MARK D. ROSENBAUM (BAR NO. 59940)
CATHERINE E. LHAMON (BAR NO. 192751)
PETER J. ELIASBERG (BAR NO. 189110)
ACLU Foundation of Southern California
1616 Beverly Boulevard
Los Angeles, California 90026
Telephone: (213) 977-9500

JACK W. LONDEN (BAR NO. 85776)
MICHAEL A. JACOBS (BAR NO. 111664)
MATTHEW I. KREEGER (BAR NO. 153793)
LEECIA WELCH (BAR NO. 208741)
J. GREGORY GROSSMAN (BAR NO. 209628)
Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105-2482
Telephone: (415) 268-7000

ALAN SCHLOSSER (BAR NO. 49957)
KATAYOON MAJD (BAR NO. 211756)
ACLU Foundation of Northern California
1663 Mission Street, Suite 460
San Francisco, California 94103
Telephone: (415) 621-2493

JOHN T. AFFELDT (BAR NO. 154430)
Public Advocates, Inc.
1535 Mission Street
San Francisco, California 94103
Telephone: (415) 431-7430

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

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

Plaintiffs,

v.

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

Defendants.

No. 312236

DECLARATION OF LEECIA WELCH IN SUPPORT OF PLAINTIFFS' DESIGNATION OF REBUTTAL EXPERT WITNESS JEANNIE OAKES

Date Action Filed: May 17, 2000

I, LEECIA WELCH, hereby declare as follows:

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

2. Plaintiffs have provided a list of the persons whose expert opinion testimony the plaintiffs intend to offer on rebuttal at trial of this action, either orally or by deposition testimony. The list includes Jeannie Oakes, to whom this declaration refers.

3. Dr. Oakes has agreed to testify at trial.

4. Dr. Oakes will be sufficiently familiar with the pending action to submit to a meaningful oral deposition concerning the specific testimony, including any opinions and their bases, she is expected to give at trial.

5. Dr. Oakes's fee for providing deposition testimony, consulting with the attorneys for plaintiffs, and researching and related activities undertaken in preparation of the attached rebuttal expert report is $300 per hour.

6. Attached to my declaration as Exhibit A and incorporated by this reference is a *curriculum vitae* providing Dr. Oakes's professional qualifications, in compliance with section 2034(f)(2)(A) of the California Code of Civil Procedure.

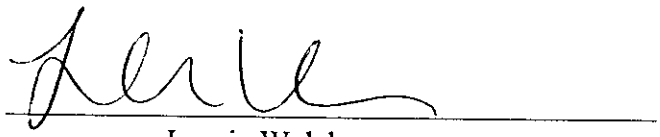
7. Attached to my declaration as Exhibit B and incorporated by this reference is Dr. Oakes's first rebuttal expert report entitled, "Responding to the State's Expert Reports: *Williams v. State of California.*" The following is a brief narrative statement of the general substance of the testimony Dr. Oakes is expected to give at trial, pursuant to section 2034(f)(2)(B) of the California Code of Civil Procedure. Dr. Oakes rebuts the State's expert reports by, among other things, summarizing the plaintiffs' case and the responses offered by the State's experts; identifying conceptual and empirical errors in the State's experts' framing of the case, and in their arguments and evidence; rebutting the State's experts' claims that California's accountability policies constitute a sufficient system of management and oversight; addressing errors the State's experts make in their analyses of teachers; addressing the State's experts' denial that fully credentialed teachers,

instructional materials, and decent facilities are essential; and addressing the State's experts' critiques of plaintiffs' recommendations for realizing equal opportunity. The foregoing statements are only a general summary of the issues and conclusions discussed and documented more fully in Dr. Oakes's rebuttal expert report, attached as Exhibit B.

8. Attached to my declaration as Exhibit C and incorporated by this reference is Dr. Oakes's second rebuttal expert report entitled, "The Inequality of Concept 6 Schools: A Response to Charles Ballinger." The following is a brief narrative statement of the general substance of the testimony that Dr. Oakes is expected to give at trial, pursuant to section 2034(f)(2)(B) of the California Code of Civil Procedure. Dr. Oakes responds to Charles Ballinger's report regarding California's use of Concept 6 school calendars. According to Dr. Oakes, although Concept 6 is the most extreme multi-track, year-round calendar, and the one challenged in this litigation, Ballinger's report devotes little attention actually addressing the Concept 6 calendar. Instead, Ballinger discusses year-round education at a general and abstract level. Ballinger does nothing to dispute evidence that multi-track, year-round schools have disadvantages and that Concept 6 has further disadvantages unique to itself. He attempts to ignore or gloss over a variety of fundamental points about the Concept 6 calendar, the obstacles it poses to schooling equality, and the educational disadvantages it creates for children in the classroom. He does not address or counter the plaintiffs' key arguments: (1) the Concept 6 calendar is not an educational reform, but instead a desperate response to severe overcrowding that provides fewer annual days of instruction than any other school calendar; (2) the Concept 6 calendar contributes significantly to students' disadvantage, particularly that of students on track B; (3) the four California school districts using the Concept 6 calendar would like to eliminate it in order to bring greater educational opportunity and improve student achievement; and (4) the Concept 6 calendar's utility in *housing* students in emergencies cannot justify its large-scale and long-term implementation as a means to *educate* students. The foregoing statements are only a general summary of the issues and conclusions discussed and documented more fully in Dr. Oakes's rebuttal expert report, attached as Exhibit C.

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

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



Leecia Welch

EXHIBIT A

JEANNIE OAKES

Graduate School of Education & Information Studies
University of California, Los Angeles
Los Angeles, California 90095-1521

EDUCATION

1980 Ph.D., Education, University of California, Los Angeles
1969 MA, American Studies, California State University, Los Angeles
1964 BA, English, San Diego State University

PROFESSIONAL EXPERIENCE

2001-present	Presidential Professor in Educational Equity Graduate School of Education & Information Studies, UCLA
2001-present	Director, University of California All Campus Consortium for Research on Diversity (UC ACCORD)
2000-present	Director, UCLA's Institute for Democracy Education and Access (IDEA)
1998-2001	Associate Dean for Research and Outreach Graduate School of Education & Information Studies, UCLA
1994-2000	Director, Center X Graduate School of Education & Information Studies, UCLA
1994-1998	Assistant Dean for Teacher Education Graduate School of Education & Information Studies, UCLA
1991–2001	Professor Graduate School of Education & Information Studies, UCLA
1989–1991	Associate Professor Graduate School of Education, UCLA
1985–1989	Senior Social Scientist Education and Human Resources Program, RAND, Santa Monica, CA
1981–1985	Senior Research Associate Graduate School of Education, UCLA

RESEARCH AREAS

Dr. Oakes' research focuses on elementary and secondary schooling policies and practices. She is perhaps best known for her studies investigating the effects of ability grouping and curriculum tracking on curriculum content, teaching practices, and classroom processes. Of particular interest have been analyses of the impact of these grouping practices on the learning opportunities of low-ability, poor, and ethnic minority students. These analyses are reported in her widely-read book, Keeping Track: How Schools Structure Inequality (Yale University Press, 1985), as well as in John Goodlad' s, A Place Called School (New York, McGraw-Hill, 1984). Dr. Oakes also conducted Multiplying Inequalities (RAND, 1990), a major study for the National Science Foundation that examined the distribution of resources, teacher quality, and instructional opportunities in mathematics and science in a national sample of schools and classrooms serving different groups of students. More recent work investigates state and local efforts to implement "equity minded" education reform, including alternatives to tracking and ability grouping. Two longitudinal, multi-site, case study research projects exemplify this line of work. One study, sponsored by the Carnegie Corporation of New York and reported in Becoming Good American Schools: The Struggle for Civic Virtue in Education Reform (Jossey-Bass, 2000), examined the interaction of state policymakers and local schools in five states as they implemented middle school reform. The second study, sponsored by the Lilly Endowment, followed the progress of ten racially-mixed secondary schools as they created alternatives to traditional tracking and ability grouping practices. Oakes has also conducted local analyses of tracking and "detracking" in conjunction with four federal desegregation cases.

In the past six years, Oakes has launched a new program of research developing and examining efforts to simultaneously prepare new teachers and improve teaching and learning opportunities in city schools serving low-income children of color. This work investigates the impact of the teacher education projects of UCLA Graduate School of Education and Information Studies' Center X (Where Research and Practice Intersect for Urban School Professionals) and of UC Outreach. In 2000, this work evolved into a campuswide program of research and public engagement, UCLA's Institute of Democracy Education and Access (IDEA) that Oakes now directs. Oakes also directs the University of California's All Campus Consortium on Research for Diversity (UC ACCORD).

HONORS

John Dewey Society Annual Lecture—American Educational Research Association, 2003
Veffe Milsted Jones Distinguished Lecture—California State University, Long Beach, 2003
World Cultural Council—Jose Vasconcelos World Award in Education—2002
University of California--Presidential Chair in Educational Equity—2001-in perpetuity

American Educational Research Association—Outstanding Book Award 2001 for Becoming Good American Schools: The Struggle for Civic Virtue in Education Reform.
American Association of Colleges of Teacher Education—Margaret Lindsey Award for Research, 2000
American Educational Studies Association (AESA)—Critic's Choice Award given to Teaching to Change the World, November, 1999
University of South Carolina Museum of Education—Keeping Track: How Schools Structure Inequality selected for Books of the Century Exhibition, 1999-2000
California Council for the Education of Teachers—Educational Quality Award, 1998
Dartmouth College—Rockefeller Distinguished Lecturer, 1998
Education, Power, and Personal Biography: Dialogues with Critical Educators. (edited by Carlos Alberto Torres)—Interviewee, 1988
National Association of Multicultural Education—Multicultural Research Award, 1998
American Educational Research Association—Palmer O. Johnson Award for Outstanding Research Article, 1997
Southern Christian Leadership Conference—Ralph David Abernathy Award for Community Service, 1997
Spencer Foundation—Mentoring Fellowship ($50,000 award to support work with Ph.D. students), 1994-1996
University of Pennsylvania Education Alumni Association—National Award of Distinction, 1995
Center for the Advanced Study in the Behavioral Sciences, Palo Alto, CA—Fellowship (awarded, not yet taken), 1994
American Educational Research Association—Award for Early Career Achievement in Programmatic Research, 1990
American Vocational Education Research Association—Outstanding Journal Article for 1987
Educational Press Association of America—Distinguished Achievement Award for Learned Article (Merit Award), 1987
American School Board Journal—Keeping Track: How Schools Structure Inequality named one of 10 "Must-Read Books for 1985"
Rockefeller Foundation—Scholar in Residence, Bellagio, Italy, 1983

SELECTED PROFESSIONAL ACTIVITIES

American Educational Research Association:
Nominations Committee—2003
Chair, Early Career Achievement Award Committee—1998-1999
Editorial Advisory Board, American Educational Research Journal, 1997-current
Editorial Advisory Board, Education Researcher, 1997-2000
Associate Editor, Education Evaluation and Policy Analysis, 1994-1996
Editorial Advisory Board, Handbook of Research on Multicultural Education (published by Macmillan for AERA in 1992; second edition to be published in 2002)

National Advisory Board Member, Encyclopedia of Educational Research (published by Macmillan for AERA in 1992)
National Advisory Board Member, Handbook of Research in Curriculum (published by Macmillan for AERA in 1992)
Editorial Advisory Board, Review of Research in Education, 1991-1993
Board of Advisory Editors, Review of Educational Research, 1991 - 1994
Chair, Professional Development and Training Committee, 1988-1990
Editorial Advisory Board Member, American Journal of Education, 1987-1990

National Academy of Science (NRC)
Committee on Programs for the Advanced Study of Mathematics and Science in American High Schools, 1999-2001
Panel on National Standards and Assessment in Science, 1992-1996
Reviewer, High Stakes, Report of the Panel on the uses of national testing, 1999

National Association of Multicultural Education: Editorial Advisory Board, Journal of Multicultural Perspectives—1999-2001.

