

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

ELIEZER WILLIAMS,

Plaintiff(s),

vs.

No. 312236

STATE OF CALIFORNIA, et. al.,

Defendant(s),

DEPOSITION OF PETER DIBBLE
Volume 1 - Pages 1 through 120
Sacramento, California
Tuesday, June 17, 2003

Reported by:

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CSR License No. 5883

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1 BE IT REMEMBERED that, on Tuesday, the 17th day of
2 June, 2003, commencing at the hour of 11:14 a.m.
3 thereof, at the Law Offices of Morrison & Foerster, 400
4 Capitol Mall, Suite 2700, Sacramento, California,
5 before me, LISA RICHARDSON, a Certified Shorthand
6 Reporter in and for the State of California, duly
7 authorized to administer oaths and affirmations, there
8 personally appeared,
9 PETER DIBBLE,
10 a Witness in the within-entitled action called by the
11 Plaintiff herein, who having been duly sworn by the
12 Certified Shorthand Reporter to tell the truth, the
13 whole truth, and nothing but the truth, was thereupon
14 examined and interrogated as hereinafter set forth.
15 --o0o--
16 EXAMINATION BY MS. PEARLMAN
17 Q Good morning, Mr. Dibble.
18 Can you please spell your full name for the
19 record, please?
20 A My first name is Peter, P-e-t-e-r, my last
21 name is Dibble, D-i-b-b-l-e.
22 Q And have you been deposed before, sir?
23 A About 35 years ago when I was a recreation
24 director.
25 Q And without disclosing any confidential

1 information, what was the nature of that case?
 2 A A child injured his arm.
 3 Q You've met with counsel and discussed the
 4 procedures of the deposition?
 5 MS. READ-SPANGLER: Objection.
 6 MS. KOURY: Objection, calls for
 7 attorney-client privileged information.
 8 Q BY MS. PEARLMAN: Are you familiar with the
 9 procedures of a deposition?
 10 MS. KOURY: Same objection.
 11 MS. READ-SPANGLER: And actually, before we go
 12 on, I don't know if you are aware, but we have a
 13 stipulation that we put on the record before that if
 14 one counsel makes an objection, all other counsel,
 15 except the counsel asking the questions, are deemed
 16 joined so that we don't all have to sit there and go,
 17 "Join." "Join." "Join."
 18 Is that acceptable?
 19 MS. PEARLMAN: That's fine. That's
 20 acceptable.
 21 Q Mr. Dibble, are you familiar with the
 22 procedures of a deposition?
 23 A Yes.
 24 Q And you've just taken an oath, which -- I will
 25 give you a background on some of the procedures --

1 which means you are under the pains of perjury as if
 2 you are in a courtroom.
 3 Also, for the court reporter so that she can
 4 get everything, please speak audibly and loudly.
 5 And it's also hard for her to transcribe
 6 everything if we speak at the same time. So if you
 7 could wait until I finish my question before you
 8 answer, and I will give you the same courtesy.
 9 I'm going to ask you a series of questions
 10 related to the Williams case. I want to -- I'm just
 11 trying to get background about your role and your work.
 12 I have no intent to trick or deceive you. So
 13 if you don't understand anything, please just let me
 14 know. If you don't say you don't understand something,
 15 I will assume you've understood it.
 16 And the questions and answers will be
 17 transcribed in a booklet, which at some point you will
 18 have a chance to review. You can make changes to it.
 19 But you should know that the attorneys have a right to
 20 review those changes and draw any inferences from them.
 21 Also, if you need to take a break at any time,
 22 just let me know. Just I ask that you try and answer
 23 any pending questions.
 24 Is there any reason you can't provide your
 25 best testimony today?

1 A No.
 2 Q Are you on any medication?
 3 MR. HAJELA: That would affect your ability --
 4 MS. PEARLMAN: That's fine.
 5 Q -- that would affect your ability to testify
 6 truthfully and accurately today?
 7 A No.
 8 Q And did you meet with counsel before the
 9 deposition?
 10 A Yes.
 11 Q Okay. Which counsel?
 12 A I met with Kara and I met with Vanessa.
 13 Q And how many times?
 14 A Two times. I will retract that. One time.
 15 Q One time.
 16 Did you have a meeting with counsel on the
 17 phone another time?
 18 A We had coffee this morning.
 19 Q And the one time that you met with them, how
 20 long was the meeting? Approximately.
 21 A I know. Approximately, approximately five
 22 hours.
 23 Q Other than counsel, have you had discussions
 24 with anyone about this case?
 25 A No.

1 Q Discussions with anyone about this deposition
 2 other than counsel?
 3 A Yes.
 4 Q And with whom did you discuss the deposition?
 5 A I had a brief informal conversation with my
 6 daughter.
 7 Q Have you discussed this case with anyone from
 8 the state Board of Education?
 9 A No.
 10 Q Anyone from the superintendent's office?
 11 A Yes.
 12 MS. READ-SPANGLER: Go ahead.
 13 Q BY MS. PEARLMAN: And with whom did -- from
 14 the state superintendent's office did you discuss the
 15 case?
 16 A I told the deputy superintendent.
 17 MS. READ-SPANGLER: That's not what she asked.
 18 Listen to the question.
 19 THE WITNESS: Okay.
 20 Gino Flores.
 21 Q BY MS. PEARLMAN: What did you discuss?
 22 MS. READ-SPANGLER: Objection, deliberative
 23 process privilege. And also it's attorney -- it could
 24 be work product.
 25 Q BY MS. PEARLMAN: Without disclosing any

1 confidential information, what did you discuss with
 2 Gino Flores?
 3 MS. READ-SPANGLER: Well, we will have to step
 4 out and talk about it.
 5 MS. PEARLMAN: Okay.
 6 MS. READ-SPANGLER: They are both my clients,
 7 so...
 8 MR. HAJELA: What's Gino Flores' title?
 9 MS. READ-SPANGLER: What's his precise title?
 10 THE WITNESS: Deputy superintendent.
 11 MR. HAJELA: He's not an attorney?
 12 MS. READ-SPANGLER: No. He is our client.
 13 (Off the record.)
 14 MS. PEARLMAN: I want to make sure the record
 15 reflects Mr. Dibble stepped out of the room with
 16 counsel.
 17 MS. PEARLMAN: Let's go back to my question
 18 then.
 19 Q What did you discuss with Gino Flores
 20 regarding this case?
 21 A I told him I was being deposed.
 22 Q That's the extent of your conversation?
 23 A Yes.
 24 Q What did he say when you told him that?
 25 A "So am I."

1 Q Without telling me anything that a lawyer told
 2 you, can you tell me when you first heard about this
 3 case?
 4 A I don't remember.
 5 Q Do you remember how you heard about the case?
 6 A Yes.
 7 Q How was that?
 8 A I believe I read it in the newspaper.
 9 Q Have you ever been in a meeting in which --
 10 without counsel -- in which this case was discussed?
 11 MS. KOURY: Objection, vague and ambiguous.
 12 Q BY MS. PEARLMAN: You can answer.
 13 MS. KOURY: If you understand.
 14 THE WITNESS: Repeat the question for me,
 15 please.
 16 Q BY MS. PEARLMAN: Have you ever been in a
 17 meeting, other than a meeting with counsel, where this
 18 case was discussed?
 19 MS. KOURY: Do you mean a meeting in terms of
 20 at work? Is that what you are trying to ask?
 21 MS. PEARLMAN: Sure.
 22 Q A meeting.
 23 A Yes.
 24 Q And can you tell me what the nature of that
 25 meeting was, who were the attendees?

1 A It was a meeting at which our division was
 2 meeting to discuss another issue, and it -- the case
 3 was simply mentioned as something that was on the
 4 horizon.
 5 Q What do you mean "on the horizon"?
 6 A I believe somebody said, "The Williams case is
 7 going to have an" -- I think somebody said, "The
 8 Williams case has to do with the Department of
 9 Education."
 10 Q Anything else?
 11 A No.
 12 Q Did you learn anything about what the case was
 13 about at that time?
 14 A No.
 15 Q Any other meetings other than that one meeting
 16 where this case was discussed?
 17 MS. KOURY: Objection, mischaracterizes his
 18 testimony.
 19 Q BY MS. PEARLMAN: Other than meetings with
 20 counsel.
 21 A No.
 22 Q Can you tell me what your current position is,
 23 your current title?
 24 A Yes.
 25 Q What is that?

1 A I am the manager of the English learner
 2 monitoring unit in the school and district
 3 accountability division at the California Department of
 4 Education.
 5 Q And how long have you held that position?
 6 A Just about 15 months.
 7 Q I'm just going to ask you briefly -- I don't
 8 have your resume.
 9 MS. PEARLMAN: Did you bring a resume?
 10 MS. READ-SPANGLER: He does not have a resume.
 11 Q BY MS. PEARLMAN: I'm going to ask you
 12 briefly, to get a sense of your background, what's your
 13 educational background generally?
 14 MS. READ-SPANGLER: Objection, vague.
 15 You mean what's his -- where did he go to
 16 school, or his whole background in the field of
 17 education? Which is very overbroad.
 18 Q BY MS. PEARLMAN: In terms of your own
 19 education, what is your background? Where did you go
 20 to school?
 21 A I attended public school in Montebello in
 22 California. I attended East Los Angeles Junior
 23 College. I attended University of California at
 24 Riverside. And I graduated from California State
 25 University at Los Angeles with a standard multiple

1 subject teaching credential and a major in Spanish
 2 literature.
 3 Q Did you receive a degree from the University
 4 of Riverside?
 5 A Yes. I have a BA.
 6 Q In what?
 7 A In Spanish literature. And a credential in
 8 multiple subjects.
 9 Q And did you obtain any higher education after?
 10 A I took postgraduate classes.
 11 Q Okay. What kind of postgraduate classes?
 12 A Things to get a salary raise in a unified
 13 school district, like elementary school dance, so I
 14 could get a raise.
 15 Q Did you receive any higher degree?
 16 A No.
 17 Q Did you take any courses in bilingual or
 18 cross-cultural instruction?
 19 MS. KOURY: Other than his undergraduate?
 20 MS. PEARLMAN: I don't know that his
 21 undergraduate degree included that.
 22 THE WITNESS: Repeat the question for me.
 23 Q BY MS. PEARLMAN: Did you take any courses in
 24 bilingual or cross-cultural education?
 25 MS. READ-SPANGLER: Are you talking about

1 while he was getting his degree at CSU or ever?
 2 MS. PEARLMAN: Ever.
 3 THE WITNESS: Oh, my. It's a long time ago.
 4 No.
 5 Q BY MS. PEARLMAN: Have you taken any courses
 6 in educational administration?
 7 A Yes.
 8 Q What courses?
 9 A I took -- I don't remember the name of the
 10 course. I took several from --
 11 MS. READ-SPANGLER: You have to keep your
 12 voice up.
 13 THE WITNESS: I took a course in -- well,
 14 school administration law. I took a course in, for
 15 lack of a better term, just basic school
 16 administration.
 17 Q BY MS. PEARLMAN: Okay. And were these -- did
 18 you take these courses while you were an undergrad?
 19 A No.
 20 Q Have you had any courses or training -- strike
 21 that.
 22 Have you had any courses in monitoring
 23 schools?
 24 MS. KOURY: Objection, vague.
 25 You can answer that. I was just stating my

1 objection for the record.
 2 MS. READ-SPANGLER: If you understand.
 3 THE WITNESS: Yes.
 4 Q BY MS. PEARLMAN: Can you tell me what those
 5 courses are, were?
 6 A Various and sundry trainings at the California
 7 Department of Education over the last 31 years. The
 8 last five years I've attended what we call the fall
 9 training institutes for monitoring.
 10 Q Can you tell me what -- describe for me what
 11 those fall training institutes for monitoring are?
 12 A Yes.
 13 Q Will you, please?
 14 A Yes. Each fall the LEAs that are going to be
 15 involved in the self-review year for coordinated
 16 compliance review, subsequent validation review the
 17 next school year, attend a two-day training at which
 18 time they are provided with the coordinated compliance
 19 review training manual. And the manual is presented in
 20 various workshops as to how it actually works and what
 21 its implications are for coordinated compliance review.
 22 Q And just for the record to be clear, can you
 23 tell me what LEA stands for?
 24 A Sure. Local education agency, i.e., school
 25 district.

1 Q Can an LEA be anything other than a school
 2 district?
 3 A I believe county Office of Education can be an
 4 LEA in some situations.
 5 Q You said you attended these fall training
 6 institutes over the past five years; is that correct?
 7 A Yes. Correct.
 8 Q And have you been an instructor at any of
 9 these training institutes?
 10 A Yes.
 11 Q How many times have you been an instructor?
 12 A Probably on 20 or 25 occasions.
 13 Q And in your current position, have you
 14 attended any of these fall training institutes?
 15 A Yes.
 16 Q Have you been an instructor at any of them in
 17 your current position?
 18 A Yes.
 19 Q And as an instructor at these fall training
 20 institutes currently, do you focus on issues related to
 21 EL programs?
 22 MS. KOURY: Objection, vague.
 23 Are you asking just in general when he's been
 24 an instructor during his current position, or are you
 25 asking the last time that he was an instructor?

1 Let me state my objection. Objection as to
 2 time. Vague.
 3 MS. PEARLMAN: I think it's in the question.
 4 In the question I said "in your current position."
 5 THE WITNESS: Actually, I need to take a
 6 break.
 7 MS. READ-SPANGLER: Do you understand the
 8 question?
 9 THE WITNESS: No. I need to take a break.
 10 MS. READ-SPANGLER: Okay.
 11 MS. PEARLMAN: Okay. Can we just answer the
 12 question?
 13 MS. KOURY: Try to answer the question the
 14 best that you can.
 15 MS. READ-SPANGLER: Unless it's going to fall
 16 into some privileged area which --
 17 THE WITNESS: It's -- the word "instructor" is
 18 a misnomer.
 19 MS. KOURY: Why don't you explain that.
 20 MS. READ-SPANGLER: Why don't you ask her to
 21 define that for you.
 22 THE WITNESS: Can you define "instructor" for
 23 me, please?
 24 Q BY MS. PEARLMAN: Why don't you tell me why
 25 the word "instructor" is a misnomer.

