

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

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ELIEZER WILLIAMS, a minor, by)
Sweetie Williams, his guardian ad)
litem, et al.,)

Plaintiffs,)

vs.) No. 312236

STATE OF CALIFORNIA; DELAINE)
EASTIN, State Superintendent of)
Public Instruction; STATE)
DEPARTMENT OF EDUCATION; STATE)
Board of Education,)

Defendants.)

DEPOSITION OF
LILI MALABED

Volume II
(Pages 223 through 373)
December 10, 2001

REPORTED BY: JOHNNA FORD CSR 11268 JOB 5-114611

<p style="text-align: right;">Page 224</p> <p style="text-align: center;">I N D E X</p> <p style="text-align: center;">INDEX OF EXAMINATIONS</p> <p>EXAMINATION BY:</p> <p>Mr. Rosenthal..... 226</p> <p style="text-align: center;">--o0o--</p>	<p style="text-align: right;">Page 226</p> <p style="text-align: center;">--o0o--</p> <p>ACLU FOUNDATION OF SOUTHERN CALIFORNIA, 1616 Beverly Boulevard, Los Angeles, California 90026-5752, represented by CATHERINE E. LHAMON, Attorney at Law, appeared as counsel on behalf of the Plaintiffs.</p> <p>O'MELVENY & MYERS LLP, 400 South Hope Street, Los Angeles, California 90071-2899, represented by MICHAEL ROSENTHAL, Attorney at Law, appeared as counsel on behalf of the Defendant, State of California.</p> <p style="text-align: center;">--o0o--</p> <p>EXAMINATION BY MR. ROSENTHAL</p> <p>MR. ROSENTHAL: Q. Good morning, Ms. Malabed. My name is Michael Rosenthal, as you probably remember, and I represent the State of California in this action. During our first day, we went over some basic ground rules as to how we were going to conduct the deposition. Do you remember those rules or would you like me to go over them?</p> <p>A. No, I remember them.</p> <p>MR. ROSENTHAL: Before we begin, I know Ms. Lhamon wanted to make a representation about the changes to your first day of testimony. Why don't you go ahead and do that.</p> <p>MS. LHAMON: Thank you. We have the changes</p>
<p style="text-align: right;">Page 225</p> <p>IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN FRANCISCO</p> <p style="text-align: center;">--o0o--</p> <p>ELIEZER WILLIAMS, a minor, by) Sweetie Williams, his guardian ad) litem, et al.,)</p> <p style="text-align: center;">) Plaintiffs,)</p> <p style="text-align: center;">) vs.) No. 312236)</p> <p>STATE OF CALIFORNIA; DELAINE) EASTIN, State Superintendent of) Public Instruction; STATE) DEPARTMENT OF EDUCATION; STATE) Board of Education,)</p> <p style="text-align: center;">) Defendants.)</p> <p style="text-align: center;">--o0o--</p> <p>BE IT REMEMBERED that, pursuant to notice and on Monday, December 10, 2001, commencing at 9:44 a.m. at O'Melveny & Myers LLP, 275 Battery Street, Conference Room 26 West, San Francisco, California, before me, JOHNNA FORD, a Certified Shorthand Reporter, personally appeared</p> <p style="text-align: center;">LILI MALABED</p> <p>called as a witness by the Defendant State of California, who, having been first duly sworn, was examined and testified as follows:</p>	<p style="text-align: right;">Page 227</p> <p>with us today for the first day of Ms. Malabed's deposition and just for the court reporter and for a clean record and Michael, we thought it would be better for me to send them with a letter rather than handing them to Michael and to the court reporter today, so when I return to my office, which won't be until Thursday of this week, I will mail them and, Michael, I understand that you agree that will be timely?</p> <p>MR. ROSENTHAL: I have no objection to that and we will accept that as timely.</p> <p>MS. LHAMON: Thank you.</p> <p>MR. ROSENTHAL: Q. Ms. Malabed, can you tell me what you did to prepare for your deposition today excluding what you did prior to your first day?</p> <p>A. Nothing.</p> <p>Q. Did you review any documents?</p> <p>A. I looked at the transcript of my deposition from November 1st.</p> <p>Q. Did you review any other documents?</p> <p>A. Nothing.</p> <p>Q. Did you have any meetings with counsel?</p> <p>A. No.</p> <p>Q. Did you discuss your testimony from your first day with anybody since the day you gave that testimony?</p>

1 A. Yes.

2 Q. Can you tell me who you discussed it with?

3 A. I know I at least spoke to my husband and
4 possibly, I'm not sure, but I possibly spoke to one or
5 more of my sisters and one or more friend.

6 Q. Did you speak to any of your current
7 colleagues at the San Francisco School?

8 A. I think someone asked -- I think if anyone
9 asked me how it went, I just said it was fine, but we
10 didn't talk about it in detail, what the questions or
11 what the answers were, or anything like that.

12 Q. Did you speak to any of your former
13 colleagues at Bryant about the testimony you gave?

14 A. No, I don't think so. I don't think so. I
15 haven't been in contact with any of them by voice. I
16 don't think so.

17 Q. Would it be helpful if I ran down the list
18 of some of your former colleagues? Might that jog your
19 memory?

20 A. No. No, I know I haven't spoken by voice to
21 anyone. And I think the content of most of the
22 conversations that I've been having with ex-colleagues
23 is about getting together for dinner or something like
24 that, but we haven't spoken about the deposition.

25 Q. When you excluded speaking to any of them by

1 with them about your testimony.

2 A. No.

3 Q. Okay.

4 A. No; huh-uh, that is why I hesitated because
5 it was about having lice, getting lice.

6 Q. I'm thankful we're sitting across the table
7 from each other.

8 A. I don't think I have it anymore.

9 MS. LHAMON: The joys of teaching school.

10 THE WITNESS: It's bizarre. You just never
11 know. I didn't think I had them when they found them
12 on me.

13 MR. ROSENTHAL: Q. As you may recall during
14 your first day of testimony, we were discussing some of
15 the concerns you had at Bryant regarding textbooks and
16 I would like to pick up where we left off.

17 A. Okay.

18 Q. We had largely covered your concerns about
19 the shortage of textbooks and other instructional
20 materials that you experienced during your five years
21 at Bryant and we had also discussed some concerns you
22 had about some of the materials you used being outdated
23 and I would like to pick up basically right there. Did
24 you have any other concerns about any of the textbooks
25 or instructional materials that you used at Bryant?

1 voice, did you communicate with them in any other way
2 about your testimony?

3 A. Yes, I've exchanged e-mails with Gina
4 Martinez and Tanya Oster.

5 Q. Are both of those individuals former
6 colleagues of yours at Bryant?

7 A. Yes.

8 Q. Were they both teachers?

9 A. Yes, they are both still teachers there.
10 They are 2nd grade teachers.

11 Q. Did you communicate with them by e-mail
12 separately or was it e-mail --

13 A. Separately.

14 Q. Do you recall your substance of your e-mail
15 communications with Ms. Martinez?

16 A. Yes.

17 Q. Can you tell me the substance of that
18 e-mail?

19 A. I had to tell her I had lice, that I got
20 lice and that I could not get together with her until I
21 got rid of the lice and the same came up with Tanya
22 Oster because the three of us were supposed to go out
23 to dinner.

24 Q. And perhaps my question was unclear. I
25 apologize. I was wondering if you had communicated

1 Did you have any concerns that any of those materials
2 were outdated that you haven't already told me about?

3 A. In our last conversation, I mentioned the
4 reference materials in the library which were
5 encyclopedias that were at least ten years old. The
6 globes I had in my room, which were out of date, had
7 political boundaries on them that were out of date.
8 The maps in my room had -- the key referred to certain
9 symbols on the map showing the populations of certain
10 cities and things like that and I remember it saying
11 that the population of San Jose was much less than San
12 Francisco. And as you know, San Jose is now much
13 larger than San Francisco. So my wall maps, my globes,
14 the reference materials in the library, the textbooks
15 were old, and it wasn't just that they were out of
16 date, but they were culturally irrelevant and
17 inaccurate, in my opinion. They don't reflect the
18 histories of the people who really are citizens of the
19 state and residences of the state. I'm going to limit
20 it to that.

21 Q. Just so I'm clear, I think during your first
22 day, you said the textbooks you were referring to were
23 the social studies textbooks that you used and also
24 there were some materials in connection with the
25 Literacy Place Program that you believed were

1 non-representative of your students, I guess. Were you
2 referring to any other textbooks?

3 A. That's right. Let's see, we didn't really
4 have any other textbooks, so no, we didn't have other
5 textbooks.

6 Q. Now, you said some of the other materials in
7 your classroom such as maps and globes were out of
8 date. Do you recall how old those materials were?

9 A. The world map and the world globe both
10 showed the USSR, so it was before changes there had
11 happened. It -- they predated that. The population
12 of -- I have to guess the population of San Jose was
13 half of San Francisco's population at least ten or 15
14 years ago, I think, but I can't tell you what the
15 copyright dates were.

16 Q. Is it your best estimate, as you sit here
17 today, the maps you were referring to were
18 approximately ten to 15 years old?

19 A. That would be my guess, at least ten to 15
20 years old.

21 MS. LHAMON: I want to remind you of the
22 distinction between a guess and an estimate. I think
23 what Michael is getting at is do you have a basis for
24 thinking that they are or is this something you are
25 pulling out of thin air?

1 Q. And did you use those newer materials to
2 instruct your class?

3 A. Yes, I did. We also received a set of
4 atlases, road map atlases, from AAA. They were not
5 helpful for teaching geography because they don't show
6 landmarks, mountains, valleys, rivers, but they did
7 show boundaries and you could do work with the children
8 using those maps to determine area or distances or
9 things like that, so I used those as well.

10 Q. Do you recall how you went about getting
11 those materials?

12 A. They were donated by AAA. AAA was Bryant's
13 corporate partner which meant that they sometimes would
14 provide materials or field trips to students at Bryant,
15 depending on what their budget was for the year. And a
16 couple of years while I was at Bryant, they were able
17 to be more generous than in the last year I was there.
18 In the last year, they had to scale back their budget
19 because they were not having a good year financially,
20 so they withdrew some of the support we began to rely
21 upon in terms of field trips and sponsorship for other
22 things like camping that they paid for before. They
23 couldn't do it anymore, but --

24 Q. You said you purchased some atlases on your
25 own. Did you ever get reimbursed for those purchases?

1 THE WITNESS: The basis would be knowing
2 what I know about census-taking and political history
3 and world events, so that is why, for me, it is an
4 estimate and a guess is --

5 MS. LHAMON: Thin air.

6 THE WITNESS: Okay. Yeah.

7 MS. LHAMON: It is an estimate?

8 THE WITNESS: That is my best estimate.

9 MS. LHAMON: Thank you.

10 MR. ROSENTHAL: Q. Do you have any
11 understanding as to whether those kind of materials
12 such as maps and globes are replaced or updated at
13 Bryant on any sort of regular schedule?

14 A. In all the years that I worked for public
15 schools, the only time I've ever seen new wall maps
16 installed in a classroom is if a teacher uses her
17 discretionary funds to buy new maps. Otherwise, every
18 classroom I've entered has had the maps installed and
19 they've been there since no one knows how long or when.
20 Globes, there is no routine or system for making sure
21 that the materials are accurate that I'm aware of.

22 Q. Did you have any maps or globes in your
23 classroom that were more up to date than the ones
24 you've identified as being out of date?

25 A. Yes, I bought some from Rand McNally myself.

1 A. No.

2 Q. Did you attempt to get reimbursed?

3 A. There was no budget for reimbursement or
4 teacher classroom expenditures and that was the policy
5 at the school from the beginning of my time there.

6 Q. So is it fair to say you didn't ask to be
7 reimbursed?

8 A. No, I did not ask to be reimbursed because I
9 had learned you would not be.

10 Q. Other than the books and other materials
11 you've identified as being outdated in your opinion,
12 were there any other books or instructional materials
13 that you used at Bryant that you believed to be
14 outdated that you haven't already told me about?

15 A. I'm tempted to reference the computer
16 technology. Technology as a tool, teachers are
17 accountable for presenting to their students and
18 preparing them for middle school and for high school
19 and the technology that we had at Bryant was
20 occasionally unusable because we didn't have the money
21 to maintain technical support. We didn't have the
22 money to buy age-appropriate software, but I don't
23 consider this a significant aspect of the education,
24 but that is also part of the whole spectrum of things
25 that we had in the classroom that were not ideally

1 suited to teaching kids.

2 Q. Just so I'm clear, did you have some
3 concerns that the computer technology at Bryant was
4 outdated?

5 A. Boy, in the five years that I was there, we
6 went through moments that -- where we were on top of
7 the technology game, but because of the nature of the
8 way technology works, it is easy for something to
9 become obsolete or unusable very quickly. I think it
10 was because we were not able to -- we didn't have the
11 resources timewise or moneywise to make sure we had
12 what was appropriate for teaching kids of this age with
13 these languages.

14 Q. Can you just elaborate for me what you mean
15 by that?

16 A. It takes time for a specialist to evaluate
17 and test materials for a group of users and the
18 children that we have at Bryant are not the kinds of
19 kids that typically get asked to beta test software.
20 I've been part of software beta tests and usually the
21 way a company evaluates materials is looking at sort of
22 the middle-of-the-road child, your middle-class child,
23 typically a Caucasian child who has a typical American
24 experience, but software to be used by working class or
25 subworking class children whose first language is not

1 training in how to implement technology into the
2 programs unless it was provided by the school itself.
3 And Judy Chow, the curriculum technology and
4 integration specialist and I and a couple of other
5 really computer-savvy people put together curriculum
6 that we wrote ourselves and developed for the school,
7 so I was able to do it, but much more successfully than
8 most of the other teachers there because of my personal
9 background as a computer specialist before I became a
10 teacher.

11 Q. You mentioned that you were involved in
12 training other students -- other teachers in how to
13 provide instruction in computers to students. Was that
14 something that was provided to all teachers at Bryant?

15 A. Yes.

16 Q. And did you do that by yourself or was that
17 in conjunction with Ms. Chow?

18 A. Ms. Chow, two other teachers, and I served
19 on a committee called the Technology Committee and we
20 would meet once or twice a month to talk about how we
21 could improve the use of technology at the school and
22 the four of us together planned a training event for
23 teachers, planned it and delivered it.

24 Q. Did you get any feedback from that training
25 event from teachers who attended?

1 English, whose first alphabet is not English, even if
2 their parents were literate in their foreign language,
3 requires a different kind of learning experience and to
4 ferret out those titles and programs among the
5 thousands that are out there takes some time and our
6 computer technology specialist didn't have that time
7 with all the other demands that were on her, nor did we
8 have the money to buy software. We were also -- we
9 didn't have the money to buy the software, but we were
10 also beholden to some expectations by our other
11 corporate partner, which was Pac Bell, and I can't
12 really speak in too much detail to that, but there were
13 gifts we were expected to receive from them and use and
14 they weren't always appropriate to the kids we had.

15 Q. During your five years of teaching at
16 Bryant, did you incorporate computers into the
17 education program that you instructed your children in?

18 A. Yes, but I don't know if I've said this
19 before, but the reason why is that I was a computer
20 specialist for ten years before I became a teacher.
21 That is the job I did, so I have a much higher level of
22 understanding and a lot more experience using
23 technology than most teachers do and when I was at
24 Bryant, I was part of the team that helped train
25 teachers. Teachers at our school didn't get any

1 A. The focus of the training I did was teaching
2 the other teachers how to use the internet and download
3 graphics or how to find usable materials in their own
4 research to develop curriculum and they said that they
5 told me they thought it was really helpful.

6 Q. Do you know how many computers there are
7 located at Bryant -- how many there were at the time
8 you were there?

9 A. I can break it down a little bit. There
10 were probably 25 in the computer lab and anywhere
11 between two to four in every classroom, except for
12 kindergarten which I believe each of the kindergartens
13 only had one for the teacher's use and then there were
14 two in the front office -- three in the front office.

15 Q. Do you have an estimate as to how old any of
16 those computers were?

17 A. When I first arrived, we had -- no, I can't
18 answer that question in terms of years and dates.

19 Q. Over the five years that you taught at
20 Bryant, do you recall new computers ever being
21 delivered to the school?

22 A. Not brand-new. They would be recycled
23 through some other office in the district. We never
24 had cutting-edge technology there except for a -- the
25 first year I was there, there was a huge television and

1 it was supposed to be used for video conferencing.
 2 That was the only cutting-edge technology. It wasn't
 3 appropriate cutting-edge technology, but it was there.
 4 That was one of the gifts I was talking about that we
 5 got from Pacific Bell. Because no one was trained to
 6 use it, no one used it after the first year or so that
 7 I was there.

8 Q. Now, you said earlier that for a period of
 9 time, Bryant was on top of the technology game. Can
 10 you just tell me what you meant by that?

11 A. Bryant was an elementary school that was
 12 identified as being the lead technology school in San
 13 Francisco because of its partnership with Pacific Bell
 14 and so a lot of equipment, hardware were poured into
 15 the school in the few years -- in the few years just
 16 prior to me joining Bryant. When I got there, the
 17 equipment that we had and the current computer
 18 specialist that was there had a more advanced computer
 19 lab up and running than a lot of the other schools in
 20 San Francisco. At this point, their computer lab is
 21 probably pretty similar to a lot of the other schools
 22 in San Francisco.

23 Q. And what is that belief based on that it
 24 is --

25 A. Similar to? From my conversation with

1 internet connected. The third through fifth year at
 2 the school, it worked much of the time, but then when
 3 it would have a problem, it would have that problem
 4 persistently for weeks, maybe a month, two months where
 5 Judy would have to come and restore my hard drive or
 6 reload all my software or run diagnostics on it.

7 My printer broke a lot. I was only wired up
 8 to one printer in the school.

9 If we're talking about technology, I can go
 10 on to other things like the VCRs were broken, many of
 11 them. The laser disc remote controls were all missing.

12 Q. Why don't we stick to computers first.

13 A. Okay.

14 Q. Now you said during your first year, the
 15 computers in your classroom didn't work at all. Was
 16 that true for all the computers in your class?

17 A. I only had one my first year there. I only
 18 had one and it wasn't hooked up.

19 Q. When you say it wasn't hooked up, was it --
 20 did you -- I'm trying to get a sense of if it was not
 21 functioning or if it wasn't hooked up.

22 A. It was sitting in my room and you could turn
 23 it on. It was not wired to the printer or the school
 24 server. It had an older operating system. I don't
 25 remember what the operating system was, but it wasn't

1 computer specialist teachers and classroom teachers in
 2 elementary schools in San Francisco who I would meet at
 3 union meetings or socially.

4 Q. Do the computers at Bryant have access to
 5 the internet?

6 A. Yes.

7 Q. Is that true for all the computers at the
 8 school?

9 A. To my knowledge.

10 Q. Do you recall there being any instance in
 11 which the computers at Bryant -- any of the computers
 12 at Bryant were not functioning?

13 A. Many.

14 Q. Do you remember there being instances in
 15 which computers which were situated in your classroom
 16 did not function?

17 A. Yes, frequently.

18 Q. And when you say, "Frequently," can you tell
 19 me approximately how often you are referring to? Did
 20 the computers break down on a weekly basis?

