student wrote:

27 I think that if we aren't going to have enough materials then we  
28 shouldn't be taught! I mean we should that is if we get more materials  
it will be better for teachers and the kids. I feel sad right now that we  
don't have enough materials because I am trying my best to learn but it  
just doesn't work.

(DT-SF 101; *see also* DT-SF 89, 92, 94, 96, 97, 99, 103, 104, 107, 108, 109, 111, 113, 117.) Carlos’s teacher Lili Malabed testified: “I had 17 social studies textbooks in English and I had 23 students. The fifth grade next door also had 22 students, so that makes about 55 kids, 5th graders who need social studies textbooks and we only had 17.” (Deposition of Lili Malabed (“Malabed Depo.”) at 72:20-24.) Bryant principal Larry Alegre confirmed these students’ descriptions of book shortages, testifying that the school had had insufficient numbers of fifth grade social studies textbooks as well as too few English as a Second Language Kindergarten texts. (Deposition of Larry Alegre (“Alegre Depo.”) at 207:24-208:3.)

175. Watsonville High School assistant principal Lawrence Lane testified that “[t]his year we’re providing classroom sets” of economics textbooks and also federal government and U.S. History textbooks because the school did not have enough of these books for the students to take them home for homework: “We knew we were short Social Studies books this school year, that’s the reason we went to classroom sets in relation to the total enrollment of the school in Social Studies classes.” (Lane I Depo. at 80:4-16, 84:25-85:8, 88:10-12; Lane II Depo. at 8:16-19.) School records from Watsonville High School in Watsonville show American government textbooks with 1988 copyright dates and economics textbooks with 1991 copyright dates, and assistant principal Lane testified that the government text in use at Watsonville High has a copyright date of 1988. (DT-PV 1566-67, 1564-65; Lane I Depo. at 85:22-86:3.)

176. School records from Crenshaw High School in Los Angeles reflect responses from a textbook room administrator that there were “none left” or “none available” when teachers requested copies of *Catcher in the Rye* or *Black Boy* for English classes or math textbooks. (DT-LA 8137, 8141; *see also* DT-LA 8092 (“P.S. Do not have 25 *Catcher in the Rye*”), 8174 (“no more books” of *Paso a Paso*), 8186 (“no more” of *Biology Visualizing Life*).) Class representative D’Andre Lampkin testified that he asked his ninth grade math teacher “numerous times” if he could take a book home for homework but “[s]he kept telling me no, because she had to use the book for her other classes.” (D’Andre Lampkin Depo. at 163:2-6.) D’Andre also testified that “[t]here weren’t enough books” in his tenth grade biology class “for students to be able to take them home. And a lot of times there were maybe about one or two students that would have to share a textbook with another student

1 because there weren't enough." (D'Andre Lampkin Depo. at 252:10-14.) D'Andre's twin and fellow  
2 class representative Delwin Lampkin also testified to textbook shortages for his Crenshaw classes,  
3 requiring him to share books with other students during class time and preventing him from being  
4 able to take a book home for homework. (Delwin Lampkin Depo. at 270:2-272:6; 303:11-304:20.)

5 177. At Balboa High School in San Francisco, class representative Alondra Jones testified  
6 that she routinely lacked books to take home or to use in class without sharing. For example, she  
7 testified that for her U.S. History class "[t]here weren't enough textbooks for us to take home. And  
8 my teacher, Ms. Safir, said that the textbooks were so outdated that whatever we learned in the  
9 textbook would have changed anyway by now." (Deposition of Alondra Jones ("Jones Depo.")  
10 at 367:6-9; *see also id.* at 369:21-370:1.) Alondra also testified that students could not take books  
11 home for homework in her chemistry class "[b]ecause there weren't enough for — because our  
12 chemistry class and the other period's chemistry class shared the same book, like in my health ed  
13 class. And so when I got the book to use — and chemistry, it was kind of like a capitalist society; it  
14 was dog eat dog. I had my book. That was all I was worried about." (Jones Depo. at 393:2-7.)  
15 Ms. Jones continued: "They didn't have enough Spanish books for everybody, meaning we had to  
16 share Spanish books in class. And we also couldn't take Spanish books home. The Spanish  
17 homework we were assigned, I was unable to do it because I didn't know a lick of Spanish." (Jones  
18 Depo. at 420:12-16.) Another Balboa student testified that his freshman year Spanish class had only  
19 approximately 25 books for approximately 30 to 35 students, requiring the students to share books  
20 during class time. Deposition of Antonio Lewis ("Lewis Depo.") at 82:6-15, 85:8-10, 94:22-95:1.  
21 This same student testified that he and other students in his advanced algebra class had to share books  
22 in class every day because Balboa did not have enough books for the students. (Lewis Depo.  
23 at 107:17-20.) And he testified that "currently my American democracy class seems as if the  
24 presidents that they are talking about go only up until 1988 when George Bush, Senior was  
25 president." (Lewis Depo. at 142:17-143:2.) Balboa math teacher Emmanuel Medina testified that he  
26 had only enough advanced algebra and trigonometry textbooks for one class set for each course, even  
27 though he taught two periods of advanced algebra and two periods of trigonometry. Deposition of  
28 Emmanuel Medina ("Medina Depo.") at 129:11-130:3, 150:14-151:24.

178. Leadership Council minutes from class representative Cindy Diego’s school — Fremont High School in Los Angeles — report textbook shortages in both 2000 and 2001: in October 2000, the Leadership Council reported that classes in the Foreign Language department “have students with no books” and in January 2001 the Council reported that “the Special Education department still needs books, especially grammar and composition books.” (Hines Depo. Exhibit 13.) Fremont’s principal confirmed the existence of Fremont textbook shortages as well: “I don’t think they have — they [Fremont High School] meet the requirement that I just mentioned in terms of having a complete classroom set as well as a book to take home.” (Roland Depo. at 59:2-5; *see also id.* at 47:20-23 (testifying that the allegation that Fremont did not have enough textbooks was accurate); *id.* at 101:7-9 (“I do know the social studies department as a whole was short on textbooks, more so than the other departments.”); Hines Depo. at 426:11-429:5 (assistant principal testified that one month into the 2001-2002 school year the school still did not have chemistry, reading literacy, and Spanish textbooks).) Teacher Joel Vaca testified:

School started in July. . . . But come July [2001], there are no books, not even enough for a classroom set or not enough for the students to take home. So what we had to do — for about a month and a half, we had to make photocopies of the different chapters that we had to do, not the information of the book, but only the problem sets. And that had happened for a month and a half. So I lost, basically, half a semester to not having a book.

(Vaca Depo. at 33:10-24; *see also id.* at 187:18-188:17 (students in his Algebra I class during the 2001-2002 school year had to share books in class for approximately two weeks because he did not have enough books for all students); Diego Depo. at 59:11-14 (“For example, my Government class. We don’t get a full class set — we do get a class set, but the thing is that there’s too many students in that class. So, we have to share books.”); *id.* at 61:19-62:1 (testifying that she cannot take books home “[i]n my math class, Government, Economics, and American Literature”).)

### **5. Other Class Members Have Suffered Due to Lack of Access to Instructional Materials.**

179. Many other class members also lack textbooks altogether in academic subjects. (*E.g.*, J. Garcia Depo. at 48:9-23, 50:15-20; Gonzalez Depo. at 84:7-14; Deposition of Luis Magdaleno (“Magdaleno Depo.”) at 61:2-9; Perkins-Ali Depo. at 56:16-18, 63:7-16.) As one parent put it,

1 “Some of the students, they don’t have no books the whole school year. One of them was my son.”  
2 (Gonzalez Depo. at 79:9-10.) According to the 1999-2000 Coordinated Compliance Review for  
3 Oakland Unified School District, district parents complained that “[s]ome schools have operated for  
4 3-5 years without books.” (DOE 23201.) One class member testified that “I never had a textbook in  
5 my math classes” in high school. (Magdaleno Depo. at 78:5-14.)

6 180. Class members who do have textbooks they may use in class often have to share the  
7 books with other students during class time because their teachers do not have enough copies of the  
8 texts for all students enrolled in the classes. (E.g., J. Garcia Depo. at 58:18-22; Gonzalez Depo.  
9 at 81:3-7, 86:3-10; Lewis Depo. at 84:21-85:10, 88:6-11, 93:22-94:5, 101:9-19; Montes Depo.  
10 at 103:24-104:3; Muñoz Depo. at 184:8-21; Perkins-Ali Depo. at 110:9-111:2; Salyer Depo. at 204:3-  
11 17.) According to the II/USP action plan for one school class members attend, “There is a [d]istrict  
12 practice to provide one text for social studies for every two students. Currently students must share  
13 social studies texts in class. Texts are not available to take home.” (DOE 53585 — action plan for  
14 John H. Nuffer Elementary School in Norwalk-La Mirada Unified School District.)

15 181. In addition, some class members who have texts to use in class nonetheless lack  
16 textbooks to take home for homework. (E.g., J. Garcia Depo. at 48:1-5, 60:6-11, 99:3-20; Gonzalez  
17 Depo. at 80:6-8; Islas Depo. at 191:20-192:1; Lewis Depo. at 81:1-8, 82:6-83:23; Magdaleno Depo.  
18 at 109:17-24; Montes Depo. at 41:4-13, 96:6-97:9, 101:18-102:17, 103:10-104:5; Muñoz Depo.  
19 at 121:15-24; Salyer Depo. at 267:12-18; DOE 46985.) According to the II/USP action plan for  
20 Farmersville Junior High School in Farmersville Unified School District, “only about a third of the  
21 students reported that they had language arts, science, or social science books to take home. . . . Some  
22 content areas only have classroom sets of textbooks. Having more books was requested by 48% of  
23 the students.” (DOE 37014.)

24 182. Those textbooks to which class members do have access frequently are in poor  
25 condition, with covers and pages missing, torn, and falling out of the binding, or with writing in them  
26 (e.g., J. Garcia Depo. at 46:5-20, 56:12-18, 63:03-64:24; Islas Depo. at 151:16-152:17; Magdaleno  
27 Depo. at 37:25-38:22, 40:16-21, 130:20-131:3; Montes Depo. at 34:10-15, 37:15-24; Muñoz Depo.  
28 at 199:21-24, 200:4-7, 204:22-205:19; Deposition of Alexander Nobori (“Nobori Depo.”) at 52:23-



53:13, 72:5-25, 89:7-12, 120:6-21, 160:19-161:9; Perkins-Ali Depo. at 75:17-20, 111:21-25), or are old and out of date (e.g., J. Garcia Depo. at 46:5-20, 60:3-61:11; Magdaleno Depo. at 36:20-25, 119:22-120:8; Nobori Depo. at 62:1-63:1, 77:9-18; DOE 45115, 51333). For example, one class member testified that her teacher “said turn to page 50, page 50 wasn’t there. I got a different book, page 50 wasn’t there. And I got another book, page 50 wasn’t there. So when I got to my fourth book, I got to a book that had page 50.” (Perkins-Ali Depo. at 113:21-25.) Another student testified that in his school, “[i]t was like they went scavenger hunting for the books. Some of them had different publishers and all that.” (J. Garcia Depo. at 72:11-73:19.) Another class member testified that he knew his chemistry textbook had been published in the mid 1960s because “[i]t’s in big writing when you open it [the book] on the inside. And I remember there’s a girl in there whose dad took the class in the ‘60s and it has his name in one of the books.” (Magdaleno Depo. at 137:5-12.)

183. II/USP action plans reflect the poor condition of books some class members must use. For example, the action plan for Lee Richmond Elementary School in Kings County reported that “[s]tudents in the focus groups all noted that their books are in very bad condition and that they can’t take them home.” (DOE 51432.) At Abraham Lincoln Elementary School in San Bernardino City Unified School District, the II/USP action plan identified “outdated texts and ad-hoc supplementals” as barriers to student performance in mathematics. (DOE 65551.) At Roosevelt Elementary School, also in Kings County, “the lack of up-to-date books and classroom resources was a chief concern” in the focus group discussions on the school. (DOE 51333.) “Students in the focus groups noted that many of their books are in bad condition and because there are not enough, they can’t take them home. This creates a problem when they are needed for homework reference.” (DOE 51333.) Roosevelt teachers agreed with their students: “Teachers feel they have a lack of instructional materials to support the standards implementation.” (DOE 51303.)

184. A January 1998 chart from Los Angeles Unified School District shows 36 elementary schools reported that they did not have recent adequate books in each of five core academic areas. (DT-LA 4675-77.) Likewise, II/USP action plans from schools some class members attend identify shortages of instructional materials in core academic areas. (E.g., DOE 37948, 37960, 38920, 40254, 44535, 45081, 45095, 45153, 46346, 48257, 46164, 49552, 51333, 51432, 51860, 55605, 56012,

78990.) One plan reported that “[o]n the faculty survey, almost 40% of the teachers say they do not have the instructional materials available for the subjects they teach.” (DOE 38917 — action plan for Gates Elementary School in Los Angeles Unified School District.) Another action plan reports that “[f]orty-one percent of the students and 43% of the staff say they do not have sufficient books and materials.” (DOE 37378 — action plan for Miramonte Elementary School in Los Angeles Unified School District.) The action plan for a third school, Marcus Foster Elementary in Oakland, reported that the school had “Foss Kits for science instruction, but not all grades;” (DOE 31092) that “there is a need for Foss kits at each grade level.” (DOE 31093). As the report further states, “In *Open Court*, teachers are required to photocopy much of the materials;” and that “Marcus Foster will need to obtain additional *Hampton Brown* teacher resource kits and *Mathland* Kindergarten and 3rd grade levels teacher’s manuals.” (DOE 31093.)

185. According to the II/USP action plan for Agua Caliente Elementary School in Palms Springs Unified School District:

[T]eachers reported that there is a total lack of materials such as books, overheads, and encyclopedias. The majority of teachers reported that more resources would improve the school (83%). . . .

. . . . Some parents reported that their children have not been given a mathematics, language arts, social science, or science textbook (~20%). Students in 4th and 5th grade were not consistent in their responses as to whether they have been given a textbook. The lowest responses were for math (27%) and science (38%). Teachers reported that some grades have no class sets of books for spelling, science, or history. The majority of teachers reported that they have a classroom set only or no books aligned to the CA content standards.

(DOE 41460.) Still another action plan states:

Students reported that they have not been given a textbook or that they have a textbook for class use only (~62%). Parents reported that their students do not have a textbook or that they have one for classroom use only (~45%). . . . The lack of books has created a hole in the instructional program because in some classes students spend instructional time hand copying definitions out of books so that they can utilize those [definitions] when they go home.”

(DOE 32733 — action plan for Clyde L. Fischer Middle School in Alum Rock Union Elementary School District.)

1           186.   The II/USP action plan for another school found that “[t]here is clearly a critical lack  
2 of textbooks and curricular materials across all grade-levels and subject areas.” (DOE 77551 —  
3 II/USP action plan for Cali Calmecac (Charter # 162) in Windsor Unified School District in Sonoma  
4 County.) The action plan continued:

5           Teachers in early grades noted that the creation of small classes without  
6 adequate resources for materials had forced them to spread leveled  
7 reading books very thinly across classrooms. We also found very  
8 limited in-classroom collections of books, reference materials, and  
9 periodicals in the 4<sup>th</sup> through 8<sup>th</sup> grades, and in many classrooms there  
10 was not even one complete set of texts for the grade level. (Reading  
11 and reference materials that were available in these grades were often  
12 in poor condition.) As noted earlier, students without texts were  
13 generally unengaged, while in other grades, valuable instructional time  
was lost so that students could complete worksheets since there were  
not sufficient texts to bring home. Teachers in upper grades continue to  
use outdated textbooks, and sometimes rely on text-based assessments  
that are unaligned to standards or inappropriate for the given grade  
level. Consistently, teachers and students in all focus groups expressed  
the desire to have more and newer reading materials. . . . Additionally,  
there were very few science manipulatives and no science equipment  
seen in classrooms.

14 (DOE 77587.)

15           187.   Likewise, at Orosi High School in Cutler-Orosi Joint Unified School District in Tulare  
16 County, the II/USP action plan reported that “[n]ot all classes have textbooks available to students”  
17 and that “[s]tudents repeatedly cited a need for better materials.” (DOE 78990.) A survey of  
18 Antelope Valley High School teachers revealed that 40% of teachers disagreed with the survey  
19 statement that “[t]his school has adequate resources such as texts, curriculum materials, and teaching  
20 aids.” (DOE 51860 — II/USP action plan for Antelope Valley High School in Antelope Valley  
21 Union High School District in Lancaster.) At Gompers Secondary School in San Diego City Unified  
22 School District, “51% of students said there were not enough books and supplies for all the students  
23 in their classes.” (DOE 67357 — II/USP action plan for Gompers Secondary School in San Diego  
24 City Unified School District.)

25           188.   At Los Medanos Elementary in Pittsburg Unified School District, the II/USP action  
26 plan reported that “[s]tudents need more books, not just handouts.” (DOE 48040.) Likewise, at  
27 Laton High School in Fresno County, “[t]eachers cite a lack of textbooks in the English department.”  
28 (DOE 49552 — II/USP action plan for Laton High School.) At Mariano Castro Elementary in Santa

1 Clara County, “[t]here were inadequate quantities of leveled readers in at least one primary  
2 classroom, based on classroom observations.” (DOE 72518 — II/USP action plan for Castro  
3 Elementary in Mountain View Elementary School District.) At Fulton Elementary School in San  
4 Diego City Unified School District, “[t]here is a need to purchase additional instructional materials  
5 and books to supplement those that can be purchased from the school’s budget.” (DOE 67278.)

6 189. The II/USP action plan for King Elementary School in West Contra Costa Unified  
7 School District cited “widespread use of worksheets” throughout the language arts and reading  
8 instruction as a barrier to education success. (DOE 48460, 48481.) At Perris High School in Perris  
9 Union High School District in Perris, the II/USP action plan reported that parents complained at a  
10 public meeting about “[n]o books (proper text)” and “[k]inds of books the school has (authors/age of  
11 books) on hand,” noted that math “[w]orksheets don’t provide enough learning possibilities,” and  
12 recommended that the school “[g]et proper textbooks.” (DOE 58677-78.) And at Fremont  
13 Elementary School in San Diego City Unified School District, “[p]arents and staff both shared  
14 concerns . . . regarding the existing quality and quantity of texts, supplemental books, media, and  
15 other materials aligned to the standards and leveled by reading level.” (DOE 67176 — II/USP action  
16 plan for Fremont Elementary School in San Diego City Unified School District.)

17 190. At Vista Verde Middle School in Greenfield Union School District, “[t]here is a  
18 shortage of textbooks school-wide that has led to a great deal of frustration among teachers and  
19 parents. In multiple subject areas, there are not enough textbooks to provide a book for each student.  
20 As a result, texts are not available for students to take home for home study.” (DOE 56012 — II/USP  
21 action plan for Vista Verde Middle School in Greenfield Union School District.) Similarly, at Frank  
22 Sparkes Elementary School in Winton Elementary School District, the II/USP action plan found  
23 “[i]nadequate curricular materials to support math, science, spelling instruction.” (DOE 55605.)

24 191. The II/USP action plan for Plummer Elementary School in Los Angeles Unified  
25 School District reported that “[a]t present, the school is experiencing difficulty in getting instructional  
26 materials to all students and classrooms.” (DOE 43202.) The II/USP action plan for Howard  
27 Ingraham Elementary School in San Bernardino City Unified School District identified “lack of  
28

content based and level appropriate remedial materials” in mathematics as a barrier to student performance. (DOE 65466.)

**C. The State Has Known that Large Numbers of English Language Learners Have Not Been Provided With Specially Trained Teachers and Appropriate Instructional Materials.**

**1. Specially-Trained Teachers And Appropriate Instructional Materials Are Basic to the Educational Process of Teaching English Language Learners.**

**a. Specially-Trained Teachers Are A Basic Component of Teaching English Language Learners.**

192. Specially-trained teachers are vital to the process of educating English Language Learners. Plaintiffs’ expert Dr. Kenji Hakuta has opined:

Proper training is particularly critical for those who work with English Language Learners (ELLs), as members of the ELL population are not only vastly different from the native English speakers with whom teachers are familiar, but there is great variability even among ELL students. This heterogeneous group of students comes to California’s classrooms with varying degrees of proficiencies in both their native language and English, differing amounts of academic content knowledge, and from varying socioeconomic and political circumstances, all of which affect learning readiness. Instructors of these students need explicit training in additional teaching skills and theoretical knowledge beyond that which is taught to mainstream teachers in order to effectively instruct this population (citation omitted).

Expert Report of Dr. Kenji Hakuta (“Hakuta Report”) at 2-3. According to Dr. Hakuta, the international education association Teachers of English to Speakers of Other Languages (TESOL) has found that “the field of teaching English to speakers of other languages is a professional activity that requires specialized training. The fact that someone speaks English as a native language does not qualify that person to teach it — especially to those who are learning English as an additional language.” Hakuta Report at 3, *citing* TESOL, available at <http://www.tesol.org/careers/counsel/whatistesol.html>.

193. Dr. Hakuta has also opined that “[a]n increasingly large body of research supports the notion that teachers with good professional preparation make a difference in student learning (citations omitted).” Hakuta Report at 4. Dr. Hakuta points out that a recent study conducted in Los Angeles Unified School District (LAUSD) investigated the relationship between student gains in

1 achievement and the credential held by the teachers who taught them and found that ““state/district  
2 authorization of teachers does have an impact on student outcome.”” *Id.* at 6-7 (citation omitted).

3 194. State officials have agreed that specially-trained teachers are important to the  
4 academic success of English Language Learners. Laurie Burnham-Massey, Director of the Comite  
5 Compliance Unit, has stated that English Language Learners “need instruction that they can  
6 understand. They need teachers qualified to provide that instruction . . .” Deposition of Laurene  
7 Burnham-Massey (“Burnham-Massey Depo.”) at 43:22-24 ; *see also* Deposition of Laurene Burham-  
8 Massey taken in Comite litigation (“Burnham-Massey Comite Depo.”) at 88:4-21 (stating that  
9 teachers require specialized training in order to provide effective instruction to English Language  
10 Learners). Norm Gold, former head of the Department of Education’s Bilingual Compliance Unit,  
11 has stated that “[s]pecially-qualified teachers are essential to ensure that students receive an  
12 understandable and challenging curriculum.” Norm Gold, *Solving the Shortage of Bilingual*  
13 *Teachers: Policy Implications of California’s Staffing Initiative for LEP Students*, in THIRD RES.  
14 SYMP. ON LIMITED ENG. PROFICIENT STUDENT ISSUES (1992).  
15 at [www.ncbe.gwu.edu/ncbepubs/symposia/third/gold.htm](http://www.ncbe.gwu.edu/ncbepubs/symposia/third/gold.htm). He has also stated that “we should expect  
16 that special language, cultural, and methodological skills needed to ensure academic success for LEP  
17 students would be prerequisites for teachers assigned to instruct these students.” *Id.*

18 195. The California Department of Education Proposition 227 Task Force “concluded that  
19 an instructional program for English learners needs, at a minimum, to (1) have qualified teachers;  
20 (2) establish English language development standards and valid assessments; (3) give learners access  
21 to the district’s core curriculum; (4) provide current materials; and (5) provide ongoing opportunities  
22 for learners to develop a comprehensive set of literacy skills.” CDE, *The Report of the*  
23 *Proposition 227 Task Force, Educating English Learners for the Twenty-first Century* (1999) at 13.  
24 In addition, in their study of the effects of the implementation of Proposition 227, the American  
25 Institute for Research and WestEd wrote:

26 The quality and appropriateness of instruction [of English Language  
27 Learners] is dependent on the degree to which teachers have been  
28 adequately prepared through effective professional development and  
the degree to which they have access to the necessary instructional  
materials and support.

1 Thomas B. Parrish, *et al.*, Am. Inst. for Research & WestEd, *Effects of the Implementation of*  
2 *Proposition 227 on the Education of English Learners, K-12: Year 2 Report* (2002) at IV-40.

3 196. The Legislature has also recognized that English Language Learners need teachers  
4 with specialized training:

5 [L]imited-English-proficient pupils have the same right to a quality  
6 education as all California pupils. For these pupils to have access to  
7 quality education, their special needs must be met by teachers who  
8 have essential skills and knowledge related to English language  
9 development, specially designed content instruction delivered in  
10 English, and content instruction delivered in the pupils' primary  
11 languages. It is the intent of the Legislature that the Commission on  
12 Teacher Credentialing implement an assessment system to certify those  
13 teachers who have the essential skills and knowledge necessary to meet  
14 the needs of California's limited-English-proficient pupils.

15 CAL. EDUC. CODE § 44253.1.

16 197. In order to ensure that English Language Learners have teachers with the requisite  
17 training to instruct them, the State has created the Cross-cultural Language and Academic  
18 Development ("CLAD") certificate and the Bilingual Cross-cultural Language and Academic  
19 Development ("BCLAD") certificate. CAL. EDUC. CODE §§ 44253.3-44253.4.

20 198. In 1994 the Legislature authorized a new form of English Language Learners  
21 certification with SB 1969 (amended by SB 395 in 1999). Ed. Code § 44253.10. The Legislature  
22 stated that:

23 (a) All pupils should have the opportunity to learn. Pupils with limited  
24 English Proficiency (LEP) need equal educational access to the  
25 curriculum. Teachers of LEP pupils must have the skills and  
26 knowledge to provide appropriate methods of instruction. The pupil  
27 population in kindergarten and grades 1 to 12, inclusive, in this state  
28 has become more diverse and many pupils in our schools speak little or  
no English. It appears that this trend toward a more culturally diverse  
population will continue at a rising pace. This increase in cultural and  
language diversity of the schoolage population will require a dramatic  
increase in the number of teachers who are trained and competent to  
provide educational instructions to LEP pupils

(b) The new credentialing system includes a Crosscultural, Language  
and Academic Development (CLAD) certificate to provide for the  
preparation and credentialing of teachers for LEP pupils. For the near  
future, there is a shortage of teachers who will meet the educational  
requirements of the CLAD certificates. However, there is an  
abundance of LEP pupils who need trained and competent teachers.

1 SB 1969, ch. 1178, § 1, 1993-1994 Sess. (Cal. 1994).

2 199. The CTC has also recognized that teachers need specialized training to teach English  
3 Language Learners. It has set forth these standards in the Teacher Performance Expectations section  
4 of its *Standards for Program Quality and Effectiveness for Professional Teacher Preparation*  
5 *Programs* in describing what credential program graduates should know and be able to do:

6 **TPE 7: Teaching English Learners**

7 Candidates for a Teaching Credential know and can apply pedagogical  
8 theories, principles, and instructional practices for comprehensive  
9 instruction of English learners. They know and can apply theories,  
10 principles, and instructional practices for English Language  
11 Development leading to comprehensive literacy in English. They are  
12 familiar with the philosophy, design, goals, and characteristics of  
13 programs for English language development, including structured  
14 English immersion. They implement an instructional program that  
15 facilitates English language development, including reading, writing,  
16 listening and speaking skills, that logically progresses to the grade level  
17 reading/language arts program for English speakers. They draw upon  
18 information about students' backgrounds and prior learning, including  
19 students' assessed levels of literacy in English and their first languages,  
20 as well as their proficiency in English, to provide instruction  
21 differentiated to students' language abilities. They understand how and  
22 when to collaborate with specialists and para-educators to support  
23 English language development. Based on appropriate assessment  
24 information, candidates select instructional materials and strategies,  
25 including activities in the area of visual and performing arts, to develop  
26 students' abilities to comprehend and produce English. They use  
27 English that extends students' current level of development yet is still  
28 comprehensible. They know how to analyze student errors in oral and  
written language in order to understand how to plan differentiated  
instruction.

Candidates for a Teaching Credential know and apply pedagogical  
theories, principles and practices for the development of academic  
language, comprehension, and knowledge in the subjects of the core  
curriculum. They use systematic instructional strategies, including  
contextualizing key concepts, to make grade-appropriate or advanced  
curriculum content comprehensible to English learners. They allow  
students to express meaning in a variety of ways, including in their first  
language, and, if available, manage first language support such as para-  
educators, peers, and books. (footnote omitted) They use questioning  
strategies that model or represent familiar English grammatical  
constructions. They make learning strategies explicit.

Candidates understand how cognitive, pedagogical, and individual  
factors affect students' language acquisition. They take these factors  
into account in planning lessons for English language development and  
for academic content.



1 Cal. Comm'n on Teach Credentialing, *Standards of Quality and Effectiveness for Professional*  
2 *Teacher Preparation Programs* (2001) at A-8.

3 **b. Appropriate Instructional Materials Are A Basic**  
4 **Component of Teaching English Language Learners.**

5 200. Appropriate instructional materials are also basic to the process of teaching English  
6 Language Learners. *See* Hakuta Report at 15-17. Dr. Hakuta has opined that "English Learners need  
7 specialized materials beyond that which is provided to mainstream students in order to make the  
8 curriculum comprehensible to them." *Id.* at 16. Dr. Hakuta has further opined that:

9 ELLs need specialized instructional materials beyond those provided  
10 their mainstream peers for many reasons. First, while ELLs come to  
11 the state's classrooms with a variety of levels of English proficiency,  
12 many require a focus solely on the English language for at least the  
13 beginning period of their education. According to the California  
Department of Education's Proposition 227 Task Force, materials that  
emphasize the explicit teaching of English (reading, writing, speaking,  
and listening skills) *without a focus on academic content*, as well as  
bilingual dictionaries to facilitate translation, must be available to  
English learners (citations omitted).

14 Moreover, ELLs come to California with a wide variety of academic  
15 experiences and content area knowledge as well. Therefore, the scope  
16 of ELLs' instructional materials goes beyond the need for English  
language development resources.

17 *Id.* citing CDE, *Educating English Learners for the Twenty-first Century* (1999) at 3.

18 201. State officials have agreed that appropriate instructional materials are a component of  
19 the "basic necessities" that English Language Learners need to learn. Laurene Burnham-Massey,  
20 Director of the Comite Compliance Unit, has stated that English Language Learners "need instruction  
21 that they can understand. They need teachers qualified to provide that instruction, they need  
22 appropriate instructional materials. . . ." (Burnham-Massey Depo. at 43:22-25.) Ms. Burnham-  
23 Massey further stated that "[t]extbooks are important because they contain information students need  
24 to know, and it's important, if the district so defines its program, that students have textbooks in a  
25 language they understand, if they don't speak English, to help them understand what's going on in  
26 class." (Burnham-Massey Depo. at 46:7-12.)

27 202. Norm Gold, former head of the Department of Education's Bilingual Compliance  
28 Unit, has also confirmed the importance of instructional materials to educating English Language

Learners. See Norman C. Gold, *Solving the Shortage of Bilingual Teachers: Policy Implications of California's Staffing Initiative for LEP Students*, in THIRD RES. SYMP. ON LIMITED ENG. PROFICIENT STUDENT ISSUES (1992) at www.ncbe.gwu.edu/ncbepubs/symposia/third/gold.htm. He has stated that "[t]he second major barrier [to the improvement of instructional programs for English Language Learners] is the scarcity of materials for providing content instruction in non-English languages, English language development (ELD) instruction, or specialized materials for use with sheltered English approaches." *Id.* See also Thomas B. Parrish, Am. Inst. for Research & WestEd, *Effects of the Implementation of Proposition 227 on the Education of English Learners, K-12: Year 2 Report* (2002) at IV-40 ("The quality and appropriateness of instruction [of English Language Learners] is dependent on the degree to which teachers . . . have access to the necessary instructional materials . . .").

## **2. The State Has A Duty to Provide English Language Learners With Specially-Trained Teachers and Appropriate Instructional Materials.**

203. In 1974, California's failure to provide equal educational opportunities to English Language Learners came to the forefront in the case of *Lau v. Nichols*, which ultimately reached the U.S. Supreme Court. In that case, a class of Chinese students sued the school system, claiming violations of both Title VI and the Equal Protection Clause based on the fact that less than 50% of the Chinese students in San Francisco Unified School District were being taught English. The U.S. Supreme Court held that providing the same facilities and curriculum did not translate to equal educational opportunities for students who did not understand English. See *Lau v. Nichols*, 414 U.S. 563, 566 (1974). The Court held that school districts were required to provide students with a meaningful education by taking affirmative steps to remedy language deficiencies. *Id.*<sup>12</sup>

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<sup>12</sup> In response to Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin, the Department of Health, Education and Welfare (HEW) issued the following regulations:

Where inability to speak and understand the English language excludes national-origin minority group children from effective participation in the education program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to the students.

204. In 1976, the California legislature responded to the *Lau* decision by passing the Chacon-Moscone Bilingual-Bicultural Education Act, which required districts to offer bilingual educational opportunities to any student identified as an English learner. CAL. EDUC. CODE §§ 52161-52178. The law “required school districts to assess students whose home language was other than English and classify them as non-, limited-, or fluent English speak[ers].” See LAO, *The Bilingual Education Program, A Sunset Review* (1986) at 11. The legislation required school districts to “provide students identified as NES, LES, or FES with an educational program that used the students’ primary language in an ‘instructionally supportive manner.’” *Id.* In the accompanying legislative findings section, the Legislature expressly recognized the special instructional needs of English Language Learners:

The Legislature recognizes that a critical need exists for teaching and administrative personnel qualified in the bilingual and crosscultural skills necessary to the instruction of the limited-English proficient population in the state’s school districts. Therefore, the Legislature directs school districts to provide for in-service programs to qualify existing and future personnel in the bilingual and crosscultural skills necessary to serve the pupils of limited English proficiency of this state. Furthermore, the Legislature intends that the public institutions of higher education establish programs to qualify teachers and administrators in the bilingual and crosscultural skills necessary to serve these pupils.

\* \* \*

It is the purpose of this article to require California school districts to offer bilingual learning opportunities to each pupil of limited English proficiency enrolled in the public schools, and to provide adequate supplemental financial support to achieve such purpose.”

CAL. EDUC. CODE § 52161.

205. Two federal cases further defined the requirements relating to the instruction of English Language Learners. In *Castaneda v. Pickard*, 648 F.2d 989 (5th Cir. 1981), Mexican-American students and their parents alleged that the school had failed to overcome language barriers that would have allowed the students to take part in the educational program. The court found that “schools are not free to ignore the need of limited English speaking children for language assistance.” 648 F.2d at 1008. The court concluded that in promulgating the Equal Educational Opportunities Act, Congress intended to require that schools take appropriate steps to overcome language barriers that impede equal participation by minorities in the educational program. 35 Fed. Reg. § 11595 (1970).

Act<sup>13</sup>, Congress “must have intended to insure that schools made a genuine and good faith effort, consistent with local circumstances and resources, to remedy the language deficiencies of their students and deliberately placed on federal courts the difficult responsibility of determining whether that obligation had been met.” *Id.* at 1009. To make this determination, the *Castaneda* court created a three-pronged test with which to determine whether a school district’s language remediation program was appropriate. *See id.* First, the court must determine whether a school system is pursuing a “program informed by an educational theory recognized as sound by some experts in the field or, at least, deemed a legitimate experimental strategy.” *Id.* at 1009. Second, the court must determine “whether the programs and practices actually used by a school system are reasonably calculated to implement effectively the educational theory adopted by the school.” *Id.* at 1010. Finally, the court determined that schools must show that the language barriers are being overcome. *See id.*

206. As early as 1976, the State was on notice that approximately 43% of California’s English Language Learners were not receiving any educational services geared toward meeting their language needs during the 1974-75 school year. *See* LAO, *Analysis of the 1976-77 Budget Bill* (1976) at 675-678. According to the March 1975 Language Dominance Survey, there was a total of 233,520 English Language Learners in California public schools. *Id.* at 678. Of those students, the State concluded that only 133,074 English Language Learners were being served by existing state and federal programs. *Id.* at 675.

207. In 1979, a group of California parents filed *Comite de Padres de Familia v. Honig*. Among other issues, plaintiffs alleged that the defendants (the Superintendent of Public Instruction and Board of Education) had failed to monitor and enforce the state BBEA and the federal EEOA.

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<sup>13</sup> Section 204(f) of the EEOA, codified as 20 U.S.C. § 1703, provides:

No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by —  
(f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.

20 U.S.C. § 1703.

1 See Stipulation and Court Order as to First Cause of Action in *Comite de Padres de Familia v. Bill*  
2 *Honig* (Feb. 5, 1985). In 1985, after many years of litigation, the parties entered into a consent  
3 decree as to plaintiffs’ first cause of action relating to the CDE’s failure to monitor the  
4 implementation of bilingual education programs. *Id.* The consent decree required the CDE to audit  
5 the identification of English Language Learners and monitor the provision of services to English  
6 Language Learners required by the BBEA. *Id.* Subsequently, the Department of Education  
7 developed the *Comite* Compliance Unit to monitor whether selected districts are in compliance with  
8 the requirements of the State’s Coordinated Compliance Review process as it relates to English  
9 Language Learners. (See Burnham-Massey Depo. at 25:7-26:9, 27:15-28:3.)

10 208. In *Gomez v. Illinois State Board of Education*, 811 F.2d 1030 (7th Cir. 1987), the court  
11 concluded that it was not enough for districts to have appropriate English Language Learners  
12 programs in place; state educational agencies must also provide oversight and guidance to districts in  
13 the provision of such services to English Language Learners. 811 F.2d at 1042. In that case, a group  
14 of Illinois students sued the Illinois Board of Education and Illinois Superintendent of Public  
15 Instruction for failing to promulgate uniform guidelines for the identification, placement, and training  
16 of English Language Learners in violation of the EEOA, the federal equal protection clause, and  
17 Title VI. See *id.* at 1034. The court concluded that the obligation to take “appropriate action” under  
18 section 1703(f) of the EEOA falls on both the districts and the state. *Id.* at 1042-43. “State agencies  
19 cannot, in the guise of deferring to local conditions, completely delegate in practice their obligations  
20 under the EEOA . . . .” *Id.* at 1043.

21 209. The State has followed the holdings of both *Castaneda* and *Gomez* in defining its  
22 obligations to English Language Learners. In materials made available to districts at Coordinated  
23 Compliance Review institutes and on-line, the State has acknowledged its adherence to these  
24 holdings through its Coordinated Compliance Review process (discussed further below). CDE,  
25 *Programs for English Learners: Overview of Federal and State Requirements* (2000) at 7, 9.

26 210. The State’s duty to provide equal educational opportunities to English Language  
27 Learners was further confirmed with the passage of Proposition 227 in 1998:

1 The government and the public schools of California have a moral  
2 obligation and a constitutional duty to provide all of California's  
3 children, regardless of their ethnicity or national origins, with the skills  
4 necessary to become productive members of our society, and of these  
5 skills, literacy in the English language is among the most important.

6 CAL. EDUC. CODE § 300(c). To fulfill the obligations of this duty, the voters resolved that "all  
7 children in California public schools shall be taught English as rapidly and effectively as possible."

8 CAL. EDUC. CODE § 300(f). The guarantee of Proposition 227 would be rendered meaningless  
9 without access to basic educational necessities such as specially trained teachers and appropriate  
10 instructional materials.

11 **3. The State Has Known That A Disproportionate Number of**  
12 **English Language Learners Have Been and Are Being**  
13 **Taught By Undercredentialed Teachers.**

14 211. As discussed above, the State began systematically collecting data regarding the  
15 characteristics and distribution of credentialed teachers in 1977. *See* CAL. EDUC. CODE § 10600 et  
16 seq.. The State has been collecting data regarding the number of English Language Learners  
17 attending California public schools since 1973. *See* LAO, *Analysis of the 1976-77 Budget Bill* (1976)  
18 at 678. Accordingly, the State has been on notice of the rising correlation between English Language  
19 Learners and low proportion of credentialed teachers for decades. Holding poverty constant, CBEDS  
20 data show that English Language Learners are significantly less likely to have a fully credentialed  
21 teacher than other low-income non-EL students. *See* Hakuta Report at 22-24. As the percentage of  
22 English Language Learners in a California school increases, so does the percentage of emergency  
23 credentialed teachers. *Id.*

24 212. In 2000, PACE found based on 1998 data that "[o]nly one-third of English Language  
25 Learners had certified teachers in 1998, partially on account of K-3 class-size reduction that siphoned  
26 the most qualified teachers from schools serving poor students to those serving the most affluent."  
27 Elizabeth Burr, Gerald C. Hayward, Bruce Fuller & Michael W. Kirst, Policy Analysis for Cal.  
28 Educ., *Crucial Issues in California Education 2000: Are the Reform Pieces Fitting Together?* (2000)  
at 5. This report concluded that "[u]ntil an adequate number of well-trained teachers can be secured,  
the education of English language learners will be in jeopardy." *Id.* at 5. The Public Policy Institute  
has also concluded that the California Class Size Reduction program has resulted in the concentration

1 of teachers with lower qualifications in schools with the highest percentages of English Language  
2 Learners. Sonya Tafoya, Public Policy Inst. of Cal., *The Linguistic Landscape of California Schools*,  
3 Cal. Counts, (2002) at 3.

4 213. Similarly, the Director of the Comite Compliance Unit has stated that “it’s not unusual  
5 for schools that have high English learner enrollments to also have a high number of emergency-  
6 credentialed teachers.” (Burnham-Massey Depo. at 158:23-25.) She stated that she is “[c]oncerned  
7 about teachers with less experience teaching kids that have substantial special kinds of needs.” (*Id.*  
8 at 159:22-24.) She further stated:

9 My concern is when English learners in schools and districts with a  
10 large numbers of English learners are not able to attract and keep  
11 teachers that are fully authorized and have the maximum amount of  
experience and that, in fact, sometimes they have emergency teachers  
who are teaching them.

12 (*Id.* at 160:4-9.) Despite these concerns, Ms. Burnham-Massey stated that neither her unit nor other  
13 State agencies have conducted a systematic study of the number of English Language Learners who  
14 are being taught by emergency credentialed teachers. *Id.* at 159:2-11.

15 **4. The State Has Known That Large Numbers of English**  
16 **Language Learners Are Being Taught by Teachers that**  
17 **Lack the Requisite Training and Without Appropriate**  
**Instructional Materials.**

18 214. In addition to the State’s knowledge of the fact that English Language Learners have  
19 been disproportionately taught by undercredentialed teachers, the State has been on notice that many  
20 English Language Learners have not had access to teachers with the requisite training to teach them  
21 or appropriate instructional materials with which to learn.

22 215. As early as 1986, the LAO noted the critical shortage of specially-trained teachers.  
23 LAO, *The Bilingual Education Program, A Sunset Review* (1986) at 5. The LAO’s report found that  
24 approximately “5,836 individuals [held] bilingual teaching credentials, which represent[ed] only 50%  
25 of the 11,833 teachers needed for bilingual instruction.” Additionally, “5,074 individuals had  
26 received waivers of the teaching credential requirements in order to teach LEP pupils.” Even  
27 including these teachers, there was still a shortfall of 7% of bilingual teachers. *Id.* “Despite the fact  
28 that the statutory requirements for bilingual programs have been in effect since 1976, SDE has not

1 conducted an evaluation to determine (1) bilingual education program effectiveness, by program  
2 option or (2) whether the primary goal of current law — to develop a child’s fluency in English, as  
3 effectively and efficiently as possible — is being met.” *Id.* at 5-6.

4 216. According to the LAO, the CDE concluded that “[t]he implementation of bilingual  
5 programs is often hampered by a lack of qualified bilingual teachers and appropriate instructional  
6 materials.” LAO, *The Bilingual Education Program, A Sunset Review* (1986) at 7. The LAO  
7 recommended that the CDE develop a plan that would “(1) encompass an accountability plan to  
8 measure success at the state, district, and school level in meeting the program objectives of the  
9 Bilingual Education Reform and Improvement Act, (2) contain model evaluation designs for use at  
10 the district and school level,” and “(3) provide a process for identifying exemplary programs and  
11 disseminating information about these programs to all school districts.” *Id.* at 8.

12 217. Both the CDE and the LAO agreed that “techniques need to be identified and fostered  
13 to increase the supply of credentialed bilingual teachers....” LAO, *The Bilingual Education*  
14 *Program, A Sunset Review* (1986) at 47. According to the LAO report, “the passage rate on the BCC  
15 exam during 1984-85 — the first year it was offered — was quite low.” Only 10% “of the 690  
16 persons taking all three sections of the test qualified for the certification.” *Id.* at 48. The LAO  
17 recommended that the Department of Education “should identify the bilingual teacher training  
18 programs that are the most effective in preparing teachers on waiver to attain the BCC.” The LAO  
19 also believed the Department of Education “should collect information on the cost of providing  
20 training to each teacher” to determine cost-effectiveness of the program. *Id.* at 49. The LAO  
21 recommended that in lieu of the Assumption Program of Loans for Education, the “problem of  
22 attracting and retaining individuals to the bilingual teaching field could be addressed more directly by  
23 providing higher salaries to bilingual teachers.” *Id.* at 50.

24 218. In 1989, State Superintendent of Public Instruction Bill Honig convened a task force  
25 of educators from the state and local level and from professional organizations. The task force was  
26 asked to recommend interim measures to assist the Department of Education with the shortage of  
27 teachers for English learners and to formulate a long-range proposal to increase the supply of teachers  
28



for English learners. CDE, *Remedying the Shortage of Teachers for Limited-English-Proficient Students* (1991) at iv.

219. The task force noted that the shortage of teachers with appropriate credentials to meet the needs of English learners amounted to “a crisis for education in California.” CDE, *Remedying the Shortage of Teachers for Limited-English-Proficient Students* (1991) at 4. At that time, there was a need for approximately 22,365 trained teachers for English learners and a supply of 8,033 authorized teachers resulting in a shortage of 14,332 qualified teachers. CDE, *Remedying the Shortage of Teachers for Limited-English-Proficient Students* (1991) at vii. Even including the additional 6,957 teachers in training, there was still a substantial shortfall. CDE, *Remedying the Shortage of Teachers for Limited-English-Proficient Students* (1991) at vii. The task force noted that “[t]he lack of qualified staff and appropriate curriculum negatively affects the academic achievement among” English learners. CDE, *Remedying the Shortage of Teachers for Limited-English-Proficient Students* (1991) at vii. The task force also noted that:

[t]he failure to meet the increased demand for trained personnel capable of providing bilingual support or strategies for English language development for the LEP student population constitutes a staffing crisis in the California school system. The current shortage of appropriately trained personnel is related to a lack of strategic planning for the instruction of a student population unlike any previously enrolled. Changing demographics indicated a rise in the LEP student population as early as ten years ago. During the ensuing years these changes were not systematically tracked and analyzed for their effect on programs for teacher preparation. The number of candidates entering teacher training programs in universities and colleges and in local school settings at that time and presently does not match the population growth of LEP students.

CDE, *Remedying the Shortage of Teachers for Limited-English-Proficient Students* (1991) at vii.

220. In addition to recognizing that the State had failed to plan strategically to address the increasing need for teachers of English Language Learners, the task force also recognized that the State was failing to make schools with high concentrations of English Language Learners desirable places to work:

The CDE and LEAs need to cooperate on improving the quality of the work environment for teachers of LEP students by lowering the teacher-student ratio, by providing preparation time for classroom instruction, and by establishing accommodations in the same quality of buildings and surroundings as that of regular classes. Too often

1 bilingual and ESL resources are offered to LEP students in temporary  
2 or makeshift settings.

3 CDE, *Remedying the Shortage of Teachers for Limited-English-Proficient Students* (1991) at 10.

4 221. In 1992, Norm Gold, former head of the CDE's Bilingual Compliance Unit, wrote a  
5 report titled *Solving the Shortage of Bilingual Teachers: Policy Implications of California's Staffing*  
6 *Initiative for LEP Students* for the Third National Research Symposium on Limited English  
7 Proficient Student Issues. Mr. Gold noted the following:

- 8 • "It has [long] been acknowledged by many that the implementation of ideal programs for  
9 limited-English proficient (LEP) students has been hampered by a lack of administrative  
10 support, the scarcity of appropriate materials, a failure to thoroughly apply sound  
11 methodologies, divergent levels of support from majority and minority communities, and  
12 a shortage of qualified teachers." Norm Gold, *Solving the Shortage of Bilingual*  
13 *Teachers: Policy Implications of California's Staffing Initiative for LEP Students*, in  
14 THIRD RES. SYMP. ON LIMITED ENG. PROFICIENT STUDENT ISSUES (1992)  
15 at [www.ncbe.gwu.edu/ncbepubs/symposia/third/gold.htm](http://www.ncbe.gwu.edu/ncbepubs/symposia/third/gold.htm).
- 16 • "Now, with over one million LEP students and a current shortage of over 18,000 bilingual  
17 teachers and over 17,000 ELD teachers, California's success or failure in adequately  
18 staffing programs for LEP students will determine whether or not hundreds of thousands  
19 of students will be educated." *Id.*
- 20 • "The challenge for California is an urgent one. Total public school enrollment is  
21 projected to increase by about 200,000 per year for most of this decade, and to reach 7.2  
22 million by the year 2005. In that year, Hispanic and Asian enrollments will comprise over  
23 53 percent of the total . . . ensuring ever-larger enrollments of LEP students for the  
24 foreseeable future. This last year's growth of 93,000 LEP students represented 59 percent  
25 of the total K-12 enrollment growth in the state." *Id.*
- 26 • "The shortage of qualified bilingual and ELD teachers is the most important factor that  
27 inhibits improvement of instructional programs for LEP students. Without a teacher  
28 trained in language acquisition approaches, who has both general and specific cultural

1 knowledge, and who can communicate effectively with LEP students, these students  
2 remain disconnected from the core curriculum of our schools.” *Id.*

- 3 • “The second major barrier [to the improvement of instructional programs for English  
4 Language Learners] is the scarcity of materials for providing content instruction in non-  
5 English languages, English language development (ELD) instruction, or specialized  
6 materials for use with sheltered English approaches.” *Id.*
- 7 • “The history of the last two decades, and the large shortages we face today, have led some  
8 to conclude that the production of sufficient bilingual and ELD teachers is a challenge  
9 which can never be met. If this were so, then current and future LEP students are doomed  
10 to an incomplete and inadequate education, since neither fully bilingual nor structured  
11 immersion and ELD approaches can be implemented without specially-qualified teachers.  
12 Such a conclusion, however, is not warranted because the production of sufficient  
13 bilingual and ELD teachers has never been seriously attempted.” *Id.*

14 222. In its 1993 report on the educational opportunities available to California’s English  
15 Language Learners, the Little Hoover Commission criticized the Department of Education for its  
16 “divisive, wasteful, and unproductive” approach to educating English learners. LHC, *A Chance to*  
17 *Succeed: Providing English Learners with Supportive Education* (1993)  
18 at [www.lhc.ca.gov/lhcdlr/122rp.html](http://www.lhc.ca.gov/lhcdlr/122rp.html). The report noted that, despite federal and state law, “one-  
19 quarter of [the English learners in California] receive no special services whatsoever — not even  
20 instruction in the English language. The other three-quarters are often caught in a tug-of-war  
21 between advocates of different educational theories.” LHC, *A Chance to Succeed: Providing*  
22 *English Learners with Supportive Education* (1993) at [www.lhc.ca.gov/lhcdlr/122rp.html](http://www.lhc.ca.gov/lhcdlr/122rp.html).

23 223. The report also found that “[t]here is a severe shortage of teachers with the expertise in  
24 language acquisition, the training in cultural diversity and the skills to enhance the classroom learning  
25 environment that are vital for meeting student needs in today’s schools.” LHC, *A Chance to*  
26 *Succeed: Providing English Learners with Supportive Education* (1993)  
27 at [www.lhc.ca.gov/lhcdlr/122rp.html](http://www.lhc.ca.gov/lhcdlr/122rp.html). The Commission noted that the supply of teachers who have  
28 the ability to teach English learners is “far outstripped by the demand represented by 1 million

1 students who are not fluent in English” and that there was an overwhelming need for the CDE and  
2 CTC to provide additional teacher training. LHC, *A Chance to Succeed: Providing English Learners*  
3 *with Supportive Education* (1993) at [www.lhc.ca.gov/lhcdir/122rp.html](http://www.lhc.ca.gov/lhcdir/122rp.html).

4 224. The Commission observed that

5 [i]n the real world of California education, all too often children are  
6 jammed into decaying classrooms while teachers squeeze the most  
7 learning they can out of out-dated textbooks and limited supplies. The  
8 task of educating 5 million children is daunting in these  
circumstances — and greatly complicated by the fact that nearly 1  
million of California’s students do not speak English fluently enough to  
understand what is going on in the classroom.”

9 LHC, *A Chance to Succeed: Providing English Learners with Supportive Education* (1993)  
10 at [www.lhc.ca.gov/lhcdir/122rp.html](http://www.lhc.ca.gov/lhcdir/122rp.html).

11 225. In 1994, more than 30 participants, including members of the legislature and staff of  
12 the CTC, attended the California Policy Education Seminar. Cal. Policy Educ. Seminar, *Teachers*  
13 *and Teaching: Recommendations for Policy Makers* (1994) at 2. The accompanying report indicated  
14 that “severe shortages remain . . . in the . . . bilingual education” field. *Id.* at 3. Reports from 1997  
15 and 1998 made similar observations. The California Statewide Task Force on Teacher Recruitment  
16 found that “California experiences chronic teacher shortages — in urban and rural areas, bilingual  
17 education and special education . . . resulting in the hiring of thousands of teachers per year on  
18 emergency permits or waivers.” Cal. State Task Force on Teacher Recruitment, *Shaping the*  
19 *Profession that Shapes California’s Future: The California Statewide Teacher Recruitment Action*  
20 *Plan* (1997) at 6. The California Research Bureau noted that California has experienced “chronic  
21 shortage[s]” in bilingual education. Cal. Research Bureau, *Qualified Teachers for All California*  
22 *Students: Current Issues in Recruitment, Retention, Preparation, and Professional Development*  
23 (1998) at 6.

24 226. The 2000 PACE report also criticized the minimal level of training needed to instruct  
25 English Language Learners under the State’s current system:

26 On paper, it appears that among those teachers in California who  
27 instruct English learners, a significant number (52 percent) have  
28 received some kind of preparation in instructing English learners.  
Unfortunately, this preparation is often cursory and only sufficient to  
make a teacher aware of what he or she does not know. Under

1 SB1969, CLAD certification can often be acquired with only forty-five  
2 hours of relevant training.

3 Elizabeth Burr, Gerald C. Hayward, Bruce Fuller & Michael W. Kirst, Policy Analysis for Cal.  
4 Educ., *Crucial Issues in California Education 2000: Are the Reform Pieces Fitting Together?* (2000)  
5 at 34.

6 227. The CTC is well aware that many English Language Learners are not being taught by  
7 teachers with the requisite training. According to the CTC's own guidelines

8 [t]eachers assigned to classes that are not designated LEP, regardless of  
9 whether they include LEP students, are only required to have the basic  
10 credential authorizing instruction in that class. . . . Teachers who do not  
hold appropriate authorizations may be given LEP assignments on an  
interim basis if the teacher is identified on the district's Plan to Remedy  
the Shortage approved by the California Department of Education.

11 CTC, *Credential Handbook* (2002) at II-C-1 8/01.

12 228. The CTC also admits that "[t]he most widely used [ELL authorization] option through  
13 the CDE is the *Plan to Remedy* in which a district with the CDE, develops a plan to remedy the  
14 shortage of certificated English learner teachers. This is sometimes referred to as 'teachers in  
15 training.'" CTC, *Credential Handbook* (2002) at II-C-3 8/01. "A teacher who does not hold a  
16 document that authorizes the instruction provided may be assigned if the teacher is identified on the  
17 employing district's *Plan to Remedy the Shortage* approved by the CDE or holds a certificate issued  
18 under the provisions of SB 1969." *Id.*

19 229. The State has also been on notice that many schools throughout the State lack the  
20 necessary instructional materials to teach English Language Learners. II/USP action plans from  
21 countless schools document this critical problem.

22 **5. Class Members Have Suffered Due to Lack of Access to**  
23 **Qualified, Specially-Trained Teachers and Appropriate**  
**Instructional Materials.**

24 230. Some schools class members attend lack any instructional program at all for English  
25 Language Learners. For example, the II/USP action plan at one school stated that: "The third  
26 identified barrier to student achievement is the lack of an English Language Learner program."  
27 (DOE 44377; *see also* DOE 65466 ("[I]lack of school wide ELD program" identified as a barrier to  
28 student achievement).) According to the CDE, 77,000 English Language Learners are receiving no

EL instruction of any sort. This number represents approximately 1 in every 20 English Language Learners statewide. *See* <http://www.data1.cde.ca.gov/dataquest/>. The CDE has acknowledged that the bulk of these students are in 205 districts around the State where 10% or more of the districts' English Language Learners are not receiving any English Language Learners instructional services. (Letter from Kara Read Spangler, CDE, to Leecia Welch (Jan. 20, 2002 attaching Jan. 29, 2002 data run.) In total, 62,420 English Language Learners in these latter districts are not receiving any English Language Learner instructional services. (*Id.*).

**a. Class Representatives Attend Schools With Insufficient Numbers of Teachers Who Are Specially Trained for English Language Learner Instruction.**

231. A spring 2001 language census conducted by class representative Carlos Santos's school — Edison-McNair Academy in East Palo Alto — found that the school had 356 English Language Learners but only two teachers with English Language Learner certification. (DT-RA 6225-28.) Similarly, the 2001 language census for class representative Krystal Ruiz's school — Cesar Chavez Academy, also in East Palo Alto — found that Cesar Chavez had 575 English learners and only eight teachers with any English learner certification. (DT-RA 6233-36.) Notwithstanding the fact that approximately 85% of the Cesar Chavez student population are English Language Learners, the Cesar Chavez principal testified: "I believe that there are no teachers with bilingual authorization at my school." (C. Walden Depo. at 234:5-6.)

232. Similarly, the February 2000 Evaluation Report of English Learner Programs for class representative Theresa Ensminger's school — Tenaya Middle School in Merced City School District — noted that teachers for English Language Learners designated at the higher English proficiency range "are not B/CLAD or SB 1969 certificated" (DOE 55254) and that the school has "one BCLAD (Hmong) teacher who teaches 27 Hmong and Mien students for four periods a day" but that "[i]t is strongly recommended that a second BCLAD (Hmong) teacher be hired to split the four-subject load of the present teacher. . . . [and i]t is strongly recommended that a bilingual instructional assistant be hired to assist the teacher with the awesome task of fulfilling the needs of 27 students in 4 subject areas!" (DOE 55252.)

**b. English Language Learner Class Members Attend  
Schools With Insufficient Numbers of Specially  
Trained Teachers.**

233. Coordinated Compliance Reviews routinely find schools and school districts out of compliance with requirements to provide English Language Learners with teachers trained in English language instruction skills. (*E.g.*, DOE 21304, 23098, 24967-69, 24976-77, 25075-76, 25095-96, 25193-95, 25198-99, 25440, 25778, 25812, 25843, 27287-88, 27492-94; DT-SP 1182; *see also* 1997-98 CCR *Summary of Findings for Los Angeles Unified School District* (Depo. Exh. SAD-20) at 14-15.) For example, in annual reports filed in response to CCR reviews, Lynwood Unified School District identified a shortage in the 1998-1999 school year alone of 32 teachers for primary language instruction, 103 teachers for English Language Development (“ELD”), and 103 teachers for Specially Designed Academic Instruction in English (“SDAIE”), and a continued shortage in the 1999-2000 school year of 18 teachers for primary language instruction, 95 teachers for ELD, and 79 teachers for SDAIE. (DOE 27003-16.) Likewise, during the 2000-2001 school year, the CDE withheld \$5,135,619 of Economic Impact Aid funds to Oakland Unified School District, in part because repeated CCR notifications regarding “[s]taffing for English-language development” remained “unresolved.” (DOE 23441-42.) In 2000, CDE criticized Inglewood Unified School District for having been “noncompliant for over 365 days” in the areas of “[c]ore content instruction” for English Language Learners and “[s]taffing for ELD” and criticized Ravenswood City Elementary School District for having been noncompliant for the same period in “[s]taffing for ELD.” (DOE 25452-53, 26582-83.) That same year, CCR found Merced City Elementary School District noncompliant for 373 days because “[t]raining for staff who serve English Learners is not adequate.” (DOE 23075.) In its 1997-98 Notification of Findings, CCR found that “[a]t Richmond [High School in West Contra Costa Unified School District] there is no teacher to provide access to the science courses through Spanish.” (DOE 25440.)

234. School district documents and II/USP action plans also identify shortages of CLAD and BCLAD credentialed teachers. (*E.g.*, DT-OA 23537, 27250-51; DOE 31014, 31237, 37454, 39829, 39920, 39976, 41759, 43266, 44377, 45114, 45155, 46155, 53687, 65551, 65557, 78984.) For example, one action plan reports: “Nineteen classroom teachers, half of the active faculty, do not

1 possess a CLAD . . . or SB 1969 authorization for providing instruction to English Language  
2 Learners in spite of the large numbers of English Language Learners in all classrooms at the school.”  
3 (DOE 56563 — action plan for Gonzales High School in Gonzales Unified School District.)  
4 According to another II/USP action plan from a school class members attend, “many of the teachers  
5 have not received the necessary training in SDAIE strategies, sensitivity to language diversity, or  
6 other language acquisition techniques.” (DOE 53028 — II/USP action plan for Willowbrook Middle  
7 School in Compton Unified School District.) The II/USP action plan for Holtville High School in  
8 Holtville Unified School District reported that “[a] significant number of teachers are not fully  
9 credentialed (or certificated to teach ELL students).” (DOE 32512.)

10  
11 **c. Class Representatives Attend Schools With**  
12 **Insufficient Materials Designed for English**  
**Language Learner Instruction.**

13 235. The February 2000 Evaluation Report of English Learner Programs for class  
14 representative Theresa Ensminger’s school — Tenaya Middle School in Merced City School  
15 District — notes that English Language Learner “[m]aterials are dated and . . . [t]he use of dittoes  
16 and xeroxed packets is prevalent at the site.” (DOE 55256.) Likewise, at class representative Moises  
17 Canel’s school — Helms Middle School in San Pablo — the 1998-1999 textbook plan identified  
18 shortages of 213 books for English Language Learner instruction. (DT-WC 416-18 (shortages of 110  
19 ESL 2 books, 78 ESL 3 books, and 25 ESL 4 books).)

20 **d. English Language Learner Class Members Attend**  
21 **Schools With Insufficient Materials Designed for**  
**English Language Learner Instruction.**

22 236. Coordinated Compliance Review Notification of Findings repeatedly cite school  
23 districts for failure to provide English Language Learners with access to instructional materials  
24 designed for English Language Learner instruction. For example, CCR cited the Los Angeles  
25 Unified School District each year from 1997 to 2000 for providing English Language Learners  
26 “insufficient basic ELD and Spanish instructional resources to ensure full access to the core  
27 curriculum.” (1997-98 *CCR Summary of Findings for Los Angeles Unified School District* (Depo.  
28 Exh. SAD-20) at 15.; *see also* DOE 28379 (1998-99 Notification of Findings); DOE 21799 (1999-



2000 Notification of Findings).) Similarly, the 1997-98 Notification of Findings to Inglewood Unified School District reported that “[a]t Crozier there is lack of materials in all curricular areas available for LEP students.” (DOE 25811.) The 1997-98 Notification of Findings to Alhambra City Elementary School District found that “[a] significant number of Spanish-speaking and all other LEP students who are diagnosed to need access to the core curriculum through primary language instruction are not receiving such instruction. . . . [L]ack of materials, staff, or instructional approaches result in situations where the complete core is not covered.” (DOE 21304; *see also* Burnham-Massey Depo. at 46:1-49:15 ; *see also, e.g.*, DT-SP 1182.)

237. One student testified that in one of his English Language Development classes, “[w]e didn’t have any books at all. We’ll work on photocopy materials that the teacher prepared from other textbooks” and that in his ELD class the following year, he had to “share[] [a book] with somebody” because “[n]obody really had one. It was — they were for the class, like — like it was only enough for half of them — half of the class”; “[e]verybody shared with at least one. Only some people in the back have to share with two.” (J. Garcia Depo. at 59:1-8, 83:3-24, 84:12-21, 85:13-16; *see also id.* 82:2-11.) When asked “how do you know that you were supposed to have a textbook or use a book in your ELD classes?” this same student testified:

Well, it’s an English program and it’s sort of common sense ‘cause if this kid’s trying to learn English and they’re supposed to do it faster who already are speaking English because otherwise they will not be incorporated into the mainstream English program. So it’s kind of obvious that they need a book. Besides other schools have books for ELD programs.

(J. Garcia Depo. at 107:23-108:7.)

238. School II/USP plans also identify shortages of instructional materials for English Language Learners. (*E.g.*, DOE 31587, 37948, 42517, 46985, 48257, 53148, 57429, 61290, 65466, 71501.) According to the II/USP action plan for Farmersville Junior High School in Farmersville Unified School District, “[n]o formalized instructional materials were observed for ELD.” (DOE 37015.) At Sacramento High School in Sacramento City Unified School District, “[t]here was a significant lack of materials in almost all classrooms” for English Language Learner students. (DOE 60927.) The II/USP action plan for McLane High School in Fresno County reported that the

1 school only has “limited availability of materials and supplementary books” for English Language  
2 Learner students. (DOE 49175.) The II/USP action plan for North Avenue Elementary School in  
3 Del Paso Heights School District reported a similar shortage of English Language Learner  
4 instructional materials: “The teachers do not have the complete Scholastic program or the complete  
5 Houghton Mifflin program.” (DOE 33814.) The II/USP action plan for Howard Ingraham  
6 Elementary School in San Bernardino City Unified School District identified “[f]ew materials for  
7 Primary Language Support” for English Language Development as a barrier to student performance.  
8 (DOE 65466.) At Kelseyville Primary School in Kelseyville Unified School District, the II/USP  
9 action plan reported that “[t]here is a dearth of instructional materials that are aligned with EL  
10 standards as well as materials in the student’s first language, as required, to enable students to access  
11 the core curriculum.” (DOE 32561.)

12 **D. The State Has Known that California Schoolchildren Were Not**  
13 **Being Provided Equal Access to Safe, Clean School Facilities That**  
**Are Supportive of Learning.**

14 **1. Safe, Clean School Facilities That Are Supportive of**  
15 **Learning Are Basic to the Educational Process.**

16 **a. Published Studies and Reports Confirm that**  
17 **Substandard School Facilities Impair Student**  
**Performance**

18 239. Studies and reports confirm that substandard school facilities impact student learning.  
19 “Significant research documents that clean, safe, well maintained, and otherwise suitable learning  
20 environments have a positive impact on student learning, while the opposite is true of unsuitable  
21 environments. In addition . . . survey data indicate that unsuitable environments have a negative  
22 impact on the ability of schools to provide the quality teaching and leadership that is necessary to  
23 provide a high-quality education.” Joint Comm. to Develop a Master Plan for Educ. — Kindergarten  
24 through University, *Master Plan for Education in California* (2002) at 49.

25 240. The United States General Accounting Office notes that “[a] number of state courts as  
26 well as the Congress have recognized that a high-quality learning environment is essential to  
27 educating the nation’s children. Crucial to establishing that learning environment is that children  
28

attend school in decent facilities.” GAO, *School Facilities: Condition of America’s Schools* (1995) at 3.

241. California’s equivalent to the General Accounting Office, the LAO, confirms that “[t]here is a growing body of educational research that suggests there is a positive relationship between student achievement and the condition of the facility in which they are schooled.” LAO, *Analysis of the 1997-98 Budget Bill, K-12 Education Chapter* (1997) at E-82.

242. EdSource has also reported that “[r]esearch evidence and common sense both indicate that there is a minimum level of quality for a school facility, below which student and teacher effectiveness can be seriously compromised. A variety of studies conducted since 1982 throughout the United States indicate that students achieve less in school buildings which are situated on noisy streets, have too many students for their capacity, or cannot be adequately and safely maintained.” Mary Perry, EdSource, *California’s School Facilities Predicament* (1998) at 5.

243. Plaintiffs’ expert, Dr. Glen Earthman, reviewed the research and found that “the weight of evidence supports the premise that a school building has a measurable influence on student achievement.” Expert Report of Dr. Glen I. Earthman (“Earthman Report”) at 4.. He reports the findings of research on several specific facilities conditions relating to thermal quality, acoustic quality, school building age, and overcrowding. See Earthman Report at 5-9, 12-15.

244. Thermal Quality: Studies show that a controlled thermal environment is important for satisfactory student performance. Charles M. Peccolo, *The Effect Of Thermal Environment On Learning* (1962) (unpublished Ph.D. dissertation, Univ. of Iowa) (on file with UMI Dissertation Services); Robert William McCardle, *Thermal Environment and Learning* (1966) (unpublished Ph.D. dissertation, Univ. of Iowa) (on file with UMI Dissertation Services); David P. Harner, *Effects of Thermal Environment on Learning Skills*, 12 CEFP J. 4 (1974); Tak Cheung Chan, Sch. Dist. of Greenville County (S.C.), *Physical Environment and Middle Grade Achievement* (1980). Temperatures above 74°F adversely affect reading and mathematical skills. David P. Harner, *Effects of Thermal Environment on Learning Skills*, 12 CEFP J. 4 (1974).

245. Acoustic Quality: Studies show that acoustic quality can impact student learning. Students in quiet schools consistently achieved higher test scores than their demographically matched

counterparts in noisy schools located under the flight path of take-offs and landings of jet aircraft. Carole Lynn Hyatt, *The Effect of Jet Aircraft Noise on Student Achievement and Attitude Toward Classroom Environment* (1982) (unpublished Ph.D. dissertation, Seattle Univ.) (on file with UMI Dissertation Services). Controlling for socioeconomic status, students in noisy schools near freeways scored considerably lower on reading tests than students in quieter neighborhoods. Cal. Dep't of Health Servs., *Effects of Noise on Academic Achievement and Classroom Behavior* (1981). The grade equivalent reading scores of children in noisy classrooms near an elevated train were found to lag behind their peers on the quieter side of the building from three months to nearly a year. Arline L. Bronzaft & Dennis P. McCarthy, *The Effect of Elevated Train Noise on Reading Ability*, 7 ENVIRONMENT AND BEHAVIOR 517 (1975). Reports going back as far as 1917 have found that noisy distractions and noise levels above 40 decibels interfere with learning. John J.B. Morgan, *The Effect of Sound Distraction Upon Memory*, 28 AM. J. PSYCHOL. 191 (1917); see also Donald A. Laird, *The Effects of Noise: A Summary of Experimental Literature*, 1 J. ACOUSTICAL SOC'Y AM. 256 (1930).

246. School Building Age: Studies show that school building age can impact student learning. Older buildings usually do not have the attributes of modern buildings that are associated with a physical environment conducive to student learning. Glen I. Earthman & Linda Lemasters, *Review of Research on the Relationship Between School Buildings, Student Achievement, and Student Behavior*, Paper presented at Council of Educ. Facility Planners, Int'l, Tarpon Springs, Fla. (1996). Older buildings may also not be conducive learning environments because of poor maintenance. See Earthman Report at 8-9. Studies demonstrate that all things being equal, students in older buildings perform worse on achievement tests than students in modern buildings. Carroll W. McGuffey & Calvin L. Brown, *The Impact of School Building Age on School Achievement in Georgia*, 16 COUNCIL EDUC. FACILITIES PLAN. J. 6 (1978); Joseph Pinkney Plumley, Jr., *The Impact of School Building Age on the Academic Achievement of Selected Fourth Grade Pupils in the State of Georgia* (1978) (unpublished Ph. D. dissertation, Univ. of Ga.) (on file with UMI Dissertation Services); J. Howard Bowers & Charles W. Burkett, *Physical Environment Influences Related to Student Achievement, Health, Attendance and Behavior*, CEFJ J. 33 (July-Aug. 1998); Ransel Warren

1 Phillips, *Educational Facility Age and the Academic Achievement and Attendance of Upper*  
2 *Elementary School Students* (1997) (unpublished Ph.D. dissertation, Univ. of Ga.) (on file with UMI  
3 Dissertation Services).

4 247. Overcrowding: Studies show that overcrowding can impact student learning. In  
5 schools with high proportions of students from families with low socioeconomic status, students'  
6 passing rate for tests of reading proficiency and mathematics competency in overcrowded schools  
7 was between two and nine percentage points lower than in schools that were not overcrowded.  
8 Dr. Francisco L. Rivera-Batiz & Lilian Martí, Inst. for Urban and Minority Educ., *A School System at*  
9 *Risk: A Study of the Consequences of Overcrowding in New York City Public Schools* (1995).  
10 Overcrowding can be a causal factor in high rates of absenteeism among teachers and students, and in  
11 stressful, unpleasant working conditions. Thomas B. Corcoran, *et al.*, Inst. for Educ. Leadership,  
12 *Working in Urban Schools* (1988). Teachers report that overcrowded schools are noisier and inhibit  
13 teaching and learning. Ricardo R. Fernandez & P. Michael Timpane, N.Y. City Bd. of Educ.,  
14 *Bursting at the Seams: Report of the Citizens' Commission on Planning for Enrollment Growth*  
15 (1995). Moreover, students in overcrowded schools are deprived of the benefits of smaller class  
16 sizes. Research shows that small classes (15-17 students per classroom) in the primary grades are  
17 academically beneficial (especially for students at risk) because they enhance student/teacher  
18 interaction, increase the amount of individual attention each student receives, and ease the effects of  
19 disruptive behavior. Jeremy D. Finn & Charles M. Achilles, *Tennessee's Class Size Study: Findings*  
20 *Implication, Misconceptions*, 21 EDUC. EVALUATION AND POL'Y ANALYSIS 97 (1999)

21 248. Recent studies, including one by Dr. Earthman, combine the various facilities  
22 components or features that have been shown to have a direct influence on student achievement into  
23 single, composite, building condition measurements which can then be correlated with student scores  
24 on standardized achievement tests. *See* Earthman Report at 9-10. Because they control for  
25 socioeconomic status and allow for statistical analysis, these studies permit precise documentation of  
26 the effect that inferior school facilities have on student achievement scores. *Id.* This research  
27 consistently finds that students forced to learn in poor facilities score from five to seventeen  
28 percentile points lower on average than students taught in above standard facilities. Maureen M.

Berner, *Building Conditions, Parental Involvement, and Student Achievement in the District of Columbia Public School System*, 28 URBAN EDUCATION 6 (1993); Carol Scott Cash, *Building Condition and Student Achievement and Behavior* (1993) (unpublished Ph.D. dissertation, Va. Polytechnic Inst. and State Univ.) (on file with UMI Dissertation Services); *Earthman et al.* (1996); Eric Wayne Hines, *Building Condition and Student Achievement and Behavior* (1996) (unpublished Ph.D. dissertation, Va. Polytechnic Inst. and State Univ.) (on file with UMI Dissertation Services); David J. O'Neill, *The Impact of School Facilities on Student Achievement, Behavior, Attendance, and Teacher Turnover Rate in Central Texas Middle Schools* (2000) (unpublished Ph.D. dissertation, Texas A&M Univ.) (on file with UMI Dissertation Services).

249. A recent study of this type created a “school decay” measurement based on structural adequacy, exterior walls, roofing, ceilings, doors, interior walls, floor finishes, cabinet work, toilet conditions, heat, and temperature control thermostat. Valkiria Duran, *School Decay and Academic Achievement in New York City Elementary Schools*, Presentation at Three Psychology Subprograms Student Presentation Day (Apr. 5, 2002). The study found that, controlling for ethnicity, SES, teacher turnover, teacher certification, and school size, “school decay” predicted attendance and English Language and Math test scores. *Id.* Further analysis showed that attendance mediates the relationship between school decay and academic achievement. *Id.* In other words, in decaying schools, students were absent more often and consequently performed poorly on achievement tests.

250. Qualitative studies also suggest that inadequate school facilities directly affect student achievement. Several such studies, cited by Dr. Earthman, report that teachers regularly state that poor building conditions or overcrowded schools impaired teaching and learning. Thomas B. Corcoran, *et al.*, Inst. for Educ. Leadership, *Working in Urban Schools* (1988); Jerry Milton Lowe, *The Interface Between Educational Facilities and Learning Climate in Three Elementary Schools* (1990) (unpublished Ph.D. dissertation, Texas A&M Univ.) (on file with UMI Dissertation Services); Ricardo R. Fernandez & P. Michael Timpane, New York City Board of Educ., *Bursting at the Seams: Report of the Citizens’ Commission on Planning for Enrollment Growth* (1995).

**b. Substandard School Facilities Harm Students  
Emotionally and Psychologically**

251. Superintendent Delaine Eastin declared, “School facilities poorly maintained and just plain inadequate can depress the human spirit. Cleanliness and enough room are not frills; they enhance productivity.” Written Testimony, Delaine Eastin, Superintendent of Public Instruction, to LHC (March 26, 1988) at 8.

252. Duwayne Brooks, Director of the School Facilities Planning Division, agrees:

One way that [a poor school facility] could impair the learning process is, as the superintendent has often said, the facilities that we provide our students sends them signals regarding how we value education. They see nice, new shiny malls, they see the way facilities can be, and if our schools are not constructed and maintained in a manner that sends the right message to kids about the way we value education, then they won’t value education.

(Depo. of Duwayne Brooks at 329:18-330:1.)

253. Research supports the idea that deteriorating school facilities negatively impact children. Professor Lorraine Maxwell summarized some of the literature on this subject and reported the following:

- “Physical attributes of places convey meaning about a physical setting that influence the perception of not only the facility, but the psychological climate of the organization housed in the facility (citations omitted).” Lorraine E. Maxwell, *A Safe and Welcoming School: What Students, Teachers, and Parents Think*, 17 J. ARCHITECTURAL AND PLAN. RES. 271, 272 (2000) (citations omitted).
- When school conditions are “inappropriate, the individual may be adversely affected. Poor performance may occur, or the individual may perform well but at some psychological or physiological cost,” such as “greater distractibility and learned helplessness.” *Id.* (citation omitted).
- “Just as adults’ job performance and satisfaction in the workplace may be influenced by physical cues . . . children’s performance and satisfaction in a school setting may be based on cues they get from the physical setting (citations omitted).” *Id.* (citation omitted).

