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9
10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA

12 JESSY CRUZ, et al.,
13 Plaintiffs,

14 vs.

15 STATE OF CALIFORNIA, et al.,
16 Defendants.

No.: RG14727139

ASSIGNED FOR ALL PURPOSES TO
JUDGE George C. Hernandez, Jr.
DEPARTMENT 17

**STATE EDUCATION DEFENDANTS'
OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION**

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TABLE OF CONTENTS

Page(s)

| | | |
|----|--|----|
| 1 | | |
| 2 | | |
| 3 | TABLE OF AUTHORITIES | ii |
| 4 | INTRODUCTION | 1 |
| 5 | I. PLAINTIFFS ASK THE COURT TO VIOLATE THE SEPARATION | |
| 6 | OF POWERS | 2 |
| 7 | II. PLAINTIFFS ARE NOT LIKELY TO SUCCEED ON THE MERITS | 4 |
| 8 | A. The Situation At The Targeted High Schools Does Not | |
| 9 | Rise To The Level Of A Constitutional Violation Under | |
| 10 | <i>Butt v. State of California</i> | 5 |
| 11 | 1. Evidence regarding Dorsey and Fremont High Schools in Los Angeles | 5 |
| 12 | 2. Evidence regarding Compton High School | 7 |
| 13 | 3. Evidence regarding Castlemont and Fremont High Schools in Oakland | 8 |
| 14 | B. The <i>Butt</i> Case Does Not Give Plaintiffs License To Ignore The | |
| 15 | School Districts Before Demanding Intervention From The State | 10 |
| 16 | C. Plaintiffs Have Not And Cannot Establish A Prevailing Statewide | |
| 17 | Standard For Use Of Home And IWE Periods Or Finalization | |
| 18 | Of Master Schedules | 12 |
| 19 | 1. There is no state law or policy on the matters at issue here | 12 |
| 20 | 2. Factually, there is no prevailing statewide practice | |
| 21 | regarding these issues | 12 |
| 22 | III. THE BALANCE OF HARMS FAVORS DEFENDANTS | 16 |
| 23 | CONCLUSION | 20 |
| 24 | | |
| 25 | | |
| 26 | | |
| 27 | | |
| 28 | | |

TABLE OF AUTHORITIES

Page(s)

CASES:

Butt v. State of California passim
(1992) 4 Cal.4th 668

Crawford v. L.A. Bd. of Ed.4
(1976) 17 Cal.3d 280

Landmark Holding Group, Inc. v. Superior Court5
(1987) 193 Cal.App.3d 525

O'Connell v. Superior Ct.16, 19, 20
(2006) 141 Cal.App.4th 1452

People v. Barragan5
(2004) 32 Cal.4th 236

White v. Davis19
(2003) 30 Cal.4th 528

Wilson v. State Bd. of Ed.2
(1999) 75 Cal.App.4th 1125

CALIFORNIA CONSTITUTION:

Article IX

§ 52

§ 143

STATUTES:

Education Code

§ 42238.023

§ 510022

§ 510402

§ 510542

§ 51225.32

§ 512262

§ 52060 et seq.3

§§ 52060-520743

§ 520724

§ 520753

MISCELLANEOUS:

Cal. Code Regs., tit. 5, § 46003, 4

1 **INTRODUCTION**

2 All parties agree that the students and high schools at issue here face huge challenges.
3 They also agree that these are important matters of educational policy and practice. The State Education
4 Defendants and the three districts at issue here disagree with plaintiffs, however, about what that means
5 legally and how those issues should be addressed.

6 The brief that follows demonstrates three things. First, plaintiffs’ proposed remedy
7 would violate the separation of powers, because issues involving educational policy and governance are
8 constitutionally committed to the Legislature, which has determined that matters involving course
9 schedules can and should be handled at the local level. State law and expert opinion are clear that
10 effective monitoring and control over individual students’ scheduling concerns must take place at the
11 local level, and not be done by the State.

12 Second, according to the districts, the situations at plaintiffs’ target schools are not as
13 plaintiffs and their experts portray them. Whether because of misunderstanding, miscommunication, or
14 otherwise, the evidence from the districts shows that many facts are different from what plaintiffs have
15 presented to this Court. Those facts most certainly do not demonstrate that the students have been
16 deprived of the “basic educational equality” that was at issue in *Butt v. State of California* (1992)
17 4 Cal.4th 668.

18 Third, plaintiffs have not and cannot establish a prevailing statewide standard for service
19 courses, early release, or the timely preparation of master schedules. Plaintiffs cannot point to any
20 applicable state policy; their 10-district sample is statistically unreliable and internally inconsistent; and
21 supplemental declarations from the districts and opinions from experts confirm there are no prevailing
22 statewide standards in these matters.

23 For these reasons, plaintiffs are not likely to succeed on the merits of their claim. Even if
24 they were, however, the balance of harms favors defendants, because granting plaintiffs the relief they
25 seek would impose serious hardship on other students in these and other schools in the districts. Indeed,
26 LAUSD’s Chief Academic Officer says that imposing plaintiffs’ proposed restrictions on early release
27 for students who have serious family obligations would be “inhumane and unconscionable.” OUSD’s
28 Chief of Schools says the proposed limit on service periods “ignores the individualized focus that is
necessary to best meet the needs of our students” and warns that the restrictions on changes to the master

1 schedule “would actually harm students” and violate the district’s bargaining agreement with its
2 teachers. Plaintiffs’ proposed remedy also asks the Court to redirect scarce educational resources in a
3 manner that OUSD’s Chief of Schools testifies would fail to “reflect the priorities of this community.”¹
4 Thus, as defendants’ experts confirm, plaintiffs’ proposed remedy is fraught with unintended
5 consequences. This is not the way to bring about meaningful school reform.

6 **I. PLAINTIFFS ASK THE COURT TO VIOLATE THE SEPARATION OF POWERS**

7 Article IX, section 5 of the California Constitution specifies that “[t]he *Legislature* shall
8 provide for a system of common schools by which a free school shall be kept up and supported in each
9 district at least six months in every year” (Emphasis added.) The Constitution does not specify
10 what the system of common schools must contain or how it is to be governed and it is well established
11 that “curriculum and courses of study are not constitutionally prescribed.” (*Wilson v. State Bd. of Ed.*
12 (1999) 75 Cal.App.4th 1125, 1135 [hereafter “*Wilson*”].)

13 Thus, questions of curriculum are largely left to the Legislature, which, in turn, has
14 decided “to set broad minimum standards and guidelines for educational programs, and to encourage
15 local districts to develop programs that will best fit the needs and interests of the pupils”
16 (§ 51002.)² The Education Code therefore contains only the broad parameters of a required course of
17 study for high school – three years of English, for example – and the State Board of Education adopts
18 curriculum standards and frameworks that broadly describe what students should be taught in English,
19 history, sciences and the like. (§§ 51225.3, 51226; Burr, ¶ 9.) The actual courses of study, however, are
20 developed and adopted by the governing boards of each of California’s 1,028 local school districts.
21 (§§ 51040, 51054.) Significant variances among districts exist and are sanctioned by the Constitution
22 and statutes. (*Wilson*, 75 Cal.App.4th at 1142.) When the question goes beyond minimum courses to
23 the content of courses and the method of instruction, the delegation to local districts is virtually
24 complete. Indeed, section 51226 specifically states that “*neither the superintendent nor the board shall*

25 ¹ For brevity in this memorandum, defendants’ declarations are cited by the declarant’s name only. The
26 quotations in this paragraph can be found at pages 422, 244-245, and 247 of the Declaration of Juan
27 Carlos Ibarra. Student and staff declarations submitted by plaintiffs as exhibits to the Eidmann
28 Declaration are cited as Eidmann Ex. _____. A chart summarizing the State Education Defendants’ expert
and percipient witness declarations by topic can be found at Appendix A to this memorandum.
Defendants’ Request for Judicial Notice is cited as “Ed. Defs. RJN.” Additional evidence is attached as
exhibits to the Ibarra declaration and cited as “Ibarra Ex. _____.”

² All statutory citations are to the Education Code.

1 *adopt rules or regulations for course content or methods of instruction.*” (Emphasis added.) Plaintiffs
2 attempt to avoid these limitations by characterizing courses at issue here as “contentless,” but district
3 educators and the experts, including plaintiffs’ own, testify that these courses can have unique
4 educational value for individual students. (Ibarra at 328, ¶ 6; *see, e.g., id.* at 324, ¶¶ 4-5; *id.* at 244, ¶ 14;
5 Campbell, ¶¶ 22, 24; Guthrie, ¶ 19; McCauley, ¶ 10; Timar, ¶ 35; Oakes, ¶ 33; Price, ¶ 10.)

6 An emphasis on localism for instructional programs has always been part of California’s
7 school governance system, but it became constitutionally enshrined in 1972 when the voters adopted
8 article IX, section 14, which allows the Legislature to “authorize the governing boards of all school
9 districts to initiate and carry on any programs, activities, or to otherwise act in any manner which is not
10 in conflict with the laws and purposes for which school districts are established.” The ballot materials in
11 favor of the constitutional amendment told the voters that the measure was intended to “entrust your
12 local school board with more responsibility and flexibility to tailor education precisely to the unique
13 needs of your own children.” (Ed. Defs. RJN, Ex. 7.)

14 The Legislature has determined that the best way to balance state and local authority in
15 order to bring about school improvement is through providing additional funding and autonomy to
16 districts through a guided system of local decision making. (Burr, ¶ 16.) That system, known as the
17 LCFF/LCAP,³ requires districts to determine their local priorities, align their budgets with instructional
18 programs designed to meet those priorities, and target new resources for the students who need them
19 most – those like the plaintiffs in this case who are low-income, English learners, or foster youth.
20 Accountability is built into the system through mandatory involvement by teachers, staff, parents, and
21 the students. County offices of education review and support the resulting local plans and district
22 improvement under the direction of county superintendents – almost all of whom are locally elected –
23 who are closer to and more familiar with their local school districts. (§§ 52060-52074.) The Legislature
24 has also approved a carefully structured complaint process that allows anyone to file a complaint that a
25 school district has not complied with LCFF/LCAP requirements, among other things, with an appeal to
26 the State Superintendent if the complainant is not satisfied with the response. (§ 52075; Cal. Code

27
28 ³ LCFF stands for “Local Control Funding Formula,” and LCAP stands for “Local Control and
Accountability Plan.” (§§ 42238.02, 52060 et seq.)

1 Regs., tit. 5, § 4600.) This legislative balance in favor of localism is endorsed in the Constitution,
2 embodied in statute, and supported by educational research and experience. (*See, e.g.*, McCauley, ¶¶ 26,
3 29-31; Timar, ¶¶ 21, 28, 32; Guthrie, ¶ 24.)

4 The Legislature has also set out the conditions under which the State Superintendent may
5 intervene in a local school district’s academic decisionmaking: The State Board must agree that the
6 district needs intervention; the district must have failed to improve outcomes for three or more
7 subgroups of students in three out of four consecutive school years; and the California Collaborative for
8 Educational Excellence must have provided assistance to the district and found either that the district has
9 failed or is unable to implement its suggestions or that the district’s inadequate performance is “either so
10 persistent or acute as to require intervention by the Superintendent.” (§ 52072(a) & (b).)⁴

11 None of these conditions has been met for any of the districts at issue in this case.
12 Instead, plaintiffs seek to skirt *all* of the Legislature’s school governance structure by asking the Court
13 to substitute plaintiffs’ priorities for those of the districts and the communities they serve.⁵ That request
14 violates not only traditional principles of separation of powers but the California Supreme Court’s
15 admonition in *Crawford v. L.A. Bd. of Ed.* (1976) 17 Cal.3d 280, 286 that when it comes to remedying a
16 constitutional violation, a court should allow a school board’s approach a chance to work, even if the
17 court believes that its own plan would work more quickly.

18 **II. PLAINTIFFS ARE NOT LIKELY TO SUCCEED ON THE MERITS**

19 The parties agree that *Butt v. State of California* (1992) 4 Cal.4th 668, establishes the
20 analytical framework for reviewing this claim. However, contrary to plaintiffs’ contention that the State
21 must “correct any disparities in the public education system” (Pls. Mem. at 12), the *Butt* Court made
22 clear that “principles of equal protection have never required the State to remedy all ills or eliminate all
23 variances in service.” (*Id.* at 686.) Instead, the *Butt* Court focused on “basic educational equality,”
24 using some variation of the word “basic” more than 30 times. The Court also made clear that “[u]nless
25

26 ⁴ A separate letter from LAUSD’s counsel describes the conditions under which the State
27 Superintendent may exercise fiscal control of a district. (Ibarra at 566.)

28 ⁵ It is noteworthy that one of plaintiffs’ counsel, the ACLU, has brought to the Legislature the same
issues on which they ask this Court to act through newly-introduced AB 1012, that would grant
plaintiffs virtually the same relief they request here. (Ed. Defs. RJN, Ex. 6.)

1 the actual quality of the district’s program, viewed as a whole, falls fundamentally below prevailing
2 statewide standards, no constitutional violation occurs.” (*Id.* at 686-687.) Thus, before they are able to
3 invoke any form of strict scrutiny, plaintiffs must show that the districts’ programs “viewed as a whole”
4 fall “fundamentally below prevailing statewide standards.” This they cannot do.

5 Plaintiffs seem to think that by issuing its earlier TRO, the Court has already decided
6 their motion for preliminary injunction.⁶ As demonstrated below, the circumstances this time are
7 different. Although still under significant time constraints, defendants can now present a fairer picture
8 to the Court about what the districts say is actually happening in the targeted high schools, which is
9 quite different from the one that plaintiffs present.⁷ Yet even if the individual students’ declarations
10 were universally accurate, plaintiffs could and should have brought their concerns directly to local
11 administrators, where they could have been handled much more expeditiously than through this
12 litigation. Finally, as the Court recognized in its TRO at 8-9, plaintiffs at that time made only a minimal
13 showing regarding the prevailing statewide standard for the use of what they call “contentless” periods
14 and preparation of master schedules. They have failed to demonstrate a prevailing statewide standard on
15 these issues now either.

