

1 MARK D. ROSENBAUM (BAR NO. 59940)
CATHERINE E. LHAMON (BAR NO. 192751)
2 PETER J. ELIASBERG (BAR NO. 189110)
ACLU Foundation of Southern California
3 1616 Beverly Boulevard
Los Angeles, California 90026
4 Telephone: (213) 977-9500

5 JACK W. LONDEN (BAR NO. 85776)
MICHAEL A. JACOBS (BAR NO. 111664)
6 MATTHEW I. KREEGER (BAR NO. 153793)
LEECIA WELCH (BAR NO. 208741)
7 J. GREGORY GROSSMAN (BAR NO. 209628)
Morrison & Foerster LLP
8 425 Market Street
San Francisco, California 94105-2482
9 Telephone: (415) 268-7000

10 ALAN SCHLOSSER (BAR NO. 49957)
KATAYOON MAJD (BAR NO. 211756)
ACLU Foundation of Northern California
11 1663 Mission Street, Suite 460
San Francisco, California 94103
12 Telephone: (415) 621-2493

13 JOHN T. AFFELDT (BAR NO. 154430)
Public Advocates, Inc.
14 1535 Mission Street
San Francisco, California 94103
15 Telephone: (415) 431-7430

16 Attorneys for Plaintiffs
ELIEZER WILLIAMS, etc., *et al.*

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 COUNTY OF SAN FRANCISCO

19 ELIEZER WILLIAMS, a minor, by SWEETIE
20 WILLIAMS, his guardian ad litem, *et al.*, each
individually and on behalf of all others similarly
21 situated,

22 Plaintiffs,

23 v.

24 STATE OF CALIFORNIA, DELAINE EASTIN,
State Superintendent of Public Instruction,
25 STATE DEPARTMENT OF EDUCATION,
STATE BOARD OF EDUCATION,

26 Defendants.

No. 312236

**DECLARATION OF LEECIA WELCH
IN SUPPORT OF PLAINTIFFS'
DESIGNATION OF REBUTTAL
EXPERT WITNESS KENJI HAKUTA**

Date Action Filed: May 17, 2000

1 I, LEECIA WELCH, hereby declare as follows:

2 1. I am an attorney licensed to practice law in the State of California. I am an associate
3 at the law firm of Morrison & Foerster LLP, counsel of record for plaintiffs Eliezer Williams, et al.
4 (“plaintiffs”) in this action. I have personal knowledge of the facts stated herein and could testify
5 competently to them if called to do so.

6 2. Plaintiffs have provided a list of the persons whose expert opinion testimony the
7 plaintiffs intend to offer on rebuttal at trial of this action, either orally or by deposition testimony.
8 The list includes Kenji Hakuta, to whom this declaration refers.

9 3. Dr. Hakuta has agreed to testify at trial.

10 4. Dr. Hakuta will be sufficiently familiar with the pending action to submit to a
11 meaningful oral deposition concerning the specific testimony, including any opinions and their bases,
12 he is expected to give at trial.

13 5. Dr. Hakuta’s fee for providing deposition testimony and for consulting with the
14 attorneys for plaintiffs is \$300 per hour. This rate did not apply to the research and other activities
15 undertaken in the preparation of the attached rebuttal expert report.

16 6. Attached to my declaration as Exhibit A and incorporated by this reference is a
17 *curriculum vitae* providing Dr. Hakuta’s professional qualifications, pursuant to
18 section 2034(f)(2)(A) of the California Code of Civil Procedure.

19 7. Attached to my declaration as Exhibit B and incorporated by this reference is Dr.
20 Hakuta’s rebuttal expert report. The following is a brief narrative statement of the general substance
21 of the testimony Dr. Hakuta is expected to give at trial, pursuant to section 2034(f)(2)(B) of the
22 California Code of Civil Procedure. Dr. Hakuta responds to and refutes some of the opinions of the
23 State’s experts Dr. Russell Gersten and Dr. Christine Rossell. In his rebuttal report, Dr. Hakuta
24 demonstrates that Dr. Gersten has failed to rebut the evidence in Dr. Hakuta’s expert report that
25 established that English Language Learners receive unequal and inadequate access to qualified
26 teachers, appropriate instructional materials, and clean and safe facilities. Moreover, in his rebuttal,
27 Dr. Hakuta addresses Dr. Gersten’s suggestions that the State’s new English Language Arts
28 Standards and corresponding curriculum and reading materials show that the State has abandoned its

1 recognition of the need to provide English Language Learners with qualified teachers and specialized
2 instructional materials, and concludes that, even so, Dr. Gersten neither establishes that his framing
3 of the new approach to educating English Language Learners is supported by the research he cites,
4 nor that the State has adequately implemented this approach by effectively developing and
5 distributing instructional materials and providing teachers trained to instruct English Language
6 Learners with these materials. Dr. Hakuta also demonstrates the many mischaracterizations and
7 errors Dr. Gersten makes in his attempts to rebut criticisms of the manner in which the State has
8 implemented Proposition 227. Finally, Dr. Hakuta responds to Dr. Gersten's attempts to undermine
9 the research that demonstrates English Language Learners need specialized instructional materials
10 and specially trained teachers. With respect to Dr. Rossell, Dr. Hakuta's rebuttal report disputes Dr.
11 Rossell's attempt to illustrate that there is no accurate way of knowing how well English Learners are
12 performing in comparison to native English speakers. The foregoing statements are only a general
13 summary of the issues and conclusions discussed and documented more fully in Dr. Hakuta's rebuttal
14 expert report, attached as Exhibit B.

15 I declare under penalty of perjury under the laws of the State of California that the foregoing
16 is true and correct.

17 Executed at San Francisco, California, this 15th day of September, 2003.

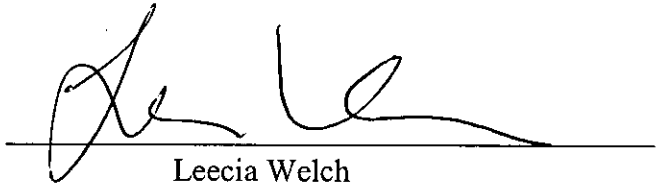
18
19
20 
21
22
23
24
25
26
27
28

EXHIBIT A

Curriculum Vitae

Kenji Hakuta

- Home:* 1887 Farmland Ave., Merced, CA. 95340-9131; Phone: 209-725-0408.
- Work:* School of Social Sciences, Humanities and Arts, University of California, Merced, P.O. Box 2039, Merced, CA 95344. For Package Service Delivery: 4225 N. Hospital Road, Bldg 1200, Atwater, CA 95301. Phone: 209-724-4335. Fax: 209-724-4424.
- e-mail* kenji.hakuta@ucmerced.edu
- url:* www.ucmerced.edu/khakuta
- Birthdate:* December 19, 1952
- SSN:* : 153-48-8600

Degrees

- 1979 *Ph.D.*, Experimental Psychology, Harvard University.
- 1975 *B.A. (Magna Cum Laude)*, Harvard University, Psychology and Social Relations.

Primary Positions

- 2003- Founding Dean, School of Social Sciences, Humanities and Arts, University of California, Merced.
- 1989- Professor, School of Education, Stanford University. Vida Jacks Professor of Education (2000 -). On leave, 2003- .
- 1987-1989 Professor of Education and Psychology, University of California, Santa Cruz.
- 1987-1989 Director, Bilingual Research Group, University of California, Santa Cruz.
- 1983-1987 Associate Professor of Psychology, Yale University.
- 1979-1983 Assistant Professor of Psychology, Yale University.

Honors

- 1976-7 Peter B. Livingston Fellowship, Harvard Medical School. Award to study language acquisition in Japanese children.
- 1982-3 Fellow, Center for Advanced Study in the Behavioral Sciences, Stanford. Sponsored by Sloan, Spencer, and Exxon Foundations.

- 1984 Connecticut Association for Bilingual and Bicultural Education. Honored for "Advocacy and Significant Research in Bilingual Education."
- 1986 National Association for Bilingual Education. Honoree of the year.
- 1986 Visiting Distinguished Faculty, University of California at Davis.
- 1986 California Association for Asian-Pacific Bilingual Education. Distinguished Service Award.
- 1987 American Educational Studies Association. Critic's Choice Panel selection for *Mirror of Language: The Debate on Bilingualism*.
- 1988 Distinguished Lecturer, Temple University, Japan.
- 1989 Visiting Distinguished Professor, King/Chavez/Parks Program, University of Michigan.
- 1993 Distinguished Scholar, Committee on the Role and Status of Minorities in Education R&D, American Educational Research Association.
- 1996 Elected to the National Academy of Education.
- 1998 Senior Scholar Fellowship, Spencer Foundation.

University Service (Selected, Recent)

- Chair, Psychological Studies in Education (4 years)
- Dean's Advisory Committee (5 years)
- Search Committees: Child Development, Adolescence, Sociology, History, Philosophy, Higher Education, Dean of the School of Education.
- Advisory Board, Stanford Teacher Education Program (STEP)
- Committee on Educational Policy (6 years)
- Chair, Language, Literacy and Culture (2 years)
- Technology Advisory Committee (1 year)
- Executive Committee, Stanford Center for Chicano Research (5 years)
- Freshman Advisor (5 years)
- Human Subjects Committee (Non-Medical) (4 years, Chair for 2 years)

Non-University Boards, Committees, Consulting, and Other Activities

- Advisory Committee, National Center for Bilingual Research, Los Alamitos, CA. (1980).
- Advisory Board, Naomi Gray Associates, Inc., San Francisco, "Instructional Services to Secondary School Language Minority Students with Limited English Proficiency," U. S. Department of Education (1983-1984).
- Board of Directors, Latino Youth Development, Inc., New Haven, Connecticut (1984).
- Bilingual-Bicultural Education Program Advisory Committee, South Central Community College, New Haven, Connecticut (1984-1987).
- Advisory Board, Asian Community Services, New Haven, Connecticut (1984-1986).
- Expert Witness, U. S. Department of Justice Community Relations Service, Denver, CO., mediation of Duran et. al. vs. Center Consolidated School District (1986).
- Steering Committee, Mayor's Task Force on Literacy, New Haven, Connecticut (1986).
- Consultant, Bureau of Program Development, Connecticut State Department of Education, Bilingual Evaluation (1986).
- Policy Panel on Bilingual Education, Association for Supervision and Curriculum Development (ASCD), Alexandria, Virginia (1986-7).
- Advisory Panel, Psychological Corporation, San Antonio, "Spanish Language Achievement Test Project" (1987).
- Advisory Committee, Council of Chief State School Officers, "Limited English Proficient Students Project" (1987-8).
- Director, Human Resources, Ateneo Puertorriqueño International Symposium on Bilingualism, San Juan, Puerto Rico (1987).
- Board Member, InterCultura, Oak Park, Illinois (1987-).
- Co-Chair (with Catherine Snow), Institute on Bilingual Education: Research to Policy to Practice, Harvard Graduate School of Education, December, 1987.

Director, Joint Study of the ESL Needs of the Greater New Haven Area. Study funded by the Connecticut State Department of Higher Education to South Central Community College and the Greater New Haven State Technical College (1987).

Consultant, Education and Cultural and Linguistic Pluralism Case Study Project, Centre for Educational Research and Innovation, Organisation for Economic Co-operation and Development (OECD) (1987-1992).

Study Section Member, Human Development and Aging Study Section (Subcommittee 1), Division of Research Grants, National Institutes of Health (1987-1991; Reviewer Reserve, 1992-1996).

Chair, Planning Committee, University of California Linguistic Minorities Project Conference (1988).

