

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

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

vs.

No. 312236

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

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13 Deposition of
14 THOMAS PAYNE

15 Volume I, Pages 1 through 130

16 Tuesday, November 20, 2001
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22 Reported by:

23 TRACY LEE MOORELAND

24 CSR No. 10397

25 Job No. 29856

APPEARANCES

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3 For the Plaintiffs Eliezer Williams, et al.:

4 MEXICAN AMERICAN LEGAL DEFENSE
5 AND EDUCATIONAL FUND
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18 State Board of Education:

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25

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9 EXHIBITS

10
11 (No exhibits were offered.)
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APPEARANCES, cont.

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1 BE IT REMEMBERED, that on Tuesday, November 20,
2 2001, commencing at the hour of 10:03 a.m., thereof, at
3 the offices of Morrison & Foerster, 400 Capitol Mall,
4 26th Floor, Sacramento, California, before me,
5 TRACY LEE MOORELAND, a Certified Shorthand Reporter in
6 the State of California, there personally appeared
7 THOMAS PAYNE,
8 called as a witness herein, who, having been duly sworn
9 to tell the truth, the whole truth, and nothing but the
10 truth, was thereupon examined and interrogated as
11 hereinafter set forth.
12 ---o0o---
13 EXAMINATION BY MR. VILLAGRA
14 Q. Good morning, Mr. Payne.
15 A. Hi.
16 Q. My name is Hector Villagra, and I represent the
17 plaintiffs in this action.
18 If you wouldn't mind please stating your name
19 for the record.
20 A. Tom Payne.
21 Q. And if you would spell that for the court
22 reporter.
23 A. P-a-y-n-e.
24 Q. And if you could please state your address for
25 the record.

1 A. 1224 47th Street, Sacramento,
 2 Q. Have you ever been deposed before?
 3 A. No.
 4 Q. In that case, let me go over some ground rules.
 5 You're going to be under oath. I'm going to ask you
 6 some questions, and the court reporter here will be
 7 taking down my questions and your answers. You'll need
 8 to verbalize your answers. You can't shake or nod your
 9 head because that can't be recorded.
 10 If you don't understand a question, please let
 11 me know and I'll clarify it for you. If you answer, it
 12 will be assumed that you understood the question and are
 13 providing a complete and truthful answer.
 14 A. Okay.
 15 Q. If at any point you remember something you'd
 16 like to add to a prior question, just let me know and
 17 we'll go back to it, otherwise we'll assume that your
 18 prior answer was complete and truthful. If you need a
 19 break for any reason, just let me know.
 20 A. Okay.
 21 Q. Do you understand all that I've explained to
 22 you so far?
 23 A. I do.
 24 Q. Is there any reason why you believe you're
 25 unable to provide truthful information today?

1 A. No.
 2 Q. Are you currently taking any medication?
 3 A. No.
 4 Q. I'd like to start first with your education.
 5 Did you graduate from college?
 6 A. Yes, I did.
 7 Q. From where?
 8 A. San Francisco State.
 9 Q. When did you graduate?
 10 A. 1971.
 11 Q. And what did you major in?
 12 A. English.
 13 Q. Did you attend graduate school at one point?
 14 A. Yes, I did.
 15 Q. What graduate school?
 16 A. I graduated from Sacramento State.
 17 Q. When?
 18 A. 1973.
 19 Q. Did you go straight from San Francisco State to
 20 Sacramento State?
 21 A. Yes.
 22 Q. Did you attend any other graduate school?
 23 A. No.
 24 Q. When were you first hired by the California
 25 Department of Education?

1 A. Fourteen years ago. So to do the math, 1987.
 2 Q. If I can work backwards, what was the first job
 3 you held after attending graduate school at Sacramento
 4 State?
 5 A. I taught high school.
 6 Q. For how long?
 7 A. Ten years.
 8 Q. What high school?
 9 A. Cordova High School.
 10 Q. Is that here in Sacramento?
 11 A. Uh-huh.
 12 MR. SEFERIAN: Is that yes?
 13 THE WITNESS: Yes. Sorry.
 14 Q. BY MR. VILLAGRA: And that would be up to about
 15 1983; is that correct?
 16 A. Yes.
 17 MR. SEFERIAN: Will you please wait until he
 18 completely finishes his question before you start giving
 19 your answers.
 20 THE WITNESS: Yes.
 21 Q. BY MR. VILLAGRA: And after teaching at Cordova
 22 High School, where did you work?
 23 A. I traveled around the world for a year.
 24 Q. And then what job did you have next?
 25 A. I worked for La Cooperativa De Campesina De

1 California.
 2 Q. Would you mind spelling that for the court
 3 reporter.
 4 A. If I could. L-a C-o-o-p-e-r-a-t-i-v-a D-e
 5 C-a-m-p-e-s-i-n-a, De California.
 6 Q. And what did you do there?
 7 A. I was a liaison officer.
 8 Q. What did you do as a liaison officer?
 9 A. I negotiated labor contracts and training
 10 contracts.
 11 Q. Labor contracts dealing with what?
 12 A. Retraining farm workers primarily so they could
 13 be introduced into a more standard work force.
 14 Q. And how long did you work at La Cooperativa?
 15 A. A year.
 16 Q. And then what job did you hold next?
 17 A. Working for the Department of Education.
 18 Q. And what was your title when you first started
 19 at the Department of Education?
 20 A. Assistant consultant.
 21 Q. And what were your responsibilities as
 22 assistant consultant?
 23 A. I administered a program called the employment
 24 training panel.
 25 Q. And what was that program?

1 A. That program was getting a portion of
 2 unemployment insurance fund into adult schools for
 3 retraining of adults and students.
 4 Q. And how long were you assistant consultant in
 5 charge of this employment training program?
 6 A. About a year.
 7 Q. And then what position did you have next?
 8 A. Then I became the coordinator for year-round
 9 education.
 10 Q. Was that your title?
 11 A. No, my title was education programs consultant.
 12 Q. Were you responsible for any other education
 13 programs other than year-round education?
 14 A. Initially, no.
 15 Q. But later yes?
 16 A. Uh-huh.
 17 MR. SEFERIAN: Is that a yes?
 18 THE WITNESS: Yes. I'm sorry.
 19 Q. BY MR. VILLAGRA: When was it that you later
 20 were assigned to other educational programs?
 21 A. About three years later I assumed other
 22 responsibilities, or additional responsibilities.
 23 Q. What were those additional responsibilities?
 24 A. The major one was writing Title 5 regulations.
 25 Q. What were the others?

1 A. General SCS correspondence.
 2 Q. What is SCS correspondence?
 3 A. Superintendent's correspondence system. The
 4 superintendent would get -- gets letters, those letters
 5 are disbursed to experts or good writers in the
 6 department, and those people write responses for the
 7 superintendent's signature.
 8 Q. Any other additional responsibilities?
 9 A. No.
 10 Q. And what are Title 5 regulations, what subjects
 11 does that cover?
 12 MR. SEFERIAN: Objection. Overly broad.
 13 THE WITNESS: Site selection standards for new
 14 school sites and plan standards for design of schools.
 15 Q. BY MR. VILLAGRA: And when you took on these
 16 additional responsibilities, were you still an education
 17 programs consultant?
 18 A. Yes.
 19 Q. Has that title ever changed?
 20 A. No.
 21 Q. That's the title you still hold today?
 22 A. Uh-huh.
 23 MR. SEFERIAN: Yes?
 24 THE WITNESS: Yes. I'm sorry.
 25 Q. BY MR. VILLAGRA: Do you have any additional

1 responsibilities?
 2 MR. SEFERIAN: Objection. Overly broad.
 3 MR. VILLAGRA: Other than what we've discussed
 4 so far.
 5 THE WITNESS: Today?
 6 MR. VILLAGRA: Uh-huh.
 7 THE WITNESS: Yes.
 8 Q. BY MR. VILLAGRA: What are those?
 9 A. I have 15 counties, and for those counties I
 10 help them with site selection, the site selection
 11 process, and planning and approving their plans.
 12 Q. Plans for new school construction?
 13 A. Yes.
 14 Q. What about plans for modernization?
 15 MR. SEFERIAN: Objection. Vague.
 16 THE WITNESS: Yes.
 17 Q. BY MR. VILLAGRA: What do you understand
 18 modernization to be?
 19 MR. SEFERIAN: Objection. Overly broad. Calls
 20 for speculation.
 21 THE WITNESS: Anything that is submitted and
 22 requires state funding or requests state funding that
 23 changes the existing facility, adds to the existing
 24 facility.
 25 Q. BY MR. VILLAGRA: And when were you assigned

1 these additional 15 counties that you have
 2 responsibility for, if you can recall?
 3 A. Six years ago, five years ago.
 4 Q. So is it fair to say that as of today your
 5 responsibilities are, as a coordinator for year-round
 6 education, that you have responsibility for 15 counties
 7 with respect to site selection and planning and
 8 approving new school construction plans?
 9 A. Yes.
 10 MR. SEFERIAN: I'm not sure he finished the
 11 question.
 12 THE WITNESS: Okay.
 13 Q. BY MR. VILLAGRA: Are you still writing Title 5
 14 regulations, is that still part of your job?
 15 A. They were revised a year ago, and I did the
 16 revisions.
 17 Q. So it's not an ongoing process of writing
 18 regulations?
 19 A. No.
 20 Q. Are you still responsible for SCS
 21 correspondence?
 22 A. No.
 23 Q. And has your employment at the California
 24 Department of Education been full time?
 25 A. Yes.

1 Q. Have you held any other jobs during this period
2 that you've worked for the California Department of
3 Education?

4 A. Yes.

5 Q. What are those other jobs?

6 A. I teach at City College.

7 Q. When did you start teaching at City College?

8 A. Thirteen years ago.

9 Q. What do you teach?

10 A. English literature.

11 Q. Anything else?

12 A. No.

13 Q. Do you hold any other jobs other than being a
14 consultant for the California Department of Education
15 and teaching at City College?

16 A. No.

17 Q. I'd like to ask you a few questions about the
18 organizational structure at the CDE, if I could. If we
19 could start at the top of the chain and work ourselves
20 down to you.

21 Who do you understand to be the top person at
22 the CDE?

23 MR. SEFERIAN: Objection. Vague and ambiguous
24 as to "top person." Calls for speculation. Calls for
25 an inadmissible opinion. No foundation.

1 MR. SALVATY: Objection. Vague and ambiguous
2 also.

3 THE WITNESS: I don't know the name of the
4 branch.

5 Q. BY MR. VILLAGRA: Is it possible that she's the
6 head of the finance, technology and administration
7 branch?

8 MR. SEFERIAN: Objection. Calls for
9 speculation. No foundation.

10 THE WITNESS: Yes.

11 Q. BY MR. VILLAGRA: How do you know that?

12 MR. SEFERIAN: Same objections.

13 THE WITNESS: It seems to be the familiar -- it
14 seems familiar to me.

15 Q. BY MR. VILLAGRA: From your work at the
16 California Department of Education?

17 A. Yes.

18 Q. Do you know who Duwayne Brooks is?

19 A. Yes.

20 Q. And who is he?

21 A. My boss.

22 Q. And what's his title?

23 A. Director of school facilities planning
24 division.

25 Q. Do you know what areas Duwayne Brooks has

1 Q. BY MR. VILLAGRA: Do you understand the
2 question?

3 A. Yes.

4 MR. SEFERIAN: Same objections.

5 THE WITNESS: Delaine Eastin.

6 Q. BY MR. VILLAGRA: And what is her title?

7 A. State superintendent of public instruction.

8 Q. And how do you know that?

9 MR. SEFERIAN: Objection. Overly broad. Calls
10 for a narrative.

11 THE WITNESS: She was elected to that position.

12 Q. BY MR. VILLAGRA: Do you know who Scott Hill
13 is?

14 A. Kind of.

15 Q. Do you know his title?

16 A. No.

17 Q. Do you know who Susan Lange is?

18 A. Yes.

19 Q. Who is Susan Lange?

20 A. Department superintendent of public
21 instruction.

22 Q. Is there a particular subject area that she's
23 responsible for?

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

1 responsibility for as director of the school facilities
2 planning division?

3 A. Yes.

4 MR. SEFERIAN: Objection.

5 Q. BY MR. VILLAGRA: What are those areas?

6 MR. SEFERIAN: Objection. Overly broad. Vague
7 and ambiguous as to "responsibilities." Calls for an
8 inadmissible legal opinion. Calls for a narrative.

9 THE WITNESS: Administering the state school
10 construction program for the Department of Education,
11 the QZAB program, class size reduction, year-round
12 education and school transportation.

13 MR. SEFERIAN: We go off the record?

14 MR. VILLAGRA: Sure.

15 (Discussion held off the record.)

16 MR. SALVATY: We didn't say this at the
17 beginning, but in the prior depositions we talked about
18 a stipulation that the objections raised by Mr. Seferian
19 would also be jointly asserted by the State defendants.

20 Has that been your understanding at prior
21 depositions?

22 MR. SEFERIAN: Yes. Is that acceptable, and
23 vice versa?

24 MR. VILLAGRA: That's fine with me.

25 MR. SEFERIAN: Thank you.

1 MR. SALVATY: Thanks.
 2 Q. BY MR. VILLAGRA: Mr. Payne, when you were
 3 testifying about the areas that Mr. Brooks has
 4 responsibility for, you mentioned a QZAB program. Would
 5 you spell that.
 6 A. It's an acronym, and it stands for Qualified
 7 Zone Academy Bonds.
 8 Q. What are Qualified Zone Academy Bonds, if you
 9 know?
 10 A. It's a federal program from a federal pot of
 11 money that gives grants to schools to go into
 12 partnerships with businesses in which they share
 13 training facilities and equipment.
 14 Q. You also mentioned that Mr. Brooks has
 15 responsibility for school transportation?
 16 A. Yes.
 17 Q. What do you mean by "school transportation"?
 18 A. School buses.
 19 Q. What do you mean by "school buses"?
 20 A. I don't know much else.
 21 Q. Does he have a staff responsible for school
 22 transportation?
 23 A. Yes.
 24 Q. Do you know who is on that staff?
 25 A. No.

1 Q. Do you know how many people are on that staff?
 2 A. I don't.
 3 Q. Do you know who Jim Bush is?
 4 A. Yes.
 5 Q. And who is he?
 6 A. Assistant director of the school facilities
 7 planning division.
 8 Q. Do you know what his responsibilities are as
 9 assistant director?
 10 MR. SEFERIAN: Objection. Vague and ambiguous
 11 as to "responsibilities." Calls for an inadmissible
 12 opinion. Overly broad. Calls for a narrative.
 13 THE WITNESS: He manages the school facilities
 14 consultants, the field consultants.
 15 Q. BY MR. VILLAGRA: How many school facilities
 16 consultants are there?
 17 A. I believe 10.
 18 Q. Does Mr. Bush manage you?
 19 A. Yes.
 20 Q. Do you know who Lynn Piccoli is?
 21 A. Yes.
 22 Q. Who is she?
 23 A. She's a staff manager.
 24 Q. Do you know what her responsibilities are as
 25 staff manager?

1 MR. SEFERIAN: Objection. Vague and ambiguous
 2 as to "responsibilities." Calls for an inadmissible
 3 opinion. No foundation.
 4 THE WITNESS: She manages the nonprofessional
 5 staff.
 6 Q. BY MR. VILLAGRA: I take it she doesn't manage
 7 you?
 8 A. No.
 9 Q. Who do you report to directly, is it Mr. Bush?
 10 MR. SEFERIAN: Objection. Vague and ambiguous
 11 as to "report."
 12 THE WITNESS: For facilities issues, Jim Bush.
 13 Q. BY MR. VILLAGRA: Who do you report to with
 14 respect to other issues?
 15 A. Duwayne Brooks.
 16 Q. And as to what issues do you report to Duwayne
 17 Brooks?
 18 A. Year-round education.
 19 Q. When you say facilities, that that's the
 20 subject that you report to Jim Bush regarding, what do
 21 you mean by facilities?
 22 A. Site selection questions and issues, and plan
 23 review questions and issues.
 24 Q. Is that also known as field services?
 25 A. Yes.

1 Q. How do you report to Jim Bush regarding
 2 facilities issues?
 3 MR. SEFERIAN: Objection. Overly broad. Vague
 4 and ambiguous.
 5 THE WITNESS: If a problem arises, I'll just
 6 consult with him.
 7 Q. BY MR. VILLAGRA: Do you have
 8 regularly-scheduled meetings with him?
 9 A. Staff meetings, yes.
 10 Q. How often do you have staff meetings with
 11 Mr. Bush?
 12 A. Three times a month.
 13 Q. How long is a typical staff meeting with
 14 Mr. Bush?
 15 A. Two to three hours.
 16 Q. Is it just you and Mr. Bush?
 17 A. No.
 18 Q. Who else attends those staff meetings?
 19 A. The field representatives.
 20 Q. Would that be the other consultants?
 21 A. Yes.
 22 Q. Anyone else?
 23 A. Support staff sometimes.
 24 Q. Are any minutes kept of the staff meetings that
 25 you have with Mr. Bush three times a month?

