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

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 COUNTY OF SAN FRANCISCO

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

22 Plaintiffs,

23 v.

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

26 Defendants.
27

No. 312236

**DECLARATION OF LEECIA WELCH IN
SUPPORT OF PLAINTIFFS'
DESIGNATION OF REBUTTAL WITNESS
YALE STENZLER**

Date Action Filed: May 17, 2000

1 I, LEECIA WELCH, hereby declare as follows:

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

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

9 3. Dr. Stenzler has agreed to testify at trial.

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

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

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

19 7. Attached to my declaration as Exhibit B and incorporated by this reference is
20 Dr. Stenzler's rebuttal expert report. The following is a brief narrative statement of the general
21 substance of the testimony that Dr. Stenzler is expected to give at trial, pursuant to section
22 2034(f)(2)(B) of the California Code of Civil Procedure. Dr. Stenzler rebuts opinions offered in
23 the expert report of State's expert Dr. Thomas Duffy. In particular, Dr. Stenzler responds
24 to Dr. Duffy's contentions that "centralization fails in education" and that Maryland does not
25 provide a good place to look for ideas about how to set up a state school facilities
26 program. Dr. Stenzler argues that there are sound educational and fiscal reasons to ensure that
27 school facilities are properly designed, constructed, renovated, and maintained and that oversight
28 by entities outside the school district, including the state, is necessary to ensure that all students

1 have access to facilities that are clean, safe, uncrowded, and educationally appropriate. The
2 foregoing statements are only a general summary of the issues and conclusions discussed and
3 documented more fully in Dr. Stenzler's rebuttal expert report, attached as Exhibit B.

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

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

7
8 
9 _____
10 Leecia Welch

EXHIBIT A

Dr. Yale Stenzler

5409 Killingworth Way

Columbia, MD 21044

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e-mail: yesconsulting3@yahoo.com

Dr. Stenzler established YES Consulting, LLC to provide educational facilities planning and management consulting services. Prior to retiring in January 2003 he was the Executive Director for the State of Maryland's Public School Construction Program and served in this capacity, under four governor's, since 1981. He has over 30 years of experience in educational facility planning and management. Dr. Stenzler has worked as a consultant providing guidance and assistance to school systems, educational institutions, Federal and State agencies, and other entities. He has made numerous presentations to local, regional, national, and international groups and has written many articles on a broad range of subjects. He has been an active member of Council of Educational Planners, International at the regional, national, and international level for three decades.

Career Highlights

- Responsible for the review and approval of \$3.2 billion in state and local funding for school construction projects in the last eight years.
- Initiated a program for improvements and renovations for high school science facilities – LOOK OF THE FUTURE – that provided over \$45 million in State funds for more than 515 science labs in approximately 100 high schools.
- Responsible for establishing the State of Maryland's Qualified Zone Academy Bond (QZAB) program, which has provided in excess of \$18 million for 190 projects.
- Assisted the Governor's office in establishing the State's Technology in Maryland Schools (TIMS) program to wire all public schools for voice, video, and data communication systems, which provided in excess of \$110 million for over 960 schools.
- Responsible for establishing the State's Federal School Renovation Program, which utilized over \$10.5 million of Federal funds for eligible renovation projects.
- Developed an allocation formula and procedures for the Aging School Program (ASP), which is a program for smaller renovation and capital improvement projects that provides \$10.4 million annually to the 24 school systems in Maryland.
- Served as the agency's Minority Business Enterprise coordinator – developing model procedures for school systems to utilize, gathering and tracking MBE participation information, and preparing appropriate reports.
- Promoted cooperative arrangements to provide space in public school buildings for programs which are community related such as school-based health centers, libraries, theaters, and for park and recreation programs.
- Experience with Systemic Renovation (SR) projects to replace roofs, boilers, chillers, lighting, mechanical and/or electrical systems, and exterior windows.

Career Highlights (continued)

- Participated in planning and funding of renovation projects and the building of new elementary, middle and high schools, career and technical centers, and facilities to serve students with disabilities.
- Provided facilities for pre-kindergarten and full-day kindergarten.
- Involved in developing a work-based learning and apprenticeship program for high school students to be involved in State funded school construction projects.
- Organized two international educational facilities conferences in Maryland.
- Speaker and presenter at conferences and meetings in France and Israel.
- Served as an Expert Witness in the school facilities finance case in West Virginia (APPALRED - 1981) and New Jersey (Abbott – 1986/87). Currently listed as an Expert Witness for a facilities lawsuit in Connecticut.
- Served on the Governor's Green Building Council (Maryland).
- Promoted and encouraged Green Building design for Maryland's public schools.
- Taught educational facility planning courses at the college level.
- Developed and/or reviewed Educational Facility Master Plans, Capital Improvement Programs, and Comprehensive Maintenance Plans.
- Prepared and made presentations to legislative committees and coordinated activities with other state departments and agencies.
- Responsibility for the approval of the award of contracts, payments to contractors or school systems, and audits of school construction expenditures.

Education

- Bachelor of Science in Education, City College of New York, 1964 (B.S. in Ed.)
- Master of Science in Education, City College of New York, 1966 (M.S. in Ed.)
- Master of Education, Teachers College, Columbia University, 1971 (M. Ed.)
- Doctor of Education, Teachers College, Columbia, University, 1972 (Ed. D.)

Memberships

- Council of Educational Facility Planners, International
- Association of School Business Officials, Maryland and District of Columbia
- Maryland Government Finance Officers Association
- Northeast Regional CEFPI

Prior Work Experience

Executive Director, State of Maryland Public School Construction Program (1981-2003)
Deputy Director, State of Maryland Public School Construction Program (1979-1981)
Educational Specialist/Consultant, Maryland Department of Education (1972- 1979)
Assistant to the Director, Office of Facility Planning, Teachers College, Columbia University (1970-1972)
Industrial Arts Teacher, New York City Board of Education (1965-1970)

References available upon request.

EXHIBIT B

EXPERT REPORT OF DR. YALE STENZLER, ED.D

Eliezer Williams v. State of California

A. Qualifications

My elementary and secondary school education was through the New York City public school system. This was followed by undergraduate and graduate work in Industrial Arts Education at The City College of New York, where I received a B.S. in Ed. (1964) and a M.S. in Ed. (1966). I started my educational career as a public school teacher in New York City, where I taught Industrial Arts in a junior high school in Brooklyn, NY for five years. I received two graduate degrees from Teachers College, Columbia University in educational administration, specializing in the planning of educational facilities. The first was a M.Ed. (1971) and culminated with the award of the Ed.D. (December 1972). During my graduate school experience I was awarded a "Proctor and Gamble Scholarship" and worked in the facility planning office at Teachers College.

Starting in June 1972 I was employed by the state of Maryland in the Maryland State Department of Education as a Specialist in Educational Facilities and then as a Consultant in School Facilities Planning (through December 1978). In this capacity I worked with school systems throughout the state and the planning committees that they established to develop educational specifications for new schools, renovations, and/or addition projects. This included onsite visits to existing schools and working with project architects as they developed solutions in schematic designs to meet the expressed needs and requirements of the school system and the specific community. This work was done in conjunction with three state agencies under the auspices of the state's Public School Construction Program.

In January 1979 I was appointed to the position of Deputy Director for the State Public School Construction Program, as an employee of the Board of Public Works. In this capacity I assisted the Executive Director in the administration, management, and operation of the Program. I often worked with school systems discussing various options for specific projects and the development and submission of their capital improvement program requests.

From July 1, 1981 through January 31, 2003 I served as the Executive Director for the state of Maryland's Public School Construction Program. In this position I was responsible for the administration, management, and operation of the Program. The Program has operated with annual appropriations from the Maryland General Assembly, signed into law by the Governor which have ranged from somewhat less than \$50 million (per year) in the early 1980s to approximately \$250-\$300 million (per year) in the first three-years of the 21st century.

Since 1972 I have been an active member of the Association of School Business Officials of Maryland and the District of Columbia; and have been a member of the Maryland Government Finance Officers Association for at least ten years.

I have been an active member of the Council of Educational Facility Planners, International (CEFPI) for over thirty years (joined in 1970). I have attended International and regional conferences, served on many committees and work groups, made numerous presentations, written articles that were published in the organization's journal, and held office in the Northeast Region of CEFPI.

In the course of my thirty plus years in the field of educational facility planning and management I have made numerous presentations to a variety of groups, public and private bodies, and organizations at the national, state, and local level in the United States. I have also made presentations in France and Israel.

During the past twenty years I have provided consultant services to a wide range of clients. This has included being an expert witness and testifying in the APPALRED, West Virginia School Finance Case (1981) and the Abbott School Finance Case in New Jersey (1986-87). I am currently listed as an expert witness in the pending school finance case in Connecticut.

In January 2003, in anticipation of my retirement after thirty years of service to the state of Maryland, its children, teachers, and citizens, I established YES Consulting, LLC as an educational facility planning and management consulting firm. (See my attached resume, Exhibit A).

