

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

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

vs.

No. 312236

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

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Deposition of  
PAMELA LYNNE ATKINSON  
Wednesday, May 9, 2001

Reported by:  
TRACY LEE MOORELAND  
CSR No. 10397

APPEARANCES

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17 State Board of Education:

18 DEPARTMENT OF JUSTICE  
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APPEARANCES, CONT.

1  
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1 BE IT REMEMBERED, that on Wednesday, May 9,  
2 2001, commencing at the hour of 10:03 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 PAMELA LYNNE ATKINSON,  
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 MS. LHAMON

14 Q. Good morning, Ms. Atkinson.  
15 A. Hi.  
16 Q. I'm Katherine Lhamon. How are you doing?  
17 A. Just fine.  
18 Q. Okay. Will you please state your name and  
19 spell it for the record.  
20 A. Complete name?  
21 Q. Please.  
22 A. Pamela Lynne Atkinson, P-a-m-e-l-a, L-y-n-n-e,  
23 Atkinson, A-t-k-i-n-s-o-n.  
24 Q. Thank you. I assume your attorney has reviewed  
25 with you before coming what will take place here today,

1 but I want to go over a few things first to make sure  
2 we're all clear.

3 First I want to tell you a little bit about  
4 what the suit is about. The plaintiff schoolchildren,  
5 whom I represent, have sued the State of California, the  
6 State Superintendent of Public Instruction, the State  
7 Department of Education, and the State Board of  
8 Education concerning State oversight of delivery of  
9 public education in California. The plaintiffs have not  
10 sued any school districts or schools or principals,  
11 including you. The suit concerns only the question  
12 whether the State appropriately supports schools in the  
13 difficult task of providing education.

14 I'm going to ask you questions today concerning  
15 information that might be relevant to our lawsuit  
16 against the State.

17 A. Okay.

18 Q. Have you ever been deposed before today?

19 A. No.

20 Q. Okay. This deposition is going to be taken  
21 under oath, and the court reporter is writing down what  
22 I'm saying and what you're saying.

23 After the deposition, she'll send you a  
24 transcript for you to review. You'll have a chance to  
25 make changes if you want to, but you should know that I

1 had the flu or food poisoning or something like that.

2 If I ask to leave, it's just the remnants of that.

3 Q. Fair enough. Thanks for letting me know.

4 On that note, if you at any point need to take  
5 a break for any reason, for that one or another one,  
6 just let me know and we can accommodate you.

7 A. Great.

8 Q. If you don't understand a question that I ask  
9 or you'd like me to clarify it, please let me know. If  
10 you don't ask me to clarify it, I'm going to assume that  
11 you did understand the question and the record will  
12 reflect that understanding also.

13 Is that okay with you?

14 A. That's fine.

15 Q. I'd like you to be as accurate as you can in  
16 response to my questions, but I don't want you to make  
17 any guesses. So you can tell me you don't know  
18 something and that's a fair answer, but I'd like you to  
19 try to be as accurate and complete as you can be if  
20 that's okay with you.

21 A. Okay.

22 Q. Thanks. You may hear some objections from your  
23 attorney today to questions that I ask. You should go  
24 ahead and answer my questions anyway, unless your  
25 attorney instructs you not to answer them.

1 and the other attorneys will be free to draw any  
2 inferences from changes that you make, so you should try  
3 to be careful today to say everything that you have to  
4 say.

5 A. Okay.

6 Q. She can't take down a gesture or a nod, so  
7 you'll need to give full answers, which you're doing  
8 already, which I appreciate.

9 A. All right.

10 Q. Thanks. You need to know that you're  
11 testifying today as if you were in court and under all  
12 the pains and penalties of perjury as if we were in  
13 court, and your testimony can be used at trial also. So  
14 even though we're in something of an informal setting,  
15 the procedure is like we're in court. Okay?

16 A. Okay.

17 Q. Okay. Do you have any reason that you think we  
18 should not go forward today?

19 A. No.

20 Q. Okay. Are you feeling okay today?

21 A. I am.

22 Q. Good. Have you taken any medication or any  
23 drugs or anything that would impair your ability to  
24 remember?

25 A. No. But you do need to know that yesterday I

1 A. Okay.

2 Q. Thanks. Have you discussed this case with your  
3 attorney? I don't want to know the contents of the  
4 discussion.

5 A. Yes.

6 Q. Have you discussed this case with anyone else?

7 A. Yes.

8 Q. Okay. Have you discussed the case with other  
9 attorneys, or who were the other people that you  
10 discussed it with?

11 A. I've discussed it with obviously my  
12 superintendent and with Mr. Choate.

13 Q. Okay. Have you discussed it with anyone else?

14 A. The teachers on my staff.

15 Q. Okay.

16 A. Most of my staff.

17 Q. Okay. Can you think of anyone else?

18 A. Family members. But other than that, that's --

19 Q. That's about it?

20 A. Right. Parents that have asked, if they've  
21 asked a question, because it made it in the newspaper.

22 Q. It sure did. I saw those too.

23 And you haven't discussed it with anybody from  
24 the Attorney General's office?

25 A. No.

- 1 Q. And no other lawyers?  
 2 A. No.  
 3 Q. Okay. I don't want to know content, again, of  
 4 any of the discussions you've had with lawyers, but in  
 5 your meetings with your lawyer, was anyone else present  
 6 at the meetings?  
 7 A. Superintendent.  
 8 Q. Okay. I appreciate that. Thanks.  
 9 A. Uh-huh.  
 10 Q. I'd like to know a little bit about your  
 11 educational background before we start, if you don't  
 12 mind.  
 13 So could you tell me?  
 14 A. Sure. I attended Brigham Young University, and  
 15 had a brief period of time where I thought maybe I  
 16 didn't want to go into education and actually went into  
 17 court reporting school, and found out that I really  
 18 couldn't keep up with that.  
 19 Q. People like me speaking too quickly.  
 20 A. And so finished my education at Brigham Young  
 21 University, taught for a number of years. Got my  
 22 master's through Chapman University and my  
 23 administrative credential Tier II through St. Mary's.  
 24 Q. You said your administrative credential Tier  
 25 II; is that right?

- 1 A. Uh-huh, Tier I through Chapman, Tier II through  
 2 St. Mary's.  
 3 Q. I'm a little slow, so I'm going to walk you  
 4 back through that again.  
 5 A. That's okay.  
 6 Q. The Chapman was your MA, and then your Tier II  
 7 was through St. Mary's? That's wasn't an MA or it is an  
 8 MA?  
 9 A. It's not an MA. It's not. I don't know how to  
 10 explain it. It's just another credential.  
 11 Q. Okay. And that was an administrative  
 12 credential?  
 13 A. Yes. It's the second half of your  
 14 administrative credential.  
 15 Q. Do also hold a teaching credential?  
 16 A. Yes, I do.  
 17 Q. What kind of teaching credential do you hold?  
 18 A. I hold the elementary ed multiple subject.  
 19 Q. And when you were teaching, were you teaching  
 20 elementary school?  
 21 A. I taught elementary school then I taught middle  
 22 school, which is considered elementary school as well.  
 23 Q. And where did you teach?  
 24 A. I have taught at Jackling Elementary in Utah,  
 25 Schaffer Elementary in Atwater, Ada Givens Elementary in

- 1 Merced.  
 2 Q. You know what, we should probably spell the  
 3 names of those schools for the court reporter.  
 4 A. Jackling was J-a-c-k-l-i-n-g. Schaffer,  
 5 S-c-h-a-f-f-e-r. Ada Givens, two names, A-d-a and  
 6 Givens, G-i-v-e-n-s. Rivera, R-i-v-e-r-a.  
 7 Q. And where was that one?  
 8 A. And that one was with Merced City Schools.  
 9 That was a middle school.  
 10 Q. Okay. And could you tell me, do you remember  
 11 approximately what years you were teaching at those  
 12 schools? Is that fair to ask you?  
 13 A. Let's see. If I work backwards. I was at  
 14 Givens '85, '86 -- no, I'm sorry, '86, '87; Schaffer,  
 15 '85, '86; and Jackling the seven years prior to that,  
 16 whatever that equals out.  
 17 Q. Okay.  
 18 A. And then '87 until '92 I believe at Rivera.  
 19 Came in as assistant principal in '92.  
 20 Q. At Rivera?  
 21 A. At Rivera. Was an assistant principal there  
 22 for two years. Was transferred to Tenaya where I  
 23 currently am. Was an assistant principal there for one  
 24 year.  
 25 Q. And that was '94, '95?

- 1 A. Right. And I've been the principal at Tenaya  
 2 from '95 to the current year, currently there.  
 3 Q. Okay. So you like the school?  
 4 A. Uh-huh.  
 5 Q. Do you remember when you obtained your teaching  
 6 credential?  
 7 A. For California?  
 8 Q. For California.  
 9 A. I think I was on -- that one is going to be a  
 10 little bit -- I was on an emergency credential from '85  
 11 until about '90, I believe. I think it's a five-year  
 12 emergency credential, but I'm not positive on that. And  
 13 then I think I went to the Clear credential at that  
 14 time.  
 15 Q. And at each of those schools were you teaching  
 16 the same grades, not the middle school?  
 17 A. No. At Jackling, I taught 5th grade, 6th grade  
 18 and a 4, 5, 6 combination.  
 19 Q. Okay.  
 20 A. At Givens I taught second grade. At Schaffer I  
 21 believe it was a 5th grade, and at Rivera I taught 7th  
 22 grade.  
 23 Q. Also now did you get -- the MA from Chapman,  
 24 had you gotten that before you started teaching, or was  
 25 that something you got later?

1 A. That's something that I got later. Don't ask  
 2 me exact dates, but I was working on that when I was at  
 3 Rivera.  
 4 Q. Okay. Was that in administration also,  
 5 education administration?  
 6 A. Curriculum and instruction. I did a double,  
 7 curriculum and instruction and administrative Tier I,  
 8 but my master's is in curriculum and instruction.  
 9 Q. Bet that's helpful now.  
 10 A. Yes.  
 11 Q. Did you decide to go back to school because you  
 12 were thinking about becoming a principal?  
 13 A. Yes, I was.  
 14 Q. What made you become a principal?  
 15 A. I wanted to see if I could help influence  
 16 instruction on a larger level, and I had a principal at  
 17 the time who was very encouraging, wanted me to go into  
 18 that pathway, and I took his advice and went.  
 19 Q. That's good. Are you glad you did it?  
 20 A. Most days.  
 21 Q. How about today?  
 22 A. There are days where you start to say classroom  
 23 looks a lot better. No, most days it's great.  
 24 Q. That's really good. Good.  
 25 Do you find that your day-to-day work is

1 training separate from the Tier I and the Tier II on how  
 2 to be a principal?  
 3 A. There is a course that's called CSLA, and it  
 4 is -- it's kind of like an in-service in helping you  
 5 become a better administrator.  
 6 Q. Do you know what CSLA stands for?  
 7 A. I knew you were going to ask that. No, I  
 8 don't.  
 9 Q. Okay. Do you know where I might find out what  
 10 it stands for?  
 11 A. Sure, just about any educational group that you  
 12 call would have the letters to it, the meaning of the  
 13 acronym. I couldn't even tell you if it's put out by  
 14 the State.  
 15 Q. Okay. Where did you take it?  
 16 A. Turlock.  
 17 Q. Okay. At the community college?  
 18 A. Yes.  
 19 Q. Okay. And you're not sure who offered it?  
 20 A. No.  
 21 Q. Okay. And when did you take that?  
 22 A. Long time ago. I would say probably --  
 23 probably started in '90, and you take it off and on  
 24 throughout. It's a series of workshops that you can  
 25 sign up and take.

1 consistent with what you were learning at Chapman?  
 2 A. Yes.  
 3 Q. Okay. Good. Had you held any previous jobs  
 4 before you went into teaching?  
 5 A. Yes.  
 6 Q. What were your previous jobs?  
 7 A. I was a clerk for Gottschalk's,  
 8 G-o-t-t-s-c-h-a-l-k-s. And put myself through college  
 9 being a custodian at the University and working in food  
 10 services at the University.  
 11 If you want to go way back, I was the first  
 12 female newspaper carrier in Virginia.  
 13 Q. The entire state?  
 14 A. That's what I was told.  
 15 Q. That's an achievement.  
 16 A. Yeah.  
 17 Q. Okay.  
 18 A. Outside of baby-sitting and stuff like that,  
 19 that's basically it.  
 20 Q. You've run a little bit of the gamut.  
 21 Do you find that the custodial work and the  
 22 food service work is helpful to you now as a principal?  
 23 A. Absolutely. Every role shows its importance.  
 24 Q. I bet it does. Great.  
 25 When you became a principal, did you go through

1 Q. Okay. And are they two-week workshops, are  
 2 they weekends, are they evenings?  
 3 A. Generally -- they are some weekends, but  
 4 usually you take a workday.  
 5 Q. Okay.  
 6 A. And it goes into the evening. It's like a  
 7 Friday, Saturday type of a course.  
 8 Q. Okay. And is that a kind of course that you  
 9 complete at the end and now you're done with it, or is  
 10 that something that you have to continue?  
 11 A. It kind of goes on forever. You can complete  
 12 it. I didn't complete it. I have four more sessions to  
 13 take, I believe.  
 14 Q. Do you intend to complete it, or have you  
 15 decided it's enough for you?  
 16 A. No, with the other courses that I'm taking, I  
 17 doubt that I'll finish it.  
 18 Q. Okay. What other courses are you taking?  
 19 A. Just the Tier II and all of that. It pretty  
 20 well covered it.  
 21 Q. Okay. So you're not taking other courses now?  
 22 A. No. No.  
 23 Q. Okay. Did anyone ask you to take the CSLA  
 24 course?  
 25 A. No, I asked to take it.

- 1 Q. Okay. So it's not something that's mandatory  
2 for being --
- 3 A. No.
- 4 Q. Other than the Tier I and II and the CSLA  
5 course, have you had any other training for being a  
6 principal?
- 7 A. Outside of keeping my credential and everything  
8 current by taking other workshops, no, just workshops  
9 that are offered and services that are offered through  
10 the district.
- 11 Q. Okay. I'm going to step back for a second.  
12 You told me that you have a clear credential for  
13 teaching. My understanding of a clear credential is  
14 that you don't have to do anything after that, is that  
15 right?
- 16 A. No, that's not right.
- 17 Q. Educate me, please.
- 18 A. You have to take 150 hours of CE-type credits  
19 every five years.
- 20 Q. Okay. Is there something similar you have to  
21 do for the Tier I and the Tier II?
- 22 A. No. But if I want to keep my teaching  
23 credentials current, then I continue to take those  
24 classes.
- 25 Q. Okay. For the administrative credential, you

- 1 are current?
- 2 A. Right.
- 3 Q. Okay. That's good to know. Thank you.  
4 So you haven't received any training from the  
5 district, for example, on how to be a principal?
- 6 A. I'm not sure what you're asking. For  
7 in-service and stuff, they offer in-services, yes.
- 8 Q. Okay.
- 9 A. Specific classes where I could sit down and  
10 give you the names, no, it's just in-services.
- 11 Q. Okay. And when you say "in-service," what do  
12 you mean by that?
- 13 A. When the district has a set of meetings, for  
14 example, they'll bring in a guest speaker and have them  
15 talk to us on legal issues facing the educators.
- 16 Q. I support that.
- 17 A. Yes.
- 18 Q. That's great. And how often are the  
19 in-services offered?
- 20 A. Probably once or twice a year.
- 21 Q. Okay. And do you go to every one?
- 22 A. Yes.
- 23 Q. Okay. Are you required to go to every one?
- 24 A. Not required to go to all of them, but you are  
25 required to go to most of them.

- 1 Q. Okay. And to what extent is it optional, is it  
2 optional because you might not be able to attend, or are  
3 you told that there's a certain percentage that you have  
4 to attend?
- 5 A. No, just that you might be able to attend.
- 6 Q. But it's otherwise expected that you would go?
- 7 A. Yes.
- 8 Q. And that's something that's true for all  
9 principals in the district?
- 10 A. Yes.
- 11 Q. Do you know if that's true for all principals  
12 in the state?
- 13 A. I don't know.
- 14 Q. The only district that you've been a principal  
15 in is the Merced district?
- 16 A. Yes, it is.
- 17 Q. Have you received any training from the State  
18 for how to be a principal?
- 19 A. Just through the tier. I'm sure State  
20 accredited the Tier I and the Tier II programs.
- 21 Q. Okay. But you don't receive in the mail,  
22 brochures or fliers or newsletters from the State about  
23 how to be a principal?
- 24 A. No.
- 25 Q. Okay.

- 1 A. It's not a State thing. But I'll go back to  
2 the question you asked prior to that.
- 3 Q. Thank you.
- 4 A. The universities sometimes send out mailers,  
5 and I know that UC Merced had a principals seminar, if  
6 you will, last year, and I attended that.
- 7 Q. Okay. And how long was that?
- 8 A. It was a week.
- 9 Q. And what was the subject matter?
- 10 A. Each day was a different type of agenda. Once  
11 again, legal issues facing educators, working with staff  
12 members in conflict. Like I said, each day was a  
13 different topic similar to those.
- 14 Q. And what made you choose to attend that  
15 seminar?
- 16 A. I'm a partner with UC Merced and they -- this  
17 is a new program they're trying to get off the -- I  
18 can't think of cliches right now -- just trying to get  
19 rolling here, and they offered to pay for a good bit of  
20 the school -- gave a scholarship on it, and I would be  
21 stupid not to take that kind of an opportunity.
- 22 Q. Did you enjoy it?
- 23 A. Very much.
- 24 Q. And what other kinds of things that you took  
25 from it that were new to you that you can think of

1 today?

2 A. Actually, I don't think there was a whole lot  
3 that was new. It was more like a refresher course.

4 Q. Were there principals from schools outside of  
5 the Merced district that were there?

6 A. Yes, there were.

7 Q. Was that helpful to you, to interact with them?

8 A. The networking is always good.

9 Q. Did you learn from other principals about  
10 techniques or the things that they do?

11 A. Yes.

12 Q. Sounds like you are taking a lot of initiative  
13 too in figuring out what you should be doing for your  
14 school. That's great.

15 A. Thanks.

16 Q. Can you tell me about your duties as the  
17 principal.

18 A. We work with a master schedule, work with  
19 keeping class size at a -- within our contracted level,  
20 obviously working with all of the different groups that  
21 help make a school run, custodians and their staff, the  
22 classified staff, the certificated staff, working with  
23 parents, and most importantly working with the students.

24 Q. It's a full day.

25 A. Very full.

1 Q. Do you have to review everything that goes out  
2 about your school? What's your oversight?

3 A. I don't have to review everything that goes out  
4 about the school, but many things are cleared through  
5 me.

6 Q. How would one know what has to go to you and  
7 what doesn't?

8 A. Through memos that I've given out or if I talk  
9 to the staff about something and say, hey, I would like  
10 to see this.

11 Q. How regularly do you circulate memos to your  
12 staff?

13 A. I do an update about twice a month.

14 Q. Really?

15 A. We have staff meetings generally twice a month.

16 Q. Okay. And what kinds of things go into the  
17 update that you do twice a month?

18 A. Just current information of things that are  
19 coming up. If evaluations are due, if there's still  
20 objectives due, put that out, if Warrior Day is coming  
21 up and we've got celebrations going.

22 Q. What's "Warrior Day"?

23 A. Warrior Day is -- it's a reward period for the  
24 kids, and they get two periods. If they've kept their  
25 grades up and not received any referrals, they get to go

1 to various classes the teachers are offering or a dance.

2 Q. And how often are there Warrior Days?

3 A. Once a month.

4 Q. That's great.

5 Do you send out a calendar in those twice  
6 monthly updates?

7 A. My secretary sends out a calendar once a month.

8 Q. Okay. Do you send out notices about upcoming  
9 events in that update?

10 A. In the update, yeah.

11 Q. Do you send out notices about policies at the  
12 school or changes in policies at the school?

13 A. Occasionally, yes.

14 Q. What makes you decide when to do that?

15 A. Basically it depends on if it is a policy  
16 that's just for a small group, then I just send a memo  
17 to that group or call a meeting and ask them in. If  
18 it's something that the whole staff needs to hear, then  
19 it will go into the update or into the daily bulletin.

20 Q. Okay. What kinds of things would be something  
21 that the whole staff would need to hear?

22 A. Basically, for example, the sexual harassment.  
23 And with sexual harassment, that's a policy that they  
24 would all be dealing with and thus we would meet with  
25 all of them on it.

1 Q. And you send out an update describing the  
2 policy and then you hold a meeting, is that how it  
3 works?

4 A. It varies. Generally I like to hold the  
5 meeting first and then send out. So I may send out an  
6 update saying there's going to be a meeting about  
7 such-and-such, and then we'll do it.

8 Q. Okay. And are the meetings regular also?

9 A. The staff meetings are.

10 Q. Okay. Is everyone who works at Tenaya Middle  
11 School answerable to you?

12 A. Yes, except custodians and food service people  
13 have another director. But as far as things that are  
14 going on in any staff, yes.

15 Q. Who reports most directly to you?

16 A. My assistant principals, my teachers.

17 Q. Okay. Do you -- is there a written handbook  
18 for teachers and for parents at the school?

19 A. Yes.

20 Q. And for students?

21 A. Yes.

22 Q. Do you review that handbook?

23 A. Yes.

24 Q. Okay. What kinds of -- is it the same handbook  
25 for all three groups of people?

- 1 A. No. The parent handbook is sent out by the  
2 district and, no, I don't review that one. The staff  
3 handbook I review. The student handbook I review.  
4 Q. Okay. Do you update that -- both those  
5 handbooks every year?  
6 A. Yes.  
7 Q. Okay. Do you do the initial writing, or do you  
8 just edit the handbooks?  
9 A. Little bit of both.  
10 Q. You do it all at your school.  
11 What goes -- I guess maybe I'll start with the  
12 student handbook. What goes into the student handbook?  
13 A. Student handbook covers requirements for  
14 graduation, covers dress code requirements, discipline  
15 procedures, sexual harassment statement, things that  
16 they're allowed to bring and not allowed to bring.  
17 Q. Okay. Have you gotten complaints from the  
18 students about anything in the handbook?  
19 A. No.  
20 Q. Not ever?  
21 A. No.  
22 Q. Wow.  
23 A. Have I gotten complaints about rules, but about  
24 what's in the handbook, no.  
25 Q. How about the staff handbook, how does it

- 1 differ from the student handbook?  
2 A. It covers things like emergency procedures,  
3 lock-down procedures, duty rosters, responsibilities of  
4 the various groups.  
5 Q. And the parent handbook that's sent out by the  
6 district, have you ever seen it?  
7 A. Yes.  
8 Q. But you don't review it?  
9 A. I don't have a lot of input into it, what's put  
10 into it.  
11 Q. Okay. Are you familiar with it?  
12 A. Yes.  
13 Q. Okay. What's in it that's different from the  
14 student and the staff handbooks?  
15 A. It's very similar to the student handbook. It  
16 has the rules, it has a little bit more information,  
17 like if they wanted to have a school of choice, the  
18 procedures they would follow for that.  
19 Q. Do you agree with the material that's in the  
20 parent handbook from the district?  
21 A. I can't think of anything I disagree with.  
22 Q. Okay. Have you ever disagreed with anything  
23 that was in it, in any of the yearly handbooks for the  
24 parents?  
25 A. No.

- 1 Q. Okay. But the district, nobody from the  
2 district asks you about what should go into the parent  
3 handbook?  
4 A. We were consulted on the discipline portion of  
5 it.  
6 Q. Did you make any recommendations for changes  
7 that should be made to the discipline portion?  
8 A. I asked for some clarification to have it made  
9 a little bit more clear so the parents understood.  
10 Q. And did that happen?  
11 A. Yes.  
12 Q. So there was a fair level of back and forth  
13 between you and the district?  
14 A. Yes.  
15 Q. Who at the district did you communicate with  
16 about the parent handbook?  
17 A. For that portion it would have been Tom Grave.  
18 Q. And what does he do?  
19 A. He's the director over student services.  
20 Q. Okay. I asked you if your staff is answerable  
21 to you, but I didn't ask you to whom you answer.  
22 A. I answer to the superintendent, the directors  
23 at the district office, and ultimately the board.  
24 Q. And when you say "the superintendent" and "the  
25 board," you're talking about the Merced City Elementary

- 1 School --  
2 A. Yes.  
3 Q. Does the district school board have greater  
4 oversight over you than does the superintendent?  
5 A. Yes, they do.  
6 Q. Do you have a lot of interaction with them?  
7 A. No, I don't.  
8 Q. Is that unnerving?  
9 A. Depends on the moment.  
10 Q. Yeah. Do you have a lot of interaction with  
11 the superintendent?  
12 A. Yes, I do.  
13 Q. Okay. How regularly do you meet with the  
14 superintendent?  
15 A. I would say we probably either talk on the  
16 phone or see each other at least once a week. Twice a  
17 month we have principals council with the  
18 superintendent.  
19 Q. Do you always attend the principal council  
20 meetings?  
21 A. Unless I'm ill or out of town.  
22 Q. And that's all principals?  
23 A. Yes.  
24 Q. And what goes on at those meetings?  
25 A. It's like a -- it's a general staff meeting,



1 updates of what's happening in the district, covering  
 2 any issues or concerns that principals or the district  
 3 may have.  
 4 Q. Okay. Did you discuss this case at one of  
 5 those meetings?  
 6 A. Yes, I did.  
 7 Q. Okay. What other kinds of things, when you're  
 8 not talking about this case, would you be talking about  
 9 at those meetings?  
 10 A. Budget issues. We discuss issues that may be  
 11 occurring on all of the sites, for example, when the law  
 12 came out about fingerprinting, those types of things.  
 13 Q. Do the principals give each other advice and  
 14 counsel about how they're dealing with issues on their  
 15 campuses at those meetings?  
 16 A. Yes, they do.  
 17 Q. Do you interact with the other principals other  
 18 than at those meetings?  
 19 A. Yes.  
 20 Q. At what kinds of settings?  
 21 A. We have a middle school principals meeting  
 22 where we try to get together about once a month. We  
 23 have different socials and things like that where we get  
 24 together and talk. We say we aren't going to talk shop,  
 25 but we do.