21 A. Yes.

22 Q. Was that true for the entire five years you
 23 were at the school?

24 A. The first year at the school, it didn't work
 25 at all. The second year at the school, it was not

1 Windows. It was probably Windows 95 or something like
 2 that. I don't remember now, but you couldn't do
 3 anything on it. You could do nothing. You couldn't
 4 word process. You couldn't check e-mail. You couldn't
 5 surf the web. You couldn't do anything.

6 Q. Was this a computer that was intended for
 7 your use or a computer intended for students' use or
 8 some combination thereof?

9 MS. LHAMON: Calls for speculation.

10 MR. ROSENTHAL: Q. To the extent you know.

11 A. I know for sure it should have been for
 12 teachers' use. Teachers should have been able to use
 13 it and I don't know. That was my first year at Bryant
 14 and if you go back and read my first set of statements.
 15 I had a lot of naivete about the site and about my
 16 responsibilities and expectations and I was given a
 17 message through a senior teacher not to have too many
 18 questions and not to complain. I was also overwhelmed
 19 as a teacher that first year and I think I chose to
 20 ignore the computer aspects of it.

21 Q. Do you recall taking any steps in an effort
 22 to get the computer hooked up and functioning?

23 A. Yes. I spoke to the computer specialist at
 24 the time. Her name was Virginia Davis. I asked her if
 25 anything could be done and she explained that there

1 were too many problems for her to take care of to deal
2 with my computer situation.

3 Q. Other than speaking to Ms. Davis, did you
4 take any other steps?

5 A. There was no one else to speak with.

6 Q. Did you ever speak to, I guess the principal
7 at that time was Ms. Zita?

8 A. Yeah, I did not speak to Ms. Zita because I
9 was told not to complain or ask questions about that
10 kind of thing. I had complained in a staff meeting
11 that the Xerox machine didn't work, that the ditto
12 machine did not work, that the computers didn't work,
13 and that as the technology magnet school of the city,
14 that since our technology was so broken down, we needed
15 to get something done about it and I was taken aside
16 later and told never to speak of that again because I
17 wouldn't be returning the next year. If I made those
18 kinds of statements, she would not renew my contract.

19 Q. Do you recall who took you aside and told
20 you that?

21 A. Yvette Fagan.

22 Q. And was she a teacher at Bryant at the time?

23 A. Yes, she was a special ed teacher. She had
24 a very unique class. She was a very highly respected
25 teacher in the district and also worked at Bryant.

1 Q. Do you know if she continues to work at
2 Bryant today?

3 A. She teaches at Cobb, C-o-b-b.

4 Q. Is that another elementary school in the San
5 Francisco Unified School District?

6 A. Yes.

7 Q. You said during your second year at Bryant,
8 the -- strike that.

9 During your first year, you said you had one
10 computer located in your class. Did you obtain -- for
11 your second year, did you have more computers in your
12 class?

13 A. I don't recall. I still had that same one
14 computer and possibly a second one was put in my
15 classroom. I don't recall if either one of them was
16 hooked up.

17 Q. A few moments ago, you said during your
18 second year, you had no internet access. Do you
19 remember the computers functioning with respect to word
20 processing and other areas that you identified that the
21 computer did not work -- well, did not -- was not
22 hooked up with during your first year?

23 A. In the second year, we were allowed to bring
24 our students into a computer lab, the one I spoke about
25 earlier that had 25 computers, and we could take them

1 in at least once, if not twice a week, and I remember
2 teaching the children how to do word processing in the
3 computer lab. I don't know that if my room computer
4 ever worked. I did a lot of my curriculum writing at
5 home on my home computer.

6 Q. Just so I'm clear, when you said there was
7 no internet access during your second year, were you
8 referring to the computers in the computer lab then?

9 A. No, I was talking about my classroom.

10 Q. Was there internet access for the computers
11 located in the computer lab during that time?

12 A. Yes.

13 Q. Has there been internet access for the
14 computers in the computer lab during the entire five
15 years you were at Bryant?

16 A. I think so.

17 Q. You said during your final three years at
18 Bryant, you -- let me ask this question: Were the
19 computers located in your classroom during your final
20 three years at Bryant, were those hooked up for
21 internet access?

22 A. Yes, and they often worked, but not always.
23 Sorry, Michael.

24 Q. Were they -- were you able to do word
25 processing and other applications on those computers

1 when they functioned?

2 A. Yes.

3 Q. Do you have any understanding as to how your
4 computers went from being not hooked up to getting
5 hooked up?

6 A. Virginia Davis left. Judy Chow joined staff
7 and she paid more attention to making the technology
8 usable than the previous CTIS, Curriculum Technology
9 Integration Specialist. Virginia had more
10 responsibilities than Judy did and so when Judy joined
11 -- I need to back up. Virginia and Ms. Zita left the
12 school at the end of the same year and the following
13 year is when Mr. Alegre and Judy Chow joined. They had
14 a different vision, different expertise, and different
15 demands on their time. Bryant stopped being notorious
16 in a good way for being a technology magnet school, so
17 we had fewer -- we used to have parades of people
18 coming through looking at our technology lab which
19 meant while other people were looking at it, we
20 couldn't bring students in there. When Virginia Davis
21 left and took her notoriety with her, the dog and pony
22 shows ended and we were now able to use the lab for
23 student work.

24 Q. Now, you said that -- strike that.

25 Did you have any concerns about the

1 computers at Bryant being too old or outdated or were
2 they, in your opinion, at least sufficiently up to
3 date?

4 A. That is kind of a complicated question. I'm
5 not going to -- I don't really want to speak to were
6 they appropriate tools for kids younger than 4th or 5th
7 grade, younger than nine or ten years old, because
8 there is question and debate about the developmental
9 appropriateness for technology of kids that age. But
10 for my 4th and 5th graders who were raised with remote
11 controls and Game Boys and things like that,
12 interacting with technology and media in that way
13 actually changes the way you think. This is not just
14 my guess. This is not just my opinion. It is based
15 also on research I've done on cognitive development.
16 It changes the way you think and it changes the way you
17 interact with the data and the media and your world.
18 The particular kids I had in 4th and 5th grade were
19 highly motivated to do a lot more with the computer
20 than the computer was capable of doing with them. They
21 were ready to make movies. They were ready to make
22 multimedia presentations and things like that.
23 Technology does exist like that. It exists in some
24 schools. It doesn't exist at Bryant.

25 And one example I can give you is that for

1 part of one year, we published a newspaper and the best
2 software for publishing that newspaper didn't exist in
3 all the most current versions on all the computers and
4 some of the computers didn't have the memory capacity
5 to edit and publish the paper, so you could work on it
6 in one location; save it to the server, but not be able
7 to open it at another location or another computer
8 because that particular PC's hard drive didn't have the
9 memory capacity to handle the program and the document
10 itself.

11 Later in that year, the kids wanted to turn
12 it into a news television show. They wanted to set
13 up the camera. They wanted to download it to the
14 computer. They wanted to edit the film and turn it
15 into something they could put on VHS and take from room
16 to room, but we couldn't do that because it turned out
17 all the video cameras in the school had been broken or
18 something had gone wrong with them. And they would
19 inflate these incredible visions and dreams and all
20 this excitement to learn and I think you can infer that
21 with this kind of a project, it is all about reading,
22 writing and oral language. It is the very finest way
23 to teach that to these kinds of kids. I would get all
24 the equipment out and sort it away and discover none of
25 it worked and there was no money in the budget to

1 repair it or replace it.

2 Q. Do you remember having any successful
3 lessons using computer technology over your five years
4 at Bryant?

5 A. Yes.

6 Q. Other than the concerns you've identified
7 regarding the computers and technology at Bryant so
8 far, do you have any other concerns about those kinds
9 of materials being out of date?

10 A. Not that I can speak to in an educated way.
11 I would be guessing. I don't want to guess.

12 Okay. One thing, we had a library of CD
13 roms that you could use as talking books or -- no. You
14 know what, I don't want to go there because I could --
15 I could critique the software, but I don't know if I'm
16 really critiquing the software publisher or if I'm
17 critiquing our ability to seek something out that is
18 more appropriate. I'm not sure what it is. They are
19 both problems.

20 Q. Were your concerns related to the software
21 being out of date?

22 A. The encyclopedias, yes, the Encarta if you
23 have old versions of Encarta and you are looking up
24 census data or information on the political boundaries
25 of a country and it is not accurate anymore and doesn't

1 reflect the most current history, then it is not really
2 usable.

3 It seems to me the school was very flush
4 with funds to deal with technology and computer issues
5 in the very early years of getting the computer lab.
6 We were visited by Clinton and Gore back when Clinton
7 was first elected president, but around the time I
8 started, the funds for the lab were beginning to
9 dwindle and by the time I left, there was nothing
10 really, unless we took it from our general supplies
11 fund or something like that.

12 Q. Do you have an understanding as to what the
13 funds you were referring to were spent on during that
14 time?

15 A. At the beginning, in the middle, or the end?

16 Q. Over the entire period.

17 A. In the beginning, it was for hardware,
18 servers, wiring, reconfiguring the building for wires.
19 In the middle, it was probably for maintaining software
20 and upgrading operating systems and servers and toward
21 the end, it was for maintenance.

22 Q. Do you have any opinion as to whether those
23 funds were spent in an efficient manner?

24 A. Did you say understanding or opinion?

25 Q. Let's start with understanding -- let's ask

1 for your opinion. Sorry. Want me to rephrase the
2 question?

3 A. Yeah.

4 Q. Okay. Do you have an opinion as to whether
5 the funds that you are referring to were spent in an
6 efficient manner?

7 MS. LHAMON: I'm going to object. The
8 question lacks foundation. Calls for speculation.

9 MR. ROSENTHAL: Q. To the extent you have
10 an opinion.

11 A. My opinion is that if an investment is going
12 to be made in something like technology, which is a
13 dynamic tool, then there also have to be the funds to
14 maintain it. It is foolish to give something and say
15 there is no maintenance. There is no upgrade
16 available. Whatever happens to it now happens to it
17 and you'll just have to eat it if it doesn't work. It
18 was very difficult for us to find monies for technical
19 support at the end and that was frustrating for every
20 teacher who used technology there. It is not all the
21 teachers, but every teacher who relied on it was
22 frustrated by that.

23 Q. Was it your understanding that part of Ms.
24 Chow's role was to provide technical support onsite?

25 A. No, she is not a technical support person.

1 expect they will break down. This is just the way they
2 are.

3 Q. Do you know if, in fact, that was done?

4 A. I think some limited monies were finally
5 found that we could use to hire consultants to come in
6 and fix the serious problems.

7 Q. Do you know whether that money was spent?

8 A. I don't. I don't know. These are all good
9 questions for Judy Chow.

10 Q. We've been covering the concerns you've had
11 regarding textbooks, instructional materials, and other
12 equipment at Bryant and specifically concerns you had
13 about those materials being out of date. Are there any
14 other concerns you have in that regard that you haven't
15 told me about?

16 A. Not that I haven't told you about.

17 MS. LHAMON: Now a good time for a break?

18 MR. ROSENTHAL: That is fine. Sure.

19 (Recess taken.)

20 MR. ROSENTHAL: Q. Okay. Ms. Malabed, I
21 would like to now turn your attention, and we've
22 touched on this to some extent, but I would like you to
23 focus on any concerns you had during the five years at
24 Bryant you had about the physical condition of the
25 books that you used in connection with teaching your

1 She is a coordinator. Her job was to provide -- well,
2 let me make an analogy. She is an advice nurse. She
3 is not the surgeon. If there were deep problems within
4 the system, that is not something she is qualified or
5 capable of doing. She is somebody who can say, "It
6 seems" -- "These seem to be the problems. This may fix
7 it. Let's try this." But she is not able to go in and
8 pull wires and change panels or look at the electrical
9 system or something like that.

10 Q. Do you know whether in Bryant's budget there
11 was an allocation for -- allocation of funds to deal
12 with technology issues?

13 A. Under the heading technology, there is
14 hardware, software, maintenance contracts. Technology
15 actually also encompasses the phone systems and the
16 copiers and so I'm not aware of all the line items
17 under the technology heading, but I do know that from
18 Technology Committee conversations in the last two
19 years that I was there, that the monies for technical
20 support didn't really exist in the budget and that if
21 we insisted wanted to negotiate with Larry about the
22 budget, if the committee wanted to negotiate with him,
23 we had to somehow persuade him that he had to find
24 money somewhere, take it from something else to make
25 sure the computers could be maintained because you can

1 classes over that time frame. Did you have any such
2 concerns?

3 A. When we talked last time, I mentioned that
4 there were some books that came from the school library
5 that had been -- that were moldy and that there were
6 some books that had cuss words written in them. The
7 only textbooks that I had were the social studies books
8 and math workbooks. The math workbooks were new every
9 year, so they were fine. The social studies textbooks,
10 like I said, were not taken home. They were used only
11 in the classroom during class time and as far as I
12 could tell, they were in pretty good condition. The
13 Literacy Place books were in good condition because
14 they were brand-new in my second year there.

15 Q. Just so I'm clear, then, did you have any
16 concerns about any of the physical conditions of any of
17 the books you used at Bryant outside of some library
18 books?

19 A. No.

20 Q. Can you just briefly tell me about the
21 concerns you had? I know you've mentioned that there
22 were some library books that were moldy and some other
23 books had some graffiti in them. Did you have any
24 other concerns about the physical condition of library
25 books at Bryant?

1 A. Not about their condition. About their
2 content, yes, in terms of their -- a point I've made a
3 few times is about their cultural relativity to the
4 kids and some of the books in the library were so old
5 and just unattractive to children. For a child who is
6 a reluctant reader, a book has to look attractive. At
7 least it has to be clean and smell good and not look
8 ancient and dusty and moldy and some of the books like
9 that -- some of the books did look like that in our
10 school library and the kids do judge a book by its
11 cover, so -- other than that, no.

12 Q. Can you tell me roughly about how many
13 library books, in your opinion, were in the physical
14 condition that caused you some concern?

15 A. More than half.

16 Q. And just so I'm clear, were more than half
17 of the books in the library at Balboa either moldy or
18 have graffiti in them?

19 MS. LHAMON: Bryant.

20 THE WITNESS: At Bryant.

21 MR. ROSENTHAL: I'm sorry. What did I say?

22 MS. LHAMON: Balboa.

23 MR. ROSENTHAL: It was bound to happen.

24 THE WITNESS: No. At school, no. No, the
25 percentage of books in the library that got rained on

1 Q. Just so I'm clear, you've identified some
2 books in the library that were either moldy or
3 contained graffiti. Are there other types of
4 characteristics that make books in the library, in your
5 opinion, or made those books appear to be in poor
6 condition, in your opinion?

7 A. No.

8 Q. Do you know whether, during your five years
9 at Bryant, any new books were added to the library's
10 collection?

11 A. Yes, they were.

12 Q. Did that happen on a regular basis?

13 A. No, not on a regular basis. There was a
14 clerk at the school named Dee Hashimoto and she was
15 responsible for identifying and ordering new library
16 books, but Dee was very protective of her job and I
17 don't know how much money she was given or when she was
18 given the money or how she chose the books she chose,
19 but they appeared irregularly over the time I was
20 there.

21 Q. Did you ever make any suggestions to Ms.
22 Hashimoto as to the kind of books she should purchase
23 with the funds she was given?

24 A. Yes, I did and she did take into
25 consideration what I said to her and some of the things

1 and left on the shelves was probably less than ten
2 percent. The number that had graffiti in them, I
3 couldn't even estimate, but the number of books that
4 were culturally irrelevant or very old and unattractive
5 to students were definitely more than half the books in
6 there.

7 MR. ROSENTHAL: Q. And just so I'm clear,
8 when you say, "Old," are you referring to them being
9 culturally irrelevant or are you referring to them
10 being in poor physical condition?

11 A. Culturally irrelevant and/or poor physical
12 condition and I don't think I could break it down for
13 you any further than that. A lot of books that were
14 published even in the '70s and possibly as late as the
15 '80s promote cultural stereotypes or -- and by saying
16 that, I mean they promote stereotypes by virtue of the
17 invisibility of all the cultures. The invisibility of
18 cultures not being represented in them or the main
19 character or if you take out a book on Thanksgiving,
20 for example, you see fat little happy Indians with one
21 feather at the back of their head and it is told in the
22 perspective of the conquering Pilgrims, the holy
23 Pilgrims, and not at all from the perspective of the
24 native peoples. Those books do exist, but not in our
25 library at Bryant.

1 other teachers had said to her.

2 Q. During the five years you were at Bryant,
3 were books added to the library's collection that you
4 believed to be more culturally relevant?

5 A. Yes.

6 Q. And more up to date?

7 A. Uh-huh; yes. I want to remind -- this
8 sounds so condescending when I say that. I wanted to
9 remind you that the library was an open library and we
10 had no librarian, so even though the books were there,
11 there was no formal process to make the teachers become
12 aware that the books had arrived, nor was there a
13 librarian to help the teachers and the children find
14 the books and check them out. The library was
15 primarily used as a meeting space, so even though the
16 library existed, it was only after hours when I would
17 go through the library on my own and look for things
18 that I would find both the good and bad.

19 Q. How did you find out that new books were
20 added to the library collection? Was it through the
21 process you just described?

22 A. No, I am pretty snoopy. There was a cart
23 where she used to put stuff and hide things. I knew
24 that Dee would hide materials at school trying to --
25 she had a method for trying to preserve materials,

1 everything from pens, pencils, and papers to books to
2 make sure they would -- and PE equipment to make sure
3 it would last throughout the year and I accidentally
4 discovered her stash, so when I saw Dee was starting a
5 new stash, I would peek and look and see what she had.

6 Q. Did Ms. Hashimoto ever tell you when new
7 books had arrived or did you only find out during the
8 methods you've described?

9 A. The way I described it.

10 Q. When new books -- to your knowledge, when
11 new library books arrived, did Ms. Hashimoto shelve
12 those books or did she keep them somewhere else?

13 A. She shelved them in her spare time which
14 means when she wasn't processing PO's or tutoring
15 children or doing yard duty or answering the phones or
16 covering other people's jobs, she would shelve them and
17 I know watching Dee after school late one afternoon,
18 she used to come in on her own time to do it.

19 Q. Do you know what her job title was?

20 A. Clerk.

21 Q. Do you know what her job responsibilities
22 were generally?

23 A. Those things I just mentioned and more that
24 I couldn't really describe for you.

25 Q. Did she have her own office at the school?

1 A. She had a chair and a little space in the
2 front office of the school.

3 Q. Did she have a desk as well or a cubicle of
4 some kind?

5 A. She had -- she had a desk, not a cubicle.

6 Q. Okay. Just wanted to make sure it wasn't
7 just a chair.

8 A. It was a chair with a -- the front office is
9 about as big as this conference table and it was shared
10 by herself and the secretary and sometimes another
11 clerk.

12 MS. LHAMON: Just for the record, you are
13 going to need to estimate the size of the conference
14 table.

15 THE WITNESS: Okay. Let's see now --

16 MS. LHAMON: We can't see it when we're
17 reading it.

18 THE WITNESS: 15 feet by -- this thing isn't
19 15 feet long -- about 15 feet long and about five feet
20 wide.

21 MS. LHAMON: You are estimating this
22 conference table or --

23 THE WITNESS: The office. The office.

24 MS. LHAMON: Okay. I think the conference
25 table is significantly smaller than that.

1 THE WITNESS: It was maybe about 15. I'm
2 trying to think. There was a desk and a typewriter and
3 a fax machine, so whatever that space would be, plus a
4 door, plus a little counter space, so about 15 feet
5 wide.

