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**Concept 6 and Busing to Relieve Overcrowding:  
Structural Inequality in California Schools**

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Claims of *Williams v. State of California*

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Multi-track, year-round education, which began as a stopgap effort to cope with severe overcrowding, has only exacerbated the inequities between and among California's schools. (See Duke Helfand, *Year-Round Discontent at Hollywood High*, L.A. Times, Nov. 20, 2000, at A1 (although a multi-track calendar was introduced in LAUSD at a single school about 25 years ago as "a temporary fix for overcrowding," LAUSD now operates more multi-track schools than New York, Chicago, Philadelphia, Miami, and Houston combined).) Students who attend schools operating on the multi-track, year-round calendar known as Concept 6 suffer several clear disadvantages as compared to students at schools on traditional calendars: (1) overcrowded and large schools; (2) truncated and lost instructional time; (3) limited access to courses and specialized programs; (4) ill-timed breaks and correspondingly limited access to extracurricular activities and enrichment programs; and (5) poorer academic performance. In light of its disadvantages, it is hardly surprising that Delaine Eastin, State Superintendent of Public Instruction, should declare: "I would love to get rid of Concept 6." (Julie Z. Giese, *State superintendent makes stop at Lodi Middle School*, Lodi News-Sentinel, Oct. 26, 2001.) Nor is it surprising that the State Master Plan for Education should include the recommendation that the State "move aggressively to eliminate the use of multi-track year-round schedules that result in fewer calendar days of instruction." Joint Committee, 2002 Master Plan for Education, Summary of Recommendations, Recommendation 14.2. The only school calendar in use today that fits this description is the Concept 6 calendar.

Likewise, busing seeks to address the negative effects of overcrowding, but creates inequities of its own. Students who are bused to school due to overcrowding suffer several clear disadvantages as compared to students who attend a neighborhood school: (1) reduced parental involvement; (2) incentive to skip kindergarten; (3) limited access to after-school programs; and (4) poorer academic performance. Few districts rely as heavily on busing to reduce overcrowding as the Los Angeles Unified School District ("LAUSD"), which buses students from schools that overflow their capacities even after they are put on multi-track calendars.<sup>1</sup> In

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<sup>1</sup> I focus on LAUSD because public information, largely in the form of press reports, is more readily available regarding its busing program than is the case for other districts. I note, however, that LAUSD appears to have removed from its website a document prepared by its School Reform Office, which described the number of district students bused due to overcrowding, the length and duration of their bus trips, and the results of studies assessing the achievement of students bused to school. (LAUSD School Reform Office, Facilities Task Force, [http://www.lausd.k12.ca.us/lausd/offices/reform/school\\_fac.html](http://www.lausd.k12.ca.us/lausd/offices/reform/school_fac.html) (last visited 5/10/02).) Other districts do not appear to post, or to have posted, such information. The Long Beach Unified School District also operates a program to bus students due to overcrowding. (Declaration of Thierry Kolpin ("Kolpin Decl."), dated December 21, 2001, at ¶ 3 ("During the time I worked there, at least 600 kids were bused away from Lincoln [Elementary] each year because the school had no room for the students. Lincoln is one of many elementary schools in inner city Long Beach that is considered a 'sending' school. That means Lincoln cannot take any more students,

light of the disadvantages of multi-tracking and of busing students to distant neighborhoods, it is not surprising that the main goal of LAUSD's construction program is, and has been for some time, to build enough schools to return all its students to neighborhood schools operating on traditional calendars.<sup>2</sup>

Indeed, in determining the priorities for its construction program, LAUSD has applied two criteria: "number of students that would be 'capped out' (not able to attend their resident school on a multi-track calendar) at peak year based on current demographics, and the number of years the school had been on multi-track calendar (or, highest need/longest harm.)" Memorandum from Kathi Littman, Deputy Chief Executive – New Construction, to Members LAUSD Board of Education, regarding New Construction Phase I, November 2002 Local Bond, dated July 9, 2002, at 1.

### Currently Prevailing Circumstances Statewide

California has a public school enrollment of slightly more than 6 million. The California Department of Education ("CDE") makes enrollment data and other information available to the public on its website. (See CDE, Year-Round Education 2000-01 Statistics, <http://www.cde.ca.gov/facilities/yearround/yrstat00.htm> (last visited August 8, 2002) ("YRE Stats").)

#### A. School Calendar: Traditional/Single-Track Schools Are the Norm.

Approximately 4.7 million students attend schools operating on a traditional calendar, which provides 180 days of instruction per school year. (See *id.*; CDE Year-Round Education Program Guide, <http://www.cde.ca.gov/facilities/yearround/proggde.htm> (last visited August 8, 2002) ("YRE Guide").) An additional 300,000 students attend schools operating on some form of single-track, year-round calendar, which breaks up the summer vacation into shorter periods, but nonetheless provides 180 days of instruction per school year. (*Id.*; see also Declaration of Thomas Payne in Support of Defendant State of California's Opposition to Plaintiffs' Motion for Class Certification ("Payne Decl.") ¶¶ 3, 10)<sup>3</sup>.) Accordingly, about 5 million of the 6 million

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so it must send students to other, 'receiving,' schools.") But its website does not list any information regarding number of students in the program.

<sup>2</sup> (See Harrison Sheppard, *\$ 9 Billion Sought for New Schools*, L.A. Daily News, July 20, 2000 (LAUSD Facilities Chief Robert Buxbaum stating, "It is our intention in this district to create a neighborhood, two-semester seat in every school in the district[.]"); Amy Pyle, *Crash Renews Calls to Stop Forced Busing; Many Students, Like Those in Accident, Are Transported Because of Overcrowding*, L.A. Times Dec. 7, 1995) at A32 ("The ideal is zero students bused," said Bruce Takeguma, a district busing specialist. "You keep working for that ideal."); see also Harrison Sheppard, *High School Population "Bulge" Less Than Expected*, L.A. Daily News (Feb. 13, 2001), at N3 ("Ultimately, the district hopes to build facilities for 200,000 students to eliminate year-round schedules and busing of students to schools in distant neighborhoods.")

<sup>3</sup> I should explain my reliance on the testimony of Thomas Payne. Since 1990, Payne has been a member of the "Year-Round Education Staff of the School Facilities Planning Division with the California Department of Education." (Payne Decl. ¶ 2.) It is my understanding that, in

California public school students attend schools operating on a single-track, where students and staff at a school are all in session or on vacation at the same time.

About 1 million students – approximately 17% of California’s public school enrollment – attend schools operating on what I will refer to generally as “multi-track” calendars, all but one of which – the only exception being the Concept 6 calendar – are capable of providing 180 days of instruction per school year. (Payne Decl. ¶¶ 8, 10; YRE Guide.) Roy Romer, the Superintendent of LAUSD, has called these calendars a “handicap.” (Helfand, *Year-Round Discontent*.) Genethia Hayes, the former LAUSD Board President, has likened students at these schools to “rats in a maze.” (Doug Smith & Kristina Sauerwein, *L.A. Unified May Need High Schools to Go Year-Round*, L.A. Times, April 16, 2000, at A1.) Multi-track schools disproportionately enroll low-income students of color. (California’s Coalition for Adequate School Housing, *Multi-Track Year Round Education: Causes and Effects of Legislative Initiatives and Proposals* (June 30, 1998) at 2.)

With the dramatic increases in California’s school population outpacing new school construction, schools and districts have increasingly resorted to use of multi-track calendars, which allow them to enroll more students than their facilities can otherwise accommodate. (YRE Guide (“[b]ecause of rapid growth, overcrowding, and its cost-effectiveness in achieving class size reduction, the number of districts using multitrack year-round education has grown significantly”); LAO, *Year-Round School Incentive Programs: An Evaluation 15-16* (1990) (“[I]t appears that the major impetus for districts to adopt year-round schedules is the combined effects of (1) overcrowded schools and (2) a recognition that state funding will not be available quickly enough to meet pressing needs for additional capacity.”).<sup>4</sup> While statewide enrollment grew from 4.4 to 5.8 million in the years from 1987 to 1999, multi-track enrollment grew from 163,402 to 1,012,000 over more or less the same period. (Payne Decl. ¶ 6.)

Multi-track calendars divide the student body and staff into different tracks, which are then rotated throughout the course of the school year, so that if, for example, a school operates on a four-track calendar, at any one time three of the four tracks are in school while the fourth is on vacation. (YRE Guide; Payne Decl. ¶ 4.) Through this rotation of tracks, multi-track calendars artificially “expand” the enrollment capacity of a school without the construction of additional facilities. (YRE Guide (“The advantage of a multitrack system is that it expands the seating capacity of a school.”).) From a facilities perspective, therefore, it is not difficult to

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this litigation, the State designated Payne as its employee “most knowledgeable and competent to testify” regarding year-round education and, specifically, multi-track, year-round education.