- 1           • “[T]he physical setting can affect the social climate of a school, and in turn, this social  
2           climate may affect student learning and sense of competency (citations omitted).” *Id.*  
3           at 280 (citation omitted).

4           254. Professor Maxwell conducted a case study to examine factors contributing to a safe  
5           and welcoming school environment. She found that students perceived the condition of the school  
6           facilities differently than adults:

7                     To the visitor, the school may appear to be clean and well-maintained.  
8                     Teachers and parents considered the apparent cleanliness of the school  
9                     to be a welcoming factor. Many students, however, disagreed. In the  
10                    focus group discussions, students indicated that the toilets are dirty  
                      (paper on the floor, graffiti on the walls). Students also indicated that  
                      the restrooms should have hot water and mirrors.

11                    In addition, the classrooms are cluttered and have unpleasant odors. . . .  
12                    The student toilets and classrooms are important areas to the children  
13                    and seem to play a role in how the students view the school. These  
14                    areas may not be high priority areas to adults. Adults appear to be  
                      judging the cleanliness of the school by the condition of the public  
                      areas. Comments made by students in the focus groups are consistent  
                      with the survey results where students were less likely than adults to  
                      choose cleanliness of the school as a welcoming feature.

15       *Id.* at 278.

16           255. Students suggested that improvements in the “cleanliness/maintenance of the school  
17           (e.g., remove graffiti in the bathroom and the cracks in the walls)” would contribute to “a more  
18           welcoming school.” *Id.* at 279. Professor Maxwell’s research “points to the importance of the  
19           physical environment in creating an atmosphere conducive to learning and teaching. Surely if  
20           students and teachers do not feel comfortable and safe, learning and teaching will suffer. . . .  
21           [C]hildren are very much aware of their physical environment and how it makes them feel.” *Id.*  
22           at 280. She concluded with a hypothesis: “Physical features that give cues about safety and a sense  
23           of welcome may . . . contribute to students’ self-esteem. This increase in self-esteem may result in  
24           improved academic performance. In other words, an improved social climate (operationalized here  
25           as welcome and safety) may mediate the relation between physical building features and student  
26           learning.” *Id.*

27           256. Citing numerous published studies, plaintiffs’ expert Dr. Michelle Fine describes the  
28           effects of inadequate school facilities on students’ hearts and minds:



1 Buildings in disrepair are not merely a distraction; they are identity  
2 producing and self-defining. Since the early part of the 20th century,  
3 psychologists and sociologists (Cooley, 1998; DuBois, 1935; Fanon,  
4 1967; Goffman, 1963; Mead, 1988; Merton, 1948) have argued that  
5 children and youth develop a sense of self from the messages they  
6 gather from adults and peers, structures, and institutions around them.  
7 What the culture says about the child, his/her family, and community  
8 comes to be internalized, in part, by that child. Children who are  
9 valued tend to be more positive in self-concept than those who are  
10 disparaged (DeLuca and Rosenbaum, 2000). This value may be  
11 communicated in what people say about and to them. But as powerful,  
12 the quality of the contexts in which they are growing “speaks” to youth  
13 about how they are viewed and valued. For better or worse, these  
14 “voices” come to form part of the core of how a child feels about  
15 him/herself and/or the extent to which s/he is valued by others  
16 (Maxwell, 2000). If surrounded by decay, disrepair, and filth, and if no  
17 adult intervenes to protect, a child may come to see him/herself as  
18 worthy of little more or at least that adults see him/her as unworthy.

19 Expert Report of Michelle Fine (“Fine Report”) at 38-39 (emphasis added).

20 257. Evans, Kliwer, and Martin explain how the stress caused by multiple inadequate  
21 school facilities conditions can wear down a child’s ability and motivation to learn:

22 Increased helplessness induced by chronic exposure to uncontrollable,  
23 aversive environmental conditions [such as noise, crowding, unhealthy  
24 air, filthy bathrooms, vermin infestations, poorly maintained buildings,  
25 etc.] weakens the child’s ability to exercise control even when it is  
26 available to him or her. Such children may be less willing to actively  
27 engage their surroundings and are perhaps more cautious and reticent to  
28 explore. Moreover, the fatigue produced by efforts to cope with  
environmental demands may have residual effects on performance or  
motivation that make it more difficult to cope with subsequent  
environmental insults.

19 Gary W. Evans, *et al.*, *The Role of the Physical Environment in the Health and Well-Being of*  
20 *Children*, in NEW DIRECTIONS IN HEALTH PSYCHOLOGY ASSESSMENT 127, 147 (Harold Schroeder ed.,  
21 1991).

22 **c. The State Has Acknowledged the Importance of**  
23 **School Facilities.**

24 258. The California Department of Education has declared: “It is the policy of the State  
25 Board of Education that all students in the public schools have the right to attend school on campuses  
26 that are safe and secure. . . . Safe schools have . . . timely maintenance programs. Their campuses  
27 and classrooms present clean and attractive appearances.” CDE, *School Facilities* (1997) at vii.

28 259. The California Department of Education has also found:

1 A clear relationship exists between school facilities and student  
2 performance in the classroom. Nearly 4.9 million students now attend  
3 California's public schools, and approximately 160,000 new students  
4 will enter our schools each year over the next ten years. Consequently,  
5 we must consider three important questions about the condition of our  
6 school facilities: (1) Are the students who now attend our schools  
7 receiving instruction in safe, adequate, and well-maintained facilities?  
8 (2) Are capital investments being protected by adequate maintenance?  
9 and (3) Will our future students have appropriate facilities in which to  
10 learn? A successful maintenance and operations program contributes to  
11 the comfort, safety, efficiency, and well-being of all those who use  
12 school facilities. To provide a proper learning environment, these  
13 elements are essential if we are to meet our goals of educational  
14 excellence.

15 (Duwayne Brooks, Asst. Supt. School Facilities Planning Division, *A Self-Assessment Guide for*  
16 *School District Fiscal Policy Teams: Maintenance and Operations* (1990) at DOE 155.)

17 260. Former Superintendent of Public Instruction Bill Honig has expressed the significance  
18 of school facilities to learning as follows:

19 Are the students who now attend our schools receiving instruction in  
20 safe, adequate, and well-maintained facilities? And will our future  
21 students have such facilities in which to learn?

22 Many of our educational reform efforts will be in vain if we cannot  
23 answer these questions positively. We cannot offer rigorous courses in  
24 science if high schools do not have the appropriate laboratory facilities.  
25 We cannot expect our children to learn basic skills in reading and  
26 writing if they are taught in overcrowded classrooms or in inadequate  
27 facilities.

28 (CDE, *Administration of Maintenance and Operations in California School Districts* (1986) at  
DOE 61.)

261. The Legislature has also commented on the impact of school facilities on education:

(c) The state's practice of not providing consistent, ongoing funding for  
deferred maintenance purposes has resulted in greater future facilities  
costs and has reduced the quality of education that can be provided to  
the state's 5.6 million public school pupils.

\* \* \*

(f) Educational research suggests a positive relationship between pupil  
achievement and the condition of the facility in which pupils are  
schooled.

(g) It is important for school facilities to be maintained in order to  
provide a safe, clean, adequate environment for teachers to teach  
effectively and for pupils to be educated properly and to excel  
academically.

1 Legislative Findings to Educ. Code section 17584.1.

2 262. The Legislature elaborated on the State’s school facilities policy in a recent bill:

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

7 AB 2223, § 1(i), am. in S. Aug. 6, 2002, action pending in Leg. (Cal. 2002).

8 263. More broadly, the Legislature’s California Master Plan for Education maintains that  
9 “[t]he State should guarantee suitable learning environments for all students, including buildings,  
10 classrooms, and other facilities.” The Joint Comm. to Develop a Master Plan for Educ. —  
11 Kindergarten through University, *Master Plan for Education in California* (2002) at 41.

12 264. “Superintendent of Public Instruction Delaine Eastin said that if California expects  
13 children to meet the state’s academic standards, ‘we must provide them with a safe, clean and modern  
14 environment in which to do so.’” Stephanie Firth, *Assembly Approves \$25 Billion Education Bond  
15 Issue for Ballot*, ASSOCIATED PRESS, Mar. 21, 2002.

16 **2. The State Has Known About the Existence of Serious  
17 Facilities Problems in Some of California’s Public Schools  
18 for Decades.**

19 **a. Reports by State and Federal Oversight Agencies  
20 Have Documented Serious School Facilities Problems  
21 at Some Schools.**

22 265. For over twenty years, an independent state oversight agency called the Little Hoover  
23 Commission (LHC) has repeatedly reported serious school facilities problems in some California  
24 schools and warned of the consequences that would follow a failure to solve them. Recent reports  
25 prepared by the United States General Accounting Office (GAO), the LAO, and EdSource  
26 corroborate the LHC’s findings.

27 266. In 1978, the Little Hoover Commission reported the following:

- 28
- “The Commission has . . . discovered that a massive amount of the state’s public school facilities are in very poor maintenance condition, seriously threatening a multi-billion dollar taxpayer investment.” LHC, *A Study of the Utilization of Public School Facilities (Grades K through 12)* (1978) at *intro. letter*.

- 1 • “According to estimates of the California Association of School Business Officials, less  
2 than 5 % of the state’s districts have adequately maintained the condition of their  
3 facilities.” *Id.* at 29.
- 4 • “In a recent survey conducted by the State Department of Education, the state’s  
5 elementary and secondary school districts reported a backlog of major maintenance needs  
6 which would cost over \$742 million to perform.” *Id.*
- 7 • “Fifty-five percent of school facilities were constructed between 1949 and 1964, making  
8 them 14 to 29 years old. Many kinds of major maintenance items (roofs, asphalt, etc.)  
9 have a useful life expectancy of 15 to 20 years. Given this natural life cycle and the fact  
10 that so much maintenance has been deferred up to now, the major maintenance of those  
11 facilities is essentially coming due at one time. . . . The longer major maintenance is  
12 deferred, the greater the likelihood that other costly problems will arise. If timely steps  
13 are not taken to relieve the backlog, the deterioration may soon reach a state at which the  
14 costs of rectification would become completely unmanageable.” *Id.* at 32.
- 15 • When asked where and when funds would be secured to begin reducing their maintenance  
16 backlog, district administrators frequently responded that they really didn’t know. One  
17 district official flatly said that without massive state assistance, the buildings would  
18 simply continue to deteriorate. *Id.*
- 19 • The passage of Proposition 13 promises to further limit the fiscal resources of school  
20 districts and their ability to meet backlogged maintenance needs. But the maintenance  
21 problem cannot go on being ignored without serious and costly consequences. *Id.*

22 267. In 1981, the LHC reported that, since its 1978 report, maintenance backlogs had  
23 increased to over \$900 million. LHC, *The Los Angeles Unified School District* (1981) at 1.

24 According to the California Association of School Business Officials, the deferred maintenance and  
25 facility deterioration costs [were] over \$80 million per year. *Id.* at 6.

26 268. A year later, the LHC put a fine point on the situation: “The deferred maintenance of  
27 school facilities has reached catastrophic proportions.” LHC, *A Report on the Role of the State*  
28 *Department of Education in California’s K-12 Public Education System* (1982) at Intro. letter.

1           269. In 1985, the LHC noted another facilities shortfall: “[T]here is a total shortfall of  
2 about \$6 billion in school facility [construction and reconstruction] needs (exclusive of deferred  
3 maintenance).” Letter from LHC to Gov. Deukmejian et al. (Dec. 10, 1985) at 2.

4           270. By 1992, the situation had worsened, and the LHC issued yet another report, this time  
5 backing up the numbers with anecdotal evidence of deteriorating schools:

- 6           • “Existing facilities are in poor repair, with more than \$1 billion in backlogged  
7 maintenance needs.” LHC, *No Room for Johnny: A New Approach to the School*  
8 *Facilities Crisis* (1992) at 7.
- 9           • “Schools throughout the State are threadbare and bursting at the seams. Crowded districts  
10 bus students long distances, sometimes right past vacant facilities owned by other school  
11 districts. School officials complain bitterly that there is never enough state funding for  
12 needed new construction and maintenance of existing facilities. Faced with an anticipated  
13 increase of 2 million students by the year 2000, California is struggling with a school  
14 facilities crisis.” *Id.* at Intro. letter.
- 15          • “One legislator [then Assemblywoman Delaine Eastin] who has extensively toured school  
16 facilities throughout the State tells of classrooms with buckets strategically placed to catch  
17 rain, windows covered with dark sheets to block out the sweltering sunlight, broken light  
18 fixtures and bathrooms reminiscent of Third World slum conditions.” *Id.* at 22.,
- 19          • “Another telling example is a school in Arbuckle where each year needed re-painting was  
20 deferred. Finally, when flakes began to peel and fall to the ground, the district discovered  
21 that the paint was lead-based. The resulting contamination caused the school to be closed  
22 temporarily and cost far more to remedy than timely painting would have cost.” *Id.* at 22-  
23 23.
- 24          • “California estimated that: Of its 7,125 school buildings, the condition of 55 percent  
25 (3,919) were inadequate. . . . Of the 3,919 inadequate facilities, all needed major repairs,  
26 90 percent were obsolete, 80 percent had environmental or asbestos problems, 60 percent  
27 were overcrowded and 10 percent were actually unsound structures.” *Id.* at 23

- “Eventually, deferred maintenance becomes no maintenance — and buildings begin to fall apart or become unsafe.” *Id.*

271. A 1995 report by the United States General Accounting Office included two California school districts in a list illustrative of some of the worst facilities conditions in the country:

- “In Ramona, California, where overcrowding is considered a problem, one elementary school is composed entirely of portable buildings. It had neither a cafeteria nor auditorium and used a single relocatable room as a library, computer lab, music room, and art room.” GAO, *School Facilities: Condition of America’s Schools* (1995) at 11.
- “In the Pomona, California, school district, the student body has increased 37 percent over the last 10 years. Some schools must have five staggered lunch periods to accommodate all students. As a result of overcrowding, in one elementary school, students are housed in temporary buildings installed in 1948 that are unattractive, termite ridden, dark, and underequipped with electrical outlets. The temporary buildings get very hot as well as very cold at times because of poor insulation.” *Id.* at 15.

272. The same 1995 GAO report found that “modern buildings, particularly those built after 1970, were designed to have a life span of only 20 to 30 years. A study of English school facilities found that the schools built during the 1960s and 1970s were built quickly and cheaply and have caused continuing maintenance problems.” *Id.* at 18-19. This could explain a lot of California’s facilities woes in light of the fact that a study conducted in 1996-97 found that 35% of the square footage in public schools within PG&E’s electric service area was constructed in the 1960s — 48% between 1960 and 1974. Pacific Gas & Electric Co., *Commercial Building Survey Report* (1999) at p. 7.

273. In 1996, the GAO released state-by-state results of its nationwide school facilities survey in which it had asked school officials to identify specific facilities problems. The following charts summarize the GAO’s findings with respect to California schools:

Percentage of California Schools Reporting “Inadequate” Building Features in 1994-95:

Features	CA Respondents
Roofs	40.5%
Framing, Floors, Foundations	27.8
Exterior walls, finishes, windows, doors	41.7
Interior finishes	46.5
Plumbing	40.9
Heating, ventilation, air conditioning	41.2
Electrical power	32.1
Electrical lighting	42.5
Life safety codes (such as fire and earthquake)	20.8
Schools reporting at least one inadequate on-site building	42.9

GAO, *School Facilities: America's Schools Report Differing Conditions* (1996) at 32-40.<sup>14</sup>

Percentage of California Schools Reporting “Unsatisfactory” Environmental Conditions:

Factors	CA Respondents
Lighting	31.1%
Heating	24.7
Ventilation	28.8
Indoor air quality	21.8
Acoustics for noise control	34.2
Schools reporting 5 or more unsatisfactory environmental conditions	20.0

*Id.* at 51-56.

274. Since this GAO report was written, California’s voters have passed a large bond measure, Proposition 1A, which provided \$6.7 billion for K-12 school construction and modernization. These funds indisputably improved the conditions in many schools. However, the bond measure was not enough to satisfy all the needs documented by the GAO and others. The bond funds also were not targeted to meet the greatest needs or to the schools with the worst conditions. For example, the Court in *Godinez v. Davis*, No. C227352 (L.A. Sup. Ct.) concluded that the State

<sup>14</sup> The GAO’s methodology categories for rating buildings and their features were “excellent, good, adequate, fair, poor, or replace.” GAO, *School Facilities: Condition of America’s Schools* (1995) at 6 n.17. “A building or building feature was considered in inadequate condition if fair, poor, or replace was indicated.” *Id.*

1 Allocation Board was improperly distributing new construction funds on a first-come first- served  
2 basis, instead of prioritizing allocation to the districts with the greatest need. *See Godinez Order*  
3 dated August 24, 2000 at 1; *Godinez Order* dated July 12, 2002 at 5. Plaintiffs alleged that the SAB’s  
4 system for distributing funds created a race that went to the swiftest, but not necessarily the neediest,  
5 districts. As a result, funds disproportionately went to less crowded suburban districts, than to  
6 overcrowded urban districts, which enrolled substantially more low-income students of color. As  
7 another example, under Proposition 1A, an overcrowded district could not count students in multi-  
8 track year schools as unhoused as long as the district was accepting multi-track year-round grant  
9 funds for those students. By contrast, a district could count as unhoused projected student enrollment  
10 from unbuilt homes on approved tract maps that might be built in the future. *See Expert Report of*  
11 *Robert Corley (“Corley Report”) at 49-50.*

12 275. Nor does it appear that Proposition 1A funds were equitably allocated among richer  
13 and poorer districts and districts with higher and lower percentages of white students. The California  
14 Budget Project did an analysis in which it compared, among other things, districts that received  
15 greater funding from Proposition 1A’s new construction funds relative to their need (high-funded)  
16 with districts that received lesser funding from Proposition 1A’s new construction fund relative to  
17 their need (low-funded). The report concluded, among other things, that high-funded districts “had a  
18 smaller percentage of non-white students (59.3 percent) than low-funded districts (70.0 percent)” and  
19 a “smaller share of students enrolled in free or reduced priced lunch programs (38.6 percent) than  
20 low-funded districts (54.1 percent).” California Budget Project, *Where Has All the Money Gone?*  
21 *The Distribution of Proposition 1A School Facilities New Construction Funds* (2001) at 2.

22 276. In 1997, the California Legislative Analyst observed, “[o]ne of the most common  
23 complaints about the state’s education system — from parents and school employees alike — is the  
24 physical disrepair of school facilities. Stories abound regarding unpainted buildings, leaky roofs,  
25 broken heaters, and failing plumbing. These situations are representative of serious maintenance  
26 problems in California schools — both in inadequate ongoing funding and in huge deferred  
27 maintenance backlogs.” LAO, *Analysis of the 1997-98 Budget Bill, K-12 Education Chapter* (1997)  
28 at E-82.



1           277. The same LAO report mentioned that “California school districts report maintenance  
2 deferrals totaling \$2.6 billion.” *Id.* As noted above, that statistic was \$742 million in 1978, or about  
3 1.8 billion 1997 dollars. In other words, in twenty years the State had not only made no progress  
4 towards redressing school maintenance needs, but had allowed maintenance deferrals to increase by  
5 over thirty percent.

6           278. In 1998, EdSource, an independent, non-profit educational information provider,  
7 emphasized the consequences of decades of neglected maintenance:

8                   Not only are school buildings aging, they have also often been poorly  
9 maintained. Declines in general school funding over the last 20 years  
10 led many districts to defer preventive maintenance expenses in order to  
maintain education programs. As a result, some school facilities are  
now in a state of serious physical disrepair.

11                   ‘We’re seeing, time and time again, that facilities and sites are being  
12 neglected,’ says Tom Henry, chief administrative officer for the state’s  
Fiscal Crisis and Management Assistance team (FCMAT). His office  
13 provides technical assistance and oversight to districts which are  
confronting serious financial problems, and thus visits districts  
14 throughout the state. He stresses the seriousness of the situation as it  
relates to student and staff welfare. ‘We’re seeing unsafe and unhealthy  
15 conditions.’

16                   Data from [the 1996 GAO report] backs up these observations. In a  
nation where the condition of school facilities has been labeled a crisis,  
17 California school districts report their schools to be in some of the  
worst condition in the country.

18 Mary Perry, EdSource, *California’s School Facilities Predicament* (1998) at 4.

19           279. EdSource lamented, “In some places the situation is extreme. Educators struggle to do  
20 their jobs and students struggle to concentrate in overcrowded, deteriorating buildings with  
21 inadequate heating, undependable plumbing, leaking roofs, and peeling paint.” *Id.* at 1.

22           280. The most recent LHC report on school facilities, published in 2000 noted the  
23 following:

- 24           • “Providing adequate school facilities became a major challenge for school districts in the  
25 early 1990s, as the resources for new facilities did not keep pace with growing  
26 enrollments, smaller class sizes, and the deterioration of existing facilities.” LHC, *To*  
27 *Build a Better School* (2000) at 9.

1 • “The ability of districts to house children has been compounded by the aging of existing  
2 schools, especially those built to accommodate the baby boomers. Poorly maintained,  
3 those schools are now filled with the boomers’ children. The troublesome stories and  
4 pictures of rain-filled buckets and computers idled by inadequate wiring have become  
5 standard news fare. School officials estimate that 60 percent of the state’s schools are  
6 more than 30 years old.” *Id.* at 11.

7 • “The U.S. General Accounting Office researched the condition of schools in 1994 and  
8 found California’s to be among the worst, as described in testimony to the Commission:

9 It was second in the nation in the percent of schools reporting at least  
10 one inadequate building feature, inadequate plumbing and  
11 unsatisfactory lighting and third in the percentage of schools reporting  
12 inadequate roofs and exterior walls, finishes, windows and doors. It  
13 was first in the nation in percentage of schools reporting unsatisfactory  
14 energy efficiency and physical security and second in the nation in  
15 reporting unsatisfactory lighting and flexibility of instructional spaces.  
16 On 12 of the 16 building features and environmental conditions we  
17 asked about, California ranked in the top one-quarter of states in the  
18 largest percent of schools reported inadequate or unsatisfactory  
19 conditions.

20 While the survey was conducted in 1994, the GAO believes the problem persists. The  
21 State does not collect information on the condition of schools, or measure progress toward  
22 improvement.” *Id.* at 53.

23 **b. Studies Have Identified Health and Safety Problems**  
24 **Associated with Conditions in Some California**  
25 **Schools.**

26 281. Studies by state agencies and independent researchers show that unsafe levels of  
27 bacteria, mold, toxic chemicals, allergens, and germs contaminate some of the school environments  
28 where children work, eat, and play. “Because children’s bodies are actively growing, they absorb and  
retain more contaminants in the local environment. Their defense mechanisms are less effective to  
prevent contaminants and infectious organisms from entering their bodies, and their immune systems  
are less able to respond when agents do enter.” Cal. Interagency Working Group on Indoor Air  
Quality, *Indoor Environmental Quality in California Schools: Critical Needs Draft Report* (1998)  
at 4-5.

1 **i. Unhealthy Indoor Environments**

2 **(a) Inadequate Ventilation**

3 282. In 1998, the Lawrence Berkeley National Laboratory (LBNL) reviewed existing  
4 published literature and reports on indoor air quality (IAQ), including 70 reports on IAQ  
5 investigations of schools in California. Joan M. Daisey & William J. Angell, Lawrence Berkeley  
6 National Lab, Environmental Energy Technologies Division, *A Survey and Critical Review of the*  
7 *Literature on Indoor Air Quality, Ventilation and Health Symptoms in Schools* (1998) at ii.

8 The report noted that indoor air quality problems are “the most  
9 common complaint made to the California Department of Education.  
10 There have been several schools with such serious air quality problems  
11 that they have come to the combined attention of the California  
12 Department of Education, the California Department of Health  
13 Services, the California Air Resources Board, and the Indoor Air Risk  
14 Assessment Group (IARAG) of the California Environmental  
15 Protection Agency.”

16 *Id.* at 17.

17 283. Poor ventilation with outside air was “the most common building factor identified as a  
18 problem in the California schools investigations.” *Id.* at 11. One of the largest sets of ventilation rate  
19 measurements in the literature reviewed by the LBNL was derived from a 1995 study of California  
20 schools prepared by Lagus Applied Technology for the California Energy Commission. Although  
21 the subset of fourteen schools tested was not random, it was “probably reasonably representative.”  
22 *Id.* at 47. According to that study, “About 20% of the school buildings have air change rates less than  
23 half the value required to provide the current recommended ASHRAE (American Society of Heating,  
24 Refrigerating, and Air-Conditioning Engineers) ventilation rate of 15 cfm per person. Richard A.  
25 Grot, *et al.*, Final Report prepare for the California Energy Commission, *Air Change Rates in Non-*  
26 *residential Buildings in California, Contract #400-91-34* (1995) at 47.

27 284. Because classrooms in California fall below the ASHRAE standard, students are more  
28 likely to encounter increased concentrations of “a variety of pollutants emitted by the occupants and  
building materials and furnishings,” and “increased risks of contracting certain infectious diseases,  
such as influenza and tuberculosis.” Joan M. Daisey & William J. Angell, Lawrence Berkeley

1 National Lab, Environmental Energy Technologies Division, *A Survey and Critical Review of the*  
2 *Literature on Indoor Air Quality, Ventilation and Health Symptoms in Schools* (1998) at 48.

3 285. Emphasizing that point, the LBNL reported the results of “[o]ne of the largest  
4 databases of reported measurements” of bacteria which studied “150 classrooms in 40 California  
5 schools with complaints (Gallup, et al., 1993). The average airborne bacterial count for these  
6 classrooms when occupied was 2,345 (CFU)/m<sup>3</sup> [colony forming units]. This is twice the 1,000  
7 CFU/m<sup>3</sup> level . . . indicative of possible microbial contamination and warranting further investigation.  
8 At the upper end of the range, concentrations as high as 18,432 CFU/m<sup>3</sup> were reported for these  
9 California schools. [These data suggest again] that a significant fraction of California schools may  
10 not have the ventilation rates needed to remove and dilute the indoor concentrations of airborne  
11 bacteria and viruses which can cause infectious diseases, e.g., influenza, colds, tuberculosis.” *Id.*  
12 at 73.

13 286. “California school investigations also found some cases of inadequate source exhaust,  
14 including: bathroom exhausts that were manually operated by occupants and when they were off and  
15 the HVAC system was on, the bathrooms became pressurized in respect to an adjacent office that  
16 reported a ‘rotten egg’ odor; and leaks in sewer lines that allowed sewer gas to infiltrate classrooms.  
17 In another case, a crawl space under a portable classroom was inadequately ventilated and the  
18 insulation in the crawl space [was found] to be littered with rodent droppings.” *Id.* at 82.

19 **(b) Poorly Sealed and Leaky Buildings**

20 287. The second most common building factor identified as a problem in the California  
21 schools reports reviewed by LBNL was “water leaks in the building shell.” *Id.* at 12. This factor is  
22 frequently associated with mold contamination. *Id.*

23 288. “In a northern California elementary school, an environmental consultant found  
24 standing water under a portable classroom. In an adjacent community, the same consultant found that  
25 roof drains were connected to the crawlspace of an elementary school and thus, when it rained, the  
26 crawlspace would fill with standing water. In some areas, the floor insulation sagged and rested on  
27 the saturated soil. This school had been vacated due to unresolved indoor air concerns. In southern  
28 California, a health department inspector evaluated a carpeted school classroom that had been

1 flooded due to surface run-off. The same investigator also inspected an elementary school where  
2 teachers complained about chronic respiratory problems and he found abandoned subslab ducts that  
3 were visibly damp from a roof leak.” *Id.* at 82.

4 289. “The root cause of many of the ventilation and water-damage problems in the schools  
5 was inadequate and/or deferred maintenance of school buildings and HVAC systems.” *Id.* at 13.

6 290. Reports of poor indoor air quality are hardly surprising given the 1996 GAO report  
7 indicating that 40.5% of California schools reported inadequate roofs; 40.9% inadequate plumbing;  
8 41.2% inadequate HVAC systems; 28.8% unsatisfactory ventilation; and 21.8% unsatisfactory indoor  
9 air quality. GAO, *School Facilities: Condition of America’s Schools* (1995) at 39-40, 55.

### 10 (c) Filthy Bathrooms

11 291. Filthy bathrooms are a widespread problem in schools. Ellen Aasletten, Senior  
12 Architect with the School Facilities Planning Division of the CDE remarked, “Questions about toilet  
13 rooms are among the most frequent questions received by the California Department of Education,  
14 School Facilities Planning Division.” Among the questions she reported receiving were: “Why is  
15 there no hot water? soap? toilet paper? or towels? Why are toilets dirty, smelly, and vandalized?”  
16 Ellen Aasletten, CDE & Cal. Coalition for Adequate School Housing, *School Toilets*,  
17 at [www.cashnet.org/Resource%20Center/Section%205/5-3-25.htm](http://www.cashnet.org/Resource%20Center/Section%205/5-3-25.htm).

18 292. In 1998, the Los Angeles Times conducted a poll of middle school and high school  
19 students and found that “[o]f those surveyed, 48% said they avoid using the restrooms at their school.  
20 The reasons? They’re filthy. The toilets don’t flush. The sinks don’t work. There’s no toilet paper  
21 and no doors on the stalls.” Richard L. Colvin, *Campus Restrooms: “They Stink, They’re Gross”; as*  
22 *Teachers Focus on the Big Issues, Students Deal with More Mundane Problems — Such as Finding a*  
23 *Bathroom That Works*, L.A. TIMES, May 17, 1998, at S-4.

24 293. In May of 2002, reporters from the Sacramento Bee conducted “spot checks” at all 52  
25 high schools in their region. Deb Kollars, *Restrooms Reek of Old Fixtures, Careless Kids*,  
26 SACRAMENTO BEE, May 19, 2002, at A17. They found bathrooms “filled with stained and corroded  
27 fixtures, scratched or broken mirrors, and walls and floors of unpainted concrete. Soap often is  
28

absent. Paper towels are hit-and-miss. Sinks are clogged. Stall doors sag. Graffiti and the smell of urine are pervasive.” *Id.*

294. A 2002 Los Angeles Times editorial described disgusting conditions in some of the restrooms in schools in the district:

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

And here’s what the school board members and the superintendent will get: individual, brand-spanking-new, clean and functioning restrooms at the district’s new headquarters.

*School Board’s Royal Flush*, L.A. TIMES, June 19, 2002, at 2-12.

#### **(d) Harmful Effects Documented**

295. All the indoor environmental issues listed above — poor ventilation, leaky buildings, and filthy bathrooms — pose health risks for children. Based on a review of pertinent research studies, plaintiffs’ expert, Dr. Megan Sandel, explains the effects of poor ventilation and leaky buildings:

First, since many environmental exposures are cumulative, poor ventilation can effectively increase the level of exposure for any molds, allergens, or toxins in the environment since little to no air exchange means longer exposure times (Institute of Medicine 2000). Second, inadequate ventilation will increase humidity and encourage mold growth and other allergen problems.

High humidity and overheating can lead to increased pest and dust mite proliferation, which are both respiratory irritants and allergens (Institute of Medicine 2000). . . .

Overcrowding and inadequate ventilation also increase interior moisture (Institute of Medicine 2000). Increased moisture can lead to damp and moldy conditions, which are respiratory and allergic irritants.

Damp conditions provide a nurturing environment for mites, roaches, respiratory viruses and molds, all of which play a role in respiratory disease pathogenesis (Institute of Medicine 2000). . . .

. . . .

1 The most important factor contributing to asthma is the indoor  
2 environment, which includes many known asthma triggers (Lanphear  
3 2001, Institute of Medicine 2000). Excessive dust mite allergen, . . .  
4 excessive humidity, poor ventilation, and pest allergens, such as  
5 cockroach (Rosenstreich 1997), mouse and rat (Phipatanakul 2000), all  
worsen asthma symptoms for allergic children. Mold exposure can also  
make children with asthma wheeze (Williamson 1997). In my opinion,  
substandard conditions in schools cause excess asthma attacks and  
children miss school unnecessarily.

6 Expert Report of Dr. Megan Sandel (“Sandel Report”) at 12-13.

7 296. The Lawrence Berkeley National Laboratory noted that

8 “[p]otentially there are more than 275,000 California students and  
9 10,000 California teachers with asthma. . . . ALA [American Lung  
10 Association] also notes that asthma is the number one cause of school  
11 absenteeism due to chronic health problems, and the leading chronic  
12 illness among elementary school children. ALA believes that asthma  
causes children to experience 16 million days of restricted activity  
annually in the U.S., including days spent in bed and days misse[d]  
from school.”

13 Joan M. Daisey & William J. Angell, Lawrence Berkeley National Lab, Environmental Energy  
14 Technologies Division, *A Survey and Critical Review of the Literature on Indoor Air Quality,  
15 Ventilation and Health Symptoms in Schools* (1998) at 18.

16 297. A report prepared at the request of Assembly member Alan Lowenthal reiterates the  
17 dangers of exposure to mold:

18 Certain health effects, such as those related to allergic reactions like  
19 irritation of the eyes, nose, and throat, dermatitis, exacerbation of  
20 asthma, and respiratory distress, have been proven to be associated with  
21 mold exposure. Other reported effects such as fever, flu-like  
22 symptoms, fatigue, respiratory dysfunction (including coughing up  
23 blood), excessive and regular nose bleeds, dizziness, headaches,  
24 diarrhea, vomiting, liver damage, and impaired or altered immune  
25 function have been identified in persons who have been exposed to  
26 mold via inhalation. . . .

27 Pamela J. Davis, Cal. Research Bureau, *Molds, Toxic Molds, and Indoor Air Quality* (2001) at 4.

28 298. Water leaks not only contribute to mold, but they also invite pest infestations, as do  
filthy bathrooms. Pest infestations can cause asthma or trigger asthma attacks in children who  
already have the disease:

One of the strongest allergens results from pest infestations. Pest  
infestations, through their association with asthma and infectious  
diseases, provide another linkage between substandard school facility  
conditions and childhood illness. Pests, such as cockroaches, mice, and

1 rats, seek indoor environments if certain conditions are present. . . .  
2 Conditions in schools where water leaks . . . and bathrooms [are] poorly  
3 maintained invite pests into schools, where they leave behind their  
4 feces and skin to cause and exacerbate allergies and asthma in children.

5 Sandel Report at 7.

6 299. “Defects in the structural membrane of buildings permit entry of cockroaches and  
7 rodents (Institute of Medicine 2000). These include poorly sealed doors, windows, basements and  
8 cracks in walls. Leaking pipes, roofs and other sources of water provide drinking sources for many  
9 pests.” Sandel Report at 8-9. Along those lines, 27.8% of California schools reported inadequate  
10 framing, floors, or foundations, and 41.7% inadequate exterior walls . . . windows, or doors. GAO,  
11 *School Facilities: Condition of America’s Schools* (1995) at 39.

12 300. The evidence that substantial numbers of schools are poorly sealed, leaky, or have  
13 filthy bathrooms is consistent with the results of a 2001 survey of district officials responsible for  
14 pest management at 394 California school districts. The survey reported that 31.9% of the officials  
15 considered mice/rats to be a serious problem and 23.4% considered cockroaches to be a serious  
16 problem in their districts. Dennis H. Tootelian, Cal. Dep’t of Pesticide Regulation, *2001 IPM*  
17 *Baseline Survey of School Districts*, (2001) at 4.

## 18 **ii. Unhealthy Air Quality in Portable** 19 **Classrooms**

20 301. A 1999 report (cited in bill AB 2223) by the Environmental Working Group notes that  
21 the indoor environments of portable classrooms “can be a significant source of exposure to airborne  
22 toxic chemicals and molds.” Zev Ross & Bill Walker, Environmental Working Group, *Reading,*  
23 *Writing, and Risk: Air Pollution Inside California’s Portable Classrooms* (1999) at 1.

24 The EWG report further explains the health risks created by portable  
25 classrooms: [M]anufactured buildings emit hundreds of chemicals,  
26 including a number known to cause cancer, birth defects, brain and  
27 nerve damage, asthma and other illnesses. Of greatest concern are  
28 volatile organic compounds (VOCs) such as formaldehyde, benzene  
and toluene, which are emitted from the particle board, plywood,  
fiberglass, carpets, glues and other materials used in portables.  
Manufactured buildings, which are often prone to leaks, are also  
favored habitat for toxic molds that can cause nausea, nosebleeds,  
respiratory illness, and in extreme cases, even death.

. . . In many reported cases, students or teachers who suffered health  
problems in portables experienced short-term effects such as headaches



1 or nausea that abated when they switched classrooms or ventilation  
2 deficiencies were corrected. But an exhaustive review of the scientific  
3 literature finds clear evidence that some portables can expose children  
to toxic chemicals at levels that pose an unacceptable risk of increasing  
their chances of developing cancer or other serious illness.

4 *Id.*

5 302. The EWG report anecdotally supports its findings with references to several news  
6 reports:

7 In 1991, elevated levels of a breakdown product of benzene and  
8 trichloroethane were found in the blood of a teacher and a student using  
a new portable classroom at an elementary school in San Clemente,  
9 Orange County. Both chemicals are known carcinogens. The teacher  
requested the tests after 80 percent of her students complained of  
10 nausea, chest pains, headaches, dizziness and breathing difficulties. A  
few months later, two students at an elementary school in nearby  
Mission Viejo suffered seizure-like attacks after attending class for just  
11 a few weeks in a brand-new portable.

12 In 1996, school officials in Cupertino spent more than \$50,000 to test  
air quality and replace toxic materials in portable classrooms after some  
13 second-grade students, teachers and parents experienced nausea,  
fainting, headaches and eye irritation. One parent with a history of  
14 chemical sensitivity said she remained ill for months after spending just  
10 minutes in her child's portable classroom.

15 In 1997, a teacher and a dozen students reported dizziness, burning  
16 eyes, headaches and watering eyes after attending class in a portable  
classroom at an elementary school in Riverside. That same year,  
17 parents of children with asthma and other health problems were  
angered to learn that the Corona school district, also in Riverside  
18 County, had known for two years about problems with mold and  
ventilation in its portables, but never advised parents.

19 In 1998, a portable classroom was removed from an elementary school  
20 in Elk Grove after tests found a toxic mold connected with a rash of  
infant deaths in Cleveland, Ohio. Tests confirmed the presence of  
21 *Stachybotrys chartarum*, a rare mold whose spores can cause  
respiratory problems, nosebleed and diarrhea, leading to death in severe  
22 cases. At least six children, plus their teacher, had suffered severe  
allergic reactions while attending class in the portable.

23 *Id.* at 8.

24 In May 1999, a toxicologist and a pediatrician reported that they had  
25 treated at least six children from the Saugus school district in Los  
Angeles' San Fernando Valley who suffered health problems after  
26 attending class in portables. The students' blood and urine contained  
elevated levels of formaldehyde, benzene, arsenic and other chemicals  
27 commonly used in portables construction. The toxicologist said the  
toxins 'were oozing out of the walls and just recirculating and going  
28 into their bodies.

1 *Id.* at 4

2 303. “Worst of all,” the 1999 EWG report concludes, “in the face of mounting evidence  
3 that childhood exposure to toxic chemicals can retard mental and physical development, the state has  
4 failed to exercise effective oversight over air quality in portable classrooms. There are no  
5 enforceable regulations, no monitoring programs, not even restrictions preventing manufacturers  
6 from continuing to sell portables to schools after the company’s buildings have been repeatedly  
7 implicated in health complaints.” *Id.* at 3-4.

8 304. The Legislature acknowledged the scope of indoor environmental problems in portable  
9 classrooms, and in schools generally, in the findings and statement of legislative intent accompanying  
10 a recent bill:

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

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

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

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

20 \* \* \*

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

24 A.B. 2223, § 1, am. in S. Aug. 6, 2002, action pending in Leg. (Cal. 2002).

### 25 **iii. Lead Contamination**

#### 26 **(a) Widespread Problems**

27 305. In 1998, the California Department of Health Services (“DHS”) tested at a sample of  
28 elementary schools and child care facilities to determine the prevalence of lead and lead hazards in

1 the paint, drinking water, and soil. Dep't Health Services, *Lead Hazards in California's Public*  
2 *Elementary Schools and Child Care Facilities; Report to the California State Legislature* (1998)  
3 at § I.

4 306. "[L]ead-based paint" is paint that has a lead-level above 5,000 ppm, the Title X  
5 definition of a lead hazard. *Id.* at Table 1. In 1978, the Consumer Product Safety Commission  
6 (CPSC) set a limit of 600 ppm of lead content for consumer paint. *Id.* at Table 5. Cal/OSHA  
7 requires worker protection where there is any detectable lead content in the paint. *Id.* The DHS  
8 survey found that 95.8% of California public elementary schools have lead-containing paint, i.e.,  
9 paint that is "lead-based," or above the CPSC 600 ppm standard, or contains some detectable level of  
10 lead. *Id.* at Table 6. In the vast majority of those schools with "lead-containing paint," the paint is  
11 "lead-based." At 37.6% of the schools studied, children were potentially exposed to deteriorating  
12 "lead-containing" paint. *Id.* at Table 7. The report defined a "Deteriorated Paint Environment" as  
13 one where "wall and/or trim paint in a room or on the exterior of a building from which a paint  
14 sample was taken was in 'fair' or 'poor' condition." *Id.* at Table 5.

15 307. Plaintiffs' expert Dr. Sandel found that "there is increasing evidence that no detectable  
16 threshold or minimum safe amount exists for the adverse effects of lead exposure on  
17 neurodevelopment (Schwarz 1991, Rosen 1995). Therefore no level of lead exposure should be  
18 considered safe." Sandel Report at 11.

19 308. The DHS also found that "6.1 percent (307) of public elementary schools may have  
20 some soil that exceeds the USEPA [United States Environmental Protection Agency] recommended  
21 high of 400 ppm for areas in which children play." *Id.* at § IV.B.3.

22 309. Finally, the DHS reported that 15.5% of public elementary schools had lead in  
23 drinking water above regulatory standards, specifically above 15 ppb, the level at which the USEPA  
24 considers water to be safe. *Id.* at Figure 11.

25 310. Two reports were prepared for SFUSD in October 2000, one concerning lead in  
26 schools' drinking water and another concerning lead paint in district schools. Of 92 elementary  
27 school and childcare sites surveyed, 50 (54%) had facilities with damaged, lead based paint. SCA  
28 Environmental, San Francisco Unified Sch. Dist., *Lead Paint Survey: SCA Proj. No. B4357, Draft*

1 *Summary Report* (2000) at 2. If more than 10% of drinking water sources contain over 15 parts per  
2 billion (ppb) lead, EPA regulations are violated. SCA Environmental, San Francisco Unified Sch.  
3 Dist., *Lead in Drinking Water Survey: SCA Proj. No. B4210* (2000) at 2. Twenty percent (or 31 of  
4 153) of the school sites surveyed for the SFUSD report had more than 15 ppb. *Id.*

5 311. In late 2000, tests conducted by the National Resources Defense Council of areas  
6 within reach of small children at seven elementary schools in the SFUSD by the Natural Resources  
7 Defense Council repeatedly found peeling, chipping, cracking, or chalking paint measuring 20, 30,  
8 and even 40 times the EPA action level for lead-based paint. Letter from Gina Solomon, Natural  
9 Resources Defense Council, to Arlene Ackerman, SFUSD (Nov. 1, 2000).

10 312. In 2000 and 2001, CBS 2 News broadcast several “Special Assignment” reports  
11 entitled “*Poison Paint*.” The first one announced: “All together, we found lead contamination in five  
12 school districts, including L.A. Unified, Pasadena, South Pasadena, La Canada and Newhall. Out of  
13 the 50 schools we examined, 17 of them tested positive for lead. The highest reading we got was on  
14 a pole in Pasadena’s Linda Vista School, which measures 42 times higher than the limit considered  
15 safe.” *Poison Paint* (CBS2 television broadcast, Nov. 5, 2000).

16 313. The news team observed:

- 17 • A boy repeatedly placing his hands on cracked and peeling paint in a windowsill at  
18 Catskill Elementary School in South Los Angeles and then putting his hands in his mouth.  
19 The paint contained 31 times the EPA lead limit. *Id.*
- 20 • A girl at Avalon Gardens School near Compton running her hand along a pole in the  
21 school yard covered in lead paint chalk measuring 9 times the limit and then putting her  
22 hands in her mouth. *Id.*
- 23 • Cracked paint and dust measuring 8 times the EPA lead limit on the lunch tables where  
24 children eat every day at Hamilton Elementary School in Pasadena. *Id.*

25 314. A study conducted by LAUSD of its elementary and pre-schools in response to the  
26 CBS 2 News investigation found: “Out of more than 700 elementary and pre-schools, nearly 550  
27 have cracked and peeling lead paint. In other words, 72% of the schools with young children are  
28 contaminated.” *Peeling Paint: Episode 5*, transcription.

1 (b) Harmful effects documented

2 315. “Most children with lead poisoning have no overt symptoms. Instead, they silently  
3 suffer permanent neurological deficits and behavioral problems, those most notably being loss of IQ  
4 and attention deficit disorder. Childhood lead poisoning results in significant medical and special  
5 education costs and reduces the lifetime earning potential of poisoned children.” Dep’t Health  
6 Services, *Lead Hazards in California’s Public Elementary Schools and Child Care Facilities; Report*  
7 *to the California State Legislature* (1998), at § II.A.

8 316. LAUSD Superintendent Roy Rohmer called lead contamination in schools “a real  
9 serious problem that needs very, very quick action.” *Poison Paint, Episode 2* (CBS 2 television  
10 broadcast, Nov. 6, 2000).

11 317. State Superintendent of Public Instruction, Delaine Eastin was interviewed by the CBS  
12 reporter after viewing videotape footage of some of the lead hazards in LAUSD schools. She  
13 commented, “When you look at those windows, we could be in Soweto, South Africa; we could be in  
14 a third world country . . . . The condition of these schools is unacceptable and I do worry terribly  
15 about the paint because it can cause permanent damage to these children.” *Id.*

16 c. News Articles, FCMAT Evaluations, and II/USP  
17 Action Plans Have Confirmed the Serious School  
Facilities Problems in Some Schools.

18 318. Accounts from a variety of sources, including newspaper reports, II/USP action plans,  
19 and outside evaluations performed by the state’s Fiscal Crisis and Management Assistance Team  
20 (“FCMAT”), constitute repeated notice to state officials of the serious facilities problems in some  
21 schools.

22 319. Indeed, in 1998, the California Senate Office of Research confirmed that legislators  
23 are aware of the mounting news reports about facilities problems: “Beyond test scores, press  
24 coverage of leaky roofs, broken windows, falling ceilings and students attending class in storage  
25 closets paint a dismal picture of the schools we send our children to in California.” Senate Office of  
26 Research, *Overview of California Education Issues* (1998)  
27 at [www.sen.ca.gov/sor/educate/overview.htm](http://www.sen.ca.gov/sor/educate/overview.htm).

**i. Los Angeles Unified School District**

320. In 1981, the Little Hoover Commission concluded that the LAUSD had “mismanaged its \$1.8 billion of taxpayer dollars.” LHC, *The Los Angeles Unified School District* (1981) at 2. For example: “Twelve million dollars was budgeted [by the LAUSD] for FY 1980-81 to deal with a \$225 million maintenance backlog, while the district maintained a surplus of funds for the past ten years.” *Id.* at 17. As a consequence: “Forty-one (nearly 10%) of the elementary schools [in the LAUSD] are overcrowded. Some of them are crammed to 500% of their designed capacity. As one Board member testified, ‘No logical excuse can be offered for the maintenance of schools where students are crammed in like sardines with the simultaneous preservation of a country club atmosphere for others.’” *Id.* at 12.

321. In 1985, the Los Angeles Times reported that “[t]he bathrooms [at Taft High School] were absolutely filthy. . . . They got so bad the kids wouldn’t even go in them,” and that the “condition of the campus had deteriorated. ‘There were desks out in hallways,’ Singer [the leader of a group of PTA members] said. ‘In some cases, students had no desks.’” Mayerene Barker, *Stormy Year in Taft Principal’s Transfer*, L.A. TIMES, July 10, 1985, at 2-6.

322. A 1988 article in the Los Angeles Times reported:

At Gardner Elementary School in Hollywood, the school year started out pretty much as the old one had ended — with one long list of annoying problems.

There were only eight toilets, two drinking fountains and one large wash basin for the nearly 500 students returning to school. There was no running water in the nurse’s room to wash cuts. Many of the classes were without books and other materials. The library was shut down. There were no buzzers or intercoms to communicate between classroom bungalows. No pay telephone on campus. And no heat for the winter.

John L. Mitchell, *Going to School Becomes an Exercise in Frustration*, L.A. TIMES, Oct. 23, 1988, at 2-2.

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

Outside, the well-tended campus belies the maintenance cutbacks. Graffiti etched on campus walls hardly has a chance to dry before it is wiped clean. But inside, there are telling signs of neglect. Hallway

1 floors have a coating of dust so thick they are slick, almost slippery.  
2 Half the bathrooms have been padlocked because there are too few  
security aides to patrol them, and the others are reeking and filthy by  
3 mid-morning.

4 Sandy Banks, *Schools in Crisis: Grim Days at Grant High; Fights, Absenteeism, and Resentment are*  
5 *Increasing, and Learning is Suffering, as a Once Proud School Deals with Relentless Budget Cuts*,  
L.A. TIMES, Jan. 5, 1992, at Magazine-12.

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

9 The sprawling LAUSD has accumulated \$600 million worth of  
10 deferred maintenance projects. “We’re only funded at one-third of what  
11 the needs are,” said Margaret Scholl, director of maintenance and  
12 operations for the district. “We spend less than any other major school  
district by far, and less than any school district I am aware of in the  
country on maintenance.”

13 Doug Brown, the current head of LAUSD’s Facilities, Asset and  
14 Management division recently warned board members that without  
15 additional funds, “that \$600 million will grow to \$900 million, that  
\$900 million will grow to \$1 billion. Pretty soon you have to shut  
down schools and where are you going to put kids?”

16 Lynn Smith, *Reading, Writing, Ruin: Ravaged by Time, Vandals and a Lack of Money, Public*  
17 *Schools are Starting to Look Like War Zones; With Little or No Budget for Repairs, the Children are*  
18 *Suffering the Consequences*, L.A. TIMES, Nov. 9, 1994, at E1. The article further described the  
19 consequence of neglected maintenance upon these schools, such as Benjamin Franklin High School:

20 A boy’s bathroom reeked, its stench sometimes reaching the attendance  
21 office, students said.

22 The day was warm and cloudless, but one student described the campus  
as “gray and gloomy.” The Los Angeles Unified School District hasn’t  
23 once repainted this school since it was rebuilt in the 1960s. The older  
gym, heated with radiators from the 1930s, has no air conditioning.  
24 Three on-site custodians have been lost to cutbacks and until last week,  
no full time gardener has tended the 19-acre, multi track, year-round  
campus.

25 *Id.*

26 325. State Superintendent Eastin was quoted in 1996 as saying — after having been “shown  
27 classrooms where the floor tiles are all detached and a room with a gaping ceiling hole caused by a  
28

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

8           326. In 1998, a Los Angeles Times reporter visited Jefferson and Fremont high schools, at  
9 the invitation of students who were complaining about the poor conditions at their school. The  
10 article states that “[t]he filthy, smelly toilets and burned-out lights tell a story of failure, indifference  
11 and bad management in the Los Angeles school system. So does graffiti on the walls and dirt-  
12 encrusted drinking fountains.” Bill Boyarsky, *Impoverished Old Schools Need Bigger Share of Prop.*  
13 *BB Funds*, L.A. TIMES, Jan. 19, 1998, at B1. The reporter noted that at Jefferson High School:

14                   [p]aint was peeling from the ceiling. Walls were stained with graffiti.  
15                   As we walked over to the gym, I could smell the toilets even before I  
16                   entered the building. It’s the third day they’ve been dirty, one of the  
                      students said. A young woman in our inspection party said the floor in  
                      the girl’s bathroom was covered with water.

17                   Acoustic tiles have fallen off the walls inside some of the buildings and  
18                   not been replaced. Bleachers burned in a Fourth of July fire were  
19                   unrepaired. There was no grass on the football field, just rock-solid  
                      dirt. The running track was made of sand and dangerously pitted.

20                   The scene at Fremont, a few miles southwest of Jefferson, was just as  
21                   bleak. . . . Graffiti was part of the decor, just as it was at Jefferson.  
                      One of my guides pointed to the tiles that remained on a ceiling. ‘In  
                      third period, a tile fell on a boy’s head,’ she said.

22                   The auditorium was locked, but one of the students told me seats were  
23                   missing and a wall still had not been repaired from a recent fire that  
24                   inflicted severe damage. In the covered luncheon area, most of the  
25                   lights in the ceiling were out. In an upstairs classroom, water leaking  
                      from the roof had blistered the wall and the chalkboard. Instead of  
                      replacing the chalkboard, repair crews had merely covered it with green  
                      paint, which was peeling.

26 *Id.* This same reporter later wrote that “[a] week after I wrote about our visit, Beth Louargand,  
27 district facilities manager, sent a memo to the school board members representing the Jefferson and  
28



1 Fremont areas, confirming my assessment.” Bill Boyarsky, *Students’ Gripes About Schools Bring*  
2 *Results*, L.A. TIMES, Feb. 9, 1998, at B-1.

3 327. In 1999, the Little Hoover Commission issued a report that was extremely critical of  
4 LAUSD’s facilities management and the conditions in LAUSD schools. The report noted, for  
5 example, that “[t]he cloud of health concerns may never clear from Jefferson New Middle School,  
6 which was built on a toxic site that was not properly assessed or cleaned up before construction  
7 began.” Letter from LHC to Gov. Davis et al. (Nov. 3, 1999) at 2.

8 328. The report continued: “[I]n some classrooms, there are twice as many children as  
9 there are desks. Some 15,000 school children ride buses each day because there is no room at their  
10 home school.” *Id.* at 4. As summarized by the Commission, “[a]nother generation of children in Los  
11 Angeles have been doomed to overcrowded, uninspiring and unhealthy schools.” *Id.* at 2.

12 329. In 2001, Miramonte Elementary School reported that “the condition of the school  
13 facility is considered a barrier by many staff members. In particular, they indicate that the age of the  
14 building, the crowded conditions, and poor heating and air conditioning systems have a negative  
15 impact on teaching and learning.” (DOE 37376 — II/USP action plan for Miramonte Elementary  
16 School in Los Angeles.)

17 330. Also in 2001, Tweedy Elementary School reported: “Tweedy is experiencing extreme  
18 overcrowding. Due to a chemical hazard situation at the original site, Tweedy has no permanent  
19 location or buildings and has been in this condition for over thirteen years. The school is housed in  
20 ‘temporary’ bungalows in a small corner of South Gate Park.” (DOE 37848 — II/USP action plan  
21 for Tweedy Elementary School in Los Angeles).

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

25 [S]o far, officials say 7,434 health and safety deficiencies have been  
26 found — 1,544 of them serious.

27 Inspectors scrutinize individual school sites for hazards in 20  
28 categories, ranging from the serious — for example, peeling lead paint  
in elementary schools, categorized as a Priority 1 violation — to the  
not-so-serious, such as failure to post a safety notice.

District K, which stretches from San Pedro to Gardena, so far has the greatest average number of violations per school — 24, including six ranked as Priority 1.

Mariel Garza, *Schools Above C in Safety: Area Kids Encounter Fewer Hazards Than Most LAUSD Students Face*, L.A. DAILY NEWS, Mar. 26, 2002, at N4. While the inspections have not been completed, LAUSD officials believe the findings are useful because they provide “an overall picture of the conditions of the district’s schools.” Likewise, the Los Angeles Daily News reported in February 2002 that:

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

Mariel Garza, *Hazards on Campus: Violations Found at Schools Across City*, L.A. DAILY NEWS, Feb. 10, 2002, at N1.

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

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

And here’s what the school board members and the superintendent will get: individual, brand-spanking-new, clean and functioning restrooms at the district’s new headquarters.

*School Board’s Royal Flush*, L.A. TIMES, June 19, 2002, at 2-12.

## **ii. Oakland Unified School District**

333. In 1994, the San Francisco Chronicle reported that

1 Flaking plaster from a waterlogged ceiling covers the floor in a  
2 classroom at Calvin Simmons Junior High in Oakland, a room locked  
from the students for safety reasons.

3 The classroom looks like it belongs in an abandoned building, not in an  
4 open school where the community sends its children to learn.

5 Joe Mears, the man in charge of leaky roofs and flaking plaster at more  
6 than 100 sites owned by the Oakland schools, shakes his head as he  
7 relocks the door to Room 130 to make sure no one can enter. He  
8 knows he can do little else. The cause of the damaged ceiling is a leaky  
9 roof, which the school district cannot afford to fix right now. “All we  
can do is patch, patch. We know the preventive maintenance that needs  
to be done, but we can’t do it. There is no money except to handle  
crisis after crisis,” said Mears, director of facilities management for the  
Oakland Unified School District, which serves more than 50,000  
students.

10 Lori Olszewski, *A Lesson In School Decay: Oakland Group Pushes Ballot Measure to Pay for*  
11 *Repairs*, S.F. CHRON., Oct. 27, 1994, at A19.

12 334. In 1995, the San Francisco Chronicle reported that “[a]t Jefferson in the Fruitvale  
13 flatlands, 1,200 elementary students are packed into a campus designed for 750 students, with the  
14 overflow spilling into portable classrooms. The children share six deteriorating bathrooms, a single  
15 eating area and an overcrowded playground, which creates logistics nightmares.” Lori Olszewski,  
16 *Oakland Wrestles With Problems in Its Public Schools: Overcrowding in Classrooms Is a Big Issue*,  
17 S.F. CHRON., Aug. 7, 1995, at A13. The same year, the San Francisco Chronicle reported that parents  
18 and students rallied at the school district offices “to call for better facilities at Lazear Elementary  
19 School, which consists entirely of 40-year-old portable classrooms” that parents described as “tiny,  
20 windowless, poorly ventilated and are unsafe for students and teachers.” *Oakland Parents Rally for*  
21 *Real Classrooms*, S.F. CHRON., May 20, 1995, at A18.

22 335. The independent agency FCMAT (Fiscal Crisis and Management Assistance Team)  
23 conducted a safety audit of the Oakland Unified School District during the summer and fall of 1999.  
24 The *Get On The Bus Tour* included hundreds of parents, community members, and city and county  
25 political leaders. This preliminary review identified a significant number of safety concerns at school  
26 sites throughout the district. “It was clear from reviewing the safety audit that the Oakland Unified  
27 School District had ignored its basic infrastructure. In terms of the learning environment, it was also  
28 reported to be clear to the tour participants that teachers could not teach and students could not learn

1 in unsafe and unhealthy facilities.” (FCMAT 2883.) In its rating of Oakland schools during the *Get*  
2 *On The Bus* Tour, nineteen of Oakland’s seventy-two schools which were rated received “F”’s and  
3 ten received “D”’s. (FCMAT 0116.)

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

10 337. FCMAT’s explanation of why Fremont High School received a “D” illustrates the  
11 severity of the facilities problems in Oakland. “Serious Safety and Health Issues” include: “Large  
12 rats are entering the classrooms. . . . Campus lighting very poor. . . . Electrical hazards in  
13 portables. . . . Exposed electrical panel in gym.” FCMAT Summary of Fremont High School  
14 at [http://www.fcmat.org/stories/storyReader\\$49](http://www.fcmat.org/stories/storyReader$49) (last updated Mar. 8, 2000).

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

21 339. The II/USP action plans for some of the schools in the district similarly underscore the  
22 persistence of extreme maintenance issues in Oakland USD. For example, the district’s action plan  
23 for Garfield Elementary School, prepared in 2000, stated that “the school facility is not well  
24 maintained, clean, or adequate and does not promote creative and innovative approaches to teaching  
25 and learning.” (DOE 31105.)

26 340. Likewise, the action plan the district prepared for Stonehurst Elementary School in  
27 2000 reported: “[a]lso significant and problematic are the city of Oakland’s sewer lines that cross the  
28 school property and flood the school during the heavy rainy season. This causes total disruption of

1 school activities.” (DOE 46968.) Evaluators recommended that “[a] comprehensive safety  
2 assessment should be made of Stonehurst to immediately eliminate hazards such as faulty heating  
3 systems, torn carpets, building cleanliness, etc.” (DOE 46989.) The action plan continued:

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

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

15 One 5th grade class off the auditorium had folding accordion doors that  
16 were not soundproof. A teacher was teaching violin classes during the  
17 observation of the fifth grade class. The violin playing could clearly be  
18 heard and would cause the 5th grade teacher to raise her voice above  
19 the music. This room was not only noisy, but it was too small. The  
20 class size had been kept lower than other 5th grade classes because of  
21 the limited space. The room did not have bookcases or storage space  
22 and [had] insufficient chalkboards. The room was also cold. The  
23 teacher wore a heavy coat and gloves and told the students if they were  
24 cold not to forget their coats and gloves. This room posed safety and  
25 health problems. The carpet was torn in many places and was taped by  
26 the teacher as a stop gap measure. The carpet was littered with paper  
27 and clearly had not been cleaned. The custodial services for this room  
28 could be an issue to investigate.

(DOE 46991.)

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

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

(DOE 46994; DOE 46999.)

1 **iii. Compton Unified School District**

2 342. In 1988, the Los Angeles Times described the “‘horrible’ environmental conditions”  
3 that plagued Compton Unified School District. George Stein, *Carson vs. Compton; High Crime Rate*  
4 *of Neighbor to North Is Cited in Attempts by Carson to Distance Itself*, L.A. TIMES, Jan. 15, 1988,  
5 at 2-8. The article quoted a teachers’ union president describing “‘horrible’ conditions for students  
6 and teachers, including leaking ceilings, broken windows, ‘filthy’ bathrooms, bird droppings on  
7 classroom floors and a lack of fire extinguishers. ‘I’m surprised that the Fire department or Health  
8 department had not gone in and closed down those schools for being unsafe and unhealthy,’ said  
9 Mary Futrell, president of the National Education Assn.” *Id.*

10 343. According to the Los Angeles County Office of Education in a report submitted to the  
11 Legislature in the spring of 1993:

12 Facilities are in extreme disrepair causing serious situations including:

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

25 (Los Angeles County Office of Education, (1993) at 17.)

26 344. In 1994, the Los Angeles Times reported that:

27 [s]ome schools have boarded up the rotten buildings that the district  
28 can afford neither to fix nor tear down. In one of the closed buildings,  
a middle school teacher once fell through the floor, its supports  
undermined by gophers, Harris said. One high school pool has been  
unusable since the 1987 Whittier earthquake.

At Theodore Roosevelt Elementary School, built in 1922, parents have  
gamely painted the façade and planted colorful flowers. But the

1 windows that are open won't ever close and windows that are shut  
2 won't open. Some doors have no knobs. The toilet stalls have no  
3 doors. Principal Jackie Cochran said the sewer backs up once a  
4 quarter.

5 Lynn Smith, *Reading, Writing, Ruin: Ravaged by Time, Vandals and a Lack of Money, Public*  
6 *Schools are Starting to Look Like War Zones; With Little or No Budget for Repairs, the Children are*  
7 *Suffering the Consequences*, L.A. TIMES, Nov. 9, 1994, at E1.

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

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

23 *Id.* at 50.

24 346. That same year, the Los Angeles times reported that:

25 [I]n the 3 ½ years since the State Department of Education took control  
26 over the debt-saddled Compton School District, many buildings have  
27 fallen deeper into decay and disrepair:

28 Leaky roofs sometimes drive students and teachers out of their  
classrooms.

Broken windows are left unrepaired for months. . . . Most classrooms  
have no heating or air conditioning, forcing students to endure cold or  
sweltering temperatures. And some restrooms are so filthy and  
dilapidated that students refuse to use them.

'If these schools were prisons, they would be shut down,' said Maureen  
DiMarco, Gov. Pete Wilson's former chief education advisor. . . .  
Records show that there is a backlog of 2,400 work orders to fix

1 everything from broken water pipes to exposed electrical wires. . . .  
2 Compton Unified is still a bleak landscape of boarded-up windows,  
3 blistered paint, sagging roofs and fetid restrooms. The walls and floors  
4 of many portable classrooms are rotted and cracked. Ceiling tiles have  
5 fallen in many buildings. . . . In classroom after classroom, water  
6 seepage has caused portions of the ceiling to fall. Desks and chairs are  
dripping wet. Puddles form on the floor. . . One recent morning, 12 of  
the 30 students had been carted home by parents, who pull them out of  
school on rainy days for fear they will be hit by ceiling tiles or shocked  
by exposed wiring. Conditions have been this way, teacher Betty  
Wilson said, for nine years.

7 Jeff Leeds, *State Fails to Stop Compton Schools' Slide into Decay; Education: Dilapidated and*  
8 *Filthy Facilities Illustrate Difficulty of Getting the District Back on Track. Top Official Says Raising*  
9 *Test Scores, Fixing Accounting Practices Were Priority*, L.A. TIMES, Jan. 26, 1997, at A1.).

10 347. According to the same article, a Los Angeles County Grand Jury report written in  
11 1985 stated that “[d]uring the past 15 years, physical maintenance has consisted primarily of stopgap  
12 measures to repair damage rather than capital outlays to restore the buildings and sustain their useful  
13 lives.” *Id.*

14 348. According to a 1999 FCMAT report, many of the deplorable conditions that were  
15 identified as early as 1985 were still plaguing Compton schools. Following a 1998 comprehensive  
16 assessment of Compton schools, FCMAT reported that “[t]here is still much to be done regarding  
17 improved facilities. Approximately 50 percent of the rooms visited had malfunctioning or non-  
18 functioning heating and ventilation systems.” (FCMAT 4475.) FCMAT also reported that  
19 “[a]pproximately 40 percent [of the rooms] had poor lighting. These two deficiencies have a major  
20 impact on instruction and must be corrected immediately.” (FCMAT Compton Facilities  
21 Management Introduction, page v., 1999).

22 349. In the same 1999 assessment, FCMAT stated that:

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

27 (FCMAT 5303.) Regarding heating and ventilation, FCMAT further reported:  
28



1 Natural ventilation opportunities have been minimized at various  
2 buildings over time due to safety and security risk prevention measures.  
3 These conditions prevent the room occupants from having adequate  
4 heating and ventilation, which are especially problematic during the  
5 summer months. Some of the conditions found include entire  
6 classroom wings that had the windows removed and rooftop HVAC  
7 units or systems installed. However, when the units malfunction due to  
8 obsolescence or lack of maintenance, the only means of ventilation is a  
9 single exterior door. Other conditions observed include teaching and  
10 learning areas where HVAC systems were not properly balanced. Some  
11 of these problems resulted in room being heated while the outside  
12 temperature was above 80F degrees.

13 (FCMAT 5317.).

14 350. In 2000, Willowbrook Middle School still struggled with major facilities problems:

15 There was an issue with improving the heating to the school. Parents  
16 inquired about the possibility of a parent school fix-up day with the  
17 parent group actually painting the school. The peeling paint and  
18 deterioration of the school was a[n] eye sore.

19 \* \* \*

20 The facilities at Willowbrook have deteriorated over the years and as  
21 you walk onto the school campus, you can see paint peeling off of  
22 buildings and worn and dated classrooms. Window coverings are  
23 missing in many classes and there is no way to deflect the light or the  
24 heat as the sun beats down in many rooms.”

25 (2000 II/USP report — DOE 53025, 53027.)

#### 26 **iv. San Francisco Unified School District**

27 351. Similar problems have been reported in San Francisco’s schools over ten years ago  
28 and continuing today. In 1992, a San Francisco Chronicle reporter investigated conditions at a high  
school in San Francisco and reported the following:

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

35 Shann Nix, *Firsthand Look at a S.F. High School*, S.F. CHRON., Nov. 16, 1992, at A1.

36 352. Likewise, the district’s own 2001 school facility appraisal the San Francisco Unified  
37 School district hired Dr. Robert McCord to conduct in 2001 reported a number of safety hazards and  
38 other significant facilities problems in a number of the district’s schools. For example, at Cesar

Chavez Elementary School, Dr. Robert McCord, the appraiser hired by the district, found the following problems, among others:

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

(SF 3083-84.)

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

- Landscaping is poorly maintained.
- Significant (30+) window breakage was present during two visits.
- Lighting requires significant upgrading.
- Reports that hot water is only on when central heating is on — confirmed during two visits to facility.
- General lack of cleanliness of the facility suggests that significant attention needs to be devoted to the facility. Exterior areas (for example, the kindergarten playground building entrance) are filthy with evidence of tagging. Floors, other than terrazzo surfaces, appear to be poorly maintained without proper periodic and thorough stripping prior to rewaxing.
- Floor surfaces in classrooms are aging and require repair and/or replacement.
- Bathrooms are filthy and require expansion, rehabilitation, and thorough and continuing cleaning support.

1 (SF 03106-07.)

2 354. San Francisco Unified School District adopted Dr. McCord's findings regarding the  
3 dismal condition of San Francisco school facilities in a report the district filed with the Court, and  
4 with the State Board of Education and State Department of Education, in April 2001. SFUSD., *Local*  
5 *Defendants' Report to the Court Regarding Comprehensive Plan for Consent Decree*  
6 *Implementation, SF NAACP v. SFUSD*, (2001) at 1; available at  
7 <http://www.gseis.ucla.edu/courses/edlaw/sfUSD41101brief.pdf>. In that same report, SFUSD noted  
8 that the Consent Decree Monitor "found serious environmental concerns about Malcolm X  
9 Elementary, which is a school with a predominantly African American student enrollment" and that  
10 "the Monitor has found that facilities disparities such as 'poor wiring or outdated equipment' have  
11 left some schools 'literally drifting' in terms of their efforts to integrate computer technology into the  
12 educational program." *Id.* at 19. SFUSD flagged these concerns for the Court and for the State —  
13 "the District is concerned about these problems and agrees that they must be addressed" — and  
14 identified yet further concerns: "[the District's] own analysis shows even more fundamental facilities  
15 problems that relate to issues of student assignment and inequitable transportation burdens." *Id.*

16 355. In fact, facilities problems at some San Francisco schools are so severe that the  
17 Consent Decree Monitor issued a special supplemental report regarding three schools in  
18 February 2001, in which the Monitor wrote:

19 Also, the principal reports serious concerns about health at the school  
20 [Malcolm X Elementary], related to the possibility of toxic waste and  
21 other emissions from current and former industrial operations in the  
22 area. She reports that both she and the students are sick all the time,  
23 and that the faculty have had problems as well. A veteran Malcolm X  
24 teacher who spearheaded innovative computer-based activities at the  
25 school has come down with cancer, and this was mentioned in the same  
26 context. In addition, a fire department official who spent four straight  
27 days at the school reportedly became ill.

28 We also note that Gloria R. Davis Middle School, which is located very  
close to Malcolm X, had to be relocated for health reasons until school  
site problems were addressed.

SFUSD, *Supplemental Report of Consent Decree Monitor Regarding McAteer, Golden Gate, and*  
*Malcolm X, SF NAACP v. SFUSD* (2001) at [http://www.gseis.ucla.edu/courses/edlaw/supp-rept-2-](http://www.gseis.ucla.edu/courses/edlaw/supp-rept-2-01.htm)  
01.htm.

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

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

7 San Francisco Unified Sch. Dist., *Excellence for All: A Five-Year Comprehensive Plan to Achieve*  
8 *Educational Equity in the San Francisco Unified School District For School Years 2001-02 Through*  
9 *2005-06* (2002) at 64.

10           357. Recent newspaper accounts from San Francisco corroborate the existence of serious  
11 maintenance issues in schools throughout the district. For example, one reporter noted:

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

17           But vermin is not all the teachers and students must contend with at  
Taylor Elementary. As a chilly thunderstorm drenched the city, the  
18 school had no heat — again. Children in coats tried to study. Teachers  
in wool gloves wrote clumsily on the blackboard.

19           “[T]he lack of heat is as chronic a problem as rats,” said Paula Mack,  
20 the Library Technician.

21           “We call about the heat, but it takes three or four days before someone  
gets here to turn it on. Then it goes off again,” said Mack, who had  
22 encased herself in thermal underwear, a turtleneck, a plush vest and a  
wool coat. Still her hands felt icy.

23 Nanette Asimov, *S.F. School is Plagued with Rats*, S.F. CHRON., Jan. 27, 2001, at A17.

24           358. Another article found:

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

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

\* \* \*

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

\* \* \*

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

- A leaking roof.
- A sewer system that backs up in the rain.
- Homeless people camping on the roof and clogging drain spouts with broken beer bottles.
- A fire alarm system that is so old that it can’t be shut off without calling in a school district electrician to silence it.

“They’re fed up every time I have to have a fire drill,” Lau said.

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

Phillip Matier & Andrew Ross, *S.F. Students Left to Learn in the Cold: Mayor Steamed After Trip to Neglected School*, S.F. CHRON., Dec. 6, 2001, at A1.

#### **v. West Contra Costa Unified School District**

359. Immediate Intervention/Underperforming Schools Action Plans from the West Contra Costa Unified School District again reflect the persistence of severe maintenance issues. For example, the action plan the district filed in 2000 for Grant Elementary School states:

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

(DOE 48241.) Likewise, the executive summary to the action plan the district filed that same year for Helms Middle school identified “[b]uildings . . . sorely in need of painting and repair” as one of the ten “problems preventing all children at Helms . . . from achieving at high levels.” (DOE 48352.) The body of the report provided further detail about the serious facilities problems in the school:

- Decaying infrastructure: Buildings at Helms are desperately in need of repair and painting. There are leaking roofs leaving mold and mildew in some of the classrooms and hallways, a potentially

1 serious health hazard. While many of the classrooms themselves  
2 have been painted, the hallways, other classrooms and public areas  
3 are sorely in need of paint. Students and parents report that they  
4 would like to see grass, trees and flowers in place of at least some  
5 of the asphalt. As it stands, the school is not an inviting place for  
6 students, teachers or parents.

- 7 • Poorly maintained facilities: Students, teachers and parents  
8 complained that the school is not clean or maintained. Prior to one  
9 meeting in the library, one of the evaluators vacuumed the carpet  
10 herself to assure a clean space for parents.
- 11 • Overcrowded facilities: The student population at Helms continues  
12 to grow, stretching the capacity of the school to accommodate more  
13 students. There are not enough classroom for each teacher to meet  
14 individually with students in their own classrooms, requiring some  
15 teachers to move from room to room as they teach.

16 (DOE 48364.)

17 360. As desperate as the Helms action plan makes the school's facilities sound, the action  
18 plan appears to have understated the problems at the school. According to a February 2000 report  
19 from architects the school district hired, "[i]t is the opinion of Gale and CSS Architects that due to  
20 extensive deterioration of the glass block window system, there is potential for the entire sections of  
21 the glass block window system to fail and potentially fall into the hallways during an earthquake."  
22 (DT-WC 520.) Moreover, the report "confirm[ed] the extent deteriorated facility conditions result[]  
23 from the existing failed roofing, glass block window and HVAC systems." (DT-WC 520.) The  
24 report identified the following specific areas of facility deterioration:

- 25 • [R]oof membrane plies have embrittled and gravel surfacing has  
26 eroded at many locations.
- 27 • [O]ver the past several years extensive leakage has occurred  
28 through the glass block systems. Furthermore, glass block breakage  
has resulted in many unsatisfactory repairs.
- [O]ngoing chronic roof and window leakage has resulted in  
extensive damage to other building components. Acoustic ceiling  
tile, underlying gypsum sheathing and fiberglass insulation are  
stained and are reported to be a source of mold and mildew  
problems. The District has had reported several staff complaints  
stemming from interior air issues related to mold and mildew  
growth.
- Roof mounted heating equipment on each of the various school  
structures is in deteriorated condition and requires replacement at  
the earliest opportunity. A total of six gas fired heating units have  
ongoing chronic maintenance problems primarily associated with

1 advanced age. Rusted exterior components and corroded heat  
2 exchangers are frequent sources of operational failure. The existing  
3 units have obsolete energy management systems which results in  
wasteful operation and poor control of interior environments.

(DT-WC 520-21.)

4 361. Similarly, a May 2001 West Contra Costa Unified facilities report states that Helms  
5 “lack[s] . . . adequate restrooms due to age, general disrepair, and increased enrollment at the school,”  
6 and that the restrooms require replacement of stalls, sinks, floors, and all equipment. The report  
7 further states that “ceiling tiles throughout site are in various states of disrepair and need to be  
8 repaired/replaced”; that roof and skylights need “immediate” attention; and that “glass blocks  
9 throughout the school leak and must be repaired and replaced”; that the “gymnasium floor needs to  
10 be refinished”; that the “carpet throughout [the] site is in various states of disrepair and needs to be  
11 replaced”; and that interior and exterior walls need to be painted. (PLTF 1834-1835.) Moreover, as  
12 the Contra Costa Times reported in January 2002:

13 The sky in this San Pablo school is, quite literally, falling.

14 Ceiling tiles, burdened by water and age, have buckled and snapped in  
15 the two-story, green-tiled entryway that each morning greets 1,350  
16 babbling pre-teens at Helms Middle School.

17 One by one, the tiles have dropped, smacking the red tile floor below  
and leaving a gaping black hole overhead.

18 “They fall whenever they fall,” said principal Harriet MacLean, an  
19 outspoken woman who keeps a trash bin full of fallen tiles in a storage  
20 closet near her office. “One fell mid-day, and luckily it didn’t hit  
anybody.” There are hundreds of schools in California with a similar  
21 set of problems — leaking roofs, inadequate heating, peeling paint,  
moldy wall cavities and chipping floor tiles. Some are overrun by  
vermin; others smell of urine or lack even a sliver of sunlight.

