

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

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4   ELIEZER WILLIAMS, a minor, by  
5   Sweetie Williams, his guardian ad litem,  
6   et al., each individually and on behalf  
7   of all others similarly situated,  
8                               Plaintiffs,

9                               vs.

No. 312236

10   STATE OF CALIFORNIA, DELAINE EASTIN,  
11   State Superintendent of Public  
12   Instruction, STATE DEPARTMENT OF  
13   EDUCATION, STATE BOARD OF EDUCATION,  
14                               Defendants.

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15                               Deposition of  
16                               LAURENE BURNHAM-MASSEY  
17                               Volume II, Pages 273 through 426  
18                               Friday, July 20, 2001

19  
20  
21  
22   Reported by:  
23   TRACY LEE MOORELAND  
24   CSR No. 10397  
25   Job No. 27830



1 A. Yes.  
 2 Q. Nice to see you this morning.  
 3 A. Thank you.  
 4 Q. Let me ask you if you would please take a look  
 5 at what we marked as Exhibit 50. That's your resume.  
 6 I'm going to have that placed in front of you.  
 7 A. Got it.  
 8 Q. Is that in front of you now?  
 9 A. Yes.  
 10 Q. And looking at Exhibit 50, under professional  
 11 experiences it says bilingual consultants, third bullet  
 12 down, complaints management and bilingual compliance  
 13 unit. Do you see that?  
 14 A. Yes, I do.  
 15 Q. And that was for the California Department of  
 16 Education?  
 17 A. Yes.  
 18 Q. Now, did the complaint management and bilingual  
 19 compliance unit subsequently become the language  
 20 proficiency and academic accountability unit, or are  
 21 they two different units?  
 22 A. The unit split and became two units. The  
 23 bilingual compliance part became the language  
 24 proficiency and academic accountability unit.  
 25 Q. Okay. And then between 1998 and November, at

1 least November 1999, you were either a consultant or an  
 2 acting manager of the language proficiency and academic  
 3 accountability unit; is that right?  
 4 A. Yes.  
 5 Q. And then you told us you became the manager in  
 6 November of 2000; is that right?  
 7 A. October of 2000.  
 8 Q. I'm sorry. Thank you. Can you tell me what  
 9 your qualifications were for becoming manager as you  
 10 understood them?  
 11 MR. VIRJEE: Objection. Vague and ambiguous as  
 12 to "qualifications," and also calls for speculation.  
 13 MR. ROSENBAUM: Go ahead.  
 14 THE WITNESS: I met the minimum qualifications  
 15 of the State of California in terms of credentials,  
 16 degrees and exams taken and passed, and I had extensive  
 17 experience in this area.  
 18 Q. BY MR. ROSENBAUM: When you say "this area,"  
 19 what do you mean by that?  
 20 A. Of services for English learners generally, and  
 21 having served as acting manager, I had also some  
 22 experience managing the unit.  
 23 Q. And who appointed you to that position?  
 24 A. Acting manager or manager?  
 25 Q. To manager.

1 A. Dr. Stewart Greenfeld.  
 2 Q. And do you know if that appointment was  
 3 approved by the superintendent?  
 4 A. Yes, it was.  
 5 Q. Okay. Now, explain to me -- the unit -- the  
 6 language proficiency and academic accountability unit,  
 7 would that unit do follow-ups on selected districts that  
 8 CCR had previously reviewed?  
 9 A. Yes.  
 10 Q. Okay. And explain to me the relationship  
 11 between -- was that unit part of CCR?  
 12 MR. VIRJEE: Objection. Vague and ambiguous as  
 13 to "part of CCR."  
 14 When you say was it part of the unit that deals  
 15 with CCR, there is no unit called CCR.  
 16 MR. ROSENBAUM: I appreciate that.  
 17 Q. What is the relationship between -- I'll  
 18 withdraw my question.  
 19 What was the relationship between the language  
 20 proficiency and academic accountability unit and CCR?  
 21 MR. VIRJEE: Objection. Vague and ambiguous as  
 22 to CCR.  
 23 The process?  
 24 MR. ROSENBAUM: Go ahead.  
 25 MR. VIRJEE: She answered that question

1 yesterday twice.  
 2 Q. BY MR. ROSENBAUM: You're are part of the CCR  
 3 process?  
 4 A. We have assisted with the CCR on occasion.  
 5 MR. VIRJEE: You asked yesterday twice whether  
 6 the language proficiency and academic accountability  
 7 unit participated in the CCR process. She answered yes  
 8 both times.  
 9 MR. ROSENBAUM: That's what I thought.  
 10 Q. And the same is true with the Comite follow-up  
 11 unit when changed its name?  
 12 MR. VIRJEE: What is true?  
 13 MR. ROSENBAUM: That it assisted CCR.  
 14 Q. Is that right?  
 15 MS. READ SPANGLER: Objection. Misstates her  
 16 testimony.  
 17 MR. VIRJEE: Join.  
 18 Q. BY MR. ROSENBAUM: The Comite follow-up unit,  
 19 is that any different than the language proficiency and  
 20 academic accountability unit?  
 21 MR. VIRJEE: Objection. Vague and ambiguous as  
 22 to "different."  
 23 THE WITNESS: It's the same unit.  
 24 Q. BY MR. ROSENBAUM: Okay. I want to state for  
 25 the record and I'm going to come back to this, you have

1 files on each of the districts that you reviewed; is  
 2 that right?  
 3 A. That's correct.  
 4 Q. Okay. And I have not -- were you asked at any  
 5 point to review your files for purposes of turnover of  
 6 documents in this case?  
 7 MR. VIRJEE: Objection to the extent that calls  
 8 for an attorney/client privileged conversation.  
 9 MR. ROSENBAUM: Go ahead.  
 10 THE WITNESS: No.  
 11 Q. BY MR. ROSENBAUM: Okay. Did you, in fact,  
 12 ever review files or documents for purposes of turning  
 13 over documents to plaintiffs in this case?  
 14 MR. VIRJEE: Objection. To the extent that  
 15 calls for attorney work product or would invade the  
 16 attorney/client privilege.  
 17 THE WITNESS: No.  
 18 MS. READ SPANGLER: Just remember that if he  
 19 asks you anything like that and it would entail any  
 20 conversations you've had with me or anyone from the  
 21 attorney general's office, he's not really asking about  
 22 that because he's not allowed to.  
 23 Q. BY MR. ROSENBAUM: Have you seen any documents  
 24 in this case?  
 25 MR. VIRJEE: Objection. Calls for speculation.

1 Lacks foundation.  
 2 MR. ROSENBAUM: Strike that. I'll withdraw the  
 3 question.  
 4 MR. VIRJEE: Also vague and ambiguous as to  
 5 "seen any documents."  
 6 Q. BY MR. ROSENBAUM: Have you seen any documents  
 7 that -- you're familiar with what a pleading is, right?  
 8 A. Yes.  
 9 Q. Have you seen any document -- any pleadings in  
 10 this case?  
 11 A. No.  
 12 MR. ROSENBAUM: Okay. We should have been  
 13 turned over the documents. We should have been turned  
 14 over the files that we sought. We have not been turned  
 15 over any files, any full files on the school districts,  
 16 any of the reports that were made. And I'm on limited  
 17 time today.  
 18 MS. READ SPANGLER: Why don't you and I talk  
 19 about it later. I think it was on honest oversight.  
 20 MR. VIRJEE: I don't think the documents are  
 21 responsive.  
 22 MS. READ SPANGLER: I'm going to look at the  
 23 request again.  
 24 MR. ROSENBAUM: I think they are responsive.  
 25 MR. VIRJEE: I don't think it had anything to

1 do with an oversight. I don't think the documents are  
 2 responsive.  
 3 MS. READ SPANGLER: Let's talk about it later  
 4 so that we can look at the actual request.  
 5 MR. ROSENBAUM: That's fine.  
 6 MS. READ SPANGLER: If we should have produced  
 7 them, we will.  
 8 MR. ROSENBAUM: And I reserve to conduct the  
 9 deposition with respect to those.  
 10 MR. VIRJEE: Let's leave now and you can bring  
 11 her back later if you think you have the right to bring  
 12 her back.  
 13 MR. ROSENBAUM: I do have the right to bring  
 14 her back, but I want to be efficient with her time and  
 15 counsel's time as well as my time this morning.  
 16 Q. Ms. Burnham-Massey, explain to me what  
 17 differences, if any, exist in terms of the way that your  
 18 unit conducts reviews and the CCR prior review took  
 19 place?  
 20 A. There are some significant differences. First  
 21 of all, up until this year, the CCR unit -- or the unit  
 22 that conducted the CCRs was responsible for reviewing  
 23 eight programs. When we review a district, we're only  
 24 reviewing the English learner program.  
 25 Another difference is the unit that conducts

1 the CCR is part of a bigger team looking at a whole  
 2 bunch of programs in addition to their eight programs,  
 3 so they have less time, actually, to devote to English  
 4 learner issues.  
 5 Another difference is in the consultants in our  
 6 unit, the follow-up unit, English learner education is  
 7 their main expertise. In the CCR unit their expertise  
 8 is more diversified. They certainly have competency in  
 9 English learner issues, but it's not necessarily their  
 10 main focus. It is for some of the consultants, but not  
 11 for all of them.  
 12 The CCR unit leaves a report with the districts  
 13 when they leave. And their reports tend to be short,  
 14 and they just pretty much list noncompliant issues and  
 15 why the finding was made. Our unit submits reports  
 16 later, typically within 45 days of the review, and the  
 17 reports are generally more extensive and more in depth.  
 18 The unit that does the CCRs typically goes to  
 19 one or two or maybe three schools, as a rule. Our unit  
 20 typically goes to substantially more schools than that.  
 21 Even on one review, and certainly over time, we go to a  
 22 high percentage of district schools. Those are the main  
 23 things I can think of right now.  
 24 Q. Thank you. Now, help me understand this.  
 25 Regarding the CCR review, the first review that takes

1 place -- you know what I'm talking about?  
 2 A. Yes.  
 3 Q. You said that that covers eight programs; is  
 4 that right?  
 5 A. Yes, it did, up until now.  
 6 Q. And one of those programs was EL; is that  
 7 right?  
 8 A. That's right.  
 9 Q. Okay. And you told me that -- and you  
 10 personally conducted some of those reviews; isn't that  
 11 right?  
 12 MR. VIRJEE: Objection. Vague as to time.  
 13 MR. ROSENBAUM: Go ahead.  
 14 THE WITNESS: Some of those reviews as an EL  
 15 reviewer, yes.  
 16 Q. BY MR. ROSENBAUM: And if I understood you  
 17 correctly, one of the things you told me was that some  
 18 of the consultants that conducted the CCR reviews, they  
 19 would not have the same level of competency as the  
 20 individuals in your review who con -- in your unit who  
 21 conducted the reviews; is that right?  
 22 MR. VIRJEE: Mark, I'm going to object to this  
 23 way of questioning as a colossal waste of time. She  
 24 just gave you a response, and all you're doing is  
 25 repeating it back to her and saying is what you said

1 correct. You're not making any changes or elaborating.  
 2 If you have questions, ask them. All you're doing is  
 3 saying, you said you conducted reviews, correct? You  
 4 said this, correct? She said what she said on the  
 5 record.  
 6 MR. ROSENBAUM: Go ahead.  
 7 MR. VIRJEE: It's a waste of time.  
 8 THE WITNESS: Yes.  
 9 Q. BY MR. ROSENBAUM: Can you tell me the basis of  
 10 that answer, please.  
 11 A. My personal knowledge of the individuals.  
 12 Q. Okay. What percent of the individuals who  
 13 conducted the EL reviews for the CCR process would you  
 14 say did not have the same level of competency as the  
 15 individuals in your unit now?  
 16 MR. VIRJEE: Objection. Calls for speculation.  
 17 Also vague as to time.  
 18 MR. ROSENBAUM: Go ahead.  
 19 MR. VIRJEE: When?  
 20 THE WITNESS: I'm not sure.  
 21 Q. BY MR. ROSENBAUM: 50 percent?  
 22 MR. VIRJEE: Objection. Vague as to time.  
 23 The CCR reviews have been going on for years,  
 24 so have the Comite reviews.  
 25 MR. ROSENBAUM: Go ahead.

1 THE WITNESS: More than 50 percent.  
 2 Q. BY MR. ROSENBAUM: Okay. You told me that the  
 3 CCR reviews were typically of one or two or three  
 4 schools, do you remember telling me that?  
 5 A. Yes.  
 6 Q. What's the basis of that answer, please?  
 7 A. Reviews of records of CCR reviews.  
 8 Q. Okay. Thank you. And in terms of the  
 9 methodology, beyond what you've just testified to, is  
 10 there anything different in the methodology of your  
 11 unit's reviews with the CCR reviews of EL schools?  
 12 MR. VIRJEE: Objection. Vague and ambiguous as  
 13 to "methodology." And also asked and answered yesterday  
 14 where she told you they used exactly the same  
 15 instrument.  
 16 MR. ROSENBAUM: Go ahead.  
 17 THE WITNESS: We do use the same instrument,  
 18 different amount of time spent.  
 19 Q. BY MR. ROSENBAUM: How much more time?  
 20 MR. VIRJEE: Objection. Objection vague and  
 21 ambiguous, also overbroad. Vague as to time.  
 22 MS. READ SPANGLER: Calls for speculation.  
 23 MR. ROSENBAUM: If you know. If you don't  
 24 know, that's fine.  
 25 THE WITNESS: I don't know.

1 Q. BY MR. ROSENBAUM: Okay. Thanks. Now, you  
 2 told me yesterday that there were some 30 districts that  
 3 had been out of compliance for three years or more at  
 4 the present time; is that right?  
 5 A. That's right.  
 6 Q. Do you have a list of those districts?  
 7 A. Yes, I do.  
 8 Q. Where do you keep that list?  
 9 A. In our office.  
 10 Q. Is it in a particular file?  
 11 A. Yes.  
 12 Q. Okay. And does that file have a particular  
 13 name?  
 14 A. It's in the Comite file and it's a document --  
 15 yes.  
 16 MR. VIRJEE: You've answered the question.  
 17 Q. BY MR. ROSENBAUM: Is it like a sheet of paper  
 18 that lists those schools?  
 19 A. Yes.  
 20 Q. Okay. And does it also list the 24 schools  
 21 that have been a year or more?  
 22 A. Yes.  
 23 Q. Between one and three years?  
 24 A. Yes.  
 25 Q. I'm going to ask you -- I'm going to tell you

1 the names of some districts. Could you tell me, please,  
 2 if they're within either the 30 list or the 24 list or  
 3 neither. Okay?  
 4 A. Okay.  
 5 Q. You told me yesterday Inglewood, Compton and  
 6 Oakland are in the 30 list; is that right?  
 7 A. That's right.  
 8 Q. How about San Francisco Unified School  
 9 District?  
 10 A. No.  
 11 Q. How about Ravenswood Unified School District?  
 12 A. Yes.  
 13 Q. Which list?  
 14 A. 30.  
 15 Q. How about West Contra Costa?  
 16 A. Yes.  
 17 Q. Which list?  
 18 A. 30.  
 19 Q. How about Cloverdale?  
 20 A. No.  
 21 Q. How about Fresno?  
 22 A. No.  
 23 Q. How about Merced?  
 24 A. No.  
 25 Q. How about Long Beach?

1 A. No.  
 2 Q. How about Pioneer Union?  
 3 A. No.  
 4 Q. How about Pajaro Valley Joint?  
 5 A. Yes.  
 6 Q. In which list?  
 7 A. 24.  
 8 Q. How about Visalia?  
 9 A. No.  
 10 Q. How about Alhambra?  
 11 A. No.  
 12 Q. How about Los Angeles?  
 13 A. No.  
 14 Q. How about Lynnwood?  
 15 A. No.  
 16 Q. Was Los Angeles ever in a three-year or more  
 17 list?  
 18 A. Yes.  
 19 Q. When was that?  
 20 A. I don't remember specifically.  
 21 Q. Can you give me a ballpark estimate, please.  
 22 A. Maybe three, four years ago.  
 23 Q. Okay. Was San Francisco ever on a three-year  
 24 list? You understand me. Three years or more.  
 25 MR. VIRJEE: Objection. Calls for speculation.

1 MS. READ SPANGLER: Overbroad as to time.  
 2 MR. ROSENBAUM: Three years or more.  
 3 THE WITNESS: Yes.  
 4 Q. BY MR. ROSENBAUM: When was that?  
 5 A. Also about three or four years ago,  
 6 approximately.  
 7 Q. Okay. And how about Long Beach?  
 8 A. Not since I'm here. Not to my knowledge.  
 9 Q. How about Fresno?  
 10 A. Yes.  
 11 Q. When was that?  
 12 A. Probably two years ago.  
 13 Q. Okay. And do you know how long Fresno had been  
 14 on the list at that time?  
 15 A. No, I don't.  
 16 Q. Or San Francisco?  
 17 A. No.  
 18 Q. Or Los Angeles?  
 19 A. No.  
 20 Q. How about Visalia?  
 21 A. I'm not aware of them being on the list.  
 22 Q. Okay. Now, have you read the consent decree in  
 23 the Comite case?  
 24 A. Yes.  
 25 Q. You're familiar with its terms?

1 A. Yes.  
 2 MS. READ SPANGLER: Can we clarify which  
 3 consent decree you mean.  
 4 MR. ROSENBAUM: The 1985 one.  
 5 THE WITNESS: Yes.  
 6 Q. BY MR. ROSENBAUM: Have you read the 1996 --  
 7 A. Yes.  
 8 Q. That's a modification or --  
 9 A. It's a stipulated amendment, yes.  
 10 Q. And what was the nature of that stipulated  
 11 amendment as you understand it?  
 12 A. I don't understand the question.  
 13 Q. When you say "amendment," what do you mean by  
 14 that?  
 15 A. It made some changes in the 1985 consent  
 16 decree.  
 17 Q. What's your understanding of what those changes  
 18 were?  
 19 MR. VIRJEE: Objection. Document speaks for  
 20 itself. Also calls for a legal conclusion.  
 21 THE WITNESS: The ones that I'm most aware of  
 22 deal with the fact that it changed the cycle for CCR  
 23 from three years to four years and required an increase  
 24 in the number of consultants assigned to conduct both  
 25 the CCRs and the Comite follow-up reviews.

1 Q. BY MR. ROSENBAUM: Did the -- I just want your  
2 understanding. Did either the amendment or the '85  
3 decree limit what the State could do in terms of when it  
4 could take reviews?  
5 For example, you talked to me about a cycle of  
6 three to four years; is that right?  
7 A. Yes.  
8 Q. Is there anything in the decree that says the  
9 cycle can't be one to two years?  
10 MR. VIRJEE: Objection. Document speaks for  
11 itself. Calls for a legal conclusion.  
12 THE WITNESS: Not that I'm aware of.  
13 Q. BY MR. ROSENBAUM: Okay. Or every six months?  
14 MR. VIRJEE: Same objections. Document speaks  
15 for itself. Calls for a legal conclusion.  
16 THE WITNESS: Also not that I'm aware of.  
17 Q. BY MR. ROSENBAUM: To your understanding, the  
18 decree talks about the number of consultants that should  
19 be involved?  
20 MR. VIRJEE: Same objections. The document  
21 speak for itself. Calls for a legal conclusion.  
22 THE WITNESS: Yes.  
23 MR. ROSENBAUM: I'm pleased to give you a  
24 standing objection to questions about the decree, but  
25 it's your call.

1 Q. Is there anything in the decree, to your  
2 knowledge, that limits the number of consultants that  
3 can be assigned to a particular review or reviews?  
4 MR. VIRJEE: The document speaks for itself.  
5 It calls for a legal conclusion.  
6 THE WITNESS: Not that I'm aware of.  
7 Q. BY MR. ROSENBAUM: Or the number of schools  
8 that can be examined?  
9 MR. VIRJEE: Same objection.  
10 THE WITNESS: No.  
11 Q. BY MR. ROSENBAUM: Okay. Now, to your  
12 knowledge, has the State ever sought release from the  
13 court order?  
14 MR. VIRJEE: Objection. Calls for a legal  
15 conclusion. Also may call for the invasion of the  
16 attorney/client privilege.  
17 MR. ROSENBAUM: Go ahead.  
18 MR. VIRJEE: Don't answer to the extent it  
19 would require you to reveal any --  
20 MR. ROSENBAUM: You're not their lawyer in this  
21 one. You're not their lawyer in this case either.  
22 MS. READ SPANGLER: Don't answer to the extent  
23 it would call for conversations that you've had with any  
24 attorney in either matter.  
25 THE WITNESS: The answer is yes.

