

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

3 ---o0o---

4 ELIEZER WILLIAMS, a minor, by  
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.

-----/

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Deposition of  
JUDY PINEGAR  
Thursday, March, 22, 2001

Reported by:  
TRACY LEE MOORELAND  
CSR No. 10397

APPEARANCES

1  
2  
3 For the Plaintiffs Eliezer Williams, et al.:  
4 MORRISON & FOERSTER LLP  
5 BY: MICHAEL A. JACOBS, ESQ.  
6 LOIS K. PERRIN, ESQ.  
7 425 Market Street  
8 San Francisco, California 94105  
9  
10 For the Defendant State of California:  
11 O'MELVENEY & MYERS LLP  
12 BY: FRAMROZE M. VIRJEE, ESQ.  
13 400 South Hope Street  
14 Los Angeles, California 90071  
15  
16 For the Defendant Delaine Eastin, State Superintendent  
17 of Public Instruction, State Department of Education,  
18 State Board of Education:  
19 DEPARTMENT OF JUSTICE  
20 OFFICE OF THE ATTORNEY GENERAL  
21 BY: THOMAS YANGER, ESQ.  
22 1300 I Street, Suite 1101  
23 Sacramento, California 95814  
24 /  
25 /

APPEARANCES, cont.

1  
2  
3 For the Defendants San Francisco Unified School District  
4 and Fresno Unified School District:  
5 MILLER, BROWN & DANNIS  
6 BY: PETER STURGES, ESQ.  
7 71 Stevenson Street, 19th Floor  
8 San Francisco, California 94105  
9  
10 For the Defendant Los Angeles Unified School District:  
11 STRUMWASSER & WOOCHEER LLP  
12 BY: KEVIN S. REED, ESQ.  
13 100 Wilshire Boulevard, Suite 1900  
14 Santa Monica, California 90401  
15  
16 Also present: Hilary Novak, California Department of  
17 Education, waiver office  
18  
19 ---o0o---  
20  
21  
22  
23  
24  
25

INDEX

1		
2	Examination by:	Page
3	Mr. Jacobs	6
4	Mr. Sturges	192
5	Mr. Reed	194
6	--- <td></td>	
7		
8	E X H I B I T S	
9	Defendants'	Page
10	SAD-1 Memo dated October 12, 1999	36
11	SAD-2 Letter dated October 23, 2000	67
12	SAD-3 Senate Bill No. 273	83
13	SAD-4 Annual Report General Waiver Activity,	
14	January 1998 - December 1998	110
15	SAD-5 California Board of Education	
16	Draft Minutes, January 10 - 11, 2001	110
17	SAD-6 California, Board of Education Agenda,	
18	March 7 - 8, 2001	110
19	SAD-7 California Board of Education,	
20	Draft Minutes February 7 - 8, 2001	110
21	SAD-8 Schiff-Bustamante Standards-Based	
22	Instructional Materials Program	110
23	E X H I B I T S, cont.	
24	Defendants'	Page
25	SAD-9 Memo dated February 1, 2001	180

1	SAD-10 Year-Around Waivers and Certifications	
2	as of February 28, 2001	182
3	SAD-11 One-Year Renewable Waiver for Severely	
4	Impacted MTYRE Schoolsites 1999-2000	
5	K-3 Class Size Reduction Program	183
6	SAD-12 California State Board of Education	
7	Agenda, December 6 - 7, 2000	188
8		
9	--- <td></td>	
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 BE IT REMEMBERED, that on Thursday, March, 22,  
2 2001, commencing at the hour of 10:05 a.m., thereof, at  
3 the Law Offices of Morrison & Foerster LLP, 400 Capitol  
4 Mall, Suite 2300, Sacramento, California, before me,  
5 TRACY LEE MOORELAND, a Certified Shorthand Reporter in  
6 the State of California, there personally appeared  
7 JUDY PINEGAR,  
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. JACOBS

14 Q. Good morning, Ms. Pinegar. My name is Michael  
15 Jacobs and I represent the plaintiffs in this case.  
16 Have you ever had your deposition taken before?  
17 A. On personnel issues.  
18 Q. Meaning labor disputes?  
19 A. Yeah.  
20 Q. If you have any questions about the process,  
21 feel free to consult with your counsel. My goal today  
22 is to understand the waiver process that you administer  
23 and particular waivers that relate to items we've  
24 addressed in our case.  
25 Have you seen the complaint in this litigation?

1 A. No.  
2 Q. Do you have any understanding of what the case  
3 is about?  
4 A. Yes.  
5 MR. VIRJEE: Object to the extent it would call  
6 for the attorney/client privilege.  
7 MR. JACOBS: Who is defending this witness?  
8 MR. YANGER: I'm defending the witness.  
9 MR. VIRJEE: I can still make objections.  
10 MR. JACOBS: Go ahead. There's no instruction.  
11 THE WITNESS: I guess I need the question  
12 again.  
13 Q. BY MR. JACOBS: What's your understanding of  
14 the lawsuit?  
15 A. I don't know a lot about it.  
16 Q. What?  
17 A. It's just been explained as being a  
18 class-action suit, basically.  
19 Q. About what?  
20 A. About --  
21 MR. VIRJEE: Again, I'd object to the extent it  
22 calls for the disclosure of the content of  
23 attorney/client communication.  
24 THE WITNESS: I don't really know any of the  
25 details.

1 MR. YANGER: To the extent -- if you would make  
2 a foundation. I want to make sure that she's not  
3 testifying as to conversations I've had with her about  
4 the complaint.  
5 MR. JACOBS: We'll come back to that.  
6 Q. Your title is what?  
7 A. Education administrator.  
8 Q. Of what?  
9 A. I'm education administrator for the California  
10 Department of Education.  
11 Q. You report to whom?  
12 A. Leslie Fausset.  
13 Q. And her title is?  
14 A. She's a chief deputy superintendent, public  
15 instruction.  
16 Q. You have people who report to you?  
17 A. Yes.  
18 Q. And is that layered, that is, do you have  
19 people who report to you, in turn, have people who  
20 report to them?  
21 A. No.  
22 Q. So all the people that you supervise are your  
23 direct reports?  
24 A. Yes.  
25 Q. How many people do you supervise?

1 A. Three.  
2 Q. And they are in an office, a named office in  
3 the Department?  
4 A. Yes.  
5 Q. What is that office called?  
6 A. The waiver office.  
7 Q. To tie it up, there are four people in the  
8 waiver office, yourself and three subordinates?  
9 A. That's correct.  
10 Q. Do all waivers that are requested of the  
11 Department of Education go to the waiver office in some  
12 fashion or other?  
13 MR. VIRJEE: Objection. Vague and ambiguous as  
14 to "waiver."  
15 THE WITNESS: I don't know that all of them go.  
16 Q. BY MR. JACOBS: Which ones don't come to the  
17 waiver office?  
18 A. I don't know.  
19 MR. VIRJEE: Objection. Calls for speculation.  
20 Lacks foundation.  
21 THE WITNESS: I don't know what doesn't come to  
22 me, I know what comes.  
23 Q. BY MR. JACOBS: You don't know of any waivers  
24 that don't come to the waiver office?  
25 MR. VIRJEE: Objection. Misstates her

1 testimony.  
 2 THE WITNESS: I can't testify about what  
 3 doesn't come to me. I don't know.  
 4 Q. BY MR. JACOBS: That wasn't my question.  
 5 Do you know of any waivers, any waivers that  
 6 are not processed by your waiver office?  
 7 MR. VIRJEE: Objection. Vague and ambiguous as  
 8 to "waiver."  
 9 THE WITNESS: I don't understand the question.  
 10 Q. BY MR. JACOBS: What part don't you understand?  
 11 A. Do I know of any -- say it again.  
 12 Q. Do you know of any waiver requests that are not  
 13 processed by your waiver office?  
 14 MR. VIRJEE: Are you asking about specific  
 15 waivers or types of waivers? That's my problem with the  
 16 question as to being vague and ambiguous.  
 17 MR. JACOBS: Go ahead.  
 18 MR. VIRJEE: I'll object to the question as  
 19 vague and ambiguous.  
 20 THE WITNESS: I guess I'm not quite  
 21 understanding your question.  
 22 Q. BY MR. JACOBS: Let's approach it from another  
 23 standpoint.  
 24 You present waiver requests to the State Board  
 25 of Education, correct?

1 A. That's correct.  
 2 Q. Does the State Board of Education consider any  
 3 waiver requests that someone other than yourself in the  
 4 ordinary course, leaving aside being sick or something  
 5 like that, would present to the State Board of  
 6 Education?  
 7 A. Not to my knowledge.  
 8 Q. Looking at the State Board of Education  
 9 minutes, it appears that there are three categories of  
 10 waivers. There are consent waivers, quasi-consent  
 11 waivers and a third category that is none of the above  
 12 correct?  
 13 A. Correct.  
 14 MR. VIRJEE: Objection. Vague and ambiguous as  
 15 to "categories of waivers."  
 16 Q. BY MR. JACOBS: Can you describe for me the  
 17 composition of those three categories?  
 18 MR. VIRJEE: The three categories you just  
 19 identified?  
 20 MR. JACOBS: Yes.  
 21 THE WITNESS: The consent waivers are waivers  
 22 that have approved State Board policies for their review  
 23 and recommendation basically, policy for the review and  
 24 how to recommend.  
 25 Q. BY MR. JACOBS: Quasi-consent?

1 A. Actually, the quasi -- the next group is just  
 2 action. They are scheduled for action. There's a  
 3 consent calendar, there's an action calendar.  
 4 Q. Under the action calendar are there two  
 5 categories?  
 6 A. Those are just informal categories, they're not  
 7 anything formal. They're the quasi-consent and then the  
 8 rest of them. We don't really have a name for that.  
 9 Q. And do you decide as between quasi-consent and  
 10 other?  
 11 A. No.  
 12 Q. Who decides that?  
 13 A. State Board staff.  
 14 Q. Is that a function of a particular State Board  
 15 staff person?  
 16 MR. VIRJEE: Objection. Calls for speculation.  
 17 No foundation.  
 18 THE WITNESS: I don't know.  
 19 Q. BY MR. JACOBS: Do you interact with State  
 20 Board staff in that categorization?  
 21 A. Yes.  
 22 Q. Who do you interact with?  
 23 A. Deborah Franklin.  
 24 Q. What is her position?  
 25 A. I don't know.

1 Q. But you understand her to be on the staff of  
 2 the State Board of Education?  
 3 A. Yes.  
 4 MR. STURGES: I'm having a real hard time  
 5 hearing you. If you could speak up a little, please.  
 6 Thank you.  
 7 THE WITNESS: Okay.  
 8 Q. BY MR. JACOBS: Do you decide whether something  
 9 goes on the consent item as opposed to the action item?  
 10 MR. VIRJEE: Objection. Vague and ambiguous as  
 11 to "decide."  
 12 THE WITNESS: Yeah, it's not quite that easy.  
 13 Q. BY MR. JACOBS: How does it happen?  
 14 MR. VIRJEE: How does it happen that something  
 15 goes on the consent calendar versus the action calendar?  
 16 THE WITNESS: Generally I know what types of  
 17 waivers have policies, usually so do the staff that work  
 18 on them. And the document comes back marked consent or  
 19 action.  
 20 Q. BY MR. JACOBS: Comes back from the staff  
 21 person working on the waiver request?  
 22 A. Correct.  
 23 Q. And then operationally the way that that works  
 24 is that the staff person has a set of the approved State  
 25 Board policies with respect to waivers and can

1 categorize based on that?  
 2 A. They know their own waivers.  
 3 Q. And so your staff is divided among types of  
 4 waivers?  
 5 MR. VIRJEE: Objection. Vague and ambiguous.  
 6 Calls for speculation. She hasn't said this was her  
 7 staff.  
 8 THE WITNESS: Yeah, they're not my staff.  
 9 Q. BY MR. JACOBS: Which staff are they?  
 10 A. They're staff within the Department who review  
 11 waivers for me, or for the Department, actually.  
 12 Q. So what's the particular function of the three  
 13 people who report to you?  
 14 A. Managing the waiver process, I would say.  
 15 Q. And they work with staff people in the  
 16 Department who have a variety of functions, one of which  
 17 is to review waiver requests; is that correct?  
 18 A. Yes, to some extent.  
 19 Q. Well, let me ask it a little differently.  
 20 Are you aware of staff people outside of the  
 21 waiver office whose primary responsibility is reviewing  
 22 waiver requests?  
 23 A. No, not -- no, not primary.  
 24 Q. So one of the several responsibilities of such  
 25 staff people is to review waiver requests?

1 A. Correct. I believe so.  
 2 Q. And give me an example of somebody -- of such a  
 3 person who reviews some waiver request that comes to  
 4 mind.  
 5 A. There would be a staff member in special  
 6 education to review those specific types of waivers that  
 7 deal with that area.  
 8 Q. You're thinking of somebody in particular?  
 9 A. No, because there's several people. That's  
 10 just -- it's split by counties, for example.  
 11 Q. Let's take 60119, for example, one of our areas  
 12 of interest.  
 13 Is there a staff person outside of your office  
 14 who is focused on the review of 60119 waiver requests?  
 15 MR. STURGES: Is that Education Code 60111?  
 16 MR. JACOBS: Yes.  
 17 MR. YANGER: I think you've misstated the  
 18 section.  
 19 THE WITNESS: 60119 is what we call it, and the  
 20 answer is no.  
 21 Q. BY MR. JACOBS: What is the procedure -- strike  
 22 that. We'll come to 60119 in a minute.  
 23 One kind of waiver request that you are  
 24 currently able to grant is a waiver request for lunches,  
 25 correct?

1 MR. VIRJEE: Vague and ambiguous as to "you."  
 2 Are you talking about the Board, Ms. Pinegar, who?  
 3 THE WITNESS: I don't grant any waivers.  
 4 Q. BY MR. JACOBS: One type of waiver request that  
 5 you are currently, meaning this academic year, that you  
 6 are currently empowered to process relate to school  
 7 lunches, correct?  
 8 A. Correct.  
 9 Q. Can you tell me the process by which a waiver  
 10 request for school lunches is evaluated in the  
 11 Department of Education?  
 12 MR. VIRJEE: Objection. Vague and ambiguous as  
 13 to "school lunches."  
 14 THE WITNESS: No.  
 15 Q. BY MR. JACOBS: Why not?  
 16 A. I don't work for that person, I send it to her.  
 17 Q. But don't you manage the process?  
 18 A. Yes.  
 19 Q. So what knowledge do you have about that  
 20 process by virtue of your management function?  
 21 MR. VIRJEE: Objection. Vague and ambiguous as  
 22 to "process."  
 23 Are you asking how the waiver goes from the  
 24 application to the Board, or the analysis that goes into  
 25 it? I think that's the problem.

1 THE WITNESS: I'm confused by what you're  
 2 asking.  
 3 MR. VIRJEE: I'll object as compound and vague  
 4 and ambiguous.  
 5 THE WITNESS: You need to start more smaller so  
 6 I can answer.  
 7 Q. BY MR. JACOBS: Shall we take a specific --  
 8 A. That's a good example. What do you want me  
 9 to -- that's a good waiver but --  
 10 Q. So you've talked with schools -- have you  
 11 talked with schools about the process for getting school  
 12 lunch waivers?  
 13 MR. VIRJEE: Objection. Vague and ambiguous as  
 14 to "schools." You mean particular schools, or  
 15 districts?  
 16 THE WITNESS: Yes, I answer questions on that.  
 17 Q. BY MR. JACOBS: And they call up and say -- a  
 18 superintendent or his designee might call up and say, I  
 19 think I need a school lunch waiver, what's the process,  
 20 right?  
 21 A. Yes.  
 22 Q. How do you explain that process?  
 23 A. I say, I'll send you the form.  
 24 Q. That's your complete answer?  
 25 A. On that waiver, yes.

1 Q. Why as to that waiver is that, in your mind, a  
 2 sufficient answer?  
 3 A. I didn't create the form.  
 4 Q. When the form first comes into the Department,  
 5 to whom is it directed?  
 6 MR. VIRJEE: Are we still talking about the  
 7 school lunch?  
 8 MR. JACOBS: Yes.  
 9 THE WITNESS: Usually the envelope has waiver  
 10 office on it, Judy Pinegar, sometimes.  
 11 Q. BY MR. JACOBS: In fact, does the mail room  
 12 deliver it to the waiver office?  
 13 A. Yes.  
 14 Q. And then someone in the waiver office routes  
 15 the request; is that correct?  
 16 A. Yes.  
 17 Q. And in the case of the school lunch waiver, to  
 18 whom is it routed?  
 19 A. To a staff member in the child nutrition  
 20 division.  
 21 Q. As a matter of the paper flow, does a copy stay  
 22 with the waiver office?  
 23 A. I do keep a copy of everything that goes out.  
 24 Q. So someone in your office directs a copy of  
 25 that waiver request to this specialist in child

1 nutrition, correct?  
 2 A. Yes.  
 3 Q. And then what happens next procedurally?  
 4 MR. VIRJEE: Objection. Calls for speculation.  
 5 Lacks foundation.  
 6 THE WITNESS: You log it into a book that says  
 7 where it is, who it's with, who it's assigned to.  
 8 Q. BY MR. JACOBS: And then what happens?  
 9 MR. VIRJEE: Objection. Calls for speculation.  
 10 Lacks foundation.  
 11 THE WITNESS: We wait.  
 12 Q. BY MR. JACOBS: How long do you wait?  
 13 A. Until it comes back.  
 14 Q. Do you have a tickler file to prompt a response  
 15 if it's out too long?  
 16 A. Yes.  
 17 Q. And what's your -- what are your timetables for  
 18 prompting response?  
 19 A. Roughly two weeks.  
 20 Q. While it is at the child nutrition specialist,  
 21 do you have any information on what is -- what  
 22 evaluation is being done of the waiver? Let me ask that  
 23 a little more concretely.  
 24 As a matter of the regular and routine  
 25 processing of the requests, is there interaction between

1 your office and in this case the child nutrition  
 2 specialist about the evaluation of the waiver?  
 3 A. No.  
 4 Q. What is the next information you get about a  
 5 request for a waiver with respect to school lunches?  
 6 A. Usually the waiver would be returned with a  
 7 cover document written by the staff member.  
 8 Q. A cover document representing a recommendation?  
 9 A. Correct.  
 10 Q. In the case of school lunch waivers, who does  
 11 that go to in your office?  
 12 A. Me.  
 13 Q. And you and you alone, or do you have one of  
 14 your three people also working in that area?  
 15 A. No.  
 16 Q. Okay. So the waiver request comes back with a  
 17 memorandum directed to you, and you review the  
 18 memorandum?  
 19 MR. VIRJEE: Objection. Compound.  
 20 THE WITNESS: It's not directed to me.  
 21 Q. BY MR. JACOBS: Who is it directed to?  
 22 A. It's just a form.  
 23 Q. It's delivered to you?  
 24 A. Yes.  
 25 Q. And you review the form?

1 A. Yes.  
 2 Q. And what do you review it with a view toward?  
 3 MR. VIRJEE: Objection. Vague and ambiguous.  
 4 THE WITNESS: I make sure that accurate  
 5 information has been transmitted from the original  
 6 document to the cover document.  
 7 Q. BY MR. JACOBS: The original document meaning  
 8 the waiver request?  
 9 A. Itself, uh-huh.  
 10 Q. And what else do you review it for?  
 11 A. What the recommendation is.  
 12 Q. And what else?  
 13 A. I read it. I basically review it, you know,  
 14 the whole thing, the write-up, what they say and why.  
 15 Q. What do you do after that review?  
 16 A. I usually initial it and give it to one of my  
 17 staff members.  
 18 Q. And you give it to a staff member for what,  
 19 what purpose are they given the --  
 20 A. To be assigned to the next board meeting.  
 21 Q. You give it to them to assign the waiver or to  
 22 assign the person?  
 23 A. The waiver, the document.  
 24 Q. And what do they then do between that point and  
 25 the next board meeting?

1 MR. VIRJEE: Objection. Calls for speculation.  
 2 MR. YANGER: If you know.  
 3 MR. VIRJEE: It's also overbroad, vague and  
 4 ambiguous.  
 5 THE WITNESS: In regards to that waiver, they  
 6 might type it into an agenda.  
 7 Q. BY MR. JACOBS: What else do you expect them to  
 8 do?  
 9 A. Keep it reasonably filed so it could be found.  
 10 That's about all at that point.  
 11 Q. And then what happens next?  
 12 A. When most of the waivers are in or it's getting  
 13 close to the timeline, I usually review them again for  
 14 which -- you know, for consent and action, and if she's  
 15 got them in the proper order, any typos, anything on her  
 16 agenda that's wrong. And then right before the turn-in  
 17 date I have them approved by my supervisor.  
 18 Q. And the turn-in date and approval by the  
 19 supervisor is with reference to the upcoming State Board  
 20 of Education meeting?  
 21 A. Exactly.  
 22 Q. And then you actually present the waiver agenda  
 23 items at the State Board of Education meetings?  
 24 A. Yes, I speak to them.  
 25 Q. And on occasion questions are asked about

1 particular waiver recommendations, correct?  
 2 A. Yes.  
 3 Q. Do you field those questions yourself?  
 4 MR. VIRJEE: Objection. Vague and ambiguous.  
 5 Questions from the audience, the Board, any  
 6 questions?  
 7 MR. JACOBS: Let's take it from the Board.  
 8 THE WITNESS: In most cases, yes.  
 9 Q. BY MR. JACOBS: And in order to do that, you  
 10 have to have a substantive understanding of the request  
 11 and the basis for recommendation, correct?  
 12 MR. VIRJEE: Objection. Vague and ambiguous as  
 13 to "substantive."  
 14 THE WITNESS: I have an understanding.  
 15 Q. BY MR. JACOBS: You have an understanding of  
 16 the substance as opposed to just its procedural status,  
 17 correct?  
 18 MR. VIRJEE: Vague and ambiguous.  
 19 THE WITNESS: I don't quite understand that.  
 20 Q. BY MR. JACOBS: Let's take a particular case.  
 21 Were you ever -- do you recall being asked at a  
 22 State Board of Education meeting to comment on a school  
 23 lunch-related waiver request?  
 24 A. No.  
 25 Q. What was the last time you were asked to

1 comment on a waiver request at a State Board of  
 2 Education meeting?  
 3 A. Every meeting just about.  
 4 Q. So let's take the last meeting.  
 5 Was there discussion about any particular  
 6 waiver request?  
 7 MR. VIRJEE: That she recalls?  
 8 THE WITNESS: Yes, I speak about them in  
 9 general when I present them, I present to you consent  
 10 items numbered whatever through whatever, I know of no  
 11 corrections.  
 12 Q. BY MR. JACOBS: With respect to consent items,  
 13 is that generally the nature of your presentation?  
 14 A. With consent, yes.  
 15 Q. Now, with respect to action requests, do you go  
 16 into more depth on occasion?  
 17 A. Yes.  
 18 Q. And in particular some waiver requests raise  
 19 issues that the Department has determined represent  
 20 policy issues for the Board, correct?  
 21 MR. VIRJEE: I'm sorry, could you repeat the  
 22 question?  
 23 THE WITNESS: I'm not sure.  
 24 MR. JACOBS: Want to read it back.  
 25 (Record read.)

1 MR. VIRJEE: Objection. Asked and answered.  
 2 THE WITNESS: No. No.  
 3 Q. BY MR. JACOBS: Do you typically flag any of  
 4 the waiver requests for particular attention?  
 5 MR. VIRJEE: Objection. Vague and ambiguous.  
 6 THE WITNESS: I don't.  
 7 Q. BY MR. JACOBS: Who does?  
 8 MR. VIRJEE: Objection. Calls for speculation.  
 9 Lacks foundation. Assumes facts.  
 10 THE WITNESS: Anyone who wants to.  
 11 Q. BY MR. JACOBS: In anticipation of the meeting  
 12 at which you're going to present waiver requests, are  
 13 particular items identified in advance as likely  
 14 requiring discussion with the Board?  
 15 MR. VIRJEE: Objection. Vague and ambiguous.  
 16 Calls for speculation. Lacks foundation.  
 17 If you you're asking whether she identifies  
 18 them, she can answer. As to whether others do, she  
 19 can't answer that. That's beyond her knowledge.  
 20 THE WITNESS: Except that I do get a list that  
 21 says quasi-consent versus action.  
 22 Q. BY MR. JACOBS: Are the quasi-consent items  
 23 identified in advance --  
 24 A. Yes.  
 25 Q. -- as likely requiring discussion as opposed to

1 a -- to the consent items?  
 2 A. Quasi-consent as opposed to the consent items,  
 3 you're asking?  
 4 Q. Strike. Ask it again.  
 5 What is your understanding of how -- what do  
 6 you do to prepare for a State Board of Education meeting  
 7 in anticipation of the possibility that there will be  
 8 discussion on action items?  
 9 A. I read my waivers. I know them very  
 10 thoroughly.  
 11 Q. Do you discuss them with the waiver  
 12 specialists?  
 13 A. Sometimes.  
 14 Q. And you do that based on your desire to be  
 15 prepared to answer questions at the State Board of  
 16 Education meeting?  
 17 A. Primarily, yes.  
 18 Q. So when you say you know your waivers, you --  
 19 what do you mean by that?  
 20 A. I want to be able to answer a question if asked  
 21 me.  
 22 Q. And the question might be a question about the  
 23 policy underlying the recommendation, correct?  
 24 A. Yes.  
 25 Q. And how do you become knowledgeable about -- in

1 order to prepare for that kind of question about waiver  
 2 requests?  
 3 A. It should be explained on the analysis  
 4 document.  
 5 Q. And what other steps do you take?  
 6 MR. VIRJEE: Objection. Assumes facts.  
 7 THE WITNESS: Steps that I take to do what?  
 8 MR. JACOBS: To be prepared to address policy  
 9 questions about waiver requests.  
 10 MR. VIRJEE: Same objection.  
 11 THE WITNESS: I guess I don't understand the  
 12 question exactly.  
 13 Q. BY MR. JACOBS: What do you do besides reading  
 14 the recommendations to prepare for a State Board of  
 15 Education meeting?  
 16 A. Well, a district might call and ask to be  
 17 scheduled to speak, so I would do that. I would have a  
 18 list of names and which waivers they want to speak to,  
 19 and I would generally know what they want to say a  
 20 little bit.  
 21 Q. What else do you do to prepare?  
 22 A. I might have a staff member ready to back me  
 23 up.  
 24 Q. By a staff member, in this case you mean a  
 25 staff member outside of your office?

