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1 DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO
 2 Case No. 2005CV4794, Division 9

3 REPORTER'S TRANSCRIPT: Trial - Day 21
 4 August 29, 2011

5 ANTHONY LOBATO, et al.,
 6 Plaintiffs,
 7 and
 8 ARMANDINA ORTEGA, et al.,
 9 Plaintiff-Intervenors,
 10 v.
 11 THE STATE OF COLORADO, et al.,
 12 Defendants.

13 The trial in the above-entitled matter,
 14 having commenced on Monday, August 1, 2011, was
 15 reconvened on Monday, August 29, 2011, at 1437 Bannock
 16 Street, Courtroom 424, Denver, Colorado 80202, before
 17 the Honorable Sheila A. Rappaport, Judge of the
 18 District Court.

19 This transcript is a complete transcription
 20 of the proceedings that were had in the above-entitled
 21 matter on the aforesaid date.

22 Reported by: Carol M. Bazzanella, RPR, CRR

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1 I N D E X
 2 WITNESSES: PAGE
 3 For the Defendants:
 4 Marcia Jean Neal
 5 Direct Examination by Ms. Markel 5461
 6 Cross-Examination by Mr. Miller 5470
 7 Cross-Examination by Mr. Hinojosa 5481
 8 Redirect Examination by Ms. Markel 5486

9 Voreta (Vody) Herrmann
 10 Direct Examination by Mr. Heinke 5490
 11 Cross-Examination by Ms. Gebhardt 5537
 12 Cross-Examination by Mr. Hinojosa 5565
 13 Redirect Examination by Mr. Heinke 5584
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 15 Recross-Examination by Mr. Hinojosa 5590

16 William Edward Hughes, Jr.
 17 Direct Examination by Ms. Weston 5591
 18 Cross-Examination by Ms. Gebhardt 5617
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For the Plaintiff-Intervenors:
 Linda Darling-Hammond
 Direct Examination by Mr. Hinojosa 5715, 5722
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 10488 5728
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 20150 5485
 30191 5527
 30192 5516

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1 MORNING SESSION, MONDAY, AUGUST 29, 2011
 2 WHEREUPON, the court reconvened at
 3 8:17 a.m., and the following proceedings were had:
 4 * * * * *
 5 THE COURT: All right. Calling up Case
 6 05CV4794. Are the parties ready to proceed?
 7 MS. MARKEL: Yes, Your Honor.
 8 THE COURT: Thank you. Counsel, today and
 9 Wednesday I do need to leave at 4:30 because of my
 10 class. But we can take shorter breaks, try to work
 11 around lunch so everybody has an appropriate break.
 12 But I'm pretty flexible. Okay. Thank you. Next
 13 witness for the defense?
 14 MS. MARKEL: The state calls Marcia Neal.
 15 THE COURT: If you'd come forward up here
 16 to the witness stand, ma'am. If you'd raise your right
 17 hand.
 18 MARCIA JEAN NEAL,
 19 having been first duly sworn to state the whole truth,
 20 testified as follows:
 21 THE COURT: Thank you. Please be seated.
 22 And that microphone is adjustable, so you can move it
 23 if you need to. And then would you please state your
 24 full name, and spell your last name for the record.
 25 THE WITNESS: My name is Marcia Jean Neal,

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1 N-e-a-l.
 2 THE COURT: Thank you.
 3 DIRECT EXAMINATION
 4 BY MS. MARKEL:
 5 Q. Good morning, Ms. Neal.
 6 A. Good morning.
 7 Q. There's water there, if you would like
 8 to . . .
 9 A. I'll pour a little bit just in case.
 10 THE COURT: Just be careful. Sometimes it
 11 comes out very fast.
 12 Q. (BY MS. MARKEL) Ms. Neal, what do you do?
 13 A. I'm a member of the state board of
 14 education for Colorado.
 15 Q. And how long have you been a member of the
 16 state board?
 17 A. A little over two-and-a-half years.
 18 Q. What is your congressional district?
 19 A. 3rd Congressional District.
 20 Q. Where did you grow up, Ms. Neal?
 21 A. I grew up in Gunnison, Colorado.
 22 Q. Did you have children?
 23 A. I have three children, three adult
 24 children.
 25 Q. Where did they attend schools?

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1 A. In Mesa County, where I presently reside.
 2 They all went to Mesa County schools.
 3 Q. Please describe your educational
 4 background.
 5 A. I have a bachelor's degree from Western
 6 State and a master's degree from Western State.
 7 Q. And what were your courses of study?
 8 A. Social studies, history, and English
 9 minor.
 10 Q. Please describe your employment history.
 11 A. I began my employment history working for
 12 a radio and television station in Grand Junction for
 13 about eight years. I am, by the way married. Had
 14 these children, so it was sort of spotty there. But
 15 then I began teaching, and I taught at one of Mesa
 16 County's elementary schools, Scenic Elementary. I
 17 taught sixth grade there for eight years. Then I took
 18 a eight-year hiatus, and during that time I owned a
 19 book store. And I returned to education, and at that
 20 point I went to Grand Junction High School to teach
 21 mostly history and geography.
 22 Q. Did you enjoy the work that you did as a
 23 teacher?
 24 A. Oh, yes. I enjoyed teaching a great deal.
 25 Q. And why is that?

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1 A. In a community like Grand Junction, you
 2 see the students everywhere you go, and so you have the
 3 opportunity to see them out of class. I had many
 4 examples. Don't want to -- a few people telling me
 5 they were the best -- I was the best teacher
 6 they -- history teacher they had ever had.
 7 I also had the opportunity, I used to
 8 always speak to the students every year and say, "How
 9 many of you think you want to be teachers?" And
 10 inevitably almost none did. "Oh, no, not me." And
 11 then later I would run into these same people, and
 12 occasionally they had said, "I remember you asking me
 13 that question."
 14 And one young man had gone into business,
 15 and he said after two or three years he realized the
 16 only thing he was enjoying was coaching his Little
 17 League team, and so he went back to school and got an
 18 educational degree and was teaching. So that was very
 19 gratifying.
 20 To be able to see so many of your students
 21 as they grow up and know that they were successful and
 22 talk about the things that we did at school. And
 23 I -- I enjoyed my -- the people I taught with, we had a
 24 good relationship. It was a very close relationship.
 25 I just enjoyed my years of teaching very much.

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1 Q. Overall, how many years did you teach?
 2 A. Overall, I taught 21 years.
 3 Q. And what did you -- what did you do after
 4 you stopped teaching?
 5 A. After I retired, I ran for the local Mesa
 6 County School District 51 Board of Education and was
 7 elected.
 8 Q. And why did you run for the local school
 9 board?
 10 A. Well, when I was teaching, I was always
 11 very involved in committee work. I worked on the
 12 original -- the legislation of the 1990s, when they set
 13 standards and assessments. I worked on local
 14 committees, school district committees and that. And
 15 also was frequently a critic of the way things happened
 16 in school, and so several of my -- the people that I
 17 worked with said you really should run for the school
 18 board. And I hadn't thought about it, but after I did,
 19 I thought yeah, I would like to do that. So I did run.
 20 I retired in May, and I was elected to the
 21 board in November.
 22 Q. How long did you serve on the local school
 23 board there?
 24 A. Eight years.
 25 Q. And what kinds of things did you do in

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1 **your service on the local school board?**
 2 A. Well, local boards basically just tend to
 3 the operations of the district. We set strategic
 4 plans. We had -- I had occasion while I was there to
 5 hire two new superintendents. You know, sat on budget
 6 committees, educational reform committees. Daily
 7 things, hiring and firing and -- of employees. All the
 8 kinds of things that local school boards do. We did a
 9 little bit of everything.
 10 **Q. When did you first learn about the Lobato**
 11 **lawsuit, Ms. Neal?**
 12 A. When I was on the local board, I attended
 13 a CASB meeting here in Denver, 2005, I believe it was.
 14 **Q. And what's CASB, for the Court?**
 15 A. The Colorado Association of School Boards.
 16 And at that meeting, Kathy Gebhardt came and talked to
 17 the group about the possibility of filing a lawsuit for
 18 inadequate funding.
 19 **Q. And what was your reaction to that**
 20 **presentation?**
 21 A. I was opposed to the idea.
 22 **Q. And was there a vote taken?**
 23 A. Yes, there was a vote taken. It was sort
 24 of general, you know, do you approve or disapprove, do
 25 you think this is a good idea. And of the group that

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1 was there, there were only two of us who voted no;
 2 myself and one other member.
 3 **Q. And generally why were you not supportive**
 4 **of the Lobato lawsuit at that time?**
 5 A. I'm just not supportive of the idea that
 6 more money improves education. It's not proven to be
 7 true. And too often taxpayers, you know, accuse us of
 8 oh, you always just want money.
 9 MR. HINOJOSA: Your Honor, we have an
 10 objection. We'd move to strike that testimony. It
 11 seeks the opinion of an expert, and she hasn't
 12 been -- the foundation hasn't been lied (sic) for an
 13 expert opinion.
 14 MS. MARKEL: Your Honor, I wasn't seeking
 15 the opinion of an expert, I simply asked the witness
 16 why she didn't support the lawsuit at the time while
 17 she was a local school board member.
 18 THE COURT: Overruled. I think she's
 19 giving the reason for her opinion.
 20 MR. HINOJOSA: That's fine. Thank you.
 21 **Q. (BY MS. MARKEL) So after you completed**
 22 **your service on the local school board, what did you**
 23 **do, Ms. Neal?**
 24 A. I was just going to retire and not do
 25 anything, but once again some of my friends spoke to me

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1 and suggested very strongly that I run for the state
 2 board of education, and I had -- because, of course,
 3 school board elections are non-partisan, but the state
 4 board is a partisan position, I had not really run a
 5 campaign like that before.
 6 So I did. Of course, the 3rd
 7 Congressional District, as everybody knows, it's huge
 8 in territory, going from Steamboat Springs to Alamosa
 9 to Pueblo to -- but I thoroughly enjoyed it, and I was
 10 elected by a fairly hefty margin.
 11 **Q. Are you familiar with Senate Bill 191?**
 12 A. Yes, I am.
 13 **Q. And what -- are you supportive of Senate**
 14 **Bill 191?**
 15 A. Yes, I have been supportive from the very
 16 beginning. Worked with them -- with the legislators as
 17 they were proposing and passing that bill.
 18 **Q. And why are you supportive of Senate Bill**
 19 **191?**
 20 A. Because of all -- all the years that I
 21 taught and -- Mesa County and most school districts
 22 have a master schedule in which every teacher fits into
 23 the master schedule according to the number of years
 24 they've served and according to the number of extra
 25 hours they have accumulated. There's never been any

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1 attempt to identify really, really effective teachers
 2 or uneffective teachers, and I happen to think that
 3 that's a real key thing if we really want to improve
 4 education, is to change that system.
 5 **Q. Without asking for a legal opinion,**
 6 **Ms. Neal, what does local control mean to you?**
 7 A. You know, growing up in Colorado,
 8 particularly in a town like Gunnison, local control was
 9 very important to the people that lived in the town.
 10 And it continued to be. And so I sort of took it for
 11 granted until I came on the state board, and I realized
 12 that many states do not have the degree of local
 13 control that Colorado does. Ours is in the
 14 constitution, and I think mostly states east of the
 15 Mississippi don't have a real concept of what local
 16 control is.
 17 **Q. In your work on the state board, what**
 18 **kinds of issues have you addressed over the course of**
 19 **your time on the state board?**
 20 A. You mean personally, or the board?
 21 **Q. The board.**
 22 A. The board. Oh, we have adopted new
 23 standards. We are in the process of adopting the rules
 24 for 191. Again hired a new commissioner of education.
 25 Get a lot of, you know, reports of legislation, how

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1 things are going. Because a lot of what the state
 2 board does is directed by the legislation that occurs.
 3 But in the meantime, of course, we continue to receive
 4 reports, ongoing reports on things that are in
 5 operation. It's just a widely varied board.
 6 We also hear appeals for charter schools
 7 and applications for innovative schools, those kind of
 8 issues, which I find particularly interesting.
 9 **Q. Again, and not asking for a legal opinion,**
 10 **but asking for your factual opinion, do you believe**
 11 **that the general assembly has acted unconstitutionally**
 12 **in enacting the school finance system in this state?**
 13 MR. MILLER: Objection. Leading.
 14 A. No.
 15 THE COURT: Overruled.
 16 THE WITNESS: Oh.
 17 THE COURT: Yes or no. You can answer.
 18 A. No, I don't.
 19 MS. MARKEL: I have no further questions.
 20 Thank you, Your Honor. I'll reserve questions for
 21 redirect.
 22 THE COURT: Thank you. Cross-examination.
 23 MR. MILLER: Terry Miller, Davis Graham &
 24 Stubbs, for the plaintiffs.
 25 THE COURT: Thank you.

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1 CROSS-EXAMINATION
 2 BY MR. MILLER:
 3 **Q. Good morning, Ms. Neal.**
 4 A. Good morning.
 5 **Q. Good to see you again.**
 6 A. Yes.
 7 **Q. Ms. Neal, I'd like to start by showing you**
 8 **a document. I think you've seen it in the past. For**
 9 **the record, this is Exhibit 171. It's a stipulated**
 10 **exhibit. And, Ms. Neal, I'd like to have you turn to**
 11 **page 4. Ms. Neal, this is a mission statement issued**
 12 **by the state board of education. Do you recognize**
 13 **this?**
 14 A. Yes, I do.
 15 **Q. And this is the recent mission statement**
 16 **of the state board?**
 17 A. Yes. Well, actually, we're working on
 18 another one. But this'll do for now.
 19 **Q. Okay. And the stated mission is that --**
 20 **of the Colorado state board is "To provide all of**
 21 **Colorado's children equal access to quality, thorough,**
 22 **uniform, well-rounded educational opportunities in a**
 23 **safe and civil learning environment." Did I read that**
 24 **right?**
 25 A. Yes.

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1 **Q. And I want to focus on the word**
 2 **"thorough." And do you agree that a thorough system of**
 3 **public schools is one where the educational needs of**
 4 **students are met?**
 5 A. Yes.
 6 **Q. And educational needs of a student are**
 7 **defined at both the state and local level in Colorado?**
 8 A. Repeat that, please.
 9 **Q. The educational needs of a student are**
 10 **defined at both the state and local levels in Colorado?**
 11 A. I don't believe so. You're going to find
 12 the definition, right?
 13 **Q. Would you at least agree that the**
 14 **legislature plays a role in defining the educational**
 15 **needs of a student?**
 16 A. Certainly.
 17 **Q. And they do that by enacting statutes that**
 18 **deal with standards and assessments?**
 19 A. Right.
 20 **Q. Graduation rates?**
 21 A. Yes.
 22 **Q. And the standards are measured by**
 23 **standardized tests?**
 24 A. Yes.
 25 **Q. Including CSAP?**

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1 A. Yes.
 2 **Q. ACTs and others?**
 3 A. Yes.
 4 **Q. And for students to meet the educational**
 5 **needs that we were just discussing, that's -- the**
 6 **students need to hit proficiency marks on those tests?**
 7 A. Yes, they do.
 8 **Q. And another measure of a student's needs**
 9 **is also defined by the legislature through the**
 10 **postsecondary and workforce readiness standards?**
 11 A. Yes.
 12 MR. MILLER: Your Honor, may I approach
 13 the witness again with another document?
 14 THE COURT: Yes.
 15 MR. MILLER: I apologize for not asking
 16 before.
 17 THE COURT: Not a problem.
 18 **Q. (BY MR. MILLER) Okay. Ms. Neal, I've**
 19 **just handed you another document I believe you've seen**
 20 **before.**
 21 A. Yes.
 22 **Q. And this is Exhibit 22. And I'd like you**
 23 **to focus your attention on No. 2 listed on that front**
 24 **page. "Support" --**
 25 A. The reform agenda.

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1 **Q. -- "Support Colorado's Education Reform**
 2 **Agenda."**
 3 A. Okay.
 4 **Q. And just to be clear, this is a document**
 5 **setting forth the Colorado State Board of Education's**
 6 **2011 legislative priorities?**
 7 A. Right.
 8 **Q. And going back to Section 2, there are six**
 9 **statutes, reform statutes, identified by the state**
 10 **board?**
 11 A. Yes.
 12 **Q. One of them, the first, is "Colorado**
 13 **Achievement Plan for Kids"?**
 14 A. Yes.
 15 **Q. That's CAP4K?**
 16 A. Yes.
 17 **Q. Another one on the list is the Education**
 18 **Accountability Act of 2009?**
 19 A. Yes.
 20 **Q. And then I think F is Senate Bill 191 that**
 21 **I think we already discussed this morning?**
 22 A. Right.
 23 **Q. You'd agree that all of these statutes**
 24 **listed here, all six of them, these are statutes that**
 25 **are part of a what you would believe is a thorough**

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1 **system of public schools?**
 2 A. Yes, they are.
 3 **Q. All right. Ms. Neal, you were discussing**
 4 **some of the issues that motivated you to run for both**
 5 **local and state board positions.**
 6 A. Yes.
 7 **Q. And it's true school reform is a very**
 8 **important issue to you?**
 9 A. It always has been, yes.
 10 **Q. And I think you could talk to us for a**
 11 **couple days --**
 12 A. Probably.
 13 **Q. -- and fill our heads with all the**
 14 **knowledge you've gained over the years; is that right?**
 15 A. Right. Yes.
 16 **Q. On school reform. And -- but it's also**
 17 **true that budget -- that school finance was not really**
 18 **an issue on your radar when you were considering a**
 19 **state board position?**
 20 A. No. It was on my radar because of my
 21 local board service. Finance is -- you know, always
 22 has to be an issue with a board. And I was very
 23 familiar with the state financing, how education was
 24 financed.
 25 **Q. School finance was not a major issue of**

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1 **yours at the time, though, right?**
 2 A. It was not a major issue, but it was one
 3 that came up consistently as I was campaigning, that I
 4 spoke to frequently.
 5 **Q. And today, you know, again, we're -- I**
 6 **think you -- at the forefront of school reform issues?**
 7 A. I think so.
 8 **Q. And -- but school finance, again, is still**
 9 **not a major issue -- interest of yours?**
 10 A. I -- no, it is an interest of mine. I
 11 mean, I think it -- it's very important.
 12 MR. MILLER: May I approach again, Your
 13 Honor?
 14 THE COURT: Yes.
 15 **Q. (BY MR. MILLER) Ms. Neal, I've just**
 16 **handed you a copy of your deposition.**
 17 A. Yes.
 18 **Q. You were deposed on April 15, 2011?**
 19 A. Right.
 20 **Q. And before we started that deposition, you**
 21 **took an oath, the same as you did today?**
 22 A. Right.
 23 **Q. And you did the best you could to answer**
 24 **all the questions?**
 25 A. Yes.

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1 **Q. And just to refresh your recollection, I'd**
 2 **like you to turn to page 26. And I have a -- if that**
 3 **type's too small, I have another copy that --**
 4 A. I'm just having trouble finding it. Okay.
 5 Oh. Okay.
 6 **Q. Is that typeset all right with you to**
 7 **read?**
 8 A. Yes, that's fine.
 9 **Q. And if you're on page 26, I'd just like**
 10 **you to --**
 11 A. I see what you're pointing to.
 12 **Q. All right. So at your deposition, at**
 13 **least, you testified that school finance was not on**
 14 **your radar? I'm specifically looking at lines 9**
 15 **through 12.**
 16 A. Yes.
 17 **Q. And the full answer, to be fair, the**
 18 **question was, starting at 9:**
 19 **"So is school finance not --**
 20 **"Answer: No, it was not.**
 21 **"Question: -- on your radar there?**
 22 **"Answer: It -- it was -- no, it was not.**
 23 **I mean, that's just part of what you do,**
 24 **you know. Your district has a budget; you**
 25 **sit on a budget committee and you work**

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1 with it. But that was not a major
 2 interest of mine. It's not a major
 3 interest of mine at all."
 4 Is that your testimony?
 5 A. Yes.
 6 Q. And along those same lines, you know,
 7 again, you're -- I think the core of your work is
 8 calculated to education reform?
 9 A. Yes.
 10 Q. In the last five years -- and you initiate
 11 a lot of discussions on education reform?
 12 A. Yes.
 13 Q. Take public positions on education reform?
 14 A. Yes. Uh-huh.
 15 Q. In the last five years you've not
 16 initiated discussions or ideas to cut funding for
 17 schools; is that right?
 18 A. No. Not to cut.
 19 Q. And you've never called for a reduction in
 20 funds?
 21 A. No. I -- I don't think so.
 22 Q. Okay. And you've never called for an
 23 increase either?
 24 A. No.
 25 Q. And I think it's fair that, you know,

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1 relative to your expertise in education reform, or at
 2 least, you know, your experience, that finance is not
 3 an area of expertise for you?
 4 A. You know, I have trouble with this
 5 question. You can't deal with education without
 6 dealing with finance. It's just there. And you would
 7 be remiss if you were not very familiar with it and,
 8 you know, understood it. But my issues are generally
 9 more on student growth, student improvement, which do
 10 not necessarily require extra money.
 11 Q. It's at least fair to say that education
 12 reform is more important to you than education finance?
 13 A. Yes.
 14 Q. When it comes to finance and issues like
 15 cost studies, you agree that you would typically defer
 16 to firms that prepare cost studies?
 17 A. No. Not necessarily. I -- can I explain?
 18 Q. Please.
 19 A. I have -- I have some problems with the
 20 word "expert," including financial experts. 'Cause in
 21 21 years in school, I can't tell you how many times
 22 people have come to the school in any degree,
 23 financial, educational, to say we're the experts and we
 24 know what works and what we need. And frequently
 25 they're wrong. So I -- you know, I -- I would not

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1 accept anybody's study as a gospel truth.
 2 Q. All right, Ms. Neal. But you'd agree that
 3 you don't typically read financial reports?
 4 A. I will read summaries. I won't dig into
 5 the individual figures.
 6 Q. They're not a high interest of yours
 7 either?
 8 A. No. I've already explained that.
 9 Q. And so in your service on the board, you
 10 typically defer to other members of the board and the
 11 people presenting financial reports to the board for
 12 the accuracy of those reports?
 13 A. Yes. When I know the person who's -- who
 14 is presenting the figures and have -- you know, have
 15 great confidence that they're correct, I would accept
 16 their figures and go to them and ask them for figures.
 17 But if somebody comes in with -- you know, an out
 18 of -- out-of-district or out-of-state fund and gives us
 19 financial figures, I'm not going to just accept them
 20 because they're financial figures and I should be in
 21 awe of them.
 22 Q. You're familiar with Augenblick, Palaich
 23 and Associates?
 24 A. I am familiar -- just familiar with them.
 25 Q. And you're aware that the Colorado

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1 Department of Education had commissioned that firm to
 2 prepare cost studies?
 3 A. Yes, but in a rather vague way.
 4 Q. And in your view, that APA firm is a
 5 reputable firm, correct?
 6 A. Yes. I'm sure they are.
 7 Q. And the Colorado Department of Education
 8 would not have commissioned that firm if APA was not a
 9 reputable firm?
 10 A. I would hope not.
 11 Q. All right. Ms. Neal, you discussed with
 12 counsel this morning Senate Bill 191?
 13 A. Yes.
 14 Q. You agree that that bill would cost money
 15 to districts to implement?
 16 A. It would -- it would cost money. It might
 17 not be extra money. But, you know, you've always got
 18 to shift your resources around to meet the needs.
 19 Q. You don't personally know how much that
 20 will cost, correct?
 21 A. No, I don't.
 22 MR. MILLER: Thank you, Ms. Neal. I have
 23 nothing further.
 24 THE COURT: Thank you. For the
 25 plaintiff-intervenors?

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1 MR. HINOJOSA: Thank you, Your Honor.
 2 CROSS-EXAMINATION
 3 BY MR. HINOJOSA:
 4 Q. Good morning, Ms. Neal. My name's David
 5 Hinojosa. I don't think we've met before.
 6 A. No. Good morning.
 7 Q. I'm an attorney for some plaintiff-
 8 intervenor children, low-income children, and English
 9 language learner children in this lawsuit.
 10 Now, you favor pre-K for all at-risk
 11 children, correct?
 12 A. Pardon? Pre-K for what?
 13 Q. Pre-kindergarten, preschool, for all
 14 at-risk children.
 15 A. At-risk children. Yes, I do.
 16 Q. And at-risk children would include
 17 students identified on the free and reduced-price lunch
 18 program, correct?
 19 A. That's the definition they use, yes.
 20 Q. And you believe it is desirable to have
 21 full-day pre-K for at-risk students, correct? Yes or
 22 no?
 23 A. Yes.
 24 Q. Yes. You feel that full-day pre-K would
 25 provide an opportunity for at-risk children to develop

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1 the skills that will assist with their educational
 2 development, correct?
 3 A. Yes.
 4 Q. And you think that districts should not
 5 just focus on academics, but should also consider, for
 6 example, music and art, because they are part of a
 7 well-rounded education, correct?
 8 A. Yes.
 9 Q. And you agree that at-risk students need
 10 more funding, correct? I'm not going to ask you how
 11 much, you know, but --
 12 A. And I'm not sure -- they need more focus,
 13 but I don't know that that always equates to money.
 14 Q. But can you agree that at-risk students
 15 need more funding in some areas more than others?
 16 A. Yes.
 17 Q. And you also agree that English language
 18 learners need additional funds, correct?
 19 A. Yes.
 20 Q. The school districts that our clients
 21 attend include -- well, they are Mapleton, Sheridan,
 22 Greeley, and Rocky Ford, and you've never visited those
 23 school districts, correct?
 24 A. Correct.
 25 Q. Give me just -- I have one more.

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1 MR. HINOJOSA: I'm sorry, Your Honor. I
 2 just have one more issue to resolve with the witness.
 3 But I need an exhibit.
 4 THE COURT: Yes.
 5 (Pause in the proceedings.)
 6 Q. (BY MR. HINOJOSA) Now, the Colorado State
 7 Board of Education, you promulgate rules that are
 8 consistent with your statutory authority, correct?
 9 A. Yes.
 10 Q. Don't worry, I'm not going to ask you
 11 about any specifics.
 12 A. Good.
 13 Q. But those rules are located on the
 14 Colorado Secretary of State's website?
 15 A. I assume so. I always look on our
 16 website.
 17 Q. And I'm going to show you here what's been
 18 marked as Plaintiff-Intervenors' Exhibit 20150. And
 19 this is the Code of Colorado Regulations Titles. Let
 20 me focus in for you. See where it says "Department:
 21 300 Education," and "Agency: Colorado State Board of
 22 Education"?
 23 A. Right.
 24 Q. All right. And these are the -- among the
 25 various regulations issued by the Colorado State Board

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1 of Education, correct? And feel free to look at it.
 2 It starts up there on Exhibit 20150 with "Rules for the
 3 Administration of the Accreditation of School
 4 Districts" and continues on down there. And I'll -- if
 5 you need me to move it up so you can see the remaining,
 6 let me know. I just don't want to make you dizzy.
 7 A. And what is your question?
 8 Q. Well, I -- do you recognize these as the
 9 rules that are promulgated by the state board of
 10 education?
 11 A. In scanning down, I do. That's not to say
 12 that they have -- you know, that everything --
 13 Q. That they're not everything?
 14 A. Yeah. They probably are. I certainly
 15 recognize the ones I'm looking at.
 16 Q. All right. And I'm going to go to page 2
 17 of Exhibit 20150. And it starts up there with the
 18 "Administration of the Teacher Pay Incentive Program,"
 19 although that was expired, and then it continues down
 20 to the "Rules for the Administration of the Act
 21 Assessment on a National Test Date," and it goes down
 22 through the bottom, ending with the "Rules for the
 23 Administration of the Concurrent Enrollment Program."
 24 A. Right.
 25 Q. And it -- do these rules seem to -- are

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1 **these rules a fair and accurate representation at least**
 2 **of the titles of the rules?**
 3 A. The titles of the rules. And as I scan
 4 down them, I don't see anything I would disagree with.
 5 MR. HINOJOSA: Your Honor, we offer
 6 Exhibit 20150 into the record.
 7 MS. MARKEL: No objection, Your Honor.
 8 THE COURT: Any objection?
 9 MR. KAWANABE: No objection, Your Honor.
 10 THE COURT: Okay. Thank you.
 11 **Q. (BY MR. HINOJOSA) And currently you**
 12 **are -- the state board is drafting rules for the**
 13 **ICAP; is that correct?**
 14 A. ICAP is an ongoing program, of which we
 15 pretty much finished drafting rules for. We're still
 16 implementing some of the -- some of it.
 17 **Q. And please tell the Court what ICAP will**
 18 **be.**
 19 A. ICAP was the educational plan that was
 20 adopted during Governor Ritter's, I think, second year
 21 and laid out all of the standards, new standards, new
 22 assessments. I can't -- you know, there were a lot to
 23 it. But it was very ambitious, and we've been engaged
 24 in that before I got on the board, and since I've got
 25 on the board we're still working on it. But coming

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1 close to conclusion.
 2 **Q. And that -- the ICAP essentially**
 3 **will -- and please correct me if I'm wrong, but will it**
 4 **essentially require school districts to develop an**
 5 **individualized plan, graduation plan, so to speak?**
 6 A. Yes, it does.
 7 MR. HINOJOSA: No further questions.
 8 Thank you.
 9 THE COURT: Thank you. Redirect?
 10 MS. MARKEL: Just briefly, Your Honor.
 11 REDIRECT EXAMINATION
 12 BY MS. MARKEL:
 13 **Q. Ms. Neal, in your service on the state**
 14 **board, do you ever hear from constituents?**
 15 A. Oh, yes. All the time.
 16 **Q. On what kinds of issues?**
 17 MR. MILLER: Objection. Hearsay.
 18 THE COURT: Pardon?
 19 MR. MILLER: Hearsay.
 20 THE COURT: Do you want to lay a further
 21 foundation?
 22 **Q. (BY MS. MARKEL) Ms. Neal, in your service**
 23 **on the state board, do you ever hear from constituents?**
 24 A. Yes.
 25 **Q. In what context?**

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1 A. Just simply raising various issues that
 2 we're dealing with.
 3 **Q. And why do you hear from constituents?**
 4 A. Because they think that I should be
 5 listening to them and -- and considering their points
 6 of view.
 7 **Q. Who elected you to your role as state**
 8 **board member?**
 9 A. Constituents in the 3rd Congressional
 10 District.
 11 **Q. Do you solicit information from your**
 12 **constituents?**
 13 A. I do. Some. I probably don't do enough.
 14 But, you know, I will send out group mail talking about
 15 various issues we're working on and asking them to let
 16 me know what their stand is on that.
 17 **Q. What kinds of issues have you heard from**
 18 **your constituents, Ms. Neal?**
 19 MR. MILLER: Objection. Hearsay.
 20 THE COURT: Sustained.
 21 THE WITNESS: Oh, sustained.
 22 THE COURT: Yes. No, don't answer.
 23 THE WITNESS: Don't answer. Okay. Good
 24 to know.
 25 MS. MARKEL: I'll give it one more shot,

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1 Your Honor, if it's okay with you.
 2 **Q. (BY MS. MARKEL) Is your office an**
 3 **appointed office, Ms. Neal?**
 4 A. No. It's elected.
 5 **Q. And how often does the state board meet?**
 6 A. Once a month. Except July.
 7 **Q. And in those state board meetings, is**
 8 **there opportunity for public comment?**
 9 A. Always.
 10 **Q. And is that, in your mind, an important**
 11 **part of the work that the state board does?**
 12 A. Very definitely.
 13 **Q. And in the public comment, do members of**
 14 **the public speak, without describing what they speak?**
 15 A. Yes, they do.
 16 MS. MARKEL: Your Honor, I'm not trying to
 17 get into whether -- I'm not asserting the truth of the
 18 matter of what anyone's told her, I simply want to ask
 19 her does she hear from constituents, and on what kinds
 20 of issues. I'm not using it for the truth of the
 21 matter asserted.
 22 MR. MILLER: Your Honor, I don't think you
 23 can get into what the issues are without --
 24 THE COURT: I agree. I think it is for
 25 the truth of the matter asserted. So it's still

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1 sustained.

2 MS. MARKEL: Thank you. Thank you. I

3 have no further questions, Ms. Neal.

4 THE COURT: Recross?

5 MR. MILLER: Nothing from the plaintiffs,

6 Your Honor.

7 THE COURT: Recross?

8 MR. HINOJOSA: No, Your Honor. Thank

9 you.

10 THE COURT: Thank you. Thank you, ma'am.

11 Thank you for your time. You may step down. Thank

12 you. Next witness?

13 MR. HEINKE: Thank you, Your Honor. Your

14 Honor, the state would call Vody Herrmann.

15 THE COURT: If you'd come forward here to

16 the witness stand. If you would raise your right hand.

17 VORETA HERRMANN,

18 having been first duly sworn to state the whole truth,

19 testified as follows:

20 THE COURT: Thank you. Please be seated.

21 And, again, feel free to pour water there and adjust

22 the mic.

23 THE WITNESS: Okay.

24 THE COURT: If you could state your full

25 name for the record Why don't you spell both your

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1 first and last names so we have a good spelling.

2 THE WITNESS: My full name is Voreta

3 Herrmann, more commonly known as Vody Herrmann.

4 Spelling, V-o-r-e-t-a. H-e-r-r-m-a-n-n. And my common

5 name is Vody, V-o-d-y.

6 THE COURT: Thank you.

7 DIRECT EXAMINATION

8 BY MR. HEINKE:

9 Q. Good morning, Ms. Herrmann.

10 A. Good morning.

11 Q. Ms. Herrmann, would you tell the Court if

12 you're currently working.

13 A. I'm currently working as a part-time

14 employee for the attorney general's office as an expert

15 witness.

16 Q. And is that in connection with this case?

17 A. It is.

18 Q. Other than that, are you currently

19 working?

20 A. No, I'm not.

21 Q. What was your position prior to that

22 recent retirement?

23 A. I was assistant commissioner in the public

24 school finance unit at the department of education.

25 Q. And how long did you work at the

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1 department of education?

2 A. Nearly 11 years.

3 Q. Can you describe generally your job duties

4 as assistant commissioner for public school finance?

5 A. My primary duties were the administration

6 of the Public School Finance Act and all of the

7 portions of the law that fell under that act, as well

8 as I had various departments that were direct reports

9 to me, such as Colorado Preschool Program; the BEST,

10 Building Excellent Schools Today, capital construction

11 program; the auditing unit for pupil count audits; and

12 nutrition program, which was a federally funded

13 nutrition program for the schools.

14 Q. At the beginning of your testimony, you

15 noted that you are working as a part-time employee at

16 the attorney general's office in connection with this

17 case. Can you explain that employment relationship,

18 please.

19 A. Yes. As I decided to retire at the end of

20 March, the attorney general's office asked me if I

21 would stay on as a witness in a part-time capacity so

22 that I could maintain that piece of it, coming across

23 from the department. That it couldn't be a contracted

24 position, because it was too close to what I was

25 currently doing at the department of education, so the

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1 only way that I could stay on in that capacity was to

2 go under the 110-day rule for PERA and work just as

3 needed for -- for my testimony and my participation in

4 this trial.

5 Q. And, again, you noted being a part-time

6 employee. Do you have an office at the attorney

7 general's office?

8 A. I do not.

9 Q. Okay. Are you being compensated for that

10 employment relationship you just described?

11 A. I am. At \$58 per hour.

12 Q. And do you have a rough ballpark of how

13 much time you think you've spent working on the case?

14 A. Approximately 30 hours.

15 Q. Why is it that you agreed to serve as a

16 witness in this case?

17 A. Because leaving my post at the department

18 of education, I felt that I was the most able to

19 provide information regarding the Public School Finance

20 Act and continue in that capacity as a factual witness.

21 Q. You mentioned the Public School Finance

22 Act. I'd like to turn to that now.

23 MR. HEINKE: Your Honor, if I might

24 approach?

25 THE COURT: Yes. Thank you.

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1 **Q. (BY MR. HEINKE) Ms. Herrmann, I've handed**
 2 **you what has been marked and entered as Defendants'**
 3 **Trial Exhibit 30012, which is titled "Understanding**
 4 **Colorado School Finance and Categorical Program**
 5 **Funding." Do you recognize this document?**
 6 A. I do.
 7 **Q. Did you have a hand in preparing it?**
 8 A. I did.
 9 **Q. Okay. If you could turn to page 3 of the**
 10 **document. There's a section entitled "Total Per-pupil**
 11 **Funding." And what I'd like to do is just have you**
 12 **help me walk through this and get a better**
 13 **understanding of the act.**
 14 Now, my first question, this referenced a
 15 total per-pupil funding. Is that within the Public
 16 School Finance Act?
 17 A. Yes, it is.
 18 **Q. All right. The first reference is to base**
 19 **funding. Could you describe, without getting into**
 20 **calculation detail, but describe the idea of base**
 21 **funding, please.**
 22 A. The base funding is a dollar amount
 23 that -- that was established at the beginning of the
 24 act that identified what all of the other
 25 characteristics of the finance formula calculated

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1 against. So it's the beginning basis for the formula.
 2 And every school district starts with that same base
 3 funding amount.
 4 **Q. And in recent years, do you know how that**
 5 **base funding amount has been set?**
 6 A. It has increased by -- it's based on the
 7 calculations that are identified in the constitution
 8 under Amendment 23 that requires the base to increase
 9 by, for the first several years, inflation plus
 10 1 percent, and after fiscal year '10-'11, by inflation
 11 only.
 12 **Q. Now, under the base funding in**
 13 **Exhibit 30012, there are a list of a couple of factors.**
 14 **Before we talk about those factors specifically, can**
 15 **you describe what the factors are and how they interact**
 16 **with the base?**
 17 A. The factors are intended to provide
 18 additional funding in various areas. And each one has
 19 its own intended purpose to provide additional funding
 20 off of the base funding, calculated off of the base.
 21 **Q. The first factor noted there is the**
 22 **"Cost-of-Living Factor." Can you explain to the Court,**
 23 **please, what the cost-of-living factor is?**
 24 A. The cost-of-living factor is derived by a
 25 cost-of-living study that's completed by the

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1 legislative council, or is contracted for by the
 2 legislative council of the general assembly to be
 3 conducted every other year and renewed so that it comes
 4 up with adjustments to the cost-of-living factor based
 5 on changes in the various areas. They go out and do a
 6 study and look at a shopping basket of goods and
 7 housing affects and all of those types of things and
 8 then determines whether there needs to be any
 9 adjustment in those cost-of-living factor elements.
 10 No one ever receives a reduction in cost
 11 of living. They're -- only the increases that are
 12 identified are added.
 13 **Q. You just mentioned that no one ever**
 14 **receives a reduction in cost of living. Does that mean**
 15 **that the study finds that cost of living never goes**
 16 **down?**
 17 A. No. The statute just clearly says that a
 18 district's cost-of-living factor will be that of the
 19 prior year other than any adjustments that come through
 20 the study.
 21 **Q. And you may have said this, Ms. Herrmann,**
 22 **and I apologize if I'm repeating, but conceptually what**
 23 **is it that the cost-of-living factor is meant to**
 24 **reflect?**
 25 A. The costs associated -- generally assist

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1 those districts with higher costs of living and those
 2 kinds of things. That's where the -- the primary
 3 increases are occurring more often than not.
 4 So it -- you know, the recreational areas
 5 and some of those areas that have much higher
 6 cost-of-living affects. It doesn't affect -- it's not
 7 an inflationary increase, it's clearly just an indexed
 8 number that's identified that -- that calculates off of
 9 the base. The inflationary increase is provided at the
 10 base funding level from year to year.
 11 **Q. Thank you. The next factor referenced is**
 12 **the "Personnel Costs Factor." Again, can you describe**
 13 **for me and for the Court what that factor reflects,**
 14 **please.**
 15 A. Yes. The personnel cost factor, again, is
 16 an indexed number that is calculated based on
 17 enrollment. It allows for -- there's various cut marks
 18 to where -- it identifies how -- a -- students'
 19 enrollment, and then it has various factors that --
 20 that calculate against that to adjust for this
 21 personnel cost factor.
 22 But it's for those districts to try
 23 to -- where the -- based on how many teachers it would
 24 take to hire, and it gives kind of an indication there,
 25 to assist in those higher hiring costs and personnel

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1 costs.