B. Scope of Assignment

I was asked by the Plaintiffs in the Williams case to review the report by the State's expert witness Dr. Thomas Duffy. I was asked to respond to Dr. Duffy's assertions that Maryland does not provide a useful model for California and that centralization does not work in education.

I was also asked in light of Dr. Duffy's report to give my opinion as to the proper role of a state and other governmental entities, other than the school districts themselves, with respect to the construction, renovation, maintenance and operation of school facilities. In preparing my report I reviewed the Plaintiffs' expert reports by Mr. Robert Corley, and Dr. Nancy Myers, as well as other materials cited herein.

C. Summary of Opinions

Based on my experience in the field, I have reached the following conclusions:

1. Ensuring that school facilities throughout a state are clean, safe, educationally appropriate and properly maintained furthers a number of worthwhile goals, such as protecting the investment of public funds, helping further children's education, and attracting and keeping teachers in the public school system.
2. It is important that entities other than the school district play an active role in helping districts with the construction and renovation of schools as well as in the

maintenance and operations of school facilities. These other entities cooperatively should not only help provide funds for the construction and renovation of new facilities, but also provide technical assistance to and oversight of districts to ensure that they are properly maintaining their schools and operating them in a clean and safe manner.

3. In the state of Maryland, the state, through a number of state entities, but primarily through the Public School Construction Program, provides funds, technical assistance, and oversight to school districts in the area of school construction, operations, and maintenance. Other assistance and/or oversight is and/or has been provided by several state departments in Maryland, including the Maryland Department of Education; the Department of the Environment; the Department of General Services; the Department of Natural Resources; the Department of Labor, Licensing, and Regulation; the Department of Planning; the Maryland Energy Administration; and the state Fire Marshall's Office. In my opinion, the state can also have other entities (as takes place in Maryland), such as county health departments, local fire departments, county building departments that have a vital role in the provision of technical assistance, inspections, review of plans and specifications, and oversight. Furthermore, I think that a state does have a responsibility and should exercise a major role to ensure that all students and teachers throughout the state have access to appropriate educational facilities, which also provide a safe and healthy environment.

D. Overview of the Importance of Educational Facilities and Maintaining Them

In my opinion, the proper design, construction, renovation and operation of public school facilities furthers a number of important objectives, including protecting the government's investment of funds in infrastructure, improving the education of students, and attracting and retaining teachers.

Public school buildings represent the community's (and very often the state's) investment in the infrastructure that houses the educational process. The proper maintenance of the exterior and interior of the building represent a continued exercise of the responsible parties to protect the previous investments by the members of the public (local and/or state taxpayers). These buildings did not just appear by magic. They were built as a result of a concerted effort to find the necessary resources to address a perceived need in the neighborhood or community.

To allow this public infrastructure to deteriorate does not represent sound business practice or public policy. In my experience, proper maintenance of a school facility is extremely cost effective, as has been recognized in the old advertising slogan, "you can pay me now or pay me later." In fact, in almost all cases, it is much less expensive to maintain a building properly than be faced with premature significant replacement costs at a later date. When proper maintenance is not done, major repairs, or in the most extreme cases, even complete abandonment of a building becomes necessary. In my experience, the accumulated costs of routine maintenance are almost always less than the cost of major repairs necessitated by neglected maintenance. For example, periodic inspections of the roof of a school building (at least twice per year) and the development

of appropriate and required work orders will add to the life of the roof and thereby save the expensive roof replacement costs. Conducting periodic inspections and routine preventive maintenance on mechanical equipment such as boilers, chillers, and cooling towers defers costly expenses for major repairs and/or premature replacement.

While it is true that you can educate a child in a tent or even an old wooden shack, it is recognized by most educators and school administrators that the environment we provide can significantly impact the results of our efforts. The building can be designed and constructed, as well as being maintained, to support and enhance the delivery of the desired educational programs and services or without this care and attention it can thwart and inhibit the success of the teachers and students in three obvious ways.

First, a building's poor or outdated design may simply interfere with the desired academic and educational programs of the school, the district, or the state. For example, it is difficult if not impossible to teach certain modern science classes, such as biology, chemistry, or physics with inappropriate or outdated laboratories. The science curriculum and the teaching methods of the past ten years have changed significantly from the programs that were offered in the 1950's through the 1980's. There is an emphasis on the value of laboratory work, which comes for getting hands-on experiences. Therefore there must be adequate workspace and sufficient equipment to allow all students to participate actively in these educational programs. This classroom and laboratory equipment has changed over the years and appropriate safety equipment is also a necessity. It was for this reason, that in 1991 I recommended to Governor William Donald Schaefer that he appoint a committee to develop a plan to upgrade public high school science facilities in Maryland. In 1992, the governor's committee issued its report to improve high school science laboratories. This was followed by the establishment of a program that has brought almost every high school science lab that was built before 1970 into the 21st century. Since the inception of this program over 570 science labs in approximately 115 high schools have been updated and the state expended over \$50 million for this program, with additional local financial support.

Generally, an existing school that was designed and constructed more than thirty to forty years ago may have problems providing an appropriate setting for a modern educational program. The students and the community served by the school may have to overcome physical obstacles if it has not been renovated within the past twenty-five to thirty years. As a result, in planning new schools, and particularly in renovating older schools, we should spend the time to ask questions about the educational programs and services that we want to have occur in a school building. We can build a new school (if needed) or renovate the existing school to support and enhance the delivery of educational programs and services. An older facility that is not suited to the needs or requirements of the school system can result in frustration and the inability to attain the desired educational achievement envisioned for each student.

Second, schools that are not properly maintained, or do not contain basic necessities such as cooling systems, can create substantial distractions that interfere with teaching and learning. If teachers and students can spend more time on task (teaching and

learning) and less time concerned about the lack of lights, heat, functional toilets, broken windows, a non-leaking roof, and a clean cafeteria, they can be more productive. I have visited several schools where these problems disrupted the classroom activities. In one situation I visited a school where rainwater was pouring into the classroom (through the roof) into several large buckets and students were assigned to watch them and call for the custodian when they were almost full. In another situation, students and teachers were wearing their coats and gloves when the heating system failed. They were having a very difficult time trying to turn pages in their books and write with their pens and pencils.

More productive students are a universal goal that can be supported with well-maintained facilities. When I have visited older schools with the state Superintendent of Schools in Maryland or other officials we have often heard how the building's deficiencies have occupied the time and attention of the teachers and the students and thereby interfered with the teaching and learning process. This has at times included poor heating, ventilating, and/or air conditioning; plumbing problems; and/or a leaking roof (or sections of the roof).

Children's health, safety, and comfort should be a high priority in every school building throughout each school district, if students are to be able to concentrate on learning, and feel cared for. In Maryland, we feel that we have a legal obligation to provide a safe, healthy place for all students to attend school. Beyond this legal obligation, school principals on several occasions have expressed to me their desire to provide a safe and healthy environment for their students and staff. They recognized and stated that the space in which the students and teachers work, learn and spend their time for over six hours a day can be a pleasant and inviting place or it can have a negative impact if not properly maintained. Their efforts include working with school building and central office staff to see that their facilities are properly cleaned and maintained.

There is also an obligation for the school district to provide a safe and healthy environment for their employees. Besides the existing laws and/or regulations that require that certain building conditions be maintained, it is in the best interest of the district to maintain their facilities in the best condition possible. In the business area there are very few offices that do not have air conditioning today. There are even fewer that would have their employees work in a building without proper heating. They know that they would either lose employees or have very poor productivity – neither of which represents sound business practice. School buildings need to address these same issues of health, safety, and comfort for their workers (teachers and staff). Over the years I have had discussions with school board members and school superintendents about the need to improve the heating and ventilating systems of existing schools and the necessity of providing air conditioning in their public school buildings. The school year in Maryland generally starts the last week of August and ends in mid-June. There can be many very hot and humid days during the school year as well as during the summer months when "Summer School" is offered or required. The school personnel I have spoken with over the years have all expressed concern about the health and productivity of their student. In some cases they have had to dismiss the students early when the temperature was so high that student health and a lack of productivity was a concern.

Third, the public school building, as it sits on the site and the view and perception of the interior of the building sends a message to the neighborhood and community. A well maintained public school (both exterior and interior) conveys a message of its importance and the care and attention that education deserves in the neighborhood and community. There is hardly a successful business that is not concerned with the public's perception of its operations and products. A clean, bright, comfortable, and welcoming business establishment will attract clients and customers. Our public schools should be cognizant of this principle and follow this commonsense approach for gaining support from the entire community. Several years ago I proposed to the state Superintendent of Schools that we work with the newly appointed board of school commissioners of one school system in Maryland to help them make some improvements to the exterior of a number of schools. This was proposed to enable them to show the citizens and the community that there would be improvements now that a new board was in office. It was implemented and effective for the public schools where the funds were expended.

