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16 Attorneys for Plaintiffs  
ELIEZER WILLIAMS, etc., *et al.*

17  
18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 COUNTY OF SAN FRANCISCO

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

22 Plaintiffs,

23 v.

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

26 Defendants.  
27

No. 312236

**DECLARATION OF LEECIA WELCH  
IN SUPPORT OF PLAINTIFFS'  
DESIGNATION OF REBUTTAL  
EXPERT WITNESS ROBERT CORLEY**

Date Action Filed: May 17, 2000

1 I, LEECIA WELCH, hereby declare as follows:

2 1. I am an attorney licensed to practice law in the State of California. I am an associate at  
3 the law firm of Morrison & Foerster LLP, counsel of record for plaintiffs Eliezer Williams, et al.  
4 (“plaintiffs”) in this action. I have personal knowledge of the facts stated herein and could testify  
5 competently to them if called to do so.

6 2. Plaintiffs have provided a list of the persons whose expert opinion testimony the  
7 plaintiffs intend to offer at trial of this action, either orally or by deposition testimony. The list  
8 includes Rob Corley, to whom this declaration refers.

9 3. Mr. Corley has agreed to testify at trial.

10 4. Mr. Corley will be sufficiently familiar with the pending action to submit to a  
11 meaningful oral deposition concerning the specific testimony, including any opinions and their bases,  
12 that he is expected to give at trial.

13 5. Mr. Corley’s fee for providing deposition testimony, consulting with the attorneys for  
14 plaintiffs, and researching and related activities undertaken in preparation of the attached rebuttal  
15 expert report is \$100 per hour.

16 6. Attached to my declaration as Exhibit A and incorporated by this reference is a  
17 *curriculum vitae* providing Mr. Corley’s professional qualifications, pursuant to section  
18 2034(f)(2)(A) of the California Code of Civil Procedure.

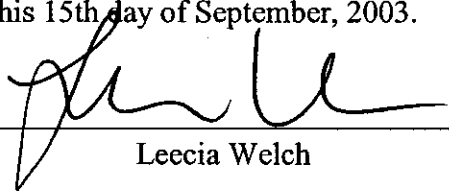
19 7. Attached to my declaration as Exhibit B and incorporated by this reference is  
20 Mr. Corley’s expert report. The following is a brief narrative statement of the general substance of  
21 the testimony that Mr. Corley is expected to give at trial, pursuant to section 2034(f)(2)(B) of the  
22 California Code of Civil Procedure. Mr. Corley rebuts opinions offered in the expert report of State  
23 expert Dr. Thomas Duffy. In particular, he responds to assertions by Dr. Duffy that Dr. Nancy Myers  
24 and Mr. Corley are in favor of state-mandated standards and oversight that are designed and  
25 implemented without local district input and participation. Mr. Corley also rebuts Dr. Duffy’s  
26 contention from his expert report that the recommendations of Dr. Myers and Mr. Corley are  
27 “directly at odds with the views expressed in this report” by revealing that Dr. Duffy  
28 mischaracterizes the positions taken by Dr. Myers and Mr. Corley. Mr. Corley also

1 compares his own deposition transcript and expert report to those of Dr. Duffy and Dr. Myers and  
2 demonstrates that there is substantial agreement among them on numerous issues. For example, all  
3 three experts agree that there are schools in unusually poor condition in California, that there is value  
4 to having statewide facilities standards, and that there is a need for governmental agencies, outside of  
5 school districts, to provide technical assistance and oversight to ensure that school districts maintain  
6 their facilities in a way that satisfies statewide standards. Finally, Dr. Corley rebuts Dr. Duffy's  
7 assertion that the state funding system is sufficient to address all the serious facilities needs in  
8 California, particularly in those schools that are in unusually poor condition. The foregoing  
9 statements are only a general summary of the issues and conclusions discussed and documented more  
10 fully in Mr. Corley's expert report, attached as Exhibit B.

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

13 Executed at San Francisco, California, this 15th day of September, 2003.

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Leccia Welch

## **EXHIBIT A**

# **Resume**

## **Rob Corley**

### **School Facilities Planning Consultant**

Mr. Corley is a consulting planner assisting California school districts with issues of long-range planning, facilities financing and development, and inter-governmental relations.

Since 1976 he has worked in this field as both a school district employee and as a private consultant. Based in Ventura, on California's Central Coast, services typically provided include:

- Master Planning

- Developer Fee Justification ("Nexus") and similar studies

- Enrollment projections

- Strategic Facilities Planning

- Facilitating community-based Task Forces

- Evaluating school issues in development plans and EIRs.

Clients range from the Oregon border to San Diego County and include urban and rural areas. District sizes range from 14 to 70,000 students.

In addition to this ongoing practice, Mr. Corley is active with statewide organizations interested in school business and facility operations, including CASH (the Coalition for Adequate School Housing) and CASBO (California Association of School Business Officials). He has participated on many state level groups dealing with legislation and state programs affecting school facilities, including the California Department of Education's Advisory Committee.

#### **Contact Information:**

Rob Corley, Consultant  
4882 McGrath Street, Suite 310  
Ventura, California 93003-7721

Telephone (805) 658-2995  
Facsimile (805) 658-6433  
Email rcorley@west.net

# RESUME/SUMMARY OF QUALIFICATIONS

## **Rob Corley, Consultant**

4882 McGrath Street, Suite 310  
Ventura, California 93003  
(805) 658-2995

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## **PROFESSIONAL EXPERIENCE**

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### **School Facility Planning Consultant**

Ventura, California  
June, 1988 - present

Independent consultant working for California school districts on facility and planning issues. Projects include writing Long-Range Master Plans, preparing numerous justification reports for School Facility Fees imposed under AB 2926, establishment of alternative facility funding programs, assistance to school districts with planning and finance issues, and preparing applications for state funding. Affiliated with Schoolhouse Services, Inc. (1995-1996), EdGroup (1982-1987), and Sage Institute, Inc. (1981).

### **Director of Planning and Facilities**

Conejo Valley Unified School District, Thousand Oaks, California  
September, 1987 - May, 1988

Responsible for all aspects of short and long range planning, facility and property management, supervision of Maintenance/Operations function, and regulatory interface for 18,000 enrollment K-12 District.

### **Business Manager**

Oak Park Unified School District  
June 1982-August 1986 (part time)

Overall responsibility for business and operational activity of 1,050 ADA unified school district. Directly supervised fiscal, maintenance/operations, food service, purchasing and facilities functions.

