

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
CITY AND COUNTY OF SAN FRANCISCO

ELIEZER WILLIAMS, et al., )

Plaintiffs, )

vs. )

No. 312 236

STATE OF CALIFORNIA; )

DELAINE EASTIN, State )

Superintendent of Public )

Instruction; STATE )

DEPARTMENT OF EDUCATION; )

STATE BOARD OF EDUCATION, )

Defendants. )

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DEPOSITION OF KEITH ENSMINGER  
San Francisco, California  
Tuesday, May 15, 2001

Reported by:  
CASSANDRA HARPER  
CSR No. 11934  
JOB No. 847543

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

3  
4 ELIEZER WILLIAMS, et al., )  
5 )  
6 Plaintiffs, )  
7 )  
8 vs. ) No. 312 236  
9 )  
10 STATE OF CALIFORNIA, )  
11 DELAINE EASTIN, State )  
12 Superintendent of Public )  
13 Instruction; STATE )  
14 DEPARTMENT OF EDUCATION; )  
15 STATE BOARD OF EDUCATION, )  
16 )  
17 Defendants. )

18 Deposition of KEITH ENSMINGER,  
19 taken on behalf of Defendant State of  
20 California, at 275 Battery Street, San  
21 Francisco, California, beginning at  
22 10:15 a.m. and ending at 4:13 p.m. on  
23 Tuesday, May 15, 2001, before CASSANDRA  
24 HARPER, Certified Shorthand Reporter  
25 No. 11934.

1 APPEARANCES:

2  
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19 Public Instruction; State Department of Education;  
20 State Board of Education

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(No appearance)

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1 San Francisco, California, Tuesday, May 15, 2001  
2 10:15 a.m. - 4:13 p.m.  
3

4 KEITH ENSMINGER,  
5 having been first duly sworn, was examined and  
6 testified as follows:  
7

8 EXAMINATION

9 BY MR. CHOATE:

10 Q Good morning, Mr. Ensminger. I'm an  
11 attorney. And I represent the State of California in  
12 this lawsuit, Williams versus State of California.  
13 Would you please state and spell your  
14 name?

15 A My name is Keith Ensminger. That's  
16 spelled K-e-i-t-h E-n-s-m-i-n-g-e-r.

17 Q Have you ever had your deposition taken  
18 before?

19 A No.

20 Q Let me briefly explain what we're going  
21 to do here today. I'm going to ask you some questions  
22 to ascertain what facts that exist supporting the  
23 allegations that were made in the Complaint regarding  
24 Tenaya Middle School. I'll need you to provide me  
25 complete and honest answers to my questions.

1 At the end of the day, the Court Reporter  
2 is going to prepare my questions and your answers in a  
3 booklet that you'll have a chance to review later.  
4 And you can make any changes that you feel are  
5 necessary. But I have to advise you that if you do  
6 make changes, I and other attorneys will be able to  
7 comment on the changes you make, at trial or any other  
8 proceeding. Do you understand that?

9 A Uh-huh. Yes.

10 Q Okay. The Reporter would be reporting my  
11 questions and your answers, so it is important that  
12 you let me finish my question first. And once I'm  
13 done you can give me your answer. And I'm going to do  
14 the same thing for you. I'm going to try to let you  
15 give me your answer first and I will wait before  
16 asking another question.

17 A Okay.

18 Q If you don't understand a question that I  
19 ask you, please tell me and I'll try to rephrase it.  
20 If you don't tell me that you don't understand a  
21 question, I'm going to assume that you do understand  
22 it; do you understand that?

23 A Uh-huh. Yes, I understand that.

24 Q You're required to answer my questions to  
25 the best of your ability. I don't want you to guess,

1 but I am entitled to your best estimate; do you  
2 understand that?

3 A I understand that.

4 Q Because your testimony will be given  
5 under oath, it will have the same effect as if it were  
6 given in a court of law. That means you're subject to  
7 all the penalties of perjury; do you understand that?

8 A I understand that.

9 Q If you need to take a break for any  
10 reason, let me know and we will try to accommodate  
11 you.

12 A Uh-huh.

13 Q If at any point during the deposition  
14 today I ask you a question and you remember that there  
15 may be additional information relating to another  
16 question I asked you, please feel free to tell me what  
17 that other additional information is.

18 A Okay.

19 Q Do you understand these ground rules?

20 A Yes.

21 Q Is there any reason that you're unable to  
22 testify today and give me your best testimony?

23 A No.

24 Q Are you currently on any alcohol or any  
25 other substance that would cloud your mind and prevent

1 you from testifying accurately?

2 A No.

3 Q Do you suffer from any disability of any  
4 kind?

5 A I have allergies a little bit.

6 Q But nothing that would effect your  
7 ability to testify fully and fairly today?

8 A No.

9 Q Can you tell me what you did to prepare  
10 for this deposition?

11 A I came over here last night. We went  
12 over some of the -- basically the same kinds of things  
13 that you just discussed. Yes, I --

14 MR. KREEGER: He's just asking what you did.

15 BY MR. CHOATE:

16 Q When you say "we," who are you referring  
17 to?

18 A Lois and Leecia Welch.

19 MS. PERRIN: That's L-e-e-c-i-a W-e-l-c-h.

20 MR. KREEGER: And by "Lois" you meant Lois  
21 Perrin?

22 THE WITNESS: Lois Perrin.

23 BY MR. CHOATE:

24 Q Did you meet with anybody else?

25 A No.

1 Q Did you meet in person?

2 A Yes, we did.

3 Q And on just one occasion yesterday?

4 A Yes.

5 Q Did you review documents in preparation  
6 for your deposition today?

7 A We looked over some things I gave them,  
8 yes.

9 Q What things were those?

10 MR. KREEGER: I'm going to object and instruct  
11 the witness not to answer on attorney/client privilege  
12 grounds. If you want to ask him about any documents  
13 that he reviewed to refresh his memory that's okay.

14 (Instruction not to answer.)

15 BY MR. CHOATE:

16 Q Did you review the First Amended  
17 Complaint?

18 MR. KREEGER: Same objection and instruction.  
19 (Instruction not to answer.)

20 MR. CHOATE: You're instructing him not to  
21 answer that question?

22 MR. KREEGER: On the foundation you've  
23 established, yes.

24 BY MR. CHOATE:

25 Q Did you review any documents in

1 preparation for this deposition?  
 2 MR. KREEGER: You can answer that yes or no.  
 3 THE WITNESS: Yes.  
 4 BY MR. CHOATE:  
 5 Q What documents did you review?  
 6 MR. KREEGER: On that foundation I'm going to  
 7 again instruct the witness not to answer the question.  
 8 (Instruction not to answer.)  
 9 BY MR. CHOATE:  
 10 Q Did you review your Declaration in this  
 11 matter?  
 12 MR. KREEGER: You can answer that question yes  
 13 or no.  
 14 THE WITNESS: Yes, we did.  
 15 BY MR. CHOATE:  
 16 Q Did you review any declarations.  
 17 MR. KREEGER: Again, you can answer yes or no.  
 18 THE WITNESS: Not any declarations, no.  
 19 BY MR. CHOATE:  
 20 Q Did you review the declaration by your  
 21 daughter?  
 22 THE WITNESS: Yes.  
 23 MR. KREEGER: You can answer that yes or no.  
 24 BY MR. CHOATE:  
 25 Q Other than your Declaration and the

1 A I don't recall when it was. It was  
 2 either yesterday or the day before.  
 3 Q And the only thing you said to her is  
 4 that it's your turn to be deposed?  
 5 A Uh-huh.  
 6 Q You mentioned you spoke to your children.  
 7 A Uh-huh.  
 8 Q How many children do you have?  
 9 A Three.  
 10 Q What are their names?  
 11 A Austin, Theresa, and Ann.  
 12 Q Okay. Where did you speak with Principal  
 13 Atkinson yesterday?  
 14 MR. KREEGER: Misstates the testimony slightly.  
 15 Go ahead.  
 16 THE WITNESS: She was at lunch supervising kids  
 17 in the cafeteria. I was on my way out.  
 18 BY MR. CHOATE:  
 19 Q Did you speak to her in the cafeteria?  
 20 A It was probably outside of the cafeteria.  
 21 Q Was anybody else present when you spoke  
 22 to her?  
 23 A No.  
 24 Q Other than the documents that you have  
 25 provided to me before this deposition, did you bring

1 Declaration of your daughter, did you review any other  
 2 declarations?  
 3 MR. KREEGER: Again, I'm going to instruct the  
 4 witness not to answer. Actually, I'll take it back.  
 5 You can answer that question yes or no.  
 6 Any other declarations is the question.  
 7 THE WITNESS: No, not any other declarations.  
 8 No.  
 9 BY MR. CHOATE:  
 10 Q Other than with your counsel, did you  
 11 communicate with anybody about your deposition today?  
 12 A With my family.  
 13 Q Okay. Who did you communicate with in  
 14 your family?  
 15 A The kids, all of the kids, my wife I told  
 16 about this. And I mentioned to Pam Atkinson --  
 17 because she's my boss -- that I was coming over here.  
 18 Q What did you tell Pam Atkinson?  
 19 A I told her it's my turn to be deposed.  
 20 Q Did you say anything else?  
 21 A No.  
 22 Q Did she say anything to you?  
 23 A No.  
 24 Q When did you talk to her, to Pam  
 25 Atkinson?

1 any other documents with you for today's deposition?  
 2 A No.  
 3 Q Do you have in your possession any other  
 4 notes or documents relating to fees that may have been  
 5 charged at Tenaya Middle School?  
 6 A Yeah, I do.  
 7 Q Can you tell me what documents you have,  
 8 please?  
 9 MR. KREEGER: And I will -- you certainly can  
 10 answer that question. I'll just instruct you not to  
 11 reveal any contents of any attorney/client  
 12 communications in giving your answer. Describe  
 13 generally what the documents are.  
 14 THE WITNESS: I have some cancelled checks for  
 15 different things.  
 16 BY MR. CHOATE:  
 17 Q Other than cancelled checks, do you have  
 18 any other documents that relate to student fees or  
 19 to --  
 20 A Not that I recall.  
 21 Q Can you tell me what the cancelled checks  
 22 were for?  
 23 A One was for a cooking class for Theresa,  
 24 a lab fee for that. And I believe I have a cancelled  
 25 check that paid for a workbook that Austin needed at

1 the high school that he had to buy, and for a lock and  
 2 P.E. clothes that he was required to purchase.  
 3 Q Are you referring to Merced High School?  
 4 A Yes.  
 5 Q Do you have any other cancelled checks  
 6 relating to money that was paid at Tenaya Middle  
 7 School?  
 8 A No.  
 9 Q Other than the cancelled check for  
 10 Theresa's cooking class, is that the only --  
 11 A That's the only cancelled check, yes.  
 12 Other things I paid cash.  
 13 Q Okay. Do you have in your possession any  
 14 correspondence between you and any other person other  
 15 than your attorney relating to fees that may be  
 16 charged or may have been charged at Tenaya Middle  
 17 School?  
 18 MR. KREEGER: Other than what's been produced  
 19 here today?  
 20 MR. CHOATE: Other than what's been produced.  
 21 THE WITNESS: I don't recall. I had written to  
 22 other folks about similar situations about the state.  
 23 And Tenaya probably came up in those discussions.  
 24 BY MR. CHOATE:  
 25 Q Were these letters that you were

1 referring to?  
 2 A Emails and letters.  
 3 Q Can you tell me who you wrote letters to  
 4 regarding school fees other than to your attorneys?  
 5 A The one gal is Elizabeth. I can't  
 6 remember her last name right now. She's from Visalia.  
 7 I write to our politicians, too, about the need to  
 8 increase school fees.  
 9 Q I want to ask you about Elizabeth first.  
 10 Do you know what Elizabeth's last name is?  
 11 A I don't recall right now.  
 12 Q You indicated she was from Visalia; what  
 13 do you mean by that?  
 14 A That's where she lives in Visalia.  
 15 Q Is she an educator?  
 16 A No, she's a concerned parent in Visalia.  
 17 Q And when did you write to Elizabeth?  
 18 A The last time I wrote to her was probably  
 19 last summer.  
 20 Q Was that around August of 2000?  
 21 A Yes.  
 22 Q What did you say in your written  
 23 correspondence to Elizabeth?  
 24 A Our general correspondence was about the  
 25 fees that were being charged in Tulare County and the

1 trouble parents were having there to try to insure  
 2 that schools were free for their children.  
 3 Q What fees were being charged in Tulare  
 4 County?  
 5 A The same kind of fees at Tenaya -- lab  
 6 fees for different classes, fees to be in sports, fees  
 7 to go on field trips.  
 8 Q Okay. You also indicated that you  
 9 communicate with politicians.  
 10 A Uh-huh.  
 11 Q Regarding school fees?  
 12 A School fees is one of them.  
 13 Q What politicians have you communicated  
 14 with?  
 15 A Representatives Cardoza and Monteith.  
 16 Q Cardoza is a state elected official?  
 17 A He's our assemblyman, and Monteith is a  
 18 senator.  
 19 Q You said Cardoza is "our assemblyman;"  
 20 what do you mean by "our assemblyman"?  
 21 A He's the assemblyman for Merced.  
 22 Q When did you write to Cardoza?  
 23 A Probably in March is the last time I  
 24 wrote to him.  
 25 Q Is that March of --

1 A March of this year 2001.  
 2 Q What did you say to him in your letter?  
 3 A Basically that the increased school fees  
 4 have become more and more prevalent throughout the  
 5 state, and it's a shame because it goes against the  
 6 free school provision for public schools in  
 7 California, and that when you look at things we're --  
 8 of the top ten industrial states of the nation we're  
 9 at the bottom in terms of per pupil spending. And I  
 10 asked that he would sponsor legislation that would at  
 11 least increase that spending by \$200 specifically for  
 12 school supplies.  
 13 I talked with our chamber of commerce  
 14 president about the same thing. And he worked with  
 15 Senator Monteith on that.  
 16 Q Who's your chamber of commerce president?  
 17 A Don Bergman.  
 18 Q I'm sorry?  
 19 A Don Bergman.  
 20 Q Is that the chamber of commerce of  
 21 Merced?  
 22 A Yeah. In fact, Mr. Monteith approached  
 23 the senator from San Luis Obispo and asked if he would  
 24 attach a rider to an ROP bill that would increase  
 25 money for school supplies.

1 Q I'm going to go back and ask you a  
2 question about your letter to Assemblyman Cardoza.  
3 You indicated that you asked him to sponsor certain  
4 legislation. The legislation that you asked him to  
5 sponsor would increase what?

6 A Spending per pupil specifically for  
7 school supplies.

8 Q By \$200?

9 A That's just a ballpark figure I threw  
10 out.

11 Q Was this proposed legislation your idea?

12 A Yes.

13 Q Did Assemblyman Cardoza write back to  
14 you?

15 A He didn't write back to me. But I talked  
16 with folks in his office that were very concerned  
17 about this issue and saw the need for something like  
18 this to happen.

19 Q Who did you speak to in his office?

20 A Kathy Paskin.

21 Q What is her -- what job does she hold in  
22 his office?

23 A I'm not sure what she does. She's one of  
24 the office managers there in Merced.

25 Q When did you speak to her?

1 increase ADA for kids and schools.

2 Q Did you have any response back from them?

3 A Not any written response, no.

4 Q Did you have a telephone call?

5 A No. I just had met with her in the  
6 office and we talked that way. At first I went in and  
7 talked with the office receptionist. He told me --  
8 you know, I explained what the situation was and what  
9 mine was. He told me to write a letter -- put it down  
10 in writing. I did that and sent it to him. He said  
11 "Well, I sent it off to Sacramento, so just wait and  
12 see what happens." And probably a week later I went  
13 in. I know Kathy and I sat down and talked with her  
14 about this.

15 Q Was it Assemblyman Cardoza who told you  
16 to put it in writing?

17 A The receptionist.

18 Q And the receptionist indicated that you  
19 put the letter in writing and she would send it off to  
20 Sacramento?

21 A Yes.

22 Q Do you know if she did?

23 A He did.

24 Q Do you know what his name was?

25 A Lou, but I can't recall his last name.

1 A About the same time I wrote the letters.

2 Q Would that be in March of 2000?

3 A March of 2000.

4 Q What did you say to Kathy Paskin?

5 A I told her about how school fees have  
6 been on the increase and that it's become difficult  
7 for parents to pay these kinds of fees to have their  
8 kids educated in California schools.

9 Q Did you say anything else to her?

10 A Basically that was the gist of the  
11 conversation. I told her that I'm on the school site  
12 council at Merced High School, and I've raised the  
13 issue with them as well, and some of the teachers on  
14 the council had queried students of theirs about the  
15 impact of fees, and they were surprised by the number  
16 of kids that wouldn't take classes that required fees  
17 because they couldn't pay for them, and they didn't  
18 want to be basically beggars and ask for charity.

19 Q I'm going to come back to your discussion  
20 with the school site council. But I want to know if  
21 you talked to Kathy Paskin about anything else other  
22 than what you told me?

23 A Basically that was it. That was the gist  
24 of the conversation -- to try to get them interested  
25 in this issue and trying to sponsor legislation to

1 Q Did you get any response back from  
2 anybody in Sacramento?

3 A No.

4 Q You also mentioned, I believe, that you  
5 communicated with the chamber of commerce president  
6 Don Bergman.

7 A Uh-huh.

8 Q When did you communicate with him?

9 A About the same time as this, March of  
10 2001.

11 Q Did you communicate with him in writing?

12 A No, we just spoke.

13 Q What did you say to him when you spoke  
14 with him?

15 A I told him about this situation -- the  
16 case that I'm involved in -- briefly. I told him that  
17 our superintendent in Merced city schools had called  
18 me into the office and asked if I would consider  
19 dropping out of the case because the cross-complaint  
20 was going to cost us close to \$100,000 or better and  
21 he asked if I would drop out so that we could save  
22 money. So I went and talked with Don Bergman and told  
23 him about that.

24 Q When you say "he" asked you if you would  
25 drop out, who are you talking about?

1 A The superintendent told me.  
 2 Q Who was that?  
 3 A Alan Rasmussen.  
 4 Q I'm going to come back to that  
 5 conversation with you later, also.  
 6 A But I told Mr. Bergman about the  
 7 situation and the impact that it would have on us and  
 8 asked him if he had any influence with either Monteith  
 9 or Cardoza to try and approach them about an increase  
 10 in ADA spending.  
 11 Q And what did he say to you?  
 12 A He said he had better communication with  
 13 Monteith's office. And so he called Monteith. And I  
 14 don't know who he talked to. I don't know if he  
 15 called him personally, but he told me about Monteith's  
 16 interest in trying to attach this rider to the bill  
 17 from the senator from San Luis Obispo.  
 18 Q And do you know when he called Monteith's  
 19 office?  
 20 A It would have been March or April of  
 21 2001.  
 22 Q The rider of the bill, was that the  
 23 proposed increase of \$200, or is this something  
 24 different?  
 25 A Well, it's related I guess. Because I

1 wrote a letter to both Monteith and to Cardoza  
 2 requesting this increase. And then Monteith  
 3 approached the senator from San Luis Obispo and asked  
 4 him if he would attach a rider to a bill that was --  
 5 that he was sponsoring that would specifically  
 6 increase money for school supplies.  
 7 Q And the assemblyman from San Luis Obispo  
 8 that is who?  
 9 A I don't recall his name.  
 10 Q Okay. What came of your efforts to  
 11 communicate with Cardoza and Monteith about the  
 12 proposed legislation?  
 13 A The senator from San Luis Obispo turned  
 14 down Monteith's request. He thought it might  
 15 jeopardize his bill. And that's kind of where we are  
 16 right now. I learned that they can only submit bills  
 17 in January. So we'll wait until January to have it  
 18 happen again.  
 19 Q When you say "they," who are you  
 20 referring to?  
 21 A The politicians in Sacramento. Their  
 22 time to submit bills is apparently in January.  
 23 Q If you wouldn't mind, tell me again the  
 24 name of the senator from San Luis Obispo.  
 25 A I don't recall his name -- Vinisconis or

1 something like that. I don't remember.  
 2 Q I want to ask you some questions about  
 3 your personal background.  
 4 A Uh-huh.  
 5 Q How old are you?  
 6 A 48.  
 7 Q What area do you live in?  
 8 A Merced, California.  
 9 Q What area within Merced? Is it Merced  
 10 city?  
 11 A Uh-huh. Yes.  
 12 Q What area within the Merced city do you  
 13 live in?  
 14 A We live in the northwest section of  
 15 town -- on the edge of town.  
 16 Q Is that by Tenaya Middle School?  
 17 A Yes.  
 18 Q How close?  
 19 A Probably a mile.  
 20 Q I think you indicated that you have a  
 21 wife and three children.  
 22 A Yes.  
 23 Q Do you live with all of them?  
 24 A Yes. Well, no. Ann is 28, and she lives  
 25 here in San Francisco.

1 Q Is Ann your oldest daughter?  
 2 A Yes.  
 3 Q And your son Austin, how old is he?  
 4 A 14.  
 5 Q And he attends Merced High School?  
 6 A Yes. He's 15 now, excuse me.  
 7 Q And Merced High School is in the Merced  
 8 district?  
 9 A Uh-huh. Yes.  
 10 Q And you live with your daughter Theresa,  
 11 also?  
 12 A Yes.  
 13 Q How old is she?  
 14 A She just turned 14.  
 15 Q And she attends Tenaya Middle School?  
 16 A Yes.  
 17 Q What grade is she in?  
 18 A Eighth grade.  
 19 Q And your wife's name -- what is your  
 20 wife's name?  
 21 A Marisa. It's with one "S."  
 22 Q Where did you grow up?  
 23 A In the Los Angeles area -- Torrance and  
 24 Palos Verdes.  
 25 Q How long did you spend in the L.A. area?

- 1 A Until I was 18.  
 2 Q Did you attend college?  
 3 A Yes, I did.  
 4 Q Where did you attend college?  
 5 A I went to Harbor College, which is a  
 6 junior college in Los Angeles. And I went to Sierra  
 7 College, another junior college, in Sacramento.  
 8 Q I'm sorry, did you say Harbor College in  
 9 Los Angeles?  
 10 A Yes.  
 11 Q That's a junior college?  
 12 A Yes. Uh-huh.  
 13 Q When did you first attend Harbor College?  
 14 A 1970, '71.  
 15 Q Did you graduate from Harbor College?  
 16 A No.  
 17 Q How long did you spend at Harbor College?  
 18 A One-and-a-half years altogether. Because  
 19 I was there one year; worked with the forest service  
 20 that summer in Oahi; went to Sierra College in  
 21 Sacramento the next year. I worked with the forest  
 22 service again; went back to Harbor College that  
 23 semester -- fall semester.  
 24 Q Let me see if I've got this straight.  
 25 You attended Harbor College in Los Angeles for a year

- 1 and a half?  
 2 A Uh-huh.  
 3 Q Would that take us to 1972?  
 4 A Uh-huh. It wasn't a continuous year and  
 5 a half. I went there one year then went to Sierra  
 6 College one year and then went back to Harbor College  
 7 the following semester.  
 8 Q Why you did you go from Harbor College to  
 9 Sierra College?  
 10 A Sierra College had a program in forestry.  
 11 I mentioned that I worked with a forest service that  
 12 summer after Harbor College that first year and  
 13 thought that I would like to pursue a career in  
 14 forestry, and I went there.  
 15 Q What college did you graduate from?  
 16 A It's called Goddard College. It's in  
 17 Plainesfield, Vermont.  
 18 Q All right. I'm sorry, I'm a little  
 19 confused. You spent a year in Harbor College?  
 20 A Right.  
 21 Q And then you took some time off to work  
 22 with the forest service?  
 23 A That summer.  
 24 Q And then after that summer you went to  
 25 Sierra College?