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1 A. Typically, no.
 2 Q. Occasionally there are minutes taken?
 3 A. Occasionally.
 4 Q. Do you know who takes those minutes?
 5 A. I'm trying to remember her name. Her first
 6 name is Sandy.
 7 Q. Do you have staff meetings with Mr. Brooks?
 8 A. Yes.
 9 Q. Do you have regularly-scheduled meetings with
 10 Mr. Brooks?
 11 A. Yes.
 12 Q. How often?
 13 A. Three times a month. Same meetings.
 14 Q. It's the same meetings that you have with
 15 Mr. Bush and Mr. Brooks?
 16 A. Yes.
 17 Q. And what do you do at these staff meetings?
 18 MR. SEFERIAN: Objection. Overly broad.
 19 THE WITNESS: We discuss any changes to
 20 regulations or proposed changes, and then discuss
 21 individual issues that arise for each of us.
 22 Q. BY MR. VILLAGRA: Is staff called upon to make
 23 presentations?
 24 A. Yes.
 25 Q. Have you made presentations at these staff

Page 23

1 meetings?
 2 A. Yes.
 3 Q. Have you made presentations regarding
 4 year-round education?
 5 A. Yes.
 6 Q. What topics have you covered in your
 7 presentations regarding year-round education?
 8 A. Status of operational grant funds. That's it.
 9 Q. When did you last make a presentation on the
 10 status of operational grant funds?
 11 A. Six months ago.
 12 Q. What do you mean by the "status of operational
 13 grant funds"?
 14 A. The money available, legislatively available as
 15 opposed to the demand for those funds.
 16 Q. Is there a difference between the money that's
 17 legislatively available as opposed to the demand for the
 18 funds?
 19 A. Yes.
 20 MR. SALVATY: Objection. Vague and ambiguous.
 21 Q. BY MR. VILLAGRA: What is the difference?
 22 MR. SEFERIAN: Objection. Vague and ambiguous.
 23 Overly broad. Calls for a narrative.
 24 THE WITNESS: I don't know the dollar amounts,
 25 dollar amount difference.

Page 24

1 Q. BY MR. VILLAGRA: Is the money legislatively
 2 available equal to the demand for the funds?
 3 A. No.
 4 MR. SEFERIAN: Objection. Overly broad.
 5 MR. SALVATY: Vague and ambiguous.
 6 THE WITNESS: No.
 7 Q. BY MR. VILLAGRA: Is it lower?
 8 MR. SEFERIAN: Objection. Overly broad. Vague
 9 and ambiguous. Vague as to time. Vague and ambiguous.
 10 THE WITNESS: Repeat the question, please.
 11 Q. BY MR. VILLAGRA: Let me rephrase it. When you
 12 made your presentation six months ago on the status of
 13 operational grant funds, was the amount legislatively
 14 available in operational grant funds lower than the
 15 demand for the funds?
 16 A. Yes.
 17 Q. How would you characterize how much lower?
 18 MR. SALVATY: Same objections.
 19 THE WITNESS: Way lower.
 20 Q. BY MR. VILLAGRA: What do you mean by "way
 21 lower"?
 22 A. Less than half.
 23 Q. In this presentation we're talking about you
 24 made about six months ago, did you have any
 25 documentation with you when you made the presentation?

Page 25

1 A. I had my analyst with me.
 2 Q. Who is your analyst?
 3 A. Shannon Farrell-Hart.
 4 Q. Who you mind spelling her name for us?
 5 A. S-h-a-n-n-o-n. Farrell-Hart is hyphenated,
 6 F-a-r-r-e-l-l, hyphen, Hart, H-a-r-t.
 7 Q. Did Shannon Farrell-Hart also make a
 8 presentation at this meeting about six months ago on the
 9 status of operational grant funds?
 10 A. No.
 11 Q. Did she provide any documentation to you
 12 regarding the status of operational grant funds at this
 13 meeting about six months ago?
 14 A. She provided the figures to me.
 15 Q. Did she provide you the figures orally or in
 16 writing?
 17 A. Orally.
 18 Q. Was there any discussion at the staff meeting
 19 about the status of operational grant funding being way
 20 low?
 21 MR. SALVATY: Objection. Vague.
 22 THE WITNESS: No discussion.
 23 Q. BY MR. VILLAGRA: Before this meeting six
 24 months ago, had you given any other presentations at
 25 staff meetings regarding the status of operational grant

1 funds?
 2 A. Yes.
 3 Q. Do you recall when those might have been?
 4 A. Probably yearly.
 5 Q. Going back how far have you made yearly
 6 presentations on the status of operational grant funds?
 7 MR. SEFERIAN: In the staff meetings?
 8 MR. VILLAGRA: In the staff meetings. Thank
 9 you.
 10 THE WITNESS: Six years.
 11 Q. BY MR. VILLAGRA: Is that when the legislature
 12 made the operational grant funds available for the first
 13 time?
 14 A. No.
 15 Q. Do you know how long they've been available?
 16 A. Yes.
 17 Q. How long have the operational grant funds been
 18 available?
 19 A. Since 1990.
 20 Q. Going back the six years that you've made
 21 presentations on the status of operational grant funds,
 22 has there always been an insufficiency of operational
 23 grant funds as opposed to the demand for them?
 24 MR. SEFERIAN: Objection. Vague and ambiguous
 25 as to "insufficiency." Overly broad. Calls for a

1 narrative. Calls for speculation. No foundation.
 2 THE WITNESS: No.
 3 Q. BY MR. VILLAGRA: Do you recall when the
 4 insufficiency began?
 5 MR. SEFERIAN: Objection. Vague and ambiguous
 6 as to "insufficiency."
 7 THE WITNESS: I believe five years ago.
 8 Q. BY MR. VILLAGRA: And what do you take
 9 insufficiency to mean?
 10 MR. SEFERIAN: Objection. Vague and ambiguous.
 11 Calls for speculation. No foundation.
 12 Q. BY MR. VILLAGRA: Let me rephrase. When you're
 13 testifying that there's been an insufficiency in the
 14 operational grant funds for the last five years as
 15 opposed to the demand, what do you mean by
 16 insufficiency?
 17 MR. SALVATY: Objection. Misstates testimony.
 18 THE WITNESS: That the grants can't be paid at
 19 face value at 100 percent. They're prorated downward.
 20 Q. BY MR. VILLAGRA: Has the amount at which
 21 operational grant funds have been prorated over the last
 22 five years been growing?
 23 MR. SEFERIAN: Objection. Vague and ambiguous
 24 as to "growing." Overly broad.
 25 THE WITNESS: Would you restate the question.

1 Q. BY MR. VILLAGRA: You testified that there's
 2 been an insufficiency in operational grant funds over
 3 the last five years in that grants can't be paid at 100
 4 percent, they've been prorated.
 5 The amount at which operational grant fund
 6 requests have been prorated, has that amount been
 7 increasing over the last five years?
 8 MR. SALVATY: Objection. Misstates testimony.
 9 MR. SEFERIAN: Objection. Vague and ambiguous
 10 as to "growing."
 11 THE WITNESS: The deficit is growing.
 12 Q. BY MR. VILLAGRA: What do you mean by "the
 13 deficit is growing"?
 14 A. The proration, the difference between the
 15 amount due and the amount received becomes bigger and
 16 bigger.
 17 Q. Do you happen to know who made presentations
 18 regarding operational grant funds before you took that
 19 responsibility over about six years ago?
 20 A. Leroy Small.
 21 Q. And who is he?
 22 A. At the time he was a consultant on staff in
 23 charge of the grant program.
 24 Q. Do you know how long Mr. Small was the
 25 consultant of the grant program?

1 A. Got to do the math. Eight years.
 2 Q. From when to when?
 3 A. 1989 to 1997.
 4 Q. Is he still a consultant for the California
 5 Department of Education?
 6 MR. SALVATY: Objection. Vague.
 7 THE WITNESS: Yes.
 8 Q. BY MR. VILLAGRA: What is his title now, if you
 9 know it?
 10 A. He's still a consultant, a retired annuitant.
 11 Q. Do you know what his responsibilities are as a
 12 retired annuitant?
 13 MR. SEFERIAN: Objection. Vague and ambiguous
 14 as to "responsibilities." Calls for an inadmissible
 15 opinion.
 16 MR. VILLAGRA: And I'm asking specifically
 17 about his responsibilities as a consultant for the
 18 California Department of Education.
 19 MR. SEFERIAN: Same objections.
 20 THE WITNESS: He still oversees the grant
 21 program on a part-time basis.
 22 Q. BY MR. VILLAGRA: Does he oversee any other
 23 programs as a consultant for the California Department
 24 of Education?
 25 A. No.

- 1 Q. I think we got into this line of questioning by
2 talking about the subject of presentations at staff
3 meetings.
4 Are there any other presentations that you make
5 at these staff meetings other than presentations
6 relating to operational grant funds?
7 A. Yes.
8 Q. What are those other presentations?
9 A. Updates on Title 5.
10 Q. Any other subjects that you make presentations
11 on at staff meetings?
12 A. No.
13 Q. Do you make presentations on year-round
14 education?
15 A. No.
16 Q. Does anyone else at the staff meetings make
17 presentations on year-round education?
18 A. No.
19 Q. Do you ever have occasion to report to Susan
20 Lange directly?
21 A. No.
22 Q. Do you ever have occasion to report to Scott
23 Hill directly?
24 A. No.
25 Q. Do you ever have occasion to report to Delaine

- 1 A. Uh-huh. Yes. I'm sorry.
2 Q. What calendar was Cordova High School on?
3 MR. SEFERIAN: Objection. Vague and ambiguous
4 as to "calendar."
5 THE WITNESS: A traditional calendar with
6 blocked scheduling.
7 Q. BY MR. VILLAGRA: What do you mean by a
8 "traditional calendar"?
9 A. 180 days a year from September through the
10 middle of June.
11 Q. And you mentioned block subjects?
12 A. Yeah.
13 Q. What do you mean by block subjects?
14 A. Classes were two hours long held every other
15 day.
16 Q. Was that a specialized program that was offered
17 at Cordova High School?
18 MR. SEFERIAN: Objection. Vague and ambiguous
19 as to "specialized."
20 THE WITNESS: It's fairly unique in high
21 school.
22 Q. BY MR. VILLAGRA: Is Cordova High School a
23 public school?
24 A. Yes.
25 Q. What did you teach?

- 1 Eastin directly?
2 A. No.
3 Q. Do you have a staff that you supervise?
4 A. No.
5 Q. Are there any other employees at the California
6 Department of Education who report to you?
7 MR. SEFERIAN: Objection. Vague and ambiguous
8 as to "report."
9 THE WITNESS: Yes.
10 Q. BY MR. VILLAGRA: Who reports to you?
11 MR. SEFERIAN: Same objection.
12 THE WITNESS: Shannon Farrell-Hart.
13 Q. BY MR. VILLAGRA: Anyone else?
14 A. Yes. I'm trying to remember her last name.
15 Patricia Shaw.
16 Q. Regarding what subjects does Shannon
17 Farrell-Hart report to you?
18 A. The grant program.
19 Q. Anything else?
20 A. No.
21 Q. And Patricia Shaw, regarding what subjects does
22 she report to you?
23 A. She's my secretary.
24 Q. Sorry to go back a little bit. The high school
25 that you taught was Cordova; is that correct?

- 1 A. English.
2 Q. Was Cordova High School on the traditional
3 calendar the entire ten-year period that you worked
4 there?
5 A. Yes.
6 Q. How large a high school is it?
7 MR. SEFERIAN: Objection. No foundation.
8 MR. SALVATY: Vague as to time.
9 MR. VILLAGRA: When you taught there.
10 THE WITNESS: 2,100 students.
11 Q. BY MR. VILLAGRA: We talked a little bit
12 earlier about your responsible -- your being responsible
13 for field services; is that correct?
14 A. (Witness nods head.)
15 Q. I'd like to go into a little more detail about
16 exactly what field services encompasses.
17 A. Okay.
18 Q. You mentioned regulations.
19 A. Yes.
20 Q. If you could describe for me in detail what
21 regulations you're responsible for with respect to field
22 services.
23 MR. SEFERIAN: Objection. Overly broad. Calls
24 for an inadmissible legal opinion. Vague and ambiguous
25 as to "responsible." Calls for a narrative.

1 THE WITNESS: Title 5 regulations from sections
 2 14001 to 14033 refer to site selection criteria and plan
 3 review criteria, and it is that criteria that we use in
 4 the process of helping districts select sites and then
 5 reviewing their plans.
 6 Q. BY MR. VILLAGRA: What are the site selection
 7 criteria?
 8 MR. SEFERIAN: Objection. Overly broad. Calls
 9 for a narrative. Calls for an inadmissible opinion.
 10 MR. SALVATY: Also the regulations speak for
 11 themselves.
 12 MR. SEFERIAN: Are you asking him to recite the
 13 statute or the regulations, or --
 14 MR. VILLAGRA: No. No, to the best of his
 15 recollection.
 16 MR. SEFERIAN: Same objections.
 17 THE WITNESS: I could probably give you most of
 18 them. Section 14010, little "a" through little "t," I
 19 believe, refers to certain safety criteria that a site
 20 must meet, proximity to railroad tracks, airport
 21 runways, buried power lines -- buried gas lines, excuse
 22 me, high tension power lines, environmental factors of
 23 wind and sunlight, prescribed site sizes, proximity to
 24 earthquake faults. I'm probably missing some, but those
 25 are they.

1 Q. BY MR. VILLAGRA: And what are the plan review
 2 criteria?
 3 MR. SEFERIAN: Objection. Overly broad. Calls
 4 for a narrative. Calls for an inadmissible opinion.
 5 MR. SALVATY: And regulations speak for
 6 themselves.
 7 THE WITNESS: 14030 specifies plan review
 8 criteria, and includes such things as class size in
 9 square footage, safety standards for laboratories. This
 10 gets very esoteric. Supervision of nurse's office. It
 11 refers to the UBC for bathroom fixtures and counts,
 12 pedestrian traffic safety to and from the school,
 13 special education classrooms in proximity to the other
 14 classrooms. That's all I can remember right now. I'm
 15 sorry.
 16 MR. VILLAGRA: No, that's quite all right.
 17 Never had a witness cite regulations by numbers before.
 18 That's wonderful.
 19 Q. And you know the site selection criteria from
 20 your work in field services; is that correct?
 21 A. Yes.
 22 Q. And you know the plan review criteria from your
 23 work in field services?
 24 A. Yes.
 25 Q. And the site selection criteria applies to new

1 schools; is that correct?
 2 A. Only to new schools.
 3 Q. And the plan review criteria, does that only
 4 apply to new schools?
 5 A. Yes.
 6 Q. To your knowledge, are there criteria that
 7 apply to existing schools like those that apply to new
 8 schools?
 9 MR. SEFERIAN: Objection. Overly broad. Calls
 10 for an inadmissible legal opinion. Vague and ambiguous
 11 as to "criteria" and "existing schools." No foundation.
 12 Calls for speculation.
 13 THE WITNESS: No.
 14 Q. BY MR. VILLAGRA: And why do you believe that
 15 to be the case, or how do you know?
 16 MR. SEFERIAN: Objection. Calls for an
 17 inadmissible opinion. No foundation. Calls for
 18 speculation. Overly broad.
 19 THE WITNESS: It just isn't part of our
 20 authority nor my job.
 21 Q. BY MR. VILLAGRA: By "our authority," what do
 22 you mean?
 23 A. Title 5 authority.
 24 Q. Do you have any idea whether criteria for
 25 existing schools falls under the authority of anyone

1 else at the California Department of Education?
 2 MR. SEFERIAN: Objection. No foundation.
 3 Calls for speculation. Calls for an inadmissible legal
 4 opinion. Vague and ambiguous as to "criteria for
 5 existing schools," and as to "anyone else."
 6 MR. SALVATY: Also calls for a legal opinion.
 7 THE WITNESS: One area I can think of. That's
 8 special education.
 9 Q. BY MR. VILLAGRA: What are you referring to
 10 when you say "special education"?
 11 A. I'm just trying to be terse. Not my style
 12 typically. If the configuration of a school appears to
 13 isolate special education students, then there is cause
 14 for the parents of those students to appeal to our
 15 special education division.
 16 Q. When you testified about plan review criteria,
 17 you mentioned class size square footage.
 18 A. Yes.
 19 Q. What does that refer to?
 20 MR. SEFERIAN: Objection. Overly broad.
 21 MR. SALVATY: Vague and ambiguous.
 22 THE WITNESS: This is Code Section 14030a, and
 23 it specifies that a standard classroom K through 12 --
 24 no, 1 through 12 should be 960 square feet.
 25 Q. BY MR. VILLAGRA: Were you responsible for