1 Q. BY MR. ROSENBAUM: And what's the basis of your  
2 understanding?  
3 A. It's public documents from the 1996 -- 1995,  
4 '96 action.  
5 Q. Have you reviewed those documents?  
6 A. Yes.  
7 Q. Okay. And what's your understanding of what  
8 the State sought in those documents?  
9 MR. VIRJEE: Objection. Calls for a legal  
10 conclusion. The documents speak for themselves.  
11 THE WITNESS: They asked the court to  
12 relinquish jurisdiction.  
13 Q. BY MR. ROSENBAUM: And do you have an  
14 understanding of what the court's response was?  
15 MR. VIRJEE: Same objection.  
16 THE WITNESS: Yes.  
17 Q. BY MR. ROSENBAUM: What was that response?  
18 A. It was no.  
19 Q. And do you have an understanding what the basis  
20 of the request for -- to relinquish jurisdiction was?  
21 MR. VIRJEE: Calls for a legal conclusion.  
22 Also the documents speak for themselves.  
23 THE WITNESS: Yes.  
24 Q. BY MR. ROSENBAUM: And what's your  
25 understanding?

1 MR. VIRJEE: Same objection.  
2 THE WITNESS: Was the sunset of the bilingual  
3 education law in 1987.  
4 Q. BY MR. ROSENBAUM: Ms. Burnham-Massey, when  
5 your unit finds a district in compliance with the  
6 requirements that you check for, can you tell me with  
7 certainty that every school in that district is  
8 compliant on all items?  
9 MR. VIRJEE: Objection. Vague and ambiguous as  
10 to "compliant."  
11 She said compliant yesterday. Compliance is a  
12 district issue, not a school-by-school issue, so your  
13 question is vague and ambiguous as to what could  
14 possibly be meant by school compliance.  
15 MR. ROSENBAUM: Go ahead.  
16 THE WITNESS: So the answer is no.  
17 Q. BY MR. ROSENBAUM: Or that every classroom is  
18 compliant?  
19 MR. VIRJEE: Same objection. Asked and  
20 answered yesterday.  
21 THE WITNESS: And same answer, no.  
22 Q. BY MR. ROSENBAUM: Or that every student has  
23 all items in his or her education met with compliance?  
24 MR. VIRJEE: Same objection. Also vague and  
25 ambiguous to all items met with compliance.

1 MR. ROSENBAUM: That one, you're correct.  
 2 MR. VIRJEE: Also asked and answered yesterday.  
 3 MR. ROSENBAUM: No, it wasn't asked and  
 4 answered.  
 5 THE WITNESS: No.  
 6 Q. BY MR. ROSENBAUM: What do you mean by that?  
 7 A. That we don't know that every student in every  
 8 classroom in every school is fully and completely in  
 9 compliance with the letter of every item.  
 10 Q. Okay. Thank you. And no one has ever directed  
 11 you to find out for every student whether or not there  
 12 is compliance on all items, isn't that correct?  
 13 A. That's correct.  
 14 Q. And no one has ever directed you to find out  
 15 for every classroom whether or not all items are in  
 16 compliance; isn't that correct?  
 17 A. Yes.  
 18 Q. Or for every school?  
 19 A. Yes.  
 20 Q. Okay. And you've never directed anybody on  
 21 your staff to do that?  
 22 A. No.  
 23 Q. Are you aware of any agency in the state that  
 24 has -- that checks to see whether or not for every  
 25 student, every EL student all items are in compliance?

1 A. No.  
 2 Q. Or for every classroom?  
 3 A. No.  
 4 Q. Or for every school?  
 5 A. No.  
 6 Q. Do you know if the county boards of education  
 7 checks for every student?  
 8 MR. VIRJEE: Objection. Asked and answered  
 9 yesterday.  
 10 THE WITNESS: No.  
 11 Q. BY MR. ROSENBAUM: Do you know if every  
 12 district in this state has an accountability system to  
 13 check whether or not there is compliance for every EL  
 14 student?  
 15 MR. VIRJEE: Objection. Asked and answered  
 16 yesterday.  
 17 THE WITNESS: No.  
 18 Q. BY MR. ROSENBAUM: You're not aware of that?  
 19 A. I'm not aware of that.  
 20 Q. No one has ever asked you to check to find out?  
 21 A. No.  
 22 MR. VIRJEE: Asked and answered yesterday.  
 23 Q. BY MR. ROSENBAUM: Have you ever been in any  
 24 discussion with any of your superior in which the  
 25 subject matter has come up, we should find out if every

1 student has compliance with respect to all the EL items?  
 2 A. No.  
 3 Q. Or every classroom?  
 4 A. No.  
 5 Q. Or every school?  
 6 A. No.  
 7 Q. Okay. Thank you. Do you have an opinion --  
 8 strike that.  
 9 Do you know, Ms. Burnham, whether or not most  
 10 EL students are in classrooms where there's compliance  
 11 with every item?  
 12 MR. VIRJEE: Objection. Vague and ambiguous as  
 13 to "most." Also asked and answered yesterday.  
 14 Q. BY MR. ROSENBAUM: 50 percent, plus 1?  
 15 MR. VIRJEE: Objection. Asked and answered  
 16 yesterday.  
 17 THE WITNESS: I don't know.  
 18 Q. BY MR. ROSENBAUM: Okay. Or most classrooms?  
 19 MR. VIRJEE: Same objection. Asked and  
 20 answered yesterday. Vague and ambiguous as to "most."  
 21 MR. ROSENBAUM: Go ahead.  
 22 THE WITNESS: I don't know. I wish I did.  
 23 Q. BY MR. ROSENBAUM: Or most schools?  
 24 A. No, I don't know.  
 25 Q. When you say you wish you did, why is that?

1 MR. VIRJEE: Lauri, answer his questions.  
 2 Okay?  
 3 THE WITNESS: Okay.  
 4 Q. BY MR. ROSENBAUM: Why is that?  
 5 A. Just because we want every student to have  
 6 everything to which they're legally entitled.  
 7 Q. Why is that?  
 8 MR. VIRJEE: Objection. Asked and answered  
 9 yesterday.  
 10 MR. ROSENBAUM: Go ahead.  
 11 THE WITNESS: So they can get the best possible  
 12 education.  
 13 Q. BY MR. ROSENBAUM: And so they can have equal  
 14 opportunity?  
 15 A. Yes.  
 16 Q. Are you familiar with the program for classroom  
 17 size reduction?  
 18 A. Yes.  
 19 Q. Okay. And what's your understanding of what  
 20 that program entailed?  
 21 A. My understanding was that it was reducing class  
 22 size at certain grade levels to 20 to 1.  
 23 Q. Okay. Do you know when that took place?  
 24 A. I do not remember specifically.  
 25 Q. Can you give me your best estimate?

1 MR. VIRJEE: Vague and ambiguous as to "took  
2 place." Also compound.

3 Are you asking when the statute was passed,  
4 when it was implemented for any particular grade at any  
5 particular school?

6 MR. ROSENBAUM: I appreciate that point.

7 Q. Do you know when the first implementation of  
8 the classroom size reduction plan began?

9 A. Not specifically.

10 Q. Okay. Do you have an opinion as to whether or  
11 not implementation of the classroom size reduction  
12 program had an impact on the availability of qualified  
13 EL teachers?

14 A. Yes, I have an opinion.

15 Q. What's that?

16 A. That it increased the need for qualified  
17 teachers and has therefore increased the shortage of  
18 qualified teachers for some districts.

19 Q. And can you tell me the basis for that answer,  
20 please?

21 MR. VIRJEE: Other than logic?

22 THE WITNESS: Math, I was going to say, it was.  
23 The 20 to a class means you need more teachers. Since  
24 there's already a shortage of qualified teachers for  
25 English learners, increasing the need is going to

1 A. Yes.

2 Q. And in what meetings were those?

3 A. Our staff meetings.

4 Q. Any meetings with Dr. Greenfeld?

5 A. Not that I recall.

6 Q. And on more than one occasion in your staff  
7 meetings?

8 A. Yes.

9 Q. Can you tell me approximately how many  
10 occasions, please?

11 A. Probably three or four times.

12 Q. Okay. And can you give me a time period when  
13 those meetings took place?

14 A. Within the last four years.

15 Q. And how about the most recent time?

16 A. It hasn't been recently.

17 Q. Okay. And what's your best recollection as to  
18 what was said in those staff meetings about this  
19 subject?

20 MR. VIRJEE: Objection. Compound.

21 THE WITNESS: There was a concern that it would  
22 increase the need for qualified teachers, it would  
23 increase the shortage; however, the positive side of it  
24 was that 20 to 1 was a better ratio for teachers to be  
25 able to teach students, and some discussion about how to

1 automatically increase the shortage.

2 Q. BY MR. ROSENBAUM: That's common sense?

3 A. I think so.

4 Q. Did anyone ever come to you before  
5 implementation of classroom size reduction and say, what  
6 is this going to do regarding the shortage of EL  
7 teachers?

8 A. Not to me, no.

9 MS. READ SPANGLER: You mean the voters before  
10 they voted on it?

11 Q. BY MR. ROSENBAUM: The extent of the shortage,  
12 they didn't come to you and discuss that?

13 A. No.

14 Q. Can you tell me your understanding, if any, as  
15 to what the actual quantity of new teachers is that were  
16 required? How much of a shortage did it cause?

17 MR. VIRJEE: Objection. Vague and ambiguous.  
18 Also calls for total speculation and lacks any  
19 foundation that this witness would have any kind of  
20 knowledge to that effect.

21 THE WITNESS: I don't know.

22 Q. BY MR. ROSENBAUM: Okay. Have you ever been in  
23 any meetings where the subject matter of the impact of  
24 classroom size reduction on shortage of EL teachers was  
25 discussed?

1 get more teachers into teaching, and particularly  
2 teachers with qualifications for teaching English  
3 learners.

4 Q. BY MR. ROSENBAUM: And these points, were they  
5 made in each of those meetings?

6 A. I don't remember the specifics of that.

7 Q. But that was a common theme?

8 A. Yes.

9 Q. And what were the measures that were discussed  
10 in terms of enlarging the pool of qualified teachers?

11 MR. VIRJEE: Objection. Vague and ambiguous as  
12 to "qualified teachers."

13 THE WITNESS: I don't remember the specific  
14 suggestions.

15 Q. BY MR. ROSENBAUM: Can you remember any  
16 discussions at all?

17 A. Not any that were beyond the kinds of  
18 discussions we had had in the past, which I think we  
19 mentioned before, like stipends, encouraging districts  
20 to grow their own teachers, so to speak, the career  
21 ladders in districts, doing what we could to encourage  
22 that.

23 Q. Okay. Was there any discussion at any of those  
24 meetings as to how much the stipend should be increased  
25 to have an impact?

1 A. No.  
 2 MR. VIRJEE: Objection. Vague and ambiguous.  
 3 Also assumes facts that there already is an existing  
 4 stipend and that it should be increased. Also compound  
 5 as to which district you were dealing with on that  
 6 issue.  
 7 THE WITNESS: No.  
 8 Q. BY MR. ROSENBAUM: For any district?  
 9 A. No.  
 10 Q. Okay. In your training and experience, have  
 11 you seen any studies on increase as to what additional  
 12 monies it would take to have an impact on increasing the  
 13 pool of qualified EL teachers?  
 14 MR. VIRJEE: Objection. Vague and ambiguous as  
 15 to "additional monies" and "impact."  
 16 Are you talking about for training? Are you  
 17 talking about for stipends, which is what your last  
 18 question was about?  
 19 MR. ROSENBAUM: For stipends.  
 20 MR. VIRJEE: Objection. Calls for speculation.  
 21 THE WITNESS: No, I don't know.  
 22 Q. BY MR. ROSENBAUM: Thanks. Incidentally, when  
 23 you work with districts, are you in a position -- and  
 24 you have recommendations. This is for any of the  
 25 compliance matters -- do you have the authority to

1 direct a district to follow your recommendations?  
 2 A. No.  
 3 Q. You can make suggestions; is that right?  
 4 A. Yes.  
 5 Q. But it's up to the district to decide whether  
 6 or not to accept those recommendations?  
 7 MR. VIRJEE: Objection. Vague and ambiguous.  
 8 Also compound. Probably would depend on what the  
 9 recommendation was or the direction was.  
 10 MR. ROSENBAUM: That's inappropriate. You can  
 11 make your objections.  
 12 MR. VIRJEE: Your question is vague and  
 13 ambiguous.  
 14 MR. ROSENBAUM: You cannot suggest a response.  
 15 MR. VIRJEE: There are a variety of things that  
 16 they do, some are direction --  
 17 MR. ROSENBAUM: You can make your objections.  
 18 MR. VIRJEE: And I am.  
 19 MR. ROSENBAUM: But you may not give testimony,  
 20 which is what you've been doing.  
 21 MR. VIRJEE: I'm not sworn, so I'm not giving  
 22 testimony anyway.  
 23 Your question is vague and ambiguous. They do  
 24 a whole lot of things where --  
 25 MR. ROSENBAUM: Objection. Objection. That's

1 not appropriate and you know it.  
 2 MR. VIRJEE: I know that she's already said  
 3 that she directs the districts to do things, and your  
 4 question is vague and ambiguous.  
 5 MR. ROSENBAUM: Go ahead.  
 6 THE WITNESS: I understood the question to be  
 7 can we direct them to follow our suggestions.  
 8 MR. ROSENBAUM: Yes.  
 9 THE WITNESS: The answer to that is no. We're  
 10 very careful to differentiate between our suggestions  
 11 and what is required by law. We make that very clear to  
 12 districts in what we write in our reports, and I tell  
 13 the consultants to never write, we suggest you do  
 14 something that's a legal requirement, that needs to be a  
 15 direction. But I say, on the other hand, if it's a  
 16 legal requirement, state it as this is a direction. If  
 17 it's a suggestion, which we have many, make sure that's  
 18 clear.  
 19 Q. BY MR. ROSENBAUM: How a district goes about  
 20 meeting a requirement, does your unit have the authority  
 21 to tell them how, in fact, to satisfy a requirement?  
 22 MR. VIRJEE: Objection. Compound. Depends on  
 23 the requirement.  
 24 MR. ROSENBAUM: Go ahead.  
 25 THE WITNESS: Not exactly how.

1 Q. BY MR. ROSENBAUM: What do you mean by that?  
 2 A. We tell them they must comply with the law and  
 3 we make clear what the law says and we make clear why  
 4 they're not in compliance with the law.  
 5 Typically there's quite a bit of flexibility.  
 6 They can say what they're going to do to come into  
 7 compliance. They submit a compliance agreement which we  
 8 may approve or disapprove.  
 9 Q. Okay. But you can't write a compliance  
 10 agreement and say, you must sign that agreement; isn't  
 11 that right?  
 12 A. That's correct.  
 13 Q. Okay. Incidentally, you were telling me  
 14 yesterday about Oakland. How many compliance agreements  
 15 did Oakland not fully satisfy that you're aware of?  
 16 A. I don't know the exact number.  
 17 Q. What's your best estimate?  
 18 MR. VIRJEE: Are you talking about in the  
 19 Comite area?  
 20 MR. ROSENBAUM: Yes. Thank you.  
 21 THE WITNESS: Probably four.  
 22 Q. BY MR. ROSENBAUM: How about -- and your  
 23 records would reflect the exact number?  
 24 A. I believe they would.  
 25 Q. That would be in the Oakland file?

1 A. It should be.  
 2 Q. And would it is also be in the reports that you  
 3 filed with the court?  
 4 A. Not with the court, no.  
 5 Q. With the plaintiffs?  
 6 A. No.  
 7 Q. Okay. Anywhere else?  
 8 A. No.  
 9 Q. How about Inglewood?  
 10 A. I'm not sure.  
 11 Q. More than three?  
 12 A. Possibly. My involvement with those districts  
 13 has not been from the beginning, so I'm not sure.  
 14 Q. Do you know Compton?  
 15 A. Even less.  
 16 Q. Okay. Your involvement was even less, is that  
 17 what you mean?  
 18 A. Yes.  
 19 Q. Los Angeles, did Los Angeles fulfill every  
 20 compliance agreement?  
 21 MR. VIRJEE: Objection. Calls for speculation.  
 22 Lacks foundation.  
 23 THE WITNESS: I'm not sure.  
 24 Q. BY MR. ROSENBAUM: Okay. How about  
 25 San Francisco, do you know about that?

1 A. No.  
 2 Q. Okay. Is there -- you talked to me about  
 3 requirements. Is there a requirement that 10 percent of  
 4 classrooms where there are EL students in a particular  
 5 school, that there -- let me start that over, please.  
 6 Is there a requirement, to your knowledge, a  
 7 legal requirement, to your knowledge, that in schools  
 8 where there are EL students, that 10 percent of those  
 9 classrooms -- more than 10 percent of those classrooms  
 10 cannot be taught by individuals without BCLAD or CLAD  
 11 credentials?  
 12 MR. VIRJEE: Are you asking whether that's a  
 13 legal requirement?  
 14 MR. ROSENBAUM: Yes.  
 15 MR. VIRJEE: Objection. Calls for a legal  
 16 conclusion.  
 17 MS. READ SPANGLER: Join.  
 18 THE WITNESS: I'm not aware of such a  
 19 requirement.  
 20 Q. BY MR. ROSENBAUM: If I change the percent to  
 21 20 percent or 30 percent or 90 percent, are you aware of  
 22 any such requirement?  
 23 MR. VIRJEE: Objection. Calls for a legal  
 24 conclusion.  
 25 THE WITNESS: No.

1 Q. BY MR. ROSENBAUM: Do you know if the State  
 2 maintains data as to percent of EL classrooms in a  
 3 particular school that are taught by instructors without  
 4 CLAD or BCLAD credentials?  
 5 MR. VIRJEE: That question was asked and  
 6 answered three times or more yesterday.  
 7 MR. ROSENBAUM: Not that specific question, and  
 8 I want the specific question.  
 9 MR. VIRJEE: Yes, it was, and you're harassing  
 10 the witness by asking the same questions over and over.  
 11 MR. ROSENBAUM: Go ahead.  
 12 THE WITNESS: I'm not aware of --  
 13 Q. BY MR. ROSENBAUM: Thank you. Do you know what  
 14 OCR is?  
 15 A. Yes.  
 16 Q. What's OCR?  
 17 A. United States Department of Education office  
 18 for civil rights.  
 19 Q. Do you ever work with them?  
 20 A. Yes, we do.  
 21 Q. With respect to the Comite unit?  
 22 A. Yes.  
 23 Q. Okay. Is there a particular person or persons  
 24 that you have principal contact with?  
 25 A. There are several.