### **Assistant to Deputy Superintendent**

Irvine Unified School District  
June 1980-June 1982

Varied assignment with 16,000 enrollment district. Also, Planning Assistant, Project Supervisor, June 1976-June 1980. Various duties including planning, liaison with city and other agencies, management of CETA programs, and data processing implementation.

## **EDUCATION**

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MBA University of California, Irvine 1981  
Emphasis in Applied Management Sciences

B.A. University of California, Irvine 1976  
Major in Urban Planning and Policies

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## **SIGNIFICANT CONSULTING PROJECTS**

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- Principal Investigator and author of more than twenty separate school facility master plans, including all demographic and facility analysis, ethnic balance and integration alternatives, facility implementation planning, and development of financing strategies. Most of these have involved follow up at the district's request during implementation of recommendations.
- Author of more than 75 School Facility Fee justification documents in compliance with AB1600 requirements for school districts throughout California.
- Statistician and co-author of 1992 and 1993, 1995, and 1996 Mira survey, Schools Legal Defense Association. Author of two statewide surveys on Developer Fees (C.A.S.H., 1985 and 1986).
- Frequent speaker to Statewide and regional workshops on school planning. Expert witness in school district land condemnations, school site related liability cases, and other court situations. Instructor, School Facilities Institute. Witness before California Assembly and Senate committees on school construction financing issues.
- Continuous involvement with State School Building Aid Program regulations, including current legislation and policy proposals. Assisted school district applications resulting in more than \$100 million of state apportionments for new school construction and reconstruction of older schools.
- Obtained special state approval to spend proceeds from sale of surplus school land for locally identified building projects. Represented District in effort to receive full state funding for underground storage tank removal project.
- Familiar with redevelopment and subdivision review practice. Familiar with California planning resources and practices.
- Ongoing involvement with construction contract law, labor codes and other regulations affecting school projects. Experience working with architects, landscape architects, engineers, testing laboratories and others involved with construction projects.

Resume/Statement of Qualifications  
Rob Corley, Consultant

- Familiar with all aspects of California school business practice, including legal requirements unique to schools. Very familiar with school business practices and legal requirements of school and public work contracts. Knowledge of all phases of Maintenance and Operations function, including physical operation of all phases of school plant.
- Experienced in working with parent and community groups on school facility issues.

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**PROFESSIONAL AFFILIATIONS**

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Member of the Association of California School Administrators (ACSA), the California Association of School Business Officials (CASBO), the Coalition for Adequate School Housing (C.A.S.H.).

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**RELEVANT SCHOOL PLANNING PROJECTS:**

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- Facilities Master Plan, Gilroy Unified School District, 1998. Facilitator for Districtwide implementation Task Force, 1999.
- Facilities Master Plan, Washington Unified School District, 1998. Facilitator of Community Planning Task Force, 1998. Facilitator/consultant for bond steering committee, 1999.
- Facility Plan/Fee Study, Berryessa School District, 1998.
- Ten Year Facility Plan/Fee Study, Cotati-Rohnert Park Unified School District, 1997.
- Southport Schools Development Strategy, Washington Unified School District, 1997.
- Facilities Implementation Strategy, Sulphur Springs School District, (with PSWC Architects), 1997.
- School Reopening/Expansion Plan, La Habra City School District; technical resource to District's Community Advisory & Information ("A&I") Committee, 1996-97.
- Facilities Master Plan, Ventura Unified School District, January, 1997.
- Facilities Master Plan, Lucia Mar Unified School District, (with Schoolhouse) July, 1996.



## Resume/Statement of Qualifications

### Rob Corley, Consultant

- Master Plan, Morgan Hill Unified School District, (with Schoolhouse) April, 1996.
- High school capacity and utilization analysis, Santa Cruz City Schools, (with Schoolhouse) May, 1996.
- School capacity analysis, Alum Rock Union School District, May, 1995.
- School Facility Plan and Fee Justification Study, Gorman School District, 1996.
- School Facility Fee Reduction Analysis, Hydesville School District, 1996.
- Technical resource, New Elementary School Educational Specification Committee, Milpitas Unified School District, Summer, 1995.
- Liaison and technical resource for Measure "S" and Measure "U" bond programs, St. Helena Unified School District, 1994 - 1995.
- Consultant and principal spokesman for affected school districts, Sutter Bay New Town (54,000 homes), South Sutter County, 1991 to 1994.
- Consultant to school districts regarding fair mitigation of development project impacts, Hollister, Gilroy, Camarillo, San Jose, Santa Cruz County, El Dorado County, other communities.
- Ten Year Facility Plan, Calistoga Unified School District, 1994.
- Technical resource for Citizens Task Force and author of Long-Range School Facilities Plan, Carmel Unified School District, 1993.
- Facilitator and technical support staff for F.U.T.U.R.E.S. Strategic Planning Task Force, Sonoma Valley Unified School District, 1993 (with TLCD Architects).
- Facilities Master Plan, Windsor Unified School District, 1993.
- Facilities Master Plan, and implementation followup, St. Helena Unified School District, 1993-1996.
- Strategic Facilities Plan and Community Implementation Committee, Black Oak Mine Unified School District, 1993.
- Facilities Analysis/Implementation Plan, Milpitas Unified School District, 1993.
- Associate staff to facilities task force resource and co-author of *Facilities Strategic Plan*, Mount Diablo Unified School District Strategic Facilities Plan, 1992.
- Associate consultant, facility standards project and fee justification study, Santa Monica-Malibu Unified School District, 1991 (with AMPG).
- Facilities Master Plan, Pleasant Valley School District, Camarillo, 1990.
- Long Range Master Plan, Oak Park Unified School District, 1989.
- Facilities Master Plan, Morgan Hill Unified School District, 1989.

