

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

3                                   ---o0o---

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.

/

15                                   Deposition of  
16                                   LAURENE BURNHAM-MASSEY  
17                                   Volume I, Pages 1 through 272  
18                                   Thursday, July 19, 2001

19  
20  
21  
22   Reported by:  
23   TRACY LEE MOORELAND  
24   CSR No. 10397  
25   Job No. 27488

Page 2

1 APPEARANCES

2

3 For the Plaintiffs Eliezer Williams, et al.:

4 ACLU FOUNDATION OF SOUTHERN CALIFORNIA

5 BY: MARK D. ROSENBAUM, ESQ.

6 JOSH DANIELS, LAW CLERK

7 1535 Mission Street

8 San Francisco, California 94103

9

10 For the Defendant State of California:

11 O'MELVENEY & MYERS LLP

12 BY: FRAM M. VIRJEE, ESQ.

13 400 South Hope Street

14 Los Angeles, California 90071

15

16 For the Defendant Delaine Eastin, State Superintendent

17 of Public Instruction, State Department of Education,

18 State Board of Education:

19 DEPARTMENT OF JUSTICE

20 OFFICE OF THE ATTORNEY GENERAL

21 BY: KARA READ SPANGLER, ESQ.

22 1300 I Street, Suite 1101

23 Sacramento, California 95814

24 /

25 /

Page 4

1 INDEX

2 Examination by Page

3 Mr. Rosenbaum 5

4

5 ---o0o---

6

7 EXHIBITS

8 Plaintiffs' Page

9 SAD-50 Curriculum Vitae of 9

10 Lauren Burnham-Massey

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Page 3

1 APPEARANCES, cont.

2

3 For the Los Angeles Unified School District and the

4 Pajaro Valley Unified School District:

5 LOZANO & SMITH

6 BY: SARAH LEVITAN KAATZ, ESQ.

7 20 Ragsdale Drive, Suite 201

8 Monterey, California 93940

9

10 The Intervener:

11 CALIFORNIA SCHOOL BOARD ASSOCIATION

12 BY: JUDY CIAS, ESQ.

13 3100 Beacon Boulevard

14 West Sacramento, California 95691

15

16

17 ---o0o---

18

19

20

21

22

23

24

25

Page 5

1 BE IT REMEMBERED, that on Thursday, July 19,

2 2001, commencing at the hour of 10:10 a.m., thereof, at

3 the Law Offices of Morrison & Foerster LLP, 400 Capitol

4 Mall, Suite 2300, Sacramento, California, before me,

5 TRACY LEE MOORELAND, a Certified Shorthand Reporter in

6 the State of California, there personally appeared

7 LAURENE BURNHAM-MASSEY,

8 called as a witness herein, who, having been duly sworn

9 to tell the truth, the whole truth, and nothing but the

10 truth, was thereupon examined and interrogated as

11 hereinafter set forth.

12 ---o0o---

13 EXAMINATION BY MR. ROSENBAUM

14 Q. How are you?

15 A. Fine.

16 Q. Could you state your full name for the record,

17 please.

18 A. It's Lauri Burnham-Massey.

19 Q. And Lauri, L-a-u-r-i?

20 A. Yes.

21 Q. And is there a hyphen between Burnham and

22 Massey?

23 A. Yes.

24 Q. And Massey is M-a-s-s-e-y?

25 A. Yes.

1 Q. And how should I refer to you?  
 2 A. Lauri.  
 3 Q. That would be okay with me. You can call me  
 4 Mark, but we'll be a little more formal here.  
 5 Is it Ms. Burnham-Massey or doctor?  
 6 A. No, it's not doctor. It could be either one.  
 7 People use one or the other or both.  
 8 Q. Do you have a preference?  
 9 A. No.  
 10 Q. Okay. Ms. Burnham-Massey, have you ever been  
 11 deposed before?  
 12 A. Yes.  
 13 Q. On how many occasions?  
 14 A. Once.  
 15 Q. And when was that?  
 16 A. It was in October of 2000 and February of 2001.  
 17 Q. And was it a personal case, or was it a case  
 18 relating to some of your duties and responsibilities?  
 19 A. To my duties and responsibilities.  
 20 Q. What was the name of that case?  
 21 A. Comite De Padres versus state superintendent of  
 22 public instruction.  
 23 Q. And I take it, then, you are generally familiar  
 24 with the procedures in a deposition?  
 25 A. Yes.

1 Q. And you've had a chance to discuss them with  
 2 your counsel today or on a prior occasion?  
 3 MR. VIRJEE: Objection. Calls for  
 4 attorney/client privileged information.  
 5 MS. READ SPANGLER: Join.  
 6 Q. BY MR. ROSENBAUM: I'm going to briefly review  
 7 some of those procedures. If you have any questions,  
 8 please feel free to ask me about it. Okay?  
 9 A. Okay.  
 10 Q. You have to speak, if you don't mind, a little  
 11 louder, a little more audibly, to help the reporter out.  
 12 A. Okay.  
 13 Q. Thank you very much. This is a deposition in  
 14 another case, Williams versus the State of California,  
 15 and I am one of the counsel for the plaintiffs in the  
 16 case. Do you understand that?  
 17 A. Yes.  
 18 Q. Okay. And I'm going to be asking you a series  
 19 of questions to try to elicit some information relating  
 20 to the case. It's not my intent to trick you or deceive  
 21 you, therefore, if you have any questions about any of  
 22 my questions, please ask me and I'll be happy to clarify  
 23 my question or restate my question or respond to any  
 24 concern that you have.  
 25 Do you understand that?

1 A. Yes.  
 2 Q. Otherwise I'm going to assume that you're  
 3 answering the questions as I've asked them as fully and  
 4 as fairly as you possibly can.  
 5 Do you understand that?  
 6 A. Yes.  
 7 Q. Okay. You know you were just administered a  
 8 few moments ago the oath?  
 9 A. Yes.  
 10 Q. And even though we're not in a formal courtroom  
 11 setting, you're testifying under the same pains and  
 12 penalties of perjury as if we were in a formal  
 13 courtroom.  
 14 Do you understand that?  
 15 A. Yes.  
 16 Q. Did you get a booklet at the end of your  
 17 depositions with your answers and the lawyers' questions  
 18 in the Comite case?  
 19 A. Yes.  
 20 Q. And you'll get one in this case too, and you're  
 21 free to review your answers and my questions and any  
 22 comments that any counsel have and any of the questions  
 23 that counsel ask you, and you can change any answer that  
 24 you would like.  
 25 Do you understand that?

1 A. Yes.  
 2 Q. You can elaborate or change those answers. Do  
 3 you understand that?  
 4 A. Yes.  
 5 Q. But I want you to understand that either myself  
 6 or any counsel can comment on those changes and draw  
 7 whatever inferences we think appropriate.  
 8 Do you understand that?  
 9 A. Yes.  
 10 Q. So, again, it's important that you answer these  
 11 questions as fully and as fairly as you possibly can.  
 12 A. Yes.  
 13 Q. I appreciate that. I appreciate the courtesy  
 14 of your bringing over a copy of your vitae this morning.  
 15 Saves us a lot of time.  
 16 Let's mark as Exhibit 50 a copy of the document  
 17 that you presented us with this morning. It's a  
 18 three-page document. On the top in bold is the name  
 19 Laurene Burnham-Massey. I'm going to give this to the  
 20 reporter to have it marked and provide copies to your  
 21 counsel and other counsel.  
 22 (Exhibit SAD-50 was marked.)  
 23 Q. BY MR. ROSENBAUM: Okay. Ms. Burnham-Massey,  
 24 let me put in front of you what's now been marked as  
 25 Exhibit 50, and ask you if recognize that.

1 A. Yes, I do.  
 2 Q. Okay. And is this a copy of your vitae as  
 3 you --  
 4 A. Yes.  
 5 Q. Did you prepare it?  
 6 A. Yes, I did.  
 7 Q. Is it up-to-date? Is it current?  
 8 A. No.  
 9 Q. Okay. What should be added to it?  
 10 MR. VIRJEE: Objection. Calls for speculation.  
 11 Overbroad.  
 12 You're just asking her what she's done since  
 13 then?  
 14 MR. ROSENBAUM: That's right.  
 15 Q. What should we add to it to make it more  
 16 current?  
 17 A. From October 2000 to the present I'm now the  
 18 manager of the language proficiency and academic  
 19 accountability unit, recently renamed the Comite  
 20 follow-up monitoring unit.  
 21 Q. That's not a very sexy name.  
 22 What was it before? Was it the Comite  
 23 follow-up?  
 24 A. Follow-up monitoring unit.  
 25 Q. Okay. Any other additions that we should note?

1 A. No.  
 2 Q. How about the last page of Exhibit 50, which  
 3 says, paper and publications, are there any additional  
 4 papers or publications since this document was prepared?  
 5 A. No.  
 6 Q. Okay. Looking at credentials, professional  
 7 administrative services K through 12, do you see that on  
 8 page 1 of Exhibit 50?  
 9 A. Yes.  
 10 Q. What's that mean?  
 11 A. That means that I hold this authorization for  
 12 administering K-12 programs in California public  
 13 schools.  
 14 Q. When I see the word services, tell me what that  
 15 means to you.  
 16 MR. VIRJEE: You're asking what it means in  
 17 this context of a professional administrative services  
 18 credential?  
 19 MR. ROSENBAUM: Yes.  
 20 THE WITNESS: That's just the title of the  
 21 credential. It's the credential that's required to hold  
 22 an administrative position in a California school  
 23 district.  
 24 Q. BY MR. ROSENBAUM: And when did you receive  
 25 that?

1 A. About 1990, I think.  
 2 Q. And how did you obtain that?  
 3 A. Through coursework at Azusa Pacific University  
 4 in Azusa, California.  
 5 Q. And how long was that coursework?  
 6 A. About two years.  
 7 Q. And did any of it involve -- strike that.  
 8 That involved training to be an administrator;  
 9 is that right?  
 10 A. Yes, it did.  
 11 Q. And did any of it involve administration in the  
 12 area of bilingual or language proficiency work for  
 13 non-English speakers?  
 14 MR. VIRJEE: Objection. Vague and ambiguous  
 15 and overbroad.  
 16 MS. READ SPANGLER: Do you understand what he's  
 17 asking you?  
 18 THE WITNESS: Whether it involved bilingual  
 19 education. Officially it did not. My work did because  
 20 that was what I did a lot of papers and the fieldwork  
 21 on.  
 22 Q. BY MR. ROSENBAUM: Okay. And then beneath that  
 23 on Exhibit 50 it says bilingual/cross-cultural  
 24 instruction K through 12?  
 25 A. Yes.

1 Q. What's that mean?  
 2 A. It means I have a teaching credential that  
 3 authorizes providing instruction to English learners,  
 4 formerly known as limited English proficient students,  
 5 also in K-12 schools, California public schools.  
 6 Q. And when did you obtain that credential?  
 7 A. I'm not sure. It was approximately probably  
 8 1980, something around there.  
 9 Q. Okay. And where did you obtain that  
 10 credential?  
 11 A. That was at California Polytechnic University,  
 12 Pomona. California State Polytechnic University,  
 13 Pomona.  
 14 Q. And how long was that coursework?  
 15 A. That was also approximately two years, as I  
 16 recall.  
 17 Q. And was that --  
 18 MR. VIRJEE: On those questions, Mark, you're  
 19 asking how long it took for her to complete the work?  
 20 MR. ROSENBAUM: Yes.  
 21 Q. And your coursework at the Cal Poly Pomona  
 22 campus with respect to this credential, was it  
 23 exclusively dealing with bilingual education?  
 24 MR. VIRJEE: As opposed to cross-cultural  
 25 issues?

1 MR. ROSENBAUM: No.  
 2 Mr. VIRJEE: Are you asking only did it deal  
 3 with the bilingual cross-cultural issue?  
 4 MR. ROSENBAUM: Yes.  
 5 THE WITNESS: I would say not exclusively. It  
 6 dealt with services to LEP, L-E-P students or English  
 7 learners, including bilingual education.  
 8 Q. BY MR. ROSENBAUM: And then beneath that  
 9 credential it says California standard elementary  
 10 teaching. Do you see that?  
 11 A. Yes, I do.  
 12 Q. When did you obtain that credential?  
 13 A. 1968.  
 14 Q. Where did you receive that?  
 15 A. UCLA, University of California at Los Angeles.  
 16 Q. Okay. And was that in the Department of  
 17 Education?  
 18 A. Yes.  
 19 Q. The school of education, I mean.  
 20 A. Yes, it was.  
 21 Q. And I notice below there you obtained a  
 22 master's; is that right?  
 23 A. Yes, I did.  
 24 Q. Did you get the credential at the same time you  
 25 obtained the master's?

1 A. Yes, I did.  
 2 Q. Okay. And did you have -- were you involved at  
 3 that time in taking courses in bilingual cross-cultural  
 4 instruction?  
 5 A. No, I was not.  
 6 Q. Did you take any during that period of time?  
 7 MR. VIRJEE: During the period of time she was  
 8 getting her master's?  
 9 MR. ROSENBAUM: Yeah.  
 10 THE WITNESS: No.  
 11 Q. BY MR. ROSENBAUM: And then you got your BA at  
 12 UCLA in 1967.  
 13 A. Yes.  
 14 Q. Did you have a particular area of  
 15 specialization?  
 16 A. It was the university recommended social  
 17 sciences major, with an English minor for education.  
 18 Q. Okay. Did you take courses dealing with  
 19 bilingual or cross-cultural education at that time?  
 20 A. I took a couple of Spanish classes, but, no,  
 21 not specifically about bilingual education.  
 22 Q. Are you fluent in Spanish?  
 23 A. Yes.  
 24 Q. Are you fluent in other languages besides  
 25 English?

1 A. Not fluent, no.  
 2 MR. VIRJEE: Objection. Assumes facts. Just  
 3 kidding.  
 4 MR. ROSENBAUM: That attack came from counsel  
 5 to your left.  
 6 Q. Do you have some familiarity with other  
 7 languages besides English and Spanish?  
 8 A. A little.  
 9 Q. Which ones?  
 10 A. Mandarin, very little, a six-week course.  
 11 Japanese, a friend of mine taught me very little. Let's  
 12 see. Korean. Know a few Tae Kwon Do karate terms.  
 13 MR. VIRJEE: Maybe you should define "familiar  
 14 with."  
 15 Q. BY MR. ROSENBAUM: Have you seen Crouching  
 16 Tiger?  
 17 A. No.  
 18 Q. Okay. Any other martial arts references?  
 19 When you obtained your master's, did you do a  
 20 paper to obtain that?  
 21 A. No, I did not.  
 22 Q. Okay. Let's get some terminology, just so  
 23 we're speaking the same vocabulary. You used the term  
 24 English learners earlier.  
 25 A. Yes.

1 Q. Okay. And sometimes that's referred to as  
 2 English language learners?  
 3 A. Yes.  
 4 Q. And what's your understanding of what that  
 5 means?  
 6 A. English learners or English language learners,  
 7 also known as LEP, limited English proficient students,  
 8 are students who speak a language other than English at  
 9 home and do not have full proficiency yet in the English  
 10 language.  
 11 Q. Okay. And you tell me if I'm wrong here, that  
 12 was formally referred to as an LEP student, is that  
 13 right, L-E-P?  
 14 A. That's correct.  
 15 Q. And that's the limited English proficiency?  
 16 A. Yes.  
 17 Q. Do you make any differentiation in those terms,  
 18 LEP and English language learners?  
 19 A. I don't.  
 20 Q. Okay. And when you say -- you said they don't  
 21 yet have full proficiency?  
 22 A. That's correct.  
 23 Q. Okay. What do you mean by that?  
 24 A. That they don't have English language speaking,  
 25 reading and writing skills equivalent to native English

1 speakers of the same age and grade levels.  
 2 Q. Okay. And how do you figure that out? How do  
 3 you measure that?  
 4 MR. VIRJEE: Objection. Overbroad. Also  
 5 incomplete hypothetical.  
 6 THE WITNESS: In California schools we have a  
 7 required assessment process to make that determination.  
 8 Q. BY MR. ROSENBAUM: For both oral and writing?  
 9 A. Yes.  
 10 Q. Are you -- have you been involved at all in  
 11 terms -- strike that.  
 12 There's an assessment instrument that's used to  
 13 make that determination?  
 14 A. Yes.  
 15 Q. And what is the name of that instrument or  
 16 instruments?  
 17 MR. VIRJEE: Objection. Vague as to time.  
 18 MR. ROSENBAUM: Now.  
 19 THE WITNESS: Currently it's the California  
 20 English language development test. The CELDT, it's  
 21 called.  
 22 Q. BY MR. ROSENBAUM: And do you know how long the  
 23 CELDT has been in effect?  
 24 A. A couple of months.  
 25 Q. Okay. And before that?

1 A. Before that there were about six state approved  
 2 assessments that districts could choose from.  
 3 Q. Do you know the names of those?  
 4 A. Some of them I do.  
 5 Q. Okay. What were they?  
 6 A. LAS, L-A-S or language assessment scale, the  
 7 IPT, the BSM, bilingual syntax measure, the  
 8 Woodcock-Munos, hyphen, Woodcock-Munos. Those are the  
 9 ones that come to mind.  
 10 Q. Okay. And do you know how long those -- these  
 11 six -- not the six, you just named, four. Do you know  
 12 how long the six state approved assessments have been in  
 13 effect?  
 14 MR. VIRJEE: Objection. Compound.  
 15 MS. READ SPANGLER: Join.  
 16 THE WITNESS: I don't know exactly.  
 17 Q. BY MR. ROSENBAUM: What's your best estimate?  
 18 MR. VIRJEE: Objection. Compound.  
 19 MS. READ SPANGLER: Join.  
 20 THE WITNESS: Okay. The LAS and the IPT for  
 21 quite a while, probably 15 or so years. Woodcock-Munos  
 22 less time, but I don't know exactly how long.  
 23 Q. BY MR. ROSENBAUM: And were you involved in the  
 24 preparation of the CELDT?  
 25 A. No, I was not.

1 Q. Were you involved in the decision-making to  
 2 have the CELDT replace the prior assessment instruments?  
 3 A. No, I was not.  
 4 Q. Do you know who made that decision?  
 5 A. No, I don't know for sure.  
 6 Q. Do you know why -- what's your understanding as  
 7 to why the CELDT is now used in place of these prior  
 8 assessments?  
 9 MR. VIRJEE: Objection. Lacks foundation.  
 10 THE WITNESS: I think it's because of the --  
 11 MS. READ SPANGLER: Are you guessing? He  
 12 doesn't want you to guess.  
 13 THE WITNESS: Well, it's an informed guess, but  
 14 it's not for sure. I don't know for sure.  
 15 Q. BY MR. ROSENBAUM: You've heard discussions as  
 16 to the use of the CELDT; isn't that right?  
 17 A. Yes.  
 18 Q. And you've heard that in the course of your  
 19 duties and responsibilities?  
 20 A. Yes.  
 21 Q. With whom have you discussed that?  
 22 A. Consultants and managers at the Department of  
 23 Education.  
 24 Q. Can you tell me who those consultants are?  
 25 A. The consultants in our unit.

1 Q. Okay. And do you know the names of some of  
 2 those persons?  
 3 A. Yes.  
 4 Q. Who are they?  
 5 MR. VIRJEE: Who are the consultants in her  
 6 unit, or the people she spoke with?  
 7 MR. ROSENBAUM: The consultants that you heard  
 8 about the discussion of the CELDT.  
 9 THE WITNESS: Leroy Hamm.  
 10 Q. BY MR. ROSENBAUM: Anyone else you recall?  
 11 A. Monica Nava.  
 12 Q. N-a-v-a?  
 13 A. Yes. Elaine Fajardo.  
 14 Q. Okay. F-a-j-a-r-d-o?  
 15 A. Yes.  
 16 Q. Okay. Anyone else?  
 17 A. Probably, but those three I remember for sure.  
 18 Q. Were you at meetings at which the CELDT was  
 19 discussed?  
 20 MR. VIRJEE: Objection. Vague and ambiguous as  
 21 to "meeting."  
 22 THE WITNESS: Yes.  
 23 Q. BY MR. ROSENBAUM: Okay. And there was  
 24 discussion as to whether or not the prior state approved  
 25 assessments ought to be replaced?

1 A. Not specifically that.  
 2 Q. What was said about the CELDT?  
 3 MR. VIRJEE: Objection. Compound.  
 4 THE WITNESS: We asked the consultant at the  
 5 department who's most involved with it to come to one of  
 6 our staff meetings and share with us information about  
 7 the CELDT, so it was more information for myself and for  
 8 the consultant.  
 9 Q. BY MR. ROSENBAUM: And who was the consultant  
 10 whom you asked to appear?  
 11 A. That was Fred Dobb.  
 12 Q. D-o-b-b?  
 13 A. Yes.  
 14 Q. And what did Mr. Dobb say?  
 15 A. He explained the test and how it was to be  
 16 administered, he talked about the field testing, he  
 17 talked about the desire to have a common yardstick or  
 18 metric throughout the state for measuring students'  
 19 English proficiency, and he talked about the timelines  
 20 that were being set up for districts to implement the  
 21 test.  
 22 Q. So one yardstick as opposed to six; is that  
 23 right?  
 24 A. Yes.  
 25 Q. And that's your understanding as to the

1 principal reason it's been instituted?  
 2 A. Yes.  
 3 Q. And the CELDT, has it been, to your knowledge,  
 4 administered to all -- if I say -- I want to use  
 5 language that you're comfortable with.  
 6 If I say ELLs -- or do you just call them  
 7 English learners?  
 8 A. I just call them English learners.  
 9 Q. Has that been administered to all English  
 10 learners K through 12, as far as you know?  
 11 MR. VIRJEE: Objection. Overbroad. Vague and  
 12 ambiguous.  
 13 MS. READ SPANGLER: Objection. Calls for  
 14 speculation.  
 15 MR. VIRJEE: Are you asking any current ones or  
 16 any one that's ever been CELDT?  
 17 MR. ROSENBAUM: In the system right now.  
 18 MR. VIRJEE: In the system right now?  
 19 MR. ROSENBAUM: Yes.  
 20 THE WITNESS: I don't think it has been to all  
 21 of them yet. It's in process, I think.  
 22 Q. BY MR. ROSENBAUM: Okay. What's your  
 23 understanding as to who has received the CELDT?  
 24 MR. VIRJEE: Objection. Calls for total  
 25 speculation. Lacks foundation.

1 MS. KAATZ: Join.  
 2 MR. ROSENBAUM: Go ahead.  
 3 THE WITNESS: My understanding is there's a  
 4 testing window that started in the spring and goes to  
 5 the fall, so the districts make a judgment about when  
 6 they give the test within that testing window.  
 7 Q. BY MR. ROSENBAUM: And it's your understanding  
 8 that when that window shuts, roughly 100 percent of all  
 9 English learners will receive the CELDT?  
 10 A. Yes.  
 11 MR. VIRJEE: Objection. Vague and ambiguous as  
 12 to "all," "100 percent."  
 13 Q. BY MR. ROSENBAUM: And have you seen any  
 14 results of the administration of the CELDT?  
 15 A. I have not seen them, no.  
 16 Q. Have you heard discussion about them?  
 17 A. Yes.  
 18 MR. VIRJEE: Objection. Vague and ambiguous as  
 19 to "results."  
 20 Q. BY MR. ROSENBAUM: When did you hear that  
 21 discussion?  
 22 A. I had some discussion with some of the  
 23 personnel in the Comite districts that I work with that  
 24 have been involved with the field testing of that  
 25 instrument.

1 Q. Okay. And let's define some terms here. When  
 2 you say the Comite districts, Comite is spelled  
 3 C-o-m-i-t-e?  
 4 A. With an accent.  
 5 Q. With an accent over the "E"?  
 6 A. Yes.  
 7 Q. What's your understanding of what a Comite  
 8 district is?  
 9 A. Comite district, as we use the term, is one of  
 10 the districts that's selected pursuant to the Comite  
 11 consent decree for follow-up review.  
 12 Q. Okay. And the purpose of the follow-up review  
 13 is what, to your understanding?  
 14 A. Is to verify the compliance status of the  
 15 district in terms of its compliance with state and  
 16 federal laws for teaching English learners.  
 17 Q. Okay. And are you in charge of the unit that  
 18 is assigned the responsibility of undertaking that  
 19 compliance review?  
 20 A. Yes.  
 21 Q. Okay. And in that compliance review what is  
 22 your unit looking for?  
 23 MR. VIRJEE: Other than what she's already  
 24 said?  
 25 MR. ROSENBAUM: Yeah.

Page 26

1 MR. VIRJEE: Objection. Overbroad. Calls for  
2 a narrative.  
3 MR. ROSENBAUM: Go ahead.  
4 THE WITNESS: We're looking specifically for  
5 the services the districts are providing English  
6 learners, and whether they're complying with state and  
7 federal law as it's laid out in the coordinated  
8 compliance review, CCR manual of the Department of  
9 Education.  
10 Q. BY MR. ROSENBAUM: Okay. And when you say in  
11 compliance with federal and state law -- that was your  
12 phrase?  
13 A. Yes.  
14 Q. -- what are you looking for with respect to  
15 that?  
16 A. The specific items in our monitoring  
17 instrument.  
18 Q. Okay. You know Eleanor Clark-Thomas?  
19 A. Yes, I do.  
20 Q. And she is head of CCR?  
21 A. Yes, she is.  
22 Q. Is she your superior?  
23 A. No.  
24 Q. Okay. Were you at one time in CCR?  
25 MR. VIRJEE: Objection. Vague and ambiguous as

Page 27

1 to "in CCR."  
2 MS. READ SPANGLER: Join.  
3 You mean the CCR management unit?  
4 MR. ROSENBAUM: Yeah.  
5 THE WITNESS: I was never in that unit.  
6 Q. BY MR. ROSENBAUM: Did you ever report to  
7 Ms. Clark-Thomas?  
8 MR. VIRJEE: Objection. Vague and ambiguous as  
9 to "report."  
10 You mean an administrative reporting  
11 relationship?  
12 MS. READ SPANGLER: Join.  
13 MR. ROSENBAUM: Yeah. One of your supervisors.  
14 THE WITNESS: No.  
15 Q. BY MR. ROSENBAUM: How does the activities of  
16 your unit differ from the activities of the CCR with  
17 respect to English learners?  
18 MS. READ SPANGLER: Objection. Calls for  
19 speculation.  
20 MR. ROSENBAUM: Go ahead.  
21 THE WITNESS: The CCR unit does the coordinated  
22 compliance reviews in every district in California on a  
23 four-year cycle.  
24 Our unit, each year, selects, from the  
25 districts that were reviewed the prior year, 10

Page 28

1 districts for an intensive follow-up monitoring review.  
2 So we then do an in-depth review and in-depth work with  
3 those districts.  
4 Q. BY MR. ROSENBAUM: Okay. Let me see if I  
5 understand this. I'm just reviewing. Bear with me.  
6 CCR undertakes a review on a number of different  
7 categorical programs; is that right?  
8 A. That's correct.  
9 Q. And one of those programs deals with services  
10 to English learners?  
11 A. Correct.  
12 Q. And it's your understanding that it looks at  
13 compliance with federal and state law?  
14 A. Yes.  
15 Q. And then in a particular calendar -- strike  
16 that.  
17 In a particular year, CCR selects certain  
18 districts for review?  
19 A. Yes.  
20 Q. And then you take a look at the districts which  
21 they have reviewed and you take a subset of those  
22 districts for a more intensive review; is that right?  
23 A. That's right.  
24 Q. Do you have certain criteria that you apply as  
25 to selecting those 10 districts?

Page 29

1 A. Yes, we do.  
2 Q. And what are those criteria?  
3 A. I'm not sure I remember them all.  
4 Q. Just your best recollection.  
5 A. One criteria is the district enrolls a  
6 substantial number of English learners, and we define  
7 that to be a thousand or more English learners.  
8 Q. Okay. Do you know how many districts in  
9 California enroll a thousand or more English learners?  
10 MR. VIRJEE: Objection. Vague as to time.  
11 MR. ROSENBAUM: At the present time.  
12 THE WITNESS: I don't know the number.  
13 Q. BY MR. ROSENBAUM: Do you have a ballpark  
14 number?  
15 A. Not really. A lot.  
16 MR. VIRJEE: That's a ballpark.  
17 THE WITNESS: Whole lot.  
18 Q. BY MR. ROSENBAUM: That's one criteria. What  
19 else?  
20 A. A significant percentage of English learners,  
21 or English learners constitute a significant percentage  
22 of the student population.  
23 Q. Of the total enrollment?  
24 A. Yes, in the district.  
25 Q. How do you define "significant percentage"?



1 A. 15 percent or more.  
 2 Q. Why do you consider that significant?  
 3 A. I don't know.  
 4 Q. Did you formulate these criteria?  
 5 A. Together with other colleagues, yes.  
 6 Q. What was your -- in your own mind, why did you  
 7 think this was an important criteria?  
 8 MR. VIRJEE: Objection. Asked and answered.  
 9 She said she didn't know.  
 10 MS. READ SPANGLER: Join.  
 11 THE WITNESS: We were looking at that criteria  
 12 as a possibility of sometime selecting districts that  
 13 might have less than a thousand students but a  
 14 significant English learner enrollment, and most  
 15 typically such districts have more like 60 or 70 percent  
 16 English learners, however, we wanted to have flexibility  
 17 so we put 15 percent as the floor.  
 18 Q. BY MR. ROSENBAUM: So I take it these criteria  
 19 don't rule each other out, you can fall into one or the  
 20 other; is that right?  
 21 A. We have six criteria and our rule of thumb,  
 22 although there are exceptions, are that districts must  
 23 meet four of the six.  
 24 Q. You told us two. Can you tell me the other  
 25 four, please?

1 A. History of noncompliance with English learner  
 2 requirements.  
 3 Q. Okay.  
 4 A. The language census. The most recent language  
 5 census for the district indicates a substantial number  
 6 of students receiving no English learner services, a  
 7 substantial number of English learners receiving no  
 8 English learner services.  
 9 Q. Okay.  
 10 A. Lack of conclusive data indicating that English  
 11 learners are both learning English and grade level  
 12 academic content.  
 13 And then one of the others, or maybe the only  
 14 other one, is recommendation from the CCR unit, the  
 15 office for civil rights or some of our other colleagues  
 16 that that's a district that could really benefit from  
 17 Comite follow-up review.  
 18 Q. Okay. And how long has this unit been in  
 19 existence, to your knowledge?  
 20 A. It's changed names, so it's hard to say  
 21 exactly.  
 22 Q. Have you always been in the unit, whatever its  
 23 name?  
 24 MR. VIRJEE: Objection. Vague and ambiguous.  
 25 Since she's come to the Department, or as long

1 as it existed, or what?  
 2 MS. READ SPANGLER: Yeah.  
 3 Q. BY MR. ROSENBAUM: This unit didn't predate  
 4 your coming into the Department?  
 5 A. Yes, it did.  
 6 Q. I apologize.  
 7 A. But not with this name.  
 8 Q. Okay. I'll come back to that. Let me go back  
 9 over a couple of these criteria. When you say history  
 10 of noncompliance with English learner requirements,  
 11 that's one of the criteria?  
 12 A. Yes.  
 13 Q. When you say English learner requirements, what  
 14 do you mean by that?  
 15 A. The state and federal requirements for English  
 16 learners as laid out in the CCR manual and as found by  
 17 the consultants that do the CCRs.  
 18 Q. And when you use the phrase "history of  
 19 noncompliance," what do you mean by that?  
 20 A. We look at their most recent CCR and our  
 21 criteria says that they have at least three noncompliant  
 22 findings, we also look back to prior CCRs and see if  
 23 some of the same issues show up in the past.  
 24 Q. Okay. I think you told me this. Your universe  
 25 of districts that you can consider for the intensive

1 review are only the districts that CCR reviewed the year  
 2 before?  
 3 A. Yes.  
 4 Q. Okay. In your experience -- let's just take  
 5 this year. Were there more than 10 districts -- that's  
 6 a lousy question.  
 7 When you say "language census," what do you  
 8 mean by that?  
 9 A. It's the R30 language census that's conducted  
 10 in every public school in California on March 1st of  
 11 every year and reported to the Department of Education,  
 12 I believe, in April.  
 13 Q. Who performs the language census, so far as you  
 14 know?  
 15 A. Each school district.  
 16 Q. Okay. And who prepares the language census?  
 17 MR. VIRJEE: Objection. Vague and ambiguous.  
 18 Who at the district?  
 19 Q. BY MR. ROSENBAUM: Is it the Department of  
 20 Education that prepares the language census?  
 21 MR. VIRJEE: The document or the results?  
 22 MR. ROSENBAUM: The document.  
 23 THE WITNESS: The form, yes, it's the  
 24 educational demographics unit, and I work with them on  
 25 that as well.

1 Q. BY MR. ROSENBAUM: Okay. Are you -- do you  
2 work with the demographics unit on other matters as  
3 well?  
4 A. Not formally. I have some interaction with  
5 them, but, no, that's the main project.  
6 Q. And do they run by you the census form and say,  
7 are we covering all the bases here?  
8 A. Yes.  
9 Q. How long have you done that, how long have you  
10 looked over the census forms as they've been prepared?  
11 A. Probably four of the five years, five and a  
12 half years they've been at the Department.  
13 Q. Okay. What does that mean as a criteria, the  
14 language census? What are you looking for?  
15 A. There's one part of the language census that's  
16 actually part two where districts note how many English  
17 learners receive different kinds of services, and one of  
18 the columns says, receives no English learner services.  
19 So if they report a substantial number of their  
20 students, they're English learners, as receiving no  
21 required services, that gets us upset.  
22 Q. Okay. And when you say "substantial number,"  
23 what do you mean by that?  
24 A. I don't believe we specifically defined that.  
25 Q. In your head do you have a criteria that you

1 apply?  
2 A. In my head if it's over 10 percent, it's pretty  
3 substantial.  
4 Q. Do you know how many districts last year on  
5 language census had more than 10 percent English  
6 learners not receiving services?  
7 MR. VIRJEE: Objection. Calls for speculation.  
8 Lacks foundation.  
9 MS. KAATZ: Can we clarify, the last year would  
10 be -- would that be 2000, 2001 school year?  
11 MR. ROSENBAUM: Yes, I appreciate that  
12 clarification.  
13 THE WITNESS: Yes.  
14 MR. VIRJEE: I know this is what you're asking.  
15 I want to make sure the question is clear. You're  
16 asking does she know how many R30s showed that, not what  
17 was actually happening at the site?  
18 MR. ROSENBAUM: Right.  
19 MS. READ SPANGLER: I also have a  
20 clarification. You mean of all the districts or the  
21 districts that were reviewed by CCR the year before?  
22 MR. ROSENBAUM: All the districts in  
23 California.  
24 THE WITNESS: I don't know.  
25 Q. BY MR. ROSENBAUM: Do you know if it was more

1 than 10 districts?  
2 MR. VIRJEE: Objection. Calls for speculation.  
3 THE WITNESS: It was more than 10.  
4 Q. BY MR. ROSENBAUM: Do you know if it was more  
5 than 50?  
6 MR. VIRJEE: Objection. Calls for speculation.  
7 Lacks foundation that she looked at the R30s for all  
8 districts in the state of California.  
9 THE WITNESS: I don't know.  
10 Q. BY MR. ROSENBAUM: Okay. That's an interesting  
11 point. Do you get a summary as to the number of  
12 districts that articulates the names of those districts  
13 that have more than 10 percent English learners not  
14 receiving services?  
15 A. Not automatically. We can ask for such a list,  
16 and I'm confident we could get it, but we have not.  
17 Q. As far as you know, there's not a printout that  
18 isolates that question, that says, hey, here are the  
19 names of the districts that have more than 10 percent  
20 English learners not receiving services?  
21 A. I'm not aware of such a printout. What the  
22 printout does show is percentage of students in the  
23 state that fall into the category of not receiving  
24 English learner services.  
25 Q. But it's not broken down by districts?

1 A. Not an automatic printout that I'm aware of.  
2 Q. Not 10 percent, 20 percent, 50 percent?  
3 A. No.  
4 Q. And you told me that you do -- strike that.  
5 As part of the R30 document, does it have like  
6 a summary entry as to the percent of English learner  
7 students who aren't receiving English learner services?  
8 MR. VIRJEE: Objection. Document speak for  
9 itself. Also vague and ambiguous as to "summary."  
10 THE WITNESS: I don't know.  
11 Q. BY MR. ROSENBAUM: You were talking to me about  
12 the numbers of English learners who don't receive  
13 services; is that right?  
14 A. Yes.  
15 Q. And when you say "services," what do you mean  
16 by that?  
17 A. Services required under state and federal law  
18 for English learners, which includes English language  
19 development at a minimum for every English learner, and  
20 very possibly also includes specially designed academic  
21 instruction in English and content areas for English  
22 learners.  
23 Q. Okay. When you say "English language  
24 development," sometimes that's referred to as ELD?  
25 A. Yes, it is.