1 Q. Who are they?  
 2 A. Stephen Rosenswag, the director.  
 3 Q. Where is his office?  
 4 A. San Francisco, western region office. The  
 5 attorneys we work with mostly are Katy Riggs, Susan  
 6 Spelletich. Those two I would say most. We work with  
 7 others, the investigators, Eva Law, Jim Wood, Chris  
 8 Witt, and we work with other folks as well from there.  
 9 Q. Okay. Let's get some spellings. Can you spell  
 10 Susan's last name?  
 11 A. Spelletich, S-p-e-l-l-e-t-i-c-h.  
 12 Q. Okay. And can you spell Eva's last name?  
 13 A. L-a-w. It's actually Eva Dale Maita (ph.) Law.  
 14 Q. You're not helping.  
 15 A. I'm sorry. Eva Law.  
 16 Q. And over what period of time have you worked  
 17 with them?  
 18 A. Since I've been in the unit.  
 19 Q. Okay. Both as a consultant and acting manager  
 20 and as a manager?  
 21 A. Yes.  
 22 Q. Okay. And to your knowledge, has OCR  
 23 investigated complaints about districts lacking  
 24 qualified teachers to teach EL students English?  
 25 MR. VIRJEE: Objection. Vague and ambiguous as

1 to "qualified."  
 2 MR. ROSENBAUM: Go ahead.  
 3 THE WITNESS: Yes.  
 4 Q. BY MR. ROSENBAUM: And what do you understand  
 5 "qualified" to mean?  
 6 MR. VIRJEE: Objection. Vague and ambiguous as  
 7 to in what context.  
 8 MR. ROSENBAUM: Go ahead.  
 9 MR. VIRJEE: From a legal compliance  
 10 standpoint? From what's best for kids? It's vague and  
 11 ambiguous.  
 12 MR. ROSENBAUM: Go ahead.  
 13 THE WITNESS: Teachers who hold the appropriate  
 14 state authorizations. OCR, when the state has  
 15 appropriate authorizations, requires teachers in that  
 16 state to hold that authorization.  
 17 Q. BY MR. ROSENBAUM: Okay. To your knowledge,  
 18 has OCR investigated complaints about districts not  
 19 providing students -- EL students access to core  
 20 curriculum?  
 21 MR. VIRJEE: Objection. Vague and ambiguous as  
 22 to "core curriculum."  
 23 THE WITNESS: Yes.  
 24 Q. BY MR. ROSENBAUM: To your knowledge, has OCR  
 25 investigated complaints about districts not providing EL

1 A. That's all I think of right now.  
 2 Q. And what districts have been investigated?  
 3 MR. VIRJEE: By OCR?  
 4 MR. ROSENBAUM: Yes.  
 5 MR. VIRJEE: Objection. Calls for speculation.  
 6 Vague as to time.  
 7 MR. ROSENBAUM: Go ahead.  
 8 THE WITNESS: I only know some.  
 9 Q. BY MR. ROSENBAUM: Tell me what you know.  
 10 A. We work with them in Riverside, Oakland,  
 11 Inglewood and Compton.  
 12 Q. How about Corona-Norco?  
 13 A. They may be there, but we're not working  
 14 directly with them there right now.  
 15 Q. Do you know if they are there?  
 16 A. I'm not sure.  
 17 Q. What other districts?  
 18 A. Pajaro Valley, Delano High School. I know  
 19 there are others. There are several that we have in  
 20 common.  
 21 Q. Okay. And then do you know how many others  
 22 besides the ones you've named, approximately?  
 23 A. Not exactly, or even approximately I'm not  
 24 sure.  
 25 Q. Okay. Do you have files that would reflect OCR

1 students with required instructional materials?  
 2 MR. VIRJEE: Objection. Vague and ambiguous as  
 3 to "required" and "instructional materials."  
 4 THE WITNESS: Yes.  
 5 Q. BY MR. ROSENBAUM: What do you understand  
 6 required instructional materials to mean?  
 7 MR. VIRJEE: Objection. Calls for speculation.  
 8 Vague and ambiguous.  
 9 Could be what's pedagogically correct, could be  
 10 what is legally required.  
 11 MR. ROSENBAUM: Go ahead.  
 12 THE WITNESS: Materials equivalent to materials  
 13 that native English speakers have.  
 14 Q. BY MR. ROSENBAUM: And are there other items  
 15 that OCR has investigated, to your knowledge, with  
 16 respect to EL students in California?  
 17 A. Yes.  
 18 Q. What are they?  
 19 A. Program evaluation, whether districts are  
 20 evaluating their programs appropriately, redesignation  
 21 of students from English learners to fluent English  
 22 proficient, English language development, provision of  
 23 English language development appropriate for English  
 24 learners.  
 25 Q. Any other items?

1 investigations in districts in California?  
 2 A. Only the Comite districts.  
 3 Q. So if OCR is investigating a district that is  
 4 not one of the Comite districts, you don't have any  
 5 information about the OCR investigation; isn't that  
 6 right?  
 7 A. Define "any information." They give us a list  
 8 of their districts, but, no, we don't have their reports  
 9 or any of that information.  
 10 Q. And I take it no one's ever directed you take a  
 11 look at what's going on in the districts that OCR is  
 12 involved in?  
 13 A. No. Not that way, no.  
 14 Q. Neither generally nor specifically?  
 15 A. No.  
 16 Q. And your unit has never undertaken an  
 17 investigation of districts that OCR is investigating,  
 18 other than what you're otherwise doing as part of the  
 19 Comite districts, is it not?  
 20 MR. VIRJEE: Objection. Vague and ambiguous,  
 21 because she's testified to that already as well, about  
 22 what they do in choosing districts.  
 23 MR. ROSENBAUM: Go ahead.  
 24 THE WITNESS: Right, so I think I don't  
 25 understand the question.

1 MR. ROSENBAUM: I'll withdraw that.  
 2 Q. Do you know when the Riverside investigation  
 3 began by OCR?  
 4 A. Yes.  
 5 Q. When was that?  
 6 A. It was December of 1996.  
 7 Q. Had the Comite unit looked at Riverside prior  
 8 to that?  
 9 A. No.  
 10 Q. Had the Comite unit received complaints about  
 11 Riverside prior to that?  
 12 A. No.  
 13 Q. Okay. Do you know if the CCR review process  
 14 had looked at Riverside prior to December 1996?  
 15 A. Sure.  
 16 Q. It had?  
 17 A. Yes.  
 18 Q. And do you know what its findings were  
 19 regarding EL?  
 20 A. Yes.  
 21 MS. READ SPANGLER: Objection. Compound.  
 22 Q. BY MR. ROSENBAUM: What were they?  
 23 MR. VIRJEE: Objection. Those findings speak  
 24 for themselves.  
 25 MR. ROSENBAUM: Go ahead.

1 THE WITNESS: There were a number of findings.  
 2 Q. BY MR. ROSENBAUM: What's your best  
 3 recollection as to what those findings were?  
 4 A. I was the reviewer.  
 5 Q. Okay. When did you undertake the review?  
 6 A. As a field colleague before I came to the  
 7 Department. I believe it was in '94, '95.  
 8 Q. When you say a field -- what was the phrase you  
 9 used?  
 10 A. A field colleague.  
 11 Q. What's that?  
 12 A. That's an individual who is not employed at the  
 13 Department of Education, is employed in a school  
 14 district, but occasionally assists the Department with  
 15 reviews.  
 16 Q. Were you working for a district at the time?  
 17 A. Yes, I was.  
 18 Q. What was that?  
 19 A. Baldwin Park Unified.  
 20 Q. And you got called in to work on the Riverside  
 21 case?  
 22 A. Yes.  
 23 Q. Who called you in?  
 24 A. Dr. Norm Gold.  
 25 Q. And what were your findings with respect to

1 Riverside over this period of time?  
 2 A. There were a number of noncompliant findings in  
 3 English learner services, including staffing, English  
 4 language development, access to core curriculum. I  
 5 believe materials was one of the findings as well.  
 6 Q. Okay. Do you know how many students were  
 7 affected by those findings?  
 8 MR. VIRJEE: Objection. Vague and ambiguous as  
 9 to "students affected."  
 10 THE WITNESS: Not exactly.  
 11 Q. BY MR. ROSENBAUM: Can you give me an estimate?  
 12 A. No, I don't recall specifically.  
 13 Q. Okay. And OCR became involved in 1996; is that  
 14 right?  
 15 MR. VIRJEE: Objection. Asked and answered.  
 16 Q. BY MR. ROSENBAUM: And any reason that you're  
 17 aware of as to why -- strike that.  
 18 There was, in 1995, a compliance manager in the  
 19 bilingual compliance unit, you've told me about that,  
 20 right?  
 21 A. Yes.  
 22 Q. You've also told me that the bilingual  
 23 compliance unit did not look at Riverside during this  
 24 period of time, is that right? The period of time being  
 25 1994, '95, 1996.

1 MR. VIRJEE: Her testimony will speak for  
 2 itself. Whatever she's already told you, she's already  
 3 told you.  
 4 MR. ROSENBAUM: Go ahead.  
 5 THE WITNESS: The Comite -- I don't understand  
 6 the question.  
 7 Q. BY MR. ROSENBAUM: It's correct, is it not,  
 8 that the bilingual compliance unit had not looked at  
 9 Riverside '94, '95, and '96?  
 10 A. December '96 was the beginning of it.  
 11 Q. The first time it did it?  
 12 A. Was the Comite selection time, yes.  
 13 Q. Now, is Riverside still under investigation by  
 14 OCR?  
 15 A. Yes, it is.  
 16 Q. Okay. And do you know what the state of that  
 17 investigation is?  
 18 A. Yes, I do.  
 19 Q. What is it?  
 20 A. It's very close to closing the case.  
 21 Q. Okay. And in 1997 -- strike that.  
 22 OCR, were its findings in December '96 similar  
 23 to your findings?  
 24 MS. READ SPANGLER: Objection. Calls for  
 25 speculation.

1 MR. VIRJEE: Also vague and ambiguous as to  
2 "similar."  
3 THE WITNESS: They didn't do the investigation  
4 in '96, the district was notified in '96.  
5 Q. BY MR. ROSENBAUM: When did it do its  
6 investigation?  
7 A. In the spring of '97.  
8 Q. Do you know what its findings were?  
9 A. Yes.  
10 Q. Were they similar to your findings?  
11 A. Yes, we issued a joint report.  
12 Q. Okay. And then was there a period of time that  
13 Riverside was given to get into compliance?  
14 MR. VIRJEE: By whom?  
15 MR. ROSENBAUM: By OCR.  
16 THE WITNESS: Yes.  
17 Q. BY MR. ROSENBAUM: What was that?  
18 A. I don't recall specifically.  
19 Q. Can you give me your best estimate?  
20 A. Different issues had different times.  
21 Q. Were any of them over four years to get into  
22 compliance?  
23 A. No.  
24 Q. Were any of them over three years to get into  
25 compliance?

1 A. I don't think so.  
2 Q. Two years?  
3 A. Probably.  
4 Q. Do you know which ones?  
5 A. No.  
6 Q. Okay. Were some of them to get into compliance  
7 within a year?  
8 A. Yes.  
9 Q. Do you know if Riverside did that?  
10 MS. READ SPANGLER: Objection. Compound.  
11 THE WITNESS: They did that with some items at  
12 some levels.  
13 Q. BY MR. ROSENBAUM: But not all items?  
14 A. No.  
15 Q. Okay. Do you know why?  
16 MR. VIRJEE: Objection. Calls for speculation.  
17 Lacks foundation.  
18 THE WITNESS: I'm not sure.  
19 Q. BY MR. ROSENBAUM: Okay. Do you know why it  
20 took so long for Riverside to get into compliance?  
21 MR. VIRJEE: Objection. Vague and ambiguous as  
22 to "so long."  
23 MR. ROSENBAUM: Go ahead.  
24 THE WITNESS: They were implementing -- trying  
25 to really implement systemic changes. They took it very

1 seriously, complexities of real-life implementation in  
2 school districts.  
3 Q. BY MR. ROSENBAUM: Was one of those real-life  
4 complexities the amount of money and resources they  
5 needed to implement the requirements?  
6 MR. VIRJEE: Objection. Calls for speculation.  
7 Lacks foundation.  
8 THE WITNESS: I don't know.  
9 Q. BY MR. ROSENBAUM: Okay. How about Oakland, do  
10 you know when OCR began its investigation there?  
11 A. No.  
12 Q. Do you know approximately when?  
13 A. Long time ago.  
14 Q. What does that mean?  
15 A. I think over 10 years ago. I think before --  
16 MR. VIRJEE: You're saying "I think." You're  
17 probably guessing or speculating. We don't want you to  
18 guess or speculate. If you have an estimate, he's  
19 entitled to that.  
20 MR. ROSENBAUM: We don't want lawyers trying to  
21 keep the truth from coming out.  
22 MR. VIRJEE: I want you to make sure you tell  
23 the truth just like you swore to do. I know you'll do  
24 that, but I don't want you to guess or speculate either.  
25 THE WITNESS: I don't know how long.

1 Q. BY MR. ROSENBAUM: Is that investigation still  
2 ongoing, so far as you know?  
3 A. Yes.  
4 Q. Do you know if that's close to being closed  
5 down?  
6 A. I know it's not.  
7 Q. How do you know that?  
8 A. Because I'm going there on Monday and I've been  
9 there recently.  
10 Q. And "there" is where?  
11 A. Oakland. I'm sorry.  
12 Q. Okay.  
13 A. With OCR.  
14 Q. Okay. And do you know what the ongoing  
15 problems are there in terms of the ongoing OCR  
16 investigation?  
17 A. Yes.  
18 Q. What are they?  
19 A. They're a good number of the compliance items  
20 in our monitoring manual.  
21 Q. Which ones that you recall?  
22 A. English language development for all English  
23 learners, access to the core for all English learners,  
24 staffing is still an issue, redesignation, lack of  
25 redesignation, just a number of things.

1 Q. By "staffing," you mean qualified, credentialed  
2 teachers?  
3 A. Yes.  
4 Q. Okay. With respect to Oakland,  
5 Ms. Burnham-Massey, your unit has been telling Oakland  
6 at least every year, you need to get into compliance;  
7 isn't that right?  
8 A. Yes.  
9 Q. Now, has your unit done anything different each  
10 year to get them into compliance?  
11 MR. VIRJEE: Objection. Vague and ambiguous as  
12 to "done anything different."  
13 MR. ROSENBAUM: Go ahead.  
14 THE WITNESS: Yes.  
15 Q. BY MR. ROSENBAUM: What's that?  
16 MR. VIRJEE: Objection. Compound. Which year?  
17 Q. BY MR. ROSENBAUM: What are the different  
18 things that you've done over the years?  
19 A. Various agreements, technical assistance from  
20 different consultants, monitoring reviews, and then most  
21 recently this year made a recommendation for withholding  
22 of money as an enforcement action against the district.  
23 Q. Okay. If I said to you, Ms. Burnham, you can  
24 do anything you want to get this district into  
25 compliance, the sky is the limit, what would you do?

1 MS. READ SPANGLER: Objection. Calls for  
2 speculation. Incomplete hypothetical.  
3 MR. VIRJEE: Lacks foundation. Calls for a  
4 legal conclusion.  
5 MR. ROSENBAUM: Go ahead.  
6 THE WITNESS: I don't know.  
7 Q. BY MR. ROSENBAUM: Has there ever been any  
8 discussion to that -- on that subject matter?  
9 MR. VIRJEE: The discussion of the sky being  
10 the limit?  
11 THE WITNESS: Not specifics, no.  
12 Q. BY MR. ROSENBAUM: Can you think of anything  
13 that your unit could do that it hasn't already done?  
14 A. Not right this minute. We'll keep thinking.  
15 Q. How about Inglewood, to your knowledge, when  
16 did that OCR investigation begin?  
17 A. I don't know.  
18 Q. Do you know if it was more than 10 years ago?  
19 A. I don't know.  
20 Q. Do you know if it was more than five years ago?  
21 A. I'm sure it was.  
22 Q. Why do you say that?  
23 A. Because I've been there for over five years and  
24 it's been for that time.  
25 Q. And is that investigation still open?

1 A. Yes.  
2 Q. Anywhere near closing, so far as you know?  
3 A. I don't think so.  
4 Q. And why do you say that?  
5 A. Having been in the district, having read the  
6 reports.  
7 Q. Okay. And what items are still problems?  
8 A. The instructional issues and the staffing  
9 issues are still problems, and I don't remember  
10 specifically the most recent report, what the other  
11 issues are.  
12 Q. When you say "instructional issues," what do  
13 you mean by that?  
14 A. English language development and access to core  
15 curriculum.  
16 Q. Okay. In terms of availability of the  
17 materials?  
18 MR. VIRJEE: Objection. Vague and ambiguous as  
19 to "availability of materials."  
20 THE WITNESS: I'm not sure.  
21 Q. BY MR. ROSENBAUM: When you say "staffing,"  
22 what do you mean by that?  
23 A. Adequate qualified teachers for English  
24 learners.  
25 Q. Okay. Incidentally, do you know the individual

1 or individuals who have principal responsibility for OCR  
2 with respect to Riverside?  
3 A. Yes, I do.  
4 Q. Who are they?  
5 A. Katy Riggs is the attorney, and Vera Lee is the  
6 investigator.  
7 Q. How about Oakland?  
8 A. Katy Riggs is the attorney, Jim Wood is the  
9 investigator.  
10 Q. Okay. How about -- did I just ask you Oakland?  
11 A. Yes.  
12 MS. READ SPANGLER: I think we started with  
13 Inglewood.  
14 THE WITNESS: No, we started with Riverside.  
15 Q. BY MR. ROSENBAUM: How about Inglewood?  
16 A. Inglewood is -- I forget. I'd have to look  
17 back on my notes. I'm not sure.  
18 Q. You have that in your files?  
19 A. Yes.  
20 Q. How about Compton?  
21 A. Compton is Susan Spelletich, the attorney, and  
22 Chris Witt, the investigator.  
23 Q. Okay. How about Pajaro Valley?  
24 A. Jim Wood is the investigator, and I'm not  
25 positive on the attorney.

1 Q. Okay. You don't know about Corona-Norco?  
 2 A. No.  
 3 Q. How about Delano High School?  
 4 A. I'm not sure on that one.  
 5 Q. The people you mentioned from OCR, in your  
 6 opinion are they all skilled individuals?  
 7 A. Yes.  
 8 Q. All competent?  
 9 A. Very much.  
 10 Q. All able to use all of the resources available  
 11 to them?  
 12 A. Yes.  
 13 Q. Okay. Same question I asked you for Oakland I  
 14 want to ask you with respect to Inglewood.  
 15 If I said to you, do whatever you need to do to  
 16 get them into compliance, is there anything different  
 17 that you'd do than what you've done in the past?  
 18 MR. VIRJEE: Objection. Calls for speculation  
 19 and lacks foundation. Incomplete hypothetical.  
 20 THE WITNESS: Not that I know right now, no.  
 21 Keep trying.  
 22 Q. BY MR. ROSENBAUM: Okay. Is Compton still  
 23 open?  
 24 A. Yes.  
 25 Q. Do you know when that investigation started by

1 OCR?  
 2 MR. VIRJEE: Objection. Asked and answered.  
 3 THE WITNESS: No.  
 4 Q. BY MR. ROSENBAUM: Do you know if it was more  
 5 than five years ago?  
 6 A. Yes.  
 7 Q. More than 10 years?  
 8 A. Don't know.  
 9 Q. Possibly?  
 10 A. Possibly.  
 11 Q. Same question for Compton. If I said to you --  
 12 do you know anything else that you could do to get them  
 13 into compliance?  
 14 A. No.  
 15 Q. If I said that with respect to any of the  
 16 districts that have been more than three years  
 17 noncompliant, same answer?  
 18 MR. VIRJEE: Objection. Calls for speculation.  
 19 Lacks foundation. Incomplete hypothetical.  
 20 MS. READ SPANGLER: Compound.  
 21 THE WITNESS: Same answer for now. We're  
 22 looking at some other options.  
 23 Q. BY MR. ROSENBAUM: What other options are you  
 24 looking at?  
 25 A. I don't know specifically?

1 Q. When you say "we're," who is "we're"?  
 2 A. Our unit, our division, the whole Department of  
 3 Education, I think.  
 4 Q. Have you ever gone to Dr. Greenfeld and said,  
 5 we've still got problems in Oakland or we've still got  
 6 problems in Inglewood or we've still got problems in  
 7 Compton?  
 8 A. I've said that to him, he's said that to me.  
 9 We kind of both know that.  
 10 Q. And what has he said?  
 11 A. He's expressed the same concerns that we have.  
 12 Q. Which are?  
 13 A. Which are what can we do as an agency to move  
 14 things along.  
 15 Q. Okay. And has he made any suggestions?  
 16 A. Mostly in terms of looking at what kinds of  
 17 sanctions we could impose.  
 18 Q. Okay. Anything besides that that you're aware  
 19 of?  
 20 A. Not that I'm aware of.  
 21 Q. Have you looked at any other sanctions besides  
 22 withholding money?  
 23 MR. VIRJEE: Has she personally?  
 24 MR. ROSENBAUM: That's not a good question.  
 25 I'm sorry.

1 Q. In terms of new sanctions, has your unit looked  
 2 at any other sanctions besides withholding money?  
 3 MR. VIRJEE: Objection. Vague and ambiguous as  
 4 to "new sanctions," and also calls for speculation.  
 5 THE WITNESS: We've had some discussions, and I  
 6 don't specifically remember what they are.  
 7 Q. BY MR. ROSENBAUM: Do you remember anything  
 8 about those discussions?  
 9 A. Yes.  
 10 Q. What do you remember?  
 11 A. Some discussions of such actions as court  
 12 action or referrals to the Attorney General's office.  
 13 Q. Has that ever been done in your experience?  
 14 MR. VIRJEE: Has what ever been done?  
 15 MR. ROSENBAUM: Court actions.  
 16 MR. VIRJEE: Objection. Asked and answered  
 17 yesterday.  
 18 THE WITNESS: Not in terms of Comite districts.  
 19 Q. BY MR. ROSENBAUM: Now, is money now being  
 20 withheld from Oakland?  
 21 A. Yes, it is.  
 22 Q. About \$5 million?  
 23 A. Yes.  
 24 Q. And what would that money otherwise go for?  
 25 MR. VIRJEE: Objection. Calls for speculation.