1 writing section 14030a?
 2 MR. SEFERIAN: Objection. Vague and ambiguous
 3 as to "responsible."
 4 THE WITNESS: Yes.
 5 Q. BY MR. VILLAGRA: What did you do with respect
 6 to regulation 14030a?
 7 MR. SEFERIAN: Objection. Overly broad. Calls
 8 for a narrative. Vague and ambiguous.
 9 THE WITNESS: I had a partner, so I don't want
 10 to take full responsibility or full culpability, as the
 11 case may be. Sorry. Couldn't help it.
 12 For that section we incorporated what was a
 13 guideline and incorporated it in, and we had authority
 14 and reference to make it a regulation.
 15 Q. BY MR. VILLAGRA: When you say incorporated a
 16 guideline, what does that mean?
 17 A. We had those standards as recommendations.
 18 Q. When you say "we," who do you mean?
 19 A. School facilities planning division.
 20 Q. So that 960-square-foot standard came from a
 21 school facilities planning division recommendation; is
 22 that correct?
 23 A. Yes.
 24 Q. Do you know whether there is any class size
 25 square footage standard that applies to existing

1 California public schools?
 2 MR. SEFERIAN: Objection. Calls for an
 3 inadmissible legal opinion.
 4 MR. VILLAGRA: To your knowledge.
 5 MR. SALVATY: Vague and ambiguous.
 6 MR. SEFERIAN: Would you reread the question,
 7 please.
 8 (Record read.)
 9 MR. SEFERIAN: Objection. Calls for an
 10 inadmissible opinion. Vague and ambiguous. No
 11 foundation. Calls for speculation. Vague and ambiguous
 12 as to "standard" and "existing schools."
 13 THE WITNESS: Yes.
 14 Q. BY MR. VILLAGRA: What is it?
 15 MR. SEFERIAN: Same objections.
 16 THE WITNESS: Local Fire Marshal codes and ADA
 17 standards.
 18 Q. BY MR. VILLAGRA: And to your knowledge, any
 19 other standards?
 20 A. No.
 21 Q. And you're testifying now about standards that
 22 you are aware of that apply to existing schools. What
 23 are you referring to with existing schools?
 24 MR. SALVATY: Objection. Vague and ambiguous.
 25 THE WITNESS: Schools that exist. Schools that

1 are already built and occupied.
 2 Q. BY MR. VILLAGRA: So existing schools would be
 3 in opposition to new schools that are being planned to
 4 be built?
 5 MR. SEFERIAN: Objection. Vague and ambiguous
 6 as to "opposition." Overly broad.
 7 THE WITNESS: Yes.
 8 Q. BY MR. VILLAGRA: Do you know what the standard
 9 for class size square footage is in any local Fire
 10 Marshal code?
 11 MR. SEFERIAN: Objection. Vague and ambiguous
 12 as to "standard." Overly broad. Calls for an
 13 inadmissible legal opinion. No foundation. Calls for
 14 speculation. Vague and ambiguous as to "Fire Marshal
 15 code."
 16 THE WITNESS: I don't know.
 17 Q. BY MR. VILLAGRA: Do you know whether there are
 18 any classrooms in California public schools that are
 19 smaller than 960 square feet?
 20 MR. SEFERIAN: Objection. No foundation.
 21 Calls for speculation. Overly broad. Vague and
 22 ambiguous.
 23 THE WITNESS: Yes.
 24 MR. SEFERIAN: Vague and ambiguous as to
 25 "classrooms."

1 Q. BY MR. VILLAGRA: I'm sorry, the answer was
 2 yes?
 3 A. Yes.
 4 Q. How do you know that?
 5 MR. SEFERIAN: Same objections.
 6 MR. SALVATY: Vague.
 7 How do you know what? You asked him if he knew
 8 and he said yes, so I got lost.
 9 Q. BY MR. VILLAGRA: What did you mean by
 10 answering yes to my question?
 11 A. That I know of classrooms in California less
 12 than 960 square feet.
 13 Q. That's what I took it to be.
 14 How do you know that?
 15 MR. SEFERIAN: Objection. Overly broad. Vague
 16 and ambiguous. Calls for a narrative.
 17 THE WITNESS: Two ways, parent complaints and
 18 we see plans with substandard classrooms.
 19 Q. BY MR. VILLAGRA: How is it that parent
 20 complaints about class size come to your attention?
 21 A. Parents will phone the Department switchboard
 22 and be channeled to our division about facility
 23 questions or complaints.
 24 MR. SEFERIAN: We've been going about an hour
 25 now. Can we take a short break?

1 MR. VILLAGRA: Sure.
 2 (Recess taken.)
 3 (Mr. Hamilton not present.)
 4 Q. BY MR. VILLAGRA: I believe when we left off we
 5 were talking about standards for class size square
 6 footage that apply to existing classrooms, standards
 7 that you were aware of, and you mentioned local Fire
 8 Marshal codes and ADA.
 9 A. Yes.
 10 Q. What is the ADA?
 11 MR. SEFERIAN: Objection. No foundation.
 12 Calls for speculation.
 13 THE WITNESS: It's the Americans with
 14 Disabilities Act.
 15 Q. BY MR. VILLAGRA: Are you aware of any other
 16 standards that apply to existing classrooms with respect
 17 to class size square footage other than local Fire
 18 Marshal codes and the ADA?
 19 MR. SEFERIAN: Objection. No foundation.
 20 Calls for an inadmissible legal opinion. Calls for
 21 speculation.
 22 MR. SALVATY: Vague as to "standard."
 23 THE WITNESS: No.
 24 Q. BY MR. VILLAGRA: Do you know whether anyone at
 25 the California Department of Education enforces the

1 class size square footage standards contained in local
 2 Fire Marshal codes or the ADA?
 3 MR. SEFERIAN: Objection. No foundation.
 4 Vague and ambiguous as to "enforces." Calls for an
 5 inadmissible legal opinion. Calls for speculation. No
 6 foundation.
 7 THE WITNESS: I know of no one who does that.
 8 Q. BY MR. VILLAGRA: And that is enforcing the
 9 local Fire Marshal codes and the ADA?
 10 MR. SEFERIAN: Same objections.
 11 THE WITNESS: Yes.
 12 Q. BY MR. VILLAGRA: How are you using enforcing?
 13 MR. SEFERIAN: Objection. Overly broad. Calls
 14 for speculation. Vague and ambiguous.
 15 THE WITNESS: Requiring them to get back into
 16 compliance with Fire Marshal regulation or ADA
 17 provisions.
 18 Q. BY MR. VILLAGRA: When it comes to the Title 5
 19 regulation that we've been talking about that has a
 20 standard for class size square footage, that's a
 21 standard that applies to new school plans; is that
 22 correct?
 23 MR. SEFERIAN: Objection. Calls for an
 24 inadmissible legal opinion. No foundation. Calls for
 25 speculation. Vague and ambiguous as to "plans."

1 THE WITNESS: Yes.
 2 Q. BY MR. VILLAGRA: And does anyone at the
 3 California Department of Education enforce whether new
 4 schools are actually built in accordance with the plans
 5 that are reviewed?
 6 MR. SEFERIAN: Objection. Calls for an
 7 inadmissible legal opinion. No foundation. Calls for
 8 speculation. Vague and ambiguous as to "enforce" and as
 9 to "in accordance."
 10 THE WITNESS: No one does that.
 11 Q. BY MR. VILLAGRA: So if a school plan says that
 12 the class sizes will be 960 square feet or larger, no
 13 one at the California Department of Education actually
 14 checks to see whether the classrooms are actually built
 15 to those specifications?
 16 MR. SEFERIAN: Objection. Calls for an
 17 inadmissible legal opinion. No foundation. Calls for
 18 speculation. Incomplete and improper hypothetical
 19 question. Vague and ambiguous as to "checks."
 20 MR. SALVATY: Vague as to time.
 21 THE WITNESS: Nobody that I know of checks.
 22 Q. BY MR. VILLAGRA: What do you mean by "checks"?
 23 MR. SEFERIAN: Objection. Vague and ambiguous.
 24 Calls for a narrative. Calls for speculation.
 25 THE WITNESS: To check is to see if the

1 blueprint plan indeed is reflected in the actual
 2 construction dimensions.
 3 Q. BY MR. VILLAGRA: Now, you mentioned that
 4 you're aware that some classes in California public
 5 schools are smaller than 960 square feet because you
 6 receive parent's complaints on that subject; is that
 7 correct?
 8 A. Yes, parent phone calls.
 9 Q. What is it generally that parents are
 10 complaining about with respect to the size of their
 11 children's classrooms?
 12 MR. SEFERIAN: Objection. Assumes facts not in
 13 evidence. Calls for a narrative. Overly broad.
 14 THE WITNESS: Often it's an inquiry, is there a
 15 standard-sized classroom? And we answer that, and then
 16 they will just report that a classroom is below that
 17 standard size.
 18 Q. BY MR. VILLAGRA: And what do you do when you
 19 receive a report from a parent that a class is smaller
 20 than the appropriate standard?
 21 MR. SEFERIAN: Objection. Vague and ambiguous
 22 as to "appropriate standard." Calls for a narrative.
 23 Assumes facts not in evidence.
 24 MR. SALVATY: Other than what he's already said
 25 he does, I assume.

1 THE WITNESS: I call the school district, tell
 2 them we've had a complaint.
 3 Q. BY MR. VILLAGRA: Anything else?
 4 A. No.
 5 Q. Do you call the school district back to see if
 6 they've taken any action to correct the deficiency in
 7 the class size?
 8 A. No.
 9 MR. SEFERIAN: Objection. Calls for -- an
 10 incomplete and improper hypothetical question. Overly
 11 broad.
 12 MR. SALVATY: Misstates testimony.
 13 Q. BY MR. VILLAGRA: I'm sorry, what was your
 14 answer?
 15 A. No.
 16 Q. When you call a school district to inform them
 17 that a parent has complained about class size being
 18 substandard, do you have any expectation that the school
 19 district will do anything about it?
 20 MR. SEFERIAN: Objection. Vague and ambiguous
 21 as to "substandard" and "expectation." Calls for
 22 speculation. No foundation. Vague and ambiguous as to
 23 "do anything about it." Assumes facts not in evidence.
 24 Incomplete and improper hypothetical question.
 25 THE WITNESS: I would hope my call makes a

1 difference.
 2 Q. BY MR. VILLAGRA: Are you aware of any
 3 instances where your call to a school district about
 4 class sizes being substandard has made a difference?
 5 MR. SEFERIAN: Objection. Vague and ambiguous
 6 as to "substandard." No foundation. Calls for
 7 speculation. Vague and ambiguous as to "made a
 8 difference."
 9 THE WITNESS: No.
 10 Q. BY MR. VILLAGRA: What do you mean by "make a
 11 difference"?
 12 MR. SEFERIAN: Objection. Vague and ambiguous.
 13 Overly broad. No foundation.
 14 THE WITNESS: Make a difference by changing the
 15 class dimensions upwards.
 16 Q. BY MR. VILLAGRA: To comply with the
 17 960-square-foot standard?
 18 MR. SEFERIAN: Objection. No foundation.
 19 Vague and ambiguous. Vague and ambiguous as to
 20 "standard." Incomplete and improper hypothetical
 21 question.
 22 MR. SALVATY: Calls for a legal conclusion.
 23 THE WITNESS: Yes.
 24 Q. BY MR. VILLAGRA: You mentioned that there is
 25 another way in which you are aware that some classes in

1 California public schools are smaller than 960 square
 2 feet, and that is because you see plans with substandard
 3 classroom sizes; is that correct?
 4 A. Yes.
 5 Q. What do you do when you see a plan with
 6 substandard classroom school sizes?
 7 MR. SALVATY: Objection. Overbroad. Vague and
 8 ambiguous.
 9 MR. SEFERIAN: Okay. Vague and ambiguous as to
 10 "substandard classroom sizes."
 11 THE WITNESS: I ask the district to submit an
 12 educational specification showing how the instructional
 13 program will not be affected by a classroom of less than
 14 960 square feet.
 15 Q. BY MR. VILLAGRA: And do you then review the
 16 educational specifications to make a determination as to
 17 whether the instructional program will be affected?
 18 MR. SEFERIAN: Objection. Hypothetical
 19 question. Incomplete and improper hypothetical
 20 question. Overly broad.
 21 (Mr. Hamilton entered the room.)
 22 THE WITNESS: Yes.
 23 Q. BY MR. VILLAGRA: And what criteria, if any, do
 24 you apply to determine whether a classroom less than 960
 25 square feet would affect the instructional program

1 offered in the classroom?
 2 MR. SEFERIAN: Objection. Vague and ambiguous
 3 as to "criteria" and "affect." Overly broad.
 4 THE WITNESS: Just a professional evaluation
 5 and experience.
 6 Q. BY MR. VILLAGRA: What do you mean by
 7 "professional evaluation and experience"?
 8 A. Will an example serve as an answer?
 9 Q. Sure.
 10 A. If an 800-square-foot classroom has adjacent to
 11 it two pull-out rooms for individualized instruction,
 12 then that is, in effect, a standard classroom.
 13 Q. Are there any other instances that you can
 14 think of where an 800-square-foot classroom would not
 15 affect the instructional program?
 16 A. Yes.
 17 MR. SEFERIAN: Objection. Vague and ambiguous
 18 as to "affect the instructional program." Overly broad.
 19 Incomplete and improper hypothetical question.
 20 THE WITNESS: Yes.
 21 Q. BY MR. VILLAGRA: What are those instances?
 22 MR. SEFERIAN: Same objections.
 23 THE WITNESS: There are a few to enumerate. A
 24 class that uses pull-out instruction that never has the
 25 entire class in at any one time.

1 Another situation would be team teaching where
 2 a portion of the class is removed to a bigger class or
 3 bigger area.
 4 Q. BY MR. VILLAGRA: Anything else that you can
 5 think of?
 6 MR. SEFERIAN: Same objections.
 7 THE WITNESS: Tiny students. Sorry. I can't
 8 think of any.
 9 Q. BY MR. VILLAGRA: Now, with something like an
 10 800-square-foot classroom being adjacent to two pull-out
 11 rooms, would that be contained in the educational
 12 specification that is submitted to you by the district?
 13 MR. SEFERIAN: Objection. Calls for
 14 speculation. Incomplete and improper hypothetical
 15 question. Vague and ambiguous as to "something like."
 16 No foundation.
 17 THE WITNESS: Yes.
 18 Q. BY MR. VILLAGRA: And you would either approve
 19 or disapprove of the plan based on the justification
 20 that's offered for having a smaller than 960-square-foot
 21 classroom; is that correct?
 22 MR. SEFERIAN: Objection. Argumentative.
 23 Vague and ambiguous as to "approve" or "disapprove."
 24 Incomplete and improper hypothetical question. Calls
 25 for speculation.

1 THE WITNESS: Yes.
 2 Q. BY MR. VILLAGRA: I'm sorry, I didn't mean to
 3 exclude any other possibility.
 4 Other than approving and disapproving, is there
 5 something else that you might do with an application
 6 justifying why a classroom was smaller than 960 square
 7 feet?
 8 MR. SEFERIAN: Objection. Incomplete and
 9 improper hypothetical question. Calls for speculation.
 10 No foundation.
 11 THE WITNESS: Short of redesigning the plans,
 12 no.
 13 Q. BY MR. VILLAGRA: Do you ever redesign the
 14 plans?
 15 A. Yes.
 16 Q. Now, if you approve a plan that calls for a
 17 classroom smaller than 960 square feet and you approve
 18 of the justification for it as not affecting the
 19 instructional program, do you, once the school is
 20 constructed, go back to see whether the purported
 21 justification of having a smaller classroom has actually
 22 been implemented?
 23 MR. SEFERIAN: Objection. Vague and ambiguous
 24 as to "approve." Vague and ambiguous as to not
 25 "affecting the instructional program." Assumes facts

1 not in evidence. Vague and ambiguous as to "purported
 2 justification." Incomplete and improper hypothetical
 3 question.
 4 THE WITNESS: No.
 5 Q. BY MR. VILLAGRA: So, for example, going back
 6 to your 800-square-foot classroom, you don't go back to
 7 look to see whether adjacent pull-out classrooms are
 8 being used so that not all of the children are in the
 9 800-square-foot classroom at one time?
 10 MR. SEFERIAN: Objection. Assumes facts not in
 11 evidence. Incomplete and improper hypothetical
 12 question. No foundation.
 13 THE WITNESS: No.
 14 Q. BY MR. VILLAGRA: Do you know whether anyone at
 15 the CDE would make that kind of review to see whether
 16 schools were built in accordance with the educational --
 17 the school design plan that was submitted?
 18 MR. SEFERIAN: Objection. Vague and ambiguous
 19 as to "make that kind of review." No foundation.
 20 Incomplete and improper hypothetical question. No
 21 foundation.
 22 THE WITNESS: I don't know of anybody in the
 23 department that would do that.
 24 Q. BY MR. VILLAGRA: How many school design plans
 25 would you say you review in a typical year?

