APPEARANCES

For the Plaintiffs Eliezer Williams, et al.:
ACLU FOUNDATION OF SOUTHERN CALIFORNIA
BY: PETER J. ELIASBERG, ESQ.
MARK D. ROSENBAUM, ESQ.
1616 Beverly Boulevard
Los Angeles, California 90026

For the Defendant Delaine Eastin, State Superintendent of Public Instruction, State Department of Education,
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
BY: ANTHONY V. SEFERIAN, ESQ.
1300 I Street, Suite 1101
Sacramento, California 95814

For the Defendant State of California:
OMELVENEY & MYERS LLP
BY: DAVID HERRON, ESQ.
400 South Hope Street
Los Angeles, California 90071

The Intervener:
CALIFORNIA SCHOOL BOARD ASSOCIATION
BY: ABE HAJELA, ESQ.
3100 Beacon Boulevard
West Sacramento, California 95691

For the Los Angeles Unified School District:
STRUMWASSER & WOOCHER LLP
BY: KEVIN S. REED, ESQ.
100 Wilshire Boulevard, Suite 1900
Santa Monica, California 90401

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BE IT REMEMBERED, that on Friday, November 16, 2001, commencing at the hour of 10:37 a.m., thereof, at the offices of Morrison & Foerster, 400 Capitol Mall, 26th Floor, Sacramento, California, before me, TRACY LEE MOORELAND, a Certified Shorthand Reporter in the State of California, there personally appeared
DUWAYNE BROOKS,
called as a witness herein, who, having been previously duly sworn to tell the truth, the whole truth, and nothing but the truth, was thereupon examined and interrogated as hereinafter set forth.

EXAMINATION BY MR. REED

Q. Mr. Brooks, you understand you're still under oath this morning?
A. Yes.

Q. Yesterday I handed you some documents, which I believe you have in front of you, and I would like to begin by dealing with the document entitled OPSC workload list SFP applications funding new construction as of 11/06/01.

(Exhibit SAD-203 was marked.)

Q. BY MR. REED: So we've asked the reporter to mark this as Exhibit SAD-203.

Do you recognize the document, Mr. Brooks?
A. Just the one that's titled funding new construction as of 11/6?
Q. Correct.
A. And do I recognize it?
Q. Yes, do you know what it is?
A. You gave it to me last night.
Q. Do you recognize it to be the workload list that OPSC publishes on its website?
A. I don't know if it is the workload list. It's titled the OPSC workload list.
Q. And the workload list is comprised of those applications that have been received by the office of public school construction, but are not yet ready to go to the state allocation board for approval; is that correct?
A. Well, I think it's a little more detailed than that. These are the applications that have been returned from the state agencies that have responsibility to sign off for their area of approval and been given to the office of public school construction, and OPSC is reviewing them to ensure that they are actually -- they have all of the -- meet all the requirements to be presented to the SAB for approval.
Q. So for the new construction program the projects represented on this list would be -- contain the universe of those projects for which districts have submitted an SAB form 50-04 and what the district believes to be the complete collection of approvals necessary to obtain funding from the state for a new construction project; is that correct?
MR. HERRON: Objection. Argumentative.
THE WITNESS: Since it's the responsibility of the office of public school construction to receive these documents and process them, I do not have personal knowledge that could confirm that this is the universe. I only know what OPSC tells me constitutes the workload list. I don't have personal knowledge that this is full, complete and accurate.
Q. BY MR. REED: The fourth column, 50-04, date received, do you understand that column to be the report by the OPSC as to when they accepted for filing a district's application for new construction funding on this exhibit?
MR. SEFERIAN: Objection. No foundation.
THE WITNESS: I do not have detailed knowledge regarding OPSC's internal processes or what the 50-04 date received column actually means.
Q. BY MR. REED: Okay. I'd like to refer you to the third page of Exhibit SAD-203, the row near the bottom of the table which says new construction funding total. Do you see that?
A. Yes.
Q. Do you understand the numbers represented there to be the total for the applications that are on the workload list?
MR. SEFERIAN: Objection. No foundation.
Q. BY MR. REED: Would you understand it to be the case from reviewing this form that as of November 6th, 2001, there existed at OPSC on their workload list an excess of $640 million worth of new construction applications?
MR. HERRON: Objection. Lacks foundation.
THE WITNESS: In looking at the document, I can't tell by this document whether the $210 million is to be added to the 432 million.
Q. BY MR. REED: The column for the 210 million is designated financial hardship, correct?
A. That's what the document says.
Q. And is it your understanding that when you, sitting on the SAB, approve a project, that the funding for a new construction project frequently has two components, one is the state grant and the other is the financial hardship component?
MR. HERRON: Objection. Compound.
THE WITNESS: That's not typically the way that it's presented to the state allocation board members.
Q. BY MR. REED: The state allocation board members, when you are approving an application at one of your meetings or approving a list of applications for allocations at one of your meetings, will be given a different list; isn't that correct?
MR. SEFERIAN: Objection. Compound question.
MR. HERRON: Argumentative.
THE WITNESS: The agenda for the state allocation board contains consent items that are formatted differently than this, as I recall.
Q. BY MR. REED: But you don't recall, sitting here today, whether that consent agenda separates the new construction grant from the financial hardship grant component of an application?
A. I do not.
MR. REED: I'd like to have marked as Exhibit 204 a document entitled school facility program, new construction unfunded approvals as of October 24th, 2001, a 15-page document. I believe I shared it with you and your counsel yesterday.

MR. HAJELA: Go off the record a second?

MR. REED: That's fine.

(Exhibit SAD-204 was marked.)

Q. BY MR. REED: Mr. Brooks, is this the approved but unfunded list that you referenced in your deposition testimony yesterday?

A. This is the -- it appears to be the document that was in the agenda for the state allocation board of October 24th, and it is titled new construction unfunded approvals.

Q. I'd like to refer you to page 15 of this document, and I want to deal with the total number. There are three columns there. The third one from the right-hand margin is labeled excessive hardship. Is it your understanding that that is the component of a new construction apportionment request that is to be funded out of the hardship pot?

MR. SEFERIAN: Objection. No foundation.

THE WITNESS: The portion of the hardship pot -- as we talked about before, hardship has three primary components, facility, financial and excessive. This appears to be the component that, for these projects on the list, totals an excessive hardship. Is it your understanding that that is the component of a new construction apportionment request that is to be funded out of the hardship pot?

MR. SEFERIAN: Objection. No foundation.

THE WITNESS: As a member of the state allocation board, if I were to look at this column at an allocation board meeting, that is probably what I would conclude.

Q. BY MR. REED: Okay. What I want to clarify is that the numbers represented in these three columns are distinct and separate from one another, in other words, the financial and facility hardship component number is an amount requested in an apportionment in addition to the new construction apportionment. Is that your understanding?

MR. SEFERIAN: Objection. Calls for speculation.


THE WITNESS: That appears to be what's represented by this chart.

Q. BY MR. REED: In other words, to understand the total amount of projects that comprise the unfunded list, the dollar value of the approved but unfunded list, one would add those three total columns; is that correct?