California State Legislature Joint Master Plan Committee—Chair, Subcommittee on Student Learning, 2001-2003

California Department of Education—Member, Advisory Board, AP Challenge Grants, 2000-present

U.S. Dept. of Education—Member Hispanic Dropout Project (appointed by U.S. Secretary of Education, Richard Riley), 1996-1998

California Commission on Teacher Credentialing—Advisory Panel for the Development of Teacher Preparation Standards (SB 2042), 1998-2000

University of California—Co-Chair of the Planning Committee for the UC Research Initiative in Education and Equity, 1998-1999: Member Outreach Technical Advisory Panel, 1998-present

UCLA—Member, Outreach Executive Committee, 1998-present

American Civil Liberties Union—Consultant on California students' access to Advanced Placement Courses

United States District Court for the Western District of Pennsylvania, the Commonwealth of Pennsylvania, the Woodland Hills School District, and the plaintiffs and other concerned parties associated with *Hoots v. Commonwealth of Pennsylvania*, No. 71-538—consultant on implementation of the court order, 1996-1998

Lawyer's Committee for Civil Rights Under Law—Consultant on within-school segregation, 1995-present

Center for the Education of Students Placed at Risk, Johns Hopkins University (funded by the U.S. Department of Education), National Advisory Board, 1994-1999.

Coalition to Save Our Children v. State Board of Education, et al., (school desegregation)—Data Analyst and Expert Witness on Ability Grouping, Tracking, and Within-School Segregation in New Castle County Schools, 1994

People Who Care v. Rockford, IL No. 89-C-20168 (school desegregation)—Data Analyst and Expert Witness on within-school segregation, 1993-1994; 1999-2000.

U.S. General Accounting Office—West Coast Advisory Panel, 1993-1996

University of California—Chair, UC Advisory Committee on Professional Programs in Education, 1992-1993, and primary author, Education in Troubled Times: A Call to Action (UC Office of the President), 1993

Vásquez v. San Jose Unified School District, No. C 71-2130 RMW (SJ) (school desegregation)—Expert Witness and Data Analyst on within -school segregation, 1993-1994

The College Board Equity 2000—National Advisory Board, 1992-1998

Common Destiny Alliance, Vanderbilt University and University of Maryland—Co-Director and Member, Board of consulting researchers, 1992-present

National Council of La Raza—National Advisory Committee for Project EXCELMAS, 1992-1996

National Governors' Association—Consultant to staff regarding policy recommendations for the National Education Goals, 1992-1996

The Public Policy Research Consortium, Chicago, IL—Member, Board of Directors, 1992-1996

Holmes Group—Member, Equity Critique Panel, 1991-1995

National Society for the Study of Education—Member, National Board of Trustees, 1991-1994.

Westview Press—Co-editor (with Henry Levin) of a book series, Renewing American Schools, 1991-1998.

Other Editorial and Reviewing Services: Jossey-Bass: Yale University Press; Teachers College Press; American Educational Research Journal; American Journal of Education; Educational Evaluation and Policy Analysis; Educational Researcher; Education Policy; International Journal of Qualitative Studies in Education; Review of Research in Education; Sociology of Education; The Carnegie Corporation of New York; The National Science Foundation; RAND; The Spencer Foundation; U.S. Department of Education; Wisconsin Center for Educational Research

Chicago Panel on School Policy and Finance—National Advisory Panel for monitoring reform in Chicago Public Schools, 1990-1992

U.S. Department of Education OERI National Center for the Improvement of Science Education—Consultant and Report Co-author, 1988-1991

National Assessment Governing Board (U.S. Department of Education) and the Council of Chief State School Officers—Consultant regarding the linking of National Assessment of Educational Progress to other national data collection efforts, 1990-1991

California Post secondary Education Commission—Advisor to Task Force (education and college preparation in low-income and minority youth), 1988

French Ministry of Education and the Organization for Economic Cooperation and Development (OECD)—Invited Expert to the 2nd International Conference on the Development of Educational Indicators, Poitiers, France, 1988; Co-author of the OECD proposal to establish an international indicators project; and continuing involvement as a Consultant to the project, 1988-1990

Quarles v. Oxford, Mississippi Schools (desegregation)—Expert Witness on tracking and within-school segregation, 1988

The College Board Equality Project—Advisor to Colloquium on the Status of Black American Education, 1985

NAACP Legal Defense and Education Fund—Consultant on education policy issues, 1985-present

RELATED PUBLICATIONS

Books and Published Research Monographs

Oakes, J. & Lipton, M. (2002). Teaching to change the world, second edition. New York: McGraw-Hill.

Committee on Programs for Advanced Study of Mathematics and Science in American High Schools (2002). Learning and Understanding: Improving Advanced Study of Mathematics and Science in U.S. High Schools. Washington, D.C.: National Research Council.

Oakes, J., Quartz, K., Ryan, S., & Lipton, M. (2000). Becoming good American schools: The struggle for civic virtue in education reform. San Francisco: Jossey-Bass.

Welner, K. & Oakes, J. (2000). Negotiating the Politics of Detracking: A School Leaders' Guide. New York: Skylight Publications.

Oakes, J. & Lipton, M. (1999). Teaching to change the world, first edition. New York: McGraw-Hill.

Oakes, J., Welner, K., and Yonezawa, S. (1998). Mandating equity: A case study of court-ordered detracking in the San Jose schools. California Policy Seminar, University of California.

Oakes, J. & Wells, A.S. (1996). Beyond the technicalities of school reform: Policy lessons from detracking schools. Indianapolis: Lilly Endowment.

Oakes, J. and Quartz, K. (Eds.). (1995). Creating new educational communities. 94th Yearbook of the National Society for the Study of Education. Chicago: University of Chicago Press.

Oakes, J., Selvin, M., Karoly, L., & Guiton, G. (1992). Educational matchmaking: Academic and vocational tracking in comprehensive high schools. The RAND Corporation, Santa Monica, CA.

Oakes, J. (1990). Lost talent: The under-participation of minorities, women, and disabled persons in science. The RAND Corporation, Santa Monica, CA.

Oakes, J., & Lipton, M. N. (1990). Making the best of schools: A handbook for parents, teachers and policymakers. New Haven, CT: Yale University Press.

Oakes, J. (1990). Multiplying inequalities: The effects of race. social class. and tracking on opportunities to learn science and mathematics. The RAND Corporation, Santa Monica, CA.

Excerpted in National Science Board (1991) Science and engineering indicators. Excerpted in J. Bellanca, E. Swartz (Eds.). (1993) The challenge of detracking.

Selvin, M., Oakes, J., Hare, S., Ramsey, K., & Schoeff, D. (1989). Who gets what and why? Curriculum decision-making at three comprehensive high schools. National Center for Research in Vocational Education, University of California, Berkeley, The RAND Corporation, Santa Monica, CA.

Shavelson, R. J., McDonnell, L. M., Oakes, J. (Eds.). (1989). Indicators for monitoring mathematics and science education: A source book. The RAND Corporation, Santa Monica, CA.

Oakes, J. (1987). Improving inner-city schools: Current directions in urban district reform. U.S. Department of Education Center for Policy Research in Education, The RAND Corporation, Santa Monica, CA.

Shavelson, R. J., McDonnell, L. M., Oakes, J., & Carey, N. (1987). Indicator systems for monitoring mathematics and science education. The RAND Corporation, Santa Monica, CA.

Oakes, J. (1986). Educational indicators: A guide for policymakers. Center for Policy Research in Education, The RAND Corporation, Santa Monica, CA.

Sirotnik, K. A., & Oakes, J. (Eds.). (1986). Critical perspectives on the organization and improvement of schooling. Hingham, MA: Kluwer-Nijhoff Publishing.

Oakes, J. (1985). Keeping track: How schools structure inequality. New Haven, CT: Yale University Press.

Commissioned Reports

Oakes, J. & Saunders, M. (2002) Access to Textbooks, Instructional Materials, Equipment, and Technology: Inadequacy and Inequality in California's Public Schools. Report prepared in conjunction with *Williams v. California.*

Oakes, J. (2002) Education inadequacy, inequity and failed state policy: a synthesis of expert reports prepared for Williams v. California. Report prepared in conjunction with *Williams v. California.*

Oakes, J. & Hernandez, S. (2002). A coherent and integrated system of high quality and equitable education for California: Challenging goals, guaranteed opportunities to learn, fair and useful assessment & systemic accountability. Report of the Student Learning Working Group of the California Legislature's Joint Committee to Develop a Master Plan for Education. Sacramento: California Senate.

Oakes, J. & Wells, A.S. (2001), The comprehensive high school, detracking, and the persistence of social stratification. Paper commissioned by New York University, for its Seminar on the Future of the Comprehensive High School.

Oakes, J. (2000). Within-school integration, grouping practices, and educational quality in Rockford schools. Report prepared in conjunction with *People Who Care v. Rockford, IL. ISD.*.

Oakes, J., Muir, K., & Joseph, R., (2000). Coursetaking and Achievement in Mathematics and Science: Inequalities that Endure and Change. Paper commissioned by the National Institute of Science Education.