Resume/Statement of Qualifications  
Rob Corley, Consultant

- Facilities Master Plan, Saddleback Valley Unified School District, 1987. (In association with Arthur Young & Company).
  - Agricultural building fee justification studies (per SB 1151).
  - Facilities Plans for: Tustin Unified School District; Wm. S. Hart Union High School District, Castaic Union School District; Newhall School District; Saugus Union School District; Sulphur Springs Union School District; Moorpark Unified School District (Update); Victor Valley Union High School District (7-12); Franklin-McKinley School District; Fallbrook Union School District; Hollister School District.
  - School Facility Fee Justification Reports (multiple reports for various listed districts):
    - El Dorado County Consortium (13 Districts):
      - Black Oak Mine Unified School District
      - Buckeye Union School District
      - Camino Union School District
      - Gold Oak Union School District
      - Gold Trail Union School District
      - Indian Diggings Elementary School District
      - Lake Tahoe Unified School District
      - Latrobe Elementary School District
      - Mother Lode Union Elementary School District
      - Pioneer Union Elementary School District
      - Placerville Union Elementary School District
      - Pollock Pines Elementary School District
      - Rescue Union Elementary School District
    - Calistoga Unified School District
    - Templeton Unified School District
    - Cloverdale Unified School District
    - West Sonoma County Consortium (8 districts)
      - Forestville School District
      - Guerneville School District
      - Harmony School District
      - Montgomery School District
      - Oak Grove School District
      - Roseland School District
      - Sebastopol Union School District
      - Twin Hills School District
    - Salinas Union High School District Consortium (8 districts)
      - Alisal Union School District
      - Graves School District
      - Lagunita School District
      - Salinas City School District
      - Salinas Union High School District
      - Santa Rita Union School District
      - Spreckels Union School District
      - Washington Union School District
    - King City Jt. Union High School District Consortium (5 districts)
      - Bradley School District
      - Greenfield Union School District
      - King City Union School District
      - King City Joint Union High School District
      - San Antonio Union School District
- (Salinas and King City projects in association with SFC)

Resume/Statement of Qualifications  
Rob Corley, Consultant

East Nicolaus Joint Union High School District  
Sutter Union High School District  
Chico Unified School District  
Brittan School District  
San Benito High School District Consortium (5 districts)  
    Hollister School District  
    San Benito High School District  
    Southside School District  
    Tres Pinos School District  
    Willow Grove School District  
Walnut Creek School District  
Goleta Union School District  
Sacramento City Unified School District  
Santa Cruz City School Districts (Elementary and High School)  
Pajaro Valley Unified School District  
Pleasant Valley School District (Camarillo)  
Elk Grove Unified School District  
Oceanside Unified School District  
Newport Mesa Unified School District  
Irvine Unified School District  
Delano Union (Elementary) School District  
Soquel Elementary School District  
East Side Union High School District Consortium (7 districts)  
    Alum Rock Elementary School District  
    Berryessa School District  
    East Side Union High School District  
    Evergreen School District  
    Franklin-McKinley School District  
    Oak Grove School District  
    Orchard School District  
    (includes various updates and supplemental studies)  
Morgan Hill Unified School District  
Gilroy Unified School District  
Long Beach Unified School District  
Corona-Norco Unified School District  
Fullerton Jt. Union High School District consortium (5 districts)  
    Buena Park Elementary School District  
    Fullerton Elementary School District  
    Fullerton Joint Union High School District  
    La Habra City School District  
    Lowell Joint School District  
Manhattan Beach City School District  
Los Alamitos Unified School District  
Jurupa Unified School District  
Hemet School District.

Additional clients and references available upon request.

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**EXHIBIT B**

## RESPONSE TO DR. THOMAS DUFFY'S EXPERT REPORT

### INTRODUCTION

Dr. Thomas Duffy, expert for Defendant State of California, states in his expert report that “[t]he Myers and Corley reports are directly at odds with the views expressed in this report.” Duffy Expert Report at 22. In fact, there are many points of agreement between the expert report and deposition testimony of Dr. Duffy, and Plaintiffs’ experts on facilities issues, Dr. Nancy Myers and me. These areas of agreement become clearer once one cuts through the hyperbole and mischaracterizations of my opinions and those of Dr. Myers in Dr. Duffy’s report and reads Dr. Duffy’s and Dr. Myers’s deposition transcripts.<sup>1</sup>

In his report, Dr. Duffy appears to contend that the current system can solve all the State’s facility problems; in his deposition, he makes clear that he endorses changes to the current system, such as the adoption of uniform statewide standards for facilities, and the provision of technical assistance and oversight by outside entities to school districts to ensure that all schools comply with these standards. These changes are consistent with the points made by Plaintiffs’ experts, Dr. Nancy Myers and me, in our expert reports and depositions, despite Dr. Duffy’s characterizations in his expert report of many of our positions being in conflict with his beliefs.

Here are some of the major areas of agreement among Dr. Duffy and me, Dr. Duffy and Dr. Myers, or among the three of us:

- \* There are schools in California whose facilities are in unusually poor condition, even though the vast majority of schools are not;
- \* There are districts in California where mismanagement has created serious facilities problems;
- \* There should be a system of statewide facilities standards, so long as those standards are developed by state officials working with local district officials;
- \* Entities outside school districts should provide technical assistance, oversight, and in some cases, should intervene to ensure that all students are in schools that meet the statewide facilities standards.
- \* State legislation will be necessary to set up that system of oversight.

Despite the substantial areas of agreement, there are some important areas of disagreement, particularly about the adequacy of the State’s current funding system to address the major facilities needs that remain in an equitable fashion. Dr. Duffy states that “[s]imply put, funding is not an issue at this time.” Duffy Expert Report at 25. However, this assertion is incorrect for two reasons. First, some of the egregious facilities problems faced by school

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<sup>1</sup> Apparently, Dr. Duffy has not read either Dr. Myers’s deposition transcript or mine. Duffy Depo. Volume IV (Sept. 9, 2003) 20:13-19; 21:1-8 Rough Transcript.

children, such as filthy bathrooms with water on the floor and no toilet paper, are the result of inadequate custodial care. Funds from general obligation bonds cannot legally be used to pay for the hiring of custodians. Thus, disputes about whether the 2002 and 2004 bond are sufficient to meet the pressing capital construction and modernization needs of California schools are irrelevant to whether all schools have sufficient maintenance and operations programs to ensure their students have basic levels of safety, comfort, and habitability. The reality that Dr. Duffy does not contest, is that some schools in California fail to provide basic levels of cleanliness to their students. This is a problem that will likely get worse in light of districts' willingness to cut maintenance and operation budgets in the face of their current fiscal concerns. Corley Report at 36.