1 MS. READ-SPANGLER: It's your question.
 2 Q BY MS. PEARLMAN: Can you tell me what
 3 position -- or what role you've played, if it hasn't
 4 been that of instructor -- when you used the word
 5 "instructor," what did you mean by that?
 6 MS. KOURY: Objection, that was multiple
 7 questions there.
 8 Did you want him to answer the last question
 9 that you asked?
 10 MS. PEARLMAN: Can you read back what I just
 11 said?
 12 (Record read.)
 13 MS. PEARLMAN: I will take the first part of
 14 that question.
 15 Q What role have you played if it hasn't been
 16 that of an instructor?
 17 A Workshop presenter.
 18 Q Can you explain what you mean by "workshop
 19 presenter"?
 20 A A workshop presenter presents the material to
 21 the attending group as in, "Here are the items, and to
 22 meet compliance you need to do the following things."
 23 Q In your current position as manager of the
 24 English learner monitoring unit, what type of workshops
 25 have you presented?

1 A I have presented the consolidated programs
 2 workshop, and I've presented the state programs for
 3 English learners workshop. And I've presented the
 4 preparing for self-review workshop.
 5 Q So am I correct that the fall training
 6 institutes, of which your unit is now a part, are
 7 conducted in conjunction with the CCR unit?
 8 MS. KOURY: Objection, leading.
 9 MS. READ-SPANGLER: She's asking if that's
 10 accurate.
 11 Is that right?
 12 MS. PEARLMAN: Right.
 13 THE WITNESS: Yes.
 14 Q BY MS. PEARLMAN: Have you ever received any
 15 training in evaluating school performance?
 16 MS. READ-SPANGLER: Objection, vague and
 17 ambiguous.
 18 THE WITNESS: Some.
 19 Q BY MS. PEARLMAN: Can you tell me what that
 20 was?
 21 A The department's office of standards and
 22 assessment provides workshops on analyzing student
 23 performance data --
 24 Let me hear the question again.
 25 (Record read.)

1 THE WITNESS: And the fall institutes provide
 2 that training, also.
 3 Q BY MS. PEARLMAN: And in terms of the training
 4 that's conducted at the fall institutes, can you
 5 describe what that training is with regards to
 6 evaluating school performance?
 7 A Hmm-hmm. It's looking at the compliance items
 8 that are in accordance with the compliance review
 9 manual, and being taught how to utilize the data that
 10 we look at at a school district to answer compliance
 11 questions.
 12 Q When you refer to "data," what are you talking
 13 about there, a specific kind of data?
 14 A Yes. Yes. Yes.
 15 Q What?
 16 A API scores. Norm referenced test scores.
 17 Standardized norm referenced test scores. Criterion
 18 reference test data. And actually we use report cards,
 19 too.
 20 Q And you look at this data for what purpose?
 21 MS. READ-SPANGLER: Objection, compound.
 22 MS. KOURY: Assumes facts.
 23 Actually I withdraw that objection.
 24 THE WITNESS: So I answer?
 25 MS. READ-SPANGLER: Go ahead and answer if you

1 can.

2 THE WITNESS: I would characterize it as we
3 look at this data to make a determination how students
4 are performing to answer one of our compliance
5 questions.

6 Q BY MS. PEARLMAN: And the training that you
7 receive that we've been discussing, does it teach you
8 how to analyze those -- that data, the API scores, the
9 norm referenced test scores, the criterion referenced
10 test scores?

11 A To some degree.

12 Q Can you explain that to me?

13 A To some degree?

14 Q Just explain to me how it does train you to
15 analyze that data.

16 A Given a page full of data, the training would
17 involve being able to decode and understand what the
18 data represents. So we have to be able to understand
19 what's presented. And from that we need to extrapolate
20 to some degree at what levels students are performing.

21 MR. HAJELA: Go off the record for a second?

22 MS. PEARLMAN: Sure.

23 (Off the record.)

24 MS. PEARLMAN: Can you read back his last
25 answer, please?

1 school, that district, the state or the nation.

2 "Extrapolate" may not be the scientific word,
3 but that's the best one I could come up with at the
4 moment.

5 Q BY MS. PEARLMAN: And the -- what is the
6 reason for this training at the fall institutes?

7 MS. KOURY: Objection, vague and ambiguous.

8 MS. READ-SPANGLER: Calls for speculation.
9 If you know.

10 THE WITNESS: Well, there are many purposes.
11 If we could narrow it down to a specific purpose.

12 Q BY MS. PEARLMAN: There are many purposes --

13 MS. READ-SPANGLER: I think that's why she's
14 asking you.

15 THE WITNESS: Well, the purpose is, as I have
16 alluded to before, is to train local education agencies
17 in the utilization of the coordinated compliance review
18 training guide so they can conduct a self-review and
19 prepare for the validation review, which is the
20 following school year. It all has to do with state and
21 federal regulations and being compliant with those
22 state and federal regulations.

23 More specifically, the fall institutes are
24 broken down into a general overview and then a variety
25 of individual presentations based on funding and/or

1 (Record read.)

2 Q BY MS. PEARLMAN: I'm interested in the second
3 part of your answer regarding the extrapolation.

4 Can you describe for me what you are trained
5 on with regard to extrapolating student performance
6 from the data we've been discussing?

7 MS. READ-SPANGLER: Just wanted to make sure
8 you didn't start talking before she was finished.

9 THE WITNESS: Oh. I was taking a deep breath
10 to get my bellowing voice coming out.

11 There are people who specialize in data
12 analysis, and there are people like me who are
13 generalists. And in order to take a specific set of
14 data and truly understand what it means, somebody needs
15 to teach you how to move from A to B, that if this is a
16 set of numbers, what does that actually mean in terms
17 of student performance.

18 So if we have 100 students in the first
19 decile, how do we extrapolate that as to a comparison
20 of -- or an understanding of what performance is at
21 that school.

22 So when I use the word "extrapolate," that
23 means take that data and utilize a professional
24 guesstimate/estimate as to where children stand in
25 comparison to other groups of children, either that

1 program source.

2 My specific involvement most recently has been
3 for the part that represents the program called state
4 learners -- state program for English learners.

5 Q BY MS. PEARLMAN: I mention again this
6 training for extrapolation of data related to school
7 performance.

8 Do -- is that training offered at every one of
9 the fall institutes?

10 A It has been.

11 Q And when you say "it has been," are you
12 referring to a certain time period?

13 A Until this fall. I haven't seen the schedule
14 for this fall.

15 Q So in the past five years?

16 A Yes.

17 Q Okay. And do all the LEAs that attend fall
18 training institutes take the training regarding the
19 analysis of the data for school performance?

20 MS. KOURY: Objection, calls for speculation.
21 If you know.

22 THE WITNESS: They better.

23 Q BY MS. PEARLMAN: Is it required for all the
24 LEAs?

25 A I can't say required. We can't make people go

1 to any one of these workshops. They may not show up.
 2 Maybe they sign up and they don't come. But we have a
 3 huge attendance. I'm not going to guarantee
 4 100 percent.

5 Q Are LEAs that are going to be subject to a
 6 validation review, are they required to go to the fall
 7 institute trainings?

8 MS. KOURY: Objection, vague and ambiguous.

9 THE WITNESS: Legally, no.

10 Q BY MS. PEARLMAN: And what happens if they --
 11 or does anything happen if they don't attend one of the
 12 fall institutes?

13 MS. KOURY: Objection, vague and ambiguous.

14 THE WITNESS: They don't get the information.

15 Q BY MS. PEARLMAN: Are there any sanctions
 16 imposed against them by the Department of Education if
 17 they don't attend one of the fall training institutes?

18 MS. KOURY: Objection, vague and ambiguous.

19 THE WITNESS: No.

20 Q BY MS. PEARLMAN: And I think you already
 21 answered this.

22 Have you attended one of these workshops on
 23 analyzing data related to school performance?

24 MS. READ-SPANGLER: Objection.

25 MS. KOURY: Asked and answered.

1 Q Would you, please?

2 A Yes. We have one staff -- I'm sorry, let me
 3 start over.

4 We have one office technician. We have one
 5 staff services analyst. We have one associate
 6 governmental programs analyst. We have one office
 7 assistant who is a retired annuitant who is part time.
 8 And we have ten EPCs. EPC stands for education program
 9 consultant.

10 Q To your knowledge, have your ten program
 11 consultants attended one of the training sessions at
 12 the fall institute regarding analysis of school
 13 performance data?

14 MS. KOURY: Objection, vague and ambiguous as
 15 to time. Also calls for speculation.

16 THE WITNESS: The answer is yes for nine
 17 people. The tenth person attended while in another
 18 office.

19 Q BY MS. PEARLMAN: Also just so we get our
 20 terminology straight, you said that your unit is in
 21 charge of oversight of English learner programs. Is
 22 that correct?

23 MS. READ-SPANGLER: Objection, misstates his
 24 testimony.

25 MS. KOURY: Objection.

1 THE WITNESS: Yes.

2 Q BY MS. PEARLMAN: And to your knowledge, has
 3 everyone on your staff attended one of these workshops
 4 at the fall training institute related to analyzing
 5 school performance data?

6 MS. KOURY: Objection, vague and ambiguous as
 7 to time. Also calls for speculation.

8 Q BY MS. PEARLMAN: Since you have been manager
 9 of your unit.

10 MS. READ-SPANGLER: It's also overbroad.

11 I mean, some of his staff it wouldn't be
 12 appropriate for them to go to it.

13 THE WITNESS: Some of my staff would not go,
 14 they are support staff. They don't do on site reviews.

15 My staff has attended these except people who are new
 16 to my staff and were not on my staff at the time. But
 17 the person that we just hired I understand --

18 MS. READ-SPANGLER: You've answered the
 19 question.

20 Q BY MS. PEARLMAN: How many people do you have
 21 on your staff?

22 A 14.

23 Q And can you list what the positions of each of
 24 those staff members are?

25 A Yes.

1 Q BY MS. PEARLMAN: Can you explain it to me?

2 A The English learner monitoring unit is
 3 responsible for monitoring compliance with state and
 4 federal -- I'm sorry, the state program for English
 5 learners.

6 Q And the term "English learners," what does
 7 that mean to you?

8 A An English learner in the State of California
 9 in public school is a student in kindergarten through
 10 12th grade who has taken the CELDT, C-E-L-D-T,
 11 California English Language Development test, and has
 12 received a score of advanced or below.

13 Q And when you are referring to a score of
 14 advanced or below, is that looking at the proficiency,
 15 the English proficiency of the student?

16 A Yes.

17 MS. KOURY: Objection.

18 That's okay.

19 THE WITNESS: Yes.

20 Q BY MS. PEARLMAN: So if a student receives a
 21 score of advanced on the CELDT, what does that mean in
 22 terms of his or her English proficiency?

23 MS. KOURY: Objection, vague and ambiguous,
 24 also incomplete hypothetical, and calls for
 25 speculation.

1 MS. READ-SPANGLER: Calls for an expert
 2 opinion.
 3 THE WITNESS: The CELDT results are -- CELDT
 4 results for the English proficiency of students are
 5 divided into five levels. Advanced would be the
 6 highest level proficiency while remaining as an English
 7 learner.
 8 Q BY MS. PEARLMAN: Do you speak Spanish
 9 fluently?
 10 A I think so.
 11 Q Okay. Do you speak any other languages?
 12 MS. READ-SPANGLER: Besides English? Do you
 13 mean fluently?
 14 THE WITNESS: Yeah, I understand.
 15 MS. PEARLMAN: Yes.
 16 Q Any other language besides English fluently?
 17 A No.
 18 Q Of your ten program consultants, do any of
 19 them speak Spanish fluently?
 20 A Yes.
 21 Q How many?
 22 A Four.
 23 Q Do any of your ten program consultants speak
 24 any other languages other than Spanish and English
 25 fluently?

1 A Yes.
 2 Q Can you tell me what those languages are and
 3 how many people speak them?
 4 A Yes. Japanese, one. Farsi, one. Mandarin,
 5 one. German, one. French, one. I think that's it.
 6 Q Just briefly, can you give me an overview of
 7 your employment history, since I don't have your
 8 resume?
 9 A For the last 15 months I have been the manager
 10 of the English learner monitoring unit.
 11 Prior to that I was an EPC, or education
 12 program consultant with the coordinated compliance
 13 review management unit.
 14 Prior to that for about 20 years I was an EPC
 15 with the office of American Indian education.
 16 And prior to that I was a consultant in early
 17 childhood education and child development.
 18 Prior to that I was a teacher in Los Angeles
 19 Unified School District. I taught bilingual preschool,
 20 sixth grade, social adjustment, English as a second
 21 language to adults, and beginning Spanish to adults.
 22 I was also in training and had experience
 23 doing summer schools as a vice principal. I think that
 24 does it.
 25 That's far enough back, isn't it?

1 Q Yes.
 2 A That's about 38 years ago.
 3 Q I'm sorry, how many years were you an EPC with
 4 the CCR?
 5 A You know, I think it was about two-and-a-half
 6 or three years.
 7 Q And were you an EPC for any particular section
 8 of the CCR unit?
 9 MS. KOURY: Objection, vague.
 10 THE WITNESS: I did it all.
 11 Q BY MS. PEARLMAN: Do you consider yourself an
 12 expert on English learner issues?
 13 MS. KOURY: Objection, vague and ambiguous.
 14 THE WITNESS: My office monitors compliance
 15 with the state program for English learners.
 16 Relatively speaking I'm an expert in that area.
 17 In terms of academic, scholarly research-based
 18 understanding, there are lots of people who probably
 19 are more expert than I am in the world, although I am
 20 relatively expert.
 21 Q BY MS. PEARLMAN: So you would consider
 22 yourself an expert in monitoring compliance for EL
 23 matters; is that correct?
 24 A Yes, I do.
 25 Q Just so I'm clear. Did the school and

1 district accountability division have a name, a
 2 different name previously?
 3 A Everything has had different names. Over 31
 4 years lots of divisions, lots of names.
 5 Q In the last five years.
 6 MS. KOURY: Calls for speculation.
 7 THE WITNESS: I don't remember.
 8 Q BY MS. PEARLMAN: To whom do you report?
 9 MS. KOURY: Objection, vague.
 10 MS. READ-SPANGLER: You mean just the next
 11 level up?
 12 MS. PEARLMAN: Yeah.
 13 Q Who is your direct report?
 14 A Dr. Joseph Brankin.
 15 Q Can you spell that for the record, please?
 16 A Sure. J-o-s-e-p-h, B-r-a-n-k-i-n.
 17 Q What is his position?
 18 A He is the division director, assistant
 19 superintendent.
 20 Q To whom is he the assistant superintendent?
 21 A I believe to Jack O'Connell.
 22 Q Can you give me a brief overview of your
 23 current duties and responsibilities as manager of the
 24 English learner monitoring unit?
 25 MS. KOURY: Objection, overbroad. Also calls

1 for a narrative.