1 Q. Understandable. Who sets the middle school  
 2 principal meetings, is that something that the district  
 3 sets or is that something that you all set?  
 4 A. Basically the middle school principals set it.  
 5 Q. Do you know if there's a similar elementary  
 6 school principals meeting and a similar high school  
 7 principals meeting?  
 8 A. I'm not sure.  
 9 Q. How many middle school principals are there?  
 10 A. In Merced?  
 11 Q. In Merced.  
 12 A. We have four in the city school district.  
 13 Q. Okay. Four including you?  
 14 A. Yes.  
 15 Q. We said that you were answerable to the  
 16 district superintendent and to the board. I'm going to  
 17 ask to whom is each of them answerable.  
 18 A. They're all answerable to the board. The board  
 19 is answerable to the electorate.  
 20 Q. Okay. So the superintendent of the district is  
 21 answerable to the school board like you are?  
 22 A. Yes.  
 23 Q. And then the school board is answerable to the  
 24 voters?  
 25 A. Uh-huh.

1 Q. Okay. Is the superintendent answerable to  
 2 anybody else?  
 3 A. Well, I'm sure -- I don't really know the  
 4 answer to that one. I'm sure that -- it's like anybody  
 5 with a credential, you're answering to the credentialing  
 6 commission.  
 7 Q. Thanks for telling me too that you don't know  
 8 the answer. You should absolutely let me know at any  
 9 point. If you don't know the answer to a question,  
 10 that's the best answer.  
 11 A. Okay.  
 12 Q. I'd like to talk to you about Tenaya also. Do  
 13 you know how many students go to Tenaya?  
 14 A. We fluctuate between about 813, 830 depending  
 15 on the day.  
 16 Q. That's this school year?  
 17 A. Yes.  
 18 Q. That's a pretty accurate number. How do you  
 19 know --  
 20 A. We do a Friday enrollment every Friday.  
 21 Q. Okay. And for what purpose do you do that?  
 22 A. The State asks for enrollment, ADA.  
 23 Q. What accounts for the difference in numbers,  
 24 students absent for illnesses, or is there some other  
 25 reason?

1 A. No, that would be in enrollment, so students  
 2 moving to another school district or students moving  
 3 into ours.  
 4 Q. Does it fluctuate a lot week to week?  
 5 A. No, it stays pretty well within that 15-student  
 6 range.  
 7 Q. Has Tenaya been roughly that same size the  
 8 whole time you've been there?  
 9 A. For about the last six years, yes.  
 10 Q. You've been there a little bit longer than six  
 11 years.  
 12 A. I was an assistant principal there for one  
 13 year, so I've been there for seven years. I didn't  
 14 really pay any addition to enrollment my assistant  
 15 principal year.  
 16 Q. The students are in 6th through 8th grades?  
 17 A. Yes, they are.  
 18 Q. How many students are eligible for the free and  
 19 reduced price meals at Tenaya?  
 20 A. I am not really sure on that. It's around 85  
 21 percent, I believe.  
 22 Q. Okay. Do most of those students get the free  
 23 and reduced price meals also, students who are eligible,  
 24 do they also partake of the program?  
 25 A. No.

- 1 Q. Do you know what percent do?  
 2 A. No. Middle school kids aren't real good about  
 3 going in and eating.  
 4 Q. True enough. Some lawyers aren't either.  
 5 Do you know the racial breakdown of the student  
 6 population at Tenaya?  
 7 A. I can give you ballpark figures.  
 8 Q. Okay.  
 9 A. We have about 7 and 8 percent African-American,  
 10 about 13 percent Caucasian, in the 30s, 33, 34 percent  
 11 Asian, about 45 percent Hispanic.  
 12 MR. YARNELL: What was that last percentage?  
 13 THE WITNESS: About 45 percent Hispanic.  
 14 Q. BY MS. LHAMON: I'm going to start asking you  
 15 about this case a little bit.  
 16 Do you remember how you first heard about this  
 17 case?  
 18 A. Yes, I heard about it in the newspaper.  
 19 Q. Was that upsetting?  
 20 A. Yes.  
 21 Q. I'm sure it was. I apologize for that.  
 22 Did you read the newspaper, or did somebody  
 23 point the newspaper out to you?  
 24 A. Somebody pointed it out to me.  
 25 Q. Do you remember who that was?

- 1 A. No. One of my staff.  
 2 Q. So it was a teacher or it was --  
 3 A. Teacher.  
 4 Q. Okay. What did the teacher say to you about  
 5 it, do you remember?  
 6 A. They were very angry.  
 7 Q. Okay. At whom were they angry?  
 8 A. They were angry at the State -- not the State,  
 9 ACLU.  
 10 Q. We're not often confused with the State.  
 11 A. They were angry at the person who made the  
 12 charges.  
 13 Q. Okay. What did you say to that teacher?  
 14 A. I told the teacher that I was upset that I  
 15 found out about it the way I found out about it.  
 16 Q. Sure.  
 17 A. And that while I understood where he was coming  
 18 from, that I did not agree with what he did.  
 19 Q. Okay. And what did you do next?  
 20 A. I can't tell you exactly what next. Talked to  
 21 the superintendent probably, was probably the next one,  
 22 say, okay, this is where we are. I called your office.  
 23 Q. I remember.  
 24 Okay. Do you remember if the next thing you  
 25 did in response to knowing about the case was to call

- 1 the superintendent, or if you maybe went and looked at  
 2 the newspaper first to read the article?  
 3 A. I read the article first.  
 4 Q. Okay. And then you called the superintendent.  
 5 Was it you who told the superintendent about  
 6 the case or had the superintendent already heard  
 7 already?  
 8 A. I believe he'd already heard.  
 9 Q. What did he say to you about it?  
 10 A. He was not real happy either.  
 11 Q. Yeah. Okay. Did he talk to you about what to  
 12 do next?  
 13 A. He let me know that he would be contacting  
 14 Scot's office.  
 15 Q. Okay. Was that the extent of that  
 16 conversation?  
 17 A. Uh-huh.  
 18 Q. Is there anything else that you discussed?  
 19 A. Wanted to know -- he was the new superintendent  
 20 and he wanted to know just what fees were charged by  
 21 everybody.  
 22 Q. Everybody at Tenaya, or everybody in the  
 23 district?  
 24 A. District.  
 25 Q. Okay. Did you know the answer to that

- 1 question?  
 2 A. I knew what Tenaya was doing.  
 3 Q. What did you tell him about what Tenaya was  
 4 doing?  
 5 A. I told him that we charged fees for cooking and  
 6 that we charged -- he asked about the baseball hats, and  
 7 I told him that we charged for the baseball hats because  
 8 the kids kept the baseball hats.  
 9 Q. Did you tell him anything else?  
 10 A. I probably did, but I don't have a photographic  
 11 or a perfect memory.  
 12 Q. Neither do I. Totally understandable.  
 13 Do you remember if you talked to him about any  
 14 other fees that were charged at the school for any other  
 15 classes or programs?  
 16 A. Woodshop was brought up.  
 17 Q. Okay. And what did you say about woodshop?  
 18 A. That they were charged for the extra program --  
 19 extra projects that they made.  
 20 Q. Okay. Can you think of anything else?  
 21 A. We have the band fees and we talked about that,  
 22 and we talked about why Tenaya didn't have a booster  
 23 club.  
 24 Q. Okay. I want to ask you about that in a  
 25 second. I want to stay on the fees for just one minute

1 more.

2 When you were having that conversation with the

3 superintendent, and here I'm just talking about that

4 first conversation, did you talk to him about any other

5 fees that you thought of then that were being charged at

6 the school or did he ask about any other fees?

7 A. I don't believe so, but I don't remember for

8 sure.

9 Q. Okay. That's fair. It's been a while.

10 And that conversation took place maybe the day

11 that you heard about the lawsuit being filed?

12 A. Probably the next day.

13 Q. Okay. So that would have been sometime in May

14 2000?

15 A. Was when it came out in the newspaper?

16 Whenever it came out in the newspaper.

17 Q. Okay. You know what, I'm remembering that

18 because I think we added Tenaya second, so that would

19 have been in August 2000.

20 A. That sounds --

21 Q. Was it hot?

22 A. It was hot. That sounds more close to the

23 date, because I didn't know about it at the end of the

24 year last year. It was a great way to start the year.

25 Q. Yes. You're welcome.

1 After you told the superintendent about the

2 baseball hats, the cooking fees, the woodshop fees and

3 the band fees, you said you talked about why Tenaya

4 didn't have a booster club?

5 A. Right.

6 Q. Did he ask you about that or did you bring that

7 up?

8 A. In his previous district they had had booster

9 clubs and he asked about that. And we don't have as

10 active parent participation and so -- and our band --

11 not the current band teacher but the band teacher prior

12 to that had had a major disagreement with the band

13 booster president, and it just kind of died a natural

14 death -- or an unnatural death.

15 Q. Was that while you were principal?

16 A. That was while I was a principal. About three

17 years ago.

18 Q. Okay. And that booster club had been just for

19 the band?

20 A. Right.

21 Q. Okay. Do you know what the purposes of that

22 booster club had been?

23 A. To fund-raise.

24 Q. Okay. After it died a natural death, did the

25 fund-raising drop off or did anything change for the

1 program?

2 A. The fund-raising dropped off, yes.

3 Q. When that happened, did you have to change any

4 of your practices with respect to band?

5 A. No.

6 Q. Okay. So you lost some contribution of funds?

7 A. Yes.

8 Q. But you were able to still produce the same

9 program?

10 A. We just tried to figure out other ways to do

11 fund-raisers. It could not be done without the

12 fund-raisers or the donations that were made.

13 Q. When you say "it could not be done," what

14 couldn't be done?

15 A. Going to the various field shows.

16 Q. So the same program could not have been run

17 without some extra funds?

18 A. Right.

19 Q. Okay. I'm going to ask you more about that

20 later. Want to go back to that conversation with the

21 superintendent.

22 A. Okay.

23 Q. Do you remember if you talked about anything

24 else after you talked to him about what the fees were

25 and about why Tenaya didn't have a booster club?

1 A. I don't think so.

2 Q. Okay. After you hung up with -- before you

3 hung up with him, did you make a plan to talk again, was

4 he going to call Mr. Yarnell's office, was he going to

5 call anybody else and then call you back?

6 A. Yes.

7 Q. What was he going to do?

8 A. Basically he was going to --

9 MR. CHOATE: I'll object. That calls for

10 speculation.

11 MS. LHAMON: That's fair. I'll restate the

12 question.

13 Q. Did he tell you what he was going to do?

14 A. He told me that he was going to check with our

15 attorneys.

16 Q. Okay. Did he call you back or meet with you

17 after he had met with the attorneys?

18 A. He let me know that he had contacted the

19 attorneys and that they would be contacting me.

20 Q. So then the next thing after that for you was

21 contacting the attorneys?

22 When I say the next thing after that, I mean

23 with respect to this case.

24 A. I am not real good at remembering the order of

25 things and what happened when, but I can tell you that,

1 yes, the attorneys did contact me.  
 2 Q. Okay. Well, I'll try to help you to do it  
 3 chronologically.  
 4 A. Okay. Because I'm not good at remembering  
 5 chronologically.  
 6 Q. We'll have that on the record too, so it will  
 7 be there for you.  
 8 A. Okay.  
 9 Q. Do you remember if you also had a meeting with  
 10 your staff, maybe the next regularly-held staff meeting  
 11 to talk about the fees issues or talk about the lawsuit?  
 12 A. I met with my electives teachers, and then I  
 13 met with the staff after that.  
 14 Q. Why did you meet first with the electives  
 15 teachers?  
 16 A. To let them know that there was probably going  
 17 to be a policy change.  
 18 Q. How had you made the decision that there would  
 19 probably be a policy change?  
 20 A. The superintendent said that there would be a  
 21 policy change.  
 22 Q. And did he say that in that first call?  
 23 A. I don't think so.  
 24 Q. So maybe he said that after he met with  
 25 Mr. Yarnell's office, or later on, or you don't

1 remember?  
 2 A. I don't remember.  
 3 Q. I'm just trying to do a chronology.  
 4 A. In fact, the policy change may have already  
 5 started when he first came on board as the  
 6 superintendent. I can't really -- I don't know.  
 7 Q. Was he the superintendent when you first heard  
 8 about the suit that day that you called him?  
 9 A. Yes.  
 10 Q. Okay. And so you're thinking that maybe --  
 11 A. He's been updating policies all the way along,  
 12 since he first came on.  
 13 Q. Okay. When did he come on staff?  
 14 A. I'm not sure. Two years ago -- no, it hasn't  
 15 even been two years. It's been about a year.  
 16 Q. Are you thinking in school years, or --  
 17 A. School years. So he was here for part of last  
 18 school year.  
 19 Q. So he was here for part of '99/2000 school  
 20 year?  
 21 A. Right.  
 22 Q. All of 2000/2001 so far?  
 23 A. Yes.  
 24 Q. And before that you had a different  
 25 superintendent?

1 A. We had an interim superintendent.  
 2 Q. Okay. And the whole time that you've been  
 3 principal, have you always had that interim  
 4 superintendent until this --  
 5 A. No.  
 6 Q. Who did you have before that?  
 7 A. Don DeLong before that, and he had a stroke.  
 8 Q. When was that?  
 9 A. He had a stroke about two-and-a-half years ago.  
 10 Q. Okay. I'm trying to do chronology, which I'm  
 11 not very good at. That would have been roughly in 1997  
 12 when he had the stroke?  
 13 A. I'm not sure.  
 14 Q. When he had the stroke, the next superintendent  
 15 was the interim superintendent?  
 16 A. That's correct.  
 17 Q. What was his name?  
 18 A. Daryl Taylor.  
 19 Q. D-a-r-y-l?  
 20 A. I should know how to spell his name, but I  
 21 don't.  
 22 Q. Okay. And he was the same interim  
 23 superintendent until you got your current one?  
 24 A. Yes.  
 25 Q. What's the name of your current superintendent?

1 A. Allen Rassmussen.  
 2 Q. Do you know how to spell his name?  
 3 A. R-a-s-s-m-u-s-s-e-n.  
 4 Q. And he came on during part of the '99/2000  
 5 school year?  
 6 A. Correct.  
 7 Q. Do you remember roughly what months or what  
 8 part of the year?  
 9 A. No.  
 10 Q. Would you say it was the end of the year,  
 11 midway through the year, the beginning of the year?  
 12 A. I'm not sure. If I wasn't sitting here with  
 13 all of you staring at me, I'd be able to tell you.  
 14 Q. Unfortunately, you are.  
 15 You were starting to tell me -- before we got  
 16 sidetracked on who was who, you were starting to tell me  
 17 that Allen Rassmussen has been updating the policies the  
 18 whole time he's been there.  
 19 A. Yes.  
 20 Q. Do you know why he's been doing that?  
 21 A. Because they were very old. A lot of them  
 22 hadn't been changed in years. So as he's found one old  
 23 one after another, and he's just made those changes.  
 24 Q. Okay. How does it come to his attention that  
 25 there's an old policy or a policy that might need to be

1 changed?

2 A. Number of different ways. It either can be an  
3 issue that's going up, but he also just goes through the  
4 policy book.

5 Q. And does he let you and the other principals  
6 know at the principals council meeting that that's what  
7 he's doing?

8 A. Yes.

9 Q. Is there another setting in which he lets you  
10 know?

11 A. He lets the board know, so we receive board  
12 minutes and those of us that are good at reading the  
13 board minutes will know.

14 Q. Are you good at reading them?

15 A. Not really, no.

16 Q. A lot of other things to do.

17 A. That's right.

18 Q. What kinds of policies has he been changing?  
19 Can you think of any others?

20 A. There was a policy on the YEPs.

21 Q. What's YEP?

22 A. It's a kind of district daycare center. I know  
23 that that one's been looked at. The sports for middle  
24 schools eligibility, that's another policy that's been  
25 changed. There's been a number of them.

1 Q. Okay. And when he changed -- let's take the  
2 sports eligibility policy. When he changed that policy,  
3 how did he let the principals know?

4 A. At principal council meetings.

5 Q. And did he give you a new written policy, or  
6 did he tell you?

7 A. Any time a policy is changed, the new policy is  
8 sent to my secretary and my secretary puts it in the  
9 policy booklet.

10 Q. And that policy booklet is your policy booklet?

11 A. Yes. Well, it's the school's policy booklet.

12 Q. And that's available for anybody to go and  
13 review?

14 A. Yes.

15 Q. When a district policy is changed, do you also  
16 send out notification to parents and to staff?

17 A. Not necessarily, no.

18 Q. If the policy change impacts them, do you let  
19 them know?

20 A. Yes.

21 Q. Okay.

22 A. For example, on the sports eligibility one,  
23 that's not one that goes really out to everybody, it  
24 went out to the P.E. teachers. And then once some  
25 teachers had questions, you know, I gave this kid a "D,"

1 why is he still eligible to play on the team, then we  
2 give the copy out to all of the teachers.

3 Q. Okay. That makes sense.

4 And how about the parents, did they get notices  
5 of the policy change?

6 A. I'm not sure.

7 Q. Did you send them notices?

8 A. I didn't send them notices of policy change,  
9 no.

10 Q. Is that because it's the district's  
11 responsibility to let them know?

12 A. (Witness nods head.)

13 Q. Did you let the students know that there was a  
14 policy change at Tenaya?

15 A. Which policy change?

16 Q. I'm sorry, about the eligibility for athletics.

17 A. Not really, no.

18 Q. Okay. So if I were a student at Tenaya and I  
19 got a "D" in a class, I wouldn't know whether I would be  
20 eligible or not now?

21 A. The coaches let the kids know about their  
22 eligibility.

23 Q. Okay. I'd hope I wouldn't get a "D" in a class  
24 too but --

25 Can you think of an approximate number of

1 policies that Superintendent Rassmussen has changed?

2 A. I really don't have any idea.

3 Q. Okay. Would you say it was more than five?

4 A. Probably.

5 Q. Okay.

6 A. I really don't know.

7 Q. So it's not helpful for me to keep asking  
8 numbers?

9 A. No.

10 Q. Okay. Fair enough.

11 You said a little while ago, I think, that you  
12 thought Superintendent Rassmussen may have been changing  
13 the policy on fees before --

14 A. I'm not really sure on that. I can remember a  
15 conversation about it, but I'm not sure.

16 Q. And you can remember a conversation with him  
17 about the school fees?

18 A. Yes.

19 Q. But you don't remember whether it was before or  
20 after you heard about this lawsuit?

21 A. No.

22 Q. Okay. What do you remember about it?

23 A. About the policy?

24 Q. About the conversation with him about the fees  
25 policy.

1 A. That the fees policy was -- before it stated  
 2 that if the child kept what it had, you know, they would  
 3 have ownership of it, that that was legal. Now I  
 4 believe it says that no fees will be charged.  
 5 Q. Okay. And that's your memory -- that sounds  
 6 like you're telling me what the policy is now.  
 7 A. Right.  
 8 Q. And I mean to be asking you what you remember  
 9 about a conversation with the superintendent about a  
 10 change that he thought he might make to the policy.  
 11 A. Oh, did he hold a personal conversation with me  
 12 about that, no.  
 13 Q. Okay. So what you knew is that the  
 14 superintendent was looking at the policy?  
 15 A. Yes.  
 16 Q. And that there might be a policy change?  
 17 A. Yes.  
 18 Q. But you didn't know the details?  
 19 A. No.  
 20 Q. Okay. That's good to know.  
 21 I'm going to go back to our chronology, which I  
 22 know is painful. Having learned about the lawsuit in  
 23 the newspaper, you had a conversation with -- you had  
 24 one conversation with the superintendent about the  
 25 lawsuit?

1 A. Right.  
 2 Q. You had a conversation with your elective  
 3 teachers?  
 4 A. Yes.  
 5 Q. And then you had a conversation with your  
 6 entire staff?  
 7 A. Yes.  
 8 Q. I want to ask you about the conversation you  
 9 had with the elective teachers.  
 10 A. Okay.  
 11 Q. Was that a meeting that you held someplace at  
 12 the school just with the teachers, the elective  
 13 teachers?  
 14 A. In my office.  
 15 Q. How many elective teachers are there, do you  
 16 know?  
 17 A. We've got woodshop, band, drama. The drama  
 18 teacher wasn't there. She was new. That was after  
 19 that. Five electives teachers. I also had the P.E.  
 20 teachers in there.  
 21 Q. Okay. There's five elective teachers, and we  
 22 went through woodshop, band and drama. Are there more?  
 23 A. Yes. Computers. Did I say cooking?  
 24 Q. No. Is that all the electives that are offered  
 25 at --

1 A. We also offer art and drama. The art teacher  
 2 was there, but he doesn't do fees, but he was at the  
 3 meeting.  
 4 Q. That's Mr. Ensminger, Mr. E-n-s-m-i-n-g-e-r,  
 5 right?  
 6 A. Yes.  
 7 Q. Okay. You've mentioned drama twice. I don't  
 8 know if that's -- so I don't know if there's an actual  
 9 number that's six for the electives or if there's seven  
 10 and we're forgetting the seventh elective course.  
 11 Do you know?  
 12 A. Let me go over them. Woodshop, cooking, drama,  
 13 art, computers. What am I forgetting? I think that's  
 14 it.  
 15 Q. You mentioned band also.  
 16 A. Band. And chorus, which is the same teacher.  
 17 Q. Okay. That's all the electives at Tenaya?  
 18 A. Uh-huh.  
 19 Q. Okay. So you had this meeting with the  
 20 elective teachers and the P.E. teachers, except the  
 21 drama teacher because the drama teacher wasn't at the  
 22 school at the time?  
 23 A. No.  
 24 Q. Was there any drama teacher at the school or --  
 25 A. No.

1 Q. And you held that in your office?  
 2 A. Yes.  
 3 Q. What did you say at that meeting?  
 4 A. Basically I just explained what I knew about  
 5 the lawsuit and asked them to clarify just exactly what  
 6 they do with fees, make sure that my understanding was  
 7 their understanding.  
 8 Q. And did they clarify it at that meeting?  
 9 A. Uh-huh.  
 10 Q. And each one of them spoke separately about  
 11 what was happening with fees?  
 12 A. I talked to each of the teachers, yeah. We all  
 13 talked collectively, but --  
 14 Q. I should take a step back and make sure that  
 15 we're on the same page. When I use a word "fees" or  
 16 "school fees," what do you understand those terms to  
 17 mean?  
 18 A. I understand it to be the amount of money that  
 19 we ask students to pay if they are able to.  
 20 Q. Okay. That works for me. We'll use that as a  
 21 definition.  
 22 A. Okay.  
 23 Q. So back to that meeting. Why don't we go  
 24 teacher by teacher at the meeting for what they said.  
 25 And let me ask you, before we start that, if

1 the art teacher also said anything at the meeting?  
 2 A. The art teacher explained his position.  
 3 Q. Okay. And his position being?  
 4 A. That he felt that the State should be paying  
 5 for all of these things, that it was not the  
 6 responsibility of the school nor the students.  
 7 Q. Okay. So then let's go through the other  
 8 teachers. What did the woodshop teacher say?  
 9 A. Woodshop teacher said that he charged for any  
 10 extra projects that the students may make, for example,  
 11 if they wanted to make a Mother's Day present or  
 12 something.  
 13 Q. Okay. Did you say anything in response to  
 14 that, or did you just let everybody talk first?  
 15 A. I just let everybody talk.  
 16 Q. So what did the band teacher say?  
 17 A. The band teacher talked about the -- basically  
 18 they all said the same thing. The band teacher talked  
 19 about the trips that had to be -- they had to go to and  
 20 what the amount of money was.  
 21 Q. What was the amounts of money?  
 22 A. I want to say \$45.  
 23 Q. Okay.  
 24 A. And she made it very clear that it was stated  
 25 in her handbook that it was not mandatory to being in

1 the class, and all of the other teachers said the same  
 2 thing, that it was not mandatory to their being in the  
 3 class, it did not have any reflection on their grades or  
 4 anything.  
 5 Q. How about the computer teachers?  
 6 A. Computer teacher does not have any fees.  
 7 Q. Did the teacher say anything about the fee  
 8 issue at the meeting?  
 9 A. She understood where Mr. Ensminger was coming  
 10 from, and also felt that the State should pay for it.  
 11 Q. Okay. How about the cooking teacher, what did  
 12 the cooking teacher say?  
 13 A. She was not in attendance at that meeting. Her  
 14 husband had just died. So I talked to her separately,  
 15 and she basically said the same thing, that kids that  
 16 could not pay for it were not required to pay for it.  
 17 Q. Okay. And the P.E. teacher? Is there just one  
 18 P.E. teacher or more than one?  
 19 A. No, there's four P.E. teachers.  
 20 Q. Okay. What did each of them say?  
 21 A. There's four full-time P.E. teachers, but we  
 22 also have a couple of P.E. teachers that teach a period  
 23 or two, so we've got -- and one who shares a contract,  
 24 so there's more teachers than that.  
 25 Q. How many total are there?