1 A. Thirty.
 2 Q. I'd appreciate it if you could put a figure on
 3 this. Out of those 30 that you see in a year, how many
 4 would include a classroom smaller than 960 square feet?
 5 MR. SEFERIAN: Objection. Calls for
 6 speculation.
 7 MR. VILLAGRA: In a typical year.
 8 MR. SEFERIAN: Vague and ambiguous as to
 9 "classroom." No foundation.
 10 MR. SALVATY: Is this how many has he done this
 11 for, or how many would he do this for in a theoretical
 12 year?
 13 MR. VILLAGRA: Typically he sees 30 school
 14 design plans. I'm wondering out of the 30 how many
 15 would include a classroom that is below 960 square feet.
 16 MR. SEFERIAN: Objection --
 17 MR. SALVATY: Vague and ambiguous.
 18 MR. SEFERIAN: -- calls for speculation.
 19 Assumes facts not in evidence.
 20 THE WITNESS: I'm guessing.
 21 MR. SEFERIAN: I don't think he wants you to
 22 guess. If you have a basis to give an estimate, then
 23 that's fine, but if it's going to be a guess, we don't
 24 want you to guess.
 25 Q. BY MR. VILLAGRA: Let me try it this way. It's

1 now November 20th. How many school design plans have
 2 you seen this calendar year?
 3 A. Thirty.
 4 Q. And of those 30, how many included classrooms
 5 smaller than 960 square feet?
 6 MR. SEFERIAN: Objection. Calls for
 7 speculation. Vague and ambiguous as to "classrooms."
 8 THE WITNESS: I'm dying here. I can't guess
 9 but I can't tell you exactly the number. Four.
 10 Q. BY MR. VILLAGRA: And that's based on your
 11 review of the school design plans that have been
 12 submitted?
 13 A. Yes.
 14 Q. Of those four school design plans that you've
 15 reviewed that included classrooms smaller than 960
 16 square feet, how many of them did you approve?
 17 MR. SEFERIAN: Objection. Vague and ambiguous
 18 as to "approve."
 19 MR. SALVATY: Overbroad. Is it four, or are
 20 you estimating?
 21 THE WITNESS: I'm estimating.
 22 MR. SALVATY: Well, you should make that clear
 23 because we're then proceeding as if that's a rock-solid
 24 number.
 25 THE WITNESS: Okay. It is not a rock-solid

1 number.
 2 Q. BY MR. VILLAGRA: Okay. Would you be able to
 3 give an equivalent not rock-solid number as to how many
 4 of those you approved?
 5 A. Yes, I am able to do that.
 6 Q. How many?
 7 A. All of them.
 8 Q. Of those four or so that you approved, did you
 9 have to redesign the plans for any of them?
 10 MR. SEFERIAN: Objection. Vague and ambiguous
 11 as to "redesign." Overly broad.
 12 MR. VILLAGRA: With respect only to class --
 13 school classroom size.
 14 THE WITNESS: No.
 15 MR. SEFERIAN: Same objections.
 16 Q. BY MR. VILLAGRA: In all four or so instances
 17 you approved the plans based on the educational
 18 specification that the district submitted to you?
 19 MR. SEFERIAN: Objection. Vague and ambiguous
 20 as to "approved."
 21 THE WITNESS: Yes.
 22 Q. BY MR. VILLAGRA: I believe when you were
 23 talking about plan review criteria in Title 5, you
 24 mentioned UBC for bathroom fixtures and counts; is that
 25 correct?

1 A. Yes.
 2 Q. What is the UBC for bathroom fixtures and
 3 counts?
 4 MR. SEFERIAN: Objection. Overly broad. Calls
 5 for an inadmissible legal opinion. Calls for a
 6 narrative. No foundation.
 7 MR. SALVATY: The regulations speak for
 8 themselves.
 9 THE WITNESS: Universal Building Code.
 10 Q. BY MR. VILLAGRA: What is the Universal
 11 Building Code?
 12 MR. SEFERIAN: Objection. Overly broad.
 13 THE WITNESS: It's a thick book filled with
 14 design and construction specifications. I don't mean to
 15 be facetious. That's indeed what it is.
 16 Q. BY MR. VILLAGRA: Is the Universal Building
 17 Code geared specifically to school construction?
 18 MR. SEFERIAN: Objection. Vague and ambiguous
 19 as to "geared." Calls for an inadmissible legal
 20 opinion. No foundation. Calls for speculation.
 21 THE WITNESS: No.
 22 Q. BY MR. VILLAGRA: So it applies to the design
 23 of all sorts of different buildings?
 24 MR. SEFERIAN: Objection. Calls for an
 25 inadmissible legal opinion. Vague and ambiguous as to

1 "applies." No foundation. Calls for speculation.
 2 MR. SALVATY: Do you understand the question?
 3 THE WITNESS: Yes.
 4 MR. SALVATY: Okay.
 5 THE WITNESS: Yes. And yes.
 6 Q. BY MR. VILLAGRA: What is the -- what are the
 7 UBC standards for bathroom fixtures and counts?
 8 MR. SEFERIAN: Objection. No foundation.
 9 Calls for speculation. Calls for an inadmissible legal
 10 opinion. Vague and ambiguous as to "standards." Calls
 11 for a narrative. Overly broad.
 12 THE WITNESS: I can't cite them specifically.
 13 It's a chart with a ratio between occupancy and required
 14 bathroom fixtures.
 15 Q. BY MR. VILLAGRA: And how do you know that?
 16 MR. SEFERIAN: Objection. Overly broad.
 17 THE WITNESS: I refer to it when I'm checking
 18 plans.
 19 Q. BY MR. VILLAGRA: The "it" being the Universal
 20 Building Code?
 21 A. Yes.
 22 Q. Do you know how the ratio that you've described
 23 between occupancy and bathroom fixtures was developed?
 24 MR. SEFERIAN: Objection. Calls for
 25 speculation.

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1 THE WITNESS: I don't know.
2 Q. BY MR. VILLAGRA: Do you know whether the ratio
3 for occupancy in relation to bathroom fixtures was
4 developed with adults in mind?
5 MR. SEFERIAN: Objection. No foundation.
6 Calls for speculation. Vague and ambiguous as to
7 "ratio." Calls for an inadmissible legal opinion.
8 THE WITNESS: I don't know.
9 Q. BY MR. VILLAGRA: Do you know whether the ratio
10 of occupancy to bathroom fixtures was developed with a
11 school day in mind?
12 MR. SEFERIAN: Objection. Vague and ambiguous
13 as to "school day." No foundation. Calls for
14 speculation. Calls for an inadmissible legal opinion.
15 THE WITNESS: I don't know.
16 Q. BY MR. VILLAGRA: Do you understand what I mean
17 by a school day?
18 A. Sure.
19 Q. When you refer to fixtures, what are you
20 talking about specifically?
21 A. Water closets, urinals, drinking fountains and
22 sinks.
23 Q. So when you receive school design plans, you
24 review them to see if there are water closets, urinals,
25 drinking fountains and sinks in sufficient numbers to

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1 comply with the Universal Building Code; is that
2 correct?
3 MR. SEFERIAN: Objection. Misstates the
4 witness' testimony. Vague and ambiguous as to
5 "sufficient." Overly broad. Incomplete and improper
6 hypothetical question.
7 THE WITNESS: Yes.
8 Q. BY MR. VILLAGRA: For example, if there are
9 fewer water closets than called for in the Universal
10 Building Code, what do you do?
11 MR. SEFERIAN: Objection. Overly broad.
12 Incomplete and improper hypothetical question. Calls
13 for a narrative.
14 THE WITNESS: We'll make a note to the
15 superintendent as part of our approval process that they
16 are to be in compliance.
17 Q. BY MR. VILLAGRA: And once the school is built,
18 do you look to see whether the school is actually being
19 built in compliance with the Universe Building Code with
20 reference to water closets, for example?
21 MR. SEFERIAN: Assumes fact not in evidence.
22 Incomplete and improper hypothetical question. No
23 foundation. Overly broad.
24 THE WITNESS: No.
25 Q. BY MR. VILLAGRA: Do you know whether anyone at

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1 the California Department of Education goes back to see
2 whether the school has been built in compliance with the
3 Universal Building Code?
4 MR. SEFERIAN: Objection. Assumes fact not in
5 evidence. Overly broad. No foundation. Calls for
6 speculation.
7 THE WITNESS: I don't know of anybody in the
8 department.
9 Q. BY MR. VILLAGRA: Are there any standards, to
10 your knowledge, that apply to bathroom fixtures and
11 counts in existing California public schools?
12 MR. SEFERIAN: Objection. Calls for an
13 inadmissible legal opinion. Vague and ambiguous as to
14 "standards." No foundation. Calls for speculation.
15 Vague and ambiguous as to "bathroom fixtures and
16 counts." Overly broad. Vague and ambiguous as to
17 "apply." Vague as to time.
18 THE WITNESS: Certainly the ratio is there in
19 the UBC, but I don't know if it applies just to new
20 buildings or to all existing buildings.
21 Q. BY MR. VILLAGRA: In the plan review criteria,
22 are there any standards with respect to lighting of
23 classrooms?
24 MR. SEFERIAN: Objection. Vague and ambiguous
25 as to "plan review criteria" and "lighting." Calls for

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1 an inadmissible legal opinion.
2 THE WITNESS: Yes.
3 Q. BY MR. VILLAGRA: Do you happen to know what
4 the criteria are for lighting?
5 MR. SEFERIAN: Objection. Calls for an
6 inadmissible legal opinion. Vague and ambiguous as to
7 "lighting." Overly broad. No foundation. Calls for
8 speculation. Vague and ambiguous as to "criteria."
9 THE WITNESS: It's not quantitative, it's
10 general. I believe it says sufficient.
11 Q. BY MR. VILLAGRA: Do you recall sufficient for
12 what purpose?
13 MR. SEFERIAN: Objection. Vague and ambiguous.
14 Overly broad.
15 MR. VILLAGRA: If any.
16 MR. SEFERIAN: Calls for an inadmissible legal
17 opinion. Vague and ambiguous as to "purpose."
18 THE WITNESS: I don't remember the specific
19 language.
20 Q. BY MR. VILLAGRA: In reviewing school design
21 plans, have you ever rejected a plan for having lighting
22 that was insufficient?
23 MR. SEFERIAN: Objection. Vague and ambiguous
24 as to "insufficient" and "rejected." Calls for
25 speculation. Incomplete and improper hypothetical

1 question.
 2 THE WITNESS: No.
 3 Q. BY MR. VILLAGRA: I'm sorry, I should have
 4 asked this about the bathroom fixtures as well.
 5 Have you ever rejected a school design plan for
 6 having insufficient numbers of bathroom fixtures in a
 7 school design plan that you've reviewed?
 8 MR. SEFERIAN: Objection. Vague and ambiguous
 9 as to "insufficient numbers of bathroom fixtures."
 10 Calls for speculation. Overly broad. Incomplete and
 11 improper hypothetical question.
 12 THE WITNESS: No.
 13 Q. BY MR. VILLAGRA: Of the 30 school design plans
 14 that you've reviewed this year, do you have any idea how
 15 many had fewer bathroom fixtures than are required under
 16 the Universal Building Code?
 17 MR. SEFERIAN: Objection. Calls for an
 18 inadmissible legal opinion. Calls for speculation.
 19 MR. SALVATY: Assumes facts not in evidence.
 20 MR. VILLAGRA: If any.
 21 THE WITNESS: I can think of one.
 22 Q. BY MR. VILLAGRA: And what did you do with
 23 respect to that one, did you send a note to the district
 24 that as part of the approval they would have to be in
 25 compliance?

1 MR. SEFERIAN: Objection. Compound question.
 2 Calls for a narrative. Overly broad. Vague and
 3 ambiguous as to "compliance."
 4 THE WITNESS: I wrote a letter to the district
 5 approving the project if they would -- no, no. I wrote
 6 a letter to the district approving the project and
 7 telling them that they needed to come up to UBC
 8 standards.
 9 Q. BY MR. VILLAGRA: In the plan review criteria
 10 contained in Title 5, do you know whether there are any
 11 standards that apply to air conditioning -- let me
 12 rephrase that -- apply to room temperature?
 13 MR. SEFERIAN: Objection. Calls for an
 14 inadmissible legal opinion. Vague and ambiguous as to
 15 "apply." Vague and ambiguous as to "room temperature."
 16 Overly broad. No foundation.
 17 THE WITNESS: There are none.
 18 Q. BY MR. VILLAGRA: Do you mean none that you're
 19 aware of, or are you certain that there are none?
 20 MR. SEFERIAN: Objection. Calls for
 21 speculation. Calls for an inadmissible legal opinion.
 22 Asked and answered.
 23 THE WITNESS: I am certain.
 24 Q. BY MR. VILLAGRA: Going back, how many years
 25 have you had responsibility for Title 5?

1 MR. SEFERIAN: Objection. Vague and ambiguous
 2 as to "responsibility." Assumes facts not in evidence.
 3 Overly broad. Misstates the witness' testimony. Vague
 4 and ambiguous.
 5 THE WITNESS: I don't have responsibility for
 6 Title 5. I helped write it in 1994. It might have been
 7 '95.
 8 Q. BY MR. VILLAGRA: And you also participated in
 9 a revision later?
 10 A. Yes.
 11 Q. When was that?
 12 A. It began in 1989, and we finished it 1999.
 13 MR. SEFERIAN: You said '89.
 14 THE WITNESS: I'm sorry, 1998.
 15 Q. BY MR. VILLAGRA: Do you know whether you have
 16 drafts of the regulations you helped write in 1994 or
 17 1995?
 18 MR. SEFERIAN: Objection. Vague and ambiguous
 19 as to "drafts."
 20 THE WITNESS: I don't have them.
 21 Q. BY MR. VILLAGRA: Do you know if they are still
 22 in existence?
 23 MR. SEFERIAN: Objection. No foundation.
 24 THE WITNESS: I don't know.
 25 Q. BY MR. VILLAGRA: Do you have any drafts of the

1 regulations, the Title 5 regulations you helped revise
 2 in 1998 and 1999?
 3 MR. SEFERIAN: Objection. Vague and ambiguous
 4 as to "drafts."
 5 THE WITNESS: I may have those.
 6 Q. BY MR. VILLAGRA: If you do have them, where
 7 would they be?
 8 A. In my office.
 9 Q. And what do you understand a draft of the Title
 10 5 regulations to refer to?
 11 MR. SEFERIAN: Objection. Vague and ambiguous.
 12 THE WITNESS: The beginning document before it
 13 was revised based upon public input.
 14 Q. BY MR. VILLAGRA: Do you recall whether in any
 15 of the drafts that you have prepared or helped prepare
 16 of Title 5 regulations you included standards as to room
 17 temperature?
 18 MR. SEFERIAN: Objection. Vague and ambiguous
 19 as to drafts of Title 5 regulations and "standards."
 20 THE WITNESS: I do recall.
 21 Q. BY MR. VILLAGRA: What do you recall?
 22 A. There was no language about room temperature.
 23 Q. When you were drafting or preparing drafts of
 24 Title 5 regulations, did you consider putting in
 25 language regarding room temperature?

1 MR. SEFERIAN: Objection. Assumes facts not in
 2 evidence. Calls for speculation. Overly broad.
 3 THE WITNESS: I don't recall that being
 4 discussed.
 5 Q. BY MR. VILLAGRA: Is the language in the plan
 6 review criteria contained in Title 5 identical to the
 7 language you helped write in the drafts?
 8 MR. SEFERIAN: Objection. Overly broad. Vague
 9 and ambiguous. Unintelligible.
 10 THE WITNESS: Could you repeat the question?
 11 Q. BY MR. VILLAGRA: I'm just trying to figure out
 12 whether the language that's in there regarding lighting
 13 is the language that you put in the drafts that you
 14 helped write?
 15 A. Yes.
 16 Q. Do you recall any of the discussion about the
 17 standard regarding lighting?
 18 A. No.
 19 Q. You mentioned at one point that there was a
 20 partner who you worked with in preparing the
 21 regulations; is that correct?
 22 A. Yes, that is correct.
 23 Q. Who was that?
 24 A. Betty Hansen.
 25 Q. Do you recall what her title was?

1 A. She was a consultant.
 2 Q. Is she still a consultant?
 3 A. No.
 4 Q. In helping to prepare the Title 5 regulations,
 5 do you recall any of the discussion regarding bathroom
 6 fixtures and counts?
 7 MR. SEFERIAN: Objection. Assumes facts not in
 8 evidence. Overly broad. Vague and ambiguous.
 9 THE WITNESS: Yes.
 10 Q. BY MR. VILLAGRA: What discussion do you
 11 recall?
 12 MR. SEFERIAN: Same objections.
 13 THE WITNESS: The choice was between two
 14 standards, one, the UBC, and the other, the UPC, which
 15 stands for Universal Plumbing Code.
 16 Q. BY MR. VILLAGRA: Who did you have this
 17 discussion with?
 18 A. The staff and our staff architect.
 19 Q. Do you recall who the staff architect was?
 20 A. Yes, Ellen Aasleten.
 21 Q. Would you mind spelling her name?
 22 A. I don't mind trying to spell her name. The
 23 Ellen is easy, E-l-l-e-n, and Aasleten is
 24 A-a-s-l-e-t-e-n.
 25 Q. And do you recall who the staff were that you

1 had discussions with regarding bathrooms in helping to
 2 prepare the Title 5 regulations?
 3 A. It was an issue at a staff meeting.
 4 Q. What was the purpose of the meeting?
 5 A. It was just an agenda item on our normally
 6 scheduled staff meeting.
 7 Q. And you were saying earlier that the discussion
 8 was about choosing between the UBC or the UPC; is that
 9 correct?
 10 A. Yes.
 11 Q. Did you make a recommendation either way?
 12 A. Yes.
 13 Q. What was your recommendation?
 14 A. The UBC standards.
 15 Q. Why did you recommend using the UBC standards?
 16 A. Just trying to be terse again. The ratio of
 17 plumbing facilities to students was much higher.
 18 Q. Anything else that you can think of?
 19 A. No.
 20 Q. To your knowledge, do any other states use the
 21 UBC as the standard for the ratio of plumbing to
 22 students?
 23 MR. SEFERIAN: Objection. No foundation.
 24 Calls for speculation. Vague and ambiguous as to "use."
 25 Calls for an inadmissible legal opinion. Overly broad.