22 Kara Shire, *Election 2002: State’s Schools Crumbling; The Endemic Disrepair and Lack of Money*  
23 *Will Leave the Next Education Chief Scrambling to Catch Up*, CONTRA COSTA TIMES, Jan. 14, 2002,  
24 at A01.

## 25 **vi. Other School Districts**

26 362. Earlimart Elementary School District: According to the II/USP action plan prepared  
27 in 2000 for Earlimart Elementary School:  
28

1 Classroom temperature was uncomfortable in 1/3 of the classrooms  
2 observed due to heat not working or [the] thermostat being set too high.  
3 Numerous heating and air conditioning breakdowns were reported by  
4 teachers. Parents said that students are sent home when air  
5 conditioning doesn't work. Parents said that students are sometimes  
6 left outside in the morning. No bells were working, few intercoms  
7 were functioning and [the] school needs paint and classroom furniture  
8 replacement. Lack of bells and working PA [Public Address system]  
9 may pose safety issues (fire, etc.). Without bells during yard duty,  
10 teachers use whistles to "freeze" students who are then slowly returned  
11 to their classrooms. Parents are concerned about the bathrooms at  
12 school . . . .

13 (DOE 36883.)

14 363. Newport-Mesa Unified School District:

15 April Rizman shakes her head each morning when she has to put her 6-  
16 year-old on a bus to school in Newport Heights because the classrooms  
17 just a block away are overcrowded.

18 And Jim Baldwin is appalled that there are 39 students in his daughter's  
19 first-grade class. . . .

20 For months, parents and teachers in Newport Beach have been  
21 protesting at school board meetings about overcrowded classrooms,  
22 supply shortages, cutbacks in programs for art, music and athletics as  
23 well as recent staff and teacher layoffs.

24 Jodi Wilgoren, *Schools Get Poor Grades in Residents' Report Card; Services: Newport Beach*  
25 *Respondents to Poll Give Education Lowest Score on List of Government Roles, Citing Crowded*  
26 *Classrooms, Cuts in Art, Music and Athletics*, L.A. TIMES, Feb. 14, 1993, at A28. Similarly,

27 Termites ravage Ensign Intermediate school in Newport Beach [in  
28 Orange County].

When it rains, the library is off-limits because the roof and windows  
leak.

At Costa Mesa High, the gymnasium floor is riddled with holes.

Jagged metal snags locker-room users. In the new state-funded  
computer lab, ceiling tiles fall on students' heads. . . .

Members of the district's Facilities Advisory Committee] toured every  
classroom at every school with district staff. They worried about what  
they found — sewer backups, rusty drinking fountains and faulty  
electrical, plumbing, heating and air conditioning systems.

Lyn Montagna, *Newport-Mesa Board to Vote on Bond Plan*, ORANGE COUNTY REGISTER, Feb. 29,  
2000, at B01.



1           364.   Berkeley Unified School District:

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

4                   According to Revin, classrooms had no textbooks. One classroom had  
5                   only 29 desks, even though there were 38 students. In the bathrooms,  
6                   faucets were cracked and stall doors were falling off hinges. On the  
7                   way home, parents were forced to maneuver their cars around a large  
8                   construction site that has been obstructing the front of the school for the  
9                   past nine months. "When I asked the teacher where other students sat,  
10                  she said that people stand around or sit on radiators," Revin told the  
11                  Berkeley School Board at a meeting last week. "I don't know how they  
12                  can be expected to concentrate on studying when they don't even have  
13                  places to sit." . . . .

14                  Bathrooms have cracked sinks and a few toilets without stalls. One  
15                  school plumber is driving a truck donated by PG&E in 1970.

16                  Mielikki Org, *Schools Ailing from Poor Maintenance: Measure BB Didn't Have the Promised*  
17                  *Effect, and Teachers and Students Are Still Suffering from Lousy Conditions*, CONTRA COSTA TIMES,  
18                  Nov. 2, 2001, at A01.

19           365.   Ripon Unified School District:

20                   Leaky roofs, foul-smelling portable classrooms, dripping faucets, dingy  
21                   bathrooms.

22                   Storage closets double as offices, brownish paint peels from the outside  
23                   walls, windows let in the winter cold.

24                   Welcome to Ripon High School.

25                   It's one of the top schools in the state for academics, but it lacks  
26                   modern science labs or well-equipped home economics  
27                   classrooms. \* \* \*. When it was built 50 years ago, there were about  
28                   350 students. Now the school has 750, and it's still growing.

29                   "When it rains, it leaks inside the classrooms," said Crystal Cemban, a  
30                   senior. "I think everything needs to be repaired."

31                  Molly Dugan, *Ripon Seeks Bond to Fix High School*, MODESTO BEE, Dec. 13, 2001.

32           366.   Lynwood Unified School District: A 1987 Los Angeles Times article stated:

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

1 Lee Harris, *Popular Figure at Lynwood High: Rumored Principal Firing Stirs Protest by Students*,  
2 L.A. TIMES, Feb. 19, 1987, at 9-3.

3 367. In addition the 2000 II/USP Action Plan for Will Rogers Elementary School identifies  
4 numerous school-wide and district-wide barriers to student achievement. The district barriers  
5 identified in the plan include the following:

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

22 (DOE 39770-71.)

23 368. Mt. Diablo Unified High School District:

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

29 Suzanne Pardington, *District Hangs Hopes on Bond: Mt. Diablo Schools Are Counting on \$250*  
30 *Million Measure to Shore Up Aging Buildings*, CONTRA COSTA TIMES, Mar. 2, 2002, at A03.

31 369. Salinas Union High School District:

32 El Sausal Middle School was built in 1949. The school currently [in  
33 2000]serves over 1300 students. Staff efforts to beautify the campus  
34 through the addition of desert gardens between classroom wings has  
35 improved the appearance of the campus, but the age and overall  
36 condition of the buildings creates impediments to creativity and  
37 innovation in the teaching/learning process.

38 Upgrades and deferred maintenance tasks are not planned in the near  
39 future. Deferred maintenance tasks are scheduled for as far as ten years

1 out. The district has made numerous attempts to pass local bond  
2 measures; but, so far, attempts have been unsuccessful.

3 (DOE 56519 — II/USP action plan for El Sausal Middle School.)

4 370. Las Virgenes Unified School District:

5 In 1997, the Ventura County Star reported that

6 [m]any of the [Las Virgenes Unified School] district's schools are  
7 operating with leaky roofs, backed-up toilets and faulty electrical and  
8 air-conditioning systems.

9 Kevin Smith, *Las Virgenes Board Backs \$93 Million School Bond*, VENTURA COUNTY STAR, July 1,  
10 1997.

11 In 2002, the Los Angeles Times noted that

12 teachers at Lindero Canyon Middle School in Agoura Hills say they . . .  
13 fear that toxic mold, removed from the school two years ago, still lurks  
14 behind classroom walls and above ceilings and may be the cause of  
15 various ailments, from migraines and burning eyes to respiratory  
16 problems.

17 David Pierson, *Danger Feared in Classroom Walls; Safety: Teachers at an Agoura Hills School  
18 Blame Health Problems on Toxic Mold that Officials Say Was Mostly Eradicated in 1999*, L.A.  
19 TIMES, Feb. 24, 2002, § 2 (California Metro), at 3.

### 20 **3. State Officials Have Acknowledged the Seriousness of 21 Facilities Problems in Some of California's Public Schools.**

22 371. Governor Davis has acknowledged the seriousness of the school facilities problems at  
23 some schools since before he was elected:

- 24 • During the 1998 election, he stated that, "it is appalling when you go on some of these  
25 campuses and see how dilapidated the schools are." *Transcript of the Debate*, On the  
26 Record/A Los Angeles Times Forum (May 14, 1998) at S1.
- 27 • In April 2000, he noted that [h]undreds of thousands of our children are trying to learn in  
28 overcrowded, out-of-date, unsafe schoolrooms — or in temporary trailers staked 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).
- In 2001, he again observed that, "California schools are in need of serious improvement  
and repair." Emily Bazar, *Davis Calls for Vote on School Bond Plan: He Says Billions*

1           *Are Needed for Building and Repairs —Work that Would Help the Economy,*

2           SACRAMENTO BEE, Nov. 30, 2001.

3           372. Superintendent of Public Instruction Delaine Eastin, who “regularly visits school  
4 sites,” and who “visited educators, students and parents in all 58 California counties” during her first  
5 term, Barbara Smith, *California Schools Chief Spends Day with Dixon Students*, THE REPORTER,  
6 Aug. 8, 2001, has also acknowledged the serious facilities problems in California public schools:

- 7           • In 1996, on a visit to a school in the LAUSD, “Eastin was shown classrooms where the  
8 floor tiles are all detached and a room with a gaping ceiling hole caused by a roof leak,  
9 which the school has stopped repairing because it reopens in every rainstorm. A school  
10 restroom emits a stench, despite scrubbing and steam-cleaning, because bacteria have  
11 seeped into the walls.” Amy Pyle, *Schools Chief Backs \$2.4 billion LAUSD Bond;*  
12 *Education: Delaine Eastin Pledges Support for Ballot Measure that Would Fund Repairs*  
13 *at the District’s Aging Facilities*, L.A. TIMES, Oct. 4, 1996, at B-4. In response, Eastin  
14 said, ““For too long, LAUSD students have sat in classrooms where roofs leak, the paint is  
15 peeling, and air-conditioning is all but nonexistent.”” *Id.*
- 16           • In 1998, Eastin wrote a letter to Assemblyman Runner: “I strongly suggest you visit  
17 schools in your Assembly district. You will see the lack of textbooks, library books and  
18 access to technology. . . . You will find facilities that impede our efforts to provide the  
19 finest instruction possible.” Dan Morain & Richard Colvin, *California & the West:*  
20 *Bickering Over School Spending Resumes; Legislature: Analyst Says Funding is Closer*  
21 *to National Average than Widely Thought. Numbers Draw Criticism*, L.A. TIMES,  
22 June 11, 1998, at A3.
- 23           • In 2000, she said, “I was in a school in Ontario last week. It is so crowded that one group  
24 of kids goes to school from 7 am until noon, another from noon to 5 p.m. I was in a  
25 Sacramento school where they’ve had to close off rooms because of water leaks and mold.  
26 I visited a high school in Fort Bragg that almost fell down because of dry rot.” Julian  
27 Guthrie, *Prop. 26 Boosts Odds of Passing School Bonds—Majority, Not Two Thirds*  
28 *Would be Needed*, S.F. EXAMINER, Feb. 22, 2000, at A1.

- In 2001, she stated that, “[w]e can’t have high-quality schools if we have crummy, run-down facilities housing a third of our students[,] as we have today.” Jennifer Kerr, *School Groups, Eastin Pitch Nearly \$30 Billion in School Bonds*, SACRAMENTO BEE, Aug. 29, 2001.

373. Superintendent Eastin’s chief policy adviser, Paula Mishima likewise acknowledged that “[t]here has been a very real crisis for all school districts as their buildings began to age and state funds continued to drop.” Sonia Giordani, *Campus Projects Languish; Schools Stretch Budgets*, L.A. DAILY NEWS, May 17, 1998. And David Zian, manager for the lease-purchase program with the Office of Public School Construction explained, ““With all the state bonds, the funds run out very shortly after they are passed because the demand is just so much greater than the money available.”” *Id.*

374. Lieutenant Governor Cruz M. Bustamante recently exclaimed, California is the fifth-largest economy in the world, yet our children are learning in trailers and cafeterias. This is unacceptable! How can we expect students to be prepared for the challenges of tomorrow if we don’t provide an appropriate environment in which they can learn today? Our children deserve safe, modern classrooms where they can reach their full potential. Press Release, *Lt. Governor Bustamante Praises Passage of School Bond Proposal AB 16* (Apr. 2, 2002) at <http://www.ltg.ca.gov/newsroom/pressreleases/2002/april/pr040402.asp>.

375. Reed Hastings, a member of the State Board of Education, was quoted as saying, ““It’s nuts how crowded many of our schools are.”” Lori Olszewski, *Some Prop. 39 Backers Have Deep Pockets*, S.F. CHRON., Oct. 23, 2000, at A3. He added, ““A lot of the schools I taught in while I was in Africa [as a Peace Corps volunteer] were in better shape than many in California today.”” *Id.*

376. Several State Legislators have also publicly recognized California’s serious school facilities problems:

- Senator Jack O’Connell said that the ““two biggest issues facing public education’ . . . ‘are the inadequacy of our school facilities and a shortage of qualified teachers.’” James P. Sweeney, *State Could Elect a New Schools Chief on March 5, But Will It Matter?*, COPLEY NEWS SERVICE, Feb. 14, 2002.

- Senator Jack Scott noted, “California schools are in critical need of repair, maintenance and new construction.” *School Bonds*, CITY NEWS SERVICE, Apr. 4, 2002.
- Assemblyman George Runner said that “our schools are experiencing an increasing crisis with school facilities.” George Runner, *Welfare for the Wealthy??*, Mar. 25, 1998, at <http://republican.assembly.ca.gov/members/36/Editorial345.html>.

#### **4. The State Has Known that Facilities Problems Have Been Far Worse at Schools Serving Low-Income Students and Students of Color.**

377. State Superintendent Delaine Eastin has acknowledged that low-income students and students of color are more likely to be harmed by inadequate facilities:

[T]he inequities of education in California are “coming to a head,” Eastin said.

Despite some progress on standardized tests, scores in many schools with high concentrations of poor, black, Latino and immigrant students continue to fall short of schools in more affluent neighborhoods. Children in those troubled schools are more likely to be taught by one of 42,000 teachers without full credentials in decrepit classrooms with little resources and support.

“There is a point where the rubber meets the road,” Eastin said. “Somebody has to step in on behalf of those children.”

. . . Eastin acknowledges the huge disparities in resources, facilities and academic achievement in the state, sometimes within the same district . . .

Suzanne Pardington, *State Education Chief’s Term Wanes; Delaine Eastin’s Tenure has been Contentious, but that May be Built into the Position*, CONTRA COSTA TIMES, Jan. 7, 2002.

378. In 1998, the California Postsecondary Education Commission noted that “disparities in facilities” “permeate our elementary and secondary school system.” These disparities “are consistently and pervasively related to the socioeconomic and racial-ethnic composition of the student bodies in schools as well as the geographical location of schools. That is, schools in our low socioeconomic communities as well as our neighborhoods with a predominance of Black and Latino families often have dilapidated facilities. . . .” *Toward a Greater Understanding of the State’s Educational Equity Policies, Programs, and Practices*, California Postsecondary Education Commission (1998) at 29.

1           379.   The same report quoted The California Achievement Council’s findings that:

2                   Into the education of poor and minority children, we put less of  
3                   everything we believe makes a difference. Less experienced and well-  
4                   trained teachers. Less instructional time. Less rich and well-balanced  
5                   curricula. Less well-equipped facilities. And less of what may be most  
6                   important of all: a belief that these youngsters can really learn.

7                   This is compounded by the fact that some communities have less, too.  
8                   Less knowledge about how the educational system works. Less ability  
9                   to help with homework. Less money to finance educational extras.  
10                  Less stability in the neighborhood. Fewer models of success. And  
11                  hopes and dreams that are too often crushed by harsh economic  
12                  conditions. (citation omitted)

13           *Id.* at 33.

14           380.   EdSource explained how districts’ need to rely on local bond measures requiring a 2/3  
15           passing rate for much of their school facilities funds can hurt low-income communities:

16                   [Some] communities are . . . more willing or able to tax themselves or  
17                   to do so at a higher rate. A large commercial tax base, a high  
18                   proportion of young families in a community, the school district’s  
19                   identification with a single city, and the relative affluence of the  
20                   community can all help with a bond measure’s passage.

21                   The political and economic differences among communities can lead to  
22                   serious inequities between school districts’ ability to meet their school  
23                   facility needs. When Campbell Union Elementary School District  
24                   passed a \$42 million bond to serve nearly 8,000 students, and two years  
25                   later neighboring and more affluent Saratoga Elementary School  
26                   District secured the same amount of bond revenue to serve 2,200, the  
27                   inequities were obvious.

28           EdSource (1998) *California’s School Facilities Predicament*, at 11.

29           381.   A 2001 report by Dr. Robert McCord that was submitted in the San Francisco school  
30           desegregation case (*NAACP v. San Francisco Unified School District*) concludes that within San  
31           Francisco Unified School District, the schools with high percentages of low-income students and  
32           students of color tend to be the ones most likely to be in unusually poor conditions. Professor  
33           McCord conducted a school facilities appraisal in the SFUSD in order to assess whether “vestiges of  
34           segregation and discrimination in the facilities aspect of SFUSD operations have been eliminated to  
35           the extent practicable.” (SF 3026.) Professor McCord concluded: “The findings of my school  
36           facility appraisal . . . point to a pattern of disparate facility conditions associated with the racial and  
37           ethnic identity of SFUSD schools. This pattern of disparate conditions is likely to convey the

1 message of racial inferiority that is implicit in a policy of segregation. . . . Based upon my appraisal  
2 and review of relevant materials, it is my opinion that vestiges of segregation related to facilities  
3 remain in SFUSD.” (SF 3036.)

4 382. Plaintiffs’ expert, Robert Corley, a facilities consultant who conducts on-site visits at  
5 many California schools, has also opined that low income students and students of color are more  
6 likely to attend schools with the worst facilities. Corley Report at 9-10. In support of this opinion, he  
7 relies on, among other things, a survey of school teachers in California conducted by the Harris  
8 Group. *Id.* The Harris survey reveals that teachers in 50% of the schools with the lowest percentages  
9 of low-income students and English Language Learners rate the condition of their facilities much  
10 more highly than teachers in the schools with the highest percentage of low-income students and  
11 English Language Learners. *Id.* at 10. In that survey, the Harris Group created a “risk index,” which  
12 was based on an evaluation of the percentage of students whose families were on CalWorks, the  
13 percentage who received free or reduced price school lunches, and the percentage of English  
14 Language Learners. *Id.* The data was broken down so that one could compare the results for schools  
15 in the higher risk groups (those schools with the higher concentration of low socioeconomic status  
16 and English Language Learners) with those in the lowest risk group (schools with the lowest  
17 concentration of low socioeconomic and English Language Learners). *Id.* Only 4.4% of the teachers  
18 in the low risk group rated their school facilities as poor, vs. 18.2% in the high-risk group. *Id.*

19 383. Mr. Corley further notes:

20 I have observed that schools with unusually poor conditions are most  
21 often found in communities identified by student populations that are  
22 less likely to be fluent in English, more likely to receive free or reduced  
23 price lunches, and have related socioeconomic factors. Within school  
24 districts, I have observed that campuses with physical problems are  
25 more likely to serve minority students, students who are less affluent or  
26 students who are more likely to be classified as limited English  
27 speakers. In Oakland, the worst school facilities are on the flatlands,  
28 not the hillsides. In Evergreen (San Jose) the schools needing upgrades  
are in the older neighborhoods, not the pricey new neighborhoods.  
This list could go on and on, but the point is valid all over the state.

Corley Report at 10.



1                                   **5. Class Representatives and Other Class Members Have**  
2                                   **Suffered Due to Lack of Access to Adequate, Safe, and**  
3                                   **Educationally Appropriate Facilities.**

4                                   **a. Class Representatives and Other Class Members**  
5                                   **Have Attended Schools With Severely Hot or**  
6                                   **Freezing Classroom Temperatures.**

7                                   **i. Class Representatives Have Attended Schools**  
8                                   **With Severely Hot or Freezing Classroom**  
9                                   **Temperatures.**

10           384. In class representative Carlos Ramirez’s school — Bryant Elementary School in San  
11 Francisco — the principal testified that “[t]he air-conditioning is a constant problem, almost daily  
12 problem.” (Alegre Depo. at 146:24-147:8; *see also* DT-SF 1072-1076 (school maintenance logs  
13 showing 64 complaints about the heating and air conditioning system between July 1997 and  
14 April 2001).) Carlos himself testified that “I fainted because I was too hot” in school. (Ramirez  
15 Depo. at 311:17-315:9.) Another class member in the same elementary school wrote an essay  
16 explaining that:

17                           [i]n the summer time, the air conditioner doesn’t work so everybody  
18                           sweats and wants to get a drink of water from the sink every so often.  
19                           That makes us stop doing our work. . . . In the room, when it’s hot I  
20                           get nose bleeds! My teacher gets hot and then sometimes she’s cranky  
21                           and I don’t like it when she teaches like that.

22           (DT-SF 81.) Still another fifth-grader wrote that “[o]ur class room is always hot and stuffy . . . .  
23 When it is to hot in the class room I get sleepy and I get a head ack.” (DT-SF 104; *see also* DT-  
24 SF 90, 98, 102, 106, 109, 110, 112, 113, 116.)

25           385. Maintenance logs from Luther Burbank Middle School in San Francisco reflect 82  
26 complaints about the heating and air conditioning system from November 1997 through  
27 October 2000, including the absence of heat altogether in particular rooms. (DT-SF 917-23.) One  
28 Luther Burbank work order reflects 20 days having passed before repairs were made to a classroom  
heater, notwithstanding the work order note that “need this fixed asap. very cold classroom.” (DT-  
SF 128.) Class representative Silas Moultrie testified that the heaters did not work in any of his  
classrooms and therefore his classroom temperatures were typically cold in the fall and winter and  
that “[w]hen you’re very cold, you don’t want to move, really” but that when he complained to

1 teachers about the temperature, “[t]here’s nothing he can really say. The heaters don’t work. . . .  
2 Same with all of them. It’s really nothing they can do. The heat don’t work.” (Moultrie Depo.  
3 at 256:7-23, 260:6-19, 260:22-24; *see also* Saunders Depo. at 70:12-13 (testifying that her sixth grade  
4 science classroom “was always, always, always hot. Always.”).) Teacher Cynthia Artiga-Faupusa  
5 testified that her classroom became so cold that “you could see your breath” and that from  
6 December through March “[i]t felt like almost every morning it was cold, particularly if it was cold  
7 out. I’d get in in the morning, and I would leave my coat on, my gloves on and my hat on in the  
8 classroom because it was still freezing cold in the classroom.” (Artiga-Faupusa Depo. at 152:16-23,  
9 154:9-24.)

10 386. Maintenance logs from class representative Lizette Ruiz’s school — Huntington Park  
11 High School in Los Angeles — reflect 116 complaints about air conditioning and heating problems  
12 during the 1998-1999 school year alone and another 92 complaints about the same problems during  
13 the 2000-2001 school year. (DT-LA 6326-28, 6368-70.) Lizette testified that it seems like the air  
14 conditioner is “always broken down” and that when it is broken down “sometimes it is kind of like  
15 unbearable and it just makes people sleepy. It makes me sleepy, so it is kind of distracting and it kind  
16 of gets frustrating sometimes.” (L. Ruiz Depo. at 49:9-10, 632:20-23.)

17 387. Class representative Alondra Jones testified that in her economics class at Balboa High  
18 School in San Francisco, “it’s been cold enough that you shiver” — indeed, “some days it’s been  
19 colder inside the classroom than it is outside” — but that “when I tried to turn it [the heater] on,  
20 nothing happened because it’s broken.” (Jones Depo. at 222:17-21, 225:13-15.) Another Balboa  
21 student testified that in his American Democracy class “I would say it is generally hot every day that  
22 I have his class, so four times a week,” (Lewis Depo. at 199:25-200:1), but that, by contrast, his  
23 English/European Literature class is routinely cold because the heater in that class had not worked  
24 during the entire 2001-2002 school year. (*Id.* at 201:14-19.) This student testified that on the days  
25 when he had English/European Literature in the morning:<sup>15</sup>

26  
27  
28 <sup>15</sup> Balboa High School operates on a block schedule, so class schedules differ each day of the  
week. (*See* A. Lewis Depo. at 202:8-11.)

1 it is always cold, and we would tell Mr. Bond, like we just came from  
2 Mr. Deguia's class and it was hot and now we're in here and it is really  
3 cold and he would say, "Try to turn on the heater." And students  
4 would make an effort to turn on the heater, but after waiting  
approximately ten minutes or so, the heater would still not come on and  
Mr. Bond would say, "Make sure you have a jacket or something and  
keep the windows closed."

5 (*Id.* at 202:21-203:7.) Balboa teacher Shane Safir testified that it was "[o]ften, often a problem" that  
6 her classroom was uncomfortably hot. (Safir Depo. at 167:13-17.) She explained:

7 There was a crank knob on the heater, so I would turn it off, but  
8 because it was broken, it would turn itself back on, so it would just emit  
9 extremely hot air, like I said, despite the temperature outside and I  
10 didn't seem to be able to resolve the problem on my own. I didn't  
11 know how to fix it, so it was often hot, which was fine if it was a cool  
12 day, but if it was warm or hot outside, it was troubling.

13 (*Id.* at 167:19-168:1; *see also* Brady Depo. at 17:8-12 ("The classroom was extremely hot and the  
14 students that were asthmatic might have difficulty breathing. I shouldn't say 'might,' definitely had  
15 difficulty breathing in my classroom several different years.").)

16 388. Class representative Carlos Santos's principal Mary Seiersen testified that the  
17 permanent classrooms at Edison-McNair Academy do not have air conditioning and that "when we  
18 have the hot days, many times the teachers will take a class out under a tree or something like that.  
19 Sure, it gets warm." (Deposition of Mary Seiersen ("Seiersen Depo.") at 225:6-7, 225:17-19.)  
20 Ms. Seiersen explained: "I think everybody needs air conditioning." (*Id.* at 225:10.) Likewise, class  
21 representative Krystal Ruiz's principal Carla Walden testified that at Cesar Chavez Academy "it's hot  
22 there, in those rooms [rooms 23, 24, and 25]," that the rooms lacked air-conditioning, and that "I  
23 can't think of anything that I can do" to alleviate the temperature problems in those classrooms.  
24 (Walden Depo. at 418:5-10, 419:21-420:1, 420:9; *see also* K. Ruiz Depo. at 161:23-162:5 (testifying  
25 that "it was like really, really annoying because they — the AC was broken" for "about a month, two  
26 months").)

27 389. Trouble call reports for class representative Cindy Diego's year-round high school in  
28 Los Angeles note that in some instances air conditioning repairs took as long as one month, during  
summer months, to complete, and that there were 19 requests to repair the temperature in the C  
building alone between May 1999 and June 2000. (DT-LA 3928-3935; *see also* DT-LA 5321-5336

1 (showing that the C building did not have functioning air conditioning on 9/1, 9/2, 9/3, and 9/8 of  
2 1998; 5/21, 6/15, 7/6, 8/17 and 9/29 of 1999; 5/22 and 5/31 of 2000; and that its heat was not  
3 working on 1/4, 3/8, and 12/02 of 1999; 1/28, 2/8, 3/28, 10/12 and 12/11 of 2000; and 4/9/01).)  
4 When asked about conditions that interfered with her ability to learn at Fremont High School, Cindy  
5 testified: “I guess when we had [a] problem with the air conditioning or the heating, especially when  
6 it was real hot and we will go inside the class and it will be as hot as it was outside because of the air  
7 conditioning [not working], or when it was cold and raining and we didn’t have any heat.”  
8 (Deposition of Cindy Diego (“Diego Depo.”) at 205:12-20; *see also* (assistant principal Marcia Hines  
9 testified about “a portable that came in without air [conditioning], and it came in in the summer, and  
10 it was absolutely dreadful . . .”).) (Hines Depo. at 147:16-18.)

11 390. In February 2000, a contractor reported to the West Contra Costa Unified School  
12 District Superintendent that “[r]oof mounted heating equipment on each of the various school  
13 structures [including class representative Moises Canel’s school, Helms Middle School] is in  
14 deteriorated condition and requires replacement at the earliest opportunity. . . . The existing units  
15 have obsolete energy management systems which results in wasteful operation and poor control of  
16 interior environments.” (DT-WC 520-521.) Helms principal Steven Muzinich testified that  
17 “[s]ometimes they [the boilers] don’t start up in the morning so you don’t have heat” and that there  
18 were occasions when the lack of heat would persist for the entire school day but that the principal  
19 was not aware of any plan in place to try to improve the boiler system. (Muzinich Depo. at 21:24-  
20 22:5, 22:17-19.) Class representative Moises Canel testified that “[i]t gets really hot” at school and  
21 that “I experienced it myself” that “sometimes it may get too hot; kids can’t concentrate.” (M. Canel  
22 Depo. at 475:2, 478:3-14.)

23 **ii. Other Class Members Have Attended Schools**  
24 **With Severely Hot or Freezing Classroom**  
25 **Temperatures.**

26 391. Other class members also suffer persistently uncomfortable classroom temperatures.  
27 *E.g.*, J. Garcia Depo. at 262:4-24, 266:4-19, 267:19-268:9, 269:4-12, 270:3-17, 273:3-19; Montes  
28 Depo. at 142:3-143:7; Nobori Depo. at 79:22-85:18, 91:16-92:13, 121:24-123:6; Salyer Depo.

1 at 328:7-12, 330:1-12, 331:17-21, 334:6-13. One teacher testified that a classroom she taught in “was  
2 unbearably hot on a daily basis” and that

3 [c]hildren in portables on the Hawthorne yard were subjected to  
4 extreme heat in the summer. Because Hawthorne was a year-round  
5 school, we were in session during times when schools normally are  
6 closed and heat isn’t an issue, particularly July and August and early  
7 September. The portables on the Hawthorne yard were of a vintage  
8 that they were not — they were metal boxes, most of them. They did  
9 not have any kind of cooling system. They had very limited windows  
10 that could be opened to provide ventilation and the recorded  
11 temperatures in those rooms at times reached over 100 degrees.  
12 Additionally, the classrooms in the Hawthorne and Whitton buildings  
13 did not have any type of cooling system.

14 (Salzer Depo. at 318:10-23, 322:1-3; *see also* DT-OA 6422-28 (temperatures in Hawthorne portables  
15 reach 90 degrees on summer days).)

16 392. At Hosler Middle School in Lynwood, six classrooms went without heat or air  
17 conditioning for an entire year. (DT-LY 1225-26.) In another school, Santa Paula High School in  
18 Santa Paula, an August 2000 work order reported: “Air conditioner heater does not work. Our unit  
19 has been inoperable since mid 1999-00 school year.” (DT-SP 4580.)

20 393. II/USP plans from class members’ schools also identify classroom temperatures as  
21 campus problems. (*E.g.*, DOE 41459, 53025.) An II/USP plan from a school class members attend  
22 reports that “[c]lassroom temperatures were uncomfortable in 1/3 of the classrooms observed due to  
23 heat not working or thermostat being set too high. Numerous heating and air conditioning  
24 breakdowns were reported by teachers. Parents said that students are sent home when air  
25 conditioning doesn’t work.” (DOE 36883 — action plan for Earlimart Elementary School in  
26 Earlimart Elementary School District.) Another II/USP plan reported that “[t]he room was also cold.  
27 The teacher wore a heavy coat and gloves and told the students if they were cold not to forget their  
28 coats and gloves.” (DOE 46991 — action plan for Stonehurst Elementary School in Oakland.) The  
II/USP action plan for Willowbrook Middle School in Compton stated that “[w]indow coverings are  
missing in many classes and there is no way to deflect the light or the heat as the sun beats down in  
many rooms.” (DOE 53027.) According to the II/USP action plan for Miramonte Elementary School  
in Los Angeles, school staff indicated that “poor heating and air conditioning systems have a negative  
impact on teaching and learning.” (DOE 37376; *see also* DOE 59814 — action plan for Bates

1 Elementary School in River Delta Joint Unified School District (stating that “[l]ack of air  
2 conditioning in all classrooms contributes to a negative learning environment in some classrooms,  
3 particularly in the late spring and early fall”).) Another II/USP action plan reported that “[t]he  
4 condition of the school plant, with its aging facilities . . . and heating outages, is a noted concern.”  
5 (DOE 44528 — action plan for Horace Cureton Elementary in Alum Rock Union Elementary School  
6 District.) Another school’s II/USP action plan reported that “[w]e have new boilers but still no heat,  
7 because the distribution system needs upgrading.” (DOE 69580 — action plan for Thurgood  
8 Marshall Academic High School in San Francisco.)

9 **b. Class Representatives and Other Class Members**  
10 **Have Attended Schools With Noise Levels So High**  
11 **That Student Learning Was Impeded.**

12 **i. Class Representatives Have Attended Schools**  
13 **With Noise Levels So High That Student**  
14 **Learning Was Impeded.**

15 394. In class representative Carlos Ramirez’s school, Bryant Elementary School in San  
16 Francisco, which lacks adequate walls between classrooms, the principal testified that “I just  
17 remember feeling — being disrupted myself in the classroom” because of the din from students  
18 learning in other rooms. (Alegre Depo. at 115:6-118:20.) Carlos himself testified that “[t]he walls  
19 are — you can hear — you can hear other classrooms jump, scream, laugh, play games, run around,  
20 play music . . . .” Ramirez Depo. at 54:4-8; *see also* Malabed Depo. at 325:14-15 (“as you know, you  
21 could hear through the walls”). Likewise, Carlos’s fifth-grade peers wrote, for example, that “[w]e  
22 can hear throw the walls sometimes we can’t hear the teacher talk because sometimes the other class  
23 rooms a to loud. That makes it harder for me to learn” and that “[s]ometimes the rooms next to us  
24 make a lot of noise that I can’t concentrate. The reason is because we don’t have real walls (which  
25 we should have) we just have thin dividers to divide up our classrooms like small office squares.”  
26 (DT-SF 111, 81; *see also* DT-SF 94, 107, 114, 116.)

27 395. At Watsonville High School, where construction took place during school hours, class  
28 representative Manuel Ortiz testified that “there was a lot of hammering going around, a lot of heavy  
equipment being there. For anybody it would be hard to concentrate with all that noise outside” and  
wondered “why couldn’t they do it [construction] after school or wait till there’s no school? Why did

1 they have to do it during school? And it was getting really heavy during finals, like before finals.  
2 Why do they have to do it then? Why not after school or weekends?” (Deposition of Manuel Ortiz  
3 (“Ortiz Depo.”) at 317:19-22, 318:21-319:1; *see also* DT-PV 117-120 (school records confirming  
4 that construction took place on weekdays from November 1999 through October or  
5 November 2000).) Manuel’s assistant principal Thomas Hiltz noted in a December email that he had  
6 spoken with a teacher about “the amount of noise and various interruptions that he and his students  
7 had to live through as the new two-story was being constructed. He has some very legitimate  
8 concerns as do other teachers near this area.” (DT-PV 1538.) Assistant principal Lawrence Lane  
9 testified that he saw jackhammers, trucks, a trencher, and tractors on campus during the hours of 7:00  
10 AM until 3:00 or 4:00 PM on school days and that after he received teacher complaints about the  
11 disruptive construction noise he negotiated with the construction teams to try to stop the noise but he  
12 ultimately agreed to allow the construction to continue:

13 I specifically went to the foreman of the job and asked — asked him if  
14 he could do that demolition at some other time because it was the last  
15 week of school. And that was either on a Monday or a Tuesday, and I  
16 told him that it would definitely have to cease Wednesday, Thursday  
17 and Friday of final exams if he couldn’t stop it on Monday or Tuesday.  
18 And he said that he would attempt to only make that big noise during  
19 passing periods and lunch and what have you. But did indicate that this  
particular — the demolition of the bathrooms had to be done literally  
ASAP. So I said, well, okay, that’s fine, as long as it doesn’t happen  
Wednesday, Thursday or Friday, until after the kids leave at 12:15. . . .  
He tried to only do it [construction generating noise] when kids were  
not in the classroom. But it did spill over sometimes.

(Lane Depo. II at 69:17-70:15, 107:4-108:19.)

20 396. Class representative Cindy Diego testified that noise from construction of new  
21 bungalows during school hours at Fremont High School in Los Angeles interfered with her ability to  
22 read during class “[e]very day, because every day will be the same noise.” (Diego Depo. at 434:15-  
23 23; *see also id.* at 595:14-17.) Assistant principal Marcia Hines confirmed that “they do mow, there  
24 is construction, there’s noise when the kids are trying to learn because the school never really does  
25 shut down.” (Hines Depo. at 128:19-21.)  
26  
27  
28

**ii. Other Class Members Have Attended Schools  
With Noise Levels So High That Student  
Learning Was Impeded.**

397. Noise impedes other class members' learning opportunities in schools with such learning impediments as inadequate walls between classrooms, inopportune siting of portable classrooms on playgrounds, other noisy areas or ongoing construction during school hours, and the location of classes in public spaces such as libraries or auditoriums or in spaces shared with other classrooms. (*E.g.*, J. Garcia Depo. at 184:19-185:12, 243:23-244:10, 250:23-254:1, 256:16-257:1; Nobori Depo. at 210:14-23; Perkins-Ali Depo. at 273:11-274:5, 281:16-21; Salyer Depo. at 393:4-394:5. The II/USP action plan for Stonehurst Elementary School in Oakland reported that "[i]n several classrooms the observer overheard teachers and students from adjoining classes. At times students were distracted by the noise from other classes" because "[o]ne section of classrooms at Stonehurst Elementary School was built as open space classrooms" (DOE 46991); "[t]he 'Open Classro[o]m Concept' is a major deterrent to a quiet and orderly learning environment" (DOE 46994). The action plan continued: "[o]ne 5th grade class off the auditorium had folding accordion doors that were not soundproof. A teacher was teaching violin classes during the observation of the fifth grade class. The violin playing could clearly be heard and would cause the 5th grade teacher to raise her voice above the music." (DOE 46991.) The action plan for another school class members attend reported that "[t]he school's architecture is not suited to elementary students and acts as a barrier to a nurturing environment. High ceilings and a lack of walls and doors create a noisy atmosphere that can be disruptive to learning. Thus far district interventions have been inadequate." (DOE 31077 — action plan for Marcus Foster Elementary School in Oakland.)

398. Similarly, the II/USP action plan for Pacifica Elementary School in Oceanside Unified School District reported: "[i]nterior walls are not sound-proof. Many of the 20 classrooms are surrounded by three or four other classrooms; the sound of instructional programs continually filters through these walls, unintentionally but constantly distracting to students and staff. . . . Student bathrooms for grades 1-6 are accessible only through the outside of the main building. These existing conditions detract from instructional time and focus." (DOE 68582.)



1                                    **c. Class Representatives and Other Class Members**  
2                                    **Have Attended Schools With Insufficient Numbers of**  
3                                    **Clean, Stocked, and Functioning Toilets and**  
4                                    **Bathrooms.**

5                                    **i. Class Representatives Have Attended Schools**  
6                                    **With Insufficient Numbers of Clean, Stocked,**  
7                                    **and Functioning Toilets and Bathrooms.**

8                    399.    Inspection logs of bathrooms at class representatives Delwin and D'Andre Lampkin's  
9 school, Crenshaw High School in Los Angeles, identify serious bathroom problems:

10                                    Two stall doors are missing.... There is dried avian (bird) feces found  
11                                    on the window sills.... There is a noticeable odor of urine present....  
12                                    The floor is soiled and there is visible urine on the floor.... 1/2 of toilet  
13                                    paper dispensers are empty.... The paper towel dispensers are empty....  
14                                    There is a build-up of urine and grime on the outside of the toilets....  
15                                    There is a build-up of debris around the floor drain.... The soap  
16                                    dispenser is empty.... The toilet seats are badly soiled.... There is  
17                                    obvious debris found on the floor.... There are spider webs found on  
18                                    the corners and ceiling (Spiders visible).

19 (DT-LA 5459-64.) Similarly, Crenshaw maintenance records show that during the 1999-2000 school  
20 year, repair for two stopped-up toilets in the girls' restrooms took 28 and 32 days, respectively, (DT-  
21 LA 3042, 3051); restocking bathroom dispensers for paper towels, soap, and toilet tissue took three  
22 weeks, (DT-LA 3046); replacement of a stall door in the boys' restroom took 20 days, (DT-LA  
23 3044); and repair of two stopped-up urinals in the boys' restroom took one week. (DT-LA 3034; *see*  
24 *also* D'Andre Lampkin Depo. at 339:8-12 (urinal flooded for a long time without being fixed); *id.*  
25 at 342:16-345:17 (lobby restroom soap dispenser lacks soap and paper towels; the restroom has  
26 graffiti all over and the floor is frequently wet).) In addition, numerous bathrooms at Crenshaw are  
27 often locked. (Kiel Depo. at 196:14-197:13; Delwin Lampkin Depo. at 702:12-704:14 (estimating  
28 that 2 or 3 of the 18 bathrooms at Crenshaw are actually open and accessible to students on a regular  
basis).)

399.    Class representative Moises Canel testified that at Helms Middle School in San Pablo,  
"the bathrooms are dirty. They don't have toilet paper. They don't have soap or the towels to wipe  
your hands. There's graffiti on the walls in the hallways, the gym, and the bathrooms. (M. Canel  
Depo. at 267:14-17.) The Helms principal testified that he received complaints about the bathrooms  
being dirty and lacking soap and paper towels. (Muzinich Depo. at 29:18-20; *see also* M. Canel

1 Depo. at 272:1-6 (“There’s no, um — like no toilet paper [in the boys’ bathroom of the second floor  
2 of the main building]. There’s no soap for you to wash your hands. There’s no hot water. There’s  
3 no towels to wipe your hands. The floors are always wet. The toilets are always — not always but  
4 mostly — flooded. There’s graffiti on the walls.”); *id.* at 293:11-12 (hand dryer in the boys’  
5 bathroom of the second floor of the main building does not work).) In addition, a 2001 West Contra  
6 Costa Unified School District Facilities study identified as one of the 23 “major site limitations” at  
7 Helms the “[l]ack of adequate restrooms due to age of school, general disrepair, and increased  
8 enrollment” and stated that “[a]ll restrooms need to be renovated by replacing stools, stalls, sinks,  
9 floors, and all equipment.” (PLTF 1834.) Of the ten bathrooms at Helms, two of them are locked  
10 and have been for years; others are closed to student use on occasion. (Muzinich Depo. at 26:18-28:9  
11 (of ten total bathrooms at Helms, two have been locked for years, others are sometimes locked).)

12 401. The bathrooms at class representative Carlos Ramirez’s school, Bryant Elementary  
13 School in San Francisco, are often unclean and smell horrible. Teacher Lili Malabed testified about  
14 these conditions and their effect on students:

15 The bathrooms smelled of urine and feces, and were — I can’t think of  
16 a good word for this right now. They were not attractive places for a  
17 child to go when they needed to do business because they were  
18 repellent in that way. There were children that I became aware of over  
19 my years teaching there who began to stop using the bathroom. In my  
20 last year at Bryant, one of my students, I found out through the school  
21 nurse and his grandmother that he had been holding his bowel  
22 movements for years. At the age of nine, he had hemorrhoids. He and  
23 others told me they did not like to use the bathrooms because they  
24 smelled bad, that in the boys’ bathroom on the second floor of the  
25 school, there was one stall that was missing a door and that there were  
26 children who used the bathrooms who would either peek under the  
27 stalls and harass them or who would smear feces on the wall or floor or  
28 who would urinate on the floor and it made it really uncomfortable for  
29 them to use the bathroom. The boys used the bathrooms to urinate.  
30 Many of the boys said they would not — they would not use the  
31 bathroom for a bowel movement because they felt it was too exposed,  
32 not private enough and not clean enough to go in there.

33 (Malabed Depo. at 282:11-283:8; *see also* DT-SF 104 (Bryant student statement that “the bathrooms  
34 stink and not clean at all. . . . Most of the doors in the bathroom are broken and I don’t feel  
35 confertable with that. Not at all.”); (DT-SF 108 (student statement that “[t]he bathroom stinks, have  
36 writting on the wall, and it’s to small.”).) Likewise, class representative Carlos Ramirez testified that

1 the upstairs bathroom at Bryant “has writing on the walls, the ceiling tile — the ceiling wallpaper is  
2 ripped, and the bathrooms look nasty, and where you put the soap — when you get the soap, people  
3 spit in the thing, because the top of it’s gone, so then they just spit in it.” (Ramirez Depo. at 96:7-11;  
4 *see also id.* at 100:8-13 (paper towel dispenser hanging off the wall); *id.* at 166:16-167:9 & 202:1-9  
5 (bathroom conditions Carlos described existed for a number of years). In addition, there is no  
6 working ventilation system for the bathrooms, which is one of the reasons the bathroom doors are left  
7 open. (Malabed Depo. at 307:16-23 (“because the heating and air-conditioning were messed up,  
8 there was no air exchange, so the only way to get air exchange in those [bath]rooms was to keep  
9 those doors open”).)

10  
11 402. Los Angeles School District records show that class representative Cindy Diego’s  
12 school, Fremont High School, has fewer toilets, urinals, and sinks available for student use than the  
13 law requires. (DT-LA 01852.) For example, while the law requires 33 toilets available for the  
14 estimated male enrollment of 1576 students, there are only 27 available. (*Id.*) There should be 50  
15 toilets available for the estimated female enrollment of 1471, but there are only 41 available. (*Id.*) At  
16 some periods during the day, far fewer toilets are actually available for student use. Marcia Hines,  
17 assistant principal at Fremont High School, testified that during lunch and nutrition, there are only  
18 two open bathrooms for girls to use, containing a total of between ten and fourteen toilets. (Hines  
19 Depo. at 143:11-25.) In other words, there is, at most, only one toilet for every 105 girls to use  
20 during lunch and nutrition. Class representative Cindy Diego testified that as a result of there being  
21 only two bathrooms open during these periods, there are lines of girls waiting to use the bathrooms.  
22 (Diego Depo. at 584:5-585:12.) Cindy Diego also testified that bathrooms are unclean and lack basic  
23 supplies. (Diego Depo. at 589:10-590:3 (testifying that “85 to 90 percent of the time there’s no toilet  
24 paper”)); *see also* Boyarsky, *Students’ Gripes About Schools Bring Results*, LA TIMES, Feb. 9, 1998  
25 (“During my tours of Jefferson and Fremont high schools in South L.A., I found that bathrooms and  
26 drinking fountains were filthy.”)) Moreover, Fremont trouble call reports show that replacing  
27 dispensers in bathrooms took as many as five months. (DT-LA 5238-39; *see also* DT-LA 5167  
28

1 (“replac[ing] door in boys r/r in the wood shop” took three and a half months to repair); DT-LA 5238  
2 (repairing the sanitary napkin dispenser in a girls’ restroom took over two months).)

3 403. Class representative Alondra Jones testified that at Balboa High School in San  
4 Francisco, “there’s no soap in the bathrooms and it’s nasty, quite unsanitary. I was taught to wash  
5 my hands after I use the bathroom, so I think I just assume naturally that after I use the bathroom at  
6 school, I would be able to wash my hands with soap. I was wrong. And then so like all we can do is  
7 rinse our hands. And then there’s not even like paper towels to use to wipe our hands with. So we  
8 have to do this or do this to dry them or wipe them on the clothes (indicating) like this to dry your  
9 hands.” (Jones Depo. at 441:23-442:8; *see also id.* at 443:1-9 (two of three faucets broken in one  
10 bathroom), *id.* at 443:12-17 (one bathroom has had the same graffiti on the wall since 1993), *id.*  
11 at 443:18-21 (bathrooms smell “horrible”), *id.* at 446:10-447:6 (ice cream bar and soiled sanitary  
12 napkin remained on the floor of one bathroom for a full year without being cleaned up).) Teacher  
13 Emmanuel Medina testified that male and female students regularly complain to him about there not  
14 being toilet paper in the bathrooms. (Medina Depo. at 264:8-18; *see also id.* at 280:1-282:23  
15 (insufficient student access to bathrooms because bathrooms are locked, there are not enough security  
16 guards to escort students, and there are insufficient numbers of bathrooms for student use during  
17 lunch period), *id.* at 283:13-21 (students tell Mr. Medina that they do not use the bathrooms at school  
18 because they are “disgusting.”).) Likewise, teacher Shane Safir testified that “I was able to avoid the  
19 student bathrooms as much as possible, but in the moments I was in them, they were in pretty bad  
20 condition, definitely graffiti. I remember seeing toilets without toilet seats, not consistently having  
21 paper towels and soap, and certainly not having like sanitary napkins and things for girls.” (Safir  
22 Depo. at 266:19-25.)

23 404. At class representative Silas Moultrie’s school, Luther Burbank Middle School in San  
24 Francisco, broken toilets often remain unrepaired for days and even weeks. *See* DT-SF 120 (2 weeks  
25 to fix flooding toilet), DT-SF 122 (one week to repair girls’ toilet), DT-SF 123 (6 days to repair girl’s  
26 toilet), DT-SF 124 (8 days to repair flooding urinal), DT-SF 125 (3 weeks to repair girl’s overflowing  
27 toilet — notes “5th time this year” that toilet was stopped up), DT-SF 128 (notes repairs to bathrooms  
28 were completed one month after request — “we need to open those bathrooms”). Luther Burbank

1 bathrooms have also been locked so that students cannot use them for long periods of time. For  
2 example, Silas testified that the first-floor boys' bathroom was locked for two years. (Moultrie Depo.  
3 at 269:6-22; *see also* Saunders Depo. at 242:20-243:6 (first floor girls' restroom was locked the  
4 whole year).) But when Luther Burbank bathrooms are available for student use, they are often dirty  
5 and poorly stocked, lacking soap, paper towels, and toilet paper. As class representative Silas  
6 Moultrie testified:

7           **Q** What don't you like about the second-floor bathrooms?

8           **A** Same as the first floor. They're all the same. They're all dirty. No  
9 soap, no seat covers, no paper towels.

10 (Deposition of Silas Moultrie ("Moultrie Depo.") at 281:10-14; *see also id.* at 266:5-10, 267:22-  
11 268:18, 271:4-17, 273:3-16, 274:8-15, 275:2-15, 295:15-22; Michaelson Depo. at 97:13-16 (principal  
12 testimony that he does "[n]ot always" find paper towels in student bathrooms at Luther Burbank);  
13 Saunders Depo. at 115:2-6 ("The girls' bathroom had no tissue. The mirror was broke. The stalls  
14 was dirty, and the toilet looked like they had something on them. That's why nobody never sat down.  
15 And they didn't have seat covers, so nobody used the bathroom in there.").)

16           405. Class representative Manuel Ortiz testified that at Watsonville High School, in  
17 Watsonville, California, "[a] lot of times when I've been wanting to go to the restroom during fifth  
18 and sixth [period], they're not even open. I have to go to like three or four different restrooms to try  
19 to find one open." (Ortiz Depo. at 76:7-11.) The bathrooms are tagged with graffiti that sometimes  
20 takes weeks to be cleaned or covered and lack soap and paper towels. (Ortiz Depo. at 76:12-13,  
21 78:12-14 ; *see also id.* at 77:5-6 ("Because if they open them [the bathrooms], . . . they're still not  
22 going to have any soap and supplies."), *id.* at 429:20-22, 436:17-24; *see also* DT-PV 1964, 1977  
23 (1993-94 WASC Accreditation Report, "There needs to be some plan developed for keeping the  
24 lavatories cleaner."))

25           406. Class representative Lizette Ruiz of Huntington Park High School testified that some  
26 of the bathrooms are closed for weeks at a time, making it hard for students to find a bathroom to use:  
27 "When [the bathrooms are] locked, they're locked for a period of two to three weeks. And at some  
28 point there is also only like one or two bathrooms open in the whole campus." (L. Ruiz Depo.

1 at 34:4-7; *see also id.* at 51:25-52:3 (“And I think it was basically just about how there aren’t enough  
2 stalls and how since there’s usually two or three bathrooms open, there’s really big lines during  
3 nutrition.”); *id.* at 318:19-319:22.) School records also show that the Huntington Park High School  
4 bathrooms are poorly stocked and dirty. *E.g.*, DT-LA 6373-78 (February 2001 memo to Huntington  
5 Park High School plant manager from LAUSD citing “grime and scum” in the bathrooms, missing  
6 toilet paper and soap dispensers, empty soap dispensers, and missing lights); *see also* L. Ruiz Depo.  
7 at 392:1-8 (one bathroom has a full trash can, sometimes lacks toilet paper and often lacks soap, and  
8 paper towels). The Huntington Park principal also testified that he had received complaints from  
9 parents about the condition of the school bathrooms, including that “[t]hey are not clean” and that  
10 they do not have enough toilet paper. (Deposition of Emilio Garcia (“E. Garcia Depo.”) at 91:4-15.)

11 **ii. Other Class Members Have Attended Schools**  
12 **With Insufficient Numbers of Clean, Stocked,**  
**and Functioning Toilets and Bathrooms.**

13 407. Bathrooms in schools other class members attend are often locked, and if they are  
14 unlocked then they are regularly filthy and lacking toilet paper, soap, paper towels, stall doors, and  
15 sanitary napkin or tampon dispensers. (*E.g.*, J. Garcia Depo. at 114:9-25, 116:8-18, 124:10-126:6;  
16 Islas Depo. at 196:12-197:4; Deposition of Nelly Magaña (“Magaña Depo.”) at 161:23-162:7,  
17 163:21-24, 174:17-22, 210:17-20; Magdaleno Depo. at 146:5-12, 146:17-147:4; Nobori Depo.  
18 at 211:12-212:22; Salyer Depo. at 302:13-15, 305:3-4; DOE 35589, 40060, 46985.) The II/USP  
19 action plan for Harry Solnaker Elementary School in Alum Rock Union Elementary School District  
20 reported that “[s]tudent bathrooms are dirty; there was no soap or paper towels for students to wash  
21 with . . . [a]ccording to staff, the toilet paper dispensers are faulty and, even when filled, the toilet  
22 paper falls out of them onto the floor.” (DOE 71502.) One class member explained: “a more  
23 appropriate question would be, if I ever used the bathrooms at Brightwood and find that there were  
24 paper towels because there were so few.” (Nobori Depo. at 173:5-8.) As one teacher explained it,

25 Hawthorne had 1,000 children on the site at any given time, 1,400 total  
26 over the course of the year 12 months out of the year. With no more  
27 than, say, 30 physical toilets available to 1,000 children at any given  
28 time, I felt that that was an extremely low number, a low toilet-to-  
student ratio, if you will. It meant there were lines to use the bathroom.  
It meant that if a — if there was any kind of sewage problem, that —  
you know, a quarter to a third of the available toilets were not available.

1 It meant that 1,000 children using that few toilets created a cleaning  
2 issue that was difficult to resolve.

3 (Salyer Depo. at 294:5-16; *see also id.* at 295:23-296:4, 296:17-21, 297:7-22; DT-OA 3751, 3770  
4 (Hawthorne only had one bathroom for 600 boys).)

5 **d. Class Representatives and Other Class Members**  
6 **Have Attended Schools Where There Are Unsanitary**  
7 **and Unhealthful Conditions.**

8 **i. Class Representatives Have Attended Schools**  
9 **Where There Are Unsanitary and**  
10 **Unhealthful Conditions.**

11 408. Class representative Alondra Jones testified that she routinely saw mice or mice  
12 droppings (“I know they are droppings of some animal. I hope it’s a mouse. Hope it’s not more  
13 serious.”) during her four years at Balboa High School in San Francisco. (Jones Depo. at 127:25-  
14 128:22.) Principal Patricia Gray testified that she had seen a mouse in her office a couple of weeks  
15 before her deposition and that teachers had complained to her about having seen mice and mouse  
16 droppings in their classrooms. (Gray Depo. at 125:22-128:19, 384:13-385:4.) Teacher Shane Safir  
17 testified that she saw mice in one of her classrooms “at least ten or 15 [times], I would say, and the  
18 droppings were daily, pretty much”:

19 [t]here were definitely mice in the classroom. They would occasionally  
20 run across the classroom, once or twice when students were in there,  
21 and if I were in there working alone and it was a bit quieter, they would  
22 come out and run around. And then they left their droppings all along  
23 the chalk . . . ledge and often on the bookshelves near the books, et  
24 cetera.

25 (Safir Depo. at 182:1-15.) Likewise, teacher Stephen Brady testified that “I’ve seen a mouse in my  
26 classroom several times. . . . I had this as a running complaint for more than one year. And I would  
27 see mouse droppings in the classroom. I’d have to sweep it up so the students wouldn’t see it. It was  
28 really disgusting.” (Brady Depo. at 35:23-36:15.) Balboa pest management service slips also note  
the existence of problems with mice and other pests at the campus. (DT-SF 52, 53, 972.)

409. In addition to the mice and mice droppings, class representative Alondra Jones  
testified that “[s]ome of the gym window panes are broken,” that the broken window shades in her  
European Literature course “added to the heat” in that class, and that her art classroom was regularly  
dirty, with paint peeling off the walls, chalk dust strewn around the room, and missing ceiling tiles

1 that left “a whole bunch of empty space in the ceiling.” (Jones Depo. at 159:9, 200:8-11, 320:13-  
2 322:10.) Alondra testified that approximately twice a month “I had to get out of class and go to the  
3 teen health clinic that we have at our school when the chalk irritated my nose and made [m]e have  
4 sneezing attacks, and my eyes were watering and getting all red and puffy. I had to go to the clinic.  
5 And then if I wasn’t in class because I was sick from something that was in the class, of course, I  
6 couldn’t learn.” (*Id.* at 322:21-323:6.) Likewise, Alondra’s teacher Shane Safir testified that “I saw  
7 broken windows in the hallways. . . . multiple windows at different times . . . . [that] remained broken  
8 for a long time,” that “probably three quarters of the classrooms at least” had missing or broken  
9 ceiling tiles, and that “I heard of a couple of classrooms where the tiles fell down during class.”  
10 (Safir Depo. at 203:11-13, 207:10-15, 213:3-15.) In addition, Ms. Shafir testified that all the window  
11 shades in one of her classrooms were broken, that shades in other classrooms were broken as well,  
12 and that:

13 the Department Chair and I spoke about it. She was very frustrated,  
14 too, because a lot of teachers in the Social Studies Department couldn’t  
15 close their shades and we show a lot of slides to illustrate different  
historical eras or films, so if it was any time after 10:00 in the morning,  
the kids couldn’t really see it. It was kind of ridiculous.

16 (*Id.* at 210:17-212:8.) Student Antonio Lewis testified that broken glass in windows remained  
17 unrepaired for “a few weeks to a month” both in a school hallway and in the gym locker room, and  
18 that broken glass remained on the floor in the gym locker room for “approximately say a week or  
19 two.” (Lewis Depo. at 147:7-148:1.) Antonio also testified that he saw water leaking from the  
20 ceiling on the third floor “whenever it rains”: “[w]henver it rains and I have a class on the third  
21 floor, it is like a little walkway or a bridge that we have to walk through to get to the third floor and  
22 generally when you walk through the door, you can see the water, like physically see the water just  
23 dropping down on to the actual floor.” (*Id.* at 157:1-8.) School documents support this testimony:  
24 work orders from 1997-2001 show that broken windows routinely go unrepaired for long periods of  
25 time. (DT-SF 994-1006; *see also* DT-SF 973 (Balboa work order reporting a falling ceiling tile in  
26 Room 217 in November 2000).)

27 410. Class representative Silas Moultrie testified that he saw mice run across the  
28 chalkboard and across the room during classes at Luther Burbank Middle School in San Francisco,



1 and that he saw a dead rat that stayed in the same place in the school gym for months, the presence of  
2 which made Silas feel uncomfortable “[e]very day. . . . [because k]nowing a rat’s in the gym, there is  
3 probably more around.” (Moultrie Depo. at 57:22, 72:21-73:1, 100:8-14, 335:16-17, 339:14-19,  
4 341:18-342:8.) Another Luther Burbank student testified that “in every class I ever had in Burbank,  
5 there been a few mice or rats, or whatever.” (Deposition of Olivia Saunders (“Saunders Depo.”)  
6 at 159:8-161:12; *see also id.* at 17:12-23, 56:19-57:8, 58:1-59:12, 68:18-23, 78:5-21, 115:16-116:17,  
7 132:18-133:16, 133:21-22, 142:6-143:5.) Teacher Cynthia Artiga-Faupusa testified that Luther  
8 Burbank was “infested with roaches” and that it “happened so frequently [that she saw roaches in her  
9 classroom] that I stopped taking notice.” (Artiga-Faupusa Depo. at 135:14-141:9.) Ms. Artiga-  
10 Faupusa also testified that “there was always visible presence of mice” in addition to three occasions  
11 on which she saw mice in her classroom and other occasions on which other teachers saw mice in  
12 their classrooms, including “at least 6 [mice] that they caught in [the] closet” of a teacher who taught  
13 two classrooms away from Ms. Artiga-Faupusa. (*Id.* at 141:14-142:16; *see also* Deposition of Jason  
14 Nawa (“Nawa Depo.”) at 176:13-22 (testifying to having seen mice in his classroom at least ten  
15 times).) Maintenance records also identify seven mice, rat, and roach sightings on campus between  
16 January and June 2000. (DT-SF 119.)

17 411. In addition, Ms. Artiga-Faupusa testified that school ceiling tiles “were falling”:

18 a lot of times, the kids would come back [from P.E.] with flecks in their  
19 hair. And I’d say, ‘Hey, you got stuff in your hair.’ She’d say, ‘Yeah,  
20 I know. A piece of the ceiling fell down.’ You’d walk in there and  
21 you’d look up and you’d see the majority of the tiles on the building  
gone. And it’s a pretty — I mean, it’s a pretty high ceiling to be hit by  
something falling from the ceiling.

22 (Artiga-Faupusa Depo. at 161:6-13; *see also id.* at 130:16-132:20 (testifying that at least fifteen  
23 ceiling tiles in her classroom were chipped and broken); Nawa Depo. at 174:7-9 (“I personally would  
24 estimate that in the gymnasium, specifically more than 50 percent of the tiles were already  
25 missing.”).) Ms. Artiga Faupusa testified that “throughout the school, there were broken windows.  
26 A lot of the windows were covered with plywood.” (Artiga-Faupusa Depo. at 159:24-160:1; *see also*  
27 *id.* at 134:1-135:10 (testifying that a broken window in another classroom “didn’t get fixed for a  
28 while” and its ultimate “repair” was simply to board it over with plywood instead of to replace the

1 broken glass); Saunders Depo. at 98:4-99:1 (testifying that windows in her social studies classroom  
2 were “[b]roken to where they had to put board over it”).) Luther Burbank maintenance records  
3 confirm these degraded conditions. For example, 1997-2001 work orders detail many broken  
4 windows, (DT-SF 876-877, 904-917); ceiling tiles falling, (DT-SF 884); boarded-up windows, (DT-  
5 SF 884); the presence of water-damaged ceiling tiles and floor tiles and a ceiling tile with asbestos  
6 loose and presenting health and safety concerns, (DT-SF 886, 888); and plumbing problems, (DT-  
7 SF 944-951).

8         412. Maintenance records from class representative Lizette Ruiz’s school — Huntington  
9 Park High School in Los Angeles — report repeated vermin calls during the 1998 to 2000 school  
10 years, including reports that “rats are in room 222 (the unfriendly kind . . . ),” “cafeteria serving area  
11 ‘spotted a huge rat walking from one store room to the other,’” “rat is eating bread in cafeteria,  
12 cannot catch it,” and “mice in rm. 71, 72, 73, 77, 76, and rm 77 storage rm.” (DT-LA 6333; *see also*,  
13 *e.g.*, DT-LA 5151 (November 2000 report that cafeteria “had problems with rats again. Pest Control  
14 caught them....”), DT-LA 5045 (May 1999 report that “Kitchen area has a rat. Pest Control there  
15 daily....Call for door sweeps on storeroom doors and exit doors.”).) The Huntington Park principal  
16 testified that the school had had a vermin problem and that teachers and students had complained to  
17 him about seeing mice or rats and their droppings in classrooms at the school. (E. Garcia Depo.  
18 at 83:7-16, 84:14-16.) Lizette also testified that teachers had told her they had seen mice or rats and  
19 that she had seen their droppings in her classrooms. (L. Ruiz Depo. at 339:11-340:22, 354:2-11.) In  
20 one of her classes, “[o]n top of the cabinet there was like a hole bitten off by the rat or mouse, or  
21 whatever it was, and the teacher showed us the trap with the tail in it.” (*Id.* at 341:11-14.)

22         413. In addition to the vermin problem at Huntington Park High School, the school has  
23 been generally unclean. For example, when asked how often her honors contemporary composition  
24 class was cleaned, Lizette testified: “I wouldn’t say every day, because I remember most of my class  
25 my backpack would get all dusty and, like, usually my pants would get also — also would get  
26 dusty. . . . I have the class for second period and I don’t think the class could get so dirty during first  
27 period and homeroom.” (*Id.* at 349:6-350:10.) School records also repeatedly note that the student  
28 dining area, which was being used for classes instead of as a dining area, was filthy. For example, in

1 May 1999, school records note “the floor was filthy at 10:30. Needs to be washed daily.” (DT-LA  
2 5043.) In May 2000, records again note “[i]nside eating area is used as a classroom and needs to be  
3 cleaned more thoroughly daily. . . .” (DT-LA 5108.) And in November 2000, school records state  
4 “[f]loor has not been swept or mopped. Filthy.” (DT-LA 5152.)

5 414. Pest control service logs from Fremont High School in Los Angeles — class  
6 representative Cindy Diego’s school — note that the school was serviced about 80 times for mice,  
7 rats, roaches, ants, and other vermin between March 1998 and August 2000. (DT-LA 4115-18, 5412-  
8 15.) For example, in October 2000, maintenance records reported “[r]ats in 319, 317, 317a, 309,  
9 309a, 304a, 313a, 309a, 306a, 319a, 313a 3 rats and rat glueboards placed in above noted rooms” and  
10 “[t]hree Rats Caught on Trap Rm# 313-A. Rodent droppings found throughout store rms and class  
11 rms.” (DT-LA 5412, 5428; *see also* DT-LA 4141 (“Heavy infestation [of cockroaches] found in all  
12 areas.”), DT-LA 4184 (“Inspected Room # 318 . . . . Found dead rat under sink area.”); DT-LA 5412  
13 (“Mice droppings and loaf of bread eaten in the kitchen . . . . Need to check for roaches and mice in  
14 135, 138, 315.”), DT-LA 5413 (“Rodents in the kitchen have rat droppings in the bins and drawers”),  
15 DT-LA 5421 (“Rat and Mouse droppings found by flour bins, and underneath oven/stove. . . .  
16 Hamburger buns and bread has been eaten off of bread delivery rack . . . .”).) Likewise, maintenance  
17 records from Fremont High School detail almost-monthly calls (except during the first half of 1999)  
18 regarding rodents or mice between July 1998 and April 2001. (DT-LA 5338-5340.) Class  
19 representative Cindy Diego testified to having seen mice “running around” in her Spanish class and  
20 that other people also had told her they’d seen mice on campus. (Diego Depo. at 297:1-22, 299:23-  
21 300:5.) Assistant principal Marcia Hines testified that about twice a year over 13 years, she has seen  
22 in her office “[l]ittle tiny mice. I suppose they are little baby rats. Little baby rats. They look like  
23 mice, but they are probably little rats.” (Hines Depo. at 150:21-151:10.) Teacher Joel Vaca testified  
24 that “every time I would sweep the room — and I do a thorough sweeping of the room — I would  
25 have to pick up also feces of rat or rodent,” that “on numerous occasions” students in his classes have  
26 told him they have seen a rat during class, and that he himself had seen rats on campus three times,  
27 including one morning when he “opened the door to the [class]room. And there’s a good sized rat, or  
28 maybe it was a big mouse, kind of healthy, just hanging out in the middle of the room . . . .” (Vaca

1 Depo. at 114:9-12, 115:10-116:3; *see also* Deposition of Mary Hoover (“Hoover Depo.”) at 186:17-  
2 187:10 (librarian testified to having seen mice and rats in three different rooms at Fremont).)

3 415. In addition to these rodent problems, Fremont principal Margaret Roland testified that  
4 “[i]f you walked on the campus now, you would think they [ceiling tiles] were all falling out because  
5 we are being wired for the digital high school and the E-Rate project. So they are all over” and the  
6 school ceilings have been in that state of disrepair for “maybe six or seven months, and working with  
7 the district and contractors, it — you know, you never know when” the project might be completed.  
8 (Roland Depo. at 266:21-267:6.) Assistant principal Marcia Hines agreed: “this is about the second  
9 year, third year. Second or third year” that the digital wiring project has been ongoing and “when  
10 they are doing this digital, they take down a lot of ceiling tiles. All those are still missing. So if you  
11 are in any room or office, you can look up and see all that wiring that is still waiting to be completed  
12 throughout the school that has — some has plastic over it and some does not.” (Hines Depo.  
13 at 592:4-10, 593:3-8.) As teacher Joel Vaca described it: “Fremont was supposed to be one of the  
14 first schools to be a digital high school. It is now one of the last to be completed upon. There are  
15 other schools that are fully digital high schools. Fremont was to have first priority and now is one of  
16 the last ones to be completed” resulting in “missing ceiling tiles from the main building, all three  
17 floors.” (Vaca Depo. at 67:10-16.) Librarian Mary Hoover testified that she saw a kitten fall through  
18 one of these holes in the ceiling and land on a student’s head then shoulder then desk. (Hoover Depo.  
19 at 190:25-191:19.) Ms. Hines also testified that “there are rooms that definitely need paint. . . . I  
20 have been there 14 years, and the classrooms have not been painted the whole time I’ve been there on  
21 the inside”; “If you think about your house, don’t paint a room for 14 years and people use it year-  
22 round day in, day out — kids, students, greasy hair — it needs to be painted.” (Hines Depo.  
23 at 310:14-20, 591:12-15.)

24 416. At class representatives Delwin and D’Andre Lampkin’s school, Crenshaw High  
25 School in Los Angeles, maintenance records report: “The horticultural center is infested with rats.  
26 Rat ate a hole in the pig. . . . Would need to clean up outside all foods and take pig away and care for  
27 it.” (DT-LA 2996; *see also* DT-LA 3002 (“rat is dead” in classroom 335), DT-LA 8631 (“rats in the  
28 kitchen rm”), DT-LA 8673 (“Rodents in cafeteria store room”), DT-LA 8701 (“receiving door to

1 kitchen — need to replace metal screen door, rat problem caused by door — per pest control”).) On  
2 April 16, 2001, “Oriental Roaches were found in 5 . . . traps in the kitchen, serving line area, and the  
3 faculty dining.” (DT-LA 5440; *see also* DT-LA 3016, 3018-20, 3024, 5444, 5447, 5449  
4 (maintenance records noting the presence of roaches). In addition to these vermin problems, school  
5 records show that broken glass in the library took over two months to repair. (DT-LA 3032-3041.)

6 417. Class representative Carlos Santos testified that at Edison-McNair Academy in East  
7 Palo Alto, “last time, I saw some rats on the ceiling, because there was this big hole in the ceiling,  
8 and there were rats, like, looking down.” (Deposition of Carlos Santos (“Santos Depo.”) at 281:8-  
9 18.) Principal Mary Seiersen testified that “I’ve had different teachers say that they saw a mouse in  
10 the classroom.” (Seiersen Depo. at 216:2-4.) Carlos also testified that even after a broken window in  
11 a classroom was replaced, broken glass remained on the blacktop outside the classroom even though  
12 “[i]t happened a long time ago”; Carlos testified that he knew the broken glass was still there  
13 “[b]ecause we always play there. . . . there’s nowhere else to play.” (Santos Depo. at 215:5-217:3.)

14 418. Maintenance records for Cesar Chavez Academy in East Palo Alto note that teachers  
15 have seen rodents in their classrooms causing parents concern. (DT-RA 5288, 5308, 5312.) In  
16 addition, parent Pedro Monje Robles testified that “I had noticed that there were broken lights” at  
17 Cesar Chavez and that a window in one of the classrooms “was completely shattered.” (Monje  
18 Robles Depo. at 57:22-24, 60:21-61:1.) Principal Carla Walden testified that she had seen broken  
19 windows in the school gym. (Walden Depo. at 210:14-20.) Likewise, class representative Krystal  
20 Ruiz testified that one of the windows in her social studies classroom was broken and boarded-over  
21 with a piece of wood and that a gym window was broken leaving glass on the gym floor during the  
22 school day. (K. Ruiz Depo. at 276:16-24, 313:14-315:4.) Student Rebecca Ruiz summed up her  
23 Cesar Chavez experiences by testifying that “Cesar Chavez is small, dirty, and not that good to go to  
24 school . . . .” (R. Ruiz Depo. at 123:4-6.)

25 419. The II/USP action plan for class representative Moises Canel’s school — Helms  
26 Middle School in San Pablo — reports that “[t]here are leaking roofs leaving mold and mildew in  
27 some of the classroom [sic] and hallways. . . . As it stands, the school is not an inviting place for  
28 students, teachers or parents.” (DOE 48364.) Moises’s principal testified that he was concerned

1 about mold and mildew in classrooms because “I was aware that some teachers were suffering  
2 from — a few teachers were suffering from allergies” and that when he arrived at the school as  
3 principal there were already leaks in the roofs of the main building, the 400 building, two portables,  
4 and the gymnasium. (Muzinich Depo. at 12:7-13:19, 18:23-19:4, 99:25-100:8.) A facilities study of  
5 Helms found that “roof and skylights are in serious disrepair causing leaks and resulting in additional  
6 damage to floors and walls,” and “[g]lass block walls throughout school leak and need to be  
7 repaired/replaced.” (PLTF 1834-35.) The principal confirmed the problems with the glass blocks,  
8 testifying that in the main hall, a “couple of glass blocks are cracked or broken,” exposing jagged  
9 edges, without anything to prevent students from becoming injured on them, and that “[i]t was my  
10 understanding that the water leaks into the glass block and then runs down the wall and then leaks  
11 onto the floors. Mainly in the hallways on the first floor. And then on the second floor it was leaking  
12 down into the — on into the classrooms down the wall.” (Muzinich Depo. at 17:8-12, 47:8-13,  
13 107:12-24.)

14 420. The Helms facilities study also found that “[c]eiling tiles throughout [the] site are in  
15 various states of disrepair and need to be repaired/replaced.” (PLTF 1834-35.) Indeed, a January 14,  
16 2002 article in the Contra Costa Times reported that

17 [t]he sky in this San Pablo school is, quite literally, falling.

18 Ceiling tiles, burdened by water and age, have buckled and snapped in  
19 the two-story, green-tiled entryway that each morning greets 1,350  
babbling pre-teens at Helms Middle School.

20 One by one, the tiles have dropped, smacking the red tile floor below  
21 and leaving a gaping black hole overhead.

22 “They fall whenever they fall,” said principal Harriet MacLean, an  
23 outspoken woman who keeps a trash bin full of fallen tiles in a storage  
closet near her office. “One fell mid-day, and luckily it didn’t hit  
anybody.”

24 Kara Shire, *Election 2002; State’s Schools Crumbling; The Endemic Disrepair and Lack of Money*  
25 *Will Leave the Next Education Chief Scrambling to Catch Up*, CONTRA COSTA TIMES, Jan 14, 2002,  
26 at A01. Similarly, the Helms II/USP action plan reported that “[b]uildings . . . are desperately in need  
27 of repair and painting. . . . As it stands, the school is not an inviting place for students, teachers or  
28 parents” and that “[s]tudents, teachers and parents complained that the school is not clean or

1 maintained. Prior to one meeting in the library, one of the evaluators vacuumed the carpet herself to  
2 assure a clean space for parents.” (DOE 48364.) The Helms principal confirmed the view that the  
3 school is uninviting: “I haven’t walked the school and counted the boarded windows, but there  
4 are — there are, you know, a fair number of them.” (Muzinich Depo. at 91:2-19; *see also* S. Canel  
5 Depo. at 144:21 (parent testifying that “[t]here are windows that are broken everywhere” at Helms).)

6 **ii. Other Class Members Have Attended Schools**  
7 **Where There Are Unsanitary and**  
8 **Unhealthful Conditions.**

9 421. In one school class members attend, “[t]he buildings have been recently condemned so  
10 classrooms are not well equipped with technology, and science classrooms do not have labs” but  
11 “[t]here is still a concern about funds for facility improvements.” (DOE 32513, 32518 — II/USP  
12 action plan for Holtville High School in Holtville Unified School District.) The II/USP action plan  
13 for Grant Elementary School in West Contra Costa Unified School District reported that “Grant is  
14 housed within a decaying infrastructure, surrounded by fields of asphalt. The facilities are poorly  
15 maintained and may pose a health risk to students and staff.” (DOE 48241 — II/USP action plan for  
16 Grant Elementary School in West Contra Costs Unified School District.) The II/USP action plan for  
17 Stonehurst Elementary School in Oakland explained: “Also significant and problematic are the city  
18 of Oakland’s sewer lines that cross the school property and flood the school during the heavy rainy  
19 season. This causes total disruption of school activities.” (DOE 46968; *see also* Deposition of  
20 Shannon Carey (“Carey Depo.”) at 26:16-18 (teacher testimony that “there had been a number of  
21 sewage floods in the school that dislocated class — many classes”); *see also id.* at 148:7 (testifying to  
22 the presence of “raw sewage in the hallways”); DT-OA 4578-4719, 6444, 6446, 6451-6456, 7376-  
23 7377, 7496-7497, 7500, 12894-13075 (facilities reports, letters, memos and other documents  
24 detailing a history of severe rain and sewer flooding at Stonehurst from 1995 through 2000).)

25 422. School staff, parent, and student testimony all confirm that class members attend  
26 schools where it is not uncommon to see rats, mice, rodent feces, cockroaches, water bugs, and other  
27 vermin. (*E.g.*, J. Garcia Depo. at 157:11-159:1, 162:2-163:20; Gonzalez Depo. at 74:18-77:4;  
28 Magdaleno Depo. at 132:24-133:19; Deposition of Patricia Muñoz (“Muñoz Depo.”) at 223:5-24,  
224:15-225:20, 226:17-21, 230:18-21; Salyer Depo. at 334:19-335:11, 337:21-25, 339:15-17.)

