

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ELIEZER WILLIAMS, a minor, by)
SWEETIE WILLIAMS, his Guardian)
ad Litem, et al., each)
individually and on behalf of)
all others similiary situated,)
Plaintiffs,)

VS.) NO. 312236

STATE OF CALIFORNIA; DELAINE) VOLUME XI
EASTIN, State Superintendent) PAGES 1750-1892
of Public Instruction; STATE)
DEPARTMENT OF EDUCATION; STATE)
BOARD OF EDUCATION,)
Defendants.)

_____)

DEPOSITION OF:

JEANNIE OAKES, PH.D.

TAKEN ON

FRIDAY, APRIL 11, 2003

Reported by: EMILIA JACALONE

CSR NO. 7182

1 Deposition of JEANNIE OAKES, PH.D., taken on behalf of
 2 the DEFENDANTS, at 400 South Hope Street, 15th Floor,
 3 Los Angeles, California, on Friday, April 11, 2003, at
 4 9:40 a.m., before EMILIA JACALONE, CSR NO. 7182,
 5 pursuant to NOTICE.

6
7 APPEARANCES OF COUNSEL:

8
9 FOR PLAINTIFFS:

10 MORRISON & FOERSTER, LLP
 11 425 Market Street
 12 San Francisco, California 94105-2482
 13 (Not present)

14 -and-

15 ACLU FOUNDATION OF SOUTHERN CALIFORNIA
 16 BY: MARK D. ROSENBAUM, ESQ.
 17 1616 Beverly Boulevard
 18 Los Angeles, California 90026-5752

19
20
21
22
23
24
25

1 ALSO PRESENT:
 2 SOPHIE A. FANELLI; JOHN NOLTE
 3
 4
 5
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 APPEARANCES: (Continued)
 2 FOR DEFENDANT STATE OF CALIFORNIA:
 3 O'MELVENY & MYERS, LLP
 4 BY: DAVID L. HERRON, ESQ.
 5 400 South Hope Street
 6 15th Floor
 7 Los Angeles, California 90071-2899

8
 9 FOR DEFENDANT DELAINE EASTIN; STATE DEPARTMENT OF
 10 PUBLIC INSTRUCTION; STATE DEPARTMENT OF EDUCATION;
 11 STATE BOARD OF EDUCATION:
 12 STATE OF CALIFORNIA
 13 DEPARTMENT OF JUSTICE,
 14 OFFICE OF THE ATTORNEY GENERAL
 15 BY: ANTHONY V. SEFERIAN, ESQ.
 16 1300 I Street
 17 Suite 1101
 18 Sacramento, California 94244-2550

19
 20 FOR THE INTERVENOR CALIFORNIA SCHOOL BOARD ASSOCIATION:
 21 LAW OFFICES OF OLSON HAGEL & FISHBURN, LLP
 22 BY: ABE HAJELA, ESQ.
 23 555 Capitol Mall
 24 Suite 1425
 25 Sacramento, California 95814-4602

1 INDEX
 2
 3 WITNESS EXAMINATION PAGE
 4 JEANNIE OAKES (By Mr. Hajela) 1755
 5 (By Mr. Seferian) 1786
 6
 7

8 EXHIBITS
 9 NO. DESCRIPTION
 10 (None offered)
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 LOS ANGELES, CALIFORNIA, FRIDAY, APRIL 11, 2003
2 9:40 a.m.

3
4 JEANNIE OAKES,
5 having been first duly sworn, was
6 examined and testified as follows:

7
8
9 EXAMINATION

10
11 BY MR. HAJELA:

12 Q. Good morning, Dr. Oakes.

13 A. Good morning.

14 Q. You know the ground rules by now, I think we're
15 on day eleven. So my name's Abe Hajela. I represent
16 the California School Boards Association. We've
17 intervened in this lawsuit to represent the interests of
18 our member districts.

19 Given that we've had a number of days of prior
20 testimony, a lot of ground's been covered. So I'm going
21 to do something that's less conventional, and you're
22 going to have to correct me if I get it wrong.

23 Rather than start from scratch on any
24 characterizing your previous responses and then asking
25 follow-up questions, and it's just a way to expedite it.

1 Is that correct? That that's one component of
2 basic education in your definition?

3 A. I think one component of my definition of a
4 basic education are the absolute foundational elements
5 on which the rest of teaching and learning is based, and
6 that these three elements that are listed in the case
7 are certainly three of those kind of foundational
8 things.

9 Q. Okay.

10 A. I wouldn't want to say ever that that's
11 absolutely all that's foundational.

12 Q. Okay. And then these foundational elements, if
13 I understood the report correctly, your opinion is that
14 they're essential for teaching and learning, and they
15 should be provided to all students regardless of this
16 analysis of whether they're provided to the majority or
17 not; is that correct?

18 A. I'd say both. That they are absolutely
19 foundational. They need to be provided to all students.
20 And it's hard to imagine how you could have a situation
21 where they're provided to all students where then their
22 provision is dependent on what the majority has.

23 But if you want to, it seems like one is
24 inclusive of the other.

25 Q. What I was trying to get at is even if it

1 But if I don't characterize your testimony
2 correctly, just tell me. Correct it, refine it. Do
3 whatever needs to happen to make it accurate.

4 MR. ROSENBAUM: Just so we don't have, you
5 know, I want you to flow with your questions. I presume
6 when you characterize, you're not representing that
7 you're getting the full scope and the depth of her
8 testimony.

9 MR. HAJELA: Absolutely. Absolutely. It's
10 just a way -- I can't see any other way to ask succinct
11 follow-up questions.

12 Q. Mr. Herron asked a number of questions related
13 to your definition of basic education. Do you recall
14 that?

15 A. Yes, I do.

16 Q. If I understood your answers correctly,
17 there's, there's three components to basic education. I
18 want to talk about that. And, again, correct me if I
19 don't have it right.

20 The first one's straightforward, and it's clear
21 from page 1 of your report. And that is the three basic
22 essentials you talk about, which are qualified teachers,
23 adequate textbooks and relevant instruction materials,
24 and clean, safe and educationally appropriate
25 facilities.

1 turned out that the majority of students in California
2 went to overcrowded schools, it would still be your
3 opinion that every student ought to be provided a safe
4 and uncrowded school; is that right?

5 A. Yes, yes.

6 Q. Okay. Again, if I understood it correctly, the
7 second component of a basic education, as you described
8 it to Mr. Herron, was an equity principle. If you
9 recall, laptops came up in this, when you were
10 discussing this.

11 And if I understand it correctly, if a resource
12 is educationally relevant and the majority of students
13 in California are provided that resource, then it should
14 be considered part of a basic education and provided to
15 all students.

16 Is that correct?

17 A. Well, I would say unless -- I'm not sure I
18 would characterize everything that fell into that
19 category as absolutely basic. The equity principle is
20 for me, in my mind, is a somewhat different principle.
21 It's sort of this functional definition of what all kids
22 ought to have.

23 And my rather than saying that these things are
24 bottomline, basic tools without which you really can't
25 conduct an education, I would say they're things that

1 are educationally important, that the state has decided
2 is certainly worth providing to more than half the
3 students, or at least half the students, so that then
4 they should be provided to all students.

5 So I would cast it in a slightly different
6 light as these sort of basic, essential foundational
7 tools.

8 Q. Then this equity principle is -- in your
9 opinion, is, is this case also about the equity
10 principle?

11 And what I mean by that, I'm not looking for a
12 legal conclusion, but as one of the remedies that are
13 sought the equity principle; that if most students get
14 it, everyone ought to?

15 A. Well, I think that's a functional way of saying
16 that yes, in our system, we, at least if we still
17 believe in the Brown decision, that I do, it's the way I
18 tend to think about it, is that education must be made
19 available to all on equal terms.

20 This notion if at least half the kids have it,
21 everybody should have it, if it's educationally
22 important seems to be one way to operationalize that
23 notion on equal terms.

24 Q. So to use the -- actually, let me come back to
25 that. Let me go to what I think is the third one.

1 A. Well, it's, you know, I don't want to get into
2 these sort of hair-splitting discussions of what's basic
3 and what isn't basic.

4 I think that all three of the components you
5 mention are, in my professional view, part of what the
6 state must provide for all children in order to have a
7 healthy, fair, decent school system.

8 Q. The report focuses mainly on the issue of
9 providing all students qualified teachers, adequate
10 instruction materials, clean, safe and educationally
11 appropriate facilities.

12 In your opinion, are there other things that
13 ought to be added to that list that, that stem from the
14 equity principle?

15 A. Well, I think actually the report focuses on
16 those three elements, but in this larger context. I
17 mean this sort of comprehensive review or comprehensive
18 view of what's, what all children should be provided.

19 So that while these three elements are the
20 pieces that the lawyers have decided to focus on
21 precisely, and I think they're good ones to focus on,
22 they're absolutely core and I think unarguable.

23 But in my view of specifying what would
24 constitute a basic education, yes, I would include some
25 other things.

1 And this one's on, it's less clear for me how
2 to characterize this one, so probably ask you to
3 characterize it.

4 You talked about every student having a fair
5 opportunity to compete for a seat at UC Berkeley. And I
6 think of this as some sort of fairness principle, but
7 maybe you could characterize it for me.

8 A. Well, you could characterize it as a fairness
9 principle or a standards based principle. That if the
10 state has set particular standards, either for promotion
11 from kindergarten to first grade, or from graduation
12 from high school, or for admission to a public
13 university, that if those standards are in place, then
14 every child certainly should be provided with a
15 meaningful opportunity to meet those standards.

16 That there should be, no child should be
17 precluded from meeting those standards by virtue of
18 going to a school where it's not possible to do that.

19 Q. Okay. Let me then follow up here. First,
20 let's do the, let's call it the equity principle first.

21 If I understood you correctly, you're not sure
22 you would take that equity principle and say it's
23 subsumed under the basic education principle.

24 Is it a, is it a separate issue than part of
25 what the basic education is?

1 Q. So then is it your opinion that the state has a
2 duty, and I guess I'm asking this a different way, just
3 to make sure I understand it, that the state has a duty
4 to provide resources to all students other than these
5 three, the ones related to teachers, instructional
6 materials and facilities?

7 A. Yes. I think the kinds of things I explicated.

8 So, for example, let me give you an example.
9 If to attend a four-year college, a public four-year
10 college or university in California it's required that
11 you have mastery and have taken a course in intermediate
12 algebra, then it would be very important to me, and an
13 obligation, that the state provide all children with an
14 opportunity, or at least in every school, children have
15 an opportunity to take a course in intermediate algebra.

16 That certainly goes beyond the three elements
17 that have been named in this report.

18 Q. Okay. And then maybe I have a, I think I'm
19 understanding this now.

20 I think the first day of the deposition on this
21 third report, you distinguished your view of an -- I
22 hope I'm using the right term -- an adequate education
23 as distinguished from the bare essentials.

24 Are these things you're talking about now part
25 of the adequate education, as you used that term, versus

1 the bare essentials that are part of this lawsuit?
2 A. Yeah, I think you could characterize it that
3 way. That the adequate education to me would encompass
4 the three, the three, all three components that we
5 talked about; whereas the suit focused specifically on
6 these three features.

7 Although, as it should be clear from my report,
8 I certainly use these other principles as a way of, as
9 the larger context in which these essential elements
10 fit.

11 Q. Okay. And then just the most straightforward
12 way for me to understand that then is this case focuses
13 on the three bare essentials. And if there's going to
14 be remedies formulated by the court, or whoever, they'll
15 focus on those three essentials.

16 The case isn't about the equity principle as
17 well?

18 A. Well, actually, in my view, and I think I say
19 in this report that these three elements and problems
20 that we see with the provision of these three elements
21 are really symptomatic of some deeper systemic flaws in
22 the way we've organized, and the way we govern, and the
23 way we fund, and the way we oversee education in the
24 state.

25 And that our remedy that deals with these three

1 think. Or at least I'd analyze what I've done a little
2 differently than that what you suggest.

3 I think this report is about two things. It's
4 about ends, which have to do with establishing a system
5 that conforms to a particular set of principles, and
6 about the provision of some basic elements of that
7 education system. Those are ends.

8 I think, in my mind, those are things that I
9 can speak about with great confidence, and I don't see
10 as things that should be subject to the political
11 process in themselves.

12 But the means for reaching those goals so that,
13 I mean I'm not a lawyer, I'm not a judge, but so in my
14 mind, that the thing that's absolute and that is a
15 matter of law is that these things need to be in place,
16 as does a system that conforms to a set of principles
17 that provide the best opportunity for ensuring that
18 those are in place.

19 Now, the specific policy mechanisms that are
20 used to obtain those ends seem to me, as a, as a
21 non-lawyer, something that's part of the political
22 process. But the ends themselves are not.

23 Q. So just so I'm clear on that, if one of the
24 ends is systemic reform, maybe I'm speaking too broadly,
25 so I'll turn to the report in a second.

1 in a serious way will have to grapple with these deeper
2 systemic issues.

3 So I would certainly not want to be limited.
4 And I think I, in this report, try to talk about there
5 are some fixes that could help remedy these specific
6 concerns, but that they would be, in my mind,
7 insufficient for a genuine correction of both the, the
8 presenting problems and the underlying structural
9 problems that have allowed these things to occur and
10 allow them to persist.

11 Q. Let me ask you: In your opinion, as you know,
12 you're an expert for plaintiffs in this lawsuit, but
13 you're also somebody with a lot of experience in policy
14 making.

15 Do you see a difference, I'm looking at the
16 difference between the role of courts and the
17 legislature. It seems to me you have a section that
18 talks about remedying the specific complaints. And that
19 is straightforward to me, as a lawyer. Something can be
20 done legally to remedy specific complaints.

21 You have another section on systemic reforms.
22 Do you have a view on, are you distinguishing between
23 who the state actors are that are responsible for those
24 two areas?

25 A. I would characterize it a little differently, I

1 If I understood you correctly then, the court
2 should say we need systemic reform, but leave it up to
3 the legislature to decide what exactly that looks like?

4 A. I would go further than that. I would say, as
5 I do in this report, that those five principles that are
6 outlined in the very last section of the report are
7 things that certainly could be and should be part of
8 what's set before the people of California and its
9 elective representatives that develop for me, if I'm the
10 judge, to be so presumptuous, develop for me a system
11 that ensures that not only these specific problems named
12 in the case are remedied, but that you have in place a
13 system that has standards for conditions as well as for
14 outcome; that has provisions for building the capacity
15 of local people and professional educators to achieve
16 them; that has the ability to regularly collect and
17 report data that allows both professionals and the
18 public to understand the conditions of the system, and
19 that has mechanisms that allow appropriate interventions
20 when problems arise; and that, in fact, has an
21 important, has ways of ensuring that there's
22 accountability up and down the system, from the
23 seven-year-old to the governor.

24 And I think that those principles could be set
25 forth as foundational, and then the policy process seems

1 to me the appropriate place. I mean I don't, I'm not...

2 Q. No, I understand.

3 A. I don't presume to be a lawyer, but.

4 Q. If you turn to page 58 of your report, I think
5 what I was getting at is you have a section six on
6 page 58. It says what remedies are needed. Specific
7 policy changes and systemic reforms.

8 And if I read this correctly, section A is
9 remedying the specific complaints. And it actually is,
10 is, includes those things you just talked about, in
11 terms of setting a standard, building capacity,
12 collecting data, effective interventions, and oversight.

13 A. Yes.

14 Q. So that part I am very clear on. So the first
15 sentence under six:

16 "There are specific remedies the
17 State can employ to prevent, detect and
18 correct the specific inadequacies and
19 disparities in teacher quality,
20 materials, and facilities that are the
21 subject of this case."

22 That sounds clear. On sentence two,
23 "governance, funding and accountability mechanisms that
24 underlie these specific problems must be corrected as
25 well."

1 And I think the straightforward question I'm
2 asking you is if you can, if the state can remedy the
3 sentence one, if it can provide specific remedies for
4 these things you identify, is it your opinion that the
5 court should also require the state to do something
6 about these systemic flaws?

7 MR. ROSENBAUM: Calls for a legal conclusion.

8 THE WITNESS: As a, as a researcher and as a
9 policy analyst, I feel quite confident unless the
10 structure of the system and the governance of the system
11 and the funding of the system and the fundamental rules
12 of oversight and accountability are not reformulated in
13 this state, the immediate remedies to these presenting
14 problems will only be superficial and, and at worst,
15 very short term.

16 MR. HAJELA: Okay.

17 THE WITNESS: I was going to give you an
18 example, but you don't need an example.

19 BY MR. HAJELA:

20 Q. This is the part where I say can you give me an
21 example, but ... can I turn your attention to A1 on
22 page 58. This is beginning of the section about
23 remedying specific complaints.