16 **A. The Situation At The Targeted High Schools Does Not Rise To The Level Of**
17 **A Constitutional Violation Under *Butt v. State of California***

18 **1. Evidence regarding Dorsey and Fremont High Schools in Los Angeles**

19 None of the declarations provided by Dorsey or Fremont students deals with the situation
20 at those schools this semester.⁸ The most recent declarations are from November, 2014;⁹ three date back
21 to the prior school year;¹⁰ and the staff declarations were all signed nearly two years ago.¹¹

22 ⁶ Plaintiffs’ counsel suggests that the Court’s ruling on the TRO is law of the case but that doctrine
23 “applies only to an appellate court’s decision on a question of law” (*People v. Barragan* (2004) 32
24 Cal.4th 236, 246.) Issuance of a TRO is not a ruling on the merits, but merely a ruling to preserve the
25 status quo until the merits can be decided. (*Landmark Holding Group, Inc. v. Superior Court* (1987)
26 193 Cal.App.3d 525, 528.)

27 ⁷ Plaintiffs’ declarations often contravene basic rules of evidence, which we address in separate
28 evidentiary objections pursuant to the Court’s guidelines.

29 ⁸ Although plaintiffs incorporate by reference their TRO evidence regarding Jefferson High School (Pls.
30 Mem. at 6, fn. 3), plaintiffs are presumably satisfied with the current situation there, because they let the
31 TRO expire without filing a motion for preliminary injunction as required by the Court. (TRO at ¶ 9.)
32 Defendants incorporate by reference here their first and second status reports to the Court regarding
33 Jefferson High.

34 ⁹ Eidmann, Exs. 36, 60, 68 & 92.

35 ¹⁰ *Id.*, Exs. 61, 83 & 98.

36 ¹¹ *Id.*, Exs. 54, 55, 64, 71 & 90.

1 Thus, none of plaintiffs' evidence addresses what is happening *this* semester, which is
2 significant given the steps that the District has taken in response to the Court's TRO issued in October,
3 2014. For example, in December 2014, the District surveyed all of its high schools and middle schools
4 on the issues at stake here. The principals at both Dorsey and Fremont certified that only students who
5 are on track to graduate, who have met A-G requirements, and who have parental consent are given
6 early release or service periods, otherwise known as Inside Work Experience ("IWE"). They also
7 certified that no student is assigned to such periods because there are no other courses available and no
8 student is assigned to a class that the student has already taken and passed unless the student requested
9 the assignment in order to get a better grade.¹² The Fremont principal also asked students who are
10 taking such periods to complete a survey, and of the 277 students who responded to the question,
11 "Would you like to take an additional class?", 247 said no and 30 said yes. (Ibarra at 211-212.)

12 Fremont's Academic Performance Index ("API") went up 41 points in 2012-13, from 582
13 to 623. (*Id.* at 527, ¶ 3.) The school has counseling and tutorial support available to students, and a
14 Wellness Center that provides health (including mental health) prevention services, and social workers
15 to the students and underserved families in the community. (*Id.* at 528, ¶ 5.) Dorsey has 10 counselors
16 for approximately 1,180 students, including 3 academic counselors, a college counselor, and others who
17 work specifically on attendance, foster youth, delinquent and neglected youth and student discipline.
18 (*Id.* at 553, ¶ 9.) Dorsey's principal says that plaintiffs' statements about problems with Dorsey's master
19 schedule "are exaggerated and untrue" and that students did not spend a week or more in the campus
20 auditorium as a result of the scheduling issues caused by the MiSiS system. (*Id.*, ¶ 4.)

21 The administrative staff declarations also tell a very different story from the student
22 declarations presented by plaintiffs. For example, Fremont's counselor testifies that Jessy Cruz, the lead
23 plaintiff in this lawsuit, was originally enrolled in all academic courses, but he and his parents asked to
24 drop some because he wanted to take his missing courses online, against the advice of his counselor and
25 the county social worker.¹³ (Ibarra at 547, ¶ 39.) Cameron Williams' fall 2014 course schedule
26

27 ¹² Ibarra at 538, ¶ 32; *id.* at 559-560, ¶ 27.

28 ¹³ There is similar evidence regarding Erika Gonzalez, Roxana Mucino, and Precious Willis, all of
whom were offered substantive courses but chose not to take them. (Ibarra at 543, ¶ 15; 548-549, ¶¶ 43-
46; 544, ¶ 22.)

1 contained one scheduling error that was corrected within three days; he is on track to graduate and with
2 parent permission, he requested early release to enroll in a college class. (*Id.* at 545, ¶¶ 26-28.)¹⁴

3 Dorsey’s assistant principal testifies that Valerie Santana was transferred from a library
4 service period to constitutional law, a transfer that took one week.¹⁵ Although Qadir Johnson testified
5 that he had scheduling issues into the second week of school, Dorsey’s records show that he did not
6 enroll until nine days after instruction began, and Christian Moton also was not enrolled at the beginning
7 of the school year. (Ibarra at 578-579, ¶¶ 23, 28.)

8 **2. Evidence regarding Compton High School**

9 There is no early release at Compton High School; the principal abolished that option
10 before the current school year began. (Ibarra at 363-364.) Compton does offer IWEs, but none of the
11 Compton students claims to have multiple IWEs, or “involuntary” assignments to such periods, or to be
12 lacking a course needed to meet graduation or A-G requirements.¹⁶ In fact, students who do not want
13 IWEs do not have them, but instead have full schedules with classes like AP U.S. History and AP
14 Biology.¹⁷ Isaiah Moses suggests that he would have preferred an AP class rather than the IWE he had
15 in fall 2014, but his transcript reveals that he actually took *four* AP classes, Spanish 2, Pre-Calculus, and
16 Honors Biology, not an IWE. (Eidmann, Ex. 59, ¶ 11; Ibarra at 407.)

17 Plaintiffs claim that Compton begins the school year without a Master Schedule in place,
18 but none of the Compton students suggests that they were missing classes after the first day of school.
19 Some complain that other students transfer in and out of their classes for “3-4 weeks” into the semester.
20 (Eidmann, Ex. 53 ¶¶ 6-7.) Although the student’s frustration is understandable, this timeframe is far
21 from unusual because transient student populations can make it impossible to finalize everyone’s
22 schedules earlier in the year. (McCauley, ¶¶ 11-12.)

23
24 ¹⁴ Cameron Williams was given a repeat World History class after the first week of school. (Ibarra
25 at 545, ¶ 26.) Juan Fernando Nunez obtained the Trigonometry/Pre-Calculus class he wanted, and
26 Valerie Santana was able to get the Leadership Class she needed as student body President. (Eidmann
27 Ex. 38, ¶ 4, Ex. 66, ¶ 7.)

28 ¹⁵ Ibarra at 577, ¶ 18. There is similar evidence regarding Monique Malone, Lisset Mancilla, and Juan
Fernando Nunez. (*Id.* at 578-580, ¶¶ 24, 30, 32.)

¹⁶ Plaintiffs claim Lucia Barajas had a “free period” last year instead of Chemistry (Pls. Mem., fn. 27)
when, in fact, Ms. Barajas was simultaneously enrolled in Chemistry “through an after school credit
recovery program.” (Eidmann, Ex. 77, ¶ 5.) Ms. Barajas graduated last fall. (Ibarra at 401.)

¹⁷ *See, e.g.*, Eidmann Exs. 52, ¶ 12; 53, ¶ 10; 63, ¶ 9; Ibarra at 406, 409, 410.

1 Plaintiffs complain that Isaiah Moses was placed in AP Chemistry one month into the
2 school year, but they fail to mention that the class was developed as voluntary enrichment outside of the
3 regular school day after students requested more AP classes, and they fail to mention that Mr. Moses
4 already had three other AP classes. (Pls. Mem. at 11; Eidmann Ex. 59 ¶¶ 8, 9; Ibarra at 407.) Plaintiffs
5 complain that Mr. Moses was placed in an Algebra 2 class he had already passed, but fail to admit that
6 he *wanted* to retake Algebra 2 “in order to better prepare [for] AP Calculus.” (Pls. Mem. at 11; Eidmann
7 Ex. 59 ¶ 13.)

8 **3. Evidence regarding Castlemont and Fremont High Schools in Oakland**

9 OUSD high schools complete their master schedules by the end of May. (Ibarra at 214-
10 215, 219.) They make adjustments in August to accommodate teacher and student changes over the
11 summer, and in September to facilitate course change requests from students. (*Id.* at 245, ¶¶ 16-17.)
12 There is not a shred of evidence that OUSD students sit in the auditorium waiting for schedules, though
13 some individual student schedules change, as occurs in nearly every high school. (*Id.* at 245, ¶ 17;
14 McCauley, ¶¶ 11-12.) Plaintiffs’ own declarant admits that scheduling problems and overcrowding this
15 year at Fremont High largely stemmed from the unexpected arrival at the school of “between 100 and
16 150 students that the District had not projected for in its budget, most of them unaccompanied minors
17 coming from Central America.”¹⁸ (Eidmann Ex. 88, ¶ 3; *see also* Ibarra at 325, ¶ 9.) That is an
18 extraordinary one-time circumstance, particularly at a school with fewer than 800 students. (Ibarra
19 at 223.)

20 Castlemont has a relatively small student enrollment, with just 564 students in 2013-
21 2014.¹⁹ The small enrollment limits the number of course offerings and teachers at the site.²⁰ Plaintiffs
22 grossly exaggerate the impact²¹ and terribly misrepresent Castlemont student Johnae Twinn. Ms. Twinn

23
24 ¹⁸ She also says there were 80 students initially on the AP Spanish roster, but Fremont added a second
section quickly, and both sections have fewer than 40 students. (Ibarra at 239.)

25 ¹⁹ Ibarra at 222.

26 ²⁰ Ibarra Ex. 217, 218. Jayla Davis complains that Castlemont does not have as many course offerings
as Oakland High, a much bigger school, but she voluntarily transferred to Castlemont because it was
closer. (Eidmann Ex. 122, ¶ 11.) Carmen Jimenez also wants more classes – like AP Calculus BC,
27 certainly not a universal offering of all high schools – but she has had a successful experience at
Fremont, completing *eight* AP courses and is on track to graduate this spring with an extremely strong
academic record. (Ibarra at 337; *id.* at 323.)

28 ²¹ Stephanie Gutierrez is a Castlemont student whose individualized education program (“IEP”) dictates
her class schedule. (Eidmann Ex. 120.) Myriam Gonzalez claims she received no credit for Spanish
(continued . . .)

1 declares that she wanted AP courses, and in fact she switched into AP Calculus this fall – not weeks late,
2 as plaintiffs claim, but *four days* after classes began. (Ibarra at 347.) Plaintiffs say overcrowding kept
3 her out of AP English, but in her junior year she enrolled in AP English Language and dropped it three
4 days later only to enroll in AP English Literature, which she dropped within two weeks. (*Id.* at 348.)
5 This fall she also dropped Women’s Studies, the fifth course on her schedule, but not until two months
6 into the school year, which is how she wound up with an IWE class that same period.²² (*Id.* at 347; *id.*
7 at 326.) Admittedly she lost 6th period Debate soon after classes began, but that does not explain why
8 she did not sign up for 6th period AP Biology when her desire is to take more science and go into
9 medicine.²³ She wants her brother to take a drawing class, and he can – Castlemont offers Art 1 and 2.
10 (*Id.* at 225-226.)

11 Although Ms. Twinn does not think highly of her own service class, Daja McCulloch
12 raves about her IWE with her chemistry teacher, who provides science articles so she can practice her
13 journalism skills. (Eidmann Ex. 119, ¶ 5.) Ms. Revoreda, whose declaration reveals past academic
14 struggles, has an IWE at Fremont with “Miss P,” whom she describes as “my angel,” saying “[b]ecause
15 of her, I am going to graduate this year. . . .” (*Id.*, Ex. 82, ¶ 6.) Under plaintiffs’ proposal,
16 Ms. Revoreda would be barred by law from having that IWE with Miss P because she is not “on track to
17 graduate.”²⁴

18 Plaintiffs say Fremont High violated Angelica Rodriguez’s constitutional rights by
19 placing her in an unwanted IWE with her construction teacher, where she assists him with classroom
20 class her junior year, but her transcript shows she received credit for EPH 2, a Spanish class for native
21 speakers that qualifies for A-G, and is currently enrolled in EPH 3. (Ibarra at 336.)

22 ²² Alban Lopez also was placed in a service period after dropping 1st period advanced algebra more than
23 two months into the school year. (Ibarra at 341.) He has not signed up for any of the 6th period
24 electives discussed in fn. 22 below. Warner Rosales has a free period only because he was enrolled in a
25 CAHSEE (exit exam) prep class, and he recently was able to pass CAHSEE. (Eidmann, Ex. 94, ¶ 19.)

26 ²³ Eidmann, Ex. 40, ¶ 7; Ibarra at 225. So too Castlemont students Braziel, Cooper, Simmons, King,
27 Stenson and Davis, all of whom say there are a lack of elective offerings 6th period, could have asked to
28 be placed in AP Biology, Art 2, Band, Ethnic Studies, Green Urban Design, Media Studies, Raza
29 Studies, Small Business Management, Social Skills, Study Tech, or Sustainable Urban Energy, all of
30 which are offered then. (*Id.* at 224-237.) Mr. Simmons took extra courses earlier in his school career
31 and at the end of this semester he will have completed more credits than required, and has a very strong
32 academic record. (*Id.* at 345.) Ms. King has already been admitted to college. (Eidmann, Ex. 72, ¶ 2.)

33 ²⁴ Miss P would also be unable to continue helping Michael Adams, who transferred to Fremont from
34 another school and needed to make up classes from prior years. (Eidmann, Ex. 80, ¶¶ 2, 4-6; *see* Ibarra
35 at 324, ¶ 4 [“IWE classes . . . often create[] unique opportunities to provide students with support and
36 educational opportunities they might not otherwise receive, including for students who may be
37 struggling”].)

1 duties or goes to her English teacher’s classroom to work on her senior project.²⁵ (Eidmann, Ex. 56,
2 ¶¶ 6-7.) Yet Ms. Rodriguez has *seven* other academic classes this semester, and assuming she completes
3 them successfully, she will graduate with more credits than required, and a strong academic record.
4 (Ibarra at 344.)