1 Q. All caps?  
 2 A. Yes.  
 3 Q. And what does ELD mean to you?  
 4 A. ELD is a developmental English program that's  
 5 designed for students who are learning English as a new  
 6 language and are not native speakers of English.  
 7 Q. Okay. And the purpose of ELD instruction as  
 8 you understand it?  
 9 A. Is to enable students to acquire English  
 10 language proficiency equivalent to that of native  
 11 English speakers and to be able to then compete with  
 12 them in the regular mainstream English classroom.  
 13 Q. Do you think that's important?  
 14 A. Very important.  
 15 Q. Why is that?  
 16 MR. VIRJEE: Objection. Lacks foundation.  
 17 Calls for speculation.  
 18 THE WITNESS: Because if students don't develop  
 19 full proficiency in English, they will incur academic  
 20 deficits and those deficits could become irreparable.  
 21 Q. BY MR. ROSENBAUM: Why is that?  
 22 A. Because the students can only fall behind so  
 23 far before they may never catch up with other students.  
 24 And if they're not able to understand the language of  
 25 instruction, then they're not going to get the academic

1 foundation that they need to graduate from high school,  
 2 to go on to university, to become lawyers.  
 3 Q. How far behind can they fall?  
 4 MS. READ SPANGLER: Objection. Calls for  
 5 speculation.  
 6 MR. VIRJEE: Also an incomplete hypothetical.  
 7 Vague and ambiguous.  
 8 MS. KAATZ: Join.  
 9 MS. READ SPANGLER: Join.  
 10 MR. VIRJEE: Overbroad.  
 11 MR. ROSENBAUM: Go ahead.  
 12 THE WITNESS: And I don't know how far. It's a  
 13 serious question.  
 14 Q. BY MR. ROSENBAUM: How do you figure that out?  
 15 MR. VIRJEE: Same objection. Overbroad.  
 16 MS. READ SPANGLER: Join.  
 17 MR. VIRJEE: Compound.  
 18 MS. READ SPANGLER: Calls for speculation.  
 19 THE WITNESS: I don't know.  
 20 Q. BY MR. ROSENBAUM: Have you ever been in  
 21 discussion since you started with the Department of  
 22 Education where that issue has been discussed?  
 23 A. Oh, yes.  
 24 Q. And on more than one occasion?  
 25 A. Yes.

1 Q. It's a major issue figuring that out; is that  
 2 right?  
 3 A. Yes, it is.  
 4 Q. Because that controls -- that helps you  
 5 understand whether or not the state is succeeding or not  
 6 in its English language programs; is that right?  
 7 A. That's right.  
 8 Q. And do you have an opinion yourself?  
 9 MS. READ SPANGLER: About what?  
 10 MR. ROSENBAUM: As to how far behind kids can  
 11 go.  
 12 MR. VIRJEE: Objection. Vague and ambiguous.  
 13 Compound. Calls for speculation.  
 14 MS. READ SPANGLER: Join.  
 15 MR. VIRJEE: In what context? On what topic?  
 16 In what subject? At what grade level? What  
 17 demographic? Way overbroad.  
 18 MS. KAATZ: Join.  
 19 MR. ROSENBAUM: Go ahead.  
 20 THE WITNESS: I don't have a specific opinion.  
 21 I do have a major concern about it.  
 22 Q. BY MR. ROSENBAUM: Why is that?  
 23 A. Because it's my opinion that if students fall  
 24 very behind, they may never recoup those deficits.  
 25 Q. Are you familiar with the phrase equal

1 education opportunity?  
 2 A. Yes.  
 3 Q. And would one component of equal education  
 4 opportunity as you understand it be to make sure that  
 5 English learners have full proficiency so that they  
 6 don't fall behind?  
 7 MS. READ SPANGLER: Objection. Vague and  
 8 ambiguous as to the term "equal educational  
 9 opportunities."  
 10 MR. VIRJEE: Or in what context.  
 11 MR. ROSENBAUM: Go ahead.  
 12 THE WITNESS: Yes.  
 13 Q. BY MR. ROSENBAUM: Why is that?  
 14 A. Because if the language of instruction is  
 15 English and the students don't speak English  
 16 proficiently, there's no way that they can do grade  
 17 level academic work in English even in kindergarten.  
 18 Q. And within the context of English learners, how  
 19 do you define equal educational student opportunity?  
 20 MR. VIRJEE: Objection. Assumes facts.  
 21 You're asking how she defines it, or a term of  
 22 art within that program?  
 23 Q. BY MR. ROSENBAUM: How do you think about it?  
 24 A. I think about it as students having equal  
 25 opportunity to learn core content. And for students who

1 don't speak English, that could mean some academic  
2 instruction in their primary language. Districts do  
3 still have that option.

4 If it doesn't mean that and the student doesn't  
5 speak English, then the district must have a plan in  
6 place with specific benchmarks and time lines that  
7 describes how students are going to both learn English  
8 in a prescribed amount of time and make up academic  
9 deficits.

10 It needs to also include something that, for a  
11 better term, I call a power boost. Because they're  
12 catching up to a group of students who is not standing  
13 still waiting for them, they need something that's going  
14 to help them close that gap.

15 Q. And what's the basis for your answer? Why do  
16 you think that?

17 A. I think that based on reading that I've done,  
18 and also my own personal experience in school districts  
19 working with students.

20 Q. When you say "core content," what do you mean  
21 by that?

22 A. Core content as the school district defines  
23 their core content program typically includes language  
24 arts, math, science and social studies.

25 Q. And based on your training and experience,

1 what comes immediately to mind.

2 Q. BY MR. ROSENBAUM: Okay. Now, when you say  
3 "instructional material," what do you mean by that?

4 A. Textbooks and other resources, library books.  
5 Depending on grade level, obviously they may need  
6 manipulatives and other kinds of materials.

7 Q. Why is that?

8 A. Because for students who don't fully understand  
9 English who are receiving instruction in English,  
10 instruction needs to be modified to make it appropriate  
11 for them, and one way to do that is through some -- they  
12 call it reality or hands-on materials, such as pictures  
13 and real objects.

14 Q. Are there particular grades or ages that you  
15 think that that is most important?

16 MR. VIRJEE: Objection. Calls for speculation  
17 and lacks foundation.

18 MS. READ SPANGLER: You're just asking for her  
19 personal opinion?

20 MR. ROSENBAUM: I'm asking for her personal  
21 knowledge based on her training and experience, an  
22 obvious thoughtful, experienced person in this area.

23 MR. VIRJEE: Objection. Calls for expert  
24 opinion.

25 MR. ROSENBAUM: You're competent. Couldn't be

1 Ms. Burnham-Massey, what does a student need in order to  
2 have an equal education opportunity in English learner?

3 MR. VIRJEE: Objection. Vague and ambiguous as  
4 to what they need.

5 MS. READ SPANGLER: Join.

6 MR. VIRJEE: And also calls for speculation and  
7 lacks foundation as to what they might need.

8 You're asking tools they need to help them as  
9 an English learner?

10 MR. ROSENBAUM: Yes, tools, resources.

11 Q. What are the basic necessities that an English  
12 learner student needs?

13 MR. VIRJEE: Your question is still overbroad  
14 and vague.

15 Are you asking because they're an English  
16 learner, or are you asking her to give you the tools  
17 that any student needs?

18 It's a vague and ambiguous question.

19 MS. READ SPANGLER: Assumes facts not in  
20 evidence.

21 MR. ROSENBAUM: Go ahead.

22 THE WITNESS: They need instruction that they  
23 can understand. They need teachers qualified to provide  
24 that instruction, they need appropriate instructional  
25 materials, they need a supportive environment. That's

1 more competent.

2 MS. READ SPANGLER: Join.

3 MR. VIRJEE: You don't have to assume -- I'm  
4 not questioning your competency to do your job, as you  
5 know.

6 MR. ROSENBAUM: Yes, you are.

7 MR. VIRJEE: I can say whatever I want on the  
8 record here.

9 And I am not questioning your competency. I'm  
10 indicating that his question asks for an expert opinion  
11 for which he has not demonstrated you are competent to  
12 testify.

13 MR. ROSENBAUM: I think that's a joke.

14 MR. VIRJEE: Let the record reflect that no one  
15 is laughing.

16 Q. BY MR. ROSENBAUM: Okay. Are there particular  
17 ages or grades that you believe manipulatives are  
18 especially important?

19 MR. VIRJEE: Objection. Calls for speculation.

20 Calls for an expert opinion for which this witness is  
21 not competent to give.

22 MS. READ SPANGLER: Join.

23 THE WITNESS: I think it's important at all  
24 grades, probably more so at the lower grades. That's  
25 just my opinion, but I'm not an expert.

1 Q. BY MR. ROSENBAUM: Okay. And why are textbooks  
2 important?  
3 MR. VIRJEE: Objection. Overbroad.  
4 MS. READ SPANGLER: And misstates her  
5 testimony.  
6 MR. ROSENBAUM: Go ahead.  
7 THE WITNESS: Textbooks are important because  
8 they contain information students need to know, and it's  
9 important, if the district so defines its program, that  
10 students have textbooks in a language they understand,  
11 if they don't speak English, to help them understand  
12 what's going on in class.  
13 Q. BY MR. ROSENBAUM: Help me understand this.  
14 When you say "textbooks in a language they understand,"  
15 is that for all English learners?  
16 A. No.  
17 Q. That's for the kids who are in the bilingual  
18 programs?  
19 A. It's for --  
20 MR. VIRJEE: Objection. Vague and ambiguous.  
21 THE WITNESS: It's for those students at the  
22 lowest levels of English proficiency who can't  
23 understand grade level text in English, and it would  
24 certainly be true for those students in an alternative  
25 program where instruction was provided in their primary

1 language.  
2 Q. BY MR. ROSENBAUM: And when you say  
3 "alternative program," what do you mean by that?  
4 A. It's a program specifically allowed under  
5 Proposition 227 for students whose parents are granted a  
6 parental exception waiver.  
7 Q. And what programs are those?  
8 Let me see if I understand. If I talk about  
9 bilingual programs, is that an alternative program?  
10 A. Yes, it is.  
11 Q. And what's your understanding of what that  
12 means?  
13 A. Bilingual program is one in which two languages  
14 are used for instruction, English and one other  
15 language. Bilingual programs include ELD always,  
16 English language development. It also includes some  
17 serious instruction in the student's primary language.  
18 Q. Okay. And are there other alternative programs  
19 where students need textbooks in their native language?  
20 MR. VIRJEE: Objection. Calls for speculation.  
21 Overbroad. Lacks foundation.  
22 MS. READ SPANGLER: Join.  
23 THE WITNESS: I'm not aware of other  
24 alternative programs, per se, but in the required  
25 structured English immersion or English language

1 mainstream classes, although they're not alternative  
2 programs, many districts define their program to allow  
3 students to either receive some instruction in their  
4 primary language, or at a minimum, have some textbooks  
5 available in their primary language.  
6 Q. BY MR. ROSENBAUM: And as a pedagogical matter,  
7 do you agree with that?  
8 MR. VIRJEE: Objection. Lacks foundation.  
9 Calls for expert opinion.  
10 THE WITNESS: Yes.  
11 Q. BY MR. ROSENBAUM: Why is that?  
12 MR. VIRJEE: Same objection.  
13 THE WITNESS: Okay. I'm not the expert to know  
14 for sure, but I think it's pedagogically very sound.  
15 Q. BY MR. ROSENBAUM: Because?  
16 MR. VIRJEE: Same objection.  
17 MS. READ SPANGLER: Join.  
18 THE WITNESS: So that students can have a  
19 better opportunity to understand the instruction.  
20 Q. BY MR. ROSENBAUM: Do you know how many  
21 districts in California with English learners do provide  
22 materials in students' native language for structured  
23 immersion?  
24 A. I don't know the number.  
25 Q. Do you know if there are any districts

1 providing structured immersion that don't provide some  
2 text or materials in the students' native language?  
3 A. That do not?  
4 Q. Yes.  
5 A. Yes.  
6 Q. What districts are those?  
7 MR. VIRJEE: You're asking her to identify  
8 which districts do not?  
9 Q. BY MR. ROSENBAUM: Do you know?  
10 A. I know some. I don't know very many.  
11 Q. Which ones do you know?  
12 A. That do not provide textbooks?  
13 Q. Yeah.  
14 A. Well, most recently I was in Oceanside. They  
15 do not.  
16 Q. Okay. Any other districts that you're aware  
17 of?  
18 A. I wouldn't want to say for sure they don't  
19 provide any.  
20 MR. VIRJEE: He's asking what you know.  
21 THE WITNESS: What I know is -- no, I don't  
22 know.  
23 Q. BY MR. ROSENBAUM: You thought of -- a few  
24 districts came to mind when I asked that question.  
25 A. I was thinking of the districts that do provide

1 such materials.  
 2 Q. The districts that do provide those materials  
 3 for structured immersion, do you know how many  
 4 districts, a ballpark figure, that do provide those  
 5 materials?  
 6 A. No. I don't know statewide, no.  
 7 Q. How many districts are you aware of that do  
 8 that?  
 9 MR. VIRJEE: That provide materials in both  
 10 languages for structured immersion?  
 11 MR. ROSENBAUM: I don't think that's my  
 12 question.  
 13 Q. My question is, is --  
 14 MR. VIRJEE: The question is vague and  
 15 ambiguous.  
 16 Q. BY MR. ROSENBAUM: In structured immersion  
 17 classes there are some districts that provide textbooks  
 18 that have native languages for the students; is that  
 19 right?  
 20 A. That's right.  
 21 Q. How many districts are like that?  
 22 MR. VIRJEE: Objection. Calls for speculation.  
 23 Lacks foundation.  
 24 MS. READ SPANGLER: Join.  
 25 THE WITNESS: I don't know how many.

1 Q. BY MR. ROSENBAUM: Which ones are you aware of?  
 2 A. I'm aware of Riverside Unified and the  
 3 districts that I work with, Anaheim Elementary, Fresno  
 4 Unified. I know those for sure. I know there are a  
 5 number of others.  
 6 Q. To your knowledge, does the state collect that  
 7 information, do they collect information as to whether  
 8 or not districts provide materials in native languages  
 9 in their structured immersion classes?  
 10 MR. VIRJEE: Objection. Vague and ambiguous as  
 11 to "collect information."  
 12 MS. READ SPANGLER: Join.  
 13 MR. VIRJEE: And overbroad.  
 14 THE WITNESS: To my knowledge, they don't.  
 15 Q. BY MR. ROSENBAUM: Do you know why not?  
 16 A. No.  
 17 Q. Have you ever heard any discussion that it  
 18 would be a good idea to find that out?  
 19 A. No.  
 20 Q. Okay. Has it ever crossed your mind that that  
 21 would be a good idea?  
 22 A. Not that specifically.  
 23 Q. Generally?  
 24 A. Probably.  
 25 Q. Why is that?

1 A. Just because of wanting kids to have the best  
 2 opportunity to learn, and that's certainly one thing  
 3 that could be helpful.  
 4 Q. Because?  
 5 A. Because they can then better understand the  
 6 classroom instruction.  
 7 Q. And why is that?  
 8 A. Because if they can read in a language they  
 9 understand what the lesson is about, they have a better  
 10 shot at understanding the lesson, even if it's only in  
 11 English. When they have to deal with new content and a  
 12 new language, it makes it very difficult to understand  
 13 instruction.  
 14 Q. Because?  
 15 A. Because they don't know either one, either the  
 16 content or the language.  
 17 Q. That's obvious, isn't it?  
 18 A. To me it is.  
 19 Q. Yes. Now, in Riverside do you know how many  
 20 different languages are spoken by the students?  
 21 A. I don't know exactly.  
 22 Q. What's your best estimate?  
 23 A. Maybe 10 or 15.  
 24 Q. Okay. And I don't think my question was  
 25 sufficiently clear.

1 If I understand you correctly, you're saying is  
 2 that English learners there speak between 10 and 15  
 3 different native languages; is that right?  
 4 A. Maybe.  
 5 Q. And in Riverside the structured immersion  
 6 materials that we've been talking about that appear in  
 7 native language, to your knowledge, are they in all 10  
 8 to 15 languages?  
 9 A. Not to my knowledge. Probably not.  
 10 Q. Why do you say that?  
 11 A. Most -- the vast majority of the students are  
 12 Spanish speakers, and I know they have a lot of  
 13 materials in Spanish. I know they have some in other  
 14 languages. I'm confident not in all of their languages.  
 15 Q. Why are you confident of that?  
 16 A. Because they have some languages where they  
 17 have maybe one or two students.  
 18 Q. Do you know what languages those are?  
 19 A. No.  
 20 Q. Do you know if there are any materials --  
 21 strike that.  
 22 Do you know if there are students, more than  
 23 one or two students or a handful of students who speak a  
 24 language in Riverside who don't have structured  
 25 immersion materials in their native language?

1 MR. VIRJEE: I'm sorry, could you repeat that?  
 2 MR. ROSENBAUM: I'll repeat it just to save  
 3 time.  
 4 Q. I'm interested in this. You've told us about  
 5 the extremes. You've told us that lots of kids in  
 6 Riverside are English learner Spanish kids, right?  
 7 A. Yes.  
 8 Q. Do you know what the percent is?  
 9 MR. VIRJEE: Percentage of what?  
 10 MR. ROSENBAUM: Of total enrollment.  
 11 MS. READ SPANGLER: Of English learners?  
 12 THE WITNESS: That are English learners? I  
 13 think it's around the 15 or 18 percent.  
 14 MR. VIRJEE: That's the percentage that are  
 15 English learners. That's not the question that he  
 16 asked. Listen carefully to the question and answer what  
 17 he asks.  
 18 MR. ROSENBAUM: You're doing fine.  
 19 MR. VIRJEE: He asked what percentage of the  
 20 total student population are Spanish English learners.  
 21 Listen to the question he asks and answer the question  
 22 he asks.  
 23 MR. ROSENBAUM: You're doing fine.  
 24 MR. VIRJEE: You're doing great.  
 25 Q. BY MR. ROSENBAUM: Of the 15 to 18 percent, do

1 you know what part of that is Spanish?  
 2 A. The vast majority. I don't know exactly. I  
 3 would just guess 80 --  
 4 MR. VIRJEE: He doesn't want you to guess.  
 5 THE WITNESS: No. Sorry about that. I'm not  
 6 sure.  
 7 Q. BY MR. ROSENBAUM: And you've said to me, yes,  
 8 there are structured immersion materials in Spanish; is  
 9 that right?  
 10 A. Well, what I should have said is there are  
 11 materials in Spanish that are used in the structured  
 12 immersion classrooms.  
 13 Q. Thanks. To the best of your understanding,  
 14 there are some languages where only a handful of  
 15 students speak that language; is that right?  
 16 MR. VIRJEE: Objection. Asked and answered.  
 17 Also calls for speculation.  
 18 MS. READ SPANGLER: And vague and ambiguous as  
 19 to "handful."  
 20 MR. ROSENBAUM: Go ahead.  
 21 THE WITNESS: Yes.  
 22 Q. BY MR. ROSENBAUM: Okay. How about in the  
 23 middle, do you know if there are more than a half dozen  
 24 or a dozen students who speak a language for which there  
 25 are not materials available in their native language for

1 structured immersion?  
 2 MR. VIRJEE: Objection. Vague and ambiguous as  
 3 to "in the middle," and also calls for speculation.  
 4 MR. ROSENBAUM: Go ahead.  
 5 THE WITNESS: I don't know.  
 6 Q. BY MR. ROSENBAUM: Have you ever made any  
 7 inquiry to find out?  
 8 A. When I'm in the district, we look at the  
 9 materials the students have available to them, but I  
 10 haven't looked at that particular issue recently.  
 11 Q. Do you know if anybody has?  
 12 MR. VIRJEE: Objection. Calls for speculation.  
 13 Lacks foundation.  
 14 THE WITNESS: I don't know.  
 15 Q. BY MR. ROSENBAUM: Okay. And are there  
 16 students -- strike that.  
 17 Are there English learner students in Riverside  
 18 who are not in the structured immersion program?  
 19 MS. READ SPANGLER: Objection. Calls for  
 20 speculation.  
 21 THE WITNESS: Yes.  
 22 Q. BY MR. ROSENBAUM: And tell me if I'm wrong  
 23 here, but as I understand it, you can be in structured  
 24 immersion, you can be in bilingual, or you can be in  
 25 mainstream. Are those the three categories, or are

1 there more categories?  
 2 A. Those are the three categories from Proposition  
 3 227.  
 4 Q. Are there additional categories?  
 5 A. Some districts have additional categories.  
 6 Q. Is Riverside one of those?  
 7 A. Not exactly, no.  
 8 Q. Okay. Why are you saying "not exactly"?  
 9 A. Explain their program. They have structured  
 10 English immersion. Then for secondary students they  
 11 have transitional classes, and then they have mainstream  
 12 classes. So under Proposition 227 -- they're following  
 13 Proposition 227, but they have sort of made it more  
 14 specific to their situation.  
 15 Q. Okay. What do you mean by a transitional  
 16 class?  
 17 A. Those are classes for students that are not  
 18 quite, in the judgment of the district, based on their  
 19 own assessments, fully ready for mainstream class,  
 20 students that still need some additional support in  
 21 addition to the English language development that they  
 22 do provide in their mainstream class.  
 23 Q. They aren't yet fluent in English; is that  
 24 right?  
 25 A. That's correct.

1 Q. Okay. Do you know how it breaks down in  
 2 Riverside, what percent of the English learning  
 3 population is structured immersion, what percent is in  
 4 the other programs?  
 5 A. I don't specifically know that.  
 6 Q. Can you tell me your best judgment as to the  
 7 percent of English learner students who are bilingual in  
 8 the bilingual programs?  
 9 A. In Riverside?  
 10 Q. Yeah, I'm sorry, in Riverside.  
 11 A. A small percentage, largely because in  
 12 Riverside they define structured English immersion to  
 13 include primary language instruction in literacy.  
 14 That's part of the structured English immersion as it's  
 15 defined in Riverside.  
 16 Q. The categories I mentioned, structured English,  
 17 bilingual and mainstream, the bilingual component, part  
 18 and parcel of that component is instruction in the  
 19 student's native language; is that right?  
 20 A. Yes.  
 21 MR. VIRJEE: Objection. Asked and answered.  
 22 Q. BY MR. ROSENBAUM: What you're telling me is  
 23 that in Riverside they have kind of collapsed the  
 24 categories, is that right, so that a component of  
 25 structured immersion is instruction in the native

1 language?  
 2 A. That is correct.  
 3 Q. Both orally and in terms of written materials?  
 4 A. Yes.  
 5 Q. And do you know the number of students in  
 6 Riverside who do not have written materials in their own  
 7 language?  
 8 A. I don't know the specific number.  
 9 Q. Okay. Can you give me an estimate?  
 10 MR. VIRJEE: Objection. Calls for speculation.  
 11 Lacks foundation.  
 12 MS. READ SPANGLER: Join.  
 13 THE WITNESS: Not a specific estimate. I know  
 14 it's not a lot, because most of their English learners  
 15 are Spanish speakers.  
 16 Q. BY MR. ROSENBAUM: But there are some?  
 17 A. Yes.  
 18 Q. And can you tell me -- in a bilingual  
 19 classroom, if I understand correctly, your instructor,  
 20 if you're an English learner, needs to be fluent in your  
 21 native language; is that right?  
 22 A. Yes.  
 23 Q. Why is that?  
 24 A. Because teachers need to speak the language  
 25 they're instructing in.

1 Q. Why is that?  
 2 A. Because if they can't speak the language, they  
 3 can't teach the kids in that language. They may have an  
 4 instructional aide who assists them, but they themselves  
 5 can't provide the instruction in a language they don't  
 6 speak.  
 7 Q. They can't provide the instruction and they  
 8 can't understand the students; is that right?  
 9 A. Yes.  
 10 Q. And your credential, the one you obtained as a  
 11 bilingual/cross-cultural instructor, we talked about  
 12 that a little bit earlier?  
 13 A. Yes.  
 14 Q. That means that you can speak the native  
 15 language of English learners in the classroom, is that  
 16 right, some English learners?  
 17 A. If they speak Spanish, yes.  
 18 Q. For Spanish, English learners; is that right?  
 19 A. Yes.  
 20 Q. And that's a requirement for the bilingual  
 21 program?  
 22 A. Yes.  
 23 Q. And do you know the number of teachers in the  
 24 bilingual program and Riverside who do not speak the  
 25 native language of English learners?

1 MR. VIRJEE: Objection. Calls for speculation.  
 2 Lacks foundation. Also vague and ambiguous.  
 3 MS. READ SPANGLER: Join. Assumes facts not in  
 4 evidence.  
 5 THE WITNESS: I don't know the specific number.  
 6 It's easy to look up. Most of their teachers who  
 7 provide bilingual instruction in structured English  
 8 immersion or in the alternative either hold or are in  
 9 training for a bilingual authorization.  
 10 Q. BY MR. ROSENBAUM: Okay. And if they don't  
 11 hold it, that means they're not yet fluent; is that  
 12 right?  
 13 MR. VIRJEE: Objection. Calls for speculation.  
 14 Lacks foundation. Overbroad.  
 15 MS. READ SPANGLER: Leading -- or misleading.  
 16 THE WITNESS: It doesn't necessarily mean that.  
 17 If they don't have the authorization, it just means they  
 18 haven't yet gotten the authorization.  
 19 Q. BY MR. ROSENBAUM: They haven't established  
 20 their fluency?  
 21 MR. VIRJEE: Objection. Vague and ambiguous as  
 22 to "established."  
 23 THE WITNESS: The fluency is only one part of  
 24 obtaining the authorization.  
 25 Q. BY MR. ROSENBAUM: What else?



1 MR. VIRJEE: What else for what?  
 2 MS. READ SPANGLER: Yeah.  
 3 MR. ROSENBAUM: Go ahead.  
 4 MR. VIRJEE: What else for what?  
 5 MR. ROSENBAUM: Go ahead.  
 6 MR. VIRJEE: Your question is vague and  
 7 ambiguous.  
 8 What else for what?  
 9 Q. BY MR. ROSENBAUM: What else do they need to  
 10 establish?  
 11 MR. VIRJEE: For what?  
 12 MR. ROSENBAUM: In order to get the bilingual  
 13 credential.  
 14 MR. VIRJEE: Which one?  
 15 MR. ROSENBAUM: The one we've just been talking  
 16 about.  
 17 MR. VIRJEE: There's more than one, that's why  
 18 it's overbroad and vague and ambiguous.  
 19 Q. BY MR. ROSENBAUM: Tell me what you need to be  
 20 a bilingual instructor, what you need to establish, to  
 21 speak and understand the native languages.  
 22 MR. VIRJEE: Which one do you want her to  
 23 answer, what you need to get a credential or to speak  
 24 and understand the kids in their native language?  
 25 That's two different questions.

1 MR. ROSENBAUM: The question is clear.  
 2 MR. VIRJEE: The question is not clear.  
 3 MR. ROSENBAUM: You don't know what you're  
 4 doing.  
 5 Q. What do you need to get the credential?  
 6 MR. VIRJEE: I'm trying to get you to ask a  
 7 clear question, that's what I'm doing.  
 8 Q. BY MR. ROSENBAUM: What do you need to get the  
 9 credential?  
 10 MR. VIRJEE: Which credential?  
 11 MR. ROSENBAUM: The bilingual credential.  
 12 MR. VIRJEE: Which one?  
 13 Q. BY MR. ROSENBAUM: What are the bilingual  
 14 credentials?  
 15 A. There are a number of bilingual credentials.  
 16 The most common right now is called BCLAD. It stands  
 17 for bilingual cross-cultural language and academic  
 18 development.  
 19 There are other credentials from the past that  
 20 are still valid, including bilingual specialist  
 21 credential. I have that. The BCC, which is the  
 22 bilingual certificate of competence, the bilingual  
 23 emphasis credential, and then there's also one called  
 24 the -- a sojourner credential for teachers from foreign  
 25 countries, and there are a few others, I think.

1 Q. And BCLAD is not the same thing as CLAD, right?  
 2 A. That's right.  
 3 Q. What's the difference?  
 4 A. The BCLAD is the CLAD plus the language  
 5 proficiency. So to get a BCLAD there are six tests that  
 6 teachers pass. To get a CLAD, there are three.  
 7 Q. And how about you, what have you passed?  
 8 A. I have taken the BCC, the bilingual certificate  
 9 of competence, and then I've also done the coursework to  
 10 get a bilingual specialist credential.  
 11 Q. Do you have what would be referred to as the  
 12 equivalent of a BCLAD?  
 13 A. Exactly right, yes.  
 14 Q. And to teach a bilingual discipline, if a  
 15 student, her parents are bilingual, the teacher needs a  
 16 BCLAD; is that right?  
 17 MR. VIRJEE: To teach in a bilingual classroom?  
 18 MR. ROSENBAUM: Yes.  
 19 MS. READ SPANGLER: Objection. Leading.  
 20 THE WITNESS: They need to hold or be in  
 21 training for. They can be legally assigned to that  
 22 classroom if they do not hold that credential.  
 23 MR. VIRJEE: Listen to his question. To teach  
 24 in a bilingual classroom, a teacher needs a BCLAD. That  
 25 was his question. Listen to his question and answer his

1 question.  
 2 THE WITNESS: No.  
 3 Q. BY MR. ROSENBAUM: You can either be in  
 4 training or have it; is that right?  
 5 A. Yes.  
 6 Q. Now, in Riverside in the -- I'm not clear about  
 7 this, and I think you explained it and I just didn't get  
 8 it.  
 9 Are there separate bilingual courses in  
 10 Riverside, bilingual classes?  
 11 A. There are a few, but because they do primary  
 12 language instruction as part of structured English  
 13 immersion, there are not a lot of bilingual classes.  
 14 Q. Okay. Thanks. And in the structured immersion  
 15 with this element that you talked to me about just now,  
 16 is the requirement that a teacher either have a BCLAD or  
 17 be in training for a BCLAD or its equivalent?  
 18 A. Yes.  
 19 Q. And are there teachers in Riverside teaching  
 20 ELL students who have neither BCLAD nor are in training  
 21 for BCLAD?  
 22 A. MS. READ SPANGLER: Objection. Calls for  
 23 speculation.  
 24 MR. VIRJEE: You're just talking about the  
 25 BCLAD now?

1 MR. ROSENBAUM: Go ahead.  
 2 THE WITNESS: There are some.  
 3 Q. BY MR. ROSENBAUM: Do you know how many?  
 4 A. No.  
 5 Q. Do you know what percent of the teachers?  
 6 A. No.  
 7 Q. Okay. Now, let's divide it between BCLAD and  
 8 in training for BCLAD. Do you know, of the teachers who  
 9 are the universe of both, what percent are BCLAD and  
 10 what percent are -- my question isn't clear.  
 11 There are a universe of teachers that are  
 12 either BCLAD, BCLAD equivalent or in training for BCLAD  
 13 or BCLAD equivalent; is that right?  
 14 A. Yes.  
 15 Q. And I want to see if I can understand what the  
 16 ratio is.  
 17 How many are BCLAD or BCLAD equivalent versus  
 18 BCLAD in training or BCLAD equivalent in training?  
 19 A. I don't know that number.  
 20 Q. Okay. Can you give me a ballpark percentage of  
 21 the teachers teaching structured immersion who are  
 22 either BCLAD in training or BCLAD equivalent in  
 23 training?  
 24 MR. VIRJEE: Objection. Calls for speculation.  
 25 Lacks foundation. Also vague as to time.