It is also recognized that the building sends a message to students, teachers and parents. A well-maintained building that enables all of the occupants to implement their specific educational activities in a clean, bright, comfortable, fully functional facility tells the occupants that the decision-makers care about them. On the other hand, a public school building that is not well maintained, is not clean, has health and/or safety problems, an untidy school site, dilapidated playground equipment, or when articles about the deficiencies appear in the newspaper, they convey the opposite message. I have spoken with schoolteachers on planning committees (at older schools) who have visited newer or modern schools in, and they relayed some of the comments from their students who wonder why they do not have similar educational facilities or amenities. A few school principals and superintendents have mentioned that they are concerned about the community's perception of their older schools, which are in need of a renovation and that the lack of a modern facility is impacting on their school-business partnerships.

The link between having a school that is designed to handle the desired academic program and improved learning is commonly recognized by persons other than teachers and school administrators. Recently there has been a lot of attention given to High Performance Schools, across the nation. *A high performance building – one that is healthy and productive, cost effective, and sustainable – supports a school's mission by delivering at least seven key benefits: Better student performance; Increased average daily attendance; Increased teacher satisfaction and retention; Reduced operating costs; Reduced liability exposure; A positive influence on the environment; and Increased opportunities for using the facility itself as a teaching tool.* (Resource and Strategy Guide: High Performance School Buildings, Sustainable Building Industry Council, 2001). Not every new school planned nor every existing public school building can be a high performing school. Many of these concepts and design features could be incorporated into the vast majority of the public schools currently in use today, that will be utilized well into the 21st century, to make them "Higher" performing schools.

Moreover, parents recognize the importance of sending their children to well-designed, clean, safe and healthy school facilities. Very often when a family, with school age children, makes a decision to move they consider the public schools their children will attend. For some, the move is expressly to find a better school. Usually the concerns are for improved educational programs and services. Another reason for the move is to leave the poor conditions of a school, such as a lack of modern amenities (wired for voice, video, and data communication system; air conditioning; modern science labs), or to find a better environment in which they want their children to learn. More than one school superintendent has relayed his or her experience at a meeting with a parent who expressed a desire to move from a community to have their student attend a newer school rather than stay in an older school building. I have personally had telephone calls from citizens seeking information regarding a potential renovation project and the timing of its completion related to when their child would be ready to attend school.

In this period of time when teachers are in high demand it is important to recognize the role of the school building in helping to attract and retain teachers. New or transferring teachers and other staff have decisions to make as to where they want to work. One factor that they might consider is the condition of the building. Given a choice between a well-maintained building (without a leaking roof, air conditioning, a functioning heating system, wired for technology, lavatory facilities that are operational, and well lit classrooms and halls) compared to a rundown facility, the choice may be simple. The well-maintained school building can help solve the teacher shortage problem for a district or a specific school. I have spoken with school superintendents and members of their staff about the difficulty of attracting and retaining teachers at older school buildings. This is often related to our discussion of their request to justify a renovation project or when a new school is opened in the district and many teachers from the older buildings apply for a transfer to the newer school. I have also spoken with a few recent graduates from teacher education colleges who expressed concern about the condition of the schools that they might work in.

E. Appropriate Roles for Entities, Other than the School District, With Respect to the Construction, Renovation, Maintenance, and Operation of School Facilities

Although school districts generally have direct responsibility for the schools in their district, it is my opinion, that in order to ensure that all school children in a state go to school in clean, safe, and educationally appropriate facilities, it is vital that other entities also have some responsibility for the construction, renovation, maintenance, and operation of school facilities. There are three reasons why school districts should not have sole responsibility for construction, renovation, maintenance, and operation of school facilities.

First, it is unusual for districts to have sufficient financial resources to build, renovate, maintain and operate the facilities necessary to house children in clean, safe, educationally appropriate facilities that are not overcrowded. Many states have recognized this condition and developed programs to provide this financial assistance. In

some states the courts have reviewed this lack of financial resources for facilities, found inequities, and determined that state intervention and resources are required.

Second, based on my long experience in the school facilities field, it is my opinion that there are some districts that lack either the necessary technical expertise, or the will and management skills to run an adequate school facilities program without outside help to design, construct, renovate and maintain necessary school facilities. Some school districts have very few schools and therefore cannot devote the resources to hire the professional qualified staff that would be necessary. There are numerous examples in Maryland and throughout the nation where classroom teachers or school administrators have been promoted to a position of responsibility for one or more aspects of school facilities. Many years ago in one school district in Maryland the person responsible for facilities was also responsible for food service and school transportation. Multiple assignments, with less than the training required for the position, are fairly common in small, rural, and/or poor school districts. This has been a subject of discussion at many meetings I have attended with state directors of facilities from across the country. Several years ago Maryland Governor Parris Glendening brought this subject to the attention of county government and school officials. He called upon them to be sure that the individuals responsible for the significant infusion of state and local funds for school construction projects were properly trained to effectively and efficiently manage these resources. It has also been my experience during my thirty years in Maryland that sophisticated, well staffed, and financial capable school systems have on occasion requested technical assistance to study a particular subject or develop and analyze several options to address a facilities related problem.

Third, I think it is sound management strategy to have back-up systems in place. In other words, while districts may have the first responsibility with respect to their facilities program, having another agency or agencies play an oversight role helps ensure that all children attend school in proper facilities. The provision of this oversight role by means of financial support, technical assistance, as well as accountability mechanisms assists and supplements the funding and staff expertise or management skill at the school level. This outside support is given to ensure that children do not go to school in unacceptable facilities or unsafe or unhealthy conditions. In the state of Maryland there are many entities working together, but also individually that have the cumulative effect of improving the educational environment for students and teachers to a level that would not, in my opinion be achieved, without this outside support. In some other states, such as New Jersey where there are numerous smaller school districts there are also functions performed and support provided at the county or regional level. In New York state there are Boards of Cooperative Educational Services that provide services and assistance to the school districts within a designated region.

Based on my experience, I believe another entity or other entities must play a number of different roles in order to ensure that schools throughout a state are safe, clean, educationally appropriate and not overcrowded for all children. These roles are: providing financial assistance; providing technical assistance; gathering information

about conditions in schools and the need for either new schools or renovation; and accountability to ensure all schools are properly maintained.

Because, as I stated above, some districts lack sufficient resources (financial, personnel, and technical) another entity is necessary to ensure that such assistance is available. Without the provision of financial assistance, many districts will simply be unable to build the new schools they need or renovate, maintain, and operate the schools they have. Many districts have a limited tax base from which to draw upon for the operation of their schools and find it difficult to raise the revenue necessary for capital improvements and to address their deferred maintenance needs.

In allocating resources to attempt to assist school district address their capital budget requirements a state agency should be able to recognize the financial ability and capability of the school districts in the state. Some states have adopted a sliding scale approach, with a higher percentage being provided to the districts with greater financial need when compared to the wealthier districts.

The state agency responsible for the allocation of the funds should be able to review and assess the relative merits of each project based upon established criteria. The review should take place at a certain period of time (each year) so that school districts can plan ahead for the submissions and gather the appropriate data and information that is required. Technical assistance should be provided for those district that request assistance and the state agency should offer assistance to those districts that they determine are in need of assistance, even if they have not requested it.

Developing allocations on a per pupil basis does not recognize the needs of smaller school systems with perhaps smaller but costly projects. The one-size-fits all approach rarely works. Several years ago the per pupil approach was suggested and at that time a small district was in need of \$4.4 million for a major high school renovation project. Based upon the per pupil figure that was being discussed it would have taken almost ten years to amass the funds required.

All of the projects should be reviewed and decisions made at an established point in time. This would bring some assurance that the projects are viewed collectively and evaluated rather than on a first-come-first serve-basis. This latter approach may find some school projects being deferred or not funded even if the late submittal has a more pressing need for a new school, a replacement school, or a renovation project. Very often the smaller and poorer school districts are unable to prepare their submittals with internal staff and of necessity raise additional funds to hire an outside consultant to assist and/or prepare the submittal. This added step could cause the submittal to arrive behind other more affluent or better-staffed districts and therefore be deferred if the available resources have been allocated on a first-come-first-serve basis.

The use of objective numbers alone to rank and fund projects is not recommended. This could result in an inequitable distribution of the limited resources. In an effort to provide funds in an equitable manner to all school districts in a state there should be an

attempt to address the highest ranked project in each school district that meets the established criteria. Since it is a statewide program, all of the citizens as taxpayers have contributed and therefore there should be method to redistribute the resources throughout the state.

The state agency providing financial and technical assistance should periodically evaluate the programs it operates. This review could examine how well the facilities in the state are meeting the educational program and services requirements of the school systems as changes have occurred. It could include a review to determine how effective the programs have been in providing appropriate facilities for special populations, such as students with disabilities; students at risk; career, vocational, and technology students; students with classroom and other service needs where English is not their primary language; and students from low socio-economic families. The ability of the school systems to properly maintain their facilities is another aspect of the program that should be studied. There should be consideration given to modifying the existing state funding programs to respond to the needs and requirements of the school district when there is evidence that the desired outcomes are not being attained with the current programs.