Oakes, J., Rogers, J., McDonough, P., Solorzano, D. Mehan, H., Noguera, P. (2000) Remedying Unequal Opportunities for Successful Participation in Advanced Placement Courses in California High Schools. Report prepared for the ACLU Southern California.

Secada, W.G., Chavez-Chavez, R, Garcia, E., Muñoz, C., Oakes, J., Santiago-Santiago, I., Slavin, R. (1998). No more excuses. Report of the Hispanic Dropout Project, Commissioned by United States Secretary of Education Richard W. Riley.

Welner, K., Oakes, J., & FitzGerald, G. (1998). Reforming for excellence and equity in Woodland Hills: A progress report on detracking. Report for the United States District Court for the Western District of Pennsylvania, the Commonwealth of Pennsylvania, the Woodland Hills School District, and the plaintiffs and other concerned parties associated with *Hoots v. Commonwealth of Pennsylvania*, No. 71-538.

Oakes et al. (1993). Education initiatives for troubled times: A call to action. Report of the Advisory Committee for Planning Professional Programs in Education, University of California.

Raizen, S. A., Baron, J. B., Champagne, A. B., Haertel, E., Mullis, I. V., & Oakes, J. (1990). Assessment in science education in the middle grades. Report of the National Center for Improving Science Education, The NETWORK, Inc., Andover, Mass.

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McDonnell, L., & Oakes, J. (1989). Creating responsible and responsive accountability systems: Report of the OERI study group on state accountability reporting. Report commissioned by the Office of Educational Research and Improvement, U.S. Department of Education.

Raizen, S. A., Baron, J. B., Champagne, A. B., Haertel, E., Mullis, I. V., & Oakes, J. (1989). Assessment in elementary school science education. Report of the National Center for Improving Science Education, The NETWORK, Inc., Andover, Mass.

Keating, P., & Oakes, J. (1988). Access to knowledge: Policy issues for states. Report commissioned by the Education Commission of the States.

Oakes, J. (1987). Opportunities, achievement, and choice: Issues in the participation of women, minorities, and the disabled in science. Report commissioned by the National Science Foundation.

Edited Chapters & Encyclopedia Entries

Oakes, J., Blasi, G. & Rogers, J. (in press) Accountability for Adequate and Equitable Opportunities to Learn. In Kenneth Sirotnik, Ed., *Moral Dimensions of Educational Accountability: Toward Responsible Concepts and Practices*, New York: Teachers College Press.

Oakes, J. (in press) Teaching to Change the World. In Lauri Johnson, Mary Finn and Rebecca Lewis, Eds., *Urban Education with an Attitude: Linking Theory, Practice And Community*. Buffalo, NY: SUNY Press.

Oakes, J. & Well, A.S., (in press). The Comprehensive High School, Detracking, and the Persistence of Social Stratification. In Floyd M. Hammack, Ed., *A Future for the Comprehensive High School?* New York: Teachers College Press.

Oakes, J., Muir, K. & Joseph, R., (in press). Access and Achievement in Mathematics and Science: Inequalities that Endure and Change. In James A Banks & Cherry M. Banks, (Eds.), Handbook of Research on Multicultural Education, San Francisco: Jossey Bass.

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Welner, K. & Oakes, J. (in press) Mandates Still Matter:Examining a Key Policy Tool for Promoting Successful Equity-Minded Reform. In J. Petrovitch & A.S. Wells, Bringing Equity Back In. New York: Teachers College Press.

Oakes, J. & Lipton, M. (in press). Foreword. In Paula Bradfield-Kreider & Jaime Romo (Ed.), Reclaiming Democracy: Multicultural Educators' Journeys Toward

Transformative Teaching. New York: Merrill/Prentice Hall.

Oakes, J., (2002) Response to Ernest Morrell & Jeff Duncan-Andrade, "What they Learn in School: Hip-Hop as a Bridge to Canonical Poetry." In J. Mahiri, Ed., What They Don't Learn in School: Literacy in the Lives of Urban Youth. Boston: Peter Lang.

Oakes, J., Rogers, J., Lipton, M., & Morrell, E. (2002). The social construction of college access: Confronting the technical, cultural, and political barriers to low income students of color. In William G. Tierney & Linda Serra Haggedorn (Eds.), Extending our reach: Strategies for Increasing Access to College, New York: SUNY Press.

Oakes, J. & Lipton, M. (2001). Foreword. In Kevin Welner, Legal Rights, Local Wrongs; When Community Control Collides with Educational Equity. New York: SUNY Press.

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Oakes, J. (2000). The public responsibility of public schools of education. In William Tierney, (Ed.), Faculty roles and responsibility. New York: Garland Press.

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Oakes, J., Welner, K, Yonezawa, S., & Allen, R. (1998). Norms and politics of equity minded change: Researching the "Zone of Mediation." In Michael Fullan, Andy Hargreaves, & Ann Lieberman (Eds.), International handbook on educational change. London: Klewer.

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Oakes, J. (1997). Ability grouping and tracking in schools. In T. Husen & T.N. Postlewaite (Eds.), The international encyclopedia of education (2nd ed., on CD-ROM). Oxford: Pergamon.

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educational change with mind and heart, Yearbook for the Association for Supervision and Curriculum Development. Arlington, VA: ASCD.

Oakes, J. (1996). Two cities: Tracking and within-school segregation. In Ellen Condliffe Lagemann & La Mar Miller (Eds.), *Brown v. Board of Education*: The challenge for today's schools. New York: Teachers College (reprint of article that first appeared in Teachers College Record).

Guiton, G., Oakes, J., Gong, J., Quartz, K. Lipton, M. & Balisok, J. (1995). Teaming: Creating small communities of learners in middle grades. In Oakes, J. & Quartz, K. (Eds.), Creating new educational communities. 94th Yearbook of the National Society for the Study of Education. Chicago: University of Chicago Press.

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Oakes, J. (1995) Normative, technical and political dimensions of creating new educational communities. In Oakes, J. & Quartz, K. (Eds.), Creating new educational communities. 94th Yearbook of the National Society for the Study of Education. Chicago: University of Chicago Press.

Oakes, J. (1995). Opportunity to learn: Can standards-based reform by equity-based reform? In I. Carl (Ed.), Seventh-five veers of progress: Prospects for school mathematics. NCTM 75th Anniversary Commemorative Volume. San Francisco, CA: Jossey-Bass.

Oakes, J.& Lipton, M. (1995). Developing alternatives to tracking and grading. In L. Rendon & R. Hope (Eds.), Educating a new majority. San Francisco: Jossey-Bass.

Oakes, J. (1994). Ability grouping and tracking in schools. In T. Husen & T.N. Postlewaite (Eds.), The international encyclopedia of education. Oxford: Pergamon.

Oakes, J. (1994). Foreword. In M. Sapon-Shevin, Playing favorites: Gifted education and the disruption of community. Albany, NY: SUNY Press.

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Oakes, J. (1993). Foreword. In D. Kelly, Last chance high. New Haven: Yale University Press.

Burstein, L., Oakes, J., & Guiton, G. W. (1992). Educational indicators. In M. Alkin (Ed.), Encyclopedia of educational research. New York: Macmillan.

Oakes, J. (1992). Foreword. In Wheelock, A., Crossing the tracks. Boston: New Press.

Oakes, J. (1992). Grouping students for instruction. In M. Alkin (Ed.), Encyclopedia of educational research. New York: Macmillan.

Oakes, J., Gamoran, A., & Page, R. (1992). Curriculum differentiation: Opportunities, consequences, and meanings. In P. A. Jackson (Ed.), Handbook of research on curriculum. New York: Macmillan.

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EXHIBIT C

The Inequality of Concept 6 Schools:
A Response to Charles Ballinger

Jeannie Oakes, Presidential Professor
UCLA

This report responds to Charles Ballinger's report relating to California's use of Concept 6 school calendars. Concept 6 is the most extreme multi-track, year-round calendar, and the one challenged in this litigation. However, as Ballinger's report title ("Understanding the Value of Multi-Track Year Round Education") reveals, the report devotes little attention actually addressing the Concept 6 calendar. Instead, Ballinger discusses year-round education at a general and abstract level. The entirety of his argument is built on flawed logic; namely, if there are merits to some versions of year-round education, Concept 6, because it is a version of year-round education, shares those merits. This is patently false in substance and logic. Further, Ballinger does nothing to dispute evidence that multi-track, year-round schools have disadvantages and that Concept 6 has further disadvantages unique to itself. He attempts to ignore or gloss over a variety of fundamental points about the Concept 6 calendar, the obstacles it poses to achieving school equality, and the educational disadvantages it creates for children in the classroom. He does not address or counter the plaintiffs' key arguments:

- The Concept 6 calendar is not an educational reform: it is a desperate response to severe overcrowding that provides fewer annual days of instruction than any other school calendar.

- The Concept 6 calendar contributes significantly to students' disadvantage, particularly that of students on track B.

- The four California school districts using the Concept 6 calendar would like to eliminate it in order to bring greater educational opportunity and improve student achievement.

- The Concept 6 calendar's utility in *housing* students in emergencies cannot justify its large-scale and long-term implementation as a means to *educate* students.

I will not repeat the considerable evidence here that I provided in my earlier report.[1] Rather, using the arguments as organizing themes, I provide additional evidence that makes clear the inadequacy and irrelevance of the arguments and evidence Ballinger uses to defend Concept 6 schools.

I. The Concept 6 calendar is no educational reform.

Ballinger conflates multi-track and single-track year-round education, glossing over the significant differences between the two calendar types and obscuring the particulars of the Concept 6 calendar. The distinctions between multi-track and single-track year-round education, however, are meaningful, particularly when it comes to the Concept 6 calendar. No sleight of

[1] J. Oakes, Multi-Track, Year-Round Calendar (Concept 6) and Busing to Address Overcrowding, 2002 ("Oakes Report").

hand can make them equivalent; they are born of far different needs, and they afford students far different opportunities.

Concept 6 provides significantly fewer days of instruction. Unlike all other school calendars, whether multi-track or single-track, the Concept 6 calendar provides only 163, as opposed to 180, days of instruction. This fundamental difference cannot be ignored.