1 MS. READ SPANGLER: Join.  
 2 MR. ROSENBAUM: Go ahead.  
 3 THE WITNESS: I couldn't really give you a very  
 4 good ballpark. It's on the Internet.  
 5 Q. BY MR. ROSENBAUM: Okay. Where is it on the  
 6 Internet?  
 7 A. In the -- I think it's in Data Quest on the CDE  
 8 website. I'm not positive. I could be wrong about  
 9 that. It could be just in our internal computer system.  
 10 MR. VIRJEE: Whenever you get a chance, we've  
 11 been going for more than hour. I'd like to take a  
 12 break.  
 13 MR. ROSENBAUM: Give me just a couple of  
 14 minutes.  
 15 Q. This information that is the credential status  
 16 of a teacher who teaches in any district, is that --  
 17 that is on some website?  
 18 MR. VIRJEE: Objection. Calls for speculation.  
 19 MS. READ SPANGLER: Misstates her testimony.  
 20 MR. ROSENBAUM: I think it does misstate your  
 21 testimony, but I'm not trying to state your testimony.  
 22 I just want to understand.  
 23 Q. Can I get that information off of some website?  
 24 What I'm interested in is, I want to know the  
 25 percentage of teachers, the number of teachers who are

1 either BCLAD, BCLAD equivalent or BCLAD training or  
 2 BCLAD equivalent in training who are teaching bilingual  
 3 courses or structured immersion courses that are like  
 4 the Riverside course.  
 5 Can I get that off a website?  
 6 MR. VIRJEE: Objection. Compound. Also vague  
 7 and ambiguous.  
 8 MR. ROSENBAUM: Go ahead.  
 9 THE WITNESS: I'm not sure. I know that on the  
 10 CDE website there's something called Data Quest that has  
 11 a lot of data. It may include that.  
 12 And I know that on the CDE website on our unit  
 13 there's our power-point presentation on state and  
 14 federal requirements for English learners, and one of  
 15 the slides provides that information for statewide, not  
 16 for the individual districts.  
 17 MR. VIRJEE: His question was for Riverside.  
 18 THE WITNESS: Oh, no.  
 19 MR. VIRJEE: Can you get the information for  
 20 Riverside, that was his question. Can you get the  
 21 information regarding what teachers are either BCLAD or  
 22 BCLAD in training or the equivalent who are teaching  
 23 immersion classes at Riverside. That's his question.  
 24 THE WITNESS: Not that I know of.  
 25 Q. BY MR. ROSENBAUM: Okay. When you go into a

1 district as part of the Comite unit, is that information  
 2 you're interested in?  
 3 A. Yes.  
 4 Q. Why is that?  
 5 A. Very much. Because it's one of the  
 6 requirements, No. 1, that students have a teacher who  
 7 hold or are in training for an appropriate  
 8 authorization, and No. 2, because it's important for the  
 9 kids' education that they have such a teacher.  
 10 Q. To your knowledge, does the state -- does any  
 11 agency in the state collect that information for all  
 12 districts?  
 13 MR. VIRJEE: What information?  
 14 MR. ROSENBAUM: The credential status of  
 15 teachers teaching English learners, BCLAD, BCLAD in  
 16 training, BCLAD equivalent, BCLAD equivalent in training  
 17 for where that's required.  
 18 THE WITNESS: I'm not sure.  
 19 Q. BY MR. ROSENBAUM: Okay. You've never seen  
 20 that data collected?  
 21 MR. VIRJEE: Objection. Vague and ambiguous as  
 22 to "data collected" and by whom.  
 23 MS. READ SPANGLER: Join.  
 24 Q. BY MR. ROSENBAUM: You've never seen that data  
 25 collected except as your office has collected it for

1 individual districts; is that right?  
 2 MS. READ SPANGLER: Objection. Leading.  
 3 THE WITNESS: Educational demographics office  
 4 on the language census collects numbers, but not  
 5 individual teacher data.  
 6 Q. BY MR. ROSENBAUM: When you say "collects  
 7 numbers," what do you mean by that?  
 8 A. Number of teachers who hold or are in training  
 9 for authorizations and assigned to provide instruction.  
 10 That's part of the R30 language census.  
 11 Q. Is it broken down by district?  
 12 A. Yes.  
 13 MR. VIRJEE: Is what broken down, the R30?  
 14 MR. ROSENBAUM: The data that we're talking  
 15 about, the credential data that we're talking about.  
 16 Q. Is that broken down by district?  
 17 A. It's a school level report.  
 18 Q. Okay. And is it -- can I figure out how many  
 19 students are taught by teachers with -- in each school  
 20 are taught by -- strike that.  
 21 Is it broken down by classroom?  
 22 A. No.  
 23 MR. VIRJEE: Is what, the R30?  
 24 MR. ROSENBAUM: No.  
 25 Q. You know what I'm talking about,

1 Ms. Burnham-Massey, don't you?  
 2 MR. VIRJEE: She's indicated that the  
 3 demographics office collects the R30.  
 4 Are you asking about the R30, or what are you  
 5 asking about?  
 6 Q. BY MR. ROSENBAUM: Are there data broken down  
 7 by classroom that I could find out how many classrooms  
 8 are taught by instructors with BCLAD, BCLAD in training,  
 9 BCLAD equivalent or BCLAD equivalent in training?  
 10 MR. VIRJEE: Objection. Calls for speculation.  
 11 Lacks foundation. Also vague and ambiguous as to where  
 12 that data may be and where you might be able to get it.  
 13 THE WITNESS: I don't think the classroom.  
 14 Q. BY MR. ROSENBAUM: Do you think it would be a  
 15 good idea to collect that data by classroom?  
 16 MR. VIRJEE: Objection. Calls for speculation.  
 17 Lacks foundation.  
 18 MS. READ SPANGLER: Join.  
 19 MR. ROSENBAUM: Go ahead.  
 20 MR. VIRJEE: Also assumes facts not in  
 21 evidence, that it isn't collected.  
 22 THE WITNESS: The schools do collect it that  
 23 way in order to report to the state, but to the state  
 24 they just report numbers.  
 25 Q. BY MR. ROSENBAUM: Do you think it would be a

1 good idea to report by classroom?  
 2 MR. VIRJEE: Same objections.  
 3 THE WITNESS: Don't know.  
 4 Q. BY MR. ROSENBAUM: Have you ever given it any  
 5 thought?  
 6 A. No.  
 7 Q. Sitting here today, do you think it would be a  
 8 good idea?  
 9 MR. VIRJEE: Objection. Vague and ambiguous.  
 10 Overbroad. Incomplete hypothetical.  
 11 MR. ROSENBAUM: Go ahead.  
 12 THE WITNESS: It could be.  
 13 Q. BY MR. ROSENBAUM: Why is that?  
 14 A. When we go -- when our unit goes to districts  
 15 to monitor the districts, we ask for it by classroom, so  
 16 maybe if the State had it already ready, that would be  
 17 helpful.  
 18 On the other hand, it might not be because  
 19 classrooms change from month to month, so it might not  
 20 be accurate more than the day it's reported.  
 21 Q. Why do you ask for it by classroom?  
 22 A. Because we're looking at services each English  
 23 learner receives when we monitor school districts.  
 24 Q. Why do you do that?  
 25 A. Because we're concerned about every single

1 student and we have to make a compliance determination,  
 2 and the law is specific that each English learner  
 3 receives appropriate services.  
 4 Q. That's the unit, the individual student; is  
 5 that right?  
 6 A. Yes.  
 7 MR. ROSENBAUM: Okay. We can take a break.  
 8 (Recess taken.)  
 9 Q. BY MR. ROSENBAUM: Ms. Burnham-Massey, you told  
 10 me a little bit about ELD instruction, instruction  
 11 materials and instruction.  
 12 A. Yes.  
 13 Q. And then you also talked to me -- are the  
 14 appropriate initials S-D-A-I-E?  
 15 A. Yes.  
 16 Q. Okay. What does that stand for?  
 17 A. Specially designed academic instruction in  
 18 English.  
 19 Q. Okay. And what's the difference between ELD  
 20 and SDAIE?  
 21 A. ELD is designed to teach English language.  
 22 SDAIE is a technique to make content in academic areas  
 23 understandable for English learners.  
 24 Q. Okay. Now, help me understand this. I think  
 25 you told me that all English learner students are

1 entitled to ELD materials, is that right, ELD  
 2 instruction?  
 3 MR. VIRJEE: Objection. Calls for a legal  
 4 conclusion.  
 5 MS. READ SPANGLER: And misstates her  
 6 testimony.  
 7 MS. KAATZ: Join.  
 8 MR. ROSENBAUM: Go ahead.  
 9 THE WITNESS: I don't know.  
 10 Q. BY MR. ROSENBAUM: Okay. When you go into a  
 11 district, do you look to see if all ELL -- strike that.  
 12 Do you look to see if all English learner  
 13 students are receiving ELD instruction?  
 14 A. Yes.  
 15 Q. And why do you do that?  
 16 A. Because it's a legal requirement.  
 17 Q. As part of the Comite case or as part of 227?  
 18 MR. VIRJEE: Objection. Assumes facts.  
 19 MS. READ SPANGLER: Calls for a legal  
 20 conclusion.  
 21 MR. ROSENBAUM: I'll withdraw the question.  
 22 Q. What's the basis for your answer?  
 23 MR. VIRJEE: For her understanding?  
 24 MR. ROSENBAUM: Yes.  
 25 THE WITNESS: It's a requirement for all

1 English learners because of the court cases and laws.  
 2 Q. BY MR. ROSENBAUM: And what laws are you  
 3 referring to?  
 4 A. 227 is one, but also the case law such as  
 5 Castaneda and other cases.  
 6 Q. Okay. How do you go about doing that? How do  
 7 you go about figuring out if all students, all English  
 8 learner students are receiving ELD instruction?  
 9 MR. VIRJEE: Just for context, we're still  
 10 talking about when she goes on-site as part of  
 11 monitoring?  
 12 MR. ROSENBAUM: Yes. It doesn't have to be  
 13 when you're on-site.  
 14 Q. When you select a district, you or your staff  
 15 say, let's find out if all EL students are receiving ELD  
 16 instruction; is that right?  
 17 A. That's one thing, yes.  
 18 Q. Okay. And how do you go about doing that?  
 19 A. We go on-site to monitor.  
 20 Q. Okay. And why do you go on-site to monitor?  
 21 A. To find out if students are receiving ELD.  
 22 Q. My question might not be really clear. What  
 23 I'm curious about is, why do you choose to go on-site?  
 24 Why don't you just get on the telephone, or why don't  
 25 you issue a questionnaire, or why don't you use some

1 other methodology? Why do you select as one of your  
 2 methodologies going on-site?  
 3 MR. VIRJEE: Objection. Assumes facts not in  
 4 evidence. Assumes they have a choice.  
 5 MS. READ SPANGLER: Join.  
 6 THE WITNESS: So that we can actually see the  
 7 instruction students are receiving.  
 8 Q. BY MR. ROSENBAUM: And why is that important?  
 9 MS. READ SPANGLER: Objection. Leading.  
 10 Misstates her testimony. Assumes facts not in evidence.  
 11 MR. ROSENBAUM: Go ahead.  
 12 THE WITNESS: In order to verify that they're  
 13 receiving instruction to which they're legally entitled.  
 14 Q. BY MR. ROSENBAUM: Okay. And why is it  
 15 important to be on-site in order to do that  
 16 verification?  
 17 MS. READ SPANGLER: Objection. Leading.  
 18 MR. ROSENBAUM: Go ahead.  
 19 THE WITNESS: To be able to see what students  
 20 are receiving, to talk to students, to talk to teachers  
 21 about the instructional program.  
 22 Q. BY MR. ROSENBAUM: And why is it important to  
 23 talk to students?  
 24 A. To be able to fully understand exactly what  
 25 those students are receiving.

1 Q. Okay. And why is it important to talk to  
 2 teachers?  
 3 A. To understand whether they actually are  
 4 implementing the required instruction.  
 5 Q. Okay. And are there a set of questions that  
 6 you routinely ask students?  
 7 MR. VIRJEE: As part of an on-site monitoring?  
 8 MR. ROSENBAUM: Yes.  
 9 THE WITNESS: Not a required set of questions.  
 10 Q. BY MR. ROSENBAUM: What do you do? Do you  
 11 personally talk to students?  
 12 A. Yes, I do.  
 13 Q. What do you ask them?  
 14 MR. VIRJEE: Overbroad.  
 15 THE WITNESS: I ask them whether -- how they're  
 16 learning, what they're learning, whether they understand  
 17 what's going on in their classrooms, what they like  
 18 about their school and their learning experience, and  
 19 what is most difficult or troublesome for them and why.  
 20 Q. BY MR. ROSENBAUM: Okay. You take notes on  
 21 their answers?  
 22 A. Yes.  
 23 Q. And do you actually ask to see the  
 24 instructional materials that they're receiving?  
 25 MR. VIRJEE: You mean talking to the students

1 now, is that what you're asking?  
 2 THE WITNESS: Sometimes.  
 3 Q. BY MR. ROSENBAUM: Why do you do that?  
 4 A. To get a good understanding of their program.  
 5 Q. Okay. And do you make inquiry, as part of your  
 6 duties and responsibilities, to determine whether or not  
 7 they have materials that they can take home with them to  
 8 study?  
 9 A. Sometimes.  
 10 Q. Okay. And why do you do that?  
 11 A. To try to get a good picture of the program  
 12 they're receiving.  
 13 Q. Have you been in schools where students don't  
 14 have materials to take home?  
 15 MR. VIRJEE: Objection. Calls for speculation.  
 16 Lacks foundation.  
 17 MS. READ SPANGLER: Join.  
 18 MR. VIRJEE: Again, we're talking about EL  
 19 students?  
 20 MR. ROSENBAUM: Yes.  
 21 MR. VIRJEE: Same objection. Calls for  
 22 speculation. Lacks foundation.  
 23 THE WITNESS: Not that I can say for sure, no.  
 24 Q. BY MR. ROSENBAUM: You can't say for sure one  
 25 way or the other?

1 A. That's correct.  
 2 Q. Have you seen materials that are not current or  
 3 up-to-date for ELS?  
 4 MR. VIRJEE: Vague and ambiguous as to "current  
 5 or up-to-date."  
 6 MS. READ SPANGLER: Join.  
 7 MS. KAATZ: Join.  
 8 MR. ROSENBAUM: Go ahead.  
 9 THE WITNESS: I'm not sure.  
 10 Q. BY MR. ROSENBAUM: You can't say one way or the  
 11 other?  
 12 A. Can't say for sure.  
 13 Q. Are you interested in finding out whether or  
 14 not their materials are current or up-to-date?  
 15 MR. VIRJEE: Objection. Vague and ambiguous as  
 16 to "current or up-to-date."  
 17 MS. READ SPANGLER: Join.  
 18 MS. KAATZ: Join.  
 19 THE WITNESS: Yes.  
 20 Q. BY MR. ROSENBAUM: Why is that?  
 21 THE WITNESS: It's important that they have  
 22 appropriate materials.  
 23 Q. BY MR. ROSENBAUM: And you're defining  
 24 appropriate as including current or up-to-date?  
 25 MR. VIRJEE: Objection. Vague and ambiguous as

1 to "current or up-to-date."  
 2 MS. READ SPANGLER: Join.  
 3 MS. KAATZ: Join.  
 4 THE WITNESS: May include that.  
 5 Q. BY MR. ROSENBAUM: Why is that?  
 6 MR. VIRJEE: Same objection.  
 7 MS. READ SPANGLER: Join.  
 8 THE WITNESS: Because in some subjects,  
 9 materials become outdated.  
 10 Q. BY MR. ROSENBAUM: Such as?  
 11 MR. VIRJEE: Objection. Calls for speculation.  
 12 Lacks foundation. Calls for an expert opinion beyond  
 13 the expertise of this witness.  
 14 MS. READ SPANGLER: Join.  
 15 MS. KAATZ: Join.  
 16 THE WITNESS: Sometimes there are newer  
 17 techniques that might be more appropriate, and older  
 18 materials possibly wouldn't have those, and sometimes  
 19 the knowledge base has increased over the years.  
 20 Knowledge is growing very fast, and older materials  
 21 might not have all the important information for  
 22 students to have.  
 23 Q. BY MR. ROSENBAUM: When you heard the phrase  
 24 current or up-to-date, what did you understand that to  
 25 mean?

1 A. Within the last few years probably.  
 2 Q. Okay. And ELD materials, are they subject  
 3 specific; that is, are there ELD materials for  
 4 mathematics, for social studies, for literature, for  
 5 different subjects?  
 6 MR. VIRJEE: Objection. Vague and ambiguous as  
 7 to "ELD materials," or else nonsensical. It doesn't  
 8 make sense.  
 9 MR. ROSENBAUM: Go ahead.  
 10 THE WITNESS: Not that I know of.  
 11 Q. BY MR. ROSENBAUM: Okay. ELD materials are  
 12 focused on teaching kids to obtain proficiency in  
 13 English; is that right?  
 14 A. Yes.  
 15 Q. Not to obtain a particular level of proficiency  
 16 in specific academic subject matters; is that right?  
 17 A. That's right.  
 18 Q. Okay. Now, do you -- as part -- do you have a  
 19 protocol in terms of what you look at for a district?  
 20 A. Define "protocol."  
 21 Q. Okay. Are there a set of -- a checklist of  
 22 what you're looking for in districts to see if the  
 23 district is in compliance with Comite?  
 24 MR. VIRJEE: In conjunction with the  
 25 monitoring?

1 MR. ROSENBAUM: Yes.  
 2 THE WITNESS: We have a monitoring instrument  
 3 that we use and it has in it --  
 4 MS. READ SPANGLER: You've answered the  
 5 question.  
 6 Q. BY MR. ROSENBAUM: Okay. Now, this monitoring  
 7 instrument -- strike that.  
 8 You have -- do you have any formal relationship  
 9 with CCR?  
 10 A. Yes.  
 11 Q. What's the nature of the relationship?  
 12 A. Their unit is part of the same division that  
 13 we're a part of, and our work is clearly related.  
 14 Q. Why is that?  
 15 A. Because our unit and their unit are both  
 16 charged with monitoring state and federal law. The CCR  
 17 unit is looking at all programs, our unit is  
 18 specifically looking at English learner programs.  
 19 Q. Does CCR have an English learner component that  
 20 is not your unit?  
 21 A. Yes.  
 22 Q. Okay. And what's the difference?  
 23 MS. READ SPANGLER: If you know.  
 24 MR. VIRJEE: Just for clarification, you are  
 25 asking about the CCR process, not about that unit now,

1 right?  
 2 MR. ROSENBAUM: Yes, that's right.  
 3 THE WITNESS: The process is different in that  
 4 the CCR, although it looks at the same issues that we  
 5 look at, is part of the CCR process, so there are other  
 6 things going on that they're involved with. At a school  
 7 site our unit, doing the follow-up work, is specifically  
 8 targeted to English learner services.  
 9 Q. BY MR. ROSENBAUM: Okay. Now, you told me  
 10 earlier that the districts you get are a subset of the  
 11 districts that CCR looks at; is that right?  
 12 A. That's right.  
 13 Q. Do you make reports to the court?  
 14 MR. VIRJEE: Does she?  
 15 Q. BY MR. ROSENBAUM: Does your unit?  
 16 A. What kind of reports?  
 17 Q. Any reports.  
 18 A. Yes.  
 19 Q. Okay. Let's go back a couple steps. Tell me  
 20 what you understand to be the objective of the Comite  
 21 unit.  
 22 A. Our unit?  
 23 Q. Yeah.  
 24 MR. VIRJEE: I'll object as vague and ambiguous  
 25 as to "objective."

1 MS. READ SPANGLER: Join.  
 2 THE WITNESS: It's to monitor services to  
 3 English learners in the specific districts identified as  
 4 Comite follow-up districts.  
 5 Q. BY MR. ROSENBAUM: And, again, I apologize if  
 6 I'm just repeating something you said, but those  
 7 districts, those districts are districts that your unit  
 8 selects?  
 9 MR. VIRJEE: Objection. Asked and answered.  
 10 MS. READ SPANGLER: You're talking about the  
 11 Comite follow-up districts?  
 12 THE WITNESS: We recommend the districts, yes.  
 13 Q. BY MR. ROSENBAUM: Okay. Now, do you do a  
 14 written report or evaluation of the districts that you  
 15 look at?  
 16 A. Yes, we do.  
 17 Q. Okay. And if I wanted to get those reports,  
 18 how would I go about doing that? I'm sorry, those  
 19 evaluations.  
 20 A. You could ask our division director or the  
 21 districts themselves for copies of those reports.  
 22 Q. Okay. And to your knowledge, are those  
 23 districts filed with the court?  
 24 MR. VIRJEE: Those districts?  
 25 MR. ROSENBAUM: Those evaluation reports.

1 THE WITNESS: They are not.  
 2 Q. BY MR. ROSENBAUM: Who receives copies of them,  
 3 so far as you know?  
 4 A. The district superintendent and selected other  
 5 people.  
 6 Q. Okay. And who are some of those other people?  
 7 A. Other people who are involved with the  
 8 district. Other people that are involved with the  
 9 district.  
 10 Q. Does the legislature?  
 11 A. No.  
 12 Q. The governor's office?  
 13 A. No.  
 14 Q. Secretary of education?  
 15 A. No.  
 16 Q. The State Board of Education?  
 17 A. No.  
 18 Q. The superintendent?  
 19 A. The state superintendent?  
 20 Q. Yes.  
 21 A. No.  
 22 MR. VIRJEE: And I'm assuming you're asking  
 23 those specific people, not their offices, but those  
 24 people; is that right? Because it's otherwise vague and  
 25 ambiguous.

1 MR. ROSENBAUM: We'll start there.  
 2 Q. Yes, those specific people, do they receive  
 3 copies?  
 4 A. Not unless they request it.  
 5 Q. How about the office of the superintendent?  
 6 MR. VIRJEE: Objection. Vague and ambiguous.  
 7 THE WITNESS: The state superintendent?  
 8 MR. ROSENBAUM: Yeah.  
 9 THE WITNESS: No.  
 10 Q. BY MR. ROSENBAUM: How about the office of the  
 11 State Board of Education?  
 12 A. No.  
 13 Q. Or the office of the secretary of education?  
 14 A. No.  
 15 Q. Or any of the legislature -- legislative  
 16 offices?  
 17 A. No.  
 18 Q. Or the LAO?  
 19 MS. READ SPANGLER: Legislative analysts  
 20 office.  
 21 THE WITNESS: No.  
 22 Q. BY MR. ROSENBAUM: Okay. How about county  
 23 boards of education?  
 24 A. No.  
 25 Q. Okay. Now, you are involved in evaluating,

1 monitoring the instruction that English learners give in  
 2 the districts that you look at; is that right?  
 3 A. That's right.  
 4 Q. Okay. Do you have any other duties and  
 5 responsibilities with respect to your unit?  
 6 MR. VIRJEE: Are you asking does her unit do  
 7 anything else other than the monitoring under the  
 8 Comite?  
 9 MR. ROSENBAUM: Other than the monitoring that  
 10 we've been generally talking about under the Comite.  
 11 MS. READ SPANGLER: So not her personal duties  
 12 as manager.  
 13 MR. ROSENBAUM: Right. Now I'm just interested  
 14 in the unit.  
 15 THE WITNESS: Only duties that are directly  
 16 related to the monitoring work.  
 17 Q. BY MR. ROSENBAUM: Tell me what that means.  
 18 A. It means that we do technical assistance with  
 19 those districts.  
 20 Q. Anything else?  
 21 A. It means that we may provide professional  
 22 development for those districts.  
 23 Q. Provide what?  
 24 A. Professional development or workshops.  
 25 Q. Like staff development?

1 A. Yes.  
 2 Q. Okay. Anything else?  
 3 A. There are a few other things. We answer  
 4 questions regarding those districts that come either  
 5 from the districts themselves or from other folks.  
 6 Q. Okay. In your experience -- how long have you  
 7 been with this unit?  
 8 A. Almost six years.  
 9 Q. Regardless of name, right?  
 10 A. Regardless, yes.  
 11 Q. And how long have you been head of this unit?  
 12 A. About nine months.  
 13 Q. And before that, what were your duties and  
 14 responsibilities?  
 15 A. I was a consultant in the unit.  
 16 Q. What does that mean?  
 17 A. That means I was one of the people that did  
 18 this monitoring work, as I am now.  
 19 Q. You still do monitoring, on the ground  
 20 monitoring?  
 21 A. I do some, but now I'm responsible for  
 22 overseeing the work of everybody so I do less.  
 23 Q. And did you have any duties or responsibilities  
 24 with respect to this unit besides -- now you're head of  
 25 it. Before that, you were a consultant?

1 A. Yes.  
 2 Q. Any other duties with respect to your duties in  
 3 your tenure there?  
 4 A. I was also acting manager on a couple of  
 5 occasions.  
 6 Q. On how many occasions?  
 7 A. Two.  
 8 Q. And when was that?  
 9 A. Wait.  
 10 Q. It's on your resume?  
 11 A. Yes.  
 12 Q. It says between June '99 and November '99.  
 13 A. Right.  
 14 Q. Any other period of time?  
 15 A. And then from May 2000 until I became the  
 16 manager in October of 2000.  
 17 Q. Okay. During that period of time, have --  
 18 strike that.  
 19 Does your unit issue reports about the  
 20 availability of teachers with BCLAD credentials?  
 21 A. Yes.  
 22 Q. And with CLAD credentials?  
 23 A. Yes.  
 24 Q. And do you know what CLAD-1969 is?  
 25 A. Yes.

1 Q. What's that?  
 2 MR. VIRJEE: CLAD-1969?  
 3 Q. BY MR. ROSENBAUM: CLAD-1969, is that how you  
 4 think of it?  
 5 A. Yes.  
 6 Q. What's that?  
 7 A. They're two different authorizations that  
 8 authorize the same instruction.  
 9 Q. And what are they?  
 10 MR. VIRJEE: Are you asking her to describe  
 11 them, or just name them as CLAD and 1969?  
 12 Q. BY MR. ROSENBAUM: One is CLAD; is that right?  
 13 A. Yes.  
 14 Q. And for CLAD you need 180 hours of instruction;  
 15 is that right?  
 16 A. I'm not sure.  
 17 Q. Okay. And do you know where you can get a CLAD  
 18 credential?  
 19 MR. VIRJEE: Objection. Vague and ambiguous as  
 20 to where you get it.  
 21 MR. ROSENBAUM: Where you can do your training.  
 22 THE WITNESS: Yes.  
 23 Q. BY MR. ROSENBAUM: Where is that?  
 24 A. University, colleges, sometimes in the  
 25 districts they arrange for training.

1 Q. Okay. For a CLAD credential?  
 2 A. Sometimes. It's university coursework.  
 3 Q. But it's always university or college  
 4 coursework, isn't it?  
 5 A. It's possible to get it through an exam, not  
 6 always.  
 7 Q. But the overwhelming number of CLAD credentials  
 8 are through a college and university?  
 9 A. Yes.  
 10 Q. And BCLAD, where do you get BCLAD?  
 11 A. University.  
 12 Q. Okay. Now, CLAD-1969, that's less hours of  
 13 instruction; isn't that right?  
 14 MR. VIRJEE: Objection. Vague and ambiguous as  
 15 to "CLAD-1969."  
 16 Q. BY MR. ROSENBAUM: CLAD-1969 isn't the same  
 17 thing as CLAD; isn't that right?  
 18 MR. VIRJEE: Objection. Vague and ambiguous as  
 19 to "CLAD-1969."  
 20 MS. READ SPANGLER: Objection. Leading.  
 21 THE WITNESS: 1969 is not identical to the  
 22 CLAD.  
 23 Q. BY MR. ROSENBAUM: What's the difference?  
 24 MR. VIRJEE: The problem here is there's  
 25 something called 1969 and something called CLAD, but not

1 called CLAD-1969. I don't want to testify, but I don't  
 2 want to waste a lot of time either.  
 3 Q. BY MR. ROSENBAUM: What's 1969?  
 4 A. The SB 1969/395 is an alternative to the CLAD.  
 5 Q. Okay. And how many hours of instruction for  
 6 that?  
 7 MR. VIRJEE: Objection. Calls for speculation.  
 8 Lacks foundation.  
 9 MS. READ SPANGLER: Join.  
 10 MR. ROSENBAUM: If you know.  
 11 THE WITNESS: It's 45 hours for ELD, and 45 for  
 12 SDAIE.  
 13 Q. BY MR. ROSENBAUM: And for CLAD how many hours  
 14 for SDAIE?  
 15 A. I'm not sure.  
 16 Q. And where can you get a 1969 credential?  
 17 A. Sometimes through a county office.  
 18 Q. County office meaning?  
 19 A. Of education. I'm sorry. County office of  
 20 education or through a local school district.  
 21 Q. Okay. You don't have to go to a college or  
 22 university for that?  
 23 A. No.  
 24 Q. I should restate that. You said no?  
 25 A. No.

1 Q. In fact, can you get a 1969 credential from a  
 2 college or university, as far as you know?  
 3 MR. VIRJEE: Can you get the instruction needed  
 4 for the credential, is that the question, as opposed to  
 5 getting the credential?  
 6 Q. BY MR. ROSENBAUM: Can you get the instruction  
 7 for that credential?  
 8 A. Not that I know of. I'm not sure.  
 9 Q. Okay. Now, do you -- you issued -- you make  
 10 these evaluation reports with respect to the districts;  
 11 is that right?  
 12 A. Yes.  
 13 Q. Do you make -- does your unit prepare any other  
 14 sorts of reports?  
 15 MS. READ SPANGLER: What?  
 16 MR. VIRJEE: Other than with respect to the  
 17 Comite districts that they're monitoring?  
 18 MR. ROSENBAUM: Yes. Exactly.  
 19 THE WITNESS: We do.  
 20 Q. BY MR. ROSENBAUM: What other reports?  
 21 A. We do the annual report on -- for the Comite  
 22 settlement agreements.  
 23 Q. And so far as you know, is that required by the  
 24 court order, that you prepare a --  
 25 MR. VIRJEE: Objection. Calls for a legal



1 conclusion.  
 2 MS. READ SPANGLER: Join.  
 3 THE WITNESS: Yes.  
 4 Q. BY MR. ROSENBAUM: And so far as you know,  
 5 where do those reports go?  
 6 A. To the court and to plaintiffs' counsel.  
 7 Q. Okay. And when you say "the court," what do  
 8 you mean by that?  
 9 A. I'm not sure.  
 10 Q. Okay. Federal court or a state court?  
 11 A. State court.  
 12 Q. Okay. And does your office send this report,  
 13 the annual report to the superintendent's office?  
 14 MR. VIRJEE: Objection. Calls for speculation.  
 15 MS. READ SPANGLER: Join.  
 16 THE WITNESS: I'm not sure.  
 17 Q. BY MR. ROSENBAUM: You're not aware of anyone  
 18 doing that?  
 19 A. No.  
 20 MS. READ SPANGLER: You mean the state  
 21 superintendent or the superintendent of the districts?  
 22 MR. ROSENBAUM: State superintendent of  
 23 education.  
 24 MR. VIRJEE: Calls for speculation.  
 25 MS. READ SPANGLER: Join.

1 THE WITNESS: I'm not sure.  
 2 Q. BY MR. ROSENBAUM: Okay. And so far as you  
 3 know, does the annual report go to the State Board of  
 4 Education?  
 5 MR. VIRJEE: Objection. Calls for speculation.  
 6 THE WITNESS: As far as I know, no, but I don't  
 7 know for sure.  
 8 Q. BY MR. ROSENBAUM: You've never directed  
 9 anybody to send it to the State Board of Education?  
 10 A. No.  
 11 Q. Okay. How about the secretary of education,  
 12 does it go there?  
 13 MR. VIRJEE: Objection. Calls for speculation.  
 14 THE WITNESS: Not that I'm aware of.  
 15 Q. BY MR. ROSENBAUM: Okay. And how about the  
 16 legislature, does it go to the legislature or any  
 17 legislators?  
 18 MR. VIRJEE: Objection. Calls for speculation.  
 19 MS. READ SPANGLER: Join.  
 20 THE WITNESS: Not that I'm aware of.  
 21 Q. BY MR. ROSENBAUM: Or the governor's office?  
 22 MR. VIRJEE: Objection. Calls for speculation.  
 23 MS. READ SPANGLER: Join.  
 24 THE WITNESS: Not that I know of.  
 25 Q. BY MR. ROSENBAUM: As far as you know, has

1 anyone from the governor's office ever asked for a copy  
 2 of the annual report?  
 3 MR. VIRJEE: Objection. Calls for speculation.  
 4 THE WITNESS: Not I that know of.  
 5 Q. BY MR. ROSENBAUM: Or a copy of any of the  
 6 district reports, your evaluation reports?  
 7 MR. VIRJEE: Objection. Calls for speculation.  
 8 MS. READ SPANGLER: Join.  
 9 THE WITNESS: I'm not sure if the governor's  
 10 office -- what it includes, so I don't know.  
 11 Q. BY MR. ROSENBAUM: So far as you know, you're  
 12 not aware of anyone from the governor's office asking  
 13 for a copy of either the annual report or any of the  
 14 district reports?  
 15 MR. VIRJEE: She just said she doesn't know  
 16 what you mean by the "governor's office," so vague and  
 17 ambiguous and also calls for speculation.  
 18 MS. READ SPANGLER: Join.  
 19 THE WITNESS: Not that I know of.  
 20 Q. BY MR. ROSENBAUM: So far as you know, has any  
 21 legislator or legislator's office ever asked for a copy  
 22 of either of the annual report or any of the district  
 23 reports?  
 24 MR. VIRJEE: Objection. Calls for speculation.  
 25 THE WITNESS: I'm not sure.

1 MR. VIRJEE: Lacks foundation.  
 2 Q. BY MR. ROSENBAUM: Are you aware of any?  
 3 A. Not that I'm aware of.  
 4 Q. So far as you know, has anyone from the  
 5 secretary of education ever asked for copies of either  
 6 the annual report or any of the district reports?  
 7 MR. VIRJEE: Objection. Lacks foundation.  
 8 Calls for speculation.  
 9 THE WITNESS: Not that I'm aware of.  
 10 Q. BY MR. ROSENBAUM: Okay. The annual report  
 11 that's filed with the court, can you tell me, please,  
 12 what that deals with?  
 13 MR. VIRJEE: Objection. Vague and ambiguous as  
 14 to time. Also vague as to "deals with."  
 15 MS. READ SPANGLER: Join.  
 16 MR. ROSENBAUM: Go ahead.  
 17 THE WITNESS: It is about the monitoring work  
 18 done pursuant to the Comite consent decree.  
 19 Q. BY MR. ROSENBAUM: When you say monitoring work  
 20 pursuant to that decree, what do you mean?  
 21 MR. VIRJEE: Objection. Asked and answered.  
 22 You're asking her to tell you what the monitoring work  
 23 entails. I think she's sort of been through that  
 24 already.  
 25 THE WITNESS: It has some specific requirements

1 to be included in the report, and we include those.  
 2 Q. BY MR. ROSENBAUM: And that's set by the court,  
 3 so far as you know?  
 4 A. Yes.  
 5 Q. Now does the annual report deal with whether or  
 6 not there are shortages of BCLAD or CLAD credentialed  
 7 teachers?  
 8 MR. VIRJEE: Objection. Vague and ambiguous as  
 9 to "shortages."  
 10 MS. READ SPANGLER: Join.  
 11 THE WITNESS: Not specifically.  
 12 Q. BY MR. ROSENBAUM: And what's the basis of that  
 13 answer?  
 14 A. That's not one of the things we're asked to  
 15 report.  
 16 Q. Okay. Does the report deal with anything other  
 17 than the districts -- strike that.  
 18 When do you file that report with the court, if  
 19 there's a particular time?  
 20 A. On or before October 1st.  
 21 Q. And has there been a custom as to when that  
 22 gets filed?  
 23 A. It's not always on time, but it was last year.  
 24 Q. Okay. And does it deal with any other  
 25 districts other than the districts that have been

1 monitored that prior eight months, nine months or twelve  
 2 months?  
 3 MR. VIRJEE: Objection. Vague and ambiguous as  
 4 to "deal with."  
 5 Q. BY MR. ROSENBAUM: Do you understand what I  
 6 mean?  
 7 What I want to know is, does it talk about --  
 8 from October to October your unit looks at a number of  
 9 districts; is that right?  
 10 A. Yes.  
 11 Q. Approximately how many districts over that  
 12 period of time?  
 13 MR. VIRJEE: Objection. Vague as to time.  
 14 THE WITNESS: 54.  
 15 Q. BY MR. ROSENBAUM: 54. Is that true every  
 16 year?  
 17 A. No.  
 18 Q. What's been the range, in your experience?  
 19 A. I don't recall exactly.  
 20 Q. Okay. Does it ever drop down as low as in the  
 21 20s?  
 22 A. Not in my experience.  
 23 Q. In the 30s?  
 24 A. Possibly.  
 25 Q. Okay. And does it ever get above 54?

1 A. Not yet.  
 2 Q. Okay. The annual report, does it discuss  
 3 matters other than the particular districts that have  
 4 been reviewed from October to October?  
 5 MR. VIRJEE: You're asking does it discuss  
 6 matters regarding anything other than the districts in  
 7 which they've done on-site monitoring during that  
 8 period?  
 9 MR. ROSENBAUM: Yes.  
 10 THE WITNESS: Yes.  
 11 Q. BY MR. ROSENBAUM: Do you do any other  
 12 monitoring besides on-site monitoring?  
 13 A. Yes.  
 14 Q. What other sorts of monitoring do you do?  
 15 A. We review documents districts submit.  
 16 MS. READ SPANGLER: Just a reminder that we  
 17 need to break soon so that she can get to her meeting.  
 18 MR. ROSENBAUM: Whenever you need to leave, you  
 19 just tell me. Do you want to leave right now?  
 20 MR. VIRJEE: Let's go off the record.  
 21 (Lunch recess taken.)  
 22 Q. BY MR. ROSENBAUM: Okay. We're back on record.  
 23 Of course you know you're still under oath.  
 24 A. Yes.  
 25 Q. You were -- I wanted to go back to one comment

1 that you made to me, one answer that you gave to me.  
 2 Has anyone from the governor's office, so far  
 3 as you know, ever sought your -- sought information from  
 4 you about the work that you do?  
 5 A. Not that I'm aware of.  
 6 Q. Or from the secretary of education's office?  
 7 A. Not that I'm aware of.  
 8 Q. Or from the legislature?  
 9 A. No.  
 10 Q. Or the LAO office?  
 11 A. The legislative analysts office?  
 12 Q. Yeah.  
 13 A. Yes.  
 14 Q. The State Board of Education?  
 15 A. I think I have to understand the question  
 16 better.  
 17 Q. Sure. Has anyone from the State Board of  
 18 Education, either a board member or a staff member ever  
 19 sought information from you about your work?  
 20 A. Yes.  
 21 Q. Not you, but so far as you know, has anyone  
 22 from the governor's office sought information from  
 23 anybody in the Comite unit about work that the unit has  
 24 done?  
 25 A. Not that I know of.

1 Q. Or the secretary of education?  
 2 A. No.  
 3 Q. Or the legislature?  
 4 A. Not that I'm aware of.  
 5 Q. Or, with the exception of what you told me  
 6 about you, the LAO office, anyone else in the unit so  
 7 far as you know that the LAO --  
 8 A. No.  
 9 Q. Anyone else in your office besides you, so far  
 10 as you know, approached by the State Board of Education  
 11 office?  
 12 A. No.  
 13 Q. And I want to be clear about time frame. I  
 14 mean since your tenure with the Comite unit.  
 15 A. Yes.  
 16 Q. You understood that?  
 17 A. Yes.  
 18 Q. With respect to the LAO office, someone has  
 19 contacted you or did you contact them?  
 20 A. They contacted me.  
 21 Q. And when was that?  
 22 A. Last week.  
 23 Q. Okay. And do you know the name of the person  
 24 or persons?  
 25 A. Yes.

1 Q. Who was that?  
 2 A. Anthony. It starts with an "S."  
 3 Q. Anthony S.?  
 4 A. Yes. I forget.  
 5 Q. And anyone else?  
 6 A. No.  
 7 Q. And did Anthony S. talk to you over the  
 8 telephone or in person, or how was the contact made?  
 9 A. Both.  
 10 Q. Did you get a letter?  
 11 A. No.  
 12 Q. Did you get an e-mail or a memo?  
 13 A. No.  
 14 Q. Okay. You got a poison-pen letter of some  
 15 sort?  
 16 A. No.  
 17 Q. What did you receive?  
 18 A. Phone call initially.  
 19 Q. And did you take the call?  
 20 A. Yes.  
 21 Q. And what was said in that call?  
 22 A. I don't remember exactly what was said.  
 23 Q. As best you can recall.  
 24 A. He asked for specific information about the  
 25 Comite settlement agreement and for reports from two

1 specific districts.  
 2 Q. Which districts?  
 3 A. Oceanside and Oakland.  
 4 Q. Okay. And did he say why he wanted that  
 5 information?  
 6 A. No.  
 7 Q. Okay. Did you -- could you infer from the  
 8 conversation why he wanted it?  
 9 A. No.  
 10 MS. READ SPANGLER: Objection. Calls for  
 11 speculation.  
 12 Q. BY MR. ROSENBAUM: And he said, I want those  
 13 reports; is that right? I mean, he didn't say it that  
 14 way, but he said, could I please have those reports?  
 15 A. Yes.  
 16 Q. And were reports sent to him by either you or  
 17 your office, so far as you know?  
 18 A. No.  
 19 Q. You said, forget it?  
 20 A. No, he came and got them.  
 21 Q. Okay. And how many reports did he get?  
 22 A. Reports, two.  
 23 Q. And did you talk to him at the time?  
 24 A. Yes.  
 25 Q. Okay. And what did he say in that

1 conversation?  
 2 A. He asked about the Comite settlement agreement.  
 3 Q. Okay. And what did you tell him?  
 4 A. I told him what I knew about it generally.  
 5 Q. Which was?  
 6 A. Well, I told him that it was initially an  
 7 action that was brought by a group of parents in 1979,  
 8 and just a little history of the case.  
 9 Q. Okay. Did he ask for a copy of the consent  
 10 decree?  
 11 A. Yes, he did.  
 12 Q. And did you provide that?  
 13 A. Yes, I did.  
 14 Q. Do you know when the consent decree was  
 15 entered?  
 16 MR. VIRJEE: Objection. Vague and ambiguous.  
 17 MS. READ SPANGLER: Join.  
 18 THE WITNESS: Yes.  
 19 Q. BY MR. ROSENBAUM: When was that?  
 20 A. Initially 1985.  
 21 Q. And have there been changes or revisions to the  
 22 consent decree, so far as you know?  
 23 A. Yes.  
 24 Q. How many?  
 25 A. Two now.