1 A. Yes.  
 2 Q. And that person might come with you to the  
 3 meeting?  
 4 A. Yes.  
 5 Q. So you attempt to determine in advance whether  
 6 a particular waiver is going to lead to the kinds of  
 7 questions as to which you think it would be a good idea  
 8 to have the relevant staff person there, correct?  
 9 A. Yes.  
 10 Q. Does your office -- let me ask it a little more  
 11 open endedly.  
 12 How would you characterize the level of  
 13 substantive involvement of your office in the evaluation  
 14 of waiver requests?  
 15 MR. VIRJEE: Objection. Asked and answered and  
 16 vague and ambiguous.  
 17 THE WITNESS: Varies.  
 18 Q. BY MR. JACOBS: What's the range?  
 19 MR. VIRJEE: Objection. Vague and ambiguous.  
 20 Q. BY MR. JACOBS: As to some waiver requests you  
 21 are involved in the substance as opposed to other waiver  
 22 requests where the substance is handled solely by the  
 23 specialists in the Department, correct?  
 24 A. Yes.  
 25 Q. What's an example of a waiver request that

1 you're involved in substantively?  
 2 A. Out of state travel requests.  
 3 Q. Out of state travel by whom?  
 4 A. Field trips, students.  
 5 Q. What others is your office involved in  
 6 substantively?  
 7 MR. VIRJEE: Objection. Vague and ambiguous as  
 8 to substantive involvement.  
 9 THE WITNESS: Date waivers, waivers of dates.  
 10 Q. BY MR. JACOBS: What is a "date waiver"?  
 11 A. One that we do would be a non-public school who  
 12 missed its application deadline in statute, and they  
 13 need to have that waived by the Board to be able to  
 14 apply late.  
 15 Q. What's another case where you're involved  
 16 substantively?  
 17 MR. VIRJEE: Same objection.  
 18 THE WITNESS: I probably can't name them all.  
 19 Q. BY MR. JACOBS: Can you name any others?  
 20 A. Recently a math professional development  
 21 waiver.  
 22 Q. Professional development by teachers?  
 23 A. Yes.  
 24 Q. Any others?  
 25 A. Not recently.

1 Q. In characterizing your level of involvement --  
2 strike that.

3 With respect to the categories you just  
4 identified, do they also go to a specialist?

5 A. No.

6 Q. So you process these waiver requests in their  
7 entirety; is that correct?

8 A. Yes.

9 Q. With respect to waiver requests that go to  
10 specialists, are there instances in which you are  
11 involved in the determination of what recommendation to  
12 make to the State Board?

13 MR. VIRJEE: Objection. Vague and ambiguous as  
14 to "involved" and "recommendation."

15 THE WITNESS: Yeah, I think I need it  
16 clarified. How involved?

17 MR. JACOBS: By involvement I mean assessing  
18 the waiver request against the criteria by which waivers  
19 are reviewed by the Department and engaging in a  
20 dialogue with the waiver -- with the relevant  
21 specialists about whether the criteria are met.

22 THE WITNESS: Yes, I might do that.

23 Q. BY MR. JACOBS: And what's an example of that  
24 kind of waiver request?

25 A. Well, I just had a discussion today with a

1 or speculate, but if you have an estimate, he's entitled  
2 to that.

3 THE WITNESS: Well, just depends on how -- what  
4 you mean by that.

5 MR. VIRJEE: I'll object as vague and  
6 ambiguous.

7 MR. STURGES: For the record, I'm not meaning  
8 to interfere with the deposition process, but I think it  
9 may be helpful if the deponent is given some instruction  
10 about the depo process to the extent of what she's  
11 supposed to testify to. She didn't receive that, and  
12 that may be a source of some confusion.

13 MR. JACOBS: I assume the witnesses come  
14 prepared to a deposition.

15 THE WITNESS: I'm prepared to testify about my  
16 job, it's just I think the way the questions are being  
17 asked, they're hard to answer sometimes.

18 Q. BY MR. JACOBS: Is there a way you talk about  
19 your job in which you're comfortable when people ask you  
20 about it?

21 MR. VIRJEE: Objection. Vague and ambiguous.

22 THE WITNESS: I talk about logging in and  
23 assigning and proofing and reading and scheduling, that  
24 kind of thing.

25 Q. BY MR. JACOBS: How about when you talk about

1 staff member about a class size reduction waiver  
2 request.

3 Q. And in that discussion had a recommendation  
4 already been delivered to you?

5 A. No.

6 Q. Would you characterize your discussion with  
7 this staff member as a discussion in which you were  
8 having a dialogue about what recommendation should be  
9 made?

10 A. Yes.

11 Q. And are there many such instances in your work?

12 MR. VIRJEE: Objection. Vague and ambiguous as  
13 to "many."

14 THE WITNESS: There are some.

15 Q. BY MR. JACOBS: How many in a week?

16 A. I don't know. I can't answer that. I can't  
17 recall that exactly.

18 Q. This week how many such discussions have you  
19 had?

20 MR. VIRJEE: So far this week?

21 MR. JACOBS: Yes.

22 THE WITNESS: And you're asking about  
23 specifically me talking to a consultant about what the  
24 recommendation is?

25 MR. VIRJEE: Judy, he doesn't want you to guess

1 the substance of your job, the substantive aspects of  
2 it, that is, the review of waivers against the criteria  
3 for granting or denying waivers?

4 MR. VIRJEE: Objection. Calls for speculation  
5 and assumes that she has had such discussions.

6 Q. BY MR. JACOBS: Do you have discussions about  
7 the aspect of your job which involves your substantive  
8 review of waiver requests?

9 A. Could you repeat that.

10 (Record read.)

11 THE WITNESS: Discussions with whom?

12 Q. BY MR. JACOBS: Anyone. You're having trouble  
13 with my questions. I'm trying to find out what  
14 vocabulary you use to talk about the substantive aspects  
15 of your job.

16 MR. VIRJEE: With the waiver specialist or with  
17 others? She's already testified to what she talked  
18 about with the waiver specialist.

19 THE WITNESS: My boss, I would try and explain  
20 to her the waiver that she's approving and --

21 Q. BY MR. JACOBS: Let's take it that way.

22 When did you come into this position?

23 A. Three years ago, '97.

24 Q. Did you have a predecessor?

25 A. Sort of, yeah. Yes, there was a person there.

1 Q. Was there a reorganization?  
 2 A. He asked to leave, and I was asked to take the  
 3 job.  
 4 Q. But the position existed before you?  
 5 A. For some short period of time.  
 6 Q. When you were given the position, were your job  
 7 duties explained to you?  
 8 A. Not really.  
 9 Q. Did you develop the job duties as you undertook  
 10 the position?  
 11 A. Pretty much, yes.  
 12 Q. And I see from one of the documents that one of  
 13 your accomplishments was -- as viewed by the Board was  
 14 to streamline the waiver process, correct?  
 15 A. Yes.  
 16 Q. As you developed the position and your role in  
 17 the position, did you develop a view as to the proper  
 18 role you should play with respect to the substance of  
 19 waiver requests when viewed against the role of the  
 20 particular specialists in the Department?  
 21 MR. VIRJEE: Objection. Vague and ambiguous.  
 22 THE WITNESS: I need to hear it again.  
 23 (Record read.)  
 24 THE WITNESS: Yes, I review and think about  
 25 what they've said in order to present it to my boss and

1 to the Board.  
 2 Q. BY MR. JACOBS: How many waivers -- how many  
 3 staff people in the rest of the Department are assigned  
 4 the duty of reviewing waivers?  
 5 MR. VIRJEE: Objection. Vague as to time.  
 6 THE WITNESS: I don't know exactly.  
 7 MR. JACOBS: Today.  
 8 THE WITNESS: I don't know exactly.  
 9 Q. BY MR. JACOBS: A range?  
 10 A. I can only say about 50. I don't know.  
 11 Q. By streamlining the waiver process -- and the  
 12 reference to that streamlining process in the State  
 13 Board of Education minutes -- what was your  
 14 understanding of what you did to streamline?  
 15 A. One of the things would be to create more  
 16 policies so more things could go to consent.  
 17 Q. What else?  
 18 MR. VIRJEE: You're asking for her view of what  
 19 she did, not necessarily what the other staff --  
 20 MR. JACOBS: Right.  
 21 THE WITNESS: I improved forms, I would reject  
 22 write-ups that weren't clear, make them redo them.  
 23 Q. BY MR. JACOBS: Write-ups from the specialists?  
 24 A. Yes. And I think the main thing was I just --  
 25 I read what I was presenting and could answer a question

1 on it. You know, it's like they could rely on me to  
 2 know what that waiver was about.  
 3 Q. In at least one case, that is, the case of  
 4 60119, there was an interaction between the Department  
 5 of Education and the legislature that had the effect, as  
 6 I understand it, eliminating the requirement for rate  
 7 requests for certain years.  
 8 Is that a correct understanding?  
 9 A. Yes, it was.  
 10 MR. JACOBS: So let's mark as State Agency  
 11 Defendant's 1 a memo from you dated October 12th, 1999.  
 12 (Exhibit SAD-1 was marked.)  
 13 MR. YANGER: While we're shuffling documents, I  
 14 think this might be a good time to note for the record  
 15 that in response to the document production request  
 16 contained in the subpoena, I've produced to plaintiff  
 17 and all other attorneys present documents labeled DOE  
 18 numbers 380451 through 30538, and I've also provided a  
 19 report prepared pursuant to Education Code Section 33053  
 20 which bears the DOE numbers 30539 through 30552.  
 21 Q. BY MR. JACOBS: So in this particular case, as  
 22 I said, there was an interaction between the State Board  
 23 of Education and the legislature that had the effect of  
 24 eliminating particular -- as you put here, eliminated  
 25 the requirement in E.C. 60119 for all years between 1994

1 and '95 and '98, '99, correct?  
 2 MR. VIRJEE: Objection. Calls for speculation.  
 3 Lacks foundation. Assumes that some interaction between  
 4 the Department and the legislature would do that and  
 5 that the Department is somehow empowered to do that.  
 6 THE WITNESS: No. And, actually, he said the  
 7 Board. And the answer is no.  
 8 Q. BY MR. JACOBS: So it is no because it's the  
 9 Board as opposed to the Department?  
 10 Let me ask it a little differently. Somebody  
 11 in the executive branch of State government made a  
 12 recommendation to the legislature to eliminate the  
 13 requirement in E.C. 60119 for all years between 1994 and  
 14 '95 and 1998 and '99, correct?  
 15 A. I don't know that.  
 16 Q. You don't know how that --  
 17 A. I don't know that someone in the Department  
 18 made that recommendation.  
 19 Q. Didn't you, in fact, recommend that the  
 20 Department take that step with respect to the  
 21 legislature?  
 22 A. Did I recommend that for the Department?  
 23 Q. Didn't you propose statutory language?  
 24 MR. VIRJEE: Did Ms. Pinegar propose that?  
 25 MR. JACOBS: Yes.

1 THE WITNESS: Let me say it this way: I knew  
2 that there were a lot of waivers that had not been  
3 processed, and I knew I could no longer process them.

4 Q. BY MR. JACOBS: So what steps did you take?

5 MR. VIRJEE: Objection. Assumes facts. She  
6 hasn't testified she took any steps.

7 MR. JACOBS: Mr. Virjee, this is your record as  
8 much as mine. There are a whole lot of objections that  
9 you're putting on the record that I suggest to you are  
10 interfering with the flow of the deposition, that are  
11 resulting in the deposition taking more time, and that  
12 will, if need be, illustrate a certain style of dealing  
13 with depositions that I don't think will be to your  
14 clients' benefit.

15 I say that now because I don't want to have to  
16 go to the judge in the middle of a deposition to ask for  
17 an instruction to you. You're not this witness's  
18 lawyer, and I would request prayerfully that you  
19 minimize your objections so that the deposition can  
20 occur on a streamlined and efficient basis.

21 MR. VIRJEE: Mr. Jacobs, you're right that I do  
22 have every right to make objections here, and I will  
23 continue to make them if you make -- if you pose  
24 questions that are objectionable. Unless you're willing  
25 to agree that all my objections are preserved for the

1 questions, not me. And I don't believe that my  
2 questions (sic) are in any way interfering. I'm trying  
3 to be as unobtrusive as possible, just stating my  
4 objection, and the witness is answering the questions.

5 Q. BY MR. JACOBS: Ms. Pinegar, did you take steps  
6 after you reached that conclusion to address the  
7 situation that you had identified?

8 A. I alerted my supervisor that many districts  
9 thought they would have a waiver process and would now  
10 not.

11 Q. And did you do anything else other than alert  
12 your supervisor?

13 A. No. Yes, I mean, I did.

14 Q. What did you do?

15 A. We went to a meeting to discuss this matter  
16 with the Department of Finance.

17 Q. And the interaction with the Department of  
18 Finance, what was your understanding of why you were  
19 meeting with the Department of Finance on that issue?

20 A. Well, they had originally, I think -- I'm not  
21 sure, actually. But they certainly were a large part of  
22 the bill that caused the stoppage of the waivers.

23 Q. And what was your objective in meeting with  
24 them?

25 A. To alert them to the problem that they -- that

1 record and I can raise them at the time this deposition  
2 testimony is being used, I have no choice or those  
3 objections are waived.

4 MR. JACOBS: I will so stipulate.

5 MR. VIRJEE: I appreciate that. Then we have a  
6 stipulation that all my objections are preserved. And  
7 with that in mind, I will not make every objection, but  
8 will make them only when I think it will help move the  
9 process along, but I accept your stipulation.

10 MR. JACOBS: I think I now have to withdraw the  
11 stipulation because it didn't resolve this issue, so  
12 there is no stipulation on the record. I think the  
13 rules --

14 MR. VIRJEE: If there is no stipulation on the  
15 record, then I will continue to make all of the  
16 objections that I believe are appropriate so that  
17 they're preserved at the time of trial, because I do not  
18 want you to argue at the time of trial that I waived any  
19 objection.

20 MR. JACOBS: And your understanding of the  
21 relevant Code of Civil Procedure section in this regard  
22 is what?

23 MR. VIRJEE: I don't need to give you my  
24 understanding as to anything. I'm not being deposed  
25 here. You're asking Ms. Pinegar the deposition

1 that bill had created.

2 Q. And as a result of that meeting, did you  
3 yourself participate in a further process to address  
4 that situation?

5 A. Myself, no.

6 Q. And did you form any understanding of what  
7 happened in the process that led to the passage of AB  
8 1600?

9 A. Yes, I had an understanding.

10 Q. And what was your understanding?

11 A. That if a bill was written to somehow help  
12 these waiver processes that I had, or somehow help the  
13 districts whose waivers remained unprocessed, well, that  
14 I would implement it or, you know, provide that  
15 information to the people who needed the help.

16 Q. Did you have any understanding, though, of the  
17 process that -- after you left that meeting with the  
18 Department of Finance --

19 A. Right.

20 Q. -- that led to the adoption of the AB 1600?

21 A. I know the legislative process, yes.

22 Q. Do you include in the knowledge of the  
23 legislative process the interaction between the  
24 executive branch and the legislative branch of  
25 government?

1 A. No.  
 2 Q. Do you have any understanding of what happened  
 3 in the executive branch to prompt the legislature to  
 4 adopt AB 1600?  
 5 A. No.  
 6 MR. VIRJEE: Objection. Asked and answered.  
 7 THE WITNESS: No.  
 8 Q. BY MR. JACOBS: So your understanding of the  
 9 legislative process is simply a general one, or do you  
 10 have a specific understanding with respect to AB 1600?  
 11 A. I followed it. I mean, I --  
 12 Q. You followed the process?  
 13 A. Yes.  
 14 Q. And what is the mechanism by which you followed  
 15 that process?  
 16 A. The web page.  
 17 Q. Of?  
 18 A. The legislature, of, you know, introduced bills  
 19 and amendments.  
 20 Q. Do you have any other mechanism for following  
 21 that process?  
 22 A. Talking to legislative staff in the Department.  
 23 Q. And did you talk to legislative staff about AB  
 24 1600?  
 25 A. Yes, I'm sure. I don't remember exactly, but

1 I'm sure I did.  
 2 Q. And in those discussions did you explain why --  
 3 how the situation had arisen and what your view was as  
 4 to how it should be corrected?  
 5 A. Certainly the first part. I don't think I  
 6 expressed a view about how it should be corrected.  
 7 Q. Did you express any view at all about the  
 8 benefits of a legislative response to this situation?  
 9 A. The benefits to a district?  
 10 Q. To a waiver process or -- yes, to a district.  
 11 I'm sorry.  
 12 MR. VIRJEE: Objection. Vague and ambiguous.  
 13 MR. JACOBS: Any benefits at all, really.  
 14 THE WITNESS: Well, the districts had an audit  
 15 and were going to lose millions of dollars.  
 16 Q. BY MR. JACOBS: And you explained that to the  
 17 legislative staff?  
 18 A. Sure.  
 19 Q. In the course of your work with waivers related  
 20 to Education Code 60119, did you develop an  
 21 understanding of the policy objectives that 60119 was  
 22 intended to serve?  
 23 A. Policy objectives?  
 24 MR. VIRJEE: Could you repeat the question.  
 25 (Record read.)

1 THE WITNESS: Benefits to the students of  
 2 California.  
 3 Q. BY MR. JACOBS: What benefits?  
 4 MR. VIRJEE: Objection. Calls for speculation.  
 5 Lacks foundation. Also irrelevant.  
 6 THE WITNESS: Relief of an audit penalty.  
 7 Q. BY MR. JACOBS: And by "relief of an audit  
 8 penalty," what do you mean?  
 9 A. I had knowledge of the waiver requests, and in  
 10 the waiver requests they would say this penalty will  
 11 cause us to have to return \$2 million.  
 12 Q. And the return of, say, \$2 million was a return  
 13 of what, as you understood it?  
 14 A. All instructional materials funds for that  
 15 previous year.  
 16 Q. And "instructional materials funds" is a term  
 17 of art, is it not?  
 18 A. A what?  
 19 Q. It's a term of art. It's not small "I"  
 20 instructional materials fund, it's capital "I," yes?  
 21 A. In this case I was using it as a small "I," I  
 22 believe.  
 23 Q. So what was your understanding of the  
 24 instructional materials funds that were at issue?  
 25 A. That there were several sources.

1 Q. And what was your understanding of the sources?  
 2 MR. VIRJEE: Can we have a time frame? Are we  
 3 talking about when this Assembly Bill 1115 was in play?  
 4 MR. JACOBS: That's fair. Yes.  
 5 THE WITNESS: Ask the question again.  
 6 Q. BY MR. JACOBS: What were the several sources  
 7 that you understood?  
 8 A. Well, the first source would be the  
 9 instructional material funds with the big IMF, and then  
 10 the second is the Schiff-Bustamante. It's a hyphenated  
 11 legislative name for a bill.  
 12 Q. Any others?  
 13 A. No.  
 14 MR. VIRJEE: Those all go to her understanding.  
 15 THE WITNESS: It's in general the small "I,"  
 16 small "F" is what I'm saying.  
 17 Q. BY MR. JACOBS: But the particular funding  
 18 sources that you had knowledge of in this connection  
 19 were the capital "I" instructional materials funds and  
 20 the Schiff-Bustamante funds, correct?  
 21 A. And there may be others, I don't know.  
 22 Q. Let me ask a general question.  
 23 When you are considering waiver requests, you  
 24 consider them against a set of criteria that are  
 25 specified by the legislature, correct?

1 MR. VIRJEE: Are you asking if those are the  
2 only criteria?  
3 Objection. Vague and ambiguous.  
4 THE WITNESS: Not always true.  
5 Q. BY MR. JACOBS: And in the cases where it's not  
6 true, what do you have in mind?  
7 A. The criteria is the policy.  
8 Q. The policy that's been adopted by the State  
9 Board of Education?  
10 A. Yes.  
11 Q. The policy is adopted with reference to  
12 legislative relief-prescribed criteria?  
13 MR. VIRJEE: Objection. Calls for speculation.  
14 THE WITNESS: I don't think so.  
15 Q. BY MR. JACOBS: So let's take the case of  
16 60119.  
17 When those waiver requests were coming in and  
18 before the adoption of --  
19 A. AB 1115?  
20 Q. -- AB 1115, correct, when you assessed those  
21 waiver requests, what were the criteria that you  
22 applied? And by you now I'm meaning your personal role  
23 in reviewing the waiver requests.  
24 A. I know they had -- I can't remember exactly  
25 what -- I've had a lot of different waivers with a lot

1 of different requirements. I know there were required  
2 attachments for this one. I believe it was to do a  
3 certified that they had held a hearing that was missing  
4 that they got the audit penalty on, the 60119 issue,  
5 before they filed a waiver.  
6 Q. So one criteria you applied, as I understand  
7 your testimony was this, the waiver request came in  
8 because they had missed a hearing date, but before you  
9 would grant the waiver request, you wanted to be sure  
10 they had held the hearing?  
11 A. Exactly.  
12 Q. What information did your office receive about  
13 how any particular district conducted the hearing?  
14 A. It's in legislature -- I mean, it's in statute.  
15 Q. Did you receive any information from districts  
16 about how they had conducted the hearing?  
17 A. In their certification.  
18 MR. VIRJEE: All these are with the same time  
19 frame in mind?  
20 MR. JACOBS: Yes, before the adoption of AB  
21 1115.  
22 MR. VIRJEE: Thank you.  
23 Q. BY MR. JACOBS: So the information you got was  
24 the information in writing that came in from the  
25 districts?

1 A. And what the statute says. I mean, they  
2 certified that they did that.  
3 Q. Did you have any other sources of information  
4 about what the districts actually did in order -- in  
5 holding the hearing?  
6 A. No.  
7 Q. Did you interact with a specialist in the  
8 Department on the waiver requests related to 60119?  
9 A. No.  
10 Q. You handled these yourself?  
11 A. Yes.  
12 Q. Was that a -- was there an actual decision on  
13 your part to handle them in that way?  
14 A. No one else wanted to do it. I couldn't find a  
15 willing consultant, and it was a lot of work, and no one  
16 wanted to do it.  
17 Q. Did you have any information in the districts  
18 about the results of their public hearing on -- that  
19 occurred in connection with the waiver request?  
20 MR. VIRJEE: You're just asking now generally  
21 for any of them that she got?  
22 THE WITNESS: Some of them did send stuff.  
23 Q. BY MR. JACOBS: What do you have in mind?  
24 A. Maybe a copy of their board minutes. Some  
25 proof that they thought was proof.

1 Q. Proof of the fact of holding the meeting?  
2 A. Yes.  
3 Q. And as to the substantive outcome of the  
4 meeting, did they send you information?  
5 A. Some may have. I don't remember.  
6 Q. It wasn't a requirement on your part that they  
7 send that information?  
8 A. Of the substantive outcome?  
9 Q. Correct.  
10 A. No, it was a requirement that they certify that  
11 they've complied with 60119.  
12 Q. And as you understood those requirements -- and  
13 I think we've told the State as we read the statute as  
14 well, it is a procedural requirement rather than a --  
15 strike that. Let's rewind a little bit.  
16 One of the things that 60119 says is that if  
17 the district concludes that there is insufficient  
18 textbooks and instructional materials, it has to adopt a  
19 plan to fix that situation, correct?  
20 A. Correct.  
21 MR. VIRJEE: Objection. The statute speaks for  
22 itself.  
23 Q. BY MR. JACOBS: That was your understanding of  
24 the way it worked, right?  
25 A. Yes, that's what I read from the statute.

1 Q. Did you have any information on any district's  
2 development of such a plan in connection with the waiver  
3 process for 60119?  
4 A. Not really, no.  
5 Q. Are you aware of anybody in the Department who  
6 had such information?  
7 A. I don't know.  
8 MR. VIRJEE: By the Department, are you talking  
9 about the Department of Education in Sacramento?  
10 MR. JACOBS: How -- maybe we should be clear.  
11 THE WITNESS: That's when I meant.  
12 Q. BY MR. JACOBS: When I say Department, what do  
13 you --  
14 A. I think of our staff, not the Board, our staff.  
15 That's what I think of.  
16 Q. Do you include the superintendent?  
17 A. Well, sure.  
18 Q. Okay. So we have the Board itself, and then  
19 would you include the Board staff in the Department?  
20 A. No.  
21 Q. There's Board and Board staff in your mind.  
22 A. Yes.  
23 Q. And then there's the superintendent of public  
24 instruction?  
25 A. And her staff.

1 Q. Which you would include the Department in that?  
2 MR. VIRJEE: Objection. Vague and ambiguous as  
3 to "Department."  
4 MR. JACOBS: The Department of Education,  
5 capital "D".  
6 MR. VIRJEE: I didn't mean it that way, I meant  
7 the Department of Education people that are housed here  
8 in Sacramento, other places? Your question is vague and  
9 ambiguous.  
10 MR. JACOBS: And I genuinely want to fix this  
11 one.  
12 MR. VIRJEE: And I genuinely want to make the  
13 objection so we can.  
14 MR. JACOBS: Good. That's why I didn't want to  
15 stipulate.  
16 MR. VIRJEE: See, I'm helping.  
17 THE WITNESS: I'd just like to clarify because  
18 people misunderstand. The Board and Department are not  
19 the same.  
20 Q. BY MR. JACOBS: And in your mind, what is  
21 the -- what constitutes the Department?  
22 A. When I say the Department, I'm talking about  
23 Delaine Eastin and everyone who reports to her.  
24 Q. And geographically that includes people in  
25 Sacramento, correct?

1 A. Sure.  
2 Q. Does it include people, in your mind, outside  
3 of Sacramento?  
4 A. There's some all over the State.  
5 Q. And they are referred to -- you would refer to  
6 those people as Department of Education employees?  
7 A. Yes.  
8 Q. When you had a discussion with the Department  
9 of Finance about the problem that had been created by AB  
10 115 (sic), did you talk with -- in that discussion --  
11 MR. VIRJEE: Just for the record, it's three  
12 ones. You keep saying 115. I did the same thing, but  
13 it's three ones just so the court reporter knows.  
14 Q. BY MR. JACOBS: In that discussion did either  
15 side make reference to the policy purpose behind the  
16 requirement of holding the hearing?  
17 A. What the law was asking for?  
18 Q. Yes.  
19 A. The sufficiency of textbooks, certainly.  
20 Q. And what do you recall of that discussion?  
21 A. He wanted to ensure that that was covered.  
22 Q. That what was covered?  
23 A. That there were sufficient texts, that this law  
24 had been completed.  
25 Q. And at the same time you were proposing that a

1 waiver, retroactive waiver be granted, correct?  
2 A. At that point in time --  
3 MR. VIRJEE: She was proposing that? Vague and  
4 ambiguous.  
5 THE WITNESS: At the point in time when you  
6 were talking about, which is in the meeting with the  
7 Department of Finance, the waiver had been terminated.  
8 Q. BY MR. JACOBS: But you went to the Department  
9 of Finance, as I understood your testimony, to suggest  
10 that there be a legislative correction that had the  
11 effect of granting a retroactive waiver?  
12 A. Some help provided to this stack that was  
13 different from this other stack that came in a day  
14 earlier.  
15 Q. And the "some help" you had in mind was a  
16 legislative retroactive waiver, correct?  
17 A. It could have gone that way, or it could go the  
18 way they went.  
19 Q. Which was?  
20 A. To change the law.  
21 Q. Instead of granting a waiver, they eliminated  
22 the requirement, is that the distinction you're drawing?  
23 A. Exactly.  
24 Q. So in the discussion with the Department of  
25 Finance, how did you -- let's take your side of that

1 discussion. How did your side reconcile the benefits of  
2 having hearings with a proposal to have a solution to  
3 the problem created by AB 1115?

