

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

Suffolk County

SJC-9267

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JULIE HANCOCK AND OTHERS,

Plaintiffs-Appellees,

v.

DAVID P. DRISCOLL AND OTHERS,

Defendants-Appellants.

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On Reservation and Report  
From Supreme Judicial Court  
On the Report and Recommendations the Superior Court

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**BRIEF OF AMICI CURIAE  
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NELLIE MAE EDUCATION FOUNDATION,  
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## SUMMARY OF THE ARGUMENT

To meet its constitutional obligation to provide all children with the level of education to which they are entitled, the state must ensure adequate learning time for all students, especially those at risk of failing, by expanding the time public school children spend in productive learning environments. The state itself has determined that more learning time is necessary to meet its constitutional obligation, though it has failed to mandate or to ensure more learning time. (8-17) Furthermore, the trial evidence shows that the state cannot meet its constitutional obligation to all students without extending learning time. (17-29) Significant outside research likewise demonstrates that more learning time in productive learning environments promotes better education and educational outcomes, especially for students most at risk of failing. (29-40)

Accordingly, *amici* support the Superior Court's conclusion that the state has failed to fulfill its duty to provide all students, particularly less affluent students, the education that is required by the Massachusetts constitution and urge this Court to include in its formulation of the remedy in this case

a mandate that the state include more learning time for students, particularly at-risk students, in the foundation budget and in the changes it is required to fund and implement. This type of mandate gives the state specific guidelines for developing and funding a constitutionally sufficient educational plan while permitting the state, in conjunction with local communities, to work out how the additional learning time requirement will be implemented. (40-43)

**STATEMENT OF INTERESTS OF AMICI CURIAE**

This brief is filed on behalf of various *amici curiae* who are committed to and have worked toward ensuring that all children have the opportunity to acquire an education that allows them to succeed in college and in the marketplace and to be meaningful participants in our democracy. Each co-signer, through its own organizational work or his or her own personal experience in the education field, has recognized the need for providing all children, especially low-income children and minority children, adequate learning time to acquire the level and quality of education required by the Massachusetts Constitution.

**STATEMENT OF THE ISSUES, THE CASE, AND THE FACTS**

*Amici* adopt the Plaintiffs-Appellees' Statement of the Issues and of the Case to the extent that such Statements concern the issues addressed in this brief.

*Amici* adopt the facts as found and reported by the Superior Court and the Statement of Facts of the Plaintiffs-Appellees to the extent that such facts and such Statement concern the issues addressed in this brief.

**ARGUMENT**

The Superior Court found that more than a decade after *McDuffy v. Secretary of the Executive Office of Education*, 415 Mass. 545 (1993), the state is still not meeting its constitutional duty to educate all its children. Report of the Honorable Margo Botsford, No. 2002-02978 (April 26, 2004) ("Botsford Report"). To remedy this, the Superior Court recommended that this Court mandate certain changes in the way the state finances and provides public school education.<sup>1</sup> *Id.* at

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<sup>1</sup> Specifically, Judge Botsford recommended as remedial relief that this Court issue a three-prong order directing the State, within six months, to

(1) ascertain the actual cost of providing the level of education in each of the focus school districts that permits all children in the district's public schools the opportunity to acquire the capabilities outlined in *McDuffy* -

315. (R.A. 1156) *Amici* urge that in fashioning the remedy in this case, the Court mandate what *amici* believe to be one of the most important changes - more learning time, especially for at-risk students. Specifically, *amici* urge this Court to include in its formulation of the remedy in this case a mandate that the state include more learning time for students, particularly at-risk students, in the foundation budget and in the changes it is required to fund and implement.<sup>2</sup> Without this change, the state cannot meet

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a directive that means, at present, the actual cost of implementing all seven of the Massachusetts curriculum frameworks in a manner appropriate for all the school district's children; (2) determine the costs associated with measures, to be carried out by the department working with the local school district administrations, that will provide meaningful improvement in the capacity of these local districts to carry out an effective implementation of the necessary educational program; and (3) implement whatever funding and administrative changes result from the determinations made in (1) and (2).

Botsford Report, at 315 (R.A. 1156)(emphasis in original). She further recommended that in fashioning that order, the Court provide some guidance concerning programmatic areas that either must be considered or at least should be considered and that then must or should be implemented through funding and administrative changes. *Id.* at 316-318 (R.A.1157-1159).

<sup>2</sup> There are at least two ways the Court can accomplish this, either by adding a specific part to its final order that requires the state to include more learning time in the calculation of the foundation budget and in its implementation plans, or by slightly revising the Superior Court's proposed order. As to the latter, in its recommendations, the Superior Court suggested that the state include in the programmatic areas that it should consider (in addressing the three-prong order discussed in note 1 above) the "institution of regular, established (as opposed to episodic) remedial programs for children at risk of failing, such as remedial tutoring, extended day, extended year programs, or a

its constitutional duty to provide all students an adequate education.<sup>3</sup>

This most basic of tools to boost student performance - increasing the time children actually spend learning - is so simple it is often overlooked. It can be overlooked no longer. Logic dictates the need. Evidence demonstrates the impact. Indeed, even the authors of *Every Child A Winner!*, the document that served as one of the primary bases for the state's Education Reform Act, urged that "school time should be increased significantly, in some cases as much as twenty percent (20%) or more." Massachusetts Business Alliance for Education, *EVERY CHILD A WINNER!*, at 30. (Ex. 1141, R.A. 06281)

In its landmark decision in *McDuffy*, this Court made clear that the state's constitutional duty "necessarily will evolve together with our society"

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combination of them." *Id.* at 318. (R.A. 1159) If this Court adopts the Superior Court's formulation of the final order, it can mandate additional learning time as advocated by *amici* by moving this area from the category of "should be considered" to the category of "must be considered" and by expanding the type of additional learning time that is required to include not just remedial programs but more learning time in general, particularly for at-risk students.

<sup>3</sup> *Amici* recognize that the Court in *McDuffy* declined to use the adjective "adequate" to describe the state's constitutional obligation. Like the Superior Court and parties, however, *amici* use the term "adequate education" as a shorthand reference for the level of education that the Commonwealth has a duty to provide all public school children. See Botsford Report, at 7 n.9 (R.A. 848).

and that "[o]ur Constitution, and its education clause, must be interpreted 'in accordance with the demands of modern society.'" 415 Mass. at 620 (1993)(quoting *Seattle Sch. Dist. No. 1 v. State*, 90 Wash.2d 476, 516 (1978)). It is abundantly clear that the demands of our modern society require that school children have more learning time than the state's public schools currently provide. The current schedule of a 180-day school year and six-hour school day was developed chiefly to accommodate labor needs of nineteenth-century farmers. In the era of standards-based reform, however, this schedule, a vestige of a different time, is inadequate. Students today are expected to know and do so much more than previous generations, yet they are required to achieve these objectives in the same allotted time. As the federal Time and Learning Commission explained:

In our agrarian and industrial past, when most Americans worked on farms or in factories, society could live with the consequences of time-bound education. ... The reality of today's world is that the global economy provides few decent jobs for the poorly educated. Today, a new standard for an educated citizenry is required, a standard suited to the 21st century, not the 19th or the 20th.

