

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

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

vs.

No. 312236

7 STATE OF CALIFORNIA, DELAINE EASTIN,
State Superintendent of Public
8 Instruction, STATE DEPARTMENT OF
EDUCATION, STATE BOARD OF EDUCATION,
9 Defendants.

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12 Deposition of

13 HENRY DER

14 Volume I, Pages 1 through 149

15 Wednesday, July 18, 2001
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22 Reported by:

23 TRACY LEE MOORELAND

24 CSR No. 10397

25 Job No. 27487

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1 BE IT REMEMBERED, that on Wednesday, July 18,
2 2001, commencing at the hour of 10:14 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 HENRY DER,
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.

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13 MR. AFFELDT: John Affeldt for plaintiffs from
14 Public Advocates.

15 MR. HERRON: David Herron from O'Melveny &
16 Myers for the State of California.

17 MS. ALTAMIRANO: Margarita Altamirano,
18 representing three State agencies and Henry Der.

19 MR. HAJELA: Abe Hajela, representing
20 California School Boards Association.

21 MR. AFFELDT: Okay. We're not going to waive
22 signature, but the deposition can be signed before any
23 notary, if that's all right.

24 EXAMINATION BY MR. AFFELDT

25 Q. Mr. Der, have you had your deposition taken

1 before?
 2 A. Yes.
 3 Q. How many times?
 4 A. A couple of times.
 5 Q. In what cases were those?
 6 A. I think one was before the PUC, or it was an
 7 administrative law matter, and there may have been
 8 another one for the Federal Communications Commission.
 9 Q. Okay. So are you somewhat familiar with the
 10 procedures for asking and answering questions in
 11 deposition?
 12 A. Yes.
 13 Q. As part of that, I'll ask you questions and
 14 we'll need you to say affirmatively yes or no on the
 15 record. Nodding your head I can see, but the court
 16 reporter needs to hear "yes."
 17 A. Uh-huh.
 18 Q. And it's important that you wait until I finish
 19 asking my question before you give an answer. Is that
 20 okay?
 21 A. Yes.
 22 Q. And by the same token, if I interrupt your
 23 question (sic) before you're done, if you could let me
 24 know, and I will let you finish your answer.
 25 A. Okay.

1 Q. And if you don't understand a question, also
 2 will you let me know that you haven't understood?
 3 A. Okay.
 4 Q. Have you -- are you on any medication that
 5 would interfere with your ability to answer questions?
 6 A. I am on medication, but I don't think it
 7 interferes with my ability to answer questions.
 8 Q. Okay. How are you feeling today?
 9 A. Very good.
 10 Q. If you need to take a break at any point, use
 11 the restroom or a coffee break, just let me know and we
 12 can do that.
 13 A. Okay.
 14 Q. The one thing that I would ask is that you
 15 answer a pending question before we take a break.
 16 A. Okay.
 17 Q. Are you familiar with the Williams litigation
 18 that we're here today about?
 19 A. Yes.
 20 Q. What's your level of familiarity?
 21 A. I know that the plaintiffs have filed an action
 22 against the State of California, the Department of
 23 Education, and the state superintendent about certain
 24 conditions in our public schools in California.
 25 Q. Have you had a chance to read the complaint?

1 A. I have read some time ago sort of a summary.
 2 I've not read the entire complaint.
 3 Q. Okay. But you're generally familiar with the
 4 allegations in the complaint?
 5 A. Yes.
 6 Q. Starting with where you went to high school,
 7 could you tell us what your educational background is?
 8 A. Starting in high school. I attended Franklin
 9 High School in Stockton, California, and after I
 10 graduated from there, I attended Stanford University. I
 11 graduated there in June of 1990 -- 1968.
 12 You want my educational background, right?
 13 Q. Yes, please. And degrees while you're going
 14 through the litany.
 15 A. I graduated from Stanford. And then '84, '85 I
 16 attended Golden Gate University and got an executive
 17 MBA. Then in 1990, '91 I attended Stanford School of
 18 Education, and I achieved an MA in policy analysis, and
 19 I attended Berkeley to do doctoral work. I haven't
 20 finished my dissertation, but I've completed all my
 21 coursework and all the qualifying exams.
 22 Q. What's the Ph.D. in?
 23 A. School choice.
 24 Q. Is that in the school -- Ph.D. in education?
 25 A. Yes, it was in the ed program.

1 Q. Is your dissertation going to be on school
 2 choice?
 3 A. Right. Yes.
 4 Q. And while we're at it, starting with your work
 5 at CAA, can you give us your employment history?
 6 A. I started my employment at Chinese for
 7 Affirmative Action in July of -- no, I started in, yeah,
 8 July of 1973, and I was employed there until January of
 9 1996.
 10 And in February of 1996 I joined the executive
 11 staff of the state superintendent as a deputy
 12 superintendent for the external affairs branch, and that
 13 was February of 1996.
 14 Then in February of 1998 I assumed my current
 15 position as deputy superintendent for the educational --
 16 ed equity access and support branch. There was -- and
 17 during -- it was in the fall of 1998 I taught a course
 18 at UC Berkeley. I taught an undergraduate course on
 19 Asian Americans in education.
 20 (Ms. Kaatz entered the room.)
 21 Q. BY MR. AFFELDT: What department was that
 22 course under?
 23 A. It was an Asian-American studies program.
 24 Q. And can you give me a brief synopsis of what
 25 the course was focusing on with respect to

1 Asian-Americans?
 2 MR. HERRON: Objection. Relevance.
 3 Go ahead.
 4 THE WITNESS: The course focused on the
 5 participation of Asian-Americans in K-12 education and
 6 higher education, historical perspective up to current
 7 status, and the course also looked at, you know, public
 8 policy issues as -- current public policy issues as they
 9 related to Asian-American's participation in education.
 10 Q. BY MR. AFFELDT: And just to be clear, when you
 11 say participation in education, do you mean the student
 12 participation, or someone else's participation?
 13 A. Student, largely student.
 14 Q. What were the current public policy issues that
 15 you were addressing?
 16 MR. HERRON: Objection. Relevance. Vague and
 17 ambiguous.
 18 Do you mean in his role as a teacher?
 19 MS. ALTAMIRANO: Join.
 20 MR. AFFELDT: You can answer the question.
 21 We're talking about your course in public policy issues
 22 that you referenced.
 23 THE WITNESS: Ask your question again.
 24 Q. BY MR. AFFELDT: You indicated that you
 25 addressed current public policy issues dealing with

1 Asian-Americans as part of the course at UC Berkeley,
 2 and my question is, what were those current public
 3 policy issues?
 4 A. Some of the issues included the participation
 5 and integration of Asian immigrant students in public
 6 education, the admission of Asian-Americans in
 7 university freshmen admission, parental expectation of
 8 Asian students in education.
 9 Q. Any public policy issues dealing with K to 12
 10 in particular?
 11 A. The general treatment of English language
 12 learners. The course also looked at the participation
 13 of Asian-Americans in the San Francisco school
 14 desegregation case.
 15 Q. Such as around the Brian Ho case?
 16 A. Yes.
 17 Q. What were your duties as the deputy
 18 superintendent for external affairs?
 19 A. My responsibilities included helping the state
 20 superintendent to develop her legislative agenda before
 21 the state legislature and the U.S. Congress to develop
 22 and maintain external relations with key stakeholder
 23 groups, such as the teachers union, school
 24 administrators, the school board, federally-funded
 25 administrators in categorical programs.

1 Q. And by "categorical programs" you mean?
 2 A. Title 1, bilingual ed.
 3 Q. Special ed?
 4 A. Special ed, migrant ed.
 5 MR. HERRON: You might want to keep your voice
 6 up at little bit.
 7 THE WITNESS: Okay. Voc ed.
 8 Q. BY MR. AFFELDT: Have you served on any
 9 governmental commissions?
 10 A. Yes.
 11 MR. HERRON: Objection. Vague as to time.
 12 MR. AFFELDT: In your career.
 13 THE WITNESS: Can you repeat your question,
 14 please?
 15 Q. BY MR. AFFELDT: Have you ever served on any
 16 governmental commissions?
 17 A. Yes.
 18 Q. And what commissions are those?
 19 A. I have served as a public member of the state
 20 bar board of governors. That was from 1979 to 1982.
 21 And then in -- between 1982 and 1985 I served as
 22 chairperson of the legal services trust fund commission
 23 of the state bar board of governors.
 24 For the last 10 years I have served on the
 25 secretary of commerce -- well, it's currently called the

1 decennial census advisory committee. It was known
 2 previously as a census 2000 advisory committee.
 3 And then in the late 1970s I served on a
 4 bilingual elections advisory committee to the federal
 5 elections commission, and from 1988 to the end of 1999 I
 6 served on the California post-secondary education
 7 commission.
 8 Q. Is that all you can remember?
 9 A. Yeah, at this time. Oh, I -- in the early
 10 1980s I served on the governor's task force on
 11 religions, race, hate -- hate, violence. And last year
 12 I served on the attorney general's anti-hate crimes
 13 commission.
 14 Q. Did you also serve on the -- I don't know if I
 15 have the name right -- master plan revision commission?
 16 A. Oh, yes, I did. I forgot about that.
 17 Q. What is that proper name?
 18 A. I served on that, the master plan review
 19 commission, from 1985 to 1987.
 20 Q. Getting back to the bar. You're not a member
 21 of the bar, are you?
 22 A. No, I'm not.
 23 Q. Well, we appreciate your service to the
 24 profession nonetheless.
 25 What did you do on the master plan review

1 commission?
 2 A. I served as a member, and we looked at the
 3 public policy issues as they related to community
 4 college, community college transfer, funding issues,
 5 accountability issues as they relate to the four-year
 6 universities and colleges. There was discussion about
 7 regionalization in terms of higher ed services to
 8 California students.
 9 Q. And the master plan -- let me back up.
 10 Maybe you can just explain briefly what the
 11 master plan is and what your task was in revisiting or
 12 reviewing that.
 13 MR. HERRON: Objection. Compound.
 14 He's asking two questions. Do you want him to
 15 break them down?
 16 THE WITNESS: Yeah, why don't you.
 17 MS. ALTAMIRANO: Join the objection.
 18 Q. BY MR. AFFELDT: Can you tell us what the
 19 master plan is that you were reviewing?
 20 A. Briefly the master plan specifies what -- which
 21 groups of students, UC, CSU and community college would
 22 serve and what is the relationship among the public
 23 segments.
 24 Generally from 1960 to the present day there's
 25 this expectation that community college is an open

1 institution, anyone can attend if he or she wishes, and
 2 if a student undertakes the required courses for
 3 transfer to CSU or UC, then that student would do so in
 4 a relatively seamless fashion.
 5 And the master plan also specified that UC
 6 would serve the top one-eighth of graduating high school
 7 students, and CSU would serve the top one-third. And
 8 over the years there's also been some debate about how
 9 well UC and CSU are serving the students.
 10 Q. And what was the task of the review commission?
 11 A. That first year there was a lot of focus about
 12 the role and function and purpose of the community
 13 colleges and what is the appropriate role of credit and
 14 noncredit education in the community colleges, and
 15 noncredit as it also relates to adult education.
 16 Q. And the second year and the third year?
 17 A. The latter year, if I can recall correctly, it
 18 just focused on all three segments. There was some
 19 discussion about CSU offering a doctorate program,
 20 whether they should have that sort of authority to do
 21 so, because the master plan specifies that UC is sort of
 22 the doctoral degree granting public institution in
 23 California because of its research nature.
 24 Q. Did the commission look at K to 12 pipeline
 25 issues at all in terms of feeding quality students,

1 diverse students, any kind of pipeline issues from the K
 2 to 12 system?
 3 A. I can't remember if we did or not.
 4 Q. Okay. What about equity issues?
 5 MS. ALTAMIRANO: Objection. Vague.
 6 MR. AFFELDT: You can answer.
 7 MR. HERRON: If you understand. You don't have
 8 to guess at his meaning.
 9 THE WITNESS: Equity in what sense?
 10 Q. BY MR. AFFELDT: Did the commission look at
 11 equity issues in any way with respect to higher --
 12 MS. ALTAMIRANO: Objection. Vague as to what
 13 the meaning of "equity" is.
 14 THE WITNESS: Well, why don't you elaborate.
 15 MR. AFFELDT: I think the deputy superintendent
 16 of the equity branch can tell us.
 17 MR. HERRON: It's a different context, John.
 18 He's asking you to clarify, if you would, please. We'd
 19 appreciate it.
 20 Q. BY MR. AFFELDT: If you don't understand, let
 21 me know and I'll rephrase the question.
 22 A. Why don't you rephrase the question.
 23 Q. Did you examine issues that had to do with the
 24 equitable -- in terms of racial equity, the populations
 25 of higher education in California?

1 MS. ALTAMIRANO: That's still vague and
 2 ambiguous. Objection.
 3 THE WITNESS: Well, I would say yes.
 4 Q. BY MR. AFFELDT: And in what way did you
 5 examine racial equity issues as part of the commission's
 6 work?
 7 A. Generally the commission looked at the
 8 representation of identified racial groups, major
 9 identified racial groups, blacks, Hispanics, Asians in
 10 the segments, UC, CSU, community colleges.
 11 Q. Did the commission file a final report?
 12 A. Yes, it did.
 13 Q. And did you dissent from that report?
 14 A. Yes.
 15 Q. Were you the sole dissenter?
 16 A. Yes, I believe I was.
 17 Q. What was the basis for your dissent?
 18 MS. ALTAMIRANO: Objection as to relevance.
 19 MR. HERRON: I agree with that. You may answer
 20 the question.
 21 THE WITNESS: Okay. Been some time, I mean,
 22 since I filed that objection, but generally I was not
 23 pleased with how they treated the community college
 24 relationship with the four-year segments, and I felt
 25 uncomfortable with what was in the report.

1 Q. BY MR. AFFELDT: What displeased you with how
2 the commission treated the community college segment?

3 MR. HERRON: Objection. Relevance.

4 You may respond.

5 MS. ALTAMIRANO: Join.

6 MR. AFFELDT: You can answer.

7 THE WITNESS: I thought that the commission's
8 comment or position on the community college transfer
9 and the function of community college was a little
10 muddled, and that's why, in my dissent, I looked
11 specifically at the transfer rate from community college
12 to the four-year segment and CSU and UC, and I just
13 didn't think that the commission's work was very -- it
14 was not as clear and as precise as maybe what it should
15 have been based on work that we had done and then
16 relative to the final recommendations of the commission.

17 Q. BY MR. AFFELDT: Do you have a copy of the
18 dissent somewhere?

19 MS. ALTAMIRANO: Objection. Relevance.

20 MR. HERRON: I'll also object, if I could.
21 He's here in his official capacity as a state employee,
22 and you're asking him about things that predate that,
23 and so you're really asking him to collect, out of his
24 personal archives, documents. I don't think that's
25 appropriate. You can ask the question, we'll answer it,

1 deal with pipeline issues focused on the need to
2 increase numbers of ethnic minorities getting into the
3 UC, CSU system?

4 MS. ALTAMIRANO: Objection. It's vague as to
5 what "pipeline issues" means.

6 MR. AFFELDT: You can answer the question.

7 THE WITNESS: Yes.

8 Q. BY MR. AFFELDT: And what sorts of -- how did
9 the commission focus on racial minority pipeline issues?

10 MR. HERRON: Objection. Calls for a narrative.

11 You may respond.

12 THE WITNESS: You know, based on the
13 commission's study of UC, CSU eligibility among public
14 high school graduates, the commission looked at the
15 representation of the major racial groups in terms of
16 freshmen admission at CSU and UC and looked specifically
17 at their eligibility rate, how well did they qualify for
18 admission to UC and CSU.

19 Q. BY MR. AFFELDT: And what was the commission's
20 view, if any, on whether or not there was sufficient
21 numbers of racial minorities entering CSU and UC
22 systems?

23 MR. HERRON: Objection to the extent it calls
24 for speculation. Vague and ambiguous.

25 MS. ALTAMIRANO: Join.

1 but that's the objection for the record.

2 You may respond.

3 THE WITNESS: Your question was?

4 Q. BY MR. AFFELDT: Could you locate your dissent
5 if we asked you for it? I'm not asking you for it, I'm
6 just asking.

7 A. I don't know, because -- it may be in a file
8 someplace but I don't know if I've kept one in my home
9 or -- I'm sure that there must be a copy floating about
10 someplace.

11 Q. Okay. Thank you.

12 A. In a library.

13 Q. What about the post-secondary -- do I have it
14 right, post-secondary education commission?

15 A. Uh-huh.

16 Q. What was the task of that commission?

17 A. The task of CPEC is generally to give advice to
18 the governor, the state legislature and other interested
19 bodies in California, advice on different aspects of
20 higher education from facilities to review of new
21 campuses, degree programs, studies related to faculty
22 pay, UC, CSU eligibility rates, the adequacy of academic
23 outreach programs to students for entrance into higher
24 education.

25 Q. Did the post-secondary education commission

1 MR. AFFELDT: You can answer.

2 MR. HERRON: Not relevant.

3 THE WITNESS: The commission's general view was
4 that all Californians should benefit from post-secondary
5 education opportunities, and to the extent that certain
6 groups had a lower participation rate than what was
7 their general representation -- than what was their
8 representation in the general population, the commission
9 had some concern, and we wanted to make sure that UC,
10 CSU community colleges had policies and programs in
11 place that would not impede the full participation of
12 any Californian in their institutions.

13 Q. BY MR. AFFELDT: Which groups had lower
14 participation rates that the commission was concerned
15 about?

16 MR. HERRON: Objection. Calls for speculation.

17 MS. ALTAMIRANO: Join.

18 THE WITNESS: Well, you have to clarify your
19 question in terms of which of the institutions of higher
20 learning. Which institution are you referring to?

21 Q. BY MR. AFFELDT: With respect to UC, which
22 racial groups had lower participation rates?

23 MR. HERRON: Objection. Calls for speculation.
24 Vague and ambiguous.

25 You may respond.

1 MS. ALTAMIRANO: Join as well.

2 THE WITNESS: The commission generally had a
3 concern about the participation of African-Americans and
4 Hispanics in UC because those two groups had a low
5 eligibility rate for admission to UC compared to, you
6 know, other groups.

7 Q. BY MR. AFFELDT: What group was the commission
8 concerned about with respect to CSU?

9 MR. HERRON: Objection. Calls for speculation.
10 Vague and ambiguous.

11 MS. ALTAMIRANO: Join.

12 THE WITNESS: With regard to CSU, the
13 commission was generally concerned about retention at
14 CSU versus what were the specific eligibility rates of
15 black and Hispanics going into CSU. It was different.
16 The concern of the commission was different for CSU than
17 it was for UC as it relates to blacks and Hispanic
18 students.