<sup>4</sup> (See also Transcript of the Deposition of Thomas Payne (“Payne Depo.”) at 221-222 (multi-track enrollment has grown “tremendously”); *id.* at 234 (multi-tracking is a “facility strategy” that “accommodate[s] enrollment when it exceeds seating capacity”); *id.* at 223, 229-230 (multi-tracking has increased in part because of “growing facilities needs”); Letter from Thomas Payne to Robert Rosenfeld, dated Aug. 29, 1994 (“Payne Letter”) Bates No. PLTF 05846 (“[Multi-Track Year Round Education] is a housing strategy used by districts to help manage growth.”); Payne Decl. ¶ 6 (“[t]he number of districts using multitrack year-round education has grown significantly [in part] . . . because of the rapid growth in student population”).)

understand the dramatic growth in multi-track enrollment – multi-track calendars allow schools with burgeoning enrollments to house more students without building additional facilities.

Multi-tracking, however, is a response to overcrowding; it is not an educational innovation or reform. As State Superintendent of Public Instruction Delaine Eastin has stated, “[S]chools didn’t move to it because they were trying out some educational innovation. It was out of desperation.” (Giese, *State superintendent makes stop* (referring specifically to the multi-track calendar known as Concept 6).) According to Thomas Payne, the CDE consultant on year-round education, “There’s no school in California that would choose to do multi-track. Most of those poor schools are packed to the gills.” (Maria Sacchetti, *Year-round classes mean so long, summer: Crowding brings rotating schedules for more O.C. students*, O.C. Register, July 25, 2001.) As Leslie Crunelle, Assistant Superintendent for the Hart school district, has stated, “Truthfully, multitrack is not a first choice for anybody I know. But the district didn’t go into this for educational reasons . . . . This is strictly a facilities decision.” (Amy Raisin, *Questions Surround Multitrack; Programs, Funding a Concern*, L.A. Daily News, Sept. 17, 2001, at SC1.)

As Payne explains, school administrators would not even inquire about multi-tracking their overflowing schools if building new schools were a realistic option. (Transcript of the Deposition of Thomas Payne (“Payne Depo.”) at 147-149.) Indeed, he believes it to be “self-evident” that administrators would not be calling to inquire about multi-tracking if they had the money to build new schools, because “[y]ou don’t ask for a Band-Aid if you’re not bleeding.” (*Id.* at 148.)

## **B. Neighborhood Schools Are the Norm**

The overwhelming majority of California public school students attend the schools in the attendance area to which they are assigned based on their parents’ or guardians’ residence. According to the CDE, school districts and county offices of education bused 987,000 students. (CDE Fact Book 2002, Handbook of Education Information, Average Costs of a California School, 1999-2000, Detail Chart, <http://www.cde.ca.gov/resrc/factbook/detail.htm> (last visited August 8, 2002).) Students may be bused to school for a variety of reasons, such as desegregation or magnet programs. A subset of these students are bused not so that they may enjoy the benefits of attending an integrated school or a school offering a specialized educational program, but because their neighborhood schools, sometimes even after resorting to multi-track calendars, have run out of space. (See Declaration of Gordon Wohlers, dated March 24, 2000 (“Wohlers Decl.”) ¶ 29 (stating that students are bused to attend schools outside their neighborhoods because “[e]ven after they are put on Concept 6, LAUSD schools overflow their capacities”); Payne Depo. at 139 (discussing busing of children from one attendance area to another as one possible response to overcrowding).) Unfortunately, the State does not even compile data regarding the number of students statewide who are bused to school due to overcrowding. (State Allocation Board, *Report on Public School Construction Apportionments 1980-2001* (July 2001) at vii (“Although it is possible to obtain information as to the number of students bused in a district, it is not possible to determine why they are bused.”).)

## **Deviations from the Norm**

### A. The Concept 6 Calendar.

There are about 240 schools in the state that operate on a multi-track calendar known as Concept 6 or Concept 6 Modified. (YRE Stats.) These schools are spread over four districts – Palmdale Elementary, Lodi Unified, Los Angeles Unified, and Vista Unified – and enroll a total of about 355,000 students. (CDE, Year-Round Education 2000-01 Year-Round Districts, <http://www.cde.ca.gov/facilities/yearround/direct00.htm>(last visited August 8, 2002) (“YRE Districts”); Letter from Delaine Eastin to Assembly Member Jackie Goldberg, dated May 10, 2002, re: AB 2027 (“Eastin Letter”).) Students enrolled in these schools represent about 6% of California’s public school enrollment. These students are disproportionately Hispanic, low-income, and English Learners. (R. Mitchell, *Segregation in California’s K-12 Public Schools: Biases in Implementation, Assignment, and Achievement with the Multi-Track Year-Round Calendar* Figs. 2, 6, 7.)

The Concept 6 calendar sounds simple enough: three tracks rotate throughout the school year, with two tracks in session at any given time and a third on vacation. But it results in a complex shuffle of students and teachers between its three tracks.

Each track has its own schedule. Track A is in session from late August to late December and from early March to late June; track B is in session from early July to late August, from late October to late December, from early January to early March, and from early May to late June; and track C is in session from early July to late October, and from early January to late April.

As shown in Table 1 below, the tracks rotate as follows. In July, at the start of the school year, track A is on vacation, while tracks B and C are in session. Track B remains in session for two months (essentially July and August), while track C remains in session for four months (essentially July through October). When track B goes on vacation at the end of August, track A comes in session for four months (essentially September through December). When track C goes on vacation at the end of October, track B comes in session for four months (essentially November through February). When track A goes on vacation at the end of December, track C comes in session for four months (essentially January through April) and completes its school year. When track B goes on vacation at the end of February, track A comes in session for four months (essentially March through June) and completes its school year. When track C goes on vacation at the end of April, track B comes in session for two months (essentially May and June) and completes its school year.<sup>5</sup>

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<sup>5</sup> As one can see from Table 1, on completion of one school year, track B immediately – usually in a span of a few days – begins a new school year.

**Table 1. Graphic Representation of Concept 6 Schedule.<sup>6</sup>**

In Session			
Off Track			
	Track A	Track B	Track C
July			
August			
September			
October			
November			
December*			
January			
February			
March			
April			
May			
June*			

\* Semester break at end of month for tracks in session

The net result of the rotation is that tracks A and C provide two four-month blocks of instruction and two two-month vacations; track B provides one four-month and two two-month blocks of instruction, and two two-month vacations.<sup>7</sup>

While all multi-track calendars allow more students to be enrolled than the school could otherwise accommodate, the Concept 6 calendar provides for the maximum enrollment given a school’s existing classroom space (absent some even more radical transformation of the school calendar, such as double sessions each day). (See YRE Guide; Wohlers Decl. ¶ 28 (explaining that LAUSD “use[s] the Concept 6 system because we need to boost school capacity by more than other forms of multi-tracking do”). According to Superintendent of Public Instruction Delaine Eastin, schools that operate on a Concept 6 Calendar do so “because of severe overcrowding.” (Eastin Letter.) As Payne, the CDE consultant, explains, Concept 6 is “the best calendar to address severe overcrowding” because it “can expand the seating capacity of a school by 50 percent. The four-track calendars can do that by [only] 33 percent.” (Payne Depo. at 100; Eastin Letter (“These schools use a three-track MTYRE calendar, commonly known as ‘Concept 6,’ because it allows them to enroll students 50 percent above the actual school building capacity.”).)

<sup>6</sup> For the sake of clarity, Table 1 shows the approximate blocks of time in which the different tracks are in session and on vacation. It does not reflect the exact start or finish dates at the beginning or end of any given month.

<sup>7</sup> The Concept 6 Modified calendar differs from the Concept 6 calendar in that it operates basically with four two-month blocks of instruction and four one-month vacations. I will generally refer to the Concept 6 and Concept 6 Modified calendars as Concept 6.

For example, in a school with a capacity for 100 students, the Concept 6 calendar allows 150 students to be enrolled. The student body is divided into three groups of 50 students each. These groups are then rotated throughout the school year, so that while any given two groups are in session, the third is on vacation. In this way, 100 students are on campus at any given time, and a school built to house 100 students can enroll 150 students, increasing its capacity by 50%. No other multi-track calendar permits a school to increase its enrollment by such a large amount. (See YRE Guide.)

To achieve the maximum increase in capacity, the Concept 6 calendar reduces the available days of instruction. (Payne Depo. at 103 (“It’s hard to describe the math, but with three tracks and a . . . capability of increasing the enrollment capacity by 50 percent, the way that they cycle in and out doesn’t allow for more than that much instruction . . .”). It provides students with only 163 days of instruction per school year, unlike all other school calendars used in California. (*Id.*; Payne Decl. ¶ 10 (stating that “[w]ith the exception of the Concept 6 and Modified Concept 6, all traditional and year-round school calendars are capable of providing students with 180 days of instruction.”).)

As Superintendent Eastin has concluded, “Concept 6 is the least desirable method of housing our students,” but “Concept 6 is a choice only when no other means of housing excess capacity students exist.” (Eastin Letter.) Of course, our children are not simply *housed* in schools; they are first and foremost *educated* in our schools. Unfortunately, the logistical question *where* to put our children is dictating *how* they are educated. (Eastin Letter (“Schools that use a 163-day school year do because of severe overcrowding.”).) As Mike Vail, the director of facilities, planning, and construction for the Vista Unified School District, has explained the resort to the Concept 6 calendar: “You have a situation where the facilities program is driving the education program. It should be the other way.” (Sherry Parnet, *Vista schools dial for dollars*, San Diego Tribune, June 10, 2000, at B1.)