2 **Q. And I'd like to turn now to the size**

3 **factor. Unless -- did we cover the personnel costs**

4 **factor generally?**

5 A. Yes. Yes.

6 **Q. The next factor listed is the "Size**

7 **Factor." Can you explain for the Court generally what**

8 **that factor reflects?**

9 A. The size factor really only adjusts for

10 size for districts under 4,023 students. Any district

11 above that size has the same size factor. So it

12 provides additional funding through this factor to very

13 small school districts, up to, you know, two,

14 two-and-a-half times what the base funding is. But for

15 those very small school districts.

16 So it tries to compensate for the

17 economies of scale and those kinds of things that the

18 larger districts have the opportunity to use.

19 **Q. Ms. Herrmann, if you'll turn over to**

20 **page 4 of Exhibit 30012. The next item that's noted is**

21 **"At-Risk Funding." Can you explain -- now, first of**

22 **all, is at risk a factor like these other factors we've**

23 **been talking about?**

24 A. It's been identified as a factor. It

25 actually is an add-on funding after all of the regular

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1 per-pupil funding has been identified using the base

2 funding, the cost-of-living factor, personnel cost

3 factor, and size factor. Then this is an add-on

4 funding that's intended to address the at-risk

5 students, which has been identified in the school

6 finance formula as free lunch students. It doesn't

7 include reduced lunch, just free lunch. And . . .

8 **Q. And you mentioned that it's intended to**

9 **address the at-risk students, and that is defined by**

10 **free lunch students. What do you mean when you say**

11 **"intended to address"?**

12 A. Those students -- those students that are

13 of poverty have -- are deemed to be most at risk for

14 not graduating or for having more difficulties in

15 succeeding in education. So it's intended to provide

16 additional money to assist in the education of those

17 students.

18 **Q. And does the at-risk funding change based**

19 **on how many at-risk students a district has?**

20 A. Yes.

21 **Q. Could you explain how that works, please.**

22 A. For every free lunch student that's

23 enrolled in a -- in a school district -- well, there's

24 two ways that it's identified for how these students

25 are identified, or the pupil count for at risk is

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1 identified. One is that it's the actual count of the

2 free lunch students plus the ELL.

3 And I forgot to mention that earlier. The

4 ELL students that have not already been identified as

5 free lunch or are taking a test in another language

6 than English or the Spanish CSAP or whose scores have

7 not been included in the accountability scores.

8 So those -- those students are added in as

9 well. But for the free lunch population, it takes

10 either the actual count, if that's the highest number

11 across the district for all grades K through 12, or it

12 takes the grades 1 through 8 students against their

13 membership and identifies a percentage of those

14 students and applies that against all grade levels.

15 Because many times the high school students won't

16 enroll in the free lunch program. So we don't have

17 that data to collect.

18 So it gives them the highest advantage of

19 either way, using those lower grade levels and the

20 percentage applied or actual numbers.

21 **Q. And so, in other words, let me see if I'm**

22 **summarizing correctly. A district would either get**

23 **their actual count or this average count, whichever**

24 **gives them the highest number?**

25 A. That's correct.

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1 **Q. Continue. I'm sorry.**

2 A. So as long as the district student

3 population is under the state average at-risk

4 percentage, then all of their students would be funded

5 at 12 percent, which is the base funding amount for

6 those at-risk students.

7 When a district's population exceeds the

8 statewide average, then there's a concentration factor

9 that gets applied to that that takes the district's

10 at-risk percentage less the state average and gives you

11 what the remainder is, and then 30 percent of that

12 remainder is the percentage that gets added to the base

13 12 percent.

14 So, you know, if it came down to an

15 additional 9 percent, 9 percent on top of 12 percent

16 would be the 21 percent for those children beyond the

17 state average. So it gives them additional funding.

18 **Q. And I think you may have said this**

19 **earlier, but when we began talking, you mentioned that**

20 **at-risk students include students on free lunch, and I**

21 **think you said there's another category. Can you**

22 **explain those two categories of at risk again, please.**

23 A. Yes. The ELL students -- well, the first

24 one is the free lunch. Those numbers are derived by

25 districts sending in their October 1 pupil count. And

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1 as of October 1, the number of kids that are enrolled
 2 in the district that are identified as free
 3 lunch-eligible and have met the criteria and filled out
 4 the free lunch documentation, so that we have that to
 5 go back and review, those students are eligible.
 6 Then there's another group that was added
 7 several years ago that is the ELL group. And it's the
 8 English language learners that were not already
 9 identified as free lunch, because if they were free
 10 lunch students, they were already incorporated in that
 11 free lunch count. So they were funded through that
 12 mechanism.
 13 Or if they took a test in the Spanish
 14 CSAP, it says in a language other than English, then
 15 those students can be counted if they weren't already
 16 counted as free lunch. Or whose scores were not
 17 incorporated in their academic performance ratings.
 18 **Q. Now, at the beginning of describing**
 19 **this -- the statute, the Public School Finance Act, I**
 20 **think you mentioned that as the base funding, everyone**
 21 **gets the same base. Once all of these factors that**
 22 **we've been talking about are applied, can you give the**
 23 **Court an idea of the range of how the per-pupil amount**
 24 **would vary among districts? Not specific numbers, but**
 25 **a general idea of the range.**

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1 A. Sure. The per-pupil amounts vary wildly,
 2 from less than \$7,000 to, say, nearly \$15,000. So
 3 pretty significantly. It more than doubles the per
 4 pupil for very, very small districts.
 5 **Q. There's another reference on page 4 to the**
 6 **"State Budget Stabilization Factor." I believe it's**
 7 **also referred to as the negative factor. Were you**
 8 **involved in the development of -- well, let me ask you**
 9 **first, what is the state budget stabilization factor?**
 10 A. The state budget stabilization factor,
 11 which was changed in statute in this last legislative
 12 session to be called the negative factor, was
 13 established to -- as a mechanism for the reduction of
 14 total program funding across all school districts for
 15 the purpose of offsetting the factors that were -- were
 16 within the formula, knowing that the base per-pupil
 17 funding could not be -- the base funding could not be
 18 adjusted, because that was set through the
 19 constitution.
 20 But the factors -- there was opinion that
 21 that -- those could be adjusted. So this negative
 22 factor was a way to do that as a similar percentage
 23 across all school districts. Once the full calculation
 24 of the total program funding had gone through its
 25 course and everybody's funding was set, then it reduced

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1 by the same percentage.
 2 **Q. And were you involved in the development**
 3 **of the budget stabilization or negative factor?**
 4 A. Yes. I was involved in the discussions
 5 that went on with that when -- when the -- it was
 6 determined that there was not enough funding to fully
 7 fund education as it -- as it was.
 8 The governor's budget office asked me to
 9 make multiple runs to look at individual factors and to
 10 look at if we just reduced the cost fact -- cost-of-
 11 living factor or if we just reduced the size factor or
 12 if we just reduced at risk, what would that do, and by
 13 doing those individual runs, each one of those factors
 14 had a significant different impact on various
 15 districts. And it certainly wasn't across -- evenly
 16 across all districts.
 17 Was -- cost of living hurt the -- the more
 18 wealthy districts more. The size factor hurt the very
 19 small districts more. It just depend -- you know,
 20 vastly different analysis came out of that.
 21 **Q. Now, you mentioned -- just a term of**
 22 **clarification. You mentioned you did multiple runs.**
 23 **Can you explain what a "run" is?**
 24 A. Yes. A run is -- is the calculation of
 25 the total program funding for all school districts

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1 across the state in total to come out with how that
 2 affects each individual district and in total.
 3 **Q. You mentioned that in doing these multiple**
 4 **runs on specific factors, it had disparate impacts**
 5 **across different types of districts. Can you explain**
 6 **why you chose to implement the budget stabilization**
 7 **factor, the negative factor, the way that you did?**
 8 A. Well, there currently is in statute a
 9 rescission provision, that if at any time throughout
 10 the year there's not enough money to fund the midyear
 11 changes or -- that occur as we true up after pupil
 12 count and assessed values and all of those things are
 13 identified midyear, that there's a -- an even
 14 distribution for what's called a rescission, where we
 15 pull that money back and don't fund it for school
 16 districts.
 17 So school districts were asking why can't
 18 it be even, why can't we do something similar to what
 19 that rescission looks like rather than -- so that it's
 20 an even reduction percentage-wise rather than something
 21 that's so disparate.
 22 **Q. And was it eventually implemented as this**
 23 **even reduction?**
 24 A. It was.
 25 **Q. We've heard testimony in this case that**

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1 **the negative factor unwinds the at-risk factor. Is**
 2 **that consistent with your understanding?**
 3 A. It is not.
 4 **Q. And why is that?**
 5 A. It was the intent that that negative
 6 factor reduce all factors within the -- within the
 7 formula, and any time that the legislative council
 8 provides information regarding those factor reductions,
 9 they show it as a proportional change, and we've much
 10 exceeded the amount that's identified for at risk alone
 11 through fiscal year '11-'12 because there's only about
 12 \$1.3 billion total in the factors in and of themselves,
 13 and the -- most of that is in the cost-of-living
 14 factor.
 15 There's a little of -- you know, nearly
 16 300,000 that's in at-risk factor and about that same
 17 amount in the size factor. So we've exceeded both of
 18 those two smaller amounts. So it's just been intended
 19 to be a proportional reduction of factors rather than
 20 to do the disparate calculations.
 21 **Q. Now, we've talked about the base funding**
 22 **and then the adjustments by the factors and then the**
 23 **state budget stabilization factor. Are you also**
 24 **familiar with what are called categoricals?**
 25 A. I am

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1 **Q. And before we get into them --**
 2 MR. HEINKE: Your Honor, if I may
 3 approach?
 4 THE COURT: Yes.
 5 **Q. (BY MR. HEINKE) Ms. Herrmann, I've handed**
 6 **you an excerpt of Defendants' Trial Exhibit 30147, and**
 7 **it's just one page of that exhibit, page 12, which is a**
 8 **chart of categorical programs. Could you describe --**
 9 **without getting into all the specific categoricals,**
 10 **could you first describe what a categorical program is,**
 11 **please.**
 12 A. A categorical program is a program that
 13 was put into place to assist school districts with
 14 funding from -- additional funding outside the formula
 15 for the various programs that were identified. These
 16 specific categorical programs have been in place for
 17 quite some time and are listed under Amendment 23 in
 18 the constitution specifically. It doesn't mean that
 19 that's all there could be. They could add some if
 20 they're accountable education programs. But these are
 21 the ones that are currently in place.
 22 **Q. And it may just be this list, but can you**
 23 **give us some examples of what some of the categorical**
 24 **programs would be?**
 25 A. The special education Early Childhood

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1 Education Act, which is state-provided funds. English
 2 Language Proficiency Program. Reimbursement --
 3 proportional reimbursement for transportation costs for
 4 school districts. Career and technical programs which
 5 are administered by the community colleges. Gifted and
 6 talented programs for kids. Expelled at risk is a
 7 small grant program that's administered at the
 8 department. And small attendance center aid is for
 9 very small school districts that -- or schools that are
 10 20 miles away from another school of a similar size.
 11 And then comprehensive health education program, a
 12 grant program.
 13 **Q. And do you know the reason additional**
 14 **funds are provided for these certain programs?**
 15 A. To provide additional funding for certain
 16 populations of -- that need assistance. That tries to
 17 assist with that funding outside the formula. It's
 18 additional, beyond the formula.
 19 **Q. Can you describe the total increase in**
 20 **funding for the categoricals over the last decade?**
 21 A. On this particular table, it shows that
 22 the increase has been about \$89 million over the last
 23 ten years.
 24 **Q. And is that increase governed by anything**
 25 **or driven by anything?**

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1 A. It is. The Amendment 23 requires the
 2 categorical funding in total to increase by -- and
 3 previously, for the first ten years, inflation plus
 4 1 percent, and then inflation thereafter. So that's
 5 what is -- has happened.
 6 **Q. And you mentioned that Amendment 23**
 7 **addresses the total increase of -- in categoricals.**
 8 **Does it also address how much the specific categoricals**
 9 **must increase?**
 10 A. It does not.
 11 **Q. How are those individual increases**
 12 **determined?**
 13 A. There -- there's various processes that
 14 take place that go through this. The department of
 15 education provides a recommendation on changes that
 16 would occur. And we've been trying to address the
 17 unfunded gap, which means that the school districts are
 18 paying much more, they're spending much more in these
 19 various programs than what they're receiving in
 20 revenue, and that's coming out of their total program
 21 funding.
 22 So we look at the revenue compared to the
 23 expenditures and look at that gap and try to put the
 24 largest amount of increase where the largest gap is.
 25 So special ed has been one that has received

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1 continually larger increases. And then English
 2 language proficiency has been another one that we've
 3 tried to address specifically over the last few years,
 4 to try to get more money into that area.
 5 **Q. And can you explain what the total**
 6 **increase for English language proficiency has been over**
 7 **the last decade?**
 8 A. It's been about \$9.2 million, or about a
 9 3 percent increase.
 10 **Q. And whose decision was it to have that**
 11 **3 percent increase?**
 12 A. Like I say, that goes through a process.
 13 It starts at the department of education, and the joint
 14 budget committee has their process, and then the
 15 general assembly gets a stab at it if they choose to
 16 make any changes in it, but primarily that unfunded
 17 gap. And then the last couple of years we tried to get
 18 more money into the English language program because
 19 special education had been infused with some pretty
 20 significant amounts of federal dollars through the
 21 stimulus dollars, and it gave us an opportunity to put
 22 some more money into transportation and English
 23 language proficiency.
 24 **Q. Do you know generally what the English**
 25 **Language Proficiency Program addresses?**

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1 A. Well, it addresses some additional funding
 2 to assist students for the first two years of
 3 their -- it's the non-English speaking or the limited
 4 English-speaking students, and to try to assist them in
 5 that area.
 6 MR. HEINKE: Your Honor, I'm about to move
 7 to another area. I don't know if this would be a time
 8 for a morning break. This next area may take five or
 9 ten minutes.
 10 THE COURT: Yeah, we can go. We can go to
 11 the next area, and then we'll take our break.
 12 MR. HEINKE: Thank you, Your Honor.
 13 THE COURT: Thank you.
 14 **Q. (BY MR. HEINKE) Ms. Herrmann, we've also**
 15 **heard testimony in this case about declining**
 16 **enrollment. Can you explain how declining enrollment**
 17 **interacts with public school financing?**
 18 A. Yes. There's a large number of districts,
 19 over a hundred districts, that have declining
 20 enrollment, and it's primarily the rural districts that
 21 are seeing significant declines in enrollment, where
 22 they're shifting it to a more central area, a larger
 23 town or a city, or moving to online education or
 24 whatever the case may be. But when that occurs in the
 25 school finance formula, we have a mechanism that allows

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1 for a softening of that declining enrollment, to allow
 2 those districts to average up to five years their pupil
 3 enrollment so that they can get additional money while
 4 they're making decisions on how they can downsize or
 5 changes that they can make within their staffing
 6 patterns or whatever's necessary.
 7 So in the school finance formula, it
 8 allows for -- for the funded pupil count to be
 9 calculated using either the current year, or the
 10 average of two years, average of three years, average
 11 of four years, or average of five years, whichever's
 12 the highest.
 13 **Q. Whatever's the highest?**
 14 A. Whatever's the highest. And it
 15 automatically calculates that and gives that district
 16 that highest number for the purpose of funding.
 17 **Q. And this may be an elementary question,**
 18 **but by getting the highest number, what does that do to**
 19 **a district's funding?**
 20 A. Well, it hopefully provides them
 21 additional funding. Like I say, as it softens and
 22 gives them time to make changes in their plans. 'Cause
 23 many times they don't know what their pupil count's
 24 going to be until they've already started the school
 25 year and it gets into the October count. We don't

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1 finalize that till nearly midyear. And for a district
 2 to have significant reduction in funding, if they were
 3 to lose their per-pupil funding for every child that
 4 didn't show up to school that year that they were
 5 counting on could be significant, since they've already
 6 let their contracts and -- So . . .
 7 **Q. Now, you mentioned that there's currently**
 8 **a five-year averaging in order to soften those effects**
 9 **that you just talked about. Has it always been five**
 10 **years?**
 11 A. No. In the last ten years, and I can't
 12 tell you exactly when, but it's changed from three
 13 years to four years, and then it changed from four
 14 years to five years.
 15 **Q. And what's the effect been from extending**
 16 **the time from three, now to five years?**
 17 A. Well, primarily it's assisted the small
 18 school districts that have had the largest impacts on
 19 this, to soften that, to give them a longer period of
 20 time that they have additional funding that's coming to
 21 them in their formula. But then they could reach a
 22 cliff, where that -- that larger number that's being
 23 averaged throughout those five years drops off, and it
 24 might cause them at that point to have to regroup if
 25 they haven't made appropriate adjustments throughout

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1 that five-year period.

2 **Q. And whose decision is it, or was it, to**

3 **extend from three years now to five years of averaging?**

4 A. Well, the general assembly is -- is who

5 put that in place. But it certainly was called for by

6 many small school districts, asking that that be

7 extended.

8 **Q. You may have mentioned this at the**

9 **beginning of explaining declining enrollment, but**

10 **roughly how many districts in Colorado are declining**

11 **enrollment, if you know?**

12 A. I think it was about 108.

13 **Q. Out of a total of how many? Sorry.**

14 A. 178.

15 **Q. Okay.**

16 MR. HEINKE: Your Honor, if it's all

17 right, now may be a good time for the morning break.

18 THE COURT: Okay. We'll take about 15

19 minutes. Let's say quarter to 10:00. Is that okay?

20 MR. HEINKE: Works for us, Your Honor.

21 (Recess taken, 9:29 a.m. to 9:48 a.m.)

22 THE COURT: Back on the record in

23 05CV4794. And we're on direct examination.

24 MR. HEINKE: Thank you, Your Honor. We've

25 put up a demonstrative during the break. I apologize

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1 to your clerks, because I think I've blocked their view

2 of anything at this point.

3 **Q. (BY MR. HEINKE) But, Ms. Herrmann, before**

4 **the break we were talking about base funding factors**

5 **that adjust on the base categorical funding. I want to**

6 **turn now and talk about bonds and mill levy overrides,**

7 **if that's okay with you.**

8 **I'll put on the Elmo Trial Exhibit 505,**

9 **which is a slide helpfully titled "Elections." Have**

10 **you seen this slide before -- or this presentation**

11 **before?**

12 A. I have.

13 **Q. Did you have a role in creating it?**

14 A. I did.

15 **Q. I'll turn to page CDE43072, which**

16 **describes several types of elections. And we'll get**

17 **into each one of these specifically, but can you just**

18 **tell me generally what authority districts have to seek**

19 **elections from their voters? If that makes sense.**

20 A. I'm sorry.

21 **Q. I'm sorry, let me try to ask the question**

22 **in a better way.**

23 A. I'm sorry. Say that again.

24 **Q. I note there's five types of elections or**

25 **things called elections on this slide. What is that**

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1 **reference to, the "elections"?**

2 A. These are the elections that school

3 districts can go to their voters to ask them to

4 approve. Either a bond issue, for capital

5 construction, or the various override provisions that

6 are allowed by law.

7 **Q. So we'll skip over bonded indebtedness for**

8 **now. We'll come back to that. Let's start with mill**

9 **levy override. Can you describe generally what a mill**

10 **levy override is, please.**

11 A. A mill levy override is an opportunity for

12 school districts to ask their voters for additional

13 local property taxes outside their formula funding, for

14 voter approval for that. A general override can

15 encompass a wide variety of reasons that they would use

16 that money. Could be just general operating

17 expenditures that they would use it for.

18 It's intended to be -- not to exceed

19 25 percent of their total program funding. And when I

20 talk about total program funding in this context, it is

21 the total program funding prior to the time that a

22 negative factor is applied against it to reduce the

23 total program. So it keeps it at the higher total

24 program for any of these override election provisions.

25 **Q. Appreciate that explanation, Ms. Herrmann.**

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1 **And to give an example of what you were just talking**

2 **about, the 25 percent of total program, I'll put up on**

3 **the Elmo what has been marked, not yet entered, as**

4 **Defendants' Trial Exhibit 30192. I'll zoom in here to**

5 **not kill all of our eyes. This is a slide -- or a**

6 **spreadsheet entitled "Override Reconciliation." Have**

7 **you seen this document before?**

8 A. I have.

9 **Q. Did you have a role in creating this**

10 **document?**

11 A. Yes.

12 **Q. Is it true and accurate, to the best of**

13 **your understanding?**

14 A. It is.

15 MR. HEINKE: Your Honor, at this time we

16 would move for the admission of Defendants' Trial

17 Exhibit 30192.

18 THE COURT: Any objection?

19 MR. HINOJOSA: No objection, Your Honor.

20 MS. GEBHARDT: No objection. Thank you.

21 THE COURT: 30192 will be admitted.

22 MR. HEINKE: Thank you, Your Honor.

23 **Q. (BY MR. HEINKE) So we won't walk through**

24 **all of this, but I thought as an example, you mentioned**

25 **that mill levy overrides are based on total program**

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1 **funding. Mapleton happens to be the first line. Can**
 2 **you walk us through these first couple of columns and**
 3 **tell us how that total program is calculated?**
 4 A. The -- the first column is the total
 5 program funding, should be the total program prior to
 6 any reduction for negative factor. The second column
 7 identifies -- and this may be old enough that it
 8 wouldn't have the -- well, it has the 25 percent
 9 provision identified up there, that they can go to
 10 25 percent. So it would calculate what the allowable
 11 override would be.
 12 And then the cost-of-living increase
 13 that's calculated in fiscal year 2001-'02 was when the
 14 cost-of-living increase was not funded in the total
 15 program funding for one year, it allowed for that
 16 dollar amount that was calculated at that time to be
 17 added to -- as an override beyond the cap. So
 18 districts can -- can ask for their voters to go beyond
 19 the cap by that amount.
 20 And then the next column is the total
 21 amount that they're allowable to have an override.
 22 **Q. So in the example of Mapleton, it shows a**
 23 **total program funding of what amount?**
 24 A. \$52.9 million.
 25 **Q. And how much, then, would districts be**

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1 **able to go ask their -- would Mapleton be able to go**
 2 **ask its voters for?**
 3 A. 14.2 million.
 4 **Q. Now, I note that there's also a column in**
 5 **this spreadsheet -- we'll try not to make everybody**
 6 **dizzy while I do this. The last column on this page**
 7 **notes "Amount Over or Under Limit." Can you explain**
 8 **what that column shows, please.**
 9 A. That shows the amount of override capacity
 10 that they still could go to their voters to ask for.
 11 **Q. So the Mapleton reference to 9.36 million,**
 12 **what does that tell us?**
 13 A. That they could ask their voters for an
 14 additional \$9.3 million.
 15 **Q. And is there a way --**
 16 MR. HEINKE: And it may be easier, Your
 17 Honor, if I could approach the witness with a copy of
 18 the spreadsheet?
 19 THE COURT: Yes.
 20 **Q. (BY MR. HEINKE) Is there a way to look at**
 21 **this spreadsheet and explain what the total amount**
 22 **across all 178 school districts, what amount there is**
 23 **that they could go to their voters for?**
 24 A. Well, first of all, for this particular
 25 spreadsheet, it's not going to show all 178 districts.

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1 **Q. Okay.**
 2 A. It's only going to show the ones who have
 3 gone for an override. But for these particular
 4 districts, it would show that they have in total
 5 \$1.4 billion in override capacity, and that's down at
 6 the bottom, under totals, under the column called
 7 "Total Maximum Allowable Override," which is column D
 8 and E totaled.
 9 And then it shows the amount of the
 10 voter-approved and hold harmless that they've got in
 11 place, which is 652 million. So if you subtracted the
 12 652 million from the 1.4 billion, that would give you
 13 the outstanding, which is not quite \$800 million.
 14 **Q. And I apologize since I only have one**
 15 **copy, but I will have you walk through that same**
 16 **example you just gave with the spreadsheet up on the**
 17 **Elmo. So we're on page 3 of the spreadsheet, which,**
 18 **again, is Exhibit 30192. Now, you mentioned**
 19 **\$1.4 billion in total maximum override; is that**
 20 **correct?**
 21 A. That's correct.
 22 **Q. And you noted that -- tell me again how**
 23 **much the -- these districts had gone to their voters**
 24 **for.**
 25 A. 652 million.

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1 **Q. And that's this number here, correct?**
 2 A. Yes.
 3 **Q. And then you took the product of those**
 4 **two -- probably using my math terms incorrectly -- and**
 5 **came up with what, again, was the rough number?**
 6 A. A little less than 800,000 --
 7 \$800 million.
 8 **Q. You also mentioned that this spreadsheet**
 9 **only shows those districts that have gone to their**
 10 **voters for an override. Do you know roughly how many**
 11 **of the 178 districts that would be?**
 12 A. There's approximately a hundred on this
 13 spreadsheet. Hundred districts.
 14 **Q. So to summarize, a hundred of the 178**
 15 **school districts. Only looking at those, they still**
 16 **have 800 million in capacity?**
 17 A. Yes.
 18 **Q. When we were on the first page,**
 19 **Ms. Herrmann, you mentioned that the sheet might be a**
 20 **little older, and you weren't sure if it had showed the**
 21 **25 percent. Has the override limit always been**
 22 **25 percent?**
 23 A. It has not. It was 20 percent up until
 24 just -- I believe -- I don't remember if it was '9-'10
 25 or '10-'11. Recently.

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1 **Q. Do you know why that number changed?**
 2 MR. HINOJOSA: Objection. Foundation.
 3 THE COURT: Overruled.
 4 A. Some of the districts that were coming up
 5 against their cap of the 20 percent wanted additional
 6 space to be able to ask for additional overrides.
 7 **Q. (BY MR. HEINKE) And, again, first the**
 8 **foundational question. Do you know why there's a cap**
 9 **at all?**
 10 A. Well, to keep districts from becoming so
 11 far apart in the haves and have-nots. To keep it from
 12 getting any further out of line. Because many
 13 districts have difficulty obtaining override issues,
 14 getting voter approval, and others don't have much
 15 trouble at all. So it creates a disparity the wider
 16 that goes.
 17 **Q. Now, I want to direct your attention a**
 18 **little behind you to Demonstrative Exhibit 30175. And**
 19 **if I can make this pointer work, I will give it to you.**
 20 **Okay. So feel free to use this. It's that green**
 21 **button.**
 22 MR. HEINKE: Sorry, Your Honor. I forgot
 23 to ask to approach. Apologize.
 24 **Q. (BY MR. HEINKE) Ms. Herrmann,**
 25 **Exhibit 30175 is a demonstrative that I will represent**

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1 **we created based on information on the CDE website**
 2 **showing voter approved override, bond, and other mills.**
 3 **Would this chart help you explain what we've been**
 4 **talking about, override revenues?**
 5 A. Yes.
 6 **Q. All right. So if you could look at that**
 7 **first column, entitled "Voter-Approved Override Mills."**
 8 **Is that first column reflective of what we've been**
 9 **talking about now, with the override mill levy?**
 10 A. Yes. That is for the general mill levy
 11 override, yes.
 12 **Q. I'll note for the record, this**
 13 **demonstrative only reflects the plaintiff school**
 14 **districts with individual plaintiffs residing and**
 15 **school districts with plaintiff-intervenors residing.**
 16 **Ms. Herrmann, I notice that there are**
 17 **numbers under the various voter-approved override mill**
 18 **column, some at zero and some greater than zero. Can**
 19 **you explain what the zeros and the numbers greater than**
 20 **zero mean?**
 21 A. Well, for the numbers that are zeros, that
 22 means that there are no voter-approved overrides in
 23 place in those districts. For the numbers that are
 24 above zero means that the districts have gone to their
 25 voters and asked for additional override and have been

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1 approved for that.
 2 **Q. So, for example, Alamosa, do they have an**
 3 **override mill?**
 4 A. No, they do not.
 5 **Q. And that would be true for any of those**
 6 **school districts with a zero next to them?**
 7 A. That's correct.
 8 **Q. Okay. Do you know roughly out of**
 9 **the -- I'm sorry if I've already asked you this, but**
 10 **out of the 178 districts, how many of them have no**
 11 **voter-approved override at all?**
 12 A. I -- I would say somewhere around 70.
 13 **Q. Okay. Going back to Exhibit 505. We**
 14 **talked about the mill levy override. The next election**
 15 **noted is excess transportation costs. Can you describe**
 16 **generally what that is?**
 17 A. Yes. Excess transportation cost override
 18 was a statute that was -- was put in place several
 19 years ago, but it changed a little bit in the last
 20 couple of years. What this allows for is for a school
 21 district to ask its voters to provide an override or a
 22 mill levy to cover all of the costs for their
 23 transportation that are not reimbursed by the
 24 transportation categorical funding reimbursement that's
 25 provided by the state.

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1 So it allows them to go for anything
 2 beyond what their actual payment and reimbursement is
 3 for transportation.
 4 **Q. And, Ms. Herrmann, if you'll look back at**
 5 **Exhibit 30175. The third column is titled**
 6 **"Transportation Mills." Does that reflect what you**
 7 **were just describing, the excess transportation costs?**
 8 A. It does.
 9 **Q. And how many of the plaintiff and**
 10 **plaintiff-intervenor school districts have gone to**
 11 **their voters to seek and/or received a transportation**
 12 **mill levy override?**
 13 A. One. Boulder Valley.
 14 **Q. And do you know across the 178 school**
 15 **districts roughly how many have gone for a**
 16 **transportation mill levy?**
 17 A. I want to say three or four. Not many.
 18 **Q. All right. Turning back to Exhibit 505.**
 19 **The next election noted is special building and**
 20 **technology. Can you describe what that mill levy**
 21 **override relates to?**
 22 A. Special building and technology overrides
 23 are those -- it's a short-term funding for a project,
 24 either for a building project or to address technology
 25 needs. It allows for up to ten mills for no longer

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1 than three years. So it's kind of a high mill levy, or
 2 could be, for a short term.
 3 **Q. And turning back to Exhibit 30175. The**
 4 **fourth column notes "Special Building and Technology**
 5 **Mills." Is that what you were just describing?**
 6 A. It is.
 7 **Q. How many of the plaintiff and**
 8 **plaintiff-intervenor school districts have gone to**
 9 **their voters and gotten special building and technology**
 10 **mill levy overrides?**
 11 A. None of them.
 12 **Q. And across the 178 school districts in**
 13 **Colorado, do you know roughly how many have gotten that**
 14 **special building and technology override?**
 15 A. Very few. Just a couple.
 16 **Q. Turning back to 505. The last election**
 17 **noted is full-day kindergarten. Can you describe what**
 18 **that mill levy override relates to?**
 19 A. This was a new override that was put in
 20 recently that allows school districts to go to their
 21 voters and ask them to provide the excess costs for
 22 full-day kindergarten. The state, through the Public
 23 School Finance Act, provides 58 percent of a -- a
 24 student's full-day kindergarten funding. And this
 25 allows the districts to ask for the additional

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1 42 percent to bring them up to full funding.
 2 **Q. And looking back to 30175, the last column**
 3 **is entitled "Full-Day Kindergarten Mills." Is that**
 4 **what we've been talking about?**
 5 A. It is.
 6 **Q. And how many of the plaintiff and**
 7 **plaintiff-intervenor school districts have gone to**
 8 **their voters and gotten full-day kindergarten mill levy**
 9 **overrides?**
 10 A. None of them.
 11 **Q. Across the 178 school districts, do you**
 12 **know roughly how many of them have gone for a full-day**
 13 **kindergarten mill levy override?**
 14 A. I believe it's two.
 15 **Q. All right. Back to 505. The first bullet**
 16 **we skipped over for the moment was "Bonded**
 17 **indebtedness." Can you explain briefly what bonded**
 18 **indebtedness is?**
 19 A. Bonded indebtedness is -- allows a school
 20 district to go to its voters and ask for funding for
 21 building projects or other capital expenditures to
 22 build a new school or renovate or catch up on deferred
 23 maintenance, those kinds of things, depending on what
 24 it is. But it's fairly broad, as long as it's
 25 capital-related.

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1 **Q. And, Ms. Herrmann, I'll put up on the**
 2 **overhead Exhibit -- what's been marked, not yet**
 3 **entered, as Exhibit 30191, another easy-to-read**
 4 **spreadsheet. This is entitled "Final Mill Levy**
 5 **Summary." I'll zoom in so you can see it a little**
 6 **better. "Final Mill Levy Summary, Fiscal Year**
 7 **'10-'11." Have you seen this document before?**
 8 A. I have.
 9 **Q. Did you have a role in creating it?**
 10 A. I did.
 11 **Q. Is it true and accurate, to the best of**
 12 **your knowledge?**
 13 A. To the best of my knowledge, yes.
 14 MR. HEINKE: Your Honor, at this time
 15 defendants would move for admission of Exhibit 30191.
 16 THE COURT: Any objection?
 17 MR. HINOJOSA: No objection.
 18 MS. GEBHARDT: No objection.
 19 THE COURT: 30191 will be admitted.
 20 MR. HEINKE: Thank you, Your Honor.
 21 **Q. (BY MR. HEINKE) Just want to,**
 22 **Ms. Herrmann, briefly spend some time on this exhibit**
 23 **to allow you to describe how it is that bonding**
 24 **capacity is -- is calculated. So if you could explain**
 25 **how a district calculates its bonding capacity.**

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1 A. Bonding capacity is calculated by using
 2 20 percent of the assessed valuation of a district,
 3 unless the district is in a high-growth pattern. And
 4 we generally require 3 percent per year growth in
 5 student population for that certification for high
 6 growth for the last three years. So if they don't meet
 7 that, then they are at 20 percent of their assessed
 8 valuation.
 9 **Q. And using Mapleton as an example, again,**
 10 **just 'cause it's the first on the chart, if you could**
 11 **explain how we would calculate Mapleton's bonding**
 12 **capacity.**
 13 A. The assessed valuation is identified there
 14 at \$454 million for the school district. So 20 percent
 15 of that would be roughly \$90 million.
 16 **Q. And you also mentioned that there are**
 17 **potential to have -- or to be certified as a**
 18 **high-growth district. And I believe you said it was**
 19 **25 percent of your assessed valuation. Do you know why**
 20 **that high-growth certification is allowed?**
 21 A. Because when you have patterns of high
 22 growth in a school district, it's difficult sometimes
 23 to have enough building space available to accommodate
 24 that number of students, especially if it's a larger
 25 district. So it gives them that opportunity to go out

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1 and bond at a higher -- have their bonding capacity at
 2 a higher rate so they can meet some of those needs.
 3 **Q. So if we turn back to Exhibit 30175,**
 4 **Ms. Herrmann, the demonstrative. There's -- the second**
 5 **column is entitled "Bond Redemption Mills." Does that**
 6 **describe what we were just talking about with bonded**
 7 **indebtedness?**
 8 A. It does.
 9 **Q. And so for districts with a zero bonded**
 10 **redemption mills, what does that tell us about their**
 11 **bonded indebtedness?**
 12 A. That they don't have any bond issue that's
 13 been approved by their voters.
 14 **Q. Okay. Now, Ms. Herrmann, to be fair, is**
 15 **it equally easy for all districts to go and seek a bond**
 16 **or mill levy override?**
 17 A. Absolutely not.
 18 **Q. And why is that?**
 19 A. It's -- well, for smaller school districts
 20 or lower assessed valuation school districts in the
 21 state, it takes many more mills to generate the money
 22 to pay back -- say for a \$4 million school or a
 23 \$5 million school, to pay back the payments on that
 24 would take so many more mills for a small district than
 25 it would be for a district -- or a low-wealth district.

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1 let's say that, rather than a high-wealth district.
 2 So those who are in a high-wealth assessed
 3 value area can much more easily get a bond issue or
 4 overrides passed, for that matter, than -- than a small
 5 district. The burden on the taxpayers is just less in
 6 those higher wealth districts.
 7 **Q. And with that said, looking back at 505,**
 8 **is there any district, to your knowledge, that has**
 9 **max'd out all five of these mill levy options?**
 10 A. No.
 11 **Q. Ms. Herrmann, I want to talk briefly about**
 12 **the technical assistance that your former office**
 13 **provides to school districts. So if you could describe**
 14 **what help and assistance you and your colleagues at CDE**
 15 **provided to school districts, please.**
 16 A. We spent an enormous amount of time on
 17 one-on-one discussions with individual school
 18 districts, superintendents, and business managers
 19 primarily dealing with their individual needs and their
 20 financial areas. Providing technical assistance
 21 through information that's provided on the web, through
 22 e-mails, through professional development trainings and
 23 those kinds of things.
 24 We assisted school districts in
 25 determining how they were to set their mill levies. We

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1 assisted them in every way possible, to -- to the point
 2 of even helping them find another contact within the
 3 department. But just anything that they needed, we
 4 tried to be there to assist them.
 5 **Q. Do you have a sense of what school**
 6 **districts thought of you and your office?**
 7 A. I think I was held in high regard.
 8 **Q. Ms. Herrmann, the last category I want to**
 9 **talk about is funding itself. We've been talking about**
 10 **structure of the public school finance system. I want**
 11 **to turn to the amount of funding. And as a first**
 12 **question, I want to be completely fair. Do you**
 13 **personally believe that there's enough funding that's**
 14 **put into the Public School Finance Act?**
 15 A. I do not.
 16 **Q. Okay. And would the question of why you**
 17 **think there isn't more money going into public school**
 18 **finance require you to talk about TABOR or**
 19 **non-education appropriations?**
 20 A. It would.
 21 **Q. I won't ask you that question then. Who**
 22 **do you believe should ultimately decide whether schools**
 23 **are appropriately funded?**
 24 MS. GEBHARDT: Your Honor, I object. This
 25 calls for a legal conclusion.