6 MR. ROSENTHAL: Q. And did that front
7 office include the principal's office as well?

8 A. Not in that space, but, yes, he was in an
9 office off that. The front office was an open space
10 and his office was off the open space. There was a
11 door that led into a private office for him.

12 Q. Other than the problems you've identified
13 regarding the physical condition of the -- some of the
14 library books at Bryant, did you have any other
15 concerns about the physical condition of books you used
16 at the school other than those you've told me about?

17 A. Nothing is coming to mind right now.

18 Q. To your knowledge, were students at Bryant
19 ever required to pay any fees? By fees I mean money in
20 connection with any aspects of the educational program
21 provided to them.

22 A. No.

23 Q. Did you have any concerns about the
24 availability of classroom supplies during your five
25 years at Bryant? And by classroom supplies, I'm

1 including things like paper, pencils, chalk, and things
2 like that.

3 MS. LHAMON: Asked and answered, at least in
4 part on the first day.

5 THE WITNESS: Uh-huh, yeah, we talked about
6 that on our first day. Do you want me to resummari-
7 ze what we talked about?

8 MR. ROSENTHAL: Q. Why don't you? Did you
9 have concerns like that?

10 A. Oh, yes.

11 MR. ROSENTHAL: Why don't we go off the
12 record for one second.

13 (Recess taken.)

14 MR. ROSENTHAL: Q. Now, I know it came up
15 in various points during the first day of your
16 deposition and I don't think I asked particular
17 questions about any concerns you had about the
18 availability of supplies. I know you identified a few
19 of those during your first day. First of all, I want
20 to make sure we're clear as to the distinction I'm
21 making with respect to classroom supplies and
22 instructional materials. By classroom supplies, I'm
23 referring to sort of generic supplies you would use on
24 a day-to-day basis such as, like I said before, paper,
25 pencils, chalk, things that were not specific to a

1 particular subject or curriculum as opposed to
2 instructional materials which would include things like
3 manipulatives used in connection with the Mathland
4 Program or items contained in the FOSS kits. Do you
5 understand that distinction when I use those terms?

6 A. I do. I do.

7 Q. So did you have any concerns about the
8 availability of classroom supplies during your five
9 years at Bryant?

10 A. Yes. I didn't just have serious concerns.
11 We had serious problems with supplies with the
12 exception of my last teaching year at Bryant. We
13 consistently run out of basic classroom supplies by
14 February or March of each year and in that I'm also
15 including we ran out of our ability to make
16 photocopies, which really falls under classroom
17 materials because we had to write a lot of our own
18 curriculum and translate our curriculum and February or
19 March seemed to be about the time when we just ran out
20 of things. So in my first year at Bryant -- I can't
21 break it down right this second -- I know I spent about
22 \$4,000 buying materials for my classroom and that
23 included instructional materials like reading books for
24 students as well as binder paper, pencils, colored
25 paper, construction paper, glue, poster boards,

1 with the exception of my last two years at school, we
2 didn't even get our basic supplies until mid September
3 to October, so we would start the school year off with
4 nothing and had you not been wise enough to hoard
5 something at the end of the last year or the previous
6 year or you had not gone to Target and gotten
7 everything on discount in early August, you could start
8 the school year with nothing and have to make an
9 emergency trip to Office Depot. And my first year at
10 Bryant, that is exactly what happened to me. We didn't
11 have crayons. We didn't have colored pencils. We
12 didn't have art materials. We didn't have bulletin
13 board paper.

14 Q. You said you weren't reimbursed for any
15 materials you bought over, I guess, the first four
16 years you taught at Bryant?

17 A. I was never reimbursed by the school
18 district.

19 Q. Were you reimbursed by anybody at any time?

20 A. No, I don't consider the grant a
21 reimbursement.

22 Q. Did you attempt to get reimbursed for any of
23 those expenses?

24 A. I asked some of the other lead teachers what
25 the policies would be if we needed something and they

1 bulletin board paper, art supplies and the like. I
2 also would go to an organization called SCRAP, capital
3 S-C-R-A-P, and I don't remember exactly what it stands
4 for. It is associated with the school district and it
5 is a place where people can donate all kinds of
6 materials and people who worked for schools can go in
7 and fill a sack full of materials and pay by the sack,
8 so a full sack of materials stuffed with scratch paper
9 and post-it notes and film canisters might be \$5,
10 something like that, and I would go there quite often
11 to pick up materials really cheap to use in my
12 classroom.

13 In my second year at Bryant, I spent \$2,000.
14 In my third year at Bryant, I spent another \$2,000,
15 fourth year, \$1,000. And in my last year at Bryant, I
16 had a grant that I received for \$2,000 for materials
17 and supplies. I wasn't reimbursed for any of those
18 monies. I shared a lot of my materials with other
19 people. I just really strongly felt that I had to have
20 those things in the classroom for the kids to use.
21 They had to have a classroom that felt like a
22 classroom.

23 Ten or 15 years ago on the first day of
24 school, you would find sitting on your desk a pack of
25 paper and a small box of crayons and some pencils and

1 said you go out and you spend your own money on it.

2 Q. Do you recall who told you that was the
3 policy?

4 A. No.

5 Q. Those were teachers at Bryant at the time?

6 A. Yes. I can guess who it was, but I can't
7 say for certain who it was.

8 Q. I don't want you to guess. Do you have some
9 basis for --

10 A. Yes, I had been assigned a big brother who
11 was a teacher who taught in the room next door to me
12 and his name was Kerry Sullivan, K-e-r-r-y, and he was
13 a person I would typically ask those kinds of questions
14 when I needed information.

15 Q. Now, you've testified that you spent, if my
16 math is correct, approximately \$9,000 over the first
17 four years you taught at Bryant. Can you tell me what
18 the basis of that estimate is for the amount of money?

19 A. Yes. I saved my receipts and I tried to
20 file them with my tax returns as a business expense and
21 tried to get my accountant to help me out, so I may
22 have copies of most of those receipts still.

23 Q. Now, you said that during your final year at
24 Bryant, you obtained a \$2,000 grant --

25 A. Yes.

1 Q. -- to purchase classroom supplies; is that
2 correct?

3 A. No, it was a grant to implement
4 project-based curriculum and the budget I submitted to
5 the San Francisco Ed Fund included equipment
6 consultants and materials, not really classroom
7 supplies. By my fifth year, I had -- I had stockpiled
8 a lot of classroom materials and I had also started
9 soliciting office materials from private companies so
10 that I didn't need to buy things.

11 In my -- also, in my last year at Bryant,
12 after the suit was filed, supplies became more
13 plentiful and available and Larry Alegre told me in the
14 beginning of the last year at Bryant, which was
15 2000/2001, that we would not run out of supplies this
16 year and I asked him why not, what had changed.

17 And he said, "We're just not going to run
18 out this year."

19 Q. Now, you said the grant you obtained -- can
20 you tell me from whom you obtained the \$2,000 grant
21 that you testified to?

22 A. San Francisco Ed Fund.

23 Q. And do you know if that fund is in any way
24 affiliated with the San Francisco Unified School
25 District?

1 first floor that housed the basic supplies and it did
2 not always have what you needed when you needed it.
3 For example, I remember going in there to get a box of
4 highlighters and there weren't any left. I remembered
5 that I needed binder clips and there weren't any left.
6 For a short period of time, we were out of pencils and
7 they were reordered, but it was -- there was a gap of
8 time between when we were out of pencils in my
9 classroom and when the stock cabinet had them again.
10 Larry dug into an old prize bag and pulled out some of
11 those fancy pencils that you give out as prizes
12 sometimes. They have fancy casings on them, but they
13 are not very good pencils because they are made out of
14 plastic. I remember around Halloween, we ran out of
15 black construction paper and Valentine's Day, we ran
16 out of red. I can't remember all the details, but I
17 know it came up, yeah.

18 Q. Are there any other instances during that
19 school year that you recall having any concerns about
20 the availability of any other classroom supplies that
21 you haven't mentioned?

22 A. Not in the way we're talking about classroom
23 supplies, no, nothing that is coming to my mind right
24 now.

25 Q. In each of those instances you identified,

1 A. Yes, I think it is. I think they only
2 grant -- they only give grants to public school
3 teachers.

4 Q. During the 2000/2001 school year at Bryant,
5 your final year there, did you have any concerns about
6 the availability of classroom supplies during that
7 school year?

8 A. No, because I had, as I said, managed to
9 solicit materials from private companies. I was able
10 to go to SCRAP and get materials and I had this \$2,000
11 grant, so I didn't -- if I -- if I was, in that last
12 year, still relying on the school district to make sure
13 we had the supplies we need, I'm sure I would have
14 concerns, but because I no longer made them my patron
15 of supplies, since they were no longer my patron of
16 supplies and I had found outside sources for it, I
17 didn't -- I could eliminate the concern for that
18 particular year. Had I not received that grant, I
19 can't say, but I would imagine that I would still have
20 been concerned.

21 Q. During that school year, the 2000/2001
22 school year, do you recall ever not being provided with
23 any classroom supplies that you requested through the
24 school?

25 A. There was a cabinet in the copy room on the

1 were the classroom supplies that were lacking
2 replenished?

3 A. I know that pencils were reordered.

4 Q. And did pencils arrive at the school as a
5 result of that order?

6 A. Yes.

7 Q. Do you recall how long that took?

8 A. No.

9 Q. Do you remember it being a lengthy period of
10 time?

11 A. I don't remember because if I needed
12 pencils, I would have gone out and bought some. You
13 can't wait two weeks for pencils to show up.

14 Q. Do you recall waiting two weeks?

15 A. No, because I went out and bought some, so I
16 didn't go back and check again. I don't remember the
17 details of how long it took to replenish any of these
18 things I mentioned.

19 Q. Do you remember any of those items not being
20 replenished?

21 A. I have memories of certain kinds of colored
22 construction paper never re-appearing again. I don't
23 know what year that happened, though, or which years it
24 happened.

25 Q. And for this, I -- perhaps my question was

1 not clear. I was trying to focus this on your last
2 year at Bryant, the 2000/2001 school year.

3 A. Okay.

4 Q. Were those incidences where there was a
5 shortage of classroom supplies, did those occur during
6 the 2000/2001 school year or was your answer intended
7 to be broader than that?

8 A. Well, I think there were shortages during
9 that time. How short-lived or long-lived they were, I
10 don't know, but as I said before, because of my grant
11 and because of my other sources of materials, I had
12 stopped relying on the school district closet to be my
13 source of classroom materials. I had been saving up
14 and gathering and hoarding for a long time and I don't
15 mean hoarding from our own supply closet, but from
16 places like SCRAP and private areas and so I didn't
17 really pay attention to what was going on downstairs in
18 the supply cabinet anymore. I didn't pay attention to
19 it as closely and I also knew that I had this \$2,000
20 grant of which I had probably spent about \$1,700, but I
21 had some cushion money that if I should run out of
22 supplies, I could get them in a timely way, so I don't
23 think I can give you the explicit answers about that
24 last school year. In a way, I just sort of eliminated
25 my dependence on the school district as best I could so

1 art materials, poster board, and if the onus is on the
2 teacher to provide exciting, motivating curriculum, it
3 means that given a chance, a teacher is going to choose
4 a pair of scissors that make a fancy cut. I don't know
5 if you know what kind of scissors I'm talking about.
6 Those scissors that have the squiggly edges as opposed
7 to a pair of little scissors that just do straight cuts
8 and I had bought all those things, so I had a supply of
9 -- I had lots of really nice materials in my room that
10 made kids want to do projects. Given the opportunity
11 to interact with these materials, they wanted to make
12 things, so teachers would come borrow my paints, my
13 glues. I had special glues. I had special paints. I
14 had special brushes, scissors, stamp pads. Those were
15 not part of the regular basic school supplies list that
16 Larry would order from because he had a pretty plain
17 vanilla list, but for me and for other teachers who
18 were trying to write good curriculum and provide kids
19 with motivating activities, those are basic supplies.

20 Q. Do you recall teachers ever coming to you
21 during that school year for any kind of basic classroom
22 supplies such as --

23 A. Yes.

24 Q. -- papers, pencils, and things like that?

25 A. Yes, they would come to me for reams of copy

1 that I could just get my job done.

2 Q. And just so I'm clear, were you -- did you
3 stop paying attention to the -- did you pay less
4 attention to the classroom supplies available through
5 the school starting in that year or did you pay less
6 attention starting prior to that?

7 A. In that year. In that year I had gotten the
8 grant.

9 Q. Did you ever hear any other teachers
10 experienced any shortages of classroom supplies during
11 that school year, the 2000/2001 school year?

12 A. Yes, I know they did because they would come
13 to me for materials.

14 Q. And do you know they came to you for
15 materials because they could not obtain those materials
16 through the school?

17 A. Because they couldn't get them downstairs in
18 the supply room, yes.

19 Q. So when Mr. Alegre said the school wouldn't
20 run out of classroom supplies during that year, was his
21 statement not true?

22 A. Well, there is basic classroom supplies as
23 far as the school is concerned, binder paper, pencils,
24 colored pencils, and then there are classroom supplies
25 as far as the teacher is concerned and that includes

1 paper to put into their printers.

2 Q. And do you know why they came to you for
3 copy paper on occasion?

4 A. Because they needed to print something out
5 and the supply closet was empty. I do not know how
6 long it took for that supply closet to be replenished.
7 I know it was, but the closet would empty out and then
8 it would be empty for a while before the materials
9 would show up again. They did not have a system or the
10 people in place to keep track of stuff as it was
11 running out. No one was keeping an eye on diminishing
12 inventories.

13 Q. Do you recall approximately how often
14 teachers would come to you for basic classroom supplies
15 such as copy paper during the 2000/2001 school year?
16 Do you recall how many times that happened?

17 A. No, not at all.

18 Q. Was it a frequent occurrence?

19 A. It was common. I could say it was common,
20 that the sharing of materials among teachers was a
21 common experience and that is just not something I paid
22 a lot of attention to is how often it happened.

23 Q. Was there somebody at the school whose
24 responsibility it was to keep the supply cabinet
25 stocked?

1 A. I don't know if it was her responsibility to
2 keep it stocked. I know it was Dee Hashimoto's
3 responsibility to reorder materials. When she was
4 supposed to reorder them or whether she was supposed to
5 be inventorying, I do not know if that was part of her
6 job.

7 Q. Do you know whether teachers informed Ms.
8 Hashimoto when supplies were low?

9 A. There was no reliable system that I was
10 aware of that existed.

11 Q. When you went to the supply closet and
12 noticed that there were -- there was a particular
13 supply missing or was in short supply, did you ever
14 notify Ms. Hashimoto of that fact?

15 A. There was a pad of paper hanging on the
16 outside of the supply cabinet door where you were
17 supposed to write down what you needed and I believe
18 that Dee put it up there with the intention that she
19 would be checking on that regularly and making orders,
20 but I don't know how frequently she chose to do that.
21 I don't know what her schedule was like.

22 Q. Now, in your testimony, you made some
23 distinctions between basic classroom supplies that were
24 provided to teachers, to some extent, by the school and
25 then other types of materials that you had amassed over

1 Highlighters.

2 Q. I don't expect we'll be able to make the
3 list exhaustive, but did the school also provide things
4 like paint brushes?

5 A. We had to request them.

6 Q. Was that provided by the school?

7 A. If you requested them.

8 Q. How about things like colored pencils?

9 A. Yes, they would give you colored pencils.

10 Q. Glue?

11 A. Yeah, glue and glue sticks. Glue sticks
12 were really hard to get.

13 Q. Were teachers provided with any funds to
14 purchase additional classroom supplies?

15 A. A few times when I was at Bryant, not every
16 year that I was there, I was told mid-year that I would
17 have a couple hundred dollars to spend on classroom
18 books for my classroom library. I mentioned it on our
19 first day together. It was unpredictable when it would
20 come, but the only thing I remember being consistent
21 about the two or three times I was given the money is
22 that I had to spend it almost right away.

23 Q. Do you remember those funds being given to
24 you to purchase classroom supplies or was it books?

25 A. Only materials, classroom instructional

1 your years at Bryant. Can you tell me what basic
2 classroom materials, classroom supplies you were
3 referring to as those that were provided to teachers by
4 the school? If you can give me the list of materials.

5 A. Binder paper, construction paper, pencils,
6 scissors, staplers, tacks, tape, and tape dispensers.
7 Did I say staplers?

8 Q. Yes.

9 A. Staplers and staples, brads, bulletin board
10 paper. Did I say erasers?

11 Q. No, you did not?

12 A. Okay. Chalk, white board markers. There is
13 writing paper that is used by other -- by the younger
14 grades. It is called newsprint. It has got the little
15 dashed lines on it so they can learn how to form their
16 letters, tag board, graph paper, rulers. I think that
17 is the basic set.

18 Q. Do you know whether the school provided any
19 art supplies?

20 A. Oh, yeah, tempera paint, water colors, and
21 crayons.

22 Q. Do you feel confident this is an exhaustive
23 list or do you think there may be a few additional
24 items you have neglected? I can suggest a few, but --

25 A. I think there are things I've forgotten.

1 materials, books.

2 Q. So were any funds provided to teachers to
3 purchase any additional classroom supplies?

4 A. No.

5 Q. Going back to the list of materials that we
6 identified as basic classroom supplies that were
7 provided by the school, do you recall there being any
8 shortages of any of those materials other than the ones
9 you've identified during the 2000/2001 school year?

10 A. Nothing is coming to my mind right now, but
11 if I remember it, I'll let you know.

12 Q. Great. Do you remember there being
13 shortages of those kinds of materials in the -- during
14 the first four years you were at Bryant?

15 A. Of paper and pencils and things?

16 Q. Right, the list of basic classroom supplies
17 that we just talked about.

18 A. Yes. In the first three, possibly four
19 years I was at Bryant, all of those materials ran out
20 and the supply cabinet would be empty by March and any
21 materials you needed after that you had to buy on your
22 own.

23 Q. Just so I'm clear, so by roughly March of
24 each of those years, none of the supplies we identified
25 were available at the school anymore?

1 A. Virtually none. For sure pencils were gone,
2 binder paper, so -- lined paper and pencils were gone.
3 Glue was gone. I remember glue being serious.

4 Q. How about the remaining items?

5 A. I don't know. You know, when you get
6 colored pencils and crayons and such at the beginning
7 of the year, you just use them until they are down to a
8 nub, but as I mentioned before, Michael, I bought all
9 of those things on my own, so it wasn't in my thinking
10 to say, "Oh, my God. We're out. Now what am I going
11 to do?"

12 For me it was, "Oh, my God. We're out. I
13 guess I'm going to Office Depot."

14 Q. Did you ever take any steps in those
15 instances to have the school reorder any of those
16 classroom supplies?

17 A. No, we were told -- Dee would tell the
18 teachers -- Ms. Hashimoto or Dee, as we called her,
19 would tell the teachers, "Kids, we're out of pencils.
20 The budget is empty. It is done. There is not going
21 to be more this year."

22 Q. Just so I'm clear, other than going out and
23 purchasing those materials on your own, was it your
24 understanding that the classroom supplies that were
25 provided by the school were not being replenished in

1 responsible in the last two or three years. I believe
2 that she was also the one responsible the whole time,
3 but I don't really remember.

4 Q. Okay. I would like to shift gears a little
5 bit and discuss any concerns you had with respect to
6 the bathrooms at Bryant over the five years you were a
7 teacher there. Did you have any such concerns?