19 Q. BY MR. AFFELDT: What do you mean about a
20 concern over retention rates for blacks and Hispanics at
21 CSU?

22 A. Once students were admitted, they did not
23 either stay in or they required a number of courses of
24 remediation so that they can bring themselves up to an
25 acceptable level of academic performance to college

1 Q. BY MR. AFFELDT: From California?

2 A. Yes, because most -- the overwhelming majority
3 of students at CSU are California students.

4 Q. Was the commission concerned that California
5 public high school students weren't graduating with
6 adequate skills to survive at the college level?

7 MS. ALTAMIRANO: Objection. Calls for
8 speculation.

9 MR. HERRON: Assumes facts not in evidence.
10 Vague and ambiguous.

11 You may respond if you understand.

12 THE WITNESS: The commission was more concerned
13 about once they get in, what was going on within CSU,
14 what did they need to do to successfully stay in and get
15 an -- and earn a degree.

16 Q. BY MR. AFFELDT: Is it fair to say the
17 commission was aware that large numbers of high school
18 graduates from California were not adequately prepared
19 to succeed at the college level at CSU?

20 MR. HERRON: Objection. Vague and ambiguous.
21 Calls for speculation. Assumes facts not in evidence.

22 MS. ALTAMIRANO: Join.

23 THE WITNESS: Can you ask your question again?

24 Q. BY MR. AFFELDT: Sure. Is it fair to say the
25 commission was aware that there were large numbers of

1 work.

2 Q. And were those students who needed the
3 remediation proportionally more African-American and
4 Hispanic than other ethnic minority groups?

5 MR. HERRON: Objection. Calls for speculation.
6 Vague and ambiguous.

7 You may respond if you understand.

8 MS. ALTAMIRANO: Join.

9 THE WITNESS: The commission had some concern
10 for sure about blacks and Hispanics, but also had
11 concern about students in general because I think more
12 than 50 percent of first-time freshman students at CSU
13 had to take remediation courses in their first year, for
14 a couple years, meaning that their academic abilities in
15 math and English were not sufficiently adequate to
16 undertake college work, college-level work.

17 Q. BY MR. AFFELDT: And were most of those 50
18 percent that you just identified California high school
19 graduates?

20 MR. HERRON: Objection. Calls for speculation.
21 Vague and ambiguous.

22 You may respond.

23 MS. ALTAMIRANO: Join.

24 THE WITNESS: Yeah, it was. We looked at
25 public high school students largely.

1 high school graduates from California high schools who
2 were not prepared to work at the CSU level, college
3 level?

4 A. No, I would not. I would not agree with your
5 statement in terms of the commission being aware in the
6 way that you've described it.

7 Q. Uh-huh. So they're aware that 50 percent of
8 first-time freshmen need to take remediation courses,
9 correct?

10 A. That's correct.

11 Q. And they're aware that the overwhelming
12 majority of those freshmen are from California schools?

13 MR. HERRON: Objection. Asked and answered.
14 Assumes facts not in evidence. Calls for speculation.

15 MS. ALTAMIRANO: Join.

16 THE WITNESS: The commission looked at --
17 largely at really the time to degree issue. That was
18 really the perspective in which we looked at those kinds
19 of issues, how long does it take for a student to get a
20 degree after he or she enters as a first-time freshman.
21 And in looking at that particular concern, one of the
22 issues that the commission looked at was the number or
23 types of remediation courses they had to take.

24 Another kind of issue that the commission
25 looked at was -- and had great concern about was many of

1 the students at CSU have to work part-time, and that,
2 more than anything else, created impediments to getting
3 a degree.

4 A third issue generally that we looked at was
5 many students had a hard time getting the courses that
6 they need from CSU to even graduate because of cuts in
7 funding to CSU or insufficient funding for CSU.

8 Q. BY MR. AFFELDT: My question is, and it's -- to
9 restate the previous question and answer, you've agreed
10 that the -- have you not, that the overwhelming majority
11 of the students taking remediation in the CSU system
12 were graduates from California public school system?

13 MR. HERRON: Objection. Vague and ambiguous.
14 It calls for speculation. Assumes facts not in
15 evidence.

16 You may respond.

17 THE WITNESS: You know, I don't have the
18 specific data in terms of the origin of first-year
19 freshman. But what I recollect from my work on the
20 commission was that generally first-time freshmen
21 students at CSU come from California schools.

22 Q. BY MR. AFFELDT: Right. So you're saying
23 that -- strike that. I'll move on.

24 How does one get appointed to the
25 post-secondary committee on higher education?

1 MS. ALTAMIRANO: Object as to relevance.

2 MR. AFFELDT: You can answer.

3 THE WITNESS: There are various appointing
4 authorities to the commission. Each of the segments,
5 UC, CSU and community colleges has a representative on
6 the commission, meaning the UC board of regents appoints
7 a representative, the CSU board of trustees appoints a
8 representative, and the community college board of
9 governor appoints a representative to be on the
10 commission. The Board of Education appoints a
11 representative. On the speaker, the assembly has three
12 appointments, the governor has, I believe, three
13 appointments, and the senate rules committee has three
14 appointments, and the association of private and
15 independent colleges has a representative on the
16 commission.

17 Q. BY MR. AFFELDT: How did you get appointed?

18 A. I was appointed by the assembly speaker.

19 Q. How did you get appointed to the master plan
20 review commission?

21 A. The assembly speaker.

22 Q. Going back to the Department of Education. I
23 just want to clarify, you've had only two positions,
24 deputy director of external affairs -- or deputy
25 superintendent of external affairs, and deputy

1 superintendent of --

2 A. Education equity access and support branch.

3 Q. Thank you.

4 A. Yes, that's correct.

5 Q. What are your duties in your current position?

6 A. I have general administrative responsibility
7 for three divisions in the branch. The three divisions
8 are special education, education support systems
9 division, and the state special schools and diagnostic
10 center division.

11 Q. What do you mean by general administrative
12 oversight of those divisions?

13 A. Each of the divisions has a division director
14 and those -- each of those division directors report to
15 me. And in special education there are -- they have to
16 enforce federal and state law as it relates to students
17 with disabilities.

18 There are grant programs, federal dollars that
19 the division handles. We distribute those federal
20 dollars to SELPAs, special education local planning
21 areas, which, in turn, distribute those dollars to local
22 school districts.

23 And the division also handles complaints filed
24 by parents and students about the adequacy of special
25 education services. And the division also has to

1 conduct compliance reviews and visits of local school
2 districts as whether they complied with federal and
3 state law.

4 So any issue where that arises in that area of
5 special ed, I have responsibility to make sure that the
6 division and the department generally is doing what it's
7 supposed to be doing.

8 And the same then can be said for the education
9 support systems division. They handle federal grants
10 and state funded grant programming, safe school area.
11 That division handles the federal adult literacy
12 program.

13 Q. Anything else the ed support division handles?

14 A. They have programmatic responsibility for
15 education option programs, which include independent
16 study, community day schools for expelled students,
17 alternative programs, continuation high school,
18 opportunity high school, court schools.

19 Q. And what does the state special schools
20 division carry out?

21 A. That division has responsibility for the
22 operation of our state special schools for the deaf in
23 Fremont, in Riverside, and the state special school for
24 the blind in Fremont and the three diagnostic centers
25 located in Fremont, LA and Fresno.

1 The diagnostic center will accept referrals
 2 from local school districts and conducts a diagnosis of
 3 students with disabilities as to what are their special
 4 disabilities.
 5 Q. Are any of those programs in the special
 6 schools division funded by federal dollars?
 7 A. I'm sorry, can you repeat your question?
 8 Q. Are any of the schools in the special schools
 9 division funded by federal dollars?
 10 MR. HERRON: I think he meant programs, are any
 11 programs.
 12 Maybe we could have it read back, if you don't
 13 mind, John.
 14 Q. BY MR. AFFELDT: You just listed a number of
 15 schools and programs that are in the state special
 16 schools division.
 17 A. You're referring to the school for the blind,
 18 the school for the deaf?
 19 Q. Yes. Are any of those schools or programs
 20 funded by federal dollars?
 21 A. No, they're funded largely by state dollars.
 22 Actually, I really -- let me go back on my question.
 23 There may be some federal dollars. If so, I can't
 24 remember, you know, how it gets -- how it all gets down
 25 to them, but it's largely funded by state dollars, by

1 Prop 98.
 2 Q. Okay. Thank you. Again, with respect to the
 3 special schools division, is there any federal oversight
 4 that you're aware of that goes along with any of those
 5 programs?
 6 A. Explain what you mean by "federal oversight."
 7 Q. Well, if there are federal dollars which you
 8 think might be feeding into some of those programs, are
 9 you aware of any federal oversight with respect to any
 10 of those programs in the special schools division?
 11 MS. ALTAMIRANO: Objection. It's vague. Just
 12 by the federal government? Federal oversight directly
 13 by the federal government?
 14 MR. AFFELDT: That's usually where federal
 15 oversight comes from.
 16 MS. ALTAMIRANO: Directly by the federal
 17 government without the state participating in the
 18 federal oversight?
 19 MR. AFFELDT: The question would be by federal
 20 agencies, the Department of Education perhaps, or any
 21 other source of the federal funding.
 22 MS. ALTAMIRANO: Objection. May call for
 23 speculation.
 24 THE WITNESS: You're talking about the
 25 Washington, D.C., U.S. Department of Ed?

1 MR. AFFELDT: It can be broader than that
 2 because the federal government is broader. And just the
 3 Department of Ed, that may well be the agency that funds
 4 that division. But I guess -- let me rephrase the
 5 question this way.
 6 Q. As you sit here today, are you aware of any
 7 federal oversight at any level of any of the programs in
 8 the state special schools division?
 9 MS. ALTAMIRANO: I'm going to object. It's
 10 vague as to "oversight" in the sense do you mean
 11 enforcement, do you mean monetary?
 12 MR. AFFELDT: You can answer the question.
 13 THE WITNESS: I'm not sure if I understand your
 14 question as to what you mean by "oversight."
 15 MR. AFFELDT: Okay.
 16 THE WITNESS: Because I don't know what's the
 17 context.
 18 MR. HERRON: He'll clarify it.
 19 Q. BY MR. AFFELDT: Has anyone -- are you aware of
 20 a federal official, for example, investigating a program
 21 going on in the state special schools division?
 22 MS. ALTAMIRANO: Objection. Calls for
 23 speculation.
 24 THE WITNESS: Ask your question again. Am I
 25 aware of --

1 Q. BY MR. AFFELDT: Any federal official
 2 investigating, monitoring, judging the progress of a
 3 program in the state special schools division?
 4 A. You mean currently?
 5 MS. ALTAMIRANO: Same objection.
 6 MR. AFFELDT: Yes.
 7 THE WITNESS: I am not aware of any federal
 8 official currently conducting an investigation.
 9 MS. ALTAMIRANO: That responds to the question.
 10 Q. BY MR. AFFELDT: Do you have to submit any
 11 reports to the federal government about the programs in
 12 the state special schools division?
 13 A. Not that I'm aware of.
 14 Q. On the special education division, is the
 15 California Department of Education the entity that has
 16 responsibility to ensure compliance with federal special
 17 education laws?
 18 MS. ALTAMIRANO: Objection. It calls for a
 19 legal conclusion.
 20 MR. HERRON: Calls for speculation as well.
 21 You may respond.
 22 THE WITNESS: The California Department of
 23 Education is a state education agency, and as such we
 24 have the responsibility to ensure that students with
 25 disabilities receive free and appropriate public

1 education in California.
 2 Q. BY MR. AFFELDT: Does any other state agency
 3 have that responsibility?
 4 A. Yes.
 5 Q. What other agency has that responsibility?
 6 A. The Department of Corrections.
 7 Q. With respect to the Department of Corrections,
 8 that's just related to special ed students in
 9 correctional facilities, correct?
 10 MR. HERRON: Objection. Calls for speculation.
 11 You may respond if you know.
 12 MS. ALTAMIRANO: Join.
 13 THE WITNESS: Yes, as it relates to adult
 14 facilities or adult prisons.
 15 Q. BY MR. AFFELDT: Because under federal law
 16 you're entitled to special education services until
 17 you're 22 years old; is that correct?
 18 A. That's correct, if you're identified as a
 19 special -- a student with a disability.
 20 Q. Thank you for the clarification. You're not
 21 saying the Department of Corrections has responsibility
 22 for special education students in public schools K to
 23 12, are you?
 24 MS. ALTAMIRANO: Objection. It calls for a
 25 legal conclusion.

1 THE WITNESS: No, I am not stating that. They
 2 have the responsibility for qualified special ed
 3 students who are incarcerated in adult prisons.
 4 Q. BY MR. AFFELDT: Right. But as far as the K to
 5 12 public school system, that's your responsibility,
 6 isn't it?
 7 MS. ALTAMIRANO: Objection. It's vague.
 8 Are you differentiating between any public
 9 school classes that are held in jails or CYA facilities?
 10 MR. AFFELDT: Talking about the K to 12 public
 11 school system, and I'm not including a correctional
 12 facility, juvenile or adult.
 13 THE WITNESS: My answer is, yes, we have the
 14 responsibility to enforce federal, state law in K-12
 15 public education.
 16 Q. BY MR. AFFELDT: Are you aware of any federal
 17 investigations into the adult education program?
 18 MR. HERRON: Objection. Relevance.
 19 MS. ALTAMIRANO: And calls for speculation.
 20 MR. HERRON: Vague as to time.
 21 MR. AFFELDT: You can answer.
 22 THE WITNESS: Ask your question again.
 23 Q. BY MR. AFFELDT: Are you aware of any federal
 24 investigations since you've been at the Department into
 25 the adult education program?

1 MR. HERRON: Same objections.
 2 MS. ALTAMIRANO: Join.
 3 THE WITNESS: Can you specify which adult
 4 education program, because there are -- we have two.
 5 Q. BY MR. AFFELDT: What two do you have?
 6 A. There's the state program and there's the
 7 federally-funded program.
 8 Q. Have you had an investigation into either of
 9 those two programs since you've been at the Department?
 10 MS. ALTAMIRANO: Objection. Vague as to by
 11 whom or when.
 12 MR. HERRON: Calls for speculation. Also
 13 object on relevance grounds.
 14 You may respond.
 15 THE WITNESS: Yes.
 16 Q. BY MR. AFFELDT: Uh-huh. How many -- strike
 17 that.
 18 What investigations, federal investigations,
 19 are you aware of?
 20 MR. HERRON: Same objections.
 21 MS. ALTAMIRANO: Same.
 22 THE WITNESS: I'm aware of the U.S. Department
 23 of Education's office of inspector general looking at
 24 the funding of community-based organizations in the
 25 federal adult literacy program.

1 Q. BY MR. AFFELDT: And what was the inspector
 2 general looking at?
 3 MS. ALTAMIRANO: Objection. Calls for
 4 speculation.
 5 MR. HERRON: I'll also object as
 6 attorney/client privilege. You're instructed not to
 7 answer the question to the extent that it would disclose
 8 any information that you learned from an attorney
 9 representing the Department or otherwise representing,
 10 well, the Department's interest in that case. And he's
 11 not asking for that. He doesn't want you to disclose to
 12 him information you learned from an attorney. That's
 13 privileged, just so that's clear.
 14 MR. AFFELDT: Are you the Department's lawyer?
 15 MR. HERRON: We have a right and obligation to
 16 protect the privilege, and I've made my objection.
 17 MS. ALTAMIRANO: We will join in the objection.
 18 MR. AFFELDT: You're the Department's lawyer,
 19 right?
 20 MS. ALTAMIRANO: Yes, but we're joining.
 21 THE WITNESS: What was your question again?
 22 Q. BY MR. AFFELDT: The question is, what was the
 23 inspector general investigating with respect to the
 24 community based -- the funding of the community-based
 25 organizations?

1 A. The inspector general asked for the production
2 of documents as they related to community-based
3 organizations.
4 Q. And what was the inspector general concerned
5 about?
6 MR. HERRON: Objection. Calls for speculation.
7 Lacks relevance to this case.
8 MS. ALTAMIRANO: Join.
9 MR. AFFELDT: You can answer.
10 THE WITNESS: The OIG just asked for the
11 production of documents as it related -- as they relate
12 to those community-based organizations.
13 Q. BY MR. AFFELDT: Are you saying you don't know
14 what the subject of the investigation was?
15 MR. HERRON: That's a different question. You
16 asked him what was the inspector general thinking.
17 You may answer that question.
18 THE WITNESS: Ask your question again.
19 Q. BY MR. AFFELDT: What is your knowledge of what
20 was being investigated with respect to the
21 community-based organization?
22 A. They asked for the production of documents, and
23 they did not specify what they were looking at. They
24 just asked us to produce all documents in our files as
25 they related to these community-based organizations.

1 Q. Okay. I'm not trying to be evasive or do
2 cross-examination, just trying to get out what was a
3 very public affair.
4 And my question is, what was -- wasn't there a
5 problem in 1998 with respect to some community-based
6 organization's delivery of adult education services?
7 MS. ALTAMIRANO: Objection. Vague.
8 MR. HERRON: Assumes facts not in evidence.
9 Calls for speculation. It's not relevant to this case.
10 You may, nonetheless, respond.
11 THE WITNESS: The Department took some action
12 relative to some CBOs, but we did that on our own.
13 With regard to the OIG, and I will repeat, they
14 asked us for the production of documents. They did not
15 tell us what they were looking at specifically about the
16 CBOs, other than we needed to turn over all these
17 documents. They did not say, we suspect this, we
18 suspect that, or this is what we're looking at, they
19 just did not tell us.
20 Q. BY MR. AFFELDT: My question at this point is
21 not about the inspector general, it's about what the
22 problem was.
23 So what is your knowledge of what the
24 particular issue or problem was with respect to the
25 federally funded adult education program?