1 A. Six.  
 2 Q. Now I'm confused, and I am bad at math. But  
 3 there's four who are full-time P.E. teachers?  
 4 A. There's three who are full time. I have two  
 5 males, and then my female P.E. teacher is on a shared  
 6 contract, and so that's where I was getting the four  
 7 because the four of them are there on a regular basis.  
 8 And then I have one teacher who teaches a couple of  
 9 periods, and another teacher who teaches one period of  
 10 P.E.  
 11 Q. Okay. That explained how we got to six.  
 12 Thanks. Why don't we go through each of the six, what  
 13 they said.  
 14 A. I'm trying to remember if all six of them were  
 15 there. I can tell you what the group's basic thing was.  
 16 They were very upset about the hat piece of it, because  
 17 the boys wear their hats, they keep their hats, they  
 18 take their hats home, but no one was kept from being  
 19 able to participate on the team without the hats. They  
 20 were very upset about that. They talked about -- and  
 21 that was basically their part of it was the hats.  
 22 Q. Did they tell you about any other fees that  
 23 were charged for P.E. or for sports at the school?  
 24 A. Not at that meeting, no.  
 25 Q. Okay. So the P.E. teachers who teach or who do

1 sports other than baseball didn't tell you about any  
 2 other charges for any other athletics at the school?  
 3 A. No.  
 4 Q. Okay. So after -- can you think of anything  
 5 else that any of the teachers said at that meeting?  
 6 A. This was clear back at the beginning of the  
 7 year, you guys. But that's basically the things that  
 8 were talked about.  
 9 Q. Okay. After they spoke, did you say anything  
 10 to them?  
 11 A. I just told them that I would keep them updated  
 12 on what was happening, and if I needed them to change  
 13 anything that they were doing, that I would let them  
 14 know.  
 15 Q. Did you share any thoughts with them about what  
 16 they thought about what fees could be charged or about  
 17 the --  
 18 A. They basically already told me what they  
 19 thought.  
 20 Q. Did you respond, did you say what you thought  
 21 about what they thought?  
 22 A. I'm pretty good at sharing my opinions on  
 23 things, so I'm sure I probably did.  
 24 Q. But you can't remember sitting here what you  
 25 said?

1 A. No.  
 2 Q. Can you remember the gist of what you said?  
 3 A. The gist of it was like I already told you,  
 4 that I was upset with it, that I did not think that it  
 5 was fair, that I did not think that what we had done was  
 6 illegal, and I know we talked about what do we tell  
 7 parents.  
 8 Q. Uh-huh. What did you say about what to tell  
 9 parents?  
 10 A. Basically just tell them like it was. They  
 11 knew more than I knew. It was already in the newspaper.  
 12 They knew way more than I did.  
 13 Q. Okay. Then after you had that meeting, you had  
 14 a meeting with all the teachers on your staff?  
 15 A. Yes.  
 16 Q. Can you describe that meeting for me?  
 17 A. That meeting wanted to be a hostile meeting.  
 18 Q. Who wanted it to be a hostile meeting?  
 19 A. The teachers. They were very angry.  
 20 Q. Who were they angry with?  
 21 A. Keith. And Keith asked if he could speak at  
 22 that meeting and I gave him the floor, and other  
 23 teachers wanted to -- they wanted to be angry, they  
 24 wanted to say their part, and I shut it off and did not  
 25 allow it to go on.

1 MR. YARNELL: Is it clear on the record that  
 2 her reference to Keith, I believe, is to Mr. Ensminger?  
 3 MS. LHAMON: It is now, and I appreciate it.  
 4 Q. How come you shut off the meeting, so that the  
 5 teachers wouldn't be angry?  
 6 A. I couldn't shut off the anger, but I shut off  
 7 them directing their anger towards a person who felt  
 8 that he was doing what was right consciencewise.  
 9 Q. Did any of the teachers say anything to you  
 10 about that?  
 11 A. About me shutting it off, oh, yeah.  
 12 Q. But you felt good about that decision?  
 13 A. That's my prerogative as an administrator.  
 14 Q. I agree with you.  
 15 How long did that meeting last, the one that  
 16 was with all the teachers?  
 17 A. It was a regular beginning of the year staff  
 18 meeting, and so it was probably a couple of hours long.  
 19 That portion of it was a couple of minutes long.  
 20 Q. Did you have any other conversations with  
 21 teachers either individually or collectively about --  
 22 A. Yes.  
 23 Q. Will you hate me if I ask you to try to do it  
 24 chronologically?  
 25 A. Yes.

1 Q. Then I won't.  
 2 A. No, I won't hate you, but will I be able to  
 3 answer you, no. And I wouldn't be able to tell you  
 4 which teacher asked what. That's all kind of blurred  
 5 together.  
 6 Q. I just looked at my watch. We've been going  
 7 about an hour and 15. Do you want to take a break, or  
 8 do you want to keep going. Are you okay?  
 9 A. I'm okay.  
 10 Q. Let's talk about what you remember about the  
 11 conversations with the teachers. Let's start with  
 12 individual conversations. How many people did you speak  
 13 to individually?  
 14 A. I would say on the whole there was probably  
 15 only about eight or nine staff members that wanted to  
 16 talk. Many of them were people we had already talked  
 17 with before, but they were still upset and they needed  
 18 to air their feelings about the issue.  
 19 Q. Okay. And when you say "staff members," are  
 20 you referring only to teachers?  
 21 A. No, it could be anybody on the staff. I know  
 22 that there were some secretaries that wanted to know.  
 23 Q. Okay. Do you remember who that eight or nine  
 24 people were?  
 25 A. Not specifically.

1 Q. Okay. You can't picture in your mind how those  
 2 conversations went?  
 3 A. Basically it was -- I became a broken record.  
 4 I told them what I knew and listened to their concerns.  
 5 Q. Okay. Did each of the eight or nine people  
 6 have essentially the same concerns, or did anybody have  
 7 a different set?  
 8 A. They were basically the same, that they were  
 9 angry, they didn't think it was fair.  
 10 Q. Okay. I take it I wouldn't be very popular  
 11 among your staff.  
 12 A. No.  
 13 Q. Okay.  
 14 A. Not you personally, but your group.  
 15 Q. Thank you. Did you have any other group  
 16 conversations?  
 17 A. I did meet with the band parents.  
 18 Q. Do you remember when that was?  
 19 A. Sometime in September or early October. I'm  
 20 not really sure.  
 21 Q. Okay. And where was that meeting?  
 22 A. In the band room.  
 23 Q. Okay. And was that in the evening?  
 24 A. Early afternoon, early evening -- I mean, late  
 25 afternoon, early evening.



- 1 Q. Had you scheduled that meeting, or did the  
2 parents schedule the meeting?  
3 A. We scheduled the meeting.  
4 Q. "We" being Tenaya Middle School?  
5 A. The band teacher and I.  
6 Q. Okay. And how come you did that?  
7 A. Because we'd had a couple of parents call and  
8 ask about the newspaper article, and we needed to let  
9 them know that we were not going to be charging any fees  
10 and what could happen to the program by not charging any  
11 fees.  
12 Q. Okay. And what did you say could happen?  
13 A. That all of the road trips would not be able to  
14 occur, and that we used the money for dry cleaning their  
15 uniforms and buying the team's -- the band t-shirts, and  
16 that those were things that we would have to try and  
17 find other funding for.  
18 Q. You said all the road trips would not be able  
19 to occur. By that do you mean none of them would occur,  
20 or not all of them would occur?  
21 A. We didn't see how at that point in time, not  
22 knowing what fund-raisers would be able to bring in, if  
23 we would be able to hold any of them at all. And I was  
24 just real honest with them, I told them that we didn't  
25 know what we could and could not do, that it would

- 1 depend upon the fund-raisers.  
2 Q. Did the parents say anything in response to  
3 that?  
4 A. The parents wanted to know -- they didn't think  
5 it was fair either and wanted to know what they could  
6 do, and I told them that we would just really have to  
7 become very active in trying to get as many fund-raisers  
8 as we could. One parent was very upset, didn't have the  
9 time for fund-raisers, could I just make a flat-out  
10 donation, and I said, absolutely, all donations are  
11 accepted.  
12 Q. Sure. Okay. How many parents were at that  
13 meeting?  
14 A. I don't think we did a sign-in thing on it. I  
15 would guesstimate that there was probably about 30  
16 adults in there.  
17 Q. Okay. Were there any students at the meeting?  
18 A. Yes.  
19 Q. How many students were at the meeting?  
20 A. There weren't as many students. I would say  
21 about 10, 15 maybe.  
22 Q. Okay. Were they with parents?  
23 A. Yes.  
24 Q. Okay. So it was about 40 people plus you and  
25 the band teacher?

- 1 A. Yes.  
2 Q. Did the band teacher say anything at the  
3 meeting?  
4 A. She just went over what we had planned to do  
5 this year and band rules, and we did it as a whole band  
6 class meeting, kind of like your back-to-school type of  
7 a meeting, so she went over that kind of stuff. I'm the  
8 only one that talked to the lawsuit.  
9 Q. Okay. Did each of the 30 adults speak about  
10 the lawsuit?  
11 A. No.  
12 Q. Okay. How many people did?  
13 A. I would say probably five or six.  
14 Q. Okay. And each of them had essentially the  
15 same views?  
16 A. Uh-huh.  
17 Q. Okay. Did you hold similar meetings with any  
18 of the athletic program parents and kids?  
19 A. No.  
20 Q. Okay. Did you hold similar meetings with the  
21 cooking class parents and kids?  
22 A. No.  
23 Q. Okay. Did you hold any other meetings like  
24 that?  
25 A. No.

- 1 Q. Okay. Did you hear from parents or kids about  
2 any of the other programs other than the band?  
3 A. I had one note from one parent in cooking that  
4 said because of the newspaper article, they would not be  
5 paying the cooking fees. And I had two phone calls  
6 asking about the program, so out of 800-and-some people,  
7 three phone calls.  
8 Q. That's not so bad.  
9 A. It was real surprising.  
10 Q. The two calls asking about the program, what  
11 were they asking?  
12 A. They wanted to know if other schools charged  
13 fees, and I told them, yes. And why was it okay for all  
14 of the other schools to charge fees and them not to  
15 charge fees. They remembered paying fees when they were  
16 kids, and basically it was calls of support.  
17 Q. What did you say to them when they asked why it  
18 was okay for other schools to charge fees?  
19 A. I said I had the same question.  
20 Q. Okay. Did you have any meetings or  
21 conversations with your staff or with parents or with  
22 kids that you can think about today?  
23 A. No, I don't think there were any others.  
24 Was it brought up again in our regular  
25 meetings?

1 Q. Uh-huh.  
 2 A. Yeah, they would ask for update, but I did not  
 3 hold any other meetings specifically for that purpose.  
 4 Q. Okay. When you've updated your staff, what  
 5 have you said?  
 6 A. Let them know that we had a lawyer working with  
 7 us on the case, let them know that I had the  
 8 conversation with you. I didn't realize that it was  
 9 with you, but --  
 10 Q. But it was.  
 11 A. That's right. Let them know that I was coming  
 12 here today. So those kinds of updates.  
 13 Q. Okay. Have you had any other meetings or  
 14 conversations with your superintendent about the lawsuit  
 15 after that first one?  
 16 A. Yes.  
 17 Q. Do you know how many total you've had?  
 18 A. No. I think we've both kind of kept each other  
 19 updated on different things that are going on. I would  
 20 say probably maybe five or six times.  
 21 Q. And those were telephone conversations?  
 22 A. Right, or to set up times when I was going to  
 23 meet with Scot.  
 24 Q. Okay. I asked you about your staff  
 25 conversations also, but I don't think I was clear that I

1 saying what are you going to be doing next, these are  
 2 some documents that we need, this is what you need to  
 3 get, this is what I need to get, that type of  
 4 conversation.  
 5 Q. Okay. Did you have further conversations after  
 6 the first one, about whether it was okay for Tenaya  
 7 Middle School to charge the fees that Tenaya Middle  
 8 School had been charging, with the superintendent?  
 9 A. I can't remember if it was the first or the  
 10 second time where we just agreed with everything that  
 11 was going on, that we weren't going to charge fees.  
 12 Q. Okay.  
 13 A. The cooking fees had already been done, but  
 14 everything else was stopped.  
 15 Q. Did you refund the money from the cooking fees?  
 16 A. No.  
 17 Q. So for the current school year you have taken  
 18 in money for the cooking fees?  
 19 A. Yes.  
 20 Q. Okay. What's the fee for the cooking class?  
 21 A. \$3.  
 22 Q. And that's \$3 per student in the class?  
 23 A. Right.  
 24 Q. And there's at least one parent who didn't pay  
 25 the fee?

1 was also talking about your administrators at your  
 2 school, like the vice principal.  
 3 Have you had any separate conversations with  
 4 them?  
 5 A. Separate meaning -- yes, when I met with my two  
 6 assistant principals when we have our administrative  
 7 meetings, probably right at the very beginning, told  
 8 them what I was going -- I can't say that for sure. I'm  
 9 assuming, because that's what my general practice would  
 10 be, that I was telling them what I'd be saying in the  
 11 next meeting.  
 12 Q. Okay. Do you remember what they said to you?  
 13 A. Basically the same thing, that they didn't  
 14 understand it and thought it was not fair. Some had  
 15 stronger terms than others.  
 16 Q. Of the two of them?  
 17 A. No. No, of all of the people we've talked to.  
 18 Q. I appreciate your sanitizing that version.  
 19 You had five or six total conversations with  
 20 the superintendent?  
 21 A. Uh-huh.  
 22 Q. Can you remember the substance of those  
 23 conversations after the first one? And we don't have to  
 24 do them in order.  
 25 A. Right. No, I think basically it was just

1 A. Right. I'm sure there was a number that  
 2 didn't, because every year we have kids that can't and  
 3 don't, and we don't follow up on it, we don't ask them  
 4 about it, we just take what we can get and don't follow  
 5 up on what we can't.  
 6 MR. CHOATE: I'm sorry, are we talking about  
 7 money that was collected in the past? What time frame  
 8 are you talking about?  
 9 Q. BY MS. LHAMON: The question was about this  
 10 year. Did you understand that?  
 11 A. Right.  
 12 Q. Other than the cooking fees for this school  
 13 year, you haven't collected any other fees?  
 14 A. No.  
 15 Q. And that's because the band fee hadn't been  
 16 collected yet when you made a decision?  
 17 A. Right.  
 18 Q. And the woodshop fees hadn't been collected  
 19 yet?  
 20 A. He doesn't collect woodshop fees, he just  
 21 collects for projects that they're going to do that's  
 22 over and above the thing.  
 23 Q. When you say "over and above the thing," you  
 24 mean --  
 25 A. The class requirements.

- 1 Q. Do you intend to return the fee to the students  
2 from cooking?  
3 A. It hasn't been discussed.  
4 Q. When I say you, I mean you. Have you created a  
5 new policy for Tenaya Middle School about the school  
6 fees?  
7 A. I follow the district policy that says no fees.  
8 Q. Is that policy in writing anywhere?  
9 A. Yes, it is.  
10 Q. It is?  
11 A. It's in the district policy.  
12 Q. Okay. And that's in the district policy book?  
13 A. Uh-huh.  
14 Q. Okay. If I wanted to get a copy of it, how  
15 would I go about doing that?  
16 A. Just give the superintendent a call and he's  
17 got board policy copies.  
18 MR. YARNELL: You could ask me for it.  
19 MS. LHAMON: Thanks. I think I will.  
20 Q. Do you know what the policy guide actually  
21 says?  
22 A. Do I have it memorized, no.  
23 Q. Is the gist of it there will be no fees charged  
24 for anything?  
25 A. Yes.

- 1 Q. Do you know if the policy guide makes a  
2 distinction between academic and extracurricular  
3 subjects, or any distinctions?  
4 A. I don't think it makes any distinctions.  
5 Q. Okay.  
6 A. I don't think so.  
7 Q. When you've sent out your updates to your staff  
8 or to the parents at the school, have you sent out an  
9 update saying that there will be no fees charged now?  
10 A. No.  
11 Q. Okay.  
12 A. We just stated it. I don't think it's in  
13 writing anywhere.  
14 Q. Okay. I'm going to start asking you about the  
15 practice of charging fees in some more detail, and I  
16 hope you'll bear with me.  
17 I'm going to step back. Before I start asking  
18 about that, I want to know, I guess, if you have heard  
19 complaints about the charging of fees before you heard  
20 about this lawsuit?  
21 A. From Mr. Ensminger.  
22 Q. When have you heard those complaints from him?  
23 A. Just about every year that I've known him.  
24 Q. Okay. So he's persistent?  
25 A. Yes.

- 1 Q. Okay. Is he the only person who has  
2 complained?  
3 A. Yes.  
4 Q. Okay. Has he complained to you orally or in  
5 writing, or both?  
6 A. I don't think he's ever done it in writing.  
7 I'm trying to think if he's ever sent me an e-mail on  
8 it. He may have sent me an e-mail on it, but basically  
9 it is orally. I know that he sent a letter to you folks  
10 a couple of years ago about field trips.  
11 Q. How do you know that?  
12 A. Because I dealt with the repercussions of it.  
13 Q. What were the repercussions of the letter?  
14 A. We basically had to go to a lot more of a  
15 donation type of thing. That was a few years ago.  
16 Q. Okay. When you said "you folks," who did you  
17 mean by that?  
18 A. ACLU.  
19 Q. Thanks. Every once in a while I like to be  
20 associated with the ACLU.  
21 The repercussions were that you changed your  
22 policy, is that what you were saying?  
23 A. No, we -- yeah, I guess you would say we  
24 changed the policy.  
25 Q. I didn't mean to tell you what to say. I

- 1 forgot what you said, and I should have asked the court  
2 reporter to read it back for me.  
3 A. At that time we asked students to help us pay  
4 for field trips.  
5 Q. "At that time" being before --  
6 A. Before the letter.  
7 Q. Okay.  
8 A. And now we ask for donations.  
9 Q. Okay.  
10 A. Or we don't have the field trips.  
11 Q. Right. Okay. And you say that letter was a  
12 couple of years ago?  
13 A. I think so.  
14 Q. You don't remember when?  
15 A. (Witness shakes head.)  
16 Q. The truth is that I know when, so it's okay.  
17 A. Good, because I don't. Some time during the  
18 period I was a principal.  
19 Q. Okay. That's fair.  
20 When you got -- was the letter to you?  
21 A. No.  
22 Q. Okay. Who was the letter to?  
23 A. No, I was just told that it was mailed to  
24 the -- that the district received a letter from the  
25 ACLU.

- 1 Q. Okay. And who told you that?  
2 Isn't this fun?
- 3 A. No, because I'm feeling real stupid.
- 4 Q. You're not. You're doing really well.
- 5 A. I want to say that it was the superintendent,  
6 and at that time that would have been Don DeLong.
- 7 Q. Okay. Just so you know, you're being real  
8 clear when you don't know something for sure, and you  
9 don't look stupid and you don't sound stupid, and you're  
10 not going to think you're stupid when you read this  
11 transcript.
- 12 A. Thank you.
- 13 Q. And I'm certainly not going to.  
14 So you heard a couple of years ago, probably  
15 from the superintendent, that there was a letter from  
16 the ACLU about the school fees?
- 17 A. Not about school fees, about field trip fees.
- 18 Q. Okay. You had a conversation with the  
19 superintendent. To the best of your memory, did the  
20 superintendent tell you something to do in response?
- 21 A. This was -- once again, me personally, no, with  
22 the middle school principals, and if I remember  
23 correctly, it was with all of the principals, all of the  
24 elementary principals.
- 25 Q. Okay. But not the high school principals?

- 1 A. It's not a unified district.
- 2 Q. I forgot that. Thank you.  
3 So your memory is the superintendent, probably  
4 Don DeLong, talked to all of the principals?
- 5 A. Yes.
- 6 Q. About the field trip fees?
- 7 A. Right.
- 8 Q. Assuming it was Don DeLong, what did he tell  
9 you to do?
- 10 A. It would have been -- actually, Don DeLong was  
11 the superintendent at the time, Judy Doyle was the  
12 assistant superintendent, and she got advice from  
13 counsel that helped us state our letters in a way that  
14 let parents know that it was not required, but that if  
15 they could help us out so that we could have these field  
16 trips.  
17 It was basically the same thing, but we just  
18 wanted to make sure that the wording was such that the  
19 parents knew for sure that it was not required, that it  
20 was -- we just needed help if this field trip was going  
21 to be taken.
- 22 Q. Okay. Do you still word the letters in the  
23 same way?
- 24 A. We asked for donations.
- 25 Q. Do you have copies of those letters now?

- 1 A. Yes. Not here.
- 2 Q. Not today. But in your office you have copies  
3 of those letters?
- 4 A. Yes.
- 5 Q. So if I wanted a copy, and I think I probably  
6 do, I could ask you or your counsel?
- 7 A. Yeah.
- 8 Q. And you would be able to get your hands on  
9 them?
- 10 A. Yeah.
- 11 Q. And I don't mean a copy of an actual letter  
12 that was sent out, but you have in your records --
- 13 A. Letters that have been sent out.
- 14 Q. Do you know if such a letter has gone out this  
15 year?
- 16 A. For the Great America Trip we had a letter that  
17 went out, and we just had another letter that went out  
18 and told them that they were short funding and that we  
19 would probably have to cancel the trip.
- 20 Q. Okay. And that was pretty recent, that letter?
- 21 A. Yeah, within the last couple of weeks. And we  
22 asked for people that would like to donate any amount.  
23 Very much like your alumni letters that you get from  
24 your universities stating for one person, two people,  
25 \$5, any amount. Stated how much money we were short in

- 1 our fund-raising abilities to be able to have this  
2 graduation trip paid for.
- 3 Q. My college is not asking for \$5, I'll tell you  
4 that.  
5 What was the response, or have you had much  
6 response in the last two weeks to that letter?
- 7 A. We have had about \$200 come in.
- 8 Q. That is enough to be able to --
- 9 A. We're short \$2,000.
- 10 Q. In addition to the -- are you now short 1,800?
- 11 A. We're now short \$1,800.
- 12 Q. Okay.
- 13 A. This has had serious impact on being able to  
14 provide opportunities for our students to do what  
15 they've done in the past.
- 16 Q. And when you say this has had "serious impact,"  
17 what do you mean?
- 18 A. At the time of the field trips, you know,  
19 asking for fees and not being able to get them.
- 20 Q. I'm going to want to ask you more about this  
21 impact, but I want to wait for a few minutes, or  
22 probably longer than a few minutes, actually. Your  
23 counsel is laughing.
- 24 But to go back to the field trips. You do have  
25 a letter that says, in short, that a donation would be

1 appreciated?  
 2 A. Yes.  
 3 Q. I don't think that's your words, but that's the  
 4 message?  
 5 A. Yes.  
 6 Q. Okay. Do you send letters about anything else  
 7 at the school that say similarly that donations would be  
 8 appreciated?  
 9 A. Besides for field trips?  
 10 Q. Uh-huh.  
 11 A. Not that I can think of. Not that I'm aware  
 12 of.  
 13 Q. I worded that question unbelievably unclearly,  
 14 so I'm going to make it clearer now.  
 15 Not just you personally, but do you know if any  
 16 teacher sent home letters asking for donations?  
 17 A. Besides for field trips?  
 18 Q. Besides for field trips.  
 19 A. I don't believe so.  
 20 Q. Do you know if any administrators sent home  
 21 letters asking for donations besides for field trips?  
 22 A. Not that I'm aware of.  
 23 Q. Okay. And when I refer to teachers, I also was  
 24 including the coaches to the extent that they may differ  
 25 from the P.E. teachers.

