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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF ALAMEDA**

JESSY CRUZ; BRIAN CRUZ, a minor, by Jonathan Cruz, guardian ad litem; BRIANA LAMB, a minor, by Ronald Lamb, guardian ad litem; CRISTIAN GASPAR, a minor, by Guadalupe Gaspar, guardian ad litem; LEE SIMMONS, a minor, by Rhae Ray Eason, guardian ad litem; MYRIAM GISELLE GONZALEZ; SAMARIA HUDSON, a minor, by Chawmein Hudson, guardian ad litem; TALIYAH JACOBS, a minor, by Katherine Jacobs, guardian ad litem; JUMANTAE SMITH; ARNOLD GUTIERREZ, a minor, by Norma Gutierrez, guardian ad litem; ERIC FLOOD, a minor, by Nicole

Case No.:

**CLASS ACTION COMPLAINT FOR:**

1) **Violation of the Equal Protection Clauses of the California Constitution, Article I, Section 7(a) & Article IV, Section 16(a) (Fundamental Interest**

**2) Violation of the Equal Protection Clauses of the California Constitution, Article I, Section 7(a) & Article IV,**

King, guardian ad litem; EDITH QUINTERO; DAISY ROMO, a minor by Elizabeth Rodriguez, guardian ad litem; RIANNA BROWN, a minor, by Victoria Williams, guardian ad litem; EMMANUEL ENRIQUEZ, a minor, by Olga Enriquez, guardian ad litem; NATHAN SAUCEDA, a minor, by Olga Enriquez, guardian ad litem; IGNACIA BARAJAS, a minor, by Genoveva Barajas, guardian ad litem; and LUCIA BARAJAS, a minor, by Genoveva Barajas, guardian ad litem,

Plaintiffs,

vs.

STATE OF CALIFORNIA; STATE BOARD OF EDUCATION; STATE DEPARTMENT OF EDUCATION; TOM TORLAKSON, and DOES 1-100, inclusive,

Defendants.

**Section 16(a) (Suspect Class)**

**3) Violation of Article IX, Sections 1 and 5 of the California Constitution**

**4) Violation of Article I, Section 7(b) of the California Constitution**

**5) Violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution**

**6) Violation of California Government Code Section 11135**

**7) Declaratory Relief**

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Unless explicitly stated to the contrary, all allegations are based on information and belief. Plaintiffs allege as follows:

## INTRODUCTION

1. There are few absolutes in education, but none more fundamental than this: learning takes time. Meaningful learning time is the irreducible unit of education.

2. This action is filed on behalf of the children in seven California public schools who receive far less meaningful learning time than their peers in most California public schools. They are nearly all poor students of color. Like every child, these students entered the school system with promise, hope, and potential. Yet that system continuously deprives them of the basic requisite for academic success: the minutes, hours, weeks, and years of learning time that translate into the skills and knowledge that constitute the foundation for educational achievement. For these students, consigned to a series of school that perpetually fail to deliver education, hope fades and potential is crushed. The loss educational opportunity does not occur in any dramatic, headline-making way, but rather inexorably through the cumulative and debilitating effects, over time, from the loss of learning time itself.

3. As a result of the loss of learning time, the children in these seven schools have been denied and continue to be denied their right under the California Constitution to receive an education that is not substantively inferior to the education received by other students in California public schools. (Cal. Const. art I, § 7(a); *id.* art IV, § 16(a).) They have also been denied and continue to be denied access to the minimum level of learning time adequate to obtain the basic educational services to which they are entitled under the state constitution. (*Id.* art IX, §§ 1, 5.)

4. Students in these seven schools receive fewer minutes of learning time per hour, fewer hours per week, and fewer weeks per year. As a result of this massive deprivation, an indefensibly high percentage of students at these schools fall far behind, give up, and drop out, not as result of any deficiencies on their part, but because the grade-level academic content standards that the State requires they be taught cannot be delivered and mastered in the actual learning time provided at their schools. The actual learning time available at these schools falls far below the norm in public

schools across the State of California due to conditions at the schools triggered through inequities in the educational delivery structures established by the State that these students and their educators must confront every day and cannot overcome, no matter how great their commitment and efforts may be.

5. Those who persist through 12 years or more to graduation receive a diploma but lag far behind their peers elsewhere in literacy, mathematical skills, and basic knowledge—the consequence of losses of months or even years of effective learning time since entering kindergarten. And those—far too few—who struggle on and gain entry to a community college, trade school, or university find that they are so far behind their peers that they must continue to lose precious time, assigned to classes designated "remedial" precisely because they are designed to remedy some of the predictable consequences of learning time lost in 12 years in their public schools.

6. The effects of learning time lost in these seven schools are not isolated or linear, but cumulative, compounding, and self-amplifying. The state-mandated academic content standards are predicated on a carefully prescribed sequence of teaching and student mastery of academic content, within a given year or semester and throughout a student's academic career. These standards presume that students are progressing and able to keep up with increasingly complicated bodies of knowledge, each constructed upon foundations attained in past years of learning. The language of instruction itself assumes an expected level of literacy at each grade level. Instruction in mathematics and science assumes that students will have attained certain and progressively elevated levels of numeracy. As the loss of learning time accumulates, the gap grows between the base of knowledge and the skills reasonably expected of students and what they have been able to acquire in the learning time provided. New material that should be merely challenging instead becomes unattainable, stifling growth and engendering a vicious cycle of frustration, self-doubt, and disengagement.

7. Effective learning time is lost in increments large and small and for reasons that may vary somewhat from school to school and between elementary and secondary schools. There are,

however, tragically common patterns replicated over and over in the seven schools and not seen in most other public schools throughout the state. The causes and impacts of lost learning time, though known to the State, are hidden from view for the majority of the public, who would be aghast were even some of these conditions to take place in their children's schools.

8. For instance, students and teachers lose days and sometimes weeks of learning time at the beginning of each school year, particularly at the high schools in this action. Administrators struggle to construct master schedules of courses appropriate to the students who have enrolled. Because of the instability of the teaching staff, transience of the student population, and insufficiency of administrative resources at these schools, a permanent schedule is almost never in place when school officially starts. As a consequence, students are routinely assigned temporarily to the wrong classes, only to be reassigned weeks later so they can, finally, begin instruction in the state-prescribed academic content standards. An extreme shortage of academic counselors in these schools aggravates the disruption. These problems beget other problems, and further loss of effective learning time. Until the master class schedule is set, for example, principals cannot determine what staffing they may require, forcing them to rely more heavily on substitute teachers. The often chaotic beginning to the school year is just one of the many challenges that teachers and administrators face.

9. In addition, lockdowns—procedures in which students and teachers stay in locked classrooms, often huddled under desks to protect themselves from violence in the area—are far too common in schools to which Plaintiff children are assigned. These incidents, which do not take place in the vast majority of public schools, have traumatic after-effects that persist far longer than the duration of any single lockdown itself. These traumatic events provoke the need for intensive mental health support, but appropriate counseling, emotional, and mental health resources are not available on the campuses. This unavailability occurs even though it is well-established that unaddressed trauma reduces students' ability to focus and learn. Many teachers in these schools, though not trained in crisis counseling or mental health services, must therefore function as makeshift mental health counselors, taking time from curriculum planning and instructional time in

class to help distressed students cope enough to be able to process what they have endured, let alone learn at all. Administrators also pitch in to help address students' emotional and mental health needs, trading off essential time from their regular duties as both administrators and instructional leaders.

10. Teachers and administrators in these schools face high expectations and overwhelming demands with resources and support woefully inadequate to the need. Teachers are expected to deliver instruction in the state-mandated content standards in a sequence keyed to particular grade levels to students who have already fallen far behind. Instruction that should be devoted to teaching grade-level material is instead spent trying to build basic skills that teachers in other schools can simply assume students possess. But students, teachers, and administrators are judged based on student performance on tests standardized using expectations for students who attend schools without these challenges. So teachers must spend additional days on test preparation that professional educators believe would otherwise be more productively spent on core instruction. Teachers and administrators at these seven schools are forced to choose continually among pedagogically bad alternatives, cutting corners on the fly in ways they hope will do the least harm to the majority of their students.

11. Many teachers are able to perform heroically under these stressful and demanding conditions, but others are understandably less able to cope and instead seek other teaching positions. Teacher absences are far higher in these schools, as are mid-year departures and teacher turnover generally. Here again, the loss of time compounds upon other time lost. Unexpectedly vacant positions are filled by substitute teachers, including short-term substitutes who are completely unfamiliar with the students and their progress in coursework. Little learning takes place during these chaotic transitions, which many students in these schools experience several times in the course of a single school year.

12. The effects of lost learning time not only cumulate over time for students, but at these schools they also ripple through the structure of instruction itself, leaving students in classes where they learn nothing at all. Students who fail courses, either because they received inadequate

learning time in those courses or in the building block courses that came before, must repeat those courses. Administrators must staff additional classrooms to accommodate the resulting additional demand for basic courses. In other schools, those teachers and classrooms would be devoted to a much wider range of elective courses, which increase student engagement in school and enthusiasm for learning. But in these schools, those students who do not fail courses often find that there are no meaningful course offerings available for them to take.

13. Because there is neither staff to teach elective courses nor resources devoted to improving literacy and numeracy skills that students might need in college or the workplace, the education of these more successful students simply comes to an abrupt end, as they are assigned to make-work "service classes," running errands for teachers, or are simply sent home early.

14. Taken together, these deprivations conspire to convey to students an inescapable message that the time they spend in school is not valuable. After repeatedly attending schools where they are not provided meaningful opportunities to learn, these students, who are overwhelmingly poor and already face substantial stressors, trauma, and challenges in their home lives, begin to arrive late or miss school altogether. Tardy students and students who are returning from absences of various lengths arrive and disrupt the flow of instruction, not only for themselves but also for students who are never absent or tardy. More instructional time is lost as teachers struggle to further differentiate and remediate instruction for students who have missed school because they have become disaffected with a school system that is not meeting their educational needs. These schools lack the counseling, mental health, and other supportive resources needed to effectively reduce student absences and tardiness, which requires that schools closely monitor attendance and respond promptly and early to attendance issues and then provide targeted assessments and intervention when attendance issues arise.

15. These are only a few of the many ways in which students, teachers, and administrators in these schools are trapped in vicious cycles and downward spirals of the cumulative effects of lost learning time. The children in these schools deserve better. The California Constitution demands it. Indeed, the California Supreme Court has long recognized that education is a fundamental right in

this State because public education serves a "distinctive and priceless function" (*Serrano v. Priest* (1971) 5 Cal.3d 584, 608, 608-09 (*Serrano I*))—it is the engine of our democracy. Public schools, properly functioning, teach children the values and ways of participating in our political and institutional structures that "distribute economic opportunities," (*Hartzell v. Connell* (1984) 35 Cal.3d 899, 908), and serve as "the bright hope for entry of the poor and oppressed into the mainstream of American society" (*Serrano I*, at p. 609). This case seeks to ensure that these schools do not extinguish that "bright hope."

16. The California Constitution places an affirmative obligation on the State to safeguard the indispensable right to an equal education, no matter the circumstances: "The State itself bears the ultimate authority and responsibility to ensure that its district-based system of common schools provides basic equality of educational opportunity." (*Butt v. State of California* (1992) 4 Cal.4th 668, 685). This obligation "extends beyond the detached role of fair funder or fair legislator", and requires the State, to "intervene to prevent unconstitutional discrimination at the local level" "even when the discriminatory effect was not produced by the purposeful conduct of the State or its agents." (*Id.* at p. 688, 681 (internal quotation marks omitted).) Thus, the State must not create, compound, or permit the perpetuation of disparities in its public school system that contribute to students receiving an education that "falls fundamentally below prevailing statewide standards." *(Id.* at p. 686-87.)

17. Basic equality in education then must begin with the guarantee that no child be denied the time required to learn what the State itself mandates be taught. As an elemental matter of equity and fairness, all public school children, at a minimum, are entitled to meaningful learning time sufficient for teachers to deliver the content necessary to meet the State's academic standards. In *Butt v. California, supra*, 4 Cal.4th at 668, 687-88, our Supreme Court concluded that a one-time loss of six weeks of instruction time would produce a "real and appreciable impact on the affected students' fundamental right to basic educational equality." It held that the State was mandated to ensure delivery of those resources necessary to prevent the "extensive educational disruption" resulting from this loss of precious instructional time. (*Id.* at 687.) A six-week interruption in a

single block, as in *Butt*, has less long-term effects on students than the steady, cumulative, compounding loss of learning time and the resulting degradation of literacy, numeracy and prerequisite knowledge in these schools. These students rarely experience a normal school day, let alone semester or year.

18. The State itself has recognized that time is an integral unit of learning. Defendant California Superintendent of Public Instruction Tom Torlakson has admitted that the loss of just four weeks of instruction in one school year would create a "gap" in learning (Ginn, *Why Johnny Can't Ride the Bus*, (Sept./Oct. 2012) Capitol Ideas 20, 21 [admitting that in a school year shortened by four weeks, teachers "can't cover all of the material in depth for optimal student understanding and learning"].)

19. The State has also established minimum standards for the number of instructional days and minutes that schools must deliver and conducts annual audits to ensure that schools meet these standards. (Cal. Ed. Code, §§ 46200–46208; Cal. Code Regs., tit. 5 § 19824.) But this audit process is both perfunctory—it does not account for the above-described factors that substantially reduce the amount of meaningful learning time in the seven schools—and counterproductive for these schools—failure to deliver sufficient instruction time is penalized by the withholding of funds.

20. The State has an affirmative duty under the California Constitution to address circumstances that result in the deprivation of basic educational equity. That duty extends to taking appropriate steps to ensure that its district-based system of public schools accounts for the realities it has long known about and that are identified by this action. The State must adequately identify grossly disparate meaningful learning time in its school system and must ensure appropriate remediation when schools fall below the norm, as has occurred at the seven schools that are the subject of this action. Each of the identified losses is preventable and can be remedied with practices that have been demonstrated effective in schools like the seven schools that are located in California and throughout the nation.

21. The time losses suffered at the seven schools are far greater than the prevailing norm in California and are not an inevitable result of poverty or any other condition faced by the

communities in which these schools are located. To suggest that it is impossible to provide these children with an equal education would be to demean the children enrolled at these schools, who depend on their education to have a bright future, and the committed education professionals working in these schools, who devote their professional lives to the success of their students.

22. The State is aware and has been aware for years that students at these schools are systematically deprived of meaningful learning time. The State is also aware that there are straightforward and commonsense measures that it can take to prevent and remediate these time losses, such requiring students to be placed in courses that prepare them for graduation and college instead of assigning them to perform administrative tasks or sending them home, ensuring that adequate numbers of mental health, attendance, and academic counselors, teachers, and administrators are assigned to schools to meet student needs, requiring implementation of research-based practices that have been demonstrated to promote stability in teaching faculties, and mandating provision of proven literacy and mathematics intervention programs to bring students up to grade level. Yet the State has failed to take such steps and thus has permitted the loss of learning time at these schools to continue unabated.

23. The State has failed to establish a system that meaningfully identifies and remedies grossly disparate and inadequate allocations of meaningful learning time in its school system. The State's inaction violates its duty as the ultimate guarantor of fundamental educational rights of children. The unmistakable message that the State thereby communicates to the children in the seven schools here is that they are regarded as less capable of learning and achieving success in school than their counterparts in schools where meaningful learning time in line with prevailing statewide standards is provided—that they are, in short, disposable children for whom the State will not provide the time of day.

## PARTIES

### *Plaintiffs*

24. Plaintiffs Jessy Cruz, Brian Cruz, Briana Lamb, and Cristian Gaspar, reside in Los Angeles County within the boundaries of the Los Angeles Unified School District and John C.

Fremont High School in Los Angeles. Plaintiffs Jessy Cruz, Briana Lamb, and Cristian Gaspar attend school at Fremont High School, and Cristian Gaspar is legally required to attend school. Plaintiff Jessy Cruz is 18 years old. Plaintiff Brian Cruz and will attend Fremont High School in the future and is legally required to attend school. The legal guardian of Plaintiff Brian Cruz, the legal guardian of Plaintiff Briana Lamb, and the parent of Plaintiff Cristian Gaspar have concurrently filed petitions with the Court to act as Plaintiffs' guardians ad litem.

25. Plaintiffs Lee Simmons and Myriam Giselle Gonzalez reside in Alameda County within the boundaries of the Oakland Unified School District and Castlemont High School in Oakland. Plaintiffs Lee Simmons and Myriam Giselle Gonzalez attend school at Castlemont High School and Lee Simmons is legally required to attend school. Plaintiff Myriam Giselle Gonzalez is 18 years old. The parent of Plaintiff Lee Simmons has concurrently filed a petition with the Court to act as Plaintiff Lee Simmons's guardian ad litem.

26. Plaintiffs Samaria Hudson, Taliyah Jacobs, and Jumantae Smith reside in Contra Costa County within the boundaries of the West Contra Costa Unified School District and Nystrom Elementary School in Richmond. Plaintiffs Samaria Hudson, Taliyah Jacobs, and Jumantae Smith attend school at Nystrom Elementary School and are legally required to attend school. The parents of Plaintiffs Samaria Hudson, Taliyah Jacobs, and Jumantae Smith have concurrently filed petitions with the Court to act as Plaintiff's guardian ad litem.

27. Plaintiff Arnold Gutierrez resides in Los Angeles County within the boundaries of the Compton Unified School District and Franklin S. Whaley Middle School in Compton. Plaintiff Arnold Gutierrez attends school at Franklin S. Whaley Middle School and is legally required to attend school. The parent of Plaintiff Arnold Gutierrez has concurrently filed a petition with the Court to act as Plaintiff Arnold Gutierrez's guardian ad litem.

28. Plaintiffs Eric Flood, Edith Quintero, and Daisy Romo reside in Alameda County within the boundaries of the Oakland Unified School District and Fremont High School in Oakland. Plaintiffs Eric Flood and Daisy Romo attend school at Fremont High School and are legally required to attend school. Plaintiff Edith Quintero is 18 years old. The parents of Plaintiffs Eric

Flood and Daisy Romo have concurrently filed petitions with the Court to act as Plaintiffs' guardians ad litem.

29. Plaintiffs Rianna Brown, Emmanuel Enriquez, and Nathan Sauceda reside in Los Angeles County within the boundaries of the Los Angeles Unified School District and Florence Griffith Joyner Elementary School in Los Angeles. Plaintiffs Rianna Brown, Emmanuel Enriquez, and Nathan Sauceda attend school at Joyner Elementary School and are legally required to attend school. The parents of Plaintiffs Rianna Brown, Emmanuel Enriquez, and Nathan Sauceda have concurrently filed petitions with the Court to act as Plaintiffs' guardians ad litem.

30. Plaintiffs Ignacia Barajas and Lucia Barajas reside in Los Angeles County within the boundaries of the Compton Unified School District and Compton High School in Compton. Plaintiffs Ignacia Barajas and Lucia Barajas attend school at Compton High School and are legally required to attend school. The parents of Plaintiff Ignacia Barajas and Lucia Barajas have concurrently filed a petition with the Court to act as Plaintiffs' guardians ad litem.

***Defendants***

31. Plaintiffs are ignorant of the names or capacities of other defendants responsible for the wrongs described in this Complaint, and, pursuant to California Code of Civil Procedure section 474, sue such defendants under the fictitious names Does 1 through 100 inclusive.

32. Defendant State of California is the legal and political entity with plenary responsibility for educating all California public school students, including the responsibility to establish and maintain the system of common schools and a free education, under Article IX, section 5 of the California Constitution, and to assure that all California public school students receive their individual and fundamental right to an equal education, under the equal protection clauses of the California Constitution, Article I, section 7(a), and Article IV, section 16(a).

33. Defendant State Board of Education and its members are responsible for determining the policies governing California's schools and for adopting rules and regulations for the supervision and administration of all local school districts. Pursuant to California Education Code Sections 33030-32, Defendant State Board of Education is required to supervise local school

districts to ensure that they comply with State and federal law requirements concerning educational services.