1 Lacks foundation. Also vague and ambiguous.  
 2 MR. ROSENBAUM: Go ahead.  
 3 THE WITNESS: It's a district decision.  
 4 Q. BY MR. ROSENBAUM: District could spend that  
 5 money any way it wanted?  
 6 A. Well, there are restrictions on how they could  
 7 spend it, and I'm not fully expert on the funding, so  
 8 I'm not sure.  
 9 Q. Okay. Let me -- you told me yesterday -- bear  
 10 with me -- those funds are -- is it LIA --  
 11 A. EIA. EIA-LEP.  
 12 Q. What's EIA stand for, if you know?  
 13 A. Economic impact aid. I'm not sure. I don't  
 14 understand the funding that well.  
 15 Q. If you don't know this, just tell me.  
 16 Districts have some discretion as to how they spend that  
 17 money?  
 18 MR. VIRJEE: Objection. Calls for speculation.  
 19 Lacks foundation. She's already said she doesn't know  
 20 how that works.  
 21 MS. READ SPANGLER: Join. Calls for a legal  
 22 conclusion.  
 23 THE WITNESS: Some, but I don't know now the --  
 24 Q. BY MR. ROSENBAUM: Have you ever personally  
 25 said, I'd like to know where that money would otherwise

1 go, that EIA-LEP money?  
 2 A. We look at that in districts, what they spend  
 3 the money on.  
 4 Q. Do you know what they spend it on in Oakland?  
 5 A. Not conclusively.  
 6 Q. What's your best understanding?  
 7 MR. VIRJEE: Objection. Calls for an expertise  
 8 that this witness doesn't have. There's been no  
 9 foundation laid that she would understand how the money  
 10 is spent.  
 11 THE WITNESS: I'm not sure.  
 12 Q. BY MR. ROSENBAUM: Do you know if Dr. Greenfeld  
 13 knows?  
 14 A. I don't know if he knows.  
 15 Q. Has anyone ever said, let's talk to Oakland and  
 16 find out what they would spend that money on before we  
 17 take it away?  
 18 MR. VIRJEE: Objection. Calls for speculation  
 19 as to whether anybody has ever said that.  
 20 Q. BY MR. ROSENBAUM: That you're aware of.  
 21 A. No.  
 22 Q. Have you ever ordered anyone in your unit to go  
 23 out and find out how that money has been spent in the  
 24 past by Oakland?  
 25 A. No.

1 Q. Or what the discretionary limits are?  
 2 A. No.  
 3 MR. VIRJEE: Other than what she's already  
 4 testified to as part of the process where they look at  
 5 that issue? She just told you that a minute ago.  
 6 Q. BY MR. ROSENBAUM: Do you know if anybody in  
 7 the State of California has done that?  
 8 A. I don't know.  
 9 Q. Okay. Have you met -- who is the present  
 10 superintendent of Oakland schools?  
 11 A. Dennis Chaconas.  
 12 Q. And have you had personal discussions with him?  
 13 A. Yes, I have.  
 14 Q. Have you ever said to him, what would you spend  
 15 that money on?  
 16 A. Not specifically that, that I recall.  
 17 Q. Okay. Generally that?  
 18 A. We've discussed the money. I don't remember  
 19 the specifics of the conversation.  
 20 Q. And when have you had those discussions?  
 21 A. Over the last year.  
 22 Q. Okay. And he has said to you please don't take  
 23 that money away from us, hasn't he?  
 24 MR. VIRJEE: Objection. Assumes facts not in  
 25 evidence. Assumes that Ms. Burnham took the money away

1 or even her unit took the money away.  
 2 MS. READ SPANGLER: And it's also leading.  
 3 MR. ROSENBAUM: Go ahead.  
 4 THE WITNESS: He didn't exactly say that.  
 5 Q. BY MR. ROSENBAUM: He objected to the money  
 6 being withheld; isn't that true?  
 7 A. I'm not sure.  
 8 Q. There's been correspondence that said, would  
 9 the Department of Education reconsider withholding those  
 10 monies?  
 11 A. I'm not sure about that correspondence.  
 12 Q. What's your understanding as to what their view  
 13 is as to whether or not those funds should be withheld?  
 14 MR. VIRJEE: Oakland's view?  
 15 MR. ROSENBAUM: Yes.  
 16 THE WITNESS: Mr. Chaconas, when the action was  
 17 first taken, expressed that he wasn't happy about it,  
 18 but he understood.  
 19 He was a new superintendent at that time, and  
 20 he made a commitment to do everything he could do to  
 21 move the district toward compliance.  
 22 Q. BY MR. ROSENBAUM: As far as you know, is he  
 23 doing that, is he working diligently to get into  
 24 compliance?  
 25 MR. VIRJEE: Is he in particular?

1 MR. ROSENBAUM: Yes.  
 2 THE WITNESS: As far as I know. I don't know.  
 3 I don't know for a fact.  
 4 Q. BY MR. ROSENBAUM: Do you think the district is  
 5 doing everything it can to get into compliance?  
 6 MR. VIRJEE: Objection. Calls for speculation.  
 7 Lacks foundation.  
 8 THE WITNESS: I don't know.  
 9 Q. BY MR. ROSENBAUM: How about Compton, do you  
 10 think it's doing everything it can to get into  
 11 compliance?  
 12 MR. VIRJEE: Objection. Calls for speculation.  
 13 Lacks foundation. Vague and ambiguous. Also vague and  
 14 ambiguous as to "everything it can."  
 15 THE WITNESS: I don't know.  
 16 Q. BY MR. ROSENBAUM: How about Inglewood?  
 17 A. I don't know.  
 18 MR. VIRJEE: Same objection.  
 19 Q. BY MR. ROSENBAUM: Have you ever directed  
 20 anyone in your unit to find out if Oakland is doing  
 21 everything it can to get into compliance?  
 22 MR. VIRJEE: Same objection. Also vague and  
 23 ambiguous as to "everything it can."  
 24 MR. ROSENBAUM: Go ahead.  
 25 THE WITNESS: Not that specifically. We do

1 work with them. We have for four years.  
 2 Q. BY MR. ROSENBAUM: Based on that four years'  
 3 experience, do you think that Oakland is doing  
 4 everything it can to get into compliance at this time?  
 5 MR. VIRJEE: Objection. Asked and answered.  
 6 THE WITNESS: I don't know.  
 7 Q. BY MR. ROSENBAUM: Same with any of the  
 8 districts that are still not in compliance?  
 9 MR. VIRJEE: Same objection. Vague and  
 10 ambiguous as to everything it can. Also compound.  
 11 MR. ROSENBAUM: Go ahead.  
 12 THE WITNESS: I don't know.  
 13 MS. READ SPANGLER: When you get to a good  
 14 stopping point, can we --  
 15 MR. ROSENBAUM: We can take a break right now.  
 16 MS. READ SPANGLER: Okay. Thank you.  
 17 (Recess taken from 10:04 to 10:16.)  
 18 Q. BY MR. ROSENBAUM: You doing okay?  
 19 A. Yes.  
 20 Q. Okay. Whenever you need a break, just let me  
 21 know.  
 22 Directing your attention again to what's been  
 23 marked as Exhibit 50. Could you please turn to the  
 24 second page of your resume.  
 25 A. Yes.

1 Q. Do you have that in front of you?  
 2 A. Yes.  
 3 Q. And looking under the subject matter  
 4 professional accomplishments and then California  
 5 Department of Education, the last bullet says, conducted  
 6 compliance reviews, focused on evidence of student  
 7 achievement, analyze data, prepared reports and worked  
 8 with districts to resolve noncompliant issues and  
 9 improve services for English learners. Do you see that?  
 10 A. Yes.  
 11 Q. I take it that's the work that we've been  
 12 talking about for the bilingual compliance unit and then  
 13 as it's gone through different iterations?  
 14 A. Yes.  
 15 Q. Can you give me your best estimate as to how  
 16 many compliance reviews you've conducted?  
 17 MR. VIRJEE: You mean how many on-sites?  
 18 MR. ROSENBAUM: That's a nice point.  
 19 Q. How many on-sites?  
 20 A. I don't know. Probably 40.  
 21 Q. And then have you done other reviews that were  
 22 not on-site regarding EL?  
 23 MR. VIRJEE: You're talking about as part of  
 24 the Comite area?  
 25 MR. ROSENBAUM: As part of the different units

1 that we've talked about.  
 2 MR. VIRJEE: You're including CCR, or not,  
 3 that's what I'm asking.  
 4 MR. ROSENBAUM: Including CCR, yes.  
 5 THE WITNESS: Review of district documents.  
 6 Q. BY MR. ROSENBAUM: And how many of those have  
 7 you done?  
 8 A. Probably about the same.  
 9 Q. Okay. Do you know anybody in the state of  
 10 California who has done more than you?  
 11 A. Probably. I don't know specifically though.  
 12 Q. Okay. But you're in the top field?  
 13 MS. READ SPANGLER: Are you talking just for  
 14 ELs?  
 15 MR. ROSENBAUM: Yes.  
 16 MR. VIRJEE: Calls for speculation.  
 17 You're including CCR reviews too, not just  
 18 Comite reviews?  
 19 MR. ROSENBAUM: Yeah.  
 20 THE WITNESS: I don't know for sure.  
 21 Q. BY MR. ROSENBAUM: Okay. I asked you some  
 22 questions about the Stanford-9 yesterday. Bear with me  
 23 if I -- I just want to ask you one question. To your  
 24 knowledge, is anyone in the state investigating results  
 25 of EL performance on the Stanford-9 broken down by

1 whether the students were in instructional immersion  
 2 versus bilingual, versus mainstream classes?  
 3 A. Not that I'm aware of.  
 4 Q. Or any configuration like structured immersion  
 5 versus -- structured immersion versus bilingual versus  
 6 mainstream or mainstream versus structural immersion?  
 7 A. I don't know.  
 8 Q. You're not aware of any such investigation or  
 9 inquiry or analysis?  
 10 MR. VIRJEE: Objection. Asked and answered.  
 11 THE WITNESS: I'm not aware. Could well be.  
 12 Q. BY MR. ROSENBAUM: No one has brought such a  
 13 study, if it exists, to your attention?  
 14 A. No.  
 15 MR. VIRJEE: Objection. Asked and answered.  
 16 She's not aware.  
 17 Q. BY MR. ROSENBAUM: Have you ever seen any data  
 18 regarding dropout rates of English learners?  
 19 A. Yes.  
 20 Q. What have you seen, please?  
 21 A. I've seen some data, not recently, and I don't  
 22 recall specifically what it said.  
 23 Q. Do you know who prepared the data?  
 24 A. I don't recall.  
 25 Q. Do you know if it was -- did the Department of

1 Education prepare the data?  
 2 A. I believe it did.  
 3 Q. Can you give me an approximate time frame when  
 4 you saw the data?  
 5 A. Five years ago.  
 6 Q. Okay. Do you know if that sort of data is  
 7 still being compiled?  
 8 A. I don't know.  
 9 Q. Okay. Have you ever sought any such data?  
 10 A. Not since that one time.  
 11 Q. Did you actually seek out that data five years  
 12 ago or so?  
 13 A. Yes, I did.  
 14 Q. For what purpose?  
 15 A. For a complaint investigation I was working on.  
 16 Q. What was that?  
 17 A. It was a complaint. I'm not positive which one  
 18 it was, actually, right now.  
 19 Q. For a particular district?  
 20 A. Yes.  
 21 Q. So the dropout rates that you looked --  
 22 incidentally, when I say dropout rates, what do you  
 23 understand that to mean?  
 24 A. Students not completing high school.  
 25 Q. Okay. And so you got data for dropout rates

1 for a particular district; is that right?  
 2 A. Yes.  
 3 Q. Do you remember from whom you got the data?  
 4 A. I don't.  
 5 Q. Okay. The district reports that you file as  
 6 part of the Comite case, does that include data  
 7 regarding dropout rates, so far as you know?  
 8 A. Not automatically.  
 9 Q. Okay. What do you mean when you say "not  
 10 automatically"?  
 11 A. It's a requirement, no.  
 12 Q. And does your unit have a policy or practice or  
 13 custom of including dropout rate data in all your  
 14 reports?  
 15 A. No.  
 16 Q. Any reason why not?  
 17 A. It's not a specific requirement.  
 18 Q. Okay. And that's what you do in those reports,  
 19 just follow the requirements?  
 20 MR. VIRJEE: The report to the court?  
 21 MR. ROSENBAUM: Yes.  
 22 THE WITNESS: I'm talking about reports to the  
 23 district.  
 24 MR. ROSENBAUM: The reports to the district,  
 25 let's start there.

1 THE WITNESS: Yes, we follow the requirements.  
 2 Q. BY MR. ROSENBAUM: Okay. And in the report to  
 3 the court, to your knowledge, have any of those reports  
 4 to the court discussed dropout rates of ELs?  
 5 A. Not to my knowledge, no.  
 6 Q. Okay. And do you know what, if any, use is  
 7 made of data regarding dropout rates of ELs as collected  
 8 by the Department of Education?  
 9 A. I don't know.  
 10 Q. Okay. And has anyone in your unit, to your  
 11 knowledge, requested information about dropout rates of  
 12 ELs?  
 13 A. I'm not sure.  
 14 Q. Okay. And to your knowledge, has anyone in the  
 15 Department of Education ever investigated whether  
 16 dropout rates of ELs are greater or less than non-EL  
 17 students?  
 18 A. I've not been involved with that, so I'm not  
 19 aware of it.  
 20 Q. Or looked to see whether or not similarly  
 21 students at the same school, comparing EL students at  
 22 one school with non-EL students at the same school  
 23 looked at dropout rates under those circumstances?  
 24 MR. VIRJEE: Objection. Vague and ambiguous.  
 25 THE WITNESS: We sometimes look at such data on

1 a specific review, but it's not something that we  
2 automatically look at.

3 Q. BY MR. ROSENBAUM: Can you think of any reviews  
4 where you looked at that data?

5 A. Not the dropouts specifically, no.

6 Q. And to your knowledge, has there ever been any  
7 investigation or inquiry as to why EL students drop out?

8 A. Not that I know of.

9 Q. Okay. Any in the state of California you're  
10 not aware of?

11 A. Not that I can talk about intelligently, let's  
12 put it that way.

13 Q. Let me break that down a little bit. I want to  
14 know if they exist. Do you know if there's been any  
15 analysis or inquiry as to why EL students drop out?

16 MR. VIRJEE: Analyzing students in the state of  
17 California, is what I understand your question to be.

18 MR. ROSENBAUM: Yeah, in the state of  
19 California.

20 MR. VIRJEE: When you say "in the state," are  
21 you saying that analysis done within the State, capital,  
22 "S," State, by private industry? It's vague and  
23 ambiguous. I don't understand what you're talking  
24 about.

25 Q. BY MR. ROSENBAUM: I'm interested in EL

1 students who attend public schools in the state of  
2 California. I want to know if there's been, to your  
3 knowledge, any investigation, any inquiry, any analysis  
4 of dropout rates of EL students. I don't care who  
5 performed the analysis or the investigation.

6 A. I think there have been some, but I can't talk  
7 about them. It's something I'm vaguely aware. I think  
8 it does exist. I don't want to say it doesn't. I don't  
9 have knowledge.

10 Q. Do you know if the Department of Education  
11 undertook any of those analyses or evaluations, or  
12 whether they were private or university?

13 MR. VIRJEE: Or other?

14 MR. ROSENBAUM: Or other.

15 THE WITNESS: I don't know.

16 Q. BY MR. ROSENBAUM: Thank you. If I asked you  
17 the same set of questions -- I'm pleased to repeat them  
18 if you'd like me to -- and I substituted instead of  
19 dropout rates grade retention, being retained in the  
20 same grade, do you know whether or not any such studies  
21 or investigations exist?

22 MR. VIRJEE: With respect to the retention of  
23 EL students?

24 MR. ROSENBAUM: Correct.

25 MR. VIRJEE: Any studies by anyone?

1 MR. ROSENBAUM: Exactly.

2 MR. VIRJEE: Including the state, districts  
3 private, academia, anybody?

4 MR. ROSENBAUM: Exactly.

5 THE WITNESS: Define study. I don't  
6 understand.

7 MR. ROSENBAUM: Any investigation, analysis,  
8 evaluation as to, first of all, what the grade retention  
9 rates are; secondly, why kids are being retained in the  
10 same grades who are EL; comparing EL to non-EL students  
11 with respect to grade retention, any of those subject  
12 matters.

13 MR. VIRJEE: Remember, he's including what the  
14 district is doing as well. All his questions have  
15 included anybody, anywhere in the state.

16 THE WITNESS: As part of our investigations, we  
17 frequently do that. We frequently look at retention of  
18 English learners compared to non-English learners. In  
19 fact, I specifically have directed staff to do that and  
20 I have done taht. That's in our work in the district.

21 As far as statewide, I believe that has been  
22 done, but I can't talk about it. I don't know anything  
23 about it.

24 Q. BY MR. ROSENBAUM: Do you know who did it?

25 A. No.

1 Q. You've never made any use of such data if it  
2 exists?

3 A. No.

4 Q. Do you know if anybody has ever made any use of  
5 that data?

6 A. I don't know.

7 Q. Okay. Have you ever heard that discussed in  
8 any staff meeting, either your staff or with  
9 Dr. Greenfeld?

10 MR. VIRJEE: Objection. Vague and ambiguous.

11 MR. ROSENBAUM: Retention, comparisons of  
12 retention.

13 MR. VIRJEE: That's what she just testified to.

14 MR. ROSENBAUM: No. I don't think you heard my  
15 question correctly.

16 Q. Has there ever been, to your knowledge, any  
17 discussion either in your staff meetings or staff  
18 meetings with Dr. Greenfeld regarding comparative  
19 retention rates of EL to non-EL students?

20 MR. VIRJEE: And, again, she just testified  
21 about that. You're asking -- she had said statewide as  
22 opposed to what they do in their unit, so that's why  
23 your question is vague and ambiguous. I don't  
24 understand which you're talking about, or both.

25 Q. BY MR. ROSENBAUM: How about in your unit, have

1 you had those discussions?  
 2 MR. VIRJEE: About?  
 3 Q. BY MR. ROSENBAUM: You said that you directed  
 4 people to look at that information?  
 5 A. Yes.  
 6 Q. Now, has there ever been any discussions about  
 7 what people have found out as a result of collecting  
 8 that data?  
 9 A. We've had some discussions specifically about  
 10 the districts we work with.  
 11 Q. In what districts do you recall there being  
 12 discussions about the retention?  
 13 A. Ravenswood and Inglewood most recently.  
 14 Q. Any other districts?  
 15 A. Oceanside.  
 16 Q. Anything else? Any other districts?  
 17 A. Those are the ones that come right to mind.  
 18 Q. When were the discussions about Ravenswood, so  
 19 far as you recall?  
 20 A. Six or eight months ago.  
 21 Q. What do you recall about those discussions?  
 22 A. That in the schools that we looked at we found  
 23 English learners were being retained at a higher rate  
 24 than non-English learners.  
 25 Q. And do you remember how much more?

1 A. I don't remember specifically.  
 2 Q. Do you remember if it was in the magnitude of  
 3 two times more, three times more, 50 percent more?  
 4 A. No, I don't.  
 5 Q. You can't give me a ballpark number at all?  
 6 MR. VIRJEE: Objection. Asked and answered.  
 7 THE WITNESS: No.  
 8 Q. BY MR. ROSENBAUM: Okay. Was there any  
 9 discussion in these meetings about why that was  
 10 happening?  
 11 A. Yes.  
 12 Q. What was the nature of that discussion, please?  
 13 A. Concern about the impact of Proposition 227 on  
 14 retention of English learners.  
 15 Q. And can you be more specific, please?  
 16 A. That lack of English shouldn't be a reason for  
 17 retaining students, but that possibly in some instances  
 18 it might have been.  
 19 Q. Okay. Was there discussion about finding out  
 20 whether or not that, in fact, was a cause?  
 21 A. Yes.  
 22 Q. And did that, in fact, happen, was there an  
 23 investigation?  
 24 MR. VIRJEE: You're asking in Ravenswood?  
 25 MR. ROSENBAUM: That's right.