2 THE WITNESS: As manager of the English
3 learner monitoring unit, I clearly manage the
4 day-to-day operations of the office.

5 As a civil servant, state employment, I manage
6 14 civil servants with all of the requirements of civil
7 servant employment. I oversee the ten field-based
8 consultants who go to school districts and participate
9 in a coordinated compliance review, specifically the
10 English learners program.

11 I am involved in the developmental activities
12 as we revise, rewrite the training guide itself.

13 I review all of the documents that pertain to
14 a coordinated compliance review for English learners.

15 I oversee the compliance tracking system
16 pertinent to English learners.

17 I hold meetings, especially during the summer,
18 to discuss the compliance items themselves, to discuss
19 office routine, and I collaborate with another manager
20 to provide training during the summer months to the
21 education program consultants.

22 I oversee the scheduling of CCRs pertinent to
23 English learner monitoring.

24 And I get a 5 percent pay cut.

25 MS. READ-SPANGLER: We all get that.

1 THE WITNESS: I'm sorry. She was never
2 officially appointed as division director, she was the
3 point of contact in the absence of a division director.
4 She never got that appointment or title.

5 Q BY MS. PEARLMAN: And what was Lorie
6 Burnham-Massy's position at that time?

7 MS. KOURY: Objection, calls for speculation.

8 Q BY MS. PEARLMAN: If you know.

9 A Manager of the Comite' follow-up unit.

10 Q So while she was the point of contact for the
11 division, did you have regularly-scheduled meetings
12 with her?

13 MS. KOURY: Objection, vague.

14 THE WITNESS: No.

15 Q BY MS. PEARLMAN: In your current position, do
16 you make reports to the division director?

17 MS. READ-SPANGLER: Objection, vague.

18 Q BY MS. PEARLMAN: Written reports.

19 MS. KOURY: In the last week that he's been in
20 office? Is that what you are referring to?

21 Q BY MS. PEARLMAN: Is that part of one of your
22 responsibilities to make reports to a division
23 director?

24 A We make weekly reports and go through the
25 division director to the superintendent.

1 Q BY MS. PEARLMAN: Do you attend regularly-
2 scheduled meetings with your division manager -- with
3 the division manager?

4 MS. KOURY: Objection, it's vague.

5 MS. READ-SPANGLER: You mean the division
6 director?

7 MS. PEARLMAN: Director. Sorry.

8 THE WITNESS: Yeah. I need to provide an
9 explanation.

10 Q BY MS. PEARLMAN: Sure.

11 A Joe is new. He's been there about a week.

12 MS. READ-SPANGLER: So the answer is probably
13 no. I mean, I don't want to coach you, but...

14 THE WITNESS: I know.

15 MS. READ-SPANGLER: Just let her ask the
16 question.

17 THE WITNESS: No.

18 MS. READ-SPANGLER: She will come up with a
19 good follow-up, I'm sure.

20 Q BY MS. PEARLMAN: Do you -- who was Joseph
21 Brankin's predecessor?

22 A We've had an acting division director for I
23 think six months whose name is Lorie Burnham.

24 I need to restate that, if I may.

25 MS. READ-SPANGLER: Sure. Go for it.

1 Q What do -- what are these weekly reports
2 comprised of?

3 A A lot of numerical data, numbers of reviews
4 conducted, numbers of noncompliances found, names of
5 districts reviewed, personnel action.

6 Q When you say "personnel action," what do you
7 mean?

8 A For example, the person that we most recently
9 hired was put into the weekly report. I'm sorry, it's
10 a biweekly report, not weekly. Biweekly report.

11 Q Do you prepare these reports yourself?

12 MS. KOURY: Objection, vague.

13 THE WITNESS: My staff -- the staff services
14 analyst in our office prepares a lot of the number
15 stuff. I typically write the narrative, approve the
16 report and send it off.

17 Q BY MS. PEARLMAN: Are these documents publicly
18 available?

19 A I truly believe everything in public education
20 is available.

21 Q Do you have a file in your office where you
22 keep all the biweekly reports that you've made?

23 A Yes. Electronically.

24 Q Has your office been asked to produce
25 documents for this case?

1 MS. READ-SPANGLER: If you know.
 2 THE WITNESS: Not that I know.
 3 Q BY MS. PEARLMAN: Do you have regularly-
 4 scheduled meetings with managers of the other units
 5 under your division?
 6 MS. KOURY: Objection, vague and ambiguous.
 7 THE WITNESS: We did when we had a division
 8 director.
 9 Q BY MS. PEARLMAN: And who was that division
 10 director to which you are referring?
 11 A Marsha Bedwell.
 12 Q If you know, what is Marsha Bedwell's position
 13 now?
 14 A I know -- I'm not sure if I have the right
 15 name. She is the supervising -- no. She's the general
 16 counsel for the California Department of Education.
 17 She's the top of the bunch.
 18 Q And how often were these meetings with Marsha
 19 Bedwell; weekly, monthly?
 20 A May I say frequently. Probably at least every
 21 two to three weeks.
 22 Q Who set the agenda for these meetings?
 23 MS. KOURY: Objection, assumes facts.
 24 Q BY MS. PEARLMAN: If you know.
 25 MS. KOURY: Calls for speculation.

1 THE WITNESS: Marsha did and asked for input
 2 from managers. And we could add to the agenda at the
 3 meetings.
 4 Q BY MS. PEARLMAN: And at these meetings, did
 5 you present any written reports?
 6 MS. KOURY: Objection, vague and ambiguous.
 7 THE WITNESS: No.
 8 Q BY MS. PEARLMAN: What was the purpose of
 9 these meetings?
 10 MS. KOURY: Objection, vague and ambiguous,
 11 assumes facts, if the purpose didn't change from
 12 meeting-to-meeting.
 13 You can answer.
 14 THE WITNESS: The purpose was to discuss
 15 routine office division procedures, to -- I just have
 16 to say that. Just discuss the operation of the
 17 department as to our division. On some occasions the
 18 purpose of the meeting was to inform us about
 19 plaintiff's attorney request on the Comite' de Padres
 20 case.
 21 Q BY MS. PEARLMAN: And specifically what do you
 22 recall with regard to discussions about the Comite'
 23 case?
 24 MS. KOURY: Objection, overbroad. He noted
 25 that there were several meetings over a time span.

1 So if you can answer that.
 2 THE WITNESS: Sure. Generally speaking -- I'm
 3 sorry, I don't know the legal terms -- but we would
 4 receive -- we would receive reports, I don't know if
 5 they were declarations or whatever, from plaintiff's
 6 attorneys, and Marsha would go over those with us.
 7 On other occasions plaintiff's attorneys would
 8 request a file review via the attorney general's
 9 office, and we would -- all of the managers discuss
 10 getting ready for the file review, how to go about
 11 doing that, necessary procedures to make it work.
 12 We had one specific meeting I remember very
 13 well was to talk about the impact of the Comite' de
 14 Padres case and how the court order had been vacated by
 15 Judge Gray and what that meant to us.
 16 Q BY MS. PEARLMAN: And with respect to the last
 17 part of your answer, what the vacating of that order
 18 meant, do you recall any specific discussions about
 19 that?
 20 A I most certainly do.
 21 Q Can you tell me about it?
 22 A And it is -- we had followed to the word, to
 23 the extent possible, or I will just say we followed to
 24 the word the requirements in the 25-page compliance
 25 plan as set forth in the consent decree. And when the

1 order was vacated, Marsha informed us that the case
 2 would probably be under appeal; it may be stayed, that
 3 we were to continue operating under the provisions of
 4 the compliance plan.
 5 Q Just so I'm clear, when you are using the term
 6 "compliance plan," are you referring to the 2001
 7 compliance plan?
 8 MS. READ-SPANGLER: Objection, calls for a
 9 legal conclusion.
 10 Are you asking him about legal documents?
 11 MS. PEARLMAN: If he knows.
 12 MS. KOURY: Calls for speculation.
 13 She's not asking you to guess, only if you
 14 know.
 15 THE WITNESS: Yes.
 16 Q BY MS. PEARLMAN: Is it your understanding
 17 that the division is still operating in accordance with
 18 that compliance plan?
 19 MS. KOURY: Objection, calls for speculation.
 20 THE WITNESS: Mostly so.
 21 Q BY MS. PEARLMAN: When you say "mostly so," in
 22 what ways is the division not operating in compliance
 23 with that compliance plan?
 24 MS. READ-SPANGLER: Objection, calls for a
 25 legal conclusion.

1 MS. KOURY: Also leading, and mischaracterizes
2 his testimony.

3 THE WITNESS: The English learner monitoring
4 unit?

5 Q BY MS. PEARLMAN: We can start there.

6 A In the compliance plan?

7 Q Sure.

8 A Was expressly mandated to do on-site
9 monitoring and to follow only mandated activities. A
10 nonmandated activity that was expressly prohibited was
11 to provide technical assistance to school districts.
12 We began to do some technical assistance with school
13 districts.

14 Q Okay. And when did you begin to provide some
15 technical assistance to school districts?

16 A Last fall.

17 Q What type of technical assistance are you
18 providing to school districts?

19 A The consultants were able to go to the fall
20 training institutes and be trainers, and the
21 consultants contacted the county offices in the
22 counties in which they were going to be doing reviews
23 in school year 2002-2003 and ask the county to set up a
24 meeting with all the districts in that county for a
25 training opportunity.

1 A I don't know.

2 Q Are you the first manager of your unit, or was
3 there --

4 A No.

5 Q Who was your predecessor?

6 A Diane Levin. L-e-v-i-n.

7 Q And if you know, how long was she manager of
8 the English learner monitoring unit?

9 A About six months.

10 Q And do you know whether there was a manager
11 prior to Diane Levin?

12 A I don't think so.

13 Q To your knowledge, why did Diane Levin leave
14 the position of manager of the English learner
15 monitoring unit?

16 MS. KOURY: Objection, calls for speculation.

17 THE WITNESS: Diane was interim while they
18 were searching for a manager.

19 Q BY MS. PEARLMAN: And did you apply for the
20 position of manager of the English learner monitoring
21 unit?

22 A Yes.

23 MS. READ-SPANGLER: If you want to get to a
24 good stopping point, just at a natural break. It's
25 kind of a good time for lunch.

1 Q Anything else?

2 A No.

3 Q And with respect to the CCR unit, is there
4 anything to your knowledge that the CCR unit is now
5 doing that is not in accordance with the Comite'
6 compliance plan?

7 MS. READ-SPANGLER: Objection, calls for a
8 legal opinion.

9 MS. KOURY: And also calls for speculation.
10 You can answer to the extent you know.

11 THE WITNESS: The CCR management unit, I don't
12 even know if it's mentioned in the compliance plan. If
13 it is, it's very -- I don't know.

14 Q BY MS. PEARLMAN: And to your knowledge, is
15 there anything that the Comite' follow-up unit is now
16 doing that is not in accordance with the Comite'
17 compliance plan?

18 MS. READ-SPANGLER: Objection, calls for a
19 legal conclusion.

20 MS. KOURY: Also calls for speculation.
21 You can answer to the extent you know.

22 THE WITNESS: I don't think so.

23 Q BY MS. PEARLMAN: Let's talk about that a
24 little bit, then.

25 When was your unit first created?

1 Q BY MS. PEARLMAN: To your knowledge, why was
2 the English learner monitoring unit created?

3 MS. READ-SPANGLER: Objection, calls for a
4 legal conclusion, calls for speculation.

5 THE WITNESS: Court ordered compliance plan.
6 No. I don't know the terms. Compliance plan.

7 Q BY MS. PEARLMAN: You are referring to the
8 Comite' compliance plan?

9 A Yes.

10 Q And to your knowledge, to what part of that
11 compliance plan was the English language monitoring
12 unit responsible?

13 MS. KOURY: Objection, calls for a legal
14 conclusion. The document speaks for itself. Calls for
15 speculation.

16 MS. READ-SPANGLER: You are asking him to
17 interpret a legal document. I think it lacks
18 foundation, too.

19 THE WITNESS: I don't understand the question.

20 Q BY MS. PEARLMAN: You said, correct me, that
21 the English language monitoring unit was created in
22 response to the Comite' compliance plan. Is that
23 correct?

24 A Yes.

25 Q And do you know what the content of that plan

1 was that prompted the creation of your unit?
 2 MS. KOURY: Objection, calls for a legal
 3 conclusion, the document speaks for itself. It also
 4 calls for speculation.
 5 You can answer to the extent you know.
 6 THE WITNESS: Yes. It says in the compliance
 7 plan there will be an English learner monitoring unit.
 8 MS. PEARLMAN: Go off the record.
 9 (The luncheon recess was taken.)
 10 Q BY MS. PEARLMAN: Hello, Mr. Dibble. Welcome
 11 back.
 12 A Thank you.
 13 Q I'd like to remind you you are still under
 14 oath.
 15 A Hmm-hmm.
 16 Q Do any of your program consultants speak
 17 Vietnamese?
 18 MS. KOURY: Objection, asked and answered.
 19 THE WITNESS: No.
 20 Q BY MS. PEARLMAN: Do any speak Cantonese?
 21 MS. READ-SPANGLER: Just to clarify, are you
 22 asking at all, to some degree of fluency.
 23 MS. PEARLMAN: I'm asking at all, because
 24 before we were talking about what languages they were
 25 fluent in.

