

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

ELIEZER WILLIAMS, et al.,            )  
  )  
                  Plaintiffs,            )  
  )  
                  vs.                    ) No. 312236  
  )  
STATE OF CALIFORNIA, et al.,        )  
  )  
                  Defendants.            )  
\_\_\_\_\_  
  )

DEPOSITION OF CHARLES BALLINGER  
Los Angeles, California  
Wednesday, June 25, 2003  
Volume III

Reported by:  
DAVID OCANAS  
CSR No. 12567  
Job No. 43689

SUPERIOR COURT OF the State OF CALIFORNIA  
FOR THE COUNTY OF SAN FRANCISCO

1 ELIEZER WILLIAMS, et al., )  
2 )  
3 Plaintiffs, )  
4 )  
5 vs. ) No. 312236  
6 )  
7 STATE OF CALIFORNIA, et al., )  
8 )  
9 Defendants. )

10  
11 Deposition of CHARLES BALLINGER,  
12 Volume III, taken on behalf of  
13 Plaintiffs, at 555 West 5th Street,  
14 Suite 3500, Los Angeles, California,  
15 beginning at 9:13 A.M. and ending at  
16 4:02 P.M. on Wednesday, June 25,  
17 2003, before DAVID OCANAS, Certified  
18 Shorthand Reporter No. 12567.  
19  
20  
21  
22  
23  
24  
25

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4 Volume III

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21 BY: (NOT PRESENT)  
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25 Also Present:  
MARIO ACOSTA  
CATHERINE MEZA  
CLAIRE SCHAEFER

1 Los Angeles, California, Wednesday, June 25, 2003  
2 9:13 A.M. - 4:02 P.M.  
3

4 CHARLES BALLINGER,  
5 having been previously first duly sworn, was  
6 examined and testified as follows:  
7

8 EXAMINATION

9 BY MR. VILLAGRA:

10 Q Good morning.

11 MS. DAVIS: Mr. Ballinger wanted to  
12 clarify something.

13 THE WITNESS: I asked my attorney if it  
14 was possible if I could clarify.

15 Yesterday, you went through the  
16 implementations step of the year-round  
17 organizational ground put out by the  
18 Department of Education which, I believe, was  
19 Exhibit 7.

20 BY MR. VILLAGRA:

21 Q Yes.

22 A First, it might save a lot of time if we  
23 could have the transcript from yesterday read.

24 We have a different court reporter.

25 Just to check what my responses were to

1 your questions.  
 2 I'll tell you, we did -- there were so  
 3 many, we started doing it shorthand, where not all  
 4 the questions were asked.  
 5 Most of the things that I was talking  
 6 about are preferable.  
 7 And I'm not sure whether, at some point or  
 8 other, I indicated it was necessary.  
 9 So I thought in these 35 points, if I  
 10 could hear it read back, it might be just fine.  
 11 I was a little uncomfortable after all of  
 12 those had been reviewed, whether I was consistent  
 13 in my point of view.  
 14 Q I believe there were several items you  
 15 mentioned were desired or preferable.  
 16 My question to you on all the items was  
 17 whether to be properly implemented, a multitrack  
 18 year-round program must do each of those items.  
 19 Is that not how you understood my  
 20 question?  
 21 A That's not how I understood it.  
 22 I was speaking what's preferable and what  
 23 should be done.  
 24 And not all of these things should be  
 25 required or must be done.

1 That's why I raised the question about it.  
 2 Q Let's go through them, again.  
 3 And please try to answer the specific  
 4 question that I ask.  
 5 My question on each of these items of  
 6 Exhibit 7, I'm looking at page EXP-CB0853.  
 7 My question is to whether each item will  
 8 be identical, whether each implementation step must  
 9 be implemented at a multitrack year-round school  
 10 for the multitrack year-round program to be  
 11 properly implemented?  
 12 MS. DAVIS: Objection, vague and ambiguous  
 13 as to "implementation," just to this line of  
 14 questioning.  
 15 BY MR. VILLAGRA:  
 16 Q Do you have an understanding as to what I  
 17 mean by "properly implemented"?  
 18 A I really don't.  
 19 Q What do you take the term, "properly  
 20 implemented," to mean?  
 21 A Properly implemented, to me, would be  
 22 desired.  
 23 And I think that's how I was responding  
 24 last night to most of these items.  
 25 This is the desirable way to go.

1 That's different than saying "it must be  
 2 done."  
 3 Q In your opinion, are there certain things  
 4 that must be done in order for a multitrack  
 5 year-round program to be, I believe the word you  
 6 used yesterday was, "successful"?  
 7 A In general, of course.  
 8 Like Item No. 1, you do have to select the  
 9 schools.  
 10 And you have to select what grades might  
 11 be involved, that sort of thing.  
 12 Obviously, that's a requirement in order  
 13 to have a multitrack program.  
 14 The first one is a must.  
 15 But now the second one, where we talk  
 16 about establishing a process for resolving issues,  
 17 I certainly think that's very desirable.  
 18 And I would counsel schools in districts  
 19 to do exactly that.  
 20 Q You don't believe it's necessarily  
 21 something that must be done?  
 22 A I would say not absolutely.  
 23 MS. DAVIS: Maybe the "must" is the key.  
 24 MR. VILLAGRA: The must is the key.  
 25 THE WITNESS: The must is the key.

1 I will say to the districts: You will  
 2 fail if you don't do some of these things.  
 3 But that's a choice at the local level.  
 4 It is the word "must" that I had trouble  
 5 with after the day was over.  
 6 BY MR. VILLAGRA:  
 7 Q If a district chose not to do an item that  
 8 you believed is desirable, might it fail in its  
 9 implementation of a multitrack year-round program?  
 10 A Could very well, yes.  
 11 Q No. 3: "Construct a 'pert chart' for  
 12 organizing issues, time lines, and  
 13 responsibilities."  
 14 A Yesterday, my response was I really don't  
 15 know what a "pert chart" is, so I can't responsible  
 16 to that.  
 17 Q No. 4: "Meet consultation requirements  
 18 and November 1 public notice  
 19 deadline, if needed."  
 20 A I don't know the education sections  
 21 involved, particularly the 37616, so I won't  
 22 comment on that one.  
 23 The other one, the November 1st deadline,  
 24 I do know that section and that's a state law.  
 25 That must be followed.

1 Q No. 5 is: "Working with employee groups,  
2 select and approve a calendar."

3 Is that something that must be done to  
4 implement a multitrack year-round program?

5 MS. DAVIS: Vague and ambiguous.

6 THE WITNESS: I would say that's very  
7 desirable, I don't know if it's a must, other than  
8 what union contracts might require.

9 Q 6: "Assess the need for facilities'  
10 modifications, including shade modifications and  
11 storage areas for off-track teachers."

12 Is that something that must be done to  
13 implement a multitrack year-round program?

14 A I'm not sure that's a must.

15 I think that's highly desirable.

16 Q No. 7: "Submit budget request to district  
17 business office."

18 And, I believe, you said yesterday that  
19 that depends on the district practice?

20 A That's correct.

21 Q No. 8: "Decide if year-round education  
22 will be implemented on a voluntarily  
23 or mandatory basis for students and  
24 employees."

25 Do you believe that is something that must

1 If some parents prefer to go to another  
2 district in the district that's under-utilized in  
3 terms of pay, it would help to have fewer students  
4 to work with.

5 I think that's a good practice, both from  
6 a political point of view and also from a -- just  
7 from a very practical point of view.

8 Q Can you name for me, any districts in  
9 California that have a voluntary multitrack  
10 year-round program?

11 A I think a good -- but I might speak out of  
12 turn.

13 Our national year-round directory,  
14 usually, states for each district whether their  
15 policies are voluntary and mandatory.

16 If I had that directory, I could specify  
17 which districts have a voluntary system.

18 Q No. 9 says: "Develop and approve track  
19 preference and assignment policy for students."

20 Do you believe that is something that must  
21 be done to implement a multitrack year-round  
22 program?

23 A I'm going to say yes, on that.

24 Q And No. 9 says: "In addition, balance  
25 tracks by ethnicity, ability,

1 be done to implement a multitrack year-round  
2 program?

3 A I think that's desirable to do that, but  
4 that's not required.

5 Q What would it mean for a multitrack  
6 year-round program to be implemented on a voluntary  
7 basis?

8 A Some districts set up a multitrack to  
9 handle the overcrowding.

10 But say to the parents: If you choose to  
11 attend a school in another part of  
12 the district that's not on a  
13 multitrack calendar, you're welcome  
14 to do that.

15 So we call that a voluntary basis.

16 Other districts have a mandatory  
17 situation.

18 So that depends on the district and what  
19 their own internal requirements are.

20 Q Do you have an understanding as to why a  
21 district might implement a voluntary as opposed to  
22 a mandatory multitrack year-round program?

23 A It gives parents options, and it may,  
24 indeed, to help to relief the pressure of the  
25 over-enrollment.

1 socioeconomic level, and  
2 educational..."

3 Is that something that must be done to  
4 implement a multitrack year-round program?

5 A That's not a must.

6 That's highly desirable.

7 The reason I put it that way is because  
8 what we talked about yesterday.

9 There might be a reason to have English  
10 language learners on a particular track for a  
11 curriculum and instruction reason.

12 For that reason, I think I'm going to  
13 leave that as highly desirable and not as an  
14 absolute.

15 Q Do you believe it's highly desirable?

16 A I think from a philosophy of education,  
17 from what I think is right for all students, it's  
18 right to balance tracks as much as possible by  
19 socioeconomic levels, educational needs, and so on.

20 As I read this more carefully, the  
21 education need part may, indeed, change the  
22 balancing we might do in terms of ethnicity and  
23 ability as I just mentioned a while ago.

24 Q You mentioned that you believe balancing  
25 tracks by ethnicity, ability, socioeconomic level,

1 and educational need is highly desirable because of  
2 your philosophy of education?

3 A Yes.

4 Q What do you mean by that?

5 A As I mentioned yesterday, students of  
6 lower achievement can be helped by sitting in  
7 classes with students of higher achievement.

8 And there is a whole body of research that  
9 suggests that is true.

10 That's one kind of situation where I would  
11 advocate heterogeneous groupings where people from  
12 different achievement categories are in the same  
13 room together.

14 Q Anything else in terms of philosophy of  
15 education?

16 A That's all for right now.

17 Q You mentioned that you believe that it's  
18 highly desirable to balance tracks by ethnicity,  
19 ability, socioeconomic level, and educational need  
20 because what you believe is right for all students.

21 What do you mean by that?

22 A Just a personal philosophical stance that  
23 I take, and I would hope most educators would.

24 Q What is that stance?

25 A That I think there should be balance in

1 BY MR. VILLAGRA:

2 Q So the result would be homogeneous  
3 grouping of students by track?

4 A It may.

5 And we're speaking of, for example,  
6 English language learners that may have a need for  
7 some class.

8 That may unbalance some of the other  
9 factors.

10 But given the ordinary classroom,  
11 I believe in heterogeneous population.

12 Q What do you mean by an "ordinary  
13 classroom"?

14 A American history, a class which most  
15 students are going to take.

16 Q If English language learners are  
17 disproportionately put on a single track when they  
18 sit in their American history course, aren't they  
19 less likely to sit in a classroom of  
20 higher-achieving students who are more likely to be  
21 on other tracks?

22 MS. DAVIS: Same objection.

23 THE WITNESS: That may be possible.

24 I'm not sure it's true in all instances.

25 BY MR. VILLAGRA:

1 the tracks.

2 Q When you talked about heterogeneous  
3 groupings of students, are you speaking at the  
4 classroom level?

5 A Yes

6 Q So based on your understanding, it is  
7 better for lower achieving students to be in the  
8 same classroom with higher achieving students?

9 A I think so, yes.

10 Q If lower achieving students are put on one  
11 track disproportionately, will they have reduced  
12 opportunities to sit in classrooms with higher  
13 achieving students?

14 MS. DAVIS: Calls for speculation.

15 THE WITNESS: Yes. That is -- let's put  
16 it this way.

17 The other item here which is in this same  
18 sentence with ethnicity, ability, and socioeconomic  
19 economic level, educational need, if there is an  
20 educational need for a group of students to be  
21 together to have the same kind of lessons taught to  
22 them, that may in itself skew the "balance" that  
23 we talked about otherwise.

24 In that situation, the need would override  
25 the other desirability of having a balance.

1 Q It's true in some instances?

2 A It may be.

3 Q Isn't that a necessary result of  
4 unbalancing tracks by educational need?

5 MS. DAVIS: Vague and ambiguous.

6 THE WITNESS: I don't think it's a  
7 necessary result.

8 If a good administration is occurring,  
9 there should be some attempts to balance the tracks  
10 elsewhere, if possible.

11 There are 980 multitrack schools in the  
12 state, which means an umpteen thousand number of  
13 classrooms.

14 I can't speak for every classroom in the  
15 state and what happens in each of those classrooms.

16 We're talking, here, about general  
17 policies.

18 So I think I'll stop there and say I've  
19 given my view as to general policies and what I  
20 would like to see happen.

21 BY MR. VILLAGRA:

22 Q At a general policy level, if you do  
23 unbalance tracks by educational need, isn't there  
24 the possibility of unbalancing the tracks by  
25 ethnicity, ability, and socioeconomic level?

1 A I was talking about in the classroom  
2 level.  
3 You're speaking of track levels.  
4 I'm really talking about the classroom as  
5 the educational need.  
6 You develop a classroom situation, but  
7 given that, I would still prefer and suggest and  
8 encourage that elsewhere, there be a heterogeneous  
9 population in the classroom to the greatest degree  
10 possible.  
11 Q I don't know what you mean by "elsewhere"?  
12 A If we're talking about a class for English  
13 language learners, that is one class out of a day  
14 of maybe 5, 6, 7 periods, depending on the school  
15 and how it's organized.  
16 There should be other opportunities in the  
17 day to have a heterogeneous classroom for those  
18 students.  
19 And in a subject such as American history,  
20 as I mentioned a while ago, that takes some  
21 alertness on the part of the administrators.  
22 But it is possible to do.  
23 Q Is it difficult to do?  
24 MS. DAVIS: Calls for speculation.  
25 THE WITNESS: It may be, I don't know.

1 BY MR. VILLAGRA:  
2 Q Do you have any idea?  
3 A I say it may be.  
4 Q Have you ever done it yourself?  
5 A I have not.  
6 Q Have you ever spoken with anyone who has  
7 done it?  
8 A I have.  
9 Q What have they told you about the level of  
10 difficulty?  
11 A The level of difficulty, in some  
12 situations, it is difficult.  
13 Q Can you name for me any of the schools'  
14 staff that you have spoken with about the  
15 difficulty of balancing tracks?  
16 A Excuse me, say it again.  
17 (Record read.)  
18 A I can't.  
19 BY MR. VILLAGRA:  
20 Q Were any of those schools' staff from  
21 California?  
22 A Yes.  
23 Q Were any of them from multitrack  
24 year-round schools?  
25 A Yes.

1 Q Were any of them from Concept 6 schools?  
2 A That, I can't tell you. I don't know.  
3 Q The next Item, 10: "Develop and approve  
4 staff policy for teachers and staff."  
5 Do you believe that must be done to  
6 implement a multitrack year-round program?  
7 A Desirable, not absolute, not a must.  
8 Q 11: "Determine staff and service  
9 schedule."  
10 A Desirable, not must.  
11 Q Turn to the next page of Exhibit 7, on  
12 page 0854.  
13 I'm looking at Item No. 22: "Develop  
14 a work schedule for office, custodial, and  
15 administrative staff."  
16 That is something that must be done to  
17 implement a multitrack year-round program?  
18 A I don't see that it's a required -- that  
19 it's required for a multitrack program.  
20 For example, the office staff is probably  
21 going to have the -- pretty much, the same daily  
22 schedule as before.  
23 I think that's more of a desirable than a  
24 must.  
25 Q What about office staff that's taking a

1 vacation, doesn't some sort of arrangement have to  
2 be made to cover a vacation since there's no time  
3 when the year-round school is not in session?  
4 A Well, maybe we're working against words  
5 here.  
6 But while a work schedule would have to be  
7 done, it doesn't have to be done at the point of  
8 implementing a year-round educational program.  
9 It could be done over a period of time.  
10 Q So are you reading these items as items  
11 that need to be done in designing a multitrack  
12 year-round program?  
13 A Or at the start of the program.  
14 That's what "implementing" means to me, at  
15 the beginning, after program.  
16 Q So a year later, the school is no longer  
17 implementing a year-round program?  
18 A I wouldn't see it as implementing.  
19 I would see it as sustaining the  
20 implementation.  
21 Q Do you believe, then, that to sustain a  
22 multitrack year-round program, a school must  
23 develop a work schedule for office, custodial, and  
24 administrative staff?  
25 A Highly desirable.

1 Q But not a must?  
 2 A Not a must.  
 3 Q No. 23: "Develop a system to deliver  
 4 electives and special services such  
 5 as special day classes, psychological  
 6 services, resource specialists, and  
 7 bilingual education."  
 8 Do you believe that is something a school  
 9 must do to implement a multitrack year-round  
 10 program?  
 11 A It must do some of those things by law.  
 12 So the answer would be yes.  
 13 Part of that would be a must to follow a  
 14 law.  
 15 Not all of those items would have to be  
 16 musts.  
 17 Q Which of those, in your understanding,  
 18 must be done by law?  
 19 A Well, certain special services to students  
 20 that would be enrolled in special education  
 21 courses.  
 22 For example, there are certain policies  
 23 that need to be followed in law.  
 24 That, for example, would be a must.  
 25 When we're talking about resource

1 thing, and I'm not really familiar with that area.  
 2 But in general, I would say most of these  
 3 are not requirements to sustain a multitrack  
 4 year-round program.  
 5 They were likely desirable, not a  
 6 requirement.  
 7 Q Why would you say that?  
 8 A Because a psychologist is a very important  
 9 member of the staff, but not required for the  
 10 implementation or the sustaining of the calendar  
 11 program called "multitrack."  
 12 Q Isn't it necessary to develop a system to  
 13 provide psychological services over the course of a  
 14 12-month year as opposed to a 9-month year?  
 15 A Desirable, highly desirable.  
 16 Q But not a must?  
 17 A I don't see it as a must.  
 18 Q Do you believe that a school should have a  
 19 substitute psychologist in place when the school  
 20 psychologist goes on vacation at a multitrack  
 21 year-round program school?  
 22 MS. DAVIS: Vague and ambiguous.  
 23 THE WITNESS: Not every school has a  
 24 psychologist.  
 25 So a multitrack could occur without a

1 specialists, that would be at the discretion of the  
 2 district.  
 3 So that might be a desirable; it wouldn't  
 4 be a requirement.  
 5 Q Other than special services, special  
 6 education as you just mentioned, are there any  
 7 other items, here, that must be done by law, in  
 8 your understanding?  
 9 A Not right now, to my understanding.  
 10 Q Apart from special education, which you  
 11 believe must be done by law, do any of these other  
 12 items have to be done to implement a multitrack  
 13 year-round program?  
 14 A I don't believe so, no.  
 15 Q Do any of these items have to be done in  
 16 order to sustain a multitrack year-round program?  
 17 A Not a requirement, no.  
 18 Q Why do you believe that?  
 19 A Because, there are certain aspects of  
 20 choice on the part of the district in regard to  
 21 psychological services, resource specialists.  
 22 There are certain laws, as I understand it  
 23 and I may be incorrect here, relative to bilingual  
 24 education.  
 25 But that's a more curriculum sort of

1 staff psychologist.  
 2 I think psychological services are  
 3 important, and I'm not downplaying that at all.  
 4 But it's just -- the question is: Is it a  
 5 must?  
 6 I'm saying: I don't see it as a must.  
 7 I think it's highly desirable.  
 8 Q At a traditional calendar school, do you  
 9 have any understanding of when a psychologist would  
 10 typically take a vacation?  
 11 MS. DAVIS: Calls for speculation.  
 12 THE WITNESS: Typically, I -- yes, I do.  
 13 BY MR. VILLAGRA:  
 14 Q When would it be?  
 15 A Typically, it would be during the long  
 16 summer vacation.  
 17 Q So when school is not in session?  
 18 A That's correct.  
 19 Q At a multitrack year-round calendar, if a  
 20 school has a psychologist and a psychologist takes  
 21 a vacation, will the vacation occur typically when  
 22 school is in session?  
 23 MS. DAVIS: Vague and ambiguous, calls for  
 24 speculation, incomplete hypothetical, assumes facts  
 25 not the evidence.

1 (Record read.)  
 2 THE WITNESS: It may, depends on local  
 3 decision-making.  
 4 BY MR. VILLAGRA:  
 5 Q What do you mean by that?  
 6 A Psychologist is going to be hired for  
 7 psychological services within a given school year.  
 8 An administrator, in consultation with the  
 9 psychologist, would agree to when the vacations  
 10 would be taken.  
 11 That could change school by school.  
 12 Q But there is a possibility that a school  
 13 psychologist would go on vacation at a multitrack  
 14 year-round school when school is in session?  
 15 A Yes, it's possible.  
 16 Q Do you believe that the school should  
 17 provide a substitute school psychologist if the  
 18 ordinary school psychologist is on vacation?  
 19 MS. DAVIS: Calls for speculation, vague  
 20 and ambiguous.  
 21 THE WITNESS: Not necessarily.  
 22 BY MR. VILLAGRA:  
 23 Q Why not?  
 24 A If the psychologist is taking three days  
 25 over a long weekend, there may not be any need for

1 If the psychologist is off for two weeks,  
 2 we do this, in that district or school, what we do  
 3 with a two-week illness.  
 4 Q Except we're not talking about illness;  
 5 we're talking about vacation?  
 6 A The psychologist would be absent for the  
 7 same period of time.  
 8 Q But on the traditional calendar schedule,  
 9 a school psychologist can plan their vacations so  
 10 as not to overlap with periods of the year when  
 11 school is in session; is that right?  
 12 A Yes.  
 13 Q No. 25, we talked about yesterday.  
 14 And I believe you said that was "a must."  
 15 That's modifying the transportation  
 16 system?  
 17 A That has to be planned at the  
 18 implementation, yes.  
 19 Q No. 26: "Establish a system for teacher  
 20 room rotation or roving."  
 21 That is something that must be done to  
 22 implement a multitrack year-round program?  
 23 A Highly desirable.  
 24 I'm holding back because of the  
 25 Orchard Plan, where the teacher neither

1 bringing in a substitute psychologist for that  
 2 short period of time.  
 3 The psychologist may agree to scatter  
 4 vacation days throughout the year and on each one  
 5 of the tracks.  
 6 That time is balanced.  
 7 For short periods of vacation, I don't  
 8 know that it would be required to have a substitute  
 9 psychologist on campus.  
 10 Q What do you mean by a "short-period  
 11 vacation"?  
 12 A A week.  
 13 Q What if a school psychologist were taking  
 14 a two-week vacation, do you believe it would be  
 15 necessary to make provisions for a substitute  
 16 school psychologist?  
 17 MS. DAVIS: Incomplete hypothetical.  
 18 THE WITNESS: It would be highly  
 19 desirable.  
 20 BY MR. VILLAGRA:  
 21 Q But not necessary?  
 22 A Not necessary.  
 23 Right now, in a traditional calendar  
 24 school, a multitrack must always be compared with  
 25 what we do at the traditional calendar.

