

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF SAN FRANCISCO

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4 ELIEZER WILLIAMS, a minor, by
5 Sweetie Williams, his guardian ad litem,
6 et al., each individually and on behalf
7 of all others similarly situated,
8 Plaintiffs,

9 vs.

No. 312236

10 STATE OF CALIFORNIA, DELAINE EASTIN,
11 State Superintendent of Public
12 Instruction, STATE DEPARTMENT OF
13 EDUCATION, STATE BOARD OF EDUCATION,
14 Defendants.

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15 Deposition of

16 DUWAYNE BROOKS

17 Volume III, Pages 437 through 550

18 Friday, November 16, 2001

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20
21
22 Reported by:

23 TRACY LEE MOORELAND

24 CSR No. 10397

25 Job No. 28909

APPEARANCES

1
2
3 For the Plaintiffs Eliezer Williams, et al.:

4 ACLU FOUNDATION OF SOUTHERN CALIFORNIA
5 BY: PETER J. ELIASBERG, ESQ.
6 MARK D. ROSENBAUM, ESQ.
7 1616 Beverly Boulevard
8 Los Angeles, California 90026
9

10 For the Defendant Delaine Eastin, State Superintendent
11 of Public Instruction, State Department of Education,
12 State Board of Education:

13 DEPARTMENT OF JUSTICE
14 OFFICE OF THE ATTORNEY GENERAL
15 BY: ANTHONY V. SEFERIAN, ESQ.
16 1300 I Street, Suite 1101
17 Sacramento, California 95814
18
19

20 For the Defendant State of California:

21 O'MELVENEY & MYERS LLP
22 BY: DAVID HERRON, ESQ.
23 400 South Hope Street
24 Los Angeles, California 90071
25

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APPEARANCES, cont.

1
2
3

4 The Intervener:

5 CALIFORNIA SCHOOL BOARD ASSOCIATION
6 BY: ABE HAJELA, ESQ.
7 3100 Beacon Boulevard
8 West Sacramento, California 95691
9

10 For the Los Angeles Unified School District:

11 STRUMWASSER & WOOCHEER LLP
12 BY: KEVIN S. REED, ESQ.
13 100 Wilshire Boulevard, Suite 1900
14 Santa Monica, California 90401
15
16
17
18
19
20
21
22
23
24
25

1 BE IT REMEMBERED, that on Friday, November 16,
2 2001, commencing at the hour of 10:37 a.m., thereof, at
3 the offices of Morrison & Foerster, 400 Capitol Mall,
4 26th Floor, Sacramento, California, before me,
5 TRACY LEE MOORELAND, a Certified Shorthand Reporter in
6 the State of California, there personally appeared
7 DUWAYNE BROOKS,
8 called as a witness herein, who, having been previously
9 duly sworn to tell the truth, the whole truth, and
10 nothing but the truth, was thereupon examined and
11 interrogated as hereinafter set forth.

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EXAMINATION BY MR. REED

14 Q. Mr. Brooks, you understand you're still under oath this morning?

16 A. Yes.

17 Q. Yesterday I handed you some documents, which I
18 believe you have in front of you, and I would like to
19 begin by dealing with the document entitled OPSC
20 workload list SFP applications funding new construction
21 as of 11/06/01.

(Exhibit SAD-203 was marked.)

23 Q. BY MR. REED: So we've asked the reporter to
24 mark this as Exhibit SAD-203.

25 Do you recognize the document, Mr. Brooks?

1 A. Just the one that's titled funding new
2 construction as of 11/6?
3 Q. Correct.
4 A. And do I recognize it?
5 Q. Yes, do you know what it is?
6 A. You gave it to me last night.
7 Q. Do you recognize it to be the workload list
8 that OPSC publishes on its website?
9 A. I don't know if it is the workload list. It's
10 titled the OPSC workload list.
11 Q. And the workload list is comprised of those
12 applications that have been received by the office of
13 public school construction, but are not yet ready to go
14 to the state allocation board for approval; is that
15 correct?
16 A. Well, I think it's a little more detailed than
17 that. These are the applications that have been
18 returned from the state agencies that have
19 responsibility to sign off for their area of approval
20 and been given to the office of public school
21 construction, and OPSC is reviewing them to ensure that
22 they are actually -- they have all of the -- meet all
23 the requirements to be presented to the SAB for
24 approval.
25 Q. So for the new construction program the

1 projects represented on this list would be -- contain
2 the universe of those projects for which districts have
3 submitted an SAB form 50-04 and what the district
4 believes to be the complete collection of approvals
5 necessary to obtain funding from the state for a new
6 construction project; is that correct?
7 MR. HERRON: Objection. Argumentative.
8 Compound.
9 THE WITNESS: Since it's the responsibility of
10 the office of public school construction to receive
11 these documents and process them, I do not have personal
12 knowledge that could confirm that this is the universe.
13 I only know what OPSC tells me constitutes the workload
14 list. I don't have personal knowledge that this is
15 full, complete and accurate.
16 Q. BY MR. REED: The fourth column, 50-04, date
17 received, do you understand that column to be the report
18 by the OPSC as to when they accepted for filing a
19 district's application for new construction funding on
20 this exhibit?
21 MR. SEFERIAN: Objection. No foundation.
22 THE WITNESS: I do not have detailed knowledge
23 regarding OPSC's internal processes or what the 50-04
24 date received column actually means.
25 Q. BY MR. REED: Okay. I'd like to refer you to

1 the third page of Exhibit SAD-203, the row near the
2 bottom of the table which says new construction funding
3 total. Do you see that?
4 A. Yes.
5 Q. Do you understand the numbers represented there
6 to be the total for the applications that are on the
7 workload list?
8 MR. SEFERIAN: Objection. No foundation.
9 Calls for speculation.
10 THE WITNESS: Assuming that the addition of the
11 separate items is accurate, that column is titled total,
12 so unless -- so I guess you could assume that that's the
13 total.
14 Q. BY MR. REED: Would you understand it to be the
15 case from reviewing this form that as of November 6th,
16 2001, there existed at OPSC on their workload list an
17 excess of \$640 million worth of new construction
18 applications?
19 MR. SEFERIAN: Objection. Lacks foundation.
20 MR. HERRON: Calls for speculation. Document
21 speaks for itself.
22 THE WITNESS: In looking at the document, I
23 can't tell by this document whether the \$210 million is
24 to be added to the 432 million.
25 Q. BY MR. REED: The column for the 210 million is

1 designated financial hardship, correct?
2 A. That's what the document says.
3 Q. And is it your understanding that when you,
4 sitting on the SAB, approve a project, that the funding
5 for a new construction project frequently has two
6 components, one is the state grant and the other is the
7 financial hardship component?
8 MR. HERRON: Objection. Compound.
9 THE WITNESS: That's not typically the way that
10 it's presented to the state allocation board members.
11 Q. BY MR. REED: The state allocation board
12 members, when you are approving an application at one of
13 your meetings or approving a list of applications for
14 allocations at one of your meetings, will be given a
15 different list; isn't that correct?
16 MR. SEFERIAN: Objection. Compound question.
17 MR. HERRON: Argumentative.
18 THE WITNESS: The agenda for the state
19 allocation board contains consent items that are
20 formatted differently than this, as I recall.
21 Q. BY MR. REED: But you don't recall, sitting
22 here today, whether that consent agenda separates the
23 new construction grant from the financial hardship grant
24 component of an application?
25 A. I do not.

1 MR. REED: I'd like to have marked as Exhibit
 2 204 a document entitled school facility program, new
 3 construction unfunded approvals as of October 24th,
 4 2001, a 15-page document. I believe I shared it with
 5 you and your counsel yesterday.
 6 MR. HAJELA: Go off the record a second?
 7 MR. REED: That's fine.
 8 (Exhibit SAD-204 was marked.)
 9 Q. BY MR. REED: Mr. Brooks, is this the approved
 10 but unfunded list that you referenced in your deposition
 11 testimony yesterday?
 12 A. This is the -- it appears to be the document
 13 that was in the agenda for the state allocation board of
 14 October 24th, and it is titled new construction unfunded
 15 approvals.
 16 Q. I'd like to refer you to page 15 of this
 17 document, and I want to deal with the total number.
 18 There are three columns there. The third one from the
 19 right-hand margin is labeled excessive hardship. Is it
 20 your understanding that that is the component of a new
 21 construction apportionment request that is to be funded
 22 out of the hardship pot?
 23 MR. SEFERIAN: Objection. No foundation.
 24 Calls for speculation.
 25 THE WITNESS: The portion of the hardship

1 pot -- as we talked about before, hardship has three
 2 primary components, facility, financial and excessive.
 3 This appears to be the component that, for these
 4 projects on the list, totals an excessive hardship.
 5 Q. BY MR. REED: So the column just to the right
 6 of that, the financial or facility hardship, would that
 7 be the financial or facility hardship component of a new
 8 construction grant, if any?
 9 A. That's what this document labels it as.
 10 Q. And then the new construction apportionment
 11 would be the per pupil grant amount multiplied by the
 12 number of grants to be used for a particular project in
 13 the school facilities program?
 14 MR. HERRON: Objection. Argumentative.
 15 THE WITNESS: Since my division does not
 16 prepare this report, I cannot say with certainty what
 17 elements completely comprise that last column.
 18 Q. BY MR. REED: Just in your role and capacity as
 19 a member of the SAB who approves funding of school
 20 construction programs or apportionments to school
 21 districts, is it your understanding that that new
 22 construction apportionment component is comprised of the
 23 per pupil grant amount on the project application?
 24 MR. SEFERIAN: Objection. Asked and answered.
 25 No foundation. Calls for speculation. Argumentative.

1 THE WITNESS: As a member of the state
 2 allocation board, if I were to look at this column at an
 3 allocation board meeting, that is probably what I would
 4 conclude.
 5 Q. BY MR. REED: Okay. What I want to clarify is
 6 that the numbers represented in these three columns are
 7 distinct and separate from one another, in other words,
 8 the financial and facility hardship component number is
 9 an amount requested in an apportionment in addition to
 10 the new construction apportionment. Is that your
 11 understanding?
 12 MR. SEFERIAN: Objection. Calls for
 13 speculation.
 14 MR. HERRON: Argumentative. Vague and
 15 ambiguous.
 16 THE WITNESS: That appears to be what's
 17 represented by this chart.
 18 Q. BY MR. REED: In other words, to understand the
 19 total amount of projects that comprise the unfunded
 20 list, the dollar value of the approved but unfunded
 21 list, one would add those three total columns; is that
 22 correct?
 23 A. The total dollar amount as opposed to the total
 24 number of projects, I guess you could get to the total
 25 number of projects if you added them up. That would be

1 my conclusion looking at the document, that the column
 2 in the far right would comprise the total need defined
 3 as the approved but unfunded.
 4 Q. Okay.
 5 A. Once the board approved the consent calendar,
 6 of course.
 7 Q. Okay. Now, at this moment the SAB, the board,
 8 is approving projects for school districts for new
 9 construction on a quarterly basis; is that correct?
 10 A. Yes. There may be a provision that allows for
 11 funding for facility hardship on a monthly basis.
 12 Q. Okay. Now, facilities hardship projects would
 13 be funded out of the hardship pot, correct?
 14 A. Correct.
 15 Q. And there is no money left in the hardship pot
 16 as of now; is that correct?
 17 A. That's not correct.
 18 Q. Okay. How much money is left in the hardship
 19 pot, do you know?
 20 A. At a prior allocation board meeting at my
 21 request we separated facility hardship from the
 22 remaining hardship pots and we have -- we are reserving
 23 funds for facility hardship because they refer to health
 24 and safety problems in the schools. So we do have, my
 25 best recollection is, somewhere in the area of 25 to 35

1 million dollars that we've set aside specifically for
 2 facility hardships.
 3 Q. And a project that receives a facility hardship
 4 apportionment, do they receive 100 percent of the
 5 project -- let me rephrase that -- do they receive 100
 6 percent of the apportionment out of the facility
 7 hardship pot?
 8 MR. SEFERIAN: Objection. Incomplete
 9 hypothetical.
 10 MR. HERRON: Vague and ambiguous.
 11 THE WITNESS: I don't know the details of that
 12 mechanical aspect of the program.
 13 Q. BY MR. REED: Is it the case that a facility
 14 hardship apportionment is typically 100 percent of the
 15 cost, in other words, there's no local match to a
 16 facilities hardship apportionment?
 17 MR. SEFERIAN: Objection. Calls for
 18 speculation.
 19 THE WITNESS: That's my understanding of how
 20 the program works.
 21 Q. BY MR. REED: But sitting here today you're not
 22 sure whether the 100 percent comes all out of the
 23 facility hardship pot or whether maybe only half of it
 24 does?
 25 A. We've had problems in the past and that is one

1 reason, as I mentioned in my prior testimony, in the new
 2 state bond why I have asked that, for instance, the
 3 excessive hardship not be part of the hardship pot, that
 4 that comes out of the new construction pot because of
 5 the difficulty, the interplay in the two pots where one
 6 pot might have funds and the other not and the project
 7 gets stalled because of that technical barrier. And I
 8 am not absolutely certain whether the financial hardship
 9 facility hardship is treated the same as the excessive
 10 hardship.
 11 Q. Okay. Now, going back, if you could for a
 12 moment, to Exhibit SAD-203, the workload list. Under
 13 the current board rules, do you understand it to be
 14 typically the case that a district that makes an
 15 application in one quarter, one calendar quarter is --
 16 will have that application heard by the board or
 17 presented to the board at its meeting at the end of the
 18 following quarter?
 19 MR. SEFERIAN: Objection. Assumes facts not in
 20 evidence. Vague and ambiguous as to "typically." Calls
 21 for speculation. Incomplete hypothetical.
 22 THE WITNESS: The executive director of the
 23 office of public school construction, which is
 24 responsible for processing the applications, has told
 25 the board that they will make every effort to schedule

1 each project that meets the cutoff for the prior
 2 quarterly allocation period, that they'll make every
 3 effort that that project will be on the agenda for the
 4 subsequent quarterly allocation period. I do not
 5 believe that that is an absolute rule, right, law.
 6 Q. BY MR. REED: And, in fact, as this exhibit
 7 demonstrates, there are some projects listed on it that
 8 designate an SAB received date earlier than the fourth
 9 quarter of '01, isn't that correct?
 10 MR. SEFERIAN: Objection. Document speaks for
 11 itself.
 12 THE WITNESS: I haven't reviewed the document
 13 to that level of detail.
 14 Q. BY MR. REED: Do you understand it, though, to
 15 be the case that the workload list at any given time
 16 would roughly represent the applications presented to
 17 OPSC over, at most, a three-month period?
 18 MR. SEFERIAN: Objection. Vague and ambiguous
 19 as to "roughly."
 20 THE WITNESS: The goal of the allocation board
 21 and the office of public school construction is to
 22 process any application that's received prior to the
 23 cutoff date of the quarter, for the subsequent quarter.
 24 That's the goal.
 25 Q. BY MR. REED: So, in fact, Exhibit SAD 203 --

1 let me rephrase that.
 2 If we assume for the purposes of this question
 3 that the 50-04 date, received date, designates the date
 4 on which the application was presented by a district to
 5 the office of public school construction, assuming
 6 that's correct, is it fair to conclude from Exhibit
 7 SAD-203 that the total amount requested for new
 8 construction projects as represented on page 3 of this
 9 document represents approximately two months' worth of
 10 applications?
 11 MR. SEFERIAN: Objection. Incomplete and
 12 improper hypothetical. Assumes facts not in evidence.
 13 No foundation. Calls for speculation. Argumentative.
 14 MR. HERRON: Could we please have the question
 15 reread, if you don't mind.
 16 (Record read.)
 17 THE WITNESS: In order to answer that
 18 completely accurately, you'd have to go through every
 19 one of these line items on these two-and-a-half pages
 20 and look at the date received and determine whether
 21 they're two months prior to the date that they'll be
 22 going to the allocation board, or whatever your question
 23 referred to. I haven't done that line-by-line
 24 calculation.
 25 Q. BY MR. REED: And, I'm sorry, I'm not trying to

1 ask for that line-by-line calculation, I'm just trying
2 to help us interpret for the record the workload list.
3 It appears to be sorted in date order received,
4 sorted by that column. There are, in fact, a dozen or
5 so applications represented in the top half of the first
6 page which have dates prior to September, but the
7 remaining two pages seem to be populated by projects
8 that have received dates of the 6th of September through
9 the end of October. Do you follow where I am?