The National Education Commission on Time and Learning, PRISONERS OF TIME (1994).<sup>4</sup> Explaining what this new standard required, the Commission noted that “[s]tudents in other post-industrial democracies receive twice as much instruction in core academic areas during high school.” *Id.*<sup>5</sup> (emphasis added). It concluded: “By relying on time as the metric for school organization and curriculum, we have built a learning enterprise on a foundation of sand. ... In the school of the future, learning - in the form of high, measurable standards of student performance - must become the fixed goal. Time must become an adjustable resource.” *Id.*<sup>6</sup>

The state’s own findings and the undisputed evidence in the case compel the conclusion that, as the Superior Court found with regard to preschool programs, the only way to give all students, especially those at risk, a realistic opportunity to acquire the education to which they are entitled is to expand the learning time made available to them by the state. Therefore, as this Court determines how to

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<sup>4</sup> See <http://www.ed.gov/pubs/PrisonersOfTime/Prisoners.html>. A full copy of the report can be viewed at <http://www.ed.gov/pubs/PrisonersOfTime/index.html>.

<sup>5</sup> See <http://www.ed.gov/pubs/PrisonersOfTime/Lessons.html>.

<sup>6</sup> See <http://www.ed.gov/pubs/PrisonersOfTime/Prisoners.html>.

remedy the state's failure to provide all students an adequate education, an education that provides them with the seven *McDuffy* frameworks in a modern context, it should include the resource of adequate learning time.

**I. TO MEET ITS DUTY TO PROVIDE ALL STUDENTS THE EDUCATION REQUIRED BY THE MASSACHUSETTS CONSTITUTION, THE STATE MUST ENSURE THAT STUDENTS HAVE ADEQUATE LEARNING TIME.**

**A. The State Itself Has Recognized That More Learning Time is Necessary to Meet Its Constitutional Obligation, Though it Has Failed to Act on Its Own Mandates and Findings.**

The Education Reform Act, signed into law three days after the Court issued its decision in *McDuffy*, contained an unambiguous directive that more learning time must be part of the state's education system:

The board of education shall prepare a plan to extend the time during which students attend school to reflect prevailing norms in advanced industrial countries and to address the educational needs of children. ... Said plan shall contain a practical, but timely, proposal for implementation and detail all associated costs.

St. 1993, c. 71, § 80 (emphasis added).

The state's position in this case has been that it has taken "appropriate legislative action within a reasonable time to provide public school students with the education required under the Massachusetts

Constitution" through the passage and implementation of the Education Reform Act's various components. See, e.g., Appellant's Brief, at 21-74, 115. Whether or not the state's position is accurate in a broad sense (which the lower court found it is not), it is plain that the state views the passage and implementation of the Education Reform Act as satisfying its constitutional duty. As such, the state's inclusion in the Act of a specific, mandatory requirement to extend learning time signifies that the state itself recognizes that more learning time is necessary to meet its constitutional goal.<sup>7</sup>

In response to this mandate in the Education Reform Act, the Board of Education created the Massachusetts Commission on Time and Learning in 1993 to review the quantity, quality, and adequacy of school time in Massachusetts. In November 1995, the Commission issued findings and a set of recommendations in its final report, *Unlocking the Power of Time*.<sup>8</sup> The report notes that the

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<sup>7</sup> *Amici* note that the fact that the state has failed to prepare and implement a plan to extend learning time pursuant to its own mandate disproves the state's argument that it has taken "appropriate legislative action within a reasonable time," without suggesting that this is the appropriate standard.

<sup>8</sup> The full text of the report can be found at <http://www.doe.mass.edu/edreform/timelearn/tlrep.html>.

recommendations "are based on solid research nationally as well as in Massachusetts" and on "almost two years of focused study of the complex issues of time and learning." Massachusetts Commission on Time and Learning, UNLOCKING THE POWER OF TIME (1995). The report concluded: "Massachusetts public schools must significantly increase all students' learning in order to prepare them for success in today's world and the world of tomorrow. For most students, meeting the challenge of a high standard of learning will require more learning time." *Id.* (emphasis added).<sup>9</sup>

Emphasizing this point, the report explained:

We cannot have better, more equitable, learning without more time on task. We cannot have more time on task without adding hours for the core academic subjects. We cannot add core subject hours without pressing other worthy school activities into later hours of the afternoon, or adding to the number of school days in the year.

*Id.* The Commission further explained: "By explicitly providing additional time, schools protect structured learning time for students as well as provide sufficient time for activities allowing students to

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<sup>9</sup> In many ways, the findings of the state's Time and Learning Commission parallel those of the federal Time and Learning Commission, which noted that "[i]n the nearly 40 years of American education reform efforts, we have altered nearly everything we do in school except the amount of time available for learning." PRISONERS OF TIME.

achieve the high standards of learning envisioned in the curriculum frameworks ...” *Id.*(emphasis added). Indeed, the Commission left no doubt about the connection between the higher standards envisioned and provided for in the Education Reform Act and more learning time:

It has become increasingly obvious that campaigns for higher standards of learning on the one hand and for sufficient time to achieve those standards on the other are wholly interdependent. They stand or fall together. ... [O]nly more and better time will provide the teaching and learning needed to open the way for students to reach those standards. If separated, substantive gain in both may be lost - and lost with them will be the best opportunity for dramatic improvement in Massachusetts’ public education for this generation.

*Id.* (emphasis added).

The Commission’s direct linkage of the need for more learning time with the curriculum frameworks (English language arts, mathematics, history and social studies, science and technology, health, arts, and foreign language) shows that the state understood the constitutional significance of more learning time. As the Superior Court found, while the curriculum frameworks themselves are not constitutionally required in themselves, they “represent the specific

way the Commonwealth has chosen, at this point in time, to explicate the responsibility imposed upon it" the Education Clause of the state constitution. Botsford Report, at 33. (R.A. 874) Moreover, James Peyser, chairman of the Massachusetts Board of Education, testified that he views the frameworks as intending to implement much of the constitutional requirement for an education that will equip children with the capabilities called for in *McDuffy*, and other witnesses agreed. Botsford Report, at 34. (R.A. 875) Thus, because the Commission found that additional learning time is needed to meet the requirements of the curriculum frameworks and the frameworks are the way the state has chosen to meet its constitutional obligation, additional learning time is required for the state to meet its constitutional obligation.

Importantly, despite the unambiguous findings and recommendations of the state's own commission, there has been almost no increase in learning time in Massachusetts schools in the last decade. Though the state revised its regulations concerning what it terms "structured learning time" and included in those regulations a statement that "[s]chool committees are encouraged to exceed the minimum number of school days

wherever possible, and to offer extended day and extended year programs that expand student learning opportunities," 603 CMR 27.03(4), it failed to follow through on the mandate of implementing a plan for more learning time that was required by Section 80 of the Education Reform Plan.<sup>10</sup>

Further evidence of the state's own recognition that more learning time, at least for at-risk students, is required to meet its constitutional obligation is that the state itself has made provisions for funding more learning time, though it has failed either to fund them fully or to make them mandatory.