24 MR. ROSENBAUM: I'm sorry, what page?

25 MR. HAJELA: 58.

1 MR. ROSENBAUM: A1?

2 THE WITNESS: Yes.

3 MR. HAJELA: It's in the outline form. Six,
4 A1.

5 MR. ROSENBAUM: Okay. Go ahead.

6 BY MR. HAJELA:

7 Q. Let me just read that section under remedying
8 the specific complaints.

9 "Mandate the provision of qualified
10 teachers; appropriate, standards-based
11 textbooks, instructional materials,
12 equipment, and technology; and
13 well-maintained, safe, healthy and
14 uncrowded school facilities. The most
15 straightforward policy instrument for
16 ensuring all California public school
17 students' access to the resources and
18 conditions their education requires
19 would be for the State to require
20 districts and schools to provide all
21 students with them."

22 Well, actually, let me, let me back up first
23 and pick up one thing.

24 In your discussion with Mr. Herron, I think it
25 was day before yesterday, if I recall correctly, you

1 linked the mandate or the standard A1, this idea that
2 you could create standards with, for these things, with
3 section two. It didn't make sense to do one without the
4 other.

5 Is that accurate?

6 A. Under current California law, it seems that if
7 you're going to mandate something, you need to accompany
8 it by the resources necessary for the, the entities that
9 you're mandating to do something to, can do it.

10 However, and so for that reason, it, it seems
11 like these two things are very inseparable. Although
12 money is not the only form of capacity building, as I
13 try to talk about in here.

14 The other is that it seems absolutely
15 irresponsible to ask people to do something for which
16 they don't have the capacity or the resources. Which
17 is, in part, my critique of what currently happens.

18 Q. Let me ask you then -- I understand that, and
19 that makes perfect sense to me. I appreciate that.

20 There's a technical and legal meaning of the
21 word "mandate," and I want to just explore whether you
22 really mean that or what you just said, which is very
23 clear to me.

24 Which is, I don't want to mischaracterize it,
25 but you tell people to do it and you provide them the

1 ability to do it. A reimbursable -- well, let me ask
2 you first: When you use the term "mandate" here, are
3 you talking about something that triggers the
4 reimbursement requirement under the California
5 constitution?

6 A. I'm not speaking about this in, in a way that
7 employs or that should evoke the technicalities of.

8 Q. Okay. Because I, looking at the transcript, I
9 know Mr. Egan and Mr. Hill both went into this a little
10 bit. And to explore it, I'll just ask you to assume
11 something.

12 Assume for purposes of these questions that a
13 definition of reimbursable mandate that says the state,
14 if it requires school districts to do something must
15 reimburse them for it, but the way it's operationalized
16 is the state tells the districts to do it.

17 The districts then must do it with current
18 resources that they have. And essentially, at the end
19 of the year, they bill the state for the cost of doing
20 it.

21 Is that the type of mandate you're talking
22 about here?

23 A. I am speaking in the, in the broadest
24 permissible sense of the word "mandate." The notion of
25 a requirement or a rule.

1 A. That gets more at the means question than the
2 goal. And that certainly I think reasonable people
3 could agree on some implementable strategy for realizing
4 this goal without negotiating the goal in itself away.

5 Q. And the reasonable strategy to implement the
6 goal, is that something that lies in the province of the
7 legislature?

8 What I'm getting at is, if I've understand you
9 correctly, the court says this is the goal that's
10 required, but then it's up to the legislature to figure
11 out how to get there?

12 A. Frankly, I have not thought enough about, nor
13 have the information in front of me at the moment to
14 sort of get any more specific about how a remedy,
15 specific remedies would be devised and carried out.

16 Q. Okay. I want to look at some of the things you
17 have included in your report. Let's take teachers,
18 under building capacity. That starts on page 59 and
19 goes to 61.

20 And if I understood your testimony when you
21 were speaking with Mr. Herron, these are, these are
22 intended to be suggestions. This isn't the full list of
23 what the state ought to do. Is that --

24 A. That's exactly right. I think that what I've
25 attempted to do here is to talk about, first of all,

1 And this policy analysis, when we talk about
2 mandates and we're talking about, you know, typically we
3 do national analyses, and mandates is a category of
4 policy instruments that essentially puts in place a
5 requirement or a rule.

6 States vary in the technical ways that they
7 actually operationalize those things. And in no way
8 here was I referring -- I meant, I was referring to
9 those technicalities. I could have as easily said make
10 non-voluntary the provision of, of teachers, textbooks
11 and facilities.

12 Q. Okay. And that's really what I was looking
13 for. So in your definition of "mandate," it could
14 include a requirement with a multi-year plan to get
15 there and multi-year funding commitment, sort of all
16 that goes together.

17 The problem I was having -- I'm sorry, that
18 wasn't a question. The problem I was having is how this
19 would work for teachers.

20 A mandate from the state says the districts
21 hire fully qualified teachers. And I was having trouble
22 seeing how a district could use its current resources,
23 make sure it had all its teachers, and then bill the
24 state for the cost of doing that.

25 So I guess what did you mean here?

1 the, the fundamental is that you don't require schools
2 and districts to do something without helping to put in
3 place the mechanisms that would make it reasonable to
4 expect them to be able to do it.

5 So I mean that's the whole idea of capacity
6 building. It's not only money, but it's all kinds of
7 policy supports. Some of the issues around teachers, in
8 my view, are not matters over which local districts have
9 a great deal of control. That the labor markets for
10 teachers often extend beyond the boundaries of a single
11 district.

12 So there are instances where there need to be
13 in place some other instruments that, that support
14 districts to do things to, to put in place, say, a cadre
15 of well-qualified teachers when the dynamics in their
16 labor market make that extremely challenging for them to
17 do it.

18 So, but then I also talk about in here examples
19 that are not simply means for attracting teachers to the
20 district, or increasing the supply of teachers in the
21 state, but also means for enhancing the likelihood that
22 teachers will remain in districts that currently have
23 difficulty keeping them.

24 So the purpose of this section is to illustrate
25 that, that the capacity building around teachers could

1 be a very multi-pronged strategy, and one that looks at
2 not only increasing the supply, but also the, the
3 retention of the current supply.

4 Things like that.

5 Q. Okay. Do you have something -- I generally
6 understand what's here and don't mean to ask you about
7 specifics, but I'm curious mostly on the issue of,
8 because I think I can envision what the state would do
9 to try to increase the supply, or try to make teaching,
10 as a general matter across the board, more attractive.

11 But a lot of this case is about the fact that
12 in some schools, they have an awfully hard time
13 attracting credentialed teachers.

14 Do you have any specific ideas of -- if I
15 understood you correctly, capacity as money is one
16 thing, but then there's this technical assistance and
17 other sort of thing.

18 Do you have anything in mind specifically about
19 how the state could assist schools in attracting
20 credentialed teachers in hard to staff schools?

21 A. Actually, I heard a really wonderful example
22 recently from David Gordon, who's the superintendent of
23 the Elkwood district. That is an interesting district,
24 because in some ways, it mirrors a lot of areas across
25 the state.

1 think Linda Darling-Hammond's paper speaks at length
2 about strategies for doing this, and gives lots of
3 examples from other places that have been more
4 successful than California.

5 Q. Are there any current programs, incentive
6 programs or inducement programs, that the state's
7 operating that you think are effective in this, but
8 perhaps are not comprehensive enough or not funded well
9 enough?

10 A. Actually, I think many of the things the state
11 has attempted to do are interesting ideas and promising
12 strategies. I think providing extra funding to schools
13 to use in whatever way they see is appropriate to create
14 conditions that will be more likely to attract and keep
15 teachers, whether it be signing bonuses or working
16 conditions, or, or the forgivable loans that I know
17 many of my students have taken advantage of the Apple
18 program, knowing that they're making a commitment to go
19 into challenging schools.

20 They're too little and too late, unfortunately.
21 And the projections are that at the current level that
22 the state is doing things, I mean SRI has done a really
23 quite remarkable analysis that even if we continue doing
24 all the things that are currently in place, and this of
25 course was prior to the budget crisis, at the levels of

1 They have some schools that are thought of
2 being much more attractive to teach in than others
3 because they're in more pleasant suburban neighborhoods,
4 and more middle class children, and, you know, settings
5 that are thought of easier to teach.

6 So in collaboration with the teacher's union,
7 they came up with a strategy to use the Title 1 money in
8 the Title 1 schools to lower class size in grades four
9 through six, as an incentive, as a, as an effort to make
10 the working conditions more attractive in those schools,
11 to stem the flow of qualified teachers out of those
12 schools and to attract teachers in.

13 His report is that it's been extraordinarily
14 effective in both attracting and keeping qualified
15 teachers in schools where previously they had a problem.

16 Now, he's a very clever guy. That was a great
17 idea. He must have good relationships with his union.
18 But the state could certainly do a great deal to
19 encourage, to, for example, make possible the use of, of
20 designated funds for purposes like that.

21 Or to adjust its class size reduction if it
22 continues class size reduction policies in ways that
23 create those sorts of incentives.

24 So that's one idea of the kind of capacity
25 building that the state could assist districts with. I

1 which they were funded, we would still end up with a
2 huge shortfall in qualified teachers over the next five
3 to seven years.

4 Q. There's a section in here, and I won't, can't
5 recall exactly where it is, but there's a Harris,
6 there's some Harris Poll data in a graph. And you know
7 that there's a convergence of problems in certain
8 schools.

9 So where you're likely to have or where you
10 have, because we have that data, a large number of
11 uncredentialed teachers, you're also likely to have
12 other problems with facilities and instruction
13 materials; is that right?

14 A. Yes. Yes. I do that both in this report and
15 in the, in my materials report, and some of the other
16 experts do that. And it's not only the Harris data that
17 suggest those convergences, it's other data as well.

18 Q. If the state's developing a monitoring and
19 oversight program or ability, does it make sense for the
20 state to focus on those schools where these problems
21 most converge rather than dealing with these issues in
22 isolation?

23 A. No, actually, because one of the most powerful
24 elements of a monitoring system is to be able to compare
25 across. And that if you only collect data about schools

1 having great difficulty and try to gauge their progress
2 or to make, to use data from one place to help inform
3 practices of another place, you've got this very limited
4 range of possibilities if you've only focused on those
5 schools and difficulty.

6 This is an argument I had with Senator
7 Voscanlejos (phonetic) last year when he was trying to
8 implement some indicators of inputs and conditions and
9 opportunities in the high priority schools grants.

10 And I really think that for the ability of
11 educators and community members in the most challenging
12 places to improve is very much enhanced by having images
13 of what's possible and what's happening in other places
14 as well.

15 And then there's, I have a point that
16 Mr. Russell makes in his paper, which I think is so
17 important, is that high achievement can sometimes mask
18 problematic conditions.

19 And to really provide all children with the
20 education they need, we can't allow their ability to
21 score well on tests to remove their schools from
22 scrutiny to make, around the essential elements of
23 education.

24 Q. And I think you anticipated where I was going,
25 but I have a slightly different question, which is not,

1 translating policy into action -- I guess I'll ask you
2 hypothetically, if there's a school in Davis, where I
3 live, where my daughter goes to school, and my son, it's
4 an excellent school. They seem to have mostly all
5 credentialed teachers, and they seem to have instruction
6 materials, and they seem to score really well.

7 Does it really make sense to spend your time
8 monitoring whether their facilities are clean enough,
9 well ventilated, or too noisy, or those things?

10 A. Well, how do we know that they aren't unless we
11 pay attention. We in the state feel that it's just as
12 important to inspect Wolfgang Puck's restaurants as we
13 do the corner hamburger stand.

14 And there are good reasons for that and I think
15 that there are parallels here.

16 Q. Okay.

17 MR. ROSENBAUM: I think this is the first
18 education case in which Wolfgang Puck has been
19 mentioned.

20 MR. HAJELA: All right.

21 THE WITNESS: You know, I'd like to add
22 something to that, and maybe it's not relevant to this,
23 but I think the people of Davis stand to benefit a great
24 deal by having a healthy system throughout the state,
25 not only just having a healthy school, and that your

1 not only to focus on the schools based on test scores,
2 which I think you've responded why that's not a good
3 idea, but I guess what I'm saying is without getting
4 into what the state can afford and can't afford,
5 assuming there's some, some range of spending that's
6 reasonable for public education, does it make more sense
7 to focus your interventions on specific schools and deal
8 with the three issues you raise, which are facilities,
9 teachers and instructional materials as a way of
10 remedying the most egregious problems first?

11 A. No. I actually think that no. I mean, first
12 of all, that would narrow my definition of what the
13 state should provide to focus on those three, or those
14 essential elements, and really then remove from the
15 state's consideration things based either on this equity
16 principle, or things based on this fairness, as you call
17 it, or standards based principle.

18 And I would certainly believe that the
19 monitoring and oversight and data collection system
20 should encompass all three of those components which
21 makes it essential that you're collecting data about
22 every school.

23 Q. I appreciate the answer. And I follow you
24 totally.

25 As a policy matter, I guess, when you're

1 child stands to benefit from having a healthy school
2 system.

3 And so if there's a little bit of time that's
4 spent on exposing the conditions in Davis to the rest of
5 the state, that that's time well spent.

6 BY MR. HAJELA:

7 Q. I just have a couple more things. Again,
8 mostly follow-up to what you talked about yesterday. I
9 believe you've already answered this today. If you
10 have, you can tell me.

11 You and Mr. Herron were talking about
12 accountability. And I think you were using the example
13 of facilities. And you said it would not be in an
14 accountability system, this is, this is number four of
15 the things under remedying the specific complaints.

16 It comes after collecting data, then
17 monitoring. Then you get to intervention and
18 accountability, I believe.

19 And if I understood you correctly, you said it
20 would not be appropriate to hold a school accountable
21 for facilities problem if an external constraint, and I
22 think you used the district as an example, prevents the
23 school from remedying that problem.

24 Is that accurate?

25 A. Yes. I think that it, it illustrates a general

1 principle that's really maybe principle number five in
2 the, I can't remember, four or five, in the end that
3 people should be held accountable for the things over
4 which they have authority and control.

5 And I think that principle holds for
6 five-year-olds as well as it does for district officials
7 and state officials.

8 Q. Maybe the answer is the courts. My question is
9 who holds the state accountable. I've got it for
10 schools. I've got it for districts.

11 How, in this system we envision is the state
12 held accountable. And I'll just use an example,
13 facilities. Let's say we simply don't have enough
14 school facilities in the State of California and one of
15 the reasons is historically a lack of, of sufficient
16 resources.

17 How do you hold the state accountable for
18 something like that?

19 A. Well, I think there's several ways you can hold
20 the state accountable. And partly, you know, I mean we
21 talk about accountability, different kinds,
22 administrative, political, moral accountability. There
23 are many forms of accountability.

24 First of all, you absolutely have to have good
25 information for any of those kinds of accountability.

1 It seems that people at the state level can certainly,
2 either, either elected firms or highly placed appointed
3 officials, can hold appointed administrators accountable
4 for their responsibilities.

5 I mean people can lose their jobs when they're
6 not carrying out the responsibilities they have. And
7 that's more of a kind of administrative accountability.
8 It's also very important that the public at large can
9 hold its elected officials accountable. The ultimate
10 form of accountability is voting people out of office.

11 That, of course, is extraordinarily dependent
12 on people having very good information, which is one of
13 the reasons why I talk about this reciprocal
14 accountability.

15 That, that people in communities need to have
16 very good information about their system, and then they
17 have to be able to have mechanisms that they can use so
18 that when they're unhappy about what they see, they can
19 call attention to it.

20 And all the way from filing official complaints
21 that get paid attention to and responded to, to having
22 enough information to organize and put pressure on, on,
23 and know where to put that pressure.

24 I see now a lot of community organizations
25 putting a lot of pressure on local school districts and

1 local school boards over things that those local school
2 boards have very little control.

3 So it's important, in my view, that people
4 have, so this gets into those clear lines of
5 responsibility, very good information and trigger
6 mechanisms so people can act in effective ways at the
7 right levels.

8 Q. And the last series of questions I'll ask you
9 then is, I know you were involved in the master plan, in
10 the master plan process.

11 As part of these clear lines of accountability,
12 do you have a specific opinion about the structure of
13 the school governance and how it ought to be altered?

14 And if it's not at all relevant to this case,
15 you can tell me that.

16 A. I do have some thoughts, but what I think is
17 important for this case is the notion of clear lines of
18 responsibility, transparency, triggers that, that
19 actually lead to consequences.

20 That those, those principles. And, and I would
21 not presume, at least at this point in this case, to
22 spell out a specific governance structure.

23 MR. HAJELA: That's all I have.

24 MR. ROSENBAUM: Thanks very much.
25 Do you want to take a break?

1 MR. SEFERIAN: Whatever your pleasure.

2 MR. ROSENBAUM: A few minutes?

3 THE WITNESS: Sure.

4 (Brief recess)

5

6 EXAMINATION

7

8 BY MR. SEFERIAN:

9 Q. Dr. Oakes, since we adjourned the deposition
10 yesterday and until now, have you spoken with anyone
11 about the deposition or about this case?

12 A. Only my husband.

13 Q. In preparing your third report, did you attempt
14 to assign responsibility for the various conditions that
15 are discussed in your Meta report among the state
16 officials and state entities? State bodies?