1 Q. Do you know when they took place?  
 2 A. 1996 and 2001.  
 3 Q. Okay. And did he say anything else about  
 4 why -- did he say anything about why he wanted the  
 5 reports?  
 6 A. Not that I recall.  
 7 Q. Did you ask him?  
 8 A. No.  
 9 Q. Any reason why not?  
 10 A. Why I didn't ask him?  
 11 Q. Yeah.  
 12 A. No.  
 13 Q. Okay. So you or your office gave him the  
 14 Oceanside report, the Oakland report and three consent  
 15 decrees?  
 16 A. Two consent decrees and the court order, the  
 17 most recent court order that we had.  
 18 Q. The 2001?  
 19 A. Yes.  
 20 (Ms. Read Spangler left the room.)  
 21 Q. BY MR. ROSENBAUM: Have you had any contact  
 22 from him since then?  
 23 A. No.  
 24 Q. Do you have any idea what he did with these  
 25 reports?

1 A. No.  
 2 Q. Or with the consent decrees?  
 3 A. No.  
 4 Q. Now, you also said that you've had contact with  
 5 the State Board of Education, someone from one of their  
 6 offices?  
 7 MR. VIRJEE: That misstates her testimony.  
 8 MR. ROSENBAUM: You're right, it does.  
 9 Q. Has someone from the State Board of Education  
 10 contacted you?  
 11 MR. VIRJEE: Objection. Asked and answered.  
 12 MR. ROSENBAUM: Go ahead.  
 13 THE WITNESS: Not personally.  
 14 Q. BY MR. ROSENBAUM: Okay. Tell me what  
 15 happened.  
 16 A. The State Board asked our division director for  
 17 some information on the districts that we're working  
 18 with, reports, correspondence, and through the division  
 19 director I provided the information that they asked for.  
 20 Q. And when you say the districts you're working  
 21 with, what do you mean by that?  
 22 A. Some of the Comite follow-up districts.  
 23 Q. The ones that you're working on presently, or  
 24 that you've worked on in the past, or something else?  
 25 A. This was in the past.

1 Q. Do you know which districts?  
 2 A. I recall some of them, but not all of them.  
 3 Q. Do you know how many districts?  
 4 A. No.  
 5 Q. Can you give me your best estimate?  
 6 A. My best estimate would be about 10.  
 7 Q. And do you have an understanding as to why this  
 8 information was being requested?  
 9 A. I don't know.  
 10 Q. Who is the division director? Is that what you  
 11 said?  
 12 A. Yes.  
 13 Q. Who is that?  
 14 A. Currently it's Marsha Bedwell.  
 15 Q. Was it Ms. Bedwell who, so far as you know, was  
 16 the person who had been contacted?  
 17 A. No.  
 18 Q. Who was the person?  
 19 A. Stewart Greenfeld, her predecessor.  
 20 Q. Okay. Have you ever testified in front of the  
 21 State Board of Education or any subcommittee or any  
 22 staff members regarding your work?  
 23 A. No.  
 24 Q. Do you know if anybody in your unit ever has?  
 25 A. Not my current unit. Our former manager has.

1 Q. Who was that?  
 2 A. Dr. Norm Gold.  
 3 Q. Is it Dr. Gold?  
 4 A. Yes.  
 5 Q. Do you know when Dr. Gold testified?  
 6 A. Not exactly, but on a few occasions.  
 7 Q. Okay. Do you know what subject matters?  
 8 MR. VIRJEE: Objection. Calls for speculation.  
 9 Lacks foundation.  
 10 THE WITNESS: He spoke to the Board about  
 11 waivers that districts were requesting regarding English  
 12 learner services.  
 13 Q. BY MR. ROSENBAUM: Tell me what that means.  
 14 MR. VIRJEE: What that means, that he spoke to  
 15 them, or what English language learner waiver are?  
 16 MR. ROSENBAUM: What English language waivers  
 17 are.  
 18 THE WITNESS: In the context of Dr. Gold's  
 19 discussion with the Board, it was -- it was prior to  
 20 Proposition 227 and there were four districts that asked  
 21 for waivers from the Board so that they would not have  
 22 to provide primary language instruction to their  
 23 students who needed that instruction to access grade  
 24 level core content.  
 25 Q. BY MR. ROSENBAUM: Do you remember what those

1 districts were?  
 2 A. Yes.  
 3 (Ms. Read Spangler entered the room.)  
 4 Q. BY MR. ROSENBAUM: Who are they?  
 5 A. Westminster, Orange Unified, Magnolia and  
 6 Savannah.  
 7 Q. And in any of those districts had there been a  
 8 CCR review that identified a lack of teachers qualified  
 9 to teach in primary language?  
 10 MR. VIRJEE: Objection. Vague as to time.  
 11 Also vague and ambiguous. Also calls for speculation.  
 12 MS. READ SPANGLER: Join. Vague as to the term  
 13 "qualified."  
 14 THE WITNESS: I'm not sure. I don't know.  
 15 Q. BY MR. ROSENBAUM: You don't know one way or  
 16 the other?  
 17 A. Right.  
 18 Q. Do you understand what I mean by the question?  
 19 A. Yes.  
 20 Q. To your knowledge, has Dr. Gold testified about  
 21 any other matters in front of the State Board?  
 22 A. Yes.  
 23 Q. What else?  
 24 A. About districts who were being recommended for  
 25 conditional approval of their consolidated applications.

1 Q. And when you say "applications," you're  
 2 referring to what?  
 3 A. The CON app that districts submit every year  
 4 for their funding.  
 5 Q. Okay. Were those districts that had been found  
 6 in noncompliance at one point?  
 7 MR. VIRJEE: Objection. Vague and ambiguous as  
 8 to "noncompliance."  
 9 MS. READ SPANGLER: Join.  
 10 THE WITNESS: Yes.  
 11 Q. BY MR. ROSENBAUM: They had gone to level 3 or  
 12 4 noncompliance?  
 13 MR. VIRJEE: Objection. Lacks foundation.  
 14 Calls for speculation.  
 15 THE WITNESS: Yes.  
 16 Q. BY MR. ROSENBAUM: Do you know what those  
 17 districts were?  
 18 A. No.  
 19 Q. To your knowledge, had Dr. Gold testified about  
 20 anything else?  
 21 A. Not that I recall.  
 22 Q. Okay. And anyone else in your unit since your  
 23 tenure that you're aware of having testified in front of  
 24 the State Board of Education?  
 25 MR. VIRJEE: I'm also going to object to the

1 fact that you're characterizing whatever Dr. Gold did as  
 2 testimony. She said that he spoke to the Board. I want  
 3 to make that clarification.  
 4 MS. READ SPANGLER: Join.  
 5 MR. ROSENBAUM: I'll modify it. Issued  
 6 statements, made statements. That's fine.  
 7 Q. Anyone else in your unit that you're aware of  
 8 having spoken to or testified or given statements to the  
 9 State Board?  
 10 A. Not that I'm aware of.  
 11 Q. Or any subcommittee of the State Board?  
 12 A. Not that I'm aware of.  
 13 Q. Okay. How about in front of the legislature or  
 14 in front of legislative committees? You told me you've  
 15 never testified or made statements to any legislative  
 16 body or -- any legislative body or any legislative  
 17 committee?  
 18 MR. VIRJEE: Objection. Asked and answered.  
 19 She told you she didn't do it and nobody in her group  
 20 did it that she knows of. You already asked that.  
 21 Q. BY MR. ROSENBAUM: You're not aware of anyone  
 22 in your tenure who has done that?  
 23 MR. VIRJEE: Objection. Asked and answered.  
 24 That's the third time.  
 25 THE WITNESS: Yes, I'm not aware.

1 Q. BY MR. ROSENBAUM: You were telling me before  
 2 we took a break that your unit, you file an annual  
 3 report with the court, you told me that. Do you recall  
 4 that?  
 5 A. Yes.  
 6 Q. And one of the matters that's discussed in that  
 7 report is a discussion of the analyses that you've done  
 8 of districts that have been referred to you; is that  
 9 right?  
 10 MR. VIRJEE: Objection. Misstates her  
 11 testimony.  
 12 THE WITNESS: I don't fully understand your  
 13 question.  
 14 Q. BY MR. ROSENBAUM: This report discusses the  
 15 districts that you did on-site evaluations of?  
 16 MR. VIRJEE: Objection. Asked and answered.  
 17 THE WITNESS: Yes.  
 18 Q. BY MR. ROSENBAUM: Okay. Does it discuss other  
 19 subject matters besides that?  
 20 A. Yes.  
 21 MR. VIRJEE: Objection. Vague and ambiguous.  
 22 Q. BY MR. ROSENBAUM: And could you tell me what  
 23 those other subject matters are.  
 24 A. It discusses monitoring of the unit that does  
 25 the CCRs as well, and it discusses a number of districts

1 and names of districts with noncompliant English  
 2 language learner issues.  
 3 Q. Okay. And let me see if I understand this,  
 4 please. When you say districts of noncompliance, that's  
 5 either as the result of your on-site investigations or  
 6 the CCR investigations; is that right?  
 7 A. Yes.  
 8 Q. Anything else?  
 9 A. There are other things in the report. I don't  
 10 recall right now what they are.  
 11 Q. Right now I'm interested in the subject matter  
 12 about the noncompliant districts. I just want to  
 13 understand the universe of districts.  
 14 It's the districts that your unit looks at and  
 15 the districts in, say, the prior 12 months that CCR  
 16 looks at; is that right?  
 17 A. That's right.  
 18 Q. Any other districts?  
 19 A. There could be other districts if there are  
 20 other districts that have noncompliant items in English  
 21 learner programs over 365 days that are not included in  
 22 one of those other groups.  
 23 Q. Okay. Now, in a given twelve-month period --  
 24 am I doing the right period of time, is it October to  
 25 October generally?

1 A. Yes.  
 2 Q. Okay. -- CCR does monitoring work of federal  
 3 and state rules and regulations; is that right?  
 4 A. That's right.  
 5 MR. VIRJEE: Objection. Asked and answered.  
 6 Q. BY MR. ROSENBAUM: And your unit, you've told  
 7 me, does that; is that right?  
 8 MR. VIRJEE: Objection. Asked and answered.  
 9 THE WITNESS: (Witness nods head.)  
 10 Q. BY MR. ROSENBAUM: So far as you know, does any  
 11 other state agency monitor compliance with federal or  
 12 state rules regarding English learners?  
 13 A. I don't know.  
 14 Q. You're not aware of any?  
 15 A. No.  
 16 Q. Okay. Does any other state agency, so far as  
 17 you're aware, monitor the services that EL students  
 18 receive?  
 19 MR. VIRJEE: Objection. Calls for speculation.  
 20 Lacks foundation. Vague and ambiguous as to services EL  
 21 students receive.  
 22 MS. READ SPANGLER: Join.  
 23 THE WITNESS: I don't know.  
 24 Q. BY MR. ROSENBAUM: You're not aware of any?  
 25 A. I'm not.

1 Q. Do you know if county boards of education  
 2 conduct monitoring of services that EL students receive?  
 3 MR. VIRJEE: Objection. Lacks foundation.  
 4 Vague and ambiguous as to services EL students receive.  
 5 THE WITNESS: Not that I'm aware of.  
 6 Q. BY MR. ROSENBAUM: Okay. So far as you know,  
 7 do districts who are not monitored by CCR, monitored by  
 8 your unit or are 365 days and over noncompliance, do  
 9 they compile information about services that EL students  
 10 receive?  
 11 MR. VIRJEE: Other than what she's already  
 12 testified to?  
 13 MR. ROSENBAUM: Yes, other than that.  
 14 MR. VIRJEE: Because she specifically testified  
 15 to the fact that they do that. And also assumes facts  
 16 not in evidence. Assumes there are any districts that  
 17 are not monitored by CCR, so you're vague and ambiguous,  
 18 overbroad, nonsensical.  
 19 MR. ROSENBAUM: Go ahead.  
 20 THE WITNESS: As far as I know, it's the  
 21 language census that we discussed before.  
 22 Q. BY MR. ROSENBAUM: Okay. And do you know how  
 23 many districts CCR typically looks at for EL compliance?  
 24 MR. VIRJEE: Objection. Vague as to time.  
 25 MR. ROSENBAUM: Over a twelve-month period of

1 time.  
 2 THE WITNESS: Yes.  
 3 Q. BY MR. ROSENBAUM: How many?  
 4 A. Approximately 200.  
 5 Q. Now, explain to me -- do you receive the  
 6 language census when it's completed?  
 7 MR. VIRJEE: The actual document?  
 8 MR. ROSENBAUM: Yes.  
 9 MR. VIRJEE: Objection. Vague and ambiguous as  
 10 to "receive the language census."  
 11 THE WITNESS: Yes.  
 12 Q. BY MR. ROSENBAUM: Okay. And put aside the  
 13 districts that your unit is involved with. Do you  
 14 review the census for any purpose relating to your  
 15 duties and responsibilities?  
 16 MR. VIRJEE: And by "your unit," the districts  
 17 your unit is responsible for.  
 18 You're talking about the Comite districts?  
 19 MR. ROSENBAUM: Yes.  
 20 THE WITNESS: Yes.  
 21 Q. BY MR. ROSENBAUM: What other purposes?  
 22 A. For preparing our workshops that we do on  
 23 English learner services.  
 24 Q. Okay. And any other purposes?  
 25 A. Look at it for any inconsistencies or

1 information that we might want to look at further.  
 2 Q. Tell me what that means.  
 3 A. For example, we might look at all the districts  
 4 that report that they have more teachers assigned to  
 5 provide instruction for English learners than they have  
 6 teachers working for them, so we know something is  
 7 wrong, so we typically would follow up on that.  
 8 Q. Okay. Has that happened?  
 9 A. Yes.  
 10 Q. On how many occasions, that you recall?  
 11 A. A few.  
 12 Q. Okay. Over what period of time?  
 13 A. The last two or three years.  
 14 Q. Do you know which districts?  
 15 A. I don't recall.  
 16 Q. Okay. And what did you do?  
 17 A. Some of our staff made calls to those districts  
 18 to figure out with them what the problem was.  
 19 Q. Do you know what the results were of those  
 20 calls?  
 21 A. The districts had made a mistake and they  
 22 adjusted their language census.  
 23 Q. Okay. Your report to the court, you've told me  
 24 some of the subject matters that it covers. Are there  
 25 any other subject matters that it covers?

1 MR. VIRJEE: Objection. Asked and answered.  
 2 THE WITNESS: Yes.  
 3 Q. BY MR. ROSENBAUM: What are they?  
 4 A. I don't remember them all.  
 5 Q. Okay. Just the best you can do.  
 6 A. It asks for -- besides the monitoring history  
 7 over the last year, it also asks for information on the  
 8 staffing of our units, our unit, and the unit that does  
 9 the CCRs. I don't recall them all right now.  
 10 Q. That's okay. What's the relationship between  
 11 your unit and the CCR unit?  
 12 Let me break that down a little bit. Do  
 13 personnel from your unit participate in CCR reviews?  
 14 MR. VIRJEE: Objection. Vague and ambiguous as  
 15 to "participate." Also vague as to time.  
 16 MR. ROSENBAUM: Go ahead.  
 17 THE WITNESS: We have in the past. We do not  
 18 now.  
 19 Q. BY MR. ROSENBAUM: And how long has that been  
 20 the case?  
 21 MR. VIRJEE: How long has what been the case?  
 22 MR. ROSENBAUM: That you don't participate in  
 23 the CCR reviews.  
 24 THE WITNESS: The last few months.  
 25 Q. BY MR. ROSENBAUM: And is there a reason for

1 that?  
 2 A. Yes.  
 3 Q. What's that?  
 4 A. The latest Comite decision.  
 5 Q. What did that do with respect to this matter?  
 6 A. It mandated that that was an activity that our  
 7 unit was not to be participating in.  
 8 Q. Do you have an understanding as to why that is?  
 9 A. Yes.  
 10 MR. VIRJEE: Objection. Vague and ambiguous.  
 11 Q. BY MR. ROSENBAUM: What's that?  
 12 A. It's because the concern of the plaintiffs was  
 13 that the monitoring work, the follow-up work was the  
 14 most important work of the unit and that that work  
 15 needed to be completed in a timely manner, and so the  
 16 focus needed to be on that.  
 17 Q. Is there a CCR unit that deals with English  
 18 learners?  
 19 MR. VIRJEE: Objection. Vague and ambiguous as  
 20 to "CCR unit."  
 21 MS. READ SPANGLER: Join.  
 22 THE WITNESS: Yes.  
 23 Q. BY MR. ROSENBAUM: Do you know who is in charge  
 24 of that?  
 25 A. Yes.

1 Q. Who is that?  
 2 A. His name is Keric, K-e-r-i-c, Ashley.  
 3 Q. In the past have you consulted with Mr. Ashley?  
 4 A. Yes.  
 5 MS. READ SPANGLER: About what?  
 6 THE WITNESS: Yes.  
 7 Q. BY MR. ROSENBAUM: About what?  
 8 MR. VIRJEE: Objection. Vague and ambiguous as  
 9 to "consulted," and overbroad.  
 10 MS. READ SPANGLER: Join.  
 11 MR. ROSENBAUM: Go ahead.  
 12 MR. VIRJEE: Anything you've ever talked to him  
 13 about.  
 14 MS. READ SPANGLER: Since you've been at the  
 15 Department.  
 16 MR. VIRJEE: Where to go to lunch, whatever?  
 17 THE WITNESS: We consult on an ongoing basis  
 18 because our units work together, so we talk about  
 19 English learner issues. And we usually are an interview  
 20 team together, an interview panel, when we interview  
 21 consultants for our units.  
 22 Q. BY MR. ROSENBAUM: Does your unit have any  
 23 responsibilities with respect to state policies as to  
 24 recruiting teachers to teaching in structured immersion  
 25 or bilingual programs?

1 MR. VIRJEE: Objection. Vague and ambiguous.  
 2 MS. READ SPANGLER: As to responsibilities and  
 3 state policies.  
 4 THE WITNESS: Not that I'm aware of, no.  
 5 Q. BY MR. ROSENBAUM: Have you ever been consulted  
 6 as to policies regarding recruiting teachers for  
 7 structured immersion or bilingual programs?  
 8 A. Consulted by whom?  
 9 Q. By policymakers.  
 10 MR. VIRJEE: Objection. Vague and ambiguous.  
 11 MS. READ SPANGLER: Join.  
 12 Do you understand the question?  
 13 THE WITNESS: I do, and I -- I think I do, and  
 14 I'm trying -- the commission on teacher credentialing  
 15 we've had some discussion with. I'm not sure that's  
 16 consulting.  
 17 Q. BY MR. ROSENBAUM: Okay. Besides that  
 18 commission, anyone else?  
 19 A. On a policy level?  
 20 Q. Yes.  
 21 A. No.  
 22 Q. Do you set policy with regard to how teachers  
 23 are to be recruited?  
 24 A. No.  
 25 Q. Or retained?

1 A. No.  
 2 Q. Has any policymaker or policymaking body ever  
 3 consulted with you regarding policies as to how to  
 4 retain teachers for structured immersion or bilingual  
 5 programs?  
 6 MR. VIRJEE: Objection. Vague and ambiguous.  
 7 THE WITNESS: No.  
 8 Q. BY MR. ROSENBAUM: Or so far as you know has  
 9 anyone in your unit?  
 10 A. No.  
 11 Q. Over your tenure.  
 12 A. Right. No.  
 13 Q. Do you have -- were you consulted with respect  
 14 to the development or the implementation of the API?  
 15 A. No.  
 16 Q. Do you know what the API is?  
 17 A. Yes.  
 18 Q. So far as you know, was anyone in your unit?  
 19 A. Not that I'm aware of.  
 20 Q. And you know what IIUSP is?  
 21 A. Yes.  
 22 Q. To your knowledge, was anyone in your unit  
 23 consulted with respect to the development or the  
 24 implementation of the IIUSP?  
 25 A. Not to my knowledge.

1 Q. Were you?  
 2 A. No.  
 3 Q. And this is during your entire tenure?  
 4 A. Yes.  
 5 Q. Okay. Do you know what the high school exit  
 6 exam is?  
 7 A. Yes.  
 8 Q. Were you consulted with respect to the  
 9 development or implementation of the high school exit  
 10 exam?  
 11 A. No.  
 12 Q. To your knowledge, was anyone in your unit?  
 13 A. No.  
 14 Q. And that's during your entire tenure?  
 15 A. No.  
 16 Q. Do you know if anyone in CCR was consulted with  
 17 respect to the high school exit exam?  
 18 MR. VIRJEE: Objection. Calls for speculation.  
 19 Lacks foundation.  
 20 THE WITNESS: No, I don't.  
 21 Q. BY MR. ROSENBAUM: Have you seen any results of  
 22 the high school exit exam?  
 23 A. Only in the newspaper.  
 24 Q. No one's shown you any prospective results or  
 25 tentative results or final results of the high school

1 exit exam?  
 2 A. No.  
 3 Q. Sitting here today, do you have any information  
 4 about how English learners did on the high school exit  
 5 exam?  
 6 A. Not that I can intelligently discuss, no.  
 7 Q. Have you requested any information about how  
 8 English learners did on the high school exit exam?  
 9 A. No.  
 10 Q. Have you had any discussions about that?  
 11 A. No.  
 12 Q. So far as you know, has anyone in your unit  
 13 been consulted with respect to the subject matter of how  
 14 English learners did on the high school exit exam?  
 15 A. No.  
 16 Q. Do you have regular staff meetings?  
 17 MR. VIRJEE: Objection. Vague and ambiguous.  
 18 THE WITNESS: Yes.  
 19 Q. BY MR. ROSENBAUM: Okay. And who attends those  
 20 meetings?  
 21 A. Our consultants and our office staff.  
 22 Q. Okay. Who are your consultants?  
 23 How many consultants are we talking about?  
 24 A. Currently, eight.  
 25 Q. And do they have specific duties and



1 responsibilities?  
 2 MR. VIRJEE: Do each of them, or do they  
 3 generally?  
 4 MR. ROSENBAUM: Both.  
 5 THE WITNESS: Yes.  
 6 MR. VIRJEE: Okay. Compound.  
 7 MR. ROSENBAUM: Go ahead.  
 8 Q. Tell me what their duties and responsibilities  
 9 consist of.  
 10 A. Well, four of them are brand-new, so their  
 11 duties are to learn the job. Started July 2nd.  
 12 Q. Okay.  
 13 A. But generally the duties are the monitoring  
 14 tasks with regard to monitoring the Comite follow-up  
 15 districts.  
 16 Q. What does that mean?  
 17 MR. VIRJEE: What does what mean?  
 18 MR. ROSENBAUM: Dealing with the follow-up  
 19 districts.  
 20 MS. KAATZ: Didn't we talk about this earlier?  
 21 MR. VIRJEE: Asked and answered. It was gone  
 22 over in detail.  
 23 Q. BY MR. ROSENBAUM: And how big is your staff  
 24 with the exception of the consultants?  
 25 A. There are two other people right now.

1 Q. How regularly do you have staff meetings?  
 2 A. Monthly.  
 3 Q. Okay. And before you became head of the unit,  
 4 did you attend staff meetings?  
 5 A. Yes.  
 6 Q. And were they also generally on a monthly  
 7 basis?  
 8 A. Yes.  
 9 Q. Has the subject of the high school exit exam  
 10 come up in any of these meetings?  
 11 A. Yes.  
 12 Q. Has the subject of the API come up in any of  
 13 these meetings?  
 14 A. Yes.  
 15 Q. Has the subject of the IIUSP come up in any of  
 16 those meetings?  
 17 A. Yes.  
 18 Q. Tell me what has been discussed about the high  
 19 school exit exam.  
 20 A. It's not been extensively discussed, but we  
 21 discussed concerns about its impact on English learners.  
 22 Q. Has there been more than one discussion about  
 23 this?  
 24 A. I think not, right now.  
 25 Q. Okay. What's been said? Strike that.

1 When was the discussion that you recall?  
 2 A. Probably three months ago. I'm just  
 3 estimating.  
 4 Q. Okay. Do you know what was the impetus for  
 5 this, why it came up?  
 6 A. No.  
 7 Q. Was it a regular agenda item?  
 8 A. No.  
 9 Q. Just came up?  
 10 A. We discussed it, yes.  
 11 Q. And did you participate in the discussion?  
 12 A. Yes.  
 13 Q. What was said, as best you can recall?  
 14 A. I don't recall the specifics of the discussion,  
 15 I just recall the concerns in terms of English learners.  
 16 Q. What was the concern?  
 17 A. That English learners, by definition, would  
 18 have a more difficult time with that exam, not because  
 19 of lack of the content knowledge, but because of the  
 20 lack of English.  
 21 Q. Okay. Was there also concern that students in  
 22 structured immersion may not have caught up sufficiently  
 23 to do as well as they would otherwise on the exam?  
 24 A. Yes. That's part of that, yes.  
 25 Q. Okay. Is that your view?

1 A. That that's a possibility, yes.  
 2 Q. Okay. Did anyone disagree with this concern at  
 3 the meeting?  
 4 A. No.  
 5 Q. What else was said?  
 6 A. I don't recall.  
 7 Q. Have you communicated that concern to anyone  
 8 else outside your staff or consultants?  
 9 A. Yes.  
 10 Q. To whom?  
 11 A. To our former division director. Haven't had  
 12 that discussion yet with the current one. She's  
 13 brand-new too.  
 14 Q. Who is the division director we're talking  
 15 about?  
 16 A. Dr. Stewart Greenfeld.  
 17 Q. Okay. And what was the occasion for that  
 18 discussion with Dr. Greenfeld?  
 19 A. I don't recall the specifics.  
 20 Q. Was it a meeting with Dr. Greenfeld?  
 21 MR. VIRJEE: Objection. Vague and ambiguous.  
 22 THE WITNESS: Not a formal meeting.  
 23 Q. BY MR. ROSENBAUM: That's what I'm trying to  
 24 figure out. Was it a casual conversation, a telephone  
 25 call, were you face-to-face in a sit-down meeting with

1 him?  
 2 A. More like a casual conversation, I would  
 3 characterize it as.  
 4 Q. Okay. And approximately when did that take  
 5 place?  
 6 A. Approximately a month or two ago.  
 7 Q. And Dr. Greenfeld's position at that time was  
 8 what?  
 9 A. Division director.  
 10 Q. And did you initiate the conversation or did he  
 11 initiate it?  
 12 A. I think I did.  
 13 Q. Okay. And what did you say to him?  
 14 A. I don't recall the specifics.  
 15 Q. Just in sum or substance as best you can  
 16 recall.  
 17 A. I think it was just part of a larger context of  
 18 talking about English learners and impact of the current  
 19 laws and practices on them, and that the high school  
 20 exit exam was a major concern. And he had prior to that  
 21 talked about his concerns regarding the high school exit  
 22 exam in general, so I was specifically talking about it  
 23 in terms of the English learner.  
 24 Q. You told me you were worried about how English  
 25 learners were going to do?

1 A. Yes.  
 2 MR. VIRJEE: Objection. Vague and ambiguous.  
 3 Q. BY MR. ROSENBAUM: What else do you remember  
 4 saying to him?  
 5 A. That's all I recall right now.  
 6 Q. Okay. And what did he say to you?  
 7 A. Just that he thinks it's a very explosive issue  
 8 and concern.  
 9 Q. And did he use the word "explosive"?  
 10 A. He may have. Something like that.  
 11 Q. Did he explain what he meant?  
 12 A. I thought I knew.  
 13 Q. What was your understanding?  
 14 A. I thought he meant that it was going to be a  
 15 hot and controversial issue.  
 16 Q. Because?  
 17 A. Because there are people -- any time something  
 18 involves the English learners, there are people with  
 19 strong feelings on all sides of the issues.  
 20 Q. Do you know if there was -- strike that.  
 21 Have you sought results of the high school exit  
 22 exam?  
 23 A. No.  
 24 Q. Any reason why not?  
 25 A. Lack of time.

1 Q. Have you directed anybody on your staff to look  
 2 at them?  
 3 A. No.  
 4 Q. Okay. Do you know -- strike that.  
 5 We're not at October yet. So you've looked at  
 6 how many districts so far this year?  
 7 MR. VIRJEE: Objection. Vague and ambiguous as  
 8 to "looked at."  
 9 Are you asking how many on-sites they've done?  
 10 MR. ROSENBAUM: Your follow-up on-sites.  
 11 THE WITNESS: Probably about 30-some this year,  
 12 within the last 12 months.  
 13 Q. BY MR. ROSENBAUM: And are those of  
 14 districts -- 30 some districts?  
 15 A. Yes.  
 16 Q. When you do a follow-up, do you look at every  
 17 school in the district?  
 18 A. No.  
 19 Q. Okay. Do you look at some schools in the  
 20 district?  
 21 A. Yes.  
 22 Q. You do some on-site investigations?  
 23 A. Oh, yes.  
 24 Q. And, incidentally, the number of schools --  
 25 strike that.

1 The number of districts that you do follow-ups,  
 2 is that mandated by the court order, so far as you know?  
 3 A. Yes, it is.  
 4 Q. What does the court order say in terms of the  
 5 number of districts?  
 6 MR. VIRJEE: Objection. The document speaks  
 7 for itself.  
 8 MS. READ SPANGLER: Join.  
 9 THE WITNESS: The court order says that you  
 10 will select 10 each year, and the current court order  
 11 says every current Comite district will be visited  
 12 on-site every year.  
 13 Q. BY MR. ROSENBAUM: Okay. Does it say anything  
 14 about the number of schools that are to be visited?  
 15 A. It says the initial visit will be conducted in  
 16 15 percent of the school sites. It only addresses the  
 17 initial visit.  
 18 Q. Okay. And does it say anything about how many  
 19 other schools should be visited in the course of a  
 20 follow-up investigation?  
 21 A. No.  
 22 Q. Okay. Does your office have a rule of thumb in  
 23 terms of how many schools it visits?  
 24 A. Yes.  
 25 Q. What is that?

- 1 A. Our rule of thumb is that before a district  
2 would be released from Comite status, we should visit a  
3 minimum of a third of the district schools, and usually  
4 more.
- 5 Q. Can you give me a sense of what the range is  
6 that you visit?
- 7 Do you ever visit all of the schools?
- 8 A. Oh, yes.
- 9 Q. When you use the phrase "Comite district," what  
10 do you mean by that?
- 11 A. The Comite follow-up districts.
- 12 Q. Okay. And do you visit every classroom where  
13 there are English learners in the school?
- 14 A. Not necessarily every classroom. Sometimes we  
15 do.
- 16 Q. Okay. Do you have a rule of thumb as to how  
17 many classrooms you visit?
- 18 A. No.
- 19 Q. Is it important to do classroom visits?
- 20 A. Our rule of thumb is that we spend at least 50  
21 percent of the time or more in the classroom. We would  
22 visit all of them if the school is small enough.  
23 Sometimes it's too big so we don't.
- 24 Q. If you really could do a thorough monitoring as  
25 you like, you would visit every classroom, right?

- 1 A. Yes.
- 2 MR. VIRJEE: Objection. Vague and ambiguous.  
3 Also calls for speculation. Also incomplete  
4 hypothetical.
- 5 Q. BY MR. ROSENBAUM: Why is that?
- 6 A. Because we're interested in every single  
7 student.
- 8 Q. Okay. Now, you also told me that there were  
9 some discussions about the API in your staff meetings?
- 10 A. Yes.
- 11 Q. Okay. On how many occasions, as best you can  
12 recall?
- 13 A. Several.
- 14 Q. And over what time period, please?
- 15 A. Over the last three years, I guess, since we've  
16 had the API.
- 17 Q. Okay. Would you characterize it as a subject  
18 that comes up with some frequency?
- 19 A. Some frequency.
- 20 Q. That's pretty vague, isn't it?
- 21 It's a concern of your staff?
- 22 A. Yes.
- 23 Q. Concern of yours?
- 24 A. Yes.
- 25 Q. Why is that?

- 1 A. Because the API and the SAT-9 doesn't  
2 necessarily accurately reflect the ability of English  
3 learners.
- 4 Q. Why do you say that?
- 5 A. Because both of them right now are based --  
6 well, the SAT-9 is the SAT-9. The API is based on the  
7 SAT-9. And those are tests given in English normed by  
8 English speaking students, and not necessarily valid and  
9 reliable for students who are not English proficient.
- 10 Q. Do you believe that?
- 11 A. Yes.
- 12 MR. VIRJEE: Believe what, what she just said?
- 13 MR. ROSENBAUM: Yes.
- 14 Q. Was that view expressed at your staff meetings  
15 by you?
- 16 A. Yes.
- 17 Q. And by other individuals?
- 18 A. Yes.
- 19 Q. By consultants?
- 20 A. Yes.
- 21 Q. By all of your consultants?
- 22 A. Yes.
- 23 Q. Did you ever hear any disagreement in your  
24 staff meetings on that point?
- 25 A. Not at our staff meetings.

- 1 Q. Okay. And did you ever express that view to  
2 anyone outside your staff or consultants?
- 3 A. Yes.
- 4 Q. To Dr. Greenfeld?
- 5 A. Yes.
- 6 Q. To anyone else?
- 7 A. Yes.
- 8 Q. Who else?
- 9 A. Well, it's part of a workshop that we do on  
10 standards-based accountability for English learners, so  
11 I expressed that view to district people that attend the  
12 workshop.
- 13 Q. And is this more than one workshop?
- 14 MR. VIRJEE: Objection. Vague and ambiguous.  
15 Did she do the workshop more than once, or does  
16 she do more than one kind of workshop?
- 17 MR. ROSENBAUM: I'll be glad to withdraw the  
18 question and make it a little bit clearer for you.
- 19 Q. You've expressed that you told Dr. Greenfeld;  
20 is that right?
- 21 A. Yes.
- 22 Q. And you personally have done that?
- 23 A. Yes.
- 24 Q. And have other persons from the unit, so far as  
25 you know, expressed it to Dr. Greenfeld?

1 MR. VIRJEE: Objection. Calls for speculation.  
 2 Lacks foundation.  
 3 THE WITNESS: I don't know specifically.  
 4 Q. BY MR. ROSENBAUM: Was this at a meeting with  
 5 Dr. Greenfeld, or was it just a conversation, a casual  
 6 conversation?  
 7 (Ms. Kaatz left the room.)  
 8 THE WITNESS: I would say a meeting, but not an  
 9 agendized kind of meeting. When the two of us were  
 10 meeting, talking about issues.  
 11 Q. BY MR. ROSENBAUM: Was anybody else present?  
 12 A. We discussed it on more than one occasion, so I  
 13 would say sometimes yes, sometimes no.  
 14 Q. Okay. On how many occasions would you say this  
 15 subject has come up that you were in Dr. Greenfeld's  
 16 presence?  
 17 A. If I were to guess, I'd say three or four.  
 18 Q. Over what period of time?  
 19 A. Over the last couple of years.  
 20 Q. And at these three or four occasions, who else  
 21 do you recall being present?  
 22 MR. VIRJEE: If anyone.  
 23 THE WITNESS: I don't recall specifically.  
 24 Q. BY MR. ROSENBAUM: Okay. Was Mr. Padilla  
 25 present?