10 MR. SEFERIAN: Objection. Document speaks for
11 itself.

12 THE WITNESS: Yes. Yes, I follow where you
13 are.

14 Q. BY MR. REED: Is it -- do you understand, then,
15 that this document can be interpreted to say that the
16 majority of these applications represented on this
17 workload list were received in the two-month period
18 beginning September 6th of '01 and ending at the end of
19 October?

20 MR. HERRON: I'm sorry, interpreted by whom?

21 MR. REED: Mr. Brooks.

22 MR. SEFERIAN: Objection. No foundation.
23 Calls for speculation. Assumes facts not in evidence.

24 THE WITNESS: Let me look in the document in
25 detail then if you want that type of response. I'll

1 This represents, as I indicated before, those
2 applications that have gone -- apparently gone through
3 all of the required processes and received the approval
4 of the Department of Education and the division of the
5 state architect and are now back at the office of public
6 school construction with the assumption that they have
7 received all of the approval, and OPSC is in the process
8 of reviewing those applications to make sure that they
9 have all of the required approval and all the required
10 components before putting them on an agenda to the state
11 allocation board to be funded.

12 Q. Thank you for clarifying. Let me rephrase my
13 question. Is it your understanding, based on your
14 review of this exhibit, the workload list for new
15 construction as of October 6th, 2001, that OPSC has
16 accepted for processing and presentation to the state
17 allocation board somewhere in the neighborhood of \$600
18 million worth of new construction applications over the
19 course of the last two months?

20 MR. SEFERIAN: Objection. No foundation.
21 Calls for speculation.

22 MR. HERRON: Asked and answered in part.

23 THE WITNESS: That appears to be what the total
24 column represents.

25 Q. BY MR. REED: Do you have an understanding from

1 look at it line item by line item and make sure that
2 every entry subsequent to September 6th appears to be
3 within the month of September, beginning with September
4 6th and ending with October 29th, '01.

5 Q. BY MR. REED: Is it your understanding based on
6 the review of the workload list, then, that over the
7 course of the last two months somewhere in the
8 neighborhood of \$600 million worth of new construction
9 applications have been presented to the office of
10 public school construction?

11 MR. SEFERIAN: Objection. No foundation.
12 Calls for speculation. Asked and answered.

13 THE WITNESS: Presented to the office of public
14 school construction?

15 MR. REED: Yes, sir.

16 THE WITNESS: Or on the workload list?

17 MR. REED: I'll ask those separately, if you
18 understand those to be separate.

19 THE WITNESS: They are separate.

20 Q. BY MR. REED: What do you understand the
21 difference to be?

22 A. School districts submit applications to the
23 office of public school construction prior to receiving
24 the approval of the various stages responsible for
25 approving their aspects of the program.

1 your experience with the state allocation board with
2 respect to the dollar amount of new construction
3 applications that have been presented to -- let me
4 rephrase that -- that have been accepted by OPSC for
5 presentation to the board for funding? Let me try this
6 all over again.

7 Do you have an understanding based on your
8 experience as an SAB member with respect to what the
9 average dollar value is of applications accepted by OPSC
10 for new construction applications for presentation to
11 the board for funding?

12 MR. HERRON: Objection. Vague and ambiguous as
13 to time. Vague and ambiguous as phrased. Calls for
14 speculation.

15 MR. REED: That's fair enough. I want to deal
16 within the year 2001.

17 THE WITNESS: The average dollar -- for new
18 construction for every project?

19 MR. REED: Yes.

20 THE WITNESS: That information is not presented
21 to the state allocation board in that manner.

22 Q. BY MR. REED: Could one calculate that number
23 by adding together between the unfunded list and the
24 workload list the total number of applications
25 designated as received by the SAB between -- beginning

1 in January of 2001 to date?

2 MR. SEFERIAN: Objection. Incomplete
3 hypothetical. Calls for speculation. Vague and
4 ambiguous as to received by the state allocation board.

5 THE WITNESS: Do you mean by received by the
6 allocation board what we've tried to distinguish in
7 prior questions, received versus on the workload list?

8 MR. REED: No. Let's talk about being on the
9 workload list complete and ready for processing for
10 presentation to the state allocation board.

11 MR. SEFERIAN: Same objections.

12 THE WITNESS: Technically those projects that
13 were on the workload list in January, February or March
14 have been moved from the workload list to the approved
15 but unfunded list, so technically you do not have
16 projects going back to January that are still on the
17 workload list.

18 Q. BY MR. REED: And to find the dollar value of
19 those projects, one could go to the approved but
20 unfunded list or the consent agenda for the SAB's
21 September meeting for that universe of projects that, in
22 fact, got funded in September; is that correct?

23 MR. SEFERIAN: Objection. Calls for
24 speculation. Compound question.

25 THE WITNESS: I do not think the term "or" is

1 to September 27th, 2000 to October 29th, 2001, and
2 divide by the number of months in that period, it
3 represents a number roughly in the 180 to 200 million
4 dollar range of applications.

5 Does that number seem too high, too low or
6 about what you would have expected?

7 MR. SEFERIAN: Objection. Argumentative.
8 Assumes facts not in evidence.

9 Would you read the question, please.
10 (Record read.)

11 MR. SEFERIAN: Objection. Argumentative.
12 Vague and ambiguous as to "applications." Assumes facts
13 not in evidence.

14 MR. REED: Let me clarify. I'm talking about
15 new construction.

16 THE WITNESS: New construction only?

17 MR. REED: Yes.

18 MR. SEFERIAN: Same objections.

19 THE WITNESS: The number and dollar amount of
20 applications fluctuates significantly. There is a
21 crunch of applications submitted the last day of the
22 quarterly funding period. In fact, we told people not
23 to plan to be off for Christmas because this quarterly
24 funding period ends December 28th. So on a monthly
25 basis the figure varies significantly.

1 appropriate. You'd have to go to both. You'd have to
2 add them.

3 Q. BY MR. REED: Do you have any understanding as
4 to the average dollar figure for applications accepted
5 by OPSC for processing and presentation to the SAB for
6 funding received -- so accepted by the OPSC since
7 September of 2000, September 27th, 2000?

8 A. The average --

9 MR. HERRON: Objection. Calls for speculation.
10 It's vague and ambiguous.

11 THE WITNESS: The average dollar per project?

12 MR. REED: Average dollars in the aggregate of
13 the new construction projects accepted by OPSC per
14 month.

15 MR. SEFERIAN: Objection. Vague and ambiguous
16 as to "average dollars in the aggregate." Calls for
17 speculation.

18 THE WITNESS: The staff does not give the board
19 members information in that format, so I would not know
20 what the average per project is for that period or for
21 any other period unless we directed the staff to prepare
22 the information for us in that format.

23 Q. BY MR. REED: I'll represent to you that if one
24 adds the unfunded list to the workload list for
25 applications designated 50-04 date received subsequent

1 Staff at OPSC have informed me that over the
2 course of several months the average per month will vary
3 anywhere from 100 million to \$400 million depending on
4 what period of time we're looking at. So I have --
5 unless we narrowed it down, unless we got into the minds
6 of the school districts about when they intend to file
7 their applications, it's difficult to say what we would
8 expect since the dollar amount has varied so widely over
9 the last several months.

10 Q. BY MR. REED: You've heard the use of the term
11 pipeline, correct?

12 A. Yes.

13 Q. What do you understand that term to mean?

14 MR. HERRON: In what context, the shipment of
15 oil or what? Please clarify, if you would. Vague and
16 ambiguous.

17 Q. BY MR. REED: Do you understand the context,
18 Mr. Brooks?

19 MR. SEFERIAN: Objection. Calls for
20 speculation.

21 MR. HERRON: He doesn't have to speculate about
22 it, Kevin. I object as vague and ambiguous, and I think
23 you should rephrase.

24 Q. BY MR. REED: Do you think I'm talking about
25 oil?

1 A. Are you --
 2 MR. HERRON: You are not going to sit here and
 3 harass the witness either. Either rephrase the question
 4 or he'll try to finish it as you put it.
 5 THE WITNESS: I do not think that you're
 6 talking about oil.
 7 Q. BY MR. REED: Do you understand the term
 8 pipeline as it's used in school construction context --
 9 school construction funding context?
 10 MR. SEFERIAN: Objection. Overly broad. Calls
 11 for speculation. Vague and ambiguous.
 12 THE WITNESS: Yes.
 13 Q. BY MR. REED: What do you understand that term
 14 to mean?
 15 A. To me it's synonymous with the workload list.
 16 Q. As district from the unfunded list, correct?
 17 A. Correct.
 18 Q. In order for one to understand the current
 19 number of school construction applications that are
 20 complete -- strike that.
 21 In order to understand the dollar amount of the
 22 total new construction applications that are either
 23 currently being processed for presentation to the board
 24 or which have been presented to the board and put on an
 25 approved but unfunded list, one would add the totals

1 from the pipeline to the totals of the approved and
 2 unfunded list; is that correct?
 3 MR. SEFERIAN: Objection. Compound question.
 4 Calls for speculation.
 5 MR. HERRON: Argumentative.
 6 THE WITNESS: No.
 7 Q. BY MR. REED: How would one calculate that?
 8 MR. SEFERIAN: Objection. Calls for
 9 speculation. No foundation.
 10 THE WITNESS: You use the term "currently being
 11 processed." There are several -- many applications that
 12 are currently being processed through the division of
 13 the state architect and the State Department of
 14 Education and the Department of Toxic Substances
 15 Control. If you mean do we add the workload list to the
 16 approved but unfunded list, then I would say yes.
 17 Q. BY MR. REED: Do you understand the total
 18 dollar value of those applications as we sit here in
 19 November of 2001 to be roughly in the amount of \$2.7
 20 billion?
 21 MR. SEFERIAN: Objection. Lacks foundation.
 22 THE WITNESS: For new construction?
 23 MR. REED: Yes, new construction.
 24 THE WITNESS: And that figure being the
 25 approved but unfunded list and the workload list?

1 MR. REED: Correct.
 2 THE WITNESS: I would have to take a look at
 3 the totals and add them up. Do you want me to do that?
 4 Q. BY MR. REED: No, I don't need you to do that.
 5 But to do that, one would look at the -- on the two
 6 exhibits that we've been talking about, one would look
 7 at the totals for estimated state grant on Exhibit
 8 2003 --
 9 MR. ELIASBERG: 203.
 10 MR. REED: I'm sorry.
 11 Q. -- on 203, one would add the total number --
 12 one would add the totals for the column designated
 13 estimated state grant to the totals for the column
 14 designated financial hardship, plus the totals on 204
 15 for the excessive hardship column, plus the total for
 16 the financial or facility hardship column, plus the
 17 total for the new construction apportionment column on
 18 that exhibit in order to get that number; is that
 19 correct?
 20 MR. SEFERIAN: Objection. Argumentative.
 21 Compound question. Assumes facts not in evidence.
 22 Calls for speculation.
 23 THE WITNESS: I've forgotten what that number
 24 that you're searching for really is. Can you refresh my
 25 memory about that number?

1 Q. BY MR. REED: Sure. To understand the total
 2 dollar amount of applications on the workload -- I'm
 3 sorry, the total dollar value of new construction
 4 applications on the workload list plus the approved but
 5 unfunded list, one would need to add the totals of those
 6 five columns; is that correct?
 7 MR. SEFERIAN: Objection. Documents speak for
 8 themselves.
 9 THE WITNESS: I think you could accomplish it
 10 by adding the three columns. One is -- document SAD-204
 11 already has a total, so you wouldn't add the two
 12 previous columns to that.
 13 You could reach the figure that you're
 14 searching for by adding the total column, 1,373 --
 15 \$1,373,390.34, add that to \$432,288,942, plus
 16 210,072,035, and you would reach the total of the
 17 approved but unfunded and the workload list through
 18 November 6th, 2001.
 19 Q. BY MR. REED: Okay. Do I understand, then,
 20 that you read the total on page 15 of Exhibit 204 in the
 21 far right column on the last page, the number 1,373
 22 billion and some change, to be the total of the two
 23 columns immediately to its left?
 24 MR. SEFERIAN: Objection. Calls for
 25 speculation. Misstates the witness' testimony.

1 Argumentative. Misstates the document. The document
2 speaks for itself.

3 THE WITNESS: It appears that the way that the
4 document is structured, that's what whoever prepared the
5 document intended that column to represent.

6 Q. BY MR. REED: Would you like to take a moment
7 to do the math, at least roughly, on those two columns
8 and ensure yourself that that is correct?

9 MR. HERRON: Can we take a short break to do
10 that?

11 MR. REED: Absolutely.
12 (Recess taken.)

13 Q. BY MR. REED: Mr. Brooks, you've had a chance
14 to look more closely at the numbers, and I apologize 15
15 pages worth of Excel spreadsheet is hard to digest in
16 the deposition context.

17 Having reviewed it, do you have an
18 understanding as to whether, in fact, the numbers in the
19 third and second from the left columns on Exhibit 204
20 are different from the number in the far right column?

21 MR. SEFERIAN: Objection. Vague and ambiguous.

22 MR. HERRON: We'll stipulate they're different.

23 THE WITNESS: Yeah, they do not add up to the
24 third column. As you indicated before, you'd have to
25 add all five columns.

1 submitted to the state for funding at a rate of 150 to
2 \$200 million per month between now and December of 2002,
3 do you have any estimate as to the amount of un -- I'm
4 sorry, do you have any estimate as to how large the new
5 construction unfunded list is likely to be as of
6 December of 2002?

7 MR. SEFERIAN: Objection. Calls for
8 speculation. No foundation. Vague and ambiguous as to
9 "projects." Calls for an inadmissible opinion.
10 Incomplete and improper hypothetical. Overly broad.

11 MR. HERRON: Calls for calculus. The numbers
12 are what the numbers are, aren't they?

13 THE WITNESS: If I accept your assumption of
14 taking one number and adding another number to it over a
15 period of time for a number of months, simple math would
16 give us the answer that you're looking for. I'm not
17 going to do that simple math in my head.