5532

1 THE COURT: Could you ask the question
 2 again?
 3 MR. HEINKE: Sure. The question was:
 4 Ms. Herrmann, given your experience with the department
 5 and your role as assistant commissioner for public
 6 school finance, who do you believe should ultimately
 7 determine whether schools are adequately funded?
 8 THE COURT: I'm going to sustain it as to
 9 the form of the question.
 10 MR. HEINKE: Okay.
 11 **Q. (BY MR. HEINKE) Ms. Herrmann, you just**
 12 **talked about your views on the amount of funds going**
 13 **into the public school finance system. What do you**
 14 **think of the structure of the public school finance**
 15 **system?**
 16 MR. HINOJOSA: Objection. It calls for a
 17 non-lay witness opinion. She hasn't been qualified as
 18 an expert.
 19 THE COURT: Overruled. She's very
 20 familiar with the structures. Overruled.
 21 A. I think the structure of the School
 22 Finance Act is pretty good. I think it lacks funding.
 23 But if -- especially now that we've had these
 24 reductions the last few years, I think that's been
 25 terrible.

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1 But I think the structure itself
 2 addresses -- or tries to address the needs across the
 3 districts in a fairly fair manner. It doesn't mean
 4 that each of those areas couldn't be tweaked if -- if
 5 it was deemed necessary, if it was deemed that
 6 the -- the at-risk student population was growing at a
 7 pace that was faster than -- than anyone can keep up
 8 with.

9 Maybe there needs to be some additional
 10 funding put in that area. Or -- but there's nothing to
 11 keep that from happening with the existing structure.
 12 But it addresses the -- the high property tax wealth.
 13 It addresses the -- the at-risk kids. It maybe doesn't
 14 include reduced, but I'm not so sure that -- that that
 15 would make it better, unless there's a lot more money
 16 that's available. You'd be taking away from one of the
 17 other areas.

18 So I think the fairness with the size
 19 factor, if more money was in the formula, all of those
 20 pieces would get their increases, and it would provide
 21 those additional funds for districts all across the
 22 state.

23 **Q. (BY MR. HEINKE) Now, in continuing the**
 24 **conversation about funding, we talked about the**
 25 **mechanism through which the dollars are distributed.**

5534

1 **Are you familiar with the concept of state versus local**
 2 **share?**

3 A. I am.

4 **Q. Can you describe generally how that**
 5 **applies in a public school finance system?**

6 A. The School Finance Act requires that the
 7 formula go to the property taxes first, whatever's
 8 available through property taxes. It looks at specific
 9 ownership taxes. So those are the local sources that
 10 come in. And then anything that's remaining that needs
 11 to be provided comes from the state level.

12 **Q. Ms. Herrmann, I'm putting up on the**
 13 **overhead what's been marked and entered as Trial**
 14 **Exhibit 30038. Have you seen this presentation before?**

15 A. I have.

16 **Q. I want to direct your attention to**
 17 **page 12. Excuse me, page 9 of the presentation, which**
 18 **is entitled "K-12 Shift from Local to State Funding."**
 19 **And feel free to use this exhibit to help you, but**
 20 **could you describe generally how that state and local**
 21 **share that you were just talking about has changed over**
 22 **time?**

23 A. Yes.

24 MS. GEBHARDT: Your Honor, I'm just going
 25 to have a standing objection to this line of questions.

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1 because I think you can't do this without talking about
 2 TABOR and Gallagher.

3 THE COURT: Thank you. So noted.

4 MR. HEINKE: Appreciate that.

5 **Q. (BY MR. HEINKE) I would caution the**
 6 **witness, if there's a way you could describe it without**
 7 **mentioning TABOR or Gallagher, that would be helpful.**
 8 **So in terms of amounts or percentages, can**
 9 **you describe how K-12 funding has shifted over time?**

10 A. Sure. Back in the late 1980s, it -- local
 11 property taxes were running nearly 60 percent. 50 --
 12 nearly 60 and state share was running a little less
 13 than 45 percent. So since that time, it crossed paths
 14 to where there was a 50/50 split about in 1990. And
 15 then since then, it's been going the other direction,
 16 to where the state's been picking up a larger portion
 17 and the local property taxes have been declining, to
 18 where now the state's portion is above 60 percent,
 19 nearly to 65 percent, and the local portion is below
 20 40 percent, getting down closer to 35.

21 So it's been a significant shift, with the
 22 state having to pick up a larger portion.

23 **Q. And despite the fact that, as you said,**
 24 **the state now contributes about 65 percent of the**
 25 **funds, who is it that determines how the districts**

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1 **spend those funds?**

2 A. Well, the -- the school districts
 3 determine how their budgets are set and how they use
 4 the money that comes to them.

5 MR. HEINKE: Thank you, Ms. Herrmann. I
 6 have no further questions at this time.

7 THE COURT: Thank you. Cross-examination.

8 MS. GEBHARDT: Good morning, Ms. Herrmann.
 9 Just a second.

10 THE WITNESS: That's fine.

11 MS. GEBHARDT: As a preliminary matter,
 12 Your Honor, at this point we would move to withdraw
 13 Exhibit 8402, because Ms. Herrmann had been identified
 14 as an expert, and that's her expert report, which I
 15 believe is no longer relevant in the suit. I don't
 16 think there's any objection from the plaintiffs (sic).

17 MR. HEINKE: That's right. No
 18 objection.

19 THE COURT: Thank you. That will be
 20 withdrawn.

21 MS. GEBHARDT: And it was a joint motion
 22 with plaintiff-intervenors.

23 THE COURT: Thank you.

5537

1 CROSS-EXAMINATION
 2 BY MS. GEBHARDT:
 3 Q. Hello, Ms. Herrmann.
 4 A. Good morning.
 5 Q. It's a true statement, isn't it, that you
 6 do not know how the base number in the '94 act was
 7 arrived at?
 8 A. I -- I was not there at the time that that
 9 was done, yes.
 10 Q. And you didn't do any studies of the '94
 11 act to determine how the base number was calculated?
 12 A. I did not.
 13 Q. And that's the same basic framework, and
 14 the same calculations are still in the act today
 15 along -- if you include the Amendment 23 addition?
 16 A. That's correct.
 17 Q. And the same would hold true for any
 18 calculation -- or the mill levy overrides? You
 19 weren't -- you weren't part of the determination as to
 20 how the mill levy override statutory language was to be
 21 included or the intent of the mill levy override in the
 22 '94 act?
 23 A. No, I was not.
 24 Q. And it's a true statement, isn't it,
 25 Ms. Herrmann, that the base has never been predicated

5538

1 on the fact that there was a definition of academic
 2 performance and expectations?
 3 A. Not that I'm aware of.
 4 Q. And you would agree that the goals of
 5 Amendment 23 were just to reach funding levels to take
 6 the base back to 1988 funding levels?
 7 A. That's correct.
 8 Q. And do you remember participating in an
 9 interim school finance committee in 2005?
 10 A. I do.
 11 Q. And were you on the task force from that
 12 committee?
 13 A. I was.
 14 Q. I've put on the Elmo what has been
 15 previously marked as deposition -- or Trial Exhibit 26.
 16 Have you seen that before?
 17 A. I have.
 18 Q. And it identifies you as one of the
 19 participants?
 20 A. Yes.
 21 Q. And I direct your attention to Roman II.
 22 And it's one of the findings of the task force which
 23 states:
 24 "An adequate foundation of spending should
 25 be established through a higher amount of

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1 statewide base per-pupil spending that
 2 reflects the academic accountability
 3 requirements of public schools.
 4 "The level of base per-pupil spending has
 5 been inadequate in prior school finance
 6 acts because it has never been set based
 7 on the academic performance expectations."
 8 Did I read that correctly?
 9 A. You did.
 10 Q. And it's a statement you agree with,
 11 correct?
 12 A. Yes.
 13 Q. And again, the same task force finds that,
 14 quote:
 15 "Neither the 1988 nor '94 acts established
 16 a base level of per-pupil funding prior to
 17 addressing other school finance
 18 adjustments that were meant to achieve
 19 funding equity. Base per-pupil funding
 20 was set at a dollar figure that
 21 represented the amount of money not
 22 already dedicated for other per pupils.
 23 In effect, base per-pupil funding became
 24 an afterthought in prior acts."
 25 Again, you agree with that statement?

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1 A. I think that's reasonable, yes.
 2 Q. And then on page 13, the task force made
 3 recommendations to the interim committee, and one of
 4 those recommendations was:
 5 "The task force believes identifying an
 6 adequate level of base per-pupil funding
 7 should be the first priority in a new
 8 state finance" -- "school finance formula.
 9 The base funding amount should provide
 10 adequate resources to allow school
 11 districts to meet academically accountable
 12 standards that exist at the local, state,
 13 and federal levels.
 14 "Adjustments to the base are necessary,
 15 but should not take precedence over
 16 properly identifying this dollar amount."
 17 Again, you agree with that
 18 recommendation?
 19 A. I do.
 20 Q. Now I've put on the Elmo what's been
 21 marked as Defendants' Trial Exhibit 30106, which I will
 22 represent to you is the interim committee's report to
 23 the general assembly. Have you seen that document
 24 before?
 25 A. I have.

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1 **Q. And on page Roman XI it has the charge to**
 2 **the committee, which included that they were to**
 3 **consider issues including the impact of recent**
 4 **education reforms on the ability of school districts**
 5 **and the state to meet their legal and constitutional**
 6 **obligations with respect to public education. Then it**
 7 **drops down to whether the current system by which**
 8 **school districts pay for capital facility needs is**
 9 **thorough and uniform and whether the state needs to**
 10 **adopt state standards for public school facilities.**
 11 **Agreed?**
 12 A. Yes.
 13 **Q. And in this report to the general**
 14 **assembly, they pick up the task force recommendations**
 15 **concerning adequacy and a recommendation to examine**
 16 **adjustments to base per-pupil funding? Yes?**
 17 A. Yes.
 18 **Q. Yet what came out of this was only a**
 19 **recommendation to allow school districts to impose an**
 20 **additional mill levy to fund an additional half day of**
 21 **kindergarten, correct?**
 22 A. Correct.
 23 **Q. And again, were you aware of the interim**
 24 **committee that met in 2009?**
 25 A. Yes.

5542

1 **Q. And did any -- any significant legislation**
 2 **result as a result of that interim committee that would**
 3 **relate to the base?**
 4 A. No.
 5 **Q. Like to turn our attention to categoricals**
 6 **next. Do you agree that there is no rational**
 7 **basis -- and I only want your definition of rational,**
 8 **not a legal interpretation of rational -- for the**
 9 **determination of what the share is for ELPA funding?**
 10 **That the number is based on whatever is available for**
 11 **those -- for those kids?**
 12 A. That's primarily true, yes.
 13 **Q. And you don't know how the amount for**
 14 **special education reimbursement was calculated either,**
 15 **do you?**
 16 A. I do not. Not from the beginning, no.
 17 **Q. And you're familiar when the state changed**
 18 **from the -- to a tiered system for special education?**
 19 A. Yes.
 20 **Q. But that did not change the overall**
 21 **statewide reimbursement for special education, did it?**
 22 A. It did not.
 23 **Q. And you're familiar with the study on**
 24 **special education funding?**
 25 A. Vaguely.

5543

1 **Q. I've put up on the Elmo what's been marked**
 2 **as deposition -- or Trial Exhibit 28. Make it a little**
 3 **wider so you can see the whole cover sheet. Have you**
 4 **seen this document before, Ms. Herrmann?**
 5 A. I don't remember if I have or not.
 6 **Q. Okay. No reason to think you have not?**
 7 A. No reason to think that I have not. But I
 8 can't guarantee that I have.
 9 **Q. Okay.**
 10 A. Okay.
 11 **Q. This was during your time when you were at**
 12 **CDE, was it not?**
 13 A. It was. But we're vastly different units.
 14 So . . .
 15 **Q. Okay. And the recommendation of this**
 16 **independent contractor on special education funding was**
 17 **that:**
 18 **"Based on research findings, is that**
 19 **Colorado increase state funding to reduce**
 20 **the local costs closer to the national**
 21 **average of 32 percent. This increase**
 22 **would partially address the issues of**
 23 **funding inadequacy and funding inequity."**
 24 **I read that correctly?**
 25 A. You did.

5544

1 **Q. And you would agree with that conclusion?**
 2 A. Yes. Actually, I go beyond that.
 3 **Q. We'll let your counsel ask you that. So**
 4 **now we are on page 24 of this exhibit, under**
 5 **"Recommendations." And the recommendations are,**
 6 **include:**
 7 **"On average, 69.3 percent of special**
 8 **education expenditures are paid from**
 9 **local funds. This compares to an average**
 10 **of 32.3 percent of funds coming from**
 11 **local funds reported by Parish. This**
 12 **difference in local contributions, in**
 13 **addition to survey results, indicates**
 14 **that the state ECEA" -- which is the**
 15 **special education law, correct --**
 16 **"contributions are inadequate."**
 17 **Do you agree with that?**
 18 A. I do.
 19 **Q. And we'll just turn to the next page of**
 20 **recommendations. Recommendation No. 2:**
 21 **"Since local districts are responsible for**
 22 **over two-thirds of special education**
 23 **expenditures, local wealth may become a**
 24 **factor in determining the quality of**
 25 **special education services available. It**

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1 is therefore recommended that additional
 2 studies be conducted to determine whether
 3 special education programs across
 4 Colorado's 176," now 178, "school
 5 districts offer equitable services."
 6 You don't have any knowledge of any such
 7 study ever being conducted, do you, Ms. Herrmann?
 8 A. No, I do not.
 9 **Q. Recommendation No. 3:**
 10 "On average, special education
 11 expenditures accounted for 7.5 percent of
 12 the total education" -- "educational
 13 expenditures. This compares to a national
 14 average of 12 percent. This difference
 15 may indicate that in addition to the state
 16 ECEA contributions being inadequate, local
 17 contributions are not able to keep up with
 18 the costs of providing quality special
 19 education services. Thus, special
 20 education services may be of poorer
 21 quality than they should be."
 22 You agree with that statement, don't you,
 23 Ms. Herrmann?
 24 A. I have no reason not to --
 25 **Q. Okay.**

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1 A. -- agree.
 2 **Q. And then where they -- there was a survey**
 3 **that was sent out, and it says under recommendation**
 4 **No. 4: "Inadequate funding has led to several other**
 5 **issues identified by survey respondents." And No. B**
 6 **is: "Moneys are not available to train, retrain, and**
 7 **attract quality staff." Any reason to disagree with**
 8 **that, Ms. Herrmann?**
 9 A. No.
 10 **Q. In fact, the issue of underfunding of**
 11 **categoricals is something the state has studied over**
 12 **time; isn't that true?**
 13 A. It is. Discussed. I don't know about
 14 studied, but discussed.
 15 **Q. I'd like to put up what's been marked as**
 16 **deposition -- or Trial Exhibit -- I keep calling it**
 17 **deposition; I apologize -- Trial Exhibit No. 29. This**
 18 **is an amendment related to No. -- sorry, Amendment 23**
 19 **from the Colorado Board of Education. State board of**
 20 **education. Have you seen this document before? If it**
 21 **helps, I showed it to you in your deposition.**
 22 A. Yes.
 23 **Q. And back in 2001, the state board of**
 24 **education stated:**
 25 **"Special education represents, at once,**

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1 our high obligation to our most vulnerable
 2 children and the ultimate in unfunded
 3 mandates. School districts have faced
 4 cruel dilemmas that set child against
 5 child and program against program as they
 6 bore the brunt of broken federal promises
 7 and special education funding and state
 8 shortfalls. We recommend, if possible,
 9 the accelerated funding of this critical
 10 need area."
 11 Did I read that correctly?
 12 A. You did.
 13 **Q. Then as part of the 2005 work, there was a**
 14 **presentation made to the committee on categorical**
 15 **funding. Do you remember that?**
 16 A. I do.
 17 **Q. And that presentation was made by Deb**
 18 **Godshall?**
 19 A. Yes.
 20 **Q. And who is Deb Godshall?**
 21 A. She was assistant director of the
 22 legislative council for the general assembly.
 23 **Q. And so her report is Trial Exhibit No. 27.**
 24 **Yes? Okay. I'm just asking if you recognize this.**
 25 **You've seen this before?**

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1 A. Oh. Yes. Yes.
 2 **Q. Okay.**
 3 A. I'm sorry.
 4 **Q. Sorry, my question wasn't very clear. And**
 5 **in this report, it addressed various categorical**
 6 **funding, and you've already talked about what some of**
 7 **those categoricals are, correct?**
 8 A. Yes.
 9 **Q. It talks about the ELPA funding, and it**
 10 **shows in 2004 and '5 the ELPA allocation was \$117 per**
 11 **pupil. That's per year, correct?**
 12 A. Correct.
 13 **Q. And \$65 per pupil per year, correct?**
 14 A. Correct.
 15 **Q. And then in Table 2, it shows what the**
 16 **reimbursement is to school districts, and it was**
 17 **11.4 percent, correct?**
 18 A. Correct.
 19 **Q. Districts are expected to make up the rest**
 20 **of that through drawing on their general fund**
 21 **generally, correct?**
 22 A. Yes.
 23 **Q. And we'll --**
 24 A. Except for federal dollars that also come
 25 in.

5549

1 **Q. On special education, the same year it**
 2 **shows that there was a total -- there were 80,000**
 3 **education students identified?**
 4 A. Yes.
 5 **Q. Total special education expenditures were**
 6 **567 million, approximately?**
 7 A. Yes.
 8 **Q. And you go over, and it shows that it was**
 9 **11.9 percent of unreimbursed special education as a**
 10 **percent of the PSFA, Public School Finance Act?**
 11 A. Yes.
 12 **Q. Then in 2009 this was looked at again as**
 13 **part of the other interim committee. Do you remember**
 14 **that, Ms. Herrmann?**
 15 A. I do.
 16 **Q. And this has been marked -- so who is Marc**
 17 **Carey and Todd Herreid?**
 18 A. Marc Carey is an economist in the
 19 legislative council, and Todd Herreid took Deb
 20 Godshall's place when Deb retired.
 21 **Q. And this is the report that was provided**
 22 **to the 2009 interim committee?**
 23 A. Yes.
 24 **Q. By leg. council?**
 25 A. Yes.

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1 **Q. And it has been marked Plaintiffs' Trial**
 2 **Exhibit 10367. And so for 2007 and '8, the numbers for**
 3 **ELPA are \$182 per pupil per year, but the category C is**
 4 **dropped down to \$17 per pupil per year, correct?**
 5 A. That's correct.
 6 **Q. And, again, to summarize, that's**
 7 **16.9 percent of the -- of the maximum that could be**
 8 **provided if the state actually allocated the total**
 9 **allowed under statute?**
 10 A. Yes.
 11 **Q. For special education, the population has**
 12 **grown approximately 2,000. It was 8,000 in the prior**
 13 **exhibit, correct?**
 14 A. Correct.
 15 **Q. The expenditures have gone up to**
 16 **\$12,000 -- or sorry, million. Sorry, we're going to**
 17 **play with the Elmo a little bit. Showing a per-pupil**
 18 **average cost per student of \$9,895 for special needs**
 19 **students, and the amount has dropped to 10.3 percent,**
 20 **correct?**
 21 A. That's correct.
 22 **Q. And we also studied gifted and talented**
 23 **students, correct? And they're part of a**
 24 **categorical -- or they're included in this calculation?**
 25 A. They are.

5551

1 **Q. And it shows that funding ranges for**
 2 **gifted and talented students range from a low of \$8.93**
 3 **per pupil to \$26.92 per pupil, and that's per year,**
 4 **correct?**
 5 A. Correct.
 6 **Q. Let's talk a little bit about the mill**
 7 **levies. You talked about how mill levies -- to pass a**
 8 **mill levy can be dependent on the local wealth of a**
 9 **district?**
 10 A. It can.
 11 **Q. And that -- the students have nothing to**
 12 **do with that ability to be able to pass a mill levy**
 13 **override; would you agree with that?**
 14 A. They do not.
 15 **Q. And one of the biggest places where**
 16 **there's a problem is that the assessed value and**
 17 **differentials between rich property districts and low**
 18 **property districts; do you agree with that?**
 19 A. I do.
 20 **Q. And you agree that there's nothing in the**
 21 **School Finance Act that requires districts to raise**
 22 **their mill levies to the statutory maximum?**
 23 A. Well, the statutory maximum mill levy
 24 right now is 27 mills.
 25 **Q. I'm talking mill levy overrides. Sorry.**

5552

1 A. Oh. I'm sorry.
 2 **Q. So there is nothing in the School Finance**
 3 **Act that requires districts to raise to their limit**
 4 **mill levy overrides to the statutory maximum?**
 5 A. No, there's nothing. That's all optional.
 6 **Q. And, in fact, if there was, wouldn't it be**
 7 **the same as having a statewide property tax; it is**
 8 **prohibited by the constitution?**
 9 A. Yes.
 10 **Q. And are you aware that if Denver raised**
 11 **its mill levy override to a statutory maximum, it would**
 12 **only raise enough money to cover the cuts that were**
 13 **made pursuant to the negative factor?**
 14 A. For all overrides?
 15 **Q. For mill levy overrides.**
 16 A. For -- in general. I don't know that I
 17 can answer that, because I haven't done that
 18 calculation.
 19 **Q. Would you agree, though, if that statement**
 20 **is true, that there -- then Denver would have no**
 21 **flexibility to meet local programs or other programs as**
 22 **necessary to address the specific needs of the**
 23 **community?**
 24 A. Say that again, please.
 25 **Q. If Denver raised its mill levy override to**

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1 its statutory max and only covered what was cut by the
 2 negative factor, it would have no other flexibility to
 3 meet local programs and other programs necessary to
 4 address specific needs of the community?
 5 MR. HEINKE: Objection, Your Honor.
 6 Foundation.
 7 THE COURT: Sustained.
 8 **Q. (BY MS. GEBHARDT) Ms. Herrmann, it's not**
 9 **your testimony that the districts have done anything to**
 10 **cause the shift of the state and local share, is it?**
 11 A. No. Absolutely not.
 12 **Q. And when you calculated the total amount**
 13 **of money that was potentially available under mill levy**
 14 **overrides, you included in that calculation the**
 15 **cost-of-living amount that the state didn't fund back**
 16 **in 2001?**
 17 A. Yes. That's on top of the 25 percent
 18 that's allowable, yes.
 19 **Q. And generally the cost of living is a**
 20 **state obligation, not a local obligation?**
 21 A. Always has been in this act.
 22 **Q. Except that now you're passing it on to be**
 23 **paid for out of locals through the mill levy override,**
 24 **potentially?**
 25 A. Well, let's go back. I don't know that

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1 it's a state obligation, necessarily. Other than it
 2 would have been the shared cost had it been included in
 3 the formula in the year that it didn't get funded.
 4 **Q. And your earlier statement that the cost**
 5 **of living has never been cut is not exactly accurate**
 6 **when you consider the negative factor, which takes**
 7 **things out of the factors, correct?**
 8 A. Well, I was talking about the factor
 9 itself doesn't get reduced. But, yes, the -- the
 10 negative factor has reduced all of the factors, yes.
 11 **Q. So let's move now to budget cuts. Even**
 12 **before the negative factor, the school finance unit**
 13 **takes certain dollars off the top of the per-pupil**
 14 **funding allocation; isn't that true?**
 15 A. That is true.
 16 **Q. And that includes funding for your unit,**
 17 **correct?**
 18 A. Yes.
 19 **Q. Funding for the CPP unit?**
 20 A. Yes.
 21 **Q. And funding for audit?**
 22 A. Yes.
 23 **Q. And those dollars are taken off the top,**
 24 **before the money's distributed to school districts?**
 25 A. Yes.

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1 **Q. And isn't it your -- it's your**
 2 **understanding that if you do a midyear rescission,**
 3 **which you've talked about, that's almost an effect of**
 4 **having double the cut than if it had been at the**
 5 **beginning of the year, because there's fewer choices**
 6 **available to a district?**
 7 A. That's correct.
 8 **Q. And you would also agree with me that many**
 9 **costs that school districts are having to bear are**
 10 **increasing faster than the Colorado Consumer Price**
 11 **Index or the Denver-Boulder CPI?**
 12 A. Many costs that who are? Say that again,
 13 please.
 14 **Q. You would agree with me that many costs**
 15 **that districts are asked to bear, those costs are**
 16 **increasing much faster than inflation?**
 17 A. Absolutely.
 18 **Q. And those are costs over which districts**
 19 **have no control?**
 20 A. That's true.
 21 **Q. And, in fact, just about everything that**
 22 **goes on in a district is going up except the funding to**
 23 **be able to support it at the same level; isn't that**
 24 **true?**
 25 A. That's true.

5556

1 **Q. Can we talk a little bit about what a**
 2 **BOCES is? Can you tell us what a BOCES is, please.**
 3 A. A BOCES is -- provides cooperative
 4 services to school districts who choose to be a member
 5 of a BOCES. And some are required to be a member of a
 6 BOCES because it's an administrative unit for special
 7 education depending on the size of the district. So
 8 nearly all small districts have to be involved with
 9 a -- with a BOCES.
 10 **Q. And you agree with the idea of having a**
 11 **BOCES for shared services?**
 12 A. I do.
 13 **Q. However, there's not adequate funding for**
 14 **BOCES either, is there?**
 15 A. No. It's all member-provided. So the
 16 school districts have to pay for all of the
 17 administration that goes on within a district. That
 18 they can't pull from excess -- or indirect costs from
 19 their federal programs.
 20 **Q. And it's also true, isn't it,**
 21 **Ms. Herrmann, that there's only been two or three years**
 22 **in the past ten years that there have not been budget**
 23 **cuts?**
 24 A. For the BOCES?
 25 **Q. Sorry. For all districts.**

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1 A. Oh, yes. In one form or another.
 2 **Q. And it's also true that the smaller the**
 3 **district gets, the harder it is to absorb the budget**
 4 **cuts because they have less choices?**
 5 A. That is true.
 6 **Q. Now, you said in response to the questions**
 7 **from Mr. Heinke -- Heinke -- sorry -- I never got it**
 8 **wrong before the trial -- that you believe that there's**
 9 **not enough money in the School Finance Act?**
 10 A. That's true.
 11 **Q. In fact, you made a presentation to the**
 12 **fiscal stability committee on October 1, 2009?**
 13 A. I did.
 14 **Q. I've put on the Elmo part of what has been**
 15 **marked as Deposition Exhibit 31. Do you recognize this**
 16 **part of this document?**
 17 A. I do.
 18 **Q. And just for the record, this is the cover**
 19 **sheet to it. This is the presentation you made to the**
 20 **fiscal stability committee?**
 21 A. It -- I was partial presenter.
 22 **Q. And this was the part you were responsible**
 23 **for, correct?**
 24 A. Yes.
 25 **Q. And at this presentation, you found that**

5558

1 **to meet an average education, it would take**
 2 **\$2.8 billion more than what's currently in the system**
 3 **in 2009?**
 4 A. Well, I think we need to clarify that just
 5 a little bit. An average education -- bringing the
 6 teachers up to average was one thing. But this is also
 7 an extended year, and it's extending the categorical
 8 programs for that extended year, and it's providing
 9 full-day kindergarten and it's providing half-day
 10 kindergarten for all -- or half-day preschool for all
 11 students. So it expands the services as well as
 12 bringing it up to average.
 13 **Q. So let's just look at what it would take**
 14 **to bring the expenditures to the national average.**
 15 **That's \$1.2 billion, correct?**
 16 A. Yes.
 17 **Q. And just to bring salaries up is another**
 18 **\$269 million, correct?**
 19 A. Yes.
 20 **Q. And then just to fill the gap which we've**
 21 **already talked about in categorical funding would be**
 22 **another \$816 million?**
 23 A. Correct.
 24 **Q. So just for those, without expanding any**
 25 **programs, is another \$1.086 billion?**

5559

1 A. Yes.
 2 MS. GEBHARDT: Sorry, I've been summonsed.
 3 (Discussion off the record between
 4 Ms. Gebhardt and Ms. Bezoza.)
 5 **Q. (BY MS. GEBHARDT) And you added in**
 6 **extending the school year and full-day kindergarten**
 7 **because you thought that was part of an average**
 8 **education that students in Colorado deserved, correct?**
 9 A. I don't know that it's necessarily
 10 average, because I'm not sure that the number of days
 11 that are currently taking place is under average across
 12 the nation. But I think it's an important element to
 13 be able to extend that school year and have kids in
 14 school longer.
 15 **Q. And to have full-day kindergarten?**
 16 A. Yes.
 17 **Q. Okay. So you talked a little in response**
 18 **to the questions from Mr. Heinke -- did I get it right?**
 19 **Another block. I'm sorry, Nic -- about the at-risk**
 20 **funding. And you would agree with me, wouldn't you,**
 21 **Ms. Herrmann, that there's no valid educational reason**
 22 **for capping the at-risk -- at-risk funding, the**
 23 **30 percent cap? There's no valid educational reason**
 24 **for that?**
 25 A. No. Not really, no.

5560

1 **Q. And there's no valid educational reason**
 2 **for the budget stabilization factor?**
 3 A. No.
 4 **Q. And there's no valid educational reason**
 5 **that you don't include reduced-price lunch in the**
 6 **funding for at risk?**
 7 A. No.
 8 **Q. All right. So am I correct that there is**
 9 **no valid educational reason for the budget**
 10 **stabilization factor? I asked you a double negative,**
 11 **so the question and the answer weren't very clear. So**
 12 **there -- am I correct that there is no valid**
 13 **educational reason for the budget stabilization factor?**
 14 A. You are correct.
 15 **Q. And I am correct that there's no valid**
 16 **educational reason for the 30 percent cap in at risk?**
 17 A. You are correct.
 18 **Q. And there's no valid educational reason to**
 19 **not include reduced-price lunch kids in the calculation**
 20 **and funding for at risk?**
 21 A. You are correct.
 22 **Q. And, again, there are no increases in the**
 23 **School Finance Act to reflect the mandates in CAP4K;**
 24 **that's a correct statement as well?**
 25 A. I believe so.

5561

1 **Q. And you would also agree that in the last**
 2 **couple of years, there's been a new method of funding**
 3 **legislation that is known as gifts, grants, and**
 4 **donations?**
 5 A. That's correct.
 6 **Q. And you also agree that grants are not a**
 7 **reliable source of funding, correct?**
 8 A. Some grants are not.
 9 **Q. Not federal grants, private grants?**
 10 A. Right.
 11 **Q. And that's because you'll never know if**
 12 **you actually receive the money that could provide a**
 13 **program? And, in fact, you've had difficulty having**
 14 **enough money to initiate a program that's been put in**
 15 **place based on gifts, grants, and donations that's**
 16 **funded by that source; is that a true statement?**
 17 A. That is a true statement.
 18 **Q. Now, you're also -- you talked a little**
 19 **about declining enrollment. You're familiar with a**
 20 **study that the state had conducted on declining**
 21 **enrollment?**
 22 A. I am.
 23 **Q. I've put on the Elmo what has been marked**
 24 **as Trial Exhibit 10487. Do you recognize this**
 25 **document, Ms. Herrmann?**

5562

1 A. I do.
 2 **Q. And it's the declining enrollment study**
 3 **that was prepared by Pat Pacey for the state department**
 4 **of education?**
 5 A. It was.
 6 MS. GEBHARDT: At this time I move for
 7 admission of this exhibit, please.
 8 MR. HEINKE: No objection, Your Honor.
 9 MR. HINOJOSA: No objection.
 10 THE COURT: 10487 will be admitted.
 11 **Q. (BY MS. GEBHARDT) I direct your attention**
 12 **to page 157. And it talks about what the state's role**
 13 **in public education is, and it states:**
 14 **"The state's role in public education is**
 15 **to set student performance expectations**
 16 **and to measure how well schools and**
 17 **districts are operating given allocated**
 18 **resources. Such expectations and**
 19 **accountability require determining the**
 20 **cost necessary to provide pupils with a**
 21 **public education that meets both state and**
 22 **federal mandates."**
 23 **Did I read that correctly?**
 24 A. Yes, you did.
 25 **Q. And you believe that the costing-out study**

5563

1 **that was performed by Augenblick and Palaich quantified**
 2 **the financial concerns of school districts around the**
 3 **date through a credible and defensible analysis, don't**
 4 **you?**
 5 A. For the most part, yes.
 6 **Q. I'd also direct your attention to**
 7 **page 177, where it states: "Student performance should**
 8 **be considered when funding levels are determined." You**
 9 **agree with that statement as well?**
 10 A. Yes.
 11 **Q. And one more. On page 6, Pat Pacey and**
 12 **her company found that although the number of non-CSAP**
 13 **course offerings is not to have had a statistically**
 14 **significant relationship with performance or any grade**
 15 **level regressions, it did provide to be an important**
 16 **and positive indicator of performance when using the**
 17 **graduation rate as a measure of performance, correct?**
 18 A. That's correct.
 19 **Q. One more second. Sorry. Now, you've**
 20 **looked at various audited financials and information**
 21 **relating to the budgets of the school districts in**
 22 **this -- across the state and in the districts involved**
 23 **in this litigation?**
 24 A. I have.
 25 **Q. And you have not identified any financial**

5564

1 **mismanagement on the part of any of the districts**
 2 **listed up on demonstrative Exhibit 30175; that's a true**
 3 **statement, isn't it?**
 4 A. That's a true statement.
 5 **Q. And you also believe it's the state's**
 6 **obligation to support all kids in the state?**
 7 A. Yes.
 8 MS. GEBHARDT: Could I just have a minute,
 9 Your Honor?
 10 THE COURT: Yes.
 11 (Discussion off the record between
 12 Ms. Gebhardt, Mr. Kawanabe, and Ms. Bezoza.)
 13 **Q. (BY MS. GEBHARDT) One last question.**
 14 A. Can I go back to the other question, the
 15 last question?
 16 **Q. Sure. What was the last question?**
 17 A. About supporting all kids in the state.
 18 **Q. Yes.**
 19 A. As long as they choose public education.
 20 **Q. Oh, fair enough.**
 21 A. Yes.
 22 **Q. It is a public education finance suit.**
 23 **And then I'd just turn your attention to page 5 of the**
 24 **declining enrollment study. And the second bullet**
 25 **states:**

5565

1 **"Another important result is that reading**
 2 **and math performances as measured by CSAP**
 3 **are both positively related to**
 4 **instructional expenditures per pupil,**
 5 **although the relationship is stronger for**
 6 **math and reading."**
 7 **And, again, you agree with that statement?**
 8 A. I do.
 9 MR. HEINKE: Objection, Your Honor.
 10 Foundation.
 11 THE COURT: Overruled.
 12 (Discussion off the record between
 13 Ms. Gebhardt and Ms. Bezoza.)
 14 MS. GEBHARDT: Thanks very much,
 15 Ms. Herrmann.
 16 THE WITNESS: Thank you.
 17 THE COURT: Cross-examination.
 18 CROSS-EXAMINATION
 19 BY MR. HINOJOSA:
 20 **Q. Good morning, Ms. Herrmann.**
 21 A. Good morning.
 22 **Q. Now, you understand that mill levy**
 23 **overrides are more costly to those districts with lower**
 24 **assessed values than they are for those with higher**
 25 **assessed values, correct?**

5566

1 A. It takes more mills to generate the same
 2 dollars, yes.
 3 **Q. And so, for instance, if we look at**
 4 **Exhibit 30191, there's been some testimony in this case**
 5 **about Boulder Valley's mill levy overrides and what**
 6 **they've sought. And their assessed value is**
 7 **4.194 billion; is that right?**
 8 A. That's correct.
 9 **Q. And then if we look at Greeley, do you**
 10 **know how Greeley's net assessed valuation compares?**
 11 A. Not off the top of my head, no. I know
 12 it's much lower.
 13 **Q. Okay. We'll go to page 12 of**
 14 **Exhibit 30191. And Greeley's -- can you read how much**
 15 **Greeley's net assessed valuation is?**
 16 A. 945 million.
 17 **Q. All right. Is that one of the examples?**
 18 **You know, for instance, it would take Greeley more mill**
 19 **levies to raise the same -- or to generate the same**
 20 **amount of revenue compared to Boulder Valley; is that**
 21 **right?**
 22 A. That is correct.
 23 **Q. And then the rough math estimate would be**
 24 **about four times as many mill levy overrides to**
 25 **generate the same amount of money between those two**

5567

1 **districts, correct?**
 2 A. Yes.
 3 **Q. Okay. Now, you talked earlier about the**
 4 **increase in annual appropriations for categorical**
 5 **funding between 2000 and 2001 through I think it was**
 6 **the 2009-2010 school year. Do you recall that?**
 7 A. It's between '10-'11.
 8 **Q. Okay.**
 9 A. I went to '10-'11. Yes, I recall.
 10 **Q. And that was 89 million --**
 11 A. Yes.
 12 **Q. -- additional? And did you factor in the**
 13 **increase in student population over that time period?**
 14 A. No. It was just the increase in the
 15 funding that was being discussed at that time.
 16 **Q. All right. So that would -- some of that**
 17 **increase would be resulting from the increase in**
 18 **English language learner students and free lunch**
 19 **students?**
 20 A. No.
 21 **Q. That's just the change from the formulas?**
 22 A. Yes. It's just -- it just reflects the
 23 increases that are based on the inflationary or the
 24 inflation plus 1 percent increases in the overall
 25 funding. It doesn't have anything to do with the

5568

1 growth of the numbers of students in those various
 2 programs.
 3 **Q. Okay. And it's not your opinion that the**
 4 **levels of funding back in 2000-2001 were sufficient,**
 5 **correct?**
 6 A. I have not stated an opinion on that, yes.
 7 **Q. And the same goes for when you're talking**
 8 **about the 2010-2011 categorical funding, you're not**
 9 **saying that that amount is sufficient either, correct?**
 10 A. I'm -- I'm not, based on documents that
 11 I've provided.
 12 **Q. And in -- I'm going to show you what's**
 13 **been marked as Plaintiff -- or this is Trial**
 14 **Exhibit 33. It's the same exhibit that was shown to**
 15 **you earlier. This is July 2010 "Understanding Colorado**
 16 **School Finance and Categorical Program Funding." And**
 17 **that was Exhibit 30012 earlier.**
 18 A. Yes.
 19 **Q. Now, you're not aware of any false**
 20 **representations or misrepresentations of facts related**
 21 **to the various categories of funding and those amounts**
 22 **that are portrayed here in this report, correct?**
 23 A. I'm not aware of any, no.
 24 **Q. So if we go to page -- page 12 first. And**
 25 **this is going over from page 11. Page 11, it talks**

5569

1 about the English Language Proficiency Act. And it
 2 says currently that a hundred thousand -- it is
 3 estimated that a hundred thousand Colorado public
 4 school students, 12 percent statewide, have dominant
 5 languages other than English and are functioning below
 6 grade level, correct?
 7 A. That's what it says, yes.
 8 Q. And going over to page 12, in the last
 9 paragraph in this same section it states that in budget
 10 year 2010-2011, it is estimated that the state ELPA
 11 funding amount provided will support roughly
 12 20 percent to 25 percent of the total educational
 13 expenditures incurred by districts to address the
 14 English language proficiency needs of their students,
 15 correct?
 16 A. That's what it says, yes.
 17 Q. And so despite the increase that you've
 18 referenced in categorical funding, there -- even with
 19 that increase, the state ELPA funding amount still only
 20 provided roughly 20 to 25 percent of the total
 21 expenditures incurred by districts to address the
 22 English language proficiency needs of their students,
 23 correct?
 24 A. That's correct.
 25 Q. And then going to gifted and talented.