It is essential that the state agency have a database with basic information for each school building in the state. Information gathering serves a number of purposes. First, it enables the school district to know what it has and it might not gather this information if not requested or required by the state. Secondly, it can be the basis of enabling the school district to prioritize their projects based upon a needs assessment or evaluation. Furthermore, it can provide the basis for the state agency to begin its evaluation process of the applications it receives. The staff at the state agency may not be able to make an on-site visit to every school for which a project request is submitted for approval. The database could provide some important and useful information that can be used to evaluate the requests.

The state agency or another entity that has access to the database may offer technical assistance to the school district based upon their knowledge about a specific school building or the schools in the district. It is my experience that some school systems may not ask for assistance even though they desperately need it. Often they do not know that the assistance for a specific task is available.

By having one or more state agencies or other entities review the various plans developed by the school district there is a greater likelihood that one or more of these entities can offer some assistance to improve the plans. This could include the review of an educational facility master plan, site acquisition or development plans, capital improvement plans, comprehensive maintenance plans, asbestos monitoring plans, indoor air quality plans, energy conservation plans, inspection procedures and plans for roof or boilers, and educational improvement plans. Technical assistance and the expertise that can be provided by other entities can be a valuable contribution to the school district.

For example, the state Education Article in Maryland under Section 7-401 is entitled School Health Program. It states that it is the duty of the county board (board of

education) with the assistance of the county health department to provide adequate school health services, instruction in health education, and a healthy school environment. It further states that the state Department of Education and the state Department of Health and Mental Hygiene jointly shall develop public standards for school health programs and offer assistance to county boards and county health departments in their implementation. I have attended several sessions of the Joint Meeting of Health Officers and Superintendents to discuss school health issues, which have included the subject of school facilities. At their March 10, 2000 meeting they included the following in the School Health Issues Summary that was distributed and discussed:

School Environment – Physical facilities – Schools are confronting a variety of environmental issues including indoor air quality, aging buildings, integrated pest management, water quality, preventative maintenance, and staffing. These issues are of great concern to parents, and resolution depends upon the close collaboration between local health and education agencies. The cost implications for localities necessitate state and federal resources. Future presentation to the group is planned.

Finally, if another entity, other than the school district, has no mechanism to gather information about the condition of a district's facilities, then they cannot determine how well they are being maintained. Without this information the school district cannot be held accountable and the state agency cannot determine how or where the resources to improve the school facilities are needed most. The allocation of the resources should be provided to improve the public schools in which students learn and teachers teach. There should be a concerted effort to maintain all the public schools in a state to provide a healthy, safe, and supportive environment.

In my opinion, based on my experience, it not necessary (as stated above) that a state's educational entity alone provide the financing, technical assistance, and perform some oversight functions. However, I think the state does have a responsibility and should take an active role for numerous reasons. First, the state has a responsibility to provide for the education of its students and usually has the greatest capacity to provide funds. Second, if the state is the entity (other than the district) that provides some or all of the funds for the construction or renovation of the schools, the state has the greatest responsibility and incentive to ensure that buildings are well-designed, constructed, renovated, and maintained, so that the state's funds (taxpayer's dollars) are properly invested and protected. Third, state legislation is generally necessary to establish the process and/or procedures used by other entities, even if the state is not the entity actually performing the procedures.

For example, in Maryland the individual county health departments perform certain functions with respect to local schools as required by state law. They periodically inspect the school kitchens and cafeterias and often review the plans and specifications for code compliance prior to construction or renovation work proceeding. They also may make site visits prior to the county government issuing an occupancy permit at the completion

of the construction project. The state Fire Marshall's Office reviews the plans and specifications for all new school construction projects, as well as major renovations and/or additions. Their office is also responsible for periodic inspections of the public schools (sometimes delegated to the county or city fire protection agency) to assure compliance with the fire and life safety codes. Without state law, some county boards might perform these functions, but there is certainly no guarantee that all of them could or would do so. Without these provisions in state law (and these are only a few examples in Maryland) there would be no assurance that these important and essential procedures would be performed to ensure that all of the students in the state, regardless of the district they reside in, are protected and able to attend school in a safe, healthy, and appropriate educational facility.

F. Maryland Has Recognized the Importance of Educational Facilities and Established a Program to Ensure that Appropriate Facilities are provided Throughout the State

For the past thirty years I have been actively involved in the planning, design, funding, construction, operation, and maintenance of public school facilities in Maryland. In several different positions I have observed the process and procedures and been intimately involved with elected public officials at the state and local level, school board members (both elected and appointed) school superintendents, central office school system personnel, as well as school building principals, teachers, and their staff.

Maryland has continually recognized the linkage between educational programs and the facilities in which education takes place. From the beginning of the current program in 1971, there was a commitment to equalize the quality of educational facilities throughout the state to enable all students and teachers to have access to comparable facilities.

The importance of public school buildings and the continued investment in these facilities has not been questioned in Maryland. In the years when there were surpluses, the Governor in cooperation with the Maryland General Assembly authorized significant expenditures of the surplus funds for capital improvements for public school projects.

The Governor, State Comptroller, and State Treasurer, the three members of the State Board of Public Works, have been actively involved with the school construction program since the inception of the program and have continually called upon local officials to maintain the state and local infrastructure investments.

The state has recognized that the twenty-four school systems have different educational facility needs and requirements. Each system has different existing facilities that were constructed at different times with different materials, and they have different means for operating and maintaining them.

The state provides funding that is based upon a formula for each approved project. There is a sliding scale that is based upon the wealth or lack of wealth of the county

school system, which is applied to each project. State funds generally range between 50% and 80%, with some exceptions that reach 90 percent.

The Public School Construction Program not only provides funding but the staff provides technical assistance to all school system. The systems vary in size and the staff that they assign to school construction and/or maintenance functions come with different backgrounds and experiences. Some individuals may need more help and assistance than others. The assistance that is available could include, but is not limited to, the following: developing an educational facility master plan, a capital improvement plan, a comprehensive maintenance plan; working with the state's architects, engineers or other staff and consultants on specific projects; and reviewing funding options and potential sources of funds for projects being considered.

In recognition of the need for ongoing training the Public School Construction Program and the Maryland State Department of Education have periodically sponsored programs of interest to the directors of facility planning, the directors of maintenance, and members of their staffs.

Staff from the Public School Construction Program review the status of approved projects and offer assistance in addressing specific problems in moving a project through the design process. This could involve a dialogue with another state or local government department or agency.

Although some school systems have architects and engineers on their staff, we have found that the technical assistance provided during the review of the schematic drawings, the design development documents, and the construction documents is welcomed by almost all school system personnel. These reviews identify potential problems regarding the appropriateness of the design solution to meet the educational requirements; cost effective design solutions and construction techniques, building, fire, or life-safety code requirements; and possible errors or omissions that could result in costly change orders after the project is bid.

The design submittals for some projects have been rejected, (to be revised and resubmitted), when the state staff determines that there are major problems that will not result in a high quality building consistent with the state's generally acceptable standards, have errors or omissions, do not comply with code requirements, or could possibly result in a more costly project because of a less than adequate design package.

The Maryland State Department of Education during the past thirty has produced a number of educational facility planning guides to assist local school systems, their planning committees, and their project architects. These guides generally cover a subject or program area. They are each developed to enable the school system to identify the educational programs and services that would be offered or required by them and then select the facility related components that are appropriate for their project. These have included such subjects as: Standards for Telecommunication Distribution Systems, Science Facilities Design Guidelines, School Food & Nutrition Service Design Manual,

Family and Consumer Sciences, and School Health Services: A Facility Planning and Design Guide.

Even before the state's Public School Construction Program was established in 1971 the state Superintendent of Schools was responsible to review and approve the plans and specifications for all new schools, additions, and renovations before they were bid. The Superintendent was required to approve the award of the contracts for these types of projects and without such approval the contract was null and void. The state legislature wanted the state to have oversight responsibility for these activities to assure that appropriate facilities were being designed and constructed and the award of contract was consistent with state law. This procedure is still in place today for projects undertaken by a school system and entirely locally funded (no state funds and an estimated cost of at least \$350,000).

School systems in Maryland are now required to submit a plan to the state Superintendent of Schools to comply with the state legislation that was passed in 2002, which will significantly increase state funding for K-12 education. The plan, called "The Bridge to Excellence Five Year Comprehensive Master Plan" will be submitted for the first time in October 2003 and then updated annually. In recognition of the relationship of educational programs to facilities the plan must include a section that "Analyzes facility needs and capital improvements to implement the master plan".

The information provided below is a brief summary of one state's approach (Maryland's) to providing funds for public school construction projects, requiring that certain plans be submitted, and monitoring the maintenance of the schools in each school system.

1. History – The state of Maryland has a long history of providing financial support for school construction project in the 24 school systems (districts) - 23 county school systems and Baltimore City. It started in 1947 and the current program, with some modifications over the years, began in 1971. To provide some basic data about Maryland, there were 866,743 students in pre-kindergarten through grade 12 (as of 9/30/2002) in approximately 1400 school buildings in the 24 school systems. The smallest school system (Kent County) had 2,629 student and the two largest school systems had 138,983 students (Montgomery County) and 133,439 students (Prince George's County).