1 rotates or roves.  
 2 Not all multitrack programs do use the  
 3 rotation or roving.  
 4 Ordinarily, it's highly desirable to have  
 5 that system in place where rotation or roving  
 6 occurs.  
 7 Q Was the Orchard Plan, you discussed,  
 8 typical?  
 9 A It's not typical, no.  
 10 Q To your knowledge, has it been replicated  
 11 in any other district in California?  
 12 A Yes.  
 13 Q Where?  
 14 A It's in Oroville Orchard in Chula Vista,  
 15 in Palmdale.  
 16 That's all that comes to mind right now.  
 17 Q How many schools are we talking about that  
 18 have implemented the Orchard Plan, to your  
 19 knowledge?  
 20 MS. DAVIS: Calls for speculation.  
 21 THE WITNESS: At its peak, it may be 16  
 22 schools, something like that.  
 23 BY MR. VILLAGRA:  
 24 Q Do you believe it is necessary to  
 25 establish a system for teacher room rotation or



1 roving in order to sustain a multitrack year-round  
 2 program?  
 3 A Excluding Orchard?  
 4 Q Yes.  
 5 A I'm going to say, yes, on that one.  
 6 Q No. 28: "Provide activities for  
 7 connectedness for off-track employees and parents."  
 8 Do you believe that's something that must  
 9 be done to implement a multitrack year-round  
 10 program?  
 11 MS. DAVIS: Vague and ambiguous.  
 12 We may have gone over this yesterday.  
 13 THE WITNESS: I'm not sure what  
 14 "connectedness means."  
 15 BY MR. VILLAGRA:  
 16 Q All right.  
 17 A I don't recall that we went over this  
 18 yesterday.  
 19 I don't know what the "connectedness"  
 20 means here.  
 21 I don't know what the author has in mind.  
 22 Q No idea?  
 23 A I don't.  
 24 Q 32 says: "Coordinate with community  
 25 services such as the recreation

1 department, youth organizations,  
 2 church groups, and the police  
 3 department."  
 4 Do you believe that must be done to  
 5 implement a multitrack year-round program?  
 6 A I don't think it's a must situation.  
 7 I think this one is very highly desirable.  
 8 Q Do you believe this must be done to  
 9 sustain a multitrack year-round program?  
 10 A Not required, highly desirable.  
 11 Q No. 35: "Modify student testing program."  
 12 Do you believe that must be done to  
 13 implement a multitrack year-round program?  
 14 A I don't think it must be.  
 15 Q Do you believe it must be done in order to  
 16 sustain a multitrack year-round program?  
 17 A No.  
 18 Q And for the various items you have  
 19 identified as a must, do you believe that any are  
 20 actually required by the State of California for a  
 21 multitrack year-round schools?  
 22 MS. DAVIS: Objection, calls for  
 23 speculation.  
 24 THE WITNESS: I'm not prepared to say,  
 25 because I just don't know.

1 I have to think about that one for a  
 2 while.  
 3 BY MR. VILLAGRA:  
 4 Q What do you mean you would have to "think  
 5 about it"?  
 6 A Right now, I just don't know how to answer  
 7 it.  
 8 Q You don't know of any requirement by the  
 9 State of California that any of these items that  
 10 you have identified as a must implementation  
 11 established for a multitrack year-round program, in  
 12 fact, must be taken by a multitrack year-round  
 13 school?  
 14 MS. DAVIS: Vague and ambiguous, calls for  
 15 speculation.  
 16 THE WITNESS: I said, for example, No. 4,  
 17 that's a requirement, the Ed 37611.  
 18 I do realize that's a legal requirement.  
 19 So I would have to go through and think  
 20 about this in long-term, in order to answer your  
 21 question.  
 22 BY MR. VILLAGRA:  
 23 Q What would you have to do in thinking  
 24 about it in long-term?  
 25 A Probably have to go through the Ed code

1 and see which are specific requirements and whether  
 2 they apply to this particular list.  
 3 Q Putting to one side any future work you  
 4 may do sitting here today, do you have any  
 5 knowledge of whether any of these implementation  
 6 steps are required by California State Law?  
 7 MS. DAVIS: Same objection.  
 8 THE WITNESS: Not other than those I've  
 9 already identified.  
 10 BY MR. VILLAGRA:  
 11 Q As being required by State Law?  
 12 A Yes.  
 13 Q Do you know whether the State, I want to  
 14 refer specifically to the California Department of  
 15 Education, does any monitoring of whether schools  
 16 have taken these steps in implementing multitrack  
 17 year-round programs?  
 18 MS. DAVIS: Same objection.  
 19 THE WITNESS: I don't know whether the  
 20 State Department does or not.  
 21 BY MR. VILLAGRA:  
 22 Q Do you know whether the California Board  
 23 of Education takes any steps to monitor whether  
 24 schools have taken any of these implementation  
 25 steps in implementing a multitrack year-round

1 program?

2 MS. DAVIS: Same objection.

3 THE WITNESS: I don't know whether the  
4 State does or not.

5 BY MR. VILLAGRA:

6 Q Do you know whether the California  
7 Superintendent of Public Construction monitors, in  
8 any way, whether schools have taken any of these  
9 implementation steps for multitrack year-round  
10 schools?

11 MS. DAVIS: Same objection.

12 THE WITNESS: I don't know whether the  
13 superintendent does or not.

14 BY MR. VILLAGRA:

15 Q Do you believe it would be desirable for  
16 the State of California to monitor whether schools  
17 are taking any of these implementation steps for a  
18 multitrack year-round program?

19 MS. DAVIS: Same objections.

20 You mean the State; are you talking about  
21 the Department of Education?

22 MR. VILLAGRA: Did you understand the  
23 question?

24 THE WITNESS: I was pausing because it's a  
25 wide field there.

1 around the state, for districts to compare what  
2 other districts are doing, good professional  
3 policy.

4 Q No. 9: "Develop and improve track  
5 preference and assignment policy for students."

6 You said: "I believe that must be done in  
7 order to implement a multitrack year-round  
8 program"; is that correct?

9 A Yes.

10 Q Do you believe it would be helpful for any  
11 agency of the State of California to determine  
12 whether schools implementing a multitrack  
13 year-round program have developed and approved  
14 track preference and assignment policy for  
15 students?

16 MS. DAVIS: Vague and ambiguous as to  
17 "helpful."

18 THE WITNESS: I don't know it's necessary  
19 for the State to particularly monitor that.

20 The reason I said that was a must was  
21 because if there is not some kind of a system for  
22 choosing tracks, for setting up tracks, it would be  
23 chaos at the implementation of a multitrack  
24 program.

25 So there has to be some kind of system set

1 BY MR. VILLAGRA:

2 Q What do you mean by "wide field"?

3 A Are we talking about state superintendent;  
4 are we talking about the facilities division of the  
5 State Department; are we talking about the Board of  
6 Education?

7 Q Do you believe that any entity, any agency  
8 of the State of California, should monitor whether  
9 schools follow any of these implement steps in  
10 implementing a multitrack year-round program?

11 MS. DAVIS: Any of the 35?

12 MR. VILLAGRA: Yes.

13 THE WITNESS: The key word for me, there,  
14 is "monitor."

15 I think it would be helpful to have some  
16 data collection; monitoring suggests State control.

17 I do like local control of education to  
18 the greatest degree possible.

19 Acknowledging there are certain state's  
20 laws, of course, that need to be followed.

21 But -- it would be helpful to get more  
22 data collected.

23 BY MR. VILLAGRA:

24 Q Why would it be helpful?

25 A Just as a way of knowing what's going on

1 out to tracking.

2 But I'm not sure that's something the  
3 State needs to monitor.

4 BY MR. VILLAGRA:

5 Q So you believe that in implementing a  
6 multitrack year-round program, a school will  
7 necessarily have to develop a track preference and  
8 assignment policy; is that correct?

9 MS. DAVIS: Asked and answered.

10 THE WITNESS: I think I would say the same  
11 thing. Yes.

12 You have to have a system where you would  
13 have chaos.

14 That's why I say that is a must.

15 Same thing as I said transportation is a  
16 must.

17 There has to be some prior knowledge on  
18 the part of parents and students, you know, when  
19 the bus is going to run.

20 But that's not something I think the State  
21 needs to monitor.

22 BY MR. VILLAGRA:

23 Q You mentioned that you believe that a  
24 multitrack year-round school must balance tracks by  
25 ethnicity, ability, socioeconomic level, and

1 educational need?  
 2 A I didn't say "must."  
 3 I said "highly desirable."  
 4 Q Do you believe it would be desirable for  
 5 any agency of the State of California to determine  
 6 whether multitrack year-round schools are balancing  
 7 tracks by ethnicity, ability, socioeconomic level,  
 8 and educational needs?  
 9 MS. DAVIS: Vague and ambiguous.  
 10 THE WITNESS: It might be helpful if some  
 11 data were collected.  
 12 BY MR. VILLAGRA:  
 13 Q Helpful for what purpose?  
 14 A To get a picture of whether the kind of  
 15 philosophy, I believe is, is being followed.  
 16 Q If the picture showed that the type of  
 17 your philosophy were not being followed, would that  
 18 be the end of it?  
 19 MS. DAVIS: Vague and ambiguous, calls for  
 20 speculation, incomplete hypothetical.  
 21 THE WITNESS: I don't know whether it  
 22 would or not.  
 23 Just going with my personality, I would  
 24 probably write an article, somewhere, encouraging  
 25 heterogeneous balancing of classrooms' tracks to

1 the greatest degree possible.  
 2 BY MR. VILLAGRA:  
 3 Q Do you believe the State should collect  
 4 the data, and if the data reveals that tracks are  
 5 not balanced by ethnicity, ability, socioeconomic  
 6 level, and educational need, that balance should be  
 7 encouraged at multitrack year-round schools?  
 8 MS. DAVIS: Same objection.  
 9 THE WITNESS: The State might encourage  
 10 it.  
 11 And if there is a civil rights situation  
 12 which needs to be corrected, gathering data may  
 13 help in that regard.  
 14 But I think I'll just leave it at that  
 15 point.  
 16 As I have said before, that's something I  
 17 would prefer.  
 18 BY MR. VILLAGRA:  
 19 Q What do you mean by "a civil rights  
 20 situation"?  
 21 A I'm not sure if there was something that  
 22 would constitute if it were clear that students  
 23 were being assigned by ethnicity or race to a  
 24 particular track.  
 25 Then I think that would be a highly

1 undesirable situation and probably an illegal  
 2 situation.  
 3 That kind of data might be helpful.  
 4 By otherwise, much of this balancing, it  
 5 might be desirable to have the situation.  
 6 I'm not sure it's a legal situation.  
 7 Q What do you mean by "a legal situation"?  
 8 A I don't know what I mean.  
 9 Q You don't know what you mean?  
 10 A I'm not sure. I'm just using that in a  
 11 general sense.  
 12 Like I referred to, a while ago, to  
 13 African-American for being assigned to only one  
 14 track.  
 15 That might be an illegal situation.  
 16 Q Do you know whether the State of  
 17 California, I want to encompass all of its  
 18 agencies, whether the State of California keeps any  
 19 data regarding ethnicity, ability, socioeconomic  
 20 level, and educational needs of students by track  
 21 at multitrack year-round schools?  
 22 MS. DAVIS: Vague and ambiguous, calls for  
 23 speculation.  
 24 THE WITNESS: I don't know whether the  
 25 State does or not.

1 BY MR. VILLAGRA:  
 2 Q To your knowledge, the California Board of  
 3 Education does not maintain data that's segregated  
 4 in that way, by track?  
 5 MS. DAVIS: Asked and answered.  
 6 THE WITNESS: Not to my knowledge.  
 7 BY MR. VILLAGRA:  
 8 Q The superintendent of public instruction  
 9 for California does not maintain that data?  
 10 A I don't know one way or another.  
 11 Q The California Board of Education, you  
 12 don't know?  
 13 A I don't know whether it does or doesn't.  
 14 MS. DAVIS: Asked and answered.  
 15 BY MR. VILLAGRA:  
 16 Q On page 2, the second page that we've been  
 17 looking at, which is 0854, under B, Point 4: "Does  
 18 not load tracks by ability level..."  
 19 Do you have an understanding as to what it  
 20 would mean to "load a track"?  
 21 MS. DAVIS: Vague and ambiguous.  
 22 THE WITNESS: I'm not sure what the author  
 23 has in mind here.  
 24 But the author is apparently saying -- I  
 25 stress "apparently," the author is saying do not --

1 probably, the author is saying avoid -- I'm not  
 2 sure what the author is saying here.  
 3 BY MR. VILLAGRA:  
 4 Q You have no idea?  
 5 A Well -- I don't have an absolute idea what  
 6 the author is saying.  
 7 It may very well be referring to what we  
 8 were talking about on the prior page, about  
 9 heterogeneity versus homogeneity.  
 10 And I would suspect the author is saying  
 11 here "be careful, this is a consideration."  
 12 I see -- B says: "A consideration, try to  
 13 avoid loading the tracks so there is  
 14 a homogeneity situation rather than a  
 15 heterogeneity."  
 16 Q This is specifically at the track level;  
 17 is that correct?  
 18 MS. DAVIS: Calls for speculation.  
 19 THE WITNESS: It does say "tracks," here.  
 20 BY MR. VILLAGRA:  
 21 Q So you read this consideration to be about  
 22 loading tracks by ability level?  
 23 MS. DAVIS: Calls for speculation.  
 24 He told you he doesn't know what the  
 25 author means.

1 MR. VILLAGRA: I believe I asked him how  
 2 he read this.  
 3 MS. DAVIS: We can keep going and he can  
 4 keep guessing.  
 5 MR. VILLAGRA: I don't want him to  
 6 speculate as to what he thinks.  
 7 If he doesn't know, I'm not sure who  
 8 would.  
 9 MS. DAVIS: Maybe the author of the  
 10 document.  
 11 THE WITNESS: I think I just answered that  
 12 to the best of my ability.  
 13 BY MR. VILLAGRA:  
 14 Q Have you had discussions within the  
 15 California Department of Education Year-Round  
 16 Education Advisory Committee about the steps  
 17 involved in implementing a multitrack year-round  
 18 program?  
 19 A I don't recall ever discussing any of  
 20 this, no.  
 21 All of this is new to me.  
 22 Not the ideas, but the language that we  
 23 have here.  
 24 All of this is new to me.  
 25 Q So you did not review this document in

1 preparing your report?  
 2 A No, I did not.  
 3 Q Did you review everything that was sent to  
 4 you by defense counsel?  
 5 A I looked over everything.  
 6 I don't recall that this particular item  
 7 was in there. It may have been.  
 8 It may have just slipped my memory.  
 9 At this point, I don't remember looking it  
 10 over.  
 11 Q Do you have any opinion as to how ability  
 12 levels should be distributed across tracks at a  
 13 multitrack year-round school?  
 14 MS. DAVIS: Vague and ambiguous.  
 15 THE WITNESS: Will you repeat the  
 16 question?  
 17 (Record read.)  
 18 THE WITNESS: Yes, and I do.  
 19 And I think I answered that a while ago.  
 20 I would prefer, to the greatest degree  
 21 possible, a heterogeneous situation where students  
 22 of different ability levels are together in the  
 23 classroom.  
 24 But I didn't exclude the possibility that  
 25 educational needs might dictate another situation.

1 BY MR. VILLAGRA:  
 2 Q I know that earlier, you talked about  
 3 heterogeneity at the classroom level.  
 4 I'm asking now, at the track level?  
 5 A The same response, to the greatest degree  
 6 possible, I think that's desirable.  
 7 Q I believe I asked you on Monday whether  
 8 you had been part of something called a Year-Round  
 9 Incentive Payments Advisory Committee; do you  
 10 believe that?  
 11 A I don't recall your asking me that.  
 12 Q Do you recall being a member of that  
 13 committee?  
 14 A I don't recall being a part of a formal  
 15 committee.  
 16 I remember discussing the issue within an  
 17 advisory committee.  
 18 I don't recall being a part of a formal  
 19 committee.  
 20 Q If I could turn your attention to  
 21 Exhibit 1?  
 22 A All right.  
 23 Q Turn your attention to Appendix B which  
 24 appears at State EXP-CB713.  
 25 MS. DAVIS: Page 47 of the actual

1 document.

2 BY MR. VILLAGRA:

3 Q Do you see your name listed there?

4 A I do see my name.

5 Q Listed among the members of the Year-Round  
6 Incentive Payment Advisory Committee?

7 A Yes.

8 Q Does this refresh your recollection that  
9 you were a part of the Year-Round?

10 A As I said, I don't recall being a part of  
11 a formal advisory committee called Payments  
12 Advisory Committee.

13 What I said was we discussed the issue  
14 within the larger framework of the Advisory  
15 Committee.

16 Whoever put this together may have said,  
17 since we discussed it and these were people who  
18 were involved in the discussions, this was the  
19 Payments Advisory Committee.

20 I'm speculating on that. I don't know.

21 But I don't remember ever being a part of  
22 a formally constituted Payments Advisory Committee.

23 Q This report, Exhibit 1, there is a date of  
24 April 1990 on it.

25 Do you believe, then, that you would have

1 "Deposition of Dr. Jenny Oaks," at page 521.

2 Do you see that?

3 A Yes.

4 Q Do you have any support for this  
5 proposition that Concept 6 students are typically  
6 allowed to cross-track, other than the deposition  
7 testimony of Dr. Oaks?

8 A I could.

9 Q What other support do you have?

10 A Having talked with Concept 6  
11 administrators over the many years, I was executive  
12 director.

13 I have asked whether students are allowed  
14 to cross-track, and the answer was "yes."

15 Q Why did you not cite any of those  
16 administrators?

17 A Because I made the statement here, and  
18 this is just a separate citation as well, "see her  
19 deposition."

20 Because she acknowledges that as well.

21 But the statement itself is my statement.

22 Q Do you believe that Dr. Oaks's testimony  
23 was that the concept of students are typically  
24 allowed to cross-track?

25 A That's my statement.

1 been a member of the Year-Round Educational  
2 Advisory Committee in 1990?

3 MS. DAVIS: I believe that's asked and  
4 answered, but go ahead.

5 THE WITNESS: I don't recall. I just  
6 don't recall those dates; that's 13 years ago.

7 MS. DAVIS: He did give an estimate of  
8 dates.

9 MR. VILLAGRA: I'm not sure he went that  
10 far.

11 THE WITNESS: I don't recall when that  
12 committee really started.

13 BY MR. VILLAGRA:

14 Q I want to turn your attention to where we  
15 left off yesterday, Exhibit 12, which is your  
16 report, specifically page 31.

17 A I have 31.

18 Q The second full paragraph.

19 A All right.

20 Q You began by writing: "Concept 6 students  
21 are typically allowed to cross-track,  
22 meaning they can jump to another  
23 track for a particular course of  
24 credit."

25 That's followed by a citation to the

1 Q What do you believe her testimony to have  
2 been?

3 MS. DAVIS: I think the document speaks  
4 for itself.

5 THE WITNESS: Yes.

6 MR. VILLAGRA: He said that's his  
7 statement.

8 MS. DAVIS: The Oaks deposition, I don't  
9 know if he recalls.

10 MR. VILLAGRA: Do you recall?

11 THE WITNESS: I have the citation here on  
12 page 521.

13 The answer would be, yes, I saw that.

14 But again --

15 BY MR. VILLAGRA:

16 Q The question is: Do you recall what her  
17 testimony was?

18 If you don't, that's fine.

19 A At this point, I will say I don't recall  
20 the exact words.

21 Q Can you name for me any of the Concept 6  
22 administrators that you spoke to about  
23 cross-tracking?

24 A Maria Tostato, Tony Garcia, Mel Mares, at  
25 least those three and more.

1 I can't recall other names right now.  
 2 Q And Maria Tostato was a principal?  
 3 A At Garfield High School.  
 4 Q Tony Garcia?  
 5 A He was principal of both Huntington Park  
 6 and Garfield High School.  
 7 Q And Mel Mares?  
 8 A Principal at Bell High School.  
 9 Q The discussions you had with those three  
 10 administrators will tell you there was  
 11 cross-tracking when they were at those schools at  
 12 Garfield, Huntington Park, and Bell High School in  
 13 LAUSD; is that correct?  
 14 A That's correct.  
 15 Q I believe yesterday you mentioned that you  
 16 believe there are about 17 or 18, Concept 6 high  
 17 schools?  
 18 A Yes.  
 19 Q Do you know whether cross-tracking is  
 20 allowed at any other high school other than  
 21 Garfield, Huntington Park, or Bell?  
 22 A I haven't checked specifically with those  
 23 high schools, but it's my understanding that the  
 24 answer is yes, at other high schools as well.  
 25 Q What's your understanding based on?

1 MS. DAVIS: Asked and answered.  
 2 THE WITNESS: Discussion with -- the  
 3 principals name -- the other principal was Steve  
 4 Walters.  
 5 BY MR. VILLAGRA:  
 6 Q Where was he a principal?  
 7 A He was assistant principal at Huntington  
 8 Park for many years and also a member of the  
 9 National Board of the National Association for  
 10 Year-Round Education.  
 11 Q Can you think of anyone else you spoke to  
 12 about cross-tracking at Concept 6 schools?  
 13 MS. DAVIS: Asked and answered.  
 14 THE WITNESS: I may think of additional  
 15 names as we go along.  
 16 I have given you four, now.  
 17 BY MR. VILLAGRA:  
 18 Q Did you speak with these administrators  
 19 about policies at other Concept 6 high schools?  
 20 A To the degree that I asked, "Is this a  
 21 common practice," the answer is, yes.  
 22 Q You believe you asked who whether  
 23 cross-tracking was a common practice?  
 24 A Over the years, probably all four of these  
 25 that I mentioned so far.

1 Q Do you have any specific recollection of  
 2 having done that?  
 3 A Not at this point.  
 4 Q When you say you probably did, is it also  
 5 probably true that you did not?  
 6 A It's more likely that I did have that  
 7 conversation.  
 8 Q When was the last time you spoke with an  
 9 administrator at a Concept 6 high school about  
 10 cross-tracking?  
 11 A Probably at the point of my retirement, in  
 12 2000.  
 13 Q Do you believe that there are any schools  
 14 that do not permit cross-tracking in Concept 6  
 15 schools?  
 16 MS. DAVIS: Objection.  
 17 THE WITNESS: I don't know whether there  
 18 are any or not that permit it or not.  
 19 BY MR. VILLAGRA:  
 20 Q When you say "typically," did you mean to  
 21 suggest that to your knowledge all Concept 6 high  
 22 schools allowed cross-tracking?  
 23 A Typical just means it's a common practice.  
 24 It doesn't mean that every single school  
 25 necessarily does that.

1 But typical is a very common practice.  
 2 Q So even within a typical practice, some  
 3 Concept 6 high schools may not allow  
 4 cross-tracking; is that correct?  
 5 MS. DAVIS: Calls for speculation.  
 6 THE WITNESS: It's possible, but I don't  
 7 know that's true.  
 8 BY MR. VILLAGRA:  
 9 Q Did you ask any of the administrators you  
 10 identified, Maria Tostato, Tony Garcia, Mel Mares,  
 11 or Steve Walters whether they knew of any Concept 6  
 12 high schools that did not allow cross-tracking?  
 13 A When I wrote this; is that what you're  
 14 asking me?  
 15 Q Ever.  
 16 A Sure, I have talked to them about whether  
 17 schools do or not.  
 18 Q Did you ask them whether they knew of any  
 19 Concept 6 schools that did not allow  
 20 cross-tracking?  
 21 A I did not ask that specific question, no.  
 22 MS. DAVIS: Can we take a break?  
 23 (Recess taken.)  
 24 BY MR. VILLAGRA:  
 25 Q We were looking at page 31 of your report

1 which is Exhibit 12, we were talking about  
2 cross-tracking.  
3 Do you recall that?  
4 A Yes.  
5 Q In your report, you write that  
6 "cross-tracking means that students can jump to  
7 another track for a particular course credit."  
8 Can you expand on that for me?  
9 MS. DAVIS: Vague and ambiguous.  
10 THE WITNESS: If a student is on vacation  
11 for two months and has been, for example, on track  
12 three, during that two months vacation, the student  
13 can participate in classes on one of the other  
14 tracks to get a class that might be available on  
15 that other track that wouldn't be available on a  
16 given track.  
17 Again, an example might be a student in  
18 track A wanting to cross-track to a class that's on  
19 track C.  
20 Or it could be a different teacher, even,  
21 not just a class, but to hear what another teacher  
22 might be giving out in a particular class subject.  
23 BY MR. VILLAGRA:  
24 Q So a student on one track might  
25 cross-track in order to take a class that is not

1 available on their own attendance track?  
2 A That's correct.  
3 Q And you said that if a student is on  
4 vacation for two months, they can participate in a  
5 class offered on one of the other two tracks?  
6 A That they are in school.  
7 Q Going back to page 8 of your report.  
8 Do you see Figure 3?  
9 A I do.  
10 Q It says: "Diagram of the Concept 6  
11 calendar."  
12 If a student were on track B and wanted to  
13 cross-track to take a course offered on track A, if  
14 September and October, when they were normally  
15 scheduled to be on vacation, they would be  
16 attending the course on track A?  
17 A That's correct.  
18 Q That's how cross-tracking works?  
19 A That's correct.  
20 Q What happens in November and December when  
21 both tracks A and B are in session?  
22 A That student would go back to track B.  
23 Q Would they continue to take the course  
24 that they had cross-tracked on to track A for?  
25 A Ordinarily not.