1 Q So back to my question. Do any of your
 2 program consultants speak Cantonese?
 3 MS. READ-SPANGLER: To the extent you know.
 4 Q BY MS. PEARLMAN: Cantonese.
 5 A Cantonese is the next question.
 6 Yes.
 7 Q How many?
 8 A I'm sorry, I'm sorry. I'm confused.
 9 Mandarin.
 10 Possibly one person.
 11 Q BY MS. PEARLMAN: Am I correct that you said
 12 the English learner monitoring unit is responsible for
 13 monitoring the state program for ELs?
 14 A Yes.
 15 Q I don't know if we've defined this. When I
 16 refer to the "ELs," what's your understanding of that
 17 term?
 18 A English learners.
 19 Q And the state program for ELs, what does that
 20 include?
 21 MS. READ-SPANGLER: Objection, calls for a
 22 legal conclusion.
 23 THE WITNESS: Provisions in chaptered statute
 24 at the beginning of Education Code 305 through 313, I
 25 believe. I'm not absolutely sure on those Ed Code

1 Section numbers. Some state Board of Education
 2 regulations. And some federal court case. Federal
 3 court cases.
 4 Q BY MS. PEARLMAN: And do your program
 5 consultants receive any kind of training with respect
 6 to those laws and regulations that you just listed?
 7 A Yes.
 8 Q What type of training?
 9 A What type. Training. Training is training.
 10 What type of training? I don't quite understand that.
 11 Training is training.
 12 Q What don't you understand about it?
 13 MS. KOURY: I think he doesn't understand what
 14 you mean by training.
 15 Are you talking about workshops, formalized
 16 training, on-the-job training?
 17 Q BY MS. PEARLMAN: Do they attend any
 18 workshops --
 19 A Yes.
 20 Q And what workshops are those?
 21 A Those are provided by -- I'm sorry, were
 22 provided by the legal staff in the Department of
 23 Education. They were provided by the manager of the
 24 Comite' follow-up unit. And they also were involved in
 25 their own research on each of the items to follow the

1 compliance item through to the citation itself. That
 2 was done for about two-and-a-half months this summer.
 3 Q And you said that such workshops were
 4 provided. Are the workshops still being provided,
 5 or --
 6 MS. KOURY: Calls for speculation.
 7 THE WITNESS: They will be this summer. They
 8 are part of the summer plan.
 9 Q BY MS. PEARLMAN: When you say "summer plan,"
 10 what are you referring?
 11 A During the summer months.
 12 Q The plan for your office? Sorry.
 13 During the summer months, what, is it a
 14 schedule, or...
 15 A You asked me if we were doing training, you
 16 said during the summer months.
 17 Q When you said your staff was involved in
 18 research on certain items, can you explain what you are
 19 talking about there?
 20 A For each compliance item there's a citation in
 21 the law. They were required to go find that law and
 22 see the direct link to the law.
 23 Q Is there a document that contains the legal
 24 citations that correspond to each compliance item?
 25 MS. KOURY: Objection, vague and ambiguous,

1 also calls for speculation.
 2 THE WITNESS: Yes.
 3 Q BY MS. PEARLMAN: What document is that?
 4 A Coordinated compliance review training guide.
 5 Q Does the state program for ELs require
 6 specific types of instruction for ELs?
 7 MS. KOURY: Objection, vague and ambiguous.
 8 THE WITNESS: Yes.
 9 Q BY MS. PEARLMAN: What type of instruction?
 10 A English language acquisition. Instruction
 11 appropriate to provide EL learners access to core
 12 curriculum. And intervention strategies when required.
 13 Q Explain what you mean by "EL acquisition."
 14 A Remember we said EL is English learner. I
 15 said English language acquisition, not English learner
 16 acquisition.
 17 English language acquisition is a structured
 18 approached and instructional setting and methodology to
 19 teach children to learn the English language.
 20 Q And are you referring to specific types of
 21 methodologies?
 22 A Yes.
 23 Q What methodologies?
 24 A English as a second language, English, SDAIE,
 25 which is S-D-A-I-E, which is specially designed

1 academic instruction in English. Alternative programs
 2 utilizing primary language. English language
 3 development that is aligned with the English language
 4 development standards. And general good teaching that
 5 is -- provides children access to language.
 6 Q You also mentioned instruction appropriate to
 7 give ELs access to the core curriculum.
 8 Can you describe what type of instruction you
 9 are referring to there?
 10 A I think those same things I itemized would
 11 help children get access to core curriculum.
 12 Another possibility is ancillary support.
 13 Q What do you mean by "ancillary support"?
 14 A Something like paraprofessionals or tutors.
 15 Or extended day, extended school time.
 16 Q And is ancillary support alone sufficient to
 17 meet the instruction requirements under the state's
 18 English learner program?
 19 MS. KOURY: Objection, vague and ambiguous,
 20 also calls for a legal conclusion.
 21 THE WITNESS: No.
 22 Q BY MS. PEARLMAN: Why not?
 23 MS. READ-SPANGLER: Same objections.
 24 THE WITNESS: English learners are the
 25 responsibility of school districts, and are required to

1 have a teacher.
 2 Q BY MS. PEARLMAN: Did you finish your answer?
 3 A Yes.
 4 Q Before I get to that.
 5 When you -- the last thing you mentioned when
 6 we were discussing instruction programs were
 7 intervention strategies.
 8 Can you explain further what you meant by
 9 "intervention strategies"?
 10 A Could be a student study team. It could be
 11 after school tutoring. It could be Saturday school.
 12 It could be a paraprofessional that provides ancillary
 13 support. It could be a teacher who goes back and
 14 reviews a lesson.
 15 Q And under the state program, when are these
 16 intervention strategies deemed necessary for ELs?
 17 A When the children need them.
 18 Q How is that determined?
 19 A By a variety of methods. It could be the
 20 classroom teacher, it could be a student study team, it
 21 could be by request of the parent, it could be by
 22 request of the student.
 23 Q And as part of your unit's review, do they
 24 monitor intervention strategies?
 25 A Yes.

1 Q In what way?
 2 A We ask school personnel, "If children need
 3 intervention strategies, what do you provide"?
 4 Q Do you look at any documentation?
 5 MS. KOURY: Objection, vague.
 6 MS. PEARLMAN: I'm sorry. You are right.
 7 Q Do you look at any documentation with regard
 8 to intervention strategies?
 9 A We can.
 10 Q What type of documentation?
 11 A Typically documentation would be the report
 12 written by a student study team, if the school has one.
 13 Q Now, under this state program, is it required
 14 that English learners receive one of the types of
 15 specialized instruction you mentioned?
 16 MS. KOURY: Objection, vague and ambiguous.
 17 MS. READ-SPANGLER: Calls for a legal
 18 conclusion.
 19 THE WITNESS: No.
 20 I'm sorry. Let me back up a minute.
 21 Most of what I mentioned are instructional
 22 strategies. ELD is actually an instructional setting.
 23 All kids who are EL are required to have ELD.
 24 Q BY MS. PEARLMAN: I'm sorry?
 25 A All children who are EL in the State of

1 California are required to have ELD, English language
2 development.

3 Q Does English learner monitoring unit monitor
4 whether all EL children receive ELD?

5 MS. KOURY: Objection, misstates his
6 testimony. He just said ELD is a setting, not a
7 strategy.

8 THE WITNESS: At the cohort of schools we
9 visit each year, yes.

10 Q BY MS. PEARLMAN: What about for the districts
11 that your unit monitors?

12 A That's the same thing, district schools.

13 Q Based on your experience, is it important that
14 ELs are in an ELD setting?

15 MS. KOURY: Objection, calls for speculation,
16 also calls for expert testimony.

17 THE WITNESS: It's required.

18 MS. PEARLMAN: That didn't answer my question.

19 Q In your opinion, is it important that ELs are
20 in an ELD setting?

21 MS. READ-SPANGLER: Objection, asked and
22 answered.

23 MS. KOURY: It's also an incomplete
24 hypothetical.

25 THE WITNESS: If they are not, they are not

1 MS. READ-SPANGLER: Apparently there isn't.
2 He's answered it to the best of his ability.

3 Q BY MS. PEARLMAN: Can you answer that yes or
4 no?

5 A Give me the question one more time.

6 Q In your experience, is it important that ELs
7 are in an ELD setting?

8 MS. READ-SPANGLER: Again, asked and answered.

9 If you can answer it with a yes or no that you
10 are comfortable with, that's fine. But just because
11 she wants you to, doesn't mean you have to.

12 THE WITNESS: Sure.

13 Q BY MS. PEARLMAN: And are ELs who are in
14 mainstream classes -- strike that.

15 Under the state program for ELs, are ELs in
16 mainstream classes also -- sorry. Strike that.

17 Does the state program for ELs also mandate
18 that ELs in mainstream classes receive some type of
19 specialized instruction?

20 MS. KOURY: Objection, vague and ambiguous.

21 MS. READ-SPANGLER: Calls for a legal
22 conclusion. Lacks foundation.

23 THE WITNESS: All students who are EL? It's
24 required that they have English language development.

25 Q BY MS. PEARLMAN: Is it required that they

1 compliant.

2 Q BY MS. PEARLMAN: So are you saying it's
3 important -- yes, that it's important solely to be in
4 compliance? Is that your answer?

5 MS. KOURY: Objection, mischaracterizes his
6 testimony, and it's argumentative. He ask -- it was
7 asked twice and answered.

8 MS. PEARLMAN: I don't think he answered my
9 question.

10 THE WITNESS: What is your question?

11 Q BY MS. PEARLMAN: My question is, based on
12 your experience, do you believe it's important that ELs
13 are in an ELD setting?

14 MS. READ-SPANGLER: Objection, asked and
15 answered.

16 THE WITNESS: In my work it doesn't really
17 matter. It's a requirement.

18 Q BY MS. PEARLMAN: Can you give me a yes or no
19 answer to that question?

20 MS. KOURY: Objection, asked and answered
21 three times. I don't know that he's not giving you the
22 answer that you want, but he's answered the question.

23 MS. PEARLMAN: I don't want a particular
24 answer, but there's a yes or no answer to that
25 question.

1 have any particular instructional, specialized EL
2 instructional strategy?

3 MS. KOURY: Objection, vague and ambiguous as
4 to "specialized structural strategies."

5 THE WITNESS: It depends on their level of
6 English learner.

7 Q BY MS. PEARLMAN: Can you explain what you
8 mean by that?

9 A For example, levels 4 and 5 in high school may
10 be in a college prep English class, but they are still
11 to be monitored and assisted when necessary in terms of
12 they are still acquiring the English language.

13 If they are levels 1, 2 or 3 and they are in
14 kindergarten, there may be all kinds of instructional
15 strategies to get them to acquire English.

16 Q So under the state program, it is not required
17 that ELs are taught through a specific EL instructional
18 strategy, is that what you are saying?

19 MS. READ-SPANGLER: Objection, misstates his
20 testimony.

21 MS. KOURY: Also asked and answered.

22 THE WITNESS: There's -- yes. Yes.

23 English learners are to be in a setting in
24 which instruction provides them with English language
25 acquisition. Minimally they have to have English

1 language development in a classroom setting. We
2 require that appropriate instruction be in place. That
3 can be defined in 100 different ways in 100 different
4 districts. So I can't absolutely say that there's one
5 way of doing it.

6 The generic sense of instructional strategies
7 for English learners must be in place, unless -- excuse
8 me for my little bit of narrative -- unless the student
9 is performing at or above performance level of age,
10 grade level peers who are English only students to
11 start with. And if that's the case, they should be
12 reclassified.

13 Q BY MS. PEARLMAN: You also mentioned SDAIE.

14 Can you explain to me what your understanding
15 of SDAIE?

16 A SDAIE is the acronym of special design
17 acquisition in English. And it involves things like
18 preview, review, total physical response, contextual
19 clues, checking for comprehension, cadence. A SDAIE
20 teacher could probably give you others.

21 Q Can you give me an example of what an EL
22 setting is for an EL student in a mainstream class?

23 MS. KOURY: Objection, vague, overbroad.

24 THE WITNESS: There would be lots of examples
25 in lots of different places.

1 THE WITNESS: One example might be team
2 teaching. Two teachers pair up and an English language
3 arts lesson is being provided to English only students
4 by teacher A, and teacher B is providing an English
5 development lesson.

6 Q Any other examples?

7 A The teacher might group the students and work
8 with group A, the English only, or group B, the English
9 learners.

10 MS. KOURY: For the record, I'm sure there are
11 many examples he can come up with. I take it you are
12 only asking him to name one or two that come to mind?

13 MS. PEARLMAN: That's right.

14 THE WITNESS: Okay.

15 Q BY MS. PEARLMAN: In those two examples, would
16 the ELD setting requirement under the state program be
17 satisfied if the teacher -- if it were not a teacher,
18 but a bilingual aid providing instruction to the ELs?

19 MS. KOURY: Objection, calls for speculation,
20 it's an incomplete hypothetical.

21 If you can answer, go ahead.

22 THE WITNESS: Probably not.

23 Q BY MS. PEARLMAN: Are there some circumstances
24 where it might?

25 MS. KOURY: Same objections.

1 One of the -- would you define "mainstream
2 English class," please?

3 Q BY MS. PEARLMAN: What's your understanding of
4 mainstream English?

5 A It's defined in Ed Code --

6 MS. READ-SPANGLER: You don't have to give her
7 Ed Codes. You are not an attorney.

8 THE WITNESS: That's the definition. That's
9 where it comes from.

10 It's defined in Ed Code as where the medium of
11 instruction is in English.

12 MS. READ-SPANGLER: I just didn't want you
13 racking your brain for specific numbers.

14 THE WITNESS: We have to be careful, because
15 these are specific --

16 MS. READ-SPANGLER: She takes down everything
17 we say, even when you think out loud, by the way.

18 Q BY MS. PEARLMAN: So based on that definition
19 of "mainstream" where the medium of instruction is in
20 English, can you give me some examples in that type of
21 setting, in a mainstream situation, how an ELD setting
22 is applied for an EL in one of those mainstream
23 classes?

24 MS. KOURY: Objection, calls for a narrative.
25 It's also overbroad.

1 THE WITNESS: Could be.

2 Q BY MS. PEARLMAN: What would those
3 circumstances be, if you know?

4 A That the teacher has already provided the
5 lesson and the paraprofessional is doing a repeat of
6 the lesson; called review.

7 Q Does the state program require that teachers
8 of ELs have a particular -- any particular
9 authorization?

10 MS. KOURY: Objection, vague and ambiguous.
11 It also calls for a legal conclusion.

12 THE WITNESS: Yes.

13 Q BY MS. PEARLMAN: What are those
14 authorizations?

15 A For ELD it's CLAD or equivalent. CLAD stands
16 for -- whoops. Cross-cultural language acquisition
17 development. I think.

18 And for core curriculum, EL students should
19 have a teacher who has a CLAD.

20 Q You said with respect to ELD, CLAD or its
21 equivalent.

22 What were you referring to when you said
23 "equivalent"?

24 MS. READ-SPANGLER: I'm just going to object,
25 it calls for a legal conclusion.

1 THE WITNESS: The SB 395, or the 1969
 2 certificate, or a BCLAD.
 3 Q BY MS. PEARLMAN: Can you give me your
 4 understanding of what a CLAD certificate entails?
 5 A Yes.
 6 MS. READ-SPANGLER: Again, object, it calls
 7 for a legal conclusion.
 8 You can tell her.
 9 THE WITNESS: A CLAD is a certificate that is
 10 obtained by examination. Examination is offered
 11 through the state. I can't tell you more than that,
 12 except that it has three parts.
 13 And I can tell you how typically teachers take
 14 a course in preparing to take this examination. And
 15 it's authorized through the California -- the --
 16 MS. READ-SPANGLER: You can say CTC.
 17 THE WITNESS: CTC. What's the word.
 18 California Teacher Credential ling.
 19 MS. KOURY: We are all acronymed out.
 20 Q BY MS. PEARLMAN: In your understanding, does
 21 a CLAD, does CLAD training include knowledge of
 22 pedagogical theories and practices for EL instruction?
 23 MS. KOURY: Objection, calls for a legal
 24 conclusion.
 25 THE WITNESS: Yes.