The Public School Construction Program (PSCP) was established in 1971 to be administered by the Interagency Committee on School Construction. The Committee has three members two of whom are cabinet secretaries (Department of General Services and Department of Planning) appointed by the Governor and the third is the state Superintendent of Schools (chairperson), appointed by the state Board of Education (the board members are appointed by the Governor on a staggered term). The Committee administers the Program consistent with the Rules, Regulations, and Procedures for the Administration of the School Construction Program adopted by the State Board of Public Works (the Governor, State Comptroller, and State Treasurer). The Board of Public Works approves all allocations for school construction projects.

(Note: The Board of Public Works in Maryland is the constitutionally created body that approves all contracts and state expenditures (consistent with state law) as appropriated by the legislature, unless there is delegated authority given by them to departments and/or agencies. For example, the Interagency Committee on School Construction approves the several hundred individual school construction contracts that are approved each year, within the allocations approved by the Board. This may explain why the Board over the years, even with a change in the members, has maintained an active interest and concern regarding the funding and condition of the public schools in Maryland.)

When the Program was established there were several objectives:

- a. provide local property tax relief;
- b. relieve the subdivisions of the high costs of school construction;
- c. address the considerable backlog of new construction, renovation, and replacement schools;
- d. even out the financial impact through the state assumption of these costs; and
- e. equalize educational facilities and opportunities throughout the state.

2. The Program - The state program in Maryland, which is briefly described below, provides funding for school construction projects, technical assistance, gathers and maintains a database on the schools in the state, works cooperatively with other state and local departments and agencies, monitors projects during the design process, and inspects school buildings to assure that the school systems properly maintain them.

There are three submittals required from each school system each year. The first is the Educational Facility Master Plan, followed by the annual and five-year Capital Improvement Program, and the third is the Comprehensive Maintenance Plan. Each of these plans is briefly described below.

a. Educational Facility Master Plan – This is a planning document developed by the school system that identifies the projected facility needs of the school system. It follows a format and outline provided by the PSCP (See attached pages 1-4 to 1-7 from the Public School Construction Program Administrative Procedures Guide, 1994, as Exhibit B). It is a plan for the next ten-year period and is updated each year. It is required to be submitted on July 1 each year. It presents a summary of school board policies with respect to school development and utilization, data and information about the communities within the school system, an inventory of the facilities and an evaluation, enrollment data, and a facility needs assessment. It should be noted that item 3. Inventory and Evaluation, of the Outline (under Section 101.2 on page 1-5) provides for the listing and certain information about each educational facility in the school system. The school system's staff must also enter the "physical condition". There are no specific standards set by the PSCP for this evaluative process. However, "An explanation of the system utilized for evaluating the physical conditions should be included", as can be seen in Section 101.2, 3. (b). The explanation provides information and a rationale for the rating process or system that the school system utilized to rate their schools. This entire plan forms the basis for evaluating capital improvement program requests when they are submitted for state review and approval. The capital improvement program must be

consistent with the most recently submitted and accepted Educational Facility Master Plan.

As part of the review process there might be a recommendation sent back to the school system or discussions pursued that would suggest that the school system consider construction of additions at one or more schools rather than building a new school as proposed in their plan. In several instances we suggested and encouraged a school system to modify their request to include the renovation of the older existing school buildings when they were only proposing the construction of an addition at each of the schools submitted for state approval. We recognized that the existing schools were in need of renovation work and not just to add a new addition.

b. Capital Improvement Program – This is an annual and five-year plan that contains specific requests for planning approval and state funding for eligible projects. The review focuses on the annual request with comments or suggestions regarding the proposed projects in the subsequent five years of the plan. The requests are due on October 15th each year and can be amended on or before December 7th. Since the public school systems in Maryland are fiscally dependent upon the local government (23 counties and Baltimore City) the request must be approved by the local government before the December 7th deadline. Between mid-October until early November the staff meets with each school system to review their CIP request. The staff makes preliminary recommendations, to the Interagency Committee on School Construction in early November and the school systems can present an appeal (in person) to the Committee in December. The Committee then forwards their recommendations to the Board of Public Works at the end of December. The school systems can present an appeal (in person) before the Board (Governor, Comptroller, Treasurer) in January. After the legislative session ends in early April the Board meets again (usually in late April or early in May) to respond to the appeals since at that time the level of state funding for the next fiscal year has been established in the approved budget. All project requests are reviewed and evaluated at the same time and decisions made based upon the merits of each project. This is viewed as a statewide program and attempts are made to approve at least one eligible and justified project in each school system.

The funding is based upon an annual appropriation, with the majority of the funds, over the years, coming from state General Obligation Bonds. Since 1971 the state has provided in excess of \$3.7 billion (which does not include any debt service).

Projects eligible under this program include new schools, renovations, additions, renovations and additions, systemic renovations (for specific building system – i.e. mechanical, electrical, structural), improvements to high school science facilities, wiring all of the public schools for technology (voice, video, and data communication systems), and pre-kindergarten and kindergarten facilities.

During the CIP review meetings (October/November) questions are asked about specific project requests. Requests for systemic renovation projects (roofs, boilers, chillers, etc.) might have been identified during the state's annual maintenance survey

(described below). If a school system has not requested a systemic renovation project, a question is often asked if there were any deficiencies identified in the maintenance survey that could or should have resulted in a request for a systemic renovation project.

On more than one occasion a school system submitted a request for several systemic renovation projects, with for example four roof replacement projects, followed by four boiler replacement projects, and ending with four window replacement projects. Since we try to fund the projects in the order submitted we asked them if the submission accurately reflects the priority of their projects. Most often the response results in a resubmission that rearranges the projects by interspersing the projects rather than ordering them as originally submitted in clusters by project type. As part of our review of specific projects we have also on occasion recommended that a project be withdrawn from the CIP and submitted as a Aging School Program project or as a QZAB project (both of which provide full state funding).

The PSCP provides technical assistance to any school system upon request. The PSCP contacts school systems during the year and particularly during the summer to obtain information and discuss possible options for the submittal of specific projects in the CIP. The staff also takes a pro-active role and offers assistance when it appears that the school district is faced with a problem or obstacle. We become aware of these issues or problems through discussions with school system staff or representatives, through newspaper articles, and/or questions raised by local or state officials. The staff will work with the school systems throughout the process to help them resolve any outstanding questions or issues to make each project eligible for approval.

c. Comprehensive Maintenance Plan – This is a plan that is required to be submitted each year on October 15th. It describes the strategies that the school system will utilize to maintain their public school facilities. Section 801 from the Public School Construction Program Administrative Procedures Guide, 1994 (See the attached Exhibit C, excluding Section 803 Maintenance Expenditure Report: pages 8-6 to 8-10, which has since been deleted as a submission requirement). The objectives of the maintenance program are cited on page 8-3 under 802.2 B as follows:

- a. Maintain a positive learning environment;
- b. Maintain the asset value of the property;
- c. Eliminate or reduce the number and scope of fires, accidents, and other safety hazards on the property;
- d. Provide buildings that function at top efficiency;
- e. Provide continuous use of facilities without disruption to the education program; and
- f. Conserve energy.

It should be noted that there are not prescribed standards to be attained. There are no minimum percentages or dollar values established that are required to be set aside for the proper maintenance of the public schools within a school system. Although these decisions are developed and implemented at the school system level, they are fully cognizant of the state's interest and concern regarding the proper maintenance of their

facilities. They also recognize that failure to maintain their facilities could result in a withholding of state funds. The PSCP does review the plans and does send written comments back to each school system. The PSCP, as noted above, deleted the submission of a separate report on the expenditures for maintenance several years ago. Instead the PSCP reviews the annual financial reports submitted by each school system to the Maryland State Department of Education to observe any trends that might indicate that maintenance expenditures as a percentage of the overall school system expenditures is declining.

The PSCP has conducted a maintenance survey of 100 schools each year, since 1981, and has issued a report showing the results. The state conducts the maintenance surveys as a means of verifying and assessing the quality, operation, and implementation of the Comprehensive Maintenance Plan. Copies of the detailed individual school building surveys are sent to the Superintendent of Schools and the local government. A representative from the school system's central office and the school building custodian accompanies the state inspector at each building. The inspector asks questions and records his observations and pertinent responses. He also may orally suggest some possible solutions and/or corrective actions that would be appropriate. A written report for all the schools surveyed is sent to the superintendent of schools and the local government. A written response indicating how and when the corrective action will be taken must be sent to the PSCP by the school system. Failure to implement the Comprehensive Maintenance Plan or respond to the maintenance survey reports could result in the denial of state school construction funds. There is a three-page maintenance survey form that is utilized by the inspector, which identifies the thirty-four systems or components that are examined and rated. This form is attached as well as the summary form utilized to determine the overall rating for the school surveyed. The schools that receive a "superior" rating (a score of 90% or more) are awarded a "Governor's Citation" at a ceremony at the state capitol each year.