5 As Oakland’s Chief of Schools testifies, “[t]he delivery of educational services to our
6 students is a complex and multi-faceted endeavor.” (*Id.* at 242.) Thus, to assess and address the issues
7 plaintiffs raise, “[c]ontext is essential and very specific.” (Timar, ¶ 35; *see* Guthrie, ¶ 10; McCauley,
8 ¶¶ 11, 15.) To target “specific facets of the educational endeavor for piecemeal remedies” and make the
9 State the “big administrator for the schools” is “fundamentally misguided.” (Timar, ¶¶ 29, 35-37, 44;
10 McCauley, ¶¶ 5, 15, 22-24; *see also* Guthrie, ¶ 25; Ibarra at 246-247, ¶¶ 20-21.) True reform requires
11 school district capacity building, action and flexibility, not state mandates and interventions. (Guthrie,
12 ¶ 25; McCauley, ¶¶ 9, 19, 24; Timar, ¶ 44; Smith, ¶ 20.)

13 **B. The *Butt* Case Does Not Give Plaintiffs License To Ignore The School Districts**
14 **Before Demanding Intervention From The State**

15 In *Butt*, the plaintiffs had nowhere to go but to the State, because the District was in
16 bankruptcy and could not keep its schools open without outside help. (*Butt*, 4 Cal.4th at 675, 676, fn. 6,
17 687, fn. 15.) These facts were among the “extreme” and “unprecedented” circumstances that led the
18 *Butt* Court to order State intervention, based on the principle that the State bears “the *ultimate*
19 responsibility” to provide basic equality. (*Id.* at 680, 687, 692, emphasis added.)

20 The *Butt* Court did not hold that the State bears *initial* responsibility. Yet rather than
21 taking their clients’ individual scheduling issues to school or district administrators, plaintiffs’ counsel
22 filed their lawsuit against the State, a strategy that has delayed any relief to which they may be entitled.
23 For example, just eight days after LAUSD sent a letter to plaintiffs’ counsel asking them to bring such
24 issues directly to the District’s attention (Ibarra at 220), counsel had Fremont senior Cameron Williams
25 sign a declaration in which he expressed concerns about whether he had the courses he needs to
26 graduate. (Eidmann, Ex. 36, ¶ 7.) Rather than ask LAUSD to address those concerns, plaintiffs’

27 ²⁵ Castlemont student Breanna Gonzalez has a service period in which she “help[s] the teacher prepare
28 before class, grade papers, staple papers, and get computers ready for students.” (Eidmann Ex. 118, ¶ 6.)
Ms. Chavez says her service period at Fremont is a chance to do extra work for her newspaper teacher.
(Eidmann Ex. 42, ¶8)

1 counsel withheld his declaration until they filed this motion on February 5, 2015. This secrecy and
2 delay might have served plaintiffs’ litigation tactics, but it did not serve Mr. Williams’ interests.²⁶

3 Although plaintiffs argue that the State has an affirmative duty to monitor individual
4 student course assignments in a way that would have put it on notice of their issues, nothing in *Butt*
5 supports that assumption, nor does the assumption make any practical sense.²⁷ The California
6 Department of Education has approximately 1,500 employees, while California has 6.24 million
7 students in 1,028 districts. (Ed. Defs. RJN at 202; Burr, ¶ 6.) The State cannot possibly monitor the
8 course offerings and scheduling of all of those students. (Whitmore, ¶ 8; Timar, ¶ 45; Campbell, ¶ 19.)

9 Fortunately, there is a process in place that works: filing local complaints. As explained
10 by Richard Whitmore, a former Chief Deputy Superintendent of Schools as well as a former district
11 superintendent and current school board member, “the quickest and most effective way” to address the
12 concerns of these students would have been to raise them with school officials, and if that did not work,
13 go to the district, school board, or county office of education. (Whitmore, ¶¶ 6,7.) There is broad expert
14 consensus around this approach. (Campbell, ¶ 18; McCauley, ¶¶ 28-31; Timar, ¶ 45.) The
15 administrators of all 10 of plaintiffs’ comparison districts agree.²⁸ Plaintiffs’ own experts do not say
16 otherwise. As Carlas McCauley, an expert in school turnaround, points out, Professor Oakes “does not
17 call for State intervention” at all, and Professor Price remains vague on this point. (McCauley, ¶ 19.)

18 Plaintiffs’ own evidence demonstrates that this approach can work and that *it can work in*
19 *the districts at issue here*. For example, when Compton student Isaiah Moses saw two “free periods” on
20 his schedule on the first day of school, he “immediately” asked the principal to give him classes, and the
21 problem “was resolved that same day” when his counselor added Pre-Calculus and Physics to his
22 schedule. (Eidmann Ex. 59, ¶¶ 5-6.)²⁹ The fact that some students did not get their preferred results

23 ²⁶ Fortunately, Mr. Williams is not actually missing the classes that worried him. (Ibarra at 545, ¶¶ 25-
24 29.)

25 ²⁷ Defendants strongly object to plaintiffs’ claims that they are deliberately indifferent to students’ needs
or that they failed to investigate the issues raised by plaintiffs’ complaint. As the declaration of Richard
26 Zeiger makes clear, because plaintiffs raised their claims in litigation, the State Education Defendants
had no choice but to conduct their investigation through their lawyers. (Zeiger, ¶¶ 4-6.)

27 ²⁸ Ibarra at 004-005, ¶ 18 [Anaheim]; *id.* at 158, ¶ 14 [Antelope Valley]; *id.* at 041, ¶ 10 [Covina-
Valley]; *id.* at 057, ¶ 12 [Delano]; *id.* at 048, ¶ 16 [El Monte]; *id.* at 109, ¶ 10 [El Rancho]; *id.* at 150, ¶ 8
28 [Fremont]; *id.* at 090, ¶ 15 [Modesto]; *id.* at 199, ¶ 10 [San Francisco]; *id.* at 024-025, ¶ 17 [Santa
Maria].

²⁹ Similarly, Fremont OUSD student Nohemi Lucas requested a number of schedule changes, all of
which were made within three days. (Ibarra at 343.)

1 from their counselors does not mean the process failed; the appropriate remedy depends on the facts
2 regarding the particular student. (McCauley, ¶ 15; *see also Butt*, 4 Cal.4th at 686 [“A finding of
3 constitutional disparity depends on the individual facts.”].) Because local officials are infinitely better
4 equipped to know those facts and make a decision about what is best for each individual student, it is in
5 the students’ best interest to exhaust their local remedies before suing the State. (Whitmore, ¶ 8; *see*
6 *also* Campbell, ¶ 27; Guthrie, ¶ 25; Ibarra at 244, ¶ 14 [plaintiffs’ requested relief “ignores the
7 individualized focus that is necessary to best meet the needs of our students”]; *Butt*, 4 Cal.4th at 686
8 [local districts’ solutions are “entitled to considerable deference”].)

9 **C. Plaintiffs Have Not And Cannot Establish A Prevailing Statewide Standard**
10 **For Use Of Home And IWE Periods Or Finalization Of Master Schedules**

11 In *Butt*, the California Supreme Court made it clear that statutory provisions, standing
12 alone, could not establish the “prevailing statewide standard.” (*Butt, supra*, 4 Cal.4th at 686-687.)
13 Thus, although California statutes effectively required a 175-day term, the Court looked at certifications
14 from districts all across the state to determine “that virtually every established school district in
15 California operated for at least 175 days during the [school] year.” (*Id.* at 685-687 & fn. 14.) Insistence
16 on a showing of both state policy and local practice makes sense. If the State has ultimate responsibility
17 for equal education, then courts must ask how the State has defined the standards. But unless the State’s
18 policies are expressed in widespread practice, they are neither prevailing nor statewide.

19 **1. There is no state law or policy on the matters at issue here**

20 Plaintiffs cannot point to any state law or policy that supports the standards they assert as
21 “prevailing state standards.” This alone is fatal to their claim under *Butt*. In *Butt*, California statutes
22 required a minimum number of school days, and by closing its schools for six weeks, the Richmond
23 school district dramatically and comprehensively failed to meet that standard. There is no comparable
24 statute or policy and no similar district failure here.

25 **2. Factually, there is no prevailing statewide practice regarding these issues**

26 Plaintiffs rely on testimony from Professors Oakes and Price that there are “accepted”
27 and “prevailing” professional standards. But these standards are far from “accepted” by other
28 professionals. Professor Guthrie has “never heard of a professional standard” around these issues.
(Guthrie, ¶¶ 8-10.) Neither has Professor Timar or San Mateo County Superintendent Campbell.

1 (Timar, ¶ 9; Campbell, ¶ 23.) Indeed, the very notion of a “standard” is anathema for curricular issues,
2 which must be determined on the local level based on the particular situation. (McCauley, ¶ 5; Smith,
3 ¶¶ 14, 17.)

4 Nor do these standards “prevail” in California. Professor Oakes relies on a survey of
5 10 comparison school districts, but, as Professor Haertel explains, that survey “is of little or no value
6 statistically.” (Haertel, ¶¶ 9, 10, 17.) For example, the survey sample excludes schools with enrollment
7 under 700 because scheduling issues are “quite different in smaller schools,” even though the samples
8 are being compared to Castlemont, which has far fewer than 700 students, and Fremont (Oakland),
9 which has fewer than 800. (Ibarra at 222, 223; Oakes, ¶ 6; Timar, ¶ 11; *see also* Haertel, ¶¶ 11-14.)
10 Moreover, the sample size – less than 1% of districts in California – is “far too small.” (*Id.*, ¶¶ 9, 15-
11 16.) Trying to draw conclusions about prevailing practices from such a small sample is sheer
12 “nonsense.” (Guthrie, ¶ 11; Timar, ¶ 11.) Compounding the problem is the fact that only some of the
13 10 districts report policies that conform with the supposed standards. (Timar, ¶ 15 & Exs. 2 & 3.)
14 Finally, plaintiffs asked CUSD, OUSD, and LAUSD students and staff about their experiences in their
15 schools, but they only asked the declarants from the 10 comparison districts what the *districts* expect or
16 direct.³⁰ Without any comparable information about what is actually happening in the 10 comparison
17 districts, the study cannot be validly compared to the target districts and schools. (Guthrie, ¶ 15; Timar,
18 ¶ 14.) When coupled with supplemental declarations from each of the 10 comparison districts,³¹
19 plaintiffs’ sample shows practices across the state are in fact “quite varied.” (Timar, ¶ 10; Guthrie,
20 ¶¶ 13-14.)

21 ***Early Release Periods.*** Four districts allow early release, but none indicates that they
22 restrict eligibility to students who have passed the high school exit exam, perform at grade level in
23 English or math, or have enrolled in community college or work experience, as plaintiffs’ experts claim
24 professional standards require.³² The only prerequisites all four districts describe is that (1) the student

25
26 ³⁰ Plaintiffs asked the comparison districts to provide information about their policies, and never asked
27 how those policies are actually being implemented in those districts. (Ibarra at 003, ¶ 8 [Anaheim]; *id.*
at 156, ¶ 6 [Antelope Valley]; *id.* at 056, ¶ 8 [Delano]; *id.* at 150, ¶ 9 [Fremont]; *id.* at 088-089, ¶ 6
[Modesto]; *id.* at 022, ¶ 6 [Santa Maria].)

28 ³¹ Ibarra Exs. 1-10.

³² Eidmann, Ex. 101, ¶ 6 [Antelope Valley]; *id.*, Ex. 107, ¶ 6 [Modesto]; *id.*, Ex. 108, ¶ 6
[San Francisco]; *id.*, Ex. 110, ¶¶ 6, 7 [Santa Maria]. Two other districts allow “away periods,” where

(continued . . .)

1 “usually” be a senior in “good academic standing” with “sufficient credits to graduate,” (2) with either
2 parental consent or knowledge. (Timar, Ex. 3.) But “good academic standing” means different things in
3 different districts (Guthrie, ¶ 21), and having “sufficient credits to graduate” does not necessarily mean
4 the student has the particular credits needed to be on track to graduate.

5 Professor Oakes also claims that the comparison districts do not release students early
6 “because there are no other courses available.” (Oakes, ¶ 20 & fn. 27; *see also* Price, ¶ 9.) Yet, as
7 Professor Guthrie explains, this phrase has “so little meaning as to be useless and uninformative.”
8 (Guthrie, ¶ 16.) All it “means is that something is happening at the school in which the student could be
9 placed.” It does not tell us “whether the available class would be good for the student or facilitate his or
10 her next educational step.” (Guthrie, ¶ 16.)³³

11 ***IWE Periods.*** Professor Oakes claims that “[a]ll ten” comparison districts require
12 students enrolled in such periods to be “on track to graduate and to satisfy college admission (A-G)
13 requirements.” (Oakes, ¶ 34.) But this is not true for nearly half of the districts. At least one allows
14 some students to enroll in IWEs if they are not on track to graduate (Eidmann, Ex. 102, ¶ 7 [Covina-
15 Valley]), and four allow some students to enroll in an IWE if they are not on track to satisfy “A-G
16 requirements.”³⁴

17 It is also not true, as Professor Oakes asserts, that these districts require ““specific,
18 written education objectives”” for IWE periods.³⁵ (Oakes, ¶ 34.) Only half of the districts refer to
19 “educational objectives,”³⁶ but, as Professor Guthrie explains, that phrase “operates at so many levels
20 that it cannot serve as a standard.” (Guthrie, ¶ 19.) Learning long division is an educational objective,

21 _____
22 students may leave campus for a prescribed activity, such as off-campus work experiences or
community college classes. (*Id.*, Ex. 100, ¶ 6 [Anaheim]; *id.*, Ex. 103, ¶ 7 [Delano].)

23 ³³ Although Professor Oakes states that none of the comparison districts uses early release because there
24 are “no other courses in which to place the students” (Oakes, ¶ 20), she concedes (*id.*, fn. 27) that only
seven of the districts actually say such a thing. It is unclear what these districts mean by the phrase
25 given that two of them admit that students who drop a course mid-semester can be “assigned” to a so-
called “instruction-free period,” presumably because there are no other appropriate courses in which to
place the student. (Eidmann, Ex. 100, ¶ 8 [Anaheim]; Ibarra at 109, ¶ 9 [El Rancho].)