For example, the Education Reform Act includes in each district's foundation budget an "expanded program allotment," which is an amount within each district's foundation budget designed to enable each district to "provid[e] expanded educational services for low-

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<sup>10</sup> The regulations require that all elementary school students receive a minimum of 900 hours per year and all secondary school students receive a minimum of 990 hours per year of structured learning time. 603 CMR 27.04. The regulations specifically define "structured learning time" as including "time during which students are engaged in regularly scheduled instruction, learning activities, or learning assessments within the curriculum for study of the 'core subjects' and 'other subjects' [as defined in the regulations]" and excluding "[t]ime which a student spends at lunch, passing between classes, in homeroom, at recess, in non-directed study periods, receiving school services, and participating in optional school programs." Simple arithmetic shows that these standards cannot be met in 180 six-hour days.

income students.” Mass. Gen. L. ch. 70, § 2.<sup>11</sup>

Understanding that low-income students typically arrive at school at an educational disadvantage to their more affluent peers and intending to help these students, the authors of the Education Reform Act inserted this provision specifically to assist low-income students. Again, given that the Act is the framework for the state’s attempt to satisfy its constitutional obligation, the inclusion of money for additional educational services for low-income students shows that the state sees expanded learning time as part of its constitutional obligation.

Notably, though, the state does not mandate that school districts spend the amount of the “expanded program allotment” within in its foundation budget on expanded programs. Mass. Gen. L. ch. 70, § 8 (“each school district may determine how to allocate any funds appropriated for the support of public schools without regard to the categories employed in calculating the foundation budget” (emphasis added)). As a result, most school districts do not spend their expanded program allotment on more learning time. A

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<sup>11</sup> The “expanded program allotment” is determined “by multiplying the number of low-income elementary and middle school students in a district by the wage adjustment factor by three hundred and eighty dollars.” Mass. Gen. L. ch. 20, § 2.

March 2000 report issued by the state's Educational Management Accountability Board found that in eighteen school districts audited by the Board, only Worcester could document any spending in this category of the foundation budget in FY98: it expended 69.5% of the amount in its "expanded program allotment" on expanded programs. Educational Management Accountability Board, FIRST FINDINGS 25 (Table 1)(2000).<sup>12</sup> The other seventeen districts reported no spending in this category. *Id.*<sup>13</sup> Overall, in FY1998, only 7% of the amount designated in foundation budgets as the "expanded program allotment was used on expanded programs. In FY1999, it was 5%; FY2000, 4%; and FY2001, 5%.<sup>14</sup>

Similarly, the state has evidenced its understanding that at-risk students require more learning time by providing grants for remediation programs for students who have failed or are at risk

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<sup>12</sup> The full report can be found at <http://www.edbenchmarks.org/index/Findings.PDF>. The data underlying this survey can be found at <http://financel.doe.mass.edu/schfin/chapter70/chart98.aspx>.

<sup>13</sup> Furthermore, the \$80 million budgeted for the "expanded programs" allotment overall hardly meets the needs of all poor students, not to mention all students overall, for more education time.

<sup>14</sup> These data can be found at <http://financel.doe.mass.edu/chapter70>.

of failing the Massachusetts Comprehensive Assessment System ("MCAS") exam. Conceived to provide additional learning time for at-risk students, these grants, which the Massachusetts Department of Education funds separately from districts' foundation budgets, are used by school districts to provide extra academic tutoring support after-school and for running summer school programs. The Superior Court found: "These are the funds used by the focus and other districts to provide MCAS tutoring, extra classes, etc. All witnesses who were asked about the subject acknowledged that these funds played a critical role in helping students improve and ultimately pass the MCAS tests in order to join the 2003 graduating class." Botsford Report, at 273. (R.A. 114)<sup>15</sup>

Because this money is not in the foundation budget, however, the state can - and has significantly - cut these funds. Thus, while the state provided about \$200 million on MCAS remediation programs from fiscal year 2000 through fiscal year 2003, spending has been cut 80% this past year (from \$50 million in FY2003 to \$10m in FY2004, Botsford Report, at 148

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<sup>15</sup> The Superior Court noted, for example, that Brockton's MCAS remediation grant is the primary source of funding for its after school and summer programs. Botsford Report, at 73. (R.A. 914)

n.81(R.A. 989)),<sup>16</sup> a victim of the type of budget cuts that the foundation concept protects against.

Botsford Report, at 273. (R.A. 1114) In discussing these cuts, the Superior Court found that "the steep reductions in ... these grant funds have had a deeply negative impact on [the focus districts'] ability to provide adequate educational programs. This has been particularly true for children who are at risk of failure ...." Botsford Report, at 274. (R.A. 1115)

In sum, the state has repeatedly made clear its knowledge that providing all children the education to which they are entitled requires more learning time, particularly for at-risk and poor children. Despite its apparent recognition, however, the state has failed to mandate extended learning time or to make funding for more learning time a sustained priority.

**B. Experience Shows that The State Cannot Meet Its Constitutional Obligation Without Increasing Time Spent on Learning.**

Recent results on the MCAS exam suggest that the requirements of all seven curriculum frameworks cannot be met within the traditional six-hour, 180-day school

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<sup>16</sup> In fact, the funds for grades 1-10 have been cut entirely, and the funds for grades 9-12 have been cut from \$30 million to \$10 million. STEPPING BACKWARDS: THE FRAYING OF MASSACHUSETTS' COMMITMENT TO STUDENTS AT THE FRONT LINES OF SCHOOL REFORM (2004), at 1.

year, particularly in districts that have a high concentration of at-risk students.

MCAS is the means by which the state tests whether public school students are receiving an education that complies with the curriculum frameworks, Botsford Report, at 17 (R.A. 858), which, in turn, are the specific way that the state has chosen to carry out its constitutional obligation, as explained above. As such, MCAS results are one way (though not the only way or a constitutionally required way) of measuring whether the state is fulfilling its constitutional obligation at least with regard to the two subjects that the MCAS tests, English Language Arts ("ELA") and math.

As the trial evidence showed, not all students pass the MCAS test the first time around. Massachusetts Department of Education, SPRING 2003 MCAS TESTS: SUMMARY OF STATE RESULTS. (Ex. 5474, R.A. 14305-14340)<sup>17</sup> As the trial evidence also showed, though, many students pass the MCAS test only with the benefit

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<sup>17</sup> Indeed, a significant - and unacceptably large - percentage of minority students score at the "warning (failure)" level during the first test. *Id.* at Table 18. (R.A. 14330) For example, in 2003, 25% of African American tenth graders failed the ELA part, and 43% failed the mathematics part. *Id.* Similarly, 34% of Hispanic tenth graders failed the ELA part, and 47% failed the mathematics. *Id.*

of more learning time. This evidence is in the form of uncontroverted testimony that many students passed the MCAS only after participating in MCAS remediation programs, which, as discussed above, take the form of additional learning time for at-risk students. For example, Commissioner of Education David Driscoll testified that MCAS remediation funds "made a difference" and were "effective." Driscoll testimony, 10/27/03, p. 190. He explained: "[F]rom what I've been told by superintendents, from what I viewed myself, ... it's been an effective program. Kids [who] hadn't passed went through this program ... wound up passing and made significant progress." *Id.* Robert Schwartz likewise testified that "obviously, the remediation fund seems to have played an important role in providing, especially urban districts, with the resources necessary to reach the kids who are most at-risk." Schwartz testimony, 12/9/03, p. 75.