1 THE WITNESS: Not at this point, no.  
 2 Q. BY MR. ROSENBAUM: Was there any discussion  
 3 with any Ravenswood officials or personnel about that  
 4 subject matter, so far as you know?  
 5 A. It was discussed with them when we were leaving  
 6 the district.  
 7 Q. When was that?  
 8 A. A few months ago. It was this school year.  
 9 Q. Subsequent to this, the discussion in your  
 10 unit?  
 11 A. No, prior to.  
 12 Q. Okay. And what did the Ravenswood people say?  
 13 A. They had a concern, and they wanted to look at  
 14 that issue more closely as well.  
 15 Q. Who at the Ravenswood district?  
 16 A. I believe Dr. Mike Smirthwait (ph.). Don't ask  
 17 me to spell that one.  
 18 Q. Okay. Has there been any follow-up?  
 19 MR. VIRJEE: Objection. Vague and ambiguous as  
 20 to "follow-up."  
 21 MR. ROSENBAUM: By your unit.  
 22 THE WITNESS: The consultant assigned to  
 23 Ravenswood has been in contact with the district.  
 24 Q. BY MR. ROSENBAUM: Do you know what the  
 25 results, if any, have been?

1 A. No.  
 2 Q. Who is the consultant?  
 3 A. Monica Nava.  
 4 Q. How about Inglewood, you told me you had  
 5 discussions with your staff about the retention rate?  
 6 A. In one school where we visited, not  
 7 districtwide, yes.  
 8 Q. What school was that?  
 9 A. I don't recall the name of the school.  
 10 Q. Do you know if it was a middle school or an  
 11 elementary school or a high school?  
 12 A. It was an elementary school.  
 13 Q. Okay. And was there any discussion about, we  
 14 should see if this is happening in other schools in the  
 15 Inglewood district?  
 16 A. Yes.  
 17 Q. What was the nature of the discussion?  
 18 A. That we want to look at that in every school  
 19 that we go to, Inglewood or any other district.  
 20 Q. And has that now been done?  
 21 A. Yes.  
 22 MR. VIRJEE: Is what being done?  
 23 Q. BY MR. ROSENBAUM: What did you mean?  
 24 A. That we are looking at retention as one of the  
 25 indicators of -- for EL 3b which is student access to

1 the core curriculum. We're looking at that. Even  
 2 though it's not explicitly in the law, that we're taking  
 3 that as one of our indicators to look at.  
 4 Q. Have you gotten any results back for any  
 5 district?  
 6 MS. READ SPANGLER: Objection. Vague and  
 7 ambiguous as to "results."  
 8 THE WITNESS: Just when we go to the districts,  
 9 the three I mentioned, and Pittsburg was another one.  
 10 So we are getting results as we go to the districts and  
 11 include that in what we look at.  
 12 Q. BY MR. ROSENBAUM: Okay. Have you formed any  
 13 conclusions as to the frequency, if any, of this  
 14 occurring in Inglewood?  
 15 MR. VIRJEE: Objection. Vague and ambiguous as  
 16 to "frequency."  
 17 MR. ROSENBAUM: Go ahead.  
 18 THE WITNESS: Not a definite conclusion, no.  
 19 Q. BY MR. ROSENBAUM: A tentative conclusion?  
 20 MR. VIRJEE: Are you asking with what frequency  
 21 are kids retained that are EL?  
 22 "Frequency" is vague and ambiguous.  
 23 MR. ROSENBAUM: Yes, that's my first question.  
 24 THE WITNESS: I don't have a conclusion.  
 25 Q. BY MR. ROSENBAUM: Do you have any conclusions

1 A. No.  
 2 Q. In how many districts would you say you've done  
 3 this?  
 4 A. Just this year, so just a few districts so far  
 5 this year. I don't know the exact number.  
 6 Q. Okay. What's your best estimate as to a  
 7 number?  
 8 A. It's hard to estimate.  
 9 Q. Do you do it for every school in the district,  
 10 which is the schools you're --  
 11 A. No. It would just be the schools that we  
 12 visit, and it might not even be every one of those  
 13 schools.  
 14 Q. Would it be every student in the schools?  
 15 A. No.  
 16 Q. Do you know what percentage of the schools?  
 17 A. No, I don't.  
 18 Q. And there are not requirements as to how many  
 19 students you look at, I take it?  
 20 A. No.  
 21 Q. Okay. You talked to me yesterday about aides,  
 22 instructional aides in the classroom. To your  
 23 knowledge, are there any specific state programs that  
 24 deal with increasing the number of instructional aides  
 25 who are fluent in a particular language other than

1 as to whether or not lack of familiarity with English is  
 2 a cause for EL students being held back?  
 3 MR. VIRJEE: Objection. Calls for speculation.  
 4 Lacks foundation.  
 5 MR. ROSENBAUM: Go ahead.  
 6 THE WITNESS: Not a definite conclusion.  
 7 Q. BY MR. ROSENBAUM: A tentative conclusion?  
 8 A. Or tentative.  
 9 Q. Is there a time when you expect to have a  
 10 conclusion regarding this?  
 11 A. Not a specific time.  
 12 Q. Okay. How about Oceanside, have you looked  
 13 into it at Oceanside, retention rates?  
 14 A. Actually, no.  
 15 Q. Okay. How about Oakland?  
 16 A. Not yet, no.  
 17 Q. Okay. How about Compton?  
 18 A. No.  
 19 Q. How about Los Angeles?  
 20 A. No.  
 21 Q. How about San Francisco?  
 22 A. No.  
 23 Q. Or Alhambra?  
 24 A. No.  
 25 Q. Or San Diego?

1 English?  
 2 MR. VIRJEE: Could you repeat that question.  
 3 (Record read.)  
 4 THE WITNESS: Not that I'm aware of.  
 5 Q. BY MR. ROSENBAUM: I apologize if I'm repeating  
 6 myself. The definition of fluency for an aide in a  
 7 language other than English, there is not a specific  
 8 state requirement as to that; isn't that correct?  
 9 A. Correct, there's not.  
 10 Q. And it's up to the district?  
 11 A. Yes.  
 12 Q. Does the state -- does your unit monitor the  
 13 definitions of fluency that are used for instructional  
 14 aides?  
 15 A. Not always. Sometimes we'll ask the district,  
 16 but it's not a regular thing we do, no.  
 17 Q. It's not a requirement?  
 18 A. No.  
 19 Q. It's your experience that the definitions vary  
 20 from district to district?  
 21 A. Yes.  
 22 Q. Okay. What's the range, if you know?  
 23 A. I don't know.  
 24 MR. VIRJEE: Objection. Vague and ambiguous as  
 25 to the "range."

1 THE WITNESS: I don't know.  
 2 Q. BY MR. ROSENBAUM: Have you ever directed  
 3 anyone in your unit to see how districts are dealing  
 4 with the question of fluency for instructional aides?  
 5 A. No.  
 6 Q. Thank you. Are there districts in California  
 7 that you personally, based on your training and  
 8 experience, regard as having successful EL programs?  
 9 A. Yes.  
 10 Q. Okay. And which districts would they be?  
 11 MR. VIRJEE: You're talking about her personal  
 12 knowledge?  
 13 MR. ROSENBAUM: I am.  
 14 THE WITNESS: This doesn't mean they're  
 15 perfect, right? Successful programs, I would say  
 16 Riverside, Fresno.  
 17 MR. VIRJEE: I'm going to object as vague and  
 18 ambiguous as to the term "successful."  
 19 MR. ROSENBAUM: Go ahead.  
 20 THE WITNESS: Garvey.  
 21 Q. BY MR. ROSENBAUM: You said Garvey?  
 22 A. Yes.  
 23 Q. Okay.  
 24 A. Anaheim Elementary. I know there are others.  
 25 Like I say successful, I'm not sure, but some that I

1 know are doing a good job and meeting compliance.  
 2 Q. Okay. And when you understand the word  
 3 "successful," what do you take that to mean?  
 4 MR. VIRJEE: Objection. Vague and ambiguous as  
 5 to "successful."  
 6 Are you attaching some legal compliance or  
 7 pedagogical, or what?  
 8 MR. ROSENBAUM: With respect to your last  
 9 answer.  
 10 THE WITNESS: That they're offering equitable  
 11 programs for English learners and they have some  
 12 evidence of English learner success, that they have  
 13 systems in place to take action when they find problems  
 14 in their own district and correct those problems.  
 15 Q. BY MR. ROSENBAUM: Is that important?  
 16 A. Yes.  
 17 Q. Why is that?  
 18 A. Because the State can't be in every district  
 19 all the time.  
 20 Q. Does every district have such systems in place?  
 21 MR. VIRJEE: Objection. Calls for speculation.  
 22 Lacks foundation.  
 23 THE WITNESS: Not to my knowledge.  
 24 MR. ROSENBAUM: That's a really nice point.  
 25 Q. Do you know if the State has made inquiry to

1 determine whether or not every district has such a  
 2 system in place?  
 3 MR. VIRJEE: Objection. Calls for speculation.  
 4 Lacks foundation.  
 5 THE WITNESS: We do that with our Comite  
 6 districts. That's my only personal knowledge.  
 7 Q. BY MR. ROSENBAUM: What are the components of a  
 8 system in place, as you described it, which you would  
 9 regard as successful?  
 10 A. That they have a way to monitor their school  
 11 sites to ensure that English learners are receiving all  
 12 legally required services as the district has laid out  
 13 its program.  
 14 So I should back up first and say the district  
 15 has laid out a program and that they have a way to  
 16 monitor that program to make sure it's implemented and  
 17 that they have a way to evaluate the effectiveness of  
 18 that program both for individual students and for the  
 19 program as a whole.  
 20 Q. And then to make corrections as needed?  
 21 A. And then to make corrections when necessary.  
 22 Q. Have a plan, discover if there are problems,  
 23 prevent problems, and correct them when they come up?  
 24 A. Yes.  
 25 Q. Okay. That's the bare minimums, right?

1 A. Yes.  
 2 MR. VIRJEE: Objection. Vague and ambiguous as  
 3 to "bare minimums."  
 4 Q. BY MR. ROSENBAUM: Why is that? What's the  
 5 basis for your answer?  
 6 A. Well, the custody of the court decision for  
 7 one, but also my experience as an educator that if you  
 8 have those systems in place, that increases certainly  
 9 the likelihood you're going to have positive outcomes  
 10 for students.  
 11 Q. That's common sense, isn't it?  
 12 A. Uh-huh.  
 13 Q. You're saying yes?  
 14 A. Yes.  
 15 Q. Can you tell me, among Riverside, Fresno,  
 16 Garvey, and Anaheim Elementary, is there one that you  
 17 would rank as the best?  
 18 A. No, because they're all different and they all  
 19 have, I'm sure, stronger and weaker schools.  
 20 Q. There's a number of ways that this system can  
 21 be established; is that right?  
 22 A. Yes.  
 23 Q. And a number of ways it can be implemented?  
 24 A. Yes.  
 25 Q. How does Riverside do it? What is it about the

1 way Riverside does it that appeals to you?  
 2 MR. VIRJEE: Objection. Overbroad. Vague and  
 3 ambiguous.  
 4 THE WITNESS: Riverside has a very strong what  
 5 we call accountability system for ensuring that all  
 6 administrators and teachers with responsibility for  
 7 English learners have adequate training and, in fact, do  
 8 their job, it's part of their personnel evaluation.  
 9 They have a very strong monitoring system.  
 10 Q. BY MR. ROSENBAUM: How does Fresno do it, if  
 11 they do it any differently?  
 12 A. Fresno I'm less aware of. I just know that  
 13 they're a recent Comite graduate. I didn't work  
 14 personally with them, but I know they deal with a  
 15 variety of language groups and have done some good work  
 16 and completed the requirements for graduation from  
 17 Comite.  
 18 Q. Was Garvey a Comite district?  
 19 A. Yes, it was.  
 20 Q. Are there non-Comite districts that you're  
 21 aware of with successful programs?  
 22 A. I'm less aware of them. I'm aware of some of  
 23 the two-way programs in some districts, but I don't know  
 24 those districts nearly as well.  
 25 Q. You don't feel comfortable to describe those

1 systems?  
 2 A. Yes, I don't.  
 3 Q. Sitting here today, can you tell me the number  
 4 of districts that have successful systems?  
 5 A. I don't know the number.  
 6 Q. Okay. Or the percent?  
 7 A. No, I don't. I know there are a number of  
 8 successful districts and successful programs, I don't  
 9 know specifics.  
 10 Q. Okay. Sitting here today, do you know the  
 11 number of schools that have successful programs?  
 12 A. No.  
 13 Q. Are schools involved in the programs for  
 14 accountability?  
 15 A. Yes.  
 16 Q. They have to be, don't they?  
 17 A. Yes.  
 18 Q. Why is that?  
 19 A. Because they're the closest touch to the  
 20 students.  
 21 Q. Do you know if every -- strike that.  
 22 Do you know the percent of schools in  
 23 California that have successful programs?  
 24 A. No.  
 25 Q. If I asked you the same question -- you told me

1 about having systems in place that are aware of  
 2 problems, monitor problems, have a plan. Do you  
 3 remember you talked to me about that?  
 4 A. Yes.  
 5 Q. Do you know the number of districts in  
 6 California that have such systems in place?  
 7 MR. VIRJEE: Objection. Asked and answered.  
 8 You've asked her that question probably three  
 9 questions ago.  
 10 THE WITNESS: No.  
 11 Q. BY MR. ROSENBAUM: Okay. Do you know -- strike  
 12 that.  
 13 Has your unit ever developed a document that  
 14 describes what such a model system in place would look  
 15 like?  
 16 MR. VIRJEE: Objection. Vague and ambiguous as  
 17 to describing a model system.  
 18 THE WITNESS: Not one document I can point to.  
 19 Q. BY MR. ROSENBAUM: Okay. More than one  
 20 document?  
 21 A. We've put out some documents, but I'm not clear  
 22 on what kind of document.  
 23 Q. If I were starting up a school district  
 24 tomorrow and I said to you, Ms. Burnham-Massey, I'd like  
 25 to develop such a system in place, do you have any

1 documents that you can share with me as to how to do  
 2 that? What, if anything, would you give me?  
 3 A. Well, I would give you our document on  
 4 designing a standards-based accountability system for  
 5 English learners.  
 6 Q. Yes.  
 7 A. I would probably give you our master plan  
 8 checklist because it lays out legal requirements, and  
 9 districts use that as a guide in planning their  
 10 programs. I'd probably give you those.  
 11 Q. Okay. The first document, it's a -- what's it  
 12 called?  
 13 A. Standards-based accountability system.  
 14 Q. That's like a 30- or 35-page document?  
 15 A. Yes.  
 16 Q. Has every district in the state received that  
 17 document?  
 18 MR. VIRJEE: Objection. Calls for speculation.  
 19 MR. ROSENBAUM: If you know.  
 20 THE WITNESS: I don't know.  
 21 Q. BY MR. ROSENBAUM: Do you know how many  
 22 districts, if any, have received that document?  
 23 A. I don't know.  
 24 Q. Or what percent of districts?  
 25 A. No, I don't know.

1 Q. And the master plan checklist, has every  
2 district in the state received that?  
3 MR. VIRJEE: Objection. Calls for speculation.  
4 THE WITNESS: I don't know.  
5 Q. BY MR. ROSENBAUM: Do you know if every school  
6 has received the master plan checklist?  
7 A. I don't know.  
8 Q. Do you know if there's any agency in the  
9 state -- strike that.  
10 Do you know if there's any agency or body in  
11 the state that monitors to see whether or not there are  
12 systems in place in every district?  
13 A. Not that I'm aware of.  
14 Q. Or in every school?  
15 MS. READ SPANGLER: Obviously she does.  
16 MR. VIRJEE: Are you asking outside of the  
17 Comite and the CCR process, or are you including those,  
18 or what are you doing?  
19 MR. ROSENBAUM: Go ahead.  
20 THE WITNESS: Outside of the Comite process and  
21 the CCR, I'm not aware of there being another system in  
22 the state.  
23 Q. BY MR. ROSENBAUM: Do you know prior to 227,  
24 the year prior to 227, what percent of EL students were  
25 taught by teachers with bilingual credentials?

1 A. I don't know.  
2 Q. Do you know if it was more or less than 50  
3 percent?  
4 MR. VIRJEE: Objection. Vague and ambiguous as  
5 to "bilingual credentials." It also calls for  
6 speculation.  
7 MR. ROSENBAUM: Go ahead.  
8 THE WITNESS: Was the question English  
9 learners?  
10 MR. ROSENBAUM: Yes.  
11 THE WITNESS: Less than 50 percent.  
12 Q. BY MR. ROSENBAUM: Around a third?  
13 A. I'm not sure.  
14 Q. How do you know that?  
15 A. Because I know that only a third of English  
16 learners prior to 227 were receiving any kind of  
17 bilingual instruction, so -- and all of those students  
18 may not have had teachers with authorizations, so it's  
19 logic, I guess.  
20 Q. And was there a legal requirement at that time,  
21 the year prior to 227, that all EL students receive  
22 bilingual instruction?  
23 MS. READ SPANGLER: Objection. Calls for a  
24 legal conclusion.  
25 THE WITNESS: I think no.

1 Q. BY MR. ROSENBAUM: What was the legal  
2 requirement as you understood it?  
3 MR. VIRJEE: Objection. Calls for a legal  
4 conclusion.  
5 THE WITNESS: The legal requirement, as I  
6 understood it, before 227, was all English learners who  
7 needed primary language instruction in order to fully  
8 access grade level academic content had to have a  
9 bilingual teacher or a teacher in training.  
10 Q. BY MR. ROSENBAUM: Do you know what percent of  
11 those students prior to 227, the year prior to 227, were  
12 taught by teachers with a bilingual credential?  
13 A. No, I don't.  
14 Q. Do you know if the State compiled that data?  
15 MR. VIRJEE: Other than what she's already  
16 testified to?  
17 MR. ROSENBAUM: Go ahead.  
18 THE WITNESS: Only what the language census  
19 collected.  
20 Q. BY MR. ROSENBAUM: Did the language census, to  
21 your knowledge, specifically include the category of  
22 English learners who -- you gave me some language about  
23 needing primary language instruction.  
24 MR. VIRJEE: Objection. Asked and answered.  
25 Q. BY MR. ROSENBAUM: Did they collect that data?

1 A. Not the number needing such instruction, no.  
2 Q. Do you know why not?  
3 MR. VIRJEE: Objection. Calls for speculation.  
4 THE WITNESS: Don't know.  
5 Q. BY MR. ROSENBAUM: That's still a requirement  
6 for the bilingual program, isn't it?  
7 A. Yes.  
8 Q. And do you know, if that data is collected  
9 today, the number of students that require bilingual  
10 instruction?  
11 A. Not that I know of.  
12 Q. I'm sorry, require instruction in primary  
13 language?  
14 A. Not that I know of.  
15 Q. Has there ever been any discussion about  
16 collecting that information, so far as you know?  
17 A. It's been collected indirectly in the English  
18 learner staffing plans, but, no.  
19 Q. Thank you. As far as you know, the State  
20 doesn't compile it anywhere?  
21 MR. VIRJEE: Calls for speculation.  
22 THE WITNESS: Not that I know of.  
23 Q. BY MR. ROSENBAUM: Thank you. To your  
24 knowledge, has there been an annual report prepared by  
25 the State Department of Education regarding

1 implementation of Prop 227?  
 2 A. Annual report, not to my knowledge.  
 3 Q. Or by the Department of Education?  
 4 A. Not to my knowledge.  
 5 Q. Or by anybody in the superintendent's office?  
 6 A. Not that I know of.  
 7 Q. Or by the State Board of Education?  
 8 A. Not that I'm aware of.  
 9 Q. Or the legislature?  
 10 A. Not that I'm aware of.  
 11 Q. If I changed it and said not an annual report  
 12 but just a report regarding the implementation of  
 13 Proposition 227 and, just to save time, the same  
 14 entities that I just mentioned?  
 15 MR. VIRJEE: Objection. Vague and ambiguous as  
 16 to "report."  
 17 Q. BY MR. ROSENBAUM: Do you know if there has  
 18 been any such report?  
 19 MR. VIRJEE: Any report at any time by any of  
 20 those agencies?  
 21 MR. ROSENBAUM: Regarding implementation of  
 22 Prop 227.  
 23 MR. VIRJEE: Objection. Vague and ambiguous as  
 24 to "report."  
 25 THE WITNESS: The Department of Education put

1 out one publication on 227. I don't remember the name  
 2 of it.  
 3 Q. BY MR. ROSENBAUM: Do you know when it came  
 4 out?  
 5 A. About a year or two ago.  
 6 Q. And was that about how to implement 227?  
 7 A. I think it was, yes.  
 8 Q. It included like questions and answers?  
 9 A. Yes.  
 10 Q. Okay. Have you seen any report, study,  
 11 evaluation, memo regarding the results of Proposition  
 12 227 prepared by any of the entities I mentioned?  
 13 A. I haven't seen one, no.  
 14 Q. Do you know if any such report, evaluation,  
 15 memorandum has been prepared by anybody, as Mr. Virjee  
 16 said before, whether it's the government, academia,  
 17 private entities, others?  
 18 A. I think it's being worked on. I have not seen  
 19 anything final. I'm not aware that there's been  
 20 anything done.  
 21 Q. I take it your unit isn't working on such an  
 22 evaluation?  
 23 A. No, we're not.  
 24 Q. When you say that you think it's being worked  
 25 on, what's the basis for that answer?