8 A. Yes, very serious ones.

9 Q. Can you tell me what your concerns were in
10 that regard?

11 A. Yes. The bathrooms smelled of urine and
12 feces, and were -- I can't think of a good word for
13 this right now. They were not attractive places for a
14 child to go when they needed to do business because
15 they were repellent in that way. There were children
16 that I became aware of over my years teaching there who
17 began to stop using the bathroom. In my last year at
18 Bryant, one of my students, I found out through the
19 school nurse and his grandmother that he had been
20 holding his bowel movements for years. At the age of
21 nine, he had hemorrhoids. He and others told me they
22 did not like to use the bathrooms because they smelled
23 bad, that in the boys' bathroom on the second floor of
24 the school, there was one stall that was missing a door
25 and that there were children who used the bathrooms who

1 any other way?

2 A. Correct. And if you are losing your stuff
3 at the end of the year, it was pretty hard on a lot of
4 teachers. That was when we were getting ready for
5 graduation, final projects, science fair. It was
6 tough. It was very tough.

7 Q. Were there any steps taken at the -- to your
8 knowledge, at the end of -- around the end of each
9 school year to ascertain what supplies teachers would
10 need in the upcoming year?

11 A. There was no survey of the teachers, if that
12 is what you are asking. No, there was no system.

13 Q. Did anybody ask you towards the end of the
14 year if you had any list of items that you wanted the
15 school to purchase?

16 A. Never. Never.

17 Q. Was Ms. Hashimoto at Bryant for all five
18 years that you were teaching there?

19 A. Dee worked at Bryant for over 20 years. She
20 just retired a couple months ago. She was there the
21 whole time I was there.

22 Q. And over the entire five-year period, was
23 she the person primarily responsible for the ordering
24 of classroom supplies?

25 A. I know she was the person primarily

1 would either peek under the stalls and harass them or
2 who would smear feces on the wall or floor or who would
3 urinate on the floor and it made it really
4 uncomfortable for them to use the bathroom. The boys
5 used the bathrooms to urinate. Many of the boys said
6 they would not -- they would not use the bathroom for a
7 bowel movement because they felt it was too exposed,
8 not private enough and not clean enough to go in there.

9 In my third year teaching at Bryant, I had
10 two students who were very articulate about how
11 repellent the bathrooms were and they said it was much
12 too embarrassing to be in there and need to go to the
13 bathroom for bowel movements and so we had a very
14 candid conversation about double flushing, but they
15 told me that they didn't really think that solved the
16 problem. Just thinking about that conversation is
17 going to make me laugh because it was so bizarre.

18 Let's see, the girls did not complain about
19 not doing bowel movements in the bathroom, but often
20 asked me if they could please use the teachers'
21 bathroom instead, which was a private stall with a
22 locking door, and in their own childlike inimitable way
23 they just said, "The bathrooms are so gross."

24 We had two custodians at the school, one who
25 worked during the day and one who worked in early

1 afternoon through the evenings and both of them kept
2 the bathrooms as clean as they could, but in terms of
3 the stall doors being broken or feces or graffiti on
4 the wall -- and it is threatening graffiti. It is gang
5 graffiti which is scary to a lot of kids. It was hard
6 for them to keep on top of that.

7 There was also a period of time when boys
8 would go into the bathroom and knock the lights out and
9 leave wires and lights dangling which Larry told me it
10 was really dangerous. They could be electrocuted if
11 they touched it in a particular way and we didn't know
12 who the children were that were doing it, so at one
13 point, they had to start sending the kids to the
14 bathrooms in pairs to make sure they were safe and
15 following property rules of not writing on the walls
16 and such like that.

17 But the kids again said to me, "Do you know
18 how hard it is to do your business while your friend is
19 waiting there for you? You just don't want to."

20 So my concerns about the bathrooms were they
21 didn't smell right, that in some cases they weren't --
22 in all cases, they weren't private enough. In order to
23 make sure there was adequate security being provided,
24 they made the doors stay open which meant that two of
25 the classrooms could hear anything that was going on

1 Bryant side of the school, there is another pair of
2 bathrooms and they also each had three stalls. The
3 bathroom -- I don't remember if the bathrooms on the
4 yard had a wheelchair-accessible stall or not, but I
5 know that they did upstairs inside and so that was a
6 total of six toilets for, at one point, probably 350
7 students.

8 Q. Now, when you say the --

9 A. Wait. That is 12 toilets total.

10 Q. Right.

11 A. Six inside and six out.

12 Q. Six for boys, six for girls?

13 A. Uh-huh; yes.

14 Q. With respect to the boys' bathrooms, you say
15 there were three stalls. Were there three toilets in
16 each of those boys' bathrooms?

17 A. Yes, three stalls with toilets and I think
18 at least two urinals and one or two sinks, I think. I
19 haven't been in the boys' bathroom but just to inspect
20 graffiti, so I'm not very familiar with the boys'
21 bathroom. And it was in the boys' bathroom that one of
22 the stall doors was off for a period of time because it
23 was broken, so not all of the stalls provided privacy.

24 Q. Is it your belief that there were at least
25 two urinals in each of the boys' bathrooms, the

1 inside the bathrooms, everything from the
2 conversations, to the body sounds, to the flushing.
3 The kids told me that affected the way they chose to do
4 their business.

5 MR. ROSENTHAL: Can we take a quick break?
6 (Recess taken.)

7 MR. ROSENTHAL: Q. Ms. Malabed, I'm going
8 to put in front of you what we previously marked as
9 Exhibit 1 which were some handwritten notes you took
10 that you used to refresh your recollection as to the
11 classes you were teaching at various points in time
12 during your five years at Bryant, so feel free to
13 consult your notes whenever you need to.

14 A. Okay.

15 Q. Prior to our break, we were discussing the
16 concerns you had about bathrooms at Bryant. Did you
17 have any concerns about the number of bathrooms that
18 were available for students to use?

19 A. No.

20 Q. Do you know the number of bathrooms that are
21 available for students to use at Bryant?

22 A. I think so. In the main -- well, there is
23 only one building. Upstairs just off the library,
24 there is a boys' bathroom and a girls' bathroom and
25 they each have three stalls. On the playground on the

1 upstairs bathroom and the yard bathroom?

2 A. Yes.

3 Q. Are there any other bathrooms at -- student
4 bathrooms at Bryant?

5 A. No.

6 Q. Are there any bathrooms attached to any of
7 the kindergarten classrooms, to your knowledge?

8 A. The one kindergarten that would be
9 kindergarten A, K-A, had a toilet. Kindergarten B, I
10 think they might have had a set of little toilets for
11 kids in there, but I'm not sure and I don't know if
12 there was more than one or a set or if it was a coed
13 bathroom. I know the preschool -- the day care
14 preschool area had a coed bathroom, I think, but I
15 wasn't very familiar with it. The bathrooms were so
16 foul-smelling in the preschool that you just didn't
17 spend any time there at all.

18 Q. Over your five years at Bryant, were any of
19 the bathrooms that exist at Bryant unavailable for
20 students to use for any period of time, to your
21 knowledge?

22 MS. LHAMON: Calls for speculation and
23 overbroad.

24 MR. ROSENTHAL: Q. To the extent you know.

25 MS. LHAMON: Can I ask for a clarification?

1 MR. ROSENTHAL: Sure.

2 MS. LHAMON: Are you asking were there
3 periods of time when the bathrooms were locked and the
4 students couldn't get in as a policy matter or are you
5 asking whether there were times when a particular
6 toilet was broken so the bathroom wasn't available?

7 MR. ROSENTHAL: Q. I'm asking if, at any
8 point in time during your five years at Bryant, any of
9 the bathrooms you identified were locked or closed off
10 for any reason.

11 A. The bathrooms on the school yard are locked
12 sometimes in the morning as a policy. There were two
13 sets of doors. There were doors from the school yard
14 and a door from the cafeteria, so you could get into
15 the same bathroom either from one door, which was the
16 cafeteria side, and one door, which was the school yard
17 side, and I remember that it was somebody's policy to
18 lock one or both sets of the doors to keep kids from
19 going to the bathroom as they were trying to get the
20 school day started. And then they kept the cafeteria
21 side locked most -- you know, I don't know exactly what
22 their schedule was, but they had some system for
23 locking the doors to make sure the kids would have to
24 either go in through only one entrance and go out one
25 entrance, so they wouldn't be able to loop through them

1 But I don't know how often that occurred or
2 under what circumstances that occurred and I don't
3 remember when.

4 Q. And in those instances, do you know whether
5 those students tried both entrances of the bathroom?

6 A. Uh-huh; yes, I do know and we tell them to
7 go in the other one and they would say, "No, they are
8 both locked."

9 Q. What did you do in those instances?

10 A. I didn't have a key to the bathrooms, so I
11 couldn't unlock them. I would tell them to try and
12 find Mr. Alegre or to find the custodian. Usually they
13 would come tell me this if I was on yard supervision
14 duty, so I couldn't leave the space then that I was
15 supervising. I would tell them to go look for someone
16 else because in the morning they are not allowed to go
17 upstairs to the second floor before the official school
18 day begins, so they can only use the downstairs
19 bathrooms.

20 Q. Were all the instances that you recall where
21 students told you that the yard bathroom was locked,
22 did those occur only in the mornings?

23 A. I think so, yes.

24 Q. Was that before the start of the school day?

25 A. Before the start of classes. The school

1 to prevent them from playing, but I don't remember what
2 the system was.

3 As far as the bathrooms upstairs were
4 concerned, to my knowledge, they were supposed to be
5 unlocked at all times. Although the bathrooms are in
6 an interior hallway of the school with no outside
7 sources of light and some students had discovered ways
8 of shutting lights out in the bathrooms which would
9 make them virtually pitch black inside and they became
10 unusable at those times when the kids could not see.
11 They would walk into the bathroom and not be able to
12 see anything, so they would just come right back out
13 and they would have to try and page the custodians to
14 come turn the lights back on because they were special
15 kind of switches.

16 Q. Just so I'm clear, with respect to the yard
17 bathroom which had two different entrances, is it your
18 belief that only one of those entrances was open at a
19 time?

20 A. It is my belief that most of the day only
21 one door was unlocked, one side was unlocked.

22 Q. Do you remember any instances in which both
23 sides were locked?

24 A. I remember kids coming to me and telling me,
25 "The bathrooms are locked and I can't get in."

1 opened at 7:30 and classes started at 7:50. Some
2 students arrived earlier and they might arrive before
3 the bathrooms were officially unlocked.

4 Q. Do you recall any instances during your five
5 years at Bryant when a student was unable to access a
6 bathroom during a school day?

7 A. I remember one time at least when several of
8 my students came to me and told me they could not get
9 into the boys' bathroom because the lights were out and
10 they couldn't see.

11 And I also remember a time when boys went to
12 the bathroom and came back and said, "I can't use it.
13 It is too gross." And there was feces smeared on the
14 floor.

15 Q. Putting those instances aside, do you
16 remember any occasions during the school day during
17 which a student did not have physical access to the
18 bathroom?

19 A. Locked out, no, not to my knowledge.

20 Q. And you identified an instance in which one
21 of the stalls in the boys' bathroom on the second floor
22 was missing a --

23 A. Door.

24 Q. -- stall door; is that right?

25 A. Uh-huh.

1 Q. Was the door physically not there?
 2 A. Correct.
 3 Q. And was that just a problem in one of the
 4 stalls?
 5 A. As far as I know.
 6 Q. The other two stalls in that bathroom had
 7 doors?
 8 A. Yes.
 9 Q. And, to your knowledge, were those doors
 10 functioning?
 11 A. Yes, and I just want to say it for context
 12 sake that children are supposed to use the bathrooms
 13 only during recess time and if 20 -- let's see, if 120
 14 students -- if 60 students have recess at the same time
 15 and there are only two stalls available and assuming
 16 they would do their business in there, it can get --
 17 you know, pretty jammed up. This doesn't happen to men
 18 very often, but women are very aware of how backed up
 19 bathrooms can get and I know my students have sometimes
 20 left the room to go to the bathroom and have been gone
 21 ten or 15 minutes just because there were a lot of
 22 other kids trying to use the bathroom at the same time,
 23 so --
 24 Q. Do you recall the stall door in the second
 25 floor boys' bathroom being missing for the entire five

1 years you were at Bryant?
 2 A. No, it wasn't missing the entire five years.
 3 It was missing during one of the school years for some
 4 part of the school year. I don't know which year it
 5 was missing and I don't know for how long.
 6 Q. Is it possible for you to estimate for how
 7 long it was missing?
 8 A. No.
 9 Q. Do you recall the stall door being replaced
 10 at some point?
 11 A. It must have been. I don't remember it
 12 happening. Like I said, I didn't go into the boys'
 13 bathroom unless there was some graffiti on the wall.
 14 Q. When you say, "It must have been," can you
 15 tell me what that is based on?
 16 A. I asked my kids later on if there were three
 17 stall doors and they said, "Yeah, there are now."
 18 Q. Other than that one period of time during
 19 which one of the stall doors was missing, were there
 20 any other periods -- were there any other stall doors
 21 missing from any of the bathrooms for any length of
 22 time at Bryant?
 23 A. Not to my knowledge.
 24 Q. That is true for both of the boys' and the
 25 girls' bathrooms?

1 A. Yes.
 2 Q. You testified earlier that some of the girls
 3 had -- some of the girls at Bryant had asked you to let
 4 them use the teachers' restroom rather than the student
 5 restroom because the student restrooms weren't private
 6 enough. Can you tell me what you were referring to?
 7 A. As I said earlier, to make sure that the
 8 behavior inside the bathrooms was appropriate, children
 9 weren't playing with paper towels, sinks or loitering,
 10 they would leave -- generally, we would leave the
 11 bathroom -- the main door open that goes into the
 12 bathroom and that meant that whatever you did in there
 13 could be heard in any of the classrooms that were
 14 nearby the toilets, which included a 2nd grade, a 1st
 15 grade, and a 4th grade. And it meant that any noises
 16 that their bodies made could be heard and for some
 17 children that was really uncomfortable.
 18 Q. Just so I'm clear, each of those stalls also
 19 had doors, but the main door, the entrance door, of the
 20 bathroom was open?
 21 A. Kept open.
 22 Q. Do you have an understanding as to why the
 23 main door of the bathrooms were kept open?
 24 A. Let me see if I can say this more clearly.
 25 The only -- they were not supervised directly by an

1 adult. It was an honor system to be able to go to the
 2 bathroom and use it appropriately and the truth is that
 3 children don't always use it appropriately. The only
 4 way it was supervised was by leaving the door open so
 5 teachers could keep their ears open for anything that
 6 sounded suspicious.
 7 Q. Was that the policy for Bryant the entire
 8 five years you were there?
 9 A. It was never the written policy, but it was
 10 the way we managed that space, yes.
 11 Q. Perhaps let me try asking a different
 12 question: Was it a practice to keep the main door of
 13 the bathrooms open during all of the five years you
 14 spent at Bryant?
 15 A. Yes. Now, I have to say that didn't always
 16 work. If there were a lot of kids that were going to
 17 the bathroom, they were doing an art project in one
 18 room and they were sending a series of children down to
 19 the bathroom to wash their hands, the teachers who were
 20 in that surrounding area would be disturbed by the
 21 noise because we had those partition walls and you
 22 could hear through the walls, so they would sometimes
 23 come and close the bathroom doors because kids would be
 24 in there washing and chatting, things like that. If it
 25 got to be an excessive amount of noise in the bathroom,

1 but it sounded like appropriate noise but just too much
2 of it, they might shut the doors for that reason.

3 Q. That was the exception rather than the rule?

4 A. I think so. I was not one of the teachers
5 who had a classroom right outside the bathroom doors.

6 Q. Do you recall there being any problems with
7 the functioning of the toilets and urinals at Bryant
8 over the five years that you were a teacher there?

9 A. Yes. I know the toilets flooded on
10 occasion. I know the water never came out hot. I know
11 that the soap dispenser was sometimes empty. I don't
12 know how often that happened.

13 Q. Let's focus in on the functioning of the
14 toilets first and we'll come back to any other concerns
15 about the supplies in the bathroom. You say the
16 toilets flooded on occasion. Was that a persistent
17 problem at Bryant?

18 A. Not that I'm aware of. You know, aside from
19 -- I'm just going to kind of make a general statement
20 about the bathrooms. Aside from the fact they didn't
21 offer an appropriate amount of privacy for the kids and
22 the smell in there was really foul, the bathrooms
23 didn't present other kinds of mechanical problems that
24 were -- that were of an extremely serious concern for
25 me or the kids at Bryant. The side effect of them not

1 that you squat over the toilet seat which usually means
2 that they would urinate a lot on the seat. I know kids
3 would come back to me and complain about that there was
4 urine all over the seat and no one was wiping it up.

5 And when they would come in, they weren't going to wipe
6 up somebody else's urine, so they just wouldn't go.

7 Q. Just so I'm clear, is it your testimony that
8 for the five years you taught at Bryant, the toilets
9 generally functioned and the bathrooms were generally
10 supplied with the kinds of bathroom supplies I
11 mentioned?

12 A. Yes.

13 MS. LHAMON: Objection. Mischaracterizes
14 the testimony slightly and also the record will speak
15 for itself. She doesn't need to recast it.

16 THE WITNESS: I was going to say yes with a
17 qualification.

18 MR. ROSENTHAL: Q. Was there a
19 qualification?

20 A. I was going to say yes, they functioned and
21 yes, there were supplies, but no, that doesn't make
22 them usable in the sense that you and I would ever want
23 to use them and even these children wouldn't want to
24 use them and that presented some pretty serious health
25 problems which impacted their ability to concentrate.

1 being able to use bathroom became a health concern for
2 me because it meant that I had kids holding their
3 stomachs or doubled over or refusing to eat because
4 they didn't want to start a digestive process that
5 might cause them to make a bowel movement, so they
6 wouldn't eat either, so the side effect was of what
7 they called "nasty" or "disgusting" bathrooms had more
8 impact on their health, but the access to a functioning
9 -- to a toilet that flushed with a door that existed,
10 but because of the way -- because of the lack of
11 air-conditioning and air circulation or because of --
12 you know, I don't know why toilets smell like that
13 after a while, why public bathrooms smell like that,
14 but it was enough to make you want to hold your breath
15 when you walked in there. It was pretty stinky and
16 that seemed to be the more serious of the problems in
17 the whole scope of things. The functioning of the
18 bathroom was not a problem.

19 Q. Did you have any concerns regarding the
20 availability of bathroom supplies in the bathrooms at
21 Bryant? And by "Supplies" I'm referring to things like
22 toilet paper, paper towels, soap, those kinds of items.

23 A. No. One of the things we've never had at
24 the school is toilet seat covers, though, and so the
25 practice in some families or cultures of children is

1 Sometimes when we talk about this stuff, it feels to me
2 like we're compartmentalizing it into these really neat
3 little chapters and packages, but there is this domino
4 effect of what happens, you know.