26 ³⁴ Eidmann, Ex. 100, ¶ 8 [Anaheim]; *id.*, Ex. 102, ¶ 11 [Covina-Valley]; *id.*, Ex. 103, ¶ 13 [Delano]; *id.*,
Ex. 106, ¶ 6 [Fremont].

27 ³⁵ Four state only that staff “are expected” – not required – to create a plan and description of duties.
(Eidmann, Ex. 101, ¶ 10 [Antelope Valley]; *id.*, Ex. 107, ¶ 10 [Modesto]; *id.*, Ex. 108, ¶ 10
[San Francisco]; *id.*, Ex. 110, ¶ 11 [Santa Maria].)

28 ³⁶ Eidmann, Ex. 100, ¶ 6 [Anaheim]; *id.*, Ex. 102, ¶ 7 [Covina-Valley]; *id.*, Ex. 103, ¶ 8 [Delano]; *id.*,
Ex. 105, ¶ 7 [El Rancho]; *id.*, Ex. 106, ¶ 4 [Fremont].

1 but so is staying out of trouble, coming to school, and doing homework under the watchful eye of a
2 trusted teacher. (*Id.*; Timar, ¶ 35.)

3 The comparison districts that claim to have “educational objectives” for IWE periods
4 appear to adopt the non-academic meaning of the term because all 10 assign students to the very tasks
5 plaintiffs criticize, such as delivering notices,³⁷ performing clerical work,³⁸ organizing the office,³⁹
6 giving campus tours or otherwise interacting with the public.⁴⁰ These districts describe these
7 experiences as valuable because students can gain work experience, learn communication skills,
8 cultivate a work ethic, gain a mentor, and have time to study for other classes when there is no work to
9 do.⁴¹ Experts and practitioners agree that such objectives are both important and “educational,”
10 regardless of plaintiffs’ definition of the term. (Guthrie, ¶ 19; Timar, ¶ 35; Campbell, ¶¶ 22, 24; Ibarra
11 at 324, ¶ 4; *id.* at 328, ¶¶ 5-6.)

12 Professor Price also wants to limit IWE periods to one per semester and two total. (Price,
13 ¶ 10.) (Plaintiffs’ proposed order would only permit one such period in a student’s high school career.)
14 However, more than half of the districts allow students to take early release or away periods during the
15 same semester as an IWE;⁴² and all allow students to take at least two and as many as four semesters of
16 IWE during high school.⁴³

17 ***Master Schedules.*** Professor Oakes asserts that in the 10 comparison districts, “a master
18 schedule and a student’s individual course assignments are in place before the student arrives on
19

20 ³⁷ Ibarra at 003-004, ¶ 15 [Anaheim]; *id.* at 157, ¶ 12 [Antelope Valley]; Eidmann, Ex. 103, ¶ 8
[Delano]; Ibarra at 047, ¶ 10 [El Monte]; *id.* at 024, ¶ 13 [Santa Maria].

21 ³⁸ Ibarra at 003-004, ¶ 15 [Anaheim]; *id.* at 157, ¶ 12 [Antelope Valley]; *id.* at 041, ¶ 8 [Covina-Valley];
Eidmann, Ex. 103, ¶ 8 [Delano]; Ibarra at 047, ¶ 10 [El Monte]; *id.* at 133 [El Rancho]; *id.* at 154
22 [Fremont]; *id.* at 106 [Modesto]; *id.* at 198, ¶ 8 [San Francisco]; *id.* at 024, ¶ 13 [Santa Maria]; *id.* at 133
[El Rancho].

23 ³⁹ Ibarra at 047, ¶ 10 [El Monte].

24 ⁴⁰ Ibarra at 003-004, ¶ 15 [Anaheim]; Eidmann, Ex. 103, ¶ 8 [Delano]; Ibarra at 047, ¶ 10 [El Monte]; *id.*
at 133 [El Rancho]; *id.* at 154 [Fremont]; *id.* at 106 [Modesto]; *id.* at 198, ¶ 8 [San Francisco].

25 ⁴¹ *See, e.g.*, Ibarra at 003-004, ¶ 15 [Anaheim]; *id.* at 157, ¶ 12 [Antelope Valley]; Eidmann, Ex. 103, ¶ 8
[Delano]; Ibarra at 047, ¶¶ 11-12 [El Monte]; *id.* at 024, ¶ 13 [Santa Maria].

26 ⁴² Ibarra at 003, ¶ 12 [Anaheim]; *id.* at 156-157, ¶ 7 [Antelope Valley]; *id.* at 041, ¶ 7 [Covina-Valley];
id. at 089, ¶ 12 [Modesto]; *id.* at 198, ¶ 7 [San Francisco]; *id.* at 023, ¶ 11 [Santa Maria].

27 ⁴³ Ibarra at 003, ¶ 11 [two] [Anaheim]; *id.* at 156-157, ¶ 7 [four] [Antelope Valley]; Eidmann, Ex. 102,
¶ 12 [two or more] [Covina-Valley]; Ibarra at 056, ¶ 10 [at least two] [Delano]; *id.* at 047, ¶ 9 [more
28 than one] [El Monte]; *id.* at 109, ¶ 8 [more than one] [El Rancho]; *id.* at 089, ¶ 11 [four] [Modesto]; *id.*
at 154 [two per year] [Fremont]; Eidmann, Ex. 108, ¶ 10 [no limit mentioned] [San Francisco]; Ibarra
at 023, ¶ 10 [two total] [Santa Maria].

1 campus,” but that is not true either.⁴⁴ (Oakes, ¶ 36.) Six of the districts she relies upon state that they do
2 not finalize their master schedules until one to three weeks into the academic year.⁴⁵

3 It is also not true, as Professor Oakes asserts, that in these 10 districts, scheduling
4 “adjustments are finalized in the first week or two of instruction.” (Oakes, ¶ 36.) Half explain that
5 schools must respond to actual enrollment figures by adding or eliminating sections of classes during the
6 first *three or four weeks* of the school year.⁴⁶ Furthermore, changes to individual student schedules can
7 take place *four to six weeks* into the school year,⁴⁷ or even later.⁴⁸

8 Plaintiffs’ “standards” lack evidentiary support because they fail to consider context.
9 (Timar, ¶ 15.) One comparison district with a very stable student population still requires up to
10 20 school days to balance class sizes. (Ibarra at 048, ¶¶ 14-15 [El Monte].) For many schools high
11 transiency rates prevent them from knowing actual enrollment until weeks into the school year,
12 something that is, as Mr. McCauley points out, “beyond the school’s reach.” (McCauley, ¶ 12; Guthrie,
13 ¶ 10.)

14 **III. THE BALANCE OF HARMS FAVORS DEFENDANTS**

15 In determining whether to issue a preliminary injunction, the Court must weigh the harm
16 that granting the relief would cause to others not before the Court “and – more significantly – to the
17 public interest” (*O’Connell v. Superior Ct.* (2006) 141 Cal.App.4th 1452, 1469-1470, & fn. 11
18 [hereafter “O’Connell”].) The Court must also consider not only plaintiffs’ evidence regarding harm to
19 individual students, but also defendants’ evidence showing lack of harm or that the harm has lessened or
20 dissipated for some students since suit was filed. (*Id.* at 1469-1470 & fn. 11.)

21
22
23 ⁴⁴ Although Professor Price believes that “a well-functioning high school” should complete a
24 “preliminary master schedule . . . before the end of the prior school year,” (Price, ¶ 11), only three
25 districts claim to meet this standard. (Eidmann, Ex. 107, ¶ 11 [Modesto]; *id.*, Ex. 108, ¶ 11
26 [San Francisco]; *id.*, Ex. 110, ¶ 12 [Santa Maria].) OUSD meets that standard. (Ibarra at 214-215.)

25 ⁴⁵ Ibarra at 158, ¶ 14 [Antelope Valley]; Eidmann, Ex. 102, ¶ 15 [Covina-Valley]; *id.*, Ex. 103, ¶ 18
26 [Delano]; *id.*, Ex. 104, ¶ 12 [El Monte]; *id.*, Ex. 105, ¶ 14 [El Rancho]; *id.*, Ex. 106, ¶ 11 [Fremont].

26 ⁴⁶ Eidmann, Ex. 101, ¶ 13 [Antelope Valley]; Ibarra at 048, ¶ 14 [El Monte]; Eidmann, Ex. 107, ¶ 12
27 [Modesto]; *id.*, Ex. 108, ¶ 12 [San Francisco]; *id.*, Ex. 110, ¶ 13 [Santa Maria]; *see also* Ibarra at 150,
28 ¶ 7 [Fremont].

27 ⁴⁷ Ibarra at 004, ¶ 16 [Anaheim]; *id.* at 056-057, ¶ 11 [Delano]; *id.* at 150, ¶ 7 [Fremont]; *id.* at 090, ¶ 14
28 [Modesto]; *id.* at 024, ¶ 14 [Santa Maria].

28 ⁴⁸ Ibarra at 157-158, ¶ 13 [Antelope Valley].

1 Other students and the public interest, specifically the LCFF/LCAP process, face
2 significant harm if plaintiffs’ injunction is granted. As Mr. McCauley, who has spent his career working
3 with schools like these, explains, these kinds of interventions “frequently backfire and create new
4 problems.” (McCauley, ¶ 9.) Schools may have fewer of the courses that plaintiffs condemn, but as a
5 result they are likely to see increased absenteeism and low grades as students resist classes they do not
6 want; and “for a student who has to hold a job to help support his or her family, restricting flexible
7 schedules may be the difference between staying in school and dropping out.” (*Id.*, ¶ 10.)

8 Students who *want* an IWE for whatever reason will not be able to have one unless they
9 meet all of plaintiffs’ conditions, even if they currently meet the districts’ conditions. (*Id.*, ¶¶ 22, 24;
10 Guthrie, ¶¶ 19-20; Timar, ¶ 35.) The principals of Castlemont and Fremont High in Oakland describe
11 the importance of the opportunities that would be lost: students can learn about teaching, including the
12 “menial or trivial” as well as the “complicated” and “exciting” aspects; they gain “real life work
13 experiences”; they can also “obtain additional support and tutoring” and make “positive one-on-one”
14 connections. (Ibarra at 327-328, ¶¶ 4-6; *id.* at 324-325, ¶¶ 4-6.) Students who *want* early release
15 because they have a job, are taking classes elsewhere, have other responsibilities, or simply do not want
16 to attend any more classes than they have to (and might not attend at all if they are forced into a full day)
17 will be denied that opportunity even if they have parental permission. (McCauley, ¶ 10; Timar, ¶ 35.)
18 The Chief Academic Officer at LAUSD puts it bluntly: “Depriving a student who is on track to
19 graduate and meet the A-G requirements the ability to be dismissed early from school after completing
20 the minimum instructional minutes in order to care for an ailing relative, younger siblings or their own
21 children or work to support the family would be inhumane and unconscionable.” (Ibarra at 422, ¶ 30.)
22 In addition, students who *want* to make schedule changes two weeks into the school year will be unable
23 to do so, a result OUSD’s Chief of Schools says “would actually harm students.” (Ibarra at 245, ¶ 16;
24 *see* Eidmann, Ex. 103, ¶ 18; *id.*, Ex. 101, ¶ 13; Ibarra at 157-158, ¶ 13; *id.* at 004, ¶ 16; *id.* at 056-057,
25 ¶ 11].)

26 As the experts make clear, the state intervention that plaintiffs demand is a throwback to
27 a discredited model that “shifts attention and resources from education to regulatory compliance” and
28 “would divert resources at every level – State, district and school.” (Timar, ¶¶ 44, 48; *see also*
McCauley, ¶¶ 21-23.) Professor Timar describes plaintiffs’ demands as inconsistent with the “critical

1 dimension” of localism that is “the key to effective improvement.” (Timar, ¶ 27; *see also* McCauley,
2 ¶¶ 5, 9, 14, 18.) There is little question that the result will be to undermine the LCFF and LCAP efforts
3 “that are positioned to bear considerable fruit” and are “consistent with what research shows are best
4 practices.” (Timar, ¶ 48; McCauley, ¶ 29; *see also* Guthrie, ¶¶ 24-25; Campbell, ¶ 25.) This new model
5 for school governance and local planning “is considered a promising new system from which other
6 States may learn precisely because of its concentrated focus on local capacity, its re-positioning of the
7 State and local authority, and its dramatic divergence from the compliance model which has been
8 demonstrably unsuccessful.” (McCauley, ¶ 26; *see also* Timar, ¶¶ 28-32.)

9 This new system is not the generalized, abstract notion of local control rejected in *Butt*
10 but rather a concrete, full-bodied and legislatively crafted system of capacity building at the level most
11 directly able to provide the services students need. (Burr, Ex. 1; McCauley, ¶¶ 9, 25, 29-31; Timar,
12 ¶¶ 27-32, 39-42.) The State is sending the districts at issue here more financial resources each year
13 (Schweizer, ¶¶ 4-5, 9-12); building a structure and process for the local stakeholders to decide what their
14 students need and how to provide it; ensuring that targeted resources are used to increase and improve
15 services for needier students; building ever stronger relationships between districts and county
16 superintendents; and providing expertise and assistance, rather than punishment, in response to
17 problems. (Burr, ¶¶ 7, 22-23, 25-27.) These are the types of structural remedies that prevent
18 educational deprivations and ensure that districts are able to respond rapidly and well when individual
19 student problems of the type detailed by plaintiffs occur. This is an extraordinarily important public
20 policy codified in statute, and it should be allowed to continue to take effect. (Burr, ¶¶ 28-31; Campbell,
21 ¶ 25; Guthrie, ¶¶ 24-25; McCauley, ¶¶ 25-26, 30-31; Timar, ¶¶ 43-44, 50-51.)

22 Plaintiffs cannot credibly argue that their approach does no harm because the
23 LCFF/LCAP process can still continue forward. The interventions that plaintiffs demand “emasculate
24 local decision making, planning, organization and effectiveness. They impose priorities rather than
25 having schools and districts who know the situation identify priorities.” (McCauley, ¶ 9; *see also*
26 Campbell, ¶ 25; Ibarra at 246-247, ¶ 21 [OUSD would allocate extra resources “based on priorities in
27 our LCAP plan . . . that reflect the priorities of this community – and not through superimposed
28 priorities established by the State or anyone else. . . .”].)