17 A. I'm sorry. I think I lost your question.
18 Assign what?

19 Q. In preparing your Meta report, did you attempt
20 to assign responsibility among the various state
21 entities, state officials, state actors, in terms of the
22 conditions described in your report?

23 A. I, I think that, first of all, the Meta report
24 is a synthesis of all of the other expert reports, so
25 that it's, it's an effort to be reflective not only of

1 my thinking, but what I learned from, from their work,
2 and from all the the analyses on which they relied as
3 well.

4 So having said that, I think that the general
5 theme of the Meta report is the responsibility lies at
6 the level of the state. And I made no precise effort to
7 assign responsibilities for particular pieces to
8 particular parts of the state.

9 In fact, one of the major themes of this Meta
10 report is that the state system is, suffers from
11 fragmentation and incoherence, such that it's very
12 difficult to assign responsibility. And I suggest, in
13 fact, that one part of a solution would be to clarify
14 lines of responsibility.

15 All of that being said, I think that the
16 details in the Meta report and in the reports of the
17 other experts certainly make clear where some actions
18 have taken place that have been problematic.

19 Q. In connection with your Meta report, do you
20 have any criticisms of the current or former state
21 superintendent of public instruction?

22 A. Well, I'd like to say generally that this is,
23 none of what I've written is meant to be interpreted as
24 an assault on the character of any of the individuals
25 who happen to inhabit particular state offices at a

1 A. Are you asking me to detail for you now here
2 all of the specifics that are in both my third report
3 and all of the other expert reports on which this report
4 is based?

5 Because if, if that's what you would like me to
6 do, then I would need to look at all of the reports and
7 go through them with you page by page to, to make sure
8 that I am encompassing all of the criticisms that are
9 contained in those reports.

10 Again, though, I would say that, that it is far
11 less about personal problems than it is about systemic
12 problems.

13 Q. In connection with the Meta report that you
14 prepared for this case, what criticisms do you have
15 specifically of the superintendent of public instruction
16 in connection with providing California students with
17 educational essentials they require?

18 A. Is that a different question than the one you
19 just asked me?

20 Q. Well, I'm not asking you to at this point
21 review all of the expert reports upon which your Meta
22 report is based.

23 I'm asking you, as you're sitting here today,
24 what criticisms do you have of the superintendent of
25 public instruction in connection with providing

1 particular period of time.

2 I personally like Delaine a lot, and, and have
3 for a long time, and respect her values, and much of
4 what she attempted to do.

5 However, I think there are these deep systemic
6 problems that have put good people in a position of
7 having to do some pretty awful things.

8 Q. Do you have any criticisms of the performance
9 of the current or former superintendent of public
10 instruction in California in connection with providing
11 California students with the educational essentials they
12 require?

13 MR. ROSENBAUM: I think that's been asked and
14 answered.

15 THE WITNESS: Actually, I do. And I think that
16 the report is, this Meta report and, and certainly the
17 other reports are pretty comprehensive in describing
18 specific instances that have either caused or
19 contributed to the problems that are described in the
20 reports as well.

21 BY MR. SEFERIAN:

22 Q. What criticisms of the performance of the
23 superintendent of public instruction do you have in
24 connection with providing California students with
25 educational essentials they require?

1 California students with educational essentials they
2 require.

3 A. Well, as I sit here today, I reflect on all of
4 the details and all of the reports. And those are
5 certainly what come to mind for me.

6 But to be precise, I would certainly want to
7 refer to all of that work. I mean I could give you one
8 example for, example of -- as an example.

9 But I would certainly not want in any way to
10 see that as being the, the universe of what is contained
11 in all of these reports.

12 (Mr. Rosenbaum leaves the deposition room at
13 this time)

14 BY MR. SEFERIAN:

15 Q. What example can you give?

16 A. Well, I think the, the one that sticks out in
17 my mind, and again, I don't see this as sort of a
18 personal failing, but an unfortunate choice of the
19 letter that went out telling school districts that they
20 would no longer be held accountable for the failure to
21 conform to the requirements of the six, 60119, and
22 beginning that letter with a bolded "Good News," as if
23 somehow being relieved of the responsibility of assuring
24 the public and reporting to the state about the
25 sufficiency of textbooks and materials was something

1 that should be cheered.

2 I mean that's just one example of, that comes
3 to mind. But again, it's just one of much of what's in
4 these reports.

5 Q. Okay. What was the approximate date of that
6 letter you referred to?

7 (Mr. Rosenbaum re-enters the deposition room)

8 THE WITNESS: You know, I'd have to refer to
9 my, I think it was -- I mean I, I'm -- certainly within
10 the last three years. Maybe the last two years. But I
11 don't want to, I don't want to miscite myself.

12 If you'd like to look at the instructional
13 materials report, I can get you the precise date.

14 BY MR. SEFERIAN:

15 Q. Other than the letter that the superintendent,
16 the state superintendent sent the school districts in
17 connection with 60119, what other examples are there of
18 your criticisms of the state superintendent's
19 performance in connection with providing students with
20 educational essentials?

21 MR. ROSENBAUM: That come to her mind now.
22 She's already said she'd have to refer to the reprot.
23 But that come to mind now, that's your question?

24 BY MR. SEFERIAN:

25 Q. My question is: As you sit here today, and you

1 You've mentioned an example of a criticism you
2 have of the state superintendent in connection with a
3 letter sent to school districts regarding 60119.

4 Are there any other examples of the state
5 superintendent's actions or inactions in the last ten
6 years that you believe have contributed to depriving
7 California students of the educational essentials they
8 require?

9 MR. ROSENBAUM: Asked and answered. Answer to
10 the last four questions.

11 BY MR. SEFERIAN:

12 Q. Are there any other examples that you can think
13 of as you sit here today?

14 A. It's difficult for me to answer that without
15 knowing whether you're talking about the individual who
16 happens to hold that office, or thinking broadly about
17 that individual as being the representative of the
18 Department of Education.

19 Q. Speaking in terms of just the office of the
20 superintendent of public instruction, apart from the
21 Department of Education, are there any other examples of
22 the performance of the office of the superintendent of
23 public instruction --

24 MR. ROSENBAUM: Same objection.

25 MR. SEFERIAN: -- in the last --

1 have the Meta report in front of you, you've mentioned
2 an example of a criticism you have of the state
3 superintendent, which is a letter in connection with
4 60119.

5 As you sit here today, what other examples are
6 there of instances where you believe the state
7 superintendent of public instruction acted in a way to
8 not provide or deprive California students of the
9 educational essentials they require?

10 A. Well, let me first ask you to clarify for me.
11 When you say the state superintendent of public
12 instruction, first of all, I, in my report, I begin in
13 the 1970's with an analysis of where California has gone
14 wrong. And we've had several superintendents since that
15 time.

16 And I guess I'd like you to clarify for me
17 whether you want me to speak to the specific actions of
18 the individuals who've held those offices, or to the
19 performance of the California Department of Education
20 which is supervised by that person.

21 (Mr. Herron leaves the deposition room at this
22 time)

23 BY MR. SEFERIAN:

24 Q. For the purposes of this question, do you have
25 any criticisms -- I'll withdraw that.

1 MR. ROSENBAUM: I'm sorry.

2 MR. SEFERIAN: -- in the last ten years --

3 MR. ROSENBAUM: Same objection.

4 BY MR. SEFERIAN:

5 Q. -- in connection with the, in connection with
6 providing California students with educational
7 essentials they require?

8 MR. ROSENBAUM: Same objections.

9 THE WITNESS: I think because I'm having so
10 much difficulty sort of understanding the level at which
11 you want me to answer the question, I will simply leave
12 it with the one example I gave you, and refer you to the
13 rest of my report and the other reports.

14 MR. SEFERIAN: Can you explain to me what
15 difficulty you're having with the question, and I can
16 state it maybe in a clearer way?

17 MR. ROSENBAUM: She's twice asked you whether
18 you're referring to the office or the individual.

19 MR. SEFERIAN: I'm only referring to the office
20 of the state superintendent of public instruction. Not
21 any individual who might hold that office.

22 Q. Just speaking of the office of the state
23 superintendent in the last ten years, what other
24 examples are there of that office not providing or
25 contributing to the deprivation of educational

1 essentials to California students?

2 A. Well --

3 MR. ROSENBAUM: Same, same objections.

4 THE WITNESS: Well, framed in that way, I would
5 say that all of the problems that are detailed in these
6 reports are examples of this, in that that office was,
7 has been complicit in implementing a fundamentally
8 flawed set of policies.

9 And I would say that sometimes in spite of the,
10 the wishes of the individual holders of, of that office.

11 (Mr. Herron re-enters the deposition room)

12 BY MR. SEFERIAN:

13 Q. What do you mean when you say in connection
14 with the state superintendent, that that office has been
15 complicit in implementing policies?

16 A. I'm not sure what about that you don't
17 understand. If you could help me understand what...

18 Q. When you say that that office, referring to the
19 state superintendent, has been complicit in implementing
20 policies, are you saying that in the context that the
21 policies were enacted by the office of the state
22 superintendent?

23 A. Well, the role of the superintendent and the
24 department over which the superintendent presides is
25 charged with the responsibility of carrying out the

1 There's also been considerable political
2 negotiation which, in fact, has contributed in itself to
3 the problems that I've written about, and that others
4 have written about in the reports, with the multiple
5 agencies seeming to assume authority for policy making
6 as well as policy implementation.

7 BY MR. SEFERIAN:

8 Q. Under current law, what is your understanding
9 of the, the general role of the state superintendent in
10 California?

11 MR. ROSENBAUM: Same objection.

12 THE WITNESS: Well, I can only give you the
13 non-technical definitions, since I would not want to be
14 so presumptuous to cite the law for you right now.

15 But the, the role of the Department of
16 Education has been to carry out the policies of the
17 state and to help administer federal policies.
18 Although, as I've said, that, that role has been
19 preempted in many cases, and most recently by the
20 governor.

21 I think the reason why Senator Alpert proposed
22 as a first piece of legislation coming out of the
23 California master plan recommendations the governance
24 bill is that there is considerable confusion about the
25 role of the department vis-a-vis the other state

1 policies of the state, either that have been determined
2 by the state board of education under the direction of
3 the governor, or from legislation.

4 So they have the sometimes unfortunate task of
5 trying to craft sensible regulations and implementation
6 strategies for policies that have either created or
7 contributed to these problems, or fail to correct them.

8 Q. When you said that the office of the state
9 superintendent was complicit in implementing state
10 policies, is that in reference to the office carrying
11 out educational policies of the state?

12 A. Well, what I'm understanding you to say is
13 essentially what I said. So if my assumption is correct
14 about that, then the answer would be yes.

15 Q. What is the role of the state superintendent of
16 public instruction in California?

17 MR. ROSENBAUM: Calls for a legal conclusion.
18 It's vague also.

19 THE WITNESS: It's certainly changed over time.
20 As other branches of state government have increasingly
21 become interested in the, the conduct of education in
22 the state.

23 So it's, I suppose there are some legal
24 definitions of what the circumscribed role is that I
25 don't recall the technicalities of right now.

1 entities.

2 BY MR. SEFERIAN:

3 Q. Looking just at the role of the state
4 superintendent apart from the Department of Education,
5 what is the state superintendent's role, your
6 understanding, in California?

7 MR. ROSENBAUM: Same objections.

8 THE WITNESS: I'm just, I'm not able to
9 separate the superintendent of public instruction from
10 the Department of Education, because I see them as very
11 integral. That the department, at least in my
12 understanding, is the body through which the
13 superintendent exercises his or her responsibilities.

14 BY MR. SEFERIAN:

15 Q. In forming your opinions in this case, did you
16 make any distinction between what responsibilities the
17 state superintendent might have that are in any way
18 distinct from responsibilities that the Department of
19 Education might have?

20 A. No.

21 Q. Does the state superintendent in California
22 have the authority or obligation to set educational
23 policy for the state, as far as your understanding?

24 MR. ROSENBAUM: I'm just going to -- I don't
25 want to interrupt your questions, Tony. So if you don't

1 mind, I'll just have a continuing set of objections as
2 to this line.

3 MR. SEFERIAN: Sure.

4 THE WITNESS: In the, in the role of sort of
5 operationalizing and implementing policy, the, certainly
6 the superintendent and the department do make policy
7 whenever they establish a set of guidelines or
8 regulations that are to be followed as programs and are
9 carried out.

10 I sometimes, you know, there's a lot of
11 controversy right now, and been some real tensions in
12 the past, the recent past, between the state
13 superintendent and the school board about who has the
14 right to make policy.

15 Again, it's a situation that's reflective of
16 the general ambiguity over which office has which state
17 roles.

18 BY MR. SEFERIAN:

19 Q. When you used the term make policy in the state
20 educational context, what do you mean by that?

21 A. Generally I define policy as decisions about
22 the conduct of education, patterns of expected behavior,
23 rules that should govern people's actions, guidelines
24 that should be followed.

25 Q. If the legislature passes an education-related

1 (Mr. Rosenbaum leaves the deposition room)

2 BY MR. SEFERIAN:

3 Q. Can you give an example of a set of policies,
4 regulations or guidelines issued by the California
5 Department of Education that you're critical of in
6 connection with providing students with educational
7 essentials they require?

8 A. I, again, I said I will give you an example,
9 but don't want to exclude anything that is in any of the
10 other reports.

11 One example is the guidelines around the
12 operationalization of the IIUSP program, in particular
13 the procedures by which the state has certified
14 individuals as external evaluators that can be used by
15 schools under the IIUSP program as sort of assistants.

16 I think that they've been quite generous, and
17 the guidelines are far more generous in certifying
18 people as having the competence to provide help to
19 schools than they should be. That's one example.

20 I think, of course, that example is elaborated
21 in Mr. Mintrop's report and mentioned in the Grubb and
22 Goe report, and several others.

23 (Mr. Rosenbaum and Mr. Hajela re-enter the
24 deposition room)

25 ///

1 law and the Department of Education issues regulations
2 or guidelines in connection with that law, would you
3 consider the guidelines or regulations that the
4 department enacts to be making policy?

5 A. Yes.

6 Q. Are there any guidelines or regulations issued
7 by the Department of Education that you're critical of
8 in connection with providing California students with
9 educational essentials they require?

10 MR. ROSENBAUM: That's asked and answered.

11 THE WITNESS: I would certainly give you all of
12 the same answers to that question that I gave you when
13 you asked earlier about criticisms of the
14 superintendent.

15 (Mr. Hajela leaves the deposition room)

16 BY MR. SEFERIAN:

17 Q. As you sit here now, or in your Meta report,
18 are there any examples of Department of Education
19 regulations or guidelines that you're critical of in
20 connection with providing California students with
21 educational essentials they require?

22 A. Yes. I think both the Meta report and all of
23 the other reports on which it's based is, contains
24 numerous examples of inadequacies in the policies,
25 regulations and guidelines.

1 BY MR. SEFERIAN:

2 Q. You mentioned the guidelines in connection with
3 the IIUSP program.

4 Are there any other examples that come to mind
5 of guidelines or regulations issued by the Department of
6 Education that you're critical of in this case?

7 A. Well, you know there are many, many that come
8 to mind. And if you want me to start at the beginning
9 and list them all, I will do that. But they're all
10 fully, or at least I think reasonably explained in my
11 reports and the other expert reports.

12 Q. I'm asking you to list the guidelines and
13 regulations that you're critical of, as you sit here
14 today, issued by the Department of Education in
15 connection with providing California students with
16 educational essentials they require.

17 A. One category of such guidelines are the
18 guidelines that surround the coordinated compliance
19 review process. And that is defined far more narrowly
20 than I think could and should be the case, by focusing
21 on the specifics of the requirements of categorical
22 programs rather than also extending those reviews to
23 include the more foundational elements of schooling on
24 which those programs depend.

25 I think that is also the case in the carrying

1 out of the additional reviews by the Comite unit. The
2 decision -- it's also the case in terms of the, some of
3 the focus on learning elements of the, the WASC process,
4 to the degree that the department participates in it.

5 As I've said before, I think the, the
6 department's interpretation, at least of the uniform
7 complaint procedure, by making clear to members of the
8 department and local school districts that it
9 essentially has no interest and will not respond to
10 complaints that deal with the foundational elements of
11 schooling, staffing patterns, staffing problems,
12 facilities problems, problems with instructional
13 materials and textbooks, is inappropriate and
14 unfortunate set of guidelines to issue.

15 I think in reviewing the IIUSP plans submitted
16 by schools in, having difficulty, the fact that the
17 plans don't have to be submitted and only a five-page
18 summary of the plan is submitted to the state is a
19 decision that has exacerbated problems rather than to
20 help solve them.

21 I think the fact that the way the department
22 has responded to the requirement for school
23 accountability report cards has been problematic, in
24 that they don't review the data that is placed on those
25 school report cards, check for accuracy, or in any way

1 hadn't initially been certified with English language
2 development credentials, or more recently, the Platter
3 Recack (phonetic) credentials, has been very
4 insufficient and first tend to experience with some of
5 those 45-hour, 1969 training sessions.