1 MR. HERRON: You mean from the Department's
2 perspective?
3 MR. AFFELDT: That's right.
4 THE WITNESS: Now you're asking a different
5 question. And with regard to how we viewed the issues
6 of federal funding going to CBOs, we made a
7 determination that some of the CBOs were not giving us
8 appropriate documentation on a timely basis, or any
9 documentation in some situations, with regard to how the
10 federal dollars were being spent, and as such, we asked
11 for money back from a couple of CBOs in 1998.
12 Q. BY MR. AFFELDT: Did the office of the
13 inspector general asking you for documentation trigger
14 the Department's inquiry?
15 MS. ALTAMIRANO: Objection. Calls for
16 speculation.
17 THE WITNESS: I would not agree with your
18 characterization of the OIG triggering the action that
19 we took.
20 MR. HERRON: John, we've been going precisely
21 an hour. When you get to a convenient stopping point,
22 could we take a break?
23 MR. AFFELDT: Sure.
24 Q. There was -- strike that.
25 Do you think that the Department was lax in

1 monitoring the flow of federal dollars to these CBOs?
2 MR. HERRON: Objection. Relevance. Calls for
3 speculation.
4 MS. ALTAMIRANO: And it's vague.
5 THE WITNESS: Ask your question again.
6 Q. BY MR. AFFELDT: Do you think that the
7 Department was lax in monitoring the flow of federal
8 dollars to the CBOs?
9 MS. ALTAMIRANO: Same objections.
10 MR. HERRON: Also add vague as to time.
11 You may respond.
12 THE WITNESS: When I assumed my current
13 position and I looked at the adult ed program, the
14 federally funded adult ed program, it struck me that we
15 needed to have better systems of just running the
16 program in general.
17 Q. BY MR. AFFELDT: And did you put in better
18 systems to run the adult ed program?
19 A. We conducted a review of what we were doing,
20 and we instituted specific policies and procedures as to
21 how we handled the application for these dollars to the
22 review of the applications, and then how we would
23 monitor the expenditure of those funds once they were
24 awarded to CBOs.
25 Q. So prior to your putting in those new systems,

1 was the Department lax in monitoring the flow of federal
 2 dollars?
 3 MR. HERRON: Objection. Asked and answered.
 4 MS. ALTAMIRANO: It's still vague.
 5 MR. HERRON: It calls for speculation. It's
 6 not relevant to the lawsuit. He's already answered.
 7 You may answer yet again.
 8 THE WITNESS: I don't want to speculate about
 9 what happened before me, I just looked at what was at
 10 that particular time. And from an administrative point
 11 of view, I felt that we should institute certain
 12 procedures which would run the program in the way that
 13 the program should be run.
 14 Q. BY MR. AFFELDT: So the program wasn't being
 15 run properly before you instituted those procedures;
 16 isn't that right?
 17 MR. HERRON: All the same objections.
 18 Argumentative.
 19 MS. ALTAMIRANO: Join.
 20 THE WITNESS: I wouldn't agree with your
 21 characterization.
 22 MR. HERRON: Can we get a break point now?
 23 MR. AFFELDT: After this exhibit.
 24 I'm going to hand you what's being marked as
 25 Exhibit 41.

1 (Exhibit SAD-41 was marked.)
 2 Q. BY MR. AFFELDT: This purports to be a June
 3 12th, 1998 Sacramento Bee article.
 4 Can you tell me, after you've had a chance to
 5 look at it, if you've seen this before?
 6 MR. HERRON: Do you know if this document has
 7 been produced in discovery, John?
 8 MR. AFFELDT: No, I don't. I assume it hasn't.
 9 It's publically available.
 10 MR. HERRON: I object on the grounds that we've
 11 asked for all documents relevant to the lawsuit. This
 12 I've never seen before. It's showing up here again in a
 13 pattern in deposition. I think that's improper, and I
 14 want you to know that.
 15 MS. ALTAMIRANO: We join in that objection.
 16 THE WITNESS: Yes, I remember this story.
 17 Q. BY MR. AFFELDT: Do you remember reading the
 18 story at the time?
 19 A. I probably read it.
 20 Q. Does the article accurately paraphrase you when
 21 it says, quote, Der acknowledged that the Department had
 22 been lax in monitoring the flow of money and student
 23 progress in some of the programs, unquote?
 24 MR. HERRON: Objection. Misstates the
 25 document, which speaks for itself. It doesn't purport

1 to quote him.
 2 MS. ALTAMIRANO: Join in the objection.
 3 MR. HERRON: Do you see where he's looking?
 4 THE WITNESS: Yes.
 5 Q. BY MR. AFFELDT: The pending question is, is
 6 that quote from the article an accurate paraphrase of
 7 your statements to the State Board at the time?
 8 MS. ALTAMIRANO: Same objections. It's not a
 9 direct quote.
 10 THE WITNESS: Yeah, I didn't quote. I mean,
 11 that is not a quote that I made. I remember talking to
 12 the reporter, but that's how she characterized it, it's
 13 not a --
 14 Q. BY MR. AFFELDT: The question -- when I refer
 15 to "quote," it's a quote of the article, not of your
 16 words.
 17 The question is, is the article here accurately
 18 paraphrasing your comments to the reporter?
 19 MR. HERRON: Objection. Asked and answered.
 20 MS. ALTAMIRANO: I would join in that.
 21 MR. HERRON: Calls for speculation as well.
 22 THE WITNESS: You know, I remember speaking
 23 with her and being interviewed by her, but with regard
 24 to that third to the last paragraph, that's how she
 25 characterized it, and I don't -- I don't recollect

1 specifically what I said to her about that. I mean,
 2 that's how she characterized it.
 3 Q. BY MR. AFFELDT: Do you think that's, sitting
 4 here today, inaccurate?
 5 MR. HERRON: Objection. Asked and answered.
 6 MS. ALTAMIRANO: It's also vague.
 7 Are you asking whether this reporter's
 8 characterization is inaccurate?
 9 Q. BY MR. AFFELDT: My question is, is the
 10 paraphrase a mischaracterization of what you told the
 11 reporter at the time?
 12 MR. HERRON: Objection. Asked and answered and
 13 it calls for speculation, particularly given that this
 14 article is three years old.
 15 You may respond if you're able to.
 16 THE WITNESS: I mean, that's how she
 17 characterized it. I felt at that time that we needed to
 18 institute certain policies and procedures as to how we
 19 administer the federal grant program, because when I
 20 came on board, even before we got the OIG, before we got
 21 the OIG request for production of documents, Mary Weaver
 22 brought to my attention an issue related to one of the
 23 CBOs and we -- I gave her the go-ahead to request money
 24 back from LULAC Bellflower, and LULAC Bellflower was not
 25 one of the CBOs cited in the OIG's request for the

1 production of documents. And looking at the, you know,
2 LULAC Bellflower CBO, there were some procedures that I
3 thought that we needed to look at that would be
4 applicable to the entire program.

5 Q. BY MR. AFFELDT: And is it fair that those
6 procedures were ones that would more accurately account
7 for the flow of federal dollars?

8 A. What do you mean by "flow of federal dollars"?
9 I mean, can you maybe explain a little bit what you
10 mean?

11 Q. You tell me because your characterization was
12 somewhat vague.

13 What was the purpose of the procedures that you
14 put in place with respect to the adult ed program?

15 MR. HERRON: Objection. Asked and answered
16 about three times.

17 Go ahead.

18 THE WITNESS: We were largely concerned with
19 once the dollars were awarded to a CBO or to a provider
20 how responsive were they to reporting to us how the
21 funds were spent and whether the reports came to us on a
22 timely basis, whether they submitted a financial report
23 on a timely basis so that the Department of Ed could
24 make a determination that the funds were appropriately
25 expended.

1 And specifically in the case of LULAC
2 Bellflower, Mary Weaver brought to my attention that she
3 felt that they had not acted or reported appropriately
4 or on a timely basis. So I said if they hadn't done so,
5 then let's submit a demand letter to LULAC Bellflower,
6 and we asked for a payback of some amount of money. I
7 don't remember what the specific amount was at this
8 time, and that was, you know, an action that we took
9 administratively.

10 MR. AFFELDT: We can take a break here.
11 (Recess taken.)

12 MR. HERRON: We've talked off the record and
13 stipulated that an objection to certify the state agency
14 by defendants' attorney or myself, David Herron, shall
15 be deemed adopted by both of us so we don't have to
16 always say "join." We don't think that's necessary.
17 Just to make things easier and not to have so much
18 conversation, we'll have that stipulation for purposes
19 of this deposition only.

20 The other point I wanted to raise is that I
21 understand we're only -- you're only available today.

22 MR. AFFELDT: That's right.

23 MR. HERRON: And if we have to have a second
24 day of deposition, that will be rescheduled?

25 MR. AFFELDT: Right.

1 MR. HERRON: Is there some reason another
2 attorney can't take the deposition?

3 MR. AFFELDT: Yeah, because I'm the one who is
4 prepared for it.

5 MR. HERRON: I'm perfectly happy to accommodate
6 that, but I just want to point out that I didn't get
7 notice until Monday from you. The AG's office told me.
8 Again, it's perfectly fine if you've got a conflict and
9 you're assigned to this, that's fine. I will note that
10 that's going to increase expenses if we go into two days
11 because I'll have to fly up and back again. I'm
12 wondering if we'll get the same courtesy. If one of our
13 attorneys is assigned to a deponent and they need to be
14 accommodated, can we expect the same treatment?

15 MR. AFFELDT: I'm perfectly willing to be
16 reasonable. Let me explain to you the history behind
17 the --

18 MR. HERRON: John, as far as I'm concerned if
19 you tell me you can't do it two days in a row, I'm
20 perfectly fine with that. I just want to know that
21 we'll get the same courtesy.

22 MR. AFFELDT: You'll get the same courtesy in
23 terms of scheduling deposition, and if you don't think
24 you have -- anyway --

25 MR. HERRON: I appreciate that.

1 Do you need to call Judd Jordan?

2 MS. KAAZ: I'll call him at the next break. I
3 wanted to let him know whether or not he'd have to come
4 down and cover the deposition tomorrow.

5 MR. AFFELDT: Tomorrow is not going to happen.
6 Oh, for Burnham?

7 MS. KAAZ: Burnham is going to happen.

8 MR. AFFELDT: Right.

9 MS. KAAZ: Good. Perfect.

10 MR. AFFELDT: Tom Yanger was informed about
11 this last week. He said that was fine.

12 I didn't realize that you were taking the
13 quote, unquote, lead on defending the state agency
14 deponents as well, but I did notify you in my letter,
15 which I sent you Friday, about the second day.

16 MR. HERRON: We're a party and we've appeared
17 at every deposition and we've always been here, and I
18 didn't get any notice from you at all, and the notice I
19 did get from you didn't come until Monday. When Tom
20 told me about that, I said, that's fine, if that's his
21 need, we will to accommodate his schedule. For future
22 purposes, it may be helpful to contact me directly.

23 MR. AFFELDT: That's fine.

24 MR. HERRON: I appreciate that very much.

25 MR. AFFELDT: I'm going to hand you what's

1 being marked as Plaintiffs' Exhibit 42.
 2 (Exhibit SAD-42 was marked.)
 3 Q. BY MR. AFFELDT: Can you identify what this is,
 4 once you've had a chance to look at it?
 5 MR. HERRON: You just want him to scan it to
 6 see if he knows what it is?
 7 MR. AFFELDT: Correct.
 8 MS. ALTAMIRANO: Again, was this produced by
 9 plaintiffs to us?
 10 MR. AFFELDT: I don't believe so. This is
 11 another public document which wasn't produced to us
 12 either.
 13 MR. HERRON: Wasn't requested. Our point is I
 14 think that we've asked for all documents that are
 15 relevant. If they're relevant enough to appear as
 16 exhibits at deposition, they're relevant enough to be
 17 produced.
 18 MR. AFFELDT: There's a question pending.
 19 MR. HERRON: That's an objection.
 20 Can we have the question reread, please.
 21 Q. BY MR. AFFELDT: Once you've had a chance to
 22 look at this, can you identify what this document is?
 23 A. Well, this is a report that was produced by the
 24 California state auditor with regard to the Department
 25 of Education's administration of the federal adult

1 education program as it relates to community-based
 2 organizations. This report was in response to a request
 3 that was made by the joint legislative audit committee.
 4 Q. Is this an audit of the adult education funding
 5 problems that we were just talking about before the
 6 break?
 7 A. Particular audit -- just give me a second here.
 8 MS. ALTAMIRANO: May I ask, are you asking
 9 Mr. Der to identify this document or authenticate it in
 10 some way, or are you just asking him to read what he
 11 sees in the document?
 12 MR. AFFELDT: I don't think I've asked him to
 13 authenticate it. I asked him if he recognizes it.
 14 MS. ALTAMIRANO: May I put on the record that
 15 he's been reading from the document in answer to some of
 16 these past questions as to who prepared the document.
 17 Q. BY MR. AFFELDT: Let me ask, have you seen this
 18 document before?
 19 A. Yes, I have.
 20 Q. Is this an audit of the adult education funding
 21 issues that we were talking about before the break?
 22 A. This document looks largely at the funding of
 23 CBOs as it relates to the ESL citizenship component of
 24 the federally funded adult literacy program.
 25 Q. Okay. And the -- isn't that the same problem

1 that the inspector general was asking for information
 2 about?
 3 MR. HERRON: Objection. Asked and answered in
 4 part. Calls for speculation. Assumes facts not in
 5 evidence.
 6 You may respond. If you'd like the question
 7 read back, you can have that done too.
 8 THE WITNESS: Why don't you ask your question
 9 again.
 10 Q. BY MR. AFFELDT: Let me ask you -- rephrase the
 11 question.
 12 A. Okay.
 13 Q. Do you recall our discussion before the break
 14 about funding -- lax monitoring and funding for adult
 15 education programs?
 16 A. Yeah, I generally recall our discussion before
 17 the break, yes.
 18 Q. Is this audit related to those same issues?
 19 MR. HERRON: Objection. Calls for speculation.
 20 THE WITNESS: Well, this particular audit is
 21 directly in response to a request that Senator Haines of
 22 Southern California made to the joint legislative audit
 23 committee with regard to the allocation of federal adult
 24 literacy funds to CBOs, and the audit, the state audit
 25 office looked at that particular issue, meaning the CBOs

1 and federal ESL citizenship dollars going to CBOs.
 2 There are other components to the federal
 3 program, such as adult basic ed, ESL and ESL
 4 citizenship. There are three primary components to the
 5 adult literacy program.
 6 Q. BY MR. AFFELDT: When you were talking with the
 7 Sacramento Bee reporter in June of 1998, was that about
 8 the ESL adult literacy program as well?
 9 A. You have to show me the article again.
 10 Q. I'm handing you Exhibit 41.
 11 A. Your question again was?
 12 Q. When you were talking to the reporter with
 13 respect to the issues being covered in Exhibit 41, is
 14 that the same adult literacy funding problems that are
 15 audited in Exhibit 42?
 16 MR. HERRON: Objection. Vague and ambiguous.
 17 Documents speak for themselves.
 18 You may respond if you know.
 19 THE WITNESS: What I recollect from my
 20 conversation with her was she just had questions about
 21 the OIG investigation and production of documents, and
 22 it was primarily about ESL citizenship, because that's
 23 what the OIG had requested in terms of production of
 24 documents, that was specific to CBOs and ESL
 25 citizenship.

1 Q. BY MR. AFFELDT: And the state audit is also
2 about ESL funding, correct?

3 A. ESL citizenship funding. Because there are
4 three main components to the federal adult literacy
5 program, adult basic ed, ESL, and ESL citizenship, and
6 they were looking primarily at ESL citizenship.

7 Now, as I flip through the report, this report
8 could have dealt with some ESL issues, but I don't
9 really have enough time right now to sort of re-review
10 the entire report to say definitively all the aspects,
11 but my recollection was that the state auditor was
12 looking at CBOs and ESL citizenship dollars.

13 Q. Okay. And for the record, the title of the
14 report is Department of Education, colon, lax monitoring
15 led to payment of unsubstantiated adult education
16 claims, and changes in the program may seriously impact
17 its effectiveness, correct?

18 A. You are reading the title of this report made
19 by the auditor general. This is not -- we didn't say
20 this, it's what they are saying.

21 Q. I understand. And do you recall if at the time
22 that the audit came out, that the Department
23 substantially agreed with the recommendations made in
24 the audit?

25 MS. ALTAMIRANO: Objection. Calls for

1 Q. BY MR. AFFELDT: That's your recollection
2 reading Leslie Fausset's letter at R1, correct?

3 A. Yeah.

4 Q. My question was, do you recall, sitting here
5 today, whether or not at the time the Department
6 essentially agreed with the findings in the audit?

7 MR. HERRON: Independent of what the document
8 may say?

9 MR. AFFELDT: That's right.

10 THE WITNESS: No, we didn't -- what I recollect
11 was that we agreed with their recommendations in terms
12 of things that we might undertake. We also disagree --
13 I mean, the report was a little funny because there was
14 one recommendation for one finding that they made about
15 the procedure that we were -- that we had undertaken
16 since spring of 1998. They said our procedure was going
17 to deny a number of CBOs to apply and qualify for
18 participation in the program, and we just sort of
19 thought it was a little strange. I mean, we thought
20 that -- you know, we're just implementing procedures so
21 that we improve administration of the program, and we're
22 not trying to make it easier or harder for CBO, we're
23 just trying to do what we thought would be good
24 administration.

25 Let me look at the report. That's what I

1 speculation.

2 THE WITNESS: Well, normally whenever a state
3 audit office produces a report with regard to a
4 particular agency, they will give a draft copy of the
5 report to the agency. We then have the opportunity to
6 respond, and we submitted a response, which I believe is
7 appended to the report.

8 MR. HERRON: You should also look at page 2 of
9 the document because it talks about agency comments.

10 Q. BY MR. AFFELDT: My question is, do you recall
11 whether at the time the Department essentially agreed
12 with the findings in the audit? It's a yes or no
13 question.

14 MR. HERRON: Objection. Calls for speculation.
15 Vague and ambiguous as phrased.

16 MS. ALTAMIRANO: And the report speaks for
17 itself and answers that question.

18 THE WITNESS: Just give me a second to read the
19 cover letter that Leslie Fausset signed. It's on R1.

20 The letter that Leslie signed states, in part,
21 that CDE has concerns about the perspective provided,
22 and therefore, in some instances, the accuracy of the
23 information provided in your draft audit report. So we
24 took some exceptions to how the auditor characterized
25 how the program was being run.

1 recollect, but let me look at -- I think there was a --

2 Q. BY MR. AFFELDT: My question was just
3 independent of the report. I think you've responded.

4 Is it fair to say that the Department's
5 concerns, disagreements that it had at the time would be
6 reflected in the comments that are appended to the
7 report?

8 MR. HERRON: Objection. Calls for speculation.

9 THE WITNESS: Yeah, that would be generally
10 what we would do, that is, whatever we had concerns
11 about in terms of the findings or how they may have
12 characterized what we were doing, we would respond and
13 say, this is what we're doing.

14 MR. AFFELDT: I'm going to hand you Exhibit 43.
15 (Exhibit SAD-43 was marked.)

16 Q. BY MR. AFFELDT: This is an exhibit that is
17 entitled final draft minutes, California State Board of
18 Education, Friday, October 8th, 1999.

19 Can I have you look at item 24, please, which
20 is on the first page.

21 A. Okay.

22 Q. Do you recall attending the State Board meeting
23 on Friday, October 8th, 1999?

24 A. Yes.

25 Q. Did you introduce adult education director Joan

1 Polster to the State Board?
 2 A. Yes, I did. When they use the term
 3 "introduce," I just brought her up to the podium because
 4 I started off the agenda item, but it was not the first
 5 time that they had seen Joan.
 6 Q. Uh-huh.
 7 A. By introducing her, I pulled her into the
 8 discussion of the item.
 9 Q. Do you see where the minutes say -- the second
 10 full sentence, the CDE essentially agrees with the
 11 report's finding, unquote?
 12 A. That's correct.
 13 Q. Just to be clear, we're talking about the
 14 Plaintiffs' Exhibit 42, the state audit we were just
 15 looking at, correct?
 16 A. Uh-huh.
 17 Q. You're shaking your head, but you need to --
 18 A. Yes.
 19 Q. Thanks. Now that you've seen this document,
 20 does that refresh your recollection as to whether the
 21 Department essentially agreed with the findings in the
 22 state audit?
 23 MR. HERRON: Objection. Asked and answered.
 24 THE WITNESS: To the degree that we specified
 25 in our response to the auditor's report.