1 A. Because I think there's a bill that requires  
 2 such a study, and I think that somewhere in the  
 3 Department it's happening, but I can't say anything  
 4 intelligent about it.  
 5 Q. You don't know where?  
 6 A. No.  
 7 Q. Have you heard any discussion about it?  
 8 A. Some, but not enough to really comment.  
 9 Q. What have you heard?  
 10 A. Just that somebody somewhere is doing such a  
 11 document.  
 12 Q. Okay. Do you know when it's scheduled to come  
 13 out?  
 14 A. No.  
 15 Q. Okay. Has anyone asked you for information for  
 16 such a report or evaluation?  
 17 A. No.  
 18 Q. Okay. Do you know if anyone has asked anybody  
 19 at CCR?  
 20 A. Not that I'm aware of.  
 21 MR. VIRJEE: Objection. Calls for speculation.  
 22 Q. BY MR. ROSENBAUM: Thank you. You talked to me  
 23 about the S-A-B-E yesterday. Do you remember that?  
 24 A. Yes.  
 25 Q. Is that pronounced SABE?

1 A. SABE.  
 2 Q. Do you know if there's been any attempt to  
 3 determine whether or not any relationship exists between  
 4 SABE results and Stanford-9 results?  
 5 MR. VIRJEE: Objection. Asked and answered.  
 6 THE WITNESS: Not that I know of.  
 7 Q. BY MR. ROSENBAUM: Okay. We've talked several  
 8 times about redesignation of students. Do you remember  
 9 that?  
 10 A. Yes.  
 11 Q. And just as a predicate, you've told me that  
 12 when an English learner meets certain requirements, that  
 13 English learner would be redesignated from EL to an FEP;  
 14 is that right?  
 15 MR. VIRJEE: Objection. Her testimony will  
 16 speak for itself.  
 17 THE WITNESS: Yes.  
 18 Q. BY MR. ROSENBAUM: Okay. Now, do you know if  
 19 there has been any investigation or inquiry or  
 20 examination to determine the numbers of FEPs in AP  
 21 courses?  
 22 A. A statewide investigation, or within our work?  
 23 Q. Let's break it down. First of all, statewide  
 24 investigation?  
 25 A. Not that I'm aware of.

1 Q. How about at a county level?  
 2 A. Not that I'm aware of.  
 3 Q. To your knowledge, do the districts keep data  
 4 as to redesignated students in AP courses?  
 5 A. The districts that we work with do because we  
 6 ask for it.  
 7 Q. Okay. But except for the districts that you  
 8 work with, to your knowledge, do other districts do  
 9 that?  
 10 MR. VIRJEE: Calls for speculation.  
 11 THE WITNESS: I don't know.  
 12 Q. BY MR. ROSENBAUM: You're not aware of any?  
 13 A. Yes, I'm not.  
 14 Q. Okay. If I change it from AP courses to honors  
 15 courses, would your answer change?  
 16 A. Same answer.  
 17 MR. VIRJEE: Objection. Vague and ambiguous as  
 18 to "honors courses."  
 19 Q. BY MR. ROSENBAUM: If I change it to  
 20 international baccalaureate, would your answer change  
 21 then? Same answer?  
 22 A. No.  
 23 Q. No, meaning?  
 24 A. No, meaning it wouldn't change. Meaning, yes,  
 25 the same answer.

1 Q. Thank you. Your unit does ask for that  
 2 information, how many redesignated students are there in  
 3 AP; is that right?  
 4 A. Yes.  
 5 Q. Why do you ask for that?  
 6 A. We ask for that because of the legal  
 7 requirements, specifically EL 3b, which says English  
 8 learners have access to core content and also EL 1,  
 9 which is redesignation, that we want to know if  
 10 redesignated students are being successful, and that's  
 11 an indicator for both of those requirements. It's an  
 12 indicator -- we ask for English learners and former  
 13 English learners involved in those programs for those  
 14 reasons.  
 15 Q. Why do you regard that as an indicator for  
 16 those measures?  
 17 A. Because we expect them to be participating in  
 18 higher-level courses at the same rate as other students,  
 19 that that would indicate that, in fact, they had  
 20 received equal access and were having equal success in  
 21 core content.  
 22 Q. Do you know if CCR asks for that information?  
 23 A. I don't know.  
 24 Q. Okay. And do you know if -- besides you, your  
 25 unit, do you know if there is anybody in the state that

1 is asking for that information?  
 2 A. I don't know.  
 3 Q. Do you know if there is a written requirement  
 4 that districts compile that information?  
 5 A. I don't know.  
 6 Q. Okay. You've never heard of any?  
 7 A. No.  
 8 Q. Okay. Now, you told me that you asked the  
 9 Comite districts to compile that data; is that right?  
 10 A. Yes, we ask them for that data when we're  
 11 on-site.  
 12 Q. Okay. And have there been cases where the  
 13 district did not have that data and said, well, we'll  
 14 have to compile it for you?  
 15 A. Sometimes that happens.  
 16 Q. Okay. And what districts?  
 17 A. I don't recall specifically.  
 18 Q. Can you tell me the percent of districts that  
 19 said, we'll have to compile the data for you, we don't  
 20 have it?  
 21 MR. VIRJEE: Objection. Calls for speculation.  
 22 THE WITNESS: I don't know exactly.  
 23 Q. BY MR. ROSENBAUM: Do you know about Oakland?  
 24 MR. VIRJEE: Objection. Vague and ambiguous as  
 25 to time.

1 THE WITNESS: Not sure.  
 2 Q. BY MR. ROSENBAUM: Do you know if Inglewood had  
 3 that data before you asked them?  
 4 A. I don't think they did.  
 5 Q. Why do you say that?  
 6 A. I don't think they had very many AP classes.  
 7 Q. Do you know about Los Angeles, whether they had  
 8 that information?  
 9 A. No.  
 10 Q. No what?  
 11 A. They're not a current Comite district, so I'm  
 12 not aware right now of them.  
 13 Q. Okay. Do you know if Compton had that  
 14 information?  
 15 A. I don't know.  
 16 Q. Okay. Or Ravenswood?  
 17 A. I'm not sure. They're a high school. I don't  
 18 recall the high school.  
 19 Q. Okay. Has that subject come up in any of your  
 20 meetings with Dr. Greenfeld, whether results you're  
 21 getting about whether or not redesignated students are  
 22 in AP courses, has that ever come up?  
 23 A. I believe we've discussed it. I don't remember  
 24 it as a specific item of agenda.  
 25 Q. Okay. And did you say something about it?

1 A. I don't have a specific recollection of that.  
 2 Q. Okay. What were your findings regarding  
 3 Oakland?  
 4 MR. VIRJEE: Regarding what?  
 5 MR. ROSENBAUM: Regarding redesignated AP  
 6 students in Oakland.  
 7 THE WITNESS: I don't recall specifically.  
 8 Q. BY MR. ROSENBAUM: Do you know if they were  
 9 more or less than non-EL students?  
 10 A. No, I don't.  
 11 Q. Okay. Do you look at the particular AP course  
 12 in which redesignated students are enrolled?  
 13 A. We look at all the AP courses and ask for  
 14 enrollment of students in each of those courses.  
 15 Q. You break it down by course?  
 16 A. Yes.  
 17 Q. And is it your finding that there are --  
 18 sitting here today, what districts do you recall results  
 19 from?  
 20 MR. VIRJEE: Results regarding?  
 21 MR. ROSENBAUM: Numbers, percent of EL students  
 22 in AP courses.  
 23 THE WITNESS: I don't recall the specific  
 24 results right now. I couldn't say on a specific  
 25 district. I know in Oakland the problem was not getting

1 students redesignated, so there weren't a lot of  
 2 redesignated students to look at. But I couldn't say  
 3 the specific data on districts right now.  
 4 Q. BY MR. ROSENBAUM: Okay. How about  
 5 San Francisco, do you know if they keep that data?  
 6 A. I don't know.  
 7 Q. Okay. Did you bring any documents with you  
 8 this morning?  
 9 A. For this deposition?  
 10 Q. Yes.  
 11 A. No.  
 12 Q. Did you hand your counsel a document this  
 13 morning?  
 14 A. Yes.  
 15 Q. What was that?  
 16 MS. READ SPANGLER: I'll instruct her not to  
 17 answer.  
 18 MR. VIRJEE: That's attorney/client privilege.  
 19 MR. ROSENBAUM: She can certainly tell me what  
 20 the documents are.  
 21 MS. READ SPANGLER: No, she didn't bring it for  
 22 the deposition.  
 23 Q. BY MR. ROSENBAUM: Did you look at this  
 24 document before you came?  
 25 MR. VIRJEE: In preparation for her deposition?

1 MR. ROSENBAUM: Go ahead.  
 2 THE WITNESS: Not in preparation for my  
 3 deposition.  
 4 Q. BY MR. ROSENBAUM: Let me show you a few  
 5 documents if I can.  
 6 MR. ROSENBAUM: Let's go off the record.  
 7 (Discussion held off the record.)  
 8 Q. BY MR. ROSENBAUM: Let me show you a document  
 9 that I'm going to have marked as Exhibit 51. It's a  
 10 42-page document that on the top says coordinated  
 11 compliance review, summary of findings, 1997-98. I'm  
 12 going to have it marked and I'm going to have it  
 13 presented and put in front of you, and also supply  
 14 copies to all counsel.  
 15 (Exhibit SAD-51 was marked.)  
 16 MR. VIRJEE: Just for the record, it also says  
 17 Los Angeles Unified School District, specially-funded  
 18 program, technical support and monitoring.  
 19 MR. ROSENBAUM: Thank you.  
 20 Q. You're free, Ms. Burnham-Massey, for this  
 21 document or any document to spend as much time as you'd  
 22 like looking at it, but I'm not going to ask you any  
 23 detailed questions.  
 24 Have you had a chance to look at it just  
 25 generally?

1 A. Yes.  
 2 Q. Again, feel free to review it in whatever  
 3 detail you want to as I ask you particular questions.  
 4 Do you know what this document is?  
 5 A. Yes.  
 6 Q. What is it?  
 7 A. It appears that it is the district's compliance  
 8 findings from the 1997-98 coordinated compliance review.  
 9 Q. This is as a result of the review that the  
 10 district itself undertakes?  
 11 A. I believe this is a result of the state review.  
 12 Q. And turning to page 2 -- I'm sorry, page 3  
 13 where it says at the top left-hand corner of Exhibit 51  
 14 3 of 40, do you have that page in front of you?  
 15 A. Yes.  
 16 Q. And looking where it says signature of  
 17 reviewers under -- it's kind of cut off there. But do  
 18 you see where it says ed civil rights in the left-hand  
 19 column?  
 20 A. Yes.  
 21 Q. And then below that it says -- should that be  
 22 other reviewers?  
 23 A. Yes.  
 24 Q. Are you one of those other reviewers?  
 25 A. Yes.

1 Q. And that's a Xerox of your signature?  
 2 A. Yes.  
 3 Q. Okay. And Aida, that was another reviewer?  
 4 A. Yes.  
 5 Q. Was she working, to your knowledge, as an OCR  
 6 reviewer at the time?  
 7 A. No, she was in our unit.  
 8 Q. At the time that you undertook -- you reviewed  
 9 EL programs as part of this review; is that right?  
 10 A. Yes, we did.  
 11 Q. And at that time you were -- what's the name of  
 12 the unit you were working with?  
 13 MR. VIRJEE: Working with?  
 14 Q. BY MR. ROSENBAUM: Well, you were a bilingual  
 15 consultant, right?  
 16 A. Yes.  
 17 Q. And you were a bilingual consultant in what  
 18 unit?  
 19 A. I think it was language proficiency and  
 20 academic accountability. I'd have to look at my --  
 21 Q. Would it refresh your recollection if your  
 22 resume said 1998 to the present?  
 23 A. So it could have been complaints management and  
 24 bilingual compliance unit.  
 25 Q. On page 1 of 40, do you see where it says

1 MR. ROSENBAUM: You know, I appreciate that,  
 2 and you can look at it.  
 3 MR. VIRJEE: Okay.  
 4 MR. ROSENBAUM: And I assume that as a result  
 5 of that, I can look at all of your markings on your  
 6 documents.  
 7 MR. VIRJEE: You know what they say about  
 8 assuming.  
 9 MR. ROSENBAUM: I appreciate you telling me  
 10 that.  
 11 MR. VIRJEE: I'm happy to return it back to you  
 12 and get clean copies.  
 13 MR. ROSENBAUM: That's okay.  
 14 Q. Your copy, Ms. Burnham-Massey, you don't have  
 15 any stray markings, do you?  
 16 A. No.  
 17 Q. Okay. Now, did you personally review Budlong?  
 18 A. I'm not sure. There were two teams so there  
 19 were four EL reviewers. I couldn't tell you  
 20 specifically if I was at Budlong or not.  
 21 Q. How about Mayall?  
 22 A. I'm not sure.  
 23 Q. Okay. The language that is in the far  
 24 column --  
 25 MR. VIRJEE: The far right column?

1 review date 1/21 - 2/6/98? It's on the right-hand side.  
 2 A. Yes.  
 3 Q. Do you see that?  
 4 A. Yes.  
 5 Q. Would that help refresh your recollection as to  
 6 what the unit's name was at the time?  
 7 A. Actually, that makes it harder. Maybe it says  
 8 in here somewhere. I don't remember the unit name  
 9 changed.  
 10 Q. But that was your position at the time; is that  
 11 right?  
 12 A. Yes.  
 13 MR. VIRJEE: Whatever it was, that was it?  
 14 MR. ROSENBAUM: Yeah.  
 15 Q. Okay. Now, let me ask you, please, to turn to  
 16 page 14 of 40 of what's been marked as Exhibit 51.  
 17 A. Yes.  
 18 Q. Do you have that in front of you?  
 19 A. Yes.  
 20 Q. Okay. Now, there a number of columns there?  
 21 MR. VIRJEE: Before we go any further, Mark,  
 22 you've handed out a document that has handwritten  
 23 markings on it, and if that's your work product, I don't  
 24 want to look at it. It's got check marks and  
 25 handwriting on it.

1 MR. ROSENBAUM: Yes.  
 2 Q. -- is that standard language for these  
 3 reviews, so far as you know?  
 4 MR. VIRJEE: Objection. Vague and ambiguous as  
 5 to "standard."  
 6 THE WITNESS: I don't think I would say  
 7 standard.  
 8 Q. BY MR. ROSENBAUM: All right. Let's go down to  
 9 the second to last row where it says Mayall and it says  
 10 Roman numeral VII-CON. Do you see that?  
 11 MS. READ SPANGLER: VII?  
 12 THE WITNESS: IV.  
 13 MR. VIRJEE: I don't see where you're talking  
 14 about.  
 15 MR. ROSENBAUM: Of course you don't. I didn't  
 16 make it clear.  
 17 MS. READ SPANGLER: Are you on a different  
 18 page?  
 19 MR. VIRJEE: 14.  
 20 MR. ROSENBAUM: Yeah, I'm on 15. I'm really  
 21 sorry.  
 22 MS. READ SPANGLER: 15?  
 23 MR. ROSENBAUM: Yeah. My mistake. I apologize  
 24 for the confusion. There's no stray marks on 15 either,  
 25 are there?

1 MS. READ SPANGLER: Not on hers.  
 2 Q. BY MR. ROSENBAUM: Do you see the second to  
 3 last row?  
 4 A. Yes.  
 5 Q. Okay. And do you see where it says for Mayall  
 6 there are insufficient basic ELD and Spanish  
 7 instructional materials?  
 8 MR. VIRJEE: It says "resources" not  
 9 "materials."  
 10 MR. ROSENBAUM: Resources to ensure full access  
 11 to the core curriculum.  
 12 THE WITNESS: Yes.  
 13 Q. BY MR. ROSENBAUM: Okay. Help me understand a  
 14 few things. First of all, do you have an understanding  
 15 of what the phrase instructional resources means in this  
 16 context?  
 17 MR. VIRJEE: In this particular context?  
 18 MR. ROSENBAUM: Yes.  
 19 MR. VIRJEE: Objection. Calls for speculation.  
 20 Lacks foundation as to whether she was the reviewer here  
 21 at Mayall or made this comment.  
 22 MR. ROSENBAUM: Go ahead.  
 23 THE WITNESS: What's the question again?  
 24 Q. BY MR. ROSENBAUM: I want to get at the  
 25 vocabulary of these reports, and what I want to know is

1 where it says instructional resources, is that a term of  
 2 art for these reviews?  
 3 A. We use that term frequently, yes.  
 4 Q. Okay.  
 5 A. At this item, 39 A.  
 6 Q. Okay. Thanks. What's your understanding of  
 7 what that means in this context?  
 8 MR. VIRJEE: Generally?  
 9 MR. ROSENBAUM: Yes.  
 10 THE WITNESS: This context, generally 39 A  
 11 refers to adequate, basic materials for core curriculum  
 12 instruction, and specifically materials purchased with  
 13 the district's general fund.  
 14 Q. BY MR. ROSENBAUM: Would that include  
 15 textbooks?  
 16 A. Yes.  
 17 Q. Would that include staff, like teachers or  
 18 aides?  
 19 A. No.  
 20 Q. Okay. Would it include other instructional --  
 21 written instructional materials?  
 22 A. It could if the district defined those as part  
 23 of their base program.  
 24 Q. Okay. And help me understand. If I don't  
 25 formulate this question correctly, just tell me. Where

1 it says ELD and Spanish, why are they separate?  
 2 MR. VIRJEE: Objection. Vague and ambiguous.  
 3 I mean --  
 4 MS. READ SPANGLER: And calls for speculation.  
 5 MR. VIRJEE: -- since they're not the same  
 6 thing.  
 7 MR. ROSENBAUM: That's what I'm trying to  
 8 understand.  
 9 Q. When it says Spanish and instructional  
 10 materials, does that relate to bilingual materials?  
 11 A. Actually, that would mean materials in the  
 12 primary language for those students diagnosed to need  
 13 that instruction.  
 14 Q. Okay. Now, for any -- for this item,  
 15 Ms. Burnham-Massey, do you know how long this was the  
 16 situation at Mayall, that there were insufficient basic  
 17 ELD and Spanish instructional resources?  
 18 A. I don't.  
 19 Q. As part of the reviews that were conducted at  
 20 that time, were reviewers directed to find out the  
 21 length of time that that condition had existed, a  
 22 particular condition of noncompliance exists?  
 23 MR. VIRJEE: Objection. Calls for speculation.  
 24 MR. ROSENBAUM: To your knowledge.  
 25 THE WITNESS: To my knowledge, no.

1 Q. BY MR. ROSENBAUM: How about your unit when you  
 2 find an item of noncompliance, are your staff directed  
 3 to find out how long that item of noncompliance has been  
 4 the circumstance?  
 5 MR. VIRJEE: Here we're talking about a Comite  
 6 review not a CCR review?  
 7 MR. ROSENBAUM: Yeah.  
 8 THE WITNESS: No.  
 9 Q. BY MR. ROSENBAUM: Any reason why not?  
 10 A. Our concern is to find out that it's a  
 11 violation and to fix it.  
 12 Q. Okay. And going back to the period of time  
 13 that Exhibit 51 was prepared, to your knowledge, were  
 14 reviewers directed to find out the number of students  
 15 affected by the item of noncompliance?  
 16 A. I'm not aware of them being directed to find  
 17 that out.  
 18 Q. Or the number of classrooms?  
 19 A. As a specific direction, no.  
 20 Q. Or to follow up later what happened to those  
 21 students?  
 22 MR. VIRJEE: Objection. Vague and ambiguous as  
 23 to "follow up."  
 24 THE WITNESS: The follow-up is done by the CCR  
 25 unit, and so I'm not sure.