Second, Dr. Duffy does not dispute the State's own figures that show that approximately 200,000 classrooms in the state of California are 25 years old or older, and therefore eligible for modernization funds. The cost of modernizing those classrooms would be about \$14 billion. And, it is undisputed that all the modernization funds in Proposition 1A and AB 16, combined, amount to about \$7.7 billion. So, while Proposition 1A and AB 16 are major positive steps, they simply do not provide the funds to address all the State's pressing facilities needs, needs that have been caused in part by a multi-decade failure on the part of the State to provide the funds necessary to address the State's education facilities needs.

### **1. Are Some California Schools in Unusually Poor Physical Condition?**

Plaintiffs' expert reports, including mine, as well as my deposition testimony, give ample evidence that some schools in California are now - and others for many years have been - in substandard or unusually poor physical condition. See Corley Report at 4-20, 72-93. Since that report was submitted, the California Air Resources Board and the California Department of Health Services circulated a joint draft report entitled, *Report to the California Legislature: Environmental Health Conditions in California's Portable Classrooms ("Environmental Health")*, (June 12, 2003),<sup>2</sup> which supports my previous conclusion that some schools in California remain in unusually poor condition. Here are a few findings from that report:

\* In approximately ten percent of classrooms, both portable and permanent, there were severely excessive amounts of carbon dioxide, resulting from inadequate ventilation. The report stated that "such deficiencies have been associated with increased eye and throat irritation, lethargy, headache and other symptoms incompatible with an acceptable learning environment." *Environmental Health* at 10.

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<sup>2</sup> Its title is somewhat misleading because the report also includes information about environmental health conditions in classrooms in permanent school buildings.

\* “27% of portables and 17% of traditional [classrooms] experienced temperatures below ASHRAE’s<sup>3</sup> thermal comfort standards for the heating season.” *Id.* at 11.

\* “1% of all classrooms had visible mold inside the classroom, and 3% had visible mold on exterior walls.” *Id.* at 13.<sup>4</sup>

At points in his expert report, Dr. Duffy appears to suggest that there are no schools in California that have really serious facilities problems. For example, in his report, he writes, “yet the perception . . . is that some minority of schools and some minority of school districts are failing. That is a false perception.” Duffy Report at 13. However, during his deposition, Dr. Duffy clarified that when he talked about “failing schools” in his report he was talking about schools in fiscal crisis, not discussing the physical condition of any schools in California. Duffy Depo. 37:20-38:22.

The conclusion in my report about schools in unusually poor conditions is supported by Dr. Duffy’s deposition: “. . . there seems to be a *common understanding* that there seems to be at least some districts in California that don’t necessarily have facilities that are up to an acceptable standard.” Duffy Depo. 382:3-6 (emphasis added); *id.* at 376:20-377:2 (“You previously stated – used the word ‘continuum,’ a continuum of school facilities from the excellent to – I believe you said something along the lines of very poor. Is that – A. Yes. Q: Do you believe that continuum exists in California today? A: I believe it exists today.”)

**Summary:** Dr. Duffy’s expert report and deposition<sup>5</sup> do not rebut the existence of substandard school facilities, and in deposition, Dr. Duffy admits “common knowledge” of such unusually poor physical conditions affecting some – not all or most, but some – students in California’s public schools.

## **2. Are There School Districts in the State of California Where Mismanagement is Causing Unusually Poor Conditions?**

In my initial report, I stated that there were a non-trivial number of districts that were plagued by poor management of their facilities, and that poor management was frequently the cause of unusually poor facilities conditions. Corley Report at 20-25. I also stated that there had been numerous published reports of mismanagement by districts of their facilities over long periods of

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<sup>3</sup> ASHRAE is the American Society for Heating Refrigerating and Air-Conditioning Engineers.

<sup>4</sup> While 1% might seem like a small number, it translates into approximately 60,000 children exposed to mold in their classrooms.

<sup>5</sup> Many of the examples that I included in my initial report of schools in unusually poor condition – including some examples based on personal visits – were from Oakland Unified School District and West Contra Costa Unified School District. Corley Report at 7, 18-21, 76-78, 86-88. In his deposition, Dr. Duffy stated that he had no basis to evaluate the facilities conditions in either of those districts. Duffy Depo. 364:8-11; 365:13-22; 369:13-17.

time. *Id.* During my deposition, in response to questions by an attorney, I explained that poor management was more often the cause of operations and routine maintenance problems, such as filthy bathrooms, than issues such as overcrowding, which often were the result of lack of funds to build new schools. Corley Depo. 592:4-19 (explaining that the “root” cause of problems in one district with overcrowding and multi-tracking “is money.”); *id.* at 597:10-598:9 (explaining that failures to do routine maintenance and operations on facilities is generally result of mismanagement); *id.* at 603:4-7. I also explained that in some cases, such as where Oakland Unified School District failed to apply for substantial amounts of state funds that were available to it, mismanagement could be a major cause of even large capital problems. Corley Depo. 744:16-746:2; Corley Report at 54-56.

Dr. Duffy does not contradict these assertions. He does state, “the vast majority of school districts in California are well managed by caring superintendents and governed responsibly by elected boards.” Duffy Report at 13.<sup>6</sup> However, he also states in his deposition that he is aware of districts that have had management problems that have negatively affected the condition of school facilities. Duffy Depo. 695:22-696:10, 703:14-22.<sup>7</sup>

**Summary:** Dr. Duffy does not contradict my conclusion that there are a limited number of districts in California that have mismanaged their school facilities program to the detriment of their students.

### **3. Do Standards For Maintenance And Modernization of School Facilities Exist And, If So, Are They Being Followed in All Schools?**

In my initial report, I presented evidence that enforceable standards governing the condition of existing school buildings are few, vague, and ineffective. Corley Report at 33-35. Dr. Duffy argues in his expert report that standards for maintenance of California’s public schools exist. “Standards for maintenance and modernization exist in California, albeit not in the same construct that Dr. Myers and Mr. Corley advocate.” Duffy Report at 23. However, during his deposition, Dr. Duffy was asked if he was aware of any State statute or regulation concerning a wide variety of facilities conditions including, maintenance, painting of buildings, cleanliness and operability of restrooms, and air quality. He stated he was not aware of any such statutes or regulations. Duffy Depo. 352:10-363:7.

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<sup>6</sup> I have never contended that most districts are poorly-managed. Corley report at 93. The problem remains that for those students in districts that are poorly-managed, the consequences in terms of unsafe and unsanitary conditions can be severe. Moreover, some of the districts that have been plagued by mismanagement of their facilities programs are large districts. Corley Report at 20-25. Simply counting the districts that have management problems may underestimate the number of children affected.