1 A. They have fund-raisers for their different  
 2 things, but I don't believe that they're asking for  
 3 donations.  
 4 Q. Okay. To stay on the field trips just briefly,  
 5 you had advice from counsel a few years ago after the  
 6 district got that letter from the ACLU in how to word  
 7 the letters appropriately.  
 8 Have you checked with counsel more recently  
 9 than that to see if the wording is still appropriate?  
 10 A. I personally haven't.  
 11 Q. Do you know if the district has?  
 12 A. I don't know.  
 13 Q. Okay. In the context of this lawsuit, have you  
 14 discussed the field trip issue with your superintendent  
 15 or with anybody else?  
 16 A. Not in the context of this lawsuit, no.  
 17 Q. Okay. So your understanding has been that the  
 18 school fees concern now that's part of this lawsuit is  
 19 separate from the field trips issue?  
 20 A. Yes.  
 21 Q. Okay. Why is that?  
 22 A. Because field trips haven't been brought up.  
 23 Q. Uh-huh. Let me ask it a different way. If you  
 24 were still asking for not a donation, if the school were  
 25 still saying a parent needs to pay some sum of money for

1 a student to be able to go on a field trip, would you  
 2 have considered that to be part of the school fees  
 3 issue?  
 4 A. No.  
 5 Q. Or would it still have seemed separate?  
 6 A. It would still stay separate.  
 7 Q. Why is that?  
 8 A. Well, first off, it was taken care of years  
 9 before this even came in, and at that time it wasn't  
 10 considered a fee, it was an extra trip that we were  
 11 taking kids on, and if they -- in order for those  
 12 opportunities to arrive, we needed help in funding them,  
 13 and if they could help, great, if they couldn't help,  
 14 then we would try to figure out if we could get enough  
 15 help that the trip could still go on. We found ways to  
 16 get donations and sponsors for those kids who couldn't.  
 17 Q. That makes a lot of sense.  
 18 Okay. I'm going to ask you about the impact on  
 19 the districts now and then I'm going to get to my other  
 20 questions.  
 21 A. Okay.  
 22 Q. You've said that this issue, the issue of the  
 23 school fees and the not being able to charge them has  
 24 had a serious impact on the district's ability to do the  
 25 things kids would like to do?

1 A. I said it had a serious impact on Tenaya's  
 2 ability. Yes, it has.  
 3 Q. Can you talk to me about what that impact is?  
 4 A. By not doing the fees for cooking, I think  
 5 that's one of the larger areas of impact right now. I'm  
 6 working on the budget for next year this week, and the  
 7 teachers have always received a certain amount of money  
 8 in order to buy their classroom supplies out of our  
 9 general fund. In order to offset that and pay for the  
 10 additional monies that are needed in order to run the  
 11 cooking class, I've had to drastically cut, or will have  
 12 to drastically cut what I'm able to allot for classroom  
 13 supplies.  
 14 Q. For all classrooms or for the cooking classes?  
 15 A. No, for all classes because -- and for the  
 16 department supplies. In the past the social studies  
 17 department, say, had \$1,000 that they could buy supplies  
 18 that they wanted for their department out of. I've had  
 19 to cut that in order for us to offset the cooking  
 20 classes.  
 21 Q. Okay. Do you know what the dollar figure is by  
 22 which you've had to cut it per teacher?  
 23 A. I'm still working on that budget, so, no. I'm  
 24 thinking that in each of the departments I'll probably  
 25 cut a couple hundred dollars from each department.

1 Q. Okay. How much revenue had Tenaya been taking  
2 in for the school fees for, let's say, this year, how  
3 much?  
4 A. For cooking?  
5 Q. For cooking.  
6 MR. CHOATE: I'm going to object to the  
7 question. It's unclear as to what revenue you're asking  
8 about.  
9 Q. BY MS. LHAMON: Did you understand my question?  
10 A. Asking how much money we took in for cooking  
11 fees?  
12 Q. Uh-huh.  
13 MR. CHOATE: I'm sorry.  
14 MS. LHAMON: It's okay. You can go ahead and  
15 answer.  
16 THE WITNESS: The exact amount, no, I can't  
17 tell you. But if you figure -- say, it was at 800  
18 students times \$3. You're look at a couple thousand  
19 dollars there, \$2,400 that could have been used to help  
20 with that area.  
21 Q. BY MS. LHAMON: Does every student at Tenaya  
22 take cooking?  
23 A. At one time or another, unless they are taking  
24 band or chorus, which are year-long courses. Sometime  
25 between their 7th and 8th grade year they will probably

1 take a cooking class, unless they took band or chorus.  
2 Q. That is because Tenaya students have a  
3 particular fascination with the culinary arts?  
4 A. No, it's a small school so we don't have as  
5 many elective courses. And elective is a poor choice of  
6 words because they don't get to elect to take it very  
7 often, they get to elect to take whether they're going  
8 to take a year-long course or a semester course.  
9 Q. You were saying that you would probably have to  
10 cut a couple hundred dollars per department for the  
11 cooking fees alone?  
12 A. Uh-huh.  
13 Q. Will you have to cut anything else from your  
14 programs as a result of not taking in money from school  
15 fees for any other programs other than cooking?  
16 A. I don't think that we'll be -- what we'll  
17 probably be doing is cutting the opportunities because  
18 we're already on such a lean budget that there's no  
19 place else to cut. We're just going to have to start  
20 dropping programs -- not programs, but opportunities.  
21 Q. Okay. When you say "opportunities," what kinds  
22 of things do you mean?  
23 A. The field trips, being able to, if we can, to  
24 do it fund-raisingwise. If fund-raising don't give  
25 enough money, then maybe we aren't going to be able to

1 participate in baseball if we can't get enough money to  
2 buy the baseball hats. Just those kinds of programs, if  
3 we can't find additional resources, we aren't going to  
4 be able to do them.  
5 Q. Those programs that you're worried about maybe  
6 having to cut, do you think those are important for  
7 kids?  
8 A. That's what causes kids to hook into one to be  
9 in school, gives them opportunities outside of the  
10 straight academics. It also gives, especially students  
11 in my school who have parents who are very limited  
12 income parents and so -- or second-language learners who  
13 have not had enough concrete opportunities to build  
14 experiences onto, have that foundation and language that  
15 comes. You know that all of that comes from the  
16 opportunities that they get. If you can't have those  
17 opportunities, then, in my opinion, this is just  
18 Atkinson's opinion, it lowers motivation, but it also  
19 has an impact on their learning.  
20 Q. Uh-huh. And what kind of impact does it have  
21 on their learning?  
22 A. They don't have as much of a foundation to be  
23 able to pull from. If you've never seen the ocean, if  
24 you are doing purely academics and you don't get to  
25 participate in a cooking class, academics are already

1 pushing or -- and it should, but you're saying -- we're  
2 losing too many programs, we're losing music programs,  
3 we're losing our programs, we're losing electives  
4 programs because we've got to funnel that money into the  
5 academic quarters.  
6 Q. Okay. And you think that that loss is not good  
7 for kids?  
8 A. I think that loss is not good for kids.  
9 Q. Okay. Are you trying to find other ways to  
10 make sure that those programs can still be offered at  
11 Tenaya?  
12 A. Tenaya is a continuous fund-raising school.  
13 Q. So yes?  
14 A. Yes.  
15 Q. Would it help you if you got more resources to  
16 the school?  
17 A. Yes.  
18 Q. Okay. In the same vein, since the State has  
19 sued your district, have you had to spend a lot of time  
20 with your attorney working on this suit?  
21 A. I wouldn't say we had to spend a lot of time,  
22 but, yes, we've had to spend time.  
23 Q. How much time have you had to spend?  
24 A. To be real honest, I think it's the same amount  
25 of time as we're -- we're doing the same things, it's

1 just we've got more participants, but we're doing the  
 2 same stuff. I'd have to prepare for you as I would have  
 3 to prepare for them.  
 4 Q. Okay. And what does your attorney charge per  
 5 hour?  
 6 A. I don't know.  
 7 Q. That's okay. Do you know what the district has  
 8 had to pay so far to Mr. Yarnell's office?  
 9 A. I know what the superintendent has told me what  
 10 it could come up to. The superintendent has said that  
 11 it could cost up to about \$50,000.  
 12 Q. 50 or 15?  
 13 A. I'm sorry?  
 14 Q. Did you say 50?  
 15 A. 50, \$50,000.  
 16 Q. The cooking fees were presumably a lot less  
 17 than that.  
 18 A. Yes.  
 19 Q. So that's money that you might have preferred  
 20 to have spent at the school on other things?  
 21 A. Any money that the district has to spend on  
 22 legal fees could have gone into the general fund if  
 23 those legal fees did not have to be spent.  
 24 Q. Okay. If you had some portion of those funds,  
 25 let's say -- how many schools are there in the Merced

1 district?  
 2 A. Fourteen, I believe.  
 3 Q. So if you had a fourteenth of the \$50,000, what  
 4 would be the things that you would put that money  
 5 toward?  
 6 A. I would put it towards allowing the teachers to  
 7 have more money for the things that they need in their  
 8 classes, the classroom materials. That's where we're  
 9 having to cut back.  
 10 Q. Okay.  
 11 A. So it would just go right back to them.  
 12 Q. It would go right back to the classroom  
 13 materials?  
 14 A. Right.  
 15 Q. Would you use any of it for field trips or for  
 16 anything else?  
 17 A. If we had sufficient classroom materials, then  
 18 we would be able to do the field trips as well.  
 19 MR. CHOATE: I'm going to object to the  
 20 question to the extent it asks her to speculate how she  
 21 would spend funds that she may or may not have access  
 22 to.  
 23 Q. BY MS. LHAMON: Do you know how much money you  
 24 need to run the band?  
 25 A. Not really, no. I can give you ballpark

1 figures again.  
 2 Q. Uh-huh.  
 3 A. We do six band reviews a year. The band review  
 4 fees generally are about \$125 to \$250 depending on the  
 5 review. Then you have to pay for one to two buses to  
 6 get the kids to and from the band reviews. Obviously a  
 7 band participating in these reviews, participating in  
 8 these concerts is an integral part of the program, and  
 9 so it's about \$600 -- 3 to \$600 depending on how far  
 10 away the band review is for the buses, for  
 11 transportation, and then another couple of hundred  
 12 dollars for each of the reviews.  
 13 And then you have dry cleaning fees, you have  
 14 uniform fees, the costs that it costs us to -- I think  
 15 the last set of uniforms that we purchased cost between  
 16 6 and \$9,000 for the uniforms and the alterations that  
 17 have to be done as a new student comes into those  
 18 uniforms.  
 19 Q. Pretty expensive?  
 20 A. Very expensive.  
 21 Q. Okay. You said a little while ago that the  
 22 cooking fees were your largest concern right now. Is  
 23 that because you're doing --  
 24 A. Well, that's the one -- it's because I'm doing  
 25 the budget right now.

1 Q. Are you concerned about your ability to run the  
 2 band the way that the school has been running it in the  
 3 past next year?  
 4 A. Our fund-raising is not bringing in all of the  
 5 amount of money that it's going to take, so what the  
 6 band boosters -- because we do have a band boosters  
 7 now -- what the band boosters is not able to raise,  
 8 hopefully we can augment out of our student body  
 9 accounts, but, once again, that's done with fund-raisers  
 10 as well.  
 11 Q. Okay.  
 12 A. So it's totally dependent on what we can  
 13 fund-raise.  
 14 Q. Okay. So far this school year, have you been  
 15 able to raise the money you needed for the band?  
 16 A. So far we have been able to raise the money.  
 17 Q. Okay. So far this year --  
 18 A. For the band, yes.  
 19 Q. None of the band students have been unable to  
 20 do things that the students were able to do last year?  
 21 A. No.  
 22 Q. And none of the band students this year have  
 23 been unable to do things that the band teacher planned  
 24 for them to do this year?  
 25 A. Not that I'm aware of. I think we've been able

1 to augment it.  
 2 Q. Okay. That's lucky.  
 3 A. Real lucky.  
 4 Q. What are the fund-raisers that you used for the  
 5 band this year?  
 6 A. The dentists love us because we've sold tons of  
 7 candy. Basically it has been candy. I think they did a  
 8 pizza fund-raiser. I can't remember if it was this year  
 9 or not. They do car washes.  
 10 Q. Did they do -- did the students and the band --  
 11 A. Band-a-thons.  
 12 Q. I'm sorry, I didn't mean to cut you off.  
 13 A. That's okay.  
 14 Q. Are you done now?  
 15 A. Yes.  
 16 Q. Did the students in the band do those kinds of  
 17 fund-raisers last year also, in addition to the school  
 18 fees?  
 19 A. Yes, so that they could take more trips. And  
 20 we are just doing the six trips.  
 21 Q. So actually maybe last year they did get to  
 22 take more trips than they're taking this year?  
 23 MR. CHOATE: Object to the question.  
 24 MS. LHAMON: You can answer it anyway.  
 25 THE WITNESS: I need to clarify a little bit

1 and go back two years. They're having to do less than  
 2 they did two years ago, less than they would have done  
 3 last year, but I had a brand-new band teacher and she  
 4 was coming on board, and so what she would have done  
 5 would have been similar to the year before if I'd had  
 6 the same teacher and, yes, that was less.  
 7 Q. BY MS. LHAMON: Okay. So this year, do you  
 8 think that the students this year in band will partake  
 9 of fewer opportunities than you would have, you,  
 10 Principal Atkinson, would have hoped that they could  
 11 have partaken in?  
 12 A. Yes.  
 13 Q. And fewer opportunities than they would have  
 14 partaken of had the fees been charged?  
 15 A. Probably.  
 16 Q. Okay. And why do you say "probably"?  
 17 A. Once again, it's contingent on -- the fees pay  
 18 a very small portion of it. It's the fund-raising too.  
 19 Q. Okay. Has the school received any outright  
 20 donations for band --  
 21 A. Yes.  
 22 Q. -- this year?  
 23 A. Many of the band parents prefer to go with the  
 24 donation than doing -- in addition to the fund-raising.  
 25 Q. Do you know what the sum has been so far this

1 year of outright donations?  
 2 A. No, I don't.  
 3 Q. Do you know if the donations tend to be equal  
 4 to what the fees had been?  
 5 A. Yes, they have.  
 6 Q. Have there been any large donations?  
 7 A. Not that I'm aware of. But I don't do the band  
 8 booster stuff, so I don't have as much a feel for it as  
 9 I have in the past.  
 10 Q. And that's because you have a new band booster  
 11 program now?  
 12 A. That's correct.  
 13 Q. Who does the band booster stuff now?  
 14 A. The band booster president, and I can get the  
 15 name for you, but I can't remember the name.  
 16 Q. It's a woman?  
 17 A. Yes.  
 18 Q. Is she a parent at the school?  
 19 A. Yes.  
 20 Q. Does she have a child who is going to be at the  
 21 school next year also?  
 22 A. I'm not sure if she's an 8th grader or not.  
 23 Q. So you might lose her?  
 24 A. Might lose her.  
 25 MS. LHAMON: I'm looking at my watch again, and

1 we're close to noon. Do you want to keep going for a  
 2 little while, or do you want to take a break for lunch?  
 3 MR. YARNELL: I do need a break myself.  
 4 MS. LHAMON: Why don't we take one.  
 5 MR. YARNELL: If we're going -- I guess I'd  
 6 like to estimate how long we're going to take today,  
 7 because at some point we need to schedule a break for  
 8 lunch.  
 9 MS. LHAMON: I don't expect to go all day, but  
 10 I do have at least another hour or so to go, so we  
 11 should probably take a break for lunch.  
 12 MR. YARNELL: I wouldn't suggest doing that now  
 13 at this point. It's the busiest time. If she's ready  
 14 to go further, I'm happy to do so also. I'm not  
 15 suggesting a lunch break.  
 16 MS. LHAMON: Let's take a ten-minute break, and  
 17 we'll get back and figure out then how long we should  
 18 keep going.  
 19 (Recess taken.)  
 20 Q. BY MS. LHAMON: I've been asking you about  
 21 school fees so far, and it occurred to me during the  
 22 break that I should check in with you about whether  
 23 students are required to pay for anything else for  
 24 school.  
 25 Are they required to pay for textbooks or for



1 instructional materials for their classes or anything  
 2 else for the school?  
 3 A. They aren't required to pay anything. They are  
 4 asked to pay for some things. We have P.E. uniforms,  
 5 and they can purchase the P.E. uniforms or a gray  
 6 t-shirt and blue shorts.  
 7 Q. If they don't purchase the P.E. uniform from  
 8 the school, where else could they get the clothes for  
 9 P.E.?  
 10 A. Anywhere that they can get a gray shirt and  
 11 blue shorts.  
 12 Q. Has that always been the policy since you've  
 13 been the principal?  
 14 A. It was the policy this year, and in talking  
 15 with my P.E. teachers, they gave that option in the past  
 16 as well.  
 17 Q. Okay. Did they give that option last year?  
 18 A. Yes.  
 19 Q. Okay. Is there anything else that you can  
 20 think of that students are asked to pay for at the  
 21 school?  
 22 A. They have the opportunity to purchase the lock.  
 23 Q. And the lock for?  
 24 A. For their P.E. uniforms.  
 25 Q. Okay. So the lock goes on the locker holding

1 the P.E. uniforms?  
 2 A. Yes.  
 3 Q. Okay. If they don't purchase that lock?  
 4 A. Then they get the school lock.  
 5 Q. Okay. Is there anything else that students are  
 6 asked to pay for?  
 7 A. I can't think of anything right now.  
 8 Q. Okay. You can't think of any textbooks or  
 9 instructional materials that they might need for any  
 10 class?  
 11 A. In band they can pay for their music book if  
 12 they want to write in it and do all of the writing in  
 13 it.  
 14 Q. And if they don't want to write in it or they  
 15 don't pay for it?  
 16 A. Then we find a book for them.  
 17 MS. LHAMON: Okay. I'm going to mark an  
 18 exhibit. It will be Merced-1 for us.  
 19 (Exhibit Merced-1 was marked.)  
 20 MS. LHAMON: You should take time to review  
 21 this. And while you're doing that, I'll say for the  
 22 record that Exhibit 1 is a document that's three pages,  
 23 and at the bottom it's Bates stamped SC-ME-TM-00 143  
 24 through 145.  
 25 Q. Have you had a chance to review it?

1 A. Uh-huh.  
 2 Q. Can you tell me what Exhibit 1 is?  
 3 A. It's the -- she calls it her handbook, but it's  
 4 basically the classroom requirements for her class and  
 5 information for the band students.  
 6 Q. When you say "she," who are you referring to?  
 7 A. Cynthia Kiaunis (ph.), the band teacher.  
 8 Q. Is she the current band teacher?  
 9 A. Yes, she is.  
 10 Q. Do you know if this -- let's call it a handbook  
 11 since that's what she calls it -- if this handbook is  
 12 the current handbook?  
 13 A. I was just looking to see. I don't see a date  
 14 on the -- was there a cover that went with this also?  
 15 Q. This is all I got, and I didn't see a date  
 16 either.  
 17 A. Let me read a little more closely and then I  
 18 can tell you. This is this year's, I believe, either  
 19 this year's or last year's because it has choral chorus,  
 20 and we didn't have that before.  
 21 Q. Okay. Thanks.  
 22 Have you seen this document before?  
 23 A. Uh-huh.  
 24 Q. Is this something that you review before it's  
 25 sent out to the students?

1 A. No.  
 2 Q. Okay. In what circumstances have you seen it?  
 3 A. I usually get it -- at the same time that it's  
 4 sent out to the students, I get a copy of it as well.  
 5 Q. If you turn to the third page, which is 00145  
 6 of Exhibit 1, do you see where it says in all capitals  
 7 textbook toward the top of the page?  
 8 A. Yes.  
 9 Q. And it lists three books, or actually four  
 10 books for advanced, intermediate and beginning band.  
 11 A. Uh-huh.  
 12 Q. Still looking at Exhibit 1, it says after that,  
 13 these books are available at several Merced music  
 14 stores.  
 15 Do you know if these students have to buy these  
 16 books to be able to be in the advanced band, the  
 17 intermediate band and the beginning band?  
 18 A. From what I understand, it's if they want to  
 19 write in them and they want to keep them for their own  
 20 personal use, yes, they have to buy them.  
 21 Q. Okay. Is there anything in this document that  
 22 says that the students don't have to buy the books or  
 23 that it's okay if they don't buy the books?  
 24 A. Not that I'm aware of, but -- you'll get me on  
 25 speculation. I'm learning.

1 Q. You're good.  
 2 A. I was going to say that the teacher goes over  
 3 that with the kids.  
 4 Q. Okay. I'm going to give you a similar document  
 5 that I'll mark as Exhibit Merced-2.  
 6 (Exhibit Merced-2 was marked.)  
 7 MS. LHAMON: While you take the time you need  
 8 to review it, I'm just going to say for the record that  
 9 the document is titled Tenaya Warrior Band and Color  
 10 Guard Handbook 1998/99, and it's Bates stamped in the  
 11 bottom right SC-ME-TM 00148 through 00155.  
 12 Having done that, I see that I'm ahead of  
 13 myself in my notes and I've given you the wrong exhibit,  
 14 but we can use that one later so hold onto it.  
 15 We're going to mark as Exhibit 3 a document  
 16 that I'm handing to you now, and it is Bates numbered in  
 17 the bottom right, SC-ME-TM 00146 through 147.  
 18 (Exhibit Merced-3 was marked.)  
 19 Q. BY MS. LHAMON: Have you had a chance to review  
 20 it?  
 21 A. Uh-huh.  
 22 Q. Do you recognize what is Exhibit 3?  
 23 A. Yes, I do.  
 24 Q. What is it?  
 25 A. Similar to the last exhibit, it's another

1 classroom information sheet that's signed by the  
 2 parents.  
 3 Q. When you referred to the last exhibit, were you  
 4 referring to Exhibit 2 or Exhibit 1, or both?  
 5 A. Exhibit 1.  
 6 Q. Okay. Thank you. Do you know if this  
 7 Exhibit 3 is the classroom handbook from this current  
 8 school year?  
 9 A. No, it's not. This was from the very beginning  
 10 of last year with a teacher that we only had for a few  
 11 months.  
 12 Q. And that was in the '99/2000 school year?  
 13 A. Yes.  
 14 Q. Do you see that on the second page, which is  
 15 00147 of Exhibit 3 where it says textbooks at the top of  
 16 the page?  
 17 A. Yes.  
 18 Q. And it says, the textbook that is required for  
 19 all students in advanced band is and it names the  
 20 textbook.  
 21 A. Yes.  
 22 Q. And then it says, these books are available at  
 23 several Merced music stores.  
 24 A. Yes.  
 25 Q. Do you know if that textbook is still required

1 for students in advanced band?  
 2 A. Basically it's the same thing that I told you  
 3 on Exhibit 1. Exhibit 1 has the same names of two of  
 4 the books that is asked for here.  
 5 Q. Okay. What's your understanding of the term  
 6 "required" as used in Exhibit 3?  
 7 A. That they need to have the book.  
 8 Q. Okay. Okay. So at the beginning of last  
 9 school year, the '99/2000 school year, students were  
 10 required to buy textbooks to be able to be in the  
 11 advanced band at Tenaya Middle School?  
 12 MR. SEFERIAN: Objection. Misstates the  
 13 witness' testimony.  
 14 MR. CHOATE: Join.  
 15 THE WITNESS: It sure does.  
 16 Q. BY MS. LHAMON: How would you say it?  
 17 A. I would say that this is the textbook that is  
 18 used, and if they want to write in the textbook, then  
 19 they could purchase it at these stores.  
 20 Q. Okay. Thank you. I want to turn back to  
 21 Exhibit 1 also. Turn to the last page of Exhibit 1. If  
 22 you look at the top where it says instruments, do you  
 23 see where there are two asterisks and then it says,  
 24 beginning band percussion players, colon, you will need  
 25 to purchase a tuneable drum practice pad, they are

1 available at any music store in Merced?  
 2 A. Yes, I do.  
 3 Q. What's your understanding of "you will need to  
 4 purchase" as used in Exhibit 1?  
 5 A. It's very similar to the reeds that the  
 6 students have to purchase for their band uniforms and  
 7 things like that, it helps them with their -- with their  
 8 practice and stuff.  
 9 MR. CHOATE: Excuse me, could you read back the  
 10 witness' answer, please.  
 11 (Record read.)  
 12 THE WITNESS: I'm sorry, band instruments, not  
 13 uniforms.  
 14 Q. BY MS. LHAMON: Is your understanding of this  
 15 document, this document being Exhibit 1, the text of it  
 16 is saying that students need to make purchases to  
 17 participate in the band?  
 18 A. Not to participate in, but it is asking for  
 19 them to make purchases. If they were not able to make  
 20 these purchases, we would find a way to help them so  
 21 that they could be in the program.  
 22 Q. Okay. No student has ever been turned away  
 23 from the program?  
 24 A. No. And if you look down further underneath  
 25 that, it's underlined, and it's stated in every handbook

1 going back as long as I remember, no student will be  
 2 turned away because of not having the money to pay.  
 3 Q. That is important to you?  
 4 A. That's very important to me.  
 5 Q. Why is that?  
 6 A. Because every child should have the  
 7 opportunity, whether they have money available or not,  
 8 and we'll find a way to help them.  
 9 Q. That's something you've been committed to the  
 10 whole time you've been a principal at Tenaya?  
 11 A. Yes, I have.  
 12 Q. Why is it you think that every child should  
 13 have an opportunity? I know why I think it, I just want  
 14 to hear what you think.  
 15 A. I think it just -- that every child deserves --  
 16 has that right, deserves to be able to.  
 17 Q. If you wouldn't mind just articulating for me  
 18 why you think a child deserves that right or should have  
 19 that opportunity.  
 20 A. Because that helps their learning process.  
 21 Q. Okay. Thank you. After looking at Exhibits 1,  
 22 2 and 3, can you think of any other programs at this  
 23 school that ask students to pay for any books or any  
 24 instructional materials or anything else for the school,  
 25 whether or not those students are required to make those

1 Q. Okay. And she could wear her own socks?  
 2 A. Yes.  
 3 Q. Okay. Are there any other sports for which  
 4 students have to make any purchases, like maybe  
 5 football?  
 6 A. We don't have a football program.  
 7 Q. Okay. So no?  
 8 A. No.  
 9 Q. Do you have water polo?  
 10 A. No.  
 11 Q. Do you have soccer?  
 12 A. Yes.  
 13 Q. Do they have to make any purchases for soccer?  
 14 A. No.  
 15 Q. Okay. Do you have a golf team?  
 16 A. No.  
 17 Q. I'm happy to hear that.  
 18 Do you have basketball?  
 19 A. Yes.  
 20 Q. Okay.  
 21 A. And they have no purchases they have to make.  
 22 Q. Neither the girls nor the boys?  
 23 A. No.  
 24 Q. This is terrible. I'm not very good at sports,  
 25 so it's hard for me to think.