1 In weighing these considerations against the harm to the plaintiff students, the *O'Connell*
2 case is particularly instructive. The Court of Appeal affirmed that plaintiffs were likely to succeed on
3 their claim that requiring students in the graduating class of 2006 to pass the new high school exit exam
4 in order to receive a diploma violated the Equal Protection Clause because not all students had an equal
5 opportunity to prepare for the exam. (141 Cal.App.4th at 1465.) Despite this finding, the Court
6 reversed the trial court's preliminary injunction order restraining state education officials from denying
7 diplomas to any students in the 2006 graduating class who otherwise were eligible to graduate but had
8 not yet passed the exam. The appellate court found that the trial court failed to adequately weigh
9 evidence regarding lack of harm to the students, including evidence regarding other options available to
10 them and evidence that the named plaintiff was accepted to a state university despite having failed to
11 pass the exam. (*Id.* at 1468-1470 & fn. 11.) Here, too, evidence of harm to the students presented in
12 this motion is far from universal. Of the 47 high school student plaintiffs and declarants, nine *graduated*
13 *last year* and dozens more are on track to graduate this spring; an order will have no effect on them.
14 Although named plaintiff Jessy Cruz failed to graduate, the district's evidence is that he took early
15 release and online courses against the advice of his guidance counselor and social worker. (Ibarra
16 at 547, ¶ 39.) That leaves just six students⁴⁹ who will still be in high school this fall, none of whom is
17 enrolled at a high school in OUSD or at Fremont High in LAUSD. Of those six, as described above, the
18 districts and the students paint very different pictures of their individual circumstances. (*Contra Butt,*
19 *supra*, 4 Cal.4th at 693 [injunction based on "uncontradicted declarations"].)

20 This Court must also consider the possibility that plaintiffs may not prevail at trial, and
21 "that its initial assessment of the merits . . . may turn out to be in error." (*White v. Davis* (2003)
22 30 Cal.4th 528, 554, 561.) Courts are particularly ill-suited to second-guess decisions to allocate scarce
23 public resources, as has been done by these districts through their LCAPs. Once again, *O'Connell* is
24 instructive. There, the Legislature had provided additional funding for remedial education relevant to
25 the exit exam but not enough to cover all state-wide needs, so it allocated funds first to districts with the
26 greatest needs. The appellate court upheld the Legislature's approach, saying: "[F]ar from being
27

28 ⁴⁹ The students are Alejandro Torres, Angel Preciado and Isaiah Moses of Compton High; and Lisset Mancilla, Monique Malone and Qadir Johnson of Dorsey High.

1 'arbitrary,' the pedagogical triage performed by defendants, so as to ensure that the available funds were
2 allocated to those districts most in need, was to be commended." (*O'Connell, supra*, 141 Cal.App.4th
3 at 1466-1467.)

4 There are other problems. Plaintiffs' proposed injunction would operate district-wide,
5 across all these districts' high schools, even though there is absolutely no evidence regarding those other
6 schools and no way of knowing what impact the injunction would have on them. (*Cf. id.* at 1477-1479
7 [injunction that granted relief affecting every high school in the state regardless of circumstances was
8 overly broad].) In addition, plaintiffs' proposed injunction is so broad that it would prohibit early
9 release even for college courses and internships, not to mention work experience.

10 Thus, if plaintiffs get their way, the statutory authority committed to local school districts
11 and the important LCAP process just now underway will be hijacked by an injunction imposing
12 different priorities determined in piecemeal fashion by litigation. (Timar, ¶¶ 42-43.) Such a result
13 would be far more disruptive than the disregard of legislative priorities that would have resulted from
14 the injunction in *O'Connell*. (141 Cal.App.4th at 1476; *Butt, supra*, 4 Cal.4th at 696 ["A court should
15 always strive for the least disruptive remedy adequate to its legitimate task."].)

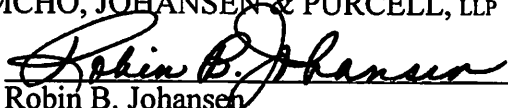
16 CONCLUSION

17 Dealing with students' needs and activities on this kind of day-to-day level is exactly why
18 we have school districts and county offices of education as separate, autonomous, constitutionally
19 recognized political entities. Dealing with the needs more effectively is why we have LCFF/LCAP.
20 Plaintiffs have not shown a constitutional violation, but even if they have, the Court should defer to
21 those processes in addressing remedy.

22 Dated: March 19, 2014

Respectfully submitted,

23 REMCHO, JOHANSEN & PURCELL, LLP

24 By: 
25 Robin B. Johansen

26 Attorneys for Defendants State Board of Education,
27 California Department of Education, and State
28 Superintendent of Public Instruction Tom Torlakson

Appendix A

**Summary of Testimony of State Education Defendants' Expert &
Percipient Witnesses**

APPENDIX A

| SUMMARY OF TESTIMONY OF STATE EDUCATION DEFENDANTS' EXPERT AND PERCIPIENT WITNESSES | | |
|--|------------------|---|
| Issue Addressed | Witness* | Summary of Testimony |
| The State Education Defendants' role is limited because of the size and diversity of the public school system. | Sue Burr | <ul style="list-style-type: none"> • Explanation of the diversity and role of school districts and COEs. (¶¶ 6-7, 30.) • Explanation of the limited role of CDE, SBE, and Superintendent of Public Instruction under California law. (¶¶ 8-10.) |
| | Anne Campbell | <ul style="list-style-type: none"> • COEs and the County Superintendents support and oversee districts in areas including curriculum and instruction. (¶¶ 3-8, 10.) |
| | Carlas McCauley | <ul style="list-style-type: none"> • California faces unique challenges due to its size and diversity. (¶¶ 27-28.) • CDE does not have the staff, expertise, or funding to supervise details of local operations, but districts do. (¶¶ 28, 30, 31.) |
| | Thomas Timar | <ul style="list-style-type: none"> • Explanation of the size and diversity of California's public school system. (¶ 18.) • The law limits the State's authority over school districts and COEs. (¶ 25.) |
| Students would be better served by seeking remedies for their individual concerns from local officials. | Anne Campbell | <ul style="list-style-type: none"> • Complaint procedures exist to address the issues raised here with districts and COEs, where they can be best addressed, and, if necessary, the State. (¶¶ 16-20.) |
| | Carlas McCauley | <ul style="list-style-type: none"> • State has neither the capacity nor expertise to supervise or intervene in the details of district or school operations. (¶ 28.) |
| | Thomas Timar | <ul style="list-style-type: none"> • Effective organization requires distribution of responsibilities and the State cannot effectively review content of all courses and master schedules. (¶ 45.) |
| | Richard Whitmore | <ul style="list-style-type: none"> • Students could have achieved quicker and more effective relief by first seeking relief from local officials. (¶¶ 6-8.) • State does not have the capacity to monitor, or information to make determinations about, individual student schedules and master schedule process. (¶¶ 8-9.) |
| There are no "Prevailing Statewide Standards" on the issues plaintiffs raise. | Anne Campbell | <ul style="list-style-type: none"> • Not aware of any professional standards in this area. (¶ 23.) |
| | James Guthrie | <ul style="list-style-type: none"> • Never heard of a professional standard around these matters. (¶¶ 7-10.) |
| | Carlas McCauley | <ul style="list-style-type: none"> • There is no single "correct" approach on these issues; there is the approach that makes sense in the particular situation. (¶ 5.) |
| | Thomas Timar | <ul style="list-style-type: none"> • Prevailing statewide standards do not exist because there is considerable variability across the state. (¶ 9.) |
| Plaintiffs have not shown that their standard is prevailing because their sample of 10 comparison districts is deeply flawed. | James Guthrie | <ul style="list-style-type: none"> • "Nonsense" to draw generalizations from unreasonably small sample. (¶ 11.) • Sample selection process flawed because it is neither random nor intentional. (¶ 12.) • Cannot validly compare data from 10 districts with data from target schools. (¶ 15.) • Oakes' standards are based on vague and meaningless terms. (¶¶ 16-22.) • Oakes overstates or misrepresents the "It's About Time" article she cites. (¶ 23.) |
| | Edward Haertel | <ul style="list-style-type: none"> • The 10-district sample "is of little or no value statistically." (¶¶ 9, 17-18.) • Oakes "muddles" the description of the represented population. (¶ 10.) • Oakes' flawed procedures result in an unscientific sample. (¶¶ 11-14.) • The sample size is too small to support Oakes' inferences. (¶¶ 15, 16.) |
| | Thomas Timar | <ul style="list-style-type: none"> • The methodology for 10-district sample "is terribly flawed." (¶¶ 10-12.) • The type of data from the 10-district sample cannot be validly compared to the type of data gathered from target schools. (¶ 14.) • The 10 district declarations are vague and contradictory. (¶¶ 16, 17.) |
| Plaintiffs' standards do not match what the 10 comparison districts report. | James Guthrie | <ul style="list-style-type: none"> • Oakes reports the 10-district sample results inaccurately and relies on as few as one or two districts to support some of her statements. (¶¶ 13-14.) |
| | Thomas Timar | <ul style="list-style-type: none"> • Oakes inaccurately reports the 10-district sample results. (¶¶ 13, 15-17.) • Plaintiffs' standards do not match what the 10-districts report, which actually reveals the lack of any common standard. (¶¶ 13, 15, 17.) • Both purported standards and actual results are summarized. (Exs. 2 & 3.) |
| The Master Schedule ("MS") timeline varies among schools by necessity. | Pedro Avalos | <ul style="list-style-type: none"> • 2012-13 scheduling issues arose when Fremont (LAUSD) transitioned from a year-round to 9-month calendar and began participating in school choice program. (¶ 3.) • Individual student schedule changes are sometimes necessary in first 5 weeks to meet student needs, such as leveling down if a course is too difficult. (¶ 16.) |
| | Manuel Colon | <ul style="list-style-type: none"> • Anaheim finalizes its MSs 2 weeks before school; "seeks to" balance class sizes in first 2 weeks; and changes student schedules in first 6 weeks. (¶ 12, Supp., ¶ 16.) • It took longer to finalize schedules at a school where some students were recent immigrants who had to be assessed before receiving schedules. (Supp., ¶ 17.) |

**SUMMARY OF TESTIMONY OF STATE EDUCATION DEFENDANTS'
EXPERT AND PERCIPIENT WITNESSES**

| Issue Addressed | Witness* | Summary of Testimony |
|---|---------------------|---|
| | John Davis | <ul style="list-style-type: none"> • Santa Maria finalizes MSs in spring; balances class sizes in first 2-3 weeks; and changes individual schedules in first 4 weeks. (§§ 12-13; Supp., ¶ 14.) • “A large number of late enrollees can prolong the [MS] process because it is necessary to add classes and sections to accommodate the new students, and then it is necessary to balance class sizes in response to the newly added classes and sections.” (Supp., ¶ 15.) |
| | Elizabeth Eminhizer | <ul style="list-style-type: none"> • Covina-Valley finalizes MSs in first 1-2 weeks; balances class sizes afterwards; and changes individual schedules for next “several weeks.” (§ 15; Supp., §§ 9, 12.) |
| | Sergio Flores | <ul style="list-style-type: none"> • El Monte finalizes MSs in 1st week; balances class sizes in first 4 weeks; and changes student schedules afterwards with “most” changes on 1st day. (§ 12; Supp., ¶ 14.) • 97-98% of enrolled students actually attend classes. (Supp., ¶ 15.) |
| | April Gregerson | <ul style="list-style-type: none"> • Delano creates a draft MS before school year begins; “typically” finalizes MSs by end of 2nd week; and changes student schedules in first 6 weeks. (§ 18; Supp., ¶ 11.) |
| | Thorsten Harrison | <ul style="list-style-type: none"> • Modesto finalizes MS in spring semester; balances class sizes in first 3 weeks; and changes individual schedules in first 4 weeks. (§§ 11-12; Supp., ¶ 14.) • “[I]t can take longer to finalize class schedules in school with greater numbers of transient students than in schools with a more stable student body.” (Supp., ¶ 13.) |
| | Jessica Kwek | <ul style="list-style-type: none"> • El Rancho “typically” finalizes MS by 2nd week and changes individual schedules afterwards or in first 2 weeks. (§ 14; Supp., ¶ 6.) |
| | Gerardo Loera | <ul style="list-style-type: none"> • “[C]hanges several weeks in[to] the semester are sometimes necessary to meet student needs.” (§ 34.) |
| | Carlas McCauley | <ul style="list-style-type: none"> • Some schools confront scheduling problems beyond their reach because they do not know which students will enroll until weeks into the school year, and must contend with high transiency throughout year. (§§ 11, 12.) |
| | James Morris | <ul style="list-style-type: none"> • Fremont finalizes MSs by end of 1st week; balances class sizes in first 3 weeks; and changes individual schedules in first 3-5 weeks, depending on the kind of change. (§§ 11, 12; Supp., ¶ 7.) |
| | Greg Nehen | <ul style="list-style-type: none"> • Antelope Valley finalizes MSs in spring; class sizes are balanced in first 2-3 weeks; student schedules can be changed at any time. (§§ 12-13; Supp., ¶ 13.) |
| | Emiliano Sanchez | <ul style="list-style-type: none"> • This year enrollment at Fremont (OUSD) varied drastically from enrollment projections which caused “unique difficulties in scheduling students. . . .” (§ 9.) |
| | Bill Sanderson | <ul style="list-style-type: none"> • San Francisco finalizes MSs in spring; class sizes are balanced in first 2-3 weeks; and changes individual schedules “[a]t the start of the year.” (§§ 11-12; Supp., ¶ 9.) |
| | Thomas Timar | <ul style="list-style-type: none"> • 10-district sample does not support Professors Oakes and Price’s standards. (§ 15.) |
| Plaintiffs misrepresent the value of Inside Work Experience (“IWE”) and Early Release. | Pedro Avalos | <ul style="list-style-type: none"> • IWEs allow students to gain practical experience and skills. (§ 21.) • Early release addresses considerations like the students’ need to care for a mother with cancer or their own kids, or work to earn a living to survive. (§ 25.) |
| | Anne Campbell | <ul style="list-style-type: none"> • IWEs can effectively address individual student needs, including students who are not on track, and decisions about them should be made by schools. (§§ 22, 24.) |
| | William Chavarin | <ul style="list-style-type: none"> • An IWE “offers students a unique opportunity to have a positive one-[on]-one experience with an educator” and offers struggling students more support. (§§ 4-6.) |
| | Manuel Colon | <ul style="list-style-type: none"> • “Absolutely” believes IWEs offer students valuable experiences, including job experience and how to conduct themselves in a professional setting. (Supp., ¶ 15.) |
| | John Davis | <ul style="list-style-type: none"> • “I believe it is important for schools and the District to have flexibility to address the needs of the individual students they serve.” (Supp., ¶ 12.) • Early Release can serve the interests of particular students and IWE “can be valuable for students in different ways.” (Supp., §§ 12, 13.) |
| | Sergio Flores | <ul style="list-style-type: none"> • “Having the option to place students in [IWE] provides schools with the opportunity to meet the individualized needs of particular students.” (Supp., §§ 11-13.) |