<sup>7</sup> I included in my initial report a discussion of districts where mismanagement had negatively affected the condition of school facilities – including examples based on my personal knowledge and experience – from Oakland and Del Paso Heights School District, among others. Corley Report at 21, 25. In his deposition, Dr. Duffy stated that he had not evaluated or had no basis to evaluate the facilities conditions in those districts. Duffy Depo. 695:11-16.



**Summary:** It does not appear that there is any real dispute as to whether there are sufficient binding statewide standards governing school facilities conditions. Moreover, even if one reads Dr. Duffy's report to conclude that binding facilities standards exist – an assertion that is not supported by his knowledge of specific standards – he admits that there are some schools where those standards are not being adhered to. Duffy Depo at 348:10-15 ( “I believe that with the history of what’s happened in the state with regard to resources, availability of resources, that districts – some districts in particular have had difficulty recognizing and maintaining those standards because of the reality of life in those school districts.”)

#### **4. Are Consistent Standards Needed for All Schools in State?**

In his report, Dr. Duffy criticizes Dr. Myers and me for recommending that “. . . (apparently) mandatory standards concerning facilities maintenance and modernization must be imposed by the state in classic top-down fashion.” Duffy Report at 22. This misstates both Dr. Myers's and my opinions, and substitutes the red herring of total state domination of local school districts for a set of simple minimum standards to guarantee the safe, hygienic and functional school day experience for *every* student in California.

In fact, Dr. Myers stated in her deposition that facilities standards should be developed in a cooperative effort between State officials and local districts. Myers Depo. 237:11-13 (“[T]here are standards that have been established in cooperation with the local districts and the state”). My report did not state that facilities standards must or should be developed by the State without participation by local district officials. Nor do I believe that imposition of standards without local input and participation in the development of those standards is a good idea.

At pages 341-348 of Dr. Duffy's deposition, he states his agreement with a recommendation of the Facilities Working Group that the State “Establish clear, concise, and workable standards that are characteristic of facilities that provide a high quality/high performance teaching and learning environment,” so long as those standards are drawn up in a cooperative fashion by State and local district officials.

At pages 343-344 of his deposition, Dr. Duffy states that he believes that it is feasible to promulgate a set of clear, concise and workable facilities standards and that the establishment of those standards “would help support the ability of students to get an education in that facility.”

**Summary:** Dr. Duffy has endorsed a recommendation from the Master Plan for the establishment of statewide standards governing all school facilities in California, which is indistinguishable in practice from recommendations by both Dr. Meyers and me.

**5. Should Governmental Entities Outside the School District Provide Technical Assistance and Oversight (Monitoring) To Ensure That All Schools Satisfy Statewide Facilities Standards?**

In my initial report, I relied on documents written by State officials, statements by other State officials, and my own experience in the field of school facilities as the basis for my opinion that neither the State, nor any other governmental entity, provides any real oversight of school districts with respect to conditions of their school facilities after construction has been completed. Corley Report at 29-41.

I also expressed the opinion that standards only work when monitored; without oversight, failing schools are likely to fail again. Corley Report at 35-36. In the same way restaurants are inspected for cleanliness, hospitals and nursing homes are inspected, barber shops are inspected, cars are inspected, pet vaccinations are re-checked, and so forth, minimum standards for schools must be monitored to be effective. My reference to the statement that “if it ain’t Monitored, it’s optional,” is a shorthand version of that belief. *Id.* at 35.

In her expert report and deposition, Dr. Myers expressed a similar opinion – that an effective state school facilities system required a system oversight to ensure that districts were actually complying with those standards. Myers Report 2-3, 7. In Dr. Myers’s opinion, in the absence of these “checks and balances,” it is likely that in some districts “facilities [will] becom[e] a low priority in terms of funding.” *Id.* at 10.

In his deposition, Dr. Duffy makes clear that he endorses the concept of having entities outside the district provide an oversight role that would include mandatory review of a district’s facilities plan – a plan that would set forth how the district planned to comply with the State’s facilities standards. *E.g.*, Duffy Depo. 319, 322-24, 325, 326, 327-28, 335-36, 340-41. Moreover, Dr. Duffy made clear that oversight could also include informal contacts with the district about problems the outside entity identified in the facilities plan, technical assistance and, in cases of continued problems, more aggressive intervention to ensure that districts are complying with the state facilities standards. Duffy Depo. 315-328; *id.* at 322:20-25 (“And if there is a failure there [in a local district], that potentially the County Office of Education steps in and assists. Maybe it’s because the district doesn’t have adequate staff or isn’t knowledgeable, but somebody’s there to give backup. And then going beyond that, if necessary.”)

Dr. Duffy gave as examples of methods of intervention – to be used in circumstances of repeated failure by the District – the refusal of the County Offices to approve a budget if a district had not designated funds to address a problem that violated statewide standards, or having a State agency step in and hire a contractor to do the necessary work, where a district is really being “recalcitrant.” Duffy Depo. 393-394. In Dr. Duffy’s opinion, this oversight, which no outside agency currently exercises, was designed to help avoid future facilities problems such as occurred in Compton Unified School District. Duffy Depo. 340:21-341:3; 396:3-8. Moreover, he stated a number of times during the course of his deposition that such technical assistance and oversight could help prevent facilities problems he was aware of from his

experience in California. *E.g.*, Duffy Depo. at 336:12-337:14; 374:22-376:17 (“Q: Do you believe the adoption of this Recommendation [that districts adopt five-year facilities plans that are reviewed by the County Offices] would further the goal of making sure that all facilities were adequate and safe places for our kids to go? A: Yes, I believe it would further that goal.”); 376:15-19.

I believe that most County Offices have neither staff or the expertise to review such plans or check field conditions. I also respectfully disagree that such a system, potentially involving fifty-plus County organizations, would be any more efficient or cost-effective than a State system that uses agencies already committed to school facilities, such as the School Facility Planning Division of the California (State) Department of Education. A key point, however, is that we all agree that independent, outside oversight is essential to ensure that standards are met and children are protected.

**Summary:** Dr. Duffy, Dr. Myers and I are in agreement that there should be a governmental entity outside the school district that plays an assistance, monitoring and oversight role to ensure that all schools satisfy statewide facilities standards. We also agree that such oversight is a means to prevent or fix school facilities problems.