1 purchases?  
 2 A. We talked about the locks.  
 3 Q. Uh-huh.  
 4 A. And P.E. uniforms and the hats.  
 5 Q. The hats were for baseball, is that what you're  
 6 thinking of?  
 7 A. Baseball and softball. The girls purchase  
 8 their own hats. They came to the coaches and had found  
 9 some visors that they wanted to purchase.  
 10 Q. Can you think of anything else today?  
 11 A. I can't think of anything else, no.  
 12 Q. Okay. There's no other sports at the school  
 13 where a student has to buy any part of the uniform for  
 14 the sports or anything else?  
 15 A. Cheerleading, their little underpants and  
 16 their socks.  
 17 Q. Okay. But they don't have to buy pompoms or --  
 18 A. No.  
 19 Q. Are there -- I know this is personal, but are  
 20 there regulation panties that the cheerleaders have to  
 21 wear or regulation socks that they have to wear?  
 22 A. No.  
 23 Q. Could a cheerleader not purchase the particular  
 24 panties and wear her own?  
 25 A. Yes.

1 A. We have a volleyball team, and they don't have  
 2 to do anything for the volleyball team.  
 3 Q. So it's just the baseball and the softball kids  
 4 and the cheerleaders for a few things too?  
 5 A. Uh-huh.  
 6 Q. Are the softball girls buying their own hats  
 7 this year, or is that something that you've also done  
 8 away with?  
 9 A. Softball hats are not part of the requirement,  
 10 like baseball hats. Evidently in the baseball book of  
 11 rules it says you have to have to have a hat. Softball  
 12 doesn't. I am not aware if the girls came and asked if  
 13 they could design a team hat like they had in the past.  
 14 They've never been required to buy a softball hat. It's  
 15 never been part of their uniform. They have come  
 16 forward and said that they wanted to design or get one,  
 17 and it's used as spirit wear and if they want to buy it  
 18 as spirit wear, they can.  
 19 Q. And for the cheerleaders is it the same, or is  
 20 it part of the regulation cheerleader uniform that you  
 21 wear particular socks and particular panties?  
 22 A. No, there's nothing in requirement on that  
 23 either. I think baseball is the only one that  
 24 specifically states a piece of uniform that has to be  
 25 worn.

1 Q. Okay. Thank you. Can you think of any -- I  
2 know that we already talked about how extracurricular --  
3 or the electives are not really elective at Tenaya.

4 Can you think of any of the elective courses  
5 that have students pay for anything else other than the  
6 fee for the course or the instructional materials we've  
7 already talked about for band?

8 A. No.

9 MR. CHOATE: I'm just going to object to the  
10 extent that the question implies that students are being  
11 charged fees for courses right now.

12 Q. BY MS. LHAMON: I want you to turn, if you  
13 will, to Exhibit 2.

14 A. That was the Aguilar one?

15 Q. It's the one that says Tenaya Warrior and Color  
16 Guard Handbook at the top. If you'll look at the page  
17 that's numbered 00153 at the bottom, do you see midway  
18 through the page where it says payment of fees?

19 A. Yes.

20 Q. In that sentence it says there is a \$40  
21 contribution of love that is needed from all members of  
22 the marching band and color guard to cover the costs of  
23 band shirts, uniforms, dry cleaning, shoes, and travel  
24 expenses, this fee is due immediately.

25 A. Uh-huh.

1 A. It was a different teacher.

2 Q. Okay. Has the different teacher seen the  
3 "contribution of love" phrase?

4 A. I do not know if she's seen it or not.

5 Q. Okay. I'm going to show you a new exhibit,  
6 which will be Merced-4.

7 (Exhibit Merced-4 was marked.)

8 MS. LHAMON: And this is a one page -- Merced-4  
9 is a one-page document that's titled advanced band  
10 grading policy 1998, first quarter, and at the bottom of  
11 the page it's Bates numbered SC-ME-TM 00156.

12 Take your time to review it.

13 MR. CHOATE: Counsel, can I ask you, is this,  
14 what you have, Exhibit 4, was this submitted as part of  
15 the Exhibit 2 that was produced by the district to --  
16 pursuant to the plaintiff's records subpoena?

17 MS. LHAMON: The document was submitted by the  
18 district pursuant to our records subpoena. I'm not sure  
19 that it is actually a part of Exhibit 2.

20 Q. Have you had a chance to review Exhibit 4?

21 A. Yes, I have.

22 Q. Have you seen it before today?

23 A. Yes, I have.

24 Q. In what context have you seen it before today?

25 A. I believe it was in one of Scott's policy

1 Q. Do you think that the phrase -- let me start  
2 again.

3 What is your understanding of the phrase  
4 "contribution of love"?

5 A. If you knew the teacher, you'd understand that  
6 phrase. Basically it is a contribution.

7 Q. Okay. Do you think that the phrase  
8 "contributions of love" makes people feel more obligated  
9 to make that contribution?

10 MR. SEFERIAN: Objection. Calls for  
11 speculation.

12 MR. CHOATE: I join in that objection.

13 MS. LHAMON: You can answer it anyway.

14 THE WITNESS: No, simply because I read the  
15 rest of the paragraph where it says that if you can't do  
16 it, you won't be required to.

17 Q. BY MS. LHAMON: Okay. And we should look at  
18 Exhibit 1. See on page 00145 where it says, midway  
19 through the page, payment of fees, and then it says,  
20 still on Exhibit 1, there is a \$40 assessment fee that  
21 is needed for all members of the marching band, et  
22 cetera?

23 A. Yes.

24 Q. Do you know why the phrase "contribution of  
25 love" has been changed to "assessment fee"?

1 books.

2 Q. And Scott is the band teacher?

3 A. Yes.

4 Q. Do you see at the top of the page where it  
5 says, points will be given for the following, and then  
6 midway -- or at the bottom of that section it says,  
7 turning in forms, money, uniforms, fund-raising,  
8 permission slips, or other things in on time --

9 A. Yes.

10 Q. -- 200 points?

11 A. Yes.

12 Q. What's your understanding of that language in  
13 this document?

14 MR. SEFERIAN: Objection. No foundation.

15 MR. CHOATE: Join in that objection.

16 MS. LHAMON: You can answer it anyway.

17 MR. CHOATE: Calls for speculation.

18 THE WITNESS: My understanding is that if you  
19 do turn things in on time, if you're doing fund-raising  
20 and you turn those monies in on time, if you turn your  
21 uniform in on time, if you turn your forms in on time,  
22 you're going to get 200 points.

23 Q. BY MS. LHAMON: Okay. Do you read that  
24 language, still on Exhibit 4, to equate fund-raising  
25 with money in that phrase, or do you see those as

1 separate?

2 MR. SEFERIAN: Objection. No foundation.

3 THE WITNESS: I can't read Scott's mind on

4 that.

5 Q. BY MS. LHAMON: But as you read it, how do you

6 read it?

7 MR. SEFERIAN: Objection. No foundation.

8 Calls for speculation.

9 THE WITNESS: I read it just like I told you,

10 with the fund-raising and everything, because I know

11 what the policy is. So when I give you my answer here,

12 I know what my policy is and I know that points would

13 not have been taken away any other way, so it's all part

14 of any raising of any monies.

15 MR. SEFERIAN: I'll also object to the question

16 on the grounds of no foundation and calls for

17 speculation.

18 Q. BY MS. LHAMON: Did you see this document in

19 the 1998 school year when it was given out or at any

20 point during that school year?

21 A. I don't think so. Well, I may have, but it

22 would have been turned in with all of the other teachers

23 who turned theirs in, and I can't remember. But I would

24 assume, yes, that I did.

25 Q. I just want to make sure that I'm clear, so I

1 want to check again. When you see this document, and

2 presumably any time you've seen the document, the phrase

3 that I read to you, the turn in forms, money, uniforms,

4 fund-raising, permission slips or other things in on

5 time, would not raise a red flag for you --

6 A. No, it wouldn't.

7 Q. -- because you know what the policy is?

8 A. Yes.

9 Q. So you know that the Tenaya policy is that no

10 student should be what, should be required to pay money

11 for a grade?

12 A. Exactly. Should they be held accountable for

13 their fund-raising and stuff like that, yes. Should

14 they be kept from doing something or get a grade because

15 they do not have the means to help in our fund-raising

16 activities, no.

17 Q. Okay. Thank you. Do you anticipate that the

18 band teacher will produce another handbook for 2001/2002

19 school year?

20 A. Yes, I do.

21 Q. Okay. Do you -- have you had any conversations

22 with the band teacher about changing language in the

23 handbook for the 2001/2002 school year?

24 A. No, I haven't.

25 Q. Have you had any conversations with the band

1 teacher -- let me step back.

2 Is the band teacher still going to be at the

3 school in 2001/2002?

4 A. Yes, she is.

5 Q. Have you had any conversations with the band

6 teacher about how she will communicate to her students

7 the change in policy about school fees for the 2001/2002

8 school year?

9 A. No, I haven't.

10 Q. I asked you before we took our break whether

11 the school had refunded the money from this school year

12 for the cooking fees.

13 Has the school refunded money for anything else

14 to the students this school year or to the students and

15 their parents, to the families?

16 A. We have refunded if they made a donation for a

17 field trip and then said that they wouldn't be able to

18 go. We have refunded if they lost a book, paid for it,

19 found the book.

20 Q. That's very generous of you. I know a number

21 of school that don't do that.

22 Can you think of anything else? I didn't mean

23 to cut you off. Can you think of anything else that

24 you've refunded this year?

25 A. Not off the top of my head, no.

1 Q. And you haven't refunded the parents and the

2 students for fees that they had to pay for last year or

3 for any other year?

4 A. No, we haven't.

5 Q. Okay. Do you keep records of the payments for

6 the softball caps for the girls or for the cheerleading

7 panties and socks, for want of a better phrase?

8 MR. YARNELL: You mean her personally, or

9 somebody else?

10 MS. LHAMON: Thank you. I mean the school.

11 Q. Does the school keep records?

12 A. The school keeps receipts, either individual

13 receipts or a general receipt.

14 Q. I saw from the documents that were produced

15 from the District that the school keeps pretty detailed

16 receipts for the baseball caps and for the cooking fees

17 and for some other issues.

18 Why it is that the school keeps those receipts

19 and such detailed records?

20 A. It's the regulations that our auditors --

21 recommendations our auditors have given to our district

22 and our district, in turn, has told us that that's how

23 we have to do it.

24 Q. So let me make sure I really understand. The

25 receipts and the records are for audit purposes?

1 A. Yes.  
 2 Q. I'm going to ask you about that in a few  
 3 minutes, but not just yet. I want to show you also  
 4 another document. This will be Merced-5.  
 5 (Exhibit Merced-5 was marked.)  
 6 MS. LHAMON: While you're referring it, it's a  
 7 two-page document and it's Bates stamped SC-ME-TM 00018  
 8 through 19.  
 9 Q. Have you reviewed it?  
 10 A. Uh-huh.  
 11 Q. What is Exhibit 5?  
 12 A. It's the board policy for participation in  
 13 extracurricular activities.  
 14 Q. And you know it's the board policy because it  
 15 says at the top BP 6145?  
 16 A. That's correct.  
 17 Q. Does that refer to the school board for the  
 18 Merced City Elementary School District?  
 19 A. No, it's just the -- it's kind of like a page  
 20 number, it's where it falls in the booklet.  
 21 Q. I wasn't clear. I meant, when you say it's the  
 22 board policy, which board are you talking about?  
 23 A. Merced City School District Board.  
 24 Q. Okay. Thanks.  
 25 Is this a current policy statement?

1 A. I believe that this year another change has  
 2 been made to it, talking about the -- whether or not you  
 3 can get a "U" or an "N" for participation.  
 4 Q. Okay.  
 5 A. And the grade.  
 6 Q. Do you see at the top of the page where it says  
 7 extracurricular activities?  
 8 A. Yes.  
 9 Q. Above that do you see the sentence that says,  
 10 students may be charged fees in order to participate in  
 11 extracurricular activities, however, a student will  
 12 never be excluded because of an inability to pay the  
 13 fee?  
 14 A. Yes.  
 15 Q. Is that still the current statement of board  
 16 policy?  
 17 MR. SEFERIAN: Objection. No foundation.  
 18 Calls for speculation.  
 19 MR. CHOATE: I join in that objection.  
 20 MS. LHAMON: You can answer it anyway.  
 21 THE WITNESS: I know that it was changed in the  
 22 regular board policy. I would assume that it's been  
 23 changed in the current board policy, but I'm not sure.  
 24 Q. BY MS. LHAMON: You haven't seen a more recent  
 25 version of the participation in extracurricular

1 activities board policy?  
 2 A. We've received it. I have not read it yet.  
 3 Q. Okay. When was this a current statement of  
 4 board policy?  
 5 A. In '97 was when it was last revised.  
 6 Q. And you know that because?  
 7 A. Because it's dated at the bottom of the policy  
 8 statement.  
 9 Q. Okay. And you're looking at page 2 of Exhibit  
 10 5?  
 11 A. Yes, I am.  
 12 Q. Okay. Do you know if this was a current policy  
 13 statement for the '99/2000 school year?  
 14 A. For the '99/2000 school year I believe it was  
 15 still the policy.  
 16 Q. Okay. And why do you believe that?  
 17 A. Because I don't think we received another  
 18 change until this 2000/2001 year.  
 19 Q. Okay. Do you know if there's any board policy  
 20 for the district about participation in academic  
 21 activities or classes?  
 22 A. I'm not really sure what you're asking.  
 23 Q. This board policy is titled participation in  
 24 extracurricular activities, and it has a policy  
 25 statement about whether students may be charged fees for

1 participation in extracurricular activities. And I'm  
 2 wondering if there's a policy statement from the board  
 3 that you know of about charging fees for participation  
 4 in academic programs?  
 5 A. I believe that the former -- I'm not really  
 6 sure. I don't know that it speaks to specifics on the  
 7 other board policy that was just changed.  
 8 Q. What's that board policy that you're thinking  
 9 of?  
 10 A. It's just a board policy on fees and stuff like  
 11 that.  
 12 Q. Okay.  
 13 A. You have a copy of that board policy as well, I  
 14 believe. You have the old one. It was the one that you  
 15 just -- that Mr. Yarnell said he could just get you the  
 16 other copy of.  
 17 Q. That would be great. I don't think I have a  
 18 copy of it now. I would show it to you if I had it.  
 19 I'm not asking you to speculate just because I'm mean.  
 20 I actually don't think I have it.  
 21 But you are referring to --  
 22 A. A different board policy, and I don't know the  
 23 title of that board policy.  
 24 Q. And it's written down?  
 25 A. Yes.

1 Q. Okay. Thank you. Has anyone from the State  
2 ever contacted you, Ms. Atkinson, not you the district  
3 or you the school, you, Ms. Atkinson, about charging  
4 fees at Tenaya Middle School?  
5 A. From the school board, I mean the State School  
6 Board.  
7 Q. That's one source. Has the State School Board  
8 ever contacted you?  
9 A. No.  
10 Q. Has anyone from the State Department of  
11 Education ever contacted you?  
12 A. No.  
13 Q. Has anyone from the State Superintendent of  
14 Public Instruction's office ever contacted you?  
15 A. No.  
16 Q. Okay. Has anyone from any other area of state  
17 government contacted you about charging fees at Tenaya  
18 Middle School?  
19 A. The State's lawyer.  
20 Q. Okay. And that was in the context of this  
21 case?  
22 A. Right.  
23 Q. Okay. Before that happened?  
24 A. No.  
25 Q. Just so I'm clear, before that happened, no one

1 else from the State had contacted you?  
2 A. No.  
3 Q. Okay. Did anyone from the State ever ask  
4 whether Tenaya was charging fees?  
5 A. No.  
6 Q. Okay.  
7 A. Not of me.  
8 Q. Not of you. Do you know if anyone from the  
9 State has ever asked anyone whether Tenaya was charging  
10 fees?  
11 MR. SEFERIAN: Objection. Calls for  
12 speculation.  
13 MR. CHOATE: Join.  
14 THE WITNESS: Not that I'm aware.  
15 Q. BY MS. LHAMON: Do you know if anyone from the  
16 State has ever contacted anyone from your district  
17 concerning the fees at Tenaya Middle School?  
18 A. No. Prior to this lawsuit?  
19 Q. Prior to this lawsuit.  
20 A. No.  
21 Q. When you say "no," do you mean, no, you don't  
22 know or --  
23 A. No, that I'm not aware of any.  
24 Q. Okay. You mentioned an audit a while ago.  
25 Does Tenaya undergo an audit every year?

1 A. The school district undergoes an audit every  
2 year, and the district chooses various sites for  
3 informal audit, and then we have the formal audit also.  
4 Q. Okay. The formal audit --  
5 A. The formal audit, they'll pull a couple of  
6 pieces out of our student body accounts and stuff like  
7 that. Do they always choose Tenaya, no, in the formal  
8 audits.  
9 Q. Is there a regular schedule for when they do  
10 choose Tenaya?  
11 A. No. If that was the case, we would probably be  
12 extra -- no, that's not true. No, they don't let us  
13 know.  
14 Q. I'm assuming that you would be as careful no  
15 matter what, as you are now.  
16 A. I believe that that's the only way to do it.  
17 But that's why auditors don't tell you.  
18 Q. Right. How many times has Tenaya been audited  
19 either formally or informally since you have been a  
20 principal?  
21 A. Our student body books are audited, at least  
22 informally, every year.  
23 Q. Okay. And that's because you ask for that  
24 informal audit?  
25 A. No, it's just the practice of our district.

1 Q. And what is the distinction between an informal  
2 and a formal audit?  
3 A. The informal audit is done by our fiscal  
4 department.  
5 Q. "Our" is the district?  
6 A. The district's fiscal department. And then the  
7 formal is done by the auditors that are hired by the  
8 district.  
9 Q. Okay. So the district conducts an informal  
10 audit of Tenaya, the student body books, is that what  
11 you said?  
12 A. Yes.  
13 Q. What falls within student body books, or what's  
14 not covered by that informal audit?  
15 A. The student body accounts -- actually, an audit  
16 is done of all levels.  
17 Q. Every year?  
18 A. But that's done on a district level for reports  
19 that we've turned in to the site. The student body  
20 accounts are the funds that we raise through student  
21 fund-raising.  
22 Q. Okay. And that's what's audited every year,  
23 the funds that you raise through student?  
24 A. Yes.  
25 Q. Okay. Who performs that informal audit?

1 A. Someone from the fiscal department.  
 2 Q. Of the district?  
 3 A. Of the district. And then the district also  
 4 has a -- the informal audits are done by the district.  
 5 Q. Okay. Do you see the results of the informal  
 6 audit every year?  
 7 A. It's given in a board statement. If Tenaya is  
 8 named with specific -- you know, if they specifically  
 9 say Tenaya in something, then, yes, we receive a copy of  
 10 anything that the auditors have stated about Tenaya.  
 11 Q. Have you ever received any information from the  
 12 results of the informal audit concerning the school fees  
 13 or the charging of money to students for any activities  
 14 at school?  
 15 A. No, I haven't.  
 16 Q. Okay. So no one from the district has ever  
 17 before this lawsuit said anything to you as a result of  
 18 the audit about the fees being charged to students for  
 19 field trips or for anything else?  
 20 A. No.  
 21 Q. Okay. Then let's turn to the formal audit.  
 22 How often since you've been principal has Tenaya been  
 23 part of the formal audit for the district?  
 24 A. I'm really not sure how closely they look at  
 25 each. I'm sure that in a formal audit each school is

1 A. Someone from the fiscal department during one  
 2 of the principals council meetings, and it was a general  
 3 statement saying that year was a really good year, none  
 4 of the sites had had any dings, if you will.  
 5 Q. Okay. And when you say the fiscal services  
 6 department, you're referring to the department in --  
 7 A. The city school direct.  
 8 Q. Okay. In that formal audit, the auditors --  
 9 let me step back.  
 10 Is a formal audit performed by an external  
 11 audit company?  
 12 A. External audit company.  
 13 Q. Who is the external audit company?  
 14 A. I'm not sure who it is now.  
 15 Q. Do you know who it was that year?  
 16 A. I can't tell you for sure because I'm not sure  
 17 whether it switched over. I don't know.  
 18 Q. Okay. But in any case, it's an external  
 19 company?  
 20 A. It's an external audit.  
 21 Q. And the only year since you've been principal  
 22 in which the external audit has been performed at Tenaya  
 23 was that school year?  
 24 A. Right.  
 25 Q. And the results of that school year did not

1 looked at on a cursory and then on a really in-depth one  
 2 on a couple of schools in the district, and I believe  
 3 Tenaya has had an in-depth look once.  
 4 Q. What year was that, do you remember?  
 5 A. That would have been -- I believe it was two  
 6 years ago.  
 7 Q. So the '98/'99 school year?  
 8 A. Yes.  
 9 Q. Okay. Did you see the results of that formal  
 10 audit?  
 11 A. We were told that we had no statements against  
 12 us.  
 13 Q. Congratulations.  
 14 A. Thank you.  
 15 Q. That's very nice. So I take it, then, by no  
 16 statements against you, that includes no statements  
 17 concerning the school fees?  
 18 A. That's correct.  
 19 Q. And there were no statements either way,  
 20 nothing supporting them, nothing against them?  
 21 A. That's correct.  
 22 Q. And you know that because someone told you  
 23 that, or you know that because you saw them?  
 24 A. Because someone told us that.  
 25 Q. Who was it who told you that?

1 include any statements saying that the students at  
 2 Tenaya should not be charged fees or should not be  
 3 paying for things at school?  
 4 A. That's correct.  
 5 Q. I think I'm done. I'm not done. I lied. I  
 6 have a very few more questions which we can proceed  
 7 with, or we can break for lunch. And it's up to you,  
 8 how you're feeling.  
 9 A. If it's just a few, I'd just as soon finish it  
 10 out.  
 11 Q. Mr. Choate is going to have some questions for  
 12 you too. We're not going to be able to go.  
 13 A. Then I leave it up to you.  
 14 MR. CHOATE: You have how much?  
 15 MS. LHAMON: Just a few questions.  
 16 MR. CHOATE: Why don't you finish and we'll  
 17 break for lunch.  
 18 MS. LHAMON: Is that okay with you?  
 19 MR. YARNELL: Yes.  
 20 MR. SEFERIAN: Yes.  
 21 Q. BY MS. LHAMON: I would just like to know a  
 22 couple more things about reviews and the school.  
 23 When was the last time that the school  
 24 participated in the coordinated compliance review  
 25 process?



1 A. CCR?  
 2 Q. Uh-huh.  
 3 A. I think it was in '98, the '98/'99 school year.  
 4 Q. That was a bad year for you.  
 5 Did you see the results of the CCR review?  
 6 A. Yes, I did.  
 7 Q. When you say it was the '98/'99 school year,  
 8 was that the same year that you did your self-review?  
 9 A. And the self-review.  
 10 Q. So that would have been about '99/2000 school  
 11 year for the CCR review?  
 12 A. Right.  
 13 Q. In your self-review process, did you identify  
 14 or did the school identify a concern about school fees  
 15 or payment of -- by students for any materials at  
 16 school?  
 17 A. I don't believe so.  
 18 Q. Did you see the self-review of the CCR when it  
 19 was performed?  
 20 A. Yes, I did.  
 21 Q. And your memory is that it didn't say anything  
 22 about the fees or the payments?  
 23 A. I don't even believe that there's a question  
 24 that speaks to that on the CCR.  
 25 Q. Okay. So, no, there wasn't anything to your

1 memory?  
 2 A. No.  
 3 Q. Do you remember for the CCR review, the one  
 4 that was performed in '99/2000, if there was anything in  
 5 that review that said anything about the school fees or  
 6 payments?  
 7 A. No.  
 8 Q. And you saw that?  
 9 A. Yes.  
 10 Q. Has there been any other state review process,  
 11 the CCR or anything else external to the audits,  
 12 something different from the audits, I mean, that has  
 13 noted the fee issue for field trips or for  
 14 extracurricular activities or for academic activities or  
 15 instructional materials, for anything?  
 16 A. I've seen nothing that spoke to those issues.  
 17 Q. If anybody from the CCR or at the state level  
 18 had ever notified you that you shouldn't be charging  
 19 fees to kids or kids shouldn't be told to buy  
 20 instructional materials for their classes, would you  
 21 have stopped charging the fees?  
 22 MR. SEFERIAN: Objection. Calls for  
 23 speculation, overly overbroad, vague and ambiguous.  
 24 MR. CHOATE: I join all of those.  
 25 MS. LHAMON: You can go ahead.