**SUMMARY OF TESTIMONY OF STATE EDUCATION DEFENDANTS'
EXPERT AND PERCIPIENT WITNESSES**

| Issue Addressed | Witness* | Summary of Testimony |
|--|------------------|--|
| | Gerardo Loera | <ul style="list-style-type: none"> • “[F]lexibility to meet the unique needs of students and their families is critical to retaining enrollment.” (§ 30.) • IWEs are “considerable opportunities for pupils to develop knowledge and skills that will become important to them in the real world.” (§ 25.) • Early Release has “proven valuable in motivating students to make advanced progress towards graduation and college admission.” (§§ 28-29.) |
| | Greg Nehen | <ul style="list-style-type: none"> • IWEs are “valuable” because “they teach important skills like how to work independently and cultivate a work ethic” (Supp., § 12.) |
| | Reginald Sample | <ul style="list-style-type: none"> • IWEs are designed to develop practical skills including clerical tasks, developing positive work attitudes, interacting with students, parents, and staff. (§ 21.) • Early Release accommodates students with “significant family obligations” that require “time out of the day to support members of their families.” (§ 24.) |
| | Emiliano Sanchez | <ul style="list-style-type: none"> • IWE provides “real life work skills” and provides struggling students time with a teacher who can provide support and tutoring in a particular subject. (§§ 4-6.) |
| | Allen Smith | <ul style="list-style-type: none"> • OUSD believes in educational value of IWE to develop students’ skills and provide in-school experiences beyond those provided by pencil and paper tasks. (§§ 13-14.) |
| | Thomas Timar | <ul style="list-style-type: none"> • Decisions about IWE and Early Release should be made at the school level because both options can effectively address student needs. (§ 35.) • It is not enough to say that IWE and Early Release lack academic content because they can still have educational value. (§ 35.) |
| Recent education reform efforts move away from the failed model of state control towards more local control and accountability. | Sue Burr | <ul style="list-style-type: none"> • California began moving away from state control over a decade ago. (§§ 11-12, 14.) • Beginning in 2007, a series of influential studies recommended linking funding to student need, decreasing state regulation, and increasing local flexibility. (§ 13.) • In 2012, Governor Brown launched education reform efforts to focus authority at the local level where it will be most effectively exercised. (§§ 15-17, 30.) |
| | Carlos McCauley | <ul style="list-style-type: none"> • Isolating perceived problems in the operations of low performing schools and trying to solve them one by one with outside mandates has been tried and failed. (§ 13.) |
| | Thomas Timar | <ul style="list-style-type: none"> • Until recently, reform efforts focused on top-down categorical funding and mandates which may have undermined efforts to close the achievement gap. (§§ 19-24.) |
| Recent reforms give districts more funding, flexibility, and accountability to better address student needs. | Sue Burr | <ul style="list-style-type: none"> • LCFF/LCAP focuses more responsibility and accountability at the local level “where it can be most effectively exercised.” (§§ 15, 17.) • LCFF sends more money to districts with the neediest students. (§ 16.) • The LCAP process involves the community in defining local priorities. (§§ 18, 23.) • The State defines the priority areas that districts must address in LCAPs while allowing districts to determine how best to address these priorities. (§§ 18-20.) • County superintendents provide oversight and support through LCAP process. (§ 22.) • Anyone can file a complaint over the failure to comply with LCAP duties. (§ 23.) • The State is developing rubrics as a further evaluation tool. (§§ 24-27.) |
| | Anne Campbell | <ul style="list-style-type: none"> • Districts engage local stakeholders to create LCAPs. (§ 12.) • COEs review and approve LCAPs and support districts with implementation. (§ 12.) • LCFF/LCAP is already having positive effects, including focusing district attention on instruction issues. (§§ 13-15, 25.) |
| | Carlos McCauley | <ul style="list-style-type: none"> • LCFF/LCAP positions the state in a role that is in line with the state’s relatively low operational capacity and the need to develop local capacity. (§§ 28-30.) • LCFF/LCAP has an accountability structure that couples local accountability with state support and, as a last resort, state takeover. (§ 31.) |
| | Thomas Timar | <ul style="list-style-type: none"> • LCFF/LCAP addresses the need to improve low performing schools by focusing on local and regional school improvement activities that can build the social capital necessary for effective reform. (§§ 26-28, 31.) • LCFF/LCAP focus school funding on the students who really need it. (§ 29.) • With LCAPs, the State structures the planning while districts drive the planning to address local problems. (§§ 30, 32.) |

**SUMMARY OF TESTIMONY OF STATE EDUCATION DEFENDANTS'
EXPERT AND PERCIPIENT WITNESSES**

| Issue Addressed | Witness* | Summary of Testimony |
|--|-----------------|---|
| | Nick Schweizer | <ul style="list-style-type: none"> • Proposition 30, approved in 2012, is helping K-12 education to recover from budget cuts that occurred during the Great Recession. (§ 4.) • LCFF is providing billions of additional revenue for school districts, including approximately \$7 billion in funds in 2014-15 targeted for low income, English learners, and foster youth students. (§§ 5-7.) • LCFF funding is targeted to districts with the highest concentrations of students who are low income, English learners, and foster youth. (§§ 6-8.) • LCFF funding is increasing in the target districts. (§§ 9-12, Exs. 1-3.) |
| In California, reform efforts are underway to effectively address the systemic issues plaintiffs raise. | Anne Campbell | <ul style="list-style-type: none"> • The issues raised here must be addressed through overall local district plan. (§ 25.) • Plaintiffs' experts call for more teachers and counselors, but that is exactly what LCFF/LCAP is trying to do. (§ 26.) |
| | Carlos McCauley | <ul style="list-style-type: none"> • Effective reform focuses on bolstering capacity, recruiting and developing leadership, and supporting quality teaching, all of which must happen at the local level, and cannot be prescriptive. (§§ 5, 9, 13-14, 16-18, 23.) • The State's role in boosting school performance is to create a framework that supports district level capacity building, which LCFF/LCAP is designed to do. (§§ 24-26.) • The issues raised here can be addressed with local efforts like LCFF/LCAP. (§ 25.) |
| | Thomas Timar | <ul style="list-style-type: none"> • The issues raised by plaintiffs require flexibility at the local level because solutions depend on the context of the problem. (§§ 33-34, 46-47, 49, 51.) • The issues raised by plaintiffs can be identified and resolved through the LCAP process, which needs to be given a chance to work. (§§ 38-40, 49, 51.) • LCAPs in all three target districts address these issues in diverse ways. (§§ 41-42.) • Highlights from the CUSD, LAUSD, and OUSD 2014-15 LCAPs. (Ex. 3.) |
| Plaintiffs' proposed order would harm students and undermine reform efforts. | Pedro Avalos | <ul style="list-style-type: none"> • If the court restricts Early Release, it could "deprive students and their families [of] their ability to provide the care and income they need to live." Without this flexibility, a greater number of students could "drop out of school." (§ 26.) • If LAUSD were prohibited from changing student schedules after 1 week, it would negatively affect students who need or wish to change their schedule. (§ 16.) • If forced to hire more teachers to address plaintiffs' mandates, Fremont (LAUSD) would have to eliminate other positions like counselors or school police. (§ 34.) |
| | Sue Burr | <ul style="list-style-type: none"> • Many in the education community have cautioned that recent reforms need time to work without imposition of new state mandates. (§§ 28-31.) |
| | Anne Campbell | <ul style="list-style-type: none"> • Proposed order would bar positive uses of IWE. (§§ 22, 24.) • State mandates risk undermining the vital work of the LCAP. (§ 25.) |
| | Donald Foote | <ul style="list-style-type: none"> • If Jefferson HS were in effect not allowed to offer IWE or Early Release, it would have to hire more teachers and eliminate other positions like counselors, cafeteria workers, custodial staff, and/or school police. (§ 9.) |
| | James Guthrie | <ul style="list-style-type: none"> • Schools and districts need flexibility or they will not be able to serve children, and the mandates plaintiffs request will undermine their effectiveness, divert resources, and are a throwback to a discredited compliance model. (§§ 24-25.) |
| | Gerardo Loera | <ul style="list-style-type: none"> • Depriving an eligible student of Early Release "to care for an ailing relative, younger siblings or their own children or work to support the family would be inhumane and unconscionable." (§ 30.) • If LAUSD were forced to provide additional courses to 325 high schools it would have to find nearly \$400 million, despite an existing deficit of \$160 million and UTLA's current demands for teacher salary increases and class size reductions. (§ 38.) |
| | Carlos McCauley | <ul style="list-style-type: none"> • Mandates on the curricular issues raised here are not only useless but detrimental if the goal is improved instruction and student outcomes. (§§ 5-11, 13, 16, 22-23.) • Scheduling and transcript review deadlines can be counterproductive. (§§ 11, 12.) • Neither Oakes nor Price clearly call for State intervention. (§ 19.) |

**SUMMARY OF TESTIMONY OF STATE EDUCATION DEFENDANTS'
EXPERT AND PERCIPIENT WITNESSES**

| Issue Addressed | Witness* | Summary of Testimony |
|-----------------|------------------|---|
| | Reginald Sample | <ul style="list-style-type: none"> • If LAUSD could not sometimes address “real life considerations” of students with Early Release, “I believe we will experience a greater drop out rate.” (§ 24.) • If LAUSD could not change schedules after first week of school, it would have a negative impact on students who need or wish to change their schedules. (§ 16.) • If Dorsey had to hire more teachers to account for loss of IWE and Early Release, it would have to eliminate other valuable positions from its staff. (§ 32.) |
| | Allen Smith | <ul style="list-style-type: none"> • Limiting IWEs would “ignore the individualized focus that is necessary to best meet the needs of our students.” (§ 14.) • Limiting schedule changes to the first week would impede informed decision making by students and interfere with collective bargaining agreement. (§§ 16-18.) • OUSD wants to allocate resources to the priorities “this community” set out in its LCAP, not the priorities superimposed by the State “or anyone else. . . .” (§§ 9-11, 21.) |
| | Thomas Timar | <ul style="list-style-type: none"> • Standardization of curriculum has been tried and failed. (§§ 36-37, 43, 50.) • Practically, state cannot review the content of hundreds of thousands of courses and 10,000 master schedules. (§ 45.) • Has reviewed proposed order and believes it “would be harmful.” (§ 48.) |
| | Richard Whitmore | <ul style="list-style-type: none"> • State is in no position to determine whether IWE or Early Release is appropriate for a particular student. (§ 8.) • Proposed order on Master Schedule “would make it virtually impossible” for schools to meet the needs of students or to balance class sizes. (§ 9.) |

***WITNESS DESCRIPTIONS: State Education Defendants’ Experts and Percipient Witnesses**

| Sue Burr | Anne Campbell | James Guthrie | Edward Haertel | Carlos L. McCauley | Nick Schweizer | Thomas B. Timar | Richard Whitmore |
|---|-----------------------------------|---|---|--|---|----------------------------------|--------------------------------------|
| Member, SBE; former Ed. advisor to Gov. Brown | San Mateo County Supt. of Schools | Prof.; Former Dean of UCB School of Ed. | Prof., Stanford U. Graduate School of Ed. | Director of WestEd Center on School Turnaround | Deputy Supt. of Public Instruction, CDE | Prof., School of Ed., U.C. Davis | CAO of WestEd; former District Supt. |

* All declarations submitted by State Education Defendants in Opposition to Plaintiffs’ Motion for Preliminary Injunction.

***WITNESS DESCRIPTIONS: Administrators From 10-District Sample**

| Manuel Colon | Greg Nehen | Elizabeth Eminhizer | April Gregerson | Sergio Flores | Jessica Kwek | James Morris | Thorsten Harrison | Bill Sanderson | John Davis |
|---------------------------|-----------------------------------|--------------------------------|----------------------|----------------------------|-------------------------|--------------------|--|--------------------------------|---------------------------------|
| Asst. Supt., Anaheim UHSD | Asst. Supt., Antelope Valley UHSD | Asst. Supt., Covina-Valley USD | Principal, Delano HS | Asst. Supt., El Monte UHSD | Principal, El Rancho HS | Supt., Fremont USD | Senior Dir. of Ed. Services, Modesto City SD | Asst. Supt., San Francisco USD | Asst., Supt., Santa Maria JUHSD |

* Each declarant submitted one declaration attached as exhibits 100-108 and 110 to the Eidmann Decl. in Support of Pl. Mot. for Prelim. Inj., and one supplemental declaration attached as exhibits 1-10 to the Ibarra Decl. in Opposition to Pl. Mot. for Prelim. Inj.

***WITNESS DESCRIPTIONS: Administrators From Target Districts**

| Pedro Avalos | William Chavarin | Samuel Diaz | Donald J. Foote | Gerardo Loera | Reginald Sample | Emiliano Sanchez | H. Allen Smith |
|---------------------------|-----------------------------|--------------------------------|-----------------------------|-------------------------------|--------------------------|--------------------------|------------------------|
| Principal, Fremont, LAUSD | Principal, Castlemont, OUSD | Lead Counselor, Fremont, LAUSD | Principal, Jefferson, LAUSD | Chief Academic Officer, LAUSD | Principal, Dorsey, LAUSD | Principal, Fremont, OUSD | Chief of Schools, OUSD |

* All declarations submitted as exhibits 18-20 and 27-31 to the Ibarra Decl. in Opposition to Pl. Mot. for Prelim. Inj.