This trial evidence is supported by independent evidence gathered by Mass Insight Education's Keep the Promise Initiative - a three-year longitudinal study of high school academic remediation in Boston, Springfield, and Worcester - that indicates that the continuous gains realized after each MCAS retest

opportunity are due at least in part to student participation in academic remediation programs. Mass Insight Education, STEPPING BACKWARDS: THE FRAYING OF MASSACHUSETTS' COMMITMENT TO STUDENTS AT THE FRONT LINES OF SCHOOL REFORM (2004), at 2.<sup>18</sup> Specifically, the Keep the Promise Initiative found that high school students who have taken advantage of remediation programs have attained higher MCAS retest scores and passing rates than those who did not attend such programs. *Id.*

Significantly, the MCAS tests only two of the seven curriculum frameworks as a requirement for graduation, English language arts and math.<sup>19</sup> As the evidence showed, the result is that school districts have placed more emphasis on these subjects to the exclusion or detriment of the other curricula - history and social studies, science and technology, foreign languages, the arts, and health. For example, the Superior Court found that although Lowell's arts program has excellent features, "its capacity to reach all or most students is restricted by the district's increased focus on mathematics and English language

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<sup>18</sup> A full copy of this report can be viewed at <http://www.massinsight.org/docs/SteppingBackwards.pdf>.

<sup>19</sup> MCAS tests are administered in English language arts, math, science, and social studies, but to date passing grades are required for graduation only on English language arts and math.

arts." Botsford Report at 49. (R.A. 890) Similarly, it found that "Springfield's history and social studies program suffers from the district's perceived need to emphasize ELA and math." *Id.* at 54. (R.A. 895) Highlighting that this situation is caused more by lack of adequate time than by lack of other resources, the court explained: "In the elementary grades, teachers are supposed to teach social studies as an integral part of the curriculum, but whether or not the subject is offered depends often on whether the particular school is underperforming in math and English language arts. The same is essentially true in the middle schools." *Id.* Similarly, "while the curricula for Brockton's health and fine arts programs seem to be of high quality and aligned with the appropriate curriculum frameworks, these subjects are not offered with enough frequency or in enough duration to students in the elementary and junior high schools to permit full implementation of the frameworks." *Id.* at 44. (R.A. 885)

Given that results on MCAS are used as a criterion for graduation and as a measure of success or failure for schools and school districts, these admissions are not surprising. The consequence is

that students are much less likely to receive what they need and are entitled to in the other five subject areas than they are even in ELA and math, which, as noted above, many students are failing without additional learning time. The conclusion is inextricable: if schools cannot sufficiently provide all students with a constitutionally adequate education in the ELA and math without additional learning time, they certainly cannot be providing a meaningful or adequate education in the remaining five subjects without more learning time. Simply put, the state has not provided enough resources, including time, for schools to focus sufficiently on each of the curriculum frameworks at the same time, or, more accurately, within the same small amount of time. The state's Time and Learning Commission addressed this result when it commented that "[o]ur schools run out of time. Too many activities are force-fit into the fixed and limited time available in a 6-hour day, a 5-day week, and a 180-day year." UNLOCKING THE POWER OF Time. As a consequence, school children are not be provided what they are constitutionally entitled to because there simply is not enough time.

C. The Trial Evidence Highlights that More Learning Time is Needed for The State To Meet Its Constitutional Obligation to All Children.

As Judge Botsford noted, there was general agreement by all witnesses on both sides of this case that "many at risk children need additional services beyond the regular school day offerings in order to achieve educational success. ... These would include extended day programs; extended year programs to support school year learning and prevent regression; tutoring in general; and MCAS remediation and support programs in particular." Botsford Report, at 308. (R.A. 1149) Among the testimony on this point was a statement by James Guthrie, an expert witness called by the state at trial and a professor of public policy and education at Vanderbilt University, that he believed that increasing school time for children at risk, such as through preschool, extended day, and after-school programs, is an "important step to be taken to improve their likely success in school." Guthrie testimony, 12/10/03, p. 174. Moreover, Robert B. Schwartz, also a witness for the state and former president of Achieve, Inc., an independent, bipartisan, non-profit organization created by the

nation's governors and corporate leaders to help states raise academic standards, testified that "[o]ne of the challenges in implementing the curriculum frameworks is providing additional time and academic support for children who are struggling to meet standards." Schwartz testimony, 12/9/03, p. 74. He further testified that "[o]ne of the important ways [of raising academic standards for all students while ensuring that at-risk students receive the support that they need to meet standards and stay in school] is to extend school time by extending the school day and by extending the school year." *Id.* at 74-75.

The documentary evidence also attested to the criticality of more learning time to providing all students a constitutionally adequate education. For example, S. Paul Reville, another trial witness for the state, opined in an article he authored in 2002 entitled *Every Child Not Yet a Winner*, (Ex. 1053), in which he concluded that the state has not yet met the standards of Education Reform Act:

Standards-based reform could succeed only if all students were provided an adequate opportunity to learn, an opportunity consisting of high-quality teaching, a curriculum aligned with the standards, regular assessment of

performance, and the time and attention needed to attain the standards.

S. Paul Reville, EVERY CHILD NOT YET A WINNER. (R.A.

049590 He further wrote: "Extended school days and longer school years must become options for students who need them." *Id.* (emphasis added). (R.A. 04963)

He concluded:

If we are serious about bringing all students to the high standards, then we need to ask our educators, particularly our urban educators, that question again: "What will it take to get the job done?" Then we need to calculate the costs of the necessary educational provisions - e.g. more instructional time - and develop a formula that will deliver the resources required to move each student to the standard."

*Id.* (emphasis added). (R.A. 04964)

Likewise, the 2001 Report by the Massachusetts Education Reform Review Commission, which was established by the legislature to oversee implementation of the Education Reform Act, concluded that "[s]ince there are no low-income schools or districts with scores [on MCAS] near any reasonable long-term goal, it is hard to escape the conclusion that low income areas need more money to reduce class size, provide extra time in the school day and the school year, give teachers additional training, and

deal with the social, emotional, and family problems these youngsters bring with them to school."

Massachusetts Education Reform Review Commission, 2001 ANNUAL REPORT (emphasis added)(Ex. 238A) (R.A. 03170-71).

The testimony of the superintendents of the focus school districts, the people charged with educating many of the Commonwealth's at-risk children, further supports the basic principle that more learning time is required to provide all students with a constitutionally adequate education. For example, Karla Brooks Baehr, the superintendent for the Lowell school district, testified that in her opinion, about half of Lowell's students need to be participating in a program that provides more learning time, such as extended school days and summer school programs. Baehr testimony, 8/20/03, pp. 178, 180 (emphasis added). *See also id.* at 175 (noting that "extending the school year for youngsters, particularly the youngsters who were doing poorly as readers, is a critical strategy" ) Echoing the findings of various studies, discussed below, that more learning time in productive learning environments is especially

necessary for poor and minority students,

Superintendent Baehr testified:

[W]e know that ... we need to make more opportunities available for learning. Unlike ... youngsters in Wellesley or in Lexington, many of [the children in urban school districts] don't have opportunities outside of school for the kind of experiences ... that support their learning in school. We need exciting, vibrant, good after school opportunities that are linked to the curriculum that we offer during the day."