- 1 A That's right.  
 2 Q And you spent a year at Sierra College?  
 3 A That's right.  
 4 Q And that would be around '72 to '73?  
 5 A Uh-huh.  
 6 Q And you spent how long at Sierra College?  
 7 A One year.  
 8 Q And then went back to Harbor College?  
 9 A That's correct.  
 10 Q And spent a semester?  
 11 A Uh-huh.  
 12 Q And then is that about the end of 1973?  
 13 A No, that would have been the end of '72.  
 14 Q End of '72?  
 15 A Uh-huh.  
 16 Q And then after your semester at Harbor  
 17 College did you then go to Goddard College?  
 18 A No. I had saved up some money and wanted  
 19 to take some time off from college and had heard about  
 20 kibbutz villages in Israel. And lived overseas and  
 21 throughout the country for a period of about  
 22 two-and-a-half years doing different kinds of  
 23 occupations.  
 24 Q Where did you live overseas?  
 25 A I lived in Israel for about six months.

- 1 I lived in a kibbutz village and then worked in the  
 2 southern port town of Pilat and then went back to  
 3 Europe and wound up working in Germany for a little  
 4 while.  
 5 Q What did you do in Germany?  
 6 A Worked in a cookie factory for about six  
 7 weeks.  
 8 Q After that?  
 9 A Came back to the United States and worked  
 10 in New York City for a while. I had some relatives  
 11 there that I stayed with for a while.  
 12 Q What did you do in New York City?  
 13 A They were converting a large hotel by  
 14 Central Park into apartments. And my job was to go  
 15 after all the trade folks and clean up basically to  
 16 get the apartments ready for sale.  
 17 Q When did you come back to Goddard  
 18 College? Or when did you --  
 19 A 1975 I started there.  
 20 Q Okay.  
 21 A I graduated in 1978.  
 22 Q What degree did you receive from Goddard  
 23 College?  
 24 A A bachelor's of arts.  
 25 Q What did you study?



- 1 A Art and comparative religion.  
 2 Q After you graduated from Goddard College,  
 3 did you attend any postsecondary institutions?  
 4 A I got my teaching credential from USC and  
 5 my master's in education from USC.  
 6 Q When did you begin attending USC?  
 7 A 1983.  
 8 Q When did you graduate?  
 9 A 1987.  
 10 Q What teaching credential did you obtain?  
 11 A Multiple-subject teaching credential.  
 12 Q Do you still have that?  
 13 A Yes.  
 14 Q Is it still current?  
 15 A Yes, it is.  
 16 Q What does the multiple-subject credential  
 17 allow you to teach?  
 18 A It allows you to teach K through 12th  
 19 grade, self-contained classes basically.  
 20 Q Have you ever held any other teaching  
 21 credential?  
 22 A No.  
 23 Q Have you ever taught on an emergency  
 24 credential?  
 25 A I started on an emergency credential in

- 1 Los Angeles and worked with Los Angeles Unified School  
 2 District in conjunction with USC.  
 3 Q I'm going to come back to that in just a  
 4 second.  
 5 A Uh-huh.  
 6 Q Are you currently employed by the Merced  
 7 City Elementary School District?  
 8 A Yes, I am.  
 9 Q You're a teacher at Tenaya?  
 10 A Yes, I am.  
 11 Q You're an art teacher?  
 12 A Yes.  
 13 Q When did you begin teaching at Tenaya  
 14 Middle School?  
 15 A I began probably in around 1992.  
 16 Q And when you began teaching in 1992, what  
 17 subjects did you teach?  
 18 A I taught seventh grade language and math.  
 19 Q And how long did you teach those subjects  
 20 for?  
 21 A One year.  
 22 Q For one year?  
 23 A Uh-huh.  
 24 Q What did you -- did you teach a different  
 25 course in 1993?

- 1 A Yeah. I moved to the sixth grade and  
 2 taught sixth grade language.  
 3 Q Did you teach sixth grade math?  
 4 A No.  
 5 Q And after you taught sixth grade  
 6 language - or how long did you teach sixth grade  
 7 language for?  
 8 A I think about three years at that time.  
 9 Q Would that take us to 1996?  
 10 A Probably '95.  
 11 Q '95?  
 12 A Yeah.  
 13 Q What did you start teaching in 1995 at  
 14 Tenaya?  
 15 A I asked for a leave of absence. I had a  
 16 construction business. I did that for a year.  
 17 Q What type of construction business were  
 18 you in?  
 19 A We did commercial and small remodeling  
 20 projects.  
 21 Q Did you do that in the Merced city area?  
 22 A Uh, throughout the central valley --  
 23 central California.  
 24 Q When did you come back to Tenaya?  
 25 A After that year I went back to Burbank

- 1 Elementary School. I was there for a year and a  
 2 couple months and then went back to Tenaya.  
 3 Q Did you come back to Burbank Elementary  
 4 School in '96?  
 5 A Probably would have been '96.  
 6 Q And what did you teach at Burbank  
 7 Elementary?  
 8 A Second grade.  
 9 Q And you stayed at Burbank for about a  
 10 year and a half?  
 11 A A year and a few months. They were a  
 12 year-round school.  
 13 Q And then you came back to Tenaya?  
 14 A Yes. Uh-huh.  
 15 Q And would that be in '97 sometime?  
 16 A Probably, uh-huh.  
 17 Q When you came back to Tenaya in '97, what  
 18 subjects did you teach?  
 19 A I taught math and science to sixth  
 20 graders, basic math to eighth graders and one class of  
 21 P.E.  
 22 Q I'm sorry, you taught math and science to  
 23 sixth graders?  
 24 A Uh-huh.  
 25 Q What did you teach to eighth graders?

- 1 A Basic math class.  
 2 Q And you indicated that you taught P.E.,  
 3 also?  
 4 A Uh-huh. I had one period of P.E.  
 5 Q And from what period to what period did  
 6 you teach these subjects?  
 7 A For one year.  
 8 Q For what year? Is that the '97 to '98  
 9 school year?  
 10 A Probably.  
 11 Q And then after that --  
 12 A I taught sixth grade language after that  
 13 at Tenaya. A position opened up for that.  
 14 Q Is this in the '98 to '99 school year?  
 15 A Yes. Uh-huh.  
 16 Q And how long did you teach sixth grade  
 17 language?  
 18 A Two years. I'm trying to recall the  
 19 dates. But as far as the time line goes, those are  
 20 the classes that I did teach.  
 21 Q Have you taught sixth grade language in  
 22 the current 2000/2001 school year?  
 23 A No, I started teaching art last year.  
 24 Q You started teaching art in the 1999/2000  
 25 school year?

- 1 A Yes.  
 2 Q Did you teach art and sixth grade  
 3 language at the same time?  
 4 A No.  
 5 Q I thought you indicated that you taught  
 6 sixth grade language in the '98 to '99 school year and  
 7 that you did that for about two years.  
 8 A Yeah. Well, I -- and I mentioned if the  
 9 time line doesn't -- if the dates don't match up, I'm  
 10 sorry. But that was the time line that was -- I mean,  
 11 that was the series of classes that I taught.  
 12 Q You've been the art teacher at Tenaya  
 13 Middle School since the 1999/2000 school year?  
 14 A Yes.  
 15 Q Is that all you teach currently?  
 16 A Yes. Uh-huh.  
 17 Q And is it your understanding that your  
 18 multiple-subject teaching credential allows you to  
 19 teach seventh grade language and math?  
 20 A Yes.  
 21 Q And it allows you to teach sixth grade  
 22 language and math?  
 23 A Yes.  
 24 Q And it allows you to teach basic math?  
 25 A Yes.

- 1 Q And it also allows you to teach art?  
 2 A I'm taking classes to work on an  
 3 authorization in art.  
 4 Q What kind of authorization in art do you  
 5 need?  
 6 A With a credential you have, you know,  
 7 from the state credentialing department -- in my case,  
 8 I have a multiple-subject credential. And then you  
 9 can get authorizations to teach maybe agriculture,  
 10 art, math, science or whatever.  
 11 Q And where are you taking classes to  
 12 obtain the authorization that you need?  
 13 A The last class that I have taken was an  
 14 extension class through UC Santa Cruz in Cupertino.  
 15 Q When did you start taking these classes?  
 16 A The summer before I started teaching art.  
 17 Q Would that be in the summer of '98? I'm  
 18 sorry, I think that would be in the summer of '99.  
 19 A Yes.  
 20 Q Do you take these classes regularly?  
 21 A Not regularly, no.  
 22 Q How often do you take them?  
 23 A That was the last class that I took  
 24 from -- that was the last regular class that I took.  
 25 And then I've done a number of self-study kinds of

- 1 things.  
 2 Q What kind of self-studies?  
 3 A Computer graphic kinds of things.  
 4 Because that is a major component in the print world.  
 5 And art is definitely part of that.  
 6 Q Have you ever received authorization yet  
 7 to teach art?  
 8 A No.  
 9 Q Do you know why?  
 10 A Because I haven't completed everything.  
 11 And I have -- I was told that I needed to complete  
 12 another 12 units or so.  
 13 Q Who told you that?  
 14 A Our director of personnel.  
 15 Q The director of personnel at Tenaya?  
 16 A No, at Merced Middle School.  
 17 Q Who was the director for personnel?  
 18 A Right now it is John Tennet, but he  
 19 wasn't there at that time.  
 20 Q John tenant told you you needed an  
 21 additional 12 units?  
 22 A No, it was Lenny Houser.  
 23 Q And when did Lenny Houser tell you that?  
 24 Strike that.  
 25 When did Lenny Houser tell you that you

1 needed to obtain an additional 12 units to receive an  
2 authorization to teach art?

3 A She told Pam Atkinson that, and Pam  
4 Atkinson told me that before I started teaching art  
5 classes.

6 Q So that would be sometime in the summer  
7 of 1999?

8 A Yes.

9 Q What have you done to complete those  
10 12 units?

11 A Like I told you, I took that class -- a  
12 couple of classes at UC Santa Cruz, one in -- it was  
13 working with Quirk. That's a publishing software  
14 program. Another two classes were in basic operation  
15 of PCs and Mac's, Macintosh computers. And another  
16 class was a class in mask making.

17 Q And how many units do you have to  
18 complete now at the present time?

19 A Probably about 10.

20 Q About 10?

21 A Uh-huh.

22 Q Are you going to take more classes?

23 A Uh-huh.

24 Q Are you planning on taking those at  
25 UC Santa Cruz?

1 A I think if I was to take more classes,  
2 especially in drawing, it would be helpful for them.  
3 Because, you know, I majored in art back in the '70s  
4 and didn't do a lot of artwork since then.

5 Q You said you majored in art in the '70s.  
6 Was that at Harbor College?

7 A At Goddard.

8 Q Are you planning on taking drawing  
9 courses -- any type of drawing courses that you think  
10 will benefit your students?

11 A I do drawing on my own now as much as I  
12 can. I do a lot of independent research on the  
13 Internet looking at sites from museums getting  
14 information for the kids that we work with.

15 Q Do you feel that drawing on your own and  
16 doing the Internet research that helps you be a better  
17 art teacher for your students?

18 A Uh-huh. Yes.

19 Q Why is that?

20 A That gives me a better sense of some of  
21 the issues they'll deal with as artists. And from  
22 the -- you know, the nice thing about the Internet now  
23 is you can pull up lots of pictures from artists and  
24 we can go over those kinds of things. They can  
25 practice drawing those kinds of things and such.

1 A Probably not because that's a long way to  
2 go.

3 Q Where do you think you're going to take  
4 them?

5 A There's Turlock; there's Cal State Fresno  
6 down in Fresno, and then there's the local junior  
7 college in Merced.

8 Q Do you think that not having the  
9 authorization in art impairs your ability to teach art  
10 to the students?

11 A No, because I majored in art in college.  
12 I was kind of surprised that I was told that I needed  
13 to take additional coursework.

14 Q The additional coursework, do you  
15 understand that that's a state requirement?

16 A Yes.

17 Q Because you majored in art you feel that  
18 that allows you to teach your art students even though  
19 you don't have technically this authorization yet?

20 A The authorization would probably enhance  
21 it. Having the coursework, taking extra classes would  
22 certainly, you know, help. It always would help.

23 Q Do you think your art students have been  
24 in any way disadvantaged because you don't have the  
25 authorization at this time?

1 Q Are you doing anything other than drawing  
2 on your own and doing Internet research that you think  
3 makes you a better art teacher?

4 A I mentioned those classes.

5 Q Anything else?

6 A No.

7 Q Okay. Have you had any previous teaching  
8 experience prior to coming to Tenaya in 1992?

9 A Yes. Uh-huh.

10 Q Can you describe for me your previous  
11 experience?

12 A I started teaching in 1984 in  
13 Los Angeles.

14 Q What school did you start teaching at in  
15 1984?

16 A Hoover Street School.

17 Q Is that an elementary school?

18 A Yes. Uh-huh.

19 Q What did you teach at Hoover?

20 A I started -- I did my student teaching  
21 there and was asked to stay by the principal. I took  
22 over a kindergarten class in March for a teacher that  
23 was out on maternity leave. I finished up that class  
24 and then taught a fourth grade class for a year and a  
25 half after that. And that's when my wife and I

1 started having our children.

2 Our oldest daughter is a stepdaughter.  
3 And when we -- when Austin was first born, Marisa  
4 decided to stay home with him, which made it difficult  
5 financially for us, because I was teaching and going  
6 to USC at the same time. So we moved into my parents'  
7 home, which put me quite a distance from Hoover Street  
8 School, so I asked to transfer to Delano Street  
9 School.

10 Q When did you transfer from Hoover to  
11 Delano?

12 A In February.

13 Q Of what year?

14 A Probably would have been '86.

15 Q So you were at Hoover from 1984 to the  
16 beginning of 1986?

17 A Uh-huh.

18 Q And then you transferred to Delano Street  
19 School?

20 A Right.

21 Q Is Delano also an elementary school?

22 A Yes, in Los Angeles Unified.

23 Q What did you teach at Delano?

24 A I went into a second grade classroom the  
25 remainder of that year. That teacher retired midway

1 USC where they had a very good oversight of teachers  
2 in that program and worked closely with us. I would  
3 have been lost if it wasn't for that.

4 Q And you think having that oversight at  
5 USC helped you to assimilate and do a good job  
6 teaching?

7 A Absolutely.

8 Q Was the program at USC -- was that like a  
9 university internship type of program, or were you  
10 just studying at USC to get your teaching credential?

11 A No, it was a formal program that they had  
12 devised with Los Angeles Unified School District where  
13 candidates like myself would do student teaching for  
14 two or three months -- intensive student teaching for  
15 two or three months. And then we would be placed in a  
16 classroom and then attend classes two or three times a  
17 week in the evenings -- afternoon and evenings --  
18 working on our credentials. They would have advisors  
19 come to our classes on a fairly regular basis.

20 Q And did you -- let's see. When you were  
21 at Delano Street School from 1986 to 1987, were you  
22 still teaching on an emergency credential?

23 A No. By then I had gotten my -- I had my  
24 clear credential. And I was finishing up my master's.

25 Q When did you obtain your clear

1 through the year.

2 Q How long did you stay at Delano?

3 A For a year and a half. The next year  
4 after that I taught sixth grade.

5 Q You taught sixth grade at what school?

6 A Delano Street School.

7 Q Delano Street School?

8 A Uh-huh.

9 Q You left Delano Street School sometime in  
10 '87?

11 A Uh-huh.

12 Q Okay. Let me back up for a second. When  
13 you were at Hoover Street School from 1984 to 1986,  
14 you indicated you were taking teaching classes at USC.

15 A Uh-huh.

16 Q Were you teaching on an emergency  
17 credential at that time?

18 A Yes.

19 Q Do you feel that you were able to teach  
20 your children at Hoover Street School with the  
21 emergency credential?

22 A Yeah. It was difficult, but yeah.

23 Q How was it difficult?

24 A Because I hadn't had training in  
25 teaching. Fortunately, I was in an environment with

1 credential, if you can remember?

2 A Probably in '85.

3 Q When you say "clear credential" you're  
4 referring to the multiple-subject credential that you  
5 currently hold?

6 A Yes.

7 Q After you left Delano Street School in  
8 1987 where did you go?

9 A We moved to Folsom, California and I  
10 taught in Roseville.

11 Q Is that Roseville --

12 A California.

13 Q Roseville, California.

14 A The school district was Dry Creek  
15 Elementary School.

16 Q Dry Creek Elementary School District?

17 A Right.

18 Q And what was the school you taught at in  
19 Dry Creek?

20 A There was only one school Dry Creek  
21 School at that time.

22 Q Was it an elementary?

23 A Well, it was a K through eighth grade  
24 school.

25 Q And you began at Dry Creek in about 1987?

1 A Yes.  
 2 Q And how long did you stay at Dry Creek?  
 3 A One year.  
 4 Q That would be the 1987 to '88 school  
 5 year?  
 6 A Yes.  
 7 Q What did you teach?  
 8 A Fourth grade.  
 9 Q In 1988 what school did you go to?  
 10 A Then we moved to Merced.  
 11 Q That's when you began at Tenaya?  
 12 A No. I started at Charles Wright School  
 13 in Merced.  
 14 Q Is that an elementary school?  
 15 A Yes, that's an elementary school.  
 16 Q And what did you teach at Charles Wright.  
 17 A I started teaching fourth grade, and then  
 18 they had a need for a kindergarten teacher. I  
 19 volunteered to do that, because if I didn't do that  
 20 then we would have had to have a number of combination  
 21 classes.  
 22 Q How long did you stay at Charles Wright  
 23 School?  
 24 A For a couple of years.  
 25 Q Would that be up until --

1 A Up until I went to Tenaya.  
 2 Q You came to Charles Wright in 1988; does  
 3 that sound right?  
 4 A Yes.  
 5 Q And you began at Tenaya in 1992?  
 6 A Yes.  
 7 Q So you were at Charles Wright for three  
 8 or four years?  
 9 A Three or four.  
 10 Q Has there ever been a time since you  
 11 obtained your clear credential that it wasn't current?  
 12 A No.  
 13 Q You indicated that Theresa is eight years  
 14 old.  
 15 A No, she's 14.  
 16 Q That's right. She's 14. And she's in  
 17 eighth grade?  
 18 A Yes.  
 19 Q Theresa started at Tenaya Middle School  
 20 in the sixth grade?  
 21 A Yes.  
 22 Q And she also did her seventh grade school  
 23 year there?  
 24 A Yes.  
 25 Q I'm sorry, I don't think I asked you this

1 before: Have you ever been involved in any other  
 2 civil lawsuit?  
 3 A No.  
 4 Q Any criminal actions?  
 5 A No.  
 6 Q Has Theresa ever been involved in any  
 7 civil lawsuit?  
 8 A No.  
 9 Q And she hasn't been involved in any  
 10 criminal actions?  
 11 A No.  
 12 Q I want to ask you some questions about  
 13 the origin of this lawsuit.  
 14 A Uh-huh.  
 15 Q When did you first think -- well, first  
 16 can you explain to me what your role is in this  
 17 lawsuit?  
 18 MR. KREEGER: Objection. Vague.  
 19 Answer if you understand.  
 20 THE WITNESS: The role in the lawsuit?  
 21 BY MR. CHOATE:  
 22 Q Let me rephrase that.  
 23 Are you a plaintiff in this lawsuit?  
 24 A Yes.  
 25 Q Okay. What is your role as a plaintiff

1 in this lawsuit?  
 2 A As a concerned parent about the increase  
 3 in school fees that schools are charging not only at  
 4 Tenaya but around the state.  
 5 Q I believe you're the guardian ad litem of  
 6 Theresa.  
 7 A That's correct.  
 8 Q But you feel that you're also a  
 9 plaintiff?  
 10 A Yes.  
 11 Q Okay. When did you first think about  
 12 suing?  
 13 A I first heard of this case last spring on  
 14 ABC News.  
 15 Q And when you say "last spring," what  
 16 month are you referring to?  
 17 A Probably May about a year ago -- April or  
 18 May.  
 19 Q What did you hear on ABC News last  
 20 spring?  
 21 A That the ACLU had filed this lawsuit  
 22 against the State of California alleging that the  
 23 state had not administered public education well in  
 24 California.  
 25 Q What did you do after you saw the news

1 program?

2 A I called the ACLU office in Los Angeles  
3 and told them that I had some information from -- I  
4 had a grand jury report from Tulare County about  
5 school fees that were being changed in Tulare County  
6 and if they thought that would be helpful.

7 Q And you called them sometime in April or  
8 May of 2000?

9 A Sometime right after that news program.

10 Q Who did you speak to at the ACLU?

11 A A receptionist that I met there.

12 Q And what happened? Did somebody return  
13 your call?

14 A Yes.

15 Q Did you have any further conversations  
16 with anybody at the ACLU about your possible  
17 involvement in this lawsuit?

18 MR. KREEGER: You certainly can answer that  
19 question yes or no. But I'll remind you not to reveal  
20 any contents of any communications you've had with any  
21 of your attorneys.

22 THE WITNESS: Yes.

23 BY MR. CHOATE:

24 Q Well, when you contacted the ACLU last  
25 spring, were they your attorneys at that time?

1 conversations with anybody in the Merced City  
2 Elementary School District about your possible  
3 involvement in this lawsuit prior to the filing of the  
4 lawsuit?

5 A No, not prior.

6 Q Okay. Do you know if you spoke -- or do  
7 you recall having spoken with any teachers at Tenaya  
8 Middle School about your possible involvement in this  
9 lawsuit?

10 MR. KREEGER: Before it was filed?

11 MR. CHOATE: Before it was filed.

12 THE WITNESS: No, because -- no.

13 BY MR. CHOATE:

14 Q You were going to say something?

15 A It was filed after school was out.

16 Q When was it filed?

17 A Well, we got involved in June. School  
18 was out then.

19 Q Have you had any contact with the  
20 American Civil Liberties Union -- I'm not talking  
21 about in relationship to this lawsuit -- previously  
22 about school fees related issues?