Member, Advisory Committee, Assessment of Educational Services for the Amnesty Population. California Postsecondary Education Commission (1988-1989).

Expert Witness, *Teresa P., et al., v. Berkeley Unified School District, et al.*, on behalf of Plaintiffs and META, Inc., Case No. C-87-2396 DLJ, U. S. District Court for the Northern District of California (1988).

Member, Advisory Committee, Japanese-American National Museum, Los Angeles (1988-).

Chair, University of California Linguistic Minorities Project Policy Initiative (1988-1989).

Member, Visiting Committee, Department of Psychology, Harvard University (1989-1995).

Consultant, Curriculum Commission, California State Department of Education (1989).

Member, Superintendent's Elementary Schools Task Force, California State Department of Education (1989-1990).

Chair, Board of Trustees, Center for Applied Linguistics, (Member, 1987-1990, Chair, 1989-1995.)

Advisory Group, Santa Cruz County New Teacher Project Consortium (1990-1992).

Member, Panel to Review Studies on Bilingual Education, Committee on National Statistics, National Research Council, National Academy of Sciences (1991).

Member, Task Force on Assessment, National Council for Education Standards and Testing (1991).

Member, Planning Committee and Chair of Language Development Panel, Society for Research in Child Development (1992-1996).

Chair, Stanford Working Group on Federal Education Programs for Limited English Proficient Students (1992-1993).

Member, Clinton/Gore Presidential Transition, Education Cluster, K-12 Task Force (December, 1992).

Member, National Board for Professional Teaching Standards, English as a New Language Committee (1993-)

Member, Panel on the National Education Standards and Improvement Council (NESIC). National Academy of Education (1994-1995).

Outstanding Book Award Committee, American Educational Research Association (Chair-Designate 1993-4, Chair 1994-5).

Co-Chair, United Supporters of Early Foreign Language. Produced a report presented to the Palo Alto Unified School District requesting action on foreign language in the elementary grades (1994-1995).

Member, Carnegie Task Force on Learning in the Primary Grades. Carnegie Corporation of New York (1994-1996)

Advisory Panel Member, Center for Research on the Education of Students Placed at Risk (CRESPAR), Johns Hopkins University (1995-7)

Chair, *Committee to Develop a Research Agenda for the Education of Limited-English-Proficient and Bilingual Students*, Board on Children and Families, National Research Council (1995-1997).

Member, *National Education Goals Panel*, Goal 1 Early Childhood Assessments Resource Group (1995-1998).

National Academy of Education, *Spencer Postdoctoral Fellow Selection Committee* (1996-1999)

Co-Chair (with James Jones), *Panel Study on Racial Dynamics in Colleges and Universities*. Joint project sponsored by the American Educational Research Association and the

Stanford University Center for Comparative Studies in Race and Ethnicity (1997-1999)

Member, *Forum on Educational Excellence and Equity*, Board on Testing and Assessment, National Research Council (1999-2001)

Member, *National Educational Research Policy and Priorities Board*, Office of Educational Research and Improvement, U. S. Department of Education (Appointed by Secretary of Education Richard Riley, 1995-1998, reappointed 1998-2004, co-Chair 1995-1997, Chair 1997-).

Member, Board of Directors, *The Spencer Foundation* (1998-2003). Vice Chair (2002-).

Board of Visitors, Learning Research and Development Center (LRDC), University of Pittsburgh (1998-).

Member, Board of Trustees, *Educational Testing Service* (1998-2004) Audit Committee (1998 -).

Member, Board of Directors, *Multicultural Education, Training and Advocacy, Inc. (META)*.

Member, National Advisory Board, *The Merrow Report* (Learning Matters, Inc.) (1997-).

Member, Education Advisory Panel, U. S. General Accounting Office (2001 -).

Development Committee, National Academy of Education (2001 -).

Grants

1979-1981 National Institute of Education. *The Acquisition of English by Working Class Adult Speakers of Spanish* (with Herlinda Cancino). \$70,000.

1979-1981 The Spencer Foundation. *Social Aspects of Adult Second Language Acquisition*. \$14,079.

1980-1982 National Science Foundation. *Bilingualism, Cognitive Flexibility, and Social-Cognitive Skills in Children*. \$45,000.

1981-1984 National Institute of Education. *A Longitudinal Study of the Relationship between Bilingualism, Cognitive Flexibility, and Social-Cognitive Skills in Children*. \$174,165.

- 1985 The Axe-Houghton Foundation, New York. *Cross-Language Transfer of Skills in Bilingual Children*. \$5,000.
- 1985-1990 U. S. Department of Education, OERI. *Studies in the Linguistic and Metalinguistic Underpinnings of Academic Learning in Bilingual Children*. Subcontract to UCLA Center for Language Education and Research (CLEAR, Amado Padilla, PI). \$664,935.
- 1988-1989 University of California Linguistic Minority Research Project. *Linguistic, Psychological and Contextual Factors in Language Shift*. \$50,000.
- 1988-1990 California Policy Seminar. *Effective Schooling for Hispanic Students*. (Eugene E. Garcia, PI). \$74,418.
- 1988-1989 Presidential Grants for School Improvement, University of California. *Collaboration for School Improvement: The Middle School Project* (E. E. Garcia, PI). \$56,675.
- 1990-1993 The Spencer Foundation. *Language Retention, Loss, and Re-Acquisition*. \$224,900.
- 1992-1993 Carnegie Corporation of New York. *Working Group on Federal Education Programs for Limited-English-Proficient Children*. \$230,000.
- 1990-pres. U. S. Department of Education, Office of Bilingual Education and Language Minority Affairs (OBEMLA). *Bilingual Education Fellowship Program*.
- 1993-1994 Carnegie Corporation of New York. *Limited-English-Proficient Students and Education Reform: Follow-up Activities to the Stanford Working Group on Federal Education Programs for L.E.P. Students*. \$165,000.
- 1993-1994 John D. and Catherine T. MacArthur Foundation. *Limited-English-Proficient Students and Education Reform: Follow-up Activities to the Stanford Working Group on Federal Education Programs for L.E.P. Students*. \$50,000.
- 1994-1997 The Spencer Foundation. Lucinda Pease-Alvarez, co-Principal Investigator. *Language Maintenance and Shift in Early Adolescence*.
- 1994-1997 Carnegie Corporation of New York. *Limited-English-Proficient Students and Education Reform*. \$300,000.

- 1995-1996 The Andrew W. Mellon Foundation. *Panel Study on Developing a Research Agenda on the Education of Limited English Proficient and Bilingual Students*. \$50,000.
- 1997-1999 American Educational Research Association. *Panel Study on Racial Dynamics in Colleges and Universities*. \$172,635.
- 1998-2000 The Spencer Foundation. *Spencer Senior Scholar Fellowship: Testing Hypotheses about Educating Language Minority Students*. \$350,000.
- 1999 San Diego City Schools. Language and Academic Development of English Language Learners. \$12,904.
- 1999-2003 James S. McDonnell Foundation. *The Effects of Metacognitive Approaches on Improving English as a Second Language Instruction for Language Minority Students*. \$372,232.
- 1999-2004 San Francisco Unified School District. *CLAD/BCLAD Networked Learning Project*. Subcontract under a grant to SFUSD from the U. S. Department of Education, OBEMLA. \$344,000.
- 2001-2002 Joint funding from the Hewlett Foundation, the Irvine Foundation, the Carnegie Corporation of New York, and the Ford Foundation. *An Experimental Test of the Effects of Racial Diversity on the Critical Thinking among College Students*. (Anthony Antonio, co-PI). \$350,000 total.

Publications

- Hakuta, K. (1974). A preliminary report on the development of grammatical morphemes in a Japanese child learning English as a second language. *Working Papers in Bilingualism*, 3, 18-38. Reprinted in E. Hatch (Ed.), *Studies in Second Language Acquisition*. Rowley, Mass.: Newbury House Publishers, 1979.
- Hakuta, K. (1974). Prefabricated patterns and the emergence of structure in second language acquisition. *Language Learning*, 24, 287-297.
- Hakuta, K. (1975). Learning to speak a second language: what exactly does the child learn? In D. P. Dato (Ed.), *Developmental Psycholinguistics: Theory and Applications*. Washington, D. C.: Georgetown University Press.

- Hakuta, K. (1976). A case study of a Japanese child learning English. *Language Learning*, 26, 321-351.
- Hakuta, K. & Cancino, H. (1977). Trends in second language acquisition research. *Harvard Educational Review*, 47, 294-316.
- Hakuta, K. (1977). Word order and particles in the acquisition of Japanese. *Papers and Reports on Child Language Development*, 13, 117-127.
- de Villiers, J. G., Tager-Flusberg, H. & Hakuta, K. (1977). Deciding between theories of coordination in child speech. *Papers and Reports on Child Language Development*, 13, 128-137.
- de Villiers, J. G., Tager-Flusberg, H., Hakuta, K. & Cohen, M. (1979). Children's comprehension of English relative clauses. *Journal of Psycholinguistic Research*, 8, 499-518.
- Hakuta, K. (1980). Some common goals for first and second language acquisition research. In R. Andersen (Ed.), *New Dimensions in Research on the Acquisition and Use of a Second Language*. Rowley, Mass.: Newbury House Publishers.
- Hakuta, K. (1980). Review of Givon (Understanding Language), Cooper and Walker (Sentence Processing) and Schiefelbusch (Nonspeech Language and Communication). *American Scientist*, 68, 577-578.
- Hakuta, K. (1981). Grammatical description versus configurational arrangement in language acquisition: the case of relative clauses in Japanese. *Cognition*, 9, 197-236.
- Hakuta, K. (1982). Interaction between particles and word order in the comprehension and production of simple sentences in Japanese children. *Developmental Psychology*, 18, 62-76.
- Hakuta, K., de Villiers, J. G., & Tager-Flusberg, H. (1982). Sentence coordination in Japanese and English. *Journal of Child Language*, 9, 193-207.
- Tager-Flusberg, H., de Villiers, J. G. & Hakuta, K. (1982). The development of sentence coordination. In S. A. Kuczaj (Ed.), *Language Development: Problems, Theories and Controversies, Volume I: Syntax and Semantics*. Hillsdale, N. J.: Lawrence Erlbaum Associates.

- Hakuta, K. (1983). English language acquisition by speakers of Asian languages. In Chu-Chang, M. (Ed.), *Comparative Research in Bilingual Education: Asian-Pacific-American Perspectives*. New York: Teachers College Press.
- Hakuta, K. (1983). Grammar in minds of adults, children and linguists. In H. Wode & S. Felix (Eds.), *Language Development at the Crossroads: Papers Presented at the Interdisciplinary Conference on Language Acquisition, Passau 1981*. Tuebingen, Germany: Gunter Narr Publishing Company.
- Hakuta, K. (1983). New methodologies for studying the relationship of bilingualism and cognitive flexibility. *TESOL Quarterly*, 17, 687-681.
- Hakuta, K. (1983). Review of Grittner (Learning a Second Language: 79th Yearbook of the National Society for the Study of Education). *Child Development Abstracts and Bibliography*, 57, 119-120.
- Hakuta, K. (1981). Review of Piattelli-Palmarini (Language and Learning: the debate between Jean Piaget and Noam Chomsky). *Harvard Educational Review*, 51, 437-439.
- Goodban, N. & Hakuta, K. (September, 1984). Statistical quintet (Review of statistical programs for the IBM Personal Computer). *PC World*, 2, 186-195.
- Hakuta, K. (1984). Bilingual education in the public eye: a case study of New Haven, Connecticut. *NABE Journal*, 9, 53-76.
- Hakuta, K. (1984). In what ways are language universals psychologically real? *Typological Studies in Language, Volume 6: Language Universals and Second Language Acquisition*. Amsterdam: John Benjamins.
- Hakuta, K. (1984). Review of Moerk (The Mother of Eve -- as a First Language Teacher). *Contemporary Psychology*, 29, 744-745.
- Hakuta, K. (1985). Cognitive development in bilingual instruction. In *Issues in English language development* (pp. 63-67), Rosslyn, Va.: National Clearinghouse for Bilingual Education.
- Hakuta, K. & Diaz, R. (1985). The relationship between degree of bilingualism and cognitive ability: a critical discussion and some new longitudinal data. In K. E. Nelson (Ed.), *Children's Language, Volume 5* (Pp. 319-344). Hillsdale, N. J.: Lawrence Erlbaum Associates.