18 Q. BY MR. REED: And I'm not asking you to. What
19 I'm really looking for is whether you have an
20 understanding that as of December 2002, whether you
21 believe that it is likely that there will be an excess
22 of \$4 billion of unfunded but approved new construction
23 projects?

24 MR. SEFERIAN: Objection. No foundation.
25 Calls for speculation. Incomplete and improper

1 Q. BY MR. REED: Okay. So with that
2 understanding, I will represent to you that if one adds
3 those five columns together, those totals in those five
4 columns ends up with a total of approximately \$2.7
5 billion for new construction projects between the
6 workload list and the unfunded list.

7 Does that number seem to you to be too high,
8 too low or about your expectation?

9 MR. SEFERIAN: Objection. Argumentative.
10 Assumes facts not in evidence. Vague and ambiguous as
11 to "columns." No foundation. Calls for speculation.

12 MR. HERRON: Asked and answered.

13 THE WITNESS: Too high or too low compared to
14 what?

15 MR. REED: Given your understanding of the
16 amount of shortfall of school construction money for
17 projects as of today.

18 MR. SEFERIAN: Objection. Vague and ambiguous
19 as to "shortfall." Calls for speculation. No
20 foundation. Vague and ambiguous.

21 THE WITNESS: We have a little less than \$900
22 million available to fund new construction. If this
23 figure exceeds \$2 billion, then obviously we don't have
24 enough to fund.

25 Q. BY MR. REED: Okay. And if the projects are

1 hypothetical. Asked and answered. Argumentative.

2 THE WITNESS: What's the number that you are
3 anticipating by December of 2002?

4 MR. REED: Well, that's kind of the number that
5 I'm asking you, is what you're anticipating by December
6 of 2002.

7 MR. HERRON: Except you gave him the number.
8 Wasn't it 4 --

9 MR. REED: Four billion.

10 MR. SEFERIAN: Objection. Calls for
11 speculation. No foundation.

12 THE WITNESS: In order to confirm or deny that
13 number, I'd have to do the math, I'd have to deduct the
14 remaining funds from Proposition 1A, including the funds
15 that are available for the remaining quarters, \$450
16 million that will be allocated in August 2002, and add
17 and subtract, so it's going to be a big number. That's
18 what we're trying to get at. We are not going to have
19 enough money to fund all the applications, and it's
20 going to be a big number that we need additional funds
21 for in the next state bond.

22 Q. BY MR. REED: Do you understand the same to be
23 true for the modernization funding as well, that there
24 will be, as of December of '02, a big number of unfunded
25 modernization applications for which there will not be

1 enough money in the next bond to fund?
 2 MR. HERRON: Objection to the extent it calls
 3 for speculation.
 4 You may respond.
 5 THE WITNESS: Big number means different things
 6 to different people. But, yes, I think there will be a
 7 similarly large number of projects for modernization
 8 that won't get funded similar to new construction
 9 projects that won't get funded.
 10 Q. BY MR. REED: Do you have an opinion with
 11 respect to how -- in the circumstance of a shortfall
 12 like that, how the state is to allocate the money as
 13 amongst the projects that have been presented?
 14 MR. SEFERIAN: Objection. Calls for an
 15 inadmissible opinion. Vague and ambiguous.
 16 Would you read the question, please.
 17 (Record read.)
 18 MR. SEFERIAN: Vague and ambiguous as to
 19 shortfall. Incomplete and improper hypothetical
 20 question.
 21 THE WITNESS: During which period of time are
 22 you referring to how the board will allocate funds?
 23 MR. REED: That's fair. Let me clarify.
 24 Q. Going forward from December of 2002, if one
 25 assumes that there is insufficient funds in a new

1 statewide bond measure to fund all of the projects
 2 currently on the unfunded list for new construction
 3 projects, do you have an opinion as to how the state
 4 should apportion that as amongst those projects?
 5 MR. HERRON: I'm sorry, are you asking him to
 6 anticipate what the new bond measure will provide?
 7 MR. REED: I think he testified as to what the
 8 numbers that are currently being discussed are.
 9 MR. HERRON: Right. But you're asking how it
 10 would be allocated. Are you asking him to tell us what
 11 you think -- what he thinks the new bond measure will
 12 provide if indeed it's passed in November?
 13 That seems to be what your question is asking
 14 for, and to the extent it is asking that, I object as
 15 calling for speculation. I think it is somewhat asked
 16 and answered too. Peter got into all the nooks and
 17 crannies of this very topic in the last two days.
 18 You may respond if you understand.
 19 MR. SEFERIAN: Objection. Calls for an
 20 inadmissible opinion. Incomplete hypothetical question.
 21 Vague and ambiguous. Lacks foundation. Calls for
 22 speculation.
 23 THE WITNESS: My answer would be different if
 24 the November 2002 bond passes versus whether it fails.
 25 Q. BY MR. REED: Assuming it passes, what would

1 your answer be?
 2 MR. SEFERIAN: Objection. Assumes fact not in
 3 evidence. Incomplete hypothetical. Vague and
 4 ambiguous. Calls for an inadmissible opinion. Lacks
 5 foundation.
 6 THE WITNESS: My answer would be that it would
 7 be allocated in a manner that the joint legislative
 8 conference committee, the legislature and the voters
 9 approve the language in a successful November 2002 state
 10 general obligation bond.
 11 Q. BY MR. REED: Prior to the implementation of
 12 priority points in the school facilities program, was it
 13 the case that projects got funded in date order received
 14 by the OPSC?
 15 MR. HERRON: Objection. Asked and answered in
 16 the last two days.
 17 MR. SEFERIAN: Objection. Assumes facts not in
 18 evidence. Lacks foundation.
 19 THE WITNESS: Technically it was not the date
 20 order received. You could have an application that was
 21 received prior to another application, but they were
 22 funded in the order that they were -- received all of
 23 the necessary approvals and presented to the allocation
 24 board for funding.
 25 Q. BY MR. REED: But prior to the implementation

1 of priority points, was it your understanding as a
 2 member of the SAB that in the case of a shortfall of
 3 funds, the projects that were submitted to the OPSC and
 4 deemed eligible for funding first would be funded first,
 5 and those projects that came in after the funds ran out
 6 would not be funded?
 7 MR. SEFERIAN: Objection. Incomplete
 8 hypothetical. Vague and ambiguous as to "shortfall" and
 9 "projects."
 10 MR. HERRON: It's compound as well.
 11 THE WITNESS: No, that's not my understanding.
 12 Q. BY MR. REED: Yesterday you stated the opinion
 13 that districts when planning construction projects would
 14 sometimes rush to get into line. Do you recall that
 15 testimony?
 16 A. Yes.
 17 Q. Why do you understand that they would rush to
 18 get into line?
 19 MR. SEFERIAN: Objection. Assumes facts not in
 20 evidence. Argumentative.
 21 THE WITNESS: To obtain funding.
 22 Q. BY MR. REED: Why would it matter to get there
 23 first for a district?
 24 MR. SEFERIAN: Objection. Calls for
 25 speculation. Overly broad. Vague and ambiguous.

1 THE WITNESS: Because when funds are gone, they
 2 don't get funding until the funds are replenished.
 3 Q. BY MR. REED: And if they got there early, then
 4 they might get there when the funds are still there; is
 5 that correct?
 6 MR. SEFERIAN: Objection. Vague and ambiguous.
 7 MR. HERRON: Calls for speculation. Incomplete
 8 and improper hypothetical. Asked and answered.
 9 THE WITNESS: Early is subjective. If they got
 10 to the state allocation board on an approved agenda
 11 before the funds were completely depleted, then they
 12 would get funded. This is prior to the implementation
 13 of priority points.
 14 Q. BY MR. REED: When you returned to the school
 15 facilities planning division, did you immediately become
 16 Ms. Eastin's designee on the SAB?
 17 A. It was -- I do not recall whether Ann Evans'
 18 last meeting was November or December of 1998. If it
 19 wasn't the first board meeting following my return, it
 20 was at least the second.
 21 Q. Okay. So do you have any memory sitting here
 22 today as to whether you sat at the first meeting of the
 23 SAB at which Proposition 1A funds were apportioned?
 24 MR. HERRON: Objection. Calls for speculation.
 25 THE WITNESS: No. As I indicated, I do not

1 recall whether I sat at the allocation board meeting in
 2 December or whether my first meeting was January.
 3 Q. BY MR. REED: And the first meeting in which 1A
 4 funds went out was the December meeting, correct?
 5 MR. SEFERIAN: Objection. Calls for
 6 speculation.
 7 THE WITNESS: I do not recall whether the
 8 December 1998 state allocation board agenda actually had
 9 an item on there apportioning funds to school districts.
 10 Q. BY MR. REED: Now, there was a time in --
 11 before July 1st of 2001 in which the school -- I'm
 12 sorry, in which Proposition 1A funds for modernization
 13 projects were exhausted; is that correct?
 14 A. I believe it was July 1st of 2000 when the
 15 first cycle of the modernization funds were exhausted.
 16 Q. Let's clarify. Thanks for correcting my date.
 17 July 1st of 2000 is when the second trunk or second half
 18 of Proposition 1A funds became available to the state
 19 allocation board, correct?
 20 MR. SEFERIAN: Objection. Vague and ambiguous
 21 as to "funds."
 22 MR. HERRON: Vague and ambiguous as phrased.
 23 THE WITNESS: The Proposition 1A divided the
 24 \$6.7 billion into two funding cycles. The allocation
 25 board had the authority to apportion funds as laid out

1 in Proposition 1A in the first cycle, which began after
 2 approval of the bond and ended on June 30th of 2000.
 3 The second cycle of funds available for
 4 apportionment by the allocation board started July 1st
 5 of 2000.
 6 Q. BY MR. REED: Wasn't there a time between the
 7 first apportionments made under Prop 1A and June 30th of
 8 2000 at which modernization funds were fully exhausted?
 9 A. From the first cycle of funds available?
 10 Q. Yes.
 11 A. Yes.
 12 Q. And at that time was there an unfunded list for
 13 those modernization projects created?
 14 MR. SEFERIAN: Objection. Calls for
 15 speculation.
 16 THE WITNESS: There was an approved but
 17 unfunded list.
 18 Q. BY MR. REED: So is it the case that the
 19 approved but unfunded list created by the SAB, at least
 20 for modernization applications, was not implemented as a
 21 result of priority points?
 22 MR. SEFERIAN: Objection. No foundation.
 23 Calls for speculation.
 24 THE WITNESS: Priority points do not apply to
 25 modernization, period. They only apply to new

1 construction by law.
 2 Q. BY MR. REED: In your experience as a member of
 3 the SAB and your work in the Department of Education,
 4 have you formulated an understanding with respect to
 5 whether school districts or facilities executives expect
 6 to be funded when the next bond is passed as long as
 7 they received an approved but unfunded designation from
 8 the state allocation board?
 9 MR. HERRON: Objection. Incomplete and
 10 improper hypothetical. Calls for speculation. Vague
 11 and ambiguous as phrased.
 12 THE WITNESS: I am certain that there are some
 13 school districts out there that believe that they
 14 probably will not be funded.
 15 Q. BY MR. REED: On what do you base that
 16 understanding?
 17 A. Their comments to me.
 18 Q. Do you understand it to be a priority of CASH
 19 to ensure that out of the next statewide bond, the
 20 approved but unfunded list is fully funded?
 21 MR. SEFERIAN: Objection. Vague and ambiguous
 22 as to "priority." Lacks foundation. Calls for
 23 speculation.
 24 THE WITNESS: I have not had such conversations
 25 with CASH.

1 MR. HERRON: We've been going about an hour.
2 When we reach a convenient stopping point, could we take
3 a break.

4 MR. REED: This is a good spot.
5 (Recess taken.)

6 Q. BY MR. REED: Mr. Brooks, yesterday you stated
7 that there were still some Proposition 203 funds
8 available for the SAB to apportion; is that correct?

9 A. Yes.

10 Q. Do you understand as to whether those Prop 203
11 funds may have become available because of the SAB
12 rescinding apportionments that were made out of that
13 source to districts?

14 A. I don't know that for certain. That sounds
15 logical. I do know that there are funds that are
16 returned because the projects didn't utilize the total
17 amount.

18 Q. Is there any other reason you can think of
19 there would still be Prop 203 funds available?

20 A. Proposition 203, like Proposition 1A and every
21 other proposition before and after, lists the types of
22 things that qualify for funding. There may have been
23 some money left over from some of the categories of
24 funding that weren't necessarily new construction or
25 modernization. I know there's some money in there for

1 detailed knowledge of the mechanics of the program
2 that's operated by other state agencies.

3 Q. I appreciate that. I'll try and keep this on a
4 policy level. That is my intention.

5 You do, as a member of the SAB, approve the
6 eligibility applications of districts, right?

7 A. On the advice of staff who are intimately
8 knowledgeable of the law and the requirements to receive
9 approval, we adopt a consent calendar based on staff
10 recommendation that the applications meet all of the
11 requirements.

12 Q. Okay. In general the way in which the capacity
13 of a district to house its pupils is calculated begins
14 with the calculation of the number of teaching stations
15 that a district has, correct?

16 MR. SEFERIAN: Objection. No foundation.
17 Calls for speculation.

18 MR. HERRON: Counsel is testifying. Just
19 because he says it's so doesn't mean it is, and if you
20 don't have knowledge, you can let him know and he can
21 move on to something you do know about.

22 THE WITNESS: It's my understanding that that
23 is one of the elements that's reviewed during the
24 process.

25 Q. BY MR. REED: Now, adjustments are made to that

1 the Northridge earthquake. Things of that nature.

2 Q. Okay. I want to shift gears and talk about the
3 calculation of eligibility within the school facilities
4 program under Proposition 1A and SB 50.

5 In order to determine eligibility, one of the
6 things a district must do is inventory the total
7 capacity it has to house pupils; is that correct?

8 MR. SEFERIAN: Objection. Vague and ambiguous
9 as to "eligibility."

10 THE WITNESS: They have to calculate their
11 current capacity to house students, is that your
12 question?

13 MR. REED: That's my question.

14 THE WITNESS: I believe that's correct.

15 Q. BY MR. REED: And they do that on the form SAB
16 50-02?

17 A. My office is not the office that's responsible
18 for processing the applications. I deal primarily on a
19 policy level. I do not have detailed, intimate
20 knowledge of the mechanics of other state agencies that
21 are involved in the process.

22 I try to stay as knowledgeable as I can about
23 the mechanics so that I know whether or not the policy
24 decisions that we're making are practical when they get
25 down to the implementation phase, but I do not have

1 raw calculation of teaching capacity as part of the
2 process of approving a district's eligibility; is that
3 your understanding?

4 MR. HERRON: Objection. Calls for speculation.
5 Counsel is testifying.

6 THE WITNESS: The regulations that I have read,
7 as I recall, contain about a full page of additions and
8 deductions to that calculation. I have not memorized
9 those regulations. I do not deal with them on a daily
10 basis. I do not have intimate knowledge of the
11 mechanical aspects of the program operated by offices
12 outside of my control.

13 Q. BY MR. REED: One of the adjustments that's
14 made, I just want to know if you have an understanding,
15 is that a district's capacity is increased in that
16 calculation if the district receives multi-track
17 year-around educational operational grants; is that
18 correct?