1 THE WITNESS: I follow the recommendations that  
 2 are given to us. I want to be in compliance.  
 3 Q. BY MS. LHAMON: Have you ever knowingly been  
 4 out of compliance --  
 5 A. No.  
 6 Q. -- with any requirement from the State?  
 7 A. No.  
 8 MR. SEFERIAN: Objection. That's quite broad  
 9 and calls for speculation.  
 10 MS. LHAMON: You know, I appreciate that,  
 11 actually. It's a good objection.  
 12 Q. Have you ever, since you've been a principal at  
 13 Tenaya Middle School, been knowingly out of compliance  
 14 with any State requirement or regulation or guideline?  
 15 A. No.  
 16 Q. Have you ever, since you've been a principal at  
 17 Tenaya, been out of compliance with any district  
 18 regulation or guideline or requirement that you know of?  
 19 A. Are we still talking fees, or are we talking  
 20 any --  
 21 Q. Anything.  
 22 A. No. When we found out -- on any of them, if we  
 23 found out that we were not in compliance, we did  
 24 everything that we could to come into compliance.  
 25 Q. Let me make sure I was clear too about the

1 previous question. Since you've been a principal at  
 2 Tenaya, have you ever been out of compliance with any  
 3 regulation or requirement or anything else, any  
 4 regulation or requirement from the State that you knew  
 5 of?  
 6 A. We found that we were out of compliance, and  
 7 then we remedied it.  
 8 Q. And what are you thinking of there?  
 9 A. ELD requirements.  
 10 Q. How did you find that you were out of  
 11 compliance?  
 12 A. When we were doing the self-review, answering  
 13 the specific question that was on the self-review, we  
 14 saw that and said, no, we weren't in compliance with  
 15 that, and so we remedied that and put in the ELD class,  
 16 a separate period for ELD. And then someone came from  
 17 IIUSP. We're on an underperforming thing and our  
 18 external evaluator sent somebody in and they told us  
 19 that it was supposed to be a 30-minute class. We were  
 20 currently doing it 20 minutes. And we changed it and  
 21 made it 30 minutes.  
 22 Q. Okay. That was in the '99/2000 school year, or  
 23 that was the '98/'99 school year?  
 24 A. When we made it 30 minutes?  
 25 Q. Uh-huh.

1 A. No, we made it 30 minutes this year due to the  
 2 external evaluator coming in last year and telling us it  
 3 was supposed to be 30 minutes, not 20 minutes.  
 4 Q. And that external evaluator was from the CCR?  
 5 A. No, IIUSP external evaluator.  
 6 Q. I think there were two separate answers maybe  
 7 in your answers, so I'll tell you what I heard and you  
 8 can tell me what's wrong with what I heard.  
 9 When you did your self-review process for the  
 10 CCR --  
 11 A. Yes.  
 12 Q. -- you realized, the school realized that the  
 13 school was out of compliance with ELD, which is the  
 14 English language development aspect of the CCR?  
 15 A. Yes.  
 16 Q. Separate from that you had somebody from the  
 17 IIUSP program come to the school during --  
 18 A. Later.  
 19 Q. -- '99/2000 school year; is that right?  
 20 A. Yes.  
 21 Q. And notify you that you were out of compliance  
 22 with a separate issue also with respect to ELD kids?  
 23 A. Right.  
 24 Q. Moving to the first one in the CCR. You  
 25 realized that -- did you personally figure out that the

1 school was out of compliance with respect to ELD kids,  
 2 or did somebody else on your staff make that  
 3 realization?  
 4 A. It was done together as we were discussing it.  
 5 Q. So you and who?  
 6 A. The teachers that are doing ELD and my resource  
 7 teachers Debbie Furtado.  
 8 Q. How did you come to realize that the school was  
 9 out of compliance?  
 10 A. When you do a self-review, they give you all of  
 11 the regs and you're sitting there reading them line by  
 12 line, and as we were reading it, that's when we  
 13 discovered that, no, it wasn't, we couldn't say yes to  
 14 that reg.  
 15 Q. When you say "they," you mean the CCR people,  
 16 people from the CCR staff?  
 17 A. Right.  
 18 Q. So as a part of the self-review process, the  
 19 CCR had given you a list of -- maybe a checklist, is  
 20 that what it is --  
 21 A. Yes.  
 22 Q. -- a checklist?  
 23 A. Yes.  
 24 Q. Okay. To see if you're in compliance with  
 25 respect to a particular issue that the CCR was

1 monitoring?  
 2 A. Right.  
 3 Q. You looked at that checklist, you and your  
 4 staff looked at that checklist and realized that you  
 5 were not in compliance with respect to that issue?  
 6 A. That's correct.  
 7 Q. As soon as you saw that, what did you do?  
 8 A. We remedied it.  
 9 Q. Okay. How long did it take you to remedy it?  
 10 A. We had it up and going for the next school  
 11 year.  
 12 Q. Okay. Thanks. Do you think that if you were  
 13 to get a checklist that included something saying you  
 14 shouldn't be charging fees at the school, you would  
 15 realize -- have realized without the benefit of a  
 16 lawsuit that you were out of compliance and would have  
 17 corrected it?  
 18 MR. SEFERIAN: Objection. Calls for  
 19 speculation, overly broad, vague and ambiguous.  
 20 MR. CHOATE: Join.  
 21 THE WITNESS: Yes.  
 22 Q. BY MS. LHAMON: For the external audit -- for  
 23 the IIUSP review, how did you come to realize that the  
 24 school was out of compliance for the ELD kids for the 20  
 25 minute versus 30-minute classes?

1 A. The external evaluator sent in an expert in the  
 2 area of ELD, and while we were going over our program  
 3 and telling them the changes that we made, she stated  
 4 that it was supposed to be a 30-minute program.  
 5 Q. And when you said "we" were going over the  
 6 changes, do you mean you and the auditor or you and  
 7 somebody else and the auditor?  
 8 A. The evaluate -- the external evaluator, myself  
 9 and my resource teacher.  
 10 Q. And so that's three people?  
 11 A. Yes.  
 12 Q. Three people together realized that Tenaya had  
 13 a compliance issue. What did you do after you had that  
 14 conversation?  
 15 A. We had changed our master schedule to go the 30  
 16 minutes.  
 17 Q. And how quickly did you change that?  
 18 A. We found out at the end of the last year, and  
 19 we had it up and going for the school year.  
 20 MS. LHAMON: Thank you very much. I really am  
 21 done now.  
 22 (Lunch recess was taken.)  
 23 EXAMINATION BY MR. CHOATE  
 24 Q. Good afternoon, Ms. Atkinson.  
 25 A. Hello.

1 Q. My name is Peter Choate. I'm an attorney for  
 2 the State of California. I represent the State in this  
 3 lawsuit.  
 4 I'm going to ask you some questions about the  
 5 allegations concerning Tenaya Middle School just as  
 6 Ms. Lhamon did, and I just ask that you give me your  
 7 most complete and truthful answer.  
 8 Have you had any alcohol while you had lunch?  
 9 A. No, I haven't.  
 10 Q. Is there any other reason why you can't answer  
 11 truthfully the questions I'm going to ask you today?  
 12 A. No.  
 13 Q. I think you indicated that you became principal  
 14 at Tenaya in 1995?  
 15 A. Uh-huh.  
 16 Q. Who was the principal before you?  
 17 A. Tom Parker.  
 18 Q. And how long was he the principal at Tenaya?  
 19 A. I'm not sure. Around 10 years.  
 20 Q. Who is the vice principal at Tenaya right now?  
 21 A. I have two, Steve Kuykendall,  
 22 K-u-y-k-e-n-d-a-l-l. And Rojelio Gutierrez,  
 23 R-o-j-e-l-i-o, G-u-t-i-e-r-r-e-z.  
 24 Q. And Mr. Kuykendall, what is his -- does he have  
 25 a certain title?

1 A. Assistant principal.  
 2 Q. He is in charge of a certain area of the  
 3 school?  
 4 A. They both have various responsibilities, but we  
 5 all kind of go wherever we're needed. So does he have a  
 6 specific title besides assistant principal, no.  
 7 Q. Could you describe for me his responsibilities?  
 8 A. Some of his basic responsibilities, he does  
 9 discipline, he works with the parent functions, like  
 10 parent education, parent/teacher/student club, student  
 11 council.  
 12 Q. Is that it?  
 13 A. There's a whole list of different things all of  
 14 us do, but those are his main.  
 15 Q. And what about Mr. Gutierrez?  
 16 A. Mr. Gutierrez does school site -- I'm sorry,  
 17 student study teams, the IAP student special ed  
 18 department, student body books and discipline.  
 19 Q. How long have they been the assistant  
 20 principals at Tenaya Middle School, if you know?  
 21 A. This is -- Steve came on board about November  
 22 of last year, and I believe this is Rojelio's fourth  
 23 year.  
 24 Q. So Mr. Rojelio came on in the 1997 to '98  
 25 school year?

1 A. I believe so. I can't remember if this is his  
 2 third or fourth year, but I think it's his fourth. Yes.  
 3 Q. Do you know that Theresa Ensminger is a  
 4 plaintiff in this lawsuit?  
 5 A. Yes, I do.  
 6 Q. And Theresa Ensminger is a student at Tenaya  
 7 Middle School?  
 8 A. Yes, she is.  
 9 Q. What grade is she in?  
 10 A. She's an 8th grader.  
 11 Q. Describe for me your relationship to her.  
 12 A. I'm her principal.  
 13 Q. Do you have any other interactions with her  
 14 other than -- in the sense that you're the principal of  
 15 Tenaya Middle School?  
 16 A. No. If I see her in the halls, I say hi, like  
 17 I do to any other kind of kid.  
 18 Q. Can you describe what kind of student she is?  
 19 MR. YARNELL: I'll object to that as vague and  
 20 ambiguous.  
 21 Q. BY MR. CHOATE: Is she a good student?  
 22 A. I've got 830 kids, so to give you specifics, I  
 23 can't. She's not on my list of students who are in  
 24 jeopardy of losing their graduation, and she's in our  
 25 GATE program, but I don't know her current grades.

1 Q. And the GATE program is?  
 2 A. GATE is for the gifted and talented education  
 3 program.  
 4 Q. Okay. Does she have any discipline problems?  
 5 MR. YARNELL: I'll object and direct my client  
 6 not to answer that question. That goes to a matter that  
 7 that's a pupil's record. That's confidential  
 8 information.  
 9 Q. BY MR. CHOATE: Theresa's father is Ken  
 10 Ensminger?  
 11 A. Yes.  
 12 Q. And he's an art teacher at Tenaya Middle  
 13 School?  
 14 A. Yes.  
 15 Q. How long has he been a teacher at Tenaya Middle  
 16 School, if you know?  
 17 A. This is his second year teaching art.  
 18 Q. And prior to that -- did he teach any other  
 19 subjects prior to teaching art?  
 20 A. Yes, he did.  
 21 Q. Can you tell me when those were?  
 22 A. He taught language arts core.  
 23 Q. What is a language arts core?  
 24 A. He taught 6th grade, so that would be reading,  
 25 writing and social studies.

- 1 Q. Okay. And how long did he teach that for, the  
2 language arts core?  
3 A. Since my six years as principal, he came on --  
4 I want to say he came on the year after I started, so he  
5 taught that class for three years.  
6 Q. Would he have come on in the 1997 school year,  
7 does that sound accurate?  
8 A. That sounds accurate.  
9 Q. Do you know Theresa's mother?  
10 A. I know who she is.  
11 Q. Do you have frequent interactions with her?  
12 A. No, I don't.  
13 Q. Can you describe for me the extent to which  
14 parents are involved in the school's activities at  
15 Tenaya Middle School?  
16 A. They're welcome to come to all of their  
17 children's activities. We have an open-door policy.  
18 They're welcome to, and they know that they can observe  
19 any classes that are going on. We have a school site  
20 council that is made up of parents, teachers and  
21 students. We have a parent education night once a  
22 month, PTSC meetings quarterly.  
23 Q. Could you describe for me your open-door  
24 policy?  
25 A. If a parent needs to see me or wants to come by

- 1 and visit the school, they just need to check in at the  
2 office and then we make arrangements to talk to them,  
3 see them, let them visit, whatever they want.  
4 Q. Okay. And you indicated that the school site  
5 council is comprised of the parents, teachers and  
6 students?  
7 A. Yes.  
8 Q. What does a school site council do?  
9 A. School site council, it's main authority is  
10 over categorical funding, but I use it as a vehicle to  
11 talk over any issues that are going on at Tenaya at the  
12 time and get their feedback on it.  
13 Q. Excuse me if you've already answered this  
14 question earlier, but did you discuss the issues in this  
15 lawsuit during a school site council meeting?  
16 A. I reported it. One of the parents asked about  
17 it, and I basically gave them the information that they  
18 had asked for.  
19 Q. What information did they ask for?  
20 A. Same thing that we were talking about before,  
21 what the lawsuit meant, what it was that -- what our  
22 actions were going to be with this, that I would be  
23 meeting with the lawyers, that I would be possibly  
24 having to testify in court.  
25 Q. Okay. And you mentioned that PTSE (sic)

- 1 meetings are held quarterly?  
2 A. Quarterly.  
3 Q. What is a PTSE?  
4 A. Parent teacher student club.  
5 Q. I'm sorry, it's PTSC?  
6 A. Yes.  
7 Q. What does the PTSC do?  
8 A. It's more a fund-raising organization, and  
9 basically this group has basically run our student skate  
10 nights, which we have on the first Tuesday of every  
11 month. They provided a luncheon for the teachers -- or  
12 helped with a luncheon for the teachers at the beginning  
13 of the school year. They help with graduation things.  
14 They do the school dances.  
15 Q. When you say they do the school dances, you  
16 mean they organize --  
17 A. They organize them in conjunction with our  
18 student council.  
19 Q. Can you describe for me the extent to which  
20 parents are involved in the PTSC?  
21 A. We don't have a large PTSC. We have a  
22 president and two assistants, and she works real hard to  
23 get volunteers to come out to the dances, but that's  
24 about as involved as parents are in that particular  
25 organization.

- 1 Q. What's the president's name?  
2 A. Tanya Chadwell, I think it's T-a-n-y-a,  
3 C-h-a-d-w-e-l-l.  
4 Q. Is there a PTA at --  
5 A. That's the same thing. Middle school level  
6 they involve the students. Instead of calling it an  
7 association, they call it council.  
8 Q. Are there any other type of  
9 parent/teacher/student organizations other than the PTSC  
10 at Tenaya Middle School?  
11 A. No.  
12 Q. Do any of the departments or classes at Tenaya  
13 Middle School hold planning meetings attended by  
14 parents?  
15 A. No.  
16 Q. Okay. Do they hold planning meetings?  
17 A. Yes.  
18 Q. And are those attended by teachers and staff at  
19 the school?  
20 A. Basically by the teachers in the departments  
21 depending on when they hold them. If we're on lunch  
22 duty, then obviously the administrators don't get out  
23 there, we're doing lunch duty. But if it's held before  
24 or after school, the administrators try to pop in and  
25 answer any questions they have.

- 1 Q. And at these planning meetings do the teachers  
2 discuss in general issues that are affecting their  
3 department?  
4 A. Yes. And they also discuss -- well, that's  
5 team meetings. We have grade level meetings as well,  
6 and they discuss what the Warrior Day is going to be  
7 and --  
8 Q. I'm sorry, what the --  
9 A. Warrior Day, what the responsibilities of the  
10 various teachers will be at that, and they discuss any  
11 field trips that they're raising funds for.  
12 Q. Okay. When does the school year at Tenaya  
13 begin?  
14 A. The end of August.  
15 Q. When does it end?  
16 A. The end of the first week in June, or this year  
17 it's the 8th of June, I believe.  
18 Q. Is Tenaya on a semester schedule?  
19 A. Yes, it is.  
20 Q. When does the first semester end?  
21 A. In January, mid, end of January.  
22 Q. Okay. I think you indicated earlier that the  
23 electives taught at Tenaya include band, cooking,  
24 woodshop, drama, computers and art?  
25 A. Yes.

- 1 Q. Is that right?  
2 A. Yes.  
3 Q. Okay. And students receive -- and students in  
4 band, do they receive a grade for their participation in  
5 the class?  
6 A. Yes, they do.  
7 Q. Okay. Are there different levels of band  
8 classes at Tenaya?  
9 A. Yes, we have a beginning, intermediate and  
10 advanced band.  
11 Q. And students receive grades in each of those?  
12 A. Yes.  
13 Q. All right. The marching band, how does that  
14 relate to the other band classes?  
15 A. Marching band is called a co-curricular  
16 program, which means that generally they're an advanced  
17 band, and part of their advanced band grade is the  
18 participation in the marches.  
19 Q. How many marches do they do a year?  
20 A. This year they're doing six, six parades, I  
21 believe.  
22 Q. I think you mentioned that there was -- I think  
23 you mentioned chorus?  
24 A. Yes.  
25 Q. Is that part of the music program?

- 1 A. Yes, it is.  
2 Q. Is that a separate class that students take?  
3 A. Yes, it is. It's our 8th period class.  
4 Q. And do students receive a grade in that class?  
5 A. Yes, they do.  
6 Q. At Tenaya Middle School is there a procedure --  
7 strike that.  
8 Is there a procedure or practice by which the  
9 school district, the Merced City Elementary School  
10 District informs principals at schools within the  
11 district of the district's official policies?  
12 A. We each have a copy of the board policy book  
13 that's about that thick. I don't know how you write  
14 that down. And if a new policy is being changed, we  
15 receive it in the district mail and delete -- you know,  
16 take those pages out of your booklet, and put these  
17 pages in.  
18 Q. Are part of your responsibilities as principal  
19 at Tenaya Middle School to assure that the district's  
20 policies are implemented and enforced?  
21 A. Yes.  
22 Q. Okay. Could you describe for me how as  
23 principal you assure that the district's official  
24 policies are implemented and enforced at Tenaya Middle  
25 School?

- 1 A. Well, basically I read the policies, see  
2 that -- and depends on what kind of a policy it is, and  
3 just do what it says.  
4 Q. Okay. Do you have meetings with teachers to --  
5 A. If the policy relates to something that they  
6 do.  
7 Q. Okay. If you find -- strike that.  
8 If you were to find that a policy was not being  
9 enforced at your school, what would you do?  
10 A. Change it, remedy it, make sure that it gets  
11 enforced.  
12 Q. Okay. Would you have any communications with  
13 the school district about the situation, and by "the  
14 situation" I mean that the policy was not being  
15 enforced?  
16 A. Generally that's probably how I would find out  
17 that the policy wasn't being enforced. There isn't a  
18 board policy CCR, if you will. And as you can see by  
19 the number here, there's 6145 of that one, so I guess  
20 that answer speaks for itself.  
21 MS. LHAMON: I'd like to mark as Exhibit 6 a  
22 document.  
23 (Exhibit Merced-6 was marked.)  
24 Q. BY MS. LHAMON: Have you seen this document  
25 before?

- 1 A. Yes, I have.  
 2 Q. Okay. Can you tell me what this is?  
 3 A. This is board policy 6145, the newest version,  
 4 updated January 16th, 2001.  
 5 Q. Okay. Would you look in the first paragraph  
 6 and read for me the second -- the second to the last  
 7 sentence in the first paragraph?  
 8 A. Students may not be charged fees for  
 9 participation in athletic teams, dramatic productions,  
 10 vocal, music groups, instrumental groups or  
 11 cheerleading.  
 12 Q. What is your understanding of that?  
 13 A. We don't charge fees.  
 14 Q. Okay. Do you understand this policy to mean  
 15 that students at Tenaya Middle School are not to be  
 16 charged fees for classes as well as extracurricular  
 17 activities?  
 18 A. Yes, I do.  
 19 Q. I'd like to ask you some questions about the  
 20 band class.  
 21 A. Okay.  
 22 Q. And I'd like you to focus on the period from  
 23 January 2001 onward.  
 24 A. Okay.  
 25 Q. During that period, have students been charged

- 1 Q. Okay. Prior to January 2001, are you aware of  
 2 any students who have been excluded from participating  
 3 in band for the reason of not paying a fee?  
 4 A. I'm not aware of any student.  
 5 Q. Okay. Would you take a look, please, at  
 6 Exhibit 1, which I think that you testified earlier that  
 7 Exhibit 1 is the music department handbook for the  
 8 current 2000 to 2001 school year?  
 9 A. Yes.  
 10 Q. Is band a yearlong class, or is it a semester  
 11 class?  
 12 A. Yearlong class.  
 13 Q. Is it your understanding that this document was  
 14 provided to students at the beginning of the school  
 15 year?  
 16 A. Yes.  
 17 Q. Okay. Would you turn to page 00145, please.  
 18 Do you see where it says there's a \$40 assessment fee is  
 19 needed?  
 20 A. Yes.  
 21 Q. Were students ever required to pay \$40 to take  
 22 band?  
 23 A. No, they weren't.  
 24 Q. Are you aware of any students who were excluded  
 25 from participating in band because they did not pay \$40?

- 1 fees for participation in band?  
 2 A. No, they haven't.  
 3 Q. Okay. Have students been required to pay any  
 4 fees to participate in band?  
 5 A. No, they haven't.  
 6 Q. Have you ever told a student that the student  
 7 would be excluded from band if the student did not pay a  
 8 fee?  
 9 A. I have never told a student that they would be  
 10 excluded from band prior to January or now.  
 11 Q. All right. Do you know if any teachers have  
 12 told students that they would be excluded from band if  
 13 they did not pay a fee?  
 14 A. No, I don't.  
 15 Q. Okay. Do you know if anyone has ever told  
 16 students that unless -- to avoid paying a fee, they have  
 17 to -- strike that.  
 18 Have you ever told students that to avoid  
 19 paying a fee in band class, they have to follow a  
 20 special procedure and obtain permission from someone at  
 21 the school?  
 22 A. No.  
 23 Q. Okay. Prior to January 2001, have students  
 24 ever been required to pay a fee to participate in band?  
 25 A. No.

- 1 A. No, they weren't. In fact, I'll direct you to  
 2 the asterisk section where it says, no student will be  
 3 turned away because of not having the money to pay this  
 4 assessment.  
 5 Q. In band class in the first semester, prior to  
 6 the school board's official policy, could a student  
 7 decide not to pay a \$40 assessment and still take band?  
 8 A. Yes, they could.  
 9 Q. Could a student decide not to pay a \$40  
 10 assessment and still take band for whatever reason?  
 11 A. Yes.  
 12 Q. Could I direct your attention a little bit  
 13 higher on that page where there's a reference to the  
 14 word textbook.  
 15 A. Yes.  
 16 Q. Does Tenaya Middle School -- strike that.  
 17 There is a reference to four different method  
 18 books, do you see that?  
 19 A. Yes, I do.  
 20 Q. I think you testified earlier that those are  
 21 the books that are used in the band class?  
 22 A. Yes.  
 23 Q. Does Tenaya Middle School provide these books  
 24 for the use of students at school?  
 25 A. The band teacher receives district funding as

1 well as Tenaya funding, and so the band teacher can use  
 2 both of those fundings to get copies of the books.  
 3 Q. Okay.  
 4 A. Both of those funds.  
 5 Q. Are students required to purchase those books  
 6 at a store in order to participate in band?  
 7 A. No, they're not.  
 8 Q. Okay. Are students provided with instruments  
 9 in band class?  
 10 A. Those students who don't have an instrument are  
 11 provided instruments. We don't have a large supply, but  
 12 what they basically are told is these are the  
 13 instruments we have available, if you'd like to learn on  
 14 one of these instruments, you're welcome to join.  
 15 Q. Do students have to pay to use instruments at  
 16 Tenaya Middle School?  
 17 A. In order to participate?  
 18 Q. Yeah.  
 19 A. No.  
 20 Q. Are students required to buy a tuneable drum  
 21 practice pad in order to participate in the band  
 22 classes?  
 23 A. No, they're not. Basically this is for parents  
 24 who don't want their tables used as drums, because you  
 25 can't carry the drums back and forth from school.