Appendix B

Snapshot of District, School, and Student Data

APPENDIX B

| LOS ANGELES UNIFIED SCHOOL DISTRICT | | | | | | |
|--|---|--|---|---|-----------|--|
| DISTRICT | FREMONT (LAUSD) HIGH SCHOOL | STUDENTS* | | | | |
| <p>District Features</p> <ul style="list-style-type: none"> • Second largest school district in the country. (Ibarra at 411-412, ¶ 4.) • Approx. 653,826 students in 2013-14. (Id.) • LCFF funding grew from \$4.1 billion in 2013-14 to \$4.4 billion in 2014-15, even though "targeted students" decreased. (Schwelzer, ¶ 10.) <p>Highlights: LCAP Priorities Over Three Years</p> <ul style="list-style-type: none"> • \$300.9 million to focus on school climate and student engagement at campuses of highest need with additions to provide socio-behavioral, psychiatric, behavioral and other supports. (Ed. Def. RJN 032-034.) • \$171.6 million for programs and interventions that target student academic, socio-behavioral, mental and other needs, designed to keep students in school or return them to school. (Id. at 021-022.) • \$74.2 million in support for school sites with high turnover and high concentrations of "unduplicated students" to support staffing, professional development augmentations, recruitment and retention and new teacher support and assistance. (Id. at 028-029.) • \$273.4 million to focus on college and career readiness in high schools with a particular focus on high school Math and English. (Id. at 036.) • \$75.9 million for student health and human services, including nurses, city partnerships, school mental health professionals, crisis counseling and intervention services. (Id. at 022-023.) | <ul style="list-style-type: none"> • Enrollment: approx. 2,044 students. (Ibarra at 540, ¶ 3.) • Schedule: 8 periods with 4 per day under 2x8 block schedule (2014-15). (Id. at 415, ¶ 12.) • 26.9% transient student rate in 2013-14. (Id. at 530, ¶ 11.) • Master Schedule created to meet A-G requirements, credit recovery, and intervention/enrichment course needs. (Id. at 532-533, ¶ 17.) • 2014-15: reduced home periods by offering Senior Seminar workshops offering college and career preparation. (Id. at 535, ¶ 24.) • 93% Individual Graduate Plan completion rate in 2013-14 compared to the 45% district avg. (Id. at 528, ¶ 4.) • Approx. 300 students per counselor. (Id. at 540, ¶ 3.) • Students in class within 20 min. of first day of 2014-15 school year. (Id. at 528, ¶ 4.) • 85% federal student aid application completion rate for 12th grade students in 2013-14 (compare: 63% district avg). (Id. at 529, ¶ 7.) • Approx. 23% of students enrolled in an AP course. (Id. at 533, ¶ 17.) | Staff Review of Academic Progress | If Given Early Release, Student/Parent Requested it | If Given Early Release or IWE, student is On Track ¹ | | |
| | | FREMONT (LAUSD) HIGH SCHOOL Class of 2015 | | | | |
| | | Cameron Williams ² | ✓ | ✓ | ✓ | |
| | | Daniel Madrigal | ✓ | ✓ | ✓ | |
| | | Erika Gonzalez | ✓ | ✓ | ✓ | |
| | | FREMONT (LAUSD) HIGH SCHOOL Class of 2014 | | | | |
| | | Jessy Cruz | ✓ | ✓ | x | |
| | | Ashley Penalzoa | ✓ | n/a | Graduated | |
| | | Roxana Mucino | ✓ | ✓ | Graduated | |
| | | Precious Willis | ✓ | ✓ | Graduated | |
| | | DORSEY HIGH SCHOOL Class of 2017 & 2018 | | | | |
| | | Monique Malone | ✓ | n/a | n/a | |
| | | Lisset Macilla | ✓ | n/a | n/a | |
| | | Qadir Johnson | ✓ | n/a | n/a | |
| | | DORSEY HIGH SCHOOL Class of 2015 | | | | |
| | | Jesse Romero | ✓ | n/a | n/a | |
| | | Jordan Parx | ✓ | ✓ | ✓ | |
| | | Juan Nunez | ✓ | ✓ | ✓ | |
| | | Christian Moton | ✓ | n/a | n/a | |
| | | Ryan Bell | ✓ | n/a | n/a | |
| Valerie Santana | ✓ | n/a | n/a | | | |
| <p>*Key: ✓ = yes ✎ = accepted to 4-yr. college/university x = no n/a = No allegation student completed (Fall '14) or is currently assigned to Early Release or IWE period.</p> | | | | | | |
| <p>NOTES</p> <ul style="list-style-type: none"> • Fremont (LAUSD) and Dorsey Bell Schedules make it possible to offer students remediation, acceleration, enrichment, and credit recovery classes during the regular day. (Ibarra at 415, ¶ 12.) <p>¹ "On Track" means on track to complete graduation requirements and A-G coursework.</p> <p>² All student info. is based on declarations submitted by student declarants and declarations provided by LAUSD.</p> | | | | | | |

| COMPTON UNIFIED SCHOOL DISTRICT | | | | | | |
|---|---|---|--------------------|------------------------------|----------------------------|-----------------------------|
| DISTRICT | COMPTON HIGH SCHOOL | STUDENTS* | | | | |
| <p>District Features</p> <ul style="list-style-type: none"> LCFF funding grew from \$176.4 million in 2013-14 to \$196.7 million in 2014-15, or an increase of 11.5% in just one year. (Schweizer, ¶ 4.) The LA County Office of Education determined at the start of the 2014-15 school year that all district schools had sufficient textbooks and instructional materials pursuant to the settlement of <i>Williams v. State of Cal.</i> (Ibarra at 352.) <p>Highlights: LCAP Priorities Over Three Years</p> <ul style="list-style-type: none"> \$3.3 million for new mental health professionals and secondary school counselors. (Ed. Def. RJN at 179-180.) \$4.8 million for professional development and \$2.8 million for training at school sites. (<i>Id.</i> at 164.) \$3.8 million for alternative education programs including more advanced placement classes, Advancement Via Individual Determination (AVID), and Science Technology Engineering and Math (STEM). (<i>Id.</i> at 165.) \$3.7 million to extend learning time. (<i>Id.</i> at 171.) \$3.75 million in teacher incentives to reduce absenteeism and maintain student attendance at 98%. (<i>Id.</i> at 178.) \$1.5 million to reduce absences and for programs for attendance recovery, attendance counselors, and a Saturday recovery program. (<i>Id.</i> at 178.) \$1.2 million for college tutors. (<i>Id.</i> at 171.) | <ul style="list-style-type: none"> Enrollment: 2,190 students in 2013-14. (Ibarra at 371.) Schedule: 6 periods. (<i>Id.</i> at 372.) About 10% foster youth and 15% homeless students. (<i>Id.</i> at 367-370.) 12 AP courses in 2014-15, including AP U.S. Hist, AP Eng Comp, AP Blo, and AP Span Lit. (<i>Id.</i> at 372.) 9 Honors courses in 2014-15 including Honors Pre-Cal, Gen. Chem, Gen. Bio, and Geometry. (<i>Id.</i>) 97.4% of pupils completing a Career Technical Education program earned a high school diploma in 2013-14. (<i>Id.</i> at 356.) 98.5% of core academic courses taught by Highly Qualified Teachers in 2013-14. (<i>Id.</i> at 352.) | | Student Has No IWE | Student Has No Early Release | On Track (HS) ¹ | On Track (A-G) ² |
| | | COMPTON HIGH SCHOOL Class of 2016 | | | | |
| | | Isaiah Moses ³ | ✓ | ✓ | ✓ | ✓ |
| | | Alejandro Torres | ✓ | ✓ | ✓ | ✓ |
| | | Angel Preclado | ✓ | ✓ | ✓ | ✓ |
| | | COMPTON HIGH SCHOOL Class of 2015 | | | | |
| | | Maria Sanchez | ✓ | ✓ | ✓ | ✓ |
| | | Ignacia Barajas | x | ✓ | ✓ | ✓ |
| | | COMPTON HIGH SCHOOL Class of 2014 | | | | |
| | | Lucia Barajas | ✓ | ✓ | ✓ | ✓ |
| | | <p>*Key: ✓ = yes x = no</p> | | | | |
| | | <p>NOTES</p> <ul style="list-style-type: none"> Beginning with the 2014-15 school year Compton High School has eliminated Early Release. (Ibarra at 363-364.) Beginning with the 2014-15 school year, Compton High School has limited the number of students in IWE. (<i>Id.</i> at 363.) No student-declarant claims to be enrolled in an IWE that he or she does not want. (Eidmann Exs. 52, 53, 59, 63, 77, 117.) The five student declarants who are currently enrolled in high school are currently enrolled in a combined total of 12 AP and 3 Honors classes. (Ibarra at 406-410.) No student declarant claims that he or she is not on track to graduate or complete A-G requirements. (Eidmann Exs. 52, 53, 59, 63, 77, 117.) Master Schedule in place prior to 2013-14 school year. (Ibarra at 365-366.) | | | | |
| | | <p>¹ "On Track (HS)" identifies students who are on track to complete the requirements for graduation from high school.</p> <p>² "On Track (A-G)" identifies students who are on track to complete the A-G coursework requirements.</p> <p>³ All student info. is based on student records.</p> | | | | |

OAKLAND UNIFIED SCHOOL DISTRICT

| DISTRICT | CASTLEMONT HIGH SCHOOL | STUDENTS* | | |
|---|--|-------------------------|-----------------------------|--|
| | | Staff Reviewed Schedule | Schedule Prior to First Day | On Track (A-G) and graduation ¹ |
| <p>District Features</p> <ul style="list-style-type: none"> LCFF funding grew from \$266.3 million in 2013-14 to \$298.3 million in 2014-15 (12% increase). (Schweizer, ¶ 11.) Budgeted expenditures this year of \$20.4 million towards activities targeted to low income and English learner students and foster youth. (Ibarra at 243, ¶ 10.) All student schedules reviewed before and during senior year for progress toward graduation/A-G requirements. (Id. at 246, ¶¶ 19-20.) Uses APEX digital and online instruction to assist with credit recovery. (Id. at 323-324, ¶ 3e.) Master schedule completed May 31 each year. (Id. at 214-215.) Collective bargaining agreements require classes be balanced by Oct 31. (Id. at 245-246, ¶ 18.) <p>Highlights: LCAP Priorities Over Three-Years</p> <ul style="list-style-type: none"> \$4.5 million for targeted summer learning for low income students. (Ed. Def. RJN at 097.) One year of planning and then \$1,489,294 over the next two years to establish a comprehensive system to track student progress, including hiring a district Registrar for timely transcript review to support A-G monitoring and intervention. (Id. at 085-087.) \$5,450,575 to recruit, support and retain effective teachers and increase coaches for beginning teachers. (Id. at 089-090.) \$15,549,300 for career pathways expansion, including new staff to coordinate and support robust career pathways in every high school, a contract with Master Schedule specialist to build pathways into Master Schedule of every high school, and additional electives and internships. (Id. at 097-100.) Targeting 34 schools to add teachers to provide individual and small group interventions in reading and math. (Id. at 107.) "Very robust" LCAP development process in 2013-14. (Id. at 243, ¶ 9.) | <ul style="list-style-type: none"> Enrollment: 564 students in 2013-2014. (Ibarra at 222.) Schedule: 6 periods. (Id. at 224-237.) 6 AP courses in 2014-15: AP Amer Gov't, AP Bio, AP Calc-AB, AP Comp Science, AP Eng Lang, and AP U.S. Hist. (Id.) Builds master schedule to allow students to graduate, meet A-G requirements and take electives that enhance educational experience and prepare them for work or college. (Id. at 328, ¶ 7.) All students have opportunity to take courses to keep on track to graduate and meet A-G. (Id.) Assigns students to service period when student is on track to graduate and (1) student has requested it and teacher agrees, or (2) student has not selected or been assigned to a class; or (3) when struggling student can benefit from extra time and support from teacher in that area. (Id., ¶ 4.) | | | |
| | CASTLEMONT HIGH SCHOOL Class of 2015 | | | |
| | Johnae Twinn ² | ✓ | ✓ | ✓ |
| | Ronye Cooper | ✓ | ✓ | ✓ |
| | BreAnna Gonzalez | ✓ | ✓ | ✓ |
| | Daja McCullough | ✓ | ✓ | ✓ |
| | Alban Lopez | ✓ | ✓ | ✓ |
| | Jayla Davls | ✓ | ✓ | ✓ |
| | Preclous Brazll | ✓ | ✓ | ✓ |
| | Kourtnee King | ✓ | ✓ | ✓ |
| | Stephanie Gutierrez | ✓ | ✓ | ✓ |
| | CASTLEMONT HIGH SCHOOL Class of 2014 | | | |
| | Myriam Gonzalez | ✓ | ✓ | Graduated |
| | Warner Rosales | ✓ | ✓ | Graduated |
| | Lee Simmons | ✓ | ✓ | Graduated |
| | Jazmin Stenson | ✓ | ✓ | Graduated |
| | Jacob Mathis-Smith | ✓ | ✓ | Graduated |
| | FREMONT (OUSD) HIGH SCHOOL Class of 2015 | | | |
| | Angellica Rodriguez | ✓ | ✓ | ✓ |
| | Carmen Jimenez | ✓ | ✓ | ✓ |
| | Loata Fine | ✓ | ✓ | ✓ |
| | Michael Adams | ✓ | ✓ | ✓ |
| | Nohemi Lucas | ✓ | ✓ | ✓ |
| | Quenajonay Frazier | ✓ | ✓ | ✓ |
| | Stephanle Revoreda | ✓ | ✓ | In-Progress |
| | Stephanie Valencia Chavez | ✓ | ✓ | ✓ |
| | Dalsy Romo | ✓ | ✓ | ✓ |
| | FREMONT (OUSD) HIGH SCHOOL Class of 2014 | | | |
| | Eric Flood | ✓ | ✓ | Graduated |
| | Edith Quintero | ✓ | ✓ | Graduated |
| *Key: ✓ = yes x = no | | | | |
| NOTES | | | | |
| ¹ "On Track (A-G) and graduation" for the class of 2015 means on track to complete graduation requirements, including A-G courses. | | | | |
| ² All student info. is based on student records, declarations from the school districts, and the Taylor deposition. | | | | |

Appendix C

Response to Plaintiffs' Appendix 5 (Student Profiles)

APPENDIX C

RESPONSE TO PLAINTIFFS' APPENDIX 5 (STUDENT PROFILES)

COMPTON

Isaiah Moses. Mr. Moses began the year with two "free periods" on his schedule, but he was enrolled in Pre-Calculus and Physics by the end of the first day of school. (Eidmann, Ex. 59 ¶¶ 5-6.) Although Mr. Moses did not get every AP class he wanted, he was enrolled in four AP classes last semester, and is currently enrolled in three AP classes. (Ibarra at 407.) Mr. Moses was placed in AP Chemistry one month into the school year because the class was offered as voluntary enrichment outside of the regular six period school day in response to student requests for more AP classes. (Eidmann, Ex. 59, ¶¶ 8-9.) Mr. Moses' transcript and grade report do not show any service periods, which suggests that any such assignment lasted a single week. (Ibarra at 407-408; Eidmann, Ex. 59, ¶ 13.) Plaintiffs claim that Mr. Moses was not prepared for pre-calculus because he had several substitute teachers for his sophomore year Algebra 2 class. Yet the principal testified that the vacancy was filled "very quickly" by a teacher with the credential and experience to teach Algebra 2. (Ibarra at 366-366E.)