19 MR. HERRON: Objection. Calls for speculation.
20 I think he's fairly well told you a couple of times he
21 doesn't have that kind of knowledge. You want to ask
22 that as a foundational question.

23 THE WITNESS: Would you repeat the question,
24 please.

25 MR. REED: Could I have it read back.

1 (Record read.)

2 MR. SEFERIAN: Objection. Calls for an
3 inadmissible opinion.

4 THE WITNESS: No.

5 Q. BY MR. REED: Have you heard in the context of
6 the school facilities program the term MTYRE op grant
7 hit?

8 A. Yes.

9 Q. What do you understand that term to mean?

10 A. It is a term that -- it does not apply to
11 the -- necessarily to the operational grant. The hit --
12 let me back up.

13 You said that the calculation was increased.
14 The calculation is actually decreased.

15 Q. Okay.

16 A. That's why I said no to your question. It's a
17 decrease, not an increase.

18 Q. It's an decrease of eligibility, correct?

19 A. Yes.

20 Q. So if a school district operating an MTYRE
21 school receives an operational grant from the state,
22 then their eligibility in the school facilities program
23 is decreased?

24 MR. SEFERIAN: Objection. Incomplete
25 hypothetical question. Vague and ambiguous.

1 because the operational grant is tied to the cost
2 avoidance of state construction. That appears to be the
3 legislative intent in developing the operational grant
4 program.

5 Q. BY MR. REED: Okay. When calculating teaching
6 stations, is it your understanding that portable
7 classrooms are considered teaching stations, included in
8 the capacity of a school district?

9 MR. HERRON: Objection. Calls for speculation.

10 THE WITNESS: All portables or some portables?

11 MR. REED: Some portables.

12 MR. SEFERIAN: Objection. Vague and ambiguous.

13 THE WITNESS: Some portables are excluded from
14 the calculation.

15 Q. BY MR. REED: Which portables are excluded, in
16 your understanding?

17 MR. SEFERIAN: Objection. Calls for an
18 inadmissible legal opinion. Lacks foundation.

19 THE WITNESS: Those portables that exceed 25
20 percent of the number of permanent classrooms in the
21 district.

22 Q. BY MR. REED: Any others?

23 MR. SEFERIAN: Same objections.

24 THE WITNESS: If there were any portables that
25 were less than 700 square feet, they would be excluded.

1 THE WITNESS: It is decreased, and it varies
2 from district to district, the amount of the decrease.
3 Q. BY MR. REED: Because there are some exemptions
4 from the increase, correct?

5 MR. HERRON: Objection. Asked and answered.
6 Calls for speculation. Incomplete and improper
7 hypothetical.

8 THE WITNESS: The eligibility is decreased
9 because in receiving the operational grant, the district
10 receives a calculation that is called the cost avoidance
11 of state construction, and because they received a
12 calculation -- an amount for the cost avoidance of state
13 construction, we assume that those students will not be
14 housed in a project that is funded by the state and so
15 those students are deducted.

16 Q. BY MR. REED: Is it your understanding, again,
17 on a policy level, that by doing that calculation, the
18 state is, in effect, deeming that a student on a
19 multi-track calendar, for which the district receives an
20 operational grant, is to be housed?

21 MR. SEFERIAN: Objection. Overly broad. Vague
22 and ambiguous. It calls for an inadmissible opinion.
23 Argumentative.

24 THE WITNESS: Given the way that the mechanics
25 work, the legislature presumably made that assumption

1 Q. BY MR. REED: And that's a blanket exclusion,
2 is it not, of any teaching station, any classroom that
3 is less than 700 square feet is not counted in the
4 capacity of a district?

5 MR. SEFERIAN: Objection. Misstates the
6 witness' testimony. Vague and ambiguous.

7 THE WITNESS: Are you talking about portables
8 now or permanents and portables?

9 MR. REED: Permanents and portables.

10 THE WITNESS: My recollection of the regulation
11 is that teaching stations that are less than 700 square
12 feet are excluded as existing teaching stations.

13 Q. BY MR. REED: So when determining a district's
14 eligibility for state funding, any students in a
15 classroom of less than 700 square feet are deemed
16 unhoused in the school facilities program?

17 MR. SEFERIAN: Objection. Calls for an
18 inadmissible opinion. Calls for speculation. Lacks
19 foundation.

20 MR. HERRON: Incomplete and improper
21 hypothetical.

22 THE WITNESS: The classroom that they are in is
23 determined not to be an existing classroom.

24 Q. BY MR. REED: Is that not the same as saying
25 that under the school facilities program, that the

1 students in that classroom are unhousted?
 2 MR. SEFERIAN: Objection. Vague and ambiguous.
 3 Argumentative. Misstates the witness' testimony.
 4 THE WITNESS: It could be semantics. It
 5 could -- different people could have different
 6 interpretations of unhousted.
 7 Q. BY MR. REED: Okay. When determining a school
 8 district's eligibility for state school construction
 9 money, does the state in any way differentiate between
 10 districts which operate multi-track calendars and those
 11 that do not? And, again, I'm talking eligibility only.
 12 MR. SEFERIAN: Objection. Overly broad. Calls
 13 for an inadmissible opinion. Vague and ambiguous.
 14 MR. HERRON: Calls for speculation.
 15 THE WITNESS: Do they differentiate in any way?
 16 MR. REED: Yes.
 17 THE WITNESS: Whatsoever?
 18 MR. SEFERIAN: Objection. Overly broad.
 19 MR. REED: Yeah.
 20 THE WITNESS: Yes.
 21 Q. BY MR. REED: In what ways?
 22 MR. SEFERIAN: Same objection.
 23 MR. HERRON: And calls for speculation.
 24 THE WITNESS: There are various ways, many of
 25 which I am not familiar with because they are detailed,

1 mechanical operational provisions conducted by the
 2 office of public school construction. I do not know all
 3 of the ways.
 4 Q. BY MR. REED: Going back to the portable
 5 question. In addition to portables in excess of 25
 6 percent of a school's teaching stations and portables of
 7 less than 700 square feet, do you know of any other
 8 portables that are excluded from a district's capacity
 9 when determining eligibility?
 10 A. Yes.
 11 Q. What are those?
 12 A. Portables that are purchased under the --
 13 interim portables under the lease purchase school
 14 facilities program through the office of public school
 15 construction I believe are also considered nonpermanent
 16 counted teaching stations.
 17 Q. Interim portables are typically those portables
 18 that a district may employ to house children during a
 19 construction -- modernization or new construction of a
 20 school?
 21 MR. SEFERIAN: Objection. No foundation.
 22 Vague and ambiguous as to "typically."
 23 THE WITNESS: That is typically when the
 24 portables are used in that sense, yes.
 25 Q. BY MR. REED: Anything else besides interim

1 portables?
 2 MR. SEFERIAN: Objection. Lacks foundation.
 3 THE WITNESS: Is the question are there any
 4 more or do I know any more specifically?
 5 Q. BY MR. REED: Do you know of any more
 6 specifically?
 7 A. There are more exclusions. I do not know every
 8 one of them because I do not deal at that level with
 9 this program.
 10 Q. Do you know whether it's possible for a
 11 district receiving funding under the state school
 12 facilities program to build a classroom knowing that
 13 funding -- I'm talking about the school facilities
 14 program in existence since SB 50 -- to build a school
 15 with classrooms of less than 700 square feet?
 16 MR. SEFERIAN: Objection. Calls for
 17 speculation. Incomplete hypothetical question. Vague
 18 and ambiguous.
 19 THE WITNESS: You're saying does the program
 20 allow for that?
 21 MR. REED: Yes.
 22 THE WITNESS: To build classrooms less than 700
 23 square feet?
 24 MR. REED: Yes.
 25 MR. SEFERIAN: Objection. Calls for an

1 inadmissible legal opinion.
 2 THE WITNESS: Technically that cannot occur
 3 because under the program a room that is less than 700
 4 square feet, unless it's an RSP room, resource
 5 specialist room, or a pull-out room, technically is not
 6 a classroom in the eyes of the school facilities
 7 program.
 8 So I guess the answer would be yes because
 9 there are RSP programs, there are pull-out programs,
 10 there's speech and hearing that are less than 700 square
 11 feet. Now, whether your definition is that's a
 12 classroom or that's an RSP program or a pull-out room
 13 depends on your definition.
 14 Q. BY MR. REED: Setting aside those RSP and
 15 pull-out rooms, are you aware of any instance in which
 16 the SAB has approved funding for a new construction
 17 project that was used by a district to construct new
 18 classrooms of less than 700 square feet?
 19 MR. SEFERIAN: Objection. Lacks foundation.
 20 Vague and ambiguous as to "new classrooms."
 21 THE WITNESS: Yes.
 22 Q. BY MR. REED: How often is that occurring?
 23 MR. SEFERIAN: Objection. Lacks foundation.
 24 Calls for speculation. Overly broad.
 25 THE WITNESS: I would only be speculating.

1 Q. BY MR. REED: Okay. Do you have any
2 understanding as to whether Capistrano Unified has done
3 that.
4 MR. SEFERIAN: Objection. Lacks foundation.
5 THE WITNESS: Yes.
6 Q. BY MR. REED: And on what do you base that
7 understanding?
8 A. Facilities director told me.
9 Q. The facilities director for Capistrano Unified?
10 A. Yes.
11 Q. Is that Dave Doomey?
12 A. Yes.
13 Q. D-o-o-m-e-y.
14 And were the classrooms built of that size
15 ultimately -- I'm sorry, subsequently included within
16 the capacity of Capistrano Unified when calculating
17 their remaining eligibility for Prop 1A funding?
18 MR. SEFERIAN: Objection. Lacks foundation.
19 Vague and ambiguous as to "that size."
20 MR. HERRON: Calls for speculation.
21 THE WITNESS: That is a function of the office
22 of public school construction of which I do not have
23 authority, and I do not have that knowledge.
24 Q. BY MR. REED: Okay. Do you have any
25 understanding as to how many unhoused pupils Capistrano

1 is deemed to have under the school facilities program?
2 MR. SEFERIAN: Objection. Lacks foundation.
3 Calls for speculation.
4 THE WITNESS: I don't have any understanding of
5 how many unhoused students Capistrano has, or any of the
6 other thousand school districts in the state.
7 MR. HERRON: Before your next question.
8 (Discussion held off the record.)
9 Q. BY MR. REED: Who would know the answer to the
10 question with respect to whether a school district using
11 Prop 1A funding to build a new classroom of less than
12 700 square feet would have that new classroom counted
13 towards the district's capacity for -- when determining
14 remaining eligibility under the school facilities
15 program?
16 MR. SEFERIAN: Objection. Assumes facts not in
17 evidence. Calls for speculation. Lacks foundation.
18 THE WITNESS: The school district would know
19 that. And as I've stated several times, the office of
20 public school construction, who is the entity
21 responsible for determining those calculations, I
22 assume, would have that information, but you'd have to
23 talk to them.
24 Q. BY MR. REED: As a policy matter under the
25 school facilities program, is it your understanding that

1 the State treats all unhoused children equally?
2 MR. SEFERIAN: Objection. Overly broad. Vague
3 and ambiguous as to "equally." Lacks foundation. Vague
4 and ambiguous.
5 THE WITNESS: I don't understand your question.
6 Q. BY MR. REED: Dealing with the policy level and
7 your role as a member of the SAB, is it your
8 understanding that the school facilities program
9 attempts to house all unhoused pupils on an equal
10 priority?
11 MR. SEFERIAN: Objection. Incomplete, improper
12 hypothetical. Vague and ambiguous as to "equally."
13 Lacks foundation. Vague and ambiguous.
14 MR. HERRON: Calls for speculation.
15 THE WITNESS: Can you define "equal priority"?
16 Q. BY MR. REED: For example, does a student who
17 is -- is an unhoused pupil on a Concept 6 multi-track
18 calendar given any greater eligibility for funding than
19 a student attending a classroom of less than 700 square
20 feet?
21 MR. HERRON: New school construction funding?
22 MR. REED: New school construction funding.
23 MR. SEFERIAN: Objection. Incomplete
24 hypothetical. Assumes facts not in evidence.
25 THE WITNESS: Since you prefaced it by saying

1 on a policy level as opposed to a technical, mechanical
2 program application level, it is the goal of the state
3 allocation board to treat all students throughout the
4 state in an equitable manner and to level the playing
5 field for all school districts and try to make the funds
6 accessible to every school district and every student in
7 the state. On a policy level, that's the goal.
8 Q. BY MR. REED: Do you believe that it is a goal
9 of the school facilities program to try to eliminate
10 multi-track year-around educational programs?
11 MR. SEFERIAN: Objection. Vague and ambiguous
12 as to "goal." Calls for an inadmissible legal opinion.
13 MR. HERRON: Vague as to time.
14 THE WITNESS: The school facilities program
15 encompasses many, many people. I cannot say that
16 everybody that is associated with the school facilities
17 program would have that common goal.
18 Q. BY MR. REED: Okay. I want to take a moment to
19 talk about the per pupil grant amounts. When a district
20 makes an application for funding to the SAB, it receives
21 its grant in functionally two components, the new
22 construction grant and the land cost grant, site
23 acquisition grant, and I want to speak outside of the
24 context of financial or environmental hardship
25 applications. Is that your understanding?

1 A. That they receive money in two different
2 apportionments?
3 Q. Not two different apportionments, but that an
4 application essentially has two components, the new
5 construction grants and the site acquisition grant?
6 MR. SEFERIAN: Objection. Lacks foundation.
7 Calls for speculation.
8 THE WITNESS: I believe that's correct.
9 Q. BY MR. REED: And the new construction grant is
10 calculated on a per unboxed pupil basis, correct?
11 MR. HERRON: Objection. Calls for speculation.
12 MR. SEFERIAN: Objection. Overly broad.
13 THE WITNESS: That is one component. There are
14 other components, such as the excessive cost for
15 geographics for urban adjustment, and probably other
16 components that are administered by the office of public
17 school construction.
18 Q. BY MR. REED: And the amount of the per pupil
19 grant, the basic grant outside of the adjustments you've
20 just described, is a number that is adjusted annually by
21 the SAB; is that correct?
22 A. Is it annually or every other year?
23 Q. Either one.
24 A. It is either annually or every other year.
25 Q. Do you know what that amount is for elementary,

1 discussed yesterday, the exhibit number escapes me now.
2 It might be 202.
3 And I wanted to just revisit that number and
4 determine whether the construction cost per student
5 number that is represented in the fingertip facts is --
6 how it was calculated.
7 I believe your testimony yesterday was it was
8 determined either by Mr. Yeager or by staff of OPSC to
9 be the -- double the state's share of apportionments
10 made for new construction in each of those program
11 levels; is that accurate?
12 A. May I see the exhibit?
13 Q. Absolutely.
14 A. I think the footnote describes how the figure
15 was calculated. Which column are you referring to?
16 Q. Let's deal in No. 7, the basic construction
17 date, the construction cost per student for elementary.
18 \$16,728 is the amount?
19 A. Yes.
20 Q. And that number is considerably in excess of
21 the per pupil grant amount currently designated in the
22 school facilities program, and I'm trying to determine
23 why.
24 MR. SEFERIAN: Objection. Overly broad. Lacks
25 foundation.