1 Q. So it sounds like a child could use a table as  
 2 a tuneable drum practice pad in lieu of an actual pad?  
 3 A. Yes.  
 4 Q. Okay. Since you've been principal, since 1995,  
 5 are you aware of any occasion in which a student has  
 6 been required to pay a fee to participate in band?  
 7 A. No, I'm not.  
 8 Q. I believe you may have been asked this earlier,  
 9 but let me ask you again to clarify.  
 10 Have you spoken with the band teacher at Tenaya  
 11 Middle School about the district's policy against  
 12 charging fees?  
 13 A. Yes, I have.  
 14 Q. Okay. The band teacher is Cynthia Kiaunis; is  
 15 that right?  
 16 A. Yes, it is.  
 17 Q. Did you tell Cynthia Kiaunis that students may  
 18 not be charged fees to participate in band?  
 19 A. Yes, I did. K-i-a-u-n-i-s.  
 20 Q. I'd like to ask you about the cooking class.  
 21 A. Okay.  
 22 Q. I'm sorry, let me back up for a second. No,  
 23 I'm fine. Cooking. Focus on the period from January  
 24 2001 to the present.  
 25 During that period have students in the cooking

1 class at Tenaya Middle School been required to pay a fee  
 2 to take the cooking class?  
 3 A. No, they have not.  
 4 Q. During that period January 2001 to the present,  
 5 have students been told that they cannot participate in  
 6 the cooking class unless they pay a fee?  
 7 A. No, they have not.  
 8 Q. During that period are you aware of any  
 9 students who have been excluded from taking cooking  
 10 because they have not paid a fee?  
 11 A. No, I'm not.  
 12 Q. Prior to the period of January 2001, have  
 13 students in the cooking classes at Tenaya Middle School  
 14 been required to pay a fee to take cooking classes?  
 15 A. They've been asked to, but not required to.  
 16 Q. So students have not been required to pay a  
 17 fee?  
 18 A. No, they have not.  
 19 Q. Prior to January 1st, 2001, have students  
 20 been -- strike that.  
 21 Prior to January of 2001, have any students  
 22 been told that they cannot participate in the cooking  
 23 class unless they pay money in some form?  
 24 A. No, they have not.  
 25 Q. Okay. Are you aware of any occasions during

1 the per -- are you aware of any occasions during any  
 2 period in which students have not been allowed to take  
 3 cooking because they have not paid a fee?  
 4 A. No, I am not.  
 5 Q. Okay. You indicated that students were asked  
 6 for money during the period prior to January 2001?  
 7 A. Yes, they were.  
 8 Q. Okay. If a student decided not to pay any  
 9 money for any reason, would they still be allowed to  
 10 take the class?  
 11 A. Yes, they would.  
 12 Q. Okay. Is it fair to say that to the extent  
 13 money was collected from students in the cooking class  
 14 prior to January 2001, that it was collected on a  
 15 voluntary basis?  
 16 A. Yes, it was.  
 17 Q. Is it fair to say that to the extent that money  
 18 was collected from the students in the cooking class  
 19 prior to January 2001, it was collected in the form of  
 20 voluntary contributions?  
 21 A. Yes.  
 22 Q. Is it fair to say that to the extent money was  
 23 collected from students in the band class prior to 2001,  
 24 it was collected in the form of voluntary contributions?  
 25 A. Yes.

1 Q. I believe that you indicated that you had a  
 2 meeting with teachers in the elective classes after you  
 3 found out about this lawsuit?  
 4 A. Yes.  
 5 Q. And I think you indicated that the cooking  
 6 teacher was not at that meeting?  
 7 A. That's correct.  
 8 Q. And I'm not sure if you indicated or not, so  
 9 forgive me if I'm asking you again, but have you had a  
 10 conversation with the cooking teacher about the school  
 11 district's policy that students may not be charged fees?  
 12 A. Yes, I have.  
 13 Q. What did you tell the cooking teacher?  
 14 A. I told her that we would not be charging fees  
 15 for the cooking class anymore.  
 16 Q. Okay. When you just referred to "fees," I'm  
 17 assuming that you're still referring to fees in the  
 18 sense that is an amount of money that students are asked  
 19 for, but not required to pay?  
 20 A. Yes.  
 21 Q. Okay. I'd like to talk to you about woodshop.  
 22 A. Okay.  
 23 Q. Who is the woodshop teacher?  
 24 A. Jim Briggs, B-r-i-g-g-s.  
 25 Q. Focusing on the period from January 2001

1 onward, have students in woodshop been required to pay a  
 2 fee to participate in woodshop?  
 3 A. No, they have not.  
 4 Q. Have students in woodshop ever been told that  
 5 they cannot participate unless they pay a fee?  
 6 A. No.  
 7 Q. Students in woodshop ever been told that to  
 8 avoid paying a fee they have to follow some procedure or  
 9 seek the permission of someone at Tenaya Middle School  
 10 or the district?  
 11 A. No, they have not.  
 12 Q. Can you describe for me the activities that  
 13 take place in the woodshop class?  
 14 A. They learn how to measure, cut wood, make  
 15 projects. They learn how to measure, cut metal, make  
 16 projects.  
 17 Q. In the woodshop class, I am assuming that  
 18 students use wood to make projects?  
 19 A. Yes, they do.  
 20 Q. Does Tenaya Middle School provide students with  
 21 wood to make projects?  
 22 A. Yes, we do.  
 23 Q. Does Tenaya Middle School provide students with  
 24 wood free of charge to make projects?  
 25 A. So long as it's a class-related project that

1 goes with the lesson, yes.  
 2 Q. So for those class-related projects that are  
 3 part of a curriculum in woodshop, Tenaya Middle School  
 4 provides, free of charge, wood to the woodshop students?  
 5 A. That's correct.  
 6 Q. I think you indicated that there may be  
 7 occasions on which students in woodshop are allowed to  
 8 make projects kind of outside the normal scope of the  
 9 class?  
 10 A. That's correct.  
 11 Q. Okay. And can you describe for me how that  
 12 process may work?  
 13 A. If a student chooses to make a project that's  
 14 not one of the required projects, there's a -- the  
 15 woodshop teacher has a catalog that they can choose  
 16 mirrors and clocks and different things like that, and  
 17 if they would like to make one of those, then they pay a  
 18 fee for that.  
 19 We have a lot of kids right before Christmas  
 20 that want to make their Christmas presents for their  
 21 family. Mother's Day is coming up right now. We have a  
 22 number of mirrors that kids want to make for Mother's  
 23 Day projects. And a lot of times they'll come in at  
 24 lunchtime and other times besides their class time, and  
 25 any extra time they have in class, they make those

1 projects.  
 2 Q. And are these projects that they are allowed to  
 3 keep and take home?  
 4 A. Yes, they are.  
 5 Q. Students, however, are not required to pay a  
 6 fee to do special projects?  
 7 A. No, they are not.  
 8 Q. In fact, can you tell -- strike that.  
 9 Does the woodshop teacher actually go out of  
 10 his way to -- well, if a student wants to create a  
 11 special project, what does a student do?  
 12 A. Talks to the teacher about it, teacher shows  
 13 them one of the catalogs, and they choose it from the  
 14 catalog.  
 15 Q. Okay.  
 16 A. And because the teacher can get it for  
 17 wholesale, he'll usually do the order for them.  
 18 Q. Okay. Have you spoken with the woodshop  
 19 teacher about the school district's official policy  
 20 against charging fees?  
 21 A. He was in the meeting when we discussed that.  
 22 Q. All right. I'd like to ask you -- let me ask  
 23 you another question about woodshop. If a student wants  
 24 to make a special project that the student keeps and  
 25 takes home, can you tell me how much, if you know, a



1 student would generally pay for this special project?  
 2 A. I really don't know. It would vary on the  
 3 scope of the project.  
 4 Q. But, in general, do you have any --  
 5 A. Probably between -- I really don't know. I  
 6 can't even make a guess.  
 7 Q. Okay. But it wouldn't be a large amount of  
 8 money?  
 9 A. No.  
 10 MR. YARNELL: What's large? Sorry, you asked  
 11 the question.  
 12 MR. CHOATE: I asked for it.  
 13 Q. Could it be under \$10?  
 14 A. I would say it probably would run in the \$10  
 15 range at Tenaya. I know that there's other woodshops  
 16 that have bigger laths that charge -- you know, if they  
 17 want to make bigger projects, they can.  
 18 Q. Are you talking about other schools?  
 19 A. Other schools in other districts.  
 20 Q. Let me ask you some questions about P.E.  
 21 clothes.  
 22 A. Okay.  
 23 Q. Are students at Tenaya required to purchase  
 24 P.E. clothes from the school?  
 25 A. No, they're not.

1 Q. Okay. But Tenaya does have a dress code for  
 2 P.E.?  
 3 A. Yes, we do.  
 4 Q. Okay. And I think that the -- you indicated  
 5 that the dress code consisted of blue shorts and a gray  
 6 shirt?  
 7 A. That's correct.  
 8 Q. Are students free to wear -- I'm going to  
 9 strike that question.  
 10 Are students allowed to wear their own clothes  
 11 to P.E.?  
 12 A. Yes, as long as they're blue shorts and gray  
 13 shirts.  
 14 Q. Okay. Have students at Tenaya ever been told  
 15 that they can't participate in P.E. unless they purchase  
 16 clothes from the school?  
 17 A. No, they've not.  
 18 Q. Do you know of any students who have ever been  
 19 excluded from P.E. class because they chose not to  
 20 purchase clothes from the school?  
 21 A. No, I don't.  
 22 Q. Okay. I'll ask you a couple of questions about  
 23 P.E. locks. I think you indicated that students use  
 24 P.E. locks to lock their belongings in P.E. lockers  
 25 while they're participating in P.E.?

1 A. That's correct.  
 2 Q. Okay. Are students at Tenaya Middle School  
 3 required to purchase P.E. locks?  
 4 A. No, they're not.  
 5 Q. Does Tenaya Middle School provide locks free of  
 6 charge to students who want to use them?  
 7 A. Yes, we do.  
 8 Q. If a student wants to purchase his or her own  
 9 lock, are they allowed to do that?  
 10 A. As long as it's from the school so that we have  
 11 the master key.  
 12 Q. And is that for safety reasons?  
 13 A. Yes, it is.  
 14 Q. Okay.  
 15 A. Students have a great tendency of forgetting  
 16 their combination. We have the key and we can get the  
 17 lock off without destroying the lock.  
 18 Q. Okay. Students ever been -- strike that.  
 19 Have you or any other teachers at Tenaya Middle  
 20 School ever told students at Tenaya Middle School that  
 21 they cannot participate in P.E. unless they purchase a  
 22 lock for their P.E. locker from the school?  
 23 A. No, I haven't or nobody else has that I know  
 24 of.  
 25 Q. Okay. I'd like to ask you some questions about

1 the athletic teams at Tenaya. Focusing on the periods  
 2 from January 2001 to the present, have students at  
 3 Tenaya Middle School ever been required to pay a fee in  
 4 order to participate on an athletic team?  
 5 A. No, they have not.  
 6 Q. Students at Tenaya Middle School ever told  
 7 that -- strike that.  
 8 Were students at Tenaya Middle School ever told  
 9 by you or anyone else, to your knowledge, that they  
 10 would not be allowed to participate on a sports team for  
 11 reason of not paying a fee?  
 12 A. No.  
 13 Q. Are you aware of any students at Tenaya Middle  
 14 School who have been excluded from participating on an  
 15 athletic team because of an inability -- strike that.  
 16 Prior to January 2001, have students at Tenaya  
 17 Middle School ever been required to pay a fee to  
 18 participate on an athletic team?  
 19 A. No, they have not.  
 20 Q. Have students at Tenaya Middle School ever been  
 21 required to pay a fee to participate on the baseball  
 22 team?  
 23 A. No, they have not.  
 24 Q. Have students at Tenaya Middle School ever been  
 25 required to pay a fee to participate on the softball

1 team?  
 2 A. No, they have not.  
 3 Q. Does Tenaya Middle School provide school  
 4 uniforms to students who participate on the athletic  
 5 teams?  
 6 A. Yes, they do.  
 7 Q. Can you tell me for what teams Tenaya Middle  
 8 School provides uniforms?  
 9 A. We provide uniforms for the volleyball team,  
 10 the basketball team, boys and girls soccer, boys and  
 11 girls softball, wrestling.  
 12 Q. Anything else?  
 13 A. I think that's it.  
 14 Q. Do you have a track team?  
 15 A. Yes, track team.  
 16 Q. Do you provide uniforms to your track students?  
 17 A. Yes, we do.  
 18 Q. Are uniforms provided to students free of  
 19 charge?  
 20 A. Yes, they are.  
 21 Q. Do students turn the uniforms back in to the  
 22 school at the end of the season?  
 23 A. Yes, they do.  
 24 Q. I want to make sure that I have a clear  
 25 response to that. Do the students turn their athletic

1 softball or the baseball coaches have provided hats to  
 2 students who chose not to purchase them?  
 3 A. Yes, and the principal.  
 4 Q. And the principal has also done that?  
 5 A. Yes.  
 6 Q. If a student wanted to purchase a baseball hat,  
 7 how much would that cost?  
 8 A. It varies on the style that they choose, but  
 9 it's generally between 8 and \$13.  
 10 Q. Okay. And if a student chose not to purchase a  
 11 baseball cap, they could still participate on the  
 12 baseball team?  
 13 A. Yes, they could.  
 14 Q. Or the softball team?  
 15 A. Yes, they could.  
 16 Q. And somebody would provide them with a hat?  
 17 A. Yes.  
 18 Q. That somebody being the coaches or perhaps  
 19 yourself?  
 20 A. Sponsors that will help with hats.  
 21 Q. Okay. I believe you indicated earlier that you  
 22 have spoken with the athletic coaches at Tenaya Middle  
 23 School and informed them of the school district's  
 24 official policy against charging fees for participation  
 25 in athletic events?

1 uniforms back in to the school at the end of the season?  
 2 A. Yes, they do.  
 3 Q. Focusing on the period from January 2001 to the  
 4 present, have students on the girls softball team ever  
 5 been required to purchase a softball cap in order to  
 6 play on the softball team?  
 7 A. No, they have not.  
 8 Q. Have boys ever been required to purchase a cap  
 9 in order to participate on the boys baseball team?  
 10 A. No, they have not.  
 11 Q. Have you or, to your knowledge, have any other  
 12 teachers or administrators at Tenaya Middle School ever  
 13 told students that they had to purchase a baseball cap  
 14 or softball -- strike that. I'm sorry. That was a bad  
 15 question.  
 16 Have you or any other administrators or  
 17 teachers at Tenaya, to your knowledge, told students  
 18 that unless they purchased a baseball or softball cap,  
 19 they had to apply for a special waiver?  
 20 A. No.  
 21 Q. Okay. Are you aware of any students who have  
 22 been denied an opportunity to play on the softball or  
 23 baseball teams because they've not bought a hat?  
 24 A. No, I'm not.  
 25 Q. Are you aware of any occasions on which the

1 A. Yes, we did, I did.  
 2 Q. So if I understand this correctly, at no time  
 3 while you've been principal at Tenaya Middle School have  
 4 any students been required to pay any fee to participate  
 5 in any classes or extracurricular activities?  
 6 A. No.  
 7 MR. SEFERIAN: Can you clear that up, because I  
 8 think the way she answered that it might have been a  
 9 double-negative question. To clarify the record will  
 10 you --  
 11 Q. BY MR. CHOATE: Was your answer that students  
 12 have not, in fact, ever been required to pay a fee to  
 13 participate in a class or extracurricular activity?  
 14 A. Students have not been required to pay a fee.  
 15 Q. At any time while you've been principal?  
 16 A. While I've been principal.  
 17 Q. Okay. I'd like to ask you some questions about  
 18 how you fund extracurricular activities at Tenaya Middle  
 19 School.  
 20 A. Okay.  
 21 Q. Can you describe for me how extracurricular  
 22 activities are funded?  
 23 A. The activities themselves, the uniforms?  
 24 Q. Well, why don't we start with the activities.  
 25 A. Our student body fund pays a -- how to explain

1 this succinctly. We have an athletic director that  
2 every two years the school chooses one of the assistant  
3 principals to be an athletic director, and he or she  
4 runs the account for -- or collects the school fees for  
5 paying for referees and that kind of thing, and that  
6 money is usually taken out of our student body fund  
7 account.

8 Q. You said she collects the school fees for  
9 certain items?

10 A. Well, someone has to pay for the refs and the  
11 umpires and things like that, and so those monies come  
12 out of our student body account, so through  
13 fund-raising.

14 Q. And it's money generated through fund-raising  
15 that goes into the student body account?

16 A. Correct.

17 Q. Okay. Could you describe for me some of the  
18 types of fund-raising activities that are used to raise  
19 money for the student body accounting fund?

20 A. Sure. We have a fall fund-raiser that is  
21 generally selling products. We go with a company that  
22 has a bunch of products that you can sell. I know that  
23 kids have come to your door with this little catalog of  
24 items that you can purchase, so that's one of our  
25 fund-raisers, and we sell candy. We have -- basically

1 Q. Okay. Are fund-raising activities discussed at  
2 parent meetings? I think you mentioned the PTSC  
3 meeting.

4 A. The PTSC basically discusses their fund-raising  
5 events and generates parent support that way. Band  
6 talks to the parents, softball talks to the softball  
7 parents. And then at the beginning of the school year  
8 when we talk about the various programs, I encourage  
9 parents to volunteer in as many different areas and  
10 clubs as they can, as well as schoolwide activities.

11 Q. Have parents ever complained to you about  
12 fund-raising?

13 A. They get tired of fund-raising and ask if he  
14 they can make a direct donation to avoid fund-raising.

15 Q. Okay. Parents ever complain to you, though,  
16 that they think fund-raising is a -- is an improper  
17 thing for students to be doing?

18 A. I've had some parents say that.

19 Q. Is Keith Ensminger one of those parents?

20 A. Yes, he is.

21 Q. In general, however, are parents supportive of  
22 fund-raising efforts?

23 A. In six years as principal I can count on two  
24 hands the parents that have complained about the  
25 fund-raising to me.

1 that's just about it. The candy fund-raisers and the --  
2 it's not magazines, but little catalog items.

3 Q. Other than selling candy and --

4 A. And we also have -- I just thought of one.  
5 Sorry. We sell an activity sticker which gives students  
6 discounts to get into dances, to get discounts on spirit  
7 wear, the spirit t-shirts, the P.E. uniforms, the  
8 yearbook, that kind of thing.

9 Q. Is money raised through car washes, things like  
10 that?

11 A. Particular clubs may do carwashes for their  
12 area. For example, softball has a softball club and  
13 they sell refreshments at the softball games, they may  
14 have fund-raisers, car washes. The band club -- now we  
15 have band boosters, but prior to that would have car  
16 washes and a bowl-a-thon and things like that.

17 Q. Okay.

18 A. But those are all club sponsored not full  
19 school fund-raisers.

20 Q. When you say "club sponsored" -- let me ask you  
21 a different question.

22 Are parents involved in any of the fund-raising  
23 activities that are used to --

24 A. We take parent volunteers anywhere we can get  
25 them.

1 Q. Okay. Where do the fund-raising activities  
2 take place?

3 A. Variety of places. We try to keep most of them  
4 as close to campus as possible, but I know they've done  
5 bowl-a-thons and they've done skate-a-thons at the local  
6 skating rink. Candy's sold too much around our area.

7 Q. Do the fund-raising activities take place after  
8 school?

9 A. After school, before school, Saturdays.

10 Q. So fund-raising doesn't interfere with  
11 children's education at Tenaya Middle School?

12 A. Does not take place during academic times.

13 Q. Is student participation in fund-raising  
14 activities voluntary?

15 A. Yes, it is.

16 Q. Are students ever told that they have to  
17 participate in fund-raising activities?

18 A. No, they're not. They're strongly encouraged,  
19 but it's not a have to.

20 Q. If the band class, let's say, is conducting a  
21 fund-raising activity and a student doesn't want to  
22 participate in that fund-raising activity, is the  
23 student still allowed to participate in band?

24 A. Yes.

25 Q. And do you have any reason to believe that

1 student's grades are affected by their decision to  
 2 participate or not in fund-raising?  
 3 A. No.  
 4 Q. Are students and their parents allowed to  
 5 contribute money to Tenaya Middle School?  
 6 A. Yes.  
 7 Q. Do you think that's wrong?  
 8 A. In the perfect world they shouldn't have to.  
 9 Q. Are students required to contribute money?  
 10 A. No, they're not.  
 11 Q. Are students' grades in their classes affected  
 12 by a decision to contribute or not contribute money?  
 13 A. The grades are not affected by it. There's  
 14 other ways to get points, if points are -- I know  
 15 earlier you gave me this sheet here, and on that sheet  
 16 it also shows other ways to get points. That is one way  
 17 to get points.  
 18 I'd also like to point out on that same sheet  
 19 that you gave to me that the section that says these  
 20 actions are so horrible, points will be taken away, you  
 21 do not see anywhere in that section that it says that  
 22 points will be taken away if they do not contribute to  
 23 fees, it does not say points will be taken away if they  
 24 do not perform in fund-raising.  
 25 Q. Let me ask you some questions about -- do you

1 think that -- the opportunities which children at Tenaya  
 2 Middle School have because of fund-raising, do you think  
 3 those opportunities are important to children's  
 4 education?  
 5 A. Yes, I do.  
 6 Q. Can you explain for me why that is?  
 7 A. Because it gives them -- it motivates them, it  
 8 makes them connect with their school. And when a child  
 9 is motivated and connected to their school, they perform  
 10 better overall.  
 11 It also gives them -- broadens their horizon,  
 12 gives them a foundation from which they can build. If  
 13 you'd take a look at SAT-9 tests, things like that, a  
 14 lot of those questions are based on foundational  
 15 experiential things. In the perfect world where both  
 16 parents work and there's extra money to take kids to  
 17 different places and broaden those horizons, those kids  
 18 automatically do better on tests. In homes where kids  
 19 don't have those opportunities, they do not perform as  
 20 well on tests.  
 21 These students -- by providing those  
 22 opportunities as a school, we help students that  
 23 normally wouldn't have those opportunities to broaden  
 24 their experiences and thus, we feel, perform better on  
 25 tests.

1 Q. Have you heard of the Busy Bees?  
 2 A. No.  
 3 Q. Are you aware of any occasion on which the 6th  
 4 grade students at Tenaya Middle School took a trip to  
 5 Oakland to see a baseball game?  
 6 A. Oh, yes.  
 7 Q. Can you describe for me kind of -- what that  
 8 was about?  
 9 A. The students took a -- this is -- I believe  
 10 it's their third field trip. All year long their  
 11 curriculum is geared towards baseball and they do  
 12 baseball in math, they read baseball biographies and  
 13 study the history of baseball, everything is kind of the  
 14 theme. And they earn money throughout the year and they  
 15 take the whole 6th grade to a major league baseball  
 16 game.  
 17 Q. Was that paid for through fund-raising  
 18 activities?  
 19 A. Yes, it was.  
 20 Q. Do you think students got an educational  
 21 benefit from that trip?  
 22 A. Absolutely.  
 23 Q. Why?  
 24 A. Because they got to see first-hand the thing  
 25 that they've been studying all long. And most kids

1 don't have any opportunity to participate in that, at  
 2 least my students would never have that kind of an  
 3 opportunity. They've been averaging baseball scores and  
 4 learning averages. This was a real-life thing to show  
 5 what those baseball averages do.  
 6 Students are often asked to write essays based  
 7 on experiences as well, and kids that come from limited  
 8 backgrounds don't have a reservoir of things to write  
 9 from. I can tell you that every one of our 6th graders  
 10 have got a great thing to write about now.  
 11 Q. I think Ms. Lhamon asked you some questions  
 12 about the CCR process.  
 13 A. Yes.  
 14 Q. I believe it was the '98/'99 school year?  
 15 A. Yes.  
 16 Q. What's your understanding of the CCR process?  
 17 A. We get a set of -- from the State a set of  
 18 regulations, and we do a self-review going through each  
 19 of those regulations and answer yes or no that we meet  
 20 those regulations. And then some of the -- then the  
 21 State sends some representatives out and they take a  
 22 look at it and see if they concur with or disagree with  
 23 our self-evaluation.  
 24 Q. Is it your understanding that -- do you know  
 25 what CCR stands for?

1 A. Compliance review. I can't remember what the  
 2 other "C" is.  
 3 Q. Coordinated compliance review.  
 4 A. Thank you.  
 5 Q. Is it your understanding that the CCR process  
 6 is a method of -- strike that.  
 7 Is it your understanding that the CCR process  
 8 is a way that the State monitors schools like Tenaya  
 9 Middle School?  
 10 A. Yes.  
 11 Q. You also indicated that Tenaya Middle School  
 12 was participating in the Immediate Intervention  
 13 Underperforming Schools Program?  
 14 A. That's correct.  
 15 Q. What is your understanding of that program?  
 16 A. It is a program to help schools that have a low  
 17 API score, to improve those scores.  
 18 Q. Has Tenaya Middle School received State funding  
 19 for being a participant in that program?  
 20 A. Yes, we have.  
 21 Q. Do you know how much you received?  
 22 A. I want to say that it's about -- a ballpark  
 23 figure of around \$200,000 a year, less than that, but in  
 24 that ballpark. I think it's \$130,000.  
 25 Q. When did Tenaya begin participating in that

1 program?  
 2 A. Last year was the pilot year. This year is our  
 3 first official year in it. We have one more year on the  
 4 program next year.  
 5 MR. YARNELL: What was the name of the program?  
 6 THE WITNESS: IIUSP.  
 7 MR. CHOATE: IIUSP, Immediate Intervention  
 8 Underperforming Schools Program.  
 9 Q. Has Tenaya hired an external evaluator?  
 10 A. Yes, we have.  
 11 Q. Who is it?  
 12 A. Pullia (ph.).  
 13 Q. Has an action plan been prepared?  
 14 A. Yes, it has.  
 15 Q. Has it been submitted to the State Department  
 16 of Education?  
 17 A. Yes, it has and approved.  
 18 Q. When was it approved?  
 19 A. Last year for this year.  
 20 Q. What's the current status of your participation  
 21 in that program?  
 22 A. None.  
 23 Q. Are you implementing any strategies to --  
 24 A. Yes, we are.  
 25 Q. -- make your school a better school?