6 And frankly think it's pretty laughable that
7 those sessions would make up for the absence of any
8 professional training in how to make knowledge
9 accessible, basic knowledge accessible to students whose
10 primary language is not English.

11 I think those are examples that come to mind as
12 I sit here.

13 Q. In California, do you see any different role
14 between the state superintendent and the state
15 Department of Education?

16 MR. ROSENBAUM: That's been asked and answered.

17 THE WITNESS: My view is that the Department of
18 Education is the body of, provides the superintendent
19 with the capacity to, to carry out their
20 responsibilities.

21 BY MR. SEFERIAN:

22 Q. When you say -- did you say "their"
23 responsibilities?

24 A. The elected superintendent's responsibility.

25 Q. In California, what are the elected

1 make clear to schools that they take seriously the
2 accuracy of the school accountability report cards, or
3 insist that they be widely distributed.

4 Certainly the response to or the lack of
5 scrutiny of the 60119 hearing requirement. Around the,
6 the Star program and the academic performance index, I
7 think that they're both technical and substantive
8 decisions that have been made that have made the API and
9 the Star program less useful than it could have been.
10 And should have been.

11 Those are some things that come to mind as I
12 sit here. And again, I bear many more details in the
13 reports.

14 Q. Are there any other that come to mind, as you
15 sit here today?

16 A. Certainly there are a number of things in
17 relationship to facilities. The decisions about the,
18 the amount and kind of support that's provided or not
19 provided to help districts plan and carry out routine
20 maintenance and more careful systemic planning for the
21 ongoing modernization of schools when needed.

22 When it comes to English learners, I think that
23 the kind of professional development that has been
24 offered to satisfy the legal requirements of additional
25 training of teachers who work with English learners, who

1 superintendent's responsibilities?

2 A. How, how is that question different from the
3 one you asked me earlier? I thought I was answering
4 that question earlier when I talked about the, that
5 there be, there are some legal definitions, which I
6 don't recall in their precision, and then there are some
7 more functional and political territory, I guess, or, or
8 purview, which is contested, and has gotten politically
9 negotiated between the superintendent and the board and
10 the, the, more recently, the governor, secretary of
11 education.

12 Q. With regard to the CCR process, is your
13 understanding that the Department of Education defines
14 the elements that are reviewed in schools and districts
15 in that process?

16 A. I think the, there's a division of labor here.
17 I think the federal government requires that the state
18 monitor compliance with the federal regulations. And so
19 there are elements that are defined by the federal
20 government.

21 There are legislative requirements with the
22 state's own categorical programs that are defined
23 through legislation. And then there are additional
24 guidelines that are developed by the department as they
25 try to create procedures to operationalize the way one

1 would monitor the elements that are defined in state and
2 federal law.

3 Q. In connection with the CCR process, you
4 discussed the elements that were reviewed in the
5 process.

6 Do you have any other general categories of
7 criticism of the department in connection with the CCR
8 process?

9 MR. ROSENBAUM: I think that mischaracterizes
10 her testimony. I don't know if you're referring to her
11 testimony or report, but in either case, I think it
12 mischaracterizes.

13 BY MR. SEFERIAN:

14 Q. I'm not trying to misstate what you said. But
15 one of the items is, that you mentioned in this
16 deposition today was that in the CCR process, the
17 department defined more narrowly than could and should
18 be the case some of the elements that are reviewed, or
19 words to that effect.

20 I'm asking whether there are any other types of
21 categories of criticisms you have of the department
22 and/or the superintendent in connection with the CCR
23 process.

24 MR. ROSENBAUM: Same objections.

25 THE WITNESS: Yes. I think as I discuss in my

1 process that you can think of right now?

2 A. I think my, I will stick with the answer that I
3 just gave you as being fairly comprehensive, but also I
4 wouldn't want to exclude anything that's in the other
5 reports.

6 Q. In connection with your review and your
7 opinions in this case, did you perform any type of
8 analysis of the, the staffing and resource capabilities
9 of the Department of Education?

10 A. Not a systematic analysis of the staffing and
11 resource capabilities, although I think it's quite
12 well-known among educational policy analysts that the
13 department has been severely stretched and its work
14 undermined by a lack of resources that would enable it
15 to provide both the oversight and support that it's
16 expected to perform.

17 Q. In connection with your discussion of the UCP
18 process in today's deposition, is it your opinion that
19 the Department of Education has the -- or let me
20 withdraw that.

21 In connection with the UCP process, are there
22 other criticisms you have of the department in addition
23 to not reviewing enough different types of complaints?

24 MR. ROSENBAUM: Vague and ambiguous.
25 (Mr. Herron leaves the deposition room)

1 instructional materials report more at length than in
2 this report, the fact that the self-study is often the
3 only part of the CCR process, that the self-study is
4 often accepted as the final report.

5 I think that's troubling. I have some concerns
6 about the -- and again, I'm not, I absolutely realize
7 that the Department of Education has, especially in
8 recent years, has been under severe resource
9 constraints.

10 But the, it seems to me, as I talk in the
11 reports, that the process could be much more systematic
12 in terms of staff training, the reporting strategies,
13 the follow-up strategies.

14 So yes, I have criticisms of things other than
15 simply the fact that the, there's not systematic
16 attention paid to the most foundational elements of
17 schooling on which the categorical programs rest.

18 BY MR. SEFERIAN:

19 Q. Will you just list those general categories of
20 criticisms you have in connection with the CCR process?
21 Or did you just list those?

22 A. I listed some. And, and referred you to my
23 report for more, both my report and the reports of
24 others for a more comprehensive treatment of this topic.

25 Q. Are there any other criticisms of the CCR

1 THE WITNESS: I think that as I said many days
2 ago, when we first discussed the uniform complaint
3 procedure, that in addition to not covering these basic
4 elements that we've discussed here today, that the, the
5 existence of that complaint procedure is far less
6 well-known than it could and should be to be effective,
7 and the procedures make it less accessible, especially
8 for those in low income communities, than, who are
9 experienced barriers of language access, transportation
10 access, familiarity with the administrative procedures
11 than it could be.

12 I don't, my view is that the department could
13 have made it a much far more user friendly procedure.

14 BY MR. SEFERIAN:

15 Q. What efforts, if any, has the Department of
16 Education made to disseminate the existence of the
17 uniform complaint procedures?

18 A. Well, I'm very aware that it's made clear to
19 school districts that they should have some procedure
20 that conforms with the, with the uniform complaint
21 procedure. And if you look on the internet, you'll see
22 lots of school district sites.

23 Their recognition of, I guess, a letter or some
24 communication from the department that they should
25 accommodate this procedure in their local administration

1 of the schools.
 2 (Mr. Hajela and Mr. Rosenbaum leave the
 3 deposition room)
 4 BY MR. SEFERIAN:
 5 Q. Are there specific actions that you believe the
 6 Department of Education should have taken to make the
 7 existence of the uniform complaint procedures more
 8 well-known?
 9 A. I'm certainly not prepared to sit here today
 10 and give a prescription for the specific actions that
 11 could be taken. But certainly there are, are things
 12 that it could have done.
 13 (Mr. Rosenbaum re-enters the deposition room)
 14 BY MR. SEFERIAN:
 15 Q. Earlier in today's deposition you mentioned
 16 that in connection with the 60119 requirements, there
 17 was a lack of scrutiny of the 60119 hearing requirement,
 18 or words to that effect, by the Department of Education.
 19 What did you mean by that?
 20 A. Well, I know that from the deposition testimony
 21 and my perusal of school board minutes, for example, as
 22 in San Francisco, in conjunction with the instructional
 23 materials report, there is considerable evidence of the
 24 procedure being either not performed at all, or
 25 performed in such a superficial fashion that it would be

1 deposition room)
 2 THE WITNESS: My understanding is that the
 3 State Board of Education appointed by the governor is
 4 expected to make policy on a range of educational
 5 issues. It has a responsibility to direct the
 6 Department of Education to carry out those policies.
 7 The state also sometimes takes on the role of
 8 being the designated body for making state policy
 9 related to federal requirements. For example, the state
 10 board was designated the, the body that would frame
 11 California's response to the No Child Left Behind Act,
 12 essentially a policy-making body.
 13 (Mr. Herron leaves the deposition room)
 14 BY MR. SEFERIAN:
 15 Q. What are your criticisms of the performance of
 16 the State Board of Education in connection with
 17 providing California students with educational
 18 essentials they require?
 19 A. Well, the, the litany of things that I gave you
 20 before I think hold here, to the extent that those
 21 decisions have been a function of board decisions about
 22 policy.
 23 So, for example, when it comes to some of the
 24 elements in the academic performance index and how those
 25 elements are defined and implemented, while the

1 unlikely to ever yield accurate and helpful information.
 2 And with, with no consequences or oversight or
 3 scrutiny of those practices by the department.
 4 Essentially, simply accepting the certification that the
 5 hearing had been held and the, as compliance.
 6 Q. Would you agree that school districts'
 7 compliance with the 60119 requirements is reviewed in
 8 the annual audits that are performed in school
 9 districts?
 10 A. I think there's not sufficient review and, and
 11 I'm not prepared to sit here without more information to
 12 talk about all of the points at which that insufficiency
 13 occurs.
 14 But it adds up to inadequate oversight of that
 15 process.
 16 Q. At the present time, do you know whether the
 17 60119 requirements are reviewed in the annual audits
 18 that are conducted by school districts?
 19 A. No.
 20 Q. What is your understanding of the role of the
 21 State Board of Education in California?
 22 MR. ROSENBAUM: Asked and answered I think
 23 several times now.
 24 State Board of Education? I'm sorry.
 25 (Mr. Herron and Mr. Hajela re-enter the

1 department has had considerable responsibility for
 2 working out the details of those policies, some of the
 3 fundamental decisions have been made at the state board
 4 level.
 5 So again, these domains, and as I explained
 6 before that there is a great deal of overlap and,
 7 frankly, contention over who decides what. So, and part
 8 of one of my major criticisms is that it's very
 9 difficult to, to know who has clear responsibility for
 10 what.
 11 So the, the state board, like the state
 12 Department of Education, has been complicit in making
 13 decisions and directing the implementation of decisions
 14 that have contributed to the problems.
 15 (Mr. Herron re-enters the deposition room)
 16 BY MR. SEFERIAN:
 17 Q. In connection with the CCR process, do you have
 18 any criticisms specifically with reference to the State
 19 Board of Education?
 20 A. No. I mean not that I'm recalling as I sit
 21 here today.
 22 Q. Earlier in the deposition today you testified
 23 about criticisms of the state Department of Education in
 24 areas including the CCR process, Comite, focus on
 25 learning, the UCP, IIUSP, the accountability report

1 card, 60119, Star program and API, facilities and
2 English learners.

3 Are there any other areas that come to mind, as
4 you sit here today, that you have criticisms with
5 respect to the State Board of Education?

6 A. Well, I would give you essentially the same
7 answer that I just gave. That in most of those domains,
8 it's very difficult to separate out the lines of
9 responsibility between the board and the department.

10 Although, in theory, the board's supposed to
11 make the policy; the department carries out the policy.
12 But, of course, policy decisions, as I explained much
13 earlier, takes place at many different levels. And so
14 the guidelines and regulations are policies as well as
15 the specific policy decisions made by the board.

16 Again, I see the board as being complicit in
17 this array of problems that have been outlined in the
18 Meta report and in the, the other experts' reports.

19 Q. Are there any other domains with respect to
20 which you're critical of the state department, State
21 Board of Education?

22 A. Sure. I think the, most recently, the
23 interpretation of the No Child Left Behind legislation,
24 the definition that the board passed in May of 2002
25 defining a highly qualified teacher as anyone with a

1 this case. So I'm not sure it's relevant to talk about
2 it.

3 But I think it's certainly been unfortunate
4 that the the board has engaged in what's called the
5 reading wars and the math wars, and the big fight over
6 whether teachers should be using phonics-based methods
7 or more whole language methods.

8 I think these are interesting questions, but I
9 think it's unfortunate that the board has gotten all
10 caught up in it.

11 Q. Are those decisions in any way relevant to your
12 opinions in this case?

13 A. Not really, no.

14 Q. With regard to the CCR process, what is your
15 understanding of the type and extent of training, if
16 any, that the CCR team members undergo?

17 A. Is it possible -- I would like to have a copy
18 of my instructional materials report. I don't have my
19 copy with me.

20 Or I can actually, when we break for lunch, my
21 copy is at the California Pizza Kitchen, and I'm going
22 to go pick it up.

23 MR. ROSENBAUM: Let's go off the record.
24 (Discussion held off the record)

25 ///

1 bachelor's degree, and who's passed a test of basic
2 skills, and some minimal subject matter requirement, is
3 far less than it should be.

4 And I certainly think the way the state board
5 has gotten itself entangled in ideological decisions
6 about the specifics of, of the teaching of reading, for
7 example, has been unfortunate.

8 That certainly goes beyond the issues in this
9 case, but yes, there are other domains about which I
10 have concerns.

11 Q. Are there any other domains that come to mind,
12 as you sit here today, with respect to the State Board
13 of Education?

14 A. Certainly the, the whole set of decisions that
15 have been made around the high school exit exam. The
16 parent lack of concern that students be provided the
17 fundamentals of a good education and provided those
18 equitably before their earning of a high school diploma
19 is determined by their score on a single test.

20 That's another example that comes to mind right
21 now.

22 Q. What did you mean in connection with your
23 testimony regarding the state board ideological
24 decisions about specifics of teaching of reading?

25 A. As I said, this is an issue that goes beyond

1 (At the hour of 11:50 a.m. a luncheon recess
2 was taken. The deposition was resumed at 1:07 p.m., the
3 same persons being present, with the exception of
4 Mr. Hajela, who is not present at this time)

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 LOS ANGELES, CALIFORNIA, FRIDAY, APRIL 11, 2003
2 1:07 p.m.

3
4
5 EXAMINATION (Resumed)

6
7 BY MR. SEFERIAN:

8 Q. Dr. Oakes, during our lunch break, did you have
9 any discussions with anyone about this deposition or
10 this case?

11 A. I think both Ms. Fanelli and Mr. Rosenbaum
12 assured me that it was going well. This deposition.

13 MR. ROSENBAUM: I, I didn't talk to you, but.

14 THE WITNESS: I thought you said that.

15 BY MR. SEFERIAN:

16 Q. You felt Mr. Rosenbaum's vibes.

17 Over the lunch break, did you review any
18 documents relating to this case?

19 A. No.

20 Q. Do you know what type and extent of training,
21 if any, the CCR team members undergo?

22 A. Not with, not with specificity right now, as I
23 recall.

24 Q. What is your education and experience with
25 respect to public school finance issues?

1 But I think that that would certainly follow
2 from decisions about what functions the department and
3 the superintendent should have responsibility for under
4 our reformed system.

5 Q. When you say size and scope of work, can you be
6 more specific than that?

7 A. Well, I can imagine all kinds of possibilities,
8 both from greatly broadening the scope of work of the
9 department so that it took greater responsibility, say,
10 for ensuring comprehensive data reporting and -- data
11 gathering and data reporting.

12 I can see it possibly being -- I mean I'm not
13 suggesting these as possibilities with any sort of
14 substantive recommendation behind them, but I can
15 imagine that it could be very different.

16 I know that certainly the Senator Alpert's
17 proposal, which I neither, you know, reject or endorse,
18 suggests that the superintendent should become like an
19 inspector general, and have the responsibility of
20 maintaining a monitoring system, and that the
21 implementation functions should be transferred to the
22 Secretary of Education and the governor's office.

23 And that's again, I wouldn't, I'm not either
24 endorsing or rejecting that idea. But it certainly
25 shows that there could be some modifications to the

1 A. Well, in my general background and training
2 about the conduct of schooling and education policy,
3 I've both participated in courses, both as a student and
4 a teacher, that deals with school finance as one element
5 of education policy making.

6 Q. Do you have any degrees or specializations in
7 school finance?

8 A. No. My Ph.D. was in the study of schooling,
9 which is a broad look at schooling issues, policy and
10 practice generally.

11 So the extent to which it's, finance is part of
12 that, it's encompassed in my, in my preparation. But
13 not, not specialization narrowly focused on school
14 finance.

15 Q. Do you have any opinions in this case about the
16 organizational structure of the California Department of
17 Education?

18 A. No.

19 Q. Do you have any opinions about whether, if all
20 of your recommendations in this case were enacted, the
21 California Department of Education would be expanded or
22 contracted or changed in some way?

23 A. Well, I think it's certainly possible that
24 there would be some change to both the size and scope of
25 work of the department.

1 department and the superintendent's role.

2 Q. As you sit here today, do you have any specific
3 substantive recommendations with respect to the size and
4 scope of the work of the Department of Education?

5 A. No.

6 Q. Have you heard the term "local control" used in
7 connection with school education governance?

8 A. Yes.

9 Q. What does "local control" mean?

10 A. Well, I think in common usage, local control
11 usually means the, the responsibility of local school
12 districts to make decisions about the conduct of, of
13 schooling in their communities.