- Hakuta, K. & Campbell, R. (1985). The future of bilingual education. *COSSA Washington Update*, 4, (6), 4-6.
- Hakuta, K. (1985). Review of McLaughlin (Second-Language Acquisition in Childhood: Volume I: Preschool Children). *American Scientist*, 73, 204.
- Hakuta, K. & Suben, J. (1985). Bilingualism and cognitive development. *Annual Review of Applied Linguistics*, 6, 35-45.
- Hakuta, K. (1986). *Mirror of language: The debate on bilingualism*. New York: Basic Books.
- Hakuta, K. & Bloom, L. (1986). The search for cross-linguistic invariants and variation in language development. In H. Azuma, K. Hakuta & H. Stevenson (Eds.), *Child development in Japan and the United States*. New York: W. H. Freeman.
- Hakuta, K. & Snow, C. E. (1986). Summary of research in bilingual education. *California School Boards Journal*, 44 (7), 2-4.
- Hakuta, K. & Snow, C. (1986). The role of research in policy decisions about bilingual education. Written testimony to the U. S. House of Representatives, Committee on Education and Labor, 99th Congress, 2nd Session. Reprinted in *NABE News*, 9 (3), 1-21.
- Stevenson, H., Azuma, H. & Hakuta, K. (Eds.). (1986). *Child development and education in Japan*. San Francisco: W. H. Freeman.
- Hakuta, K. (1986). Cognitive development of bilingual children. *Center for Language Education and Research Educational Report Series, No. 3*. UCLA.
- Hakuta, K. (1987). The second language learner in the context of the study of language acquisition. In P. Homel, M. Palij & D. Aaronson (Eds.), *Childhood bilingualism: Aspects of cognitive, social and emotional development* (pp.31-55). Hillsdale, NJ.: Lawrence Erlbaum Associates.
- Hakuta, K., Ferdman, B. M. & Diaz, R. M. (1987). Bilingualism and cognitive development: Three perspectives. In S. Rosenberg (Ed.), *Advances in Applied Psycholinguistics Volume II: Reading, Writing and Language Learning*. (pp. 284-319). Cambridge: Cambridge University Press.
- Hakuta, K. (1987). View of the bilingual child. Review of A. Fantini, Language Acquisition of a Bilingual Child: A Sociolinguistic Perspective. *Contemporary Psychology*, 32, 149-150.

- Hakuta, K. (1987). Societal and policy contexts of research with language minority students. In C. Underwood (Ed.), *Proceedings of the University of California Linguistic Minority Project Conference*. (pp. 7-20). Berkeley, CA: University of California, Berkeley.
- Levy, J., Berreth, D. G., Garza, G., Hakuta, K., Saville-Troike, M. & Zakariya, S. B. (1987). *Building an indivisible nation: Bilingual education in context*. Alexandria, VA.: ASCD.
- Hakuta, K. & Gould, L. (March, 1987). Synthesis of research on bilingual education. *Educational Leadership, 44*, 39-45.
- Hakuta, K. (1988). Why bilinguals? In F. Kessel (Ed.), *Development of language and language researchers (Essays presented to Roger Brown)* (Pp. 299-318). Hillsdale, N.J.: Lawrence Erlbaum Associates.
- Hakuta, K. (1987). Degree of bilingualism and cognitive ability in mainland Puerto Rican children. *Child Development, 58*, 1372-1388.
- Hakuta, K. & Rodriguez-Lansberg, M. (in press). El papel del primer idioma en la adquisicion de un segundo idioma. To appear in the Proceedings of the Ateneo Puertorriqueno International Symposium on Bilingualism.
- Prince, C. D. & Hakuta, K. (1987). Bilingualism in a community perspective: The case of New Haven. In *Schooling Language Minority Youth, Vol. III: Proceedings of the University of California Linguistic Minority Research Project Conference* (Pp. 17-38). Los Angeles: UCLA.
- Galambos, S. & Hakuta, K. (1988). Subject-specific and task-specific characteristics of metalinguistic awareness in bilingual children. *Applied Psycholinguistics, 9*, 141-162.
- Hakuta, K. & Garcia, E. E. (1989). Bilingualism and education. *American Psychologist, 44*, 374-379.
- Hakuta, K. (1989). An interview with Werner F. Leopold. *BRG Working Papers*, No. 89-07. Santa Cruz, California: University of California, Santa Cruz, Bilingual Research Group.

- Hakuta, K. (1989). Bilingualism and intelligence testing: An annotated bibliography. *BRG Working Papers*, No. 89-08. Santa Cruz, California: University of California, Santa Cruz, Bilingual Research Group.
- Hakuta, K. (1988). A wordly look at language acquisition: Review of Dan I. Slobin (Ed.), *The crosslinguistic study of language acquisition*. *Contemporary Psychology*, 33, 576-578.
- Hakuta, K. (in press). Review of Eleanor Wilson Orr, *Twice as less: Does Black English stand between black students and success in math and science?* *American Scientist*.
- Hakuta, K. (1989). Translation skills in bilingual children. *Stanford Forum for Research in Language and Culture*.
- Hakuta, K. (1989). (Ed.), *Policy and research perspectives on linguistic minority education: Proceedings of the 4th University of California Linguistic Minority Research Project Conference*. Berkeley, California: University of California.
- Hakuta, K. (1989). Review of James Crawford, *Bilingual education: History, theory, politics, and practice*. *American School Boards Journal*, 176 (October), 11.
- Hakuta, K. (1989). Having it both ways. Review of S. Romaine, *Bilingualism* and J. F. Hamers & M. H. A. Blanc, *Bilinguality and Bilingualism*. *Times Literary Supplement*, November 17-23, p. 1263.
- Hakuta, K. (1990). Language and cognition in bilingual children. In A. Padilla, C. Valdez & H. Fairchild (Eds.), *Bilingual education: Issues and strategies*. (Pp. 47-59). Newbury Park, California: Sage Publications.
- Malakoff, M. & Hakuta, K. (1990). History of minority education in the United States. In A. Padilla, C. Valdez & H. Fairchild (Eds.), *Bilingual education: Issues and strategies*. (Pp. 27-43). Newbury Park, California: Sage Publications.
- Hakuta, K. (1990). Bilingualism and bilingual education: A research perspective. *Occasional Papers Series, No. 1*. Washington, DC: National Clearinghouse for Bilingual Education.
- Padilla, A. M, Lindholm, K. J., Chen, A., Durán, R., with Hakuta, K., Lambert, W. & Tucker, G. R. (1991). The English-only movement: Myths, reality, and implications for psychology. *American Psychologist*, 46, 120-130.

- Malakoff, M. & Hakuta, K. (1991). Translation skill and metalinguistic awareness in bilinguals. In E. Bialystok (Ed.), *Language processing and language awareness by bilingual children* (pp. 141-166). Oxford: Oxford University Press.
- Hakuta, K. (1991). What bilingual education has taught the experimental psychologist: A capsule account in honor of Joshua A. Fishman. In O. García (Ed.), *Bilingual education: Focusschrift in honor of Joshua A. Fishman on the occasion of his 65th birthday*. (Pp. 203-212). Amsterdam: John Benjamins.
- Shannon, S. & Hakuta, K. (1991). Challenges for limited English proficient students and the schools. In M. Reynolds, H. Walberg & M. Wang (eds.), *Handbook of special education: Research and practice, Vol. 4: Emerging programs* (pp. 215-233). New York: Permagon Press.
- Hakuta, K. (1991). Review of K. Hyltenstam & L. Obler (Eds.), *Bilingualism across the lifespan: Aspects of acquisition, maturity, and loss*. *Applied Linguistics*, 12, 337-339.
- Hakuta, K. (1991). Review of S. Foster, *The communicative competence of young children: A modular approach*. *Child Development Abstracts and Bibliography*, 65, 97-98.
- Hakuta, K. (1991). Notes on Implications of National Assessment for Special Populations. Washington, DC: Task Force on Assessment, National Council on Education Standards and Testing.
- Hakuta, K. (1992). Bilingualism. *International Encyclopedia of Linguistics, Vol. 1* (pp. 175-178). Oxford University Press.
- Hakuta, K. & D'Andrea, D. (1992). Some properties of bilingual maintenance and loss in Mexican background high-school students. *Applied Linguistics*, 13, 72-99.
- Pease-Alvarez, L. & Hakuta, K. (1992). Enriching our views of bilingualism and bilingual education. *Educational Researcher*, 21 (March), 4-19,24.
- Hakuta, K. & Pease-Alvarez, L. (1992). (Eds.) Special issue on bilingual education. *Educational Researcher*, 21, No. 2 (March).
- Snow, C. & Hakuta, K. (1992). The costs of monolingualism. In J. Crawford (Ed.), *Language loyalties* (pp. 384-394). Chicago: University of Chicago Press.

- Hakuta, K. (1992). The gift of bilingualism. *Proceedings of the Esther Katz Rosen Symposium on the Psychological Development of Gifted Children*. American Psychological Association.
- Hakuta, K. (1994). Distinguishing among proficiency, choice, and attitudes in questions about language for bilinguals. In C. Garcia Coll and G. Lamberty (eds.), *Health and development of Puerto Rican mothers and children in the mainland, Vol. II* (pp. 191-209). New York: Plenum.
- Pease-Alvarez, L. & Hakuta, K. (1993). Perspectives on language maintenance and shift in Mexican-origin students. In P. Phelan & A. L. Davidson (Eds.), *Renegotiating cultural diversity in American schools* (pp. 89-107). New York: Teachers College Press.
- Hakuta, K. (1993). Second-language acquisition, bilingual education, and prospects for a language-rich nation. *Restructuring learning: 1990 Summer institute papers and recommendations by the Council of Chief State School Officers* (pp. 123-131). Washington, DC: Council of Chief State School Officers.
- Hakuta, K. (in press). Bilingualism. In T. Husén & T. N. Postlethwaite (Eds.), *The international encyclopedia of education, 2nd Edition*. Oxford: Permagon Press.
- Hakuta, K. (in press). Bilingualism. In R. Sternberg (Ed.), *Encyclopedia of intelligence*. New York: MacMillan Publishing Co.
- Hakuta, K. & Pease-Alvarez, L. (1994). Proficiency, choice and attitudes in bilingual Mexican-American children. In G. Extra & L. Verhoeven (eds.), *The cross-linguistic study of bilingual development* (pp. 145-164). Royal Netherlands Academy of Arts and Sciences. North-Holland, Amsterdam.
- Bialystok, E. & Hakuta, K. (1994). *In other words: The science and psychology of second language acquisition*. New York: Basic Books.
- August, D., Hakuta, K. & Pompa, D. (1994). *For All Students: Limited English Proficient Students and Goals 2000. Focus, Vol. 10 (Fall, 1994)*. Washington, DC: National Clearinghouse for Bilingual Education.
- Hakuta, K. & Valdes, G. (1994). A study design to evaluate strategies for the inclusion of L.E.P. students in the NAEP State Trial Assessment. National Academy of Education Panel on NAEP Trial State Assessment.