1           423. Class members also are exposed to mold, fungus, mildew, damaged paint with high  
2 levels of lead, and rotting areas in their classrooms and schools. *E.g.*, J. Garcia Depo. at 152:13-21,  
3 170:15-171:15, 172:21-174:8; Magdaleno Depo. at 184:7-21; Salyer Depo. at 308:13-17, 347:14-  
4 348:16, 349:24-350:5, 351:22-25, 352:5-8, 356:6-13, 364:6-23; DT-OA 5417, 7579-88; SCA  
5 Environmental, Inc., Draft Summary Report Prepared for SFUSD, *Lead Paint Survey; SCA Proj.*  
6 *No. B4357* (2000). As one teacher explained, “I spent two years in a classroom that was identified as  
7 having carcinogenic mold. That was a concern to me.” (Salyer Depo. at 348:14-16.) This same  
8 teacher testified that, because of the mold in her classroom,

9           I had a student in my class in 1<sup>st</sup> grade who had pre-existing asthma  
10          who was absent 94 days out of that school year. The preceding year  
11          when she was not in that building, she was absent 30 days. The year  
12          after that when she was not in that building, she was absent 18 days.  
13          The year she was in my classroom, she was absent over one half of the  
14          instructional days of that school year.

15 (*Id.* at 353:15-22.) In another school class members attend, mushrooms grew out of a classroom’s  
16 tiled floor after repeated flooding of the room; the mold problem was serious enough that it affected  
17 the wall structure. (DT-OA 5527-28 (Fremont High School in Oakland).) At Stonehurst Elementary  
18 School in Oakland, March 2000 lab tests revealed high levels of fungi in a classroom as a result of  
19 repeated roof leaks. (DT-OA 7378-7390.)

20           424. Class members attend schools with missing and falling ceiling tiles, broken glass, and  
21 other evidence of general disrepair of the facilities. (*E.g.*, J. Garcia Depo. at 182:8-183:6; Islas Depo.  
22 at 71:7-72:11; Nobori Depo. at 113:5-21, 190:18-193:2, 198:21-199:25, 201:15-202:13; Salyer Depo.  
23 at 297:7-22; DT-OA 4578-4719, 6444, 6451-56, 7376-77, 7496-97, 7500, 12894-13075; DOE 31105,  
24 35589, 36883, 37376, 38879-80, 40060, 44528, 46989, 48492, 59172, 66071, 69580, 71502.) The  
25 II/USP action plan for Wilson Elementary School in West Contra Costa Unified School District  
26 reported that “[s]upport services often meet with students in an unused custodial storage area that  
27 leaks in heavy rain.” (DOE 48814.) The II/USP action plan for another school class members attend  
28 reported that “Grant is housed within a decaying infrastructure, surrounded by fields of asphalt. The  
facilities are poorly maintained and may pose a health risk to students and staff.” (DOE 48241,  
48259.) Another school’s II/USP action plan noted that “[t]he External Evaluators found many of the



1 facilities in the district to be deteriorating and poorly maintained. Overall, they were inadequate in  
2 promoting a healthy and supportive learning environment.” (DOE 46560 — action plan for Hoover  
3 Elementary School in Oakland.) The II/USP action plan for Willowbrook Middle School in Compton  
4 reported that “the peeling paint and deterioration of the school was a[n] eyesore” and that “[t]he  
5 facilities of Willowbrook have deteriorated over the years and as you walk onto the school campus,  
6 you can see paint peeling off of buildings and worn and dated classrooms. Window coverings are  
7 missing in many classes and there is no way to deflect the light or the heat as the sun beats down in  
8 many rooms.” (DOE 53025, 53027.)

9 **E. The State Has Known that Severe Overcrowding and Attempts to**  
10 **Cope with It Through Multi-Tracking and Busing Have Impacted**  
11 **Educational Opportunity for California Schoolchildren on an**  
12 **Unequal Basis.**

13 **1. Attempts to Cope With Severe Overcrowding Through**  
14 **Multi-Tracking Have Impacted Educational Opportunities**  
15 **for California Schoolchildren on an Unequal Basis.**

16 425. The State has known that multi-track, year-round education (MTYRE) is a symptom  
17 of severe overcrowding. MTYRE is a strategy employed only by school districts confronted with  
18 severe overcrowding and unable to build new schools, because it allows districts to increase their  
19 enrollment capacities without building additional facilities.

20 426. The State has also known that, when particularly pressed for space, districts employ  
21 the multi-track calendar known as Concept 6, because it maximizes the existing capacity of school  
22 facilities. However, the Concept 6 disadvantages students in many significant ways. *See* Expert  
23 Report of Dr. Jeannie Oakes (“Oakes Overcrowding Report”). Most notably, it provides 17 fewer  
24 days of instruction than are available on all other school calendars in California. According to State  
25 Superintendent of Public Instruction Delaine Eastin, “I would love to get rid of Concept 6 . . . [b]ut  
26 schools didn’t move to it because they were trying out some educational innovation. It was out of  
27 desperation.” Julie Z. Giese, *State Superintendent Makes Stop at Lodi Middle School*, LODI NEWS-  
28 SENTINEL, Oct. 26, 2001.

427. Research suggests that multi-tracking negatively impacts student achievement. In  
1987, for example, the CDE commissioned a study of student achievement at multi-track schools.

1 This study concluded that multi-track schools scored below predicted levels even after controlling for  
2 student socioeconomic status, while the less prevalent single-track, year-round schools scored at or  
3 slightly above predicted levels. Claire Quinlan, Cathy George & Terry Emmett, *Year-Round*  
4 *Education: Year-Round Opportunities; A Study of Year-Round Education in California* (1987) at 94.

5 428. Although the State has not only permitted, but encouraged the growth in multi-  
6 tracking, in order to save money on the construction of new schools, the State has not conducted or  
7 commissioned another assessment of the impact of the calendar on student achievement. In fact,  
8 Thomas Payne, the CDE consultant responsible for year-round education, believes that a study should  
9 be conducted comparing the achievement of students at year-round schools with those at traditional  
10 schools. (Deposition of Thomas Payne (“Payne Depo.”) at 155:4-11, 180:25-181:13.) Given the  
11 large percentage of students enrolled at year-round schools, (*id.* at 181:14-18), Payne believes “it  
12 would be nice to have a definitive study.” *Id.* at 185:5-6. Accordingly, he has on multiple occasions  
13 requested of the Director of the CDE’s School Facilities Planning Division that a study be conducted.  
14 Each time his request has been denied due to a lack of funding. *Id.* at 153:23-154:4, 155:23-158:23.)

15 429. Almost 17% of the state’s public school students are now enrolled at multi-track, year-  
16 round schools. They are disproportionately low-income students of color. Students enrolled in  
17 Concept 6 schools represent about 6% of California’s public school enrollment. These students are  
18 disproportionately Hispanic and low-income. Expert Report of Dr. Ross Mitchell (“Mitchell  
19 Report”).

20 **a. The State Has Known that School Overcrowding Has**  
21 **Been a Growing Problem Resulting in Increasing**  
22 **Usage of Multi-Track Calendars.**

23 **i. MTYRE and Concept 6**

24 430. Multi-track, year-round calendars allow the enrollment capacity of a school to be  
25 increased (artificially) without building additional facilities. CDE *Year-Round Education Program*  
26 *Guide*, at <http://www.cde.ca.gov/facilities/yearround/proggde.htm>. (“YRE Guide”) By contrast,  
27 single-track, year-round education does not increase a school’s enrollment capacity. *Id.*

28 431. While all multi-track calendars allow more students to be enrolled than the school  
could otherwise accommodate, the three-track calendar known as the Concept 6 calendar provides for

1 the maximum enrollment given a school's existing classroom space. YRE Guide. According to  
2 Superintendent Eastin, schools that operate on a Concept 6 calendar do so "because of severe  
3 overcrowding." Letter from Delaine Eastin, Superintendent of Public Instruction, to Jackie Goldberg,  
4 Member of Cal. State Assembly, May 10, 2002. As Thomas Payne explains, Concept 6 is "the best  
5 calendar to address severe overcrowding" because it "can expand the seating capacity of the schools  
6 by 50 percent. The four-track calendars can do that by [only] 33 percent." (Payne Depo. at 100:9-15;  
7 Letter from Delaine Eastin, Superintendent of Public Instruction, to Jackie Goldberg, Member of Cal.  
8 State Assembly, May 10, 2002.)

9 432. To achieve the maximum increase in capacity, the Concept 6 calendar reduces the  
10 available days of instruction. It provides students with only 163 days of instruction per school year,  
11 unlike all other school calendars used in California. Declaration of Thomas Payne in Support of  
12 Motion for Class Certification ("Payne Decl."), dated July 25, 2001, at ¶ 10.<sup>16</sup> All other school  
13 calendars can provide 180 days of instruction. (Payne Depo at 101:6-103:10.)

14 433. There are about 240 schools in the state that operate on the Concept 6 or Concept 6  
15 Modified calendars. CDE, *Year-Round Education 2000-01 Statistics* ("YRE Stats.") at 1 downloaded  
16 from <http://www.cde.ca.gov/facilities/yearround/yrstat00.htm>. These schools are spread over four  
17 districts — Palmdale Elementary, Lodi Unified, Los Angeles Unified, and Vista Unified — and  
18 enroll a total of about 355,000 students. Letter from Delaine Eastin, Superintendent of Public  
19 Instruction, to Jackie Goldberg, Member of Cal. State Assembly, May 10, 2002; *see also* CDE, *Year-*  
20 *Round Education 2000-01 Year-Round Districts*, ("YTR Districts") at  
21 <http://www.cde.ca.gov/facilities/yearround/direct00.htm>; ("YRE Districts").

22 434. Lodi Unified exemplifies districts' resort to multi-tracking and Concept 6. The district  
23 experienced an enrollment boom in the late 1980s. Although some schools were built using state  
24 construction funds, "the district couldn't keep up with the growing student population." Julie Z.  
25 Giese, *Bond's Approval Will Change District, Educators Say*, LODI NEWS-SENTINEL (Feb. 9, 2002).  
26 The district turned to multi-track calendars to cope with its need for additional classroom space. *Id.*

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27 <sup>16</sup> The State, by statute, permits school districts to operate multi-track calendars offering as  
28 few as 163 days of instruction. Cal. EDUC. CODE § 37670(a).

1 “Lodi Unified began using Concept 6 in the late 1980s to ease its burgeoning student population and  
2 classroom crunch.” J. Giese, *Fewer Lodi District Schools Open on Year-Round Calendar* LODI  
3 NEWS-SENTINEL (July 6, 2002). “In 1990, the Concept 6 calendar became the mainstay in the district  
4 for pragmatic, not academic, reasons. It provided the most classroom space . . . .” J. Giese, *Bond’s*  
5 *approval will change district, educators say*, LODI NEWS-SENTINEL (Feb. 9, 2002). For more than a  
6 decade, the majority of district students have attended schools operating on a Concept 6 calendar.  
7 J. Giese, *Fewer Lodi district schools open on year-round calendar* LODI NEWS-SENTINEL (July 6,  
8 2002).

9 **ii. Growth in reliance on MTYRE**

10 435. Use of multi-track, year-round calendars has grown significantly in the last two  
11 decades. YRE Guide at 1; (Payne Depo. at 220:24-222:17; Payne Decl. at ¶ 6.)

12 436. In 1973-74, only 30 districts implemented year-round programs at 100 schools  
13 enrolling a total of 61,323 students. LAO, *Year-Round School Incentive Programs: An Evaluation*  
14 (1990) at 16 (Consistent data on numbers of districts, schools, and pupils under year-round schedules  
15 do not exist, because the data available from 1973-74 to 1983-84 does not distinguish between multi-  
16 track and single-track, year-round schools.)

17 437. By 1983-84, 39 districts operated year-round programs, with 230,797 students  
18 enrolled in these programs. *Id.*

19 438. By 1985, enrollment at multi-track programs alone reached 163,402. Payne Decl. at  
20 ¶ 6.

21 439. By 1988-89, an estimated 69 districts operated year-round programs, enrolling about  
22 360,000 students. LAO, *The 1989-1990 Budget: Perspectives and Issues, Year-Round Schools*  
23 (1989) at 174. The overwhelming majority of these students — an estimated 300,000 — attended  
24 schools operating multi-track programs. *Id.*

25 440. As of 2000-01, two hundred districts operated year-round programs, with 1,331,589  
26 students enrolled in the programs. YRE Stats. at 1. The overwhelming majority of these students —  
27 1,016,567 — attended schools operating multi-track programs. *Id.*

1 **iii. Districts Resort to MTYRE When They Are**  
2 **Not Able to Build Schools To Reduce**  
3 **Overcrowding.**

4 441. Districts implement MTYRE calendars in an attempt to cope with overcrowding.  
5 According to Thomas Payne, “MTYRE is a facility strategy, a way to deal with overcrowding.”  
6 Letter from Thomas Payne, Consultant for CDE, to Robert Rosenfeld (Aug. 29, 1994); *see* YRE  
7 Guide at 1 (identifying “rapid growth, overcrowding, and its cost-effectiveness in achieving class size  
8 reduction” as reasons for growth in number of districts using multi-track calendars).

9 442. “MTYRE schools have a common trait: a need to create space in overcrowded school  
10 districts. In every situation, the decision to implement an MTYRE calendar is an attempt to provide  
11 classrooms to school districts that experience rapid increases in student enrollments without a  
12 commensurate level of school facility expansion.” Cal.’s Coalition for Adequate School Housing,  
13 *Multi-Track Year Round Education: Causes and Effects of Legislative Initiatives and Proposals*  
(1998) at 1. (emphasis in original)

14 443. In 1990, the LAO concluded, “For the most part, multitrack programs have been  
15 implemented for the *sole* purpose of relieving either site-specific or districtwide overcrowding.”  
16 LAO, *The 1989-1990 Budget: Perspectives and Issues, Year-Round Schools* (1989) at 174 (emphasis  
17 added).

18 444. That same year, the LAO also concluded that “the major impetus for districts to adopt  
19 year-round schedules is the combined effects of (1) overcrowded schools and (2) a recognition that  
20 state funding will not become available quickly enough to meet pressing needs for additional  
21 capacity.” LAO, *Year-Round School Incentive Programs: An Evaluation* (1990) at 15-16. The LAO  
22 found that between 1984-85 and 1988-89, the number of pupils in year-round schools increased  
23 steadily. It concluded that “this trend appears to be strongly related to — and explainable by — the  
24 extent of demand for state school facilities aid.” *Id.* at 16. According to the LAO, “as the extent of  
25 the ‘backlog’ in requests for state new construction funds grows (that is, the dollar value of  
26 applications on file increases), the number of pupils in eligible year-round schools increases.... In  
27 other words, what appears to be motivating school districts to implement year-round programs is their  
28

1 recognition that funding provided through [the State’s new school construction] program will not  
2 become available quickly enough to meet pressing needs for additional capacity.” *Id.* at 16-17.

3 **iv. State Funding for New School Construction**  
4 **Has Been Inadequate to Keep Up with the**  
5 **Demand for New Facilities.**

6 445. There has been a persistent lack of funding necessary to build schools to meet the  
7 pressing need for additional capacity. Based on its review of bond initiatives over the past five  
8 decades, the California Research Bureau concluded, “It is clear that throughout this history there was  
9 never enough State money available to school districts for facility construction or repair.” Joel  
10 Cohen, *School Facility Financing: A History of the Role of the State Allocation Board and Options*  
11 *for the Distribution of Proposition 1A Funds*, California Research Bureau (Feb. 1999) at 2. In its  
12 April 1998 report, EdSource concluded that the investment in school facilities “has been flatly  
13 inadequate to the tremendous statewide need.” EdSource, *California’s School Facilities Predicament*  
14 (Apr. 1998) at 1.

15 446. In 1989, the LAO predicted growth of “approximately 140,000 students per year  
16 between now and 1997, resulting in a need for an additional 2,100 new schools.” LAO, *The 1989-*  
17 *1990 Budget: Perspectives and Issues, Year-Round Schools* (1989) at 170. The CDE estimated that  
18 as much as \$11 billion might be needed to furnish the additional required facilities. *Id.* At the time,  
19 the LAO reported, “school district requests for state aid to accommodate unhoused students through  
20 the State School Building Lease-Purchase Program far exceeds — by several billion dollars — the  
21 amount of funds currently available from the state.... Specifically, as of November 1988, applications  
22 from school districts for state aid (\$4.3 billion) exceeded existing available funding (\$800 million) by  
23 approximately \$3.5 billion.” *Id.* at 170-71. Also, the LAO reported, “the demand for these limited  
24 state resources will mount in the coming years as the K-12 school-age population continues to grow.”  
25 *Id.* at 170.

26 447. By 1992, the need for new school construction had grown to \$14 billion. Confronted  
27 with this tremendous need, “[California]’d have to build 23 classrooms every day for the next five  
28 years to keep up with the students,” said Tom Payne, a California state official who oversees year-  
round school funding.” Barbara A. Serrano, *Year-Round School Getting a Close Look — Money*,

1 *Space Crunch Add Urgency to Debate*, SEATTLE TIMES, Feb. 25, 1992, at A1. Referring to the State  
2 incentives, reformed in 1990, that gave multi-track, year-round schools priority for construction  
3 funding, Payne stated, “Ours was a move of desperation.” *Id.*

4 448. That same year, the Little Hoover Commission reported that “[s]chool officials  
5 complain bitterly that there is never enough state funding for needed new construction . . . .” Little  
6 Hoover Commission Introductory Letter to *No Room for Johnny: A New Approach to the School*  
7 *Facilities Crisis* (1992).

8 449. In 1994, Thomas Payne explained the appeal of multi-tracking given prevailing  
9 circumstances. “In California presently there is no state money to build schools. We have a high  
10 school with 45 students per class and another with 87 portables spreading across its play field. We  
11 have students attending tent classrooms. At some point, in spite of its complications, MTYRE begins  
12 to look awfully good.” Letter from Thomas Payne, Consultant for CDE, to Robert Rosenfeld  
13 (Aug. 29, 1994).

14 450. In 1997, it was reported that “California has all but given up on building enough  
15 schools to house its 5.2 million public school students. . . . ‘[California] would need to build 13  
16 classrooms a day for seven days a week for five years to keep pace with growth.’” Karlayne R.  
17 Parker, *What Course to Take?: Florida’s Experience with School Crowding Isn’t Unique*.  
18 *California and Texas are Having Little Success Catching Up*, TAMPA TRIBUNE, Nov. 2, 1997, at 1.

19 451. In 1998, the State enacted the most recent school facilities bond, Proposition 1A, which  
20 provided \$6.7 billion for school construction and repair.

21 452. Those funds were plainly insufficient to meet the state’s tremendous infrastructure  
22 needs. “Based on the Department of Finance projections,” the California Research Bureau  
23 concluded, “the six years following this bond issue will require roughly an additional \$10 billion in  
24 State money.” Cohen, *School Facility Financing* at 19.

25 453. In particular, the bond’s new construction funds were not nearly enough to keep pace  
26 with the statewide growth in enrollment, let alone to eliminate the use of multi-track calendars,  
27 which, in effect, mask the actual need for additional facilities.

1           454. Proposition 1A provided \$2.9 billion for new school construction, but by 2000,  
2           midway through the bond’s funding cycle, districts had filed applications for new school construction  
3           projects totaling more than \$7 billion. Declaration of Lyle Smoot, dated March 7, 2000 at ¶ 36. The  
4           bond therefore provided less than half of the funds necessary to accommodate the state’s burgeoning  
5           student enrollment.

6           455. More important, the amount provided by the bond paled in comparison to the amount  
7           necessary to eliminate overcrowding. LAUSD alone, which, under the terms of the bond, was  
8           eligible for approximately \$1 billion in new school construction funds, required approximately  
9           \$9 billion to eliminate overcrowding in the district — returning all its students to neighborhood  
10          schools operating on traditional calendars. Harrison Sheppard, *\$9 Billion Sought for New Schools*,  
11          L.A. DAILY NEWS, July 20, 2000.

12          456. In 2000, the CDE projected that between 1998 and 2003 enrollment would increase by  
13          nearly 290,000 students, and that some 14,000 classrooms, or 434 schools, would have to be added to  
14          accommodate the increased enrollment. CDE, *School Facilities Planning Division, Fingertip Facts*  
15          (January 2000). It estimated that the state’s infrastructure needs totaled \$16.5 billion, with almost \$6  
16          billion needed for new school construction. *Id.*

17          457. In 2001, the CDE projected that between 2000 and 2005 enrollment would increase by  
18          almost 190,000 students, and that 13,396 classrooms, or 344 schools, would need to be constructed to  
19          accommodate the increased enrollment. CDE, *Fingertip Facts* (2001)  
20          at [www.cde.ca.gov/facilities/field/facts2001.htm](http://www.cde.ca.gov/facilities/field/facts2001.htm). It estimated the new school construction tab to be  
21          \$9.69 billion. *Id.*

22          458. In 2002, the CDE projected that between 2001 and 2006 enrollment would increase by  
23          almost 206,000 students, and that 13,430 classrooms, or 331 schools, would need to be constructed to  
24          accommodate the increased enrollment. CDE, *Factbook 2002, Handbook of Education Information,*  
25          *Facilities* (2002) at 86. It estimated the new school construction tab to be \$7.27 billion. *Id.*

26          459. As of July 24, 2002, the State Allocation Board (“SAB”), which is responsible for  
27          allocating state bond funds, had approved but not funded projects totaling approximately \$1.5 billion.  
28          According to the SAB, these projects are “designated as ‘unfunded approvals’ because no funding



1 has been made available.” Office of Public School Construction (“OPSC”) website,  
2 <http://www.opsc.dgs.ca.gov/SAB+Approvals/Default.htm>. Essentially, these projects are placed on a  
3 wait list for possible future funding. However, as the SAB makes clear, the total for unfunded  
4 approvals does “not represent the total unfunded need for projects on file with [the SAB].” *Id.*

5 460. By August 28, 2002, the OPSC calculated that unfunded new school construction  
6 approvals totaled approximately \$3.2 billion, with an additional \$600 million worth of applications  
7 that had “been accepted for processing, but not yet submitted to the SAB.” OPSC, *Statistical and*  
8 *Fiscal Data for the School Facility Program and Proposition 1A*, December 16, 1998 through  
9 August 28, 2002, at 3.

10 461. The State does not inventory the statewide need for new school facilities, so the exact  
11 size of the need is not known. However, it is clear that a sizeable need currently exists. In fact, the  
12 OPSC calculates that the State’s share of eligibility applications approved as of August 28, 2002, for  
13 which future new construction funding applications may be filed, potentially exceeds \$13 billion. *Id.*  
14 at 3-4. State estimates of the need for new construction likely underestimate the size of the need,  
15 because they are based on the number of students defined to be “unhoused”; this number, however,  
16 does not take into account all students at multi-track schools who are in excess of the schools’  
17 capacity. *See* SAB Form 50-02 Existing School Building Capacity, Part III (adding greater of 6% of  
18 pupil capacity or students reported for operational grant purposes, and thereby reducing the number  
19 of unhoused students by an equivalent number.

20 **v. Absent the Pressing Need for New Facilities,**  
21 **Districts Would Not Resort to MTYRE.**

22 462. Absent the pressing need for additional capacity, districts would not turn to multi-  
23 tracking. It is not an educational reform; it is a solution to the problem of housing children in  
24 existing facilities.

25 463. According to Thomas Payne, “There’s no school in California that would choose to do  
26 multitrack. . . . Most of those poor schools are packed to the gills.” Maria Sacchetti, *Year-round*  
27 *Classes Mean So Long, Summer; Education: Crowding Brings Rotating Schedules for More O.C.*  
28 *Students*, ORANGE COUNTY REGISTER, July 25, 2001.

464. As Payne explains, school administrators would not even inquire about multi-tracking their overflowing schools if building new schools were an option. (Payne Depo. at 147:1-149:9.) To him, it is “self-evident” that administrators would not be calling to inquire about multi-tracking if they could build new schools, because “[y]ou don’t ask for a Band-Aid if you’re not bleeding.” (*Id.* at 148.)

465. According to Leslie Crunelle, Assistant Superintendent for Hart, “‘Truthfully, multi-track is not a first choice for anybody I know. But the [Hart] district didn’t go into this for educational reasons.... This is strictly a facilities decision.’” Amy Raisin, *Questions Surround Multi-track; Programs, Funding a Concern*, L.A. DAILY NEWS, Sept. 17, 2001, at SC1.

466. As State Superintendent Eastin has stated, “[S]chools didn’t move to [concept 6] because they were trying out some educational innovation. It was out of desperation.” Julie Z. Giese, *State Superintendent Makes Stop at Lodi Middle School*, LODI NEWS-SENTINEL, Oct. 26, 2001. As she has explained, “Concept 6 is the least desirable method of housing our students,” and “Concept 6 is a choice only when no other means of housing excess capacity exist.” Letter from Delaine Eastin, Superintendent of Public Instruction, to Jackie Goldberg, Member of Cal. State Assembly, May 10, 2002.

**b. MTYRE, and Concept 6 in Particular, Fail to Provide Students Equal Educational Opportunities.**

467. Students who attend schools operating on the Concept 6 calendar, in particular, suffer several significant disadvantages as compared to students at schools on traditional calendars.

468. As Dr. Oakes concludes, those disadvantages include (1) overcrowded and large schools; (2) truncated and lost instructional time; (3) limited access to courses and specialized programs; (4) ill-timed breaks and correspondingly limited access to extracurricular activities and enrichment programs; and (5) poorer achievement. Oakes Overcrowding Report; *see also* Mitchell Report at 19-28. In light of its many significant disadvantages, Dr. Oakes finds it hardly surprising that Delaine Eastin, State Superintendent of Public Instruction, should declare: “I would love to get rid of Concept 6.” Julie Z. Giese, *State Superintendent Makes Stop at Lodi Middle School*, LODI NEWS-SENTINEL, Oct. 26, 2001; Oakes Overcrowding Report.

1           469.   According to LAUSD Superintendent Roy Romer, the three-track Concept 6 calendar  
2 may save money, but it compromises the quality of education:

3                   When you put kids in a sardine can the way we've been doing in this  
4                   district, there is an economy of scale. . . . This district has been saving  
5                   money by packing people like sardines. . . .

6                   I want this community to understand that they have had a cheap ride by  
7                   putting kids in sardine-can schools. . . . If you put 4,000 kids into a  
8                   middle school on triple tracks, you inevitably are going to save money.  
9                   But quality goes out the door.

10           *Do L.A. Public Schools Work? A conversation with Superintendent Roy Romer, L.A. WEEKLY*  
11           (Dec. 1-7, 2000).

12           470.   Studies indicate that multi-tracking has a negative effect on student achievement.

13           471.   In 1987, the CDE commissioned a study of year-round education, “the first attempt to  
14 analyze and synthesize information on all schools with year-round programs in California.” Claire  
15 Quinlan, Cathy George, and Terry Emmet, *A Study of Year-Round Education in California* at 1  
16 (1987) at 1. The study found that multi-track schools scored below predicted levels even after  
17 controlling for socioeconomic status, while the less prevalent single-track, year-round schools scored  
18 at or slightly above predicted levels. *Id.* at 94.

19           472.   A study of schools in Oakland found that student achievement decreased in multi-track  
20 schools, but increased for students on traditional calendars over the three-year period before the  
21 study. Ana Resnik, *Year-Round Schools Evaluation* at 3-4 (1993) at 3-4. Although socioeconomic  
22 status played some part in the results, the type of school calendar played a significant role. *Id.* at 8.

23           473.   Last year, it was reported: “Statewide, multi-track year-round schools performed  
24 largely below average when compared to similar schools, said Pat McCabe, administrative manager  
25 of the state department’s Office of Policy and Evaluation.” Julie Z. Giese, *Year-Round Calendar*  
26 *Blamed for Poor Ranks*, LODI NEWS-SENTINEL (Jan. 18, 2001). The same article reported that the  
27 Superintendent of the Lodi Unified School District, Bill Huyett, blamed “some of the dismal scores to  
28 the Concept 6 year-round calendar, which gives students 17 less days in the classroom compared to  
typical 180-day calendar” and “said he hope[d] to continue working toward getting students a longer  
school year.” *Id.*

474. Also last year, an LAUSD study concluded that students on the Concept 6 calendar do not perform as well in reading and math as students at traditional schools. Jeffrey A. White and Steven M. Cantrell, *Comparison of Student Outcomes in Multi-Track Year-Round and Single-track Traditional School Calendar*, at 4. It found that achievement gaps existed even after comparing only demographically similar schools. *Id.*

475. Further, reviewing State data for 2001, Dr. Ross Mitchell concludes that there is a large achievement gap between multi-track schools and other schools. Mitchell Report at 20-27. In particular, he finds that traditional/single-track schools are best off, while Concept 6 schools are worst off. *Id.* Moreover, he concludes that multi-track schools remain less likely to be ranked as highly as other schools on the State's Academic Performance Index (API). *Id.* In particular, he finds that Concept 6 schools, over nearly the entire range of scores, are one full rank below traditional/single-track schools on the Similar Schools Index, which is designed to account for student and school background characteristics. *Id.*

476. Finally, Dr. Oakes relies on a recent Harris Group survey of California teachers in support of her opinion that the multi-track schedule is a barrier to student learning. *See* Oakes Overcrowding Report. Of the teachers who reported working in multi-track schools, 42% said that the multi-track schedule interfered with their ability to cover the curriculum “in a complete and coherent way.” *Id.* Forty-seven percent said the multi-track schedule interfered with their ability to prepare students to meet state content standards, and 48% said it interfered with their ability to prepare students for standardized tests. *Id.*

**c. The State Has Known for Years that Low-Income Students and Students of Color Are Disproportionately Enrolled in Multi-Track Schools, and Most Significantly in Concept 6 Schools.**

477. Students enrolled in multi-track schools do not reflect statewide enrollment demographics. Multi-track schools disproportionately enroll low-income students and students of color.<sup>17</sup>

<sup>17</sup> Multi-track schools also disproportionately enroll English Language Learners and employ undercredentialed teachers. Dr. Mitchell found that “ELL students are relatively more likely to be enrolled in a multi-track year-round calendar school, and the high level of enrollment in Concept 6

1           478.   The 1987 study commissioned by the CDE found that year-round schools, two-thirds  
2   of which were multi-track schools, served higher percentages of students of color than the statewide  
3   average, and were “more likely to be found in communities with a lower socioeconomic status and a  
4   higher proportion of families receiving AFDC.” C. Quinlan, C. George, and T. Emmet, *A Study of*  
5   *Year-Round Education in California* at 2. The year-round schools also served “about twice as many  
6   limited- and non-English-speaking students as d[id] traditional schools.” *Id.*

7           479.   A 1993 study in Oakland showed that the district’s year-round schools, which had a  
8   multi-track configuration, had “a significantly higher percent LEP [Limited English Proficient]  
9   student enrollment (47%), than the other schools (18%),” and “a significantly higher (85%) percent  
10   of students receiving free or reduced lunch than the other schools (74%).” Resnik, *Year-Round*  
11   *Schools Evaluation* at 3, 6.

12           480.   “The majority of children that attend MTYRE schools are from low-wealth families  
13   and under-represented communities. In a sample of 344 MTYRE schools conducted by the  
14   California Department of Education, 50% of the students were English Language Learners. They  
15   attend the most impacted schools in some of the oldest facilities in the State. The need for additional  
16   instructional services and community resources are beyond the capacity of their school facilities.  
17   (Note: California Department of Education data reveal that the average AFDC [30%] and Free and  
18   Reduced Lunch counts [82%] for MTYRE students are almost twice the California average.)”  
19   California’s Coalition for Adequate School Housing (CASH), *Multi-Track Year Round Education:*  
20   *Causes and Effects of Legislative Initiatives and Proposals* (June 30, 1998) at 2. (emphasis in  
21   original)

22           481.   Dr. Mitchell concludes that “[r]acial or ethnic group membership is strongly aligned  
23   with the type of calendar under which schools operate in the State of California.” Mitchell Report  
24   at 26. He finds that “[t]his is particularly striking for Hispanic students attending schools using a

25   \_\_\_\_\_  
26   schools is well out of proportion to their representation in the state as a whole.” Mitchell Report at  
27   16. While the median level of English Language Learner enrollment at Concept 6 schools is 53%,  
28   the State has an English Language Learner enrollment of 17%. *Id.* Similarly, Dr. Mitchell found that  
“there is a staggeringly high proportion of adults in the classrooms of Concept 6 schools who are not  
fully qualified to occupy the particular teaching assignment in which they have been placed . . .” *Id.*  
at 16-17.

1 multi-track calendar, especially those attending schools using a Concept 6 calendar.” *Id.* While  
2 Hispanic students represent approximately 37% of students at traditional/single-track schools, they  
3 represent approximately 57% of students at multi-track schools other than Concept 6 schools, and  
4 approximately 74% of students at Concept 6 schools. *Id.* at Exhibit B.

5 482. Dr. Mitchell also concludes that “the percentage of students from low-income  
6 families . . . in multi-track year-round schools, especially among those attending schools using a  
7 Concept 6 calendar, are greatly different from those attending traditional or single-track schools.” *Id.*  
8 at 5. While students participating in the National School Lunch Program represent 44% of students at  
9 traditional/single-track schools, they represent 66% of students at multi-track schools other than  
10 Concept 6, and 85% of students at Concept 6 schools. *Id.* at Exhibit B.

11 **d. For Years, the State Has Not Merely Permitted**  
12 **MTYRE, and Failed to Make Enough Funding**  
13 **Available to Avoid Resort to MTYRE, but Provided**  
**Incentives to Encourage Districts to Resort to**  
**MTYRE.**<sup>18</sup>

14 483. California has long provided incentives for districts to implement and operate multi-  
15 track, year-round programs “as an alternative to constructing new school facilities.” *See* LAO, *Year-*  
16 *Round School Incentive Programs: An Evaluation, Year-Round Schools (1990)* at 3. As the LAO has  
17 concluded, “the state’s *primary* interest in year-round education is its potential for reducing school  
18 districts’ demands for limited state resources to construct new school facilities.” *Id.* According to  
19 the LAO, “Other reasons why the state might be interested in promoting year-round education,  
20 besides its potential to reduce the need for new funds for school facility construction, either have not  
21 been conclusively established or are not strongly enough in the state’s interest to merit the provision  
22 of financial incentives.” *Id.*

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23  
24  
25 <sup>18</sup> As the State acknowledges, its effort to reduce class sizes has also spurred resort to multi-  
26 track calendars. *See* YRE Guide (“Because of rapid growth, overcrowding, and its cost-effectiveness  
27 in achieving class size reduction, the number of districts using multitrack year-round education has  
28 grown significantly.”); *see also* CASH, *Multi-track Year Round Education: Causes and Effects of*  
*Legislative Initiatives and Proposals* (1998) at 1-2 (“Since 1997 and the implementation of Class  
Size Reduction programs, a number of elementary schools have begun to convert non-MTYRE  
schools into MTYRE schools . . . as a means to increase instructional space without adding portable  
classrooms.”)

484. “MTYRE calendars, while problematic, were seen as the lesser of several evils by many school districts. The acceptance of an MTYRE calendar by schools districts was facilitated by a series of legislatively approved incentives.” CASH, *Multi-Track Year Round Education: Causes and Effects of Legislative Initiatives and Proposals* (1998) at 3. “The proposed legislative ‘fixes’ to reform education appear to ignore or underestimate their effect on those school districts (MTYRE) that have responded to an extreme enrollment crisis by following regulations and incentives prescribed by California law.” *Id.* (emphasis in original)

### **i. Higher Eligibility for School Construction Funds**

485. The State for years gave districts higher eligibility for funding from State school construction bonds if they committed to implementing MTYRE. *See id.*

486. AB 1650, signed into law in 1987, gave first priority for new school construction funding, commencing July 1, 1989, to districts that demonstrated current or planned use of a multi-track program, as specified in the statute.

487. Specifically, it gave first priority to districts that demonstrated either:

(1) At least 10 percent of district pupils or 20 percent of pupils in the high school attendance area for which the district is applying for new facilities, in kindergarten or any of the grades 1 to 6, inclusive, are enrolled, or will be enrolled no later than July 1, 1990, in year-round multi-track educational programs. However, if 10 percent of the district's population in kindergarten and grades 1 to 6, inclusive, represents less than one school, then at least one school shall be on a year-round multi-track educational program.

(2) At least 30 percent of district pupils in kindergarten or any of the grades 1 to 6, inclusive, or 40 percent of pupils in the high school attendance area for which the school district is applying for new facilities are enrolled, or will be enrolled no later than July 1, 1992, in year-round multi-track educational programs.

Thus, as Payne explained, priority was only available if districts “ha[d] a substantial enrollment in multi-track year-round education . . . .” (Payne Depo at 224:20-22.)

488. AB 87, signed into law in 1990, created six categories of priority for new school funding, and made approval of projects operating on a multi-track calendar the priority. It also repealed the existing provisions for year-round incentive payments, and established the Year-Round School Grant Program, which provided assistance to school districts implementing new multi-track year-round programs and districts already operating such programs.

489. Specifically, it provided “[f]irst priority for construction funds . . . to school districts with a substantial enrollment in multi-track year-round schools requesting state funding for 50 percent of the cost of a project that would be constructed to operate on a multi-track year-round basis.” It also accorded “[s]econd priority . . . for school districts with a substantial enrollment in multi-track year-round schools requesting state funding for the entire cost of a project that would be constructed to operate on a multi-track year-round basis.” Under the statute, substantial enrollment meant “at least 30 percent of district pupils in kindergarten or any of the grades 1 to 6, inclusive, or 40 percent of pupils in the high school attendance area for which the school district is applying for new facilities.”

490. According to Payne, in addition to “growing facilities needs,” AB 1650 and AB 87, which “tied participation in the state school building program to a substantial enrollment in multi-track year-round education,” are responsible for the tremendous growth in the enrollment at multi-track schools in California. (Payne Depo. at 222:19-223:11.) As he explained, through these programs, “[the State] gave priority status to those districts operating multi-track year-round education.” (*Id.* at 229:11-18.) These programs thus “gave incentives to those [districts] choosing to operate multi-track year-round education.” (*Id.* at 230:5-7, 229:17-18.)

491. “The effect of this policy was to require any school district seeking State funding for school construction, to commit its schools to implement an MTYRE calendar.” CASH, *Multi-Track Year Round Education: Causes and Effects of Legislative Initiatives and Proposals* (1998) at 3.

## ii. Operational grants for schools adopting MTYRE

492. The State has also provided “incentives...in the form of operational grants to those schools that adopted an MTYRE calendar and increased their school’s enrollment capacity. The



1 State's savings in construction costs for new facilities were shared with the school districts based on  
2 the number of students that were above the initial design capacity of the school." CASH, *Multi-  
3 Track Year Round Education: Causes and Effects of Legislative Initiatives and Proposals* (1998)  
4 at 3. "Incentive grants are available for school districts . . . operating multitrack year-round education  
5 programs. These grants are allocated annually based on the number of students claimed in excess of  
6 school site capacity." YRE Guide; *see* CAL. EDUC. CODE § 42260 et seq.

7 493. However, there is a disadvantage to accepting operational grant funding, and there is a  
8 significant shortfall in the funds available through the program.

9 494. "A disadvantage of adopting a multi-track system and collecting State multitrack  
10 operational grant money is that the school district's new construction entitlement in the State School  
11 Building Program is reduced by the number of additional students housed at a school as a result of its  
12 multitrack calendar." YRE Guide. Put differently, generally, for each student a district claims for  
13 purposes of an operational grant, there is a reduction in the district's eligibility for new school  
14 construction funds. (Payne Depo. at 118:11-19.) According to Thomas Payne, he would do away  
15 with the operational grant program, and the loss of eligibility incurred by accepting the grants,  
16 because it would "level[] the playing field by renewing statewide eligibility on a fair basis." (*Id.*  
17 at 119:11-120:20.)

18 495. According to the State's most recent report of lost eligibility from the operational grant  
19 program, Los Angeles Unified lost eligibility for nearly 24,000 students; Palmdale nearly 2,600; Lodi  
20 Unified just over 2,400; and Vista Unified almost 1,500. CDE, Year-Round Education 2000-  
21 01/2001-02 Lost Eligibility by School/District, at  
22 <http://www.cde.ca.gov/facilities/yearround/lse10001.htm>. Making a rough estimate based on a State  
23 apportionment of \$10,000 per student — the low is \$9,478 per student in grades K-6 and the high is  
24 \$13,240 per student in grades 9-12 (*see* OPSC, Statistical and Fiscal Data for the School Facility  
25 Program and Proposition 1A: December 16, 1998 through August 28, 2002 at 4) — the districts that  
26 operate schools on Concept 6 calendars lost out on a combined total of approximately \$300,000,000  
27 in new construction funds as a result of the operational grant program.



503. On August 29, 2002, the Legislature overwhelmingly approved AB 2027, a bill that effective July 1, 2008 would have repealed Education section 37670.

504. Superintendent Delaine Eastin opposed the bill. Notwithstanding her opposition, Ms. Eastin explained: “Schools that use a 163-day school year do so because of severe overcrowding. These schools use a three-track MTYRE calendar, commonly known as ‘Concept 6,’ because it allows them to enroll students 50 percent above the actual school building capacity . . . . Concept 6 is a choice only when no other means of housing excess capacity students exist.” Letter from Delaine Eastin, Superintendent of Public Instruction, to Jackie Goldberg, Member of Cal. State Assembly, May 10, 2002. As discussed above, Ms. Eastin described Concept 6 as the “least desirable method of housing our students.” *Id.*

505. On September 19, 2002, the Governor vetoed AB 2027. In his veto message, the Governor explained that the bill “would result in significant cost pressure at the state and local level to fund the costs associated with consequences of eliminating Concept 6 MTYRE. . . . The Department of Finance estimates those costs could result in hundreds of millions in additional General Obligation bond dollars and General Fund costs.” September 19, 2002 Veto Message of AB 2027. He added that the bill “would result in a significant loss of local flexibility for school districts operating a Concept 6 MTYRE schedule....[and] that school districts should continue to have discretion in choosing their own education program schedule.” *Id.*

## **2. Attempts to Cope With Severe Overcrowding Through Busing Have Impacted Educational Opportunities for California Schoolchildren on an Unequal Basis.**

**a. The State Has Known that School Overcrowding Has Been a Growing Problem Resulting in Busing of Students to Less Crowded Schools.**

506. Schools and districts have resorted to busing in an attempt to relieve overcrowding — busing students from schools that have no room for them to schools elsewhere in the district that are less crowded — sometimes even after resorting to multi-track calendars. (Payne Depo. at 139:12-25 (discussing busing of children from one attendance area to another as one possible response to overcrowding); Declaration of Gordon Wohlers, dated March 24, 2000 (“Wohlers Decl.”) ¶ 29.)

1           507. In 1992, the Little Hoover Commission reported that “ [c]rowded districts bus students  
2 long distances, sometimes right past vacant facilities owned by other school districts.” Little Hoover  
3 Commission Introductory Letter to *No Room for Johnny: A New Approach to the School Facilities*  
4 *Crisis* (1992) at intro. letter.

5           508. LAUSD operates the Capacity Adjustment Program (CAP) to bus students to schools  
6 out of their neighborhoods when their home schools have run out of space for them. “Once a  
7 school’s enrollment reaches capacity, students who want to enroll are put in the program.” Brett  
8 Johnson, *The 4th R-Riding; Overcrowded Downtown Campuses Mean Some Students Must Rise at*  
9 *Dawn and Endure an Hourlong Bus Trip to Chatsworth*, L.A. TIMES, June 14, 1998, at B1. The  
10 purpose of the program is to relieve overcrowding.

11           509. In 1979-80, the number of students in CAP was about 25,000. *Id.*

12           510. The number of students in CAP decreased to about 11,000 in 1998 — in part, as a  
13 result of the district’s conversion of schools to multi-track calendars. *Id.* At that time, there were 89  
14 overcrowded elementary, middle and high schools in CAP. *Id.*

15           511. In 1999, the Little Hoover Commission found that every day LAUSD bused more than  
16 15,000 students because of overcrowding in their home schools. Little Hoover Commission,  
17 *Recommendations for Improving the School Facility Program in Los Angeles Unified School District*  
18 (1999) at 4.

19           512. An August 17, 2001 press release reported that there were 18,000 students in CAP.  
20 Press Release, LAUSD, *Traveling Students in L.A. Schools to Receive Bus Information Mailers in*  
21 *Late August*, (Aug. 17, 2001) (“LAUSD News Release”)  
22 [http://www.lausd.k12.ca.us/lausd/offices/Office\\_of\\_Communications/travelpacket.pdf](http://www.lausd.k12.ca.us/lausd/offices/Office_of_Communications/travelpacket.pdf).

23           513. The LAUSD Facilities task force reported that:

24                   As a result of the problems created by overcrowded campuses, nearly  
25                   25,000 students are transported every day out of their neighborhoods to  
26                   less crowded schools. This number is expected to increase dramatically  
27                   in the coming years. Some of these children have up to an 100 mile  
28                   daily commute which often requires them to spend over 2 hours in rush  
                      hour traffic.

1 LAUSD School Reform Office, Facilities Task Force (“Task Force”)

2 [http://www.lausd.k12.ca.us/lausd/offices/reform/school\\_fac.html](http://www.lausd.k12.ca.us/lausd/offices/reform/school_fac.html).

3 514. Although scores of district schools operate on the Concept 6 calendar, the schools still  
4 cannot accommodate their neighborhood enrollments. Wohlers Decl. ¶ 29. Some LAUSD students  
5 are actually bused to schools that operate on multi-track calendars to accommodate their own  
6 growing enrollments. In fact, as of 2000, it appears that at least 34 of the LAUSD schools receiving  
7 students bused due to overcrowding operated on the Concept 6 calendar. *See* Wohlers Decl. Exh. 7.

8 515. Cahuenga Elementary, for example, has long needed to bus children out due to  
9 overcrowding even though it converted to the Concept 6 calendar approximately 21 years ago.  
10 (Deposition of Lloyd Houske (“Houske Depo.”) at 401:10-13.) Principal Lloyd Houske, who has  
11 been at Cahuenga 16 years, estimates that the school has been busing students out of the schools for  
12 10 or 11 of those years. (*Id.* at 301:8-10.) The school actually buses more children out of the  
13 neighborhood than are enrolled at the school — about 1900 students are bused out, while 1300  
14 remain at the school. (*Id.* at 246:14-15, 301:2-4.) About 700 kindergartners and first graders (five  
15 and six-year-old students) are bused from Cahuenga. Wohlers Decl. ¶ 30. Of the 15 schools  
16 Principal Houske identified as schools that receive Cahuenga students, 4 currently operate on the  
17 Concept 6 calendar. (*See* Houske Depo. at 172:15-174:1); <http://www.lausd.k12.ca.us/findit.html>.

18 516. Like LAUSD, the Long Beach Unified School District (“LBUSD”) has long had to  
19 bus students to relieve overcrowding. The elementary schools located downtown and on the city’s  
20 west side — the “mostly low-income, minority neighborhoods — were the first to feel the crunch of  
21 too many students.” Maria L. LaGanga, *L.B. Schools Predicting More Students Than Classrooms*,  
22 L.A. TIMES, Apr. 14, 1985, at 12-1. LBUSD has been busing students from these overcrowded  
23 schools since 1978. *Id.*

24 517. At Lincoln Elementary, in LBUSD, hundreds of students are bused due to  
25 overcrowding. Declaration of Thierry Kolpin (“Kolpin Decl.”), dated December 21, 2001, at ¶ 3  
26 (“During the time I worked there, at least 600 kids were bused away from Lincoln [Elementary] each  
27 year because the school had no room for the students. Lincoln is one of many elementary schools in  
28

1 inner city Long Beach that is considered a “sending” school. That means Lincoln cannot take any  
2 more students, so it must send students to other, ‘receiving,’ schools.”).

3 **b. The State Does Not Compile the Number of Students**  
4 **Bused Due to Overcrowding.**

5 518. The State does not even compile data regarding the number of students statewide who  
6 are bused to school due to overcrowding.

7 519. The State requires districts to maintain records showing the number of students bused.  
8 However, “[a]lthough it is possible to obtain information as to the number of students bused in a  
9 district, it is not possible to determine why they are bused.” State Allocation Bd., *Report on Public*  
10 *School Construction Apportionments 1980-2001* (2001) at vii.

11 520. According to the CDE, school districts and county offices of education bus  
12 approximately 987,000 students. CDE *Fact Book 2002*, Average Costs of a California School, 1999-  
13 2000, Detail Chart, <http://www.cde.ca.gov/resrc/factbook/detail.htm>., at 108.

14 521. Students may be bused to school for a variety of reasons, such as desegregation or  
15 magnet programs. Only a subset of students is bused, then, not so that they may enjoy the benefits of  
16 attending an integrated school or a school offering a specialized educational program, but because  
17 their neighborhood schools have run out of space.

18 522. If LAUSD is any guide, the number of students bused to relieve overcrowding is likely  
19 to be a relatively small percentage of all students who are bused to school. LAUSD buses  
20 approximately 75,000 students for a variety of reasons, including desegregation and magnet  
21 programs. *Rolling on Under Pressure*, L.A. TIMES, Apr. 4, 2002, at Pt. 2, Pg. 14. Less than a third  
22 of those students are bused to relieve overcrowding. *Id.*

23 **c. Students Bused to School Due to Overcrowding Do**  
24 **Not Receive Equal Educational Opportunities.**

25 523. Students who are bused to school due to overcrowding suffer several significant  
26 disadvantages as compared to students who attend a neighborhood school.

27 524. According to Dr. Oakes, those disadvantages include: (1) reduced parental  
28 involvement; (2) incentive not to attend kindergarten; (3) limited access to after-school programs; and  
(4) poorer academic performance. Oakes Overcrowding Report.

1           525. LAUSD Chief of Staff Gordon Wohlers has stated the disadvantages succinctly.  
2        “The combination of early morning hours, dead time spent on a bus in traffic, low rates of parental  
3 participation and stress are all reasons that a traveling student’s grades suffer,” Wohlers said. . . .  
4         “[i]t’s not surprising,” Wohlers said. “When you think about all the hurdles that these families go  
5 through, day after day, year after year.”” Margaret Ramirez, *A Long and Tiring Road to School; For*  
6 *Many Inner-City Children, Going to Class Can Mean Catching a Bus* at 6:45, L.A. TIMES, Nov. 25,  
7 2000, at B1. See Craig B. Howley, Aimee A. Howley & Steve Shamblen, *Riding the School Bus: A*  
8 *Comparison of the Rural and Suburban Experience in Five States*, 17 J. RES. RURAL EDUC. (2001) at  
9 43 (“[u]nintended consequences [of busing students] include (a) rides that have in some cases  
10 become unreasonably long, (b) disruptions to family life, and (c) negative effects of length of ride on  
11 achievement.”).

12           526. Research over the last two decades indicates that parental involvement is a critical  
13 factor relating to student achievement.

14           527. Yet, according to Wohlers, LAUSD “effectively discourages” parental involvement  
15 through its busing program to relieve overcrowding. Wohlers Decl. ¶ 15. As children are bused  
16 involuntarily from their home schools, their parents frequently cannot connect with the new school.  
17 Wohlers Decl. ¶ 36.

18           528. As Cahuenga Elementary Principal Lloyd Houske has explained, “Some of those  
19 children [bused from Cahuenga due to overcrowding] ride buses more than an hour each way. Their  
20 parents aren’t as involved in their schools. They can’t be; many don’t have cars.” Jim Newton,  
21 *District Weighs Evictions to Make Way for Schools; L.A. Unified: Officials Concede the Need to*  
22 *Preserve Affordable Housing, But Say New Campuses are Essential*, L.A. TIMES, Jan. 9, 2000, at A1.

23           529. Immigrant parents, in particular, may not be as involved in their children’s schools,  
24 because they may not receive the same level of language support, and may not feel as comfortable, at  
25 the school to which their child is sent. As the L.A. TIMES has reported, “[Cahuenga Elementary  
26 Principal] Lloyd Houske . . . believes some immigrant parents are intimidated by schools outside  
27 their neighborhood and avoid visits for fear of embarrassment. “These parents don’t have much  
28 contact with the school. Some don’t even know where the school is. They just don’t have the same

1 comfort as they would if the school was around the corner,' Houske said.” Margaret Ramirez, *A*  
2 *Long and Tiring Road to School; For Many Inner-City Children, Going to Class Can Mean Catching*  
3 *a Bus* at 6:45, L.A. TIMES, Nov. 25, 2000, at B1. As Houske has explained, immigrant parents can’t  
4 be as involved if their children are bused to schools that serve a different community and do not  
5 provide the same language support as their neighborhood school. Jim Newton, *District Weighs*  
6 *Evictions to Make Way for Schools; L.A. Unified: Officials Concede the Need to Preserve Affordable*  
7 *Housing, But Say New Campuses are Essential*, L.A. TIMES, Jan. 9, 2000, at A1 (“Their parents aren’t  
8 as involved in their schools. They can’t be. . . . There’s not as much language support.”); see also  
9 Richard Rothstein, *Lessons: A Crowding Quandary Meets a Quake Code*, N.Y. TIMES, Apr. 3, 2002,  
10 at B7 (“The pupils are bused to schools that usually don’t offer the Spanish- or Korean-language help  
11 that Cahuenga provides.”).

12         530. A recent study of school busing in five states confirms the negative impact of busing  
13 on parental involvement. This study found that “39.0% of principals in schools with rides of less  
14 than 30 minutes duration believed that length of ride had a negative effect on parental involvement,  
15 as compared with 67.3% of principals in schools with longest rides greater than 30 minutes duration.”  
16 Craig B. Howley, Aimee A. Howley & Steve Shamblen, *Riding the School Bus: A Comparison of the*  
17 *Rural and Suburban Experience in Five States*, 17 J. RES. RURAL EDUC. (2001) at 58.

18         531. Research indicates that busing to relieve overcrowding has a negative effect on  
19 achievement.

20         532. In 1973, a study of Oklahoma students in grades four, eight, and eleven found a small  
21 but significant difference between the performance of bused and non-bused students. Yao-Chi Lu  
22 and Luther Tweeten, *The Impact of Busing on Student Achievement*, 4 GROWTH AND CHANGE 44-46  
23 (1973). The students bused were not bused to achieve integration. The researchers found that, if  
24 other variables were held constant, each hour per day spent riding a bus could be predicted to reduce  
25 achievement scores. *Id.* at 46 They noted that “bus-riding time is not very good for studying.” *Id.*  
26 at 45.

27         533. LAUSD officials and staff have consistently reported that the students bused to relieve  
28 overcrowding achieve at the lowest levels.



1           534. In 1989, the L.A. Times reported, “[LAUSD] Board of Education member Leticia  
2   Quezada, who represents some of the most crowded schools in the district, said. . . . ‘I am convinced  
3   it (busing for overcrowding) is having a detrimental effect’ on achievement as a whole, she said,  
4   citing other district studies that show CAP [Capacity Adjustment Program] students with lower test  
5   scores than students who are allowed to remain in the neighborhood schools.” Elaine Woo, *School*  
6   *Dropouts: New Data May Provide Elusive Clues*, L.A. TIMES, Sept. 11, 1989, at 1-1.

7           535. In 1999, the Little Hoover Commission stated:

8                         Researchers have attempted to gauge the link between the quality of  
9                         school buildings and the quality of learning. In Los Angeles, however,  
10                        this link is obvious. . . . Some 15,000 schoolchildren ride buses each  
11                        day because there is no room at their home school. . . . According to  
12                        LAUSD officials, the 15,000 children involuntarily riding buses score  
                          significantly lower on academic tests than the children who stay in their  
                          neighborhood schools. They are poor performers in a poor-performing  
                          district.

13           Little Hoover Commission, *Recommendations for Improving the School Facility Program* at 4.

14           536. In 2000, Gordon Wohlers, Chief of Staff to the LAUSD Superintendent, stated, “For  
15   some years we have known that the lowest California Test of Basic Skills and Stanford 9 scores in  
16   the District are those of students who are in our ‘CAP’ program, the program we use to bus students  
17   away from their local schools when those schools have no room for them.” Wohlers Decl. ¶ 17.

18           537. In 2001, the LAUSD Facilities Task Force reported that the group of students bused to  
19   school to relieve overcrowding “is the lowest achieving group in the school district and its test scores  
20   are significantly below those of the students who are able to remain in the home school.” Task Force.

21           538. In light of the disadvantages of busing students to distant neighborhoods, it is not  
22   surprising that the main goal of LAUSD’s school construction program is, and has been for some  
23   time, to build enough schools to return all its students to neighborhood schools. “‘The ideal is zero  
24   students bused,’ said Bruce Takeguma, a district busing specialist. ‘You keep working for that  
25   ideal.’” Amy Pyle, *Crash Renews Calls to Stop Forced Busing; Education: Many Students, Like*  
26   *Those in Accident, Are Transported Because of Overcrowding*, L.A. TIMES, Dec. 7, 1995, at A32.  
27   See also Harrison Sheppard, *\$9 Billion Sought for New Schools*, L.A. DAILY NEWS, July 20, 2000  
28   (LAUSD Facilities Chief Robert Buxbaum stating, “‘It is our intention in this district to create a

neighborhood, two-semester seat in every school in the district[.]”); *see also* Harrison Sheppard, *High School Population ‘Bulge’ Less Than Expected*, L.A. DAILY NEWS, Feb. 13, 2001, at N3 (“Ultimately, the district hopes to build facilities for 200,000 students to eliminate year-round schedules and busing of students to schools in distant neighborhoods.”).

**3. Class Members Have Suffered Disproportionately From the Effects of Overcrowding.**

**a. Class Representatives Have Attended Schools On a Year-Round, Multi-track Schedule.**

539. Class representatives Cindy Diego, Lizette Ruiz, and Samuel Tellechea all attended overcrowded, multi-track, year-round schools that operate on the Concept 6 calendar. (Diego Depo. at 65:7-11; L. Ruiz Depo. at 84:2-3 (“I’ve never been in a school that isn’t a multitrack.”); *id.* at 129:15-130:8, 131:2-13; Deposition of Rosa Tellechea (“Tellechea Depo.”) at 326:18-23, 331:11-13.) The II/USP action plan for Lizette’s school, Huntington Park Senior High School in Los Angeles, reported that “HPSHS was built to accommodate 1,700 students. It currently has over 4,300 students enrolled. HPSHS is a multi-track, year-round campus that can accommodate 3,000 students.” (DOE 37183.) Cindy Diego’s assistant principal Marcia Hines testified that disadvantages to multi-track calendar schools include:

I think you get a more cohesive group [in a traditional calendar school than in a multitrack calendar school]. Everyone is there at the same time, and they all hear the same message and have similar experiences. With the comings and goings, it’s difficult to look at everyone all together and get everyone’s opinion. For example, if we have to make a decision right now on the bell schedule, we are not able to get all the C track input that we would need to get. . . . The decisions — the ones we don’t have a lot of time to make — are made by whoever is there at that particular time. So that’s a third of your student body, a third of your teachers that are not there, and they don’t ever hear the same message because things change. There are different problems in March that we are talking about than what we had last November. We have a different population in March than we had in November. So even though you try to have everything consistent — the same staff developments, same instructional whatever — it’s just different because things change because we have to change as problems change. So I mean that’s really a challenge, I think.

(Hines Depo. at 130:24-132:8.)

. . . AP tests . . . are given in May, and the perfect track for that, of course, is C track because those kids are in school from January through the beginning of May. So they are actually with a

1 teacher. And if you look at the A track kids that don't come back until  
2 March, they have to make an effort to come back to school — as do B  
3 track — make an effort to come back to school, when they are off  
4 track, to meet with their teacher, and some of them are unable to do  
5 that. Maybe they are out of the country or whatever. So in a way that  
6 impacts — it could impact.

7 (*Id.* at 134:22-135:8.)

8 [These] teachers were all originally traditional teachers. So they all had  
9 curriculum that span so many weeks and so forth. So that is the way  
10 they were used to instruction. They had to make some modification  
11 [for a multitrack calendar with fewer school days]. Some people saw  
12 that as leaving things out and modified to make sure all the content was  
13 delivered. So it's possible in some classes that happened.

14 (*Id.* at 137:14-24; *see also* Roland Depo. at 78:25-79:5, 307:16-309:3 (principal testimony that many  
15 academic electives, including geography, psychology, and science, were not offered on all three  
16 tracks at Fremont).)

17 540. In addition, Ms. Hines testified: “I assume a large part of the reason [Fremont High  
18 School in Los Angeles switched to a Concept 6 calendar] is because we had too many students that  
19 needed to attend our school; therefore, to accommodate more students, we put the track system in. . . .  
20 Because our population is huge, and if we were on single track, we would have to bus more students  
21 out.” (Hines Depo. at 615:22-616:6.) Similarly, Samuel Tellechea’s principal testified that  
22 Cahuenga transferred to the Concept 6 calendar “[b]ecause they had more children than they could  
23 house within the school”; “I assumed everybody knew we were an overcrowded school. That wasn’t  
24 a secret.” (Houske Depo. at 232:5-7, 401:18-23.) Samuel’s mother testified that “I fear that — that  
25 his education — that he’s not getting the education, the fair education that he is entitled to”  
26 “[b]ecause he’s out for four months instead of being out for only two like traditional calendar schools  
27 are, meaning that he could be learning more.” (Tellechea Depo. at 363:21-364:9.)

28 **b. Other Class Members Have Attended Schools On a  
Year-Round, Multi-track Schedule.**

29 541. According to 2000-2001 CDE data, 965 schools statewide operate on multi-track,  
30 year-round calendars (<http://api.cde.ca.gov/datafiles.html>), of which approximately 240 schools  
31 operate on the Concept 6 or Concept 6 modified multi-track, year-round calendar that reduces the  
32 total number of days students attend school during the school year. As the II/USP action plan for

1 Miramonte Elementary School in Los Angeles explained it, “[t]he school, one of the largest  
2 elementary schools in the Los Angeles Unified School District (LAUSD), does not have sufficient  
3 classrooms to accommodate neighborhood students on a traditional school year calendar.”  
4 (DOE 37375.)

5 542. Some school II/USP plans identify year-round multi-track schedules as barriers to  
6 their students’ performance. (*E.g.*, DOE 31502, 36505, 46346-47.) According to two San Jose  
7 schools’ II/USP plans, “[m]ulti-track year round schedule [is] the #1 barrier to student achievement  
8 and to consistency in program implementation.” (DOE 32798 — II/USP action plan for Franklin  
9 Elementary School in Franklin-McKinley School District, DOE 32864 — II/USP action plan for  
10 Santee Elementary School in Franklin-McKinley School District.) The II/USP action plan for Barton  
11 Hill Elementary School in Los Angeles reported:

12 The Concept 6 school calendar presents a significant barrier to student  
13 achievement. On this schedule, two of the three tracks are on vacation  
14 twice a year for two months each. Research has documented that  
15 student[s] forget a significant proportion of the prior session gains  
16 during long vacation periods, including gains in English language  
17 develop[ment]. The school is on a 163-day rather than the normal 180-  
18 day year calendar. While the school day is elongated to account for the  
19 17 fewer days, teachers and experts agree that adding a few minutes to  
20 each lesson is not the same as having the equivalent calendar days.  
21 Thus, on the basis of the shortened calendar alone, Barton Hill students  
22 on two tracks receive 17 fewer days of “new” instruction a year or 102  
23 days over the six years at Barton. In short, these students receive  
24 almost two-thirds of [a] year less education than students do on regular  
25 school calendars. While this matter is beyond the scope of the grant,  
26 the teachers at Barton Hill agreed to explore the possibility of a 4-track  
27 calendar.

28 (DOE 38186-87; *see also* DOE 36538 — II/USP action plan for Lawrence Elementary School in  
Lodi Unified School District.)

543. The II/USP action plan for Plummer Elementary School, also in Los Angeles,  
reported:

Running an overpopulated school on a year-round basis is difficult at  
best. At any one time, one-third of the teaching staff is off-track. Key  
decision-making by members of the school leadership teams has been  
disjointed and without a clear focus resulting in poor communication  
with the various school stake holders. There is a need for the various  
leadership groups to spend concentrated times throughout the school  
year to make decisions based on student assessment data and other  
identified needs.

1 (DOE 43201.) The Plummer action plan continued:

2 Because one track is always off, professional development occurs on an  
3 inconsistent basis for all teachers. The same training sessions must be  
4 repeated to reach all faculty members causing a burden for the  
instructional leaders. It also affects the continuity and consistency of  
the overall instructional program.

5 The number of students and classrooms require large numbers of  
6 instructional materials to be handled by the teachers and administrators.  
7 Often times teachers and classes have to change rooms when coming  
back on-track. At present, the school is experiencing difficulty in  
getting instructional materials to all students and classrooms. A  
8 management system and coordinator for the materials are needed to  
facilitate the process when tracks begin and end.

9 (DOE 43202.)

10 544. Likewise, the II/USP action plan for Leroy Nichols Elementary School in Lodi  
11 Unified School District stated:

12 Although Concept 6 allows the school to house (enroll) more students,  
13 it is not conducive to a learning environment that promotes student  
achievement. Instruction is interrupted by two (2) two-month “off  
14 track” times. Many students forget what they’ve learned during the  
two-months breaks. One-third of the students and teachers are always  
15 “off track” at any one time. The staff does not receive training at the  
same time. There is no common planning time for grade levels  
16 teachers. As a result, instruction, programs, and staff development are  
fragmented.

17 (DOE 36573.)

18 545. Similarly, the II/USP action plan for Moffett Elementary School in Lennox School  
19 District reported:

20 Moffett stakeholders are experiencing many difficulties due to the  
school’s year-round calendar. Having a year-round calendar out of  
21 sync with the middle school is problematic, particularly since parents  
with students at both levels tend to pull children out of school when the  
22 middle school is off. The year-round schedule puts a strain on facility  
use and also limits flexibility for scheduling professional development.  
23 Lennox School District is aware of the overcrowding issue and a new  
elementary school is expected to be complete within two years.  
24 Nonetheless, converting Moffett to a traditional school calendar is not  
an option for the near future.

25 (DOE 44137.)

26 546. A teacher from another school, Hawthorne Elementary School in Oakland, testified  
27 that the four-track, year-round multi-track schedule her school operated on:  
28

1 meant from ten to 13 teachers had to rove every year, which meant  
2 their classes had to change classrooms on a monthly basis. That meant  
3 that there were inadequate sanitation facilities. That meant that  
4 students were housed in inappropriate classroom spaces. That meant  
5 that recesses and lunches had to be handled in shifts. That meant that  
6 we had a teaching faculty of 65 and that it was impossible to know all  
7 of the people you worked with and all of the students in the school.  
8 Our children had to go to school in the summer when it was hot. Our  
9 children had to be out of school at times of the year when there were no  
10 other programs available for them to participate in. They didn't get to  
11 participate in summer sports leagues or summer camps or summer art  
12 programs because they were in school on a year-round schedule, which  
13 is what happens when you have such an overcrowded school. Teachers  
14 miss out on professional development opportunities since most of those  
15 occur during the summer. Trying to work in an environment of 1,400  
16 kids with 900 to 1,000 of them on the site at any given time is chaos  
and no matter what you do and what structures you impose, it is really  
difficult to achieve any sense of calm order when there is just that many  
bodies present. Because Hawthorne was year-round, we were forced to  
continue to accept students with no enrollment cap. Other schools in  
the neighborhood that were on traditional calendar could redirect their  
students to Hawthorne when they were full. Those students then had to  
travel from other areas within the broader neighborhood to attend a  
school of 1,400 children that always grew and never shrank to be  
placed in classes that had to change classrooms every three to four  
weeks or to be in portables that were 30 years old and lacked  
appropriate climate control; to play on a yard that was crowded with  
500 children at a time for recess; to stand in line for 15 minutes to get  
their lunch; to have to eat their food as quickly as possible to clear the  
table so the next load of students could sit down. I think that  
summarizes my concerns about overcrowding at Hawthorne.

17 (Salyer Depo. at 369:5-370:21; *see also* DOE 31274 — II/USP action plan for Hawthorne (stating  
18 that the school operates on a multi-track, year-round calendar and is “too large to provide the kinds of  
19 services it envisions”).)

20 **c. Class Representatives Attend Schools in Which**  
21 **Students Must Be Bused Excessive Distances from**  
22 **Their Neighborhood Schools Because of School**  
**Crowding.**

23 547. The principal of class representative Cindy Diego's school — Fremont High School in  
24 Los Angeles — testified that “we don't have the space. . . . That's why we are a capped school, and  
25 we send kids out because of space. We bus kids out.” (Roland Depo. at 267:25-268:3.) Cindy  
26 described neighborhood students that “hav[e] to wake up 5:30 in the morning, get to school around  
27 6:30 and wait[] for the bus there and then go to school” because they are bused to other schools away  
28 from Fremont. (Diego Depo. at 273:4-12.)

1           548.   The principal of class representative Samuel Tellechea’s school, Cahuenga Elementary  
2 School in Los Angeles, testified that “[a]pproximately 1900” students are bused away from his school  
3 because of school crowding — in fact, “I bus away more children than I have” on campus — and that  
4 the school has been busing students away to other schools for “[a]pproximately ten, 11 years” so far.  
5 (Houske Depo. at 301:2-23, 339:15-23.) The principal testified that during the 2001-2002 school  
6 year, “[p]robably close to 70” students ride each of the “probably 25, if not more” buses that depart  
7 from Cahuenga each morning to take neighborhood students to other, less crowded schools and that  
8 the fact that “we bus away so many children” is “a problem that needs to be addressed.” (*Id.*  
9 at 233:3-234:16, 317:9-17, 321:15-17.)

10           549.   Samuel and Jonathan’s mother testified that Cahuenga is so crowded that “in order to  
11 save a place for a child to attend Cahuenga, parents must camp out the night before enrollment to  
12 guarantee a spot for your child to attend Cahuenga. Other than that, they will be bused out to other  
13 schools.” (Tellechea Depo. at 337:16-20.) Mrs. Tellechea testified that her older son, Jonathan, was  
14 bused away from Cahuenga, which is his neighborhood school, to another school far from the  
15 neighborhood because Cahuenga was too crowded to be able to accommodate Jonathan and other  
16 neighborhood students. (*Id.* at 341:11-12; *see also id.* at 384:11-12 (“I would not want him to be  
17 bused at all.”).) She also testified that

18                   He’s too much time on the bus when he could be at school participating  
19                   in before school reading program or math or an after school program  
20                   that would help him improve him or give him extra education. By the  
21                   time he’s up in the morning, he has to be up earlier. He has to — he  
22                   has to get breakfast real early in the morning because he won’t be able  
23                   to take it at school. He’ll miss it and it’s very important for his  
24                   education. He won’t be able to focus in class like he should. So it does  
25                   affect him a lot.

(*Id.* at 385:3-14; *see also id.* at 387:4-12.)

**d. Other Class Members Have Been Bused Excessive  
Distances From Their Neighborhood Schools  
Because of School Crowding.**

26           550.   Thousands of other class members also are bused away from their neighborhood  
27 schools because the neighborhood schools are too crowded to accommodate all neighborhood  
28 students. (*E.g.*, DT-LB 4598, 4639 (Long Beach Unified School District reports concerning

1 hardships for families whose children are bused away from neighborhood schools because of  
2 overcrowding).) The II/USP plan for one school class members attend stated that “[o]ne third of the  
3 second graders and half of the third graders who should attend Garfield are forced to transfer to  
4 another school due to lack of facilities.” (DOE 49663 — II/USP action plan for Garfield Elementary  
5 in Selma.) Another II/USP plan reported that “27% of its students are bussed from overcrowded  
6 schools.” (DOE 37946 — II/USP action plan for Willshire Crest Elementary School in Los Angeles  
7 Unified School District.)

8 **e. Class Representatives Have Attended Overcrowded**  
9 **Schools and Classes Within Schools.**

10 551. Class representative Alondra Jones testified that in one class she took at Balboa High  
11 School in San Francisco, with “40 plus” students in it, “students were sitting everywhere, on the  
12 floor, on top of the file cabinets, on his [the teacher’s] desk, at his desk. Some kids even got chairs  
13 from out other classrooms to sit. I mean that class was packed.” (Jones Depo. at 406:14-25.) Balboa  
14 teacher Stephen Brady testified that at Balboa “I have personally had, on more than one occasion, in  
15 more than one type of class, not enough chairs in my classroom to fit students and have had them  
16 standing or have had them sit on the counter in order to attend my class.” (Brady Depo. at 35:12-16;  
17 *see also* Medina Depo. at 120:1-122:8 (math teacher testimony that he had more than 40 students in  
18 one of his classes when the 1998-1999 school year started and that it took approximately six weeks to  
19 stabilize the course enrollment to approximately 29 to 33 students).)

20 552. Balboa teacher Shane Safir testified that “[o]vercrowding was a consistent problem [at  
21 Balboa]. My classes were particularly overcrowded my first year and then I was able to escape that  
22 to some extent, but it continued to be a big problem in other classrooms.” (Safir Depo. at 227:7-10.)  
23 Ms. Safir testified that during her first year teaching at Balboa (the 1997-1998 school year), “I had a  
24 class with about 40 seniors in it and it was a problem because the rooms aren’t that big, plus you had  
25 to scramble to try to get chairs or desks for all the kids, so that was a problem.” (*Id.* at 228:4-7; *see*  
26 *also id.* at 233:3-18 (estimating that four students had chairs but no desks in that class because “either  
27 we couldn’t get enough desks or we couldn’t fit enough desks, but I don’t remember which”).)  
28



1 Ms. Safir also testified that, “this year [2001-2002 school year], the Spanish teacher, who is in my  
2 former Classroom 323, had over 40 kids in her class.” (*Id.* at 241:12-17.)

3 553. Class representatives Delwin and D’Andre Lampkin’s principal testified that at  
4 Crenshaw High School in Los Angeles, it is “[n]ormal within the first week of school” for students to  
5 sit on counters to take notes because there are not enough seats for all students in a class. (Kiel Depo.  
6 at 167:17-21.) School documents confirm that overcrowding is normal. 2000-2001 school year  
7 enrollment class lists show multiple core classes with allowable enrollments up to 56 students and  
8 actual enrollments up to 44. (DT-LA 8378-8552.) Specifically, one English class had 44 students,  
9 another had 42 students, and a third had 39 students; one biology class had 41 students and another  
10 had 40 students; one world education class had 42 students; and one drama class had 43 students.  
11 (DT-LA 8488, 8491, 8519.) D’Andre testified that as many as 15 students, with an average of five  
12 students, had to stand during the entire class period in his biology class “because the class is  
13 overcrowded [and] there weren’t enough seats.” (D’Andre Lampkin Depo. at 263:21-266:24.)

14 554. May 2001 School Board meeting minutes describe the overcrowding at class  
15 representative Manuel Ortiz’s school — Watsonville High School in Watsonville — as a “crisis  
16 situation” and reflect discussion of Watsonville High teachers having to rove from room to room,  
17 using other teachers’ classrooms during their free periods, because of campus crowding. (DT-PV  
18 3112, 3113.) Assistant principal Lawrence Lane testified that, for every year since even before 1967,  
19 at least one teacher per year has had to rove. (Lane II Depo. at 62:15-63:12; *see also* Jose Banda  
20 Depo. (“Banda Depo.”) at 109:25-110:16 (principal testimony that “because of our high student  
21 population and the impact on facilities, we don’t have a classroom for every single teacher”).) In  
22 addition, assistant principal Lane testified that geometry and health classes had met in the library and  
23 that English, social studies, and art classes had been held in the old district office because the school  
24 did not have enough available classroom space. (Lane II Depo. at 57:6-15, 58:10-25; *see also* Banda  
25 80:1-23.) Teacher James Hagan testified that “I happen[ed] to witness a young lady trying to give a  
26 science class, a biology class . . . in the library for a better part of a semester” and that

27 the library is not suited for teaching a biology class. I mean, this is a  
28 class in which frogs should be dissected as an example, okay? Well,  
you need certain facilities to do something like that, okay? A library is

1 not consistent with those kinds of facilities, okay? In addition to that,  
2 the library, in my opinion, is the intellectual heart and soul of a learning  
3 institution. And by having a class in there, it really precludes the free  
4 flow of students to come in and do the normal functions of a library. I  
5 mean, the tables are not available to them. They don't feel they can  
6 speak and wander around . . . . I mean, I just think that it's despicable.

7 (Deposition of James Hagan ("Hagan Depo.") at 15:2-18.) Mr. Hagan explained that the biology  
8 class was taught in the library "[b]ecause there was no other place to put it. I mean, you know, we  
9 had classes in the back stage of the performing arts center, in the cafeteria, in the gym. We had  
10 students taking class sitting on the floor of the gymnasium. We had people in classes in an office  
11 building behind posts so they couldn't see . . . ." (Hagan Depo. at 179:24-180:5.)

12 555. Principal Jose Banda testified that every year since he had been at Watsonville High  
13 School, he had heard about one or more classes in which there were more students than available  
14 seats. (Banda Depo. at 76:2-16.) Likewise, teacher James Hagan testified that he has had more  
15 students than desks in his classes "[v]irtually every year" he has taught at Watsonville High School,  
16 including "right now." (Hagan Depo. at 165:4-17; *see also id.* at 14:14-24 (testifying that almost two  
17 months into the 2001-2002 school year, "we're so overcrowded, we still don't have a balance of  
18 students" in classes).) Class representative Manuel Ortiz testified that in one of his classes, "we had  
19 too many students in that class and not enough seats. So sometimes I remember we had to stay  
20 standing up for the period toward the beginning of the year" and that in another class, "some students  
21 were standing up for the whole first week." (Ortiz Depo. at 179:10-13, 197:3-4.)