A. Yes. There may be a provision that allows for funding for facility hardship on a monthly basis.

Q. Okay. Now, facilities hardship projects would be funded out of the hardship pot, correct?

A. Correct.

Q. And there is no money left in the hardship pot as of now; is that correct?

A. That's not correct.

Q. Okay. How much money is left in the hardship pot, do you know?

A. At a prior allocation board meeting at my request we separated facility hardship from the remaining hardship pots and we have -- we are reserving funds for facility hardship because they refer to health and safety problems in the schools. So we do have, my best recollection is, somewhere in the area of 25 to 35...
million dollars that we've set aside specifically for facility hardships.  
Q. And a project that receives a facility hardship apportionment, do they receive 100 percent of the project -- let me rephrase that -- do they receive 100 percent of the apportionment out of the facility hardship pot?  
MR. SEFERIAN: Objection. Incomplete hypothetical.
MR. HERRON: Vague and ambiguous.
THE WITNESS: I don't know the details of that mechanical aspect of the program.  
Q. BY MR. REED: Is it the case that a facility hardship apportionment is typically 100 percent of the cost, in other words, there's no local match to a facilities hardship apportionment?  
MR. SEFERIAN: Objection. Calls for speculation.
THE WITNESS: That's my understanding of how the program works.
Q. BY MR. REED: But sitting here today you're not sure whether the 100 percent comes all out of the facility hardship pot or whether maybe only half of it does?  
A. We've had problems in the past and that is one reason, as I mentioned in my prior testimony, in the new state bond why I have asked that, for instance, the excessive hardship not be part of the hardship pot, that that comes out of the new construction pot because of the difficulty, the interplay in the two pots where one pot might have funds and the other not and the project gets stalled because of that technical barrier. And I am not absolutely certain whether the financial hardship facility hardship is treated the same as the excessive hardship.  
Q. Okay. Now, going back, if you could for a moment, to Exhibit SAD-203, the workload list. Under the current board rules, do you understand it to be typically the case that a district that makes an application in one quarter, one calendar quarter is -- will have that application heard by the board or presented to the board at its meeting at the end of the following quarter?  
THE WITNESS: The executive director of the office of public school construction, which is responsible for processing the applications, has told the board that they will make every effort to schedule each project that meets the cutoff for the prior quarterly allocation period, that they'll make every effort that that project will be on the agenda for the subsequent quarterly allocation period. I do not believe that that is an absolute rule, right, law.  
Q. BY MR. REED: And, in fact, as this exhibit demonstrates, there are some projects listed on it that designate an SAB received date earlier than the fourth quarter of '01, isn't that correct?  
THE WITNESS: I haven't reviewed the document to that level of detail.
Q. BY MR. REED: Do you understand it, though, to be the case that the workload list at any given time would roughly represent the applications presented to OPSC over, at most, a three-month period?  
MR. SEFERIAN: Objection. Vague and ambiguous as to "roughly."
THE WITNESS: The goal of the allocation board and the office of public school construction is to process any application that's received prior to the cutoff date of the quarter, for the subsequent quarter. That's the goal.
Q. BY MR. REED: So, in fact, Exhibit SAD 203 -- let me rephrase that. If we assume for the purposes of this question that the 50-04 date, received date, designates the date on which the application was presented by a district to the office of public school construction, assuming that's correct, is it fair to conclude from Exhibit SAD-203 that the total amount requested for new construction projects as represented on page 3 of this document represents approximately two months' worth of applications?  
MR. HERRON: Could we please have the question reread, if you don't mind.
(Record read.)
THE WITNESS: In order to answer that completely accurately, you'd have to go through every one of these line items on these two-and-a-half pages and look at the date received and determine whether they're two months prior to the date that they'll be going to the allocation board, or whatever your question referred to. I haven't done that line-by-line calculation.
Q. BY MR. REED: And, I'm sorry, I'm not trying to
ask for that line-by-line calculation, I'm just trying
to help us interpret for the record the workload list.
It appears to be sorted in date order received,
sorted by that column. There are, in fact, a dozen or
so applications represented in the top half of the first
page which have dates prior to September, but the
remaining two pages seem to be populated by projects
that have received dates of the 6th of September through
the end of October. Do you follow where I am?
MR. SEFERIAN: Objection. Document speaks for
itself.
THE WITNESS: Yes. Yes, I follow where you
are.
Q. BY MR. REED: Is it -- do you understand, then,
that this document can be interpreted to say that the
majority of these applications represented on this
workload list were received in the two-month period
beginning September 6th of '01 and ending at the end of
October?
MR. HERRON: I'm sorry, interpreted by whom?
MR. REED: Mr. Brooks.
MR. SEFERIAN: Objection. No foundation.
Calls for speculation. Assumes facts not in evidence.
THE WITNESS: Let me look in the document in
detail then if you want that type of response. I'll
look at it line by line item and make sure that
every entry subsequent to September 6th appears to be
within the month of September, beginning with September
6th and ending with October 29th, '01.
Q. BY MR. REED: Is it your understanding based on
the review of the workload list, then, that over the
course of the last two months somewhere in the
neighborhood of $600 million worth of new construction
applications have been presented to the office of
public school construction?
MR. SEFERIAN: Objection. No foundation.
Calls for speculation. Assumes facts not in evidence.
THE WITNESS: That appears to be what the total
column represents.
Q. BY MR. REED: Do you have an understanding from
your experience with the state allocation board with
respect to the dollar amount of new construction
applications that have been presented to -- let me
rephrase that -- that have been accepted by OPSC for
presentation to the board for funding? Let me try this
all over again.
Do you have an understanding based on your
experience as an SAB member with respect to what the
average dollar value is of applications accepted by OPSC
for new construction applications for presentation to
the board for funding?
MR. HERRON: Objection. Vague and ambiguous as
to time. Vague and ambiguous as phrased. Calls for
speculation.
MR. REED: That's fair enough. I want to deal
within the year 2001.
THE WITNESS: The average dollar -- for new
construction for every project?
MR. REED: Yes.
THE WITNESS: That information is not presented
to the state allocation board in that manner.
Q. BY MR. REED: Could one calculate that number
by adding together between the unfunded list and the
workload list the total number of applications
designated as received by the SAB between -- beginning
in January of 2001 to date?

MR. SEFERIAN: Objection. Incomplete hypothetical. Calls for speculation. Vague and ambiguous as to received by the state allocation board.

THE WITNESS: Do you mean by received by the allocation board what we've tried to distinguish in prior questions, received versus on the workload list?

MR. REED: No. Let's talk about being on the workload list complete and ready for processing for presentation to the state allocation board.

MR. SEFERIAN: Same objections.

THE WITNESS: Technically those projects that were on the workload list in January, February or March have been moved from the workload list to the approved but unfunded list, so technically you do not have projects going back to January that are still on the workload list.

Q. BY MR. REED: And to find the dollar value of those projects, one could go to the approved but unfunded list or the consent agenda for the SAB's September meeting for that universe of projects that, in fact, got funded in September; is that correct?


THE WITNESS: The staff does not give the board members information in that format, so I would not know what the average per project is for that period or for any other period unless we directed the staff to prepare the information for us in that format.

Q. BY MR. REED: I'll represent to you that if one adds the unfunded list to the workload list for applications designated 50-04 date received subsequent to September 27th, 2000 to October 29th, 2001, and divide by the number of months in that period, it represents a number roughly in the 180 to 200 million dollar range of applications.

Does that number seem too high, too low or about what you would have expected?

MR. SEFERIAN: Objection. Argumentative.

Assumes facts not in evidence.

Would you read the question, please.

(Record read.)

MR. SEFERIAN: Objection. Argumentative.

Vague and ambiguous as to "applications." Assumes facts not in evidence.

MR. REED: Let me clarify. I'm talking about new construction.

THE WITNESS: New construction only?

MR. REED: Yes.

MR. SEFERIAN: Same objections.

THE WITNESS: The number and dollar amount of applications fluctuates significantly. There is a crunch of applications submitted the last day of the quarterly funding period. In fact, we told people not to plan to be off for Christmas because this quarterly funding period ends December 28th. So on a monthly basis the figure varies significantly.

Staff at OPSC have informed me that over the course of several months the average per month will vary anywhere from 100 million to $400 million depending on what period of time we're looking at. So I have -- unless we narrowed it down, unless we got into the minds of the school districts about when they intend to file their applications, it's difficult to say what we would expect since the dollar amount has varied so widely over the last several months.

Q. BY MR. REED: You've heard the use of the term pipeline, correct?

A. Yes.

Q. What do you understand that term to mean?

MR. HERRON: In what context, the shipment of oil or what? Please clarify, if you would. Vague and ambiguous.

Q. BY MR. REED: Do you understand the context, Mr. Brooks?

MR. SEFERIAN: Objection. Calls for speculation.

MR. HERRON: He doesn't have to speculate about it, Kevin. I object as vague and ambiguous, and I think you should rephrase.

Q. BY MR. REED: Do you think I'm talking about oil?
A. Are you --
MR. HERRON: You are not going to sit here and harass the witness either. Either rephrase the question or he'll try to finish it as you put it.
THE WITNESS: I do not think that you're talking about oil.
Q. BY MR. REED: Do you understand the term pipeline as it's used in school construction context -- school construction funding context?
THE WITNESS: Yes.
Q. BY MR. REED: What do you understand that term to mean?
A. To me it's synonymous with the workload list.
Q. As district from the unfunded list, correct?
A. Correct.
Q. In order for one to understand the current number of school construction applications that are complete -- strike that.
22 In order to understand the dollar amount of the total new construction applications that are currently being processed for presentation to the board or which have been presented to the board and put on an approved but unfunded list, one would add the totals from the pipeline to the totals of the approved and unfunded list; is that correct?
THE WITNESS: I've forgotten what that number that you're searching for really is. Can you refresh my memory about that number?
Q. BY MR. REED: Sure. To understand the total dollar amount of applications on the workload -- I'm sorry, the total dollar value of new construction applications on the workload list plus the approved but unfunded list, one would need to add the totals of those five columns; is that correct?
MR. SEFERIAN: Objection. Documents speak for themselves.
THE WITNESS: I think you could accomplish it by adding the three columns. One is -- document SAD-204 already has a total, so you wouldn't add the two previous columns to that.
Q. You could reach the figure that you're searching for by adding the total column, 1,373 -- $1,373,390.34, add that to $432,288,942, plus 210,072,035, and you would reach the total of the approved but unfunded and the workload list through November 6th, 2001.
Q. BY MR. REED: Okay. Do I understand, then, that you read the total on page 15 of Exhibit 204 in the far right column on the last page, the number 1,373 billion and some change, to be the total of the two columns immediately to its left?
MR. SEFERIAN: Objection. Calls for speculation. Misstates the witness' testimony.

THE WITNESS: It appears that the way that the document is structured, that's what whoever prepared the document intended that column to represent.

Q. BY MR. REED: Would you like to take a moment to do the math, at least roughly, on those two columns and ensure yourself that that is correct?

MR. HERRON: Can we take a short break to do that?

MR. REED: Absolutely.

(Recess taken.)

Q. BY MR. REED: Mr. Brooks, you've had a chance to look more closely at the numbers, and I apologize 15 pages worth of Excel spreadsheet is hard to digest in the deposition context. Having reviewed it, do you have an understanding as to whether, in fact, the numbers in the third and second from the left columns on Exhibit 204 are different from the number in the far right column?

MR. SEFERIAN: Objection. Vague and ambiguous.

MR. HERRON: We'll stipulate they're different.

THE WITNESS: Yeah, they do not add up to the third column. As you indicated before, you'd have to add all five columns.

Q. BY MR. REED: Okay. So with that understanding, I will represent to you that if one adds those five columns together, those totals in those five columns ends up with a total of approximately $2.7 billion for new construction projects between the workload list and the unfunded list.

Does that number seem to you to be too high, too low or about your expectation?


MR. HERRON: As for the modernization funding as well, that there will be, as of December of '02, a big number of unfunded modernization applications for which there will not be submitted to the state for funding at a rate of 150 to $200 million per month between now and December of 2002, do you have any estimate as to the amount of un -- I'm sorry, do you have any estimate as to how large the new construction unfunded list is likely to be as of December of 2002?


MR. HERRON: Calls for calculus. The numbers are what the numbers are, aren't they?

THE WITNESS: If I accept your assumption of taking one number and adding another number to it over a period of time for a number of months, simple math would give us the answer that you're looking for. I'm not going to do that simple math in my head.

Q. BY MR. REED: And I'm not asking you to. What I'm really looking for is whether you have an understanding that as of December 2002, whether you believe that it is likely that there will be an excess of $4 billion of unfunded but approved new construction projects?

MR. SEFERIAN: Objection. No foundation.

THE WITNESS: What's the number that you are anticipating by December of 2002?

MR. REED: Well, that's kind of the number that I'm asking you, is what you're anticipating by December of 2002.

MR. HERRON: Except you gave him the number. Wasn't it 4 --

MR. REED: Four billion.