- August, D. & Hakuta, K. (1994). Evaluating the inclusion of L.E.P. students in systemic reform. In *Issues and Strategies in Evaluating Systemic Reform*. U. S. Department of Education, Office of the Undersecretary, Planning and Evaluation Service.
- Moran, C. & Hakuta, K. (1995). Bilingual education: Broadening research perspectives. In J. Banks (Ed.), *Handbook of Multicultural Education* (pp. 445-462). New York: MacMillan Publishing Co.
- Hakuta, K. (1995). Language minority students: Challenges and Promises. In *What Governors Need to Know about Education Reform*. Washington, DC: National Governors' Association.
- August, D., Hakuta, K., Olguin, F. & Pompa, D. (1995) LEP Students and Title I: A Guidebook for Educators. *National Clearinghouse for Bilingual Education (NCBE) Resource Collection Series*, No. 1 (available at <http://www.ncbe.gwu.edu>).
- Hakuta, K. & Feldman Mostafapour, E. (1996). Perspectives from the history and politics of bilingualism and bilingual education in the United States. In I. Parasnis (ed.), *Cultural and language diversity: Reflections on the Deaf experience* (pp. 38-50). New York and Cambridge: Cambridge University Press.
- Hakuta, K. & McLaughlin, B. (1996). Bilingualism and second language learning: Seven tensions that define the research. In D. Berliner & R. Calfee (eds.), *Handbook of Educational Psychology* (pp. 603-621). New York: Macmillan Publishing Co.
- Pease-Alvarez, L., Hakuta, K. & Bayley, R. (1996). Spanish proficiency and language use in a California Mexicano community. *Journal of the Linguistic Association of the Southwest*, 15, 137-152.
- August, D. & Hakuta, K. (1997). *Improving Schooling for Language-Minority Children*. Washington, DC: National Academy Press.
- Galguera, T. & Hakuta, K. (1997). Linguistically diverse students. In H. J. Walberg & G. D. Haertel (eds.), *Psychology and educational practice* (pp. 387-407). Berkeley, CA: McCutchan Publishers.
- August, D. & Hakuta, K. (Eds.). (1998). *Educating Language Minority Children*. Washington, DC: National Academy Press.

- Hakuta, K. (1998). Improving education for all children: Meeting the needs of language minority children. In D. Clark (ed.), *Education and the Development of American Youth*. Washington, DC: The Aspen Institute.
- Bialystok, E. & Hakuta, K. (1999). Confounded age: Linguistic and cognitive factors in age differences for second language acquisition. In D. Birdsong (ed.), *Second language acquisition and the critical period hypothesis*. Mahwah, NJ: Lawrence Erlbaum Associates.
- Hakuta, K., Butler, Y. Goto, & Bousquet, M. (1999). SAT-9 scores and California's Proposition 227. NABE News (November), 5-7. More details are reported at: <http://www.stanford.edu/~hakuta/SAT9/index.htm>
- Chang, M. J., Witt-Sandis, D. & Hakuta, K. (1999). The dynamics of race in higher education: An examination of the evidence. *Equity and Excellence in Education*, 32, 12-16.
- Hakuta, K., Goto Butler, Y., & Witt, D. (2000). *How Long Does It Take English Learners to Attain Proficiency?* University of California Linguistic Minority Research Institute Policy Report 2000-1.
- Milem, J. & Hakuta, K. (2000). The benefits of racial and ethnic diversity in higher education. In D. J. Wilds (ed.), *Minorities in Higher Education 1999-2000: Seventeenth Annual Status Report*. Washington, DC: American Council on Education.
- Goto-Butler, Y., Orr, J. E., Bousquet Gutierrez, M. & Hakuta, K. (2000). Inadequate conclusions from an inadequate assessment: What can SAT-9 scores tell us about the impact of Proposition 227 in California? *Bilingual Research Journal*, 24, 141-154.
- Hakuta, K. (2001). A Critical Period for Second Language Acquisition? In D. Bailey, J. Bruer, F. Symons & J. Lichtman (eds.), *Critical Thinking about Critical Periods*. (pp. 193-205). Baltimore: Paul Brookes Publishing Co.
- Chang, M. J., Witt, D., Jones, J. & Hakuta, K. (Eds.) (2003). *Compelling Interest: Examining the Evidence on Racial Dynamics in Higher Education*. Stanford University Press.
- Hakuta, K., Bialystok, E. & Wiley, E. (2003). Critical Evidence: A Test of the Critical Period Hypothesis for Second Language Acquisition. *Psychological Science*.

Bikle, K., Billings, E. & Hakuta, K. (in press). Two-Way Immersion: Lessons for Language Education. In J. Banks (ed.), *Handbook of Research in Multicultural Education*, 2nd Edition. New York: MacMillan.

Baker, S. & Hakuta, K. (in press). Bilingual education and Latino civil rights. To appear in volume edited by Gary Orfield and Chris Edley, Harvard Civil Rights Project.

Goto Butler, Y. & Hakuta, K. (in press). Bilingualism and second language acquisition. To appear in T. Bhatia & W. Ritchie (eds.), *Handbook of bilingualism*. Blackwell Publishers.

Antonio, A., Chang, M., Hakuta, K., Kenny, D., Levin, S. & Milem, J. (in press). Effects of Racial Diversity on Complex Thinking in College Students. *Psychological Science*. (to appear January, 2004)

last updated on June, 2003.

EXHIBIT B

Rebuttal to Dr. Russell Gersten's and Dr. Christine Rossell's Expert Reports

I. Introduction/Summary

In this paper, I respond primarily to the expert report of Dr. Russell Gersten in *Williams v. California*, and to a more limited extent, to some of the assertions of Dr. Christine Rossell concerning English Language Learners in California.

Dr. Gersten's response to my expert report on the inequities that exist for English Language Learners (ELLs) does not refute the evidence I presented that ELLs face widespread shortages of teachers with specialized knowledge needed to teach English and academic content to second-language learners and instructional materials designed to suit their special learning needs; that ELLs have higher rates of exposures to emergency credentialed teachers than most students; and that ELLs are disproportionately in over-crowded and substandard facilities.

Instead, Dr. Gersten suggests that the State need not provide much, if any, specialized training or specialized materials because it is now abandoning its long-established training requirements for ELL teachers and its long-established efforts to provide specially designed instructional materials for ELLs.¹ Though Dr. Gersten suggests a radical retrenching to a "sink or swim" approach for ELLs in California that would contravene the U.S. Supreme Court's decision in *Lau v. Nichols*, in fact, the State is not abandoning its recognition of the need to provide qualified ELL teachers and specialized material to ELLs so that they may learn English effectively and access the core curriculum.² The State continues to recognize that ELLs have unique needs that require ELL-trained teachers and supplemental materials, even as it implements one aspect (English language arts instruction) of an overall approach for ELLs through the Open Court and Houghton Mifflin materials. The State is not abandoning its certification requirements for teachers of ELLs, nor its acknowledged need to provide specialized materials for ELLs. The Open Court and Houghton Mifflin language arts materials themselves contain special supplements for ELLs and have some professional development trainings for teachers to learn to effectively utilize them, including the ELL supplements. Indeed, when pressed at his deposition, Dr. Gersten agreed that ELLs continue to need specialized instructional materials and instruction from specially trained teachers. (Gersten Depo. at 240:16-243:25 (curriculum should be made comprehensible for ELLs); 248:4-249:19 (ELLs need supplemental ELD materials); 251:18-253:4 (most ELLs require extra assistance); 254:17-20 (teacher training increases learning for ELLs); 262:17-264:21 (confirming that some special training for teachers is part of a successful program for ELLs); 427:6-15 (new teachers of ELLs should have "some awareness and some practice in working with and thinking about the kind of adjustments that one makes for English learners").)

In fact, as Dr. Gersten acknowledged at his deposition, his familiarity with California's ELL services and the focus of his report is primarily limited to the State's early reading instruction program, and, at that, is limited to a conceptual understanding of the program

¹ See my initial expert report at pp. 8-17.

² At his deposition, Dr. Gersten confirmed that he had not been asked to provide the State with any assistance to improve or to monitor the education of ELLs. (Gersten Depo. at 34:3-35:24.)

California proposes to implement. (See Gersten Depo. at 200:5-201:7 (stating that he does not know level of detail regarding professional development on teaching reading, and his understanding was at conceptual level); 209:15-210:6 (noting that research base underlying professional development referred to in his expert report was on reading instruction); 288:7-289:3 (stating that he did not know about quality of Open Court and Houghton Mifflin but merely relied on the direction the State is taking); see also 292:11-293:1.) Dr. Gersten is not familiar with how well California has actually implemented its Open Court/Houghton Mifflin Reading Language Arts programs, and he has only looked at some of those materials briefly. (*Id.* at 288:7-11; 288:19-289:9; 453:5-8; 454:11-455:21.) More significantly, Dr. Gersten is not familiar with how California delivers reading instruction for ELLs beyond grade three (*id.* at 455:4-21; 505:6-16), nor did he attempt to address in his expert report how California delivers core academic content to ELLs at any grade. What Dr. Gersten fails to establish, therefore, is that the State has effectively disseminated to ELLs the Open Court and Houghton Mifflin reading materials he espouses; that it has effectively trained teachers to instruct with those materials; and that it has achieved any success with the “Gersten” approach for reading or in terms of access to the core curriculum. Indeed, much of the evidence I presented in my initial report documents the lack of access ELL students have to instructional materials—including those materials Dr. Gersten espouses—and to teachers trained in any way to teach English Language Development or Specially Designed Academic Instruction in English. Dr. Gersten acknowledges the critical necessity for teachers to have adequate training and materials that guide them for early reading instruction,³ yet, beyond unsupported statements that such training is occurring and that the State has developed such materials, he fails to demonstrate that there is indeed adequate training and materials. In fact, as I present below: (a) a number of problems have arisen with the very materials Dr. Gersten espouses which suggest they may not be appropriate for ELLs as presently constituted; and (b) the Dr. Gersten does not know whether the “intensive” training he points to has occurred. Thus, even assuming Dr. Gersten’s program, in theory, were supportable to advance early reading for all ELLs, the evidence suggests it is not being implemented in a way to ensure ELLs have equal access to reading instruction. More significantly, Dr. Gersten’s report does not rebut the notion that ELLs lack the materials and the trained instructors to master literacy skills beyond the third grade or to access the core curriculum in any grade.

In suggesting (though not actually espousing) that it could be time to abandon special training for teachers and special instructional materials, Dr. Gersten relies on research to support the notion that very young second-language learners—*i.e.*, first through third-grade students—can learn some aspects of reading (not necessarily comprehension) at rates similar to native speakers. As my review of this research, and as the responsive paper from Dr. Catherine Snow,⁴ demonstrate, in fact, this research focuses only on precursor (early emerging) reading skills, such as phonological (sound) processing, syntactic processing (measures of how well children can

³ In his expert report, Dr. Gersten states, “Experts agree that teachers need training in reading instruction for English learners, and that publishers and experts in the area must develop practical materials that guide teachers as they teach reading to English learners.” (Gersten Expert Report at 21.)