1 A. No.  
 2 Q. Do you know who Mr. -- Ms. Spears is?  
 3 A. Only by name. Not present.  
 4 Q. Okay. Do you know Ms. Clark-Thomas?  
 5 A. Yes.  
 6 Q. Was she present?  
 7 A. Possibly. I don't recall.  
 8 Q. Okay. Do you know -- who is the superior to  
 9 Dr. Greenfeld?  
 10 A. Paul Warren.  
 11 Q. Okay. Was Paul Warren present?  
 12 A. I don't recall.  
 13 Q. And who is above Paul Warren?  
 14 A. Scott Hill.  
 15 Q. Okay. And was Mr. Hill present?  
 16 A. I don't recall that either.  
 17 Q. Who else do you recall being present?  
 18 A. I don't recall specifically.  
 19 Q. And you made a statement to Dr. Greenfeld about  
 20 this concern?  
 21 MR. VIRJEE: Objection. Asked and answered.  
 22 THE WITNESS: Yes.  
 23 Q. BY MR. ROSENBAUM: What did you say?  
 24 MR. VIRJEE: Objection. Asked and answered.  
 25 THE WITNESS: I don't recall specifically, I

1 just recall that we discussed this issue.  
 2 Q. BY MR. ROSENBAUM: And what did Dr. Greenfeld  
 3 say?  
 4 MR. VIRJEE: Objection. Asked and answered.  
 5 THE WITNESS: That he shares the concern.  
 6 Q. BY MR. ROSENBAUM: And did you ask him, well,  
 7 have you expressed this concern to anyone else?  
 8 A. No.  
 9 Q. Anything in sum or substance like this?  
 10 A. No.  
 11 Q. Was there any discussion, well, why are they  
 12 doing this?  
 13 A. I don't recall specifically.  
 14 Q. What else -- generally was there discussion  
 15 about that?  
 16 MR. VIRJEE: About what?  
 17 MR. ROSENBAUM: Why are they doing this.  
 18 MR. VIRJEE: Objection. Vague and ambiguous as  
 19 to "they" and "doing this."  
 20 MS. READ SPANGLER: Can we take a short break?  
 21 MR. ROSENBAUM: No.  
 22 MS. READ SPANGLER: Well, Sarah is out and I  
 23 need to go out too. It has nothing to do with your  
 24 questioning. I just need to use the restroom.  
 25 MR. ROSENBAUM: Okay.

1 (Recess taken.)  
 2 Q. BY MR. ROSENBAUM: Beyond what you've already  
 3 told me, do you remember anything else about discussions  
 4 regarding the API?  
 5 A. No.  
 6 Q. Okay. There were also discussions about IIUSP;  
 7 is that right?  
 8 A. Yes.  
 9 Q. And they were with Dr. Greenfeld?  
 10 MR. VIRJEE: Objection. Misstates her  
 11 testimony.  
 12 MS. READ SPANGLER: Join.  
 13 MR. ROSENBAUM: I'm asking.  
 14 THE WITNESS: We've had some with him, yes.  
 15 Q. BY MR. ROSENBAUM: Okay. With who else outside  
 16 the consultants and staff, your consultants and your  
 17 staff?  
 18 A. Eleanor Clark-Thomas.  
 19 MR. VIRJEE: I'm sorry, with whom besides  
 20 Dr. Greenfeld?  
 21 MR. ROSENBAUM: The Comite unit's consultants  
 22 and staff.  
 23 MR. VIRJEE: With whom she talked about IIUSP?  
 24 THE WITNESS: Eleanor Clark-Thomas.  
 25 Q. BY MR. ROSENBAUM: And on how many occasions

1 have you discussed this with Eleanor Clark-Thomas, as  
 2 far as you can recall?  
 3 A. Maybe two.  
 4 Q. And in your unit, on how many occasions has the  
 5 subject matter of IIUSP come up?  
 6 A. A few times.  
 7 Q. Okay. And what was said?  
 8 MR. VIRJEE: In the meetings in the unit?  
 9 MR. ROSENBAUM: Correct.  
 10 THE WITNESS: Discussion about selecting  
 11 schools for review, the pros and cons of choosing  
 12 schools that were identified as IIUSP schools.  
 13 Q. BY MR. ROSENBAUM: And was any conclusion  
 14 reached by your staff?  
 15 A. Yes.  
 16 Q. What was that?  
 17 A. All things being equal, we avoid the IIUSP  
 18 schools.  
 19 Q. And why is that?  
 20 A. Because they're already receiving intervention  
 21 and assistance.  
 22 Q. Okay. Have you ever investigated how the  
 23 intervention works with respect to English learner  
 24 students in IIUSP schools?  
 25 MR. VIRJEE: Objection. Assumes facts not in

1 evidence.  
 2 MS. READ SPANGLER: And vague and ambiguous as  
 3 to the word "investigated." And join.  
 4 THE WITNESS: Just to know that their external  
 5 evaluator is supposed to be someone that has knowledge  
 6 of English learner issues.  
 7 Q. BY MR. ROSENBAUM: Do you know what the nature  
 8 of the evaluation, if any, is with respect to that?  
 9 A. No.  
 10 Q. You ever made any inquiry to find out?  
 11 A. No.  
 12 Q. Have you ever directed anybody on your staff to  
 13 find out?  
 14 A. No.  
 15 Q. Have you ever looked at any results of any of  
 16 the evaluations of IIUSP schools?  
 17 A. No.  
 18 Q. You haven't ever directed your staff to do  
 19 that?  
 20 A. No.  
 21 Q. You've had discussions with Eleanor  
 22 Clark-Thomas?  
 23 A. Yes.  
 24 Q. What were they about?  
 25 A. The same thing, the site selection and the CCR

1 process.  
 2 Q. And was the subject matter whether or not to  
 3 choose IIUSP schools?  
 4 A. Yes.  
 5 Q. And was a conclusion reached?  
 6 A. The same conclusion -- in fact, they reached it  
 7 first -- that when there's a choice, not to choose the  
 8 IIUSP school.  
 9 Q. Okay. And I think you told me you had  
 10 discussions with Dr. Greenfeld about this?  
 11 MR. VIRJEE: Objection. That misstates her  
 12 testimony.  
 13 MR. ROSENBAUM: Withdraw that question.  
 14 Q. Have you had discussions with Dr. Greenfeld  
 15 about IIUSP?  
 16 A. I don't recall specifically. I'm not sure.  
 17 Q. Okay. Have you looked to see whether or not  
 18 there is any relationship between numbers or percent of  
 19 EL students and API rankings?  
 20 MS. READ SPANGLER: Can you read back the  
 21 question?  
 22 (Record read.)  
 23 MS. READ SPANGLER: Objection. Vague and  
 24 ambiguous as to "relationship."  
 25 THE WITNESS: Not a specific study of it, but

1 we do look at it and have some sense of it.  
 2 Q. BY MR. ROSENBAUM: What's your sense?  
 3 A. Is that schools with higher numbers of English  
 4 learners tend to have lower API and SAT-9 scores.  
 5 Q. Okay. And have you directed any one of your  
 6 staff to do a systematic study?  
 7 A. No.  
 8 Q. Have you done a systematic study?  
 9 A. No.  
 10 MR. VIRJEE: Objection. Asked and answered.  
 11 Q. BY MR. ROSENBAUM: Do you have an opinion as to  
 12 why that is?  
 13 MR. VIRJEE: Objection. Calls for speculation.  
 14 Lacks foundation. Calls for an opinion beyond the  
 15 expertise of this witness.  
 16 THE WITNESS: Yes.  
 17 Q. BY MR. ROSENBAUM: Why is that?  
 18 A. Because the students don't speak the language  
 19 of the test in many cases.  
 20 Q. Any other reasons?  
 21 A. Possibly the instructional program that they've  
 22 had. If they're involved in a catch-up kind of a  
 23 program, that would be a factor as well.  
 24 Q. Okay. Have you undertaken an inquiry or  
 25 investigation on that subject matter to look at those

1 instructional programs for catch-up?  
 2 A. I don't understand the question.  
 3 MR. VIRJEE: With respect to API scores, or  
 4 just generally? I think that's the problem. You just  
 5 jumped to a different topic.  
 6 Q. BY MR. ROSENBAUM: If I understood you  
 7 correctly, what you said to me was that -- I don't want  
 8 to mischaracterize it. But there appeared to be some  
 9 relationship between API ranking and numbers of EL  
 10 students. Did I understand you correctly?  
 11 A. Correct. Yes.  
 12 Q. And I thought you said to me that one of the  
 13 things that occurred to you was -- that maybe one of the  
 14 causes was the nature of the instructional program with  
 15 respect to substantive academic subjects. Am I  
 16 understanding you right?  
 17 A. Yes.  
 18 MR. VIRJEE: She said for the catch-up  
 19 programs.  
 20 MR. ROSENBAUM: I know.  
 21 THE WITNESS: He said it better.  
 22 Q. BY MR. ROSENBAUM: And my question to you,  
 23 has -- so far as you know, has anyone in your unit  
 24 looked into the instructional programs for the purposes  
 25 that you're talking about, to see if they influenced the

1 API rankings?  
 2 A. We only look at the instructional programs of  
 3 the school districts that we're working with, so not as  
 4 a study, no.  
 5 Q. Now, as to the instructional programs of the  
 6 schools that you're look at, is one of the matters that  
 7 you look at to see the quality of the instructional  
 8 program with respect to the substantive academic  
 9 matters?  
 10 MR. VIRJEE: Objection. Vague and ambiguous as  
 11 to "instructional program." Are you again talking about  
 12 EL students now, or generally at the school, or what?  
 13 MR. ROSENBAUM: That EL students receive.  
 14 THE WITNESS: Yes.  
 15 Q. BY MR. ROSENBAUM: And have you formed any  
 16 conclusions about the quality of the instructional  
 17 materials that the schools have?  
 18 MR. VIRJEE: Objection.  
 19 MS. READ SPANGLER: Materials or --  
 20 MR. ROSENBAUM: I'm sorry, the instructional  
 21 programs at those school with respect to the substantive  
 22 academic matters.  
 23 MR. VIRJEE: Objection. Vague as to time.  
 24 Compound with respect to which district, what time  
 25 frame.

1 THE WITNESS: We form conclusions individually  
 2 with each district. We haven't done a summary.  
 3 Q. BY MR. ROSENBAUM: How do you evaluate that?  
 4 How do you look into that?  
 5 A. We look into that using our EL monitoring  
 6 instrument, and then looking at the student results at  
 7 the individual districts.  
 8 Q. In your experience, are students catching up?  
 9 MR. VIRJEE: Objection. Vague and ambiguous.  
 10 Overbroad. Compound as to any particular student at any  
 11 particular school in any particular district at any  
 12 particular time.  
 13 MR. ROSENBAUM: Go ahead.  
 14 MS. READ SPANGLER: Join.  
 15 MR. VIRJEE: Are there any students catching up  
 16 anywhere?  
 17 MR. ROSENBAUM: You can ask your own questions.  
 18 Go ahead.  
 19 THE WITNESS: We don't have enough data to make  
 20 a definitive statement about that at this time.  
 21 Q. BY MR. ROSENBAUM: What sort of data would you  
 22 need?  
 23 A. Data shows that students, after a certain  
 24 period of time, actually reach grade level.  
 25 Q. Is there any data on that, so far as you know?

1 A. Individual districts are collecting that kind  
 2 of data, but I think not conclusive data that I'm aware  
 3 of.  
 4 Q. Okay. Do you know if there are -- Proposition  
 5 227 took effect when?  
 6 A. 1998.  
 7 Q. Okay. That was the first year, '98, '99?  
 8 A. Yes.  
 9 Q. And if I understand you correctly, what you're  
 10 saying is that individual districts are collecting data  
 11 to see whether or not students who are in structured  
 12 immersion program are able to catch up; is that right?  
 13 A. Yes.  
 14 Q. And do you know if the State is undertaking any  
 15 investigations to determine whether or not students are  
 16 catching up?  
 17 MR. VIRJEE: Other than what she's been  
 18 testifying to all day?  
 19 MR. ROSENBAUM: Go ahead.  
 20 THE WITNESS: I'm not aware of a specific study  
 21 or data collection that they're doing.  
 22 Q. BY MR. ROSENBAUM: Okay. So far as you know,  
 23 is anybody in the State, state agencies looking at what  
 24 are the basic essentials that EL students need to catch  
 25 up?

1 MS. READ SPANGLER: Objection. Vague and  
 2 ambiguous as to "basic essentials."  
 3 MR. VIRJEE: Also vague and ambiguous as to  
 4 "state." Also, she's already been testifying to that  
 5 all day.  
 6 MR. ROSENBAUM: Go ahead.  
 7 THE WITNESS: I don't know.  
 8 Q. BY MR. ROSENBAUM: You're not aware of any?  
 9 A. No.  
 10 Q. Let's talk about teacher credentialing for a  
 11 moment. Put aside BCLAD, CLAD, 1969 credentials. Okay?  
 12 I just want to look at -- teachers have to have other  
 13 credentials as well; is that right?  
 14 A. Yes.  
 15 Q. And what's your understanding of what a  
 16 fully-credentialed teacher would be? And putting aside  
 17 CLAD, BCLAD and 1969 credentials.  
 18 MR. VIRJEE: Objection. Vague and ambiguous as  
 19 to "fully credentialed."  
 20 MS. READ SPANGLER: Join.  
 21 THE WITNESS: A teacher who holds an  
 22 appropriate California teaching credential for their  
 23 assignment.  
 24 Q. BY MR. ROSENBAUM: You have one of those  
 25 credentials; is that right?

1 A. Yes.  
 2 Q. And are you familiar with the phrase "emergency  
 3 credential"?  
 4 A. Yes.  
 5 Q. What's your understanding of what that means?  
 6 A. It's a teacher who has a credential that allows  
 7 them to teach, but they haven't completed all the  
 8 requirements yet for the full credential, and they  
 9 typically have a time frame by which they need to  
 10 complete it.  
 11 Q. Okay. Now does your unit -- is your unit  
 12 concerned with whether or not EL students have teachers  
 13 who are fully credentialed, as you've defined it?  
 14 I'm not talking about BCLAD, I'm not talking  
 15 about CLAD, I'm not talking about 1969. Those  
 16 credentials, BCLAD, CLAD and 1969, they're on top of or  
 17 in addition to the other credentials; isn't that right?  
 18 A. That's right.  
 19 Q. Does your office look into whether or not EL  
 20 students have instructors who are fully credentialed as  
 21 you've been talking to me about it?  
 22 MS. READ SPANGLER: Didn't we talk about this  
 23 this morning?  
 24 MR. ROSENBAUM: No.  
 25 THE WITNESS: We look at in terms of the CLAD

1 and the BCLAD and in training. They don't have the CLAD  
 2 or BCLAD without a full authorization. You have to have  
 3 that as a precursor to getting the CLAD or the BCLAD or  
 4 the SB-1969.  
 5 Q. BY MR. ROSENBAUM: Maybe you just answered it,  
 6 and if you have, I apologize to you. But does your  
 7 office collect data on the number of  
 8 emergency-credentialed teachers that EL students have?  
 9 A. No.  
 10 MR. VIRJEE: Objection. Asked and answered.  
 11 She just answered the question.  
 12 THE WITNESS: Not specifically.  
 13 Q. BY MR. ROSENBAUM: Okay. And your reports, the  
 14 district reports or the Comite, the annual reports to  
 15 the court, does it say anything about the numbers of  
 16 emergency-credentialed teachers or whether or not EL  
 17 students have emergency-credentialed teachers?  
 18 A. The Comite report, no, not specifically.  
 19 Q. Generally does it?  
 20 MR. VIRJEE: Objection. Calls for speculation  
 21 as to whether it generally references that. Vague and  
 22 ambiguous as to general.  
 23 THE WITNESS: The annual report asks for a list  
 24 of districts and the specific items that are found in  
 25 noncompliance. Two of those potential items deal with

1 staffing, so in a sense the annual report lists  
 2 districts that have staffing issues out of compliance.  
 3 Q. BY MR. ROSENBAUM: And do those staffing issues  
 4 deal with BCLAD, CLAD, 1969 credentials?  
 5 A. Yes, they do.  
 6 Q. So they don't -- there's nothing in the Comite  
 7 report, so far as you know, that deals with whether or  
 8 not EL students are being taught by  
 9 emergency-credentialed teachers?  
 10 MR. VIRJEE: Objection. Asked and answered.  
 11 THE WITNESS: Not as far as I know.  
 12 Q. BY MR. ROSENBAUM: And you review and help  
 13 prepare those reports?  
 14 A. Yes, I do.  
 15 Q. Now, to your knowledge, has anyone in the state  
 16 of California, state agencies -- withdraw that.  
 17 To your knowledge, is there any state office  
 18 that is compiling data on whether or not EL students  
 19 have emergency-credentialed teachers?  
 20 MR. VIRJEE: Objection. Vague and ambiguous.  
 21 Also calls for speculation.  
 22 THE WITNESS: Not that I'm aware of.  
 23 Q. BY MR. ROSENBAUM: How about county boards of  
 24 education, are any county boards of education compiling  
 25 that information?

1 MR. VIRJEE: Objection. Calls for speculation.  
 2 Lacks foundation.  
 3 MS. READ SPANGLER: Join.  
 4 THE WITNESS: I don't know.  
 5 Q. BY MR. ROSENBAUM: Do you know if local boards  
 6 of education are doing that?  
 7 A. I don't know.  
 8 MR. VIRJEE: Calls for speculation. Lacks  
 9 foundation. Also vague and ambiguous as to collecting  
 10 information.  
 11 Q. BY MR. ROSENBAUM: And you've never sought that  
 12 information; isn't that right? You've never sought  
 13 information as to whether or not EL students are being  
 14 taught by emergency-credentialed teachers?  
 15 A. Yes, we haven't specifically sought that.  
 16 Q. When you say "we," you mean your unit?  
 17 A. Our unit.  
 18 Q. That's throughout your entire tenure?  
 19 A. Yes.  
 20 Q. Have you ever heard any discussion in any  
 21 meeting you've ever attended about the subject matter of  
 22 whether or not EL students are being taught by  
 23 emergency-credentialed teachers?  
 24 A. Yes.  
 25 Q. What meeting or meetings was that?

1 A. In staff meetings we've had that discussion,  
 2 and also outside of staff meetings we've also sometimes  
 3 had that discussion.  
 4 Q. When you say "staff meetings," you're talking  
 5 about your staff?  
 6 A. Our unit, yes.  
 7 Q. Now, do you sit on any other meetings regularly  
 8 besides your own unit?  
 9 MR. VIRJEE: Objection. Vague and ambiguous.  
 10 MR. ROSENBAUM: Sit on a meeting is a pretty  
 11 poor phrase.  
 12 Q. Do you attend any meetings besides your staff  
 13 meetings on a regular basis?  
 14 MR. VIRJEE: Objection. Vague and ambiguous as  
 15 to "meetings."  
 16 THE WITNESS: Yes, have managers meetings in  
 17 our division. I attend those. And there's also a group  
 18 called the EL cross-branch team at the Department of  
 19 Education, which I used to sit on that as well.  
 20 Q. BY MR. ROSENBAUM: Okay. Now, your division is  
 21 that what you said?  
 22 A. Yes.  
 23 Q. And that's headed by Dr. Greenfeld?  
 24 A. Yes.  
 25 Q. Who attends those meetings?

1 A. The managers of each of the units.  
 2 Q. Can you give me the names of the people who you  
 3 know?  
 4 A. It's Eleanor Clark-Thomas.  
 5 Q. Yes.  
 6 A. Keric Ashley.  
 7 Q. Yes.  
 8 A. Howie Delaine.  
 9 Q. Who is Ms. Delaine?  
 10 A. It's a she. Howie Delaine. She's the manager  
 11 of the complaint units.  
 12 Q. How do you spell her first name?  
 13 A. H-o-w-i-e.  
 14 Q. Cool.  
 15 A. Laura Wagner.  
 16 Q. Okay. Who is Laura Wagner?  
 17 A. She's the manager of another unit. I forget  
 18 their name. They work with the IIUSP.  
 19 Q. Who else?  
 20 A. Let's see. Well, me. There's one more. I'm  
 21 forgetting one. There's one more.  
 22 Q. And how frequently does this group meet, if it  
 23 meets regularly at all?  
 24 A. Probably about monthly also.  
 25 Q. In Dr. Greenfeld's office?

1 A. Usually in a conference room.  
 2 Q. Okay. And it's chaired by Dr. Greenfeld?  
 3 A. Yes.  
 4 MR. VIRJEE: It's chaired, is that what you  
 5 said?  
 6 MR. ROSENBAUM: Yes.  
 7 MR. VIRJEE: Just for the record, she's already  
 8 testified Greenfeld is not there anymore. Your  
 9 questions are all current, and I don't want her --  
 10 MR. ROSENBAUM: Fair enough. That's fair.  
 11 Q. Who is chairing those meetings now?  
 12 A. We haven't had one yet. Our new division  
 13 director, Marsha Bedwell, will be.  
 14 Q. And in the meetings -- strike that.  
 15 What's the EL cross-branch team?  
 16 A. That's a group that's made up with people from  
 17 different units and different divisions who have a  
 18 particular interest in English learner issues.  
 19 Q. Okay. And who attends those meetings?  
 20 MR. VIRJEE: Currently?  
 21 MR. ROSENBAUM: Yes.  
 22 MR. VIRJEE: I think she's testified that she's  
 23 not currently sitting on the meeting. That calls for  
 24 speculation.  
 25 Q. BY MR. ROSENBAUM: Who did attend those



1 meetings?

2 A. Somebody from the assessment office, somebody

3 from the language policy and leadership office, somebody

4 from our -- well, I did, and also Keric Ashley has in

5 the past, and a couple of other, you know, folks in the

6 Department of Education.

7 Q. And who has chaired those meetings?

8 A. The last time I was there it was Paula Jacobs,

9 who is a consultant in the language policy and

10 leadership office.

11 Q. Now, as to the meetings that were chaired by

12 Dr. Greenfeld when he was there, if I understood you

13 correctly, there were discussions about EL students

14 being taught by emergency-credentialed teachers, am I

15 right?

16 A. We've had discussion of that, yes.

17 Q. On more than one occasion?

18 A. More in our staff meetings and amongst our

19 staff, but, yes.

20 Q. In your staff meetings, what's been said about

21 that?

22 A. Just the general observation of consultants

23 that it's not unusual for schools that have high English

24 learner enrollments to also have a high number of

25 emergency-credentialed teachers. It's not always the

1 case but it frequently is.

2 Q. To your knowledge, has there been a systematic

3 study of that?

4 A. I'm not aware of that.

5 Q. Your unit hasn't done that?

6 A. No.

7 Q. You've never directed anyone to do that?

8 A. No.

9 Q. So far as you know, has anyone in the state

10 been directed to do that?

11 A. Not that I'm aware of.

12 Q. How about county boards of education, do you

13 know if they've been directed to look at that?

14 A. No.

15 Q. Or local boards of education?

16 A. I don't know.

17 Q. Okay. And was there any discussion about what

18 the consequences of that would be?

19 MR. VIRJEE: Objection. Calls for speculation.

20 Vague and ambiguous as to "consequences."

21 MS. READ SPANGLER: Join.

22 THE WITNESS: Concerned about teachers with

23 less experience teaching kids that have substantial

24 special kinds of needs.

25 Q. BY MR. ROSENBAUM: Is that your concern?

1 A. Yes.

2 Q. And be more specific about what your concern

3 is.

4 A. My concern is when English learners in schools

5 and districts with a large numbers of English learners

6 are not able to attract and keep teachers that are fully

7 authorized and have the maximum amount of experience and

8 that, in fact, sometimes they have emergency teachers

9 who are teaching them.

10 Q. Okay. And has that been expressed by other

11 persons in your meetings?

12 A. Yes.

13 Q. Your consultants?

14 A. Yes.

15 Q. Anyone disagree with that in any of these

16 meetings?

17 A. No.

18 Q. To your knowledge, is there any agency or

19 office in the state that is addressing that question?

20 A. I don't know.

21 MR. VIRJEE: Objection. Vague and ambiguous as

22 to "addressing."

23 Q. BY MR. ROSENBAUM: You're not aware of any?

24 A. No.

25 Q. Okay. Now, in the meetings that were formally

1 chaired by Dr. Greenfeld, did the same subject matter

2 come up?

3 A. I think it has. I don't specifically remember

4 it.

5 Q. As best you can recall, what was said?

6 A. I don't recall. I don't recall.

7 Q. Do you ever remember anybody at any time

8 disagreeing with the proposition you gave me regarding

9 the consequences of English learners being taught by

10 emergency-credentialed teachers?

11 A. No.

12 Q. Did this subject matter come up in the EL

13 cross-branch team meetings?

14 A. I don't remember it specifically. I don't

15 recall.

16 Q. Okay. Your Comite reports, have they ever

17 discussed the impact of English learners being taught by

18 emergency-credentialed teachers?

19 MR. VIRJEE: Objection. Asked and answered.

20 THE WITNESS: No.

21 Q. BY MR. ROSENBAUM: And you've never been

22 directed to include that?

23 MR. VIRJEE: Objection. Asked and answered.

24 THE WITNESS: No.

25 Q. BY MR. ROSENBAUM: You are involved -- strike

1 that.  
 2 When your unit goes into a school, a Comite  
 3 school, do you seek information regarding the  
 4 credentialing status of teachers?  
 5 MR. VIRJEE: Objection. Asked and answered.  
 6 You've already asked her what do you look at,  
 7 do you look at anything besides CLAD, BCLAD, 1969, do  
 8 you look at whether they're provisional. You've been  
 9 through all this already. You're just repeating  
 10 yourself over and over again.  
 11 Q. BY MR. ROSENBAUM: Do you seek that  
 12 information?  
 13 A. Yes.  
 14 Q. Okay. Now, the information that you get, do  
 15 you know whether or not there's any other office in the  
 16 state that obtains that information?  
 17 A. I don't know.  
 18 Q. Okay. You're not aware of any other office  
 19 receiving that?  
 20 A. No.  
 21 Q. Okay. The language census, does that include  
 22 that information?  
 23 A. No, not specifically.  
 24 Q. Okay. To your knowledge, has there ever been  
 25 any discussion about a state agency collecting that

1 information?  
 2 MR. VIRJEE: Collecting what information?  
 3 MR. ROSENBAUM: Regarding the degree to which  
 4 EL students are taught by emergency-credentialed  
 5 teachers.  
 6 MR. VIRJEE: Objection. Asked and answered.  
 7 THE WITNESS: Not that I recall.  
 8 Q. BY MR. ROSENBAUM: Okay. Do you work with  
 9 county boards of education?  
 10 MR. VIRJEE: Objection. Vague and ambiguous as  
 11 to "work with."  
 12 THE WITNESS: Very indirectly.  
 13 Q. BY MR. ROSENBAUM: How is that?  
 14 A. We have conversations with some of their folks  
 15 on occasion about specific districts in their counties,  
 16 but that's not very frequent.  
 17 Q. Do you know whether or not county boards of  
 18 education have any responsibilities with respect to EL  
 19 students?  
 20 MR. VIRJEE: Objection. Calls for speculation.  
 21 Lacks foundation. Also vague and ambiguous as to  
 22 "responsibilities for EL students."  
 23 THE WITNESS: And I don't know.  
 24 Q. BY MR. ROSENBAUM: Okay. Have you ever heard  
 25 or been at any meeting with respect to your duties and

1 responsibilities where the subject of county board of  
 2 education dealing with EL or EL issues has come up?  
 3 MR. VIRJEE: Objection. Assumes facts not in  
 4 evidence. Assumes they deal with the issue.  
 5 THE WITNESS: Yes.  
 6 Q. BY MR. ROSENBAUM: Okay. And what meetings  
 7 were those?  
 8 A. There's a meeting regarding specific districts  
 9 in Southern California and one specific district in  
 10 Northern California where we have had conversations with  
 11 representatives from the county about how the county can  
 12 assist those districts, so two such conversations.  
 13 Q. Okay. What was said in those discussions?  
 14 MR. VIRJEE: Objection. Compound.  
 15 THE WITNESS: In one there was an agreement  
 16 that a consultant from the county was going to be  
 17 working with the district and submitting reports to us  
 18 every other month, and that's been happening. And the  
 19 other one was more an exploration of how the county  
 20 might assist the other district.  
 21 Q. BY MR. ROSENBAUM: Okay. Does your office  
 22 collect information as to the numbers of EL students who  
 23 are taught by teachers who are emergency credentialed --  
 24 strike that.  
 25 You told me you can't get a BCLAD or a CLAD or

1 a 1969 unless you first have the other credentials; is  
 2 that right?  
 3 A. Right.  
 4 MR. VIRJEE: Her testimony speaks for itself.  
 5 Q. BY MR. ROSENBAUM: Okay. You talked to me  
 6 about the criteria that you use in selecting schools?  
 7 A. Yes.  
 8 MR. VIRJEE: Objection. The testimony speaks  
 9 for itself.  
 10 Q. BY MR. ROSENBAUM: And in selecting schools,  
 11 one of the factors you gave to me was a history of  
 12 noncompliance?  
 13 MR. VIRJEE: Objection. Asked and answered.  
 14 Her testimony speaks for itself.  
 15 THE WITNESS: In selecting districts, yes.  
 16 Q. BY MR. ROSENBAUM: Okay. And history of  
 17 noncompliance, when you say that, over what period of  
 18 time?  
 19 A. Initially over the last CCR, which would have  
 20 been held the year before they're selected, and then we  
 21 also look at the CCR prior to that one just to see if  
 22 there's a pattern.  
 23 Q. Would it go all the way back to 1985?  
 24 A. '85?  
 25 Q. Yeah.

1 A. Not usually, no.  
 2 Q. How far back would it usually go?  
 3 A. One year back and four years prior to that, so  
 4 five years. Initially not beyond that, on occasion  
 5 maybe.  
 6 Q. Sitting here today, are there districts which,  
 7 in your mind, you consider as having a history of  
 8 noncompliance?  
 9 A. Oh, yes.  
 10 Q. And how many districts would that be?  
 11 MR. VIRJEE: Objection. Vague and ambiguous as  
 12 to "history of noncompliance."  
 13 THE WITNESS: We have 54 Comite districts right  
 14 now. They all have noncompliant issues that have been  
 15 noncompliant for some time. 30 of those have issues  
 16 noncompliant for three years or more.  
 17 Q. BY MR. ROSENBAUM: Okay. And when you say 54  
 18 Comite districts, tell me what you mean by that phrase.  
 19 A. Districts selected for the Comite follow-up  
 20 review.  
 21 Q. And the 24 districts, how long have they been  
 22 noncompliant?  
 23 MR. VIRJEE: Objection. Compound.  
 24 Q. BY MR. ROSENBAUM: What's the range?  
 25 MS. READ SPANGLER: Less than three years.

1 MR. VIRJEE: Zero to three.  
 2 Q. BY MR. ROSENBAUM: It wouldn't be zero, would  
 3 it?  
 4 A. No, most of them are maybe one year or two  
 5 years.  
 6 Q. Okay. And of the 24 districts we've just been  
 7 talking about, have any of them been noncompliant prior  
 8 to this most recent history of noncompliance?  
 9 MR. VIRJEE: Objection. Calls for speculation.  
 10 Lacks foundation.  
 11 MS. READ SPANGLER: Join.  
 12 If you know.  
 13 THE WITNESS: Some of them have findings from  
 14 prior CCRs, yes.  
 15 Q. BY MR. ROSENBAUM: Okay. And do you know how  
 16 many of those 24?  
 17 A. No.  
 18 Q. Is that information maintained anywhere?  
 19 A. Yes.  
 20 Q. Where is that maintained?  
 21 A. In a computer database that the CCR unit keeps.  
 22 Q. Do you separately keep that information?  
 23 A. No.  
 24 Q. And the 30 noncompliant districts that have  
 25 been there three years or more, have any of them been

1 noncompliant prior to this most recent period?  
 2 MR. VIRJEE: What most recent period?  
 3 MR. ROSENBAUM: Up to three years or more.  
 4 MS. READ SPANGLER: What?  
 5 MR. VIRJEE: That doesn't make any sense.  
 6 Q. BY MR. ROSENBAUM: You understand what I mean,  
 7 right?  
 8 A. Yeah, and I'm not sure.  
 9 Q. Okay. There are 30 districts that have been  
 10 noncompliant for three years or more; is that right?  
 11 A. Yes.  
 12 Q. What's the range here, three to how many years?  
 13 A. Three to ten.  
 14 Q. Possibly more than ten?  
 15 A. I think ten is the most.  
 16 Q. And to the best of your recollection, how many  
 17 of them are ten?  
 18 A. Three.  
 19 Q. Which districts are those?  
 20 A. Oakland, Inglewood, Compton.  
 21 Q. Okay. And we're talking about at the current  
 22 time they are noncompliant; is that correct?  
 23 A. That's correct.  
 24 Q. And you told me earlier those are on three or  
 25 more items?

1 A. Not necessarily, but in this case, yes.  
 2 Q. How many in Oakland at the current time?  
 3 MR. VIRJEE: How many items are they not in  
 4 compliance with currently?  
 5 MR. ROSENBAUM: Yes.  
 6 THE WITNESS: I don't know currently.  
 7 Q. BY MR. ROSENBAUM: Can you give me a ballpark?  
 8 MR. VIRJEE: You don't have to guess or  
 9 speculate.  
 10 THE WITNESS: I can guess.  
 11 MR. VIRJEE: You shouldn't guess.  
 12 MS. READ SPANGLER: If you have an estimate,  
 13 you can do that, but if you can't even estimate, then  
 14 don't guess.  
 15 THE WITNESS: I would estimate 10 or 12.  
 16 Q. BY MR. ROSENBAUM: Okay. And what's the basis  
 17 of that estimate?  
 18 A. That I've looked at their reports.  
 19 Q. You spend a lot of time thinking about Oakland?  
 20 A. Yes, I do.  
 21 Q. Okay. How about Inglewood, how many items?  
 22 MS. READ SPANGLER: Currently?  
 23 MR. ROSENBAUM: Yes.  
 24 THE WITNESS: I would say about the same. I  
 25 would say about the same for all three, and that's just

1 an estimate.  
 2 Q. BY MR. ROSENBAUM: Okay. Last year how many  
 3 items was Oakland, about the same?  
 4 A. The same.  
 5 Q. And the year before?  
 6 A. The same.  
 7 Q. And the year before?  
 8 A. I'm not sure.  
 9 Q. Okay. Do you keep that information in your  
 10 office?  
 11 A. Yes.  
 12 Q. Where is it kept?  
 13 A. We have our Comite reports, a Comite file for  
 14 each district.  
 15 Q. Okay. And Inglewood last year?  
 16 A. Would be the same.  
 17 Q. And the year before?  
 18 A. Also the same.  
 19 Q. Okay. And Compton?  
 20 A. Same.  
 21 Q. Going back?  
 22 A. I would say a couple of years, and I don't  
 23 know. I don't have information in my head before that.  
 24 Q. Okay. Oakland, Inglewood and Compton ten  
 25 years?

1 A. Yes.  
 2 Q. Any other ten years?  
 3 A. I don't think so.  
 4 Q. What about nine years?  
 5 A. I don't think so.  
 6 Q. Eight years?  
 7 A. Possibly. I'm not sure.  
 8 Q. Are there certain districts that come to mind?  
 9 A. Some do, but I wouldn't want to speculate on  
 10 them.  
 11 Q. Okay. Now I want to understand some  
 12 terminology here. When you say a district is  
 13 noncompliant, what does that mean?  
 14 A. Compliance is, in our view, a district issue,  
 15 so findings are made by visiting school sites, but the  
 16 school site is considered to be representative of the  
 17 district, so if the district is noncompliant, the  
 18 district is responsible to deal with the noncompliant  
 19 issues.  
 20 Q. Are there schools -- forget about Oakland,  
 21 Inglewood and Compton. But are there schools for which  
 22 there has been noncompliance more than 10 years? That  
 23 question was muddled.  
 24 Are there schools outside of Oakland, Inglewood  
 25 and Compton where there have been five years of

1 noncompliance?  
 2 MR. VIRJEE: Objection. Calls for speculation.  
 3 Lacks foundation, and also vague and ambiguous as to  
 4 "noncompliance," because she said compliance is a  
 5 district issue. So I don't know how she's supposed to  
 6 answer that.  
 7 MS. READ SPANGLER: Join.  
 8 THE WITNESS: We don't keep school level data  
 9 unless you read each report.  
 10 Q. BY MR. ROSENBAUM: What do you mean?  
 11 A. Well, the report we talked about, the schools  
 12 we visited, but in our data system we don't list the  
 13 schools, it's the district's issues.  
 14 Q. To your knowledge, does anyone in the state  
 15 keep school data as to compliance?  
 16 MR. VIRJEE: Objection. Vague and ambiguous.  
 17 THE WITNESS: I'm not sure.  
 18 Q. BY MR. ROSENBAUM: Not that you're aware of  
 19 any?  
 20 A. That's right, I'm not.  
 21 Q. Okay. Now, do you know how many students in  
 22 Oakland at the current time -- how many EL students in  
 23 Oakland at the current time are affected by this  
 24 noncompliance?  
 25 MR. VIRJEE: Objection. Vague and ambiguous as

1 to "affected."  
 2 THE WITNESS: I'm not sure.  
 3 Q. BY MR. ROSENBAUM: Is it your assumption that  
 4 it is every EL student in Oakland?  
 5 A. It wouldn't necessarily be every EL student.  
 6 Q. But is that the working assumption of your  
 7 unit?  
 8 MR. VIRJEE: Assumes facts not in evidence.  
 9 Assumes that there is an assumption at all.  
 10 MS. READ SPANGLER: Uh-huh. Join.  
 11 THE WITNESS: I wouldn't say definitely  
 12 everyone. I'd say potentially affects everyone.  
 13 Q. BY MR. ROSENBAUM: Does your unit ever make an  
 14 investigation to determine how many EL students in  
 15 Oakland are affected by the items of noncompliance?  
 16 MR. VIRJEE: Objection. Vague and ambiguous as  
 17 to "affected."  
 18 MS. READ SPANGLER: Join.  
 19 THE WITNESS: I don't exactly understand.  
 20 Q. BY MR. ROSENBAUM: Okay. What I want to --  
 21 your report identifies items of noncompliance; is that  
 22 right?  
 23 A. That's right.  
 24 Q. And they come from your monitoring worksheet;  
 25 is that right?