34. Defendant State Department of Education is the department of State government responsible for administering and enforcing laws related to education. Pursuant to California Education Code Sections 33300-16, the State Department of Education is responsible for revising and updating budget manuals, forms, and guidelines; cooperating with federal and state agencies in prescribing rules and regulations, and instructions required by those agencies; and assessing the needs and methods of collecting and disseminating financial information.

35. Defendant Tom Torlakson, sued here solely in his official capacity, is the State Superintendent of Public Instruction for the State of California, the Secretary and Executive Officer for the State Board of Education, and the Chief Executive Officer of the California Department of Education. As such, he is obligated to take all necessary steps to ensure that school districts comply with the California Constitution and State laws. Pursuant to California Education Code Sections 33301-03, he is the Director of Education in whom all executive and administrative functions of the California Department of Education are vested. Pursuant to California Education Code Section 33112(a), he shall superintend the schools of this state. He is responsible for ensuring that children within the State of California receive a free and equal public education. Although the conditions in Plaintiffs' schools have continued since Superintendent Torlakson assumed office, these conditions existed under many prior Superintendents of Instruction and were well-known to other State officials.

36. Defendants State of California, State Board of Education, State Department of Education, and Tom Torlakson are herein referred to collectively as "Defendants."

37. All the Defendants either are recipients of State funds in support of the operation of public schools or are responsible for and capable of ensuring that recipients of State funds for the operation of public schools are spent in a nondiscriminatory manner.

## CLASS ACTION ALLEGATIONS

38. This action is maintainable as a class action under section 382 of the California Code of Civil Procedure.

39. Plaintiffs represent a class of students consisting of all current or future students attending Castlemont High School in Oakland Unified School District, John C. Fremont High School in Los Angeles Unified School District, Nystrom Elementary School in West Contra Costa Unified School District, Franklin S. Whaley Middle School in Compton Unified School District, Fremont High School in Oakland Unified School District, Florence Griffith Joyner Elementary School in Los Angeles Unified School District, and Compton High School in Compton Unified School District (collectively, "Plaintiffs' schools").

40. There is a well-defined community of interest in that there exist questions of law and/or fact common to the entire class and which predominate over any individual question. Common questions of law include, without limitation, whether the Defendants' actions and omissions have failed to ensure the delivery of equal educational opportunity and constitutionally adequate educational services to the class by denying, and sanctioning and failing to correct the deprivation of, meaningful instructional time in accordance with the prevailing statewide standard. These common questions of law are susceptible to common answers. More specifically, these common questions of law and/or fact include, without limitation, the following:

a. Whether the Defendants' practices or absence of practices which deny, and sanction and fail to correct the deprivation of, meaningful instructional time in accordance with according the prevailing statewide standard violate Article I, section 7(a) and Article IV, section 16(a) of the California Constitution, which guarantee Plaintiffs the equal protection of the law, by failing to provide Plaintiffs basic educational opportunities equal to those that students in other schools receive;

b. Whether the Defendants' practices or absence of practices which deny, and sanction and fail to correct the deprivation of, meaningful instructional time sufficient to provide basic educational services violate Article IX, sections 1 and 5 of the California Constitution,

which guarantee Plaintiffs a fundamental right to attend a "system of common schools" that are free and "kept up and supported" such that they may receive the "diffusion of knowledge and intelligence essential to the preservation of the[ir] rights and liberties";

c. Whether the Defendants' practices or absence of practices which deny, and sanction and fail to correct the deprivation of, meaningful instructional time in accordance with the prevailing statewide standard violate Article I, section 7(b) of the California Constitution by denying Plaintiffs educational services capable of allowing students at Plaintiffs' schools to master state-mandated content standards in all academic subjects, while providing educational services capable of allowing students at other schools to master the content standards in all academic subjects;

d. Whether the Defendants' practices or absence of practices which deny, and sanction and fail to correct the deprivation of, meaningful instructional time in accordance with the prevailing statewide standard violate the Fourteenth Amendment of the United States Constitution by maintaining a system of public schools that does not provide equal access to basic educational services to Plaintiffs without regard to economic status;

e. Whether the Defendants' practices or absence of practices which deny, and sanction and fail to correct the deprivation of, meaningful instructional time in accordance with the prevailing statewide standard violate California Government Code section 11135 by maintaining a system of public schools that does not provide equal educational opportunities and basic educational services to Plaintiffs without regard to race or ethnicity.

41. The Plaintiff class is so numerous that joinder of all members or individual actions by each class member are impracticable. The class includes all students at Castlemont High School, Fremont High School in Los Angeles, Nystrom Elementary School, Whaley Middle School, Fremont High School in Oakland, Joyner Elementary School, and Compton High School. The size of the class exceeds 8,000 students, which is the approximate number of students currently enrolled

in the schools attended by Plaintiffs. Moreover, the inclusion in the class of future members and the dispersal of the class at seven school sites make joinder impracticable.

42. Each member of the class has claims that are typical of the claims of the class. All named Plaintiffs are members of the class they seek to represent and have suffered or will suffer the deprivation of meaningful learning time.

43. The named Plaintiffs will fairly and adequately protect the interests of the class. Plaintiffs are represented by experienced counsel who will adequately represent the interests of the class.

44. Defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief and/or corresponding declarative relief with respect to the class as a whole.

## FACTUAL ALLEGATIONS

45. Plaintiffs' schools, which serve high concentrations of low-income students, students of color and English language learners ("ELs"), consistently deliver far less meaningful learning time than California public schools serving more affluent students provide and that professional standards dictate as essential to the delivery of instruction necessary for students to meet the State-mandated academic content standards. This disparity in the availability of meaningful learning time, which is created and perpetuated by the State's systematic failure to adequately staff and resource Plaintiffs' schools and by the State's failure to monitor practices at these schools responsible for such deprivations, denies Plaintiff students and their peers an equal chance to obtain essential basic literacy and mathematical skills, and the opportunity to meet the mandated academic content standards that assume students have these skills.

46. Defendants' actions and inactions resulting in the creation and exacerbation of these disparities are deliberate and conscious, in that they are aware of the causes of these disparities, yet have failed to establish any system to monitor the provision of meaningful learning time in schools throughout California and remedy identified gaps. In fact, Defendants have taken the position that they have no legal duty or responsibility to prevent, close or correct these disparities.

### A. Factors Resulting in Denial of Meaningful Learning Time in Plaintiffs' Schools

47. At Plaintiffs' schools, the amount of time devoted to meaningful learning—that is, time during which a qualified teacher delivers instruction necessary to meet state-mandated academic standards to students who are present in class—comprises only a fraction of the hours that school is in session. Several interrelated factors divert substantial classroom time away from content-delivery in Plaintiffs' schools including, but not limited to the following:

- assignment of students to administrative tasks or free periods instead of assignment to classroom periods of instruction because of insufficient curricular offerings and a lack of available qualified teachers;
- violence or security disruptions, which result in cessation of instruction and traumatic after-effects, and insufficient access to mental health professionals to assist students and faculty in coping with these disruptions;
- late changes to the master course schedule requiring course and teacher changes well into the semester;
- unstable, transient teaching faculties and administrative teams (including principals, assistant principals, and counselors), resulting from under-resourced and stressful campuses not conducive to professional development and growth; and
- unaddressed student absenteeism, resulting in whole or part from campus conditions.

48. Each of these factors can be redressed by the State and directly contributes to the loss of real and appreciable meaningful learning time for students. At least as damaging to the overall educational program delivered by Plaintiffs' schools, however, are the lasting consequences of these deprivations, which contribute to and compound the chaos, instability and unmet student needs at the school site. The learning environments at Plaintiffs' schools do not meet prevailing statewide standards compared to the learning environments at schools within the same districts, across the state, and as deemed minimally acceptable by professional educators.

49. The causes of lost learning time in Plaintiffs' schools described below have been documented repeatedly as known features of the district-based system of schools adopted by the State. Yet the State has not taken steps to mitigate or prevent the deprivations, and has it not intervened directly to remedy the harm in Plaintiffs' schools.

50. ***High School Students Assigned to Administrative Tasks or Sent Home:*** The high schools attended by Plaintiffs—Castlemont, Fremont in Los Angeles, Fremont in Oakland, and Compton—lack an adequate number of qualified teachers and curricular content course offerings, making it impossible to fill all students' course schedules. As a consequence, many students are assigned to menial administrative tasks or sent home. Some students are assigned to classes for only part of the school day and are sent home for the remainder of the day even though they are supposed to be receiving a full day of education. Similarly, some students have class periods during which they are assigned to a teacher or staff member at the school for whom they perform administrative tasks, such as making photocopies or summoning other students from class. Sending students home or assigning them to perform administrative busywork as a replacement for time spent in class is counter-productive for any child, but it is particularly devastating for students who are already below proficiency in basic skills and core knowledge and who are ill-prepared for college-level work after graduation. The use of students' time in this manner also conveys the message that learning is not valued, and that the purpose of attending school is simply to obtain credits and check off a box rather than to master content and grow academically. For this reason too, such practices disadvantage students in Plaintiffs' high schools when they submit (or consider submitting) applications for higher education or employment.

51. Students attending most California public high schools do not spend a substantial proportion of the school day performing administrative tasks on behalf of school personnel or at home because there are not sufficient appropriate courses are to fill students' schedules. Most California public high schools offer sufficient courses such that students enroll as a routine matter in the courses they need to complete for graduation and college eligibility and students on track to meet graduation requirements have the option to take meaningful elective courses that enhance

their education and keep them engaged in learning. In Plaintiffs' schools, by contrast, some students are assigned to perform administrative tasks or sent home because there is no space in core courses required for graduation. And although a limited number of the top students at other high schools may be assigned to free periods or other enrichment activities when they have completed the entire curriculum offered by the school, these students are typically academically advanced students who have had consistent access to meaningful learning time and are performing at the college level. By contrast, students in Plaintiffs' schools assigned to perform administrative tasks or sent home during the school day often have not yet mastered the high school curriculum and may be reading at a ninth grade level or lower. As a result, children attending Plaintiffs' schools receive substantially less meaningful learning time than their peers in most California public schools.

52. The State has created a system of district-based governance that allows these known and extreme disparities to arise and has no mechanism to address them. Moreover, although the State knows or reasonably should know of this disparity, the State has failed to ensure that students are not assigned to periods during which students perform administrative tasks or are sent home. The State has also failed to ensure that Plaintiffs' schools are adequately staffed with sufficient numbers of teachers such that they can offer sufficient classes to provide a full schedule of meaningful course offerings to every student, comparable to that at other schools in the same districts and throughout California.

53. ***Disruptions Caused by Trauma and Unmet Mental Health Needs:*** Many students in Plaintiffs' schools are exposed to violence while on their school campuses. In several of Plaintiffs' schools, for example, classroom instruction is not infrequently disrupted or brought to a halt when violence perpetrated outside the school by non-students and the police response to that violence spills onto the campus and forces the school to go on lockdown. These frightening incidents deprive children at Plaintiffs' schools of valuable class time and traumatize students by introducing violence into the school sphere, where students have—and should have—and expectation of safety. While on lockdown, students may be confined to a single classroom for hours, at times dropping to the floor and squatting under furniture in response to the sounds of nearby gunshots, police sirens,

and circling helicopters. No compensatory learning time is provided for time lost during lockdowns or for the time it takes for students to recover emotionally from that type of traumatic event.

54. Indeed, the intrusion of neighborhood violence onto school campuses creates disruptions in the learning environment in Plaintiffs' schools that persist far longer than the duration of any single lockdown or traumatic incident. The insecurity and uncertainty that students feel when their physical safety is endangered makes it more difficult for them to focus in the classroom and engage in higher-level critical thinking. Young people who have been affected by violence experience anxiety, inability to concentrate, and anger management issues. Some students feel extreme anxiety if they must sit with their backs to the door in a classroom. Students experiencing untreated trauma may have sudden and disproportionate reactions to small perceived slights, profoundly affecting their capacity to learn and that of their classmates. Each time a teacher must respond to outbursts caused by such untreated trauma, every student in the class loses learning time.

55. Trauma also contributes to student absence from school. In particular, students are disproportionately absent in the aftermath of traumatic incidents or during periods of threatened or expected violence.

56. Plaintiffs' campuses lack adequate numbers of trained mental health personnel who could help students to cope more effectively with their emotional responses and assist teachers to develop trauma-sensitive classroom management techniques to mitigate the impact of trauma from these lockdowns in the classroom. As a result, teachers and administrators in Plaintiffs' schools, most of whom are not qualified to provide mental health or therapeutic services, must spend significant class time addressing students' reactions and responses to violence and trauma. This requires teachers to expend valuable classroom learning time in attempting to relieve student trauma and stress. By necessity, the majority of time is spent with those students who most visibly manifest the consequences of the violence experienced, leaving the needs of other students unmet.

57. Additionally, the occurrence of violence around these schools and the resulting disruption on these campuses accompanied by the absence of sufficient personnel to assist in

minimizing the consequences also discourage qualified teachers and administrative personnel, including principals, assistant principals and counselors, from seeking positions at these schools or from remaining for long periods of time.

58. Most California public high schools are not significantly affected by recurrent violence surrounding the school and the attendant security measures—schools and students placed on lockdown, the sounds of police sirens and circling helicopters. The emotional and psychological toll such traumatic incidents exact on students, if not absent entirely, occurs only in anomalous and isolated incidents at most California schools and does not substantially reduce the availability of meaningful learning time. In contrast, because of unmet mental health needs, children attending Plaintiffs' schools receive materially less meaningful learning time than their peers in most California public schools.

59. The consequences of trauma at Plaintiffs' schools can be remedied most efficiently by fostering supportive learning environments staffed by sufficient numbers of well-trained mental health professionals who can implement trauma-sensitive practices. The State has endorsed these widely recognized, evidence-based practices as proven effective in schools like Plaintiffs', yet it has failed to ensure that sufficient numbers of mental health professionals are assigned to Plaintiffs' schools. The State acknowledges the necessity of addressing student mental health needs by recognizing counselors, psychologists, and social workers trained to address trauma as staff who belong at schools, but Plaintiffs' schools lack anywhere near sufficient numbers of such professionals to meet student demand. The State's decision to limit so extremely the resources for essential student support services at Plaintiffs' schools requires administrators at these schools to choose between necessary services, inevitably leaving many students underserved.

60. The State is aware that Plaintiffs' schools are located in areas that experience high rates of violence that periodically cause schools to go on lockdown, and that such traumatic events create mental health effects that schools are not equipped to address. Yet the State has created a district-based system for delivering public education that does not account for these district needs

and allows Plaintiffs' schools to lose significant learning time due to these unaddressed mental health issues. The State has taken no affirmative steps to address these significant disparities.

61. ***Changes to the Master Schedule and New Student Assignments after the Start of School:*** Meaningful learning time is reduced and disrupted in Plaintiffs' high schools by frequent course and classroom transfers during the initial weeks and months of the school year. Plaintiffs' schools traditionally do not finalize their master course schedules before school begins for the year. As consequence, students are routinely placed in classes where they do not belong because of insufficient numbers of qualified personnel such as counselors to adequately assess students' academic needs, match course schedules with these needs, and provide sufficient curricular offerings to permit students to satisfy State requirements for matriculation and graduation. Some students in fact identified as having been improperly assigned to courses remain in these classrooms for weeks or months because Plaintiffs' schools cannot offer all the courses that their students need or because Plaintiffs' schools lack sufficient numbers of administrators and academic counselors to promptly and efficiently effectuate the necessary course transfers, which is exacerbated by the high transiency rate of students attending these schools.

62. Moreover, students who have been placed in appropriate classes are also affected by the repeated disruptions caused by many students transferring in and out of their classes, including students newly arriving at the school. Transfers work a hardship on teachers and make impossible orderly and efficient presentation of curriculum according to sequential lesson plans crafted on the assumption that class rolls will remain largely stable. The incapacity of Plaintiffs' schools to do proper scheduling is so severe that some teachers do not even attempt to introduce new material during the first weeks of the school year, resulting in the loss of meaningful learning time from the first day of the academic year, and forcing their teachers to choose between compressing curriculum into shorter periods than required to properly deliver required content or sacrificing required content in order to deliver the remaining material.

63. Plaintiffs' schools serve a highly transient student population unlike the student enrollment in the large majority of public schools throughout California. Such schools are unable to

program classes prior to the first day of school because the enrollment processes on which these schools are forced to rely do not provide an adequate estimate of the number and type of students that will actually attend the school in the coming year. Plaintiffs' schools also lack the personnel and technology necessary to efficiently schedule new students to their campuses into classes appropriate to these students' academic backgrounds in a timely manner throughout the school year. Each new student's enrollment results in lost learning time associated with enrolling that student, including the time required to register the student, identify and assess the student's academic needs and integrate the student into the school and individual classrooms. This causes lost meaningful learning time not just for the new students, but for all of the students in the classrooms to which they are assigned. Where, as in Plaintiffs' schools, there is not the personnel or technology available to facilitate new enrollments efficiently, the losses in meaningful learning time are multiplied beyond what they would be in counterpart schools serving student populations without high percentages of transiency and able to process new students with sufficient personnel and technology to fulfill these responsibilities.

64. Most California public high schools finalize a master course schedule in advance of the first day of school and do not experience repeated course and classroom transfers during the initial weeks of the school year. Although a very few students in a class may transfer from one course to another in some California schools, these limited and isolated instances of student schedule changes do not detract from the stability and consistency necessary to adequately deliver instruction at the beginning of the school year. In other words, the inability of Plaintiffs' schools to create and maintain a master schedule prior to the beginning of the school year leaves children with substantially less meaningful learning time than their peers in most California public schools.

65. Despite knowing that students attending Plaintiffs' schools experience these disruptions, the State has created a district-based system for delivering public education that does not account for these district challenges and allows Plaintiffs' schools to lose significant learning time due to high student transiency, insufficient numbers of counselors and administrators, and schools that are difficult to staff. The State has taken no affirmative steps to address these

significant disparities. In particular, the State has failed to ensure that sufficient numbers of administrators and academic counselors are assigned to Plaintiffs' schools to make likely the completion of a master course schedule in advance of the school year, efficiently make required changes, and ensure that students are placed in appropriate courses in the context of a highly transient student population.

66. ***High Teacher Turnover, Vacancies and Absences:*** Given the above-described factors that significantly reduce the amount of available meaningful learning time in Plaintiffs' schools, it is not surprising that these schools are historically difficult to staff with permanent teachers and administrators and are characterized by high teacher turnover and absences. The reduced learning time available in Plaintiffs' schools contributes to the hard-to-staff character of the schools. As a result of years of accumulated lost learning time, students in Plaintiffs' schools enter the classroom academically behind, requiring teachers to do additional work to develop curricula and plan lessons that meet State standards while accommodating the wide range of ability levels in the classroom, including the students who lack even basic literacy and numeracy skills. Throughout the school year, additional burdens are placed on teachers and valuable instruction time is lost as lockdowns, unmet student mental health needs, unaddressed student absences, and changes to student class schedules disrupt the delivery of instruction. This loss of learning time only increases the pressure placed on teachers to successfully deliver required curricula and meet expectations on statewide proficiency assessments, the results to which are normed by comparison to students who do not face these losses to learning time. Teachers teach to succeed and because of their belief that all children can learn. The diminished learning time available at these schools conspires to defeat this belief system through no fault of either the students or the teachers.

67. The frequent teacher turnover on these campuses predictably produces teaching vacancies, including vacancies occurring during the course of the school year that result when teachers are unable to continue working in these conditions or who are forced to go on medical leaves. These vacancies are difficult or impossible to fill with new teachers who possess the necessary background to achieve success in delivering meaningful learning time to Plaintiff

students and their classmates. Vacant teaching positions are often filled by one or a series of long-term substitutes; some students are assigned new teachers every week, month or semester. These substitute teachers generally do not know how long they will be in the classroom and typically lack expertise and experience in the curricular subject areas where they are placed. These factors conspire to make it difficult for the substitutes to plan or carry out efficient and coherent long-term lesson plans and teaching strategies, learn their students' strengths and weaknesses and to develop relationships with their students, and become part of the school-wide community. Substitute teachers are regarded by all segments of the campus as temporary personnel, here today and gone tomorrow.