1 Vague as to time.
 2 THE WITNESS: I don't know.
 3 Q. BY MR. VILLAGRA: Is it fair to say that you
 4 took the standards in the UBC to be better because it
 5 had more bathrooms and fixtures for students?
 6 MR. SEFERIAN: Objection. Overly broad. Vague
 7 and ambiguous.
 8 THE WITNESS: Preferable for that reason.
 9 Q. BY MR. VILLAGRA: Are you aware of any codes
 10 that have a higher ratio of plumbing to students than
 11 the UBC?
 12 MR. SEFERIAN: Objection. Calls for an
 13 inadmissible legal opinion. Vague and ambiguous as to
 14 "plumbing." No foundation.
 15 THE WITNESS: I'm not aware of any.
 16 Q. BY MR. VILLAGRA: Do you recall any discussion
 17 regarding the 960-square-foot standard when you were
 18 helping to prepare the Title 5 regulations?
 19 MR. SEFERIAN: Objection. Vague and ambiguous
 20 as to "standard." Vague as to time.
 21 THE WITNESS: I don't recall a conversation
 22 when we first prepared them in 1994.
 23 Q. BY MR. VILLAGRA: Do you recall a conversation
 24 when you revised them in 1998 or '99?
 25 A. Yes.

1 Q. What was the discussion?

2 MR. SEFERIAN: Objection. Calls for a
3 narrative.

4 THE WITNESS: The original, unrevised language
5 specified that a classroom should be 960 square feet or
6 30 square feet per student. When class size reduction
7 was implemented, districts were perceiving that a
8 600-square-foot classroom using that formula would be
9 acceptable, so we needed to disabuse them of that and
10 remove that language.

11 Q. BY MR. VILLAGRA: When you say "disabuse them,"
12 do you mean prevent districts from building classrooms
13 smaller than 960 square feet?

14 MR. SEFERIAN: Objection. Vague and ambiguous
15 as to "prevent."

16 THE WITNESS: Yes.

17 Q. BY MR. VILLAGRA: Or maybe, more specifically,
18 not prevent but prohibit?

19 MR. SEFERIAN: Objection. Vague and ambiguous
20 as to "prohibit."

21 THE WITNESS: I like prevent more.

22 MR. VILLAGRA: Okay.

23 MR. SEFERIAN: Can we go off the record?

24 MR. VILLAGRA: Sure.

25 (Recess taken.)

1 THE WITNESS: I don't know.

2 Q. BY MR. VILLAGRA: To your knowledge, is there a
3 standard with respect to room temperature, classroom
4 temperature that applies to existing schools?

5 MR. SEFERIAN: Objection. Overly broad. Calls
6 for an inadmissible legal opinion. Vague and ambiguous
7 as to "standard" and "existing schools."

8 THE WITNESS: I know of no standard.

9 Q. BY MR. VILLAGRA: We talked a while back with
10 respect to what you did with respect to parent
11 complaints about their children's classrooms being
12 smaller than 960 square feet.

13 A. Yes.

14 Q. Do you know whether anyone else at the CDE has
15 any responsibility with respect to parent complaints
16 about their children's classrooms being smaller than 960
17 square feet?

18 MR. SEFERIAN: Objection. Vague and ambiguous
19 as to "responsibility." Calls for an inadmissible legal
20 opinion. Vague and ambiguous as to "parent complaints."
21 Overly broad. No foundation. Calls for speculation.

22 THE WITNESS: I know of no one else.

23 Q. BY MR. VILLAGRA: Do you know of anyone else --

24 A. May I revise that?

25 Q. Sure.

1 Q. BY MR. VILLAGRA: Mr. Payne, we were talking
2 about standards in the Title 5 regulations regarding
3 bathrooms, lighting and room temperature, and we were
4 discussing those standards as they apply to new schools;
5 is that correct?

6 A. Yes, that's correct.

7 Q. To your knowledge, are there standards for
8 bathroom fixtures and counts that apply to existing
9 schools?

10 MR. SEFERIAN: Objection. Calls for an
11 inadmissible legal opinion. Vague and ambiguous as to
12 "standards." Vague and ambiguous as to "bathroom
13 fixtures and counts." Overly broad. Vague and
14 ambiguous as to "apply." No foundation. Calls for
15 speculation.

16 THE WITNESS: Again, I think the UBC -- I don't
17 think. The UBC certainly has those standards, but I
18 don't know if that applies to existing buildings.

19 Q. BY MR. VILLAGRA: To your knowledge, is there a
20 standard with respect to lighting that applies to
21 existing schools?

22 MR. SEFERIAN: Objection. Overly broad. Calls
23 for an inadmissible legal opinion. Vague and ambiguous
24 as to "standard." Incomplete and improper hypothetical
25 question.

1 A. When I say I know of no one else, other than
2 our division.

3 Q. And within your division, who would it be that
4 has responsibility for parent complaints regarding their
5 children's classrooms being smaller than 960 square
6 feet?

7 MR. SEFERIAN: Objection. Vague and ambiguous
8 as to "responsibility." Calls for an inadmissible legal
9 opinion. Misstate the witness' testimony. Overly
10 broad.

11 THE WITNESS: Generally whoever the secretary
12 deems should answer that question. It's random.

13 Q. BY MR. VILLAGRA: Who is in the pool of people
14 who the secretary might decide to refer a parent's
15 complaints about classrooms being smaller than 960
16 square feet to?

17 A. All the consultants.

18 Q. Do you know if when the other consultants
19 receive a parent complaint, they do anything different
20 than what you described earlier?

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

23 MR. SALVATY: Vague and ambiguous.

24 THE WITNESS: I don't know.

25 Q. BY MR. VILLAGRA: Do you know whether there is

1 any other agency apart from the school facilities
 2 planning division that would have responsibility for
 3 dealing with parent complaints regarding the size of
 4 their children's classroom?
 5 MR. SEFERIAN: Objection. Calls for an
 6 inadmissible legal opinion. Vague and ambiguous as to
 7 "responsibility" and "dealing." No foundation. Overly
 8 broad. Asked and answered.
 9 THE WITNESS: I know of no other state agency.
 10 Q. BY MR. VILLAGRA: Is there any other agency
 11 other than a state agency that you can think of?
 12 MR. SEFERIAN: Same objections.
 13 THE WITNESS: Is a district an agency? Then
 14 the district would get those complaints too.
 15 Q. BY MR. VILLAGRA: Do you ever receive parent
 16 complaints regarding school bathrooms?
 17 MR. SEFERIAN: Objection. Overly broad. Vague
 18 and ambiguous as to "complaints."
 19 THE WITNESS: Yes.
 20 Q. BY MR. VILLAGRA: What do parents complain
 21 about with respect to school bathrooms?
 22 MR. SEFERIAN: Objection. Overly broad. Vague
 23 and ambiguous. Calls for a narrative.
 24 MR. SALVATY: Vague as to time.
 25 THE WITNESS: Again, by example I can tell you

1 several. A parent recently called worried about her
 2 child's bathroom being isolated and not supervisable. I
 3 also get calls about bathrooms that exist but are
 4 closed, and then there's always the call about the
 5 bathroom conditions being dirty. And, I'm sorry, I say
 6 always the call. I have been called. Don't mean to say
 7 there are a lot of those that I get.
 8 Q. BY MR. VILLAGRA: When was the last time you
 9 received a call from a parent saying that the condition
 10 of the bathroom was dirty?
 11 A. I can guess. It was many months ago.
 12 Q. I don't want you to guess.
 13 MR. SEFERIAN: If you don't have a basis to
 14 give a reasonable estimate, then it's best that you say
 15 that.
 16 THE WITNESS: I don't have the basis to give a
 17 reasonable estimate.
 18 Q. BY MR. VILLAGRA: Would you be able to give a
 19 reasonable estimate as to how many calls you've received
 20 from parents this calendar year about the condition of
 21 the bathroom being dirty at their children's school?
 22 A. A reasonable estimate would be three.
 23 Q. Do you recall what you did with respect to any
 24 of those three instances where you received a parent
 25 call complaining about the condition of the bathroom

1 being dirty?
 2 A. Yes.
 3 MR. SEFERIAN: Objection. Overly broad. Calls
 4 for a narrative.
 5 THE WITNESS: Yes.
 6 Q. BY MR. VILLAGRA: What did you do?
 7 MR. SEFERIAN: Same objections.
 8 THE WITNESS: I called the principal in each
 9 case.
 10 Q. BY MR. VILLAGRA: Did you do anything else?
 11 A. No.
 12 MR. SEFERIAN: Objection. Assumes facts not in
 13 evidence.
 14 Q. BY MR. VILLAGRA: Do you know whether the
 15 principals in any of those cases did anything to correct
 16 the conditions of the bathrooms?
 17 MR. SEFERIAN: Objection. Vague and ambiguous.
 18 Calls for speculation.
 19 MR. SALVATY: Assumes facts not in evidence.
 20 MR. SEFERIAN: Vague and ambiguous as to
 21 "correct the conditions." Vague as to time. Incomplete
 22 and improper hypothetical question.
 23 THE WITNESS: I don't know.
 24 Q. BY MR. VILLAGRA: Do you recall how many times
 25 this calendar year you've received a call from a parent

1 complaining that the bathroom at their child's school
 2 was closed?
 3 MR. SEFERIAN: If you can make an estimate.
 4 THE WITNESS: I can make an estimate that it
 5 didn't happen this year.
 6 Q. BY MR. VILLAGRA: Did it happen last year?
 7 A. Yes.
 8 Q. Do you recall how many times it happened last
 9 year?
 10 A. I do because it was one school district, and it
 11 was just that once.
 12 Q. Do you ever receive calls from parents
 13 complaining that the water closet or a water closet is
 14 not functioning in their child's bathroom at school?
 15 MR. SEFERIAN: Objection. Vague and ambiguous
 16 as to "not functioning." Overly broad.
 17 THE WITNESS: I don't recall receiving calls
 18 like that.
 19 Q. BY MR. VILLAGRA: Do you recall receiving any
 20 calls about -- from parents about fixtures in their
 21 child's bathroom not working?
 22 MR. SEFERIAN: Objection. Overly broad. vague
 23 and ambiguous as to time. Vague and ambiguous as to
 24 fixtures not working. Calls for speculation.
 25 THE WITNESS: I don't recall that happening.

1 Q. BY MR. VILLAGRA: Do you recall receiving any
 2 parent complaints about the lighting in their children's
 3 classrooms?
 4 MR. SEFERIAN: Objection. Overly broad. Vague
 5 as to time. Vague and ambiguous as to "lighting."
 6 THE WITNESS: No, I've never received a call.
 7 Q. BY MR. VILLAGRA: Do you recall receiving a
 8 call from parents complaining about temperature of their
 9 child's classroom?
 10 MR. SEFERIAN: Objection. Overly broad. Vague
 11 as to time.
 12 THE WITNESS: Yes.
 13 Q. BY MR. VILLAGRA: When was that?
 14 A. It was last summer. Not this summer, but last
 15 summer. It was last summer.
 16 Q. Was it a single call?
 17 A. Yes.
 18 Q. Do you recall what school the call referred to?
 19 A. I believe it was a Los Angeles Unified call.
 20 Q. Do you recall what the substance of the
 21 complaint was?
 22 A. Yes, it was a hot classroom at a year-round
 23 school.
 24 Q. Do you recall what you did in response to this
 25 call about a hot classroom at a year-round school?

1 MR. SEFERIAN: Objection. Assumes facts not in
 2 evidence. Calls for a narrative.
 3 THE WITNESS: Yes, I remember.
 4 Q. BY MR. VILLAGRA: What did you do?
 5 A. I called the principal.
 6 Q. Did you do anything else?
 7 MR. SEFERIAN: Objection. Assumes facts not in
 8 evidence.
 9 THE WITNESS: No.
 10 Q. BY MR. VILLAGRA: Do you know whether the
 11 principal did anything to reduce the temperature at this
 12 year-round school?
 13 MR. SEFERIAN: Objection. Vague as to time.
 14 Vague and ambiguous. Overly broad. No foundation.
 15 Calls for speculation.
 16 THE WITNESS: I don't know.
 17 Q. BY MR. VILLAGRA: Do you ever have discussions
 18 with the consultants at the Department of Education
 19 regarding parent complaints that they receive?
 20 A. Yes.
 21 Q. Have you ever talked with the other consultants
 22 about complaints regarding classroom temperature?
 23 A. Yes.
 24 Q. Do you recall when the last time was?
 25 A. I have no idea.

1 Q. Do you recall what the substance of the
 2 conversation was?
 3 MR. SEFERIAN: Objection. Overly broad. Calls
 4 for speculation.
 5 THE WITNESS: Yes.
 6 Q. BY MR. VILLAGRA: What was it?
 7 MR. SEFERIAN: Objection. Calls for a
 8 narrative.
 9 THE WITNESS: This was at a staff meeting. We
 10 asked our architect, Ellen Aasleten, if OSHA covered
 11 such things as classroom temperature.
 12 Q. BY MR. VILLAGRA: Do you recall who
 13 specifically asked Ellen that question?
 14 A. I don't.
 15 Q. Do you recall why that question was being asked
 16 of Ellen?
 17 MR. SEFERIAN: Objection. No foundation.
 18 Calls for speculation. Vague and ambiguous.
 19 THE WITNESS: I don't know how it came up.
 20 Q. BY MR. VILLAGRA: Do you recall what Ellen's
 21 response was to the question whether OSHA applied to
 22 temperatures in classrooms?
 23 A. Yes.
 24 Q. What was her answer?
 25 A. That it did not apply.

1 Q. Do you recall any other discussion at this
 2 staff meeting about classroom temperature?
 3 A. I don't.
 4 Q. Was there any discussion about whether any
 5 other standards applied to temperatures in school
 6 classrooms?
 7 MR. SEFERIAN: Objection. Vague and ambiguous
 8 as to "standards." Vague as to time.
 9 THE WITNESS: Yes.
 10 Q. BY MR. VILLAGRA: What was the discussion?
 11 A. Just that, if other standards did apply.
 12 Q. Was that question answered at this staff
 13 meeting?
 14 MR. SEFERIAN: Objection. Vague and ambiguous.
 15 MR. VILLAGRA: The question being whether there
 16 were other standards as to classroom temperature.
 17 MR. SEFERIAN: Objection. Calls for an
 18 inadmissible opinion. Vague and ambiguous as to
 19 "answered."
 20 THE WITNESS: Yes.
 21 Q. BY MR. VILLAGRA: What was the answer?
 22 MR. SEFERIAN: Same objections. Overly broad.
 23 THE WITNESS: That she knew of no other
 24 standards that applied.
 25 Q. BY MR. VILLAGRA: Do you recall whether there

1 was any discussion at the staff meeting -- I'm sorry, do
 2 you have a recollection as to when this staff meeting
 3 would have occurred?
 4 MR. SEFERIAN: Objection. Asked and answered.
 5 Calls for speculation.
 6 THE WITNESS: I simply can't recall.
 7 Q. BY MR. VILLAGRA: Was there any discussion at
 8 this staff meeting as to whether there should be a
 9 standard in classrooms with respect to temperature?
 10 MR. SEFERIAN: Objection. Argumentative.
 11 Calls for speculation. Assumes facts not in evidence.
 12 Vague and ambiguous as to standard.
 13 THE WITNESS: I don't recall further
 14 discussion.
 15 Q. BY MR. VILLAGRA: Has there been discussion at
 16 any other staff meeting about classroom temperature?
 17 A. I don't recall any.
 18 Q. Do you recall conversations with other
 19 consultants about lighting in the classroom?
 20 MR. SEFERIAN: Objection. Overly broad. Vague
 21 and ambiguous as to "lighting." Vague as to time.
 22 THE WITNESS: Yes, I do recall a conversation.
 23 Q. BY MR. VILLAGRA: Just one conversation?
 24 A. Yes.
 25 Q. Who was the conversation with?