23 A Yes.

24 Q Can you recall when your first contact  
25 with the ACLU was?

1 A No.

2 Q When did the ACLU become your attorneys?

3 A Probably in June.

4 Q Okay. June of 2000?

5 A Yes.

6 Q Who did you speak to at the ACLU prior to  
7 June of 2000?

8 MR. KREEGER: You can answer that question.

9 THE WITNESS: Like I mentioned, I spoke with  
10 the receptionist there and told them that I had a  
11 grand jury report.

12 MR. KREEGER: The question is who.

13 THE WITNESS: Kathryn Lhamon.

14 MS. PERRIN: L-h-a-m-o-n.

15 BY MR. CHOATE:

16 Q Did you have any discussions with anybody  
17 else prior to filing this lawsuit about your possible  
18 involvement?

19 A In this lawsuit?

20 Q Yeah.

21 MR. KREEGER: Anybody else at the ACLU?

22 MR. CHOATE: Just anybody.

23 THE WITNESS: No, I don't recall. No.

24 BY MR. CHOATE:

25 Q Do you recall if you had any

1 A '95 or '96.

2 Q Did you contact the ACLU?

3 A Yes.

4 Q What did you -- what did you have to say  
5 to them?

6 MR. KREEGER: I'm going to object and instruct  
7 the witness not to answer on the grounds of  
8 attorney/client privilege.

9 (Instruction not to answer.)

10 BY MR. CHOATE:

11 Q Was the ACLU your attorney in 1995?

12 A No.

13 MR. CHOATE: Can we go off the record for a  
14 second?

15 MS. PERRIN: Yes, please.

16 (Discussion off the record.)

17 BY MR. CHOATE:

18 Q Mr. Ensminger, when you contacted the  
19 ACLU back in 1995, were you thinking about trying to  
20 hire the ACLU to act as your counsel?

21 A I wanted them to help.

22 Q Did you want them to serve as your  
23 lawyers?

24 A I wasn't thinking of that. I wanted  
25 them -- I was seeking their advice about school fees

1 that were happening at Tenaya.  
 2 Q You were seeking their advice because  
 3 they were lawyers?  
 4 A Yes.  
 5 Q Okay. Prior to the filing of this  
 6 lawsuit, approximately how many letters had you  
 7 written to the ACLU, if you know?  
 8 A One.  
 9 Q Just one and that was back in 1995?  
 10 A Uh-huh.  
 11 Q And you were seeking legal advice from  
 12 the ACLU in the letter?  
 13 A Yes.  
 14 Q Did that letter have to do with  
 15 fund-raising at Tenaya Middle School?  
 16 MR. KREEGER: I'm going to object and instruct  
 17 the witness not to answer.  
 18 (Instruction not to answer.)  
 19 BY MR. CHOATE:  
 20 Q Do you understand that instruction? Do  
 21 you understand your attorney's instruction?  
 22 A Yes.  
 23 Q Are you going to follow it?  
 24 A Yes.  
 25 Q If he didn't instruct you not to answer,

1 would you have answered my question?  
 2 MR. KREEGER: I'll object. Vague and  
 3 ambiguous.  
 4 If you understand, you can answer.  
 5 THE WITNESS: They're here to help me, and I'll  
 6 listen to their advice.  
 7 BY MR. CHOATE:  
 8 Q Okay. Prior to filing this lawsuit, have  
 9 you had any contact with any other civil rights  
 10 organization relating to school fees?  
 11 A No.  
 12 MR. KREEGER: We're been going about an hour.  
 13 MS. PERRIN: Can we take a break?  
 14 MR. CHOATE: Sure.  
 15 (Recess.)  
 16 BY MR. CHOATE:  
 17 Q Mr. Ensminger, you indicated that you're  
 18 a plaintiff in this lawsuit.  
 19 A Yes.  
 20 Q Are you also a class representative?  
 21 A Yes.  
 22 Q Is there a reason why Theresa is not a  
 23 class representative in this lawsuit? Well, I guess  
 24 my understanding originally was that Theresa was a  
 25 class representative. Are you substituting in for her

1 as a class representative?  
 2 A Yes.  
 3 Q Why is Theresa not a class representative  
 4 now?  
 5 A Because I paid the fees; she didn't.  
 6 Q Okay. And when you indicate "the fees,"  
 7 are you referring to fees at Tenaya Middle School?  
 8 A Yes.  
 9 Q What class are you purporting to  
 10 represent?  
 11 A Pardon me?  
 12 Q What class of students do you represent  
 13 in this lawsuit?  
 14 MR. KREEGER: Calls for a legal conclusion  
 15 THE WITNESS: I imagine for all children that  
 16 are being charged for school activities.  
 17 BY MR. CHOATE:  
 18 Q That's it?  
 19 A Uh-huh, from my understanding.  
 20 Q Okay. Do you have any special  
 21 responsibilities as a class representative that you're  
 22 aware of?  
 23 A Just to keep abreast of what's happening  
 24 with the lawsuit.  
 25 Q Okay.

1 A To give my input on things.  
 2 Q And how do you keep abreast of what's  
 3 happening in the lawsuit?  
 4 MR. KREEGER: Objection. Vague.  
 5 Answer if you understand.  
 6 THE WITNESS: We get letters occasionally from  
 7 the ACLU updating us on what's going on with the  
 8 lawsuit.  
 9 BY MR. CHOATE:  
 10 Q How often do you get letters from the  
 11 ACLU? I don't need you to tell me what they say but  
 12 how often.  
 13 A About once a month.  
 14 Q Do you get letters from any other lawyers  
 15 in this lawsuit?  
 16 A No.  
 17 Q Are you entitled to any benefits in your  
 18 capacity as a class representative?  
 19 MR. KREEGER: Objection. Vague.  
 20 Go ahead.  
 21 THE WITNESS: I don't know what you mean by  
 22 "benefits."  
 23 BY MR. CHOATE:  
 24 Q Are you receiving any compensation,  
 25 monetary compensation, for being a class

1 representative?  
 2 A No.  
 3 Q Do you have an agreement with your  
 4 lawyers regarding the payment of attorney fees?  
 5 MR. KREEGER: Objection. Vague.  
 6 Answer if you understand.  
 7 THE WITNESS: An agreement with -- I'm not  
 8 paying anybody anything in this.  
 9 BY MR. CHOATE:  
 10 Q Do you understand or do you know who's  
 11 responsible for paying attorney fees to any of the  
 12 plaintiffs' lawyers in this case, to the extent that  
 13 you know?  
 14 A I don't know.  
 15 Q All right. Can you tell me what classes  
 16 Theresa is taking in the current 2000/2001 school year  
 17 at Tenaya Middle School?  
 18 A She has art, woodshop, two periods of  
 19 language, science, and math.  
 20 Q Are these classes that you just told me  
 21 for the spring semester of this year?  
 22 A Yes.  
 23 Q Okay. Art -- she's taking in the spring  
 24 semester art, woodshop, two periods of language,  
 25 science, and math?

1 A That's right.  
 2 Q What other periods of language are there?  
 3 A The regular reading and writing class.  
 4 Q What did she take in the spring semester  
 5 of this school year?  
 6 MR. KREEGER: Asked and answered.  
 7 Did you mean something other than spring?  
 8 MR. CHOATE: I'm sorry, I thought these --  
 9 well, I thought -- oh, that was the spring, I'm sorry.  
 10 Excuse me.  
 11 Q What classes did Theresa take in the fall  
 12 semester?  
 13 A She had all of those except the first art  
 14 and woodshop. Instead of those two classes she had  
 15 drama and cooking.  
 16 Q So in the fall semester --  
 17 A Excuse me, drama -- she was an office  
 18 aid. They have a class where you can do service like  
 19 an office aid.  
 20 Q She took drama and she was an office aid.  
 21 And did she also take cooking?  
 22 A And transferred to drama because that was  
 23 instituted in about September.  
 24 Q She was a special aid?  
 25 A Right.

1 Q And then she took two periods of  
 2 language, science, and math?  
 3 A Yes. Uh-huh.  
 4 Q Do you know what her grades were in those  
 5 classes in the fall semester?  
 6 A [REDACTED]  
 7 Q [REDACTED]  
 8 A Uh-huh.  
 9 Q [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 A [REDACTED]  
 13 [REDACTED]  
 14 Q What about her classes in the 1999 to  
 15 2000 school year in the spring semester; do you  
 16 remember what she took?  
 17 A Last year she had -- she had art. Then  
 18 she had her two periods of language, math, P.E. I  
 19 can't recall the others off the top to my head. Back  
 20 to the others last fall, she also had social studies.  
 21 Q Okay. Can you think back to what her  
 22 classes were in the fall semester of the 1999 to 2000  
 23 school year?  
 24 A Well, she would have had everything  
 25 except for -- I can't remember now what their elective

1 was then. But their core program would have been  
 2 reading and writing class, math, science, P.E.  
 3 Q Social studies?  
 4 A For one semester that would have been one  
 5 of them. She took a computer class. I believe she  
 6 did computers in the fall.  
 7 Q The core academic subjects at Tenaya  
 8 Middle School are the two periods of language, which  
 9 are reading and writing, math, science --  
 10 A For one semester or social studies for  
 11 the other.  
 12 Q Let me just make sure I've got a clear  
 13 record.  
 14 A Okay.  
 15 Q The core academic classes are math,  
 16 science and/or social studies?  
 17 A Correct.  
 18 Q And the periods of reading -- a period of  
 19 writing?  
 20 A Writing.  
 21 Q And a period of writing?  
 22 A Yes.  
 23 Q Do you remember what her grades were in  
 24 the '99 to 2000 year?  
 25 A [REDACTED]



1 [REDACTED]  
 2 [REDACTED]  
 3 A Uh-huh.  
 4 Q Was that a yes?  
 5 A Yes.  
 6 Q What about the '98 to '99 school year?  
 7 A When she was in sixth grade?  
 8 Q Yeah.  
 9 MR. KREEGER: Objection. Vague.  
 10 BY MR. CHOATE:  
 11 Q What classes did she take in the spring  
 12 semester?  
 13 A Six graders have three periods of  
 14 language. That also includes social studies.  
 15 Q Social studies is one of the three  
 16 periods of language?  
 17 A Yes, in sixth grade.  
 18 Q Did she take any electives in the spring?  
 19 A No. The sixth graders don't have  
 20 electives. So she took that, math, science, and P.E.  
 21 Q Okay. Would these be the same classes  
 22 that she took in the fall semester of her sixth grade?  
 23 A Yes.  
 24 Q What were her grades like in the 1998 to  
 25 '99 school year?

1 A Yes.  
 2 Q Do you feel that Theresa's grades reflect  
 3 her true academic abilities?  
 4 MR. KREEGER: Objection. Vague.  
 5 BY MR. CHOATE:  
 6 Q You can answer.  
 7 A Yes.  
 8 Q Do you know what schoolwide tests Theresa  
 9 has taken this year?  
 10 A The Star Test.  
 11 Q What's the Star Test?  
 12 A That's the statewide test that all  
 13 students take throughout California in the spring.  
 14 Q And she took that in the spring of this  
 15 year?  
 16 A This year. They just finished.  
 17 Q Do you know what her score was on the  
 18 Star Test?  
 19 A No.  
 20 Q Did she take any other tests this year  
 21 that you're aware of?  
 22 A No.  
 23 Q What about in her seventh grade year; do  
 24 you know if she took any schoolwide tests?  
 25 A Yeah. It would have been the Star, their

1 A Again the same.  
 2 Q [REDACTED]  
 3 A [REDACTED]  
 4 Q You imagine your daughter to be a good  
 5 student?  
 6 A Yes.  
 7 Q Is she in the GATE program?  
 8 A Yes.  
 9 Q How long has she been in that program?  
 10 A Since second grade.  
 11 Q What does GATE stand for, if you know?  
 12 A Gifted and talented -- I don't know what  
 13 the E stands for.  
 14 Q Is Theresa assigned homework often in her  
 15 classes?  
 16 A Yes.  
 17 Q Does she do all of her homework?  
 18 A Yes.  
 19 Q Does anyone help her with her homework?  
 20 A When she asks for help.  
 21 Q Who does she ask for help?  
 22 A Me, her mother, and sometimes her  
 23 brother.  
 24 Q And you, your wife or your son would help  
 25 Theresa with her homework?

1 regular state testing test that they take in the  
 2 spring.  
 3 Q And do you remember what her score was on  
 4 that test?  
 5 A I don't recall right off. She did fairly  
 6 well.  
 7 Q Did she take the Star Test in sixth  
 8 grade, also?  
 9 A They didn't have the Star Test then. But  
 10 it was the same -- it was the statewide test.  
 11 Q And she did well on that test as well,  
 12 also?  
 13 A I believe so.  
 14 Q I want to ask you a few more questions  
 15 about conversations that you had prior to filing the  
 16 lawsuit.  
 17 A Okay.  
 18 Q Have you ever addressed the Merced City  
 19 School Board publicly about a school fees issue?  
 20 A No, not the school board.  
 21 Q You never addressed the school board?  
 22 A Huh-uh.  
 23 Q Have you spoken with the superintendent  
 24 of the Merced School District prior to filing this  
 25 lawsuit?

1 A Yes.  
 2 Q Okay. The current superintendent is  
 3 Alan Rasmussen; is that correct?  
 4 A Yes.  
 5 Q Prior to filing the lawsuit, have you  
 6 spoken to Alan Rasmussen about school fees?  
 7 A Yes.  
 8 Q Do you recall when you spoke with him?  
 9 Let me ask you a different question.  
 10 Do you know how many times you spoke to  
 11 Mr. Rasmussen about school fees prior to filing the  
 12 lawsuit?  
 13 A Once that I remember.  
 14 Q Do you remember when that was?  
 15 A Maybe in March or so of that last year.  
 16 Q That would be March of 2000?  
 17 A That's correct.  
 18 Q Okay. Did you call Mr. Rasmussen?  
 19 A Yes.  
 20 Q What did you say to him?  
 21 A I showed him the grand jury report from  
 22 Tulare County and mentioned that this was an issue  
 23 that is a problem for a lot of students and their  
 24 families.  
 25 Q You spoke to him over the telephone?

1 A No, I met with him in his office with  
 2 another gal.  
 3 Q Do you know who the other woman was?  
 4 A Mary Whiteman.  
 5 Q Do you remember what her position is in  
 6 the district?  
 7 A Her position in the district? She's a  
 8 parent.  
 9 Q Oh, she's a parent?  
 10 A Uh-huh.  
 11 Q Do she have a child that attends Tenaya  
 12 Middle School?  
 13 A Yes.  
 14 Q So in this conversation with the  
 15 superintendent you talked to him about the grand jury  
 16 report regarding Tulare County?  
 17 A Yes.  
 18 Q Did you talk to him about anything else?  
 19 A Yeah. We talked about our work on a  
 20 committee involved in dress codes -- the dress code  
 21 that we had at the middle school. Mary and I were on  
 22 that committee.  
 23 Q Did you speak with Mr. Rasmussen on this  
 24 occasion about school fees at Tenaya?  
 25 A Yes.

1 Q What did you say to him about school fees  
 2 at Tenaya?  
 3 A We said that the kids were being charged  
 4 fees for cooking, band.  
 5 Q This is what you said to Mr. Rasmussen?  
 6 A Yes.  
 7 Q You said the students were charged fees  
 8 for cooking and band?  
 9 A Band and some sports.  
 10 Q Do you recall what sports?  
 11 A Baseball and softball.  
 12 Q Other than fees that may have been  
 13 charged for cooking, band, baseball, and softball, did  
 14 you talk to Mr. Rasmussen on this occasion about any  
 15 other fees at Tenaya Middle School?  
 16 A We probably talked about fees other  
 17 teachers charge. Say if they go on a field trip to a  
 18 play, kids are asked to pay admission to get in.  
 19 Q Is that it?  
 20 A Basically, yeah. That's all I can  
 21 remember.  
 22 Q Did Mary Whiteman talk to Mr. Rasmussen  
 23 about any other fees?  
 24 A She might have mentioned the fees her  
 25 high school kids paid to be in band.

1 Q And would this be at Merced High School?  
 2 A Yes, at Merced High School.  
 3 Q What did Mr. Rasmussen say to you, if  
 4 anything?  
 5 A He said it's unfortunate that schools  
 6 used to provide things for free but they've been  
 7 pushed to the wall financially and have had to look  
 8 for ways to offset material budgets. I remember him  
 9 saying specifically about cooking that kids eat that  
 10 food so we can charge them for it.  
 11 Q What did you say to it?  
 12 A I didn't say anything. I said okay. I  
 13 mean, I didn't say anything then.  
 14 Q And you didn't speak to Mr. Rasmussen  
 15 again about school fees prior to filing the lawsuit?  
 16 A No.  
 17 Q Did you have any conversations with  
 18 Principal Atkinson about school fees at Tenaya prior  
 19 to filing the lawsuit?  
 20 A Yes.  
 21 Q About how many times, if you know?  
 22 A Every year.  
 23 Q You spoke to Principal Atkinson every  
 24 year about this?  
 25 A Yes.

1 Q How many times a year would you say you  
2 talked to him (sic) about school fees at Tenaya?

3 A How many times? Numerous times. I can't  
4 give you a figure, but numerous times.

5 Q Can you describe -- I'm sorry, were you  
6 going to say something?

7 A I was going to say it came up, when I  
8 taught in sixth grade, as an issue, because there were  
9 sixth grade teachers who wanted to charge fees for  
10 field trips and various activities. And I always  
11 spoke out against it. So Pam Atkinson and I talked  
12 about that on a fairly regular basis.

13 Q When you would speak with Pam about  
14 charging students for field trips, what generally  
15 would you say? I know you had a lot of conversations,  
16 so I just want the gist, if you know.

17 A Generally that it's not fair that we  
18 have -- we've had a free school system in California  
19 for generations and it's too bad to see this happen  
20 and that it puts a big burden on kids who can't pay.  
21 It basically turns them into beggars coming to us  
22 asking for charity. And they shouldn't be put in that  
23 position as students.

24 Q What did Principal Atkinson say to you?  
25 Generally what was her response to your comments?

1 field trips?

2 A He was very upset about it and  
3 distressed. And said, Keith, how can I charge these  
4 kids this kind of money that they don't have money? I  
5 feel bad about this.

6 Q Did Mr. Xiong indicate to you that  
7 someone told him that he had to charge fees?

8 A Yes. It was decided in the sixth grade  
9 meeting that they would do that that particular year.

10 Q Who decided in the meeting?

11 A The teachers in the meeting.

12 Q And what exactly was it that they  
13 decided, if you know?

14 A That they were going to charge kids \$15  
15 to go on a field trip.

16 Q Where were these field trips to; do you  
17 know?

18 A I believe that one was to a -- there's an  
19 Egyptian museum in San Jose.

20 Q And when the teachers decided -- made  
21 this decision about field trips -- do you know when  
22 that was approximately?

23 A Well, that was the first year I went back  
24 to Tenaya when I went back. So it's probably like  
25 1996. I mean, that particular instance. They had

1 A That it would be a shame for the children  
2 not to have those experiences. Basically that was it.  
3 So she supported the fees.

4 Q You indicated that charging students fees  
5 for field trips turns them into beggars.

6 A If they had to come and ask us for  
7 charity to say they couldn't pay the fees, yes.

8 Q Prior to filing this lawsuit, did you  
9 have any conversations with specific teachers at  
10 Tenaya Middle School about school fees?

11 A Yes.

12 Q Can you recall what teachers?

13 A One fellow's name is Tae Xiong.

14 Q I'm sorry, could you spell that?

15 A T-a-e, I believe, X-i-o-n-g or T-h-a-e --  
16 Xiong, X-i-o-n-g.

17 Q What does Tae Xiong teach?

18 A He teaches sixth grade core for mostly  
19 Laotian immigrants.

20 Q And what did you speak to him about in  
21 terms of school fees?

22 A He came to me one day and said, Keith,  
23 how can I charge these kids 15 bucks for field trips?  
24 They don't have any money.

25 Q He asked you how he could charge for

1 been doing that for probably since 1990 or '91.

2 Q Was it your understanding that when the  
3 teachers made this decision that students who chose  
4 not to pay would be excluded from the field trips?

5 A No.

6 Q What do you mean by "no"?

7 A If they came and told teachers that they  
8 couldn't afford to pay, then they were sometimes asked  
9 to pay whatever they could but were allowed to go.

10 Q Did a student have to come and tell  
11 somebody that they couldn't pay?

12 A Yes.

13 Q In order to go?

14 A Yes.

15 Q What if the student didn't come and talk  
16 to the teacher, what would have happened?

17 A They would have asked them why didn't  
18 they pay or why couldn't they pay.

19 Q Okay. Other than with Tae Xiong, did you  
20 have any other conversations with other teachers that  
21 you can recall?

22 MR. KREEGER: Prior to filing the lawsuit?

23 MR. CHOATE: Prior to filing the lawsuit.

24 THE WITNESS: Yes. A few years before that,  
25 the seventh grade teachers had been charging \$15 for

1 field trips for a number of years. And that first  
2 year when I started teaching sixth grade we had a  
3 sixth grade meeting where the issue of charging kids  
4 for field trips came up. And a lot of teachers wanted  
5 to do it. And it was eventually passed that we would  
6 do that. I think I was the only person that objected  
7 to it. There were some people that even wanted to  
8 leave children who couldn't pay.

9 BY MR. CHOATE:

10 Q Did this occur at a meeting?

11 A Yes.

12 Q And when did that meeting take place?

13 A '92 or 93. I can't recall exactly  
14 when -- that first year that I taught sixth grade at  
15 Tenaya.

16 Q And when you say that -- I think you said  
17 that the decision passed to charge fees.

18 A Yes.

19 Q What did you mean by that?

20 A The teachers decided that they were going  
21 to charge kids to go on a field trip.

22 Q And you were the only one who objected to  
23 that practice?

24 A Yes.

25 Q What did you say?

1 and didn't go on the field trip.

2 Q This was what the teacher told you?

3 A Yes.

4 Q Do you recall that teachers name? It's  
5 been a long time.

6 A Well, no, I -- John -- you would think I  
7 would be good at names being a teacher, but I'm not.  
8 I've got a picture of him right there. (Indicating.)  
9 But I can't recall his name.

10 Q But this teacher John told you that a  
11 student was left behind because she didn't pay a fee?

12 A Yes.

13 Q Do you recall any other specific  
14 conversations?

15 A We had some conversations about having an  
16 end-of-the-year picnic one year.

17 Q When you say "we," who --

18 A Among the sixth grade teachers. And they  
19 wanted to charge kids \$3 to have an end-of-the-year  
20 picnic at a nearby park. I said, "We ought to run it  
21 through the cafeteria since we have so many kids on  
22 free lunch." But I was overruled on that issue. And  
23 the other teachers eventually went off and had their  
24 picnic at the park. I ran it through the school  
25 cafeteria, and we had the picnic outside of the class.