68. Plaintiffs' schools also experience disproportionately higher teacher absences of shorter duration as well, necessitating the use of short-term substitutes to cover classes. These substitute teachers are "substitutes" only in name, brought in without access to the long-term learning plan being followed in the classroom, without any knowledge of the students and their instructional needs, and often lacking the expertise and experience required to carry out coherent and productive delivery of curricular material and classroom management. The frequent use of short-term substitutes is so disruptive to and destructive of Plaintiff students' learning as to constitute waste of students' time in these classes.

69. It is well established that learning requires, at minimum, consistency and stability in teaching faculties. Even when a permanent teacher is assigned or returns, valuable learning time must be expended by the teacher in attempting to determine what teaching took place in her absence, where the students are academically and psychologically as result of the substitutes' practices, and then in improvising, designing, and implementing catch-up strategies for delivery of curricular material and classroom management. Similarly, when a new teacher is hired to replace a teacher who has left the school permanently, the new teacher must spend learning time adapting to the new school and students and receiving training from the administrative staff before the teacher is fully up-to-speed. Students subjected to such practices internalize that their learning is not an educational priority and understandably question the basis of the teacher-student relationship; they

and their permanent teachers must spend even more valuable time just in forming and cementing such relationships.

70. The disruptions that take place in Plaintiffs' schools as a consequence of teacher turnover, vacancies, and absenteeism do not take place in most California schools. Though a teacher in any California school may, for example, take temporary parental leave, such periods of leave typically do not have an overall impact on the availability of meaningful learning time at the school because they are comparatively rare and take place in an otherwise stable teaching environment. In addition, most California schools are typically able to hire in advance a long-term substitute teacher to cover the entire period of the planned leave. Likewise, although all schools experience a modicum of teacher turnover from year to year as teachers retire or relocate, the departure of a very few teachers has a dramatically different effect than the turnover of a significant proportion of the teaching staff. And although teachers in any school will be absent on occasion, the higher number of teacher absences in Plaintiffs' schools on top of the greater instability of the teaching staff more broadly generates consequences that are far more disruptive to the consistency and stability necessary to learn in Plaintiffs' schools. As a result, children attending Plaintiffs' schools receive substantially less meaningful learning time than their peers in most California public schools.

71. Defendant Torlakson's Task Force on Education Excellence has acknowledged that high teacher turnover at under-resourced schools "cause[s] discontinuity that interferes with school improvement efforts and reduces student achievement." (State Superintendent of Public Instruction Tom Torlakson's Task Force on Educator Excellence, *Greatness by Design* (Sept. 2012) p. 20.) Defendant Torlakson's task force report and findings within the academic literature identify supportive teaching and learning conditions as proven effective to create and maintain teacher stability in schools in high-poverty communities including and like those in parts of Oakland, Richmond, Compton and Los Angeles. (*See id.* at pp. 25-26.) These practices include safe campuses, meaningful professional development opportunities, access to instructional coaching, protected time for teacher collaboration, ability to influence curriculum, a role in school-wide

decision-making and assignment of sufficient numbers of teachers, administrators, counselors, nurses, and mental health professionals.

72. Although the State is undeniably aware of the disproportionately high teacher turnover at low-income schools and its destructive consequences for student learning, the State has created a district-based system for delivering public education that does not account for these district needs and allows Plaintiffs' schools to lose significant learning time due to instability in the teaching staff. The State has taken no affirmative steps to address these significant disparities. In particular, the State has failed to intervene to require implementation of widely recognized, evidence-based practices that have been demonstrated to promote stability in the teaching faculties or administrative staffs in schools like Plaintiffs' schools located in California and throughout the nation.

73. ***Unaddressed Student Absenteeism and Tardiness:*** The above-described factors that rob students of meaningful learning time contribute to high student absenteeism and tardiness by creating school environments in which learning time is not valued and time in school is not valuable. What results is a vicious cycle: the loss of meaningful learning time causes students to miss class, and absence from school deprives students of yet more learning time. The causes of lost learning time in Plaintiffs' schools—for example, being assigned menial tasks instead of receiving an academic lesson, having a different substitute teacher every week, or suffering from untreated mental health needs related to violence on campus—directly contribute to academic disengagement, which leads to absenteeism. When time in school is wasted on menial administrative tasks or receiving repetitive instruction or no instruction at all from a series of ever-changing substitute teachers, students are, understandably, left with the impression that they do not lose anything by missing school. In a school environment in which every minute is not valued, students may make the rational decision that their time is better spent attending to their many obligations outside of school.

74. As a result, students in Plaintiffs' schools are absent and tardy in far greater numbers than their counterparts in other schools throughout their districts and throughout California.

Generally speaking, the State recognizes that absences and tardiness can be combatted at the school site level through the provision of specially trained attendance counselors and mental health professionals. But there are far too few such personnel to effectively address the needs on these campuses.

75. By definition, student absenteeism and tardiness reduce the availability of meaningful learning time at Plaintiffs' schools not only for absent or tardy students, but also for these students' classmates. When students are not present in class, they cannot receive instruction. They fall behind and then require assistance from their teachers in learning the missed information so that they can progress. Where absenteeism and tardiness are high, teachers are confronted with choices that have no good outcome: whether to adjust or redo lesson plans to devote classroom time to attend to the needs of each previously absent or tardy student or whether to treat these students as if they had been present all along and have the necessary learning foundation when they do not. More broadly, teachers in Plaintiffs' schools cannot employ some forms of effective pedagogy, such as lesson plans relying on complex instructional groupings, because they cannot predict which (or how many) students will show up for any particular lesson. The result is cumulative net losses of meaningful learning time for the entire class.

76. The disruptions that take place in Plaintiffs' schools as a consequence of student absenteeism and tardiness do not take place in most California schools. Although students in any school may be absent on limited or isolated occasions, student absences in most California schools are not attributable to the State's failure to ensure that meaningful learning time is provided at the school. Moreover, the occasional absence of a very few students from a classroom does not create overall instability and inconsistency as the scale of student absences in Plaintiffs' schools does. As a result, children attending Plaintiffs' schools receive substantially less meaningful learning time than their peers in most California public schools.

77. The California Attorney General has recognized that thousands of California schoolchildren are being denied the fundamental right to an education guaranteed by the California Constitution "because they never make it to the classroom." (California Attorney General Kamala

D. Harris, *In School and On Track: Attorney General's 2013 Report on California's Elementary School Truancy & Absenteeism Crisis* (2013) p. 1.) The State acknowledges the necessity of attendance interventions by recognizing attendance support, nurses, mental health counselors, and family liaisons who can address student attendance by contacting families and conducting home visits as staff who belong at schools. Yet Plaintiffs' schools lack anywhere close to the resources sufficient to consistently staff sufficient numbers of such professionals to adequately address attendance.

78. Despite the State's acknowledgment that unaddressed student absenteeism deprives students of equal educational opportunity, the State has created a district-based system for delivering public education that does not account for these district needs and in which districts are not able to take appropriate, well-documented steps to prevent chronic absenteeism and allows Plaintiffs' schools to lose significant learning time due to unaddressed student absences. The State has failed to ensure that Plaintiffs' schools are adequately staffed to allow the schools to identify chronically absent students, investigate the root causes of student absences, and assist students in returning to school.

**B. The Denial of Meaningful Learning Time in Plaintiff Students' Schools**

79. The extreme disparity in access to educational opportunity as a consequence of the above-described factors in Plaintiffs' schools is a well-documented feature of California's district-based system of K-12 public education. As a direct result of the district-based system for delivering public education that fails to account for the distinct needs of Plaintiffs' schools and the State's failure to take affirmative steps to address the significant disparities this system generates, Plaintiffs' schools lose significant learning time. The individual experiences of Plaintiff students typify many of the ways by which they and other class members at their schools are denied equal meaningful learning time in comparison to students at other campuses in their districts and across California as consequences of the actions and failure to act by Defendants. As examples:

80. **Castlemont High School in Oakland.** Plaintiffs Lee Simmons and Myriam Giselle Gonzalez attend Castlemont High School in East Oakland. During the 2012-2013 school year,

Castlemont's enrollment was 641. Of these students, 53 percent were Latino, 38 percent were black, 6 percent were Native Hawaiian / Pacific Islander, and 1 percent were Asian. Approximately 43 percent of the students were English language learners, and 87 percent of the students were socioeconomically disadvantaged. Castlemont is a chronically low-performing school, having been on Program Improvement status since 2006-2007, which means it has consistently failed to meet student achievement goals. Castlemont High School was divided into three small schools—East Oakland School of the Arts, Castlemont Leadership Preparatory School, and Castlemont Business and Information Technology School—beginning with the 2004-2005 school year. The three small schools were reconsolidated into a single large high school during the 2011-2012 school year.

81. Although Castlemont has a six period daily class schedule, many Castlemont students are not placed in meaningful core or enrichment classes for all of these periods. Instead, they are assigned to Inside Work Experience ("IWE") periods or have no class scheduled at all for some class periods. Plaintiff Lee Simmons has no class scheduled during fifth or sixth period. As a result of these IWE periods alone, Lee has received 33 percent less learning time during his senior year of high school. Plaintiff Myriam Giselle Gonzalez has an IWE period for sixth period, during which she helps the teacher to whom she is assigned clean the room, organize the desks, or write the daily "To Do" list on the board.

82. Castlemont students experience and witness violence at school and in the immediate vicinity of the school. Violence and threats to student safety cause security lockdowns that disrupt the delivery of instruction and affect students' mental health. Recent representative incidents include, but are not limited to, the following:

- On April 18, 2013, a drive-by shooting sent bullets flying through the front door of the school and into the main hallway, where many students were walking at the time. Stray bullets struck occupied cars parked in front of the school, including those of a Castlemont student and a Castlemont teacher's partner. Students and teachers in classrooms dropped to the floor at the sounds of the gunshots. Students missed hours of instruction during the subsequent security

lockdown. In the days that followed, student absenteeism increased and teachers took class time to discuss the incident and provide informal mental health support to their students.

- In November 2013, a drive-by shooting took place next to the school gates immediately after school let out. The street and sidewalks were full of students coming out of the school. Plaintiff Lee Simmons heard the gunshots, started running, and had to drop to the ground. After the incident, he was shaken and the next day struggled to pay attention and did not want to come to school.
- No additional mental health, counseling, or trauma support was provided to the school-site to assess the needs of students and teachers affected by these incidents and provide appropriate services. For those students whose absentee rates rose after the shootings, there were insufficient counselors and administrative staff to reach out to those families and address their needs.

83. The student population at Castlemont has a significant unmet need for mental health and social-emotional support: an experienced Castlemont administrator estimates that over 85 percent of the student population would benefit from some form of counseling or therapeutic programming. But Castlemont has no mental health counselor on staff to support students with mental health or social-emotional challenges. Although counselors employed by an outside non-profit organization, Children's Hospital Oakland, meet with some Castlemont students on a weekly basis, these counselors only have the capacity to serve a fraction of the Castlemont students in need of mental health or social-emotional support. Some Castlemont students who were referred for mental health counseling in fall 2013 have yet to receive any services. Castlemont does not control or supervise the outreach, casework, or management of Children's Hospital. Castlemont also has no ability to serve students who have mental health and social-emotional needs that are greater than one hour of counseling per week can manage. In addition, Castlemont has no school nurse.

84. Insufficient administrative, mental health, and teaching personnel contribute to high levels of student absenteeism and tardiness at Castlemont. During the 2013-2014 school year, only approximately 60 percent of Castlemont students are estimated to have attended school regularly.

Throughout the school day, those Castlemont students who do receive some mental health counseling with Children's Hospital, meet with mentors through an outside non-profit organization, or attend group therapy sessions are removed from class in order to receive services. Each morning, more than half of the student body arrives late to school and misses the beginning of first period. In many first period classes, there are typically fewer than five students present in a 25 student class when the bell rings to start the school day. In some classes, there is not a single student present for the first few minutes of class. Many students miss first period altogether.

85. Castlemont lacks sufficient administrative staff to meaningfully reduce student absenteeism and tardiness. Castlemont designates one staff member with responsibility for addressing truancy. He spends only a fraction of his hours on student attendance because he must also attend to significant teaching, athletic department, and other administrative responsibilities. Castlemont also lacks sufficient, stable administrative resources to consistently enforce school policies to deter student absences and tardiness.

86. At the beginning of each of the past two years, approximately half of Castlemont's teaching staff was new to the school. Key members of the administrative team also turned over in both years. In addition, the difficulty of attracting experienced teachers to teach at Castlemont means that many Castlemont hires are first-year teachers who are part of an alternative certification program. These teachers typically stay for only the duration of a two-year contract, contributing to high teacher turnover at Castlemont.

87. Because of the extraordinary challenges they must face with inadequate resources and support, teachers regularly leave Castlemont mid-way through the school year. That creates mid-year teaching vacancies that are particularly difficult to fill. In most cases, classes are covered with a series of short-term or long-term substitute teachers. Some of the mid-year teacher departures during the past several years include, but are not limited to, the following:

- During the 2011-2012 school year, Plaintiff Lee Simmons's Spanish 1 teacher left Castlemont during the fall semester. The position was vacant for months. The class was taught by a series of substitute teachers, most of whom did not speak Spanish. Lee and his classmates enrolled

in Spanish 2 the following year, but it soon became clear that the class had not gained the necessary foundational skills in Spanish 1 to be able to succeed in Spanish 2.

- Also during 2011-2012, an art teacher left midway through the year.
- During fall 2012, Plaintiff Myriam Giselle Gonzalez's Spanish teacher left the school. The students who remained in the class were taught by a series of substitute teachers. Myriam was transferred to an art class. Because she had been transferred midway through the semester, she received no credit for either Spanish or art that semester.
- During spring 2013, the art teacher whose class Myriam had been transferred into after her Spanish teacher left also left the school. The class was covered by a series of substitute teachers. Work was rarely assigned, assignments went ungraded, and students spent class time socializing.

88. Castlemont has had several vacancies in its special education department during the past two years. Five of seven positions for instructional assistants remained vacant throughout the 2012-2013 school year. These assistants are necessary to provide support to special education students in mainstream classrooms and facilitate one-on-one instruction in special education classes. As of January 2014, one instructional assistant position remained vacant.

89. A severely handicapped special education class began the 2013-2014 school year with no permanent teacher. On the first day of school, there was not even a substitute teacher present in the classroom. This position was later filled with a teacher contracted to work only four days per week. A substitute teacher or instructional assistant covers the remaining day of class on an *ad hoc* basis. The school is out of compliance with the standards set out in the students' Individualized Education Programs ("IEPs") because students are not in a classroom with a credentialed special education teacher for one-fifth of their time in school.

90. Castlemont classes are repeatedly disrupted during the first weeks of the school year as changes are made to Castlemont's course schedule and students are shifted between classes. Castlemont does not receive sufficient information regarding the number of incoming students to finalize the master course schedule before the school year begins. In fall 2012, out of approximately

600 incoming ninth graders assigned to Castlemont in the school district's student information system, approximately 100 ultimately attended the school. In the opening weeks and months of the school year, Castlemont must significantly alter student schedules to correct the resulting imbalances. The schedules of the freshman students in the Resource Program, for example, were changed three times in the first two months of the 2013-2014 school year. At the beginning of a given school year, some Castlemont classrooms have over 40 students in them. These conditions persist for weeks until some students are transferred to other classes. In response to the instability in the initial weeks of the school year, many Castlemont teachers do not attempt to introduce new material during the first week or more of school.

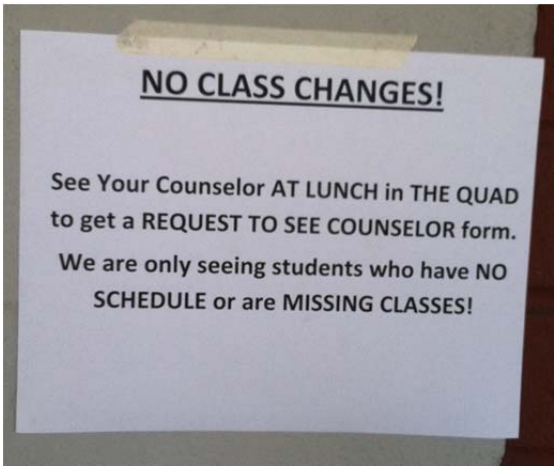
91. Castlemont also lacks the resources to respond to the consequences of the high student transiency it faces throughout the school year. A disproportionate number of students new to the school district are placed at Castlemont because the school is underenrolled; it serves only around 550 students on a campus with physical capacity for 2,500 students. Castlemont has no registrar, so the responsibilities of requesting and receiving student records, entering new student data into the student information system, and placing students in appropriate classes fall upon already overwhelmed administrators. As a consequence of insufficient administrative support, some students who transfer to Castlemont are placed in classes they have already taken or for which they lack prerequisites. Others are not provided necessary services. Students have attended Castlemont for months or even years before the school became aware that the student had an IEP and was entitled to special education services.

92. As a result of the cumulative effects of the above-described losses to instructional time, Plaintiffs Lee Simmons and Myriam Giselle Gonzalez and their classmates at Castlemont receive substantially less meaningful instruction time than their peers at most other California schools. The State's district-based system for delivering public education fails to account for the above-described disparities and allows Castlemont's students to lose substantial meaningful learning time as a result of unaddressed needs. The State has taken no affirmative steps to address these disparities.

93. **John C. Fremont High School in Los Angeles.** Plaintiffs Jessy Cruz, Briana Lamb, and Cristian Gaspar attend Fremont High School in South Central Los Angeles. Plaintiff Brian Cruz lives within the attendance area for Fremont High School and will attend Fremont High School beginning in 2017. During the 2012-2013 school year, Fremont's enrollment was 2,515. Of these students, 91 percent were Latino and 9 percent were black. Approximately 46 percent of the students were English language learners, and 76 percent of the students were socioeconomically disadvantaged. Fremont is a chronically low-performing school, having been on Program Improvement status since 1997-1998, which means it has consistently failed to meet student achievement goals.

94. Fremont experiences persistently high administrative turnover. In the past four years, Fremont has had four principals and many more assistant principals. Immediately prior to the opening of the 2012-2013 school year, the principal position and all four assistant principal positions were vacant. The assistant principal positions were all filled with interim appointments, and a principal was assigned to Fremont only two days before the beginning of the school year.

95. In part due to the late administrative transition, Fremont's master course schedule was not finalized prior to the start of the 2012-2013 school year, resulting in scheduling chaos that was not fully resolved for up to three months. Some students showed up on the first day of school and were told that they were no longer enrolled at Fremont. Others were given blank course schedules. Some sat in the auditorium during the school day for weeks, waiting to be assigned to classes. Many students who had been assigned to classes were placed in the incorrect courses or in classrooms of over 60 students. They were unable to make changes to their schedules for weeks because Fremont's limited scheduling resources were overwhelmed with attending to the needs of students who had no classes at all.




Sign posted at Fremont, August 20, 2012

For several months, some Fremont teachers had a different set of students in their classes almost every day as the administration sought to absorb additional students and balance class sizes. In some cases, students were transferred out of a class, reassigned to another class, and then transferred back into the initial class two weeks later.

96. Scheduling problems at Fremont are not limited to the 2012-2013 school year. For example, at the beginning of the 2011-2012 school year, the master course schedule was changed several weeks into the school year. Teaching assignments were changed and many students were given entirely new course schedules. Likewise, many students experienced multiple schedule changes at the beginning of the 2013-2014 school year.

97. Fremont also lacks the resources to respond to the consequences of high student transiency throughout the school year. In 2013-2014, Fremont had a 59 percent student transiency rate—the percentage of students who enter entered the school or left the school during the school year. Despite consistently high levels of student transiency, Fremont has no system or process to integrate mid-year transfer students and no additional support to manage the administrative burden of mid-year transfers. Plaintiff Jessy Cruz, for example, transferred high schools five times, in part due to changing foster care placements. Jessy attended Fremont at the beginning of his sophomore year of high school, transferred to another school in Victorville for several months, and then returned to Fremont the same year. His teachers were not notified that he had temporary transferred

to Victorville and believed that he had simply been absent. He therefore did not receive academic credit for the work he had accomplished in Victorville until a social worker intervened on his behalf. Fremont's failure to properly re-integrate Jessy had devastating effects on his academic performance and engagement in school.