THE WITNESS: In order to confirm or deny that number, I'd have to do the math, I'd have to deduct the remaining funds from Proposition 1A, including the funds that are available for the remaining quarters, $450 million that will be allocated in August 2002, and add and subtract, so it's going to be a big number. That's what we're trying to get at. We are not going to have enough money to fund all the applications, and it's going to be a big number that we need additional funds for in the next state bond.

Q. BY MR. REED: Do you understand the same to be true for the modernization funding as well, that there will be, as of December of '02, a big number of unfunded modernization applications for which there will not be
enough money in the next bond to fund?
10 MR. HERRON: Objection to the extent it calls
11 for speculation.
12 You may respond.
13 THE WITNESS: Big number means different things
to different people. But, yes, I think there will be a
similarly large number of projects for modernization
that won't get funded similar to new construction
projects that won't get funded.
Q. BY MR. REED: Do you have an opinion with
respect to how -- in the circumstance of a shortfall
like that, how the state is to allocate the money as
amongst the projects that have been presented?
MR. SEFERIAN: Objection. Calls for an
inadmissible opinion. Vague and ambiguous.
Would you read the question, please.
(Record read.)
MR. SEFERIAN: Vague and ambiguous as to
shortfall. Incomplete and improper hypothetical
question.
THE WITNESS: During which period of time are
you referring to how the board will allocate funds?
MR. REED: That's fair. Let me clarify.
Q. Going forward from December of 2002, if one
assumes that there is insufficient funds in a new
statewide bond measure to fund all of the projects
currently on the unfunded list for new construction
projects, do you have an opinion as to how the state
should apportion that as amongst those projects?
MR. HERRON: I'm sorry, are you asking him to
anticipate what the new bond measure will provide?
MR. REED: I think he testified as to what the
numbers that are currently being discussed are.
MR. HERRON: Right. But you're asking how it
would be allocated. Are you asking him to tell us what
you think -- what he thinks the new bond measure will
provide if indeed it's passed in November?
That seems to be what your question is asking
for, and to the extent it is asking that, I object as
calling for speculation. I think it is somewhat asked
and answered too. Peter got into all the nooks and
crevasses of this very topic in the last two days.
You may respond if you understand.
MR. SEFERIAN: Objection. Calls for an
inadmissible opinion. Incomplete hypothetical question.
Vague and ambiguous. Calls for speculation.
THE WITNESS: My answer would be different if
the November 2002 bond passes versus whether it fails.
Q. BY MR. REED: Assuming it passes, what would
your answer be?
MR. SEFERIAN: Objection. Assumes fact not in
evidence. Incomplete hypothetical. Vague and
ambiguous. Calls for an inadmissible opinion. Lacks
foundation.
THE WITNESS: My answer would be that it would
be allocated in a manner that the joint legislative
conference committee, the legislature and the voters
approve the language in a successful November 2002 state
general obligation bond.
Q. BY MR. REED: Prior to the implementation of
priority points in the school facilities program, was it
the case that projects got funded in date order received
by the OPSC?
MR. HERRON: Objection. Asked and answered in
the last two days.
MR. SEFERIAN: Objection. Assumes facts not in
evidence. Lacks foundation.
THE WITNESS: Technically it was not the date
order received. You could have an application that was
received prior to another application, but they were
funded in the order that they were -- received all of
the necessary approvals and presented to the allocation
board for funding.
Q. BY MR. REED: But prior to the implementation
of priority points, was it your understanding as a
member of the SAB that in the case of a shortfall of
funds, the projects that were submitted to the OPSC and
deemed eligible for funding first would be funded first,
and those projects that came in after the funds ran out
would not be funded?
MR. SEFERIAN: Objection. Incomplete
hypothetical. Vague and ambiguous as to "shortfall" and
"projects."
MR. HERRON: It's compound as well.
THE WITNESS: No, that's not my understanding.
Q. BY MR. REED: Yesterday you stated the opinion
that districts when planning construction projects would
sometimes rush to get into line. Do you recall that
testimony?
A. Yes.
Q. Why do you understand that they would rush to
get into line?
MR. SEFERIAN: Objection. Assumes facts not in
evidence. Argumentative.
THE WITNESS: To obtain funding.
Q. BY MR. REED: Why would it matter to get there
first for a district?
MR. SEFERIAN: Objection. Calls for
speculation. Overly broad. Vague and ambiguous.
THE WITNESS: Because when funds are gone, they
don't get funding until the funds are replenished.
Q. BY MR. REED: And if they got there early, then
they might get there when the funds are still there; is
that correct?
MR. SEFERIAN: Objection. Vague and ambiguous.
MR. HERRON: Calls for speculation. Incomplete
and improper hypothetical. Asked and answered.
THE WITNESS: Early is subjective. If they got
to the state allocation board on an approved agenda
before the funds were completely depleted, then they
would get funded. This is prior to the implementation
of priority points.
Q. BY MR. REED: When you returned to the school
facilities planning division, did you immediately become
Ms. Eastin's designee on the SAB?
A. It was -- I do not recall whether Ann Evans'
last meeting was November or December of 1998. If it
wasn't the first board meeting following my return, it
was at least the second.
Q. Okay. So do you have any memory sitting here
today as to whether you sat at the first meeting of the
SAB at which Proposition 1A funds were apportioned?
MR. HERRON: Objection. Calls for speculation.
THE WITNESS: No. As I indicated, I do not
recall whether I sat at the allocation board meeting in
December or whether my first meeting was January.
Q. BY MR. REED: And the first meeting in which 1A
funds went out was the December meeting, correct?
A. Yes.
Q. And at that time was there an unfunded list for
those modernization projects created?
MR. SEFERIAN: Objection. Calls for speculation.
THE WITNESS: There was an approved but
unfunded list.
Q. BY MR. REED: So is it the case that the
approved but unfunded list created by the SAB, at least
for modernization applications, was not implemented as a
result of priority points?
MR. SEFERIAN: Objection. No foundation.
THE WITNESS: Priority points do not apply to
modernization, period. They only apply to new
construction by law.
Q. BY MR. REED: In your experience as a member of
the SAB and your work in the Department of Education,
have you formulated an understanding with respect to
whether school districts or facilities executives expect
to be funded when the next bond is passed as long as
they received an approved but unfunded designation from
the state allocation board?
MR. HERRON: Objection. Incomplete and
improper hypothetical. Calls for speculation. Vague
and ambiguous as phrased.
THE WITNESS: I am certain that there are some
school districts out there that believe that they
probably will not be funded.
Q. BY MR. REED: On what do you base that
understanding?
A. Their comments to me.
Q. Do you understand it to be a priority of CASH
to ensure that out of the next statewide bond, the
approved but unfunded list is fully funded?
MR. SEFERIAN: Objection. Vague and ambiguous
as to "priority." Lacks foundation. Calls for
speculation.
THE WITNESS: I have not had such conversations
with CASH.
MR. HERRON: We've been going about an hour. When we reach a convenient stopping point, could we take a break.

MR. REED: This is a good spot.

(Recess taken.)

Q. BY MR. REED: Mr. Brooks, yesterday you stated that there were still some Proposition 203 funds available for the SAB to apportion; is that correct?

A. Yes.

Q. Do you understand as to whether those Prop 203 funds may have become available because of the SAB rescinding apportionments that were made out of that source to districts?

A. I don't know that for certain. That sounds logical. I do know that there are funds that are returned because the projects didn't utilize the total amount.

Q. Is there any other reason you can think of there would still be Prop 203 funds available?

A. Proposition 203, like Proposition 1A and every other proposition before and after, lists the types of things that qualify for funding. There may have been some money left over from some of the categories of funding that weren't necessarily new construction or modernization. I know there's some money in there for the Northridge earthquake. Things of that nature.

Q. Okay. I want to shift gears and talk about the calculation of eligibility within the school facilities program under Proposition 1A and SB 50.

In order to determine eligibility, one of the things a district must do is inventory the total capacity it has to house pupils; is that correct?

MR. SEFERIAN: Objection. Vague and ambiguous as to "eligibility."

THE WITNESS: They have to calculate their current capacity to house students, is that your question?

MR. REED: That's my question.

THE WITNESS: I believe that's correct.

Q. BY MR. REED: And they do that on the form SAB 50-02?

A. My office is not the office that's responsible for processing the applications. I deal primarily on a policy level. I do not have detailed, intimate knowledge of the mechanics of other state agencies that are involved in the process.

I try to stay as knowledgeable as I can about the mechanics so that I know whether or not the policy decisions that we're making are practical when they get down to the implementation phase, but I do not have detailed knowledge of the mechanics of the program that's operated by other state agencies.

Q. I appreciate that. I'll try and keep this on a policy level. That is my intention.

You do, as a member of the SAB, approve the eligibility applications of districts, right?

A. On the advice of staff who are intimately knowledgeable of the law and the requirements to receive approval, we adopt a consent calendar based on staff recommendation that the applications meet all of the requirements.

Q. Okay. In general the way in which the capacity of a district to house its pupils is calculated begins with the calculation of the number of teaching stations that a district has, correct?


Mr. Herron: Counsel is testifying. Just because he says it's so doesn't mean it is, and if you don't have knowledge, you can let him know and he can move on to something you do know about.

THE WITNESS: It's my understanding that that is one of the elements that's reviewed during the process.

Q. BY MR. REED: Now, adjustments are made to that raw calculation of teaching capacity as part of the process of approving a district's eligibility; is that your understanding?

MR. HERRON: Objection. Calls for speculation. Counsel is testifying.

THE WITNESS: The regulations that I have read, as I recall, contain about a full page of additions and deductions to that calculation. I have not memorized those regulations. I do not deal with them on a daily basis. I do not have intimate knowledge of the mechanical aspects of the program operated by offices outside of my control.

Q. BY MR. REED: One of the adjustments that's made, I just want to know if you have an understanding, is that a district's capacity is increased in that calculation if the district receives multi-track year-around educational operational grants; is that correct?

MR. HERRON: Objection. Calls for speculation. I think he's fairly well told you a couple of times he doesn't have that kind of knowledge. You want to ask that as a foundational question.