1 Q. BY MR. AFFELDT: And if it wasn't specified in
 2 the response to the auditor's report, a disagreement,
 3 then you essentially agreed with the remaining parts of
 4 the audit?
 5 MR. HERRON: Objection. Calls for speculation.
 6 Vague and ambiguous in the use of the term "you."
 7 Q. BY MR. AFFELDT: You were shaking your head.
 8 A. That is correct.
 9 Q. Has the special ed division been the subject of
 10 any federal investigation in the time that you've been
 11 there?
 12 MR. HERRON: Objection. Vague and ambiguous.
 13 THE WITNESS: Can you specify what you mean by
 14 "investigation"?
 15 Q. BY MR. AFFELDT: Is that a term that you're
 16 unfamiliar with?
 17 MR. HERRON: Objection. Harassing. He's asked
 18 you to clarify the question. That's perfectly fair and
 19 within his rights. Please do so.
 20 THE WITNESS: I mean, you need to specify what
 21 you mean by "investigation" because, I mean, what is the
 22 context of the investigation? Is it an investigation
 23 because of criminal stuff or civil stuff, or is it a
 24 monitoring visit, or are they doing a site visit?
 25 Q. BY MR. AFFELDT: Has the Department of

1 Education been the subject of any investigation by the
 2 federal government with respect to compliance with IDEA?
 3 MR. HERRON: Objection. Vague and ambiguous.
 4 You may respond if you understand.
 5 THE WITNESS: I would not agree with your term
 6 "investigation." The U.S. Department of Education has
 7 come to California to review how well we are enforcing
 8 federal law, so by their coming they make a site visit,
 9 they conduct a review. I would not characterize that as
 10 investigation.
 11 Q. BY MR. AFFELDT: And what has the Department of
 12 Ed concluded with respect to California's enforcement of
 13 the IDEA as a result of those monitoring visits?
 14 A. What was the --
 15 Q. What were the conclusions that the Department
 16 of Ed reached?
 17 A. Federal?
 18 Q. Yes. As a result of the monitoring visits you
 19 were just referencing.
 20 MS. ALTAMIRANO: Objection. Calls for
 21 speculation.
 22 MR. HERRON: Vague as to time.
 23 THE WITNESS: Can you specify over what time
 24 period you're referencing?
 25 MR. AFFELDT: I'm referencing the visits that

1 you just identified in your prior answer, but I will be
 2 happy to ask a question about that.
 3 Q. When did the monitoring visits that you
 4 referenced in your prior answer occur?
 5 A. Okay. The feds came to California in spring of
 6 1998, kind of in the April, June 1998 time frame. They
 7 came and did a site visit. They came to the Department
 8 of Ed. And I can't -- and they may have gone to some
 9 local school districts as part of their site visit to
 10 California. And as a result of that site visit, they
 11 drafted a report assessing how well we are doing our job
 12 or how not well we are doing our job.
 13 Q. In fact, there were previous visits as well,
 14 weren't there?
 15 A. Yes. Now, those previous visits, of course,
 16 occurred prior to my, you know --
 17 Q. Tenure?
 18 A. -- tenure as department superintendent in that
 19 area, and they had come, you know, going back maybe to
 20 the early -- or late 1980s and in the early 1990s, so
 21 they made site visits during that time.
 22 Q. And there was also a visit -- or a report that
 23 came out in 1996 from the Department of Ed as well?
 24 MS. ALTAMIRANO: Objection as to -- it's
 25 speculation. Before his tenure.

1 THE WITNESS: There have been a number of
 2 reports. You would have to show me the specific report
 3 so I can comment specifically about it, because they've
 4 come out several -- well, as part of their job, they've
 5 come out to California to visit California before my
 6 time and during my time.
 7 Q. BY MR. AFFELDT: As you sit here now, it's your
 8 recollection that there were several reports between the
 9 late '80s and prior to your -- immediately prior to your
 10 tenure from the Department of Education?
 11 A. Yeah, that's correct. Because in their
 12 report -- for example, the 1998 visit, in their report,
 13 if I recollect, they would make reference to previous
 14 visits that they made, but I don't remember reading all
 15 those reports from the past, but they made reference to
 16 it.
 17 Q. When did the Department of Education issue its
 18 findings after the spring '98 visit?
 19 A. The federal?
 20 Q. Yes.
 21 MR. HERRON: Objection. Calls for speculation.
 22 You're not required to guess, but if you know
 23 or have a reasonably good basis to provide your best
 24 estimate, you should do so.
 25 THE WITNESS: Well, they came out with a report

1 like a year or a year and a half after their visit.
 2 They took their time to issue their report, and I can't
 3 remember the specific date when they issued their report
 4 from their, you know, spring 1998 visit.
 5 Q. BY MR. AFFELDT: But it occurred in your
 6 tenure?
 7 A. Yes, that's correct.
 8 Q. And what did that report conclude?
 9 A. The report generally concluded that the
 10 Department -- the California Department of Education
 11 needed to make improvements in terms of how we are
 12 enforcing federal law, and that there were certain
 13 compliance activities identified in the late 1980s and
 14 early 1990s that still needed to be attended to or
 15 improvements needed to be made.
 16 Q. In fact, the Federal Department of Education
 17 found that California was failing to fulfill its
 18 supervisory responsibilities with respect to ensuring
 19 the IDEA; isn't that correct?
 20 MR. HERRON: Objection. Calls for speculation.
 21 Argumentative. Vague and ambiguous. The document
 22 certainly speaks for itself. And if you've got it, why
 23 don't you show it to him. Go a bit quicker.
 24 You may respond.
 25 THE WITNESS: I would have to look at the

1 report itself as to how they characterized what we were
 2 doing or not doing. I mean, what I recollect is --
 3 generally what I recollect is we needed to improve how
 4 we carried out our supervision and enforcement
 5 responsibilities as it relates to federal special ed
 6 laws.
 7 Q. BY MR. AFFELDT: As you sit here, it is your
 8 testimony that you don't know whether or not they
 9 concluded you were failing to comply with the IDEA?
 10 A. Well, see, if you use the term "fail," I would
 11 not agree with the term failed because there were things
 12 that we were doing, at least in spring of 1998 when I
 13 assumed my responsibility, where I would say we were
 14 carrying out our federal responsibilities. There were
 15 other areas where we needed to make improvements.
 16 The relationship that the state has with the
 17 feds is really one of trying to make sure we're all
 18 doing what we're supposed to be doing under federal law.
 19 So if they point out an area where there needs to be
 20 improvement, we try to, you know, comply and do what --
 21 and undertake whatever suggestions that they may
 22 identify or make.
 23 Q. Did the Federal Department of Education ever
 24 threaten to withhold funding from California for failing
 25 to comply with the IDEA?

1 MS. ALTAMIRANO: Objection as to time. Calls
 2 for speculation.
 3 THE WITNESS: You would have to point out some
 4 evidence or documentation about threatening. I don't
 5 know. I can't really answer your question if you use
 6 that term.
 7 Q. BY MR. AFFELDT: As the deputy superintendent
 8 overseeing special education now, it is your
 9 characterization that the Department of Ed was providing
 10 technical assistance as opposed to finding the
 11 Department of -- California Department not in compliance
 12 with the IDEA?
 13 MS. ALTAMIRANO: Objection. The question is
 14 vague. Could you be specific as to time, whether it's
 15 just under his tenure.
 16 MR. AFFELDT: I'm talking under his tenure.
 17 MR. HERRON: You can have the question reread
 18 if you'd like.
 19 THE WITNESS: Okay. Why don't you.
 20 Q. BY MR. AFFELDT: Is it your testimony that you
 21 don't really know if the Federal Department of Education
 22 had found the California Department of Education not in
 23 compliance with the IDEA?
 24 MR. HERRON: Objection. Asked and answered.
 25 THE WITNESS: I would have to see the report

1 and review, again, the report that they submitted to us
 2 based on their visit in spring of 1998.
 3 What I can best recollect right now, without
 4 having the document in front of me, was they were
 5 critical of certain aspects of what we were doing or not
 6 doing, and they also acknowledged things that we were
 7 doing that were -- where we were fulfilling our
 8 responsibilities, because there are many aspects to our
 9 federal -- there are many aspects to our enforcement and
 10 compliance activities ranging from how we handle
 11 complaints filed by students or parents with the
 12 Department of Ed, to how we implement corrective action
 13 ordered on a local school district, to how we provide
 14 technical assistance, to how we monitor the 1,000-plus
 15 school districts on an ongoing basis. Then there was
 16 the issue of how we -- you know, how we handle special
 17 ed students who are incarcerated in adult prisons.
 18 So there were a lot of issues that they covered
 19 in their report, and they made, you know, certain
 20 findings and certain comments, some of which we
 21 disagreed with and some that we made -- some of which we
 22 may have disagreed with, and some that we may have
 23 agreed with.
 24 Q. BY MR. AFFELDT: My question, again, is,
 25 sitting here, without looking at the report, based on

1 your current recollection, did the Federal Department of
 2 Education find the California Department of Education
 3 not in compliance with the IDEA?
 4 MR. HERRON: Objection. Asked and answered.
 5 The question before he responded directly to that.
 6 Calls for speculation and it's vague and ambiguous.
 7 Do you mean any aspect of the IDEA, or whatever
 8 it is?
 9 THE WITNESS: I would have to look at their
 10 report given to us, because you're asking me, you know,
 11 are we in compliance or not with IDEA in '97 in terms of
 12 our supervisory responsibilities. I would have to look
 13 at the report and say what is it that they found in
 14 terms of the different aspects of what we do.
 15 I mean, as I said previously, there were some
 16 things that they were not happy with or critical, or
 17 they said conditions that they found in 1998 or in early
 18 1991, that some of those conditions had not improved.
 19 Q. BY MR. AFFELDT: So the answer to my question
 20 is, no, you can't really recall without looking at the
 21 report?
 22 A. I would like to look at the report as to what
 23 they specifically said, whether we are in compliance or
 24 not.
 25 Q. I understand you'd like to look at it, but my

1 question is, without looking at it, can you recall
 2 whether or not you were found not to be in compliance
 3 with any aspect of the IDEA?
 4 A. Now you're saying with any aspect of IDEA in
 5 terms of our supervisory responsibilities?
 6 Q. That's my question.
 7 A. From what I can recollect, there were some
 8 things that they found that we were not doing that we
 9 should be doing.
 10 Q. Should be doing as required by federal IDEA
 11 law?
 12 A. Of a state education agency.
 13 Q. So you're agreeing with me, that you were found
 14 to be not in compliance with some of the supervisory
 15 responsibilities of a state agency under the IDEA?
 16 A. Yes, from what I can recollect in terms of what
 17 they submitted with their report. And there were other
 18 issues that they cited us for that we may have disagreed
 19 with.
 20 Q. That's all I wanted to know. Let's take a look
 21 at the report so you can refresh your recollection.
 22 (Exhibit SAD-44 was marked.)
 23 MR. AFFELDT: This is being marked as
 24 Plaintiffs' Exhibit 44.
 25 Q. If you could take a look at that and then

1 identify it for us when you're ready.
 2 MR. HERRON: We object to the use of this
 3 document for the same reasons noted with respect to the
 4 other exhibits. It's never been produced in discovery
 5 and it was requested.
 6 THE WITNESS: Just give me a second.
 7 MR. AFFELDT: Take your time.
 8 MR. HERRON: Take as much time as you need.
 9 Maybe now is a good time to go to lunch. We
 10 can review it over lunch and respond to your questions
 11 afterward.
 12 MR. AFFELDT: I'd like to ask a few questions
 13 about it.
 14 MR. HERRON: When do you plan on taking a lunch
 15 break? We're now at 12:30.
 16 MR. AFFELDT: About 1:00.
 17 MR. HERRON: Why don't we take a lunch break as
 18 soon as we're done with this question and this document.
 19 He's certainly entitled to have lunch on a regular
 20 schedule. That would be my proposal anyway, unless
 21 there's some reason not to do that.
 22 THE WITNESS: I am hungry. I mean, I'll answer
 23 your question, but if we could take a lunch break, it
 24 would be nice. Go ahead.
 25 Q. BY MR. AFFELDT: Have you had a chance to

1 review the document?

2 A. Yeah.

3 Q. Is this the federal Department of Education's
4 follow-up to the spring '98 visit that we were talking
5 about earlier?

6 MR. HERRON: Objection. Calls for speculation.

7 THE WITNESS: Well, there are actually several
8 documents in this exhibit, and it's -- let me just make
9 reference to it from what I can see. On page 6 of 29 --
10 let me backtrack.

11 MR. AFFELDT: Off the record.

12 (Discussion held off the record.)

13 THE WITNESS: I'm looking at Exhibit 44. It
14 appears to me that this might have been taken off of our
15 website, but let me just start with page 3 of 29. At
16 the very bottom there it states, Honorable Delaine
17 Eastin. This appears to be the cover letter that Judy
18 Huemann sent to the Department of Ed with the monitoring
19 report appended to her cover letter, and that monitoring
20 report starts on page 6 of 29.

21 And I don't recollect what was the specific
22 date of Judy's letter to Delaine, but it did come after
23 their visit. It took them a little while to pull
24 together their report, and it came back in -- sometime
25 in spring of 1999.

1 Now, turning to page 1 of 29, that document
2 from page 1 to page 3 appears to be a letter that the
3 special ed director, Alice Parker, sent out to the field
4 to -- field meaning to local school districts. And this
5 was put on the web because special ed department puts
6 virtually everything on the web. This was a letter that
7 she sent out to the field to share with them what
8 generally were the comments and findings of the federal
9 U.S. Department of Education and then what we intended
10 to do in response to the federal -- you know, to their
11 report in relationship to their visit of spring of 1998,
12 because in Alice's letter to the field we talk about the
13 quality assurance process.

14 If you note on page 1 on solution strategies,
15 No. 1, it says a research-based quality assurance
16 process. That quality assurance process was really our
17 monitoring system that was implemented during my watch.
18 We'd started working on it in 1998, going into 1999, and
19 we did not have the benefit of the federal -- the
20 federal's report to us because it took them a year to
21 give us their report, and in the meanwhile we had
22 started working on our quality assurance process and our
23 focused monitoring and technical systems, and we had
24 made administrative changes to how we handle complaints
25 and how we provide technical assistance to parents and

1 families. So that's why I personally took some
2 exceptions to their report which came out in 1999,
3 because it didn't acknowledge some of the things that we
4 had done between 1998 and 1999. There was a lag time.

5 Q. BY MR. AFFELDT: So you think that you had
6 already addressed some of their concerns by the time
7 this report came out?

8 A. Yeah.

9 Q. This report, just to clarify, on the bottom
10 left-hand corner indicates a website address. Is that
11 the Department's special ed division website address?

12 A. It appears to be that way, yeah, that that's
13 the web. You'll note that it says SP branch, because
14 it -- before I took over the branch, it was called
15 specialized programs branch. Then when I assumed
16 responsibility for the branch, I didn't think that that
17 term was appropriate for things that we do in the branch
18 so, you know, after consultation with programs in the
19 branch and with, you know, Delaine Eastin, the state
20 superintendent, we effectuated a change in the name of
21 the branch.

22 Q. To its current name?

23 A. To its current name.

24 Q. But SP branch would be the programs under your
25 tutelage?

1 A. Not tutelage, but under my area of
2 responsibility, yes.

3 Q. And the title of this report is California's
4 monitoring report from the U.S. Department of Education
5 office of special education programs, correct?

6 A. That's correct.

7 Q. And it's dated April 1999?

8 A. Yes.

9 Q. Just to point out the other pieces of this
10 exhibit, can you confirm that on --

11 MR. HERRON: We'll stipulate the document says
12 what it says, if that will save time.

13 Q. BY MR. AFFELDT: Is this -- page 15 of 29 is
14 appendix A?

15 A. Yes, appendix A, which goes, I guess, from --
16 there are two appendices, appendix A and appendix B.
17 Appendix A goes from page 15 of 29 to page 26 of 29, and
18 then appendix B goes from page 26 of 29 to page 29 of
19 29.

20 Q. Those are appendices to the OSEP monitoring
21 report?

22 MR. HERRON: Objection. Calls for speculation.
23 Document speaks for itself.

24 Q. BY MR. AFFELDT: Those are appendices to the
25 OSEP monitoring report that starts on page 6?

1 MS. ALTAMIRANO: Calls for speculation.
 2 THE WITNESS: Well, it appears that, yeah,
 3 those appendices go with the OSEP monitoring report that
 4 the feds gave to us sometime in 1999.
 5 Q. BY MR. AFFELDT: As far as you know, this is
 6 the report that the feds gave to you?
 7 A. Yeah. Yes.
 8 Q. Looking at page 4 --
 9 MR. HERRON: Before you move on to a new topic,
 10 I propose we go to lunch. It's now 12:42. The deponent
 11 has indicated he's hungry. He has a right to eat.
 12 We've been going now for over an hour, so can we take
 13 our break now?
 14 MR. AFFELDT: I'd like to finish asking
 15 questions about this document.
 16 MR. HERRON: If it only takes a few minutes,
 17 that's fine, otherwise we need to take a break for
 18 lunch.
 19 Q. BY MR. AFFELDT: Let's continue for now and you
 20 let me know if --
 21 MR. HERRON: I'm just saying if you're not done
 22 in five minutes, then we're going to take a break on our
 23 own. This is a request for the benefit of the deponent.
 24 You can't try to get him tired and make him fatigued.
 25 Q. BY MR. AFFELDT: We're on page 4, and the

1 second paragraph reads, although the California
 2 Department of Education has made some progress in
 3 correcting some of the deficiencies identified in the
 4 1996 report, the office of special education programs is
 5 deeply concerned about continuing noncompliance, most
 6 notably the California Department of Education's
 7 continuing failure to exercise its general supervisory
 8 responsibility over local school districts in this
 9 state, including ensuring that local school districts
 10 correct identified deficiencies in a timely manner. As
 11 a result of this failure by the California Department of
 12 Education, serious deficiencies have been allowed to
 13 exist for a number of years, impacting services for
 14 children with disabilities. The office of special
 15 education programs has documented many of these
 16 continuing deficiencies in its prior monitoring reports
 17 of the California Department of Education of 1988, 1992
 18 and 1996. The June 1998 follow-up visit documented that
 19 many previously identified problems remain uncorrected,
 20 unquote.
 21 Does that refresh your recollection as to
 22 whether or not the feds found you in noncompliance in
 23 spring of '99?
 24 MR. HERRON: Objection. Asked and answered.
 25 The document speaks for itself. Doesn't say a thing

1 about noncompliance either, so you're misconstruing it.
 2 THE WITNESS: When I -- as you read this and as
 3 I remember how I read this letter the first time when we
 4 received it several years back, was that we had done
 5 some corrections. In that first sentence there,
 6 although California has made some progress. And I felt
 7 that we had made progress, that we had done more than
 8 what they wanted to credit us for, but Judy
 9 characterized it as continuing noncompliance. Well,
 10 it's noncompliance in what area versus what we were in
 11 compliance with. So I wouldn't agree with you if you
 12 were to say we were in noncompliance on all issues on
 13 all responsibilities.
 14 Q. BY MR. AFFELDT: I didn't ask if you were in
 15 noncompliance on all responsibilities.
 16 My question is, does this refresh your
 17 recollection that you were found in noncompliance by the
 18 feds in spring of 1999?
 19 MR. HERRON: In any aspect of the program?
 20 THE WITNESS: Well, your question --
 21 MR. HERRON: Well, objection. Vague and
 22 ambiguous. Asked and answered. Calls for speculation.
 23 Document speaks for itself.
 24 MR. AFFELDT: I'm asking about your
 25 recollection.