1 Q BY MS. PEARLMAN: And in your understanding,
 2 does it include knowledge of theories and instructional
 3 practices for ELs?
 4 MS. KOURY: Same objection.
 5 THE WITNESS: Yes.
 6 Q BY MS. PEARLMAN: In your understanding, does
 7 it include familiarity with SDAIE practice?
 8 MS. KOURY: Same objection.
 9 THE WITNESS: Yes.
 10 Q BY MS. PEARLMAN: In your understanding, does
 11 it include an understanding of the role assessment of
 12 literacy plays in providing instruction to ELs?
 13 MS. KOURY: Objection, vague and ambiguous,
 14 also calls for a legal conclusion.
 15 THE WITNESS: I don't know.
 16 Q BY MS. PEARLMAN: And in your understanding,
 17 does a CLAD include training on selecting instructional
 18 materials and strategies to develop student's abilities
 19 to comprehend English?
 20 MS. KOURY: Objection, vague and ambiguous,
 21 calls for speculation, and a legal conclusion.
 22 THE WITNESS: I can answer the question if you
 23 separate materials and instructional strategies.
 24 Q BY MS. PEARLMAN: With respect to materials.
 25 A I'm not sure.

1 Q And instructional strategies?
 2 A Yes.
 3 Q In monitoring EL program's compliance, does
 4 your unit look to see whether teachers of ELs have CLAD
 5 or a BCLAD?
 6 A Yes.
 7 Q And why is that?
 8 MS. KOURY: Objection, vague.
 9 THE WITNESS: It's a requirement that we
 10 monitor.
 11 Q BY MS. PEARLMAN: Does -- first of all, what
 12 is your understanding of the term "teachers in
 13 training"?
 14 MS. READ-SPANGLER: If you have one.
 15 Q BY MS. PEARLMAN: If you have one.
 16 A I have one.
 17 Are teachers who are -- one definition of
 18 teachers in training is teachers who are taking the
 19 course work to take the CLAD test.
 20 Q Do you know how many teachers in training were
 21 teaching ELs in California this past year?
 22 MS. KOURY: Objection, calls for speculation.
 23 THE WITNESS: No.
 24 Q BY MS. PEARLMAN: Does your unit monitor in
 25 any way the number of teachers in training teaching EL

1 in California?
 2 MS. KOURY: Objection, vague and ambiguous.
 3 THE WITNESS: No.
 4 Q BY MS. PEARLMAN: Do you know whether --
 5 sorry.
 6 Did you have something to supplement your
 7 answer?
 8 THE WITNESS: You said my unit on that last
 9 question. Specifically my unit?
 10 Q BY MS. PEARLMAN: Right.
 11 A The answer stays no.
 12 Q Do you know whether someone in the state
 13 Department of Education or some entity in the state
 14 Department of Education keeps track of the numbers of
 15 teachers in training teaching ELs?
 16 MS. KOURY: Objection, vague and ambiguous as
 17 to "keep track," and also calls for speculation.
 18 THE WITNESS: I think so.
 19 Q BY MS. PEARLMAN: And what department or what
 20 unit would that be?
 21 A I think it's done through the language census
 22 R30 collection. And I think Jan Meier's unit does
 23 that.
 24 Q What is Jan Meier's unit?
 25 A I think it's language proficiency academic

1 something. I don't know beyond that. I don't
2 remember.

3 Q Do you know whether the number of teachers in
4 training teaching ELs has increased in the past year?

5 MS. KOURY: Objection, vague and ambiguous,
6 calls for speculation.

7 THE WITNESS: No.

8 Q BY MS. PEARLMAN: Where there's a teacher in
9 training teaching an EL, is that an issue of
10 noncompliance?

11 MS. KOURY: Objection.

12 MS. READ-SPANGLER: Objection, vague and
13 ambiguous.

14 MS. KOURY: Lacks foundation.

15 THE WITNESS: It's a compliance question. I
16 don't want to say it's an issue of noncompliance, it's
17 an issue of compliance.

18 Q BY MS. PEARLMAN: Why is it an issue of
19 compliance?

20 A We would check and make a determination if it
21 is noncompliant or compliant.

22 Q And how -- what would make a teacher in
23 training noncompliant?

24 A The teacher would not be noncompliant, we call
25 districts noncompliant.

1 If the district is -- I'm trying to think of a
2 word here -- if a district is majorly using teachers
3 who are noncertificated, we call them noncompliant.

4 Q What's your definition there of majorly?

5 A Yeah. I have to say it's on a case-by-case
6 basis. I don't have a magic percentage.

7 MS. KOURY: I think you've answered the
8 question.

9 THE WITNESS: Okay.

10 Q BY MS. PEARLMAN: Would 10 percent of
11 teachers -- would 10 percent of the teachers teaching
12 ELs -- strike that.

13 If -- assuming 10 percent of the teachers
14 teaching ELs were teachers in training, would that be a
15 noncompliant issue for the district?

16 MS. KOURY: Objection, calls for speculation.
17 This is also an incomplete hypothetical. I'm not sure
18 if we are still talking about the previous incomplete
19 hypothetical.

20 But to the extent you are able to answer, go
21 ahead.

22 MS. READ-SPANGLER: And he also said it's on a
23 case-by-case basis, so I'm not sure he can give you any
24 fixed percentage.

25 MS. PEARLMAN: Let's see if he can.

1 THE WITNESS: On a case-by-case basis it
2 depends on other factors.

3 Q BY MS. PEARLMAN: What factors do you consider
4 when you are looking to see whether the number of
5 teachers in training is an issue of noncompliance?

6 A Effort of the district to get people
7 certificated, and pupil performance.

8 Q In terms of effort of the district to get
9 people certificated, what types of things do you look
10 at, does your unit look at?

11 A If we talk to a district and come to an
12 understanding that they are not willing to put people
13 in training, there's no history of putting people in
14 training, there's no history of getting people
15 certificated, we might call that noncompliant.

16 Q Does your unit monitor whether teachers in
17 training do get certificated?

18 MS. KOURY: Objection, vague and ambiguous.

19 THE WITNESS: At the districts we have marked
20 noncompliant, yes.

21 Q BY MS. PEARLMAN: And how does your unit
22 monitor whether these such teachers in a noncompliant
23 district, teachers in training, have become
24 certificated?

25 A If they are marked noncompliant they are

1 responsible for providing us proposed resolution of
2 noncompliance and written evidence.

3 Q Anything else other than the proposed
4 resolution of noncompliance?

5 A No.

6 Q Does your unit look to see whether the
7 district meets the proposed resolution of
8 noncompliance?

9 MS. KOURY: Objection, vague and ambiguous as
10 to "meets."

11 THE WITNESS: We review the proposal, we
12 review the evidence, and we make a determination if it
13 is resolved or not resolved.

14 Q BY MS. PEARLMAN: And in what ways may a
15 district resolve the -- a teacher in training issue
16 that's found to be noncompliant?

17 MS. KOURY: Objection, vague and ambiguous.
18 It's also an incomplete hypothetical.

19 There's many circumstances and different
20 factors that will weigh in. I'm not sure that he can
21 answer that question in the abstract.

22 THE WITNESS: One of many possible scenarios
23 is the district sends us information about the numbers
24 of EL students, the numbers of teachers required to be
25 compliant, and demonstrates evidence that teachers have

1 completed the CLAD.
 2 Q BY MS. PEARLMAN: Is -- strike that.
 3 Are you aware of what the number of ELs is in
 4 the state?
 5 MS. READ-SPANGLER: Objection, calls for
 6 speculation. I'm assuming you are limiting it to ELs
 7 in California public schools.
 8 MS. PEARLMAN: Yes.
 9 THE WITNESS: Roughly.
 10 Q BY MS. PEARLMAN: What's that number?
 11 A About 1.6 million.
 12 Q Is that number growing?
 13 MS. KOURY: Objection, vague and ambiguous.
 14 MS. READ-SPANGLER: Calls for speculation.
 15 THE WITNESS: I don't have this year's data,
 16 but it has increased over the years.
 17 Q BY MS. PEARLMAN: And are you aware of the
 18 numbers of authorized EL teachers in the state?
 19 MS. KOURY: Objection, vague and ambiguous,
 20 calls for speculation. Also calls for a legal
 21 conclusion.
 22 THE WITNESS: No.
 23 Q BY MS. PEARLMAN: In your opinion, is there a
 24 shortage of authorized EL teachers?
 25 MS. KOURY: Objection --

1 MS. PEARLMAN: In the state.
 2 MS. KOURY: Sorry.
 3 Objection, vague and ambiguous as to
 4 "shortage." Also calls for expert testimony. Calls
 5 for speculation and legal conclusion.
 6 THE WITNESS: Are you talking about teachers
 7 who are certificated with CLAD or teachers of EL
 8 students who are credentialed?
 9 Q BY MS. PEARLMAN: I'm talking about teachers
 10 who have an EL authorization.
 11 A It's an area that we often find out of
 12 compliance. Certainly we find that noncompliant at
 13 sites we visit on occasion.
 14 MS. PEARLMAN: Off the record.
 15 (A break was taken.)
 16 Q BY MS. PEARLMAN: Mr. Dibble, does your unit
 17 monitor whether each EL student in California has an EL
 18 authorized teacher?
 19 MS. KOURY: Objection, vague and ambiguous.
 20 THE WITNESS: To the extent that we review
 21 one-fourth of the school districts each year.
 22 (Pause in proceedings.)
 23 MS. PEARLMAN: Going back to that question.
 24 Q In the schools that you monitor each year,
 25 does your unit monitor whether each student in that --

1 those schools has an EL authorized teacher?
 2 A Yes.
 3 Q And how does your unit go by monitoring that?
 4 A We ask for classroom, classroom -- or course
 5 offerings. We ask for the number of students in each
 6 of those courses or classes. And we look at the
 7 teachers who are assigned to those settings, and we
 8 look at their certifications.
 9 Q And does the unit do this for every school or
 10 just for each district?
 11 MS. KOURY: Objection, asked and answered.
 12 THE WITNESS: The coordinated compliance
 13 review cycle is one-fourth of the districts each year.
 14 And at each district we review, we do a 10 percent, one
 15 year a 30 percent sampling of school sites.
 16 Q BY MS. PEARLMAN: I'm sorry, was that
 17 10 percent or 30 percent?
 18 A With 10 percent, and last year we did 30
 19 percent of school sites. Most years we do 10 percent,
 20 last year we did 30 percent.
 21 Q Why did you do 30 percent last year?
 22 A Because of the Comite' compliance plan.
 23 Q Do you know this year going forward, is there
 24 a plan to do 10 percent or 30 percent of the schools?
 25 A Yes, it's 10 percent.

1 Q So going back to your monitoring. You first
 2 said you asked for course offerings.
 3 Does that information come from the 10 percent
 4 of the schools reviewed, or does that information come
 5 from the districts?
 6 A Schools.
 7 Q So in each year, then, you would get the
 8 course offering for 10 percent, or last year 30
 9 percent, of the schools in the district that's being
 10 monitored?
 11 MS. KOURY: Objection, I think that misstates
 12 his testimony.
 13 But go ahead.
 14 THE WITNESS: We visit 10 percent of the
 15 district schools. Our protocol to check on certified
 16 teachers is to look at course offerings, students
 17 enrolled, certificated teachers. I'm sorry.
 18 Certification of teachers.
 19 MS. PEARLMAN: Just so I'm clear.
 20 Q In this review, do you make sure that in every
 21 course an EL is enrolled they have a teacher with an EL
 22 authorization teaching that course?
 23 MS. READ-SPANGLER: Objection, asked and
 24 answered.
 25 MS. KOURY: Are you referring now just to the

1 sites that he reviews, the specific sites he reviews?
 2 MS. PEARLMAN: Yes.
 3 MS. KOURY: Asked and answered.
 4 THE WITNESS: Clarification.
 5 Q BY MS. PEARLMAN: Yes, please.
 6 A Every course does not require -- every course
 7 that has an EL kid in it does not require a certified
 8 teacher. CLAD and core curriculum require EL certified
 9 teachers. Core curriculum and CLAD -- I'm sorry, ELD
 10 classes, yes, we check every site we go to.
 11 Q For every student, for every EL student,
 12 correct?
 13 MS. KOURY: Asked and answered.
 14 THE WITNESS: I don't want to characterize it
 15 by student-by-student. We ask for course and class
 16 description, we look at the numbers of ELs enrolled in
 17 CLAD -- in ELD classes and core, and we see if there's
 18 a certified teacher in there.
 19 I don't want to characterize it if we have 600
 20 EL students that we check on every minute for 600 kids.
 21 MS. KOURY: I think you've answered it.
 22 Q BY MS. PEARLMAN: Are you finished with your
 23 answer?
 24 A Yes.
 25 Q And for those schools that you don't review in

1 a district, do -- does your review entail anything to
 2 determine whether those other schools have EL
 3 authorized teachers for each EL student?
 4 MS. KOURY: Objection, vague and ambiguous.
 5 It also calls for speculation.
 6 I take it you mean in terms of the particular
 7 cycle year within each cycle year; is that correct? I
 8 guess my objection is --
 9 MS. PEARLMAN: It's during the particular
 10 review cycle, yes.
 11 MS. KOURY: So regardless of whether those
 12 sites are reviewed later in a different cycle, you are
 13 talking about only this specific cycle. Is that
 14 correct?
 15 MS. PEARLMAN: No.
 16 Q I'm talking about each cycle you review a
 17 quarter of the districts in the state; is that correct?
 18 A Yes.
 19 Q And of those districts, that quarter of
 20 districts, you review 10 percent usually, last year was
 21 30 percent of the schools; is that correct?
 22 A Yes.
 23 Q You've just described to me the procedure that
 24 you do at the school sites, is that correct, in terms
 25 of determining whether each EL student has an EL

1 authorized teacher?
 2 A A procedure, yes.
 3 Q Is there anything done with respect to the
 4 other schools that are not specifically visited within
 5 the district being reviewed?
 6 A Yes.
 7 Q What is done?
 8 A A bit of review is done at the district level.
 9 Q I'm sorry?
 10 A A bit of review is done at the district level
 11 during the district documentation review.
 12 Q Can you explain to me what types of documents
 13 are reviewed with respect to this issue of EL
 14 authorized teachers?
 15 A We basically ask the district to provide us
 16 with information on a district-wide basis, numbers of
 17 students in ELD and in core, and we ask the numbers of
 18 certified teachers.
 19 Q And is there a particular document that you
 20 look at?
 21 MS. KOURY: Objection, vague and ambiguous.
 22 Are you referring to a document from the
 23 district?
 24 MS. PEARLMAN: Right.
 25 THE WITNESS: No.