Notwithstanding the consensus that Concept 6 is the last resort of districts facing severe overcrowding and lacking sufficient facilities, Governor Davis recently vetoed AB 2027, which would have phased out use of Concept 6 by 2008. He explained, in part, that he did not want to limit the discretion of districts to choose to implement Concept 6 calendars. The problem is that the State has not provided districts with the option of building off of Concept 6. The Governor’s rationale is akin to throwing a would-be drowning victim a life preserver and refusing to bring them aboard ship because they “chose” to grab onto the life preserver.

## **B. Busing to Relieve Overcrowding**

Districts also respond to overcrowding by resorting to forced busing – busing students who cannot be accommodated at their neighborhood schools to other schools in the district that can accommodate them. As noted above, the state does not compile data regarding the number of students statewide who are bused to school due to overcrowding. Whatever the exact figure may be, it is likely to be a relatively small percentage of all students who are bused to school. Take the example of LAUSD. Few districts rely as heavily on busing as LAUSD. (*Rolling Under Pressure*, L.A. Times, April 4, 2002, at Pt. 2, Pg. 14.) It buses approximately 75,000 students – almost 10% of its enrollment – for a variety of reasons, including desegregation and

magnet programs. Of those, about 15,000 to 25,000 students are bused due to overcrowding. (LAUSD School Reform Office, Facilities Task Force (“Task Force”) [http://www.lausd.k12.ca.us/lausd/offices/reform/school\\_fac.html](http://www.lausd.k12.ca.us/lausd/offices/reform/school_fac.html) (last visited May 10, 2002); Wohlers Decl. ¶ 36.) Although scores of district schools operate on the Concept 6 calendar, the schools still cannot accommodate their neighborhood enrollments. Students as young as five and six years old, in kindergarten and first grade, are bused to a distant school due to overcrowding. (Wohlers Decl. ¶ 30.) “Some . . . children have up to an 100 mile daily commute which often requires them to spend over two hours in rush hour traffic.” (Task Force.) LAUSD buses about 700 kindergartners and first graders from a single school, Cahuenga Elementary, and some of those students attend schools that are more than an hour away. (Wohlers Decl. ¶ 30.) Odd as it may seem, given that students are bused to relieve overcrowding, some LAUSD students are actually bused to schools that operate on multi-track calendars to accommodate their own growing enrollments.<sup>8</sup> In fact, as of 2000, it appears that 46 of the LAUSD schools receiving students bused due to overcrowding operated on the Concept 6 calendar. (See Wohlers Decl. Exh. 7.) This is an apparent recognition of the undesirability of busing long distances for overcrowding: students are bused to the nearest available school, regardless of its calendar, to avoid the burden of a longer bus ride. Presumably, the benefits of attending a school on a traditional calendar, as opposed to one on a multi-track calendar, would be compromised if it resulted in a longer bus ride.

### **Disadvantages Experienced by Students on the Concept 6 Calendar**

The Concept 6 calendar raises five significant areas of concern: 1) density and size; 2) instructional time; 3) tracking; 4) access to enrichment and remediation programs; and 5) achievement. The combined impact of these disadvantages, over the course of a single school year, and over the course of the many years that children must face some or all of them, take a significant toll on the quality of education.

#### **A. Overcrowded, Large Schools**

The first concern relates to the density and size of multi-track schools. Multi-track calendars do not necessarily relieve overcrowding. Take the example of LAUSD, which has almost a third of its schools on multi-track calendars, and most of them on the Concept 6 calendar. (Wohlers Decl. ¶¶ 18-19, 22, 26.) As stated by Gordon Wohlers, Chief of Staff to LAUSD Superintendent Romer, “Even after they are put on Concept 6, LAUSD schools overflow their capacities.” (Wohlers Decl. ¶ 29.) Due to increasing enrollment, LAUSD is in danger of exhausting all its high school space within the next few years, even with the expanded enrollment capacity provided by converting all high schools to multi-track calendars. (Wohlers Decl. ¶ 20.)

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<sup>8</sup> At Lincoln Elementary and Jackie Robinson Academy, in the Long Beach Unified School District, there are overflow classes for children who are awaiting assignment to another school in the district. (See Kolpin Decl. at ¶ 4; LBUSD 4593; LBUSD 4543A.) Assignment to another school does not necessarily guarantee a space, however. A form produced in this case documents a parent complaining apparently because her son was in the overflow at Robinson, and was assigned to Franklin, only to find himself in the overflow there. (See LBUSD 4595.)

Since the inception of the program, LAUSD has struggled to reduce class sizes. According to Gordon Wohlers, Chief of Staff to LAUSD Superintendent Roy Romer, “When the K-3 class size reduction program started in California in 1996, 208 of the [LAUSD’s] elementary schools were unable to reduce class size to 20 students in grades K-3 because the campuses are so crowded already, even on multi-track, year-round calendars, that additional classrooms could not be added. . . . We see this inability to reduce class sizes in our middle and high schools as well. It is not uncommon in [LAUSD’s] middle and high schools for there to be classes in excess of 40 students.” (Declaration of Gordon Wohlers, dated September 5, 2001 (“Wohlers Decl. 2”) ¶¶ 18-19.) Indeed, according to the School Accountability Report Cards for LAUSD Concept 6 high schools, a large number of English, Math, Science, and Social Science classes are taught in classrooms with more than 33 students. (See LAUSD, School Accountability Report Card, <http://search.lausd.k12.ca.us/cgi-bin/fccgi.exe?w3exec=sarc0> (last visited Aug. 15, 2002).) Thus, while designed to cope with overcrowding, multi-tracking does not necessarily reduce overcrowding at the classroom level.

Indeed, a recent news account of Polytechnic High School underscores how multi-tracking may actually result in overcrowding. (Helen Gao, *LAUSD Packed with Students*, L.A. Times, Sept. 26, 2002.) The school operates on the Concept 6 calendar, and has only one chemistry teacher on track B. The district chose to increase class size by an average of two students in grades four through twelve, but this science teacher has seen his class sizes grow by as many as fifteen students this year, presumably because there are fewer science classes offered on track B than on other tracks. (See *id.*) Accordingly, he now has “classrooms so jammed with students it’s dangerous for them to do any experiments using Bunsen burners and gas.” (*Id.*)

Overcrowding negatively affects many classroom activities, instructional strategies, and academic performance. (See F.L. Rivera-Batiz & L. Marti, *A School System at Risk: A Study of the Consequences of Overcrowding in New York City Public Schools* (1995).)<sup>9</sup> For example, LAUSD officials told an L.A. Times reporter that between 15 and 20 percent of teachers must change classrooms at least once a day, and in the more overcrowded schools, 30 percent or more must do so. (Duke Helfand, *In the Classroom: Have Books, Must Travel*, L.A. Times, Aug. 22, 2001, at Pt. 2, Pg. 2.) Although this allows classrooms to be used more “efficiently” throughout the course of the school day, it also reduces teachers’ preparation time, and places teachers in unfamiliar rooms without their instructional materials. Teachers forced to change classrooms

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<sup>9</sup> In a survey of more than a thousand California public school teachers, pollster Lou Harris found that about 32% of teachers reported that their schools use spaces for instruction that were not designed as classrooms. (See Harris Research Group, *California Teacher Survey* (2002) at Q13A. Whether school uses spaces for instruction that were not designed as a classroom.) Thirty-eight percent of teachers at multi-track schools reported use of non-instructional spaces as classrooms. (*Id.*) Almost 56% of all teachers, and almost 60% of teachers at multi-track schools, reported that the non-instructional spaces were too noisy for students to concentrate. (*Id.* at Q13B. Whether use of spaces not designed as classrooms makes room too noisy for students to concentrate.) Finally, almost 63% of all teachers, and almost 74% of teachers at multi-track schools, reported that the use of non-instructional spaces for instruction created a serious space problem. (*Id.* at Q13C. Whether use of spaces not designed as classrooms creates a serious space problem.)

report that the time between classes is insufficient for them even to write warm-up assignments on the board.

Multi-tracking can actually exacerbate the negative effects of overcrowding. Students' classes are sometimes held in gymnasiums, libraries, and computer labs instead of classrooms as a result of overcrowding. (See Declaration of Aureliano Alcaraz Cortes ("Cortes Decl.") ¶ 50.) These make-shift settings not only fail to provide adequate instructional spaces, but prevent other students from benefitting from the services those locations are designed to provide. Multi-tracking only exacerbates the problem; with all classrooms in use during the entire year, schools have no space in which to provide makeup or enrichment classes, test preparation, and other academic intervention programs. (See Declaration of Carlos Jimenez, dated March 28, 2000 ("Jimenez Decl.") ¶¶ 27, 29; Declaration of Felipe Aguirre, dated March 27, 2000 ("Aguirre Decl.") ¶ 14.) By making space a premium, multi-track calendars can create incentives for schools to make use of all available space. (See Wohlers Decl. ¶ 40 ("We have psychologists and speech pathologists who now see their students in closets.")).