1 Q. BY MR. ROSENBAUM: But you did reviews for CCR,  
2 right?

3 A. Yes.

4 Q. Were you ever directed to say what happened to  
5 students subsequent to their being in a classroom where  
6 there was noncompliance?

7 MR. VIRJEE: Objection. Vague and ambiguous.  
8 Was she ever directed to go -- by CCR to go and  
9 find out what happened?

10 MR. ROSENBAUM: Exactly.

11 THE WITNESS: No.

12 Q. BY MR. ROSENBAUM: Or by anybody?

13 A. No.

14 Q. Do you direct people in your unit to do  
15 follow-up on students who were in classrooms where there  
16 are items of noncompliance?

17 MR. VIRJEE: On individual students?

18 MR. ROSENBAUM: Exactly.

19 MR. VIRJEE: And in noncompliance in Comite  
20 investigations?

21 MR. ROSENBAUM: Exactly.

22 THE WITNESS: I would say sometimes.

23 Q. BY MR. ROSENBAUM: Okay. When?

24 A. When there are specific students affected by a  
25 district's action, and then resolving the Comite issues,

1 we want to find out what happened with those students.  
2 Q. You're thinking about redesignation?

3 A. I'm thinking of redesignation, I'm thinking of  
4 students retained in Pittsburg, I'm thinking of a few  
5 specific circumstances, but it's not a general  
6 requirement, no.

7 Q. Okay. Is it a requirement for students where  
8 the item of noncompliance is that they don't have  
9 qualified staff?

10 A. No.

11 Q. Or where they haven't received access to --  
12 full access to core curriculum?

13 MR. VIRJEE: Objection. Vague and ambiguous.  
14 THE WITNESS: It may be. It's not a clear yes  
15 and no.

16 Q. BY MR. ROSENBAUM: Is there a requirement that  
17 there be follow-up?

18 MR. VIRJEE: Objection. Vague and ambiguous.  
19 Requirement that they be followed by what?

20 MR. ROSENBAUM: Of students who have been in  
21 classrooms where it's been identified that there was  
22 noncompliance on the subject matter of full access to  
23 core curriculum.

24 THE WITNESS: It's very likely that we would  
25 require that of districts.

1 Q. BY MR. ROSENBAUM: To follow up on that on  
2 individual students?

3 A. In some cases, yes.

4 Q. What do you mean by that, when you say "some  
5 cases"?

6 A. In each district that we're working with if we  
7 find a finite group of students that's had a problem,  
8 then we will ask down the line for evidence of action  
9 the district's taken.

10 Q. With respect to those individual students or  
11 with respect to the schools?

12 A. Usually with respect to the schools, but on  
13 occasion with respect to individual students. It's not  
14 a common practice.

15 Q. On how many occasions can you remember that  
16 happening?

17 MR. VIRJEE: Objection. Calls for speculation.  
18 THE WITNESS: I'm thinking right now of only  
19 one, but I wouldn't want to say that was the only one.

20 Q. BY MR. ROSENBAUM: For what districts?

21 A. That's Pittsburg.

22 Q. Okay. Now, help me understand this. The word  
23 insufficient -- and we're again looking at page 15 of 40  
24 on Exhibit 51. Do you see where it says insufficient?

25 A. Yes, I do.

1 Q. Okay. Is that a term of art with respect to  
2 the preparation of these reviews?

3 A. It's a judgment call by the consultant.

4 Q. Okay. Are there specific criteria as to what  
5 insufficient means?

6 A. It's in comparison to materials or resources  
7 that non-English learners have.

8 Q. Okay. Help me understand this. If I'm just  
9 way out of here, just tell me. Could it be 50 percent  
10 less, 25 percent less, 90 percent less? How do you  
11 figure it out?

12 A. It could technically be any amount less, and  
13 that's where the professional judgment of the reviewer  
14 comes in.

15 Q. So there's no specific written criteria as far  
16 as you know; is that right?

17 A. Other than what's in the CCR manual that  
18 instructs reviewers what to look for.

19 Q. You're familiar with that?

20 A. Yes, I am.

21 Q. Does it talk about percent?

22 MS. READ SPANGLER: Objection. The document  
23 speaks for itself.

24 THE WITNESS: I don't recall it saying a  
25 percent. I don't remember specifically what it says. I

1 know it does give some guidance.  
 2 Q. BY MR. ROSENBAUM: Do you remember any of the  
 3 schools that you worked on as part of this review?  
 4 A. I don't specifically recall this review.  
 5 Q. Okay. At the time that this review took place,  
 6 to your knowledge, was there a requirement that each  
 7 district have a system of accountability in place to  
 8 deal with these items of compliance?  
 9 MR. VIRJEE: Objection. Vague and ambiguous as  
 10 to "requirement."  
 11 THE WITNESS: I wouldn't want to say no, but I  
 12 couldn't point to one compliance item that happened the  
 13 next year.  
 14 Q. BY MR. ROSENBAUM: Tell me the basis for your  
 15 answer.  
 16 A. My sense is districts had to have a way to deal  
 17 with noncompliance items forever. We hold them  
 18 accountable to resolve their noncompliant issues.  
 19 Starting in the '98, '99 school year we have a  
 20 specific English learner item that deals with district's  
 21 responsibility to monitor its own implementation of  
 22 programs and services for English learners and to take  
 23 action when their own monitoring indicates a problem.  
 24 Starting the year after this review, there was  
 25 a very specific EL requirement. Prior to that I can't

1 explain it, although I know districts were accountable  
 2 to resolve the issues.  
 3 Q. Okay. Didn't come as any surprise to these  
 4 districts that they had to be in compliance?  
 5 A. Not a surprise.  
 6 Q. Okay. With respect to -- incidentally, on 14  
 7 of 40 and 15 of 40 and 13 of 40 of Exhibit 51 in the  
 8 first column it says -- it's cut off in some  
 9 instances -- actually, it's not. I'm just talking to  
 10 myself.  
 11 You see there are Roman numerals and then a  
 12 hyphen and then it says CON?  
 13 A. Yes.  
 14 Q. And CON stands for consolidated programs?  
 15 A. Yes.  
 16 Q. What does that mean?  
 17 A. It means all the consolidated programs, which  
 18 at that time included the English learner program, it  
 19 also included Title 1 and other programs. I'm not sure  
 20 of all of them.  
 21 Q. And if I asked you for any of the items of  
 22 noncompliance on 13, 14 and 15 of Exhibit 51, how long  
 23 had those conditions existed at those schools, would you  
 24 be able to tell me?  
 25 MR. VIRJEE: As she sits here today?

1 MR. ROSENBAUM: Yeah.  
 2 MR. VIRJEE: Objection. She's already  
 3 indicated she doesn't even remember the review.  
 4 THE WITNESS: No, I couldn't.  
 5 Q. BY MR. ROSENBAUM: Okay. And a slight  
 6 variation on the question. There was no requirement to  
 7 include in the report a time period of noncompliance?  
 8 A. No.  
 9 MR. VIRJEE: Objection. Asked and answered.  
 10 Q. BY MR. ROSENBAUM: When you would conduct these  
 11 reviews and you found an item of noncompliance, did you  
 12 have a practice of asking officials at the schools or at  
 13 the districts how long has this gone on?  
 14 MR. VIRJEE: Objection. Asked and answered.  
 15 MS. READ SPANGLER: Her personally?  
 16 MR. ROSENBAUM: Yeah, you personally.  
 17 THE WITNESS: No.  
 18 Q. BY MR. ROSENBAUM: You were never instructed to  
 19 do that?  
 20 A. No.  
 21 Q. Do you direct your unit personnel today to do  
 22 that?  
 23 MR. VIRJEE: Objection. Asked and answered.  
 24 THE WITNESS: No.  
 25 MR. ROSENBAUM: Go off the record for a minute.

1 (Discussion held off the record.)  
 2 MR. ROSENBAUM: Let's mark as Exhibit 52 a  
 3 two-page document Bates stamped DOE 23441 and 23442, and  
 4 I'm going have it marked, supplied to the witness, and  
 5 furnished to all counsel.  
 6 (Exhibit SAD-52 was marked.)  
 7 Q. BY MR. ROSENBAUM: Just ask you if you could  
 8 briefly take a look at that.  
 9 A. Yes.  
 10 Q. Are you familiar with what's been marked as  
 11 Exhibit 52?  
 12 A. Yes.  
 13 Q. And directing your attention to page 2 of  
 14 Exhibit 52, in the last full paragraph do you see your  
 15 name?  
 16 A. Yes.  
 17 Q. That's you?  
 18 A. That's me.  
 19 Q. That's your phone number and your e-mail, at  
 20 least at the time of this letter?  
 21 A. Yes.  
 22 Q. Okay. And were you involved in the preparation  
 23 of this letter?  
 24 A. Yes.  
 25 Q. Did you write it?

1 A. I was involved. I didn't write the whole  
2 thing, I don't think.  
3 Q. Tell me, as best you can recall, what was the  
4 nature of your involvement?  
5 A. I wrote probably -- I wrote all of it except  
6 the first paragraph, I believe.  
7 Q. Okay. Do you know who wrote the first  
8 paragraph?  
9 A. No.  
10 Q. That's a pretty standard line with exception of  
11 the numbers?  
12 A. The numbers, somebody provided us with the  
13 information to put the numbers in.  
14 Q. Okay. Now, you told us you are involved  
15 personally in the Oakland review; is that right?  
16 A. I have been, yes, for the last year or so.  
17 Q. And what's the nature of your involvement?  
18 A. I was the -- I have been acting as the  
19 consultant assigned to the district because we're short  
20 of consultants, and this one is kind of a major one  
21 so --  
22 MS. READ SPANGLER: You've answered the  
23 question.  
24 Q. BY MR. ROSENBAUM: How short of consultants are  
25 you?

1 A. We're not now, but we were at this time.  
2 Q. How short were you at that time?  
3 A. We had four or five out of seven.  
4 Q. Okay. Have you ever requested more  
5 consultants?  
6 MR. VIRJEE: Objection. Vague and ambiguous.  
7 THE WITNESS: We've tried to fill our  
8 positions.  
9 Q. BY MR. ROSENBAUM: Have you ever requested more  
10 than seven consultants?  
11 MR. VIRJEE: Objection. Vague and ambiguous as  
12 to "requested" and from whom.  
13 THE WITNESS: Yes.  
14 Q. BY MR. ROSENBAUM: Okay. Of whom?  
15 A. Can I go off the record and ask them a  
16 question?  
17 MS. READ SPANGLER: Let's step outside.  
18 (Recess taken from 11:26 to 11:31.)  
19 Q. BY MR. ROSENBAUM: What was the nature of your  
20 involvement in the Oakland investigation?  
21 A. I've been the consultant that's done the last  
22 two reviews in Oakland.  
23 Q. Two Comite reviews?  
24 A. Two Comite follow-up reviews. At least two,  
25 maybe more.

1 Q. Had you previously had any involvement with  
2 Oakland as to ELs?  
3 A. No.  
4 Q. And you've made on-site visits?  
5 A. Yes.  
6 Q. You've met with administrators?  
7 A. Yes.  
8 Q. You've met with teachers?  
9 A. Yes.  
10 Q. You've met with parents?  
11 A. Yes.  
12 Q. You've met with students?  
13 A. Yes.  
14 Q. Is it important to talk to students?  
15 A. Yes.  
16 MR. VIRJEE: Objection. Asked and answered.  
17 Q. BY MR. ROSENBAUM: In Oakland?  
18 A. Yes.  
19 Q. Why is that?  
20 MR. VIRJEE: Objection. Asked and answered.  
21 THE WITNESS: It's important to talk to  
22 students in Oakland and in all districts to understand  
23 their program.  
24 Q. BY MR. ROSENBAUM: Okay. Did you ask students  
25 if they knew what the requirements were? And when I say

1 requirements, I mean the compliance item requirements.  
2 A. No.  
3 Q. Okay. Do you know if students know what the  
4 compliance item requirements are?  
5 MR. VIRJEE: Objection. Calls for speculation.  
6 THE WITNESS: Don't know.  
7 Q. BY MR. ROSENBAUM: Or any of the item  
8 requirements?  
9 A. Don't know.  
10 Q. Do you know if the Oakland Unified School  
11 District distributes information to students or their  
12 parents telling them that they have certain entitlements  
13 with respect to EL programs?  
14 A. I know they distribute information describing  
15 programs options.  
16 Q. Like structured immersion or bilingual or  
17 mainstream; is that right?  
18 A. Yes.  
19 Q. My question is a little bit different. We're  
20 talking about the requirements that are reflected in the  
21 compliance items. Do you understand that?  
22 A. Yes.  
23 Q. So my question is, do you know if the Oakland  
24 Unified School District distributes information to  
25 students telling them there are certain requirements

1 that this school district has to meet with respect to  
 2 your EL programs?  
 3 A. I don't know.  
 4 Q. Okay. Do you know if any school district in  
 5 California does that?  
 6 A. I don't know.  
 7 Q. Has your unit ever recommended -- strike that.  
 8 Is there a requirement, to your knowledge, that  
 9 districts inform students as to what compliance item  
 10 requirements are?  
 11 A. Not that I'm aware of.  
 12 Q. Or that they're entitled to certain matters  
 13 with respect to their EL education?  
 14 MR. VIRJEE: Objection. Vague and ambiguous as  
 15 to requirement.  
 16 MR. ROSENBAUM: Go ahead.  
 17 THE WITNESS: Not that I'm aware of.  
 18 Q. BY MR. ROSENBAUM: Do you know if there are any  
 19 standards?  
 20 When I use the word standard, do you know what  
 21 the word standard means?  
 22 MR. VIRJEE: In what context?  
 23 THE WITNESS: That's what I was going to say.  
 24 Q. BY MR. ROSENBAUM: Do you know if there are any  
 25 state standards that direct schools, school districts to

1 inform students of what they are entitled to with  
 2 respect to EL programs?  
 3 MR. VIRJEE: Objection. Vague and ambiguous as  
 4 to "state standards." Calls for speculation. Calls for  
 5 a legal conclusion.  
 6 MR. ROSENBAUM: Go ahead.  
 7 THE WITNESS: I don't know.  
 8 Q. BY MR. ROSENBAUM: You're not aware of any?  
 9 A. No.  
 10 Q. Okay. And if I changed it instead of students  
 11 to parents, would any of your answers change?  
 12 MR. VIRJEE: Objection. Compound.  
 13 THE WITNESS: With parents it could change.  
 14 Q. BY MR. ROSENBAUM: Why is that?  
 15 A. One of the state requirements deals with parent  
 16 committees, English learner advisory committees, and  
 17 those committees are required to be trained in their  
 18 legal responsibilities, one of which is to advise the  
 19 school site and the district governing board on the  
 20 services for English learners.  
 21 Q. Are those called ECLADs?  
 22 A. ELAX.  
 23 Q. ELAX.  
 24 A. English learner advisory committee.  
 25 Q. Help me understand this. And if you just

1 answered it, bear with me here.  
 2 Is there a requirement that you're aware of  
 3 that parent advisory committees inform all parents of EL  
 4 students as to what they're entitled to with respect to  
 5 EL programs?  
 6 MR. VIRJEE: Objection. Vague and ambiguous as  
 7 to requirement, and calls for a legal conclusion.  
 8 THE WITNESS: I don't know.  
 9 Q. BY MR. ROSENBAUM: Okay. And if I talked about  
 10 requirements specifically in the context of the  
 11 compliance items that your unit reviews, do you know if  
 12 there's a requirement that the parent advisory  
 13 committees inform parents as to what those requirements  
 14 are?  
 15 MR. VIRJEE: Vague and ambiguous as to  
 16 "requirements," and calls for a legal conclusion.  
 17 THE WITNESS: Not that I know of.  
 18 Q. BY MR. ROSENBAUM: Okay. Do you know of any  
 19 requirements at any school district that parents of EL  
 20 students be informed of what they're entitled to with  
 21 respect to their children's EL education?  
 22 MR. VIRJEE: Would you repeat that, please.  
 23 (Record read.)  
 24 MR. VIRJEE: Objection. Vague and ambiguous as  
 25 to "requirements at any school district." Also calls

1 for a legal conclusion. Vague and ambiguous as to  
 2 "requirements."  
 3 MR. ROSENBAUM: Go ahead.  
 4 THE WITNESS: I'm not sure.  
 5 Q. BY MR. ROSENBAUM: You're not sure?  
 6 A. I don't know. That's not something I know  
 7 about specifically.  
 8 Q. Has your unit ever undertaken any investigation  
 9 to determine what percent of parents are aware of what  
 10 their kids are entitled to with respect to EL programs?  
 11 A. No.  
 12 Q. Do you know if anybody in the state has done  
 13 that?  
 14 A. No, I don't know.  
 15 Q. Do you know if anybody in any district has ever  
 16 done that?  
 17 A. Don't know.  
 18 Q. Or at the county level?  
 19 A. Don't know that.  
 20 Q. Do you know if it's ever been done?  
 21 A. I don't know.  
 22 Q. Okay. Do you think it would be a good idea?  
 23 MR. VIRJEE: Objection. Vague and ambiguous as  
 24 to "good idea," and what would be a good idea?  
 25 MR. ROSENBAUM: Go ahead.

1 MR. VIRJEE: Also incomplete hypothetical.  
 2 THE WITNESS: I would have to think it over.  
 3 Q. BY MR. ROSENBAUM: You have visited classrooms  
 4 in Oakland?  
 5 A. Yes.  
 6 Q. How many classrooms have you visited?  
 7 A. I don't know exactly or even very close. Many.  
 8 Q. Scores, hundreds?  
 9 A. Probably 100 maybe.  
 10 Q. And in how many of those classrooms did you  
 11 find compliance with respect to instructional materials?  
 12 A. I couldn't give an exact number or even a close  
 13 number.  
 14 Q. Did you find compliance in all the classrooms?  
 15 MR. VIRJEE: Objection. Asked and answered.  
 16 She said she couldn't give you an even close number.  
 17 MR. ROSENBAUM: Go ahead.  
 18 THE WITNESS: No.  
 19 Q. BY MR. ROSENBAUM: No, you did not?  
 20 A. No.  
 21 Q. Did you receive cooperation from the school  
 22 district?  
 23 A. Yes.  
 24 Q. Have you always received cooperation from the  
 25 school district?

1 A. Yes.  
 2 Q. Okay. So there has not been a problem in terms  
 3 of them being on board with the compliance requirements  
 4 in terms of wanting to get into compliance?  
 5 MR. VIRJEE: Objection. Vague and ambiguous as  
 6 to "on board," and calls for speculation as to whether  
 7 they want to get into compliance.  
 8 THE WITNESS: They have not expressed that they  
 9 don't want to get into compliance.  
 10 Q. BY MR. ROSENBAUM: How would you characterize  
 11 their attitude with respect to compliance?  
 12 MS. READ SPANGLER: Objection. Calls for  
 13 speculation.  
 14 MR. ROSENBAUM: Go ahead.  
 15 THE WITNESS: They've been cooperative.  
 16 Q. BY MR. ROSENBAUM: Okay. Directing your  
 17 attention to what's been marked as Exhibit 52, page 1 of  
 18 that, do you see EL 4B English language proficiency  
 19 assessment?  
 20 A. Yes.  
 21 Q. What is that?  
 22 A. That's an assessment of English language  
 23 proficiency for students new to the district required to  
 24 be conducted within the first 30 school days of the  
 25 student's enrollment.