1 A I said first of all, it's not within our  
2 right to do that. Parents in our community have every  
3 right to send their children to our school for free  
4 knowing that we would never charge them a dime. And  
5 it was really kind of a backdoor way of getting a tax,  
6 which was unfair, because some people could pay that  
7 easily, and others didn't have a way of paying that at  
8 all.

9 Q Did you have many conversations at  
10 meetings such as this throughout the time you've been  
11 at Tenaya?

12 A Yes.

13 Q Have all of these meetings tended to be  
14 the same in terms of what was said?

15 A Basically, yes. After that meeting that  
16 we just discussed I was talking with one of the  
17 teachers that works with our death students. And he  
18 was telling me about one death student that was left  
19 behind on a seventh grade field trip. The seventh  
20 grade teachers had the same protocol for this. They  
21 wanted to collect the money and you had to come and  
22 approach them as to whether you could pay or not. And  
23 this one little girl -- there must have been some kind  
24 of communication. She was death. She was too shy to  
25 tell them she was too poor to pay. And she was left

1 Q You had two picnics?

2 A That's right.

3 Q Half of the other teachers had their  
4 picnic at the park, and you had your picnic in the  
5 cafeteria?

6 A Yeah, basically.

7 Q When did that occur -- that picnic?

8 A That was two years ago.

9 Q Two years ago?

10 A Yes.

11 Q Were you the only teacher who objected to  
12 the decision apparently to ask students for money for  
13 the picnic?

14 A Yes.

15 Q Do you recall any other specific  
16 instances or any occasions on which you spoke to other  
17 teachers prior to filing this lawsuit about school  
18 fees at Tenaya?

19 A I don't recall any specific instances.  
20 Although, when the issue comes up, I always speak out  
21 that it's wrong to charge fees for public schools.

22 Q Okay. But the three instances that you  
23 recall specifically prior to filing this lawsuit were  
24 the conversation with Tae Xiong?

25 A That's correct.

- 1 Q The meeting with seventh grade teachers  
2 about charging for field trips?  
3 A No, the meeting with sixth grade teachers  
4 about charging for field trips like they were doing in  
5 the seventh grade.  
6 Q And the conversation with the teacher  
7 named John who talked to you about the death student?  
8 A Plus that instance of the \$3 picnic.  
9 Q Okay. And those four instances are the  
10 only specific conversations that you can recall?  
11 A Um, I talked with a P.E. teacher about  
12 charging for baseball caps. Because I taught -- or  
13 when Austin was in sixth grade, I was the coach for  
14 the junior varsity baseball team.  
15 Q Do you recall when you spoke to the P.E.  
16 teacher?  
17 A When Austin was in sixth grade that  
18 spring.  
19 Q Do you recall what year that was?  
20 A '97, '98.  
21 Q Who was the P.E. Teacher?  
22 A El Delco.  
23 Q Al Doco?  
24 A El, E-I, Delco.  
25 Q What did you say to El Delco, if you

- 1 A No.  
2 Q Did you ask?  
3 A I don't recall.  
4 Q Do you recall any other specific  
5 conversations prior the filing this lawsuit about  
6 school fees?  
7 A I talked with Mary Whiteman about her --  
8 the band program at Merced High School that her kids  
9 were in.  
10 Q Do you recall any of the specific  
11 conversations about Tenaya Middle School?  
12 A With Mary Whiteman about paying for band  
13 and band programs for her kids, yes.  
14 Q Her children at Tenaya Middle School?  
15 A Yes.  
16 Q What did -- what did you say to Mary in  
17 that conversation? First of all, let me ask do you  
18 know when that conversation took place?  
19 A The fall of last year.  
20 Q That would be in this current 2000/2001  
21 school year?  
22 A Excuse me, the previous fall 1999/2000.  
23 Q And what did you say to Mary in that  
24 conversation about fees at Tenaya?  
25 A We were at -- they call it a middle

- 1 recall?  
2 A Probably that I didn't realize that the  
3 kids needed to buy hats to play baseball and that  
4 there were kids where there was going to be a problem  
5 coming up with that money. I went to a local  
6 lumberyard -- I talked to you about having a  
7 construction business -- and asked if they would  
8 donate money for baseball caps and baseball equipment.  
9 And they eventually did donate some money so we could  
10 get some baseball equipment and not charge kids for  
11 hats.  
12 Q What did El Delco say to you in that  
13 conversation?  
14 A Basically that they've always charged.  
15 Q Did he tell you that students were  
16 required to pay a fee for a hat?  
17 A They were told that they had to buy the  
18 hat.  
19 Q El Delco told you that students were  
20 required to purchase the hat?  
21 A I don't recall if he told me they were  
22 specifically. What he said was that kids needed to  
23 buy the baseball cap.  
24 Q Did he tell you what happened if students  
25 didn't buy the basketball cap?

- 1 school summit about middle school issues. And we were  
2 on a break and sitting down and talking. And she was  
3 telling me about how hard it was for her because she  
4 was paying like close to \$1,000 for her children to be  
5 in band at the high school. And I told her, "Mary  
6 that's not even supposed to be an issue." And I told  
7 her about the Tulare County Grand Jury report that I  
8 had and that I would give her a copy of that. And we  
9 generally talked about how kids are charged things at  
10 Tenaya and other schools as well.  
11 Q Okay. After this lawsuit was filed, did  
12 you have -- did you ever speak to Superintendent  
13 Rasmussen about school fees at Tenaya?  
14 A Yeah.  
15 Q Do you remember on how many occasions?  
16 A Twice.  
17 Q Do you remember when the first occasion  
18 was?  
19 A Yes. It was at a school board meeting.  
20 I went to tell the school board what my position was  
21 in the lawsuit.  
22 Q Do you know when that school board  
23 meeting was?  
24 A It probably was in September of this  
25 year.

1 MR. KREEGER: September of 2000?  
 2 THE WITNESS: Yes.  
 3 BY MR. CHOATE:  
 4 Q And was this a public school board  
 5 meeting?  
 6 A Yes.  
 7 Q What did you say to the board at this  
 8 meeting?  
 9 A I told them that this lawsuit was  
 10 directed against the State of California; that it  
 11 wasn't directed at Merced or Tenaya; that it was  
 12 basically a lawsuit alleging that the state has not  
 13 done their part to make sure that we have a common  
 14 school system throughout the state, basically to try  
 15 to ease their fears that this was something we were  
 16 doing to Merced and Tenaya specifically.  
 17 Q Did you say anything else?  
 18 A That was it.  
 19 Q Okay. Did Mr. Rasmussen say anything  
 20 back to you?  
 21 A No.  
 22 Q Did anybody on the school board say  
 23 anything?  
 24 A No, they just listened.  
 25 Q And when was the second conversation you

1 had with Mr. Rasmussen?  
 2 A Probably in February of this year --  
 3 January or February of 2001.  
 4 Q What did you say to Mr. Rasmussen in this  
 5 conversation?  
 6 A He called me into the office and asked if  
 7 I would entertain dropping out of the lawsuit.  
 8 Q Did he say why?  
 9 A He showed me a letter that was from the  
 10 school lawyers. And they requested -- they asked him  
 11 to ask me if I would drop out because they figured it  
 12 was going to cost the school district \$100,000 to  
 13 defend against the cross-complaint.  
 14 Q Did he tell you that?  
 15 A Something like that -- just asked if I  
 16 would do that because he said he needed to decide on  
 17 budget issues. And if I wasn't going to drop out then  
 18 he needed to take that into account -- the money.  
 19 Q And what did you say to Mr. Rasmussen?  
 20 A That I would consider it.  
 21 Q And did you consider it?  
 22 A Yes.  
 23 Q And why did you decide --  
 24 A If we can reestablish that a free school  
 25 means more than sitting in class then it would be good

1 for children.  
 2 Q I'm sorry, you said it means more than  
 3 what?  
 4 A More than being free to sit in class it  
 5 also means being free to take part of everything that  
 6 takes place in class without having to worry about  
 7 paying money or without having to go to your teachers  
 8 to tell them you're too poor to pay.  
 9 Q Did you have any conversations with  
 10 Principal Atkinson?  
 11 A Yes.  
 12 Q Do you recall about how many?  
 13 A Maybe 10.  
 14 Q Can you just give me the general gist of  
 15 what those conversations were?  
 16 A To try and ease her fear that this wasn't  
 17 directed toward Tenaya or Merced -- basically what I  
 18 told you that in the short run it might be difficult  
 19 financially but in the long run it would probably be  
 20 helpful if we can reestablish that parents can send  
 21 their children to public schools in California for  
 22 free.  
 23 Q Did she have a general response to your  
 24 comments?  
 25 A Her general response is that it would be

1 a shame for children to miss out on education  
 2 opportunities. She kind of took the short-range view  
 3 of things.  
 4 Q Do you think it would be a shame for  
 5 children to miss out on educational opportunities?  
 6 MR. KREEGER: Objection. Vague.  
 7 Go ahead.  
 8 THE WITNESS: It would be a bigger shame to see  
 9 a free school system erode further.  
 10 BY MR. CHOATE:  
 11 Q Do you think it would be a shame for  
 12 children to miss out on educational opportunities?  
 13 A Yes, it would be a shame for them.  
 14 MR. KREEGER: Same objection.  
 15 THE WITNESS: I do recall a -- back to a  
 16 previous discussion with teachers. I talked with a  
 17 teacher yesterday actually before I came. I don't  
 18 know how it came up. But he asked -- he asked where  
 19 Theresa was going next year. I said Merced High  
 20 School. He said, "Oh, it's going to get more and more  
 21 expensive as she goes on to high school." I said,  
 22 "It's not supposed to be expensive."  
 23 BY MR. CHOATE:  
 24 Q What teacher was this that you spoke with  
 25 yesterday?

- 1 A Lynn Talafero.  
 2 Q Lynn Talafero?  
 3 A Uh-huh.  
 4 Q What does Lynn teach at Tenaya?  
 5 A He teaches sixth grade language.  
 6 Q Do you have a -- after this lawsuit was  
 7 filed, did you attend a meeting with  
 8 Principal Atkinson and the other elective teachers?  
 9 A Yes.  
 10 Q When was that?  
 11 A When the school year started, so it would  
 12 have been in August of 2000.  
 13 Q Do you recall what was said at that  
 14 meeting?  
 15 A That we were going to continue with the  
 16 fee system that we had at least for this year to see  
 17 what happened.  
 18 She was real angry that she had to find  
 19 out about this through the newspaper.  
 20 Q At this meeting in August of 2000,  
 21 Principal Atkinson told you that Tenaya was going to  
 22 continue with the fee system throughout this current  
 23 school year?  
 24 A Yes.  
 25 Q Did she explain what she meant about

- 1 participate in a band program.  
 2 Q Did any other teachers say anything else  
 3 in that meeting that you recall?  
 4 A The woodshop teacher says they've always  
 5 done that.  
 6 Q They've always done what?  
 7 A Charged for hats.  
 8 Q The woodshop teacher said that Tenaya  
 9 Middle School has always charged for hats?  
 10 A Yeah, for baseball hats.  
 11 Q For baseball hats?  
 12 A Yeah.  
 13 Q Do you recall anything else?  
 14 A Other than if you want to get Pam  
 15 Atkinson mad do what I did --  
 16 Q Are you referring to the filing of the  
 17 lawsuit?  
 18 A Yeah. Well, not so much that, that I  
 19 didn't have a chance to tell her about the lawsuit  
 20 before she read about it in the newspaper.  
 21 Q Do you think you should have told her  
 22 about the lawsuit so that she wouldn't have read it in  
 23 the newspaper?  
 24 A I was going to.  
 25 Q Why didn't you?

- 1 that?  
 2 A That this fee system would continue for  
 3 cooking, band, hats.  
 4 Q Principal Atkinson told you that they  
 5 were going to continue the fees for cooking, for band  
 6 hats for the school year?  
 7 A Cooking, band, baseball hats, softball  
 8 hats -- that their policy wouldn't change.  
 9 Q Did she talk about any other fees?  
 10 A Not that I recall.  
 11 Q Did the other teachers speak at that  
 12 meeting?  
 13 A Yeah. The band teacher talked about how  
 14 she thought it was unprofessional for us to do  
 15 fund-raisers for band.  
 16 Q Who's the band teacher?  
 17 A I forget her name. She's a new teacher.  
 18 Q And the band teacher told you that it was  
 19 unprofessional to do fund-raisers?  
 20 A Yes.  
 21 Q Do you know what she meant by that?  
 22 A Yeah. That she thought their job was to  
 23 teach music to children, and that their job was to  
 24 learn music, and it was a shame to put them in a  
 25 position that they had to go out and raise money to

- 1 A We were leaving for vacation. And we  
 2 were like two hours late trying to get out of the  
 3 house and a newspaper reporter called. We were just  
 4 about out the door and he called and said that he had  
 5 information about this lawsuit and wanted to write a  
 6 story on it and if I cared to talk to him. And I  
 7 said, "Well, I can't not now, but I'll call you  
 8 tomorrow or the next day from where we are." And I  
 9 called and talked to him about it. And we were out of  
 10 town when the newspaper article was written.  
 11 Q What newspaper did the article appear in;  
 12 do you know?  
 13 A It appeared in the Modesto Bee and the  
 14 Merced Sun Star.  
 15 Q Other than the meeting with  
 16 Principal Atkinson and the other elective teachers, do  
 17 you recall having any other conversations with any  
 18 other teachers about the filing of this lawsuit about  
 19 school fees?  
 20 A Just general conversations with teachers  
 21 that were sympathetic to me who understood that it was  
 22 going to be very difficult; that there was going to be  
 23 other teachers that would hate me for doing this, and  
 24 they would probably do whatever they could do to make  
 25 life uncomfortable for me, and that was just part of

1 the -- part of doing this kind of thing, but it was  
 2 important to stand up for things you believe. In  
 3 general, that was the gist of the conversations.  
 4 Q Do you think that other teachers have  
 5 made your life miserable at times?  
 6 A Uh-huh.  
 7 Q How so?  
 8 A I'm sharing a contract with a teacher  
 9 this year where I teach in the morning and she teaches  
 10 in the afternoon. And we had worked out an  
 11 arrangement with Pam Atkinson where I would not teach  
 12 first period which is a shorter period but would teach  
 13 four periods of art and then Ann would come in after  
 14 lunch and teach the last three periods and then do an  
 15 additional reading program after school -- the pilot  
 16 reading material in the junior high. Because she has  
 17 a reading specialist credential. And then our own  
 18 union took issue with that arrangement and convinced  
 19 the school district that it was not correct. And they  
 20 tried to change our contract.  
 21 Q Who tried to change your contract?  
 22 A The district. The union had convinced  
 23 the district to change our contract so that we were to  
 24 teach all of the periods. She was told that she  
 25 couldn't teach after school and that she had to teach

1 a 30-minute drop-in center during lunch. And I think  
 2 there is a harassment issue, because some of the  
 3 people that were involved in this talked about other  
 4 teacher -- another teacher sharing a contract. And  
 5 she wasn't asked to do the same thing we were asked to  
 6 do.  
 7 MR. CHOATE: Okay. Can I mark as exhibit -- I  
 8 think what I'm going to do is introduce what was  
 9 marked as Exhibit 6 in the deposition of  
 10 Pamela Atkinson. Why don't I just go ahead and mark  
 11 it Exhibit 7 now and we'll label the exhibits like we  
 12 did in the deposition of Principal Atkinson.  
 13 MS. PERRIN: I'm a little confused.  
 14 MR. KREEGER: Let's go off the record for a  
 15 minute.  
 16 (Discussion off the record.)  
 17 MR. CHOATE: I would like to mark as Exhibit 1  
 18 a document entitled Policy BP6145.  
 19 (Deposition Exhibit 1 marked for  
 20 identification by the Court Reporter.)  
 21 BY MR. CHOATE:  
 22 Q Mr. Ensminger, have you had a chance to  
 23 look at Exhibit 1?  
 24 A Before this?  
 25 Q Today.

1 A Today, yes.  
 2 Q Do you know what this document is?  
 3 A Yes.  
 4 Q What is it?  
 5 A It's rules and guidelines for being  
 6 eligible -- for being eligible to participate in  
 7 extracurricular activities.  
 8 Q You understand this is a policy of the  
 9 Merced School District?  
 10 A Yes.  
 11 Q Have you seen this prior to today?  
 12 A Yes.  
 13 Q When did you see it?  
 14 A We've been probably given this handout at  
 15 staff meetings as a policy issue just to be aware of  
 16 who is eligible for extracurricular activities.  
 17 Q Do you know when you were given this  
 18 handout at the staff meeting?  
 19 A I can't recall specifically, no. It  
 20 would have probably been in our handbook that we're  
 21 given at the beginning of the year.  
 22 Q Teachers are given a handbook of district  
 23 policies at the beginning of the year?  
 24 A Some policies and things like that that  
 25 are going to happen.

1 Q So only some of the teachers --  
 2 A No, all of the teachers are.  
 3 Q Do you know if this policy is in a  
 4 handbook?  
 5 A I don't recall.  
 6 Q Have you had any discussions with  
 7 Pamela Atkinson about this policy as it relates --  
 8 well, first of all strike that question.  
 9 You see the second to last sentence in  
 10 the first paragraph?  
 11 A Uh-huh.  
 12 Q Would you read that, please?  
 13 A "The students may not be charged fees for  
 14 participation in athletic teams, dramatic productions,  
 15 vocal music groups, instrumental groups, or  
 16 cheerleading."  
 17 Q Have you spoken to Pamela Atkinson about  
 18 this policy insofar as it relates to school fees?  
 19 A I don't recall if we spoke about this  
 20 specific policy. I mean this specific document.  
 21 Q Do you recall if you've spoken with any  
 22 teachers at Tenaya Middle School about this document  
 23 as it relates to school fees?  
 24 A I don't recall talking with teachers  
 25 about this specific document, no.



1 Q Okay. Do you recall talking to students  
2 or parents about this document as it relates to school  
3 fees?

4 A Not about this document, no. But I have  
5 spoken with students and parents with respect to  
6 school fees.

7 Q What is your understanding of this  
8 policy?

9 MR. KREEGER: Objection. Vague.  
10 BY MR. CHOATE:

11 Q You can answer.

12 MR. KREEGER: Compound. Go ahead.

13 THE WITNESS: My understanding is that we're  
14 not supposed to charge kids to be involved in these  
15 different groups.

16 BY MR. CHOATE:

17 Q You're referring to athletic teams,  
18 dramatic productions and so forth?

19 A Yes.

20 Q Do you know if teachers are required to  
21 follow this policy?

22 A They're supposed to.

23 Q Do you think that this is a good policy?

24 A Yes. The only part I don't like about  
25 this is where it says a student will never be excluded

1 this year; do you know when that was?

2 A Fall of 2000.

3 Q And this bulletin about baseball caps --

4 A Was this spring -- last month. Because  
5 baseball season just ended.

6 Q Do you recall what the bulletin said  
7 exactly?

8 A That if you want to keep your baseball  
9 hat go to the office and pay 15 -- I can't remember  
10 the exact figure -- but pay for it.

11 Q The bulletin said that if a student wants  
12 to keep the baseball hat the student should go to the  
13 office and pay for the baseball hat?

14 A That's correct.

15 Q Okay. Did the bulletin indicate that a  
16 student was required to purchase a hat?

17 A No.

18 Q The bulletin -- the bulletin simply --  
19 the bulletin indicated only that if a student wanted  
20 to keep a hat the student had to pay for it?

21 A That's correct.

22 Q Other than the bulletin about the  
23 baseball hats, do you have any reason to believe that  
24 at the present time students are charged fees for  
25 extracurricular activities?

1 because they can't pay, which means they have to come  
2 and tell us they can't pay.

3 Q Do you see above that where it says  
4 "students may not be charged fees for  
5 participation...?"

6 A That's correct.

7 Q What do you take that to mean?

8 MR. KREEGER: Vague.

9 Go ahead.

10 THE WITNESS: That they won't be charged. But  
11 why is that next sentence there?

12 BY MR. CHOATE:

13 Q Do you have any reason to believe that at  
14 the present time students at Tenaya Middle School are  
15 charged fees for participation in extracurricular  
16 activities?

17 MR. KREEGER: Objection. Vague.

18 THE WITNESS: At the present time?

19 BY MR. CHOATE:

20 Q Yeah, now.

21 A Well, I paid for cooking. There was a  
22 bulletin item that if students wanted to keep their  
23 baseball hats they had to go to the office and pay for  
24 them.

25 Q You indicated you had to pay for cooking

1 A I don't know about the present time.

2 Pam Atkinson in a meeting last week or the week before  
3 that said we will not be charging fees in the future.

4 Q This meeting with Pam Atkinson that took  
5 place last week?

6 A Either last week or the week before -- a  
7 staff meeting.

8 Q Who was present at this meeting?

9 A All of the teachers.

10 Q All of the teachers at Tenaya Middle  
11 School?

12 A Uh-huh.

13 Q And what did Pam Atkinson say at this  
14 meeting to the best of your recollection?

15 A That we were not going to be charging  
16 students for cooking. I remember that the students  
17 could either buy their P.E. uniforms from the school,  
18 or they could go to the store and buy them. And  
19 that's all I remember that she said.

20 Q She only talked about cooking and P.E.?

21 A That's all I remember, yeah.

22 Q Did she say students would be charged  
23 fees for any other activities or courses?

24 A She said that we would stop charging  
25 fees, so I assume that meant for band. Cheerleaders

1 were charged for the uniform, to clean it and stuff  
2 like that, I guess.

3 Q Do you have any reason to believe that at  
4 the current time that students are required to pay  
5 fees at Tenaya Middle School to participate in  
6 extracurricular activities or in courses?

7 A Not now, because the school year is  
8 almost over. So they don't have to pay any fees to  
9 finish the year.

10 Q What's your understanding for what's  
11 going to happen next year?

12 A Apparently we're going to have to absorb  
13 the costs that we used to get from the fees.

14 Q Is it your understanding that in the  
15 2000/2001 school year that students may not be charged  
16 fees for participation in courses or extracurricular  
17 activities?

18 A That's my understanding, yes.

19 Q Do you have any reason to believe that  
20 teachers or other people at Tenaya Middle School are  
21 not going to follow that policy?

22 A Yes.

23 Q And why do you have reason to believe  
24 that?

25 A Because there are some teachers that

1 A Yes.

2 Q Do you agree with that policy?

3 A Yes, I do.

4 Q So at the present time you're not aware  
5 of any classes at Tenaya Middle School in which  
6 students are charged fees to participate in the class?

7 MR. KREEGER: Objection. Misstates his  
8 testimony.

9 Go ahead and answer.

10 THE WITNESS: Not that they're going to be  
11 charged. Because, like I said, we only have four more  
12 weeks of school.