⁴ In his deposition, Dr. Gersten testified that through her experience as chair of the National Academy of Science’s panel on preventing reading disabilities, “and perhaps what she’s done afterwards, many would consider [Dr. Snow] a reading expert.” (Gersten Depo. at 83:1-25.)

engage in tasks like repeating nonsense words) and decoding, and makes no conclusions regarding comprehension or core curriculum access. Moreover, the research cited by Dr. Gersten—much of it done in other countries with populations and target languages quite different than faced in California—does not show that it is time to reject the U.S. Supreme Court’s pronouncement that providing the same teachers and the same materials to students who do not speak English fails to provide “equality of educational opportunity.” At most, the research applies to languages such as Dutch and Hebrew that are phonologically easier than English and to precursor skills that do not equate to overall reading comprehension. Moreover, for the most part, this research relates only to young second-language learners. There is no basis from what Dr. Gersten presented in his expert report or deposition to conclude that ELL students beyond the third grade, without special help, can learn academic English and access the core curriculum at rates equal to native speakers. To the contrary, research indicates that ELLs need supplemental services in the form of materials and instruction to have any chance of catching up to their native-speaking peers.

Dr. Gersten also makes various mischaracterizations and errors – to which I respond below – in his attempts to rebut valid criticisms of the manner in which the State has implemented Proposition 227. Finally, I address many of the critiques that Dr. Gersten makes of some of the research on which I relied in my initial expert report to support the importance of specially trained teachers to provide ELLs with equality of learning opportunity.

In her report, Dr. Rossell also discusses some of this research, namely the study by the Program Evaluation and Research Branch of the Los Angeles Unified School District (Hayes, Salazar & Vukovic (2002)). She does not critique this study, but instead, merely proposes that other studies as well as her own analyses contradict Hayes, Salazar & Vukovic’s finding that certification of ELL teachers has a significant effect on student achievement. Her analyses are methodologically flawed, and the two studies of other authors that she cites fail to support her claim. Finally, Rossell asserts that there is no way of knowing how well ELLs in California are performing on standardized tests in relation to native English speakers because ELL students that learn academic English are redesignated as fluent in English and are no longer considered part of the ELL population for performance assessment. (Rossell’s Expert Report at 11-15.) Although this is simply not relevant to the claims and supporting evidence in my initial expert report, I respond to Dr. Rossell’s assertion below. In addition to my rebuttal here, several others of the plaintiffs’ experts address Dr. Rossell’s fundamentally flawed statistical analyses that also pertain to ELLs (see Dr. Darling-Hammond’s Expert Report; Dr. Lucas’s Expert Report; and Dr. Oakes’s Expert Report).

II. Dr. Gersten Neither Disputes that ELLs Lack Adequate Instructional Materials Nor Provides Evidence that They Have Access to Adequate Instructional Materials.

In my initial expert report, I presented evidence that many ELLs are not gaining access to specialized instructional materials. (Hakuta Expert Report at 30-35.) This evidence included large surveys of teachers that reported they did not have specialized or appropriate materials for their ELL students (American Institutes for Research and WestEd (2002), the Harris Survey (2002)), reports received by the State as part of the Immediate Intervention/Underperforming

Schools Program (II/USP) that document shortages of ELL instructional materials, case studies by Social Policy Research Associates where teachers in 7 of the 17 schools surveyed reported they had no materials for ELL students, and testimony of teachers and administrators in *Williams'* plaintiffs' schools.⁵

Dr. Gersten does not dispute this evidence and merely alleges in his expert report that the State has "adopt[ed] a new series of greatly improved textbooks, published by Houghton Mifflin and Open Court" (Gersten Expert Report at 3) and that these "newly-adopted instructional materials are dramatically better than the materials used by California in the past . . . [and] than those used in many other states." (Gersten Expert Report at 3.) In spite of his accolades for these new textbooks, Dr. Gersten makes no showing that ELLs have been, or are going to be, provided with the Houghton Mifflin and Open Court materials. Indeed, he makes no mention of ELLs' access to these or any other materials anywhere in his expert report. When specifically asked at his deposition about statewide information regarding the extent to which ELLs have access to the Houghton Mifflin and Open Court materials, Dr. Gersten replied, "I simply don't have access to that kind of information." (Gersten Depo. at 215:13-17; see also *id.* at 284:19-3 (stating that although State officials should have a system for ensuring that all ELLs have appropriate instructional materials, he did not know whether California did).)

Absent discussion of access to specialized materials, Dr. Gersten's reference to the State's newly-adopted instructional materials is not relevant to the claims and supporting evidence that I set forth in my initial expert report regarding the inequities as to instructional materials designed to suit the special learning needs of ELLs. Thus, Dr. Gersten fails to rebut the evidence of these inequities and simply misses the point.

III. Dr. Gersten Neither Disputes that ELLs Lack Access to Teachers Authorized to Teach ELLs Nor Provides Evidence that They Have Access to Teachers Qualified to Teach ELLs.

In my initial expert report, I also provide evidence of the mal-distribution and inadequate supply of teachers with the qualifications and training that the State requires for teaching ELL students. As detailed in that report (Hakuta Expert Report at 11-15), the State of California requires that ELL teachers have additional authorizations beyond a teacher's existing credential to teach ELLs English Language Development (ELD) and Specially Designed Academic Instruction in English (SDAIE) or to teach ELLs through their primary language. The California Commission on Teacher Credentialing (CTC) has issued two basic credentials to ELL teachers: (1) the Cross-Cultural, Academic, and Language Development (CLAD) certificate, and (2) the

⁵ As the evidence continues to amass on behalf of the plaintiffs in this case, there is further indication that many ELLs continue to suffer significant shortages of specialized instructional materials. For example, I have reviewed a recent declaration from a teacher at Watsonville High School (one of the plaintiffs' schools) that states in the last school term, he did not have the resources necessary to teach effectively U.S. History, Specially Designed Academic Instruction in English, SDAIE Federal government and SDAIE Economics to ELLs. (Mejia Dec.) As a result, this teacher had to spend "an average of three hours per night researching, translating, and creating bilingual supplemental materials so that [his] students can understand and learn the material in their textbooks." (Mejia Dec. at p. 1, paragraph 3.) This teacher also noted that some of his colleagues lacked special materials for ELLs and even lacked textbooks for his students to take home for studying and homework. (Mejia Dec. at p. 2, paragraph 5.)

Bilingual Cross-Cultural, Academic and Language Development (BCLAD) certificate.⁶ Further, in response to the shortage of ELL teachers, the State has established various other alternative methods of authorization for teaching ELL students. My initial report demonstrates that although the State's data collection system fails to collect data at the classroom level, various analyses of the available data – including the CBEDS data and the Language Census Survey – show that at a minimum, there is a serious problem in the State with the distribution of ELL-trained teachers among schools where they are needed, and that there are significant numbers of ELL students receiving no specialized instruction whatsoever (approximately 77,000 students in the year 2001-02). Moreover, evidence from two large surveys of teachers (the 2000 Class Size Reduction survey (Stecher & Bohrnstedt (2002)) and the Harris Survey) reinforces the empirical data that large numbers of ELLs receive instruction from teachers without the ELL authorizations the State requires. The absence of sufficient numbers of teachers authorized to teach ELL students is confirmed by the State's practice of temporarily allowing certain teachers – more than 37,000 in 2001-02 – to provide ELL instructional services without the certification to do so.

Despite evidence, including the State's own data, demonstrating the significant shortages of teachers authorized to teach ELL students, Dr. Gersten's expert report does not address this issue. In fact, Dr. Gersten simply contends, without support, that, "all teachers are now being trained in ELD teaching strategies so that they are capable of using [the Houghton Mifflin and Open Court] materials. In this way, teaching techniques specific to English-language learners are being infused throughout the state's professional development programs." (Gersten Expert Report at 3-4.) There are two problems with this assertion. First, it fails to address the State's various requirements pertaining to proper certification of teachers of ELL students. Second, even assuming that learning teaching techniques related to the ELD portion of the Houghton Mifflin and Open Court language arts materials was sufficient to satisfy the State's requirements, Dr. Gersten has failed to present any evidence that California teachers are receiving such training and that a significant number of ELL students are being taught by teachers with this or other specialized training on ELD issues. Indeed, at his deposition, he testified that he did not know what the State's current system was for ensuring that ELLs have appropriately trained teachers. (Gersten Depo. at 284:4-17.) He also stated that he did not know whether there was a State system to detect how many ELLs in California are not receiving any ELL support services. (Gersten Depo. at 551:15-552:1.)

In fact, by not addressing areas other than reading language arts, Dr. Gersten fails to dispute the evidence that ELLs in California do not have a sufficient supply of teachers trained to teach them the core content areas. And, as Dr. Gersten acknowledges, it is not sufficient to merely teach an ELL student how to read to provide him or her with access to content areas. (See Gersten Depo. at 479:18-480:21.)

⁶ Although Dr. Gersten asserts in his expert report that the CLAD and BCLAD certifications have a "somewhat antiquated linguistic focus," (Gersten Expert Report at 11), he admitted in his deposition that he had not followed the California credentialing process for teachers of ELL students in California (Gersten Depo. at 273:3-12). Also, Dr. Gersten testified that the ability to teach morphology and phonemic awareness – two precursor skills to reading that are highlighted in the studies on which Dr. Gersten relies – are important areas of linguistics for teachers of ELLs to be familiar with. (Gersten Depo. at 418:7-10.)

Even with regard to Dr. Gersten’s suggestion that the State is providing ELL students with teachers trained to meet their specialized needs because “California has been and continues to provide intensive professional development in reading instruction for English learners and the merger of English language development with reading instruction” (Gersten Expert Report at 21), Dr. Gersten does not offer evidence. In fact, his expert report gives no description of these professional development programs other than the bold assertions that they are “intensive” (*id.*) and “linked to principles in recent Federal legislation such as *No Child Left Behind* and *Reading First*” (*id.*), and that “the state continues to provide districts support with professional development for structured immersion and ELD” (*id.* at p. 4). Dr. Gersten’s report does not quantify the number of relevant professional development programs being provided or the number of teachers who have already received or are scheduled to receive this training. Not even one example of these “intensive” professional development programs is mentioned. Moreover, in his deposition, Dr. Gersten admitted that he did not know much about the actual professional development programs he referred to in his report; that he had not reviewed any materials relating to the programs; that he was not aware as to how much of such training was being provided; and that he did not know how many teachers had participated in the professional development. (See Gersten Depo. at 200:12-25; 209:12-14; 213:11-13.) To the contrary, Dr. Gersten acknowledged that his understanding of the State’s professional development in reading instruction for ELLs is limited to the conceptual level. (*Id.* at 200:12-201:7.)

In sum, Dr. Gersten fails to rebut the evidence – presented in my initial expert report – of the mal-distribution and inadequate supply of teachers authorized by the State to teach ELL students; he fails to rebut the evidence I presented that in-service, professional development related to ELL instruction is inadequate; and he fails to offer evidence of his own to support his limited claim that “California has been and continues to provide intensive professional development in reading instruction for English Learners.” (Gersten Expert Report at 21 (emphasis added).) Thus, although the State has recognized the need to ensure that its ELL students receive specially-trained teachers, it has not done so (see Hakuta Expert Report at 8-15, 18-26), and Dr. Gersten’s rebuttal falls short of demonstrating otherwise.

IV. Dr. Gersten’s Concept for Beginning Reading Instruction is Not Being Well-Implemented and Lacks Evidence that it is Providing Equal Access for ELLs.