1 Q BY MS. PEARLMAN: With respect to books and
 2 materials for ELs, what does the state EL program
 3 require?
 4 MS. KOURY: Objection, calls for a legal
 5 conclusion. It's also vague and ambiguous.
 6 THE WITNESS: Did you say materials and what?
 7 Q BY MS. PEARLMAN: Books and materials.
 8 MS. READ-SPANGLER: Do you mean instructional
 9 materials?
 10 MS. PEARLMAN: Yes.
 11 THE WITNESS: The compliance question is
 12 actually do students receive ELD, do they have access
 13 to the core curriculum. We do not require each and
 14 every district have a specific set of materials or
 15 books.
 16 Q BY MS. PEARLMAN: What do you monitor in terms
 17 of ELD materials?
 18 A What the district has.
 19 Q And as part of your monitoring, do you look to
 20 see whether each EL student receives ELD materials?
 21 MS. KOURY: Objection, vague and ambiguous.
 22 THE WITNESS: Probably not.
 23 Q BY MS. PEARLMAN: And what, what types of
 24 things do you look at to determine what ELD materials
 25 the district has?

1 MS. KOURY: Objection, misstates his
2 testimony.
3 THE WITNESS: What the district presents to us
4 as their ELD books and materials.
5 Q BY MS. PEARLMAN: In your unit's review, is
6 anything done to determine whether each EL student has
7 a textbook for their core curriculum classes?
8 MS. KOURY: Objection, vague and ambiguous.
9 THE WITNESS: Probably not in most cases.
10 Q BY MS. PEARLMAN: And what does the state
11 program require in terms of SDAIE materials?
12 A We look at what the district offers.
13 Q And what are you looking for when you...
14 A Professional judgment. Are the materials
15 appropriate for the learning level of the students. Is
16 it appropriate material, understandable to the
17 children. Do they even have any.
18 Q What does your unit do to determine whether
19 the SDAIE materials are appropriate?
20 A Isn't that just -- isn't that what you just
21 asked? What was the question before that?
22 Q You said they looked to determine whether the
23 materials are appropriate.
24 MS. KOURY: Do you mean to ask how do they
25 determine whether it's appropriate?

1 THE WITNESS: I thought I said they looked to
2 see if it's at a level the children can understand, if
3 they even have materials.
4 Q BY MS. PEARLMAN: In your experience --
5 MS. READ-SPANGLER: These are just my notes.
6 Let the record reflect I am not writing notes
7 to my client.
8 Q BY MS. PEARLMAN: Can you just explain what
9 the relationship of the English learner monitoring unit
10 is to the CCR --
11 MS. KOURY: Objection --
12 Q BY MS. PEARLMAN -- - to the CCR management
13 unit?
14 MS. KOURY: Sorry.
15 Objection. Calls for a narrative. It's also
16 been somewhat asked and answered.
17 THE WITNESS: Yes. The coordinated compliance
18 review management unit coordinates all of the reviews.
19 The reviews are conducted by a variety of programs and
20 funding sources.
21 A district, instead of having individual
22 reviews, is visited by a team. For example. A
23 district might get a consolidated programs review, a
24 safe and drug free school review, an Eisenhower staff
25 development review, a vocational education review and

1 an English learner review. English learner monitoring
2 unit's relationship with coordinated compliance review
3 management unit is that we participate in that process,
4 which is coordinated by CCR management unit.
5 Q BY MS. PEARLMAN: What is the English learner
6 monitoring unit's relationship to Comite"?
7 MS. KOURY: Objection, calls for a narrative.
8 THE WITNESS: Our relationship is that we are
9 in the same division. We both provide services for
10 English learner students, and we were both designated
11 in the compliance plan to be units. And we both look
12 at the compliance items as they apply to school
13 districts.
14 Q BY MS. PEARLMAN: Going back. We talked about
15 your unit reviews each district's -- a quarter of the
16 districts each year; is that correct?
17 A Correct.
18 Q Now, does it review every single one of those
19 districts that is -- does it do a review of every
20 single one of those districts?
21 MS. READ-SPANGLER: Objection, vague and
22 ambiguous.
23 MS. KOURY: It's also been asked and answered.
24 Vague and ambiguous as to what you mean by "review all
25 of the districts."

1 MS. PEARLMAN: Strike that. I will clarify.
2 Q Does it do a validation review of each of
3 those districts?
4 MS. KOURY: Objection, vague and ambiguous.
5 MS. READ-SPANGLER: You mean each of the
6 quarter districts?
7 MS. PEARLMAN: Right.
8 THE WITNESS: The compliance plan requires
9 that the English learner monitoring unit visit every
10 district that's on the current year validation review
11 cycle.
12 Q BY MS. PEARLMAN: Okay. And how does the unit
13 determine which schools out of the quarter districts
14 being reviewed to do a validation review of?
15 A Under the auspices of the coordinated
16 compliance review management unit during the site
17 collection, which typically takes place in August, the
18 team that's going to visit that district works together
19 to select sites based on the criteria of compliance
20 history, funding level, numbers of EL students, and
21 something else I can't remember right now. Oh, and if
22 they have been or not been visited in the last four
23 years.
24 Q And in terms of compliance history, what are
25 you looking for there to make your determination?

1 A If they have remained severely noncompliant
2 since the last review, then they might be subject to
3 another review.

4 Q And how do you determine whether they've
5 remained severely noncompliant?

6 A We get data from the compliance tracking
7 system which shows us all the noncompliant issues that
8 remain noncompliant.

9 Q And where does the data that goes into the
10 compliance tracking system come from?

11 A Originally it's generated when the teams
12 return and submit a notification of findings. The
13 notification of findings itemizes all of the
14 noncompliant issues for the district for that
15 particular validation review.

16 Q And is this data updated after the original
17 notification of findings?

18 MS. KOURY: Objection, vague and ambiguous,
19 it's also calling for speculation.

20 MS. READ-SPANGLER: Just for the record, a lot
21 of this has been detailed extensively in Eleanor
22 Clark-Thomas' deposition. You guys have even done
23 discovery requests for some of the CTS items. There's
24 a lot of backgrounds on this. You may not want to
25 spend much time on it.

1 THE WITNESS: The districts are required to
2 submit to us, once the notification of findings is
3 submitted and they are recorded in the compliance
4 tracking system as noncompliant, a proposed resolution
5 of noncompliance --

6 MS. KOURY: You mean of compliance.

7 THE WITNESS: Proposed resolution of
8 noncompliance. Yeah.

9 MS. KOURY: Sorry.

10 MS. READ-SPANGLER: Again, this is -- the
11 whole process is detailed extensively in Eleanor
12 Clark-Thomas' deposition. And given that you only have
13 two days for Mr. Dibble, use your time wisely.

14 Q BY MS. PEARLMAN: And other than the composed
15 resolution of noncompliance, is there any review,
16 subsequent review to determine the district or the
17 school site has actually followed through on its
18 resolution of noncompliance?

19 MS. KOURY: Objection, vague and ambiguous,
20 it's also been asked and answered.

21 I take it you are asking for anything other
22 than what he's already testified to.

23 THE WITNESS: A proposed resolution of
24 noncompliance will be reviewed by our office. It has
25 three possible results.

1 THE WITNESS: Help me a little bit with
2 "updated."

3 Q BY MS. PEARLMAN: You said that the data into
4 the compliance tracking system comes from the
5 notification of findings; is that correct?

6 A Hmm-hmm. Yes.

7 Q And that only -- is the notification of
8 findings filed only once every four years?

9 A Yes.

10 Q Okay. So how, then, do you determine whether
11 a school site has remained in noncompliance, been
12 severely noncompliant during that four-year period?

13 MS. KOURY: Objection, asked and answered.

14 THE WITNESS: If it's registered in the
15 compliance tracking system as noncompliant, it stays
16 there as noncompliant until the district resolves it.

17 Q BY MS. PEARLMAN: And how is the determination
18 made as to whether the district has resolved the issue
19 of noncompliance?

20 A If the compliance tracking system data reports
21 it's noncompliant if it's noncompliant. If it reports
22 it's compliant, it's compliant.

23 Q Does this information as to compliance or
24 noncompliance come from the schools themselves?

25 MS. KOURY: Objection, vague and ambiguous.

1 The district can remain noncompliant because
2 it was an unsatisfactory proposal.

3 The district can have its issue resolved
4 because there was sufficient evidence submitted to the
5 reviewer in my office to say it's resolved.

6 Or the district can ask for an extension of
7 time called a compliance agreement. This process goes
8 typically until the district has resolved its
9 noncompliance.

10 Q BY MS. PEARLMAN: Again, how do you determine
11 whether the district has resolved its noncompliance,
12 other than the resolution of noncompliance?

13 MS. READ-SPANGLER: Objection, asked and
14 answered.

15 MS. KOURY: A couple times.

16 MS. READ-SPANGLER: Do you have anything to
17 add to your answers?

18 THE WITNESS: No, I don't.

19 Q BY MS. PEARLMAN: Does the district send you
20 any new information after the resolution of
21 noncompliance?

22 MS. KOURY: Do you mean if they then become
23 compliant whether they send them evidence of that
24 compliance?

25 MS. PEARLMAN: Correct.

1 THE WITNESS: I had stated earlier they send a
 2 proposed resolution of noncompliance. Three possible
 3 situations can come out of that.
 4 The district can be considered as resolved,
 5 case closed.
 6 The district can be put into an agreement at
 7 which time they are required to submit additional
 8 information until they are resolved.
 9 Or they can be considered as noncompliant
 10 still, at which time they must submit additional
 11 evidence until they get it resolved.
 12 Q BY MS. PEARLMAN: Since becoming manager of
 13 the English language monitoring unit --
 14 MS. READ-SPANGLER: Learner.
 15 Q BY MS. PEARLMAN -- learner monitoring unit,
 16 how many validation reviews has your unit conducted?
 17 A Our unit has conducted, under my management,
 18 approximately 1200 school site reviews.
 19 Q And what about how many districts?
 20 A That would involve -- I need to go -- I'm not
 21 sure.
 22 MS. KOURY: I don't want you to guess.
 23 THE WITNESS: I don't know.
 24 MS. READ-SPANGLER: If you can estimate,
 25 that's fine, but don't guess.

1 THE WITNESS: Okay. I would like to estimate
 2 between 7 and 800 districts.
 3 Q BY MS. PEARLMAN: And during the 2001-2002
 4 cycle, were there any CCR makeup reviews that your unit
 5 participated in?
 6 MS. READ-SPANGLER: Objection, lacks
 7 foundation.
 8 THE WITNESS: Yes. I need -- makeup as
 9 defined by the compliance plan.
 10 Q BY MS. PEARLMAN: Do you know approximately
 11 how many?
 12 A Yes. 400.
 13 Q Can we go back to the self-reviews for a
 14 minute that the districts do.
 15 What is the purpose of the self-reviews?
 16 A Please recall that self-review is a
 17 requirement that's coordinated by coordinated
 18 compliance review management unit, that English learner
 19 programs participates in it as part of a coordinated
 20 effort. It's been a while that I've worked with the
 21 actual self-review.
 22 If I harken back to the time when I was in CCR
 23 management unit, the purpose of the self-review is one,
 24 for districts to take responsibility for monitoring
 25 their own level of compliance and get compliant.

1 Two, is to improve their programs by doing a
 2 compliance review.
 3 And three, is to prepare for the following
 4 year's validation review.
 5 And four, at one time, but no longer,
 6 self-reviews were used as part of the criteria for site
 7 selection.
 8 Q You just said that self-reviews used to be
 9 part of the criteria for self-selection.
 10 A Site selection.
 11 Q When you say "site collection," to what are
 12 you referring?
 13 A When we review 10 percent of the school sites,
 14 we select what sites to review based on the criteria I
 15 mentioned earlier.
 16 Q And when was the practice of considering the
 17 self-review in making that determination of site
 18 selection discontinued?
 19 MS. KOURY: Objection, calls for speculation.
 20 THE WITNESS: I think at the beginning of the
 21 2001-2002 review.
 22 Q BY MS. PEARLMAN: So, then, does district
 23 self-review play any role in what items of an EL
 24 program your unit reviews?
 25 MS. KOURY: Objection, vague and ambiguous.

1 It's also been -- well --
 2 MS. READ-SPANGLER: I also think it misstates
 3 his testimony.
 4 THE WITNESS: Regardless, we apply all ten
 5 English learner program items.
 6 Q BY MS. PEARLMAN: So does your unit apply all
 7 ten English learner items to all districts that are in
 8 that -- the entire quarter of districts that are
 9 reviewed for each review period?
 10 MS. KOURY: Objection, vague and ambiguous.
 11 Are you asking whether he applies all ten
 12 items to each of the districts that they are reviewing
 13 within a cycle?
 14 MS. PEARLMAN: Yes.
 15 THE WITNESS: We visit all the districts on
 16 the schedule. We visit 10 percent of the schools. And
 17 every school we visit we apply all of the items.
 18 MS. PEARLMAN: Can you read back that answer?
 19 (Record read.)
 20 Q BY MS. PEARLMAN: And with respect to the
 21 districts, do you apply all ten of the items?
 22 MS. KOURY: Objection, vague and ambiguous.
 23 I'm not sure that -- well, you can answer if you
 24 understand it.
 25 MS. READ-SPANGLER: Basically you are asking

1 if they apply it to schools that they don't do site
2 visits on?

3 MS. PEARLMAN: Correct.

4 MS. KOURY: Wait. Let me -- you are asking
5 him whether they apply the ten compliance items to
6 sites within a district that they are reviewing, but
7 the sites which are not part of that review?