98. Instead of being placed in meaningful core or enrichment classes, many Fremont students are assigned to "Service periods", during which they perform menial administrative tasks for Fremont staff, or "Home periods", during which they must leave the Fremont campus. Fremont has invested its limited resources in providing intervention classes, which are necessary for many students to graduate, but this has come at the expense of offering sufficient classes and electives to fill the course schedules of students who are on track to graduate. For the 2013-2014 school year, for example, the school did not have the resources to re-hire a beloved teacher who had been teaching auto mechanics electives at Fremont for 32 years. Many Fremont students are enrolled in multiple Service and Home periods. Fremont senior Oscar Serranto, for example, is currently enrolled in four Service periods, two Home periods, and only two actual classes. As a result of these Service and Home periods alone, Oscar has received 75 percent less learning time during his senior year of high school. Plaintiff Jessy Cruz, who will not graduate with sufficient credits to meet the entry requirements for four-year colleges in California, was enrolled in two Service periods and one Home period.

99. Fremont students experience violence in the immediate vicinity of the school. Just outside the school gates, students are assaulted, robbed, and sexually harassed, and gang recruitment and retaliation activity takes place. Several female students were victims of sexual assault in the immediate vicinity of the Fremont campus during the 2012-2013 school year. A female student was abducted near the campus during the 2013-2014 school year. No additional mental health, counseling, or trauma support was provided to the school-site to assess the needs of students and teachers affected by these incidents and provide appropriate services.

100. The student population at Fremont has significant unmet need for mental health and social-emotional support. In addition to students struggling with the effects of trauma, depression,

and anger management issues, Fremont supports many students who are in crisis, exhibiting suicidal behavior or deliberately inflicting self-harm. Fremont's psychological social worker ("PSW") conducts between ten and fifteen suicide assessments per week, and, among those students, about five students per month are determined to pose a threat to themselves and require hospitalization.

101. Fremont also serves a sizeable population of students with particularly high mental health needs: as of the beginning of the 2013-2014 school year, Fremont had identified at least 100 foster youth, 100 migrant students, and 57 homeless students. Despite the tremendous need for mental health intervention, Fremont has only one mental health professional—a psychological social worker—on staff to support 2,500 students. This professional provides short-term counseling and crisis intervention and coordinates services supplied by outside providers, but he is unable to provide any long-term counseling within the school. Counselors employed by outside non-profit and governmental organization meet with some Fremont students on a weekly basis, but these counselors serve only a fraction of the Fremont students in need of mental health or social-emotional support. Fremont also does not control or supervise the casework or management of these outside organizations. During the 2012-2013 school year, Fremont's psychological social worker referred about 150 students to outside organizations for long-term counseling, but only approximately 60 percent of those students received any services, and many more students with high mental health needs did not even receive a referral.

102. Insufficient administrative, mental health, and teaching personnel contribute to high levels of student absenteeism and tardiness at Fremont. During the 2012-2013 school year, only 50 percent of Fremont students attended school at least 96 percent of the time, equivalent to missing seven or fewer days of school. In addition, throughout the school day, Fremont students who participate in mental health counseling with outside service providers are removed from class in order to receive services.

103. Disproportionately large class sizes at Fremont also contribute to poor student attendance and make it more difficult for students who have been absent to successfully return to

school. Fremont regularly places 45 students or more in a single classroom, making it difficult or impossible to create a physical environment conducive to learning and impossible to effectively deliver differentiated learning pedagogy.

104. Fremont lacks sufficient administrative staff to meaningfully reduce student absenteeism and tardiness. During the 2011-2012 school year, Fremont used Quality Education Investment Act ("QEIA") funding to hire three full-time Pupil Services and Attendance ("PSA") counselors, and one part-time PSA counselor. These staff members, although insufficient to address all student attendance issues, called and visited student homes, created attendance contracts, and tracked credit recovery. During the 2012-2013 school year, Fremont had only one PSA counselor to serve more than 2,500 students, and this counselor rarely made home visits because she feared for her safety in the neighborhood. During the 2013-2014 school year, Fremont has had no PSA counselor on staff. Although academic counselors have been asked to add attendance issues to their responsibilities, they are not trained as social workers and attendance is not their primary area of responsibility. Fremont's lack of capacity to effectively address student attendance issues causes many students to miss additional school time. For example, Plaintiff Jessy Cruz missed a significant amount of school as a consequence of unmet social-emotional needs, yet the only contact he or his family received from the school regarding his attendance was automated, pre-recorded voicemail messages stating that he had been absent. Administration of student attendance issues is so haphazard that a student who missed a week of school to attend a family event was dropped from the school's roster and had to re-enroll at Fremont when she returned. To her knowledge, no one from the school ever contacted her or her family to inquire why she was missing school before dropping her from the school's roster.

105. Fremont has experimented with various strategies to attempt to mitigate the consequences of recurrent student tardiness to school in the morning, but these policies have often caused students to miss even more instruction time. Teachers estimate that approximately half of their students arrive late to school on a daily basis, some by as much as 20 minutes into the first period. Fremont therefore constructed a course schedule in which the first period of each day is a

25-minute advisory period for which students do not receive credit and which teachers use for activities such as character-building exercises, review, or homework. The Fremont administration and staff determined that it was preferable to spend instruction time on a non-credit advisory period than to have half of the students arriving late and missing the beginning of a core class. In fall 2012, students who arrived late to school had to wait in long lines to check in with the attendance office before they were permitted to go to class, causing late students to miss even more class in the mornings.

106. Because of the extraordinary challenges teachers must face with inadequate resources and support, teachers regularly leave Fremont mid-way through the school year, creating mid-year teaching vacancies that are particularly difficult to fill. Teaching vacancies are covered with a series of short-term or long-term substitute teachers. During the 2013-2014 school year, at least two science teachers and an English teacher have left midyear.

107. During the 2012-2013 school year, only 56% of Fremont teachers attended school at least 96 percent of the time, an attendance rate that is not much higher than the student attendance rate. Only approximately seven out of Fremont's 90 teachers completed the year with perfect attendance.

108. As a result of the cumulative effects of the above-described losses to instructional time, Plaintiffs Jessy Cruz, Briana Lamb, Cristian Gaspar, and their classmates at Fremont receive substantially less meaningful instruction time than their peers at most other California schools, and Plaintiff Brian Cruz will receive substantially less meaningful instruction time than his peers at most other California schools. The State's district-based system for delivering public education fails to account for the above-described disparities and allows Fremont's students to lose substantial meaningful learning time as a result of unaddressed needs. The State has taken no affirmative steps to address these disparities.

109. **Nystrom Elementary School in Richmond.** Plaintiffs Samaria Hudson, Taliyah Jacobs, and Jumantae Smith attend Nystrom Elementary School in Richmond. During the 2012-2013 school year, Nystrom's enrollment was 451. Of these students, 71 percent were Latino, 26

percent were black, and 2 percent were Native Hawaiian / Pacific Islander. Approximately 61 percent of the students were English language learners, and 100 percent of the students were socioeconomically disadvantaged. Nystrom is a chronically low-performing school, having been on Program Improvement status since 1998-1999, which means it has consistently failed to meet student achievement goals.

110. Because of the extraordinary challenges teachers must face with inadequate resources and support, Nystrom experiences persistently high teacher turnover. At the beginning of the 2013-2014 school year, 11 of approximately 21 teachers at Nystrom were new to the school, and nine of those teachers were new to the teaching profession entirely. The school has had six different principals in the past 15 years. The difficulty of attracting experienced teachers to Nystrom means that many Nystrom hires are first-year teachers who are part of an alternative certification program. These teachers typically stay for only the duration of a two-year contract, contributing to and exacerbating high teacher turnover at Nystrom.

111. Teachers regularly leave Nystrom mid-way through the school year, creating mid-year teaching vacancies that are particularly difficult to fill. For example, one first grade classroom at Nystrom has gone through three teachers during the first six months of the 2013-2014 school year. The school district reduced class sizes after the school year had begun, which required some first graders to be transferred into a newly created class four to six weeks into the school year. The new class was initially covered by a long-term substitute before a permanent teacher was hired. The permanent teacher was so overwhelmed by the challenges of teaching at Nystrom that she called 911 from her classroom during the school day and to report that she was a danger to herself. The police escorted her out of her classroom. A first-year teacher with no prior teaching experience was hired to replace her.

112. Mid-year—and, at times, mid-day—teacher departures have been a persistent fixture at Nystrom for years. Approximately ten years ago, during the middle of the school day, a teacher picked up his lunch and coat, walked out of his classroom to his car, and never returned to Nystrom. In most cases, mid-year vacancies are covered with a series of short-term or long-term

substitute teachers. For example, during the 2010-2011 school year, a second grade teacher left, and the class was covered by a series of substitute teachers. During the 2011-2012 school year, more students enrolled than the school expected, and the school had to create an additional first grade classroom. That teaching position was covered in piecemeal fashion by a series of substitute teachers.

113. Nystrom has particular difficulty attracting and retaining short-term substitute teachers. The challenge of being a substitute teacher at Nystrom is so great; on at least one occasion, a substitute teacher left midway through the school day. Frequently, the school cannot hire enough substitute teachers to cover teacher absences. When a teacher is absent and no substitute is available, the class is split into groups of about 10 students who are sent into other classrooms. This type of incident, during which Nystrom teachers must absorb some students from an absent colleague's classroom, occurs with great frequency, in some classrooms, as frequently as every other week.

114. The student population at Nystrom has significant unmet needs for mental health and social-emotional support. Students at Nystrom experience a great deal of violence, with one teacher estimating that at least 75 percent of children at Nystrom have personally witnessed violence. In addition to the trauma of violence, many students at Nystrom face challenges associated with severe poverty. Nystrom has no mental health counselor on staff to support students with mental health or social-emotional challenges. Although a counselor employed by an outside non-profit organization, Bay Area Community Resources, meets with some Nystrom students on a part-time basis, this part-time counselor only has the capacity to serve a fraction of the Nystrom students who are in need of mental health or social-emotional support. The counselor's caseload is almost always at capacity. Undocumented students do not receive services because Bay Area Community Resources serves only students with health insurance.

115. Nystrom has a high student absence rate. One teacher reports that typically one out of every ten students is absent on a daily basis. About one in four students arrives to school late in the morning. Some students arrive late to school almost every day. Nystrom lacks sufficient

administrative staff to meaningfully reduce student absenteeism and tardiness. Nystrom employs one, part-time attendance clerk. Her limited time is consumed by addressing daily issues and ensuring that attendance is properly completed. Tracking students who are chronically absent or tardy is not a priority. Nystrom previously employed a community outreach worker who was assigned to respond to student absences, tardiness, or poor hygiene by contacting families, including by making home visits. But there is no community outreach worker currently on staff at Nystrom.

116. As a result of the cumulative effects of the above-described losses to instructional time, Samaria Hudson, Taliyah Jacobs, Jumantae Smith, and their classmates at Nystrom receive substantially less meaningful instruction time than their peers at most other California schools. The State's district-based system for delivering public education fails to account for the above-described disparities and allows Nystrom's students to lose substantial meaningful learning time as a result of unaddressed needs. The State has taken no affirmative steps to address these disparities.

117. **Franklin S. Whaley Middle School in Compton.** Plaintiff Arnold Gutierrez attends Whaley Middle School in Compton. During the 2012-2013 school year, Whaley's enrollment was 854. Of these students, 90 percent were Latino and 9 percent were black. Approximately 76 percent of the students were English language learners, and 95 percent of the students were socioeconomically disadvantaged. Whaley is a chronically low-performing school, having been on Program Improvement status since 1997-1998, which means it has consistently failed to meet student achievement goals.

118. Because of the extraordinary challenges teachers must face with inadequate resources and support, Whaley experiences persistently high teacher turnover. Teachers sometimes leave Whaley mid-way through the school year, creating mid-year teaching vacancies that are particularly difficult to fill. In addition, Whaley regularly fails to fill teaching vacancies prior to the beginning of the school year. In most cases, teaching vacancies are covered with a series of short-term substitute teachers. For example, the 2013-2014 school year began with five teaching vacancies.

Some of these vacancies were not filled until December. Some of the recent mid-year teacher departures included:

- Whaley's eighth grade algebra teacher left prior to the 2011-2012 school year, creating a teaching vacancy that was covered by a long-term substitute teacher for the 2011-2012 school year. The position remained unfilled at the beginning of the next school year, and was covered by a series of short-term substitute teachers for the entire duration of the 2012-2013 school year.
- A reading intervention teacher position was vacant at the beginning of the 2013-2014 school year. The position was ultimately eliminated due to the school's inability to fill it with appropriate staff
- A seventh grade history teacher position was vacant at the beginning of the 2013-2014 year. The position was covered by a series of short-term substitute teachers for over three months until a permanent teacher was hired in December.

119. Whaley has particular difficulty attracting and retaining short-term substitute teachers. Frequently, the school cannot hire enough substitute teachers to cover teacher absences. When a teacher is absent and no substitute is available, the class is sent to sit in another teacher's classroom during that teacher's planning period.

120. Whaley students experience and witness violence at school and in the immediate vicinity of the school. Violence and threats to student safety cause "Code Red" security lockdowns that disrupt the delivery of instruction and affect students' mental health. For example, in 2013, a shooting took place directly in front of the school. The school was placed on lockdown for approximately two hours due to a fear that the shooter may have entered the building. Within a block of the school, students are assaulted, harassed, and encounter prostitution and gang activity. No additional mental health, counseling, or trauma support was provided to the school-site to assess the needs of students and teachers affected by these incidents and provide appropriate services.

121. The student population at Whaley has a significant unmet need for mental health and social-emotional support. Whaley has no mental health counselor on staff designated to support

students with mental health or social-emotional challenges. Although teachers can refer struggling students to an outside non-profit organization, Shields for Families, for mental health counseling, this organization has the capacity to serve only a fraction of the Whaley students who are in need of mental health or social-emotional support. Whaley does not control or supervise the outreach, casework, or management of Shields for Families.

122. At the beginning of the school year, students are often placed in inappropriate classes or classes for which they lack appropriate proficiency. At the beginning of the school year, English learner students are frequently placed in classes for which they lack appropriate proficiency, and students who have been reclassified and should be taking mainstream classes are placed in English Language Development classes. Due to insufficient numbers of counseling and administrative staff, it takes up to 10 weeks to correct student schedules and stabilize classes.

123. Whaley also lacks the resources to respond to the consequences of the high student transiency it faces throughout the school year. It is not unusual for Whaley teachers to receive seven new transfer students throughout the first half of the school year. Despite this consistent level of high student transiency, Whaley has no appropriate system to place or integrate mid-year transfer student. For example, English learner students who transfer into Whaley from outside the district are typically placed into whichever classes have space, without any kind of proficiency assessment.

124. Insufficient administrative, mental health, and teaching personnel contribute to high levels of student absenteeism and tardiness at Whaley. During the 2012-2013 school year, at least 75 students at Whaley missed 28 or more days of school. Some students arrive late to school almost every day. Whaley lacks sufficient administrative staff to meaningfully reduce student absenteeism and tardiness. Whaley employs one attendance clerk whose limited time is consumed by addressing daily issues and ensuring that attendance is properly complete. Tracking students who are chronically absent or tardy is not a priority.

125. As a result of the cumulative effects of the above-described losses to instructional time, Plaintiff Arnold Gutierrez and his classmates at Whaley receive substantially less meaningful instruction time than their peers at most other California schools. The State's district-based system

for delivering public education fails to account for the above-described disparities and allows Whaley's students to lose substantial meaningful learning time as a result of unaddressed needs. The State has taken no affirmative steps to address these disparities.

126. **Fremont High School in Oakland.** Plaintiffs Eric Flood, Edith Quintero, and Daisy Romo attend Fremont High School in the Fruitvale District of East Oakland. During the 2012-2013 school year, Fremont's enrollment was 795. Of these students, 51 percent were Latino, 32 percent were black, 4 percent were Native Hawaiian / Pacific Islander, 9 percent were Asian, and 2 percent were white. Approximately 47 percent of the students were English language learners, and 100 percent of the students were socioeconomically disadvantaged. Fremont is a chronically low-performing school, having been on Program Improvement status since 2005-2006, which means it has consistently failed to meet student achievement goals. Beginning with the 2004-2005 school year, Fremont High School was divided into four small schools—College Preparatory and Architecture Academy, Mandela High School, Media College Preparatory High School, and Paul Robeson School, Visual and Performing Arts. One school closed in 2009-2010 and the remaining small schools were reconsolidated into a single large high school during the 2011-2012 school year. Each Fremont student is assigned to one of four academies within the school—Media Academy, Architecture Academy, Mandela Academy for Law and Public Service, and Ninth Grade House—and most of his or her classes are taught by teachers associated with each academy.

127. Because of the extraordinary challenges teachers must face with inadequate resources and support, Fremont experiences persistently high teacher turnover. At the beginning of the 2013-2014 school year: (1) five of seven teachers in Ninth Grade House were not only new to Fremont, but new to the teaching profession entirely; (2) two of three Spanish teachers were new to Fremont; and (3) four out of seven teachers in Media Academy were in their first or second year of teaching at Fremont. Several of the new Media Academy teachers were hired at the last minute, including an English teacher who was hired the week before school started. The administration also turned over just prior to the 2013-2014 school year. The difficulty of attracting experienced teachers to teach at Fremont means that many Fremont hires are first-year teachers who are part of an alternative

certification program. These teachers typically stay for only the duration of a two-year contract, contributing to high teacher turnover at Fremont.

128. Teachers regularly leave Fremont mid-way through the school year, creating mid-year teaching vacancies that are particularly difficult to fill. In most cases, classes are covered with a series of short-term or long-term substitute teachers. Some of the mid-year teacher departures during the 2013-2014 school year include, but are not limited to, the following:

- A social science teacher in Media Academy left Fremont shortly before Thanksgiving. Although she notified the school administration in early October of her plans to leave, her job listing was not posted until December. For more than six weeks, her classes were covered by a series of substitute teachers. As a consequence of the staffing changes necessitated by her departure, Plaintiff Eric Flood was removed from an advisory class with a teacher who had been his advisor for the past three years and moved to a larger advisory class with a new teacher.
- A video production teacher in Media Academy left Fremont six weeks into the school year. His classes were covered by a series of substitute teachers for over three months. The video production students were combined into the same classroom as Eric Flood's journalism class for a period of time, as Fremont's journalism teacher attempted to manage both the journalism and video production classes simultaneously.
- A long-term substitute teacher hired to cover the four-month maternity leave of a government teacher in Media Academy left Fremont after only six weeks. For the next two and a half months, the classes were covered by a series of at least four substitute teachers. Plaintiff Eric Flood's government class and Plaintiff Daisy Romo's Advanced Placement ("AP") U.S. History class were affected. When Eric told a substitute teacher that he did not know how to complete an assigned worksheet because he had not been taught the necessary material, the substitute teacher told him simply to copy the answers from the textbook into the packets. Because class time was not used for an educational purpose, many students understandably stopped attending class, and most students did not pass their final exams. Daisy is no longer

planning to take the AP test in U.S. History at the end of the school year because she does not believe she can pass it.

As a result of these departures, some seniors in Media Academy had only one permanent teacher in a core class during fall 2013. Mid-year teacher departures of this nature are not unusual at Fremont; during the 2012-2013 school year, a nine-year veteran at Fremont left mid-way through the year. Eric Flood's drama teacher also left several weeks before the end of the 2012-2013 school year; the class spent class time watching movies for the remainder of the semester.