One person who is employed by the Department of General Services conducts the maintenance inspections of the 100 schools each year. The Secretary for the Department of General Services (and a member of the Committee) has recommended that the maintenance inspections be discontinued (effective for July 1, 2003) due to budget reductions and fiscal constraints. This will be the first time in over two decades that the annual maintenance inspections will not be performed. My attempts to continue this activity have not been successful. In my opinion this is an attempt to save a minimum amount of funding while sacrificing a significant program and service to school systems across the state of Maryland. The one inspector's salary, fringe benefits, associated costs are less than \$75,000. My position is shared and supported by State Treasurer Nancy K. Kopp. In a letter to the Secretary of General Services Boyd Rutherford (dated August 27, 2003) she stated "But, although I concede that these inspections provide limited data, this is the only information the state collects on the condition of school buildings in Maryland. As such, it is valuable both for the information it provides -- and as an accountability tool for the state's oversight of the maintenance of school buildings by the local school system." She went on to write "The only other mechanism to continue collecting the information would be to require school systems to self-report. However,

self-reporting is typically an unreliable methodology. For self-reporting data to have an appropriate level of confidence, random, independent verification would be required at a cost similar to the minimal cost of the current program” (See letter attached as Exhibit D).

There are other aspects of the state’s program that are presented below which are important components and contribute to the efforts to ensure that the educational facilities are appropriate and are being properly maintained. Each is briefly presented below.

1. Aging School Program – The Aging School Program was added as another program to be administered by the Interagency Committee on School Construction in 1997. It was established to provide full-state funding for smaller capital improvements, repairs, and deferred maintenance projects. The allocations are established in statute based upon a formula that was developed utilizing the information in the PSCP Facility Inventory (to be described below). The funding for a school system is based upon its percentage of the entire state’s square footage in public schools that were built prior to 1960 and have not had a major renovation since that time. For the initial year the amount was \$4.350 million and it was increased to \$10.370 million the second year and has remained at that level. The minimum project cost is \$10,000. The smallest allocation to a school system is \$65,000 and the largest allocation is \$2,940,000. Although the funds are allocated based upon the pre-1960 square footage the school system can select projects and submit them for approval against the allocation if the school or component being repaired or replaced is at least 16 years old. Each school system receives an allocation under this program and then decides which projects to submit based upon their priorities, needs, and requirements. Since its inception, the state has provided approximately \$66.6 million in general funds for this program.

2. Qualified Zone Academy Bonds – This is a federal tax credit program whereby the bonds are sold, the bondholder receives a tax credit for the term of the bond, and the bond seller only repays the principal at the end of the term. This program is also administered by the PSCP. Most states, including California, announced the availability of the QZABs and distributed the QZAB authorization on a first-come- first-serve basis. This left many school systems without the ability to access these funds. The state of Maryland in an effort to be equitable to all school system, decided to (a) distribute an allocation among all public school systems with at least one eligible school; (b) develop an equitable formula for the distribution; (c) sell the QZABs at the state level; and (d) repay the principal without collecting any repayment from the school systems. This would also be less expensive for bond sale and related expenses with one bond sale rather than several smaller sales by less credit worthy jurisdictions. The formula was based upon two parts. The first half was distributed based upon the school system’s percentage of the state total of students eligible for Free or Reduced Price Meals and the second half was distributed and upon the school system’s percentage of pre-1960 square footage when compared to the state total (using information in the PSCP Facility Inventory). The minimum project cost is \$30,000. Twenty-two of the twenty-four school systems received allocations, approved by the Board of Public Works, which ranged from \$56,000 to \$5.2 million (based upon the \$18.1 million total). The state sold its first four-

year total of QZABs in the amount of \$18.1 million. A second QZAB sale has been authorized by the Maryland General Assembly in the amount of \$9.1 million, which represents the last two federal QZAB authorizations. The Board of Public Works approved specific allocations to each eligible school system utilizing the same formula.

3. Federal School Renovation Program – This Federal program enabled the state to access \$10,586,000 for renovations and capital improvements to existing schools. The program is administered by the PSCP. These funds were required to be awarded on a competitive basis in three distinctive categories. Although the state and its school systems will benefit from these funds that will improve the educational facilities approved for funding, there was not an equitable distribution of the funds, which is what we would like to achieve in Maryland. Many school systems decided not to apply. Several school systems that did apply did not receive any funds. School systems with more capable staff, the ability to identify qualifying projects, and make a well prepared written application, were the beneficiaries. This federal program required that the funds be distributed within three established categories on a competitive basis. Our staff therefore did not provide the typical level of assistance that we otherwise provide due to concerns regarding a potential conflict during the evaluation process.

4. Facility Inventory – The state of Maryland has had a facility inventory of its public schools since the mid-1970s. The inventory contained some very basic information and data about the dates of original construction and each addition with the square footage constructed by for each entry. It also contained information for major renovations since the date of the original construction or the addition, with the amount of square footage renovated by date. The inventory had two sections. One that had the actual age of the original construction and the additions and a second section that had the adjusted age based upon the major renovations. The latter was used for funding purposes of future renovation projects or in the formulas described for the Aging School Program and the QZAB Program (above). A new computer program was installed within the past few years to replace the old system. This new facility inventory system can now be accessed by designated school system personnel to make data entries at any time, rather than relying upon PSCP staff to make the changes. The data, once accepted by PSCP, becomes part of the public record that is accessible to any individual with access to the Internet at the PSCP website (www.pscp.state.md.us). The facility inventory data can now be used by the school systems in preparing their submissions of the capital improvement program without having to retype the required data and information. The adjusted age of the school building is utilized in the funding formula for renovation or renovation and addition projects. It assists the local school systems and the PSCP in determining eligibility based upon age and maximum square footage based upon a formula. The new system can be queried to respond to a variety of questions related to the public school facilities in Maryland and assist in the development of public policy.

5. Cooperative Activities - In the state of Maryland there are other entities that inspect the schools, as may also be the case in California. There are periodic inspections from the state, county, or city fire marshal's office or fire department. There are boiler inspections conducted by either the state boiler inspectors or inspectors authorized by the

state to conduct inspections for the insurance companies insuring the pressure vessels in the public schools. The Health Department conducts inspections of school kitchens and dining area as they do for all establishments that serve and/or prepare food products. These three surveys and/or inspections bring a different perspective to public schools officials that they otherwise might not have. They are performed to assure the health and safety of the occupants of the facility and bring to the attention of the owner of the property problems or deficiencies that require some corrective action.

Other Activities Within the PSCP – There are a few additional activities that warrant mention that enable the Maryland Public School Construction Program to be effective.

1. The staff at the PSCP takes an active role in trying to provide technical support and assistance to local school personnel at all levels. This can range from a telephone call to the director of facility planning or director of maintenance after reading an article in the newspaper about a particular facility problem, to making a site or presentation to PTA or community group about a specific issue or subject.

2. Private citizens, business representatives, and/or parents often send letters, e-mail requests, or make telephone calls to the PSCP, the state Superintendent of Schools, the Governor, state or local elected officials requesting information or requesting action to resolve a particular problem. All of these inquiries are responded to as quickly as possible. Some of the requests concern the condition of a public school building which the writer or caller feels needs attention. Usually a telephone call to the school system by someone at PSCP is necessary to gather some information from the school system's perspective. Very often an easy solution is possible and often just knowing that the state (which funds school construction projects) is interested in the specific issue or problem, bring about some corrective or remediable action.

3. Rather than dictate solutions from a centralized office at the state level, the PSCP responds to requests submitted by the school systems based upon local identified needs, their specific requirements, and decisions made by the local board of education. The PSCP upon request will offers suggestions and/or alternatives. The PSCP also takes a pro-active role in making suggestions throughout the year, during the review of the local requests, or during the design process.

4. The PSCP and/or the Maryland State Department of Education, through the state Superintendent of Schools, has taken an active role to promulgate and distribute information and procedural recommendations on such health and safety subjects as: asbestos, lead in drinking water, indoor air quality, and ADA accessibility, and emergency procedures related to utilities. They have also sponsored seminar and workshops on a wide range of topics that have included the subjects of importance to individuals responsible for the proper maintenance of educational facilities.

Before finishing my discussion of Maryland's school facilities program, I would be remiss if I did not comment on the apparent significant difference in approach and perspective between educational and government leaders in Maryland and California. Mr.

Corley, in his report (p.37), provides a quote from the state Superintendent of Schools Eastin that he indicated appeared in a newspaper article in January 2002. Superintendent Eastin is quoted as saying "I can't go in and order you to fix the bathrooms and paint the walls". I do not know the specifics of the situation here, but if newspaper reports similar to the numerous problems I read in Mr. Corley's Report appeared in Maryland newspapers, there would be a dramatic and significantly different response. The first response might be from the Executive Director of the Public School Construction Program, who would call the school system to determine if the reported problem was true and what the school system was doing to resolve it. What action was planned and when would it resolved? The Executive Director might also receive a telephone call from the state Superintendent of Schools, the Governor's Office, the Comptroller's Office, or the Treasury's office inquiring about the problem that they read about in the newspaper. Sometimes the initiation of an inquiry by the Executive Director might be triggered by a telephone call to one of these officials from a state or local elected official or a private citizen. Each inquiry is taken seriously and an inquiry from the state School Construction Program is not brushed off. On more than one occasion the state Superintendent of Schools in Maryland has made a telephone call to the local superintendent to inquire about a facility related maintenance problem.