4 MR. VIRJEE: Objection. Calls for speculation.  
5 Lacks foundation.

6 THE WITNESS: I don't think that I understand  
7 that. Maybe that wasn't discussed. I'm not sure.

8 Q. BY MR. JACOBS: You said that you understood or  
9 you discussed in that meeting that 60119 was aiming at  
10 sufficiency of textbooks and instructional materials,  
11 correct?

12 MR. VIRJEE: Objection. That misstates her  
13 testimony.

14 THE WITNESS: I said that we were there to talk  
15 about waivers that people wanted processed that were no  
16 longer allowed because of this statutory change, how do  
17 we help those districts as the others have been helped.

18 Q. BY MR. JACOBS: But unless I misunderstood your  
19 testimony, I thought you said that you discussed in that  
20 meeting the goal of 60119.

21 A. Sure.

22 MR. VIRJEE: Her testimony speaks for itself.

23 THE WITNESS: Yes.

24 Q. BY MR. JACOBS: And in that discussion was your  
25 understanding, was your express understanding of the

1 Q. Let me ask it again slightly differently.

2 What was your understanding of what you were  
3 doing with the waiver?

4 MR. VIRJEE: Objection. Asked and answered.  
5 She just answered that.

6 THE WITNESS: Requiring them to comply and  
7 requiring them to complete a waiver application, which  
8 has a lot of requirements itself, legal requirements,  
9 and then analyzing that, finding it to be sufficient,  
10 good for the kids to be granted the waiver, the Board to  
11 grant the waiver.

12 Q. BY MR. JACOBS: But in granting the waivers,  
13 the Board did not assess whether the districts had made  
14 a determination that there were sufficient instructional  
15 materials?

16 A. Yes, they did.

17 Q. How did they do that?

18 A. They required them to comply with the law.

19 Q. Maybe I didn't ask it clearly enough. The  
20 Board was not informed in reviewing these waiver  
21 requests whether the outcome of the process had been a  
22 conclusion that the district had sufficient textbooks  
23 and instructional materials?

24 MR. VIRJEE: Can we get, again, a time frame?  
25 Again, are we talking before 1115, or are we talking

1 purpose behind 60119 sufficiency of textbooks and  
2 instructional materials for the school children of  
3 California?

4 A. Yes.

5 Q. And did you discuss how the waiver process  
6 related to that goal?

7 A. I don't think we discussed that because I think  
8 everyone there knew.

9 Q. And they knew what?

10 A. How the waiver process related to that goal.

11 Q. And what was the understanding that you think  
12 was held about how the waiver process related to that  
13 goal?

14 MR. VIRJEE: Objection. Calls for speculation.

15 THE WITNESS: Again, I have to go back. A  
16 district was required to give back \$2 million. If they  
17 had sufficient text, they complied with the law, the  
18 waiver was granted. They didn't lose \$2 million.

19 MR. JACOBS: Could you read that back, my  
20 question and the answer.

21 (Record read.)

22 Q. BY MR. JACOBS: Does that accurately reflect  
23 your understanding of the view that was held?

24 A. That's what we were doing with the waiver.

25 That's what we were doing.

1 now, after?

2 THE WITNESS: It should be before.

3 MR. JACOBS: Yes.

4 MR. VIRJEE: Thank you.

5 THE WITNESS: Again, the law is the law.

6 They're supposed to comply with it. We required them to  
7 certify they complied with it.

8 Q. BY MR. JACOBS: And that was the -- that  
9 certification was the extent of the information  
10 available to the Board of Education in deciding whether  
11 to grant a waiver, correct?

12 A. No.

13 MR. VIRJEE: Objection. Vague and ambiguous.  
14 Also calls for speculation.

15 This witness doesn't necessarily know what goes  
16 on with the Board of Education.

17 THE WITNESS: No.

18 MR. JACOBS: I'm not trying to ask a trick  
19 question. I'll tell you when I have a trick question in  
20 mind.

21 MR. VIRJEE: Don't count on it.

22 MR. JACOBS: I promise you.

23 MR. VIRJEE: He's a better lawyer than that, I  
24 promise.

25 Q. BY MR. JACOBS: The districts were certifying

1 that they had held a hearing in compliance with 60119,  
 2 correct?  
 3 A. Uh-huh.  
 4 Q. They were not providing you information as a  
 5 matter of your requirement about whether the outcome of  
 6 the hearing had been a determination that we do have  
 7 sufficient textbooks and instructional materials,  
 8 correct?  
 9 A. No, that wasn't a requirement of the law.  
 10 Q. And so in passing on the waiver requests to the  
 11 State Board of Education, you did not provide to the  
 12 Board information about whether the outcome of the  
 13 hearing had been a determination that there were  
 14 sufficient textbooks and instructional materials,  
 15 correct?  
 16 A. What was in compliance with the law.  
 17 Q. And the compliance with the law -- in your  
 18 understanding, compliance with the law does not mean  
 19 that there -- you can comply with the law and conclude  
 20 that you don't have sufficient textbooks and  
 21 instructional materials, correct?  
 22 MR. VIRJEE: Objection. Calls for a legal  
 23 conclusion this witness isn't qualified to give. The  
 24 statute speaks for itself.  
 25 THE WITNESS: I just read what it says.

1 Q. BY MR. JACOBS: Your understanding of the way  
 2 this works was that in certifying to you that they had  
 3 complied with the law, they were not necessarily  
 4 informing you one way or the other whether they had  
 5 sufficient textbooks or instructional materials,  
 6 correct?  
 7 MR. VIRJEE: Same objection.  
 8 THE WITNESS: It's compliance with the law  
 9 because the law requires them to do one of two things.  
 10 Q. BY MR. JACOBS: And the one of two thing is  
 11 what, as you understand it?  
 12 A. Either have the sufficient texts and do the  
 13 resolution to that effect, or have the plan.  
 14 Q. And the information you had didn't distinguish  
 15 between those two outcomes, correct?  
 16 A. No more than the law does, that's right.  
 17 Q. Just to be real clear about this, you did not  
 18 ask the districts in connection with waiver requests  
 19 before AB 115 (sic) was passed to tell you whether they  
 20 had concluded they had sufficient textbooks and  
 21 instructional materials, or, in the alternative,  
 22 developed a plan?  
 23 A. Yes, I did require them to do that. One or the  
 24 other they had to have, and certify to that.  
 25 Q. But you didn't ask them to tell you which one

1 they had?  
 2 A. No, I asked them to comply with the law.  
 3 Q. I just want a real clean question and answer.  
 4 You did not ask them to tell you what the outcome of  
 5 their public hearing was, correct?  
 6 MR. VIRJEE: Objection. Asked and answered.  
 7 She's given you a clean answer.  
 8 THE WITNESS: I mean, I think I've given you  
 9 what I can give you. We required certification that  
 10 they complied with the law.  
 11 Q. BY MR. JACOBS: Is there anything incorrect in  
 12 what I said?  
 13 MR. VIRJEE: Objection. Vague and ambiguous  
 14 MR. STURGES: Could we have the question read  
 15 back.  
 16 (Record read.)  
 17 THE WITNESS: I don't know what the outcome of  
 18 the public hearing was. I know they complied with the  
 19 law. They said they did.  
 20 Q. BY MR. JACOBS: You know they certified that  
 21 they complied, correct?  
 22 A. Yes.  
 23 Q. Did you have -- again, we're in this period  
 24 before AB 115.  
 25 Did you have available to you any other sources

1 of information about the sufficiency or insufficiency of  
 2 textbooks in school districts around the State?  
 3 MR. VIRJEE: Generally, or for special waiver  
 4 requests?  
 5 MR. JACOBS: Generally.  
 6 THE WITNESS: I've worked in the Department 20  
 7 years.  
 8 Q. BY MR. JACOBS: So you have some understanding?  
 9 A. I have a general knowledge, yes.  
 10 Q. Let's break this down a little bit.  
 11 In your development of an approach to the 60119  
 12 issues, again, before AB 115 (sic), did you bring to  
 13 bear that knowledge and experience about the sufficiency  
 14 or insufficiency of textbooks?  
 15 A. I really wasn't even aware there was a law  
 16 until they started requesting waivers of it.  
 17 Q. But once they started requesting waivers of it,  
 18 you had to do something about those waivers, correct?  
 19 A. Yes.  
 20 Q. And in developing an approach to dealing with  
 21 those waivers, did you bring to bear the 20 years of  
 22 knowledge and experience you have from working in the  
 23 Department about the sufficiency or insufficiency of  
 24 textbooks or instructional materials?  
 25 MR. VIRJEE: In processing the waivers?

1 MR. JACOBS: In developing an approach.

2 MR. STURGES: I'm going to object on the  
3 grounds that the term "sufficiency" is vague.

4 THE WITNESS: I don't think I can answer that.

5 Q. BY MR. JACOBS: What's the problem with it?

6 A. I find the law pretty clear what they have to  
7 do.

8 Q. Did you find the law pretty clear in terms of  
9 what your approach to the waivers should be?

10 A. Yes. I wanted compliance with the law.

11 Q. Is that the extent of your analysis?

12 A. No, the waiver process itself has a lot of  
13 legal requirements.

14 Q. And what are -- what do you have in mind in  
15 giving that answer?

16 A. They have to do -- they have to have a Board  
17 vote. They have to notice it publically. They have to  
18 tell all their public that they're requesting a waiver  
19 and why. They have to go to the school site council and  
20 talk about it, or some kind of parent committees, or  
21 whatever committees might -- the instructional materials  
22 committee, or something like that. They have to check  
23 with the unions. They have to specify the exact code  
24 that they're waiving, and then they have to tell me why  
25 or what the detriment is to students.

1 A. What it says in the statute.

2 Q. Even though they had in some technical senses  
3 not been in compliance?

4 A. They were in compliance if they did what the  
5 statute says.

6 Q. So you didn't view them as being in a situation  
7 out of compliance with the statute when they were  
8 requesting the waiver?

9 A. Not if they'd completed the paperwork and sent  
10 it to me. I would reject it if it hadn't come with a  
11 certification.

12 Q. What was your understanding of what was  
13 triggering the waiver requests in the first place?

14 A. The audit finding.

15 Q. The audit finding was a finding by the  
16 Department of Finance personnel?

17 A. No.

18 Q. Who was it a finding by?

19 MR. VIRJEE: Objection. Calls for speculation.

20 THE WITNESS: Auditors.

21 Q. BY MR. JACOBS: What's your understanding of  
22 the process by which that audit finding was occurring?

23 A. There's an annual audit of every school  
24 district.

25 Q. What's your understanding of who conducts that

1 Q. Let's rewind a little bit.

2 I asked you whether you had additional  
3 information available to you as you were developing an  
4 approach to dealing with these waiver requests about the  
5 sufficiency or insufficiency of textbooks and  
6 instructional materials in California, and your answer  
7 was, I've worked in the Department for 20 years, and  
8 therefore, had some understanding from that knowledge  
9 and experience.

10 A. That was related specifically to textbooks and  
11 that whole issue of textbooks. I know the waiver  
12 process, and I know the requirements of the waiver  
13 process.

14 Q. What I wanted to know was, in developing your  
15 approach to dealing with these 60119 waiver requests,  
16 did you bring to bear the knowledge and experience you  
17 had from working in the Department about textbooks?

18 MR. VIRJEE: Objection. Asked and answered.

19 THE WITNESS: I guess I'm confused by your  
20 questioning, because my role was to make sure they  
21 complied with all the legal requirements of a waiver,  
22 and then to make sure that they complied with the law  
23 that they're requesting a waiver of.

24 Q. BY MR. JACOBS: And by complying with the law,  
25 you meant what?

1 audit?

2 A. The auditors.

3 Q. And what was your understanding, then, of what  
4 they were doing that triggered these 60119 waiver  
5 requests?

6 A. Checking for legal compliance with an audit  
7 guide, some kind of audit material that they had. I  
8 don't know how they do it.

9 Q. You don't happen to know the process by which  
10 they get the guidance from -- that enables them to then  
11 go out and look for -- the guidance as to what to look  
12 for?

13 A. Yeah. The controllers, you know, have guidance  
14 for auditors. I think it's available around -- you  
15 know, probably in our department too, if you need  
16 guidance as an auditor.

17 Q. Did you actually look at the guidance they had  
18 gotten in connection with your work on 60119?

19 A. Yes.

20 Q. What was your understanding of the guidance  
21 they were operating under?

22 MR. VIRJEE: The guidance that the independent  
23 auditors were operating under?

24 MR. JACOBS: Yes.

25 THE WITNESS: The statute. Requirements of the

1 statute.

2 Q. BY MR. JACOBS: And they were making the  
3 determination that the districts were out of compliance,  
4 correct?

5 A. For the time period they were auditing.

6 Q. How do you reconcile your statements that your  
7 role was to ensure that the districts were in compliance  
8 with the statute with an auditor's finding that the  
9 districts requesting the waivers were out of compliance?

10 MR. VIRJEE: Objection. Assumes facts not in  
11 evidence.

12 THE WITNESS: I knew they had an audit finding  
13 or they wouldn't have requested a waiver. But before I  
14 processed the audit findings, I made them be in  
15 compliance with the law.

16 Q. BY MR. JACOBS: Meaning you made them hold a  
17 hearing in, say, 1998 if they had to come into  
18 compliance, even though they had not held a hearing,  
19 say, in 1997?

20 MR. VIRJEE: Objection. Vague and ambiguous.

21 THE WITNESS: I don't know about 1998. I made  
22 them certify that they had held a public hearing and  
23 give me a date that they held it, and complied with the  
24 law all along with the whole law of 60119 in doing that.

25 Q. BY MR. JACOBS: Now, the -- I want to talk now

1 Q. Looking at the first paragraph, it refers to a  
2 conversation that you held with Mr. Malfatti.

3 Do you see that?

4 A. Yes.

5 Q. And then it says, I'm returning your request.  
6 What do you mean by "returning your request"?

7 What's the significance of returning a request?

8 A. I determined that I can't process it, I can't  
9 send it to the Board.

10 Q. Is there a distinction between returning a  
11 request and denying a request?

12 A. Yes.

13 Q. What's the difference?

14 A. Denial is -- any of the formal actions take the  
15 Board's vote.

16 Q. So how do you decide when you can't process a  
17 request?

18 A. Well, in this case I had a policy that said I  
19 should return it.

20 Q. So from time to time the Board will promulgate  
21 policies that categorically deny the possibility of  
22 requesting a waiver?

23 A. Yes.

24 Q. And in this case the category was -- what was  
25 your understanding of the category that the State Board

1 about the post AB 1600 world.

2 MR. VIRJEE: Is that a good time to take a  
3 break? Sure.

4 (Recess taken.)

5 Q. BY MR. JACOBS: Ms. Pinegar, I want to show you  
6 Department of Education 30451 to 30453, which we'll mark  
7 as SAD-2. I believe your counsel has a copy.

8 And if anyone doesn't have a set, Mr. Yanger,  
9 brought them.

10 MR. VIRJEE: Are these the ones that Tom --

11 MR. JACOBS: Correct.

12 MR. YANGER: You said through 30452?

13 MR. JACOBS: 3.

14 (Exhibit SAD-2 was marked.)

15 Q. BY MR. JACOBS: Ms. Pinegar, I've now marked as  
16 SAD No. 2 the documents I referred to. And it's dated  
17 October 23rd, 2000.

18 That is the first page of it, the letter to  
19 Somis Union School District that you signed, correct?

20 A. Yes, I signed that.

21 MR. VIRJEE: Can I make a suggestion, and  
22 that's that we attach 30454 as well, because it appears  
23 to be an attachment to the letter.

24 MR. JACOBS: Thanks. Let's add 30454 to this  
25 exhibit.

1 of Education had adopted into which the Somis Union  
2 School District's waiver fell?

3 A. At the bottom, any requests to waive  
4 retroactively any statute or regulation that is the  
5 basis of an apportionment significant audit exception.

6 MR. VIRJEE: Let the record reflect that she's  
7 looking at 30454 and reading from it.

8 Q. BY MR. JACOBS: What is your understanding of  
9 an "apportionment significant audit exception"?

10 A. It's an audit finding where you need to give  
11 money back.

12 Q. And in the case of 60119, the effect of an  
13 audit finding is that the districts would have to give  
14 money back; is that correct?

15 A. That's correct.

16 Q. And, therefore, this request for a waiver fell  
17 within policy 99-05 at the DOE 30454?

18 A. Correct.

19 Q. So if I understand the process that you  
20 described at the Board of Education level, one thing  
21 that the Board does is define a category of waivers  
22 pursuant to which you can put waiver requests on the  
23 consent calendar?

24 A. Uh-huh.

25 Q. And another thing the Board does is make policy

1 that eliminates the possibility of requesting a waiver;  
 2 is that correct?  
 3 A. This is first they ever did that, but, yes,  
 4 they've done it.  
 5 Q. And is that the last time also?  
 6 A. No.  
 7 Q. They've done it again with respect to what?  
 8 A. A policy about Schiff-Bustamante.  
 9 Q. Are there any other cases where they've issued  
 10 that kind of policy?  
 11 A. In other policies there's a reference -- I  
 12 mean, it's by default. If you don't meet the criteria,  
 13 you get a denial. It's more like a denial reason than  
 14 it is a request to return or request non-process.  
 15 Q. That's the distinction I'm drawing.  
 16 In some cases the Board will issue guidance  
 17 that gives you criteria to decide whether to grant or  
 18 deny a waiver, correct?  
 19 A. Yes.  
 20 Q. And in some cases the Board will define a  
 21 category where the result is that the waiver request  
 22 gets returned as not processable?  
 23 A. With that definition, that's the only one like  
 24 that.  
 25 MR. VIRJEE: And here we're only talking about

1 MR. VIRJEE: Were going to be found or had been  
 2 found? Did she anticipate that?  
 3 THE WITNESS: I thought you said I became aware  
 4 of that, and I did.  
 5 Q. BY MR. JACOBS: And how did it -- what did you  
 6 become aware of in your own words?  
 7 A. Probably a phone call like this one.  
 8 Q. But from multiple districts?  
 9 A. Yes.  
 10 Q. Did you keep track of how many districts were  
 11 facing this situation?  
 12 MR. VIRJEE: Objection. Vague and ambiguous as  
 13 to keeping track.  
 14 THE WITNESS: At first, no.  
 15 Q. BY MR. JACOBS: Did you develop an  
 16 understanding of the numbers that were -- strike that.  
 17 You got a phone call, and the district said  
 18 what?  
 19 MR. VIRJEE: Just for the record, we're talking  
 20 about Somis?  
 21 Q. BY MR. JACOBS: Was that the one you had in  
 22 mind?  
 23 A. That's fine. It's as good as any.  
 24 Q. So Somis calls up and they say?  
 25 A. He might say. I don't know what he said. I

1 the Board, not what the legislature does.  
 2 THE WITNESS: Right.  
 3 MR. JACOBS: Just the Board of Education  
 4 Q. Now, I take it that you became aware at some  
 5 point, but after the adoption of AB 115 --  
 6 MR. VIRJEE: 1115.  
 7 MR. JACOBS: Did it again.  
 8 Q. -- AB 1115 that a considerable number of --  
 9 that some number of school districts were going to be  
 10 out of compliance with 60119; is that correct?  
 11 A. We're back at this time period here in October  
 12 or -- in '99.  
 13 Q. I don't think I said it right because I didn't  
 14 have the exhibit in front of me. After AB 1600.  
 15 A. Oh, after AB 1600.  
 16 MR. VIRJEE: Can you repeat your question now?  
 17 MR. JACOBS: Sure.  
 18 Q. I take it that you became aware after AB 1600  
 19 was enacted, which eliminated the requirement in E.C.  
 20 60119 for all years between 1994, '95 and 1998, '99,  
 21 that with respect to the school year '99, 2000, some  
 22 number of school districts were going to be found to be  
 23 out of compliance with 60119 and would, if waivers  
 24 available, be asking for waivers; is that correct?  
 25 A. Yes.

1 want to know how to file a waiver, or something like  
 2 that.  
 3 Q. And your response was?  
 4 A. I would say, what Ed Code are you talking  
 5 about, what is your problem, what is your issue.  
 6 Q. And the school district would say?  
 7 A. And then -- actually, in this case I can tell  
 8 that I actually had his document in front of me because  
 9 I wouldn't have known his phone number to call him and I  
 10 wouldn't be saying I'm returning your waiver request  
 11 unless I had it. So in this case I had this, the second  
 12 part.  
 13 Q. Meaning 30452?  
 14 A. Yes.  
 15 MR. VIRJEE: 452 and 3.  
 16 THE WITNESS: Right. They're both -- two  
 17 pages. In the first place, he didn't fill it out very  
 18 well.  
 19 Q. BY MR. JACOBS: But that was beside the point  
 20 in this case, correct?  
 21 A. Yes, because I knew when I saw 60119 under  
 22 No. 1 as a regulation section to be waived.  
 23 Q. And you also noted that the period of request  
 24 was July '99 to June 2000, as to which there was no  
 25 legislative solution, correct?

1 A. Surely, yes.  
 2 Q. Did you get some number of written requests of  
 3 this sort?  
 4 A. Yes.  
 5 Q. And how many requests like this did you get?  
 6 A. I don't recall exactly.  
 7 Q. Roughly?  
 8 A. Back to a written request. Maybe only half a  
 9 dozen.  
 10 Q. Did you also get informal -- did you also have  
 11 informal communications with districts in which a  
 12 similar issue was presented?  
 13 A. Yes, where I started to describe where -- how  
 14 do I do a waiver phone call.  
 15 Q. And how many such phone calls?  
 16 A. Untold numbers.  
 17 Q. And that led to what?  
 18 MR. VIRJEE: Objection. Vague and ambiguous.  
 19 Q. BY MR. JACOBS: You did something as a result  
 20 of getting all those calls, right?  
 21 A. Alerted my boss.  
 22 Q. Okay. Did you have a discussion with your boss  
 23 about this issue arising?  
 24 A. Sure.  
 25 Q. Did you develop a plan of action?

1 MR. VIRJEE: Vague and ambiguous.  
 2 THE WITNESS: Well, yes.  
 3 Q. BY MR. JACOBS: What was that plan?  
 4 A. I had a request come in -- actually, at first I  
 5 think I -- I couldn't tell by looking at their document  
 6 whether or not they'd had an audit finding.  
 7 Q. In a particular case you can't tell?  
 8 A. Yes.  
 9 Q. And it's not necessarily --  
 10 A. This would be one, actually, but he probably  
 11 told me on the phone he had an audit finding. I don't  
 12 know. But in a case like this where it didn't say I  
 13 need relief from a \$2 million audit finding, I thought,  
 14 well, if they haven't had an audit finding, maybe I can  
 15 take a waiver.  
 16 Q. Because there is a possibility of granting  
 17 waivers where there's been no audit finding with respect  
 18 to 60119?  
 19 MR. VIRJEE: Objection. Calls for speculation.  
 20 Calls for a legal conclusion. No foundation.  
 21 THE WITNESS: I'm interpreting from the policy.  
 22 It says, staff to return --  
 23 MR. VIRJEE: She's reading from 3045.  
 24 THE WITNESS: -- to the submitting LEA any  
 25 request to waive retroactively any statute or regulation

1 that is the basis of an apportionment significant audit  
 2 exception by that LEA.  
 3 Q. BY MR. JACOBS: And if you concluded that the  
 4 district had requested the waiver but had not been the  
 5 subject of such an audit finding, you concluded that  
 6 waivers were available?  
 7 A. I would at least forward it. It wouldn't be on  
 8 me to return it.  
 9 Q. Meaning now that we're in the category of  
 10 waiver requests that are not, per se, returnable; is  
 11 that right?  
 12 A. Yes.  
 13 Q. We're in waiver requests that get processed?  
 14 A. Processed.  
 15 Q. What was the -- and that affected a subset of  
 16 the inquiries and requests you were getting?  
 17 A. Yes.  
 18 Q. Any estimate on your part of the size of that  
 19 subset?  
 20 MR. VIRJEE: Objection. Calls for speculation.  
 21 THE WITNESS: No. I forwarded two waivers like  
 22 that -- actually, three, but two only went forward.  
 23 Q. BY MR. JACOBS: The one that didn't go  
 24 forward --  
 25 A. Was withdrawn by the district.

1 Q. Did they communicate to you why they were  
 2 withdrawing it?  
 3 A. No. No.  
 4 Q. Did you have any information on why they  
 5 withdrew it?  
 6 A. I think they may have felt the Board wouldn't  
 7 have approved it or that there was a problem.  
 8 MR. VIRJEE: Objection. Move to strike. Calls  
 9 for speculation.  
 10 Q. BY MR. JACOBS: Was that based on a discussion  
 11 you had with them?  
 12 A. With the district, no.  
 13 Q. Was it based on -- did you form that judgment  
 14 based on your review of the substance of the request for  
 15 waiver?  
 16 A. No.  
 17 Q. Did you have any information that led you to  
 18 conclude that that was a possible explanation for their  
 19 withdrawal?  
 20 A. They got put on an action to be discussed.  
 21 Q. And were you the one who -- were you involved  
 22 in the decision to put them in that place?  
 23 A. No.  
 24 Q. Who made that decision?  
 25 A. That's the Board staff.

1 Q. Did you have any interaction with the Board  
2 staff so that you could understand what direction they  
3 were taking with respect to that waiver and similar  
4 waivers?  
5 A. They didn't agree I'd interpreted the policy  
6 correctly.  
7 Q. What was their view of the proper  
8 interpretation of the policy?  
9 A. That I should have returned it.  
10 Q. And did they explain to you how they were  
11 reading the policy?  
12 A. Yes.  
13 Q. And was their explanation that even though  
14 there was not yet, in fact, an audit finding, this  
15 particular statutory category, if the district was out  
16 of compliance, would result in an apportionment  
17 significant audit exception when the audit occurred?  
18 THE WITNESS: No.  
19 MR. VIRJEE: I'm sorry, can you repeat that  
20 question?  
21 Q. BY MR. JACOBS: What was their explanation?  
22 MR. VIRJEE: I'd like to hear the question  
23 back, because I didn't understand it.  
24 MR. JACOBS: She answered it no.  
25 Q. What was their explanation?