1 middle school or high school, per pupil grants, as of
2 now?
3 A. I have not memorized the amounts that are
4 available for those different grade levels for
5 modernization or new construction.
6 Q. Okay. I appreciate that. I can't do it
7 either.
8 Is it your understanding that the per pupil
9 grant amount for elementary school is somewhere in the
10 neighborhood of \$5,500 per unboxed pupil?
11 MR. HERRON: Objection. Calls for speculation.
12 Isn't this all a matter of just like regulation
13 and the law? Do we really need to ask him about that?
14 MR. REED: If you're not going to raise
15 foundational objections, then we don't.
16 MR. HERRON: I'm just thinking that I haven't
17 heard much that hasn't already been gone into in the
18 nook and cranny type examination that preceded us these
19 past few days, but go ahead.
20 THE WITNESS: The per pupil amount is either at
21 or above that level. I don't know that \$5,500 is
22 exactly what it is. I don't have the benefit of having
23 it in front of me.
24 Q. BY MR. REED: Okay. And neither do I. What I
25 do have in front of me are the fingertip facts we

1 MR. HERRON: Wait until he asks you a question.
2 Q. BY MR. REED: Yeah. Trying to give you the
3 background as to where I'm going.
4 Is it your understanding that this \$16,700
5 number was calculated by simply looking at the Prop 1A
6 apportionments and dividing by the number of students to
7 be housed?
8 A. No.
9 MR. SEFERIAN: Objection. Lacks foundation.
10 Q. BY MR. REED: How do you understand it to be
11 calculated?
12 A. I'm looking at the asterisk that explains how
13 that column was calculated. The first thing that leaps
14 to mind is it says "and the required local match," so
15 the first difference is it is both the state portion and
16 the local portion, not just the state per pupil grant.
17 That's one main difference.
18 Q. And in the LAO report that we looked at
19 yesterday, the LAO made the statement that historically
20 the state has contributed 40 percent of the funding for
21 school construction and local sources have contributed
22 60 percent.
23 Do you recall that portion of the LAO report?
24 A. No.
25 MR. SEFERIAN: Objection. Assumes facts not in

1 evidence.

2 THE WITNESS: No, we did not discuss that

3 yesterday. We discussed the report, but not that

4 particular fact.

5 Q. BY MR. REED: I'm wondering -- and I know it

6 was a while ago since you read it -- if you recall

7 having read that portion of the LAO report?

8 MR. SEFERIAN: Objection. Assumes facts not in

9 evidence. Argumentative.

10 THE WITNESS: I do not recall reading that

11 particular fact.

12 Q. BY MR. REED: Do you have an understanding

13 sitting here today as to under the school facilities

14 program what, for new construction funding, is the

15 general breakdown in percentage terms of state share and

16 local share of the cost of constructing new schools?

17 MR. SEFERIAN: Objection. Overly broad. Calls

18 for an inadmissible opinion. Lacks foundation.

19 MR. HERRON: Calls for speculation.

20 THE WITNESS: The actual cost of constructing

21 schools, or the breakdown of the percentage of state

22 versus local contribution?

23 MR. REED: I'm looking for the breakdown.

24 THE WITNESS: It's 50/50 by law.

25 Q. BY MR. REED: Let's talk about, in experience,

1 over what it has cost the districts who have received

2 apportionment and constructed schools and made their

3 local match. Do you have an estimate as to what the

4 experience is with respect to ultimately how much of the

5 cost of constructing those schools has been borne by the

6 localities -- the local district in percentage terms?

7 MR. SEFERIAN: Objection. Calls for an

8 inadmissible opinion. Lacks foundation. Calls for

9 speculation. Overly broad. Vague and ambiguous.

10 THE WITNESS: That is not the role of the

11 California Department of Education to do that type of

12 fiscal analysis. The office of public school

13 construction has that responsibility.

14 Q. BY MR. REED: I understand. I'm really not

15 asking for a breakdown, I'm asking for whether you have

16 an understanding, given your role at the Department and

17 your role in the SAB, as to what roughly speaking that

18 breakdown has been?

19 MR. SEFERIAN: Objection. Argumentative.

20 Asked and answered. Calls for an inadmissible opinion.

21 Lacks foundation. Calls for speculation.

22 THE WITNESS: Not roughly speaking, no.

23 Q. BY MR. REED: To make an application for

24 funding from the SAB, a district will receive a new

25 construction grant, the basic new construction grant

1 before you get to the adjustments you described, and

2 it's calculated by the capacity to be housed in that

3 school multiplied by the per pupil grant; is that

4 correct?

5 MR. SEFERIAN: Objection. Lacks foundation.

6 Calls for an inadmissible legal opinion.

7 THE WITNESS: It is my understanding that that

8 is one element that the office of public school

9 construction uses to make that calculation.

10 Q. BY MR. REED: Outside of the adjustments that

11 you described before, is there anything else that the

12 office of public school construction uses?

13 MR. SEFERIAN: Objection. Calls for

14 speculation. Lacks foundation.

15 THE WITNESS: I do not have intimate knowledge

16 of their processes.

17 Q. BY MR. REED: I'm going to take a moment to

18 describe the context of trying to get funding for, let's

19 say, a 200-student primary school from the SAB. And by

20 primary center I mean classrooms with kindergarten

21 through third grade.

22 Assuming that we are talking about construction

23 costs per student as calculated in the fingertip facts,

24 we can roughly estimate the cost of that 200 seat

25 primary center, the construction component itself is

1 roughly 200 times \$16,700, correct?

2 MR. SEFERIAN: Objection. Calls for an

3 inadmissible opinion. Lacks foundation. Calls for

4 speculation.

5 MR. HERRON: Incomplete and improper

6 hypothetical.

7 THE WITNESS: You're referring to the

8 construction cost per student only, not the other

9 elements that go into the cost of building a school?

10 MR. REED: I'm talking about what it's actually

11 going to cost to build the school separate and apart

12 from the site acquisition costs.

13 MR. SEFERIAN: Objection. Lacks foundation.

14 Calls for speculation. Calls for an inadmissible

15 opinion. Incomplete hypothetical question.

16 THE WITNESS: There are many variables that are

17 included. There's site acquisition costs, there may be

18 toxic mitigation costs. There are many factors other

19 than just the site acquisition and the cost per pupil.

20 When you're asking about the actual cost to the

21 school district of building that, I don't think you can

22 assume, not even within one district, that you take one

23 figure times the number of kids and every school that

24 you build throughout the district is going to cost

25 exactly that same amount. There are too many other

1 elements.

2 MR. REED: Absolutely. I'm trying to deal with

3 an average.

4 THE WITNESS: You didn't say "average."

5 MR. SEFERIAN: Please wait. He hasn't asked

6 you a question.

7 Q. BY MR. REED: If we assume that the numbers

8 reported in the fingertip facts represent the average

9 cost from both state and local sources for constructing

10 an elementary classroom statewide, I want to use that

11 number in mind, the 16,700 number, can we assume that on

12 average to build a -- the construction component of a

13 200 seat primary center should cost on average \$16,700

14 times 200?

15 MR. SEFERIAN: Objection. Incomplete

16 hypothetical question. Assumes facts not in evidence.

17 Lacks foundation. Calls for speculation. Vague and

18 ambiguous.

19 THE WITNESS: There are so many variables

20 involved, that I do not think that you could assume even

21 on average that that's the way that the math will work

22 out.

23 Q. BY MR. REED: Okay. Do you have an

24 understanding sitting here today as to what it would

25 cost to build a 200-seat primary center in Elk Grove

1 MR. SEFERIAN: Objection. Overly broad. Vague

2 and ambiguous.

3 THE WITNESS: With a larger school, you'd need

4 a larger cafeteria, a larger library, you might need a

5 larger multi-purpose room, and therefore the cost of

6 building that total facility could be more than building

7 a small school.

8 Q. BY MR. REED: Is it also the case that there

9 are some centralized facilities that most every primary

10 center or elementary school will need to have in order

11 to be approved by the Department of Education regardless

12 of whether it's a 100-student school or a 500-student

13 school?

14 MR. SEFERIAN: Objection. Assumes facts not in

15 evidence. Lacks foundation. Calls for speculation.

16 Incomplete and improper hypothetical question. Vague

17 and ambiguous.

18 THE WITNESS: Would you repeat the question,

19 please.

20 (Record read.)

21 MR. SEFERIAN: Objection. Vague and ambiguous

22 as to "primary center."

23 THE WITNESS: Please define most centralized

24 facilities.

25 Q. BY MR. REED: Are most elementary schools,

1 School District?

2 MR. HERRON: In Elk Grove?

3 MR. SEFERIAN: Objection. Lacks foundation.

4 Calls for speculation.

5 THE WITNESS: No.

6 Q. BY MR. REED: Same question with respect to Los

7 Angeles Unified School District?

8 MR. SEFERIAN: Objection. Lacks foundation.

9 Calls for speculation.

10 THE WITNESS: No.

11 Q. BY MR. REED: Amongst the variables you're

12 describing, does the size of the school affect the cost

13 per seat?

14 MR. SEFERIAN: Objection. Incomplete and

15 improper hypothetical question. Lacks foundation.

16 Calls for speculation. Vague and ambiguous.

17 THE WITNESS: Yes.

18 Q. BY MR. REED: Is it generally the case that the

19 smaller the school, the more expensive the cost per seat

20 will be?

21 MR. SEFERIAN: Objection. Incomplete and

22 improper hypothetical question. Lacks foundation.

23 Calls for speculation. Overly broad.

24 THE WITNESS: No.

25 Q. BY MR. REED: Why not?

1 regardless of size, going to have to have a library to

2 be approved by the school facilities planning division?

3 MR. SEFERIAN: Objection. Incomplete and

4 improper hypothetical question. Lacks foundation.

5 Calls for speculation. Vague and ambiguous as to

6 "approved."

7 THE WITNESS: Not necessarily. A classroom can

8 be used as a library.

9 Q. BY MR. REED: Do the SFPD guidelines have

10 recommendations with respect to whether an elementary

11 school should have a library?

12 MR. SEFERIAN: Objection. Vague and ambiguous

13 as to "SFPD guidelines" and "recommendations." Lacks

14 foundation.

15 MR. REED: If I said recommendations, I meant

16 regulations.

17 THE WITNESS: Do you mean the Title 5

18 regulations?

19 MR. REED: Yes, and other guidelines or

20 guidebooks put out by the school facilities planning

21 division for the purpose of designing elementary

22 schools.

23 MR. SEFERIAN: Objection. Overly broad.

24 Compound. Calls for an inadmissible legal opinion.

25 THE WITNESS: In an ideal situation and where

1 it is feasible to do so, the guidelines recommend that a
 2 school contain a library.
 3 Q. BY MR. REED: And do you have an understanding
 4 as to whether a library -- withdraw that question.
 5 THE SAB makes apportionments to the school
 6 districts for site acquisition at the lesser of the
 7 appraised value of a site acquired or its purchase
 8 price; is that correct?
 9 MR. SEFERIAN: Objection. Calls for an
 10 inadmissible legal opinion. Lacks foundation. Calls
 11 for speculation.
 12 MR. HERRON: Argumentative.
 13 THE WITNESS: I believe it's a little more
 14 complicated than that, but I don't understand all of the
 15 intimate, mechanical details of the responsibilities of
 16 the office of public school construction.
 17 Q. BY MR. REED: I'm just trying to deal with the
 18 policy level of how -- what the reimbursement looks like
 19 for the state's share of site acquisition.
 20 It is roughly assumed to be 50 percent of the
 21 lesser of the appraised value of a site or the cost of
 22 the site to a district, correct?
 23 MR. HERRON: You just asked that question the
 24 question before. He's responded. Can we move on to
 25 something relevant? He just answered that question,

1 Kevin. We're wasting time here.
 2 THE WITNESS: I do not have intimate knowledge
 3 of that aspect of the program.
 4 Q. BY MR. REED: I understand. I'm really not
 5 asking for intimate knowledge, and that's why I came
 6 back and tried to ask the question again.
 7 I'm asking on the broad policy level if it is
 8 your understanding that roughly what a school district
 9 gets from the state is 50 percent of the lesser of the
 10 appraised value or the purchase price?
 11 MR. HERRON: That's not a policy question at
 12 all. I mean, I object to your mischaracterization of
 13 your own question. You're asking him for the mechanical
 14 details which he's told you 15 times that he doesn't
 15 have. I object as asked and answered. I think you're
 16 harassing this witness with this and other similar
 17 questions.
 18 You may respond yet again, and that's the last
 19 time you respond to this question.
 20 THE WITNESS: I'm not aware of the intimate
 21 details of the mechanics of the way that works.
 22 Q. BY MR. REED: Is a school district entitled to
 23 some money from the state for the cost of environmental
 24 clean-up at a site?
 25 MR. SEFERIAN: Objection. Overly broad. Vague

1 and ambiguous as to "entitled." Incomplete and improper
 2 hypothetical question. Lacks foundation. Calls for
 3 speculation.
 4 MR. HERRON: Asked and answered.
 5 THE WITNESS: Are you saying will the state pay
 6 the school district a portion of the cost for
 7 environmental clean-up?
 8 MR. REED: Yes.
 9 MR. SEFERIAN: Same objections.
 10 THE WITNESS: I do not know.
 11 MR. HERRON: We've been going about an hour.
 12 Can we take a break when we reach a convenient stopping
 13 point?
 14 MR. REED: Now would be fine.
 15 (Recess taken.)
 16 Q. BY MR. REED: Now, Mr. Brooks, is it true that
 17 under the school facilities program a district can seek
 18 a new construction grant using more per pupil grants
 19 than a facility will, in fact, have on a two-semester
 20 capacity basis?
 21 MR. HERRON: Objection. Vague and ambiguous.
 22 Calls for speculation.
 23 THE WITNESS: On a two-semester capacity basis?
 24 What do you mean by that?
 25 Q. BY MR. REED: Let me try and do that a

1 different way. The SAB has established a policy, has it
 2 not, that OPSC may accept and forward to the board for
 3 approval new construction grant apportionment requests
 4 that use more per pupil grants or seek more per pupil
 5 grants than the number of pupils that can be
 6 accommodated at a school on a two-semester capacity
 7 basis?
 8 MR. SEFERIAN: Objection. Vague and ambiguous.
 9 Vague and ambiguous as to "policy."
 10 THE WITNESS: What do you mean by a
 11 two-semester basis?
 12 MR. REED: On a nonmulti-track year-around
 13 educational basis, a traditional calendar.
 14 MR. SEFERIAN: Same objections.
 15 THE WITNESS: My understanding of the policy is
 16 that school districts can borrow per pupil eligibility
 17 and use it in another project, whether it's multi-track,
 18 traditional or any other calendar.
 19 Q. BY MR. REED: Okay. So, for example, a
 20 district seeking funding for, to use easy numbers, a
 21 thousand-seat middle school could seek an apportionment
 22 for up to -- from the SAB that would use up to 1,350 per
 23 pupil grants; is that correct?
 24 MR. HERRON: Objection. Calls for speculation.
 25 Vague and ambiguous.