8 Q BY MS. PEARLMAN: Well, how do you determine,
9 how do you determine whether the overall district is in
10 compliance with the ten EL factors?

11 MS. KOURY: Objection, overbroad. Calls for a
12 narrative.

13 Answer if you can.

14 THE WITNESS: The district is always
15 responsible for all the compliance items, even if they
16 are found at a local site. So although we may in
17 theory mark a school site noncompliant, the district is
18 noncompliant.

19 When they submit a resolution to us, the
20 superintendent or her/his designee signs and says that
21 this is compliant at all sites in our district.

22 Q BY MS. PEARLMAN: Is there any review of
23 district-level evidence to determine whether the
24 district itself is in compliance with the ten EL items?

25 MS. KOURY: Objection, vague and ambiguous.

1 Q Can you give me an example of who a pertinent
2 district personnel person might be?

3 A Yes, of course. The English learner program
4 director, coordinator, assistant superintendent,
5 project director, whatever that title might be in that
6 district. Possibly the superintendent. Possibly the
7 director of assessment and evaluation.

8 Q Okay.

9 A Possibly the business officer.

10 Q And going back to the document part of the
11 district review.

12 Can you tell me what documents your -- the
13 consultants from your unit look at?

14 A I will not guarantee I capture everything.
15 But we look at things such as the reclassification
16 policy, the numbers of -- strike that.

17 It's not the numbers, but we look at evidence
18 comporting compliance about the question of certified
19 teachers.

20 We look at the district's home language
21 survey.

22 We look at the district's policy on waivers.

23 We look at the district's communication via
24 correspondence to parents and guardians.

25 We look at the district's descriptions of

1 It also calls for a narrative.

2 But I take it that you are asking him beyond
3 what he's already testified to, which was that he
4 testified there's evidence at the district level about
5 whether or not there are authorized teachers to teach
6 English learners.

7 MS. READ-SPANGLER: He did talk about the
8 district document review.

9 THE WITNESS: The review starts with a
10 district level review.

11 Q BY MS. PEARLMAN: And when you are doing that
12 district level review, do you apply all ten EL factors
13 in that review?

14 A We begin gathering evidence in all ten items,
15 yes.

16 Q And is this district level review solely a
17 document review?

18 MS. KOURY: Objection, vague and ambiguous.

19 THE WITNESS: No.

20 Q BY MS. PEARLMAN: What does it entail other
21 than reviewing documents?

22 A Interviews.

23 Q Interviews of who? Sorry. Who do you
24 interview?

25 A Pertinent district personnel.

1 professional development.

2 We look at if they have it, the district's
3 description of their program for English learners.

4 We look at, if they have it, the evaluation
5 plan for English learners for the district.

6 We look at the minutes of the district English
7 learner advisory committee meetings.

8 We do a look at expenditures. If they have
9 EIA, emergency impact aid, LEP --

10 MS. READ-SPANGLER: Economic.

11 THE WITNESS: Is it economic? EIA, LEP
12 dollars. LEP standing for limited English proficient.

13 And we look at their policy for insuring that
14 students are given the self-test if the survey
15 indicates it should be given within 30 days.

16 And we look to some degree at primary language
17 assessment procedures.

18 I hope I've got everything. I'm not going to
19 promise.

20 Q BY MS. PEARLMAN: Is there any document that
21 lists all of the items that your unit looks at in its
22 documentation review of the districts?

23 A A lot of that is captured in compliance,
24 coordinated compliance review training guide, the ten
25 EL items.

1 Q And when you referred to the policy on
2 waivers, what are you talking about there?

3 A In a compliance manual, according to the
4 provisions, the statute the Ed Code, districts must
5 notify parents that if there are 20 or more who request
6 a waiver out of the structured English immersion or
7 mainstream English program, that the district must
8 provide it.

9 They also are supposed to show a description
10 of what the alternative program might be. They are to
11 notify the parents that they need to come to the school
12 to request the waiver. And that even if there are not
13 20 or more parents who request the waiver, that if they
14 want alternative program for their child, that the
15 district will find something for them.

16 Q You used the term "structured English
17 immersion." Can you define what you mean by that term,
18 please?

19 A That is defined in the Ed Code as the
20 beginning levels for English learner students.

21 Q And you are referring to -- when you say
22 "beginning levels," what are you referring to?

23 A Actually when Unz wrote the bill, the proposed
24 bill, he was talking about entry-level students.

25 Q And in your understanding, does structured

1 determine how many English learners are in the
2 district?

3 MS. KOURY: Objection, assumes facts.

4 THE WITNESS: It's called the R30 language
5 census.

6 Q BY MS. PEARLMAN: Anything else?

7 A No.

8 Q Is there a particular document that a district
9 must provide with regard -- with regard to evidence of
10 compliance on certified teachers for ELs?

11 MS. KOURY: Objection, vague and ambiguous.
12 Also lacks foundation.

13 THE WITNESS: No. I think we talked about
14 what we do to look, to check on certified teachers
15 earlier.

16 Q BY MS. PEARLMAN: What type of documentation
17 does the district give you with regard to the numbers
18 of certified EL teachers they have?

19 MS. KOURY: Objection, vague and ambiguous,
20 calls for speculation, assumes facts, and I think it's
21 been asked and answered.

22 Go ahead.

23 THE WITNESS: As I stated before, we would ask
24 them for course offerings, class offerings, numbers of
25 students placed in those settings, numbers of teacher

1 English immersion require any type of certain teaching
2 methodologies?

3 MS. KOURY: Are you finished?

4 MS. PEARLMAN: Yeah.

5 MS. KOURY: Objection, vague and ambiguous,
6 also calls for a legal conclusion.

7 THE WITNESS: Yes. And would I answer it by
8 saying exactly all of those teaching strategies, et.
9 cetera, that we talked about earlier.

10 Q BY MS. PEARLMAN: You also mentioned one item
11 that your unit looks at is the home language survey.

12 Why does it look at the home language survey?

13 A We have required districts to give every child
14 who enters school at whatever grade level a home
15 language survey which is taken home to the parents.
16 There are four questions. It's an indicator of the
17 student being an English learner possibly.

18 If it comes back with one of the questions
19 answered with a language other than English, it
20 triggers a subsequent assessment process.

21 Q And does this -- is this the document that
22 your unit uses to determine how many English learners
23 are in a district?

24 A Not at all.

25 Q What document does your unit look at to

1 certifications.

2 Q BY MS. PEARLMAN: Do the districts provide
3 that type of documentation, also?

4 A I'm -- we ask them to give us that.

5 Q At the district level?

6 A We ask for it at the district level and we
7 will ask for it at the site level, too.

8 Q And in your unit's district review, why do you
9 request a description of the EL programs?

10 A Compliance --

11 MS. KOURY: Objection, misstates his
12 testimony.

13 Go ahead.

14 THE WITNESS: Compliance item 3A and 3B
15 basically poses that question, is there a program in
16 place for children.

17 MS. KOURY: Do you mind if we go off the
18 record for a quick break?

19 (A break was taken.)

20 Q Before we go on this document, going back to
21 the self-review process.

22 A Did you say we are on the record?

23 Q Yes.

24 A I didn't hear you.

25 Q Are the self-evaluations that the districts do

1 submitted to your unit?
 2 A By the districts?
 3 Q Yes.
 4 A No.
 5 Q Are they submitted by anyone?
 6 MS. KOURY: To his unit?
 7 MS. PEARLMAN: Yes.
 8 THE WITNESS: Yes.
 9 Q BY MS. PEARLMAN: From where do you get the
 10 self-evaluations?
 11 A CCR management unit.
 12 Q When your unit receives those self-reviews,
 13 what does it do with them?
 14 A We get those when we are going on a review for
 15 that district. We review those, and we try and get a
 16 feeling of a trend as to whether the district is in
 17 compliance.
 18 I don't want too get wordy, but you have to
 19 say that at one time self-review and validation review
 20 made sense. A district did a self-review, and we used
 21 a review to validate their self-review. I cannot
 22 testify that's the same anymore. They seem to be two
 23 separate entities.
 24 Simply validation review meant we went out and
 25 we looked at what the district said about itself, we

1 validated if it was true or not.
 2 Q How has the process changed now?
 3 A We, regardless of what the self-review says,
 4 we do an absolutely complete and thorough application
 5 of all of the ten EL items. We do not leave the
 6 district by saying, "Yeah, yeah, you did a good job on
 7 the self-review. You were right, you need to fix these
 8 things." We simply point out to them what they need to
 9 fix. So the self-review has become more of a beginning
 10 idea as to where they are.
 11 Q Go ahead.
 12 A I'm done.
 13 Q So in your opinion, are the self-reviews a
 14 waste of time?
 15 MS. KOURY: Objection, leading. Also to a
 16 certain extent it misstates his prior testimony.
 17 THE WITNESS: On the contrary. I think it's
 18 great the districts take a look at their programs.
 19 Q BY MS. PEARLMAN: Why is that?
 20 A They are responsible for them, they need to
 21 fix them. They are responsible for insuring those kids
 22 have a good education, so they need to know what they
 23 are doing.
 24 Q Is it your testimony that -- strike that.
 25 And when did the process -- strike that.

1 To your knowledge, does the CCR management
 2 unit use the self-review for a purpose other than your
 3 unit does?
 4 MS. KOURY: Objection, vague and ambiguous,
 5 calls for speculation. Somewhat asked and answered.
 6 THE WITNESS: CCR management -- as I recall,
 7 CCR management still -- I need to start over again. I
 8 forgot.
 9 Starting with last year, the districts no
 10 longer submit their local site self-reviews on a
 11 school-by-school basis to the California Department of
 12 Education, but simply send a composite report called
 13 the district self-review. And CCR management unit
 14 reviews those and gives them a score, and then each
 15 unit that goes out on a review gets a copy of that
 16 self-review at review time.
 17 MS. PEARLMAN: Can you read back that answer?
 18 (Record read.)
 19 Q BY MS. PEARLMAN: Does your unit also review
 20 the self-reviews and give a score for the EL programs?
 21 MS. KOURY: Objection, vague and ambiguous.
 22 You are talking about a score separate from
 23 the CCR management?
 24 MS. PEARLMAN: Yes.
 25 THE WITNESS: All of the units that are in CCR

1 are involved in looking at the self-review and giving
 2 them a score, except for EL monitoring unit, because
 3 it's a nonmandated activity and it was prohibited by
 4 the compliance plan.
 5 Q BY MS. PEARLMAN: And going forward, will the
 6 EL monitoring unit be involved in giving scores based
 7 on self-reviews?
 8 A I will have to get advice on that to see what
 9 we are to do yet.
 10 Q And does the CCR management unit use the
 11 scores to determine what it reviews?
 12 MS. KOURY: Objection, vague and ambiguous.
 13 THE WITNESS: No longer.
 14 Q BY MS. PEARLMAN: In your understanding, what
 15 is the reason for this score, scoring process?
 16 A I disagree with score process. I find --
 17 MS. READ-SPANGLER: That's not what she asked
 18 you.
 19 MS. PEARLMAN: You can just make your
 20 objection, please.
 21 MS. READ-SPANGLER: Well, I just remind the
 22 witness this is a question and answer.
 23 MS. PEARLMAN: You are coaching the witness.
 24 You can just make your objection.
 25 MS. READ-SPANGLER: Will you read back the

1 question?
 2 (Record read.)
 3 MS. KOURY: Objection, vague and ambiguous.
 4 MS. READ-SPANGLER: If you want to follow up
 5 and ask him his opinion, that's fine. But I thought
 6 you wanted the answer to your question, so I was just
 7 reminding him to answer your question.
 8 You can go ahead and answer.
 9 THE WITNESS: What was the question again,
 10 please.
 11 (Record read)
 12 THE WITNESS: I have no idea.
 13 Q BY MS. PEARLMAN: And what is your opinion of
 14 the scoring process that the CCR unit gives to the
 15 LEAs?
 16 MS. READ-SPANGLER: Just to be clear, you are
 17 asking for his personal opinion?
 18 MS. PEARLMAN: Yes.
 19 THE WITNESS: My personal opinion is that we
 20 don't really use it for anything anymore. We don't
 21 need to do it.
 22 Q BY MS. PEARLMAN: In your opinion, are the
 23 monitoring functions that your unit performs important?
 24 MS. KOURY: Objection, vague and ambiguous.
 25 What do you mean by "important"?

1 MS. READ-SPANGLER: I'm going to object, it's
 2 argumentative.
 3 THE WITNESS: Important for two reasons.
 4 One, it's the law and it's our job.
 5 Two, I personally feel that it assists in
 6 insuring good programs for English learners.
 7 Q BY MS. PEARLMAN: Before the creation of the
 8 English language monitoring unit, in your opinion did
 9 the CCR unit do an adequate job of monitoring EL
 10 programs?
 11 MS. KOURY: Objection, vague and ambiguous,
 12 calls for speculation. It's also somewhat of an
 13 incomplete hypothetical.
 14 THE WITNESS: The CCR monitoring unit did not
 15 monitor English learner programs, per se.
 16 Q BY MS. PEARLMAN: Prior to the creation of the
 17 English learner monitoring unit, who monitored the EL
 18 programs?
 19 MS. KOURY: Objection, calls for speculation.
 20 THE WITNESS: As I recall, it was the
 21 consolidated programs unit.
 22 Q BY MS. PEARLMAN: And in your opinion, did the
 23 consolidated programs unit do an adequate job of
 24 monitoring EL programs?
 25 MS. READ-SPANGLER: Objection, vague and

1 ambiguous.
 2 MS. KOURY: Calls for speculation.
 3 THE WITNESS: I don't know.
 4 Q BY MS. PEARLMAN: When you were with the CCR,
 5 did you -- were you -- did you review EL programs?
 6 MS. KOURY: Objection, vague and ambiguous.
 7 THE WITNESS: Some.
 8 MS. PEARLMAN: Off the record for a second.
 9 (Off the record.)
 10
 11 (Plaintiff's Exhibit
 12 SAD 270 was marked for
 13 identification.)
 14 MS. PEARLMAN: Let the record reflect that
 15 I've marked as SAD 270 a document entitled "Coordinated
 16 Compliance Review Training Guide, 2002-2003."
 17 MS. READ-SPANGLER: Did you want to give the
 18 Bates range for the record?
 19 MS. PEARLMAN: Yeah. Bates DOE 139665 to
 20 139910.
 21 MS. READ-SPANGLER: 911.
 22 MS. PEARLMAN: Sorry. 911.
 23 Q BY MS. PEARLMAN: Mr. Dibble, are you familiar
 24 with this document that's in front of you?
 25 MS. READ-SPANGLER: Take your time.