1 Q So they would have two months of access to  
2 the course?  
3 A That's correct.  
4 Q But not the complete course?  
5 A That's correct. Ordinarily, that's  
6 correct.  
7 Q Do you know what the steps are that a  
8 student must take in order to cross-track?  
9 A What do you mean by "steps"?  
10 Q Are there any administrative requirements  
11 required for a student to cross-track?  
12 MS. DAVIS: Vague and ambiguous.  
13 THE WITNESS: I don't know what each  
14 individual school may require.  
15 Ordinarily, there is an application  
16 request.  
17 I don't know whether it's verbal or in  
18 writing.  
19 But the school, obviously, would need to  
20 know that the student desires to do cross-tracking.  
21 BY MR. VILLAGRA:  
22 Q To your knowledge, would anything else be  
23 required for a student to cross-track?  
24 A I would imagine the teacher would have to  
25 accept an additional student in the class, or

1 students in the class, be willing to take one, two,  
2 or three more.  
3 Q Any other steps that you can think of that  
4 would be required for a student to cross-track?  
5 A Whatever steps would be more informational  
6 for both teachers and administrators involved.  
7 Q Anything else?  
8 A I didn't mean to leave out counselors,  
9 administrative teachers and counselors.  
10 Q Anybody else?  
11 A That's all.  
12 Q Have you ever had discussions with any  
13 Concept 6 school administrator whether all  
14 applications for cross-tracking are granted?  
15 A Not in that specific way, no.  
16 Q Do you have any understanding as to  
17 whether all student requests to cross-track are  
18 granted at Concept 6 schools?  
19 MS. DAVIS: Calls for speculation, vague  
20 and ambiguous.  
21 THE WITNESS: I don't have that  
22 information.  
23 I remember one conversation many years ago  
24 with Maria Tostato when she was principal at  
25 Garfield.

1 And my recollection is that Principal  
 2 Maria Tostato said: To the greatest degree  
 3 possible, all students were allowed  
 4 to cross-track when they requested to  
 5 do so.  
 6 Now, that doesn't tell me whether there  
 7 were any that were denied.  
 8 But she -- in fact, she said that, I  
 9 remember in a public discussion, probably in one of  
 10 intercession conferences where "To the greatest  
 11 degree possible," that was the policy of Garfield.  
 12 BY MR. VILLAGRA:  
 13 Q Is she still the principal at Garfield?  
 14 A No, she's retired now.  
 15 Q When did she retire?  
 16 A I can't tell you that.  
 17 Q Do you recall when you had the discussion  
 18 with her about the degree of cross-tracking at  
 19 Garfield High School?  
 20 A I would think it was ten years ago.  
 21 Q Do you recall the public comment at the  
 22 NAYRE?  
 23 A It would be about that same time.  
 24 Q Did they specify the degree to which  
 25 students were allowed to cross-track, other than

1 say: "To the greatest degree possible"?  
 2 A In numbers?  
 3 Q Yes.  
 4 A I don't recall, specifically.  
 5 Q What about in percentages?  
 6 A I don't recall either.  
 7 Q You mentioned a second step of having the  
 8 teacher accept the additional student or students.  
 9 To your knowledge, could a teacher refuse  
 10 to accept the additional cross-track student?  
 11 MS. DAVIS: Calls for speculation.  
 12 THE WITNESS: I don't know of a specific  
 13 policy.  
 14 I don't know whether that's part of a  
 15 union contract or whatever.  
 16 But ordinarily, there would be a class  
 17 loading which would be a natural part of enrolling  
 18 in a particular class.  
 19 And I would think, once that list were  
 20 developed, and then there was a follow-up request:  
 21 Here's a student from another track  
 22 who would like to sit in on the  
 23 class.  
 24 I would think that teacher, as a matter of  
 25 professional courtesy, at least, would be given the

1 -- at least the notice that: This is what's going  
 2 to happen.  
 3 But other than that, I don't have any  
 4 specificity.  
 5 So I would speculate beyond that point.  
 6 BY MR. VILLAGRA:  
 7 Q Does class loading refer simply to the  
 8 roster of students assigned to a classroom?  
 9 A Yes.  
 10 Q There's no indication of a maximum number  
 11 of students in a class?  
 12 A Not necessarily.  
 13 At least that's how I used the term.  
 14 Q Would a student at a traditional calendar  
 15 school need to cross-track to take an AP course?  
 16 MS. DAVIS: Calls for speculation.  
 17 THE WITNESS: Not ordinarily, no.  
 18 Because cross-tracking is not available in  
 19 a traditional calendar school.  
 20 That's a term applied only in a multitrack  
 21 situation.  
 22 BY MR. VILLAGRA:  
 23 Q How do you know that?  
 24 A I've never, in my 42 years in public  
 25 education, I never heard of cross-tracking in

1 conjunction with a traditional calendar school.  
 2 Q Do you believe that there are any  
 3 disadvantages to students who cross-track?  
 4 MS. DAVIS: Vague and ambiguous.  
 5 BY MR. VILLAGRA:  
 6 Q Do you understand the term  
 7 "disadvantages"?  
 8 A I don't.  
 9 Q Relative to a student who takes a course  
 10 on their on track, do you believe that a student  
 11 who cross-tracks, in order to take a course, faces  
 12 any additional disadvantages?  
 13 MS. DAVIS: Same objection.  
 14 THE WITNESS: I don't know what those  
 15 would be.  
 16 Because it's student choice; it's not a  
 17 requirement on the part of the student.  
 18 BY MR. VILLAGRA:  
 19 Q Does the NAYARE take any position on  
 20 cross-tracking?  
 21 MS. DAVIS: Now, or when he was executive  
 22 director?  
 23 BY MR. VILLAGRA:  
 24 Q To your knowledge?  
 25 A I don't think we've ever taken a position



1 on it, no.

2 Q Do you encourage multitrack year-round  
3 schools to permit cross-tracking?

4 A I have said that in some of my conference  
5 sessions, where I can offer that as a suggestion,  
6 yes.

7 Q Why do you encourage it as a suggestion?

8 A There are a lot of students who like  
9 additional work beyond what is required in the way  
10 of graduation or college entrance or whatever.

11 There are some students that are natural  
12 learners.

13 They are the kind that go to every summer  
14 school possible.

15 To the degree possible, I would encourage  
16 cross-tracking in a multitrack school because one  
17 student my learn one more subject area than they  
18 might not, otherwise, be able to fit in a natural  
19 schedule.

20 Q Do you think it's a necessary policy of a  
21 multitrack year-round school?

22 A It wouldn't be required, no.

23 Q When a student cross-tracks and sits in on  
24 a course offered on another track, in your  
25 understanding, are they given a grade for their

1 A It could if there were a possibility of  
2 the student cross-tracking in a subsequent vacation  
3 period and picking up additional work in that  
4 subject area.

5 Q Going back to page 8 of your report,  
6 Exhibit 12?

7 A Yes.

8 Q So we had been discussing a student on  
9 track B, who wishes to take a course on track A?

10 A Yes.

11 Q So you're saying that the student could,  
12 during September and October, take a course on  
13 track A, and then complete the course during March  
14 and April?

15 A On track C.

16 MS. DAVIS: We're looking at Concept 6  
17 schools.

18 THE WITNESS: Three-track calendar.

19 BY MR. VILLAGRA:

20 Q If the student were on track B and wanted  
21 to cross-track to take a course on track A, they  
22 would be in the course on track A during September  
23 and October?

24 A That's correct.

25 Q And when would they complete the course?

1 work during the time that they are cross-tracking?

2 A I don't think whether they are or not.

3 It would depend on the agreement between  
4 the student and the school.

5 Cross-tracking could be an audit  
6 situation.

7 Cross-tracking could be a credit  
8 situation.

9 It could be either, so it would be an  
10 understanding between the school and the student.

11 Q How could it be for the credit if the  
12 student weren't taking the entire course?

13 A Some schools, I can't speak to any  
14 particularly, but throughout the United States,  
15 some schools give half credits.

16 Q So if a student were to cross-track and  
17 receive credit, your understanding that the credit  
18 would be partial?

19 MS. DAVIS: Mischaracterizes his past  
20 testimony.

21 BY MR. VILLAGRA:

22 Q Is that correct?

23 A It could be half credited or partial  
24 credit, as you say.

25 Q Could it be full credit?

1 A They would complete it on track C in March  
2 and April when they are on vacation, during that  
3 period of time.

4 That would not be unlike a two-semester  
5 course idea, two semesters of the same subject  
6 area.

7 And so, consequently, you see, in  
8 September and October, it would be the first half  
9 of that course.

10 Then on track C in March and April, it  
11 could be the second half.

12 If you think of it in terms of semesters,  
13 I think it's pretty clear to -- traditional  
14 calendar schools can do that as well.

15 Q To your knowledge?

16 A That would allow a full credit, then.

17 Q That would be the way that a full credit  
18 would be earned?

19 A That's correct.

20 Q Is that the only way, in your  
21 understanding, that full credit would be earned?

22 MS. DAVIS: Calls for speculation.

23 THE WITNESS: I believe that would be the  
24 way, yes.

25 BY MR. VILLAGRA:

1 Q To your knowledge, are there any  
2 two-semester courses at a traditional calendar  
3 school that are separated by a break of four  
4 months?  
5 MS. DAVIS: Calls for speculation.  
6 THE WITNESS: Not four months, three  
7 months, perhaps, not four months.  
8 BY MR. VILLAGRA:  
9 Q Do you believe there is any disadvantage  
10 in having a two-semester course separated by four  
11 months as opposed to three?  
12 MS. DAVIS: Vague and ambiguous.  
13 THE WITNESS: I don't know whether it's of  
14 disadvantage, other than the possible learning loss  
15 involved.  
16 But again, this is a choice of the  
17 student, not a school requirement.  
18 So the student may be simply taking the  
19 class for additional credit, elected, or the  
20 student is simply interested in that topic.  
21 So the same principles of learning laws  
22 would apply.  
23 But on the other hand, if this is an  
24 elective and the student wishes to do that as  
25 additional credit, that would be a student choice.

1 BY MR. VILLAGRA:  
2 Q If the student chose to cross-track for  
3 full credit and there was learning loss with the  
4 four-month break, that would be okay because it was  
5 their choice?  
6 A I would say if that's their choice, it's  
7 what they have chosen to do.  
8 It's okay, yes.  
9 In the sense that they have chosen to do  
10 that, I wouldn't disallow them.  
11 Q In what circumstance would a two-semester  
12 course at a traditional calendar school be divided  
13 by a three-month vacation?  
14 A It's possible that a student would elect  
15 to take a particular class the second semester of a  
16 year, and then pick up the first half in the first  
17 semester of the following school year.  
18 Q You said that's possible?  
19 A Yes.  
20 Q Can you estimate for me how prevalent that  
21 is?  
22 A I wouldn't think it's very prevalent at  
23 all.  
24 But it's possible.  
25 Q Would you say it's a rare circumstance?

1 A It's a rare circumstance.  
2 I think it's sometimes done when a student  
3 has fallen behind in credits and needs to quickly  
4 pick them up in order to graduate.  
5 Particularly when it's a required subject,  
6 there needs to be a pass in order to graduate.  
7 But it's not a regular occurrence.  
8 Q Would it be preferable, in your opinion,  
9 to take a two-semester course with less than a  
10 four-month break between the two semesters?  
11 MS. DAVIS: Vague and ambiguous.  
12 THE WITNESS: I think it's preferable.  
13 BY MR. VILLAGRA:  
14 Q Is it possible that a schedule conflict  
15 could prevent a student from cross-tracking on to  
16 another track?  
17 MS. DAVIS: Calls for speculation, vague  
18 and ambiguous.  
19 THE WITNESS: Right now, I can't conceive  
20 of that situation.  
21 BY MR. VILLAGRA:  
22 Q Do students on a traditional calendar, or  
23 at a traditional calendar school, all have equal  
24 access to courses offered at the school, subject,  
25 obviously, to their having taken necessary

1 prerequisites and being eligible for the course?  
2 MS. DAVIS: Vague and ambiguous as to  
3 "equal" opportunity.  
4 THE WITNESS: No. Traditional calendars,  
5 students don't all have equal access.  
6 BY MR. VILLAGRA:  
7 Q Why not?  
8 A The singleton classes are offered at the  
9 same time and same time period.  
10 So a choice has to be made between those  
11 classes that are offered.  
12 It's a time-scheduling problem.  
13 So, no. They don't have equal access.  
14 Q Do you believe that it's harder to create  
15 electives on the Concept 6 calendar than on a  
16 traditional school calendar?  
17 MS. DAVIS: Vague and ambiguous.  
18 THE WITNESS: If you're talking on the  
19 totality of the total school, the answer is no.  
20 You have to compare numbers to numbers.  
21 BY MR. VILLAGRA:  
22 Q What do you mean by that?  
23 A If you're talking about a school with  
24 3,600 with a traditional calendar or a school of  
25 3,600 with a multitrack calendar, the number of

1 courses and electives are probably going to be  
2 pretty similar.

3 If a track situation is looked at, which  
4 is a school of 1200, if it's a three-track  
5 calendar, then that 1200 has to be compared with a  
6 traditional high school of 1200.

7 Q Why must that be done?

8 A Because that's the operating unit that  
9 we're talking about.

10 Q So a school of 1200 would offer fewer  
11 electives?

12 A Than a school of 3,600, irrespective of  
13 the calendar.

14 Q Why would that be?

15 A You don't have the number of students that  
16 would be needing particular sections or particular  
17 courses.

18 You wouldn't have the same number of  
19 teachers in the smaller unit against the larger,  
20 all kinds of factors come into play.

21 Q Have you conducted any study of the  
22 electives offered at Concept 6 high schools as  
23 opposed to other calendar schools?

24 MS. DAVIS: Vague and ambiguous.

25 THE WITNESS: I've not conducted a formal

1 be additional information that I might have that  
2 would be useful, helpful.

3 MR. VILLAGRA: I want to mark as an  
4 exhibit, Exhibit 26, Declaration of Carlos Jimenez,  
5 9 pages long, and is dated March 28, 2000.

6 (Deposition Exhibit 26,  
7 Declaration of Carlos Jimenez, was  
8 marked for identification by the  
9 Court Reporter.)

10 MR. VILLAGRA: Would you like to review  
11 the entire document?

12 (Recess taken.)

13 BY MR. VILLAGRA:

14 Q You read through the entirety of  
15 Exhibit 26?

16 A I have.

17 Q Have you ever seen Exhibit 26 before?

18 A I have.

19 Q You have?

20 A I have.

21 Q When did you last see it?

22 A Probably late January.

23 Q Did you see other documents like  
24 Exhibit 26, labeled: "Declaration of"?

25 A I have.

1 study, no.

2 BY MR. VILLAGRA:

3 Q Are you aware of any studies on that  
4 subject?

5 A No.

6 Q To your knowledge, does the State of  
7 California compile figures on the electives offered  
8 by track, at multitrack year-round schools?

9 MS. DAVIS: Vague and ambiguous, calls for  
10 speculation.

11 THE WITNESS: I have no knowledge one way  
12 or the other.

13 BY MR. VILLAGRA:

14 Q Do you believe that the State should  
15 compile such data?

16 MS. DAVIS: Vague and ambiguous.

17 THE WITNESS: It would be interesting.

18 BY MR. VILLAGRA:

19 Q Why?

20 A Just additional information to know about,  
21 work with.

22 Q How would you work with that data?

23 A You know, sometime or another, I might be  
24 asked to write another paper.

25 And that's some additional -- there might

1 Q Do you recall, on the first day, I believe  
2 I asked you whether you reviewed declarations by  
3 teachers filed in this case.

4 Does this refresh your recollection as to  
5 whether you saw declarations by teachers filed in  
6 this case?

7 A Well, I do recollect other declarations.

8 I do think you asked me whether I had seen  
9 declarations.

10 You didn't say "of teachers," as I recall.

11 But I responded, then, to declarations; I  
12 said: I'm not sure. I don't know.

13 Q Do you recall seeing any other  
14 declarations besides that of Carlos Jimenez?

15 A Of other teachers?

16 Q Yes.

17 A Yes.

18 Q Do you recall seeing declarations by  
19 administrators?

20 A At this moment, I don't recall of  
21 administrators.

22 But I do of teachers.

23 Q Do you recall seeing declarations by  
24 parents of students?

25 A Yes.

1 Q Do you recall seeing declarations by  
2 students?  
3 A I don't recall students.  
4 Q I want to turn your attention to page 2,  
5 the very end of paragraph 6.  
6 It says: "Despite going to the Concept 6  
7 schedule and adding bungalow  
8 classrooms, Garfield still has large  
9 and unmanageable classes with  
10 teachers often assigned 40 or more  
11 students."  
12 Do you see that?  
13 A Yes.  
14 Q Do you recall, yesterday, we were  
15 discussing whether Concept 6 necessarily reduces  
16 overcrowding.  
17 Do you recall that?  
18 A I recall a discussion, I don't recall  
19 whether it was yesterday, yes.  
20 Q Do you recall testifying that Concept 6  
21 may not necessarily reduce, eliminate all  
22 overcrowding?  
23 A Yes.  
24 Q Is this consistent with your understanding  
25 of the fact that Concept 6 schools may still be

1 overcrowded?  
2 MS. DAVIS: Vague and ambiguous.  
3 THE WITNESS: May still be large, and may  
4 be overcrowded, yes.  
5 BY MR. VILLAGRA:  
6 Q I want to turn your attention to  
7 paragraph 9, it's at page 3.  
8 It says: "The month is lost on the  
9 Concept 6 calendar, means that  
10 students have approximately 25 fewer  
11 weekday and weekend nights to do  
12 homework."  
13 Do you see that?  
14 A I see that.  
15 Q Do you agree that's what the Concept 6  
16 calendar results in, namely 25, approximately 25  
17 fewer weekday and weekend nights to do homework?  
18 MS. DAVIS: Vague and ambiguous.  
19 THE WITNESS: I don't know how he's  
20 calculating 25.  
21 BY MR. VILLAGRA:  
22 Q Does the Concept 6 calendar result in  
23 17 fewer instructional days?  
24 A Instructional days, yes.  
25 Q When we were talking yesterday or the day

1 before, we were talking about vacations on  
2 multitrack year-round calendars?  
3 A Yes.  
4 Q When you talked about 45-15 calendar, for  
5 example, you told me that students were out for  
6 15 days?  
7 A School days.  
8 Q And that amounted to three full weeks?  
9 A If weekends were included, which you added  
10 in your question to me, as I recall.  
11 Q Do you believe that adding weekends to the  
12 Concept 6 vacation gets to, approximately, 25 fewer  
13 nights to do homework?  
14 A When I say I wasn't sure how I calculated  
15 the 25, if there are 17 fewer school days and  
16 presuming that there are seven days in a week,  
17 three weeks of seven days would be 21 days.  
18 Then for two additional days, my  
19 calculation would be 23 rather than 25; it may be a  
20 minor difference.  
21 But nevertheless, the -- I don't know  
22 exactly how he came to 25.  
23 Q Let's take it, then, at your calculation  
24 of 23?  
25 A All right.

1 Q The next sentence says:  
2 "What must be emphasized is that  
3 not all learning occurs in the  
4 classroom."  
5 Do you see that?  
6 A I see that.  
7 Q Do you agree that not all learning occurs  
8 in the classroom?  
9 A Of course.  
10 Q The next sentence says:  
11 "A significant portion of  
12 learning, particularly at the high  
13 school level, occurs at home as  
14 students do their homework."  
15 Do you see that?  
16 A I see that.  
17 Q Do you agree?  
18 A I agree.  
19 Q The next sentence:  
20 "A novel, for example, is not  
21 read in the classroom, students read  
22 the novel at home and come to class  
23 prepared to take a quiz or discuss  
24 it."  
25 Do you agree?

1 A I agree.  
 2 MS. DAVIS: Vague and ambiguous, calls for  
 3 speculation.  
 4 THE WITNESS: One hopes this happens.  
 5 Whether it always does, I can't say.  
 6 BY MR. VILLAGRA:  
 7 Q The assignment is typically, is it not,  
 8 for the novel to be read at home?  
 9 MS. DAVIS: Calls for speculation.  
 10 THE WITNESS: Typically.  
 11 BY MR. VILLAGRA:  
 12 Q If it's going to be read, it's going to be  
 13 read in home?  
 14 A Yes.  
 15 We know all students don't follow homework  
 16 assignments.  
 17 MS. DAVIS: Calls for speculation.  
 18 BY MR. VILLAGRA:  
 19 Q How do you know that?  
 20 A Having been a teacher in the classroom.  
 21 Q And the "that" I'm referring to, that a  
 22 novel, for example, is assigned to be read at home.  
 23 Same answer, do you know that based on  
 24 your experience as a teacher?  
 25 MS. DAVIS: For all schools?

1 THE WITNESS: Are you asking do teachers  
 2 make assignments where novels are to be read at  
 3 home?  
 4 MR. VILLAGRA: Yes.  
 5 THE WITNESS: Some teachers do, yes.  
 6 BY MR. VILLAGRA:  
 7 Q How do you know that?  
 8 A Just from my teaching experience.  
 9 Q The next sentence says:  
 10 "The instruction that occurs in  
 11 the classroom is built on the  
 12 foundation of the work the students  
 13 have done at home, elaborating and  
 14 developing what students have learned  
 15 in completing their homework  
 16 assignment."  
 17 Do you see that?  
 18 A Yes.  
 19 MS. DAVIS: Calls for speculation.  
 20 BY MR. VILLAGRA:  
 21 A In the scenario being set up here, yes,  
 22 that's probably the way it will happen, yes.  
 23 Q Paragraph 10, first sentence:  
 24 "Fewer nights to assign homework,  
 25 therefore means that less can be done

1 in the classroom, that classroom  
 2 instruction has less to build on."  
 3 Do you see that?  
 4 A Yes.  
 5 Q Do you have an understanding what that  
 6 means?  
 7 A There is an assumption, all students are  
 8 carrying out their homework assignments and all  
 9 teachers are making the homework assignments and  
 10 everything, in an ideal way, is going on.  
 11 So there is a huge assumption there, that  
 12 teachers are making an assignment everyone of the  
 13 classroom days.  
 14 Homework every night, I don't think that's  
 15 a fair assumption.  
 16 Q You don't think that homework is assigned  
 17 nightly?  
 18 A No, I know it isn't.  
 19 Q How do you know that?  
 20 A Again, my own teaching experience.  
 21 Q Do you believe that's true at the high  
 22 school level?  
 23 A Elementary and high school, not all  
 24 teachers assign homework.  
 25 Q Do you believe that students typically

1 have homework nightly?  
 2 A Not typically and not in all subjects.  
 3 Q All right. I'm trying to take out the  
 4 fact that one teacher in one subject may not have  
 5 assigned something.  
 6 From the student's perspective, when they  
 7 go home at night after a school day, do they have a  
 8 homework assignment from any teacher?  
 9 MS. DAVIS: Vague and ambiguous.  
 10 THE WITNESS: If you're talking about a  
 11 whole group of teachers together, students will  
 12 typically have homework assignments on a given  
 13 evening.  
 14 BY MR. VILLAGRA:  
 15 Q How do you know that?  
 16 A From common experience.  
 17 Q And you mentioned there were some  
 18 assumptions being made here, all students were  
 19 doing the assignments and all teachers were making  
 20 assignments.  
 21 If we make the assumption, on a nightly  
 22 basis students are assigned some homework, not  
 23 necessarily from every teacher, do you agree that  
 24 fewer nights to assign homework or fewer nights for  
 25 homework to be done, means less can be done in the

1 classroom?