Research on school size indicates that student achievement is higher, along with attendance and graduation rates, while the rates of violence and disruptive behavior are lower, at small schools as compared to large schools. (Howley, C., Bickel, R. The Matthew Project: National Report. ERIC: ED433174. 1999; Raywid, M.A. "Small Schools: A Reform That Works," *Educational Leadership*, 55:4 December/January, 1997/98; Friedkin, N. and Necochea, J. "School System Size and Performance: A Contingency Perspective," *Educational Evaluation and Policy Analysis*, Vol 10, No. 3, 1998, pp. 237-249; Farber, P. "Small Schools Work Best for Disadvantaged Students," *Harvard Education Letter*, March/April, 1998; Fine, M. and Somerville, J. (eds.) *Small Schools, Big Imaginations: A Creative Look at Urban Public Schools*. Chicago: Cross-City Campaign for Urban School Reform.) Small schools are particularly beneficial for low-income students. (V.E. Lee & J.B. Smith, *Restructuring High Schools for Equity and Excellence* (Teacher's College Press, New York, 2001.)) Likewise, reconfiguring large urban schools into smaller schools has a positive impact on student performance, school climate, professional collegiality, and parent satisfaction. (See P. Wasley, M. Fine, S. King, L. Powell, N. Holland, R. M. Gladden, and E. Mosak, *Small Schools: Great Strides*, New York: Bank Street College of Education, 2001.)

The schools that adopt multi-track calendars do not shrink in size; they remain large when judged by the research on school size. The research suggests that an elementary school should be in the range of 300 to 400 students, while a high school should be in the range of 400 to 800. For the 2000-01 school year, there were only 19 multi-track senior high schools in California. (YRE Districts.) Seventeen of them, all in LAUSD, were on the Concept 6 calendar and had enrollments that ranged from about 3,000 to 5,100. Thus, even though they operated on the Concept 6 calendar, these schools still had from 2,000 to 3,400 students on campus at any one time – making them too large by any standard.

## B. Truncated and Lost Instructional Time.

### 1. Concept 6 Generally

The second concern raised by use of the Concept 6 calendar relates to time – specifically, to the quantity and quality of instructional time. The Concept 6 calendar offers only 163 days of instruction each academic year, significantly fewer days than are offered on all other school calendars in California. Indeed, the CDE describes all school calendars other than Concept 6 as providing 180 days of instruction, and states that the Concept 6 calendar has the “disadvantage” of “[l]imit[ing] [the] school year to approximately 163 days.” (YRE Guide.)

While minutes are added to the school day on the Concept 6 calendar in an effort to compensate for the shortened school year, evidence suggests that this time is not necessarily used to provide students with additional academic content. For example, a 1987 study prepared for LAUSD found that teachers reported they only sometimes used the additional minutes to cover more content than they would have during a traditional class period. (J.L. Herman, *Los Angeles Experience: Evaluating the Results of Concept 6* (UCLA Center for the Study of Evaluation, 1987).) Indeed, teaching more content ranked lowest among a variety of ways that teachers spent the additional minutes.

As summed up in a newspaper account of conditions at Hollywood High School, “Teachers dismiss the additional time as logistic sleight-of-hand with little educational value. Students, they say, can’t concentrate through class periods that now run 62 minutes. ‘They chopped up the days and minutes but weren’t thinking about the consequences,’ said chemistry teacher Patricia Barker. ‘Just because you have a couple more minutes added onto class doesn’t mean you can do more.’” (Helfand, *Year-Round Discontent*; see also Jimenez Decl. ¶¶ 7-8, 12; Declaration of Elena Soto-Chapa, dated March 23, 2000 (“Soto-Chapa Decl.”) ¶¶ 26-27; Declaration of Irma Torres, dated March 20, 2000 (“Torres Decl.”) ¶¶ 16-17.)

Fewer school days in the Concept 6 calendar also translate into fewer nights for teachers to assign, and students to do, homework. Teachers accordingly cover less material over the course of the school year and administer fewer tests, providing fewer opportunities for students to master and demonstrate their mastery of material. (See Helfand, *Year-Round Discontent*; Jimenez Decl. ¶¶ 7, 9-12; Soto-Chapa Decl. ¶ 28; Torres Decl. ¶ 16.) Indeed, because teachers generally structure lesson plans around discrete class sessions and not minutes, the compensation for missed days under Concept 6 is simply not a natural exchange. According to a statement attributed to a high school teacher at a Concept 6 school, “The longer days don’t make up for having fewer days in the classroom.” (Julie Giese, *Bond’s approval will change district, educators say*, Lodi News-Sentinel (Feb. 9, 2002).)

The vacation breaks on the Concept 6 calendar are also disruptive; progress through the curriculum is slowed because time is lost moving in and out of classrooms, and because time must be spent reviewing material after each of the long vacations. (Helfand, *Year-Round Discontent*; Jimenez Dec. ¶ 13; Soto-Chapa Dec. ¶¶ 8-16; Torres Dec. ¶¶ 19-24; Declaration of Nelson Daza, dated March 27, 2000 (“Daza Decl.”) ¶¶ 22-25.) On the Concept 6 calendar, all classrooms are in use throughout the entire year; when a teacher and his or her

students go on vacation, another teacher and set of students immediately takes their place. In the week or two before a vacation, some instructional time must be devoted to preparing the classroom for the teacher and students about to return from vacation – i.e., packing up materials, collecting books and supplies, and taking down classroom displays. Similarly, in the week or two after a vacation, some instructional time must be devoted to settling into the classroom – i.e., unpacking materials, distributing books and supplies, and putting up classroom displays – as well as settling back into the school term – i.e., re-establishing discipline for and rapport with students, and reviewing subject matter covered before the long vacation. (See DOE 36538 (Immediate Intervention/Underperforming Schools Program (“II/USP”) Plan for Lawrence Elementary in Lodi) (“Teachers expressed concern that it takes them time to ‘track back on.’ There is an abundance of paperwork for teachers and tremendous effort to get the students back into the mode of school while the teachers also become acclimated to changes on campus made during their absence.”).)

The reduction in the amount of instructional time devoted to advancing the curriculum is coupled with a reduction in the quality of instructional time. During the weeks before and after the Concept 6 vacations, students are “taught by teachers who are coping with a major additional distraction.” (Wohlers Decl. ¶ 40.) What’s more, because the teachers at Concept 6 schools are disproportionately the least experienced, they are the least prepared and able to cope with an additional distraction, let alone a major one. (R. Mitchell, *Segregation in California’s K-12 Public Schools* Figs. 8, 9.)

While it may not be readily apparent, the difficulty of coordinating the distribution and collection of textbooks and instructional materials at the beginning and end of sessions results in significant losses of quality instructional time. (Social Policy Research Associates (SPRA), *School Equity Study Documentation* at 16 (March 27, 2002) (“[S]tudents in Concept 6 schools could not keep their textbooks when they went off track. This policy caused a loss of ‘a few days’ of instructional time when textbooks were redistributed as students go on and off-track . . . .”); DOE 43202 (II/USP Plan for Plummer Elementary in LAUSD) (“The number of students and classrooms require large numbers of instructional materials to be handled by the teachers and administrators. Often times teachers and classes have to change rooms when coming back on-track. At present, the school is experiencing difficulty in getting instructional materials to all students and classrooms.”); see also Daza Decl. ¶¶ 28-33; Cortes Decl. ¶¶ 15-18.)

For example, as reported in the press, students in one eleventh-grade English classroom at Hollywood High School spent the first week back in school listening to their teacher’s description of her trip to Egypt, because their copies of John Steinbeck’s *Of Mice and Men* had not arrived. (Helfand, *Year-Round Discontent*.) The Concept 6 calendar, which shuttles students in and out of school throughout the school year, caused the delay. The books had to be collected and tallied from students on one track who went on vacation on October 24, and redistributed to the students on another track who came back from vacation on October 25.<sup>10</sup> These and other significant losses of instructional time caused by the Concept 6 calendar only exacerbate the disadvantage of having fewer days of instruction to begin with.

<sup>10</sup> Presumably, schools collect the books because experience has shown that some students will lose them over a vacation that lasts as long as two months.

## 2. Track B In Particular.

The Concept 6 schedule is particularly disruptive for students on track B. Their school year is interrupted by two long vacations and impacted by the additional moves in and out of the classroom those vacations necessitate. While students on tracks A and C attend school in two large blocks – they are in school 4 months, off for 2, and in for 4 – students on track B attend school in three blocks – they are in school for 2 months, off for 2 months, in for 4 months, off for 2 months, and in for 2 months. Teachers report that track B makes it especially difficult to establish and maintain momentum, because students are in session for only two months before they go on vacation. (Torres Decl. ¶¶ 23-24; Daza ¶ 26; Jimenez Decl. ¶ 13.) More important, teachers report that they are unable simply to pick up where they left off. They report that given the length of the vacation, they must spend a significant amount of time making students readjust to being in school and reviewing the material covered during the initial two-month session. (*Id.*)

As noted above, one result of the operation of track B is that students end one school year and begin another almost immediately – for example, over the course of a short period, two, three, or four days. This stands in stark contrast to the 3 months of vacation enjoyed by students on a traditional calendar, or even the 2 months enjoyed by their classmates on Concept 6 tracks A and C. Track B students therefore are not afforded recovery time from the end of the school year. This has particular significance at the high school level, where end-of-the-year exams generally leave students in far from optimal condition to begin a new school year. Track B teachers also must begin the new school year without having had the time necessary to prepare for it, and often without end-of-year evaluations or information on students from their prior year’s teacher. (*See* Torres Decl. ¶¶ 25-28.)