1 Assuming the page numbers are inclusive, I
 2 will represent to you it is a complete copy of the
 3 training guide.
 4 THE WITNESS: It's a copy of the document.
 5 Yes, I'm familiar with it.
 6 Q BY MS. PEARLMAN: And is the 2002-2003 most
 7 recent CCR training guide that there is?
 8 MS. KOURY: Objection, vague and ambiguous,
 9 calls for speculation.
 10 THE WITNESS: No.
 11 Q BY MS. PEARLMAN: And there is a more recent
 12 version of this; is that correct?
 13 A Yes.
 14 Q Okay.
 15 MS. PEARLMAN: I request --
 16 MS. READ-SPANGLER: Let's go off the record.
 17 MS. PEARLMAN: We can stay on the record.
 18 Q Why don't you explain to me, Mr. Dibble, why
 19 the fact is that this is not the most recent version of
 20 the training guide.
 21 THE WITNESS: Are we off the record?
 22 MS. READ-SPANGLER: No.
 23 It's my understanding --
 24 MS. PEARLMAN: Can he just explain?
 25 MS. READ-SPANGLER: Go ahead.

1 Is there a final, more recent final version?

2 THE WITNESS: The school year we just finished
3 is 2002-2003. The school year coming up is 2003-2004.

4 In the fall of 2002, we had a document called
5 Coordinated Compliance Review Training 2003-2004 Draft
6 edition or issue we trained on. There were some
7 changes made in it that are different from what's in
8 here. It's basically the same document. It's in the
9 hands of school districts.

10 MS. PEARLMAN: Again -- well not again. I'd
11 like to request that that document be produced to us.

12 MS. READ-SPANGLER: That's fine. I was under
13 the impression that there was no final version, so I
14 will see what I can do. I was recently told there was
15 no final version.

16 THE WITNESS: It's called draft. It says
17 draft on it.

18 MS. READ-SPANGLER: By the way, if you want it
19 you should make a formal document request. You guys
20 have always required us to do that.

21 MS. PEARLMAN: Okay.

22 Q Are the ten steps for -- that your unit uses
23 to review EL programs, are they included in this
24 document, this CCR review training guide?

25 A While I'm looking for that, I will say they

1 scores on it, assessment and data. The various and
2 sundry documentation that a school district submits
3 before the review. That includes a master plan, if
4 they have one. Any pertinent handbooks. Just the
5 point of being ludicrous, the district's suggested
6 hotels and map.

7 Q BY MS. PEARLMAN: Can you tell me what the
8 compliance tracking system historical perspective is?

9 A It's a printout, it's a printout that shows
10 what remains noncompliant for the district that's being
11 reviewed.

12 Q And who maintains this printout, or who
13 produces the printout?

14 A Coordinated compliance review management.

15 I need to add one document that the
16 consultants go to the field with. The preprinted
17 notification of findings for that district.

18 Q When you say preprinted notification of
19 findings, are you referring to the form?

20 A Yes.

21 Q And the supplemental guide to the CCR training
22 guide, do you know what year that supplemental guide
23 was created?

24 A Created? The first year?

25 Q No. Sorry.

1 are not ten steps, they are ten items.

2 Q Ten items. Okay.

3 I will direct you to --

4 A Please.

5 Q -- Bates number 139817 to 139841.

6 A Can you please repeat the question?

7 Q Are the ten items that your unit uses to
8 review the state program for ELs included in this CCR
9 training manual?

10 A Yes. Yes.

11 Q And are there any other documents that the
12 consultants from your unit use to guide them in the
13 procedure for doing their validation reviews?

14 MS. KOURY: Objection, overbroad.

15 THE WITNESS: Yes.

16 Q BY MS. PEARLMAN: What documents?

17 A Supplemental guide coordinated compliance
18 review guide. The compliance tracking system
19 historical perspective.

20 Maybe I should ask to have the question
21 repeated.

22 MS. PEARLMAN: Can you repeat my question?
23 (Record read.)

24 THE WITNESS: Yes. A copy of the self-review.
25 The -- I forgot what it's called, basically has the API

1 The current version that you use, is it a new
2 version each year?

3 A Yes.

4 Q Okay. And you also said that the consultants
5 receive a document regarding API scores; is that
6 correct?

7 MS. READ-SPANGLER: Objection, misstates his
8 testimony. I think he said it had them on it.

9 THE WITNESS: Yes. It's a document that has
10 API scores on it.

11 Q BY MS. PEARLMAN: And for what purpose does
12 the -- do the consultants look at the API scores?

13 A In order to start getting a comparison of
14 performance of EL students with English only students.

15 Q So can you explain to me how they get that
16 comparison based on the API scores?

17 A Basically it talks about scores for EL kids
18 are at this level or at this range, nonEL kids or
19 English only kids are at this range. It's not real
20 hard to draw a comparison.

21 Q Turn to what's marked as DOE 139831, which is
22 headed with Roman numeral IV, "Staffing and
23 Professional Growth."

24 When -- now, the -- where it lists "Compliance
25 Items," that heading, do your consultants look at --

1 apply each of those items to each of the districts
 2 under their review?
 3 MS. READ-SPANGLER: Objection, asked and
 4 answered.
 5 MS. KOURY: Also vague and ambiguous.
 6 THE WITNESS: I'm sorry, I did not hear the
 7 first part of your question about the heading. I
 8 didn't hear it.
 9 Q BY MS. PEARLMAN: Just under "Compliance
 10 Items."
 11 A Oh. Okay.
 12 Now the question?
 13 Q Do your consultants apply each of those items
 14 to the districts that they are reviewing?
 15 MS. READ-SPANGLER: Same objections.
 16 THE WITNESS: Each of those items. Compliance
 17 item. I'm sorry. Are we talking --
 18 MS. KOURY: Are you referring to the two
 19 compliance items, the left-hand column --
 20 MS. PEARLMAN: Right. Like IV-EL6, IV-EL6a.
 21 THE WITNESS: Okay. To us that's one item.
 22 Q BY MS. PEARLMAN: Okay.
 23 A And the other part of your question, yes.
 24 Q Okay. In IV-EL6a, the second sentence says,
 25 "Upon documentation of a local shortage of qualified

1 teachers to provide English language development
 2 instruction, the district has adopted and is
 3 implementing interim measures by which it plans to
 4 remedy the shortage."
 5 How does -- how do your consultants determine
 6 what the district is -- determined that the district
 7 has adopted and is implementing interim measures to
 8 remedy the shortage?
 9 MS. READ-SPANGLER: Objection, calls for
 10 speculation.
 11 MS. KOURY: And also assumes facts.
 12 THE WITNESS: Most of the --
 13 MS. KOURY: And it's an incomplete
 14 hypothetical.
 15 Go ahead.
 16 THE WITNESS: A, we determine that there's a
 17 shortage of teachers.
 18 B, we ask the district to show us, once we've
 19 established that number, who is receiving training.
 20 Q BY MS. PEARLMAN: And other than what we've
 21 already discussed, are there any other documents that
 22 your consultants would look at to determine whether
 23 there's a shortage of authorized teachers for ELs?
 24 MS. KOURY: Objection, asked and answered.
 25 THE WITNESS: No.

1 MS. KOURY: Nothing in addition to what you've
 2 already testified to?
 3 THE WITNESS: I don't think so.
 4 Q BY MS. PEARLMAN: Under "District" and "Site,"
 5 you see that middle column there?
 6 A Yes.
 7 Q The -- it refers to the English learner
 8 staffing plan.
 9 And is that a document that your consultants
 10 review to determine whether there's a shortage of EL
 11 authorized teachers?
 12 A The English -- I'd like to state that I am
 13 currently in the process of rewriting these items, that
 14 I don't necessarily agree with the way a lot of these
 15 were written. In fact, this is from last school year,
 16 and the staffing plan is no longer required from
 17 districts. So things like that need to be revised.
 18 And to answer your question, if the district
 19 still uses the English learner staffing plan, great, we
 20 will take a look at it. They are not required to have
 21 it.
 22 Q Is there any documentation that the district
 23 is now required to have showing the -- it's plan to
 24 remedy a shortage of authorized EL teachers?
 25 A Not really, they just have to show us evidence

1 that they are remediating the situation.
 2 Q Okay. What type of evidence do they -- do you
 3 look for?
 4 A They could show us, or we could establish with
 5 them that they are, for example, ten teachers short,
 6 and they could show us ten teachers have signed a
 7 contract saying that, "We'll go to training." Could be
 8 individual contracts. They could be in the minutes of
 9 the school site council. It could be, believe it or
 10 not, by interview.
 11 Q Interview of who?
 12 A Teachers, principals, district personnel.
 13 Q To your knowledge, why is the district EL
 14 staffing plan no longer required?
 15 A I don't know.
 16 Q Do you know who made the decision to withdraw
 17 that as a district requirement?
 18 A I do not.
 19 Q In your experience, are districts still
 20 preparing an English learner staffing plan?
 21 MS. KOURY: Objection, vague and ambiguous,
 22 calls for speculation.
 23 THE WITNESS: I think some are.
 24 Q BY MS. PEARLMAN: Under that same "District"
 25 and "Site" says, "Observe selected English language."

1 At EL-IV, "Observe selected English language
2 development lessons. Follow a sample of at least two
3 EL students in at least three grade levels in the
4 school."

5 Do your consultants from your unit observe
6 actual ELD lessons?"

7 MS. READ-SPANGLER: Objection, overbroad.

8 THE WITNESS: I'm not at every site with them.
9 To the best of my knowledge the protocol says they are
10 supposed to do that.

11 Q BY MS. PEARLMAN: And what's the purpose of
12 that observation?

13 A This relates back to EL6 that they are
14 observing qualified people.

15 Q When you say "qualified people," what do you
16 mean by that?

17 A Again, I have some difficulty with this
18 particular item having a direct link back, so I find
19 myself in a bit of a conundrum with this one.

20 We check do you have a certificate or don't
21 you. This actually asks for some subjectivity. And
22 I'm not sure that this item actually answers the
23 question do you have qualified teachers, particularly
24 when the visit is short.

25 I would like to take this item out of the

1 scientific? No. But it gives you a sense from which
2 you can begin to ask other questions.

3 Q BY MS. PEARLMAN: In terms of compliance
4 of item EL6, is anything required other than that
5 the teachers providing instruction are EL
6 authorized?

7 MS. READ-SPANGLER: Again, objection, the
8 document speaks for itself.

9 MS. KOURY: And it misstates the document.

10 MS. READ-SPANGLER: And misstates his previous
11 testimony.

12 THE WITNESS: And I didn't understand your
13 question.

14 MS. PEARLMAN: Let's go back for a minute.

15 Q You said that the guidance on observing
16 ELD lessons had a certain sense of subjectivity,
17 correct?

18 A I said that.

19 Q And do you believe that -- strike that.

20 MS. PEARLMAN: Can we go off the record for a
21 second?

22 (Off the record.)

23 MS. PEARLMAN: We will reconvene tomorrow.

24 MS. READ-SPANGLER: And we've agreed to 9:30,
25 I think.

1 guide. But we have -- I'm done.

2 Q Why would you like to take it out of the
3 guide?

4 A I don't see a direct link between this and
5 truly establishing numbers of qualified teachers.

6 Q So do your consultants look to determine
7 whether the teachers they are observing are effective
8 teachers?

9 MS. KOURY: Objection, vague and ambiguous as
10 to what "effective" means.

11 Go ahead.

12 THE WITNESS: To some degree. To some degree,
13 yes.

14 Q BY MS. PEARLMAN: In your opinion, is this
15 item, "Observe selected ELD lessons" for that purpose,
16 to determine whether the teachers are effective?

17 MS. READ-SPANGLER: Objection, misstates the
18 document. That's not an item, that's just a guidance
19 thing.

20 MS. PEARLMAN: Sorry.

21 THE WITNESS: Thank you.

22 MS. KOURY: Also speaks for itself.

23 Go ahead.

24 THE WITNESS: It gives you a sense there's
25 instruction going on for EL kids. Is it rocket

1 I want a disk with my copy.

2 MS. PEARLMAN: We'll just take the disk.

3 MR. HAMILTON: Copy, no disk, no condensed.
4 (The deposition was concluded at 4:12 p.m.)

5 --o0o--

1 PURSUANT TO SECTION 2025 (q) (1) of the Code of
2 Civil Procedure of the State of California, I hereby
3 certify that I have read my deposition, made those
4 changes and corrections I deem necessary, and approve
5 the same as now written.

6
7 (Check one) NO CORRECTIONS
8 CORRECTIONS PER ATTACHED
9

10
11 DATED this ____ day of _____,
12 2003.

13
14 _____
15 PETER DIBBLE

16
17
18 CASE TITLE: Williams v State of Calif.
19 DATE OF DEPOSITION: June 17, 2003
20 JOB NUMBER: 38546
21
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23
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25

1 REPORTER'S CERTIFICATE

2 --o0o--

3 I, LISA RICHARDSON, a Certified Shorthand Reporter
4 for the State of California, duly licensed and a
5 disinterested person, certify:

6 That the foregoing deposition was taken before me
7 pursuant to applicable sections of the Code of Civil
8 Procedure of the State of California at the time and
9 place herein set forth;

10 That Peter Dibble, the deponent herein, was put
11 under oath by me;

12 That the testimony of the witness and all
13 objections made at the time of the examination were
14 recorded stenographically by me, to the best of my
15 ability, and were thereafter transcribed;

16 That the foregoing deposition is a verbatim record
17 of the testimony of the deponent and all objections
18 made at the time of the examination.

19 IN WITNESS WHEREOF, I have subscribed my name on
20 this 24th day of June, 2003.

21
22 _____
23 LISA RICHARDSON
24 Certified Shorthand Reporter,
25 License No. 5883

1 DEPONENT'S CHANGES OR CORRECTIONS

2 Note: If you are adding to your testimony, print the
3 exact words you want to add. If you are deleting from
4 your testimony, print the exact words you want to
5 delete. Specify with "Add" or "Delete" and sign this
6 form.

7 DEPOSITION OF: Peter Dibble
8 CASE: Williams v State of Calif.
9 DATE OF DEPOSITION: June 17, 2003
10

11 I, Peter Dibble, have the following corrections to make
12 to my deposition:

13
14 PAGE LINE CHANGE/ADD/DELETE
15
16
17
18
19
20

21 _____
22
23 SIGNATURE DATE _____
24
25