1 A. It's a discussion over what is an audit  
2 exception.  
3 Q. What's the discussion?  
4 A. Is it a document that an auditor writes down, I  
5 find you, and whatever.  
6 Q. And the staff's view was what?  
7 A. That it didn't matter whether --  
8 MR. VIRJEE: Which staff, the Board or the  
9 district staff?  
10 THE WITNESS: The Board.  
11 MR. JACOBS: I think it's clear.  
12 THE WITNESS: The Board staff felt that they  
13 didn't care if there was no audit finding.  
14 Q. BY MR. JACOBS: What did they care about?  
15 A. Well, I think basically -- I don't know. I  
16 don't know.  
17 Q. You didn't develop an understanding of their  
18 reading of this language?  
19 A. I don't think it's very clear legally, so I had  
20 one opinion, and they had a different opinion.  
21 Q. And they get to decide?  
22 A. Well, they do and they don't. I put it on the  
23 Board. The Board chose to take no action.  
24 Q. And the effect of taking no action is what  
25 insofar as the district's request for a waiver is

1 concerned?  
2 A. To be precise, in the case of the two that went  
3 forward, they requested the districts to withdraw the  
4 waiver request verbally at the meeting.  
5 Q. And with respect to the third which didn't  
6 go -- I'm sorry, what happened to the third?  
7 A. They withdrew before the meeting.  
8 Q. Okay. So are there -- with respect to 60119  
9 and the '99, 2000 school year, did the State Board of  
10 Education grant any waivers?  
11 A. No.  
12 Q. And if I understood your testimony, or maybe  
13 extrapolating from your testimony, there were three  
14 waiver requests for that school year so far that you  
15 processed and submitted to the State Board of Education?  
16 A. Correct.  
17 Q. And there were untold numbers of districts that  
18 you -- strike that.  
19 With respect to the rest of the districts that  
20 you described as facing a 60119 issue, did you  
21 understand that they had, in fact, been the subject of  
22 an apportionment significant audit exception as you were  
23 interpreting it?  
24 A. I didn't know.  
25 MR. VIRJEE: Objection. Compound.

1 Q. BY MR. JACOBS: You didn't know?  
2 A. Whether they did or not.  
3 Q. When they called you up, did you have a  
4 discussion with them about what was triggering their  
5 call?  
6 A. Yes.  
7 MR. VIRJEE: Objection. Compound.  
8 All of them?  
9 MR. JACOBS: Because there are many of them and  
10 so -- I don't know, do you want to break it down?  
11 THE WITNESS: I would say, do you have an audit  
12 penalty.  
13 Q. BY MR. JACOBS: And they would say?  
14 A. If they said yes, I'd say, I'll send you a copy  
15 of my policy.  
16 Q. Do you have a record of that going out to the  
17 districts?  
18 A. No. Multiple faxes, many, many faxes.  
19 Q. The time frame we're talking about now is -- in  
20 terms of your interaction with school districts is what,  
21 in your mind?  
22 A. I don't know precisely, but -- let's see.  
23 Q. Do you want to look at the stack?  
24 A. '99 to '00. The audit would happen sometime at  
25 the close of their year or during the year. I don't

1 really know when audits happen. Let's say -- let's say  
 2 roughly July of this year -- last year.  
 3 Q. So July of 2000. And the last such interaction  
 4 you had about the '99, 2000 school year was when?  
 5 A. Probably yesterday or the day before.  
 6 Q. So from July to the present have you had a  
 7 discussion with anyone in the Department of Education in  
 8 which you expressed concern that many districts were  
 9 apparently out of compliance with 60119?  
 10 A. Yes.  
 11 Q. Who have you had those discussions with?  
 12 A. My boss.  
 13 Q. In the discussions with your boss, did the  
 14 discussion -- you obviously had a discussion about how  
 15 that affected the waiver process itself, correct?  
 16 MR. VIRJEE: Objection. Assumes facts.  
 17 THE WITNESS: No.  
 18 Q. BY MR. JACOBS: What did you discuss with your  
 19 boss?  
 20 A. That many districts seem to have a problem.  
 21 Q. And maybe I'm resetting to our plan of action  
 22 discussion.  
 23 Did you develop a plan of action as a result of  
 24 that conversation?  
 25 A. Well, yes.

1 Q. What was that plan?  
 2 A. Providing information to districts.  
 3 Q. Anything else?  
 4 A. Well, might be -- actually, I have been asked  
 5 to review a bill.  
 6 Q. And who asked you to do that?  
 7 A. Our legislator. It's just a routine process,  
 8 bill analysis.  
 9 Q. Were you informed how the bill was prompted?  
 10 A. No.  
 11 Q. Could you take a look, please, at DOE 30537 and  
 12 538. This is a copy of Senate Bill No. 273, dated  
 13 February 16, 2001.  
 14 Is this the bill you were referring to?  
 15 A. Yes.  
 16 MR. YANGER: Actually, if she's going to be  
 17 testifying from it, I'd prefer we mark it as an exhibit.  
 18 (Exhibit SAD-3 was marked.)  
 19 Q. BY MR. JACOBS: Did you comment on Senate Bill  
 20 No. 273?  
 21 MR. VIRJEE: Objection. Vague and ambiguous as  
 22 to "comment."  
 23 THE WITNESS: I've not done a written comment.  
 24 Q. BY MR. JACOBS: Did you have any discussions  
 25 within the Department of Education who has -- strike

1 that.  
 2 In connection with 60119 waivers, I understood  
 3 that you took on the responsibility for reviewing them  
 4 and that the request for waivers were not routed to a  
 5 specialists in the Department of Education outside of  
 6 your office; is that correct?  
 7 MR. VIRJEE: Objection. Vague as to time.  
 8 THE WITNESS: Yes.  
 9 Q. BY MR. JACOBS: And that's true from the  
 10 beginning to the present, correct?  
 11 A. Yes, actually.  
 12 Q. Did you have discussions about 60119 waivers  
 13 with any specialists in the Department even though they  
 14 weren't being routed to any specialists?  
 15 MR. VIRJEE: Objection. Vague and ambiguous as  
 16 to "specialists." I would also object on the grounds of  
 17 attorney/client privilege to the extent it would invade  
 18 the attorney/client privilege.  
 19 THE WITNESS: I'm sure I had conversations.  
 20 Q. BY MR. JACOBS: With?  
 21 A. I don't know what you mean.  
 22 Q. Let me ask it a little differently.  
 23 Do you understand there to be a specialist in  
 24 the Department of Education who is a specialist in  
 25 textbooks that you could ask questions about or have

1 discussions with in connection with the consideration of  
 2 60119 waivers?  
 3 A. Well, there's an instructional material  
 4 division.  
 5 Q. And is there a person or persons there who you  
 6 interact with?  
 7 A. Sherry Griffith-Skelly.  
 8 Q. What is your understanding of -- ask a simpler  
 9 question.  
 10 Do you have a topic that you typically talk  
 11 with her about?  
 12 MR. VIRJEE: Objection. Assumes facts not in  
 13 evidence.  
 14 THE WITNESS: No.  
 15 Q. BY MR. JACOBS: Do you understand her to be a  
 16 specialist who is concerned with the availability of  
 17 textbooks and instructional materials to students?  
 18 MR. VIRJEE: Objection. Calls for speculation.  
 19 Also vague and ambiguous as to "specialist."  
 20 THE WITNESS: Not particularly.  
 21 Q. BY MR. JACOBS: So what do you understand her  
 22 expertise to be?  
 23 MR. VIRJEE: Objection. Lacks foundation.  
 24 THE WITNESS: I believe she's an executive  
 25 secretary, or something like that, to the curriculum

1 commission. I don't know what the title is. And she's  
 2 also the head of the division that works on all kinds of  
 3 instructional materials issues.  
 4 Q. BY MR. JACOBS: You ever discuss with her 60119  
 5 issues?  
 6 A. Sure. I'm sure.  
 7 Q. What discussions do you think you had with her?  
 8 A. That I was getting waivers still.  
 9 Q. And you're thinking now of in this period July  
 10 2000 through the present?  
 11 A. Correct.  
 12 Q. And did you discuss -- what was the substance  
 13 of your discussions with her?  
 14 A. Was she aware, did she know this was -- had  
 15 anyone called her. Just sharing information.  
 16 Q. Did you propose to her any particular action  
 17 that she should take?  
 18 A. That she should take? No, I don't think so.  
 19 Q. Did you discuss with her any action you felt  
 20 the Department as an institution should take?  
 21 A. No.  
 22 Q. Did you discuss with her -- did she discuss  
 23 with you any actions she felt the Department as an  
 24 institution should take?  
 25 A. I don't know what she wanted. I don't know. I

1 don't think she told me what she thought the Department  
 2 should do.  
 3 Q. Do you have any information on any  
 4 institutional response by the Department to the fact  
 5 that a lot of districts seem to be out of compliance  
 6 with 60119?  
 7 MR. VIRJEE: Vague and ambiguous as to  
 8 "institutional response."  
 9 THE WITNESS: What is that?  
 10 MR. JACOBS: I'm trying to get it away from any  
 11 particular individual and just talk about the  
 12 organization.  
 13 MR. VIRJEE: Separate than what she's already  
 14 testified about, rejecting the waivers and that process?  
 15 MR. JACOBS: Yes.  
 16 THE WITNESS: Any time there's a bill, the  
 17 Department has a -- has an interface with any education  
 18 bill institutionally.  
 19 Q. BY MR. JACOBS: In this case you think there's  
 20 been an interaction with the legislature?  
 21 A. I would assume every education bill we follow.  
 22 MR. VIRJEE: Objection. Move to strike. Lacks  
 23 foundation.  
 24 Q. BY MR. JACOBS: You don't know of the  
 25 interaction in this case? I think you told us that

1 already.  
 2 A. No.  
 3 Q. But you believe based on your knowledge and  
 4 experience in the Department that there likely has been  
 5 such interaction?  
 6 MR. VIRJEE: Objection. Calls for speculation.  
 7 Lacks foundation.  
 8 THE WITNESS: I'm sure there's a leg analyst  
 9 assigned to this. I'm sure that person has worked with  
 10 the legislative staff. That's their job.  
 11 Q. BY MR. JACOBS: Did you have any discussions  
 12 with anyone in which consideration was given to taking  
 13 steps to ensure that more districts were holding the  
 14 hearings required by 60119, and, therefore, would not be  
 15 presenting to you the issues you were receiving?  
 16 A. Yes.  
 17 MR. VIRJEE: I'm sorry, can you repeat the  
 18 question?  
 19 (Record read.)  
 20 THE WITNESS: Yes.  
 21 Q. BY MR. JACOBS: What were those discussions?  
 22 A. Ways to notice districts of legal requirements.  
 23 Q. Who did you have such a discussion with?  
 24 A. Probably Sherry.  
 25 Q. What was the substance of the discussion?

1 A. I probably asked if they had done that, their  
 2 division.  
 3 Q. And what did you learn?  
 4 A. I believe that they said they did.  
 5 Q. Did you ever see a copy of such a notification?  
 6 A. No.  
 7 Q. Did she -- what else -- what else occurred in  
 8 that office on this topic?  
 9 A. How clear was the information provided.  
 10 Q. You asked that question?  
 11 A. Yeah.  
 12 Q. What were you informed?  
 13 A. Well, I guess I didn't ask it like that. Let  
 14 me say, I would say something like, did you ask them --  
 15 did you tell them they had to notice it for 10 days.  
 16 Q. And she would say?  
 17 A. No.  
 18 MR. VIRJEE: I'm going to object. Move to  
 19 strike on the grounds of speculation if we're talking  
 20 about what someone would have said. If you're asking  
 21 what she did say, that's fine.  
 22 MR. JACOBS: I'm using the witness's language.  
 23 MR. VIRJEE: And that's why I'm objecting and  
 24 moving to strike her testimony as speculative.  
 25 Q. BY MR. JACOBS: Did she say that?

1 A. Well, I don't know precisely. I'm just saying  
 2 that -- I can't -- I can't say that I asked that  
 3 question or that she answered that question.  
 4 Q. You're in the job of receiving waivers?  
 5 A. Yes.  
 6 Q. But you became aware of a problem, and that is  
 7 that many school districts had not held 60119 hearings  
 8 in the 1999, 2000 school year, correct?  
 9 MR. VIRJEE: Objection. Asked and answered.  
 10 THE WITNESS: No.  
 11 Q. BY MR. JACOBS: I think that's what you told  
 12 me.  
 13 What did you become aware of?  
 14 MR. VIRJEE: Her testimony speaks for itself.  
 15 THE WITNESS: No, they were -- just had an  
 16 audit finding.  
 17 Q. BY MR. JACOBS: You became aware that a lot of  
 18 districts had an audit finding that they had not held --  
 19 A. Sometimes that's what the finding was.  
 20 Q. What were the other findings?  
 21 MR. VIRJEE: Objection. Calls for speculation.  
 22 THE WITNESS: That they had not noticed it for  
 23 the proper number of days.  
 24 Q. BY MR. JACOBS: Did you learn of any other  
 25 audit findings that related to this issue?

1 A. Yes.  
 2 Q. What were those?  
 3 A. That they did not publically notice it in three  
 4 places.  
 5 Q. Did you learn of any other audit findings?  
 6 A. That it was not held in the fiscal year.  
 7 Q. Did you form an understanding as to the  
 8 breakdown of the audit findings in question?  
 9 A. No.  
 10 Q. You concluded that you should have a discussion  
 11 with someone outside of the waiver group to address the  
 12 fact that these audit findings were coming to your  
 13 attention, correct?  
 14 A. Yes.  
 15 Q. And you went to, among others, perhaps,  
 16 Ms. Griffith, and you said something along the lines of,  
 17 I'm getting a lot of calls from districts who are facing  
 18 audit findings with respect to 60119, correct?  
 19 MR. VIRJEE: Objection. Asked and answered.  
 20 THE WITNESS: Yes.  
 21 Q. BY MR. JACOBS: And you inquired, are we, the  
 22 Department, giving them information about the  
 23 requirements of 60119 so that they can comply with the  
 24 law, right?  
 25 MR. VIRJEE: Objection. Asked and answered.

1 THE WITNESS: Generally, yes.  
 2 Q. BY MR. JACOBS: Her general response was, well,  
 3 we're giving some information out, correct?  
 4 MR. VIRJEE: Objection. Asked and answered.  
 5 THE WITNESS: Yes.  
 6 Q. BY MR. JACOBS: And you had a further  
 7 discussion about the level of precision of that  
 8 information in view of the information you were getting  
 9 about the audit findings, correct?  
 10 A. May not have been with her, but I know I said  
 11 there's different kinds of audit findings. Sometimes  
 12 they held a hearing.  
 13 Q. This current state of affairs on this issue,  
 14 that is, the understanding you have about what  
 15 information is conveyed to school districts by the  
 16 Department of Education in connection with 60119, is  
 17 what?  
 18 A. I really don't know what all the methods are or  
 19 what was conveyed. I don't know.  
 20 Q. In your discussions with school districts, have  
 21 school districts raised with you the concern that they  
 22 were unaware of specific requirements of 60119?  
 23 A. Yes.  
 24 Q. And what requirements have they -- have you  
 25 become aware of them not being aware of? I better ask

1 that better.  
 2 The districts have said to you various --  
 3 particular aspects of 60119 that they're not aware of,  
 4 correct?  
 5 A. Yes.  
 6 Q. What have they conveyed to you in that  
 7 connection?  
 8 A. Can I for example?  
 9 Q. Sure.  
 10 A. A man said he had not posted it in three places  
 11 because his school was 20 miles from town and that's  
 12 where the parents came, so he posted it where he  
 13 normally posts all of his public notices.  
 14 Q. And, nonetheless, he was the subject of an  
 15 audit finding?  
 16 A. That's right.  
 17 Q. What other issues came to your attention from  
 18 the school districts in terms of requirements of 60119  
 19 they were not aware of?  
 20 A. The requirement to notice 10 days.  
 21 Q. What else?  
 22 A. The unstated requirement that it be done prior  
 23 to June 30th.  
 24 Q. Unstated because that's not in the statute,  
 25 correct?

1 A. That's right.  
 2 Q. But it seemed to be part of the -- did you  
 3 conclude that it was part of the guidance given to the  
 4 auditors?  
 5 A. It is part of the guidance given to the  
 6 auditors. Well, excuse me, no, it's not in the book.  
 7 It doesn't say that.  
 8 Q. So the auditors developed -- your understanding  
 9 is the auditors developed this on their own?  
 10 A. A date. They go with a date.  
 11 Q. What other lack of awareness issues were  
 12 brought to your attention?  
 13 A. Lack of awareness?  
 14 Q. Let me prompt you.  
 15 Did some districts say they were unaware that  
 16 they had to hold a hearing at all?  
 17 MR. VIRJEE: Any of the districts that were  
 18 contacting her about a waiver?  
 19 MR. JACOBS: Yes.  
 20 THE WITNESS: I guess I may have heard that,  
 21 yeah.  
 22 Q. BY MR. JACOBS: In some cases in looking at the  
 23 documents that we were provided with this morning, it  
 24 looks like a new superintendent is taking office and  
 25 discovering that a previous superintendent didn't

1 hold -- didn't arrange for the hearing, correct?  
 2 A. Common thing, yes.  
 3 Q. In the discussions you've had in this January  
 4 to the present time frame that arise out of this 60119  
 5 issue, have you had --  
 6 MR. VIRJEE: Again, we're talking now  
 7 discussions with school districts?  
 8 MR. JACOBS: No, sorry. Well, let me ask it  
 9 first with respect to school districts. That's a  
 10 helpful clarification.  
 11 Q. In those discussions, has information come to  
 12 your attention about whether, in fact, there are  
 13 sufficient textbooks and instructional materials in the  
 14 school districts in which you're having conversations?  
 15 A. Yes.  
 16 Q. What information in that connection has come to  
 17 your attention?  
 18 A. They might say, I have adopted text for all my  
 19 kids.  
 20 Q. And I take it they're saying this in the  
 21 context of, gosh, give me a waiver, I have enough  
 22 textbooks, right?  
 23 A. Yeah.  
 24 Q. And have you actually had discussion with them  
 25 about that?

1 MR. VIRJEE: Objection. Asked and answered.  
 2 THE WITNESS: I have a policy. It doesn't give  
 3 exceptions like that.  
 4 Q. BY MR. JACOBS: Have you had discussions with  
 5 school districts in which you have learned -- in which  
 6 the school district has conveyed to you that they lack  
 7 sufficient textbooks and instructional materials?  
 8 A. No.  
 9 Q. So it might come up, it seems to me, in this  
 10 connection, why would you take away my instructional  
 11 materials fund money, I'm already lacking funds to  
 12 purchase enough textbooks or instructional materials.  
 13 Has that kind of communication from a school  
 14 district occurred to you?  
 15 MR. VIRJEE: Objection. Asked and answered.  
 16 THE WITNESS: I need it repeated.  
 17 (Record read.)  
 18 THE WITNESS: Sure. I'm sure they've said  
 19 that.  
 20 MR. VIRJEE: Objection. Move to strike.  
 21 Speculative.  
 22 THE WITNESS: Well, similar.  
 23 Q. BY MR. JACOBS: What kind of communication are  
 24 you thinking of in answering the question? I take it  
 25 it's not exactly the way I said it, and not necessarily

1 the way you would say it. So can you put that kind of  
 2 communication in your words, please.  
 3 A. I spent my textbook money last year on adopted  
 4 text, why are you taking it away. I'm not taking it  
 5 away, it's the State.  
 6 Q. Have you received specific information about  
 7 districts that have spent money and that money was  
 8 insufficient in the district's view?  
 9 MR. STURGES: Objection. Misstates testimony.  
 10 MR. VIRJEE: Also vague and ambiguous.  
 11 THE WITNESS: I don't know that. I think, in  
 12 general, we don't have enough textbook money, but --  
 13 MR. VIRJEE: Move to strike as nonresponsive.  
 14 Q. BY MR. JACOBS: Do you have any mechanism for  
 15 recording your conversations with school districts?  
 16 A. I have a phone log.  
 17 Q. Do you keep track on that phone log of the  
 18 substance of your conversations with them?  
 19 A. It varies.  
 20 Q. Sometimes your notes are detailed and sometimes  
 21 they're not?  
 22 A. Right.  
 23 MR. VIRJEE: Meaning the notes of the  
 24 conversation, or the notes of which -- of the actual  
 25 communication? Because if you're talking about the

1 notes of the conversation, I'll move to strike as  
 2 nonresponsive.  
 3 MR. JACOBS: What's the difference?  
 4 MR. VIRJEE: The fact that they called as  
 5 opposed to what they talked about. I misunderstood your  
 6 question.  
 7 Q. BY MR. JACOBS: Your notes about the substance  
 8 of the conversations are in some cases more detailed  
 9 than others?  
 10 A. In most cases it's a name, a district, and a  
 11 phone number, and maybe a one- or two-word reference to  
 12 what the subject is.  
 13 Q. In some cases it's more detailed?  
 14 A. Yeah, sure. Sometimes I -- yeah.  
 15 Q. Do you pass on to anybody in the Department  
 16 when you become aware of a school district that is  
 17 conveying to you that they lack sufficient funds for  
 18 textbooks and instructional materials?  
 19 MR. VIRJEE: Objection. Assumes facts not in  
 20 evidence. She hasn't said that anybody ever  
 21 communicated that to her. In fact, she said that she  
 22 hasn't heard that.  
 23 THE WITNESS: No, I haven't.  
 24 MR. JACOBS: I'm sorry, can you read back the  
 25 answer from -- Mr. VIRJEE, I think I have to ask you to

1 simply state the objection.  
 2 MR. VIRJEE: I don't want you to coach her into  
 3 giving an answer which she has already contradicted.  
 4 She said she didn't hear that. I'm sorry, Michael, I  
 5 just want to make sure that's clear.  
 6 MR. JACOBS: I want to be clear that -- as I'm  
 7 sure your colleague reported to you when he was  
 8 conducting an examination of a witness, we were quite  
 9 restrained and did not engage in lengthy speaking  
 10 objections. I'm going to make the same request of you.  
 11 MR. VIRJEE: I'll try to keep them to a  
 12 minimum, but I also don't want you to mischaracterize  
 13 her testimony.  
 14 THE WITNESS: Start again. I don't think I can  
 15 answer that question.  
 16 Q. BY MR. JACOBS: I understood you to have  
 17 testified that districts conveyed to you -- some  
 18 districts conveyed to you during conversations related  
 19 to 60119 that they did not have enough money for  
 20 textbooks and instructional materials.  
 21 MR. VIRJEE: Objection. That misstates her  
 22 testimony.  
 23 Q. BY MR. JACOBS: Is that correct or incorrect?  
 24 A. I don't think that's what I said.  
 25 Q. What do you think you said?

1 MR. VIRJEE: I guess the deposition testimony  
 2 will speak for itself. I won't have it asked and  
 3 answered again.  
 4 THE WITNESS: It's why should the State take  
 5 away my textbook money, I need -- I spent it already on  
 6 adopted text.  
 7 Q. BY MR. JACOBS: That's one category of  
 8 communication you received from school districts, and  
 9 I'm asking you specifically whether any school district  
 10 from July to the present said to you, we lack sufficient  
 11 money for textbooks and instructional materials, in  
 12 words or substance?  
 13 MR. VIRJEE: Objection. Asked and answered.  
 14 THE WITNESS: I don't know. I'm getting  
 15 confused, I guess.  
 16 Q. BY MR. JACOBS: What are you confused by?  
 17 A. That I may have said something that I didn't  
 18 mean or something. I don't know what you're --  
 19 Q. Again, no trick questions.  
 20 MR. VIRJEE: Don't worry about it. Just answer  
 21 his question. My asked and answered objection is still  
 22 there.  
 23 THE WITNESS: I think I'm going to have to have  
 24 it again, or rephrased preferably.  
 25 MR. JACOBS: Sure. Let me reset. It's not a

1 trick question. I promise you, I will tell you when  
 2 there's a trick question coming.  
 3 MR. VIRJEE: And I promise you he won't.  
 4 Q. BY MR. JACOBS: It seems to me that a district  
 5 could call you up and they could give you a range of  
 6 information about their situation, and the range of  
 7 information could be very narrow, we have an audit  
 8 finding, I need to request a waiver on the one hand. At  
 9 the other extreme they could engage in a lengthy  
 10 communication with you in which they tell you a lot of  
 11 information about their textbook situation.  
 12 Is that a fair characterization of the range of  
 13 communications you've had with school districts?  
 14 A. Not much of that, no. I mostly am focused on  
 15 what their audit finding is about and what damage that  
 16 would do to their children.  
 17 Q. So it seems to me that in conjunction with  
 18 that -- that in connection with the discussion about the  
 19 damage that could be done, a district could convey to  
 20 you a range of information from we spent our money and  
 21 it would hurt us to have it taken away --  
 22 A. That's right.  
 23 Q. -- to we spent our money and even that money  
 24 wasn't sufficient and it would hurt us even more to have  
 25 it taken away.

1 Does that characterize the range of  
2 communications you've had with school districts on this  
3 topic?  
4 MR. VIRJEE: Objection. Asked and answered.  
5 THE WITNESS: Not that much, no.  
6 Q. BY MR. JACOBS: So the communications have all  
7 been in the former category?  
8 A. No. They are talking about how the loss of  
9 funds will damage their educational programs.  
10 Q. In the period July to the present in the course  
11 of your communication with school districts have you  
12 gained any knowledge about whether any school district  
13 in the State of California faces a shortage of textbooks  
14 or instructional materials?  
15 A. I don't know for sure.  
16 Q. I didn't ask for sure, I asked about whether  
17 you gained any knowledge.  
18 MR. VIRJEE: Objection. Vague and ambiguous.  
19 THE WITNESS: I don't ask what they do at their  
20 resolution, I'm only asking for compliance.  
21 Q. BY MR. JACOBS: And I guess I just need to know  
22 yes or no, have you gained any such information from  
23 July to the present?  
24 MR. VIRJEE: In her discussions with the school  
25 districts?