129. Fremont students experience and witness violence at school and in the immediate vicinity of the school. Violence and threats to student safety cause security lockdowns that disrupt the delivery of instruction and affect students' mental health. Recent representative incidents include, but are not limited to, the following:

- In February 2013, a student was shot in the leg immediately after school let out on the corner of Fremont's football field, which is adjacent to the school. Many students trying to leave the school were on the football field and on the street. There was widespread panic and fear among students and staff. Some students just outside of the school gates tried to run back to safety inside the school, but the school had entered lockdown and did not allow any students who were outside the gates back into the school. The school had not issued student identification cards, and thus had no way to distinguish between students and potential non-student perpetrators.
- During the 2012-2013 school year, Fremont was placed on lockdown after a shooting lodged bullets into the wall of an English classroom. The class heard three or four loud shots and felt the building jolt. The class froze, and then an administrator came on the loudspeaker to announce a lockdown.
- No additional mental health, counseling, or trauma support was provided to the school-site to assess the needs of students and teachers affected by these incidents and provide appropriate services. For those students whose absentee rates rose after the shootings, there were

insufficient counselors and administrative staff to reach out to those families and address their needs.

130. The student population at Fremont has a significant unmet need for mental health and social-emotional support. Fremont has no mental health counselor on staff to support students with mental health or social-emotional challenges. Although one counselor employed by an outside community health organization, La Clínica, meets with some Fremont students on a weekly basis, this counselor has the capacity to serve only a fraction of the Fremont students in need of mental health support. During the 2012-2013 school year, five Marriage and Family Therapist ("MFT") interns worked full-time at Fremont through a non-profit internship program, each of whom had a full caseload of Fremont students. The MFT interns did not return for the 2013-2014 school year. Fremont students referred for mental health counseling have yet to receive any services. Because teachers are aware that the single mental health counselor has very limited capacity, they tend to refer only the most extreme cases for counseling. That leaves students who are perceived to have comparatively lesser needs without any services.

131. Insufficient administrative, mental health, and teaching personnel contribute to high levels of student absenteeism and tardiness at Fremont. Teachers report that in a typical Fremont class, approximately one-third of students on the roster are regularly absent. Throughout the school day, Fremont students who participate in mental health, physical health, or sexual education counseling with La Clínica leave class to receive those services. In a typical day at Fremont, more than half of the students arrive late to school and miss the beginning of first period. In many first period classes, late students continue to walk in 30 to 45 minutes after the starting bell has rung.

132. Fremont lacks sufficient administrative staff to meaningfully reduce student absenteeism and tardiness. Fremont has only one staff member with the designated responsibility for addressing attendance by tenth through twelfth graders: an attendance clerk who is assigned to refer chronically absent students to the district's School Attendance Review Board ("SARB"). The attendance clerk only has the capacity to serve a fraction of the many Fremont students in need of attendance-related intervention. Fremont previously assigned two bilingual staff members to

address truancy by making contact with families and reporting back to teachers. Those positions have been cut.

133. Fremont inconsistently implements a tardy sweep policy that actually causes students to miss additional class time and increases the number of lost instructional minutes for students. When the school announces a tardy sweep, teachers must close and lock their doors, and administrators collect any students in the hallways or courtyards and bring them to the front gate. Students identified in the sweep are held at the front gate until the end of the period, placed in detention for the entire school day, or sent home for the day.

134. Approximately one-third of Fremont seniors are assigned to at least one Inside Work Experience ("IWE") period instead of being placed in meaningful core or enrichment classes. Some seniors have up to three IWE periods. Plaintiff Eric Flood has an IWE period during which he sorts mail, runs errands, or socializes. Plaintiff Edith Quintero has two IWE periods during which she makes copies, enters attendance data into a computer, or socializes. Fremont assigns IWE periods to juniors as well. When Plaintiff Daisy Romo received her schedule at the beginning of the 2013-2014 school year, she was first assigned to an IWE period instead of a science class.

135. Fremont classes are repeatedly disrupted during the first weeks of the school year as changes are made to Fremont's course schedule and students are shifted between classes. At the beginning of the school year, students are often placed in inappropriate classes or classes for which they lack prerequisites. For example, in fall 2013 an entire class of English learner students was assigned to a mainstream twelfth grade government class. Plaintiff Daisy Romo's schedule changed twice within the first month of school. During the first week of school, Daisy asked her counselor to transfer her into a science class to replace her preassigned IWE period. Two weeks later, she was transferred to a different English class because the English teacher to whom she had been assigned was outside of her academy. In addition, Fremont does not receive sufficient information regarding the number of incoming students to finalize the master course schedule before the school year begins; and must make many changes to student schedules to correct resulting imbalances. At the beginning of this school year, some Fremont classrooms had over 35 students for two months until

some students are transferred to other classes. Similarly, during the 2011-2012 school year, there were so many students in Plaintiff Eric Flood's media studies class for the first week of the school year that students had to stand up because there were too few desks. Eric's schedule was also changed at the beginning of the 2012-2013 school year, as his intended Spanish class was removed from his schedule because all of the Spanish classes were full. In response to the instability in the initial weeks of the school year, many Fremont teachers do not attempt to introduce new material during the first week or more of school.

136. Fremont also lacks the resources to respond to the consequences of high student transiency throughout the school year. A disproportionate number of students new to the school district are placed at Fremont because the school is underenrolled. Fremont receives a particularly high number of recent immigrant transfer students because the school has a Newcomer Program designed to assist students who are not English-proficient. It is not unusual for Fremont teachers to receive 10 new transfer students throughout the first half of the school year. Despite this consistent level of high student transiency, Fremont has no system to integrate mid-year transfer students and no additional support to manage the administrative burden of mid-year transfers.

137. As a result of the cumulative effects of the above-described losses to instructional time, Plaintiffs Eric Flood, Edith Quintero, Daisy Romo, and their classmates at Fremont receive substantially less meaningful instruction time than their peers at most other California schools. The State's district-based system for delivering public education fails to account for the above-described disparities and allows Fremont's students to lose substantial meaningful learning time as a result of unaddressed needs. The State has taken no affirmative steps to address these disparities.

138. **Florence Griffith Joyner Elementary School in Los Angeles.** Plaintiffs Rianna Brown, Emmanuel Enriquez, and Nathan Sauceda attend Joyner Elementary School, located in Watts in South Central Los Angeles. During the 2012-2013 school year, Joyner's enrollment was 705. Of these students, 70 percent were Latino, and 29 percent were black. Approximately 45 percent of the students were English language learners, and 86 percent of the students were socioeconomically disadvantaged. Joyner is a chronically low-performing school, historically

failing to meet the student achievement goals set by the State. In 2010, Joyner began being managed by the Partnership for Los Angeles Schools, an independent school turnaround operator managing 17 schools in Los Angeles pursuant to an agreement with Los Angeles Unified School District.

139. Joyner students experience and witness violence at school and in the immediate vicinity of the school. Violence and threats to student safety cause security lockdowns that disrupt the delivery of instruction and affect students' mental health. During lockdowns, Joyner students frequently hear the sounds of police sirens and helicopters flying low overhead. Recent representative incidents include, but are not limited to, the following:

- On October 3, 2012, an annual day of particularly intense gang violence in the area, Joyner was placed on lockdown for most of the school day, as the repeated sounds of gunshots, helicopters, and police sirens sounded outside.
- One morning in October 2012, shots were fired on the corner of 103rd Street and Wilmington, directly adjacent to the Joyner playground. The school was in chaos as many of the children on the playground tried to run inside, screaming, crying, and looking for their teachers or adults who could offer them some safety. The school remained on lockdown for approximately two hours. After this incident, some students were afraid to go outside on the playground. Some students asked to stay inside during recess and subsequently wrote about guns and shootings in their journal entries.
- In April 2013, during a month in which a series of traumatic violent incidents had taken place, gunshots were fired so close to the school that they rattled the windows of the principal's office. While crouching under her desk, the principal reached for her telephone and announced a lockdown over the loudspeaker.
- In October 2013, Joyner was placed on an inclement weather schedule, in which all doors and windows to the school were locked and students were not permitted to go outside, for four days straight because a cycle of gang violence and retaliation in the area made it too dangerous for the children to be outside.

- No additional mental health, counseling, or trauma support was provided to the school-site to assess the needs of students and teachers affected by these incidents and provide appropriate services. For those students whose absentee rates rose after the shootings, there were insufficient counselors and administrative staff to reach out to those families and address their needs.

140. Even when the school is not on lockdown, Joyner students are confronted with violence and its consequences throughout the school day. Upon returning from winter break, one class discovered bullet holes in their classroom window. From their classroom windows, Joyner schoolchildren hear fights, tires screeching, police sirens, and helicopters. Sometimes they see people outside on the street carrying a gun or a knife.

141. The student population at Joyner has significant unmet need for mental health and social-emotional support. Joyner has no psychiatric social worker on staff to support students with mental health needs, such as students with post-traumatic stress disorder, anxiety disorders, and students who deliberately inflict self-harm. Although counselors employed by outside non-profit and governmental organizations, including Kedren and Alafia Mental Health Institute, meet with about 200 Joyner students, these counselors serve only a fraction of the Joyner students in need of mental health or social-emotional support. Joyner does not control or supervise the outreach, casework, or management of these outside organizations. In addition, throughout the school day, the Joyner students who are able participate in mental health counseling with outside service providers are removed from class in order to receive services. During the 2012-2013 school year, Joyner was able to use a time-limited grant funding to hire a psychiatric social worker ("PSW"), who coordinated social service providers on campus and sought to ensure that counseling during the school day is provided during non-core classroom activities to the extent feasible. No PSW is on staff at Joyner for the 2013-2014 school year; during budgeting, the administration had to choose between hiring a PSW and a psychologist to test students for learning disabilities, an unconscionable choice to have to make between the needs of students with disabilities and those suffering from trauma.

142. Insufficient administrative, mental health, and teaching personnel contribute to high levels of student absenteeism and tardiness at Joyner. During the 2012-2013 school year, only 50 percent of Joyner students attended school at least 96 percent of the time. Throughout the school day, Joyner students who participate in mental health counseling are removed from class in order to receive services. Teachers report that approximately one in six students arrives to school late in the morning.

143. Joyner lacks sufficient administrative staff to meaningfully reduce student absenteeism and tardiness. Despite demonstrated need for attendance intervention, Joyner lacks sufficient, stable resources to consistently staff a Pupil Services and Attendance ("PSA") counselor position. During the 2012-2013 school year, Joyner was able to use School Improvement Grant funding to hire a PSA counselor. No PSA counselor was on staff at Joyner for the fall 2013 semester; during budgeting, the administration had to choose between hiring a PSA counselor and a nurse, and chose the latter to serve students who need daily medical attention. During the spring 2014 semester, a new PSA counselor was hired on a part-time basis. Her limited time is insufficient to serve all of the Joyner students in need of attendance-related interventions.

144. Because of the extraordinary challenges teachers must face with inadequate resources and support, Joyner experiences persistently high teacher turnover. Prior to the 2012-2013 school year, approximately 50 percent (18 out of 37) teaching positions were vacant and had to be filled. The following year, the retention rate of teachers who had been hired during the previous summer was less than 50 percent. In 2012-2013, only 65 percent of the teaching staff was present at the school at least 96 percent of the time.

145. Teachers also leave Joyner mid-way through the school year, creating mid-year teaching vacancies that are particularly difficult to fill. Some of the mid-year teacher departures during the past several years include, but are not limited to, the following:

- After a teacher was removed for cause at the beginning of the 2012-2013 school year, the class was covered by a series of long-term substitute teachers throughout fall 2012. The instability created a chaotic classroom environment. Each of the substitute teachers left

because they could not handle the challenges of teaching at Joyner. When a permanent teacher took over the class in January 2013, the students asked her, "Are you going to leave us, too?"

- During the 2013-2014 school year, the lower-level intervention teacher did not return to school after winter break. The upper-level intervention teacher was assigned to both upper-level and lower-level intervention students to cover the vacancy. As a result, Joyner students received less one-on-one and small group intervention time.

146. Joyner classes covered by short-term substitute teachers rarely engage students in meaningful learning. Substitutes almost never request to return to Joyner. Some substitute teachers—particularly those assigned to fourth and fifth grade classrooms—do not even stay for the entire school day.

147. Joyner lacks the resources to respond to the consequences of high student transiency throughout the school year. During the 2011-2012 school year, Joyner's student transiency rate—the percentage of students who either entered the school or left the school during the school year—was over 30 percent.

148. As a result of the cumulative effects of the above-described losses to instructional time, Plaintiffs Rianna Brown, Emmanuel Enriquez, Nathan Sauceda, and their classmates at Joyner receive substantially less meaningful instruction time than their peers at most other California schools. The State's district-based system for delivering public education fails to account for the above-described disparities and allows Joyner's students to lose substantial meaningful learning time as a result of unaddressed needs. The State has taken no affirmative steps to address these disparities.

149. **Compton High School in Compton.** Plaintiffs Ignacia Barajas and Lucia Barajas attend Compton High School in Compton. During the 2012-2013 school year, Compton's enrollment was 2,224. Of these students, 82 percent were Latino and 17 percent were black. Approximately 61 percent of the students were English language learners, and 92 percent of the students were socioeconomically disadvantaged. Compton is a chronically low-performing school,

having been on Program Improvement status since 1997-1998, which means it has consistently failed to meet student achievement goals.

150. Because of the extraordinary challenges teachers and administrators must face with inadequate resources and support, Compton experiences persistently high teacher and administrative turnover. The school has had five different principals in the past 12 years and many more assistant principals. Compton regularly fails to fill teaching vacancies prior to the beginning of the school year. For example, the 2013-2014 school year began with four teaching vacancies in the science department. Two of these positions were eliminated due to the school's inability to fill them with appropriate staff. The students who had been assigned to those classes were reassigned. The remaining two positions remained vacant for several months, and were covered by a series of short-term substitute teachers.

151. Instead of covering teaching vacancies with long-term substitute teachers who can stay until a permanent teacher is hired, Compton typically employs a series of short-term substitute teachers, who only work in a single assignment for a up to several weeks. For example, when Lucia Barajas's biology teacher went on maternity leave during the 2011-2012 school year, the position was covered for two months by a series of short-term substitute teachers, most of whom stayed only for a few days. As a result of the systematic failure by the State to match resources and support with the needs of the school, district administrators have informed teachers that during the 2013-2014 school year, a policy of hiring short-term substitute teachers to fill teaching vacancies was implemented to avoid the cost of health care benefits for substitute teachers.

152. Frequently, the school cannot hire enough substitute teachers to cover teacher absences because Compton has particular difficulty attracting and retaining short-term substitute teachers. When a teacher is absent and no substitute is available, the class is either sent to the library or sent to sit in another teacher's classroom during that teacher's planning period. For example, Plaintiff Ignacia Barajas's U.S. History class had more than 10 substitute teachers during the fall 2013 semester. The class was assigned to a different substitute teacher each time their teacher was absent. On some days, no substitute teacher showed up at all. The class waited outside

the classroom door until they were sent to the library or another teacher's classroom for the duration of the class period.

153. Compton students experience violence on campus and in the immediate vicinity of the school. Non-students regularly enter the school campus and initiate altercations and assaults. Teachers at Compton estimate that most students have witnessed or been a victim of violence. Just outside the school gates, students are assaulted and robbed, and gang recruitment and retaliation activity takes place. No additional mental health, counseling, or trauma support was provided to the school-site to assess the needs of students and teachers affected by these incidents and provide appropriate services.

154. The student population at Compton has a significant unmet need for mental health and social-emotional support. Compton has no mental health counselor on staff to support students with mental health or social-emotional challenges.

155. Many Compton students, instead of being placed in meaningful core or enrichment classes, are assigned to "Teaching Assistant" periods—during which students help teachers with administrative tasks such as photocopying or grading papers—or free periods for some periods. Plaintiff Lucia Barajas currently has a free period. She requested that her free period be switched for a chemistry class, which she needed to pass in order to graduate. She was told, however, that there was no space in any chemistry class.

156. Compton classes are repeatedly disrupted during the first weeks of the school year as changes are made to Compton course schedule and students are shifted between classes. At the beginning of the school year, students are often placed in inappropriate classes. Due to insufficient numbers of counseling and administrative staff, it typically takes weeks or even months to correct every student's schedule. Students are often placed in the wrong classes; classes are dangerously overcrowded, and counselors have huge lines of students waiting to fix their schedules. At the beginning of the school year, some Compton classrooms have over 45 students in a single class for weeks or even months until some students are transferred to other classes. For example, during the first three months of the 2012-2013 school year, there were so many students in Plaintiff Ignacia

Barajas's chemistry class that students had to sit in regular chairs and do work on their laps because there were too few desks.

157. Insufficient administrative, mental health, and teaching personnel contribute to high levels of student absenteeism and tardiness at Compton. Teachers report that typically four or five students per class are absent on a daily basis. Some students arrive late to school almost every day. At Compton, student absences are particularly damaging to the critical continuity required for learning because Compton follows a block schedule in which each class typically meets on alternate days for approximately 100 minutes. If a student misses even a single class period, he may not see his teacher for almost a week.

158. Compton lacks sufficient administrative staff to meaningfully reduce student absenteeism and tardiness. Compton's only staff with designated responsibility for addressing attendance are two attendance clerks whose primary responsibility is to ensure that attendance records are properly maintained. These attendance clerks do not assume primary responsibility for making home visits or assisting students in need of attendance-related intervention to return to school.

159. As a result of the cumulative effects of the above-described losses to instructional time, Plaintiffs Ignacia Barajas, Lucia Barajas, and their classmates at Compton receive substantially less meaningful instruction time than their peers at most other California schools. The State's district-based system for delivering public education fails to account for the above-described disparities and allows Compton's students to lose substantial meaningful learning time as a result of unaddressed needs. The State has taken no affirmative steps to address these disparities.

**C. The Consequences for Plaintiffs of Denial of Meaningful Learning Time**

160. By maintaining a district-based system of public schools that deprives Plaintiffs and class member students in Plaintiffs' schools of equal and adequate meaningful learning time, the State denies all these children any realistic opportunity to master and develop basic literacy and mathematical skills, let alone more advanced skills commensurate with their intelligence and academic potential. Due to the unstable, chaotic and disruptive learning conditions created by the

Defendants' policies, teachers in Plaintiffs' schools—unlike their counterpart teachers in other schools throughout their districts and across California—do not have anywhere close to the learning time necessary to bring their students to appropriate levels of proficiency in literacy and mathematics. As such, Plaintiffs' schools cannot deliver the core curricular information that will allow Plaintiffs to satisfy the State's mandated content standards. Even more troubling, children in Plaintiffs' schools graduate without the basic skills minimally necessary for informed citizenship in a democracy and participation in the workforce.

161. As a direct and proximate result of the failure of the State to ensure that its schools deliver minimally necessary meaningful learning time, class member children who attend Plaintiffs' schools lag far behind their peers in literacy and math skills. Many struggle just to read and write and to master elemental math concepts. Many students in Plaintiffs' schools read far below grade level or are functionally illiterate. Many students in Plaintiffs' high schools struggle to write a proper paragraph or even a complete sentence; some cannot read, let alone comprehend paragraphs or narratives. Many students are unable to even read their teacher's instructions written on the chalkboard. Without the levels of literacy and numeracy that the curriculum assumes, students are denied meaningful access to the core content not only of the required English and mathematics courses, but also to the state-mandated content in literature, history, social science, science, and the visual and performing arts.

162. At Castlemont, school-wide administration of the Scholastic Reading Inventory ("SRI") during the 2013-2014 academic year revealed that more than two thirds of students were reading below grade level, and close to a fifth were reading at an elementary school level.

| | **Percentage of Castlemont Students Reading Below Grade Level** | **Percentage of Students Castlemont Students Reading at a Below Basic Level** |
|---|---|---|
| **Ninth Grade** | 77% | 20% (below a fourth grade reading level) |

| | | |
|---|---|---|
| **Tenth Grade** | 67% | 21% (below a fourth grade reading level) |
| **Eleventh Grade** | 66% | 21% (below a fifth grade reading level) |
| **Twelfth Grade** | 53% | 11% (below a fifth grade reading level) |

163. Likewise, many students in Plaintiffs' schools have significant gaps in their mathematical skills. Students in high school algebra classrooms do not know their basic multiplication tables or how to perform long division. At Fremont High School in Los Angeles, for example, only 88 of 500 incoming freshman passed a math placement test administered before the 2013-2014 school year.

164. Student performance data collected by the State has long established that students at Plaintiffs' schools are far less likely to achieve proficiency in English and math than their peers elsewhere throughout the state. Plaintiffs' schools are all on Program Improvement status and have consistently failed to meet student achievement goals—most for six or more consecutive years.