DORSEY

Christian Moton. Mr. Moton says at the beginning of the school year his schedule was incorrect and he had no class 7th period, but at that time he was enrolled at Crenshaw High; he transferred to Dorsey later. (Ibarra at 579, ¶ 28.) Mr. Moton was not advised that courses at Dorsey were over-enrolled or that he could not get classes to satisfy A-G requirements. (*Id.*, ¶ 29.) Dorsey worked closely with Mr. Moton upon his transfer to Dorsey, and helped him with applying for college, financial aid and scholarships, even providing a recommendation from the Principal. (*Id.*, ¶ 29.)

DORSEY

Juan Fernando Nuñez. Mr. Nuñez was offered the necessary courses to graduate at the beginning of this school year. (Ibarra at 580, ¶ 32.) He changed two classes at the beginning of the school year, but was never one month behind. (*Id.*, ¶ 34.) He requested service classes last year and a home period this year and was given them because he met the necessary criteria and had parent permission. (*Id.*)

DORSEY

Jordan Parx. Five of Mr. Parx's seven classes were scheduled from the first day of the school year. He requested a home period on September 3, 2014, but that was changed to Chemistry on September 23, 2014, not nine weeks into the semester as his declaration states. (Ibarra at 578, ¶ 25; Eidmann, Ex. 65, ¶ 4.) His counselor did not advise Mr. Parx that he needed trigonometry to graduate, and he was concerned about Mr. Parx's choice to skip statistics class to visit the counseling office in order to have that class changed, because there was no need to skip statistics. (Ibarra at 579, ¶ 27.)

FREMONT LAUSD

Jessy Cruz. In his senior year, Mr. Cruz was originally enrolled in all academic courses as recorded in his Individual Graduation Plan ("IGP") and program card. (Ibarra at 547, ¶ 39.) Mr. Cruz completed two IGP meetings and was counseled several times by the counseling office about his academic standing. (*Id.*, ¶ 40.) Against the advice of his counselor and his social worker, but with a parental consent form, Mr. Cruz asked for and was given one service course in the fall of 2013 and two service courses in the spring of 2014 so that he could take missing courses online. (*Id.*, ¶ 39.)

FREMONT LAUSD

Erika Gonzalez. Ms. Gonzalez had a full academic course load at the beginning of the 2014-15 school year. (Ibarra at 543, ¶ 14.) Because she was chosen to participate in the Heart program for peer mediation and conflict resolution, she requested a home period in order to do peer counseling, with parental permission. (*Id.*, ¶ 15.) Ms. Gonzalez is not missing Spanish or English classes that she needs in order to satisfy the A-G requirements, and her counselor told her that she could retake Spanish for Spanish Speakers 2A in order to improve her grade. (*Id.* at 54, ¶ 19.) She is retaking English 9B, although she asked to drop the course but was counseled against it. (*Id.*, ¶ 20.)

CASTLEMONT

Jayla Davis. Jayla Davis is on track to graduate and may be able to meet the A-G requirements. (Ibarra at 327, ¶ 3d.) She does not have an IWE. (*Id.*) She voluntarily transferred to Castlemont from Oakland High, a bigger school with more course offerings, because Castlemont was closer to her home. (Eidmann, Ex. 122, ¶ 11.) She is enrolled in CyberHigh because she had to "make up come classes that I had failed and also had to get more elective credits so I could graduate." (*Id.*, ¶ 6.) Through APEX and Cyber High she has taken at least six courses this year, including English, U.S. History, Basic Mathematics, and Health Education. (Ibarra at 330.) Those are in addition to the Advanced Algebra, English, Health & Safety, American Government, and Economics courses she is enrolled in. (*Id.*; Eidmann, Ex. 122, ¶ 6.)

CASTLEMONT

Johnae Twinn. Johnae Twinn is on track to graduate and has met A-G requirements. (Ibarra at 326, ¶ 3a.) She switched into AP Calculus this fall – not weeks late, as plaintiffs claim, but four days after classes began. (*Id.* at 347.) Plaintiffs say overcrowding kept her out of AP English, but in her junior year she enrolled in AP English Language and dropped it three days later only to enroll in AP English Literature, which she dropped within two weeks. (*Id.* at 348.) Women's Studies was the fifth course on her schedule this fall but she dropped it after two months and elected instead to take an IWE that same period. (*Id.* at 326, ¶ 3a; 347.) She dropped 6th period Debate soon after classes began but did not request 6th period AP Biology, a class that would have been consistent with her desire to take more AP and science classes and go into medicine. (Eidmann Decl., Ex. 40, ¶ 7; Ibarra at 225.) Instead, she requested a second IWE period, which she dropped in late October, opting instead for early release. (Ibarra at 326, ¶ 3a; 347.) Ms. Twinn complains that late students disrupt her classes, but junior year she was repeatedly tardy to first period Advanced Algebra and fifth period U.S. History. (*Id.* at 348-349.) She wants her brother to take a drawing class, and he can – Castlemont offers Art 1 and 2. (*Id.* at 225-226.)

CASTLEMONT

BreAnna Gonzalez. BreAnna Gonzalez is on track to graduate, has met A-G requirements. (Ibarra at 327, ¶ 3f.) She has already been accepted to Cal State Chico and Cal State East Bay. (Eidmann, Ex. 118, ¶ 2.) She was dropped from Physiology two weeks into the school year, not one month, and transferred to Environmental Science, but dropped that one day later, opting instead for an IWE in which she "help[s] the teacher prepare before class, grade papers, staple papers, and get computers ready for students." (*Id.*, ¶ 6; Ibarra at 335.)

FREMONT OUSD

Loata Fine. Loata Fine is on track to graduate, has met A-G requirements, has taken five AP courses, and has been accepted to UC Davis. (Ibarra at 322, ¶ 3a.) She has "concurrent enrollment" which is not an instruction free period but an option to enroll in a college class in lieu of a high school class; during first semester she enrolled in a class at Laney College but dropped it two months into the semester. (Eidmann, Ex. 78, ¶ 9.) This semester for concurrent enrollment a college professor comes to Fremont to teach Ethnic Studies. (*Id.*, ¶ 11.) Ms. Fine's schedule changes senior year accommodated her desire after one week of classes to drop 2nd period American Government in order to move into 1st period AP Government. (Ibarra at 322, ¶ 3a; 332.) That schedule change led to her dropping 1st period Graphic Design and taking an Academic Literacy class with her AP Government teacher 2nd period. (*Id.*) She also was enrolled in 7th period Construction Tech for one day before dropping it in favor of 7th period Math Analysis. (*Id.* at 322; 332.) Her IWE period is with her AP Biology teacher who has her help with classroom duties, set up lab stations, and grade papers; during down times she does homework. (Eidmann, Ex. 78, ¶ 6.)

FREMONT OUSD

Eric Flood. Eric Flood graduated from Fremont in June, 2014 having completed 35 more credits than required to meet A-G. (Ibarra at 333.) There is no record of his having taken two IWE classes senior year; OUSD records show he took English, Journalism, Int. Algebra, PE and PE10-12, American Government, Economics, World History, Advisory, and an Internship. (Id. at 333-334.)

FREMONT OUSD

Carmen Jimenez. Carmen Jimenez is on track to graduate, has met A-G requirements, and has been accepted to her first choice school, UC San Diego. (Ibarra at 323, ¶ 3b.) She completed 8 AP courses at Fremont. (Id. at 337-338.) There is no record of her having taken an IWE sophomore year. (Id. at 340.) Her "no class" period is concurrent enrollment, which means she has chosen to take a college class in lieu of a high school class. (Id. at 339.)

FREMONT OUSD

Nohemi Lucas. Nohemi Lucas is on track to graduate, has met A-G requirements, and has been accepted to UC Davis and UC Santa Cruz. (Ibarra at 324, ¶ 3g; 342.) Her course selections were set by August 28 (school began August 25) and only 3 out of her 8 class periods had changes. (Id. at 343.) She transferred to a new American Gov't section 3 days after school began, not 3 weeks. (Id.) Math Analysis was broken into two sections by September 2, just one week after school began. (Id.; id. at 238-239.)

FREMONT OUSD

Angelica Rodriguez. Angelica Rodriguez is on track to graduate, and has met A-G requirements. (Ibarra at 323, ¶ 3d.) She has 7 academic classes this semester: Creative Writing, Drama, English 4, AP Spanish Language, Math Analysis, American Government and a concurrent enrollment in Introduction to Business at Peralta Community College. (Id. at 344.) Assuming she completes them successfully, she will graduate with 241.5 credits, 11.5 more than required. (Id.) She also has an IWE with her construction teacher, where she assists him with classroom duties or goes to her English teacher's classroom to work on her senior project. (Eidmann, Ex. 56, ¶ 6.)

ADDITIONAL STUDENT PROFILES**COMPTON**

Angel Preciado. Mr. Preciado has never had Early Release or an IWE. (Eidmann, Ex. 63, Ibarra at 409.) He is on track to graduate and fulfill his A-G requirements. So far in three years at CHS, he has had 4 AP classes and 5 Honors classes, including AP English Comp, AP US History, Honors Chemistry, and Honors Biology. (Id.) Mr. Preciado believes his AP studio Art and graphic design classes are repetitive, but he does not suggest that he would have been unable to transfer to a different class if he had asked to do so. (Eidmann, Ex. 63, ¶ 5.)

DORSEY

Qadir Johnson. Although Mr. Johnson complains that he did not receive a course schedule before the first day of school this year, he did not enroll at Dorsey until August 20, 2014, nine days after the start of the school year. (Ibarra at 578, ¶ 23.) His records show that he is taking the required courses to graduate.

COMPTON

Alejandro Torres. Mr. Torres has never had early release or an IWE. (Eidmann, Ex. 52, Ibarra at 406.) He is on track to graduate and fulfill his A-G requirements. So far in three years at CHS, he has had 4 AP classes and 9 Honors classes, including AP Spanish Language, AP Biology, Honors World History, and Honors Pre-Calc. (Id.) When CHS cancelled his AP Environmental Science this year and instead placed him in Anatomy, Mr. Torres asked his counselor to enroll him in a college prep class, so she placed him in AP Biology. (Eidmann, Ex. 52, ¶ 7.) Mr. Torres is worried about being adequately prepared for college, and reports that his AP Spanish Lit class is currently fulfilling that role for him. (Id., ¶ 11.)

DORSEY

Lisset Mancilla. Ms. Mancilla had a full schedule by the second day of school, which included her taking the requested course of Algebra 2. (Ibarra at 579, ¶¶ 30, 31.)

DORSEY

Monique Malone. Ms. Malone spent no more than two days in the auditorium due to MiSiS issues. She did not have two advisory periods, and she was given a geometry class during the second week of school. (Ibarra at 578, ¶ 24.)

1 **PROOF OF SERVICE**

2 I, the undersigned, declare under penalty of perjury that:

3 I am a citizen of the United States, over the age of 18, and not a party to the within cause
4 of action. My business address is 201 Dolores Avenue, San Leandro, CA 94577.

5 On March 19, 2015, I served a true copy of the following document(s):

6 **State Education Defendants' Opposition to**
7 **Motion for Preliminary Injunction**

8 on the following party(ies) in said action:

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- 14 **BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed
15 envelope or package addressed to the person(s) at the address above and
- 16 depositing the sealed envelope with the United States Postal Service, with
the postage fully prepaid.
 - 17 placing the envelope for collection and mailing, following our ordinary
18 business practices. I am readily familiar with the business's practice for
collecting and processing correspondence for mailing. On the same day
19 that correspondence is placed for collection and mailing, it is deposited in
the ordinary course of business with the United States Postal Service,
20 located in San Leandro, California, in a sealed envelope with postage
fully prepaid.
- 21 **BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope
or package provided by an overnight delivery carrier and addressed to the persons
22 at the addresses listed. I placed the envelope or package for collection and
overnight delivery at an office or a regularly utilized drop box of the overnight
23 delivery carrier.
- 24 **BY MESSENGER SERVICE:** By placing the document(s) in an envelope or
package addressed to the persons at the addresses listed and providing them to a
25 professional messenger service for service.
- 26 **BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons
at the fax numbers listed based on an agreement of the parties to accept service by
27 fax transmission. No error was reported by the fax machine used. A copy of the
fax transmission is maintained in our files.



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2
3
4 I declare, under penalty of perjury, that the foregoing is true and correct. Executed on
5 March 19, 2015, in San Leandro, California.

6 
7 Ethan Bodenstein
8

(00245080-18)

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