2 MS. DAVIS: Assumes facts not in evidence,  
3 calls for speculation, incomplete hypothetical.

4 THE WITNESS: I don't think you can assume  
5 that.

6 I'll tell you -- at all -- I don't think  
7 we can assume that.

8 BY MR. VILLAGRA:

9 Q But taking those assumptions as true,  
10 would you agree that less can be done in the  
11 classroom, meaning the classroom instruction has  
12 less to build on?

13 MS. DAVIS: Same objections.

14 THE WITNESS: I don't think we can say  
15 that or assume that at all.

16 BY MR. VILLAGRA:

17 Q When you say "we can't assume that," what  
18 can't be assumed, the conclusion or the things I'm  
19 asking you to assume?

20 A The things you're asking me to assume.

21 MS. DAVIS: For purposes, he can ask you  
22 to assume some facts.

23 It doesn't mean you have all the facts.

24 MR. VILLAGRA: I can ask you a  
25 hypothetical question.

1 If you got five or six teachers at the  
2 high school level, just by chance, there might be  
3 homework on every one of those nights.

4 But it doesn't mean that more days of  
5 homework would happen simply because there were  
6 additional days of school.

7 Q Why wouldn't you expect the proportion of  
8 homework, relative to days of instruction, to be  
9 the same?

10 A It would depend on the teacher and the  
11 class and so on.

12 I don't think it depends on the number of  
13 days.

14 I think it depends on what's required to  
15 complete class assignments.

16 Q Do you agree, on the Concept 6 calendar,  
17 nine months of instruction has been compressed into  
18 eight months?

19 MS. DAVIS: Vague and ambiguous.

20 THE WITNESS: It's the word "compress."  
21 Already the same number of instructional  
22 minutes.

23 We haven't compressed time.

24 I can't say that.

25 BY MR. VILLAGRA:

1 Assuming certain things to be true, what  
2 would your answer be?

3 BY MR. VILLAGRA:

4 Q Assuming that students have, on a nightly  
5 basis, homework to do, do you believe that fewer  
6 nights in which to do homework, means that less can  
7 be done in the classroom or that classroom  
8 instruction has less to build on?

9 A I don't believe that.

10 Q Why not?

11 A Because people don't make assignments  
12 every given night of the school year.

13 And while it is true that most students  
14 will have homework assignments most nights of the  
15 year, given that most teachers don't make  
16 assignments every day, anyway, therefore, we can't,  
17 in any way, assume that the -- that fewer nights of  
18 homework are going to happen in a year of fewer  
19 days than a year of longer days.

20 It doesn't follow.

21 Q Why not?

22 A Let's say there are 163 instructional  
23 days.

24 Let's assume teachers make assignments on  
25 115 of those 163 days.

1 Q Nine months of instruction are provided in  
2 eight months on the Concept 6 calendar; is that  
3 correct?

4 A On the calendar basis, yes.

5 Q The time between one school day and the  
6 next is finite; is that correct?

7 MS. DAVIS: Vague and ambiguous.

8 THE WITNESS: Are you saying there are  
9 24 hours in a day?

10 MR. VILLAGRA: Yes.

11 THE WITNESS: Yes.

12 BY MR. VILLAGRA:

13 Q There is a limited amount of homework that  
14 can be assigned on a nightly basis; is that  
15 correct?

16 MS. DAVIS: Vague and ambiguous.

17 THE WITNESS: I don't know that there is a  
18 limited amount,

19 BY MR. VILLAGRA:

20 Q There's no limit on the amount of homework  
21 that can be given out on a nightly basis?

22 A A teacher can make out all kinds of  
23 assignments.

24 It may not be wise, not be practical,  
25 teachers do that.

1 Students complain all the time, they've  
 2 been given too much homework in the time available.  
 3 That's true in traditional calendar  
 4 schools as well as Concept 6.  
 5 It's a common complaint and sometimes a  
 6 reality on some days.  
 7 Q Do you think it's a more common complaint  
 8 on the Concept 6 calendar than a traditional  
 9 calendar that too much homework is assigned?  
 10 A I have no way of knowing one way or the  
 11 other.  
 12 Q Since each day, each school day, on the  
 13 Concept 6 calendar is longer, would you assume that  
 14 more material is covered during an instructional  
 15 day on the Concept 6 calendar than on a traditional  
 16 calendar ?  
 17 A I don't know one way or the other.  
 18 I would hope so, but I would have no way  
 19 of knowing the other.  
 20 Q I'm going to turn your attention to  
 21 paragraph 11.  
 22 The first few sentences describe some  
 23 students whose first language is not English,  
 24 others who are socioeconomically disadvantaged.  
 25 At the very end of the paragraph, it says:

1 So additional days of schooling would be  
 2 fine.  
 3 Q It would be a benefit?  
 4 A It would be a benefit, yes.  
 5 Q As far as English language learners are  
 6 concerned, do you believe that they benefit from  
 7 being in heterogeneous classrooms to the extent  
 8 possible?  
 9 A That's a whole debate going on, in  
 10 bilingual education.  
 11 Whether they should be in homogeneous or  
 12 heterogeneous classrooms.  
 13 I'm not an expert in the field on language  
 14 acquisition.  
 15 I can't give a clear opinion on that.  
 16 Q You're not prepared to offer a "expert  
 17 opinion" on that subject?  
 18 A On the subject of language acquisition,  
 19 no.  
 20 Q I want to turn your attention to paragraph  
 21 15, it's at page 5.  
 22 It says: "Garfield, for example, has only  
 23 one AP European history teacher. The  
 24 teacher is on track A. The only AP  
 25 European teacher is on track A."

1 "What these children need is the  
 2 reinforcement of additional days of  
 3 schooling."  
 4 Do you see that?  
 5 A Yes.  
 6 Q Do you understand the term "English  
 7 language learners"?  
 8 A Yes.  
 9 Q What do you understand that to refer to?  
 10 A Students that have less than proficient  
 11 use of the common language, of the common school  
 12 language.  
 13 Q In the United States?  
 14 A Yes.  
 15 Q In 2003?  
 16 A Yes.  
 17 Q Do you agree that English language  
 18 learners need the reinforcement of additional days  
 19 of schooling?  
 20 MS. DAVIS: Vague and ambiguous.  
 21 THE WITNESS: That would be helpful.  
 22 BY MR. VILLAGRA:  
 23 Q Why?  
 24 A In learning the language, the constant use  
 25 of the language is very helpful.

1 Do you see that?  
 2 A Yes.  
 3 Q It says: "Similarly, journalism is only  
 4 available on track B. And drama and  
 5 student government are only available  
 6 on track C."  
 7 Do you see that?  
 8 A Yes.  
 9 Q In terms of the balance of tracks, what  
 10 would you need to know to determine whether tracks  
 11 were balanced in terms of course offerings?  
 12 MS. DAVIS: Vague and ambiguous.  
 13 THE WITNESS: I need to know what the  
 14 requirements are for each track and whether the  
 15 requirements of the students are being met on that  
 16 track.  
 17 Balance doesn't necessarily mean only an  
 18 equal number of classes, AP classes, on each track.  
 19 BY MR. VILLAGRA:  
 20 Q Following up on that, then.  
 21 Could balance mean that AP European  
 22 history is only offered on one track and not the  
 23 other two on a Concept 6 calendar?  
 24 A It could be, I don't know.  
 25 I don't know what the circumstance is at

1 Garfield.

2 Q Yesterday, I asked you whether you were  
3 aware of the distribution of AP courses across  
4 tracks at Concept 6 high schools?

5 A At all the high schools, and I said I  
6 didn't.

7 Q Do you recall telling me that one of the  
8 things you would need to know is the number of  
9 students on each track?

10 A That's one thing.

11 Q How much variation would you expect to see  
12 in enrollments across tracks at Concept 6 high  
13 schools?

14 MS. DAVIS: Vague and ambiguous.

15 THE WITNESS: I would expect the  
16 enrollment to be somewhat balanced.

17 BY MR. VILLAGRA:

18 Q Why?

19 A Well, the idea is to relief the  
20 overcrowding by setting up a three-track system.

21 By balancing each of the tracks, that  
22 would help to alleviate the very problem we're  
23 talking about, over-enrollment.

24 Q On an equal amount?

25 A On a roughly equal amount.

1 Q When you say "balance in required  
2 courses," am I right to take that to mean courses  
3 required to receive a diploma?

4 A Yes.

5 Q When you're talking about courses  
6 necessary for entry to higher learning, you're  
7 talking about electives?

8 A Electives, yes.

9 Q As far as?

10 A Some of the basics would be required,  
11 three or four years of English.

12 That's what I mean by balance across the  
13 tracks of the required courses.

14 Q As far as electives are concerned, that  
15 are above and beyond the requirements for a  
16 diploma, would you like to see balance in those  
17 courses, in the offering of those courses across  
18 tracks?

19 MS. DAVIS: Vague and ambiguous.

20 THE WITNESS: That's exactly what I'm  
21 talking about.

22 Here, in this paragraph that you referred  
23 to, there is only one AP European history teacher.

24 I don't know how many students at Garfield  
25 actually want or need AP European history in order

1 Q The other thing you said you would need to  
2 know to determine whether AP courses were fairly  
3 distributed, was the needs of students on  
4 particular tracks?

5 A That's correct.

6 Q And by "needs," did you mean what courses  
7 students would be eligible for?

8 A No. What they are required -- what  
9 classes are required in order to receive a diploma  
10 from the high school.

11 Or the courses they need for entry into an  
12 institution of higher learning, whatever those  
13 courses might be.

14 Those are required kinds of courses,  
15 others are electives.

16 Q So is it fair to say that in terms of  
17 balance across tracks, you would like to see  
18 balance in terms of courses necessary to receive a  
19 diploma and/or obtain entry to an institution of  
20 higher learning?

21 A Balance in the required courses, for sure.

22 But when it comes to what's required at  
23 institutions of higher learning, that could be  
24 different kinds of classes for different  
25 institutions.

1 to get into -- to get a diploma or to get into  
2 their preferred institution of higher learning.

3 There is a lot that we don't know there.

4 One class might be sufficient.

5 Maybe no classes are required.

6 We just don't have -- I don't have prior  
7 information here.

8 BY MR. VILLAGRA:

9 Q I want to turn your attention to  
10 paragraph 17?

11 A All right.

12 Q It says: "Even though students have the  
13 ability to register for courses on  
14 other tracks, they still have to be  
15 motivated enough to take a course or  
16 courses over their vacation, and they  
17 have to be free of any schedule  
18 conflicts that prevent them from  
19 being on different tracks at the same  
20 time."

21 Do you see that?

22 A Yes.

23 Q Do you agree, in order to cross-track,  
24 students have to be motivated enough to take a  
25 course over their vacation?



1 A Yes, because it's a matter of choice.  
 2 Q At a traditional calendar school, does a  
 3 student who wants to take an AP course have to be  
 4 motivated enough to take a course over their  
 5 vacation?  
 6 MS. DAVIS: Calls for speculation.  
 7 THE WITNESS: It's not a comparable  
 8 situation.  
 9 The comparable situation would be summer  
 10 school in a traditional calendar school.  
 11 Their choice would be to go to summer  
 12 school.  
 13 Cross-tracking would be the equivalent of  
 14 choosing to go to summer school.  
 15 BY MR. VILLAGRA:  
 16 Q I take that answer to be no?  
 17 MS. DAVIS: Mischaracterizes his  
 18 testimony.  
 19 THE WITNESS: Read back the question and  
 20 I'll say yes or no.  
 21 (Record read.)  
 22 BY MR. VILLAGRA:  
 23 Q If a traditional calendar school offers  
 24 AP European history and a student at that  
 25 traditional calendar school wants to take it, would

1 be as motivated as a traditional school.  
 2 Q Why would that student have to be as  
 3 motivated?  
 4 A It's possible that two AP classes would be  
 5 scheduled during the same period.  
 6 A choice would have to be made which class  
 7 to take.  
 8 Therefore, if the student still wanted  
 9 that other AP class and if we're -- and it were  
 10 offered in the summer, that student would have to  
 11 be motivated to go to that class during the summer.  
 12 Q They could also take that second course  
 13 during the next school year?  
 14 A That's correct.  
 15 MS. DAVIS: Calls for speculation.  
 16 BY MR. VILLAGRA:  
 17 Q So they would not need, necessarily, to  
 18 take the course over the vacation; is that correct?  
 19 MS. DAVIS: Calls for speculation, assumes  
 20 facts not in evidence.  
 21 THE WITNESS: Read the question.  
 22 (Record read.)  
 23 BY MR. VILLAGRA:  
 24 Q Let's go back to an ordinary situation.  
 25 Let's take out, for the moment, schedule

1 the student have to take AP European history over  
 2 the summer vacation?  
 3 MS. DAVIS: Calls for speculation.  
 4 THE WITNESS: It could happen.  
 5 BY MR. VILLAGRA:  
 6 Q Could; is that typical?  
 7 A Probably not typical; it could happen.  
 8 Q Is it rare in your experience?  
 9 MS. DAVIS: Calls for speculation.  
 10 THE WITNESS: I don't know how rare it  
 11 would be.  
 12 BY MR. VILLAGRA:  
 13 Q Would you say that typically, a student at  
 14 a traditional calendar school that wants to take an  
 15 AP course will take it during the regularly  
 16 mandated school year?  
 17 MS. DAVIS: Same objection.  
 18 THE WITNESS: Ordinarily, yes.  
 19 BY MR. VILLAGRA:  
 20 Q So ordinarily, a student at a traditional  
 21 calendar school would not need to be motivated  
 22 enough to take a course over the vacation as would  
 23 a student at a Concept 6 school who would have to  
 24 cross-track in order to take a course?  
 25 A Yes, may have to, the student may have to

1 conflicts.  
 2 A All right.  
 3 Q I'm an ordinary high school student in a  
 4 traditional calendar school, and I want to take AP  
 5 European history.  
 6 I believe you said that ordinarily, I  
 7 would take that during the school year; is that  
 8 correct?  
 9 A That's correct.  
 10 Q So I would not need the motivation needed  
 11 by a student at a Concept 6 high school who would  
 12 have to take the course over their vacation because  
 13 I would have the opportunity to take it during the  
 14 school year; is that correct?  
 15 A You would have the opportunity to take  
 16 that class during the school year, that's correct.  
 17 Q I would not need the motivation necessary  
 18 to take the course over my vacation?  
 19 A No. Because that student already has  
 20 received that course.  
 21 MS. DAVIS: I object to the extent you're  
 22 characterizing his prior testimony.  
 23 BY MR. VILLAGRA:  
 24 Q I want to turn your attention to  
 25 paragraph 21, Exhibit 26?

1 A All right.  
 2 Q It says: "Because teachers are basically  
 3 offering their courses to only  
 4 one-third of the student body, it is  
 5 more difficult to offer elective  
 6 courses on a Concept 6 calendar."  
 7 Do you see that?  
 8 A Yes.  
 9 Q Do you agree?  
 10 MS. DAVIS: Calls for speculation, vague  
 11 and ambiguous.  
 12 THE WITNESS: I can't agree yes or no,  
 13 here.  
 14 Because the equivalency is not discussed  
 15 here.  
 16 The equivalency would be a high school of  
 17 1200 students.  
 18 BY MR. VILLAGRA:  
 19 Q If Mr. Jimenez is teaching a course on  
 20 track B, at a Concept 6 high school, he can only  
 21 draw from one-third of the students, generally, for  
 22 that course; is that correct?  
 23 MS. DAVIS: Assumes facts not in evidence.  
 24 THE WITNESS: If he's thinking of the  
 25 entire school situation, the answer is yes.

1 But that's a faulty -- that's a faulty  
 2 comparison.  
 3 BY MR. VILLAGRA:  
 4 Q All right.  
 5 A A proper comparison would be a school of  
 6 1200 students.  
 7 Q If a Concept 6 has 3,600 students  
 8 enrolled, what would you expect the capacity of  
 9 that school to be?  
 10 MS. DAVIS: Vague and ambiguous.  
 11 THE WITNESS: Capacity in what, seat  
 12 capacity?  
 13 BY MR. VILLAGRA:  
 14 Q Yes.  
 15 A If it's 3,600 students, it doesn't mean  
 16 that's the seat capacity.  
 17 Q That's what I'm asking you?  
 18 A I don't know what the seat capacity would  
 19 be.  
 20 Q Let's assume that a 3,600-seat, Concept 6  
 21 high school has capacity of 2,400 students?  
 22 A Yes. Seat capacity?  
 23 Q Yes.  
 24 A Okay.  
 25 Q On any given day, you could have 2,400

1 students on the site?  
 2 A All right.  
 3 Q If you were operating that school on a  
 4 traditional calendar, could you have 2,400 students  
 5 at the school; is that correct?  
 6 A At the same time, yes.  
 7 Q Why, in terms of looking at the  
 8 availability of elective courses, would you not  
 9 look at a school of 2,400 students to make your  
 10 comparison?  
 11 A You could compare the 2,400 with 2,400.  
 12 I would think that the number of classes  
 13 and electives would be very similar.  
 14 Q But for a teacher, if you just look at the  
 15 school in one scenario as a Concept 6 school and  
 16 another scenario at the traditional calendar  
 17 school, the population that the teacher is drawing  
 18 to create an elective is 2,400 at the traditional  
 19 school and, generally, 1,200 at the Concept 6  
 20 school; is that correct?  
 21 A If the students are all in school, it's  
 22 possible they could attend that class at the same  
 23 time.  
 24 It might be more difficult  
 25 administratively, but it's possible.

1 Q Is that a prevalent occurrence in your  
 2 opinion?  
 3 A I don't know.  
 4 MS. DAVIS: Calls for speculation.  
 5 BY MR. VILLAGRA:  
 6 Q You have no idea if that's ever existed?  
 7 A No, I don't.  
 8 MR. VILLAGRA: Off the record.  
 9 (Recess taken.)  
 10 BY MR. VILLAGRA:  
 11 Q When we left off, we were talking about AP  
 12 courses.  
 13 Have you ever heard of an AP course  
 14 offered at a traditional calendar school over the  
 15 summer in California?  
 16 A I couldn't point to any specific school  
 17 that has done so.  
 18 Q Have you ever heard of any traditional  
 19 calendar school in the United States offering an  
 20 AP course over the summer?  
 21 A I couldn't name a particular school.  
 22 Q To your knowledge, aren't AP courses  
 23 designed to lead up to the AP examination in May?  
 24 A I don't know. I presume so, but I don't  
 25 know.

1 Q Why do you presume so?  
 2 A Your question was: Do they lead to the  
 3 exam?  
 4 They all lead to the exam.  
 5 But the sequence is what I'm saying.  
 6 I don't know.  
 7 Q In terms of the sequence, if a student  
 8 were to take an AP course over the summer, how long  
 9 would it be before they took the AP exam; do you  
 10 know?  
 11 A Most of the year.  
 12 Q For that reason, do you believe that it's  
 13 not likely that AP courses would be offered over  
 14 the summer?  
 15 A It's probably not very common.  
 16 But I don't know that it's not done.  
 17 Q But you don't know that it is either?  
 18 A That's right.  
 19 Q I want to go back to Exhibit 26.  
 20 And specifically, paragraph 24, the first  
 21 sentence says: "The lack of classroom space  
 22 becomes a significant problem for  
 23 AP students who regularly have to  
 24 come in over their vacation to  
 25 complete the course and prepare for

1 on the next page, page 8 of Exhibit 26.  
 2 The fourth sentence says:  
 3 "We typically bounce from  
 4 classroom to classroom over the  
 5 vacation, which not only results in a  
 6 loss of time and energy to locate  
 7 space, but it also means I don't have  
 8 all of my materials and files with me  
 9 when I finally get done with  
 10 teaching, and I'm not as effective as  
 11 I would be if I were in my own  
 12 classroom."  
 13 Do you see that?  
 14 A Yes.  
 15 Q Have you heard similar complaints from  
 16 teachers at Concept 6 schools high schools about  
 17 finding classroom space for AP students who are  
 18 coming in over their vacations to prepare for their  
 19 AP exams?  
 20 A No.  
 21 Q Have you heard complaints like that,  
 22 generally?  
 23 A Not about AP, but -- yes, space is a  
 24 problem in multitrack schools.  
 25 That's why they are multitracked.

1 their exams."  
 2 Do you see that?  
 3 A Yes.  
 4 Q I believe we talked earlier about  
 5 AP students at Concept 6 high schools having to do  
 6 precisely this, having to come in during vacation  
 7 to prepare for the test.  
 8 Do you recall that?  
 9 A Yes, some do.  
 10 Which I think is a positive.  
 11 Q Do you think there is a lack of classroom  
 12 space for those AP students who come back over  
 13 their vacations to complete their preparation for  
 14 the AP exams?  
 15 MS. DAVIS: Vague and ambiguous.  
 16 Are you talking about Concept 6 schools?  
 17 MR. VILLAGRA: Concept 6 schools.  
 18 THE WITNESS: I don't know whether that's  
 19 true or not.  
 20 BY MR. VILLAGRA:  
 21 Q Do you have any reason to disagree with  
 22 Mr. Jimenez's description of Garfield as of the  
 23 date of this declaration?  
 24 A I don't have any reason to disagree, no.  
 25 Q I want to turn to paragraph 27, which is

1 Q Is it a problem, in particular, when  
 2 students are coming back to the school who would  
 3 otherwise be on vacation?  
 4 A In the most overcrowded schools, yes.  
 5 But not all multitrack schools.  
 6 Q Would you expect space for students coming  
 7 back to the campus, who should otherwise be on  
 8 vacation, do you expect that to be a problem at  
 9 Concept 6 schools?  
 10 MS. DAVIS: Vague and ambiguous as to  
 11 "problem," calls for speculation.  
 12 THE WITNESS: I don't know how great the  
 13 program is in the various schools.  
 14 I just -- I don't know how to answer your  
 15 question.  
 16 BY MR. VILLAGRA:  
 17 Q In the next sentence, it says:  
 18 "I know teachers who have had to  
 19 reserve to using places that provide  
 20 an even more inadequate learning  
 21 environment, such as storage areas,  
 22 cafeteria, and the outside sitting  
 23 area, in order to meet over the  
 24 vacation and adequately prepare their  
 25 students for AP exams."

1 Do you see that?  
 2 A Yes.  
 3 Q Are you familiar with similar complaints?  
 4 MS. DAVIS: Vague and ambiguous.  
 5 BY MR. VILLAGRA:  
 6 Q From teachers at Concept 6 schools?  
 7 MS. DAVIS: Vague and ambiguous.  
 8 THE WITNESS: I have not heard it,  
 9 specifically, from Concept 6 schools.  
 10 That's a common complaint of any crowded  
 11 school, traditional calendar or multitrack  
 12 calendar.  
 13 BY MR. VILLAGRA:  
 14 Q Are you familiar with that as a complaint  
 15 from teachers at multitrack schools?  
 16 MS. DAVIS: Objection.  
 17 THE WITNESS: In some cases, yes.  
 18 BY MR. VILLAGRA:  
 19 Q What about, specifically, in terms of  
 20 teachers of AP students who are coming in over  
 21 their vacations.  
 22 Are you familiar of complaints like that,  
 23 in that context?  
 24 A I have not heard it often.  
 25 I can't even remember any other case,

1 A You would need a classroom.  
 2 You would need seats.  
 3 You would need a learning environment  
 4 which could be different in different subject areas  
 5 or different grade levels.  
 6 Q Anything else?  
 7 A Factors of that kind.  
 8 Q Anything else?  
 9 A That's all for now.  
 10 Q I understand classroom and seats.  
 11 What do you mean by "learning  
 12 environment"?  
 13 A A general purpose added towards learning  
 14 on the part of both teachers and students.  
 15 Q Did you mean to convey anything else by  
 16 learning environment?  
 17 A Not at this time.  
 18 Q Using those criteria, do you believe that  
 19 a storage area provides an adequate learning  
 20 environment?  
 21 MS. DAVIS: Vague and ambiguous, calls for  
 22 speculation.  
 23 THE WITNESS: Depends on whether the  
 24 storage area has been reconstituted as a learning  
 25 space.