Baehr testimony, 8/20/02, p. 181. Similarly, Dr.

Joseph Burke, the superintendent of the Springfield

school district, testified: "We know that students

need more time in the academic arena with a very

focused curriculum in order to be successful in

matriculating through the senior high school level."

Burke testimony, 6/17/03, p. 32 (emphasis added). See

also *id.* at 33-34 (noting that Springfield needs much

more extensive, additional time services for students

in the City of Springfield to help them to be

successful, such longer school days and longer school

years, but lacks the resources to add these). Joseph

Bage, the superintendent of the Brockton school

district, likewise testified that programs that

provide more learning time, such as after school

programs, Saturday programs, and summer school programs "are extremely important." He explained that they provide both remediation and enrichment, which he described as "critical." Bage testimony, 9/24/03, p. 46.

The superintendents' testimony on the critical nature of more learning time for at-risk children is not just lip-service. That they consider additional learning time vital to providing an education to all students is evidenced by the fact that each of the superintendents expended funds on extending learning time in after-school, Saturday school, or summer school programs to the extent that funds, such as MCAS remediation money and other state monies and grant money, were available, according to their testimony. See, e.g., Botsford Report at 80 (R.A. 921)(Brockton used grants to offer additional MCAS English and math classes, including Saturday, after-school, and summer-school classes); 122 (R.A. 963) (Lowell provided summer school programs and extended school day programs for students who need extra time to learn reading, writing, and math skills); 161 (R.A. 1002) (Springfield used part of a National Science

Foundation grant to have a certified math teacher provide summer enrichment programs in math).

Notably, according to the testimony, many of the programs implemented by the superintendents are being cut back or discontinued altogether this year because state funding has been cut or eliminated or because the efforts were funded by one-time grants or other episodic money. This unfortunate circumstance again highlights how the state's failure to fund and implement these critical additional learning programs leaves school districts' ability to provide a constitutionally adequate education subject to budgetary cycles and political whim.

In sum, the state has made clear that it understands the centrality of additional learning time to its fulfillment of its constitutional obligation to educate all children in the Commonwealth. The state has, however, failed to act in a manner consistent with its own findings and beliefs.

**II. THERE IS SUBSTANTIAL EVIDENCE THAT MORE LEARNING TIME IN EFFECTIVE LEARNING ENVIRONMENTS PROMOTES BETTER EDUCATION AND EDUCATIONAL OUTCOMES, ESPECIALLY FOR STUDENTS AT RISK OF FAILING.**

Time, like money, is a finite resource. How it is spent matters. Clearly, more time alone is not

enough. The time must be spent in productive learning environments with qualified staff and on focused learning activities for students to achieve improved academic outcomes. As the Massachusetts Time and Learning Commission stated, “[t]ime alone guarantees nothing. But with it, all else is possible.” UNLOCKING THE POWER OF TIME.

How children spend their time overall likewise matters. By the state’s own mandates, children in Massachusetts are spending just under 1,000 hours in class every year. For many children, this amount appears sufficient because during their waking hours when they are not in school – approximately 4,000 hours per year, or four times the amount of time they spend in formal schooling – they are still able to take part in many activities that foster positive development and learning. They get tutoring in particular subjects, do their homework, read books, and take ballet or music lessons. In other words, their resource of time is spent in ways that directly or indirectly help them to achieve academically because, during their time out of school, they gain the skills and knowledge covered by the seven curriculum frameworks.

However, for many children, indeed too many of the Commonwealth's children, the end of the school day simply means the start to an unproductive, unchallenging, and often dangerous time that does not support their education.<sup>20</sup> Moreover, many of our most at-risk children come from households where English is not the first language, where achieving a college education seems out of reach, and where both parents are, or the single parent is, at work after the children leave school, situations that result with the parent(s) being unable to assist with homework or to afford to enroll children in enrichment programming. These children's education would almost certainly be improved if they were instead occupied in productive learning experiences during the afternoon and summer.

The evidence is overwhelming that for these children transforming this lost time into time that is productive and helps them to progress along the learning track is one of the most basic strategies to

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<sup>20</sup> Indeed, too many at-risk students not only lose this valuable time during which they could be learning, but instead find themselves in dangerous and unhealthy situations. For this reason, many see productive use of this time as critical for reducing crime, drug and alcohol use, teen pregnancy, and other destructive behaviors. See generally David A. Farbman, Ph.D., *THE FORGOTTEN EIGHTY PERCENT: THE CASE FOR MAKING THE MOST OF CHILDREN'S TIME OUT OF SCHOOL* (Massachusetts 2020 Foundation), at 16-20. A complete copy of the report can be found at <http://www.mass2020.org/whitepaperFINAL.pdf>.

boost student academic achievement. Though there are several possible vehicles for delivering the extra learning time, the reality is that the more time children spend in productive learning environments, the more they generally learn and the better they perform in school.

Over the last few years, efforts to document and evaluate the learning that takes place in after-school and summer programs have demonstrated that these additional learning programs, if well-staffed and well-run, can and do make a difference in children's in-school performance. Below are but a few examples of studies that demonstrate the educational impact that additional learning programs can have on at-risk youth.

The Mid-continent Research Education Laboratory published a meta-analytical review of fifty-six studies of out-of-school time programs. The review considered only program evaluations that had compared groups attending the program to a matched cohort not attending the programs to measure differences among the two groups in their academic achievement in reading and/or mathematics. The researchers found that the groups attending programs consistently scored

higher on standardized tests in both subject areas. The effects were more marked among younger students. P.A. Lauer, M. Akiba, S.B. Wilkerson, H.A. Apthorp, D. Snow, and M. Martin-Glenn, THE EFFECTIVENESS OF OUT-OF-SCHOOL TIME STRATEGIES IN ASSISTING LOW-ACHIEVING STUDENTS IN READING AND MATHEMATICS (2003).

In one of the largest such studies, a compendium of local evaluations of after-school programs in California's After School Learning and Safe Neighborhoods Partnerships Program, the authors reported statistically significant positive impacts on SAT-9 Reading and Math test scores, as well as improved student grade point averages. University of California Irvine, EVALUATION OF CALIFORNIA'S AFTER-SCHOOL LEARNING AND SAFE NEIGHBORHOODS PARTNERSHIPS PROGRAM (ASLSNPP): 1999-2001 (2002). These evaluations also found especially large achievement gains in the most high-risk students. *Id.* A similar, though less rigorous, study conducted in Ohio showed that 3,000 students involved in after-school programs in seventeen urban districts scored higher on average than the mean of the state's standardized tests in math, reading, writing, and science, and they also improved their class grades and completed homework more often than

they did before their participation. Partners Investing in Our Community of Kids and Ohio Hunger Task Force, URBAN SCHOOL INITIATIVE SCHOOL-AGE CARE PROJECT: 1998-99 SCHOOL YEAR EVALUATION REPORT (1999).