13 BY MR. CHOATE:

14 Q Okay. Let me ask you this question:  
15 Since this fall semester began, are you aware of any  
16 classes in which students were charged fees to  
17 participate in class?

18 MR. KREEGER: Objection. Vague.

19 THE WITNESS: Yeah, the sixth graders went on a  
20 field trip this spring, and another teacher told me  
21 that a number of sixth grade teachers collected money  
22 from the students to go on the trip. And from what I  
23 know of these teachers, they probably said, you know,  
24 it is going to cost you whatever to go on the trip.

25 BY MR. CHOATE:

1 believe that children ought to be charged for public  
2 school activities. And they'll probably still do it.

3 Q Did they do -- did any teachers still  
4 tell you that they're going to charge -- strike that.

5 Did any teachers tell you that they are  
6 going to charge students fees for extracurricular  
7 activities or courses?

8 A No. But I know from past experience that  
9 it probably will happen.

10 Q But no teachers have told you that  
11 they're going to charge students fees for  
12 extracurricular activities or participation in  
13 courses?

14 A No.

15 Q This meeting that took place last week  
16 with Pam Atkinson and all of the teachers at Tenaya  
17 Middle School, was this the only meeting where the  
18 principal indicated that the fees would not be charged  
19 for extracurricular activities or for courses?

20 A This was the only time she brought it up,  
21 yes.

22 Q Do you think that this policy at Tenaya  
23 Middle School -- the policy, again, for not charging  
24 fees for extracurricular activities or participation  
25 in courses is that a good policy?

1 Q What class was the field trip associated  
2 with?

3 A It was the sixth grade language program.

4 Q Let me see if I understand this right. A  
5 teacher told you that students in the sixth grade  
6 language class were charged fees to participate in the  
7 field trip?

8 A Yes.

9 Q What teacher told you that?

10 A Pat Louis.

11 Q Does Pat Louis teach sixth grade  
12 language?

13 A Yes, she does.

14 Q Do you know when Pat Louis told you this?

15 A A couple, three weeks ago.

16 Q Do you know where the -- did students in  
17 the sixth grade language class go on the field trip?

18 A Yes, they did.

19 Q Where did they go?

20 A They went to a Giants game.

21 Q To a baseball game?

22 A Uh-huh.

23 Q And do you know whether students were  
24 asked to pay money to go to the baseball game?

25 A According to Pat Louis they were asked to

1 pay to go.  
 2 Q How were they asked to pay?  
 3 A She didn't say.  
 4 Q Do you know whether students paid money  
 5 to go on that field trip?  
 6 A No.  
 7 Q Other than this conversation with  
 8 Pat Louis, has it come to your attention that any  
 9 students have been required to pay a fee to  
 10 participate in a course or in an extracurricular  
 11 activity beginning in the -- strike that.  
 12 Other than this conversation with  
 13 Pat Louis, has it come to your attention that students  
 14 have been required to pay a fee to participate in a  
 15 course or extracurricular activity in the fall  
 16 semester -- in the spring semester, I'm sorry -- of  
 17 this current school year?  
 18 A It hasn't come to my attention. But I  
 19 know the cooking teacher would charge, because she  
 20 only teaches her class for one semester and then gets  
 21 a new group of kids the next semester.  
 22 Q Is the cooking class taught in the  
 23 current semester?  
 24 A Yes.  
 25 Q And you know the cooking teacher has

1 charged fees in the current semester?  
 2 A Well, I assume she did.  
 3 Q Why is that?  
 4 A Because she did in the past.  
 5 Q But you don't know that she charged fees  
 6 in the current semester, do you?  
 7 A No.  
 8 Q Any other reason to believe that students  
 9 have been charged fees for participation in courses or  
 10 extracurricular activities in the current semester at  
 11 Tenaya?  
 12 A The current semester at Tenaya?  
 13 Q Yes.  
 14 A No.  
 15 MR. CHOATE: Do you want to take a break now  
 16 for lunch?  
 17 MR. KREEGER: Sure.  
 18 (Recess.)  
 19 BY MR. CHOATE:  
 20 Q Mr. Ensminger, did you have any alcohol  
 21 to drink at lunch?  
 22 A No.  
 23 Q Is there any reason why you can't provide  
 24 me your most complete and truthful testimony today?  
 25 A No.

1 Q A while ago I asked you to look at  
 2 Exhibit 1.  
 3 A Uh-huh.  
 4 Q Is it your understanding that children  
 5 may not be charged fees for their participation in a  
 6 number of activities?  
 7 A Right.  
 8 Q Would you look on page 2 of this exhibit,  
 9 please?  
 10 A Uh-huh.  
 11 Q Do you see where it says "policy revised  
 12 January 16th, 2001"?  
 13 A That's right.  
 14 Q Do you understand that this was the  
 15 official policy of the Merced District since January  
 16 of 2001?  
 17 A I just assume so looking at this, yes.  
 18 Q And then you indicated in a meeting last  
 19 week Pamela Atkinson informed all of the teachers that  
 20 fees may not be charged to students for participation  
 21 in courses or extracurricular activities?  
 22 A That's correct.  
 23 Q I think you indicated that you did not  
 24 know whether -- strike that.  
 25 I think you indicated that you do not

1 know whether at the present time students are charged  
 2 fees for participation in participating in  
 3 extracurricular activities; is that correct?  
 4 MR. KREEGER: Misstates his testimony.  
 5 Go ahead.  
 6 THE WITNESS: They were for this semester.  
 7 BY MR. CHOATE:  
 8 Q What fees were they charged for this  
 9 semester?  
 10 A For cooking.  
 11 Q For the spring semester?  
 12 A Yes. Well, I assume so.  
 13 Q You assume so because they've always done  
 14 it?  
 15 A Yes.  
 16 Q Did you -- you don't know whether fees  
 17 were, in fact, charged for cooking in the spring  
 18 semester of this year, do you?  
 19 A No.  
 20 Q You don't know whether, in fact, students  
 21 why charged fees for participation in any courses or  
 22 extra activities in the current spring semester, do  
 23 you?  
 24 A Except for what Pat Louis told me, that's  
 25 correct.

1 Q But I think with regard to your  
2 conversation with Pat Louis you indicated that you did  
3 not know whether, in fact, students were charged fees  
4 for the field trips.  
5 A She said they were.  
6 Q But you don't know whether money was  
7 collected, do you?  
8 A No, I don't.  
9 MR. CHOATE: I would like to have marked as  
10 Exhibit 2 a document which is the Declaration of Keith  
11 Ensminger.  
12 (Deposition Exhibit 2 marked for  
13 identification by the Court Reporter.)  
14 BY MR. CHOATE:  
15 Q Have you seen this document before?  
16 A Yes.  
17 Q Would you look on page 3, please?  
18 A Okay.  
19 Q Is that your signature?  
20 A Yes.  
21 Q Would you look at paragraph 3, please?  
22 A No. 3?  
23 Q Yes, paragraph 3. Have you seen the  
24 second line where it says "I'm upset that students at  
25 Tenaya or Merced High are being charged fees for some

1 of their courses"?  
2 A Yes.  
3 Q Are you aware whether that's accurate  
4 with regard to Tenaya Middle School at the present  
5 time?  
6 MR. KREEGER: Objection. Vague.  
7 THE WITNESS: At the present time I'm not  
8 aware.  
9 BY MR. CHOATE:  
10 Q At the present time, you're not aware if  
11 whether fees are being charged to students at Tenaya;  
12 is that correct?  
13 A That's correct.  
14 Q I can't recall what your answer was  
15 previously, but has Theresa taken band at Tenaya  
16 Middle School?  
17 A She signed up for band in sixth grade.  
18 Q I thought you indicated that students  
19 don't take electives in sixth grade.  
20 A Well, how did that work? What would they  
21 do in place of that? I don't -- oh, they kind of  
22 combined it with P.E. So band -- if you signed up for  
23 band then you would go three days of band.  
24 Q But Theresa signed up for band in sixth  
25 grade?

1 A That's correct.  
2 Q And that was in the 1998 to '99 school  
3 year; is that right?  
4 A That's right.  
5 Q Did she complete the course?  
6 A No.  
7 Q She transferred out of the course?  
8 A Yes, she did.  
9 Q Why?  
10 A She is involved in gymnastics. We have  
11 her in a gymnastics program in a private club in a  
12 nearby town, and that takes a lot of her time and  
13 commitment. And band was also going to also take a  
14 lot of after-school time and commitment. And she just  
15 didn't want to do both.  
16 Q When did she transfer out of the band  
17 class? Strike that.  
18 How long was she in the band class before  
19 she transferred out?  
20 A Probably a couple of weeks.  
21 Q Was Theresa charged a fee in her band  
22 class?  
23 A We got a note that she was to pay a fee.  
24 Q You got a note? Can you describe for me  
25 what you received?

1 A It was just a letter from the teacher  
2 explaining what the band program was and that the kids  
3 needed to pay a \$45 fee -- I can't remember the exact  
4 amount -- for cleaning uniforms and things like that.  
5 Q Did the note indicate that Theresa was  
6 required to pay the fee in order to participate in  
7 band?  
8 A It says there was a fee for band and you  
9 needed to pay it as soon as possible, or something to  
10 that effect.  
11 MR. CHOATE: I'll mark as Exhibit 3 a document  
12 entitled, Tenaya Warrior Band & Color Guard handbook  
13 1998 to 1999.  
14 MR. KREEGER: Counsel, has this document been  
15 previously produced?  
16 MR. CHOATE: It was produced by the Merced City  
17 School District.  
18 THE WITNESS: I recall seeing this.  
19 BY MR. CHOATE:  
20 Q Is this the document you received from  
21 the band teacher?  
22 A I believe we received a letter from them.  
23 I'm not sure.  
24 Q Okay. Will you take a look at -- I  
25 believe it's the sixth page. There's a section

1 entitled "payment of fees."  
 2 A Payment of fees, okay.  
 3 Q Would you read that paragraph, please?  
 4 A There's a --  
 5 MR. KREEGER: He doesn't mean out loud.  
 6 THE WITNESS: I'm sorry, that's my school  
 7 background coming in, I guess.  
 8 BY MR. CHOATE:  
 9 Q Is the language in the section of the  
 10 payment of fees similar to the language that you  
 11 received in the note?  
 12 A No, the note from the band teacher says  
 13 there was a \$40 fee.  
 14 Q It didn't refer to it as a contribution  
 15 of love?  
 16 A No.  
 17 Q You can set aside the exhibit.  
 18 Did the note from the band teacher  
 19 indicate that Theresa was -- that students were  
 20 required to pay the \$40 fee to participate in band?  
 21 A Just said there was a fee.  
 22 Q Okay. Did the -- well, then it didn't  
 23 say students were required to pay \$40 to participate  
 24 in band, did it?  
 25 A You assume that that's the case. If they

1 say there's a fee to be in band, you pay it.  
 2 Q But the letter didn't say students were  
 3 required to pay a fee to participate in band, did it?  
 4 A I don't believe so.  
 5 Q Did the letter indicate that to avoid  
 6 paying the fee students had to get permission from the  
 7 band teacher or from someone else at Tenaya?  
 8 A I don't recall.  
 9 Q Do you know -- do you recall what the  
 10 dollar amount was referenced in the letter?  
 11 A It was \$40 or \$45 -- I can't remember  
 12 specifically -- somewhere in that neighborhood.  
 13 Q Do you know what the purpose of that  
 14 money was?  
 15 A To clean band uniforms, help pay for  
 16 travel to band competitions.  
 17 Q Was there any other purpose for the fee?  
 18 A Not that I recall.  
 19 Q Just to clean uniforms and to pay for  
 20 travel?  
 21 A That's what I recall. I would assume it  
 22 would be for upkeep of the instruments and things like  
 23 that.  
 24 Q What did you do when you received the  
 25 note?

1 A Well, we just filed it. Theresa said she  
 2 wanted to quit because of her conflict with  
 3 gymnastics, so we never followed up with it.  
 4 Q Did you talk with the band teacher about  
 5 the note?  
 6 A I talked with him the previous year when  
 7 Austin was in the band.  
 8 Q But when you received the letter from  
 9 Theresa, did you talk to the band teacher?  
 10 A No, I didn't.  
 11 Q Did you pay the money?  
 12 A No, we didn't pay for Theresa.  
 13 Q Okay. If you would take a look at  
 14 paragraph 4 of your Declaration, it indicates that the  
 15 band class charged your daughter a \$45 fee for  
 16 cleaning uniforms and maintaining equipment.  
 17 A Uh-huh.  
 18 Q That money was not actually paid, was it?  
 19 A That was not paid.  
 20 Q Do you know whether other students in  
 21 Theresa's band class paid \$45?  
 22 A No. I assume they did.  
 23 Q But you don't know?  
 24 A No.  
 25 Q Did you ever hear that a student in a

1 band class at Tenaya was not allowed to participate in  
 2 band for the reason of not having paid a fee?  
 3 A No.  
 4 Q Did you ever hear or did anyone ever tell  
 5 you that a student in band class had to apply for a  
 6 special waiver to avoid having to pay a fee to take  
 7 band?  
 8 A It says so in this note -- if you can't  
 9 pay come and make special arrangements with me.  
 10 Q Okay. Is it your understanding that  
 11 students in band had to obtain the permission from the  
 12 band teacher to avoid having to pay a fee?  
 13 A Uh-huh.  
 14 Q Did anybody ever tell you that?  
 15 A I assume that from this note.  
 16 Q But did anyone ever tell you that?  
 17 A No.  
 18 Q Okay. Has it ever come to your attention  
 19 that a student in band at Tenaya was excluded from  
 20 participation because of not paying a fee?  
 21 A No, it has never come -- has never been  
 22 brought to my attention.  
 23 Q Did your son Austin take band while at  
 24 Tenaya?  
 25 A Yes.

1 Q What year did he take band, if you can  
2 recall?  
3 A The year before Theresa.  
4 Q Would that be in the 1997 to 1998 school  
5 year?  
6 A I believe so.  
7 Q And did it come to your attention that --  
8 strike that.  
9 Was Austin charged a fee for  
10 participation in band?  
11 A Yes.  
12 Q Did you pay that?  
13 A Yes, I did.  
14 Q How much was it?  
15 A It was \$40 or \$45.  
16 Q How did you pay it?  
17 A I think with cash.  
18 Q Who did you pay?  
19 A To the teacher.  
20 Q Do you know what the teacher did with the  
21 money?  
22 A No.  
23 Q Do you know if other students in Austin's  
24 class were -- strike that.  
25 Do you know if other students in Austin's

1 A Yeah. Uh-huh.  
2 Q What instrument does Theresa play?  
3 A She played the flute.  
4 Q How long did she play the flute for?  
5 A Well, she started in fifth grade. And  
6 then when she quit band she never really continued  
7 with it.  
8 Q So she doesn't play the flute anymore?  
9 A No.  
10 Q Does she play any other instrument?  
11 A No.  
12 Q Do you have any reason to believe that  
13 band fees are charged to students at Tenaya at the  
14 present time?  
15 MR. KREEGER: Objection. Asked and answered.  
16 Go ahead.  
17 THE WITNESS: Yeah. They were charged this  
18 year at the beginning of the year. They paid the fee.  
19 BY MR. CHOATE:  
20 Q How do you know they were charged at the  
21 beginning of the year?  
22 A The band teacher told me they were.  
23 Q What did the band teacher tell you  
24 specifically?  
25 A Just talked about -- the band teacher

1 class paid money?  
2 A No.  
3 Q Were you ever told that Austin could not  
4 participate in band unless he paid that fee?  
5 A No.  
6 Q What kind of activities did Austin  
7 participate in while he was in band, if you know?  
8 MR. KREEGER: Objection. Vague.  
9 Answer if you understand.  
10 THE WITNESS: They had different band  
11 competitions in nearby cities. He went to those.  
12 They had performances at school in the evening for  
13 different school functions. Those were the kinds of  
14 things he participated in.  
15 BY MR. CHOATE:  
16 Q Do you have any understanding whether the  
17 \$40 that you paid for Austin to take band -- strike  
18 that.  
19 Do you have an understanding as to  
20 whether the \$40 that you paid in connection with the  
21 band class was used to help pay for those activities?  
22 A Yeah. It said in here they used it to  
23 help pay for travel. I think it said in here.  
24 Q Do you think Austin received an  
25 educational benefit from participating in band?

1 didn't tell me. At that meeting that I told you about  
2 with Pam Atkinson and the other elective teachers at  
3 the beginning of the year, that issue came up. And  
4 Pam said that we were going to continue the fees and  
5 such for this year.  
6 Q Do you know if students were actually  
7 charged at the beginning of the year in band to take  
8 band?  
9 A She said they were going to be. So I  
10 assume they were.  
11 Q Pam Atkinson said that students were  
12 going to be charged for fees for band?  
13 A She said we were going to continue with  
14 the fee structure.  
15 Q Do you actually know that students were  
16 actually charged fees or not?  
17 A No.  
18 Q Other than that conversation with  
19 Pam Atkinson and the other elective teachers, is there  
20 any other reason for you to believe that band fees are  
21 still being charged at Tenaya?  
22 A No.  
23 Q You're not aware of any student that has  
24 ever been denied participation in band class because  
25 of the failure -- strike that.

1 You're not aware of any other -- strike  
2 that.

3 I think you indicated that you were not  
4 aware of any student who has ever been denied the  
5 right to participate in band for the reason of not  
6 paying the fee.

7 A That's probably correct.

8 Q Has Theresa taken a cooking class?

9 A Yes.

10 Q When did she take the cooking class?

11 A In the fall this year.

12 Q In the fall of --

13 A 2000.

14 Q Has she taken cooking on any other  
15 occasion?

16 A I think that was the only time she took  
17 it.

18 MR. CHOATE: I would like to mark as Exhibit 4  
19 a document entitled the Declaration of Theresa  
20 Ensminger.

21 (Deposition Exhibit 4 marked for  
22 identification by the Court Reporter.)

23 BY MR. CHOATE:

24 Q Would you please take a minute and read  
25 to yourself paragraph 3?

1 When did Theresa transfer out of the  
2 cooking class?

3 A Probably about three weeks after the  
4 semester started.

5 Q Okay. How did you learn that a \$3  
6 cooking fee was charged for cooking class?

7 A The cooking teacher approached Theresa  
8 and asked her if she was going to pay the fee. And  
9 Theresa told me that that's what the teacher asked  
10 her. And so I went ahead and wrote a check and put it  
11 in the teacher's mailbox.

12 Q Did the cooking teacher have the  
13 conversation with Theresa at the beginning of the  
14 semester?

15 A Yes.

16 Q And the teacher asked Theresa whether she  
17 was going to pay the fee?

18 A Yes.

19 Q And Theresa told you?

20 A Uh-huh.

21 Q Is that a "yes"?

22 A Yes.

23 Q And then you wrote a check and gave it to  
24 the cooking teacher?

25 A That's correct.

1 A Okay.

2 Q Theresa indicates that she transferred  
3 out of cooking last semester?

4 A Uh-huh.

5 Q Is she referring to the fall semester of  
6 the 2000/2001 school year?

7 A That's correct.

8 Q Why did she transfer out of cooking?

9 A They put together a drama class and she  
10 wanted to take that.

11 Q Okay. Was Theresa charged a fee for the  
12 cooking class last semester?

13 A Yes.

14 Q Was that fee paid?

15 A Yes.

16 Q Did you pay it?

17 A Yes, I paid it.

18 Q Did you pay it in cash?

19 A Check.

20 Q Check?

21 A Uh-huh.

22 Q And who did you give the check to?

23 A To her cooking teacher.

24 Q How long after Theresa signed up for the  
25 cooking class did she -- strike that.

1 Q Did you ever discuss with the cooking  
2 teacher the fee?

3 A With respect to Austin I did but not  
4 Theresa.

5 Q Not Theresa?

6 A Uh-huh.

7 Q Why not?

8 A Because I had already talked to her  
9 before about Austin, and I figure I would just go  
10 ahead and pay it.

11 Q Why did you not just pay the fee?

12 MR. KREEGER: Say it again.

13 MR. CHOATE: I'm sorry, would you read back the  
14 question?

15 (Record read.)

16 BY MR. CHOATE:

17 Q Is there a reason why you decided not to  
18 pay the fee -- strike that.

19 Why didn't you decide not to pay the fee?  
20 A Not to pay the fee? Because she was  
21 asked -- she was asked to pay and so I figured I  
22 would.

23 Q Do you know what that --

24 A I didn't want Theresa to have any problem  
25 with her cooking teacher.

1 Q Did the -- are you aware of whether  
2 anybody ever told Theresa that she had to pay that fee  
3 in order to take cooking?

4 A I'm not aware of anybody telling her she  
5 had to.

6 Q Did anybody tell you that Theresa had to  
7 pay the fee in order to take cooking class?

8 A The teacher asked the kids to pay the  
9 fee.

10 Q But did anybody ever tell you that  
11 Theresa was required to pay the fee to take the  
12 cooking class?

13 A No.

14 Q Did anybody ever tell you or Theresa that  
15 in order to avoid paying the fee for the cooking class  
16 Theresa had to get permission from the teacher?

17 A No.

18 Q Do you know what the fee for the cooking  
19 class was used for?

20 A To buy the food.

21 Q To buy food to make in the recipes?

22 A Uh-huh.

23 Q What kind of recipes were they making in  
24 this cooking class?

25 A They made cookies, omelets. They made

1 A Uh-huh.

2 Q She indicates that she also took cooking  
3 in the seventh grade.

4 A Uh-huh.

5 Q Did you learn about the \$3 cooking fee  
6 when Theresa was in the seventh grade in the same way  
7 you learned about the fee when she took cooking this  
8 year?

9 A I don't recall how I learned about it  
10 when she was in seventh grade.

11 Q Do you recall anybody ever saying that  
12 Theresa was required to pay that fee to take cooking  
13 when she was in the seventh grade?

14 A No.

15 Q Have you ever heard of a student in the  
16 cooking classes at Tenaya who's been denied  
17 participation in the class because of the reason of  
18 not paying a fee?

19 A No.

20 Q Have you ever heard that students were  
21 required to get the permission of a teacher or someone  
22 else at Tenaya to avoid paying the fee in cooking?

23 A No.

24 Q Did Austin -- I'm sorry. Excuse me.

25 Was Theresa charged \$3 in that cooking

1 pancakes, I think.

2 Q Were the students allowed to eat the food  
3 they made?

4 A Yes.

5 Q Do you know whether they were allowed to  
6 take the food out of the classroom?

7 A Yes, they were.

8 Q They were?

9 A Uh-huh.

10 Q Did Theresa ever bring home food that she  
11 had cooked?

12 A Uh-huh.

13 Q Theresa brought food home from her  
14 cooking class?

15 A Yes.

16 Q What kinds of things would she bring  
17 home?

18 A She brought home some cookies and some  
19 muffins. That's what I remember.

20 Q Did she ask you to taste them?

21 A Oh, yeah.

22 Q Were they good?

23 A They were good.

24 Q Would you take a look at paragraph 3  
25 again of Theresa's Declaration?

1 class last year?