1 other than what he's described in here.  
 2 Q When you say you have not heard it often,  
 3 does that mean you have heard it --  
 4 A I said or ever.  
 5 I remember listening to Maria Tostato.  
 6 She talked about having AP preparation  
 7 classes for students in their intercession  
 8 training.  
 9 I don't recall if she specified where  
 10 those classes were, and even if they were on  
 11 campus.  
 12 Q You didn't ask?  
 13 A I didn't ask.  
 14 But it didn't have to be on campus, such  
 15 classes.  
 16 Q Do you have an understanding as to what is  
 17 necessary for an adequate learning environment?  
 18 MS. DAVIS: Vague and ambiguous.  
 19 THE WITNESS: What's an adequate learning  
 20 environment?  
 21 BY MR. VILLAGRA:  
 22 Q Do you have an understanding as to what  
 23 that is, what that would be?  
 24 A Some general understandings.  
 25 Q What would that entail?

1 I don't know what is meant here by  
 2 "storage area."  
 3 BY MR. VILLAGRA:  
 4 Q If the storage area has not been  
 5 reconstituted, would you believe that the storage  
 6 area provides an adequate learning environment?  
 7 MS. DAVIS: Vague and ambiguous, calls for  
 8 speculation.  
 9 THE WITNESS: If the storage area has mops  
 10 and brooms and no seats, that probably is not a  
 11 proper learning environment.  
 12 BY MR. VILLAGRA:  
 13 Q When you said that the storage area might  
 14 have been reconstituted, what did you mean?  
 15 A Sometimes areas that previously were used  
 16 for another function, have been refurbished in one  
 17 way or another to provide the space as a learning  
 18 area.  
 19 Q Do you believe that a school cafeteria  
 20 provides an adequate learning environment?  
 21 MS. DAVIS: Calls for speculation, vague  
 22 and ambiguous.  
 23 THE WITNESS: It can.  
 24 We certainly use cafeterias for testing on  
 25 a rather common basis, standardized testing.

1 BY MR. VILLAGRA:

2 Q Are there circumstances in which a  
3 cafeteria, in your opinion, would not provide an  
4 adequate learning environment?

5 A If there are students eating and a lot of  
6 noise in the room, that would not be an adequate  
7 learning space.

8 Q In what circumstances, other than  
9 standardized testing, would a cafeteria, a school  
10 cafeteria, provide an adequate learning  
11 environment?

12 MS. DAVIS: Calls for speculation, vague  
13 and ambiguous.

14 BY MR. VILLAGRA:

15 Q In your opinion?

16 A It could be used for some kind of an  
17 assembly which is a subject oriented assembly.

18 Q Anything else?

19 A No.

20 Q Do you believe that a cafeteria would  
21 provide an adequate learning environment for a  
22 classroom of AP students or for a class of AP  
23 students?

24 A It could.

25 MS. DAVIS: Vague and ambiguous.

1 depending on the purpose for which it was being  
2 used?

3 A Purpose or time.

4 Q Looking at paragraph 28, it says:

5 "Students on a traditional  
6 calendar don't experience these  
7 difficulties when they take AP  
8 courses. They have sufficient  
9 classroom instruction time before the  
10 exam to cover the necessary material  
11 and prepare for the exam."

12 Do you see that?

13 A Yes.

14 Q Do you disagree?

15 MS. DAVIS: Objection, calls for  
16 speculation.

17 THE WITNESS: I do disagree to the extent  
18 that he's idealizing what traditional calendar  
19 schools are like.

20 BY MR. VILLAGRA:

21 Q Do you have any way of disputing what  
22 Mr. Jimenez has described of Garfield High School?

23 MS. DAVIS: Vague and ambiguous.

24 THE WITNESS: I have no way of disagreeing  
25 with Garfield.

1 THE WITNESS: It could.

2 BY MR. VILLAGRA:

3 Q It might not?

4 A It might not.

5 Q In an eating area in a school, do you  
6 believe that provides an adequate learning  
7 environment?

8 MS. DAVIS: Vague and ambiguous, calls for  
9 speculation.

10 THE WITNESS: An eating area, just because  
11 it's an eating area; is that what you're asking me?

12 BY MR. VILLAGRA:

13 Q Yes.

14 A I would say if it's -- if the space can be  
15 used for separate classes at one time to see a film  
16 that's only available for one hour, or whatever,  
17 that could be a proper learning situation.

18 But if the eating area is being used for  
19 other things at the same time, that would not be  
20 proper.

21 So depends on the circumstance that we  
22 would find ourselves in.

23 Q You said "it might not" be.

24 A It might not be.

25 Q An adequate learning environment,

1 I do disagree with his description of what  
2 traditional calendar schools are like in  
3 paragraph 28.

4 BY MR. VILLAGRA:

5 Q Do you have any reason to dispute  
6 Mr. Jimenez's description of the experience at  
7 traditional calendar schools, given the fact that  
8 he spent about 15 years teaching on a traditional  
9 calendar?

10 MS. DAVIS: As he sits here today?

11 MR. VILLAGRA: Yes.

12 THE WITNESS: Yes. Today, I know of  
13 schools -- not today, but I've known of traditional  
14 calendar schools where they have used the storage  
15 areas, a cafeteria, outside eating areas for  
16 certain kinds of learning activities.

17 So that happens at traditional calendar  
18 schools as well.

19 BY MR. VILLAGRA:

20 Q Do you know of traditional calendar  
21 schools where storage areas, cafeteria, or outside  
22 eating areas are used to teach AP students?

23 A Not AP students, no.

24 Q Do you agree that students on the  
25 traditional calendar have sufficient classroom

1 instruction time before the exam to cover the  
 2 necessary material and prepare for the AP exam?  
 3 MS. DAVIS: Vague and ambiguous.  
 4 THE WITNESS: I don't agree, because there  
 5 is never enough time.  
 6 BY MR. VILLAGRA:  
 7 Q Never?  
 8 A On any calendar.  
 9 You can always learn more to prepare for  
 10 an AP exam.  
 11 Q What's your understanding what a scoring  
 12 system is on the AP exam?  
 13 A I don't know.  
 14 Q Do you have an understanding as to whether  
 15 it's scored on a 1 to 5 basis?  
 16 A I don't know.  
 17 Q In order to receive the highest score on  
 18 the AP, whatever that might be, do you believe  
 19 there is not enough time provided by any calendar  
 20 to do that?  
 21 MS. DAVIS: Vague and ambiguous, calls for  
 22 speculation.  
 23 THE WITNESS: I do as a general rule.  
 24 You can always learn more, the more time  
 25 one has to prepare.

1 So there is never enough time in that  
 2 general sense.  
 3 BY MR. VILLAGRA:  
 4 Q But in the specific sense of passing the  
 5 AP exam, do you believe that students on the  
 6 traditional calendar have more instructional time  
 7 to cover the necessary material and prepare for the  
 8 exam than students on the Concept 6 school  
 9 calendar?  
 10 A Not necessarily.  
 11 MS. DAVIS: Calls for speculation.  
 12 BY MR. VILLAGRA:  
 13 Q But they may?  
 14 A They may in some instances.  
 15 But I would think that in an AP situation,  
 16 that Concept 6 schools, where students are off on  
 17 intercession just prior to taking the exam, if they  
 18 are concentrating heavily on the AP areas, they  
 19 would actually have more time than students in a  
 20 traditional calendar.  
 21 Q Looking at your report, specifically  
 22 page 8, can you show me which track you're  
 23 referring to that is on vacation right before the  
 24 AP exam?  
 25 A B track would be one.

1 Q B track is on vacation starting when?  
 2 A March.  
 3 Q All right.  
 4 A B are on vacation during March and April.  
 5 Q So they are on vacation during March and  
 6 April?  
 7 A Yes.  
 8 Q To your understanding, the AP exam is  
 9 when?  
 10 A May.  
 11 Q Do you have any idea in May?  
 12 A It could vary slightly.  
 13 But for our purposes here, let's say  
 14 middle of May.  
 15 Q So a track B student has been in school  
 16 for six months, give or take, six-and-a-half months  
 17 before the AP exam; is that correct?  
 18 A No, that would not be correct.  
 19 MS. DAVIS: Wait a minute.  
 20 That they are in class?  
 21 MR. VILLAGRA: Yes.  
 22 THE WITNESS: Excuse me, what do you mean  
 23 by "in class," are you --  
 24 BY MR. VILLAGRA:  
 25 Q Instructional phase?

1 A From July?  
 2 Q Yes.  
 3 There are two months, in July and August?  
 4 A Yes.  
 5 Q Four months; in November, December,  
 6 January, February?  
 7 A Yes.  
 8 Q And then two weeks in May?  
 9 A In school, yes.  
 10 Q In class?  
 11 A Yes.  
 12 Q So they have had six-and-a-half months?  
 13 A Yes.  
 14 Q How long have students on track A had by  
 15 mid-May?  
 16 A Ten-and-a-half -- excuse me, not weeks.  
 17 Six-and-a-half months.  
 18 Q For track C?  
 19 A Eight.  
 20 Q As you said, there is never enough time to  
 21 learn.  
 22 Do you think that students on track C have  
 23 an advantage over students on track A and B, given  
 24 that they have been in school, in class, for  
 25 one-and-a-half months longer than students on track

1 A or B?

2 MS. DAVIS: Vague and ambiguous.

3 THE WITNESS: They may have, but not  
4 necessarily.

5 As I pointed out a while ago, track B  
6 which is on vacation during March and April, just  
7 prior to the exam, may be able if they are willing  
8 to study for those exams.

9 Concentrate in such a way that they have  
10 an advantage over either A or C.

11 C, while in school, is also doing a lot of  
12 other activities, classes that are not AP classes,  
13 classes which may require assignments and take up  
14 time.

15 So there is not preparation time to  
16 actually concentrate on the upcoming AP exams.

17 So in the example we have given here, it's  
18 very possible for the students on B track, while  
19 they are on vacation, may actually be better  
20 prepared for the upcoming AP exam than C, whose  
21 been in school.

22 BY MR. VILLAGRA:

23 Q So B may be better off, but only if  
24 students take advantage of their vacation time to  
25 work on their own?

1 September, October, November.

2 We'll count December as a whole month,  
3 that's four.

4 They would be in school January, February,  
5 March, April.

6 That would be eight months and possibly a  
7 half a month.

8 Since we specified that the exam would be  
9 in mid-May.

10 Q We took those two weeks into account when  
11 we looked at the instructional time available on  
12 the calendar for A, B, and C students?

13 A Yes. That same period of time, yes.

14 Q So traditional calendar students would be  
15 in school eight-and-a-half months leading up to the  
16 AP exam?

17 A Yes.

18 Q Do you believe a traditional calendar  
19 student taking an AP exam has an advantage over a  
20 Concept 6 school high school student in preparing  
21 for the AP exam?

22 MS. DAVIS: Calls for speculation.

23 THE WITNESS: Not necessarily.

24 BY MR. VILLAGRA:

25 Q Is it based on any firsthand report by

1 MS. DAVIS: AP students?

2 MR. VILLAGRA: Yes.

3 THE WITNESS: AP students, correct.  
4 I'm going to change that.

5 Ordinarily that would be so.

6 But I don't know if C students, really  
7 preparing for the AP exam, if he or she has been in  
8 school.

9 I don't know that.

10 BY MR. VILLAGRA:

11 Q Have you spoken to any AP students at a  
12 Concept 6 school regarding their experience in  
13 preparing for the examination?

14 A No, I have not.

15 Q Have you spoken to any AP teachers at a  
16 Concept 6 school regarding their experience in  
17 preparing students to take the exam?

18 A I don't recall any such conversation.

19 Q How long would a student at traditional  
20 calendar, how many months of instruction would they  
21 have had leading up to the AP exam in mid-May?

22 A It would be eight; the same as schedule C.

23 Q How are you calculating that?

24 A Starting in September, ordinarily,  
25 students in a traditional calendar would have

1 teachers or students for preparing for the AP exam?

2 A That's my view.

3 Q Your personal view?

4 A Yes.

5 Q What's that personal view based on?

6 A It depends what the student has been doing  
7 during the eight-and-a-half months, six months,  
8 six-and-a-half months.

9 Depends on the student.

10 The students attitude towards preparation  
11 more than it does just the seat time in school.

12 Q Do you have any school age children?

13 A I do not.

14 Q If you had a child in high school, would  
15 you rather that your child have six-and-a-half  
16 months of instruction before taking an AP exam or  
17 eight-and-a-half months?

18 MS. DAVIS: Vague and ambiguous,  
19 incomplete hypothetical, assumes facts not in  
20 evidence.

21 (Record read.)

22 THE WITNESS: Are those my only two  
23 options?

24 BY MR. VILLAGRA:

25 Q Yes.

1 MS. DAVIS: Same objections.  
 2 THE WITNESS: Ordinarily, I suppose I  
 3 would say eight-and-a-half rather than  
 4 six-and-a-half.  
 5 BY MR. VILLAGRA:  
 6 Q Why?  
 7 A I'm assuming everything is equal?  
 8 Q All things being equal.  
 9 A All things being equal, assuming that the  
 10 circumstances are all the same, more days in school  
 11 might help the student be better prepared.  
 12 But there are some assumptions there, I'm  
 13 making.  
 14 I'm saying all things being equal.  
 15 Q Would you say that for any other reason,  
 16 other than what you just stated?  
 17 A No.  
 18 But I if knew I had an option as the  
 19 B track, where my child might be able to prepare  
 20 for AP during intercession, I would probably opt  
 21 for track B.  
 22 Q Over a traditional calendar?  
 23 A Over a traditional calendar, yes.  
 24 Q What would you expect of the student over  
 25 the vacation?

1 A I would expect my student, my child, to  
 2 spend most of that time preparing for the upcoming  
 3 AP exam or exams.  
 4 Q All right.  
 5 A I think that would be great preparation  
 6 time.  
 7 Q Why would you feel that those two months  
 8 would be necessary?  
 9 A Because there wouldn't be --  
 10 MS. DAVIS: Mischaracterizes his past  
 11 testimony.  
 12 BY MR. VILLAGRA:  
 13 Q Do you believe that those two months of  
 14 preparation would be necessary to preparing for the  
 15 AP exam?  
 16 A I'm not sure it would be necessary.  
 17 I think it would be welcome.  
 18 I would hope my child would prepare.  
 19 It's important to have AP exams and all  
 20 that go with it.  
 21 Q Going on with the hypothetical, you  
 22 highlighted track B; would you want your child on  
 23 track A if they were going to take an AP exam?  
 24 MS. DAVIS: Incomplete hypothetical,  
 25 assumes facts not in evidence.

1 THE WITNESS: Not necessarily.  
 2 No. If we're talking about preparation  
 3 for AP exams, I think B has a lot going for it.  
 4 BY MR. VILLAGRA:  
 5 Q More so than A?  
 6 A Even more so than A.  
 7 Q How about C; would you want your child on  
 8 track C?  
 9 A If the only consideration is preparing for  
 10 AP exams, I think track B has something going for  
 11 it, yes.  
 12 MS. DAVIS: Vague and ambiguous.  
 13 BY MR. VILLAGRA:  
 14 Q You would prefer track B over track A at a  
 15 Concept 6 school?  
 16 A I would.  
 17 The only consideration is preparation for  
 18 AP exams.  
 19  
 20 (The luncheon recess was taken at  
 21 12:19 P.M.)  
 22  
 23  
 24  
 25

1 (The deposition of CHARLES E.  
 2 BALLINGER was reconvened at 1:41  
 3 P.M.)  
 4  
 5 CHARLES E. BALLINGER,  
 6 having been previously placed under oath, testified  
 7 further as follows:  
 8  
 9 EXAMINATION (CONTINUING)  
 10 BY MR. VILLAGRA:  
 11 Q I want to go back to Exhibit 12, which is  
 12 your report.  
 13 A All right.  
 14 Q I want you to turn to page 34.  
 15 A Okay.  
 16 Q The second sentence at the top of the page  
 17 says: "In contrast to Drs. Oaks' and Mitchell's  
 18 allegations, there is time and space  
 19 available to provide intercession to  
 20 multitrack year-round students."  
 21 A Yes.  
 22 Q What's your claim that there is time and  
 23 space available to provide intercession to  
 24 multitrack year-round students?  
 25 A I was contrasting what I said here, with



1 what Drs. Oaks and Mitchell said.  
 2 That there really was not space.  
 3 Many of our year-round schools do have  
 4 intercession programs in their building or  
 5 buildings.  
 6 Those that don't, could provide it  
 7 outside.  
 8 So there is time, if time is available and  
 9 the space is available, to provide intercession to  
 10 multitrack year-round students.  
 11 Q Is that based on the theory of multitrack  
 12 year-round education?  
 13 MS. DAVIS: Vague and ambiguous.  
 14 BY MR. VILLAGRA:  
 15 Q Or is it based on your knowledge of the  
 16 practice of multitrack year-round education?  
 17 A It's the practice.  
 18 There are multitrack schools with  
 19 intercession classes in the school.  
 20 And there are some with intercession  
 21 classes outside the school.  
 22 Q Are you familiar with the intercession  
 23 programs available at multitrack year-round schools  
 24 in the State of California?  
 25 A In general.

1 Q What do you mean by "in general"?  
 2 A I know that they are being held up and  
 3 down the State.  
 4 I know that they cover a wide variety of  
 5 topics, subjects.  
 6 Q How do you know that?  
 7 A From attendance at conferences,  
 8 participation in year-round meetings, committee  
 9 meetings, and that sort of thing.  
 10 Q With respect to Concept 6 schools in  
 11 California, in particular, do you believe that  
 12 there is time and space available to provide  
 13 intercession to students?  
 14 A I do.  
 15 Q What's that based on?  
 16 A On some of the newspaper articles cited by  
 17 Dr. Oaks.  
 18 Q Is it based on anything other than  
 19 newspaper articles cited by Dr. Oaks?  
 20 A I have heard discussion of it in general  
 21 year-round intercessions.  
 22 But certainly, those two newspaper  
 23 articles specifically talk of students that go to  
 24 intercession classes.  
 25 Q Who have you heard discussions of the

1 availability of intercession in Concept 6 schools,  
 2 by?  
 3 A Discussions at the various meetings and  
 4 conferences and so on.  
 5 I have been at this for 30 years -- 33  
 6 years.  
 7 I have had lots of discussions over those  
 8 years.  
 9 Q Can you identify for me, any staff  
 10 associated with a Concept 6 school who has  
 11 discussed with you the availability of  
 12 intercession?  
 13 MS. DAVIS: Vague and ambiguous.  
 14 THE WITNESS: Some of the principals I  
 15 mentioned a while ago have certainly discussed  
 16 intercession practices.  
 17 BY MR. VILLAGRA:  
 18 Q Who would those people be?  
 19 A Maria Tostato, Tony Garcia, Mel Mares,  
 20 Steve Walters.  
 21 Q When is the last time you spoke to any of  
 22 those principals you just identified?  
 23 A I spoke with Mr. Mares in preparation for  
 24 this report.  
 25 I think there is a date in here, somewhere

1 in my footnotes.  
 2 I'll just say it's in one of the  
 3 footnotes.  
 4 Q When you spoke to Mr. Mares, did you  
 5 discuss with him the issue of intercession at  
 6 Concept 6 schools?  
 7 A It wasn't intercession; it was AP classes.  
 8 Q When was the last time you spoke with  
 9 Maria Tostato about the availability of  
 10 intercession in Concept 6 schools?  
 11 A I couldn't say when.  
 12 But it was some time ago.  
 13 Q Would you say more than three years ago?  
 14 A It would be more than three years ago.  
 15 Q More than five years ago?  
 16 A It may have been; I'm not sure.  
 17 Q Is it possible it may have been more than  
 18 ten years ago?  
 19 A I have talked with her in that intervening  
 20 ten years.  
 21 I wouldn't say it was more than ten years  
 22 ago.  
 23 Q When is the last time you spoke with  
 24 Tony Garcia about the availability of intercession  
 25 at Concept 6 schools?

1 A I couldn't specify the time.  
 2 Q Is it possible it was longer than five  
 3 years ago?  
 4 A Possible.  
 5 Q Likely?  
 6 A It's likely.  
 7 Q Steve Walters, when is the last time you  
 8 spoke with him about the availability of  
 9 intercession and Concept 6 schools?  
 10 A That may have been within the last five  
 11 years.  
 12 Q All right.  
 13 A Since he was a long-time member of the  
 14 National Board.  
 15 Q Anyone you can say within the last five  
 16 years, do you believe it's possible you spoke with  
 17 Steve Walters about the availability of  
 18 intercession at Concept 6 schools within the last  
 19 three years?  
 20 A No.  
 21 Q So it's longer than three years?  
 22 A Longer than three years.  
 23 Q And I don't remember if I asked you about  
 24 Mel Mares, when is the last time you spoke with  
 25 him?

1 A I did just speak to that.  
 2 I said I spoke with him in preparation for  
 3 this paper on AP, but not on intercession.  
 4 Q When is the last time you spoke to him  
 5 about the availability of intercession at Concept 6  
 6 schools?  
 7 A Probably the same time frame as the other  
 8 principals.  
 9 Q Sometime more than three years ago?  
 10 A Correct.  
 11 Q In terms of what you can think of today,  
 12 apart from what you have told me about newspaper  
 13 articles and these four principals, can you think  
 14 of anyone else that you have spoken to about the  
 15 availability of intercession at Concept 6 schools?  
 16 A I cannot right now.  
 17 Q Have you read, other than in newspaper  
 18 articles that you mentioned, any materials dealing  
 19 with the availability of intercession at Concept 6  
 20 schools?  
 21 A Ever?  
 22 Q Yes.  
 23 A Yes, I have.  
 24 It would be in conference, prepared  
 25 material that was handed out.

1 Q When was the last time you saw materials  
 2 dealing with the availability of intercession at  
 3 Concept 6 schools?  
 4 A I cannot give you an exact time.  
 5 Q Is it possible it was more than five years  
 6 ago?  
 7 A I don't know.  
 8 I really don't know when the last time  
 9 was.  
 10 Q In preparing your report in this case, did  
 11 you review any materials that related to the  
 12 availability of intercession at Concept 6 schools?  
 13 MS. DAVIS: Are you talking about the date  
 14 when he was asked to write an expert report?  
 15 MR. VILLAGRA: In this period when you  
 16 were preparing the report.  
 17 THE WITNESS: Repeat the question.  
 18 BY MR. VILLAGRA:  
 19 Q When you were preparing your report in  
 20 this case, including whatever research you did to  
 21 write it, did you review any materials addressing  
 22 the availability of intercession in Concept 6  
 23 schools?  
 24 A Currently?  
 25 Q Yes.