1 A. Yes.  
 2 Q. Okay. Does anyone in your unit try to figure  
 3 out how many students are affected by those  
 4 noncompliance items?  
 5 MR. VIRJEE: What's the total number of  
 6 students within the district that are affected by any  
 7 particular issue of compliance?  
 8 MR. ROSENBAUM: Exactly.  
 9 MR. VIRJEE: At any particular time?  
 10 THE WITNESS: Not in that way.  
 11 Q. BY MR. ROSENBAUM: Okay. In any way?  
 12 A. No. I think I'm not understanding well.  
 13 Q. This is what I'm trying to understand. The  
 14 report comes back that Oakland is noncompliant with  
 15 respect to 10 or 12 items; is that right?  
 16 A. Yes.  
 17 Q. And you've already told me that that's at a  
 18 district level?  
 19 A. Yes.  
 20 Q. Now what I'm trying to figure out is does  
 21 anyone try to figure out what that means in terms of the  
 22 numbers of students who are affected by noncompliance  
 23 with respect to each of those items?  
 24 A. Not specifically. We work with the districts  
 25 to resolve those items to impact all of their students,

1 Q. Okay. Is that part of your job, that you  
 2 review each of the reports?  
 3 A. Yes, it is.  
 4 Q. And for what purpose do you conduct those  
 5 reviews?  
 6 A. Well, I review the reports to make sure that  
 7 they have the right tone and adequately express the  
 8 findings that the consultant has made, and I review them  
 9 to make sure that they're factual and hopefully not just  
 10 opinion, and I write some of the reports on the ones  
 11 that I do as well.  
 12 Q. Okay. So you are also an editor, is that a  
 13 fair comment?  
 14 A. I'm not the main editor, but, yes, I make edits  
 15 as well.  
 16 Q. And you review the Oakland, Inglewood and  
 17 Compton reports?  
 18 MR. VIRJEE: Currently?  
 19 MR. ROSENBAUM: Currently.  
 20 THE WITNESS: Yes.  
 21 Q. BY MR. ROSENBAUM: I want to put aside the EL  
 22 questions for a moment. To your knowledge, does anyone  
 23 look at those schools, the schools that -- strike  
 24 that -- the districts you've identified for purposes to  
 25 see whether or not there is overcrowding?

1 but we haven't tried to go figure out which ones are  
 2 affected. We assume it's most of them.  
 3 Q. Or the number of classrooms?  
 4 A. No. No.  
 5 Q. And that's true with respect to every district;  
 6 is that right?  
 7 A. Yes.  
 8 Q. Now, the items for Oakland, Inglewood and  
 9 Compton, you've worked on the Oakland matter, haven't  
 10 you?  
 11 A. Yes.  
 12 Q. For how many years?  
 13 A. About a year and a half.  
 14 Q. Okay. And did you work on the Oakland matter  
 15 before that period of time?  
 16 A. No.  
 17 Q. How about Inglewood, did you personally work on  
 18 that?  
 19 A. I did for a short while.  
 20 Q. When was that?  
 21 A. Probably a year and a half ago, right before.  
 22 Q. How about Compton?  
 23 A. Never personally.  
 24 Q. Do you review the reports about Oakland?  
 25 A. Yes.

1 MR. VIRJEE: Objection. Calls for speculation.  
 2 Lacks foundation. The only testimony she's given is  
 3 that she deals with EL issues, not with any other  
 4 issues.  
 5 MS. READ SPANGLER: Join.  
 6 THE WITNESS: And I don't know.  
 7 Q. BY MR. ROSENBAUM: Okay. Or with respect to  
 8 the state of facilities?  
 9 MR. VIRJEE: Same objection. She deals with EL  
 10 issues. There's no testimony or foundation laid that  
 11 she deals with any other issues.  
 12 THE WITNESS: I don't know.  
 13 Q. BY MR. ROSENBAUM: You're not aware of any?  
 14 A. No.  
 15 Q. Or whether or not those students have textbooks  
 16 in their classes?  
 17 MR. VIRJEE: Objection. Lacks foundation.  
 18 Calls for speculation. She deals only with EL issues.  
 19 There's been no foundation laid she deals with any other  
 20 issues.  
 21 THE WITNESS: I don't know.  
 22 Q. BY MR. ROSENBAUM: Okay. You're not aware of  
 23 any; is that right?  
 24 A. That's right.  
 25 Q. Okay. Has someone from your unit visited every

1 school in Oakland?  
 2 A. No.  
 3 Q. What percent of the schools?  
 4 MR. VIRJEE: Objection. Calls for speculation.  
 5 MS. READ SPANGLER: Join.  
 6 MR. ROSENBAUM: If you know.  
 7 THE WITNESS: I don't know percentage. We've  
 8 been in 22 schools in the last year and a half.  
 9 Q. BY MR. ROSENBAUM: And do you know if before  
 10 that -- do you know how many schools there are in the  
 11 Oakland school district?  
 12 A. I don't recall. I don't recall.  
 13 Q. What's your best estimate?  
 14 A. Over 100.  
 15 Q. Okay. And do you know how many were  
 16 elementary, how many were middle and how many were high  
 17 school of the 22 you looked at?  
 18 A. Mostly elementary. Probably three-fourths were  
 19 elementary. One visit was devoted to elementary and the  
 20 other visit included all, so mostly elementary.  
 21 Q. Do you know how many high schools, if any?  
 22 A. Been to two.  
 23 Q. Two of the 22?  
 24 A. Yes.  
 25 Q. Okay. And how many were middle?

1 A. Don't recall specifically.  
 2 Q. Okay. Did your unit find in Oakland any  
 3 schools which had zero items of noncompliance?  
 4 MR. VIRJEE: For EL purposes?  
 5 MR. ROSENBAUM: Yes.  
 6 THE WITNESS: We found one school substantially  
 7 in compliance. I don't recall if it had zero. It might  
 8 have had one or two items. One school we found was  
 9 pretty compliant.  
 10 MR. ROSENBAUM: Okay.  
 11 THE WITNESS: I'd have to reread the report to  
 12 remember. It may have had one or two issues.  
 13 Q. BY MR. ROSENBAUM: And how about the other 21,  
 14 what was the range?  
 15 A. Many issues.  
 16 Q. When you say "many," what do you mean by that?  
 17 A. I would say five or more at least.  
 18 Q. Okay. Was one of those issues whether or not  
 19 they had sufficient teachers qualified to teach the  
 20 instructional materials?  
 21 MR. VIRJEE: Objection. Vague and ambiguous as  
 22 to the "instructional materials."  
 23 Are you talking about EL issues?  
 24 MR. ROSENBAUM: Yes.  
 25 THE WITNESS: That is a finding in Oakland,

1 yes.  
 2 Q. BY MR. ROSENBAUM: And has that been a finding  
 3 for each of the ten to twelve years?  
 4 A. I'm not sure.  
 5 MR. VIRJEE: Objection. Calls for speculation.  
 6 Lacks foundation.  
 7 Q. BY MR. ROSENBAUM: What about last year?  
 8 A. Yes.  
 9 Q. And the year before?  
 10 A. Not sure.  
 11 Q. Okay. And what about Inglewood, did you find  
 12 any schools in Inglewood that had zero items of  
 13 noncompliance?  
 14 A. No.  
 15 Q. How many schools did you look at in Inglewood?  
 16 A. Not as many. I don't recall specifically.  
 17 Q. Do you know what percent of the total number of  
 18 schools?  
 19 MR. VIRJEE: That she looked at last year?  
 20 MR. ROSENBAUM: Yes.  
 21 THE WITNESS: No, I don't. It's a smaller  
 22 district, but I don't know exactly.  
 23 Q. BY MR. ROSENBAUM: Okay. If you had more  
 24 staff, would you look at more schools?  
 25 MR. VIRJEE: Objection. Calls for speculation.

1 Lacks foundation.  
 2 MS. READ SPANGLER: Join.  
 3 MR. VIRJEE: Incomplete hypothetical. Would  
 4 she look at more schools? Would she look at more  
 5 districts? Would they do different things? It's a  
 6 completely incomplete hypothetical. Would they have  
 7 other duties if they had more staff? It's an incomplete  
 8 hypothetical. Calls for speculation.  
 9 THE WITNESS: I don't know.  
 10 MS. READ SPANGLER: Join.  
 11 Q. BY MR. ROSENBAUM: Were there any schools in  
 12 Inglewood that had only one item noncompliant?  
 13 A. I don't think so, no.  
 14 Q. Two items?  
 15 MR. VIRJEE: Objection. Calls for speculation.  
 16 Lacks foundation.  
 17 THE WITNESS: I'm not sure.  
 18 Q. BY MR. ROSENBAUM: Okay. Was one of the items  
 19 in Inglewood whether or not students were being  
 20 taught -- EL students were being taught by teachers  
 21 qualified to teach instructional materials?  
 22 MS. READ SPANGLER: Objection. Vague and  
 23 ambiguous as to "qualified."  
 24 MR. VIRJEE: Also vague as to time.  
 25 Are you asking about this last year?

1 MR. ROSENBAUM: I'm sorry, with respect to this  
 2 last year.  
 3 THE WITNESS: I don't recall specifically.  
 4 Q. BY MR. ROSENBAUM: Okay. How is it -- am I  
 5 phrasing the item correctly?  
 6 A. Yes.  
 7 Q. And when you use the word "qualified," what do  
 8 mean by that?  
 9 A. I mean hold appropriate authorization for  
 10 teaching English learners, which would be the CLAD, the  
 11 BCLAD and, of course, the prerequisite credential that  
 12 goes with that.  
 13 Q. Okay. And how about Compton, any schools there  
 14 with no items of --  
 15 A. Compton, we have not done an on-site review in  
 16 a while.  
 17 Q. Why is that?  
 18 A. It's complicated. So are the other two. But  
 19 it's a district that we share the responsibility with  
 20 the United States Department of Education office of  
 21 civil rights, and the consultant in our unit that has  
 22 been assigned to Compton is working with the OCR on that  
 23 case, and they have determined that up until now that  
 24 because of their confidence level that the district is  
 25 not in compliance, they haven't seen the value of

1 conducting an on-site review. They will be conducting  
 2 an on-site review this year.  
 3 Q. And for how many years has there not actually  
 4 been an actual visit of Compton?  
 5 MR. VIRJEE: For how many years has the Comite  
 6 unit not visited for an on-site?  
 7 MR. ROSENBAUM: Thank you. Yes.  
 8 THE WITNESS: About three or four years.  
 9 Q. BY MR. ROSENBAUM: Okay. So when you say ten  
 10 or twelve items of noncompliance for Compton, is that  
 11 just an estimate?  
 12 A. It's just an estimate.  
 13 Q. Could be more?  
 14 A. Could be.  
 15 Q. Okay. Now, in how many districts in this  
 16 state -- strike that.  
 17 Do you know how many districts in this case  
 18 have EL students?  
 19 MR. VIRJEE: Objection. Asked and answered  
 20 earlier today.  
 21 THE WITNESS: Not exactly.  
 22 Q. BY MR. ROSENBAUM: Do you know what the percent  
 23 is?  
 24 A. No.  
 25 Q. Are there any -- are there any districts that

1 have no EL students?  
 2 A. Yes, there are some.  
 3 Q. More than ten?  
 4 MR. VIRJEE: Objection. Calls for speculation.  
 5 THE WITNESS: Yeah, not sure. Not sure.  
 6 Q. BY MR. ROSENBAUM: Do you know how many  
 7 districts are in the state of California?  
 8 A. Approximately, yes.  
 9 Q. How many?  
 10 A. A thousand.  
 11 Q. Okay. And you've been with the Comite unit or  
 12 its predecessor for how many years?  
 13 MR. VIRJEE: Objection. Asked and answered a  
 14 number of times.  
 15 THE WITNESS: Five and a half.  
 16 Q. BY MR. ROSENBAUM: Okay. And in that five and  
 17 a half years, how many districts have been intensively  
 18 investigated by your unit?  
 19 MR. VIRJEE: Objection. Vague and ambiguous as  
 20 to "intensively investigated."  
 21 Are you asking how many have become Comite  
 22 districts?  
 23 MR. ROSENBAUM: Yes.  
 24 MS. READ SPANGLER: Join.  
 25 THE WITNESS: I still didn't understand

1 specifically the question.  
 2 Q. BY MR. ROSENBAUM: I'm trying to figure out how  
 3 many districts.  
 4 A. We add ten a year, so there would be 50 that  
 5 were new districts in that time, but there are also  
 6 districts that were prior to that time that were still  
 7 Comite districts, and then there have been districts.  
 8 Graduating. So districts that we've touched in some  
 9 way, over 50.  
 10 Q. Okay. And sitting here today, do you know how  
 11 many of the 950 districts are in compliance with all the  
 12 items?  
 13 MR. VIRJEE: Objection. Assumes facts not in  
 14 evidence and misstates her testimony. She didn't say  
 15 there were 950. She just said that she knows there's  
 16 been over 50.  
 17 MS. READ SPANGLER: Join.  
 18 THE WITNESS: And I don't know specifically how  
 19 many.  
 20 MR. ROSENBAUM: Okay. It's a silly objection,  
 21 but I'll reframe it.  
 22 Q. Of the districts that you haven't looked at  
 23 where there are EL students, sitting here today, do you  
 24 know how many of those districts have items of  
 25 noncompliance?

1 A. No.  
 2 Q. Or how many schools within those districts  
 3 would have items of noncompliance?  
 4 A. No.  
 5 Q. Or how many students are in classrooms where  
 6 there would be noncompliance?  
 7 A. No.  
 8 Q. Do you know if anybody in the state of  
 9 California does?  
 10 A. No.  
 11 Q. You've never seen any data with respect to  
 12 that?  
 13 MR. VIRJEE: Objection. Vague and ambiguous as  
 14 to "data."  
 15 Other than what she's already testified to with  
 16 respect to the CCR process?  
 17 THE WITNESS: The CCR process is the only data  
 18 that I'm aware of.  
 19 Q. BY MR. ROSENBAUM: Okay. Sitting here today,  
 20 do you know how many students in the -- how many EL  
 21 students in the state of California are taught by  
 22 teachers who are either not BCLAD, CLAD or 1969?  
 23 A. No.  
 24 Q. Do you know if that data is collected by  
 25 anybody in the state?

1 MR. VIRJEE: Objection. Asked and answered  
 2 about ten times now, Mark.  
 3 MS. READ SPANGLER: Join.  
 4 MR. VIRJEE: You're just asking the same  
 5 questions over and over again. She said she doesn't  
 6 know and she doesn't know if the data is collected.  
 7 She's told you how it's been collected to the extent she  
 8 knows.  
 9 Q. BY MR. ROSENBAUM: Do you agree with that?  
 10 A. I don't know any more other than the R30  
 11 information.  
 12 Q. Okay. With respect to -- another item that you  
 13 have is access to core curriculum?  
 14 A. Yes.  
 15 Q. What does that mean?  
 16 A. That's item EL 3b, and it means that students  
 17 have access to grade level core content either  
 18 immediately, or, if they're in a sequential program,  
 19 that there's a plan for them to recoup academic deficits  
 20 and eventually achieve at grade level equivalent to  
 21 native English speakers.  
 22 Q. We use the euphemism, catch up. That's the  
 23 catch-up part?  
 24 A. Yes.  
 25 Q. Now, the plan that you're talking about, when

1 did that requirement for a plan come into effect, so far  
 2 as you know?  
 3 A. It's always been a requirement under federal  
 4 law, but California, up until Proposition 227, had a  
 5 state law that required all students to receive grade  
 6 level academic content, and so practically for  
 7 California it's been since 1998.  
 8 Q. Okay. To your knowledge, has anyone in this  
 9 state determined whether or not every district with EL  
 10 students has such a plan?  
 11 MR. VIRJEE: Objection. Vague as to time, and  
 12 also calls for speculation and lacks foundation.  
 13 Assuming also you're asking other than what  
 14 she's already testified to about what her unit does and  
 15 what the CCR unit does.  
 16 THE WITNESS: And I don't know anything other  
 17 than our unit and the CCR.  
 18 Q. BY MR. ROSENBAUM: Have you ever seen any data  
 19 that enumerates how many districts have plans?  
 20 A. No.  
 21 Q. As far as you know, there may be districts out  
 22 there today that CCR or your unit hasn't looked at that  
 23 don't have plans?  
 24 MR. VIRJEE: Objection. Calls for speculation.  
 25 Lacks foundation.

1 MS. READ SPANGLER: Join. Leading.  
 2 Q. BY MR. ROSENBAUM: Isn't that right?  
 3 A. It's possible.  
 4 Q. Okay. Do you know if the county boards of  
 5 education are looking into that question?  
 6 A. I don't know.  
 7 Q. Do you know if anybody in the state is looking  
 8 at this question?  
 9 A. I don't know.  
 10 MR. VIRJEE: Other than what she's already  
 11 testified to?  
 12 Listen to his questions. He just asked do you  
 13 know if anybody is looking into it. Clearly you know  
 14 the Comite unit is looking into it, CCR is looking into  
 15 it, and he'll take that and later say, you don't know of  
 16 anybody that's looking into it. Listen carefully.  
 17 MR. ROSENBAUM: I would never distort anything  
 18 that you say and you speak extremely clearly.  
 19 MR. VIRJEE: Luckily he's not under oath here.  
 20 MR. ROSENBAUM: That's an inappropriate  
 21 statement.  
 22 Q. Do you know if there's any requirement that  
 23 local districts report to any state agency the existence  
 24 of these plans?  
 25 A. Other than our Comite follow-up unit, I do not.



1 Q. And with respect to the Comite follow-up unit,  
 2 you ask them for those plans; isn't that right?  
 3 A. Yes, we do.  
 4 Q. There wasn't some requirement previously that  
 5 they report to you whether or not they have plans?  
 6 MS. READ SPANGLER: Previous to what?  
 7 Q. BY MR. ROSENBAUM: Isn't that right?  
 8 MR. VIRJEE: Objection. Vague and ambiguous as  
 9 to "previously." She's just testified there wasn't even  
 10 a need for a plan previous to 1998.  
 11 Q. BY MR. ROSENBAUM: Did you say 1998 or --  
 12 A. 1998, 227.  
 13 Q. Go ahead.  
 14 A. What was the question?  
 15 MR. ROSENBAUM: I'll withdraw that question.  
 16 (Recess taken.)  
 17 Q. BY MR. ROSENBAUM: The items that your unit  
 18 looks at, those items have been previously presented to  
 19 the districts, the Comite districts; isn't that right?  
 20 MR. VIRJEE: Objection. Vague and ambiguous as  
 21 to "previously presented."  
 22 MS. READ SPANGLER: Join.  
 23 THE WITNESS: Yes.  
 24 Q. BY MR. ROSENBAUM: Okay. I just want to see if  
 25 I understand the protocol. When a district is selected

1 for you to investigate, for you to do oversight on, it's  
 2 already been looked at by CCR? You told us that several  
 3 times.  
 4 A. Yes.  
 5 Q. And the items that you use for your evaluation,  
 6 are they the same as the items that CCR looks at?  
 7 A. Yes, they are.  
 8 Q. So by the time you get to a district, those  
 9 items have been communicated to the districts?  
 10 A. Yes.  
 11 Q. And have they been explained to the districts  
 12 what the items mean?  
 13 MR. VIRJEE: Objection. Vague and ambiguous as  
 14 to "explained."  
 15 Are you talking about before they get involved  
 16 at all by CCR, or somewhere else? If so, that calls for  
 17 speculation.  
 18 MS. READ SPANGLER: Join.  
 19 MR. ROSENBAUM: I'll withdraw my question.  
 20 Q. Do you know whether or not in the CCR process  
 21 the items of compliance are explained to the district,  
 22 do you know if that's part of the protocol?  
 23 MR. VIRJEE: Objection. Vague and ambiguous as  
 24 to "explained." Also calls for speculation.  
 25 MS. READ SPANGLER: Join.

1 THE WITNESS: It is part of the protocol.  
 2 Q. BY MR. ROSENBAUM: How do you know that?  
 3 A. CCR institutes are offered every year for  
 4 districts that are going to be undergoing a CCR and the  
 5 districts send representatives to that institute.  
 6 Q. Does your unit also explain what the items  
 7 mean?  
 8 MR. VIRJEE: At the CCR institute, or  
 9 separately, after they're chosen?  
 10 MR. ROSENBAUM: At any point.  
 11 THE WITNESS: Yes.  
 12 Q. BY MR. ROSENBAUM: And how do you do that?  
 13 A. We do that -- in the past we've done that at  
 14 the CCR institutes. We also do that at what we call the  
 15 Comite symposium that we hold each year for our  
 16 newly-selected districts, and we go over them at that  
 17 time as well.  
 18 Q. You discuss each item?  
 19 A. Yes.  
 20 Q. And what you're looking for with respect to  
 21 each item?  
 22 A. Yes.  
 23 Q. Now, as part of your evaluation of each  
 24 district, do you attempt to find out why districts are  
 25 in noncompliance?

1 MR. VIRJEE: Objection. Vague and ambiguous as  
 2 to "why." Assumes that there is a reason or that there  
 3 can be a reason found.  
 4 MR. ROSENBAUM: Go ahead.  
 5 THE WITNESS: We try to, insofar as we can, to  
 6 be able to assist the district, but basically compliance  
 7 is, yes, you're in compliance or, no, you're not. And  
 8 then we always cite evidence as to why not, so in that  
 9 sense, yes.  
 10 Q. BY MR. ROSENBAUM: In your reports that you  
 11 prepare, is there a section in sum or substance that  
 12 deals with the causes of the items of noncompliance?  
 13 MR. VIRJEE: Objection. Vague and ambiguous as  
 14 to causes for noncompliance.  
 15 Because they don't meet the criteria?  
 16 MS. READ SPANGLER: Join.  
 17 MR. ROSENBAUM: That's a fair comment.  
 18 Q. What I want to know is why did it happen. Not  
 19 if it happened, but why did it happen.  
 20 A. I think no in that sense. We cite the  
 21 noncompliance finding and the evidence, what's the  
 22 evidence that supports the finding of noncompliance.  
 23 Q. And you say that the district -- well, strike  
 24 that.  
 25 Do you know if anybody in the state, any state

1 agency, Department of Education, the State Board of  
 2 Education, the superintendent's office, governor's  
 3 office, anyone is out there trying to figure out the  
 4 causes of the noncompliance, why did it happen?  
 5 MR. VIRJEE: Objection. Vague and ambiguous as  
 6 to causes of noncompliance.  
 7 MS. READ SPANGLER: Join.  
 8 MR. VIRJEE: And, again, you're asking outside  
 9 of what Comite and CCR do?  
 10 MR. ROSENBAUM: Well, she's already testified.  
 11 THE WITNESS: Comite, we do that, and outside  
 12 of that, I'm not aware of it.  
 13 Q. BY MR. ROSENBAUM: Okay. Well, maybe I didn't  
 14 understand correctly, and I apologize. What I tried to  
 15 find out in my earlier question was, do you go out there  
 16 and say, why is this happening, why are they -- why are  
 17 they not in compliance in terms of access to core  
 18 curriculum or not having teachers qualified?  
 19 MR. VIRJEE: You were asking what the report  
 20 says, you never asked her what they did in addition to  
 21 the report.  
 22 MR. ROSENBAUM: I thought I had.  
 23 Q. Do you do that, do you sit down and try to  
 24 figure out why is this happening?  
 25 A. We do that.

1 Q. Okay. Why is Oakland out of compliance? Have  
 2 you tried to figure that out?  
 3 A. We've tried, and I don't think I have the  
 4 answer.  
 5 Q. Okay.  
 6 A. But, yes, we've tried and we've worked with the  
 7 district.  
 8 Q. Okay. Do you have some working theories?  
 9 MR. VIRJEE: Objection. Vague and ambiguous.  
 10 THE WITNESS: A number of factors, but not that  
 11 I would call working theories.  
 12 Q. BY MR. ROSENBAUM: Does anyone in the state  
 13 have?  
 14 MR. VIRJEE: Objection. Calls for speculation.  
 15 MR. ROSENBAUM: So far as you know.  
 16 THE WITNESS: I don't know.  
 17 Q. BY MR. ROSENBAUM: Is anyone out there trying  
 18 to figure that out, so far as you know?  
 19 MR. VIRJEE: Outside of the Comite?  
 20 THE WITNESS: We are.  
 21 Q. BY MR. ROSENBAUM: Besides you?  
 22 A. I don't know.  
 23 Q. How long has Comite been trying to figure this  
 24 out, so far as you know?  
 25 MR. VIRJEE: Trying to figure what out, why

1 Oakland is not in compliance?  
 2 MR. ROSENBAUM: Exactly.  
 3 THE WITNESS: Probably for ten years in  
 4 Oakland.  
 5 Q. BY MR. ROSENBAUM: Okay. How about Inglewood,  
 6 do you have -- have you tried to figure out why  
 7 Inglewood has been out of compliance for this period of  
 8 time?  
 9 MR. VIRJEE: Mark, just for clarification,  
 10 obviously they're out of compliance because they don't  
 11 meet the criteria. And I know what you're trying to  
 12 say, but your questions are vague because of that.  
 13 Q. BY MR. ROSENBAUM: I don't mean whether or not  
 14 you check the box compliance or noncompliance, I mean  
 15 trying to figure out a cause-and-effect relationship,  
 16 why did this happen.  
 17 A. We try to figure that out. Obviously we have  
 18 not figured it out totally because there are still  
 19 problems.  
 20 Q. Okay. Do you have a working theory as to what  
 21 some of the causes might be for Inglewood?  
 22 MR. VIRJEE: Objection. Vague and ambiguous as  
 23 to "working theory."  
 24 THE WITNESS: No.  
 25 Q. BY MR. ROSENBAUM: No hypothesis?

1 A. No.  
 2 Q. How about Compton, same answers?  
 3 A. The same, I would say, yes.  
 4 Q. Okay. Now, you told me that there were 30  
 5 districts that -- strike that.  
 6 So far as you know, with the exception of the  
 7 Comite unit, is there any other state agency out there  
 8 trying to figure out why is this happening?  
 9 MR. VIRJEE: Other than what she's already  
 10 testified to with respect to the CCR process?  
 11 MR. ROSENBAUM: Yes.  
 12 THE WITNESS: Not that I know of.  
 13 Q. BY MR. ROSENBAUM: Has CCR figured it out, so  
 14 far as you know?  
 15 MR. VIRJEE: Objection. Calls for speculation.  
 16 THE WITNESS: I don't know.  
 17 Q. BY MR. ROSENBAUM: It's never been communicated  
 18 to you?  
 19 A. No.  
 20 Q. No hypotheses have been communicated to you?  
 21 A. No.  
 22 Q. And that's for Inglewood and Compton and  
 23 Oakland?  
 24 A. Yes.  
 25 Q. Is that with respect to all 30 of these

1 districts?  
 2 MR. VIRJEE: I'm not sure I understand your  
 3 question, Mark.  
 4 Q. BY MR. ROSENBAUM: There are 30 districts that  
 5 you characterized to me as three years or more  
 6 noncompliance; is that right?  
 7 A. That's right.  
 8 Q. Okay. Has your office, with respect to any of  
 9 the 27 other districts, figured out why these districts  
 10 are in noncompliance?  
 11 A. Well, we work with them, we try to figure that  
 12 out, we help them to develop compliance agreements that  
 13 they and we think will bring them into compliance. The  
 14 fact that they're still out of compliance means it's not  
 15 exactly figured out yet.  
 16 Q. Okay. Any hypotheses as to why these 27  
 17 districts are still not in compliance?  
 18 MR. VIRJEE: Objection. Vague and ambiguous as  
 19 to "hypotheses". Also compound as to whether there's a  
 20 single unifying reason for all 27 or there's a different  
 21 reason or set of reasons for every district.  
 22 MR. ROSENBAUM: I think my question is clear,  
 23 but I'm going to clarify.  
 24 Q. Any reason that would explain any of the  
 25 districts being out of compliance?

1 MR. VIRJEE: Same objection.  
 2 THE WITNESS: There are lots of reasons  
 3 specific to individual districts, but not any  
 4 hypotheses.  
 5 Q. BY MR. ROSENBAUM: For any of the 27 districts,  
 6 can you tell me why they were out of compliance?  
 7 MR. VIRJEE: Objection. Vague and ambiguous,  
 8 especially when there's different factors in which they  
 9 are not in compliance. It's compound and overbroad.  
 10 MR. ROSENBAUM: Go ahead.  
 11 THE WITNESS: It depends on what the issue is.  
 12 There are a number of different issues. If it's a  
 13 staffing issue, it may be that they have problems  
 14 attracting qualified teachers, but nothing definite. I  
 15 can't say definite, no.  
 16 Q. BY MR. ROSENBAUM: Are there districts that  
 17 have problems attracting qualified teachers?  
 18 MR. VIRJEE: Objection. Calls for speculation.  
 19 Overbroad.  
 20 MR. ROSENBAUM: So far as you know.  
 21 THE WITNESS: Yes.  
 22 Q. BY MR. ROSENBAUM: Which districts?  
 23 A. Districts where it's very expensive for  
 24 teachers to live in Ravenswood. That has to be one  
 25 factor.

1 Q. Any other reasons why districts have problems  
 2 attracting qualified teachers?  
 3 MR. VIRJEE: Objection. Calls for speculation.  
 4 Lacks foundation that she's an expert on the recruitment  
 5 of teachers into any particular district.  
 6 MS. READ SPANGLER: Join.  
 7 THE WITNESS: I think I don't know enough to  
 8 say for sure.  
 9 Q. BY MR. ROSENBAUM: Okay. Have you consulted  
 10 with people outside your unit as to strategies for  
 11 attracting qualified teachers?  
 12 MR. VIRJEE: And I know you don't mean this,  
 13 Mark, but you're talking about people other than at the  
 14 district, because they're not in their unit either.  
 15 MR. ROSENBAUM: Outside the unit and outside  
 16 the district.  
 17 THE WITNESS: Outside the unit and outside the  
 18 district, no.  
 19 Q. BY MR. ROSENBAUM: Have you done any reading as  
 20 to strategies for attracting qualified teachers, reading  
 21 of -- I don't mean district reports, but I mean outside  
 22 reading as to strategies for attracting qualified  
 23 teachers?  
 24 A. We've actually put together, a few years ago, a  
 25 document called remedying the shortage of qualified

1 teachers for English learners that had some ideas for  
 2 strategies in it. But that's been a number of years  
 3 ago, and we still see a lot of the same problems.  
 4 Q. How many years ago was that?  
 5 A. Probably six or so.  
 6 Q. And what -- were you involved in the  
 7 preparation of that report?  
 8 A. No, it was before I was at the Department.  
 9 Q. Okay. Have you read the report?  
 10 A. Yes.  
 11 Q. Do you remember what some of the strategies  
 12 were?  
 13 A. Some of it. It included offering stipends for  
 14 teachers. I think it said having a high-quality program  
 15 for teachers of English learners -- teachers of English  
 16 learners tend to want to go where there are good  
 17 programs, so if a district has a good program and  
 18 markets its program in a positive way, that helps  
 19 attract teachers. It had a few strategies like that in  
 20 there.  
 21 Q. Did it talk about facilities at the school,  
 22 state facilities at the school?  
 23 A. I don't recall that it did.  
 24 Q. When you say high-quality program, what do you  
 25 mean by that?

1 MR. VIRJEE: What did it mean in this document  
2 that she read that she can recall?  
3 MR. ROSENBAUM: No.  
4 Q. What was your understanding?  
5 A. In that document it meant specifically  
6 high-quality bilingual programs, because that was prior  
7 to 227 and bilingual teachers. There was -- I don't  
8 know who did it. There was a study that I read that  
9 said the number one thing attracting bilingual teachers  
10 to a district was a high-quality program, not pay, not  
11 all the things that one might think, that bilingual  
12 teachers tended to want to work where there was support  
13 for a quality program for kids.  
14 Q. Okay. Do you have a copy of that report in  
15 your office?  
16 A. I might be able to find it. It's gone now. I  
17 mean, it's not something that's reprinted, so we  
18 probably have a copy around, but it's not easily  
19 available.  
20 Q. Are districts given copies of that report?  
21 A. Not anymore.  
22 MR. VIRJEE: Calls for speculation.  
23 Q. BY MR. ROSENBAUM: Do you know when that  
24 stopped?  
25 MR. VIRJEE: Objection. Calls for speculation.

1 Lack of foundation.  
2 MR. ROSENBAUM: You're right.  
3 Q. Were districts ever given that report, so far  
4 as you know?  
5 A. Yes.  
6 Q. And do you know when that stopped?  
7 A. No. It's been a while back, before 227.  
8 Q. Before that too?  
9 A. Probably a year or so before that, I would  
10 guess. I don't know.  
11 Q. Do you have any idea why that stopped?  
12 A. No.  
13 MR. VIRJEE: Why what stopped?  
14 MR. ROSENBAUM: Handing out the reports.  
15 THE WITNESS: No.  
16 Q. BY MR. ROSENBAUM: Okay. The compliance  
17 agreement, what is a compliance agreement as you use  
18 that phrase?  
19 A. A compliance agreement is an agreement between  
20 the district and the Department of Education that lays  
21 out specifically the actions the district will take to  
22 achieve compliance, the time line by which it plans to  
23 complete each of the actions, the person responsible in  
24 the district to make sure the action happens, and it  
25 does that for each of the noncompliant findings.

1 Q. Okay. And have districts, in your experience,  
2 had more than one compliance agreement with respect to  
3 the same item?  
4 A. Yes.  
5 Q. In the Oakland example --  
6 MR. VIRJEE: Again, we're talking about in the  
7 Comite unit, compliance agreements with the Comite unit?  
8 MR. ROSENBAUM: Right. Yes.  
9 MR. VIRJEE: They're separate for CCR.  
10 Q. BY MR. ROSENBAUM: And has Oakland, for  
11 example, had more than five compliance agreements with  
12 respect to the same item?  
13 A. I don't know.  
14 Q. Do you know how many they've had, the most  
15 they've had?  
16 A. No.  
17 Q. And then there are also compliance agreements  
18 with respect to CCR; isn't that right?  
19 A. Yes.  
20 Q. And do you know whether or not -- did you ever  
21 work in the CCR unit?  
22 A. No, not as an employee.  
23 Q. But you performed evaluations that were made  
24 part of the total CCR report; isn't that right?  
25 A. Yes.

1 Q. And you did that in the area of EL, English  
2 learners?  
3 A. Yes.  
4 Q. Okay. Now, do you know whether or not  
5 districts have had more than one compliance agreement  
6 with respect to the same item as part of the CCR  
7 process?  
8 A. I don't know.  
9 Q. Okay. Incidentally, to your knowledge, has any  
10 district been sued for failing to fulfill its compliance  
11 agreement?  
12 A. Not that I'm aware of.  
13 Q. Okay. Has there ever been any discussion to  
14 your knowledge about suing a district for failing to  
15 fulfill a compliance agreement?  
16 A. Yes.  
17 Q. And when did that discussion take place?  
18 A. About a year ago.  
19 Q. And were you privy to that discussion?  
20 A. Yes.  
21 Q. And was it more than one district?  
22 A. Yes.  
23 Q. What districts?  
24 A. Specifically Oakland and Pittsburg.  
25 Q. Okay. And what was the nature of that

1 discussion?  
 2 A. The discussion was that the Department had  
 3 taken enforcement action on both of those districts this  
 4 past year. That action was withholding of EIA-LEP  
 5 funds, and the discussion was what if after this  
 6 enforcement action compliance doesn't come about, what  
 7 would be some other steps that could be taken, and court  
 8 action was one such possibility that was discussed.  
 9 Q. And what was said about court action?  
 10 A. Pardon?  
 11 Q. What's said about court action?  
 12 A. Just that that was one possible additional  
 13 sanction that could be taken if it were deemed  
 14 appropriate.  
 15 Q. Have you ever heard of court action being taken  
 16 against a district, actually taken?  
 17 MR. VIRJEE: Ever heard of court action being  
 18 taken against a district in any context?  
 19 MR. ROSENBAUM: For failure to come into  
 20 compliance with respect to EL items.  
 21 THE WITNESS: No.  
 22 MR. VIRJEE: You've asked that question.  
 23 Q. BY MR. ROSENBAUM: Okay. We're coming onto  
 24 October. For this next October, has your unit finished  
 25 its work with respect to Oakland?