1 MR. HERRON: Separate of the document?
 2 Separate of the document, John?
 3 He's not responding.
 4 MR. AFFELDT: You have the question.
 5 THE WITNESS: I think that paragraph speaks for
 6 itself. And as I recollect and as I read it, I disagree
 7 with how Judy characterized what we were doing and what
 8 we were not doing, because I put greater weight on the
 9 progress that we had made and the changes that we were
 10 implementing in 1999, as I testified and stated earlier
 11 about the development of the quality assurance process,
 12 which was and is a very substantial effort on our part
 13 to carry out our supervisory responsibility to enforce
 14 federal law.
 15 Q. BY MR. AFFELDT: You're not disputing that you
 16 were found in noncompliance for carrying out your
 17 supervisory responsibility, are you?
 18 MR. HERRON: Objection. Vague and ambiguous.
 19 Misstates prior testimony. Misstates the testimony.
 20 MS. ALTAMIRANO: The document.
 21 THE WITNESS: As I stated before, they found --
 22 I mean, that paragraph speaks for itself. The report
 23 found us to be noncompliant on some issues, and on other
 24 issues I think we were in compliance.
 25 MR. AFFELDT: Why don't we take a break here.

1 MS. ALTAMIRANO: Before we go, I just want to
2 put on the record that we would object to continued
3 questioning in this area, special education, which is
4 not a part of this lawsuit at all.

5 (Lunch recess taken.)

6 Q. BY MR. AFFELDT: Mr. Der, did you have an
7 opportunity to look over Exhibit 44 over lunch at all?

8 A. No, I didn't.

9 Q. I'm on page 4 again, and we had read the second
10 paragraph on page 4 in which the letter, in part,
11 accuses the Department of failing to ensure that local
12 school districts correct identified deficiencies in a
13 timely manner.

14 Is that something that you would agree or
15 disagree with?

16 MR. HERRON: Objection. Vague and ambiguous.
17 Misconstrues the document. Assumes facts not in
18 evidence.

19 MR. AFFELDT: You can answer.

20 THE WITNESS: Can you restate?

21 Q. BY MR. AFFELDT: Would you agree with that
22 statement?

23 A. That?

24 Q. That the Department failed to ensure that local
25 school districts correct identified deficiencies in a

1 characterized what we have or have not done, because I
2 felt then, and I continue to feel, that they did not
3 give us adequate credit for what we had, in fact,
4 achieved.

5 Q. When you talk about what you'd achieved, are
6 you referring to the implementation of the quality
7 assurance program?

8 A. That's correct, plus other administrative
9 action that we had taken to address the processing of
10 complaints filed with the Department.

11 Q. That would be complaints concerning special ed,
12 the provision of special education under the IDEA?

13 A. That's correct, where individual students or
14 parents file a complaint with us alleging that their
15 child's local school district or local school has not
16 provided the services required or has not carried out
17 their responsibility in an appropriate way.

18 Q. Do you see on the fifth paragraph, the last
19 paragraph on that page, the first sentence where it
20 says, as noted above, one of the biggest barriers to the
21 California Department of Education's achievement of
22 compliance has been its failure to identify
23 noncompliance in school districts and ensure that they
24 correct it?

25 Do you see that sentence?

1 timely manner.

2 A. Well, as I stated previously, I disagree with
3 how the feds characterize what we have or have not done
4 in -- with regard to our responsibilities.

5 This paragraph that you make reference to, it
6 doesn't say "fail," it just says is deeply concerned
7 about continuing noncompliance. I'm sorry, you're
8 right. Let me just.

9 Most notably the California Department of
10 Education's continuing failure to exercise its general
11 supervisory responsibility over local school districts
12 in this state, including ensuring that local school
13 districts correct identified deficiencies in a timely
14 manner.

15 And as I stated before, I disagree with how
16 they characterize what we're doing, but that's what they
17 claim.

18 Q. I understand. Do you disagree with their
19 conclusion that the Department of Education had failed
20 to exercise its supervisory responsibilities over school
21 districts at a level of compliance with the IDEA?

22 A. At the time that they submitted this cover
23 letter to us, and given what we had achieved between
24 their spring 1998 visit and the time that we received
25 this cover letter, I disagreed with how they

1 A. That's correct. I see it.

2 Q. Do you also disagree with that sentence?

3 A. As I stated before, they state one of the
4 biggest barriers to California Department of Education's
5 achievement of compliance has been its failure to
6 identify noncompliance in school districts and ensure
7 that they correct it, and I felt at the time that we
8 received this letter that we had instituted procedures
9 and programs to address that, so I would not agree with
10 them to say that it's failure to identify noncompliance.

11 We had systems in place there where we could
12 identify noncompliance. I mean, one indication of
13 noncompliance is individual complaints filed by
14 individual students. An individual complains. If it's
15 sustained, it would be an indication of noncompliance.
16 And if we're processing these complaints and we make a
17 finding that there's merit to the complaint, we have in
18 place a system to identify noncompliance. I mean, I
19 believed then and I believe now that that statement is
20 far too sweeping.

21 Q. Do you see in the -- at the bottom of your page
22 4, the last sentence starting off, in a letter dated
23 February 18, 1999, the California Department of
24 Education provided updated information showing that it
25 needs 16 full-time equivalents to effectively monitor

1 special education compliance, but that it currently has
2 only seven full-time equivalents?

3 A. Yes, I see that.

4 Q. Is that a letter that you can produce for us if
5 we ask for it?

6 MR. HERRON: He's not going to respond to that.
7 You want to ask for it, ask for it and I'll let you know
8 whether or not we're going to produce it. If you want
9 to ask him where the document is, if he's seen it,
10 that's fine. But the issue whether or not it can be
11 produced is not for him to respond to.

12 Q. BY MR. AFFELDT: Are you familiar with that
13 letter?

14 A. You know, I would have to take a look at that
15 letter because we have, you know, ongoing communication
16 with the federal office of special education programs,
17 and that letter, I would have to take a look at it and
18 see what did we say in that particular letter.

19 Q. Do you have any recollection of that letter,
20 reading this sentence?

21 A. Generally speaking, we can always use more
22 staff to do compliance work, to help -- you know, to
23 help local school districts, give them technical
24 assistance or whatever.

25 Q. My question was, do you have any recollection

1 February -- I'm referring to the 1999 letter and I'm
2 reading from the top of page 5 and it states, quote, in
3 that same letter, meaning the 1999 letter, the
4 California Department of Education also stated that,
5 one -- and then it goes forth.

6 I mean, this paragraph gives me an idea of what
7 was in the February 1999 letter, but for me to really
8 recollect what specifically was in it, I would need to
9 see a copy of it to respond to your question.

10 Q. BY MR. AFFELDT: Would you agree that having
11 sufficient personnel to monitor the districts is a
12 critical piece for any monitoring system --

13 MR. HERRON: Objection. Vague and ambiguous.

14 MR. AFFELDT: -- over a state education
15 program?

16 MR. HERRON: Objection. Vague and ambiguous.
17 Calls for speculation. Calls for a legal conclusion.
18 Asking him to go beyond his personal knowledge and
19 therefore improper.

20 MR. AFFELDT: You can answer.

21 THE WITNESS: Ask your question again.

22 Q. BY MR. AFFELDT: Under the programs that you're
23 supervising, would you agree that it's important to have
24 enough personnel so that you can monitor the effective
25 implementation of those programs?

1 of that letter sitting here today?

2 A. I don't have a specific recollection of that
3 letter. As I stated earlier, I would need to take a
4 look at the letter to see what we stated in that letter.

5 Q. But at least, according to that letter, as of
6 February 18th of '99, the Department itself was saying
7 that it was understaffed in terms of monitoring the
8 school districts, right?

9 MR. HERRON: Objection. Assumes facts not in
10 evidence. He's already said he didn't see the letter,
11 so he can't possibly answer what the letter says. He
12 can answer if the document placed before him says what
13 the letter said. You're calling for him to speculate,
14 and I object on that ground.

15 MR. AFFELDT: That's all my question did ask.

16 MR. HERRON: No, your question asked him what
17 the letter said, and he said he hasn't seen it so he
18 can't possibly respond.

19 THE WITNESS: As I said before, I need to see
20 the letter. I'm not saying that I haven't seen the
21 letter, but I would need to see the letter to see what
22 we stated in that letter, because this paragraph here at
23 the bottom of page 4, going to the top of page 5,
24 referenced that letter and -- well, this paragraph
25 speaks for itself. That same letter, meaning

1 MS. ALTAMIRANO: Objection. Which programs?

2 MR. AFFELDT: You can answer the question.

3 THE WITNESS: Yes. I mean, it's always wise to
4 have adequate staffing to do our work, to carry out our
5 responsibilities.

6 There are ideal situations where you have
7 adequate staffing, there are times when you have less
8 than adequate. But if you have less than adequate, that
9 does not mean that we are not identifying noncompliance
10 in the field, because given the staffing that we do
11 have, we are identifying noncompliance or addressing
12 matters of noncompliance among local school districts.

13 Q. BY MR. AFFELDT: Have you had adequate staffing
14 in your tenure to monitor special education compliance
15 by local school districts?

16 MR. HERRON: Objection. Vague and ambiguous.
17 Calls for a legal conclusion. Calls for speculation.

18 MR. AFFELDT: You can answer.

19 THE WITNESS: Well, it's my sense that if the
20 legislature -- let me answer your question in this way,
21 the state legislature determines how many dollars we can
22 spend out of the federal grant in special ed to
23 California on state operations, and state operations in
24 this instance would be dollars allocated specifically to
25 the California Department of Education to carry out our

1 supervisory responsibilities under federal law.
 2 And it's my belief that the legislature can
 3 probably allow a higher level of dollars to come to the
 4 California Department of Education so that we can hire
 5 more staffing to do our work, but for whatever reason,
 6 they have -- the legislature and the governor have made
 7 a certain determination as to the amount of dollars and
 8 the number of positions we are allowed to carry out our
 9 work under the federal program.
 10 Q. BY MR. AFFELDT: And based on your experience
 11 and tenure in your position, is it your view that you
 12 have had an inadequate number of personnel to monitor
 13 district compliance with the IDEA?
 14 MS. ALTAMIRANO: Objection. Calls for a legal
 15 conclusion.
 16 MR. HERRON: Calls for speculation. Asked and
 17 answered. Vague and ambiguous.
 18 You may respond if you can.
 19 THE WITNESS: Well, it's my opinion that we
 20 could use more staffing than what has been permitted by
 21 the legislature and the governor to carry out our work.
 22 I mean, we -- for the staffing that we have, I feel
 23 strongly that we are carrying out our responsibilities
 24 under federal law. And if we had more staffing, we
 25 could do more.

1 Q. BY MR. AFFELDT: The first sentence of the next
 2 paragraph on page 5 says, the California Department of
 3 Education has reported it does not have sufficient funds
 4 to adequately staff its special education monitoring
 5 system or its system for resolving Part B complaints.
 6 Would you agree with that characterization of
 7 the Department of Education's position?
 8 MR. HERRON: Objection. Vague and ambiguous.
 9 Calls for speculation. Vague as to time. Calls for a
 10 legal conclusion and is irrelevant to this case since
 11 all of these questions deal with the special education
 12 monitoring system and program that are not at issue.
 13 But you may respond nonetheless.
 14 THE WITNESS: Okay. At the time that this
 15 letter was written, the matter of our processing of
 16 complaints was an issue of concern that had been
 17 identified over time, and we felt -- I felt -- if I
 18 recollect correctly, at that time that I received this
 19 letter, I felt that we were making progress to move in
 20 that area, but we probably could have used more staff so
 21 we could process these complaints within the 60-day time
 22 line under federal law, because that's what we're
 23 supposed to do under federal law.
 24 Once a complaint is filed, we need to conduct
 25 an investigation and come to some kind of conclusion

1 within the 60-day time frame. So we were doing it in
 2 certain complaints, and we were probably not doing in
 3 some other complaints because we didn't have enough
 4 staffing, but we were -- for what we were able to
 5 handle, we processed those complaints.
 6 Q. BY MR. AFFELDT: So you did the best you could
 7 with the staff that you had?
 8 MR. HERRON: Objection. Misconstrues prior
 9 testimony. Vague and ambiguous. Vague as to time.
 10 THE WITNESS: Well --
 11 MR. HERRON: Argumentative.
 12 MR. AFFELDT: Strike that.
 13 Q. That addresses the system for resolving Part B
 14 complaints. The first part of the sentence had to do
 15 with adequately staffing the special education
 16 monitoring systems.
 17 Would you agree that the Department of
 18 Education did not have sufficient funds?
 19 A. If you look at that first full paragraph on
 20 page 5 of 29, the paragraph speaks for itself, because
 21 we go beyond. The second sentence, and I quote --
 22 beginning with the third sentence of the paragraph --
 23 for years the state has chosen to retain only a fraction
 24 of the amounts permitted by IDEA for administration and
 25 other state-level activities. As explained in the

1 state's Part Grant B award letter for fiscal year 1998,
 2 the state is authorized to set aside up to \$78,548,137,
 3 approximately 20.8 percent of the total grant, for
 4 state-level purposes. In sharp contrast, the state is
 5 retaining only 7.27 percent of the grant for state-level
 6 purposes. While Part B permits the California
 7 Department of Ed to retain for state-level purposes less
 8 than the full amount allowed, the California Department
 9 of Education must ensure that a sufficient amount of
 10 federal and state monies are allocated to ensure that
 11 its monitoring and complaint management systems are
 12 effective in the timely identification and correction of
 13 noncompliance. The state's continuing failure to do so
 14 has been one cause of its continuing failure to meet its
 15 general supervision responsibility under Part B.
 16 I mean, this paragraph speaks for itself in
 17 that the State has allowed only a certain amount of
 18 dollars, even though it doesn't state their position, a
 19 certain amount for state operation for us to carry out
 20 our work.
 21 Q. So are you agreeing that -- that may be the
 22 explanation, but do I take your answer to agree that you
 23 didn't have enough personnel to carry out the state
 24 monitoring of districts?
 25 MR. HERRON: Objection. Asked and answered

1 three times, and he doesn't have the faintest idea what
2 you understand.

3 THE WITNESS: As I stated before, it would have
4 been nice to have had more staffing to carry out our
5 activities.

6 Q. BY MR. AFFELDT: Did you or the Department
7 dispute any of the findings and conclusions that are
8 contained in this report?

9 MS. ALTAMIRANO: That's a compound question.
10 Objection.

11 MR. HERRON: Calls for speculation. Vague and
12 ambiguous in the use of the word "dispute."

13 THE WITNESS: I cannot at this moment recall
14 what our specific response was to this letter. Normally
15 we would write a response or we would have a discussion
16 with them.

17 There were a number -- there was a series of
18 communications with the feds. I would have to look at
19 the file to look at what we may or may not have done and
20 what were some -- what was some subsequent action,
21 because this particular report that we got in 1999 --
22 this particular report that we got in 1999 led to a
23 series of discussions that we had with the feds about
24 our activities in the year 1999 and 2000, and this
25 particular report that the feds gave us could have gone

1 receiving the funds for 1999, 2000.

2 Q. Okay.

3 A. And it was understood that these conditions
4 were to cover the 1999, 2000 year, for a one-year
5 period, and it specifies certain activities that we
6 would take and reporting activities that we would engage
7 in with the federal, so -- and they had specific
8 activities that we were to undertake.

9 Q. And you agreed to those activities in order to
10 receive the federal funding for that year?

11 MR. HERRON: Objection. Argumentative. Calls
12 for speculation. Vague and ambiguous. Irrelevant to
13 the case.

14 THE WITNESS: I have to go back and look at the
15 file as to what was the written communication, because
16 the feds give us a grant award letter, and right now I
17 don't remember all the letters and forms that we fill
18 out that we have to give to them and then when the
19 special condition is, you know, when it was agreed to.
20 Because we went through an extensive discussion with the
21 feds about the contents of the special conditions
22 because it was a give-and-take situation, it was not a
23 situation where they said you're going to do this and
24 there's no room to discuss what these conditions are.

25 Q. BY MR. AFFELDT: You mentioned earlier the

1 in several directions. One was to have a compliance
2 agreement, another was to have no agreement whatsoever,
3 and a third was to have special conditions attached to
4 our '99, 2000 activities.

5 Again, I would have to look at the file to look
6 at both written and any other kind of notations of the
7 communications that we had with the feds, but what we
8 ended up with was a set of special conditions that were
9 agreed to by the California Department of Education and
10 the Federal U.S. Department of Education as it related
11 to 1999 and 2000 activities.

12 I mean, I have to go back to the file to check
13 to make sure that I have all my years in the right
14 sequence, but at least as I'm sitting here, that's how I
15 kind of recollect it without having all the -- you know,
16 the file in front of me.

17 Q. BY MR. AFFELDT: When you say special
18 conditions attached to the funding, do you mean that
19 there were certain conditions that the California
20 Department of Ed had to fulfill in order to receive the
21 Part B funding from the federal government?

22 A. No.

23 Q. What do you mean?

24 A. Well, excuse me, yes, those conditions that we
25 agreed to were part of our overall agreement for

1 development of an improved complaint processing
2 procedure and also the quality assurance program as
3 measures that the Department took to improve compliance
4 in local -- throughout the state.

5 Are there any other elements or steps that the
6 Department took to improve compliance with the IDEA
7 throughout the state?

8 A. Yes. After IDEA '97 was enacted in 1997, the
9 state legislature enacted AB 602, which was known at
10 that time as the special ed reform bill that clarified
11 funding issues, how we distribute special ed dollars to
12 the special education local planning area entities,
13 SELPA.

14 And also that particular piece of legislation
15 specified some new rules and procedures on how we
16 consider and how the State Board approves or disapproves
17 local plans for special ed submitted by the SELPAs to
18 the State of California.

19 So that -- and I have to look through the file.
20 I think it was -- AB 602 was enacted in either -- it was
21 enacted after the federal IDEA of '97. I can't remember
22 if it was late '97 or sometime in 1998. Actually, it
23 had to have been in late 1997 because I was still in my
24 previous position of -- yeah, I was still in my previous
25 position, I believe, of deputy superintendent for

1 external affairs.