1 A. Yes, we are.  
 2 Q. I want to ask you a question about the audit  
 3 procedure that you spoke about earlier. I think that  
 4 you testified that the school district performs an  
 5 informal audit annually?  
 6 A. Yes.  
 7 Q. And I think that you testified that -- strike  
 8 that.  
 9 When Tenaya Middle School collected money from  
 10 students in the cooking class, did the school fill out  
 11 or prepare any type of forms to keep track of what money  
 12 was collected?  
 13 A. The teachers filled it out and turned it in,  
 14 and then we turned it in to the district.  
 15 Q. The teacher turned the form in to you?  
 16 A. To my assistant principal.  
 17 Q. And then somebody at Tenaya Middle School  
 18 provided that document to the district?  
 19 A. And the money. It's deposited with the  
 20 district.  
 21 Q. Okay. But that money is no longer collected  
 22 from students in cooking class now?  
 23 A. That's correct.  
 24 Q. I think you indicated earlier that you were  
 25 concerned that you may have to cut the instructional

1 supplies budget for various departments?  
 2 A. That's correct.  
 3 Q. Is there a policy or practice at Tenaya Middle  
 4 School or procedure or practice at Tenaya Middle School  
 5 for obtaining instructional supplies for the classrooms  
 6 or departments?  
 7 A. The teachers are given a budget, and then they  
 8 turn in their order forms to my secretary who orders the  
 9 stuff and distributes it to them.  
 10 Q. Does your secretary order the supplies from the  
 11 district?  
 12 A. Some from the district, some from companies,  
 13 you know, educational companies.  
 14 Q. How is the instructional supplies budget at  
 15 Tenaya Middle School determined?  
 16 A. Basically I receive the amount that we are  
 17 being allocated from the district, and based on past  
 18 years' practice try to divvy it up as close as possible  
 19 to what they've received in the past.  
 20 That's taken to leadership, which is a  
 21 committee made up of teachers representing the various  
 22 departments and grade levels, and then they recommend  
 23 whether it be accepted or not, and then I take it to the  
 24 staff.  
 25 Q. The teachers in the various departments

1 recommend --  
 2 A. They choose their leadership team. That  
 3 leadership team takes a look at my budget, makes any  
 4 suggestions, whatever, and then approves it or  
 5 disapproves it, recommends it or won't recommend it, and  
 6 then I take their recommendations to the staff.  
 7 Q. To the staff at your school?  
 8 A. Right, the full staff versus just the  
 9 leadership team.  
 10 Q. And what happens then?  
 11 A. Then if everybody's in agreement that that's  
 12 the best way to spend those monies, then we put it in  
 13 practice and spend it.  
 14 Q. Do you know how the district determines how  
 15 much money you are allocated for --  
 16 A. Based on ADA, attendance of the students.  
 17 Q. Is that like the average daily attendance?  
 18 A. Right.  
 19 MR. CHOATE: Okay. All right. I don't think I  
 20 have any questions at this moment.  
 21 EXAMINATION BY MR. SEFERIAN  
 22 Q. I represent the State Board of Education and  
 23 the State Department of Education and the Superintendent  
 24 of Public Instruction. I'd like to ask you a few  
 25 questions.

1 A. Okay.  
 2 Q. After you first learned about the lawsuit, did  
 3 you have a telephone call with Ms. Lhamon?  
 4 A. Yes, I did.  
 5 Q. And what did you tell her in that telephone  
 6 conversation?  
 7 A. Basically I asked her questions, what it meant  
 8 and what was going to happen with it, and I told her  
 9 that I was upset and that my constituents were upset.  
 10 Q. When you told her you were upset, why were you  
 11 upset at that time regarding the lawsuit?  
 12 A. I was upset that Tenaya was being singled out  
 13 when I know that the practices we've discussed today  
 14 were practices that occurred at just about every school  
 15 in the state, and I was upset that I found out about it  
 16 in the newspaper and not prior to it being published in  
 17 the newspaper, and I did not feel that we had done  
 18 anything illegal.  
 19 Q. And what do you recall that Ms. Lhamon told you  
 20 in that conversation?  
 21 A. She was very good at calming me down and  
 22 reassuring me. She did state that Tenaya and Tenaya's  
 23 principal were not being sued, but it was the State.  
 24 Q. After that conversation you had with Ms. Lhamon  
 25 on the telephone, did you ever speak with any other

1 attorneys or representatives who were representing the  
 2 plaintiffs in this lawsuit that you're aware of?  
 3 A. Did I talk to any lawyers for the Ensmingers or  
 4 for --  
 5 Q. After speaking with Ms. Lhamon the first time,  
 6 did you ever speak with anyone else who you understood  
 7 was representing the Ensmingers or the ACLU?  
 8 A. I don't believe so.  
 9 Q. Are you aware of what fees Theresa Ensminger  
 10 has paid or her parents have paid while she's been a  
 11 student at Tenaya?  
 12 A. 800-and-some kids, I can't tell you  
 13 specifically who paid what, no.  
 14 Q. Did Mr. Ensminger ever tell you that any fees  
 15 that he had paid for his daughter at Tenaya were a  
 16 financial hardship to him?  
 17 A. No, he did not.  
 18 Q. Are you aware of -- I'll withdraw that.  
 19 Has any student at Tenaya Middle School ever  
 20 had their grade affected by failure to pay any fee for  
 21 any activity or class?  
 22 A. Not that I'm aware of.  
 23 MR. CHOATE: Counsel, are you still using "fee"  
 24 in the way that Principal Atkinson defined it earlier?  
 25 MR. SEFERIAN: Yes.

1 Q. When you were discussing the fees that were  
 2 charged to students who performed extra woodshop  
 3 projects, is it your understanding that those extra  
 4 woodshop projects were not part of the student's grade  
 5 for that course?  
 6 A. Yes.  
 7 Q. Are you aware of any parents or students who  
 8 have ever asked for a refund of any monies that were  
 9 paid for a cooking class at Tenaya Middle School?  
 10 A. Only if they moved or were moving and wouldn't  
 11 be there for the full period or something like that.  
 12 Q. What about are you aware of any other parents  
 13 or students who have requested a refund of any monies  
 14 paid for any other type of activity at Tenaya Middle  
 15 School besides cooking, such as sports activities or  
 16 woodshop, who requested a refund other than if they were  
 17 moving?  
 18 A. No.  
 19 Q. Are you aware of any student at Tenaya Middle  
 20 School who has ever been denied a textbook or other type  
 21 of instructional material for failure to pay a fee?  
 22 A. No. I need to preface that. If a child has  
 23 lost a textbook and not paid for that textbook, then  
 24 they can't take a textbook out of the classroom.  
 25 Q. But other than the circumstance where a child

1 has lost a textbook, you're not aware of any student at  
 2 Tenaya Middle School who has ever been denied a textbook  
 3 or other type of instructional material --  
 4 A. No.  
 5 Q. -- for failure to pay a fee; is that right?  
 6 A. That's correct.  
 7 MR. SEFERIAN: I don't have any other  
 8 questions.  
 9 MS. LHAMON: I have a few more questions. It  
 10 won't take long. I need to take a bathroom break first.  
 11 (Recess taken.)  
 12 FURTHER EXAMINATION BY MS. LHAMON  
 13 Q. Ms. Atkinson, when Mr. Choate was asking you  
 14 questions, you said to him something like in a perfect  
 15 world, parents wouldn't have to contribute money to  
 16 schools.  
 17 A. Yes.  
 18 Q. Is that roughly accurate?  
 19 A. Yes.  
 20 Q. Why in a perfect world would parents not have  
 21 to contribute money to schools?  
 22 MR. SEFERIAN: Objection. Overly broad, vague.  
 23 MR. CHOATE: I'll join the objection.  
 24 MS. LHAMON: I'll rephrase it.  
 25 Q. What did you mean by that?

1 MR. SEFERIAN: Same objections.  
 2 MS. LHAMON: I'm not rephrasing. Go ahead.  
 3 THE WITNESS: I really believe that education,  
 4 as much as possible, that it should be provided, but  
 5 that's in a perfect world, and there isn't the money  
 6 that is needed for that.  
 7 Q. BY MS. LHAMON: When you say "there isn't the  
 8 money that's needed for that," do you mean in your  
 9 district there's not enough money?  
 10 A. I think in education in general.  
 11 Q. Okay. So anywhere in the nation there's not  
 12 enough money for that?  
 13 A. (Witness nods head.)  
 14 Q. Okay. And why do you think that, that there's  
 15 not enough money?  
 16 A. Because it's a government agency. Just like  
 17 everything else, it's based on what the taxpayers pay,  
 18 and there isn't enough money.  
 19 Q. Okay. Thank you. I'm going to direct your  
 20 attention to a couple of exhibits again. Let's turn  
 21 back to Exhibit 3 first.  
 22 Before we turn to the exhibits, actually,  
 23 Mr. Choate asked you if Tenaya provides the textbooks  
 24 for students in the band classes, and you answered that  
 25 the band teacher receives district funds and school

1 funds.  
 2 Could you tell me if the school provides the  
 3 textbooks for the students in the band classes?  
 4 A. It doesn't come out of my funds, no.  
 5 Q. Okay. So does that mean that you don't know if  
 6 the teacher provides the textbooks?  
 7 A. I know that she has ordered textbooks. Is  
 8 there enough for every student, that I don't know.  
 9 Q. Okay. Thank you. Now I'm ready to turn to the  
 10 exhibits. So if you'll turn to Exhibit 3.  
 11 A. Okay.  
 12 Q. If you look at the second page of Exhibit 3  
 13 where it says textbook and it says that the textbook is  
 14 required for all students in advanced band, it doesn't  
 15 say in this document that if a student doesn't have the  
 16 textbooks, that the textbook will be provided otherwise,  
 17 does it?  
 18 A. No, it doesn't.  
 19 Q. Do you think that a parent or a student reading  
 20 this document would know that the student could get the  
 21 textbook if the student didn't purchase the textbook him  
 22 or herself?  
 23 MR. SEFERIAN: Objection. No foundation.  
 24 Calls for speculation.  
 25 MR. CHOATE: Join that.

1 THE WITNESS: Yes, because the teacher talks to  
 2 the students in class about it.  
 3 Q. BY MS. LHAMON: Okay. And do you know that the  
 4 teacher talks to the students in class because you're  
 5 there in class?  
 6 A. No, because I've been told.  
 7 Q. And you've been told by the teacher?  
 8 A. Yes.  
 9 Q. If you didn't have any external knowledge, so  
 10 if you weren't Principal Atkinson and you didn't know  
 11 the policies at the school and you were reading  
 12 Exhibit 3 and you looked at the paragraph that refers to  
 13 textbooks, would you know that a textbook is available  
 14 to you?  
 15 A. I'd ask my child.  
 16 MR. SEFERIAN: Objection. Hypothetical  
 17 question. Calls for speculation.  
 18 MR. CHOATE: Join.  
 19 THE WITNESS: I can only talk for me. I would  
 20 ask my child, what has your teacher said about this.  
 21 And if my child said, if I want to write in the book,  
 22 then I need to buy it, that's how I'd know.  
 23 Q. BY MS. LHAMON: Okay. Thanks. Is it your  
 24 experience that the students at Tenaya are all exemplary  
 25 listeners in their classes?

1 A. No, it is not my experience.  
 2 Q. I'm not trying to trap you, I'm not trying to  
 3 get you to say something that you don't want to say, but  
 4 I am concerned about the possibility that some students  
 5 might not hear the teacher, and I wonder whether it  
 6 would be a better practice for the document, Exhibit 3,  
 7 to say that if a textbook -- if a student doesn't buy a  
 8 textbook, then the teacher would provide the textbook to  
 9 the student? Do you think that would be a --  
 10 MR. SEFERIAN: Objection.  
 11 MS. LHAMON: I hadn't finished.  
 12 Q. Do you think that that would be a better  
 13 practice?  
 14 MR. SEFERIAN: Objection. Hypothetical  
 15 question. Calls for speculation. Vague.  
 16 MR. CHOATE: And ambiguous.  
 17 MS. LHAMON: You can go ahead and answer.  
 18 THE WITNESS: Yes.  
 19 Q. BY MS. LHAMON: I'm just going to turn to one  
 20 more exhibit, which is Exhibit 1. If you look at what  
 21 is the third page of Exhibit 1, it's Bates numbered  
 22 00145 in the bottom. Here where it refers to textbooks  
 23 in Exhibit 1 it also doesn't say anything about the  
 24 textbooks being available to students if the students  
 25 don't purchase them themselves, does it?

1 A. No, it does not.  
 2 Q. Do you think, like in Exhibit 3, Exhibit 1  
 3 would be a better document if it did include a statement  
 4 like that one?  
 5 MR. SEFERIAN: Objection.  
 6 MR. CHOATE: Same objections.  
 7 THE WITNESS: Yes.  
 8 Q. BY MS. LHAMON: My last set of questions for  
 9 you. I talked to you when I was first asking you  
 10 questions today, if you can remember back that long ago,  
 11 about the audit process.  
 12 A. Yes.  
 13 Q. And I can't remember if I asked you carefully  
 14 enough my questions, so I just want to follow up with a  
 15 few more questions.  
 16 You told me at one point today -- strike that.  
 17 Do you collect the receipts for the fees that  
 18 students are charged for class materials or for taking a  
 19 course?  
 20 MR. YARNELL: Her personally?  
 21 Q. BY MS. LHAMON: I'm sorry. Does Tenaya Middle  
 22 School keep the receipts for fees that have been charged  
 23 to students?  
 24 A. Yes.  
 25 Q. For any activities --

1 MR. CHOATE: Objection. Mischaracterizes her  
 2 testimony. Assumes that students are being charged fees  
 3 right now for their courses. That's not what  
 4 Ms. Atkinson has testified to.  
 5 MS. LHAMON: You know, I hadn't finished my  
 6 question. And I also wasn't characterizing your  
 7 testimony. But I appreciate your yes answer and I'll go  
 8 forward with the rest of my question.  
 9 Q. Do you keep those receipts for the purpose of  
 10 turning them in to an auditor?  
 11 A. Yes.  
 12 Q. Okay. Do you turn in -- is it the Tenaya  
 13 Middle School practice to turn in all of those receipts  
 14 every year to the informal auditor?  
 15 A. Yes.  
 16 Q. Do you know of any year since you have been  
 17 principal at Tenaya when receipts, a category of  
 18 receipts, I don't mean an individual receipt that's  
 19 missing, a category of receipts was not turned in to the  
 20 informal auditor?  
 21 A. I hope not. I don't know of any.  
 22 Q. And you don't know of any?  
 23 A. No.  
 24 Q. Is it the Tenaya Middle School practice to turn  
 25 in those receipts to the formal auditor when the formal

1 auditor comes to campus as well?  
 2 A. We turn them in to the district and the  
 3 district turns -- to the district office, and the  
 4 district office turns it over to the auditor.  
 5 Q. And how do you know that the district office  
 6 turns it over to the auditor?  
 7 A. Basically because of the reports we get.  
 8 Q. Okay. Is it your expectation that all of the  
 9 receipts in your possession for cooking fees for last  
 10 school year were turned over to the informal auditor?  
 11 A. Yes.  
 12 Q. Is it your expectation that all of the receipts  
 13 for band fees were turned over to the external auditor  
 14 for last year?  
 15 A. Yes.  
 16 Q. I'm sorry, to the informal auditor for last  
 17 year?  
 18 A. Yes.  
 19 Q. Is it your expectation that all of your  
 20 receipts for any fees were turned over to the informal  
 21 auditor last year?  
 22 A. Yes.  
 23 Q. Okay. Thank you. This is the final set of  
 24 questions.  
 25 You told me earlier this morning that you had a



1 set of conversations or a conversation with Mr. Choate  
 2 before today?  
 3 A. Yes.  
 4 Q. How many conversations have you had with him?  
 5 A. One.  
 6 Q. When did that conversation take place?  
 7 A. You're getting me chronologically again.  
 8 Q. Sorry. It's just one though.  
 9 A. Couple of months ago.  
 10 Q. Do you remember --  
 11 A. I don't remember the date. I'd have to look at  
 12 my calendar, and I don't have it with me.  
 13 Q. Okay. Do you think it was before or after  
 14 January?  
 15 A. Yes.  
 16 Q. Which one?  
 17 A. After.  
 18 Q. After January. Okay. Thanks.  
 19 Was that conversation on the telephone?  
 20 A. No.  
 21 Q. It was in person?  
 22 A. Yes.  
 23 Q. Where did it take place?  
 24 A. The district office, superintendent's office.  
 25 Q. And who set up that meeting?

1 A. I'm not sure who initiated it, but Mr. Yarnell  
 2 let us know when it was going to be, and I received a  
 3 subpoena.  
 4 Q. For that conversation?  
 5 A. No, wait a minute. I'm sorry. Yours was the  
 6 subpoena.  
 7 Q. Probably received more than one subpoena for  
 8 today's deposition.  
 9 A. Yes.  
 10 Q. Do you know if you received a subpoena for any  
 11 other conversations?  
 12 A. I don't think so.  
 13 Q. Okay. I hope you haven't, because I didn't get  
 14 a copy of them.  
 15 A. No, it was yours that I was confusing it with.  
 16 Q. When you had the in-person conversation with  
 17 Mr. Choate, how long did that last?  
 18 A. About an hour.  
 19 Q. Okay. Do you remember what was said?  
 20 A. Just some questions about the case.  
 21 Q. Okay. Will you try to tell me more  
 22 specifically what you talked about? What questions do  
 23 you remember?  
 24 A. Questions very similar to the ones that were  
 25 being asked today about specifically which fees I

1 charged and who I charged the fees with.  
 2 Q. Did you bring any documents to that meeting?  
 3 A. Yes, I did.  
 4 Q. Do you remember what those documents were?  
 5 A. A lot of the same documents you have. I don't  
 6 think there was anything that you don't have.  
 7 Q. Okay. Do you know, for example, if Exhibit 6  
 8 is one of the documents you brought to that meeting?  
 9 A. Which one is 6?  
 10 Q. It's the policy BP 6145, the current board  
 11 policy.  
 12 A. I don't believe so. I think that I didn't have  
 13 that copy yet. I didn't have it with me.  
 14 Q. Okay. Let's try to think about what the  
 15 documents were from that meeting, and I apologize  
 16 because I know there's probably a lot.  
 17 A. I've just done so many meetings with --  
 18 actually, not so many meetings. Just trying to remember  
 19 everything here.  
 20 Receipts, band policies. I brought in the  
 21 various letters that I've received. I didn't show those  
 22 with you though, but I had them with me in my  
 23 possession.  
 24 Q. Can you think of anything else?  
 25 A. A lot of the same things that are right here.

1 Q. Okay. When you say the various letters that  
 2 you've received, do you mean letters with respect to  
 3 this lawsuit?  
 4 A. Yes.  
 5 Q. And they are letters from whom?  
 6 A. A letter that Keith Ensminger had received from  
 7 you explaining the State's position on it.  
 8 Q. Okay. That's good to know, he's showing those  
 9 around.  
 10 A. Yes.  
 11 Q. Are there any other letters?  
 12 A. Just letters requesting information, from my  
 13 lawyer.  
 14 Q. Okay. And who sent that letter requesting the  
 15 information?  
 16 MR. YARNELL: I believe she said from her  
 17 lawyer.  
 18 Q. BY MS. LHAMON: I thought it was somebody  
 19 requesting information from your lawyer.  
 20 A. No. It was in response to your subpoena and  
 21 the information that was asked for.  
 22 Q. You shouldn't tell me anything else about it  
 23 because it's privileged.  
 24 MR. YARNELL: Thank you.  
 25 MS. LHAMON: You can object. But thank you.

1 It's the niceties of the legal process.  
 2 Q. Can you think of any other letters that you had  
 3 at that meeting?  
 4 A. No.  
 5 Q. Can you remember anything else about what was  
 6 said at that meeting?  
 7 A. Other than what I've told you, no.  
 8 Q. At the meeting, present were you and  
 9 Mr. Choate. Was anyone else present at the meeting?  
 10 A. Superintendent.  
 11 Q. The superintendent. And that's it?  
 12 A. Yes.  
 13 Q. Okay. Have you had any meetings with anybody  
 14 from the State Department of Education?  
 15 A. No, I haven't.  
 16 Q. Okay. Have you had any meetings with any  
 17 lawyers from the state agency defendants, which are the  
 18 lawyers -- the other defendants in this case other than  
 19 the state of California?  
 20 A. No, I haven't.  
 21 MS. LHAMON: Okay. That's all my questions.  
 22 Thank you.  
 23 THE WITNESS: Sure thing.  
 24 MR. CHOATE: Just a couple questions.  
 25 /

1 FURTHER EXAMINATION BY MR. CHOATE  
 2 Q. At the meeting that I attended with you -- you  
 3 were just recently referring to your lawyer --  
 4 Mr. Yarnell was present, was he not?  
 5 A. Yes, he was.  
 6 Q. Students at Tenaya Middle School are not  
 7 charged fees to participate in classes or  
 8 extracurricular activities; is that true?  
 9 A. They are currently not charged fees, no.  
 10 MR. CHOATE: That's all the questions I have.  
 11 MS. LHAMON: Does anybody else have any  
 12 questions today?  
 13 MR. YARNELL: No.  
 14 MS. LHAMON: Thank you for your time.  
 15 THE WITNESS: Sure.  
 16 MR. CHOATE: Can we stipulate the copies and  
 17 documents attached to the deposition may be used as  
 18 originals?  
 19 MS. LHAMON: Yes.  
 20 MR. CHOATE: May we stipulate that the original  
 21 of this deposition be signed under penalty of perjury,  
 22 that the original be delivered to the office of  
 23 Mr. Yarnell, that the reporter is relieved of liability  
 24 for the original of the deposition, that the witness  
 25 will have 15 days from the date of the court reporter's

1 transmittal letter to Mr. Yarnell to sign and correct  
 2 the deposition, that Mr. Yarnell shall notify all  
 3 parties in writing of any changes in the deposition, and  
 4 if there are no such changes communicated or signature  
 5 within that time, that the unsigned and uncorrected copy  
 6 may be used for all purposes as signed and corrected?  
 7 MS. LHAMON: Does the 15-day period work for  
 8 the both of you?  
 9 MR. YARNELL: I was going to suggest 30 days.  
 10 I don't know when we're going to get it, and there is  
 11 our school program coming up. I don't know what Pam --  
 12 THE WITNESS: Graduation coming up.  
 13 MR. YARNELL: Pam's availability.  
 14 MR. CHOATE: Okay. 30 days?  
 15 MS. LHAMON: Okay. I'm prepared to stipulate.  
 16 MR. SEFERIAN: So stipulated.  
 17 (The deposition concluded at 3:31 p.m.)  
 18 ---o0o---  
 19  
 20  
 21  
 22  
 23  
 24  
 25

1 Please be advised that I have read the  
 2 foregoing deposition. I hereby state there are:  
 3  
 4 (check one) \_\_\_\_\_ NO CORRECTIONS  
 5 \_\_\_\_\_ CORRECTIONS ATTACHED  
 6  
 7 \_\_\_\_\_  
 8 Date Signed  
 9  
 10 \_\_\_\_\_  
 11 PAMELA LYNNE ATKINSON  
 12  
 13 Case Title: Williams vs State  
 14 Date of Deposition: Wednesday, May 9, 2001  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25  
 ---o0o---

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: PAMELA LYNNE ATKINSON  
8 CASE: WILLIAMS VS STATE  
9 DATE OF DEPOSITION: WEDNESDAY, MAY 9, 2001  
10 I, \_\_\_\_\_, have the following  
11 corrections to make to my deposition:

12	PAGE	LINE	CHANGE/ADD/DELETE
13	_____	_____	_____
14	_____	_____	_____
15	_____	_____	_____
16	_____	_____	_____
17	_____	_____	_____
18	_____	_____	_____
19	_____	_____	_____
20	_____	_____	_____
21	_____	_____	_____
22	_____	_____	_____
23	_____	_____	_____
24	_____	_____	_____

25 \_\_\_\_\_  
PAMELA LYNNE ATKINSON DATE

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

5 Pamela Lynne Atkinson  
6 760 West 8th Street  
7 Merced, CA 95340

8 Re: Williams vs State  
9 Date Taken: Wednesday, May 9, 2001

10 Dear Ms. Atkinson:

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.

19 \_\_\_\_\_  
PAMELA LYNNE ATKINSON DATE

20 Sincerely,

21 TRACY LEE MOORELAND, CSR  
22 Esquire Deposition Services  
23 Job No. 26091

24 cc: Catherine Lhamon, Esq. Peter Choate, Esq.  
25 Anthony Seferian, Esq. James Yarnell, Esq.

1 REPORTER'S CERTIFICATE

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

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

16 IN WITNESS WHEREOF, I have hereunto set my hand  
17 this 14th day of May, 2001.

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

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

5 MORRISON & FOERSTER  
6 ATTN: LOIS K. PERRIN, ESQ.  
7 429 Market Street  
8 San Francisco, CA 94105-2482

9 Re: Williams vs State  
10 Deposition of: Pamela Lynne Atkinson  
11 Date Taken: Wednesday, May 9, 2001

12 Dear Ms. Perrin:

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

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

18 \_\_\_\_\_ The witness has waived signature.

19 \_\_\_\_\_ The time for reading and signing  
20 has expired.

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

23 \_\_\_\_\_ Other:

24 Sincerely,

25 TRACY LEE MOORELAND, CSR  
Esquire Deposition Services  
Ref. No. 26091