A. Implementation Problems with Open Court and Houghton Mifflin

In his expert report, Dr. Gersten attempts to rebut the evidence in my initial report that the State has not adequately ensured equal access for ELLs to the State’s content standards by pointing to the State’s adoption of “reading/language arts curriculum frameworks for K-8 students that are aligned to the state’s content standards” (Gersten Expert Report at 3) and the subsequent adoption of English language arts textbooks published by Houghton Mifflin and Open Court (*id.*).⁷ Dr. Gersten indicates that because the reading language arts curriculum frameworks incorporate ELD strategies and the above-referenced materials contain a supplement

⁷ Dr. Gersten stated in his deposition, that he did not have much, if any, knowledge about the State’s approach to educating ELLs in grades 7-12. (Gersten Depo. at 468:13-469:5.)

with a 30-40 minute additional, daily lesson for ELLs, the State is now providing ELLs with equal access to the core curriculum. (See *id.* at 3.) Dr. Gersten's assertion is flawed, however, for several reasons.

First, Dr. Gersten completely ignores ELL access to all of the other core content areas for which the State has promulgated content standards, including math, science, and social studies. Not only must ELLs have equal access to these content areas as a matter of right, but grade promotion and, with the high school exit exam, now a diploma can be premised on proficiency in these other areas. (See Hakuta Expert Report at 17-18.)

Second, as to the Open Court and Houghton Mifflin materials in particular, Dr. Gersten admits in his deposition that he is not qualified to review and rate actual curriculum for ELLs. (Gersten Depo. at 177:11-24; 180:21-181:7.) Third, even if he were, he stated that he had not reviewed the quality of the Houghton Mifflin and Open Court materials. (*Id.* at 288:7-289:3 (explaining that he had not done a "serious review" of the materials and that he is simply relying on the concept of the State's program rather than quality of the actual materials); 563:16-19; see also 429:16-22.)

Fourth, evidence from state officials, educators in the field and the textbook publishers suggests that the Houghton Mifflin and Open Court reading/language arts textbooks are insufficient for teaching ELLs the State's reading/language arts curriculum, not to mention for providing access to other core academic subjects. For example, with regard to the ELD portion of the Open Court materials, Dr. Laurene Burnham Massey, Director of the Comite Compliance Unit at the California Department of Education, has stated the following concerns:

[T]hat material . . . is good for helping shelter or SDAIE the [sic] language arts instruction but isn't really designed to provide students with the developmental English language development program that will allow them to gain full proficiency in English. (Burnham Massey Depo. at 235:16-20.)

Dr. Burnham Massey also said she had discussed with district personnel ways in which they could supplement the Open Court ELD sections with either district-developed materials or those from another publisher to "help the students meet the standards." (*Id.* at 243:19-244:9.)

Dr. Burnham Massey stated further that she believed others who had reviewed the Houghton Mifflin ELD supplements had similar concerns. (*Id.* at 240:16-24.) Likewise, with respect to the ELD supplements to the new reading/language arts materials, other educators in the field have provided testimony to the State Board of Education that:

[I]t is necessary to create and fill in the missing pieces, and many schools are falling back on the previous ELD adoption or purchase supplemental materials and trainings to do so. The result has been the use of state and federal categorical monies to buy what the state-adopted reading/language art series are actually required to provide. (See July 9, 2003 State School Board Presentation of Elizabeth Fralicks, Resource Specialist, Fresno Unified School District, Title III, Office of State and Federal Program.)

Moreover, in her presentation to the State Board of Education, Ms. Fralicks, a Resource Specialist in Fresno Unified School District, also pointed out that the Open Court and Houghton Mifflin ELD supplements fail to provide “meaningful instruction” to ELLs because they do not adequately account for the state-recognized proficiency levels of ELL students. (*Id.*) Indeed, as she correctly notes, contrary to State Board requirements for ELL standards-based materials, Open Court makes no reference to or accommodation for differing English language proficiency levels among ELLs (*e.g.*, beginning, intermediate, advanced). Ms. Fralicks further noted, “Houghton Mifflin does not provide sufficient materials or strategies for meaningful instruction to . . . English Learners, particularly those at the lower levels.”⁸ (*Id.*)

Finally, and quite significantly, the State Board has demanded a “product recall,” to which the publishers have agreed, of the ELD supplemental guide in the Open Court reading/language arts materials. (Draft Minutes of the State Board of Education, July 9-10, 2003.) President of the Board, Reed Hastings, announced that the recall was necessary as the materials contained “the single most disturbing example of institutional racism he [had] witnessed.” (*Id.* at p. 16, Item 25.) President Hastings was responding to calls by certain State Senators to examine the appropriateness of the Open Court materials for ELLs insofar as the teacher guide contained derogatory and inappropriate comments concerning second-language learners. The existence of such unfortunate content raises concerns about both the quality of the materials for instructing ELLs and about the review procedures for the materials. Yet, equally and immediately troubling is the fact that the recall presents implementation problems for the school districts that have purchased these materials. Specifically, the publishers plan to comply with the demanded changes by including “inserts” in the form of a temporary replacement that was to be delivered to the schools this month; the permanent replacement piece is not scheduled to be ready until January 2004. (Department of Education, Information Memorandum, July 31, 2003, “Report on Changes to English Language Development Guide in SRA/McGraw Hill’s SRA/Open Court Reading 2002.) Thus, over a year-and-a-half after these materials were to have been implemented, their implementation is still moving in fits and starts.

B. The Inability of Early Reading Language Arts to Substitute For the Whole Curriculum.

Dr. Gersten concedes that since the Reading Language Arts approach he supports “is so new, it is too early to gather reliable data on long-term outcomes.” (Gersten Expert Report at 19.) I think it unlikely that significant, improved long-term outcomes for ELLs will be generated in the future simply by employing the early reading approach Dr. Gersten supports. By focusing solely on beginning reading, the approach described by Dr. Gersten fails to provide ELLs with equal opportunity to access California’s core curriculum. Indeed, Dr. Gersten neglects to establish how ELLs will gain access to that curriculum without qualified teachers and appropriate instructional materials.

⁸ It is my understanding that – contrary to Dr. Gersten’s claim that LAUSD “has taken significant strides to implement the state framework” (Gersten Expert Report at 22) – LAUSD is permitting its district personnel to substitute previously adopted materials for ELLs for the ELD supplements to the Open Court reading/language arts materials.

Furthermore, with respect to this so-called new approach to educating ELLs, Dr. Gersten did not even consider its applicability to ELLs arriving in California after the third grade. (Gersten Depo. at 393:20-394:24 (stating that the studies he cites in his expert report on reading all deal with ELLs at early grade levels); 455:4-21 (conceding that he looked at the Open Court materials for grades beyond grade 3 only out of curiosity); 505:18-21 (admitting that he was not aware of any instructional materials designed for teaching newcomer ELLs to read in grades 7 through 12)). Thus, he completely discounts how newly-arrived, grade 3-12 ELL students, who come to school with a wide variety of reading and English language skills, are to learn how to read proficiently in English.

V. There is No Support for the Notion that ELL's and Native English Speakers Can Learn to Read Equally with Precisely the Same Instruction.

As I discuss briefly here, and as Dr. Snow discusses in greater detail in her paper responding to Dr. Gersten, the research Dr. Gersten cites does not support the notion that ELLs can learn to read at approximately the same rate as native English speakers.⁹ While Gersten makes the point that he cites studies that have been published in “the most prestigious journals in the field” (such as Droop, M., & Verhoeven, L. (2003), Language proficiency and reading ability in first- and second-language learners, *Reading Research Quarterly*, 38(1), 78-103), his use of the information from these studies is selective and contradictory. Although it is true that Droop and Verhoeven found no differences in the decoding skills of the native-speaking (Dutch) children versus the minority (Turkish and Moroccan) children after two years of formal instruction, he conveniently fails to note additional findings that minority children with Dutch as a second language scored lower than their low-SES Dutch peers on reading comprehension, oral language proficiency, vocabulary knowledge (largest differences), and morphosyntactic knowledge.¹⁰ In other words, Dr. Gersten’s claim that ELLs can learn to read at approximately the same rate as comparable native English speakers is supported only with respect to “decoding skills” (and, in this case, in Dutch). The Droop and Verhoeven study has shown, as the authors highlight in their abstract, “with respect to reading comprehension and oral language proficiency, however, the minority children were found to lag behind the Dutch children in all aspects.”¹¹

Likewise, Gersten cites Fitzgerald (2000) and Bernhardt (2003) to make his point that there is no fundamental difference in learning to read in a second language (Gersten Expert Report at 20.) Quite to the contrary, while Fitzgerald asserts that “there is little evidence to support the need for a special vision of second-language reading instruction,” (Fitzgerald at p. 520), Bernhardt asserts that “[t]heory, scholarship, research, policy, and practice that emphasize

⁹In the event Dr. Gersten is suggesting that the research he cites for this proposition negates the need for any specialized instructional materials or specially trained teachers, his contention contravenes the Supreme Court’s ruling in *Lau v. Nichols*, 414 U.S. 563, 566 (1974) (concluding that “. . . there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education”).

¹⁰In his deposition, Dr. Gersten stated that he had reviewed some of the “key findings” of the Droop and Verhoeven study but did not recall how thoroughly he had studied it. (Gersten Depo. At 59:14-60:2.)

¹¹In fact, at his deposition, Dr. Gersten said that he was not aware of any evidence that ELLs could achieve fluency or develop reading comprehension at the same rate as native speakers. (See Gersten Depo. at 524: 1-6; 526:20-527:1.)

the sameness between the two processes [first language reading and second language reading] lure the research community into a naïve complacency” (Bernhardt at p. 114) and that “indeed, while the direct experimental evidence does not yet exist, such statements become *carte blanche* for teachers and researchers to ignore any language or literacy differences that children bring to classrooms.” Regarding teacher preparation, Bernhardt states that:

It takes an enormous store of professional knowledge and commitment to the literacy achievement of individual children to effectively and efficiently formulate classroom strategies to accommodate the development of all children. When children come to school with a language other than English, diagnostic accuracy becomes simultaneously more critical and much more difficult. (Bernhardt at p. 115).

To summarize, Bernhardt does not say that there is no fundamental difference in learning how to read in a second language. Quite the opposite, she disagrees with Fitzgerald's opinion that there is no need for a special vision of second language reading instruction. Also, she stresses the challenges that teachers confront when teaching reading to second language learners and advocates for the development of materials specifically designed to assess and diagnose these students.

VI. Dr. Gersten's Statements Regarding EL Teacher Certification and the Research Related to It are Inaccurate, Irrelevant or Misguided and Fail to Discredit the Link between EL Teacher Certification and Student Achievement.

A. Mischaracterization of “New Law” Guaranteeing ELLs Qualified Teachers.

As part of the State's “waive of initiatives” (Gersten Expert Report at p. 1) that Dr. Gersten contends are likely to enhance the achievement of ELLs, he refers to “[t]he new state law that requires teachers to be fully certified” (*id.*) and cites Keller (2003) for this proposition.¹² The Keller article, which is from *Education Week*, is referring to the recently adopted Master Plan for Education and its proposed legislation on changes to teacher credentialing. (Joint Committee To Develop a Master Plan for Education, California Master Plan for Education (2002).) This falls woefully short of providing qualified teachers for ELLs. First, the Master Plan bill – introduced by Assemblywoman Carol Liu -- does not address teachers authorized to teach ELLs specifically. Instead, its focus is to reduce and eliminate preinterns by 2010 and emergency permits by 2005. Second, the Master Plan is a long-term plan that could take several years to implement and is still in drafting stages. The “new law” is in fact not a law at all, but is still only a bill that never made it out of its original policy committee, the Assembly Committee on Education. Instead, the bill has been made into a two-year bill to be discussed further and

¹² It is notable that Dr. Gersten agrees with the proposition in my initial expert report that research suggests the academic success of students is strongly related to the professional preparation and certification of their teachers (Hakuta Expert Report at 3). Specifically, in his deposition, Dr. Gersten stated that requiring teachers to be fully certified improves the quality of education for ELLs “because there's some suggestions . . . that certified teachers on average tend to do somewhat better than those who have no certification in terms of student outcomes”. (Gersten Depo. at 229:15-19.)

amended next year. Of course, there is no present guarantee that it will ever become a “new law” at all.