In Boston, the BELL Foundation runs an after-school program for hundreds of Boston Public School at-risk elementary school students at several school sites. Evaluation of students' pre- and post-test scores found that they gained in reading an equivalent of seven months in the classroom and the equivalent of one full year in math. BELL Foundation, BASICS 2001: EVALUATION REPORT.<sup>21</sup> Further, while only 30% of students arrived proficient in math, more than 90% of participants left the program with proficient math skills. *Id.*

Higher test scores and better grades are just one type of benefit from programs that increase learning time. Those who participate in after-school programs experience higher school attendance. An evaluation of academically at-risk students in Boston found that those enrolled in after-school programs missed an average of six days of school for the year, while a similar cohort of students missed an average of

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<sup>21</sup> For the complete report, see [http://www.bellboston.org/docs/BASICS\\_2001\\_Results.doc](http://www.bellboston.org/docs/BASICS_2001_Results.doc).

nineteen days. Massachusetts 2020, THE TRANSITION TO SUCCESS PILOT PROJECT EVALUATION (2004). The Ohio study referenced above reported a similar finding: eighth graders in the program reduced the average number of school days they missed before starting the program from 18 to 5. Ohio Hunger Task Force, URBAN SCHOOL INITIATIVE. Likewise, high school students who participated in the Quantum Opportunities Program (in four U.S. cities), an intensive four-year program combining academic study and community service projects, were half as likely to drop out of high school and 2.5 times more likely to go on to further education after high school. A. Hahn, *et al.*, *Evaluation of the Quantum Opportunities Program*, BLUEPRINTS FOR VIOLENCE PREVENTION BOULDER, 53-55 (1998).

Summer learning programs are another important way to improve education. As teachers experience every year when they have to spend the first few weeks of school catching students up to the level at which they were when school ended in June, students often lose much learning during the summer. This phenomenon - a direct result of the antiquated school calendar - is known as "summer lag." Research has shown that summer is a time when children from all economic backgrounds

lose some skill in mathematics. For low-income students, summer lag is exacerbated. Thus, while the reading skills of middle-class children typically remain constant or even rise during the summer, the reading skills of low-income children characteristically decline, thus widening the academic gap even further. H. Cooper, B. Nye, K. Charlton, J. Linday, and S. Greathouse, *The Effects Of Summer Vacation On Achievement Test Scores: A Narrative And Meta-Analytic Review*, 66 REV. ED. RESEARCH 227-268 (1996). As such, summer programs, while important for all students, can have an even greater overall positive bearing on the academic outcomes of low-income students because the negative impacts of summer break on learning can be more stark.

The same research team that produced the definitive study on "summer lag" also found that summer school programs can have a remarkable influence on stemming these types of educational losses. H. Cooper, K. Charlton, J.C. Valentine, and L. Muhlenbruck, *Making The Most Of Summer School: A Meta-Analytic And Narrative Review*, 65 MONOGRAPHS OF SOC. FOR RES. IN CHILD DEV. 1 (2000). Locally, the BELL program has proven the same. The students who participated in

BELL's six-week summer program experienced the equivalent of four-months gain in reading and three-months gain in math. Reading gains at some grade levels were as much as nine months. The program clearly counteracts the negative effects that a lack of structured learning time during the summer can have.<sup>22</sup>

In all these studies, evaluators found fair to very strong correlations between the amount of time children spend in learning programs - the technical term is "dosage" - and the overall impact on school performance and other behaviors. The more children attend regularly during the week and the more they attend throughout their school careers, the sharper the influence that programs that expand learning time will be on overall academic achievement. In the simplest of terms, time matters. The more time spent in productive learning environments, the greater the chances that such exposure will lead to improved academic outcomes.<sup>23</sup>

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<sup>22</sup> For results on BELL's Accelerated Learning Summer Program, see <http://www.bellboston.org/Programs/BalspOutcomes.htm>.

<sup>23</sup> For an effective summary of the impact of out-of-school time programs on student learning and development, see B.M. Miller CRITICAL HOURS (2003).

Proof that educators themselves understand that more learning time leads to better outcomes is the simple fact that schools that have the ability and means to break free of the rigid traditional school schedule often decide to do just that. A survey of the forty-five charter schools operating in Massachusetts in 2002-2003 found that 69% operate for at least 15% more hours per year than the traditional district school.<sup>24</sup> Similarly, a study by the Rennie Center for Education Research and Policy at MassINC of higher performing urban high schools in Massachusetts found that of the nine schools it identified in the study, seven explicitly have a longer school day for all students and the other two extend learning hours for at-risk students. Center for Education Research and Policy at MassINC, HEAD OF THE CLASS: CHARACTERISTICS OF HIGHER PERFORMING URBAN HIGH SCHOOLS IN MASSACHUSETTS, at 18-19 (Fall 2003). Further, the highly regarded KIPP Academy schools, which have become a national model, considers keeping students in class longer than the

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<sup>24</sup> All reports are posted online at <http://www.doe.mass.edu/charter/reports/2003/annual/>. Charter schools in other states also have extended their days and years. Massachusetts charter school statistics are based on analysis of 2002 - 2003 charter school annual reports. In New Jersey, the figure stands at 70%, and in Illinois, at 81%, for example. New Jersey and Illinois statistics come from the web sites of the respective state departments of education.

conventional schedule - indeed, about two-thirds longer - to be one the five pillars of their success.<sup>25</sup> The founders explain that disadvantaged students need "more time in the classroom to acquire the academic knowledge and skills that will prepare them for competitive high schools and colleges, as well as more opportunities to engage in diverse extracurricular experiences."<sup>26</sup> Their view is validated by results: these schools are located in poor neighborhoods, and they serve predominantly low-income student populations, but student academic performance generally equals that of schools with much more affluent student populations.

The bottom line: among students that are struggling to meet high standards, the more time they are given to engage in "time on task" learning on particular topics, to engage in group and experiential learning, and to delve deeper into a curriculum, the more likely they are to achieve the standards of learning expected of them.<sup>27</sup> As the National Academy of

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<sup>25</sup> For a complete list of the five pillars, visit KIPP's Web site, [http://www.kipp.org/KIPP\\_schools/pillars.html](http://www.kipp.org/KIPP_schools/pillars.html).

<sup>26</sup> *Id.*

<sup>27</sup> For a discussion of what research has shown regarding the relationship between time spent in class in various types of activities and educational outcomes, see J. Aronson, J. Zimmerman

Sciences concluded succinctly, "learning cannot be rushed; the complex cognitive activity of information integration requires time." HOW PEOPLE LEARN: BRAIN, MIND, EXPERIENCE AND SCHOOL, at 58 (J.D. Bransford, et al., eds. 2000).

**III. MANDATING MORE LEARNING TIME IS BOTH SPECIFIC ENOUGH TO PROVIDE THE STATE WITH GUIDANCE AND BROAD ENOUGH TO PERMIT THE STATE TO FASHION ITS CONTOURS.**

A court mandate that the state fund and implement more learning time for at-risk students would give the state specific guidelines for developing and funding a constitutionally sufficient educational plan while permitting the state, in conjunction with local communities, to work out how the additional learning time will be structured. Although it found in *McDuffy* that the state was failing to meet its obligation to provide all children their constitutional entitlement of education, the Court nevertheless declined to deem unconstitutional any legislative provision for school funding. 415 Mass. at 618. Rather, the Court set out broad guidelines concerning the capabilities that an educated child must have and assumed that "the Commonwealth will fulfil its responsibility with

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& L. Carlos, IMPROVING STUDENT ACHIEVEMENT BY EXTENDING SCHOOL: IS IT JUST A MATTER OF TIME? (1998).

respect to defining the specifics and the appropriate means to provide the constitutionally-required education." *Id.* at 618-20, 619 n.92.