## 3. Inability to Implement Extended Year Reform

Students at Concept 6 schools – disproportionately Hispanic – receive a significantly shorter school year and experience other losses of instructional time. The already significant gap in the length of the school year will only widen if State initiatives to extend the school year in California are implemented. For example, under the proposal the Governor made last year, middle school students at traditional schools would attend school for 210 days. (George Skelton, *Energy Crisis Isn’t Pulling the Plug on Davis’ School Plans*, L.A. Times, Jan. 15, 2001, at A3.) However, their peers at Concept 6 schools would have remained at 163 days, because their schools are unable to provide any more days of instruction. (*See* Payne Depo. at 103.) Indeed, the CDE recognizes as much, noting that the reform of “lengthing [sic] the school year beyond 180 days . . . is thwarted by the available-day limitations of each multitrack year-round education track.” (YRE Guide.) As the Legislative Analyst’s Office put it, “the administration’s intent [was] to devise special rules for multitrack year-round schools, where it would be difficult (or impossible) to extend the school year to 210 days.” (LAO, *Analysis of the 2001-02 Budget Bill, Longer Middle School Year.*) These rules would have allowed multi-track schools to lengthen the school day, but “[e]ven so, multitrack schools may have difficulty implementing an extended school day, or would do so at the expense of supplemental instructional programs.” (*Id.*) The Concept 6 school day has already been lengthened to provide an equivalent number of minutes of instruction. According to the LAO’s calculations, approximately one more hour would have to

be added to the school day to provide an equivalent number of minutes as schools offering 210 days of instruction.

### C. Limited Access to Course Offerings and Special Programs

The third concern raised by multi-track calendars relates to curriculum differentiation or tracking. Despite numerous efforts to “de-track” K-12 education institutions since the mid-1980s, tracking persists. The tracking of students into distinct programs – e.g., academic, general, and vocational – can lead to profound racial, ethnic, and socio-economic segregation. (See, e.g., J.H. Braddock and M.P. Dawkins, Ability grouping, aspirations, and attainments: Evidence from the National Educational Longitudinal Study of 1988, *Journal of Negro Education*, 62(3), 1-13 (1993); R. Atanda, Do gatekeeper courses expand education options? Washington, D.C.: National Center for Education Statistics (1999); L. Horn, A. Nunez and L. Bobbit, *Mapping the road to college: First generation students’ math track, planning strategies, and context of support*. Washington, D.C.: National Center for Education Statistics (2000); X. Ma and J.D. Williams, Dropping out of advanced mathematics: How much do students and schools contribute to the problem. *Educational Evaluation and Policy Analysis*, 21(4), 365-383 (1999); I. Weiss, A profile of science and mathematics education in the United States: 1993. Chapel Hill, N.C.: Horizon Research (1994).) Schools have consistently assigned children from privileged families (usually White) to academic tracks, and those who are poor and non-White to the others. Track assignments, however, do not necessarily reflect students’ ability or performance. (See, e.g., J. Oakes, Within-school integration, grouping practices, and educational quality in Rockford schools (2000); J. Oakes and G. Guiton, Matchmaking: The dynamics of high school tracking decisions, *32 American Educational Research Journal* (1995)).<sup>11</sup>

By providing students with differential access to high-level courses and teachers, tracking has a profound impact on students’ achievement and post-secondary opportunities.<sup>12</sup> Research shows that: (1) advanced course taking enhances achievement; (2) advanced course taking determines eligibility for competitive colleges; (3) completion of a rigorous high school program is the best predictor of college success, and it has a particularly strong impact on under-represented students of color; and (4) taking courses from qualified teachers increases achievement. To the extent that tracking reduces students’ access to rigorous courses and well-qualified teachers, it diminishes students’ achievement and post-secondary opportunities. (See J. Oakes and G. Guiton, Matchmaking: The dynamics of high school tracking decisions; J. Oakes, Rockford schools; C. Adelman, U.S. Department of Education, Answers in the Tool Box: Academic Intensity, Attendance Patterns, and Bachelor’s Degree Attainment (1999).) Thus,

<sup>11</sup> Research also suggests that there is an unequal distribution of teachers across different ability tracks. (See R.M. Ingersoll, The problem of underqualified teachers in American secondary schools. *Educational Researcher*, 28 (20), 26-37 (1999) (students in lower tracks more likely to have out of field math and science teachers); J. Talbert and M. Ennis, Teacher tracking: Exacerbating inequalities in the high school (1990) (suggesting teachers of low-track students are more often tracked themselves).)

<sup>12</sup> This becomes especially problematic at the high school level where course offerings are more varied than at the elementary or middle school levels.

tracking often does more to shape and limit educational opportunities than respond to academic needs or performance.

Tracking can and does become explicit in multi-track schools as students and course offerings are clearly differentiated between tracks within a school. (*See, e.g.,* Helfand, *Year-Round Discontent* (at Hollywood High, “the A track includes the arts magnet,” “B track is home to students who are still learning English,” and “C track encompasses the New Media Academy”); DOE 37377 (II/USP Plan for Miramonte Elementary in LAUSD) (“The instructional programs in the three tracks [at Miramonte Elementary] are also out of balance, with Track A serving all students repeating the second grade and all special education students.”).)

A recent study, for example, found that “[m]ulti-track year-round education is a particularly powerful mechanism for tracking student groups within schools,” creating opportunities for separation of children by ability or achievement.” (Ross E. Mitchell and Douglas E. Mitchell, *Student Segregation and Achievement Tracking in Year-Round Schools* (2000) at 5.) The study found that multi-track schools not only serve a very different population of students than traditional calendar schools, but also show substantial segregation between tracks. More significant, it found that the segregation into the different tracks expands the differences between tracks over time. “The C-Track is the highest achieving track and solidifies its advantage for students with extended enrollment. The D-Track declines from positive to negative or lagging marginal adjustment over time. The B-Track starts out behind and gets further behind . . . .” (*Id.* at 29.)

Students at multi-track schools have limited access to course offerings and specialized programs that are offered only on particular tracks. To divide a school into multiple tracks is effectively to create separate “schools” on each track. Resources, however, are not divided equally, so as to provide the same level of access to courses and programs across tracks. As CDE consultant Thomas Payne explains, “high school MTYRE is programmatically problematic. To divide a high school into, say, four tracks is to compromise the number of electives available to students. For instance, a high school of 2000 which can offer one [Advanced Placement] AP French class and one AP calculus class is faced with some difficult decisions when divided into four tracks: it now becomes four high schools of 500 each. What becomes of those AP classes?” (Letter from Thomas Payne to Robert Rosenfeld, dated Aug. 29, 1994 (“Payne Letter”) Bates No. PLTF 05846 ; Raisin, *Questions Surround Multitrack* (multi-tracking will “restrict the availability of electives . . . , while posing scheduling conflicts for those students eligible for minimally offered advanced math courses”).) As Payne acknowledges, certain options will limit student access; the AP classes “can all be put on one track (de facto segregation by ability)” or “they can be randomly spread across all tracks (assuring the inaccessibility of a portion).” (Payne Letter.)

According to LAUSD Superintendent Roy Romer, AP classes are “not distributed fairly across the tracks.” (Duke Helfand, *South L.A. Pupils Demand More College Prep Classes*, L.A. Times (Dec. 15, 2000).) A commentary from the L.A. Times highlighted the limits on access. “On average, a student in a traditional two-semester LAUSD school has 10 AP courses available during the academic year. A student in a [Concept 6] school, with three different tracks, has

access to fewer course offerings because the 10 courses must be divided between the three tracks. If a school has only one teacher qualified to teach AP physics, and it is offered on Track A, students in Tracks B and C do not have access to this course. Some year-round schools cluster their AP courses in a way that prevents access to students in one particular track.” (Commentary, *AP Program – A Big Step Up If You Can Get It*, L.A. Times (May 5, 2000); Raisin, *Questions Surround Multitrack*; Jimenez Decl. ¶ 15.)<sup>13</sup>

While it is true that comprehensive high schools that offer discrete curricular programs (such as multi-track schools) must make AP course offerings available to students across different programs, because the CDE rarely collects or disaggregates data for different tracks within schools, reports of course offerings in multi-track *schools* mask the disparities in courses offered to students on each *track*. Thus, although the State advises districts using multi-track calendars to develop policies to ensure that each track mirrors the ethnic and socio-economic composition of the whole school population, and to minimize ability and special need segregation by track, it effectively does nothing to prevent it. (See YRE Guide; Payne Letter (referring to placing all AP courses on one track as “de facto segregation by ability”).) Indeed, the State does not even collect the data necessary to determine whether tracks are segregated.<sup>14</sup>

Due most likely to its undesirability – in addition to the disadvantages discussed above, it offers no vacation during the summer months – track B is often the most limited in educational opportunities. As reported by the L.A. Times, “Administrators [at Hollywood High, a Concept 6 school,] freely acknowledge that the schedule creates inequities within the school. They say B track is the biggest loser, even questioning whether it is academically sound.” (Helfand, *Year-Round Discontent*.)