B. Reliance on Reliable Research Institutions and Their Research.

Dr. Gersten characterizes my review of research as excessively relying on research at the University of California’s research institutes. Furthermore, he notes that a good deal of the research has not been subjected to the rigors of the scientific peer review process. He refers, instead, to a set of studies that he characterizes as more scientific and that I presumably avoided selectively.

There is no particular reason why I relied on the studies that happened to be affiliated with the University of California. The research centers he refers to are the Center for Research on Education, Diversity and Excellence (CREDE), funded primarily by the U.S. Department of Education and based at the University of California, Santa Cruz, the University of California Linguistic Minority Research Institute, a multi-campus research unit that is primarily funded by the Office of the President at the University of California and based at the University of California, Santa Barbara, and the Center for Applied Linguistics based in Washington, D.C., but whose work in this area is subcontracted with CREDE at UC Santa Cruz. These are all centers with highly recognized researchers. The advantage of research centers is that they have critical mass and have developed a high level of internal controls on agenda setting and quality. The fact that they happen to be in California is not particularly relevant except, perhaps, to demonstrate that California has a large English Language Learner population.

C. Thomas & Collier.

Dr. Gersten critiques my use of the Thomas & Collier (2002) study at two levels. One has to do with its publication status, *i.e.*, that it has not been published in a scientific, peer-reviewed journal, and the second, on the inferences that can be drawn from the data.

Although the study has not been published in a peer-reviewed scientific journal, the report was reviewed both internally and externally by highly qualified researchers in accordance with standards that were developed and enforced by the U.S. Department of Education’s office of research (at that time, the Office of Educational Research and Improvement). Although the review process is confidential, I am aware of at least one external reviewer -- a nationally recognized specialist in program evaluation -- who evaluated the document. The manuscript, because of its high national prominence, was also given strict scrutiny by the top levels of OERI, including two individuals who are highly recognized experimental psychologists.

The critiques of the quality of the study given by Dr. Gersten are off the mark. For one thing, my testimony only referred to a specific portion of the Thomas and Collier study, *i.e.*, the low performance of the students in the Houston Independent School District who were not receiving special services. Dr. Gersten spends most of his effort critiquing characteristics of the components of the study conducted in Maine and in Oregon, neither of which reported data on students not receiving services. Dr. Gersten also focuses his critique of the Houston data on the

difficulty in comparing students in native language instruction to those in English-only instruction. That was not the point of my use of the Houston data, either.

Nevertheless, Dr. Gersten raises two valid concerns about the Houston study. First, he states that the study does not enable us to know the qualifications of the teachers in the different categories, i.e., bilingual, ESL, and “refusers of services”. He complains that there is no information on the specific kind or level of training received by the teachers in the ESL programs. He is directing his comments on why the study found the students in the bilingual programs fared better than those in ESL programs. Again, Dr. Gersten misses my point, which is that the performance of the students who were the refusers of services fared worse than those either in the bilingual or the ESL programs. These refusers of services are in mainstream classes, and therefore their teachers are not likely to have received any kind of training specific to ELLs.

Another point raised by Dr. Gersten has to do with the problems relating to longitudinal data and attrition of the sample. This is a problem familiar to anyone who has attempted to collect data from students over time. Thomas and Collier do not discuss how attrition was handled in their study. However, what they do report is that the students who were refusers of services had the highest drop-out rate of the students in the different groups. Thus, if sample attrition were to be taken into account, it would only amplify rather than detract from my point about the poor outcomes of the refusers of services.

Dr. Gersten’s criticism of the problems in the longitudinal design of Thomas and Collier shows, at least, that he understands that the Thomas and Collier study is a longitudinal reconstruction of school district data, painstakingly conducted by the authors in collaboration with school district personnel. This point seems to have completely escaped Dr. Rossell who flatly states that the study is not longitudinal and “does not follow the same students over time”. Quite clearly, she has not read or at least fails to appreciate the Thomas and Collier report. In a comment that I find inappropriate, she supports this by claiming that I do not do “quantitative research”, a claim that would come as a great surprise to anyone who has read even a small sample of my research, much of it in the area of experimental psycholinguistics, a field defined by the quantitative and experimental testing of hypotheses generated by linguistic theories.

D. Wong-Fillmore & Snow and Academic English.

Dr. Gersten critiques my reference to the recommendations of Wong-Fillmore & Snow regarding teacher knowledge of language as reflecting the “antiquated linguistic focus in the CLAD and BCLAD certifications” (Gersten at p. 11). He characterizes my testimony as “utterly absent” in its emphasis on “how to use reading, writing, and a discussion of the literature to enhance academic English” (Gersten at p. 11).

There are two important rebuttals to Dr. Gersten’s critique on this point. First, I would not debate the contention that knowledge about linguistics is, solely on its own, a sufficient basis for teaching English language learners. However, the point is that knowledge of linguistics is something that teachers who are not trained in ELL teaching strategies, such as CLAD, are unlikely to be exposed to, and that is why the points raised by Wong-Fillmore and Snow are so

important to raise explicitly. Certainly, there is no basis, as Gersten claims, that the seven courses, literally taught, positively impact student achievement. However, in my own professional experience teaching pre-service and in-service programs for CLAD certification, I have consistently found great hunger on the part of teachers for this component of the class. Experts, such as Elizabeth Bernhardt, who was cited by Dr. Gersten, also would agree to the importance of linguistic expertise. In her paper, she wrote: “The first challenge is to integrate linguistic perspectives with the teacher education curriculum ... Explicit knowledge of the languages involved helps to fill the gap between teachers and pupil. ... The second challenge is to develop useful materials for inservice teachers to help them assess and diagnose literacy difficulties encountered by children whose native language is not that of the classroom.” Thus, from both professional experience and research experts, there is recognition of the importance of the knowledge of linguistics in teaching ELL students. It is hardly an antiquated notion; indeed, having knowledge of second language acquisition continues to be a core requirement for teachers of ELLs in California and in some other states with large ELL populations, such as Florida.

A second rebuttal is the characterization that my expert report ignores reading, writing, and the enhancement of academic English. To the contrary, after discussing the importance of linguistics, my report goes on to cite the National Research Council report and a study by Saunders, O’Brien *et al.* (2001) and their colleagues to show how professional development is important. These reports talk about the importance of professional development not as a stand-alone activity – which would not make sense, since any professional development activity occurs around specific content – but in the context of academic language development. For example, most of the activities that are the focus of the Saunders, O’Brien, *et al.* (2001) studies are about academic language development. Their report (Saunders, O’Brien, Marcelletti, Hasenstab, Saldivar & Goldenberg (2001)) begins with about as clear a statement of this point as might be expected: “We have concentrated on improving literacy achievement for two reasons. First, literacy achievement is usually the core issue at schools with large numbers of English language learners. Second, we presume that improved literacy achievement—both basic skills and basic literacy practices – contributes to improved achievement throughout the academic program” (Saunders, O’Brien, *et al.* at p. 2) Dr. Gersten’s critique does not address the wealth of information contained in these reports, even though they address literacy development. Thus, Dr. Gersten mischaracterizes my report as ignoring these important aspects of academic development.

E. Hayes, Salazar & Vukovic.

Dr. Gersten’s critique of the findings of Hayes, Salazar & Vukovic (2002) rests on the fact that the effects for training are trivial, defined as “well less than an effect size of .25” (Gersten Expert Report at p. 12). While this is indeed a small effect size, many effect sizes in educational interventions are small, especially when one controls for large sources of variation such as socioeconomic status. But small should not be equated with trivial, a fact that is underscored by experts in meta-analysis such as the article by M. Lipsey and D. Wilson (1993) (published in the flagship journal of the American Psychological Association) who write: “what does seem clear, however, is that in assessing meta-analytic estimates of the effects of

psychological, educational, and behavioral treatment, we cannot arbitrarily dismiss statistically modest values (even 0.10 or 0.20 SDs) as obviously trivial” (Lipsey at p. 1199).

Dr. Rossell also addresses the Hayes, Salazar (2002) study but does not critique it other than to say that the results are contrary to other research. She refers to studies on the general lack of relationship between teacher education and student achievement (Hanushek), studies whose conclusions are addressed by other experts. Dr. Rossell also relies on the Significant Bilingual Instructional Features study by Dr. Tickunoff. Dr. Rossell’s points regarding Hayes, Salazar (2002) do not contradict the CLAD/BCLAD requirements at all; she noted that: “The most common preparation for these outstanding teachers was attendance at in-service workshops. Only one of the 58 teachers had passed a proficiency test in the non-English language. [CLAD does not require proficiency in the non-English language.] Only nine had ever taken any courses in college in bilingual education. [Again, bilingual education is not a California CLAD requirement.] Only four had ever taken any course work in linguistics. [Knowledge about linguistics and second language acquisition are best embedded within a pedagogical framework, not as stand-alone college coursework.]” I believe that Dr. Rossell is stuck in the traditional and somewhat antiquated battle that has unfortunately sapped the energy of educators serious about the education of English Language Learners, by continuing to insist that the battle is “bilingual” vs. “English only”.

In addition, in an attempt to further argue the point that certification does not matter, Dr. Rossell discusses two analyses. The first is based on data from the Berkeley Unified School District in 1988 (Table 6). In this analysis, she claims to show that BCLAD certification had no significant effect on student outcomes. However, BCLAD certification was not adopted by the California Commission on Teacher Credentialing until 1992. Furthermore, the sample must have been selective. She writes that “in this analysis, an individual student’s achievement from one year to the next was predicted from their personal characteristics and from whether their teacher was bilingual certified (BCLAD)” (Rossell Expert Report at p. 17). The sample sizes (N) are just 77 for reading achievement, 78 for math achievement, and 62 for language achievement. Surely there were more ELL students than this in Berkeley Unified School District in 1988. Without knowing how the samples were constructed and having more information about this study, it is not possible to accord it any weight.

The second analysis, in Dr. Rossell’s Table 7, is a summary table, but the analysis is similarly not transparent and can be accorded little, if any, weight. For one thing, the data are at the school level, not at the level of individual students. Thus, one cannot make inferences about classrooms or individual students based on this analysis. It is possible that within schools, there was a mal-distribution of EL-certified teachers to instruct ELL students. Even if the unit of analysis were schools, the sample size for the analysis (N’s) indicate that they are not the universe of schools with ELLs in California, and there is no information in Dr. Rossell’s Appendix 4 as to how the sample was constructed. Finally, the data is not longitudinal and only looks at students who are designated as ELL. Dr. Rossell’s analysis is flawed for the exact reasons that she herself argues in her expert report, *i.e.*, the present data system does not enable her to draw inferences about the outcomes for ELLs because it excludes ELLs who were successfully redesignated.

VII. Dr. Gersten Mischaracterizes Statements about Prop. 227 and the AIR & WestEd (2002) Report.

Dr. Gersten's representation of the impact of Proposition 227, and of the state-funded evaluation of it, is selective and tendentious. There are several examples that demonstrate this.