1 A No.  
 2 Q I believe I asked you yesterday, about  
 3 Gordon Wohlers.  
 4 You told me you knew who he was.  
 5 A Yes.  
 6 Q Have you ever spoken with Gordon Wohlers  
 7 about the availability of intercession at Concept 6  
 8 schools in LAUSD?  
 9 A I may have.  
 10 Q Do you recall any of those conversations?  
 11 A I did not recall.  
 12 MR. VILLAGRA: I'm going to mark as  
 13 Exhibit 27, a document entitled: "Declaration of  
 14 Gordon Wohlers."  
 15 And it's ten pages long and it is dated  
 16 March 24, 2000.  
 17 (Deposition Exhibit 27,  
 18 declaration of Gordon Wohlers, was  
 19 marked for identification by the  
 20 Court Reporter.)  
 21 MR. VILLAGRA: Off the record.  
 22 (Discussion off the record.)  
 23 BY MR. VILLAGRA:  
 24 Q Have you completed reviewing?  
 25 A Yes.

1 Q Did you review the entirety of the  
 2 exhibit?  
 3 A Yes.  
 4 Q If I could turn your attention to page 3  
 5 of Exhibit 27, paragraph 15.  
 6 Mr. Wohlers is describing the actions  
 7 faced by LAUSD to handle the influx of students in  
 8 excess of capacity.  
 9 It identifies: "First, putting schools on  
 10 multitrack year-round calendars.  
 11 Busing students over long distances.  
 12 And three, adding portable  
 13 classrooms."  
 14 Do you see that?  
 15 A Yes.  
 16 Q Do you agree that LAUSD has used all of  
 17 these three solutions in order to handle its excess  
 18 enrollment?  
 19 MS. DAVIS: Calls for speculation.  
 20 THE WITNESS: I have no way of knowing  
 21 precisely, other than the multitrack year-round  
 22 calendars.  
 23 BY MR. VILLAGRA:  
 24 Q Do you have any knowledge as to whether  
 25 LAUSD has had to bus students in order to address

1 Q So to be able to say, you would have to  
 2 judge from the school site?  
 3 A That would be the best way to make the  
 4 decision, make a judgment.  
 5 Q Do you believe that LAUSD's busing of  
 6 students in order to handle excess enrollment has  
 7 had an impact on the district's educational  
 8 program?  
 9 MS. DAVIS: Calls for speculation, vague  
 10 and ambiguous.  
 11 THE WITNESS: I would not be able to know  
 12 unless I had firsthand experience.  
 13 BY MR. VILLAGRA:  
 14 Q Do you believe that LAUSD's efforts to  
 15 handle excess enrollment through the use of  
 16 multitrack year-round calendars has had an impact  
 17 on the district's educational program?  
 18 MS. DAVIS: Same objections.  
 19 THE WITNESS: I'm not sure what the impact  
 20 would be, other than the achievement scores which I  
 21 do know about.  
 22 BY MR. VILLAGRA:  
 23 Q What do you mean you're not sure of what  
 24 the impact would be other than achievement?  
 25 A I would have to be on the site to see if

1 student over-enrollment?  
 2 A I have seen newspaper articles and this  
 3 declaration to that effect.  
 4 Q To your knowledge, has LAUSD added  
 5 portable classrooms in order to cope with its  
 6 over-enrollment of students?  
 7 A I do.  
 8 MS. DAVIS: Objection.  
 9 BY MR. VILLAGRA:  
 10 Q How do you know that?  
 11 A I've been on the campus and seen the  
 12 portables.  
 13 Q Do you agree that adding portable  
 14 classrooms in order to handle excess capacity has a  
 15 significant impact on LAUSD's educational program?  
 16 MS. DAVIS: Calls for speculation, vague  
 17 and ambiguous.  
 18 THE WITNESS: I don't know how it does.  
 19 I'm not at the site, so I can't specify  
 20 how it affects.  
 21 BY MR. VILLAGRA:  
 22 Q You would have to be --  
 23 A I would have to say no.  
 24 I can't say firsthand what, if any, there  
 25 might be.

1 there might be other impacts.  
 2 Q So you can't address other impacts from  
 3 LAUSD's use of multitrack year-round calendars,  
 4 other than on achievement?  
 5 A That's the data that I have some idea  
 6 about.  
 7 Q And what is the data that you're referring  
 8 to, in particular?  
 9 A The kind of data which Dr. Kneese has  
 10 looked at.  
 11 Q Is that data specific to LAUSD?  
 12 A Some of it may be, yes.  
 13 Q But not all of it?  
 14 A Not all of it.  
 15 Q I want to turn your attention to the very  
 16 last part of this page 3.  
 17 And there is a semicolon on the last line.  
 18 And after that it says:  
 19 "It, referring to the multitrack  
 20 year-round calendar that the district  
 21 uses most often, impedes the  
 22 provision of vital intervention of  
 23 services for struggling students."  
 24 Do you see that?  
 25 A Yes.

1 Q Do you believe that the concept of this  
2 calendar impedes the provision of intervention  
3 services for struggling students?  
4 MS. DAVIS: Vague and ambiguous, calls for  
5 speculation.  
6 Are you eliminating the Concept 6 versus  
7 multitrack?  
8 It looked to me, you were referring to  
9 multitrack. I could be wrong.  
10 MR. VILLAGRA: I asked about Concept 6, we  
11 can keep it at Concept 6.  
12 THE WITNESS: I'm not in a position to  
13 know whether it does impede vital intervention  
14 services or not.  
15 I would have to be on-site.  
16 BY MR. VILLAGRA:  
17 Q On page 3, at lines 22 and 23, it says:  
18 "The multitrack year-round  
19 calendar that the district most often  
20 uses, provides a shortened and  
21 compressed school year with either  
22 long or midyear interruption."  
23 Do you see that?  
24 A Yes.  
25 Q Do you have an understanding as to what

1 Q I'm going to turn your attention to  
2 page 8.  
3 The line I'm looking at is line 24.  
4 It says: "Students who are on  
5 intercession, that is, they are off  
6 rotation and not in school, can take  
7 intervention classes theoretically,  
8 but often find that on the extremely  
9 crowded and overused campuses where  
10 they go to school, there are not  
11 enough classrooms available to permit  
12 the school to provide these classes."  
13 Do you see that?  
14 A Yes.  
15 Q Do you have any reason to disagree with  
16 Mr. Wohlers's characterization of the provision of  
17 intervention in LAUSD Concept 6 schools?  
18 MS. DAVIS: Calls for speculation.  
19 THE WITNESS: I need more information.  
20 I do note that apparently, it does happen.  
21 Because he does say "often find," which  
22 would suggest there are often intervention classes.  
23 I would have to have more information to  
24 make a conclusive judgment.  
25 BY MR. VILLAGRA:

1 calendar Mr. Wohlers is referring to?  
2 MS. DAVIS: Calls for speculation.  
3 THE WITNESS: I don't know specifically.  
4 I would have to presume.  
5 BY MR. VILLAGRA:  
6 Q What would you presume?  
7 A I would presume he's speaking of  
8 Concept 6.  
9 Q Or possibly Concept 6 modified?  
10 A Not entirely modified Concept 6.  
11 Because certainly -- modified Concept 6  
12 does not have long vacations -- yes, long  
13 vacations.  
14 Q Given that understanding, do you have any  
15 reason to disagree with Gordon Wohlers's conclusion  
16 in this declaration that the district's use of  
17 Concept 6 has impeded the provision of intervention  
18 services?  
19 A That, I don't know.  
20 Because I don't have firsthand knowledge.  
21 Q So you have no reason to disagree?  
22 MS. DAVIS: I believe that's what he said.  
23 THE WITNESS: I have no reason to agree or  
24 disagree unless I got more information.  
25 BY MR. VILLAGRA:

1 Q The next sentence says:  
2 "Moreover, whenever a classroom  
3 is a precious asset to the school,  
4 just to handle regular classes all  
5 year-round, an intercession class  
6 which brings back to the campus  
7 students who are supposed to be off,  
8 becomes an undesirable stepchild."  
9 Do you see that?  
10 A Yes.  
11 Q Do you have an understanding as to what  
12 Mr. Wohlers is referring to?  
13 A Yes.  
14 Q What do you think he's referring to?  
15 A I think he's saying if the campus is  
16 already full, having students come back would make  
17 it more full.  
18 Q And so, that would be undesirable from the  
19 point of view of the administration?  
20 MS. DAVIS: Vague and ambiguous, calls for  
21 speculation.  
22 THE WITNESS: I don't know what he has in  
23 mind here.  
24 BY MR. VILLAGRA:  
25 Q Was it your recollection that Mr. Wohlers

1 had been a principal at a multitrack school?  
 2 A I believe that's my recollection.  
 3 That was many years ago.  
 4 Q In the next sentence:  
 5 "It is impossible to encourage  
 6 all students who need intercession  
 7 classes to take advantage of them  
 8 when there is so little room."  
 9 Do you see that?  
 10 A Yes.  
 11 Q Do you have any reason to disagree that  
 12 LAUSD has been unable to encourage all students who  
 13 need intercession to take advantage of it?  
 14 MS. DAVIS: Calls for speculation.  
 15 THE WITNESS: I'm not on-site.  
 16 There is an assumption here, that  
 17 intercession can only take place on the -- within  
 18 the four walls of the school house.  
 19 And repeatedly, I have said we can think  
 20 about classes off campus as well as on campus.  
 21 BY MR. VILLAGRA:  
 22 Q At a traditional calendar school, where  
 23 would remediation classes take place?  
 24 MS. DAVIS: Calls for speculation, vague  
 25 and ambiguous.

1 conducive to teaching and learning?  
 2 MS. DAVIS: Vague and ambiguous?  
 3 THE WITNESS: They can be.  
 4 BY MR. VILLAGRA:  
 5 Q But they could not be as well?  
 6 A They could not be as well.  
 7 I would have to judge each case  
 8 individually.  
 9 Q Why could they not be conducive to  
 10 teaching and learning, in your opinion?  
 11 MS. DAVIS: Vague and ambiguous.  
 12 THE WITNESS: There could be various  
 13 factors.  
 14 It could be the quality of the teaching  
 15 staff.  
 16 It could be whether there is fresh air, a  
 17 lot of different factors.  
 18 I just don't know.  
 19 I would have to judge each case on its own  
 20 merits.  
 21 BY MR. VILLAGRA:  
 22 Q What about student fatigue from having to  
 23 attend an after-school intervention program?  
 24 A I don't know about student fatigue since  
 25 other states in the nation require a longer day

1 THE WITNESS: Intercession is summer  
 2 school rescheduled.  
 3 Summer school classes are sometimes held  
 4 off campus, yes.  
 5 So I don't see that as any different than  
 6 summer school would be.  
 7 BY MR. VILLAGRA:  
 8 Q But a traditional calendar school, in  
 9 theory, has space enough to bring back every child  
 10 for remediation services; is that correct?  
 11 MS. DAVIS: Calls for speculation.  
 12 THE WITNESS: In theory.  
 13 BY MR. VILLAGRA:  
 14 Q The next sentence says:  
 15 "We have tried to make up for  
 16 this with after-school and Saturday  
 17 academic intervention programs."  
 18 Do you see that?  
 19 A Yes.  
 20 Q Are you familiar with after-school and  
 21 Saturday academic intervention programs that LAUSD  
 22 has operated at Concept 6 schools?  
 23 A I'm not directly familiar, no.  
 24 Q Do you believe that after-school or  
 25 Saturday academic intervention programs are

1 than California in the first place.  
 2 I don't know why California students would  
 3 be more fatigued than other parts of the nation.  
 4 I just don't take much stock in the idea  
 5 that California students are going to be fatigued  
 6 with after-school learning exercises.  
 7 Q A student at a Concept 6 school is already  
 8 on a schedule that is 33 minutes longer per day  
 9 than the traditional calendar; is that correct?  
 10 A That's correct.  
 11 I don't know about the exact minutes  
 12 longer, it's longer, yes.  
 13 Q Is it approximately 33 minutes?  
 14 A It could be, yes.  
 15 Q All right.  
 16 A It depends on what the original  
 17 instructional day was to begin with, that changes  
 18 district by district.  
 19 I don't know L.A.'s program.  
 20 I don't know whether 33 minutes is correct  
 21 or not.  
 22 Q Do you think there is a possibility of  
 23 students becoming fatigued by attending a school  
 24 day that is already longer than the traditional  
 25 calendar school day, and then attending an

1 additional intervention class of an hour in length?  
 2 A Not necessarily.  
 3 Q At the bottom of this paragraph 42, it  
 4 says: "Intervention..."  
 5 A Excuse me, where are we?  
 6 Q It says: "Intervention is, in effect, not  
 7 being done for children on the  
 8 Concept 6 calendar."  
 9 Do you see that?  
 10 A Yes.  
 11 Q Do you have any reason, sitting here  
 12 today, to disagree with Gordon Wohlers's conclusion  
 13 that intervention is, in effect, not being done for  
 14 children on the Concept 6 calendar?  
 15 MS. DAVIS: Calls for speculation.  
 16 THE WITNESS: I don't have enough  
 17 information about the program to have an opinion.  
 18 BY MR. VILLAGRA:  
 19 Q If you could turn back to page 3, line 24,  
 20 it says: "The schedule's compression and  
 21 disruption creates enormous  
 22 challenges to teaching and learning."  
 23 Do you see that?  
 24 A Yes.  
 25 Q Do you believe that the Concept 6 calendar

1 But I don't know what the author has in  
 2 mind here, with the word "impact."  
 3 BY MR. VILLAGRA:  
 4 Q The next sentence, it says:  
 5 "When we started the Concept 6  
 6 program many years ago, we hoped that  
 7 we could make up with longer class  
 8 periods for the 17 instructional days  
 9 a year that students on this calendar  
 10 lose. It has not worked out that  
 11 way."  
 12 Do you see that?  
 13 A Yes.  
 14 Q Do you have any reason to disagree with  
 15 Gordon Wohlers's conclusion that LAUSD's attempt to  
 16 implement the Concept 6 program and make up with  
 17 longer class days for the lost number of  
 18 instructional days a year has not worked out?  
 19 MS. DAVIS: Calls for speculation.  
 20 THE WITNESS: I have no reason to know  
 21 whether that's true or not.  
 22 BY MR. VILLAGRA:  
 23 Q I'm going to turn your attention to  
 24 page 9, paragraph 40.  
 25 A The last paragraph on that page?

1 creates any challenges to teaching and learning?  
 2 MS. DAVIS: Vague and ambiguous.  
 3 THE WITNESS: What do we mean by  
 4 "challenges"?  
 5 BY MR. VILLAGRA:  
 6 Q What do you take the word to mean?  
 7 A It could mean a lot of different things.  
 8 There are changes and there are issues to  
 9 deal with.  
 10 I don't know what -- I don't really know  
 11 what's meant by "enormous challenges."  
 12 I can't answer your question, then.  
 13 Q Turning your attention to page 8,  
 14 paragraph 38.  
 15 "Multitrack calendars also directly impact  
 16 teaching and learning."  
 17 Do you believe that the multitrack  
 18 year-round calendar has any impact on teaching and  
 19 learning?  
 20 MS. DAVIS: Vague and ambiguous.  
 21 THE WITNESS: We're talking about words  
 22 here, "impact."  
 23 Again, we have change, so there would be  
 24 some differences.  
 25 If that's an impact, yes.

1 Q It says: "It is extremely difficult to  
 2 administer a Concept 6 school in an orderly way."  
 3 Do you see that?  
 4 A Yes.  
 5 Q Can you list for me the ways in which it  
 6 is different to administer a Concept 6 than a  
 7 traditional calendar school?  
 8 MS. DAVIS: Vague and ambiguous.  
 9 THE WITNESS: You would have students with  
 10 different start-stop times, teachers with different  
 11 start-stop times; that would not be true on a  
 12 traditional calendar.  
 13 BY MR. VILLAGRA:  
 14 Q Anything else?  
 15 A Not right now.  
 16 Q Do you believe it is more difficult to  
 17 administer a Concept 6 school than a traditional  
 18 calendar school?  
 19 A I do not know personally.  
 20 I have not administered a Concept 6  
 21 school.  
 22 Q I want to turn your attention to page 7,  
 23 paragraph No. 34.  
 24 Are you familiar with the school readiness  
 25 language development programs?

1 A I'm not.  
 2 Q Do you have any knowledge whether LAUSD  
 3 could serve more children in school readiness  
 4 language development programs, but for the  
 5 operation of its multitrack year-round schools?  
 6 MS. DAVIS: Vague and ambiguous.  
 7 He said he didn't know what that program  
 8 is.  
 9 THE WITNESS: I don't know what the  
 10 program is.  
 11 I don't know how its organized or  
 12 administered.  
 13 BY MR. VILLAGRA:  
 14 Q Or what effect?  
 15 A Or what effect it has.  
 16 Q On page 8, paragraph 39, it says:  
 17 "All teachers on Concept 6 have  
 18 to pack up their materials and move  
 19 out of their classrooms when they go  
 20 off-track in order to make room for  
 21 the incoming teacher in class."  
 22 Do you see that?  
 23 A Yes.  
 24 Q Do you have any understanding to what  
 25 Mr. Wohlers is referring to?

1 MS. DAVIS: Calls for speculation.  
 2 BY MR. VILLAGRA:  
 3 Q What do you understand that sentence to  
 4 refer to?  
 5 MS. DAVIS: Same objection.  
 6 THE WITNESS: My understanding is that the  
 7 coming in of the new group and the going out of the  
 8 group scheduled to go on vacation.  
 9 That's an assumption.  
 10 But that would be the usual response.  
 11 BY MR. VILLAGRA:  
 12 Q The next sentence says:  
 13 "At least 1 of every 3 teachers  
 14 on Concept 6 must rove without a  
 15 permanent classroom, even while he or  
 16 she is on track."  
 17 Do you see that?  
 18 A Yes.  
 19 Q Is it your understanding that at least  
 20 1 out of every 3 teachers at a Concept 6 school  
 21 must rove?  
 22 MS. DAVIS: Vague and ambiguous.  
 23 THE WITNESS: If they have chosen the  
 24 roving system, the answer would be yes.  
 25 There is an "F" there.

1 BY MR. VILLAGRA:  
 2 Q Do you know how prevalent, in LAUSD  
 3 Concept 6 schools, the adoption of a roving  
 4 teacher's schedule is?  
 5 A I don't know the numbers and rotation.  
 6 Q The next sentence:  
 7 "Roving teachers have to pack up  
 8 their materials and move even more  
 9 frequently."  
 10 Do you see that?  
 11 A Yes.  
 12 Q Do you agree with that statement?  
 13 A It depends on what it's being compared to.  
 14 If it is compared to the other two  
 15 teachers, that has been spoken of up above.  
 16 The roving teacher has to do that more  
 17 frequently, yes.  
 18 Q Does the roving teacher also have to pack  
 19 up and move more frequently than a teacher on a  
 20 traditional calendar?  
 21 A Yes.  
 22 Q Paragraph 40, the first paragraph 40.  
 23 It says: "The classroom dislocations that  
 24 Concept 6 requires are disruptive and  
 25 draining to the students."

1 A Yes.  
 2 Q What do you understand that classroom  
 3 dislocations required by Concept 6, refers to?  
 4 MS. DAVIS: Vague and ambiguous.  
 5 THE WITNESS: I don't know what he's  
 6 referring to.  
 7 BY MR. VILLAGRA:  
 8 Q Do you believe that teachers on Concept 6  
 9 calendars, who have to pack up their materials and  
 10 move out of their classrooms when they go  
 11 off-track, are coping with a distraction?  
 12 MS. DAVIS: Vague and ambiguous, calls for  
 13 speculation.  
 14 THE WITNESS: I don't know whether they  
 15 are or not.  
 16 It depends on how it's organized.  
 17 MR. VILLAGRA: Off the record.  
 18 (Recess taken.)  
 19 BY MR. VILLAGRA:  
 20 Q I want to go back to Exhibit 12, your  
 21 report, page 39.  
 22 A Okay.  
 23 Q In the first sentence of the first full  
 24 paragraph, you mention that Dr. Mitchell decided to  
 25 give less weight to findings related to multitrack

1 year-round calendars in other states?  
 2 A Yes.  
 3 Q In the parenthetical, you note:  
 4 "Multitrack year-round schools in  
 5 Arizona, Utah, Colorado, Nevada, and  
 6 New Mexico, Texas, Florida, North  
 7 Carolina, Missouri, Illinois, and  
 8 Pennsylvania..."  
 9 Do you see that?  
 10 A Yes.  
 11 Q Does any of those states have as high a  
 12 proportion of its schools, of its year-round  
 13 schools, as California does, using multitrack  
 14 programs?  
 15 A Not to my knowledge.  
 16 Q To your knowledge, does any of those  
 17 states that you list here, on page 39, use the  
 18 Concept 6 calendar?  
 19 A Not to my knowledge.  
 20 MS. DAVIS: You mean currently?  
 21 MR. VILLAGRA: Yes.  
 22 THE WITNESS: Not to my knowledge.  
 23 BY MR. VILLAGRA:  
 24 Q In the next sentence, you say:  
 25 "Dr. Mitchell has then, has

1 not the only state involved with multi-tracking.  
 2 It's not the only state that is facing  
 3 overcrowding.  
 4 It's not the only state that has too  
 5 little money to do all the things that is demanded  
 6 of state government.  
 7 It also is a way of saying that different  
 8 communities in different states have accepted  
 9 multitrack.  
 10 And they are what you would call middle  
 11 class communities, not just lower socioeconomic  
 12 communities.  
 13 Q Does the decision to give less weight to  
 14 the experience of other states with multitrack  
 15 year-round calendars, skew the picture in any other  
 16 way, in your opinion, other than what you have told  
 17 me?  
 18 A That's what I had in mind with this  
 19 section.  
 20 Q In the next sentence, you say:  
 21 "By doing so, Dr. Mitchell  
 22 attempts to paint the multitrack  
 23 year-round calendar as the calendar  
 24 of poor and minorities, this is not  
 25 the case."

1 chosen to ignore the history of  
 2 multitrack year-round calendar."  
 3 Do you believe that the history of the  
 4 multitrack year-round calendar is relevant to this  
 5 litigation?  
 6 A I do in the sense that the overarching  
 7 topic is multitrack year-round education, with a  
 8 subtopic of Concept 6.  
 9 Dr. Mitchell specifically said, as I  
 10 recall, that he was going to give less weight to  
 11 findings related to multitrack calendars, plural,  
 12 in other states.  
 13 That's what I'm reacting to in this  
 14 section.  
 15 Q Do you disagree with his decision to give  
 16 less weight to the experience of multitrack  
 17 year-round education in other states?  
 18 A I do.  
 19 Q Why?  
 20 A I think it skews the picture about  
 21 multi-tracking, if the fact that it's prevalent in  
 22 other states -- that it is prevalent in other  
 23 states.  
 24 Q In what way does it skew the picture?  
 25 A It's the way of saying that California is

1 Do you see that?  
 2 A Yes.  
 3 Q Do you disagree with Dr. Mitchell that in  
 4 California, multitrack year-round education has  
 5 been implemented in schools enrolling  
 6 disproportionate numbers of poor students of color?  
 7 MS. DAVIS: Are you talking now or ever?  
 8 MR. VILLAGRA: Now.  
 9 THE WITNESS: I don't have the data at  
 10 hand, to make that judgment.  
 11 BY MR. VILLAGRA:  
 12 Q Do you disagree with Dr. Mitchell's data?  
 13 A Well, I don't disagree entirely.  
 14 But I don't know all of his data.  
 15 I don't know whether I would disagree in  
 16 whole or in part.  
 17 Q What is your understanding of what the  
 18 data Dr. Mitchell has?  
 19 A I know he has his particular study.  
 20 That was a very small sample.  
 21 I would have to look at his overall data  
 22 for the whole state of California.  
 23 Q In his expert report which you have  
 24 reviewed, do you know whether Dr. Mitchell analyzed  
 25 statewide data?