#### **D. Limited Access to Enrichment and Remediation Opportunities**

The fourth concern raised by multi-tracking relates to the limitations it places on important enrichment and remediation opportunities.

The Concept 6 breaks are ill-timed; students at Concept 6 schools find themselves out of step, because so many programs and opportunities for children are premised on the traditional calendar. Students who are on vacation during the fall miss critical opportunities to attend college fairs, meet with counselors and college recruiters, and participate in other events linked

<sup>13</sup> Transferring from one track to another is not permitted in some schools. Even where it is permitted, it comes at a cost. When students from a non-AP track enroll in AP classes offered on another track, they must forego their “off-track” vacation time. (See Jimenez Decl. ¶¶ 17-18.)

<sup>14</sup> State Senator Richard Alarcon, a member of the Senate Select Committee on College and University Admissions and Outreach, introduced a bill, SB 1813, which would have required disaggregation of student demographic and achievement data by track. According to Senator Alarcon, “In looking at individual performance, [the Select Committee] found that students in a multitrack system are often denied access to valuable resources that are crucial to get into a university or state college. . . . [S]tudents on different tracks become segregated and are often denied access to the special programs, such as AP classes and college preparatory courses that are critical for university admissions.” (*Improving Data on Student Performance at Multi-Track Schools Gets Senate Approval* (May 28, 2002).)

to attending college. (See Helfand, *Year-Round Discontent* (documenting student who “began her eight-week vacation in late October, right in the middle of college application season. Quiroa is missing a chance to meet recruiters, whose visits are well publicized on campus”); Wohlers Decl. ¶ 40 (“Counselors and students have great difficulty connecting with each other due to scheduling and space problems.”).) Likewise, other students cannot obtain important summer internships and jobs, which are critical components of college applications, or they can participate in seasonal sports or other extracurricular activities only if they go to school during their purported vacation months. (See Miriam Koenig, *Perpetuating Problems in LAUSD*, L.A. Daily News (May 25, 2001) (“Many [students at multi-track schools] cannot participate in sports or special classes, such as the Academic Decathlon, unless they are willing to go to school 12 months a year and cross-track.”); Jimenez Decl. ¶ 20.) Still other children cannot attend summer camps, and have limited access to enrichment programs, because of the seasonal nature of these activities. “Students on a traditional calendar can take advantage of many camps, recreation programs, internships and jobs during their summer breaks. But those are not so plentiful during schedules that also put youngsters out of school for long stretches of time in the fall, winter and spring. In fact there is a painful shortage of programs to keep schoolchildren busy during non-summer vacations, parents and teachers complain.” (Abdur-Rahman, *Calendar Can Leave Students Out in Cold*; see also Aguirre Decl. ¶ 13; Cortes Decl. ¶ 13.)

AP courses and exams illustrate the difficulties faced by students on the Concept 6 calendar, because the program, like so many others, is built around the traditional school calendar. Even if fortunate enough to enroll in an AP course on their own track (see n.13), students must forego their vacation time to complete the required work before they sit for the examinations the courses lead up to. (See Helfand, *Year-Round Discontent* (“Yohanna Figueroa worries that her vacation in January and February will cost her valuable time to prepare for Advanced Placement exams in the Spring.”); Sufiya Abdur-Rahman, *Calendar Can Leave Students Out in Cold*, L.A. Times (March 17, 2002) (“Because [Stephen Wade] had six periods a day of Advanced Placement review for six weeks, Wade said his vacation was ‘almost like the break that wasn’t.’”); Jimenez Decl. ¶¶ 24-25.) The AP exams are offered only once a year in May, before students on Concept 6 calendars have completed their school year. Thus, those students must work over their vacations to cover all the material to be tested on the exams. Moreover, students on track B must take the exam only weeks after coming back to school from a two-month vacation, while those on track C are actually on vacation in the last weeks leading up to the exam.

Finally, multi-tracking compromises the provision of intervention programs designed to prevent at-risk students from falling too far behind their peers. On multi-track calendars, there is no period – like the summer vacation on the traditional calendar or off-track time on the single-track, year-round calendar – when the school is available to provide assistance to students struggling to reach grade level. When students on multi-track calendars are on vacation – during what is known as intersession – they often find that their schools do not have enough space to provide assistance to all eligible students. (Wohlers Decl. ¶ 41; see also Aguirre Decl. ¶ 14; Jimenez Decl. ¶ 29; Daza Decl. ¶ 43.) Indeed, given the premium that multi-track calendars put on space, their schools have little incentive to encourage all eligible students to participate in the programs. As Gordon Wohlers, Chief of Staff to LAUSD Superintendent Romer, puts it, “[W]hen every classroom is a precious asset to the school, just to handle regular classes all year

round, an intersession class – which brings back to the campus students who are ‘supposed’ to be off – becomes an undesirable step-child.” (*Id.*)<sup>15</sup>

While LAUSD has responded by providing academic assistance after school or on Saturdays, Wohlers concludes: “[T]his means that interventions for these children are not being done in a way that is conducive to teaching and learning, with fresh and focused students and teachers. . . . Intervention is, in effect, not being done for children on the Concept 6 calendar.” (*Id.* ¶ 42; Declaration of Gordon Wohlers, dated September 5, 2001 (“Wohlers Decl. 2”) at ¶ 1; see DOE 43201 (II/USP Plan for Plummer Elementary in LAUSD) (“The lack of adequate space on campus [prevents] the school from implementing intervention classes, year-round classes of support services for special education and/or regular education.”).)

It is particularly troubling that intervention should be compromised for students who would most benefit from it. A recent study found that upper and lower socio-economic status (“SES”) children make similar gains over the school year, but that there are large disparities in learning over the summer, when students are out of school. (K.L. Alexander, D.R. Entwisle and L.S. Olson, *Schools, Achievement, and Inequality: A Seasonal Perspective*. Educational Evaluation and Policy Analysis. 23(2), 171-191 (Summer 2001).) While the skills of lower SES students remain flat over the summer, upper SES students’ skills continue to improve, albeit at a slower rate than during the school year. Based on these findings, the study underscored the need for programs, like summer school, to support the learning of disadvantaged students through coordinated interventions when school is not in session. The Concept 6 calendar, which has no play left in the joints, simply does not afford the flexibility necessary to provide these interventions.

### **E. Poorer Academic Achievement**

The fifth concern regarding multi-tracking is its effect on the achievement of students, which suffers in comparison to that of students on traditional calendars. For example, a study of schools in Oakland found that student achievement decreased in multi-track schools, but increased for students on traditional calendars. (A. Resnik, *Year-Round Schools Evaluation* (1993).) Although socioeconomic status played some part in the results, the type of school calendar played a significant role.

As researchers recently noted, the only study of year-round education to distinguish between multi-track and single-track, year-round schools – a statewide study of California schools commissioned by the CDE – found that multi-track schools scored below predicted levels even after controlling for socioeconomic status, while the less prevalent single-track, year-round schools scored at or slightly above predicted levels. (Mitchell and Mitchell, Student Segregation and Achievement Tracking 7 (citing C. Quinlan, C. George, and T. Emmet, *A Study of Year-Round Education in California* (1987)).)

<sup>15</sup> Just as the district has no incentive to bring to campus students who are supposed to be on vacation, the district has no incentive to improve its retention rate. One can only wonder what the district would do if the large number of students who elect to drop out each year instead decided to stay in school.

Last year, it was reported: “Statewide, multi-track year-round schools performed largely below average when compared to similar schools, said Pat McCabe, administrative manager of the state department’s Office of Policy and Evaluation.” Julie Z. Giese, *Year-Round Calendar Blamed for Poor Ranks*, Lodi News-Sentinel (Jan. 18, 2001). The same article reported that the Superintendent of the Lodi Unified School District, Bill Huyett, blamed “some of the dismal scores to the Concept 6 year-round calendar, which gives students 17 less days in the classroom compared to typical 180-day calendar” and “said he hope[d] to continue working toward getting students a longer school year.” *Id.*

Also last year, an LAUSD study concluded that students on the Concept 6 calendar do not perform as well in reading and math as students at traditional schools. (J.A. White and S.M. Cantrell, *Comparison of Student Outcomes in Multi-Track Year-Round and Single-Track Traditional School Calendar*. LAUSD Program Evaluation and Research Branch, Policy Analysis Unit 4 (2001).) It found the achievement gaps to exist even after comparing only demographically similar schools. (*Id.*) Moreover, not surprisingly – given the added obstacles inherent to track B – the study found that “[w]hen student performance in multi-track calendars is disaggregated by track, a clear pattern emerges with respect to [Concept 6] schools. In every school type, the performance of B-track students is substantially lower than other tracks in both reading and mathematics.” (*Id.* at 5.)<sup>16</sup>

A comparison of the cumulative results on the 2001 and 2002 spring administrations of the High School Exit Exam (HSEE) reveals a significant difference in achievement between students at Concept 6 schools and students at other schools.<sup>17</sup> The comparison shows: the average HSEE Math test passing rate for Concept 6 schools is 31%, while non-Concept 6 schools have an average HSEE Math test passing rate of 58%; and the average HSEE English Language Arts test passing rate for Concept 6 schools is 53%, while the non-Concept 6 schools have an average HSEE English Language Arts passing rate of 78%.