2 Q. Any other steps the Department took to improve
3 compliance with the IDEA during your tenure?

4 MR. HERRON: Objection. Calls for speculation.
5 Vague and ambiguous.

6 THE WITNESS: As part of our quality assurance
7 process, we got some legislative support for our focus
8 monitoring component of the quality assurance process.

9 Q. BY MR. AFFELDT: My question already included
10 the QAP and the approved complaint processing, so beyond
11 the QAP or complaint process.

12 A. Oh, any others?

13 MR. HERRON: Same objections.

14 THE WITNESS: I can't -- I mean, nothing comes
15 to mind right now to answer your question.

16 Q. BY MR. AFFELDT: Okay. Can you explain to me
17 what the quality assurance process, or maybe we can call
18 it QAP for short, consists of?

19 MR. HERRON: Presently?

20 MR. AFFELDT: Yes.

21 THE WITNESS: You know, the quality assurance
22 process has several main components that form our work
23 in identifying noncompliance. One, we have the
24 complaints, two, complaints investigation and making
25 findings. Too, we have our focus monitoring wherein we

1 there are about 22 to 26 elements that we are checking
2 the local plan for in terms of their compliance with
3 federal and state law.

4 So, anyway, in the major components of the
5 quality assurance process, if we find noncompliance,
6 then we invoke corrective action, technical assistance,
7 follow-up to those instances of noncompliance.

8 Then if a local school district does not
9 correct its problems, we invoke sanctions, either
10 monetary sanctions or go to court to seek a writ to
11 compel a local school district to do what they're
12 supposed to do.

13 Q. BY MR. AFFELDT: And this quality assurance
14 program that's been developed, was that, at least in
15 part, developed in response to the federal Department of
16 Education's review of the California Department of
17 Education special ed compliance problems?

18 A. What do you mean by "problems"?

19 Q. Everything that's in Plaintiffs' Exhibit 44
20 that identifies problems with the state's IDEA
21 compliance.

22 MR. HERRON: He can't certainly answer that
23 question unless he's given an opportunity to read each
24 and every page of that document, so if that's how you
25 want to phrase it, great, why don't we take a break and

1 go into a district, a selected district, and do a very
2 intense review of their data, policies and procedures
3 based on what they submit to us, and then what we then
4 observe when we go out into the field.

5 We also had -- another component would be our
6 CCR, our coordinated compliance review that we conduct
7 on all districts, and there's a component part in the
8 CCR that relates to special ed.

9 And then the fourth component would be the
10 local plans that SELPAs submit to the California
11 Department of Education, plans that are reviewed by the
12 State Board, at least -- you know, that are reviewed by
13 the State Board.

14 And the other component would be any other
15 findings or information that we would get out of the
16 McGeorge hearing office, because we have a contract with
17 McGeorge Law School where we would do due process
18 hearings and mediation under contract with the
19 California Department of Education.

20 So those are the major elements in which we
21 identify noncompliance. And then if we identify
22 noncompliance, then the next tool would be corrective
23 action and technical assistance to local school
24 districts.

25 And I should also add that in the local plan

1 we'll read the entire document. I object as vague and
2 ambiguous and vastly overbroad and say that it would be
3 a waste of our time.

4 Q. BY MR. AFFELDT: The question is, were you
5 developing the QAP in response to Plaintiffs' Exhibit
6 44?

7 MR. HERRON: Objection. Calls for speculation.
8 Vague and ambiguous. Assumes facts not in evidence.
9 Calls for a legal conclusion. Irrelevant to the case.

10 THE WITNESS: The QAP was developed in response
11 to the historic -- or what I would consider to be the
12 previous -- pre-1998 visits made by the feds to
13 California. They made their visit in spring of 1998,
14 but before we even got their report, which we received
15 in 1999, we were already doing -- we were developing and
16 crafting the quality assurance process.

17 Q. BY MR. AFFELDT: Were you doing that in
18 response to the previous fed visits starting in 1998 and
19 going through 1996 when you took over?

20 MR. HERRON: Objection. Calls for speculation.

21 THE WITNESS: No, I did not take over in 1996,
22 I took over in the spring of 1998.

23 MR. AFFELDT: The previous fed visits.

24 MR. HERRON: Same objection. Vague and
25 ambiguous.

1 THE WITNESS: It was generally in response to
 2 fed visits in the late 1980s and early 1990s.
 3 MR. AFFELDT: Let me hand you what we will mark
 4 as Plaintiffs' Exhibit 45.
 5 (Exhibit SAD-45 was marked.)
 6 MR. HERRON: I'm going to object to the use of
 7 this document for the reasons noted with respect to the
 8 other exhibits introduced today.
 9 What would you like him to do, read the whole
 10 thing, or see if he recognizes it, or what?
 11 Q. BY MR. AFFELDT: Can you tell me if you
 12 recognize this document once you've had a chance to look
 13 at it?
 14 A. This appears to be taken off of our web, and I
 15 don't see everything before the special ed division puts
 16 things on the web, so I don't know when this was placed
 17 on the web.
 18 Q. Do you see on the first page, upper right-hand
 19 corner it says, this web page was developed, updated on
 20 2/28/00?
 21 A. Where do you see that? Oh. It's covered with
 22 a sticky.
 23 Q. Poor placement by plaintiffs' counsel of the
 24 exhibit sticker.
 25 A. Yeah, I see that, February 28th.

1 Q. And is that generally how the Department notes
 2 when they've updated their web pages, by making some
 3 notation on the first page?
 4 MR. HERRON: Objection. Calls for speculation.
 5 Assuming he's a web master.
 6 THE WITNESS: I don't really know because I
 7 don't handle the web pages. I don't handle the web
 8 pages. And that's been an issue within the Department
 9 as to what are rules and procedures for putting things
 10 on and off the web, and we have actually engaged in a
 11 whole study about what are proper procedures about that.
 12 So now, going to this, again, I've not looked
 13 up the web and personally looked at the special ed web.
 14 So if this is what they've put on there, then that's
 15 what they've put on there.
 16 Q. BY MR. AFFELDT: Reviewing the contents of the
 17 document, does it appear to accurately describe the
 18 components of the California Department of Education's
 19 special education monitoring and oversight plan?
 20 MR. HERRON: Before he's going to respond to
 21 the question, he's going to read each and every page.
 22 If you want him to do that, that's fine. It's a waste
 23 of time and it's got nothing to do with this case.
 24 We're not going to have him answer the questions without
 25 giving him an opportunity to review the document. So

1 how do you want to proceed, change your question or have
 2 him read it?
 3 MR. AFFELDT: You can take your time to look at
 4 it. I haven't asked him to verify every word.
 5 MR. HERRON: Let's have the question reread.
 6 Q. BY MR. AFFELDT: Does this reflect the QAP, or
 7 is this something that some third party snuck into the
 8 CDE's website?
 9 MR. HERRON: Objection. Compound. Harassing.
 10 Irrelevant. If your question is whether or not it
 11 relates to the QAP, he'll answer that question.
 12 THE WITNESS: I would hope that a third party
 13 didn't put it onto the web. We would be in big trouble.
 14 MR. HERRON: Let's wait for his question.
 15 THE WITNESS: What was your --
 16 Q. BY MR. AFFELDT: Is this the California
 17 Department of Education's special ed monitoring and
 18 oversight plan, which is the title on the document?
 19 THE WITNESS: Well, let me -- how do you --
 20 MR. HERRON: He's perfectly fine with you
 21 reviewing the document to the extent you need to. Don't
 22 feel the need to talk.
 23 MR. AFFELDT: Take your time.
 24 THE WITNESS: Okay. This document in Exhibit
 25 45 generally describes what we do in a quality assurance

1 process with these caveats and conditions.
 2 As I look at this document, this document was a
 3 negotiated document between the California Department of
 4 Education and the U.S. Department of Education, and it
 5 was worded in this way because, if you recall what I
 6 stated earlier, after we received their report in 1999
 7 of their visit in 1998, we engaged in a very, very,
 8 very, very extensive conversation with the feds about
 9 the contents of our federal -- our federal -- of the
 10 special conditions to the grant year.
 11 Now, I don't know if that updated thing is
 12 accurate or not, but if you look at the document, this
 13 document, we went through different iterations with the
 14 feds and when we came out with this document, for
 15 example, the historic perspective -- and I'm trying to
 16 remember what exactly happened -- but this historic
 17 perspective section on page 4, I think, of 7 --
 18 MR. AFFELDT: Page numbers are in the lower --
 19 THE WITNESS: Yeah, on the lower left, but on
 20 my copy it doesn't show what of 7.
 21 But on that page, it looks like page 4, there's
 22 a section called historical perspective in California,
 23 Part B, corrective action plan. What I recollect now is
 24 that we engaged in extensive discussion with the feds
 25 where we were going to put that section, either at the

1 beginning of this document, at the middle or at the end.
 2 It became a point of extended conversation, and I have
 3 to go through my notes to remember what was the
 4 rationale and what was the compromise.

5 And furthermore, if you look at the last two,
 6 three pages, those are the special conditions during --
 7 you know, specified for the 1999, 2000 school year. So
 8 I would say generally this describes it at that period
 9 in which we were negotiating with the feds.

10 And, again, I repeat myself, one of the big
 11 points of debate between us and the feds was they were
 12 not giving us appropriate credit for compliance
 13 activities that we had undertaken, and it took us a long
 14 time to get this document with the kind of language that
 15 I think, you know, is there.

16 Because if you note, in the very first sentence
 17 of this document it states, in May 1999, after 15 months
 18 of planning with stakeholder groups, the California
 19 Department embarked on the implementation of a quality
 20 assurance process.

21 Well, see, that 15 months, if you count back 15
 22 months from May 1999, that's when I took over my current
 23 position. And that's when we started this whole QAP.
 24 So how we characterize it, what credit they gave to us
 25 was a point of contention between us. Now, you could

1 Q. BY MR. AFFELDT: Isn't the McGeorge piece
 2 encompassed within .3 on page 2 there, which is
 3 complaint investigations?

4 A. No. At the time that we were negotiating with
 5 the feds when we talked about complaints investigation
 6 and complaints management, we were referring to the unit
 7 that is housed in the special ed division at the
 8 California Department of Education. We did not fold the
 9 McGeorge -- fold the McGeorge part into it.

10 Q. What was your role in the negotiations?

11 A. I was present throughout the negotiation that
 12 we had when the California Department of Education
 13 indicated to the feds that we would not enter into a
 14 compliance agreement with them, but that we would
 15 entertain special conditions.

16 We had a very extended conversation with the
 17 feds prior to negotiating this, and I was part of -- I
 18 was party to those discussions as to what would be the
 19 parameters of what we would discuss when we actually sat
 20 down to discuss what we were going to do for '99, 2000,
 21 because we did not have a consensus with the feds as to
 22 compliance agreement, no compliance agreement, special
 23 conditions or some other thing for 1999, 2000.

24 Q. So the feds wanted a compliance agreement?

25 MR. HERRON: Objection. Calls for speculation.

1 say it's a word of semantics between us and the feds,
 2 but that was the nature of the negotiation of the
 3 special conditions.

4 And now, this is generally what was produced in
 5 terms of a document between the Department of Education
 6 at the California level and the federal Department of
 7 Education. But since that time we have come to the
 8 recognition -- remember, I talked about there were five
 9 elements. I threw in the findings and whatever
 10 information that we get out of McGeorge, because
 11 McGeorge is not mentioned in that particular document.

12 So in answer to your question does this
 13 accurately reflect, well, at that time this reflects at
 14 that moment, but today we have acknowledged and have
 15 included in our description of the quality assurance
 16 process the McGeorge component as one of the major
 17 components of the quality assurance process.

18 Q. BY MR. AFFELDT: Just to clarify, the McGeorge
 19 component is the due process hearings that the
 20 Department has contracted out for?

21 A. Yeah, that's correct.

22 Q. That is not included or encompassed within .3
 23 near the bottom of page 2, which is complaint
 24 investigation and complaint management activities?

25 MR. HERRON: Page 2?

1 Vague and ambiguous. Calls for a legal conclusion.

2 You may respond.

3 THE WITNESS: You know, I don't recall
 4 specifically what -- how they phrased it, what they
 5 said. I really have to look back at -- let me think.
 6 It's just my recollection now, and I would have to go
 7 through my files and calendars. This is 2001, right?

8 MR. AFFELDT: Yes.

9 THE WITNESS: Now you're jogging my memory. In
 10 fall of 1999, after we had gotten the report from the
 11 feds of their visit of 1998, in the fall of 1999, before
 12 I took a vacation with two of my three children to go to
 13 Asia, there was a big discussion between us and the feds
 14 about a compliance agreement or not. And right before I
 15 went on the airplane, I participated in a discussion
 16 about what was it the feds wanted or what they did not
 17 want, because there was some misunderstanding between
 18 what they wanted and what we thought they wanted, and I
 19 tried to straighten that out.

20 After I came back, certain parts of it did, in
 21 fact, clarify itself. And then we continued the
 22 conversations with the feds, so that by spring of 2000
 23 when this document was agreed upon or developed, we had
 24 a better sense as to how we were going to proceed with
 25 that year. Actually, my dates might be wrong because if

1 this was -- no, I'm right. Because we did not sign off
2 on the grant agreement in summer of 1999 because we had
3 a disagreement with the feds, so everything was sort of
4 held in abeyance until we could resolve what route we
5 were going to go. And we really did not resolve it
6 until spring of 2000, and we were well into the '99,
7 2000 year.

8 Because in this special condition it talks
9 about, for example, in A, overall supervision and
10 monitoring system identifies and corrects a
11 noncompliance, on .2 there it states, you know,
12 California Department of Education will demonstrate that
13 it, .2, has, during the 1999, 2000 school year,
14 conducted at least 18 randomly selected verification
15 reviews and initiated at least 8 facilitated and 13
16 collaborative reviews. So that sort of put forth what
17 we were going to do for 1999, 2000.

18 And I just want to repeat myself, one of the
19 big points of discussion throughout this entire
20 negotiation of these special conditions was how much
21 credit were they going to give us for what we had
22 actually initiated over the last 15 months or a year,
23 year and a half.

24 We got into wordsmithing as to how we were
25 going to say it or do it, so on and so forth, and

1 this -- you know, this is what we came up with. On page
2 5, 6 and 7, what you see in the brackets there, those
3 are the special conditions in terms of what we committed
4 ourselves to do and what they required us to do.

5 Q. BY MR. AFFELDT: Were you the senior person
6 from the State Department of Education negotiating this
7 arrangement with the feds?

8 A. No, I was not, because the chief deputy --

9 MR. HERRON: All he asked was whether you were
10 or not.

11 Q. BY MR. AFFELDT: Was the chief deputy the
12 senior person?

13 A. Well, the chief deputies were involved, but we
14 were all in the same -- I mean, we all negotiated. I
15 mean, we -- I mean, we came to a consensus with the
16 feds. It wasn't a situation where the chief deputy said
17 it was going to be this way. We reached a consensus on
18 the CDE side what we should or should not accept.

19 Q. Who was on the CDE side?

20 MR. HERRON: Objection. Calls for speculation.

21 THE WITNESS: I don't recall everybody, but the
22 ones that I recall right now are Scott Hill and Leslie
23 Fausset, the chief deputies who participated. They
24 weren't there all the time. Alice Parker was involved,
25 and then some of Alice's staff were involved, and then I

1 was there all the time, or pretty much all the time in
2 the negotiations.

3 Q. BY MR. AFFELDT: Who was there negotiating for
4 the federal government?

5 MR. HERRON: Objection to the extent it calls
6 for speculation. Irrelevant to the case.

7 THE WITNESS: What I can kind of remember was
8 Larry Ringer, Ruth Ryder, R-y-d-e-r, Frank Lopez, and
9 Jolita (ph.) somebody. I forget Jolita's last name, but
10 she's from Kentucky. She works in Washington, D.C., but
11 she's from Kentucky because she speaks with an accent.
12 That's how I remember Jolita.

13 MR. HERRON: I'm pretty sure that his question
14 didn't ask for that information.

15 THE WITNESS: I'm sorry.

16 Q. BY MR. AFFELDT: Was there anyone else from the
17 federal government?

18 A. Ellen Safranick (ph.) may have been there
19 because she's the California monitor or she's the
20 staffer from the feds who was assigned to watch over
21 California. There may have been some others, but those
22 are the names that come to my mind.

23 MR. HERRON: We've been going over an hour, can
24 we take a break now, please.

25 MR. AFFELDT: One more question on this.

1 MR. HERRON: Sure.

2 Q. BY MR. AFFELDT: Were those folks all from the
3 Department of Education?

4 A. Which folks?

5 Q. The list of federal people that you just gave
6 me.

7 A. Yes, they come from the U.S. Department of Ed.

8 MR. AFFELDT: Okay. Let's take a break.

9 (Recess taken.)

10 Q. BY MR. AFFELDT: What is the focus monitoring
11 component? Can you elaborate on how that's supposed to
12 improve compliance with the IDEA?

13 MR. HERRON: Objection. Relevance. It has
14 nothing to do with this case. We're spending an awful
15 lot of time on these types of issues.

16 You may respond.

17 THE WITNESS: The focus monitoring component of
18 the quality assurance process looks at key performance
19 indicators that stem from data that local school
20 districts submit to us about their students, and from
21 those key performance indicators -- and I forget all of
22 them. There's quite a few of them -- the special ed
23 division looks at the condition of the school or school
24 district and makes a determination whether that school
25 district should be reviewed or participate in this focus

1 monitoring process where the local school districts
2 report the data to the Department of Ed. We look at the
3 data and make some kind of preliminary judgment about
4 how well they're doing, how well they're not doing and
5 say, you know, we really want to come out and visit you
6 all, local school district.

7 Then we'll go to the local school district and
8 verify the data and make site visits and observe
9 classes, talk to parents, speak to students, speak to
10 teachers, administrators and the like.

11 Q. BY MR. AFFELDT: Do you get data from all of
12 the districts as part of the key performance indicator
13 process?

14 A. As a general rule local school districts are
15 required to provide us data about their special ed
16 students, so they submit it to us for each identified
17 special ed student in their district.

18 Q. So does that mean every identified special ed
19 student in the state has data going into the Department
20 of Education in this process?

21 A. That's correct. Not with the focus monitoring,
22 it's as part of our ongoing data collection and ongoing
23 compliance and monitoring activities and what's required
24 under federal rules and regulations and whatnot.

25 Q. Is that the CASEMIS?

1 A. C-A-S-E-M-I-S. Yes, CASEMIS.

2 Q. But as part of the focus monitoring process,
3 you are reviewing data?

4 A. From CASEMIS, yeah, we're looking at data from
5 CASEMIS.

6 Q. And as part of the focus monitoring process,
7 you're reviewing data from each of the thousand
8 fifty-odd districts across the state?