School systems recognize that the state will not fund school construction projects that are not properly maintained. There was a project a few years ago that was scheduled for funding (as a replacement school project). Governor William Donald Schaefer and Dr. Nancy Grasmick, state Superintendent of Schools (and others) visited the school. The Governor was so upset by the evidence of a lack of appropriate custodial and maintenance work at the school that he refused to approve funding for the project until the conditions were improved. After some work was done and a subsequent visit made by me (the Executive Director), a favorable report was submitted and the project was funded. The previous State Comptroller, Louis L. Goldstein (as well as the current Comptroller, William Donald Schaefer) insisted that school systems maintain their facilities and had a particular interest in well-maintained roofs. He made visits to schools and went up on the roofs to see for himself how they were maintained. His interest was known to all school systems and local governments that were seeking state funds for school construction projects (even if they were not asking for roofing projects). A change in perception from the state perspective might make a significant difference in how school systems view their role and responsibility to provide and maintain their public school facilities in California.

G. California's Record of Funding Educational Facilities

Let me state at the outset that I have not personally visited or studied the public school facilities in California. I have visited a few California public schools in the course of my thirty years of travel related to conferences and programs pertaining to educational facilities. I have not studied the funding of education in California in depth and I am not in position to draw a conclusion about the appropriateness of the funding being provided or anticipated to be provided.

As cited by Dr. Thomas G. Duffy, in his expert witness report (April 2003), there have been several programs initiated by the state of California to provide state financial assistance in the area of school facilities over the years. This has included state loans for the construction of schools, a Lease Purchase Program, a Deferred Maintenance Program, a Modernization Program, a School Rehabilitation Program, a Facility Hardship Program, a New Construction Program, a state Leased Portable Program, a state School Facility Program, a Financial Hardship Program, and a Pre-school Portable Program. The state has also administered the Federal Qualified Zone Academy Bond Program and the Federal School Renovation Program, which do not require or utilize any state funds.

The voters of California have approved statewide bond referendums for school construction every two year dating back to 1982 through 2002. There was only one bond referendum that was reported as having failed, and that was in 1994. There was no information presented related to a possible bond referendum in the year 2000. The total amount approved by the voters between 1982 and 1998 for K-12 facilities was approximately \$16.4 billion. The amount approved in the 2002 referendum for K-12 facilities (in several programs) was \$11.4 billion. The state is anticipating another bond referendum in 2004 (based upon legislation previously approved) in the amount of \$10 billion for K-12 facilities.

Even with a variety of state funding programs and this long history record of funding for educational facilities, there appear to be persistent problems and deficiencies in many schools in California, based upon the information in Mr. Corley's report. The wide variety of materials cited in Mr. Corley's report provides an indication that the problems identified by such sources as the Little Hoover Commission, the Legislative Analyst's Office, the Federal General Accounting Office, and numerous newspaper articles have been lingering for an extended period of time. These identified problems cover a period of over 20 years.¹ Many of the problems and "unusually poor conditions" seem to be the results of a lack of proper maintenance, both preventative and responsive to reported incidents. These are not just the normal results of a work order submitted which then is responded to in a short or reasonable period of time. Usually a call from a parent or citizen to a reporter citing these types of problems would end and no story would be written if the local school system employees provided a response with a timely date for the resolution of the problem. Some of the conditions cited could be considered custodial rather than maintenance problems. Some seem to be easily addressed for a relatively small sum of money, while others would require a more significant investment. Since these reported problems have been occurring over a significant period of time, they seem

¹ Dr. Thomas G. Duffy offers only passing comments on the condition of the public schools in California. He makes reference to the reports prepared by Mr. Corley and Dr. Myers, but does not refute or deny that the reports accurately present and state the problem. His comments that can be attributed to the condition of the public school facilities include the following: "Yet it is local decision making that separates the successful districts in terms of adequate facilities from those that are unsuccessful or simply mediocre" (p.20); "The State has made significant progress..."(p.21); "There is no doubt that the schools in California are not yet out of the woods. Work on the issues presented must be sustained"(p.21); and "To suggest that all is perfect in not appropriate" (p. 23). There are no specific statements or comments that contradict or explain the numerous reports and newspaper article about the unhealthy and unsafe conditions in California public schools that have been reported over the past 20 years.

to show a pattern that raises questions about how the public schools are being maintained. It raises the issue of how to assure that students throughout the state are able to be educated in a healthy and safe educational facility. These are educational facilities that are either funded locally or with state financial resources, and they are funded on the operational side with both state and local funds. These facilities, if left to deteriorate, will only require greater fiscal investments to make the necessary improvements in the future.

If these same articles had appeared in newspapers in Maryland, our office would have been actively involved to find solutions through local action or suggested projects for state funding under one or more of our programs. Without expressing an opinion as to the adequacy of the funding for educational facilities over time in California, the evidence in Mr. Corley's report reinforces my opinion that it is vital to have an entity or other entities provide school districts with technical assistance, gather information about the condition of the facilities, and enforce accountability mechanisms.

H. Centralization and Local Decisions

The state of Maryland and other states that provide significant funding for public school construction projects have to exert some level of control from a central location. No state that I am aware of simply receives requests and allocates funds without some level of review against some established criteria. The criteria usually include questions of eligibility and a justification for need. These undoubtedly vary between states but also may vary between several programs within the same state.

Contrary to Dr. Duffy's statement that "Centralization fails in education; it is an ineffective model" (p. 23), it is apparent that some forms of centralization in education do work and work very well. This is particularly true in the area of educational facilities when one looks at other states, such as Florida, West Virginia, New Jersey, Ohio, New Mexico, and Maryland. California could also be added to the list of states that provide funding through a variety of programs from a "centralized" location at the state level to assist local public school districts.

The proposals recommended by Mr. Corley and Dr. Myers, which called upon the State of California to take a more active role in the area of school building maintenance, were based upon a significant problem that was identified. Dr. Duffy agrees, that, "While detail in their proposals is lacking, the proposals themselves are not entirely lacking in merit" (p. 22). He further states that, "Standards for maintenance and modernization exist in California, albeit not in the same construct that Dr. Myers and Mr. Corley advocate" (p. 23).

The state of Maryland over the thirty plus year history has an admirable track record. Although there is a process, procedures, standards, and criteria that have been administered at the state level ("Centralized" according to Dr. Duffy) there has been and continues to be a dialogue and input from local school systems and other representatives. There have been over the years, several Governor appointed task forces that reviewed the school construction program and made recommendations for changes and modifications

when and where there were perceived needs. For example, the state prior to the late 1980's did not provide funding for separate maintenance types of projects such as the replacement of roofs, boilers, or chillers. Representatives from one school system made a suggestion that these types of projects should be eligible for state funding. Their proposal was reviewed and the State decided to fund these types of projects (as "systemic renovation" projects). Since July 1987 the state has funded over 1,000 systemic renovation projects and invested over \$319 million in these existing school buildings throughout the state.

Maryland's political leaders (at the state and local level) have encouraged and supported the PSCP in striving to provide leadership and assistance to school systems and their staff in the area of educational facilities. This has included a wide range of fields including the planning, design, construction, financing, operation, and maintenance of public school facilities. Through an initiative by the Public School Construction Program with cooperation from the Maryland Energy Administration additional state funds were provided for the first installation of a geothermal ground-source heat pump system in a public school in Maryland. Since that time there have been two workshops for school system personnel and about a dozen school projects are proceeding to include this concept. They are proceeding with these plans (some are already in operation) without additional state resources when they recognized the environmental and economic benefits of this system.

Many school systems do not have architects and/or engineers on their staff and rely upon the PSCP staff to review schematic designs, design development documents and construction documents as the projects move through the various design phases. The staff offers comments, recommendations, and guidance at each phase of the process. There are times when certain state or local requirements are identified that must be addressed and included in the next design phase. The PSCP staff is available for consultation upon request for more difficult projects or problems. Even school systems with the technical staff appreciate the reviews from the PSCP as "another set of eyes" to review the designs. These reviews can identify problems that otherwise could result in costly change orders once construction starts.

In conversations with school system personnel responsible for educational facilities they indicated that they look to the PSCP to set standards and requirements to enable them to perform their jobs and carryout their responsibilities more effectively. For example, a meeting was held on August 1, 2003 with representatives from several school systems to discuss possible legislation pertaining to stationary engineers. Although licensed stationary engineers might not be required for public schools with low-pressure boilers, they wanted the state to put forth some recommendations or requirements for the low-pressure vessels. A subsequent meeting will be scheduled with school system personnel to address this issue. Many of the Directors of Facility Planning and the Directors of Maintenance for the 24 school systems in Maryland have commented to me about the fact that the state's policies and requirements have made their jobs easier. They indicated that they have been able to garner local board of education and county

government support to plan, design, construct, and maintain their schools because the state has made this a priority.