1 MR. JACOBS: Correct.  
2 MR. YANGER: If you recall.  
3 THE WITNESS: Certainly it's that they need the  
4 money to buy the books, whether or not they have enough  
5 or not. Oh, I guess I -- I may have had that said to  
6 me, that they don't have enough money now, that they  
7 don't have --  
8 MR. VIRJEE: I'm sorry, I didn't hear the rest  
9 of what you said.  
10 THE WITNESS: I just didn't finish it. They  
11 don't have enough money now. And, I mean, these people  
12 are mostly extremely upset because they spent money  
13 appropriately, they bought adopted text. And I'm  
14 telling them, I can't prevent all that money from being  
15 taken. I mean, that's their focus at me. I'm the  
16 whipping boy. I'm hearing their frustrations, that they  
17 did something with the money, their money was spent. I  
18 spent my money on adopted text, if you take that, it  
19 comes out of my general fund, what am I going to do, I  
20 have to eliminate a teacher.  
21 Q. BY MR. JACOBS: Is there any mechanism, formal  
22 or informal, by which you convey to people outside the  
23 Department -- I'm sorry, outside of the waiver office  
24 any information that you might learn about whether or  
25 not a district, in fact, is suffering from a shortage of

1 textbooks or instructional materials?  
2 MR. VIRJEE: Objection. Assumes facts not in  
3 evidence.  
4 THE WITNESS: I don't know. No, I don't. I  
5 haven't, no.  
6 Q. BY MR. JACOBS: No such mechanism?  
7 A. No, because I don't know. I'm asking if  
8 they've complied with the law and the law allows both.  
9 Q. Now, that last string of questions was about  
10 your -- started with discussions about school districts.  
11 So just to tell you where I'm going now, let's talk  
12 about discussions with others in the Department.  
13 In discussions with others in the Department  
14 from the period July to the present, have you gained any  
15 knowledge about whether --  
16 MR. VIRJEE: Just so I understand, we're  
17 talking about the Department of Education as defined  
18 earlier?  
19 MR. JACOBS: Correct.  
20 MR. VIRJEE: Thank you.  
21 Q. BY MR. JACOBS: Have you gained any knowledge  
22 about whether school districts in the State of  
23 California, one or more school districts in the State of  
24 California, suffer from a shortage of textbooks or  
25 instructional materials?

1 MR. VIRJEE: Objection. Vague and ambiguous as  
2 to "shortage." And also calls for speculation.  
3 THE WITNESS: I don't know.  
4 Q. BY MR. JACOBS: You don't know what?  
5 A. If some districts are short textbooks or not.  
6 Q. My question is, as a result of discussions with  
7 others in the Department, have you gained any knowledge  
8 on that subject?  
9 MR. VIRJEE: Objection. Asked and answered.  
10 THE WITNESS: No specific knowledge.  
11 Q. BY MR. JACOBS: How about general knowledge?  
12 MR. VIRJEE: Objection. Vague and ambiguous.  
13 THE WITNESS: I guess you could just read in  
14 the paper, you know, and see that maybe sometimes -- you  
15 know, it's like, what's general knowledge?  
16 Q. BY MR. JACOBS: No, I meant general knowledge  
17 of -- I confused you then. You said not specifically,  
18 and I meant --  
19 A. I've certainly heard that, you know, maybe  
20 districts don't have enough textbooks. I mean, you  
21 would hear something like that.  
22 Q. So my question is a little more focused than  
23 that.  
24 In the period July to the present, have you had  
25 discussions about that topic in the Department that

1 you've participated in?  
 2 A. No.  
 3 Q. Have you seen any papers, by that I mean  
 4 official papers, not newspapers in general circulation  
 5 materials, but official papers addressing that topic in  
 6 that period?  
 7 A. No.  
 8 Q. Has anyone discussed with you how the waiver  
 9 process could be used or -- or how the waiver process  
 10 relates to the actual existence of a shortage of  
 11 textbooks or instructional materials in any particular  
 12 district?  
 13 Let me ask that a little differently. I want  
 14 to distinguish between discussions you've had about the  
 15 requirements of 60119, which is a requirement to hold a  
 16 hearing with two outcomes that we discussed earlier, on  
 17 the one hand, and what I believe we both agreed earlier  
 18 was the purpose behind 60119, which was to address the  
 19 issue of whether there was or was not sufficient  
 20 textbooks in the hands of students.  
 21 A. Same thing though, isn't it?  
 22 Q. As I understand the first, it's a procedural  
 23 requirement that you held a hearing and have an outcome,  
 24 correct? That's the way you've applied it?  
 25 A. Based on what the law requires, yes.

1 Q. And it is designed to serve a policy of getting  
 2 textbooks in the hands of students, correct?  
 3 MR. VIRJEE: Objection --  
 4 MR. JACOBS: As you understand it.  
 5 THE WITNESS: It's designed to make them do  
 6 what the law requires them to do.  
 7 Q. BY MR. JACOBS: Well, in 60119 there's a  
 8 statement of legislative intent, right?  
 9 A. Right.  
 10 MR. VIRJEE: I guess the statute will speak for  
 11 itself, as we soon will find out.  
 12 AMR. STURGES: Is there a question pending?  
 13 MR. JACOBS: No, we're looking for something.  
 14 MR. STURGES: Then I won't object.  
 15 MR. JACOBS: I will withdraw my question, if  
 16 there was one pending, and I will start over.  
 17 Q. In our lawsuit we are alleging that some  
 18 students in some schools face a shortage of textbooks or  
 19 instructional materials.  
 20 My question to you is whether you have engaged  
 21 in any discussions from the period July to the present  
 22 in which the topic of discussion has been the  
 23 relationship between the granting of waivers under 60119  
 24 and the actual existence of such a shortage?  
 25 MR. VIRJEE: Any discussions with anyone?

1 MR. JACOBS: Anyone.  
 2 MR. VIRJEE: Or back at the Department?  
 3 MR. JACOBS: Anyone other than the lawyers.  
 4 MR. VIRJEE: I'd object as overbroad.  
 5 THE WITNESS: I think I need it again.  
 6 (Record read.)  
 7 MR. VIRJEE: I'll object as vague and  
 8 ambiguous.  
 9 THE WITNESS: I think I need it again.  
 10 (Record read.)  
 11 THE WITNESS: Yes, if you lose all your money,  
 12 you don't have money to spend on text. It's going to  
 13 have a damage. That's the damage.  
 14 Q. BY MR. JACOBS: Have you had any discussions of  
 15 a different nature on that topic?  
 16 MR. VIRJEE: Objection. Vague and ambiguous.  
 17 THE WITNESS: Meaning what?  
 18 Q. BY MR. JACOBS: Well, you just identified one  
 19 category of discussions. And now I'm asking you if  
 20 there are any other types of discussions you've had  
 21 along those lines?  
 22 MR. VIRJEE: Objection. Vague and ambiguous.  
 23 THE WITNESS: I'm not doing any waivers right  
 24 now, so the only waivers I can talk about are the ones  
 25 where we required compliance with the law.

1 Q. BY MR. JACOBS: So I'm asking you whether --  
 2 maybe this will help. I'm asking you whether you've had  
 3 any policy-oriented discussions about the relationship  
 4 between waivers granted under 60119 and the policy goal  
 5 of putting textbooks in the hands of students?  
 6 You answered me, well, yeah, if we don't grant  
 7 waivers, we're going to take away money. That's one  
 8 kind of discussion I've had about the relationship  
 9 between granting waivers and the policy goal of getting  
 10 textbooks in the hands of students.  
 11 And I'm asking if you've had any other  
 12 policy-oriented discussions about the relationship  
 13 between 60119 and getting textbooks in the hands of  
 14 students?  
 15 MR. VIRJEE: Objection. Asked and answered.  
 16 Vague and ambiguous and compound.  
 17 THE WITNESS: I'm getting confused. If waivers  
 18 were going to be allowed, I would hope that they would  
 19 require compliance with the law, which would be back to  
 20 what they're supposed to do, and have either textbooks  
 21 or a two-year plan.  
 22 Q. BY MR. JACOBS: And have you had any  
 23 discussions in which the effectiveness of that process,  
 24 the one you just described in getting textbooks in the  
 25 hands of students, has been assessed?

1 A. The effectiveness of what process?  
 2 Q. The one you just described, the compliance with  
 3 the statutory requirements.  
 4 A. I don't understand that.  
 5 Q. Have you had any discussions in which someone  
 6 has said, on the whole 60119 is or is not working to get  
 7 textbooks in the hands of students?  
 8 A. Yeah. Well, I guess it's more the audit that's  
 9 not working, that's hurting. It's the audit penalty  
 10 that's hurting getting those textbooks in the hands of  
 11 students, it's not 60119 itself.  
 12 Q. Now, that's the penalty side. And I guess I  
 13 appreciate since you get the waiver requests why you  
 14 would be focused there. But I need to ask you about the  
 15 other side, which is, have you had any discussions in  
 16 which the substance of the discussion has been the  
 17 public hearing requirement of 60119 is or is not  
 18 achieving the goal of getting textbooks in the hands of  
 19 students?  
 20 MR. VIRJEE: Objection. Asked and answered.  
 21 THE WITNESS: I can't recall that.  
 22 MR. JACOBS: Why don't we break for lunch.  
 23 (Lunch recess taken.)  
 24 (Exhibits SAD-4 through SAD-8 were marked.)  
 25 (Mr. Reed not present.)

1 MR. JACOBS: We note the absence of Mr. Reed.  
 2 But in view of the witness's time in particular, I want  
 3 to get going here.  
 4 Q. Ms. Pinegar, a couple questions still focusing  
 5 on 60119.  
 6 Are you aware of any assessments of the  
 7 effectiveness of 60119?  
 8 MR. VIRJEE: Objection. Vague and ambiguous as  
 9 to "assessments."  
 10 THE WITNESS: Yeah, I don't know.  
 11 Q. BY MR. JACOBS: Are you aware of any  
 12 consideration being given to revising 60119 other than  
 13 the legislative proposal that is embodied in Exhibit 3,  
 14 SAD-3?  
 15 A. No.  
 16 MR. VIRJEE: Well, I think that would  
 17 misconstrue SAD-3, because that's not a revision of  
 18 60119, as far as I know.  
 19 THE WITNESS: You're right. It's an amendment  
 20 to the Ed Code 41344.3.  
 21 Q. BY MR. JACOBS: Up to the present your office  
 22 has done all the processing of 60119 waiver requests as  
 23 opposed to personnel located elsewhere in the Department  
 24 of Education, correct?  
 25 A. That's correct.

1 Q. And has there been any consideration given to  
 2 changing that procedure?  
 3 MR. VIRJEE: Consideration in her office?  
 4 MR. JACOBS: Any consideration you're aware of.  
 5 THE WITNESS: Not that I'm aware of.  
 6 Q. BY MR. JACOBS: Has there been any  
 7 consideration given to changing the kinds of information  
 8 that you request in connection with 60119 waivers?  
 9 A. Yes.  
 10 Q. What consideration is that?  
 11 A. That we would probably want to develop a  
 12 policy, just like some of the other ones that was agreed  
 13 to ahead of time, that we could measure various requests  
 14 against.  
 15 Q. And in developing that policy have you given --  
 16 in thinking about developing such a policy, I take it  
 17 you've considered what kinds of information you would  
 18 ask for?  
 19 A. Yes.  
 20 Q. And what have you considered?  
 21 A. Well, for example, thinking of the audit  
 22 penalties of I've heard of, to me the fact that you held  
 23 a hearing and you noticed it for seven days instead of  
 24 ten is not a very --  
 25 Q. It's a technicality, right?

1 A. Yes.  
 2 Q. And so you're considering asking for what in  
 3 that connection?  
 4 A. In other words, determining exactly what was  
 5 their problem was that caused the audit penalty would  
 6 affect the recommendation in regards to the audit  
 7 penalty, so in such a situation it might be waiver of  
 8 full penalty.  
 9 Q. Has any consideration been given to asking the  
 10 waiver requesters for more information about the outcome  
 11 of the hearing that was requested?  
 12 A. I've thought of it, yeah.  
 13 (Mr. Reed entered the room.)  
 14 Q. BY MR. JACOBS: Have you talked about it with  
 15 anybody in the Department?  
 16 A. No, I really haven't.  
 17 Q. What consideration have you given to it?  
 18 A. I just was trying to write down some possible  
 19 what ifs and like attempting to write a policy,  
 20 basically.  
 21 Q. And did you have in mind some alternative that  
 22 depended on about the nature of the information that you  
 23 got about the outcome of the process?  
 24 A. Yes, like do you have adopted text for all kids  
 25 or not.

1 Q. Where does that consideration stand right now?  
 2 A. Well, it's just in my -- it's only in my dra --  
 3 in me right now. Until I have a bill, I don't even have  
 4 a need for a waiver policy.  
 5 Q. Do you have -- have you communicated to any  
 6 school district an expectation as to the timetable for  
 7 consideration of the bill?  
 8 A. Yes.  
 9 Q. What have you conveyed?  
 10 A. Well, it says -- I guess it's not here. In the  
 11 web page it says that it can be enacted after some date,  
 12 and I believe it's sometime in late March or early  
 13 April.  
 14 Q. And you've conveyed that expectation?  
 15 A. Yes. And also that I know it has urgency  
 16 because it has that listed.  
 17 Q. I will represent to you that it does say  
 18 urgency also. You don't have to hunt for it.  
 19 A. Which therefore it becomes enacted whenever the  
 20 Governor signs it, as opposed to some later date, which  
 21 some bills do.  
 22 Q. In the early documents that went out about  
 23 60119 from your office, you referred to confusion about  
 24 the funding sources that would be effected by 60119.  
 25 MR. VIRJEE: Objection. The documents speak

1 for themselves.  
 2 Q. BY MR. JACOBS: What was that confusion?  
 3 A. We have 60119?  
 4 Q. Yeah. You're looking at exhibit --  
 5 MR. VIRJEE: It's not labeled.  
 6 MR. JACOBS: You're looking at 1.  
 7 MR. VIRJEE: Looking at 01009.  
 8 MR. YANGER: It's Exhibit 1, page 2 of  
 9 Exhibit 1.  
 10 THE WITNESS: No, you can't really see it  
 11 looking at this, but the wording, in order to be  
 12 eligible to receive funds available for the purposes of  
 13 this article, as far as what that -- what does that  
 14 apply to, what does that mean.  
 15 Q. BY MR. JACOBS: And that was a confusion that  
 16 you understood school districts to hold; is that  
 17 correct?  
 18 A. Yes, very much.  
 19 Q. And they conveyed to you in the initial wave of  
 20 communications to you when audit findings started coming  
 21 in; is that correct?  
 22 A. Yes.  
 23 Q. In that initial period did you have discussions  
 24 with other DOE personnel about whether 60119  
 25 requirements had been communicated by the DOE to school

1 districts?  
 2 MR. VIRJEE: Can you tell us which period?  
 3 THE WITNESS: Yeah.  
 4 MR. VIRJEE: The period prior to --  
 5 MR. JACOBS: Period prior to AB --  
 6 MR. VIRJEE: -- AB 1600?  
 7 MR. JACOBS: Yeah.  
 8 THE WITNESS: Or 15, more likely.  
 9 MR. JACOBS: Yeah, 1115. Before AB 1115.  
 10 MR. VIRJEE: Make sure I understand, pre AB  
 11 1115 or pre AB 1600?  
 12 MR. JACOBS: 1115.  
 13 MR. VIRJEE: So prior to the fact that they  
 14 instituted the audit exception rule?  
 15 MR. JACOBS: Correct.  
 16 THE WITNESS: Let me hear the question.  
 17 (Record read.)  
 18 THE WITNESS: Yes, I probably asked that,  
 19 because districts would have said, I didn't know this is  
 20 required.  
 21 Q. BY MR. JACOBS: What did you learn at that  
 22 point about what had been communicated to school  
 23 districts?  
 24 A. I didn't really know. I don't -- what did I  
 25 learn? I don't think I ever verified one way or the

1 other what happened.  
 2 Q. And between that point in time and the July to  
 3 the present time frame, which we were talking about  
 4 before lunch, did you ever gain additional understanding  
 5 as to what had been conveyed to school districts by the  
 6 DOE about the requirements of section 60119?  
 7 A. Yes.  
 8 Q. What did you learn?  
 9 A. I was told three communications were made.  
 10 Q. And this is -- to be clear, this is before July  
 11 you learned this?  
 12 MR. VIRJEE: Before July of this year?  
 13 MR. JACOBS: July of 2000.  
 14 MR. VIRJEE: Thank you.  
 15 THE WITNESS: You mean the communications were  
 16 before then, or I learned that?  
 17 MR. JACOBS: No, when you learned it.  
 18 THE WITNESS: No, I probably didn't know when  
 19 the communications went out. I didn't learn it until  
 20 after I started getting waivers again.  
 21 Q. BY MR. JACOBS: Right. So I'm just trying to  
 22 fix the time of your understanding.  
 23 A. I probably only asked questions after I started  
 24 getting waivers again, so it would have been after the  
 25 July -- what we're guessing is, roughly, July when I

1 started having calls.  
 2 Q. So you had some discussions with other DOE  
 3 personnel and learned that three communications had gone  
 4 out?  
 5 A. That's right.  
 6 Q. Did you see the communications?  
 7 A. No.  
 8 Q. Did you gain any additional understanding than  
 9 what you testified to before lunch about the contents of  
 10 the communications?  
 11 A. Maybe only in that they were not real specific  
 12 in terms of some of the audit questions that I'm asking.  
 13 Q. Let's talk about a document that I believe  
 14 we've marked as SAD Exhibit 4, the Annual Report of  
 15 General Labor Activity --  
 16 MR. VIRJEE: You haven't marked it on the  
 17 record.  
 18 MR. JACOBS: I'm doing so now.  
 19 MR. VIRJEE: That's going to be --  
 20 MR. JACOBS: That is 4.  
 21 Q. Are you familiar with this document?  
 22 A. Yes. I wrote it.  
 23 Q. Couple of preliminary questions.  
 24 Is there a corresponding report for '99?  
 25 A. In my computer.

1 Q. Waiting to be finalized?  
 2 A. Yes.  
 3 Q. Is there a corresponding report for 2000?  
 4 A. Also in my computer.  
 5 Q. Waiting to be finalized?  
 6 A. That's right.  
 7 Q. Is there a tickler in anybody else's file  
 8 that's asking you to file that report?  
 9 MR. VIRJEE: Objection. Calls for speculation.  
 10 THE WITNESS: Don't know.  
 11 Q. BY MR. JACOBS: Are you receiving such  
 12 requests?  
 13 A. No.  
 14 Q. Did your -- I take it that your predecessor was  
 15 in place for the year, at least part of the year,  
 16 January to December 1997?  
 17 A. Yes. I started in September 1997. Yes,  
 18 September 1997.  
 19 Q. Was there a report for 1997?  
 20 A. No.  
 21 Q. Any prior years?  
 22 A. About 10 years before that.  
 23 Q. And did you have that report available to you  
 24 as you were preparing SAD Exhibit 4?  
 25 A. Yeah, I had a copy of it. And I'm not sure

1 about the 10 years. It was some number of years.  
 2 Q. Now, do you see the second paragraph on page 1  
 3 of the report? There's a sentence, this trend can  
 4 clearly be seen in the section of this report entitled  
 5 analysis of major types of general waivers granted where  
 6 many of the, quote, high usage, close quote, waivers  
 7 from 1998 have been eliminated in the 1999, 2000  
 8 legislative year by statutory changes.  
 9 Do you see that?  
 10 A. I do.  
 11 Q. And can you show us what you had in mind with  
 12 that sentence by referring to the analysis section?  
 13 A. The first, and I believe the most prevalent  
 14 waiver that I did that year was the mentor teacher  
 15 program.  
 16 Q. How was -- let's take them one by one.  
 17 How was that addressed by statutory changes?  
 18 A. It's in the last paragraph.  
 19 MR. VIRJEE: Last paragraph of?  
 20 THE WITNESS: Whatever this -- page 2 under  
 21 mentor teacher program, as districts begin to  
 22 participate in the peer assistance and review program,  
 23 most -- and then to quote the bill, most or all of the  
 24 mentor teacher waivers should no longer be requested as  
 25 the mentor teacher law no longer applies to districts

1 implementing the PAR program under the new statute.  
 2 Q. BY MR. JACOBS: Did that turn out to be true?  
 3 A. Yes.  
 4 Q. And did you have any other waivers in mind?  
 5 A. Well, the second one, it's the last sentence on  
 6 page 2. It says, in fact, in the new statute the  
 7 Charter caps or limits on numbering, as described above,  
 8 were excluded from any waiver by the State Board of  
 9 Education under the authority of E.C. section 33050, or  
 10 any other provision of law.  
 11 Q. So that was a case where the possibility of  
 12 requesting a waiver was eliminated?  
 13 A. There were no caps, so you don't have to waive  
 14 a cap if the cap is gone.  
 15 Q. The restriction was eliminated?  
 16 A. Yes. The need for a waiver, I mean.  
 17 Q. So the reason I'm confused is the sentence  
 18 says, in fact, in the new statute, the Charter caps or  
 19 limits on numbering, as described above, were excluded  
 20 from any waiver by the State Board of Education under  
 21 the authority of E.C. 33050.  
 22 A. I believe what happened was the cap was raised  
 23 so high and then -- I'd have to go back and check. They  
 24 might have actually said that also.  
 25 Q. You don't recall for sure?

1 A. No.

2 Q. Okay. Any other high-usage waivers as you

3 meant?

4 A. The next one, community day school.

5 Q. Can you explain what happened with community

6 day school waivers?

7 A. Again, it's in the third paragraph of page 3.

8 In the 1999 legislative year, State Board supported AB

9 1600, which includes some revisions of the code for

10 community day schools which will make some of the

11 commingling waivers for K-8 districts and any middle

12 school configuration unnecessary.

13 Q. Any others?

14 A. Well, it goes on to say, also included -- and

15 do I need to read all this? We all have it.

16 Q. No, we all have it. Any other waivers that you

17 regarded as high-usage waivers from 1998 that were

18 eliminated?

19 A. Well, yes, the next one where I have explained

20 the basic issue we've been talking about all morning,

21 the 60119, and explained the statutory change enacted in

22 both AB 1115 and then AB 1600, which had me no longer

23 doing waivers, eliminated them.

24 Q. Any others?

25 A. Let's see. The next one is -- you're talking

1 about waivers that are eliminated, correct?

2 Q. Correct.

3 A. I don't think so, at least not that I've

4 identified here and I don't recall any others, but there

5 may have been.

6 Q. In any of the instances that you just

7 identified, did your office play a role in the statutory

8 change?

9 MR. VIRJEE: "Your office" being the waiver

10 office?

11 MR. JACOBS: Correct.

12 THE WITNESS: Not in the mentor teacher waiver

13 nor in the Charter school waiver. In the community day

14 school waiver we certainly -- upon bringing multiple

15 situations fitting into these categories, waivers of the

16 same thing, the Board is approving them, approving them,

17 approving them. It becomes apparent if this many people

18 need waivers, the statute needs to be changed.

19 Q. BY MR. JACOBS: And what I'm asking, I guess,

20 is, does that interaction, in fact, occur with your

21 office?

22 Let's focus on these first, and then we'll

23 generalize it. Let's take -- let's narrow it down even

24 more.

25 In your discussions at the State Board of

1 Education meetings, have you engaged in a discussion

2 with the Board about the point you just made, that is,

3 we're getting a lot of waivers in this area, this may be

4 an area that would benefit from statutory change?

5 A. Yes.

6 Q. And so now with respect to any of these that

7 we've gone through on the 1998 report, did you have such

8 an interaction with the Board?

9 A. On the first two I probably was more of telling

10 them what what's happening, in other words, I'd be

11 bringing a bunch of mentor teaching program waivers and

12 I would say, by the way, there's a law going through the

13 books that would eliminate this. I would be just

14 informing them of what's happening, what appears to be

15 happening.

16 Q. With respect to the others that we just went

17 through?

18 MR. VIRJEE: The others being the community day

19 school?

20 THE WITNESS: One at a time. So that's the

21 mentor teacher one.

22 The Charter one, again, I probably also would

23 have -- maybe after the bill was signed or when it

24 appears like it's going to be signed, I would say, I'm

25 probably not going to be bringing anymore waivers to you

1 as X, Y, Z.

2 On the community day school waivers, both

3 myself and the consultant who reviews these, and in many

4 cases the people who were testifying would say to the

5 Board, this is not a very good law, I have a K-8

6 district, why do I have to keep my 6th graders separate

7 from my 7th graders and my 8th graders.

8 And similarly on the co-location. I mean,

9 this -- this is the best site. I have to get a waiver

10 to be able to put this community day school, which are

11 expelled students, on a site with other K-12, and that

12 doesn't seem reasonable because we don't have any more

13 land and we don't -- whatever. Just expressing concerns

14 with the law to the point that the Board says, yeah, you

15 got a point.

16 Q. BY MR. JACOBS: And how about on the next one,

17 sufficiency of instructional materials and textbooks?

18 A. No. On that one, when the problem first became

19 apparent, probably with my first waiver of that type --

20 I don't remember, actually. But at some point I would

21 have said to the Board, there appears to be a big

22 waiver -- you know, a bunch of people coming in for this

23 particular type of waiver, and that's when they directed

24 me to kind of what their criteria was going to be for

25 approval, which included they wanted to know that these

1 people were compliant before they even look at their  
 2 waiver.  
 3 Q. Meaning that they had been brought into  
 4 compliance even if they had been out of compliance at  
 5 some point?  
 6 A. Right.  
 7 Q. In the draft for 1999, do you have a  
 8 corresponding discussion of waivers that have been  
 9 eliminated by statutory changes?  
 10 A. No, I actually have only gotten -- I'm working  
 11 on the data base part of it right now. I haven't  
 12 written any narrative.  
 13 Q. Do you have in your mind any waivers that were  
 14 eliminated that -- I'll just ask this to frame the time  
 15 in your own mind -- that will go into that report, the  
 16 1999 report?  
 17 A. Probably, but I can't tell you that without  
 18 looking at my data and thinking about each one.  
 19 Q. And how about for the 2000 report, do you have  
 20 any waivers in mind that have been eliminated?  
 21 A. I think --  
 22 MR. VIRJEE: By legislative action?  
 23 MR. JACOBS: In a way, that corresponds to your  
 24 discussion in this report.  
 25 THE WITNESS: I believe this is a consistent

1 and continued way of finding out about laws that need  
 2 flexibility, that need changing.  
 3 Q. BY MR. JACOBS: And you view it as part of your  
 4 role as the director of the waiver office to bring these  
 5 instances to the Board of Education's attention?  
 6 A. To either my department or the Board depending  
 7 on -- yeah.  
 8 Q. On page 4 it says, the waiver office staff  
 9 receives many calls from districts --  
 10 MR. VIRJEE: Can you tell us where on page 4?  
 11 MR. JACOBS: Bottom. -- who want to, quote,  
 12 discuss the possibility of a waiver, close quote.  
 13 Q. Do you see that?  
 14 A. Yes.  
 15 Q. And then it goes on to describe the process  
 16 that ensued.  
 17 Do you see that?  
 18 A. Uh-huh.  
 19 Q. In those sorts of discussions, do waiver office  
 20 staff refer callers to staff outside of the waiver  
 21 office?  
 22 A. Not in most cases, I don't think, no.  
 23 Q. And in the case of the discussions you've had  
 24 concerning 60119, have there been instances in which you  
 25 have referred a caller who calls thinking that there

1 might be a waiver available and had a waiver discussion  
 2 with you, and have you -- has the discussion led to a  
 3 conclusion by you that the district officials really  
 4 ought to talk to somebody else in the Department about  
 5 their problem, and have you made that referral?  
 6 A. Yes.  
 7 MR. VIRJEE: In the Department of Ed?  
 8 MR. JACOBS: Correct.  
 9 THE WITNESS: Yes.  
 10 Q. BY MR. JACOBS: What kind of instances come to  
 11 mind in that connection?  
 12 A. We're talking now post -- we're talking the  
 13 current, since July of 2000?  
 14 Q. Whatever you're recalling in that connection.  
 15 You want to start there, that's fine.  
 16 A. Okay. Since I'm no longer able to handle these  
 17 waivers when they call me, they say to me, what am I  
 18 going to do about this audit penalty. And I say, well,  
 19 there's an audit resolution process that was established  
 20 by Ed Code 41344.3, and if I were you, I would file that  
 21 audit appeal. And then I might -- and I do have a facts  
 22 file that just as who to call and what to do, so I send  
 23 them that.  
 24 Q. Any other referrals that you've made?  
 25 A. Yes. Also, in addition to the audit appeal

1 process they have a repayment plan process to request  
 2 more years to pay back.  
 3 Q. Has there been an instance in which the issue  
 4 of the -- I'll keep this in connection with 60119 for  
 5 the moment.  
 6 Has there been an instance in which the issue  
 7 happened to come up in the conversation about the  
 8 contents of textbooks and whether they had been approved  
 9 or not, and in that instance had you referred the  
 10 districts to somebody else in the Department?  
 11 MR. VIRJEE: Objection. Vague and ambiguous.  
 12 THE WITNESS: I don't understand that. That  
 13 doesn't make sense.  
 14 Q. BY MR. JACOBS: What part doesn't make sense?  
 15 A. I guess, no, I wouldn't do what you just said  
 16 in regards to 60119.  
 17 Q. In doesn't really correlate to 60119?  
 18 A. Right.  
 19 Q. And how about an instance in a 60119 context in  
 20 which the district official led you to conclude that  
 21 whether or not they got a waiver, they could benefit  
 22 from additional funding with respect to textbooks, have  
 23 you reached such a conclusion and made a referral to  
 24 someone in the Department who could help them with  
 25 additional funding?