State officials and representatives have recognized the significance of reduced annual days of instruction. Recently, the Legislature's Joint Committee to Develop a Master Plan for Education recognized that the Concept 6 calendar "ha[s] reduced the numbers of calendar days of instruction and, hence, of students' opportunities to learn."[2] Similarly, the State Department of Toxic Substances Control concluded that, when schools resort to the shortened Concept 6 calendar, "the education process and the children in it suffer."[3]

In 1987, the California Department of Education ("CDE"), in its own study on year-round education, acknowledged that "[a] major disadvantage of the Concept 6 Plan is the matter of the fewer instructional days . . . ."[4] As stated in a document prepared in 1992 by the CDE's School Facilities Planning Division, "the reduced number of in-class school days inherent to the Concept 6 calendar (17 fewer than the average) raises serious reservations about its educational efficacy. Most educators feel the school year should be longer, not shorter."[5]

Indeed, to this day, the CDE describes as an advantage of other calendars that they provide a school year of 180 days of instruction – that is, a longer school year.[6] The Governor, acknowledging the benefits of a longer school year, recently proposed to improve education at the middle school level by extending the school year by 20 to 30 days. Significantly, he proposed not adding *minutes* to the school day, but adding *days* to the school year. As stated in the minutes of a California Board of Education meeting where the Governor's proposal was discussed: "There is research to support lengthening of the school year by 20 to 30 days."[7] The CDE also recognizes the additional disadvantage that the Concept 6 school year simply cannot be extended beyond its 163 days of instruction to accommodate an increase in days.[8]

As explained in my original report and not countered by Ballinger, the addition of minutes to each school day does not compensate for the reduction in the number of school days. As discussed below, officials from districts using the Concept 6 calendar confirm that that the lost 17 days of instruction are not compensated, as do documents from the State's Immediate

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[2]Joint Committee to Develop a Master Plan for Education—Kindergarten through University, *Master Plan for Education In California,* 2002, p. 44.
[3]California Environmental Protection Agency, Department of Toxic Substances Control, *School Property Evaluation and Cleanup Division Biennial Report, January 2000 through 2001*, April 2002, p. 11.
[4]C. Quinlan, C. George & T. Emmet, Year-Round Education: Year-Round Opportunities. A Study of Year-Round Education in California, 1987, p. 12.
[5]Memorandum from Tom Payne to Year-Round Education Advisory Committee, December 21, 1992. DOE 86995-996.
[6]California Department of Education, Year-Round Education Program Guide ("CDE Program Guide"), p. 3 of 19. ("[l]imits the school year to approximately 163 days"), at http://www.cde.ca.gov/facilities/yearround/proggde.htm.
[7]California State Board of Education, Final Minutes, March 8, 2001.
[8]CDE Program Guide, p. 4 of 19.

Intervention/Underperforming Schools Program ("II/USP"). For example, according to the II/USP Plan for Barton Hill Elementary in the Los Angeles Unified School District ("LAUSD"):

> The Concept 6 school calendar presents a significant barrier to student achievement. . . . The school is on a 163-day rather than the normal 180-day year calendar. While the school day is elongated to account for the 17 fewer days, teachers and experts agree that adding a few minutes to each lesson is not the same as having the equivalent calendar days. Thus, on the basis of the shortened calendar alone, Barton Hill students . . . receive 17 fewer days of "new" instruction a year or 102 days over the six years at Barton. In short, these students receive almost two-thirds of year [sic] less education than students do on regular school calendars.[9]

As stated in the II/USP Plan for Creekside Elementary in Lodi:

> The kind of year-round education (YRE) calendar implemented by the Lodi School District has affected the learning climate of the school. . . . Creekside operates on a three track, year round education Concept 6 schedule. There are 163 instructional days as opposed to 180 days in other YRE and traditional school schedules. Although Concept 6 allows the school to house (enroll) more students, it is not conducive to a learning environment that promotes student achievement.[10]

There is a fallacy underlying the notion that the relevant unit of time is minutes, rather than days of instruction, and that equalization of annual minutes can compensate for inequality in annual days of instruction. As explained by teacher Carlos Jimenez:

> [N]ot all learning occurs in the classroom. A significant portion of learning . . . occurs at home as students do their homework. A novel, for example, is not read in the classroom. Students read the novel at home and then come to class prepared to take a quiz or test on it, or to discuss it. The instruction that occurs in the classroom is built on the foundation of the work students have done at home, elaborating what students have learned in completing their homework assignments. Conversely, the work that students do at home serves to reinforce what students have learned in the classroom.[11]

With fewer nights to assign homework, Jimenez concludes that he "cover[s] much less material on the Concept [6] calendar than [he] did when [he] was on a traditional calendar." He explains that "when [he] had nine months to run [his] class, [he] assigned and covered the entire textbook plus three other books. On the Concept 6 calendar, [he] only assign[s] two books in addition to

[9]DOE 38186-87.
[10]DOE 36408-09. The II/USP Plan for Leroy Nichols Elementary reaches the same conclusion. DOE 36573.
[11]Declaration of Teacher Carlos Jimenez, March 28, 2000 ("Jimenez Decl."), p. 3.

the textbook because there's no way to cover the third book [he] used to assign." Carnegie teacher scholar and longtime LAUSD teacher Chris Gutierrez concluded, "[E]xchanging school days for additional minutes per day does not work in practice for many reasons. . . . Students do not get the time they need to master the material, let alone demonstrate it on a standardized test."[12]

Fewer school days translates into less homework and reduced coverage of the curriculum; students have reduced opportunities to understand and review what is learned in class, because there is only so much homework that can and should be assigned each night. Reviewing the body of scholarship on homework, Duke University researcher Harris Cooper recommends teachers assign homework based on 10-minute rule, that is, 10 minutes multiplied by the student's grade level per night. Cooper concludes that an overload of homework can ruin motivation and compromise valuable leisure time and community activities essential for personal, spiritual, moral, and social development.[13] The National PTA agrees: "Most educators agree . . . that for children in grades K-2, homework is most effective when it does not exceed 10-20 minutes each day; older children, in grades 3-6, can handle 30-60 minutes a day."[14] Even without having additional homework assigned each day to compensate for the reduction in homework nights, students at Concept 6 schools have longer daily hours in school and therefore less time in which to complete a standard night's worth of homework than their counterparts at traditional calendar schools. If additional homework were simply piled on each night, it would not only decrease its effectiveness, increasing the risk that students reach the satiation point and become fatigued and lose interest, but also exacerbating the inequity experienced by students at Concept 6 schools, giving them more work to do and less time in which to do it.

What is more, students at Concept 6 schools not only begin with significantly fewer days of instruction, they also have their instructional time further reduced and compromised, as explained in my original report and not contradicted by Ballinger. The State recognizes that the classroom dislocations and teacher rovers required by the Concept 6 calendar are a disadvantage.[15] At traditional calendar schools, teachers and students typically move into a classroom at the beginning of the school year and move out at the end of the school year. However, teachers and students at Concept 6 schools must make additional moves as a result of the schedule's classroom rotations. Teachers and students on tracks A and C experience one additional classroom dislocation and those on track B have two additional classroom dislocations, as compared to the traditional calendar. Moreover, at least one of every three teachers on Concept 6 must "rove," meaning that they get bumped from classrooms as teachers permanently assigned to the classrooms come back on track and move into the classrooms of teachers going off track. While in school for a four-month instructional block, roving teachers and their students spend two months in one classroom and then transition to another for the last two months. Roving teachers and their students therefore must make three additional sets of moves, as compared to the traditional calendar.

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[12]Declaration of Chris Gutierrez, March 13, 2000, p. 3.
[13]See, for example, H. Cooper. "Homework for all – in moderation". *Educational Leadership,* 58, 2001, pp. 34-38.
[14] National P.T.A., Helping Your Student Get the Most Out of Homework, http://www.pta.org//parentinvolvement/helpchild/hc_gc_homework.asp.
[15]CDE Program Guide, pp. 4 and 7 of 19 ("[re]quires class rotation or teacher rover"; "[t]eachers pack and move everything after every session").

The State likewise acknowledges that the additional start-ups and endings on the Concept 6 calendar are a disadvantage.[16] Students on tracks A and C have one additional start up and ending, while those on track B have two additional start ups and endings that disrupt their educational progress.

For example, the weeks before the end of a school session or instructional block are stressful for teachers, who must balance instruction with the distraction of packing up and moving out to make way for the incoming teacher and class. As explained in my original report, the collection of textbooks and instructional materials results in significant losses of instructional time.[17] As reported by teacher Nelson Daza, "Book collection alone is a significant administrative burden that disrupts classroom instruction . . . ."[18] Without textbooks, which are collected in the weeks before the end of a session, teachers lack a main educational tool and must make do with photocopied materials that may not be tied to the curriculum.[19] Parent Aureliano Alcaraz Cortes reported that, in his children's experience, books were collected a week or two before vacation starts,[20] a practice that inhibits learning. He observed, "[O]nce the books are collected, the students start their vacation. They know that that particular session is effectively over, and it becomes much more difficult to keep them focused and working."[21] He reported that "[his son] Aurelio feels that the session has ended once the books are collected. He feels that the worksheets they are then given are just to review and that they are not as difficult as textbook problems."[22] Thus, at Concept 6 schools, students go without textbooks, and receive a compromised quality of instruction, for significant stretches of the school year.[23] Daza estimates at least 7 weeks; Cortes estimates 3-5 weeks.[24]

Moreover, although teachers may attempt to keep the packing and moving from taking class time away from students, it proves difficult with the tight transitions required by the Concept 6 calendar, which has classrooms in use on a year-round basis. According to teacher Irma Torres, "the last two days of school before a break are lost completely as teachers prepare to move out of the classroom."[25] Likewise, according to teacher Nelson Daza, "The last two days before a vacation are intense because the time to move out has grown short . . . . Teachers often bring in their own VCRs and show videos during parts of these last two days to free themselves up to finish packing."[26]

Indeed, as reported by parent Felipe Aguirre, over the last two days before a vacation, his daughter Maya and her classmates "receive only limited instruction in the curriculum; instead they watch movies that the children bring in, such as 'George of the Jungle' or 'Dudley Do-Right,' or they help the teacher by cleaning their desks or picking up trash."[27] As reported by

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[16]CDE Program Guide, p. 4 of 19 (additional "'start-ups' and 'endings'").
[17]Oakes Report, pp. 22-23.
[18]Declaration of Nelson Daza, March 27, 2000 ("Daza Declaration"), p. 8.
[19]Daza Declaration, p. 6.
[20]Declaration of Aureliano Alcaraz Cortes, March 26, 2000 ("Cortes Declaration"), pp. 3-4.
[21]Cortes Declaration, p. 8.
[22]Cortes Declaration, p. 8.
[23]Oakes Report, pp. 23-24.
[24]Daza Declaration, p. 7; Cortes Declaration, p. 4.
[25]Declaration of Irma Torres, March 20, 2000 ("Torres Declaration"), p. 3.
[26]Daza Declaration, p. 8.
[27]Declaration of Felipe Aguirre, March 27, 2000 ("Aguirre Declaration"), p. 2.

parent Aureliano Cortes, his son "Aurelio and his classmates also lose a few periods of instruction over each of the last few days before the end of a session. He and his classmates usually watch movies while the teacher packs."[28] And, as reported by parent Lorena Jaramillo, the week before her daughter Frances goes on vacation, "her teacher typically spends much of the last two days packing. While the teacher packs, the students play or . . . keep . . . out of the teacher's way."[29] Thus, at the end of each school session, when the classroom priority becomes packing up and moving out, students on the Concept 6 calendar lose additional instructional days, which "only exacerbates the disadvantage of having fewer days to begin with."[30]

Ballinger makes no attempt to rebut the conclusions about the uncompensated loss of school days, let alone the significant additional losses of instructional time that result from Concept 6.