14 The idea is less an administrative one than
15 conceptual one, that local communities should have some
16 decision-making authority over the conduct of schooling
17 in, in those communities.

18 Q. Why is local control less an administrative and
19 more conceptual idea?

20 MR. ROSENBAUM: Misstates her testimony.

21 THE WITNESS: I think I described two
22 definitions that are in common use. One definition has
23 to do with governance, specific governance of a local
24 school board having authority and, to make policy
25 decisions and to direct its local school administration

1 on how to carry out those decisions.

2 More conceptually, the conceptual part is that
3 it's an idea that's, has deep roots in American culture,
4 that local communities should be able to have some
5 authority over the conduct of schooling in their
6 communities.

7 BY MR. SEFERIAN:

8 Q. Do you believe that there are positive
9 attributes to local control in the educational context?

10 A. I couldn't talk about positive or negative
11 attributes in absence of a larger understanding of the
12 context that we were talking about.

13 Q. What do you mean by that?

14 A. That in the abstract, I would have to say it
15 depends.

16 Q. What does it depend on?

17 A. On other elements of the context, including the
18 particular ways an educational system was structured. I
19 think in no case, certainly in California, could local
20 control ever be considered an adequate substitute for
21 ultimate state responsibility for the provision of
22 education.

23 But within that strong enactment of that state
24 responsibility, that there's ample room for lots of
25 positive decisions to be made locally.

1 staff development, how parents can be most productively
2 involved in helping to achieve the curricular goals of a
3 school.

4 I think local professionals certainly are best
5 positioned to make decisions about pedagogical practice,
6 as long as they have access to lots of resources and
7 opportunities for professional development.

8 So those are some examples. Actually, I'll add
9 another. I think that the requirements for graduation
10 from high school are probably best or the decisions
11 about whether or not a child is, should be given a high
12 school diploma is one that should be established
13 locally.

14 The state certainly may have a role in it and
15 set some basic standards for, say, course requirements,
16 or even some sort of a statewide assessment of student
17 learning, but the actual decision about whether or not a
18 child is ready to graduate from high school or should be
19 awarded a diploma I think is one that could be best be
20 made locally.

21 Q. What should the state's role be in terms of
22 deciding whether an individual student is awarded a high
23 school diploma?

24 MR. ROSENBAUM: Same objections.

25 THE WITNESS: I think the state -- I mean,

1 Q. In the abstract, do you believe that the
2 governance aspect of local control has positive
3 attributes?

4 MR. ROSENBAUM: Vague and ambiguous, incomplete
5 hypothetical.

6 THE WITNESS: I think there are -- first of
7 all, it's not a question that I can answer sensibly in
8 the abstract.

9 But I think there are many positive things
10 about the idea of local, of local communities having
11 some influence and authority for the conduct of
12 schooling for their children.

13 BY MR. SEFERIAN:

14 Q. What are those positive things?

15 A. Are you asking me in what domains might there
16 be positive decisions made locally?

17 Q. Yes.

18 A. Well, I, I think much decision making about the
19 conduct of day-to-day practice in schools to meet
20 particular goals set by the state or established locally
21 in addition to the state goals can probably best be
22 decided locally.

23 So with strong community involvement and
24 professional involvement, making decisions about how a
25 day might be paced, which days might be best to use for

1 again, I'm not prepared to prescribe particular specific
2 policies.

3 But I think there's a mix of state standards,
4 and that certainly should be brought into consideration.
5 But that the ultimate decision should be done locally.

6 And I think we have an example of that in the
7 grade to grade promotion policies in the state, which at
8 least currently, to the best of my knowledge, still say
9 that while the student's performance on state tests
10 should certainly be a factor in a school's decisions
11 about grade to grade promotion, the specific criteria
12 that are set or that are used to establish a threshold,
13 and the variety of measures that come into play, should
14 be a matter of local decision making.

15 So I would envision something parallel to that.

16 BY MR. SEFERIAN:

17 Q. In the abstract, do you believe that the
18 conceptual part of local control has positive
19 attributes?

20 MR. ROSENBAUM: Asked and answered. Same
21 objections.

22 THE WITNESS: Yes. I think that the
23 engagement -- in fact, one of the things that I talk
24 about in this Meta report and one of the recommendations
25 is for reciprocal accountability.

1 The notion of reciprocity means that people in
2 local communities have some real influence and role in
3 the state's accountability system.

4 So that certainly would be one example of the
5 concept of local control having some real meaning and a
6 real positive role.

7 BY MR. SEFERIAN:

8 Q. Would you characterize California's current
9 educational system as a system of local control?

10 A. Well, again, you know, these terms are all
11 relative. I think that California, over time, has
12 become increasingly centralized, with the state playing
13 a larger role in controlling the conduct of education.

14 I think in my Meta report, I sketch a bit of
15 history to, that provides some of the details of how
16 that increased centralization has occurred. Although
17 California certainly is not without local control at the
18 same time.

19 Q. Do you have any opinion about, as compared to
20 other states, whether California has more or less local
21 control in the educational context?

22 MR. ROSENBAUM: Same objections.

23 THE WITNESS: I think there's considerable
24 research that has looked at the extent to which the
25 state has control and to which locals have control.

1 the political decisions that get made as these
2 principles are being enacted.

3 Q. Would you agree that if the principles that are
4 discussed in your Meta report are enacted, that would
5 result in less discretion for educational officials at
6 the local level?

7 MR. ROSENBAUM: Same objections.

8 THE WITNESS: Again, it, it would certainly
9 result in less discretion over whether or not the basic
10 essential foundational elements of education could be
11 provided to all children.

12 But my belief is that it could certainly retain
13 lots of flexibility locally about how the practices of
14 education are conducted.

15 BY MR. SEFERIAN:

16 Q. Are the opinions in your Meta report based, in
17 part, on an examination of the reports of the
18 plaintiff's other experts in this case?

19 A. In part, yes.

20 Q. If any of the information in the other
21 plaintiff's expert reports were inaccurate, would that
22 affect the basis for any of your opinions?

23 MR. ROSENBAUM: Vague and overbroad.

24 THE WITNESS: I think each of my opinions is
25 based on multiple sources of evidence and multiple

1 I suppose the two, kind of the examples that,
2 that most frequently get contrasted, in my experience,
3 have been Texas, as a highly centralized control state,
4 and Vermont, which is very much driven by local
5 policies.

6 And that even state policies are expected to be
7 developed through a consensus building process among
8 locals. California falls somewhere in between. And as
9 I said before, I think is moving increasingly towards
10 the centralized end of governance.

11 BY MR. SEFERIAN:

12 Q. If the recommendations that are contained in
13 your Meta report are implemented, would that result in
14 more or less centralization of governance in education
15 in California?

16 A. I think that's very dependent on the specifics
17 of the remedy that are devised. The state could, while
18 assuming ultimate responsibility for the provision of
19 education and oversight to ensure that it's both
20 adequate and equitable, could choose to delegate lots of
21 decisions about the carrying out of those policies to,
22 to local authority.

23 On the other hand, they could choose to develop
24 more centralized policy making and implementation than
25 is currently the case. I think it's very dependent on

1 analyses by multiple experts.

2 I think if there turned out to be inaccuracies
3 in the report, just as I pointed out an inaccuracy in my
4 report, and that I named a three -- a four-year period
5 as a three-year period, or something like that, it would
6 have very little bearing on the recommendations.

7 BY MR. SEFERIAN:

8 Q. When you reviewed the reports of the
9 plaintiff's other expert witnesses in connection with
10 the preparation of your Meta report in this case, did
11 you notice any weaknesses in any of the other reports?

12 MR. ROSENBAUM: Vague.

13 THE WITNESS: Well, each of the reports stakes
14 out territory that it attempts to cover. I think,
15 actually, I was extraordinarily impressed with the
16 quality of work in carrying out those assignments that
17 the scholars had set for themselves.

18 The reports certainly do not cover every aspect
19 of education in the State of California, and as is,
20 should be clear in my Meta report, I certainly go beyond
21 those reports in some ways.

22 BY MR. SEFERIAN:

23 Q. As you sit here now, do any weaknesses in any
24 of the other plaintiff's expert reports come to mind?

25 MR. ROSENBAUM: Same objections.

1 THE WITNESS: Not that are occurring to me at
2 the moment.

3 BY MR. SEFERIAN:

4 Q. Did you independently verify any of the
5 underlying source data of any of the other plaintiff's
6 expert reports?

7 MR. ROSENBAUM: Any of it?

8 MR. SEFERIAN: Yes.

9 THE WITNESS: Yes.

10 BY MR. SEFERIAN:

11 Q. Can you describe what you did in that regard?

12 A. Well, I certainly am very familiar from my own
13 firsthand analysis of many of the research studies that
14 are cited by the experts.

15 I've certainly read many of the depositions and
16 other documentary material that was produced in
17 conjunction with this case independent of the other
18 scholars' use of them.

19 I certainly know the, the full range of data
20 that were produced in conjunction with the Lou Harris
21 survey, and with the SPRA studies, independent of the
22 other scholars use of them.

23 I have some firsthand knowledge of specific
24 data sources; for example, the, the Rand Corporation's
25 classified production study that was cited both in my

1 I think that may, that may be the only one,
2 however.

3 BY MR. SEFERIAN:

4 Q. Would you agree that ideally you would have
5 reviewed all the underlying work papers of all the
6 plaintiff's other experts in forming your opinions in
7 this case?

8 A. No.

9 Q. Why is that?

10 A. Well, I have, the reason why the authors of the
11 other papers are the authors of the other papers is that
12 they have a very well developed and strongly established
13 expertise in, in the topics that they were addressing.

14 And are quite, I'm quite confident in their
15 ability to sort through the various sources of evidence
16 to make early decisions about how to approach our
17 report, and then subsequently revise those decisions to
18 produce a better report.

19 And I feel no need to second-guess them on
20 those decisions.

21 Q. Do you believe, do you believe that reviewing
22 the work papers of the plaintiff's other experts in this
23 case would provided you greater insight into the work
24 that those experts conducted and the methods that they
25 used?

1 instructional materials report, but also in the, for
2 example, in Linda Darling-Hammond's report on teachers.

3 So I have independent knowledge of that. So
4 those are some examples.

5 Q. Did you review any of the underlying work
6 papers of any of the other plaintiff's expert witnesses?

7 A. How would you define "work papers"?

8 Q. For example, with Dr. Fine, did you review the,
9 the surveys that were conducted, the documents generated
10 by her assistants, the correspondence between Dr. Fine
11 and the plaintiff's attorneys, the notes Dr. Fine took,
12 papers such as those.

13 MR. ROSENBAUM: Vague.

14 BY MR. SEFERIAN:

15 Q. Did you review those types of papers with
16 respect to the plaintiff's other experts?

17 MR. ROSENBAUM: Same objection. Compound.

18 THE WITNESS: Well, I can say with certainty
19 that I did not rely on anything like that for this
20 report. For the most part, I do not believe that I
21 reviewed anything like that.

22 Although, with Linda Darling-Hammond's report,
23 because I was engaged with it early on, I certainly saw
24 some early draft materials and had access to some of the
25 memos related to that report.

1 MR. ROSENBAUM: Asked and answered one question
2 ago.

3 THE WITNESS: I think it's possible. But I'm
4 also quite confident that the thousands of pages that I
5 did review provided me with ample evidence and analysis
6 to, to craft this Meta report.

7 With the exception, as I said, that some of the
8 Meta report goes beyond what is in those individual
9 expert reports.

10 BY MR. SEFERIAN:

11 Q. Before this case, had you ever prepared what
12 you would describe as a Meta report?

13 A. Actually, I have. My most recent book, called
14 "Teaching to Change the World," which is now in its
15 second edition, is a synthesis of the literature done by
16 other scholars on a wide variety of topics, many of
17 which are the same as those contained in the Meta
18 report.

19 I mean I have many other instances of doing
20 research reviews throughout my career that quite
21 parallel the process of reviewing the research that was
22 done for this case.

23 Q. Do other examples of meta reports that you
24 prepared come to mind now?

25 A. Sure. I have reviewed the research, for

1 example, in 1990 for -- the National Science Foundation
2 asked me to review all of the research done that would
3 help explain why women and African Americans and Latinos
4 participate in science and mathematics and
5 technology-related fields at lower rates than do white
6 and Asian males. That's one example.

7 I was asked by a group housed at the University
8 of Maryland, called The Common Destiny Alliance, to
9 review and produce a synthesis for them of what research
10 has told us about the use of ability grouping practices
11 as it relates especially to the educational
12 opportunities of low income children and children of
13 color.

14 Nearly every publication that I've ever
15 developed begins with a review of literature on the
16 topic, and that review informs conclusions and helps
17 form the basis of recommendations.

18 (Mr. Herron leaves the deposition room)

19 BY MR. SEFERIAN:

20 Q. In any of the other med a reports that you have
21 prepared, did you review the underlying source documents
22 and work papers of the authors?

23 A. It's not a common practice when you're
24 reviewing research by established scholars to look at
25 the underlying work.

1 work papers of the researchers in connection with a Meta
2 report that you've prepared?

3 (Mr. Rosenbaum leaves the deposition room)

4 THE WITNESS: I think only in those cases where
5 the research being reviewed was conducted by a
6 collaborator on that particular project.

7 BY MR. SEFERIAN:

8 Q. In those cases, why would you have done that?

9 A. Because a collaborator would have brought them
10 to the table and said "I think we ought to take a look
11 at this. It seems relevant to this review."

12 Generally, reviews are reviews of completed
13 published work by others. But if you're engaged in
14 review with someone who has some of the underlying data
15 that they have used in a published work, it, I'm trying
16 to recall, but it seems to me that revisiting some of
17 those analyses is something that I had done.

18 (Mr. Rosenbaum and Mr. Herron re-enter the
19 deposition room; Mr. Hajela is now present)

20 BY MR. SEFERIAN:

21 Q. I'd like to ask you to look at page 1 of your
22 Meta report, and specifically, the first sentence after
23 the first bullet point.

24 MR. HAJELA: If you're on page 1, I didn't miss
25 anything.

1 I mean there are some, there are some
2 methodologies that have you do that, especially when
3 you're synthesizing or doing a med a analysis of
4 quantitative studies, that you may go back and read --
5 well, not even in that case do you look at the
6 underlying papers.

7 It's generally not a -- certainly in reports
8 like this, that would not be accepted practice.

9 Q. In any of the other med a reports that you've
10 prepared, did you look at the underlying papers of the
11 researchers whose work you were synthesizing?

12 MR. ROSENBAUM: I thought that was answered
13 before, but you can do it again.

14 THE WITNESS: Is, is that what you just asked
15 me before or --

16 MR. ROSENBAUM: I thought you asked that two
17 questions ago.

18 THE WITNESS: You could tell me how it's
19 different, if I'm not remembering.

20 BY MR. SEFERIAN:

21 Q. My recollection is that you testified that it
22 is not a common practice in the Meta report context to
23 look at the underlying papers.

24 And my question is although it's not a common
25 practice, have you ever looked at the underlying papers,

1 (Discussion held off the record)

2 BY MR. SEFERIAN:

3 Q. The sentence says: Qualified teachers,
4 relevant instructional materials that students may use
5 at school and at home, and clean, safe and public
6 facilities is fundamentally important to students
7 education.

8 Are there conditions in addition to qualified
9 teachers, relevant instructional materials that students
10 may use at school and at home, and clean, safe and
11 educationally facilities that are fundamentally
12 important to students' education?

13 A. Yes.

14 Q. What are those?

15 MR. ROSENBAUM: You're absolutely welcome to
16 ask this question, but I believe that Dr. Oakes has gone
17 into this at considerable length, particularly
18 Mr. Herron's questions.

19 But you're free to do it. But I just want to
20 make clear that I believe a considerable amount of this
21 deposition has been devoted to this question already.
22 And to Mr. Hajela's questions also. Both sets of
23 questions.

24 But go ahead.

25 THE WITNESS: Well, I would certainly refer you

1 to the general discussion that we had this morning
2 earlier in this, not you and I, but in this discussion
3 about these three components of educationally important
4 education.

5 One being the very basic tools, such as
6 teachers, materials and facilities that are the subject
7 of this case, and are sort of representative of that
8 class of absolute essentials to which I say things like,
9 add things like time on instruction, pedagogy that makes
10 knowledge accessible, as sort of fundamentals.

11 A second is the things that the state has
12 deemed to be educationally important enough that they've
13 enabled districts to provide it to at least half of
14 students.

15 And third is the component that we could call
16 the standards component, or the fairness component,
17 which has to do with making sure that every child has in
18 their schooling environment the resources, conditions
19 and opportunities that give them a reasonable chance to
20 compete for a place at the state's most competitive
21 public institution.

22 BY MR. SEFERIAN:

23 Q. Does the answer that you just gave, does that
24 contain the components of what you testified earlier
25 this morning constitute a basic education?

1 A. I think we had considerable discussion this
2 morning about the differences between terms like "basic"
3 and "adequacy" that I certainly am not using in any sort
4 of narrow, technical way.