1 A He refers to looking at California data.  
 2 I don't recall the degree to which he  
 3 looked at that.  
 4 MR. VILLAGRA: If I could ask you to take  
 5 a look at Exhibit 2.  
 6 THE WITNESS: Which one is that?  
 7 MR. VILLAGRA: The C.A.S.H.  
 8 THE WITNESS: I have it.  
 9 BY MR. VILLAGRA:  
 10 Q Will you turn to the page No. 73349?  
 11 A All right.  
 12 Q That paragraph under the heading:  
 13 "MTYRE Children."  
 14 A Yes.  
 15 Q Do you see that?  
 16 A Yes.  
 17 Q It says: "The majority of children that  
 18 attend MTYRE schools are from  
 19 low-well families and  
 20 under-represented communities."  
 21 Do you see that?  
 22 A Yes.  
 23 Q Do you disagree that the majority of  
 24 students that attend multitrack year-round schools  
 25 are from low-well families and under-represented

1 communities?  
 2 MS. DAVIS: Vague and ambiguous.  
 3 THE WITNESS: I don't agree or disagree.  
 4 I haven't done this study myself.  
 5 BY MR. VILLAGRA:  
 6 Q So when you say "Dr. Mitchell is  
 7 attempting," going back to your report, Exhibit 12,  
 8 at page 39.  
 9 When you say he's "attempting to paint the  
 10 multitrack year-round calendar as the calendar of  
 11 only the poor and minorities, and that is not the  
 12 case," you're not saying that's not the case in  
 13 California; you don't know one way or the other?  
 14 A I'm saying that's correct.  
 15 We're looking at the broad picture of  
 16 multitrack in this discussion, in this paragraph.  
 17 And the key word is only to "poor and  
 18 minorities."  
 19 Q To your knowledge, did Dr. Mitchell make  
 20 the claim that the multitrack year-round calendar  
 21 in California was the calendar of only the poor and  
 22 minorities?  
 23 A I thought he was painting the picture that  
 24 that was so.  
 25 Q Does that mean you inferred that from his

1 discussion?  
 2 A I inferred that from his discussion.  
 3 Q Do you disagree with Dr. Mitchell that in  
 4 California, a Concept 6 calendar is used at schools  
 5 that enroll disproportionate numbers of poor Latino  
 6 students?  
 7 A Disproportionate to what?  
 8 Q To their proportion in the student  
 9 population?  
 10 A Well, my problem with the disproportionate  
 11 is they certainly -- Concept 6 calendars are  
 12 implemented at a particular site or locale.  
 13 If a particular group of students are  
 14 situated in that locale, then, obviously, the  
 15 calendar would be implemented in schools where they  
 16 reside.  
 17 Whether that's disproportionate to the  
 18 population in that locale, I can't tell.  
 19 I haven't done that kind of a survey.  
 20 Q You can't say whether it's  
 21 disproportionate or not?  
 22 A I can't.  
 23 Q To your knowledge, is this case addressed  
 24 to multitrack year-round calendars, in general?  
 25 MS. DAVIS: This case being the Williams

1 case?  
 2 MR. VILLAGRA: Yes.  
 3 THE WITNESS: In general, that's my  
 4 understanding, yes.  
 5 BY MR. VILLAGRA:  
 6 Q I want to turn your attention to page 41  
 7 of your report, Exhibit 12.  
 8 You say, you write:  
 9 "Dr. Mitchell claims that a  
 10 multitrack year-round student program  
 11 is likely to be restricted to the  
 12 number of school days on the  
 13 calendar."  
 14 You go to write:  
 15 "That may be true only in the  
 16 multitrack year-round schools  
 17 severely impacted at 130 percent and  
 18 above level of the stated capacity of  
 19 the school."  
 20 Do you see that?  
 21 A Yes.  
 22 Q Will a school that's severely impacted at  
 23 the 130 percent and above level, stated school  
 24 capacity, generally be on the Concept 6 calendar?  
 25 A That would be common.

1 130 percent could be 135 in one facility  
 2 or 140 in another facility.  
 3 I chose 130 to be fair in the State  
 4 material.  
 5 Q Will you expect that at a Concept 6  
 6 school, the instructional calendar would be  
 7 restricted to the number of school days on the  
 8 calendar?  
 9 MS. DAVIS: Asked and answered.  
 10 THE WITNESS: Yes. I've, a couple of  
 11 times in the last two-and-a-half days, suggested  
 12 that the regular school days could be increased if  
 13 we could think of classes being held other than  
 14 just in the four walls of the school house.  
 15 BY MR. VILLAGRA:  
 16 Q If we thought of classes, though, as  
 17 limited to the four walls of the school, do you  
 18 believe that a Concept 6 calendar is limited to the  
 19 number of school days on the calendar, namely 163?  
 20 MS. DAVIS: Same objection.  
 21 THE WITNESS: There would be 163 days  
 22 extended time for comparable instructional minutes.  
 23 BY MR. VILLAGRA:  
 24 Q That's a yes?  
 25 A Yes. I'm talking about days, yes.

1 Q Is Dr. Mitchell's claim that a program is  
 2 likely to be restricted to the number of regular  
 3 school days on the calendar, can that be true of a  
 4 Concept 6 school?  
 5 A It can be true if they do nothing to add  
 6 days, other than within the four walls of the  
 7 school.  
 8 Q I want to turn back to page 15 of your  
 9 report.  
 10 The first full paragraph, you refer to a  
 11 study out of the Oakland unified school district?  
 12 A Yes.  
 13 Q Do you see that?  
 14 A Yes.  
 15 Q If I refer to that study as the  
 16 Resnick study, would that be okay?  
 17 A Yes.  
 18 Q Do you understand, I don't recall the  
 19 author's full name, Resnick to be the last name of  
 20 the author of this study?  
 21 A Yes.  
 22 Q At bottom of the paragraph, you have a  
 23 quotation from the Resnick study.  
 24 "In summary, we found that academic  
 25 achievement is chiefly influenced by

1 socioeconomic status. With the  
 2 calendar modality (year-round or  
 3 regular) playing a secondary, but  
 4 still significant role."  
 5 Do you see that?  
 6 A Yes.  
 7 Q Do you believe that the Resnick study  
 8 found that the calendar modality, year-round or  
 9 regular, played a significant role in determining  
 10 academic achievement?  
 11 A The quote that I have here, is from that  
 12 study.  
 13 That's what the author of that study said.  
 14 That's not -- those are not my words.  
 15 Q How do you understand those words?  
 16 A The author felt that the calendar had a --  
 17 had a secondary role, not the primary role.  
 18 Q A secondary, but still significant role?  
 19 A That's the words of the author, yes.  
 20 Q Do you believe that the Resnick study  
 21 found that the calendar modality, year-round or  
 22 regular, played a detrimental role in academic  
 23 achievement?  
 24 MS. DAVIS: Vague and ambiguous.  
 25 THE WITNESS: As I recall the study, they

1 weren't sure what role the calendar played.  
 2 But this paragraph, at the bottom of 15  
 3 which we're reacting to right now, the intent here,  
 4 was to point out that Dr. Oaks had not given the  
 5 full intent of the quote.  
 6 I found that she had misstated what the  
 7 author, Resnick, was saying in the open report.  
 8 BY MR. VILLAGRA:  
 9 Q I appreciate that.  
 10 Do you understand the Resnick study to  
 11 have found a calendar, namely, multitrack  
 12 year-round calendar, plays a statistically  
 13 significant role in determining student  
 14 achievement?  
 15 A It didn't say "statistically."  
 16 But it said "significant."  
 17 That was the quote from the Resnick study.  
 18 Q You don't understand the significance to  
 19 have been statistically significant?  
 20 A I don't remember -- that the study said  
 21 statistically significant.  
 22 In fact, the study, from my perspective,  
 23 was a fairly weak study.  
 24 Q Why do you say it's a "weak study"?  
 25 A Because I had trouble following the study.

1 It was not a well-put-together study for,  
 2 at least, those of us who are not researchers to  
 3 follow.  
 4 Q Did you believe that the Resnick study to  
 5 be a weak study for any other reason?  
 6 A I could not follow how she got her data  
 7 even, so it was a very difficult study.  
 8 But my point here, in this paragraph,  
 9 Dr. Oaks did not really correctly state what was  
 10 coming from the Oakland study.  
 11 Q I appreciate that.  
 12 When you said you had trouble following  
 13 this study, are there any other research studies  
 14 that you have had trouble following?  
 15 A Yes.  
 16 Q You're not a researcher?  
 17 A I'm not a researcher.  
 18 Q You can't say anything about Resnick's  
 19 methodology in conducting this study?  
 20 A I can say something about it.  
 21 I can react as I just did.  
 22 I didn't think it was a very good study.  
 23 Q What can you say about the methodology  
 24 used by Resnick in this study?  
 25 A To tell you the truth, there was not

1 enough information for me to know how she derived  
 2 her data.  
 3 Q What do you mean by "how she derived her  
 4 data"?  
 5 A I don't know what it compares to.  
 6 I don't know how they collected it.  
 7 It was a relatively short paper, few  
 8 pages, and I just don't have enough information.  
 9 I didn't think it was a very good study.  
 10 It was one that had words left out, typos, just --  
 11 that's why I say it's not a good study.  
 12 Q Are you saying it's a weak study in  
 13 layman's terms?  
 14 A From my perspective, yes.  
 15 Q All right.  
 16 A "Layman" in the sense of not being a  
 17 researcher.  
 18 Q Is it fair to say you're not offering an  
 19 expert opinion regarding the Resnick study?  
 20 A I'm not an expert in educational research  
 21 statistics, that sort of thing, yes.  
 22 I'm giving that as my personal response to  
 23 the study.  
 24 Q Do you take issue with all studies that  
 25 are short?

1 A Not necessarily.  
 2 Q Do you take issue with all studies that  
 3 have typos in them?  
 4 A As an English teacher, I always have  
 5 questions.  
 6 If it's one typo, that's human.  
 7 If it's full of such situations, say,  
 8 somebody should have looked at this more carefully.  
 9 Q At page 16, the next page of Exhibit 12,  
 10 the second to last sentence you say:  
 11 "The Oakland study, therefore,  
 12 cannot be viewed as a well-documented  
 13 and weighty report on the effects of  
 14 year-round education on student  
 15 achievement."  
 16 Do you see that?  
 17 A Yes.  
 18 Q Is what you wrote there, the equivalent of  
 19 what you just testified to in terms of what the  
 20 substance of your opinion is?  
 21 A That's my opinion.  
 22 Q When you say, in the next sentence:  
 23 "But the Oakland report tells us  
 24 is that socioeconomic status, first  
 25 and foremost, is central to student

1 achievement."  
 2 Do you see that?  
 3 A Yes.  
 4 Q Does the Oakland report also tell us that  
 5 a multitrack year-round calendar is relevant to  
 6 student achievement?  
 7 MS. DAVIS: Vague and ambiguous.  
 8 THE WITNESS: I don't know whether it's  
 9 relevant or not.  
 10 Because the quote here, here, in the same  
 11 paragraph, the author says: "We're not sure."  
 12 Because she says in the fourth line of  
 13 that paragraph:  
 14 "Whether it's due to differences  
 15 in the population or due to the  
 16 different calendars..."  
 17 Even the author wasn't clear what role the  
 18 calendar played in the results.  
 19 BY MR. VILLAGRA:  
 20 Q Reading the very next sentence, though,  
 21 which you did not just read, it says:  
 22 "Our results indicate that both  
 23 factors play a role in academic  
 24 achievement with low SES being more  
 25 detrimental than the calendar."

1 Do you see that?  
 2 A Yes.  
 3 Q Don't you understand that to mean that  
 4 while SES may be more detrimental, that the  
 5 calendar, nonetheless, is detrimental?  
 6 MS. DAVIS: Calls for speculation.  
 7 THE WITNESS: That may be so or it may not  
 8 be so.  
 9 MS. DAVIS: Calls for speculation.  
 10 BY MR. VILLAGRA:  
 11 Q Just in terms as an old English professor,  
 12 if I read something is "more detrimental," doesn't  
 13 it assume that both things were detrimental?  
 14 A Certainly both were factors.  
 15 MS. DAVIS: That's in his capacity as an  
 16 old English teacher.  
 17 THE WITNESS: Strike "old."  
 18 MS. DAVIS: A former English teacher.  
 19 BY MR. VILLAGRA:  
 20 Q Are you familiar with what I will call the  
 21 Quinlan study?  
 22 A Yes.  
 23 Q What is the Quinlan study?  
 24 A That was a study done in, I believe, 1987,  
 25 sponsored by the California Department of

1 Education.  
 2 And it was a study of year-round  
 3 education.  
 4 Q Do you recall what that study found?  
 5 A There are lots of things that it found.  
 6 And I refer to that in my report.  
 7 Q Do you recall whether the Quinlan study  
 8 control addressed specifically for student  
 9 background characteristics?  
 10 A I don't recall.  
 11 Q Do you recall whether the Quinlan study,  
 12 even after controlling for background  
 13 characteristics, concluded that multitrack  
 14 year-round schools performed below predicted  
 15 levels?  
 16 A There was a statement in the report to  
 17 that, yes.  
 18 Q Page 17 of your report of Exhibit 12, you  
 19 conclude, the last sentence of the full paragraph:  
 20 "Thus the Quinlan study revealed  
 21 that predicted levels of achievement  
 22 are related more to the demographics  
 23 than the multitrack year-round  
 24 calendar."  
 25 A Yes.

1 Q Does that mean you understand the Quinlan  
 2 study to reveal that predicted levels of  
 3 achievement are also related to the multitrack  
 4 year-round calendars, although, less so than to  
 5 demographics?  
 6 MS. DAVIS: Calls for speculation.  
 7 (Record read.)  
 8 THE WITNESS: I believe so, yes.  
 9 BY MR. VILLAGRA:  
 10 Q All right.  
 11 A That's what I say here.  
 12 Q Turn your attention to page 16 of your  
 13 report, Exhibit 12.  
 14 A All right.  
 15 Q In the middle of the page, at the start of  
 16 the second paragraph, you mention: "A 2001 study  
 17 by LAUSD, authored by White and Cantrell."  
 18 Do you see that?  
 19 A Yes.  
 20 Q You quote the authors as stating:  
 21 "We have found evidence of an  
 22 interaction effect between student  
 23 background characteristics at the  
 24 school level and student performance.  
 25 We cannot condemn a calendar

1 policy for factors beyond the control  
 2 of that policy, namely, student  
 3 background characteristics."  
 4 Do you see that?  
 5 A Yes.  
 6 Q I believe you added the italics to the  
 7 second sentence?  
 8 A Yes.  
 9 Q Why did you italicize that second  
 10 sentence?  
 11 A Because its statement: "We cannot condemn  
 12 a calendar policy for factors beyond  
 13 the control of that policy, namely,  
 14 student background characteristics."  
 15 So they were saying, in effect, we can't  
 16 condemn the introduction of the multitrack  
 17 calendars for whatever the student performance  
 18 might be.  
 19 Q Why else did you italicize that sentence?  
 20 A Just for that reason.  
 21 Q In your opinion, can a calendar, school  
 22 calendar policy, be condemned for factors that are  
 23 within the control of the policy?  
 24 A I don't know that the calendar itself  
 25 should be condemned.

1 Because most, if not all, of the factors  
2 are outside of the calendar.  
3 Q When you say most of the factors are  
4 outside of the control of the calendar, what  
5 factors are you referring to?  
6 A Student achievement, as I said several  
7 times in the deposition, is primarily the result of  
8 interaction between student and pupil.  
9 The calendar is a means to handle  
10 over-enrollment.  
11 I don't think the calendar should be  
12 overplayed, particularly when we're looking for  
13 reasons why students are not performing at a higher  
14 level.  
15 Q The calendar shouldn't be claimed for  
16 factors outside of its control.  
17 But the calendar should not be claimed for  
18 factors within its control either?  
19 A I'm not sure what factors are within its  
20 control.  
21 Can you name those for me?  
22 Q Do you believe that any factors are within  
23 the control of a calendar policy?  
24 MS. DAVIS: Vague and ambiguous.  
25 THE WITNESS: By now, I'm not coming up

1 A Yes.  
2 Q Is pupil mobility a factor that is within  
3 the control of a school?  
4 MS. DAVIS: Vague and ambiguous.  
5 THE WITNESS: I don't believe so,  
6 ordinarily.  
7 BY MR. VILLAGRA:  
8 Q Why not?  
9 A It's parents who make that choice, not the  
10 school.  
11 Q Is people ethnicity a factors that is  
12 within the control of a school?  
13 A No.  
14 Q Is people socioeconomic status a factor  
15 within the control of the school?  
16 A No.  
17 Q Is the percentage of teachers who are  
18 fully credentialed within the control of the  
19 school?  
20 MS. DAVIS: Vague and ambiguous.  
21 THE WITNESS: But teachers have some  
22 control over -- whether they have fully  
23 credentialed teachers or not, but not entire  
24 control.  
25 BY MR. VILLAGRA:

1 with any factors that are controlled by calendar.  
2 BY MR. VILLAGRA:  
3 Q I want to turn your attention back to  
4 Exhibit 24.  
5 I know there were parts of it that you  
6 could not express an opinion on.  
7 Are you familiar with the Public School  
8 Accountability Act of '99?  
9 A In a very general way.  
10 Q What's your understanding of the Act?  
11 A The intent was to gather information about  
12 the achievement of California students.  
13 Q If you could turn to page 2 of this  
14 technical report, the first full paragraph says:  
15 "The PSAA, referring to the Act,  
16 specifies that similar  
17 characteristics include, but are not  
18 limited to, to the following  
19 characteristics insofar as data are  
20 available from the California  
21 Department of Education."  
22 Do you see that?  
23 A Yes.  
24 Q Do you see, the first one is "pupil  
25 mobility"?

1 Q What do you mean by "control"?  
2 A They can hire, they can have as a policy  
3 to hire only fully credentialed teachers.  
4 But the circumstance may be where they  
5 have hired other than fully credentialed teachers.  
6 Q I'm assuming the same goes for a  
7 percentage of teachers who hold credentials --  
8 A Yes.  
9 Q Percentage of pupils who are English  
10 language learners, is that within the control of  
11 the school?  
12 A No.  
13 Q Average class size per grade level, is  
14 that within the control of the school?  
15 MS. DAVIS: Vague and ambiguous.  
16 THE WITNESS: Yes and no.  
17 BY MR. VILLAGRA:  
18 Q To what extent is it?  
19 A If the school district is following the  
20 guidelines for class size reduction, those  
21 guidelines are set by law.  
22 And so, there would be no control once the  
23 district agrees to be part of that program.  
24 Otherwise, the district can set the limits  
25 of the number of pupils per teacher or by union

1 contract; sometimes, those limits are set.  
 2 Q The last characteristic included or  
 3 specified in the similar characteristics index is  
 4 whether a school can operate multitrack year-round  
 5 educational programs.

6 Is that within the control of the school?

7 MS. DAVIS: Vague and ambiguous as to  
 8 "control of the school."

9 THE WITNESS: That's a good question,  
 10 whether the school can control that.

11 The school can make a choice as to whether  
 12 to implement the calendar.

13 But the need for the calendar is not  
 14 within the school's control.

15 BY MR. VILLAGRA:

16 Q The school can make a choice as to whether  
 17 it will operate on a multitrack year-round  
 18 calendar?

19 A Yes.

20 Q But the school can't make a choice as to  
 21 the ethnicity of its student population?

22 A That's true.

23 Q Going back on the language, we were  
 24 looking at your report about condemning the  
 25 calendar policy for factors beyond the control of

1 other governmental agencies in the school.

2 For instance, approval of certain housing  
 3 densities, certain subdivisions -- new subdivisions  
 4 built, issues of that kind are decided by  
 5 governmental agencies, other than the public  
 6 schools.

7 So enrollment is not within the control of  
 8 the public schools.

9 Q To no degree?

10 A Well, the public schools could go to some  
 11 of these hearings and testify what consequences of  
 12 these other agencies's actions might be.

13 But land-use decisions are not decisions  
 14 made by the public schools.

15 Q Could the California Department of  
 16 Education assume more control over over-enrollment  
 17 by attempting to build more schools precisely in  
 18 those communities experiencing growth for whatever  
 19 reasons?

20 MS. DAVIS: Vague and ambiguous, calls for  
 21 speculation.

22 THE WITNESS: I don't think California  
 23 Department of Education builds schools, local  
 24 agencies do.

25 Some of the money that may be available is

1 that policy.

2 Do you believe that a school can be  
 3 condemned for its choice of calendar, given that  
 4 the choice of calendar is within its control?

5 A I would think any citizen could condemn  
 6 the policy.

7 Whether that's a right opinion is another  
 8 matter.

9 So, I guess, I would have to say yes.

10 The school could be condemned for its  
 11 choice of calendar.

12 It doesn't mean that condemnation is  
 13 correct.

14 Q But if you were looking, if you as a  
 15 citizen were looking, at factors to condemn a  
 16 school on, wouldn't you look for factors that are  
 17 within the control of the school?

18 A I would as a citizen.

19 But the over-enrollment is nothing within  
 20 the control of the school.

21 Q Who is over-enrollment within the control  
 22 of?

23 A Good question. I'm not sure I can fully  
 24 answer it.

25 But increases can come from the actions of

1 funneled through the California Department of  
 2 Education.

3 But local districts and local communities  
 4 decide whether schools will be built or not.

5 BY MR. VILLAGRA:

6 Q What if some districts can't build enough  
 7 schools to meet their student enrollment, do you  
 8 believe the State has any responsibility for the  
 9 students in those districts?

10 MS. DAVIS: Vague and ambiguous as to  
 11 "responsibility."

12 THE WITNESS: Good question.

13 I don't know whether the State has  
 14 responsibility -- in the current way of operating  
 15 schools, where local districts make those decisions  
 16 about what's over-enrollment, what schools are  
 17 going to be built or not built, and that sort of  
 18 thing, there would have to be a whole restructuring  
 19 of California Government if the State were to have  
 20 the direct influence on the building of buildings.

21 BY MR. VILLAGRA:

22 Q Do you know whether there are any other  
 23 states in the United States that does that?

24 A I don't know of any, for sure.

25 There may be one or two.

1 Q Going back to the White and Cantrell study  
2 from 2001.

3 Do you recall whether that study found  
4 that students do not perform equally across school  
5 calendars, with traditional calendar schools  
6 outperforming multitrack year-round schools?

7 A You're speaking of the 2001 study?

8 Q Yes.

9 MS. DAVIS: Vague and ambiguous.

10 THE WITNESS: Would you break the question  
11 down for me a little bit?

12 There were several parts to it.

13 BY MR. VILLAGRA:

14 Q Do you recall whether the 2001 White and  
15 Cantrell study found that students do not perform  
16 equally across school calendars?

17 MS. DAVIS: Vague and ambiguous, you mean  
18 "equally," controlling for certain things or not  
19 controlling for anything?

20 MR. VILLAGRA: Not controlling.

21 THE WITNESS: There were unequal levels of  
22 student achievement, yes.

23 BY MR. VILLAGRA:

24 Q With the traditional calendar performing  
25 best?

1 MR. VILLAGRA: I want to mark as Exhibit  
2 28, a document entitled: "Comparison of Student  
3 Outcomes in Multitrack Year-Round and Single-Track  
4 Traditional Calendar Schools," authored by Jeffrey  
5 White and Steven Cantrell, dated March 21, 2001.

6 The document is Bates stamp State-EXP-CB  
7 0464 through 0472.

8 (Deposition Exhibit 28,  
9 Comparison of Student Outcomes in  
10 Multitrack Year-Round and  
11 Single-Track Traditional Calendar  
12 Schools, was marked for  
13 identification by the Court  
14 Reporter.)

15 BY MR. VILLAGRA:

16 Q Have you had a chance to review Exhibit  
17 28?

18 A I have it in my hands.

19 I did not review it.

20 I did a few weeks ago; it's been a while  
21 since I looked at this.

22 Q Do you know what Exhibit 28 is?

23 A Yes.

24 Q What is it?

25 A It's a report authored by Jeffrey White,

1 A In some instances, yes.

2 Q And the Concept 6 schools performing  
3 worse?

4 A In some instances, yes.

5 Q But in general?

6 A I can't say that, in general.

7 Q You don't recall?

8 A I don't recall at this point.

9 Q Do you recall whether the 2001 White and  
10 Cantrell study found that school demographics  
11 explained a considerable part of the difference in  
12 achievement across school calendars?