II. Use of Concept 6 is dictated solely by severe overcrowding.

Single-track, year-round education, according to its proponents, is an educational reform. It seeks to rearrange the instructional calendar, dividing and apportioning the summer vacation period throughout the school year.[31] It does not create any additional school capacity and in no way responds to overcrowding. By contrast, overcrowding alone dictates use of multi-track, year-round calendars.[32] As even Ballinger has concluded, "Multi-track was designed to save space on an overcrowded campus" and that multi-tracking responds to "the problem of too many students enrolled in existing facilities. . . ."[33] He admits in his deposition in this case that the education program should drive the school facilities program.[34] Yet he admits that if school construction funds were available, multi-track, year-round education "[w]ouldn't be needed."[35] As he puts it, "multi-track would never be utilized unless there is a problem of over-enrollment."[36] Indeed, he acknowledges a direct relationship between multi-tracking and over-

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[28]Cortes Declaration, p. 4.
[29]Declaration of Lorena Jaramillo, March 21, 2000 ("Jaramillo Declaration"), p. 2.
[30] Oakes Report, p. 23.
[31]The purported benefits of single-track, year-round education have not proved the dominant motivation in the growth of year-round education in California. There are nearly twice as many multi-track, year-round schools as there are single-track, year-round schools. (CDE, Year-Round Stats 2001-2002, http://www.cde.ca.gov/facilities/yearround/yrstat01.htm.) This suggests, rather plainly, that the purported benefits of rearranging the traditional calendar are not enough, in and of themselves, to justify large numbers of schools converting from the traditional calendar. It is instead the multi-track, year-round calendar that explains most of the growth in year-round education, and it is only the increased capacity to house students that explains the appeal of the multi-track, year-round calendar.
[32]As Ballinger explains, "if the degree of overenrollment is less than 25% above the school's capacity, a local district may choose to implement a four-track or five-track calendar. If overenrollment is 25-40% above stated capacity, however, the five-track calendar will no longer provide an option; rather, only a four-track or three-track calendar will work." (Ballinger Report, p. 6.) Use of the three-track Concept 6 calendar becomes necessary when overcrowding becomes most extreme: "Once enrollment exceeds 40% above stated capacity, only a three-track calendar will . . . bring attendance . . . within the capacity of a school." (Ballinger Report, p. 6.)
[33]C. Ballinger, *Year-Round Education: An Overview,* 1985; C. Ballinger, *Year-round education: learning more for less*, June 1990.
[34]Deposition Transcript of Charles Ballinger ("Ballinger Depo."), p. 361.
[35]Ballinger Depo., p. 119.
[36]Ballinger Depo., p. 134.

enrollment: the greater the multi-track, year-round enrollment in a district, the greater the over-enrollment in the district.[37]

The Concept 6 calendar, which reduces the school year by 17 days of instruction in order to increase enrollment capacity, must be understood for what it is: a symptom of, and extreme response to, severe overcrowding. It is not an educational strategy, but a housing strategy used only in the face of the most severe overcrowding, when no other multi-track calendar will do. As State Superintendent of Public Instruction Delaine Eastin stated regarding the Concept 6 calendar, "[S]chools didn't move to it because they were trying out some educational innovation. It was out of desperation."[38]

Ballinger does not, and cannot, dispute Superintendent Eastin's assessment. A former executive director of an advocacy group devoted to increasing the number of year-round schools, Ballinger describes himself as a "believer" in and "advocate" for year-round education, sees himself as part of a "movement," and would like to see all schools on year-round calendars.[39] Yet even he must concede that the Concept 6 calendar is implemented in response to severe overcrowding, and not for *educational* reasons. He admits that Concept 6 is a "facility strategy."[40] As he puts it: "I can't recall any case where it was introduced without the factor of severe over-enrollment."[41] No other state in the country, according to Ballinger, currently uses the Concept 6 calendar.[42] He explains that the Concept 6 calendar is "prevalent [here] because a large number of schools in California are severely over-crowded."[43] Significantly, although extremely critical of school calendars not designed for educational reasons, he admits that the Concept 6 calendar was not designed for educational reasons, but to address overcrowding.[44]

Indeed, to Ballinger's knowledge, although other multi-track calendars have been implemented in single-track form, no school has ever implemented Concept 6 in single-track form. As he put it, "45-15, 60-20, 90-30 [other multi-track calendars] have been introduced in single-track version as well as multi. I don't ever recall the Concept 6 program being other than multi-track . . . ."[45] Thus, no school has adopted the Concept 6 schedule simply for the sake of its instruction and vacation blocks, without the benefit of expanding enrollment capacity.

Accordingly, the Concept 6 calendar, used only out of desperation and in the face of severe overcrowding, is anything but an educational reform; indeed, it runs counter to educational reform, reducing the number of days of instruction, and forecloses the possibility of extending the school year.

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[37]Ballinger Depo., p. 131.
[38]Oakes Report, pp. 3, 7.
[39]Ballinger Depo., pp. 11, 18-19, 63-64.
[40]Ballinger Depo., p. 154.
[41]Ballinger Depo., p. 155.
[42]Ballinger Depo., pp. 149-50.
[43]Ballinger Depo., p. 153.
[44]Ballinger Depo., p. 885.
[45]Ballinger Depo., p. 155.

III. Concept 6 does not afford students the purported benefits of year-round education.

The Concept 6 calendar does not afford the claimed benefits of year-round education. Ballinger suggests that both single-track and multi-track, year-round calendars are designed to reduce learning loss over the summer vacation. But, as he admits, the multi-track, year-round calendar is designed to cope with overcrowding, and not to reduce summer learning loss. This is particularly evident with the Concept 6 calendar, which, in the face of the most severe overcrowding, not only provides two long vacations for students, but forces students out on vacation for a longer total period than all other calendars.

Ballinger misinterprets the research on learning loss. As a preliminary matter, the research on which Ballinger relies does not support his conclusion about the benefits of year-round education. He relies principally on the work of Dr. Harris Cooper, the lead author of a review of the research on summer learning loss.[46] The review states, "when the overall effect of summer vacation on standardized test scores is at issue, students appear at best to demonstrate no academic achievement over summer. At worst, students appear to lose 1 month of grade-level equivalent skills relative to national norms. When performance is gauged relative to the student's own fall scores, the worst-case scenario seems to be that the average student score in the fall is about one tenth of a standard deviation below the spring average."[47]

The review, however, expressly warns, "proponents of calendar change cannot take the findings about summer vacation to mean that any alternative calendar is preferable to the present one. For instance, the present synthesis does not assess whether alternative schedule calendars, *such as those that include the present number of school days* but distribute shorter and more frequent vacations throughout the school year, are actually more effective than the present calendar."[48] As reiterated in a subsequent study by Cooper, "the authors of the meta-analysis pointed out that the existence of summer learning loss could not ipso facto be taken to mean that modified calendars that redistribute vacations throughout the school year produce higher achievement among students."

Yet Ballinger interprets the research to do precisely that – to mean that the year-round calendar, which distributes shorter and more frequent vacations throughout the school year, is more effective than the traditional calendar. But going even further, he interprets the research to mean that the Concept 6 calendar, which provides *fewer than the present number of school days,* is more effective than the traditional calendar. If the research cannot be read to suggest the general benefits of year-round education when it provides the same number of days of instruction per year, it can be read to say even less about the Concept 6 calendar, which provides significantly fewer days of instruction and significantly more days of vacation. Thus, in seeking to use this research in support of the Concept 6 calendar, Ballinger oversteps the limits the research itself establishes. Ballinger admits he is not a "scholar" or "researcher" and has never

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[46]H. Cooper, B. Nye, K. Charlton, J. Lindsay & S. Greathouse, *The Effects of Summer Vacation on Achievement Test Scores: A Narrative and Metanalytic Review*, Review of Educational Research, Vol. 66 (Fall 1996), pp. 227-268 (emphasis not in original).

[47]Cooper, et. al, p. 259.

[48]Cooper, et. al, p. 264.

performed original research in the field of *education.*[49] Perhaps because Ballinger is not a researcher, he does not fully understand what research can and cannot say. [50]

Concept 6 vacations are too long to limit learning loss. Even if we assumed Ballinger's claim that year-round education reduced learning loss, that shaky assertion does not hold up for Concept 6 schools. While other year-round calendars provide students with vacations as short as two or three weeks, the Concept 6 calendar does not. It provides students with two overly long vacations of two months – vacations more likely to promote than to limit learning loss. Indeed, Don Glines, co-founder of the National Association of Year-Round Education, the organization formerly headed by Ballinger, acknowledges that the Concept 6 calendar vacations are too long. "'Six weeks should be the maximum time away from school, otherwise it breaks up the continuity of learning,' he said."[51] Thus, there is little in practice or research to support Ballinger's suggestion that the Concept 6 calendar does not interfere with continuity of learning. Because the Concept 6 provides two, not just one, vacations that are too long to provide continuity of learning, students are away from the classroom for a longer period than students at all other schools – *four* months instead of *three.* If, as Ballinger agrees, students who come from low-income families lose ground as compared to their peers when out of school, he must agree that the potential for those students to fall behind is greatest when they attend schools operating on the Concept 6 calendar. He cannot have his cake and eat it too: if learning loss when children are out of school is the concern, he should be particularly concerned that the Concept 6 calendar has children on vacation for approximately one month longer than any other school calendar used in California.

This is all the more troubling given that the very students least able to cope with extended time away from school are disproportionately subjected to Concept 6. Low-income children and English learners represent 99% and 53% of students at Concept 6 schools, compared to 46% and 17% statewide, respectively.[52] For English learners, this means substantially less time to assimilate critical academic material and be exposed to English language models. Equally important, moreover, is the loss of learning that occurs with these many months away from

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[49]Ballinger Depo., pp. 11, 13, 14.