THE WITNESS: Would you repeat the question, please.

MR. REED: Could I have it read back.
MR. SEFERIAN: Objection. Calls for an inadmissible opinion.

THE WITNESS: No.

Q. BY MR. REED: Have you heard in the context of the school facilities program the term MTYRE op grant hit?

A. Yes.

Q. What do you understand that term to mean?

A. It is a term that -- it does not apply to the -- necessarily to the operational grant. The hit -- let me back up.

You said that the calculation was increased.

The calculation is actually decreased.

Q. Okay.

A. That's why I said no to your question. It's a decrease, not an increase.

Q. It's an decrease of eligibility, correct?

A. Yes.

Q. So if a school district operating an MTYRE school receives an operational grant from the state, then their eligibility in the school facilities program is decreased?

MR. SEFERIAN: Objection. Incomplete hypothetical question. Vague and ambiguous.

THE WITNESS: It is decreased, and it varies from district to district, the amount of the decrease.

Q. BY MR. REED: Because there are some exemptions from the increase, correct?


THE WITNESS: The eligibility is decreased because in receiving the operational grant, the district receives a calculation that is called the cost avoidance of state construction, and because they received a calculation -- an amount for the cost avoidance of state construction, we assume that those students will not be housed in a project that is funded by the state and so those students are deducted.

Q. BY MR. REED: Is it your understanding, again, on a policy level, that by doing that calculation, the state is, in effect, deeming that a student on a multi-track calendar, for which the district receives an operational grant, is to be housed?

MR. SEFERIAN: Objection. Overly broad. Vague and ambiguous. It calls for an inadmissible opinion.

ARGUMENTATIVE.

THE WITNESS: Given the way that the mechanics work, the legislature presumably made that assumption because the operational grant is tied to the cost avoidance of state construction. That appears to be the legislative intent in developing the operational grant program.

Q. BY MR. REED: Okay. When calculating teaching stations, is it your understanding that portable classrooms are considered teaching stations, included in the capacity of a school district?

MR. HERRON: Objection. Calls for speculation.

THE WITNESS: All portables or some portables?

MR. REED: Some portables.

MR. SEFERIAN: Objection. Vague and ambiguous.

THE WITNESS: Some portables are excluded from the calculation.

Q. BY MR. REED: Which portables are excluded, in your understanding?


THE WITNESS: Those portables that exceed 25 percent of the number of permanent classrooms in the district.

Q. BY MR. REED: Any others?

MR. SEFERIAN: Same objections.

THE WITNESS: If there were any portables that were less than 700 square feet, they would be excluded.

THE WITNESS: The classroom that they are in is determined not to be an existing classroom.

Q. BY MR. REED: Is that not the same as saying that under the school facilities program, that the
students in that classroom are unhoused?

MR. SEFERIAN: Objection. Vague and ambiguous.

Argumentative. Misstates the witness' testimony.

THE WITNESS: It could be semantics. It could -- different people could have different interpretations of unhoused.

Q. BY MR. REED: Okay. When determining a school district's eligibility for state school construction money, does the state in any way differentiate between districts which operate multi-track calendars and those that do not? And, again, I'm talking eligibility only.


MR. HERRON: Calls for speculation.

THE WITNESS: Do they differentiate in any way?

MR. REED: Yes.

THE WITNESS: Whatsoever?

MR. SEFERIAN: Objection. Overly broad.

MR. REED: Yeah.

THE WITNESS: Yes.

Q. BY MR. REED: In what ways?

MR. SEFERIAN: Same objection.

MR. HERRON: And calls for speculation.

THE WITNESS: There are various ways, many of which I am not familiar with because they are detailed, mechanical operational provisions conducted by the office of public school construction. I do not know all of the ways.

Q. BY MR. REED: Going back to the portable question. In addition to portables in excess of 25 percent of a school's teaching stations and portables of less than 700 square feet, do you know of any other portables that are excluded from a district's capacity when determining eligibility?

A. Yes.

Q. What are those?

A. Portables that are purchased under the -- interim portables under the lease purchase school facilities program through the office of public school construction I believe are also considered nonpermanent counted teaching stations.

Q. Interim portables are typically those portables that a district may employ to house children during a construction -- modernization or new construction of a school?

MR. SEFERIAN: Objection. No foundation. Vague and ambiguous as to "typically."

THE WITNESS: That is typically when the portables are used in that sense, yes.

Q. BY MR. REED: Anything else besides interim portables?

MR. SEFERIAN: Objection. Lacks foundation.

THE WITNESS: Is the question are there any more or do I know any more specifically?

Q. BY MR. REED: Do you know of any more specifically?

A. There are more exclusions. I do not know every one of them because I do not deal at that level with this program.

Q. Do you know whether it's possible for a district receiving funding under the state school facilities program to build a classroom knowing that funding -- I'm talking about the school facilities program in existence since SB 50 -- to build a school with classrooms of less than 700 square feet?


THE WITNESS: You're saying does the program allow for that?

MR. REED: Yes.

THE WITNESS: To build classrooms less than 700 square feet?

MR. REED: Yes.

THE WITNESS: Technically that cannot occur because under the program a room that is less than 700 square feet, unless it's an RSP room, resource specialist room, or a pull-out room, technically is not a classroom in the eyes of the school facilities program.

So I guess the answer would be yes because there are RSP programs, there are pull-out programs, there's speech and hearing that are less than 700 square feet. Now, whether your definition is that's a classroom or that's an RSP program or a pull-out room depends on your definition.

Q. BY MR. REED: Setting aside those RSP and pull-out rooms, are you aware of any instance in which the SAB has approved funding for a new construction project that was used by a district to construct new classrooms of less than 700 square feet?

MR. SEFERIAN: Objection. Lacks foundation.

Vague and ambiguous as to "new classrooms."

THE WITNESS: Yes.

Q. BY MR. REED: How often is that occurring?

MR. SEFERIAN: Objection. Lacks foundation.

Calls for speculation. Overly broad.

THE WITNESS: I would only be speculating.
Q. BY MR. REED: Okay. Do you have any understanding as to whether Capistrano Unified has done that.

MR. SEFERIAN: Objection. Lacks foundation.

THE WITNESS: Yes.

Q. BY MR. REED: And on what do you base that understanding?

A. Facilities director told me.

Q. The facilities director for Capistrano Unified?

A. Yes.

Q. Is that Dave Doomey?

A. Yes.

Q. D-o-o-m-e-y. And were the classrooms built of that size ultimately -- I'm sorry, subsequently included within the capacity of Capistrano Unified when calculating their remaining eligibility for Prop 1A funding?

MR. SEFERIAN: Objection. Lacks foundation. Vague and ambiguous as to "that size."

MR. HERRON: Calls for speculation.

THE WITNESS: That is a function of the office of public school construction of which I do not have authority, and I do not have that knowledge.

Q. BY MR. REED: Okay. Do you have any understanding as to how many unhoused pupils Capistrano is deemed to have under the school facilities program?


THE WITNESS: I don't understand your question.

Q. BY MR. REED: Dealing with the policy level and your role as a member of the SAB, is it your understanding that the school facilities program attempts to house all unhoused pupils on an equal priority?

MR. SEFERIAN: Objection. Incomplete, improper hypothetical. Vague and ambiguous as to "equally."

Lacks foundation. Vague and ambiguous.

MR. HERRON: Calls for speculation.

THE WITNESS: Can you define "equal priority"?

Q. BY MR. REED: For example, does a student who is -- is an unhoused pupil on a Concept 6 multi-track calendar given any greater eligibility for funding than a student attending a classroom of less than 700 square feet?

MR. HERRON: New school construction funding?

MR. REED: New school construction funding.

MR. SEFERIAN: Objection. New school construction funding.


THE WITNESS: Since you prefaced it by saying on a policy level as opposed to a technical, mechanical program application level, it is the goal of the state allocation board to treat all students throughout the state in an equitable manner and to level the playing field for all school districts and try to make the funds accessible to every school district and every student in the state. On a policy level, that's the goal.

Q. BY MR. REED: Do you believe that it is a goal of the school facilities program to try to eliminate multi-track year-around educational programs?

MR. SEFERIAN: Objection. Vague and ambiguous as to "goal." Calls for an inadmissible legal opinion.

MR. HERRON: Vague as to time.

THE WITNESS: The school facilities program encompasses many, many people. I cannot say that everybody that is associated with the school facilities program would have that common goal.

Q. BY MR. REED: Okay. I want to take a moment to talk about the per pupil grant amounts. When a district makes an application for funding to the SAB, it receives its grant in functionally two components, the new construction grant and the land cost grant, site acquisition grant, and I want to speak outside of the context of financial or environmental hardship applications. Is that your understanding?

THE WITNESS: The school district would know that. And as I've stated several times, the office of public school construction, who is the entity responsible for determining those calculations, I assume, would have that information, but you'd have to talk to them.

Q. BY MR. REED: As a policy matter under the school facilities program, is it your understanding that the State treats all unhoused children equally?


THE WITNESS: I don't understand your question.

Q. BY MR. REED: Dealing with the policy level and your role as a member of the SAB, is it your understanding that the school facilities program attempts to house all unhoused pupils on an equal priority?

MR. SEFERIAN: Objection. Incomplete, improper hypothetical. Vague and ambiguous as to "equally."

Lacks foundation. Vague and ambiguous.

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A. That they receive money in two different apportionments?

Q. Not two different apportionments, but that an application essentially has two components, the new construction grants and the site acquisition grant?


THE WITNESS: I believe that's correct.

Q. BY MR. REED: And the new construction grant is calculated on a per unhoused pupil basis, correct?

MR. HERRON: Objection. Calls for speculation.

MR. SEFERIAN: Objection. Overly broad.

THE WITNESS: That is one component. There are other components, such as the excessive cost for geographics for urban adjustment, and probably other components that are administered by the office of public school construction.

Q. BY MR. REED: And the amount of the per pupil grant, the basic grant outside of the adjustments you've just described, is a number that is adjusted annually by the SAB; is that correct?