13 A Background characteristics, yes.

14 That's what we just reviewed on page 16.

15 Q To your recollection, did the 2001 White  
16 and Cantrell study find that all of the differences  
17 in student achievement across school calendars were  
18 attributable to school demographics?

19 MS. DAVIS: The document speaks for  
20 itself.

21 THE WITNESS: I'm going to hesitate  
22 because of the word "all."

23 I'm not sure at this point.

24 I would have to go back and check my notes  
25 and review their report.

1 Steven Cantrell, entitled: "Comparison of Student  
2 Outcomes in Multitrack Year-Round and Single-Track  
3 Traditional School Calendars."

4 Q You reviewed a copy of Exhibit 28 in  
5 preparing your report?

6 A I looked at it, yes.

7 Q When is the last time you saw a copy of  
8 Exhibit 28?

9 A It's been at least two months ago.

10 Q What is your opinion of this study  
11 reflected in Exhibit 28?

12 MS. DAVIS: Overbroad, vague and  
13 ambiguous.

14 THE WITNESS: I thought it was a better  
15 study than the Oakland study.

16 I thought it had some interesting  
17 information in it.

18 Q Anything else?

19 A That's my opinion.

20 Q Why did you think it was better than the  
21 Oakland study, authored by Resnick?

22 A For one thing, I could follow it better.

23 Q Was there any aspect of this study,  
24 contained in Exhibit 28, that you could not follow?

25 MS. DAVIS: If you recall.

1 THE WITNESS: I'm not an expert in  
2 statistics.  
3 I relied more heavily on the written  
4 report than I did on the tables presented.  
5 BY MR. VILLAGRA:  
6 Q Do you know where White and Cantrell  
7 derived their data from?  
8 A It was within Los Angeles Unified.  
9 Q Do you know how they mathematically or  
10 statistically reached their conclusions?  
11 A I can't respond to that.  
12 Q If you turn to page 4 of the Exhibit, No.  
13 0467m, at the top.  
14 It says: "Students do not exhibit similar  
15 achievement gains across all school  
16 calendar tracks."  
17 Do you see that?  
18 A I do.  
19 Q Do you agree with that finding by  
20 White and Cantrell?  
21 A That statement by itself, I don't disagree  
22 with that.  
23 Q Next sentence: "Students on three-track  
24 calendars perform more poorly in  
25 reading and mathematics than any of

1 BY MR. VILLAGRA:  
2 Q In the next sentence, it says:  
3 "When comparing only  
4 demographically, similar schools,  
5 same achievement patterns exist."  
6 Do you see that?  
7 A Yes.  
8 Q Do you disagree with that conclusion?  
9 A I don't disagree that they conclude  
10 differently.  
11 MS. DAVIS: Objection, you left out part  
12 of the conclusion.  
13 BY MR. VILLAGRA:  
14 Q Looking at page 5 of the report, the next  
15 page of the report, in the first paragraph under  
16 Table 2, the second sentence.  
17 It says: "When student performance in  
18 multitrack calendars is disaggregated  
19 by track, a clear pattern emerges  
20 with three-track schools.  
21 In every school type, performance  
22 of B track schools is substantially  
23 lower than other tracks in both  
24 reading and mathematics."  
25 Do you see that?

1 those of any calendar type."  
2 Do you see that?  
3 A Yes.  
4 Q Do you disagree with that conclusion?  
5 MS. DAVIS: In terms of the data that's  
6 analyzed in the 2001 report?  
7 MR. VILLAGRA: Within the context of this  
8 report.  
9 THE WITNESS: I don't disagree with their  
10 statement here, as they see it.  
11 BY MR. VILLAGRA:  
12 Q In the next paragraph, it says:  
13 "School demographics explain a  
14 considerable portion of the  
15 differences in student achievement  
16 gains in similar calendar types."  
17 Do you see that?  
18 A Yes.  
19 Q Do you understand White and Cantrell to  
20 have concluded that school demographics explained  
21 all of the differences in student achievement gains  
22 among calendar types?  
23 MS. DAVIS: Calls for speculation.  
24 THE WITNESS: They don't say "all."  
25 They say "considerable portions."

1 A Yes.  
2 Q Do you have any reason to disagree with  
3 that conclusion?  
4 MS. DAVIS: I want to clarify that's in  
5 the 2001 data.  
6 MR. VILLAGRA: Sure.  
7 THE WITNESS: I don't disagree this is  
8 their conclusion.  
9 BY MR. VILLAGRA:  
10 Q Is B track structured any differently than  
11 A and C on the Concept 6 calendar?  
12 A Yes.  
13 Q How so?  
14 A The vacation periods would be different in  
15 A and C.  
16 Q How are the vacation periods different?  
17 A They are different times of the year than  
18 for A and C.  
19 Q I want to look back at your report,  
20 Exhibit 12, page 8.  
21 There is a figure where you have the  
22 schedule.  
23 A Yes.  
24 Q As I read this track on Chart A, there are  
25 four months of instruction, followed by two months



1 of vacation, followed by four months of  
2 instruction?

3 A That's correct.

4 Q On track B, there are two months of  
5 instruction, followed by two months of vacation,  
6 followed by four months of instruction, followed by  
7 two months of vacation, followed by two months of  
8 instruction; is that correct?

9 A That's only partially correct.

10 It has -- as visualized in this kind of a  
11 chart, that's true.

12 For the track B student, they follow  
13 exactly the same pattern as A and C.

14 That is, they are in school for four  
15 months, they are on vacation for two, back for  
16 four, off for two.

17 The pattern is the same for each of the  
18 three tracks.

19 Q So you don't recognize any distinction  
20 among the tracks in terms of the pattern of  
21 instruction and vacation?

22 A I don't, other than the fact there might  
23 be a grade change at the end of June, for example.

24 But the instructional pattern, which is  
25 what you were asking about, is still the same as

1 A and C; four months of instruction, two months of  
2 vacation.

3 Q You told us many times today, that cover  
4 analysis always has to go back to the traditional  
5 calendar?

6 A True.

7 Q All right.

8 A But your question was the instructional  
9 pattern.

10 So the instructional pattern is the same  
11 for all three tracks.

12 Q Now, you say it's the same for students  
13 because it's 4 and 4.

14 Let's go into that.

15 A It's 4 and 2.

16 Q I meant 4 and 4 in terms of instruction.

17 A Okay.

18 Q At the end of each school year, don't  
19 students typically, I shouldn't say typically, but  
20 isn't the expectation that students would be  
21 promoted to the next grade level?

22 A Yes, they are promoted or not promoted.

23 Q So from the perspective of a student on  
24 track A, the student beginning in first grade, they  
25 would begin school in September, go on vacation in

1 January, come back in March, and end in June?

2 A Correct.

3 Q And then they would have two months off  
4 before they started second grade; is that correct?

5 A Correct.

6 Q Now for a student on track C, in first  
7 grade as well, they would start school in July and  
8 go on vacation in November and come back in  
9 January, go off in May and be on vacation for two  
10 months before they started second grade?

11 A Correct.

12 Q On track B, a student would start first  
13 grade in July, go on vacation in September, come  
14 back in November, go on vacation in March, come  
15 back into school in May, and at the end of June,  
16 they would begin the next school year?

17 A Yes.

18 Q You don't see that as being different from  
19 the perspective of the student?

20 MS. DAVIS: He did mention there is a  
21 difference.

22 MR. VILLAGRA: I thought he said there may  
23 be a calendar change.

24 THE WITNESS: Not may be, there is -- not  
25 a calendar change, but there is an end-of-school

1 fiscal year.

2 In California, our school year runs from  
3 July 1 through June 30.

4 What you asked me about, the instructional  
5 pattern.

6 I said the instructional pattern is the  
7 same for all three tracks.

8 Later, I did say there is a change at the  
9 end of the school year.

10 Which is, in truth, the school in  
11 California.

12 BY MR. VILLAGRA:

13 Q You see that as the end of the school  
14 fiscal year and not the end of the school year?

15 A School year too, instructional year.

16 Q To your knowledge, does any other  
17 multitrack year-round calendar, after two months,  
18 go on vacation for two months?

19 A No.

20 Q Do you think that a vacation that is as  
21 long as that first school session, breaks up the  
22 continuity of learning?

23 MS. DAVIS: Asked and answered, we talked  
24 about this yesterday.

25 THE WITNESS: I'm not sure what you're

1 asking me, if you don't mind rephrasing it.

2 BY MR. VILLAGRA:

3 Q My understanding is that the year-round  
4 calendar is premised on the idea of fostering the  
5 continuity of learning by breaking up the summer  
6 vacation period into smaller vacation periods?

7 MS. DAVIS: Other than traditional?

8 BY MR. VILLAGRA:

9 Q Do you believe track B fosters the  
10 continuity of learning after two months in school,  
11 the students are off in school?

12 A In comparison with a traditional calendar,  
13 it's better than the long vacation in the  
14 traditional calendar.

15 Q Are you aware of any studies assessing the  
16 extent to which teachers on track B have to review  
17 when they come back in November, the material that  
18 was covered in July and August?

19 A A formal study on how much time they take  
20 to review, I'm not aware of any such study.

21 Q Are you aware of any informal study?

22 A Well, informal in the sense that yes, it's  
23 what we kind of learn as professionals in the  
24 field.

25 Q All right.

1 review they feel is necessary in November,  
2 following the first vacation break?

3 A Not in those terms.

4 Different teachers, different subjects,  
5 different groups of students, -- it would require  
6 different amounts of review.

7 So there's no study review pattern at all.

8 Q Would you expect there to be more review  
9 necessary for teachers and students on track B,  
10 following the first vacation, than for students and  
11 teachers or tracks A or C?

12 MS. DAVIS: Calls for speculation.

13 THE WITNESS: Not necessarily.

14 BY MR. VILLAGRA:

15 Q Why not?

16 A Well, depends.

17 First, are we talking about that period of  
18 instruction in July and August and that first  
19 vacation period, and then coming back in November,  
20 would there be more review required there than at  
21 some other point of review time; is that what  
22 you're asking me?

23 Q Let me be more specific.

24 On track A, the first instructional period  
25 is four months, and then there is a vacation of two

1 A I speak to that in my report, here.

2 Q Is that an informal study, or are you  
3 talking about anecdotal comments?

4 A What do you mean by an "informal study"?

5 We have to talk the same language.

6 Q Where you said you weren't aware of a  
7 formal study?

8 A No.

9 Q All right.

10 A I --

11 Q I asked if you were aware of an informal  
12 study?

13 A Yes, informally -- not study. I think  
14 that would be incorrect.

15 So let's agree to say that there is a  
16 general understanding about review, but not even in  
17 informal study, whatever that term might be.

18 Q When you say "general understanding" of  
19 review, is it particular to the experience of  
20 teachers and students on track B?

21 A I don't know that there is anymore or less  
22 review in track B than other tracks, I don't know  
23 that there is.

24 Q Have you ever spoken to a teacher at a  
25 Concept 6 school on track B about the amount of

1 months and teachers come back in March, teachers  
2 and students.

3 A Right.

4 Q On track B, there is two months of  
5 instruction, two months of vacation, and students  
6 and teachers come back in November.

7 Would you expect there to be more review  
8 for teachers and students on track B in November,  
9 than on track A in March?

10 MS. DAVIS: Same objection.

11 THE WITNESS: I don't know. Not  
12 necessarily. There could be.

13 There could be less.

14 BY MR. VILLAGRA:

15 Q You don't know?

16 A There are too many factors to have a clear  
17 opinion.

18 Q I want to talk, now, also about the school  
19 year change.

20 How much time would a student on track B  
21 have between one grade level and another, that is,  
22 between June and July?

23 A On track B?

24 Q Yes.

25 A I would suspect, probably one week.

1 Q Do you know whether it can be as short as  
2 a transition from a Friday to a Monday?

3 A It could be on the district's structuring  
4 of the calendar.

5 Q Do you know whether it can be as short as  
6 one day to the next?

7 A Theoretically, I suppose it could be.

8 Q Do you think it can be as short as two  
9 days?

10 A It could be.

11 Q On any other multitrack year-round  
12 calendar, is there a group of students who have a  
13 significantly shorter period in which to transition  
14 from one grade level to another as in the case of  
15 track B?

16 MS. DAVIS: Vague and ambiguous.

17 You mean any multitrack calendar,  
18 anywhere?

19 (Record read.)

20 THE WITNESS: If we're talking about the  
21 four-track calendars, it's possible that the school  
22 year would run up to June 30th.

23 And for some of the tracks, a school year  
24 could begin on July 1st.

25 So there is a -- four-track calendars

1 Do you see that?

2 A Yes.

3 Q What, in your opinion, are the factors  
4 that affect at which school a teacher chooses to  
5 teach?

6 A A teacher may choose to teach at a  
7 particular school if union contracts allow teachers  
8 choices on schools on a variety of factors.

9 It could be familiarity with the staff,  
10 feeling comfortable with the staff, willing to work  
11 with that particular administrative staff.

12 Could be that the teacher wants to be in a  
13 specified program in that school, that is, wants to  
14 be part of an innovative project or particular  
15 instructional program.

16 It could be that a teacher would choose to  
17 go there because it's the school closest to the  
18 residence of the teacher.

19 It could be a school whose calendar is  
20 compatible with the calendar that the teacher's  
21 children might be on.

22 It could be how many English language  
23 learners there would be in that school, whether the  
24 teacher would feel comfortable working with  
25 students who would need extra help with language

1 could do the same as the three-track calendars.

2 BY MR. VILLAGRA:

3 Q Would it also, necessarily, be the same  
4 track or would it depend on how the district had  
5 designed the calendar?

6 A It could depend on how the district  
7 designed the calendar.

8 Track B in one calendar is not the same as  
9 track B in another calendar.

10 Q Unless for some reason the district has  
11 designed them to be more or less equivalent to each  
12 other; is that correct?

13 A That's correct.

14 But I was speaking more of the nature of  
15 the calendars, rather than what a district might  
16 do.

17 Q I want to turn your attention to page 37  
18 of your report, Exhibit 12?

19 A All right.

20 Q At the very bottom of the page, the last  
21 sentence says: "The operational calendar of the  
22 school, however, may be the least  
23 important of several factors that  
24 affect it, which school a teacher  
25 chooses to teach."

1 difficulties.

2 There are a whole lot of factors that come  
3 into play, where a teacher chooses to teach.

4 If, in deed, they are allowed the option  
5 of choosing which of the schools, that's not true  
6 in every district.

7 Q If the teacher does have a choice, are you  
8 a study of ranking the factors that lead a teacher  
9 to choose?

10 A I couldn't name such a study, now.

11 Q What is your support, then, for saying  
12 that the calendar may be the least important of the  
13 factors that effect at which school a teacher  
14 chooses to teach?

15 A That's my own judgment.

16 For some teachers, a calendar is not a  
17 factor at all.

18 But for some, it may be.

19 Q But that's your own personal opinion?

20 A Yes.

21 Q Is it formed by conversations with  
22 teachers?

23 A Yes, sure.

24 Q I don't want you to guess.

25 A Yes. I have talked to enough teachers,

1 that say: It's not the calendar that makes the  
2 difference.  
3 It might be as well as my children go on  
4 the calendar and this school goes on the same  
5 calendar, that might be a situation where calendar  
6 is important.  
7 But on the other hand, there are other  
8 teachers who say it's not the calendar at all.  
9 I want to be part of this innovative  
10 program.  
11 Q So your opinion is that it may or it may  
12 not be the primary factor?  
13 A Which page are we on?  
14 MS. DAVIS: 37, going on to 38.  
15 THE WITNESS: That's what I say, may be  
16 the least of several factors.  
17 BY MR. VILLAGRA:  
18 Q Might it also, in some cases, be the most  
19 important?  
20 A It could be as well, I'm saying "may be."  
21 I don't say all cases.  
22 Q I want to turn your attention to page 32  
23 of your report.  
24 In the full paragraph, you say:  
25 "Dr. Mitchell, also, incredibly

1 Vague and ambiguous.  
2 THE WITNESS: That's my next question.  
3 As I said, it can change district by  
4 district and calendar by calendar.  
5 BY MR. VILLAGRA:  
6 Q I wish I could object to the report.  
7 It says: "Less preferred attendance  
8 tracks."  
9 Less preferred by whom; parents, teachers,  
10 students?  
11 A In this case, it would have to be their  
12 parents and their choosing.  
13 Q Parents and no one else?  
14 A The less preferred would be what parents  
15 choose to put their students on.  
16 Q Do you have any understanding of which  
17 tracks fill up first at Concept 6 schools in  
18 California?  
19 A I don't know which of the three would fill  
20 up first.  
21 Q Do you have an opinion on which tracks  
22 would fill up first?  
23 MS. DAVIS: Calls for speculation.  
24 THE WITNESS: My suspicion is track A  
25 fills up first.

1 finds fault with the practice of some  
2 school districts to track the gifted  
3 and talented education program, GATE,  
4 which often includes students with  
5 higher socioeconomic status on less  
6 preferred attendance tracks."  
7 Do you see that?  
8 A Yes.  
9 Q What do you mean by "less preferred  
10 attendance tracks"?  
11 A Whenever parents are given the choice of  
12 tracks, that is, parents can choose which they want  
13 their children to be on.  
14 That means that one or the other tracks  
15 may fill up faster than the others.  
16 And so, those that fill up first, would  
17 obviously be the preferred attendance track.  
18 And that can change district by district  
19 and calendar by calendar.  
20 Q Do you have any understanding as to which  
21 may be the preferred attendance track, if any, on  
22 the Concept 6 calendar?  
23 A Any understanding of which is the  
24 preferred track.  
25 MS. DAVIS: Preferred by whom?

1 BY MR. VILLAGRA:  
2 Q Why is that first?  
3 A It's the closest to the traditional  
4 calendar.  
5 Q For any other reason?  
6 A That would be the primary reason.  
7 Q What would be the second track likely to  
8 fill up, in your opinion?  
9 MS. DAVIS: Calls for speculation .  
10 MR. VILLAGRA: If you know.  
11 THE WITNESS: I would -- I don't know,  
12 specifically.  
13 But I would guess it would be C track.  
14 BY MR. VILLAGRA:  
15 Q Why do you believe it would be C track?  
16 A That would be because of the positioning  
17 of the vacation periods.  
18 Q And you're looking at page 8 of your  
19 report?  
20 A Yes.  
21 Q So A, because of the July-August vacation?  
22 A Yes.  
23 Q C, because of the May-June vacation?  
24 A Yes.  
25 Q In your opinion, it would be the preferred

1 tracks on the Concept 6 calendar?  
 2 A Yes.  
 3 Q If you would look at Exhibit 7, the  
 4 program guide.  
 5 A Yes.  
 6 Q Page 8 of 20.  
 7 A All right.  
 8 Q It's labeled State-EXP-CB 0855.  
 9 A Excuse me, I didn't follow that.  
 10 Q You may have grabbed the next exhibit  
 11 copy.  
 12 A There were two different days of -- I have  
 13 a different copy.  
 14 MS. DAVIS: Look.  
 15 THE WITNESS: Here it is. It's the same  
 16 copy.  
 17 Will you tell me again?  
 18 BY MR. VILLAGRA:  
 19 Q We're looking at the pros.  
 20 MS. DAVIS: Page 8.  
 21 THE WITNESS: Page 8 of 20.  
 22 BY MR. VILLAGRA:  
 23 Q The fourth pro, up from the bottom, says:  
 24 "Some families preferred staggered  
 25 vacation schedules."

1 Do you see that?  
 2 A Fourth from the bottom?  
 3 Q Yes.  
 4 A I see that, yes.  
 5 Q Based on what you have described to me  
 6 about the preference of parents for tracks A and C,  
 7 would you still say that families prefer staggered  
 8 vacation schedules?  
 9 A Some do.  
 10 The interesting thing is that even the  
 11 least preferred track has people that choose and  
 12 prefer that track.  
 13 Q The next pro that is listed here, it says:  
 14 "Provides calendar options that  
 15 more closely fit changing lifestyles  
 16 and work patterns."  
 17 Do you see that?  
 18 A I do.  
 19 Q Although Concept 6 might provide those  
 20 types of options, it seems if parents are  
 21 preferring track A and C, they are preferring  
 22 tracks that most closely resemble the traditional  
 23 summer vacation; isn't that correct?  
 24 MS. DAVIS: Assumes they are preferring  
 25 those two tracks.

1 THE WITNESS: It does assume they are  
 2 preferring the two tracks.  
 3 It doesn't negate that some people have  
 4 some other ideas about when vacation should be.  
 5 BY MR. VILLAGRA:  
 6 Q Some might.  
 7 A We're saying "some," here.  
 8 Q If tracks A and C fill up faster, doesn't  
 9 it suggest that most parents still prefer a summer  
 10 vacation for their children?  
 11 MS. DAVIS: Vague and ambiguous as to  
 12 "summer vacation."  
 13 THE WITNESS: Depends on what they  
 14 consider the right time to take the summer  
 15 vacation.  
 16 As I mentioned a couple of days ago or  
 17 yesterday, here, in California, particularly in  
 18 Southern California, September should really be  
 19 considered part of the summer season.  
 20 And even track B, on a three-track  
 21 calendar, would have a vacation period during that  
 22 very warm month which, in most counties in  
 23 California, is either the first or the second  
 24 warmest month of the year.  
 25 BY MR. VILLAGRA:

1 Q But if tracks A and C are filling up  
 2 faster or ahead of track B, doesn't that suggest,  
 3 and given the rationale you gave me, that track  
 4 A and C were preferred by parents because they were  
 5 closest to the traditional calendar; doesn't that  
 6 suggest that parents want their children off during  
 7 what is traditionally considered the summer?  
 8 MS. DAVIS: Assumes facts not in evidence.  
 9 THE WITNESS: There may be some of that.  
 10 You don't change societal attitudes  
 11 overnight.  
 12 It takes a long period of time before  
 13 these changes occur.  
 14 But we know they are occurring.  
 15 BY MR. VILLAGRA:  
 16 Q How do you know they are occurring?  
 17 A Because of families who choose tracks  
 18 other than just in the middle of the summer for  
 19 vacation periods.  
 20 Q Well, once track A and C fill up, is there  
 21 much choice left for parents as to what track they  
 22 want their kids at?  
 23 A For those who haven't been -- haven't  
 24 chosen yet, that's true.  
 25 As in life, when there are choices to be

1 made and only so many slots for a given entity,  
2 whatever it is. Once those fill up, the rest who  
3 have been chosen are given the other alternatives.

4 MS. DAVIS: Assumes facts not in evidence  
5 that parents don't choose B before the others fill  
6 up.

7 MR. VILLAGRA: Off the record.

8  
9 (TIME NOTED 4:02 P.M.)  
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1  
2  
3 I, the undersigned, a Certified  
4 Shorthand Reporter, do hereby certify:

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

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

17 IN WITNESS WHEREOF, I have this  
18 date subscribed by name.

19  
20 Dated: July 7, 2003  
21

22  
23 \_\_\_\_\_  
24 DAVID OCANAS  
25 CSR No. 12567

1  
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4  
5  
6  
7  
8  
9 I, CHARLES BALLINGER, do hereby  
10 declare under penalty of perjury that I have read  
11 the foregoing transcript; that I have made such  
12 corrections as noted herein, in ink, initialed by  
13 me, or attached hereto; that my testimony as  
14 contained herein, as corrected, is true and  
15 correct.

16 Executed this \_\_\_\_ day of \_\_\_\_\_,  
17 2003, at \_\_\_\_\_,  
18 (City) (State)

19  
20  
21 \_\_\_\_\_  
22 CHARLES BALLINGER  
23 Volume III  
24  
25