9 A. That's correct.

10 Q. And that has data on each of the 100,000 --
11 each special ed student in the state?

12 A. Yes, every school district is obligated to
13 submit a set of prescribed data to the California
14 Department of Education.

15 Q. What kind of data is in the CASEMIS database?

16 A. There's a lot. And I don't recall every single
17 last detail, but what I do recall at this time, the data
18 would include what kind of disability is involved with
19 that child, the race and ethnicity of the child, grade
20 level, the status of their IEP, so on and so forth.

21 Q. Out of the thousand-odd school districts in the
22 state, how many are selected for focused monitoring,
23 approximately, on a -- in a typical year?

24 MS. ALTAMIRANO: Objection. Vague.

25 MR. HERRON: Calls for speculation.

1 THE WITNESS: Well, it varies from year to year
2 because in 1999, 2000 -- I forget what the number was, I
3 forget right now what the number was, but it was "X"
4 number. And then for 2000, 2001 it was another number.
5 I think it was -- well, I just don't know specifically
6 what was the number that we have in the focus monitoring
7 process or verification review because that was embodied
8 within our special conditions. I would have to pull out
9 the specific content of our special conditions to give
10 you the precise number.

11 Q. BY MR. AFFELDT: How many years have you used
12 the focused monitoring process?

13 MR. HERRON: "You" being who, Henry Der or --

14 MR. AFFELDT: The Department of Education.

15 MR. HERRON: Calls for speculation. You may
16 answer to the extent you know.

17 THE WITNESS: 1999, 2000; 2000, 2001.

18 Q. BY MR. AFFELDT: And do you have a -- without
19 guessing, do you have a sense of what percentage of
20 districts you might review -- well, let's say you
21 reviewed in 2001?

22 MR. HERRON: You're saying focused review?

23 MR. AFFELDT: Yes.

24 THE WITNESS: Generally speaking I would have
25 to look at the precise number that we committed

1 ourselves to the feds. It's in the neighborhood of 50

2 or 54 that we would do focus monitoring or the
3 verification review, because verification review is a
4 big, big part of the focus monitoring, because in focus
5 monitoring we also give technical assistance.

6 After we go out to the field, look at their
7 data, look at their practices, and if we find that there
8 is noncompliance, we will then impose corrective action
9 to be followed by the local school district, so we have
10 that set of activities.

11 For example, there was a number specified for
12 2000, 2001, but then we have to follow-up for those that
13 engaged in focus monitoring for 1999, 2000, so there's
14 ongoing follow-up.

15 Q. BY MR. AFFELDT: Do you only do verification
16 reviews of districts that are targeted as a result of
17 the focus monitoring?

18 A. No, we do verification review for the other
19 districts that are specified in the special condition or
20 are districts that were under federal review in the late
21 1980s, 1990s.

22 MR. HERRON: Can we have the question reread,
23 please.

24 (Record read.)

25 MR. HERRON: That was a yes or no question. I

1 want you to pay attention to what he's asking and
2 respond to that, please.

3 THE WITNESS: No.

4 Q. BY MR. AFFELDT: The other districts -- strike
5 that.

6 So how do you identify the other districts that
7 are nonfocused monitoring districts for verification
8 reviews?

9 MR. HERRON: Objection. Relevance. This
10 doesn't possibly have anything to do with this case.
11 We're looking for the zingers here. It's getting late
12 in the day. We've objected on relevance grounds all
13 day. Relevance is a broad term, but attenuated topics
14 like this need to be covered in a timely fashion. I
15 understand the argument you're trying to make or craft,
16 and I wish you could make it so we could promptly move
17 for summary judgment and win.

18 We're not going to sit here and produce this
19 fellow for two days to be subjected to these kinds of
20 questions. Special education has nothing to do with
21 this case, compliance with federal requirements
22 regarding special education has nothing to do with this
23 case.

24 If you've got questions that are relevant, I
25 encourage you to ask them now because if this is going

1 MR. AFFELDT: You can have a continuing
2 objection, although that in no way is an agreement that
3 relevance is even an appropriate objection.

4 MR. HERRON: I agree with you that typically
5 the questions asked have some arguable connection to the
6 case and so you don't make it, but when you ask
7 questions that have nothing to do with the case, you are
8 being oppressive and harassing not only with the
9 defendants but with this deponent, and that is my
10 objection. And I think at this point that that's what
11 this question is doing. I guess the point of my earlier
12 objection is whether we're going to stand for that
13 another day remains to be seen.

14 THE WITNESS: Your question again was what?

15 Q. BY MR. AFFELDT: What are facilitated reviews?

16 A. Facilitated reviews are reviews of school
17 districts that have sort of the lowest -- would be sort
18 of the lowest -- I mean, they would be in the lowest
19 percentiles in terms of performance on those key
20 performance indicators out of our CASEMIS, or stated
21 another way, we think there are multiple issues that we
22 need to look at, and the districts, though, have to
23 agree to be facilitated. Generally they have to agree
24 to be a facilitated district.

25 Q. And collaborative reviews, how are those

1 to be the type of questioning you want to put us through
2 on a second day, we'll have to consider that.

3 MR. AFFELDT: Are you done?

4 MR. HERRON: I'm certainly done for now, but
5 we've got an hour and 15 minutes left, and if you want
6 to use your time well, I want to encourage you to do so.

7 MR. AFFELDT: You can reread the question,
8 please.

9 MR. HERRON: I object to these questions as
10 harassing at this point.

11 (Record read.)

12 THE WITNESS: The feds will specify what
13 districts they would like us to conduct a verification
14 review of.

15 Q. BY MR. AFFELDT: What are facilitated reviews?

16 A. You know, our -- I have to look at our document
17 because --

18 MR. HERRON: Exhibit 45, you mean?

19 THE WITNESS: Just give me a second here. I
20 need to look at our --

21 MR. HERRON: John, if I may, I'd like a
22 continuing objection to all of these questions on this
23 topic as lacking any relevance to the case and
24 harassing, if I may do so, so that I don't have to pose
25 it as to each question.

1 different?

2 A. The collaborative reviews are conducted of
3 districts that have low performance on those key
4 performance indicators, but they're not as -- the
5 conditions are not as severe or as frequent as those
6 districts that are classified as facilitated reviewed
7 districts, so. We anticipate that the amount of work
8 that we would need to work with them to identify and
9 correct deficiencies would take a little less time than
10 a facilitated review district.

11 MR. HERRON: And all this has to do with
12 special education; is that right?

13 THE WITNESS: That's correct.

14 Q. BY MR. AFFELDT: And then the preferred
15 practices reviews, what are those?

16 A. Preferred practices review districts would be
17 the districts on the other end of the spectrum where
18 they do very well on the key performance indicators, and
19 we like to work with them to see what we could do to
20 replicate some of their practices and share it with
21 other districts.

22 MR. AFFELDT: I will hand you Plaintiffs'
23 Exhibit 46 with a well-placed sticker.

24 (Exhibit SAD-46 was marked.)

25 Q. BY MR. AFFELDT: And I'll ask if you could

1 review that and identify it, please.

2 MR. HERRON: I'm going to object to the
3 introduction and the use of this document for the same
4 reasons noted with respect to the other exhibits used in
5 this deposition.

6 Can I just ask a question? Is it one document
7 or is it an assemblage of two, if you know, John?

8 MR. AFFELDT: It is -- I'm going to say it's
9 one document, which is pages 1, 2, 3, and then I think
10 there's a link. Yeah, I will purport to explain that
11 the documents attached are a sample of the links which
12 flow from the letter A on page 3, P and R.

13 MR. HERRON: I see what you're saying.

14 Q. BY MR. AFFELDT: Let us know when you're done
15 reviewing the document.

16 A. Okay.

17 Q. Do you recognize this document?

18 A. This document appears to come off of our web.
19 And as I stated to you, very seldom do I look up our own
20 web pages, so I -- I mean, it appears that it came off
21 of our web.

22 MR. HERRON: He's asking, do you recognize it
23 as something that you've reviewed before, if that's your
24 question.

25 THE WITNESS: I can't -- I cannot remember

1 collecting from districts, or, again, has some third
2 party created a fraudulent data report?

3 A. No, this data we collect from local school
4 districts, or for example, we get the SAT-9 results
5 coming from the testing for that particular district.

6 Q. And on page 2 of the exhibit where it explains
7 the terms and it reports comparable districts,
8 disparity, exited, CASEMIS, CBEDS, STAR, et cetera, are
9 those the data points and sources you're using to
10 develop the key performance indicators?

11 A. Generally speaking, yes. I'm not the technical
12 person within the special ed division, and I know that
13 we collect the CASEMIS data in special ed. CBEDS data
14 is handled by Lynn Bocker, who is head of that unit.
15 She reports to another deputy superintendent. The STAR
16 results are in the assessment and accountability branch,
17 which is headed by another deputy superintendent, and
18 our technical folks, they work together to coordinate
19 the data.

20 (Exhibit SAD-47 was marked.)

21 Q. BY MR. AFFELDT: I'll hand you Plaintiffs'
22 Exhibit 47.

23 MR. HERRON: Let me interpose the same
24 objection to Exhibit 47 that we have to the other
25 exhibits used at this deposition today.

1 seeing -- I mean, I did not look up the web on this. I
2 know that we were going to do summaries from our CASEMIS
3 and CBEDS and whatever data.

4 Q. BY MR. AFFELDT: Have you seen district
5 summaries of any districts from your CASEMIS, CBEDS
6 data?

7 A. You know -- what time frame?

8 Q. At any time since they've been developed.

9 A. I have seen summary data about districts, yes,
10 that emanate from CBEDS and emanate from CASEMIS.

11 Q. Are the data points that are displayed on the
12 sample districts the ones that the Department of
13 Education has developed as part of the focus monitoring
14 process?

15 MS. ALTAMIRANO: Objection to the question as
16 vague.

17 Are you referring specifically to the exhibit
18 in front of Mr. Der?

19 MR. AFFELDT: Yes.

20 MS. ALTAMIRANO: And to which page?

21 MR. AFFELDT: The sample districts are on pages
22 4 through 6 or 7.

23 MS. ALTAMIRANO: Thank you.

24 THE WITNESS: And the question again was?

25 Q. BY MR. AFFELDT: Is this the data you're

1 Q. BY MR. AFFELDT: That exhibit, on the top it
2 says, California Department of Education, special
3 education division, key performance indicator
4 calculations, prepared by CDE, SED, AES on 6/19/01.
5 Have you seen this document before?

6 A. I don't recall seeing this previously.

7 Q. Just looking at the goals on the -- the five
8 goals laid out on the exhibit, are those the goals of
9 the quality assurance program?

10 MR. HERRON: I'm sorry, what are you referring
11 to?

12 MR. AFFELDT: It says goal I on the first page,
13 et cetera.

14 MR. HERRON: I see.

15 THE WITNESS: Yes, those goals reflect the
16 goals that are associated with our quality assurance
17 process and our sort of overall efforts within the
18 special ed division.

19 Q. BY MR. AFFELDT: Who is the most knowledgeable
20 person in the Department that is responsible for the
21 development of the key performance indicators?

22 MR. HERRON: Calls for speculation. I object
23 on that basis.

24 THE WITNESS: This data comes out of our
25 assessment evaluation unit in the special ed division,

1 and it's headed by Lilit, L-i-l-i-t, Roy, R-o-y. He's
 2 the manager and he heads up this particular effort with
 3 his staff.
 4 Q. BY MR. AFFELDT: And did Lilit design the --
 5 what the KPIs would be in this key performance indicator
 6 system?
 7 A. Ask your question again.
 8 Q. Was Lilit responsible for coming up with which
 9 key performance indicators would be used?
 10 A. No.
 11 Q. Whose responsibility was that?
 12 A. Lilit took over the position of manager within
 13 the last six months or so, so it was really his
 14 predecessor, Vince Madden, who was the manager of that
 15 unit, who was involved with the development of these key
 16 performance indicators.
 17 Now, as I stated previously, beginning in
 18 spring of 1998, the special ed division commenced a
 19 series of discussions with stakeholder groups to
 20 identify key performance indicators. So these key
 21 performance indicators are the result of consensus and
 22 discussion between and among the special ed division and
 23 key stakeholder groups, you know, representatives of
 24 local school districts or other groups that have
 25 something to do with special ed division.

1 Q. And who is in charge of that process that you
 2 just described?
 3 A. That process was headed up by Alice Parker, the
 4 division director of special ed. She is the special ed
 5 director, and that's what she was assigned to undertake
 6 and do as special ed director.
 7 Q. Did you hire Alice Parker?
 8 A. No, I did not.
 9 Q. Did she predate your tenure in your current
 10 position?
 11 A. Yes.
 12 Q. Are you aware if any other states use a similar
 13 quality assurance program perhaps by another name?
 14 A. No.
 15 Q. Do you think California is unique in that
 16 regard, or do you just not know?
 17 MS. ALTAMIRANO: Objection. Calls for
 18 speculation.
 19 THE WITNESS: I don't know.
 20 Q. BY MR. AFFELDT: Uh-huh. Did you look --
 21 strike that.
 22 How did the branch come up with the quality
 23 assurance process for ensuring compliance with the IDEA?
 24 MR. HERRON: Objection. Asked and answered in
 25 part. Calls for speculation. Calls for a narrative.

1 Vastly overbroad and difficult for him to respond to it.
 2 I request that you break it down. That's your call.
 3 THE WITNESS: Can you ask your question again?
 4 Q. BY MR. AFFELDT: Who designed the quality
 5 assurance process?
 6 MR. HERRON: Same objections.
 7 THE WITNESS: As I stated before, the quality
 8 assurance process was -- is a result of work done by the
 9 special ed division and discussions and meetings that we
 10 had with key stakeholder groups, and even input from the
 11 feds because they knew what we were doing, because when
 12 they came out in 1998, we already were telling them what
 13 we were doing with our quality assurance process. I
 14 mean, this was the framework of what we wanted to do.
 15 In addition to all that, we also hired
 16 consultants who had expertise and familiarity with
 17 special ed monitoring and compliance work. Many, many
 18 people were involved with the process, but we knew where
 19 we wanted to go and we wanted to improve our activities
 20 in this area.
 21 Q. BY MR. AFFELDT: So as far as you're aware,
 22 were you designing this program around models -- a model
 23 program somewhere else?
 24 MR. HERRON: Objection. Relevance.
 25 THE WITNESS: I don't know. I don't know what

1 other states are really doing.
 2 Q. BY MR. AFFELDT: So it sounds like, based on
 3 your description, that it was developed -- sort of a
 4 homegrown California quality assurance process?
 5 MR. HERRON: Objection. Asked and answered, in
 6 part, the question before.
 7 THE WITNESS: The quality assurance process is
 8 what it is, what we've described it to be in written
 9 documents, on the web, and what I've just described to
 10 you today.
 11 Q. BY MR. AFFELDT: I've only asked you, as far as
 12 you know, it's a homegrown product?
 13 A. I don't know because I don't know what the
 14 consultants may or may not have said or done in other
 15 states. I've not really asked them what -- if they were
 16 engaged in consultations with other states and what they
 17 may or may not have done in other states.
 18 Q. Is there a quality assurance program perhaps by
 19 another name, the equivalent of a quality assurance
 20 program in the general education program in California?
 21 MR. HERRON: Objection. Vague and ambiguous.
 22 Calls for speculation.
 23 THE WITNESS: Can you ask your question again?
 24 Q. BY MR. AFFELDT: As far as you're aware, is
 25 there any similar quality assurance program in the

1 general education system in California public schools?

2 MR. HERRON: Same objections. Object as vague
3 and ambiguous to general education system.

4 THE WITNESS: That's a difficult question to
5 answer because our quality assurance process that we've
6 developed and implemented is specific to special ed law.
7 It's for special ed only, so --

8 MR. AFFELDT: I understand that.

9 THE WITNESS: There's not an IEP requirement
10 for nonspecial ed students and --

11 Q. BY MR. AFFELDT: The IDEA requires the delivery
12 of certain services to special ed students, correct?

13 A. IDEA requires that identified special ed
14 students -- or, actually, it's students with
15 disabilities is, I think, the appropriate title -- it
16 requires that they get a free and appropriate public
17 education.

18 If they're assessed and identified to be a
19 student with special disability, then what drives the
20 services they receive -- what drives the services they
21 receive is their IEP, their individual education plan or
22 program, and those are all student specific. It's not
23 specific to a group of kids, but it's specific to that
24 particular student. You know, as such we have developed
25 this quality assurance process in such a manner that we

1 THE WITNESS: I mean, as far as I know, and
2 this is just what I know or perceive, no other entity
3 within the Department of Ed has a quality assurance
4 process like the way we have it, but then again, they're
5 not running special ed so -- you know, because special
6 ed gives specified rights to identified students with
7 disabilities. For example, when they file a complaint,
8 we've got to process and reach a conclusion on that
9 complaint within 60 days. That's specific to students
10 with disabilities. What are the general provisions, I'm
11 not -- I've not -- I don't have responsibility in that
12 particular area.

13 Q. BY MR. AFFELDT: Looking at goal No. 2, for
14 example, on Exhibit 47, goal No. 2, is that all students
15 with disabilities will be served or taught by
16 fully-qualified personnel, correct?

17 A. That is goal No. 2, yes.

18 Q. And that is supposedly one of the key
19 performance indicators that the Department is now
20 collecting data on and reviewing compliance with,
21 correct?

22 MR. HERRON: Objection. Misconstrues the
23 document. Assumes facts not in evidence. Calls for
24 speculation. Vague and ambiguous. Irrelevant to any
25 issue in the case.

1 can look for and anticipate instances of noncompliance
2 when such noncompliance occurs, and also look for any
3 kind of systemic patterns of noncompliance if they occur
4 or exist out there.

5 Q. The IDEA requires students receive free and
6 appropriate public education, correct?

7 A. Yes, that's correct.

8 Q. And IDEA requires that the State of California
9 ensure that students in districts are receiving a free
10 and appropriate public education, correct?

11 MS. ALTAMIRANO: Objection. Vague. Are you
12 talking only about special education students?

13 MR. AFFELDT: Yes.

14 THE WITNESS: That is correct.

15 Q. BY MR. AFFELDT: And with respect to the
16 delivery of general education services like instruction
17 from a qualified teacher, are you aware of any
18 equivalent program on the general ed side which is
19 similar to the quality assurance program?

20 MR. HERRON: Objection. Incomplete and
21 improper hypothetical. Calls for speculation. Vague
22 and ambiguous as phrased and in the use of the term
23 "general education services," among others. Lacks
24 foundation.

25 MR. AFFELDT: You can answer.

1 You may, nonetheless, respond.

2 THE WITNESS: Ask your question again.

3 Q. BY MR. AFFELDT: My question is, since that is
4 the goal, No. 2 under key performance indicator, is that
5 not part of the focused monitoring system on which the
6 Department is collecting data and reviewing district
7 compliance with?