A. Is it annually or every other year?

Q. Either one.

A. It is either annually or every other year.

Q. Do you know what that amount is for elementary, middle school or high school, per pupil grants, as of now?

A. I have not memorized the amounts that are available for those different grade levels for modernization or new construction.

Q. Okay. I appreciate that. I can't do it either.

Is it your understanding that the per pupil grant amount for elementary school is somewhere in the neighborhood of $5,500 per unhoused pupil?

MR. HERRON: Objection. Calls for speculation.

Isn't this all a matter of just like regulation and the law? Do we really need to ask him about that?

MR. REED: If you're not going to raise foundational objections, then we don't.

MR. HERRON: I'm just thinking that I haven't heard much that hasn't already been gone into in the nook and cranny type examination that preceded us these past few days, but go ahead.

THE WITNESS: The per pupil amount is either at or above that level. I don't know that $5,500 is exactly what it is. I don't have the benefit of having it in front of me.

Q. BY MR. REED: Okay. And neither do I. What I do have in front of me are the fingertip facts we discussed yesterday, the exhibit number escapes me now. It might be 202.

And I wanted to just revisit that number and determine whether the construction cost per student number that is represented in the fingertip facts is -- how it was calculated.

I believe your testimony yesterday was it was determined either by Mr. Yeager or by staff of OPSC to be the double the state's share of apportionments made for new construction in each of those program levels; is that accurate?

A. May I see the exhibit?

Q. Absolutely.

A. I think the footnote describes how the figure was calculated. Which column are you referring to?

Q. Let's deal in No. 7, the basic construction date, the construction cost per student for elementary.

$16,728 is the amount?

A. Yes.

Q. And that number is considerably in excess of the per pupil grant amount currently designated in the school facilities program, and I'm trying to determine why.

MR. SEFERIAN: Objection. Overly broad. Lacks foundation.
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1 evidence.
2 THE WITNESS: No, we did not discuss that
3 yesterday. We discussed the report, but not that
4 particular fact.
5 Q. BY MR. REED: I'm wondering -- and I know it
6 was a while ago since you read it -- if you recall
7 having read that portion of the LAO report?
8 MR. SEFERIAN: Objection. Assumes facts not in
9 evidence. Argumentative.
10 THE WITNESS: I do not recall reading that
11 particular fact.
12 Q. BY MR. REED: Do you have an understanding
13 sitting here today as to under the school facilities
14 program what, for new construction funding, is the
15 general breakdown in percentage terms of state share and
16 local share of the cost of constructing new schools?
17 MR. SEFERIAN: Objection. Overly broad. Calls
18 for an inadmissible opinion. Lacks foundation.
19 MR. HERRON: Calls for speculation.
20 THE WITNESS: The actual cost of constructing
21 schools, or the breakdown of the percentage of state
22 versus local contribution?
23 MR. REED: I'm looking for the breakdown.
24 THE WITNESS: It's 50/50 by law.
25 Q. BY MR. REED: Let's talk about, in experience,

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over what it has cost the districts who have received
apportionment and constructed schools and made their
local match. Do you have an estimate as to what the
experience is with respect to ultimately how much of the
cost of constructing those schools has been borne by the
localities -- the local district in percentage terms?
MR. SEFERIAN: Objection. Calls for an
inadmissible opinion. Lacks foundation. Calls for
speculation. Overly broad. Vague and ambiguous.
THE WITNESS: That is not the role of the
California Department of Education to do that type of
fiscal analysis. The office of public school
construction has that responsibility.
Q. BY MR. REED: I understand. I'm really not
asking for a breakdown, I'm asking for whether you have
an understanding, given your role at the Department and
your role in the SAB, as to what roughly speaking that
breakdown has been?
MR. SEFERIAN: Objection. Argumentative.
Asked and answered. Calls for an inadmissible opinion.
Lacks foundation. Calls for speculation.
THE WITNESS: Not roughly speaking, no.
Q. BY MR. REED: To make an application for
funding from the SAB, a district will receive a new
construction grant, the basic new construction grant

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before you get to the adjustments you described, and
it's calculated by the capacity to be housed in that
school multiplied by the per pupil grant; is that
correct?
MR. SEFERIAN: Objection. Lacks foundation.
Calls for an inadmissible legal opinion.
THE WITNESS: It is my understanding that that
is one element that the office of public school
construction uses to make that calculation.
Q. BY MR. REED: Outside of the adjustments that
you described before, is there anything else that the
office of public school construction uses?
MR. SEFERIAN: Objection. Calls for
speculation. Lacks foundation.
THE WITNESS: I do not have intimate knowledge
of their processes.
Q. BY MR. REED: I'm going to take a moment to
describe the context of trying to get funding for, let's
say, a 200-student primary school from the SAB. And by
primary center I mean classrooms with kindergarten
through third grade.
Assuming that we are talking about construction
costs per student as calculated in the fingertip facts,
we can roughly estimate the cost of that 200 seat
primary center, the construction component itself is

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roughly 200 times $16,700, correct?
MR. SEFERIAN: Objection. Calls for an
inadmissible opinion. Lacks foundation. Calls for
speculation.
MR. HERRON: Incomplete and improper
hypothetical.
THE WITNESS: You're referring to the
construction cost per student only, not the other
elements that go into the cost of building a school?
MR. REED: I'm talking about what it's actually
going to cost to build the school separate and apart
from the site acquisition costs.
MR. SEFERIAN: Objection. Lacks foundation.
Calls for speculation. Calls for an inadmissible
opinion. Incomplete hypothetical question.
THE WITNESS: There are many variables that are
included. There's site acquisition costs, there may be
toxic mitigation costs. There are many factors other
than just the site acquisition and the cost per pupil.
When you're asking about the actual cost to the
school district of building that, I don't think you can
assume, not even within one district, that you take one
figure times the number of kids and every school that
you build throughout the district is going to cost
exactly that same amount. There are too many other
MR. REED: Absolutely. I'm trying to deal with an average.

THE WITNESS: You didn't say "average."

MR. SEFERIAN: Please wait. He hasn't asked you a question.

Q. BY MR. REED: If we assume that the numbers reported in the fingertip facts represent the average cost from both state and local sources for constructing an elementary classroom statewide, I want to use that number in mind, the 16,700 number, can we assume that on average to build a -- the construction component of a 200 seat primary center should cost on average $16,700 times 200?


THE WITNESS: There are so many variables involved, that I do not think that you could assume even on average that that's the way that the math will work out.

Q. BY MR. REED: Okay. Do you have an understanding sitting here today as to what it would cost to build a 200-seat primary center in Elk Grove School District?

MR. HERRON: In Elk Grove?


THE WITNESS: No.

Q. BY MR. REED: Same question with respect to Los Angeles Unified School District?

MR. SEFERIAN: Objection. Lacks foundation.

Calls for speculation.

THE WITNESS: No.

Q. BY MR. REED: Amongst the variables you're describing, does the size of the school affect the cost per seat?


THE WITNESS: There are so many variables involved, that I do not think that you could assume even on average that that's the way that the math will work out.

Q. BY MR. REED: Is it generally the case that the smaller the school, the more expensive the cost per seat will be?


THE WITNESS: No.

Q. BY MR. REED: Why not?

THE WITNESS: With a larger school, you'd need a larger cafeteria, a larger library, you might need a larger multi-purpose room, and therefore the cost of building that total facility could be more than building a small school.

Q. BY MR. REED: Is it also the case that there are some centralized facilities that most every primary center or elementary school will need to have in order to be approved by the Department of Education regardless of whether it's a 100-student school or a 500-student school?


THE WITNESS: Would you repeat the question, please.

(Record read.)

MR. HERRON: In Elk Grove?

MR. SEFERIAN: Objection. Vague and ambiguous as to "primary center."

THE WITNESS: Please define most centralized facilities.

Q. BY MR. REED: Are most elementary schools, regardless of size, going to have to have a library to be approved by the school facilities planning division?

MR. SEFERIAN: Objection. Incomplete and improper hypothetical question. Lacks foundation. Calls for speculation. Vague and ambiguous as to "approved."

THE WITNESS: Not necessarily. A classroom can be used as a library.

Q. BY MR. REED: Do the SFPD guidelines have recommendations with respect to whether an elementary school should have a library?

MR. SEFERIAN: Objection. Vague and ambiguous as to "SFPD guidelines" and "recommendations." Lacks foundation.

MR. REED: If I said recommendations, I meant regulations.

THE WITNESS: Do you mean the Title 5 regulations?

MR. SEFERIAN: Objection. Yes, and other guidelines or guidebooks put out by the school facilities planning division for the purpose of designing elementary schools.


THE WITNESS: In an ideal situation and where
it is feasible to do so, the guidelines recommend that a school contain a library.

Q. BY MR. REED: And do you have an understanding as to whether a library -- withdraw that question.

The SAB makes apportionments to the school districts for site acquisition at the lesser of the appraised value of a site acquired or its purchase price; is that correct?


MR. HERRON: Argumentative.

THE WITNESS: I believe it's a little more complicated than that, but I don't understand all of the intimate, mechanical details of the responsibilities of the office of public school construction.

Q. BY MR. REED: I'm just trying to deal with the policy level of how -- what the reimbursement looks like for the state's share of site acquisition.

It is roughly assumed to be 50 percent of the lesser of the appraised value of a site or the cost of the site to a district, correct?

MR. HERRON: You just asked that question the question before. He's responded. Can we move on to something relevant? He just answered that question, Kevin. We're wasting time here.

THE WITNESS: I do not have intimate knowledge of that aspect of the program.

Q. BY MR. REED: I understand. I really not asking for intimate knowledge, and that's why I came back and tried to ask the question again.

I'm asking on the broad policy level if it is your understanding that roughly what a school district gets from the state is 50 percent of the lesser of the appraised value or the purchase price?

MR. HERRON: That's not a policy question at all. I mean, I object to your mischaracterization of your own question. You're asking him for the mechanical details which he's told you 15 times that he doesn't have. I object as asked and answered. I think you're harassing this witness with this and other similar questions.

You may respond yet again, and that's the last time you respond to this question.

Q. BY MR. REED: Is a school district entitled to some money from the state for the cost of environmental clean-up at a site?