22 556. Class representative Lizette Ruiz's principal testified that five weeks after the 1999-  
23 2000 school year began the school had nearly 100 more students enrolled than the school's capacity  
24 to accommodate. (E. Garcia Depo. at 69:15-70:25.) Huntington Park records reflect the "[s]tudent  
25 dining area used for classes" for at least three school years. (DT-LA 5152 (November 2000); *see*  
26 *also* DT-LA 5043 (May 1999), 5108 (May 2000).) Class representative Lizette Ruiz testified that her  
27 tenth grade honors English class was "[e]xtremely overcrowded" and "[t]here weren't enough seats  
28 so we were scattered around the room. . . . I remember seeing people sitting on the floor and others  
sitting on top of desks."; "I was sitting at the teacher's desk." (L. Ruiz Depo. at 182:3-183:21; *see*  
*also id.* at 270:21-271:2.)

1           557.   The II/USP action plan for class representative Moises Canel’s school — Helms  
2 Middle School in San Pablo reported: “The student population at Helms continues to grow,  
3 stretching the capacity of the school to accommodate more students. There are not enough  
4 classrooms for each teacher to meet individually with students in their own classrooms, requiring  
5 some teachers to move from room to room as they teach.” (DOE 48364; *see also* DT-WC 7060,  
6 7814 (Helms teacher complaints about roving).)

7           558.   Teacher attendance records from fall 2001 for class representative Cindy Diego’s  
8 school, Fremont High School in Los Angeles, show as many as 52 students enrolled in an algebra  
9 class four weeks into the school year; although nine of these 52 students may have transferred to  
10 other classes (six of those 52 students never came to class and three other students stopped coming),  
11 still 43 students showed regular attendance in the overcrowded class. (PLTF 6657-6658; *see also*  
12 PLTF 6655 (2001 teacher attendance record showing 39 students enrolled in another algebra class).  
13 Cindy testified that “[f]or the first two weeks there were sixty people in my Government class and  
14 some people had to stand.” (Diego Depo. at 122:1-17; *see also id.* at 504:9-505:9 (testifying that for  
15 approximately three and a half weeks there were approximately 45 people in her American Literature  
16 class and four people had to stand).) In addition, assistant principal Marcia Hines testified that “we  
17 already have one [math class] in the cafeteria,” and because all available campus classrooms were  
18 already in use,

19                   I’m estimating there are about four or five [teachers traveling on one of  
20 three tracks at the school], which, to me, is unacceptable. . . .  
21                   [E]specially as a new teacher, you have your stuff and you have your  
22 books, your classroom library, you put your objectives, standards for  
23 the lesson, and you may have two or three classes that are the same  
24 English 9. Why should you have to go back to another room and put  
25 up those standards and objectives again three or four times a day? That  
26 doesn’t make a lot of sense, plus you have to schlep your books to these  
27 places, too, because maybe you have a classroom set of what you want  
28 to use in that particular session. So then you have to take that to three  
other sessions. I think it’s a travesty for a teacher to travel more than  
twice. If a teacher has to go to five different locations in one day, I  
think it’s unacceptable. I feel strongly about that.

(Hines Depo. at 582:8-586:14, 630:14-15, 660:9-13; *see also id.* at 589:6-19; Roland Depo.  
at 304:23-305:14.)

559. Class representative Carlos Ramirez’s teacher Lili Malabed testified that “the school [Bryant Elementary School in San Francisco] was so overcrowded and short of meeting spaces that it [the library] was usually used for tutoring meetings or special ed evaluations . . . so teachers could not take their kids out there.” (Malabed Depo. at 99:23-100:3.) In addition, Ms. Malabed testified that:

[T]he speech therapist and the reading recovery teacher both taught in closets. They were approximately six feet by eight feet, maybe, with no windows. And they would take as many as three or four kids in there to tutor them . . . . A different supplies area was converted into a classroom and equipped with a chalkboard and some bulletin boards and that was used as a 2nd grade classroom for one or two years and then turned over to the After-School Care Program. A storage area just off the library part of the open architecture system was turned into the — into a resource specialist's work area where she would tutor kids one on one or one on two or one on three, but among all that noise that was happening in the library and that was on the south end of the library. On the north end of the library, there was another storage area that was converted into a tutoring and resource area and that was used also by reading tutors and special ed specialists for tutoring and meetings and things like that, mostly tutoring.

(Malabed Depo. at 369:1-23; *see also id.* at 365:14-366:3.)

**f. Other Class Members Have Attended Overcrowded Schools and Overcrowded Classes Within Schools.**

560. Class members testified that students often have to stand or sit on counters and tables and makeshift spaces in their crowded classes because the classes do not have enough seats for all the students. (*E.g.*, J. Garcia Depo. at 152:22-153:17, 154:15-155:13, 347:25-349:12; Islas Depo. at 63:23-66:7; Magdaleno Depo. at 107:5-108:3, 129:23-130:12; Perkins-Ali Depo. at 217:4-18, 221:7-8, 242:1-246:13.) One parent testified that she heard teachers on her son’s campus complain to the principal “[a]lmost every day” that they did not have enough chairs for all the students in their classes to sit in. (Gonzalez Depo. at 47:5-8.) A September 1999 letter from a teacher to a school administrator at Hosler Middle School in Lynwood states “Period 1 has 41 (attending) students and 25 desks!” (DT-LY 1223.)

561. In some crowded schools class members attend, classes take place in nonclassroom spaces, such as the school library or auditorium, while other activities take place in the rooms at the same time. (*E.g.*, DOE 46999, 69510.) According to the II/USP plan for Stonehurst Elementary School in Oakland.

1 Two classes observed were clearly too small for use as a classroom.  
2 The principal verified that those rooms were not intended to be  
3 classrooms but had to be used because of space needs. One 5th grade  
4 class [took place] off the auditorium . . . . The second small classroom  
5 was a kindergarten class next to the front entrance to the school. The  
6 room is small and oddly shaped. The principal said that this was  
7 formerly a computer lab. There was only one small chalkboard and one  
8 small bookcase. While observing the classroom a person entering the  
9 school interrupted a lesson in progress to ask for directions to the  
10 office.

11 (DOE 46991; *see also* DOE 46994 — action plan for Stonehurst Elementary School in Oakland  
12 (reporting that “[t]he physical facility is not adequate for the large student enrollment” and “[t]here  
13 are not enough classrooms”).)

14 562. In other crowded schools class members attend, not having enough classrooms for all  
15 the teachers employed on the campuses means that some teachers have to rove from classroom to  
16 classroom, using other teachers’ classrooms during their free periods. For example, the May 2001  
17 Master course schedule for Fremont High School in Oakland shows teachers designated as rovers and  
18 classes being held in the auditorium and gym. (DT-OA 2066-2123.) Likewise, according to the  
19 II/USP action plan for Fremont Middle School in Stockton City Unified School District, “[o]f the 53  
20 full time teachers many have no permanent classrooms and are forced to rotate to rooms vacated by  
21 other teachers on prep.” (DOE 70147.) The II/USP action plan for Perris High School in Perris  
22 Union High School District reports that there is “[n]o significant evidence of . . . [a]dequate  
23 classroom space for classes housed in the library.” (DOE 58480.)

24 563. Some school II/USP action plans identify school crowding as impediments to student  
25 learning. (*E.g.*, DOE 37376, 46747, 48241, 48259, 65557, 74226.) The II/USP action plan for Grant  
26 Elementary School in West Contra Costa Unified School District reported: “Not only are the  
27 facilities in poor conditions, they are overcrowded. There is little space available for extra curricular  
28 activities, tutoring or mentoring sessions, or parent meetings, for example.” (DOE 48241, 48259.)  
Likewise, the II/USP action plan for Raymond Cree Middle School in Palm Springs Unified School  
District reported that “[c]lassrooms are crowded with class sizes too large.” (DOE 57460.)

564. Another II/USP plan reported: “Tweedy is experiencing extreme overcrowding. Due  
to a chemical hazard situation at the original site, Tweedy has no permanent location or buildings and

1 has been in this condition for over thirteen years. The school is housed in ‘temporary’ bungalows in  
2 a small corner of South Gate Park.” (DOE 37848 — II/USP action plan for Tweedy Elementary  
3 School in Los Angeles.) The II/USP action plan for Calvin Simmons Middle School in Oakland lists  
4 “high student enrollment in overcrowded facilities” as one “major barrier[] to the creation of a stable,  
5 trust-based student-centered school” (DOE 31680) and laments having a “[l]arge overcrowded school  
6 and learning environments that prevent students from being well-known and connected to caring  
7 adults” (DOE 31683). As one student testified,

8           Actually the overcrowding affected the psychological health of the  
9           students, since they feel couped up in the facility, which is designed to  
10          house an amount lesser than the actual numbers that Fremont had of  
11          students. And when I say affect the psychological health, I mean they  
12          feel couped up, they start getting stressed or nervous, and they kind of  
13          act differently. So it’s like some of the students might act in a hostile  
14          manner due to the overcrowding, they’ll be bumping in the hallways  
15          because they are so crowded, which led to conflicts. Counselors will  
16          be definitely overwhelmed by students, especially the first weeks of  
17          school, because they are trying to get the classes together.

18 (J. Garcia Depo. at 202:17-204:5; *see also* DT-OA 133 (although optimal enrollment for this school  
19 is 1200 students, in 1999 the school housed 2018 students).)

20  
21 **F. Multiple Deprivations of Basic Conditions for Learning Tend to**  
22 **Aggregate in Schools that Lack One Condition for Learning.**

23           565. Students usually experience the conditions that form the basis of this suit in  
24 combination, making the sum of the inequality even greater than its parts. As the Public Policy  
25 Institute of California has explained, “[b]y and large, if students at a given school have relatively  
26 little of one resource, they are likely to have relatively little of other resources as well.” Julian Betts,  
27 Kim Rueben, & Anne Danenberg, Public Policy Inst. of Cal., *Equal Resources, Equal Outcomes?*  
28 *The Distribution of School Resources and Student Achievement in California* (2000) at 55.; *see also*  
LAO, *Analysis of the 2000-01 Budget Bill, Education Chapter* (2000) at E-27. (finding that “the real  
problem of too few credentialed teachers is concentrated in about 20 percent of the state’s public  
schools. These are the schools where the systems for providing professional mentoring and support  
have been overwhelmed by the imbalance between veteran and novice teachers. These are also the  
schools that face the most serious problems in terms of poor academic performance.”).

1           566. This research finding is wholly consistent with the experiences of class representatives  
2 and other class members.

3                                   **a. Class Representatives Have Suffered Multiple**  
4                                   **Deprivations of Basic Conditions Required for**  
5                                   **Learning in Their Schools.**

6           567. Class representative Alondra Jones’s school, Balboa High School in San Francisco,  
7 has been marked by broken window panes; sightings of mice, rats, and their feces, broken window  
8 shades; leaking ceilings and falling ceiling tiles; and overcrowded classrooms, some of which have  
9 more students than seats. (DT-SF 52, 53, 972, 973, 994-1006; Gray Depo. at 125:22-128:18, 384:13-  
10 385:4; Jones Depo. at 127:25-128:22, 159:9, 200:8-11, 320:13-322:10, 322:21-323:6, 406:14-25;  
11 Lewis Depo. at 147:7-148:1, 157:1-8; Safir Depo. at 182:1-15, 203:11-13, 207:10-15, 210:17-212:8,  
12 213:3-15, 227:7-10, 228:4-7, 233:3-18, 241:12-17; Brady Depo. at 35:12-16, 35:23-36:15; Medina  
13 Depo. at 120:1-122:8.) In addition, the school has suffered turnover of 75 teachers in a three-year  
14 period, even though the school only operates with a total teaching staff of 59 teachers, and has also  
15 routinely lacked textbooks for students to use in class and at home for homework. (Gray Depo.  
16 at 83:20-85:13, 91:4-92:5; Medina Depo. at 129:11-130:3, 150:14-151:24; Jones Depo. at 367:6-9,  
17 369:21-370:1, 393:2-7, 420:12-16; Lewis Depo. at 82:6-15, 85:8-10, 94:22-95:1, 107:17-20.) The  
18 school suffers such severe temperature problems that “some days it’s been colder inside the  
19 classroom than it is outside” and the school bathrooms are so regularly filthy that students avoid  
20 using them. (Jones Depo. at 222:17-21, 225:13-15, 441:23-442:8, 443:1-17, 443:18-21, 446:9-447:6;  
21 Lewis Depo. at 199:25-200:1, 201:14-19, 202:21-203:7; Medina Depo. at 264:11-18, 283:13-21;  
22 Safir Depo. at 167:13-168:1, 266:19-25; Brady Depo. at 17:8-12.) Describing the compounding  
23 effect of the multiple conditions she lacked in her school, Alondra testified that “[i]t make you feel  
24 less about yourself, you know, like you sitting here in a class where you have to stand up because  
25 there’s not enough chairs, and you see rats in the building, the bathrooms is nasty, you got to pay [for  
26 class materials].” (Jones Depo. at 348:17-21.)

27           568. Class representative Moises Canel suffered a similarly appalling convergence of  
28 deprivations at Helms Middle School in San Pablo, where the II/USP action plan listed among  
barriers to student performance: “Lack of materials, current books and supplies: Students, teachers

1 and parents lament the absence of current and appropriate materials.” (DOE 48365; *see also* DT-WC  
2 416-18, 4506, 7132-33; S. Canel Depo. at 77:20-23, 121:1-18; Muzinich Depo. at 54:1-16.) The  
3 Helms action plan also reported that “[b]uildings . . . are desperately in need of repair and painting.  
4 There are leaking roofs leaving mold and mildew in some of the classroom [sic] and hallways. . . .  
5 As it stands, the school is not an inviting place for students, teachers or parents.” (DOE 48364; *see*  
6 *also* Muzinich Depo. at 12:7-13:19, 18:23-19:4, 99:25-100:8; PLTF 1834-35.) The Helms principal  
7 testified that jagged edges of broken glass remain unrepaired and exposed in the main hall.  
8 (Muzinich Depo. at 17:8-12, 47:8-13, 107:12-24.) The II/USP action plan continued: “Students,  
9 teachers and parents complained that the school is not clean or maintained. Prior to one meeting in  
10 the library, one of the evaluators vacuumed the carpet herself to assure a clean space for parents.”  
11 (DOE 48364; *see also* M. Canel Depo. at 267:14-17 (testifying about dirty bathrooms that lacked  
12 supplies such as toilet paper, soap, and paper towels); Muzinich Depo. at 29:18-20.) “The student  
13 population at Helms continues to grow, stretching the capacity of the school to accommodate more  
14 students. There are not enough classrooms for each teacher to meet individually with students in  
15 their own classrooms, requiring some teachers to move from room to room as they teach.”  
16 (DOE 48364.) But Helms students’ deprivations did not end with textbooks and facilities: “At the  
17 beginning of the 1999/00 school year, there were 17 new teachers and 4 vacancies unfilled. The  
18 school did not have a full compliment of teachers until December 1999, leaving those students taught  
19 by substitute teachers or regular teachers filling in on their planning periods.” (DOE 48363; *see also*  
20 CDE Dataquest website (available at <http://data1.cde.ca.gov/dataquest/dataquest.asp>) (identifying  
21 32.3% undercredentialed teachers at Helms).)

22         569. Like Helms, class representative Silas Moultrie’s school, Luther Burbank Middle  
23 School in San Francisco, has suffered what the assistant principal called a “dire need for textbooks”  
24 and the principal called a “deficit” of books and operated for much of the 2000-2001 school year  
25 without two classroom teachers. (DT-SF 1166; DOE 34418; Michaelson Depo. at 75:12-22, 138:13-  
26 24, 139:10-14.) School maintenance logs reflect persistently broken heating and cooling systems,  
27 including the absence of heat altogether in particular rooms; broken toilets that remain unrepaired for  
28 days and even weeks; and broken and boarded-up windows, damaged and falling ceiling tiles, and



1 plumbing problems. (DT-SF 120, 122, 123, 124, 125, 128, 876-77, 884, 886, 888, 904-23, 944-52.)  
2 Students and teachers have routinely seen mice, mice droppings, and roaches at Luther Burbank.  
3 (Moultrie Depo. at 57:22, 72:21-73:1, 100:8-14, 335:16-17, 339:14-19, 341:18-342:8; Saunders  
4 Depo. at 17:12-23, 56:19-57:8, 68:18-23, 78:5-21, 114:24-116:17, 132:18-133:16, 133:21-22, 142:6-  
5 143:5, 159:8-161:2; Artiga-Faupusa Depo. at 135:14-141:9, 141:14-142:16; Nawa Depo. at 176:13-  
6 22; *see also* DT-SF 119.)

7 570. Class representative Lizette Ruiz’s school, Huntington Park High School in Los  
8 Angeles, which operates on the Concept 6 multi-track, year-round schedule, has had routine  
9 temperature problems — including 116 complaints about air conditioning and heating problems in  
10 one year alone — as well as such severely filthy bathrooms that the Los Angeles Unified School  
11 District sent a memo to the school citing its “grime and scum” in the bathrooms. (DT-LA 6326-28,  
12 6368-70, 6373-78; L. Ruiz Depo. at 34:4-7, 49:9-10, 51:25-52:3, 84:2-3, 318:19-319:22, 632:20-23.)  
13 The school is generally unclean and school maintenance records reflect severe vermin problems.  
14 (DT-LA 5043, 5045, 5108, 5151, 6333; L. Ruiz Depo. at 349:6-350:10). Lizette summarized her  
15 experience: “the school sucks.” (L. Ruiz Depo. at 48:1-6.)

16 571. In addition to having 70.8% undercredentialed teachers and only two teachers with  
17 English language certification for 356 English Language Learners, at class representative Carlos  
18 Santos’s school — Edison-McNair Academy in East Palo Alto — broken glass has remained on the  
19 school play yard for long periods of time and teachers and students have seen rats or mice on campus.  
20 (DT-RA 6225-28; Santos Depo. at 215:5-217:3, 281:8-18; CDE 2000-2001 School Profile for  
21 Edison-McNair Academy.)

22 572. Crenshaw High School in Los Angeles — class representatives Delwin and D’Andre  
23 Lampkin’s school — operates with 35.4% teachers who lack full, nonemergency teaching  
24 credentials; vacant teacher positions during the school year; and at least 60 school days during the  
25 2000-2001 school year alone when as many as 10 teacher absences were not filled with substitutes.  
26 (DT-LA 12712-12845; Kiel Depo. at 504:21-505:5; CDE Dataquest website (available at  
27 <http://data1.cde.ca.gov/dataquest/dataquest.asp>).) In addition to this trained teacher shortage,  
28 Crenshaw has had too few textbooks for students to use in class or to take home for homework and

1 has had crowded classrooms, with as many as 44 students in the classes and fewer desks than  
2 students. (DT-LA 3093, 8092, 8137, 8141, 8186, 8378-8552; Kiel Depo. at 167:17-21; D’Andre  
3 Lampkin Depo. at 163:2-6, 252:10-14, 263:21-266:24; Delwin Lampkin Depo. at 270:2-272:6;  
4 303:11-304:20.) Areas of the school are, according to Crenshaw maintenance reports, “infested with  
5 rats,” and school bathrooms have been regularly locked and, when unlocked, have been filthy and  
6 have taken in excess of one month for repairs to be completed. (DT-LA 2996, 3002, 3034, 3042,  
7 3044, 3047, 3051, 5459-64, 8631, 8673, 8701; Kiel Depo. at 196:14-197:13; D’Andre Lampkin  
8 Depo. at 339:8-12, 342:16-345:17; Delwin Lampkin Depo. at 702:12-704:14.)

9         573. Class representative Krystal Ruiz’s school, Cesar Chavez Academy in East Palo Alto,  
10 operates with 63.6% undercredentialed teachers — and only eight teachers with English learner  
11 certification but 575 English Language Learners — and has suffered what the principal termed such  
12 “chronic” teacher vacancies during the school year that some students have had series of substitute  
13 teachers instead of permanent teachers and have had some days when nonteaching staff has had to  
14 cover their classes because no substitute at all arrived on campus. (Walden Depo. at 120:11-121:2,  
15 123:8-124:9, 234:5-6; DT-RA 3924-27; CDE 2000-2001 School Profile for Cesar Chavez Academy.)  
16 In addition to this trained teacher shortage, Cesar Chavez also suffers a shortage of textbooks for its  
17 students and operates with facilities in disrepair, including broken lights; broken, shattered, and  
18 boarded-over windows; and the presence of vermin. (DT-RA 5288, 5308, 5312; K. Ruiz Depo.  
19 at 139:13-19, 276:16-24, 313:14-315:4; Monje Robles Depo. at 57:22-24, 60:21-61:1; Walden Depo.  
20 at 210:14-20.)

21         574. Class representative Manuel Ortiz’s school, Watsonville High School in Watsonville,  
22 has used 12-year-old history textbooks — and too few of them, at that, for the students to be able to  
23 take even these outdated books home for homework — and is so severely overcrowded that classes  
24 take instruction in the library and in the old district office and some teachers have to rove from room  
25 to room, using other teachers’ classrooms during their free periods. (DT-PV 1564-67; Lane I Depo.  
26 at 80:4-16, 84:25-85:8, 85:22-86:3, 88:10-12; Lane II Depo. at 8:16-19, 57:6-15, 58:10-25, 62:15-  
27 63:12; Banda Depo. at 76:2-16, 80:1-23, 109:25-110:16; Hagan Depo. at 15:2-18, 165:4-17, 179:24-  
28 180:5.0 Perhaps in an ill-conceived (and ill-timed) effort to relieve overcrowding, noisy construction

1 disrupts student learning by taking place on campus during school hours. (DT-PV 117-120, 1538;  
2 Lane Depo. II at 69:17-70:15, 108:2-19; Ortiz Depo. at 317:10-22, 318:15-319:8 .) The Watsonville  
3 bathrooms have been so filthy that the 1993-1994 WASC Accreditation Report found “[t]here needs  
4 to be some plan developed for keeping the lavatories cleaner” but still the problems of filth and lack  
5 of supplies persist. (DT-PV 1964, 1977; Ortiz Depo. at 76:7-13, 77:3-6, 78:11-14, 429:20-22,  
6 436:17-24 .) When asked what conditions he wanted to improve, Manuel testified: “There’s a lot of  
7 ‘em. More portables for the teachers, because some teachers in my school don’t got any stable  
8 classroom. New books. Not 1980 edition books. Better conditions of the restrooms. . . . There’s a  
9 lot of students in our school. We’re way overcrowded. Instead of just — you know, we got — our  
10 school is just meant for like a 1,700 students. We’re over 3,000 students in our school, at  
11 Watsonville High. We need better conditions at our school and we need a new school.” (Ortiz Depo.  
12 at 69:10-13, 70:3-8.)

13         575. Class representative Carlos Ramirez’s school suffers “almost daily” uncomfortable  
14 temperatures, is so distractingly noisy that the principal “remember[s] feeling — being disrupted  
15 myself in the classroom,” is so crowded that closets have been converted to instructional spaces, and  
16 has lacked sufficient numbers of textbooks for students to use without sharing in class or to take  
17 home for homework. (Ramirez Depo. at 54:4-8, 109:5-6, 204:14-24, 311:17-315:9; Alegre Depo.  
18 at 115:6-118:20, 146:24-147:8, 207:24-208:3; Malabed Depo. at 72:20-24, 99:23-100:3, 325:14-15,  
19 365:14-366:3, 369:1-24; DT-SF 81, 89, 90, 92, 94, 96-99, 101-114, 116, 117, 1072-76.) In addition,  
20 the school bathrooms are often filthy and smelly and lack toilet paper and soap and paper towels; the  
21 bathroom problem is so severe that one nine-year-old Bryant student developed hemorrhoids from  
22 holding his bowel movements at school for years. (DT-SF 104, 108; Malabed Depo. at 282:11-  
23 283:8; Ramirez Depo. at 96:7-11, 100:8-13, 166:16-167:9, 202:1-9.)

24         576. Not only does class representatives Samuel Tellechea’s school, Cahuenga Elementary  
25 School in Los Angeles, operate on a Concept 6 multi-track, year-round calendar and bus away more  
26 students than are currently enrolled on campus, but the school also operates with 46.4% teachers who  
27 are not fully credentialed. (Tellechea Depo. at 326:18-23, 331:11-13; Houske Depo. at 301:2-23,  
28 339:15-23; CDE Dataquest website (available at <http://data1.cde.ca.gov/dataquest/dataquest.asp>).)

1           577.   Like Cahuenga, Fremont High School in Los Angeles — class representative Cindy  
2   Diego’s school — operates on a Concept 6 multi-track, year-round calendar and buses students away  
3   from the campus because of overcrowding. (Diego Depo. at 65:7-11; Roland Depo. at 267:25-  
4   268:3.) Nonetheless, course enrollments reach as high as 52 and even 60 students in core academic  
5   classes, and classes have taken place in the cafeteria and teachers have to rove from classroom to  
6   classroom, using other teachers’ classrooms during their break periods, because there are not enough  
7   available classrooms for students. (PLTF 6655, 6657-58; Diego Depo. at 122:1-17, 504:9-505:9;  
8   Hines Depo. at 582:8-586:14, 630:14-15; Roland Depo. at 304:23-305:14.) The school lacks  
9   sufficient numbers of textbooks for students to use in class and at home, consistently has open teacher  
10   vacancies during the school year, and operates with 43.1% undercredentialed teachers. (Roland  
11   Depo. at 47:20-23, 59:2-5, 101:7-9, 174:16-20, 252:10-22; Hines Depo. at 426:11-429:5, 483:20-24,  
12   Exhibit 13; Vaca Depo. at 33:10-24, 187:18-188:17; Diego Depo. at 59:11-14, 61:19-62:1; CDE  
13   Dataquest website (available at <http://data1.cde.ca.gov/dataquest/dataquest.asp>).) In addition to being  
14   overcrowded and lacking textbooks and trained teachers, the school has severe facilities problems:  
15   school records reflect persistent temperature problems, with air conditioning repairs taking as long as  
16   one month to complete even in hot summer months; noisy construction disrupts student learning;  
17   mice, rats, roaches, and other vermin are so prevalent that the school required service 80 times  
18   between March 1998 and August 2000 and nonetheless required service again in October 2000 for  
19   rats in 8 different rooms; ceilings throughout the campus have had gaping holes from missing ceiling  
20   tiles for six months to three years; classrooms have not been painted in 14 years; and the school has  
21   15 fewer toilets available for student use than the law requires. (DT-LA 1852, 3928-35, 4115-18,  
22   4141, 4184, 5165-5344, 5412-15, 5421, 5428; Roland Depo. at 266:21-267:6; Hines Depo. at 128:19-  
23   21, 310:14-20, 591:12-15, 592:4-10, 593:3-8; Diego Depo. at 434:15-23.)

24           578.   When asked what changes she hopes to make at Fremont, Cindy testified:

25                   For example, better and qualified teachers; . . . . To have my supplies  
26                   like books, because it seems like we always get like secondhand books,  
27                   like leftover. We don’t have enough books to go around. Like more  
28                   seats. . . . I guess better resources, too, because not even bathrooms, we  
                      can’t go to the bathrooms. There is only like one bathroom open for  
                      everybody in school. And like ceilings are deteriorating and there’s  
                      graffiti all around.

(Diego Depo. at 21:23-22:12; *see also id.* at 72:15-19 (“I need books. Seats. There is not enough chairs to go around. Sometimes there is not enough worksheets to go around. Most of all, it’s just books. We don’t have one for ourselves to take home. It really is a shame.”).) Teacher Joel Vaca similarly summarized the totality of experiences at Cindy’s school, Fremont High School in Los Angeles. When responding to a question why he chose to testify, Mr. Vaca explained:

[M]y brother goes to Fremont. Possibly a younger brother will go to Fremont. Possibly my youngest sister will go to Fremont. Those conditions need to change if they are able to be UC qualified, at least. . . . They need a better place to study. They need a haven from home. They deserve to have classrooms without cockroaches, without rats. They deserve to go to a clean high school. They deserve to be able to take a book home in case they don’t understand how to do one problem based on the teacher’s notes. They need these things in order to be better students, to be better test takers, in order to be productive members of society. They need to have a good education. It’s — one of the rights of the State of California is education. They need these things. And I figured if I give my declaration as to how things are inside my own classroom, because I can’t speak of how it goes on in my neighbor’s classroom — I just saw a rat in my classroom. I had to speak up. Would you send your kid to a classroom with rats and roaches? No. So why should I have to send my brother to a classroom with rats and roaches?

(Vaca Depo. at 88:14-89:17.)

**b. Other Class Members Tend to Lack Multiple Conditions Required for Learning if They Lack One Condition Required for Learning.**

579. The class representatives’ experience of suffering several deprivations of basic conditions required for learning is consistent with other class members’ experience statewide. For example, the II/USP action plan for Grant Elementary School in West Contra Costa Unified School District reported that, in addition to lacking grade-level materials across all grades, “Grant is housed within a decaying infrastructure, surrounded by fields of asphalt. The facilities are poorly maintained and may pose a health risk to students and staff. Not only are the facilities in poor conditions, they are overcrowded. There is little space available for extra curricular activities, tutoring or mentoring sessions, or parent meetings, for example.” (DOE 48241, 48257, 48259.) In addition, “the preponderance of teachers on staff at Grant are inexperienced and have not completed credentialing programs” (DOE 48230) and “[c]ompounding the issue of inexperienced teachers is the high teacher turnover rate Grant has faced over the past few years. Grant has also faced a high teacher absentee

1 rate. Coupled with the district-wide issue of too few substitute teachers, this has created issues of  
2 inadequate class coverage” (DOE 48255).

3 580. At Cali Calmecac (Charter # 162) in Windsor Unified School District,  
4 [c]lassroom facilities (e.g., furniture, walls, ceilings, carpets) are  
5 generally old and worn, and classrooms are poorly lit, particularly in  
6 the upper grades. All students expressed the desire for new and better  
7 facilities (citing computers, library materials, and sports equipment),  
8 and parents, students, and teachers perceive inequities in the condition  
9 of Cali’s facilities relative to the district’s other school sites.  
10 (DOE 77590.) In addition, “[s]tudents and parents also complained of the lack cleanliness of  
11 grounds, bathrooms, and classrooms” and “[s]ignificant growth and turnover during the past two  
12 years have challenged [the] current staff.” (DOE 77551, 77590.) The Cali Calmecac problems did  
13 not end there: “[t]here is clearly a critical lack of textbooks and curricular materials across all grade-  
14 levels and subject areas” (DOE 77551). The action plan continued:

15 Teachers in early grades noted that the creation of small classes without  
16 adequate resources for materials had forced them to spread leveled  
17 reading books very thinly across classrooms. We also found very  
18 limited in-classroom collections of books, reference materials, and  
19 periodicals in the 4<sup>th</sup> through 8<sup>th</sup> grades, and in many classrooms there  
20 was not even one complete set of texts for the grade level. (Reading  
21 and reference materials that were available in these grades were often  
22 in poor condition.) As noted earlier, students without texts were  
23 generally unengaged, while in other grades, valuable instructional time  
24 was lost so that students could complete worksheets since there were  
25 not sufficient texts to bring home. Teachers in upper grades continue to  
26 use outdated textbooks, and sometimes rely on text-based assessments  
27 that are unaligned to standards or inappropriate for the given grade  
28 level. Consistently, teachers and students in all focus groups expressed  
the desire to have more and newer reading materials. . . . Additionally,  
there were very few science manipulatives and no science equipment  
seen in classrooms.

(DOE 77587.)

581. The II/USP action plan for Stonehurst Elementary School in Oakland identified severe  
facilities problems, including that raw sewage has flooded the school during rainy seasons and that  
school crowding is so severe that students have taken instruction on the auditorium stage while music  
instruction takes place off the stage in the auditorium at the same time. (*See* DOE 46968, 46991,  
46994; *see also* Carey Depo. at 148:6-8 (testifying to the presence of “raw sewage in the hallways”);  
DT-OA 4578-4719, 6444, 6446, 6451-6456, 7376-7377, 7496-7497, 7500 (facilities reports, letters,

1 memos and other documents detailing a history of severe rain and sewer flooding at Stonehurst from  
2 1995 through 2000).) In addition to the sewage and overcrowding, March 2000 school district  
3 documents revealed high levels of fungi in a Stonehurst classroom as a result of repeated roof leaks; a  
4 Stonehurst teacher testified that she had seen the ceiling in her classroom leaking in the same location  
5 for three years and that a school district painter told her he had been painting over water stains from  
6 persistent leaks in the Stonehurst roof for 14 years. (DT-OA 7378-7390; Carey Depo. at 156:12-14,  
7 243:21-244:5.) The school’s action plan also reported that noise from dual-usage of rooms such as  
8 the auditorium as well as from “[t]he ‘Open Classro[o]m Concept’ is a major deterrent to a quiet and  
9 orderly learning environment” (DOE 46994) and that one classroom was so cold that “[t]he teacher  
10 wore a heavy coat and gloves and told the students if they were cold not to forget their coats and  
11 gloves” (DOE 46991).

12         582. The II/USP action plan for Plummer Elementary School in Los Angeles Unified  
13 School District noted that, in addition to the fact that “[a]t present, the school is experiencing  
14 difficulty in getting instructional materials to all students and classrooms” (DOE 43202), “eighteen  
15 teachers left Plummer at the end of the 1999-2000 school year resulting in a high rate of new teachers  
16 (48%) for this current year” (*id.*) and that this “high rate of new/beginning teachers needs to be  
17 equalized across grade levels and tracks and needs additional support” (DOE 43191). In addition, the  
18 plan recognized that “[r]unning an overpopulated school on a year-round basis is difficult at best. At  
19 any one time, one-third of the teaching staff is off-track” (DOE 43191) and that “[b]ecause one track  
20 is always off, professional development occurs on an inconsistent basis for all teachers”  
21 (DOE 43202).

22         583. At Miramonte Elementary School, also in Los Angeles Unified School District, only  
23 40 of 108 classroom teachers are fully credentialed, and the disparities are worse on particular tracks  
24 within the school: whereas 50% of Miramonte’s track A teachers are fully credentialed, only 23% of  
25 its track B teachers and 32% of its track C teachers are fully credentialed. (DOE 37391 — II/USP  
26 action plan for Miramonte Elementary School in Los Angeles.) In addition, “[f]orty-one percent of  
27 the students and 43% of the staff say they do not have sufficient books and materials” at Miramonte.  
28 (DOE 37378.) Similarly, at Clyde L. Fischer Middle School in Alum Rock Union Elementary

1 School District, 62% of “[s]tudents reported that they have not been given a textbook or that they  
2 have a textbook for class use only” and 45% of “[p]arents reported that their students do not have a  
3 textbook or that they have one for classroom use only . . . . The lack of books has created a hole in  
4 the instructional program because in some classes students spend instructional time hand copying  
5 definitions out of books so that they can utilize those definitions when they go home.”  
6 (DOE 32733 — II/USP action plan for Clyde L. Fischer Middle School in Alum Rock Union  
7 Elementary School District.) The II/USP action plan further stated that “[d]uring the past few years,  
8 there has been a significant turn over of teachers” at Fischer, in addition to the severe textbook  
9 shortages the plan identified. (DOE 32736.)

10 584. The II/USP action plan for Hawthorne Elementary School in Oakland states that the  
11 school operates on a multi-track, year-round calendar and is “too large to provide the kinds of  
12 services it envisions.” (DOE 31274; *see also* DT-OA 6422-28.) In addition to this severe crowding,  
13 the school has had to demolish some of its buildings because of the presence of toxic mold. (DT-OA  
14 4316-17, 6405; PLTF 62188; Salyer Depo. at 289:9-12; *see also id.* at 348:14-16 (“I spent two years  
15 in a classroom that was identified as having carcinogenic mold. That was a concern to me.”)).  
16 Separate even from the toxic mold, the school buildings have generally been in disrepair, with visible  
17 mice, rats, and mice and rat droppings; high levels of lead in paint on exterior walls; too few toilets  
18 available for student use; missing and buckling floor tiles; and uncomfortably hot classroom  
19 temperatures during summer months when the year-round school was in session. (DT-OA 3151,  
20 3751, 3770, 6407-6415, 6422-28, 6885, 6905-6945; PLTF 62188; Salyer Depo. at 294:5-16, 318:10-  
21 23, 322:1-7, 334:19-335:11, 337:21-25, 339:15-17.) The school has also lacked sufficient numbers  
22 of textbooks for students to be able to take books home for homework and has suffered high teacher  
23 turnover. (Salyer Depo. at 141:4-25, 204:3-17.)

24 585. At North Avenue Elementary School in Del Paso Heights School District, the II/USP  
25 action plan reported that only “53% of the classroom teachers are fully certified” and “[t]he lack of an  
26 experienced staff is the main barrier to achievement. While this is a caring, involved and committed  
27 staff, they are lacking in the skills necessary to raise achievement without intensive assistance.”  
28 (respectively DOE 33810, 33809). The school also reported a lack of English Language Learner



1 materials: “The teachers do not have the complete Scholastic program or the complete Houghton  
2 Mifflin program.” (DOE 33814.)

3 586. The II/USP action plan for Abraham Lincoln Elementary School in San Bernardino  
4 City Unified School District identified the “[l]ack of CLAD/BCLAD/SB1969 certification for  
5 teachers” (DOE 65551), “outdated texts and ad-hoc supplementals” (DOE 65551), and  
6 “overcrowding, lack of facilities” (DOE 65557), as barriers to student performance. Similarly, the  
7 II/USP action plan for McLane High School in Fresno Unified School District reported that, in  
8 addition to not having enough textbooks for English Language Learner students, the school suffers “a  
9 lack of teacher training [regarding English Language Learner students] for some staff” and “[t]he  
10 influx of 22 teachers who are new to McLane (and some new to the profession) necessitates a  
11 significant, ongoing commitment just to stay even in terms of staff preparation.” (DOE 49171,  
12 49175).

#### 13 **IV. THE STATE HAS PERPETUATED INEQUALITY IN PUBLIC** 14 **SCHOOLS.**

##### 15 **A. The State’s Oversight System Is Incapable of Providing Basic** 16 **Educational Equality.**

17 587. In report after report, observers of California’s system of public school administration  
18 have noted that the State has failed to develop an effective system of oversight:

19 588. In 1983, the Little Hoover Commission stated: “This Commission continues to be  
20 very concerned and alarmed that no single legislative or executive official is solely responsible for  
21 holding the recipients of approximately \$13 billion accountable for efficient use of the funds in the  
22 K-12 education system. Unless State oversight responsibility is expanded or new control methods  
23 identified, the injection of new funds for education programs will have only very limited benefits.”  
24 LHC, *California’s K-12 Education Funding Report* (1983) at 1.

25 589. This report also noted

26 Included in our reports have been findings of districts with no inventory  
27 system for equipment or textbooks, management information systems  
28 not functioning after the expenditure of millions of dollars over several  
years, half-empty schools in some areas while others are over-crowded,  
overlapping functions between school districts and county departments  
of education, and an alarming deferred maintenance program.  
Additionally, we found that the number of non-teaching staff relative to

1 the number of students has increased by about 60,000 since 1970 at a  
2 current annual cost of approximately \$1 billion.”

3 *Id.* at 1.

4 590. In 1987, the Little Hoover Commission noted that “[f]or almost 30 years, the Little  
5 Hoover Commission has examined California’s education system, pinpointing problems and urging  
6 solutions. . . .A troubling common thread throughout all of these Commission reports has been the  
7 lack of meaningful ways to hold the system accountable for educating children.” LHC, *Dollars and*  
8 *Sense: A Simple Approach to School Finance* (1987) at  
9 <http://www.lhc.ca.gov/lhcdir/143/TC143.html>.

10 591. In 1996, the California Constitution Revision Committee noted that “California has an  
11 educational system that provides no real focal point for responsibility, no flexibility for local districts,  
12 and has widely scattered responsibilities, resulting in no single official or entity being accountable for  
13 the state’s education system either at the state or local level. The system has no organized method for  
14 ensuring that California’s pupils are well-educated or that education funds are spent in the best way  
15 for each local area.” Cal. Constitution Revision Comm’n, *Final Report and Recommendations to the*  
16 *Governor and the Legislature* (1996) at 48.

17 592. In 2000, Policy Analysis for California Education (“PACE”) stated that it “does not  
18 feel that a true plan of policy alignment and coherence has yet emerged from the state despite the  
19 many initiatives it has launched. California state policy . . . still has many obstacles to overcome in  
20 developing an education policy that sets clear objectives for schools and supports those schools with  
21 sufficient resources and autonomy.” PACE, *Crucial Issues in California Education* (2000) at 4.  
22 PACE also stated that “the California education system sometimes appears headless, as ‘no single  
23 entity or individual has the authority to set the course for education reform.’ . . . The authors argue  
24 that such governmental fragmentation tends to undermine efforts to put forth a coherent program of  
25 reform.” *Id.* at 5.

26 593. In 2002, the Citizen’s Commission on Civil Rights found that California has failed “to  
27 create a coherent system for educational improvement. Without such an effort, hundreds of  
28 thousands of children—most of them poor and children of color—will continue to be sentenced

unjustly to a future of illiteracy, societal marginalization and economic hardship.” Robert Rothman et al., Citizens’ Comm’n on Civil Rights, *Title I in California: Will the State Pass the Test?* (Dianne M. Piché & William L. Taylor eds., 2002) at 46.

594. Without an effective system of oversight, the State is incapable of ensuring that educational opportunities are available to all public school students on an equal basis.

**1. The State’s Oversight System Is Incapable of Preventing, Detecting, or Correcting the Unequal Access to Qualified Teachers.**

595. Although the State has known that competent teachers are vital to students’ educational achievement and that some students do not have access to qualified teachers, the State has failed to develop an oversight system that is capable of preventing, correcting or compensating for the unequal access to qualified teachers. The relevant provisions of the Education Code fail to set standards regarding the distribution of qualified teachers; fail to ensure adequate efforts toward recruitment of qualified teachers at schools serving low income students and students of color; fail to ensure adequate support and professional development opportunities for teachers at schools serving low-income students and students of color; and fail to establish a system for ensuring adequate access to qualified teachers.

596. As discussed above, since 1970, the task of licensing and credentialing professional educators has been delegated by the state legislature to the CTC. The duties and powers of the CTC are set forth in Education Code section 44225 and include the following:

- The duty to reduce and streamline the credential system “to ensure teacher competence in the subject field or fields, while allowing greater flexibility in staffing local schools.” CAL. EDUC. CODE § 44225(b).
- The duty to “seek to ensure” that California public school teachers have all the ideal attributes of competent teachers that are identified in the statutes. CAL. EDUC. CODE § 44225(d).
- The duty to ensure competence by determining the scope and authorization of credentials and to establish sanctions for the misuse of credentials and the misassignment of credential holders. *See* CAL. EDUC. CODE § 44225(e).

1 **a. The State Has Failed to Establish Standards Relating**  
2 **to Access to Qualified Teachers.**

3 597. Although the State has developed a teacher credentialing system with numerous types  
4 of credentials, it has failed to establish standards relating to access to qualified teachers. For  
5 purposes of this litigation, plaintiffs do not dispute the State's determination of the requisites to  
6 become fully certified. Indeed, plaintiffs presume that the State has developed its credentialing  
7 system in accordance with the Education Code so as to ensure that teachers are qualified by  
8 determining the scope and authorization of credentials.

9 **i. Preliminary and Clear Credentials**

10 598. The State has established the clear credential as the benchmark qualification for  
11 ensuring teacher competence. Darling-Hammond Report at 7. The two primary types of clear  
12 teaching credentials are the professional clear single subject credential (for those who teach a specific  
13 subject in a departmentalized class, usually in secondary school) and the professional clear multiple  
14 subject credential (for those who teach all subjects in a self-contained classroom, most often used in  
15 elementary schools). *Id.* To receive a clear teaching credential, candidates must demonstrate their  
16 subject matter competence by completing an approved subject matter preparation program in a  
17 California college or university or by passing one or more subject matter competency tests adopted  
18 by the CTC. *Id.* Subject matter competence exams and subject matter preparation programs are  
19 aligned with the state content standards and curriculum frameworks. CAL. EDUC. CODE  
20 § 44259(b)(4); *see* Darling-Hammond Report at 7.

21 599. In addition to demonstrating subject matter competence through specified coursework  
22 or test passage, candidates for a single subject or multiple subject credential must also complete an  
23 accredited program of professional preparation. Darling-Hammond Report at 7. Minimum  
24 requirements for a professional clear teaching credential also include:

- 25 (1) A baccalaureate degree or higher degree from a regionally accredited university;  
26 (2) Passage of the state basic skills examination (CBEST);  
27 (3) A professional teacher preparation program including student teaching;  
28 (4) A course in reading instruction and study of alternative methods for developing  
English language skills;

- 1 (5) Passage of the Reading Instruction Competence Assessment (RICA) for Multiple  
2 Subjects credential candidates;
- 3 (6) Demonstration of a knowledge of the principles and provisions of the Constitution of  
4 the United States through course or test passage;
- 5 (7) Coursework in the laws, methods, and requirements for providing education  
6 opportunities to individuals with exceptional needs in the regular classroom;
- 7 (8) A course in health education, including nutrition, the physiological and sociological  
8 effects of abuse of alcohol and narcotics and the use of tobacco, and training in  
9 cardiopulmonary resuscitation; and
- 10 (9) Demonstration of competency in the use of computers in the classroom.

11 Darling-Hammond Report at 7-8.

12 600. Prior to finalization of all requirements for a professional clear credential, candidates  
13 who complete the first six items listed above and demonstrate subject matter competence may be  
14 awarded a preliminary credential. Darling-Hammond Report at 8. With recent legislation (S.B 2042,  
15 Chapter 548, Statutes of 1998), the clear credential will require candidates to complete all of the 9  
16 items above plus an individualized induction plan and two years of successful teaching experience.  
17 *Id.* The State views teachers with either preliminary or clear credentials as fully qualified teachers.  
18 (See Deposition of Dr. Sam Swofford (“Swofford Depo.”) at 90:23-91:1; 197:20-23.)

## 19 **ii. Intern and Pre-intern Credentials, 20 Emergency Permits, and Waivers**

21 601. In 2000-2001, well over 40,000 teachers lacked a full credential, and many had not  
22 completed, or even begun, a teacher education program. Darling-Hammond Report at 12. These  
23 teachers received intern or pre-intern credentials, emergency permits, or waivers. *See id.* at 12-14.

24 602. To hold an intern credential, candidates must satisfy some of the subject matter  
25 requirements detailed above, pass the CBEST, and hold a bachelor’s degree. *Id.* at 13. They must  
26 also be enrolled in an approved internship program that provides coursework and a supervised  
27 teaching experience. *Id.* Some intern programs provide some student teaching experience before  
28 candidates become teachers of record in a classroom; others do not. *Id.* Interns generally complete  
the professional preparation requirements over a two-year period while they are teaching. *Id. citing*  
*CTC, Teaching internship programs 1994-1999: Lessons learned and challenges to face, Summary*  
*of an Agenda Report* (1999) at [www.ctc.ca.gov/aboutctc/agendas/november\\_1999/prep/prep4.html](http://www.ctc.ca.gov/aboutctc/agendas/november_1999/prep/prep4.html).

1           603. To hold an emergency permit or a pre-intern credential, candidates must have passed  
2 the CBEST, hold a bachelor's degree, and meet a less rigorous subject matter standard.<sup>19</sup> Darling-  
3 Hammond Report at 13; CAL. EDUC. CODE § 44300 et seq.; CAL. CODE REGS. tit. 5, § 80023.2  
4 (2002). Emergency permit holders must submit a statement “demonstrating intent” to complete  
5 requirements for a credential. Darling-Hammond Report at 13. Most teachers on emergency permits  
6 or pre-intern credentials lack either the professional preparation or the content preparation expected  
7 of a fully credentialed teacher, or both. *Id.*

8           604. Pre-interns are emergency permit teachers who have not yet satisfied the subject  
9 matter competence requirement for entry into an internship program and who have agreed to work  
10 toward subject matter competence while they are teaching as teachers of record. Darling-Hammond  
11 Report at 13; CAL. EDUC. CODE § 44305. They also have not generally begun studying toward the  
12 professional preparation requirements. Darling-Hammond Report at 13. They must “demonstrate  
13 intent” to take the state’s subject matter examinations for teachers and take content courses in a  
14 university while they hold the certificate. *Id.* Pre-interns are not expected to have met the longer list  
15 of professional preparation requirements outlined above. If they enter an intern program, they will  
16 then be expected to pursue those requirements. *Id.*

17           605. The CTC also grants short-term and variable term waivers that allow non-credentialed  
18 teacher candidates to waive any of the statutory and regulatory requirements for credentials. Darling-  
19 Hammond Report at 13-14; CAL. EDUC. CODE § 44225(m), CAL. CODE REGS. tit. 5, § 80122.  
20 Waivers are generally issued to candidates who have not passed the CBEST or met the subject matter  
21 standards. Darling-Hammond Report at 14.

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22  
23  
24           <sup>19</sup> The minimum requirements for a multiple subject emergency permit candidate are 10  
25 semester units of college coursework in each of *any four* of the following subject areas: language  
26 studies, literature, history, social science, mathematics, science, humanities, art, physical education,  
27 and human development. In contrast to the approved subject matter program requirements, this  
28 requirement requires fewer courses and less comprehensiveness. For example, a candidate could lack  
courses in certain areas, such as mathematics or science, entirely. The minimum requirements for a  
single subject candidate are 18 semester units in the subject area to be listed on the permit. These  
expectations are also less rigorous than the requirements for completing an approved subject matter  
program, both in quantity and expectations for breadth of content coverage. The emergency permit  
requirement can also be satisfied by passing a subject matter examination.

1           606. Districts that employ emergency credentialed teachers must submit a “Declaration of  
2   Need for Fully Qualified Educators” to the CTC. CAL. CODE REGS. tit. 5, § 80026; *see also* Darling-  
3   Hammond Report at 71. The declaration of need must be adopted by the district’s governing board,  
4   submitted to the Commission, and include the following information: estimated need, efforts to  
5   recruit certified personnel, efforts to establish alternative training options, and stipulation of  
6   insufficiency of suitable applicants. *See id.* The declaration of need is valid for twelve months;  
7   however, the twelve-month time frame can be extended by submitting a “Plan to Develop Fully  
8   Qualified Educators” to the CTC. CAL. CODE REGS. tit. 5, § 80026.4. The plan has to describe  
9   efforts to “(1) recommend to the Commission the certification of personnel who, by virtue of  
10   education, training or experience, have been judged by certificated educators from the employing  
11   agency as competent to serve in an assignment, but are not yet certified to do so; (2) support and  
12   assist persons who have training and experience in teaching, but neither training nor experience in the  
13   area to which they will be assigned; and (3) provide development activities for persons who have  
14   neither training nor experience in teaching, for example, through university or district internships,  
15   technologically based learning, or intensive professional development programs.” CAL. CODE REGS.  
16   tit. 5, § 80026.4.

17           607. As discussed above, the State has established standards to obtain various types of  
18   preliminary and clear credentials. The State has also established standards relating to the provision of  
19   intern and pre-intern credentials, emergency permits, and waivers. Although these standards require  
20   schools and districts to follow a standard protocol with respect to hiring undercredentialed teachers,  
21   they do not ensure that students have access to competent teachers. Despite the long list of  
22   credentialing standards set out in the Education Code and accompanying regulations, the State has  
23   failed to establish standards that would prevent students from having unequal access to qualified  
24   teachers.

25           608. The State has failed to acknowledge that it is the State’s responsibility to ensure equal  
26   access to qualified teachers for its public school students. (*See* Swofford Depo. at 117:13-118:24.)  
27   As part of this overarching failure, the State has failed to establish any standards around which  
28   policies could be organized to address inequalities. Standards are necessary to provide a benchmark

1 for determining whether (1) schools have too high of a percentage of teachers who have not satisfied  
2 the State's measure of competence; (2) low-income students and students of color are being  
3 disproportionately taught by teachers who have not satisfied the State's measure of competence; and  
4 (3) schools have equalized access to qualified teachers over time. The CTC has taken the position  
5 that whether or not students are provided with access to qualified teachers is purely a local matter.  
6 As a result, low-income students and students of color are disproportionately taught by teachers who  
7 have not met the State's measure of competence, many of whom have not completed, or even begun,  
8 a teacher education program.

9 **b. The State's Teacher Oversight System Ignores the**  
10 **State's Duty to Provide Equal Access to Qualified**  
**Teachers.**

11 609. The State's teacher oversight system consists of an uncoordinated patchwork of  
12 programs, laws, and regulations that result in the unconstitutional unequal distribution of competent  
13 teachers. The teacher credentialing system allows teachers with limited to no training to teach  
14 students via emergency permits, intern and pre-intern programs, and/or waivers. Lack of standards  
15 regarding the distribution of competent teachers result in schools where poor students and students of  
16 color are taught by a series of undercredentialed teachers. Inadequate recruitment and incentive  
17 programs fail to attract adequate numbers of competent teachers to the neediest schools. Inadequate  
18 induction and professional development fail to ensure that the new teachers at the neediest schools  
19 receive the training and support needed to stay in the profession. Lack of facilities and maintenance  
20 standards and lack of instructional materials result in unsafe and unappealing work environments.  
21 The result is a revolving door of undercredentialed and inexperienced teachers in schools serving  
22 poor students and students of color and no systematic State oversight to correct the unequal  
23 distribution of competent teachers.

24 610. As discussed above, the teacher credentialing system is inadequate because it fails to  
25 set any standards to gauge whether students are provided with competent teachers on an equal basis.  
26 The executive director of the CTC has expressly disavowed any obligation to ensure that students are  
27 provided with a competent teacher, explaining that ensuring such access is a purely local concern.  
28 (*See* Swofford Depo. at 116:19-118:6.) A potential benchmark for ensuring equal access to qualified



1 teachers is for schools to be required to have no more than 20% undercredentialed teachers. The 20%  
2 benchmark is consistent with the State’s own bright line criteria that has been applied in certain  
3 contexts such as SB 1331. *See* CAL. EDUC. CODE § 42127.85(a)(1)-(2), (g)(1). It is only an initial  
4 benchmark, however, as all students should ultimately have “highly qualified” teachers in all core  
5 classes, as required by the No Child Left Behind Act.

6 611. The State has not established any mechanisms to ensure equal access to competent  
7 teachers. The CTC does not monitor those districts relying heavily on undercredentialed teachers to  
8 ensure that they are, in fact, taking appropriate steps to recruit fully credentialed teachers. *See* LHC,  
9 *Teach Our Children Well* (2001) at p. iii (“[T]he State needs to target resources where the shortage  
10 of qualified teachers is persistent and severe. These schools come to the State for regulatory  
11 relief—permission to hire unlicensed teachers under emergency permits. As a condition of those  
12 permits, the State should make sure those schools and districts are doing what they can to attract  
13 qualified instructors, to improve school-site management, to provide adequate teaching resources,  
14 and to ensure a safe and healthy learning environment.”) The CTC does not review the districts’  
15 processing of teacher applications (Swofford Depo. at 270:5-272:1), nor does the agency take any  
16 action to check on the veracity of district claims when a district requests a waiver of teachers’  
17 credentials. (Swofford Depo. at 234:1-235:21.) There is no complaint procedure or formal system in  
18 place for determining when an investigation into high percentages of undercredentialed teachers  
19 should be undertaken. (*See* Swofford Depo. at 239:23-240:6.) The CTC has never called on counties  
20 to help investigate suspicions of failure to make a good-faith effort to recruit fully certified teachers  
21 before obtaining permission for emergency permitted teachers. (Swofford Depo. at 254:16-256:19 ;  
22 *see also* Darling-Hammond Report at 71.)

23 612. Further, the State’s actions and inaction with regard to ensuring equal access to  
24 qualified teachers in the public schools have in many respects led to the current teacher shortage and  
25 distribution problems. The following are some examples of what the State has done and failed to do  
26 that has caused these problems:

- 27 • The State has allowed non-competitive and unequal teacher salaries to arise throughout  
28 the state, which contributes to shortage and distribution problems. *See* CDE Prof. Dev.

1 Task Force, *Learning . . . Teaching . . . Leading: Report of the Prof. Dev. Task Force*  
2 (2001) at 8-13; LHC, *Teach Our Children Well* (Sept. 2001) at 38-44; *See* Joint Comm. to  
3 Develop a Master Plan for Educ. — Kindergarten through University, *Professional*  
4 *Personnel Development Working Group Final Report* (2002) at 36; Darling-Hammond  
5 Report at 55-58.

- 6 • The State has, without compelling justification, restricted pathways to teaching.  
7 Examples of restrictions include eliminating the bachelor's degree in education, requiring  
8 a 5-year program instead of a 4-year program, failing to fund teacher education  
9 programs consistent with supply demands, and instituting duplicative and arbitrary testing  
10 requirements. Darling-Hammond Report at 61-63.
- 11 • The State has, without compelling justification, restricted reciprocity with other states in  
12 recognizing their credentials. *Id.* at 63-64.
- 13 • As discussed above, the State has chosen overreliance on emergency permits, pre-interns,  
14 and interns—who are much less prepared than fully certified teachers and who historically  
15 have much shorter tenures in teaching—to address its shortage problem rather than  
16 comprehensive long-term solutions to ensure equal access to qualified teachers. In other  
17 words, the State has lowered standards to fill classrooms rather than increase incentives to  
18 attract and retain the truly qualified. *Id.* at 65-66.
- 19 • The State has failed to provide adequate support for beginning and veteran teachers. *Id.*  
20 at 66-67.
- 21 • The State has failed to provide adequate oversight of district personnel practices that  
22 undermine hiring and retention. *Id.* at 70-72.
- 23 • The State has not taken steps to correct unequal distribution of teachers within districts.  
24 *See* Swofford Depo. at 197:7-201:4 (acknowledging his awareness of the issue of unequal  
25 distribution of teachers and stating that neither the CTC, nor any State entity to his  
26 knowledge, has sought to correct the problem) ; A.B. 833, Governor's Veto Message (Oct.  
27 5, 2001).

1           613. The State has also failed to institute programs to ensure appropriate working  
2 conditions for teachers. “Poor facilities and unsafe working conditions add stress, health concerns  
3 and personal safety to the reasons why capable teachers leave hard-to-staff schools. The National  
4 Center for Education Statistics reports that workplace conditions have a stronger impact on teaching  
5 satisfaction than even compensation.” LHC, *Teach Our Children Well* (2001) at 45. This report also  
6 finds that:

7                   [d]ilapidated facilities and unsafe working conditions encourage  
8 capable teachers to leave undesirable schools. . . .

9                   Schools that draw high-quality teachers often are successful because  
they provide healthy, safe and stimulating teaching environments. . . .

10                  To attract and keep the kind of teachers who increase student  
11 achievement, low-performing schools need to provide quality work  
environments. But classrooms in these schools are often old, dingy and  
12 in need of substantial repairs.

*Id.* at xii-xiii.

13           614. The Center for the Future of Teaching and Learning has reached a similar conclusion:  
14

15                   Teachers and administrators argue that workplace conditions in  
overcrowded, hard-to-staff schools—year-round schedules, teachers  
16 without their own classrooms, and the constant need to address the  
most urgent crisis of the moment—are demoralizing and undermine the  
17 professional culture of the schools.

18           Patrick M. Shields et al., The Center for the Future of Teaching & Learning, *The Status of the*  
19 *Teaching Profession: Research Findings and Policy Recommendations* (1999) at 119. The Center  
20 for the Future of Teaching and Learning has further pointed out that “[p]erhaps the most daunting  
21 challenge is the urgent need to improve working conditions for all teachers and learning  
22 environments for all children in the state.” CFTL, *Teaching and California’s Future: The Status of*  
23 *the teaching Profession* (2001) at 115.

24           615. The CDE’s Professional Development Task Force has found that

25                   A key factor behind . . . [high teacher turnover] is the working  
conditions found in the state’s high-poverty, low-performing schools.  
26 A recent California Teachers’ Association report found that such  
schools are markedly larger, have more crowded facilities, and are  
27 more likely to be running on year-round schedules. Districts with the  
neediest students generally pay the least and provide the fewest  
28 supports in terms of class sizes, materials, resources, and equipment.

1 CDE Prof. Dev. Task Force, *Learning...Teaching...Leading: Report of the Prof. Dev. Task Force*  
2 (2001) at 16-17.

3 616. The task force further found that “focus groups reported ‘deplorable’ working  
4 conditions in some schools and confirmed the influence this has on their decisions about whether to  
5 stay in teaching.” *Id.* at 17; *see also* Linda Darling-Hammond, *Apartheid in American Education: How Opportunity Is Rationed to Children of Color in the United States*, in RACIAL PROFILING AND  
6 PUNISHMENT IN U.S. PUBLIC SCHOOLS (Tammy Johnson et al. eds., Applied Research Center, 2002)  
7 at 42-43 (“Students’ lack of access to well-qualified teachers is a function of several  
8 factors . . . [including] [d]ismal working conditions in many schools, especially those serving the  
9 least advantaged students. Large classes, severe overcrowding of facilities, and inadequate stocks of  
10 books and materials create stressful conditions in many schools that serve the most economically  
11 disadvantaged students. Not surprisingly, these schools have difficulty retaining well-qualified  
12 teachers....”); *see also* Darling-Hammond Report at 58-61.

14 617. In addition, schools with high concentrations of low-income students and students of  
15 color tend to have the worst working conditions. Based on a recent survey by the Harris Group,  
16 Dr. Darling-Hammond has opined that “respondents from schools with . . . very high proportions of  
17 ‘at-risk,’ low-income, and ELL students . . . were disproportionately likely to be places where  
18 teachers report high turnover, poor working conditions, low-quality materials, lack of technology,  
19 and low-quality professional development.” Darling-Hammond Report at 39-40.

20 618. SB 1331 authorized the Fiscal Crisis and Management Assistance Team (“FCMAT”)  
21 to audit districts who (1) have applied for waivers to hire emergency credentialed teachers for three  
22 years in a row and (2) have requested a need for fully qualified teachers in their latest “declaration of  
23 need” that exceeds 20% of the district’s teaching staff regarding their personnel practices. CAL.  
24 EDUC. CODE § 42127.85(a)(2). Although this legislation allows FCMAT to audit the personnel  
25 practices of districts that have applied for waivers for over 20% of their teaching staff, FCMAT has  
26 no authority to order changes, there is no followup mechanism to determine whether districts

voluntarily follow recommendations, districts are not provided with additional resources to followup on recommendations, and there is no coordination between FCMAT and the CTC.<sup>20</sup>

**c. The State Has Failed to Gather Data to Determine the Cause of the Teacher Shortage Problem in Some Schools.**

619. “Since the late 1990s, California policymakers increasingly have grown aware of a number of serious challenges facing the teaching profession: a severe shortage of credentialed teachers; a persistently inequitable distribution of qualified teachers among the schools of the state, resulting in students at poor, inner-city schools being most likely to have underprepared teachers; and a variety of shortcomings in the provision of professional development to current teachers.” Center for the Further of Teaching and Learning, *Strengthening California’s Teacher Information System* (2002) at 4. Despite the fact that the State has collected data regarding teacher credentialing and known about the unequal access to qualified teachers for decades, the State has failed to systematically collect data that is critical to understanding the causes of and solutions to this unequal access.

620. The State has failed to “collect and maintain accurate, consistent, and up-to-date information on teacher recruitment, development, and diversity needs and progress” or conduct “annual systematic supply and demand studies.” Cal. Statewide Task Force on Teacher Recruitment, *Shaping the Profession that Shapes California’s Future: The California Statewide Teacher Recruitment Action Plan* (1997) at 23; *see also id.* at 24 (“the Commission should issue an annual indicators report on teacher supply and quality. This “State of California Teaching” would provide meaningful information in a useful form to district decision-makers, college administrators, policymakers, and the general public.”); CFTL, *Year 2000 Update of CFTL Status Of Teaching Profession* (2000) at 51 (“the state’s current system of data collection, management, and reporting does not produce easily accessible and reliable data in several key areas related to teacher supply, demand, and distribution.”); Center for the Future of Teaching and Learning, *Strengthening*

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<sup>20</sup> The CTC does not receive FCMAT audit reports and there is no coordination between the two agencies. CTC director, Sam Swofford has stated that he is unfamiliar with FCMAT’s responsibilities and has never received a FCMAT report. Swofford Depo. at 273:4-18.

1 *California's Teacher Information System* (2002) at 2. ("policymakers need more reliable information  
2 in the areas of teacher attrition (teachers leaving the workforce before retirement), teacher workforce  
3 participation (job-taking), teacher movement between schools and districts, the "reserve pool" of  
4 teachers, trends in different credential routes, and the effect of state-sponsored programs for  
5 teachers."); *See* Joint Comm. to Develop a Master Plan for Educ. — Kindergarten through  
6 University, *Professional Personnel Development Working Group Final Report* (2002) at 16-17  
7 ("Though many data collection activities exist or are underway . . . state policy suffers from a lack of  
8 comprehensive data on a range of topics, including: [t]eacher and administrator quality and  
9 effectiveness that is informed by student achievement; [s]upply and demand analysis and projections;  
10 [t]eacher and administrator retention and mobility studies; [i]mpact of emergency permits; [j]ob  
11 surveys that provide systematic evaluation of prospective teachers and administrators . . .")  
12 According to a recent Center for the Future of Teaching and Learning:

13 [P]olicymakers report that they do not have access to data needed to  
14 make reliable projections of the magnitude of the teacher shortage in  
15 coming years. They also are in need of data to better understand  
16 complex conditions, such as the dynamics of the teacher labor market  
17 that result in the maldistribution of underprepared teachers, to be able  
18 to design appropriate policy to address pressing problems. They need  
19 data to help them identify which parts of the system and which types of  
20 schools or districts are most in need. Last, they need data to provide a  
baseline against which the impact of existing and new policies and  
programs can be measured. Without such data, policymakers never can  
be confident about the overall success of the state's efforts and cannot  
gauge the progress of individual programs. In addition, important  
problems, such as the maldistribution of underprepared teachers or an  
impending drop in the supply of teachers, may remain hidden.

21 Center for the Future of Teaching and Learning, *Strengthening California's Teacher Information*  
22 *System* (2002) at 4.

23 621. The State needs, and so far has failed, to do labor market analyses of the causes and  
24 effects of salaries and working conditions on supply and distribution of teachers in California public  
25 schools. *See* CDE Prof. Dev. Task Force, *Learning...Teaching...Leading: Report of the Prof. Dev.*  
26 *Task Force* (2001) at 22 ("A study should be commissioned to analyze the state's labor market needs  
27 and trends, the outcomes of recently enacted reforms, and the problems and practices in hard-to-staff  
28 districts. This study should identify the resources, incentives, and supports needed to enable all

1 districts to recruit and hire qualified teachers.”) A critical need will be state support of a data system  
2 that allows ongoing monitoring of teacher supply and demand and labor market trends. *Id.* at 21-22;  
3 *see also id.* at 56 (“Recommendation No. 4: Eliminate emergency permits and waivers within five  
4 years. . . . Evaluate sources of difficulties in districts that hire large numbers of underqualified  
5 teachers and develop remedies to improve hiring outcomes. Publicly report a Teacher Qualification  
6 Index for all schools annually.”)

7         622. In addition, the data collection efforts that are underway are poorly coordinated.  
8 “[T]he California Department of Education, the California Commission on Teacher Credentialing,  
9 and the California State Teachers’ Retirement System maintain databases for their own purposes, but  
10 the databases cannot be used in combination to address specific policy questions.” CFTL, *Teaching*  
11 *and California’s Future: The Status of the Teaching Profession* (2001) at 4; *see also* 26. “Because  
12 these agencies were established to perform specific, independent functions that are not linked by a  
13 common plan for data use, they act in isolation and make decisions that often don’t allow their data to  
14 be used in analyses of the bigger picture.” Center for the Further of Teaching and Learning,  
15 *Strengthening California’s Teacher Information System* (2002) at 2. The State has failed to create a  
16 “state-level data and analysis system to comprehensively address policymakers’ most basic  
17 questions.” Center for the Future of Teaching and Learning, *Strengthening California’s Teacher*  
18 *Information System* (2002) at 7. Without reliable information regarding teacher recruitment and  
19 retention efforts, supply, and demand, the State cannot effectively address the inequality in access to  
20 competent teachers.

21         623. The State has also failed to evaluate teacher programs and corresponding data  
22 concerning teacher supply issues. LHC, *Teach Our Children Well* (2001) at *iii*. The Little Hoover  
23 Commission has noted that “little effort is being made to evaluate rigorously and comprehensively  
24 the effectiveness of recent initiatives to improve and expand the workforce. As a result, the State  
25 cannot determine which efforts are efficiently helping to strengthen the workforce, which are not  
26 scaled or managed properly, or which are simply ineffective.” *Id.* at 63; *see also* Center for the  
27 Further of Teaching and Learning, *Strengthening California’s Teacher Information System* (2002)  
28 at 4 (“serious problems with the availability of and access to information needed to plan and monitor

1 the state’s major [teacher] reforms may hamper these efforts to ensure that every child has a fully  
2 qualified and effective teacher.”) “In the past, not having accurate data on teachers has led to false  
3 conclusions about which teacher initiative should be a priority. For example, poor workforce  
4 information resulted in the State first trying to fix the teacher shortage by just increasing the supply of  
5 teachers. Policy-makers only later realized [the State] needed to adjust its efforts to attract skilled  
6 instructors to schools with the greatest academic challenges, and often the least prepared teachers.”  
7 LHC, *Teach Our Children Well* (2001) at 65.

8 624. The LAO has also noted the lack of coherence of the current system of teacher  
9 preparation, induction, and professional development, which encompasses 22 different programs.  
10 LAO, *Analysis of the 2002-03 Budget Bill, Teacher Support and Development* (2002) at 1, 8-9. The  
11 LAO found that teacher programs are uncoordinated, duplicative, and compete with one another for  
12 teachers’ participation. *Id* at 8. The LAO’s budget analysis stated:

13 Fourteen years ago, when enacting Chapter 1362, the Legislature  
14 found: ‘The current array of staff development activities and incentives  
15 has grown by accretion, without a clear vision, remains largely  
16 unevaluated, and is unlikely to yield substantial improvement.’ Since  
17 the Legislature made this statement, the state has created 18 new  
18 teacher support and development programs. The recently released  
19 *Report of the Professional Development Task Force (2001)*,  
20 commissioned by the Superintendent of Public Instruction, reiterated  
21 similar concerns to the ones discussed above, including fragmentation,  
22 multiple funding streams, and the failure of one-size-fits-all  
23 approaches. The recently released SRI International report, *The Status*  
24 *of the Teaching Profession 2001*, also described the system as  
25 uncoordinated and ineffective (based upon teachers’ assessments).  
26 Similarly, an EdSource report, *Strengthening Teacher Quality in*  
27 *California* (1999), highlighted the difficulty school districts have in  
28 leveraging professional development funds to support local reform  
efforts.

22 *Id.* at 9.

23 **d. The State Has Failed to Effectively Monitor Teacher**  
24 **Misassignment.**

25 625. The State’s oversight system has failed to create an effective mechanism to detect,  
26 prevent or correct the misassignment of teachers. There has been no substantial reduction in the rate  
27 or number of misassigned teachers in California schools, particularly at the middle and high school  
28 levels, since 1989, when the CTC established a database in order to monitor the assignments of



1 certificated employees throughout the state. In fact, the total number of misassignments as well as  
2 the percentage of secondary school teachers misassigned has increased. CTC Assignment Report, pp.  
3 4-5. The reports themselves do not include any data or analysis of the distribution of misassignments  
4 among counties or school districts, and therefore make it difficult to detect or correct patterns of  
5 unequal access to qualified teachers across the state. Having failed to prevent the rise in the number  
6 of misassignments and by not collecting or analyzing data in a sufficiently comprehensive manner,  
7 the State of California's assignment monitoring and oversight system has been largely ineffective.

8         626. Though the State has established a system for correcting misassignments, *see* CAL.  
9 EDUC. CODE § 44258.9(g), in the thirteen years of its existence, amidst increasing levels of  
10 misassignments annually, the State has never used the system to correct a single misassignment. *See*  
11 State Agency Defendants' Responses and Objections to Plaintiffs' Fourth Set of Requests for  
12 Production of Documents, Nos. 174, 175, 177, 179 (failing to locate or produce any documents  
13 describing or related to: 1) the methods by which the CTC monitors misassignments [No. 174]; 2)  
14 any existing Compliance Agreements [No. 175]; 3) any letters of non-compliance sent by the  
15 Committee on Authorized Assignments to local governing school district boards [No. 177]; and, 4)  
16 any complaints received and/or processed concerning teacher misassignment [No. 179]); State of  
17 California's Responses and Objections to Plaintiffs' Fourth Set of Requests for Production of  
18 Documents, Nos. 175, 177, 178, 179 (failing to locate and/or refusing to produce any documents  
19 responsive to the requests noted above).

20         627. The State's discovery responses suggest that the current system is inadequate to  
21 effectively prevent or correct the assignment of teachers to classes that they are underqualified to  
22 teach. Moreover, the State's existing efforts to correct misassignment have taken place in isolation,  
23 ignoring the State's larger duty to attract and retain qualified teachers, including in shortage subject  
24 areas, in sufficient numbers for hard-to-staff schools. Notably, the No Child Left Behind Act of 2001  
25 now specifically requires the State to do what it should have been doing thus far — to track the  
26 distribution of out-of-field teachers vis à vis poor and minority students and to devise and implement

a plan to rectify any disproportionate misassignments experienced by them. ESEA Sections 1111(b), 1114(b)(1)(C), and 1115(c)(1)(E).<sup>21</sup>

**e. With Knowledge of the Inequality, the State Has Continued to Institute Programs That Are Incapable of Correcting the Unequal Access to Qualified Teachers.**

**i. The State Has Not Created Effective Programs or Directed Adequate Resources Toward Correcting the Unequal Access to Qualified Teachers.**

628. The State has failed to direct resources in a way that would address unequal access to competent teachers. State officials have admitted that the State needs to put a first rate teacher in every classroom. *See e.g.*, January 5, 2000 State Of The State Address (Governor Gray Davis characterized “a first-rate teacher for every classroom, in every school, in every neighborhood” as “the most vital ingredient” to “regain[ing] our former prominence” as a State). The State has failed to institute the requisite programs to accomplish this task. As discussed above, the bulk of the State’s programs focused on teacher recruitment and retention have allocated resources to all schools in the bottom half of the API instead of concentrating resources in the schools with greatest need. This allocation of resources guaranteed that the limited available resources would be inadequate to cure the unequal access to competent teachers. Nor have the State’s efforts to date been of sufficient scope, scale or comprehensiveness to ensure equal access to qualified teachers.

629. Although the State has established a variety of teacher recruitment, retention, induction, and professional development programs, these programs have failed to address the unequal access to competent teachers. The majority of these programs are not directed toward attracting competent teachers to the schools with the greatest need. The LAO and multiple education organizations have concluded that schools where 20% or more of the teachers are not fully

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<sup>21</sup> Section 1111(b)(8)(C) of this Act requires that, “[Each State plan shall describe] the specific steps the State educational agency will take to ensure that both schoolwide programs and targeted assistance schools provide instruction by highly qualified instructional staff as required by sections 1114(b)(1)(C) and 1115(c)(1)(E), including steps poor and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers, and the measures that the State educational agency will use to evaluate and publicly report the progress of the State educational agency with respect to such steps.”

1     credentialed “face recruitment/retention challenges [that are] so serious they have fallen into  
2     educational dysfunction.” LAO, *Recommendations Regarding the Governor’s Proposals on Teacher*  
3     *Recruitment and Retention*, SB 1505 (2000) at 2; CFTL, *Year 2000 Update of CFTL Status of*  
4     *Teaching Profession Summary Report* (2000) at 6 (“Our case study research indicates that schools  
5     where more than 20 percent of the teachers are underqualified are likely to lack the capacity to  
6     improve the academic performance of students.”); LHC, *Teach Our Children Well* (2001) at 3  
7     (“Some educational experts also believe that when the proportion of teachers in a school on  
8     emergency permits and waivers exceeds 20 percent, teaching skills become so anemic that the  
9     instructional needs of students can be seriously compromised.”) Instead of focusing teacher  
10    programs on these at-risk schools, the State has generally followed an approach of making teacher-  
11    related resources equally available to all schools or, in some cases, to schools in the bottom half of  
12    the API.

13           630.    Programs such as the Beginning-Teacher Minimum Salary program, the Pre-internship  
14    Teaching program, the School Paraprofessional Teacher Training program, the California Peer  
15    Assistance and Review program, and the Instructional Time and Staff Development Reform program  
16    provide resources to all schools — so long as districts apply for them. Such programs, while serving  
17    valid objectives, are not capable of addressing the unequal access to competent teachers that currently  
18    exists.

19           631.    Other programs, such as the TAP program, Governor’s Teaching Fellowships,  
20    National Board For Professional Teaching Standards Certification Incentive program, the Certificated  
21    Staff Performance Incentive program, APLE, Credit Teacher Home Purchase program, and (likely)  
22    the CAL T Grant program are all aimed at “low performing schools.” However, “low performing  
23    schools” are defined as schools in the bottom half of the API, which includes 50% of all schools.  
24    Because these programs are not targeted at the neediest schools, as indicated by the percentage of  
25    teachers in the district who have not completed basic credential requirements, they have not  
26    adequately addressed the unequal access to competent teachers.