As the Superior Court's findings indicate, though, the state has failed to fulfill this responsibility, despite significant efforts to do so. Accordingly, it is appropriate and necessary at this phase of the litigation to give the state more specific guidelines for what will be found constitutionally adequate, as Judge Botsford implicitly recognized in setting forth specific areas for the state to consider and implement. A mandate that the remedy of the state's constitutional violation include more learning time for many, if not all, children provides this type of necessary, specific guidance.<sup>28</sup>

At the same time, the order requested by *amici* that more learning time, especially for at-risk

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<sup>28</sup> Notably, in the independent study commissioned in the New York case concerning the adequacy of the education in that state, in response to the court's finding that New York's school finance system was unconstitutional, the research team concluded, among other things, that schools at all levels could benefit from extended day and extended year. (The full report is available at <http://www.cfequity.org/FINALCOSTINGOUT3-27-04.pdf>.) Notably, the research team's principal members included James Guthrie, one the state's expert witnesses in this case. The charge to the research team was to determine the reforms and funding necessary to provide public school children in New York with a "meaningful education."

students, be included in the list of programmatic areas that that state must fund and implement - is a flexible enough mandate to permit the state, in conjunction with local communities, to choose how to structure additional learning time. The state can, for example, choose from among various different programmatic options, such as extended day, extended school year, after-school, and summer programs. Similarly, the state can decide to utilize various ways of providing the additional time, such as through public schools, other public entities, private community-based organizations, or partnerships among these. In other words, requiring the state to extend learning time does not necessarily mean a longer school day or year, and a longer school day or year may not necessarily mean more in-class time with the same teacher. For example, within the schools themselves, schedules might be staggered for staff such that some teachers work the traditional 8 a.m. to 2:00 p.m. shift while others may not start until noon and then work till 6:00. In addition, some of the learning time might be conducted by community members with particular expertise or interests, much like after-school enrichment programs operate now.

Furthermore, some of the additional learning time can take place outside the school in existing after-school and summer programs.<sup>29</sup>

Ultimately, requiring the state to increase the time students spend learning will require bold thinking, sizeable shifts in attitudes, and additional money, while giving the state, in conjunction with local communities, the opportunity to innovate with new approaches to meet the educational needs of all students.

### **CONCLUSION**

Under the Massachusetts constitution, the state is obligated to provide every student, not just some students, an adequate education. Many, if not all, of

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<sup>29</sup> Successful models of such programs abound. Appendix G of *Unlocking the Power of Time* provides some models, for example. Others can be found on the websites and in the literature of Massachusetts 2020 Foundation (<http://www.mass2020.org>), the Nellie Mae Education Foundation (<http://www.nelliemaefoundation.org>), and BELL (<http://www.bellnational.org>.)

The state, along with local communities, can also think creatively about combining improvements in technology with providing more learning time. Worcester, for example, has implemented the NovaNet program, which students can access from home, libraries, Boys Clubs, Girls Clubs, and other community-based after-school programs. These type of programs, which provide step-by-step, paced curriculum, accelerate instruction and motivate learners and provide a value-added assessment component that is much less labor-intensive than traditional ways. Such programs, of course, would require additional funding for technology, but implementing these programs can help maximize the advantages of both technology and additional learning time.

the Commonwealth's children, need more time to obtain that education. Accordingly, as part of its order setting forth the remedy to the state's violation of its constitutional duty under the Education Clause, this Court should require that the state include more learning time - adequate learning time - for all students, especially those at risk of failing, as part of its determination of "the actual cost of providing the level of education in each of the focus school districts that permits all children in the district's public schools the opportunity to acquire the capabilities outlined in *McDuffy*" and that the state must then implement whatever funding and administrative changes result from such determination.

Respectfully Submitted,

Massachusetts 2020 Foundation  
Nellie Mae Education Foundation  
The Criminal Justice Institute  
Dr. T. Berry Brazelton  
Dr. James Caradonio  
Dr. James Comer  
William H. Guenther  
Professor Martha Minow  
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Dated: August 26, 2004

## APPENDIX A - LIST OF AMICI

Amicus Curiae Massachusetts 2020 Foundation is a non-profit organization focused on expanding educational and economic opportunities for children and families across Massachusetts. Massachusetts 2020 Foundation's initial focus has been to expand after-school and summer learning opportunities for children. Over the last three years, Massachusetts 2020 has been a lead partner in launching several major initiatives aimed at expanding and improving after-school and summer programs, including Boston's After-School for All Partnership and initiatives in Boston and six other urban districts across Massachusetts to expand school-based after-school enrichment programs for students.

Chris Gabrieli, chairman and co-founder of the Massachusetts 2020 Foundation, chaired Boston Mayor Thomas M. Menino's Task Force on After-School Time and is chairman of Boston's After-School for All Partnership.

Jennifer Davis, President and co-founder of the Massachusetts 2020 Foundation, has served as the Executive Director of the Boston 2:00-to-6:00 After-School Initiative, Deputy Assistant Secretary to

Education Secretary Richard Riley at the U.S. Department of Education, and the Special Assistant to Secretary of Education Richard Riley.

Amicus Curiae Nellie Mae Education Foundation is New England's largest public charity dedicated exclusively to improving academic achievement for the region's underserved populations. The Foundation promotes accessibility, quality, and effectiveness of education through research, policy initiatives, and grantmaking to programs that concentrate on academic achievement for success for secondary school youth and adult learners. The Foundation's Out-of-School Matters! initiative is designed to improve the academic preparedness and achievement of underserved middle school students in New England by expanding and strengthening out-of-school programs. In addition to increasing the effectiveness and capacity of community-based programs, the initiative intends to advance knowledge within the field and influence policy at the state and regional level.

Dr. Blenda J. Wilson, president and chief executive officer of the Foundation, has served as associate dean of the Harvard Graduate School of Education, executive director of the Colorado

Commission on Higher Education, chancellor of the University of Michigan, Dearborn, and president of California State University, Northridge.

Amicus Curiae The Criminal Justice Institute of Harvard Law School ("CJI") is a curriculum-based program focused on justice and education at Harvard Law School. Four clinical instructors supervise third-year law students, who represent indigent children and youth in delinquency proceedings and indigent defendants in district court criminal proceedings. Related to its representation of children in delinquency proceedings, CJI advocates for its young clients in a variety of educational matters to ensure the protection of their Constitutional and statutory rights. CJI also sponsors national conferences on criminal and juvenile justice issues and is active in legislative and policy reform in areas affecting disadvantaged youth and adults.

Amicus Curiae Dr. T. Berry Brazelton is Clinical Professor of Pediatrics at the Harvard Medical School. During his extensive career, he has worked in collaboration with educators, psychologists, and parent organizations to improve services available to children and families. His Touchpoints program is

helping child health providers and educators throughout the United States to improve the services delivered to children and families. He has been appointed by the United States Congress to the National Commission on Children, where he has advocated for disadvantaged children. He was an active participant in setting up the State of Hawaii's after school programs.