2 A I believe so.

3 Q And you paid the fee?

4 A Uh-huh.

5 Q Did you talk to the cooking teacher about  
6 that fee?

7 A No. I just talked to her once regarding  
8 Austin's.

9 Q Okay. And Austin took cooking on how  
10 many occasions, if you know?

11 A Once.

12 Q And was he also charged \$3?

13 A Yes.

14 Q And did you find out about the fee the  
15 same way as you found out about Theresa's?

16 A I think he told me we had to pay the \$3  
17 cooking fee or something like that.

18 Q You indicated that you had a conversation  
19 with the cooking teacher.

20 A Uh-huh.

21 Q What did you tell the cooking teacher?

22 A I just talked to her about the fee. I  
23 mentioned that it was unfortunate to have to do that  
24 but I would go ahead and pay it. She said "Yeah, I  
25 haven't enjoyed doing this. I've only collected fees



1 for about seven years before that. It was always that  
 2 the food was always provided by the school." She said  
 3 that she understood that cooking teachers in other  
 4 schools charge up to \$15 to be in cooking class, and  
 5 she tried to keep the cost as low as she could.  
 6 Q Did she tell you anything else?  
 7 A No, that was about it.  
 8 Q What was her name?  
 9 A Gean Schwizow.  
 10 Q Is she still a cooking teacher --  
 11 A Uh-huh.  
 12 Q -- at Tenaya?  
 13 Let me ask that again.  
 14 Is she still a cooking teacher at Tenaya?  
 15 A Yes, she is.  
 16 Q If I've asked you this, I can't recall:  
 17 Have you ever heard of any occasions in which a  
 18 student was not allowed to participate in cooking for  
 19 the reason of not paying a fee?  
 20 A No.  
 21 Q Did Austin also bring home food from his  
 22 cooking class that he prepared?  
 23 A Yes.  
 24 Q Was his food as good as Theresa's?  
 25 A Yeah, I think so.

1 Q Do you have any reason to believe that  
 2 cooking fees were charged in the cooking class in the  
 3 current spring semester of the 2000/2001 school year?  
 4 A I believe we -- were we talking in the  
 5 meeting about the fees continuing at the beginning of  
 6 the year.  
 7 Q In the spring semester or the current  
 8 semester?  
 9 A The current semester. Because the fee  
 10 policy was going to continue through the year, and  
 11 cooking is a semester class. So one group would take  
 12 it one semester, and another group would come in  
 13 another semester.  
 14 Q But didn't Pam Atkinson tell you two  
 15 weeks ago that students were not to be charged fees?  
 16 A She said they weren't going to be charged  
 17 fees next year.  
 18 Q Is that what she told you? I thought you  
 19 indicated that students would not be charged fees.  
 20 A She said we're not going to be charging  
 21 fees in the future.  
 22 Q And you understood that to mean next  
 23 year?  
 24 A Yes.  
 25 Q How do you know fees were collected in

1 the current spring semester for cooking?  
 2 A Well, I don't know.  
 3 Q Did you ever talk to Gean --  
 4 A Schwizow. No.  
 5 Q Let me repeat the question.  
 6 Did you ever talk to Gean Schwizow about  
 7 the charging of cooking fees in the current semester?  
 8 A No.  
 9 Q Do you think Theresa and your son Austin  
 10 got an educational benefit from taking the cooking  
 11 class?  
 12 A Yes.  
 13 Q Did you also pay the cooking fee for your  
 14 son Austin by check?  
 15 A No, by cash.  
 16 Q And you paid that directly to the cooking  
 17 teacher?  
 18 A Yes.  
 19 Q Did Theresa ever have any homework in her  
 20 cooking class, that you recall?  
 21 A I think she had some.  
 22 Q What would the homework consist of, if  
 23 you could remember?  
 24 A Seems like there was something to do with  
 25 recipes or find a recipe from home to bring into

1 class.  
 2 Q Would she ever be, as part of her  
 3 homework assignments, required to cook for her family  
 4 at home?  
 5 A No.  
 6 Q Would you look at paragraph 4 of your  
 7 Declaration, please?  
 8 A Uh-huh.  
 9 MR. KREEGER: He said your Declaration  
 10 Exhibit 2.  
 11 THE WITNESS: My Declaration? I'm sorry.  
 12 MR. CHOATE: Is Mr. Ensminger's Declaration  
 13 Exhibit 2 or Exhibit 3?  
 14 MR. KREEGER: It's 2. I've got 3 as the Band &  
 15 Color Guard Handbook.  
 16 BY MR. CHOATE:  
 17 Q Paragraph 4 says that both Austin and  
 18 Theresa were required to pay a \$5 fee for their  
 19 physical education class to buy locks for their gym  
 20 lockers; do you see that?  
 21 A Yes. Uh-huh.  
 22 Q When did Theresa take P.E.?  
 23 A Sixth and seventh grade.  
 24 Q Is P.E. a year-long course?  
 25 A Yes.

1 Q Why didn't she take P.E. in this school  
2 year?  
3 A Pam Atkinson let us home school her in  
4 P.E. because she's involved in gymnastics.  
5 Q How often does she do gymnastics per day?  
6 A She goes from 3:30 to 7:00.  
7 Q Every day?  
8 A Yeah, except Wednesday.  
9 Q Where is it?  
10 A Madera.  
11 Q Is that in Merced?  
12 A No, it's in Madera.  
13 Q Is Madera a town in Merced?  
14 A About 30 miles from Merced. We pay for  
15 that class down there.  
16 Q How do you know that Theresa was required  
17 to pay a \$5 fee for her lock in her P.E. class?  
18 A Because at the beginning of the year the  
19 school has a registration form, and it lists the items  
20 that you need to pay for -- the lock, P.E. clothes.  
21 Q Is this a registration form that is sent  
22 by the school to parents?  
23 A Yes.  
24 Q And this registration form, did it  
25 indicate that Theresa -- that students were required

1 to purchase a lock to take P.E.?  
2 A They said they needed to buy the lock.  
3 Q Okay. Was that also true for Austin when  
4 he took P.E.?  
5 A Yes.  
6 Q Did Austin take P.E. in sixth, seventh,  
7 and eighth grade?  
8 A Yes, he did.  
9 Q Did you pay for the lock for Theresa and  
10 Austin?  
11 A Yes.  
12 Q How did you pay?  
13 A Probably with a check for both of them,  
14 because we would pay for the locks, P.E. clothes, to  
15 get their yearbook all in one lump sum.  
16 Q Who would you pay?  
17 A The office. Somebody -- one of the  
18 secretaries of the principal in the office.  
19 Q Were you ever told by anybody that unless  
20 you purchased a P.E. lock for your children they would  
21 not be able to participate in P.E.?  
22 A No.  
23 Q Was Theresa allowed to keep the lock that  
24 she purchased?  
25 A Yes.

1 Q Same for Austin?  
2 A Yes.  
3 Q Where did you purchase the locks?  
4 A Where did we purchase them?  
5 Q Yeah.  
6 A We bought them from the school.  
7 Q Did you get receipts for that?  
8 A Yes.  
9 Q Do you have those receipts?  
10 A I don't know.  
11 Q Do you know if the school, Tenaya, loans  
12 locks to students?  
13 A Yes, they do.  
14 Q When Theresa took P.E. in the sixth  
15 grade, did Tenaya loan locks to students?  
16 A Yes.  
17 Q When she took P.E. in the seventh grade,  
18 did Tenaya also loan locks to students?  
19 A Yes, they would.  
20 Q Was that also true when Austin took P.E.?  
21 A Yes.  
22 Q How does that work in terms of loaning  
23 locks to students; do you know?  
24 A Well, with respect to Austin, the first  
25 year I went and told the teachers that I didn't like

1 their policy -- because they just started that when he  
2 was in seventh grade -- and I didn't want to buy a  
3 lock and they needed to give him a lock, and they did.  
4 The next year he said, "Dad let my buy a lock, because  
5 the ones they give us are old and they're raddy and  
6 they're not good."  
7 Q When Austin was in the sixth grade, was  
8 he required to purchase a lock from the school?  
9 A Not in the sixth grade.  
10 Q In the sixth grade he had the option of  
11 either purchasing a lock from the school or using a  
12 lock that was loaned to him by the school?  
13 A Yeah.  
14 Q Was it accurate to say that students at  
15 Tenaya Middle School were required to purchase P.E.  
16 locks?  
17 A I would say it's accurate to say that  
18 students assumed they need to purchase the lock.  
19 Parents assume they need to purchase the lock, because  
20 on the registration form it says that the costs for  
21 these various items is going to be whatever. It's  
22 just like a bill of sale. It says when you get it  
23 it's going to cost \$5 to get the lock.  
24 Q Did you talk to anyone in the  
25 administration or the P.E. teacher about the

1 registration form and payment of fees?  
 2 A No.  
 3 Q Why not?  
 4 A I was tired and worn out over the whole  
 5 issue, so I just figured forget it.  
 6 Q At the time that you received the  
 7 registration form for Theresa, did you know that the  
 8 school loaned locks to students?  
 9 A Yes.  
 10 Q So you knew that students weren't  
 11 actually required to purchase locks for P.E.?  
 12 A They had to come and tell the P.E.  
 13 teachers that they couldn't pay for the lock.  
 14 Q How do you know that?  
 15 A I remember being in the office paying --  
 16 you know, going through the registration and  
 17 overhearing Principal Atkinson tell other parents  
 18 that "You need to buy these items." And they didn't  
 19 give them the option of saying, you can ask us to give  
 20 them to them. They just said you need to buy them.  
 21 Q You knew, however, that Theresa could use  
 22 a lock loaned to her by the school, though?  
 23 A Uh-huh. Yes.  
 24 MR. CHOATE: I will like to mark as Exhibit 5 a  
 25 document entitled "Tenaya Middle School Physical

1 A No.  
 2 Q Are you aware of other students at Tenaya  
 3 who have elected to use a lock loaned to them by the  
 4 school?  
 5 A Yes.  
 6 Q I think you indicated that -- or you may  
 7 have indicated that Theresa did not want to use a lock  
 8 loaned by the school because it was old and raddy.  
 9 A Austin said that.  
 10 Q Austin said that?  
 11 A Uh-huh.  
 12 Q Is there any other reason?  
 13 A That was it.  
 14 Q What about for Theresa; is there a reason  
 15 why she decided not to use a lock loaned to her by the  
 16 school?  
 17 A She decided to use a lock loaned to her  
 18 by -- she didn't mention it. Austin brought it up.  
 19 So we just bought the locks for both the kids.  
 20 Q Okay. In your Declaration when it says  
 21 that both Austin and Theresa were required to pay a \$5  
 22 fee for gym locks, that's not -- that's not actually  
 23 accurate, is it?  
 24 A That was accurate with respect to the  
 25 registration form.

1 Education."  
 2 (Deposition Exhibit 5 marked for  
 3 identification by the Court Reporter.)  
 4 BY MR. CHOATE:  
 5 Q Have you ever seen this document?  
 6 A I don't recall.  
 7 Q You've never seen this?  
 8 A I don't think so.  
 9 Q I will represent to you that this was a  
 10 document provided for me by the counsel for the City  
 11 of Merced School District.  
 12 Do you see where it says locks and  
 13 lockers?  
 14 A Yes.  
 15 Q Do you see where it says locks are  
 16 available for purchase in the office and locks will be  
 17 loaned to students?  
 18 A Pardon me?  
 19 Q Do you say that locks are available in  
 20 the office for purchase or will be loaned to students?  
 21 A Yes.  
 22 Q Are you aware of any students at Tenaya  
 23 who had not been allowed to participate in P.E.  
 24 because they decided not to purchase a lock from the  
 25 school office?

1 Q But it is true that students are free to  
 2 use locks loaned to them by the school?  
 3 A By the school, yes.  
 4 Q Okay. Were either Theresa or your son  
 5 Austin charged any other fees in connection with their  
 6 P.E. courses?  
 7 A They had to buy P.E. shorts and a P.E.  
 8 shirt.  
 9 Q Okay. Did somebody tell you that they  
 10 were required to purchase P.E. shorts and P.E. shirts  
 11 from the school?  
 12 A It was on the registration form.  
 13 Q The same registration form that mentioned  
 14 the lock?  
 15 A Uh-huh.  
 16 Q Are students at Tenaya required to --  
 17 strike that.  
 18 Is there a dress code for students in  
 19 P.E. at Tenaya?  
 20 A Yes.  
 21 Q What is it?  
 22 A They have to wear the gym shorts that  
 23 have the Tenaya logo and the shirt that has the Tenaya  
 24 logo.  
 25 Q Are they not allowed to wear -- strike

1 that.  
 2 What color shorts do they wear?  
 3 A I think blue -- dark blue.  
 4 Q And what color shirt?  
 5 A I think it's kind of a gray background.  
 6 Q Are the students allowed to wear their  
 7 own shorts and shirts to P.E. if they want to?  
 8 A No.  
 9 Q They're not?  
 10 A No.  
 11 Q Would you take a look at Exhibit 5,  
 12 please?  
 13 A Okay.  
 14 Q You see where it says "uniform"?  
 15 A Uh-huh.  
 16 Q It says that students are required to  
 17 dress daily in blue shorts and a gray shirt and that  
 18 P.E. clothing is available for purchase.  
 19 A That's right.  
 20 Q What do you base your understanding that  
 21 students are required to purchase P.E. clothes from  
 22 the school?  
 23 A Because they would get in trouble if they  
 24 showed up without those uniforms.  
 25 Q Who would --

1 A The P.E. --  
 2 MR. KREEGER: Let him finish.  
 3 BY MR. CHOATE:  
 4 Q Would the P.E. teacher discipline the  
 5 students?  
 6 A Yes.  
 7 Q What would the P.E. teacher do?  
 8 A They call it a dress cut. They would  
 9 record it in their little book -- their grade book.  
 10 Q And your understanding is that students  
 11 were not allowed to wear their own blue shirts and  
 12 gray shirts to Tenaya?  
 13 A Yes.  
 14 Q Does Tenaya require that students wear  
 15 sweat pants ever in P.E.?  
 16 A They let them when it gets cold.  
 17 Q And are those sweat pants -- do they have  
 18 to be purchased from the school?  
 19 A No.  
 20 Q They can wear their own sweat pants?  
 21 A That's correct.  
 22 Q Did anybody ever tell you that either of  
 23 your children will not be allowed to participate in  
 24 P.E. unless they purchased P.E. clothing from the  
 25 school?

1 A Yeah. They would -- the kids would tell  
 2 us they got in trouble if they weren't dressed out in  
 3 those uniforms.  
 4 Q In the uniforms with the logos?  
 5 A Right.  
 6 Q Are you aware of whether all students at  
 7 Tenaya dress out in P.E. uniforms that have logos on  
 8 them?  
 9 A Yes.  
 10 Q Do you ever see students wearing clothes  
 11 other than uniforms with the logos?  
 12 MR. KREEGER: In P.E. class?  
 13 MR. CHOATE: In P.E. class.  
 14 THE WITNESS: Yes.  
 15 BY MR. CHOATE:  
 16 Q Do you know if those students were also  
 17 disciplined by their P.E. teacher?  
 18 A Probably.  
 19 Q How much do the P.E. clothes cost that  
 20 are sold by the school?  
 21 A It was \$15 altogether. I don't remember  
 22 the breakdown -- \$5 for the shirt, \$7.50 -- I believe  
 23 it came around to \$15.  
 24 Q And did you pay that amount of money for  
 25 Theresa?

1 A Yes.  
 2 Q Did you pay by cash or check?  
 3 A Probably by check, because that was on  
 4 the registration form for the lock and the yearbook.  
 5 Q And you paid that also for your son  
 6 Austin?  
 7 A Yes.  
 8 Q Did you buy P.E. clothes on just one  
 9 occasion for your children, or did you buy P.E.  
 10 clothes each year for your kids?  
 11 A I think it was just one occasion. I  
 12 think it was just once and they kept it, you know, for  
 13 the rest of the year. I mean for each year.  
 14 Q Were your children allowed to keep their  
 15 P.E. clothes like during the summer when school was  
 16 out of session?  
 17 A Yes.  
 18 Q Was Austin allowed to keep his P.E.  
 19 clothes when he graduated from Tenaya?  
 20 A Yes.  
 21 Q Exhibit 5 doesn't indicate that students  
 22 are required to purchase P.E. clothing from the  
 23 school, does it?  
 24 MR. KREEGER: Objection. Foundational grounds.  
 25 BY MR. CHOATE:

1 Q Would you take a look at the paragraph  
2 entitled "uniform"? Does that paragraph require that  
3 students are required to purchase gym clothes from the  
4 school?

5 A This paragraph doesn't. But I didn't see  
6 this. The registration forms parents get before  
7 school does say that you need to pay for the uniforms.  
8 This is probably something that's given out after the  
9 kids start school.

10 Q Would you take a look at your  
11 Declaration, please?

12 A Okay.

13 Q Your Declaration doesn't indicate that  
14 Theresa or Austin were required to purchase P.E.  
15 clothing from Tenaya; do you know why that is?

16 A That was just probably an oversight when  
17 I made up the notes for this.

18 Q Will you take a look at your daughter's  
19 Declaration. I believe that is Exhibit 4.

20 A Right.

21 Q Will you look at paragraph 7?

22 A Uh-huh.

23 Q Paragraph 7 indicates that your son was  
24 charged for a uniform in his P.E. class at Merced High  
25 School.

1 because she broke her ankle in February and couldn't  
2 really play the regular season.

3 Q Softball is just for girls; is that  
4 correct?

5 A That's correct.

6 Q Were students on the softball team  
7 required to pay any fees the take softball?

8 A They were asked to buy the hat or cap.

9 Q Is that the only thing they were asked to  
10 buy?

11 A Uh-huh.

12 Q Students on the softball team were  
13 provided uniforms?

14 A Yes, they were provided uniforms.

15 Q Free of charge?

16 A Yes.

17 Q And who asked students at Tenaya to  
18 purchase hats for softball if you know?

19 A Probably would have been their coaches.

20 Q Do you know whether softball hats were  
21 required for girls?

22 A Yeah. As far as the rule goes to play  
23 other schools, you had to have hats.

24 Q What rule is this?

25 A I don't know, whatever ground rule they

1 A That is correct.

2 Q But the Declaration doesn't say that  
3 either your son or your daughter was charged for P.E.  
4 uniforms at Tenaya.

5 A That is correct.

6 Q Why is that?

7 A I don't know. I guess it was just an  
8 oversight in the notes that I sent down to  
9 Los Angeles.

10 Q In the notes you sent down to  
11 Los Angeles?

12 A Yes.

13 Q Are you referring to the ACLU?

14 A That's correct.

15 Q Has Theresa ever taken or participated on  
16 the softball team at Tenaya?

17 A Yes.

18 Q When?

19 A She did at the end of the season this  
20 year and last year.

21 Q She played softball in her seventh grade  
22 year?

23 A Sixth and seventh grade years, yes.

24 Q And also in her eighth grade year or not?

25 A She played the last of the season,

1 had among the schools that you needed a uniform, and  
2 part of that uniform included a hat.

3 Q Did you ever see that rule?

4 A I have taught -- I've been in meetings  
5 when I coached baseball. I was in meetings with other  
6 teachers -- with other coaches where we did talk about  
7 that rule.

8 Q Is the rule the same for baseball as it  
9 is for softball?

10 A I believe so.

11 Q Who was responsible for establishing that  
12 rule, if you know?

13 A I don't know.

14 Q Do you know if that's a rule that just  
15 applies to the Merced City School district?

16 A I don't know.

17 Q How much do the softball cap cost?

18 A I think it was like \$13 or \$15.

19 Q Did you pay that fee for Theresa?

20 A Yes.

21 Q In both sixth and seventh grade?

22 A Yes, I believe so.

23 Q What did the softball cap look like?

24 A It was kind of like a visor. It wasn't  
25 really a cap but a visor.

- 1 Q Are students allowed to put their names  
2 on it?
- 3 A On the inside.
- 4 Q Do they personalize the visor in any way?
- 5 A No.
- 6 Q Does the visor have a logo on it?
- 7 A I don't recall.
- 8 Q Do you recall if it says "Tenaya" on the  
9 visor?
- 10 A I think it does, but I don't remember.
- 11 Q Did anybody ever tell you that Theresa  
12 was required to purchase the visor to play softball?
- 13 A They never -- no, they never said that  
14 you were required, just that you needed to buy the  
15 cap.
- 16 Q Anybody ever told you that to avoid  
17 paying a fee for the cap Theresa had to get the  
18 permission of the softball coach or anybody else at  
19 Tenaya?
- 20 A No.
- 21 Q Are you aware of any students who were  
22 excluded from participation in softball because they  
23 did not or chose not to purchase a cap?
- 24 A No, not at Tenaya.
- 25 Q Do you know if the softball coach --

- 1 first, let me ask you who is the softball coach at  
2 Tenaya?
- 3 A Mark Hurfert.
- 4 Q Was he Theresa's coach?
- 5 A Yes.
- 6 Q Do you know if he ever provided visors to  
7 students free of charge who didn't purchase them?
- 8 A I don't know. Dave McIntyre was her  
9 coach during sixth and seventh grade.
- 10 Q Was Theresa allowed to keep her softball  
11 cap?
- 12 A Yes.
- 13 Q Did you ever talk to either of Theresa's  
14 softball coaches about the -- about paying for the  
15 softball caps?
- 16 A No.
- 17 Q Why not?
- 18 A Like I said, I was just -- I had gotten  
19 worn out with the issue of paying for one thing after  
20 another in school. I just didn't.
- 21 Q Did you ever see anything in writing that  
22 says girls are required to purchase softball hats?
- 23 A I don't recall.
- 24 Q Let's talk about baseball. When did  
25 Austin play baseball at Tenaya?

- 1 A Sixth, seventh, and eighth grade.
- 2 Q And was Austin required to pay for a hat?
- 3 A He was told he had to buy one.
- 4 Q Did anybody ever tell you that he was  
5 required to buy one?
- 6 A They never used the word "required."  
7 They just said you need to buy a hat.
- 8 Q Did you ever hear about any students on  
9 the baseball team who were excluded from participating  
10 in baseball because they decided or chose not to  
11 purchase a baseball cap?
- 12 A No.
- 13 Q Can you describe for me what the baseball  
14 cap looks like?
- 15 A It was -- they had two different kinds  
16 when Austin played. One was a dark blue cap with a  
17 "T" on it. And the other was -- it was kind of a  
18 light blue cap with a baseball figure on the front, I  
19 think, or something like that.
- 20 Q When would they wear one versus the  
21 other?
- 22 A They wore -- the light blue one was the  
23 one they had when he was in the sixth grade. And the  
24 dark blue one was the one they had when he was in the  
25 seventh and eighth grade.