[50]H. Cooper, J. Valentine, Kelly Charlton & A. Melson, *The effects of modified school calendars on student achievement and on school and community attitudes*, Review of Educational Research, 73 (Spring 2003), pp. 1-52, http://proquest.umi.com, pp. 1-34. In his deposition, Ballinger made reference to this recent Cooper study. (Ballinger Depo., p. 822.) This study, by its express terms, can offer no findings relevant to the abbreviated Concept 6 calendar. It analyzed the research on "modified school calendars," that is, calendars on which the summer vacation had been eliminated and students "attended a school in session for approximately 180 days . . . ." (Cooper, pp. 2-3, 8.) For his analysis, Harris classified the schools in his study according to their scheduling scheme (30-10, 45-15, 60-15, 60-20). None of those schemes provide as few as 163 days of instruction. The analysis, therefore, did not include research on calendars like Concept 6 that provide significantly fewer than 180 days.

[51]J. Giese, *Does the Year-Round Program Help or Hurt the Success of Education?"* Lodi News-Sentinel, http://www.lodinews.com/mtg/concept-6.shtml.

[52]R. Mitchell, Segregation in California's K-12 Public Schools: Biases in Implementation, Assignment, and Achievement with the Multi-Track Year-Round Calendar (2002) ("Mitchell Report"), pp. 15-16. The disparities are evident even within the same school district. (*See* J. White & S. Cantrell, *Comparison of Student Achievement and Teacher and Student Characteristics in Multi-Track Year-Round and Single-Track Traditional School Calendars* (July 2002).) In 2001, in LAUSD elementary schools, English learners accounted for 37.7% of students at traditional calendar schools, but 69.5% of students at Concept 6 schools; and students participating in the free or reduced meal program constituted 72.3% to 69.8% of enrollment in traditional calendar schools, but 95.6% to 89.6% of enrollment in Concept 6 schools (Mitchell Report, pp. 21, 26).

school. Low-income children and English learners are more disadvantaged by long periods away from school than others; these periods have a demonstrably negative effect on their achievement.[53] Thus, the very students who need the most exposure to schooling, to English language models and opportunities to catch up to their peers, are the most likely to receive the fewest school days in California.[54]

Concept 6 impedes the provision of intersession services. Ballinger suggests that both single-track and multi-track, year-round schools offer the same opportunities for intersession services. They do not; they cannot. When students at single-track, year-round schools are on vacation, the entire student body is out on vacation. Accordingly, as with the summer vacation at traditional calendar schools, all eligible students can be brought back to school to participate in remedial or enrichment programs. No such down-time exists on multi-track calendars like Concept 6, however, because the school is in full use throughout the year. As then-Assistant Chief of Staff to LAUSD Superintendent Romer, Gordon Wohlers,[55] explained, "[W]hen every classroom is a precious asset to the school, just to handle regular classes all year round, an intersession class – which brings back to the campus students who are 'supposed' to be off – becomes an undesirable step-child." In this compromised setting, Wohlers concluded, "[i]ntervention is, in effect, not being done for children on the Concept 6 calendar."[56] Significantly, at his deposition, Ballinger stated he was in no position to dispute Wohlers' assessment that the Concept 6 calendar impedes vital intervention services, and that intervention is, in effect, not being done for children on the Concept 6 calendar.[57] Indeed, he admitted that, in Concept 6 schools throughout the state, intersession is underutilized.[58]

Concept 6 fosters harmful curriculum tracking. Finally, not only does the Concept 6 calendar not provide the benefits of single-track, year-round education, but it also creates significant obstacles that stand in the way of equal educational opportunity. Ballinger ignores the claim that multi-track, year-round calendars, like the Concept 6 calendar, foster curriculum tracking. While it may happen at a school operating on any type of calendar, it flows directly from the division of the student body into distinct tracks. As concluded by Dr. Mitchell, "[m]ulti-track year-round education is a particularly powerful mechanism for tracking student groups within schools," creating opportunities for separation of children by ability or achievement.[59]

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[53]See H. Cooper, B. Nye, K. Charlton, J. Lindsay & S. Greathouse, *The Effects of Summer Vacation on Achievement Test Scores: A Narrative and Metanalytic Review*, Review of Educational Research, Vol. 66 (Fall 1996), pp. 227-268.

[54]Aureliano Cortes, a parent with children at different Concept 6 schools, had to work "very hard at the start of the school year to make sure they were all on the same track and in session at the same times during the year" to avoid the "nightmare" of having his four sons "on vacation at different points throughout the year." (Cortes Declaration, p. 2.) Nonetheless, he finds it "difficult managing their time during their vacations," because "[i]t's much harder to find safe and useful activities for them during the school year, when they have their vacations, than it is over the summer." (Cortes Declaration, pp. 2-3.) He worries that, with their two long vacations, "they will forget much of what they have learned and have a hard time readjusting to school if they have spent their vacations watching television or playing video games." (Cortes Declaration, p. 3.)

[55]Declaration of Gordon Wohlers, September 5, 2001, p. 1.

[56]Declaration of Gordon Wohlers, March 24, 2000 ("Wohlers Declaration"), p. 9.

[57]Ballinger Depo., pp. 637-38, 645.

[58]Ballinger Depo., p. 879.

[59]Ross E. Mitchell and Douglas E. Mitchell, Student Segregation and Achievement Tracking in Year-Round Schools (2000), p. 5.

State and local officials recognize the inherent obstacles created when course offerings are divided across different tracks. As CDE consultant Thomas Payne explains, "high school MTYRE is programmatically problematic. To divide a high school into . . . tracks is to compromise the number of electives available to students."[60]

As reported by the L.A. Times, "[LAUSD] School officials said they are often forced to stack high-achieving and low-achieving courses onto separate calendars at crowded schools because they don't have the resources to spread them evenly throughout a multi-track system, also known as Concept 6."[61] The article cites Mary Kaufman, the principal of Los Angeles High School acknowledging, "It's very difficult to have three equal systems. . . . We try very hard to make them as equal as possible. It's just impossible." Emilio Garcia, principal at Huntington Park High School, acknowledged receiving complaints from parents whose children wanted to take classes not offered on their attendance track.[62]

My original report stated: "Students at multi-track schools have limited access to course offerings and specialized programs that are offered only on particular tracks."[63] This obstacle, squarely acknowledged by Payne and others, applies to a variety of elective courses and programs, and not merely to AP courses. Ballinger ignores the general point about unequal access to course offerings and specialized programs, choosing instead to focus only on AP courses. But, even on this limited score, he fails to refute my conclusion that Concept 6 denies equal opportunity.

Out of 19 Concept 6 high schools, he cites two. For one, Bell Senior High, he cites the total number of AP courses at the school and the number offered on each track, but fails to consider the availability of course subjects across tracks. He therefore ignores that only five subjects are offered on all tracks, that AP French is only available on track C, that AP Statistics is only available on track A, or that AP Physics and Government are not available on track C. For the other school, Garfield High, Ballinger provides even less information; he notes only the total number of AP courses offered at the school, which says nothing about the number of courses offered on each track, let alone the subjects offered.[64]

In any event, it is clear, as LAUSD Superintendent Roy Romer, who oversees all 19 Concept 6 high schools in California, has admitted, that AP classes are "not distributed fairly across the tracks."[65] Based on my review of documents reflecting the AP courses offered at Concept 6 high schools, I found the following: In 2001, at all LAUSD Concept 6 high schools, track A offered 225 AP courses, track C offered 203, and track B offered 139. That breaks down to approximately 40% on track A, 36% on track C, and 25% on track B. Significantly, Ballinger does not consider that multiple sections or classes of the same course may be offered on each track. For example, while a course such as AP Calculus may be offered on all three tracks, there may be 3 separate classes offered on track A, but only 1 on tracks B and C, affording greater access to it to those students on track A. The disparity in offerings across tracks at Concept 6

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[60]Letter from Tomas Payne to Robert Rosenfeld, August 29, 1994. PLTF 05846.
[61]D. Pierson, *The Bad Side of 'B-Tracks' Criticized*, *L.A. Times*, Dec. 8, 2002.
[62]Deposition Transcript of Emilio Garcia, p. 128.
[63]Oakes Report, p. 28.
[64]Ballinger Report, p. 30.
[65]D. Helfand, *South L.A. Pupils Demand More College Prep Classes*, *L.A. Times*, Dec. 15, 2000.

high schools only grows if sections are considered: 329 AP sections on track A, 296 on track C, and 187 on track B. That breaks down to approximately 42% on track A, but only 24% on track B.

The same disparities are evident in 2002. Track A offered 224 AP courses, track C offered 209, and track B offered 148. That is, 39% on track A, which has the most, and 25% on track B, which again has the least. Factoring in the number of sections, track A offers 339 AP sections, track C offers 296, and track B offers 177, which means that track A offers approximately 42% of AP classes while track B offers only 22%.

To the extent that some high schools may allow cross-tracking, this only adds to the administrative complexity and the unfair and differential burden on students who could benefit from this policy. Cross-tracking permits a student on one track to enroll in a course or courses only offered on another track. Of course, it presupposes unequal course offerings; if there were equality in course offerings across tracks, there would be no need for it.

Cross-tracking requires attending school during what is scheduled to be a vacation – a price that will prove prohibitive to some. As stated by teacher Carlos Jimenez:

> [E]ven though students have the ability to register for courses on other tracks, they still have to be motivated enough to take a course or courses on their vacation, and they have to be free of any schedule conflicts that prevent them from being on different tracks at the same time. . . . For those students motivated enough to take courses over their vacation, their reward is that they often end up in school all year . . . . [I]t's the only way they can take advantage of the school's various AP offerings."[66]

Stating what should be obvious, given that we are speaking of sophomores, juniors and seniors in high school, Marcia Hines, vice-principal at Fremont High School, explains that "many students may not be willing to [cross-track]."[67] Students at traditional calendar schools are not asked to forego vacation time – as well as to forego involvement in vacation-time enrichment activities – to take AP courses. In fact, Ballinger has never heard of a school offering AP courses over the summer vacation.[68]

Moreover, even if a student were willing and able to forego vacation time, cross-tracking disrupts the flow of learning. It allows students to take a course, but in a way that makes little, if any, sense. As Ballinger explains, due most likely to scheduling conflicts, if B-track students, for example, want to take a course not offered on track B, they start the course on track A during their vacation over September and October, and complete the course on track C, during their vacation over March and April.[69] Thus, unlike students at a traditional calendar school, these cross-tracking students not only face a four-month long interruption, but also a change in teacher and classmates. Ballinger admits that learning loss can occur over the four-month long

[66]Jimenez Declaration, p. 5.
[67]Deposition Transcript of Marcia Hines, p. 141.
[68]Ballinger Depo., p. 600.
[69]Ballinger Depo., p. 564.

interruption between the first and second halves of the course.[70] The Concept 6 calendar contributes significantly to students' disadvantage, as studies have shown.