27           632.    As noted by the CDE’s Professional Development Task Force, “[t]he commitment to  
28    turn around the state’s professional development system will need greater scope, scale, and

coordinated effort.” CDE Prof. Dev. Task Force, *Learning . . . Teaching . . . Leading: Report of the Prof. Dev. Task Force* (2001) at 4. In the years since the above programs were put into place, the number of emergency permits and pre-intern certifications have only increased. See Darling-Hammond Report at 77-78; see also Center for the Future of Teaching and Learning, *Status of the Teaching Profession 2001*, at 7-8.

633. The only program that focuses on recruiting teachers to the neediest schools, i.e. schools that have more than 20% undercredentialed teachers, is the Teacher Recruitment Incentive program. This program, however, also defines “low performing schools” as those schools in the bottom half of the API, and thus does not focus resources on the neediest schools. Moreover, a single program aimed partially at the neediest schools is not sufficient to solve the problem.

634. The March 29, 2000 LAO *Recommendations Regarding the Governor’s Proposals on Teacher Recruitment and Retention*, SB 1505, presented to the Senate Education committee, pointed out the problem with the Governor’s proposed teacher programs aimed at schools in the bottom half of the API. The LAO acknowledged that the State’s duty to provide equal access to education to all students was not being met:

[A]ccording to a recent study, about one fifth of the state’s public schools — those where 20 percent or more of the teachers lack a credential — face recruitment/retention challenges so serious they have fallen into educational dysfunction. *This is the problem that requires state intervention.* (Emphasis in original)

LAO, *Recommendations Regarding the Governor’s Proposals on Teacher Recruitment and Retention*, SB 1505 (2000) at 2; LAO, *Analysis of the 2000-01 Budget Bill, Teacher Quality and Supply* (2000) at 4 (“the available research indicates that the real problem of too few credentialed teachers is concentrated in about 20 percent of the state’s public schools. These are the schools where the systems for providing professional mentoring and support have been overwhelmed by the imbalance between veteran and novice teachers. These are also the schools that face the most serious problems in terms of poor academic performance.”). The Legislative Analyst found that the chosen target of the bottom half of the API is “overly broad and has no relationship to the problem” described above. “This misplacing of the target not only would dissipate large amounts of state funds, it could leave the fundamental problem largely unaddressed.” *Id.* The LAO recommended

1 that the Legislature “redirect the [\$122.3 million proposed] for four [new] programs for low-  
2 performing school teacher recruitment... into a block grant to school districts for teacher recruitment,  
3 retention and support targeted to the schools most in need of this help” — specifically, those schools  
4 “where at least 20 percent of the teaching staff lack credentials.” *Id.* at 5. The four programs  
5 affected by this recommendation are: National Board Certification incentive, regional teacher  
6 recruitment centers, Credentialed Teacher Recruitment (CTC), and teacher housing down-payment  
7 assistance. *Id.* at 1, 4-5. Despite these recommendations, SB 1505 was subsequently enacted with its  
8 initial reach to all schools in the bottom half of the API.

9 635. In its *Analysis of the 2000-01 Budget Bill*, the LAO again pointed out the State’s  
10 failure to solve the problem of unequal access to competent teachers:

11 Although the administration’s various proposed teacher recruitment  
12 incentives are targeted to low-performing schools, the administration’s  
13 definition of performance is overly broad. Under the Governor’s  
14 various proposals, any school scoring below the 50th percentile on the  
15 state’s API is considered low performing. Thus, by definition, half of  
16 the state’s schools are “low-performing” and would qualify for the  
17 targeted recruitment/retention incentives. (Because the API is a  
18 California-only measure, this definition of performance means that 50  
19 percent of the state’s schools would *always* be low-performing no  
matter how much the state’s schools improve over time.) This  
definition is overly broad and has no relationship to the problem that  
the proposals seek to address. This misplacing of the target not only  
would dissipate large amounts of state funds, it could leave the  
fundamental problem largely unaddressed. By offering the same  
incentives for teaching at a relatively attractive school as for teaching at  
a school in distress, the incentives would divert qualified teachers away  
from the schools that need them most.

20 LAO, *Analysis of the 2000-01 Budget Bill, Education Chapter* (2000) at E-27; *see also Id.* at 17-18  
21 (“Our analysis indicates that the state could usefully deploy more funds to address not just the  
22 problem of teacher recruitment/retention, but the larger array of problems facing disadvantaged  
23 schools — which tend to be schools serving large numbers of children in poverty). Despite the  
24 LAO’s recommendations with respect to targeting resources at the most disadvantaged schools, the  
25 State has failed to adequately address the persistent inequality in access to competent teachers. The  
26 State has continued to expend resources on programs geared toward all teachers or teachers at schools  
27 in the bottom half of the API to the detriment of schools facing the greatest challenges. The State has  
28 failed to adequately fund recruiting and retention efforts at the hardest to staff schools despite

1 available resources. The State’s reasons for failing to allocate resources in ways that could address  
2 inequality are not compelling.

3         636. The State’s Class Size Reduction program (CSR) greatly exacerbated the unequal  
4 access to qualified teachers, particularly for low-income students and students of color. Darling-  
5 Hammond Report at 72-73; *see also* Christopher Jepsen & Steven Rivkin, Pub. Policy Inst. of  
6 California, *Class Size Reduction, Teacher Quality, and Academic Achievement in California Public*  
7 *Elementary Schools* (2002) at x-xi; *and see* CTC, *Progress Report on Implementation of the Pre-*  
8 *Internship Teaching Program Beginning in 1998-1999* (Mar. 17, 1998) at 1 (noting that, “The  
9 numbers of multiple subject emergency permit teachers more than doubled in the 1996-97 school  
10 year, from approximately 6,000 to over 12,000 with the advent of class size reduction.”). Moreover,  
11 the State has failed to take steps to address the negative effects of class size reduction on hard-to-staff  
12 schools. As the CTC noted in its annual report, after CSR went into effect, there was a 59% increase  
13 in the number of credential waivers it issued. CTC, *1996-97 Annual Report: Emergency Permits*  
14 *and Credential Waivers* (1998) at 21; CDE Prof. Dev. Task Force, *Learning . . . Teaching . . .*  
15 *Leading: Report of the Prof. Dev. Task Force* (2001) at 20 (“The number of emergency permits  
16 doubled between 1995-96 and 1997-98 — from around 15,000 to more than 30,000, according to  
17 CTC figures — largely as a result of class size reduction.”) The LAO characterized the impact of  
18 CSR as follows:

19                 Probably the single greatest factor in the recent increase in  
20 noncredentialed teachers in these schools [serving poor populations],  
21 however, has been K-3 class size reduction (CSR) — or, to be precise,  
22 the rapidity and near-universality of CSR implementation across the  
23 state. The CSR Research Consortium in a multiyear study funded by  
24 state, federal, and private funds found that in 1995-96, just before  
25 implementation of K-3 CSR, there was little difference between the  
26 percentage of noncredentialed K-3 teachers in schools serving the  
poorest quartile of pupils (2 percent) and schools serving the most  
affluent quartile (0.5 percent). Two years later, the share of K-3  
teachers lacking credentials at schools serving the poorest pupils  
jumped to almost 20 percent, while the share of K-3 teachers lacking  
credentials at schools serving the most affluent pupils rose to less than  
5 percent.

27 LAO, *Analysis of the 2000-01 Budget Bill, Education Chapter* (2000) at E-24-25.  
28

637. In 2001, CDE's Professional Development Task Force found that the problem of high numbers of undercredentialed teachers continues to worsen as does the unequal access to competent teachers:

Meanwhile, the unequal allocation of teachers worsens each year. While the proportion of California schools staffed only with fully qualified teachers has been increasing, the share of schools in which more than 20 percent of teachers are underqualified has also been increasing. These schools mostly serve children of color, whose life chances may be impaired by short-term, underprepared instructors.

CDE Prof. Dev. Task Force, *Learning...Teaching...Leading: Report of the Prof. Dev. Task Force* (2001) at 20 (citation omitted); *see also id.* at 4. Despite these findings and the role the State has played in widening the gap in access to competent teachers, the State has failed to act to address the negative consequences of class size reduction.

**ii. The State Has Rejected Programs That Could Have Alleviated Unequal Access to Qualified Teachers.**

638. The State has rejected programs that could have alleviated unequal access to qualified teachers. For example, AB 833 called for the CDE to “develop a teacher qualification index for each public school, to measure the distribution of teachers within school districts across the state and to assign a rating that will demonstrate comparable improvement in the assignment of credentialed teachers and underqualified teachers in each public school.” AB 833, Legislative Counsel’s Digest, 2000-2001 Sess. (Cal. 2001). The index would have consisted of a variety of indicators and would have been published annually on the Internet. AB 833 passed the California Senate on September 4, 2001, and passed the Assembly on September 6, 2001. Though the index called for minimal expenditure, it was vetoed by the Governor, citing the “rapidly declining economy” as the primary justification. October 5, 2001 Veto Message.

639. The Teacher Quality Index provided an opportunity to address systematically the unequal distribution of competent teachers. As stated in its legislative findings, “an index measuring a pupil’s access to credentialed teachers will establish a clearly defined standard, set realistic benchmarks against which to measure improvement, and help to direct state and district resources

1 toward those schools that need them most in order to meet this standard.” AB 833, § 1(g), 2000-2001  
2 Sess. (Cal. 2001). The reasons given for the veto of this bill involved no compelling state interest.

3 640. Also vetoed, two years in a row, were bills that would have required the CTC to  
4 develop a “state plan to address the problem of a disproportionate number of teachers serving with  
5 emergency permits in low-performing schools in low-income communities, as compared to a lower  
6 number of teachers with those permits serving in schools that are not low performing or not in low-  
7 income communities.” SB 1575, § 1(b), 1999-2000 Sess. (Cal. 2000); SB 743, § 1(b) 2000-2001  
8 Sess.(2001).<sup>22</sup> The plan was to include “information for those districts on how to access and utilize  
9 federal, state and local programs and address how best to establish long-term teacher recruitment and  
10 retention policies in the schools that have the greatest difficulty hiring and retaining credentialed  
11 teachers.” SB 1575, § 2 (2000); SB 743, § 1(b) (2001). The October 13, 2001 veto message  
12 confirmed that the number of teachers serving on emergency permits in low-performing schools is  
13 concerning. Nonetheless, the veto message stated that the development of a state plan was redundant  
14 because the emergency permit system is being renamed a “Pre-internship Teaching Program” and  
15 because the incentives from teacher legislation over the past few years have not “been in place long  
16 enough to adequately evaluate their impact on increasing the number of certified teachers.” SB1575,  
17 Governor’s Veto Message (Oct. 13, 2001). Notably, these bills only required the appropriation of  
18 \$32,000.

19 641. SB 81 would have required the State “to prioritize and align educational resources and  
20 funding to ensure that all pupils have an equal opportunity for educational success and . . .to develop  
21 guidelines for measuring equal opportunity to include information pertaining to certain issues within  
22 those guidelines.” SB 81, § 2, ch. 5 at (b)(1) & (2), 1999-2000 Sess. (Cal. 1999). The bill would  
23 \_\_\_\_\_

24 <sup>22</sup> The legislative findings for SB 1575 and 743, section 1(a), stated:

25 (1) Teacher quality is one of the greatest determinants of pupil  
26 performance. (2) An increasingly disproportionate number of the least  
27 qualified emergency permit holders teach in schools with the greatest  
28 need. (3) Pupils in low-performing schools should receive priority in  
the assignment of appropriately credentialed teachers. (4) The role of  
collective bargaining should be considered in determining non-  
credentialed teacher assignments throughout school districts.”



1 have also required the State to report annually “on the status of equal opportunity for success in  
2 California’s public schools.” *Id.* Under this bill, one measure for determining equal opportunity for  
3 success is “the percentage of experienced and well-trained teachers assigned to low-performing  
4 schools” and “the percentage of teachers with emergency permits and teachers assigned outside their  
5 subject area.” SB 81, § 2, ch. 5 at (b)(1) & (2). The governor vetoed this bill stating that the State is  
6 not “responsible for ensuring that the quality of educational opportunities for each pupil is equal.”  
7 SB 81, Governor’s Veto Message (Oct. 10, 1999). The veto message further stated that ensuring  
8 equal educational opportunities “is the responsibility of school districts who, with the input of each  
9 community, determine how state-provided resources are spent.” October 10, 1999 Veto message.

10 642. SB 1408 (2002) would have required low-performing high schools to identify students  
11 failing the high school exit exam by reason of exposure to 30% or more uncredentialed teachers, or  
12 50% or more of their courses lacking adequate textbooks during grades 7-12 and to design a  
13 corrective action plan to address these problems. The the implementation of the bill was to be  
14 covered by existing funding for low-performing schools programs. Nevertheless, the bill was vetoed,  
15 citing “costs of over one million dollars and . . . potentially. . . much more” as the reason for the veto.  
16 *See* SB 1408, Governor’s Veto Message (Sept. 29, 2002).

17 643. The decisions to veto SB 1575, SB 743, SB 81, and SB 1408 are examples of the  
18 State’s failure to institute programs capable of beginning to address the unequal access to competent  
19 teachers, among other indicators of inequality. These programs were vetoed for reasons that are  
20 neither compelling, nor, in the case of SB 81, consistent with judicial decisions regarding the State’s  
21 nondelegable constitutional duty to provide fundamentally equal educational opportunity.

22 **2. The State’s Oversight System Is Incapable of Preventing,**  
23 **Detecting, or Correcting the Unequal Access to**  
**Instructional Materials.**

24 644. Although the State has known that instructional materials are vital to students’  
25 educational success and that some students do not have adequate access to instructional materials, the  
26 State has failed to develop an oversight system that is capable of preventing, correcting or  
27 compensating for the unequal access to instructional materials. The relevant provisions of the  
28

1 Education Code fail to set standards regarding the provision of instructional materials and fail to  
2 establish a system for ensuring adequate access to instructional materials.

3 **a. The State Has Failed to Establish Standards to**  
4 **Prevent Unequal Access to Instructional Materials.**

5 645. While the State has developed a detailed statewide curriculum and ensured that  
6 appropriate instructional materials are adopted, *see, e.g.*, CAL. EDUC. CODE §§ 60200-60206, it has  
7 failed to adopt standards to ensure that students have equal access to the requisite instructional  
8 materials needed to master the content. Currently, there are no standards in place for determining  
9 whether students have access to materials that are sufficient in quantity, up-to-date, and in usable  
10 condition.

11 646. Most of the Education Code sections relating to instructional materials are directed  
12 toward developing content-based adoption standards. The number and detail of the sections  
13 regarding content and adoption standards indicate that the State recognizes how important textbooks  
14 and instructional materials are; otherwise, the State would not have dedicated such substantial time  
15 and resources toward approving content. The State Board of Education has the constitutional  
16 authority to adopt textbooks for grades one through eight. *See* CAL. CONST. art. IX, § 7.5. Education  
17 Code sections 60200-60204 describe the process for the adoption of instructional materials for  
18 kindergarten through grade eight and mandate that submitted materials be evaluated for consistency  
19 with the criteria and standards in the State Board’s curriculum frameworks.

20 647. Despite the fact that the State has known since at least 1984 that students in some  
21 districts are forced to share instructional materials (*see* CDE, *Instructional Materials Sunset Review*  
22 *Report* (1984) at 46), there is still no provision of the Education Code that sets standards to ensure the  
23 actual *provision* of instructional materials to students for use in class and to take home for homework.

24 648. The IMF, which was established for “the acquisition of instructional materials as  
25 required by the Constitution of the State of California,” neglects to set substantive standards by which  
26 the adequacy of the supply of instructional materials may be measured. CAL. EDUC. CODE  
27 § 60240(a). For kindergarten through grade eight, the Board of Education is required to set  
28 allowances for each district, based on districts’ average daily attendance (“ADA”). “The IMF

1 allocation for grades nine through twelve is based on total enrollment.” See “Curriculum  
2 Frameworks and Instructional Resources Adoption Processes,” Janice Agee, CDE, *Fact Book 2002:*  
3 *Handbook of Education Information* (2002) at 50. Currently, IMF funds are apportioned at the rate  
4 of \$21.18 per pupil in the average daily attendance in the public elementary schools and \$14.41 per  
5 pupil enrolled in high school. See CAL. EDUC. CODE §§ 60246(a), 60247.

6         649. Likewise, Schiff-Bustamante, which provides school districts with additional money  
7 to purchase textbooks and instructional materials containing State-approved content, fails to set  
8 standards to ensure that students have equal access to sufficient quantities of instructional materials.  
9 See CAL. EDUC. CODE §§ 60450, 60451. Under this program, money is apportioned based on prior  
10 year enrollment, a per capita measure similar in effect to the ADA/enrollment count used to apportion  
11 funds under the IMF. See CAL. EDUC. CODE § 60450.5(a). For grades kindergarten through eight,  
12 Schiff-Bustamante “funds may be used only for materials that are aligned with content standards and  
13 adopted by the State Board. At the [nine through twelve grade] level, the funds may be used only for  
14 basic instructional materials that have been reviewed and approved, through a resolution by the local  
15 governing board, as being aligned with the State Board-adopted content standards.” Janice Agee,  
16 CDE, *Fact Book 2002: Handbook of Education Information* (2002) at 51.

17         650. Section 60119, the stated purpose of which is to ensure the availability of textbooks  
18 and instructional materials, also fails to establish a standard. Like the other textbook provisions,  
19 section 60119 fails to set a standard regarding the provision of textbooks to each student for his or her  
20 use in class and to take home for homework. Even if a school district complies with section 60119’s  
21 public hearing requirement and certifies that its students have “sufficient” textbooks or instructional  
22 materials, there is no way of testing that determination because there is no standard.

23         651. The State has also failed to develop meaningful standards to address the currency of  
24 the content in textbooks as compared with the pace of developments in the relevant subject matter,  
25 despite evidence dating back to 1984 that students in some districts are learning from obsolete  
26 textbooks. See CDE, *Instructional Materials Sunset Review Report* (1984) at 43, 46. Sections 60500  
27 and 60501 delegate to districts responsibility for developing standards for determining whether  
28 textbooks and instructional materials “are obsolete, and if such materials are usable or unusable for

educational purposes.” CAL. EDUC. CODE § 60500. The provisions give no guidance regarding the meaning of “obsolete” or “useable or unusable” and install no State-level monitoring mechanism for determining whether districts are making such assessments. *See, e.g.,* Laura Benedict, *Schools that ‘Shock the Conscience’; Lawsuit Demands California Improve Conditions in Schools Serving Low-Income Students of Color*, CHILDREN’S ADVOCATE (Jan.-Feb. 2001) (PLTF 17308-17314).

652. Nor do IMF, Schiff-Bustamante, or section 60119 set standards for measuring whether instructional materials are sufficiently up-to-date. The combination of these standardless provisions can result in districts’ certifying that history books that fail to reflect the dissolution of the Soviet Union are “sufficient” under section 60119.

653. The State has also failed to develop standards to ensure that textbooks are in appropriate physical condition. There is no provision of the Education Code, no directive, policy, or regulation that addresses the physical condition of instructional materials. Neither the IMF, nor Schiff-Bustamante, nor section 60119 even makes reference to the physical condition of textbooks and instructional materials.

**b. The State’s Instructional Materials Oversight System Ignores the State’s Duty to Provide Equal Access to Instructional Materials.**

654. Although the State considers section 60119 to be the fulfillment of its constitutional duty to provide equal access to instructional materials, this section impermissibly abdicates to districts responsibility for ensuring that students have textbooks. Section 60119 delegates ultimate authority to the districts, with no State oversight, thereby disabling the State from satisfying its constitutional obligation of identifying and remedying textbook shortages. If Section 60119 is construed as perporting to preclude State oversight, it is unconstitutional as applied.

655. As previously noted, section 60119 rests on the premise that requiring districts to hold public hearings to determine whether there are sufficient textbooks will result in students actually having equal access to adequate instructional materials. The language of the statute gives no guidance to districts regarding how districts lacking adequate materials can solve problems. Instead, the statute commands districts to do whatever is necessary, but does not require that districts report to

1 someone at the State level what actions they intend to take, whether any such measures were in fact  
2 undertaken, and/or whether any actions taken were effective.

3         656. Section 60119 is also flawed because its protracted timelines for compliance leave  
4 open the possibility that students will go months or years without the resources they need. The  
5 statute merely requires districts to certify that students will receive textbooks “prior to the end of the  
6 fiscal year.” This means that a district may satisfy the requirements of section 60119 even if its  
7 students do not have access to math books until the end of the semester. *See, e.g.,* Andy Samuelson,  
8 *Textbook Problem Resolved*, San Gabriel Valley Tribune, May 8, 2002 (regarding Pasadena Unified’s  
9 eventual certification of compliance with section 60119, a board member “said she wanted to see the  
10 resolution brought at the beginning of the school year, instead of the end”).

11         657. In addition, the statute allows districts that determine they do not have sufficient  
12 instructional materials up to two years to ensure that students have access to such materials. This  
13 means that for up to two years at a time, students may lose valuable instructional time while their  
14 teachers improvise by copying notes and assignments onto the chalk board, photocopying materials  
15 to be shared, and clarifying material students could have reviewed in their textbooks. Moreover, the  
16 statute provides no mechanism for State review of the substance or the timing of any efforts the  
17 district undertakes to remedy an insufficiency.

18         658. The implementation of section 60119 has confirmed its ineffectiveness. In practice,  
19 school districts were never fully apprised of their responsibilities under section 60119. There appears  
20 to have been no systematic effort to inform districts of the statute’s enactment and its particular  
21 requirements. Many districts evidently became aware of the statute’s requirements only after the  
22 fiscal auditing process. (*See* Pinegar Depo. 94:15-95:2; Griffith Depo. 164:14-65:9.)

23         659. In addition, weaknesses in the system permit districts to avoid taking their  
24 responsibilities under section 60119 seriously. In practice, it appears that many districts fail to give  
25 appropriate notice of the public hearing and, at most, go through the motions of passing board  
26 resolutions regarding textbook sufficiency. *See, e.g.,* Andy Samuelson, *Textbook Problem Resolved*,  
27 San Gabriel Valley Tribune, May 8, 2002 (noting that although at the end of this year Pasadena  
28 Unified School District certified that it complied with section 60119 and meant it, for “most school

districts, the [public hearing] meetings are routine”). For example, although on October 8, 1998, the LAUSD Board of Education certified that it complied with section 60119 for fiscal years 1997-1998 and 1998-1999,<sup>23</sup> evidence shows that LAUSD was suffering from severe textbook problems during those years. *See, e.g., No Bang for Our Books*; Amy Pyle, *Book Shortage Plagues L.A. Unified; Education: High School Students Often Don’t Have Texts for Classes, Despite State Law*, L.A. TIMES, July 28, 1997, at A.1; Amy Pyle, *Textbook Shortage Sparks Outrage, Study of Spending; Education: The Mayor Calls for Change as School Administrators Review Supplies and Budgets*, L.A. TIMES, July 29, 1997, at B1; *see also* Oakes Textbook Report at 82-84 (citing to the May 13, 2002 San Francisco Unified District Board meeting at which one Board member described the 60119 hearing process as “Kafkaesque” because it put the Board in the position of having “to say say that we do have sufficient textbooks and instructional materials” when, in fact, we do not). Other districts comply with the letter of the statute rather than the spirit of the law, by seeking waivers from compliance based on sections 60119(d) and 41344.3, discussed below.

660. To excuse the failure of most school districts to comply with the public hearing requirement and/or the failure the State to inform districts of their duties under the statute, the

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<sup>23</sup> See LAUSD Board Minutes, Oct. 8. 1998:

TEXTBOOKS AND INSTRUCTIONAL MATERIALS  
CERTIFICATION RESOLUTION

Mr. Konantz presented Division of Instruction Communication No. 3 proposing the adoption of the following resolution:

BE IT RESOLVED: That the governing board of the Los Angeles Unified School District certifies that it has complied with the requirements of Education Code Section 60119 for the 1997-98 and 1998-99 fiscal years.

A change in the K-12 Audit Guide, issued by the State Controller’s Office, now requires all school districts to certify compliance with Education Code Section 60119, Grades K-12, whenever they have received funds for textbooks and instructional materials from any state source.

Ms. Minami, Mr. Konantz, and Mr. Collins responded to questions raised by the Committee.

The communication was approved for transmittal to the Board of Education on October 13, 1998.

1 Legislature amended section 60119 to state “[t]he governing board of a school district is eligible to  
2 receive funds available for the purposes of this article for the 1994-95 fiscal year to the 1998-99 fiscal  
3 year, inclusive, whether or not the governing board complied with the public hearing requirement set  
4 forth in paragraph (1) of subdivision (a).” CAL. EDUC. CODE § 60119(d). Although the legislature  
5 enacted section 60119 so that information about the availability of textbooks would be collected and  
6 made publicly available, defendants have produced documents regarding requests by at least 708 of  
7 the 1,055 school districts for general waivers from compliance with the public hearing requirement  
8 during one or more of the 1994-95 through 1998-99 school years. Moreover, section 41344.3, added  
9 in 2001, permits the State Board of Education to, “upon a finding that violations were minor or  
10 inadvertent, and the intent of Section 60119 was substantially met, consider and act upon requests to  
11 waive Section 60119” to the extent that a district’s failure to comply would subject the district to a  
12 repayment. CAL. EDUC. CODE § 41344.3; *cf.* CAL. EDUC. CODE § 41020. Although this provision  
13 insulates districts from spending already limited funds on penalties, it highlights the ineffectiveness  
14 of section 60119.

15         661. Since the enactment of 60119, the State has undertaken no follow-up, whether on a  
16 comprehensive or sampling basis, to determine whether in fact the public hearings are perfunctory or  
17 meaningful. (Griffith Depo. at 96:15-98:24.) The State has neither attempted to determine whether  
18 districts’ findings at the hearings are accurate or whether any two-year plans that have been  
19 developed pursuant to the statute are meaningful and being implemented. *Id.* In fact, the waiver  
20 office, which appears to be one of the few entities among defendants that has some interaction with  
21 school districts concerning this statute, determines only if the school district complied with the  
22 formality of holding the requisite hearing and does not inquire as to the conclusion regarding the  
23 availability of textbooks of any public hearing. (Pinegar Depo. at 57:25-60:22.) Moreover, the  
24 waiver office does not convey any information from the public hearings relating to the availability of  
25 textbooks or instructional materials to anyone outside the waiver office. (Pinegar Depo. at 103:21-  
26 104:18.)

27         662. In sum, section 60119 provides, in practice, more excuses for noncompliance than  
28 effective remedies. It permits districts to lose up to two years without even a hearing to determine

whether children go to school “with insufficient textbooks or instructional materials, or both.” *See* CAL. EDUC. CODE § 60119. After the two years, the statute requires only that a district lacking such textbooks must announce a “plan” to provide books. If, in *Butt*, closing school six weeks early denied students their constitutional right to basic educational equality, then as much as two years without even a hearing regarding the availability of books, much less the books themselves, would be no less unconstitutional. Such denial (and far less) would manifestly deprive students of “an education basically equivalent to that provided elsewhere throughout the State,” *Butt, supra*, 4 Cal. 4th at 685, and work “a real and appreciable impact” on a child’s opportunity to learn. *Id.* at 686.

663. Other State monitoring mechanisms such as the Coordinated Compliance Review (CCR) and school accountability report cards (SARCs) have also proven ineffective in ensuring that students have equal access to instructional materials. For example, despite documented textbook shortages as recent as 2002, all of the SARCs in LAUSD for the previous school year contain the same language:

*The LAUSD has set a priority on ensuring that a sufficient number of textbooks to support the school’s instructional program is available. The instructional materials are chosen primarily from textbooks adopted by the Department of Education. Acquisition of educational technology and access to current additional resources to support the instructional program for all students are priorities in determining the budget expenditures. (Italics in original.)*

California State Auditor, *Los Angeles Unified School District: Outdated, Scarce Textbooks at Some Schools Appear to Have A Lesser Effect on Academic Performance than Other Factors, but the District Should Improve Its Management of Textbook Purchasing and Inventory* (June 2002) at 55.

**c. The State Has Failed to Gather Data That Would Permit It To Know the Extent and Causes of Unequal Access to Adequate Instructional Materials.**

664. The State has failed to conduct or commission any surveys or studies to measure the extent or causes of unequal access to sufficient instructional materials. In contravention of its duty to ensure that adequate funds for the purchase of instructional materials are available, the State has neglected to inform itself whether districts have sufficient instructional materials or figure out how much money it actually costs for districts to provide equal access to such adequate materials. (*See* Griffith Depo. at 122:16-23:5; 147:2-49:10; 188:7-89:22; *see also* State Agency Defendants’



1 Responses to Plaintiffs’ First Set of Special Interrogatories at 5 (stating that “[t]he extent of the  
2 availability of educational materials in all districts is unknown.”); *id.* (stating that State Agency  
3 Defendants are “not in charge of monitoring the physical quality” of textbooks.).)

4 665. Since at least 1985, the State has been on notice that “[t]he statutory formula for  
5 determining the state appropriation for instructional materials is not based on an evaluation of the  
6 schools’ needs; and the department’s estimate of these needs is based on unreasonable assumptions.”  
7 *See* LAO, *The Instructional Materials Program, A Sunset Review* (1985) at 4. Because the State has  
8 yet to conduct surveys or studies to apprise itself of the nature and scope of California’s textbook  
9 problems, it has continued to approve ineffective instructional materials programs that perpetuate  
10 inequality and that rely on untested and incorrect assumptions.

11 666. The IMF, for example, does not reflect an informed analysis of the amount of funding  
12 necessary to ensure students have equal access to the requisite instructional materials. Because the  
13 State has failed to apprise itself of how many students in California public schools lack adequate  
14 textbooks and has collected no hard data regarding how much State assistance individual districts  
15 actually require in order to provide students with an adequate number of current textbooks, the State  
16 is incapable of satisfying its constitutional duty. (*See* Griffith Depo. at 122:16-124:22, 163:5-10,  
17 188:22-189:22; Pinegar Depo. at 48:7- 49:11, 103:21-104:8, 105:22-106:7); CAL. ED. CODE  
18 §§ 60242, 60246(a), 60247.

19 667. Section 60119 was enacted in 1994 to ensure the availability of textbooks and  
20 instructional materials. The legislation requires that in order to receive instructional materials  
21 funding, “a school district’s governing board must hold at least one annual public hearing to  
22 encourage [members of the public] to voice their concerns regarding whether sufficient textbooks and  
23 instructional materials are made available for each student. The governing board is required to notify  
24 the public of the hearing 10 days in advance and post the notice in three public places in the school  
25 district.” The governing board is to determine, by resolution, “whether each student in the district  
26 will have sufficient textbooks and instructional materials in each subject prior to the end of the fiscal  
27 year” and “whether the textbooks and instructional materials are consistent with the content and  
28 cycles of the curriculum frameworks adopted by the State Board of Education. If there are

insufficient textbooks and instructional materials for each student, the governing board must notify classroom teachers and the public and provide the reasons for the lack of these materials.” *See* Janice Agee, CDE, *Fact Book 2002: Handbook of Education Information* (2002) at 50-51.

668. Section 60119 exemplifies the State's failure to collect the data it needs to prevent and correct problems regarding unequal access to adequate instructional materials. The system provided for in section 60119 is flawed because it does not require the State to gather the data that flows from the public hearing and notification requirements. Although section 60119 requires districts to notify classroom teachers and the public of a determination that there are insufficient materials for each student, there is no requirement that the outcome of the public hearings be communicated to the State. Nor has the State undertaken to survey districts to learn the outcome of the public hearings. Thus, the State has kept itself from knowing whether districts are experiencing problems, and to what degree, and has deprived itself of the opportunity to intervene when a district is repeatedly out of compliance.

In addition, Section 60119 suffers from the State’s failure to obtain reliable data regarding the extent and causes of the textbook inadequacies and inequalities in California schools. This section falls short of its stated goal of ensuring the availability of textbooks and instructional materials because it, too, is based on legislative guess-work. The design of section 60119 is fundamentally flawed because the statute rests on an untested, and we believe incorrect, assumption “that noticing and holding a public hearing on textbook availability in a school district will result in achievement of sufficient textbook availability.”

**d. With Knowledge of the Inequality, the State Has Continued to Take Actions That Exacerbate Unequal Access to Instructional Materials.**

669. The State has failed to take steps that could have remedied unequal access to instructional materials.

670. In 1998, Governor Wilson vetoed SB 1412, a bill that would have shored up deficiencies in section 60119 by requiring the State to know whether or not districts were in compliance and to actually put textbooks in the hands of students whose districts were found to be out of compliance. Relying in part on the California constitution's requirement that the State adopt

1 textbooks for grades one through eight, to be provided without cost, the legislature found that “[i]t is  
2 in the public interest for California to have a comprehensive policy designed to ensure that each pupil  
3 in each grade in each public school has up-to-date textbooks and other instructional materials in each  
4 subject.” SB 1412, § 1, 1997-1998 Sess. (Cal. 1998). The legislature also emphasized the point that  
5 “recent decisions of the state to adopt state standards and to test the progress of pupils towards those  
6 standards will not be effective unless and until pupils and teachers have textbooks and other  
7 instructional materials that are aligned to those standards.” *Id.* In light of these findings, SB 1412  
8 would have, among other things, (1) required annual audits conducted pursuant to section 41020 to  
9 include an audit of the extent of compliance with the requirements of sections 60119, 60246, and  
10 60247; (2) required the SPI to review those audits to ascertain whether the matters certified by  
11 districts under section 60119 have been accomplished; and (3) required that if the SPI found that a  
12 district had not substantially complied with section 60119, the SPI would, if necessary, “cause to be  
13 purchased and delivered to the school sites sufficient textbooks and other instructional materials to  
14 bring that school into compliance” (deducting the costs from the non-compliant district’s  
15 apportionment). SB 1412, § 3 (1998).

16 671. Despite 60119’s deficiencies, Governor Wilson vetoed SB 1412 because it was  
17 “unnecessary.” The Governor was concerned that:

18 the intent language in the bill implies an ongoing and unmet state  
19 obligation to fully fund the cost of instructional materials. The bill  
20 ignores the fact that the state is already fully funding instructional  
21 materials through a combination of categorical funding and the revenue  
22 limit, the latter of which is intended to pay for the basic instructional  
23 costs of each pupil. If textbooks are not considered a basic  
instructional cost, then what is? The legislation I signed recently to  
provide \$250 million each year for four years was intended to protect  
districts from a huge and unanticipated cost pursuant to the adoption of  
state content standards and expedited adoption of instructional  
materials aligned with those standards.

24 SB 1412, Governor’s Veto Message (Sept. 23, 1998).

25 672. In October 2001, Governor Davis vetoed AB 50, a bill that would have extended  
26 funding under the Schiff-Bustamante Program for four more years. *See* AB 50, Governor’s Veto  
27 Message (Oct. 10, 2001). This veto came down despite evidence that some districts are still  
28 experiencing shortfalls in instructional materials funding. *See* Exhibit SAD 54 (Griffith Depo.);

1 Ass'n Am. Publishers, *Financial Requirements for Instructional Materials Purchases in California*  
2 *Adoptions, 2001-2005* (2000) at 1 (PLTF 62170-62181) (“Using historic funding levels, districts  
3 would be unable to supply appropriate materials to meet the new standards....The special funding  
4 provided by the Schiff-Bustamante legislation has gone a good distance to allow schools to catch up  
5 in the critical areas of reading and mathematics. A continuation of funding in those areas and similar  
6 support for realistic funding in other core and required areas needs to occur to align curriculum,  
7 instruction and assessment.”).

8 **3. The State’s Oversight System Is Incapable of Preventing,**  
9 **Detecting, or Correcting the Unequal Access of English**  
10 **Language Learners to Specially Trained Teachers and**  
11 **Appropriate Instructional Materials.**

12 673. Although the State has known that specially trained teachers and appropriate  
13 instructional materials are vital to English Language Learners’ educational achievement, the State has  
14 failed to develop an oversight system that is capable of preventing, detecting, and correcting the lack  
15 of access to these educational necessities. The relevant provisions of the Education Code fail to set  
16 standards regarding the provision of specially trained teachers and instructional materials; fail to  
17 ensure adequate efforts toward recruitment of specially trained teachers at schools serving high  
18 percentages of English Language Learners; fail to provide adequate support and professional  
19 development opportunities for teachers of English Language Learners; and fail to establish a system  
20 for ensuring that English Language Learners are provided with adequate access to specially trained  
21 teachers and appropriate instructional materials.

22 **a. The State Has Failed to Establish Adequate**  
23 **Standards Requiring English Language Learners To**  
24 **Be Taught by Specially Trained Teachers With**  
25 **Access to Appropriate Instructional Materials.**

26 **i. The State’s Standards Regarding English**  
27 **Language Learner Teacher Credentialing Are**  
28 **Inadequate to Ensure that English Language**  
**Learners Receive Appropriate Instruction.**

**(a) English Language Learner Teacher**  
**Credentials and Permits**

674. California has recognized that English Language learners need teachers with  
specialized training. To that end, the CTC has established a number of basic English Language

1 Learner authorizations as well as temporary CDE certification status. The text of authorizing  
2 legislation states that

3 the Legislature recognizes that limited-English-proficient pupils have  
4 the same right to a quality education as all California pupils. For these  
5 pupils to have access to quality education, their special needs must be  
6 met by teachers who have essential skills and knowledge related to  
7 English language development, specially designed content instruction  
8 delivered in English, and content instruction delivered in the pupils’  
primary languages. It is the intent of the Legislature that the  
Commission on Teacher Credentialing implement an assessment  
system to certify those teachers who have the essential skills and  
knowledge necessary to meet the needs of California’s limited-English-  
proficient pupils.”

9 CAL. EDUC. CODE § 44253.1.

10 675. In 1994, the CTC implemented a new certification structure for authorizations to teach  
11 English Language Learners: Bilingual Cross-cultural Language and Academic Development  
12 (BCLAD) permits and Cross-cultural Language and Academic Development and (CLAD) permits.  
13 CAL. EDUC. CODE §§ 44253.3-44253.4. BCLAD teachers are authorized to teach specially designed  
14 academic instruction in English (SDAIE), English language development to increase English  
15 Language Learners’ English language proficiency, and content through the primary language of the  
16 students. CAL. EDUC. CODE § 44253.4(a). This certification requires teachers to have expertise in:  
17 (1) first and second language development and the structure of language, (2) methodology of English  
18 language development and specially designed content instruction in English, (3) cross-cultural  
19 competency, (4) methodology for primary language instruction, and (5/6) knowledge of a particular  
20 culture and language of emphasis. *See* CAL. EDUC. CODE § 44253.5(c); *see* Hakuta Report at 11-12.

21 676. CLAD authorization requires a teacher to complete the first three skill areas of  
22 BCLAD authorization. *See* CAL. EDUC. CODE § 44253.5(c). CLAD holders are authorized to teach  
23 subject matter to English Language Learner students using SDAIE and other English language  
24 methods, and to teach English Language Development. *Id.* In addition to BCLAD and CLAD  
25 certification there are a number of other equivalent authorizations.

26 677. In 1994, the legislature authorized an additional form of English Language Learner  
27 certification with SB 1969 (amended by SB 395 in 1999). *See* CAL. EDUC. CODE § 44253.10. The  
28 goal of the legislation was to quickly provide existing teachers with more knowledge about how to

1 teach the growing numbers of English Language Learners in California classrooms. Through the  
2 1969/395 program, any teacher who holds a teaching credential and who was a permanent employee  
3 of a district by January 1999 can earn 1969/395 certification for teaching SDAIE by taking the  
4 equivalent of one college level preparation course (45 hours) by January 1, 2005. CAL. EDUC. CODE  
5 § 44253.10(a). More experienced teachers may be authorized to teach ELD with this certificate while  
6 those with less experience can earn the ELD certification by taking an additional 45 hours of staff  
7 development or its equivalent. *See* CAL. EDUC. CODE § 44253.10(d)(4(B)).

8         678. The statute states that “[d]uring the period in which a teacher is pursuing the training  
9 specified in [the statute] . . . the teacher may be provisionally assigned to provide instruction for  
10 English language development . . . or to provide specially designed content instruction delivered in  
11 English. . . .” CAL. EDUC. CODE § 44253.10(e). SB 395 increased the deadline by which a teacher  
12 has to complete the necessary training to 2005.

13         679. The CTC also authorizes various emergency permits and waivers that allow teachers  
14 to teach English Language Learners without completing the requisite requirements. *See, e.g.*, CAL.  
15 CODE REGS. tit. 5, §§ 80024.2, 80024.2.1, 80024.7, 80024.8. To obtain an emergency multiple or  
16 single subject teaching permit with a CLAD emphasis, the applicant must meet the general  
17 requirements for obtaining an emergency permit as discussed above, complete some coursework in  
18 the subject areas the teacher will be teaching, and provide affirmation of his or her intent to complete  
19 additional requirements during the period of the permit. CAL. CODE REGS. tit. 5, § 80024.2.1(a). To  
20 obtain an emergency multiple or single subject teaching permit with BCLAD emphasis, the applicant  
21 must meet the same requirements as for the CLAD emphasis emergency permit, but have “target-  
22 language” proficiency. CAL. CODE REGS. tit. 5, § 80024.2. Accordingly, for either of these permits,  
23 it does not appear that the teacher is required to have taken any training on teaching English  
24 Language Learners whatsoever. To get the CLAD or BCLAD emphasis emergency permit reissued,  
25 an applicant must meet the general guidelines for reissuance of permits noted above. CAL. CODE  
26 REGS. tit. 5, § 80024.2.1(b), 80024.2(b), 80026.6. For either of these permits, an applicant who has  
27 not completed the subject matter knowledge requirement may, for the first reissuance only, take all  
28

1 components of the appropriate subject matter exam in lieu of 6 semester units of related coursework.  
2 See CAL. CODE REGS. tit. 5, § 80024.2.1(b).

3 680. To obtain an emergency BCLAD permit, the applicant must meet the general  
4 requirements for obtaining an emergency permit, have a valid teaching credential, and must verify  
5 “target-language” proficiency. See CAL. CODE REGS. tit. 5, § 80024.7(a). To get the BCLAD permit  
6 reissued, in lieu of the 6 semester units or 90 hours of professional development, the applicant must  
7 pass either test 4, 5 or all four parts of test 6 of the CLAD/BCLAD examination if these tests were  
8 not previously passed prior to issuance of the emergency permit being reissued. CAL. CODE REGS. tit.  
9 5, § 80024.7(b). If all of the tests were passed, three semester units of coursework for the CLAD  
10 certificate may be substituted. See *id.* The applicant must also pass either Test 1, 2, or 3 if these tests  
11 were not previously passed. CAL. CODE REGS. tit. 5, § 80024.7(b)(2). If all of these tests were  
12 passed or if the applicant opts to complete coursework, three semester units of coursework towards  
13 the CLAD certificate may be substituted. *Id.* To obtain an emergency CLAD permit, the applicant  
14 must meet the general requirements for obtaining an emergency permit and have a valid teaching  
15 credential. See CAL. CODE REGS. tit. 5, § 80024.8(a). To get the CLAD permit reissued, in lieu of  
16 the 6 semester units or 90 hours of professional development, the applicant must pass any two of  
17 Tests 1, 2, or 3 of the CLAD/BCLAD examination or three semester units for each test not taken.  
18 See CAL. CODE REGS. tit. 5, § 80024.8(b).

19 681. According to the CTC, “[t]eachers assigned to classes that are not designated LEP,  
20 regardless of whether they include LEP students, are only required to have the basic credential  
21 authorizing instruction in that class....Teachers who do not hold appropriate authorizations may be  
22 given LEP assignments on an interim basis if the teacher is identified on the district’s *Plan to Remedy*  
23 *the Shortage* approved by the California Department of Education.” CTC, *Teacher Credential*  
24 *Handbook, Serving English Learners*, (August 2001) at Subsection II-C-1. Furthermore the CTC  
25 admits that “[t]he most widely used option through the CDE is the *Plan to Remedy* in which a district  
26 with the CDE, develops a plan to remedy the shortage of certificated English learner teachers. This is  
27 sometimes referred to as ‘teachers in training.’” *Id.* at II-C-3. “Teachers in training” are authorized  
28

1 to teach ELD and SDAIE as long as they sign an agreement to complete 1969 or CLAD training  
2 within 2 years or BCLAD training within three. Hakuta Report at 13-15.

3 682. Through the waiver provisions of the Education Code, the CTC may “grant a waiver  
4 upon its finding that professional preparation equivalent to that prescribed under the provision or  
5 provisions to be waived will be, or has been, completed by the credential candidate or candidates  
6 affected or that a waiver is” deemed appropriate by the CTC based on set criteria. CAL. EDUC. CODE  
7 § 44225(m).

8 **(b) The State’s Existing Standards Fail to Set**  
9 **An Appropriate Benchmark for**  
10 **Specialized Teacher Training to Instruct**  
11 **English Language Learners.**

12 683. As discussed above, the State has established standards to obtain CLAD, BCLAD, and  
13 1969/395 authorizations (and their equivalents) to instruct English Language Learners. The State has  
14 also established standards relating to the provision of emergency permits and waivers and allowing  
15 for “teacher-in-training” status. The latter standards establish a set of procedural hoops for schools  
16 and districts to jump through in order to staff teachers with no specialized training in classrooms with  
17 English Language Learners. The State has failed, however, to establish a standard requiring all  
18 English Language Learner teachers to have at least the equivalent of CLAD or SB 1969/395 training  
19 before beginning their ELD and/or SDAIE instruction of English Language Learners and at least the  
20 equivalent of BCLAD training for primary language content instruction. The State has also failed to  
21 set standards around which policies could be organized that would result in increasing the supply of  
22 CLAD and BCLAD-credentialed teachers to schools with the greatest needs. *See* Hakuta Report at  
23 37-40.

24 **ii. The State’s Standards Relating to the**  
25 **Provision of Appropriate Instructional**  
26 **Materials to English Language Learners are**  
27 **Inadequate to Ensure Equal Access to the**  
28 **Curriculum.**

684. The State’s standards relating to instructional materials for English Language Learners  
are limited to (1) the State’s adoption of textbooks that include strategies to meet the instructional  
needs of English Language Learners in English-Language Arts classes in K-8 and (2) the component



1 of the CCR process that seeks to determine if English Language Learners are provided with “full and  
2 meaningful access to grade level core content.” *See CDE, 2001-2002 Consolidated Programs*  
3 *Coordinated Compliance Review Checklist for Organizing Documentation* (Revised 6/29/00) at 1-4.

4 685. The State has recently adopted K-8 English-Language Arts textbooks that include  
5 strategies to meet the instructional needs of English Language Learners. The State indicated that its  
6 adoption of these textbooks was “designed to ensure...every student participates in the regular  
7 classroom and has access to the basic curriculum; and teachers are provided with the support they  
8 need to ensure that all students succeed.” *Memorandum from John B. Mockler to Cal. State Bd. of*  
9 *Educ. Members* (Mar. 29, 2000). Although the decision to adopt such materials was a step in the  
10 right direction, the State has taken no steps to develop a standard relating to English Language  
11 Learners’ provision of such instructional materials in English-Language Arts or any other core class.  
12 In addition, through the State’s Coordinated Compliance Review process, described in more detail  
13 below, schools are required to describe how English Language Learners “are provided full and  
14 meaningful access to grade level core content.” However, the State has not defined what is meant by  
15 “full and meaningful access.” *See 2001-2002 Consolidated Programs Coordinated Compliance*  
16 *Review Checklist for Organizing Documentation* (Revised 6/29/00) at 1-4; (*see also 2001-2002*  
17 *Coordinated Compliance Review Training Guide* (2000) at DOE 98377-98384 (guidelines for  
18 compliance item EL-3b and all items under Dimension III, titled “Opportunity (equal educational  
19 access)” provide no definition of “full and meaningful access”).

20 686. Despite the State’s recognition of the role textbooks play in ensuring access to the core  
21 curriculum, the State has failed to adopt a standard requiring that students shall be provided with  
22 instructional materials for use in class and to take home for homework. This failure is problematic  
23 for all students who have been deprived of access to instructional materials. It is even more  
24 problematic for English Language Learners who may be denied any access to the core content  
25 without ELD, SDAIE, and/or primary language instructional materials that they are able to  
26 understand.

**b. The State Has Failed to Monitor the Extent to Which English Language Learners Are Being Denied Access to Specially Trained Teachers and Appropriate Instructional Materials.**

687. In addition to failing to develop appropriate standards, the State has failed to gather data regarding the extent to which English Language Learners are receiving instruction from teachers with minimal or no specialized training and/or without the necessary instructional materials.

According to plaintiffs' expert, Dr. Hakuta:

The State's primary means by which it monitors EL access to qualified teachers is by way of the California Department of Education's annual Language Census survey, the results of which are reported in the California Basic Educational Data System (CBEDS). A critical shortcoming in the State's data collection system emerges, however, from the fact that the Language Census survey does not collect data at the classroom level but only at the school level. Thus, for purposes of overseeing EL access to qualified teachers, the State's system can only reveal the school-wide number of EL students in a particular type of instructional setting (e.g., structured English immersion (SEI), mainstream, alternative [bilingual] classrooms), the school-wide number of students receiving particular types of services (e.g., ELD, SDAIE, primary language instruction) and the number of teachers in the school which provide specialized instruction to EL's. Because the State does not match specific EL students with specific teachers at the classroom level, it is not possible to discern, on a systemic basis, how many students in the school are actually being taught by teachers without appropriate authorizations.

Hakuta Report at 21.

688. Similarly, the Director of the Comite Compliance Unit has testified that the State does not collect data at the classroom level on the qualifications of teachers of English Language Learners and that the State does not know what it would take to provide specially trained teachers for these children. (Burnham-Massey Depo. at 71:6-24, 152:6-9; 153:17-22, 186:19-23.) Because the State does not collect data at the classroom level, it is not possible to track the extent to which English Language Learners are being denied access to trained teachers.

689. The State has also failed to gather data regarding the extent to which English Language Learners are denied access to appropriate instructional materials. The Director of the Comite Compliance Unit has testified that the State does not collect data at the classroom level regarding provision of instructional materials to English Language Learners. (Burnham-Massey

1 Depo. at 51:6-14.) She also was not aware how many districts in California provide appropriate  
2 materials to students in structured immersion classes. (*Id.* at 48:20-49:5.)

3 690. According to Dr. Hakuta, by relying on the State's crude data collection efforts in the  
4 Language Census surveys, it is possible to discern that many English Language Learners are bein  
5 denied access to the curriculum:

6 [s]ignificant numbers of ELs are receiving no specialized instruction  
7 whatsoever — not even from uncredentialed, untrained teachers or  
8 untrained paraprofessionals. In the 1998-99 school year, this number  
9 was over 96,000; for the most recently reported year, 2001-2002, over  
10 77,000 students lacking English fluency received no EL instruction of  
any sort — no English Language Development, no Specially Designed  
Academic Instruction in English, and no primary language instruction.  
This number represents approximately 1 in every 20 EL students  
statewide.

11 Hakuta Report at 21. Accordingly, these students have neither access to teachers qualified to teach  
12 them or instructional materials from which they can gain access to the curriculum.

13 **c. Despite Knowledge of English Language Learners'  
14 Lack of Access to Specially Trained Teachers and  
15 Appropriate Instructional Materials, the State Has  
16 Failed to Institute Programs To Correct or  
Compensate for the Inadequacies in the Existing  
English Language Learner Oversight System.**

17 **i. Overview of the State's English Language  
Learner Oversight System**

18 691. The Coordinated Compliance Review process ("CCR") and the related Comite  
19 Compliance Unit are the State's primary mechanisms for monitoring provision of services to English  
20 Language Learners. With respect to English Language Learners, as with the other programs that are  
21 monitored, the CCR process evaluates compliance with various issues falling under the following  
22 categories: (a) Standards, Assessment and Accountability; (b) Teaching and Learning;  
23 (c) Opportunity; (d) Staffing and Professional Development; (e) Parent and Community Involvement;  
24 (f) Governance and Administration; and (g) Funding. *See 2001-2002 Consolidated Programs*  
25 *Coordinated Compliance Review Checklist for Organizing Documentation* (Revised 6/29/00) at 1-4.  
26 The dimensions of the CCR compliance process that are most relevant to ELL issues are: "Teaching  
27 and Learning" and "Staffing and Professional Development." CCR reviews occur at the district level  
28 on a four-year cycle.

692. The Comite Compliance unit monitors whether selected districts are in compliance with CCR requirements relating to the provision of services to English Language Learners. According to the Director of the Comite Compliance Unit, the Comite Compliance unit selects 10 districts each year for follow-up monitoring review. (Burnham-Massey Depo. at 27:21-28:3.) The 10 Comite districts are chosen based on factors including having: (1) a significant percentage of English Language Learners; (2) a history of noncompliance with English learner requirements; (3) 10% of English Language Learners receiving no services; (4) a lack of conclusive data indicating that English Language Learners are learning English and grade level content; or (5) a recommendation from the CCR unit, the Office of Civil Rights, or other entities that the district could benefit from Comite follow-up review. (*Id.* at 29:2-31:17.)

693. As demonstrated in further detail below, neither CCR nor the Comite Compliance unit has ensured that English Language Learners have access to specially trained teachers and appropriate instructional materials. Although the CCR and Comite monitoring mechanisms may provide the backbone for aspects of an oversight system, the system is inadequate due to the State's failure to enact meaningful standards, failure to adequately staff these monitoring efforts, and failure to correct deficiencies that are uncovered through the monitoring process.

**ii. The State’s English Language Learner Oversight System Has Failed to Ensure that English Language Learners Have Access to Specially Trained Teachers.**

694. The “Staffing and Professional Development” dimension of the CCR process requires districts to demonstrate that all teachers assigned to instruct English Language Learners in the core curriculum and ELD are *authorized or in training* to provide instruction to English Language Learners. *See 2001-2002 Consolidated Programs Coordinated Compliance Review Checklist for Organizing Documentation* (Revised 6/29/00) at 3. More specifically, districts must show that there are an adequate number of authorized teachers to provide ELD and academic core curriculum instruction and that there is the requisite training for staff who serve English Language Learners. *Id.* at 3.

695. Despite the standards the State has promulgated relating to credentialing and the staffing/professional development dimension of the CCR, the State’s English Language Learner teacher oversight system remains inadequate because it ignores the State’s duty to provide English Language Learners with the specially trained teachers needed to “remedy the language deficiencies of their students.” *See Castaneda v. Pickard*, 648 F.2d 989 (5th Cir. 1981). The current oversight system allows unlimited numbers of teachers with limited to no training to teach English Language Learners via emergency permits, waivers, or through the “teacher in training” designation.

696. Even though the passage of Proposition 227 increased the challenges of English Language Learner teachers and made the need for BCLAD-authorized teachers even greater, the State has repeatedly lowered the bar in terms of the training required to teach English Language Learners. According to plaintiffs’ expert Dr. Hakuta:

In 1994, rather than institute programs to attract and retain sufficient numbers of CLAD and BCLAD-credentialed teachers, the State instituted a substantially watered down “CLAD” certification in the form of SB 1969 training. In permitting SB 1969 certification to function as the equivalent of a CLAD credential, the State effectively reduced a 24-unit undergraduate or 12-unit graduate-level training in (1) first and second language development and the structure of language, (2) methodology of English Language Development and specially designed content instruction in English, (3) cross-cultural competency to one or two 45-hour trainings—neither of which need be taught through an institution of higher education. Though this program was intended as a temporary stop-gap measure to sunset in 1999, it was renewed in 1999 through Senate Bill 395 and extended to 2005. Even though this watered down ELD/SDAIE certification is likely inadequate to address the needs of English Learners,<sup>24</sup> the State has still been unable to provide sufficient incentives to ensure all EL teachers meet at least the minimum that SB 1969/395 represents. Instead, the CDE regularly approves, and the CTC permits, tens of thousands of “teachers in training” to instruct ELs. These teachers are not qualified to teach ELs but have instead merely promised to obtain the requisite training. To date, the CDE’s monitoring and enforcement of these agreements appears to have been minimal for there has been no wholesale reduction in the numbers of “teachers in training.”

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<sup>24</sup> “On paper, it appears that among those teachers in California who instruct English learners, a significant number (52 percent) have received some kind of preparation in instructing English learners. Unfortunately, this preparation is often cursory and only sufficient to make a teacher aware of what he or she does not know. Under SB 1969, CLAD certification can often be acquired with only forty-five hours of relevant training.” Elizabeth Burr, Gerald C. Hayward, Bruce Fuller & Michael Kirst, Policy Analysis for Cal. Educ., *Crucial Issues in California Education 2000: Are the Reform Pieces Fitting Together?* (2000), at 34.

1 Hakuta Report at 38-39; *see also* CAL. EDUC. CODE § 44253.10(e).

2 697. Accordingly, although the training required for the 1969/395 authorization is likely  
3 inadequate to meet the instructional needs of English Language Learners, many teachers begin  
4 instructing English Language Learners without even having completed this minimal form of training.  
5 While the State may be violating its constitutional obligations to English Language Learners by  
6 merely providing them with SB 1969/395 trained teachers, it is clear that allowing teachers to instruct  
7 English Language Learners with anything less than SB 1969/395 training results in the violation of  
8 the State's duty to ensure equal educational opportunities to English Language Learners.  
9 SB 1969/395 training thus acts as a standard of clear insufficiency. By perpetuating a credentialing  
10 system in which high percentages of English Language Learners are taught by teachers with  
11 emergency permits, waivers, or who, by virtue of being a "teacher in training," have not received  
12 even the minimal form of training required by SB 1969, the State has failed to satisfy its  
13 constitutional obligations.

14 698. The State's CCR provisions and Comite Compliance unit are incapable of redressing  
15 the inequities and denials of educational opportunity caused because English Language Learners are  
16 taught by teachers with limited to no specialized training. In fact, these monitoring systems merely  
17 require districts to demonstrate that all teachers assigned to instruct English Language Learners in the  
18 core curriculum and ELD are authorized or *in training* to provide instruction to English Language  
19 Learners. *See 2001-2002 Consolidated Programs Coordinated Compliance Review Checklist for*  
20 *Organizing Documentation* (Revised 6/29/00) at 3. The "in training" component of the standard  
21 simply means that teachers must attest to the fact that they will attend the minimal training  
22 requirements of SB 1969/395 at some point in the future. This pro forma authorization is the most  
23 commonly used option for school districts. CTC, Teacher Credential Handbook, *Serving English*  
24 *Learners*, (August 2001) at II-C-3-7 8/01.

25 699. In addition, the State has failed to take adequate steps to expand the pool of teachers  
26 with CLAD and BCLAD authorization. *See* Hakuta Report at 35-40. The State has not instituted  
27 programs that would aggressively recruit teachers with such authorizations. Indeed the State has not  
28 even provided meaningful incentives to encourage teachers to acquire CLAD and BCLAD

1 authorization. Given the fact that English Language Learners tend to be concentrated in under-  
2 resourced schools with the worst working conditions, the State’s recruitment failures are even more  
3 damaging. *See* Hakuta Report at 26-28. Moreover, the State’s failure to institute and enforce  
4 adequate facilities standards increases the challenge of recruiting specially trained teachers to schools  
5 with the greatest percentages of English Language Learners. *See id.*

6 700. The State has also failed to institute adequate training programs to assist existing  
7 teachers in acquiring CLAD and BCLAD authorizations. The primary training programs focused on  
8 providing professional development opportunities in instructing English Language Learners are the  
9 Bilingual Teacher Training Program and the Beginning Teacher Support and Assessment program.  
10 In 1999, the CDE’s Proposition 227 Task Force recommended that “both the Bilingual Teacher  
11 Training Program. . . and the Beginning Teacher Support and Assessment . . . program need to be  
12 expanded and intensified to improve the teaching and learning process for English learners in  
13 structured English immersion and alternative courses of study.” CDE, *The Report of the*  
14 *Proposition 227 Task Force: Educating English Learners for the Twenty-first Century* (1999) at 14.  
15 More recently, the English Language Acquisition Program (“ELAP”) has provided funds to improve  
16 the “English proficiency of California pupils, so that those pupils are better able to meet the state’s  
17 academic content and performance standards.” CAL. EDUC. CODE § 400. Districts that apply for  
18 ELAP funds can use them for a variety of programs, including staff development. However, these  
19 programs have been inadequate to expand the pool of CLAD and BCLAD authorized teachers.

20 **iii. The State’s English Language Learner**  
21 **Oversight System Has Failed to Ensure that**  
22 **English Language Learners Receive**  
**Appropriate Instructional Materials.**

23 701. Pursuant to the “Teaching and Learning” dimension of CCR, districts are asked to  
24 check for documentation relating to whether English Language Learners are receiving English  
25 Language Development and access to the district’s core curriculum. *See 2001-2002 Consolidated*  
26 *Programs Coordinated Compliance Review Checklist for Organizing Documentation* (Revised  
27 6/29/00) at 1. Districts are required to maintain a list of all teachers assigned to teach ELD to English  
28 Language Learners and to teach the district’s grade level core content to English Language Learners;

1 to maintain a list of the number of English Language Learners receiving ELD by proficiency, grade  
2 level, etc. and the number of English Language Learners receiving academic instruction by  
3 proficiency, grade level or subject area, and program; and to keep a description of the ELD  
4 curriculum, policies, and data regarding acquisition of English language proficiency and how English  
5 Language Learners are provided “full and meaningful access to grade level core content (e.g.,  
6 simultaneously or sequentially).” *Id.*

7 702. Despite these CCR requirements, there is substantial evidence that many English  
8 Language Learners are not provided with appropriate instructional materials. II/USP action plans and  
9 other documents produced to date demonstrate that English Language Learners across the State are  
10 being denied access to instructional materials. *See* Thomas Parrish, Am. Inst. for Research & West  
11 Ed, *Effect of the Implementation of Proposition 227 on the Education of English Learners, K-12*  
12 (2002) at IV-42 (finding that 35% of the teachers surveyed did not have adequate curriculum and  
13 instructional materials to address the needs of English Language Learners.).

14 703. In light of the evidence above, the CCR and Comite monitoring mechanisms have  
15 been inadequate to ensure that English Language Learners have adequate access to instructional  
16 materials. As an initial matter, CCR and Comite are hampered by the fact that they do not have a  
17 clear standard to use as a benchmark for determining whether English Language Learners have  
18 “access to the core curriculum.” The subcategories for measuring access to the core curriculum focus  
19 on how students are taught the core curriculum (simultaneous with English instruction or  
20 sequentially), how academic deficits are monitored and overcome, whether the district has policy  
21 statements relating to Specially Designed Academic Instruction in English (SDAIE) and other forms  
22 or language instruction, data demonstrating that English Language Learners are learning the core  
23 curriculum. *See 2001-2002 Consolidated Programs Coordinated Compliance Review Checklist for*  
24 *Organizing Documentation* (Revised 6/29/00) at 1. None of the checklist items set a standard  
25 relating to whether English Language Learners are provided with appropriate instructional materials  
26 for use in class and to take home for homework.

27 704. CCR is further hampered by the fact that the review is cursory, largely based on the  
28 districts’ self-review, and there is little follow up to ensure compliance. (*See* Burnham-Massey Depo.



1 at 284:16-285:23.) Although the Comite Compliance unit performs a more in-depth review, it is  
2 limited to a small fraction of the districts and has a staff of 8 consultants and 2 staff members.  
3 (Burnham-Massey Depo. at 125:16-126:25.) In addition, the Comite Compliance Unit does not have  
4 the authority to direct districts to follow its recommendations; it can only direct them to comply with  
5 the law. (*Id.* at 306:22-309:12.)

6 705. In addition, following the passage of Proposition 227, the State exacerbated the  
7 problems associated with the short implementation timeline for this legislation by failing to provide  
8 sufficient guidance to districts on how to comply with the new law. Thomas Parrish, Am. Inst. for  
9 Research & West Ed, *Effect of the Implementation of Proposition 227 on the Education of English*  
10 *Learners, K-12* (2001) at 35. The State has allowed much of this confusion to continue unabated in  
11 the four years since implementation, impeding English Language Learners access to the appropriate  
12 instructional materials. Hakuta Report at 42-43. A member of an English Language Advisory  
13 Committee of one district stated, ““Proposition 227 doesn’t say anything about the materials the  
14 teachers have to use. The impact of Proposition 227 for the teachers was a lack of information and  
15 lack of clarity in the programs and content. The major challenge has been implementing a program  
16 without guidelines.”” CDE, *Effect of the Implementation of Proposition 227 on the Education of*  
17 *English Learners, K-12* at 36.

18 706. According to teachers interviewed during the AIR study of the implementation of 227:  
19 “After Proposition 227, the teachers were required to turn in their Spanish textbooks. After spending  
20 many years preparing to be bilingual teachers, she said, ‘[o]vernight we were told to teach entirely in  
21 English without any training.’” *Id.* “[S]chools reported that while Spanish language texts were  
22 discarded or stored away, no comparable texts were available for students in the new English-only  
23 program and that teachers were uncertain about how to approach the instruction of their students.”  
24 Elizabeth Burr, Gerald C. Hayward, Bruce Fuller & Michael W. Kirst, Policy Analysis for Cal.  
25 Educ., *Crucial Issues in California Education 2000: Are the Reform Pieces Fitting Together?* (2000)  
26 at 31; *see also* Thomas Parrish, Am. Inst. for Research & West Ed, *Effect of the Implementation of*  
27 *Proposition 227 on the Education of English Learners, K-12* (2002) at IV-11 (“In one district,  
28

1 according to a school board member, many principals forced their teachers to box up or discard  
2 Spanish-language materials”).

3 **iv. The State Has Failed to Institute Programs**  
4 **Capable of Addressing the Unequal Access to**  
5 **Specially Trained Teachers and Appropriate**  
6 **Instructional Materials.**

7 707. The State has also failed to institute programs capable of addressing the unequal  
8 access of English Language Learners to an adequate instructional program that includes specially  
9 trained teachers and appropriate instructional materials.

10 708. In 1997, the legislature passed AB 861, which would have required school districts to  
11 employ only teachers with CLAD or BCLAD authorizations starting on August 1, 2000. *See*  
12 AB 861, 1997-1998 Sess. (Cal. 1997). The bill also would have required all California teacher  
13 preparation programs to offer courses leading to the issuance of CLAD or BCLAD authorization to  
14 all students who would have graduated from a teacher preparation program after March 1, 1989. On  
15 October 10, 1997, Governor Wilson vetoed this legislation because many schools do not have a need  
16 for teachers with CLAD and BCLAD certification and because the bill “would impose a burdensome  
17 and onerous mandate on numerous schools and districts across the State.” A.B. 861, Governor’s  
18 Veto Message (Oct. 10, 1997). Governor Wilson further found that the bill was premature because  
19 the entire credentialing system was under review. *Id.*

20 709. This legislation would have had the result of greatly expanding the pool of CLAD and  
21 BCLAD certified teachers. It also would have required that allocations for training programs be  
22 “primarily directed toward school districts that have a documented shortage of teachers holding  
23 certificates issued by the [CTC] authorizing the provision of instructional services to culturally and  
24 linguistically diverse English language learners.” AB 861, 1997-98 Sess. (Cal. 1997). Thus, in  
25 addition to expanding the pool of CLAD and BCLAD authorized teachers, it would also have  
26 targeted English Language Learner training at school districts with the greatest needs.

27 710. By failing to enact this legislation, the State missed a key opportunity to ensure that all  
28 teachers at least obtain CLAD training and reverse the growing unequal access to teachers trained for  
English Language Learners. Although the State ultimately passed AB 1059 requiring all teacher

1 training programs to offer training on the needs of English Language Learners, the standard is  
2 substantially lower than was required under AB 861. In addition, in the interim, the shortage of  
3 specially trained teachers reached epidemic proportions.

4 711. In 1999, the legislature passed AB 1026, which required an assessment of the  
5 instructional needs for English Language Learners who are reclassified as reasonably fluent in  
6 English, parental notification of the student's placement, and inclusion in school development plans  
7 of activities to ensure that adequate numbers of trained staff are available for English Language  
8 Learners. *See* AB 1026, ch. 711, 1999-2000 Sess. (Cal. 1999). Governor Davis vetoed the  
9 legislation based on his conclusion that it was unnecessary and duplicative of other legislation. *See*  
10 A.B. 1026, Governor's Veto Message (Oct. 9, 1999). However, no other legislation required schools  
11 to include efforts at recruiting specially trained teachers for English Language Learners in their  
12 school development plans. Although this provision standing alone would not have been sufficient to  
13 resolve the shortage of CLAD and BCLAD authorized teachers, it would have at least required  
14 districts to take steps to ensure access to specially trained teachers.

15 712. In 2000, the legislature passed SB 2192, which would have established "the English  
16 Language Teacher Coaching Program to recruit, train, and place English language learner coaches in  
17 schools with API scores in the bottom third of the state's ranking. The coaches would [have]  
18 assist[ed] new teachers, instructional aides, and English-learning pupils to achieve greater [academic]  
19 success." SB 2192, 1999-2000 Sess. (Cal 2000). Governor Davis vetoed the legislation based on his  
20 conclusion that California was "already engaged in multiple efforts to improve the academic  
21 performance of English Language Learners" and his concern that the "bill would remove veteran  
22 teachers from the classroom for three years." SB 2192, Governor's Veto Message (Sept. 28, 2000).

23 713. This legislation would have targeted needed professional development at  
24 uncredentialed teachers in low performing schools teaching English Language Learners.  
25 Accordingly, the legislation was directly aimed at addressing inequality in access to quality  
26 instruction. The governor's decision to veto this legislation was not based on a compelling rationale.

1                                   **4. The State’s Oversight System Is Incapable of Preventing,**  
2                                   **Detecting, or Correcting the Unequal Access to Safe, Clean**  
3                                   **Facilities That Support Learning.**

4           714. Even with knowledge of seriously deficient conditions existing in some of the State’s  
5 schools, the State has failed to adopt sufficient standards for facility operations, failed to collect  
6 information on a systematic basis about the condition of school facilities throughout the State, and  
7 failed to establish a system to prevent, detect, and cure facilities problems where they are identified.  
8 Moreover, the funds the State has provided for new construction, modernization, and deferred  
9 maintenance have been insufficient to address the facilities problems in many schools both because  
10 the dollar amount has been insufficient and provision of funding is not tied closely enough to need.

11                                   **a. The State Has Failed to Establish Adequate**  
12                                   **Standards to Prevent Unequal Access to Safe, Clean**  
13                                   **School Facilities That Support Learning.**

14           715. The State currently has two sets of standards concerning school facilities. Although  
15 Title 5 of the California Code of Regulations, particularly sections 14001 and 14030, contains a fairly  
16 detailed set of standards, they are deficient in two respects. CAL. CODE REGS. tit. 5, § 14001 et seq.  
17 First, these regulations do not set standards for some important areas – for instance, a requirement  
18 that schools maintain their classrooms within some reasonable range of temperatures. Second, these  
19 regulations apply only to new school construction. Once a school is completed, these requirements  
20 no longer apply.

21           716. The standards that apply to schools after they have been constructed, which are  
22 contained in both the Education Code and Title 5 of the California Code of Regulations, are much  
23 less specific than the standards that apply to new school construction in Title 5 sections 14001 and  
24 14030. The statutes and regulations governing existing school facilities set forth only general  
25 requirements regarding responsibility for school maintenance, but do not even remotely address many  
26 essentials of school site operations necessary to ensure a safe, habitable and educationally appropriate  
27 facility, such as operability of restrooms, temperature, and ventilation. Without more specific  
28 standards, the State has no objective measure of whether students are receiving adequate levels of  
service from maintenance and custodial operations.

1           717. Although the Education Code and Title 5 of the Code of Regulations contain some  
2 standards regarding existing school buildings, they are limited in scope. Section 17593 of the  
3 Education Code states that “[t]he clerk of each district except a district governed by a city or city and  
4 county board of education shall, under the direction of the governing board, keep the schoolhouses in  
5 repair during the time school is taught therein, and exercise a general care and supervision over the  
6 school premises and property during the vacations of the school.” Section 630 of Title 5 of the  
7 California Code of Regulations provides, “[g]overning boards, superintendents, principals, and  
8 teachers are responsible for the sanitary, neat, and clean condition of the school premises and  
9 freedom of the premises from conditions that would create a fire or life hazard.”<sup>25</sup> Even if these  
10 provisions were sufficiently specific in requiring that school buildings be kept clean and in good  
11 repair, there are no binding state standards governing such basics of a habitable and educationally  
12 appropriate school facility as the number of square feet per student in each classroom,<sup>26</sup> the  
13 permissible noise levels in classrooms, and minimum and maximum classroom temperatures.

14           718. Legislation passed in 1989 required the Division of the State Architect to develop  
15 statewide standards for school facility maintenance and cleanliness. CAL. HEALTH & SAFETY CODE  
16 § 16500. That section provides: “The office of the State Architect shall adopt guidelines applicable  
17 to substandard conditions of school buildings...of the Education Code, which guidelines shall take  
18 into consideration the unique design, use, safety needs, and construction of the school buildings.” *Id.*  
19 The State has yet to develop these standards.

20           719. This lack of standards results in insufficient direction to local districts as to what  
21 minimum conditions they should provide to students. Furthermore, without these specific standards,  
22 \_\_\_\_\_

23           <sup>25</sup> The actual importance and effect of these provisions is reflected by the statement of  
24 Duwayne Brooks, Director of CDE’s School Facilities Planning Division, who has said, “there are no  
state statutes governing cleanliness and repair of school facilities.” DOE 45.

25           <sup>26</sup> Title 5, Section 14030 requires that general classrooms for grades one through twelve in  
26 new schools be not less than 960 square feet unless otherwise approved by the State Superintendent  
27 of Public Instruction. No law or regulation prevents a school from subdividing that classroom after  
the school is built. Moreover, no statute or regulation requires a minimum number of square feet per  
28 student. In other words, no state statute or regulation prevents a school from putting 45 students into  
a 960 square foot classroom, thus, falling far below the 30 square foot per student standard that the  
Department of Education recommends but the State does not *require*. DOE 145

1 the State has no objective measure with which to ensure that schools have basic levels of  
2 maintenance and custodial operations.

3 720. The lack of basic standards and the need for their promulgation was highlighted in the  
4 recent report of the Finance and Facilities Working Group of the Joint Committee to Develop a  
5 Master Plan for Education. Their March 2002 report recommended that the state “[e]stablish clear,  
6 concise and workable standards that are characteristic of facilities that provide a high quality/high  
7 performance teaching and learning environment.” Joint Comm. to Develop a Master Plan for Educ. –  
8 Kindergarten through University: *Finance & Facilities Working Group K-12 Education, Final Report*  
9 (Mar. 2002) at 44; *see also* Joint Comm. to Develop a Master Plan for Educ., *Master Plan for*  
10 *Education in California* (2002) at Appendix B, Recommendation 19.1.

11 **b. The State Has Failed to Gather Data That Would**  
12 **Permit It to Know the Extent of the Unequal Access**  
13 **to Safe, Clean Facilities That Support Learning or**  
**How to Address the Inequality.**

14 721. Defendants have conducted no state-wide study of what conditions currently exist with  
15 respect to school facilities. *See generally* LHC, *To Build A Better School* (2000) at vi (“The State has  
16 invested billions of dollars in K-12 school facilities, yet it does not have an inventory detailing when  
17 schools were built, their attributes, or their condition.”). The depositions of Duwayne Brooks,  
18 Director of the CDE School Facilities and Planning Division, and Susan Lange, Deputy Supt. of the  
19 CDE Finance, Technology and Administration Branch, confirmed the lack of any such inventory.  
20 (Brooks Depo. at 335:14-336:10, Deposition of Susan Lange (“Lange Depo.”) at 19:20-20:1.)  
21 Ms. Lange testified to the following:

22 **Q:** With respect to existing facilities, are you aware of any systematic  
23 effort on the part of the [state] department [of education] to collect  
information about the state of those facilities?

24 **A:** No.

25 (Lange Depo. at 19:20-20:1.)

26 **Q:** Are you aware of any efforts to assess whether that condition  
27 [classrooms regularly being too hot or too cold] exists in California  
public schools?

28 **A:** Am I aware of any effort to assess —

1           Q: Whether it exists?

2           A: No.

3       (Lange Depo at 159:17-22 ; *see also id.* at 160:2-18 (no routine data gathering about whether there  
4       are classrooms that are too noisy for effective learning); 160:19-161:14 (other than CDE trusteeship  
5       of Compton USD, deponent not aware of any systematic effort to gather information about whether  
6       there are sufficient numbers of clean, stocked and functioning restrooms in schools).)

7           722.   This lack of a systematic statewide inventory of school facilities has prevented  
8       adequate analysis and development of responses substandard conditions in schools. Such an  
9       information gathering system would alert state officials to schools operating under these conditions  
10      and trigger further review to determine appropriate remedies for campuses that are overcrowded,  
11      unclean, or otherwise in disrepair.

12          723.   In its 2000 report “To Build a Better School,” the Little Hoover Commission reported  
13      that the lack of such data limits the State’s ability to target funding to schools with unusually poor  
14      conditions:

15                   The State has invested billions of dollars in K-12 school facilities, yet it  
16                   does not have an inventory detailing when schools were built, their  
17                   attributes, or their condition. Without such an inventory, the State is  
18                   unable to accurately forecast the demand for new facilities or the costs  
19                   of maintaining and renovating existing facilities. Similarly, policy-  
20                   makers do not have the information to know how state funds are  
21                   allocated. While SB 50 streamlined the allocation process, the new  
22                   formula will undoubtedly favor some districts over others. Policy-  
23                   makers should be provided the information necessary to ensure that the  
24                   highest priorities are being met and state funds are fairly distributed.