5 But I think these basic features of an
6 education, like teachers and materials and facilities,
7 are one component of an education that I would consider
8 adequate, which includes the other components as well.

9 So I wouldn't certainly use the words "basic"
10 and "adequacy" interchangeably.

11 Q. Did you use the term "time of construction," or
12 "time on instruction"?

13 A. "Time"? Yes.

14 Q. What did you mean by that?

15 A. That children need to have enough time that
16 allows them to learn what the state expects them to
17 learn. That time should be provided equitably to all
18 children in the state.

19 And that it should be sufficient in order to
20 give students a reasonable chance of learning what they
21 need to know in order to compete for post-secondary
22 education.

23 Q. In your Meta report, did you attempt to
24 comprehensively discuss all of the conditions that are
25 fundamentally important to students' education?

1 A. No.

2 Q. In your Meta report, did you attempt to rank
3 the relative importance of all the conditions that are
4 fundamentally important to students' education?

5 A. No.

6 Q. In your Meta report, did you attempt to
7 quantify students' access to qualified teachers,
8 relevant instructional materials, and educationally
9 appropriate facilities in California today as compared
10 with any definite time in the past?

11 A. I think the standard is the same. That every
12 child needs a qualified teacher. Every child needs
13 materials sufficient to provide them access to the
14 knowledge they need to learn, both at school and at
15 home.

16 And every child needs a decent, safe, uncrowded
17 school facility. And while the precise numbers may
18 change as the population fluctuates, the standard
19 remains the same.

20 Q. In your Meta report, did you attempt to
21 quantify the students' relative access to qualified
22 teachers, relevant instruction materials, and safe and
23 educationally appropriate facilities in California today
24 as compared with a certain time in the past, such as two
25 years ago, five years ago, or ten years ago?

1 A. I think that the Meta report certainly lays out
2 the patterns of disparity among students in their access
3 to those things, so the answer to this part of the
4 question is yes.

5 Second, in terms of reference to prior time,
6 some of the expert reports that I rely on talk about
7 trends over time, and others do not.

8 So to the extent that the other reports made
9 comparisons, I think Linda Darling-Hammond's paper gives
10 some trend lines, for example, in access to qualified
11 teachers, then this met a includes those, or was meant
12 to encompass those analyses as well.

13 Q. Did your Meta report attempt to comprehensively
14 review the role of any resources other than teachers,
15 textbooks and facilities in providing or limiting access
16 to students' opportunities for achievement?

17 A. Those three are certainly the, the focus of the
18 Meta report. Although, as I've explained before, that
19 they are really symptoms of the lack of opportunity and
20 resources and conditions.

21 The report certainly talks about that problem
22 generally as well as in terms of these three specifics.

23 Q. Were there any specifics in addition to those
24 three that you comprehensively analyzed in your Meta
25 report?

1 A. Well, the Meta report does a lot of things. It
2 talks about those three things, and then it gives a
3 historical analysis of, of conditions, generally, in
4 patterns, in governance, in funding. It provides a
5 pretty comprehensive overview of this, of policy
6 mechanisms. And recommends changes.

7 Now, those, all of those touch on many things.
8 I think that the three things we've been talking about,
9 teachers, textbooks and facilities, certainly are the
10 ones that get the most elaborate treatment in this
11 report.

12 Q. Are there any other than teachers, textbooks
13 and facilities that you would describe as getting
14 elaborate treatment in your Meta report?

15 A. Well, I think the one issue is, and it's an
16 off, offshoot of the facilities issue, is certainly the
17 constricted amount of time in school afforded to
18 students who are Concept 6 calendars.

19 To the best of my recollection, those are the,
20 the issues that get dealt with comprehensively in this
21 report. Not the issues, but the specific educational
22 basic tools that get dealt with comprehensively in this
23 report.

24 Q. In your Meta report, did you attempt to
25 quantify the availability of those specific tools,

1 BY MR. SEFERIAN:

2 Q. On page 1 of your Meta report, in the second
3 bullet point, in the second sentence, you state, in
4 part, that the burdens of these serial shortfalls are
5 borne most heavily in high poverty schools.

6 In connection with the work you performed in
7 your meta analysis, did you attempt to quantify the
8 access to the tools, text, teachers, facilities
9 specifically in high poverty schools?

10 MR. ROSENBAUM: It's vague.

11 THE WITNESS: Well, yes. I think that the, the
12 synthesis here draws heavily on the analysis in a number
13 of the reports of the incidents of these shortages in
14 schools characterized by large numbers of students in
15 poverty.

16 That's a theme that reoccurs throughout the
17 reports, and that many of the reports quantify the
18 extent to which the burdens fall most on poor children.

19 My report, Linda Darling-Hammond's report, some
20 other reports, but certainly Kenji Hakuta's report, all
21 talk specifically about the convergence of these, these
22 problems and their convergence in schools that
23 disproportionately enroll low income children.

24 (Brief interruption)

25 (Mr. Rosenbaum leaves the deposition room)

1 teachers, textbooks and facilities, instructional time,
2 in any specific school districts or schools?

3 A. Well, there are some examples in all of the, or
4 at least in a large number, maybe all, of the other
5 expert reports on which this report relies, that gives
6 specific instantiations of these problems and disparity
7 and shortages in particular school districts.

8 So in that regard, yes.

9 Q. Would you describe your Meta report as a
10 comprehensive analysis of the existence, or lack
11 thereof, of those educational tools in school districts
12 in California statewide?

13 MR. ROSENBAUM: Vague.

14 THE WITNESS: Certainly not comprehensive, in
15 that it provides systematic school district by school
16 district analysis.

17 This report is a synthesis of, of the other
18 expert reports, all of which treat the issues on a
19 statewide basis, using district and school level
20 analyses as examples.

21 But none gives a comprehensive, statewide
22 system by system account. Except Mr. Corley's probably
23 comes the closest, in that he gave lots of detailed
24 accounts of particular school districts.

25 ///

1 BY MR. SEFERIAN:

2 Q. What does the term "high poverty schools" mean
3 as used on page 1 in your Meta report?

4 A. Well, I'm using it here in a general sense.

5 The way that the, most of the analyses quantify it are
6 based on the percentage of children who qualify under
7 the federal and state programs for free and reduced
8 priced meals at school, or the numbers of children in a
9 particular school whose families are eligible for Cal
10 Work assistance from the state.

11 Those are generally the indicators that are
12 most often used in the kind of analyses that these
13 reports rely on.

14 Q. What percentage of children at a school who
15 fell into one of those categories would qualify, under
16 your definition, as being a high poverty school?

17 A. Well, I think the analyses draw on,
18 characterize them in different ways and, across the
19 research studies that are cited in each of the reports
20 and the experts' own analyses varies.

21 So in some cases, it's a use of the risk index
22 developed by the Harris survey group, when they classify
23 schools that fall into the, I guess what you call the
24 bottom quintile. Meaning that they are schools that are
25 the, those that enroll the largest numbers.

1 In some of my work, I contrast the, the top and
2 bottom quintiles in terms of percentage of students on
3 Cal Works. It, it certainly varies. I think the
4 federal definition used for the purposes of awarding
5 Title One funding is another useful way of
6 characterizing high poverty schools.

7 I don't have one favorite.

8 Q. What definition of high poverty schools were
9 you using on page 1 of your Meta report?

10 A. I was using this as a, a general term,
11 actually, to encompass the specific definitions that the
12 experts have used throughout their reports, and that the
13 studies that underlie those reports have relied on.

14 Q. Is there any specific percentage or range of
15 percentages of students who would qualify for free or
16 reduced price meals that you would characterize as being
17 a, definitely a high poverty school?

18 A. Well, I think it would depend on the context.
19 If I was summarizing research, I would review and
20 probably accept the definitions given in the study. I
21 mean these things are pretty context bound.

22 Q. In the same sentence on page 1 of your Meta
23 report, when you say "disproportionately attended by
24 children of color," what definition were you using in
25 that context?

1 A. What do I mean by "children of color"?

2 Q. How would you classify a school at which the
3 students there, it's attended disproportionately by
4 children of color.

5 Did you have a definition in that context?

6 A. Well, first of all, these phrases in the
7 sentence are meant to be taken together, and it's a
8 sentence that says the most serious problems occur in
9 schools that are attended by children of color, who are
10 disproportionately of color and who are still learning
11 English.

12 So this is a, a general conclusion saying that
13 there's variation across the state in the degree to
14 which these problems are felt, and they're felt in their
15 most extreme, negative extreme by schools that are
16 characterized in this way.

17 Taking that phrase separately,
18 "disproportionately attended by children of color,"
19 would mean where there are more children, the proportion
20 of children of color is larger than the proportion in
21 the state as a whole.

22 Q. In the next sentence on page 1 of your Meta
23 report, it says such students are often housed in
24 overcrowded, deteriorating facilities.

25 By looking at your Meta report, can one

1 determine how often that occurs?

2 (Mr. Rosenbaum re-enters the deposition room)

3 THE WITNESS: Well, certainly if one pays
4 attention to all the footnotes and references, one can
5 easily trace back for all the specifics that these
6 generalizations refer to in the other reports.

7 And certainly in some cases, I believe on, for
8 example, on page 22, we have data that come from
9 Professor Hakuta's report that talk about the existence
10 of school buildings, and a teacher's rate is only fair
11 of poor, and how those are disproportionately teachers
12 of children who are still, that are English learners.

13 He uses two or three sources of data to support
14 that conclusion. On page 23, citation is to
15 Professor -- or to Mr. Mitchell's report, Dr. Mitchell's
16 report, showing clearly that Latino students are far,
17 are considerably overrepresented in schools that are so
18 crowded that they're on multi-track, year-round, Concept
19 6 calendars.

20 On page 24, I provide some summary of the
21 material reported extensively elsewhere from the Harris
22 survey, about the existence of problems being
23 disproportionately in students -- in schools where the
24 students face the highest risk because of poverty and
25 dominance of a language other than English.

1 And that goes on to 25, where there's also some
2 citation of the data that are more fully explicated in
3 the Darling-Hammond report and in my report.

4 So I think that, that the Meta report both
5 offers some data itself about it, and certainly provides
6 numerous references to the other expert reports that
7 provide the data in greater detail.

8 MR. ROSENBAUM: Excuse me one second. Off the
9 record.

10 (Brief recess)

11 (Mr. Rosenbaum and Mr. Hajela not present at
12 this time)

13 BY MR. SEFERIAN:

14 Q. Dr. Oakes, have you conducted a quantitative
15 analysis of how many students have not passed tests
16 required for grade degree promotion as a result of not
17 having the teachers, materials and facilities that are
18 discussed in your Meta report?

19 A. No.

20 Q. Do you have any estimate?

21 A. No. I'm, I would never use that as a, I mean
22 that might be interesting, but it would never, for me,
23 be a definitive part of an analysis of why materials are
24 important.

25 (Mr. Hajela enters the deposition room at this

1 time)

2 BY MR. SEFERIAN:

3 Q. In your Meta report, did you attempt to perform
4 an overall quantitative analysis of the extent to which
5 students are housed in overcrowded, deteriorating
6 facilities statewide?

7 (Mr. Rosenbaum enters the deposition room at
8 this time)

9 THE WITNESS: I believe I provide a review
10 based on the other experts reports and on my report on
11 Concept 6 that gives the best available data about that.

12 Although, also make clear that we simply don't
13 have the data that we require to do such an analysis.

14 BY MR. SEFERIAN:

15 Q. What do you mean in your Meta report when you
16 discuss a fragmented and incoherent approach to state
17 policy making?

18 MR. ROSENBAUM: Again, you're absolutely
19 welcome to ask this question, but I believe that the
20 witness, at considerable length, discussed this with
21 Mr. Herron, with probing and incisive questions to pull
22 out all the information.

23 MR. HERRON: I've heard it all now.

24 THE WITNESS: The Meta report, in the middle
25 section, provides a summary of the systemic problems

1 greater costs are associated with their conditions, such
2 as not having English as their primary language, or
3 having some condition that falls under the umbrella of
4 special education, or extreme poverty.

5 BY MR. SEFERIAN:

6 Q. In any states, is there a system, as you
7 describe in the last bullet point on page 2 of your Meta
8 report, that has all of those features?

9 MR. ROSENBAUM: Asked and answered.

10 THE WITNESS: I'm not sure that any state has
11 yet to fully implement a system based entirely on
12 weighted per pupil costs as I, as what would be implied
13 by this very brief bullet.

14 There are certainly many states that are, that
15 are, that have taken steps towards changing their
16 funding system in this way.

17 Again, I refer you to Professor Grubb's report
18 for a more thorough discussion of these issues. Also
19 the, there's a, I mean there are a number of studies
20 that certainly talk about this, and analyze the
21 extremely popular direction of school finance and other
22 things I've read besides Mr. Grubb's report, document at
23 length what states are doing.

24 BY MR. SEFERIAN:

25 Q. On page 3 of your report, in the third bullet

1 that underlie these terrible symptoms that we see with
2 the shortages and disparity in teachers and facilities.

3 It certainly summarizes what's treated in
4 Professor Grubb's report that Mr. Fuerte testified
5 about, about how the fragmentation and incoherence has
6 occurred over a period of years as a result of changes
7 both in the funding system and the response to changes
8 in the funding system by state actors who've framed
9 policies.

10 BY MR. SEFERIAN:

11 Q. On page 2 of your Meta report, at the bottom of
12 the page, you mention one of the reforms is to base the
13 school funding system on what providing essential
14 resources and conditions actually costs, with
15 adjustments for cost differences in the schools serving
16 different communities and students.

17 Are there any states that currently have a
18 funding system as you describe there?

19 MR. ROSENBAUM: Same objections.

20 THE WITNESS: There are certainly states, a
21 number of states that are moving toward and have adopted
22 portions of a funding system that is based on the cost
23 per pupil, or what are sometimes called the weighted
24 costs per pupil, where students are weighted based on
25 characteristics, that would suggest that greater,

1 point, you mention a reform to ensure that the
2 accountability system is reciprocal.

3 Are there any ways under the current system in
4 California that communities, parents and students can
5 hold the system accountable?

6 MR. ROSENBAUM: Same objections.

7 THE WITNESS: Well, I think we've talked this
8 morning, we spoke about some moves in that direction in
9 current state policy.

10 I think certainly the, the Uniform Complaint
11 Procedure allows people to voice their objections to
12 what's currently happening, or at least raise the
13 possibility that local officials are not carrying out
14 policies the way they were intended.

15 The school accountability report card is
16 premised on the view that that community should have
17 information that enables them to understand and take
18 action if they think it's necessary.

19 Certainly school board meetings open themselves
20 up to local participation, where people can come and
21 complain and -- however, none of these is strong enough
22 to, in my view, constitute any serious reciprocity of
23 accountability, particularly in low income communities.

24 BY MR. SEFERIAN:

25 Q. In your view, does the political process

1 provide communities with a means by which to hold the
2 educational system accountable?

3 A. In some cases it does. Although, it's premised
4 on having adequate and meaningful information, which I
5 think is generally not the case.

6 In California, we have a huge problem with
7 children whose families are not citizens, who don't have
8 the right to participate in the political process, but
9 in fact, whose children have a complete right for
10 adequate, to adequate and equitable schooling.

11 Q. What did you mean when you said in some cases
12 it does?

13 A. Well, certainly we have seen many instances of
14 well-educated, affluent communities who don't like
15 what's happening in their local schools, who are able to
16 use the ballot to remove elected officials from office.

17 Q. Are there any examples of less well-educated,
18 less affluent communities that have used the ballot to
19 remove officials from office?

20 A. Of course there's some. It is not systemic
21 enough to provide adequate accountability in the
22 educational system.

23 Q. In the last sentence in the first full
24 paragraph on page 3 of your report, which documents
25 produced by the California Department of Education were

1 you've also reviewed?

2 MR. HERRON: Can we go off for a second?

3 (Discussion held off the record)

4 (Mr. Herron leaves the deposition proceeding at
5 this time)

6 BY MR. SEFERIAN:

7 Q. Earlier in your deposition, you testified that
8 you reviewed some of the studies and research relied
9 upon by some of the other plaintiff's experts in this
10 case.

11 Can you give any estimate as to what portion or
12 what percentage of the research relied upon by the other
13 experts you've reviewed?

14 MR. ROSENBAUM: Vague.

15 THE WITNESS: If you're asking me if I looked
16 at their bibliographies, which is the only -- they may
17 have relied and looked at many more things than they
18 ever listed, but if you're asking me if I, what
19 percentage, if I looked at their bibliographies, would I
20 say I have independent knowledge of, I'd say probably
21 50, between 50 and 75 percent.

22 BY MR. SEFERIAN:

23 Q. Would you agree that with respect to the
24 facilities-related reports of the plaintiff's experts,
25 including Mr. Corley and Dr. Myers, Dr. Earthman,

1 you referring to?

2 A. Oh, I was referring to all of the documents
3 from the California Department of Education and other
4 agencies reports of research organizations,
5 universities, the whole range of material that I have
6 read, analyzed, taken into consideration when I wrote
7 this report.