He states that Proposition 227 "eliminated bilingual education" in California. This is false. Over 153,000 of California's EL students are currently receiving some form of bilingual education under alternative program provisions provided by Prop. 227 (CDE, Language Census, 2003; http://data1.cde.ca.gov/dataquest/EIP2_State.asp?RptYear=2002-03&RptType=ELPart2_1a) (And this is the case despite the facts that half of the districts and schools surveyed by AIR/WestEd reported that their ELL students' parents do not understand the parental waiver option stipulated by Prop. 227 (AIR/WestEd, 2002, p. IV-16), that nearly a quarter of surveyed districts do not have any explicit policy in place on waivers, and significant percentages of schools and districts report needing additional guidance on the requirements for offering and granting parental waivers under Prop. 227 (p. IV-17)).

Dr. Gersten claims I "fault the state for not taking a uniform approach to teaching English language learners after Proposition 227 passed." This is inaccurate. I cited the five-year AIR/WestEd evaluation study being conducted for the state, which in its Year 1 and Year 2 reports, clearly documents district and school educators' criticisms of the state for failing to provide sufficient guidance to district and school staffs on the following: how to comply with the law (particularly regarding: use of primary language in curricular materials and instruction; defining instructing "overwhelmingly in English," and the determination of "reasonable fluency" for transfer to mainstream classrooms); and what constitutes best practice in Structured English Immersion; and for not providing adequate time and professional development to implement it. (see AIR/WestEd, 2002, IV10-13). There is no "uniform approach" to teaching ELLs, as the National Research Council Committee that I chaired made clear in its 1997 report on improving schooling for language-minority children. That fact in no way, however, has prevented the state from providing to districts the guidance they need to implement Proposition 227 within clear parameters.

Dr. Gersten characterizes the ongoing lack of guidelines and instructional resources for the state's educators regarding Prop. 227 and Structured English Immersion as "flexibility," and cites his own "observational research in three southern California school districts" to suggest that teachers are not dissatisfied by it. In opposition, the AIR/WestEd survey, a representative survey, clearly documents the dissatisfaction and confusion that continues among many educators as they implement Prop. 227 and Structured English Immersion.

While the AIR/WestEd Year 2 report notes that surveyed teachers are satisfied with professional development they have received, it also details serious concerns regarding the quality and appropriateness of instruction for ELLs. In summarizing their survey findings on these topics, the researchers stated, "Teachers have lower expectations for their EL students than for their EO [English Only, or native English] students (particularly in the degree and depth of

curriculum covered), have difficulty providing ELs with challenging content, and lack adequate time to address EL students' instructional needs.” (AIR/WestEd, 2002, IV-44.)

Dr. Gersten also asserts that Prop. 227 is “likely to improve” EL student achievement. Yet, in the AIR/WestEd Year 2 survey, most district and school educators reported that Prop. 227 had no influence on redesignating ELLs to fluent English proficient (RFEP), a status which requires meeting second language fluency as well as grade-level academic criteria. In fact, surveyed educators reported that just under half of their EL students met these criteria before leaving their schools for the next school level; that the large majority of those redesignating took more than three years to do so (in contradiction to Prop. 227's suggested one-year timeframe); and that it was ELL students' academic performance in core subjects – more than their English language proficiency – that kept them in ELL status (AIR/WestEd, 2002, p. IV 31-34). In any event, my main point in my opening expert report was that Prop. 227 has no hope of improving ELL student achievement if it is not effectively implemented in terms of providing districts with the guidelines they need and students with the materials and the teachers they need. Again, Dr. Gersten fails to explain how any ELL program can be effectively implemented without adequate instructional materials and adequately trained instructors.

Dr. Gersten also projects an overly-enthusiastic view of the academic achievement data presented in the AIR/WestEd Year 2 report, something the report's researchers refrain from doing. While the researchers did note that all groups of students made gains over the four years analyzed, they also noted repeatedly that “despite small reductions, the performance gap between EL/RFEPs and EOs persists for each subject” (AIR/WestEd, 2002, p.III-8). This was found to be true for within-grade and longitudinal cohort comparisons. Regarding the .20 Standard Deviation (SD) finding for the grade 8-11 cohort, which Gersten touts in particular, the researchers noted that this outcome was likely due to the significant drop in the number of ELL students across that gradespan: “This decrease [in number of EL students] may overstate the performance of ELs as a group, since it likely reflects greater school-leaving among the lowest performers in this population” (AIR/WestEd, 2002, III-13).

Dr. Gersten claims the AIR/WestEd data indicate that “the combination of 227 and the state's newly adopted reading/language arts initiatives will not hamper student achievement, but rather are likely to improve it.” Yet the researchers themselves are careful to avoid this kind of causal speculation. They note that several important reforms were implemented in California during this timeframe, including class-size reduction, high-stakes accountability, and pupil promotion and retention, among others, and warn “attributing any of our findings exclusively to Proposition 227 would therefore be tenuous at best” (AIR/WestEd, 2002, III-25).

VIII. The State's Experts Fail to Rebut the State's Lack of an Effective Oversight and Management System for ELLs.

Neither Dr. Gersten nor Dr. Rossell assert that there is an effective oversight and management system in place which is capable of preventing, detecting and correcting serious educational opportunity deficiencies for ELLs in California. Indeed, Dr. Gersten admits that it

would be desirable for California to have in place a system that tracked ELLs' access to appropriate instructional materials and to appropriately trained ELL teachers, but conceded that he was not aware of any such system. (Gersten Depo. at 284:19-3; 284:4-17; 551:15-552:1.)

Dr. Rossell spends several pages in her report (Rossell Expert Report at pp. 11-15) going through a theoretical exercise (Table 5) in showing how there is really no way of knowing how well ELLs are doing, because ELL students who learn academic English and are redesignated as fluent in English are pulled out of the group, thus maintaining the low scores of the group. Thus, Dr. Rossell maintains that even in a system where ELL students are doing well, we would never know this fact because appropriate data do not exist that tracks students once they have become redesignated. The fact that Dr. Rossell has to use theoretical data to illustrate her point, rather than using real data from the State, virtually makes my case, which is that the State has failed to monitor and enforce its own system for educating ELLs. Dr. Rossell's inability to refer to any data from the state shows the very inadequacy of the State's commitment to finding out how English Language Learners are faring once they are redesignated.¹³

At most, Drs. Gersten and Rossell laud the State's outcomes-focused, test-based accountability system as somehow sufficient to ensure that all ELLs will receive the resources they need for learning English and equally accessing the core curriculum. This proposition has serious problems. An outcomes-focused strategy is does not make sense without the resources to provide the level of opportunity necessary for ELLs to perform. Over four years have passed since the State adopted its test-based, outcomes-focused accountability system in the form of the Public School Accountability Act of 1999 (PSAA), yet ELLs are performing no better and arguably worse; moreover, they continue to suffer from rampant denial of the basic instructional materials and qualified teachers necessary to succeed academically.

Dr. Gersten wrongly claims that I alleged "it is unfair for the state to expect EL students to meet the same academic requirements as non-EL students" (Gersten Expert Report at 2). This seriously misrepresents my criticism of the State's application of standards to ELL students. I agree that ELL students need to be included in any accountability system the State establishes; I agree that ELLs need to be held to the same high standards that all students are; and I agree that ELLs need to be provided with the same appropriate standards-based instructional materials and the appropriately qualified teachers to teach them the standards that most students have. My criticism of the State's system in this regard is that, in large measure, it has not provided ELLs the basic educational resources they need to learn the State's content standards. At the same time, the State's primary system of accountability for improving public schools, the PSAA, does not directly address either qualified teachers or specially designed instructional materials for ELLs because it focuses only on test outcomes to measure the health of a school. The focus on test scores without ensuring ELLs access to specially trained and qualified teachers and specially-designed instructional materials, is even more disputable for ELLs because their scores on the tests used under the PSAA are of questionable validity given their limited understanding of English.

IX. Conclusion

The expert reports of Drs. Gersten and Rossell fail to rebut what I established in my initial expert report. English Language Learners in California, in large measure, lack access to the specialized instructional materials needed for them to learn English and to access the core curriculum. Substantial numbers of ELLs are not being taught by teachers specially trained and authorized to teach them. What is more, ELLs are forced to try to learn in the most overcrowded and unsound facilities. The State has an ineffective system for preventing, detecting or correcting these large-scale learning deficits. Unless and until such a system is put in place, hundreds of thousands of ELLs will continue to receive poor educational opportunities despite having the State's greatest learning needs—and, they will continue to be among the State's lowest performing students.

REFERENCES

- American Institutes for Research (AIR) and WestEd (2001). *Effects of the implementation of Proposition 227 on the education of English learners, K-12*. Palo Alto, CA: Author.
- American Institutes for Research (AIR) and WestEd (2002). *Effects of the implementation of Proposition 227 on the education of English learners, K-12*. Palo Alto, CA: Author.
- Bernhardt, Elizabeth. (2003). "Challenges to reading research from a multilingual world". *Reading Research Quarterly* 38 (1): 112-117.
- California Department of Education. (2003). *Language Census*. Available: http://data1.cde.ca.gov/dataquest/ELP2_State.asp?RptYear=2002-03&RptType=ELPart2_1a. Sacramento, CA: Author.
- Droop, M., & Verhoeven, L. (2003). "Language proficiency and reading ability in first and second-language learners". *Reading Research Quarterly*, 38(1): 78-103.
- Fitzgerald, J. (2000) "How will bilingual/ESL programs in literacy change in the next millennium?" *Reading Research Quarterly* 35 (4): 520-523.
- Guthrie, E.A. Tickunoff, W.J., Fisher, C.W., & Gee, E.W. (1981). *Significant Bilingual Instructional Features Study: Instruction and Overview of the SBIF*. Part I, Volume I. San Francisco: Far West Laboratory.
- Harris, L. (2002). *A survey of the status of equality in public education in California: A survey of a cross-section of public school teachers*.
- Hayes, K., Salazar, J., & Vukovic, G. (2002). *Teacher versus child characteristics in the education of ELLs*. Los Angeles: Program Evaluation Branch, Los Angeles Unified School District.
- Keller, Bess. (2003). "Legislation Would Strengthen Teaching Requirements in California". *Education Week*. Issue 22.
- Lipsey, M. W. & Wilson, D. B. (1993). "The efficacy of psychological, educational, and behavioral treatment. Confirmation from meta-analysis." *American Psychologist*, 48: 1181-1209.
- Saunders, B., O'Brien, G., Hasentab, K., Marcelletti, D., Saldivar, T., & Goldenberg, C. (2001). Getting the most out of school-based professional development. In P. Schmidt & P. Mosenthal (Eds.). *Reconceptualizing literacy in the new age of pluralism and multiculturalism* (pp. 289-320). Greenwich, CT: IAP.

State Board of Education, (July 9-10, 2003). *Draft Minutes*. Sacramento, CA: Author.

State Board of Education. (July 9, 2003). *State School Board Presentation of Elizabeth Fralicks, Resource Specialist, Fresno Unified School District, Title III, Office of State and Federal Program*. Sacramento, CA.

State Board of Education, (July 31, 2003). Information Memorandum. Sacramento, CA: Author.

Stecher, B. & Bohrnstedt, G. (2002). *Class size reduction in California: Findings from 1999-2000 and 2000-2001*. Sacramento, CA: Class Size Reduction Consortium.

Thomas, W. & Collier, V. (2002). *A national study of school effectiveness for language minority students' long-term academic achievement (Final Report)*. Santa Cruz, CA: The Center for Research on Education, Diversity & Excellence (CREDE). Available: <http://www.crede.ucsc.edu/research//l1aa/1.1pdfs/1.1complete.pdf>.

Wong Fillmore, L. & Snow, C. (200). *What teachers need to know about language learning*. Washington, DC: Center for Applied Linguistics. Available: <http://www.cal.org/ericcll/teachers/teachers.pdf>.