5570

1 Page 13 of Exhibit 33. When we go to the last
 2 paragraph there -- well, first -- first it says here on
 3 gifted and talented that there are approximate -- over
 4 56,000 GT students served in Colorado public schools,
 5 correct?
 6 A. Correct.
 7 Q. That's about 6 percent of the population,
 8 right?
 9 A. Yes.
 10 Q. So that's roughly about half of the
 11 population of English language learners, correct?
 12 A. Yes.
 13 Q. And in the budget year 2010-2011, at the
 14 bottom of page 12 here, it says state categorical
 15 funding for gifted and talented will be \$9 million,
 16 correct?
 17 A. Correct.
 18 Q. And that \$9 million compares to the
 19 approximate 12.4 billion that was allocated for English
 20 language learner students, correct?
 21 A. That's 12.4 million.
 22 Q. I'm sorry?
 23 A. 12.4 million, yes.
 24 Q. 12.4 million. Okay.
 25 A. Yes.

5571

1 Q. And so the -- the gifted and talented
 2 funding per student would be more than the ELPA funding
 3 per student, taking all the English language learners
 4 in the state as a whole, correct?
 5 A. That's true.
 6 Q. And there's no rational reason why the
 7 gifted and talented program would be allocated more
 8 funding per student than the ELPA funding, correct?
 9 MR. HEINKE: Objection. Calls for a legal
 10 conclusion.
 11 MR. HINOJOSA: I'm not asking for a legal
 12 conclusion, Your Honor.
 13 THE COURT: Overruled.
 14 A. I think that the --
 15 Q. (BY MR. HINOJOSA) Yes or no? Is there a
 16 rational reason for allocating more funds to gifted and
 17 talented per student versus ELPA funding? Yes or no?
 18 A. Well, I think there could be -- yes. I'll
 19 say yes. Because . . .
 20 Q. Would you distinguish a rational reason
 21 from a valid educational reason? In the answer that
 22 you just gave.
 23 A. I'd like to provide just a brief
 24 explanation of why I said that.
 25 Q. No. I'm just going to -- I'm just going

5572

1 to -- if you can, please, just answer the questions in
 2 front of you. You'll probably have an opportunity
 3 through your attorney to address it. Do you recall me
 4 asking you the same question during your deposition?
 5 A. Yes.
 6 Q. Do you recall what your answer was?
 7 A. No.
 8 Q. All right.
 9 A. I mean I recall that it was no.
 10 Q. You recall that you at that time -- okay.
 11 So you recall -- just so I can make sure the record's
 12 clear, you recall that when your deposition was taken
 13 that you knew of no valid reason why GT was -- received
 14 a higher amount of funding per pupil than ELPA,
 15 correct?
 16 A. Correct.
 17 Q. And so do you want to change your answer
 18 today? Yes or no?
 19 A. I'll say no, I won't change my answer.
 20 Q. All right. Thank you. When we look at
 21 gifted and talented funding on page 13 of Exhibit 33.
 22 Once again, Exhibit 33 was produced by the Colorado
 23 Department of Education, correct?
 24 A. That's correct.
 25 Q. And here it states in the last paragraph:

5573

1 **"It is estimated that in budget year**
 2 **2010-2011, administrative units will**
 3 **combine state funding with an additional**
 4 **30 million from local and other resources**
 5 **to provide educational programs for their**
 6 **students."**
 7 **Correct?**
 8 A. Correct.
 9 **Q. When we look at special education on**
 10 **page 14 of Exhibit 33, in the last paragraph in that**
 11 **section, it states: "In budget year 2010-2011, total**
 12 **special education costs will equal roughly**
 13 **825 million." Correct?**
 14 A. Correct.
 15 **Q. And then it says:**
 16 **"In budget year 2010-2011, it is**
 17 **anticipated that state funding will cover**
 18 **approximately 15.4 percent of special**
 19 **education costs, federal funding will**
 20 **cover an additional" -- "an additional**
 21 **28.3 percent of these costs, and local**
 22 **sources of funding will cover the**
 23 **remaining 56.3 percent of the costs."**
 24 **Correct?**
 25 A. Correct.

5574

1 **Q. And then it also speaks of some ARRA funds**
 2 **there. Are those ARRA funds -- do you know whether or**
 3 **not those are still around?**
 4 A. They have to be spent by September 30 of
 5 2012.
 6 **Q. When we look at transportation on page 14**
 7 **of Exhibit 33, at the bottom there it says:**
 8 **"Each district is eligible to receive**
 9 **\$37.87 per mile travel reimbursement.**
 10 **Further, each district may receive funding**
 11 **equal to 33.87 percent of its total costs**
 12 **remaining after the per-mile traveled**
 13 **reimbursement."**
 14 **Correct?**
 15 A. Correct.
 16 **Q. And then on page 15, the second-to-the-**
 17 **last paragraph, it states -- in the last sentence, it**
 18 **says, "In budget" -- well, the second-to-the-last**
 19 **sentence:**
 20 **"In budget year 2010-2011, state funding**
 21 **to reimburse school districts' prior year**
 22 **transportation expenses equals**
 23 **49.9 million, but state funding will cover**
 24 **only about 55 percent of the districts'**
 25 **total reimbursement."**

5575

1 **Correct?**
 2 A. That's correct.
 3 **Q. And if we go to vocational education. In**
 4 **the first paragraph up there it says:**
 5 **"Roughly 90 percent of Colorado school**
 6 **districts provide career and technical**
 7 **educational opportunities for their**
 8 **students."**
 9 **Right?**
 10 A. Right.
 11 **Q. And then in the last paragraph, it states:**
 12 **"In budget year 2009-2010, district CTE**
 13 **program expenses were nearly 99 million,**
 14 **of which 23.4 million was eligible for**
 15 **state reimbursement."**
 16 **Correct?**
 17 A. Correct.
 18 **Q. And it says:**
 19 **"Available state funding covered about**
 20 **98 percent of the 23.4 million, while**
 21 **districts provided the balance from local**
 22 **and other sources."**
 23 **Correct?**
 24 A. Correct.
 25 **Q. And is GT funding limited to two years of**

5576

1 **funding, like ELPA funding?**
 2 A. No.
 3 **Q. Is GT -- are GT funds reserved for only**
 4 **the smartest GT students?**
 5 A. No.
 6 **Q. The neediest GT students?**
 7 A. No.
 8 **Q. Provided to all identified GT students?**
 9 **Do you know? Yes or no?**
 10 A. I can't tell you that.
 11 **Q. Okay. Now, the change that you talked**
 12 **about to the cost-of-living factor, that was made so**
 13 **that a district's cost-of-living factor is increased**
 14 **based on its cost of living above the household**
 15 **increase rather than the increase above inflation,**
 16 **which reduced the funds from the cost-of-living**
 17 **formula, correct?**
 18 A. That's correct.
 19 **Q. Would you agree that there's not much**
 20 **change that goes on in the cost-of-living factor and**
 21 **that it generally adds a few million dollars?**
 22 A. That's correct.
 23 **Q. And the each size factor was reduced**
 24 **by 0.0045 in 2003-2004 as a money-savings measure that**
 25 **has not been restored to this day, correct?**

5577

1 A. That's correct.

2 **Q. And I might have asked this earlier, but I**

3 **just want to make sure. You don't know if at-risk**

4 **funding combined with total program funding is enough**

5 **for at-risk students to receive a thorough and uniform**

6 **education, without stating a legal conclusion, correct?**

7 A. Correct.

8 **Q. Regarding the at-risk calculation, I'm not**

9 **sure if the record is clear on this, but at risk**

10 **doesn't -- for its proxy, it doesn't consider all**

11 **English language learner students, right?**

12 A. Right.

13 **Q. For its proxy, if you are an English**

14 **language learner student and your scores were not**

15 **included in the academic performance of the district,**

16 **then you might be included in the at-risk proxy,**

17 **correct?**

18 A. Correct.

19 **Q. All right. And for charter schools**

20 **established after 2004-2005, any district that had**

21 **40 percent or more free lunch and they -- the charter**

22 **schools will receive the same amount of funding,**

23 **per-pupil funding, that the district receives**

24 **regardless of whether or not they have a lower**

25 **percentage of at-risk students, correct?**

5578

1 A. I -- would you please restate that, 'cause

2 I don't . . .

3 **Q. Sure thing. For charter schools**

4 **established after 2004-2005.**

5 A. Yes.

6 **Q. All right? Regardless of the percentage**

7 **of at-risk students that they have within their school,**

8 **so long as the district that they're within has**

9 **40 percent or more of free lunch students, then they**

10 **would receive the same amount of funding for -- as the**

11 **district receives per pupil, correct?**

12 A. That's correct.

13 **Q. Okay. Thank you for helping me with that.**

14 **Kathy asked you all the good questions, so I need to**

15 **make sure I don't double up.**

16 **Regarding the property tax and specific**

17 **ownership taxes, there's difference -- differences in**

18 **taxes that are collected across school districts,**

19 **correct?**

20 A. I'm not sure I understand the question.

21 **Q. Yeah. In other words, the amount of**

22 **specific ownership taxes collected in districts across**

23 **the state varies?**

24 A. Oh, absolutely. The amount, yes.

25 **Q. And you're not aware of any increases in**

5579

1 **the state school finance formula that addressed the**

2 **cost of implementing CAP4K or the new model content**

3 **standards, correct?**

4 A. Correct.

5 **Q. And regarding the mill levy overrides that**

6 **you spoke about earlier, despite the differences in**

7 **school districts being able to generate the same amount**

8 **of money because of the variations in net assessed**

9 **valuation, there's no state share that's put into those**

10 **overrides, correct?**

11 A. Correct.

12 **Q. You would agree that Mapleton, Sheridan,**

13 **Rocky Ford, and Greeley are fairly low-wealth school**

14 **districts, correct?**

15 A. Correct.

16 **Q. I'm going to show you what's been marked**

17 **as Trial Exhibit 48. This is titled "Fiscal Year**

18 **2010-2011 Total Program Funding Budget Supplemental and**

19 **Reduction Due to Education, Jobs, and ARRA State Fiscal**

20 **Stabilization Grant." Are you familiar with this**

21 **document? Let me show it to you as a whole first.**

22 A. Yes. It's been a while since I've seen

23 it.

24 MR. HINOJOSA: And may I approach, Your

25 Honor?

5580

1 THE COURT: Yes.

2 MR. HINOJOSA: I'll hand this to the Court

3 first. Hopefully I'll be able to zoom enough for you.

4 THE COURT: Thank you.

5 **Q. (BY MR. HINOJOSA) And in this document,**

6 **please tell the Court generally what this document**

7 **describes. If you need to see --**

8 A. Do you have the totals pages on it? Can I

9 see the totals pages?

10 **Q. These are the two pages that we have**

11 **submitted.**

12 A. Do we have a total on it?

13 THE COURT: Do you want us to make a copy?

14 MR. HINOJOSA: That's fine, Your Honor. I

15 have my notes.

16 THE COURT: Okay.

17 A. Okay. I -- I think I understand what it's

18 saying, now that I can read it.

19 **Q. (BY MR. HINOJOSA) Okay. Please share**

20 **with the Court what this document describes.**

21 A. Okay. You can put this back. I don't

22 know if you want to. I understand. This -- this

23 particular document shows the differences between what

24 the total program funding would have been with and

25 without the federal stimulus dollars that were provided

5581

1 to cover a portion of the state's funding.
 2 So the first section, I believe -- can you
 3 put --
 4 **Q. Sure.**
 5 A. The first section, which is -- has an A at
 6 the top, shows the February 2011 prior to the federal
 7 adjustment for fiscal year 2010-'11, and then B shows
 8 what the total program funding would have been after
 9 the adjustment with the federal dollars and
 10 incorporating the categorical buyout freeze amount.
 11 **Q. And the -- the influx of federal dollars**
 12 **didn't mean more money, it just reduced the state's**
 13 **share, correct?**
 14 A. That's correct.
 15 **Q. And looking at Trial Exhibit 49.**
 16 MR. HINOJOSA: May I approach, Your Honor?
 17 THE COURT: Yes.
 18 **Q. (BY MR. HINOJOSA) Can you see Trial**
 19 **Exhibit 49 up there? And I won't ask you about any**
 20 **specific numbers just yet.**
 21 A. Okay.
 22 **Q. Do you recognize that document also?**
 23 A. Can you make it just a little bigger?
 24 **Q. Sure. And it's titled "Comparison of**
 25 **Funding, Fiscal Year 2007-'08 through 2011-2012."**

5582

1 A. Yes, I recognize the document.
 2 **Q. And I'll -- well, let me hand this to you**
 3 **first. Now, the amounts for 2010-2011, which is**
 4 **approximately the 6.8 billion, that was going to be**
 5 **less than the 2009-2010 final of 7 billion; is that**
 6 **right?**
 7 A. Please ask that question again.
 8 **Q. Sure. The amounts for 2010-2011 were**
 9 **going to be less than the 2009-2010, correct?**
 10 A. That is correct.
 11 **Q. Now, school districts are also required to**
 12 **submit accreditation reports for school finance, right?**
 13 A. Yes.
 14 **Q. And those accreditation reports determine**
 15 **whether or not districts are in compliance with**
 16 **Article 44 and 45 as set by the state, correct?**
 17 A. Correct.
 18 **Q. These are part of the district's annual**
 19 **financial audits which come out of their total program**
 20 **funding, correct?**
 21 A. Correct.
 22 **Q. And the department produces a handbook.**
 23 **I'm going to show you what's been marked as Exhibit 55.**
 24 **And this is the handbook that's to be followed by the**
 25 **districts when performing their audits, right?**

5583

1 A. Yes.
 2 **Q. And there hasn't been any costing out of**
 3 **what it takes for the districts to follow the policies**
 4 **and procedures set forth in the handbook, correct?**
 5 A. No.
 6 **Q. The agency reviews every audit to make**
 7 **sure every district is in compliance, correct?**
 8 A. Yes.
 9 **Q. And you don't believe there was any**
 10 **non-compliance by the districts Greeley, Mapleton,**
 11 **Rocky Ford, and Sheridan, correct?**
 12 A. Correct.
 13 **Q. In fact, it's your testimony that those**
 14 **four districts are efficiently and effectively spending**
 15 **their dollars, correct?**
 16 A. Correct.
 17 **Q. And you looked at their audits, and you**
 18 **didn't find any deficiencies, correct?**
 19 A. Correct.
 20 **Q. You hope the state starts to provide more**
 21 **funding to deal with the mandates or reduces mandates,**
 22 **because it's becoming increasingly difficult to meet**
 23 **the mandates, correct?**
 24 A. Correct.
 25 **Q. And you retired because you felt that**

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1 **things were going in a different direction than what**
 2 **you wanted to be a part of, correct?**
 3 A. Correct.
 4 **Q. You were seeing the decrease in funding**
 5 **for districts, and you thought that was painful?**
 6 A. Yes.
 7 **Q. And you felt that school districts had to**
 8 **make serious decisions about what was being reduced or**
 9 **not being able to grow, correct?**
 10 A. Correct.
 11 **Q. You felt that all districts were being**
 12 **affected, but it was more severely affecting the**
 13 **smaller districts, correct?**
 14 A. Correct.
 15 **Q. And the extent of reduction decisions by**
 16 **the districts depended on various factors, but the**
 17 **reductions were a fact, correct?**
 18 A. Correct.
 19 MR. HINOJOSA: Pass the witness.
 20 THE COURT: Thank you. Redirect?
 21 MR. HEINKE: Thank you, Your Honor.
 22 REDIRECT EXAMINATION
 23 BY MR. HEINKE:
 24 **Q. Ms. Herrmann, you discussed with**
 25 **Ms. Gebhardt that there have only been two or three**

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1 years over the last decade where there hasn't been some
 2 sort of a cut. Do you recall that conversation?
 3 A. Yes.
 4 Q. Do you know how many years over the last
 5 ten the total amount of dollars going to public schools
 6 has been less than the year before?
 7 A. Just the last couple.
 8 Q. So other than that, the total amount has
 9 always gone up?
 10 A. Yes.
 11 Q. Ms. Gebhardt also showed you part of your
 12 presentation to the fiscal stability committee. Do you
 13 recall that?
 14 A. I do.
 15 Q. And can you just read for the record what
 16 you entitled that presentation?
 17 A. "Estimated Cost of Ideal System."
 18 Q. Thank you. You also discussed with
 19 Ms. Gebhardt whether there was -- I believe the term
 20 was a "valid educational reason" for certain components
 21 of the at-risk factor. Do you recall that
 22 conversation?
 23 A. I do.
 24 Q. Were you involved in the original setting
 25 of the at-risk proxy factor?

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1 A. I was not.
 2 Q. You also discussed with Mr. Hinojosa the
 3 conversation around whether it was rational to allocate
 4 more funds to gifted and talented versus ELPA dollars.
 5 And I think you said you might have wanted to explain
 6 something there. I wanted to give you that chance.
 7 A. All I was thinking was that there are some
 8 federal dollars that go along with the ELPA funding
 9 that's a little bit more specific than that that's
 10 identified for gifted and talented. So that -- that
 11 would be the only rational reason that one might be
 12 given a little bit more than the other.
 13 Q. It might be a reason?
 14 A. There could be a reason. I don't know
 15 that that is a reason. But there could be a reason.
 16 Q. You also discussed with Mr. Hinojosa the
 17 ability to raise certain funds in Greeley versus
 18 Boulder. Do you recall that conversation?
 19 A. I do.
 20 Q. If you'll look back at Exhibit 30175. Has
 21 Boulder Valley gone to its voters and gotten voter
 22 override mills?
 23 A. Yes.
 24 Q. Has Greeley?
 25 A. No.

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1 Q. You mentioned, I think, with both
 2 Mr. Hinojosa and Ms. Gebhardt that there haven't been
 3 any increases in the School Finance Act to address
 4 mandates like CAP4K. Are districts permitted to
 5 reallocate their dollars to spend resources on CAP4K?
 6 A. Yes.
 7 Q. And finally, if I can do this right,
 8 Ms. Herrmann, you discussed the 2005, I believe, task
 9 force report with Ms. Gebhardt. And you read the
 10 sentence about the inadequacy of spending. I believe
 11 the sentence was:
 12 "The level of base per-pupil spending has
 13 been inadequate in prior school finance
 14 acts because it has never been set based
 15 on the academic performance expectations."
 16 Could you read the next sentence, please.
 17 A. "Success in setting an adequate funding
 18 expenditure level" --
 19 MS. GEBHARDT: Your Honor, I'm going to
 20 object because this goes into matters excluded by your
 21 order.
 22 MR. HINOJOSA: Same objection, Your Honor.
 23 MR. HEINKE: And, Your Honor, I would just
 24 say for the record I think if counsel's going to ask
 25 Ms. Herrmann to read part of a paragraph, it would be

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1 fair to have her read --
 2 MS. GEBHARDT: Well, I intentionally
 3 didn't ask her to read the rest because it would have
 4 violated your order.
 5 THE COURT: Sustained.
 6 MR. HEINKE: No further questions. Thank
 7 you.
 8 THE COURT: Recross?
 9 MS. GEBHARDT: Thank you, Your Honor.
 10 Hello again.
 11 MR. HEINKE: Okay. Do you want that
 12 exhibit?
 13 MS. GEBHARDT: Yes, please. Thanks. I
 14 get to use an electronic exhibit? No, the budget
 15 stabilization. Thanks.
 16 RE-CROSS-EXAMINATION
 17 BY MS. GEBHARDT:
 18 Q. First, you talked about how the funding
 19 has gone up over the last ten years, Ms. Herrmann.
 20 A. Yes.
 21 Q. Is that true?
 22 A. Yes.
 23 Q. We've seen a pretty significant increase
 24 in students as well, haven't we?
 25 A. Absolutely.

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1 **Q. And funding goes up based on the increase**
 2 **in students?**
 3 A. Yes.
 4 **Q. And then Mr. Heinke looked at where it**
 5 **says "Cost of Ideal System." That's not your testimony**
 6 **as to what you were costing out here, is it?**
 7 A. My testimony was that it was bringing the
 8 teachers to an average. And . . . But we were asked
 9 to look at --
 10 **Q. But what you put in here is not taking it**
 11 **to a dream world, taking it to an average, bringing it**
 12 **to an average in the nation, what it would look like,**
 13 **which certainly isn't a dream world; isn't that true?**
 14 A. That is true.
 15 **Q. So it's not an ideal system, it's an**
 16 **average system?**
 17 A. Correct.
 18 **Q. And even though districts can reallocate**
 19 **their resources, that doesn't change what you stated**
 20 **earlier in your testimony, that there are not**
 21 **sufficient resources in the School Finance Act to meet**
 22 **all of the demands placed on districts, correct?**
 23 A. Correct.
 24 THE COURT: Recross?
 25

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1 RE CROSS-EXAMINATION
 2 BY MR. HINOJOSA:
 3 **Q. Exhibit 30175 shows the mill levy summary**
 4 **for what year?**
 5 A. 2010-'11.
 6 **Q. It doesn't show the mill levy summary for**
 7 **any previous years, correct?**
 8 A. No. Well, that's -- this is all
 9 inclusive. It's any override that has been put in
 10 place in any years. This is the mill levies that are
 11 set to cover those issues.
 12 **Q. Of the currently existing outstanding debt**
 13 **that is owed under the mill levy overrides, correct?**
 14 A. Right. Right.
 15 **Q. So it doesn't reflect, for instance -- it**
 16 **won't reflect whether or not Rocky Ford had previously**
 17 **had bond redemption mills or any of these other**
 18 **override mills, or any of these other districts, for**
 19 **that matter, correct?**
 20 A. Correct.
 21 MR. HINOJOSA: No further questions.
 22 THE COURT: Thank you. Thank you, ma'am.
 23 You may step down. Thank you. Next witness for the
 24 defense?
 25 MS. WESTON: Defendants call Ted Hughes.

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1 THE COURT: Will you come forward, sir, to
 2 the witness stand. If you'd raise your right hand.
 3 WILLIAM EDWARD HUGHES, JR.,
 4 having been first duly sworn to state the whole truth,
 5 testified as follows:
 6 THE COURT: Thank you. Please be seated.
 7 And, sir, if you could please state your full name and
 8 spell your last name for the record.
 9 THE WITNESS: William Edward Hughes, Jr.
 10 H-u-g-h-e-s.
 11 THE COURT: Thank you.
 12 DIRECT EXAMINATION
 13 BY MS. WESTON:
 14 **Q. Good morning, Mr. Hughes.**
 15 A. Good morning.
 16 **Q. Who is your employer?**
 17 A. State of Colorado.
 18 **Q. And what's your position?**
 19 A. I'm the director of Public School Capital
 20 Construction Assistance.
 21 **Q. How long have you been director?**
 22 A. Three years.
 23 **Q. And before that what was your position?**
 24 A. Senior consultant in the Colorado
 25 Department of Education

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1 **Q. Before joining the department of education**
 2 **what was your job?**
 3 A. I was doing some work, some consulting
 4 work, for a fire and water restoration firm, helping
 5 them start a new business.
 6 **Q. And how many years did you do that?**
 7 A. I don't remember. I want to say
 8 approximately one -- one -- a year, year and a half.
 9 **Q. And what did you do before that?**
 10 A. I did similar work for a mechanical
 11 contractor that -- based in Minnesota that was opening
 12 a new branch here in Colorado to help them get that
 13 branch opened up and get it started.
 14 **Q. And how long did you hold that position?**
 15 A. Approximately the same amount of time,
 16 year, year and a half.
 17 **Q. And before that what did you do?**
 18 A. For a short period of time I did some
 19 insurance adjusting work.
 20 **Q. And before that?**
 21 A. I was the president/owner of a -- or at
 22 least partner of a general contracting firm that did
 23 commercial construction here in the Denver metropolitan
 24 area.
 25 **Q. And how many years did you do commercial**

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1 **construction?**
 2 A. 30 years.
 3 **Q. And what types of projects did you work**
 4 **on?**
 5 A. A lot of different types of projects.
 6 School projects. A lot of airport work. Some
 7 government work. Renovations. A lot of different
 8 types of projects.
 9 **Q. Have you ever held any certifications or**
 10 **licenses?**
 11 A. When I had the -- when I was president of
 12 the construction company I had some licenses;
 13 construction, general contractor's licenses.
 14 **Q. And do you hold any degrees?**
 15 A. I have a bachelor's degree.
 16 **Q. Have you had any other training over the**
 17 **years?**
 18 A. Over the years, since I graduated from
 19 college, I've done a lot of professional development
 20 and going to various seminars and presentations related
 21 to the type of work that I do.
 22 **Q. And have you ever given any presentations**
 23 **over the years?**
 24 A. Yes.
 25 **Q. What types?**

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1 A. The presentations generally have to do
 2 with the technical assistance that we provide through
 3 my program, how to better operate and manage
 4 facilities, how to be involved in the -- the building
 5 excellent schools, or BEST program, how to get engaged
 6 in that, how to be successful in that, things like
 7 that.
 8 MS. WESTON: At this point, Your Honor, I
 9 would ask that the Court have Mr. Hughes qualified as a
 10 non-retained expert in the areas of Building Excellent
 11 Schools Today program, the charter school capital
 12 construction program, and the Qualified Zone Academy
 13 Bond program.
 14 THE COURT: Any objection?
 15 MS. BONO: I would only object to the
 16 extent that she hasn't laid foundation for the
 17 expertise in the quality -- the QZABs, Quality Zone
 18 Bond -- the last category that she mentioned.
 19 THE COURT: On behalf of the -- yes?
 20 MS. GEBHARDT: We would join with
 21 plaintiff-intervenors.
 22 THE COURT: Yes, if you could just
 23 elaborate a little more on that. I wasn't clear.
 24 Thank you.
 25 **Q. (BY MS. WESTON) Mr. Hughes, in your work**

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1 **with the division, have you become familiar with the**
 2 **Qualified Zone Academy Bond program?**
 3 A. Yes.
 4 **Q. What is it?**
 5 A. It's a federal program that I've worked
 6 with for the last 11 or 12 years that allows the state
 7 to give permission to school districts to go out and
 8 get interest-free financing for capital projects,
 9 professional development, major equipment purchases,
 10 things like that.
 11 MS. WESTON: At this point, Your Honor, I
 12 would ask that the Court have Mr. Hughes qualified as
 13 proffered.
 14 THE COURT: With that additional
 15 foundation he'll be so qualified in the areas
 16 proffered.
 17 **Q. (BY MS. WESTON) Let's discuss your**
 18 **current position. What does the Division of Public**
 19 **School Capital Construction Assistance do?**
 20 A. We administer a grant program that
 21 provides funding to school districts, charter schools,
 22 BOCES, the Colorado School for the Deaf and Blind to
 23 assist with capital needs, with facility needs. We
 24 provide -- we've gone out and implemented -- or
 25 executed a statewide facility assessment, where we

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1 assessed every single public school building in the
 2 state. We have developed some capital construction
 3 guidelines.
 4 I think mostly what we do is provide
 5 technical assistance to school districts, charter
 6 schools, BOCES, and the Colorado School for the Deaf
 7 and Blind in the form of assisting them with grant
 8 applications, with implementing construction projects,
 9 consultant selection, needs identification, planning,
 10 facilities operations, things like that.
 11 **Q. How many people work in the division?**
 12 A. There's eight of us.
 13 **Q. And what is the nature of their**
 14 **background?**
 15 A. The -- there's two architects, two people
 16 that are very experienced in construction management,
 17 project management. I have a person that works
 18 in -- that's worked out in school districts and school
 19 finance that is helping us with accounting and
 20 financial analysis. And a couple people with business
 21 backgrounds.
 22 **Q. Does the division serve as a staff to any**
 23 **other state entity, or does the division work closely**
 24 **with any other state entity in administering the**
 25 **programs that you've mentioned?**

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1 A. I don't know that I definitely understand
 2 the question. We don't work as staff with other state
 3 entities, but we certainly work closely with other
 4 state entities such as department of local affairs,
 5 Colorado Historical Society, the governor's energy
 6 office. There's probably -- the division of public
 7 safety that does all the permitting and plan review and
 8 inspections for public schools.

9 **Q. Does the division have any sort of**
 10 **interface with any boards or anything like that?**

11 A. The division has a board.

12 **Q. Could you describe that?**

13 A. It's a nine-member board appointed by
 14 the -- three members by the governor, three members by
 15 the general assembly, three members by the state board
 16 of education. The statute -- the BEST statute
 17 identifies the background that those people have. And
 18 so we have a school superintendent, a school board
 19 member, an architect, an engineer, facilities director,
 20 a construction manager, school finance expert, a school
 21 technology expert. I'm probably forgetting some. But
 22 it defines the background that each individual member
 23 of the board has.

24 **Q. And what does the board do?**

25 A. The board oversees the -- the program

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1 Among other things, they review grant applications that
 2 are summarized by -- by the division staff and selects
 3 projects to recommend to the state board for approval.
 4 They've promulgated rules for the program and for
 5 capital construction guidelines and for another program
 6 that we oversee, full-day kindergarten program, which
 7 is still in existence, but it hasn't been funded since
 8 its inception in 2008. The -- things like that.

9 **Q. Let's discuss in a little more detail some**
 10 **of the programs implemented by the division and the**
 11 **board. You've mentioned the BEST program. What is the**
 12 **BEST program?**

13 A. It's Building Excellent Schools Today.
 14 It's a program that provides funding to assist school
 15 districts, charter schools, BOCES, school for --
 16 Colorado School for the Deaf and Blind with facilities
 17 needs. It can be anything from smaller grants for
 18 boilers and roofs and fire alarms, things like that,
 19 all the way up to building brand-new schools.

20 The program also provides technical
 21 assistance to school districts, charter schools around
 22 the state, BOCES. Possibly even -- I mean, it could be
 23 in the form of assisting with the actual BEST program
 24 and applying for or being successful with a BEST grant
 25 or implementing their project if they get a grant. But

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1 it can also -- we provide a lot of assistance that's
 2 not directly related to those grants in the form of
 3 maybe facilities operations. It could be problems that
 4 they might be having in their district. It might be
 5 planning. Anything -- anything that the school
 6 districts might ask for that's facility-related. If we
 7 have the expertise, we'll provide the assistance.

8 **Q. You've mentioned that the range of grants**
 9 **can be from small projects to large projects. What**
 10 **form do those grants take?**

11 A. There's really three types of grants.
 12 The -- there's the BEST cash grants, which we fund with
 13 money that -- that's readily available, that's already
 14 in the program from the revenues that come into the
 15 program. Those are the smaller projects, like the
 16 roofs and fire alarms. We also do BEST lease-purchase
 17 grants, which are the larger new school-type projects.
 18 Those projects have to be financed, and then that
 19 financing is paid off with future revenues that come
 20 into the program.

21 And then we have emergency grants, which
 22 are defined as if a -- if -- well, the project -- if
 23 there's a situation where a facility can't be occupied
 24 or used and the applicant can't fund whatever needs to
 25 be funded to put the building back into use themselves,

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1 then we have emergency grants available.

2 **Q. You've mentioned some of the technical**
 3 **assistance that the division provides to prospective**
 4 **applicants and applicants. Let's talk about that as it**
 5 **applies to the various stages of the work that you guys**
 6 **do.**

7 **What types of technical assistance, if**
 8 **any, does the division provide to those who haven't**
 9 **applied yet?**

10 A. We visit -- we're available to visit
 11 any -- and we -- we make visits on a regular basis to
 12 school districts around the state. I -- my staff is
 13 divided up so they have certain regions that they're
 14 responsible for. We help the -- the potential
 15 applicants identify what their needs are. Most of
 16 the -- more than half of the school districts and
 17 charter schools in the state don't have the internal
 18 capacity or the internal staff to manage their
 19 facilities, so it's done by a school principal or a
 20 custodian or a superintendent whose primary background
 21 is education, not facilities operations.

22 So we can assist them with planning and
 23 needs identification, things like that. If -- if it's
 24 not grant -- if it's not grant-specific, we might be
 25 assisting with problems that they're having with a

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1 local government agency or entity with some sort of
 2 interference that they're receiving with operating
 3 their facilities, and we help try to facilitate
 4 solutions or work through those types of things. But
 5 those are all things that aren't directly grant-
 6 related.

7 **Q. And once a district or other entity**
 8 **decides to apply for assistance, does the division**
 9 **provide any technical assistance at that point?**

10 A. We provide as much assistance as they'll
 11 allow, which is typically quite a bit. We'll help
 12 them -- as I already mentioned, we'll help them
 13 identify their needs, which sounds pretty simple, but
 14 it's not always clear-cut to people that are out there
 15 that aren't used to operating a facility. Sometimes
 16 they -- they react, they're in a reaction mode, and
 17 they react to what's maybe most obvious and not maybe
 18 what their greatest need is, which might be more hidden
 19 or less obvious.

20 We'll help them develop a grant
 21 application. We'll help them with planning. If the
 22 planning gets to be more extensive than what we can
 23 provide ourselves, we'll help them with selecting a
 24 planning consultant to create and establish a master
 25 plan

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1 Now, that may be something that -- that
 2 will be very useful to them and might result in a BEST
 3 grant application, but it might be also just a tool
 4 that they can use in the future to better manage their
 5 facilities and maximize the dollars that they have and
 6 to budget better and do a better job with the funding
 7 that they have.

8 We'll help them critique the grant
 9 application as it's developed to make sure it's
 10 supportable and as strong as it can be when it's
 11 submitted. Things like that.

12 **Q. And once an application is submitted, what**
 13 **does the review process look like?**

14 A. The applications, once they're submitted,
 15 are reviewed by my staff for -- to make sure that we
 16 understand what the project is all about, to make sure
 17 that the budgets are -- make sense, to make sure that
 18 the project makes sense. If it's a new school, for
 19 example, that it's not maybe more than what the school
 20 district really needs or what they can afford to
 21 operate. Or the charter school, for that matter.

22 We review those applications and work with
 23 the applicants to get the applications as strong and as
 24 accurate as they can be, and then we summarize those
 25 applications into a summary that's typically 900 to a

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1 thousand pages long. I mean, it's still quite a bit of
 2 information that includes not only the application
 3 summaries, but a lot of financial data and history on
 4 the grant program for the assistance board, the BEST
 5 board, to review and use to select which projects
 6 they're going to recommend to the state board for final
 7 approval. That summary is also provided to the state
 8 board to help them when they make their final
 9 decisions.

10 **Q. And earlier you mentioned a facilities**
 11 **assessment. Does that document play any role in the**
 12 **grant process?**

13 A. The statute actually requires the BEST
 14 board and the BEST staff to use that information when
 15 evaluating grant applications and making decisions on
 16 recommendations. We use it -- when I say "we," the
 17 division uses it all the time when we're trying -- when
 18 we're assisting school districts and charter schools
 19 with planning and decision making, answering questions
 20 to -- to potential applicants.

21 We also use it a lot to answer questions
 22 to outside parties that may ask us questions about
 23 facilities here in Colorado.

24 **Q. You also mentioned earlier that the**
 25 **division and board have developed guidelines for**

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1 **construction. What are those?**

2 A. They're guidelines. They're certainly not
 3 mandates or requirements, but they're guidelines that
 4 can be used to help determine maybe site size,
 5 classroom size, the types of spaces that would be in an
 6 elementary school or a middle school or a high school.
 7 High-performance criteria that could be considered in a
 8 school building, high performance being energy savings
 9 or different ways of looking at the energy performance
 10 of a building. Things like that.

11 **Q. So moving back to the grant process. If**
 12 **an applicant does indeed receive a grant, is it a**
 13 **hundred percent state-funded?**

14 A. No. The BEST program is a matching grant
 15 program. So there's a matching component to the
 16 grants.

17 **Q. And how is the matching component**
 18 **calculated?**

19 A. The statute provides us criteria to
 20 calculate the matching percent -- we calculate a unique
 21 matching percentage for each school district, for each
 22 charter school, for each BOCES, and for the Colorado
 23 School for the Deaf and Blind. And the statute
 24 provides a different set of criteria for each one of
 25 those groupings.

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1 For example, the school districts, the
 2 criteria that we use to calculate their matching
 3 percentage is their per-pupil assessed value, the
 4 average household income compared to the state average,
 5 the free and reduced lunch percentage compared to the
 6 state average, their bond history over the last ten
 7 years, and then the bonded mill levy.
 8 **Q. And how do those factors impact the number
 9 that is required for them to provide?**
 10 A. The -- for example, if they -- it's -- the
 11 matching percentage is really looking at the capacity
 12 of the school district or the charter school to help
 13 themselves with their facility needs or -- or another
 14 way to put that, it kind of looks at the wealth of
 15 those -- of the school districts. Whereas once we get
 16 beyond the matching percentage, then we're really
 17 looking at the need of the project.
 18 So when we're calculating the match
 19 percentage, for instance, if you're looking at average
 20 household income, the -- if a school district had
 21 really low average household income, then their match
 22 percentage might be reduced because there's less
 23 wealth. If -- same thing with a free and reduced
 24 lunch. So it depends on how it's impacting with the
 25 wealth of the district, how those criteria would impact

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1 their matching percentage.
 2 **Q. And if an applicant does, in fact, receive
 3 a grant, do they necessarily pay that exact percentage
 4 that you just described is calculated uniquely for each
 5 applicant?**
 6 A. They can exceed that matching percentage.
 7 We consider that to be a minimum matching percentage.
 8 And then if they feel that they can't get to the
 9 minimum matching percentage, there's a waiver process
 10 where they can apply for a waiver for part or all of
 11 the match.
 12 **Q. Could you describe that process?**
 13 A. It's really a very simple process, where
 14 they write a letter requesting a reduction, and then
 15 they provide the reasons for that request. And
 16 typically we like to -- we encourage them to focus on
 17 things that are unique to the charter school or to the
 18 school district, meaning right now most any school
 19 district can say that the budgets have been cut, so we
 20 want a reduction in the match.
 21 We're looking for something unique that
 22 not every school district or every charter school is
 23 experiencing. So, you know, something other than the
 24 budgets have been cut or that the economy's bad or they
 25 had to buy school buses this year or they had to give

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1 their teachers a raise. Something sort of outside what
 2 everybody's experiencing is what we're looking for.
 3 **Q. And so who would consider that type of a
 4 request?**
 5 A. The BEST board considers those when
 6 they're reviewing the grant applications, to determine
 7 which ones they're going to recommend to the state
 8 board for approval.
 9 **Q. And is that a discretionary-type
 10 consideration?**
 11 A. I'm not sure what you mean by
 12 "discretionary." If you mean does -- does everybody's
 13 waiver -- everybody's waiver is considered, but not
 14 everybody's waiver is -- is granted. Some of them are
 15 and some of them aren't.
 16 **Q. And are there any circumstances that would
 17 require the board to grant a waiver request?**
 18 A. Would require the board to grant a waiver
 19 request? No.
 20 **Q. Is there any cap as to a match, aside from
 21 the calculation?**
 22 A. No. They can exceed the calculated
 23 minimum match.
 24 **Q. Does the BEST act provide any sort of
 25 statutory route for a potentially reduced match?**

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1 A. The BEST statute doesn't really drill down
 2 into any detail on that issue. We have gotten into
 3 that issue in our rules, the BEST rules. The board has
 4 looked at some different criteria that might be
 5 considered -- could be considered or might be included
 6 in a waiver request.
 7 **Q. Does a district's bonding capacity affect
 8 the cap? Or play into the match?**
 9 A. The bonding capacity itself is not one of
 10 the -- is not one of the criteria.
 11 **Q. Once a grant is awarded, does the division
 12 provide any sort of ongoing technical assistance to a
 13 grantee?**
 14 A. Once it's awarded?
 15 **Q. Uh-huh.**
 16 A. As much as the district will allow, we
 17 will provide assistance with consultant selection in
 18 the form of helping them develop an RFQ or an RFP,
 19 helping them evaluate the responses to that. We'll
 20 help them implement, monitor their construction. And
 21 once the projects are completed, we're now developing a
 22 component to the program where we'll provide follow-up
 23 assistance and help them with warranty management,
 24 follow-up training.
 25 We'll help them with evaluating whether

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1 their buildings are -- are operating the way they were
 2 designed to, and if they're not, help them determine
 3 why they're not operating the way they were designed,
 4 whether there was maybe an engineering miscalculation
 5 or a construction problem or maybe something's
 6 occurring in the building that wasn't part of the
 7 modeling during the design process. So we do -- yes,
 8 we do provide technical assistance after the projects
 9 are awarded.