8 The sentence is simply meant to suggest that I
9 was not, that this report isn't only dependent on the
10 expert reports. That there's a range of other knowledge
11 and information and documents that I have access to and
12 know of that inform it.

13 Q. Is there any list of the documents produced by
14 the California Department of Education that you
15 reviewed?

16 A. No.

17 Q. Are you currently a member of the Department of
18 Education's advisory board on AP challenge grants?

19 A. I was until that board was, I think,
20 discontinued because the program has ended because of
21 the lack of funding. It may, we may still technically
22 be on that panel. There is no more money to give away.

23 Q. Earlier today you testified about some of the
24 underlying research and studies that the other plaintiff
25 experts relied upon in preparing their reports that

1 Dr. Sandel, you relied more heavily on the expertise of
2 those experts than the others?

3 MR. ROSENBAUM: Vague.

4 THE WITNESS: In terms of the specific medical
5 expertise of Dr. Sandel and the specific detailed
6 knowledge of administration and management and
7 construction planning of Mr. Corley and Dr. Myers, I
8 would say yes.

9 In terms of the overall and integral importance
10 of facilities to students' education, I would say I
11 probably have as solid an understanding as, of that as I
12 do of the work that the other experts covered.

13 BY MR. SEFERIAN:

14 Q. Have you peer reviewed any articles on school
15 facilities?

16 A. Actually, I have reviewed articles that deal
17 with issues of size and certainly crowding and -- by
18 "peer review," do you mean I was asked by a journal to
19 make a judgment about whether or not they should publish
20 something, or asked by a foundation whether or not they
21 should fund something, that very firsthand review of
22 research before it's published?

23 Is that what you mean?

24 Q. Yes. Let's start with journal. Have you peer
25 reviewed any articles for a journal related to school

1 facilities?

2 A. Certainly on, around issues of school size.

3 Q. Do you recall any of those articles?

4 A. Well, in peer review articles, you generally
5 are not, the, the research is not known to you because
6 peer reviews are done under a blind review process.

7 Q. Do you recall the, the topics, or can you be
8 more specific when you say "school size," what those
9 facilities are that you peer reviewed pertained to?

10 A. About the impact of size and density in school
11 organization on students' well-being and achievement;
12 historical treatments of issues of size, and certainly
13 recently reviewed pieces about the desirability of
14 moving to small schools.

15 Q. Have you peer reviewed any articles relating to
16 school facilities for any foundations?

17 A. Yes.

18 Q. Can you describe those?

19 A. It's generally about the trade-offs between
20 large schools and small schools. Kinds of proposals
21 that foundations like the Gates Foundation are
22 interested in.

23 I haven't reviewed for Gates, but in that realm
24 of proposals.

25 Q. In the facilities articles that you peer

1 haven't certainly said this to me, is that when the
2 expert reports from the state come in, they may ask me
3 to take a look and see what I think.

4 But they haven't really said that. That was
5 just my speculation.

6 BY MR. SEFERIAN:

7 Q. What are your areas of expertise?

8 MR. ROSENBAUM: I think she answered that. I
9 mean, again, it's your questioning, but she went on
10 about that at length.

11 And you're free, Dr. Oakes, to reference your
12 earlier testimony.

13 THE WITNESS: I think on the first day of my
14 testimony, in what seems like years ago, we talked, I
15 described at some length my areas of expertise. They're
16 certainly partially listed on my curriculum vitae, which
17 has been submitted as an exhibit.

18 I would say generally I have expertise in the
19 area of school policy and practice, and how it impacts
20 the opportunities and accomplishments of school
21 children. And also have considerable expertise in how
22 those policies and practices are designed and
23 formulated.

24 I teach courses in history of urban schooling
25 and school reform policies, in educational equity.

1 reviewed, did those pertain to the effect of school size
2 on students' academic achievement and learning?

3 A. Some of, some deal with that as one of, one
4 part of what they're considering.

5 Q. Have you peer reviewed any articles on
6 financing of school facilities?

7 A. No.

8 Q. Have you authored any publications on school
9 facility financing?

10 A. No.

11 Q. Have you authored any publications on school
12 facility construction?

13 A. No.

14 Q. Have you discussed with the plaintiff's
15 attorneys doing any further work in this case?

16 A. Yes.

17 Q. What have you discussed in that regard?

18 A. Testifying at trial.

19 Q. Anything else?

20 A. There have been vague references to the
21 possibility of some work in doing rebuttal. But nothing
22 any more specific than just that.

23 Q. What do you mean when you say "rebuttal"?

24 MR. ROSENBAUM: Speculation.

25 THE WITNESS: My assumption, although, they

1 Certainly in teachers and teacher education.

2 BY MR. SEFERIAN:

3 Q. Do you have any expertise in school facility
4 construction?

5 MR. ROSENBAUM: I think you've asked that at
6 least twice, that I can recall.

7 THE WITNESS: As I've described, I believe, I
8 have a broad and quite solid understanding of the role
9 that school facilities play in the education of
10 children.

11 BY MR. SEFERIAN:

12 Q. In terms of the process of constructing school
13 facilities, do you have any expertise in that area?

14 MR. ROSENBAUM: You mean like putting up mortar
15 and --

16 THE WITNESS: Hammers and nails.

17 I have some. Certainly I'd say considerably
18 more knowledge of those issues than a layperson would.
19 I mean it's certainly within the area of my general
20 expertise as an education policy scholar.

21 I would never pretend to have a comprehensive
22 knowledge of the specifics of those issues as such, that
23 could compare with Mr. Earthman and Corley and Dr. Myers
24 and Dr. Sandel.

25 ///

1 BY MR. SEFERIAN:

2 Q. Do you have any expertise in school facility
3 financing?

4 MR. ROSENBAUM: You asked that multiple times.

5 THE WITNESS: I would answer that in the same
6 way.

7 BY MR. SEFERIAN:

8 Q. Do you have an opinion about what definition
9 the California State Board of Education should adopt for
10 high quality teachers?

11 A. Yes.

12 Q. Under federal law?

13 A. Yes.

14 Q. What is your opinion?

15 A. My view is that they should have, as a minimum,
16 that a highly qualified teacher possess a preliminary or
17 clear credential as specified by the teacher's
18 credential commission.

19 I'm not sure I would say that's highly
20 qualified, because I think a couple of years of
21 experience might be useful as well before one is
22 considered highly qualified.

23 But I think as a minimum, that would be my
24 recommendation.

25 Q. Have you seen any data or research suggesting

1 especially if policies remain as they are today.

2 I've, I've read a number of places where those
3 projections are cited, but I don't recall the original
4 source of the ...

5 Q. You would agree that a teacher's general
6 ability has a significant effect on student achievement?

7 MR. ROSENBAUM: Vague.

8 MR. SEFERIAN: I'm referring to on page 5 of
9 your report under section one.

10 THE WITNESS: There are a number of qualities
11 of teachers that appear to matter. General ability is
12 only one of several.

13 General ability, as cited in this sentence and
14 as cited in the literature, generally means nothing more
15 than what teachers, the scores teachers received as high
16 school students on the Scholastic Aptitude Test, or the
17 ACT test.

18 So partly the reason why general ability is
19 used in that way is we have so few measures of, of a
20 teacher's background or their, that, that that's the
21 proxy that's used.

22 So when we say general ability, general
23 ability, I always want to contextualize it so we
24 understand what we're talking about.

25 ///

1 that the Los Angeles Unified School District will have
2 an increase in the number of schools or students on the
3 Concept 6 calendar?

4 A. Yes.

5 Q. What information is that?

6 A. The projection is that within the next five to
7 seven years, that all of the high schools will need to
8 go on Concept 6 calendars in order to accommodate the
9 increased high school-aged population.

10 That's one example.

11 Q. Which projection or projections are you
12 referring to?

13 A. I think, I believe they're the district's own
14 projections, but they have been widely cited and talked
15 about.

16 Q. Are there any projections that you're aware of,
17 other than Los Angeles Unified's projections, regarding
18 students on Concept 6?

19 A. Well, there are a number of organizations that
20 have dealt with the likely impact of the increases in
21 student population, especially in the next five years in
22 the, in the secondary schools in the state, and then
23 eventually in the colleges and universities.

24 Some of those have talked about the strategies
25 that will need to be used to accommodate those students,

1 BY MR. SEFERIAN:

2 Q. Would you agree that there are some California
3 teachers who have a high general ability who are not
4 fully certified?

5 A. That there are individuals who are teaching in
6 California schools who got high SAT scores who don't
7 have credentials? Yes.

8 Q. Would you agree that there are some effective
9 teachers who have not yet satisfied their state's
10 credential requirements?

11 A. What do you mean by "effective"?

12 Q. Effective in helping children learn the subject
13 of what they're teaching.

14 MR. ROSENBAUM: Vague.

15 THE WITNESS: I suspect there are.

16 BY MR. SEFERIAN:

17 Q. Would you agree that there are some teachers
18 who have not yet satisfied their state's credential
19 requirements who are more effective than credentialed
20 teachers?

21 A. As, as I answered the previous question, there
22 may be some isolated examples of that, certainly.

23 But I think as a matter of public policy, the
24 best assurance we have of teachers being able to help
25 children learn is that they've met the minimum standards

1 that the state has set for entry into the teaching
2 profession.

3 Q. Would you agree that a teacher's content
4 background has a significant effect on student
5 achievement?

6 A. Yes.

7 MR. ROSENBAUM: Vague.

8 BY MR. SEFERIAN:

9 Q. Would you agree that a teacher can have a
10 strong content background without yet having a full
11 teaching credential?

12 A. Oh, I think there are -- you mean people who
13 are teaching in California schools who have a strong
14 content background, but do not have credentials?

15 Yes, I believe there are individuals like that.

16 Q. On page 8 of your report, in the last full
17 paragraph, you discuss Dr. Earthman.

18 Would you agree that Professor earth man's
19 opinion that overcrowding of facilities has a negative
20 impact on the educational achievement of students does
21 not pertain to schools that take remedial efforts, such
22 as staggering the students' schedules?

23 MR. ROSENBAUM: Vague.

24 THE WITNESS: I'm sorry. I think I got mixed
25 up in the negatives there.

1 for my study of Concept 6 schools.

2 I would want to read page 8 pretty carefully,
3 but I can't imagine making that assumption.

4 MR. ROSENBAUM: Are you representing, Tony,
5 that that's Perkin's opinion? Otherwise, it's a
6 completely inappropriate question.

7 MR. SEFERIAN: Well, I can just say I don't
8 think it's an inappropriate question.

9 MR. ROSENBAUM: It's very inappropriate to
10 attribute something to an expert and ask another witness
11 about it unless you are certain that's what the expert
12 actually believes.

13 MR. SEFERIAN: Well, I have a good faith basis
14 for the questions that I'm asking Dr. Oakes, and I
15 wouldn't ask her questions that I didn't believe I had a
16 good faith basis for. I can represent that to you.

17 MR. ROSENBAUM: Well, you know that doesn't,
18 it's really an inappropriate question unless you can say
19 there's a basis for it. And I'm going to go on that
20 basis.

21 And I'm very passive, but that's not
22 acceptable. You don't have to accept any assumption
23 unless there's a basis for it. And I gave you an
24 opportunity to state that basis.

25 I don't think you have a basis for that.

1 Would you, maybe you could restate it for me in
2 a way that makes it easier to understand.

3 MR. SEFERIAN: Sure.

4 Q. On page 8 of your report, it says, in part,
5 Earthman concludes that the available research finds
6 that students in overcrowded schools and classrooms
7 achieve less well than students in uncrowded settings.

8 Would you agree that Professor Earthman's
9 opinion does not pertain to schools that take remedial
10 efforts, such as staggering students' schedules?

11 A. No. I think that as I testified earlier, and
12 make clear in my report on Concept 6, is that many of
13 the schools, that in most cases the compensatory
14 efforts, such as staggered schedules, do not alleviate
15 the harms caused by overcrowding, since overcrowding,
16 for the most part, remains.

17 Q. If you assume that Dr. Earthman's opinion
18 regarding student achievement and overcrowding does not
19 pertain to schools that take remedial efforts, such as
20 staggering the students' schedules, would that in any
21 way alter your discussion of facilities on page 8 of
22 your Meta report?

23 A. First of all, I can't imagine assuming that. I
24 rely on, for example, the, the Revere -- Riveria-Batiz &
25 Marti studies as one that I relied on quite extensively

1 THE WITNESS: Are we waiting for me?

2 MR. SEFERIAN: No.

3 THE WITNESS: Oh, okay.

4 BY MR. SEFERIAN:

5 Q. On page 8 of your report, under section three,
6 in the first sentence, you state: Professor Glen
7 Earthman's report demonstrates that the condition of
8 school buildings, including but not limited to,
9 temperature, acoustics, and overcrowding, influences
10 students' educational experiences and outcomes.

11 Would you agree that whether a certain number
12 of those facilities factors, for example, two or three
13 factors, needs to be present for, before there's a
14 negative effect on the outcome of a student's education
15 or a student's achievement has not been studied in
16 detail?

17 MR. ROSENBAUM: It's vague.

18 THE WITNESS: Well, first of all, I'm talking
19 about the, the impact of these elements on educational
20 experiences as well as outcomes.

21 I think, you know, it's a matter of some
22 judgment about whether, how many studies it takes to
23 establish that something's a problem. I mean do you
24 have to have negative effect of rats in a classroom in
25 17 studies to say that there's a problem? Or is a

1 negative effect in one child's report enough to say it's
2 a problem?

3 I think we have sufficient evidence.

4 BY MR. SEFERIAN:

5 Q. In the last sentence of the first full
6 paragraph on page 9 of your report, it refers to
7 instructional days.

8 Do you have any estimate of how many students
9 attend Concept 6 calendar school for 12 years?

10 MR. ROSENBAUM: You know, I'm going to object
11 to this. Dr. Oakes has been questioned at length about
12 Concept 6. I appreciate it's part of this report, but,
13 and that's why I've permitted some questions about this.

14 But this was the subject of how many days,
15 Concept 6? I don't know. Just eons of time. And I
16 just think it's inappropriate to use this deposition to
17 go into Concept 6 material, particularly when it was the
18 subject of extensive questioning. You can ask --

19 MR. SEFERIAN: I'm not intending to ask a lot
20 of questions on it.

21 MR. ROSENBAUM: I don't think there should be
22 any. There was a deposition set on Concept 6. That was
23 the rules of the game. There was a lawyer from your
24 office here to ask it.

25 You're not supposed to get more bites. It's

1 districts and the state itself about when students are
2 absent, and they bring in explanations that they, for
3 the most part, relate to issues of either physical or
4 psychological well-being.

5 Q. I understand. But in this portion of your Meta
6 report on page 12, you're referring to, in general,
7 health effects from facilities-related conditions,
8 correct?

9 A. This portion of the report is summarizing the
10 main points of Professor Sandel and Mr. Corley's reports
11 which speak generally about the relationship of
12 facilities-related problems to psychological and health
13 effects, and to students' absences, which I have
14 absolutely no reason to believe would differ for
15 children who happen to be residents of the State of
16 California than they do for students nationwide.

17 Q. Are you aware of any studies or data regarding
18 the extent of absences of California students from
19 facilities-related health effects?

20 A. Not, not that I'm recalling at the moment.

21 Q. Earlier in your testimony, you referenced, I
22 believe, a website, American Society of Civil Engineers;
23 is that correct?

24 A. Yes. Yes.

25 Q. Did the American Society of Civil Engineers

1 not a game.

2 THE WITNESS: Well, I would say two things
3 about that. One is no, I don't know specific number of
4 students who attend Concept 6 schools for 12 years. In
5 my view, one student is too many.

6 BY MR. SEFERIAN:

7 Q. Do you have a personal or professional
8 relationship with Delaine Eastin?

9 MR. ROSENBAUM: Vague.

10 THE WITNESS: Well, we've probably met on two
11 or three occasions. I think we've had lunch at the same
12 table once or twice. She and I are both professional
13 educators.

14 I suspect that qualifies us as having some form
15 of professional relationship.

16 BY MR. SEFERIAN:

17 Q. Have you ever discussed this lawsuit or your
18 opinions in this case with Ms. Eastin?

19 A. No.

20 Q. I'd like to refer you to the first full
21 paragraph on page 12 of your report.

22 Are you aware of any studies or data relating
23 psychological and health issues to student absences in
24 California public schools?

25 A. I think we have ample data from school

1 data that you reviewed provide information about
2 California facilities conditions by district and/or
3 school?

4 A. No. It was summary data.

5 Q. Do you have an opinion whether or not within
6 the past few years, California has experienced
7 astonishing demographic shifts?

8 MR. ROSENBAUM: Vague.

9 THE WITNESS: Well, I'm not sure the degree to
10 which various people might be astonished, but there
11 certainly have been some changes in the population.

12 BY MR. SEFERIAN:

13 Q. Can you briefly explain what you mean by that?

14 A. I'm not sure what you're asking me, to describe
15 the shifts that have occurred, or to describe --

16 Q. Yes.

17 A. -- various levels of astonishment. Or, I mean
18 I really...

19 Q. Let me reask it.

20 In your opinion, have there been any
21 demographic shifts in California in the recent past that
22 have affected the state's educational system?