1 THE WITNESS: The board does allow a district
 2 to borrow eligibility throughout the district and use in
 3 a project. The percentage that raised a red flag used
 4 to be 150 percent, and I believe that it was lowered to
 5 the 130 or 135 percent to be on a special consent
 6 calendar.
 7 Q. BY MR. REED: That's what you mean when you say
 8 "raise a red flag," if it was in excess of that amount,
 9 you'd have to go on a special consent calendar?
 10 A. Yes. You'd probably have to go to an appeal
 11 rather than a special consent calendar, because below
 12 that the item goes on special consent.
 13 Q. Make sure I understand. Below 135 percent of
 14 the per pupil grant amount, you still go to a special
 15 consent calendar?
 16 A. It's placed on a special consent calendar.
 17 Q. And if you are above that red flag threshold,
 18 then you need to appeal in order to get a grant?
 19 MR. SEFERIAN: Objection. Vague and ambiguous.
 20 THE WITNESS: That's my understanding of the
 21 way that the process would work, yes.
 22 Q. BY MR. REED: Okay. When a district borrows,
 23 to use your word, that eligibility to seek the funding
 24 in excess of the number of seats at the facility, what's
 25 it borrowing against?

1 MR. HERRON: Objection. Calls for speculation.
 2 THE WITNESS: It's my understanding that it's
 3 borrowing against the districtwide eligibility that the
 4 district has.
 5 Q. BY MR. REED: When a district borrows for that
 6 eligibility, it needs to demonstrate to the board that
 7 it will house those additional students whose
 8 eligibility is being borrowed through some other means;
 9 is that correct?
 10 MR. SEFERIAN: Objection. Incomplete
 11 hypothetical. Vague and ambiguous as to "demonstrate."
 12 Calls for speculation.
 13 THE WITNESS: Part of the process requires the
 14 school districts to pass a resolution approved by their
 15 board indicating that they will not come back and ask
 16 for additional funding for those students that they used
 17 in the project that exceeds the amount of students that
 18 otherwise they'd be eligible to receive funding for.
 19 Q. BY MR. REED: Okay. And is that because when a
 20 district receives an apportionment under the school
 21 facilities program, it needs to certify to the SAB that
 22 the state money it's receiving is a full and final
 23 contribution towards the creation of seats for the
 24 students whose grants are being sought, being
 25 apportioned?

1 MR. SEFERIAN: Objection. Calls for
 2 speculation. Vague and ambiguous as to "certified."
 3 THE WITNESS: No, I don't believe that the full
 4 and final apportionment for that project is the reason
 5 for that requirement.
 6 Q. BY MR. REED: Okay. What do you understand to
 7 be the reason for that requirement?
 8 MR. SEFERIAN: Objection. Calls for an
 9 inadmissible opinion.
 10 THE WITNESS: As I said, the reason for that
 11 requirement is so that the district doesn't come back
 12 later and ask for more money to house those same
 13 students that we gave them money to house in the project
 14 that they requested originally. That's different from
 15 the full and final funding requirement.
 16 Q. BY MR. REED: Okay. What do you understand the
 17 full and final funding requirement to be?
 18 MR. SEFERIAN: Objection. Calls for an
 19 inadmissible opinion.
 20 THE WITNESS: The law says that once the school
 21 district receives the allocation from the state
 22 allocation board for a certain amount of money for that
 23 project, they can't come back later and say, oops, we
 24 forgot this or we forgot that, now we need more money.
 25 The law says that once they receive that apportionment,

1 that apportionment is considered to be full and final
 2 and will allow them to build the project that they have
 3 requested the funds for.
 4 Q. BY MR. REED: Okay. So to use easy, round
 5 numbers, if a district has eligibility in the amount of
 6 10,350 -- I'm sorry, 13,500 unboxed elementary school
 7 students, they can, in fact, come to the board and get
 8 all of that eligibility in order to build 10,000 seats,
 9 correct?
 10 MR. HERRON: Objection. Vague and ambiguous.
 11 Argumentative.
 12 THE WITNESS: I don't do math in my head that
 13 well, so I can't confirm that those figures are
 14 accurate. I think we've talked about the policy of the
 15 board and the reason for the policy.
 16 Q. BY MR. REED: Yeah. I'm trying to use easy,
 17 round numbers just so I can clarify the policy.
 18 If a district has eligibility of, let's just
 19 use the number "X," it can come to the board and seek to
 20 use all of that eligibility to build fewer seats than
 21 the number "X," correct?
 22 MR. SEFERIAN: Objection. Vague and ambiguous.
 23 Incomplete and improper hypothetical question.
 24 THE WITNESS: I don't think that you can just
 25 use the number "X" and say all of that eligibility. If

1 they've got 20,000 students' eligibility, no, they
2 cannot use 20,000 units of eligibility on an 800-student
3 elementary school.

4 Q. BY MR. REED: That's fine. It's got to be
5 somewhere -- now, under current board policy, it needs
6 to be somewhere within 135 percent, correct?

7 MR. HERRON: Objection. Asked and answered.

8 THE WITNESS: 135 percent of what?

9 MR. REED: Okay. That's why I was hoping my
10 number would work.

11 Q. If a district has -- wants to build 1000
12 elementary school seats and has remaining eligibility
13 for 1000 times 135 percent, 1,350 per pupil grants
14 available to it, that district can, under current board
15 policy, get an apportionment using all 1,350 per pupil
16 grants to build those thousand elementary school seats,
17 correct?

18 MR. SEFERIAN: Objection. Incomplete, improper
19 hypothetical question. Argumentative. Asked and
20 answered. And I don't think it's fair to the witness to
21 require him to perform mathematical calculations, as
22 he's already indicated.

23 THE WITNESS: I do not do math that well in my
24 head, but let me help you out and I'll restate the
25 policy. The policy is that that district can come to

1 calendars?

2 MR. SEFERIAN: Objection. Assumes facts not in
3 evidence. Vague and ambiguous. Calls for speculation.

4 THE WITNESS: Some do.

5 Q. BY MR. REED: And do some districts who use
6 grants in excess of the capacity of the facility state
7 in their resolutions that they will house those students
8 by put -- those additional students by putting them into
9 portable classrooms?

10 MR. SEFERIAN: Objection. Vague and ambiguous
11 as to "resolutions." Calls for speculation. Lacks
12 foundation.

13 THE WITNESS: We've had several discussions as
14 to whether or not placing students in portables
15 constitutes adequately housing them. We have modified
16 our position and refined it, and I am not absolutely
17 certain where we currently are on that. Typically that
18 is not one of the methods that the school district gives
19 that's acceptable.

20 Q. BY MR. REED: But in the time period December
21 '98 until the present, are you aware of times in which
22 the SAB has approved the funding of a project in excess
23 of its capacity where the district has asserted that it
24 will house the additional students in portable
25 classrooms?

1 the state allocation board and request up to 135 percent
2 of the eligibility that they have for that project. It
3 requires that item to go to the board on a special
4 consent agenda, and the board has to approve that on the
5 basis that the district local governing board has passed
6 a resolution indicating that they will not come back and
7 request funding for those same students in a subsequent
8 project.

9 They also must demonstrate to the satisfaction
10 of the board that they will be able to adequately house
11 those students for which they use the eligibility on
12 that project that will not get a subsequent project
13 built for them. That's the policy.

14 MR. REED: Thank you. That's very helpful.

15 Q. A district seeking those grants in excess of
16 the facilities capacity, in the process of certifying
17 that, they will otherwise house those students whose
18 grants they're using without coming back for another
19 request for facilities for those students, do those
20 districts -- let me start this all over again.

21 Those districts who make the certification that
22 they will adequately house those students, will they --
23 do they sometimes certify to the board in that
24 resolution that they will put those additional students
25 whose grants are being used on multi-track year-around

1 MR. SEFERIAN: Objection. Vague and ambiguous
2 as to "project."

3 THE WITNESS: My recollection is that we have
4 not accepted that as an acceptable method of housing the
5 students. I could be wrong. I'd have to go back and
6 see if during the time that the policy was being
7 initially implemented, subsequently refined, whether any
8 slipped through.

9 Q. BY MR. REED: Do you have a time frame in mind
10 as to when the policy was being evaluated?

11 A. We evaluated the policy from the very beginning
12 when it was initially 150 percent, determined that that
13 was too lenient, went down to 130 or 135, even mentioned
14 135. The policy has been in effect for about a year or
15 a year and a half is my best recollection.

16 Q. Okay. Do you have an opinion as to why the SAB
17 has been either implementing or working towards a policy
18 of not approving the housing of pupils in portables, but
19 does allow for the housing of those additional pupils in
20 multi-track year-around calendars?

21 MR. SEFERIAN: Objection. Calls for
22 speculation. Compound question.

23 MR. HERRON: Calls for a legal conclusion.

24 THE WITNESS: Our discussion, as I stated
25 before, was whether or not housing the students in

1 portable classrooms would be an acceptable method of,
 2 quote, adequately housing them.
 3 Q. BY MR. REED: Has anybody raised a similar
 4 discussion within the SAB with respect to whether
 5 putting a student on a multi-track year-around calendar
 6 would be adequately housing those students?
 7 MR. SEFERIAN: Objection. Vague and ambiguous
 8 as to "similar discussion."
 9 MR. HERRON: Calls for speculation.
 10 THE WITNESS: To my knowledge, no one has
 11 raised that issue to me.
 12 Q. BY MR. REED: Do you have an opinion yourself
 13 as to whether housing a student on a multi-track
 14 calendar is more adequate than housing a student in a
 15 portable?
 16 MR. HERRON: You mean for purposes of the
 17 funding that you're talking about?
 18 MR. REED: Yes.
 19 MR. SEFERIAN: Objection. Vague and ambiguous
 20 as to "more adequate." Incomplete hypothetical. Calls
 21 for an inadmissible opinion.
 22 THE WITNESS: And we're comparing multi-track
 23 year-around education to portables?
 24 MR. REED: Yes.
 25 MR. SEFERIAN: Same objections.

1 THE WITNESS: There are many school districts
 2 in the state who have very high academic performance
 3 indexes in schools that are on multi-track year-around
 4 education.
 5 There are an extremely broad array of portables
 6 out there. Some are in deplorable condition, as I
 7 mentioned yesterday in Compton. There are other
 8 portables that teachers will fight to be in because a
 9 new portable is better than the permanent facilities
 10 that exist on the campus. So you cannot generalize and
 11 say multi-track versus portable one or the other.
 12 Q. BY MR. REED: In your opinion are there some
 13 multi-track year-around educational calendars that do
 14 not provide students with adequate housing?
 15 MR. SEFERIAN: Objection. Vague and ambiguous
 16 as to "adequate housing." Lacks foundation. Calls for
 17 an inadmissible opinion. Calls for speculation.
 18 THE WITNESS: I think there's a disconnect
 19 between the program of multi-track year-around and
 20 whether they're in adequate housing. One has to do with
 21 the time of year that they're in school versus the type
 22 of facilities that they're in.
 23 If they were on traditional calendars in that
 24 school, they'd be in the same facility, it's just a
 25 matter of when they're there, how often they're there,

1 and the condition of the facility doesn't change just
 2 because the school operates on a multi-track year-around
 3 calendar.
 4 Q. BY MR. REED: Do you believe that a student
 5 being housed on a Concept 6 multi-track calendar is
 6 being adequately housed?
 7 MR. SEFERIAN: Objection. Overly broad. Calls
 8 for speculation. No foundation. Vague and ambiguous as
 9 to "adequately housed." Calls for an inadmissible
 10 opinion.
 11 MR. HERRON: Asked and answered the question
 12 before.
 13 THE WITNESS: The same answer as before.
 14 You're comparing apples and oranges. The calendar that
 15 they're on does not change the facility in which they
 16 are housed.
 17 Q. BY MR. REED: I just want it to be clear that
 18 you don't make a distinction in that answer between
 19 Concept 6 varieties of multi-tracking and any other
 20 version of multi-tracking?
 21 MR. SEFERIAN: Same objections. Argumentative.
 22 THE WITNESS: The student would be in the same
 23 facility whether they're on a traditional calendar, a
 24 multi-track year-around calendar or a Concept 6
 25 calendar. You're comparing apples and oranges.

1 Q. BY MR. REED: Do you have any estimate in your
 2 experience on the SAB with respect to -- in percentage
 3 terms, just an estimate, how many of the applications
 4 for apportionment the SAB has funded, let's say, in the
 5 last year, that have involved requests to use pupil
 6 grants in excess of the facility's capacity?
 7 MR. SEFERIAN: Objection. Vague and ambiguous
 8 as to "apportionment."
 9 MR. HERRON: Calls for speculation.
 10 THE WITNESS: I cannot speculate on the
 11 percentage of the requests compared to the total number
 12 of applications that have been approved.
 13 Q. BY MR. REED: Can you tell me whether it's more
 14 or less than 50 percent?
 15 MR. HERRON: Objection. Calls for speculation.
 16 THE WITNESS: It would be less than 50 percent
 17 to my knowledge.
 18 Q. BY MR. REED: Okay. Now, when doing the
 19 capacity calculation of a school district participating
 20 in the school facilities program, the program treats the
 21 district as a whole unless the district elects to apply
 22 as a high school attendance area?
 23 MR. HERRON: Is this another one of those
 24 policy questions requiring calculations? Object. It
 25 calls for speculation.

1 THE WITNESS: The district has the option to
 2 apply on either a districtwide or a high school
 3 attendance area basis.
 4 Q. BY MR. REED: Okay. When a district applies as
 5 a district and its capacity is calculated -- back up a
 6 second.
 7 The basic formula for determining eligibility
 8 is subtracting capacity from enrollment at elementary,
 9 middle and high school level, correct?
 10 MR. SEFERIAN: Objection. Overly broad.
 11 THE WITNESS: I think you've oversimplified the
 12 process.
 13 Q. BY MR. REED: Okay. How would you state, in
 14 shorthand, the process so that I don't put words in your
 15 mouth?
 16 MR. SEFERIAN: Objection. Calls for a
 17 narrative.
 18 THE WITNESS: I do not have intimate knowledge
 19 of the mechanical details involved in the calculation of
 20 the eligibility process which is done by the office of
 21 public school construction.
 22 Q. BY MR. REED: I'm looking for the generalities
 23 of how one determines eligibility. It is a calculation
 24 that involves a comparison of enrollment projected out
 25 five years compared to the capacity of the district in

1 general terms, correct?
 2 MR. SEFERIAN: Objection. Asked and answered.
 3 Argumentative.
 4 THE WITNESS: That's an oversimplification of
 5 the process, but it is probably close to being an
 6 accurate generalization.
 7 Q. BY MR. REED: So within that process, if a
 8 district applies as a district, its capacity, the
 9 existence of a teaching station anywhere in the district
 10 is effectively considered available to any student
 11 attending the district, correct?
 12 MR. SEFERIAN: Objection. Overly broad. Calls
 13 for speculation.
 14 MR. HERRON: Asked and answered.
 15 THE WITNESS: I don't know that that
 16 necessarily is correct.
 17 Q. BY MR. REED: Okay. If a district has a
 18 thousand seats in its elementary schools and a thousand
 19 students enrolled in elementary school but has an
 20 elementary school on the far east part of the district
 21 on a multi-track calendar in excess of its capacity,
 22 excess of its two-semester capacity and empty seats at a
 23 school in the far west end of the district, the school
 24 facilities program nonetheless considers those students
 25 housed, correct?