- 1 Q Were students allowed to personalize  
2 their caps in any way?
- 3 A No.
- 4 Q Never put buttons on their caps or  
5 anything like that?
- 6 A I never noticed anything like that.
- 7 Q How much did the baseball cap cost?
- 8 A \$15.
- 9 Q You paid that?
- 10 A Yes.
- 11 Q Did you pay that by check? Did you pay  
12 the \$15 for Austin by check?
- 13 A No, by cash.
- 14 Q In both and sixth and seventh grade?
- 15 A In sixth grade we had the local  
16 lumberyard donate some money for baseball equipment,  
17 and so we didn't pay for that in the sixth grade.
- 18 Q Who was Austin's baseball coach?
- 19 A I was in sixth grade.
- 20 Q What about in seventh grade?
- 21 A El Delco was in the seventh grade.
- 22 Q Did you ever talk to El Delco about the  
23 cost of the baseball cap?
- 24 A Yes.
- 25 Q What did you say to him?

1 A I said when I was coaching in sixth grade  
2 that I had a number of kids that had trouble paying  
3 for the equipment -- for the cap. And I told him that  
4 I was going to try to get some money so they didn't  
5 have to.

6 Q Was that when you went to the  
7 construction business and asked them to donate money?

8 A Yes.

9 Q When did that conversation take place  
10 with Mr. Delco?

11 A Well, in the spring three years ago when  
12 Austin was in sixth grade.

13 Q Did it ever come to your attention that  
14 any students at Tenaya were not allowed to participate  
15 in baseball cap (sic) for the reason of not purchasing  
16 a cap?

17 A No.

18 Q Do you remember if baseball coaches ever  
19 gave -- strike that.

20 Do you know if the baseball coaches ever  
21 provided students with caps who didn't purchase them?

22 A Yes. I did. And I know that El provided  
23 at least one student a cap who couldn't pay for it.

24 Q Is it your understanding that if a  
25 student did not or chose not to purchase a baseball

1 baseball coach in order to avoid paying a fee?

2 A No. Huh-uh. I had parents that were  
3 very appreciative that I was able to get hats donated  
4 when I taught the sixth grade baseball team. There  
5 was one couple I talked to about that.

6 Q And the couple was pleased that you were  
7 able to get hats donated?

8 A Right.

9 Q Was Austin allowed to keep the baseball  
10 caps?

11 A Yes.

12 Q Were students at Tenaya ever charged any  
13 other fees for courses other than -- I think we talked  
14 about band, cooking, baseball and softball?

15 A Yes, and P.E.

16 Q And locks we talked about.

17 A And field trips.

18 Q Other than field trips, were students  
19 required to pay any fees in connection with any  
20 courses?

21 A Oh, the sixth grade science teacher one  
22 time charged the students a dime for straws they were  
23 using in a science experiment.

24 Q In a science experiment?

25 A Uh-huh.

1 cap they had to get some type of permission from the  
2 coach or somebody else at Tenaya?

3 A Yes.

4 Q On what do you base that understanding?

5 A Because they would -- they would ask the  
6 kids if they could pay.

7 Q But did a child have to get the  
8 permission from the teacher to not pay the fee?

9 A To my understanding they did.

10 Q Did they have to get written permission  
11 from the teacher?

12 A I don't know. I don't think so.

13 Q Do you have to get oral permission not to  
14 pay the fee?

15 A Yes.

16 Q Do you know what the criteria were that  
17 teachers made in deciding whether or not to grant  
18 permission?

19 A If you told them you couldn't pay for it  
20 that was it.

21 Q Did you ever hear about a student who  
22 chose not to purchase a cap for any other reason?

23 A No.

24 Q Have you ever seen anything in writing  
25 that required students to seek the permission of their

1 Q How did you learn about that?

2 A Theresa told me they had to pay a dime.

3 Q Did Theresa tell you that she was  
4 required to pay the dime in order to participate?

5 A No.

6 Q Did you pay the dime?

7 A I didn't. I suppose she did.

8 Q You don't know if she did, though?

9 A No.

10 Q Other than that incident, are there any  
11 other fees that were charged to students at Tenaya?

12 A We talked about the fee for the  
13 end-of-the-year picnic, correct?

14 Q I think you mentioned that, yeah.

15 A No, there were no others.

16 Q Students were required for woodshop --

17 A They were required to pay for the  
18 materials.

19 Q To use in woodshop?

20 A Yes. Uh-huh.

21 Q Is it your understanding that the  
22 woodshop teacher did not provide wood free of charge  
23 to students in woodshop?

24 A Yes.

25 Q On what do you base that understanding?

1 A Because the kids always said they had to  
2 pay for whatever they made. Theresa said that the  
3 teacher would sit down and measure out whatever they  
4 were going to make. And he would come up with a price  
5 for that, and they were supposed to pay for that.

6 Q Is that what Theresa told you?

7 A Yes.

8 Q Did you ever talk to the woodshop teacher  
9 about this?

10 A No.

11 Q Why not?

12 A I guess because that was something that  
13 had been happening forever, I guess.

14 Q Theresa took woodshop in the sixth grade?

15 A No, she's taking woodshop now.

16 Q Is this the first time she's taken  
17 woodshop?

18 A Yes.

19 Q How much have you paid for her in  
20 woodshop?

21 A I haven't paid anything for her in  
22 woodshop.

23 Q Has she?

24 A She didn't say if she did or not.

25 Q How do you know that other students in

1 Q Well, other than what we've talked about,  
2 are there any other fees that are charged to students  
3 at Tenaya?

4 A No. That was -- that was it.

5 Q Okay. You indicated that students were  
6 charged for fees for field trips.

7 A Yes.

8 Q Is it your understanding that students  
9 may still be charged fees for field trips now?

10 MR. KREEGER: Objection. Vague.

11 Go ahead.

12 THE WITNESS: Yeah. Pat Louis told me that  
13 some of the sixth grade teachers asked the kids to  
14 bring money.

15 BY MR. CHOATE:

16 Q But you don't know whether they did or  
17 not, though?

18 A I don't know whether they did or not.

19 Q Pam Atkinson, at the meeting two weeks  
20 ago, did she indicate that fees may not be charged for  
21 field trips?

22 A She didn't mention field trips.

23 Q Do you have any reason to believe that  
24 fees are being charged right now for field trips?

25 MR. KREEGER: Objection. Vague.

1 her woodshop class were charged fees?

2 A Just what she told me.

3 Q But you never spoke to the woodshop  
4 teacher about this?

5 A No.

6 Q Do you have any understanding as to  
7 whether the projects that students make -- strike  
8 that.

9 Are students in woodshop graded on  
10 projects they make in class?

11 A Yes.

12 Q And for those projects that count toward  
13 their grades, are you required to pay fees for wood?

14 A I assume they are required to pay.

15 Q But you don't know?

16 A But I don't know.

17 Q Okay. Do you know whether students are  
18 allowed to make projects in woodshop class that are  
19 not part of the regular class activities?

20 A Say that again, please.

21 Q Let me strike that actually.

22 Are students ever allowed to make extra  
23 projects in woodshop that don't count toward their  
24 grades; do you know?

25 A I don't know.

1 THE WITNESS: Other than what Pat Louis told  
2 me?

3 BY MR. CHOATE:

4 Q Yeah.

5 A Uh-huh.

6 Q Is that a "no"?

7 A Well, that would be a yes, because she  
8 did say some teachers have been charging fees.

9 Q Other than what Pat Louis told you, do  
10 you have any reason to believe that students are  
11 presently being charged fees for field trips?

12 A No.

13 Q What do students do in your art class?  
14 What types of activities do they participate in?

15 A We -- they paint with temper paints.

16 They paint with watercolor paints. I have them make  
17 masks with different materials. We do collage, do  
18 some sculpture with the kids where they can work with  
19 clay, papier-mache. I go and scrounge a bunch of wood  
20 scraps from different construction sites and door  
21 shops and such, and they can hammer things together  
22 and build different sculptures. They draw with  
23 pencils, crayons, markers.

24 Q Do you ever ask students to pay any  
25 money?



- 1 A No.  
 2 Q Do you ever ask them to contribute money  
 3 for your class?  
 4 A No.  
 5 Q Have you ever asked them?  
 6 A No.  
 7 Q Where do you get the materials you use in  
 8 your art class?  
 9 A Through the school -- except for the  
 10 wood. And then I go out and scrounge.  
 11 Q Do you ever go out into the community and  
 12 get donations of other supplies?  
 13 A Yes.  
 14 Q What are those supplies?  
 15 A Paints. We had painted murals. Last  
 16 year we painted murals around campus. I knew some  
 17 painters and they were able to donate some paints they  
 18 had. One of the local paint stores gave us some  
 19 brushes. The lumberyard I mentioned donated some  
 20 tools -- hammers and nails and those kinds of things.  
 21 Q Are students assigned homework in your  
 22 class?  
 23 A No.  
 24 Q You never ask them to do projects at  
 25 home?

- 1 A No. Although, I do tell them if they do  
 2 a project at home that it will count as extra credit  
 3 if they bring it in.  
 4 Q Do you supply them with supplies to do  
 5 projects at home?  
 6 A If they ask for supplies, yeah.  
 7 Q Do you know if students ever used their  
 8 own supplies to do projects at home?  
 9 A Yeah, they do.  
 10 Q Are classes and extra activities at  
 11 Tenaya supported at all by fund-raising; do you know?  
 12 A Yes, they were.  
 13 Q Do you know what classes are supported by  
 14 fund-raisers?  
 15 A Band. The sixth grade had a big  
 16 fund-raiser for their field trip to the Giants game.  
 17 We have schoolwide fund-raisers. And the most  
 18 disturbing are the number of kiosks teachers are  
 19 setting up at school to sell donuts and candy to kids  
 20 to get money for school supplies.  
 21 Q Do you ever hear of the Busy Bees?  
 22 A Busy Bees, that rings a bell.  
 23 Q Was that a group that raised money for  
 24 the field trip to the Giants game?  
 25 A I don't know.

- 1 Q Do you know how much money was raised for  
 2 the trip to the Giants game?  
 3 A They had a big Halloween carnival and did  
 4 raise money that way.  
 5 Q How did students participate in that?  
 6 A They helped build the different props  
 7 that they used for the carnival. They were told to  
 8 either bring in a bag of candy or two dollars to help  
 9 with it.  
 10 Q Is that the only fund-raiser in  
 11 connection with -- that Halloween carnival, what was  
 12 that in connection with?  
 13 A The field trip to the Giants game.  
 14 Q And was that related to a class that the  
 15 students were taking?  
 16 A Yeah, the sixth grade language classes.  
 17 Q Can you describe for me any fund-raisers  
 18 that students participated in in connection with the  
 19 band class?  
 20 A They have -- they would have car washes.  
 21 I know of at least one. They would sell candy, you  
 22 know, out of the box of candy. I know they did that  
 23 on at least one occasion. Those are the only two that  
 24 I can think of.  
 25 Q Do you know if students were required to

- 1 participate in car washes and the selling of candy?  
 2 A I don't know. Although, I don't know  
 3 with the new teacher. I had an argument with Scott  
 4 Black over that, because he assumed that the children  
 5 needed to do it.  
 6 Q Who's Scott Black?  
 7 A He used to be the band teacher.  
 8 Q Did Scott Black tell you that he thought  
 9 students were required to participate in fund-raising?  
 10 A Yes.  
 11 Q When did he tell you that?  
 12 A When Austin was in sixth grade.  
 13 Q Okay. Do you know whether students at  
 14 Tenaya are, in fact, required to participate in  
 15 fund-raisers for band?  
 16 A No, they're not, because Pam Atkinson  
 17 told them that's not true.  
 18 Q Do you know when fund-raisers -- strike  
 19 that.  
 20 Do you know of any fund-raiser that  
 21 students participated in in connection with cooking?  
 22 A No.  
 23 Q What about for athletic activities?  
 24 A Theresa had fund-raisers for her softball  
 25 team. The baseball teacher is trying to organize a

1 fund-raiser for this weekend for baseball.  
 2 Q What kind of fund-raiser did Theresa  
 3 participate in for softball?  
 4 A I can't remember exactly, but it was like  
 5 a batathon. They would go out and get people in the  
 6 community to say -- you know,  
 7 I'll-give-you-50-cents-for-every-ball-you-hit kind of  
 8 deal.  
 9 Q Were students required to participate in  
 10 those fund-raisers?  
 11 A They were certainly pressured to. I  
 12 don't know they were required to.  
 13 Q How do you know they were pressured to?  
 14 A Well, the coaches would ask them and pump  
 15 it up as though that was one of the things they did in  
 16 connection with softball.  
 17 Q Were students ever told that their grades  
 18 depended on participating in fund-raisers for  
 19 softball?  
 20 A They didn't get a grade for softball.  
 21 Q Do you know if students were ever told  
 22 that in connection with band their grades depended on  
 23 participating in fund-raisers?  
 24 A I don't know if Scott Black ever told  
 25 Austin that. But he told me he thought they were

1 Q Do you know if students are required to  
 2 work at those kiosks?  
 3 A I don't know.  
 4 Q Did anybody ever tell you they were  
 5 required to do that?  
 6 A No.  
 7 Q Have you ever heard of any children who  
 8 were denied participation in a class or  
 9 extracurricular activity because they did not  
 10 participate in a fund-raiser?  
 11 A I know students that probably would have  
 12 been pressured to be in fund-raisers and such or to  
 13 pay for, but I don't know of anybody was specifically  
 14 told that they would not be able to participate in  
 15 something.  
 16 Q Tell me again how do you know that  
 17 students would be pressured.  
 18 A We had a meeting one time a couple years  
 19 ago, and Michelle Delgado jumped all over me for  
 20 telling kids that they didn't have to pay for anything  
 21 in schools.  
 22 Q Who's Michelle Delgado?  
 23 A She's a sixth grade teacher at Tenaya.  
 24 She would say, "How dare you tell children they don't  
 25 have to pay."

1 required to do fund-raisers.  
 2 Q This is what Scott Black told you?  
 3 A Yes.  
 4 Q Can you give me any other fund-raisers  
 5 that students participated in in connection with any  
 6 other classes?  
 7 A Like I said, those kiosks all over school  
 8 are part of individual teachers selling candy or  
 9 donuts to the students usually in the morning to try  
 10 to raise money for school supplies within their  
 11 classrooms.  
 12 Q Who would sell items at the kiosk?  
 13 A Michelle Delgado does. I believe Penny  
 14 Simonson does.  
 15 Q Are these students?  
 16 A These are teachers. And they have  
 17 students run the little kiosk.  
 18 Q Students are the ones who sit behind the  
 19 kiosk and collect money?  
 20 A Right.  
 21 Q Does this occur before school?  
 22 A Usually before school.  
 23 Q Does it occur after school?  
 24 A I don't know, because I'm not there. I'm  
 25 only there in the mornings now.

1 Q Did you ever see anything in writing that  
 2 says that children have to participate in  
 3 fund-raisers?  
 4 A Not in fund-raisers, no. I have seen in  
 5 writing that they had to pay a fee.  
 6 Q Okay. Do parents participate in  
 7 fund-raisers at Tenaya?  
 8 A Some. We don't have a very big parent  
 9 club.  
 10 Q Do you have something like a  
 11 parent/teacher/student association?  
 12 A Yes.  
 13 Q Do you know what it's called?  
 14 A PTSC.  
 15 Q PTSC?  
 16 A PTSC, Parent Teacher Student Club.  
 17 Q Do parents attend PTSC meetings where  
 18 fund-raising activities are talked about?  
 19 A Yes.  
 20 Q Have you heard or do you know of any  
 21 parents who complained about fund-raisers?  
 22 A Yes. Our neighbor complained about it to  
 23 Scott Black -- the same kind of instance.  
 24 Q What was the nature of the complaint?  
 25 A He just said, "My daughter is not going

1 to participate in fund-raisers. She's got enough to  
2 do."

3 Q Do you know if his daughter was excluded  
4 from any participation in activities?

5 A No, she was not.

6 Q She wasn't?

7 A She was not.

8 Q Is there any other ways in which you  
9 think students are pressured to participate in  
10 fund-raisers?

11 A I think just part -- trying to be part of  
12 the group is pressure enough to take part in the  
13 fund-raisers.

14 I know that the sixth grade carnival that  
15 was run was run through the sixth grade classes, so  
16 they had to participate in it. Or I assume they had  
17 to participate in it. Because it was part of the  
18 curriculum they had in some of those classes.

19 Q But you don't know that some of the  
20 students were required to participate in fund-raisers  
21 for that class, do you?

22 A I would imagine they had to help build  
23 props and sets in the class.

24 Q But did anybody tell you they were  
25 required to participate in fund-raising activities?

1 A No.

2 Q Are classes in extracurricular activities  
3 at Tenaya Middle School supported at all by  
4 contributions?

5 MR. KREEGER: Objection. Vague.  
6 Go ahead.

7 MR. CHOATE: Let me strike that.

8 Q Does Tenaya ask -- does anybody at Tenaya  
9 ask students or their parents to contribute money to  
10 help support the classes or extracurricular  
11 activities?

12 A I don't know if they ask about  
13 contributions.

14 Q Have you ever seen anything in writing  
15 asking for contributions?

16 A No.

17 Q Have you ever contributed money to  
18 Tenaya?

19 A Uh-huh.

20 Q For what?

21 A To buy supplies for art class. I've had  
22 to do that on occasion. What else? I've gone out and  
23 collected supplies for baseball for little league from  
24 the girls. They had some extra mitts left over, and  
25 they gave the mitts to us to use at the school.

1 Q Okay.

2 MR. KREEGER: We've been going about an hour  
3 and 20 minutes.

4 MR. CHOATE: Do you want to take a break?

5 MR. KREEGER: Sure.

6 (Recess.)

7 BY MR. CHOATE:

8 Q Mr. Ensminger, will you look at your  
9 Declaration, Exhibit 2?

10 A Uh-huh.

11 Q Take a look at the last sentence in  
12 paragraph 3, please.

13 A Okay.

14 Q That sentence indicates that  
15 approximately 80 percent of the students at Tenaya are  
16 on the free lunch program and don't have a lot of  
17 money.

18 A That's correct.

19 Q How do you know that 80 percent of the  
20 students at Tenaya are on the free and reduced lunch  
21 program or the free lunch program?

22 A When we go on the field trips we have to  
23 let the cafeteria manager know how many lunches we  
24 need, and she'll give us a printout of who's on free  
25 lunch and who isn't. The classes that I had were more

1 like 80 to 90 percent on free lunch.

2 Q Are you referring to the federal free and  
3 reduced lunch program?

4 A That's correct.

5 Q When you refer to 80 percent of the  
6 students in that sentence, are you -- do you know that  
7 80 percent of the students are eligible or 80 percent  
8 actually participate, if you know?

9 A 80 percent actually participate. Almost  
10 all of the children in K through eight participate. I  
11 mean, all of the children that can participate in that  
12 program.

13 Q Do you know what the average income of  
14 families of Tenaya's students is?

15 A Average probably around -- between 10 to  
16 20, I would imagine.

17 Q \$10,000 to \$20,000 a year?

18 A Yes.

19 Q You indicate in this sentence that since  
20 approximately 80 percent of the students at Tenaya do  
21 not have a lot of money, charging course fees to  
22 students at the school is a serious problem. What do  
23 you mean by that?

24 A It's a serious problem for students and  
25 their families.

1 I used to have a couple of kids come up  
2 to me every year with frightened expressions asking  
3 whether they really needed to pay to go on field  
4 trips. It's also a serious problem at the high  
5 school. Because since I was -- since I've been on the  
6 school site council at the high school, I've raised  
7 this issue over there. And some teachers on the  
8 council questioned students of theirs how many would  
9 not take classes that charged fees. And they were  
10 startled at the high number of students that said they  
11 wouldn't take classes that charged fees.

12 Q I'm not interested in talking at this  
13 point about Merced High School. I know that's  
14 important to you. And I appreciate that. But I just  
15 want to just focus on Tenaya.

16 A Okay.

17 Q If students at Tenaya -- strike that.

18 If the families of students at Tenaya had  
19 more money, would charging fees for participation in  
20 courses or extracurricular activities be less of a  
21 serious problem?

22 MR. KREEGER: Calls for speculation.

23 Go ahead. You can answer.

24 THE WITNESS: I think it would be a problem as  
25 far as equity goes.

1 Q Okay. Then why in your Declaration do  
2 you indicate that charging course fees to students at  
3 Tenaya is a serious problem?

4 A Because it creates a tremendous burden  
5 for families that don't have a lot of money.

6 When we lived in Folsom, we could have  
7 qualified for the subsidized school program. So we  
8 have personal experience of what that's like. And I  
9 know it is difficult for families that are poor to pay  
10 these things.

11 Q In paragraph 3 you indicate that you're  
12 upset as a teacher and as a parent.

13 A Yes.

14 Q How are you upset as a teacher?

15 A I got into public education under the  
16 belief that parents could send their children to my  
17 classroom and I would never have to charge them for  
18 anything, and I would never have to ask their children  
19 to go out and raise money just so they could be part  
20 of my classroom.

21 Q And how are you upset as a parent?

22 A It's upsetting knowing for me I can --  
23 let's say we're talking about \$15 -- that, you know, I  
24 make that pretty quickly. And it's upsetting knowing  
25 that other children's parents might have to work a lot

1 BY MR. CHOATE:

2 Q What do you mean by that?

3 A I think students especially are aware of  
4 how unfair it would be to charge a set fee to families  
5 with varying kinds of incomes.

6 Q But would the problem be -- the problem  
7 as you would have referred to it in this  
8 Declaration -- be any less serious if students had  
9 more money?

10 MR. KREEGER: Same objection. Go ahead.

11 THE WITNESS: I think it would be more serious,  
12 because then it would open up a bigger green light to  
13 start charging people for school.

14 BY MR. CHOATE:

15 Q Do you feel that it would be more serious  
16 of a serious problem to charge students fees -- strike  
17 that.

18 Do you think it's more serious of a  
19 problem to charge wealthy students school fees than it  
20 is to charge poor students school fees?

21 A No.

22 Q Does the amount of money that a student's  
23 family have, is that irrelevant to the issue in your  
24 mind?

25 A Yes, I believe it is.

1 longer to make that same kind of money just to have  
2 our children sit together in the same classroom.

3 Q As we sit here today, is it your  
4 understanding that the policy at Tenaya Middle School  
5 is that students not be charged fees for  
6 extracurricular courses or activities?

7 A It's my understanding that that will be  
8 the new policy, yes.

9 Q But it is your understanding that that is  
10 not the current policy at Tenaya?

11 MR. KREEGER: Objection. Vague.

12 Go ahead.

13 THE WITNESS: All I can tell you is what Pam  
14 Atkinson told us at the meeting either two weeks or  
15 three weeks ago.