10 **Q. Does the division administer any other**
 11 **grant programs?**

12 A. Yes.

13 **Q. Which ones?**

14 A. There's a charter school grant program,
 15 which is a formula grant program, meaning each year
 16 the -- the general assembly appropriates a certain
 17 amount of money for charter school capital needs.
 18 The -- we determine how many pupils there are statewide
 19 in charter schools. We divide that into the amount
 20 that's appropriated and come up with a per-pupil amount
 21 which is then provided to the charter schools based on
 22 the number of pupils that they have in their charter
 23 school.

24 We also oversee the Qualified Zone Academy
 25 Bond, or QZAB, program, which is a program that

5610

1 provides -- that allows for interest-free financing for
 2 capital needs. Those are the two main programs that we
 3 oversee other than BEST.

4 **Q. Do you know whether the state's QZAB**
 5 **program currently has any outstanding capacity**
 6 **available to --**

7 A. It does.

8 **Q. And does the division provide any**
 9 **technical assistance regarding other potential sources**
 10 **of funding for capital construction that aren't**
 11 **administered by the division itself?**

12 A. We do. We -- anything that might be an
 13 alternative to the BEST funds, we encourage -- we try
 14 to make the potential applicants aware of those other
 15 grants and encourage them to pursue those to maximize
 16 the BEST funds and get them to go as far as we can.

17 A couple of examples would be there --
 18 there's historical society funds, there's Colorado
 19 Lottery funds, local funds which school districts can't
 20 directly apply for, but they can take advantage through
 21 local rec districts or counties or towns. Some years
 22 there's department of local affairs grants called
 23 Energy Impact Grants. Those haven't been available the
 24 last couple of years, but the program still exists, and
 25 hopefully it will come back as the economy improves.

5611

1 And sometimes, if it makes sense, we'll
 2 direct them towards, particularly charter schools,
 3 private foundations that have grants available for
 4 capital needs. And we're always looking and paying
 5 attention and trying to identify funding resources
 6 other than BEST that might fit what their needs are.

7 **Q. In describing some of the technical**
 8 **assistance provided by the division, you suggested that**
 9 **it may be limited by what the district will accept.**
 10 **What did you mean by that?**

11 A. Well, Colorado, being a local control
 12 state, the buildings are owned and managed and operated
 13 by the local school districts and the charter schools.
 14 And we can't necessarily tell them what to do with the
 15 funds. They -- so they -- you know, we provide as much
 16 assistance as they'll allow us to provide. If they
 17 don't want any assistance, certainly we're not going to
 18 force it on them.

19 As I mentioned earlier, though, over half
 20 the school districts in the state don't have the staff
 21 or the capacity to build a new school or to even manage
 22 the smaller projects, so they're welcome -- they're --
 23 they welcome the assistance to help them find
 24 consultants or to implement and get their projects
 25 built.

5612

1 The -- on the larger projects, we don't
 2 have the capacity at the division to do that either.
 3 So we have them include in their grant application some
 4 moneys for owners' reps, people that have been through
 5 the process of building a school. A small rural school
 6 district, a lot of them won't build -- they build a
 7 school every 50, 75, or 100 years. They don't have the
 8 experience or expertise to do that on their own.

9 So we -- we'll provide them as much
 10 assistance as they want, but they don't have to take it
 11 and -- they don't have to take it.

12 **Q. Has the division ever worked with a school**
 13 **or district that hasn't availed itself of that**
 14 **opportunity?**

15 A. It -- there's all different levels of
 16 acceptance. In some cases we don't worry about it. If
 17 it's a large school district, like a Douglas County or
 18 a Jefferson County School District, they don't ask for
 19 or need as much assistance as a small rural district
 20 does. Some school districts have some experience or
 21 some internal capacity or expertise and might take
 22 advantage of some of the pieces or components of what
 23 we have to offer, but not others. And then most of
 24 them soak up as much of it as we can provide. But it's
 25 all over the continuum, from one end to the other.

5613

1 **Q. I want to talk about some concerns that**
 2 **have been raised regarding some of these programs. Do**
 3 **all school districts have the capacity to build a**
 4 **school?**
 5 A. No.
 6 **Q. Does the BEST program or any of the other**
 7 **programs you've described respond to this concern?**
 8 A. Yes. I think the BEST program in
 9 particular is suited to a situation where if a school
 10 district's capacity, at least by going to the voters
 11 for a bond election, is -- the capacity is considerably
 12 less than what it would take to build a new school, the
 13 BEST program is suited to assist with that.
 14 Statute doesn't allow us to ask a school
 15 district for more than what their bonding -- available
 16 bonding capacity is. So if a school district has a
 17 matching percentage that we've calculated that would
 18 require them to provide, say, \$10 million to a new
 19 school project, but their capacity's only \$4 million
 20 and that's all they can provide, and \$4 million is
 21 certainly not going to build a brand-new 20 or
 22 \$30 million school, we can't ask them for more than
 23 that \$4 million, but we can provide the balance so they
 24 can get to the 20 or \$30 million they need to build a
 25 new school. So it works really well that way.

5614

1 **Q. Even if the match calculation percentage**
 2 **is more than whatever the \$4 million would have been?**
 3 A. Correct. We can't ask them for more than
 4 their available bonding capacity is.
 5 **Q. Does the BEST program have an end date?**
 6 A. No.
 7 **Q. Have you heard from any school districts**
 8 **that the application process is time-consuming?**
 9 A. Yes, we've heard that. I look at it --
 10 the grant application, which we can control, is pretty
 11 simple and quick to fill out. The hard, time-consuming
 12 piece of it is developing the scope of work and their
 13 estimates so that they know how much to ask for. That
 14 can be time-consuming to develop that. And it can be
 15 particularly time-consuming if it's -- because we like
 16 to see some real thorough, detailed thought, well
 17 thought-out planning that looks at the demographics,
 18 that's brought the community into the discussion. It
 19 looks at the facility needs, it looks at the
 20 educational needs. And that type of a process can be
 21 very time-consuming.
 22 But it's certainly, when you're making
 23 multi-million, 10, 20, 30, 40, more than that, million
 24 dollar decisions, it's the -- the planning is really
 25 important. Maybe even the most important part of the

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1 project.
 2 **Q. Do you believe the planning process has**
 3 **any value outside the BEST project scope?**
 4 A. Yeah, absolutely. The -- the planning
 5 process may not result in the need for a new school.
 6 It might just be -- result in -- in the ability to
 7 better budget over the next few years, to take care of
 8 their needs internally with the capacity that they
 9 have. Or to -- to plan ahead for something that might
 10 occur in five years instead of just reacting to it. So
 11 that if the roof is going to need to be replaced in
 12 five years, they'd start budgeting and saving for that
 13 instead of just reacting to it when all of a sudden it
 14 fails and starts leaking in five years.
 15 It's proven out through many facilities
 16 operations and management people that planning can save
 17 a lot of money and costs of operating a building.
 18 **Q. Do you believe the division's programs**
 19 **have been successful?**
 20 A. Yes.
 21 **Q. Why?**
 22 A. I think when we just talked about the
 23 ability to assist a school district or a charter school
 24 to get a building built when they couldn't have done it
 25 on their own, with a capacity that they have, that's

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1 one reason. The technical assistance, I think, has
 2 been really powerful and useful for a lot of school
 3 districts and charter schools, as far as helping them
 4 better plan and better manage the facilities that they
 5 have. And I just -- I think it's been successful in
 6 those areas.
 7 MS. WESTON: I have no further questions
 8 for this witness at this time.
 9 THE COURT: Thank you.
 10 MS. GEBHARDT: Would it be a good time for
 11 a lunch break, Your Honor?
 12 THE COURT: We can go ahead and do that.
 13 I think it makes sense.
 14 MS. GEBHARDT: Maybe 45 minutes? We have
 15 a shortened day.
 16 THE COURT: That's fine. How about 10 to
 17 1:00? It's about 45 minutes. It's about 5 after
 18 12:00. That'd be great. Thank you.
 19 MR. HEINKE: Thank you, Your Honor.
 20 (Recess taken, 12:04 p.m. to 12:53 p.m.)
 21
 22
 23
 24
 25

5617

1 AFTERNOON SESSION, MONDAY, AUGUST 29, 2011
 2 THE COURT: Calling up Case 05CV4794. And
 3 we're ready for cross-examination.
 4 MS. GEBHARDT: Thank you, Your Honor.
 5 CROSS-EXAMINATION
 6 BY MS. GEBHARDT:
 7 Q. Good afternoon, Mr. Hughes.
 8 A. Good afternoon.
 9 Q. So, Mr. Hughes, in response to a question
 10 that Ms. Weston asked you, you said there's no end date
 11 for BEST. But that's not a complete answer. There is
 12 a finite amount of money that the state has agreed to
 13 take on as a debt obligation; isn't that true? For
 14 COPs.
 15 A. I don't think so.
 16 Q. There's no -- they can go over \$40 million
 17 in debt obligation?
 18 A. No.
 19 Q. They can't?
 20 A. No.
 21 Q. So there is a limit?
 22 A. Well, the debt payments -- the state's not
 23 obligated to the lease-purchase payments indefinitely.
 24 As the lease-purchase financing gets paid down, then
 25 there's the opportunity to finance additional projects.

5618

1 Q. But next year, the year after they reach
 2 the \$40 million debt limit and that gets paid down, it
 3 may become available way in the future, but it's the
 4 true statement that in the next year or two, they reach
 5 their cap, correct?
 6 A. At some point, yeah, the capital --
 7 Q. And it's in the next year or two?
 8 A. The board, the BEST board, does not
 9 determine when that will occur.
 10 Q. But the discussions have been within the
 11 next year or two?
 12 A. Correct.
 13 Q. So the BEST board discussions have been
 14 within the next year or two the state will reach its
 15 debt limit, and the major portion of BEST funding will
 16 not be available until the debt gets retired, correct?
 17 A. Correct.
 18 Q. Putting up on the Elmo -- oops. What
 19 happened to the Elmo? Did we turn off a computer?
 20 MS. GEBHARDT: Sorry, Your Honor.
 21 THE COURT: No problem.
 22 Q. (BY MS. GEBHARDT) We're back on the Elmo.
 23 Defendants' Trial Exhibit 30102. Have you ever seen
 24 this before, Mr. Hughes?
 25 A. I can't tell from the cover sheet.

5619

1 Q. It was a K-12 capital construction finance
 2 committee that met in November of 1966 (sic). We can
 3 get that much from the cover sheet, correct?
 4 A. Correct.
 5 Q. '96. What did I say? '66. Ooh. That
 6 takes us back. 1996. Stand corrected. The committee
 7 charge was that the committee was to look at -- was to
 8 study issues related to public school capital
 9 construction, including strategies and revenue sources
 10 for financing such construction, correct?
 11 A. Correct.
 12 Q. And in performing that, they looked at
 13 existing studies relating to school capital
 14 construction, correct?
 15 A. Correct.
 16 Q. Various methods and strategies for
 17 financing school construction, renovation, maintenance
 18 and repair, and revenue sources which could be used to
 19 help finance K-12 capital construction, correct?
 20 A. Correct.
 21 Q. And in looking at those studies, they
 22 found that there was a \$2.5 billion need back in 1996
 23 of unmet need and capital construction facilities
 24 needs, correct?
 25 A. Correct.

5620

1 Q. And are you aware of any legislation after
 2 1996 up until 2000 that was passed to address this
 3 \$2.5 billion deficit?
 4 A. I think so.
 5 Q. Legislation?
 6 A. Oh. Did you say legislation?
 7 Q. Yes.
 8 A. No.
 9 Q. Then you started with the department as a
 10 result of a settlement of a piece of litigation
 11 concerning capital construction called the Giardino
 12 suit, correct?
 13 A. Correct.
 14 Q. And that was the first time that the state
 15 had actually put any money into facilities since the
 16 enactment of the 1994 act, correct?
 17 A. I don't know. But to the best of my
 18 knowledge, yes, correct.
 19 Q. It's true prior to the time you were
 20 hired, the state department of education did not have
 21 anybody on staff that was responsible to monitor school
 22 facilities?
 23 A. Correct.
 24 Q. And at the time you came on, the state did
 25 not have any idea as to the number of facilities that

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1 it was sending its school children to or the quality of
 2 those facilities, correct?
 3 A. Correct.
 4 Q. And it's true that when you started going
 5 and visiting the school districts, you were surprised
 6 by the conditions of the school buildings, correct?
 7 A. Correct.
 8 Q. Then in 2003, the auditor looked into the
 9 program that had been started in 2000, correct?
 10 A. Correct.
 11 Q. And the auditor issued a report, correct?
 12 A. Correct.
 13 Q. And that is Exhibit 1100, correct?
 14 A. Yes.
 15 Q. And you've seen this before?
 16 A. Yes.
 17 Q. And as part of this audit, the auditor
 18 conducted a survey themselves as to determine what the
 19 need was for facilities, correct?
 20 A. Yes.
 21 Q. And by 2003, the need had grown from
 22 \$2.5 billion to \$4.7 billion, correct?
 23 A. Yes.
 24 Q. The auditor also found that 53 percent of
 25 the buildings were between 21 and 50 years old and that

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1 another 19 percent were more than 50 years old,
 2 correct?
 3 A. I don't remember the results of that
 4 audit. But if that's in the audit, correct.
 5 Q. Hold on a second. We'll come back to
 6 that. Then in 2005, Donnell-Kay did a study, correct?
 7 A. I believe so.
 8 Q. And that is Trial Exhibit 1102. Have you
 9 seen that before?
 10 A. Yes.
 11 Q. And by 2005, the need had grown to almost
 12 over \$10 billion, correct?
 13 A. Correct.
 14 Q. And the report also found that one-third
 15 of Colorado high schools have inadequate science
 16 facilities, correct?
 17 A. Correct.
 18 Q. And that 92 percent of superintendents
 19 thought the school facilities are essential or very
 20 important to the academic and social success of
 21 students, correct?
 22 A. Yes.
 23 Q. And that 69 percent of the superintendents
 24 think school funding is the most pressing issue facing
 25 their district?

5623

1 A. Yes.
 2 Q. Then we've heard testimony that in 2005,
 3 there was an interim committee report, correct? Or
 4 sorry, an interim committee on school funding. You
 5 were aware of that?
 6 A. Of testimony, no.
 7 Q. You're aware that in 2005 there was an
 8 interim committee on school finance?
 9 A. Yes.
 10 Q. And one of the issues they addressed was
 11 capital construction?
 12 A. Yes.
 13 Q. And are you aware of any legislation that
 14 arose out of that interim task force?
 15 A. No.
 16 Q. And do you agree with the statement from
 17 the interim committee that at a minimum, every public
 18 school facility should be free from basic health and
 19 safety defects and sufficient for purposes of meeting
 20 state content and academic accountability standards?
 21 A. Yes.
 22 Q. So BEST was enacted in 2008?
 23 Approximately. Is that a correct statement?
 24 A. Yes.
 25 Q. And it's true that BEST does not change

5624

1 the existing structure of the 1994 act, which is
 2 dependent on local property wealth for capital
 3 construction?
 4 A. I don't know the answer to that.
 5 Q. If you don't qualify for a BEST grant, you
 6 are left to the devices of using your own local
 7 property wealth to be able to renovate or build a new
 8 facility, correct?
 9 A. Yes.
 10 Q. And part of BEST was to conduct a
 11 statewide facilities assessment, correct?
 12 A. Yes.
 13 Q. And the state hired a company called
 14 Parsons, correct?
 15 A. Yes.
 16 Q. And they issued a report, correct?
 17 A. Yes. Yes.
 18 Q. That's Exhibit 1106. Have you seen that
 19 before, Mr. Hughes?
 20 A. Yes.
 21 Q. And do you remember what the overall
 22 number is of the Parsons report after they conducted
 23 the assessment?
 24 A. I'm not sure what number you're looking
 25 for, but I don't have that report memorized.

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1 **Q. We'll look at it together. What did the**
 2 **Parsons group do in conducting the assessment?**
 3 A. They -- we provided them with a list of
 4 things that we wanted them to look at in every facility
 5 so that it was consistent from one building to the
 6 other. They visited every public school facility
 7 around the state and reviewed -- I can't think of the
 8 word I want -- surveyed the buildings to look at
 9 the -- the issues we wanted them to look at.
 10 **Q. And they broke the buildings that they**
 11 **reviewed into different levels, different tiers,**
 12 **correct?**
 13 A. That's correct, yes.
 14 **Q. What's a Tier 1 building?**
 15 A. A Tier 1 building is a classroom building.
 16 Typically it's a building that there's either students
 17 or staff in, with the exception of modulars. We
 18 didn't -- we did a lower level assessment of modulars.
 19 We didn't feel like they needed to look at every single
 20 modular with the same level of specificity or detail
 21 that they looked at the brick-and-mortar classroom
 22 buildings.
 23 **Q. And it's broken out by what are called**
 24 **FCIs and CFIs. Could you explain what those are,**
 25 **please.**

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1 A. An FCI stands for Facility Condition
 2 Index. It's a sort of a industry standard, and it's a
 3 way to look at -- what it is, it's a ratio, and it
 4 looks at the needs to -- or the costs to correct the
 5 deficiencies in a facility and compares it to the cost
 6 of replacing it. So the higher the FCI, the
 7 close -- like if it's a hundred, that means it would
 8 cost the same to repair it as it would to replace it.
 9 If it's 50 percent, then that means you could repair it
 10 for half the cost of replacing it.
 11 So it's just a -- to come up with a ratio,
 12 it's one of many indicators that could be looked at
 13 when you're considering whether you should repair a
 14 building or replace it.
 15 **Q. And what was -- the current period needs**
 16 **on this document shows it goes from 2010 to 2013. And**
 17 **what did the Parsons company find to be the total**
 18 **current and forecast period Tier 1 needs? I've**
 19 **highlighted the number.**
 20 A. Thank you. Approximately 8 --
 21 \$17.9 billion.
 22 **Q. \$17.9 billion?**
 23 A. Correct.
 24 **Q. So it's grown from 2.5 billion to**
 25 **4.5 billion to 10 billion to \$17.9 billion in the space**

5627

1 **of about 15 years, correct?**
 2 A. No.
 3 **Q. Why not?**
 4 A. Each one of those studies was done
 5 differently, using a different methodology. Some of
 6 the studies were done self-reported and didn't get
 7 complete response. Some of them had some
 8 self-reporting involved and some actual field
 9 assessment involved. Some of them, for instance, the
 10 Parsons study, was much more detailed, in the sense
 11 that it had a visit to every single building. And
 12 certainly the statewide assessment that Parsons did
 13 could have been done differently, might have resulted
 14 in a different figure. But --
 15 **Q. You don't have --**
 16 A. -- it's kind of apples to oranges.
 17 **Q. You don't have any criticism of Parsons'**
 18 **report? You were intimately involved in helping with**
 19 **that, correct?**
 20 A. That's correct.
 21 **Q. And are you aware of the findings of the**
 22 **Donnell-Kay study that found that even in situations**
 23 **where the building facilities were self-reported, that**
 24 **they found they were under-reported, not over-**
 25 **reporting? Are you aware of that finding? Yes or no?**

5628

1 A. I don't remember.
 2 **Q. You don't remember that finding?**
 3 A. No. I mean, it -- I'm not trying to be
 4 negative. I mean, it might be true. I just don't
 5 remember.
 6 **Q. And you agree, don't you, that the**
 7 **deteriorating conditions of school buildings in**
 8 **Colorado is not the result of bad faith, intentional**
 9 **neglect, or other neglect by school districts, and that**
 10 **school districts would do their best to maintain their**
 11 **buildings?**
 12 A. I would agree with that.
 13 **Q. And you don't blame the districts, do you,**
 14 **for the quality of their facilities?**
 15 A. I think you'd have to look at each
 16 individual situation, but there's some possibilities.
 17 I mean, there are some situations where they're doing
 18 the best they can and couldn't have done any better,
 19 and then there's -- there may be some situations
 20 where -- where -- I don't want to say they
 21 intentionally let their buildings go, but they just
 22 didn't know any better, didn't put any effort into
 23 their buildings because of lack of knowledge, lack of
 24 expertise in knowing how to manage or operate their
 25 facilities.

5629

1 **Q. You've testified that the majority of**
 2 **districts don't have facilities expertise, the rural**
 3 **districts, correct?**
 4 A. Correct.
 5 **Q. Do you remember when your deposition was**
 6 **taken?**
 7 A. I remember a deposition being taken.
 8 **Q. Several? And do you remember being asked**
 9 **the question about whether you blame the school**
 10 **districts?**
 11 A. No, I don't specifically remember that
 12 question.
 13 **Q. Would you like to look at that? Turn your**
 14 **attention to page 147. Do you see that?**
 15 A. Yes.
 16 **Q. One second. The question was:**
 17 **"Do you place any blame on the districts**
 18 **for the state of the buildings? Do you**
 19 **have any opinion as to either -- whether**
 20 **you would lay blame on the districts about**
 21 **the condition of the buildings?**
 22 **"No, I don't think blame is the right**
 23 **word. I wouldn't lay blame on them."**
 24 **Was that your testimony then?**
 25 A. Yes.

5630

1 **Q. And is that not your testimony today?**
 2 MS. GEBHARDT: May I approach, Your Honor,
 3 to grab this transcript?
 4 THE COURT: Yes.
 5 **Q. (BY MS. GEBHARDT) Take all the time you**
 6 **need to think about it. It's fine.**
 7 A. It's a hard question to answer. It
 8 depends how you define "blame" and how much intent
 9 there is in that word "blame." But I don't believe
 10 that they're intentionally trying to damage their
 11 buildings or not take care of their buildings.
 12 **Q. And your testimony in July was that you do**
 13 **not blame the districts; is that a correct statement?**
 14 A. Yes, it is.
 15 **Q. And you also talked about the guidelines**
 16 **that the BEST board and the BEST committee have enacted**
 17 **in response to the questions from Ms. Weston, correct?**
 18 A. Yes.
 19 **Q. And there's a mission statement. Do you**
 20 **recognize that? From the guidelines.**
 21 A. Yes.
 22 **Q. And the mission statement reads:**
 23 **"The Colorado Public School Facility**
 24 **Construction Guidelines shall be used to**
 25 **assess and prioritize public schools'**

5631

1 **capital construction needs through the**
 2 **state, review applications for financial**
 3 **assistance, make recommendations to the**
 4 **state board regarding appropriate**
 5 **allocations of awards, of financial**
 6 **assistance from the Public School Capital**
 7 **Construction Assistance Fund, and help**
 8 **ensure that awarded grant moneys will be**
 9 **used to accomplish viable, top-priority**
 10 **construction projects."**
 11 **Correct?**
 12 A. Yes.
 13 **Q. Section 2 of these guidelines states:**
 14 **"Facilities will assist school districts,**
 15 **charter schools, institute charter**
 16 **schools, Boards of Cooperative Services,**
 17 **and the Colorado School for the Deaf and**
 18 **Blind to meet or exceed state model**
 19 **content standards by promoting, quotes,**
 20 **learning environments, close quote,**
 21 **conducive to performance excellence with**
 22 **technology that supports communities,**
 23 **families, and students and provides the**
 24 **following . . ."**
 25 **You agree with that, don't you,**

5632

1 **Mr. Hughes?**
 2 A. Yes.
 3 **Q. And you also agree, as it says in 4.2,**
 4 **that educational facilities that accommodate the**
 5 **Colorado Achievement Plan for kids, CAP4K, No Child**
 6 **Left Behind, and the state board's model content**
 7 **standards, you agree that they should address that,**
 8 **correct?**
 9 A. Yes.
 10 **Q. And you agree, don't you, that facilities**
 11 **are important to student achievement?**
 12 A. Yes.
 13 **Q. And also in these guidelines for**
 14 **elementary, middle, and high is a guideline that**
 15 **states, quote, "Classrooms should accommodate a maximum**
 16 **of up to 25 students and provide 35 square feet;" isn't**
 17 **that correct?**
 18 A. No. There's a different square footage
 19 guideline for elementary school, which is different
 20 from middle school, which is different from high
 21 school.
 22 **Q. This is the elementary school.**
 23 A. Yeah, you -- I think you said -- maybe I
 24 misunderstand --
 25 **Q. And I'll put the middle school and the**

5633

1 **high school.**
 2 A. Okay. Maybe I misunderstood the question.
 3 **Q. You're right. It was a compound question.**
 4 **So for elementary school, it says 25 students, correct?**
 5 A. Yes.
 6 **Q. Middle schools. Classrooms should**
 7 **accommodate up to a maximum of 25 students, correct?**
 8 A. Yes.
 9 **Q. High schools. Classrooms should**
 10 **accommodate up to a maximum of 25 students, correct?**
 11 A. Yes.
 12 **Q. And you agree that technology is an**
 13 **important component for education as well, correct?**
 14 A. Yes.
 15 **Q. And you also agree with me that despite**
 16 **the fact that the Americans with Disabilities Act,**
 17 **which was first enacted in 1990, that there are still**
 18 **schools that violate the ADA today in Colorado?**
 19 A. Yes.
 20 **Q. And you agree that families have a**
 21 **reasonable expectation that their children are**
 22 **attending schools that are safe, secure, and healthy,**
 23 **and that you had that same expectation for your own**
 24 **daughter?**
 25 A. Yes.

5634

1 **Q. You also agree that you were -- that the**
 2 **CCAB requires local districts to pay out of their own**
 3 **general fund for master plans?**
 4 A. I'm sorry, could you ask that again?
 5 **Q. Isn't it true that the CCAB, the Capital**
 6 **Construction Advisory Board, requires districts to pay**
 7 **for master planning out of their own general funds?**
 8 **Except in very limited situations.**
 9 A. Yes.
 10 **Q. And the average cost of that is about**
 11 **\$25,000?**
 12 A. Yes.
 13 **Q. Now, if a district applies for a BEST**
 14 **match -- sorry, applies for a BEST grant and isn't able**
 15 **then to pass a bond to meet the match, is it your**
 16 **testimony that the state has no obligation to the**
 17 **students in those schools where the state knows that**
 18 **the conditions of those buildings are failing or**
 19 **substandard?**
 20 A. No.
 21 **Q. But yet you acknowledge that there's an**
 22 **almost \$18 billion need and that the most that the BEST**
 23 **program would be able to meet of that need under**
 24 **current conditions is approximately \$1 billion,**
 25 **correct?**

5635

1 A. With the immediate funding that's
 2 available, as we discussed earlier, yes, that'd be
 3 accurate. Long term there's going to be additional
 4 funding available to assist.
 5 **Q. You don't know as we sit here today, do**
 6 **you, you don't know what the legislature will or won't**
 7 **do coming forward?**
 8 A. No, I don't.
 9 MS. GEBHARDT: Thank you, Mr. Hughes. I
 10 pass the witness to Ms. Bono.
 11 THE COURT: Cross-examination.
 12 MS. BONO: Thank you, Your Honor.
 13 CROSS-EXAMINATION
 14 BY MS. BONO:
 15 **Q. Good afternoon, Mr. Hughes. It's good to**
 16 **see you again.**
 17 A. Good afternoon.
 18 **Q. BEST funds can be used for school**
 19 **operations, correct?**
 20 A. Cannot.
 21 **Q. Be used for school operations?**
 22 A. No, they cannot.
 23 **Q. And they can't be used for custodial**
 24 **services?**
 25 A. They cannot.

5636

1 **Q. BEST funds can't be used for utility bills**
 2 **that might help preserve the maintenance of a**
 3 **structure?**
 4 A. They cannot.
 5 **Q. BEST funds are solely limited to projects**
 6 **that involve improvements or alterations to physical**
 7 **structures, correct?**
 8 A. Yes.
 9 **Q. And earlier you discussed the local match**
 10 **with both Ms. Weston and Ms. Gebhardt, and you stated**
 11 **that the local match for school district includes**
 12 **per-pupil assessed valuation, correct?**
 13 A. For school districts.
 14 **Q. For school districts. And for the Court's**
 15 **benefit, that's the assessed valuation for a school**
 16 **district divided by the number of pupils, correct?**
 17 A. That's correct.
 18 **Q. And the local match also examines bond**
 19 **efforts in a school district over the past years?**
 20 A. For school districts, yes.
 21 **Q. And a BEST grant is contingent upon an**
 22 **applicant providing their matching funds, correct?**
 23 A. There is a -- it is a matching program,
 24 but there's also a waiver process.
 25 **Q. But unless the school district obtains a**

5637

1 waiver from the board, the BEST grant is contingent
 2 upon an applicant providing their matching grants,
 3 correct?
 4 A. That's correct.
 5 Q. So if a district has to rely on a local
 6 election to provide matching grants, the award is
 7 contingent on the district's success with the election?
 8 A. That's correct.
 9 Q. And the BEST award is all or nothing,
 10 correct? In other words, there's no provision to
 11 receive just a percentage of the allocated funds if the
 12 local election fails?
 13 A. That is correct.
 14 Q. And the division allows for a 1 percent
 15 reduction in the local match for each bond election
 16 defeat during the last ten years, correct?
 17 A. Up to 10 percent, that's correct.
 18 Q. So for a school district like Mapleton,
 19 for example, which failed bond elections three years in
 20 a row, they were only entitled to a 3 percent reduction
 21 to their local match?
 22 A. Correct.
 23 MS. BONO: Your Honor, may I approach?
 24 THE COURT: Yes.
 25 Q. (BY MS. BONO) Mr. Hughes, I've handed you

5638

1 what's been marked and admitted as Exhibit 86. Can you
 2 identify this document, please.
 3 A. It's a list of the calculated matching
 4 percentages for fiscal year 2011-2012.
 5 Q. And your office prepared this document,
 6 correct?
 7 A. Yes.
 8 Q. Looking at this document, we see that the
 9 local match for Mapleton is 34 percent, correct?
 10 A. Yes.
 11 Q. And for Sheridan it's 24 percent?
 12 A. Yes.
 13 Q. If you can flip to the third page. You
 14 see the local match percentage for Rocky Ford is
 15 22 percent?
 16 A. Yes.
 17 Q. And on the next page, you see the local
 18 match for Greeley is 26 percent?
 19 A. Yes.
 20 Q. And built into the BEST grant is a grant
 21 reserve that's added in case a district finds hidden
 22 conditions that the district couldn't have anticipated
 23 when they put together their application, correct?
 24 A. Yes.
 25 Q. And the grant reserve is 5 percent for new

5639

1 construction and 10 percent for renovation or
 2 remodel; is that right?
 3 A. Yes.
 4 Q. And if the cost of the hidden or
 5 unforeseen condition exceeds the grant reserve, the
 6 district can either pay for the increased cost from
 7 their general fund or come back the following year with
 8 a supplemental request; is that right?
 9 A. Yes.
 10 Q. And that means if the district doesn't
 11 have sufficient funds in their general fund, they have
 12 to leave the project uncompleted until the following
 13 year, when they apply for supplemental funding?
 14 A. Possible, yes.
 15 Q. And situations like that have happened
 16 before, correct? For example, there was a situation in
 17 Mountain Valley School District?
 18 A. Yes, there was a situation in Mountain
 19 Valley School District.
 20 Q. And in Mountain Valley, during a re-roof,
 21 they discovered that the existing structure wasn't
 22 designed to carry the existing loads, much less the
 23 additional loads of the new roof design; isn't that
 24 right?
 25 A. Yes.

5640

1 Q. And the grant reserve wasn't sufficient to
 2 fix the situation?
 3 A. Yes.
 4 Q. And the school district had to halt
 5 construction and wait for the following year to request
 6 a supplemental grant?
 7 A. That's why I was hesitant in answering.
 8 'Cause no, they didn't have to halt construction that
 9 was discovered or determined before construction began,
 10 but they weren't able to start construction until they
 11 had enough funding to be able to complete the project.
 12 Q. But the condition persisted during that
 13 year, and while the district had to wait for a
 14 supplemental grant, they had to cancel school every
 15 time it snowed more than 4 inches, correct?
 16 A. Yes.
 17 Q. And if a district receives BEST funds and
 18 they discover a need that is more pressing than what
 19 was originally identified in their application, they
 20 can't divert their BEST funds to the new project, can
 21 they?
 22 A. No.
 23 Q. You're familiar with the Mapleton School
 24 District, correct?
 25 A. Yes.

5641

1 **Q. And you've visited facilities in that**
 2 **district on multiple occasions?**
 3 A. Yes.
 4 **Q. One of the times you visited Mapleton, you**
 5 **had the opportunity to walk through every single**
 6 **facility in the district?**
 7 A. Yes.
 8 **Q. And you would agree that you observed a**
 9 **broad range of needs there, correct?**
 10 A. Yes.
 11 **Q. At the old Mapleton High School, for**
 12 **example, there were code issues?**
 13 A. Yes.
 14 **Q. Poor lighting?**
 15 A. Yes.
 16 **Q. Poor air quality?**
 17 A. Yes.
 18 **Q. Poor exiting?**
 19 A. Yes.
 20 **Q. The building wasn't safe, was it?**
 21 A. No.
 22 **Q. And you observed energy needs in some, if**
 23 **not all, of the buildings in Mapleton; isn't that**
 24 **right?**
 25 A. Yes.

5642

1 **Q. One of the times you visited Mapleton was**
 2 **immediately after they failed to pass an election to**
 3 **raise a local match for a BEST grant, correct?**
 4 A. Yes.
 5 **Q. And that was in 2009?**
 6 A. I believe so.
 7 **Q. And based on feedback you received, you**
 8 **formed some impressions of why that election was not**
 9 **successful?**
 10 A. Yes.
 11 **Q. For example, there was a powerful and**
 12 **organized no campaign that was financed by a car**
 13 **dealership, correct?**
 14 A. Yes.
 15 **Q. In fact, you saw the billboards on the**
 16 **interstate that runs through Denver?**
 17 A. Yes.
 18 **Q. And there was some concern that because**
 19 **the BEST moneys were to go to only one campus, those**
 20 **parents whose students weren't going to benefit from**
 21 **that facility voted against the bond?**
 22 A. Yes.
 23 **Q. And bond elections to raise matching funds**
 24 **don't always fail for the same reasons, correct?**
 25 A. Correct.

5643

1 **Q. For example, sometimes voters don't agree**
 2 **with the scope of the project?**
 3 A. Correct.
 4 **Q. Sometimes they want a smaller project?**
 5 A. Correct.
 6 **Q. But the state has never done a study or**
 7 **analysis of the various reasons that bond elections**
 8 **fail; isn't that right?**
 9 A. Not that I'm aware of.
 10 **Q. And recently more bond elections have been**
 11 **failing, correct?**
 12 A. Yes.
 13 **Q. And you believe there are multiple reasons**
 14 **for that as well?**
 15 A. Yes.
 16 **Q. And one of the reasons is that the economy**
 17 **is poor, and because of that, people are reluctant to**
 18 **raise their property taxes?**
 19 A. Yes.
 20 **Q. And districts aren't allowed to ask for a**
 21 **match that's greater than what their legal bond and**
 22 **indebtedness is, correct?**
 23 A. There -- yes.
 24 **Q. And that's 20 percent of their assessed**
 25 **valuation?**

5644

1 A. There's some exceptions to that, but
 2 generally that's true.
 3 **Q. And when districts need to maximize their**
 4 **bonded debt, that could be a huge tax impact on voters?**
 5 A. Yes.
 6 **Q. In fact, it almost always costs them 15 to**
 7 **20 mills?**
 8 A. I never really looked at it that way, to
 9 see if it's almost always. But it often certainly
 10 would be 15 to 20 mills.
 11 **Q. If that was the testimony you provided in**
 12 **your deposition, would you change that testimony today?**
 13 A. If that's exactly what I testified in my
 14 deposition, yeah, I -- I'd have to change it, 'cause I
 15 just don't know if that's exactly the answer. The way
 16 you asked the question.
 17 **Q. Well, you agree there could be a huge tax**
 18 **impact on the voters, correct?**
 19 A. Yes.
 20 **Q. And particularly in this economy, that's a**
 21 **lot for people to swallow?**
 22 A. Yes.
 23 **Q. And that's typically more common in lower**
 24 **property value districts?**
 25 A. Yes.

5645

1 **Q. And you believe the quality of facilities**
 2 **from district to district is a factor of the property**
 3 **wealth of that district, don't you?**
 4 A. I think that's a factor, yes.
 5 **Q. You've also visited facilities in Rocky**
 6 **Ford before, correct?**
 7 A. Yes.
 8 **Q. On one occasion you observed a locker room**
 9 **on a lower level in one facility that lacked proper**
 10 **monitoring?**
 11 A. Yes.
 12 **Q. And there was another building that was**
 13 **old and had many deficiencies?**
 14 A. Yes.
 15 **Q. Some of the schools you saw in Rocky Ford**
 16 **were unsafe, weren't they?**
 17 A. Yes.
 18 MS. BONO: Your Honor, may I approach?
 19 THE COURT: Yes.
 20 **Q. (BY MS. BONO) Mr. Hughes, I've handed you**
 21 **what's been marked as Exhibit 82, and I've handed it to**
 22 **you because I wasn't confident about my ability to zoom**
 23 **in on the numbers closely enough for you to see on the**
 24 **Elmo there. Can you please turn to Appendix 6 of**
 25 **Exhibit 82, and it should be the first red flag that's**

5646

1 **marked on the exhibit.**
 2 A. Okay.
 3 **Q. You see a chart there in Appendix 6. This**
 4 **table reflects all of the district results from the**
 5 **statewide assessment you were discussing with**
 6 **Ms. Gebhardt, correct?**
 7 A. What did you just ask me? I was looking.
 8 **Q. Does the table that you're looking at**
 9 **that's reflected in Appendix 6, it reflects all of the**
 10 **district results from the statewide assessment; is that**
 11 **right?**
 12 A. Yes.
 13 **Q. And looking at that table, can you define**
 14 **the meaning of condition needs?**
 15 A. When we -- yes. The condition needs are
 16 related to the condition of the facility, the age of
 17 the roof, the -- just the actual physical conditions of
 18 the systems in the facility.
 19 **Q. You'd agree that condition needs means the**
 20 **physical fitness or readiness of a facility, system, or**
 21 **system element for its intended use, correct?**
 22 A. Yes.
 23 **Q. And the amount of money reflected for**
 24 **condition needs in that table is the amount of money**
 25 **that's needed to bring the facility or element up to**

5647

1 **its intended use, right?**
 2 A. Yes.
 3 **Q. And suitability needs in the same table,**
 4 **that's the amount of money needed to bring the facility**
 5 **to a condition that allows it to support the program**
 6 **that it houses?**
 7 A. Yes.
 8 **Q. And so if you take a look at page 15.**
 9 **Mapleton's condition needs are 118,430,854, correct?**
 10 A. I'm just catching up with you. Can you
 11 ask the question again, please.
 12 **Q. Sure. When you look at Mapleton's**
 13 **condition needs, they're 118,430,854, correct?**
 14 A. Yes.
 15 **Q. And its suitability needs are 106,908,700?**
 16 A. Yes.
 17 **Q. And if you take a look at page 11. I'll**
 18 **wait for you to get there this time.**
 19 A. Okay.
 20 **Q. Can we agree that Greeley's condition**
 21 **needs are 108,069,540?**
 22 A. Yes.
 23 **Q. And its suitability needs are 101,920,700?**
 24 A. Yes. Although could I back up a little
 25 bit?