5 Q. You mentioned some of your concerns about
6 the cleanliness of the bathrooms. You mentioned the
7 smell of the bathrooms and how on occasion human waste
8 would be --

9 A. Outside of the toilet.

10 Q. Right.

11 A. Uh-huh.

12 Q. Places it shouldn't be.

13 A. Yes.

14 Q. Do you have an understanding as to how
15 frequently the bathrooms were cleaned at Bryant?

16 A. They were thoroughly cleaned around
17 4 o'clock every afternoon, between 4:00 and 6:00 every
18 afternoon and restocked and then I think that if there
19 was a problem during the day, the custodian would be
20 paged to come and mop or wipe or wash when she could.
21 She was responsible for the entire site, so if she
22 wasn't mopping the cafeteria or sweeping the yard or
23 something like that, then she could get up to the
24 bathrooms.

25 Q. Do you remember any instances at Bryant in

1 which the bathrooms needed to be cleaned during the day
2 and they were not?

3 A. Not meaning never, no. They were eventually
4 cleaned, but there were definitely periods of time when
5 one of the 120 boys would need to use the bathroom and
6 there was poo on the wall or gang insignia that was --
7 you know, the gang that their brother didn't belong to.
8 That scared them. I mean, there were periods of time
9 when they would go in and see things that were
10 upsetting or disturbing to them that made it even
11 difficult to pee, let alone use the toilets.

12 Q. Focusing in on the instances where there was
13 human feces on the bathroom walls, do you remember any
14 instances in which a situation like that was not
15 cleaned up by a custodian within a reasonable period of
16 time?

17 A. I can't speak to that. I don't know how
18 long -- I mean, I don't know who put the feces there.
19 I don't know how long it was sitting there before it
20 was discovered by my students and I don't know how long
21 it took after they discovered it to have the custodian
22 go in there and clean it up.

23 Q. Did you ever hear of any instances in which
24 the custodian did not clean up a situation like that?

25 A. Hearing about it?

1 more soundproof or private or secure. Like I said, it
2 is really not the cleanliness. It was the setup.

3 Q. Do the school's custodians clean the
4 teachers' bathrooms as well?

5 A. Yes.

6 Q. Was the condition of the teachers' bathrooms
7 better or worse than the condition of the student
8 bathrooms?

9 A. Better. There were far fewer people using
10 it. There were six toilets set aside for teachers and
11 there were maybe 30 adults onsite as compared to --
12 that is a 1-to-5 ratio, right? So if they had 200 kids
13 and 12 toilets -- I need a calculator.

14 MS. LHAMON: Can I make sure I'm clear.
15 Earlier today I think you testified there were 350
16 kids.

17 THE WITNESS: 350 when I started and when
18 they went through class size reduction and when the
19 dot.comers started renting the properties in the
20 Mission District, a lot of families moved away, so
21 there were about 220 when I left.

22 MS. LHAMON: Okay. Thank you.

23 MR. ROSENTHAL: Q. Just so I'm clear, you
24 said there were six toilets for teachers to use. Was
25 there a separate men's bathroom and a separate women's

1 Q. Right.

2 A. No.

3 Q. You said earlier that you believe the
4 custodians of the school kept the bathrooms as clean as
5 they could. Can you describe for me what you meant by
6 that?

7 A. Two custodians with slightly overlapping
8 schedules were charged with keeping the entire site
9 clean. That meant they had to vacuum all the carpets,
10 and empty waste baskets, and wipe counters and tables,
11 and mop floors, and much, much more than that. And my
12 understanding of the way they cleaned the bathrooms is
13 that they washed and rinsed out the toilets, the sinks,
14 and mopped the floor and occasionally removed graffiti
15 as soon as it appeared. Not always were they able to
16 get it off. Sometimes they had to use special
17 chemicals to get it off or they had to paint over it.
18 They could not fix a broken door. They could not fix a
19 broken window. They could not fix a broken paper towel
20 dispenser, but given all of the things they had to do
21 in their five-hour shift -- no, four-hour shift, given
22 all the things they had to do in a four-hour shift, it
23 seems to me that they did the best they could and by
24 that I mean that they did mop and they did clean. They
25 were never able to eliminate the odors or make the room

1 bathroom?

2 A. There were two separate toilets, entirely
3 separate toilets on the second floor and they were
4 coed. And then on the first floor, right off the
5 office, there was a men's room and a women's room and
6 each of those had two toilets each.

7 Q. Thank you. Did you have any concerns
8 regarding the teachers' bathrooms similar to the
9 concerns you had about the students' bathrooms?

10 A. No.

11 Q. It wasn't similar smell or anything like
12 that?

13 A. The smell was similar, but you could close
14 and lock the door and it was soundproof.

15 Q. But the smell in those bathrooms was --

16 A. One of the bathrooms doubled as the
17 custodian closet, so it smelled like Janitor in a Drum,
18 very strong chemical smell. The other bathroom didn't
19 smell great, but it didn't smell horrible. The
20 downstairs bathrooms were okay, although there were
21 some occasions when they got pretty disgusting and I
22 don't know why.

23 Q. Do you know whether any steps were taken by
24 anybody at the school to alleviate the smell in any of
25 the bathrooms at Bryant?

1 A. To my knowledge, nothing was done.
 2 Q. Did you ever inspect any of the student
 3 bathrooms first thing in the morning prior to any
 4 students having used them?
 5 MS. LHAMON: Vague as to "Inspect."
 6 MR. ROSENTHAL: Q. Inspect or observe, I
 7 just mean generally.
 8 MS. LHAMON: Did you ever enter them?
 9 MR. ROSENTHAL: Fair enough.
 10 THE WITNESS: Not as a routine, no. I have
 11 peeked into the bathroom if I was looking for a child.
 12 MR. ROSENTHAL: Q. Did you ever look into a
 13 bathroom or enter one of the student bathrooms first
 14 thing in the morning before any students had used it?
 15 A. I don't think so.
 16 Q. Do you know whether the condition of the
 17 bathrooms -- first thing in the morning, do you know
 18 whether the bathrooms were, in your opinion, usable for
 19 students first thing in the morning prior to anybody
 20 else having used the bathroom?
 21 MS. LHAMON: Calls for speculation.
 22 THE WITNESS: I don't know. I can say that
 23 I have used the student bathrooms. The teachers'
 24 bathrooms were often used. When I needed to use them,
 25 there was somebody in there, so I often used a student

1 bathroom, so I know what they smell like and I know
 2 what they look like and I know about the urine and
 3 things in the girls' bathroom, but I would use them in
 4 the evenings, say, at 6 o'clock at night or 5 o'clock
 5 at night after they had already been cleaned, so I know
 6 they had been cleaned and I don't know what happened to
 7 them between the time I used them at 6 o'clock at night
 8 and 7:45 the next day or 8 o'clock the next morning.
 9 Q. When you had used those bathrooms in the
 10 evening after they had been cleaned, were those
 11 bathrooms usable, in your opinion?
 12 A. Yes, because they are -- on the north of the
 13 girls' bathroom is the 2nd grade class. On the west of
 14 the girls' bathroom is the 1st grade class. It is
 15 usable because there are not 60 kids listening to the
 16 noises coming out of your body, 60 kids and two
 17 teachers. Usable because there isn't a whole parade of
 18 children standing in line waiting to go in to their
 19 classroom watching you go in to use the bathroom. It
 20 is a privacy issue, really. Usable because -- I have
 21 traveled all over the world. I know what a bathroom
 22 smelled like in Jakarta and I can stomach that, but it
 23 stinks.
 24 Q. In your opinion, was the smell of the
 25 bathroom improved at all after the bathrooms had been

1 cleaned?
 2 A. Yes.
 3 Q. Do you have an opinion as to whether leaving
 4 the entrances to the bathrooms open had any effect on
 5 how students behaved when they used the bathrooms?
 6 A. Yes, my students told me that because people
 7 could hear what they were going to do in there, they
 8 didn't want to do it.
 9 Q. You testified earlier that some students
 10 would do things in the bathroom that bathrooms weren't
 11 intended for, for example, you said some students
 12 knocked the lights out or there would be instances
 13 where human waste would be in places other than the
 14 toilet. Did you find that by keeping the bathroom
 15 doors open, those sorts of activities diminished?
 16 MS. LHAMON: Mischaracterized the testimony
 17 slightly.
 18 THE WITNESS: I wasn't in charge of deciding
 19 whether those doors stayed open or not. That was more
 20 -- those were the kinds of decisions that Larry Alegre
 21 would make or the student advisor or the teachers whose
 22 classrooms abut against the bathroom walls. I think it
 23 was their belief and their hope if they could keep the
 24 doors open, they could catch people in the act. I
 25 think what really led to those actions ceasing was more

1 that some students were ratted out and pulled aside.
 2 The kids who were doing the graffiti and unplugging --
 3 turning lights out and pulling the lights out of the
 4 ceiling were tattled on and that may have led to its
 5 slowing down and stopping, but it never really stopped
 6 -- I mean, once one set of kids stopped doing it,
 7 another kid might pick it up or someone else might do
 8 it.
 9 MR. ROSENTHAL: Q. Was it your
 10 understanding that by having the bathroom entrances
 11 open, it was the intention to discourage that kind of
 12 activity?
 13 A. Yes.
 14 Q. I'm trying to get a sense of why the
 15 bathrooms were open.
 16 A. There is also no air flow. You know, one of
 17 the things I don't think we've talked about yet was the
 18 heating and air-conditioning. I don't think we got to
 19 that in the first day. We'll probably get to it later
 20 today, but because the heating and air-conditioning
 21 were messed up, there was no air exchange, so the only
 22 way to get air exchange in those rooms was to keep
 23 those doors open, so there were multiple reasons for
 24 keeping the door open, I'm sure.
 25 MR. ROSENTHAL: Okay. Okay. We can -- this

1 would be a good place for lunch.

2 MS. LHAMON: Okay.

3 (Recess taken.)

4 MR. ROSENTHAL: Q. Okay. Ms. Malabed, I
5 would like to now turn your attention to any concerns
6 you had regarding the teaching staff at Bryant
7 Elementary. Did you have any concerns regarding the
8 teaching staff?

9 MS. LHAMON: Question is vague.

10 THE WITNESS: Everybody on the site -- I'm
11 going to try to keep it in context of what the suit
12 seems to be about, but everybody on the site had a
13 credential. Not all of the teachers had a credential
14 for the classroom they were teaching in and I'm going
15 to -- my most serious concerns are really not about the
16 staff that is supposed to be credentialed. It is about
17 the classified folks, the teaching assistants and
18 things like that, but I'm going to limit this just to
19 the teachers. In terms of our concerns for them, for
20 the teachers in the classrooms, I only have really two
21 things I thought were pretty serious impact to the
22 classrooms. One is that teachers who were in rooms
23 with kids for whom they were not specifically
24 certificated. [REDACTED] mentioned [REDACTED]
25 on our first day together. Her last name is [REDACTED]

1 because of stress, so we get lots of new teachers and
2 the year I joined, more than 50 percent of the teachers
3 were brand new to the profession. There was no
4 available support for brand-new teachers other than the
5 buddy system I talked about earlier where I was
6 assigned a big brother to help me out with questions.
7 He was not a very good teacher and, in fact, was
8 invited to leave the profession last year, but that was
9 best they could give me. So my other concern was that
10 teachers with not a lot of experience, with zero to
11 no -- zero to little experience were put into positions
12 with very stressful populations, extremely high
13 expectations to raise test scores and other indices and
14 were not afforded any support by the district and the
15 site didn't have any manpower or resources to help them
16 out through their first year, so those are my concerns
17 about staff.

18 Q. We'll discuss some of those concerns in
19 greater detail. I'm going to try and cover some areas
20 relating to teachers. Perhaps we can get through it
21 quickly. We may not be able to get through, but in the
22 event we can, I'm going to try to cover those first.
23 Did you have any concerns regarding the use of
24 substitute teachers at Bryant?

25 A. We had long-term substitutes covering

1 [REDACTED] was holding a credential to teach
2 high school and she was considering a career change and
3 came in and taught our special ed class for a year.
4 During the time she was in that class, she was taking
5 one or two courses out at San Francisco State to get
6 her credential in teaching special ed, but she wasn't
7 technically qualified and there was no one on the site
8 who was able to advise her or train her or support her
9 appropriately. She had a pretty miserable year and she
10 admitted candidly to many of us that she felt
11 underqualified, sometimes unqualified and absolutely
12 did not know what she was doing in there, so it was
13 hard watching her teach. You could tell she was very
14 stressed and very strained. As a peer, it was hard to
15 watch her and it was hard to watch her kids function in
16 the room with somebody who was not experienced and
17 qualified.

18 And the other concern I had was for the new
19 teachers at Bryant and Bryant, being one of the schools
20 that was ranked in the bottom ten -- I think there are
21 75 or 85 elementary schools in San Francisco and based
22 on test scores and other criteria, Bryant was one of
23 the lowest-ranking schools in the city. The lowest
24 ranking schools in the city tend to have the least
25 experienced teachers in them because turnover is high

1 classrooms when women would go out on maternity leave
2 and they were not trained and, honestly, they weren't
3 qualified for the job. When a substitute teacher works
4 as a long-term teacher, say, three months at a time,
5 there is a lot of time they spend just kind of doing
6 busy work and baby-sitting with the kids because they
7 don't really understand how to deliver curriculum or
8 how to assess. They don't know that. One man who was
9 there was a nice man, but he was an art teacher and he
10 didn't really know what he was doing and they really
11 suffered and I know they suffered because I taught them
12 the following year and they lacked some basic skills
13 they should have gotten when they were in his class.
14 The substitutes in general that came to fill in for one
15 or two days, some of them were good. I would say half
16 of them were good and half of them were horrid. Half
17 of them were cruel, senile. They just didn't belong
18 teaching in a classroom, but it was difficult to get
19 teachers to come down to Bryant because being one of
20 the bottom ten schools, most subs -- many subs assume
21 -- I know I assumed when I was a sub -- that you don't
22 want to work in a bottom ten school because the kids
23 are really tough. It is just a really hard place to
24 go, so not very many subs would come down and work for
25 us, so we had to take what we could get.

1 The last year that we had a special ed class
 2 in existence, which was my second year as a 5th grade
 3 teacher, the second-to-last year I was teaching there,
 4 we had a special ed teacher who had moved out here from
 5 New Orleans and she had a nervous breakdown in
 6 September/October and she was replaced by a man who had
 7 a nervous breakdown who taught for a little while and
 8 he was very odd and he had a nervous breakdown in the
 9 spring. And then they had another substitute take over
 10 the class for the rest of the year and the class was
 11 very, very out of control. It was across the hall from
 12 me and I and another woman on my side of the hall had
 13 to go over there and physically restrain children at
 14 least once a week and help out because it was so crazy
 15 in the classroom.

16 Q. Other than when teachers were on extended
 17 maternity leave and the occasional day-to-day absence
 18 of teachers and this other instance you identified in
 19 the special ed class, were there any other instances in
 20 which any classes at Bryant were taught by substitute
 21 teachers for any length of time?

22 MS. LHAMON: Vague as to time and calls for
 23 speculation. Are you asking --

24 MR. ROSENTHAL: Q. Over your five years
 25 that you were teaching at Bryant.

1 teacher for that classroom, not always credentialed for
 2 that classroom, but we did have a hire for that room.

3 Q. And just so I'm clear, other than that
 4 instance you were thinking of, do you remember any
 5 instances over your five years at -- any other
 6 instances over your five years at Bryant in which a
 7 permanent teacher stopped teaching at Bryant for some
 8 reason or another and that class was taught by one or
 9 more substitutes for an extended period of time?

10 A. Only that special ed class I told you about.

11 Q. You said earlier that you believed that many
 12 of the substitutes that taught at Bryant were not
 13 qualified, in your opinion. Do you have an
 14 understanding as to whether those substitutes had any
 15 credentials of any kind?

16 A. Very few of them. Well, let's see, some of
 17 them were retired teachers who had come back out of
 18 retirement, the elderly people that I'm thinking of.
 19 Some of them -- so they had credentials that they were
 20 trained for teaching 30, 40, 50 years ago and in
 21 preparing to be a teacher 40 years ago, you could earn
 22 something called a lifetime credential which meant you
 23 never had to take continuing education units to
 24 maintain your credential. You basically had your
 25 credential and were entitled to teach forever on.

1 MS. LHAMON: Thank you.

2 THE WITNESS: You mean were long-term subs
 3 hired to take over a classroom because no permanent
 4 teacher could be -- no permanent credentialed teacher
 5 could be found?

6 MR. ROSENTHAL: That would be an example,
 7 right.

8 THE WITNESS: I have to think about this for
 9 a second. I'm thinking of a sub that we had for a
 10 while and I don't remember whose classroom she was
 11 working in or why she was there. I don't think it was
 12 a maternity leave and yes, that situation did happen.
 13 I can't remember who we eventually hired to take that
 14 classroom job. I know the sub really wanted the job
 15 permanently, but she had bizarre behavior. For the
 16 most part, I think we've been able to find teachers at
 17 the very last possible minute with the exception of
 18 those other situations that I told you about.

19 MR. ROSENTHAL: Q. Do you ever recall any
 20 instances where, at the beginning of the school year,
 21 Bryant did not have a permanent teacher for each of the
 22 teaching positions?

23 A. We hired some people on the day before
 24 school started, so I don't think we ever started a
 25 school year without thinking we had a credentialed

1 About seven or eight years ago, the San Francisco
 2 School District decided all teachers had to have, at a
 3 minimum, the CLAD certification which we talked about
 4 before, but those teachers were immune to having to get
 5 that certification, so they would be teaching -- they
 6 would be using teaching strategies that would be
 7 appropriate for English-only classrooms, but those were
 8 not the classrooms we had there, so that is one case.

9 In the case of the substitutes who did not
 10 have their credential and were not working on a
 11 credential, they weren't qualified because generally
 12 those substitutes came in with an attitude that it was
 13 a way of making \$100 and sitting in a classroom and
 14 just watching the kids do whatever they did and we did
 15 have a few of those who would show up at school to take
 16 over classrooms when people were out sick and then
 17 there were a few teachers who had their credentials and
 18 they were still looking for permanent work, a few.

19 Q. Did you have any understanding as to
 20 whether -- strike that.

21 Is it your belief that there were substitute
 22 teachers who taught at Bryant who did not have any
 23 credential whatsoever? And included in credential, I'm
 24 also referring to emergency credentials. Do you know
 25 what an emergency credential is?