16 BY MR. CHOATE:

17 Q But you've seen Exhibit 1 which is Merced  
18 School District's policy against fees?

19 A Yes.

20 Q Don't you believe that that's the  
21 official policy of the district?

22 A That might be the official policy, but  
23 unofficially it happens.

24 Q I thought you told me earlier that you  
25 had no reason to believe that students are being

1 charged fees in courses right now at Tenaya.  
 2 MR. KREEGER: Objection. Vague.  
 3 Argumentative.  
 4 Go ahead.  
 5 THE WITNESS: Like I said, when teachers ask  
 6 them to pay for something, most people now assume that  
 7 they need to pay for it.  
 8 BY MR. CHOATE:  
 9 Q I think you indicated earlier that you  
 10 felt some students were discouraged from taking field  
 11 trips because of the issue of money.  
 12 A Uh-huh.  
 13 Q Has a student ever come to you and  
 14 indicated that he or she felt discouraged from  
 15 participating in a field trip?  
 16 A Yes.  
 17 Q How many occasions?  
 18 A I was going to answer that. It used to  
 19 happen at least a couple of times. I mean with a  
 20 couple of students a year. They would come and ask,  
 21 do we really need to pay money to go on the field  
 22 trip? And they would be frightened. And you could  
 23 see they were clearly distressed.  
 24 Q So during any given year, there would be  
 25 a couple of students who would come to you and talk to

1 you about field trips and you understood that they  
 2 were distressed?  
 3 A That's correct.  
 4 Q Okay. What would you tell those  
 5 children?  
 6 A I told them the teachers had no right to  
 7 charge them for school activities.  
 8 Q Did you tell them that they were not  
 9 required to pay any fee to participate in any  
 10 activity?  
 11 A Yes.  
 12 Q Are you aware of any occasions on which a  
 13 student at Tenaya was not allowed to participate in a  
 14 field trip for the reason of not paying a fee?  
 15 MR. KREEGER: Asked and answered.  
 16 Go ahead.  
 17 THE WITNESS: I told you about that one  
 18 instance earlier this morning about the student that  
 19 was left behind.  
 20 BY MR. CHOATE:  
 21 Q That was the death child, correct?  
 22 A Yes.  
 23 Q Other than that occasion, are you aware  
 24 of any other students that have not been allowed to  
 25 participate?

1 A No.  
 2 Q Would you please look at -- strike that.  
 3 We've talked today about a lot of  
 4 different fees. We talked about band fees, cooking  
 5 fees, fees associated with physical education, fees  
 6 associated with athletic teams, and with field trips.  
 7 Have you told me all of the fees that have been  
 8 charged at Tenaya that concern you?  
 9 A The only other one I might not have  
 10 mentioned was when the kids were told to pay an  
 11 admission to a play at a local college. But that's  
 12 related to field trips.  
 13 Q Can you tell me when that occurred?  
 14 A That was a couple, three years ago. I  
 15 can't recall exactly when it was.  
 16 Q Was the field trip to the play -- the  
 17 play was at a college?  
 18 A Yes.  
 19 Q And was the field trip to that play  
 20 associated with a specific class at Tenaya?  
 21 A The sixth grade language classes.  
 22 Q How much was collected from each student,  
 23 if you know?  
 24 A I think it was \$3.  
 25 Q Did the sixth grade language teacher ask

1 students to pay that?  
 2 A I assume so.  
 3 Q And who was the sixth grade language  
 4 teacher? You may have told me.  
 5 A Well, I think it was the whole entire  
 6 sixth grade that went. So it would have been all of  
 7 the language teachers in the sixth grade.  
 8 Q And do you know whether the language  
 9 teachers ever told students that they could not  
 10 participate in the fund-raiser unless they paid \$3?  
 11 A I do not know whether any students were  
 12 not allowed to participate on that field trip for not  
 13 paying any fees. I don't know that.  
 14 Q Have you told me now about all of the  
 15 fees at Tenaya?  
 16 A Yes.  
 17 Q Are there any other conditions at your  
 18 school that you contend deprive students of  
 19 educational opportunities?  
 20 A One of the issues we raise in there is  
 21 the lack of foreign language classes.  
 22 Q Okay. Let's talk about that.  
 23 A That's my Declaration.  
 24 Q That's your Declaration paragraph 6?  
 25 A Right.

1 Q Your Declaration indicates that you had a  
2 discussion with principal -- with the principal of  
3 Tenaya about the offering of foreign language classes.  
4 A That's correct.  
5 Q Is that Principal Atkinson?  
6 A That's correct.  
7 Q Do you recall when you had that  
8 conversation?  
9 A I think it was the -- I think it was last  
10 year -- the year before.  
11 Q Would that be either 1999 or 2000?  
12 A Yeah, one of the two.  
13 Q You can't recall any more specifically as  
14 to when it might have been?  
15 A No, I don't recall.  
16 Q Okay. Who initiated that conversation,  
17 if you can remember?  
18 A Probably me. We were talking -- you  
19 know, I would talk with her frequently about school  
20 issues. And she just mentioned "Yeah, it would nice  
21 if we could offer foreign language classes. We're  
22 supposed to, but we just don't have the money to do  
23 that."  
24 Q Okay. Principal Atkinson told you in  
25 this conversation that Tenaya was supposed to provide

1 language courses -- foreign language courses?  
2 A Yes. She said that schools were legally  
3 obligated to provide foreign language courses in the  
4 middle schools but that we weren't able to because we  
5 didn't have the money for the teachers.  
6 Q Did she indicate to you what foreign  
7 language courses Tenaya was supposed to provide?  
8 A No.  
9 Q What did you say to her in response to  
10 that, if you can remember?  
11 A Just generally that that's probably a  
12 pretty sad state for California public education.  
13 Foreign language classes were available to me when I  
14 was in junior high school.  
15 Q Okay. Have you had any further  
16 conversations with Principal Atkinson about foreign  
17 languages at Tenaya?  
18 A No, I don't think so.  
19 Q Have you had any conversations with  
20 anybody else about the offering of foreign language  
21 classes at Tenaya?  
22 A Yes.  
23 Q With whom?  
24 A David McIntyre. He's a seventh grade  
25 language teacher.

1 Q Anybody else?  
2 A And Carmen Pedrozo.  
3 Q Who is Carmen?  
4 A She's a seventh -- no, she's the eighth  
5 grade -- they call it SDC -- kids who are learning and  
6 handicapped. She teaches that class.  
7 Q SDC?  
8 A SDC.  
9 Q Anybody else?  
10 A I think that's probably it.  
11 Q Did you talk to Dave McIntyre on multiple  
12 occasions about the offering of foreign language  
13 classes at Tenaya?  
14 A Yes.  
15 Q Do you know how many times?  
16 A Probably at least five or six.  
17 Q Can you tell me what the gist of those  
18 conversations were?  
19 A That we serve a student body that comes  
20 from homes that speak primarily another language other  
21 than English and it would be nice to be able to take  
22 advantage of that and offer languages to help them  
23 become fluent in whatever language. It would be a  
24 natural for us since so many students speak other  
25 languages besides English at home.

1 Q Anything else?  
2 A That would be pretty much the gist of  
3 it -- that it was a shame that we couldn't do that and  
4 that we should take advantage of, you know, the kinds  
5 of skills these kids have.  
6 Q About how many occasions did you speak  
7 with Carmen Pedrozo, if you can recall?  
8 MR. KREEGER: About foreign language?  
9 MR. CHOATE: About foreign language.  
10 THE WITNESS: Probably a couple.  
11 BY MR. CHOATE:  
12 Q Can you tell me what the gist of those  
13 conversations was?  
14 A About 10 years ago the principal that we  
15 had there had kind of pressured her to take on a  
16 Spanish class -- I guess because she speaks Spanish  
17 fluently -- and basically that she felt very put upon  
18 because she had enough to do with her regular class --  
19 and besides taking on more -- an additional  
20 assignment -- and that there weren't any materials to  
21 teach it anyway. And she had to basically make stuff  
22 up. That was basically the gist of it.  
23 Q Okay. When you, I think, referred to --  
24 you indicated she was the principal there about 10  
25 years ago. Were you referring to Tenaya?

1 A No, Tenaya was not the principal.  
 2 Q I'm sorry. I mean a teacher at Tenaya.  
 3 A Yeah, Carmen was a teacher at Tenaya.  
 4 The principal at that time was Tom Parker. And he had  
 5 kind of pressured her to do that. But she never had  
 6 materials to use to teach the class.  
 7 Q I think you indicated earlier this  
 8 morning that according to your understanding you are  
 9 representing a class of students who have been charged  
 10 or are charged fees at school. Are you representing  
 11 any other class of students to your understanding?  
 12 A No.  
 13 Q Are you not representing another class of  
 14 students?  
 15 A No.  
 16 MR. KREEGER: Objection. Calls for a legal  
 17 conclusion.  
 18 You can give him your understanding.  
 19 THE WITNESS: My understanding is I'm  
 20 representing a class of students in California that  
 21 are being asked to pay fees for schools.  
 22 BY MR. CHOATE:  
 23 Q And is that it?  
 24 A That's it.  
 25 Q Okay. Have you told me about all of the

1 occasions -- strike that.  
 2 Have you now told me about all of the  
 3 conditions at Tenaya that you contend deprives  
 4 students at Tenaya of educational opportunities?  
 5 A Currently, yes.  
 6 Q Okay. Let me ask you this: Is Tenaya  
 7 teaching any foreign language classes now?  
 8 A No.  
 9 Q What type of relief are you seeking in  
 10 this lawsuit?  
 11 MR. KREEGER: Objection. Calls for expert  
 12 testimony. Calls for a legal conclusion.  
 13 Answer if you understand.  
 14 THE WITNESS: That the state would recognize  
 15 that we've for the last 20 years probably have been  
 16 pushing off school financing more and more on parents'  
 17 backs. And they need to pay those kinds of fees.  
 18 It's always been for generations in California that  
 19 some things that has been the cost of schools has been  
 20 borne by the state, and that they need to take that  
 21 cost on again. It's not fair to push that cost off to  
 22 parents just because they have children in schools.  
 23 BY MR. CHOATE:  
 24 Q When you say they need to take on that  
 25 cost, again are you referring to the state government?

1 A The state, yes.  
 2 Q Do you feel that the state needs to spend  
 3 more money on education?  
 4 A Yes.  
 5 Q Do you want to -- are you -- strike that.  
 6 Is there any other type of relief that  
 7 you're looking for?  
 8 MR. KREEGER: Same objections.  
 9 You can answer.  
 10 THE WITNESS: If the state was to recognize  
 11 that they need to pay for everything associated with  
 12 public schools, that they also make sure that teachers  
 13 are not put in a position that they have to charge,  
 14 and that they won't charge kids or their families for  
 15 schools.  
 16 BY MR. CHOATE:  
 17 Q How would you like the -- strike that.  
 18 How do you want the state to assure that  
 19 teachers are not put in a position where they feel  
 20 they have to charge fees?  
 21 MR. KREEGER: Objection. Calls for expert  
 22 testimony.  
 23 THE WITNESS: I don't know how they would do  
 24 that other than just try and publicize the fact that  
 25 money is available now for school supplies and

1 materials, and that teachers don't need to charge  
 2 children and their parents for school activities.  
 3 BY MR. CHOATE:  
 4 Q Okay. What do you want to see at Tenaya?  
 5 MR. KREEGER: Objection. Vague.  
 6 MR. CHOATE: That was not a very good question.  
 7 Q Would you like to see anything changed at  
 8 Tenaya as a result of this lawsuit?  
 9 A Yes. I would like to see that teachers  
 10 have adequate supplies in their classroom so that they  
 11 don't have to purchase it themselves. Or that --  
 12 well, apparently they're not going to charge students  
 13 in the future. Although, that's going to be a burden  
 14 that we're going to have to deal with as a staff now.  
 15 So I guess that's the kind of relief that I would like  
 16 to see happening at Tenaya -- that we have more money  
 17 available for school supplies.  
 18 Q That's fair enough. Do you think that --  
 19 I'm not speaking about Tenaya now; I'm just speaking  
 20 in general. Do you think that charging fees impacts  
 21 on -- impacts a child's ability to get an education?  
 22 MR. KREEGER: Objection. Vague. Calls for  
 23 expert testimony.  
 24 You can answer.  
 25 THE WITNESS: Yes, I think it does.

1 BY MR. CHOATE:  
 2 Q Can you tell me how?  
 3 MR. KREEGER: Same objection.  
 4 THE WITNESS: It puts them in a position of  
 5 having to decide whether they should take a class or  
 6 not. And children should not have to decide that in  
 7 public schools in California.  
 8 Since we're talking in a general sense, I had  
 9 mentioned how that issue is a major issue at Merced  
 10 High School and how a number of students won't take  
 11 foreign language, they won't take shop, band, sports  
 12 programs because of the fees.  
 13 MR. CHOATE: I'm going to move to strike that  
 14 as nonresponsive -- everything after -- from the point  
 15 where he talks about Merced High School on.  
 16 Q Do you think Tenaya is a good school?  
 17 A I think so.  
 18 Q Why do you think it's a good school?  
 19 A I think there are some teachers there  
 20 that really care about doing the best job they can. I  
 21 think we have a student body that generally wants to  
 22 do well.  
 23 Q Any other reasons?  
 24 A That's about it I guess.  
 25 Q Can you describe for me the range of

1 educational experiences that you think students have  
 2 at Tenaya?  
 3 MR. KREEGER: Objection. Vague. Calls for a  
 4 narrative.  
 5 THE WITNESS: Well, they can take the regular  
 6 language and reading classes. They have math and  
 7 science available to them, some sports programs  
 8 available, and the few elective classes that they have  
 9 available to them.  
 10 BY MR. CHOATE:  
 11 Q Do you think students at Tenaya have an  
 12 opportunity to get a good education?  
 13 A Not as good as they should.  
 14 Q Why is that?  
 15 A Because we're struggling for materials  
 16 that they can use. We're always struggling with that.  
 17 MR. CHOATE: Let's take a break for about 5  
 18 minutes or 10 minutes.  
 19 MR. KREEGER: Okay.  
 20 (Recess.)  
 21 BY MR. CHOATE:  
 22 Q Mr. Ensminger, earlier you indicated that  
 23 you thought that government should pay for everything  
 24 associated with education. Could you describe for me  
 25 a little bit more specifically what you mean by that?

1 MR. KREEGER: Objection. Vague. Asked and  
 2 answered.  
 3 Go ahead.  
 4 THE WITNESS: I think that parents have the  
 5 right to send their children to any public school in  
 6 California and know that they're going to receive a  
 7 free education and that the materials in those schools  
 8 are also going to be made available for their  
 9 children.  
 10 BY MR. CHOATE:  
 11 Q Free of charge?  
 12 A Free of charge.  
 13 Q You know, you had talked today about, I  
 14 think, a field trip of students that went to see a  
 15 Giants game. I imagine that would be here in  
 16 San Francisco.  
 17 A Yes.  
 18 Q Do you feel that government has an  
 19 obligation to pay for opportunities like that for  
 20 students?  
 21 MR. KREEGER: Objection. Vague.  
 22 Go ahead.  
 23 THE WITNESS: I think field trips are an  
 24 important part of the children's experience in school.  
 25 BY MR. CHOATE:

1 Q Do you think that the government should  
 2 have paid for that field trip?  
 3 A Yeah, I think that they -- uh-huh.  
 4 Q You think they should have paid for that?  
 5 A I do, yes.  
 6 Q Would you like to see a certain amount of  
 7 money allocated for schools for the purposes of field  
 8 trips?  
 9 MR. KREEGER: Objection. Vague. Calls for  
 10 expert testimony.  
 11 Go ahead.  
 12 THE WITNESS: I mentioned the \$200 in the  
 13 letter that I wrote to Senator Monteith and Cardoza as  
 14 a possibility. That would certainly go a long way.  
 15 BY MR. CHOATE:  
 16 Q Increasing it \$200?  
 17 A Yes, above what we currently have for  
 18 ADA.  
 19 Q Per student?  
 20 A Per student.  
 21 Q You made a reference a few times to a  
 22 Tulare County Grand Jury report.  
 23 A Yes.  
 24 Q I think that had to do with fees they've  
 25 been charging in Tulare County.



1 A Yes.

2 Q Do you know whether schools in Tulare  
3 County are named at all or referenced in the Complaint  
4 in this action?

5 A There are a couple of schools from Tulare  
6 County.

7 Q Okay. Would you like to see new policies  
8 at the district level in Merced relating to student  
9 fees?

10 MR. KREEGER: Objection. Vague.

11 THE WITNESS: Yeah, I would like to see them  
12 stopped. I guess it would be nice to see a new policy  
13 that states that there is a need for the school  
14 district to provide more money for things so that this  
15 doesn't have to become an issue.

16 BY MR. CHOATE:

17 Q When you refer to "this," you mean the  
18 school fees?

19 A That's correct.

20 Q Do you believe a lot of teachers -- that  
21 there are many other teachers at Tenaya who share your  
22 views?

23 A Yes, there are.

24 MR. KREEGER: Objection. Calls for  
25 speculation.

1 issue?

2 A Yes, I would.

3 MR. KREEGER: I have no further questions.

4 MR. CHOATE: I'm going to need to take a break  
5 and we can come back in about 10 minutes or 5 minutes,  
6 okay?

7 MR. KREEGER: For redirect on this?

8 MR. CHOATE: I just need to make a phone call.

9 Can we go off the record.

10 (Recess.)

11 FURTHER EXAMINATION

12 BY MR. CHOATE:

13 Q Mr. Ensminger, when your counsel asked  
14 you whether you were willing to serve as class  
15 representative for other issues referenced in the  
16 First Amended Complaint you said yes. Can you tell me  
17 what you meant by that?

18 MR. KREEGER: Objection. Vague.

19 Go ahead.

20 THE WITNESS: Just that class, I guess, means  
21 the group of us trying to convince the state that they  
22 need to do something to improve public education.

23 BY MR. CHOATE:

24 Q Well, today we've been talking about  
25 school fees. And that's what we talked about. Those

1 Go ahead.

2 MR. CHOATE: I'll remove the question. I don't  
3 think I have any other questions at this time.

4 EXAMINATION

5 BY MR. KREEGER:

6 Q I just have a few.

7 A Okay.

8 Q Have you reviewed the Complaint that was  
9 filed in this action?

10 A Yes.

11 Q The Complaint raises other issues than  
12 just the school fees issue?

13 A Yes, it does.

14 Q Are you generally familiar with the other  
15 issues that are mentioned in the Complaint?

16 A Yes, I am.

17 Q Are you willing to serve as a  
18 representative for a class that's composed of not just  
19 students who suffer from the imposition of fees but  
20 also suffer from the other conditions suffered in the  
21 Complaint?

22 A Yes, I would.

23 Q And are you willing to supervise the  
24 attorneys representing the plaintiffs in this case  
25 with respect to all of the issues not merely the fees

1 arc the allegations in the Complaint regarding Tenaya  
2 in the First Amended Complaint. And those are the  
3 allegations referenced in your Declaration and your  
4 daughter's Declaration.

5 A Correct.

6 Q Are you contending that any other  
7 conditions that may exist in other schools referenced  
8 in the Complaint also exist in Tenaya?

9 MR. KREEGER: Asked and answered.

10 You can go ahead.

11 THE WITNESS: Not to the extent that they're  
12 discussed in the Complaint, but I'm aware of those  
13 kinds of issues in other schools.

14 BY MR. CHOATE:

15 Q But are you contending that any of the  
16 other conditions that may exist at other schools in  
17 the Complaint exist at Tenaya?

18 MR. KREEGER: Objection. Vague. Compound.

19 Go ahead.

20 THE WITNESS: Yeah. Like I said, to a certain  
21 extent some of those do.

22 BY MR. CHOATE:

23 Q Can you tell me what those are?

24 A Cockroaches.

25 Q Okay.

1 A Lack of materials.  
 2 Q Anything else?  
 3 A Overcrowding.  
 4 Q Anything else?  
 5 A That's all I can think of.  
 6 MR. CHOATE: Okay. Well, I'll need to go  
 7 through these issues.  
 8 MR. KREEGER: Off the record for a moment.  
 9 (Discussion off the record.)  
 10 MR. CHOATE: I've gotten no further questions  
 11 at this time. Counsel for plaintiffs and I have  
 12 agreed that plaintiffs will not put on any evidence at  
 13 trial relating to conditions at Tenaya other than the  
 14 issue of school fees from any witness including  
 15 Mr. Ensminger and Theresa Ensminger and any other  
 16 witness.  
 17 MR. KREEGER: And the foreign language.  
 18 MR. CHOATE: And the issue of the availability  
 19 of the foreign language classes at Tenaya.  
 20 Counsel for plaintiffs has indicated that  
 21 plaintiffs may or may not put on additional evidence  
 22 at trial relating to conditions other than the schools  
 23 fees issue at other schools in the Merced School  
 24 District.  
 25 And we agree that if plaintiffs do decide to

1 MR. KREEGER: Yes.  
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1 put on evidence relevant to other school fees at  
 2 schools in the Merced City Elementary School District  
 3 other than at Tenaya, that the state will have a --  
 4 will be given an opportunity to depose Mr. Ensminger  
 5 about any of those issues at a sufficient time in  
 6 advance of trial.  
 7 MR. KREEGER: That's agreed.  
 8 MR. CHOATE: Let me get a stipulation on the  
 9 record about the deposition.  
 10 May we stipulate that the original of this  
 11 deposition be signed under penalty of perjury; that  
 12 the original be delivered to the office of Morrison &  
 13 Foerster; that the Reporter is relieved of liability  
 14 for the original of the deposition; that the witness  
 15 will have 15 days of the date of the Reporter's  
 16 transmittal letter to Mr. Kreeger to sign and correct  
 17 the deposition, and that Mr. Kreeger shall notify all  
 18 parties in writing of any changes to the deposition;  
 19 and that if there are no such changes communicated or  
 20 signature within that time, that any unsigned and  
 21 uncorrected copy may be used for all purposes as if  
 22 signed and corrected.  
 23 MR. KREEGER: That's agreed. Thank you.  
 24 THE REPORTER: Mr. Kreeger, are you ordering a  
 25 copy of the deposition today?

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 8  
 9 I, KEITH ENSMINGER, do hereby declare  
 10 under penalty of perjury that I have read the  
 11 foregoing transcript; that I have made such  
 12 corrections as noted herein, in ink, initialed by me,  
 13 or attached hereto; that my testimony as contained  
 14 herein, as corrected, is true and correct.  
 15 EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_,  
 16 20\_\_\_\_\_, at \_\_\_\_\_,  
 (City) (State)  
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I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: \_\_\_\_\_

\_\_\_\_\_  
CASSANDRA HARPER  
CSR No. 11934