165. In years prior to the 2013-2014 school year, the State has required students in grades two through eleven to take California Standards Tests ("CSTs") in order to measure students' progress toward achieving the state-mandated academic content standards. Students in Plaintiffs' schools have disproportionately failed to meet the proficiency standards established by the State in English-language arts and mathematics on the CSTs as compared to students elsewhere in the State:

| School | English/Language Arts (2013) Percentage of Students Scoring Proficient or Advanced | Math (2013) Percentage of Students Scoring Proficient or Advanced |
|---|---|---|
| Castlemont High School | 18% | 8% |
| Fremont High School (Oakland) | 14% | 3% |
| Fremont High School (Los Angeles) | 26% | 9% |
| Compton High School | 24% | 6% |

| | | |
|---|---|---|
| Whaley Middle School | 26% | 19% |
| Joyner Elementary School | 22% | 30% |
| Nystrom Elementary School | 20% | 25% |
| **State of California** | **56%** | **51%** |

166. In 2006, the California Department of Education ("CDE") instituted the California High School Exit Exam ("CAHSEE") "to ensure that pupils who graduate from public high schools can demonstrate grade level competency in reading, writing, and mathematics." (Cal. Dep't of Ed., Explaining and Using 2012-2013 CAHSEE Summary Results (2013).) Students in Plaintiffs' high schools have disproportionately failed to achieve proficiency standards established by the State in English-language arts and mathematics on the CAHSEE as compared to students elsewhere in the State:

| School | English/Language Arts (2012-2013) Percentage of Students Scoring Proficient or Advanced | Math (2012-2013) Percentage of Students Scoring Proficient or Advanced |
|---|---|---|
| Castlemont High School | 18% | 19% |
| Fremont High School (Oakland) | 22% | 23% |
| Fremont High School (Los Angeles) | 25% | 36% |
| Compton High School | 30% (2011-2012) | 26% (2011-2012) |
| **State of California** | **57%** | **60%** |

167. Students in Plaintiffs' schools fall farther behind with each year of schooling as the lost learning time accumulates and compounds pre-existing academic gaps. Literacy and mathematics are sequentially-dependent subject areas in which falling behind renders subsequent learning nearly impossible. Students with low reading comprehension skills have trouble

progressing further in school because they cannot read age-appropriate texts. There are very few books written at a third-grade reading level that are cognitively appropriate for high school-aged students, so students who are behind in their literacy development often cannot read texts that can engage and educate them with high school content. Likewise, a student lacking basic arithmetic skills cannot access the content in a high school algebra class. High school math teachers in Plaintiffs' schools must frequently go back to remediate concepts that students should have learned as early as third grade, which reduces the class time available to deliver material sufficient to satisfy state-mandated high school mathematics content standards.

168. Students' failure to attain proficiency in literacy and mathematics also prevents them from achieving mastery of content in other core subject areas. For example, students in Plaintiffs' schools with low literacy are unable to access word problems in mathematics classes, do not sufficiently understand grammatical concepts in English to be able to apply them in Spanish class, and lack the vocabulary to express their thoughts in laboratory reports in science class. Because many students lack the reading comprehension skills to access textbooks that deliver high-school level science content, at least one Castlemont biology teacher cannot rely on published textbooks or curriculum, and must create all classroom materials on his own. Likewise, students in Plaintiffs' schools lack the numeracy skills to perform basic calculations using data collected in science class and to understand how data illustrate scientific principles.

169. Severe literacy deficits, particularly among high-school-aged students, inflict immeasurable damage to the self-esteem of students and require greater resilience to remediate with each passing year. Students with low literacy may more frequently act out in the classroom to deflect being seen by others as students who cannot read. As a result, one or more students in the class facing significant literacy barriers reduces the meaningful instruction time for the full class of students.

170. Plaintiffs' schools lack the staffing and resources required to bring students up to grade level in reading and math. In Plaintiffs' schools, students with a wide range of learning abilities coexist within a single classroom. Students reading at a third-grade level or below sit next

to students reading at or above grade level in many high school classrooms. Intervening with students who are far behind in literacy and mathematics requires one-on-one time and small group time that is not feasible when a single teacher is serving a classroom, typically with more than 30 students, all with varying levels of proficiency. Moreover, many secondary school teachers have insufficient training to support students who are performing as far below grade level as many students are in Plaintiffs' schools. For example, high school English teachers in Plaintiffs' schools must work with students reading at an elementary school level, but most have not received the training in teaching reading fundamentals that an elementary school teacher would have.

171. Even a master teacher would struggle to provide appropriate instruction to students of such varied levels in the same class. As explained above, however, Plaintiffs' schools suffer from significant teacher turnover and chronic staffing issues due to the challenging teaching and learning conditions that themselves cause students to fall behind academically, illustrating vividly how the harms wrought on students at Plaintiffs' schools by the State's inaction are cumulative and amplify each other.

172. Although the State is aware of the disproportionate literacy deficits at low-income schools and its destructive consequences, the State has failed to intervene to require implementation of proven literacy intervention programs to bring students up to grade level. A literacy task force appointed by Defendants Torlakson and the State Board of Education has admitted that "[s]tatewide assessment data indicate that there is urgent need to address the language and literacy development of California's underserved populations, specifically English learners, students with disabilities, socioeconomically disadvantaged students, and African-American and Hispanic students." ( Cal. Dep't of Ed., California Striving Readers Comprehensive Literacy Plan, A Guidance Document (2012) p. 7.) Although the State's report acknowledges the critical need to provide literacy intervention in schools serving high concentrations of low-income students, English learners, and students of color, the State has failed to require implementation of literacy intervention programs proven effective in high-poverty communities in Plaintiffs' schools, and specifically has failed to ensure that teachers with appropriate training and credentials and a track record of serving low-

performing students are assigned to deliver math and reading intervention services to all students performing below grade level.

**D. The Program of Education Delivered to Plaintiffs Falls Fundamentally Below Prevailing Statewide Norms**

173. As a result of the conditions and practices in Plaintiffs' schools described above, students in these seven schools are provided with far less meaningful learning time than students in the great majority of California schools. These losses of instructional time compound over time, leaving students increasingly ill-prepared for the curriculum that the State itself mandates be taught, depressing further their ability benefit from the reduced learning time that is available.

174. The State itself has defined both the amount of instruction time and the sequencing of mandated academic content standards that schools are expected to provide to children in California and the content that schools are expected to teach within this time frame, and it has put systems in place to hold school districts and schools accountable for meeting these standards. Unlike students in most California schools, Plaintiffs and their classmates have been deprived of and continue to be deprived of the meaningful learning time necessary to meet these standards defined and enforced by the State.

175. The State has established minimum statewide standards for the number of instructional days and minutes that schools must deliver. Generally, under state law, public schools must deliver at least 180 days of instruction (Cal. Ed. Code § 46208), as well as a minimum number of instructional minutes that varies by grade level, (*id.* § 46207(a)). Districts may temporarily opt to reduce the school year on a district-wide basis by up to five days, but this option will be discontinued beginning with the 2015-2016 school year. (*Id.* § 46201.2.)

176. The State conducts annual audits to ensure that schools meet the statewide standards for instruction time of 180 days and the number of minutes prescribed by California Education Code Section 46207. During the state audit process, however, auditors review only the schools' academic calendars—which reflect the number of school days scheduled during an academic year—and bell schedules—which identify the beginning and ending time of each class period

during a school day—to calculate the number of minutes that schools were officially in session. (Cal. Ed. Audit Appeals Panel, Standards and Procedures for Audits of California K-12 Local Education Agencies (2013-2014) pp. 26-27.) In determining whether schools provided their students with an adequate amount of instruction time, the State does not account for time lost to lockdowns and their consequences, time when students were performing administrative tasks or had been sent home instead of receiving meaningful instruction, or any of the other facts contributing to lost meaningful learning time described above. In other words, the State monitors only the instructional time that schools and districts say they intend to deliver. Although the State conducts a separate audit of student attendance data, it does not link student attendance data to its determination of whether schools have met minimum state standards for the delivery of instructional time.

177. Plaintiffs' schools have fallen and continue to fall substantially below the statewide standards for instructional time of 180 days and the number of minutes prescribed by California Education Code Section 46207. The State's method of calculating instruction time and its audit procedures simply ignore the loss of actual instructional time during the "official" school day. As a result, the State system falsely presumes that as long as the bells at Plaintiffs' schools ring at 8:00 a.m. and 3:00 p.m., these schools are delivering equivalent daily hours of instruction time as schools that do not experience the losses to meaningful learning time afflicting Plaintiffs' schools. Unlike students at most California schools, however, students in Plaintiffs' schools spend far less of the actual school day engaged in the process of teaching and learning, depriving them of equal educational opportunity.

178. The amount of meaningful learning time delivered by Plaintiffs' schools also has fallen and continues to fall substantially below what educational experts agree is necessary to meet the academic content standards mandated by the State. California has set forth the content of the education guaranteed to each student by its Constitution in explicit terms. (Cal. Ed. Code §§ 51200-51284, 51003.) Since 1997, the State has prescribed uniform content standards describing precisely what the State promises to teach and what students are expected to learn in each grade level. (*Id.*

§ 60605.) California built upon this commitment when it adopted the Common Core State Standards in 2010, delineating the content of what schools are expected to teach and students are expected to learn in every school in California. The State also imposes high school graduation exit requirements. The State conditions graduating from high school or receiving a high school diploma on (1) completing a series of courses delineated by the State, (*id.* § 51225.3), and (2) demonstrating mastery of the academic content standards established by the State by passing California High School Exit Examination ("CAHSEE") (*id.*§ 60851).

179. As a result of the disproportionate loss of instruction time in Plaintiffs' schools, these schools do not deliver and continue to fail to deliver educational services that will allow their students to satisfy California's state-mandated content standards. California's content standards presume that, over the course of a full academic year, schoolchildren will receive instruction in basic academic content so they may attain and increase proficiency in the designated content areas. But the children in Plaintiffs' schools do not receive the hypothetical full academic year of instruction upon which the California content standards are predicated. As a result, teachers in Plaintiffs' schools lack sufficient time to bring their students to requisite levels of proficiency.

180. Because California's content standards build cumulatively as students progress through the educational system, students who fail to master state-mandated content standards during one school year begin at a disadvantage the following year. As a consequence, with each year that passes, students at Plaintiffs' schools receive a program of education that departs further and further from the content standards prescribed by the State and provided to the students elsewhere throughout the State.

**E. The State's Obligation to Deliver Equal Educational Opportunity to Plaintiffs.**

181. The State retains ultimate, plenary power over public education in the State of California. Notwithstanding any purported delegation of authority to local school districts, the State bears responsibility to ensure that all children in California's public schools receive equal educational opportunity. The primary responsibility for carrying out the State's duties and functions with respect to its educational mandate resides with the State Superintendent of Public Instruction

and with the State Board of Education. Neither these offices, nor the State and State Department of Education, have effectively supervised the statewide system of public education to ensure that all California schoolchildren receive equal educational opportunity.

182. The State has failed its minimal and most vital constitutional obligation to Plaintiffs and children in Plaintiffs' schools by maintaining a statewide system of education that systematically fails to account for the fact that these children receive far less meaningful learning time than their counterparts throughout their and other districts and, more broadly, throughout California. Although the essential facts spelled out in this Complaint are well-known to Defendants—and are in fact matters of common public knowledge for generations—the State has not acted or otherwise intervened to ensure that Plaintiff students and their similarly-situated peers have access to the same amount of meaningful learning time other students enjoy.

183. The State has established minimum standards for the number of instructional days and minutes that schools must deliver and conducts annual audits to ensure that schools meet these standards. By creating and enforcing such standards, the State recognizes not only that, in education, time matters, but also that the State plays an indispensable role in safeguarding the right of schoolchildren to receive instruction time that meets minimum statewide standards. But the State's enforcement process is fundamentally flawed in two ways. First, it improperly fails to account for the above-described factors and other factors that substantially reduce the amount of meaningful learning time delivered by Plaintiffs schools by failing to acknowledge losses to instructional time during the time that school is formally in session. Second, instead of remediating the factors that cause loss of instructional time by ensuring that schools have appropriate support and resources, the State penalizes schools that fail to deliver sufficient instruction time by withholding necessary funding from the district. (Cal. Ed. Code §§ 46201, 46202.)

184. The systematic deprivation of meaningful learning time in Plaintiffs' schools is one consequence of the State's failure to maintain an appropriate statewide audit system for instructional time that meaningfully monitors the actual number of instructional days and minutes delivered by California schools. The State must identify and cure constitutional deficiencies

resulting in the loss of meaningful learning time, and establishing and maintaining an appropriate statewide audit system for instructional time is one mechanism by which this relief could be accomplished.

185. The State must establish a monitoring system that tracks the number of instructional days and minutes delivered by Plaintiffs' schools to accurately account for the factors that cause loss of instruction time in these schools, including time lost when students perform administrative tasks or sent home; the consequences of violence and unmet student mental health needs; changes to the master course schedule and student transiency; student absences and tardiness; and teacher turnover, vacancies, and absences. Where schools deliver fewer minutes than the minimally acceptable statewide standard, the State must intervene to correct and prevent the causes of lost instruction time. As described above, each of the identified causes of lost time can be prevented and remedied by the State with the implementation of well-established, research-based practices, including:

- Prohibiting the assignment of students to periods during which they perform administrative tasks or are sent home, and ensuring that schools are adequately staffed with sufficient numbers of teachers such that they can offer sufficient classes to provide a full schedule of meaningful course offerings to every student;
- Ensuring that sufficient numbers of mental health and medical professionals are assigned to schools to address the consequences of violence and trauma identified in this Complaint;
- Ensuring that sufficient numbers of administrators and academic counselors are assigned to schools to make likely the completion of a master course schedule in advance of the school year, efficiently make required changes, and ensure that students are placed in appropriate courses;
- Ensuring that sufficient numbers of administrative and mental health staff—such as attendance counselors, truancy officers, and family liaisons—are assigned to schools to implement interventions proven effective at improving student attendance, such as home

visits, counseling, and the connection of students to appropriate resources to overcome barriers to attendance;

- Intervening to require implementation of research-based practices that create supportive teaching and learning conditions and have been demonstrated to promote stability in the teaching faculties or administrative staffs in schools like Plaintiffs' schools located in California and throughout the nation; and
- Implementing proven literacy and mathematics intervention programs to bring students up to grade level, such as by ensuring that teachers with appropriate training and credentials and a track record of serving low-performing students are assigned to deliver math and reading intervention services to all students performing below grade level.

## CAUSES OF ACTION

### FIRST CAUSE OF ACTION

**(All Plaintiffs Against All Defendants for Violation of the Equal Protection Clauses of the California Constitution, Article I, Section 7(a) & Article IV, Section 16(a) (Fundamental Interest))**

186. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

187. The Defendants have violated the rights of Plaintiffs and those similarly situated to receive equal protection of the laws, pursuant to Article I, section 7(a) and Article IV, section 16(a) of the California Constitution, by failing to provide them with basic educational opportunities equal to those that other students elsewhere in the State receive.

### SECOND CAUSE OF ACTION

**(All Plaintiffs Against All Defendants for Violation of the Equal Protection Clauses of the California Constitution, Article I, Section 7(a) & Article IV, Section 16(a) (Suspect Class))**

188. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

189. The Defendants have violated and continue to violate Plaintiffs' and members of the Plaintiff class' right to receive educational opportunity regardless of wealth and race, pursuant to Article I, section 7(a) and Article IV, section 16(a) of the California Constitution, by failing to provide Plaintiffs and members of the Plaintiff class equal educational opportunity and basic educational services, as described above.

**THIRD CAUSE OF ACTION**

**(All Plaintiffs Against All Defendants for Violation of Article IX, Sections 1 and 5 of the California Constitution)**

190. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

191. The Defendants have violated the rights of Plaintiffs and those similarly situated to receive basic educational services, pursuant to Article IX, sections 1 and 5 of the California Constitution, to learn in a "system of common schools" that are "kept up and supported" such that students may learn and receive "the diffusion of knowledge and intelligence essential to the preservation of the[ir] rights and liberties."

192. These constitutional provisions impose on the Defendants the duty to provide Plaintiffs with basic educational services adequate to teach them the skills they need to succeed as productive members of modern society.

**FOURTH CAUSE OF ACTION**

**(All Plaintiffs Against All Defendants for Violation of Article I, Section 7(b) of the California Constitution)**

193. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

194. The State of California has established content standards and other commitments of care and services to kindergarten through grade 12 students, defining the education to which students are entitled. These commitments are among the privileges and immunities that may not be granted to some citizens or classes of citizens but not provided on the same terms to all citizens.

195. The Defendants have violated the rights of Plaintiffs and those similarly situated to receive privileges and immunities on the same terms as all other citizens by failing to ensure that the rights enumerated *supra* were provided to Plaintiffs

**FIFTH CAUSE OF ACTION**

**(All Plaintiffs Against All Defendants for Violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution)**

196. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

197. The Defendants have violated and continue to violate Plaintiffs' and members of the Plaintiff class' right to receive a basic education regardless of economic status, pursuant to the Fourteenth Amendment of the U.S. Constitution, by failing to provide Plaintiffs and members of the Plaintiff class equal access to basic educational services, as described above.

**SIXTH CAUSE OF ACTION**

**(All Plaintiffs Against All Defendants for Violation of California Government Code Section 11135)**

198. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

199. California Government Code section 11135 provides:

No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

200. The Defendants have violated and continue to violate Plaintiffs' and members of the Plaintiff class' right to receive educational opportunity regardless of economic status, nationality, race, or ethnicity, pursuant to California Government Code section 11135, by failing to provide

Plaintiffs and members of the Plaintiff class equal educational opportunity and basic educational services, as described above.

**SEVENTH CAUSE OF ACTION**

**(All Plaintiffs Against All Defendants for Declaratory Relief)**

201. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

202. An actual and existing controversy exists between the Plaintiffs and the Defendants because Plaintiffs contend, and Defendants dispute, that Defendants' actions and inactions as described above have violated Article I, section 7(a) and Article IV, section 16(a) of the California Constitution; Article I, section 7(b) of the California Constitution; Article IX, sections 1 and 5 of the California Constitution; the Fourteenth Amendment of the U.S. Constitution; and California Government Code section 11135.

203. Plaintiffs seek a judicial declaration that the Defendants have violated these constitutional and statutory provisions.

**REQUEST FOR RELIEF**

Plaintiffs respectfully request the following relief:

1. A determination by this Court that this action may be maintained as a class action;

2. Injunctive relief prohibiting the Defendants and their officers, agents, and employees from continuing to ignore the loss of meaningful learning time in Plaintiff's schools and from continuing to operate a constitutionally inadequate monitoring system that fails to:

(a) monitor the meaningful learning time delivered by Plaintiffs' schools, taking into account the identified factors that cause loss of meaningful learning time in Plaintiffs' schools; and

(b) intervene in a timely manner when schools fall below the statewide standard for meaningful learning time to restore instruction time and prevent and remedy the causes of lost learning time;

3. The issuance of a declaratory judgment that Defendants' actions and inaction complained of herein violate:

- Plaintiffs' rights under the Equal Protection Clauses of the California Constitution, Article I, section 7(a), and Article IV, section 16(a);
- Plaintiffs' rights under Article IX, sections 1 and 5 of the California Constitution;
- Plaintiffs' rights under Article I, section 7(b) of the California Constitution;
- Plaintiffs' rights under the Fourteenth Amendment of the U.S. Constitution;
- Plaintiffs' rights under California Government code section 11135;

4. An award of costs, disbursements, and reasonable attorneys' fees and expenses pursuant to California Code of Civil Procedure section 1021.5 and any other applicable provisions of law; and

5. Such other relief as this Court deems just and proper.

Dated: May 29, 2014

ACLU FOUNDATION OF SO. CALIFORNIA
PUBLIC COUNSEL LAW CENTER
GARY BLASI
ARNOLD & PORTER
CARLTON FIELDS JORDEN BURT, LLP

By: 
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The Washington Post

June 8, 2014

# A startling waste of precious classroom time

By Jay Mathews
Washington Post

Lucia and Ignacia Barajas are sisters who attend Compton High School in southern Los Angeles County. They want an education, but their school seems unable to give them enough time to get one.