1 A. No.  
 2 MR. VIRJEE: Objection. Assumes facts not in  
 3 evidence.  
 4 Q. BY MR. JACOBS: Have you ever reached that  
 5 conclusion?  
 6 A. No, I don't think -- no. Except, as I said, in  
 7 regards to, you take the money, I don't have any money,  
 8 that money's gone.  
 9 Q. In any context have you been able to -- have  
 10 you referred the caller to somebody in the Department  
 11 who could help them with their money issues separate  
 12 from the --  
 13 A. Audit resolution?  
 14 Q. Correct.  
 15 A. No.  
 16 Q. Do you know of someone you could refer a caller  
 17 to if that issue came up?  
 18 A. No.  
 19 Q. Let's go to this document, which is the  
 20 Schiff-Bustamante Standards-Based Instructional  
 21 Materials Program information printed from the  
 22 California Department of Education website on March  
 23 18th, 2001, and mark it as 5 -- I'm sorry, it's 8.  
 24 MR. VIRJEE: Can we know what 5, 6 and 7 are?  
 25 MR. JACOBS: Sure.

1 (Discussion held off the record.)  
 2 Q. BY MR. JACOBS: Referring you now to SAD-8.  
 3 First of all, do you have information that this is not  
 4 the current or most current version of this document?  
 5 A. Well, I'm not sure. This is put on the web by  
 6 another office. I have a policy that I know was the  
 7 most recent approved and amended on February 8th. It  
 8 just doesn't look like this. It may be the same.  
 9 Q. The policy that you have is --  
 10 A. The official policy that was put before the  
 11 Board and approved. This is maybe a rewrite of it or  
 12 something. And I'd have to compare them side-by-side to  
 13 tell you if they were the same. There's been multiple  
 14 changes, let's put it that way.  
 15 Q. At a high level -- before we get into some of  
 16 the details, what is this policy directed toward?  
 17 A. Well, directed toward the use of a general  
 18 waiver to spend Schiff-Bustamante monies, designated  
 19 monies, on non-adopted texts.  
 20 Q. And a general waiver, you explain what a  
 21 general waiver is in the 1998 report, right?  
 22 A. Looks like it, yeah.  
 23 Q. And the distinction between a general waiver  
 24 and another kind of waiver is what?  
 25 A. The authority that you use, the Education Code

1 authority.  
 2 Q. What's an example of a non-general waiver?  
 3 A. The example I gave you earlier with the special  
 4 education waiver.  
 5 Q. And that is not under the authority of 33050 to  
 6 53, correct?  
 7 MR. VIRJEE: Objection. Calls for a legal  
 8 conclusion.  
 9 THE WITNESS: That's not technically correct.  
 10 Q. BY MR. JACOBS: How would you frame the  
 11 distinction?  
 12 A. It has its own authority.  
 13 Q. So --  
 14 A. In special education.  
 15 Q. So if you go through the Education Code, some  
 16 statutes in the statute itself have a waiver authority,  
 17 is that what you mean by a specific waiver authority?  
 18 A. Generally, yes.  
 19 Q. Fair enough. And what's your understanding of  
 20 the relationship between the general waiver authority in  
 21 33050 to 53 and specific waiver authorities?  
 22 MR. VIRJEE: Objection. Assumes facts not in  
 23 evidence.  
 24 THE WITNESS: Comparing it to the one we just  
 25 talked about, the general waiver authority could be used

1 in more areas of the code than the special ed waiver  
 2 authority that's specific to that section.  
 3 Q. BY MR. JACOBS: Is it your understanding that  
 4 the general waiver authority is completely set aside  
 5 when you -- when you're analyzing a specific waiver?  
 6 MR. VIRJEE: Objection. Calls for a legal  
 7 conclusion.  
 8 THE WITNESS: I don't know the answer to that.  
 9 Q. BY MR. JACOBS: Well, how do you -- when I  
 10 asked you before whether 33050 to 53 did not cover  
 11 special education waivers, you said, no, I didn't quite  
 12 have it right.  
 13 A. Right.  
 14 Q. What did you mean by that?  
 15 A. I think if you read the statute in 33050, it  
 16 becomes clear. That says you can waive any of the code,  
 17 and any regulation-implementing code.  
 18 Q. As you make the statute operational in your  
 19 office, if somebody comes in with a waiver request that  
 20 has a cubbyhole in a specific statute but they framed it  
 21 as a general waiver request, what do you do  
 22 operationally?  
 23 A. Either make them redo it correctly or -- you  
 24 know, or else possibly just change it if it's not a big  
 25 thing.

1 Q. And that's because it's your understanding that  
 2 specific waivers should be handled under the specific  
 3 waiver authority as opposed to the general waiver  
 4 authority; correct?  
 5 MR. VIRJEE: Objection. Calls for a legal  
 6 conclusion.  
 7 THE WITNESS: Partially.  
 8 Q. BY MR. JACOBS: Partially?  
 9 A. There's different requirements. My forms are  
 10 different. There's different requirements.  
 11 Q. This report is a general waiver activity  
 12 report.  
 13 Is there also a report of specific waivers?  
 14 A. No.  
 15 Q. Is there a summary of specific waivers that you  
 16 prepare?  
 17 A. No. No.  
 18 Q. Specific waivers are on the agenda of the State  
 19 Board of Education, correct?  
 20 A. Yes.  
 21 Q. And if one wanted to discern what specific  
 22 waivers had been granted by the State Board, would the  
 23 minutes, to the best of your knowledge, accurately  
 24 reflect that waiver activity?  
 25 A. Certainly.

1 Q. Are there cases in which there have been  
 2 high-usage specific waivers that have been eliminated by  
 3 statutory changes?  
 4 MR. VIRJEE: Calls for speculation. Lacks  
 5 foundation.  
 6 THE WITNESS: I can't recall. I don't know  
 7 either way.  
 8 Q. BY MR. JACOBS: None come to mind?  
 9 A. Yeah, I don't recall. I do not recall.  
 10 Q. Are there any cases of specific waivers that  
 11 you have suggested should be eliminated by statutory  
 12 changes?  
 13 MR. VIRJEE: I'm going to ask you to clarify  
 14 that just so I understand the question. Are you asking  
 15 whether the specific waiver authority ought to be done  
 16 away with or the reason waivers are being requested?  
 17 MR. JACOBS: Both, because the report -- the  
 18 report covered both cases, I think.  
 19 THE WITNESS: What both cases?  
 20 MR. JACOBS: That is, you could eliminate the  
 21 requirements so you don't need the waiver, or you could  
 22 eliminate the ability to give the waiver.  
 23 THE WITNESS: You could do that for both  
 24 general and specific waivers, yes.  
 25 Q. BY MR. JACOBS: So my question as to specific

1 waivers is: Have you suggested that that be done?  
 2 MR. VIRJEE: That either of those things be  
 3 done?  
 4 MR. JACOBS: Correct.  
 5 THE WITNESS: I can't recall having done that,  
 6 but that doesn't mean I haven't.  
 7 Q. BY MR. JACOBS: What is your understanding of  
 8 the process that led to the amendment that's referred to  
 9 at the top of SAD No. 8?  
 10 MR. VIRJEE: Objection. Calls for speculation.  
 11 Lacks foundation.  
 12 THE WITNESS: That February 8th amendment?  
 13 MR. JACOBS: Yes.  
 14 THE WITNESS: That was the addition of the math  
 15 section.  
 16 Q. BY MR. JACOBS: That's the substantive change?  
 17 A. (Witness nods head.)  
 18 Q. And was your office involved in the development  
 19 of that amendment?  
 20 A. No.  
 21 Q. Was your office -- has your office been  
 22 involved in the development of any waivers or waiver  
 23 authorities?  
 24 A. Policies.  
 25 Q. Help me out here. What do you call it?

1 MR. VIRJEE: Just let him ask the questions and  
 2 you provide the answers. Okay?  
 3 Q. BY MR. JACOBS: What did you say?  
 4 A. I said policies.  
 5 Q. Waiver policies. That's good.  
 6 Has your office been involved in any waiver  
 7 policies with respect to Schiff-Bustamante?  
 8 MR. VIRJEE: Objection. Vague and ambiguous as  
 9 to "waiver policies."  
 10 THE WITNESS: Ask me it a little different. I  
 11 am involved in sometimes writing policies. I have not  
 12 been involved in writing policies about  
 13 Schiff-Bustamante.  
 14 Q. BY MR. JACOBS: Okay. Have you been involved  
 15 in discussions in which policies regarding waivers under  
 16 Schiff-Bustamante have been discussed?  
 17 A. Sure.  
 18 Q. What are the -- what's the involvement you have  
 19 had in those discussions?  
 20 MR. VIRJEE: Are we talking about internal  
 21 department discussions?  
 22 MR. JACOBS: Any.  
 23 MR. VIRJEE: Any discussions she's ever had  
 24 about waiving Schiff-Bustamante?  
 25 MR. JACOBS: Correct.

1 MR. VIRJEE: Thank you.  
 2 MR. JACOBS: About policies.  
 3 MR. VIRJEE: I'm sorry?  
 4 MR. JACOBS: About policies, not particular  
 5 waivers.  
 6 THE WITNESS: I think the history is what  
 7 you're trying to get at here.  
 8 MR. VIRJEE: Again, let him ask the questions  
 9 and you answer them. Okay.  
 10 THE WITNESS: I don't know. Yes, I have been.  
 11 Q. BY MR. JACOBS: What's the history? That is  
 12 what I'm trying to get at.  
 13 MR. VIRJEE: There he goes with those trick  
 14 questions again.  
 15 MR. JACOBS: I'm happy to ask the question in a  
 16 way that meets the way you think about what you've done  
 17 in your job. I don't do your job, so I don't know your  
 18 vocabulary.  
 19 THE WITNESS: On October 7th, 1999, the policy  
 20 that they adopted was we intend to deny all these  
 21 waivers, period.  
 22 Q. BY MR. JACOBS: And were you involved in the  
 23 discussion that led up to that decision?  
 24 MR. VIRJEE: Objection. Vague and ambiguous as  
 25 to "involved."

1 Q. BY MR. JACOBS: Let me back it up a little bit.  
 2 Up until that point you were getting waiver  
 3 requests, correct?  
 4 A. Yes, I probably was.  
 5 Q. So you were seeing an issue under  
 6 Schiff-Bustamante as it was actually hitting the school  
 7 districts that they were requesting waivers under  
 8 Schiff-Bustamante because they felt that they needed the  
 9 waiver, yes?  
 10 A. Yes, I believe that that probably would have  
 11 happened previous to their decision.  
 12 Q. And you gained knowledge about how  
 13 Schiff-Bustamante was actually affecting school  
 14 districts insofar as the waiver requests were reflecting  
 15 that impact?  
 16 MR. VIRJEE: What's your question? You just  
 17 made a statement.  
 18 Q. BY MR. JACOBS: You gained an understanding of  
 19 an issue under Schiff-Bustamante because you were seeing  
 20 waiver requests under Schiff-Bustamante, correct?  
 21 A. Yes. I don't recall exactly, but I probably  
 22 had at least one or maybe more phone calls saying, can  
 23 we do a waiver of Schiff-Bustamante.  
 24 Q. And did you -- and then the thing you answered  
 25 a few minutes ago was that the State Board of Education

1 expressed the policy not to give waivers?  
 2 A. Yes.  
 3 Q. And so you have information where districts  
 4 want waivers and the State Board is deciding in the end,  
 5 and on October 7th, not to grant waivers, correct?  
 6 A. Yes.  
 7 Q. What was your -- what kind of communication did  
 8 you have in the process that led up to that decision?  
 9 A. Not much. I mean, that's a policy. That was a  
 10 policy decision on their part.  
 11 Q. And you weren't asked for your input in that  
 12 policy formulation?  
 13 A. Not particularly.  
 14 Q. And you didn't provide input into that policy  
 15 formulation?  
 16 A. Only in alerting them to the issue.  
 17 Q. And then after that --  
 18 A. They set the policy.  
 19 Q. And as you saw the way the policy was  
 20 developed, it, to put it colloquially, happened above  
 21 your pay grade?  
 22 A. Yes.  
 23 MR. VIRJEE: That was pretty colloquial.  
 24 Q. BY MR. JACOBS: And then the policy is adopted.  
 25 And is there a period after that policy being

1 adopted where you are getting inquiries from districts  
 2 about waivers and you're conveying to them that the  
 3 State Board has decided not to give waivers?  
 4 A. Yes, and faxing them this waiver policy, yes.  
 5 Q. And was there a period in which you were  
 6 learning about how this new policy was affecting school  
 7 districts?  
 8 A. Well, it's pretty clear how it affects them.  
 9 Q. But were you gaining in -- were you getting  
 10 input from school districts about how it was affecting  
 11 them by virtue of their inquiries about waivers?  
 12 MR. VIRJEE: Objection. Vague and ambiguous as  
 13 to how it affects them.  
 14 THE WITNESS: I guess what I was gaining  
 15 knowledge of is what they wanted to do.  
 16 Q. BY MR. JACOBS: And what they wanted to do was  
 17 shift funds from the purchase of --  
 18 A. Adopted text.  
 19 Q. Or instructional materials that are aligned to  
 20 content standards. They wanted to shift from those  
 21 textbooks to other textbooks or instructional materials,  
 22 correct?  
 23 A. It's more precise than that.  
 24 Q. More precise because it's actually adopted  
 25 versus non-adopted?

1 A. Yeah.  
 2 Q. Okay. In those communications did you learn of  
 3 any instances in which school districts were, at least  
 4 in their own mind, suffering from a shortage of textbook  
 5 funds in view of the policy that was adopted?  
 6 MR. VIRJEE: Objection. Calls for speculation  
 7 as to what was in the school district's mind.  
 8 THE WITNESS: Their question would always be  
 9 how could they spend the funds, not shortage of funds.  
 10 Q. BY MR. JACOBS: The question to you would be  
 11 how can I spend funds for one category in another  
 12 category, correct?  
 13 A. Non-adopted, yes.  
 14 Q. And in those communications they didn't -- no  
 15 district communicated to you, to the best of your  
 16 recollection, we don't have enough money for non-adopted  
 17 textbooks unless we can shift money from  
 18 Schiff-Bustamante textbooks to non-Schiff-Bustamante  
 19 textbooks?  
 20 A. Not in that manner, no.  
 21 Q. So to put it in the negative, you gained no  
 22 understanding after October 7, 1999, from communications  
 23 with school districts about Schiff-Bustamante issues  
 24 that school districts were suffering from a shortage of  
 25 textbook funds?

1 MR. VIRJEE: Objection. Asked and answered  
 2 twice.  
 3 THE WITNESS: Wasn't about shortage.  
 4 Q. BY MR. JACOBS: Were you involved in policy  
 5 formulation discussions after October 7, 1999 about  
 6 Schiff-Bustamante waiver authority?  
 7 A. After the adoption of the policy, was I  
 8 involved in --  
 9 Q. Policy formulation discussions.  
 10 A. Well, I had waivers come in.  
 11 Q. Let's distinguish interactions on specific  
 12 waivers from discussions about what your waiver policy  
 13 is going to be, or what the Board of Education's waiver  
 14 policy is going to be.  
 15 A. Okay.  
 16 Q. At some point, I take it, the Board of  
 17 Education amended its policy?  
 18 A. Right.  
 19 Q. And so at some point somebody had some policy  
 20 formulation discussions?  
 21 A. Actually, it was a waiver.  
 22 Q. So tell me the history.  
 23 A. Okay. Just because there's a policy that says  
 24 they intend to deny doesn't mean a district doesn't have  
 25 a right to appeal, apply, request a waiver.

1 Q. So this is -- I think you explained this  
 2 earlier. This is not a policy which results in a waiver  
 3 request being returned, correct?  
 4 A. Correct.  
 5 Q. It's a policy that identifies under what  
 6 circumstances the Board is likely versus unlikely to  
 7 grant approval, correct?  
 8 A. Exactly.  
 9 Q. So I take it that a waiver was processed by  
 10 your office, served up to the State Board of Education?  
 11 A. (Witness nods head.)  
 12 Q. And it was a waiver that on its face fell  
 13 outside of the October 7th, 1999 policy?  
 14 A. Correct.  
 15 Q. And what happened?  
 16 A. The Department recommended denial of the waiver  
 17 based on the policy.  
 18 Q. Okay. And then what happened?  
 19 A. The Board approved the waiver.  
 20 Q. There was discussion at a meeting at which you  
 21 attended?  
 22 A. Yes.  
 23 Q. What do you recall of the discussion?  
 24 A. Well, the district put forth a case that -- of  
 25 their needs that were non-adopted materials.

1 Q. And in that case did they explain that there  
 2 was a need for Schiff-Bustamante funds to pay for the  
 3 non-adopted materials?  
 4 A. Yes.  
 5 Q. And how did they articulate that? What do you  
 6 recall of their articulation of that need?  
 7 A. It was a question of how many materials they  
 8 had to buy to implement the program.  
 9 Q. Implement what program?  
 10 A. The particular program that they had requested,  
 11 the non-adoptive program they had wanted to implement.  
 12 Q. Do you recall what that was?  
 13 A. It's called open court.  
 14 Q. Open court?  
 15 A. Open court reading.  
 16 Q. And open court reading is a non-adopted  
 17 program, as you understood it?  
 18 A. Partially.  
 19 Q. And they wanted to use Schiff-Bustamante funds  
 20 to pay for it?  
 21 A. For this new part.  
 22 Q. And the Board had a discussion about whether to  
 23 make an exception?  
 24 A. Correct.  
 25 Q. And the Board decided to make an exception?

1 A. Correct.  
 2 Q. Do you recall the discussion, the consensus on  
 3 that issue?  
 4 A. Basically it's kind of repeated here, you know.  
 5 Q. That something had not --  
 6 A. There was an attempt apply, however --  
 7 MR. YANGER: You're referring to Exhibit 8.  
 8 THE WITNESS: I'm sorry, in the  
 9 Schiff-Bustamante exception for reading language arts,  
 10 that was the exception that was created by that  
 11 particular waiver, after that particular waiver was  
 12 approved.  
 13 Q. BY MR. JACOBS: When was that?  
 14 A. I don't remember exactly. Oh, wait. It was  
 15 late 2000.  
 16 Q. So between October 7 and the consideration of  
 17 that waiver request, did you participate in any  
 18 discussions about possibly changing the policy that was  
 19 adopted on October 7, 1999?  
 20 A. No.  
 21 Q. Aside from your presentation of the waiver  
 22 request, were you involved in any discussions about  
 23 whether that particular case that was presented --  
 24 MR. VIRJEE: Is this Los Angeles?  
 25 Q. BY MR. JACOBS: -- that the Los Angeles School

1 District's request was, in fact, a generalizable  
 2 situation that should call for a policy amendment?  
 3 MR. VIRJEE: Objection. Vague and ambiguous.  
 4 THE WITNESS: You're going to have to do it  
 5 again.  
 6 MR. JACOBS: It was a little long.  
 7 Q. You went to a Board of Education meeting and  
 8 presented the LAUSD waiver request with a recommendation  
 9 of denial based on the October 7 policy, correct?  
 10 A. Right.  
 11 Q. And then the Board decided to make an exception  
 12 for LAUSD, correct?  
 13 A. On that waiver.  
 14 Q. And then they went on to decide that we're not  
 15 just going to do this for LAUSD, we're going to make an  
 16 exception that's a matter of policy is available to  
 17 other districts, correct?  
 18 A. Correct.  
 19 Q. Were you involved in discussions that led to  
 20 the LAUSD case turning into a policy of general  
 21 application?  
 22 MR. VIRJEE: Objection. Vague and ambiguous as  
 23 to "involved."  
 24 THE WITNESS: Not really, no.  
 25 Q. BY MR. JACOBS: So to put it in the negative,

1 you did not give input into any policy formulation  
 2 activity that moved the discussion from the single case  
 3 of LAUSD to a policy of general application?  
 4 MR. VIRJEE: Objection. Asked and answered.  
 5 THE WITNESS: The exception was written by  
 6 someone else. I may have commented.  
 7 Q. BY MR. JACOBS: On a draft?  
 8 A. Yes.  
 9 Q. And what was your comment?  
 10 A. I don't know. I mean, I may have commented. I  
 11 don't remember.  
 12 Q. Okay. Wasn't a major event in your --  
 13 A. No. Well, it was because I knew it meant more  
 14 work coming in.  
 15 Q. Fair enough.  
 16 A. I'm not real happy to change from intend to  
 17 deny to all kinds of exceptions.  
 18 Q. Do you have a process now developed for  
 19 Schiff-Bustamante requests?  
 20 MR. VIRJEE: Objection. Vague and ambiguous.  
 21 Overbroad.  
 22 THE WITNESS: I have a contact, someone who is  
 23 going to review them.  
 24 Q. BY MR. JACOBS: Who is that?  
 25 A. Sherry Griffith-Skelly basically.

1 Q. And is she, herself -- your understanding is  
 2 she, herself is going to do that, or her office and  
 3 someone underneath her?  
 4 A. Probably someone underneath her.  
 5 Q. The three staff people in your group are whom?  
 6 A. Hilary Novak, Christina Gallegos and JoAn  
 7 Vonillas.  
 8 Q. How are their responsibilities allocated?  
 9 A. Christina Gallegos primarily does clerical  
 10 work, logging in and Xeroxing and that kind of stuff.  
 11 JoAn does a little bit of analytical work and most of  
 12 the Board scheduling, proofreading and special -- you  
 13 know, looking at things. Hilary started two weeks ago  
 14 and she's learning.  
 15 Q. Aside from the report that you wrote, SAD  
 16 Exhibit 4, and the drafts you're currently working on,  
 17 are you aware of any assessments of the waiver-granting  
 18 function in the Department?  
 19 MR. VIRJEE: Objection. Vague and ambiguous.  
 20 THE WITNESS: I don't understand.  
 21 Q. BY MR. JACOBS: You talk in the report in the  
 22 first page that general waivers offer flexibility.  
 23 Do you see that?  
 24 A. Yes.  
 25 Q. And then you talk about how some waivers were

1 eliminated by statutory changes.  
 2 Do you see that?  
 3 A. Uh-huh.  
 4 Q. So I take this paragraph to be an assessment of  
 5 the role that waivers play in the administration of the  
 6 State's educational policies, and second, in the latter  
 7 part of it, a discussion of how, with some statutory  
 8 changes, that administrative process as a whole can be  
 9 streamlined.  
 10 Do you agree with that?  
 11 MR. VIRJEE: I'm sorry, that's vague and  
 12 ambiguous.  
 13 Which statutory process, the waiver statutory  
 14 process?  
 15 MR. JACOBS: I'm sorry, just make an objection  
 16 and --  
 17 MR. VIRJEE: Vague and ambiguous and  
 18 unintelligible.  
 19 THE WITNESS: I'm not sure I can. I'm not sure  
 20 I can. What I'm saying is here is what the general  
 21 waivers are about, and that sometimes they identify a  
 22 need for legislative change, and sometimes that happens.  
 23 Q. BY MR. JACOBS: Are you aware of any  
 24 assessments to the same affect, other than the one that  
 25 you wrote here, or perhaps that you'll have in your '99

1 and 2000 report?  
 2 A. About the waiver processes?  
 3 Q. Correct.  
 4 A. No, I don't think so.  
 5 Q. Are you aware of any comparative studies that  
 6 assess California's waiver process against the waiver  
 7 processes of other states?  
 8 A. Okay. I did respond to some kind of a federal  
 9 or nationwide survey, and we can get a copy of the  
 10 report. And, you know, I had a thing I filled out about  
 11 waivers and how we did and what we did, so it's in the  
 12 report.  
 13 Q. What report is that?  
 14 A. I don't really know exactly. I might be able  
 15 to put my hands on it in my office. It was nationwide.  
 16 I know it surveyed all states, but who did it and why, I  
 17 don't remember.  
 18 Q. To the best of your recollection, it is a  
 19 survey focused on the waiver-granting function in the  
 20 various states?  
 21 A. Yes. Partly it was to do, as I recall, with a  
 22 suggestion that there may be more waivers from federal  
 23 laws granted to the State level, so they wanted to know  
 24 what was existing.  
 25 Q. Okay. And this was last year sometime, 2000?