1 A. Again, at a staff meeting.
 2 Q. Any idea when this meeting would have occurred?
 3 A. I'm sorry, I don't know.
 4 Q. What was the discussion at the staff meeting
 5 regarding lighting?
 6 MR. SEFERIAN: Objection. Calls for a
 7 narrative.
 8 THE WITNESS: We were wondering if there was a
 9 resource available for districts to use for defining
 10 what adequate lighting was.
 11 Q. BY MR. VILLAGRA: To your knowledge, is there
 12 such a resource?
 13 MR. SEFERIAN: Objection. No foundation.
 14 Vague and ambiguous as to "such a resource." Calls for
 15 speculation.
 16 THE WITNESS: I don't know that there is.
 17 Q. BY MR. VILLAGRA: As a result of the staff
 18 meeting, was someone assigned the responsibility to
 19 determine whether there was a resource for districts to
 20 use to define what constitutes adequate lighting?
 21 MR. SEFERIAN: Objection. Vague and ambiguous
 22 as to "adequate lighting." Assumes facts not in
 23 evidence. Calls for speculation.
 24 THE WITNESS: I don't recall if there was a
 25 follow-up assignment or meeting on it.

1 Q. BY MR. VILLAGRA: So is it fair to say that the
 2 issue was raised as to whether there was a resource for
 3 districts to use to define what constitutes adequate
 4 lighting, but there was no follow-up?
 5 MR. SEFERIAN: Objection. Misstates the
 6 witness' testimony. Argumentative. Calls for
 7 speculation. No foundation. Asked and answered.
 8 THE WITNESS: It's not fair to say that because
 9 the follow-up might not have happened that I was party
 10 to.
 11 Q. BY MR. VILLAGRA: Okay. If there had been
 12 follow-up, do you have any idea which of the consultants
 13 might have been assigned to that function?
 14 MR. SEFERIAN: Objection. Calls for
 15 speculation.
 16 THE WITNESS: Yes.
 17 Q. BY MR. VILLAGRA: Who might that have been?
 18 A. The architect, Ellen Aasleten.
 19 Q. And how do you know that?
 20 MR. SEFERIAN: Objection. Calls for
 21 speculation.
 22 THE WITNESS: She was responsible for those
 23 types of things.
 24 MR. SEFERIAN: This be a good time for a break?
 25 MR. VILLAGRA: Absolutely. I think we're at

1 12:30.
 2 (Lunch recess taken.)
 3 Q. BY MR. VILLAGRA: Mr. Payne, we talked a little
 4 bit this morning about complaints that you had received
 5 from parents about bathrooms being closed in one school
 6 district last year. Do you recall that?
 7 A. Recall talking about it, yes. Oh, yes.
 8 Q. Do you recall the name of the school district?
 9 A. I believe I do. I think it was Marysville.
 10 Q. And did you contact the Marysville district
 11 about this complaint that you had received about
 12 bathrooms being closed?
 13 A. Yes.
 14 Q. What did you say?
 15 A. I got a call from a parent concerned about a
 16 bathroom being closed and insufficient bathrooms.
 17 Q. And who did you speak to at Marysville?
 18 A. The principal.
 19 Q. And what did the principal say?
 20 A. We'll look into it.
 21 Q. Did you have any subsequent contact with the
 22 principal from Marysville?
 23 A. No.
 24 Q. You mentioned that last summer you received a
 25 complaint from parents on an LAUSD school, or a parent

1 at an LAUSD school, about hot temperatures at a
 2 year-round school. Do you recall that?
 3 A. Yes.
 4 Q. You mentioned that you called the principal?
 5 A. Uh-huh.
 6 Q. Do you recall what you said to the principal?
 7 A. I don't, no.
 8 Q. Do you recall what the principal said to you
 9 about the hot classroom temperatures at the year-round
 10 school?
 11 A. I don't recollect that.
 12 Q. Do you have any idea who that principal might
 13 have been?
 14 A. No.
 15 Q. I believe you testified earlier that you're on
 16 the year-round education staff at the California
 17 Department of Education; is that correct?
 18 MR. SEFERIAN: Objection. Vague and ambiguous
 19 as to "year-round education staff."
 20 Q. BY MR. VILLAGRA: Is that a term that you're
 21 familiar with?
 22 A. Year-round education staff?
 23 Q. Uh-huh.
 24 A. No, it assumes more people than actually exist.
 25 Q. The consultants on year-round education are

1 you, Leroy Small and Shannon Farrell-Hart; is that
 2 correct?
 3 A. No.
 4 MR. SEFERIAN: Objection. Misstates the
 5 witness' testimony.
 6 THE WITNESS: Shannon is not a consultant,
 7 she's an analyst.
 8 Q. BY MR. VILLAGRA: But they are the other two
 9 employees at the California Department of Education that
 10 work on year-round education issues with you?
 11 A. Yes.
 12 Q. Does anyone else?
 13 A. No.
 14 MR. SEFERIAN: Objection. Vague and ambiguous
 15 as to "work on."
 16 MR. SALVATY: And "employees."
 17 Q. BY MR. VILLAGRA: We talked at length this
 18 morning about your responsibilities with respect to
 19 field services. I want to turn your attention to your
 20 responsibilities with respect to year-round education.
 21 What are your duties as a consultant on
 22 year-round education?
 23 MR. SEFERIAN: Objection. Vague and ambiguous
 24 as to "duties." Overly broad. Calls for a narrative.
 25 THE WITNESS: Right now most of my time is

1 spent answering questions, and the questions are
 2 e-mailed or phoned in typically.
 3 Q. BY MR. VILLAGRA: You said most of your time is
 4 spent answering questions?
 5 A. Uh-huh.
 6 Q. What is the rest of your time spent doing?
 7 A. Analyzing year-round legislation.
 8 Q. Anything else?
 9 A. No.
 10 Q. The questions that you answer regarding
 11 year-round education, who were those questions from?
 12 A. They range from superintendents to principals
 13 to students working on papers to parents, everybody, and
 14 reporters.
 15 Q. And all regarding year-round education?
 16 A. Uh-huh.
 17 MR. SEFERIAN: Is that yes?
 18 THE WITNESS: Yes.
 19 Q. BY MR. VILLAGRA: Are you the contact person
 20 from the California Department of Education regarding
 21 year-round education?
 22 A. Yes.
 23 Q. What does that entail, being the contact person
 24 regarding year-round education?
 25 A. The person to whom calls and inquiries are

1 referred, the person assigned to analyze legislation.
 2 Q. And do you answer all the calls that come in
 3 regarding year-round education personally?
 4 MR. SEFERIAN: Objection. Calls for
 5 speculation.
 6 MR. SALVATY: Vague and ambiguous.
 7 THE WITNESS: If I get a call, I answer it
 8 personally.
 9 Q. BY MR. VILLAGRA: So you wouldn't delegate the
 10 function of responding to someone else, like Leroy Small
 11 or Shannon Farrell-Hart?
 12 A. If it has to do with the operational grant
 13 program, I do delegate it to Shannon.
 14 Q. Are there any other subjects regarding
 15 year-round education that you would delegate to someone
 16 else?
 17 A. No.
 18 Q. You mentioned specifically you get calls from
 19 superintendents and principals about year-round
 20 education?
 21 A. Uh-huh.
 22 Q. What sort of information do you provide to
 23 principals or superintendents about year-round
 24 education?
 25 MR. SEFERIAN: Objection. Overly broad.

1 Vague.

2 THE WITNESS: Public notice requirement for
3 implementing year-round education, procedures for
4 getting off year-round education, and programmatic
5 questions, particularly about intercessions.

6 Q. BY MR. VILLAGRA: Any other subjects that you
7 provide information on to superintendents or principals
8 interested in year-round education?

9 A. I'm sure there are some, but I don't recall
10 them right now.

11 Q. What do you mean when you refer to public
12 notice requirements for implementing year-round
13 education?

14 A. There's an education code, 37611, that says
15 prior to the year of implementing multi-track
16 year-round, a school or district needs to do public
17 notice three times in the newspaper prior to November
18 the 1st.

19 Q. Is there anything else that a district must do
20 before converting to year-round education?

21 MR. SEFERIAN: Objection. Overly broad. Calls
22 for an inadmissible legal opinion. Vague and ambiguous.

23 MR. VILLAGRA: In terms of public notice.

24 MR. SEFERIAN: Same objections.

25 THE WITNESS: Yes, if they need to comply with

1 Q. Do you have an understanding as to why there
2 would be no procedures for getting off?

3 MR. SEFERIAN: Objection. No foundation.
4 Calls for speculation. Vague and ambiguous as to
5 "procedures." Overly broad.

6 THE WITNESS: I don't know.

7 Q. BY MR. VILLAGRA: Have you discussed that with
8 anyone?

9 A. No.

10 Q. To your knowledge, are there any other public
11 notice requirements with respect to any changes in
12 school organization other than the calendar?

13 MR. SEFERIAN: Objection. Vague and ambiguous
14 as to "changes in school organization." Calls for an
15 inadmissible legal opinion.

16 MR. SALVATY: Could I have that question read
17 back.

18 (Record read.)

19 THE WITNESS: Yes.

20 Q. BY MR. VILLAGRA: What are those notice
21 requirements?

22 MR. SEFERIAN: Same objections.

23 THE WITNESS: There's a notice requirement for
24 the sale or lease of school property. And that's not to
25 say I've exhausted the list, that's the only one that I

1 37611 and they do public notice, then that can trigger
2 another response that the district is responsible for,
3 and that is doing a ballot, a formal ballot.

4 Q. BY MR. VILLAGRA: A ballot for whom?

5 A. In which the majority of the constituents in
6 the district are able to vote on whether or not the
7 district can implement year-round education.

8 Q. And what condition or conditions trigger resort
9 to a ballot?

10 MR. SEFERIAN: Objection. Calls for an
11 inadmissible legal opinion. Incomplete and improper
12 hypothetical question.

13 THE WITNESS: After the public notice is given,
14 the citizens have until December the 10th to submit a
15 petition requiring that election be held, and I can't
16 remember how many people have to be on the petition,
17 what percentage.

18 Q. BY MR. VILLAGRA: You mentioned that another
19 topic that you discussed with principals and
20 superintendents is procedures for getting off of
21 year-round education. What procedures are you referring
22 to?

23 A. There are none, but they ask if there are
24 procedures, like public notice procedures similar for
25 getting on required for getting off.

1 know of.

2 Q. BY MR. VILLAGRA: That you know of?

3 A. Yeah.

4 Q. Have you ever had any discussion with anyone
5 about why there's a public notice requirement before a
6 district can convert a school to year-round education?

7 A. Yes.

8 Q. Who did you have the discussion with?

9 A. I have it not frequently, but I've had it often
10 with those districts who are converting to year-round
11 about why there's a need for it.

12 Q. And what do you tell superintendents or
13 principals who ask you why there is a public notice
14 requirement?

15 MR. SALVATY: Objection. Overbroad. Vague and
16 ambiguous.

17 THE WITNESS: That conversion to multi-track
18 year-round or year-round requires changes to family
19 planning and sufficient notice on what's deemed
20 important for that.

21 Q. BY MR. VILLAGRA: What do you mean by "changes
22 to family planning"?

23 A. Vacation schedules change, child care schedules
24 change, visitation agreements need to be changed
25 sometimes.

1 Q. Are there any other changes in family planning
2 that you can think of?
3 MR. SEFERIAN: Objection. Overly broad. Vague
4 and ambiguous.
5 MR. VILLAGRA: That result from the conversion
6 to year-round schools.
7 MR. SEFERIAN: Objection. Overly broad. Vague
8 and ambiguous.
9 THE WITNESS: None that I can think of.
10 Q. BY MR. VILLAGRA: How would you describe a
11 year-round program?
12 MR. SEFERIAN: Objection. Overly broad. Calls
13 for a narrative. Vague and ambiguous as to "year-round
14 program."
15 THE WITNESS: The definition that is most
16 accepted, and it is nebulous, the definition that is
17 accepted is any school calendar that has fewer than
18 eight weeks, eight consecutive weeks off for vacation at
19 any one time.
20 Q. BY MR. VILLAGRA: Are there different types of
21 year-round programs?
22 A. Yes.
23 Q. And are they differentiated by the number of
24 tracks that they provide?
25 A. By that, and the calendar -- I mean, the

1 calendar configuration.
2 Q. And how is it that they are differentiated in
3 terms of tracks?
4 MR. SEFERIAN: Objection. Overly broad.
5 THE WITNESS: There are four types of
6 year-round calendars that can be characterized by
7 tracks, single track, three track, four track and five
8 track.
9 Q. BY MR. VILLAGRA: And just to be clear, when
10 you refer to a track, what is it you're referring to?
11 A. A group of students.
12 Q. And in a three-track school the student body is
13 divided into three separate groups?
14 A. Yes.
15 Q. And in a four track, four groups?
16 A. Yes.
17 Q. Does a single track year-round education
18 program increase the seating capacity of a school?
19 MR. SEFERIAN: Objection. Overly broad.
20 Incomplete and improper hypothetical question. Vague
21 and ambiguous as to "seating capacity." Lacks
22 foundation.
23 THE WITNESS: No.
24 Q. BY MR. VILLAGRA: And what do you mean by that?
25 MR. SEFERIAN: Same objections.

1 THE WITNESS: A single track year-round
2 schedule is just like a traditional schedule, except for
3 the vacation, instructional cycles are different.
4 Q. BY MR. VILLAGRA: Are the other types of
5 year-round calendars three-, four- and five-track
6 calendars sometimes referred to collectively as
7 multi-track calendars?
8 A. Yes.
9 Q. Would it be okay if I referred to them that
10 way?
11 A. It's okay with me.
12 Q. Do multi-track programs increase the seating
13 capacity of a school?
14 MR. SEFERIAN: Objection. Vague and ambiguous
15 as to "seating capacity." Vague and ambiguous as to
16 "multi-track." Overly broad. Vague and ambiguous.
17 THE WITNESS: No, they increase the enrollment
18 capacity.
19 Q. BY MR. VILLAGRA: How is it that multi-track
20 year-round calendars increase the enrollment capacity of
21 a school?
22 MR. SEFERIAN: Objection. Overly broad. Calls
23 for a narrative.
24 THE WITNESS: I know the answer, I'm just
25 trying to put it in 300 words or less.

1 MR. VILLAGRA: Sure.
2 THE WITNESS: By dividing student enrollment up
3 into tracks or groups and having one of those tracks
4 always out on vacation but eventually rotating back into
5 school and having another one -- it replaced by another
6 one on vacation, you can increase the enrollment
7 capacity of the school by the number of students on each
8 one of those tracks.
9 Q. BY MR. VILLAGRA: And just to go back, I may
10 have used the wrong word. Do single-track year-round
11 programs increase the enrollment capacity of a school?
12 MR. SEFERIAN: Objection. Overly broad.
13 THE WITNESS: No.
14 Q. BY MR. VILLAGRA: And how is it that you're
15 using the term "enrollment capacity"?
16 A. How do I define enrollment capacity?
17 Q. Yes.
18 A. It's a figure based upon the seating capacity,
19 plus whatever excess you can accommodate through other
20 strategies.
21 Q. So let me see if I have this correct. On a
22 single-track calendar a school is left just with its
23 seating capacity; is that correct?
24 A. That's right.
25 Q. And you mentioned that year-round programs are

1 also differentiated by calendar configuration. What are
2 the different types of year-round calendar
3 configurations?

4 MR. SEFERIAN: Objection. Overly broad. Calls
5 for a narrative.

6 THE WITNESS: The three-track calendars are
7 Concept 6 and modified Concept 6. The four-track
8 calendars are 45/15, 60/20, and 90/30. The five-track
9 calendar is the 60/15, the rare 60/15.

10 Q. BY MR. VILLAGRA: And when you refer to a
11 calendar as 45/15, what does that refer to?

12 A. The number of -- the first number is the number
13 of instructional days, and the second number is the
14 number of vacation days.

15 Q. And the same goes for 60/20, 90/30 and 65/15?

16 A. Uh-huh.

17 Q. To your knowledge, what is the most utilized or
18 most common year-round calendar in California?

19 MR. SEFERIAN: Objection. Vague as to time.
20 Lacks foundation.

21 MR. VILLAGRA: Currently.

22 THE WITNESS: 60/20.

23 Q. BY MR. VILLAGRA: And how do you know that?

24 A. We keep figures from CBEDS.

25 Q. How often are those figures from CBEDS updated?

1 why Concept 6 is the second most utilized calendar in
2 California?

3 A. Yes.

4 MR. SEFERIAN: Objection. Calls for an
5 inadmissible opinion. Lacks foundation. Calls for
6 speculation.

7 Q. BY MR. VILLAGRA: What is your opinion?

8 MR. SEFERIAN: Same objections.

9 THE WITNESS: It is the best calendar to
10 address severe overcrowding.

11 Q. By MR. VILLAGRA: What do you mean by "the best
12 calendar to address severe overcrowding"?

13 A. The three-track calendars can expand the
14 seating capacity of the schools by 50 percent. The
15 four-track calendars can do that by 33 percent.