1 A. No.  
 2 Q. Is it close?  
 3 A. Yes.  
 4 Q. Okay. Do you expect Oakland to come into  
 5 compliance?  
 6 MR. VIRJEE: Objection. Calls for speculation.  
 7 MS. READ SPANGLER: Join.  
 8 THE WITNESS: No.  
 9 Q. BY MR. ROSENBAUM: Do you expect it to have  
 10 between ten and thirteen items of noncompliance?  
 11 MR. VIRJEE: Objection. Calls for speculation.  
 12 THE WITNESS: Don't know.  
 13 Q. BY MR. ROSENBAUM: What about compliance with  
 14 respect to the item of teachers qualified to teach  
 15 instructional matters?  
 16 MS. READ SPANGLER: Qualified to teach  
 17 instructional matters, is that what you said?  
 18 MR. VIRJEE: It was a bad question.  
 19 MR. ROSENBAUM: It was a bad question.  
 20 The teacher qualification item we talked about.  
 21 MR. VIRJEE: With respect to EL?  
 22 MR. ROSENBAUM: Yes.  
 23 MS. READ SPANGLER: Objection. Vague and  
 24 ambiguous as to "qualified."  
 25 THE WITNESS: I don't expect it will be

1 resolved. They have made progress in that area.  
 2 Q. BY MR. ROSENBAUM: But they will still be in  
 3 noncompliance?  
 4 A. Not sure.  
 5 MR. VIRJEE: Objection. Calls for speculation.  
 6 Q. BY MR. ROSENBAUM: What about access to core  
 7 curriculum?  
 8 MR. VIRJEE: Again, in the EL context?  
 9 MR. ROSENBAUM: All my questions are in the EL  
 10 context.  
 11 THE WITNESS: An opinion?  
 12 MR. ROSENBAUM: Yes.  
 13 THE WITNESS: I think they will still be in  
 14 noncompliance.  
 15 Q. BY MR. ROSENBAUM: And when you say "access to  
 16 core curriculum," you feel that is an important item?  
 17 A. Yes.  
 18 Q. Why is that?  
 19 MR. VIRJEE: Objection. Asked and answered.  
 20 MS. READ SPANGLER: Join.  
 21 THE WITNESS: Because that's the core content  
 22 that all students in the district are entitled to get,  
 23 and it's important English learners get that same  
 24 content grade level standard.  
 25 Q. BY MR. ROSENBAUM: Is it fair to say that,

1 Ms. Burnham-Massey, that there are students in the  
 2 Oakland schools, EL students in Oakland schools who have  
 3 never had access to core curriculum?  
 4 MR. VIRJEE: Objection. Calls for speculation.  
 5 Lacks foundation.  
 6 I'm assuming all your questions are in the EL  
 7 context as well.  
 8 MS. READ SPANGLER: Join.  
 9 MR. VIRJEE: Is that right?  
 10 MR. ROSENBAUM: Yeah, it is.  
 11 THE WITNESS: I wouldn't say never had access,  
 12 no.  
 13 Q. BY MR. ROSENBAUM: Okay. Do you know?  
 14 MR. VIRJEE: Does she know what?  
 15 Q. BY MR. ROSENBAUM: Do you know the number of  
 16 students who have had five years in which they didn't  
 17 have access to core curriculum, six years or any number  
 18 of years?  
 19 MR. VIRJEE: Objection. Calls for speculation.  
 20 Lacks foundation.  
 21 MS. READ SPANGLER: Join. Misstates her  
 22 testimony. Assumes facts not in evidence.  
 23 THE WITNESS: And it's not a yes, no question.  
 24 Q. BY MR. ROSENBAUM: Why not?  
 25 A. Because students in a classroom are getting

1 some curriculum. What we look for is if they're getting  
 2 full access to core curriculum that all other students  
 3 get. I don't want to unfairly say that there's a  
 4 student in Oakland who has never gotten anything for  
 5 five years. I don't think that would be fair.  
 6 Q. Are there students in Oakland who have never  
 7 had full access to core curriculum?  
 8 MR. VIRJEE: Objection. Calls for speculation.  
 9 MS. READ SPANGLER: Join.  
 10 THE WITNESS: We have noncompliant findings  
 11 that students have not received full access to grade  
 12 level curriculum.  
 13 Q. BY MR. ROSENBAUM: My question is, are there EL  
 14 students in Oakland who have had two years in which they  
 15 haven't had full access to core curriculum?  
 16 MR. VIRJEE: Objection. It calls for  
 17 speculation. Lacks foundation. She's already testified  
 18 that they don't know what every kid is getting. She's  
 19 told about the process for doing it, so there's no way  
 20 to know that based on the information she has. It calls  
 21 for speculation and lacks foundation, A district is  
 22 found noncompliant, not a school or a student.  
 23 MS. READ SPANGLER: Join.  
 24 MR. VIRJEE: So there's no way to know in each  
 25 year whether any particular student is getting full

1 access or not.  
 2 MS. READ SPANGLER: They don't have student  
 3 data.  
 4 Q. BY MR. ROSENBAUM: Let's break that down. Do  
 5 you agree with Mr. Virjee's comments?  
 6 A. That we're not sure, yes.  
 7 Q. Do you agree with counsel's comments here?  
 8 A. About?  
 9 Q. They don't have student data.  
 10 MS. READ SPANGLER: That you don't have student  
 11 data, individual student data.  
 12 MR. VIRJEE: For each individual student.  
 13 MR. ROSENBAUM: For any individual student  
 14 THE WITNESS: There's some student data  
 15 available in the districts, but we haven't looked at  
 16 that longitudinally for any individual student at the  
 17 time.  
 18 Q. BY MR. ROSENBAUM: Has anyone ever said to you,  
 19 we need to do some compensatory education for these kids  
 20 that have been denied full access to core curriculum as  
 21 EL students?  
 22 MS. READ SPANGLER: Objection. Vague and  
 23 ambiguous as to "compensatory education."  
 24 THE WITNESS: I think the district thinks they  
 25 are providing compensatory education.

1 Q. BY MR. ROSENBAUM: Let me make the -- let me go  
 2 back to my question. Has anyone ever said -- have you  
 3 ever been in a discussion in which someone said in sum  
 4 or substance, there are students in the Oakland schools  
 5 who have been denied years of full access to core  
 6 curriculum, we should identify who those kids are and do  
 7 something to compensate for those denials?  
 8 A. Not expressed exactly that way. I know there's  
 9 a lot of concern at the Department of Education about  
 10 that very issue, but I can't point to a specific  
 11 conversation where somebody exactly said that.  
 12 Q. Okay. What's the basis of your statement that  
 13 you know there's a lot of concern at the Department of  
 14 Education?  
 15 A. Because there have been conversations about  
 16 Oakland and about the students in Oakland and English  
 17 learners in Oakland and what we can do to bring  
 18 compliance and student achievement to a better level.  
 19 Q. Okay. Maybe you just answered this, and if you  
 20 did, it's fine. My question is, has anyone ever said,  
 21 we should make sure that there are certain programs or  
 22 activities for kids who have been denied years of access  
 23 to core curriculum, full access to core curriculum?  
 24 MR. VIRJEE: Objection. Asked and answered.  
 25 She just answered.

1 MS. READ SPANGLER: Join.  
 2 THE WITNESS: I don't recall a specific  
 3 conversation.  
 4 Q. BY MR. ROSENBAUM: And do you know if the  
 5 Oakland district has ever identified those kids who have  
 6 been denied full access to core curriculum?  
 7 MR. ROSENBAUM: When you shake your head,  
 8 that's an inappropriate thing for counsel to do. If you  
 9 want to make an objection, you can make an objection.  
 10 MS. READ SPANGLER: I'm about to make an  
 11 objection.  
 12 MR. ROSENBAUM: That's fine, but don't  
 13 accompany it with a nod of your head. That's not  
 14 appropriate.  
 15 MS. READ SPANGLER: I didn't even realize I was  
 16 doing it.  
 17 MR. ROSENBAUM: You've been doing it throughout  
 18 this deposition and you do it at other depositions.  
 19 I'll assume it's inadvertent, but it's not appropriate.  
 20 MS. READ SPANGLER: A lot of the comments you  
 21 make aren't appropriate either. I don't think we need  
 22 be making these sorts of comments on the record.  
 23 MR. ROSENBAUM: You can certainly point those  
 24 out when I do it.  
 25 Q. My question to you is this, do you know if the

1 Oakland school district has identified the names of kids  
 2 who were denied full access to core curriculum?  
 3 MS. READ SPANGLER: Objection. Assumes facts  
 4 not in evidence.  
 5 THE WITNESS: I'm not aware of that.  
 6 Q. BY MR. ROSENBAUM: Or do you know if the  
 7 Oakland school district has identified the names of kids  
 8 who were denied qualified instructors?  
 9 MR. VIRJEE: Objection. Vague as to time,  
 10 vague as to "qualified instructors," and vague as to  
 11 access to qualified instructors.  
 12 MS. READ SPANGLER: Join. And assumes facts  
 13 not in evidence.  
 14 Q. BY MR. ROSENBAUM: Qualified is the way you  
 15 used it before, and I'm talking about EL students, and  
 16 I'm talking about any point in time.  
 17 A. And I don't know.  
 18 Q. Okay. You're not aware of any such  
 19 identification?  
 20 A. No.  
 21 Q. Or with respect to any of the items of  
 22 noncompliance, do you know if the Oakland school  
 23 district at any point has identified those kids who were  
 24 affected by those items of noncompliance?  
 25 MR. VIRJEE: Other than as part of the Comite

1 process or filling out the R30 form and all the things  
 2 she's already testified to?  
 3 MR. ROSENBAUM: That doesn't count.  
 4 Q. I'm saying, have they ever identified the names  
 5 of those kids who were the subject of the items of  
 6 noncompliance?  
 7 A. Not that I'm aware of.  
 8 Q. Do you know if any school district that has  
 9 been studied by your unit has ever identified the names  
 10 of students who were the subject of the items of  
 11 noncompliance?  
 12 MR. VIRJEE: Objection. Vague and ambiguous.  
 13 Calls for speculation.  
 14 MR. ROSENBAUM: Go ahead.  
 15 MS. READ SPANGLER: Join.  
 16 THE WITNESS: For some items, some districts  
 17 have.  
 18 Q. BY MR. ROSENBAUM: Which items?  
 19 A. Particularly the item of redesignation, the  
 20 requirement that students be redesignated and that there  
 21 be follow-up done on redesignated students. We've had  
 22 districts submit names of students and documentation on  
 23 follow-up.  
 24 Q. Besides redesignation?  
 25 A. Again, it's part of our process. We've asked

1 for student achievement data sometimes for specific  
 2 students, and districts have provided that. We'll  
 3 sometimes ask for report cards from the high school, for  
 4 example, for all students at EL levels 1 and 2 so that  
 5 we can sort of do an analysis of the student achievement  
 6 of those students.  
 7 Q. Any other items?  
 8 A. Those are the ones that come specifically to  
 9 mind.  
 10 Q. Thank you. Do you know if any county board of  
 11 education ever identifies the names of students who were  
 12 subject to items of noncompliance?  
 13 A. I don't know.  
 14 MR. VIRJEE: Objection. Lacks foundation.  
 15 Calls for speculation. She's already indicated she has  
 16 very little contact with the county boards of education.  
 17 Q. BY MR. ROSENBAUM: Or any state agency with --  
 18 A. Not that I know of.  
 19 Q. Okay. Thank you. With respect to  
 20 redesignation, could you tell me what you understand  
 21 that term to mean, please.  
 22 A. Redesignation means students meet a district  
 23 established criteria that indicates that they have the  
 24 English proficiency necessary to compete in English only  
 25 classrooms, and so their code, their language

1 classification is changed from English learner to fluent  
 2 English proficient.  
 3 Q. It used to be LEP to FEP; is that right?  
 4 A. Yes.  
 5 Q. And are you aware of any studies that talk  
 6 about how long redesignation should take?  
 7 A. There are studies that talk about how long it  
 8 takes students to become fully proficient in English,  
 9 yes.  
 10 Q. And have you read any of those studies?  
 11 A. Yes. Not recently, but, yes.  
 12 Q. Are there persons whom you believe are experts  
 13 that area?  
 14 A. Yes.  
 15 Q. Who?  
 16 A. Jim Cummings comes immediately to mind.  
 17 Q. Who is Mr. Cummings?  
 18 A. He's a researcher from Canada who has done a  
 19 lot of work in second language acquisition and in  
 20 two-way bilingual programs, and I know he's one I  
 21 specifically think of that has said that it typically  
 22 takes five to seven years for students to develop full  
 23 academic proficiency in English, although conversational  
 24 English can be acquired much quicker.  
 25 Q. And "full academic proficiency," what do you

1 understand that to mean?  
 2 A. That they have listening, speaking, reading and  
 3 writing skills comparable to those of native English  
 4 speakers of the same age and grade.  
 5 Q. And that's the objective of the system; isn't  
 6 that right?  
 7 A. Yes.  
 8 Q. Now, you use the phrase two-way bilingual?  
 9 A. Yes.  
 10 Q. What's that?  
 11 A. That's a particular kind of a bilingual  
 12 education program that has a goal of bilingualism and  
 13 biliteracy for all the children in the program. Because  
 14 it's a two-way program it usually means half the class  
 15 are English speaking students and half the class speak  
 16 another language. The instruction is provided  
 17 predominantly in that other language for both groups of  
 18 students, and the goal of the program for all the  
 19 students is that by the sixth grade they're going to be  
 20 fully proficient in two languages.  
 21 Q. And do you know whether or not -- is it  
 22 Dr. Cummings?  
 23 A. Yes.  
 24 Q. Dr. Cummings' study in which he concluded it  
 25 took five to seven years, do you know if that was a

1 two-way bilingual study?  
 2 MR. VIRJEE: That misstates her testimony. She  
 3 didn't say there was a study by Dr. Cummings or that it  
 4 reached that conclusion. All she said was that she read  
 5 papers by him and that it was his opinion that it took  
 6 five to seven years. That misstates her testimony.  
 7 Q. BY MR. ROSENBAUM: Do you know if his  
 8 conclusion was based on looking at two-way bilingual  
 9 programs?  
 10 A. My understanding is not exclusively.  
 11 Q. Do you know if the conclusion differed whether  
 12 it was two-way bilingual program or a one-way bilingual  
 13 program?  
 14 MR. VIRJEE: Objection. Document speaks for  
 15 itself. Calls for speculation. Lacks foundation.  
 16 THE WITNESS: He's done research and looked at  
 17 research in Canada and in many countries, and it's not  
 18 exclusively two-way programs that he's looking at.  
 19 Q. BY MR. ROSENBAUM: Do you know if he's looked  
 20 at structured immersion?  
 21 A. I know that he has. Yes, he has looked at it.  
 22 Q. Do you know what, if any, conclusions he's  
 23 reached regarding that?  
 24 A. The one conclusion that I know that he's  
 25 reached is that -- what he calls structured English

1 immersion in the Canadian context, which has been  
 2 pointed to in this country as being evidence of the  
 3 success of structured English immersion, that, in fact,  
 4 the Canadian immersion programs are nothing like  
 5 structured English immersion as we have it in this  
 6 country. I don't know if that made any sense.  
 7 Q. Incidentally, are you a supporter of structured  
 8 immersion as it's implemented in California?  
 9 MR. VIRJEE: Objection. Vague and ambiguous.  
 10 THE WITNESS: A supporter? That's kind of hard  
 11 to say. It's a term that's not clearly defined and so  
 12 districts interpret it very differently, so there's  
 13 really not one answer to that question.  
 14 Q. BY MR. ROSENBAUM: Okay. If it doesn't have --  
 15 you told me earlier about in Riverside the addition of  
 16 certain bilingual aspects to it?  
 17 A. Yes.  
 18 Q. Subtract those bilingual aspects of it. Are  
 19 you a supporter of structured immersion without those  
 20 aspects?  
 21 MR. VIRJEE: Objection. Vague and ambiguous.  
 22 Incomplete hypothetical as to under what situation, in  
 23 what context, with elements to the program.  
 24 MS. READ SPANGLER: Join.  
 25 THE WITNESS: Structured immersion programs can

1 be successful, but there are -- in certain socioeconomic  
 2 contexts, so in general I wouldn't say I'm opposed to  
 3 structured English immersion. I think it's something  
 4 you have to look at on a district-by-district basis.  
 5 Q. BY MR. ROSENBAUM: Okay. Has anyone in the  
 6 state of California, so far as you know, looked at what  
 7 kids in California public schools who are ELs in a  
 8 structure immersion, what they need to succeed?  
 9 MR. VIRJEE: Objection. Vague and ambiguous as  
 10 to "what they need." It's also asked and answered from  
 11 earlier today. You asked that exact question.  
 12 MR. ROSENBAUM: I think you're right.  
 13 MS. READ SPANGLER: Join.  
 14 Q. BY MR. ROSENBAUM: Have you looked at data as  
 15 to the socioeconomic status of EL students throughout  
 16 California?  
 17 A. Not specifically.  
 18 Q. Okay. Do you know what percent of EL students  
 19 in California are high SES as opposed to low SES?  
 20 MR. VIRJEE: Objection. Calls for speculation.  
 21 Lacks foundation. She just said she's never looked at  
 22 any data on that.  
 23 MS. READ SPANGLER: Join.  
 24 THE WITNESS: No.  
 25 Q. BY MR. ROSENBAUM: Do you know if anyone in



1 your unit has done that?  
 2 A. No.  
 3 Q. Do you know if the needs to succeed in a  
 4 structured immersion program would differ for low SES  
 5 structured immersion students generally as opposed to  
 6 high SES structured immersion students?  
 7 MR. VIRJEE: Objection. Vague and ambiguous as  
 8 to "needs to succeed," and also calls for speculation  
 9 and lacks foundation.  
 10 MS. READ SPANGLER: Join.  
 11 THE WITNESS: I'm not sure.  
 12 Q. BY MR. ROSENBAUM: Okay. Do you know what  
 13 FCMAT is?  
 14 A. I've heard the term, but, no, I don't know what  
 15 it is.  
 16 Q. F-C-M-A-T?  
 17 A. I've heard of it, but I don't know.  
 18 Q. Do you have any connection with FCMAT?  
 19 A. No.  
 20 Q. You don't receive their data or their reports?  
 21 A. No.  
 22 Q. You don't even know if they produce data or  
 23 reports?  
 24 A. No, I just know the term, that's all.  
 25 Q. Okay. Do you know what it stands for?

1 A. No.  
 2 Q. Okay. Do you know the number of ELs in  
 3 California at the present time?  
 4 MR. VIRJEE: Objection. Asked and answered a  
 5 couple of times already.  
 6 Mark, you're asking the same question over and  
 7 over again.  
 8 MS. READ SPANGLER: Join.  
 9 THE WITNESS: Approximately one and a half  
 10 million students.  
 11 Q. BY MR. ROSENBAUM: Do you know what percent of  
 12 the total student enrollment that is in California?  
 13 A. About 25 percent.  
 14 Q. Do you know if that number is getting bigger or  
 15 staying the same?  
 16 A. It's been increasing every year.  
 17 Q. Have you seen -- there is an education  
 18 demographics unit; isn't that right?  
 19 A. Yes,  
 20 Q. Do they make projections as to the number of  
 21 ELs?  
 22 A. Projections?  
 23 Q. Yeah.  
 24 A. Not that I'm aware of.  
 25 Q. Okay. Do you know how that 25 percent breaks

1 down in terms of elementary, middle and high schools?  
 2 A. Not exactly. I have an estimate, but I don't  
 3 know exactly.  
 4 Q. Okay. And what's your best understanding?  
 5 A. I think it's about two-thirds elementary and  
 6 one-third secondary, but I'm not sure.  
 7 Q. Okay. And have there been, prior to 227, any  
 8 studies that you're aware of as to how quickly ELs were  
 9 becoming proficient in learning English?  
 10 MR. VIRJEE: Objection. Vague and ambiguous as  
 11 to "proficient."  
 12 THE WITNESS: Not a study that I'm aware of.  
 13 The State has collected redesignation data over all  
 14 those years, but that's not a precise study.  
 15 Q. BY MR. ROSENBAUM: Do you know if that  
 16 redesignation data has been broken down in terms of how  
 17 long the students were enrolled in bilingual courses?  
 18 A. Not at the state level. We encourage districts  
 19 to do that at the local level.  
 20 Q. Why do you do that?  
 21 A. Because any redesignation number by itself  
 22 tells you very little, but if you look at redesignation  
 23 of students over time it starts to tell you a little  
 24 something about the effectiveness of the program.  
 25 Q. And why does it -- didn't it tell you by itself

1 anything about the program?  
 2 A. Because the biggest thing affecting that number  
 3 is the number of new students that come to the district,  
 4 number of students at varying levels of proficiency.  
 5 That number by itself just doesn't give you any data  
 6 without additional information.  
 7 Q. And is there a requirement that districts break  
 8 down the redesignation data to figure out how many years  
 9 kids are in programs, bilingual programs? So far as you  
 10 know, is there any such requirement?  
 11 A. I'm not aware of a requirement. Our Comite  
 12 districts we do that, we have them do that.  
 13 Q. Do you know how many districts do that outside  
 14 of the Comite districts?  
 15 A. I do not, now.  
 16 Q. There's no state requirement that they do it?  
 17 A. No.  
 18 Q. Okay. You told me that the number of ELs has  
 19 been increasing each year?  
 20 A. Yes.  
 21 Q. Okay. Is there data -- strike that.  
 22 There is data, isn't there, that breaks the ELs  
 23 down by native language spoken?  
 24 A. Yes.  
 25 Q. And do you know how many languages are spoken?

1 A. Not exactly.  
 2 Q. Over 80?  
 3 A. Yes.  
 4 Q. Something like 86?  
 5 A. Yes.  
 6 Q. Okay. And do you know whether or not there are  
 7 teachers in the California school system, public school  
 8 system, who speak those 86 languages?  
 9 MR. VIRJEE: Objection. Calls for speculation.  
 10 Lacks foundation.  
 11 MS. READ SPANGLER: Join.  
 12 THE WITNESS: I don't know about all 86, no.  
 13 Q. BY MR. ROSENBAUM: Okay. Do you know if that  
 14 data is collected?  
 15 A. Yes.  
 16 Q. Do you get that data, your unit?  
 17 A. It's the educational demographics that gets  
 18 that data.  
 19 Q. But does your unit get it?  
 20 A. It's not sent to us personally, no.  
 21 Q. Are there certain languages for which, in your  
 22 judgment, there are shortages of teachers?  
 23 A. Sure.  
 24 Q. Which ones?  
 25 MR. VIRJEE: Objection. Calls for speculation.

1 Lacks foundation.  
 2 MS. READ SPANGLER: Join.  
 3 Q. BY MR. ROSENBAUM: Which ones?  
 4 A. I would say for most of them, in fact, probably  
 5 for all of them.  
 6 Q. And do you know what the extent of the shortage  
 7 is for Spanish?  
 8 MR. VIRJEE: Calls for speculation. Lacks  
 9 foundation. Also vague and ambiguous as to "shortage."  
 10 MS. READ SPANGLER: Join.  
 11 THE WITNESS: I don't know exactly.  
 12 Q. BY MR. ROSENBAUM: What's the basis of your  
 13 statement for all of them?  
 14 A. Up until this year our unit has been  
 15 responsible for reviewing district staffing, LEP  
 16 staffing plans, annual reports. And in those reports,  
 17 the districts report to us their need, supply and  
 18 shortage of qualified teachers for English learners by  
 19 grade level -- sorry, not by grade level, strike that --  
 20 by grade level.  
 21 Q. Strike that. That's good.  
 22 A. By home language. We've collected that data.  
 23 We don't have a summary of it, but we've looked at those  
 24 each year up until now, so we have a sense that there is  
 25 a shortage in all the language groups. But, actually,

1 we're proud of this, that the shortage has decreased  
 2 greatly over the last twelve years.  
 3 Q. Do you have those reports?  
 4 MR. VIRJEE: Which reports?  
 5 MR. ROSENBAUM: The reports that compile the  
 6 data that we're talking about.  
 7 THE WITNESS: It's not compiled, but we have  
 8 the reports that the districts submit. Each district  
 9 has a file. We've got 700 files.  
 10 Q. BY MR. ROSENBAUM: But so far as you know, no  
 11 one's compiled them in one document?  
 12 A. As far as I know, it's not been compiled into  
 13 one document  
 14 Q. Has there been a discussion that that would be  
 15 a useful thing to do?  
 16 A. Oh, yes. Yes.  
 17 Q. And what's the basis of that answer?  
 18 MR. VIRJEE: The basis of what answer?  
 19 MS. READ SPANGLER: That they've had a  
 20 discussion?  
 21 MR. ROSENBAUM: Yes.  
 22 MR. VIRJEE: Which one, that it would be useful  
 23 or that they've had a discussion?  
 24 MR. ROSENBAUM: That it would be useful.  
 25 THE WITNESS: Because it would be interesting

1 information to have.  
 2 Q. BY MR. ROSENBAUM: Why?  
 3 A. Because it would give us an idea by language of  
 4 where the greatest shortages were.  
 5 Q. Do you think it would help in terms of  
 6 recruiting teachers if you do that?  
 7 A. I'm not sure.  
 8 MR. VIRJEE: Objection. Calls for speculation.  
 9 Lacks foundation.  
 10 MS. READ SPANGLER: Join.  
 11 Q. BY MR. ROSENBAUM: Have you looked at the  
 12 complaint in this case?  
 13 A. No.  
 14 Q. Okay. Do you know what the allegations in this  
 15 case are regarding EL students?  
 16 A. I didn't even know EL students were in this  
 17 case.  
 18 Q. Okay.  
 19 MS. READ SPANGLER: Neither did I.  
 20 Q. BY MR. ROSENBAUM: I take it no one has ever  
 21 said to you, will you help investigate some of the  
 22 claims that were made in this case regarding EL  
 23 students?  
 24 MR. VIRJEE: Objection to the extent it would  
 25 call for invasion of the attorney/client privilege.

1 MS. READ SPANGLER: Join.  
 2 MR. ROSENBAUM: Forget about attorneys. Forget  
 3 about the attorneys.  
 4 Q. Putting aside attorneys, has anyone said to  
 5 you, could you help investigate some of the allegations  
 6 in this complaint?  
 7 MS. READ SPANGLER: She doesn't know what the  
 8 allegations are.  
 9 THE WITNESS: Yeah, and nobody has said either  
 10 what they are or that we should investigate them.  
 11 Q. BY MR. ROSENBAUM: To your knowledge, is there  
 12 an office in the state of California or offices in the  
 13 state of California that deal was recruiting teachers  
 14 qualified to teach EL students?  
 15 MR. VIRJEE: Objection. Vague and ambiguous as  
 16 to "deals with recruiting."  
 17 MS. READ SPANGLER: And as to the term  
 18 "qualified."  
 19 MR. ROSENBAUM: Go ahead.  
 20 THE WITNESS: I'm not aware of it specifically.  
 21 There was a bilingual teacher training, BTTP group, but  
 22 I don't have knowledge.  
 23 Q. BY MR. ROSENBAUM: Do you know if it's still in  
 24 existence?  
 25 A. I don't.

1 Q. Okay. And with respect to retaining teachers  
 2 for EL students to teach a language acquisition, do you  
 3 know if there's an office in the state of California  
 4 that has that as its charge or assignment?  
 5 MR. VIRJEE: Objection. Vague and ambiguous as  
 6 to "retaining teachers," and assumes facts not in  
 7 evidence. Assumes there's a single office that does  
 8 that as opposed to multiple.  
 9 MS. READ SPANGLER: Join.  
 10 THE WITNESS: I don't know that specifically.  
 11 I do know that in California, in general there have been  
 12 many efforts about retaining teachers in teaching, but I  
 13 don't know. What office deals with that, I'm not aware  
 14 of.  
 15 Q. BY MR. ROSENBAUM: Or as Mr. Virjee said office  
 16 or office that's deal with EL?  
 17 A. Not that I --  
 18 Q. You're not aware of any such?  
 19 A. No.  
 20 Q. You talked to me -- strike that.  
 21 Is there data collected regarding the race and  
 22 ethnicity of English learners?  
 23 MR. VIRJEE: Objection. Calls for speculation.  
 24 Lacks foundation. Also vague as to in what context and  
 25 by whom.

1 MS. READ SPANGLER: Join.  
 2 THE WITNESS: It's collected by language group,  
 3 I'm not aware of race or ethnicity.  
 4 Q. BY MR. ROSENBAUM: You mean the categories are  
 5 language group, but not race or ethnicity; is that  
 6 right?  
 7 A. Yes.  
 8 Q. I take it the answer is, no, you're not aware  
 9 of any office or offices that do that?  
 10 A. Right.  
 11 Q. And do you know the phrase "immigrant  
 12 children"?  
 13 A. Yes.  
 14 Q. What does "immigrant children" mean?  
 15 MR. VIRJEE: Objection. Vague and ambiguous as  
 16 to in what context.  
 17 Q. BY MR. ROSENBAUM: In the context of EL, are  
 18 you familiar --  
 19 A. I'm familiar with the phrase.  
 20 Q. What does it mean?  
 21 MR. VIRJEE: Objection. Vague and ambiguous as  
 22 to in what context.  
 23 MR. ROSENBAUM: Go ahead.  
 24 THE WITNESS: I'm not positive what it means.  
 25 Q. BY MR. ROSENBAUM: Okay. There are -- we've

1 talked about ELs as a category, right?  
 2 A. Yes.  
 3 Q. And you said that's interchangeable with LEPs;  
 4 is that right?  
 5 A. Yes.  
 6 Q. So far as you know, is there also a category in  
 7 the California educational system known as immigrant  
 8 children?  
 9 A. Yes.  
 10 Q. And do you know -- I take it you just told me  
 11 you don't know what that means?  
 12 A. Not the specific definition, no.  
 13 Q. Do you know if there are specific programs for  
 14 immigrant children?  
 15 A. Yes, there are.  
 16 Q. Do any of those programs deal with language  
 17 acquisition, so far as you know?  
 18 A. I don't know the specifics of those programs.  
 19 Q. Have you ever investigated programs for  
 20 immigrant children in any of the Comite districts?  
 21 MR. VIRJEE: Objection. Vague and ambiguous as  
 22 to "investigated programs for immigrant children."  
 23 MR. ROSENBAUM: Go ahead.  
 24 THE WITNESS: Not specifically the immigrant  
 25 programs. Obviously a lot of immigrant students are in

1 our programs we do look at, but we have not singled out  
 2 a group of immigrant kids and looked only at them as  
 3 opposed to the native speaking students.  
 4 Q. BY MR. ROSENBAUM: Okay. Thank you. Has your  
 5 unit looked at success rates in terms of attaining  
 6 language proficiency of 1969 students?  
 7 MR. VIRJEE: Objection. Vague and ambiguous as  
 8 to "1969 students."  
 9 Students that went to school in 1969?  
 10 MR. ROSENBAUM: Well, we can ask that question  
 11 if Mr. Virjee is interested. Presumably he went to  
 12 school in 1969.  
 13 MR. VIRJEE: I'm too old for that.  
 14 Q. BY MR. ROSENBAUM: There are BCLAD, CLAD,  
 15 what's the other one?  
 16 A. SB-1969.  
 17 Q. That's the one I'm talking about. Has anyone  
 18 looked at the degree to which EL students taught by 1969  
 19 credentialed teachers attained language proficiency?  
 20 A. No.  
 21 Q. Has anyone looked at the extent to which the  
 22 students are taught by CLAD credentialed teachers?  
 23 A. No, not in our unit. I'm talking about our  
 24 unit.  
 25 MR. VIRJEE: You're asking exclusively as

1 that?  
 2 A. I don't know.  
 3 Q. Okay. Do you know if there's any research on  
 4 that subject matter?  
 5 A. I don't know.  
 6 Q. Okay. And if I asked you the same questions  
 7 with respect to attaining proficiency in core  
 8 curriculum, would your answers be the same, you're not  
 9 aware of any such investigations?  
 10 A. Yes.  
 11 Q. Or any such data with respect to that?  
 12 A. Yes.  
 13 Q. Okay. And has anyone looked at Stanford-9  
 14 results and attempted to determine whether or not there  
 15 was any difference in terms of performance by EL  
 16 students on Stanford-9 based on whether or not students  
 17 were taught by BCLAD, CLAD, 1969 or  
 18 emergency-credentialed teachers?  
 19 MR. VIRJEE: Isn't that assumed within the  
 20 question you just asked?  
 21 MR. ROSENBAUM: Probably is. I just want to  
 22 make it clear.  
 23 THE WITNESS: Not that I'm aware of.  
 24 Q. BY MR. ROSENBAUM: Okay. Has there ever been  
 25 any discussion at which you've been part of in which

1 opposed to EL students generally, taught by teachers  
 2 generally?  
 3 MR. ROSENBAUM: Any which way.  
 4 THE WITNESS: A comparison of CLAD teachers  
 5 versus 1969 teachers, we do not particularly break down  
 6 looking at teachers that way.  
 7 Q. BY MR. ROSENBAUM: Okay. Or BCLAD versus CLAD?  
 8 A. No.  
 9 Q. Or BCLAD versus 1969?  
 10 A. Right.  
 11 Q. Or 1969 versus emergency credential?  
 12 A. No.  
 13 Q. Or BCLAD versus emergency credential?  
 14 A. No.  
 15 Q. Or CLAD versus emergency credential?  
 16 A. No.  
 17 Q. Do you know if anyone at the State looks at  
 18 those questions.  
 19 A. I don't know.  
 20 Q. You're not aware of any data or any inquiry to  
 21 that effect; is that right?  
 22 A. That's right.  
 23 Q. Do you know if local districts do that?  
 24 A. I don't know specifically.  
 25 Q. Do you know if county boards of education do

1 somebody said it would be a good idea to see whether or  
 2 not it makes a difference to EL students whether they're  
 3 taught by CLAD or BCLAD or 1969 or  
 4 emergency-credentialed teachers?  
 5 A. In school districts we've had such discussions,  
 6 and the problem tends to be one year they may have an  
 7 emergency teacher, one year a BCLAD teacher, so you  
 8 can't draw a lot of conclusions just based on one year,  
 9 and very often, you know, there's a different teacher  
 10 every year. Yes, there has been thought of that, I'm  
 11 not aware of any formal studies.  
 12 Q. Do you know what a multitrack year-around  
 13 education is?  
 14 A. Generally, yeah.  
 15 Q. What's your understanding of what that is?  
 16 A. It's when students are placed on different  
 17 educational tracks and they're never all there at one  
 18 time. It's usually a way to make the best use of school  
 19 facilities when there are too many students to have them  
 20 there all at the same time.  
 21 Q. And do you know what Concept 6 is with respect  
 22 to multitrack?  
 23 A. No.  
 24 Q. You've never heard that phrase before?  
 25 A. Never heard that phrase.

1 Q. Do you know if any of the schools, the Comite  
2 schools that your units looked at are Concept 6 schools?  
3 MR. VIRJEE: She says she doesn't know what the  
4 term means.  
5 THE WITNESS: I don't think they are. I think  
6 I would know.  
7 Q. BY MR. ROSENBAUM: Has anyone looked at whether  
8 or not multitrack year-around education has an impact on  
9 EL students attaining language proficiency?  
10 MR. VIRJEE: Objection. Calls for speculation.  
11 Lacks foundation as to whether anybody has ever looked  
12 at that.  
13 Are you asking whether she is aware of anybody  
14 or has anybody in her unit looked at it?  
15 Q. BY MR. ROSENBAUM: To your knowledge, has  
16 anyone investigated that, looked into that question?  
17 A. Not that I know.  
18 Q. Nobody in your unit has ever done it?  
19 A. No.  
20 Q. No one's ever directed you to?  
21 A. No.  
22 Q. Does your unit collect data as to substitutes  
23 in classrooms where there are EL students?  
24 A. No.  
25 Q. Do you know if any state agency or office looks

1 Q. You're not aware of anybody looking into this?  
2 A. No.  
3 MR. VIRJEE: Objection. Asked and answered.  
4 Q. BY MR. ROSENBAUM: You think California is in  
5 need of teachers with CLAD credentials?  
6 MR. VIRJEE: Objection. Calls for speculation.  
7 Lacks foundation. Also incomplete hypothetical and  
8 vague and ambiguous as to "in need of."  
9 MS. READ SPANGLER: Join.  
10 THE WITNESS: I think that California needs  
11 such teachers, yes.  
12 Q. BY MR. ROSENBAUM: Do you have an opinion as to  
13 how many they need?  
14 MR. VIRJEE: Objection. Incomplete  
15 hypothetical. Vague and ambiguous. Calls for  
16 speculation as into what situation.  
17 THE WITNESS: And I don't know a specific  
18 number.  
19 Q. BY MR. ROSENBAUM: Have you ever seen any  
20 specific number as to how many CLAD teachers California  
21 needs for its public schools?  
22 MR. VIRJEE: Objection. Vague and ambiguous as  
23 to the words "CLAD" and "needs."  
24 THE WITNESS: I don't recall. I think that I  
25 have, but I don't recall the specifics.