1 MR. SEFERIAN: Objection. Incomplete and
 2 improper hypothetical question. Vague and ambiguous as
 3 to "two-semester capacity." Calls for speculation.
 4 THE WITNESS: Which students are adequately
 5 housed?
 6 MR. REED: All students in the district.
 7 MR. SEFERIAN: Same objections.
 8 THE WITNESS: If there are a thousand students
 9 in the district and they have a thousand seats
 10 available, then there are no students considered
 11 unhoused, is that your question?
 12 MR. REED: It is. But I want you to assume
 13 that we're dealing in a district -- a hypothetical
 14 district. A 500-student classroom on the far west side
 15 of the district, a 500 -- I'm sorry, 500-seat school in
 16 the far west end of the district, a 500-seat school in
 17 the far east end of the district, but 700 students --
 18 700 students are attending the school in the east and
 19 only 300 students are attending the school in the west.
 20 MR. SEFERIAN: Objection. Vague and ambiguous.
 21 Argumentative.
 22 Q. BY MR. REED: The school facilities program
 23 would consider all of those students to be adequately
 24 housed; is that correct?
 25 MR. SEFERIAN: Objection. Calls for

1 speculation. Vague and ambiguous.
 2 THE WITNESS: The school district has the
 3 option of applying on either an attendance basis or a
 4 high school attendance area -- districtwide or high
 5 school attendance basis.
 6 The school district makes that determination
 7 and determines which filing method is most advantageous
 8 to them. They then go to the office of public school
 9 construction who does the calculations. I do not have
 10 intimate knowledge of the mechanics of the way that that
 11 process works.
 12 Q. BY MR. REED: Assuming the district applies as
 13 a district, if there's capacity anywhere in the
 14 district, the school facilities program assumes that
 15 capacity to be available to any student in the district;
 16 isn't that correct?
 17 MR. HERRON: Objection. Incomplete and
 18 improper hypothetical. Calls for speculation. Asked
 19 and answered.
 20 THE WITNESS: I already answered that question.
 21 Q. BY MR. REED: A school district that seeks an
 22 apportionment from the SAB using its unhoused pupils
 23 may, under board policy, build the school it's using
 24 those grants for anywhere in the district; isn't that
 25 correct?

1 MR. HERRON: Objection. Calls for speculation.
2 Incomplete and improper hypothetical. Asked and
3 answered.

4 THE WITNESS: Would you repeat the question.

5 MR. REED: Could I have it read.

6 (Record read.)

7 THE WITNESS: No, they may not.

8 Q. BY MR. REED: Why not?

9 A. Because the Department of Education has
10 approved a specific site for that project, and they
11 cannot take that money if site A was approved and build
12 that school on site D that was not approved by the
13 Department of Education.

14 Q. Fair enough. May a district -- assuming the
15 district -- let me approach this other way.

16 If a district has unhoused pupils on
17 multi-track calendars in one part of the district, may
18 the district use the eligibility generated by those
19 unhoused pupils to build a school in another part of the
20 district remote from those multi-track schools assuming
21 it gets the appropriate approvals of the site from the
22 Department of Education?

23 MR. SEFERIAN: Objection. Vague and ambiguous
24 as to "remote." Calls for an inadmissible legal
25 opinion. Calls for speculation.

1 Calls for an inadmissible opinion.

2 THE WITNESS: My understanding is that the law
3 has always required that DSA approval.

4 There is an exemption. The district can
5 self-certify that the project is less than a specific
6 dollar amount, which I think is less than \$100,000, and
7 therefore they do not need to get DSA approval, but DSA
8 has to agree that the certification is appropriate.

9 Q. BY MR. REED: Okay. And do you understand that
10 exemption to be currently in effect in the SAB?

11 MR. SEFERIAN: Objection. Calls for an
12 inadmissible opinion.

13 THE WITNESS: Yes.

14 Q. BY MR. REED: Do you know whether a project to
15 renovate a bathroom would require DSA approval?

16 MR. HERRON: Objection. Incomplete and
17 improper hypothetical. Calls for speculation. Vague
18 and ambiguous as phrased.

19 MR. SEFERIAN: Objection. Calls for an
20 inadmissible legal opinion.

21 THE WITNESS: Is it above or below the dollar
22 exemption level?

23 MR. REED: Let's assume it is below the dollar
24 exemption.

25 MR. SEFERIAN: Objection. Calls for an

1 THE WITNESS: And have they applied on a
2 districtwide basis or a high school attendance area
3 basis?

4 MR. REED: District-wide basis.

5 MR. HERRON: Objection. Incomplete and
6 improper hypothetical.

7 THE WITNESS: To the best of my knowledge, they
8 would be able to build that school on the site that was
9 approved by the Department of Education.

10 Q. BY MR. REED: Under the modernization program
11 of the school facilities program, is it true that the
12 board has recently adopted a policy which restricts
13 modernization funding to those projects which receive
14 DSA approval?

15 MR. SEFERIAN: Objection. Vague and ambiguous
16 as to "policy."

17 MR. HERRON: Asked and answered.

18 MR. SEFERIAN: Vague and ambiguous as to "DSA
19 approval."

20 THE WITNESS: Has the board adopted a policy?

21 MR. REED: Yes.

22 THE WITNESS: No, that's the law.

23 Q. BY MR. REED: That a modernization project must
24 receive a DSA approval?

25 MR. SEFERIAN: Objection. Asked and answered.

1 inadmissible opinion.

2 MR. HERRON: All the same objections as
3 interposed to the last objection.

4 THE WITNESS: Because bathrooms are subject to
5 the ADA requirements, and DSA also is responsible for
6 administering ADA. I do not know that they would exempt
7 them from their review because of the ADA requirements.

8 Q. BY MR. REED: Okay. Same question for HVAC
9 installation at a school, is that, in your
10 understanding, a project that the DSA would need to
11 approve?

12 MR. HERRON: All the same objections.

13 MR. SEFERIAN: Objection. Calls for an
14 inadmissible opinion. Vague and ambiguous as to "would
15 need to approve." Calls for an inadmissible opinion.
16 Lacks foundation. Calls for speculation.

17 THE WITNESS: Other than the dollar amount
18 exemption that I'm aware of and the possible
19 nonexemption for ADA, I do not have intimate knowledge
20 of the mechanics of the division of the state architect.

21 Q. BY MR. REED: Do you have an understanding
22 whether a school district seeking modernization funding
23 for the installation of HVAC could, in fact, get
24 modernization money or get approval for an apportionment
25 for modernization money for that project if the DSA did

1 not have to approve it?
 2 MR. SEFERIAN: Objection. Calls for an
 3 inadmissible opinion. Incomplete and improper
 4 hypothetical question. Calls for speculation.
 5 MR. HERRON: Asked and answered in part.
 6 THE WITNESS: It sounds like the same question,
 7 except are you saying that if that project meets
 8 whatever exemption criteria, the division of the state
 9 architect will approve that they can go to the state
 10 allocation board with that written exemption from the
 11 DSA?
 12 MR. REED: Right.
 13 MR. SEFERIAN: Same objections.
 14 THE WITNESS: They would also have to go
 15 through the Department of Education and get our
 16 approval.
 17 MR. REED: Okay.
 18 THE WITNESS: If they get all of the proper
 19 approvals, they would receive state allocation board
 20 funding.
 21 MR. REED: Could we take about a five-minute
 22 break.
 23 (Recess taken.)
 24 (Mr. Eliasberg and Mr. Rosenbaum not present.)
 25 Q. BY MR. REED: Mr. Brooks, are you aware of

1 You may respond if you understand.
 2 THE WITNESS: I'm not aware of any studies done
 3 by anybody in the Department of Education that looks at
 4 Concept 6 in an effort to determine whether or not the
 5 students are adequately housed using the definition of
 6 the school facilities program.
 7 Q. BY MR. REED: Okay. Is it then the case that a
 8 school district which operates a Concept 6 calendar to
 9 house students in excess of its capacity which seeks a
 10 grant in excess of the capacity of the facility from the
 11 SAB and certifies to the SAB that it will house those
 12 students by putting them on a Concept 6 calendar, that
 13 existing board policy considers those students housed on
 14 a Concept 6 calendar to be adequately housed?
 15 MR. HERRON: Objection. Asked and answered
 16 several times now. I'm not going to allow him to answer
 17 that question. You're harassing him. He's responded to
 18 that precise question a number of times. I'm not going
 19 to sit here and waste our time. Let's go move on.
 20 MR. REED: Are you instructing him not to
 21 answer?
 22 MR. HERRON: I'm instructing him not to answer
 23 because you're harassing him. You have asked this exact
 24 question three or four times.
 25 THE WITNESS: I'll not respond on the basis of

1 whether anybody at the Department of Education has done
 2 any studies or analysis as to whether students on a
 3 Concept 6 calendar are adequately housed?
 4 MR. SEFERIAN: Objection. Vague and ambiguous
 5 as to "adequately housed." Assumes facts not in
 6 evidence. Vague and ambiguous as to "studies."
 7 MR. HERRON: Calls for speculation.
 8 THE WITNESS: What do you mean by "adequately
 9 housed"?
 10 MR. HERRON: Why is the Los Angeles Unified
 11 School District also asking questions on behalf of
 12 plaintiff? I don't get it. It's so obviously a
 13 plaintiff's question.
 14 Go ahead.
 15 THE WITNESS: Can you define "adequately
 16 housed"?
 17 MR. REED: Using the term adequately housed the
 18 way that you understand the SAB would use that term in
 19 evaluating whether a school district may use per pupil
 20 grants in excess of the capacity of the facility for
 21 which it's seeking an apportionment.
 22 MR. HERRON: Objection. Vague and ambiguous.
 23 You've added murkiness to something that was already
 24 unclear. It's vague and ambiguous. Calls for
 25 speculation.

1 counsel's recommendation.
 2 MR. HERRON: If you've got a new question,
 3 let's go to that, but let's finish.
 4 (Mr. Rosenbaum entered the room.)
 5 Q. BY MR. REED: Part of the school facility
 6 planning division's role is to approve the sites
 7 identified by school districts for proposed new schools;
 8 is that correct?
 9 MR. SEFERIAN: Objection. Vague and ambiguous
 10 as to "role" and "approved". Calls for an inadmissible
 11 legal opinion.
 12 THE WITNESS: Yes.
 13 Q. BY MR. REED: And is that under the Title 5
 14 regulations at section 1400?
 15 MR. SEFERIAN: Objection. Calls for an
 16 inadmissible legal opinion.
 17 THE WITNESS: Under Title 5 and other
 18 appropriate laws, rules, regulations and policies.
 19 Q. BY MR. REED: One of the things that the
 20 Department reviews when determining the appropriateness
 21 of a school site is the proximity of that site to gas
 22 pipelines, correct?
 23 MR. SEFERIAN: Objection. Vague and ambiguous
 24 as to "appropriateness." Lacks foundation. Incomplete
 25 and improper hypothetical question.

1 THE WITNESS: Yes.
 2 Q. BY MR. REED: And proximity to electrical
 3 transmission lines?
 4 MR. SEFERIAN: Objection. Vague and ambiguous.
 5 Incomplete question.
 6 THE WITNESS: High tension power lines.
 7 Q. BY MR. REED: Under Title 5 it looks
 8 specifically at power lines that have a particular
 9 voltage, correct?
 10 MR. SEFERIAN: Objection. Incomplete question.
 11 Calls for an inadmissible legal opinion. Vague and
 12 ambiguous.
 13 THE WITNESS: Yes.
 14 Q. BY MR. REED: And in the site review the
 15 Department undertakes, it looks at a site's proximity to
 16 airports and railroads as well?
 17 MR. SEFERIAN: Objection. Vague and ambiguous
 18 as to "site review." Incomplete hypothetical question.
 19 THE WITNESS: Technically it's the
 20 responsibility of the division of aeronautics to review
 21 the proposed site that's within two miles of an airport
 22 runway, not the Department of Education.
 23 Q. BY MR. REED: Is proximity to an airport part
 24 of any checklist that the Department will undertake or
 25 complete when approving a site?

1 MR. SEFERIAN: Objection. Vague and ambiguous
 2 as to "checklist." Incomplete and improper hypothetical
 3 question.
 4 THE WITNESS: One of the factors that the
 5 Department uses before giving final approval to the site
 6 is whether or not that site is within two miles of an
 7 airport runway and whether or not the division of
 8 aeronautics has said that that site is safe for student
 9 occupation.
 10 Q. BY MR. REED: And the Department of Education
 11 also in its review process will ensure that a district
 12 has complied with the DTSC review process on a site?
 13 MR. SEFERIAN: Will you repeat the question.
 14 (Record read.)
 15 MR. SEFERIAN: Objection. Vague and ambiguous
 16 as to "review process" in both locations. Overly broad.
 17 THE WITNESS: The Department of Education will
 18 not give final approval of a site until the Department
 19 of Toxic Substances review has -- has reviewed the site
 20 and signed off on it per law that went into effect
 21 January 1st of 2000.
 22 Q. BY MR. REED: To your knowledge, have you or
 23 any members of your staff undertaken any review as to
 24 the length of time it takes districts to comply with
 25 that site review process, the complete CDE site review

1 process?
 2 MR. SEFERIAN: Objection. Vague and ambiguous
 3 as to "that site review process" and as to the "CDE site
 4 review process." Assumes facts not in evidence. Overly
 5 broad.
 6 THE WITNESS: In terms of a formal review, we
 7 have not done a formal analysis. It takes different
 8 sites different times to be approved because of the
 9 individual characteristics of the site, and the time
 10 involved varies significantly throughout the state.
 11 Q. BY MR. REED: Is it accurate to say that in
 12 general it takes longer to approve a site in a densely
 13 developed urban area than it does in the average
 14 district in the state?
 15 MR. SEFERIAN: Objection. Vague and ambiguous
 16 as to "densely developed urban area." Lacks foundation.
 17 Calls for speculation. Incomplete and improper
 18 hypothetical question.
 19 (Mr. Eliasberg entered the room.)
 20 MR. SEFERIAN: No foundation.
 21 MR. HERRON: Asked and answered in part
 22 yesterday.
 23 THE WITNESS: You said "in general" and average
 24 school district. There is no average school district in
 25 the state. We have school districts that range for more

1 than 7,000, we have 35 one-room schools, and there is --
 2 I would say there is no average school district.
 3 Rural school districts complain that it takes
 4 just as long or longer to identify appropriate school
 5 sites as it does in an urban area. Rural school
 6 districts complain that because of the close proximity
 7 to agriculture land that the Department of Toxic
 8 Substances Control takes as long or longer for their
 9 review in rural property than it does in urban sites.
 10 The toxicity on a site varies significantly
 11 from minor to major regardless of where you are, in an
 12 urban setting or a rural setting or a suburban setting.
 13 Q. BY MR. REED: Do you know -- do you have an
 14 opinion, not based on what has been expressed by rural
 15 and suburban school districts, but based on your
 16 experience and what you have learned from your staff,
 17 with respect to approving school sites as to whether it
 18 does, in fact, take longer to approve a site, the
 19 Department of Education to approve a site in a densely
 20 developed urban area than in a rural area?
 21 MR. HERRON: All the same objections. Again,
 22 that is the same question you just asked him put in
 23 different language.
 24 MR. SEFERIAN: Objection. Lacks foundation.
 25 Calls for speculation. Calls for an inadmissible

1 opinion.