1 A. I do. And I know that when I first started
 2 teaching back in '95/'96, you could get a job as a
 3 substitute teacher without having any credential at
 4 all. You just had to go through the substitute process
 5 which meant you had to pass a test called the C BEST,
 6 C, B-E-S-T and you probably had to get fingerprinted or
 7 something like that and then you could sign on to the
 8 payroll and become part of the substitute system. In
 9 later years, I remember there being some talk that
 10 substitutes did have to have an emergency credential
 11 which doesn't mean they've had training. It means they
 12 paid the \$90 to get their credential. They paid a fee
 13 to the California Commission on Teacher Credentialing
 14 and got the credential and what I remember about it is
 15 if you had an emergency credential, you could use that
 16 credential to get a job, but you also had to make an
 17 honorable promise that you would start taking course
 18 work that would train you to be a teacher, but it
 19 didn't mean you necessarily had taken any course work,
 20 but you had made a statement of intention. Thinking
 21 back to some of the subs we had last in my last year at
 22 Bryant, though, some of those people I would be very
 23 surprised to find out if they had even an emergency
 24 credential.
 25 Q. So it is your belief that some of them

1 didn't even have that?
 2 A. Correct.
 3 Q. I made a distinction a little bit earlier
 4 between long-term substitutes who came in to teach
 5 classes, for example, when a teacher was on maternity
 6 leave, and day-to-day substitutes who filled in on a
 7 shorter-term basis. Did you believe that those two
 8 different types of substitutes had identical roles in
 9 the classroom?
 10 A. No.
 11 Q. Can you tell me what you thought their roles
 12 were?
 13 A. A day-to-day substitute follows the lesson
 14 plan written by the permanent teacher. Permanent
 15 teachers generally file emergency plans with the office
 16 or if they know they are going to be out, for example,
 17 me today, knowing I would be out, I would prepare a
 18 plan that would detail the schedule, the subject area,
 19 the work to be done and I would have all the materials
 20 there and the day-to-day sub comes in and reads it like
 21 a menu and delivers the curriculum. A long-term sub
 22 has to plan the curriculum, deliver it, do the
 23 assessments, write the report cards, have the parent
 24 conferences. They function as the permanent teacher,
 25 but it is understood that they will only be there until

1 the permanent teacher returns, but they have all the
 2 responsibility of the permanent teacher. They attend
 3 the staff meetings. They attend any trainings or go
 4 through any drills we might have.
 5 Q. Was it your experience, to the extent you
 6 know, that the credential status of day-to-day
 7 substitutes and long-term substitutes differed over the
 8 course of your five years at Bryant?
 9 A. Can you repeat the question?
 10 Q. Sure. Trying to figure out if there was --
 11 you described for me the different roles the different
 12 types of substitutes played. I'm trying to figure out
 13 if it was your experience that the longer-term
 14 substitutes had a different credential status generally
 15 than the day-to-day substitutes?
 16 A. Yes.
 17 Q. Can you tell me what your experience was?
 18 A. Yes. Long-term subs, I believe, have to
 19 have a credential of some kind and in the last few
 20 years, the District has become more strict about their
 21 credential being permanent to the job they are going to
 22 take. In other words, someone who is credentialed in
 23 art, has a single-subject credential in art, would not
 24 be allowed to take an elementary class position as a
 25 long-term sub. They could take middle or high school

1 positions, but not an elementary position because the
 2 elementary job is multiple subject. It is not just one
 3 subject.
 4 Q. And you said that is a policy the District
 5 has begun to enforce?
 6 A. Uh-huh.
 7 Q. Do you know how they have done that?
 8 A. I remember having conversations with Larry
 9 during his efforts to try and hire a long-term sub and
 10 him telling me that the hirings were being blocked
 11 downtown because the people we wanted to hire weren't
 12 credentialed appropriately. For example, there was
 13 this man that I'm thinking of who had this single
 14 subject credential in art and who hadn't -- who
 15 actually received his credential over 20 years ago.
 16 Larry had been acquainted with and liked him personally
 17 and wanted to hire him for a substitute for a maternity
 18 leave and the District didn't think it was an
 19 appropriate placement and didn't want to let Larry hire
 20 him, but in the end, somehow Larry prevailed and he was
 21 hired.
 22 Q. Is that the only example you are aware of in
 23 which a long-term substitute was hired who did not have
 24 the --
 25 A. No.

1 Q. -- type of credential that would have been
2 mandated by the District under the policy you've
3 described?

4 A. No. In my last year at Bryant, a woman went
5 on maternity leave and the substitute they hired to
6 cover her classroom had not completed his teaching
7 credential classes; hadn't done his student teaching.
8 He was not fully credentialed. He had an emergency
9 credential. He was farther along in the process, but
10 he was not fully credentialed.

11 Q. Do you remember who that was?

12 A. His name is [REDACTED] last name is [REDACTED]
13 [REDACTED]

14 Q. And can you also give me the name of the
15 other individual that Mr. Alegre was friendly with?

16 A. Yeah, first name is [REDACTED] last name
17 [REDACTED]

18 Q. Any other examples of long-term substitutes
19 being hired who did not have the appropriate credential
20 along the lines we've been discussing?

21 A. Let me think, [REDACTED] was again hired
22 as a long-term sub to cover a Spanish bilingual
23 classroom and he wasn't bilingual and the subs in there
24 usually have to have what is called the B CLAD, B,
25 C-L-A-D, credential which qualifies them to teach in a

1 an emergency credential to teach.

2 Q. At the time she filled in as a long-term
3 sub, she had an emergency credential; is that your
4 understanding?

5 A. Yes.

6 Q. And what is the basis for your knowing the
7 credential status of all these individuals? Did that
8 come from conversations or from where?

9 A. It came from conversations with the
10 individuals themselves, with Larry Alegre and I was the
11 union rep for the school, so I had access -- I was part
12 of the hiring committee.

13 Q. In each of these instances you've
14 identified, in any of those cases, did the long-term
15 sub remain for the remainder of the school year?

16 A. Yes, [REDACTED] taught the whole
17 spring semester. [REDACTED] taught the spring
18 semester and I think [REDACTED] was there for a
19 whole year, fall for Gina Martinez, and fall for Vicki
20 Doll-Polanco.

21 Q. Was it your understanding that [REDACTED]
22 was hired as a permanent replacement for Ms. Clark?

23 A. Yes.

24 Q. Any other instances -- those were the
25 substitutes that were used as temporary replacements

1 bilingual classroom. That is all I can think of right
2 now.

3 Q. Do you remember who [REDACTED]

4 A. Replaced?

5 Q. -- substituted in for?

6 A. First name is Kim. Her last name is
7 Mukoyama, M-u-k-o-y-a-m-a.

8 Q. Do you recall why she was absent for a
9 period of time?

10 A. Pregnant.

11 Q. How about [REDACTED] did he fill in on
12 two different occasions then?

13 A. He filled in for two other women who were on
14 maternity leave.

15 Q. Do you recall who they were?

16 A. His long-term substitute assignments were
17 for Gina Martinez and Vicki, V-i-c-k-i, and her last
18 name is hyphenated, Doll, D-o-l-l, hyphen,
19 P-o-l-a-n-c-o. Oh, I have another one.

20 Q. Why don't you tell me who that is?

21 A. Substituting for [REDACTED]
22 [REDACTED], who was fired mid year. The long-term
23 substitute's name was -- hold on, let me think for a
24 second -- [REDACTED]
25 [REDACTED] and she had no credential, so she bought

1 when the teachers were on maternity leave; is that
2 correct?

3 A. Right.

4 Q. Do you remember when [REDACTED] -- which
5 year she was hired in?

6 A. My second year at Bryant was the '97/98
7 school year. She was hired in the spring and then
8 taught the following year as well full time and then
9 was fired at the end of that year.

10 Q. Just to make sure, are there any other
11 instances you can think of where a long-term substitute
12 was hired who did not have the appropriate credential,
13 in your opinion, to teach the class that they were
14 assigned to?

15 MS. LHAMON: Just so I'm clear. You are
16 limiting that question to her time at Bryant; is that
17 right?

18 MR. ROSENTHAL: Right.

19 MS. LHAMON: Thank you.

20 THE WITNESS: None other than those things
21 I've mentioned so far.

22 MR. ROSENTHAL: Q. Did you have -- did you
23 ever form an opinion as to the performance of any of
24 the three individual long-term substitutes you've
25 identified?

1 A. Yes, I did. I thought [REDACTED] did a
 2 nice job with his students. I think [REDACTED]
 3 tried hard, but didn't have enough contemporary
 4 training to really be successful with the kids in his
 5 classroom. I think that because his Spanish was --
 6 because he was not classically bilingual and not
 7 qualified as a bilingual teacher, when he was serving
 8 as a sub for the Spanish bilingual kids, they were
 9 grossly underserved. In 3rd grade, they are still
 10 supposed to be speaking quite a bit of Spanish in the
 11 classroom and if a teacher is using Spanish in a way
 12 that is not appropriate, it is actually doing them
 13 harm, in my opinion.

14 And [REDACTED] had a very firm and --
 15 what would be the right word for this -- militant
 16 management style which she used as her hallmark, which
 17 can be valued in a sub. However, it made up too much
 18 of who she was and her ability to deliver curriculum
 19 appropriately -- appropriate to the children in her
 20 room; didn't develop enough to really serve those kids
 21 that she had. She just didn't have the training and
 22 the support. She may now be a good teacher. I don't
 23 know, but at the time, I didn't think highly of what
 24 she was doing.

25 Q. And what is the basis for those opinions of

1 the individuals?

2 A. Of their quality of their teaching?

3 Q. Of their performance.

4 A. We do a lot of looking at student work at
 5 Bryant where we sit around and look at examples of
 6 student work and how teachers planned and delivered
 7 their curriculum. And in my conversations with [REDACTED]
 8 [REDACTED] whom I tried to coach quite a bit during
 9 that time, and with [REDACTED] who saw me as one
 10 of her mentors, I found the way they spoke about their
 11 curriculum and students didn't jibe with what I knew
 12 and understood in my five years of teaching and in my
 13 years of experience. [REDACTED] taught right next
 14 door to me, so, as you know, you could hear through the
 15 walls. Whenever there was a substitute in that
 16 classroom that wasn't [REDACTED] the kids would scream
 17 and yell and throw things, but I saw he was able to
 18 create an environment where they could make work and
 19 speak to each other and to him respectfully, that they
 20 were taking on more and more challenging and engaging
 21 academic ideas as the year progressed and I was
 22 impressed with how reflective he was as a teacher as
 23 well in thinking about his own class.

24 I guess from my perspective now, which I've
 25 never told in here, is that I became a mentor teacher

1 in my second year and a master teacher in my third year
 2 meaning I took student teachers on in my third year as
 3 a teacher and began lecturing in education strategies
 4 and management after two years of teaching and I have
 5 worked at USF and San Francisco State, so I evidently
 6 have a level of understanding and expertise about the
 7 craft of teaching and so I trust my reaction and my
 8 instincts and I know my kids have grown and become
 9 smarter students and better-working students and better
 10 people with me, so I just trust my opinion and my sense
 11 of what I see and hear.

12 Q. Did you ever observe any of those substitute
 13 teachers that we've been talking about in their
 14 classrooms?

15 A. In action? Yes, I have observed [REDACTED]
 16 [REDACTED] teaching. I've gone into his classroom. I
 17 used to travel from classroom to classroom during my
 18 breaks just to check on kids. I'm very interested in
 19 how children learn, so when I had free time, I would
 20 ask teachers, "Could I come in and hang out with you
 21 and see what you are doing?"

22 And so I saw [REDACTED] teaching a few
 23 times and I also observed how he handled his kids on
 24 the yard. As I said, he tried hard, but he had
 25 extremely challenging students and I could see there

1 was a high percentage of kids in his class who were
 2 what is called off task, who were not working, who were
 3 not engaged in the curriculum. I have seen [REDACTED]
 4 [REDACTED] teach and also she was my day-to-day substitute
 5 many times before she became a permanent sub at the
 6 school and I could see [REDACTED] and hear him right
 7 through the wall.

8 Q. Do you ever recall there being any instances
 9 at Bryant in which a class went unsupervised by any
 10 teacher?

11 A. Yes.

12 Q. Can you tell me about those instances?

13 A. Sometimes the substitute office couldn't
 14 find a substitute to come in when a teacher was sick,
 15 so a classified staff member would be assigned to watch
 16 the class.

17 Q. Do you ever remember there being any
 18 situations where a class went unsupervised by any staff
 19 member?

20 A. Not for more than a few minutes.

21 Q. And do you recall why a class went
 22 unsupervised even for a few minutes?

23 A. If the students went to their homeroom
 24 classroom and the teacher was late, they may have been
 25 in the hallway or in their classroom without a teacher

1 for a couple of minutes.

2 Q. Do you recall approximately how often it
3 would occur that a substitute was not found and a class
4 was supervised by a classified employee who was not a
5 teacher?

6 A. Once a month or once every two months. It
7 happened a lot in one particular classroom, but I don't
8 know how often it happened.

9 Q. Do you know whose classroom that was?

10 A. Kerry Sullivan.

11 Q. Was Mr. Sullivan frequently absent?

12 A. Frequently is a subjective word, but in my
13 opinion, yes.

14 Q. I'm trying to get a sense of why it happened
15 in his classroom. Do you have an understanding as to
16 why his classroom was particularly afflicted with that?

17 A. Yeah, for a while, the substitute assignment
18 program, the computer and the system at San Francisco
19 Unified, didn't work so, so the absentee call wouldn't
20 be registered and the computer didn't kick in to start
21 calling subs to assign someone there. The way it works
22 -- the way it is supposed to work, the teacher calls
23 and punches in some codes into the key pad. I'm out.
24 Here is why, and the computer is supposed to start
25 calling available subs. If the job is accepted, it

1 Q. Were there any -- during this time frame
2 when it was -- when the computerized substitute system
3 was functioning intermittently, were there any steps
4 taken by the school to ensure that substitute teachers
5 were obtained in the instances when teachers would be
6 absent?

7 A. Not to my knowledge, but I know that when
8 Kerry's sub didn't show up and there was a flurry of
9 worry about him, where he was and why he hadn't come to
10 school that day, and I think Larry asked us to call the
11 school directly to confirm that we weren't coming just
12 in case the system was down, so if I were to call in
13 sick, I would call the substitute management system and
14 I would call and leave a voicemail at my school saying,
15 "I've called the substitute management system. They
16 are supposed to send you a sub. If they don't, I just
17 want you to know I'm not going to be here tomorrow
18 because I'm sick."

19 Q. Do you know if Mr. Sullivan followed that
20 procedure?

21 A. I don't know.

22 Q. You said that it occurred approximately once
23 a month or once every two months that a classified
24 non-teacher employee would supervise a class when a
25 teacher was absent. Was that true for the entire five

1 gets assigned to a substitute. Another message is sent
2 to the voicemail of the school saying this teacher is
3 out sick. This substitute has been assigned, but for a
4 while, a period of time, the system wasn't working, so
5 teachers were calling and registering their absence, or
6 so they thought, but no substitutes were being called
7 or assigned and the school was not being informed. So
8 that was one problem and then, yes, Mr. Sullivan was
9 sick.

10 Q. Do you recall during what time frame the
11 computerized substitute system you described was not
12 working?

13 A. I think it was the fall of 2000. I think it
14 was mostly the fall of 2000.

15 Q. And do you recall for how long the system
16 was not functioning?

17 A. At least a month, if not longer, and it was
18 intermittent, so they would fix it and the next day, it
19 would be down again. You would call and you would get
20 nothing but a busy signal and you couldn't get through.
21 It was off and on for a while.

22 Q. It wouldn't completely be down for a month,
23 it was --

24 A. No, it wasn't down completely for a month.
25 They had patches. They tried to fix it for a while.

1 years you were at Bryant or was that limited to a more
2 limited time frame?

3 A. There were more absences in my last two
4 years at Bryant by teachers where classified personnel
5 were covering the class, but it happened the entire
6 time I was there, not as frequently in the earlier
7 years, but it did happen that if a sub didn't show up,
8 a classified staff member would be assigned to the
9 class.

10 Q. So when you said it occurred approximately
11 once every one or two months, did that cover the
12 earlier period in time or the more frequent period of
13 time you were referring to?

14 A. More frequent period of time. In the
15 earlier years, the first three years at Bryant,
16 classified staff people would be called in to cover a
17 room if a teacher had to leave for a doctor's
18 appointment. If someone was going to be late because
19 they had a doctor's appointment, it was often covered
20 by a classified person like Dee Hashimoto or more often
21 by a woman named Jeanie Square and it wasn't until the
22 last year I was there or the last two years I was there
23 that the union members, specifically Kim Mukoyama,
24 said, "It is illegal for us to have classified staff
25 members covering classrooms. We can't do that. It is

1 against the law, so we need to stop."

2 But until that time, it had been a general
3 practice among the principals to reassign a classified
4 staff member.

5 Q. And do you recall when Ms. Mukoyama raised
6 that concern that she had?

7 A. Like I said, it was early in my last year
8 there or second-to-last year there. I don't remember
9 exactly when.

10 Q. After she raised that concern, did the
11 practice of assigning classified staff to classes stop?

12 A. No. It must have happened in the spring of
13 2000 that that first came up because Jeanie Square was
14 being asked to cover the special ed room after that
15 second teacher had had his nervous breakdown because
16 they couldn't find a sub to cover the room and the
17 students in there were so violent that Jeanie began to
18 complain that she wasn't paid enough to do this, that
19 she is not a teacher. She is not supposed to be in
20 there. She doing this because she is being asked to,
21 but it is getting increasingly difficult for her to
22 maintain her flexibility around that point and that is
23 when Kim Mukoyama said, "And it's illegal. We can't be
24 doing this. It's against the law."

25 Q. Do you recall any of your classes ever --

1 turnover, so that was in '96. In '97, there was a 50
2 percent turnover. In '98, there was a lot of turnover.

3 Q. Can I interrupt you for a second to make
4 sure I'm clear? At the end of your first year, prior
5 to your first year --

6 A. When I joined?

7 Q. Right.

8 A. Half of us were new.

9 Q. Okay. Prior to the '96/'97 school year,
10 half of the teachers who started that year were not
11 teaching at Bryant the previous year?

12 A. Correct. You know, this is another point
13 where I'm going to have to stop and make notes about
14 teachers. There are only 14 classrooms and there have
15 been so many teachers who have come through there. To
16 try to remember who left when will take a moment of
17 reflection. If you want me to be specific, I would
18 like time to figure it out.

19 Q. Let me ask you this: Is it your belief that
20 in at least three of the years you were teaching at
21 Bryant that teacher turnover was 50 percent or more?

22 A. Yes. It was high. And it was very hard on
23 the school. It was very hard on -- it was very hard on
24 the administration of the school because they took with
25 them wisdom and practices that were not written down.

1 did you ever -- obviously you weren't there. Did you
2 ever hear that any of your classes were supervised by a
3 classified employee who was not a teacher on a day you
4 were not there?

5 A. Yes, Jeanie Square covered my class once
6 when a sub didn't show up for me at least once.

7 Q. Do you recall approximately how many times
8 you had a classified non-teacher employee cover your
9 classes when you were absent?

10 A. Maybe two times in the five years I was
11 there.

12 Q. Did you have any concerns regarding the
13 level of teacher turnover at Bryant?

14 A. Teacher turnover at Bryant was very high.
15 The first two years I was there, I think it was 50
16 percent both years. The last year I was there, it was
17 again at least 50 percent. There was one year when we
18 were stable.

19 Q. Do you recall which year?

20 A. I think it was my fourth year. I'm not
21 sure.

22 Q. I think there is one remaining year in the
23 middle there. I think it is your third year. Do you
24 recall the level of teacher turnover during that year?

25 A. The year I joined, they had a 50 percent

1 It was very hard on the kids, this lack of continuity
2 and it was hard on the community to have new teachers
3 coming and going all the time. That is why I became a
4 mentor teacher in my second year there because I had
5 to. There was so much turnover, it was my turn to be a
6 big buddy and it was only my second year. It was
7 tough.

8 Q. During your final year at Bryant this past
9 year, 2000/2001 -- first of all, do you remember who
10 the other teachers were teaching during that school
11 year?

12 A. My last year there, yes.

13 Q. How many of those teachers who were there
14 that year were there for all five years that you taught
15 at Bryant?

16 A. Four.

17 Q. Is that including you or not including you?

18 A. I'm going to have to say their names out
19 loud.

20 Q. Fine. I was going to ask you that next, so
21 go ahead.

22 A. Okay. Laura Hernandez, Tanya Oster, Gina
23 Martinez, Kerry Sullivan, me.

24 Q. And of those four teachers, excluding
25 yourself, how many have been there longer than you

1 have? Do you understand the question?