Amicus Curiae Dr. James Caradonio is the superintendent of the Worcester school system. Dr. Caradonio is widely regarded as one of the Commonwealth's most innovative and effective superintendents. A passionate believer in the power and importance of extended learning time, Dr. Caradonio and the Worcester School system entered into a unique partnership with Clark University to jointly operate the University Park School, a public school that operated with both a longer school day and a longer school year. Dr. Caradonio has secured public and private support to expand after-school programs throughout the Worcester public school system. In addition Dr. Caradonio has pioneered technology in the classroom, and Worcester is seeing strong results from NovaNet, an internet-based program that allows

students access from home, public libraries, and other community-based after-school programs. The program, which tutors students in English and Math, is so widely successful that it has attracted private partners to help the District underwrite its cost. Under Dr. Caradonio's leadership, Worcester has consistently been one of the only communities to expend any of its expanded program allotment for expanded programming.

Amicus Curiae Professor James Comer is the Maurice Falk Professor of Child Psychiatry at the Yale University School of Medicine's Child Study Center. A prolific writer on issues involving children's development, children's health, and race relations, Dr. Comer is perhaps best known for the founding of the Comer School Development Program in 1968, which promotes the collaboration of parents, educators, and community to improve social, emotional, and academic outcomes for children that, in turn, helps them achieve greater school success. In addition to his writing, teaching and research activities, Dr. Comer is a Director of the Nellie Mae Education Foundation and has served as a consultant to the Children's Television Workshop, which produces Sesame Street, and

since 1994, he has served as a member of the National Commission on Teaching and America's Future.

Amicus Curiae William H. Guenther is President and Founder of Mass Insight Corporation and Mass Insight Education. Following a long career in public policy, he founded Mass Insight in 1989 to focus on the implementation of public policy that affects the business climate and competitiveness of Massachusetts. As an outgrowth of Mass Insight's work on K-12 education reform, Mr. Guenther established Mass Insight Education in 1997 to organize policy, outreach, and school leadership training initiatives to support the successful introduction of the new Massachusetts state academic standards and tests. Mass Insight Education provides leadership development and teacher training services to 30 school districts in Massachusetts representing more than 300,000 students through its Coalition for Higher Standards, whose members include Boston, Worcester and Springfield. Mr. Guenther is a member of the Massachusetts Technology Collaborative advisory committee on competitive benchmarks.

Amicus Curiae Professor Martha Minow is the William Henry Bloomberg Professor of Law at Harvard

Law School and a Lecturer at the Harvard Graduate School of Education. A continued focus in her research and teaching is the laws and policies affecting education for all children, with particular attention to issues affecting children with disabilities. For the past five years, she has served as Policy Director for "The IDEA Network: A National Collaboration for Improving Access to the General Education Curriculum" in partnership with the U.S. Department of Education. She has served on the boards of the Family Center, the Judge Baker Children's Center, Lawyers for Children America, and the W.T. Grant Foundation (funding research on children). Wheelock College awarded her an honorary doctoral degree in education.

Amicus Curiae Professor Charles Ogletree is the Jesse Climenko Professor of Law at Harvard Law School, Director of the Charles Hamilton Houston Institute for Race and Justice, and co-founder and chairman of the BELL Foundation, a community-based, non-profit organization founded by Black Harvard Law students in 1992, that works to ensure the healthy intellectual, physical, emotional, and spiritual development of children living in economically disadvantaged

communities and is designed to increase the educational opportunities and achievements of children living in low-income communities. BELL serves elementary school children in first through sixth grade in Boston, New York City, and Washington, D.C. who are performing below grade level. The two major programs that BELL oversees are the BELL After School Program, an extended day tutorial that meets five days per week for two and a half hours each session at local schools and community centers, and the BELL Summer Program, a comprehensive six-week academic camp that provides intensive academic instruction, hands-on educational, cultural, artistic and recreational activities, guest speakers, community service projects and field trips.

Amicus Curiae Dr. Judith Palfrey is the T. Berry Brazelton Professor of Pediatrics at the Harvard Medical School and Chief of the Division of General Pediatrics at the Children's Hospital Boston. Dr. Palfrey has worked extensively at the intersection of health and education, and her work has demonstrated the health and developmental consequences of inadequate educational services for children, particularly children with special health care needs

or disabilities. She has worked with young people in the juvenile justice system, where she has seen firsthand the effects of the serious deficiencies in educational and after-school services for these young people. Dr. Palfrey serves as a consultant to the Harvard After School Initiative.

Amicus Curiae Dr. Julius B. is John D. MacArthur Professor Emeritus of Health Policy Emeritus in the Department of Social Medicine at Harvard Medical School. A pediatrician and child psychiatrist, Dr. Richmond's research has established the importance of enriched learning environments for children in poverty. Dr. Richmond was the founding Director of Head Start, and he has written extensively on the effects of poverty and neglect on children and adolescents and has worked to ensure that all children receive appropriate health and educational services.

Amicus Curiae S. Paul Reville is the Executive Director of the Rennie Center for Education Research & Policy at MassINC, an independent policy organization dedicated to the improvement of K-12 public education in Massachusetts. Also a lecturer on educational policy and politics at the Harvard Graduate School of Education, Mr. Reville has been a leader in the

education reform effort in Massachusetts for the past twenty years. He was the founding Executive Director of the Massachusetts Business Alliance for Education (MBAE), an organization that provided key conceptual and political leadership for the development and passage of the Education Reform Act of 1993. From 1991 through 1995, he served on the Massachusetts State Board of Education, where among other assignments, he chaired the Massachusetts Commission on Time and Learning. He is the principal author of the Commission's report: *Unlocking the Power of Time*. From 1996 to 2003, Mr. Reville chaired the Massachusetts Education Reform Review Commission, the state body that provided research and oversight for the state's implementation of education reform in the Commonwealth. Mr. Reville testified as a witness for the Commonwealth at trial in this case.

Amicus Curiae Mark Roosevelt served in the Massachusetts Legislature from 1986 to 1994. From 1990 to 1994 he was the House Chairman of the Legislature's Committee on Education. He co-authored and steered to passage the Education Reform Act of 1993. Since leaving the legislature, Mr. Roosevelt has continued to lead the education reform movement in

his capacity as Vice-Chairman of the Commonwealth's Education Management Audit Council. He has also worked as a private educational consultant to such companies as Media One, Houghton Mifflin, and Chancellor Beacon Academies. Mr. Roosevelt is a 2003 graduate of the Broad Urban Superintendents Academy and is currently the Managing Director of the Massachusetts Business Alliance for Education (MBAE).

Amicus Curiae Professor Mary E. Walsh is the Kearns Professor at the Lynch School of Education at Boston College. A leader in the field of comprehensive students services, Professor Walsh is lead partner "Boston Connects: A School-Community-University Partnership for Academic Achievement and Well-being," an educational partnership initiative between Boston College and the Boston Public Schools System, that provides support and resources to urban, low-income schoolchildren and their families. She is also Director of the Boston College Center for Child, Family and Community Partnerships.