During the 2011-2012 school year, Lucia's biology teacher went on maternity leave. For two months there were nothing but short-term substitutes in the class, most staying only a few days. In the fall 2013 semester, Ignacia's American history class had more than 10 substitute teachers, and some days none at all. The restless students waited outside the door until they were sent to the library or another classroom.

Wasting time is common in the nation's low-income schools. Class schedules can be a mess at the beginning of the year, forcing students to wait days in the library for their assignments. Lockdowns because of neighborhood violence detract from learning time. Teacher absence rates are high, and instructors will often quit mid-year with no good replacements available.

A little-known time-waster is something called inside work experience (IWE) or service learning. I first encountered it 30 years ago while doing a book about an inner-city school. If the right class wasn't available or expectations for the student were low, he or she would be assigned to do chores for a teacher during that period. It's still happening.

At Fremont High School in the Oakland city school district, Eric Flood recently had an IWE period during which he sorted mail, ran errands and socialized. Fremont student Edith Quintero had two such periods during which she made copies, entered attendance data into a computer and chatted with friends.

I know this because of a remarkable lawsuit just filed by, among others, the ACLU Foundation of Southern California and Public Counsel against the state of California on behalf of 18 students at seven schools. The class-action complaint says students are not receiving the equitable education the state constitution requires.

Inequitable education class actions are not new. For decades, many states have been sued for not giving low-income children the opportunities provided in affluent communities. But this suit is different. Previous class actions focused on inadequate funds, teacher quality, facilities and materials, such as textbooks. This suit is about insufficient and inequitable time for learning. Stanford University economist Eric Hanushek, who chronicled unequal education suits in his book "Schoolhouses, Courthouses, and Statehouses," said this complaint is "something new" that focuses on "what the students are getting in the classroom."

We need more attention to bad schedules, lack of support for teachers, credit for busy work and the many other ways our schools waste time.

In a recent column, I noted a National Center on Time and Learning report on how much more high-achieving schools with longer school days and years offer their students. In those schools, teachers have more time to plan their lessons and confer with other teachers. At the schools named in the California lawsuit, it is a struggle just to get time in a classroom every day with a competent instructor.

"The effects of learning time lost in these seven schools are not isolated or linear," the suit said, "but cumulative, compounding and self-amplifying." State standards, like the new Common Core, "are predicated on a carefully prescribed sequence of teaching and student mastery of academic content," it said, but "as the loss of learning time accumulates, the gaps grow between the base of knowledge and the skills reasonably expected of students and what they have been able to acquire."

For Mark Rosenbaum, chief counsel of the ACLU of Southern California, this is one more in a series of suits that have forced the improvement of facilities and increased access to challenging courses. New research shows what longer days can do for disadvantaged students. What we need is more attention to bad schedules, lack of support for teachers, credit for busy work and the many other ways our schools waste time.

EDUCATION WEEK

June 2, 2014

# Students at Seven Schools Sue California to Get More Instructional Time

By Samantha Stainburn

Eighteen students from seven low-performing schools in California filed a class-action lawsuit against the state and its top education officials last week, claiming that they have not been given the same amount of time to learn as students in wealthier areas.

Pro-bono law firm Public Counsel and the ACLU Foundation of Southern California filed the case, *Cruz v. State of California*, in Alameda Superior Court. The plaintiffs' schools, all located in low-income, urban communities, are Fremont and Castlemont high schools in Oakland; Nystrom Elementary in west Contra Costa County; Compton High School and Whaley Middle School in Compton; and John C. Fremont High and Florence Griffith Joyner Elementary in Los Angeles.

The lawsuit alleges that a slew of factors decrease learning time for students at some of California's high-need schools.

"Students at these schools have been losing hours, days and even months of their education since the day they started kindergarten," Kathryn Eidmann, staff attorney at Public Counsel, told the San Francisco Chronicle.

While the schools' schedules look fine on paper, the suit alleges that, in practice, a slew of factors decrease learning time. These include teacher absences and long-term vacancies, scheduling mix-ups due to overburdened counselors, frequent lockdowns, and fake "service" courses in which students do office work and run errands.

All the distractions take "minutes away from teaching the P.E. drills you're supposed to be doing, from teaching Algebra 1," Danielle Dixon, a special education teacher at Castlemont High, said in a video about the issue produced by the ACLU. "This is learning time. And every minute counts."

"The California Constitution places an affirmative obligation on the state to safeguard the indispensable right to an equal education, no matter the circumstances," the complaint argues. "Basic equality in education then must begin with the guarantee that no child be denied the time required to learn what the state itself mandates be taught. As an elemental matter of equity and fairness, all public school children, at a minimum, are entitled to meaningful learning time sufficient for teachers to deliver the content necessary to meet the State's academic standards."

The lawsuit asks the state to establish a system to identify "grossly disparate meaningful learning time" and ensure that schools don't fall below the norm. It also requests that time be recovered at the plaintiffs' schools by providing them with more counselors, resources for class scheduling, and teacher training.

California's poorer schools have gained from suing the state before. A decade ago, the ACLU and other civil rights groups sued California on behalf of students whose schools lacked safe buildings, qualified teachers, or basic learning resources. Since the case, Williams v. California, was settled, the ACLU has reported that those schools have fewer unsafe buildings, more qualified teachers, and more textbooks.

In a statement, State Superintendent Tom Torlakson and state Board of Education President Mike Kirst dismissed the litigation as "costly and unnecessary." They said state officials are working on giving school districts more control over how they spend state money and that local control is "the best way to improve student achievement and meet the needs of our schools."

Los Angeles
Daily Journal
May 30, 2014

# State robs students in impoverished areas of learning time

By Chase Scheinbaum

By a variety of means, schools in high-poverty areas disproportionately rob students of learning time -a situation that violates its students' rights to equal education, according to a statewide class action filed Thursday by the American Civil Liberties Union Foundation of Southern California, Public Counsel and others.

High teacher and administrator turnover contribute to this problem, as does a disorganized class schedule at the school year's outset, a lack of mental health staff and the use of sham courses devoid of teaching instruction, according to the claim filed in Alameda County Superior Court.

"We found there was a grossly disproportionate distribution of meaningful learning time depending on what ZIP code your school was located in," said ACLU attorney Mark Rosenbaum.

The plaintiffs are students of seven elementary, middle and high schools in Los Angeles, Oakland and other parts of the Bay Area and Southern California.

Public Counsel, the ACLU of Southern California, UCLA School of Law Professor Emeritus Gary Blasi and pro bono counsel are fighting for meaningful learning time for students at seven high-need schools in the Bay Area and Southern California.

The defendants are state entities, including California, the Board of Education and the Department of Education.

"The loss of learning time - and with it, educational opportunity - does not occur in any dramatic, headline-making way, but rather inexorably through the cumulative and debilitating effects, over time, from the loss of learning time itself," the complaint said.

The suit adds to a mounting body of impact litigation geared toward improving California's dismal schools. In an April 2013, complaint against the state, the ACLU alleged that schools systematically deprive students whose first language is not English instruction in it, which the group says schools are required to do. A hearing in that matter is scheduled for July 31 before Judge James C. Chalfant in Los Angeles.

And earlier this year, the state defended claims that several teacher employment statutes make it unduly expensive and time-consuming to fire bad teachers, who disproportionately end up in high-poverty, high-minority schools. Los Angeles County Superior Court Judge Rolf M. Treu has not yet ruled on that matter. Vergara v. California, 484642 (L.A. Super. Ct., filed May 14, 2012).

In a given year, students may experience teacher departures several times, according to Thursday's complaint, requiring students to receive low-quality instruction from substitutes.

"In myriad ways, the state fails to compensate for lost learning time... the cost of this failure can no longer be borne in silence," said Hector Villagra, executive director of ACLU of Southern California, at a press conference Thursday.

The schools at the center of the suit were chosen because of their repeated poor academic performance, the attorneys said. Cruz v. California, RG14727139 (Alameda Super. Ct., filed M ay 29, 2014).

"These kids are in classrooms where the adult in the front of the room is a substitute or a rotating door of substitutes," Rosenbaum said. Children "are not getting an education from a permanent teaching core who understand the schools, the students and the curriculum."

UCLA School of Law professor Gary Blasi, Mark A. Neubauer of Carlton Fields Jorden Burt and John C. Ulin of Arnold & Porter LLP, whose firms are handling the matter pro bono, are also serving as plaintiffs counsel.

Nicholas Pacilio, a spokesman for Attorney General Kamala Harris, could not be reached for comment before deadline Thursday.

In these schools and others, the plaintiffs' attorneys said, students are often assigned to "service periods," which Rosenbaum called "a euphemism for noncourse," where they may make copies, perform other menial tasks or do nothing.

Sometimes, they are instructed to return home because there is no class for them to take, the attorneys said.

One student plaintiff, the attorneys said, received only two actual classes at one time.

The plaintiffs also allege that the schools do not have sufficient mental health staff, and in some cases none, to help students deal with violence in schools, instability in home life and other trying issues.

Schools conduct audits of students' time, but those assessments do not adequately consider what occurs in classrooms, Rosenbaum said. The plaintiffs are seeking injunctive relief, seeking to require the state to conduct more thorough audits of learning time and address the conditions that foster high turnover, among other things.

"We want the state to monitor whether these kids are actually getting an education or just sitting in a classroom," Neubauer said.

The Center for Public Integrity

May 30, 2014

# Lawsuit: Low-income students assigned too much ‘work experience’ or free time instead of classes they need

By Susan Ferriss
The Center for Public Integrity

A class-action lawsuit filed against the state of California Thursday alleges that low-income students are deprived of an equal education because they are denied academic instruction time — yet assigned to excessive hours of “service” that include tasks like tidying up classrooms.

In addition to being assigned menial tasks at school, some pupils — even those below grade level in reading or other subjects — are simply sent home during free time “even though they are supposed to receiving a full day of education,” the suit filed in Alameda County Superior Court argues.

The 18 plaintiffs in the suit are Latino and black students at seven of the state’s most disadvantaged and underfunded schools, whose students are almost all ethnic minorities. The schools are located in Los Angeles County and the San Francisco Bay Area. The suit demands that the state of California — a defendant in the suit — monitor practices at the schools and intervene to make improvements.

Class action lawsuit says California slowly robbing students at seven high-need schools of real instructional time through make-work classes and other measures.

“I think a lot of parents would be aghast if these were the conditions in their children’s schools,” said Kathryn Eidmann, Los Angeles-based staff attorney at Public Counsel, the nation’s largest pro bono law firm. Public Counsel is representing the plaintiffs, along with the American Civil Liberties Union of Southern California and other legal groups. Certain practices “slowly rob” students of real instructional time, lawyers said.

At-school “work” periods assigned to students are “classes in name only,” Eidmann said. “It’s being done to fill a hole.” Many teachers at the schools face tough challenges, Eidmann said, and staff turnover during the year and the use of multiple substitute teachers are common.

State officials said they had not yet had time to review the litigation, but also cited fresh efforts to improve the situation for low-income students.

The suit comes just as California lawmakers launch an initiative they hope will boost lagging graduation and academic proficiency among Latino and black students, in particular. Students registering lower rates of graduation and achievement are concentrated in schools stripped bare by years of state budget cuts and unequal local financial support.

The Golden State — long seen as a bellwether for national trends — is preparing to send millions of new state dollars to districts so they can use the funds, based on local jurisdictions’ own plan, to upgrade education for disadvantaged children.

The lawsuit filed Thursday alleges that at Fremont High School in Oakland, approximately one-third of seniors are assigned to so-called “Inside Work Experience” periods “instead of being placed in meaningful core or enrichment classes.” Students sort mail, run errands and perform other tasks. Juniors in the school of some 800 students are also assigned such work periods as well, the suit says.

“When plaintiff Daisy Romo received her schedule at the beginning of the 2013-2014 school year,” according to the suit, “she was first assigned to an IWE (Inside Work Experience) instead of a science class.”

In L.A. County, at Compton High School, another “chronically low performing school” with a high rate of staff turnover, students are also allegedly assigned to “teaching assistant” periods during which kids help teachers with tasks or simply get “free periods.” Plaintiff Lucia Barajas, according to the suit, requested that a free period she was given be switched to a chemistry class she needed to pass to graduate.

“She was told, however, there was no space in any chemistry class,” the suit says.

Another Compton High student, Ignacia Barajas, was enrolled in a U.S. history class with more than 10 substitute teachers during the fall 2013 semester. “On some days,” according to the suit, “no substitute teacher showed up at all. The class waited outside the classroom door until they were sent to the library or another

teacher's classroom for the duration of the class period."

At Castlemont High School in Oakland, student plaintiff Lee Simmons was assigned "work experience" periods for two out of six periods in the day. That's a 33 percent reduction in his instructional learning time during his senior year, according to the suit. In South Central Los Angeles, student Jessy Cruz of a school also called Fremont High School will graduate without enough credits to enter a four-year college. Yet he was assigned to two "service" periods at school and a period of "home" time, the suit also says.

The suit argues that academic instructional time the plaintiffs have been getting is "far below the norm" in public schools across the state, even though large numbers of these students are struggling to catch up with affluent peers.

Even if they are able to graduate, Eidmann said, they are deprived of courses affluent students are getting in their schools that prepare them for entry to college.

All the schools named in the suit — including one elementary school — are affected by neighborhood violence that lead to "lockdowns," resulting in hours, even days of lost instructional time, lawyers for the students also argue. Some schools have few or no counselors or psychologists on staff to help thousands of students cope with disturbances that spark fear and absenteeism.

"For these students, consigned to a series of schools that perpetually fail to deliver education, hope fades and potential is crushed," the suit argues. "The loss of educational opportunity does not occur in any dramatic, headline-making way," but rather "over time, from the loss of learning time itself."

Students receive "fewer minutes of learning per hour, fewer hours per week, and fewer weeks per year. As a result of this massive deprivation, an indefensibly high percentage of students at these schools fall far behind, give up, and drop out."

State Superintendent of Public Instruction Tom Torlakson — who is named as a defendant — and State Board of Education President Michael Kirst issued a statement Thursday saying that they hadn't had time to review specific claims in the suit. But the statement also said: "California's education system is in the midst of a historic effort to shift authority over decision making to local school districts, empowering them to determine how best to meet the needs of the students they serve."

The statement encouraged plaintiffs' lawyers to work with local school districts.

Troy Flint, director of communications for the Oakland Unified School District, said, "We are not opposed to the lawsuit" filed by Public Counsel and the ACLU. Flint said the district is aware "there are serious problems" at Fremont and Castlemont high schools. He said that the district has been trying to initiate reforms at each school to ensure students are put into more appropriate classes.

The suit argues that practices to patch together classes for students at these underfunded and troubled schools are violating students' right to educational opportunities, regardless of "wealth or race" under the California State Constitution.

In 2013, the Center for Public Integrity published reports on the expulsion of students in California's Kern County — mostly for behavior that did not require expulsion — and their assignment to alternative schools so far away the students were put on home-study plans or dropped out. Most were the children of farmworkers who were unable to drive their children back and forth to schools 20 to 40 miles away. The students expected to school themselves at home four out of five days a week were counted as full-time enrolled students.

Los Angeles Times

May 29, 2014

# Suit alleges state isn't providing adequate education to some students

By Steven Stephen Ceasar
*Los Angeles Times*

Thousands of students in California miss out on days, weeks and even months of classroom instruction because of chaotic campuses, high teacher turnover and a severe lack of resources, according to a lawsuit filed Thursday.

The suit, brought in Alameda County Superior Court by the American Civil Liberties Union, Public Counsel and others, contends that the state has ignored its obligation to provide an adequate education for these students, most of whom are minorities and from low-income families.

Attorneys accuse California of violating the state Constitution's equal protection guarantee by failing to ensure that all students receive a minimum level of instruction.

Among the reasons, attorneys say: unstable and transient staffing of teachers, counselors and administrators; a lack of course offerings that can lead students to be assigned to free periods or administrative tasks rather than academic classes; the frequent interruption of class by violence or security issues; chronic student absenteeism; and a lack of mental health professionals.

Supt. of Public Instruction Tom Torlakson and state Board of Education president Michael Kirst said in a joint statement that the best way to improve student achievement is through the state's new school finance system, which will add millions more to districts for students who are low-income, learning English and in foster care.

The new system "empowers them to determine how best to meet the needs of the students they serve," the statement said, adding that they will resist efforts to derail the new funding due to "costly and unnecessary litigation."

*Cruz vs. California*, filed on behalf of students from seven schools including those in the Los Angeles and Compton school systems, calls on the state to establish a system of tracking the days and minutes of instruction that accounts for time lost, rather than relying solely on the academic calendar, and for the state to intervene when a school falls short.

"Something as basic as learning time — real learning time — is disproportionately distributed to kids as a function of their ZIP Code," said Mark Rosenbaum, chief counsel of the ACLU of Southern California. "The kids who go to these seven schools have a set of challenges that kids in schools elsewhere could never dream of, let alone confront."

"The kids who go to these seven schools have a set of challenges that kids in schools elsewhere could never dream of, let alone confront," said Mark Rosenbaum of the ACLU of Southern California, pictured above with plaintiffs from John C. Fremont High School in Los Angeles.

The schools named in the class-action lawsuit are Fremont High School and Florence Griffith Joyner Elementary School in L.A. Unified; Castlemont High School and Fremont High School in the Oakland Unified School District; Nystrom Elementary in the West Contra Costa Unified School District; and Compton High and Franklin S. Whaley Middle School in the Compton Unified School District.

A Compton Unified School District official said the district has yet to review the litigation.

Students at Fremont High School in South L.A. faced nearly all of the challenges outlined in the litigation, lawyers said.

The school, which is almost entirely composed of black and Latino students, had a revolving door of administrators in recent years, teachers are frequently absent and substitutes can lead classrooms for months. Students can be subjected to violence inside and outside of school and lack the services to help them cope with such trauma, the lawsuit alleges.

L.A. Unified has attempted to deal with its lowest-performing campuses. In 2010, then-Supt. Ramon C. Cortines required all

Fremont staff to reapply for their jobs. Fewer than half of the teachers returned.

Jessy Cruz, 18, a Fremont senior, said he isn't on track to graduate, due to a lack of counseling and class offerings.

Because of frequent changes in his foster care placement, Cruz transferred from Fremont for a few months during his sophomore year but returned the same year. A lawyer had to intervene so Cruz could receive credit for the work completed at the other school. He said he also had little help in figuring out classes for graduation.

Cruz now lacks the credits to receive a diploma. Still, he was placed in three classes that have no instruction this semester.

"We don't have a college center anymore. I took classes I didn't need," said Cruz, who will attend summer school. "I was missing credits. I should have been taking classes that I needed. That's time being wasted."

Briana Lamb, 17, who is scheduled to graduate from Fremont in a few weeks, will attend Cal State Northridge in the fall. She worries that her school left her unprepared.

"I shouldn't have to question when I graduate and go off to college: Am I prepared?" she said. "Nobody of any race, of any color, should have to go to a university and feel like you don't belong there."

The disparity in resources between her school and others is clear, she said.

"It's unfair," she said. "It's not a secret. You can look at other communities and other schools and see the things that they offer."

Students at these schools believe that the state has given up on them, Rosenbaum said.

"The kids get it. They know what the state of California is saying to them," he said. "They're telling them that they're disposable, that they don't value their education."

KQED

May 29, 2014

# State Sued for Students' Lost Classroom Time

By Dan Brekke

A lawsuit filed Thursday in Alameda County Superior Court charges that state education officials have failed in their duty to provide adequate classroom learning time in schools that serve impoverished minority communities.

The suit was filed on behalf of students in seven schools across the state — including Oakland's Castlemont and Fremont high schools and a grade school in Richmond. It charges that instructional time is curtailed by a wide range of factors.

Those include a high rate of teacher turnover, an "extreme shortage" of counselors and other personnel, inefficiency in how students are assigned to classes, and the frequency of school lockdowns because of gunfire and violence on or near school campuses.