2 A. Yes, Kerry Sullivan.

3 Q. Did the remaining three start with you
4 during the '96/'97 school year?

5 A. Laura, Gina, and I all started at the same
6 time. Who else was on that list?

7 Q. Tanya Oster.

8 A. Oh, yeah, Tanya has been there longer than
9 me, too.

10 Q. So Mr. Sullivan and Ms. Oster were there
11 prior to the year you started?

12 A. Yes.

13 Q. Do you know how long each of them have --
14 let me try it this way: Do you know what year they
15 started in at the school?

16 A. No, but I can estimate how much longer they
17 were there before I got there -- no, I can't. No, I
18 can't.

19 Q. Okay.

20 A. I think Tanya has been teaching as a
21 teacher, not in other capacities in education, for
22 about ten years now, ten or 11 years. I think that Mr.
23 Sullivan, who is no longer teaching, as far as I know,
24 has been teaching one year less than Tanya and I may be
25 off by a couple of years.

1 school anymore.

2 Q. Maybe we're getting hung up on the language
3 I'm using. When I say, "Permanent teacher," I'm not
4 referring to whether the teacher was tenured or not.
5 It is my way of distinguishing between a substitute and
6 a --

7 A. Somebody who is supposed to be there for a
8 year?

9 Q. Right. So I can ask my question again, if
10 you had any concerns about any permanent teachers,
11 using the definition I just described, about the number
12 of those teachers who had emergency credentials rather
13 than some different kind of credential.

14 A. So first I have to figure out who was an
15 emergency teacher that was there for the whole year.
16 That would be [REDACTED] Someone like her,
17 yeah, I had concerns about her.

18 Q. Did you have any concerns about the number
19 of teachers at Bryant who were in those situations?

20 A. No, one is too many. I mean, I didn't look
21 at it like that. I didn't look at it and say, "Oh my
22 God. We've got one out of our 14 teachers" -- "Only
23 one of our 14 teachers is on emergency credential.
24 That is not so bad. That is not so out of place."

25 That is 25 kids who have a teacher who is

1 Q. Did you have any concerns while at Bryant
2 about the number of permanent teachers at the school
3 who were on less than full credentials?

4 A. That is what we talked about before, right?

5 Q. We may have when we were talking about
6 substitutes and long-term subs. I'm trying to focus
7 your attention on permanent teachers as opposed to
8 long-term substitutes.

9 A. Oh, permanent teachers can't keep their jobs
10 if they don't have the appropriate credentials.

11 Q. Did you have any concerns about the number
12 of permanent teachers at the school who had emergency
13 credentials? Do you understand the question?

14 A. I'm not sure if anybody had an emergency
15 credential and was a permanent teacher. You can't
16 become permanent until you are fully credentialed. You
17 can only have -- I'm not sure what the words are that
18 they use at the District, but if you have your
19 preliminary credential or your emergency credential,
20 you cannot be hired and tenured. There is only -- [REDACTED]
21 [REDACTED] actually didn't completely satisfy the
22 requirements to have CLAD certification and that is why
23 he is not at the school anymore. He didn't fulfill all
24 the paperwork and therefore he wasn't qualified to
25 teach that population and that is why he is not at the

1 underqualified and that was too much. I mean, that is
2 like saying -- sometimes about the suit and stuff like
3 that, complaining that there are too many teachers on
4 the site that are not qualified to teach yet or not
5 certificated or credentialed to teach yet is like
6 saying as long as most of us are, it should be okay.
7 The school isn't one holistic entity. There are
8 individuals in each of those classrooms. To put
9 [REDACTED] in that classroom with her 20 or 25 kids,
10 however many she had, it meant there were 20 kids in
11 there getting an inadequate education for 180 straight
12 days. To a kid, 180 days is a lifetime, a lifetime.
13 That she was there ten days in a row was wrong for me.

14 Q. I'm trying to get a sense if you thought
15 Bryant had any problems with regard to the number of
16 teachers who were on emergency credentials that other
17 schools in the district did not experience.

18 A. I can't speak about other schools in an
19 informed way. And since we're only working with my
20 opinion about this, all I can say is that it is a shame
21 that there is anybody on emergency credential in any
22 classroom and if we are putting emergency people in
23 classrooms, then we should be giving them a hell of a
24 lot of support to make sure whatever they are doing in
25 there is as appropriate as it can be. I don't know

1 about the other schools. I know there were other
2 schools out there, bigger schools who had lots more
3 uncredentialed or emergency credentialed teachers, but
4 I can't speak about them. I don't know their kids.
5 These kids I knew.

6 Q. Do you know whether Bryant provides any
7 support or training to teachers who are on emergency
8 credentials?

9 A. It does not. The support is your buddy.
10 That is the person who can tell you how to reorder a
11 key or where Ms. Dee stashes the extra copy paper, but
12 it is not somebody who can really sit there and plan
13 your curriculum with you and teach you how to teach.

14 Q. Do you know whether teachers on emergency
15 credentials are provided with any training or support
16 at the district level?

17 A. There are some programs at the district
18 level for emergency credential to teachers, but
19 [REDACTED] was not part of that program. There is some
20 program where you could -- you could be sent into the
21 district as an emergency credentialed teacher and be
22 given on-the-job training and that included some
23 seminars and workshops and things like that, but
24 [REDACTED] didn't qualify for that program, so she
25 entered the credentialing program at the new college on

1 it.

2 A mentor teacher is somebody who is assigned
3 to a teacher who is more green and maybe is in their
4 first full-time teaching position. In that case, you
5 do confer with them and support them around questions
6 on how to talk to parents and how to deal with children
7 who are in crisis, strategies for teaching, strategies
8 for management, as well as all the other things, these
9 are the forms; here is when you fill them out; here is
10 how you fill them out; the copies go to this person;
11 here is how you get the leak in your sink fixed; here
12 is who you call. Things like that.

13 Q. Was, in your understanding, that all
14 teachers who were new to Bryant were assigned either a
15 buddy teacher or a mentor teacher?

16 A. When Ms. Zita was principal, she made sure
17 that newly hired teachers always had a buddy.

18 When Mr. Alegre was a principal, it was a
19 less formal process, but it also happened because the
20 teacher themselves volunteered.

21 Q. Were there regularly scheduled faculty
22 meetings that occurred at Bryant?

23 A. You were just reading my mind. I was just
24 thinking because we had so many staff meetings, though,
25 the amount of time you had spent after school meeting

1 Valencia Street and was taking courses concurrently
2 while she was teaching.

3 MS. LHAMON: Michael, I could use a restroom
4 break, if you wouldn't mind.

5 MR. ROSENTHAL: That is fine.

6 (Recess taken.)

7 MR. ROSENTHAL: Q. Ms. Malabed, you
8 testified earlier about a role you fulfilled on
9 occasion as a, I think you called it a buddy teacher,
10 and I think you may have also called it a mentor
11 teacher; is that correct?

12 A. Yes.

13 Q. Can you describe for me what your role was
14 in that capacity?

15 A. A buddy teacher is a teacher who is
16 available to answer simple questions, like for new
17 teachers like -- let me back up. A buddy teacher works
18 with a newly hired, but experienced teacher to answer
19 questions like, this is your exit for the fire drill.
20 When we line up for lunch, it looks like this. When we
21 have assemblies, your class sits over there and you
22 don't expect the teacher to have detailed questions
23 about how to develop curriculum or how to fill out a
24 report card form. They would have questions like,
25 where are the report card forms, but not how do you do

1 with the person you were supposed to be mentoring or
2 meeting with the person who you were supposed to be
3 buddy to was fleeting and rare. We had meetings every
4 Thursday from 2:30 to about 4:00 and then typically
5 after 4:00 ad hoc meetings would come up and that would
6 be subcommittees of whatever happened during the staff
7 meeting and then we had other committee meetings on
8 Tuesday. I spoke earlier about how I was on the
9 Technology Committee. I would meet in my Technology
10 Committee meeting on Tuesday or I would meet with all
11 the teachers in the 3rd, 4th, 5th grade level team or I
12 would meet with all of the teachers who were on the ESL
13 team every Tuesday. There was a different meeting
14 every Tuesday. We had a meeting every Thursday. We
15 had a meeting -- I also often had meetings after school
16 for other things, other ad hoc committees. There were
17 a lot of meetings at Bryant, a lot of meetings.

18 Q. Generally do you have an understanding as to
19 what the purpose of having staff meetings was?

20 A. If you are quizzing me, the answer is yes.

21 If you want me to tell what they are, I can do that,
22 too. What our purpose was, we had a specific way of
23 running our meetings. They had to be -- they were
24 designed to make sure the whole staff was communicated
25 with about a particular topic. They were not

1 announcements, but they had a specific objective in
2 mind. There had to be a product that came out of the
3 conversation or there had to be a vote or a decision or
4 something like that. Occasionally we would use the
5 meetings to evaluate data, test scores, or writing
6 samples. Even more rarely, we would actually do some
7 training on those days and I gave an example of how I
8 had given a technology training earlier today. That
9 would have happened on a staff meeting day.

10 Q. And were staff meetings open to all the
11 staff at Bryant?

12 A. All teachers, classroom teachers, were
13 expected to show up and specialists, the special ed
14 people were expected to show up, technology teacher.

15 Q. Were teachers given the opportunity to
16 discuss, for example, various teaching strategies that
17 they had employed at faculty meetings?

18 A. That wasn't the time for it.

19 Q. Was there a different time designated for
20 such conversations?

21 A. There were other committees, the grade level
22 committees, which would have been 3rd, 4th, 5th grade
23 teachers, the ESL Committee, the City Science Team, the
24 Literacy Committee and I'm not on all those committees,
25 but they were committees that existed at the school

1 or experience as I do and not more training. So as
2 hard as we worked and as hard as we tried, we were not
3 given a lot of opportunities to talk about and evaluate
4 practices and implement them and model them for each
5 other. It didn't come up.

6 Q. Now, you identified a few committees at
7 which teaching strategies were discussed. Were those
8 committee meetings open to all teaching staff?

9 A. Not really because they were held pretty
10 much on the same day, so if -- the last year I was
11 there, I was on a committee called Culture and
12 Community or something like that, or Safety and
13 Culture, I can't remember the name of the committee.
14 Our job was to deal with things like classroom
15 management, conflict management, social committee kinds
16 of things. While we were meeting, the Literacy
17 Committee was meeting, and the Family Involvement
18 Committee was meeting, and the other committee was
19 meeting. If you were at your committee meeting, you
20 couldn't go to the other ones.

21 Q. How were you kept abreast of what the other
22 committees were doing?

23 A. Sometimes the chairperson or the note taker
24 would e-mail the minutes of the meeting to the entire
25 staff. Sometimes they would put a hard copy of the

1 where they would talk about teaching strategies or what
2 were called best practices and they would try to
3 develop some kind of training session to give to the
4 rest of the staff to give them an opportunity to learn
5 it.

6 You know, one of the things that I didn't
7 talk about that much on the first day, but I think --
8 it is -- about being a qualified teacher in training is
9 that the professional development days over my tenure
10 with the district went from being several days a year,
11 down to three days a year, down to three days a year on
12 your own time, if you wanted to go, if you could go, or
13 if you weren't already taking classes somewhere else,
14 or you didn't have children to take care of, or you
15 didn't have other plans. That meant people who were
16 not trained well had fewer and fewer opportunities to
17 be supported by the district and the district practices
18 or around district-adopted curriculum and it left a lot
19 of the -- a lot of the training up to us that we had to
20 train ourselves and we had to train each other, but the
21 truth is, if I'm working at Bryant and of the people
22 I'm working with, everybody is new except for Tanya and
23 Kerry, it is -- it almost gets ridiculous after a while
24 about who is giving me their expertise. It is somebody
25 who has just as much or maybe as much expertise as I do

1 minutes to Larry and he would put it in a binder and if
2 you wanted to find out what happened, you would go read
3 it in a binder. Sometimes you weren't kept abreast.

4 Q. Were all teachers required to serve on a
5 committee?

6 A. Yes.

7 Q. And how did -- how is it determined what
8 teachers would serve on what committees?

9 A. Larry asked us to give him a list of our
10 preferences in order, one, two, three, and four. In my
11 case, I asked to be on the Science and Technology Team
12 first and Culture and Community second, but it was a
13 very distant second. No one wanted to be on Culture and
14 Community, so I was assigned to it. The other teachers
15 all got their first or second choices as well.

16 Q. Do you remember, could you tell me what are
17 the different committees that you recall? You've
18 identified a few, but if you could give me the full
19 list to the extent you can.

20 A. Math, Science, Technology, Literacy, School
21 Culture, and I don't remember, Family Involvement. I
22 think that is it.

23 Q. You identified earlier a couple other
24 committees and maybe these are separate committees and
25 I want to have that clear in my mind. You said there

1 was ESL Committee and you said you met on occasion with
2 other 3rd, 4th, 5th grade teachers. Were those
3 separate committees?

4 A. Those were in addition to the ones I've
5 already named, so you had to serve on one of those four
6 main committees as well as serve on your grade level
7 committee and also on your strand committee, were you
8 the bilingual strand or were you the ESL strand. There
9 was one for each grade, one kindergarten, 1st, 2nd,
10 3rd, 4th, 5th, one in ESL and one bilingual. So I was
11 on the ESL strand, the 3rd, 4th, 5th Committee, the
12 School Culture Committee and I was the union rep. Was
13 I mentoring anybody last year? I had a student
14 teacher. That is all I can think of right now.

15 Q. Just so I have it clear in my mind, were
16 teachers required to serve on at least two or three
17 committees?

18 A. At least three.

19 Q. Okay. If you could tell me the three you
20 served on, for example, this past year, so I have it
21 clear in my mind.

22 A. Yes, my last year at Bryant was the three,
23 four, five teacher group, the ESL strand, and the
24 Culture -- School Safety and Culture. The truth is, it
25 wasn't called the ESL strand. It was called ELD

1 strand, which was another acronym, English Language
2 Development. We don't use ELD anymore. It is sort of
3 an old acronym.

4 Q. Now, we've spent some time talking about
5 some concerns you had regarding the qualifications of
6 teachers who taught at Bryant. Over the five years you
7 were employed there, did you have any other concerns
8 regarding teacher qualifications that you haven't
9 already testified to?

10 A. You know, as far as the suit is concerned,
11 what I'm thinking is that it is not really about
12 whether the people who have already been credentialed,
13 which is something that you do through your university
14 and through the Commission on Teacher Credentialing.
15 It is not whether or not they are credentialed and they
16 are qualified or not qualified because you can have all
17 that paper and still be a pretty lousy teacher or a
18 mediocre teacher. What my understanding of the statute
19 is we're talking about whether or not there are people
20 who have been placed on the job on emergency
21 credentials who aren't even trained or are barely
22 trained and that didn't happen all that often at
23 Bryant. It happened in the case of [REDACTED]
24 It happened in the case of [REDACTED] And it
25 happened in the case, really, of [REDACTED] who

1 was covering in a special ed class and the only
2 concerns I have about them were those were just wasted
3 years, completely wasted years for those kids, not
4 completely, but in [REDACTED]'s case, it was probably a
5 pretty wasted year. With [REDACTED] class,
6 there was damage that had to be undone and in [REDACTED]
7 [REDACTED] classes, they missed a lot. And with these
8 kids who are already so burdened by so many deficits
9 outside of the school, it is just something they can't
10 afford. They can't afford that on top of it. I
11 haven't actually said that about my concerns. I talked
12 about how, yes, I was concerned and specifically why I
13 was concerned is because these kids just can't handle
14 it. They can't tolerate it and rebound from it. They
15 can't be helped by a stable home life or a stable
16 neighborhood. No matter how bright they are and how
17 motivated they were, it erodes their ability to
18 function in the school system. By the time they get
19 out of 5th grade, if they are not functioning well by
20 5th grade, middle school is going to blow them off the
21 track, so I just want to say more specifically that my
22 concern is -- that is what it is about. It shouldn't
23 happen like that.

24 Q. I want to make sure I've given you the
25 opportunity to identify all of the situations where the

1 concerns that you are concerned about arose and we've
2 discussed in some detail the situations regarding [REDACTED]
3 [REDACTED] et cetera. I'm wondering if
4 there are any more instances like that over your five
5 years at Bryant that you haven't already told me about.

6 A. None that I can think of right now. I could
7 just tell you, during the time [REDACTED] was
8 there, it was a very distressing thing for me as a
9 teacher to watch her teach. It was almost physically
10 painful sometimes to watch her with her kids. And to
11 watch the way she taught, it was just the quality of
12 her management and of the curriculum she taught, it
13 made me really sad to see what was happening to them.
14 I know she didn't understand who they were and what
15 they were about. She had her own agenda and for that
16 entire year, nothing was going to change that. A year
17 in any kid's life is a long time and in these kids'
18 life, it seems even longer. It is even longer.

19 Q. Is it fair to say you thought [REDACTED]
20 was a poor teacher?

21 A. She was an inappropriate teacher.

22 Q. She was poor fit for the school?

23 A. Yes.

24 MS. LHAMON: Are you asking if she was a
25 poor fit for the school for that classroom or whether

1 she was a poor teacher in general in any classroom and
2 not in a classroom for which she had not had training?

3 MR. ROSENTHAL: Q. I assume, and correct me
4 if I'm wrong, I assume you were referring to the class
5 that she actually taught as opposed to speculating as
6 to how she might have taught another class. Am I
7 incorrect in that belief?

8 A. I can't imagine -- I know where [REDACTED] is
9 teaching now. She is in [REDACTED] and -- or she was the
10 last I heard. I -- she was not a reflective teacher.
11 She was very arrogant and really certain she was always
12 doing an excellent job, which was one of the things
13 that was disturbing about her. She -- I don't know if
14 she is a good teacher now. I know that at the time,
15 she had the energy and the confidence to take on this
16 class, but her idea of success with kids was her idea
17 that she could make them be quiet and that is not what
18 teaching is.

19 Q. Was it your opinion that [REDACTED] was a
20 poor fit for that particular class or was she a poor
21 fit for teaching at Bryant?

22 A. She was a poor fit for that particular class
23 and my kids that had had her as a day-to-day sub said
24 they hated her. I still have letters from them saying,
25 "Please come back. She is so cruel." And it is really

1 MR. ROSENTHAL: Off the record.

2 (Recess taken.)

3 MR. ROSENTHAL: Q. Okay. I would like to
4 switch to a different topic at this point. Did you
5 have any concerns while at Bryant about the existence
6 of any kind of rodents on campus?

7 A. Laura Hernandez and I both had mice in our
8 classroom, so did Indelisa Carrillo. They could be --
9 well, if you saw a mouse or a rat or droppings in your
10 classroom as well as cockroaches or ants, which I also
11 had, you would tell the secretary at the front desk and
12 she would have somebody -- I don't know if they worked
13 for the school district or worked for an extermination
14 company. They would come out and spray your room with
15 chemicals.

16 Q. Why don't we deal with your particular
17 classroom first. First of all, over your five years at
18 Bryant, was your class always -- were you always
19 located in the same physical classroom?

20 A. The first two years I was in Room 6. The
21 last three years I was in Room 11.

22 Q. And did you experience any problems with
23 rodents or insects in each of those rooms?

24 A. I do not remember problems in Room 6, but I
25 remember the ants, cockroaches, and mouse in 11.

1 sad.