**6. Which Outside Agency Should Provide Oversight and Intervene, Where Necessary?**

Both Dr. Myers and I wrote in our respective expert reports that the State must establish a system where minimum standards applicable to all students in the State were enforced. Corley Report at 33-37. In his report, Dr. Duffy asserts that Dr. Myers and I endorse an intrusive concept of oversight and monitoring established and run by the State without any input or participation from the districts, which he asserts is a world apart from what he believes is beneficial. Duffy Report at 22-23. A careful reading of the reports and deposition testimony reveals far more minor differences among us.

In my initial report, I used an illustration from the State of Maryland, where State employees inspect a sample of schools each year. Corley Report at 42-43. However, I used that example to show that such a process would work and was economically practical. I am not opposed to initial oversight by County Offices of Education, but do not believe such a system is any better or easier to implement than one modeled after the successful programs of Maryland or another State.

Dr. Duffy’s proposal could work with some important caveats. First, the County Offices would need to have the funding and expertise to do the work.<sup>8</sup> Second, the responsibilities of the

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<sup>8</sup> Dr. Duffy stated in his deposition that in order for the County Offices of Education to provide the technical oversight and supervision he envisions, steps must be taken to ensure that those offices have sufficient financial resources and technical expertise people, which many of them do not currently have. Duffy Depo. 400:7-15.

County Offices would need to be set forth in State legislation, so that standards would be consistent and County Offices could not choose whether or not to exercise their oversight role. Third, the State must not put all the responsibility on the County Offices. Just as in AB 1200, which provides for County oversight of school district budgets and financial solvency to comply with State requirements, if there were indications that a County Office is failing to address a serious facility situation, the State would need to step in.

Similarly, Dr. Myers stated in her expert report that a system of State school facilities oversight could consist of a partnership of local, regional, and State entities. Myers Report at 4. Moreover, she generally endorsed the same process from the Master Plan Report that Dr. Duffy supports, where initial oversight of districts is conducted by a local or regional entity such as County Offices of Education or another “intermediate agency.” Myers Report at 9-10.

Dr. Duffy also acknowledges that the State would have to play a significant role in the system he recommends for two reasons. First, State legislation would be necessary to empower the County Superintendents to take on this facilities assistance, oversight, and intervention function he recommends. Duffy Depo. 396:7-17. Second, he stated in his deposition that as in AB 1200,<sup>9</sup> the statute that provides for oversight of school district budgets to comply with State requirements, the State should play a role in the event of failure by the County Superintendents to remedy continual failure of a district to comply with State facilities standards. Duffy Depo. 483:10-484:23.

**Summary:** I think Dr. Duffy’s AB 1200 analogue could be an effective model of State system of facilities oversight, and it does not appear inconsistent with Dr. Myers’s recommendations. That is not to say that I think it is necessarily the best or only workable system of oversight.

**7. Are There Significant Differences Among Dr. Duffy, Dr. Myers and Me With Respect to the Need for Standards and Outside Oversight of School Facilities?**

As demonstrated above, a close examination of the reports and deposition testimony reveals that there is substantial agreement among the three of us on the need for statewide facilities standards – so long as they are developed cooperatively among state and local district officials. There is also substantial agreement on the need for outside oversight of school districts’ facilities programs. While Dr. Duffy appears to criticize Dr. Myers and me for not setting forth detailed specifics of exactly how an oversight program should work, neither of us believed that this was our charge or relevant to this level of review. Indeed, Dr. Myers made clear in her report that she intended to set forth some broad principles, based on what appeared to

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<sup>9</sup> In his deposition, Dr. Duffy repeatedly analogized the system of oversight for school facilities to AB 1200, the statute that establishes oversight of district budgets and fiscal solvency. “. . . I keep going back to the AB 1200 model that we proposed as a basis for this, is something that has worked, and we believe it can work in this other area. . . .” Duffy Depo. 326:15-18.

work in other states, while emphasizing that State and local officials in California would need to work together to develop the details of the program.<sup>10</sup> Myers Report at 3 (“There is no single formula for success in this field, from the range of options that other states have adopted, California may confront and overcome its problems in a variety of ways.”); *id.* at 14 (“There needs to be a combination of the four components that have been discussed above tailored to meet the unique needs of California schools.”).

There appear to be some relatively minor differences among us with respect to issues of oversight and intervention, but these are overshadowed by the substantial areas of agreement. For example, Dr. Myers and I have recommended that the State create and maintain an inventory of school facilities that would include information such as the age of school buildings and some information on school conditions. Corley Report 30-31. Dr. Duffy stated in his deposition that he did not support a similar recommendation that was included in the Master Plan report. Duffy Depo. 402:9-403:25.

I still believe that an inventory would be a valuable tool to enable the State to determine what the actual need for school facilities funds was – whether the source of those funds was bonds or some other source. I also recommended this inventory because it would give the State information about districts that might need help. For example, it could help prevent situations such as I identified in my first report in Compton and Oakland, where districts did not apply for bond funds they were eligible for because of mismanagement. Corley Report 54-56. Moreover, the State already has much of this information, such as the number and age of school buildings, dates modernized, restroom fixture counts, structural and safety review information, portable status, etc. in its possession because districts have submitted it to the State. The State has not, however, compiled the information into a useable inventory.

However, it may be possible that if the oversight entity were effective in providing technical assistance and oversight, then all districts that have needs and eligibility would apply for funds in a timely manner. Indeed, Dr. Duffy stated that one of the roles he saw the oversight agency playing was helping districts learn about, and access, funds for which they were eligible. Duffy Depo. 538:25-539: If the oversight process were effective, it would give the State a much more accurate picture of actual need than exists now, and perhaps obviate the need for a full-blown inventory.