5648

1 **Q. Sure.**
 2 A. You're saying "are," the needs are. The
 3 needs were at the time of this facility analysis that
 4 we're discussing.
 5 **Q. Very good. And as you probably guessed,**
 6 **we're going to go on to two other districts, and we can**
 7 **agree that the needs that we identified were as they**
 8 **were at the time the assessment was conducted for those**
 9 **districts?**
 10 A. Yes.
 11 **Q. When was the assessment published?**
 12 A. March of 2010.
 13 **Q. And let's take a look -- going back to**
 14 **Greeley on page 11.**
 15 A. Okay.
 16 **Q. Greeley has energy needs in the amount --**
 17 **or, again, at the time of the assessment had energy**
 18 **needs in the amount of approximately half a million**
 19 **dollars?**
 20 A. Yes.
 21 **Q. Please turn to page 18.**
 22 A. Okay.
 23 **Q. We can agree that the condition needs in**
 24 **Sheridan were 24,868,553, correct?**
 25 A. Yes.

5649

1 **Q. And the suitability needs there were**
 2 **18,081,800?**
 3 A. Yes.
 4 **Q. And the condition needs in Rocky Ford,**
 5 **which I think are on the same page, were 24,313,209?**
 6 A. Yes.
 7 **Q. And its suitability needs were 8,262,500?**
 8 A. Yes.
 9 **Q. And as we sit here today, you don't know**
 10 **if all the needs in the school districts we just**
 11 **reviewed have been met, correct?**
 12 A. Which -- well, yes. I mean, I -- I don't
 13 believe all the needs in any of these school districts
 14 have been met.
 15 **Q. And Mapleton and Sheridan, to be fair,**
 16 **have received BEST grants; is that right?**
 17 A. Yes.
 18 **Q. But those funds were not sufficient to**
 19 **cover all of the condition, suitability, and energy**
 20 **needs reflected in those districts in Appendix 6,**
 21 **correct?**
 22 A. Correct.
 23 **Q. And it's possible that the needs in those**
 24 **districts have increased since the time of the**
 25 **assessment, right?**

5650

1 A. Yes.
 2 **Q. And when a condition need is not met, it's**
 3 **possible that the facility will further deteriorate,**
 4 **correct?**
 5 A. Yes.
 6 **Q. And when deterioration occurs, the**
 7 **condition can become more expensive to repair or**
 8 **renovate, correct?**
 9 A. Yes.
 10 **Q. Earlier you discussed FCIs and CFIs in the**
 11 **districts with Ms. Gebhardt. You recall that**
 12 **conversation?**
 13 A. I recall discussing FCIs, yes.
 14 **Q. Is it fair to say that if the FCI is**
 15 **higher, the cost to correct the deficiency is higher as**
 16 **well?**
 17 A. No. It just means there's more --
 18 possibly more deficiencies, but not the cost of an
 19 individual deficiency. I mean, it doesn't reflect the
 20 cost of an individual deficiency.
 21 **Q. Can you state what the CFI is?**
 22 A. The CFI is a unique indicator that we
 23 created as part of this facility assessment for
 24 Colorado that brings in -- it's not just looking at the
 25 facility conditions, but it also brings in the

5651

1 suitability and the energy needs of a facility. So it
 2 adds the facility condition cost to repair the
 3 facility, the suitability cost to make it suitable to
 4 deliver the educational programs that they're
 5 delivering in the building and the cost to upgrade the
 6 energy deficiencies and then puts that relative to the
 7 cost of replacing the building.
 8 MS. BONO: Your Honor, may I approach?
 9 THE COURT: Yes.
 10 **Q. (BY MS. BONO) We're done with this**
 11 **exhibit. I've just handed you the deposition**
 12 **transcript from your second deposition in July. And if**
 13 **you could turn to page 207 for me.**
 14 A. Okay.
 15 **Q. And just a moment ago you said that if the**
 16 **FCI is higher, it's not necessarily the case that the**
 17 **cost to correct the deficiency is higher, correct?**
 18 A. Well, an individual deficiency, correct.
 19 The way you're asking the question, I'm hearing that
 20 the cost of an individual deficiency. It's
 21 definitely -- if it's higher, it means to correct all
 22 the deficiencies is higher.
 23 **Q. Okay. So when we're looking at an FCI**
 24 **number, for example, in Appendix 6, the table that we**
 25 **were just discussing, in that situation, if the FCI is**

5652

1 **higher, the cost to correct the deficiencies is higher,**
 2 **correct?**
 3 A. All the deficiencies added together, to
 4 correct all the deficiencies, is higher. It's -- you
 5 can't -- unless there's only one deficiency in the
 6 building, then you can't really say that the cost of an
 7 individual deficiency is higher just because the FCI's
 8 higher.
 9 **Q. Okay.**
 10 A. I'm not -- okay?
 11 **Q. That works. Thank you.**
 12 A. Not trying to be difficult, I just want to
 13 make sure --
 14 **Q. I appreciate the clarification. Thank**
 15 **you. It's your opinion that the FCIs and CFIs in Rocky**
 16 **Ford, Sheridan, and Mapleton will increase in the next**
 17 **three to four years, correct?**
 18 A. Without some efforts in correcting the
 19 deficiencies, yes.
 20 **Q. Your opinion's based on the fact that in**
 21 **your opinion, they're not spending enough money to keep**
 22 **FCI and CFI stable?**
 23 A. To my knowledge they're not, no. I mean,
 24 I can't see what's going to happen next year or next
 25 month, but currently that's accurate.

5653

1 **Q. But you can't state with certainty that**
 2 **those districts have the money to spend, correct?**
 3 A. I'm sorry, what was the question?
 4 **Q. You can't state with certainty that those**
 5 **districts have the money to spend, correct?**
 6 A. Correct.
 7 **Q. You believe that all the applications for**
 8 **BEST grants in the 2011-2012 cycle were for worthy**
 9 **projects, correct?**
 10 A. Yes.
 11 **Q. And you don't think any of the school**
 12 **districts with applications in the 2011-2012 cycle were**
 13 **making up their capital needs, correct?**
 14 A. Correct.
 15 **Q. None of the school districts in any of the**
 16 **BEST cycles so far have been dishonest about their**
 17 **needs; isn't that correct?**
 18 A. Correct.
 19 **Q. You don't believe that all school**
 20 **districts have not applied for BEST grant -- sorry.**
 21 **That didn't make any sense.**
 22 **You don't believe that all school**
 23 **districts that have not applied for BEST grants are**
 24 **unmotivated, correct?**
 25 A. I'm sorry, can you ask that again? I

5654

1 think I still didn't understand the question.
 2 **Q. It's not your belief that if a school**
 3 **district hasn't applied for a BEST grant, that means**
 4 **they're unmotivated, correct?**
 5 A. Correct.
 6 MS. BONO: Your Honor, may I approach?
 7 THE COURT: Yes.
 8 **Q. (BY MS. BONO) Mr. Hughes, I've handed you**
 9 **what's been marked and admitted as Trial Exhibit 7105.**
 10 **It's the list of 2011-2012 applications for the BEST**
 11 **grant. The category called "Amount of Grant Request"**
 12 **is the amount of state funding requested in the**
 13 **application, correct?**
 14 A. Yes.
 15 **Q. And the "Amount of Applicant Contribution"**
 16 **is the local match that we discussed earlier, correct?**
 17 A. Yes.
 18 **Q. And the "Total Project Cost" is the grant**
 19 **amount plus the match amount together, correct?**
 20 A. Yes.
 21 **Q. And some of the numbers reflected in this**
 22 **chart may have changed slightly, but for the most part**
 23 **they're accurate?**
 24 A. Yes.
 25 **Q. Take a look at page 47. The total project**

5655

1 **cost for all the projects submitted in this cycle was**
 2 **approximately 553.6 million; is that accurate?**
 3 A. Yes.
 4 **Q. And the total amount of grant request was**
 5 **approximately 372 million?**
 6 A. Yes.
 7 **Q. To your knowledge, was even half of the**
 8 **total project cost granted?**
 9 A. To my knowledge, less than half was
 10 granted.
 11 **Q. And you believe that all the applications**
 12 **and all the BEST cycles thus far, including this one,**
 13 **have shown substantial need, correct?**
 14 A. Yes.
 15 **Q. It's your belief that if students or**
 16 **teachers are not comfortable in the environment that**
 17 **they're learning in or working in, if they're worried,**
 18 **nervous, or concerned about their safety, it's going to**
 19 **have an impact on their ability to learn or teach,**
 20 **correct?**
 21 A. Yes.
 22 **Q. You think it has a negative impact on**
 23 **student achievement; is that right?**
 24 A. Yes.
 25 **Q. And if a school has a problem like lack of**

5656

1 **heat or leaking roof, that would have a negative impact**
 2 **on student achievement?**
 3 A. Yes.
 4 **Q. And that's based on your experiences and**
 5 **observations during your time at CDE, correct?**
 6 A. Yes.
 7 **Q. Other than the BEST grants, you discussed**
 8 **a number of other state funding sources for capital**
 9 **construction in Colorado, and I'd like to talk a little**
 10 **bit about those.**
 11 A. Okay.
 12 **Q. The charter school capital construction**
 13 **grant program is only available for charter schools,**
 14 **correct?**
 15 A. Yes.
 16 **Q. And you also mentioned energy impact**
 17 **grants. Excuse me, impact energy grants. But those**
 18 **aren't school-specific, correct?**
 19 A. That's correct.
 20 **Q. They're also available for fire districts**
 21 **and sanitation districts?**
 22 A. Yes.
 23 **Q. And you mentioned that impact energy**
 24 **grants aren't being currently funded, right?**
 25 A. Yes.

5657

1 **Q. You also mentioned a full-day kindergarten**
 2 **program that provides facilities for full-day**
 3 **kindergarten?**
 4 A. Yes.
 5 **Q. But that one's not being currently funded,**
 6 **is it?**
 7 A. No, it's not being currently funded.
 8 **Q. There was also some discussion about**
 9 **Quality Zone Academy Bonds, but QZABs aren't actual**
 10 **funds, correct?**
 11 A. Correct.
 12 **Q. What you have there is the authorization**
 13 **to get out and get interest-free financing?**
 14 A. We can provide school district
 15 authorization to get out and get interest-free
 16 financing.
 17 **Q. And there is a 10 percent private**
 18 **investment that's needed for the Quality Zone Academy**
 19 **Bonds, correct?**
 20 A. Yes.
 21 **Q. And that's sometimes hard to find?**
 22 A. Yes.
 23 **Q. For example, if there's a million dollar**
 24 **project, it's hard to find someone who wants to put up**
 25 **a hundred thousand dollars?**

5658

1 A. Yes.
 2 **Q. And not all the projects that have been**
 3 **rejected from BEST are good candidates for a QZAB,**
 4 **correct?**
 5 A. Correct.
 6 **Q. And you haven't done a QZAB deal for a**
 7 **couple of years, correct?**
 8 A. I believe we awarded -- I'm not sure. I
 9 believe we awarded a QZAB grant last year to -- I'm not
 10 sure. But it's definitely slowed down. We haven't
 11 been doing much in the way of QZAB recently.
 12 **Q. You also mentioned BEST emergency grants.**
 13 **You mentioned that briefly this morning?**
 14 A. Yes.
 15 **Q. But those funds are limited, correct?**
 16 A. The funds aren't limited. The statute
 17 requires us to maintain a million -- or -- yeah, a
 18 million dollars for emergency grants. But we -- if a
 19 district needed more than a million dollars and we had
 20 that available, we could do a larger grant than a
 21 million dollars.
 22 **Q. Those funds come from the same source as**
 23 **the cash grants?**
 24 A. Yes.
 25 **Q. And districts still need to apply for**

5659

1 **them, correct?**
 2 A. Yes.
 3 **Q. And other than those sources that we've**
 4 **discussed and aside from BEST, of course, the state**
 5 **doesn't directly provide funding for capital needs,**
 6 **correct?**
 7 A. Well, the historical society has some
 8 funds that can be used for capital needs, and GOCO
 9 sometimes assists school districts with capital needs.
 10 **Q. School districts can apply for GOCO**
 11 **funds; is that correct?**
 12 A. No, they can't.
 13 **Q. They have to apply through their local**
 14 **town or county or recreation district; isn't that**
 15 **right?**
 16 A. Yes.
 17 **Q. And GOCO funds are created through the**
 18 **Colorado Lottery?**
 19 A. Yes.
 20 **Q. They tend to fluctuate drastically?**
 21 A. Yes.
 22 **Q. And the Colorado Historical Society**
 23 **grants, a school district has to have a historic**
 24 **building to qualify for one of those, correct?**
 25 A. Yes.

5660

1 **Q. So now I'll just ask the same question.**
 2 **Have we thoroughly exhausted the sources of funding**
 3 **from the state for capital funding?**
 4 A. Yes. No. There's the governor's energy
 5 office also has grants that assist school districts.
 6 **Q. That's different than the energy impact**
 7 **grants?**
 8 A. Yes. The energy impact grants come
 9 through the department of local affairs.
 10 **Q. Earlier you mentioned updates to the**
 11 **assessment; is that correct?**
 12 A. Yes. While there are updates -- I didn't
 13 mention them, but yes, there are updates to the
 14 assessment.
 15 **Q. Okay. Then I won't go into that for now.**
 16 **Mr. Hughes, it's fair to say that as we sit here today,**
 17 **there are school districts in Colorado that need new**
 18 **facilities, correct?**
 19 A. Yes.
 20 **Q. And some of those districts that need new**
 21 **facilities cannot afford to do it without state**
 22 **dollars?**
 23 A. Yes.
 24 **Q. And there are school districts in Colorado**
 25 **that have applied for BEST grants to address health and**

5661

1 safety needs in their districts, but have not received
 2 grants, correct?
 3 A. Yes.
 4 Q. And in your mind, there's a gap between
 5 the resources that are available through BEST and the
 6 dollar amount of construction needs identified in the
 7 statewide assessment, correct?
 8 A. Yes.
 9 Q. And if the BEST program had more money,
 10 you would feel better about being able to get to all
 11 the district needs eventually, correct?
 12 A. Yes.
 13 Q. And if the BEST program had more money, it
 14 would be able to address more of the outstanding health
 15 and safety needs in the school districts?
 16 A. Yes.
 17 Q. You agree that school facilities are part
 18 of the state's overall education system, right?
 19 A. Yes.
 20 MS. BONO: Thank you for your time today.
 21 I have no further questions.
 22 THE WITNESS: You're welcome.
 23 THE COURT: Redirect.
 24
 25

5662

1 REDIRECT EXAMINATION
 2 BY MS. WESTON:
 3 Q. In your conversation with Ms. Gebhardt,
 4 you discussed a potential lease-purchase payment cap.
 5 Do you recall that conversation?
 6 A. Yes.
 7 Q. And will that potential lease-purchase
 8 payment cap impact other types of BEST grants?
 9 A. The --
 10 MS. BONO: Your Honor, objection.
 11 Leading.
 12 THE COURT: Overruled.
 13 A. The emergency grants will continue and the
 14 BEST cash grants will continue at some level.
 15 Q. (BY MS. WESTON) And when you talked about
 16 the end of the BEST lease-purchase piece, is that an
 17 end forever, or did you mean that it was at this time?
 18 MS. BONO: Objection. Leading.
 19 MS. GEBHARDT: Foundation and speculation.
 20 THE COURT: Sustained as to foundation.
 21 If you can lay a further foundation.
 22 Q. (BY MS. WESTON) Do you know whether there
 23 will be any time in the future that there would ever be
 24 lease-purchase grants?
 25 MS. GEBHARDT: Same objection, Your Honor.

5663

1 Foundation. Speculation.
 2 THE COURT: If you can lay a further
 3 foundation. If he knows or how he knows.
 4 Q. (BY MS. WESTON) I'll move on. In your
 5 conversation with Ms. Gebhardt, you discussed the
 6 status of the state's knowledge of the school
 7 facilities before the statewide facilities assessment.
 8 Do you recall that conversation?
 9 A. Yes.
 10 Q. And do you know historically whose
 11 responsibility it has been to pay for school
 12 facilities?
 13 MS. GEBHARDT: Objection. Calls for a
 14 legal conclusion.
 15 THE COURT: Overruled.
 16 A. The local school districts and charter
 17 schools.
 18 Q. (BY MS. WESTON) In your conversation with
 19 Ms. Gebhardt, you discussed whether the districts were
 20 to blame for the condition of their facilities. Do you
 21 recall that conversation?
 22 A. Yes.
 23 Q. Do you distinguish blame from
 24 responsibility?
 25 A. Blame from responsibility. I think --

5664

1 yes.
 2 Q. How so?
 3 A. Well, I feel like blame, to me, brings in
 4 intent, that they intentionally made a decision for
 5 some reason to not take care of their facilities, as
 6 opposed to weren't able to take care of their
 7 facilities. I don't think the districts are being
 8 dishonest or irresponsible if they've let their
 9 facilities slide, and that's where I was getting
 10 nervous about the word "blame."
 11 Q. Do you believe that districts are
 12 responsible for their facilities?
 13 A. Yes.
 14 Q. You and Ms. Bono discussed whether all
 15 districts who fail to apply are unmotivated. Do you
 16 recall that conversation?
 17 A. Yes.
 18 Q. And setting aside all districts, have you
 19 ever encountered any potential applicant with needs who
 20 has decided not to apply?
 21 A. Yes.
 22 MS. WESTON: I have no further questions.
 23 THE COURT: Thank you. Recross.
 24
 25

5665

1 REXCROSS-EXAMINATION
 2 BY MS. GEBHARDT:
 3 **Q. Mr. Hughes, the cash grants.**
 4 **Approximately how much has there been historically in**
 5 **the cash grants per year?**
 6 A. Since the inception of the BEST program?
 7 **Q. Of the BEST program.**
 8 A. Approximately 12 to \$15 million.
 9 **Q. And how much would it cost to build a new**
 10 **school, approximately? A K-8 or high school.**
 11 A. It would vary, but it would be a lot more
 12 than that. Generally speaking, it would be 20 -- 20 to
 13 \$40 million, something like that.
 14 **Q. So you said going forward that there'll be**
 15 **some cash grants and emergency. So there'll be some**
 16 **ability to repair roofs and boilers, but no ability to**
 17 **build new schools on yearly basis ongoing, correct?**
 18 A. Not on yearly basis.
 19 **Q. And it's not your testimony, is it,**
 20 **Mr. Hughes, that the state has absolutely no obligation**
 21 **to make sure that the facilities in which its students**
 22 **attend are safe, secure, and up to the -- meeting the**
 23 **standards for providing a constitutionally adequate**
 24 **education? That's not your testimony, is it?**
 25 A. No.

5666

1 MS. BONO: We have no further questions.
 2 Thank you.
 3 THE COURT: Thank you, sir. You may step
 4 down. Thank you.
 5 THE WITNESS: Thank you.
 6 THE COURT: Next witness?
 7 MR. HINOJOSA: Grab this stuff here.
 8 MS. MARKEL: At this time the state calls
 9 Ms. Elaine Gantz Berman.
 10 THE COURT: If you'd come forward to the
 11 witness stand. If you would raise your right hand.
 12 ELAINE GANTZ BERMAN,
 13 having been first duly sworn to state the whole truth,
 14 testified as follows:
 15 THE COURT: Thank you. Please be seated.
 16 MS. MARKEL: There's water there,
 17 Ms. Berman, if you'd like some.
 18 THE WITNESS: Thank you.
 19 THE COURT: And then if you could state
 20 your full name for the record, please, and please spell
 21 your last name.
 22 THE WITNESS: Elaine Gantz Berman. And my
 23 last two names are Gantz, G-a-n-t-z, and Berman,
 24 B-e-r-m-a-n.
 25 THE COURT: Thank you.

5667

1 DIRECT EXAMINATION
 2 BY MS. MARKEL:
 3 **Q. Ms. Gantz Berman, would you please**
 4 **describe your educational background.**
 5 A. My educational background. I have a
 6 master's in public health and maternal and child health
 7 from the University of North Carolina-Chapel Hill.
 8 **Q. And would you please describe your**
 9 **employment history.**
 10 A. Well, I think I'll start with I worked at
 11 the Piton Foundation, which is a Denver-based
 12 foundation from 1972 to 1999, for 18 years. And then I
 13 did smaller things in between.
 14 **Q. And with regard to the work that you did**
 15 **at the Piton Foundation, did you have any areas of**
 16 **focus?**
 17 A. I spent my entire time at Piton -- I've
 18 actually spent my entire career working on behalf of
 19 children, predominantly low-income children.
 20 **Q. Have you been involved in the last ten**
 21 **years in any community organizations?**
 22 A. I have been involved in many, many
 23 community organizations.
 24 **Q. Could you please identify some of the**
 25 **community organizations in which you've been involved.**

5668

1 A. I helped to found the Colorado Children's
 2 Campaign. I helped to found The Adoption Exchange.
 3 I'm currently the chair of Colorado Common Good. Also
 4 currently the chair of the Children's Health
 5 Foundation, which is based on the western slope. I was
 6 president/chair of the Jewish Community Center.
 7 **Q. Do you currently hold any elected**
 8 **positions?**
 9 A. I'm currently a member of the state board
 10 of education, representing Congressional District 1,
 11 which is Denver.
 12 **Q. Prior to your service on the state board,**
 13 **did you ever serve on any other school boards?**
 14 A. I served on the Denver School Board.
 15 **Q. And how -- I'm sorry.**
 16 A. Oh. I was just going to say from 1997 to
 17 2005. And I served as president of the Denver School
 18 Board for four of those eight years.
 19 **Q. During the time that you served on the**
 20 **Denver School Board, what kinds of issues did your**
 21 **board address?**
 22 A. Just about every single issue that faces
 23 urban public education.
 24 **Q. And over the course of your tenure on the**
 25 **school board, the local school board for Denver Public**

5669

1 **Schools, can you -- when you reflect back, are there**
 2 **any accomplishments that you're particularly proud of**
 3 **as part of that work that you did?**
 4 A. I was on the school board when ProComp was
 5 developed and passed by the voters. And I was also on
 6 the school board and provided a leadership role in
 7 passing bond and mill levy elections.
 8 **Q. If you would, please describe what ProComp**
 9 **is.**
 10 A. ProComp was one of the first efforts in
 11 the United States to tie teacher compensation to
 12 student performance.
 13 **Q. And why do you -- why do you believe that**
 14 **that was a significant accomplishment as part of the**
 15 **work that you did in service to Denver Public Schools?**
 16 A. Well, because I believe that the most
 17 important aspect of a child's education is the teacher
 18 in the classroom. And that my goal as a board member,
 19 both local and state, is to make sure we have the
 20 highest quality teacher in every classroom. And the
 21 ProComp, which was passed by the voters, was done
 22 together with the teachers union. The teachers union
 23 actually voted on behalf of ProComp, which did tie a
 24 percentage of a teacher's performance to -- to student
 25 performance.

5670

1 **Q. Are you familiar with the group known as**
 2 **Democrats for Education Reform?**
 3 A. Yes, I am.
 4 **Q. And what is that group?**
 5 A. Democrats for Education Reform, and I am a
 6 member of what we call DFER, is a democrat political
 7 action committee that has tried -- attempted to change
 8 the discourse amongst the Democratic party around
 9 education reform.
 10 **Q. Are there any specific issues of focus**
 11 **that you're aware of with regard to DFER's efforts?**
 12 A. There are a number of different efforts.
 13 DFER promotes school choice. Not vouchers, but school
 14 choice. DFER promotes having the best possible
 15 teachers in the classroom and getting progressive
 16 leaders elected to local school boards.
 17 **Q. Are you familiar with The Broad**
 18 **Foundation?**
 19 A. Yes, I am.
 20 **Q. And what is that?**
 21 A. The Broad Foundation is a national
 22 foundation that focuses on public education in the
 23 arts, and those are the predominant areas. And the
 24 founder is Eli Broad.
 25 **Q. Have you had any involvement in The Broad**

5671

1 **Foundation?**
 2 A. Yes, I have. I was one of several people
 3 that they invited to help put together their training
 4 for school board members. And I've also served as a
 5 consultant with The Broad Foundation.
 6 **Q. In what areas have you provided**
 7 **consultancy to The Broad Foundation?**
 8 A. Mentoring school board presidents.
 9 **Q. Are you familiar with NASBE?**
 10 A. Yes, I am.
 11 **Q. And what NASBE?**
 12 A. It's the National Association of State
 13 Boards of Education.
 14 **Q. And are you involved in NASBE at this**
 15 **time?**
 16 A. I am involved in NASBE. Since I'm on the
 17 Colorado State Board of Education, I am on their
 18 government affairs committee, which is the committee
 19 that reviews and provides recommendations around
 20 national legislation pertaining to public education.
 21 **Q. In your service on the state board, do you**
 22 **have any area or areas that are of particular interest**
 23 **to you?**
 24 A. Yes, I do.
 25 **Q. And what are they?**

5672

1 A. I have been a passionate advocate of
 2 health and wellness. I also have just completed
 3 chairing a commission on expanded learning
 4 opportunities. A third area is streamlining paperwork,
 5 reducing bureaucracy for local school districts. And a
 6 fourth area are Spanish-speaking children.
 7 **Q. If you would, explain or describe what the**
 8 **expanded learning opportunities work -- what was that?**
 9 A. That is we've taken a look at how the
 10 current way of delivering education is limiting and how
 11 we can expand beyond what we call walls, clocks, and
 12 calendars to provide more flexibility around meeting
 13 the individual learning needs of students. As the
 14 shorthand version.
 15 **Q. Are there any initiatives or next steps**
 16 **that came out of the expanded learning opportunities**
 17 **work?**
 18 A. We have a sizable grant from the Ford
 19 Foundation out of New York City, and we will be
 20 doing -- when I say "we," it's The Legacy Foundation,
 21 and we will be doing pilots with local school districts
 22 around expanding time and exploring new ways of meeting
 23 individual student needs.
 24 **Q. And you mentioned work around students**
 25 **with -- whose native language is other than English?**

5673

1 A. Uh-huh.
 2 **Q. What is that work?**
 3 A. I didn't say work. It's a priority of
 4 mine.
 5 **Q. Okay. And have there been any actions**
 6 **that you've taken in furtherance of that particular**
 7 **interest of yours?**
 8 A. I would just say it's a particular
 9 interest because I am bilingual and my mother is Cuban.
 10 **Q. You mentioned streamlining paperwork as**
 11 **another priority of yours. Have there been any actions**
 12 **taken around that particular focus?**
 13 A. I am always using that lens when I -- when
 14 we discuss any particular piece of legislation. I'm
 15 also -- we have two liaisons on the state board of
 16 education regarding state legislation, and we have a
 17 Democrat and Republican. I'm the Democratic liaison
 18 between the state board and the state legislature.
 19 **Q. And you also mentioned health and wellness**
 20 **as a priority of yours; is that correct?**
 21 A. Yes, that's correct.
 22 **Q. And why is health and wellness a priority**
 23 **of yours?**
 24 A. Because I believe very strongly that a
 25 student who lives a healthy lifestyle, eats nutritious

5674

1 food, and exercises will -- they will have better
 2 attendance, they'll have fewer discipline problems, and
 3 they'll have higher student achievement. And also
 4 because I'm married to a pediatrician and I have a
 5 master's in public health.
 6 **Q. And has the state board, since you've been**
 7 **sitting on the state board or serving on the state**
 8 **board, undertaken any initiatives around health and**
 9 **wellness?**
 10 A. Yes. I'm very proud to say that we just
 11 recently adopted for the first time academic standards
 12 around health and wellness. And there are other things
 13 as well.
 14 **Q. And what other -- briefly, what other**
 15 **things?**
 16 A. There -- we promulgated some rules a few
 17 years ago around eliminating diet soda and sugary
 18 beverages in schools.
 19 **Q. Are you familiar with Senate Bill 191?**
 20 A. Yes.
 21 **Q. And what is that?**
 22 A. Senate Bill 191 was passed in the last
 23 couple of years, and we refer to it as the Educator
 24 Effectiveness Bill, and it is similar to the Denver
 25 ProComp, in that it ties educator -- educator

5675

1 valuations to student performances, amongst other
 2 things.
 3 **Q. And why are you supportive of this bill?**
 4 A. Well, I am supportive of this bill. I'm
 5 supportive of it for the same reasons that -- that I
 6 answered the question regarding ProComp.
 7 **Q. Are you aware of the costs associated with**
 8 **implementing Senate Bill 191?**
 9 A. Yes, I am.
 10 **Q. And what is your awareness of the costs?**
 11 A. Well, I know it will run into the millions
 12 of dollars.
 13 **Q. Are you aware of any efforts underway to**
 14 **provide funding for implementing Senate Bill 191?**
 15 A. Yes, I am. The original intent was that
 16 we were feeling very optimistic that we would get the
 17 Race to the Top dollars from the federal government.
 18 We applied twice, we were rejected twice. Now there is
 19 a major initiative underway to raise private dollars
 20 for quite a lot of it. And we have a decent start,
 21 because we got a sizable grant from the Melinda and
 22 Bill -- Bill and Melinda Gates Foundation of over
 23 \$9 million to get it started. And when I say "we,"
 24 that's the Legacy Foundation, and I'm on the board of
 25 The Colorado Legacy Foundation.

5676

1 **Q. What is your understanding of the timeline**
 2 **for implementing Senate Bill 191?**
 3 A. There is an Educator Effectiveness Council
 4 that has been making recommendations. The first steps
 5 will be to do some pilots. So over the next couple of
 6 years there will be pilots before the full
 7 implementation takes place. So I believe it's 2013. I
 8 believe.
 9 **Q. Without asking you for a legal opinion,**
 10 **Ms. Gantz Berman, what is your understanding of local**
 11 **control?**
 12 A. My understanding of local control in the
 13 state of Colorado is that the Colorado Constitution
 14 gives local school districts the authority to develop
 15 curriculum, to hire and fire their employees, to
 16 determine how -- how their budgets are spent. And
 17 that -- I'll stop there.
 18 **Q. Do you support local control?**
 19 A. I support aspects of local control.
 20 **Q. And what aspects -- I take it from your**
 21 **response there are aspects that you don't support?**
 22 A. That is correct. And I know in my
 23 deposition I said I'm not a big fan of local control.
 24 I -- I believe that the role -- if it were up to me,
 25 the state board of education would determine what needs

5677

1 to get done in public education and local school
 2 districts would figure out how to get it done.
 3 **Q. Again, without asking for a legal opinion,**
 4 **what is your understanding of a thorough and uniform**
 5 **education?**
 6 A. I thought a lot about this. There are two
 7 ways to look at thorough and uniform public education.
 8 One is in terms of finances and the other is in terms
 9 of the actual provision of education.
 10 So to me, you have to look at both. We
 11 have to look at are all students in the state of
 12 Colorado getting a thorough and uniform education, and
 13 is the State of Colorado providing financial resources
 14 that are thorough and uniform throughout the state.
 15 **Q. As you've defined thorough and uniform**
 16 **education, do you believe there -- the students in the**
 17 **state are receiving a thorough and uniform education?**
 18 A. No, I do not.
 19 **Q. Why not?**
 20 A. I think resources vary from school
 21 district to school district. That while we have a
 22 school finance formula, we do leave it up to local
 23 jurisdictions to go to the voters and give them the
 24 opportunity to raise taxes. Some areas are more --
 25 have -- their mill levies will allow them to raise more

5678

1 money than others, and some jurisdictions are more apt
 2 to raise taxes. Denver hardly ever turns down a tax
 3 increase. Douglas County is another story, not that
 4 they need necessarily more resources.
 5 **Q. Do you have any other reasons that you**
 6 **believe that there is not a thorough and uniform**
 7 **education in Colorado?**
 8 A. I think it is much more difficult in rural
 9 areas to attract high-quality teachers. I believe that
 10 the rural areas tend to pay their teachers less. And
 11 when they get offered other jobs, those teachers tend
 12 to go to school districts that offer higher salaries.
 13 **Q. Do you have any other reasons that you**
 14 **believe that Colorado is not providing a thorough and**
 15 **uniform education?**
 16 A. I'm sure I could think of several. But
 17 I'll stop there.
 18 **Q. Do you have any thoughts in your role as**
 19 **state board member regarding consolidation of school**
 20 **districts?**
 21 A. Can you ask the question in a more pointed
 22 way?
 23 **Q. As a state board member, do you have**
 24 **any -- have you formed any thoughts on consolidation of**
 25 **school districts?**

5679

1 A. I believe that there are some areas where
 2 perhaps school districts could be doing more to do
 3 joint purchasing, whether it's around gasoline for
 4 school buses or food services, distance learning,
 5 et cetera. Whether it's actual consolidation. I've
 6 often thought that perhaps school districts could share
 7 some administrative costs like superintendents, but
 8 maintain their local school boards. But I am aware
 9 that studies that have been conducted -- at least one
 10 study that was conducted has shown that there's no cost
 11 savings from actual consolidation of school districts.
 12 **Q. Would there be any other benefits other**
 13 **than cost savings with regard to the type of**
 14 **consolidation that you just described?**
 15 A. Beyond cost savings? No.
 16 MS. MARKEL: I have no further questions
 17 at this time. I will save my questions for redirect.
 18 THE COURT: Thank you. Cross-examination.
 19 MR. KAWANABE: Thank you, Your Honor.
 20 CROSS-EXAMINATION
 21 BY MR. KAWANABE:
 22 **Q. Good afternoon, Ms. Gantz Berman.**
 23 A. Good afternoon.
 24 **Q. We met before, correct?**
 25 A. Yes, we have.

5680

1 MR. KAWANABE: And, Your Honor, if I may
 2 approach, I have one demonstrative to put up.
 3 THE COURT: Yes.
 4 **Q. (BY MR. KAWANABE) Ms. Gantz Berman, are**
 5 **you able to see this board fairly?**
 6 A. Yes, I am.
 7 **Q. Ms. Gantz Berman, you are on the state**
 8 **board of education; is that correct?**
 9 A. Yes, it is.
 10 **Q. And would you please remind us when you**
 11 **started on the state board. What year?**
 12 A. I believe I started in 2007.
 13 **Q. And when does your current term end?**
 14 A. In 2000 -- I really should know this.
 15 2013.
 16 **Q. Okay. You served on the Denver Public**
 17 **Schools board from 1997 to 2005; is that right?**
 18 A. That is correct.
 19 **Q. And you are a current member of the state**
 20 **board of education representing Congressional**
 21 **District 1; is that right?**
 22 A. That's correct.
 23 **Q. You mentioned you helped start The**
 24 **Children's Campaign; is that right?**
 25 A. That's correct.

5681

1 **Q. Did The Children's Campaign recently come**
 2 **out with a report on children's homelessness? If you**
 3 **know.**
 4 A. I'm not aware of it.
 5 **Q. The -- let me switch over to the state**
 6 **board of education legislative priorities. The state**
 7 **board of education's key responsibility is to exercise**
 8 **its duty of general supervision over public schools and**
 9 **K through 12 education programs; would you agree with**
 10 **that?**
 11 A. Yes.
 12 **Q. Let me show you our first exhibit,**
 13 **Exhibit 171. For the record, Ms. Gantz Berman, if**
 14 **you'll look up on the screen, Trial Exhibit 171 is the**
 15 **"Colorado State Board of Education Strategic Plan**
 16 **2007-2009," do you see that there?**
 17 A. Yes, I do.
 18 **Q. And let me direct your attention to the**
 19 **mission of the Colorado State Board of Education. And**
 20 **for the record, I'll read that.**
 21 "The mission of the Colorado State Board
 22 of Education is to provide all of
 23 Colorado's children equal access to
 24 quality, thorough, uniform, well-rounded
 25 educational opportunities in a safe, civil

5682

1 learning environment."
 2 Is that the mission of the Colorado State
 3 Board of Education?
 4 A. Yes, it is.
 5 **Q. You believe that Colorado needs to have**
 6 **much more uniformity in terms of curriculum and**
 7 **standards; is that correct?**
 8 A. No, that is not correct. I said
 9 standards. I didn't say curriculum.
 10 **Q. Let me rephrase then.**
 11 A. Yes. What I was talking about is what
 12 should be determined by the state and the how should be
 13 determined by the local school district.
 14 **Q. Ms. Berman, may I --**
 15 MR. KAWANABE: Your Honor, may I approach
 16 with the deposition transcript?
 17 THE COURT: Yes.
 18 **Q. (BY MR. KAWANABE) This is a transcript of**
 19 **your deposition, and I'm pointing up to page 19. Do**
 20 **you recall being deposed in this case, Ms. Gantz**
 21 **Berman?**
 22 A. Yes, I do.
 23 **Q. And when I asked you about this similar**
 24 **issue starting on page 19, line 16, you stated, quote:**
 25 **"I believe that for us to get where we**

5683

1 need to get in public education, we need
 2 to have much more uniformity in terms of
 3 curriculum, standards, many different
 4 things."
 5 Did I read that correctly?
 6 A. Yes, you did.
 7 **Q. And the State of Colorado sets standards,**
 8 **and -- and school districts are required to meet those**
 9 **education standards; do you agree with that?**
 10 A. Yes.
 11 **Q. Let's turn to Exhibit 66. Ms. Gantz**
 12 **Berman, this is Trial Exhibit 66. It's already**
 13 **admitted into evidence, entitled "Colorado Academic**
 14 **Standards 2009." Do you see that?**
 15 A. Yes, I do.
 16 **Q. And would you confirm the various subject**
 17 **areas for Colorado academic standards? I'll read those**
 18 **to you. One, comprehensive health and physical**
 19 **education; two, dance; three, drama and theater arts;**
 20 **four, English language development; five, expanded**
 21 **evidence outcomes; six, mathematics; seven, music;**
 22 **eight, reading, writing, and communicating; nine,**
 23 **science; ten, social studies; eleven, visual art;**
 24 **twelve, world languages. Are those Colorado's academic**
 25 **standards?**

5684

1 A. Yes, they are.
 2 **Q. And there's something also called the core**
 3 **standards -- I may be mis-phrasing that -- that the**
 4 **board recently adopted; is that correct?**
 5 A. The national core common standards
 6 incorporate some of -- some of the standards that you
 7 had up there on the chart. So they're not in addition
 8 to, they're part of. So they're blended together.
 9 **Q. Thanks. And those -- the state board**
 10 **adopted the common core standards which are supposed to**
 11 **be followed by school districts; is that correct?**
 12 A. That's correct.
 13 **Q. And, Ms. Gantz Berman --**
 14 MR. KAWANABE: If I might approach, Your
 15 Honor?
 16 THE COURT: Yes.
 17 **Q. (BY MR. KAWANABE) I know that's fairly**
 18 **difficult to see, but you are familiar with -- it lists**
 19 **various standards, and so you are familiar with Senate**
 20 **Bill 212, known as CAP4K; Senate Bill 163, known as the**
 21 **Education Accountability Act; most recently Senate Bill**
 22 **191, which all have been adopted in the last -- well,**
 23 **since 2008; is that correct?**
 24 A. That's correct.
 25 **Q. And CSAP, that's the standardized testing,**

5685

1 you're familiar with that?
 2 A. Yes.
 3 Q. And CSAP is a requirement on school
 4 districts?
 5 A. Yes, it is.
 6 Q. CAP4K mandates requirements on school
 7 districts?
 8 A. That's correct.
 9 Q. And that includes school readiness,
 10 meaning kids must be ready for the first grade; is that
 11 correct?
 12 A. That's correct.
 13 Q. And that includes kindergarten and pre-K
 14 work; is that right?
 15 A. Yes. But it's voluntary.
 16 Q. Okay.
 17 A. Those two are voluntary.
 18 Q. Content standards?
 19 A. Yes.
 20 Q. That's part of CAP4K?
 21 A. Yes.
 22 Q. Postsecondary workforce readiness, that's
 23 part of CAP4K?
 24 A. Yes.
 25 Q. And I believe you said CAP4K mandates

5686

1 certain requirements on school districts?
 2 A. That's correct.
 3 Q. The Education Accountability Act mandates
 4 certain requirements on school districts as well?
 5 A. Correct.
 6 Q. And accreditation is part of the Education
 7 Accountability Act?
 8 A. That's correct.
 9 Q. And S.B. 191 imposes requirements on
 10 school districts?
 11 A. That's correct.
 12 Q. And you agree that there will be a cost to
 13 school districts to implement Senate Bill 191?
 14 A. Yes, I do.
 15 Q. Generally a school district cannot waive
 16 out of accountability and cannot waive out of
 17 accreditation; do you agree with that?
 18 A. That's correct.
 19 Q. As for Senate Bill 191, there's been
 20 testimony about Kit Carson obtaining innovation status,
 21 thus enabling it to get out of Senate Bill 191's
 22 requirements. Are you familiar with that?
 23 A. Yes. The state board gave them that
 24 authority.
 25 Q. And this was under the innovation status?