2 Q. You said [REDACTED] is no longer working at
3 Bryant?

4 A. She is down in the [REDACTED] area somewhere.

5 Q. Do you know the circumstances of her leaving
6 Bryant?

7 A. Yes.

8 Q. Do you know if she was -- can you describe
9 for me the circumstances as you know them?

10 A. She was told at the end of her school year
11 that she needed to interview elsewhere for a position
12 in another school and when she pressed the principal to
13 find out why, the principal, Ms. Zita, was vague with
14 her and said she didn't think there would be a position
15 available for her because we were going to be reducing
16 the number of classrooms at our school. I don't
17 believe that we were reducing classrooms and that is
18 why [REDACTED] wasn't asked to come back.

19 I know two other teachers observed [REDACTED]
20 [REDACTED] in her classroom and went and asked the
21 principal and made some very candid remarks and
22 observations of how she taught her class, especially in
23 the way that she taught reading and the three of them
24 came to a consensus that she didn't belong at the
25 school anymore, so she was told to look elsewhere.

1 Q. And just so I'm clear, do you know whether
2 you had any problems regarding any insects or rodents
3 while you were in Room 6?

4 A. I don't remember if I did or I did not.

5 Q. Can you describe for me the problems you had
6 in Room 11 with respect to, let me start with ants
7 first.

8 A. There would be ants sometimes around the
9 sink, and telephone, and window, and there would
10 sometimes be cockroaches as well, but they were never
11 -- I never had swarms of insects.

12 Q. When you say, "Sometimes," was it -- is
13 there some way you could estimate about how frequently
14 you could see either ants or roaches in Classroom 11?

15 A. A couple times a year.

16 Q. And in those instances, did you report that
17 problem to the principal's secretary along the lines
18 you described?

19 A. Yes. I think so.

20 Q. And do you know whether any steps were taken
21 to deal with the ants or roaches that were present in
22 your classroom?

23 A. I remember being in my room once when
24 somebody came upstairs to spray. I don't remember why
25 he came upstairs to spray. I don't know if he was the

1 guy that was there to make sure that the ants, the
2 cockroaches, or the mice were killed, but he came up
3 with pesticides.

4 Q. Do you recall whether, after reporting to
5 the principal's secretary, the problems you had with
6 respect to ants and roaches, whether the problem was
7 resolved thereafter?

8 A. I think it was resolved.

9 Q. Just so it will be easier for me, can you
10 tell me the principal's secretary's name? You may have
11 told me before, but it has escaped me if I have.

12 A. I think at that point, it was Larry Alegre
13 and the secretary had the same kind of turnover rate
14 that the teachers did, so I have no idea which one it
15 was and right now, I can't remember any of their
16 names -- Sandy. Sandy, that was her name, one of them
17 anyway.

18 Q. Probably for simplicity's sake, I'll refer
19 to that person as the principal's secretary, then.

20 A. Uh-huh.

21 Q. Can you describe for me the problems you
22 experienced in Classroom 11 with respect to any
23 rodents?

24 A. I found -- I had a package of papier-mache
25 material which is shredded newspaper treated with some

1 second.

2 (Recess taken.)

3 MR. ROSENTHAL: Q. Now, you testified that
4 you found what you believed to be evidence of a mouse
5 or mice in Classroom 11 by the hole in the papier-mache
6 materials you had as well as a hole in a bag of flour
7 that you've described. Do you recall when that
8 happened?

9 A. In my last year teaching there, but I don't
10 know what time of year.

11 Q. That was during the 2000/2001 school year?

12 A. Uh-huh.

13 Q. Did you notice that evidence on the same
14 occasion or were those two separate occasions?

15 A. Those were two separate occasions.

16 Q. Both during that particular school year?

17 A. Yes. I think both times, they -- no, I was
18 going to say I think it was in the spring, but I can't
19 actually say for certain.

20 Q. Were both of those items maintained in the
21 same cabinet?

22 A. They were maintained in the same part of the
23 room. The southeast corner of my room had two closets,
24 a counter, a sink, and I also had back there a large
25 table, a small refrigerator and two cooking elements

1 kind of glue and it was in one of my closets and as I
2 was looking, I noticed there was a hole in it and a lot
3 of it had spilled on to the shelf, so I pulled it out
4 and there were some students in my room that day and --
5 no. No. No. I noticed that that had been eaten into.
6 I also had a large bag of flour in my room, a 25-pound
7 bag of flour, and that had been eaten into, nibbled
8 away on a corner, so that was evidence.

9 I saw a mouse in Indelisa's room. I was
10 with Indelisa when there was a mouse in her room and
11 they were trying to catch it. I don't know if it was
12 the same mouse or not.

13 Q. Just so I'm clear, did you ever see any mice
14 in Classroom 11?

15 A. I can't say the mice I'm thinking of were
16 from my room or Indelisa's room.

17 Q. I'm trying to get a sense of whether you saw
18 a physical mouse in Classroom 11 at any time.

19 A. I don't remember. I think that if I had, it
20 would not have alarmed me unless I had seen a bunch of
21 them. Just one mouse wouldn't have alarmed me. I
22 would have probably just thought, "Mouse. We have a
23 mouse in here," because I knew there were other mice in
24 the school.

25 MR. ROSENTHAL: Off the record for one

1 because I was teaching chemistry back there and that is
2 also where we made art, like salt doughs and things
3 like that, so they were all in the same part of the
4 room.

5 Q. Prior to noticing those items, did you ever
6 see any other evidence that indicated to you that there
7 were mice or any other rodents in Classroom 11?

8 A. I saw no evidence other than those gnawing,
9 those holes gnawed open on those art bags. I never saw
10 droppings.

11 Q. After noticing that evidence, did you take
12 any steps in an effort to deal with whatever rodent
13 problem might exist?

14 A. I always told the principal's secretary if
15 something like that had come up and then I just assumed
16 they would take care of it.

17 Q. And do you know whether any steps were taken
18 to address that problem?

19 A. I don't know.

20 Q. You identified one instance earlier in which
21 somebody came to use chemicals in the room to alleviate
22 one of the problems. Might that have been the response
23 to the possible rodent problem you identified?

24 A. It might have been, but I don't know.

25 Q. After the two occasions in which you noticed

1 evidence of possible rodents in your classroom, do you
2 recall there being any further evidence?

3 A. No, I don't.

4 Q. Was it your belief that whatever problem had
5 existed had been resolved?

6 A. When I was working in hotel and restaurant
7 studies many, many, many years ago, the adage was if
8 you see one cockroach, there are 10,000 behind the
9 wall. And in working in restaurants, you come to
10 assume that whenever you see evidence of pests or
11 vermin, that you are only seeing the tip of the
12 iceberg.

13 In working at Bryant, whenever I would see
14 an ant or a small river of ants in the garden, I always
15 thought that means we have an ant nest somewhere here
16 and the same is true for the cockroaches. If you
17 peeled away the paper in Indelisa's room on the wall,
18 you would see a stream of cockroaches and things
19 scurrying so you knew they were in the building. So in
20 terms of being resolved, for me, resolved is getting
21 them out of my face, get them out of the kids' face.
22 Don't let us see them. Don't let us have to pursue
23 cracking any of their old crusty bodies open. Let us
24 just work, and if they are in the foundation or the
25 structure, whatever, but I don't want to see them, so

1 instances?

2 A. Once was Indelisa's room, as I just said,
3 once was in the room of Laura Hernandez.

4 You know what? I saw them for sure, the
5 mouse, in Indelisa's room. I was in Laura's room when
6 she said she had it trapped under the waste basket, so
7 I didn't see it because she couldn't lift it up,
8 otherwise it was going to escape. I'm assuming I saw
9 the one in my room just because it was a vivid memory
10 of me looking at the evidence of it chewing through the
11 bags of stuff, but I don't know if I saw it, but I saw
12 evidence in all three rooms and definitely saw the
13 mouse when we were in Indelisa's.

14 Q. That is the one occasion when you
15 specifically remember actually seeing a mouse?

16 A. Indelisa's classroom was right next to mine.

17 Q. Do you recall when that was?

18 A. I don't.

19 Q. Was there a way to limit it to one
20 particular year or are you not able to do that?

21 A. I'm not able to do it. I'm able to -- the
22 last two years I was there, if I'm including Laura
23 Hernandez, but for sure the mouse in Indelisa's room
24 was in the last year I was there.

25 Q. Do you know whether those instances of mouse

1 when you asked can I presume or believe that was taken
2 care of, I can believe that something was done to keep
3 them out of my sight. Was the building rid of them?
4 My assumption would be no, the building wasn't rid of
5 them. They are also very sly. They are good at not
6 getting caught.

7 Q. Now, you testified earlier there was one
8 occasion where you recall someone who came to your
9 class to do something in connection with either the
10 insects or possible rodent problem you had in your
11 classroom, did you have -- do you have an understanding
12 as to what that individual did?

13 A. The only thing I know he did was spray
14 chemicals. And I don't know if it was for rodents or
15 for pests.

16 Q. Do you know whether that was during the
17 2000/2001 school year?

18 A. I believe it was in my last year there. I
19 know it was once I was in Room 11. I know it wasn't in
20 Room 6.

21 Q. Do you recall the total number of times
22 you've seen any rodents at Bryant during your five
23 years there?

24 A. Three.

25 Q. Can you tell me about each of those

1 sightings were reported to anybody at the school?

2 A. I know I reported my mouse sighting. I know
3 Indelisa reported hers and I think the custodian was
4 involved in trying to trap the one that Laura Hernandez
5 had in her room, so I believe there were notifications
6 of some kind to somebody, but I don't know if all three
7 were logged in the book downstairs where you were
8 supposed to log down reports of pest sightings.

9 Q. Do you know whether any steps were taken to
10 deal with the sightings of mice by Ms. Carrillo and Ms.
11 Hernandez?

12 A. No, I don't know.

13 Q. Do you know whether exterminators came to
14 Bryant on any sort of regular basis?

15 A. I don't think they ever came on a regular
16 basis, no.

17 Q. Was the instance you identified where an
18 exterminator came to your class the only instance you
19 recall where such an individual came to Bryant?

20 A. No, I had seen exterminators on site before,
21 but I don't know what room they were going to or who
22 they had been called by or what they had been called
23 for.

24 Q. Were there any other problems relating to
25 rodents or insects at Bryant that you haven't already

1 told me about?

2 A. No. You know, I just want to say in the
3 grand scheme of things, all of the things I had serious
4 troubles with at Bryant, this wasn't one of them.

5 Q. Are there any problems with respect to
6 fungus or mold at Bryant Elementary during the five
7 years you were teaching there?

8 MS. LHAMON: Calls for speculation.

9 MR. ROSENTHAL: Q. To the extent you know.

10 A. Not in my classrooms.

11 Q. Are you aware of any such problems in any
12 other parts of Bryant?

13 A. Not that I'm aware of.

14 Q. Did you ever hear that it was a problem in
15 any part of Bryant during the five years you were
16 teaching there?

17 MS. LHAMON: I think it is asked and
18 answered. When you asked if she is aware, she could
19 have heard about it, too.

20 MR. ROSENTHAL: I didn't want to limit it to
21 her knowing for a fact that was the case. I want to
22 know if she heard it was the case and perhaps you don't
23 know whether or not it was true.

24 MS. LHAMON: Thank you.

25 THE WITNESS: Not that I can think of.

1 onto the cafeteria and multipurpose room. No other
2 situations or instances of overcrowding are coming to
3 my head right now.

4 Q. Now, you said, in your opinion, if all the
5 students -- strike that.

6 You said, in your opinion, when there were
7 300 plus students at Bryant, if they were all on the
8 yard, in your opinion, it was unsafe. Was it ever the
9 case that all the students would be on the yard at
10 once?

11 A. In the mornings before the school day
12 officially began, everybody from kindergarten through
13 5th grade could be on the yard.

14 Q. Any other times?

15 A. Very rare occasions when we would have a
16 special assembly, they might be released to go outside
17 to burn steam for a little bit to go back to classes.

18 Q. Did students spend time on the yard on a
19 daily basis for recess?

20 A. Yes.

21 Q. Just so I'm clear, you said recess was split
22 roughly in threes, so that there were approximately 100
23 students on the yard at a time?

24 A. In my last year there, the school had
25 reduced in population down to about 220 to 240 and it

1 MR. ROSENTHAL: Q. Okay. Did you have any
2 concerns with respect to overcrowding at Bryant
3 Elementary?

4 A. Boy, that is such a broad question. There
5 are so many ways I could attack that. I mean, when all
6 the kids were on the yard, especially the first couple
7 of years that I was there, 300 kids on that small play
8 yard, it was not safe. It is a rectangular blacktop.
9 I can't give you the dimensions of it. I know if you
10 run around 12 times, it is one mile. We had to split
11 the recesses up in three different groups to keep them
12 small enough in number for the children to be safe to
13 play.

14 The school had, in trying to comply with
15 reducing class size for K through 3 down to 20
16 students, had to use a couple of rooms in the school
17 that had not traditionally been classrooms and for a
18 few years, I think the first three years that I was
19 there, the teacher's supply room was converted into a
20 classroom and it was a sort of small room just off the
21 cafeteria on the inside of the school. It had two
22 doors, no windows. And to me, that room seemed
23 overcrowded. You could fit the people in there, but it
24 was incredibly hot, very stuffy and if you opened the
25 doors to let air in, you would be opening the doors

1 was still split in threes where 1st and 2nd had a
2 recess -- no. Kindergarten/1st was at recess. 2nd/
3 3rd had a separate recess, and 4th and 5th had a
4 separate recess. That way, it would just be --it would
5 be 80 kids on the yard at once and that was considered
6 safe, but anything over 100 kids on that yard at any
7 one time, it was not safe.

8 Q. When you say it was not safe, can you
9 describe for me what you mean by that?

10 A. Yes. If the children were allowed to run or
11 did not have supervised play in very limited areas,
12 kids would run into each other. Jump ropes would slap
13 other students. Footballs and basketballs and other
14 kinds of balls would hit kids in the head.

15 Q. Were students supervised when they were
16 outside for recess?

17 A. All students have to be supervised by a
18 credentialed person at all times, yes.

19 Q. Were there a set number of adult supervisors
20 out on the yard during student recess?

21 A. I think ideally, at a minimum, it would
22 always be the principal and one other person. In the
23 last few years when I was there, there were a couple of
24 paraprofessionals, all one word, who were assigned to
25 the special needs students who might be accompanying

1 their special need student outside, so there may be as
2 many as three or four adults outside and I've observed
3 the outside yard being supervised by just one person at
4 a time.

5 Q. When you say you observed situations where
6 there was only one person supervising students on the
7 yard, was that the exception rather than the rule?

8 A. Yes.

9 Q. Did that happen frequently?

10 A. I don't know. I didn't go out and check the
11 yard every day. I don't know how frequently it
12 happened. It would happen when Mr. Alegre would be
13 called to a special meeting or he had to deal with a
14 disaster and he couldn't be outside supervising the
15 yard. He might leave somebody out there by themselves.

16 Q. You said a little while ago, during your
17 first three years at Bryant, there were rooms used for
18 classrooms that were not traditional classrooms and you
19 described one classroom, one room that was used as a
20 classroom off the cafeteria. Were there any other
21 examples of classrooms that were rooms that were used
22 as classrooms that you did not believe were traditional
23 classrooms?

24 A. Yes.

25 Q. Can you tell me --

1 A. Yes, the speech therapist and the reading
2 recovery teacher both taught in closets. They were
3 approximately six by eight feet, maybe, with no
4 windows. And they would take as many as three or four
5 kids in there to tutor them and unlike the other walls
6 in the school, they were concrete walls, so the noise
7 bounced around in there.

8 A different supplies area was converted into
9 a classroom and equipped with a chalkboard and some
10 bulletin boards and that was used as a 2nd grade
11 classroom for one or two years and then turned over to
12 the After-School Care Program.

13 A storage area just off the library part of
14 the open architecture system was turned into the --
15 into a resource specialist's work area where she would
16 tutor kids one on one or one on two or one on three,
17 but among all that noise that was happening in the
18 library and that was on the south end of the library.

19 On the north end of the library, there was
20 another storage area that was converted into a tutoring
21 and resource area and that was used also by reading
22 tutors and special ed specialists for tutoring and
23 meetings and things like that, mostly tutoring. That
24 is all I can think of right now, so those closets and
25 partitioned-off storage areas were turned into

1 classrooms.

2 Q. Putting aside the tutoring areas and the
3 resource areas -- actually, let me ask you a quick
4 question about those areas. Were those areas ever used
5 as meeting places for actual classes?

6 A. No, small classes.

7 Q. When you say, "Small classes," were those
8 students who were pulled out of their normal class for
9 periods of time during the day to receive specialized
10 attention?

11 A. Right. The only two rooms that were used
12 for full classrooms were the ones I spoke about before,
13 both of them off the cafeteria/multipurpose room which
14 was a room used all the time, not just for meals, drama
15 rehearsals, dance, indoor PE. And they had been
16 storage rooms, neither with windows, one without any
17 access to the outside world at all, one with doors that
18 led out into an alleyway and they were both turned into
19 classrooms. One stayed a classroom for two years and
20 the other one is still a classroom.

21 MS. LHAMON: Can we go off the record for a
22 second?

23 (Recess taken.)

24 MR. ROSENTHAL: We've agreed to suspend the
25 deposition for today. Ms. Malabed's back is bothering

1 her and I have no objection for stopping today and
2 continuing at a later day and we're discussing some
3 potential dates. Looks like we may continue on January
4 9th.

5 Anyway, just for our closing stipulation,
6 can we stipulate that the original transcript be
7 delivered to Ms. Lhamon's office; that the reporter is
8 relieved of liability of the original of the deposition
9 transcript; that the witness will have 30 days from the
10 date of the court reporter's transmittal letter to sign
11 and correct the deposition; that Ms. Lhamon will notify
12 all parties in writing of any changes in the
13 deposition; that if there are no such changes
14 communicated or signature within that time, any
15 unsigned, uncorrected copy may be used for all purposes
16 as if signed and corrected; and can we also stipulate
17 that the transcript be signed under penalty of perjury?

18 MS. LHAMON: So stipulated.

19 MR. ROSENTHAL: Then I think we're all set
20 for today. Thank you.

21 (Whereupon, the deposition was adjourned
22 at 3:50 p.m.)

23 --o0o--
24
25

1 I declare under penalty of perjury that the
 2 foregoing is true and correct. Subscribed at
 3 _____, California, this ____ day of
 4 _____, 2001.

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 9 LILI MALABED
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1 CERTIFICATE OF REPORTER

2 I, JOHNNNA FORD, a Certified Shorthand Reporter,
 3 hereby certify that the witness in the foregoing
 4 deposition was by me duly sworn to tell the truth, the
 5 whole truth and nothing but the truth in the
 6 within-entitled cause;

7 That said deposition was taken down in
 8 shorthand by me, a disinterested person, at the time
 9 and place therein stated, and that the testimony of the
 10 said witness was thereafter reduced to typewriting, by
 11 computer, under my direction and supervision;

12 I further certify that I am not of counsel or
 13 attorney for either or any of the parties to the said
 14 deposition nor in any way interested in the event of
 15 this cause and that I am not related to any of the
 16 parties thereto.

17
 18 DATED: _____, 2001.
 19
 20

21
 22 _____
 23 JOHNNNA FORD, CSR 11268
 24
 25