I also believe, and it appears from Dr. Myers’s report that she concurs, that an important part of outside oversight includes on-site inspections of the State’s schools, to evaluate their condition as a first step to ensuring that State facilities standards are being met. Only a sample of schools would be checked each year, with special attention and follow-up to those facilities with deficient conditions. Myers Report at 7. I believe the possibility of such inspections provides a strong incentive for school districts and school boards to ensure proper maintenance and operation. Moreover, it is a proactive way to put an oversight entity in a position to provide

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<sup>10</sup> In his deposition, Dr. Duffy stated that he believed that in the AB 1200 analogue that he was recommending, the State should play a role, but he admitted that he could not propose the exact specifics of the State’s role. Duffy Depo. 483:17-484:17.

technical assistance and enforcement, where necessary. Under the AB 1200 analogue Dr. Duffy endorses, he does not foresee outside agencies visiting school facilities until there had been strong indicators of district failure to meet state standards. Duffy Depo. 433:4-12 (“I would see that [an inspection] as not something that would happen initially, unless the district requested it, because the expectation is that districts are going to do what they should be doing. But if there is a -- I used the term ‘recalcitrance.’ If there is recalcitrance, it may involve, say, a physical visit, inspection, discussion about, gee, this has been on your plan for three, four years and you haven’t done anything about it.”)

**Summary:** In my opinion, these are relatively minor disagreements about the details of an oversight regime, not a broad theoretical dispute about the need for oversight or feasibility of an oversight program. Indeed, Dr. Duffy appears to agree with my contention that, at least with respect to routine maintenance and operations, the quality of local management generally plays a large role in whether schools are clean and well-maintained. “Yet it is local decision making that separates the successful districts in terms of adequate facilities from those that are unsuccessful or simply mediocre.” Duffy Report at 20. The lesson I draw from this is that the State should acknowledge differences in local management that allow some students to suffer in schools where conditions are simply unacceptable. The fact that some districts do a better job than others highlights the need for outside assistance, monitoring, and oversight to ensure that all California school children can learn in a decent environment.

**8. Does the Successful Passage of State Bonds as Well as the Lowering of the Threshold for Passage of Local Bond Measures Eliminate the Need for Standards, and Assistance and Oversight From an Outside Agency?**

While it is possible that Dr. Duffy does not intend to imply that the Passage of the 2002 bond, the potential of another large bond in 2004, and the lowering to 55% of the threshold for passage of local bond elections eliminates the need for State standards and oversight mechanisms, at times it appears that is what his report is saying. For example, he states in his report “‘Adequate resources,’ a term gleaned from the Master Plan, means enough to do the job before us. We are on the right path in policy decision making to support the building and rebuilding of our schools.” Duffy Report at 21.

California’s voters have generously provided billions of dollars to modernize older schools and build new schools. Many maintenance problems were fixed by the modernization projects, and some antiquated schools or temporary classrooms were abandoned when new schools opened. Yet this is an “apples and oranges” issue that deflects attention from an important part of Plaintiffs’ complaints, which include problems like filthy bathrooms and non-functioning heaters. Both State and local bond funds have virtually nothing to do with cleaning bathrooms or providing toilet paper or lights that work or thermostats that keep rooms within normal expected temperature ranges. The costs of daily cleaning, routine repairs, replacing burned-out light bulbs, etc. are not funded by bonds, are not managed by the same programs, and are subject to budgetary constraints not applicable to bond funds. These are tasks that are paid

for out of a district's general fund budget, as are the costs of hiring custodians. Dr. Duffy acknowledges the inability of bond funding to address these problems. Duffy Report at 17; Duffy Depo. at 449:17-450:16.

In my report, I also showed that a widespread response to the State's current budget crisis has been layoffs of school custodians and maintenance workers, the very individuals who clean the bathrooms and fix the furnaces. Corley Report at 36; *see also* Myers Report at 10 (noting that without standards and inspection there is a tendency for districts to make maintenance a low priority). These workers cannot be funded by bonds. Dr. Duffy does not acknowledge, much less contradict, the existence of these layoffs in his report.

**Summary:** Passing bonds for new construction and modernization helps many students, but does not address needs of students with many of the unusually poor facility conditions described here. Cleaning and routine fixing are General Fund, not bond fund, costs.

## **9. Is the Current State Funding System Sufficient to Meet the Capital Needs of School In California, Particularly Those in Unusually Poor Condition?**

Dr. Duffy argues that recent State bonds and local school bonds are in the process of eliminating school facility problems by providing vast amounts of money. He states in his report, "simply put, funding is not an issue at this time." Duffy Report at 25.

In my expert report, I acknowledged the generosity of California's voters, the Legislature, federal sources, and others, but continue to point out the core issue is that some students continue to be forced to attend unusually poor or otherwise substandard schools, and the problem hasn't been fixed in the seven years since the first of the huge bonds – Proposition 203 in 1996. I will not go through in detail the portions of my initial report in which I described reasons why the current State funding system, including the 2002 and 2004 bond, if it passes, will not address all the capital needs of the worst schools in California. I will however, highlight some of them again and show that Dr. Duffy does not rebut them, or demonstrate that his response is not persuasive.

### **A. Modernizations Grant Amounts Are Insufficient to Do Necessary Work, Particularly in Schools in Unusually Poor Condition**

While modernization has been a wonderful program, almost every practitioner has found the allocation amount too low to do the job completely or correctly. Since the program is based on a flat per pupil grant amount, there is great inequality in results. Some 25 years old schools in districts with strong maintenance programs look almost new again after modernization. Other schools, such as a 60-plus year old school in a district with a poor track record for maintenance, will almost always use the entire modernization grant to do only the most pressing basic "infrastructure" repairs such as new electrical transformers, new sewer pipes, access-compliant restrooms and ramps, roofing, and so forth. These leave a qualitatively and educationally

different result than the “good as new” younger school that received the same grant amount. Corley Report at 53-4. (A new program does provide more funding for fifty-plus year old schools, but this does not affect schools already modernized under the old, lower funding amount.). In his deposition, Dr. Duffy confirms that the State modernization grant is not based on need of individual schools or local school districts. Duffy Depo. 44-46. The Modernization grant was in fact created by the State largely based on a rule determined by the State Architect of when a building required complete code upgrades rather than partial modernization, *id.* at 44-46, rather than on some estimate of what it would cost to do necessary work on 25 year-old school buildings. Moreover, Dr. Duffy admits that he has heard complaints that the grant amounts are insufficient, but has no opinion as to the truth of these complaints. Duffy Depo. 666:11-667:17.

In my initial report, I also discussed how the per-pupil grant amounts for new construction are insufficient. This insufficiency creates particular problems for districts whose projects are funded under the State’s financial hardship program, because they can spend no more than what is provided by the State, and cannot supplement the project with any local funds. As a result, the schools they build are safe but very basic, but are generally far short of what is needed. Items deducted to meet budget constraints often include computer cabling, library bookshelves, cafeterias, playground structures, full development of fields for recess and sports, landscaping, sufficient parking, and so forth. Corley Report at 50-51.