In 1973 the state of Maryland was concerned about the maintenance of its public schools and hired a consultant to conduct a comprehensive survey of all of the operating public schools. The results of the survey revealed that approximately 21 percent of the 1,259 public schools in the state were in either fair or poor condition. This prompted the State to require that each school system develop and implement a comprehensive maintenance plan. This was to insure healthy and safe instructional environments, protect the state and local government investments in the educational infrastructure, and to reduce future costly repairs and renovations. The annual maintenance surveys were an outgrowth of this initial activity. School system central personnel, school principals, and school custodians have personally commented about their appreciation for the on-site visits and inspections that have improved their facilities. It should be noted that during the past ten years only two (2) schools were rated "poor" (one in 1996 and 1 in 2002) and thirty schools were rated "fair" (an average of 3 per year) of the approximately 100 schools surveyed each year. All of the other schools that were surveyed were rated "good", "very good" or "superior". I believe that the significant improvement is result of our requirement for the submission of a Comprehensive Maintenance Plan, the Maintenance Inspections, and the funding that has been provide by the state for systemic renovation projects, Aging School Program projects, and the QZAB projects.

Although the state of Maryland is proud of its record and accomplishments, this is not to say that there are not any schools with facility related problems that need to be addressed. Through a variety of mechanisms and avenues for obtaining information, the PSCP is not aware of any school building or school system that has a pervasive problem with health and safety issues that would result in another chapter in Jonathan Kozol's book Savage Inequalities.

I should mention, that after reading Jonathan Kozol's book Savage Inequalities, I as the state official, with responsibilities for the public schools in Maryland, contacted representatives in Baltimore City. I wanted to tour and visit several of the schools that they felt were in the worst physical condition. I wanted to know if there was a missing chapter from his book on the facility problems in Baltimore City. My staff and I visited several schools with representatives from the City school system. Our visits provided the information we were hopeful that we would find. There was not another chapter, but there were some problems that they could address through one or more of the state funding programs.

The school systems and local governments throughout the state are cognizant of the PSCP requirements for a Comprehensive Maintenance Plan, the review of the financial expenditures for maintenance, the annual maintenance survey, and the recognition that improper or poor maintenance can impact school construction funding. The condition of the public schools in Maryland, are the result of the efforts and the hard work of central office and school building level personnel who are on the front lines. They have the support and backing of their boards of education and the community to ensure that the

students and teaches are in a healthy and safe environment for teaching and learning. I have visited many public schools in Maryland and most school principals and custodians take pride in the condition of their school building. They refer to the building as “their school” and recognize their individual and collective responsibilities to maintain and operate a clean, healthy, and safe facility for “their” students, teachers, and the community.

I. Summary and Recommendations for California

The recommendations that follow are expressions of my opinion based upon my experience in the field of educational facility planning for over thirty years. They are based upon some of the broad principles and concepts that have been identified and described above. They reflect my knowledge and experience as viewed from the perspective of a state agency director responsible for pre-K through 12 educational facilities. In this capacity I have received feedback, comments, and suggestions to improve the process and procedures. Over the thirty-year period there have been several task forces appointed by several governors to review and study the state’s school construction program. The recommendations presented over the years lead to the improvement of the program. I am not an expert on the various programs, the specific procedures, and/or the details that are operational in California in the area of school construction or funding. Some of the recommendations (or parts thereof) that are presented below might already be part of existing programs and procedures.

The first step to solving a problem is to admit that the problem exists. Perhaps the record and expert witness report prepared by Mr. Robert Corley document the problem, if it had not been documented at an earlier time. Furthermore, perhaps the expert witness report of Dr. Thomas Duffy acknowledges the significance of the problem without specifically stating as much. Dr. Duffy also offers no statements or documentation to refute the facts and information presented by Mr. Corley, while commenting on other portions of his (Mr. Corley’s) report.

With this concluding comment the following are offered as recommendations to the state of California to develop workable solutions to address the pervasive and persistent health and safety problems within the public schools in the state:

- The use of objective numbers alone to rank and fund projects is not recommended. This could result in an inequitable distribution of the limited resources.
- All of the projects should be reviewed and decisions made at an established point in time. This would bring some assurance that the projects are viewed collectively and evaluated rather than on a first-come-first serve-basis. This latter approach may find some school projects being deferred or not funded even with a more pressing need for a new school, a replacement school, or a renovation project.

- Developing allocations on a per pupil basis does not recognize the needs of smaller school systems with perhaps smaller but costly projects. The one-size-fits all approach rarely works.
- Consider recommending and encouraging smaller school districts to pool their resources and share the services of professional employees to assist in the planning, design, construction, operation, and maintenance of the public schools in their respective districts.
- The state should consider approving all sites even if the project will be funded locally. A request within a few short years for state funds for an addition to the school would, it seems, preclude the state from raising any questions regarding the site. If the state has determined that the approval of a site is important then the source of funding should not be a deciding factor regarding the submission and approval process.
- The state should provide technical assistance to school districts that either request assistance or offer it to districts that the state believes would benefit from such assistance to improve the facilities for students and teachers.
- There have been recommendations made for a statewide survey to document and record the condition of each public school in the state of California. Rather than spend large sums of money to document some of the problems, the examples already cited in Mr. Corley's report could be accepted as evidence of the problem.
- The state could bring a group of school system representatives together to review the state's existing maintenance standards or guidelines with a goal of either endorsing what already exist or developing a revised document. These could then be distributed to all school systems for their review and utilization.
- The state should make a concerted effort to establish a facility inventory and database. It does not have to be as sophisticated and as detailed as the Florida FISH program, which is a very detailed and overly cumbersome (in my opinion). Some basic data and information, perhaps similar to the one developed for Maryland would be adaptable to meet California's needs and requirements. It is a very useful tool for making policy decisions and understanding the quantity and quality of public schools in the state.
- The state should require that each school system prepare and submit a comprehensive maintenance plan that addresses the aspects of maintenance that the state determines are important. The plans should be

reviewed and where deficiencies are noted, they should be revised and resubmitted.

- Funding to support the comprehensive maintenance plans should also be considered.
- There should be consideration given to adjusting the existing state funding programs, since as currently structured, the recorded and documented health and safety problems continue to exist.
- Local school systems should, even without a state requirement, develop their own self-assessment procedure for the proper maintenance of their facilities. The findings should be reported to the local community and the state. However, without an established requirement and a review from outside of the school system, it might not be developed and implemented. The state could, with advice from local school districts, develop an assessment tool that could be adopted or adapted by school districts throughout the state for the maintenance inspections.
- Maintenance inspections from the state level should be utilized to sample or verify the results reported by the school systems. In a large state, such as California it might be appropriate to survey a portion of the school districts each year and perhaps cover the sampling of all of the school districts in the entire state over a four to five year period.
- A summary of the results of the maintenance surveys could be compiled, printed, and distributed each year and posted on the state's website.
- The state could refocus the attention of the citizens of California, their school boards, school personnel, and local government officials on the importance of maintenance and its role in providing a healthy and safe environment for students and teachers in each school building in every neighborhood and community in the state.

One measure of success would be a significant decrease in the number of articles written about the lingering health and safety problems in the public schools in California.

The details for implementing any changes to California's school facilities system would need to be discussed and developed by the authorities with the responsibility for implementation, hopefully with a considerable amount of input from the parties that would be impacted by the decisions, particularly school districts. These recommendations, should they be recognized as suggestions provided by me, would require further study and development of detailed activities and administrative procedures. I am not advocating that California adopt Maryland's programs wholesale.

However, I believe strongly that the principles advocated here are applicable to both Maryland and California – that a government entity, namely the state, can play an essential and vital role to assist school districts in providing funding, furnishing technical assistance, gathering information, and ensuring that all students have opportunities for education in appropriate, safe, and healthy educational facilities. While Dr. Duffy states that Maryland does not provide a useful model for California, I disagree with his statement. There are obvious differences between Maryland and California, but there are some generally recognized concepts in the area of school facility planning, design, construction, operation, and maintenance where an individual state can provide invaluable assistance to its school districts and its students and teachers. The solutions and approaches between the states do and will vary, but there are some common concepts, which include: ensuring that appropriate educational facilities are provided, that they are properly maintained, that students and teachers are accommodated in healthy and safe environments, school systems have developed and implemented appropriate plans consistent with established guidelines or standards, and that funding is available to implement the plans.

In conclusion, there are no easy answers to some of these long-standing and difficult problems. There are however solutions out there. It is incumbent upon government officials (either elected or appointed) and the government employees at the various levels to recognize the existence of a problem and be prepared to work diligently to develop the most appropriate solutions. The taxpayers, whether state or local, have expectations that their investments are guarded and protected. Furthermore, in the case of the public schools, the lives of hundreds of thousands of students and their teachers are involved. All teachers and students should be able to teach and learn in a healthy and safe environment in every school in every neighborhood and community in the state of California, regardless of the wealth of the district or the management capabilities of the staff in the district in which they reside.