MR. HERRON: Asked and answered.

THE WITNESS: Are you saying will the state pay the school district a portion of the cost for environmental clean-up?

MR. REED: Yes.

MR. SEFERIAN: Same objections.

THE WITNESS: I do not know.

MR. HERRON: We've been going about an hour.

Can we take a break when we reach a convenient stopping point?

MR. REED: Now would be fine.

(Recess taken.)

Q. BY MR. REED: Now, Mr. Brooks, is it true that under the school facilities program a district can seek a new construction grant using more per pupil grants than a facility will, in fact, have on a two-semester capacity basis?


THE WITNESS: On a two-semester capacity basis?

What do you mean by that?

Q. BY MR. REED: Let me try and do that a different way. The SAB has established a policy, has it not, that OPSC may accept and forward to the board for approval new construction grant apportionment requests that use more per pupil grants or seek more per pupil grants than the number of pupils that can be accommodated at a school on a two-semester capacity basis?

MR. SEFERIAN: Objection. Vague and ambiguous. Vague and ambiguous as to "policy."

THE WITNESS: What do you mean by a two-semester basis?

MR. REED: On a nonmulti-track year-around educational basis, a traditional calendar.

MR. SEFERIAN: Same objections.

THE WITNESS: My understanding of the policy is that school districts can borrow per pupil eligibility and use it in another project, whether it's multi-track, traditional or any other calendar.

Q. BY MR. REED: Okay. So, for example, a district seeking funding for, to use easy numbers, a thousand-seat middle school could seek an apportionment for up to -- from the SAB that would use up to 1,350 per pupil grants; is that correct?

MR. HERRON: Objection. Calls for speculation.
THE WITNESS: The board does allow a district to borrow eligibility throughout the district and use in a project. The percentage that raised a red flag used to be 150 percent, and I believe that it was lowered to the 130 or 135 percent to be on a special consent calendar.

Q. BY MR. REED: That's what you mean when you say "raise a red flag," if it was in excess of that amount, you'd have to go on a special consent calendar?

A. Yes. You'd probably have to go to an appeal rather than a special consent calendar, because below that the item goes on special consent.

Q. Make sure I understand. Below 135 percent of the per pupil grant amount, you still go to a special consent calendar?

A. It's placed on a special consent calendar.

Q. And if you are above that red flag threshold, then you need to appeal in order to get a grant?

MR. SEFERIAN: Objection. Vague and ambiguous. THE WITNESS: That's my understanding of the way that the process would work, yes.

Q. BY MR. REED: Okay. When a district borrows, to use your word, that eligibility to seek the funding in excess of the number of seats at the facility, what's it borrowing against?

MR. HERRON: Objection. Calls for speculation. Vague and ambiguous. THE WITNESS: I don't believe that the full and final apportionment for that project is the reason for that requirement.

Q. BY MR. REED: Okay. What do you understand to be the reason for that requirement?

MR. SEFERIAN: Objection. Calls for an inadmissible opinion.

THE WITNESS: As I said, the reason for that requirement is so that the district doesn't come back later and ask for more money to house those same students that we gave them money to house in the project that they requested originally. That's different from the full and final funding requirement.

Q. BY MR. REED: Okay. What do you understand the full and final funding requirement to be?

MR. SEFERIAN: Objection. Calls for an inadmissible opinion.

THE WITNESS: The law says that once the school district receives the allocation from the state allocation board for a certain amount of money for that project, they can't come back later and say, oops, we forgot this or we forgot that, now we need more money.

The law says that once they receive that apportionment, that apportionment is considered to be full and final and will allow them to build the project that they have requested the funds for.

Q. BY MR. REED: Okay. So to use easy, round numbers, if a district has eligibility in the amount of 10,350 -- I'm sorry, 13,500 unhoused elementary school students, they can, in fact, come to the board and get all of that eligibility in order to build 10,000 seats, correct?


THE WITNESS: I don't do math in my head that well, so I can't confirm that those figures are accurate. I think we've talked about the policy of the board and the reason for the policy.

Q. BY MR. REED: Yeah. I'm trying to use easy, round numbers just so I can clarify the policy. If a district has eligibility of, let's just use the number "X," it can come to the board and seek to use all of that eligibility to build fewer seats than the number "X," correct?

MR. SEFERIAN: Objection. Vague and ambiguous. Incomplete and improper hypothetical question.

THE WITNESS: I don't think that you can just use the number "X" and say all of that eligibility. If
they've got 20,000 students' eligibility, no, they
cannot use 20,000 units of eligibility on an 800-student
elementary school.
Q. BY MR. REED: That's fine. It's got to be
somewhere -- now, under current board policy, it needs
to be somewhere within 135 percent, correct?
MR. HERRON: Objection. Asked and answered.
THE WITNESS: 135 percent of what?
MR. REED: Okay. That's why I was hoping my
number would work.
Q. If a district has -- wants to build 1000
district school seats and has remaining eligibility
for 1000 times 135 percent, 1,350 per pupil grants
available to it, that district can, under current board
policy, get an apportionment using all 1,350 per pupil
grants to build those thousand elementary school seats,
correct?
MR. SEFERIAN: Objection. Incomplete, improper
hypothetical question. Argumentative. Asked and
answered. And I don't think it's fair to the witness to
require him to perform mathematical calculations, as
he's already indicated.
THE WITNESS: I do not do math that well in my
head, but let me help you out and I'll restate the
policy. The policy is that that district can come to
the state allocation board and request up to 135 percent
of the eligibility that they have for that project. It
requires that item to go to the board on a special
consent agenda, and the board has to approve that on the
basis that the district local governing board has passed
a resolution indicating that they will not come back and
request funding for those same students in a subsequent
project.
They also must demonstrate to the satisfaction of
the board that they will be able to adequately house
those students for which they use the eligibility on
that project that will not get a subsequent project
built for them. That's the policy.
MR. REED: Thank you. That's very helpful.
Q. A district seeking those grants in excess of
the facilities capacity, in the process of certifying
that, they will otherwise house those students whose
grants they're using without coming back for another
request for facilities for those students, do those
districts -- let me start this all over again.
Those districts who make the certification that
they will adequately house those students, will they --
do they sometimes certify to the board in that
resolution that they will put those additional students
whose grants are being used on multi-track year-around

MR. SEFERIAN: Objection. Assumes facts not in
THE WITNESS: Some do.
Q. BY MR. REED: And do some districts who use
grants in excess of the capacity of the facility state
in their resolutions that they will house those students
by put -- those additional students by putting them into
portable classrooms?
MR. SEFERIAN: Objection. Vague and ambiguous
as to "resolutions." Calls for speculation. Lacks
foundation.
THE WITNESS: We've had several discussions as
to whether or not placing students in portables
constitutes adequately housing them. We have modified
our position and refined it, and I am not absolutely
certain where we currently are on that. Typically that
is not one of the methods that the school district gives
that's acceptable.
Q. BY MR. REED: But in the time period December
'98 until the present, are you aware of times in which
the SAB has approved the funding of a project in excess
of its capacity where the district has asserted that it
will house the additional students in portable
classrooms?

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portable classrooms would be an acceptable method of, quote, adequately housing them.

Q. BY MR. REED: Has anybody raised a similar discussion within the SAB with respect to whether putting a student on a multi-track year-around calendar would be adequately housing those students?

MR. SEFERIAN: Objection. Vague and ambiguous as to "similar discussion."

MR. HERRON: Calls for speculation.

THE WITNESS: To my knowledge, no one has raised that issue to me.

Q. BY MR. REED: Do you have an opinion yourself as to whether housing a student on a multi-track calendar is more adequate than housing a student in a portable?

MR. HERRON: You mean for purposes of the funding that you're talking about?

MR. REED: Yes.

MR. SEFERIAN: Objection. Vague and ambiguous as to "more adequate." Incomplete hypothetical. Calls for an inadmissible opinion.

THE WITNESS: And we're comparing multi-track year-around education to portables?

MR. REED: Yes.

MR. SEFERIAN: Same objections.

THE WITNESS: The student would be in the same facility whether they're on a traditional calendar, a multi-track year-around calendar or a Concept 6 calendar. You're comparing apples and oranges.

THE WITNESS: There are many school districts in the state who have very high academic performance indexes in schools that are on multi-track year-around education.

There are an extremely broad array of portables out there. Some are in deplorable condition, as I mentioned yesterday in Compton. There are other portables that teachers will fight to be in because a new portable is better than the permanent facilities that exist on the campus. So you cannot generalize and say multi-track versus portable one or the other.

Q. BY MR. REED: In your opinion are there some multi-track year-around educational calendars that do not provide students with adequate housing?


THE WITNESS: I think there's a disconnect between the program of multi-track year-around and whether they're in adequate housing. One has to do with the time of year that they're in school versus the type of facilities that they're in. If they were on traditional calendars in that school, they'd be in the same facility, it's just a matter of when they're there, how often they're there,

and the condition of the facility doesn't change just because the school operates on a multi-track year-around calendar.

Q. BY MR. REED: Do you believe that a student being housed on a Concept 6 multi-track calendar is being adequately housed?


MR. HERRON: Asked and answered the question before.

THE WITNESS: The same answer as before.

Q. BY MR. REED: You're comparing apples and oranges. The calendar that they're on does not change the facility in which they are housed.

Q. BY MR. REED: I just want it to be clear that you don't make a distinction in that answer between Concept 6 varieties of multi-tracking and any other version of multi-tracking?

MR. SEFERIAN: Same objections. Argumentative.

THE WITNESS: The student would be in the same facility whether they're on a traditional calendar, a multi-track year-around calendar or a Concept 6 calendar. You're comparing apples and oranges.

Q. BY MR. REED: Do you have any estimate in your experience on the SAB with respect to -- in percentage terms, just an estimate, how many of the applications for apportionment the SAB has funded, let's say, in the last year, that have involved requests to use pupil grants in excess of the facility's capacity?

MR. SEFERIAN: Objection. Vague and ambiguous as to "apportionment."

MR. HERRON: Calls for speculation.