25      LHC, *To Build a Better School* (2000) at 47.

26          724.   According to the Little Hoover Commission and Duwayne Brooks, in the 1980’s the  
27      Legislature directed the State Allocation Board to develop and maintain an automated school  
28      facilities inventory. Education Code section 33126.5 provides that the Superintendent of Public  
Instruction and the State Allocation Board “shall develop and maintain an automated school facilities  
inventory that is capable of indicating the statewide percentage of facility utilization and projecting  
school facility needs five years in advance, in order to permit the board to study alternative proposals  
for the allocation of funds for new construction, maintenance, and rehabilitation.” However, the

1 State and its agents have not taken the necessary steps to ensure that this inventory was created and  
2 maintained. “In fiscal year 1984-85, \$600,000 was apportioned for the job, and the staff of the  
3 allocation board attempted unsuccessfully to gather the information from the districts. As a result, no  
4 inventory exists.” LHC, *To Build A Better School* at 47-48. According to Mr. Brooks, the two  
5 reasons the system failed was because the State did not properly fund the inventory and the districts  
6 were not required to provide the information. (Brooks Depo 335:14-24.) Mr. Brooks supports  
7 having an inventory “so that we can know at the state level the condition of all facilities in the state,  
8 how old they are, what kind of condition they’re in, and what they’re used for, classroom, recreation,  
9 whatever.” (Brooks Depo. 335:25-336:4.)

10 725. The State has asserted that during the Coordinated Compliance Review (CCR)  
11 Process, CDE staff members may gather information about school facilities conditions. (*See e.g.*,  
12 State of California’s Third Set of Supplemental Responses and Objections to Plaintiffs’ First Set of  
13 Special Interrogatories at 23.) However, CCR, as currently operating, does not gather information  
14 about school facilities conditions in either a systematic or effective manner. As stated by Plaintiffs’  
15 expert, Robert Corley:

16 Coordinated Compliance Reviews similarly look at the facilities used  
17 by the specific categorical programs being reviewed, but again the  
18 focus is on the program rather than the facilities. For example, I have  
19 participated in discussions with reviewers and district staff about  
20 special education classes being assigned to portables rather than  
21 permanent rooms, and occasionally to confirm district standards for  
22 pull-out rooms, but never have I seen a compliance review that  
23 recommended or required upgraded or expanded school facilities.

24 Corley Report at 33. The deposition of Eleanor Clark-Thomas, former Manager of the Coordinated  
25 Compliance Review Unit at CDE, confirmed that facility cleanliness, temperature, and related  
26 standards are not a required part of their review process. (Clark-Thomas Depo. at 183:5-22, 184:7-  
27 14, 199:7-18.) Further, Mr. Brooks has testified that during his initial stint as director of the School  
28 Facilities and Planning Division from 1987 to 1995, and since returning as director, he has not looked  
at any CCR reports discussing school facilities conditions. (Brooks Depo. at 279:5-281:3.)

726. Notwithstanding press and other accounts of inadequate school facilities, Defendants  
have not studied whether these problems are concentrated among schools or school districts with high



1 percentages of low SES students and students of color. The School Facilities Planning Division of  
2 the Department of Education has not conducted any surveys of local educational agencies to  
3 determine the availability of or needs for anything other than educational technology. (*See* Lange  
4 Depo. 105:16-20.)

5 **c. The State Has No System to Correct School Facilities**  
6 **Conditions.**

7 727. The State has no ongoing mechanism to ensure that California public schools meet  
8 basic minimum facilities conditions for students or staff. Although legislation provided local  
9 educational agencies with the authority to inspect school buildings, it failed to provide them with a  
10 mandate or funding to monitor and enforce facilities conditions in schools. *See* Cal. Gov't Code  
11 § 53097.5 (2001). As a result, as stated by plaintiffs' expert Robert Corley, local inspections rarely  
12 occur, except by local fire inspectors and county health departments of food services. Corley Report  
13 at 37. The only exceptions are local fire inspectors, county health departments (primarily food  
14 service only), and some local law enforcement departments. Corley Report at 37. Further, although  
15 Government Code section 53097.5 requires local authorities to forward the results of their inspections  
16 to the office of the State Architect, our research indicates that no such reports have been forwarded.

17 728. The lack of an effective State oversight system to ensure that all students have access  
18 to safe, clean facilities that are supportive of learning is consistent with the statements of high-level  
19 State education officials. Duwayne Brooks has stated that "CDE has no regulatory responsibility in  
20 the maintenance of facilities. Maintenance also is the responsibility of the local school board."  
21 (DOE 45.) Further, Mr. Brooks testified that after he became aware of serious conditions in the  
22 Compton Unified School District (in particular, fifty year-old portable classrooms that were rotting)  
23 he tried to address the problem and have the conditions fixed. (Brooks Depo. at 333:15-334:25.)  
24 But, despite his efforts he was unable to do so. *Id.*

25 729. Similarly, Superintendent Eastin has taken the position that she does not have the  
26 power to remedy facilities conditions in schools. "If you have high-performing, well-heeled schools  
27 that are modern and low-performing, down-in-the-heels schools that are old, this superintendent can't  
28 do anything about that," Eastin said. "I can't go in and order you to fix the bathrooms and paint the

walls.”” Pardington, *State Education Chief’s Term Wanes; Delaine Eastin’s tenure has been contentious, but that may be built into the position*, CONTRA COSTA TIMES, Jan. 7, 2002.

730. The State has failed to establish mechanisms to detect and cure school facilities problems even on a case-by-case basis. For example, the State has failed to establish procedures for responding to complaints about physical conditions in schools with an eye toward remedying the problem. Given that the State takes the position that it has no responsibility for maintenance of school facilities, the State’s general response to facilities complaints is to refer the complainant back to the local district. (Lange Depo. at 38:6-39:2.) Further, as discussed above, the State has also failed to utilize the CCR process to investigate the conditions of school facilities. (Clark-Thomas Depo. at 183:5-22, 184:7-14, 199:7-18.)

**d. With Knowledge of the Inequality, the State Has Continued to Institute Programs That Are Incapable of Correcting or Compensating For the Unequal Access to Safe, Clean Facilities That Support Learning.**

**i. State Funding of School Facilities Has Been Insufficient to Meet the Need.**

731. While defendants have made State bond monies available for school construction and modernization, generally, the level of funding has been inadequate to meet construction and modernization needs. *See, e.g., Joel Cohen, Cal. Research Bureau, School Facility Financing: A History of the State Allocation Board and Options for the Distribution of Proposition 1A Funds* (1999) at 2.

732. Proposition 1A, the most recent bond, continued the trend of insufficient state funding. According to the Office of Public School Construction (“OPSC”) as of August 28, 2002, there were over \$3 billion in approved unfunded new construction projects and over \$2 billion in approved but unfunded modernization projects. *See OPSC, Statistical and Fiscal Data for the School Facility Program and Proposition 1A: December 16, 1998 through August 28, 2002* at 3. In addition, there was an additional \$850 million in new construction and modernization projects that had been submitted for processing but not yet approved by the State Allocation Board and about \$37 million remaining from the Proposition 1A funds. *Id.* at 1, 3.

1           733. There were approximately \$2.1 billion of modernization funds in Proposition 1A to be  
2 distributed over two funding cycles. All \$1.3 billion in the second funding cycle were allocated in  
3 one vote at the July 2000 meeting of the State Allocation Board, as districts were lined up waiting for  
4 funds for their modernization projects after the 1998 round of funding ran out. After the \$1.3 billion  
5 were allocated, many districts with billions of dollars of projects were left waiting for the next  
6 statewide school bond, which could occur no sooner than November 2002. Corley Report at 50.

7           734. Once a district satisfies eligibility criteria for either State new construction or  
8 modernization funds, those funds are allocated on a per student basis, not on the basis of the actual  
9 cost of building a sufficient new facility or bringing an older facility into acceptable condition. CAL.  
10 EDUC. CODE § 17074.10. Plaintiffs' expert Robert Corley explains that, in many cases, the grant  
11 amounts are simply too small. The State grant pays about one-third, rather than fifty percent of the  
12 total cost of new construction, and about 50-60% of the average cost of modernization, rather than  
13 the 80% the state share was supposed to cover under Proposition 1A. This discrepancy tends to  
14 exacerbate the inequality in facilities conditions because districts with financial assets are able to  
15 supplement state grants with other funds. On the other hand, districts without other sources of  
16 funding must cut back space, quality, or some other item to fit within the budget.<sup>27</sup> See Corley  
17 Report at 51-52, 54.

18           735. Similarly the flat per-pupil grant amounts for modernization projects fail to recognize  
19 the very different starting points for recipient schools. A 25-year-old school in good condition gets  
20 the same funding as a 25-year-old school in poor condition. As plaintiffs' expert Robert Corley  
21 reports:

22                   In my experience, some schools of eligible age are in fairly good  
23 condition and use modernization money to improve conditions, upgrade  
24 appearance and make other changes. Other schools have failing  
25 infrastructure and end up with most of the costs buried in new sewer  
lines, new electrical transformers and wiring, replacing rotted  
floorboards, and other features that do not improve the school's

26           <sup>27</sup> Just recently an article from a Lodi newspaper described how the district was planning to  
27 build new classrooms without "running water, tackable wall surfaces or . . . cabinets," because the  
28 amount of money available to the district in its hardship grant would not allow for these features. At  
the last minute, the district was able to pass a local bond to enable to include these features in the  
classroom. Giese, *Bare-bones Classrooms Dismay Teacher*, LODI NEWS-SENTINEL, Aug. 9, 2002.

1 functionality and overall conditions to a level comparable to newer or  
2 well-maintained schools, even though individual components (such as  
3 reliable electricity supplies and unclogged sewer lines) are better. This  
4 situation is inherent in a system with equal funding irrespective of  
5 need, but results in the schools in poorest condition staying in poor  
6 condition, and the schools in better condition able to improve.

7 Corley Report at 54.

8 736. Our research also indicates that for many years, the State has not fully matched district  
9 funds for deferred maintenance. Indeed, the State Legislature has noted this underfunding and  
10 concluded that it has harmed students' education:

11 "The Legislature finds and declares the following:

12 (a) Because of the diminishing funds available through the excess  
13 repayments from the State School Building Aid Program, the state has  
14 been unable to fully fund the maximum amount of its contribution to  
15 the deferred maintenance fund authorized by law since the early  
16 1980's.

17 (b) School districts have the expectation that state funds will be  
18 available to match the local funds they set aside to meet their deferred  
19 maintenance needs.

20 (c) The state's practice of not providing consistent, ongoing funding for  
21 deferred maintenance purposes has resulted in greater future facilities  
22 costs and has reduced the quality of education that can be provided to  
23 the state's 5.6 million public school pupils.

24 (d) If repairs to school facilities are continually deferred, school  
25 districts eventually face more expensive investments, including, but not  
26 limited to, critical repairs, major rehabilitation, or complete  
27 replacement. School districts should be discouraged from deferring  
28 maintenance projects in the short run, because inadequate ongoing  
maintenance reduces the useful life of facilities resulting in increased  
capital outlay needs, and putting more pressure on schools to access  
more expensive bond dollars in the long run.

Legislative findings at Ed Code 17584.1, note (2002) (Stats 1999, ch. 390).

737. The Legislative analysis of AB 736 reports that the State had appropriated only \$35  
million instead of the \$150 million (which would have been aimed at a dollar for dollar state match  
for every dollar the districts set aside in their deferred maintenance fund). See A.B. 736, Assemb.  
Floor Analyses at p. 3, Jan. 5, 1997.

738. The level of State match did increase in the late 1990's. However, it was frequently  
the target of budget cutbacks. In 2000-2001, the State only matched at a rate of about \$0.82 for every

dollar of district funding for deferred maintenance. OPSC, *SAB Approvals and Project Apportionments, Proposition 1A Apportionments*.<sup>28</sup>

739. The State has failed to take steps that might have helped reduce the backlog of deferred maintenance and improve conditions in the some of the oldest and most dilapidated schools. In October 1997, Governor Wilson vetoed AB 736. According to the Legislative Counsel's digest, the bill's purpose was to fund the deferred maintenance program "to the full statutory cap" so that the State would regularly match on a dollar for dollar basis district funds set aside for deferred maintenance up to ½ percent of the district's annual budget so long as budgetary priorities allowed. See CAL. EDUC. CODE § 17584(b); AB 736, Legislative Counsel's Digest, 1997-1998 Sess. (Cal. 1997). The bill would also required monies that would ordinarily have gone to into the State's general fund to go instead into the deferred maintenance fund. *Id.* Governor Wilson vetoed the bill stating "[t]his bill would result in an annual loss of \$3 million from the General Fund." A.B. 736, Governor's Veto Message (Oct. 12, 1997).

740. In September 1998, Governor Wilson vetoed AB 2643. *See* A.B. 2643, 1997-1998 Sess. (Cal. 1998). That bill would have taken funds received from districts for the lease of portable classrooms from the State and deposited them in the State School Building Aid Fund to fund the deferred maintenance program. The bill would also have targeted 10% of the funds in the deferred maintenance fund to school districts that "either have a disproportionately high percentage of school facilities in excess of 30 years old or will use the funds for the purposes of increasing health and safety on school campuses." CAL. EDUC. CODE § 17587. (The deferred maintenance program already set 10% of the funds in the program for critical hardship grants. So, this bill would have set aside an *additional* 10% for targeted funds). In Section 1 of the Bill, the Legislature included some of the following findings:

(b) More than 60 percent of California's existing school facilities are at least 30 years old and a substantial number are 40 to 50 years or older.

(c) Studies show that neglect of maintenance has a definite impact on the educational process, that poorly maintained school buildings are

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<sup>28</sup> Available at <http://www.opsc.dgs.ca.gov/SAB+Approvals/Default.htm>.

1 demoralizing to pupils and teachers alike, and that there is a  
2 relationship between pupil behavior and school conditions

3 (d) California has invested over ten billion dollars (\$10,000,000,000)  
4 in new school construction and modernization over the past 10 years,  
yet our investment in school maintenance has increased only slightly in  
real dollars.

5 (e) Without a significant long-term commitment of additional dollars  
6 for school maintenance, California risks compromising the education,  
7 health, and safety of our school children, as well as the significant  
taxpayer investment in school construction provided over the past ten  
years.

8 (i) Now that we have emerged from the recessionary years that resulted  
9 in minimum funding, we should make efforts to raise the level of  
10 funding beyond the minimum guarantee in areas that have lacked  
sufficient funding.

11 (j) The “Excess Bond Repayment Fund” has been the only regular  
12 source of funding for school districts deferred maintenance since the  
deferred maintenance program was established in the late 1970’s. As  
13 this funding source is rapidly declining and will soon be fully depleted,  
portable lease payments should replace them.

14 A.B. 2643, § 1 1997-1998 Sess. (Cal. 1998).

15 741. By targeting additional funds for districts with a disproportionately high number of  
16 older — and therefore more likely to be deteriorating — schools, the bill likely would have reduced  
17 some of the disparities in facilities conditions in the State. However, Governor Wilson vetoed the bill  
18 stating that “[t]he redirection of lease revenues is not necessary given the recent augmentation to the  
19 deferred maintenance fund of over \$100 million contained in the 1998 budget. These funds are better  
20 spent to purchase more relocatable classrooms.” A.B. 2643, Governor’s Veto Message (Sept. 18,  
21 1998).

22 **ii. The Current School Facilities Financing**  
23 **System Makes It Harder for Poorer Districts**  
24 **and State Funding is Not Targeted to Address**  
25 **the Greatest Needs.**

26 742. The system for allocating State funds fails to address inequities in school conditions,  
27 and, sometimes, exacerbates them. The way the current system is structured makes it much harder  
28 for poorer districts to raise sufficient funds to provide students with safe, clean facilities that are  
supportive of learning. PACE has noted that:

1 The effect of devolving the responsibility for funding new school  
2 construction and facilities improvements to the local level in  
3 conjunction with a constant reduction in local discretionary funds,  
4 contrasted with a school finance system controlled at the state level, has  
5 resulted in a two-fold uneven playing field. First, school districts that  
6 are successful in garnering the two-thirds vote necessary for passing a  
7 school bond measure will receive state matching funds for construction  
8 and likely meet local needs. However, school districts who are unable  
9 to pass a school bond measure or are unable to afford the indebtedness  
10 associated with repayment of a school bond measure, will not be able to  
11 receive matching capital improvement funds from the state, and are less  
12 likely to meet local needs. Second — and most concerning in light of  
13 the *Serrano* decision which advanced the concept of fiscal neutrality —  
14 a low property wealth district will need to levy a higher tax rate in  
15 order to repay a bond of equal magnitude issued by a high property  
16 wealth district.

17 In effect, the same equalization efforts that were successfully applied to  
18 district revenue limits under court order, have not been applied to  
19 capital improvements funding. Thus, placing a substantially uneven  
20 fiscal burden on low property wealth districts in their efforts to provide  
21 adequate facilities for students.

22 PACE, *Crucial Issues in California Education* (2000) at 49.

23 743. The Little Hoover Commission has also concluded the State’s current school facilities  
24 financing scheme is unfairly skewed against poorer districts.

- 25 • “Yet, particularly for schools serving high poverty communities, schools are hard pressed  
26 to come up with funds to match construction dollars. School financing experts note that a  
27 low wealth district must pass a higher tax rate levy in order to repay a bond of equal  
28 magnitude issued by a high wealth district.” LHC, *Teach Our Children Well* (2001) at 47.  
“The deferred maintenance hardship program offers school districts some relief....But the  
need for hardship exemptions far outstrips the availability of maintenance program  
funding, and school districts in economically distressed areas continue to have great  
difficulty finding money to renovate schools.” *Id.*
- “Yet schools serving high poverty communities frequently lack the civic infrastructure or  
tax base to provide the match for state construction dollars.” *Id.*

744. While recent state bonds have contained “hardship” exemptions for districts that have  
been unable to raise local funding to fund a portion of their construction or modernization needs, it  
has been very difficult for those districts to obtain state funds either because no “hardship” monies

were available or because the process to obtain hardship funding was much more complicated and slower than the process established for districts that were able to match state funds.

745. Under the hardship criteria students can also be punished for the disorganization or lack of competence of a local district. For example, if a district does not attempt to run a local bond election, or runs a poor campaign and fails to obtain 50% of the vote, the district does not qualify for hardship funds. *See* CAL. CODE REGS. tit. 2, § 1859.81 Thus, students suffer because the State has failed to exercise proper oversight to ensure that district mismanagement does not result in districts having insufficient funds to build and maintain safe, clean facilities that are supportive of learning.

746. Districts that have the greatest needs for facilities funding also sometimes fail to obtain it because the State funding system is application based, and the State does not sufficiently monitor districts to ensure that districts that are eligible for funds actually apply for them. For example, reports from FCMAT and the State Auditor confirmed that for years the Oakland Unified School District missed out on obtaining large sums of state funds for new construction and modernization — funds for which it was eligible — by not applying for them. As reported by FCMAT:

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

(FCMAT 3452.)<sup>29</sup> The State Auditor concluded that the consequence, in terms of dollars lost and possible harm to students, of the district's failure to apply for funds was severe:

Further, funds are available to the district from the State to improve or construct school buildings. However, the district has not applied to the State for \$12.6 million for new construction, \$42.8 million for facilities modernization, and \$6.3 million for asbestos abatement, all of which the district should be eligible to receive. As a result, the district's

<sup>29</sup> As of 1990, schools that were 30 years or older were eligible for modernization funds if they had not already received state funds for modernization. It appears, based on the Oakland Unified School District's Long Range Facilities Master Plan, that as of 1991, the district had over 40 schools that were at least 30 years old that had not yet been modernized. (DT-OA 03237-38); Ed Code 17021.3(c).



1 students and teachers may sometimes be unnecessarily housed in  
2 overcrowded, outdated, and potentially hazardous facilities.

3 California State Auditor, *Review of the Oakland Unified School District's Financial Position*  
4 (Jan. 1990) at S-3.

5 747. Plaintiffs' expert Robert Corley stated that for many years, the Compton Unified  
6 School District, a district with a long and well-documented history of abysmal school facilities  
7 conditions, failed to file applications for State facilities funding. Corley Report at 56.

8 **(a) Even if the New Bond Measure Passes, It**  
9 **Will Not Resolve the Serious Facilities**  
10 **Inequities In the State.**

11 748. A major bond program for 2002 and 2004 has been approved by the Legislature and  
12 the Governor and will be presented to voters in November 2002. This bond package proposes \$11.4  
13 billion in 2002 and \$10 billion in 2004 for a total of \$21.4 billion for K-12 schools over four years.  
14 In addition, \$3.95 billion is proposed for higher education facilities. A breakdown of proposed  
15 funding is shown in the following table. Of the total, \$4.8 billion are for projects on file with the  
16 state as of February 1, 2002. The \$4.14 billion for Critically Overcrowded Schools (COS) will make  
17 a difference to urban centers and other areas where land is hard to find. These school projects could  
18 not compete effectively in the 1998 bond program due to difficulties in finding land, which delayed  
19 their ability to apply for state funds. The COS program allows applications without a specific site.<sup>30</sup>  
20 Corley Report at 65-66.

21  
22  
23  
24  
25  
26 \_\_\_\_\_  
27 <sup>30</sup> The *Godinez* lawsuit resulted in the last portion of new construction funds from  
28 Proposition 1A being allocated according to a priority point system, rather than on a first come first  
serve basis.

## Proposed 2002 and 2004 Bond Allocations, AB 16

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

*Figures in italics are included in major categories*

\*Backlog amounts include Hardship

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

Source: Robert Corley's summary of AB 16, Chapter 33/2002, Corley Report at 66..

749. Even if both bonds pass, their passage will not resolve many of the facilities inequities described above for a variety of reasons. Two of the most significant reasons are that: (1) none of the bonds funds will be dedicated to regular maintenance and operations in schools; and (2) bonds funds will not resolve basic management failures in certain districts, or create a system of state oversight.

750. The new bond will not provide relief for many students who attend schools suffering unusually poor conditions. Specifically, the new bond will do nothing to address the following categories of students, nor will it be sufficient to bring those students' schools into acceptable condition:

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

- Students in schools that have not passed a bond, or cannot raise significant funds from developers fees, and do not satisfy the financial hardship criteria<sup>31</sup> set forth in CCR Title II, Section 1859;<sup>32</sup>
- Students in districts that fail to file applications for new construction or modernization funds that the district might be entitled to;
- Students in schools where the conditions are poor yet the school is not eligible for modernization funds because the school has already received modernization funds in the past. For example, a 75 year old school that was modernized 20 years ago would not be eligible for modernization funds for five years, even if it were in terrible condition;
- Students in schools that are in such poor condition that the modernization funds, that do not vary based on the actual facilities needs at a school, will be insufficient to remedy all the serious problems at the school;
- Students in schools where unusually poor conditions result from inadequate maintenance and custodial care.

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

752. According to the *School Facilities Fingertip Facts* put out by the School Facilities Planning Division of the Department of Education, as of 2002 there were an estimated 201,000 classrooms that are over 25 years old, and therefore eligible for modernization funds. *See*

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<sup>31</sup> Under the current regulations, a district must provide 50% matching funds for new construction projects unless it meets the financial hardship criteria in California Code of Regulations section 1859.81. Those criteria include: that the district's current bonded indebtedness is at least 60% of the district's total bonding capacity; that the district had a successful bond election within the last 2 years for the maximum amount allowed by Proposition 39; or "other evidence of reasonable effort as approved by the SAB." *Id.*

<sup>32</sup> Voters in districts with bad facilities management might very reasonably vote against a local bond because they believe that the district will mismanage the bond funds. Such an outcome might be rational from the voters' perspective, but it leaves students in poor school facilities because of the failure of the State to correct management problems at such schools. Moreover, poorly managed districts are unlikely to run a well-managed bond campaign. Again, the students in such districts need more help from the State if they are to benefit from the opportunity that the state bond issue presents.

1 www.cde.ca.gov/resrc/factbook/schoolfacilities.htm. Using an average figure of 26 students per  
2 classroom, there is a need for modernization funds for 5,226,000 students. According to the State's  
3 figures, approximately 3.4 million or 56% of the State's 6.05 million students are in elementary  
4 school; approximately 933,000 or 15% of the State's students are in middle school, and  
5 approximately 1.7 million or 29% are in high school. Applying those percentages, it is fair to assume  
6 that approximately 2,926,560 of the students eligible for modernization funds are elementary school  
7 students; 783,900 are middle school students; and 1,515,540 are high school students.

8 753. The proposed state bond provides 60% of the modernization funds, with the district  
9 required to provide 40%. Under the bond, the state provides \$2,471<sup>33</sup> per elementary school student  
10 to a district that has modernization eligibility if the district provides approximately \$1,647. The  
11 state's share for middle schools is \$2,641 and for high schools it is \$3,422. Since there are 2,926,560  
12 elementary school students in classrooms that are eligible for modernization funds, the state's share  
13 of modernization costs is 2,926,560 x \$2,471 or \$7.23 billion. The state's share of modernization  
14 costs for middle school students in classrooms that are eligible for modernization is 783,900 x \$2,641  
15 or \$2.07 billion; and the state's share of modernization costs for high school students is 1,515,540 x  
16 \$3,422 or \$5.19 billion. In other words, in order to meet state's share of the funds needed for  
17 modernization of the eligible classrooms as of 2000, the new bond and the funds from Proposition 1A  
18 together would have to provide for \$14.49 billion. However, the amount for modernization in the  
19 new bond is \$5.55 billion and the amount in the old bond is \$2.1 billion. The sum of these two  
20 figures falls about \$6.8 billion short of the modernization need, as estimated based on the State's  
21 numbers. This estimate of the shortfall may be low because the calculation does not include districts  
22 that are eligible for modernization funds and qualify for hardship funding, thereby increasing the  
23 state's share of the modernization cost to 100%.

24 754. The existence of this gap between modernization need, as defined by the state's  
25 criteria, and the actual amount of money available for modernization heightens the importance of  
26 ensuring that the districts and schools with facilities in the worst condition should get their share of

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27 <sup>33</sup> The state's baseline per student modernization amount is set forth in Section 13 of the  
28 bond, but then is adjusted upwards as called for in Education Code 17074.10(3)(b).

1 this money. However, the bond makes no provision for any type of prioritization in the distribution  
2 of modernization funds. Nor are there any plans for a system of oversight to make sure that districts  
3 that have needs take the necessary steps — e.g., run a bond campaign or seek developers fees, and  
4 file applications in a timely fashion. In many cases it is the poorly managed districts who are least  
5 likely to obtain the funds that they need, or even the funds they would be expected to obtain if each  
6 district obtained a share of the available funds proportionate to the number of classrooms in the  
7 district eligible to be modernized.

8         755. Our research indicates that the amount provided in the bond for new construction is a  
9 rough approximation of the amount necessary to build classrooms for those students who are  
10 currently “unhoused” under the definition set forth in Education Code 17071.75 et seq., as well as the  
11 projected enrollment growth figures through 2006. This combined total does not include the number  
12 of students who are currently on multi-track year-round calendars, above and beyond the actual  
13 capacity of the schools they attend, and for whom the district accepts operational grants. In other  
14 words, even if those districts that currently have schools on multitrack year-round calendars chose to  
15 forego operational grants in order to make those “excess” students meet the definition of unhoused  
16 students, the total pot of money would not be sufficient to enable seats to be built for all these  
17 students.

18         756. State Senator Dede Alpert, who was heavily involved in the negotiations concerning  
19 the bond measure, has acknowledged that the money in the bond is insufficient to meet need for new  
20 construction and modernization. “Even \$25 billion isn’t enough to fix everything, said Sen. Dede  
21 Alpert, D-Coronado. ‘We have more need than there is room in this bond.’” Frith, *School Bonds*  
22 *Head Toward Ballot*, SAN DIEGO UNION-TRIBUNE, Apr. 5, 2002.

1                   **B. The State Created Incentives for School Districts to Reduce Class**  
2                   **Size Without Ensuring That Sufficient Qualified Teachers or**  
3                   **Adequate Facilities Were Available to the Hardest-to-Staff Schools.**

4                   **1. The State Knew or Should Have Known that Class Size**  
5                   **Reduction Would Result in Insufficient Numbers of**  
6                   **Qualified Teachers for the Hardest-to-Staff Schools and**  
7                   **Facilities Issues.**

8                   757. The widely-reported success of the Tennessee class-size reduction (“CSR”) initiative,  
9                   prompted the California legislature to examine class size reduction as a potential strategy to address  
10                  California’s low test scores. By 1996, there were four separate proposals before the California  
11                  Legislature to reduce class size in grades K-3 to 20 students. David C. Illig, *Reducing Class Size: A*  
12                  *Review of the Literature and Options for Consideration* (1996) at 2. The legislature commissioned a  
13                  report on the feasibility of implementing CSR in California.

14                  758. The class size reduction report raised a number of concerns regarding implementation  
15                  of CSR in California. *Id.* at 6. First, staffing was noted as a potential obstacle to successful  
16                  implementation. *Id.* at 7. The report stated that

17                               [s]ome school districts now rely on emergency credentials in order to  
18                               staff existing classes. Increasing the demand for teachers is likely to  
19                               further exacerbate current shortages, ...”

20                  *Id.* Second, the report pointed to the infrastructure issues that would result from implementing CSR  
21                  in California. For example, the report questioned “whether school districts have the means by which  
22                  to fund additional physical infrastructure needed to accommodate smaller classes.” *Id.* at 6. This was  
23                  an even greater concern given that the governor’s CSR proposal did not contain a provision for new  
24                  facilities funding. *Id.* at 6-7. Third, the report noted that the effect of CSR on Limited English  
25                  Proficient students was unknown. *Id.* at 6.

26                  759. As the legislature contemplated the passage of a CSR initiative in California, the State  
27                  failed to commission any research into the potential consequences of a CSR initiative for schools  
28                  using year-round multi-tracking to alleviate overcrowding. The legislation that inaugurated CSR in  
California made no mention year-round multi-tracking schools. SB 1777, ch. 163, 1995-1996 Sess.  
(Cal. 1996); SB 1414, ch. 621, 1995-1996 Sess. (Cal. 1996). Research available to the state at the  
time indicated that funds for CSR would be better spent addressing the year-round multi-track

1 problem. From a fiscal standpoint, it made no sense for the state to pour money into a CSR program  
2 while thousands of at-risk students continued to face diminished academic opportunities at year-  
3 round multi-track schools. As early as the late 1980s, researchers had discovered that “[h]eavy use of  
4 intersessions and class size reductions . . . tend to detract from . . . the cost savings associated with  
5 year-round schools.” Claire Quinlan, *Year-Round Education: Year-Round Opportunities* (1987) at  
6 65.

## 7 **2. Class Size Reduction Exacerbated the Facilities Crisis at** 8 **Already Overcrowded Schools.**

9 760. Implementation of the CSR program began during the 1996-1997 school year. CSR  
10 Research Consortium, *Class Size Reduction in California: Findings from 1999-00 and 2000-01*  
11 (2002) at 23. California’s CSR program was designed to reduce the average statewide K-3 class size  
12 from 28.5 to no more than 20 students. LAO, *Class Size Reduction: A First Look at Implementation*  
13 (1996) at 1. Although technically voluntary, of 895 districts eligible to participate, 845, or 95%,  
14 elected to do so. *Id.* All participating districts were required to complete implementation by  
15 February 1997. *Id.* “The Legislature provided \$771 million in operational funds and \$200 million in  
16 facilities funds” for the first year of implementation, 1996-97. *Id.*

17 761. After the first year of implementation (if not before), defendants were clearly on notice  
18 of a state-wide shortage of facilities funding resulting from CSR. In its original form, California’s  
19 CSR initiative provided a one-time facilities grant of \$25,000 per new classroom. LAO, *Class Size*  
20 *Reduction: A First Look at Implementation* (1996) at 1. Participating schools, however, had to make  
21 space for a “50 percent increase in the number of K-3 classrooms.” CSR Research Consortium,  
22 *Class Size Reduction in California: Findings from 1999-00 and 2000-01* (2002) at 24. The LAO  
23 concluded that the one-time allocation of \$200 million for facilities was insufficient to meet demand.  
24 LAO, *Class Size Reduction: A First Look at Implementation* (1996) at 2. The CDE received 14,000  
25 requests for facilities grants to implement CSR, but available funds could cover only 8,000 of those  
26 requests. *Id.*

1                                   **3. Class Size Reduction Led to a Direct Increase in the**  
2                                   **Number of Undercredentialed Teachers in California’s**  
3                                   **Public Schools**

3           762. After the first year of implementation, the LAO reported that “24 percent of teachers  
4 hired for CSR [did] not have a teaching credential.” LAO, *Class Size Reduction Policy Brief* (1997)  
5 at 12. “In an initial analysis of the effect of the CSR initiative, the CSR Research Consortium (1999)  
6 found that the proportion of grade K-3 teachers without full credentials skyrocketed over the period  
7 1995-1997 — from 1 percent to 12 percent.” Julian Betts, Kim Rueben, & Anne Danenberg, Public  
8 Policy Inst. of Cal., *Equal Resources, Equal Outcomes? The Distribution of School Resources and*  
9 *Student Achievement in California* (2000) at 4. The LAO also found that “larger districts were much  
10 more likely to hire noncredentialed teachers than were smaller districts.” LAO, *Class Size Reduction*  
11 *Policy Brief* (1997) at 12.

12           763. According to the Public Policy Institute of California’s recent study on the effects of  
13 class size reduction:

14                           One of the biggest challenges to districts implementing CSR was the  
15                           need to hire more teachers. Extra classes created a need for 25,000  
16                           additional teachers statewide. In contrast, fewer than 4,000 new  
17                           teachers were hired in kindergarten through third grade in the year  
                             before CSR (1995-1996). Some districts were already beset by staffing  
                             difficulties before class size reduction, and the need to hire many  
                             additional teachers exacerbated the problem.

18 Christopher Jepsen & Steven Rivkin, Pub. Policy Inst. of California, *Class Size Reduction, Teacher*  
19 *Quality, and Academic Achievement in California Public Elementary Schools* (2002) at 2.

20           764. The State knew less-experienced teachers would fill the CSR positions. The initial  
21 per-pupil funding figure of \$650 – a number the LAO considered too low – was based on the  
22 legislature’s assumption that entry-level applicants would fill newly-created teaching positions.  
23 LAO, *Class Size Reduction: A First Look at Implementation* (1996) at 1. The State’s expectations  
24 were correct. The teachers hired during the first year of implementation had “on average, less  
25 teaching experience, fewer qualifications and a lower skill level than teachers hired in previous  
26 years.” LAO, *Class Size Reduction Policy Brief* (1997) at 12; *See also* Christopher Jepsen & Steven  
27 Rivkin, Pub. Policy Inst. of California, *Class Size Reduction, Teacher Quality, and Academic*  
28



1 *Achievement in California Public Elementary Schools* (2002) at ix (“CSR led to a dramatic increase  
2 in the percentages of inexperienced and uncertified teachers.”).

3 **4. The Increase in the Number of Uncredentialed Teachers As**  
4 **A Result of Class Size Reduction Was Concentrated in**  
5 **Schools Serving Low-Income Students and Students of**  
6 **Color.**

7 765. The increase in the number of uncredentialed teachers was not equitably distributed  
8 across schools. CSR Research Consortium, *Class Size Reduction in California: Findings from 1999-*  
9 *00 and 2000-01* (2002) at 45. Schools with higher percentages of low income students, English  
10 Language Learners, and students of color had the highest number of undercredentialed teachers. *Id.*  
11 at 46. The PPIC found that “[s]chools in disadvantaged areas seem particularly hard pressed to  
12 recruit teachers who have a full credential, several years of experience, and a high level of  
13 education.” Julian Betts, Kim Rueben, & Anne Danenberg, Public Policy Inst. of Cal., *Equal*  
14 *Resources, Equal Outcomes? The Distribution of School Resources and Student Achievement in*  
15 *California* (2000) at xxv.

16 766. The PACE report also found that “for many of the state’s large population of at-risk  
17 children, this reform has had a devastating effect on teacher quality.” Elizabeth Burr, Gerald C.  
18 Hayward, Bruce Fuller & Michael W. Kirst, Policy Analysis for Cal. Educ., *Crucial Issues in*  
19 *California Education 2000: Are the Reform Pieces Fitting Together?* (2000) at 108. “[C]lass-size  
20 reduction has all too often spawned a mad scramble for anyone willing to teach. The poorest, most  
21 challenged schools are often left with little choice other than to hire untrained or under-prepared  
22 people with emergency permits or waivers, while their most skilled and experienced teachers are  
23 often recruited away by more affluent districts.” *Id.* at 96; *see also* Robert Rothman et al., Citizens’  
24 Comm’n on Civil Rights, *Title I in California: Will the State Pass the Test?* (Dianne M. Piché &  
25 William L. Taylor eds., 2002) at 11.

26 767. The recent Public Policy Institute of California study on the impact of class size  
27 reduction explains the stark disparity in access to qualified teachers that resulted from class size  
28 reduction:

Even as late as 1995-1996, the year before CSR, schools with high  
percentages of nonwhite and low-income students were slightly more

likely than other schools to have inexperienced teachers who lacked full certification and postgraduate schooling. By 1999, large gaps in teacher qualifications emerged between schools attended by nonwhite and low-income students compared with other schools. For black students in schools with more than 75 percent of the students enrolled in subsidized lunch programs, nearly 25 percent had a first- or second-year teacher; almost 30 percent had a teacher who was not fully certified. At the other extreme, for white students attending schools with 25 percent or less of the students enrolled in subsidized lunch programs, only 12 percent had a first- or second-year teacher, and only 5 percent had a teacher who was not fully credentialed. These differences reflect the varying level of difficulty that many schools experienced in attempting to attract and retain teachers following the implementation of CSR.

Christopher Jepsen & Steven Rivkin, Pub. Policy Inst. of California, *Class Size Reduction, Teacher Quality, and Academic Achievement in California Public Elementary Schools* (2002) at ix.

768. Similarly, Secretary for Education Kerry Mazzoni has noted that “the rapid implementation of Class Size Reduction created unintended consequences that greatly expanded the need and exacerbated the problem of unqualified teachers working in classrooms, particularly in schools with the greatest needs.” Letter from *Kerry Mazzoni, Sec’y for Educ., to Senator John Vasconcellos* (August 22, 2002).

769. CSR also had an adverse effect on schools serving high percentages of English Language Learners. First, CSR implementation

increased the disparities in the numbers of qualified teachers between schools with large concentrations of English learners and schools with small concentrations of English learners. For example, the percentage of teachers not fully credentialed in schools with the least number of English learners (less than 8 percent) only increased from .2 percent in 1995-96 to 4.2 percent in 1997-98. . . . However, the percentage in schools with the greatest proportion of English learners (40 percent or more) increased from 1.8 percent to 22.3 percent over the same two-year period. As a result, schools with the most English learners benefited the least from class-size reduction, at least in terms of access to fully credentialed teachers.”

Elizabeth Burr, Gerald C. Hayward, Bruce Fuller & Michael W. Kirst, Policy Analysis for Cal. Educ., *Crucial Issues in California Education 2000: Are the Reform Pieces Fitting Together?* (2000) at 34-35. Second, CSR implementation resulted in a proportional increase in English Language Learner instructor availability to schools that were already better able to cope with the English Language Learner problem. “[S]chools with the smallest percentage of EL[L] students gained

1 substantially more BCLAD teachers per 100 EL[L] students than did schools with the largest  
2 percentage of English Language Learner students in the first five years of CSR implementation.”  
3 CSR Research Consortium, *Class Size Reduction in California: Findings from 1999-00 and 2000-01*  
4 (2002) at 99.

5 **C. The State’s API-based Accountability System Is Incapable of**  
6 **Preventing, Detecting, or Correcting Gross Disparities in Access to**  
7 **Instructional Materials, Qualified Teachers and Safe, Clean**  
8 **Facilities That Are Supportive of Learning.**

9 **1. The State Has Repeatedly Disclaimed Its Obligation to**  
10 **Ensure Equal Access to Basic Educational Necessities.**

11 770. Although the State has taken the position that it “has some kind of ultimate  
12 responsibility for the school system statewide” (October 30, 2000 Court Tr. at 11:13-15.), it has  
13 disclaimed that it has an obligation to develop a system capable of ensuring access to basic  
14 educational necessities. Instead, the State has repeatedly asserted that its current system is adequate  
15 and that the appalling conditions identified in plaintiffs’ amended complaint are solely the  
16 responsibility of local school districts to solve.

17 771. The State initially made this assertion in its arguments on demurrer when it held out  
18 the Uniform Complaint Procedure as the mechanism by which the constitutional violation alleged by  
19 plaintiffs could be resolved. (*See* October 30, 2000 Court Tr. at 21:28-22:15.) At the demurrer  
20 hearing, State’s counsel stated:

21 [Plaintiffs] say the state is abdicating its responsibilities. Well, the  
22 leading way in which the state carries out that responsibility is it has  
23 these standards [in the uniform complaint procedure]. If somebody  
24 claims the standards are violated, you make a complaint, you go  
25 through the procedure, and the state solves the problem at the end of  
26 the day. That is not abdication.

27 (*Id.* at 22:4-10.) However, as plaintiffs have pointed out, the UCP is designed to deal with  
28 discrimination on the part of local agencies and State action is not included in its purview. CAL.  
CODE REGS. tit. 5 § 4600(j), 4610(a) and (c).

772. Subsequently, in its cross-complaint against the school districts, the State blamed the  
school districts for the conditions identified in plaintiffs’ amended complaint. (*See* Memorandum of  
Defendant State of California in Opposition to Motion to Strike Cross-complaint at 1 (stating that

1 “[t]he cross-complaint expressly alleges that each school district possesses the authority and ability to  
2 fix the problems alleged, but has not done so.”.) In the State’s opposition to plaintiffs’ motion for  
3 class certification, the State expressly stated that it is “not required to have any ‘system of oversight  
4 and management.’ at all.” (See State’s Memorandum of Points and Authorities in Opposition to  
5 Motion for Class Certification at 10; see also Response of Defendant State of California to Motions  
6 for Severance and Stay at 2 (“the State has no general ‘obligation to establish and maintain an  
7 effective system of oversight and management.’”)). Most recently, the State has disclaimed its duty  
8 to ensure equal educational opportunities in its motion for summary judgment relating to the State’s  
9 failure to enforce the Free and Common Schools Clause. (See Memorandum of Points and  
10 Authorities In Support of Motion of Defendant State of California for Summary Adjudication of No  
11 Duty to Police or Monitor District Fees at 18 (“The State’s ‘ultimate responsibility’ comes into play  
12 only when (as in *Butt*) the local district cannot do what the Legislature has directed it to do.”))

13 773. Governor Davis’s veto messages of Senate Bill 81 appears to set forth the State’s  
14 position quite succinctly. Senate Bill 81 would have required the State “to develop guidelines for  
15 measuring equal opportunity for educational success;...develop a multi-year plan to align resources  
16 to ensure pupils have equal opportunities for school success;” and “require the Governor to annually  
17 report on progress toward achieving equal educational opportunities....” See Governor’s Veto  
18 Message of SB 81 dated October 10, 1999. The Governor’s veto message stated:

19 This bill would establish that it is not enough for the state to provide  
20 equal financial resources to school districts—the state would also be  
21 responsible for ensuring that the quality of educational opportunities for  
22 each pupil is equal. That is the responsibility of school districts who,  
with the input of each community, determine how state-provided  
resources are spent.

23 *Id.*; but see *Tinsley v. Palo Alto Unified Sch. Dist.*, 91 Cal. App. 3d 871, 903-04 (1979) (finding that  
24 “it is clear that in California . . . the responsibility for furnishing constitutionally equal educational  
25 opportunities to the youth of the state is with the state, not solely in the local entities it has created.”).

1                                   **2. The State’s Top Education Officials Acknowledge the**  
2                                   **State’s Comprehensive Failure to Ensure Equal Access to**  
3                                   **Basic Educational Necessities.**

4           774. The State’s top education officials have acknowledged the State’s comprehensive  
5 failure to take responsibility for ensuring equal access to basic educational necessities. Depositions  
6 of education officials throughout the State’s system have confirmed that there do not appear to be any  
7 State entities that are responsible for ensuring equal access for all students to instructional materials,  
8 qualified teachers, and safe, clean facilities that are supportive to learning anywhere in the State’s  
9 system.

10          775. The State has disclaimed any responsibility to ensure that students have equal access  
11 to instructional materials. Sherry Griffith, Director of the CDE Curriculum Frameworks and  
12 Instructional Resources Division, testified that she does not “understand the mission of the  
13 curriculum frameworks and instructional resources division to include addressing issues related to  
14 whether districts have made available to their students sufficient textbooks or instructional materials  
15 in terms of numerosity.” (Griffith Depo. at 91:8-23.)

16          776. Other education officials also disclaim any responsibility for determining whether  
17 students have access to instructional materials. Leslie Faussett, Chief Deputy Superintendent for  
18 Policy and Programs (which houses the instructional materials division), admitted that she was  
19 unaware of efforts on the part of the State to gather data about whether students have access to  
20 instructional materials. (Deposition of Leslie Fausset (“Fausset Depo.”) at 188:20-189:10 (State does  
21 not gather data on results of 60119 hearings); *see also* Griffith Depo. at 163:5-10 (the Curriculum  
22 Frameworks and Instructional Resources Division does not receive the results of 60119 hearings to  
23 determine whether districts have sufficient instructional materials); Deposition of Judy Pinegar  
24 (“Pinegar Depo.”) at 48:17-50:7, 57:25-59:13 (waiver office does not require or receive information  
25 regarding substantive outcomes of 60119 hearings).) Ms. Griffith also testified that she is not aware  
26 of any State surveys assessing instructional materials needs in California. (Griffith Depo. at 188:22-  
27 189:22.) Further, neither Ms. Fausset nor Ms. Griffith were aware of any efforts on the part of the  
28 State to provide technical assistance regarding proper administration or best practices in the

1 administration of textbook purchasing, distribution and recovery. (Fausset Depo. at 191:23-192:8;  
2 Griffith Depo. at 149:11-25, 154:14-155:13.)<sup>34</sup>

3 777. Education officials also disclaim any responsibility to ensure equal access to qualified  
4 teachers. Sam Swofford, Executive Director of the CTC testified that the CTC has no responsibility  
5 to ensure that there is an adequate supply of teachers in California, nor is he aware of any other State  
6 agency that is charged with that responsibility. (Swofford Depo. at 118:25-120:5; 164:22-166:7.) He  
7 also testified that, although he is aware of the disproportionate impact of the teacher shortage on  
8 schools with predominately low income students and students of color, he does not feel it is within  
9 the scope of his duties to address such issues because the CTC only has jurisdiction over granting or  
10 denying credentials and does not address policy issues regarding school districts. (Swofford Depo.  
11 at 116:2-118:6.) Mr. Swofford stated that the CTC's jurisdiction:

12 does not extend into policy issues relative to school districts and the  
13 populations of students that are being served by the school districts and  
14 whether or not they are being underserved by the teachers that are  
15 being assigned to those classrooms. It's strictly a local issue.

16 (Swofford Depo. at 118:1-6.)<sup>35</sup>

17 778. Scott Hill, Chief Deputy Superintendent for Accountability and Administration,  
18 testified that he is not aware of "any legal authority for the California Department of Education" to  
19 undertake any efforts to reduce the number of emergency-credentialed teachers in schools. (Hill  
20 Depo. at 242:4-18.) Nor does there appear to be any State entity that monitors disparities in access to  
21 qualified teachers within districts or policies under consideration that could strengthen the capacity of  
22 local decision-makers to make better decisions with respect to the distribution of qualified teachers.  
(Faussett Depo. at 86:13-25, 91:1-7; see Swofford Depo. at 197:7-200:3 (explaining his view that the

23 <sup>34</sup> Although through the CCR process schools are asked to address the existence of a core  
24 curriculum and students' access to it, CCR has proven ineffective in ensuring that students have equal  
25 access to instructional materials. Plaintiffs' expert, Jeannie Oakes, provides a critique of the program  
in her expert report at 69-76.

26 <sup>35</sup> Despite Mr. Swofford's assertion to the contrary, the CTC has taken policy positions in the  
27 past. For example, when the State began implementation of the class size reduction program, the  
28 CTC refused to grant multiple subject credential waivers to teachers in class size reduction  
classrooms because "the success of the class size reduction program is closely linked to the  
availability of well prepared credentialed teachers." See CTC, *1996-97 Annual Report: Emergency  
Permits and Credential Waivers* (1998) at 21.

1 CTC’s jurisdiction does not extend to unequal distribution of qualified teachers, nor is he aware of  
2 any State entity that has sought to correct the problem); Clark-Thomas Depo. at 191:15-192:4 (stating  
3 that CCR has never been directed to inquire as to the percentage of emergency credentialed teachers  
4 at schools under review), 265:9-22 (stating that CCR forms do not require a team member to note the  
5 number of classrooms where there is insufficient qualified staff to provide core curriculum  
6 instruction); *see also* Burnham-Massey Depo. at 160:4-24, 230:11-22 (stating she does not have  
7 knowledge of an office in California that focuses on recruiting teachers qualified to teach English  
8 Language Learners).)

9 779. Finally, neither the CTC nor any State entity has studied why certain schools are  
10 having difficulty attracting and retaining certified teachers, how to address recruitment or retention  
11 issues in hard-to-staff schools, or the disproportionate impact of the teacher shortage on schools with  
12 predominately low income students or students of color. (*See* Faussett Depo. at 90:19-25; Swofford  
13 Depo. at 115:6-116:1; 166:8-167:11.)

14 780. Top education officials have disclaimed any state responsibility to ensure that students  
15 have equal access to safe, clean facilities that are supportive of learning. Susan Lange, Deputy  
16 Superintendent of Finance, Technology, and Administration (which houses the facilities division),  
17 has testified that the State has no responsibility for maintaining existing school facilities. (Lange  
18 Depo. at 17:4-19:19 (Q: “you learned that you did not have oversight responsibility with respect to  
19 existing facilities?” A: “Yes.”); *see also* Clark-Thomas Depo. at 183:5-22, 184:7-14, 199:7-18  
20 (confirming that CCR teams are not required to monitor school facilities).) Duwayne Brooks,  
21 Director of the School Facilities Planning Division has also stated that the “CDE has no regulatory  
22 responsibility in the maintenance of facilities. Maintenance . . . is the responsibility of the local  
23 school board.” (DOE 45.)

24 781. Ms. Lange further testified that she is not aware of any systematic effort on the part of  
25 the CDE to collect information about the state of existing school facilities. (Lange Depo. at 19:20-  
26 20:1 ; *see also id.* at 159:17-22 (Ms. Lange is not aware of any efforts to assess whether classrooms  
27 in California public schools are regularly too hot or too cold); 160:2-18 (the CDE does not routinely  
28 gather data regarding whether there are classrooms that are too noisy for effective learning); 160:19-

1 161:14 (other than the CDE trusteeship of Compton Unified, Ms. Lange is not aware of any  
2 systematic effort to gather information about whether there are sufficient numbers of clean, stocked  
3 and functioning toilets in schools.); *see also* Deposition of John Mockler (“Mockler Depo.”)  
4 at 339:21-340:14 (stating that the State does not have an inventory of school facilities).) Ms. Lange  
5 also has no knowledge of any CDE efforts to monitor whether school districts or counties have long-  
6 range master plans in place for facilities and has not participated in discussions regarding the  
7 usefulness of such monitoring. (Lange Depo. at 180:22-181:13 ; Clark-Thomas Depo. at 182:23-  
8 185:7, 199:7-18 (stating that CCR teams are not asked to evaluate the state of school facilities).) She  
9 was also not aware of any discussions within the CDE regarding whether or not it would be a good  
10 idea to collect information on the state of school facilities or whether particular facilities issues are  
11 especially acute in any particular school districts. (Lange Depo. 20:16-19, 93:6-20.)

12 782. Ms. Lange also testified that the school facilities needs in some areas are so great that  
13 it would require building “[a] school a day for several years” (Lange Depo. at 72:18) ; that the current  
14 gap in facilities funding has a differential impact on certain school districts (Lange Depo. at 94:20-  
15 95:6) ; and that her branch does not prompt districts to plan for school facilities construction to meet  
16 expanding population needs (Lange Depo. at 92:4-93:1). On the topic of multi-tracking, Ms. Lange  
17 testified that the CDE’s only role with respect to multi-tracking is “to ensure that [such programs] get  
18 served fairly and well, and that information is available for those [schools] that have no choice but to  
19 go on multi-track year-around school.” (Lange Depo. 167:20-23 .) The CDE does not advocate for  
20 increased facilities funding in order to get schools off multi-track, year-round education programs.  
21 (Lange Depo. at 168:16-20.)

22 783. State officials in charge of the Accountability Branch similarly disclaim responsibility  
23 to ensure equal access to basic educational necessities. Paul Warren, Deputy Superintendent of the  
24 Accountability Branch of the CDE, testified that the State’s Accountability Branch does not have any  
25 duties or responsibilities with respect to provision of textbooks, distribution of qualified teachers, or  
26 school facilities. (Deposition of Paul Warren (“Warren Depo.”) at 133:17-134:1, 135:5-15, 135:16-  
27 136:1.) Phil Spears, Director of the Standards and Assessment Division of the Accountability Branch  
28 testified that he has no idea if anybody in the State is responsible for determining whether or not



1 students have qualified teachers, instructional materials, or adequate school facilities. (*See, e.g.,*  
2 Deposition of Phillip Spears (“Spears Depo.”) at 72:23-73:17.) High-ranking Accountability Branch  
3 officials have also never investigated the degree to which students have access to instructional  
4 materials and qualified teachers or the extent to which substandard facilities impact student  
5 achievement, nor do they know of any division of the CDE that has undertaken such an inquiry.  
6 (Warren Depo. at 142:21-143:14, 145:5-25, 146:1-23, 239:21-240:3; Deposition of William Padia  
7 (“Padia Depo.”) at 52:6-53:15, 73:11-23, 74:11-75:3.)

8 784. Although the State has asserted that the UCP, Coordinated Compliance Review,  
9 Immediate Intervention/Underperforming Schools Program (II/USP), School Accountability Report  
10 Cards, and various education statutes and regulations relating to *Williams* conditions satisfy its  
11 constitutional obligation to California schoolchildren (*see* Defendant State of California’s First  
12 Supplemental Set of Responses and Objections to Plaintiffs’ First Set of Special Interrogatories, Set  
13 One), discovery to date has confirmed that these programs are incapable of addressing the unequal  
14 access to basic educational necessities. *See generally* Plaintiffs’ Expert Reports.

15 **3. The State’s Accountability System Fails to Systematically**  
16 **and Directly Address Basic Educational Necessities.**

17 785. Even though the State was well aware of the gross disparities in access to basic  
18 educational necessities at the time the Public School Accountability Act (PSAA) was passed, the  
19 State failed to design a system that was capable of directly addressing inequality. Instead, the PSAA  
20 created a system of accountability that is based solely on student performance on test scores and that  
21 is indifferent to gross disparities in the opportunities and conditions for learning provided by the  
22 State’s system of education to students in different schools and school districts. The major  
23 components of PSAA are the Academic Performance Index (API), the Governor’s Performance  
24 Awards Program, and the Immediate Intervention/Underperforming Schools Program (II/USP). The  
25 newly developed High Priority Schools Grant Program (HPSGP) also plays a role in this  
26 decentralized system. CDE, *Public School Accountability (1999-2000) Immediate*  
27 *Intervention/Underperforming Schools Program (II/USP): How Low Performing Schools in*  
28 *California Are Facing the Challenge of Improving Student Achievement* (2000) at 1.

1           786. The API is a weighted index of student performance measures that currently only  
2 takes into account student performance on standardized tests. *See* LAO, *Analysis of the 2001-02*  
3 *Budget Bill, School Accountability* (2001).<sup>36</sup> Schools are publicly ranked based on their API scores  
4 and expected to meet annual growth targets set by the State. API scores form the basis for rewarding  
5 schools that do well through the Governor’s Performance Awards Program and potentially  
6 sanctioning schools that do poorly if they volunteer to participate in II/USP or HPSGP. *Id.* Schools  
7 that are in the bottom half of the API and fail to meet growth targets are eligible to apply for II/USP  
8 on a voluntary basis, and schools in the lowest deciles are also eligible to participate in the HPSGP.  
9 Only through participation in these programs are school conditions indirectly addressed through the  
10 back door of the State’s accountability system.

11           787. Although these programs could have been designed to provide state oversight of  
12 whether students have access to basic educational necessities, they have instead been designed with  
13 an exclusive focus on improving student achievement on standardized tests. (*See* Mockler Depo.  
14 196:10-198:3 (stating that “II/USP is designed to have — to be essentially a local school-based  
15 externally evaluated system with very little state oversight.”).) Overall, II/USP has numerous  
16 limitations and has failed to ensure equal access to instructional materials; qualified teachers; and  
17 safe, clean facilities that are supportive of learning. *See* Expert Report of Heinrich Mintrop  
18 (“Mintrop Report”) (providing a detailed discussion of the limitations of II/USP). One significant  
19 limitation is the fact that II/USP is a voluntary program. (*See* Deposition of Scott Hill (“Hill Depo.”)  
20 at 30:14-31:17.) Moreover, schools that meet minimal growth targets are presumed to be on the right  
21 track and are not subject to state scrutiny. As currently designed, the system allows for situations  
22 where schools can make marginal test score gains while conditions remain horrible, without any  
23 potential intervention mechanism coming into play.

24           788. Moreover, the State has failed to assess whether or not students have equal access to  
25 the basic educational necessities to be able to succeed on these standardized tests. Paul Warren

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26  
27           <sup>36</sup> Although the PSAA requires that the API include other measures, including, graduation  
28 rates, student attendance rate, and teacher attendance rate, none of these measures have been included  
because the State is not able to accurately collect the requisite school-level data. *See* LAO, *Analysis*  
*of the 2001-02 Budget Bill, School Accountability* (2001) at 3-4.

1 testified that he is not aware of a State investigation on whether there are missing basic educational  
2 inputs in schools in different ranks of the API and does not recall any discussion of whether such  
3 resources are missing. (Warren Depo. at 241:15-243:10.) Phillip Spears testified that, to his  
4 knowledge, the Standards and Assessment Division has never attempted to analyze the results of the  
5 STAR program to see if there is any relationship between results and basic educational necessities,  
6 such as instructional materials, qualified teachers, and habitable school facilities. (Spears Depo.  
7 at 86:24-87:7, 88:6-16, 89:9-16.) Indeed, state official depositions demonstrate that the State views  
8 its accountability role solely in terms of student achievement on standardized tests. (Warren Depo.  
9 at 33:2-4 (The role of accountability is to help “create incentives for the whole system to kind of  
10 maintain focus on the student achievement as the primary goal.”); Faussett Depo. at 30:6-17  
11 (Accountability system means “primarily . . . the development of the academic performance index  
12 [API]” and “the use of that information in evaluating school performance and growth”).)

13 789. In criticizing the State’s backwards approach to accountability, the PPIC has stated  
14 that, “[i]t seems crucial, at the dawn of this new era of state standards, high-stakes tests, and school  
15 accountability, to understand the degree to which ‘the playing field is level’ between schools.” PPIC,  
16 *Equal Resources, Equal Outcomes? The Distribution of School Resources and Student Achievement*  
17 *in California* (2000) at 7. Similarly, Superintendent Eastin has stated that

18 We’re focused on weighing the hog, not making sure it’s fed well. . . .  
19 Just testing is not the magic. The magic is in a powerful curriculum,  
and in giving teachers the time and training.

20 Jodi Wilgoren, *Educators Wary of Bush Testing Plan*, Dayton Daily News, July 17, 2001, at 3A.

21 790. The Joint Committee to Develop a Master Plan for Education has similarly stressed  
22 the importance of ensuring that students have equal access to the educational tools necessary to  
23 compete in the State’s current system. The Joint Committee has recommended that:

24 The Legislature should develop and the Superintendent of Public  
25 Instruction should report yearly on a comprehensive set of educational  
26 indicators, constructed from the data provided by an integrated,  
27 longitudinal, learner-focused data system and from other school-level  
28 data about educational resources, conditions, and learning  
opportunities. Such indicators must be easy to understand and trusted  
as valid and reliable. They must enable policymakers, professionals,  
families, and the public to monitor the status and quality of the

educational system and provide information to guide the improvement of policy and practice.

Joint Comm. to Develop a Masterplan for Educ. — Kindergarten through University, *Master Plan for Education in California* (2002) at 109.

#### **4. The State’s Intervention Mechanisms Are Not Directed At Curing Unequal Access to Basic Educational Necessities.**

791. The State’s intervention mechanisms parallel the failures of the State’s current monitoring system discussed above. *See* Mintrop Report at 11-22. Although State officials admit that the State has the responsibility to intervene in some schools, the current system of intervention has serious limitations. (Faussett Depo. at 152:19-153:16 (stating that “at some point there’s a responsibility that where the state will intercede to try to help improve the situation.”); Hill Depo. at 39:8-23 (stating that “Our accountability system focuses on student outcomes. Schools where students are not performing to expectations indicate that there are — that there is a need for intervention and assistance for students and for the adults at that school and there needs to be assistance provided so that student results improve.”))

792. The State apparently believes that issues such as access to instructional materials and qualified teachers will be addressed by tracking student achievement over time. (*See* Faussett Depo. at 177:7-13, 188:4-13.) This approach is flawed in at least three significant ways. First and foremost, intervention mechanisms are not aimed at curing school conditions, rather at increasing test scores. Second, under the current system, trigger mechanisms for any form of State oversight only occur after three years of participation in II/USP. Finally, only schools that volunteer for II/USP are subject to the possibility of increased State oversight.

793. Moreover, even when the State is placed on notice of gross disparities in access to basic educational necessities through the very II/USP action plans that it requires schools to prepare, no mechanisms are currently in place that would require schools to address these conditions sooner rather than later. Although the Executive Director of the Board of Education admits that “some low-performing schools will require increased investments over time in professional development, teacher quality and other — many other activities in order to continue to improve,” there are currently no

1 mechanisms in place to evaluate whether increased investment is needed, let alone to provide for  
2 such investments. (Mockler Depo. at 174:18-21.)

3 **D. The State’s Failure to Ensure Delivery of Basic Educational**  
4 **Necessities to Students Has Also Ill-Prepared Them for the High**  
5 **School Exit Exam Graduation Requirement.**

6 794. The State’s failure to ensure equal access to basic educational necessities is all the  
7 more harmful in light of its decision to require students to pass the High School Exit Exam (HSEE)  
8 as a condition of graduation. *See* CAL. EDUC. CODE §60851(a). All students in the state’s public  
9 schools, beginning with the class of 2004, must meet this graduation requirement regardless of  
10 whether they have been provided with the basic learning tools and conditions needed to pass the  
11 exam. *See* CAL. EDUC. CODE §60851 (a), §60852.

12 **1. The State knows or should know that it must provide all**  
13 **students with the basic educational tools and conditions**  
14 **needed to pass the High School Exit Exam.**

15 795. The State knows or should know what both common sense and the California  
16 Constitution dictate: before it can deny diplomas to students on the basis of an exit exam, the State  
17 must provide all students with the basic learning tools and conditions needed to pass the exam.  
18 (*Letter from Delaine Eastin to Gov. Gray Davis* (Oct. 11, 2000) at DOE 94387-94388 (“[p]roviding  
19 students with an adequate ‘opportunity to learn’ the material on the test is a critical factor in ensuring  
20 the test is fair to students;” “it is incumbent on all of us to do what we can to create the conditions  
21 that will result in a fair test for students and, in the process, help the state defend the test when legal  
22 challenges arise”); *Warren Depo.* at 534:12-535:7 (“[W]e know that opportunity to learn is kind of  
23 the lynchpin of defending the high school exit exam in terms of fairness, you know, so we are  
24 continuing to work on those issues and [delete “to”] try to define what is the state’s  
25 responsibilities.”); James Brown and David Marsh, *High School Exit Examination Standards Panel,*  
26 *First Interim Report to the Superintendent* (Dec. 3, 1999) at DOE 93226-93227 (“opportunity learn  
27 issues are a key to the success of the High School Exit Exam and must be addressed”).)

28 796. As the State has acknowledged, imposing such a “high-stakes” exam on students  
without curing the underlying fundamental disparities in access to basic learning tools and conditions  
simply makes no sense:

1 Although the Governor, Legislature, and general public expect **all**  
2 students to meet high standards and **all** schools to be accountable for  
3 helping them do so, neither standards nor accountability will guarantee  
4 higher academic achievement by students if certain groups of students  
5 do not have access to the core curriculum on an equitable basis.

6 ....

7 If test results on the HSEE (and the SAT9) are to be meaningful,  
8 California must ensure that *all* students have equal access to the core  
9 curriculum, regardless of the location of the district or school . . .

10 (*Educational Equity, Access, and Support for All Students, “High-Stakes Testing”: Accountability for*  
11 *Performance* (May 23, 2000) at DOE 94470, 94473; *see also* James Brown and David Marsh, *High*  
12 *School Exit Examination Standards Panel, First Interim Report to the Superintendent* (Dec. 3, 1999)  
13 at DOE 93227 (“[W]ithout a sufficient level of resources, the likelihood of meeting those  
14 expectations [for student achievement on the HSEE] is considerably diminished”).)

15 **2. The State knows or should know that many students have**  
16 **not been provided with the basic learning tools and**  
17 **conditions needed to pass the High School Exit Exam.**

18 797. The State has also known that many students have, in fact, been deprived of the basic  
19 learning tools and subjected to conditions that make it likely that the students will not have an equal  
20 chance to pass the HSEE.

21 798. The Advisory Committee on the HSEE cautioned the State, for example: “Teacher  
22 recruitment and quality development should be a top priority for the state — students will not meet  
23 the exit exam performance expectations without further efforts to identify and strengthen teachers.”  
24 (James Brown and David Marsh, *High School Exit Examination Standards Panel, First Interim*  
25 *Report to the Superintendent* (Dec. 3, 1999) at DOE 93227.) Similarly, Interim Secretary of  
26 Education John Mockler recommended that the State propose initiatives to ensure that students have  
27 access to instructional materials so that they can pass the exit exam. (*See Memo from John Mockler*  
28 (Nov. 1, 2000) at DOE 94392.)

799. The DOE has itself acknowledged that “a statewide test that reflects the academic  
achievement of all high school students in California implies that these students have had access to  
the same or comparable instruction that at this point is not reality.” (emphasis added). (*Educational*

1 *Equity, Access, and Support for All Students, “High-Stakes Testing”: Accountability for*  
2 *Performance* at DOE 94473.) Indeed, “all credible experts” with whom DOE consulted about the  
3 HSEE have warned the State that many students have not been provided with the learning tools and  
4 conditions needed to pass the exam. (*Memo from John Mockler* (Nov. 1, 2000) at DOE 94390.. *See*  
5 *also* document titled *High School Exit Examination (HSEE)* at DOE 94202 (cautioning that HSEE  
6 “would not stand up in court” in part because of inadequate opportunity to learn statewide); *Letter*  
7 *from Delaine Eastin to Gov. Gray Davis* (Oct. 11, 2000) at DOE 94388 (informing Gov. Davis that  
8 high-stakes testing experts consulted by DOE agreed that California was not ready to begin giving the  
9 HSEE in large part because of inadequate opportunity to learn).)

10 800. In addition, the independent evaluator of the exit exam, contracted by the State  
11 Superintendent pursuant to Educ. Code § 60855, has questioned the fairness of the HSEE because  
12 “all students may not have had opportunities to learn the material covered by the test.” Human  
13 Resources Research Organization (“HumRRO”), *High School Exit Examination (HSEE): Year 1*  
14 *Evaluation Report* (June 30, 2000) (“Year 1 HumRRO Report”) at iv. *See also* HumRRO,  
15 *Independent Evaluation of the California High School Exit Examination (CAHSEE): Analysis of the*  
16 *2001 Administration* (Jan. 29, 2002) (“HumRRO 2001 Analysis”) at vii-viii (“[W]e continue to have  
17 concerns as to whether all students in the Class of 2004 will have adequate opportunity to learn the  
18 material covered by the CAHSEE by the time they complete the 12<sup>th</sup> grade”).

19 That many students have not been provided with the basic learning tools and conditions  
20 needed to pass the exam, is reflected in its consequence: large numbers of students are failing the  
21 HSEE — and a disproportionate number of those students have been denied equal access to qualified  
22 teachers and instructional materials. *See* Nanette Asimov, *52% Fail High School Exit Exam*, S.F.  
23 *CHRON.*, Oct. 1, 2002 at A1 (“[The State Board of Education President, Reed Hastings]  
24 acknowledged that the low pass rate was because ‘many children, particularly children of color, were  
25 not getting the education they deserved.’”); (*see also* *Educational Equity, Access, and Support for All*  
26 *Students, “High-Stakes Testing”: Accountability for Performance* (May 23, 2000) at DOE 94473  
27 (“Poor instruction and inequitable learning opportunities result often in low-test scores on  
28

1 standardized, norm-referenced tests”). The administration of the HSEE over the last two years, as  
2 well as preliminary field-testing conducted by the State, revealed high failure rates. *See HumRRO,*  
3 *California High School Exit Examination (CAHSEE): Year 3 Evaluation Report* (June 28, 2002)  
4 (“*Year 3 HumRRO Report*”) at 41-58 (for March 2002 results); *HumRRO 2001 Analysis* at 77-88 (for  
5 2001 results); *HumRRO, California High School Exit Examination (CAHSEE): Year 2 Evaluation*  
6 *Report* (June 29, 2001) (“*Year 2 HumRRO Report*”) at 24-25 (for field test results), 36-40 (for March  
7 2001 results); *HumRRO, High School Exit Examination (HSEE): Supplemental Year 1 Evaluation*  
8 *Report* (Aug. 25, 2000) (“*Supplemental Year 1 HumRRO Report*”) at i, 7-8 (for Spring 2000 field test  
9 results); *Year 1 HumRRO Report* at 43-49 (for Spring, 2000 field-test results). As expected, the  
10 groups of students who are most likely to suffer from deprivations of basic educational necessities —  
11 students of color, low-income students, and English Language Learners — are the same groups of  
12 students most likely to fail the HSEE. *Year 3 HumRRO Report* at 42-43; *HumRRO 2001 Analysis* at  
13 80-81; *Year 2 HumRRO Report* at 24-25, 37; *Supplemental Year 1 HumRRO Report* at 7-8; *Year 1*  
14 *HumRRO Report* at 48-49.

17           801. Moreover, the State has known that implementing the exit exam before addressing  
18 underlying inequities in educational opportunity would likely have such a disparate impact on  
19 students. (*See Educational Equity, Access, and Support for All Students, “High-Stakes Testing”:*  
20 *Accountability for Performance* (May 23, 2000) at DOE 94470 (“As [‘high-stakes’] test results  
21 indicate, those students who are in low-performing schools and who themselves perform at low levels  
22 are disproportionately poor, limited in their ability to use the English language, and from minority  
23 groups”)); *Year 1 HumRRO report* at 48 (“[T]here will almost certainly be lower passing rates for  
24 Hispanic, African American English Language Learners), and low socioeconomic (SES) students  
25 than for students in general. The potentially great negative impact of denying more minority, English  
26 Language Learner, and low SES students a diploma should be carefully considered”).  
27  
28



1                                   **3. Absent Remedial Action, the State’s Existing Oversight**  
2                                   **System Will Not Correct the Unequal Access to Basic**  
3                                   **Educational Necessities in Time to Ensure that All Students**  
4                                   **Subjected to HSEE Diploma Denial Have Had the Basic**  
5                                   **Educational Necessities Required to Pass the Exam.**

6                   802.   Despite the devastating test results and the prospect of severe consequences attached  
7                   to failing the high school exit exam, the State has developed no system to ensure that students have  
8                   had access to the basic tools and conditions necessary to pass the exam before they are denied  
9                   diplomas on the basis of the exam. In fact, the State has not developed *any* criteria to determine  
10                  whether students have received the basic educational inputs necessary to pass the exam. (Spears  
11                  Depo. at 166:6-17; Warren Depo. at 354:13-356:19; Hill Depo. at 160:20-162:7 (has no knowledge  
12                  about whether the State, the CDE, the State Board and the Secretary of Education have a definition or  
13                  are developing a definition of opportunity to learn in the context of the HSEE).)

14               803.   Furthermore, the State has not even studied the exam results from the last two years to  
15               determine whether a correlation exists between exam performance and access to instructional  
16               materials or qualified teachers. (Spears Depo. at 87:12-17, 88:17-25, 113:1-10 (after the field test, no  
17               one from his division looked at the results to see if there was a difference in terms of performance  
18               where students were taught by emergency-credentialed teachers and where they were not), 113:16-22  
19               (no study of relationship between textbook availability and HSEE results done); Warren Depo. at  
20               312:2-7 (no discussion at DOE re: determining relationship between emergency-credentialed teachers  
21               and performance on HSEE), 312:8-10 (same for textbooks), 348:7-349:3.) Similarly, there has been  
22               no effort to examine the relationship between the condition of school facilities and the performance  
23               of students on the HSEE, nor has there been an effort to look at the correlation between multi-  
24               tracking and HSEE performance. (Warren Depo. at 312:11-16.) The State has also made no effort  
25               to investigate whether a relationship exists between HSEE results and the number of English  
26               Language Learners at a particular school. (Spears Depo. at 90:12-91:4.) In fact, there has not been  
27               any effort on the part of the State to identify underlying causes of student failures on the HSEE.  
28               (Spears Depo. at 156:13-22.)

804.   Instead of first conducting such inquiries and correcting the underlying inequities in  
educational opportunity, the State has proceeded with an aggressive implementation schedule for the

1 exam requirement – the first class of students to be subjected to the HSEE requirement is slated to  
2 graduate in less than two years. In the meantime, the State has not been willing to develop a system  
3 whereby the students who have suffered some of the most severe deprivations of educational  
4 opportunity could be exempted from the exam requirement.

5 805. As originally drafted, SB 1408 would have allowed districts to waive the HSEE  
6 requirement for any student who had experienced the most radical denial of basic educational  
7 necessities, including 50% or more of courses without adequate textbooks or 30% or more of courses  
8 without credentialed teachers. This year, the Senate Education Committee rejected these provisions  
9 of the bill. SB 1408 was then amended to require school districts solely to report the number of  
10 students who both failed the HSEE and who also lacked basic educational necessities. When 5% or  
11 more of a district’s failing students lack such basic necessities, SB 1408 as amended also required  
12 those districts to address those barriers to learning in its action plans. Although in its amended form,  
13 SB 1408 merely required districts to report information regarding failure rates and to address  
14 potential barriers to passing the HSEE, Governor Davis vetoed this bill citing as the basis for his veto  
15 that “[t]his bill contains costs of over one million dollars and could potentially cost the State much  
16 more.” SB 1408, Governor’s Veto Message (Sept. 30, 2002).

17 806. The State is currently on course to deny diplomas to large numbers of students who  
18 have been deprived of the basic learning tools needed to pass the HSEE.<sup>37</sup> In the meantime, the State  
19 is taking no steps to investigate the high failure rates, to define criteria for determining whether  
20 students have received basic educational necessities, or to correct the disparities in basic educational  
21 necessities that are contributing to high failure rates. In short, the State has developed no system to  
22

23 \_\_\_\_\_  
24 <sup>37</sup> While the State Board of Education does have until August 1, 2003, to decide to delay  
25 implementation of the exit exam requirement as a condition of graduation, there is no requirement  
26 that the Board act even if large numbers of students are demonstrably being denied basic educational  
27 necessities required for exam passage. CAL. EDUC. CODE § 60859 (a). Furthermore, there is no  
28 guarantee that the Board will act on its authority at all. The State has insisted on proceeding with the  
graduation requirement and has ignored recommendations that the exit exam requirement be delayed,  
including recommendations from both Superintendent Delaine Eastin and Interim Secretary of  
Education John Mockler. (*Letter from Delaine Eastin to Gov. Gray Davis* (Oct. 11, 2000) at DOE  
94386-94389; *Memo from John Mockler* (Nov. 1, 2000) at DOE 94390.)

1 ensure that the HSEE does not unfairly punish students for the State’s own failure to provide them  
2 with the basic learning tools and conditions at issue in this lawsuit.

3 **V. THIS COURT SHOULD ISSUE AN ORDER REQUIRING THE STATE**  
4 **TO ESTABLISH MECHANISMS TO PREVENT, DETECT, AND CURE**  
5 **THE INEQUITIES IN ACCESS TO BASIC EDUCATIONAL**  
6 **NECESSITIES.**

7 807. In view of the violations of the constitutional rights of plaintiffs described above, this  
8 Court should order the State to develop a system that prevents, detects, and cures unequal access to  
9 basic educational necessities, i.e., *Butt* violations. This system should be grounded in the  
10 constitutional principle that the State has the ultimate legal responsibility to provide students with  
11 basic educational equity. As discussed in further detail below, such a system would have the  
12 following components: (1) basic resources and conditions standards governing the availability of  
13 adequate facilities, sufficient numbers of qualified teachers, and appropriate instructional materials  
14 that apply to all California public schools; (2) a mechanism to monitor the actual conditions in  
15 California public schools against these standards; and (3) the capacity to address departures from  
16 these standards with an array of intervention and support mechanisms.

17 808. In the first instance, the Court should order the State to devise a remedial plan aimed  
18 at addressing inequality through the creation of an accountability system that incorporates these three  
19 components. The Court should further order that the State has five years to demonstrate that the  
20 accountability system it chooses to create, in fact, results in the reduction of inequality in access to  
21 sufficient instructional materials, qualified teachers, and safe, clean facilities that support learning.  
22 Such an order would comport with a long line of analogous cases from other states and be consistent  
23 with the Court’s proper role under California separation of powers and justiciability doctrines.