As school staff and evaluators explain, the reduced achievement is not surprising. According to the II/USP Plan for Barton Hill Elementary in LAUSD, “The Concept 6 school calendar presents a significant barrier to student achievement. . . . The school is on a 163-day rather than the normal 180-day year calendar. While the school day is elongated to account for the 17 fewer days, teachers and experts agree that adding a few minutes to each lesson is not the same as having the equivalent calendar days. Thus, on the basis of the shortened calendar alone, Barton Hill students . . . receive 17 fewer days of ‘new’ instruction a year or 102 days over the six years at Barton. In short, these students receive almost two-thirds of year [sic] less education

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<sup>16</sup> Although uncertain as to the cause of the achievement gap – positing the Concept 6 calendar itself as one possibility – the study noted the possibility that differences in the assignment of students to the various tracks might be to blame. (White and Cantrell, *Comparison of Student Outcomes* at 7-8.) This would appear to be a valid possibility if there were reason to believe that student assignments varied significantly across tracks – that is, if low-achieving students were tracked onto track B.

<sup>17</sup> Schools that did not report their data were not included in the comparison. Passing rates are based on the number of 10<sup>th</sup> graders enrolled at each school during the 2001-02 school year, as reported on the California Basic Educational Data System (CBEDS).

than students do on regular school calendars.” (DOE 38186-87.)<sup>18</sup> And, as stated in the II/USP Plan for Creekside Elementary in the Lodi Unified School District: "The kind of year-round education (YRE) calendar implemented by the Lodi School District has affected the learning climate of the school. Due to the high enrollment of students, lack of facilities, implementation of reduced class size, Creekside operates on a three track, year round education Concept 6 schedule. There are 163 instructional days as opposed to 180 days in other YRE and traditional school schedules. Although Concept 6 allows the school to house (enroll) more students, it is not conducive to a learning environment that promotes student achievement. Instruction is interrupted by two (2) two-month 'off-track' times. Many students forget what they've learned during the two-months breaks. One-third of the students and teachers are always 'off-track' - at one time. The staff does not receive training at the same time. There is no common planning time for grade levels teachers. As a result, instruction, programs, and staff development are fragmented." (DOE 36408-09.)<sup>19</sup>

The Lou Harris survey of California teachers suggests the widespread concern that multi-tracking negatively affects achievement. Of the teachers surveyed who reported working in multi-track schools, not all of whom taught on the shortened Concept 6 schedule, 42% said that the multi-track schedule interfered with their ability to cover the curriculum “in a complete and coherent way.” (See Harris Research Group, California Teacher Survey (Sept. 2002) at Q16f.) Forty-seven percent said the multi-track schedule interfered with their ability to prepare students

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<sup>18</sup> (See DOE 32798 (II/USP Plan for Franklin Elementary in Franklin-McKinley Elementary School District) ("Multi-track year round schedule is the #1 barrier to student achievement and to consistency in program implementation."); DOE 32857 (II/USP Plan for Santee Elementary in Franklin-McKinley Elementary School District) ("The multi-track year round schedule is cited as the #1 barrier to student achievement in this school.").)

<sup>19</sup> (See DOE 36538 (II/USP Plan for Lawrence Elementary in Lodi) (“Concept 6 also presents significant challenges for administration and teachers to operate cohesively. Maintaining on-going communication with all staff is difficult since only 2/3 of the staff is on campus at the same time. This also creates articulation issues with teachers coming on-track or going off-track. Both teachers and administration expressed a deep sense of 'fragmentation.'”); DOE 43202 (II/USP Plan for Plummer Elementary in LAUSD) (“Because one track is always off, professional development occurs on an inconsistent basis for all teachers. The same training sessions must be repeated to reach all faculty members causing a burden for the instructional leaders. It also affects the continuity and consistency of the overall instructional program.”); DOE 43201 (“Running an overpopulated school on a year-round basis is difficult at best. At any one time, one-third of the teaching staff is off-track. Key decision-making by members of the school leadership teams has been disjointed and without a clear focus resulting in poor communication with the various school stake holders. There is a need for the various leadership groups to spend concentrated times throughout the school year to make decisions based on student assessment data and other identified needs.”); DOE 32859 (II/USP Plan for Santee Elementary in Franklin-McKinley Elementary School District) ("Multi-track year round schedule does not allow all teachers to plan together, groups of teachers are always off track."); Julie Giese, *Bond's approval will change district, educators say*, Lodi News-Sentinel (Feb. 9, 2002) (administrator reported as stating that the move away from the Concept 6 calendar “has given teachers time to collaborate and improve instruction and students additional time to learn”).)

to meet state content standards, and 48% said it interfered with their ability to prepare students for standardized tests. (*Id.* at Q16g.)

### **Disadvantages Experienced by Students Bused to School to Relieve Overcrowding.**

Busing to relieve overcrowding raises four significant areas of concern: 1) impediments to parental involvement; 2) limited access to after-school activities; 3) disincentive to enroll children in kindergarten; and 4) poorer achievement. The combined impact of these disadvantages, over the course of a single school year, and over the course of the many years that children must face some or all of them, exact a significant toll on the quality of education.

#### **A. Impedes Parental Involvement**

Research over the last two decades indicates that parental involvement is a critical factor relating to student achievement. (*See Baker, D.P., & Stevenson, D.L. (1986). Mother’s strategies for Children’s School Achievement: Managing the Transition to High School.*” *Sociology of Education*, 59, 156-66. Epstein, J.L. (1983). *Longitudinal Effects of Family-School-Person Interactions on Student Outcomes.*” In A. Kerckhoff (Ed.), *Research in Sociology of Education and Socialization*, 4, 19-128. Greenwich, CT: JAI. Keith, T.Z. Reimers, T.M., Fehrmann, P.G., Pottebaum, S.M., and Aubey, L.W. (1986). “Parental Involvement, Homework, and TV Time: Direct and Indirect Effects on High School Achievement.” *Journal of Educational Psychology*, 78, 272-80. Zill, N., & Nord, C.W. (1994). *Running in Place: How American Families are Faring in a Changing Economy and an Individualistic Society.* Washington, D.C. Child Trends. See also generally: Henderson, A. & Berla, N., (1994) *A New Generation of Evidence: The Family Is Critical To Student Achievement* Washington, D.C., National Committee for Citizens in Education.)

As Chief of Staff Gordon Wohlers concedes, LAUSD “effectively discourages” parental involvement through its busing program to relieve overcrowding. (Wohlers Decl. ¶ 15 ([T]he distance between school and home effectively discourages parents from becoming involved in their children’s school.”.) As children are bused further and further from their home schools, their parents have an increasingly harder time getting to the schools, let alone working with and supporting teacher and child at the school. (Wohlers Decl. ¶ 36 (“When a child is bused not because the family wants the child to go to a different school but because the local school is full, the parent frequently lacks the ability to connect with the new school.”). As Cahuenga Elementary Principal Lloyd Houske has explained, “Some of those children [bused from Cahuenga due to overcrowding] ride buses more than an hour each way. Their parents aren’t as involved in their schools. They can’t be; many don’t have cars.” (Jim Newton, *District Weighs Evictions to Make Way for Schools*, L.A. Times (Jan. 9, 2000) at A1.)<sup>20</sup>

<sup>20</sup> Cahuenga Elementary is often the focus of reports discussing LAUSD’s efforts to relieve overcrowding through busing. (*See, e.g., Ramirez, A Long and Tiring Road.*) The school actually buses more children out of the neighborhood than are enrolled at the school – about 1900 students are bused out, while 1300 remain at the school. (Deposition of Lloyd Houske (“Houske Depo.”) at 246, 301.) As Principal Lloyd Houske is well aware, the school has long had to bus children due to overcrowding. Houske has been at Cahuenga 16 years, and the school

Immigrant parents may have an even more difficult time, because they may not receive the same level of language support, and may not feel as comfortable, at the school to which their child is sent. As the L.A. Times has reported, “[Cahuenga Elementary Principal] Lloyd Houske . . . believes some immigrant parents are intimidated by schools outside their neighborhood and avoid visits for fear of embarrassment. ‘These parents don’t have much contact with the school. Some don’t even know where the school is. They just don’t have the same comfort as they would if the school was around the corner,’ Houske said.” (Margaret Ramirez, *A Long and Tiring Road to School; For Many Inner-City Children, Going to Class Can Mean Catching a Bus at 6:45*, L.A. Times (Nov. 25, 2000) at B1.) As Houske has explained, immigrant parents can’t be as involved if their children are bused to schools that serve a different community and do not provide the same language support as their neighborhood school. (Newton, *Make Way for Schools* (“Their parents aren’t as involved in their schools. They can’t be . . . . There’s not as much language support.”); see also Richard Rothstein, *Lessons; A Crowding Quandary Meets a Quake Code*, L.A. Times (April 3, 2002), at B7 (“The pupils are bused to schools that usually don’t offer the Spanish- or Korean-language help that Cahuenga provides.”).)