IV. The Concept 6 calendar contributes significantly to students' disadvantage, particularly that of students on track B.

Because Ballinger admitted that he was not offering an expert opinion as to anything involving statistical analyses,[71] he cannot offer any rebuttal to Dr. Mitchell's analyses of student achievement at schools operating on the various school calendars. Dr. Mitchell found, interpreting the work of the Technical Design Group,[72] that "the State officially acknowledges that multi-track year-round schools are a different type of educational environment than traditional and single-track year-round schools in that the multi-track calendar serves as an indicator for conditions that influence student academic performance. This is evident by the inclusion of a dichotomous (or binary) indicator for whether or not a school is on a multi-track year-round calendar in the calculation of the School Characteristics Index (SCI). What should be inferred from the use of such an indicator is that schools on traditional/single-track year-round calendars are not otherwise comparable with schools on multi-track year-round calendars without some compensation for their differences."[73]

Dr. Mitchell also found: "[T]he achievement gap between schools utilizing the various attendance calendars is quite large, especially that between traditional/single-track year-round schools and Concept 6 multi-track year-round schools."[74] As he put it, "A tremendous disparity in achievement across calendar types is evident."[75] And, even after controlling for the various background characteristics mandated by the Public Schools Accountability Act, Dr. Mitchell found "multi-track year-round schools are not as likely to be ranked as highly as traditional/single-track schools."[76] He added that "[t]his is particularly the case if the multi-track year-round calendar is of the foreshortened Concept 6 variety."[77] According to his analysis, Concept 6 multi-track year-round schools are the most consistently low performing, lagging one rank behind on the State's Similar Schools Rank across virtually the entire range of possible scores.[78]

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[70]Ballinger Depo., p. 565.
[71]Ballinger Depo., p. 735.
[72]Ballinger admitted that he cannot interpret the work of the State's Technical Design Group. (Ballinger Depo., p. 478.) According to Ballinger, "I don't work with this report on any basis at all. So I'm not an expert in this report and don't expect to be considered an expert in this report. . . . I'm not a test person." (Ballinger Depo., p. 476.) When asked if he could read the report and at least identify the correlation between multi-track and API score, he stated, "I will not be able to do that, no." (Ballinger Depo., p. 477.) When shown the value for the correlation and asked if he understood the correlation to be statistically significant, he stated, "I'm not going to be an interpreter of this, because I'm not a researcher." (Ballinger Depo., p. 478.) Finally, when asked if he could read the report, he stated, "Not in an expert way." (Ballinger Depo., p. 479.)
[73]Mitchell Report, p. 17.
[74]Mitchell Report, pp. 6, 26-27.
[75]Mitchell Report, p. 20.
[76]Mitchell Report, p. 22.
[77]Mitchell Report, p. 28.
[78]Mitchell Report, p. 24 & Fig. 14.

Despite his lack of research expertise, Ballinger seeks to dismiss research studies finding detrimental effects of multi-track, year-round schools, and particularly of Concept 6 schools, by suggesting that any observed differences in achievement are attributable to the students themselves. It is a mistake to suggest, as Ballinger does, that student performance is solely a function of a student's background; it is also a function of the educational opportunities provided in schools and classrooms, which can have a substantial effect on academic growth and achievement. Even though socio-economic status undoubtedly plays a role in student achievement, so too does the school calendar. Ballinger's repeated references to student demographics do not change the fact that the Concept 6 calendar contributes significantly to students' disadvantage.

CDE consultant Payne has reportedly looked, "out of curiosity," at the lowest Academic Performance Index ("API") scores in the State.[79] He found that "[o]f 200 schools at the bottom of the API, 112 schools operate on a multitrack year-round calendar" and "[m]ore than half . . . use the Concept 6 calendar . . . ." This is striking, because out of more than one thousand multi-track schools, only about 200 are Concept 6 schools. "Payne cautioned against entirely blaming the calendar, explaining that socioeconomic factors, such as poverty, play into poor academics."[80] Payne may well caution against *entirely* blaming the Concept 6 calendar; however, consistent with the research described below, he does not, and cannot, caution against laying *any* blame on the Concept 6 calendar. Further, the issue is not entirely one of causality. Schools have a responsibility to do more that maintain existing achievement gaps even if the gaps are associated with background characteristics. For *whatever* reason these gaps exist, it is the responsibility of schools to narrow them, not to maintain or widen them by placing students with the greatest background obstacles into Concept 6 schools where the schools themselves add additional obstacles.

Ballinger claims that the Oakland study regarding multi-track education establishes that socio-economic status "is central to student achievement."[81] He ignores, however, the study's finding that the school calendar—whether multi-track or traditional—"play[ed] a secondary but still *significant* role."[82] Accordingly, when Ballinger quotes the study's finding that "low SES [is] *more detrimental* than the calendar," as he does in his report, he must concede that the multi-track calendar has a *significant and detrimental* effect on student achievement.[83]

Ballinger also seeks to dismiss the study commissioned by the CDE.[84] Ballinger claims that the observed differences in achievement are attributable solely to student background characteristics. He ignores, however, that *even after statistically controlling for background characteristics*, the study concluded that multi-track, year-round schools performed "below the predicted level."[85] "Even when these background characteristics [socio-economic status and

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[79]Giese, "Does the Year-Round Program Help or Hurt the Success of Education?" *Lodi News-Sentinel.*
[80]Giese, "Does the Year-Round Program Help or Hurt the Success of Education? *Lodi News-Sentinel.*
[81]Ballinger Report, p. 16.
[82]A. Resnik, "Year-Round Schools Evaluation," 1993, pp. 3-4, 8 (emphasis added).
[83]Ballinger Report, p. 16.
[84]C. Quinlan, C. George & T. Emmet, *Year-Round Education: Year-Round Opportunities. A Study of Year-Round Education in California*, 1987.
[85]Quinlan, et al, p. 36.

percentage of limited- or non-English speaking students] were statistically controlled, the multitrack year-round schools performed below predicted levels."[86]

Ballinger misreads the 2001 LAUSD study, which found that students do not perform equally across school calendars with traditional calendar schools out-performing multi-track schools.[87] The study found school demographics explained a considerable part, but not all, of the differences in student achievement at schools of different calendar types.[88] (*Id.* at 4.) Even after restricting the comparison to demographically similar schools, using the State's School Characteristics Index, it concluded that there was still an achievement gap between traditional calendar and multi-track schools. The gap was most significant for Concept 6 schools.[89]

Ballinger ignores the importance of the 2001 LAUSD study to this case. The study did not merely assess the achievement of students at multi-track schools generally. It evaluated the achievement of students at Concept 6 schools, and, more specifically, the achievement of students on track B at Concept 6 schools. It found: "When student performance in multi-track calendars is disaggregated by track, a clear pattern emerges with respect to three-track schools. In every school type, the performance of B-track students is substantially lower than other tracks in both reading and mathematics . . . ."[90]

Ballinger makes much of my not citing the later 2002 LAUSD study, which I received for the first time on May 1, 2003, long after I had filed my original report. In any event, that study, while providing some differing results, confirmed that students do not perform equally well across school calendars, with the traditional calendar schools outperforming multi-track schools. In particular, it assessed "track effects," the effects of placement on particular school tracks, controlling for school demographics. It found: "For three-track schools [i.e., Concept 6 schools], B-track has a negative effect on reading and math performance in all school levels and C-track has a negative effect on reading performance in elementary and middle schools."[91] Thus, the study found that placement on track B had a negative effect on student achievement at the elementary, middle, and high school levels, meaning that, at any school level, if an A-track student were placed on track B, he or she would be expected to do worse. The consistent under-performance of track B is not surprising because, as explained in my original report, track B is configured differently from tracks A and C in ways that further disrupt the continuity of learning.

Ballinger strikes a steady drumbeat with student demographics, as if it were some sort of trump card that excuses the State from any and all responsibility for the strikingly poor performance of Concept 6 schools. While the State is not responsible for student's socio-economic status, it is responsible for the use of the Concept 6 calendar, and certainly for its use

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[86]Quinlan, et al, p. 40.

[87]Jeffrey A. White & Steven M. Cantrell. *Comparison of Student Outcomes in Multi-Track Year-Round and Single-Track Traditional School Calendars.* LAUSD Program Evaluation and Research Branch, Policy Analysis Unit, 2001 ("White and Cantrell").

[88]White and Cantrell, p. 4.

[89]White and Cantrell, p. 5 (Table 2).

[90]White and Cantrell, p. 5.

[91]White and Cantrell, p. 7. Contrary to Ballinger's claim of equity across tracks, the study found track A to be the "most desirable" for teachers at multi-track calendar schools. According to the study, this track generally has fewer Hispanic students, fewer English Learners, fewer free and reduced lunch program participants, and more experienced and more fully credentialed teachers than other tracks. White and Cantrell, pp. 6, 11-13, 22-23.

almost exclusively by schools enrolling low-income students of color. As one set of researchers, relied upon extensively by Ballinger, has concluded,

> modified calendars have been adopted primarily to accommodate demographic changes. The evidence suggests that modified calendars are applied disproportionately among some disadvantaged populations, for example, the poor and the English language learners (see Quinlan, George, & Emmet, 1987). If this is so, the argument could be made that modified calendars are being used as a substitute for provision of equal-quality facilities to some populations (see Orellana & Thorne, 1998).[92]

Those researchers, as noted above, addressed modified calendars that, unlike Concept 6, provide the typical 180 days of instruction. When the median enrollment is 87% Latino, 1% white, and 99% low-income in the only public schools that provide fewer than 180 days of instruction, there is all the more reason to argue that the State has used Concept 6 as a substitute for provision of equal-quality facilities to all students, for the State is providing the very students who need the most exposure to schooling with the fewest school days – not merely failing to provide equal educational opportunities, but, in effect, adding significantly to their disadvantage.

V. The four California school districts using the Concept 6 calendar have all rendered judgment against Concept 6 and taken steps to eliminate it.