5687

1 A. That's correct.
 2 Q. Not a specific waiver; is that correct?
 3 A. That's correct.
 4 Q. And the intent, as you know it, is that no
 5 other school district should be allowed to waive out of
 6 Senate Bill 191, and you view Kit Carson as an isolated
 7 situation; is that fair?
 8 A. That's fair.
 9 Q. And other than this one Kit Carson
 10 example, you do not believe that any other school
 11 district is allowed to waive out of any of the state
 12 education requirements, including those that we just
 13 went over; do you agree with that?
 14 A. I agree with that in -- as it pertains to
 15 these pieces of legislation. School districts can
 16 waive out of certain requirements from the state
 17 statute, but not these.
 18 Q. And by "these," you are referring
 19 specifically to the three we went over --
 20 A. Yes.
 21 Q. -- Senate Bill 191, Education
 22 Accountability Act, and CAP4K; is that correct?
 23 A. Yes, that is correct.
 24 Q. You mentioned that you believe it will
 25 take millions of dollars for -- to implement Senate

5688

1 Bill 191; is that correct?
 2 A. Yes, it is.
 3 Q. Have you heard estimates, including
 4 estimates from the Legacy Foundation, estimating that
 5 the cost will actually exceed 70 or \$80 million?
 6 A. I have heard those numbers.
 7 Q. And originally the State of Colorado's
 8 plan to pay for that implementation was to apply for
 9 federal grants entitled "Race to the Top"?
 10 A. That's correct.
 11 Q. But the State of Colorado did not get any
 12 Race to the Top funding; is that correct?
 13 A. Not yet.
 14 Q. All right. And so the State of Colorado
 15 is now on plan B; is that fair to say?
 16 A. That's correct.
 17 Q. Trying to obtain and raise moneys from --
 18 is it private foundations?
 19 A. That's correct.
 20 Q. And the Gates grant, that was at about
 21 \$9 million, correct?
 22 A. A little bit more than that, yes.
 23 Q. Okay. Fair to say that right now, we, the
 24 State of Colorado, is still 60 to \$70 million short for
 25 implementation of Senate Bill 191?

5689

1 A. Money in hand, that's correct.
 2 **Q. You are a supporter of Denver's ProComp**
 3 **system; is that correct?**
 4 A. Yes.
 5 **Q. And Denver Public Schools received over a**
 6 **million dollars, if not more, of private foundation**
 7 **money to help implement ProComp; is that a fair**
 8 **statement?**
 9 A. It is.
 10 **Q. Including moneys from local community**
 11 **foundations, as well as The Broad Foundation; is that**
 12 **correct?**
 13 A. Well, the bulk of the money to implement
 14 ProComp was a mill levy increase of \$25 million that
 15 the voters approved.
 16 **Q. But in order to get that mill levy passed,**
 17 **there had to be a pilot project?**
 18 A. Yes.
 19 **Q. And that was funded through private**
 20 **foundations?**
 21 A. That's correct.
 22 **Q. Ms. Gantz Berman, let's discuss funding**
 23 **and resources for public education. Okay? Colorado is**
 24 **funded at one of the lower levels per pupil in the**
 25 **United States, correct?**

5690

1 A. Yes, it is.
 2 **Q. And during the time you served on the**
 3 **Denver Public Schools board from 1997 to 2005, the**
 4 **Denver Public Schools district did not have sufficient**
 5 **resources to do its job, correct?**
 6 A. That's correct.
 7 **Q. The Colorado Department of Education also**
 8 **does not have sufficient resources to do its job,**
 9 **correct?**
 10 A. Yes, that's correct.
 11 **Q. Let's discuss rural schools. The Colorado**
 12 **Department of Education does not have the level of**
 13 **staffing necessary to provide rural schools with**
 14 **support services; is that correct?**
 15 A. Yes, it is.
 16 **Q. And most of the rural school districts**
 17 **would fall into the category of having mill levy**
 18 **discrepancies in terms of what they can raise from**
 19 **their local mill levies, so the state legislature is**
 20 **not adequately funding rural school districts; do you**
 21 **agree with that?**
 22 A. That's correct.
 23 **Q. You think -- let me start over. There is**
 24 **a wide discrepancy in mill levies that are available in**
 25 **different school districts, and that is unfair; do you**

5691

1 **agree with that?**
 2 A. Yes.
 3 **Q. There is discrepancy or disparity between**
 4 **different school districts and their ability to**
 5 **supplement the money that the state legislature grants**
 6 **them; do you agree with that?**
 7 A. Yes.
 8 **Q. And different communities' mill levies**
 9 **vary so greatly that there are great disparities**
 10 **between wealthy and poor districts in terms of the**
 11 **amount of money that can be raised locally to**
 12 **supplement what is given from the state; is that right?**
 13 A. That's correct.
 14 **Q. Colorado needs to rewrite the School**
 15 **Finance Act so that there is more equity between school**
 16 **districts; do you agree with that?**
 17 A. Yes. The School Finance Act needs to be
 18 rewritten for a number of reasons.
 19 **Q. Let me show you Exhibit 22. Ms. Gantz**
 20 **Berman, for the record, this is Trial Exhibit 22,**
 21 **already admitted into evidence, entitled "Colorado**
 22 **State Board of Education 2011 Legislative Priorities."**
 23 **Do you recall me showing you this document at your --**
 24 A. Yes, I do.
 25 **Q. Okay. And the -- is it fair to say the**

5692

1 **top priority -- or one of the top priorities for the**
 2 **Colorado State Board of Education in 2011 is to support**
 3 **efforts to prevent further cuts to K through 12**
 4 **education funding?**
 5 A. That's correct.
 6 **Q. All funding that is currently allocated to**
 7 **education is necessary or part of providing a quality**
 8 **education to Colorado students; do you agree with that?**
 9 A. Could you say that again? That all
 10 funding?
 11 **Q. Sure. I can rephrase that. You do not**
 12 **know of any school district that is wasting money,**
 13 **correct?**
 14 A. No, I do not.
 15 **Q. So that's correct?**
 16 A. Yes, that's correct.
 17 **Q. Last year there were tens of millions of**
 18 **dollars cut from public education; is that right?**
 19 A. Yes, it is.
 20 **Q. You anticipate further cuts this year to**
 21 **public education?**
 22 A. We have been given that indication.
 23 **Q. You do not think that there is sufficient**
 24 **or adequate funding in our public school systems; is**
 25 **that right?**

5693

1 A. I do. I agree with that.

2 **Q. You do not think there is enough funding,**

3 **but you also think that between the state and the**

4 **federal government, we have put so many requirements on**

5 **school districts that they have no choice, because most**

6 **of these or all of these requirements are not waivable,**

7 **and school districts have to adhere to those**

8 **requirements; do you agree with that?**

9 A. Yes, I do.

10 **Q. Let's discuss teachers, Ms. Gantz Berman.**

11 **You believe that a quality teacher is one of the most**

12 **important aspects of a public education system?**

13 A. I would say is the most important, not one

14 of the. The most important.

15 **Q. And you do not think that the teaching**

16 **profession currently is attracting the highest quality**

17 **teachers; is that correct?**

18 A. That's correct.

19 **Q. In other words, you do not think the**

20 **professional development of teachers -- strike that.**

21 **It's not in other words, it's a separate topic about**

22 **professional development. You do not think that**

23 **professional development for teachers is where it needs**

24 **to be; is that correct?**

25 A. That's correct.

5694

1 **Q. And increasing teachers' salaries will**

2 **allow schools and school districts to attract better**

3 **teachers and administrators?**

4 A. Yes, I do.

5 **Q. Higher salaries are part of this problem,**

6 **it's part of the solution; would you agree with that?**

7 A. Yes, I do.

8 **Q. Let's discuss achievement gaps. Colorado**

9 **has one of the widest achievement gaps in the United**

10 **States, correct?**

11 A. That's correct.

12 **Q. And achievement gaps may vary, gaps**

13 **between poor students and other students, gaps between**

14 **certain students of color and other students; is that**

15 **fair?**

16 A. That's correct.

17 **Q. And across the board, Colorado, amongst**

18 **the various achievement gaps, is one of the worst in**

19 **the country?**

20 A. That is correct.

21 **Q. In fact, compared to other states,**

22 **Colorado is close to the very bottom of these various**

23 **achievement gaps; is that correct?**

24 A. That's correct.

25 **Q. Are you familiar with Amendment 23?**

5695

1 A. Very.

2 **Q. Amendment 23 was designed to catch**

3 **Colorado up to 1988 school funding levels; is that**

4 **correct?**

5 A. That's correct.

6 **Q. But Amendment 23 had nothing to do with**

7 **the actual cost of state requirements on school**

8 **districts; is that correct?**

9 A. That is also correct.

10 **Q. You're familiar with the Augenblick,**

11 **Palaich and Associates firm; is that right?**

12 A. I am.

13 **Q. The Colorado Department of Education has**

14 **hired Augenblick, Palaich and Associates to cost out**

15 **certain programs or aspects of CAP4K; did you know**

16 **that?**

17 A. Yes, I did.

18 **Q. And you think that the Augenblick, Palaich**

19 **and Associates firm is credible?**

20 A. I do.

21 **Q. Ms. Markel asked you about a thorough and**

22 **uniform system of free public schools. Do you recall**

23 **that?**

24 A. I do.

25 **Q. To the best of your knowledge, the state**

5696

1 **has never conducted a study to determine the cost of**

2 **its own requirements on school districts; is that**

3 **right?**

4 A. That's correct.

5 **Q. And you are familiar with the language in**

6 **the Colorado Constitution relating to a thorough and**

7 **uniform system of free public schools?**

8 A. I am.

9 **Q. In your opinion, a thorough and uniform**

10 **system of free public schools means that all students**

11 **throughout the state of Colorado would have access to**

12 **the same quality of education whether they're in a**

13 **rural, suburban, or urban setting, correct?**

14 A. That's correct.

15 **Q. And you believe that CSAP, CAP4K,**

16 **Education Accountability Act, and Senate Bill 191 are**

17 **part of a thorough and uniform system of free public**

18 **schools?**

19 A. Legislature passed those requirements.

20 Yes.

21 **Q. And you would agree with that?**

22 A. Yes.

23 **Q. In your opinion, the State of Colorado**

24 **does not provide a thorough and uniform system of free**

25 **public schools; do you agree with that?**

5697

1 A. Yes.
 2 MR. KAWANABE: Your Honor, may I have just
 3 a minute?
 4 THE COURT: Yes.
 5 (Discussion off the record between
 6 Mr. Kawanabe and Ms. Gebhardt.)
 7 MR. KAWANABE: Pardon the interruption,
 8 Ms. Gantz Berman. I'm waiting for one page that I just
 9 want.
 10 (Discussion off the record between
 11 Mr. Kawanabe and Ms. Gebhardt.)
 12 MR. KAWANABE: Your Honor, if I might --
 13 it's a bit unusual -- pass the witness to Mr. Hinojosa,
 14 and then if I may have one other follow-up area that we
 15 are looking on, or --
 16 THE COURT: Any objection?
 17 MS. MARKEL: None, Your Honor.
 18 THE COURT: All right. Thank you. That
 19 would be fine then. Cross-examination.
 20 MR. HINOJOSA: Thank you.
 21 CROSS-EXAMINATION
 22 BY MR. HINOJOSA:
 23 Q. Good afternoon, Ms. Berman.
 24 A. Good afternoon.
 25 Q. You would agree that in assessing student

5698

1 achievement, the measures of proficiency and partially
 2 proficient are two different measures, correct?
 3 A. Yes, I do.
 4 Q. And with respect to accountability under
 5 No Child Left Behind, you're aware that Colorado chose
 6 to use the measure of partially proficient, correct?
 7 A. I do.
 8 Q. And by using the -- well, you would agree
 9 that partially proficient is a lower bar than
 10 proficient, correct?
 11 A. Yes, I do.
 12 Q. And that by using a measure such as
 13 partially proficient, you essentially created -- or
 14 allowed more children to hit the bar as opposed to the
 15 number of children that would hit the bar if the bar
 16 was set at proficient?
 17 A. That's correct.
 18 Q. Glad you understood that question.
 19 A. I got it.
 20 Q. And so it was easier for low-income kids
 21 to hit the bar of partially proficient than non -- than
 22 proficient, correct?
 23 A. All students.
 24 Q. And as a state board member, you want all
 25 Colorado's students to achieve full proficiency.

5699

1 correct?
 2 A. Absolutely.
 3 Q. You want all students, regardless of what
 4 socioeconomic or racial group they're in, whatever
 5 their native language might be, you want them all to
 6 achieve full proficiency, correct?
 7 A. Yes, I do.
 8 Q. You believe, given the appropriate
 9 resources and considering the appropriate
 10 implementation of those resources, if done correctly,
 11 that all students, including English language learner
 12 students and low-income students, can achieve full
 13 proficiency, correct?
 14 A. Well, I think it's not just resources, I
 15 think that's one -- one part of it. So it's not just
 16 resources.
 17 Q. Okay. So you would agree that if given
 18 the appropriate resources and considering
 19 implementation of those resources --
 20 A. Well, I'll interrupt you, 'cause resources
 21 could be more than financial resources. So I will
 22 agree with that statement.
 23 Q. All right. And you're aware of -- of the
 24 ICAP, right?
 25 A. Uh-huh. Excuse me. Yes, I am.

5700

1 Q. And ICAP is the Individual Career and
 2 Academic Plan; is that right?
 3 A. Yes.
 4 Q. And I'm going to show you what's been
 5 previously marked as Exhibit 2301. And this is the
 6 minutes for the state board on April 14, 2011. And at
 7 this meeting -- I'm not sure if you recall it, but feel
 8 free to look at the minutes here. At this meeting, the
 9 state board considered a new law that was passed that
 10 required the state board to include arts education in
 11 students' Individual Career and Academic Plans,
 12 correct?
 13 A. Uh-huh. That's correct.
 14 Q. And as it stated here, this particular law
 15 that added performing and visual arts, it was enacted
 16 to encourage all public schools to provide courses in
 17 those, correct?
 18 A. That's correct.
 19 Q. And it amended the prior ICAP plan that
 20 didn't necessarily have that included -- those
 21 particular subject areas included, correct?
 22 A. That's correct.
 23 Q. And did the state board end up adopting
 24 new rules relative to the performing arts and visual
 25 arts?

5701

1 A. I'm not sure. I thought -- I'm not sure.
 2 **Q. If you haven't yet, then you will at some**
 3 **time in the future, correct? 'Cause it's mandated by**
 4 **the statute?**
 5 A. If it's mandated by the statute, I'm sure
 6 we did. But my -- well, let me stop there.
 7 **Q. During the same meeting minutes you also**
 8 **had an update on the next steps in CAP4K**
 9 **implementation, the high school diploma endorsements,**
 10 **and graduation guidelines, correct?**
 11 A. That's correct.
 12 **Q. And please tell the Court about the high**
 13 **school diploma endorsements and graduation guidelines**
 14 **that are being developed.**
 15 A. Well, we have not adopted them yet, so I
 16 think it's premature for me to comment on them.
 17 **Q. Well, you can tell the Court certainly**
 18 **what's been discussed publicly in your state board**
 19 **meetings regarding this issue.**
 20 A. There has been discussions about whether
 21 there should be specific diplomas around individual
 22 areas within the course curriculum and whether -- we
 23 will be adopting the graduation requirements at the
 24 December board meeting. And there are public hearings
 25 going on. There's one this afternoon in Aurora at

5702

1 3 p.m.
 2 **Q. In these minutes here, it states in**
 3 **the -- beginning with the second paragraph, it says:**
 4 **"The department, with the state board's**
 5 **directive, continues to**
 6 **implementation" --**
 7 **I guess that's a -- the way it says it**
 8 **there.**
 9 **-- "continues to implement the provisions**
 10 **of SB08-212, which require the state board**
 11 **(1) to adopt, on or before December 15,**
 12 **2011, a comprehensive set of guidelines**
 13 **for the establishment of high school**
 14 **graduation requirements to be used by each**
 15 **school district board of education in**
 16 **developing a local high school**
 17 **graduation."**
 18 **Is that consistent with your**
 19 **understanding?**
 20 A. Yes, that is exactly -- exactly.
 21 **Q. And it's also, No. 2:**
 22 **"To jointly adopt with the Colorado**
 23 **Commission on Higher Education on or**
 24 **before July 1, 2011, or as soon as**
 25 **fiscally practicable, high school diploma**

5703

1 **endorsement criteria indicating a**
 2 **student's level of postsecondary and**
 3 **workforce readiness."**
 4 **Is that correct?**
 5 A. That's correct.
 6 **Q. Now, with respect to No. 2, has the state**
 7 **board already jointly adopted with the Colorado**
 8 **Commission on Higher Education the high school diploma**
 9 **criteria?**
 10 A. No, we have not.
 11 **Q. When do you expect that -- at least the**
 12 **vote on the adoption to take place?**
 13 A. In the next few months.
 14 **Q. And what is the reason why the state board**
 15 **did not adopt this on or before July 1, 2011?**
 16 A. We are doing this in collaboration with
 17 the Colorado Commission on Higher Education, and the
 18 staff is still working on developing the endorsements
 19 to bring forward to both groups, the state board and
 20 the Colorado Commission on Higher Education.
 21 **Q. And is there going to be different**
 22 **endorsements with respect to diplomas, so that you**
 23 **might have one level of -- of a diploma versus another**
 24 **or . . .**
 25 A. We have not had staff recommendations

5704

1 regarding this as of yet. There is that possibility.
 2 **Q. And is this high school diploma criteria,**
 3 **are they going to be required to be adopted -- or --**
 4 **yeah, adopted by all the school districts across**
 5 **Colorado?**
 6 A. I -- I can't comment on that yet. I -- I
 7 haven't heard the recommendations yet.
 8 **Q. In adopting the rules regarding**
 9 **legislation such as ICAP, the board doesn't always**
 10 **fully deliberate before adopting these rules, because**
 11 **they trust the staff of CDE to think through the draft**
 12 **rules before bringing them to the board, correct?**
 13 A. I would say it varies from topic to topic.
 14 But that -- that can be said, yes.
 15 **Q. And my question was it doesn't always**
 16 **fully deliberate before adopting the rules --**
 17 A. That's correct.
 18 **Q. -- is that accurate? And you agree that**
 19 **ELL students graduating from Colorado public schools as**
 20 **a whole are not graduating college-ready?**
 21 A. Based on our achievement gap data, I would
 22 say that's a fair statement.
 23 **Q. And that low-income students defined as**
 24 **those on the free and reduced-price lunch program are a**
 25 **group that require, quote, "A fair amount of**

5705

1 remediation once they get to higher education"?

2 A. Yes, that seems to be the case.

3 Q. And you would agree that low-income

4 students on the whole are not college-ready as well?

5 A. I think that's a fair statement.

6 Q. You believe that all school districts

7 should have to meet the same graduation criteria in

8 Colorado, correct?

9 A. Yes, I do.

10 Q. You believe that the department of

11 education and the state board and the Colorado

12 Commission on Higher Ed should work together to

13 establish these criteria for graduation requirements?

14 A. Yes, I do.

15 Q. There's been testimony in this case that

16 students are graduating at rates between 60 and

17 75 percent across the state. Is it your testimony that

18 those students are not graduating with the sufficient

19 criteria that you believe that they should be?

20 A. Those that are graduating?

21 Q. Yes.

22 A. Some of them are not.

23 Q. Do you know approximately how many?

24 A. Are you asking how many are in need of

25 remediation when they get to higher education? I'm not

5706

1 sure of your question.

2 Q. You mentioned about the need for there to

3 be one set of graduation criteria. You've talked about

4 some of the work that you're doing there on the state

5 board relative to being postsecondary ready and

6 workforce ready. And so, you know, the Court's heard

7 evidence of students graduating between, you know, 60

8 and 75 percent. And I was wondering if you, as a board

9 member, might know, of that 60 to 75 percent, since you

10 think that some of those students aren't graduating,

11 perhaps, with the skills and knowledge that they need,

12 if you know how many -- what -- what percentage,

13 roughly, of those --

14 A. I wouldn't know that. No, I do not.

15 Q. You believe that there should be only one

16 set of graduation criteria for the entire state of

17 Colorado, because you believe, based on the

18 constitution, that if we have a uniform system of

19 education in the state, we need to have more uniformity

20 around educational outcomes as well as everything that

21 goes into providing a quality education, correct?

22 A. Yes.

23 Q. And you believe that it is difficult for

24 districts to enact this kind of uniformity because the

25 constitution is so weighted toward local control that

5707

1 it's difficult for this kind of uniformity, correct?

2 A. Yes.

3 Q. And therefore, you believe that local

4 control should be reduced, correct?

5 A. Yes, I do.

6 Q. To get graduation outcomes where you

7 believe they should be, you believe that the role of

8 the state is to be very clear about what outcomes

9 should be for students and to provide the necessary

10 supports that the school districts request to help them

11 get there, correct?

12 A. Yes.

13 Q. And that would include funding, correct?

14 A. Yes.

15 Q. And you agree that it's difficult for

16 school districts to plan ahead because of budget cuts,

17 right?

18 A. Because of the timetable that the state

19 legislature does the budget. And because of budget

20 cuts.

21 Q. And typically school districts create

22 their budgets in the spring, right?

23 A. That's correct.

24 Q. Let me show you what's been marked as

25 Exhibit 2302. Exhibit 2302 is a letter from Morgan Cox

5708

1 with the Colorado Department of Education. It's to

2 ELPA coordinators, directors, and contacts across the

3 state in the districts. This is a notification of ELPA

4 90 percent allocation for school year 2009-2010, and

5 it's dated January 19, 2010. And you believe that

6 awarding ELPA funds halfway through the year is

7 problematic for school districts and the children,

8 correct?

9 A. Very problematic, yes.

10 Q. And that's because school districts have

11 already provided services for half the year, and they

12 didn't have the funding to provide that, correct?

13 A. That's correct.

14 Q. With respect to the school districts where

15 our clients attend, Mapleton, Sheridan, Greeley, and

16 Rocky Ford, and you said you're familiar with three of

17 the four, and not including Rocky Ford; is that right?

18 A. That's correct.

19 Q. And you're not aware of any

20 misappropriation of funds or mismanagement of funds by

21 Greeley, Sheridan, or Mapleton, correct?

22 A. That's correct.

23 Q. And also Rocky Ford, you're not aware of

24 any misappropriation?

25 A. I'm not aware of anything in Rocky Ford as

5709

1 well.
 2 MR. HINOJOSA: Pass the witness. Thank
 3 you.
 4 CROSS-EXAMINATION (continued)
 5 BY MR. KAWANABE:
 6 **Q. Just one more follow-up issue, Ms. Gantz**
 7 **Berman. And would you like -- feel free to get some**
 8 **water.**
 9 A. Okay.
 10 **Q. All set?**
 11 A. All set.
 12 **Q. You referred to a study regarding**
 13 **consolidation; do you recall that?**
 14 A. Yes, I do.
 15 **Q. Ms. Markel asked you opinions about your**
 16 **views on consolidation of school districts. And I'm**
 17 **showing you a declining enrollment study, and I'll ask**
 18 **you whether you think that might be the study?**
 19 **Your Honor, this has been admitted today,**
 20 **Exhibit 10487, entitled "Declining Enrollment Study"**
 21 **dated March 2010 prepared for the Colorado Department**
 22 **of Education.**
 23 **And, Ms. Gantz Berman, I'm referring you**
 24 **to page 173, where it states:**
 25 **"The literature reviewed above and the**

5710

1 **empirical analysis outlined in the**
 2 **previous chapters of this report do not**
 3 **identify obvious cost savings or**
 4 **increased academic opportunities from**
 5 **across the board or formula-driven**
 6 **consolidation of school districts."**
 7 **First, did I read that correctly?**
 8 A. Yes, you did.
 9 **Q. And is this the study you were referring**
 10 **to as to consolidation of school districts does not**
 11 **necessarily save money or increase opportunities?**
 12 A. I'm quite sure it is. But not a hundred
 13 percent.
 14 MR. KAWANABE: No further questions.
 15 Thank you.
 16 THE COURT: Thank you. Redirect?
 17 MS. MARKEL: Briefly, Your Honor.
 18 REDIRECT EXAMINATION
 19 BY MS. MARKEL:
 20 **Q. Hi, Ms. Gantz Berman.**
 21 A. Hello.
 22 **Q. When you were speaking with Mr. Hinojosa**
 23 **just moments ago, you -- do you recall the testimony**
 24 **around the relationship between resources and student**
 25 **proficiency?**

5711

1 A. No. Please remind me.
 2 **Q. I believe that you testified that there**
 3 **was more than resources that impacted student**
 4 **proficiency. Does that help?**
 5 A. Yes, it does. Thank you.
 6 **Q. What were you referring to there?**
 7 A. I think financial resources is a piece of
 8 it. Attracting quality staff is the second element.
 9 So my comment was that it's not just finances, it goes
 10 beyond finances.
 11 **Q. And do you recall your conversation with**
 12 **Mr. Kawanabe around achievement gaps?**
 13 A. Yes.
 14 **Q. Are you aware of any high-property-wealth**
 15 **districts in the state that have high achievement gaps?**
 16 A. Yes, I am.
 17 **Q. And what high-wealth property districts in**
 18 **the state have high achievement gaps?**
 19 A. Well, the district that comes to mind the
 20 most is Boulder.
 21 **Q. Both Mr. Kawanabe and Mr. Hinojosa spoke**
 22 **with you about your perceived need for greater**
 23 **uniformity in education in the state. Do you recall**
 24 **that testimony?**
 25 A. Yes, I do.

5712

1 **Q. Do you have a view on how local control**
 2 **intersects with your desire for more uniformity?**
 3 A. Well, I believe I addressed this a little
 4 bit before, but I'll go into it a little bit more. My
 5 understanding of the countries that are -- have the
 6 highest level of achievement tend to have common
 7 standards, and they actually tend to have common
 8 curriculum as well.
 9 I think the United States is based on
 10 local control. But I think in some ways, local control
 11 prevents all school districts from setting the bar high
 12 and having student outcomes that can be as rigorous as
 13 they can be, because it's hard to hold all school
 14 districts accountable.
 15 We do have state testing, CSAP, but there
 16 are many areas of the academic standards that the state
 17 board has adopted that we do not test for. So we test
 18 for a very limited number of those academic standards.
 19 MS. MARKEL: I have no further questions.
 20 Thank you.
 21 THE COURT: Recross?
 22 MR. KAWANABE: None, Your Honor. Thank
 23 you.
 24 MR. HINOJOSA: None, Your Honor. Thank
 25 you.

5713

1 THE COURT: Thank you. Thank you, ma'am.
 2 You may step down. Thank you. Is 15 minutes enough,
 3 say 5 after 3:00? Does that work?
 4 MR. KAWANABE: Yes, Your Honor.
 5 THE COURT: Pardon?
 6 MR. HINOJOSA: We're -- I think the next
 7 witness -- defendants don't have any witnesses right
 8 now, and we're just going to have Dr. Darling-Hammond
 9 at 3:30. We'll see if she can make herself available
 10 earlier, perhaps. But I don't know the logistics on
 11 her end. She can't?
 12 MR. HEINKE: That's all right with us.
 13 We're ahead of schedule for today at least. The
 14 defense is done with its witnesses. Can't continue to
 15 make that promise, but for today we're on schedule.
 16 THE COURT: I do have to end by about
 17 4:30.
 18 MR. HINOJOSA: Yes, Your Honor.
 19 THE COURT: Why don't you just let us
 20 know, then, when she's here or he is here.
 21 MR. HINOJOSA: It's going to be via the
 22 videoconferencing that we --
 23 THE COURT: Oh, okay.
 24 MR. HINOJOSA: -- spoke about.
 25 THE COURT: Yeah, if it's available

5714

1 earlier, let me know. We're here.
 2 MR. HINOJOSA: Absolutely.
 3 THE COURT: Thank you.
 4 MR. KAWANABE: Thank you.
 5 THE COURT: Okay. Thank you.
 6 (Recess taken, 2:50 p.m. to 3:32 p.m.)
 7 THE COURT: Calling up Case 05CV4794. Are
 8 we ready to proceed?
 9 MR. HINOJOSA: Yes, Your Honor.
 10 Plaintiff-intervenors and plaintiffs call -- well,
 11 actually, plaintiff-intervenors, sorry, call Linda
 12 Darling-Hammond, and she is a shared witness on the
 13 specific topics as well.
 14 THE COURT: All right. Ma'am, can you
 15 hear me?
 16 THE WITNESS: Yes.
 17 THE COURT: If you would raise your right
 18 hand.
 19 LINDA DARLING-HAMMOND,
 20 having been first duly sworn to state the whole truth,
 21 testified as follows:
 22 THE COURT: Thank you. Could you please
 23 state your full name and spell your last name for the
 24 record, please.
 25 THE WITNESS: Linda Darling-Hammond. Did

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1 you say spell it?
 2 THE COURT: Just your last name, please,
 3 for the record.
 4 THE WITNESS: D-a-r-l-i-n-g hyphen
 5 H-a-m-m-o-n-d.
 6 THE COURT: Thank you.
 7 DIRECT EXAMINATION
 8 BY MR. HINOJOSA:
 9 **Q. Dr. Darling-Hammond, did you review the**
 10 **deposition and trial testimony of Dr. Eric Hanushek as**
 11 **well as the charts which have been published as**
 12 **Exhibit 7735 in this case?**
 13 A. I did.
 14 **Q. And did you prepare an analysis in**
 15 **response to this testimony and information that's been**
 16 **provided by Dr. Hanushek?**
 17 A. I did.
 18 **Q. All right. Well, we're first going to**
 19 **talk about some of your qualifications related to your**
 20 **analysis. So please talk about your background in this**
 21 **area, specifically focusing first on your education and**
 22 **training.**
 23 A. Well, I did my doctorate in a program that
 24 was policy-focused. And the name of the major was
 25 urban education, because the coursework was in

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1 political science, economics, specific qualitative
 2 methods and so on. It looks like we're having a little
 3 Internet connection problem.
 4 **Q. Can you still hear me?**
 5 A. Yes, I'm hearing you fine. Good. We'll
 6 just go ahead with that then. So I did my dissertation
 7 in a school finance field, where I did statistical
 8 analysis of achievement and spending and teacher
 9 salaries. I then conducted a wide range of studies in
 10 my work at the RAND Corporation and Stanford and
 11 Teachers College before that using both qualitative and
 12 quantitative methods of analysis to look at programs,
 13 policies, and practices that affect student learning,
 14 student achievement, and teacher effectiveness.
 15 **Q. And when you talk -- when you talk about**
 16 **some of the research that you did in qualitative and**
 17 **quantitative analysis, can you please tell the Court,**
 18 **explain that a little more, the differences and your**
 19 **work in each.**
 20 A. Okay. So qualitative analysis is using
 21 strategies like interviews and graphic methods to look
 22 at schools and programs; quantitative analyses are
 23 generally statistical analyses of large-scale datasets
 24 or survey data, both of which I have done in many
 25 different cases to look at larger scale trends in data

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1 and influences of various factors or variables on the
 2 question that's being studied.
 3 So in the latter case, for example,
 4 in -- do you want me to talk about recent studies in
 5 particular, or --
 6 **Q. Yeah. That was my next question. If you**
 7 **could talk about a few of the studies that you've done**
 8 **related to these issues.**
 9 A. So in recent years, we've been looking at
 10 large-scale datasets. Right now I'm analyzing data
 11 from New York, Los Angeles, San Francisco to evaluate
 12 the factors that influence teacher effectiveness. We
 13 use statistical methods ranging from basic regression
 14 techniques to hierarchical linear models that take into
 15 account data to evaluate the factors that influence
 16 teachers' effect on student learning, for example.
 17 And I've got several studies underway and
 18 a few that have recently been published in that -- in
 19 that area. I've also done studies looking at
 20 influences at the district or state level on student
 21 achievement and student achievement gains.
 22 **Q. Can you describe some of that work -- that**
 23 **work more specifically?**
 24 A. Sure. In states ranging from
 25 Massachusetts to South Carolina to New York I've done

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1 work. Some of it's reported in my most recent work,
 2 the "Flat World and Education," and some of it was
 3 previously reported in journal articles looking at how
 4 funding, teacher salaries, teacher quality variables,
 5 certification status, student demographics influence
 6 achievement both as measured by student test scores and
 7 by things like graduation rates or dropout rates.
 8 **Q. And have you published any peer-reviewed**
 9 **articles in these areas that you're mentioning, such as**
 10 **statistical analyses as it relates to educational**
 11 **issues and factors impacting learning and achievement?**
 12 A. Yes.
 13 **Q. And can you talk a little bit about the**
 14 **RAND Corporation? First tell us what the RAND**
 15 **Corporation is.**
 16 A. RAND Corporation is a research
 17 organization, and it's been around for probably close
 18 to 50 years. Specializes in policy research in various
 19 topic areas. I served as a social scientist there and
 20 a director of the education program.
 21 **Q. And that was from 1985 to 1989; is that**
 22 **correct?**
 23 A. Yes. I was actually a social scientist
 24 there from 1979 to 1989, and I served as director of
 25 the program for the last four years.

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1 **Q. And the same kind of analysis that you did**
 2 **in this work, is that consistent with the same type of**
 3 **analysis that you have both experience and education**
 4 **and training in?**
 5 MS. MARKEL: Objection, Your Honor.
 6 Leading.
 7 THE COURT: Overruled.
 8 **Q. (BY MR. HINOJOSA) Go ahead and answer,**
 9 **Dr. Darling-Hammond.**
 10 A. Could you please repeat the question.
 11 **Q. Sure. Is the type of analysis that you**
 12 **performed here in this case, is it similar, consistent**
 13 **with the type of analysis that you performed in other**
 14 **cases as well as with your education and training and**
 15 **experience?**
 16 A. Yes.
 17 MR. HINOJOSA: Your Honor,
 18 plaintiff-intervenors offer Dr. Linda Darling-Hammond
 19 as an expert in the areas of analysis of student
 20 performance, including statistical analysis, factors
 21 that impact learning and achievement, and factors
 22 related to teacher effectiveness. And, actually, she
 23 has already been admitted to the court as an expert in
 24 teacher effectiveness.
 25 MS. GEBHARDT: And, Your Honor, we join in

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1 that.
 2 THE COURT: Thank you. Any objection?
 3 MS. MARKEL: Just a brief voir dire.
 4 THE COURT: Yes.
 5 VOIR DIRE EXAMINATION
 6 BY MS. MARKEL:
 7 **Q. Good afternoon, Dr. Darling-Hammond. This**
 8 **is Carey Markel. How are you?**
 9 A. I'm okay. Thank you.
 10 **Q. Just briefly, when you were speaking with**
 11 **Mr. Hinojosa, what publications were you referring to**
 12 **that deal with statistical analysis as it relates to**
 13 **educational issues? I was unclear on that. I don't**
 14 **know that you named or identified any articles or the**
 15 **publication date.**
 16 A. Yeah. I'm going to look at my resume to
 17 locate some of the work. So if we look at -- the
 18 publications under "Books," in 2011, "Flat World and
 19 Education" has a section that is statistical analyses
 20 of student achievement, particularly at the state
 21 level. If we look at the set of monographs that
 22 are -- if you're using the resume, I'm not sure you
 23 have it, there's, in 2011, a study called "Speaking of
 24 Salaries, What it Will Get, Taking a Poll of Effective
 25 Teachers in All Communities." That was a statistical

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1 analysis of the allocation of teachers, salaries, and
 2 funding to different districts.
 3 There's another study that was also
 4 published in 2010 called "Teacher Professional Learning
 5 in the United States" which did a statistical analysis
 6 of the distribution of professional development
 7 offerings and access to teachers across the country.
 8 I'm just looking down the resume to find
 9 the ones that are the most recent ones. In 2009, a
 10 study called "Oakland Unified School District Small
 11 Schools Initiative Evaluation" looked at a productivity
 12 analysis of student achievement gains in different
 13 schools based on the policies and practices going on in
 14 those schools.
 15 **Q. And with regard to the statistical**
 16 **analyses that you just identified in those publications**
 17 **or articles or monographs, is that work that you**
 18 **yourself performed, Dr. Darling-Hammond?**
 19 A. Yes, I performed the work. And I usually
 20 have a research team that I'm working with, so I also
 21 guide the work of other research assistants who are
 22 part of the team. So some personally conducted
 23 and -- and overseeing for the team as a whole.
 24 MS. MARKEL: I have no further questions,
 25 Your Honor.