24 **A. Courts In Analogous Cases Have Ordered States to Devise a**  
25 **Remedial Scheme Capable of Addressing Constitutional Violations.**

26 809. Numerous courts have ordered states to fulfill their duty to provide public school  
27 students with a constitutionally adequate education. These decisions follow a similar pattern. First,  
28 courts find that the state’s actions or inaction have violated constitutional provisions. Second, courts  
order the state to take steps to remedy the problems identified. Some courts have provided specific

1 guidelines or standards that must be followed to address the problems, other courts have simply told  
2 the state: “fix it.”

3 810. In *Leandro v. State*, 488 S.E.2d 249 (N.C. 1997), the North Carolina Supreme Court  
4 held that the constitutional right to education guarantees “every child of the state the opportunity to  
5 receive a ‘sound basic education.’” *Leandro v. State*, 488 S.E.2d at 259. The appellate court then  
6 remanded plaintiffs’ adequacy claims for trial. The trial court decided to hear rural plaintiffs’ and  
7 urban plaintiffs’ claims separately, beginning with rural plaintiffs. After a series of opinions, the trial  
8 court recently issued a final ruling in rural plaintiffs’ case, *Hoke County v. State Bd. of Educ.*,  
9 95 CVS 1158. The court held:

10 The State of North Carolina is ultimately responsible to ensure that the  
11 constitutional guarantee to each child of the opportunity to receive a  
12 sound basic education is met. The State of North Carolina also has the  
inherent power to do those things reasonably related to meeting that  
constitutional duty.

13 *Hoke County v. State Bd. of Educ.*, 95 CVS 1158, at 81 (Gen. Ct. of Justice Super. Ct. Div. Apr. 4,  
14 2002). The court further explained that the constitutional rights of schoolchildren are being violated  
15 “where there are children in a classroom, or in an entire school or school district, who are not being  
16 taught by competent, qualified, caring teachers, led by competent, qualified, caring principals, using  
17 targeted, effective and valid educational methods and programs that work with particular groups of  
18 children, at-risk, or not.” *Id.* at 92. The judge ordered the state to “remedy the constitutional  
19 deficiency for those children who are not being provided the basic educational services” set out in the  
20 decision. *Id.* at 111. These “educational services” included that (1) “every classroom be staffed with  
21 a competent, certified, well-trained teacher who is teaching the standard course of study by  
22 implementing education methods that provide differentiated, individualized instruction, assessment  
23 and remediation to the students in that classroom”; (2) “every school be led by a well-trained  
24 competent principal” and (3) “every school be provided, in the most cost effective manner, the  
25 resources necessary to support the effective instructional program within that school so that the  
26 educational needs of all children, including at-risk children, to have equal educational opportunity to  
27 obtain a sound basic education, can be met.” *Id.* at 110. The court ruled that

1 The nuts and bolts of how this task should be accomplished is not for  
2 the Court to do.... [T]his task belongs to the Executive and Legislative  
3 Branches of Government. By directing this be done, the Court is  
4 showing proper deference to the Executive and Legislative Branches by  
5 allowing them, initially at least, to use their informed judgment as to  
6 how best to remedy the identified constitutional deficiencies.

7 *Id.* at 111.

8 811. In *Claremont School District v. Governor*, 794 A.2d 744 (N.H. 2002), the New  
9 Hampshire Supreme Court held that accountability standards are an essential component of the state's  
10 obligation to provide a constitutionally adequate public education and that the existing statutory  
11 scheme was inadequate. 794 A.2d at 758; *see id.* at 758 ("An output-based accountability system that  
12 merely encourages local districts to meet educational standards does not fulfill the State's  
13 constitutional duty.... While the State may delegate its duty to provide constitutionally adequate  
14 education, the State may not abdicate its duty in the process. The purpose of meaningful  
15 accountability is to ensure that those entrusted with the duty of delivering a constitutionally adequate  
16 education are fulfilling that duty." (citations omitted)). The court recognized that "there are many  
17 different ways the Legislature could fashion an educational system while still meeting the mandates  
18 of the Constitution." *Id.* at 758 (citation omitted). The court ordered that the "State 'needs to do  
19 more work' to fulfill its duty to provide a constitutionally adequate education and incorporate  
20 meaningful accountability in the education system." *Id.* at 759. The court left the particular policy  
21 decisions necessary to satisfy the state's duty to ensure delivery of a constitutionally adequate  
22 education to the legislative and executive branches. *Id.* at 761.

23 812. In *Rose v. Council for Better Education*, 790 S.W.2d 186 (Ky. 1989), the Kentucky  
24 Supreme Court held that the General Assembly had "failed to establish an efficient system of  
25 common schools throughout the Commonwealth" and that the "entire system of common schools is  
26 unconstitutional." 790 S.W.2d at 215. The Kentucky Supreme Court agreed with the trial court's  
27 assertion that an "efficient" system of education must have as its goal to provide each child with at  
28 least seven capacities: "(i) sufficient oral and written communication skills to enable students to  
function in a complex and rapidly changing civilization; (ii) sufficient knowledge of economic,  
social, and political systems to enable the student to make informed choices; (iii) sufficient

1 understanding of governmental processes to enable the student to understand the issues that affect his  
2 or her community, state, and nation; (iv) sufficient self-knowledge and knowledge of his or her  
3 mental and physical wellness; (v) sufficient grounding in the arts to enable each student to appreciate  
4 his or her cultural and historical heritage; (vi) sufficient training or preparation for advance training in  
5 either academic or vocational fields so as to enable each child to choose and pursue life work  
6 intelligently; and (vii) sufficient levels of academic or vocational skills to enable public school  
7 students to compete favorably with their counterparts in surrounding states, in academics or in the job  
8 market.” *Rose*, 790 S.W.2d at 222.

9       813. The court directed the General Assembly to “recreate and redesign a new system . . .  
10 [that] will guarantee to all children the opportunity for an adequate education, through a state  
11 system.” *Id.* at 212. The court emphasized that the General Assembly must “not only establish [such  
12 a] system, but it must monitor it on a continuing basis . . . . The state must carefully supervise it, so  
13 that there is no waste, no duplication, no mismanagement, at any level.” *Id.* at 211. The court left the  
14 questions of how to carry out this duty to the General Assembly. *Id.* at 212.

15       814. In *McDuffy v. Secretary of Education*, 615 N.E.2d 516 (Mass. 1993), the  
16 Massachusetts Supreme Court held that the state constitution’s education clause imposed a duty upon  
17 the state “to ensure the education of its children in the public schools.” 615 N.E.2d at 519. The court  
18 further held that this constitutional duty was not being met. *Id.* at 555. Relying on the broad  
19 standards set forth in *Rose* (discussed above), the court stated that it would “leave it to the magistrates  
20 and legislature to define the precise nature of the task which they face in fulfilling their constitutional  
21 duty to educate children today, and in the future.” *Id.* at 554-55.

22       815. In *Abbeville County School District v. State*, 515 S.E.2d 535 (S.C. 1999), the South  
23 Carolina Supreme Court held that the state education clause “requires the General Assembly to  
24 provide the opportunity for each child to receive a minimally adequate education.” 515 S.E.2d  
25 at 540. The court defined “minimally adequate” education as including “adequate and safe facilities”  
26 in which they have the opportunity to acquire:

- 27               1) the ability to read, write and speak the English language, and  
28               knowledge of mathematics and physical science;  
                  2) a fundamental knowledge of economic, social and political systems,

1 and of history and governmental processes; and  
2 3) academic and vocational skills.

3 *Id.* The court cautioned that these were only guidelines as to what constitutes a minimally adequate  
4 education, stating: “We recognize that we are not experts in education, and we do not intend to  
5 dictate the programs utilized in our public schools. Instead, we have defined, within deliberately  
6 broad parameters, the outlines of the constitution’s requirement of minimally adequate education.”

7 *Id.* The court emphasized that the duty to provide and implement a minimally adequate education  
8 system rested with the legislature. *Id.* at 541.

9 816. In *Pauley v. Kelly*, 255 S.E.2d 859 (W. Va. 1979), the West Virginia Supreme Court  
10 held that education is a fundamental, constitutional right. 255 S.E.2d at 878. The court found that  
11 the state constitution’s “thorough and efficient system of free schools” clause required “certain high  
12 quality educational standards,” and that the school system would be tested on remand by those  
13 standards. *Id.* Upon remand, the trial court issued a 244-page opinion finding widespread  
14 constitutional inadequacies in both the school system and the financing system. *See Pauley v. Bailey*,  
15 324 S.E.2d 128, 130-31 (W. Va. 1984). The trial court outlined the core elements that a “thorough  
16 and efficient” school system must have in the categories of curriculum, personnel, facilities,  
17 materials, and equipment. *Id.* at 135. The court ordered the legislature to develop a plan to address  
18 the violations. *Id.* In 1983, the court approved the “Master Plan for Education,” which called for  
19 improved facilities and other educational necessities. *Id.* Despite extensive reforms, in 1996, the trial  
20 court found that the state had ignored many of the reforms that had been ordered. The trial court  
21 found that the state was still not providing a “thorough and efficient” system of education. *See*  
22 *Advocacy Center for Children’s Educational Success with Standards, Finance Litigation: West*  
23 *Virginia*, at [www.accessednetwork.org/litigation/lit\\_wv.html](http://www.accessednetwork.org/litigation/lit_wv.html) (last visited Sept. 26, 2002).  
24 Subsequently, the legislature created “a state office to perform school reviews and, under a court-  
25 ordered agreement in 2000, the state must evaluate and report on individual schools’ specific needs,  
26 from personnel to curriculum.” *Id.*

27 817. Courts ruling on school finance cases have followed a similar pattern of finding state  
28 liability for failing to provide equal educational opportunities and then ordering the legislature to take

1 steps to address the identified problems. In *Serrano II*, the trial court “simply declared that the public  
2 school financing system before it, which was administered by the parties defendant, was in violation  
3 of state constitutional provisions guaranteeing equal protection of the laws.” 18 Cal. 3d at 751. The  
4 trial court retained jurisdiction over the matter so that “any party might apply for ‘appropriate relief’  
5 in the event that the lawmakers and the Governor had failed within a reasonable time. . . ‘to take the  
6 necessary steps to design, enact into law, and place into operation’ a system which would comply  
7 with those provisions.” *Id.* at 751-52. The trial court further stated that the “judgment is not intended  
8 to require, and is not to be construed as requiring, the adoption of any particular plan or system for  
9 financing the public elementary and secondary schools of the state . . . .” *Id.* at 752.

10 818. In *Lake View School District, No. 25 v. Huckabee*, No. 1992-5318 (Pulaski Chancery  
11 Court, May 25, 2001), at <http://www.cfequity.org/ar5-25dec.html>, the Arkansas trial court declared  
12 the state’s school funding system unconstitutional for the third time in less than twenty years. The  
13 court stated: “The school funding system now in place in the State of Arkansas is inequitable and  
14 inadequate under Article 14, § 1, and Article 2, §§ 2, 3 and 18 of the Arkansas Constitution.” *Id.* at 1.  
15 The court did not mandate a particular remedy; however, it did require the state to take remedial steps  
16 to fix the problem. *Id.* at 27. The court stated that it would leave the task of formulating a particular  
17 remedy to the legislature in the first instance. *Id.*

18 819. In *DeRolph v. State*, 677 N.E.2d 733 (Ohio 1997) (“*DeRolph I*”), the Ohio Supreme  
19 Court declared the state’s education finance system unconstitutional. The court admonished the  
20 legislature to create a new school funding system. *See* 677 N.E.2d at 747. Following this decision,  
21 the legislature enacted various changes. Despite increased funding enacted by the legislature and the  
22 new governor’s proposals for major state funding for school facilities, the court found the funding  
23 system was still unconstitutional in its second *DeRolph* decision. *See DeRolph v. State*, 728 N.E.2d  
24 993 (Ohio 2000) (“*DeRolph II*”). Subsequently, the state again revised the funding system and  
25 enacted a two-year \$1.4 billion increase in state funding for education. On September 6, 2001, the  
26 Ohio Supreme Court issued *DeRolph III* in a third attempt to resolve the case. *See DeRolph v. State*,  
27 754 N.E.2d 1184 (Ohio 2001) (“*DeRolph III*”). The court again concluded that the state’s  
28 educational funding system was unconstitutional. *Id.* at 1200-1201. The court provided the



1 legislature and the governor with specific directions on how to modify the funding formula to make  
2 the new plan constitutional. *Id.* at 1201. The court ordered the legislature to increase the per-pupil  
3 foundation amount and phase in the “parity aid” more rapidly. *Id.*

4 820. In *Campbell County School District v. State*, 907 P.2d 1238 (Wyo. 1995)  
5 (“*Campbell I*”), the Wyoming Supreme Court held that the state school funding system was  
6 unconstitutional on equity and adequacy grounds. 907 P.2d at 1268. The *Campbell* court provided  
7 remedial guidelines to the legislature based on the need to prepare high school graduates to  
8 participate in the political system and to compete both intellectually and economically. *See id.* at  
9 1259-63. The court directed the legislature to determine the cost of a quality education and allocate  
10 funding for it. *See id.* at 1279. On February 23, 2001, the Wyoming Supreme Court ruled in  
11 *Campbell II* that the state’s new cost-based system was constitutional with the exception of the  
12 capital funding component. *Campbell County Sch. Dist. v. State*, 19 P.3d 518 (Wyo. 2001)  
13 (“*Campbell II*”). The state subsequently moved for rehearing, and the court again found in *Campbell*  
14 *III* that the capital funding component of the most recent legislation did not pass constitutional muster  
15 and required the legislature’s further attention. *Campbell County Sch. Dist. v. State*, 32 P.3d 325, 337  
16 (Wyo. 2001) (“*Campbell III*”).

17 821. In *Roosevelt Elementary School District Number 66 v. Bishop*, 877 P.2d 806 (Az.  
18 1994), the Arizona Supreme Court held that the state’s scheme of school financing violated the  
19 Arizona Constitution’s requirement that the Legislature establish and maintain a “general and  
20 uniform public school system.” 877 P.2d at 810. The court noted that the system, which required  
21 districts to fund anything over the state’s contribution through bonded indebtedness, “has a  
22 particularly profound effect on capital needs.” *Id.* It concluded that the system was unconstitutional  
23 because there were enormous disparities among school facilities and that the disparities were the  
24 “direct result of the state’s financing scheme.” *Id.* at 815. The court concluded that injunctive relief  
25 was inappropriate, but held that the districts were entitled to declaratory relief because the state  
26 funding scheme violated the Constitution. *Id.* at 815-16. The court stated that there were many  
27 possible financing schemes that would comply with the state constitution and left it to the legislature,  
28 “[a]s the representatives of the people” to devise an appropriate financing scheme. *Id.* at 816.

1           822. In a series of subsequent cases, the Arizona Supreme Court reviewed the financing  
2 systems passed by the Legislature in the wake of *Roosevelt*. In *Hull v. Albrecht*, 950 P.2d 1141 (Ariz.  
3 1997) (“*Hull I*”), the court again held that the state’s financing scheme, which still placed heavy  
4 reliance on district property taxation even though property tax valuation varied tremendously among  
5 districts, was unconstitutional. See 950 P.2d at 1142. The court also issued more specific guidance  
6 to the defendants than it had in *Roosevelt*. It stated that the Legislature 1) must define minimum  
7 standards for school facilities; 2) make available to all districts funds sufficient to meet the minimum  
8 facilities standards; and 3) ensure that the funding mechanism does not itself cause substantial  
9 disparities between the districts. See *id.* at 1145. In so doing, the court made clear that “[l]ocal  
10 control [did] not include the power to choose substandard facilities. Local control includes the power  
11 to choose facilities beyond the standard.” *Id.* at 1146.

12           823. In *Hull v. Albrecht*, 960 P.2d 634 (Ariz. 1998) (“*Hull II*”), the court again reviewed the  
13 state’s school financing system. The court held that the scheme satisfied the first two requirements of  
14 *Hull I* because the Legislature had passed some minimum school building standards that every school  
15 district must comply with and had provided sufficient funds for each district to meet the standards.  
16 See *id.* at 637. The court held that the financing system nevertheless did not satisfy the third  
17 requirement of *Hull I* because it allowed districts that chose to opt out of the state financing scheme  
18 and pay for their capital needs solely through local financing much greater opportunities to access  
19 their local property tax base than districts that chose to participate in the state’s funding program. See  
20 *id.* at 639.

21                           **B. Examples from Other States Demonstrate that Measures Are**  
22                           **Available to Detect, Correct and Cure Unequal Access to Basic**  
23                           **Educational Necessities.**

24           824. Other states have taken a variety of measures to ensure equality in access to basic  
25 educational necessities. Plaintiffs provide some examples of such measures below to demonstrate  
26 that there are a number of policy options available to the State going forward to address the current  
27 inequities. The State’s failure to undertake steps to address the gross disparities in access to  
28 educational necessities is all the more unwarranted in light of available alternatives from other states.

1                                   **1. Other States Have Developed Mechanisms to Ensure Equal**  
2                                   **Access to Instructional Materials.**

3           825. Plaintiffs' expert Jeannie Oakes provides a number of examples of mechanisms to  
4 ensure equal access to instructional materials that other states have adopted. *See Oakes Textbook*  
5 Report at 103-13. For example, Florida has established a "one book per child" provision as follows:

6                       Each school district must purchase current instructional materials to  
7 provide each student with a textbook or other instructional materials as  
8 a major tool of instruction in core courses of the appropriate subject  
9 areas of mathematics, language arts, science, social studies, reading,  
10 and literature for kindergarten through grade 12.

11 FLA. STAT. ANN. § 1006.40(2)(a) (2002).

12           826. In South Carolina, State Board Regulations also require "one textbook per child."  
13 South Carolina's Department of Education provides schools with a manual, *Instructional Materials*  
14 *Management Procedures for Schools*, to guide school administrators in the management of  
15 instructional materials. Oakes Textbook Report at 103-04. The guide is based on South Carolina  
16 Code of Regulations 43-71, which states:

17                       Section 1: Free Basal Textbook Enabling Act. Pursuant to Section 49-  
18 31-360 to provide "free basal textbooks" in Grades 1-12, State Board of  
19 Education does hereby set forth procedures for ordering instructional  
20 materials.

21                       Section 2: Requisition for Free Instructional Materials. Requisitions  
22 for free instructional materials shall be made only to the State  
23 Department of Education, in accordance with *Instructional Materials*  
24 *Management Procedures for Schools* . . . .

25           26 S.C. CODE ANN. REGS. 43-71 (2002). According to *Instructional Materials Management*  
26 *Procedures for Schools*, allocations are calculated primarily using a school's prior year textbook  
27 inventory information and reported Average Daily Membership for the current year. Oakes Textbook  
28 Report at 103-04. "A school's eligibility to order instructional materials under the state['s] free  
textbook program is determined by class or course enrollment, the school/district curriculum, and the  
principle — *one textbook per child* — in a subject area." S.C. Dep't Educ., *Instructional Materials*  
*Management Procedures for Schools* (2002) at 5 (emphasis added). The South Carolina Code also  
states that "a public school may not begin a course if state-approved textbooks or other course  
material is not available on the first day of class or if the delivery date is after the first two weeks of

1 classes unless the board of trustees determines that the class should be offered.” S.C. CODE ANN.  
2 § 59-31-75 (2001).

3 827. Dr. Oakes has also found that other states have established policies that mandate  
4 students’ access to textbooks and other instructional materials:

- 5 • Rhode Island’s policy states that all students must be provided textbooks in the core  
6 subjects, stating that: “The school committee of every community as it is defined in § 16-  
7 7-16 shall furnish upon request, at the expense of the community, textbooks to all students  
8 in grades K-12 in the fields of mathematics, science, and modern foreign languages and in  
9 the fields of English/language arts and history/social studies in grades K-8 only, appearing  
10 on the list of textbooks published by the commissioner of elementary and secondary  
11 education as provided in § 16-23-3, to all pupils of elementary and secondary school  
12 grades resident in the community, the textbooks to be loaned to the pupils free of  
13 charge . . . .” R.I. GEN. LAWS § 16-23-2 (2001).
- 14 • Utah mandates that “The State Board of Education, in consultation with local school  
15 boards and local superintendents, shall design and implement a statewide plan to:  
16 (i) provide for an adequate supply of textbooks for students in the state’s public schools on  
17 an ongoing basis; and (ii) replace outdated textbooks or textbooks in poor condition.”  
18 UTAH CODE ANN. § 53A-12-201.5(1)(a) (2002).

19 *See* Oakes Textbook Report at 104.

20 828. In addition, some states have developed a variety of accountability mechanisms to  
21 ensure equal access to instructional materials. Oakes Textbook Report at 107-13, 118-21. For  
22 example, Utah requires each school board to provide an annual report to the State Board of Education  
23 on the district’s textbook needs for the just completed school year. *See* UTAH CODE ANN. § 53A-12-  
24 201.5(1)(c)(i) (2002).

25 829. Kentucky addresses access to textbooks in the context of an overall accountability  
26 system to ensure that schools succeed with all students and receive the “appropriate consequences” in  
27 proportion to that success. *See* Oakes Textbook Report at 118-21 for a more detailed discussion of  
28 the Kentucky model; *see* KY. REV. STAT. ANN. § 158.6455 (2001). As part of this accountability

1 system, the legislature established an assessment index and empowered the Board of Education to  
2 adopt administrative regulations to establish consequences for schools whose assessment index fell  
3 below established levels. Oakes Textbook Report at 118-21. These consequences may include a  
4 scholastic audit, eligibility for Commonwealth School Improvement Funds, school improvement  
5 plans, education assistance from a highly skilled certified staff, evaluation of school personnel and  
6 student transfer to successful schools. *See id.* Access to textbooks and instructional materials is one  
7 of the items assessed by the school and the scholastic audit teams. *See* Oakes Report at 118-21; KY.  
8 REV. STAT. ANN. § 158.6451 (2001).

9 **2. Other States Have Developed Mechanisms to Ensure Equal**  
10 **Access to Qualified Teachers.**

11 830. According to plaintiffs' expert Dr. Darling-Hammond, Connecticut and North  
12 Carolina provide two examples of states that have successfully initiated programs to address  
13 inequality in access to qualified teachers. *See* Darling-Hammond Report at 97-100. Beginning in the  
14 late 1980s, these states passed some of the "most ambitious" and comprehensive teacher legislation in  
15 the country. *Id.* at 97. Both of these states, which have a relatively large low-income student  
16 population, coupled major statewide teacher salary increases and improvements in teacher salary  
17 equity with intensive recruitment efforts and initiatives to improve pre-service teacher education,  
18 licensing, beginning teacher mentoring, and ongoing professional development. *Id.*

19 831. Since instituting these reforms, North Carolina has posted the largest student  
20 achievement gains in mathematics and reading of any state in the nation, now scoring well above the  
21 national average in 4th grade reading and mathematics, although it entered the 1990s near the bottom  
22 of the state rankings. *Id.* Moreover, North Carolina was identified by the National Education Goals  
23 Panel "as the state that has been most successful at closing the achievement gap between white and  
24 minority students during the 1990s." *Id.* (citation omitted) Connecticut also made significant  
25 progress "becoming the highest achieving state in the nation, despite an increase in the proportion of  
26 low-income and limited English proficient students during that time." *Id.* By 1998, Connecticut's 4<sup>th</sup>  
27 grade students ranked first in the nation in reading and mathematics on the National Assessment of  
28 Educational Progress, despite increased student poverty and language diversity in the state's public

1 schools during that decade; Connecticut’s proportion of 8<sup>th</sup> graders scoring at or above proficient in  
2 reading was first in the nation; and Connecticut’s 8th graders werer the only ones who performed  
3 significantly better than the U.S. average. *Id.* Finally, more than 25% of Connecticut’s students who  
4 are black or Hispanic substantially outperform their counterparts nationally as well. *Id.*

5 832. North Carolina’s reforms were initiated in 1983 with omnibus legislation. *Id.*. The  
6 legislation accomplished many things simultaneously, including:

7 (a) boosting salaries in the mid-1980s and again in the 1990s,  
8 (b) creating a career development program that rewarded teachers for  
9 greater education and for achieving National Board Certification,  
10 (c) launching an aggressive fellowship program to recruit hundreds of  
11 able high school students into teacher preparation each year by entirely  
12 subsidizing their college education, (d) requiring schools of education  
13 to become professionally accredited by the National Council for the  
14 Accreditation of Teacher Education (NCATE), (e) increasing licensing  
15 requirements for teachers and principals, (f) investing in improvements  
16 in teacher education curriculum, (g) creating professional development  
17 academies and a North Carolina Center for the Advancement of  
Teaching, (h) developing teacher development networks like the  
National Writing Project and an analogous set of professional  
development initiatives in mathematics, (i) launching a beginning  
teacher mentoring program, and (j) introducing the most wide-ranging  
set of incentives in the nation for teachers to pursue National Board  
certification. North Carolina now has more Board-certified teachers  
than any other state. The recent National Education Goals Panel report  
recognized North Carolina for having made among the greatest gains in  
mentoring for beginning teachers as well as the greatest achievement  
gains for students.

18 *Id.* at 97-98.

19 833. North Carolina’s investment in teaching occurred in conjunction with extensive  
20 investments in “early childhood education and general K-12 spending increases that lowered  
21 pupil/teacher ratios slightly.” *Id.* at 98. In the early 1990s, North Carolina introduced new  
22 curriculum standards, accompanied by an extensive program of professional development for  
23 teachers statewide. *Id.* Subsequently, the 1997 Educational Excellence Act furthered efforts to  
24 upgrade the quality of teacher preparation and teaching quality, “pouring hundreds of millions of  
25 dollars into a new set of reforms.” *Id.* The Act required that all colleges of education establish  
26 “professional development school partnerships to provide the sites for year-long student teaching  
27 practicums.” *Id.* It also funded a more intensive beginning teacher mentoring program, further  
28 upgraded licensing standards, created pay incentives for teachers who pursue master’s degrees and

1 National Board certification, and authorized funds to raise teacher salaries to the national average.

2 *Id.*

3 834. Connecticut instituted similar programs. *Id.* The 1986 Educational Enhancement Act  
4 allocated over \$300 million to increase teacher salaries in such an equalizing way that made it  
5 possible for lower wealth districts to compete for qualified teachers. *Id.* This act and accompanying  
6 legislation:

- 7 • increased and equalized teacher salaries across districts (providing  
8 state salary assistance to reach a target minimum for the salaries of  
9 fully certified teachers),
- 10 • increased licensing standards by requiring more teacher preparation  
11 at entry, including a major in the content area to be taught, the  
12 passage of basic skills and content tests, increased content  
13 pedagogical training, and preparation to teach reading and special  
14 needs learners,
- 15 • eliminated emergency licensing and toughened temporary license  
16 requirements (granted only to trained teachers),
- 17 • enacted forgivable loans and scholarships to attract high-ability  
18 candidates into teacher education at the graduate and undergraduate  
19 levels and to encourage candidates to teach in priority schools and  
20 shortage fields,
- 21 • facilitated the entrance of well-trained teachers from out-of-state,
- 22 • created a staged licensing process that included a beginning teacher  
23 program with individual trained mentors for all new teachers and  
24 student teachers,
- 25 • required ongoing professional development, including a masters  
26 degree for a professional license and continuing education for  
27 license renewal (9 credits every 5 years),
- 28 • required districts to develop professional development plans, career  
incentive plans, and teacher evaluation systems, and then partially  
funded implementation of the plans, plus evaluation and  
dissemination of the most effective models.

*Id.* at 98-99.

835. A Connecticut Department of Education analysis of the outcomes of this initiative  
found that it eliminated teacher shortages and emergency hiring, even in the cities, and created  
surpluses of teachers within three years of its passage. *Id.* at 99. By 1990, nearly one-third of the  
new teachers hired had graduated from colleges rated “very selective” or better in Barron’s Index of

1 College Majors (1988) and 75% of the teachers had undergraduate grade point averages of B or  
2 higher. *Id.* Even with an increase in demand in recent years, the pool of qualified applicants has  
3 remained impressive. *Id.* In National Education Goals Panel reports highlighting Connecticut's  
4 strong performance and large gains in achievement, educators and state officials pointed to the salary  
5 increases and teacher education investments as central to their progress. *Id.*

6 836. More recently, Connecticut has invested in new curriculum frameworks and a  
7 statewide assessment system for students using performance intended to measure higher order  
8 thinking and performance skills. *Id.* This system is tied to statewide reporting of scores and  
9 substantial new professional development and is used to diagnose problems and improve curriculum  
10 and teacher development. *Id.*

11 837. The reforms that have occurred in Connecticut and North Carolina involve substantial  
12 investments in pre-service and in-service education for teachers linked to standards that incorporate  
13 much of the current knowledge base about teaching and learning. *Id.* at 99-100. Both states  
14 increased salaries, the quality of preparation for teachers, and the consistency with which they  
15 enforced their standards, thereby sharply reducing the hiring of unlicensed and under-prepared  
16 teachers. *Id.* at 100. These focused and comprehensive policy initiatives have improved the quality  
17 of the teachers in these states. *Id.*

18 **3. Other States Have Developed Mechanisms to Ensure Equal**  
19 **Access to Clean, Safe and Properly-Maintained Facilities.**

20 **a. Other States and Professional Organizations Provide**  
21 **Examples of Facilities Standards.**

22 838. Other states, such as Arizona, have adopted regulations requiring minimum school  
23 facilities conditions. Arizona did so in the wake of rulings by the state's Supreme Court holding the  
24 state's school capital financing system unconstitutional. *See* ARIZ. REV. STAT. § 15-2011 (2001);  
25 ARIZ. ADMIN. CODE § R7-6-101 (2001), *et seq.* Those regulations require districts to satisfy the  
26 following minimum standards, among numerous others:

- 27 • cumulative minimum square footage for the number of students in the district, which  
28 varies according to the grade level of the students (§ R7-6-210);



- 1 • an HVAC system in each general, science, and art classroom that can maintain
- 2 temperatures between 68 and 82 degrees Fahrenheit (§ R7-6-213);
- 3 • an HVAC system capable of maintaining a CO2 level of not more than 800 PPM above
- 4 the ambient CO2 level in each general, science, and art classroom (§ R7-6-215);
- 5 • acoustics in each general, science, and art classroom that permit a background sound level
- 6 of less than 55 decibels to be maintained (§ R7-6-214); and
- 7 • exterior envelope, interior surfaces, and interior finishes are safe and capable of being
- 8 maintained (§ R7-6-271).

9 ARIZ. ADMIN. CODE § R7-6-101 (2001), *et seq.*

10 839. In some cases, such as in the area of ventilation, standards proposed by professional  
11 organizations provide another source for the State to draw upon to establish minimum school  
12 facilities requirements. For example, the American Society of Heating, Refrigeration and Air  
13 Conditioning Engineers has determined that there should be a ventilation rate of 15 cubic feet per  
14 minute (cfm) for acceptable indoor air quality in school classrooms and 20 cpm in school  
15 laboratories. *See* ANSI/ASHRAE Standard 62-2001, Ventilation for Acceptable Indoor Air Quality,  
16 Table 2.2, at 10.

17 **b. Other States Provide Examples of Facilities**  
18 **Monitoring and Intervention Mechanisms.**

19 840. Plaintiff's expert, Dr. Nancy Myers, has also found that other states provide examples  
20 of the feasibility of setting up a system of information gathering about the condition of school  
21 facilities.<sup>38</sup> Expert Report of Dr. Nancy R. Myers ("Myers Report"). In Maryland, for example, the  
22 state has used two methods for obtaining information about school facilities conditions. The first  
23 method is used as part of Maryland's Aging Schools Program to gain an initial sense of the facilities  
24 conditions in order to distribute program funds in an equitable fashion. In the first method:

25 <sup>38</sup> California previously had part of a system for gathering information concerning school  
26 facilities. According to Duwayne Brooks, Director of the School Facilities Planning Division of the  
27 CDE, districts were supposed to report the condition of their school facilities to the State. Brooks  
28 Depo. at 337:5-14. However, the inventory did not function properly because "[t]hey got a very poor  
response from the schools, and the schools that they did get a response from, there was no  
requirement to annually report and maintain the data that was in the system as current data, and so it  
eventually fell apart." Brooks Depo. at 337:9-14.

1 all local school Districts would be responsible for completing a school  
2 facility survey which would require them to identify all of the square  
3 footage in all of their facilities by construction age. If the facility or  
4 portions of the facility had been remodeled or renovated at some point,  
5 then through established criteria, the renovated square footage would  
6 receive an “adjusted” age. Through this simple data gathering system,  
7 the State could identify all of the facilities within the State based on age  
8 of square footage and begin to establish a database for prioritizing  
9 financial resources which need to be expended to address the facility  
10 needs. [Although] [a]ge is not the sole determining factor of need[,] it  
11 can be a key indicator, especially in making an initial assessment of  
12 statewide needs.

13 *See Myers Report at 6.*

14 841. Maryland also has an ongoing inspection system. Under that system, the Board of  
15 Public Works and the Interagency Committee on Public School Construction conduct random on-site  
16 inspections of every facility in Maryland on a rotating basis. In general, Maryland’s inspection  
17 process results in every school in smaller districts being inspected every five years. It takes  
18 approximately 8-12 years for every school in the largest districts to be inspected. Myers Report at 8.

19 842. Maryland’s inspection system is, however, risk sensitive. Thus, if a school is  
20 inspected and receives a ranking of “poor,” the state inspector inspects it again within a year to  
21 determine if the conditions that resulted in it obtaining a “poor” grade have been corrected. Myers  
22 Report at 8.

23 843. Maryland’s inspection system includes review of both health and safety issues and  
24 educational appropriateness. The system utilizes a rating scale for various categories including:  
25 windows and caulking, equipment on roof, condition of roof, fire and safety equipment, boilers/water  
26 heaters, steam distribution, plumbing, air conditioning and capacity of building and number of  
27 students within the building. Each separate inspection area is rated as superior, very good, good, fair,  
28 poor or NA. A multiplier is assigned to each of these areas, and each facility is given an overall  
rating. This provides a standardized system for inspection with each facility given an objective  
rating. Myers Report at 7.

844. In Arizona, the Legislature passed a statute requiring the state’s School Board to  
contract with building inspectors to “complete an initial assessment of school facilities and  
equipment” for compliance with the state’s minimum facilities standards after the Arizona Supreme

1 Court held that the state’s school capital finance system violated the Arizona Constitution. ARIZ.  
2 REV. STAT. § 15-2002(E) (2001). The statute also requires the Board to inspect every school building  
3 in the state at least once every five years to ensure compliance with the state’s minimum school  
4 facilities standards. *See* ARIZ. REV. STAT. § 15-2002(A)(3) (2001).

5 845. West Virginia has also established a system whereby an official from the state inspects  
6 school facilities. Any school building in the state built with state funds is inspected once a year by an  
7 official of the State Department of Education. W. Va. Sch. Bldg. Auth. Guidelines and Procedures,  
8 section 400.90 (1999). Standardized forms have been established to evaluate school facilities and for  
9 the onsite visit made by the inspector when inspecting each school building. The Office of Education  
10 Performance Audits’, *5-8 School Facilities Evaluation Checklist* addresses such things as size of  
11 educational spaces (with guidelines for recommended sizes) and requires, as one example, that the  
12 “[s]ize of academic learning areas is adequate,” with “adequate” defined as 28 to 30 square feet per  
13 student. . The inspection report is sent to the State School Building Authority (SBA).

14 846. In addition to establishing a facilities inspection system, West Virginia also has a two-  
15 tiered oversight system with respect to all school facilities. There are two oversight regimes, one for  
16 schools that have been built in whole or in part with state funds, and one for schools that have been  
17 built entirely with local funds. If a district accepts state funds in order to build a school, it enters into  
18 a long-term partnership with the state Department of Education and the state School Building  
19 Authority to ensure that the schools are properly maintained and that the state’s capital investment is  
20 not squandered. If the annual inspection by a DOE official (discussed above) reveals a maintenance  
21 problem, such as a leaking roof that has not been properly patched, an inspector from the SBA returns  
22 to the school to see if the problem has been fixed. If the problem has not been fixed, the district and  
23 the SBA official work together to draw up an action plan to fix the problem. The action plan includes  
24 a time frame in which the problems are to be fixed and a scheduled time for a follow-up visit. W. Va.  
25 Sch. Bldg. Auth. Guidelines and Procedures, section 400.90 (1999). If the SBA inspector determines  
26 during the follow-up visit that adequate progress has not been made to remedy the problems, the  
27 inspector reports that information to the State Board of Education. Once the State Board is notified,  
28 it is required to “restrict the use of the necessary funds or otherwise allocate funds from moneys

1 appropriated by the legislature” to contract with someone to fix the problem. *Id.* The cost of the  
2 repair is deducted from the district’s allocation of State funds.

3 847. West Virginia also has a program whereby any district applying for state funds must  
4 have a comprehensive 10-year facilities and maintenance plan drawn up by an architect in  
5 conjunction with a school facilities planner. *See id.* at § 100.00. In order to be eligible to do the ten-  
6 year plan, the school facilities planner must have taken a training course run by the Coalition for  
7 Education Facilities Planners International. Part of the school’s inspection includes an evaluation of  
8 the 10-year plan, including whether the district completed the work in the plan scheduled for the  
9 previous year.

10 848. West Virginia’s oversight of schools that have been built entirely with local funds is  
11 less rigorous. All schools, even those not built with state funds are inspected every three years as part  
12 of a comprehensive assessment of districts by the “Education Assessment Group.” The EAG is  
13 separate from the DOE, but reports to the state Board of Education. If a district has exhibited  
14 significant failure to maintain and operate its school facilities, the state Board of Education can take  
15 over the district.

16 **C. AB 1200 Provides One Example of a Possible Remedial**  
17 **Framework to Address the Inequities Presented in This Case.**

18 849. As the education reform cases set forth above demonstrate, once liability is  
19 established, it is the State’s obligation to develop a remedial framework capable of addressing the  
20 inequality. In light of the issues raised in this lawsuit, the State must come forward with a plan to  
21 develop an effective oversight system capable of addressing gross disparities in access to basic  
22 educational necessities. Such a system must contain three basic components: standards, the means to  
23 monitor the standards, and the capacity to intervene. The overreaching goal of the system should be  
24 the reduction of inequality, and the system should have a means of measuring whether this goal is  
25 being achieved. If the State fails to come forward with a plan that comports with these requirements,  
26 the remedial steps discussed below could serve as the basis for development of such a plan. Plaintiffs  
27 provide this remedial alternative not as a mandate that the State must follow, but as one of many  
28 possible frameworks that could be developed to address current inequities.

1           850. Plaintiffs rely on the Supreme Court’s ruling in *Butt v. State of California* and the  
2 Legislature’s subsequent enactment of AB 1200 to provide the framework for a potential remedial  
3 model in this case. In *Butt*, the underlying problem was that the Richmond school district ran out of  
4 money and was planning to shut down its schools six weeks early. This problem arose in large part  
5 because there were inadequate oversight mechanisms in place to monitor district fiscal management.  
6 The court ruled that “the State is obliged to intervene when a local district’s fiscal problems would  
7 otherwise deny its students basic educational equality . . . .” *Butt*, 4 Cal. 4th at 692. “[T]he trial  
8 court directed the State, the SPI, and the Controller to ensure ‘by whatever means they deem  
9 appropriate’ that District students would receive their educational rights; both orders made clear that  
10 ‘[h]ow these defendants accomplish this is up to the discretion of defendants. . . .’” *Id.* at 694. In  
11 response to the trial court’s invitation, the Superintendent and the Controller proposed a conditional  
12 loan plan that was approved by the court. *See id.* The primary components of the court’s order  
13 approving the plan were: (1) an emergency loan to the district; (2) displacement of the local board by  
14 the Superintendent; and (3) development of a repayment plan on the district’s behalf to ensure  
15 operation of the school through the school year. *See id.* at 676.

16           851. In order to prevent, detect, and cure subsequent budgetary problems of similar  
17 magnitude, however, the Legislature enacted AB 1200. *See id.* at 691-92 (noting “in response to this  
18 case, the Legislature and the Governor have already agreed to tighter county and State control of  
19 local district budgets and spending. Under certain circumstances, this new legislation [AB 1200]  
20 requires the SPI’s complete takeover of an insolvent district as a precondition of an emergency State  
21 appropriation.” (footnotes omitted)). AB 1200 (1) created standards against which to measure district  
22 fiscal management; (2) established county offices of education as the mechanism for monitoring  
23 fiscal oversight of districts; and (3) created the Fiscal Crisis Management and Assistance Team to  
24 assist county offices of education and districts in need of fiscal management assistance and  
25 intervention. *See* Cal. EDUC. CODE § 42127.8 (2001). The combination of the *Butt* court’s order and  
26 AB 1200 (with modifications to address the issues raised by this lawsuit) could be used as a remedial  
27 analog to address the substandard school conditions in plaintiffs’ schools.

1                                   **1. Standards Are a Necessary Component of an AB 1200-style**  
2                                   **Remedy.**

3           852.   The first step in developing such a remedy is the articulation of standards by which to  
4   measure whether students are receiving basic educational equity. These standards would address  
5   access to instructional materials; access to qualified teachers; and access to safe, uncrowded, and  
6   properly maintained school facilities.

7           853.   Promulgation of minimum standards covering these areas would serve four significant  
8   functions. First, minimal standards provide schools and districts with guidance regarding the State's  
9   expectations for school conditions and quality. *See, e.g.,* Finance and Facilities Working Group of  
10   the Joint Committee to Develop a Master Plan for Education, *Final Report* at 44 (stating that  
11   "[c]ommon standards will establish an expectation of the condition and quality of school facilities  
12   throughout the state."). These standards provide a floor beneath which no school may fall, thereby  
13   helping reduce the gross disparities in conditions that currently exists. Second, binding standards  
14   provide an incentive to districts to monitor whether schools are in compliance with the requirements  
15   set forth in the standards. Legal requirements can have the effect of altering behavior. Third,  
16   standards provide a basis against which a school or district's performance can be evaluated. In other  
17   words, standards provide a measuring stick. Fourth, as stated by the Finance and Facilities Working  
18   Group K-12 Education with respect to school facilities, but equally applicable to all of the above  
19   areas: "The linkage of the standards to a reliable source of annual state funding is direct and logical:  
20   The state establishes the expectations and guarantees the provision of resources to meet them." *Id.*

21           854.   Plaintiffs have discussed the components of appropriate standards for these areas in  
22   previous sections of this Liability Disclosure, as well as in previous discovery responses, and set forth  
23   these standards below.

24                                   **a. Standards Regarding Equal Access to Instructional**  
25                                   **Materials**

26           855.   An appropriate standard regarding equal access to instructional materials would:  
27   (1) call for each student to receive his or her own copy of a textbook for use in class and to take or  
28   leave home for homework; (2) call for each textbook students use to be reasonably current as  
measured against the pace of developments in the relevant subject matter; and (3) call for each

1 textbook that students use to be in satisfactory physical condition. An appropriate standard would  
2 also address the possibility that, in a particular course, no “textbook” has been adopted, but rather a  
3 set of instructional materials has been prepared. If these instructional materials are indeed the basic  
4 instructional materials for the course (drawing on the definition of “basic instructional materials” set  
5 forth in California Education Code sections 60040-60048), then the standard should specify that they  
6 too must be available in a number sufficient to allow each student in core subjects to take or leave  
7 such materials home for homework.

8 **b. Standards Regarding Equal Access to Qualified**  
9 **Teachers**

10 856. An appropriate standard regarding equal access to qualified teachers would require  
11 that at least 80% of the teachers in each school, and at least 80% of the teachers on each track in  
12 schools with multi-track programs, be fully credentialed and that those teaching English Language  
13 Learners be specially authorized to teach them. In addition, low-performing schools should be  
14 prohibited from having more than the State average proportion of teachers without preliminary or  
15 clear credentials and schools with high proportions of English Language Learners should be  
16 prohibited from having more than the State average proportion of unqualified English Language  
17 Learners teachers. The California Professional Development Task Force (2001) has recommended  
18 that this requirement apply to schools that are in the bottom quartile of achievement on the API.  
19 CDE Prof. Dev. Task Force, *Learning . . . Teaching . . . Leading: Report of the Prof. Dev. Task*  
20 *Force* (2001) at 22-23.

21 **c. Standards Regarding Equal Access to Clean, Safe,**  
22 **and Properly Maintained Facilities**

23 857. Currently, there are few standards that apply to existing K-12 school buildings, as  
24 opposed to standards that apply to new construction. The Finance and Facilities Working Group of  
25 the Joint Committee to Develop a Master Plan for Education (“Facilities Working Group”) has  
26 recommended that the CDE “[e]stablish clear, concise and workable standards that are characteristic  
27 of facilities that provide a high quality/high performance teaching and learning environment.”  
28 Facilities Working Group, *Final Report of the Finance and Facilities Working Group* at 44. In

particular, the Finance and Facilities Working Group has recommended that the standards include, but not be limited to the following categories:

- 1) Classrooms: address the adequacy of the number and size of classrooms to deliver the local educational program
- 2) Maintenance: address the conditions of building—good repair, painted, roofs in good condition, and inspections occur on an adequate periodic basis
- 3) Cleanliness: address litter and graffiti; assure clean and adequate food preparation and serving facilities
- 4) Safety: address fire hazards, emergency telephone accessibility, air quality, and other health issues
- 5) Windows: are operable, safe, and clean
- 6) Restrooms: are operable, safe, and clean
- 7) Drinking water: fountains are operable, safe, and clean

*Id.* at 44-45.

858. Promulgating clear and workable facilities standards is very feasible. The California Department of Education has already drafted a variety of non-binding recommendations for school facilities. CDE, *1978 Facilities Performance Profile (reissued in 1988)* at DOE 184-206. These include, among others, the following recommendations on classroom temperature, lighting, classroom space:

- The inside air temperature of all instruction areas can be maintained at a minimum of 68 degrees Fahrenheit (21 degrees centigrade) during winter months and a maximum of 80 degrees Fahrenheit (27 degrees centigrade) during summer months for all hours of normal occupancy.” (CDE, *Facilities Performance Profile: An Instrument to Evaluate School Facilities*, 1978 Edition (1988) at 12. DOE 199.)
- “The electric lighting system is designed to permit minimum visual performance equivalent to an effective sphere illuminance (ESI) of 55 footcandles (592 lux) on the student’s task” (*Id.* at DOE 197.)
- The size and shape of all instructional spaces are determined by the number of occupants and their activities. (Minimum area recommended for normal classroom functions is 30 square feet [2.8 square metres] per occupant at maximum loading.)” (*Id.* at DOE 195.)



1                                   **2. Monitoring Mechanisms Are Necessary to Detect Whether**  
2                                   **Schools Are Complying With Established Standards.**

3           859.   The next step in developing an AB 1200-style remedy is the development of  
4 monitoring mechanisms. The State does not have a system by which it systematically obtains  
5 information on school conditions throughout the State or evaluates them against any criteria or  
6 binding standards. Evaluating the conditions and existence of basic resources in schools would serve  
7 four important purposes. First, it would enable the State to discover schools that did not meet  
8 minimum standards and take steps to ensure that the conditions in those schools improved. Second,  
9 the inspection process would provide an incentive to districts to ensure that schools were at or above  
10 standards, in order to avoid bad publicity and potentially punitive actions by the State or another  
11 entity. Third, an assessment of school conditions and basic resources would enable the State to  
12 assess the extent of problems, which would help in formulating the necessary response. Fourth, an  
13 overall assessment of the condition and resources of schools would enable the State to focus on the  
14 schools and districts with the greatest problems, thereby alleviating the current inequities.

15           860.   Using an AB 1200-style remedial approach, county offices of education, or some other  
16 intermediate entity, could act as the mechanism for monitoring whether or not schools within their  
17 purview were meeting the standards discussed above.<sup>39</sup> See, e.g., Joint Committee to Develop a  
18 Master Plan for Education, *The California Master Plan for Education* at 97 (stating that  
19 “County/Regional offices of education should be assigned a set of functions, resources, and  
20 authority . . . to act as monitoring agents on behalf of the State to ensure that every public school  
21 meets minimal standards of educational quality.”). County superintendents are constitutionally-  
22 established entities that already play a significant role in monitoring district fiscal matters. See CAL.  
23 CONST. Article IX, §§ 3 & 4. County superintendents would be directed to collect information on  
24 schools in their county or region from a wide range of sources, including: budgets (which county

25  
26           <sup>39</sup> There are a number of other “intermediate” levels of school management that could be  
27 developed to monitor school conditions and provide interventions. Plaintiffs offer one potential  
28 option for purposes of presenting a comprehensive framework that could be adopted by the  
Legislature to address the issues raised by this lawsuit. Another option would be to rely on regional  
offices of the CDE, such as the Regional School Support and Improvement Centers that are being  
utilized in connection with Title I.

superintendents already review under AB 1200), teacher or parent complaints, CCR reviews, WASC assessments, II/USP and HPSGP action plans, school site plans, media reports, unannounced school visits, school board meetings, etc. In reviewing this information, county superintendents would examine the conditions of schools against the standards discussed above.

861. With respect to school facilities, the Facilities Working Group has proposed that all districts “develop and annually update a Facilities Master Plan that would identify long-term capital and ongoing maintenance needs for the district, along with a plan of finance to address these needs. . . . The district plan would be subject to public review and comment during local hearings, and a final plan adopted by the local board would be filed with the county office of education and the State Department of Education.” Joint Comm. to Develop a Master Plan for Educ. — Kindergarten through University: *Finance & Facilities Working Group K-12 Education, Final Report* (Mar. 2002) at 45. According to the Facilities Working Group report, “[t]he initial five-year plan must be designed to ameliorate all deficiencies within the first five years with the recognition that appropriate state funding support will be in place.”<sup>40</sup> *Id.* The Facilities Working Group’s recommendation would work well with the AB 1200-style remedial framework proposed by plaintiffs because it would provide county superintendents with another source of information by which to gauge the state of the schools under their purview.<sup>41</sup>

862. Although other approaches to the assignment of monitoring responsibility could also be acceptable, employing county superintendents in this monitoring role would not represent a significant departure from the current statutory framework for school governance. California Education Code section 1240 expressly states that the superintendent of schools of each county shall

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<sup>40</sup> Facilities funding is addressed below in section \_\_\_\_.

<sup>41</sup> The Facilities Working Group also recommends having intermediate agencies, such as county offices of education, oversee the districts’ preparation and completion of the goals set forth in the five-year plans, as well as satisfaction of the minimum facilities standards. This oversight would consist of, among other things, technical assistance, monitoring the facilities planning to ensure districts are meeting the state standards, and direct intervention if districts fail to satisfy state standards. “The Working Group recommends that county offices of education, or other successor intermediate agencies, incorporate a review of capital budgets against school district facilities plans and offer, where needed, further support by providing technical, early intervention and prevention assistance to their respective school districts regarding adequate educational facilities.” *Id.* at 46.

1 “superintend the schools of his or her county” and “[v]isit and examine each school in his or her  
2 county at reasonable intervals to observe its operation and to learn of its problems.” Cal. EDUC.  
3 CODE § 1240 (2002).

### 4 **3. Intervention Mechanisms Are Necessary to Correct Gross** 5 **Departures From the Established Standards.**

6 863. Based on the results of their investigation into school conditions, county  
7 superintendents would determine whether standards were being met. Districts with substantial  
8 departures from standards would receive increased oversight and assistance from the county office of  
9 education and, in some circumstances, the State. The magnitude of the oversight and/or assistance  
10 would be based on the severity of the problem. The primary, and least intrusive, level of oversight  
11 and assistance would simply consist of informal discussions between the county superintendent and  
12 school or district regarding departures from standards noted by the county superintendent. When  
13 county superintendents determined that schools or districts were not meeting the standards, a likely  
14 first step would be to “pick up the phone” and discuss the identified problem with district or school  
15 personnel.

16 864. If problems persist, county superintendents would have the discretion to provide  
17 schools or districts with increased oversight and assistance using FCMAT-style intervention teams.  
18 These teams would be assigned to particular schools or districts to review operations and diagnose  
19 solutions for the identified departures from standards. Initially, these intervention teams would make  
20 non-mandatory recommendations to schools or districts on how to improve conditions. If problems  
21 persisted after a reasonable period of time had passed, however, the intervention teams could  
22 recommend that county superintendents increase the level of oversight and assistance at the school or  
23 district. Possible actions that could result from this next level of oversight would be withholding  
24 budget approval, as is contemplated under AB 1200 (*see* Cal. EDUC. CODE § 42127(g) and (i)  
25 (2001)), or replacing certain school or district personnel.

26 865. For schools or districts with the most severe and persistent problems, county  
27 superintendents in conjunction with intervention teams would have the authority and means to  
28 provide “baseline stabilization” interventions. Districts or schools in need of “baseline stabilization”

1 would be required to follow intervention team recommendations and would be provided with the  
2 requisite assistance to do so. These high-need schools and districts would potentially have access to  
3 “baseline stabilization” funds that we would expect to be created as a result of this accountability  
4 model.

5 866. Based on their investigation of school conditions, county superintendents would  
6 annually prepare a report on the state of the schools in their districts. Currently, pursuant to  
7 California Education Code section 1240(c), county superintendents “*may* annually present a report of  
8 the state of the schools” in their counties.” Cal. EDUC. CODE § 1240(c) (2002) (emphasis added).  
9 Under plaintiffs’ proposed remedial model, county superintendents would be *required* to prepare a  
10 state of the schools report. This report would address whether standards are being met and the steps  
11 the county is taking to monitor and remediate departures from the standards. This report would be  
12 prepared and posted on the Internet and at schools and made available at school board meetings. The  
13 State would also be provided with the reports.

#### 14 **4. Likely Outcomes to Result from This Model**

15 867. Establishing a remedial model that addresses the issues raised by this lawsuit would  
16 likely result in positive outcomes that go beyond the immediate scope of a remedial order. First, as a  
17 result of the development of standards, school districts would have a clear understanding of their  
18 obligations to students. In addition, parents, teachers, and students would have a clear understanding  
19 of what they should expect from their schools.

20 868. Second, as a result of relying on county offices of education to monitor school  
21 conditions, problems at schools would become known sooner rather than later. Early detection of  
22 problems would also likely result in savings down the road as crises are diverted due to careful  
23 review. In schools where there are substantial departures from standards, county superintendents  
24 would be able to identify the causes for the departure. In addition, county superintendent reports  
25 could be compared with school or district-prepared SARCs; accordingly, SARCs would become a  
26 more accurate source of information for parents and the community. The state of the schools annual  
27 report would also provide stakeholders with a comprehensive assessment of the schools in the county  
28 and provide parents with a meaningful opportunity to compare their schools against others in the

1 surrounding area. Because this information would also be made available to the State, policymakers  
2 in Sacramento would have additional data on which to base educational funding and policy decisions.

3 869. Finally, as a result of county intervention requirements, we would expect that the CDE  
4 would provide technical assistance, develop intervention models, and document best practices.  
5 Examples of technical assistance the CDE could provide are the development of the template for the  
6 state of the schools annual report and development of a model school budget with which county  
7 superintendents could compare expenditures in schools that had a substantial departure from  
8 standards. Given the CDE's expertise with school interventions in districts such as Compton, county  
9 superintendents would likely turn to the CDE for assistance in developing "baseline stabilization"  
10 models. CDE supervision of interventions might also be an outcome in the case of schools with the  
11 most extreme and prolonged substandard conditions. The CDE would also likely study schools  
12 facing various interventions to determine whether interventions are successful and pass along "best  
13 practices." If many schools are identified that are in need of "baseline stabilization," the CDE may  
14 expand its current personnel to address these needs. The expanded accountability role of the county  
15 offices of education would also be incorporated and coordinated with the CDE's accountability  
16 mechanisms.

17 870. Significantly, any accountability system should embrace the notion of reciprocal  
18 accountability. The Joint Committee to Develop a Master Plan for Education describes the necessary  
19 components of such a system in this way:

20 To be useful, the state accountability system should monitor all  
21 levels . . . of the educational system, and include appropriate indicators  
22 that measure the effectiveness of each level . . . in exercising its  
23 responsibilities. Consequently, the State's indicators should enable the  
24 public to hold policymakers and governing bodies accountable for  
providing the commitment, policy mechanisms, resources, and  
conditions necessary to a high-quality system of education, as well as  
to hold schools, educators, and students accountable for the outcomes  
that result.

25 Joint Committee to Develop a Master Plan for Education, *The California Master Plan for Education*  
26 at 109.

**D. The High Priority Schools Grant Program Provides Another Example of a Possible Remedial Framework to Address the Inequities Presented in This Case.**

871. The HPSGP provides another potential remedial framework and triggering mechanism to achieve the goal of baseline stabilization. This remedial model has the potential to complement or work in conjunction with the AB 1200-style model outlined above.

872. To address the issues raised by this lawsuit, the current HPSGP would need to be revised to incorporate standards by which to measure whether students are receiving basic educational equity. As discussed above, these standards would address access to instructional materials; access to qualified teachers; and access to safe, uncrowded, and properly maintained school facilities.

873. Through the needs assessment process currently required by California Education Code section 52055.620(a)(3), schools would be required to assess compliance with each of the above standards. In the action plan required by California Education Code section 52055.620, schools would also be required to address what actions are appropriate in light of the findings in the needs assessment. In addition, schools would be required to provide the public with notice of their compliance or lack thereof. The State would monitor action plans to ensure that issues identified in the needs assessment were addressed in the school's action plan. Funding levels for the action plan would be dependent on the school's assessment of the cost of improving current conditions to comply with standards. Such costs would be evaluated and approved or adjusted by the State.

874. By the beginning of the third year after a school's entry into HPSGP, a school would be required demonstrate compliance with the standards. Failure to make reasonable progress in complying with the standards would result in diagnostic and aggressive State intervention. Schools that failed to make such progress could be referred to county offices of education for intervention services or other State entities could be developed to provide this assistance. A timeline and guidelines would be developed for stabilizing the school site and developing an environment in which boosting academic achievement in meaningful ways becomes an attainable and sustainable goal.

**E. Additional Intervention Mechanisms Are Necessary to Ensure  
Equal Access to Facilities Funding and Construction.**

**1. Facilities Funding**

875. In addition to the intervention mechanisms discussed above, additional mechanisms will be needed to ensure equal access to facilities funding and new school construction.

876. The Legislature has recently passed a school bond measure. The bond measure would provide approximately \$21.4 billion dollars for K-12 school construction and modernization if the first portion is approved in November of this year and the second portion is approved by the voters in 2004. A summary of the categories of funding and the amounts are as follows:

**Proposed 2002 and 2004 Bond Allocations, AB 16**

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

*Figures in italics are included in major categories*

\*Backlog amounts include Hardship

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

Source: Robert Corley's summary of AB 16, Chapter 33/2002, Corley Report at 66.

877. One of the most effective short-term measures the State could take to address the major inequities in school facilities conditions in California is to ensure that districts with serious

1 overcrowding and/or deteriorated facilities conditions file applications for all the funds they are  
2 entitled to for modernization and new school construction.

3       878. The current school facilities financing system is application driven. That is, unless a  
4 district files an application for funds to modernize a school or to build a new school, it is ineligible to  
5 receive state funds. Moreover, the rules governing this bond, as under the last bond measure  
6 Proposition 1A, give priority to those districts that file their applications earliest.<sup>42</sup> Indeed, districts  
7 that were eligible and applied for state funds under Proposition 1A, but did not receive them because  
8 those funds were exhausted, already are in line for funding if the current bond passes. As explained  
9 above, in numerous cases, poorly managed districts have either failed to file applications for funds for  
10 which they were eligible, or have filed their applications more slowly than better managed districts.  
11 As a result, better managed districts have tended to be more successful in obtaining state bond funds.

12       879. To ensure that funds from the proposed bond, if passed, reduce the unconstitutional  
13 inequities in school facilities conditions the State should be ordered to assign employees of the  
14 DOE School Facilities Planning Division, the Office of Public School Construction, FCMAT, or the  
15 County Boards of Education to districts to oversee their applications for bond funds.

16       880. If the bond passes, the State should be ordered to take steps to ensure that districts that  
17 currently have some of the most severe facilities needs and have eligibility for new school  
18 construction funds or modernization funds receive their fair share of the funds from the bond. One  
19 possible step would be to have county superintendents, or employees of the State Department of  
20 Education, the Office of Public School Construction or FCMAT assigned to districts such as  
21 Oakland, Los Angeles, San Francisco, West Contra Costa, with large numbers of school in the II/USP  
22 program and well-known facilities problems, to monitor the districts' applications for funding under  
23 the new bond. These monitors would help the districts assess their eligibility for bond funding,  
24 timely file their applications, and take appropriate steps to raise local matching funds, or justify their  
25 hardship applications.

26 \_\_\_\_\_  
27       <sup>42</sup> The distribution of Proposition 1A funds on a first-come, first-served basis was altered as a  
28 result of litigation, *Godinez v. Davis*, No. C227352 (L.A. Sup. Ct.), which contended that bond funds  
had not been distributed on the basis of need, as required by statute.



881. Once the districts obtained state funds, these monitors would continue to work with the districts to ensure that the capital construction projects are properly managed, work is completed according to schedule, and funds are not wasted.

882. If the monitors concluded that technical assistance was insufficient, they would have the discretion to engage in more intrusive intervention, including replacing district facilities personnel, hiring outside school facilities consultants, and requiring districts to follow recommendations made by the monitors.

883. If all else failed, monitors would have the authority to set up a school construction authority to handle a particular capital construction and modernization project for the district or to take over all capital construction and modernization work in the district.

## 2. Ensuring Sufficient Resources for New Construction, Modernization, and Maintenance of School Facilities

884. Applying a remedial approach described above specifically to facilities problems, the State would monitor districts with known serious facilities needs to ensure that they 1) apply for and obtain their fair share of funds from the new bond; and 2) utilize those funds efficiently to improve their facilities, and reduce the number of students in unsafe, unhealthy, or overcrowded facilities, and the number of students subjected to measures designed to cope with overcrowding, such as Concept 6 MTYRE and busing. An AB 1200-like monitoring system as described above would help remedy the problems faced by students in schools where poor facilities conditions are the result of poor maintenance, operations and custodial care. However, even if this Court orders the State to implement oversight with respect to the new bond and along the lines of plaintiffs' proposed AB 1200 model, this oversight will still not remedy the facilities inequities faced by numerous categories of students. Specifically, the new bond will do nothing to address the following categories of students, or will be insufficient to bring those students' schools into acceptable condition:

- Students in overcrowded multi-track year-round schools, where the district cannot afford to, or will not forego MTYRE operational grant funds;<sup>43</sup>

<sup>43</sup> LAUSD and other districts with large numbers of multi-track year-round schools are facing enormous budget shortfalls and are slashing their budgets. These budget shortfalls make it uncertain whether districts will be able to afford to forego their Operational Grant funds under Education Code

- Students in unsafe, unhealthy, or educationally inappropriate schools in districts that have not passed a bond, or cannot raise significant funds from developers' fees, and do not satisfy the financial hardship criteria<sup>44</sup> set forth in California Code of Regulations, title 2, section 1859.81 (2002);<sup>45</sup>
- Students in schools where the conditions are poor yet the school is not eligible for modernization funds because the school has already received modernization funds in the past. For example, a 75-year old school that was modernized 20 years ago would not be eligible for modernization funds for five years, even if it were in terrible condition; and
- Students in schools that are in such poor condition that the modernization funds, which do not vary based on the actual facilities needs at a school, will be insufficient to remedy all of the serious problems at the school.

885. Accordingly, the Court should order the State to take steps to develop a remedial framework that will ensure these categories of students attend schools with safe, clean facilities that support learning and are not overcrowded or adversely impacted by measures designed to cope with overcrowding, such as Concept 6 MTYRE and busing. There are a variety of steps that the State could take to satisfy its constitutional duty to these categories of students. Plaintiffs will set forth a couple of examples here.

886. The State should assess the condition of all school facilities throughout the State against minimum school facilities standards that it creates. Once it determines what schools do not

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section 42263 in order to restore their eligibility for construction funds. (Helfand, *Trustees Find Cuts to Budget Difficult*, LOS ANGELES TIMES, May 1, 2002.) If they cannot, then they will be unable to obtain state funds to build new schools so they can take schools off multi-track calendars.

<sup>44</sup> Under the current regulations, a district must provide 50% matching funds for new construction projects unless it meets the financial hardship criteria in California Code of Regulations, title 2, section 1859.81 (2002). Those criteria include: that the district's current bonded indebtedness is at least 60% of the district's total bonding capacity, that the district had a successful bond election within the last two years for the maximum amount allowed by Proposition 39, or "[o]ther evidence of reasonable effort as approved by the SAB." *Id.*

<sup>45</sup> Voters in districts with bad facilities management might very reasonably vote against a local bond because they believe that the district will mismanage the bond funds. Moreover, mismanaged districts are unlikely to run a well-managed bond campaign.

1 satisfy these minimum conditions standards, it can determine how much money would be required to  
2 bring those facilities up to those standards.

3 887. The State could then provide the funds to the districts through a state bond, through  
4 general fund revenues or other means of the State's choosing with the requirement that the districts  
5 use the funds for the sole purpose of bringing all of their facilities into compliance with the minimum  
6 facilities standards. The State could monitor to ensure that the districts actually did bring their  
7 facilities into compliance using an AB 1200-like model described above.

8 888. In the alternative, the State could contract directly with construction firms, as Arizona  
9 has, to do all of the new construction and modernization work required to bring all facilities into  
10 compliance with the State's minimum facilities standards. *See* ARIZ. REV. STAT. § 15-2021 (2001)  
11 (giving power to state school facilities board to pay contractors to correct deficiencies in school  
12 facilities to bring them up to state standards under Arizona Revised Statutes section 15-2011).

13 889. Once all of the facilities were brought into compliance with the standards, the State  
14 could continue with its current system of bond-based facilities financing, so long as it:

15 1) implemented sufficient oversight to ensure that districts act in such a way that they maintain their  
16 facilities in compliance with the State's minimum facilities standards; and 2) structured the hardship  
17 criteria for obtaining State bond funds so that poorer districts are not denied the funding sufficient to  
18 build, modernize and maintain its facilities so that all students attend schools that comply with the  
19 State's minimum standards. This approach would be consistent with *Butt*, even if some districts used  
20 their bonding capacity to build more elaborate facilities, so long as no students attend schools where  
21 the facilities are fundamentally below the prevailing statewide standard.

22 890. In the alternative, the State could ensure that districts have sufficient resources to  
23 ensure that there are no unconstitutional inequalities among school conditions by transitioning away  
24 from a general obligation bond-based system of facilities funding. Both the LAO and the Finance  
25 and Facilities Working Group of the Joint Committee to Develop a Master Plan have recommended  
26 that the State transition to financing capital construction and modernization by allocating yearly funds  
27 on a per-ADA basis to districts. Both groups recommend that this transition take place only after  
28 there have been sufficient bond expenditures to remedy the current gross inadequacies in facilities

1 conditions. Yearly ADA-based funding would eliminate the problems caused by the feast and famine  
2 funding that has resulted from relying on the inconsistent funding provided by general obligation  
3 bonds. For example, districts could establish long-term modernization, maintenance and new  
4 construction plans around a consistent funding stream rather than scrambling to do work when there  
5 are bond funds available.

6 891. In order to ensure that no students suffer from constitutional inequities in facilities  
7 conditions, the funding levels would need to be based on an realistic assessment of the actual cost of  
8 maintaining, modernizing and constructing facilities that meet the State's minimum facilities  
9 standards. Districts that chose to build schools that exceeded that standard could draw upon local  
10 funding sources to do so. But each district should be guaranteed the minimum level of funds  
11 necessary for it to have sufficient schools that meet the State's minimum standards.<sup>46</sup>

12 **F. The State Must Reverse or Modify Those Programs and Policies**  
13 **That Have a Disparate and Discriminatory Impact and Refrain**  
14 **From Enacting New Policies That Exacerbate Inequality.**

15 892. The State must also reverse or modify those policies and programs that have a  
16 disparate and discriminatory impact (especially on low income students, students of color, and  
17 English Language Learners), including those programs discussed below.

18 **1. The State Must Phase Out the Use of Concept 6 MTYRE.**

19 893. The State must phase out the use of any multi-track year-round calendar, such as  
20 Concept 6, that offers fewer than 180 days of instruction — the number provided by every other  
21 school calendar currently used in California. Students at these schools should be afforded the  
22 opportunity to attend a school operating on a traditional two-semester schedule, as are the great  
23 majority of California public schoolchildren.

24 894. Despite the State's knowledge of the negative consequences of Concept 6 and the  
25 discriminatory impact it has on low-income students and students of color, it has failed to take steps

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26 <sup>46</sup> The LAO recommends that under this system, districts would still generally be expected to  
27 provide a local match drawn from developers' fees, general obligation bonds, or other sources. The  
28 LAO also recommends that annual capital funds for districts with the lowest property tax base be  
adjusted upward. That system would be consistent with the State's constitutional obligations so long  
as students are not forced to attend schools that do not satisfy the minimum standard due to a  
district's unwillingness or inability to pass a local bond.

1 to end this practice. Indeed, on September 19, 2002, the Governor vetoed AB 2027, which would  
2 have phased out Concept 6 over time. The Governor’s veto message stated that “[g]iven the fiscal  
3 and resource implications associated with eliminating Concept 6 MTYRE, and the increase in  
4 resources required to provide the same level of classroom availability, I believe that school districts  
5 should continue to have discretion in choosing their own education program schedule.”  
6 September 19, 2002 Veto Message of AB 2027. In light of the impact Concept 6 MTYRE calendars  
7 have on educational opportunities, the State’s rationale for continued support of the program must be  
8 compelling. The veto message indicates that no such compelling rationale exists.

9 895. Instead, the veto message makes clear that the State intends to consign students —  
10 primarily low income students, students of color, and English Language Learners — indefinitely to  
11 schools with fewer school days and fewer learning opportunities for no reason other than unrelenting  
12 overcrowding disguised as local discretion. The history of State financial incentives to districts that  
13 operate MTYRE calendars like Concept 6 in order to avoid the costs of construction, coupled with  
14 the State’s failure to assess school crowding statewide, let alone to act on such an assessment,  
15 confirms that local “discretion” to operate Concept 6 schools is an entirely constrained choice. The  
16 State has never conducted a statewide assessment of school facilities needs, let alone attempted to act  
17 on such an assessment. The State has consistently underfunded new school construction. As a result,  
18 the State had permitted overcrowding to reach crisis proportions and become entrenched in certain  
19 districts and communities. The State has by statute created incentives for districts to operate MTYRE  
20 calendars like Concept 6 that provide fewer days of instruction than all other school calendars  
21 currently used in California. Faced with burgeoning enrollments and a lack of funding, some districts  
22 and schools have resorted to Concept 6 in an attempt to accommodate students in existing facilities.  
23 But given the State’s involvement in allowing the pressure of overcrowding to build and in creating  
24 financial incentives toward Concept 6, the State bears the responsibility for the result.

25 896. A viable remedial mechanism for removing Concept 6 calendars from schools is for  
26 the State to remove the option to operate Concept 6 calendars by identifying a near-term end point for  
27 the calendars. The State should then assist schools and districts in necessary planning for how to  
28

1 transition from Concept 6 calendars to school calendars that do not denigrate student learning  
2 opportunities.

3 897. The weight given to financial concerns as the reason not to phase out Concept 6  
4 calendars underscores the problem with the State's funding mechanism: it does not target  
5 distribution of funds to the districts with the greatest need. Multi-tracking is a symptom of severe  
6 overcrowding, yet the State is unwilling to target funds to eliminate the necessity of resorting to  
7 multi-tracking. Even with the prospect of unprecedented funding for new school construction  
8 becoming available in 2002 and 2004, the State evidently does not anticipate that the funds will be  
9 allocated in a way that would permit elimination of Concept 6.

10 898. Accordingly, although the Joint Committee to Develop a Master Plan for Education  
11 recommends that "[t]he State should move aggressively to eliminate the use of multi-track year-round  
12 schedules that result in fewer calendar days of instruction," (Joint Comm. to Develop a Master Plan  
13 for Educ. — Kindergarten through University, *Master Plan for Education In California* (2002) at 44)  
14 the State has refused to mandate its gradual elimination, lest it encroach on district discretion.  
15 However, the State's inability to target funds to eliminate overcrowding and resort to multi-track  
16 schedules cannot justify use of an undesirable facilities strategy that deprives low-income students  
17 and students of color of equal educational opportunities.

## 18 **2. The State Must Phase Out the Use of Emergency Permits, 19 Preintern Certificates, and Their Equivalents.**

20 899. The State must cease granting emergency teaching permits, preintern certificates, and  
21 their equivalents. Because emergency teaching permits and their equivalents have become so  
22 ubiquitous as to constitute the norm in some schools and to provide the basis for teaching for 20% or  
23 more teachers in 1,794 schools throughout the State (*see* [http://www. api.cde.ca.gov/datafiles.html](http://www.api.cde.ca.gov/datafiles.html)), it  
24 is now clear that the "emergency" permit is not in fact an emergency mechanism. The State should  
25 sunset emergency permits and their equivalents with a near-term end point and implement plans for  
26 increasing the supply of qualified teachers, providing sufficient incentives for teachers who are  
27 trained but who are not employed as teachers to return to the profession.  
28

1           900. Both the Center for the Future of Teaching and Learning and the California  
2 Professional Development Task Force have recommended that the Legislature sunset existing  
3 California Education Code provisions relating to the use of emergency permits. The Center for the  
4 Future of Teaching and Learning recommended that first-time emergency permits be eliminated by  
5 2006-07. Patrick M. Shields *et al.*, The Center for the Future of Teaching & Learning, *The Status of*  
6 *the Teaching Profession: Research Findings and Policy Recommendations* (1999) at 80  
7 PLTF 60054-60239. Similarly, the California Professional Development Task Force report called on  
8 the State to:

9                   [d]evelop an action plan to eliminate emergency permits and waivers  
10                   within five years. Evaluate labor market conditions and identify the  
11                   resources, incentives, and supports needed to enable all districts to  
12                   recruit and hire qualified teachers.

13 CDE Prof. Dev. Task Force, *Learning . . . Teaching . . . Leading: Report of the Prof. Dev. Task*  
14 *Force* (2001) at 21.

15           901. Additionally, the Joint Committee to Develop a Master Plan for Education has  
16 recommended that “[t]he State should immediately replace emergency permit usage with universal  
17 participation in the pre-internship program” and “set a specific timeline (approximately five years) to  
18 phase out the use of the pre-internship program and require that all teachers be qualified before being  
19 assigned independent responsibility for a classroom.” Joint Comm. to Develop a Master Plan for  
20 Educ. — Kindergarten through University, *Master Plan for Education In California* (2002) at 27-28.

21                   **3. The State Should Be Enjoined From Conditioning Receipt**  
22                   **of a High School Diploma Upon Passage of the High School**  
23                   **Exit Exam Until the State Can Demonstrate Equality in**  
24                   **Access to Basic Educational Necessities.**

25           902. The State should also be enjoined from enforcing the mandates of California  
26 Education Code section 60851 that condition the granting of a high school diploma upon passage of  
27 the High School Exit Exam until the State can demonstrate equality in access to the basic educational  
28 necessities. As set forth above, currently the State cannot ensure that all students have been provided  
with the basic learning tools and conditions needed to pass the HSEE. Indeed, low income students  
and students of color are both disproportionately at schools where they are deprived of these basic  
tools and conditions and most likely to fail the HSEE. The State should be enjoined from denying

high school diplomas on the basis of the HSEE until the State can demonstrate that class members, at a minimum, have been provided with these fundamental educational necessities.

**4. The State Must Refrain From Expanding Programs Such As Class Size Reduction Without First Ensuring That Such Expansion Will Not Exacerbate Inequality.**

903. Before enacting new policies and programs, the State must consider the degree to which they will have negative disparate impacts on students (especially low income students, students of color, and English Language Learners), and take steps to eliminate or compensate for such disparate impacts. In particular, the State should be barred from expanding Class Size Reduction beyond its current implementation in grades K-3 unless the discriminatory impact of the program, discussed above, has been addressed. Research has shown that the direct effect of underfunding Class Size Reduction — such that schools have sufficient incentive to reduce class size but insufficient resources to provide, for example, additional classrooms or to purchase additional resources for the newly-created classrooms — has been that students in some schools — most often schools that low-income students and students of color attend — trade essential resources required for learning for the opportunity to learn in classes with smaller teacher-to-student ratios.

904. In addition, the State should be barred from expanding CSR until it has ensured that such expansion will not worsen the disparity in access to qualified teachers. As discussed above, one of the negative consequences of the implementation of CSR was that the percentage of undercredentialed and inexperienced teachers in schools attended by low-income students, students of color, and English Language Learners skyrocketed. The State should not be allowed to widen the gap in access to qualified teachers by expanding CSR without first instituting policies aimed at ensuring that students have an equal chance to be taught by qualified teachers.

905. Accordingly, the State must choose either to oversee provision of resources to students and expand Class Size Reduction consistent with that oversight, or not to expand Class Size Reduction at all. The State should be precluded from expanding CSR unless it can demonstrate that such expansion will not worsen inequality.



1 **CONCLUSION**

2 Every day that passes without a system “that will either prevent or discover and correct [the  
3 alleged] deficiencies” (Nov. 14, 2000 Order at 2:10-11) wastes learning opportunities for the  
4 thousands of students in this State who must try to learn in appalling conditions.

5 Plaintiffs seek the systemic reforms necessary to reduce the intolerable inequities brought to  
6 light in reports, newspapers, studies, and the State’s own documents, for decades. The State not only  
7 has the authority to properly manage and oversee the delivery of education in the State in a way that  
8 ensures basic educational equality, it has the duty. The State must own up to its responsibility to  
9 deliver to every child the essentials of educational opportunity. It must then design a system that  
10 holds itself and its operating arms, the school districts, accountable for whether these essentials are in  
11 fact present in plaintiffs’ schools and classrooms.

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