Ballinger makes much of districts' recent efforts to abandon the Concept 6 calendar, mistakenly claiming that the issue therefore no longer deserves attention. Not surprisingly, he completely ignores the reasons the few districts implementing the Concept 6 calendar are doing what they can to eliminate it. As explained in my earlier report, there were four districts, out of the more than 1,000 districts in California, that resorted to the Concept 6 calendar: Palmdale School District, Vista Unified School District, Lodi Unified School District, and LAUSD. Since then, these districts have taken a variety of steps in an attempt to eliminate the Concept 6 calendar. Notwithstanding Ballinger's obviously deeply held opinions about the value of year-round education, those districts' decisions speak loud and clear about the terrible inadequacy of the Concept 6 calendar from an education perspective.

Consider this announcement from the Palmdale School District regarding elimination of the Concept 6 calendar:

[92]Cooper, et. al., 2003, p. 27 of 34.

> Palmdale School District is finally able to eliminate the year-round 3-track calendar and return to a Traditional School Year!
>
> The change will take place beginning with the upcoming 2003-2004 school year. The overwhelming majority of parents, teachers and staff voiced their support during the past 2 months, enabling the Governing Board of Trustees to approve the change during last night's board meeting.
>
> Students will now be attending school **180 days** per year. That is an additional 17 days of instruction, up from the previous 163 under the 3-track calendar, without any major interruptions! In the course of a student's K-8 attendance, this represents about a year and a half of added beneficial instructional school days by the time they are ready to move on into high school![93]

And consider this announcement from the Superintendent of the Vista Unified School District, Dave Cowles:

> On Thursday, January 16th, the local headlines read 'VUSD Ends Year-Round Education'. This headline was more than twelve years overdue. Implemented in 1989, the complicated schedule was intended as a 'stop-gap' measure to get a school bond passed and some new schools built. Unfortunately many issues side-tracked the district from this mission and it wasn't until 2002 that a comprehensive school bond was approved by voters and a construction schedule adopted by the School Board to move our children into a more normal educational calendar.[94]

The bond that allowed Vista's conversion from the Concept 6 to a traditional calendar had been placed on the ballot at the recommendation of a committee composed of parents, city and school officials, business leaders, and trustees. As one committee member put it, "We need to pay the cost of putting schools in so that our kids aren't going to schools on blue track and green track, and yellow track in multi-track year-round schools."[95] District Director of Facilities, Mike Vail, has concluded that the Concept 6 calendar puts students at a disadvantage because they attend school 17 fewer days, and explained that the district's reliance on the Concept 6 calendar "just shows you how desperate we've been."[96] As he has put it, "You have a situation where the facilities program is driving the education program. It should be the other way."[97]

The Lodi Unified School District, which began using the Concept 6 calendar in the late 1980s, has had a majority of its students on it for more than a decade.[98] Superintendent Bill Huyett has been working for years to eliminate the Concept 6 calendar, which he believes

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[93]Palmdale School District, Palmdale School District Returns to Traditional School Year Calendar!, February 6, 2003. http://www.psd.k12.ca.us/Superintendent/PSDReturnsToTraditional.PDF.
[94]Vista Unified School District, A Message from the Superintendent ... Dave Cowles, January 22, 2003.
[95]S. Parmet, "Bond Measure Urged for Vista Schools," *San Diego Union-Tribune*, Sept. 13, 2001.
[96]S. Parmet, "New School, New Boundaries," *San Diego Union-Tribune* (Oct. 25, 2001).
[97]S. Parmet, "Vista schools dial for dollars," *San Diego Tribune*, June 10, 2000, at B1.
[98]J. Giese, "Fewer Lodi district schools open on year-round calendar," July 6, 2002.

shortchanges students academically.[99] He faults the Concept 6 calendar for providing 10% fewer days of instruction than other school calendars and rejects the notion that it can make up for the lost days with more minutes each day.[100] Huyett blames "some of the dismal scores to the Concept 6 year-round calendar, which gives students 17 less days in the classroom compared to typical 180-day calendar."[101]

Finally, LAUSD, which began using the Concept 6 calendar in 1980 due to severe overcrowding, has relied on it more extensively than any other district; about 190 of the 240 or so Concept 6 schools in the state the past several years have been in LAUSD.[102] As Superintendent Roy Romer has stated regarding the "benefits" of the Concept 6 calendar: "I want this community to understand that they have had a cheap ride by putting kids in sardine-can schools. . . . If you put 4,000 kids into a middle school on triple tracks, you inevitably are going to save money. But quality goes out the door."[103]

Based on its assessment of multi-track, year-round calendars in general, and the Concept 6 calendar in particular, LAUSD has recently decided to distribute its new school construction funds based on two criteria, the second of which is the number of years a school has been on a multi-track calendar like the Concept 6 calendar, or, as the district puts it, the "longest harm."[104] LAUSD has further decided to abandon the Concept 6 calendar and provide 180 days of instruction, where feasible, as the "best way to improve the instructional program" and "to improve student achievement and close the achievement gap."[105]

These districts' views of the Concept 6 calendar stand in stark contrast to Ballinger's claims in his report, as well as his own testimony in this case. First, while Ballinger claims in his report that the additional minutes tacked onto each instructional day compensate for the lost instructional days, Palmdale, Vista, Lodi, and LAUSD want very much to restore those lost days of instruction. As Lodi Superintendent Bill Huyett has stated, "It really affects learning. Adding a half-hour doesn't compensate for the lost days."[106] And, as LAUSD Assistant Superintendent Wohlers has put it, "Based on educational theories, 180 days is better than 163 days."[107] Wohlers concludes that LAUSD has been unable to compensate with added minutes "for the 17 instructional days a year that students on this calendar lose."[108] At his deposition, Ballinger did not disagree with Assistant Superintendent Wohlers' assessment that educational theory supports the notion that 180 days of instruction is better than 163.[109] Nor did he dispute Wohlers'

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[99]J. Giese, "School Officials Field Bond Questions at Forum," *Lodi Sentinel-News*, Feb. 16, 2001.
[100]J. Giese, "Lodi Trustees May Add Days to School Year," *Lodi Sentinel-News*, July 29, 2000.
[101]J. Giese, "Year-Round Calendar Blamed for Poor Ranks," Lodi News-Sentinel, Jan. 18, 2001.
[102]See Giese, "Does the Year-Round Program Help or Hurt the Success of Education?" *Lodi News-Sentinel*; CDE, Year-Round Education Directory.
[103]"Do L.A. Public Schools Work? A conversation with Superintendent Roy Romer," *L.A. Weekly*, Dec. 1-7, 2000.
[104]Memorandum from Kathi Littman to LAUSD Board Members re: New Construction Phase I, November 2002 Local Bond, July 9, 2002, p. 1.
[105]Memorandum from Superintendent Roy Romer to LAUSD Board of Education, January 14, 2003, p. 1.
[106]Giese, "Does the Year-Round Program Help or Hurt the Success of Education?" *Lodi News-Sentinel*. The article also cites the Superintendent of Hesperia, which abandoned the Concept 6 calendar after twelve years, as recognizing that "[t]he biggest drawback of Concept 6 is you can only get 163 school days."
[107]Giese, "Does the Year-Round Program Help or Hurt the Success of Education?" *Lodi News-Sentinel*.
[108]Wohlers Declaration, p. 8.
[109]Ballinger Depo., p. 412.

conclusion that LAUSD's attempt to make for the 17 fewer days provided on the Concept 6 calendar with longer classes has not worked out.[110]

Second, while Ballinger touts in his report the benefits of year-round education to reduce learning loss and improve learning, Lodi blames the poor results of its students, in part, on the Concept 6 calendar; LAUSD wants to abandon the Concept 6 calendar to promote the continuous educational progress of students, and Palmdale wants to do away with the Concept 6 calendar because of its major interruptions. At his deposition, Ballinger stated that he could not disagree that the best way to improve the instructional program in LAUSD would be to convert from the Concept 6 calendar to a 180-day school calendar as soon as possible. As he put it, "Certainly is a way to improve."[111]

Thus, the California school districts most directly familiar with the Concept 6 calendar have recently begun owning up to its various failings, and seeking to implement calendars offering 180 days of instruction in order to improve student achievement. However, the State is still far from eliminating the Concept 6 calendar, much less from preventing its use in the future.

VI. The Concept 6 calendar's utility in *housing* students in emergencies cannot justify large-scale and long-term implementation as a means to *educate* students.

The Concept 6 calendar may be expedient in the face of extraordinary circumstances, but it does not afford equal educational opportunities. This should be self-evident given that, as even Ballinger concedes, no one would choose to use it unless experiencing the most severe overcrowding or a natural disaster.[112]

In defending the Governor's veto of legislation that would have phased out use of the Concept 6 calendar by 2008, Ballinger damns the Concept 6 calendar with faint praise, explaining that "resort to a Concept 6 calendar may be required in response to an occurrence such as a natural disaster, which could cause the closure of schools in a district, thus impacting neighboring schools." While a natural disaster may justify a variety of extraordinary temporary measures, it cannot justify their long-term implementation, let alone their institutionalization. In Vista, Concept 6 was implemented as a temporary stopgap measure, but it took thirteen long years to eliminate it. The so-called "emergency" or "crisis" lasted the entire career of a student, from Kindergarten through twelfth grade. The so-called "crisis" has now lasted 14 years at Lodi and 23 years at LAUSD, with relief still many years away.

More fundamentally, the crisis that forces school districts to resort to the Concept 6 calendar is neither unforeseeable nor inevitable. The State can take steps to ensure that overcrowding does not occur, or, at the very least, that it does not become so severe as to require resort to the Concept 6 calendar. Growth in enrollment can be projected with reasonable certainty, and funds can be directed to those districts projected to experience growth in enrollment and to need additional classroom and school space. By 2000, LAUSD had 773 schools, one-third of which operated on a multi-track calendar, with the great majority on the Concept 6 calendar. That means, according to Ballinger, that about one-third of its schools were

[110] Ballinger Depo., p. 647
[111] Ballinger Depo., p. 380
[112] Ballinger Report, p. 46.

at least 25% to 40% over-subscribed, and many of those were more than 40% oversubscribed. This facilities "crisis" has been decades in the making, yet only recently have steps been taken to attempt to remedy it – steps that will do nothing for the students who have spent their careers at Concept 6 schools, and steps that will still take years to reach fruition. For the hundreds of thousands of students subjected to the Concept 6 calendar over the course of the last 20 years and in the foreseeable future, it is cold comfort to say, as Ballinger does, that "[c]hange . . . is coming."[113] Moreover, as long as the State authorizes schools to use Concept 6, there is no reason to believe that the change, if indeed it comes, will be permanent or lasting.

[113]Ballinger Report, p. 3.