In his deposition, Dr. Duffy admitted that he had heard numerous complaints about the adequacy of the State grant amounts for new construction. There is a group that is studying the issue now. He stated that he did not have an opinion about the accuracy of the complaints. Duffy Depo. at 651:23-653:4; 653:5-655:24; 660:24-661:17.

B. There Is Not Nearly Enough Modernization Money In the 2002 and 2004 Bonds to Meet the Overwhelming Need for Modernization

In my first report, I showed that the modernization amounts in the 2002 and 2004 bond, if passed, plus the modernization amounts in Proposition 1A were billions short of the amount needed to modernize all the classrooms in the State that were 25 years or older.<sup>11</sup> Corley Report at 67-69. In short, I relied on the State’s estimate of about 200,000 classrooms that were 25 years old or older, the State loading figures of students per classroom, and the State’s per pupil grant amounts adjusted for whether a student was in elementary, middle, or high school. I calculated the amount needed to provide the state’s share of funds to modernize all those classrooms at approximately \$14.5 billion.<sup>12</sup> However, Proposition 1A and the 2002 and 2004 bonds include about \$7.7 billion for modernization. Even if one includes the relatively small

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<sup>11</sup> Under the Modernization program, a classroom in a permanent building is eligible for modernization if it is 25 year or older and has not previously been modernized with state funds. Portable classrooms are eligible if they are 20 years or older and have not previously been modernized with State funds.

<sup>12</sup> This number is low for two reasons. It does not account for the fact that the State will have to pay up to 100% of the modernization costs for some financial hardship districts. It also does not account for the inadequacy of the modernization grants with respect to the actual work that needs to be done in some schools.



amounts of funds for modernization in Proposition 203 and earlier bonds, the shortfall is very large.

Moreover, the State makes no effort to prioritize the allocation of these funds except on a first-come first-served basis. So, there is no assurance that those schools in unusually poor condition that are eligible for modernization will receive funding before the money runs out, or will receive the funds they need to bring the school into satisfactory condition.<sup>13</sup> In fact, in my experience, districts having the fewest resources, or that have management problems, are the most likely districts not to file applications, or not to file applications quickly, thereby increasing the chances that they will not be funded in this bond cycle.

C. The State Facilities System Will Not Get All Schools Off Concept 6 Calendars

The current system will not eliminate schools on multi-track year round education calendars (MTYRE), including those on Concept 6,<sup>14</sup> the worst of the MTYRE calendars, for two reasons. First, under the current eligibility criteria for new construction funds, districts do not have eligibility for students housed in a school beyond its capacity by the use of MTYRE calendars so long as they are receiving MTYRE operation grants. This is true, even though Dr. Duffy acknowledges “. . . the state has broken the deal . . .” regarding payments in lieu of construction dollars for districts building multi-track (year-round with rotating classes) instead of traditional calendar schools. Duffy Depo. 225. Indeed, the State has paid less than 25% on every dollar of the expected operational grant payment. Nevertheless, there are districts on MTYRE calendars currently facing tight fiscal times who may very well not be able to forego the operational grants in order to restore their eligibility for new construction funding. Corley Report at 62-64.

Second, while the Critically Overcrowded Schools Program, which sets aside a dedicated pot of funds for districts to build new schools designed to move students out of severely overcrowded schools is a good program, there are real questions as to whether it is sufficient to address all the severe overcrowding needs in the State, even if all schools on MTYRE were able to forego operational grants to make themselves eligible for the program. Dr. Duffy himself seems to acknowledge that the program is not large enough to get all schools off Concept 6. Duffy Depo. 645:12-646:24.

Dr. Duffy and I agree that AB 16 includes a tremendous sum of money that will help many schools and districts relieve overcrowding and fix facilities that are badly in need of repair. But AB 16 is not a panacea. It does not provide funds for routine maintenance and operations.

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<sup>13</sup> Modernization of a school that is 25 years old or older is not a frill. In my experience, as schools age, there are almost always systems, such as HVAC systems, or items like roofs, which need major repair or replacement. Bruce Hancock of the State Allocation Board staff concurs with this opinion. Hancock Depo. 161:12-162:13 (“Well, I think it is obvious that any system, roofing, heating and air conditioning, plumbing, have life cycles. And I don't know of many systems in any kind of a structure that have a life cycle of more than 25 years.”)

<sup>14</sup> Concept 6 calendars generally have 163 days of instruction versus 180 days for other year-round calendars and traditional calendar schools. This causes a loss of almost four weeks of school per year for these students.

Moreover, the reality is that the State of California has drastically underfunded school facilities needs for decades, Corley Report at 51, and, in the words of Senator Dede Alpert, who was heavily involved in the negotiations about AB 16, “[e]ven \$25 billion isn’t enough to fix everything. . . . we have more need than there is room in the bond.” Frith, School Bonds Head Toward Ballot, *San Diego Union-Tribune*, April 5, 2002. And, since there are not enough funds to meet all the needs, the inequities in how money is sometimes allocated, which I highlighted in my earlier report, will mean that some children remain in substandard facilities.

D. Deferred Maintenance Funding Has Been Less Than the Statutorily Established Amount Frequently in Past Years, And is Severely Under Funded Again at This Time.

Persistent shortchanging of the Deferred Maintenance program by the State has contributed to the problems of maintenance for school districts. While the program is a wonderful assist to local school districts and is an example of how a centralized State-run program can be effective and efficient while being very popular with educators, the State has habitually deficit funded this program (provided fewer dollars than promised). As for the current budget year, Dr. Duffy estimates that the amount of deferred maintenance funding will be very low. Duffy Depo. 452:11-453:12.

**Conclusion**

A careful review of the Dr. Duffy’s, Dr. Myers’s, and my expert reports and deposition transcripts demonstrates that there is general agreement over the need for and benefit of Statewide facilities standards and a system of technical assistance, oversight, and even intervention to ensure local districts keep their facilities up to these standards. There are, however, substantial disagreements in the area of facilities funding between Dr. Duffy and me. In my opinion, the numbers, allocation models, and the limits on the use of general obligation bond funds, reveal that Dr. Duffy’s optimism about the ability of these funds to solve the operations, routine maintenance, and capital needs of California’s schools, especially those that remain in unusually poor condition, is unwarranted.