THE WITNESS: I cannot speculate on the percentage of the requests compared to the total number of applications that have been approved.

Q. BY MR. REED: Can you tell me whether it's more or less than 50 percent?

MR. HERRON: Object. Calls for speculation.

THE WITNESS: It would be less than 50 percent to my knowledge.

Q. BY MR. REED: Okay. Now, when doing the capacity calculation of a school district participating in the school facilities program, the program treats the district as a whole unless the district elects to apply as a high school attendance area?

MR. HERRON: Is this another one of those policy questions requiring calculations? Object. It calls for speculation.
THE WITNESS: The district has the option to apply on either a districtwide or a high school attendance area basis.

Q. BY MR. REED: Okay. When a district applies as a district and its capacity is calculated -- back up a second.

The basic formula for determining eligibility is subtracting capacity from enrollment at elementary, middle and high school level, correct?

MR. SEFERIAN: Objection. Overly broad.

THE WITNESS: I think you’ve oversimplified the process.

Q. BY MR. REED: Okay. How would you state, in shorthand, the process so that I don’t put words in your mouth?

MR. SEFERIAN: Objection. Calls for a narrative.

THE WITNESS: I do not have intimate knowledge of the mechanical details involved in the calculation of the eligibility process which is done by the office of public school construction.

Q. BY MR. REED: I'm looking for the generalities of how one determines eligibility. It is a calculation that involves a comparison of enrollment projected out five years compared to the capacity of the district in general terms, correct?


THE WITNESS: That's an oversimplification of the process, but it is probably close to being an accurate generalization.

Q. BY MR. REED: So within that process, if a district applies as a district, its capacity, the existence of a teaching station anywhere in the district is effectively considered available to any student attending the district, correct?


MR. HERRON: Asked and answered.

THE WITNESS: I don't know that necessarily is correct.

Q. BY MR. REED: Okay. If a district has a thousand seats in its elementary schools and a thousand students enrolled in elementary school but has an elementary school on the far east part of the district on a multi-track calendar in excess of its capacity, excess of its two-semester capacity and empty seats at a school in the far west end of the district, the school facilities program nonetheless considers those students housed, correct?

MR. SEFERIAN: Objection. Incomplete and improper hypothetical question. Vague and ambiguous as to "two-semester capacity." Calls for speculation.

THE WITNESS: Which students are adequately housed?

MR. REED: All students in the district.

MR. SEFERIAN: Same objections.

THE WITNESS: If there are a thousand students in the district and they have a thousand seats available, then there are no students considered unhoused, is that your question?

MR. REED: It is. But I want you to assume that we’re dealing in a district -- a hypothetical district. A 500-student classroom on the far west side of the district, a 500-seat school in the far west end of the district, a 500-seat school in the far east end of the district, but 700 students -- 700 students are attending the school in the east and only 300 students are attending the school in the west.


Q. BY MR. REED: The school facilities program would consider all of those students to be adequately housed; is that correct?

THE WITNESS: The school district has the option of applying on either a districtwide or a high school attendance area -- districtwide or high school attendance basis.

The school district makes that determination and determines which filing method is most advantageous to them. They then go to the office of public school construction who does the calculations. I do not have intimate knowledge of the mechanics of the way that that process works.

Q. BY MR. REED: Assuming the district applies as a district, if there's capacity anywhere in the district, the school facilities program assumes that capacity to be available to any student in the district; isn’t that correct?


THE WITNESS: I already answered that question.

Q. BY MR. REED: A school district that seeks an apportionment from the SAB using its unhoused pupils may, under board policy, build the school it's using those grants for anywhere in the district; isn't that correct?

THE WITNESS: Would you repeat the question.

MR. REED: Could I have it read.

(Record read.)

THE WITNESS: No, they may not.

Q. BY MR. REED: Why not?

A. Because the Department of Education has approved a specific site for that project, and they cannot take that money if site A was approved and build that school on site D that was not approved by the Department of Education.

Q. Fair enough. May a district -- assuming the district -- let me approach this other way.

If a district has unhoused pupils on multi-track calendars in one part of the district, may the district use the eligibility generated by those unhoused pupils to build a school in another part of the district remote from those multi-track schools assuming it gets the appropriate approvals of the site from the Department of Education?

MR. SEFERIAN: Objection. Vague and ambiguous as to "remote." Calls for an inadmissible legal opinion. Calls for speculation.

THE WITNESS: And have they applied on a districtwide basis or a high school attendance area basis?

MR. REED: District-wide basis.

MR. HERRON: Objection. Incomplete and improper hypothetical.

THE WITNESS: To the best of my knowledge, they would be able to build that school on the site that was approved by the Department of Education.

Q. BY MR. REED: Under the modernization program of the school facilities program, is it true that the board has recently adopted a policy which restricts modernization funding to those projects which receive DSA approval?

MR. SEFERIAN: Objection. Vague and ambiguous as to "policy."

MR. HERRON: Asked and answered.

MR. SEFERIAN: Vague and ambiguous as to "DSA approval."

THE WITNESS: Has the board adopted a policy?

MR. REED: Yes.

THE WITNESS: No, that's the law.

Q. BY MR. REED: That a modernization project must receive a DSA approval?

MR. SEFERIAN: Objection. Asked and answered.

THE WITNESS: My understanding is that the law has always required that DSA approval.

Q. BY MR. REED: Do you know whether a project to renovate a bathroom would require DSA approval?


MR. SEFERIAN: Objection. Calls for an inadmissible legal opinion.

THE WITNESS: Is it above or below the dollar exemption level?

MR. REED: Let's assume it is below the dollar exemption.

MR. SEFERIAN: Objection. Calls for an inadmissible opinion.

MR. HERRON: All the same objections as interposed to the last objection.

THE WITNESS: Because bathrooms are subject to the ADA requirements, and DSA also is responsible for administering ADA. I do not know that they would exempt them from their review because of the ADA requirements.

Q. BY MR. REED: Okay. Same question for HVAC installation at a school, is that, in your understanding, a project that the DSA would need to approve?

MR. HERRON: All the same objections.

MR. SEFERIAN: Objection. Calls for an inadmissible opinion. Vague and ambiguous as to "would need to approve." Calls for an inadmissible opinion. Lacks foundation. Calls for speculation.

THE WITNESS: Other than the dollar amount exemption that I'm aware of and the possible nonexemption for ADA, I do not have intimate knowledge of the mechanics of the division of the state architect.

Q. BY MR. REED: Do you have an understanding whether a school district seeking modernization funding for the installation of HVAC could, in fact, get modernization money or get approval for an apportionment for modernization money for that project if the DSA did
not have to approve it?


MR. HERRON: Asked and answered in part.
THE WITNESS: It sounds like the same question, except are you saying that if that project meets whatever exemption criteria, the division of the state architect will approve that they can go to the state allocation board with that written exemption from the DSA?

MR. REED: Right.

MR. SEFERIAN: Same objections.
THE WITNESS: They would also have to go through the Department of Education and get our approval.
MR. REED: Okay.
THE WITNESS: If they get all of the proper approvals, they would receive state allocation board funding.

MR. REED: Could we take about a five-minute break.

(Recess taken.)

(Mr. Eliasberg and Mr. Rosenbaum not present.)

Q. BY MR. REED: Mr. Brooks, are you aware of whether anybody at the Department of Education has done any studies or analysis as to whether students on a Concept 6 calendar are adequately housed?

MR. SEFERIAN: Objection. Vague and ambiguous as to "adequately housed." Assumes facts not in evidence. Vague and ambiguous as to "studies."

MR. HERRON: Calls for speculation.
THE WITNESS: What do you mean by "adequately housed"?

MR. REED: Using the term adequately housed the way that you understand the SAB would use that term in evaluating whether a school district may use per pupil grants in excess of the capacity of the facility for which it's seeking an apportionment.

MR. HERRON: Objection. Vague and ambiguous. You've added murkiness to something that was already unclear. It's vague and ambiguous. Calls for speculation.

THE WITNESS: Can you define "adequately housed"?

MR. HERRON: Why is the Los Angeles Unified School District also asking questions on behalf of plaintiff? I don't get it. It's so obviously a plaintiff's question.

Go ahead.

THE WITNESS: Can you define "adequately housed"?

MR. HERRON: Objection. Vague and ambiguous to "role" and "approved". Calls for an inadmissible legal opinion.

THE WITNESS: Yes.

Q. BY MR. REED: And is that under the Title 5 regulations at section 1400?

MR. SEFERIAN: Objection. Calls for an inadmissible legal opinion.

THE WITNESS: Under Title 5 and other appropriate laws, rules, regulations and policies.

Q. BY MR. REED: One of the things that the Department reviews when determining the appropriateness of a school site is the proximity of that site to gas pipelines, correct?