16 MR. SEFERIAN: Did you mean seating capacity?

17 THE WITNESS: Yes.

18 Q. BY MR. VILLAGRA: Seating or enrollment?

19 A. Enrollment capacity. Sorry.

20 MR. VILLAGRA: Thanks.

21 Q. When you refer to "severe overcrowding," what
22 are you referring to?

23 MR. SEFERIAN: Objection. Vague and ambiguous.

24 THE WITNESS: I have no idea how to answer that
25 question. Certainly a -- yeah, I have no idea how to

1 A. Once a year.

2 Q. Speaking about current figures, do you know
3 what the second most common year-round calendar is in
4 California?

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

7 MR. SALVATY: Vague as to time.

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

10 THE WITNESS: Concept 6.

11 Q. BY MR. VILLAGRA: And by common, do you mean
12 prevalent in terms of numbers of schools utilizing this
13 calendar in this state?

14 A. The number of schools, uh-huh.

15 Q. Do you know what is the third most common
16 year-round calendar in California?

17 A. I don't. I could guess, but I don't.

18 Q. Do you have an opinion as to why 60/20 is the
19 most utilized year-round calendar in California?

20 MR. SEFERIAN: Objection. No foundation.
21 Calls for speculation. Calls for an inadmissible
22 opinion.

23 THE WITNESS: I don't know. Certainly -- I
24 don't know. Sorry.

25 Q. BY MR. VILLAGRA: Do you have an opinion as to

1 answer the question.

2 Q. BY MR. VILLAGRA: But, nonetheless, you believe
3 the Concept 6 calendar is the best calendar to address
4 severe overcrowding?

5 A. Yes.

6 Q. Do you know how many days of instruction are
7 offered on the traditional calendar?

8 A. Yes.

9 Q. How many is that?

10 A. 180, typically.

11 Q. Is it sometimes more?

12 MR. SEFERIAN: Objection. Overly broad. Lacks
13 foundation.

14 THE WITNESS: It's sometimes more and sometimes
15 less.

16 Q. BY MR. VILLAGRA: Is the 180 figure an average
17 then?

18 MR. SEFERIAN: Objection. No foundation.

19 MR. SALVATY: Vague and ambiguous.

20 THE WITNESS: Yes.

21 Q. BY MR. VILLAGRA: Are all the year-round
22 calendars that we've been discussing capable of
23 providing a total of 180 days of instruction?

24 MR. SEFERIAN: Objection. Overly broad. Vague
25 and ambiguous as to "capable." No foundation. Calls

1 for an inadmissible opinion.
 2 THE WITNESS: No.
 3 Q. BY MR. VILLAGRA: Which ones are not?
 4 MR. SEFERIAN: Same objections.
 5 THE WITNESS: The Concept 6 can't provide 180
 6 days of instruction. They cannot provide 163 days of
 7 instruction within the confines of the classroom.
 8 MR. SEFERIAN: Did you mean 180 days?
 9 THE WITNESS: 180 days. Yes, I did. Sorry.
 10 Q. BY MR. VILLAGRA: Did you imbibe any alcoholic
 11 beverages at lunch?
 12 A. No, I didn't.
 13 Q. Thanks. Did you take any medication at
 14 lunchtime?
 15 A. You're kidding. No.
 16 Q. You'd be surprised.
 17 A. No.
 18 Q. I believe when you answered the last question,
 19 you referred to Concept 6 calendars, plural. Were you
 20 meaning to refer to Concept 6 and modified Concept 6?
 21 A. Yes.
 22 Q. And what do you mean that they are not capable
 23 of providing 180 days of instruction?
 24 A. It's hard to describe the math, but with three
 25 tracks and a 50 percent -- capability of increasing the

1 enrollment capacity by 50 percent, the way that they
 2 cycle in and out doesn't allow for more than that much
 3 instruction without having two of the tracks -- or all
 4 three tracks overlapping.
 5 Q. So how many days of instruction are the Concept
 6 6 calendars, plural, capable of providing?
 7 MR. SEFERIAN: Objection. Overly broad.
 8 Incomplete improper hypothetical question. Vague and
 9 ambiguous as to "capable." Calls for speculation.
 10 THE WITNESS: 163.
 11 Q. BY MR. VILLAGRA: How do you know that?
 12 MR. SEFERIAN: Same objections.
 13 THE WITNESS: I've looked at a whole lot of
 14 Concept 6 calendars and modified Concept 6 calendars,
 15 and that's certainly the standard of those districts
 16 that operate those.
 17 Q. BY MR. VILLAGRA: When you speak to
 18 superintendents and principals interested in year-round
 19 education, do you discuss the advantages or
 20 disadvantages of year-round education programs?
 21 MR. SEFERIAN: Objection. Overly broad. Vague
 22 and ambiguous as to "advantages" and "disadvantages."
 23 Calls for a narrative. Vague as to time.
 24 MR. SALVATY: Has he ever discussed that?
 25 Q. BY MR. VILLAGRA: Have you ever discussed it?

1 MR. SEFERIAN: Calls for a narrative.
 2 THE WITNESS: I discuss both.
 3 Q. BY MR. VILLAGRA: What's the basis of your
 4 information that you provide regarding advantages and
 5 disadvantages of year-round education programs?
 6 MR. SALVATY: Objection. Vague and ambiguous.
 7 Ever?
 8 MR. SEFERIAN: Objection. Vague and ambiguous
 9 as to "provide." Vague as to time.
 10 Q. BY MR. VILLAGRA: Let's try it this way, when's
 11 the last time you spoke to a principal or superintendent
 12 about the advantages or disadvantages of year-round
 13 education?
 14 A. Certainly this year, maybe four months ago.
 15 Q. Do you recall who you were speaking to?
 16 A. I don't.
 17 Q. Do you recall the title of the person you were
 18 speaking to?
 19 A. It was a principal.
 20 Q. And you discussed with this principal the
 21 advantages and disadvantages of year-round education?
 22 A. Yes.
 23 Q. What was the basis for the information you
 24 provided regarding advantages and disadvantages of
 25 year-round education?

1 MR. SEFERIAN: Objection. Vague and ambiguous
 2 as to "basis."
 3 THE WITNESS: Accumulated expertise over the
 4 tenure of the job I've had.
 5 Q. BY MR. VILLAGRA: Is that based on a review of
 6 literature regarding year-round education?
 7 MR. SALVATY: Objection. Vague.
 8 (Break in the proceedings.)
 9 (Recess taken.)
 10 Q. BY MR. VILLAGRA: I think where we left off, I
 11 had asked whether your knowledge of the advantages and
 12 disadvantages of year-round education was based on your
 13 review of literature on the subject, and I think we got
 14 interrupted at that point.
 15 MR. SEFERIAN: Objection. Vague and ambiguous
 16 as to "literature."
 17 THE WITNESS: Partially, yes.
 18 Q. BY MR. VILLAGRA: What besides a review of the
 19 literature is your knowledge based on?
 20 MR. SEFERIAN: Objection. Asked and answered.
 21 THE WITNESS: Testimony from people who have
 22 done it, anecdotal information.
 23 Q. BY MR. VILLAGRA: What do you mean by
 24 "testimony from people who have done it"?
 25 A. Principals or superintendents or teachers or

1 parents who have experience with the operation of a
 2 year-round school and the implementation of it.
 3 Q. When was the last time you spoke with a parent
 4 about the experience of the implementation of a
 5 year-round program?
 6 A. Last Thursday.
 7 Q. Do you recall what you discussed?
 8 A. Yes, I do. It was a question similar to a lot
 9 of other questions I get, can you tell me about
 10 year-round education.
 11 Q. Do you have a standard answer that you've
 12 developed for a question like that about year-round
 13 education?
 14 MR. SEFERIAN: Objection. Vague and ambiguous
 15 as to "standard answer." Overly broad. No foundation.
 16 Vague and ambiguous as to "a question like that."
 17 THE WITNESS: It's pretty standard, yes.
 18 Q. BY MR. VILLAGRA: What is that answer?
 19 MR. SEFERIAN: Objection. Calls for a
 20 narrative.
 21 THE WITNESS: Once again, I'm trying to be
 22 terse. We talk about alternatives to overcrowding, and
 23 we enumerate those and discuss their merits, and then I
 24 discuss the merits of year-round education and also the
 25 pitfalls of year-round education, so it's very

1 objective.
 2 MR. SEFERIAN: Would you read that answer,
 3 please.
 4 (Record read.)
 5 Q. BY MR. VILLAGRA: Had you finished with that
 6 answer?
 7 A. Yes.
 8 Q. Have you personally conducted any studies
 9 regarding the advantages or disadvantages of year-round
 10 education?
 11 MR. SEFERIAN: Objection. Vague and ambiguous
 12 as to "studies." Vague as to time.
 13 THE WITNESS: No.
 14 Q. BY MR. VILLAGRA: Have you commissioned any
 15 studies regarding year-round education while you've been
 16 a consultant for the California Department of Education?
 17 MR. SEFERIAN: Objection. Assumes facts not in
 18 evidence. Vague and ambiguous as to "commissioned."
 19 Overly broad.
 20 THE WITNESS: No.
 21 Q. BY MR. VILLAGRA: Are you familiar with the La
 22 Canada Unified School District feasibility study
 23 conducted by Osborne Architects?
 24 MR. SEFERIAN: Objection. Vague and ambiguous.
 25 THE WITNESS: No.

1 (Break in the proceedings.)
 2 Q. BY MR. VILLAGRA: I believe you testified that
 3 it was last Thursday you spoke with someone regarding
 4 the advantages and disadvantages of year-round
 5 education; is that correct?
 6 A. Yes.
 7 Q. And you talked about your standard answer and
 8 the topics that you discuss. If you can think back to
 9 that conversation and try to tell me in as much detail
 10 as you can what you said specifically, if you can
 11 recall.
 12 MR. SEFERIAN: Objection. Calls for a
 13 narrative. Overly broad.
 14 THE WITNESS: The woman phoned and said, our
 15 district is thinking about going -- implementing
 16 multi-track year-round. And I said, why? And she
 17 talked about needing facilities and overcrowding, and so
 18 I mentioned to her -- I asked her if they pursued some
 19 other possibilities. And she said, like what? And I
 20 mentioned some of the standard alternatives to that, to
 21 year-round education, multi-track year-round education.
 22 Q. BY MR. VILLAGRA: If I could stop you there.
 23 What are those alternatives, standard alternatives to
 24 multi-track year-round education that you mentioned?
 25 MR. SEFERIAN: Objection. Overly broad. Calls

1 for a narrative.
 2 THE WITNESS: Putting portables on existing
 3 sites, reconfiguring grade levels, double session.
 4 Those are they.
 5 Q. BY MR. VILLAGRA: And did you discuss putting
 6 portables on existing sites in any detail, or did you
 7 just mention the possibility?
 8 A. Just a possibility.
 9 Q. And the same for reconfiguring grade levels?
 10 A. Uh-huh.
 11 Q. And same goes for double session?
 12 A. Uh-huh. No, she asked me about reconfiguring
 13 grade levels and what that meant.
 14 Q. And what did you tell her?
 15 A. I asked her if she knew what the capacity --
 16 she was an elementary school person. I asked her if she
 17 knew if the middle school was overcrowded. She didn't
 18 know. I asked, well, if the middle school isn't
 19 overcrowded and if you have room there, then you can
 20 think about moving the sixth graders to the middle
 21 school and make more room at the elementary schools.
 22 Q. Why did you ask her if her district had pursued
 23 other alternatives to multi-tracking?
 24 MR. SALVATY: Objection. Vague and ambiguous.
 25 Misstates testimony.

1 THE WITNESS: I always ask parents or anybody
 2 that, let's look at the multi-track as one of several
 3 options.
 4 Q. BY MR. VILLAGRA: And then after talking about
 5 the alternatives to multi-track year-round education,
 6 what did you discuss?
 7 MR. SEFERIAN: Objection. Calls for a
 8 narrative. Overly broad.
 9 THE WITNESS: Then we talked about programmatic
 10 implications of multi-track.
 11 Q. BY MR. VILLAGRA: What did you say about the
 12 programmatic implications of year-round multi-track?
 13 MR. SEFERIAN: Objection. Calls for a
 14 narrative.
 15 THE WITNESS: We talked about the potential of
 16 intercessions as used for mediation, and I talked about
 17 the fact that some students seemed to benefit by not
 18 having summer regression associated with traditional,
 19 and that some parents actually like having a variety of
 20 vacation times of the year that they can use, and then I
 21 talk about how it needs to be done correctly. I always
 22 talk about that. And that means making sure that
 23 families have their children on the same tracks as much
 24 as possible, and that a lot of time should be given in
 25 the district for planning. That's it.

1 Q. BY MR. VILLAGRA: Is there anything else that
 2 you discuss when you discuss how it is that multi-track
 3 year-round education needs to be done to be done
 4 correctly?
 5 MR. SALVATY: Generally, or in this one
 6 conversation?
 7 MR. VILLAGRA: In this conversation.
 8 THE WITNESS: I don't recollect that there was.
 9 Q. BY MR. VILLAGRA: Is there generally something
 10 else that you discuss when you discuss how it is that
 11 multi-track year-round education needs to be done to be
 12 done correctly?
 13 A. Yes.
 14 MR. SEFERIAN: Objection. Overly broad. Vague
 15 and ambiguous.
 16 MR. SALVATY: Vague.
 17 THE WITNESS: Yes.
 18 Q. BY MR. VILLAGRA: What is that?
 19 MR. SEFERIAN: Same objections.
 20 THE WITNESS: It certainly depends upon the
 21 audience the level of technicality I give them, but I
 22 always talk about how to do proper track assignments.
 23 That's it, yes.
 24 Q. BY MR. VILLAGRA: So in this conversation you
 25 had last week, after discussing the programmatic

1 implications of multi-track year-round education, what
 2 did you discuss?
 3 MR. SEFERIAN: Objection. Assumes facts not in
 4 evidence. Overly broad.
 5 THE WITNESS: After that I referred her to our
 6 website, and I think that was the end of the
 7 conversation.
 8 Q. BY MR. VILLAGRA: Is there any specific part of
 9 your website that you referred her to?
 10 A. Yes, there is a part on the website, I think
 11 it's called reports and data, and that's the -- I'd give
 12 her the URL so she can -- whoever it is can track that
 13 down.
 14 Q. Why did you refer her to the reports and data
 15 portion of your web sites?
 16 A. It's a good summary of what I can tell her, and
 17 something that she can pass on to other people.
 18 Q. When you mentioned the programmatic
 19 implications of multi-tracking, you first discussed the
 20 potential of intercessions as used for mediation. What
 21 did you mean by that?
 22 A. Typically remediation in a traditional calendar
 23 is offered most formally during summer school, nine
 24 months after the school year has begun, not necessarily
 25 articulated with the rest of the instructional program.

1 Intercessions allow much more frequent
 2 opportunities for remediation than summer school does,
 3 and it offers -- it can be much more articulated than
 4 summer school is with the curriculum.
 5 Q. What do you mean by "articulated"?
 6 A. That the teacher whose student is going to
 7 intercessions can talk to the intercession school
 8 teacher, sometimes it's the same person, and then that
 9 student goes back to the same teacher.
 10 In summer school it's typically at the end of
 11 nine months a teacher -- a student leaving a class going
 12 to a summer school teacher who hasn't spoken to the
 13 class from which that student has come, and then after
 14 the end of summer school, returning to a different
 15 teacher, so there isn't a sequence of instruction there.
 16 Q. Is the intercession a component, in your
 17 opinion, of doing multi-track year-round education
 18 correctly?
 19 MR. SEFERIAN: Objection. Overly broad. Calls
 20 for an inadmissible opinion. Lacks foundation. Vague
 21 as to "correctly." Incomplete and improper hypothetical
 22 question. Lacks foundation.
 23 THE WITNESS: Yes.
 24 Q. BY MR. VILLAGRA: Why is that?
 25 MR. SEFERIAN: Same objections.

1 THE WITNESS: It's a conspicuous educational
 2 opportunity that districts should utilize if they can.
 3 Q. BY MR. VILLAGRA: And how is it that you've
 4 come to form that opinion about the importance of
 5 intercession with respect to multi-track year-round
 6 education?
 7 MR. SEFERIAN: Objection. Overly broad. Vague
 8 and ambiguous.
 9 MR. SALVATY: Misstates testimony.
 10 MR. SEFERIAN: Calls for an inadmissible
 11 opinion.
 12 THE WITNESS: Testimony from educators, things
 13 that I've read. I couldn't tell you what that is. It's
 14 an accumulation of doing this for a long time.
 15 Q. BY MR. VILLAGRA: You mentioned way back when
 16 that one category of information that you provide to
 17 principals or superintendents interested in year-round
 18 education is information on legislative issues; is that
 19 correct?
 20 A. Yes.
 21 Q. What sorts of legislative issues do you provide
 22 information on?
 23 MR. SALVATY: Objection. Vague and ambiguous.
 24 Overbroad.
 25 Ever? This is at any time ever?