A recent study of school busing in five states indicates the negative impact of busing on parental involvement. It found that “39.0% of principals in schools with rides of less than 30 minutes duration believed that length of ride had a negative effect on parental involvement, as compared with 67.3% of principals in schools with longest rides greater than 30 minutes duration.” (Craig B. Howley, Aimee A. Howley, Steve Shamblen, *The Experience of Rural School Bus Rides*, Paper presented at the annual meeting of the American Educational Research Association (April 10, 2001) at 11.)

### **B. Limited Access to After-School Enrichment or Extracurricular Activities.**

Due to the increasing distances between home and school, students bused to school have limited access to after-school enrichment or extracurricular activities. Afternoon buses typically leave immediately after the formal school day ends or soon after that. Because many students have no other way of getting home, they cannot afford to miss their regularly scheduled bus. To the extent that there are any buses scheduled to depart once the after-school activities have ended, some students cannot take advantage of them because the buses would not get them home until well into the evening. Students therefore not only lose out on the benefits of participating in after-school programs, but they also miss the opportunity to socialize or study with classmates.

A story in the L.A. Times, about students bused 38 miles from South-Central Los Angeles to Chatsworth High School because their neighborhood high school had no room for them, highlights the burdens and disadvantages students face:

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has been busing for 10 or 11 of those years. (*Id.* at 301.) Cahuenga has needed to bus children due to overcrowding even though it converted to the Concept 6 calendar approximately 21 years ago. (*Id.* at 401.) According to Houske, Cahuenga converted to Concept 6 “[b]ecause they had more children than they could house within the school.” (*Id.*) He added that he did not believe there was any other reason for converting to Concept 6. (*Id.* at 402.)

Jacqueline and Michael sacrifice attending football games and participating in after-school activities in favor of getting home by 4 p.m. She said that gives them enough time for homework and dinner before getting to bed by 9:30 p.m. [Jacqueline’s morning begins at 5 a.m.]

And besides, Jacqueline said, their mother, Estela, won’t allow them to join extracurricular clubs because they would have to take a 5 p.m. bus that wouldn’t get them home until nearly 7 p.m.

“I feel bad that Jacqueline and Michael just go to school and come straight home and that’s it,” [Estela] said. “It’s not fair when other kids get to have fun after school.”

For Jacqueline and her friends on bus 4068, the compromises they make – the wasted hours on the bus, the difficulty in participating in after-school activities and the inability to interact with Chatsworth classmates after school – distinguish their uncommon high school experience.

Johnson, *The 4th R-Riding*.

### C. Disincentive to Enroll in Kindergarten

Research also indicates that children between the ages of 2 and 5 benefit from attending educational programs outside the home. (*E.g.*, Barbara T. Bowman, M. Suzanne Donovan, and M. Susan Burns, Editors, *Eager to Learn: Educating Our Preschoolers* Committee on Early Childhood Pedagogy, National Research Council, 2000.) This is particularly true for students of color, low-income students, and English learners. Yet busing to relieve overcrowding may create an incentive for parents not to send their young children to kindergarten, which is not mandatory in California, and have them forego the benefit of an early start to their schooling, in order to avoid making them ride the bus. (Wohlers Decl. ¶ 37.) LAUSD’s own statistics show an increase every year between the numbers of departing kindergartners and entering first graders, and suggest that parents may be keeping their children out of kindergarten so that they will not have to ride the bus. (*Id.*)

### D. Poorer Achievement

Last, research indicates that forced busing unrelated to other educational purposes, such as integration, has a negative impact on student achievement.

In 1973, a study of Oklahoma students in grades four, eight, and eleven, from twenty-seven school districts, found a relatively small but significant difference between the performance of bused and non-bused students in grades four and eight. (Yao-Chi Lu and Luther Tweeten, “The Impact of Busing on Student Achievement,” *Growth and Change* 4(4) at 46 (1973).) None of the students in the study was bused to achieve integration. (*Id.* at 44.) The researchers found that, if other variables, including socioeconomic background, were held constant, each hour per day spent riding a bus could be predicted to reduce achievement scores. (*Id.* at 45-46.) This unreplicated study has been referred to as the “most credible study

addressing the issue (i.e., with adequate sample size and controls.” (Craig B. Howley, Aimee A. Howley & Steve Shamblen, *The Experience of Rural School Bus Rides*, Paper presented at the annual meeting of the American Educational Research Association, April, 10, 2001, at 4.)

As LAUSD consistently reports, its research shows that students bused to school due to overcrowding score the lowest of any group of students on California’s standardized tests. In 1989, the L.A. Times reported, “[LAUSD] Board of Education member Leticia Quezada, who represents some of the most crowded schools in the district, said. . . . ‘I am convinced it (busing for overcrowding) is having a detrimental effect’ on achievement as a whole, she said, citing other districts studies that show CAP [Capacity Adjustment Program] students with lower test scores than students who are allowed to remain in the neighborhood schools.” Elaine Woo, *School Dropouts: New Data May Provide Elusive Clues*, L.A. Times, Sept. 11, 1989, at 1-1. More recently, the LAUSD’s Facilities Task Force reported: “Studies show that this group of students is the lowest achieving group in the school district and its test scores are significantly below those of the students who are able to remain in the home school.” (Task Force.) As Gordon Wohlers, Chief of Staff to the LAUSD Superintendent, explains, “For some years we have known that the lowest California Test of Basic Skills and Stanford 9 scores in the District are those of students who are in our ‘CAP’ program, the program we use to bus students away from their local schools when those schools have no room for them.” (Wohlers Decl. ¶ 17.)

Unlike their peers at neighborhood schools, students who ride the bus to school due to overcrowding must awake early in the morning, spend hours on the bus, and experience the stress of riding the bus and attending distant schools, all of which may explain their lower achievement. “The combination of early morning hours, dead time spent on a bus in traffic, low rates of parental participation and stress are all reasons that a traveling student's grades suffer, [LAUSD Chief of Staff Gordon] Wohlers said. . . . ‘It's not surprising,’ Wohlers said. ‘When you think about all the hurdles that these families go through, day after day, year after year.’” (Ramirez, *Long and Tiring Road to School*; Brett Johnson, *The 4th R-Riding: Overcrowded Downtown Campuses Mean Some Students Must Rise at Dawn and Endure An Hourlong Bus Trip to Chatsworth*, L.A. Times, June 14, 1998, at B1 (“Although the ride home for the kids on bus No. 4068 takes at least an hour, few kids use the time to study. Most kids sleep, heads leaning against bus windows or bodies stretched across cushioned seats.”); *id.* (stating that first period may find student yawning after getting up at 5 a.m. to catch bus).)

Lloyd Houske, who as Principal at Cahuenga Elementary has long experience with the busing program, [has] said these children [who are bused due to overcrowding] usually score lower on standardized tests than those attending neighborhood schools because their parents can’t be as involved in their education.” (Laura Mecoy, *L.A. Schools Need Improvement*, Scripps Howard News Service (May 8, 2000); *see also* DOE 32793 (II/USP Plan for Franklin Elementary in Franklin-McKinley Elementary School District) (identifying “[t]he bus schedule and the large number of students who are bused to school” as a barrier to achievement); Newton, *Make Way for New Schools* (Cahuenga Elementary Principal Houske stating, “It’s harder for the children to make friends because they live so far from school.”); Payne Depo. at 141-42 (stating he would rather have his son in a neighborhood school than bused somewhere else, so he could go to school with his neighborhood friends).

## Conclusion

For the reasons discussed above, and based on my experience in the education field, I conclude that the Concept 6 calendar and busing to relieve overcrowding cause students subjected to these measures to receive a significantly lower quality education than that provided to the overwhelming majority of students in the state.

More specifically, it is my professional opinion that students attending schools operating on the Concept 6 calendar face clear disadvantages that students attending schools on a traditional calendar do not. When considered cumulatively, these disadvantages result in a significantly lesser education to students at Concept 6 schools than that provided to the overwhelming majority of students in the state who attend schools on a traditional calendar. Over time, as many students will spend significant portions of their education – or their entire educational careers – on a Concept 6 calendar, the adverse impact on their educations will plainly be compounded and reinforced. Indeed, over the course of a 12-year public education, the loss of 17 instructional days a year results in the loss of 204 instructional days – significantly more than an entire school year.

Similarly, it is my professional opinion that students who are bused to school due to overcrowding face disadvantages that students who attend neighborhood schools do not, and that these disadvantages result in a significantly lesser education to students bused to school due to overcrowding than that provided to the overwhelming majority of students in the state who attend neighborhood schools. Again, as many students will spend significant portions of their educational careers bused to school due to overcrowding, the adverse impact on their education will plainly be compounded and reinforced over time.