MR. HERRON: Objection. Vague and ambiguous as to "appropriateness." Lacks foundation. Incomplete and improper hypothetical question.
1. **THE WITNESS:** Yes.
2. **Q. BY MR. REED:** And proximity to electrical transmission lines?
3. **MR. SEFERIAN:** Objection. Vague and ambiguous.
4. **THE WITNESS:** High tension power lines.
5. **Q. BY MR. REED:** Under Title 5 it looks specifically at power lines that have a particular voltage, correct?
6. **MR. SEFERIAN:** Objection. Vague and ambiguous as to "site review." Incomplete hypothetical question.
7. **THE WITNESS:** Technically it's the responsibility of the division of aeronautics to review the proposed site that's within two miles of an airport runway, not the Department of Education.
8. **Q. BY MR. REED:** Is proximity to an airport part of any checklist that the Department will undertake or complete when approving a site?
9. **MR. SEFERIAN:** Objection. Vague and ambiguous as to "checklist." Incomplete and improper hypothetical question.
10. **THE WITNESS:** One of the factors that the Department uses before giving final approval to the site is whether or not that site is within two miles of an airport runway and whether or not the division of aeronautics has said that that site is safe for student occupation.
11. **Q. BY MR. REED:** And in the site review the Department undertakes, it looks at a site's proximity to airports and railroads as well?
12. **MR. SEFERIAN:** Objection. Vague and ambiguous as to "site review." Incomplete hypothetical question.
13. **THE WITNESS:** Yes.
14. **Q. BY MR. REED:** Is proximity to an airport part of any checklist that the Department will undertake or complete when approving a site?
15. **MR. SEFERIAN:** Objection. Vague and ambiguous as to "checklist." Incomplete and improper hypothetical question.
16. **THE WITNESS:** Technically it's the responsibility of the division of aeronautics to review the proposed site that's within two miles of an airport runway, not the Department of Education.
17. **Q. BY MR. REED:** Is proximity to an airport part of any checklist that the Department will undertake or complete when approving a site?
18. **MR. SEFERIAN:** Objection. Vague and ambiguous as to "checklist." Incomplete and improper hypothetical question.
19. **THE WITNESS:** One of the factors that the Department uses before giving final approval to the site is whether or not that site is within two miles of an airport runway and whether or not the division of aeronautics has said that that site is safe for student occupation.
20. **Q. BY MR. REED:** And the Department of Education also in its review process will ensure that a district has complied with the DTSC review process on a site?
21. **MR. SEFERIAN:** Will you repeat the question. (Record read.)
22. **MR. SEFERIAN:** Objection. Vague and ambiguous as to "review process" in both locations. Overly broad.
23. **THE WITNESS:** The Department of Education will not give final approval of a site until the Department of Toxic Substances review has -- has reviewed the site and signed off on it per law that went into effect January 1st of 2000.
24. **Q. BY MR. REED:** To your knowledge, have you or any members of your staff undertaken any review as to the length of time it takes districts to comply with that site review process, the complete CDE site review process?
25. **MR. SEFERIAN:** Objection. Vague and ambiguous as to "that site review process" and as to the "CDE site review process." Assumes facts not in evidence. Overly broad.
26. **THE WITNESS:** In terms of a formal review, we have not done a formal analysis. It takes different sites different times to be approved because of the individual characteristics of the site, and the time involved varies significantly throughout the state.
27. **Q. BY MR. REED:** Is it accurate to say that in general it takes longer to approve a site in a densely developed urban area than it does in the average district in the state?
28. **MR. SEFERIAN:** Objection. Vague and ambiguous as to "densely developed urban area." Lacks foundation. Calls for speculation. Incomplete and improper hypothetical question.
29. **THE WITNESS:** You said "in general" and average school district. There is no average school district in the state. We have school districts that range for more than 7,000, we have 35 one-room schools, and there is -- I would say there is no average school district.
30. **Rural school districts complain that it takes just as long or longer to identify appropriate school sites as it does in an urban area. Rural school districts complain that because of the close proximity to agriculture land that the Department of Toxic Substances Control takes as long or longer for their review in rural property than it does in urban sites.
31. **The toxicity on a site varies significantly from minor to major regardless of where you are, in an urban setting or a rural setting or a suburban setting.**
32. **Q. BY MR. REED:** Do you know -- do you have an opinion, not based on what has been expressed by rural and suburban school districts, but based on your experience and what you have learned from your staff, with respect to approving school sites as to whether it takes, in fact, take longer to approve a site, the Department of Education to approve a site in a densely developed urban area than in a rural area?
33. **MR. HERRON:** All the same objections. Again, that is the same question you just asked him put in different language.
34. **MR. SEFERIAN:** Objection. Lacks foundation. Calls for speculation. Calls for an inadmissible
opinion.

THE WITNESS: In an urban area that does not pursue a site that is heavily laden with toxins, it would not take longer than the site approval process for a rural site or a suburban site that had significant amount of toxins. Again, you cannot generalize, you have to look at it on a site-by-site basis.

Q. BY MR. REED: Would you agree that it's generally true that high tension power lines are more likely to impact sites in urban areas than in rural areas?


THE WITNESS: There are likely to be more high tension power lines in a populated area than there is in an unpopulated area.

Q. BY MR. REED: Do you have an understanding based on your experience or what you've learned from your staff at the Department with respect to how long it takes -- withdraw that question.

Yesterday I believe you testified that in your opinion facilities executives for school districts in the state get the job done. Do you recall that testimony?

A. Yes.

Q. Do you have an opinion as to whether the facilities executives at LA Unified currently in place are getting the job done?

MR. SEFERIAN: Objection. No foundation. Calls for speculation. Vague and ambiguous as to "getting the job done." Overly broad.

THE WITNESS: Can you specify which individuals? Because my understanding is the staff at LA Unified is extremely large, and I cannot testify that every individual in the LA Unified school facility staff is getting the job done.

Q. BY MR. REED: Okay. Do you believe that Kathy Littmann is getting the job done?


THE WITNESS: Based on the reports from my staff, the assistant division director who we send down two days a week for the last several months to work with her and ensure -- help ensure that progress is being made, I would say, yes, I think Kathy is doing a good job.

Q. BY MR. REED: Do you believe that LA Unified School District is doing what it needs to do to build schools in Los Angeles?


THE WITNESS: You're talking about LA Unified School District, everybody in it?

MR. REED: Yeah.

THE WITNESS: Including the board members?

MR. REED: Including the board members.


THE WITNESS: As I testified yesterday, I think that given the resources that are available and the challenges that they face, that the current staff of the LA Unified School District that we deal with attempting to build schools is doing the best they can.

Q. BY MR. REED: Do you believe that previous staff was not doing the best that they could?


THE WITNESS: How far back do you want to go?

Do you want to go Lynn Roberts, Byron Kimble, Mel Ross?

What point in the past are we talking about?

MR. HERRON: I'm not so sure we should make it very personal either. I don't want a state official testifying about the competency of particular individuals.

MR. REED: And I don't want to ask you about particular individuals. Let me ask you about my experience when you were at the school facilities planning division on your first stint before you went to nutrition.

MR. SEFERIAN: Same objections.

THE WITNESS: Again, are we talking about the staff of the school facilities planning division, the leaders of the school facilities planning division in combination with the local school board members, or are we separating them?

MR. REED: The district as a whole, including the board members.


MR. HERRON: I think the question is was Los Angeles Unified during your prior tenure achieving its construction goals. Is that right? I mean, that takes it out of the personal.

Q. BY MR. REED: Was it doing what it needed to do
to build schools?

MR. HERRON: As far as you know.


THE WITNESS: Here's my point. I think when the former LA Unified School District board adopted a policy that they would not pursue residential condemnation, that they significantly restricted their options for potential school sites, leaving primarily commercial sites, which inherently are more subject to having toxins on them than residential sites. When the board changed their policy in the last year or two, it significantly widened the availability of possible school sites thereby enhancing the district's opportunity of meeting their goal of housing students.

Q. BY MR. REED: I appreciate that. Is there anything other than that board policy that you think the district was doing incorrectly or not doing as it should have done in that period to build schools?


THE WITNESS: One of the things that the board didn't do was ask the voters to approve a $2.6 billion local bond measure that at some point one of the boards asked the locals to do, which, again, significantly increased the possibility that they -- that the district would be able to meet its housing needs.

Q. BY MR. REED: I appreciate that. Is there anything other than that board policy that you think the district was doing incorrectly or not doing as it should have done in that period to build schools?

MR. SEFERIAN: Same objections.

THE WITNESS: Nothing that I am specifically familiar with.

Q. BY MR. REED: Have you or any member of your staff taken any steps to try and estimate what it would cost Los Angeles Unified School District to build seats for all of its unhoused pupils, unhoused pupils as defined in the school facilities program?


THE WITNESS: I'm not aware of any of my staff that has done that calculation. I believe that I have seen a figure that the district has developed and publically commented on by Superintendent Romer (ph.). I don't remember the figure, but to my knowledge we did not do such a study.

Q. BY MR. REED: Okay. In the current school facilities program -- I'm going to represent to you, I don't expect you to know this -- that we have -- LA Unified has a projected unhoused pupil population somewhere in the neighborhood of 125,000 students.

Q. BY MR. REED: Assuming that's correct and assuming the district grows at a capacity of somewhere around 10 to 15,000 students a year, does it sound reasonable to you that LA Unified would need to build 200,000 seats in the next 20 years in order to get its students off of multi-track year-around educational calendar?


THE WITNESS: You can probably anticipate my answer, that I do not do math well in my head and I have no basis to say yes or no to that question.

MR. REED: I have nothing further.

MR. ELIASBERG: I'm just going to ask two questions with respect to things that Kevin brought up.

MR. HERRON: I don't know that that's permissible, is it?

MR. ROSENBAUM: Yeah, essentially a cross-examination. We're permitted to ask follow-up questions.

MR. HERRON: I think it becomes a second deposition if you're trying to ask him questions again.

MR. ELIASBERG: I believe that Kevin opened issues with his cross-examination. I'll represent on the record that I have three questions that I want to ask him.

MR. HERRON: All right.

EXAMINATION BY MR. ELIASBERG

Q. With respect to questions that Kevin asked, Mr. Brooks, you briefly spoke about your opinion -- that you felt that LAUSD had restricted its ability to -- to find new school sites by adopting a policy not to pursue residential condemnation; is that correct?

A. That's my understanding of their policy, former policy.

Q. Do you remember approximately when that policy was put in place?

A. I don't know when it started, but it's my understanding that it's been only recently that the board has changed that policy, and I don't know for absolute certainty that they have formalized that shift
MR. HERRON: Sure.
(The deposition concluded at 1:52 p.m.)
---oOo---

Please be advised that I have read the foregoing deposition. I hereby state there are:

(check one) __________ NO CORRECTIONS
__________ CORRECTIONS ATTACHED

______________
Date Signed

_____________________________
Duwayne Brooks

Case Title: Williams vs State, Volume III
Date of Deposition: Friday, November 16, 2001

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DUWAYNE BROOKS                   DATE
REPORTER'S CERTIFICATE

I certify that the witness in the foregoing deposition, DUWAYNE BROOKS, was by me duly sworn to testify the truth, the whole truth, in the within-entitled cause; that said deposition was taken at the time and place therein named; that the testimony of said witness was reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of November, 2001.

TRACY LEE MOORELAND, CSR 10397
State of California