1 MR. VILLAGRA: Let me reask that.
 2 Q. When's the last time you provided information
 3 to a superintendent or principal about legislative
 4 issues?
 5 A. During the summer frequently, when the
 6 legislature is in session.
 7 Q. And speaking of summer 2001, what were the
 8 legislative issues?
 9 MR. SEFERIAN: Objection. Overly broad. Calls
 10 for a narrative.
 11 THE WITNESS: Proposals to change the
 12 implementation of the operational grant program. Those
 13 are they.
 14 Q. BY MR. VILLAGRA: And what were the proposals
 15 this past summer to change the operational grant
 16 program?
 17 MR. SEFERIAN: Objection. Overly broad. Calls
 18 for a narrative.
 19 THE WITNESS: Some proposals were to get rid of
 20 it, other proposals were to fund it at 100 percent
 21 through a budget augmentation. Those were they.
 22 Q. BY MR. VILLAGRA: And did you, as part of your
 23 work as a consultant for the California Department of
 24 Education, make any recommendation regarding these
 25 proposals to change the operational grant program?

1 MR. SEFERIAN: Objection. Vague and ambiguous
 2 as to "recommendation." Assumes facts not in evidence.
 3 Overly broad.
 4 THE WITNESS: I didn't, no.
 5 Q. BY MR. VILLAGRA: Did someone else in the
 6 school facilities planning division make a
 7 recommendation regarding the proposals to change the
 8 operational grant program this past summer?
 9 MR. SEFERIAN: Same objections.
 10 THE WITNESS: Yes, through the bill analysis
 11 process.
 12 Q. BY MR. VILLAGRA: And who was responsible for
 13 that?
 14 MR. SEFERIAN: Objection. Calls for
 15 speculation.
 16 MR. SALVATY: Vague and ambiguous.
 17 THE WITNESS: I believe Fred Yeager did that.
 18 Q. BY MR. VILLAGRA: And who is Fred Yeager?
 19 A. A consultant.
 20 Q. Are there particular areas or topics that he is
 21 assigned to work on?
 22 MR. SEFERIAN: Objection. Lacks foundation.
 23 THE WITNESS: He does a lot of our legislative
 24 analyses.
 25 Q. BY MR. VILLAGRA: And you know that from

1 working with him?
 2 A. Uh-huh. Yes.
 3 Q. Do you recall what his recommendation was with
 4 respect to the operational grant program?
 5 MR. SEFERIAN: Objection. Assumes facts not in
 6 evidence. Lacks foundation. Vague and ambiguous.
 7 THE WITNESS: I don't for a fact.
 8 Q. BY MR. VILLAGRA: Did you have a personal
 9 opinion with respect to the operational grant program
 10 changes that were proposed last summer?
 11 MR. SEFERIAN: Objection. Lacks foundation.
 12 Calls for speculation. Overly broad.
 13 THE WITNESS: Yes.
 14 MR. SALVATY: Vague and ambiguous also.
 15 Q. BY MR. VILLAGRA: What was your opinion?
 16 MR. SEFERIAN: Same objections.
 17 THE WITNESS: Get rid of it.
 18 Q. BY MR. VILLAGRA: Why is that?
 19 A. I think -- I don't think. It would restore
 20 lost eligibility and guarantee those districts who are
 21 receiving it a continuous revenue flow.
 22 Q. Anything else?
 23 A. No. Isn't that enough?
 24 Q. That sounded like plenty.
 25 And how is it that getting rid of the

1 operational grant program would restore lost
2 eligibility?
3 MR. SEFERIAN: Objection. Overly broad.
4 Incomplete and improper hypothetical. Vague and
5 ambiguous. No foundation. Calls for an inadmissible
6 opinion.
7 THE WITNESS: Currently there's a direct ratio
8 between the number of students claimed for operational
9 grants and the loss of eligibility to the state school
10 building program.
11 Q. BY MR. VILLAGRA: So is it fair to say that for
12 every child a district claims for purposes of an
13 operational grant, that child cannot be counted towards
14 the district's eligibility for new construction funds?
15 MR. SEFERIAN: Objection. Misstates the
16 witness' testimony. Argumentative.
17 THE WITNESS: Yes.
18 Q. BY MR. VILLAGRA: Is it a one-to-one ratio?
19 A. Yes.
20 Q. And how is it that doing away with the
21 operational grant program would ensure that districts
22 using multi-track year-round programs receive a
23 continuous revenue flow?
24 MR. SEFERIAN: Objection. Calls for an
25 inadmissible opinion. Lacks foundation. Incomplete and

1 improper hypothetical question. Vague and ambiguous.
2 THE WITNESS: That was the language we
3 propose -- in our proposal.
4 Q. BY MR. VILLAGRA: Okay. When you refer to "our
5 proposal," what do you mean?
6 A. I forget the year. In 19 -- I remember the
7 year. In 1999 we wrote -- at the direction of Escutia
8 we wrote something called the Escutia report, and that
9 was a recommendation in that report. E-s-c-u-t-i-a.
10 Q. Thank you.
11 If operational grants were funded at 100
12 percent, would you still be in favor of doing away with
13 the operational grant program?
14 MR. SEFERIAN: Objection. Incomplete and
15 improper hypothetical. Vague and ambiguous. Calls for
16 inadmissible opinion. Lacks foundation. Vague as to
17 time.
18 THE WITNESS: Yes.
19 Q. BY MR. VILLAGRA: Why is that?
20 MR. SEFERIAN: Same objections.
21 THE WITNESS: Because of the loss of
22 eligibility that's incurred by districts that accept
23 those grants.
24 Q. BY MR. VILLAGRA: Correct me if I'm wrong, is
25 it because you'd prefer for those districts to build

1 more schools to reduce the need for multi-track
2 year-round calendars?
3 MR. SEFERIAN: Objection. Overly broad.
4 Incomplete and improper hypothetical question. Calls
5 for an inadmissible opinion. Vague and ambiguous.
6 MR. SALVATY: Can I get that read back.
7 (Record read.)
8 MR. SALVATY: Objection. Is what? Vague and
9 ambiguous. Unintelligible.
10 MR. SEFERIAN: Vague and ambiguous as to "those
11 districts."
12 THE WITNESS: I don't think that states my
13 objection accurately.
14 MR. SEFERIAN: You've answered the question.
15 Q. BY MR. VILLAGRA: Would you state your
16 objection accurately for me.
17 A. No.
18 MR. SEFERIAN: Same objection.
19 THE WITNESS: I think it levels the playing
20 field by renewing statewide eligibility on a fair basis.
21 Q. BY MR. VILLAGRA: Levels the playing field for
22 whom?
23 MR. SEFERIAN: Objection. Overly broad. Vague
24 and ambiguous.
25 THE WITNESS: For those districts that have

1 received operational grants.
2 Q. BY MR. VILLAGRA: And the districts that are
3 receiving operational grants are the districts that are
4 operating multi-track year-round calendars?
5 A. Are some of the districts that operate
6 multi-track calendars, yes.
7 Q. Who are some of the other districts?
8 MR. SEFERIAN: Objection. Overly broad.
9 Vague.
10 THE WITNESS: Well, there are districts that
11 operate multi-track calendars that don't receive
12 operational grants.
13 Q. BY MR. VILLAGRA: Okay. And you would want to
14 level the playing field between those two sets of
15 districts?
16 MR. SALVATY: Objection. Vague and ambiguous.
17 MR. SEFERIAN: Objection. Misstates the
18 witness' testimony. Overly broad.
19 Q. BY MR. VILLAGRA: On the one hand you have the
20 districts that are receiving operational grant funds.
21 How are you trying to level the playing field
22 with respect to them?
23 MR. SEFERIAN: Objection. Vague and ambiguous
24 as to "you." Overly broad. Incomplete and improper
25 hypothetical question. Vague and ambiguous. Calls for

1 an inadmissible opinion.
 2 THE WITNESS: Eligibility should be calculated
 3 consistently throughout the state.
 4 Q. BY MR. VILLAGRA: And I believe you stated that
 5 you wanted to renew statewide eligibility on a fair
 6 basis.
 7 Do you think that the reduction in eligibility
 8 for students on multi-track year-round programs is
 9 unfair?
 10 MR. SEFERIAN: Objection. Overly broad. Vague
 11 and ambiguous as to "unfair." Incomplete and improper
 12 hypothetical question. Calls for an inadmissible
 13 opinion. Lacks foundation. Calls for speculation.
 14 THE WITNESS: Unfair isn't the word that I'd
 15 use since they knew what the consequences were when they
 16 accepted the grants.
 17 Q. BY MR. VILLAGRA: What would you use if not
 18 unfair?
 19 MR. SEFERIAN: Objection. Argumentative.
 20 MR. SALVATY: Objection. Vague.
 21 MR. SEFERIAN: Asked and answered. Overly
 22 broad. Vague and ambiguous. Assumes facts not in
 23 evidence.
 24 THE WITNESS: Antiquated.
 25 Q. BY MR. VILLAGRA: Why would you describe the

1 offset for multi-track year-round students as
 2 antiquated?
 3 MR. SEFERIAN: Objection. Misstates the
 4 witness' testimony. Vague and ambiguous as to offset.
 5 THE WITNESS: It's the word that comes to mind.
 6 I think the accumulated lost eligibility from some
 7 districts is much greater than one would have perceived
 8 when the program first began.
 9 Q. BY MR. VILLAGRA: For which districts is the
 10 accumulated lost eligibility much greater than you would
 11 otherwise have expected?
 12 MR. SEFERIAN: Objection. Misstates the
 13 witness' testimony. Argumentative. No foundation.
 14 Calls for speculation. Calls for an inadmissible
 15 opinion. Overly broad.
 16 MR. SALVATY: Than who would have expected?
 17 MR. SEFERIAN: Vague as to time.
 18 THE WITNESS: And I couldn't answer. I
 19 couldn't prioritize the big losers and -- I just don't
 20 know. We could tell you though.
 21 Q. BY MR. VILLAGRA: "We" being?
 22 A. Shannon, our office.
 23 Q. Is that because Shannon has done an analysis of
 24 who the, using your words, big losers are from the
 25 offset in eligibility from multi-track year-round

1 programs?
 2 MR. SEFERIAN: Objection. Vague and ambiguous
 3 as to "analysis." Misstates the witness' testimony.
 4 THE WITNESS: Yes, we keep a record of lost
 5 eligibility.
 6 Q. BY MR. VILLAGRA: How far back does that record
 7 go?
 8 A. I have no idea.
 9 Q. How often does that record of lost eligibility
 10 get updated?
 11 MR. SEFERIAN: Objection. Calls for
 12 speculation.
 13 MR. SALVATY: Vague and ambiguous.
 14 THE WITNESS: Once a year.
 15 Q. BY MR. VILLAGRA: Would you expect LA Unified
 16 School District to be among those with the highest lost
 17 eligibility for this most recent record that Shannon
 18 prepared?
 19 MR. SEFERIAN: Objection. No foundation.
 20 Calls for speculation. Vague and ambiguous as to
 21 expect. Calls for an inadmissible opinion. Lacks
 22 foundation. Overly broad.
 23 THE WITNESS: Yes.
 24 Q. BY MR. VILLAGRA: Why is that?
 25 MR. SEFERIAN: Same objections.

1 THE WITNESS: They received the most money from
 2 the operational grant program, and so I would assume
 3 that -- and I'm assuming that their lost eligibility
 4 would be concomitant, but I'm assuming that.
 5 MR. SALVATY: Take a break?
 6 MR. SEFERIAN: Yeah. I think we're about at a
 7 time that I thought we had to finish today.
 8 MR. VILLAGRA: I thought we had until 3:00.
 9 (Recess taken.)
 10 Q. BY MR. VILLAGRA: Mr. Payne, you mentioned that
 11 there was a record of lost eligibility. When was the
 12 last record of lost eligibility prepared by Shannon, and
 13 I can't remember her name, Farrell-Hart?
 14 A. Yes, that's her name.
 15 MR. SEFERIAN: Objection. Calls for
 16 speculation.
 17 THE WITNESS: I don't know.
 18 Q. BY MR. VILLAGRA: On the most recent list of
 19 lost eligibility, would you expect to find the Anaheim
 20 Unified School District on that list?
 21 MR. SEFERIAN: Objection. Lacks foundation.
 22 Calls for speculation. Vague and ambiguous as to
 23 "expect." Calls for an inadmissible opinion.
 24 THE WITNESS: I don't know. I don't know.
 25 Q. BY MR. VILLAGRA: Would it change your answer

1 if I referred to it as the Anaheim Elementary Unified
 2 School District?
 3 MR. SEFERIAN: Same objections.
 4 THE WITNESS: I still don't know.
 5 Q. BY MR. VILLAGRA: Would you expect the Lodi
 6 Unified School District to be on this list of those who
 7 have lost the most eligibility due to the offset from
 8 receipt of multi-track year-round operational grant
 9 funds?
 10 MR. SEFERIAN: Objection. Lacks foundation.
 11 Calls for speculation. Calls for an inadmissible
 12 opinion. Vague and ambiguous as to "expect." Vague as
 13 to time.
 14 MR. SALVATY: Vague as to "most."
 15 THE WITNESS: I simply don't know the districts
 16 for the most part that are claiming operational grants
 17 and aren't. I'm not trying to be evasive. I know LA
 18 does. I don't know the other ones.
 19 Q. BY MR. VILLAGRA: Do you still have a copy of
 20 the Escutia report that you referred to earlier?
 21 A. Yes.
 22 Q. In your office?
 23 A. Yes.
 24 Q. Have you communicated your opinion to anyone at
 25 the California Department of Education that the

1 already?
 2 THE WITNESS: No.
 3 MR. VILLAGRA: Off the record.
 4 (The deposition concluded at 3:00 p.m.)
 5
 6 ---oOo---
 7
 8 Please be advised that I have read the foregoing
 9 deposition. I hereby state there are:
 10
 11 (check one) _____ NO CORRECTIONS
 12 _____ CORRECTIONS ATTACHED
 13
 14 _____
 15 Date Signed
 16
 17 _____
 18 THOMAS PAYNE
 19
 20 Case Title: Williams vs State, Volume I
 21 Date of Deposition: Tuesday, November 20, 2001
 22 ---oOo---
 23
 24
 25

1 operational grant fund program should be done away with?
 2 MR. SEFERIAN: Objection. Misstates the
 3 witness' testimony. Vague and ambiguous as to
 4 "communicated." Vague as to time. Lacks foundation.
 5 THE WITNESS: Yes.
 6 Q. BY MR. VILLAGRA: Who did you discuss that
 7 with?
 8 MR. SEFERIAN: Same objections.
 9 THE WITNESS: Leroy Small, Fred Yeager and
 10 Duwayne Brooks.
 11 Q. BY MR. VILLAGRA: When did you come to the
 12 conclusion that the operational grant fund program
 13 should be done away with?
 14 MR. SEFERIAN: Same objections.
 15 THE WITNESS: I really don't know.
 16 Q. BY MR. VILLAGRA: In the last year?
 17 MR. SEFERIAN: Objection. Asked and answered.
 18 Calls for speculation.
 19 THE WITNESS: Within the last two years.
 20 Q. BY MR. VILLAGRA: Did anything specifically
 21 lead you to the conclusion that the operational grant
 22 fund program should be done away with within the last
 23 two years?
 24 MR. SEFERIAN: Objection. Asked and answered.
 25 MR. SALVATY: Other than what he's testified to

1 DEPONENT'S CHANGES OR CORRECTIONS
 2 Note: If you are adding to your testimony, print the
 3 exact words you want to add. If you are deleting from
 4 your testimony, print the exact words you want to
 5 delete. Specify with "Add" or "Delete" and sign this
 6 form.
 7 DEPOSITION OF: THOMAS PAYNE, VOL. I
 8 CASE: WILLIAMS VS STATE
 9 DATE OF DEPOSITION: TUESDAY, NOVEMBER 20, 2001
 10 I, _____, have the following
 11 corrections to make to my deposition:
 12
 13 PAGE LINE CHANGE/ADD/DELETE
 14
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____
 20 _____
 21 _____
 22 _____
 23 _____
 24 _____
 25 THOMAS PAYNE DATE

REPORTER'S CERTIFICATE

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

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

15 IN WITNESS WHEREOF, I have hereunto set my hand
16 this 3rd day of December, 2001.

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

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

9 Re: Williams vs State
10 Deposition of: Thomas Payne, Vol. I
11 Date Taken: Tuesday, November 20, 2001

12 Dear Ms. Welch:

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

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

18 _____ The witness has waived signature.

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

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

23 _____ Other:

24 Sincerely,

25 TRACY LEE MOORELAND, CSR
Esquire Deposition Services
Ref. No. 29856

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

5 Mr. Thomas Payne
6 Department of Education
7 1224 47th Street
8 Sacramento, CA 95819
9 Re: Williams vs State, Volume I
10 Date Taken: Tuesday, November 20, 2001

11 Dear Mr. Payne:

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

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

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

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

THOMAS PAYNE _____ DATE _____

Sincerely,

TRACY LEE MOORELAND, CSR
Esquire Deposition Services
Job No. 29856

cc: Kevin Reed, Esq. Anthony Seferian, Esq.
Paul Salvaty, Esq. Richard Hamilton, Esq.
Hector Villagra, Esq.