2 THE WITNESS: In an urban area that does not
3 pursue a site that is heavily laden with toxins, it
4 would not take longer than the site approval process for
5 a rural site or a suburban site that had significant
6 amount of toxins. Again, you cannot generalize, you
7 have to look at it on a site-by-site basis.

8 Q. BY MR. REED: Would you agree that it's
9 generally true that high tension power lines are more
10 likely to impact sites in urban areas than in rural
11 areas?

12 MR. SEFERIAN: Objection. Vague and ambiguous
13 as to "impact sites." Lacks foundation. Calls for
14 speculation. Calls for an inadmissible opinion. Vague
15 and ambiguous.

16 THE WITNESS: There are likely to be more high
17 tension power lines in a populated area than there is in
18 an unpopulated area.

19 Q. BY MR. REED: Do you have an understanding
20 based on your experience or what you've learned from
21 your staff at the Department with respect to how long it
22 takes -- withdraw that question.

23 Yesterday I believe you testified that in your
24 opinion facilities executives for school districts in
25 the state get the job done. Do you recall that

1 testimony?

2 A. Yes.

3 Q. Do you have an opinion as to whether the
4 facilities executives at LA Unified currently in place
5 are getting the job done?

6 MR. SEFERIAN: Objection. No foundation.
7 Calls for speculation. Vague and ambiguous as to
8 "getting the job done." Overly broad.

9 THE WITNESS: Can you specify which
10 individuals? Because my understanding is the staff at
11 LA Unified is extremely large, and I cannot testify that
12 every individual in the LA Unified school facility staff
13 is getting the job done.

14 Q. BY MR. REED: Okay. Do you believe that Kathy
15 Littmann is getting the job done?

16 MR. SEFERIAN: Objection. Overly broad. Vague
17 and ambiguous as to get the job done. Argumentative.
18 Lacks foundation. Calls for speculation.

19 THE WITNESS: Based on the reports from my
20 staff, the assistant division director who we send down
21 two days a week for the last several months to work with
22 her and ensure -- help ensure that progress is being
23 made, I would say, yes, I think Kathy is doing a good
24 job.

25 Q. BY MR. REED: Do you believe that LA Unified

1 School District is doing what it needs to do to build
2 schools in Los Angeles?

3 MR. SEFERIAN: Objection. Vague and ambiguous
4 as to "doing what it needs to do." Lacks foundation.
5 Overly broad. Calls for an inadmissible opinion. Calls
6 for speculation.

7 THE WITNESS: You're talking about LA Unified
8 School District, everybody in it?

9 MR. REED: Yeah.

10 THE WITNESS: Including the board members?

11 MR. REED: Including the board members.

12 MR. SEFERIAN: Objection. Overly broad. Calls
13 for a narrative. Lacks foundation. Calls for
14 speculation.

15 THE WITNESS: As I testified yesterday, I think
16 that given the resources that are available and the
17 challenges that they face, that the current staff of the
18 LA Unified School District that we deal with attempting
19 to build schools is doing the best they can.

20 Q. BY MR. REED: Do you believe that previous
21 staff was not doing the best that they could?

22 MR. SEFERIAN: Objection. Overly broad.
23 Relevance. Argumentative. Calls for speculation.

24 THE WITNESS: How far back do you want to go?
25 Do you want to go Lynn Roberts, Byron Kimble, Mel Ross?

1 What point in the past are we talking about?

2 MR. HERRON: I'm not so sure we should make it
3 very personal either. I don't want a state official
4 testifying about the competency of particular
5 individuals.

6 MR. REED: And I don't want to ask you about
7 particular individuals. Let me ask you about your
8 experience when you were at the school facilities
9 planning division on your first stint before you went to
10 nutrition.

11 MR. SEFERIAN: Same objections.

12 THE WITNESS: Again, are we talking about the
13 staff of the school facilities planning division, the
14 leaders of the school facilities planning division in
15 combination with the local school board members, or are
16 we separating them?

17 MR. REED: The district as a whole, including
18 the board members.

19 MR. SEFERIAN: Objection. Overly broad. Calls
20 for speculation.

21 MR. HERRON: I think the question is was Los
22 Angeles Unified during your prior tenure achieving its
23 construction goals. Is that right? I mean, that takes
24 it out of the personal.

25 Q. BY MR. REED: Was it doing what it needed to do

1 to build schools?

2 MR. HERRON: As far as you know.

3 MR. SEFERIAN: Objection. Overly broad. Calls
4 for an inadmissible opinion. Lacks foundation. Calls
5 for speculation.

6 THE WITNESS: Here's my point. I think when
7 the former LA Unified School District board adopted a
8 policy that they would not pursue residential
9 condemnation, that they significantly restricted their
10 options for potential school sites, leaving primarily
11 commercial sites, which inherently are more subject to
12 having toxins on them than residential sites.

13 When the board changed their policy in the last
14 year or two, it significantly widened the availability
15 of possible school sites thereby enhancing the
16 district's opportunity of meeting their -- their goal of
17 housing students.

18 Q. BY MR. REED: I appreciate that. Is there
19 anything other than that board policy that you think the
20 district was doing incorrectly or not doing as it should
21 have done in that period to build schools?

22 MR. SEFERIAN: Objection. Lacks foundation.
23 Calls for speculation. Calls for an inadmissible
24 opinion. Vague and ambiguous.

25 THE WITNESS: One of the things that the board

1 Unified has a projected unhooded pupil population
2 somewhere in the neighborhood of 125,000 students.

3 Does that sound accurate to you based on what
4 you know?

5 MR. SEFERIAN: Objection. Calls for
6 speculation.

7 THE WITNESS: I have no basis for saying yes or
8 no to that.

9 Q. BY MR. REED: Assuming that's correct and
10 assuming the district grows at a capacity of somewhere
11 around 10 to 15,000 students a year, does it sound
12 reasonable to you that LA Unified would need to build
13 200,000 seats in the next 20 years in order to get its
14 students off of multi-track year-around educational
15 calendar?

16 MR. SEFERIAN: Objection. Calls for
17 speculation. Assumes facts not in evidence. Incomplete
18 and improper question. Lacks foundation.

19 THE WITNESS: You can probably anticipate my
20 answer, that I do not do math well in my head and I have
21 no basis to say yes or no to that question.

22 MR. REED: I have nothing further.

23 MR. ELIASBERG: I'm just going to ask two
24 questions with respect to things that Kevin brought up.

25 MR. HERRON: I don't know that that's

1 didn't do was ask the voters to approve a \$2.6 billion
2 local bond measure that at some point one of the boards
3 asked the locals to do, which, again, significantly
4 increased the possibility that they -- that the district
5 would be able to meet its housing needs.

6 Q. BY MR. REED: Anything else?

7 MR. SEFERIAN: Same objections.

8 THE WITNESS: Nothing that I am specifically
9 familiar with.

10 Q. BY MR. REED: Have you or any member of your
11 staff taken any steps to try and estimate what it would
12 cost Los Angeles Unified School District to build seats
13 for all of its unhooded pupils, unhooded pupils as
14 defined in the school facilities program?

15 MR. SEFERIAN: Objection. Overly broad.
16 Assumes facts not in evidence. Calls for speculation.

17 THE WITNESS: I'm not aware of any of my staff
18 that has done that calculation. I believe that I have
19 seen a figure that the district has developed and
20 publically commented on by Superintendent Romer (ph.).
21 I don't remember the figure, but to my knowledge we did
22 not do such a study.

23 Q. BY MR. REED: Okay. In the current school
24 facilities program -- I'm going to represent to you, I
25 don't expect you to know this -- that we have -- LA

1 permissible, is it?

2 MR. ROSENBAUM: Yeah, essentially a
3 cross-examination. We're permitted to ask follow-up
4 questions.

5 MR. HERRON: I think it becomes a second
6 deposition if you're trying to ask him questions again.

7 MR. ELIASBERG: I believe that Kevin opened
8 issues with his cross-examination. I'll represent on
9 the record that I have three questions that I want to
10 ask him.

11 MR. HERRON: All right.

12 EXAMINATION BY MR. ELIASBERG

13 Q. With respect to questions that Kevin asked,
14 Mr. Brooks, you briefly spoke about your opinion -- that
15 you felt that LAUSD had restricted its ability to -- to
16 find new school sites by adopting a policy not to pursue
17 residential condemnation; is that correct?

18 A. That's my understanding of their policy, former
19 policy.

20 Q. Do you remember approximately when that policy
21 was put in place?

22 A. I don't know when it started, but it's my
23 understanding that it's been only recently that the
24 board has changed that policy, and I don't know for
25 absolute certainty that they have formalized that shift

1 in policy.
 2 Q. When you first learned about the -- after you
 3 had learned about that policy, by that I mean the policy
 4 not to pursue residential condemnation, did you or
 5 anyone on your staff express concerns to anyone at LAUSD
 6 about their adoption of this policy?
 7 MR. HERRON: Objection. Calls for
 8 speculations.
 9 MR. SEFERIAN: Assumes facts not in evidence.
 10 THE WITNESS: Did any staff at any time express
 11 a concern, is that your question?
 12 Q. BY MR. ELIASBERG: Let me limit it to you
 13 first. Did you personally at any time express concern
 14 about this to any member -- any person at the LAUSD?
 15 MR. SEFERIAN: Objection. Assumes facts not in
 16 evidence.
 17 THE WITNESS: My recollection is that I did,
 18 but I cannot tell you specifically who it was or at what
 19 time because it was probably six or eight years ago.
 20 Q. BY MR. ELIASBERG: Do you remember, only if you
 21 recall, what the response of the person or persons you
 22 talked with was?
 23 A. Yes.
 24 Q. And what was that?
 25 A. The staff felt very confined and very

1 frustrated. The staff of the LA Unified School District
 2 facilities people felt that they were very confined.
 3 Q. And one last question. And did anyone on your
 4 staff report to you about any conversations that he or
 5 she had had with members of the LAUSD expressing concern
 6 or disapproval about that policy? And by that policy I
 7 mean the policy not to pursue residential condemnation.
 8 A. I do not recall any specific conversation,
 9 however, at the time, the time frame that I'm thinking,
 10 we had a very competent, a very aggressive consultant
 11 assigned to that area, and I would be very surprised if
 12 she did not express concern to the district staff
 13 regarding the limiting nature of the district's policy.
 14 Q. Do you know if she made any efforts to get the
 15 board to change that policy?
 16 MR. SEFERIAN: Objection. I thought that was
 17 your last question.
 18 MR. ELIASBERG: I'm sorry to make that
 19 representation. This is my last question, and you can
 20 hold me to it.
 21 THE WITNESS: It would not be her role to
 22 address the local school district regarding a decision
 23 that properly falls within their jurisdiction.
 24 MR. ELIASBERG: Thank you. Very much.
 25 Usual stipulations?

1 MR. HERRON: Sure.
 2 (The deposition concluded at 1:52 p.m.)
 3 ---oOo---
 4
 5 Please be advised that I have read the foregoing
 6 deposition. I hereby state there are:
 7
 8 (check one) _____ NO CORRECTIONS
 9 _____ CORRECTIONS ATTACHED
 10
 11 _____
 12 Date Signed
 13
 14 _____
 15 Duwayne Brooks
 16
 17 Case Title: Williams vs State, Volume III
 18 Date of Deposition: Friday, November 16, 2001
 19 ---o0o---
 20
 21
 22
 23
 24
 25

1 DEPONENT'S CHANGES OR CORRECTIONS
 2 Note: If you are adding to your testimony, print the
 3 exact words you want to add. If you are deleting from
 4 your testimony, print the exact words you want to
 5 delete. Specify with "Add" or "Delete" and sign this
 6 form.
 7 DEPOSITION OF: DUWAYNE BROOKS, VOL. III
 8 CASE: WILLIAMS VS STATE
 9 DATE OF DEPOSITION: FRIDAY, NOVEMBER 16, 2001
 10 I, _____, have the following
 11 corrections to make to my deposition:
 12
 13 PAGE LINE CHANGE/ADD/DELETE
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 23 _____
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 25 DUWAYNE BROOKS DATE

REPORTER'S CERTIFICATE

1 I certify that the witness in the foregoing
2 deposition,
3 DUWAYNE BROOKS,
4 was by me duly sworn to testify the truth, the whole
5 truth, in the within-entitled cause; that said
6 deposition was taken at the time and place therein
7 named; that the testimony of said witness was reported
8 by me, a duly certified shorthand reporter and a
9 disinterested person, and was thereafter transcribed
10 into typewriting.

11 I further certify that I am not of counsel or
12 attorney for either or any of the parties to said cause,
13 nor in any way interested in the outcome of the cause
14 named in said deposition.

15 IN WITNESS WHEREOF, I have hereunto set my hand
16 this 29th day of November, 2001.

17 _____
18 TRACY LEE MOORELAND, CSR 10397
19 State of California
20
21
22

1 ESQUIRE DEPOSITION SERVICES
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7 429 Market Street
8 San Francisco, CA 94105-2482

9 Re: Williams vs State
10 Deposition of: Duwayne Brooks, Vol. III
11 Date Taken: Friday, November 16, 2001

12 Dear Ms. Welch:

13 We wish to inform you of the disposition of this
14 original transcript. The following procedure is being
15 taken by our office:

16 _____ The witness has read and signed the
17 deposition. (See attached.)

18 _____ The witness has waived signature.

19 _____ The time for reading and signing
20 has expired.

21 _____ The sealed original deposition is
22 being forwarded to your office.

23 _____ Other:

24 Sincerely,

25 TRACY LEE MOORELAND, CSR
Esquire Deposition Services
Ref. No. 28909

1 ESQUIRE DEPOSITION SERVICES
2 Certified Shorthand Reporters
3 1801 I Street, Suite 100
4 Sacramento, California 95814

5 Mr. Duwayne Brooks
6 Department of Education
7 660 J Street, Suite 350
8 Sacramento, CA 95814
9 Re: Williams vs State, Volume III
10 Date Taken: Friday, November 16, 2001

11 Dear Mr. Brooks:

12 Your deposition is now ready for you to read, correct,
13 and sign. The original will be held in our office for
14 45 days from the last day of your deposition.

15 If you are represented by counsel, you may wish to
16 discuss with him/her the reading and signing of your
17 deposition. If your attorney has purchased a copy of
18 your deposition, you may review that copy. If you
19 choose to read your attorney's copy, please fill out,
20 sign, and submit to our office the DEPONENT'S CHANGE
21 SHEET located in the back of your deposition.

22 If you choose to read your deposition at our office, it
23 will be available between 9:00 a.m. and 4:00 p.m.
24 Please bring this letter as a reference.

25 If you do not wish to read your deposition, please sign
here and return within 45 days of the date of this
letter.

DUWAYNE BROOKS DATE

Sincerely,

TRACY LEE MOORELAND, CSR
Esquire Deposition Services
Job No. 28909

cc: Kevin Reed, Esq. Anthony Seferian, Esq.
David Herron, Esq. Abe Hajela, Esq.
Peter Eliasberg, Esq. Mark Rosenbaum, Esq.