23 A. Several. There have been, I think between the
24 1990 and the 2000 census, we have considerable evidence
25 that the number of young people in the state has grown

1 larger; that Latinos have become an increasing portion
2 of the population; that differential birth rates among
3 groups and immigration account for those things.

4 We also know that the average age of school
5 teachers has gotten older, or that a substantial group
6 of teachers is nearing retirement age.

7 Those changes certainly affect California's
8 education system.

9 MR. ROSENBAUM: Off the record, please.
10 (Discussion held off the record)
11 (Brief recess)

12 (Mr. Hajela leaves the deposition proceeding at
13 this time)

14 BY MR. SEFERIAN:

15 Q. I'd like to ask you to refer to page 62 of your
16 report, please. And specifically, the third paragraph.

17 Would it be accurate to say that you are
18 relying on Dr. Myers' evidence that facilities
19 maintenance priorities in Maryland would represent an
20 improvement over California's system?

21 A. I'm certainly relying on Dr. Myers' use of
22 Maryland as an example of a well-defined approach to
23 oversee ongoing maintenance, yes.

24 Q. In the third paragraph on page 62, you discuss
25 Dr. Myers' recommendation of an organizational structure

1 BY MR. SEFERIAN:

2 Q. Do you know whether Dr. Myers assessed the
3 overall quality of public school facilities statewide in
4 Maryland?

5 A. You know, I'm not recalling the details, as I
6 suggested before.

7 MR. ROSENBAUM: He doesn't want you to
8 speculate. If you don't recall.

9 BY MR. SEFERIAN:

10 Q. If Dr. Myers did not assess the overall quality
11 of public school facilities statewide in Maryland, would
12 that to any extent lessen your confidence in Dr. Myers
13 recommendations?

14 A. I would give you the same response I gave
15 before, that because she's recommending this as a
16 policy, that even on its face provides for more
17 systematic oversight, that it would still be a very
18 useful suggestion in my mind.

19 Q. In the last two sentences of paragraph 3 on
20 page 62, referring to Maryland, it says:

21 "The State uses the plan to
22 establish facility priorities based on
23 the quote, adjusted, end quote, age of
24 facilities and the needs of each
25 school. The process for awarding

1 and her discussion of Maryland, correct?

2 A. Yes.

3 Q. Do you know if Dr. Myers relied on any studies
4 regarding Maryland's organizational structure and its
5 public school facility maintenance?

6 A. I'm not recalling at the moment whether this
7 was her own professional work, or whether she was
8 combining her own professional understanding with other
9 studies. I'm just not recalling.

10 Q. If Dr. Myers was not aware of any study that
11 demonstrates whether or not the public school
12 organizational structure in Maryland had improved the
13 public school maintenance in that state, would that to
14 any extent lessen your confidence in Dr. Myers'
15 recommendations?

16 MR. ROSENBAUM: Vague, incomplete hypothetical.

17 THE WITNESS: Dr. Myers is reporting about a
18 policy that on its face has the potential for ensuring
19 more systematic oversight and, of facilities
20 maintenance.

21 I think that, that my confidence in her
22 analysis would not be affected one way or the other by
23 the conditions that you pose in your, in the assumption
24 that you gave me.

25 ///

1 financial assistance is one in which
2 need is determined by an, quote -- by
3 an objective, quote, point, end quote,
4 system assuring all school districts
5 that a fair and equitable distribution
6 of funds occurs."

7 If Dr. Myers did not make any attempt to
8 analyze the extent to which Maryland schools in the
9 worst condition received public school facility
10 maintenance funding, would that to any extent lessen
11 your confidence in Dr. Myers' recommendations?

12 MR. ROSENBAUM: Same objections.

13 THE WITNESS: I would give the same answer that
14 I did before. This plan on its face is one that
15 promises to be more effective than no plan at all. And
16 for that reason, I would think it's well, well used here
17 as an example.

18 BY MR. SEFERIAN:

19 Q. Do you have the opinion that the Department of
20 Education in California has taken the position that it
21 has no role with respect to assisting school districts
22 with facilities needs?

23 A. I think that what I've said here and, in my
24 deposition, and what I've reviewed in the reports of the
25 other experts, and in other documents, suggests that the

1 Department of Education has, has not ever said they have
2 absolutely no role.

3 In fact, they have a facilities planning
4 division which takes quite an active role in the plans
5 for new facilities.

6 The specific issue in this paragraph, and I
7 think what Dr. Myers was referring to in the analysis
8 that's referenced here, is the, the role in ensuring
9 adequate maintenance and operations, and in particular,
10 after, after schools are built.

11 Q. Do you have a good working knowledge of the
12 activities, policies and functions of the Department of
13 Education's school facilities planning division?

14 A. I certainly know what I've learned by reading
15 the Department of Education's website. To the extent to
16 which their reports of their activities are
17 comprehensive, then I do.

18 I also have a working knowledge of what is in
19 the other expert reports, reports about the roles that
20 the California Department of Education plays in
21 facilities.

22 Q. Are there any other sources of your knowledge
23 about the Department of Education's facilities planning
24 division besides the website and the other expert
25 reports in this case?

1 children.

2 But he may reference it and I'm simply not
3 recalling as I sit here right now.

4 Q. I'd like to ask you to look at the last
5 paragraph on page 22 of your Meta report. And the first
6 sentence.

7 What did you mean in that context, "inadequate
8 facilities"?

9 MR. ROSENBAUM: She has gone over this over and
10 over and over again.

11 THE WITNESS: We're on page 22, and which
12 paragraph did you say?

13 BY MR. SEFERIAN:

14 Q. In the first sentence of the last full
15 paragraph on page 22. What did you mean by "inadequate
16 facilities"?

17 A. Well, this is a sentence that's summarizing
18 what Professor Hakuta reports from the Harris data
19 contrasting the finding that one-third of all teachers
20 report their school's physical plant as either in only
21 fair or poor condition.

22 That's, I mean they were given a scale where
23 they had four choices; two positive and two negative.
24 So we could think of the two positive responses as being
25 a judgment about adequacy and the two negative responses

1 A. Well, actually -- yeah. I was in on
2 discussions of outcomes of the finance and facilities
3 working group of the California Master Plan Committee.
4 Met with the co-chairs of that working group. Read
5 their report. Read the final master plan report.

6 Those reports were based on a great deal of
7 information, both from printed material and consultation
8 of, of people engaged in facilities work.

9 So yes, my knowledge goes beyond what's cited
10 in the reports.

11 Q. Would you agree that neither Dr. Earthman nor
12 Mr. Corley presented statewide evidence demonstrating
13 that schools with minority students, poor students or
14 limited English speakers are statistically more likely
15 to attend schools with facilities problems?

16 A. Well, Mr. Corley certainly provides a great
17 deal of evidence from up and down the state about the
18 problems in California schools, and the disproportionate
19 incidents of those problems in schools attended by low
20 income children in the state.

21 Professor Earthman's report was focused
22 primarily on the consequences of facilities problems on
23 the education of children. And the primary emphasis of
24 his report, as I'm recalling, was not on the
25 distribution of facilities among various groups of

1 that their plant was either only fair or poor as
2 indications of inadequate facilities.

3 So he contrasts the 32 percent overall with the
4 43 percent of teachers in schools where more than 25
5 percent of the students are English learners giving
6 those negative reports.

7 So in this context, "inadequate" means rated by
8 teachers as either only fair or poor.

9 Q. On page 30 of your report, you refer to federal
10 study, under the last paragraph.

11 Do you see that, Dr. Oakes?

12 A. I see that I'm citing a report of the Little
13 Hoover Commission that refers to a federal study, yes.

14 Q. Did the federal study cited on page 30 of your
15 report disaggregate the --

16 THE REPORTER: I'm sorry. I lost that. Can
17 you repeat your question?

18 BY MR. SEFERIAN:

19 Q. Did the federal study cited on page 30 of your
20 report disaggregate the facility data by school or
21 school district?

22 A. Not, not that I recall. I don't recall.

23 Q. On page 31 of your report, you cite a GAO study
24 in the first paragraph.

25 Did that study disaggregate the facilities

1 needs by school district, school or student demographic
2 data, status?

3 A. I don't recall.

4 Q. On page 31, you quote the legislative analyst
5 regarding maintenance, and saying by 1995, 1996, the
6 maintenance backlog totaled 2.6 billion.

7 Do you have any knowledge concerning what the
8 maintenance backlog is today?

9 A. I don't have the specific dollar figure, no.

10 Q. Is --

11 A. I know there was --

12 MR. ROSENBAUM: If you don't know, you don't
13 know.

14 THE WITNESS: It's okay.

15 BY MR. SEFERIAN:

16 Q. On page 32 you also site a 1987 Department of
17 Education study by Quinlan regarding the achievement of
18 students on year round calendars, correct?

19 A. Yes.

20 Q. The Quinlan study examined single track and
21 multi-track results where the actual performance was
22 compared with a predicted performance level. Correct?

23 A. You know, I'm not recalling right now the
24 methodology that that study used. I read it and I
25 remember reading it, but I'm not sure if it was based on

1 state has ever lost funds as a result.

2 BY MR. SEFERIAN:

3 Q. In your opinion, were there any positive
4 aspects of the state's decision to make teacher
5 education available only at the graduate level?

6 A. Well, you're referring to an issue that Linda
7 Darling-Hammond reports at great length, and I would
8 certainly refer you to her report for that detailed
9 discussion.

10 I think that certainly one effect of having
11 teacher education at the graduate level, at least in
12 some scholars' view, is that it's ensured more stringent
13 requirements for entry into teaching because it's
14 requiring graduate level education.

15 However, in Professor Darling-Hammond's view,
16 and as she documents in her report, it's also made it
17 more difficult for people to enter into teaching, and
18 that there are strategies, some of which the state has
19 begun to employ, of integrating undergraduate subject
20 matter preparation and teacher education that may be a
21 useful alternative in our efforts to improve the supply
22 of qualified teachers in the state.

23 Q. Do you disagree with the state's decision to
24 make teacher education available only to graduate level?

25 MR. ROSENBAUM: I believe she's answered that.

1 predicted scores or simply comparison scores.

2 Q. Would you agree that the Quinlan study reported
3 the multi-track three year gains were greater than those
4 of single track?

5 MR. ROSENBAUM: No foundation. Speculation.
6 If you recall at this time.

7 THE WITNESS: You know, I don't recall at this
8 time.

9 BY MR. SEFERIAN:

10 Q. Earlier in the deposition today you gave a
11 definition in response to a question of high quality
12 teacher under the No Child Left Behind Act.

13 Do you recall that?

14 A. I recall our discussion of it, yes.

15 Q. What is the consequence to the state if it has
16 more teaching positions than it has high quality
17 teachers under the No Child Left Behind Act?

18 MR. ROSENBAUM: You mean if it's in violation
19 of federal law?

20 MR. SEFERIAN: Yes.

21 THE WITNESS: Well, it's hard to know for sure.
22 The, ostensibly, the threat is that the state will lose
23 its federal funds. Although we know over the last ten
24 years, there have been states out of compliance with the
25 federal Elementary and Secondary Education Act, and no

1 THE WITNESS: I'm neither agreeing nor
2 disagreeing. I'm simply pointing to what
3 Darling-Hammond and others have commented upon as the
4 consequences of those decisions, that decision.

5 MR. ROSENBAUM: It's also an incomplete
6 hypothetical, vague.

7 BY MR. SEFERIAN:

8 Q. I'd like to ask you to look at the first
9 paragraph of page 37 of your report.

10 What did you mean in the last sentence when you
11 said it has neither the power nor capacity to assist?

12 A. Well, the paragraph here is referring to the
13 discussion in the analyses in the other expert reports
14 that, that we just were speaking about.

15 That while the Department of Education has some
16 responsibility for ensuring that new construction meets
17 a set of minimum standards, it really doesn't have it in
18 its purview to be engaged with issues of ongoing
19 maintenance and facilities operation.

20 So because it's not engaged with oversight of
21 or assistance to buildings once they're built, it has no
22 mechanisms to respond when there are facilities problems
23 in districts.

24 Q. I'd like to ask you to refer to the first full
25 paragraph on page 38 of your report, in the last

1 sentence.

2 What did you mean by "watchdog agency"?

3 A. Well, the, the point of this sentence is that

4 the problem is more complicated than simply having the

5 Comite unit not reporting data about English learners'

6 lack of access to qualified teachers to the board.

7 There is no other agency within the educational

8 system that has the responsibility of receiving such

9 reports or responding to them.

10 Q. What is a watchdog agency, generally?

11 MR. ROSENBAUM: This is not appropriate use of

12 a deposition to ask a witness in this qualification what

13 a watchdog agency is. But also way over the half hour

14 estimate you stated.

15 I just think that's inappropriate, Tony, to ask

16 her what a watchdog agency is, just like it's

17 inappropriate to quiz her on facts in these reports.

18 THE WITNESS: "Watchdog" is a colloquial

19 expression used to refer to governmental agencies that

20 have monitoring and oversight responsibility.

21 BY MR. SEFERIAN:

22 Q. In that sentence on page 38 in your report, did

23 you mean to suggest that the State Board of Education

24 has those responsibilities?

25 A. Well, certainly part of what the state board

1 does is to respond with recommendations for further

2 audits of problems when they arise. So to that extent,

3 yes.

4 Q. I'd like to ask you to look at page 59 of your

5 report, and the second sentence under "Facilities."

6 Would you agree that the state already has in

7 place recommendations for ongoing maintenance and

8 operations functions, guidelines to address the

9 educational appropriateness of facilities?

10 A. Well, I certainly am referring here to

11 Mr. Corley's judgment, which I accept, that the state

12 does have, at least in draft form, some non-mandatory

13 guidelines. The issue here is that these guidelines

14 should be stronger than non-mandatory.

15 And I refer you to his report and the, the

16 accounts that he's relaying there for further detail.

17 Q. On page 62 of your report, under section C, you

18 state:

19 "Rather, once an adequate

20 data-gathering system has been

21 established, parens, see below, end

22 parens, then the State, working with

23 the local Districts can identify and

24 prioritize those districts and

25 specifically the buildings that are top

1 priorities for funding."

2 What would be the criteria for the top

3 priorities for funding?

4 A. Well, I think as Dr. Myers makes clear in her

5 report, the overriding criteria is need.

6 (Mr. Rosenbaum leaves the deposition room)

7 BY MR. SEFERIAN:

8 Q. If the overriding criteria for facilities

9 funding were need, might districts wait to address

10 problems so that they would receive state funding?

11 A. Well, I think your question is mixing up a

12 couple of issues. One is the recommendation by

13 Dr. Myers that I think is clear in her report, and the

14 other report, for a role of the state in helping to make

15 equitable the competing, the response to competing

16 claims by the districts that they have a need for funds

17 either for new construction or for ongoing maintenance

18 and operations. And I think that's pretty clear in the

19 reports.

20 The other issue about deferring maintenance

21 until there's state money comes from another problem

22 that's identified in those reports and discussed, and

23 that is that there should be some mechanism that sets

24 aside some funding for the ongoing maintenance of

25 facilities once they're built, so that the general fund

1 sources that are now used to provide that, that funds

2 for ongoing maintenance aren't used by other things to

3 the detriment of the condition of the facilities.

4 MR. SEFERIAN: I don't have any other

5 questions. Thank you.

6 MR. ROSENBAUM: Thank you very much.

7 Before Mr. Herron and Mr. Hajela left, we said

8 that we'll have the same stipulation. I'm sure that's

9 okay with you.

10 MR. SEFERIAN: Yes.

11 MR. ROSENBAUM: Okay. Thank you very much.

12 You have a nice weekend.

13 MR. SEFERIAN: Thank you.

14 MR. ROSENBAUM: Thanks to the reporter.

15 (The deposition was concluded at 3:52 p.m.)

16

17

18

19

20

21

22

23

24

25

DECLARATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I hereby declare I am the deponent in the within matter; that I have read the foregoing deposition and know the contents thereof, and I declare the same is true of my knowledge except as to the matters which are therein stated upon my information or belief, and as to those matters, I believe it to be true.

I declare under the penalties of perjury of the State of California that the foregoing is true and correct.

Executed on the ____ day of _____, 2003, at _____, California.

WITNESS

I, EMILIA JACALONE, A Certified Shorthand Reporter for the State of California, do hereby certify:

That prior to being examined, JEANNIE OAKES, PH.D., the witness in the foregoing deposition, was by me duly sworn to testify as to the truth, the whole truth, and nothing but the truth pursuant to Section No. 2093 of the Code of Civil Procedure;

That said deposition was taken before me pursuant to NOTICE, at the time and place therein set forth, and was taken down by me in shorthand and thereafter reduced to typewriting via computer-aided transcription under my direction;

I further certify that I am neither counsel for, nor related to, any party to said action, nor in anywise interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name this ____ day of _____, 2003.

EMILIA JACALONE
CSR No. 7182

20
21
22
23
24
25