1 A. Maybe the year before.  
 2 Q. Are you aware of any other comparative  
 3 assessments state by state?  
 4 A. No.  
 5 Q. Have there been any studies about your office  
 6 in terms of proposed changes to streamline its  
 7 functioning?  
 8 MR. VIRJEE: Objection. Calls for speculation.  
 9 THE WITNESS: I've made changes to streamline,  
 10 but there's not been any discussion. It's just things I  
 11 do.  
 12 Q. BY MR. JACOBS: Let's go to the draft minutes,  
 13 California State Board of Education January 10 to 11.  
 14 A. And these are this whole set, so we need to  
 15 have a recess so I can look through it.  
 16 Q. Can I focus you, though, a little bit?  
 17 A. All right.  
 18 Q. This is SAD No. 5. In terms of your review of  
 19 it, what I'm going to ask you is just to in summary  
 20 fashion describe what these kinds of waiver requests  
 21 relate to.  
 22 A. All right.  
 23 MR. VIRJEE: Which kind? Are you on a specific  
 24 page?  
 25 MR. JACOBS: I'm looking at page 6, I think is

1 where the draft minutes start insofar as waivers are  
 2 concerned.  
 3 MR. VIRJEE: Thank you.  
 4 THE WITNESS: Okay.  
 5 MR. JACOBS: I may be wrong about that.  
 6 THE WITNESS: Yeah, I think you are.  
 7 MR. JACOBS: It may be that item 11 is the  
 8 first.  
 9 MR. VIRJEE: Item 11 on page 5?  
 10 MR. JACOBS: Correct, is the first waiver.  
 11 THE WITNESS: Right. Correct.  
 12 Q. BY MR. JACOBS: In brief, what is item 11, the  
 13 new policy guideline about the Carl D. Perkins  
 14 Vocational and Applied Technology Education Act of 1998  
 15 about?  
 16 A. It's actually a waiver given to the State by  
 17 the federal government. This is a -- the Carl D.  
 18 Perkins Vocational Education Act is federal funds for  
 19 vocational programs. And the law has a limit on --  
 20 let's see, it's below a certain amount of money that you  
 21 receive you have to be in a consortium.  
 22 Q. And a consortium is what?  
 23 A. Get in with other districts in your area and  
 24 form a consortium to receive and distribute the funds.  
 25 Q. Item 12.

1 A. Yes.  
 2 Q. Modification of State Board waiver policy  
 3 99-05, retroactive waivers.  
 4 A. It was postponed.  
 5 Q. Is this the policy that is potentially affected  
 6 by the pending legislation that we discussed?  
 7 A. No.  
 8 Q. What is this?  
 9 A. It was attached to this document. Maybe it was  
 10 this document.  
 11 Q. Are you looking at 2?  
 12 A. I didn't number them.  
 13 MR. VIRJEE: She's referencing DOA 30454.  
 14 Q. BY MR. JACOBS: What was the -- did you present  
 15 item 12 to the State Board?  
 16 A. No, because it was postponed.  
 17 Q. So nothing happened on item 12?  
 18 A. No.  
 19 Q. Do you have a presentation in -- did you later  
 20 make a presentation on 99-05?  
 21 A. No.  
 22 Q. Is it postponed indefinitely?  
 23 A. Basically, yes. It was put on twice and  
 24 postponed formally twice, and I haven't seen it back  
 25 since then.

1 Q. And the -- what's the history? Why has this  
 2 been postponed several times?  
 3 MR. VIRJEE: Objection. Calls for speculation.  
 4 THE WITNESS: Amendments were being proposed.  
 5 Q. BY MR. JACOBS: Are you involved in that?  
 6 A. I was not.  
 7 Q. Would you present the amendments?  
 8 A. No, I wouldn't have in this case.  
 9 Q. I see. And who was -- who do you understand  
 10 would have made that presentation?  
 11 A. Board staff probably.  
 12 Q. Okay. Item 13, modification of 99-06.  
 13 Is that the -- is that a discussion -- is that  
 14 a topic that is covered by the -- by SAD-8?  
 15 A. Yep.  
 16 Q. Did you present item 13?  
 17 A. No.  
 18 Q. Did Mr. Greeting present it?  
 19 A. Yes.  
 20 Q. Okay. Now let's go to page 6.  
 21 A. Okay.  
 22 Q. The first item on there for Oceanside Unified  
 23 School District, item WC-1 --  
 24 A. Yes.  
 25 Q. -- in brief and in summary, what is that about?

1 A. The regulations regarding attendance accounting  
 2 for Charter schools are different from those used by  
 3 regular schools, and this is a request to use a regular  
 4 school type of accounting.  
 5 Q. In the -- is this a case where if you use a --  
 6 the affect of not getting a waiver for a school that  
 7 uses the regular school accounting, is it an audit  
 8 finding?  
 9 MR. VIRJEE: Objection. Calls for speculation.  
 10 THE WITNESS: I don't think so.  
 11 Q. BY MR. JACOBS: What kind of impact does not  
 12 getting a waiver if you're out of compliance have?  
 13 MR. VIRJEE: Objection. Lacks foundation.  
 14 Calls for speculation.  
 15 THE WITNESS: I'm not sure.  
 16 Q. BY MR. JACOBS: Do you have any information  
 17 about what an out-of-compliance situation on this one --  
 18 on WC-1 would lead to?  
 19 A. Well, it probably -- well --  
 20 Q. That's not the way you refer to it?  
 21 A. No.  
 22 Q. How would you refer to it?  
 23 A. In most cases this is a regular school that's  
 24 becoming a Charter, and they want to keep their calendar  
 25 and their scheduling the same as they had it before and

1 not to go to the new rules which are specific to Charter  
 2 schools. Has to do with how they count ADA.  
 3 Q. And, again, do you have an understanding of  
 4 what the enforcement mechanism is if you're out of -- if  
 5 you're using the standard that's not prescribed for  
 6 Charter schools and you're a Charter school?  
 7 MR. VIRJEE: Asked and answered. Calls for  
 8 speculation. Lacks foundation.  
 9 MR. STURGES: Also object on the grounds of  
 10 relevance.  
 11 THE WITNESS: I don't know.  
 12 Q. BY MR. JACOBS: Instructional time penalty,  
 13 item WC-2, what's that about?  
 14 A. This is when a district fails to provide the  
 15 required amount of minutes. And the statute has a  
 16 waiver authority for this, a specific waiver authority  
 17 to allow the Board to waive the penalties.  
 18 Q. And the penalties are -- are they audit-related  
 19 penalties?  
 20 A. Yes.  
 21 Q. And to the best of your recollection, was this  
 22 a case where there was an audit finding and the Round  
 23 Valley Unified School District wanted to avoid the  
 24 penalties from that audit finding?  
 25 A. Yes.

- 1 Q. In that connection did the approval with  
2 conditions -- what were the conditions that you had in  
3 mind?  
4 A. I can't recall without looking.  
5 Q. Instructional time penalty waivers, are they a  
6 rare or -- on a scale of waiver requests that you get,  
7 is that a rare or a common one?  
8 MR. VIRJEE: Objection. Vague and ambiguous.  
9 THE WITNESS: I may do one a month, I may not.  
10 Q. BY MR. JACOBS: Do you have an approach to  
11 dealing with instructional time penalty requests?  
12 A. Yes.  
13 Q. And what is your approach?  
14 A. There's a policy.  
15 Q. Is this a Board policy?  
16 A. Uh-huh, it's defined in statute.  
17 Q. And it says you can grant the waiver, but  
18 certain things have to have -- certain things have to be  
19 set in motion?  
20 A. Basically, yes.  
21 Q. And does that include -- I'll use my words and  
22 you can correct me if you don't like them -- getting  
23 into compliance with the instructional time  
24 prescription?  
25 A. Yes, and more. You have to make up more.

- 1 Q. You have to compensate for the lost time?  
2 A. Yes.  
3 Q. And these policies are -- how does a member of  
4 the public find out what the Board of Education policies  
5 on waivers are?  
6 A. Either from the Board or from me, or possibly  
7 the staff member who works on this issue.  
8 Q. Is there a -- I take it they're -- to the best  
9 of your knowledge, they're not routinely put on the web;  
10 is that correct?  
11 A. No. That was something I was going to do with  
12 my new assistant.  
13 Q. Good. And if a member of the public calls you  
14 up and says, can you send me a set of the Board waiver  
15 requests, are you equipped to do that? I'm sorry, the  
16 Board waiver policies.  
17 A. Not really. It would be messy. I mean --  
18 Q. As opposed to you doing it, is there a -- to  
19 your knowledge, is there a place in the State apparatus  
20 where you could get a set of all of the Board waiver  
21 policies?  
22 A. I have a draft or a compilation, kind of, but I  
23 have not done it for a number of years and I'm not  
24 really passing it out anymore. And the Board office  
25 probably just has a file that they'd have to finger

- 1 through.  
2 Q. There's a publication that reports on the State  
3 waiver practices, I take it? Are you aware of this,  
4 sort of newsletter that goes to districts?  
5 A. Yes.  
6 Q. Do you get that publication?  
7 A. I've asked for it, and they keep forgetting to  
8 send it to me, because I don't subscribe and I don't  
9 want to pay the money. I thought it might be common  
10 courtesy that I would see what they're writing about me,  
11 but they don't think that way. But they call me up and  
12 ask me what to say.  
13 Q. Miller Unruh Reading Specialist, item WC-3,  
14 what that's about?  
15 A. Current statute says you cannot use these  
16 funds, school-based coordinated program funds, to pay  
17 for a Miller Unruh reading specialist.  
18 Q. Waiver requests come in on this one, are  
19 they -- strike that.  
20 Does this waiver have an applicable Board  
21 policy?  
22 A. Yes, otherwise it wouldn't be on consent.  
23 Q. Of course. And the policy on this one, does it  
24 have a get-into-compliance component?  
25 A. No, this is -- no.

- 1 Q. This is one where --  
2 A. A district thinks they want to do this, and  
3 they request it.  
4 Q. And then WC-4, this is the same thing?  
5 A. Uh-huh.  
6 Q. And I take it on the scale of in your work,  
7 common to uncommon, these reading specialist requests  
8 are pretty common, right?  
9 A. Yes.  
10 Q. And resource specialists, WC-5.  
11 A. Okay. It kind of explains it. The caseload in  
12 regulation and statute is 28 for a resource specialist  
13 and there is an allowance to go up to 32 with a waiver.  
14 Q. So the waiver is to cover the difference  
15 between 28 and 32?  
16 A. Correct.  
17 Q. And this one, I take it from looking at the  
18 minutes, this is another one, this resource specialist  
19 one, that you would put on the common side of the scale,  
20 correct?  
21 A. Definitely.  
22 Q. And there's a Board policy, of course, because  
23 it's on the consent?  
24 A. It's actually a regulation that's real  
25 specific.

1 Q. As to when waivers will be granted?  
 2 A. (Witness nods head.)  
 3 Q. Is the regulation under the authority of 56362  
 4 (c), do you know?  
 5 A. Title 5 reg. I don't have the reg cited here,  
 6 but it should have been.  
 7 Q. That's why this is a draft.  
 8 A. You're asking if I know what the reg is? There  
 9 is a reg that explains 52362(c), but I don't have it.  
 10 Q. And that regulation also deals with waivers?  
 11 A. Of that type.  
 12 Q. Okay. Item WC-7, funds school improvement SB  
 13 1882 Funds/School Improvement Development Funds.  
 14 What's that about?  
 15 A. Let's see. The way education funding in  
 16 California happened, programs were started and certain  
 17 schools got into it, others didn't, maybe it was capped  
 18 or something. And then maybe later other fund sources  
 19 came along and some got it and some didn't. And this is  
 20 what we call equalization so that they want to put  
 21 together funds and share it between all these high  
 22 schools in their one district.  
 23 Q. And the funds in question are funds for what  
 24 use?  
 25 A. The SB 1882, the staff development funds and

1 SIP funds, which are school improvement funds.  
 2 Q. And school improvement in this context means  
 3 what?  
 4 A. I don't know much about the program. It's a  
 5 program that has requirements. It's a section of the Ed  
 6 Code.  
 7 Q. Now the quasi consent waivers. I think we  
 8 talked about Carl D. Perkins, but here it's on  
 9 quasi-consent.  
 10 Why is that?  
 11 A. Because I hadn't had a policy approved yet.  
 12 Q. And that actually was an item that I think you  
 13 would put on the common side of your scale, correct --  
 14 A. Yes.  
 15 Q. -- in terms of how many waivers you were  
 16 getting?  
 17 Community day school co-location, we talked  
 18 about that, did we not, in conjunction with your report.  
 19 A. Uh-huh. Yes.  
 20 Q. County Community School Commingling?  
 21 MR. YANGER: What item are we talking about?  
 22 MR. JACOBS: Item W-13.  
 23 THE WITNESS: A community day school is for  
 24 expelled students. A county community school is more  
 25 like court-related, county run. I don't really know

1 precise other than I believe it's a different --  
 2 Q. BY MR. JACOBS: Is the issue again geographic?  
 3 A. Similar issues to do with the commingling.  
 4 Q. And commingling meaning putting the two  
 5 institutions geographically close together?  
 6 A. Or in this case it says, serves K-6 students  
 7 with 7-12 students in a combined program.  
 8 Q. So the waiver allows you to mix the two age  
 9 groups and the rules that's being waived is a rule that  
 10 prohibits the mixing of those two groups?  
 11 A. Exactly.  
 12 Q. On grade 9 Class Size Reduction, item W-14.  
 13 A. Current statute allows funding for one English  
 14 class and one other class among math, social science  
 15 and -- the core. And this district -- this district  
 16 had -- they wanted to have two English courses,  
 17 basically, and a math course funded.  
 18 Q. Did you have guidance from the Board of  
 19 Education in advance of considering this waiver request?  
 20 A. No. No. No, not written -- no policy.  
 21 Q. No policy. And you recommended for approval  
 22 with conditions?  
 23 A. Yes.  
 24 Q. Do you remember what the conditions were?  
 25 A. It's related to -- since the funding source and

1 the law has enough money for two whole classes of your  
 2 9th grade contingent, if they don't exceed that amount,  
 3 this waiver allows them to spread it to three as long as  
 4 they still maintain the 20-to-1 ratio that's required.  
 5 It's a conditional waiver. They have to maintain the  
 6 law. They can't do over the amount allowed.  
 7 Q. And we don't have the action column on this  
 8 draft for the quasi-consent waivers up through W-14.  
 9 A. You don't have an action column?  
 10 Q. It's not filled out.  
 11 A. I think it's done --  
 12 Q. Maybe it's done at the end. I guess it is. It  
 13 says, Ms. Bergeson moved that the State Board approve  
 14 the requests. So we know that 1 through 15 were  
 15 recommended for approval and they were, in fact,  
 16 approved, correct?  
 17 A. Uh-huh.  
 18 Q. Let's just do -- 15 is a IIUSP school.  
 19 A. Actually, this is another one that -- this is  
 20 what I call a date waiver. It's a requirement to have  
 21 completed something, in this case --  
 22 Q. This is a case where schools were designated as  
 23 IIUSP schools, and they were to have had a contract with  
 24 the external evaluator and appointment of the required  
 25 site and community team by November 15 and had not done

1 so; is that correct?  
 2 A. Right. And so to be in compliance of the law,  
 3 they had to waive that date, November 15th, and  
 4 request -- I asked them to request a replacement date,  
 5 when would they be done by, and that date would be  
 6 approved.  
 7 Q. And, in fact, that's what you provided, a  
 8 complete list of schools with a request and replacement  
 9 date, correct?  
 10 A. Correct.  
 11 Q. Okay. 18 and 19 are special ed situations,  
 12 correct?  
 13 A. Yes.  
 14 Q. And 20 and 21 are Peer Assistance and Review  
 15 Program cases, right?  
 16 A. Uh-huh.  
 17 Q. As is 22.  
 18 A. They're slightly different though. There's two  
 19 types here. One is the R -- related to the ROP, which  
 20 is the regional occupational center program staff.  
 21 Q. And the other is related to?  
 22 A. Use of retired teachers to be consulting  
 23 teachers in the program.  
 24 Q. And then item W-23 and W-24?  
 25 A. Okay. This is basically a waiver, although we

1 call it a petition because the statute named it that  
 2 way, of the requirement to -- well, under the  
 3 instructional materials funds the State Board sets a  
 4 percentage that may be spent on non-adopted and a  
 5 percentage that must be spent on adopted texts.  
 6 Q. This is separate from Schiff-Bustamante,  
 7 correct?  
 8 A. Yes, big "I," big "F." And so this is a  
 9 non-adopted text that they'd like to spend up at the 70  
 10 percent, which is required for adopted text for this  
 11 particular text.  
 12 Q. In conjunction with the approval, were there  
 13 any requirements that the Board placed on these school  
 14 districts?  
 15 A. Well, of course on these we always review that  
 16 they've met all the criteria of a petition, which is a  
 17 multipaged document, 30-day public notice and a lot of  
 18 stuff that they have to do. And then I don't have the  
 19 conditions listed, so I don't know that -- other than  
 20 they're always time limited.  
 21 Q. The waivers are time limited?  
 22 A. My waivers are always time limited.  
 23 Q. So at some point they're going to have to come  
 24 back for another waiver or move into -- this case move  
 25 into the percentage --

1 A. Required by the State Board.  
 2 Q. And the penalty on this one for being out of  
 3 compliance is also a financial penalty?  
 4 MR. VIRJEE: Objection. Calls for speculation.  
 5 Lacks foundation.  
 6 THE WITNESS: They're only allowed  
 7 prospectively.  
 8 Q. BY MR. JACOBS: So this is not a waiver to  
 9 correct a situation that arose in the past, this is a  
 10 prospective waiver?  
 11 A. Right.  
 12 Q. Now, non-consent waivers, again, these are  
 13 non-consent because?  
 14 A. Board staff indicate to me they want to have  
 15 discussion.  
 16 Q. Okay. So we get to our favorite code section.  
 17 A. I usually call them action.  
 18 Q. You call them action rather than non-consent?  
 19 A. Yeah.  
 20 Q. So this was -- the first one is W-16, which had  
 21 been postponed, and it was a 60119 issue, correct?  
 22 A. Yes.  
 23 Q. And what happened with -- first of all, what  
 24 were the circumstances of this waiver request?  
 25 A. At the December meeting this was a waiver

1 request I got in after I had the policy that said I had  
 2 to return it if there was an audit,  
 3 apportionment-related audit. And when I asked the  
 4 superintendent, do you have an apportionment-related  
 5 audit penalty, she said no. And then I said, will you  
 6 certify to that, and she said, yes. So I made up a form  
 7 and had her certify to that, and I brought it forward.  
 8 Q. And at the December meeting was there  
 9 discussion of it?  
 10 A. Yes.  
 11 Q. And what was the discussion at the December  
 12 meeting?  
 13 A. I don't know exactly, but it would be --  
 14 obviously it was postponed. I think there was  
 15 discussion about the circumstance involved in this  
 16 particular school, like why didn't you -- why wasn't the  
 17 hearing held, and do you have adopted text or not, and  
 18 those kinds of things discussed.  
 19 Q. Was there a discussion of whether they -- you  
 20 said whether they had adopted text.  
 21 What do you mean by that?  
 22 A. Textbooks for all children.  
 23 Q. For all children, that was the way the question  
 24 you recall being framed?  
 25 A. Yes.

1 Q. And in the case of Mesa Union, do you recall  
2 the union?  
3 A. She had adopted text for all her students.  
4 Q. Let me just frame this in terms of one of the  
5 issues in the case. One of the issues in the case is  
6 whether having textbooks means you have a copy of the  
7 textbook in a classroom that you share with other  
8 students, or whether you have a copy of the textbook  
9 that you individually can take home.  
10 Did you have an understanding from that  
11 discussion as to what was meant by, we have adopted  
12 textbooks for all students?  
13 A. No.  
14 Q. And the decision was that the Board would be  
15 working with the Department to find a solution to the  
16 problem presented by W-16 and W-17, correct?  
17 A. Yes, basically telling the district that in  
18 spite of what I thought, they didn't think -- they  
19 weren't willing to act on their waiver request, in spite  
20 of the fact there was no audit finding.  
21 Q. And this was the -- this is with reference to  
22 the discussion you had with Board staff about how to  
23 interpret the policy?  
24 A. Exactly.  
25 Q. And with W-17 on South Bay, was there also a

1 of the office?  
2 A. Yes.  
3 Q. But don't you also have a calendar of when  
4 certain kinds of waivers should be submitted?  
5 MR. VIRJEE: Objection. Vague and ambiguous.  
6 THE WITNESS: I don't think so. I don't know  
7 what you're talking about.  
8 Q. BY MR. JACOBS: So as a matter of your policy,  
9 waivers on any topic can come in at any time?  
10 A. Yes.  
11 Q. Okay. So let me ask you about -- is the waiver  
12 calendar 2000, 2001 that we printed from the CDE  
13 website -- which I don't have to mark as an exhibit  
14 unless one of you want to. I just want to know if this  
15 is the calendar you were referring to?  
16 A. Yes, this is -- maybe not -- yeah, it's a  
17 calendar of that type. We may have made some date  
18 changes.  
19 (Recess taken.)  
20 Q. BY MR. JACOBS: Could you please turn to item  
21 WC-11 on page 8 of 12 on SAD No. 6. SAD No. 6 is the  
22 agenda, March 7th and 8th, 2001, for the California  
23 State Board of Education, again, printed from the  
24 website.  
25 Are WC-11 and WC-12 the same kinds of requests?

1 discussion with the South Bay representative about  
2 whether South Bay had adopted text for all children?  
3 A. I don't think so. They were kind of handled as  
4 a group. He was there, talking.  
5 Q. Okay. W-25 is about number of students for  
6 resource teacher, correct?  
7 A. Uh-huh.  
8 Q. And that one was denied, correct?  
9 A. Uh-huh.  
10 Q. And then we go to item 14.  
11 What is the reference there, Digital High  
12 School Project Applications - Contested Applications?  
13 A. That's not a waiver. I don't know.  
14 Q. Are we done with waivers?  
15 A. Yes.  
16 Q. Now, there's a calendar for considering waiver  
17 requests, correct?  
18 MR. VIRJEE: Objection. Vague and ambiguous.  
19 THE WITNESS: I have a calendar that's guidance  
20 for districts as to how long a waiver might take so I  
21 can tell them -- if they say, I'm going to send you a  
22 waiver, when can I get it approved, it's an approximate  
23 calendar. It's not guaranteed.  
24 Q. BY MR. JACOBS: Is that something you  
25 contributed to the process when you became the director

1 No, I guess not. Let's take them separately.  
2 WC-11, what that's about?  
3 A. The requirement currently is if you have a  
4 Saturday school of a certain length, if you have any  
5 needy children in your district, you have to provide a  
6 meal.  
7 Q. Saturday schools, do you have an understanding  
8 of what a Saturday school at Hanford Joint Union High  
9 School District related to?  
10 A. No, I mean other than it's a school that goes  
11 to school on Saturdays. I don't know. That's what it  
12 says.  
13 Q. Do you have an understanding of typically why  
14 schools are holding sessions on Saturday?  
15 MR. VIRJEE: Objection. Calls for speculation.  
16 THE WITNESS: Not really.  
17 Q. BY MR. JACOBS: Is it a kind of multi-tracking  
18 program?  
19 A. I don't know.  
20 Q. So they asked for a renewal to waive the  
21 Saturday meal mandate.  
22 Do you have a policy dealing with meal  
23 mandates, a Board policy? I'll narrow it. A written  
24 Board policy.  
25 A. I'm --

1 Q. You're not sure?  
 2 A. Yeah, I'm trying to think right now. I'm not  
 3 really sure. It's a very cut-and-dried waiver, but I'm  
 4 not sure it's a Board policy.  
 5 Q. What are the central criteria for deciding  
 6 whether to grant it or not?  
 7 A. It's to do with how many kids are needy, how  
 8 many hours the school is actually in session. I don't  
 9 know exactly. It's just on a form and they fill it out.  
 10 Q. There is a particular form for the State meal  
 11 mandate waiver?  
 12 A. Yes.  
 13 Q. Is that a form you developed?  
 14 A. No.  
 15 Q. That predated you?  
 16 A. Yes.  
 17 Q. Is the State meal mandate a waiver that you  
 18 would characterize in your scale as common or uncommon?  
 19 MR. VIRJEE: Objection. Vague and ambiguous.  
 20 THE WITNESS: They're common.  
 21 Q. BY MR. JACOBS: They are common?  
 22 A. Yeah.  
 23 Q. And the next one is WC-12 from Foresthill Union  
 24 School District for renewal of the summer school state  
 25 meal mandate.

1 Is that the same?  
 2 A. Similar.  
 3 Q. What's the difference?  
 4 A. Well, the summer school session obviously is  
 5 during the week. And, again, the requirement is if you  
 6 have needy kids coming to your school, you're supposed  
 7 to serve a meal. So these are meeting certain criteria  
 8 to not have to do that.  
 9 Q. Are the criteria set forth on the form?  
 10 A. Yes.  
 11 Q. And E.C. 33051(c) will apply on item WC-11.  
 12 What's that a reference to?  
 13 A. That says that if a general waiver has been  
 14 requested and received for two consecutive years, the  
 15 district does not need to continually reapply, but the  
 16 Board may rescind it at any time.  
 17 Q. Do you keep track of -- as to which waivers  
 18 E.C. 33051(c) applies?  
 19 A. Oh, yes.  
 20 Q. Do you have a database of that?  
 21 A. I could search for -- yeah, I guess I could.  
 22 Q. What's your mechanism for keeping track?  
 23 A. Each waiver will be marked whether it applies  
 24 or doesn't in the recommendation column.  
 25 Q. So when the waiver gets returned to the school

1 district, as a matter of paperwork does it say on it  
 2 that E.C. 33051(c) applies?  
 3 A. Yes.  
 4 Q. And then is the implication of that spelled  
 5 out, you do not need to apply in subsequent years unless  
 6 the Board revokes the waiver?  
 7 A. In most cases I write E.C. 33051(c) will apply.  
 8 Sometimes I say a little bit more to explain it.  
 9 Q. So this is in the general waiver category?  
 10 A. Yes.  
 11 Q. And is there a similar rule -- is there a  
 12 similar rule that generally applies to special waivers?  
 13 A. No.  
 14 Q. Are there special waivers that internally to  
 15 that special waiver have a similar provision?  
 16 MR. VIRJEE: Objection. Code speaks for  
 17 itself.  
 18 THE WITNESS: You'd have to look at each one.  
 19 Q. BY MR. JACOBS: Are you aware of any that have  
 20 that?  
 21 A. Not like that, no. Not with this two-year  
 22 thing, no.  
 23 Q. The Academic Performance Index, adult testing  
 24 irregularities set of waiver requests.  
 25 Why are you laughing?

1 A. My latest headache.  
 2 Q. There are a lot of these, aren't there?  
 3 A. Right now.  
 4 Q. And what are they about?  
 5 A. It's fairly self-explanatory, if you read  
 6 these. For example W-1, I mean, this is a district who  
 7 did not -- no, this is a school -- this is a district  
 8 for whom one school, Westside Park School, didn't  
 9 receive a valid API.  
 10 Q. An API is an academic performance --  
 11 A. Academic performance index score.  
 12 Q. And as you understand it, not receiving a valid  
 13 API means what?  
 14 A. You're excluded from the Governor's performance  
 15 award program, for starters.  
 16 Q. But by not receiving a valid API, that's a  
 17 result of what? Reason renders an API invalid?  
 18 A. In this case it was because either  
 19 self-reported or discovered by the Department there was  
 20 an adult testing irregularity.  
 21 Q. And that led to the invalid API?  
 22 A. That's right.  
 23 Q. And an adult testing irregularity is what?  
 24 MR. VIRJEE: Objection. Overbroad.  
 25 THE WITNESS: I mean, they found something.