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1 THE COURT: All right.
 2 MS. MARKEL: As to voir dire.
 3 THE COURT: Thank you. She'll be admitted
 4 as an expert in the proffered areas. Thank you.
 5 MR. HINOJOSA: Dr. Darling-Hammond, I've
 6 been told that you maybe need to hit the camera. Or
 7 click it.
 8 THE WITNESS: Okay.
 9 MR. HINOJOSA: Don't hit it. All right.
 10 Your Honor, may I approach?
 11 THE COURT: Yes. Thank you.
 12 DIRECT EXAMINATION (continued)
 13 BY MR. HINOJOSA:
 14 **Q. Now, Dr. Darling-Hammond, among the**
 15 **testimony that was offered by Dr. Hanushek in this case**
 16 **included a series of six charts, and Exhibit 7735, I'm**
 17 **not sure if you're going to be able to see this too**
 18 **well, but you are familiar with the PowerPoint slides**
 19 **that he produced in this case; is that right?**
 20 A. Yes.
 21 **Q. And in here are a series of slides towards**
 22 **the latter half of Exhibit 7735 including an analysis**
 23 **of spending and median growth percentiles both for all**
 24 **grades, as well as a breakdown between elementary,**
 25 **middle school, and high school grades. Are you**

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1 **familiar with those charts?**
 2 A. Yes. If you could just show me which
 3 document you're looking at right now, that would be
 4 helpful to me.
 5 **Q. Sure. Can you see that okay?**
 6 A. Yeah. Can you show me the next page so I
 7 can see what the first set of charts is you're looking
 8 at?
 9 **Q. Oh, the set of charts. Yes.**
 10 A. Whatever it is that you're wanting to talk
 11 about first. Okay. Yes.
 12 **Q. Okay. So spending and median growth**
 13 **percentiles.**
 14 A. These are the charts that Dr. Hanushek
 15 produced?
 16 **Q. That's correct.**
 17 A. Okay.
 18 **Q. And did you review these charts as part of**
 19 **your work?**
 20 A. I did.
 21 **Q. Now --**
 22 A. You just fell over. Okay. We're good.
 23 **Q. All right. So Dr. Hanushek testified in**
 24 **this case that he had received both median growth**
 25 **percentiles and achievement data on proficiency rates,**

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1 **but he chose to go with the growth rates instead of**
 2 **proficiency rates, and based on your opinion and your**
 3 **experience, why would a researcher choose to go with**
 4 **median growth percentiles when analyzing the**
 5 **relationship between spending and achievement as**
 6 **opposed to proficiency rates?**
 7 A. Well, that was puzzling to me, because you
 8 would not necessarily expect a relationship between
 9 expenditure rates and median growth percentiles. The
 10 median growth percentile is a complicated statistic
 11 that Colorado uses, which just is how much does the
 12 district grow from year to year -- or how much students
 13 in a district show a growth from year to year, but it's
 14 adjusted for districts with similar populations and so
 15 on.
 16 And looks like your Internet connection is
 17 maybe something of a problem again.
 18 **Q. I'm hearing you fine though.**
 19 A. Okay. And you would actually potentially
 20 expect that you might even see that the higher
 21 achieving districts might show less growth because
 22 their students are closer to the top of the scale
 23 in -- you know, on the test. And you might find that
 24 lower-achieving and perhaps lower-funded districts
 25 might show more growth with additional investments

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1 because they start closer to the bottom of the scale.
 2 But there's no reason to predict a strong
 3 relationship between median growth percentile and
 4 spending. In fact, you might expect very little
 5 relationship.
 6 **Q. And Dr. Hanushek had testified about the**
 7 **median growth percentile that he used in performance,**
 8 **it's the measure of performance that the state has**
 9 **calculated for the Colorado Growth Model, and that if**
 10 **you take the growth percentile of all students in the**
 11 **school, in this case the district, and line them all up**
 12 **in order and then you take the 50th percentile or**
 13 **median, and my question to you is what does that have**
 14 **to do, if anything, with achievement?**
 15 A. What does the growth percentile have to do
 16 with achievement?
 17 **Q. Yes.**
 18 A. It doesn't tell you where the students are
 19 achieving overall. It just tells you within a band of
 20 districts with similar characteristics what the average
 21 growth was in a year. So, for example, if you just
 22 think about the SAT test with a perfect score of 800.
 23 If you're already at 790 on the SAT and you take a test
 24 prep class, you're not expecting to see very large
 25 gains, where if you're scoring a 400, you might get a

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1 large gain, which would be like the median growth
 2 percentile. You might get a 10-point gain or 30-point
 3 gain, but that doesn't mean that you actually are
 4 scoring higher at 430 than the person who is scoring
 5 795. It doesn't actually tell you what the achievement
 6 level is.
 7 **Q. All right.**
 8 A. It just tells you the amount of gains in a
 9 period of time.
 10 **Q. And related to this spending -- this**
 11 **analysis of the relationship between spending and**
 12 **expenditure -- I mean expenditures and achievement**
 13 **performed by Dr. Hanushek, what did you do to analyze**
 14 **the relationship between spending and achievement?**
 15 A. Well, replicate -- I replicated his
 16 findings and was able to reproduce them from the data
 17 that was sent to us, and we found a very small
 18 relationship between the growth percentile and
 19 spending. But then we asked the question well,
 20 wouldn't you want to look at the relationship directly
 21 between spending and achievement.
 22 Which we used the data that the state
 23 produces, which is called percent proficient, the
 24 number of students who score proficient on the state
 25 test, and then we found a very strong relationship

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1 between achievement and spending.
 2 **Q. And the data that you -- that you used,**
 3 **was that the same dataset that was produced by**
 4 **Dr. Hanushek?**
 5 A. Yes. It's the same dataset.
 6 **Q. Did you change the data in any way?**
 7 A. No. It came from the Colorado Department
 8 of Education, and so it's data that was available in
 9 the same dataset.
 10 **Q. All right.**
 11 MR. HINOJOSA: May I approach, Your Honor?
 12 THE COURT: Yes.
 13 THE WITNESS: While you're doing that, I'm
 14 just going to be sure that I have available the piece
 15 of paper that you're looking at. I'll be right back.
 16 Okay. My -- my assistant is out today, so I have
 17 somebody else working with me who's going to make sure
 18 I have the pieces of paper in front of me that you
 19 have.
 20 **Q. (BY MR. HINOJOSA) All right. I'm going**
 21 **to show you what's been marked as Plaintiffs'**
 22 **Exhibit 10488.**
 23 A. Okay.
 24 **Q. Can you see that?**
 25 A. Not really. Yes, I see what it is. Yeah.

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1 **Q. And this is a series of charts. It's four**
 2 **separate charts of the relationship between**
 3 **expenditures and achievement. And one of them is**
 4 **per-pupil expenditures, another one is per-pupil**
 5 **expenditures --**
 6 A. Right.
 7 **Q. -- minus transportation, and then one**
 8 **adjusted for cost, and then another one adjusted for**
 9 **cost minus transportation. And do you recognize**
 10 **Exhibit 10488 --**
 11 A. Yes.
 12 **Q. -- as a true and correct copy of part of**
 13 **the analysis that you did in this case?**
 14 A. Yes.
 15 MR. HINOJOSA: Your Honor, we offer
 16 Exhibit 10488 into the record.
 17 THE COURT: Any objection?
 18 MS. MARKEL: No, Your Honor.
 19 THE COURT: All right. Exhibit 10488 will
 20 be admitted.
 21 **Q. (BY MR. HINOJOSA) And we're going to**
 22 **first look at the -- the document titled "Relationship**
 23 **Between Expenditures and Achievement Per-Pupil**
 24 **Expenditures."**
 25 A. Right.

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1 **Q. And do you have a copy of this in front of**
 2 **you or --**
 3 A. I know what it is. Yeah.
 4 **Q. Okay. And can you please explain to the**
 5 **Court first what you -- what you did here.**
 6 A. What I did was first replicate what
 7 Dr. Hanushek had done, and in the bottom two lines in
 8 the graph you'll see sort of a picture of the
 9 relationship he found between achieve -- between
 10 spending and the MGP, the growth percentile.
 11 Then I looked directly at the relationship
 12 between per-pupil expenditures and students proficient
 13 on math and reading. And what you see is a strong
 14 upwardly sloping line for both math and for reading.
 15 And we looked at expenditures in four different ways to
 16 see if a relationship would hold up.
 17 The first was just to look at per-pupil
 18 expenditures straightforwardly. The second was to look
 19 at per-pupil expenditures minus the transportation part
 20 of the budget. That's a measure that Dr. Hanushek
 21 used, and we used that as well. That would be the
 22 second chart that you have there, which shows the same
 23 deep relationship between spending and achievement.
 24 Then we looked at the same things adjusted
 25 for cost-of-living differentials, because you might

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1 expect the cost differentials would affect spending.
 2 And the relationship held similarly.
 3 In those analyses, which were basic
 4 regression analyses, we had controlled for the
 5 proportion of students who were living in poverty, on
 6 free and reduced lunch, the percentage of Hispanic
 7 students, the size of the district, and then looked at
 8 the affect of expenditures. And in every case, in both
 9 reading and math, measuring expenditures in four
 10 different ways, we had a statistically significant
 11 relationship between spending and student achievement.
 12 **Q. And why did you control for those various**
 13 **factors?**
 14 A. Well, we know that -- just as Dr. Hanushek
 15 did in his analysis, he controlled for the same
 16 factors. We know that those are factors that typically
 17 predict achievement levels. And so you want to adjust
 18 for those, or take them out of the equation and say
 19 after you take into account things like poverty,
 20 percent Hispanic, which would be related also to
 21 language needs, students -- district size, which can
 22 affect how money is spent, very small districts can be
 23 more expensive, for some reason, because of small
 24 economies of scale, very large districts can have
 25 certain different economies of scale.

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1 Once you take that out of the equation,
 2 does spending still affect achievement? And that's a
 3 stronger finding than if you didn't control for those
 4 variables.
 5 **Q. And can you explain to the Court why**
 6 **you -- why your relationship seems to be -- why you**
 7 **seem to have a relationship here between expenditures**
 8 **and achievement as opposed to the lines represented**
 9 **here from Dr. Hanushek's analysis?**
 10 A. Well, as I said before, there's no reason
 11 you'd really expect median growth percentiles to be
 12 related to achievement -- to spending, because it's not
 13 a straightforward measure of achievement. If you want
 14 to know whether spending affects achievement, you
 15 should measure spending and achievement and look for
 16 the relationship. The median growth percentile is just
 17 a measure of the change in achievement from year to
 18 year, not the actual achievement of the students in the
 19 district.
 20 So a priori, one would often expect that
 21 it would have an inverse relationship to spending
 22 to -- to the level of achievement, because the higher
 23 achieving students have less far that they can grow.
 24 So it's just not a good measure of the level of
 25 achievement that students have achieved or that a

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1 district has achieved.
 2 **Q. All right. I'm going to next show you**
 3 **Plaintiffs' Exhibit 10491. These are the tables.**
 4 A. Yes.
 5 MR. HINOJOSA: May I approach, Your Honor?
 6 THE COURT: Yes.
 7 **Q. (BY MR. HINOJOSA) The first table of**
 8 **Plaintiffs' Exhibit 10491 is titled "Table 1, Estimated**
 9 **OLS Coefficients for the Percent of Students Proficient**
 10 **in Mathematics on Student Characteristics and**
 11 **Expenditures by Colorado District." And the second**
 12 **document of this exhibit is the same information,**
 13 **except for reading. Do you recognize Exhibit 10491?**
 14 A. Yes.
 15 **Q. And does Exhibit 10491 represent a true**
 16 **and accurate copy of the tables that you created as**
 17 **part of your analysis in this case?**
 18 A. Yes.
 19 MR. HINOJOSA: Your Honor, we offer
 20 Plaintiffs' Exhibit 10491.
 21 THE COURT: Any objection?
 22 MS. MARKEL: None, Your Honor.
 23 THE COURT: 10491 will be admitted.
 24 **Q. (BY MR. HINOJOSA) Now, can you tell us,**
 25 **maybe a little in English, what Table 1 says? 'Cause**

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1 **it says "Estimated OLS Coefficients for the Percent of**
 2 **Students."**
 3 A. OLS is just a type of regression. It's an
 4 ordinary least squared regression model. It's sort of
 5 a basic, you know, plain-vanilla type of regression.
 6 It's the same type of regression that Dr. Hanushek
 7 used. And what we did was we -- we again tried to
 8 predict the percent of students proficient in
 9 mathematics in Table 1 and in reading in Table 2,
 10 controlling for the variables that you see in that
 11 column on the left, the percentage of students
 12 receiving free or reduced-price lunch, the percent
 13 Hispanic.
 14 We used student enrollment as student
 15 enrollment squared to capture the size of the district,
 16 because we sometimes have a -- a -- what they call
 17 curvilinear relationship between size and spending.
 18 And then we looked at the expenditures. And you'll see
 19 some numbers that are highlighted in yellow. Those
 20 numbers highlighted in yellow are the measures --
 21 coefficients, but they are the measures of the
 22 relationship between expenditures and achievement. In
 23 this case, the percentage of students proficient in
 24 mathematics.
 25 The asterisk next to those shows the

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1 significance level, and at the bottom it tells you how
 2 significant a relationship is. And in all cases, they
 3 are what's known as statistically significant.
 4 **Q. And what --**
 5 A. Which means that the odds of finding this
 6 are -- the 95 percent chance that what we found was not
 7 due to random error or random chance.
 8 **Q. And for Model 2 --**
 9 A. I hope that was English.
 10 **Q. Yeah, that was English. So Model 2, it**
 11 **says 0.83, and then for Model 3, it goes to 0.6, and**
 12 **then 0.55 for the last model. Can you explain how**
 13 **those numbers seem to differ? 'Cause I don't know if**
 14 **"decline" is the right word.**
 15 A. Well, they don't differ much. They're all
 16 statistically significant. But what it's telling you
 17 is there's a slightly stronger relationship between
 18 expenditures just measured as raw expenditures than
 19 there is when you adjust the expenditures for the costs
 20 of wages in the district. So we wanted to see whether
 21 the relationship held up when you adjust for sort of a
 22 cost-of-living-type measure. And it still is
 23 significant, but the coefficients, the measure of the
 24 relationship, is slightly less though.
 25 **Q. Okay. And going to the second table,**

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1 **Table 2, which is titled "Estimated OLS Coefficients**
 2 **for the Percent of Students Proficient in Reading on**
 3 **Student Characteristics and Expenditures." Can you**
 4 **tell us -- now, these tables, they -- do they relate to**
 5 **the other exhibit, Exhibit 10488?**
 6 A. Yes. The -- the graphs that you showed
 7 are basically a picture of that relationship between
 8 spending and achievement. And these coefficients
 9 are basically pictorially represented in those graphs.
 10 **Q. And just so the record is clear, can you**
 11 **please tell the Court what Table 2 represents.**
 12 A. Table 2 is basically the same set of
 13 analyses in reading that we had done previously in
 14 mathematics. And the coefficients, again, are
 15 statistically significant in each case, regardless of
 16 the various ways that you can measure expenditures.
 17 On the graphs that we saw earlier, the
 18 percentage of students proficient in reading is the top
 19 line, the percentage of students proficient in math is
 20 the second line. And you see a somewhat deeper
 21 relationship, although it's positive and noticeable in
 22 both cases, in math than in reading.
 23 **Q. Okay. And in terms of statistical**
 24 **analysis, I know that you said that it was**
 25 **statistically significant, but how strong of a**

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1 **relationship did you find here compared to some of the**
 2 **other analysis that you found in -- in looking at the**
 3 **relationship between spending and achievement?**
 4 A. I'm sorry, are you asking me to compare
 5 the findings that I found in compared to Dr. Hanushek's
 6 or --
 7 **Q. No. No. No. I think you've done that**
 8 **already. But what I would want to know is you said**
 9 **that you found that there was a statistically**
 10 **significant relationship, right?**
 11 A. Yes.
 12 **Q. All right. And I was wondering if you had**
 13 **an opinion of how strong the relationship is that you**
 14 **found in this case as opposed to some of the other**
 15 **similar research that you've seen in this field?**
 16 A. Well, you often find a relationship
 17 between expenditures and achievement. That's not
 18 unusual to find. This is a pretty strong relationship,
 19 given that, you know, we were looking only at overall
 20 expenditures. Typically you will then find an even
 21 stronger relationship, you know, if you can get to
 22 specific categories of expenditures that are
 23 technically related to instruction. But this is a very
 24 robust -- what we would call a robust relationship,
 25 which is pretty -- yeah, pretty substantial.

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1 **Q. Now I want to switch subjects to the NAEP.**
 2 **Dr. Hanushek also testified about the performance of**
 3 **students in the U.S. from 1971, and this is represented**
 4 **in Chart 2 and Chart 3 of Trial Exhibit 7735. So these**
 5 **are the charts that I'm looking at now.**
 6 A. This is the one that says NAEP scores for
 7 9-year-olds?
 8 **Q. Well, they're his charts. One --**
 9 A. Oh.
 10 **Q. -- Chart 2, the NAEP scores for**
 11 **17-year-olds.**
 12 A. Right.
 13 **Q. And then Chart 3, the NAEP scores for**
 14 **17-year-olds relative to initial performance --**
 15 A. Right.
 16 **Q. -- in which you apply the standard**
 17 **deviation.**
 18 A. Right.
 19 **Q. Can you tell me a little bit about what**
 20 **your opinion is with respect to how he applied the**
 21 **standard deviation, or how -- what effect applying a**
 22 **standard deviation might have, as Dr. Hanushek did here**
 23 **in Chart 3?**
 24 A. Well, if you're looking at the standard
 25 deviation in -- as a measure of change, you're going

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1 to -- it -- it -- in a sense, it geographically reduces
 2 what the visual effect would be of looking at the
 3 actual change in terms of score points. But it's a
 4 measure of the variability.
 5 So you can look at change in terms of
 6 standard deviation units. It's just a little less
 7 transparent or clear what the amount of change is in
 8 actual score points when you do that.
 9 **Q. And what did you do as a part of your**
 10 **analysis?**
 11 A. Well, two things. One was he only looked
 12 at 17-year-olds. So we collected the data from NAEP
 13 which looks at 9-year-olds and 13-year-olds to see what
 14 the trends have been there. Because the data on
 15 17-year-olds is confounded by the fact that between
 16 1970 and 2010, over that 40-year period, you've had an
 17 increase in the proportion of students graduating and a
 18 change in the demographics of the student population.
 19 **Q. How does the change -- how does the change**
 20 **in demographics affect the analysis of NAEP results?**
 21 A. So achieve -- prior -- in earlier years,
 22 more students dropped out of school. So low-achieving
 23 students were not in the testing pool. Special
 24 education students were not in the testing pool. Into
 25 the 1970s, few African American and Latino students

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1 were in the testing pool because of higher dropout
 2 rates and lack of high schools in segregated districts.
 3 So the 17-year-old testing pool has many
 4 more kids who previously would have dropped out or not
 5 been served in public school. So when you see a
 6 constant line of achievement or a -- only a slight
 7 increase, it's matched by the fact that you've got a
 8 lot more students in that measurement pool, in the pool
 9 of students who previously would not have been tested
 10 and who would have shown a lower average score.
 11 **Q. All right.**
 12 A. So if you really want to see what all the
 13 trends have been, it's important to also look at 9- and
 14 13-year-olds.
 15 MR. HINOJOSA: All right. May I approach,
 16 Your Honor?
 17 THE COURT: Yes.
 18 **Q. (BY MR. HINOJOSA) All right.**
 19 **Dr. Darling-Hammond, I'm showing you what has been**
 20 **marked as Plaintiffs' Exhibit 10489.**
 21 A. Yes.
 22 **Q. Do you see that? It's titled "NAEP Scores**
 23 **for 9-year-olds, 1971 to 2008." And the second page of**
 24 **this exhibit is "NAEP Scores for 13-year-olds, 1971 to**
 25 **2008."**

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1 A. Right.
 2 **Q. Are you familiar with this document?**
 3 A. Yes.
 4 **Q. And is Exhibit 10489 a true and correct**
 5 **copy of the NAEP trend analysis that you did in this**
 6 **case for 9-year-olds and 13-year-olds?**
 7 A. Yes.
 8 MR. HINOJOSA: Your Honor, we offer
 9 Plaintiffs' Exhibit 10489.
 10 THE COURT: Any objection?
 11 MS. MARKEL: No, Your Honor. Thank you.
 12 THE COURT: Exhibit 10489 will be
 13 admitted.
 14 **Q. (BY MR. HINOJOSA) Now, please tell the**
 15 **Court -- I know that you started telling the Court a**
 16 **little bit about what you did, but tell the Court what**
 17 **you found here. First with respect to 9-year-olds.**
 18 A. Well, with respect to 9-year-olds, what
 19 you see is trends in -- on the NAEP scores for both
 20 reading and mathematics. And you see a pretty
 21 substantial increase in test scores over time in
 22 mathematics and a more modest, but still noticeable
 23 increase in test scores in reading over that period of
 24 time.
 25 **Q. And now going to the NAEP scores for**

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1 **13-year-olds on Plaintiffs' Exhibit 10489, what did you**
 2 **find there?**
 3 A. Again you see a very steep increase in
 4 NAEP test scores for 13-year-olds in mathematics and a
 5 more modest, but still noticeable increase in test
 6 scores for 13-year-olds in reading.
 7 **Q. So what conclusions can you draw from --**
 8 **from this trend analysis that you did for NAEP scores?**
 9 A. Well, I think you can draw the conclusion
 10 that there have been gains in achievement over the last
 11 40 years. Those gains are pretty indisputable in
 12 mathematics, and they have been, you know, more modest,
 13 but also noticeable in reading.
 14 **Q. Now, Dr. Hanushek also analyzed the NAEP**
 15 **scores for New Jersey, and you're familiar with the**
 16 **NAEP scores for New Jersey?**
 17 A. I am.
 18 MR. HINOJOSA: May I approach, Your Honor?
 19 THE COURT: Yes.
 20 **Q. (BY MR. HINOJOSA) Now I'm showing you**
 21 **what's been marked as Plaintiffs' Exhibit 10490. Do**
 22 **you recognize this exhibit?**
 23 A. Yes.
 24 **Q. Is Plaintiffs' Exhibit 10490 a true and**
 25 **accurate copy of the -- of your analysis of NAEP fourth**

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1 **grade math scores by year as well as eighth grade math,**
 2 **fourth grade reading, and eighth grade reading for**
 3 **Colorado, New Jersey, and the United States?**
 4 A. Yes, it is.
 5 MR. HINOJOSA: Your Honor, we offer
 6 Plaintiffs' Exhibit 10490 into the record.
 7 THE COURT: Any objection?
 8 MS. MARKEL: No, Your Honor.
 9 THE COURT: 10490 will be admitted.
 10 **Q. (BY MR. HINOJOSA) And please tell the**
 11 **Court what you found here with respect to the NAEP**
 12 **scores. First for fourth grade math scores.**
 13 A. Basically what you see here is that New
 14 Jersey and Colorado, in about 1996, were neck and neck
 15 in terms of fourth grade reading scores. Almost
 16 grade -- just about the same. In 1998, New Jersey put
 17 in place a school funding reform, and what you can see
 18 is that in the years since then, New Jersey pulled
 19 ahead, and by 2010, was scoring above Colorado.
 20 **Q. And how does New Jersey overall perform**
 21 **against the other states in the United States?**
 22 A. Interestingly, although New Jersey has a
 23 very large proportion of students of color, about
 24 45 percent, one of the highest rates of minority
 25 student population in the nation, they're in the top

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1 five states on every measure on the national assessment
 2 of educational progress. They're first in the nation
 3 in writing. They are -- in reading, they moved from
 4 14th in the nation in 2005 in reading to second in the
 5 nation in reading for eighth-graders by 2009.
 6 So you can see the steep increase and a
 7 reduction in the achievement gaps happened over the
 8 period of time since their funding was reformed in New
 9 Jersey.
 10 **Q. Now, let's go to the second page. If you**
 11 **can tell the Court what your analysis states there.**
 12 **And that's the NAEP eighth grade math scores.**
 13 A. Okay. Are we -- I was on reading a minute
 14 ago. Should I stick with reading, or shall I go to
 15 math?
 16 **Q. Go to eighth grade math scores.**
 17 A. Okay. We'll come back to eighth grade
 18 reading?
 19 **Q. Yes.**
 20 A. Okay. So the eighth grade math, what
 21 you'll see is that New Jersey started out behind
 22 Colorado in about 2003, which is the first year that
 23 New Jersey participated in the NAEP at the eighth grade
 24 level. And by 2009, New Jersey had substantially
 25 surpassed Colorado. In eighth grade math.

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1 **Q. And you said earlier that your testimony**
 2 **was about fourth grade reading; was that right?**
 3 A. Yes.
 4 **Q. All right. 'Cause I thought I had asked**
 5 **you about the math. But I might have mixed that up.**
 6 A. I may have misunderstood you. I
 7 apologize.
 8 **Q. All right. Now --**
 9 A. The story is exactly the same for reading
 10 and math in fourth grade. They started out almost in
 11 the very same place, and by several years later New
 12 Jersey had pulled ahead.
 13 **Q. All right. And now let's go to eighth**
 14 **grade reading, which is the last document.**
 15 A. Again, 2003 was the first year that New
 16 Jersey participated in the NAEP at the eighth grade
 17 level, and you can see that New Jersey and Colorado
 18 were scoring exactly the same in 2003, and by 2009 new
 19 Jersey had pulled substantially ahead and was scoring,
 20 as I mentioned earlier, second in the nation in eighth
 21 grade reading by that year.
 22 **Q. Are you familiar with the Abbott versus**
 23 **New Jersey school finance case?**
 24 A. I am.
 25 **Q. And are you familiar with the funding**

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1 **levels for school districts in New Jersey?**
 2 A. I am.
 3 **Q. And what documents have you reviewed with**
 4 **respect to the funding levels for school districts in**
 5 **New Jersey?**
 6 A. New Jersey publishes funding levels
 7 regularly as part of their state department of
 8 education website, and it's easily, you know, used by
 9 the public.
 10 **Q. And what is the average funding for the**
 11 **Abbott districts?**
 12 A. Just about 2009-'10 is the last data I
 13 saw. I think it's the most recent data. The Abbott
 14 districts' average funding was about \$20,000 per pupil
 15 on average across those districts. And compared to
 16 about 17,000-plus in the state as a whole. So it was a
 17 couple thousand dollars more than the state average.
 18 **Q. And you're familiar with the intent of the**
 19 **decision as far as the level of funding that the Abbott**
 20 **districts were supposed to receive?**
 21 A. Yes.
 22 **Q. And what was the intent? The intended**
 23 **level of funding. Sorry.**
 24 A. The intent of funding reform in 1998 was
 25 to achieve what they called parity funding. And they

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1 took the average per-pupil funding level of the
 2 wealthiest -- I think it was a hundred wealthiest
 3 districts -- there's a lot of small districts in New
 4 Jersey -- and that became the expectation for funding
 5 the poor urban districts that had been previously
 6 funded at far lower levels.
 7 **Q. And Dr. Hanushek had testified that the**
 8 **Abbott districts received upwards of \$30,000. Did you**
 9 **find that in the actual data that you reviewed?**
 10 A. No. There's no Abbott district receiving
 11 \$30,000. As I mentioned, the average was about
 12 \$20,000. Some of the large Abbott districts, like
 13 Newark and Camden, are up at about \$23,000 per pupil,
 14 the very heavily impacted districts with the high
 15 proportions of severely -- severe concentrations of
 16 low-income students. But then again, you also have
 17 districts like Princeton, New Jersey, that are
 18 all -- or that are also funding at \$23,000 per pupil.
 19 **Q. Okay. Now I want to shift gears to**
 20 **another slide that was part of Dr. Hanushek's**
 21 **Exhibit 7735. And this is titled "Impact on Student**
 22 **Lifetime Incomes by Class Size and Teacher**
 23 **Effectiveness."**
 24 A. Yes.
 25 **Q. And then in parenthesis "Compared to**

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1 **Average Teacher."**
 2 A. Uh-huh.
 3 **Q. Did you review Dr. Hanushek's testimony**
 4 **related to this slide?**
 5 MR. HINOJOSA: And, Your Honor, this slide
 6 is the second-to-the-last slide in the PowerPoint.
 7 A. Yes, I did.
 8 **Q. (BY MR. HINOJOSA) And what -- what are**
 9 **your findings with respect to this particular slide?**
 10 A. Well, it's -- it's an extrapolation of
 11 predictions from sort of theoretical data. It's not an
 12 actual empirical estimate, because no such thing
 13 exists. You want me to explain what I mean by that?
 14 **Q. Yes, please. I mean, for instance,**
 15 **Dr. Hanushek had testified that if a student had access**
 16 **to the 90th percentile teacher, then they might end up**
 17 **seeing these types of lifetime earnings change**
 18 **depending on the number of students in the class.**
 19 A. Right. Right. So to start with, there's
 20 almost no teacher who is a 90th percentile teacher year
 21 after year after year. The value-added estimate of
 22 teacher effectiveness that we talked about when I was
 23 there a week ago are highly variable and highly
 24 unstable. So the odds that a teacher who ranks at the
 25 top one year will rank at the top the next year are

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1 only about 20 percent.
 2 Typically that teacher will then move
 3 somewhere else in the distribution, because there are
 4 so many other things in that estimate other than the
 5 teacher's own skillfulness. So it's highly unstable.
 6 Huge error range around the teacher's value-added
 7 estimate, which is really a composite of all the things
 8 that affect student achievement other than the few
 9 things that are controlled for.
 10 So that 90th percentile teacher is kind of
 11 a figment. It's not an actual person, because you
 12 would have this great movement of teachers around
 13 ratios, even from the very top to the very bottom. The
 14 odds of moving from -- staying at the top level are the
 15 same as moving to the very bottom from one year to the
 16 next.
 17 Second thing is that the estimate that
 18 he's producing there is really a chain of logic that is
 19 hard to sustain in reality. Some studies have found
 20 that among teachers, when you do these value-added
 21 estimates, there is a range of those estimates at a
 22 moment in time from, you know, about 0.1 to 0.2
 23 standard deviations, which says that those estimates,
 24 you know, spread out.
 25 Now, they're also moving about, but at a

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1 moment in time they spread out. Then he takes the idea
 2 that a teacher who -- that one full standard deviation
 3 of difference in a teacher's so-called effectiveness
 4 would create an increase in achievement of a certain
 5 amount, about 10 to 20 percent higher earnings is what
 6 gets extrapolated back to that.
 7 And then he takes a teacher who is a full
 8 standard deviation above the mean, which is larger than
 9 the typical range among teachers, and says that teacher
 10 theoretically would move a student's achievement from
 11 50th percentile to the 84th percentile, and that would
 12 be attributed to a growth in earnings of a certain
 13 amount.
 14 But all of that is a set of extrapolations
 15 from theoretical data, not from empirical data.
 16 **Q. Okay. And now --**
 17 A. The last -- the last thing that he
 18 suggests is that if you, you know, fired the teachers
 19 at the bottom of the range, you know, you gradually
 20 move student earnings up.
 21 **Q. All right. Before you start there, I just**
 22 **want to interrupt you, because I want to make sure that**
 23 **we're all on the same page. Now, this is the**
 24 **"Alternative Estimates of How Removing Ineffective**
 25 **Teachers Affects Student Achievement," which is the**

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1 **last slide of Exhibit 7735?**
 2 A. Right.
 3 **Q. And you did review his testimony and his**
 4 **analysis, correct?**
 5 A. Sorry?
 6 **Q. You did review his testimony and analysis**
 7 **with respect to this topic?**
 8 A. I did.
 9 **Q. And what were your findings and**
 10 **conclusions?**
 11 A. Well, that -- that the conclusions that he
 12 came up with are not realistic or empirically grounded.
 13 That there is no actual place where, you know, a
 14 mythical teacher exists who produces these gains in
 15 achievement, which then produce these gains in
 16 potential earnings. And that there's no evidence that,
 17 you know, firing the bottom group of teachers, who, by
 18 the way, in another year or on another class or with a
 19 different estimate, would be somewhere else in the
 20 range of value-added estimates, perhaps as high as the
 21 very top, because the -- the instability is so great.
 22 That firing the people who in one moment
 23 in time are measured at the bottom end of the range
 24 because of the students they teach or the content that
 25 they're in or the variables that are operating, that

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1 that would in any way move student achievement upward.
 2 In fact, you know, the countries that have
 3 the high achievements that Dr. Hanushek talks about,
 4 places like Finland, invest a lot of teachers in their
 5 preparation, in the professional development and so on,
 6 and they don't fire teachers. They continue to make
 7 the job of teaching more and more attractive, and more
 8 and more teachers are, in fact, highly effective, and
 9 more and more kids achieve at high levels.
 10 **Q. So can Colorado fire its way to Finland?**
 11 A. You cannot fire your way to Finland.
 12 MR. HINOJOSA: All right. Pass the
 13 witness.
 14 THE COURT: Do the plaintiffs have any
 15 questions?
 16 MS. GEBHARDT: Oh. No, Your Honor. Thank
 17 you.
 18 THE COURT: Cross-examination?
 19 MS. MARKEL: Yes, Your Honor. I'm not
 20 sure I'll be able to finish in four minutes.
 21 THE COURT: How much time do you think?
 22 It will take a while, and then redirect?
 23 MS. MARKEL: Yes.
 24 THE COURT: Doctor, are you available
 25 tomorrow?

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1 THE WITNESS: Is that directed to me?
 2 THE COURT: Yes. Yes.
 3 THE WITNESS: I'm actually leaving for
 4 Iceland tomorrow.
 5 THE COURT: What time?
 6 THE WITNESS: Well, I'm getting in a car
 7 to the airport at around 10:00, I think, and I have a
 8 conference call at 9:00. So before 9:00 o'clock my
 9 time I could be available briefly.
 10 THE COURT: What's the time difference?
 11 MS. MARKEL: We have a witness coming,
 12 Your Honor, at 8:00 who is a non-party witness who's a
 13 superintendent from the Springs. So . . .
 14 THE COURT: We could start at 7:30.
 15 MS. MARKEL: Yeah.
 16 THE COURT: Would that work? 7:30. That
 17 would be 8:30 your time?
 18 MS. GEBHARDT: 6:30.
 19 THE COURT: Oh, 6:30. Maybe that's too
 20 early. We could start at 8:00 then. That would be
 21 7 o'clock the doctor's time, and then maybe the witness
 22 could be deferred a few minutes. Would that work for
 23 you, if we did it -- if we did it 7 o'clock -- is it
 24 8 o'clock? I'm not sure.
 25 MS. GEBHARDT: 7:00 her time.

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1 THE COURT: 7:00 her time. Would that be
 2 too early?
 3 THE WITNESS: I'm not able to hear.
 4 MS. MARKEL: 7 o'clock your time,
 5 Dr. Darling-Hammond, tomorrow morning.
 6 THE WITNESS: Well, I have an hour to pack
 7 and eat breakfast, and that's about -- that's about in
 8 that time. I could probably try to arrange a half an
 9 hour out of that time.
 10 THE COURT: You know, maybe what you could
 11 do is coordinate with the superintendent, and we could
 12 interrupt the testimony.
 13 MS. MARKEL: It's one of those things,
 14 Your Honor, I have no control over this witness. He's
 15 coming on his -- it -- I have no control over that
 16 particular witness.
 17 THE COURT: Oh. Okay. Whatever you want
 18 to do. I'll leave it up to you. Whatever you think.
 19 Whatever time would work.
 20 MS. MARKEL: Would 6:30 be better for you,
 21 Dr. Darling-Hammond?
 22 THE WITNESS: No, it would not. I -- if
 23 you -- if you want to take from 7 to 7:30 or 7:30 to
 24 8:00, I could do it and trade off against my packing.
 25 I'm going away for a week, so I'm doing a lot in that

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1 period of time.
 2 MS. MARKEL: If 7:00 to 7:30 is amenable
 3 to everyone, that would work.
 4 THE WITNESS: That's 8 o'clock your time?
 5 MS. MARKEL: That's correct.
 6 THE COURT: That would be wonderful.
 7 Would that work for you, Doctor? We appreciate you
 8 working with us on this.
 9 THE WITNESS: Yeah, I could come on at
 10 7:00 my time, 8 o'clock your time.
 11 THE COURT: All right. Does that work for
 12 everybody then? Okay. We'll be ready right at
 13 8 o'clock, and that way you won't have to rush your
 14 cross and redirect.
 15 MR. HINOJOSA: This might have to
 16 be -- I'm not sure -- are you going to be able to Skype
 17 through your work at that time, or would it be through
 18 a conference call?
 19 THE COURT: We could do a conference call
 20 if that's easier. Whatever.
 21 MR. HINOJOSA: Will a conference call work
 22 easier for you, Dr. Darling-Hammond?
 23 THE WITNESS: That would be fine. I -- I
 24 could probably arrange to Skype, but a conference call
 25 will certainly work.

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1 THE COURT: Well, I'll leave it up to you.
 2 I'll leave it up to the parties, whatever you would
 3 prefer to do.
 4 THE WITNESS: Okay. We'll caucus about
 5 what arrangements to make.
 6 THE COURT: Thank you, Doctor, for working
 7 with us on that. Thank you.
 8 THE WITNESS: You're welcome.
 9 THE COURT: We'll be ready at 8:00
 10 tomorrow.
 11 MR. KAWANABE: Your Honor, one quick
 12 question. Do you have a possibility to stay late?
 13 There is an offer of proof that we would like to -- not
 14 now, but tomorrow. And so after, perhaps, Barbara
 15 Medina, or the last witness of the day, is there any
 16 flexibility at the end of the day?
 17 THE COURT: Right. Yeah, we can certainly
 18 accommodate that.
 19 MR. KAWANABE: Thank you very much.
 20 MS. MARKEL: And we also need to get a
 21 clarification on a designation of testimony by
 22 deposition. I think we're going to offer that instead
 23 of live testimony. So that would be a good time to
 24 take care of that housekeeping as well.
 25 MR. KAWANABE: You mean Lorie Gillis?

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1 MS. MARKEL: Yes.
 2 MR. KAWANABE: Yes.
 3 THE COURT: Thank you.
 4 MR. KAWANABE: Thank you, Your Honor.
 5 MS. MARKEL: Thank you, Your Honor.
 6 WHEREUPON, the within proceedings were
 7 adjourned at the approximate hour of 4:31 p.m. on the
 8 29th day of August, 2011.
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REPORTER'S CERTIFICATE

STATE OF COLORADO)

) ss.

CITY AND COUNTY OF DENVER)

I, CAROL M. BAZZANELLA, Registered Professional Reporter, Certified Realtime Reporter, and Notary Public, State of Colorado, do hereby certify that the within proceedings were taken in machine shorthand by me at the time and place aforesaid and was thereafter reduced to typewritten form; that the foregoing is a true transcript of the proceedings had.

I further certify that I am not employed by, related to, nor of counsel for any of the parties herein, nor otherwise interested in the outcome of this litigation.

IN WITNESS WHEREOF, I have affixed my signature this 6th day of September, 2011.

My Commission expires February 10, 2012.

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