8 A. The Department is collecting data about the
9 level of certification of teachers, I mean, to the
10 extent that if they have a credential, they're qualified
11 and they go through, you know, a teacher ed program.
12 They go through -- measured by having gone through a
13 teacher ed program and passing and getting their
14 credential from CTC.

15 Q. And is the -- when you determine qualified
16 staff, you're doing so by reference to whether or not
17 they are fully credentialed; is that correct?

18 MR. HERRON: Objection. Assumes facts not in
19 evidence. Vague and ambiguous in the use of the term
20 "staff," as well as to certificated personnel.

21 Misconstrues this document, which speaks for itself.

22 You may respond if you understand.

23 THE WITNESS: On page 2 here the -- in terms of
24 looking at the key performance indicator, this -- we are
25 looking at the percent of fully certified special ed

1 teachers who are involved with providing services to
 2 students with disabilities. We are looking at that.
 3 Q. BY MR. AFFELDT: And the goal on page 2 there
 4 is all students with disabilities will be served or
 5 taught by fully-qualified personnel, correct?
 6 A. It's correct.
 7 Q. And the way that you measure that goal is by
 8 looking at the percent of fully-certified personnel,
 9 correct?
 10 MR. HERRON: Objection. Misconstrues the
 11 document. Assumes facts not in evidence.
 12 THE WITNESS: Percent of special ed teachers
 13 that are fully certified. It's special ed teachers.
 14 MR. AFFELDT: Correct.
 15 Q. So we're in agreement that the way that the
 16 very first point under measuring the goal of
 17 fully-qualified personnel is to measure the percent of
 18 special ed teachers that are fully certified?
 19 A. That is one of the measures. There's other
 20 measures that we look at too.
 21 Q. And the other ones being percent of special ed
 22 teachers with emergency permits.
 23 That would, I assume, indicate someone who is
 24 not fully qualified, correct?
 25 MR. HERRON: Objection. Assumes facts not in

1 evidence. Calls for speculation. Misconstrues the
 2 document. Asks for an expert opinion.
 3 You may respond.
 4 Can we please have the question reread?
 5 MR. AFFELDT: Let me rephrase the question.
 6 Q. The measure percent of special ed teachers with
 7 emergency permits, does that advance or retard goal
 8 No. 2 of all students with disabilities being served or
 9 taught by fully-qualified personnel?
 10 MR. HERRON: Same objections.
 11 THE WITNESS: That measure No. 2 talks -- I
 12 mean, refers to the number of special ed teachers who do
 13 not have a credential to teach special ed or to be
 14 categorized as a special ed teacher, and, I mean, to the
 15 extent that a teacher is not fully certified or fully
 16 credentialed, that is of some concern.
 17 Q. BY MR. AFFELDT: So the answer to my question
 18 is, that would count against the goal of being taught by
 19 fully-qualified personnel?
 20 MR. HERRON: Objection. Asked and answered.
 21 He's already responded to your question and you're
 22 trying to put words in his mouth. Let's have the
 23 question reread.
 24 (Record read.)
 25 MR. HERRON: Vague and ambiguous as well.

1 Calls for speculation.
 2 You may respond if you understand.
 3 THE WITNESS: Well, I wouldn't agree with how
 4 you characterize it as counting against goal No. 2. We
 5 don't count it in that way. Goal No. 2 is aspiration
 6 that all students with disabilities will be served and
 7 taught by fully-qualified personal. That's an
 8 aspirational goal. We know that there is a shortage in
 9 California of credentialed special ed teachers.
 10 Q. BY MR. AFFELDT: Is it your testimony that when
 11 someone is on an emergency permit for a special ed
 12 teacher, that that advances the goal of being taught by
 13 fully qualified personnel?
 14 MS. ALTAMIRANO: Objection. He hasn't
 15 testified that way at all.
 16 THE WITNESS: I'm not sure if I understand your
 17 question.
 18 Q. BY MR. AFFELDT: I understand it's a goal. It
 19 may be aspirational. My question, which is really quite
 20 simple, is, is the percent of special ed teachers with
 21 emergency permits a positive for the district according
 22 to the Department of Education in advancing goal No. 2,
 23 or is it a negative for the district according to the
 24 Department of Education in advancing goal No. 2?
 25 MR. HERRON: Objection. Calls for speculation.

1 Assumes facts not in evidence. And specifically what
 2 makes it hard is that question suggests that merely
 3 having an emergency permit somehow means that the person
 4 is not fully qualified, and it's also been asked and
 5 answered.
 6 MR. AFFELDT: I'll object to the inappropriate
 7 coaching.
 8 MR. HERRON: That isn't coaching. You've been
 9 over this five times and that's why he's struggling with
 10 this, so why don't you just ask the right question and
 11 make it easy on him.
 12 THE WITNESS: I mean, this document speaks for
 13 itself. I mean, the key performance indicator is to
 14 increase the percent of fully-certified staff, and that
 15 key performance indicator is in recognition of a general
 16 shortage of certified credentialed special ed teachers
 17 in the state of California.
 18 So how do we measure that increase? And there
 19 are several factors that we measure that increase, and
 20 those factors would be we look at the number of -- the
 21 number and percent of special teachers that are fully
 22 credentialed, the number of teachers who are on
 23 emergency credential, and then the number of special ed
 24 teacher positions by discipline as to what the vacancy
 25 is to make a judgment or assessment as whether a

1 district has, in fact, increased the percent of
 2 fully-certified teachers, special ed teachers in a
 3 district.
 4 Because within a district, mind you, you know,
 5 conditions may change based on the number of special ed
 6 students there are. There could be an increase,
 7 decrease, maybe there's a decreased need for teachers or
 8 there's an increase because a district, for example, has
 9 done what it's supposed to do in really, you know,
 10 identifying and assessing students with disabilities.
 11 And once they do that, they identify and assess and then
 12 they conduct the IEP, then they make a determination
 13 well, what do they need. What is the need in terms of
 14 the numbers of qualified or -- I mean, what is the
 15 number of teachers, special ed teachers needed to work
 16 with "X" number of kids with these kinds of IEPs within
 17 that district.
 18 To answer your question is somewhat complicated
 19 because you've got to look at all these measures.
 20 That's why they are listed like that. It's not just one
 21 measure by itself.
 22 Q. BY MR. AFFELDT: Well, for purposes of the QAP,
 23 at least, goal No. 2 equates, does it not, being taught
 24 by fully-qualified personnel with increasing the percent
 25 of fully-certified staff, which is the only item listed

1 under the KPI column?
 2 MR. HERRON: Objection. Argumentative. Calls
 3 for speculation. Asked and answered five times.
 4 You may respond again.
 5 THE WITNESS: What was your question again?
 6 Q. BY MR. AFFELDT: You're equating
 7 fully-qualified personnel with fully-certified staff?
 8 MR. HERRON: Same objections.
 9 THE WITNESS: I mean, it's what is stated here.
 10 Percent fully certified is calculated.
 11 Q. BY MR. AFFELDT: I'm not asking you the method,
 12 I'm just asking you to look at KPI, which is one item,
 13 increase the percent of fully-certified staff, and that
 14 serves the goal No. 2 above that, which is students with
 15 disabilities being served or taught by fully-qualified
 16 personnel, correct?
 17 A. That's correct. I mean, that KPI has been
 18 identified because there's this presumption that there
 19 is a shortage of certified special ed teachers in the
 20 state of California. And to the extent that we want to
 21 close that gap or to reduce the shortage, we would
 22 always want to increase the percent of certified
 23 teachers, special ed teachers in the district. That's
 24 the direction that we want a district to move towards or
 25 move in.

1 Q. Okay. Are you aware of any other -- I mean,
 2 the QAP responds to special education programs in
 3 California public schools, right?
 4 Are you aware of any similar process that looks
 5 to measure the increase of fully-certified staff in the
 6 general education program of California?
 7 MR. HERRON: Objection. Calls for speculation.
 8 Vague and ambiguous as phrased, and in use of the term
 9 "fully-credentialed staff."
 10 THE WITNESS: The only thing that comes to mind
 11 right now is what's reported in our CBEDS data, and I --
 12 from time to time I will look at CBEDS data on the web,
 13 and within CBEDS data there's the percent of teachers
 14 that are fully credentialed. I forget what the specific
 15 term that we use, in CBEDS, what Lynn Bocker puts up on
 16 the web, but it's sort of fully-credentialed teachers
 17 versus those who are emergency, as opposed to teachers
 18 on emergency credentials.
 19 Q. BY MR. AFFELDT: But that's just the reporting
 20 of data, isn't it?
 21 A. That's correct.
 22 Q. There's not a focus monitoring program that
 23 picks a certain select problem district and tries to
 24 provide technical assistance?
 25 MR. HERRON: Objection. Calls for speculation.

1 Assumes facts not in evidence. Asked and answered.
 2 That's enough.
 3 You may respond.
 4 THE WITNESS: I'm not aware of anything within
 5 the Department that is similar to focus monitoring or
 6 our quality assurance process. Actually, I should use
 7 the term quality assurance process because it embodies
 8 all the activities that we engage in in the area of
 9 compliance as it relates to special ed.
 10 Q. BY MR. AFFELDT: And are you aware of anything
 11 outside of the Department that mimics the quality
 12 assurance process to assure an increase of
 13 fully-certified personnel in general education?
 14 MR. HERRON: Same objections. I mean, he --
 15 same objections.
 16 THE WITNESS: When you say where, are you
 17 talking about in California or outside of California?
 18 MR. AFFELDT: I'm talking about in California,
 19 within the California public school system.
 20 THE WITNESS: Am I aware of a QAP?
 21 MR. HERRON: Within the California public
 22 school system?
 23 MR. AFFELDT: Yes.
 24 THE WITNESS: Offhand right now, no.
 25 Q. BY MR. AFFELDT: And just to clarify, that

1 would include the State Board of Education, the
2 governor's office, secretary of education, all other
3 state agencies involved in delivering public education
4 in California?

5 MR. HERRON: That is a completely different
6 question. I object to your trying to misconstrue his
7 testimony. It's vague and ambiguous and calls for
8 speculation, and it's really unfair to ask a question in
9 that way. I would like to have the question reread
10 before he responds.

11 (Record read.)

12 THE WITNESS: That they don't have a QAP?

13 MR. AFFELDT: That you're aware of.

14 THE WITNESS: I'm not aware of any QAP run by
15 the governor's office or the secretary of state or the
16 State Board of Education, because they're not really
17 administrative entities. I mean, they're not the SEA,
18 we are. The Department of Ed is the SEA.

19 Q. BY MR. AFFELDT: And by SEA you mean the state
20 educational agency?

21 A. State educational agency.

22 Q. So the Department of Ed would be the state
23 educational agency that's primarily responsible for the
24 administration of the public school system?

25 A. Well, I don't know what is in state law with

1 THE WITNESS: I don't know how to answer your
2 question because textbooks are different from what
3 students are entitled to under federal law or state law
4 in terms of educational services.

5 MR. AFFELDT: I'm not asking you to interpret
6 the law. I will say for your clarification that, as I
7 think you're aware, plaintiffs in this lawsuit are
8 claiming that they do have a right under state
9 constitutional law to textbooks and teachers and
10 facilities.

11 Q. My question is, are there any programs you're
12 aware of that are similar to the kind of quality
13 assurance program, including its focus monitoring
14 component, that would deliver textbooks to students?

15 MR. HERRON: Objection. Vague and ambiguous.
16 Calls for speculation. Calls for a legal conclusion.

17 THE WITNESS: That's a difficult question to
18 answer because local school districts -- from what I
19 understand, this is just my personal understanding,
20 local school districts determine what kind of textbooks
21 they will provide their students, and, you know, the
22 state allocates a certain amount of dollars to them, but
23 we don't tell -- actually, I can't answer your question
24 because I don't want to speculate and tell you something
25 that I don't know.

1 regard -- I mean, what's the precise language used. All
2 I know is that the California Department of Education is
3 the SEA for the purposes of special ed because in child
4 care, child development it's a little different as to
5 who is the acknowledged SEA. So it's really the context
6 in which you're talking about the SEA, I mean, what
7 federal or state program.

8 Q. Are you aware of --

9 MR. HERRON: John, when you get to a convenient
10 point, can we take a break? We've been going about an
11 hour, maybe a little over. Since we only have half an
12 hour left, I'd propose just a couple-minute break.

13 MR. AFFELDT: I've got a few more questions and
14 then we'll do that.

15 Q. Are you aware of either within the Department
16 or outside of the Department any sort of similar focus
17 monitoring process that would -- that looks at the
18 delivery of current textbooks to students in California
19 public schools?

20 MR. HERRON: Objection. Calls for speculation.
21 Vague and ambiguous as phrased. You mean a focus
22 program that exists for special ed and whether that
23 existed for textbooks, is that the question?

24 MR. AFFELDT: That's the question.

25 MR. HERRON: You may respond.

1 Q. BY MR. AFFELDT: Are you even aware of whether
2 the state has any data on whether or not kids in schools
3 have textbooks or don't have textbooks?

4 MR. HERRON: Is he aware?

5 MR. AFFELDT: Yes.

6 THE WITNESS: I'm not aware of any data one way
7 or the other about whether -- whether every kid in
8 California has a textbook or not because, you know, some
9 teachers don't use a textbook in their teaching of the
10 course.

11 MR. HERRON: I'll belatedly object as lacking
12 any relevance and therefore harassing given the other
13 questions. Assumes facts not in evidence.

14 Q. BY MR. AFFELDT: Are you aware of any program
15 that attempts to -- from the state that attempts to
16 ensure kids receive textbooks, each student, the way
17 that the quality assurance program seeks to ensure each
18 student receives their special education services?

19 MR. HERRON: Objection. Calls for speculation.
20 Vague and ambiguous as phrased. Well beyond the
21 knowledge of this witness who, as you well know, has
22 already testified about what he does and doesn't do.
23 It's a waste of our time. It's harassing.

24 You may, nonetheless, respond.

25 THE WITNESS: I'm not aware of any kind of QAP

1 type of program as it relates to textbooks to every kid,
2 but then again, it's like what kind of textbook, for
3 what class, what subject?

4 MR. AFFELDT: Why don't we take a break at this
5 point.

6 (Recess taken.)

7 Q. BY MR. AFFELDT: What is the current view, to
8 the extent you know, of the U.S. Department of
9 Education, on whether or not California is in compliance
10 with the IDEA?

11 MS. ALTAMIRANO: Objection. The answer calls
12 for speculation.

13 THE WITNESS: The representatives of the
14 federal U.S. Department of Education came out to
15 California several weeks ago, and I was not able to
16 participate personally in any of the meetings that they
17 had with our special ed staff, but what was reported to
18 me by staff was they seemed to view generally positively
19 towards our carrying out the special conditions for
20 2000, 2001 in terms of our verification reviews and
21 looking at -- and carrying out all the activities
22 specified in the special conditions for 2000, 2001.
23 What I was told was that we got -- that it was positive.

24 MR. AFFELDT: I'm going to give you Plaintiffs'
25 Exhibit 48.

1 integrate information from several different data
2 sources to make accurate compliance determinations and
3 to focus on improving results for students but, 2, CDE
4 cannot yet demonstrate that it is implementing an
5 effective system that consistently identifies and
6 corrects noncompliance, unquote.

7 Do you take issue with those conclusions?

8 A. I took issue or I take issue with point No. 2.
9 We had been working very hard, so I agree with point
10 No. 1, but point No. 2, we took some exception to.

11 Q. Do you recall if the Department issued any
12 written response to the various points made in this
13 letter?

14 A. I cannot recall right now how we responded,
15 whether it was in writing or verbally, or otherwise, to
16 Judy Huemann. Whatever was stated in this letter became
17 the basis on which we negotiated the special conditions
18 for 2000, 2001 school year.

19 Q. Have you negotiated special conditions?

20 A. Yes, we have.

21 Q. So the Department is still under special
22 conditions as part of the IDEA, Part B, funding?

23 A. That's correct, we have special conditions for
24 the 2000, 2001 grant year.

25 Q. And, at least according to the U.S. Department

1 (Exhibit SAD-48 was marked.)

2 Q. BY MR. AFFELDT: This purports to be a June
3 21st, 2000 letter to Alice Parker from Judy Huemann.

4 Do you recall seeing this letter before?

5 A. Let me just take a look at it.

6 Q. Take your time.

7 MR. HERRON: Object to the use and introduction
8 of this exhibit for the same reasons identified with
9 respect to all other exhibits introduced at this
10 deposition.

11 THE WITNESS: Okay.

12 Q. BY MR. AFFELDT: Do you recognize this letter?

13 A. Yes.

14 Q. Have you seen it before?

15 A. Yes, this comes off of the web. This is -- I
16 guess we just put the header of the special ed division,
17 but it looks like it's the U.S. Department of Education
18 stationary.

19 Q. And is this the letter that the Department of
20 Ed received on -- sometime in June of 2000?

21 A. Based on this copy, it appears to be so.

22 Q. Uh-huh. Okay. Just turning to the conclusion
23 on the last page, it says in the middle of the paragraph
24 there, we conclude that, one, CDE has been working hard
25 to develop and implement a compliance system intended to

1 of Ed as of June 2000, they weren't satisfied with the
2 QAP program as fully bringing the state into compliance
3 with the IDEA, correct?

4 MR. HERRON: Objection. Calls for speculation.

5 THE WITNESS: I think Judy's conclusion speaks
6 for itself, because she makes point No. 1, she makes
7 point No. 2, and she concludes it by saying, the
8 corrective action plan requires CDE to submit an
9 additional report to OSEP on or before June 30, 2000.
10 So we hadn't submitted that report yet because that was
11 part of the conditions of '99, 2000 grant year.

12 And then she concludes her letter by saying, we
13 will review that report to determine what additional
14 progress CDE has made in working toward compliance and
15 whether it can then demonstrate that it is implementing
16 an effective system that consistently identifies and
17 corrects noncompliance.

18 So she hadn't come to a final, final conclusion
19 with regard to '99, 2000. She indicated where she was
20 headed towards.

21 (Exhibit SAD-49 was marked.)

22 Q. BY MR. AFFELDT: I'm handing you Plaintiffs'
23 Exhibit 49, which purports to be a March 19th, 2001
24 letter to Alice Parker from Patricia Guard, acting
25 director of OSEP.

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

5 Mr. Henry Der
6 CALIFORNIA DEPARTMENT OF EDUCATION
7 721 Capitol Mall
8 Sacramento, CA 95814
9 Re: Williams vs State of California, Vol. I
10 Date Taken: Wednesday, July 18, 2001

11 Dear Mr. Der:

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

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

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

25 If you do not wish to read your deposition, please sign
here and return within 30 days of the date of this
letter.

HENRY DER DATE

26 Sincerely,

27 TRACY LEE MOORELAND, CSR
28 Esquire Deposition Services
29 Job No. 27487

30 cc: John Affeldt, Esq. David Herron, Esq.
31 Sarah Kaatz, Esq. Abe Hajela, ESQ.
32 Margarita Altamirano, 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: Henry Der, Volume I
11 Date Taken: Wednesday, July 18, 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. 27487