1 They thought something went wrong with the testing,  
 2 someone has reported as cheating, whatever. Something  
 3 is wrong.  
 4 Q. BY MR. JACOBS: That's an example, cheating is  
 5 an example?  
 6 A. Yes.  
 7 Q. So they're requesting a waiver to participate  
 8 in the Governor's program that you referenced,  
 9 notwithstanding the adult testing irregularity?  
 10 A. Not exactly. The way that the API awards work  
 11 is you had to have a base year and then an award year,  
 12 both valid, to get an award, and it had to gain by  
 13 certain -- you know, there's a lot of criteria.  
 14 These people were eliminated from this year  
 15 here that we're talking about, '99, 2000, and so they  
 16 basically -- if they were eligible because of point  
 17 gains, they weren't going to get the award money because  
 18 they were invalidated. And also because they wouldn't  
 19 have a base year for the next lump, they get run out  
 20 again the next year. So they basically have a  
 21 three-year thing where they can't be in the program.  
 22 Q. In the case of W-1 it was recommended for  
 23 approval with conditions?  
 24 A. Uh-huh.  
 25 Q. And the same with W-2.

1 And then W-3 was recommended for denial?  
 2 A. Uh-huh.  
 3 Q. Can you, in summary fashion, explain the  
 4 distinctions?  
 5 MR. VIRJEE: Objection. Compound.  
 6 THE WITNESS: Well, I can explain that the  
 7 conditions under which the waiver was granted are that  
 8 basically we are not going to reinstate your API for the  
 9 year 2000, the current year, but we will allow you to be  
 10 back in the running for 2001 with a twice the target  
 11 growth rate to make up for the missing year.  
 12 Q. BY MR. JACOBS: So instead of one year, a new  
 13 result, another year, and then a new result, the idea is  
 14 to go back to the first year and have two years to  
 15 achieve a two-year result?  
 16 A. Yeah.  
 17 Q. And then with the denial?  
 18 A. Also the limited nature part. They had to  
 19 verify what actually went on and how many kids affected  
 20 and that stuff.  
 21 I'm sorry, the denial?  
 22 Q. Uh-huh.  
 23 A. Here you can read it. The district disagreed  
 24 with the department's premises that there were any adult  
 25 testing irregularities. So they wanted everything.

1 They wanted the API back for both years.  
 2 Q. So in a way they're in the wrong process,  
 3 right, they're requesting a waiver, but they're denying  
 4 that the initial findings should have been made,  
 5 correct?  
 6 A. Yeah.  
 7 Q. Is that how you --  
 8 A. Partially. But, actually, the action on this  
 9 was not denial, it was withdrawn by the district. This  
 10 is a draft and doesn't show the actual action here, I  
 11 don't think. We don't have our final out until April.  
 12 Yeah, it's a draft. The district withdrew, and they're  
 13 going to come back sometime.  
 14 Q. I'm going to ask you about some waivers that  
 15 relate to the multitrack year-around program.  
 16 MR. JACOBS: And I would like to mark a  
 17 document dated February 1, 2001, a memo to district  
 18 superintendents and year-around education  
 19 representatives from Leroy Small. Subject, annual  
 20 certifications and waivers, substantial enrollment in  
 21 multitrack year-around programs, that we printed from  
 22 the website, the CDE website, on March 18th, 2001.  
 23 (Exhibit SAD-9 was marked.)  
 24 Q. BY MR. JACOBS: Do you have -- did you  
 25 participate in the formulation of the policy reflected

1 in SAD-9?  
 2 A. No.  
 3 Q. Did this policy get formulated outside of your  
 4 office?  
 5 A. It appears to me. I've never seen this  
 6 document before. It says State Allocation Board at the  
 7 top.  
 8 Q. What is the State Allocation Board?  
 9 MR. VIRJEE: Objection. Calls for speculation.  
 10 THE WITNESS: I don't know exactly.  
 11 Q. BY MR. JACOBS: Do you know Leroy Small?  
 12 A. No, but according to his title, he worked for  
 13 us.  
 14 MR. VIRJEE: "Us" being the Department of  
 15 Education?  
 16 THE WITNESS: Department of Education. Well,  
 17 it says that.  
 18 Q. BY MR. JACOBS: So as you look at this  
 19 document, is this a waiver issue that is not addressed  
 20 by your office?  
 21 A. Correct.  
 22 MR. VIRJEE: The document speaks for itself.  
 23 Q. MR. JACOBS: Now, let me ask you about another  
 24 document. This one we'll mark as SAD-10. It's the  
 25 waivers and certifications as of February 28th, 2001.

1 (Exhibit SAD-10 was marked.)  
 2 MR. VIRJEE: Did SAD-9 include this cover page?  
 3 MR. JACOBS: No, it's just the memo.  
 4 Q. Are you familiar with this document?  
 5 A. No.  
 6 Q. Does this document, to the best of your  
 7 understanding, also refer to waivers that are not  
 8 processed by your office?  
 9 MR. VIRJEE: Objection. The document speaks  
 10 for itself.  
 11 Q. BY MR. JACOBS: Does it?  
 12 A. It says SAB waiver. That's a State Allocation  
 13 Board waiver.  
 14 Q. So even though this is coming from CDE School  
 15 Facilities Planning Division --  
 16 A. It's linked all over the state on the web,  
 17 linked to other sites.  
 18 Q. That's the way you understand that?  
 19 A. Yes.  
 20 Q. And SAB waivers, in general, I take it your  
 21 testimony is you have no involvement in them?  
 22 A. None.  
 23 Q. Now, let me ask you about the next document in  
 24 the stack, which is entitled One-Year Renewable Waiver  
 25 for Severely Impacted MTYRE Schoolsites.

1 A. Uh-huh, for '99, 2000.  
 2 Q. For '99, 2000, correct.  
 3 (Exhibit SAD-11 was marked.)  
 4 Q. BY MR. JACOBS: So the first question is: Is  
 5 this form associated with --  
 6 A. This part?  
 7 Q. Yes.  
 8 A. Yes, I think it is.  
 9 MR. JACOBS: Let's mark then as the exhibit  
 10 pages 1 through 4 as identified in the top right-hand  
 11 column, and then the K-3 Class Size Reduction Program  
 12 Multitrack Year-Around Education Waiver Request  
 13 Certification as SAD No. 11.  
 14 Q. I take it that this document is a document from  
 15 the California Department of Education as opposed to the  
 16 SAB, correct?  
 17 MR. VIRJEE: The document speaks for itself.  
 18 THE WITNESS: I would think so.  
 19 Q. BY MR. JACOBS: Are you familiar this document?  
 20 A. Not the main part of it.  
 21 Q. Is there a part of it you're familiar with?  
 22 A. I believe I've seen this page.  
 23 Q. The page at the end of the exhibit?  
 24 A. Yes.  
 25 Q. What is your understanding of what this waiver

1 request certification pertains to?  
 2 MR. VIRJEE: That would be the last page of the  
 3 document?  
 4 MR. JACOBS: Correct.  
 5 THE WITNESS: This comes in attached to one of  
 6 my specific waiver forms, filled out with all the  
 7 information on it.  
 8 Q. BY MR. JACOBS: The specific waiver form is a  
 9 multitrack year-around education waiver request?  
 10 A. No, you fill in the title. It's kind of like a  
 11 general where it's just a form.  
 12 Q. So when you say "specific waiver form," you  
 13 didn't mean a waiver form tailored to this particular  
 14 waiver, you meant specific as opposed to general?  
 15 A. Yes.  
 16 Q. Okay. And it is -- on those forms, what kind  
 17 of waiver is being requested?  
 18 MR. VIRJEE: Objection. Asked and answered.  
 19 THE WITNESS: It's used for any waivers that  
 20 are not general waivers.  
 21 Q. BY MR. JACOBS: I'm still being confusing.  
 22 This multitrack year-around education waiver  
 23 request certification, you said, comes attached to one  
 24 of your specific waiver forms?  
 25 A. Yes.

1 Q. And I take it that those waiver forms --  
 2 A. Oh, those particular ones.  
 3 Q. -- relate to multitrack year-around education,  
 4 correct?  
 5 A. Yes.  
 6 Q. And is there a particular category of waiver  
 7 that is being requested on that form when this portion  
 8 of SAD-11 is attached to it?  
 9 A. Yes.  
 10 Q. And what is that?  
 11 A. Well, again, this is one I don't know about. I  
 12 don't review them, I send them out. I know that this is  
 13 the stuff we're checking for.  
 14 MR. VIRJEE: And by "this stuff," let the  
 15 record reflect she's pointing to --  
 16 THE WITNESS: Eligibility criteria that's  
 17 listed and that's specified out of code.  
 18 Q. BY MR. JACOBS: When you say this one you're  
 19 not partly familiar with, is that generally the case  
 20 with -- strike that.  
 21 Why with respect to this one are you less  
 22 familiar than I gathered you were with other waiver  
 23 requests?  
 24 A. Well, this is a whole section of the code. I  
 25 mean, I don't recall all the code. It's a big section

1 and this is a legislative waiver. They wrote it into  
2 the specific code to have it be waived under these  
3 conditions. It's all right out of the statute. So I  
4 don't have a need to do that, there's someone who  
5 reviews them.

6 Q. Who is that?

7 MR. VIRJEE: Objection. Calls for speculation.

8 THE WITNESS: Staff member from the division  
9 that does school facilities.

10 Q. BY MR. JACOBS: Is there a particular person  
11 who you are in contact with in that division about this  
12 category of waiver requests?

13 A. I don't recall the name actually. Dewayne  
14 Brooks is his boss, but I don't recall the name.

15 Q. And have you had substantive involvement in the  
16 review of any of the waivers to which this waiver  
17 request certification is attached?

18 MR. VIRJEE: Objection. Vague and ambiguous.

19 THE WITNESS: If substantive involvement is  
20 scheduling the waivers, I've done that.

21 Q. BY MR. JACOBS: I don't think so. I meant  
22 making a judgment about whether the -- given the range  
23 of discretion that's available, discretion should be  
24 exercised in favor or against any particular waiver  
25 request?

1 attachment?

2 A. No.

3 Q. Did your -- the SAD-11 on its face relates to  
4 1999, 2000.

5 Did you see that? It's on the front page.

6 A. Yes.

7 Q. And so presumably if this waiver program  
8 continues, a new document got issued for 2000, 2001.

9 Did you have any involvement in the preparation  
10 of that document?

11 A. No.

12 MR. JACOBS: I'm going to mark as SAD-12 the  
13 State Board of Education minutes -- agenda for December  
14 6, 7, 2000.

15 (Exhibit SAD-12 was marked.)

16 Q. BY MR. JACOBS: Could you turn to item W-16.  
17 Actually, before we do that, I need to tie down one tent  
18 flap on 11 again. Go back to 11, will you.

19 Do you present to the State Board of Education  
20 waiver requests under the multitrack year-around  
21 education program?

22 MR. VIRJEE: Objection. Vague and ambiguous as  
23 to "present."

24 THE WITNESS: I schedule all waivers, and I may  
25 introduce them to discussion.

1 A. No.

2 MR. VIRJEE: Objection. Assumes facts not in  
3 evidence. There's been no testimony there's been  
4 discretion.

5 Q. BY MR. JACOBS: Is there discretion in the  
6 State Board in granting these requests?

7 MR. VIRJEE: Objection. She said she doesn't  
8 deal with them. Calls for speculation.

9 THE WITNESS: I don't know.

10 Q. BY MR. JACOBS: Just to nail this one down, you  
11 have not advised anyone as to whether a request that  
12 meets the facial criteria that you are in a position to  
13 review should or should not be granted?

14 A. Correct.

15 Q. And are there any multitrack year-around  
16 education waiver requests that you receive to which this  
17 waiver request certification is not attached? I can ask  
18 that a little differently.

19 MR. VIRJEE: You're asking has she ever  
20 received one to which this was attached?

21 Q. BY MR. JACOBS: No. As a matter of identifying  
22 the categories of waivers that are available under the  
23 multitrack year-around education program, are there  
24 waivers that are available that your office processes  
25 that as a matter of routine do not include this

1 Q. BY MR. JACOBS: When a waiver request is on the  
2 agenda, say, for the period January 1, 2000 to the  
3 present, have they been on the consent calendar, have  
4 they all been on the consent calendar?

5 MR. VIRJEE: The one-year reviewable waiver, is  
6 that what we're talking about?

7 MR. JACOBS: Yes.

8 THE WITNESS: No.

9 Q. BY MR. JACOBS: Some of them have been action?

10 A. We haven't had that many of these, and they all  
11 would go to action. I would never put this on consent,  
12 because there's no policy.

13 Q. So these are action.

14 And by action, again, we contemplate the  
15 possibility that the State Board might actually discuss  
16 the waiver request, correct?

17 A. That's right.

18 Q. And do you bring somebody with you when one of  
19 these is on the agenda?

20 A. Yes, if the Board staff said they wanted  
21 discussion on it, I certainly would.

22 Q. As compared with other waiver requests that you  
23 present to the Board, do you tend to defer more to a  
24 staff person that you bring along when it's a multitrack  
25 year-around education waiver request?

1 A. Yes.  
 2 Q. So now back to SAD-12.  
 3 And item W-16, do you see that?  
 4 MR. VIRJEE: What page is that?  
 5 MR. JACOBS: It's on 9 of 10.  
 6 MR. VIRJEE: Thank you. Is there a question  
 7 pending?  
 8 MR. JACOBS: No. I want the witness to be  
 9 still with me on item W-16.  
 10 THE WITNESS: You realize that's an agenda, not  
 11 minutes?  
 12 MR. JACOBS: Yes.  
 13 THE WITNESS: Okay. Go ahead.  
 14 Q. BY MR. JACOBS: With me, item W-16?  
 15 A. Uh-huh.  
 16 Q. Can you explain what the Option One Class Size  
 17 Reduction waiver request from LAUSD was about?  
 18 MR. VIRJEE: Objection. Lacks foundation.  
 19 Calls for speculation.  
 20 THE WITNESS: At this point I think the best I  
 21 could do would be to -- I know this part, it's eligible  
 22 to only school sites with 200 or more students per acre  
 23 and they're receiving funding under a certain  
 24 legislative statute called Option One. And then it's  
 25 only year to year, so each waiver is separately

1 represented, and this one is for 78 sites for the fourth  
 2 year, and three sites for 23 years -- third year for 23  
 3 sites.  
 4 Q. BY MR. JACOBS: Is there a staff person in the  
 5 Department who you worked with outside of your office on  
 6 this waiver request?  
 7 A. Surely.  
 8 Q. Who was that?  
 9 A. Well, again, I don't remember the name of the  
 10 person.  
 11 Q. But it's the same person who handles the --  
 12 A. School facilities.  
 13 Q. And you have in mind the certain same person  
 14 that you were referring to in connection with SAD-11?  
 15 A. Yes. This is the same waiver, I believe.  
 16 Yeah.  
 17 Q. Did you present this to the Board?  
 18 A. I would have just introduced it.  
 19 Q. Did a staff person accompany you to discuss it?  
 20 A. I'm sure.  
 21 Q. Who was that staff person at the December  
 22 meeting?  
 23 MR. VIRJEE: It's been asked and answered  
 24 THE WITNESS: I don't remember. There were  
 25 several people. The division director was one.

1 Q. BY MR. JACOBS: And you -- as with the  
 2 discussion on SAD-11, you had no -- you had the same  
 3 level of substantive involvement that you characterize  
 4 as your substantive involvement in the kinds of waivers  
 5 that are under SAD-11, yes?  
 6 A. Correct.  
 7 MR. JACOBS: Let's just take a minute.  
 8 (Break in the proceedings.)  
 9 MR. JACOBS: Thank you, Ms. Pinegar. I have no  
 10 further questions.  
 11 EXAMINATION BY MR. STURGES  
 12 Q. My Name is Pete Sturges, and I'm the attorney  
 13 for San Francisco Unified School District and Fresno  
 14 Unified School District. Previously you testified that  
 15 school districts undergo audits on an annual basis; is  
 16 that correct?  
 17 A. (Witness nods head.)  
 18 Q. And isn't it true that those audits are  
 19 conducted by private-party auditors hired by the school  
 20 districts themselves?  
 21 A. I said independent auditors, that's my  
 22 understanding.  
 23 Q. To the extent that those auditors came up with  
 24 a rule about when the 60119 process should be concluded,  
 25 that was their independent judgment as to that issue?

1 MR. YANGER: If you know.  
 2 MR. VIRJEE: Objection. Calls for speculation.  
 3 Lacks foundation.  
 4 Q. BY MR. STURGES: I'm only looking for your own  
 5 understanding.  
 6 A. You're talking about the date.  
 7 Q. So to the extent that they concluded it should  
 8 have been done within the fiscal year, was that their  
 9 own independent standard?  
 10 A. I don't think so. It's probably an auditing  
 11 standard.  
 12 Q. Is there anything intrinsic in the waiver  
 13 request process itself that indicates that the school  
 14 district asking for the waiver has violated the law?  
 15 In other words, does the mere fact that you  
 16 have asked for a waiver indicate that you are in  
 17 violation of the law in and of itself?  
 18 A. No.  
 19 MR. STURGES: For the record, I am here on  
 20 behalf of Fresno and San Francisco Unified School  
 21 Districts because the issue of whether this case is  
 22 going to be severed and stayed with respect to the  
 23 cross-complaints has yet to be resolved.  
 24 At this point both Fresno Unified and  
 25 San Francisco Unified School Districts reserve the right

1 to re-call this witness to the extent permitted by law  
2 and the court, and I wanted to put that down for the  
3 record. No more questions.

4 MR. YANGER: Mr. Reed.

5 EXAMINATION BY MR. REED

6 Q. Ms. Pinegar, I'm Kevin Reed. I represent LA  
7 Unified School District. Just had a couple of  
8 questions.

9 One is: Do you tend to see waivers come from  
10 the same school districts again and again, or do you  
11 generally see waivers presented by a diverse array of  
12 the thousand-plus school districts in the State?

13 MR. VIRJEE: Objection. Vague and ambiguous.

14 THE WITNESS: I get waivers from a lot of  
15 school districts. I don't know how many. I'd have to  
16 look in my data base.

17 Q. BY MR. REED: Do you tend to get particular  
18 types of waivers from particular types of school  
19 districts?

20 MR. VIRJEE: Objection. Vague and ambiguous.

21 THE WITNESS: No. I mean, there might be a  
22 waiver that a district applies for over and over because  
23 they don't get it. They have to keep it and renew it  
24 and renew it, and renew it.

25 Q. BY MR. REED: Would you say that there are

1 THE WITNESS: I'm sorry. Yes.

2 Q. BY MR. REED: What other school districts are  
3 you aware of that have requested a waiver of this sort,  
4 a waiver of the Education Code 522122(b) requirements?

5 A. I recall one other district.

6 Q. Santa Ana?

7 A. Yes.

8 Q. Do you recall when that was?

9 A. There's a vague recollection of -- when? I'm  
10 sorry. Everything is annual. This is annual.

11 Q. Why is it annual?

12 A. That's the way the legislature wrote it. They  
13 wanted it to be looked at, you know.

14 Q. And is it your understanding that LA Unified  
15 brings these waivers periodically for a number of  
16 different campuses?

17 A. Correct.

18 Q. Was there a time in May of 2000 when LA Unified  
19 brought such a waiver request to the Board that you  
20 recall?

21 A. That sounds about right. I know they were  
22 back -- wait. That's not fairly recently. This is the  
23 agenda for December.

24 Q. I understand. Do you recall a similar --

25 A. Yes.

1 certain types of waivers that only urban districts apply  
2 for?

3 A. Well, I haven't yet seen a rural district that  
4 has more than 200 kids per acre.

5 Q. So, in other words, there are some waivers that  
6 tend to focus on issues relating to overcrowding on  
7 campuses?

8 A. Of course.

9 Q. And those waivers tend to be presented by urban  
10 school districts?

11 A. Yes.

12 Q. The waiver that was identified in -- I believe  
13 it's SAD-12 in item W-16, LAUSD's waiver, do you  
14 recall -- I'm sorry, let me ask one follow-up question,  
15 which is, the section 52123(c), provisions referenced in  
16 that item, does that relate to certificated teachers?

17 MR. VIRJEE: Objection. Calls for speculation.  
18 Lacks foundation.

19 THE WITNESS: I don't know.

20 Q. MR. REED: Okay. Again, this was just a waiver  
21 that you would have presented and not necessarily worked  
22 up?

23 A. (Witness nods head.)

24 MR. VIRJEE: Objection. Asked and answered.

25 MR. YANGER: You have to answer out loud.

1 Q. -- waiver request having been --

2 A. Yes.

3 Q. How often would you estimate LA Unified brings  
4 these kinds of waiver requests in any given year to the  
5 Board? These kinds, meaning waivers under section  
6 52122(b).

7 A. They're supposed to be brought each year.

8 Q. For any individual school for which the waiver  
9 is logged?

10 A. No, it covers, like it says here, 78 school  
11 sites and 23 -- it covers everybody. In other words,  
12 you don't bring a waiver for each school site, you bring  
13 a waiver for your district.

14 Q. And is it your understanding that when LA  
15 Unified seeks these waivers, it brings it for every  
16 school in the district which needs a waiver?

17 A. Yes.

18 MR. VIRJEE: Objection. Calls for speculation.  
19 Lacks foundation.

20 THE WITNESS: I don't know, but I have tracked  
21 the sites, the names of the sites, and I do know they  
22 are -- those continue. If I say they're on the fourth  
23 year, that means I've tracked that they're there four  
24 years.

25 Q. BY MR. REED: Okay. If you recall -- if you

1 recall a May 10 through 12 Board meeting in which an LA  
 2 Unified waiver under Education Code 52212(b) was on the  
 3 agenda, do you recall that being on a May agenda and  
 4 being moved to a June agenda?  
 5 A. Yes, I think I do.  
 6 Q. Do you recall why that was?  
 7 A. Because the Board wasn't real happy with the  
 8 information it first presented and wanted more work  
 9 done.  
 10 Q. And who had presented the information that the  
 11 Board was not happy, do you recall?  
 12 A. Both staff in LA, staff and -- it was a number  
 13 of people.  
 14 Q. Was it the quality of the information, the  
 15 amount of it, or the actual information itself that the  
 16 Board was unhappy with, if you recall?  
 17 MR. VIRJEE: Objection. Calls for speculation.  
 18 THE WITNESS: They asked for more specifics, I  
 19 think, than what was presented.  
 20 Q. BY MR. REED: Do you recall that those  
 21 specifics were presented at the June meeting?  
 22 A. I believe they were.  
 23 Q. Do you know whether the waiver was, in fact,  
 24 granted in June?  
 25 A. It was.

1 Q. And ultimately to get further information about  
 2 this waiver, we'd need to talk to somebody in Dewayne  
 3 Brook's office that did the subsequent work on this  
 4 waiver?  
 5 A. Correct  
 6 MR. REED: Nothing further.  
 7 MR. YANGER: Mr. Virjee?  
 8 MR. VIRJEE: No questions.  
 9 MR. YANGER: Looks like we're done.  
 10 MR. REED: I would like to take a moment to  
 11 make sure the record is clear. I believe that Judd  
 12 Jordan, our co-counsel, have served objections to the  
 13 deposition notice. I do want to preserve those  
 14 objections. Having so recently joined the litigation as  
 15 cross-defendant, not yet sure of our status as  
 16 intervener, we did not have an opportunity to do  
 17 everything that we believe may ultimately need to be  
 18 done with this witness, and do wish to reserve the right  
 19 to re-notice her deposition.  
 20 MR. YANGER: Mr. Jacobs, did you get a copy of  
 21 those objections?  
 22 MR. JACOBS: I don't want to make a  
 23 representation as to all the paper I've received in this  
 24 case, but it does not come to mind.  
 25 MR. VIRJEE: You've made your objections, and

1 we don't agree with them. And as Mr. Sturges said,  
 2 you've got all the rights that you would have under law.  
 3 (The deposition concluded at 4:12 p.m.)  
 4 ---o0o---  
 5 Please be advised that I have read the  
 6 foregoing deposition. I hereby state there are:  
 7  
 8 (check one) \_\_\_\_\_ NO CORRECTIONS  
 9 \_\_\_\_\_ CORRECTIONS ATTACHED  
 10  
 11 \_\_\_\_\_  
 12 Date Signed  
 13  
 14 \_\_\_\_\_  
 15 JUDY PINEGAR  
 16  
 17 Case Title: Williams vs State of California  
 18 Date of Deposition: Thursday, March, 22, 2001  
 19  
 20 ---o0o---  
 21  
 22  
 23  
 24  
 25

1 DEPONENT'S CHANGES OR CORRECTIONS  
 2 Note: If you are adding to your testimony, print the  
 3 exact words you want to add. If you are deleting from  
 4 your testimony, print the exact words you want to  
 5 delete. Specify with "Add" or "Delete" and sign this  
 6 form.  
 7 DEPOSITION OF: JUDY PINEGAR  
 8 CASE: WILLIAMS VS STATE OF CALIFORNIA  
 9 DATE OF DEPOSITION: THURSDAY, MARCH, 22, 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 JUDY PINEGAR DATE

REPORTER'S CERTIFICATE

1 I certify that the witness in the foregoing  
2 deposition,  
3 JUDY PINEGAR,  
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 29th day of March, 2001.

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

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

5 MORRISON & FOERSTER LLP  
6 Attn: Michael A. Jacobs, Esq.  
7 425 Market Street  
8 San Francisco, California 94105

9 Re: Williams vs State of California  
10 Deposition of: Judy Pinegar  
11 Date Taken: Thursday, March, 22, 2001

12 Dear Mr. Jacobs:

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. 25057

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

5 Ms. Judy Pinegar  
6 9195 Vista Court  
7 Loomis, CA 95650  
8 Re: Williams vs State of California  
9 Date Taken: Thursday, March, 22, 2001

10 Dear Ms. Pinegar:

11 Your deposition is now ready for you to read, correct,  
12 and sign. The original will be held in our office for  
13 30 days from the date of this letter.

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

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

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

26 JUDY PINEGAR DATE \_\_\_\_\_

27 Sincerely,

28 TRACY LEE MOORELAND, CSR  
29 Esquire Deposition Services  
30 Job No. 25057

31 cc: Framroze Virjee, Esq. Thomas Yanger, Esq.  
32 Michael Jacobs, Esq. Lois Perrin, Esq.  
33 Peter Sturges, Esq. Kevin Reed, Esq.