1 Q. That's a requirement?  
 2 A. Yes, it is.  
 3 Q. State requirement?  
 4 A. Yes, it is.  
 5 Q. How long has that been a state requirement?  
 6 MR. VIRJEE: Objection. Calls for speculation.  
 7 Also calls for a legal conclusion.  
 8 MR. ROSENBAUM: So far as you know.  
 9 THE WITNESS: Probably 20 years.  
 10 Q. BY MR. ROSENBAUM: Okay. And did you make the  
 11 finding that they were out of compliance here?  
 12 MR. VIRJEE: Did she in particular?  
 13 MR. ROSENBAUM: Yes.  
 14 MR. VIRJEE: Objection. Vague as to time.  
 15 THE WITNESS: I'm not sure. We had quite a  
 16 large team, and I don't recall specifically if that was  
 17 one of the schools I was personally at.  
 18 Q. BY MR. ROSENBAUM: Do you know how many schools  
 19 this was a problem at?  
 20 A. I don't know specifically. It was not all. We  
 21 have visited 11 schools on this -- on the review just  
 22 before this happened and it was a problem, but not at  
 23 all 11 schools. I don't recall specifically how many.  
 24 Q. Okay. I asked you this question in a different  
 25 context. Sitting here today, do you know why this

1 proficiency assessment wasn't given?  
 2 MR. VIRJEE: Objection. Calls for speculation.  
 3 Lacks foundation. Also vague as to time.  
 4 THE WITNESS: I don't know why.  
 5 Q. BY MR. ROSENBAUM: Or the number of students  
 6 who were affected?  
 7 A. No.  
 8 MR. VIRJEE: Objection. Vague and ambiguous as  
 9 to the number of students affected.  
 10 Q. BY MR. ROSENBAUM: What's the purpose of the  
 11 English language proficiency assessment as you  
 12 understand it?  
 13 MR. VIRJEE: Objection. Asked and answered  
 14 yesterday in great detail.  
 15 MR. ROSENBAUM: I'll refine my question.  
 16 That's a fair objection.  
 17 Q. What's it used for?  
 18 MR. VIRJEE: Same objection.  
 19 THE WITNESS: To determine which students are  
 20 English learners.  
 21 Q. BY MR. ROSENBAUM: So if it's not given, there  
 22 may be students who should be in EL programs who are not  
 23 and there may be students -- is that right?  
 24 A. That's right.  
 25 Q. Okay. And has your unit undertaken any

1 investigation to find out how many students should be in  
 2 EL assessments who are not?  
 3 MR. VIRJEE: At Oakland?  
 4 MR. ROSENBAUM: Yeah, in Oakland.  
 5 THE WITNESS: We do that, yes. At Oakland,  
 6 yes.  
 7 Q. BY MR. ROSENBAUM: How many in Oakland?  
 8 A. I don't recall the number. It wasn't  
 9 widespread at a lot of schools, but we found that out  
 10 and they had to correct that, had to go back and assess  
 11 those students.  
 12 Q. But you didn't look at every school in Oakland;  
 13 is that right?  
 14 A. That's right.  
 15 Q. So you don't know what's going on at those  
 16 other schools?  
 17 A. That's right.  
 18 MR. VIRJEE: Today you're talking about?  
 19 Objection. Vague as to time.  
 20 Q. BY MR. ROSENBAUM: Tell me what's involved in  
 21 giving an English language proficiency assessment. Do I  
 22 have this right, students, how long have you been in the  
 23 district, if it's under 12 months, you need to take an  
 24 exam on such-and-such a date, is that what's involved?  
 25 A. No, this assessment is whenever a student is

1 newly enrolled in the district, they must be assessed  
 2 within 30 days, all new students who have a home  
 3 language other than English.  
 4 Q. Okay. Help me understand the process. A  
 5 student and his or her mother walk in or father walk in  
 6 or guardian walk in and it's a new student and then what  
 7 happens?  
 8 A. Then they fill out registration materials which  
 9 will include a home language survey. If that home  
 10 language survey indicates a language other than English  
 11 is spoken in the home, that triggers the requirement for  
 12 this assessment in English to be conducted within 30  
 13 days.  
 14 Q. That's not very complicated, is it?  
 15 MR. VIRJEE: Objection. Vague and ambiguous.  
 16 Also calls for speculation.  
 17 THE WITNESS: No.  
 18 Q. BY MR. ROSENBAUM: Okay. And looking at the  
 19 item right above it, home language survey, what does  
 20 that mean?  
 21 A. That's the home language survey that asks four  
 22 questions.  
 23 Q. We're talking about Exhibit 52?  
 24 A. Yes.  
 25 Q. Okay. And is that the survey that's the

1 predicate for the proficiency assessment?  
 2 A. Yes.  
 3 Q. So what does that mean? Does that mean that  
 4 that survey wasn't being administered at certain  
 5 schools?  
 6 A. It means that the reviewer at at least one  
 7 school found students for whom there was no home  
 8 language survey on file.  
 9 Q. Do you know how long that's been a requirement,  
 10 that the survey be administered?  
 11 A. A long time also. 20 years maybe.  
 12 Q. And has it been a requirement that those  
 13 surveys be kept on file?  
 14 A. Yes.  
 15 Q. Do you know how many students were affected by  
 16 not receiving that survey?  
 17 A. Not right now, no.  
 18 Q. Is that information in your files?  
 19 MR. VIRJEE: How many students at Oakland were  
 20 effected by this issue?  
 21 MS. READ SPANGLER: Over the last 20 years, or  
 22 just for this review?  
 23 MR. ROSENBAUM: That are referred to in this  
 24 letter.  
 25 THE WITNESS: I don't think it would say

1 specifically that.  
 2 MR. ROSENBAUM: And I appreciate that comment.  
 3 Q. The home language survey noncompliance item,  
 4 that wasn't new as of October 27th, 2000, was it, the  
 5 date of Exhibit 52?  
 6 A. Yes, it was not new then.  
 7 Q. How many years had that been a problem in  
 8 Oakland?  
 9 MR. VIRJEE: Objection. Calls for speculation.  
 10 Also vague and ambiguous as to "problem."  
 11 THE WITNESS: I'm not sure.  
 12 Q. BY MR. ROSENBAUM: A decade maybe?  
 13 A. It could have been.  
 14 Q. Do you see the last two items where it says  
 15 staffing for English language development and staffing  
 16 for content instruction?  
 17 A. Yes.  
 18 Q. What's the difference? We're talking about  
 19 Exhibit 52.  
 20 A. Yes. Staffing for English language development  
 21 refers to teachers who hold and are providing an  
 22 appropriate authorization for teaching ELD, and 6b is  
 23 teachers who hold and are providing core content  
 24 instruction for English learners.  
 25 Q. That relates to SDAIE?

1 A. Yes.

2 Q. And do you know with respect to either item,  
3 either EL 6a or EL 6b on page 1 of Exhibit 52, how long  
4 that had been a problem in Oakland?

5 A. I don't know.

6 Q. Could have been a decade?

7 A. Could have been.

8 Q. And help me understand this, please. The third  
9 item on page 1 of Exhibit 52, program improvement,  
10 that's EL 2b?

11 A. Yes.

12 Q. You're familiar with EL 2b?

13 A. Yes.

14 Q. What's that?

15 A. That's evaluation of program services.

16 Q. That may be my mistake for you. Program  
17 improvement is 2b and program evaluation, which is right  
18 above it, is 2a.

19 A. Yes.

20 Q. Am I wrong?

21 A. Well, no, that's changed since this. But yes,  
22 program evaluation is 2a. 2b at this time is a district  
23 using the results of their program evaluation to improve  
24 services for English learners.

25 Q. Okay. And is that still an item that your unit

1 looks at?

2 A. Now program evaluation and program improvement  
3 are both 2b, and 2a is specifically program  
4 implementation.

5 Q. Under the new scheme if a district is deficient  
6 in either evaluation or improvement, it fails 2b; is  
7 that right?

8 A. That's right.

9 Q. Is program improvement important?

10 A. Yes.

11 Q. Why is that?

12 MR. VIRJEE: Objection. Asked and answered.

13 MR. ROSENBAUM: No, not this one. Go ahead.

14 THE WITNESS: Because districts always need to  
15 improve their programs for all students, specifically  
16 for English learners, and it's important that they be  
17 able to use the evaluation data that they collect to  
18 drive those improvements.

19 Q. BY MR. ROSENBAUM: Okay. That's a basic  
20 principle of accountability, isn't it?

21 MR. VIRJEE: Objection. Vague and ambiguous as  
22 to "basic principle of accountability." Also calls for  
23 expert testimony beyond the competence of this witness.

24 MS. READ SPANGLER: Calls for speculation and  
25 leading.

1 MR. ROSENBAUM: Go ahead.

2 THE WITNESS: I think it is, yes.

3 Q. BY MR. ROSENBAUM: Why is that?

4 MR. VIRJEE: Same objections.

5 THE WITNESS: Because in education we're always  
6 trying to improve things, and in some districts where  
7 student achievement is not what we want it to be, it's  
8 urgent the programs be improved.

9 Q. BY MR. ROSENBAUM: Why is it urgent?

10 A. So that students can get a good education.

11 Q. Would that include Oakland?

12 A. Yes.

13 Q. Would that include Compton?

14 A. Yes.

15 Q. Inglewood?

16 A. Yes.

17 Q. Los Angeles?

18 A. Yes.

19 MR. VIRJEE: Calls for speculation.

20 Q. BY MR. ROSENBAUM: San Francisco?

21 MR. VIRJEE: Calls for speculation.

22 THE WITNESS: I think it would include all  
23 school districts.

24 Q. BY MR. ROSENBAUM: Thank you. And what was  
25 then 2a, program evaluation, what does that mean?

1 A. That's evaluating the program, which includes  
2 districts collecting information on student achievement  
3 that will help them know whether their program is being  
4 effective in terms of both making sure students acquire  
5 English, and meeting grade level content standards.

6 Q. Okay. And is that important?

7 A. Yes.

8 MR. VIRJEE: Objection. Vague and ambiguous.

9 Q. BY MR. ROSENBAUM: Why is that?

10 MR. VIRJEE: Calls for speculation.

11 THE WITNESS: First of all, there's the legal  
12 requirement under Castaneda they have to evaluate the  
13 program, so it's important for that reason, and more  
14 importantly it's important so that they will know  
15 whether their program is being successful or not.

16 Q. BY MR. ROSENBAUM: That's another basic  
17 principle of accountability?

18 MR. VIRJEE: Objection. Vague and ambiguous as  
19 to "basic principle." Calls for an expert opinion for  
20 which this witness is not competent to testify.

21 MS. READ SPANGLER: And vague and ambiguous as  
22 to accountability. Leading.

23 THE WITNESS: I think so.

24 Q. BY MR. ROSENBAUM: Why is that?

25 MR. VIRJEE: Same objections.

1 THE WITNESS: Because that's the way districts  
2 are going to be able to know what -- the issues they  
3 have to have to deal with in terms of improving.  
4 Q. BY MR. ROSENBAUM: In October of 2000 can you  
5 tell me your best estimate as to the number of EL  
6 students in the Oakland Unified School District?  
7 A. I don't recall that right now.  
8 Q. Was it in the thousands?  
9 A. Yes.  
10 Q. Tens of thousands?  
11 A. I don't think tens of thousands, but I'd have  
12 to look it up.  
13 Q. Do you know how many students are enrolled in  
14 the district?  
15 MR. VIRJEE: As of October 2000 or now?  
16 MR. ROSENBAUM: Either one.  
17 THE WITNESS: No.  
18 Q. BY MR. ROSENBAUM: Did your unit,  
19 Ms. Burnham-Massey, do an analysis of the SES levels of  
20 EL students in Oakland?  
21 A. No.  
22 Q. Any reason why not?  
23 A. No.  
24 Q. Do you have assumption as to what they are?  
25 A. It varies.

1 MS. READ SPANGLER: Just for the record, when  
2 you say "SES," you mean socioeconomic status?  
3 MR. ROSENBAUM: Right.  
4 MR. JORDAN: I'm sorry, I couldn't hear that.  
5 MR. ROSENBAUM: Socioeconomic status.  
6 THE WITNESS: I think there's quite a variance  
7 in Oakland.  
8 Q. BY MR. ROSENBAUM: Okay. How about race or  
9 ethnicity?  
10 A. We have that information. I don't know it  
11 right now.  
12 Q. Okay. Do you know what the principal native  
13 languages spoken by EL students are in Oakland?  
14 MR. VIRJEE: All of them?  
15 MR. ROSENBAUM: The principal ones.  
16 THE WITNESS: Yes.  
17 Q. BY MR. ROSENBAUM: What are they?  
18 A. Spanish and Cantonese, I think are the two.  
19 I'm not sure. Vietnamese maybe also.  
20 Q. Thank you. The conditions that -- the  
21 description of the items of noncompliance that are  
22 reflected on pages 1 and 2 of Exhibit 52, did your unit  
23 make these items of noncompliance known to board members  
24 of the Oakland Board of Education?  
25 MR. VIRJEE: You mean other than sending this

1 letter?  
2 MR. ROSENBAUM: The letter went to the  
3 superintendent.  
4 MR. VIRJEE: Well, it's got a CC to the local  
5 governing board.  
6 MR. ROSENBAUM: I appreciate that a lot.  
7 Q. When you say local governing board, that's the  
8 Board of Education; is that right?  
9 A. Yes.  
10 Q. When your office sends -- strike that.  
11 When the school and district accountability  
12 division sends out these letters, is it the practice, so  
13 far as you know, that the local governing boards receive  
14 copies?  
15 MR. VIRJEE: These letters being letters --  
16 MR. ROSENBAUM: Compliance letter.  
17 MR. VIRJEE: Not letters dealing with  
18 withholding of economic impact?  
19 MR. ROSENBAUM: Yes, that's right.  
20 Q. Here's what I'm trying to find out. I'll  
21 withdraw the question and restate it.  
22 I want to know who knows about these items of  
23 noncompliance. And what I want to know is, first of  
24 all, is it the practice of your unit to make sure that  
25 where there are items of noncompliance, the

1 superintendent of schools at a particular district knows  
2 about it?  
3 A. Yes.  
4 Q. Why is that?  
5 A. Because he's the chief administrative officer,  
6 and so we always sent our reports directly to the  
7 superintendent and usually a copy to our Comite contact.  
8 Q. Okay. And is that also the practice, so far as  
9 you know, in the school and district accountability  
10 division to do that?  
11 A. No. There are just a whole lot of different  
12 situations in the division.  
13 Q. How about board members, the boards of  
14 education members, is it your practice, your unit's  
15 practice to let them know when there are items of  
16 noncompliance?  
17 MR. VIRJEE: Objection. Overbroad. Vague and  
18 ambiguous as to "items of noncompliance."  
19 In what situations?  
20 MR. ROSENBAUM: With respect to ELs.  
21 THE WITNESS: Most of our reports do not go to  
22 the governing boards, it's only the kind of staged  
23 letters, the letters like when we're taking action or  
24 about to take some kind of sanctions.  
25 Q. BY MR. ROSENBAUM: Stages 3 and above?

1 MR. VIRJEE: Objection. Vague and ambiguous  
 2 "for Stages 3 and above." That's a CCR concept, not  
 3 necessarily a Comite concept.  
 4 THE WITNESS: Stage 4 for sure. I'm not  
 5 positive on Stage 3.  
 6 Q. BY MR. ROSENBAUM: Thank you. And do you know  
 7 whether or not boards of education get information about  
 8 compliance problems if it's below Stage 3?  
 9 A. Not that I'm aware of.  
 10 Q. Okay. And how about county boards of  
 11 education, are they informed about noncompliance items  
 12 in schools in their counties -- strike that -- in  
 13 districts in their counties by your unit?  
 14 MR. VIRJEE: Objection. Vague and ambiguous.  
 15 Are you talking about schools that the counties  
 16 run or districts within those counties?  
 17 MR. ROSENBAUM: I appreciate that. Not the  
 18 ones that the counties run, but the ones that the  
 19 districts run.  
 20 THE WITNESS: We don't automatically send them  
 21 reports. On occasion they'll request them, and we do  
 22 send them.  
 23 Q. BY MR. ROSENBAUM: But if they don't ask for  
 24 them, they don't get them from you?  
 25 A. That's correct.

1 MR. ROSENBAUM: Let's go off the record.  
 2 (Discussion held off the record.)  
 3 MR. ROSENBAUM: It's 11:55. I apologize for  
 4 not meeting my intended goal. I believe I worked  
 5 diligently to do that.  
 6 I'd like to reschedule the deposition with the  
 7 benefit of the documents, which I'm going to talk to you  
 8 about it, on Monday.  
 9 MS. READ SPANGLER: Uh-huh.  
 10 MR. ROSENBAUM: I appreciate the inconvenience  
 11 for you, Ms. Burnham. I can do it any time next week  
 12 that works for you. I can do it any other time that  
 13 works for you and counsel.  
 14 THE WITNESS: I'll be in Oakland next week.  
 15 MS. READ SPANGLER: I'm out of town the  
 16 majority of next week.  
 17 MR. ROSENBAUM: I'm glad to do it at your  
 18 convenience at any time and location that works for you.  
 19 Thank you.  
 20 (The deposition concluded at 11:59 a.m.)  
 21 ---o0o---  
 22  
 23  
 24  
 25

1 Please be advised that I have read the  
 2 foregoing deposition. I hereby state there are:  
 3  
 4 (check one) \_\_\_\_\_ NO CORRECTIONS  
 5 \_\_\_\_\_ CORRECTIONS ATTACHED  
 6  
 7 \_\_\_\_\_  
 8 Date Signed  
 9  
 10 \_\_\_\_\_  
 11 LAURENE BURNHAM-MASSEY  
 12  
 13 Case Title: Williams vs State, Volume II  
 14 Date of Deposition: Friday, July 20, 2001  
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1 DEPONENT'S CHANGES OR CORRECTIONS  
 2 Note: If you are adding to your testimony, print the  
 3 exact words you want to add. If you are deleting from  
 4 your testimony, print the exact words you want to  
 5 delete. Specify with "Add" or "Delete" and sign this  
 6 form.  
 7 DEPOSITION OF: LAURENE BURNHAM-MASSEY, VOLUME II  
 8 CASE: WILLIAMS VS STATE OF CALIFORNIA  
 9 DATE OF DEPOSITION: FRIDAY, JULY 20, 2001  
 10 I, \_\_\_\_\_, have the following  
 11 corrections to make to my deposition:  
 12  
 13 PAGE LINE CHANGE/ADD/DELETE  
 14  
 15 \_\_\_\_\_  
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 24 \_\_\_\_\_  
 25 LAURENE BURNHAM-MASSEY DATE

REPORTER'S CERTIFICATE

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of July, 2001.

TRACY LEE MOORELAND, CSR 10397  
State of California

ESQUIRE DEPOSITION SERVICES  
Certified Shorthand Reporters  
1801 I Street, Suite 100  
Sacramento, California 95814

MORRISON & FOERSTER  
ATTN: LOIS K. PERRIN, ESQ.  
429 Market Street  
San Francisco, CA 94105-2482

Re: Williams vs State of California  
Deposition of: Laurene Burnham-Massey, Volume II  
Date Taken: Friday, July 20, 2001

Dear Ms. Perrin:

We wish to inform you of the disposition of this original transcript. The following procedure is being taken by our office:

- \_\_\_\_\_ The witness has read and signed the deposition. (See attached.)
- \_\_\_\_\_ The witness has waived signature.
- \_\_\_\_\_ The time for reading and signing has expired.

\_\_\_\_\_ The sealed original deposition is being forwarded to your office.

\_\_\_\_\_ Other:

Sincerely,

TRACY LEE MOORELAND, CSR  
Esquire Deposition Services  
Ref. No. 27830

ESQUIRE DEPOSITION SERVICES  
Certified Shorthand Reporters  
1801 I Street, Suite 100  
Sacramento, California 95814

Ms. Laurene Burnham-Massey  
9 Eastwind Ct.  
Sacramento, CA 95831

Re: Williams vs State of California, V. II  
Date Taken: Friday, July 20, 2001

Dear Ms. Burnham-Massey:

Your deposition is now ready for you to read, correct, and sign. The original will be held in our office for 45 days from the date of your last day of deposition.

If you are represented by counsel, you may wish to discuss with him/her the reading and signing of your deposition. If your attorney has purchased a copy of your deposition, you may review that copy. If you choose to read your attorney's copy, please fill out, sign, and submit to our office the DEPONENT'S CHANGE SHEET located in the back of your deposition.

If you choose to read your deposition at our office, it will be available between 9:00 a.m. and 4:00 p.m. Please bring this letter as a reference.

If you do not wish to read your deposition, please sign here and return within 30 days of the date of this letter.

LAURENE BURNHAM-MASSEY      DATE  
Sincerely,

TRACY LEE MOORELAND, CSR  
Esquire Deposition Services  
Job No. 27830

cc: Mark Rosenbaum, Esq.      Fram Virjee, Esq.  
Judd Jordan, Esq.      Judy Cias, Esq.  
Kara Spangler, Esq.