1 into that question?  
2 A. I don't know.  
3 Q. To your knowledge, is there any policy with  
4 respect to substitutes in EL classes?  
5 MR. VIRJEE: Objection. Vague and ambiguous as  
6 to "policies." Also overbroad.  
7 MS. READ SPANGLER: Join.  
8 THE WITNESS: I don't know.  
9 Q. BY MR. ROSENBAUM: Particularly for EL  
10 students.  
11 A. I don't know.  
12 Q. Do you know whether or not districts have  
13 policies with respect to placing substitutes in EL  
14 classes?  
15 MR. VIRJEE: Objection. Compound.  
16 She just said there were over a thousand  
17 districts. Are you asking about any of those districts?  
18 MR. ROSENBAUM: Yeah.  
19 THE WITNESS: I don't know.  
20 Q. BY MR. ROSENBAUM: And I take it that's not  
21 part of your investigations?  
22 A. That's not part of our investigation.  
23 Q. So far as you know, it's not part of CCR's  
24 investigations?  
25 A. Not that I'm aware of.

1 Q. BY MR. ROSENBAUM: Can you recall where you  
2 might have seen that?  
3 A. No.  
4 Q. Okay. Do you have a ballpark number as to the  
5 number of teachers?  
6 A. No.  
7 Q. Okay. If I asked you the same question with  
8 respect to BCLAD?  
9 A. Yeah, it would be the same answer.  
10 Q. They're in need but you --  
11 A. There's a need, and we've seen it through the  
12 staffing plans that we've reviewed in the past. I have  
13 a picture that I've seen of summary data somewhere, but  
14 I can't put my head on it right now.  
15 Q. Okay. When you say "staffing data," tell me  
16 what you mean by that.  
17 A. The staffing plans.  
18 MR. VIRJEE: That she's already testified to.  
19 Q. BY MR. ROSENBAUM: Okay. And do you know if  
20 there are schools where 10 percent or more of the  
21 classrooms with EL students don't have either CLAD or  
22 BCLAD or 1969 teachers?  
23 MR. VIRJEE: Objection. Calls for speculation.  
24 Also asked and answered.  
25 MR. ROSENBAUM: Go ahead.

1 THE WITNESS: I think there are some. I don't  
 2 have specific numbers.  
 3 Q. BY MR. ROSENBAUM: And what's the basis of your  
 4 answer?  
 5 A. Having reviewed school districts.  
 6 Q. Okay. Outside of the Comite districts that  
 7 you've reviewed, do you know how many districts have 10  
 8 percent or more classrooms of EL students taught by  
 9 teachers without CLAD or BCLAD or 1969?  
 10 A. No, I don't.  
 11 Q. 20 percent, 50 percent?  
 12 A. I don't have a ballpark number.  
 13 Q. Okay. Have you seen that sort of data  
 14 collected?  
 15 A. No.  
 16 Q. Do you know if it is collected?  
 17 A. I don't know.  
 18 Q. Okay. Do you know whether or not what percent  
 19 of classrooms with EL students -- strike that.  
 20 One of the items of compliance deals with  
 21 instructional materials, appropriate instructional  
 22 materials. Do I have that generally right?  
 23 MR. VIRJEE: Objection. Misstates her  
 24 testimony.  
 25 MR. ROSENBAUM: I'm not asking about your

1 testimony, I'm asking a separate question.  
 2 Q. You told me that there are a number of items of  
 3 compliance, right?  
 4 A. Yes.  
 5 Q. Do any of those items deal with whether or not  
 6 students get appropriate ELD instructional materials?  
 7 A. Yes.  
 8 Q. Okay. And appropriate SDAIE instructional  
 9 materials?  
 10 A. Yes.  
 11 Q. Outside of the Comite districts, do you know  
 12 the number of districts where there are classrooms where  
 13 students don't get appropriate ELD materials?  
 14 MR. VIRJEE: She's already testified that she  
 15 doesn't have classroom-by-classroom data.  
 16 Q. BY MR. ROSENBAUM: Do you know the number of  
 17 schools where students don't have appropriate ELD data,  
 18 instructional data?  
 19 MR. VIRJEE: She already testified that she  
 20 doesn't have school-by-school data. She looks at the  
 21 issues district by district for compliance in both the  
 22 Comite area and in the CCR area.  
 23 MR. ROSENBAUM: That's not my question.  
 24 Q. The question is, outside of the Comite schools,  
 25 do you know the number of schools with EL students where

1 EL students are not receiving appropriate instructional  
 2 materials in the classrooms?  
 3 MR. VIRJEE: Objection. Vague and ambiguous as  
 4 to "appropriate instructional materials."  
 5 THE WITNESS: I don't know.  
 6 Q. BY MR. ROSENBAUM: What's your understanding of  
 7 the phrase appropriate ELD materials, instructional  
 8 materials?  
 9 A. Materials that are specifically designed to  
 10 teach English in a developmental way to students whose  
 11 second language is English and are appropriate for the  
 12 student's particular level of English language  
 13 proficiency.  
 14 Q. Do you know if that data is collected?  
 15 MR. VIRJEE: If what data is collected?  
 16 Q. BY MR. ROSENBAUM: Do you know -- outside of  
 17 the Comite, do you know if data is collected as to  
 18 whether or not EL students have appropriate ELD  
 19 materials in the classrooms?  
 20 MR. VIRJEE: Are you also excluding the CCR  
 21 process?  
 22 MR. ROSENBAUM: Yes, I am.  
 23 MR. VIRJEE: You need to say that in your  
 24 question, otherwise she won't know that.  
 25 THE WITNESS: I'm not aware of it.

1 Q. BY MR. ROSENBAUM: Same thing with SDAIE?  
 2 A. Outside of the CCR process, I'm not aware of  
 3 it.  
 4 Q. And outside of Comite?  
 5 A. And outside of the Comite, I'm not aware of  
 6 that.  
 7 MS. READ SPANGLER: Are we close to a breaking  
 8 point? I need a quick break. I think the court  
 9 reporter might need a rest there as well.  
 10 MR. ROSENBAUM: Okay. Let's go off the record  
 11 for a minute, please.  
 12 (Recess taken.)  
 13 Q. BY MR. ROSENBAUM: You told me about a paper  
 14 you read by Dr. Cummings?  
 15 A. Yes.  
 16 Q. And that was in response to a question of mine  
 17 about whether you knew of any studies or papers dealing  
 18 with how quickly kids can become fluent in English?  
 19 A. Yes.  
 20 Q. And I actually cut you off. Are there other  
 21 papers that you've read?  
 22 A. Dealing with that specific issue, I'm not sure.  
 23 There are many other papers that I've read.  
 24 Q. Yeah, with regard to that issue.  
 25 A. Right.

1 Q. Are there other persons, besides Dr. Cummings,  
2 whom you regard as an expert in that year?  
3 A. Oh, yes.  
4 Q. Who else?  
5 A. Jay Green. Most recently he's done a  
6 metaanalysis of the effectiveness of bilingual  
7 education, K-a-y-g-i-e, and Collier and Thomas, who have  
8 done a comparative study for different kinds of programs  
9 for English learners. There's a whole bunch of them.  
10 David Ramirez.  
11 Q. Do any of those papers, as you recall them,  
12 discuss what kids need in order to be successful?  
13 MR. VIRJEE: Objection. Vague and ambiguous as  
14 to "what kids need," and also "to be successful." I  
15 guess it's just generally a vague question.  
16 MR. ROSENBAUM: Go ahead.  
17 THE WITNESS: I think that they all discuss  
18 that in some way. I don't know if any of them exactly  
19 lay it out that way.  
20 Q. BY MR. ROSENBAUM: Do you remember what their  
21 conclusions were, any of them, Green, Collier and  
22 Thomas?  
23 A. Green's overall general conclusion was that  
24 bilingual programs tend to be more effective in teaching  
25 kids English than English only when you do this kind of

1 metaanalysis, scientific analysis that he did.  
2 Steve Krashen concludes that quality programs  
3 need to teach kids English, provide primary language  
4 literacy and provide content teaching.  
5 I mean, there are just different conclusions on  
6 different studies that all point to kids need a quality  
7 program, whatever kind of program it is.  
8 Q. Okay. And when you say "quality program," what  
9 do you mean by that?  
10 A. That means a program that's well designed,  
11 based on some kind of a research design, implemented  
12 with adequate materials, teachers, whatever, to make  
13 sure that it's got a reasonable chance to succeed, and  
14 then that it's evaluated to determine that, in fact,  
15 it's being effective in helping students both acquire  
16 English and meet grade level standards.  
17 Q. Well designed, research designed?  
18 A. Well implemented and well evaluated.  
19 Q. Adequate programs and adequate teachers, am I  
20 getting this right?  
21 A. Yes.  
22 Q. Put aside the districts which Comite and CCR  
23 look at. Do you know how many programs for EL  
24 students -- strike that.  
25 Do you know how many district programs for EL

1 students are well designed, as you use that term?  
2 MR. VIRJEE: Objection. Vague and ambiguous.  
3 If you put aside all the districts that Comite  
4 and CCR look at, there are no districts.  
5 MS. READ SPANGLER: Right.  
6 THE WITNESS: CCR looks at every district on a  
7 four-year cycle, so every four years they look at every  
8 district.  
9 Q. BY MR. ROSENBAUM: Do you know how many  
10 districts have programs for research design?  
11 MR. VIRJEE: Objection. Vague and ambiguous.  
12 THE WITNESS: I don't specifically know that.  
13 Q. BY MR. ROSENBAUM: Okay. Or how many schools?  
14 A. No, don't know.  
15 Q. Okay. Do you know how many have adequate  
16 teachers?  
17 MR. VIRJEE: Objection. Vague and ambiguous as  
18 to the term "adequate." Also you've already asked that  
19 question.  
20 MR. ROSENBAUM: As you used that term.  
21 THE WITNESS: Don't know.  
22 Q. BY MR. ROSENBAUM: Same thing for each of those  
23 items?  
24 A. Right.  
25 Q. On Exhibit 50, which is your resume, you gave a

1 presentation in 1999, what does the research say,  
2 selected studies on programs for English learners?  
3 A. Yes.  
4 Q. Is that right?  
5 A. I recall that.  
6 Q. And you presented at the annual conference for  
7 bilingual education?  
8 A. Yes.  
9 MR. VIRJEE: California Association of the  
10 Bilingual Education.  
11 THE WITNESS: Yes.  
12 Q. BY MR. ROSENBAUM: And was that -- did you  
13 present a paper?  
14 A. It was actually a packet of information.  
15 Q. And do you still have that packet?  
16 A. Yes, I do.  
17 Q. Do you keep it in a particular file?  
18 A. It's in the office, yes.  
19 Q. Is it under a particular file label?  
20 A. Well, I have little like magazine racks, and  
21 one of them has that in it, yeah.  
22 Q. Can you summarize, did you reach certain  
23 conclusions?  
24 A. Actually, what we did in that was to present a  
25 variety of research on purpose, so I wouldn't say I

1 could summarize one conclusion. Presented research by  
 2 Rossell and Baker, who are opponents of bilingual  
 3 education, presented a paper by Jay Green, the paper I  
 4 mentioned, Jim Cummings, Tickenoff and Ward, and a  
 5 couple of others.  
 6 Q. Maybe this is the same thing. Your resume on  
 7 page 2, Exhibit 50 says -- under California Department  
 8 of Education there are several bullet points, and the  
 9 fifth one says, authored a paper on an analysis of  
 10 current research on services for English learners.  
 11 A. Okay. Yeah, that would be part of that packet  
 12 we put together.  
 13 Q. You authored, I take it, means you did some  
 14 writing; is that right?  
 15 A. Yeah, what I really did was summarize each of  
 16 them and what the findings were for each one.  
 17 Q. Okay. The Comite unit, one of its -- one of  
 18 the things it does is it provides technical assistance  
 19 such as you told us?  
 20 A. Yes.  
 21 Q. When you say technical assistance, what does  
 22 that mean?  
 23 A. It means that we help districts come into  
 24 compliance with state and federal law. We do that  
 25 through such activities as providing workshops in the

1 district, through talking on the telephone, e-mailing,  
 2 meeting with district personnel, district parents  
 3 sometimes, a variety of things. We make resources  
 4 available to them, we send them information, put them in  
 5 touch with other districts with similar population and  
 6 similar issues.  
 7 Q. Okay. When you say "resources," I take it that  
 8 doesn't mean money?  
 9 A. No, we don't have money.  
 10 Q. Okay. Do district personnel, in your  
 11 experience with the Comite unit, ever tell you they have  
 12 a hard time recruiting qualified teachers to teach ELs?  
 13 A. Yes, they sometimes do tell us that.  
 14 Q. Do you hear that a lot?  
 15 A. Define "a lot." We hear that quite a bit, yes.  
 16 Q. And when you say "quite a bit," what do you  
 17 mean by that?  
 18 A. It's less since 227 and there's less of a total  
 19 demand for bilingual teachers, so it's not as much as it  
 20 was, but we hear it in a number of districts, that it's  
 21 a challenge for them.  
 22 Q. Have you heard it in Oakland?  
 23 A. Yes.  
 24 Q. Have you heard it in Inglewood?  
 25 A. Yes.

1 Q. Have you heard it in Compton?  
 2 A. I haven't personally, but I think our unit has.  
 3 Q. Of the 30 districts, to your knowledge, have  
 4 those districts all expressed that concern?  
 5 A. Not all.  
 6 MR. VIRJEE: Objection. Calls for speculation.  
 7 Lacks foundation.  
 8 Q. BY MR. ROSENBAUM: Do you know what percent of  
 9 them have that you're personally aware?  
 10 MR. VIRJEE: Objection. Calls for speculation.  
 11 Lacks foundation.  
 12 THE WITNESS: I don't know specifically, but  
 13 not all of them.  
 14 Q. BY MR. ROSENBAUM: What have personnel from  
 15 Oakland told you?  
 16 MR. VIRJEE: About that issue?  
 17 MR. ROSENBAUM: Yes.  
 18 THE WITNESS: That they have a difficult time,  
 19 particularly at some of their schools, of keeping  
 20 qualified teachers.  
 21 Q. BY MR. ROSENBAUM: Keeping qualified teachers?  
 22 A. Right, attracting and keeping qualified  
 23 teachers.  
 24 Q. When you use the phrase "qualified teachers,"  
 25 what do you mean?

1 A. I mean qualified to teach English learners.  
 2 Q. And have they talked to you about why they have  
 3 difficulty attracting and keeping those teachers?  
 4 A. I don't recall the specifics of what they've  
 5 said.  
 6 Q. Okay. Have you ever heard the concern, it  
 7 would be helpful if we had more money to pay the  
 8 teachers?  
 9 A. I think almost every district would like to  
 10 have more money, but I don't remember a specific comment  
 11 along those lines, but they all think they would like to  
 12 have more money almost.  
 13 Q. How do you know that?  
 14 A. Because every time we ask, could you use more  
 15 resources, more of anything, they always think they  
 16 could.  
 17 Q. Okay. Do you ever get them more resources?  
 18 A. We don't have the power or ability to do that.  
 19 Q. Do you ever pass that information on to  
 20 anybody?  
 21 A. Not specifically, no.  
 22 Q. Okay. Do you know what SABE is?  
 23 A. Yes.  
 24 Q. What is SABE, all caps?  
 25 A. I'm actually not sure what it stands for, but



1 it's the norm-referenced test in Spanish given in  
 2 California to English learners who are Spanish speakers  
 3 who have been in schools here for less than a year.  
 4 Q. Okay. Is there an SABE I, an SABE II, as far  
 5 as you know?  
 6 A. I don't know.  
 7 MR. VIRJEE: Objection. Asked and answered.  
 8 Q. BY MR. ROSENBAUM: Do you know if there's an  
 9 SABE II?  
 10 MR. VIRJEE: Objection. Asked and answered.  
 11 THE WITNESS: I don't know.  
 12 Q. BY MR. ROSENBAUM: Do you have an understanding  
 13 of what the purpose of the SABE exam is?  
 14 MR. VIRJEE: Other than what she just testified  
 15 to?  
 16 THE WITNESS: To get some indication of a  
 17 student's ability in Spanish to do grade level basic  
 18 skills, work.  
 19 Q. BY MR. ROSENBAUM: And do you know if there is  
 20 an equivalent exam in any other language besides  
 21 English?  
 22 MR. VIRJEE: Objection. Calls for speculation.  
 23 THE WITNESS: And I'm not aware of one.  
 24 Q. BY MR. ROSENBAUM: Okay. And have you looked  
 25 at -- does your office, your unit, look at SABE results?

1 A. Yes, we do.  
 2 Q. For what purpose?  
 3 A. To see -- when districts have an alternative  
 4 program, that's one measure of the effectiveness of that  
 5 program, because districts are required to give it for  
 6 students less than a year in the district, but they may  
 7 give it to other students if they choose, and typically  
 8 districts that implement alternative programs give the  
 9 test to their students who are in those programs.  
 10 Q. Okay. Help me understand what you mean when  
 11 you say alternative programs.  
 12 A. Bilingual programs with parental exception  
 13 waivers, of course.  
 14 Q. There's another type of program called a  
 15 mainstream program?  
 16 A. Yes.  
 17 Q. What's a mainstream program?  
 18 A. Good question. 227 defines the mainstream  
 19 program not by what happens in there, but by who is in  
 20 it. 227 says specifically that a mainstream program is  
 21 a program that enrolls native English speakers, students  
 22 who are fluent in English or students who have a good  
 23 working knowledge of English, and it also says that  
 24 parents of students without a good working knowledge of  
 25 English can request to have their children in the

1 mainstream also, so it could have also students with  
 2 less than a good working knowledge of English.  
 3 Q. Do you know the percent of EL students who are  
 4 in mainstream programs?  
 5 A. I don't have it right off my head. I have it  
 6 readily available, but I don't know it.  
 7 Q. In what data form do you have it readily  
 8 available?  
 9 A. The educational demographics information.  
 10 Q. Okay. And do you know -- I'm sorry, the  
 11 administration of the SABE exam, is that a requirement?  
 12 MR. VIRJEE: Objection. Vague and ambiguous as  
 13 to "requirement."  
 14 MR. ROSENBAUM: A state requirement.  
 15 THE WITNESS: For students who have been  
 16 enrolled less than a year, yes.  
 17 Q. BY MR. ROSENBAUM: When you say "for students,"  
 18 what do you mean by that?  
 19 A. I'm sorry, English learners who speak Spanish.  
 20 Q. And is there a similar requirement for English  
 21 learners who speak other languages besides Spanish?  
 22 A. No.  
 23 Q. Do you know why that is?  
 24 A. I don't know for sure.  
 25 Q. What is your understanding?

1 A. Lack of availability of the test.  
 2 Q. Do you know if there's any work going on to  
 3 develop additional tests?  
 4 A. Not that I'm aware of.  
 5 Q. Since 227 went into effect, do you know how  
 6 many times the SABE has been administered?  
 7 MR. VIRJEE: Objection. Lacks foundation.  
 8 THE WITNESS: Two or three times.  
 9 Q. BY MR. ROSENBAUM: And have you looked at -- do  
 10 you know if the SABE data is broken down by student?  
 11 And by that what I mean is I'm interested in terms of  
 12 how a student did in year 1998, '99 on the SABE --  
 13 strike that.  
 14 Students would only be administered the SABE  
 15 one time?  
 16 MS. READ SPANGLER: Objection. Misstates her  
 17 testimony.  
 18 MR. ROSENBAUM: I'm asking the question. I'm  
 19 confused.  
 20 MR. VIRJEE: Objection. Calls for speculation.  
 21 Lacks foundation.  
 22 THE WITNESS: It's required only for students  
 23 less than a year, so that would mean one time. However,  
 24 if they're in a bilingual program, a district may choose  
 25 to give it more times.

1 Q. BY MR. ROSENBAUM: Are there districts, to your  
2 knowledge, that choose to give it more than one time?  
3 A. Yes.  
4 Q. Do you know how many districts fall in that  
5 category?  
6 A. No.  
7 Q. Or how many students are getting it more than  
8 one time?  
9 A. No.  
10 Q. Do you know if there are any longitudinal  
11 studies that look at how students do when they take the  
12 SABE more than one time since 227 went into effect?  
13 A. Not on a state level. I think districts do  
14 that kind of analysis.  
15 Q. Okay. But have you seen any of that analysis?  
16 A. No.  
17 Q. Do you know the results of any of those  
18 analyses?  
19 A. No.  
20 Q. No one has asked you to collect that  
21 information?  
22 A. No.  
23 Q. Or report on that information?  
24 A. No.  
25 Q. Who do you report to?

1 MR. VIRJEE: Objection. Asked and answered.  
2 THE WITNESS: To the division director, Marsha  
3 Bedwell, now.  
4 Q. BY MR. ROSENBAUM: Do you know who Ms. Bedwell  
5 reports to?  
6 MR. VIRJEE: Objection. Asked and answered.  
7 THE WITNESS: Yes.  
8 Q. BY MR. ROSENBAUM: Okay. And that's  
9 Mr. Warren?  
10 MR. VIRJEE: Objection. Asked and answered.  
11 THE WITNESS: Not anymore. Scott Hill.  
12 Q. BY MR. ROSENBAUM: Why is that?  
13 A. Just last week there was a change in the  
14 reporting structure, and now our division reports  
15 directly to the chief deputy.  
16 Q. Mr. Hill?  
17 A. Yes.  
18 Q. Is Mr. Warren in the same job?  
19 A. Yes, he is.  
20 Q. Okay. Do you know why that change was made?  
21 MR. VIRJEE: Objection. Calls for speculation.  
22 Lacks foundation.  
23 MS. READ SPANGLER: Join.  
24 THE WITNESS: Mr. Warren sent an e-mail about  
25 it, so I think you're still talking to him.

1 Q. BY MR. ROSENBAUM: Have you talked to  
2 Mr. Warren about his deposition?  
3 A. No.  
4 Q. Has he talked to you about it?  
5 A. No. Well, define talk. He said, oh, you're  
6 going, oh, I've been. That was about it.  
7 Q. How about Ms. Clark-Thomas, have you talked to  
8 her about her deposition?  
9 A. Just she told me she mentioned my name and  
10 she's personally responsible for this.  
11 Q. She's completely responsible.  
12 Have you reviewed any documents relating to  
13 this lawsuit at all?  
14 A. No.  
15 Q. Did you look at any documents in preparation  
16 for this deposition?  
17 A. No.  
18 Q. Forget about the lawyers in this room. Did you  
19 talk to anybody about this case? Have you had any  
20 discussions about this case?  
21 A. No, not in terms of the deposition at all.  
22 Q. How about just generally?  
23 A. I read about it when it came in the newspaper,  
24 so I was interested in it and had some discussions with  
25 colleagues, but that's very superficial knowledge.

1 Q. Okay. One of the items that you looked at is  
2 students not having core curriculum materials. We  
3 talked about that.  
4 A. Yes.  
5 Q. What's the impact if kids don't have those  
6 materials?  
7 MR. VIRJEE: Objection. Asked and answered.  
8 Calls for speculation.  
9 MS. READ SPANGLER: Join.  
10 THE WITNESS: I don't think there's a simple  
11 answer. It depends on what subject, depends on how  
12 important the actual materials are versus classroom  
13 instruction. It could be a big problem, but it is just  
14 not a straight answer.  
15 Q. BY MR. ROSENBAUM: Because?  
16 MR. VIRJEE: Objection. Asked and answered.  
17 Also vague and ambiguous. Overbroad. Calls for  
18 speculation. Incomplete hypothetical.  
19 MR. ROSENBAUM: I'll withdraw.  
20 MR. VIRJEE: Lord have mercy.  
21 Q. BY MR. ROSENBAUM: We've talked about ELD and  
22 SDAIE, right?  
23 A. Yes.  
24 Q. Is there a category SDAIE/ELD?  
25 MR. VIRJEE: In what context, Mark?

1 MR. ROSENBAUM: In the context of instructional  
2 materials or instructional strategies.

3 THE WITNESS: There is in the R30 language  
4 census, but when it does that it doesn't mean it's the  
5 same thing. It says number of students receiving  
6 ELD/SDAIE. That means English language development and  
7 SDAIE instruction for core consent, so it's not a  
8 separate category.

9 Q. BY MR. ROSENBAUM: And how do you figure that  
10 out, do you just add ELD and SDAIE together?

11 A. In the language census. That's one of the  
12 instructional programs that are described in the  
13 language census. The language census has ELD only, ELD  
14 and SDAIE, ELD and SDAIE and primary language support,  
15 ELD, SDAIE and primary language instruction, and none of  
16 the above. Those are the choices.

17 Q. And they each have different sets of  
18 instructional materials?

19 A. No.

20 Q. What's the difference between an SDAIE/ELD set  
21 of instructional materials?

22 MR. VIRJEE: I'm just going to short-circuit  
23 this. She's talking about the report, what kids are  
24 actually receiving and what program they are --

25 MR. ROSENBAUM: I appreciate that.

1 for primary --

2 MR. VIRJEE: His question was, are there any  
3 credentialing requirements. That was his question.

4 THE WITNESS: Okay. No. Got it.

5 Q. BY MR. ROSENBAUM: No state requirement that  
6 you're aware of?

7 A. Correct.

8 Q. Okay. Now, you were explaining to me that  
9 there are two categories, am I understanding you right?

10 MR. VIRJEE: Categories of what?

11 Q. BY MR. ROSENBAUM: That you look for with  
12 respect to compliance as to aides; is that right?

13 A. Yes.

14 Q. And what are they?

15 A. There's a requirement that if a teacher is in  
16 an assignment where they're providing or are responsible  
17 for primary language instruction and the teacher does  
18 not hold an appropriate authorization, that teacher must  
19 be assisted by a bilingual aide.

20 Q. And "a bilingual aide," what does that mean?

21 A. As defined by the district. The state doesn't  
22 have a requirement.

23 Q. And when you say bilingual, that means that  
24 they're fluent in a language other than English; is that  
25 right?

1 Q. You talked to me earlier about instructional  
2 aides?

3 A. Yes.

4 Q. And what's your understanding of what that  
5 phrase means, an instructional aide?

6 MR. VIRJEE: Objection. Vague and ambiguous as  
7 in what context.

8 MR. ROSENBAUM: With respect to ELs.

9 MR. VIRJEE: Still vague and ambiguous as in  
10 what context.

11 THE WITNESS: Instructional aides are adults  
12 hired by schools or school districts to assist at the  
13 school, usually in classroom instruction.

14 Q. BY MR. ROSENBAUM: Okay. And does that -- are  
15 there any credentialing requirements that you're aware  
16 of with respect to aides for purposes of EL?

17 MR. VIRJEE: Objection. Calls for speculation.  
18 Lacks foundation. Also vague and ambiguous as to  
19 "credentialing requirements."

20 THE WITNESS: The districts have requirements  
21 that their aides must meet typically. And then in terms  
22 of compliance, the only requirement that we have that  
23 deals specifically with them -- well, there are two.  
24 There is the requirement that if the teacher is  
25 providing primary language instruction, is responsible

1 MR. VIRJEE: Objection. Vague and ambiguous as  
2 to "fluent." Overbroad. She just said there is no  
3 state requirement, it's district by district.

4 MS. READ SPANGLER: Join.

5 Q. BY MR. ROSENBAUM: Tell me what you understand  
6 that to mean. When you use the word bilingual, what did  
7 you mean by that?

8 A. That they speak English and the language in  
9 which they're providing assistance.

10 Q. Okay. And some districts have that  
11 requirement; is that right?

12 MR. VIRJEE: Some districts have which  
13 requirement?

14 Q. BY MR. ROSENBAUM: That in a course that is  
15 being taught in a primary language, that if the teachers  
16 doesn't speak the language, that there be an aide  
17 present who speaks it. Did I understand right?

18 A. That is correct, yes.

19 Q. Do you know how many districts in the state of  
20 California have that requirement?

21 A. That's actually a state requirement.

22 Q. Okay. And where does that state requirement  
23 appear, so far as you know?

24 A. It's in our monitoring instrument in EL 3a, and  
25 I can't give you the Ed Code citation because I don't

1 know.  
 2 Q. When you say --  
 3 A. I'm sorry, 3b. Not 3a, 3b.  
 4 Q. Thank you. Now, if there is an EL class taught  
 5 in -- if there is a classroom and EL is taught in the  
 6 primary language and there are EL students in that  
 7 classroom who speak Spanish, I take it what you're  
 8 saying is -- and the teacher doesn't, there has to be an  
 9 aide who speaks Spanish; is that right?  
 10 A. That's correct.  
 11 Q. And if there are students who speak Spanish and  
 12 Chinese or Mandarin, there has to be two aides or one  
 13 aide who speaks both those languages; is that right?  
 14 A. If the district is providing a bilingual  
 15 program, yes.  
 16 Q. Okay. So there have to be --  
 17 MR. VIRJEE: Are you asking her what the state  
 18 requirements are, or are you asking her what the  
 19 district requirements are? Are you asking what she  
 20 monitors? What are you asking?  
 21 MR. ROSENBAUM: Let me see if I understand you  
 22 correctly. I got a little confused.  
 23 Q. Is there a state requirement that wherever  
 24 there is a primary language instruction system that's  
 25 bilingual, that if the teacher doesn't speak the

1 MS. READ SPANGLER: Join. And I think it  
 2 misstates her testimony.  
 3 Q. BY MR. ROSENBAUM: Is that your understanding?  
 4 A. You wouldn't have a bilingual class with five  
 5 languages because by definition a bilingual class has  
 6 two languages in it, so you wouldn't do that.  
 7 Q. So there could never be more -- in a bilingual  
 8 class there can never be more than one other language  
 9 besides English?  
 10 A. I don't want to say never, but there shouldn't  
 11 be.  
 12 Q. Do you know if there are?  
 13 MR. VIRJEE: Objection. Vague and ambiguous.  
 14 Calls for speculation.  
 15 THE WITNESS: I'm not sure.  
 16 MS. READ SPANGLER: Join.  
 17 Q. BY MR. ROSENBAUM: Do you know if anybody is  
 18 looking into that at the state level?  
 19 A. Not that I'm aware.  
 20 MS. READ SPANGLER: What time is it? She has a  
 21 bus to catch.  
 22 MR. ROSENBAUM: Okay. What time would you like  
 23 to resume tomorrow?  
 24 THE WITNESS: Any time for me. I come to work  
 25 at 7:00.

1 language, the native language of an EL, there has to be  
 2 an aide who speaks it?  
 3 A. The requirement is actually if the teacher  
 4 doesn't hold the appropriate authorization.  
 5 Q. Okay. And that's a state requirement?  
 6 A. Yes.  
 7 Q. Okay. Now, when you were talking to us earlier  
 8 about district requirements, that's where I got  
 9 confused. What did you mean by --  
 10 A. The district defines what are the minimal  
 11 requirements for that bilingual aide to this.  
 12 Q. I appreciate that. But there are no state  
 13 requirements as to credentialing for those aides; is  
 14 that right?  
 15 A. Yes, there are none.  
 16 MR. VIRJEE: Objection. Asked and answered.  
 17 Q. BY MR. ROSENBAUM: Okay. And speaking with  
 18 respect to the state requirements, do I understand that  
 19 to mean that if you have a primary language class and  
 20 there are ELs there that speak five different languages  
 21 in addition to English, you need aides -- an aide or  
 22 aides who speak those same five languages?  
 23 MR. VIRJEE: Objection. Calls for speculation.  
 24 Lacks foundation. Also calls for a legal conclusion for  
 25 which this witness is not competent to testify.

1 MR. ROSENBAUM: Off the record.  
 2 (The deposition concluded at 4:50 p.m.)  
 3 ---o0o---

1 Please be advised that I have read the  
 2 foregoing deposition. I hereby state there are:  
 3  
 4 (check one) \_\_\_\_\_ NO CORRECTIONS  
 5 \_\_\_\_\_ CORRECTIONS ATTACHED  
 6  
 7 \_\_\_\_\_  
 8 Date Signed  
 9  
 10 \_\_\_\_\_  
 11 LAURENE BURNHAM-MASSEY

12 Case Title: Williams vs State, Volume I  
 13 Date of Deposition: Thursday, July 19, 2001  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

1 REPORTER'S CERTIFICATE  
 2  
 3 I certify that the witness in the foregoing  
 4 deposition,  
 5 LAURENE BURNHAM-MASSEY,  
 6 was by me duly sworn to testify the truth, the whole  
 7 truth, in the within-entitled cause; that said  
 8 deposition was taken at the time and place therein  
 9 named; that the testimony of said witness was reported  
 10 by me, a duly certified shorthand reporter and a  
 11 disinterested person, and was thereafter transcribed  
 12 into typewriting.  
 13 I further certify that I am not of counsel or  
 14 attorney for either or any of the parties to said cause,  
 15 nor in any way interested in the outcome of the cause  
 16 named in said deposition.  
 17 IN WITNESS WHEREOF, I have hereunto set my hand  
 18 this 31st day of July, 2001.  
 19  
 20  
 21  
 22 \_\_\_\_\_  
 23 TRACY LEE MOORELAND, CSR 10397  
 24 State of California  
 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: LAURENE BURNHAM-MASSEY, VOLUME I  
 8 CASE: WILLIAMS VS STATE OF CALIFORNIA  
 9 DATE OF DEPOSITION: THURSDAY, JULY 19, 2001  
 10 I, \_\_\_\_\_, have the following  
 11 corrections to make to my deposition:  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

PAGE	LINE	CHANGE/ADD/DELETE
9	_____	_____
10	_____	_____
11	_____	_____
12	_____	_____
13	_____	_____
14	_____	_____
15	_____	_____
16	_____	_____
17	_____	_____
18	_____	_____
19	_____	_____
20	_____	_____
21	_____	_____
22	_____	_____
23	_____	_____
24	_____	_____
25	LAURENE BURNHAM-MASSEY	DATE _____

1 ESQUIRE DEPOSITION SERVICES  
 2 Certified Shorthand Reporters  
 3 1801 I Street, Suite 100  
 4 Sacramento, California 95814  
 5  
 6 Ms. Laurene Burnham-Massey  
 7 9 Eastwind Ct.  
 8 Sacramento, CA 95831  
 9  
 10 Re: Williams vs State of California, Vol. I  
 11 Date Taken: Thursday, July 19, 2001  
 12 Dear Ms. Burnham-Massey:  
 13 Your deposition is now ready for you to read, correct,  
 14 and sign. The original will be held in our office for  
 15 45 days from the date of your last day of deposition.  
 16 If you are represented by counsel, you may wish to  
 17 discuss with him/her the reading and signing of your  
 18 deposition. If your attorney has purchased a copy of  
 19 your deposition, you may review that copy. If you  
 20 choose to read your attorney's copy, please fill out,  
 21 sign, and submit to our office the DEPONENT'S CHANGE  
 22 SHEET located in the back of your deposition.  
 23 If you choose to read your deposition at our office, it  
 24 will be available between 9:00 a.m. and 4:00 p.m.  
 25 Please bring this letter as a reference.  
 If you do not wish to read your deposition, please sign  
 here and return within 30 days of the date of this  
 letter.  
 \_\_\_\_\_  
 LAURENE BURNHAM-MASSEY DATE \_\_\_\_\_  
 Sincerely,  
 TRACY LEE MOORELAND, CSR  
 Esquire Deposition Services  
 Job No. 27488  
 cc: Mark Rosenbaum, Esq. Fram Virjee, Esq.  
 Sarah Kaatz, Esq. Judy Cias, Esq.  
 Kara Spangler, Esq.

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

5 MORRISON & FOERSTER  
6 ATTN: LOIS K. PERRIN, ESQ.  
7 429 Market Street  
8 San Francisco, CA 94105-2482

9 Re: Williams Vs State of California  
10 Deposition of: Laurene Burnham-Massey, Volume I  
11 Date Taken: Thursday, July 19, 2001

12 Dear Ms. Perrin:

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. 27488