In particular, the lawsuit targets what it says is the widespread practice of assigning students in the plaintiffs' schools to free time, giving them errands to do or simply sending them home during the school day because classes are unavailable to them.

Lawsuit says students at high-need California schools perform administrative tasks like making copies and running errands for teachers instead of engaging in meaningful instruction.

Kathryn Eidmann, an attorney for the educational rights law firm Public Counsel, cited an example from Oakland.

"Instead of being placed in meaningful courses, students are placed in faux courses called 'Inside Work Experience' in Oakland, where they perform administrative tasks like making copies and running errands for teachers instead of engaging in meaningful instruction," she said.

Plaintiffs include 18 students in seven schools in Oakland, Richmond, Los Angeles and Compton. Attorneys for the students, led by Public Counsel and the ACLU of Southern California, are seeking to have the suit certified as a class action.

The suit names the state, the California Department of Education, the state Board of Education and Superintendent of Public Instruction Tom Torlakson as defendants. It alleges that the failure to address the factors that lead to lost learning time in the state's most troubled school districts violates students' fundamental right to education.

The suit argues that even though state officials are aware of the many issues that lead to lost learning time in classrooms, they have done too little to support school districts in dealing with them. Ultimately, the suit says, state officials are responsible for providing resources to correct the myriad problems that are eroding instructional time.

"A lot of students don't realize that these problems are a result of a failure by the state to deliver equal educational opportunities and put sufficient supports in schools," Eidmann said. "Students unfortunately think it's because of them. They say, 'Oh, this teacher left because the students are bad, or why would any teacher want to stay in a school like this?' And that's simply not true and we can't let students believe it any longer."

Oakland schools spokesman Troy Flint said Thursday the district is already taking steps. For example, he said that Castlemont is moving to block scheduling to cut down on empty class periods.

"It's about finding ways to better compensate teachers and principals to create stability," Flint said. "It's about managing better from a central office level, so sites feel supported and so that students receive the services they need."

California schools Superintendent Torlakson and state Board of Education President Michael Kirst issued a statement saying that while they hadn't yet reviewed the lawsuit, they intend to continue the state's "historic effort to shift authority over decision making to local school districts, empowering them to determine how best to meet the needs of the students they serve."

REUTERS

May 29, 2014

# California students sue state seeking more learning time

By Laura Rena Murray

Eighteen California students from seven of the state's lowest performing schools filed a lawsuit on Thursday against the state and top education officials for not having enough time to learn.

The lawsuit, filed by the American Civil Liberties Union and pro-bono law firm Public Counsel, cites multiple reasons for insufficient learning time. They include high teacher turnover, teacher vacancies and absences, and so-called "services courses" in which students often perform administrative tasks.

As a result of such issues, students at the seven low-performing schools in the lawsuit lag peers in literacy and math skills.

The lawsuit comes at a time of bitter political wrangling over how best to reinvigorate a U.S. public school system that leaves American children lagging counterparts in countries such as Finland and South Korea.

Eighteen California students from seven of the state's lowest performing schools filed a lawsuit on Thursday against the state and top education officials for not having enough time to learn.

"This is the first case that addresses the question of meaningful learning time," said ACLU attorney Mark Rosenbaum. "We looked at seven schools - all high poverty, urban communities served by these schools, which have been historically at the bottom.

"These kids do not get the same opportunities my kids get," Rosenbaum said. "Zip code determines educational opportunities in California. The state won't give these kids the time of day."

Adding to issues that diminish learning time, the lawsuit says, are schedule changes, early dismissals and lockdowns - in which students and teachers stay in locked classrooms, often huddled under desks to protect themselves from violence in the area.

According to California Standards Test scores in 2013, only 14 percent of students at Oakland's Fremont High School were proficient in English. Just 3 percent of students at the school, one of the seven named in the lawsuit, were proficient in mathematics.

"We're well aware of the shortcoming at Castlemont and Fremont," said Oakland Unified School District spokesman Troy Flint, responding to the suit. "High schools in particular have been a great challenge for us. We've tried to address some of those problems - obviously without great success."

The lawsuit, filed in Alameda Superior Court, comes on the heels of another California lawsuit that complains that rules making it difficult to fire educators put poor and minority students at a disproportionately greater risk of being taught by less-effective teachers.

San Francisco Chronicle

May 29, 2014

# California students sue state - want more learning time

By Jill Tucker

Students from seven low-performing schools across California, including two in Oakland, filed an unusual class-action lawsuit against the state and its top education officials Thursday, claiming they have received far less learning time than other, more affluent kids across the state.

While other state education lawsuits have focused on ensuring that all students have equal access to tangible resources - funding, quality teachers, safe facilities or even textbooks - this one is different.

It addresses a more fundamental part of a public education: the time it takes to learn.

The lawsuit claims that for students in the seven schools, including Fremont and Castlemont high schools in Oakland, a lot less time is spent on real learning.

"Students at these schools have been losing hours, days and even months of their education since the day they started kindergarten," said Public Counsel staff attorney Kathryn Eidmann, pictured with plaintiff Eric Flood at Fremont High School in Oakland.

The lawsuit - filed by Public Counsel, a pro bono law firm, and the ACLU Foundation of Southern California - identified several reasons for what it calls lost learning time, including a lack of teachers at the start of the school year, incomplete class schedules, the aftermath of traumatic lockdowns, overreliance on substitutes to fill long-term vacancies and "service" courses that require students to do office work or other tasks.

The lost teaching time makes a big difference in the students' lives, said Johanna Paraiso, a veteran English teacher at Fremont High and an adviser to the lawsuit.

"That lost learning time, honestly, those few minutes were what we needed to get one more kid to walk the stage (on graduation day)," she said.

That lost time is preventable, and it's the state's responsibility to address the causes, plaintiffs' attorneys said.

"The California Constitution places an affirmative obligation on the state to safeguard the indispensable right to an equal education, no matter the circumstances," according to the suit. "Basic equality in education then must begin with the guarantee that no child be denied the time required to learn what the state itself mandates be taught."

State officials said they hadn't had the opportunity to review the lawsuit, but said there has been a significant and "historic" effort to shift the control over money and policies to local school districts.

Continuing that effort "rather than shifting authority to Sacramento is the best way to improve student achievement and meet the needs of our schools, and we will resist any effort to derail this important initiative through costly and unnecessary litigation," said state Superintendent Tom Torlakson and state Board of Education President Mike Kirst in a joint statement. "We encourage the ACLU to continue to communicate with us at the state and, more importantly, to work with local school districts about the best ways to support local students and improve educational outcomes."

The case was filed Thursday morning in Alameda Superior Court.

Eric Flood, a Fremont senior and one of the plaintiffs, said he joined the lawsuit to draw attention to the large amount of time he spent not learning in his four years of high school.

Earlier this year, he said, his government teacher went on maternity leave, and the class was taught by a weekly series of teachers who did little more than hand out packets of work for the students to complete.

"People just stopped coming to class because we weren't doing anything anyway," said Eric, 17.

By the end of the first semester, three to four students would show up on any given day, down from 15 or more.

Frequent fights were another distraction, with classroom teachers responsible for breaking up the hallway melees, he said.

While other state education lawsuits have focused on ensuring that all students have equal access to tangible resources - funding, quality teachers, safe facilities or even textbooks - this one is different.

It addresses a more fundamental part of a public education: the time it takes to learn.

The lawsuit claims that for students in the seven schools, including Fremont and Castlemont high schools in Oakland, a lot less time is spent on real learning.

The lawsuit - filed by Public Counsel, a pro bono law firm, and the ACLU Foundation of Southern California - identified several reasons for what it calls lost learning time, including a lack of teachers at the start of the school year, incomplete class schedules, the aftermath of traumatic lockdowns, overreliance on substitutes to fill long-term vacancies and "service" courses that require students to do office work or other tasks.

The lost teaching time makes a big difference in the students' lives, said Johanna Paraiso, a veteran English teacher at Fremont High and an adviser to the lawsuit.

"That lost learning time, honestly, those few minutes were what we needed to get one more kid to walk the stage (on graduation day)," she said.

That lost time is preventable, and it's the state's responsibility to address the causes, plaintiffs' attorneys said.

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In addition, scheduling issues resulted in a lack of classes, which meant Eric was assigned to three service classes during the day, time he often spent filing or doing nothing, while taking credit-recovery classes online after school.

And inexperienced teachers, common given the annual staff turnover, have trouble controlling classroom behavior, which means little teaching occurs, Eric said.

"I want to be a part of (the lawsuit) so I can help future generations," he said. "I want to make sure they have the resources I didn't have in high school."

The class-action lawsuit represents all the students at the seven schools, which also include Compton High School and Whaley Middle School in Compton; John C. Fremont High and Florence Griffith Joyner Elementary in Los Angeles; and Nystrom Elementary in west Contra Costa County.

The lawsuit claims students are deprived of their state constitutional right to an equal education and calls on the state to establish a system that monitors the number of days and minutes of instruction delivered to students rather than relying on annually set academic calendars.

The suit also claims that lost time can be remedied with more counselors, increasing support and training for teachers and more resources for accurate class scheduling.

"Students at these schools have been losing hours, days and even months of their education since the day they started kindergarten," said Kathryn Eidmann, staff attorney at Public Counsel. "The state can't turn back the clock for these students, but it can give students the educational opportunities they deserve starting now."

May 29, 2014

# ACLU Sues California for 'Equal Learning Time'

By Anya Kamenetz

The American Civil Liberties Union today filed a claiming that high poverty schools in California are denying students the learning time they need to succeed. The problem is so great and so pervasive, the lawsuit claims, that it violates the state constitution. "We just celebrated the anniversary of *Brown v. Board of Ed*, and some of these schools are in worse shape than those in Topeka," says ACLU attorney Mark Rosenbaum, referring to the district that gave the landmark case its name.

The lawsuit by the ACLU of Southern California and Public Counsel on behalf of students like Briana Lamb and Christian Gaspar of Los Angeles cites factors like teacher turnover and scheduling problems that systematically cut into learning time.

The lawsuit names students including Briana Lamb as members of the class. In the fall of 2012, when Lamb showed up for her junior year at Fremont High School in South Central Los Angeles, she says her schedule was full of holes. "I had four 'home' periods, and one 'service,' " she said. A home period means just that: the student must go home. During a service period, sometimes you help teachers do photocopying or pass out papers. Lamb says that at other times it just means sitting around. That meant Lamb had actual classes for just a few hours a day—not enough to graduate on time. "It made me nervous," she said. "I knew exactly what classes I needed to be in to finish my 11th grade requirements." But it took weeks to sort them out.

The suit, *Cruz et al. v. State of California*, was filed in Alameda Superior Court with co-counsel Public Counsel. In a statement, State Superintendent of Public Instruction Tom Torlakson and State Board of Education President Michael Kirst said, "While neither the California Department of Education nor the State Board of Education has had an opportunity to review the specific claims made in today's suit, we believe continuing to implement California's Local Control Funding Formula—rather than shifting authority to Sacramento—is the best way to improve student achievement and meet the needs of our schools, and we will resist any effort to derail this important initiative through costly and unnecessary litigation." The enacted in last fall's budget, is intended to restore school budgets to pre-recession levels with an extra boost for funding for schools with high-needs students.

A spokeswoman for the Los Angeles Unified School District, which is not named in the suit, had no immediate comment.

The ACLU has spent years filing lawsuits challenging inequities in educational materials and facilities, but this is the first case to address the basic factor of time spent on learning. The class action suit names students at seven schools in Los Angeles and the San Francisco Bay Area. The complaint cites several interrelated factors that, it claims, systematically cut into learning time:

• Administrative and staff turnover. At Fremont High, the lawsuit claims, just before the school year started in 2012 the principal's job and all four assistant principal positions were vacant. They were eventually filled with last-minute and interim appointments.

High turnover among both administrative and teaching staff, plus a lack of counselors, leads to scheduling and staffing chaos, the ACLU says. At Fremont, that wasn't resolved for almost three months. In the meantime, many students had blank schedules and spent the day in the auditorium.

- Teacher turnover. Teachers at high-poverty schools are more likely to leave midway through the year or at the end of two-year contracts, the ACLU says. New teachers need transition time, which cuts into teaching. As well, higher teacher absences lead to overuse of short-term substitutes – another loss of instructional time.

"I had a math class, I think it was Algebra I, where we had a sub for a month," says Lamb. "She said, 'I'm not a math teacher. I can't help you. I'm sorry. Maybe you can help each other.' "

- Scheduling. At these schools, many more students need to repeat the basics – like ninth-grade reading — which sucks up extra time and resources. The ACLU claims that doesn't leave enough teachers to offer electives or honors courses. That's why so many high school students end up being sent home at lunch.

- Crime. Sexual assault, robbery, harassment, and gang recruitment are common just outside school gates. Safety worries keep some kids home, the lawsuit claims. Plus, classes grind to a halt for periodic "lockdowns" triggered by warnings of gang violence. "My phone was snatched a month and a half ago, right outside of school," says Lamb. "I'm still pretty shaken up about it."

- Trauma. A shortage of trained mental health counselors means teachers and administrators have to take time away from teaching and learning to try to help students focus on recovering and surviving from the many personal struggles they face, the ACLU says. And those struggles cause those students to miss school more often and makes them more likely to transfer schools.

  "My sophomore year, my mom passed away and my dad got really sick," Lamb recalls. "But nobody took the time to see why I wasn't passing. Everybody just assumed I didn't care about school. They mentioned to me, 'You know, the GED is always an option', and I was only like a sophomore."

None of these complaints are exactly new in high-poverty schools, either in California or across the nation. But by shining a light on the severity of these issues, using the frame of equal learning time, and invoking the state constitution, Rosenbaum says the ACLU hopes to prod action. He noted that two previous equity cases settled fairly quickly after negotiations with state officials, and that potential solutions are "not tough stuff," like assigning more counselors to schools to work on schedules and mental health. "Our hope is that we don't have to spend years trudging through the courts."

The Oakland Tribune

May 29, 2014

# Oakland, Richmond students file class action lawsuit against state over lost learning time

By Doug Oakley

When Eric Flood's economics teacher at Fremont High School went on maternity leave last fall, a procession of substitute teachers filled the days with easy, irrelevant and uninspiring work. It was so boring, many students stopped going to the first-period class altogether.

When his teacher returned, she expected them to be caught up with the work. Many of them ended up with D and F grades, Flood said.

Flood, 17, is one of 11 student plaintiffs across the state in a class-action lawsuit filed Thursday against the state Department of Education.

The suit says the students have been denied equal access to teaching time compared with students who attend schools in more well-to-do neighborhoods.

The suit, filed in Alameda County Superior Court, cites a loss of valuable learning time due to a number of systemic failures, including a shortage of teachers and mental health counselors, and the failure to have class schedules ready at the beginning of the year.

"We didn't even have to do the work. The substitute just marked us as being there even if we weren't," Flood said Thursday. "There was no point in going to that class anyway, so we just stayed home."

Lawyers involved in the suit say they hope it will get the state to devise a way of tracking how many hours and minutes of instruction students actually get at school, so schools will be forced to provide a minimum standard for learning time. Currently, schools simply report whether a student was there sometime between the start and end of the day.

Northern California plaintiffs in the lawsuit include two students at Castlemont High School and two at Fremont High School in Oakland and one at Nystrom Elementary School in Richmond. The other named plaintiffs are at four Southern California schools.

Also named as a defendant is the state superintendent of education Tom Torlakson, who is running for re-election.

The lawsuit says students like Eric Flood of Oakland have been denied equal access to teaching time compared with students who attend schools in more well-to-do neighborhoods.

Attorneys from Public Counsel, an advocacy firm, the ACLU of Southern California and other lawyers are handling the case on behalf of the students.

The ACLU of Southern California was part of a similar class action brought against the state and settled in 2004 that contended the state failed to provide public school students with equal access to instructional materials, safe and decent school facilities, and qualified teachers.

"We interviewed teachers and administrators in low-income schools and identified several factors that cause students to lose days and weeks of learning time," said Michael Soller, spokesman for Public Counsel, about the suit filed Thursday.

The suit alleges the schools' failure to have class schedules ready at the start of the year takes away from learning time.

A lack of mental health counselors in schools where kids are victims of violence and where shots are fired near schools takes away teaching time when teachers become ad hoc counselors, the suit says.

And at schools where there are not enough teachers, substitutes do a poor job and students are assigned to help out in school offices instead of being in class learning, the suit alleges.

It also says both Castlemont and Fremont high schools have a difficult time just getting students inside their classrooms.

At Castlemont, "Each morning, more than half of the student

body arrives late to school and misses the beginning of first period. In many first period classes, there are typically fewer than five students present in a 25-student class when the bell rings to start the school day, and, in some classes, there is not a single student present for the first few minutes of class. Many students miss first period altogether," the suit alleges.

"All of those contribute to a really challenging teaching environment and leads to higher turnover and higher vacancies," which cuts down on teaching time, said Public Counsel staff attorney Kathryn Eidman. "We really don't see this as a case of schools needing more money. We see it as identifying a need at these schools."

Oakland school district spokesman Troy Flint said the district has been trying to turn around Castlemont and Fremont high schools for a number of years with little success.

"We are grateful for any action that is going to produce more resources we can use to improve outcomes at schools in the district," Flint said.

Torlakson and state board of education President Michael Kirst issued a statement Thursday in response to the suit, calling it "costly and unnecessary." They said the new shift toward giving school districts more control over how they spend state money, called the Local Control Funding Formula, is "the best way to improve student achievement and meet the needs of our schools."

Danielle Dixon, a special-education teacher at Castlemont for the past two years, said she is quitting her job because a lack of teachers makes it too stressful to stay.

"Mental health is one of the greatest needs I see," Dixon said. "My students on a daily basis know students who have been shot. I have homeless students who don't have enough to eat and are still expected to take the tests and earn the grades to graduate, but they don't have the support to do that. We need an investment of qualified and certified psychiatrists and counselors. We need wrap-around services which we don't have right now."

She said the school has vacancies for special education assistants that are not filled for an entire year.

"There should be people whose job it is to bring those assistants to us," Dixon said.

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# Advocates say California public schools are wasting students' time

By Adolfo Guzman-Lopez

A lawsuit filed Thursday by public interest lawyers against California education officials alleges poor planning is causing students in poor and urban schools to lose weeks of instructional time, harming their education.

"These students do not have the basic building block of education students at most other California schools can take for granted, and that is meaningful learning time," said lawyer Kathryn Eidmann of the Public Counsel.

He said schools in Los Angeles, Compton, Oakland and other districts often don't have enough teachers to go around, so they assign students to "service classes," in which they make copies or help school staff for a period when they should be getting academic instruction.

"I hated it because I was thinking about all the other things I could have been doing," said Briana Lamb, a 12th grader at Fremont High School in South Los Angeles and one of the 18 named plaintiffs in the lawsuit.

"I could have had an actual elective class. I could have gotten psychology - put an hour and a half to good use instead of being brain dead," she said.

She said she was in a service class last year and again this entire school year.

Disorganized class schedules at the beginning of the school year, lawyers said, also leave students sitting around in holding classes for days or sometimes weeks, losing valuable learning time.

Other factors they said lead to lost time: High teacher turnover and absences at urban, low income schools and lockdowns and other security disruptions.

If she could change her school, Lamb said she'd get rid of the service classes, hire teachers who are empathetic with the socio-economic struggles she and other teens face, and she'd offer more academic classes.

> Students at seven schools "do not have the basic building block of education students at most other California schools can take for granted, and that is meaningful learning time," said Public Counsel staff attorney Kathryn Eidmann.

Lamb said she also lost a lot of credits after her mother died and her grades slipped.

"I wasn't thinking about school," she said. "I was at school but school wasn't on my mind."

She worked hard to make up the lost classes. She's been accepted to Cal State Northridge and will start in the fall.

"Just to meet state requirements for graduation from high school - just to attain the classes necessary for promotion to college - requires incredible strength and resilience on their part," Eidmann said of the students.

The lawsuit demands state officials find a way to track learning time at all schools to find out how widespread the problem is.

The lawsuit's also meant to compel school administrators to spend some of the more than $4 billion extra dollars coming to schools in the fall on the schools named in the lawsuit.