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CALIFORNIA ADVISORY COMMITTEE  
TO THE  
U.S. COMMISSION ON CIVIL RIGHTS  
  
OPEN MEETING ON EDUCATION  
  
VOLUME III

June 26-27, 1975  
Sacramento, California

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187 North Church Avenue  
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I N D E X

VOLUME III

<u>SPEAKER</u>	<u>PAGE</u>
Ms. Nadine Hata, Chairperson	284
Dr. Leslie Brinegar	285
Ms. Virna Canson	339
Mr. Clif Shryock	359
Dr. Allan Simmons	376
Ms. Margaret Fraser	390
Mr. Thomas Rothery	405
Mr. Tony Sierra	418

## 1 MORNING SESSION

2 June 27, 1975

3 9:00 a.m.

4  
5 (Ms. Nadine Hata was Chairperson for the following  
6 session)

7  
8 THE CHAIR: Good morning.

9 I think we can begin our proceedings.

10 This is the second day of the open meeting of the  
11 California Advisory Committee to the United States Com-  
12 mission on Civil Rights.

13 I am Nadine Hata, Southern Vice Chairperson. To  
14 my right is Dr. Rodriguez and on the other side of Dr.  
15 Rodriguez, Mr. Griffin, to my left, Dr. Share, Ms. Ruiz,  
16 Mr. Yoshioka and Mr. Johnson.

17 And various staff members are scattered in the  
18 appropriate benches.

19 We'll begin this morning with Dr. Leslie Brinegar.  
20 Dr. Brinegar?

21 If I mispronounce your name, by all means let me  
22 know. If you mispronounce mine, I'll let you know, too,  
23 so -- Dr. Brinegar, for the record, would you state your  
24 name and your position, please?  
25

1 DR. LESLIE BRINEGAR

2 A (By Dr. Brinegar) Yes, I'm Leslie Brinegar, I'm  
3 Assistant Superintendent and Manager of the program of  
4 Special Education within the California Department of  
5 Education.

6 THE CHAIR: Do you have a brief statement before  
7 we begin?

8 A I do, yes.

9 MR. FERGUSON: Excuse me, Chairperson, may I  
10 introduce myself? My name is Philip Ferguson, I'm staff  
11 counsel to the department of education. I'll be filling  
12 in here until a deputy attorney general, Joanne Rabin  
13 arrives.

14 THE CHAIR: Fine, thank you.

15 A I want to take the opportunity, first of all, to  
16 express my appreciation to the committee for the opportunity  
17 to allow me to make some opening remarks.

18 I would like to try to explain what has been hap-  
19 pening in the broad area of special education for handi-  
20 capped pupils in this state, the broad program, of course,  
21 includes the educable mentally retarded youngster as well  
22 as a broad variety of other kinds of children with special  
23 needs.

24 During the past five years there's been a number of  
25 rather dramatic changes in the education of exceptional

1 children, actuated or in process of being implemented  
2 within the state, and many of these changes have been  
3 written by or supported by the California Department of  
4 Education.

5 And one of these changes which is most important,  
6 we believe, is the total series of new laws which, or  
7 under which, special education will tend to operate in  
8 the future. And that was brought about by the California  
9 Master Plan for Special Education, which is embodied in  
10 this document which was published, I think around about  
11 March or April of last year.

12 Now, a major concern of the department has been the  
13 assessment and the evaluation of pupils for placement in  
14 EMR programs. And one can, by reading the master plan  
15 document, obtain a feeling of the expression of our need  
16 to continue to make improvements in those areas. —

17 We've already seen a lot of changes that have taken  
18 place within special education programs for educable  
19 mentally retarded children during the past very few years.  
20 However, the provisions of the state master plan for special  
21 education include a specially-detailed, careful screening,  
22 assessment, evaluation and placement of handicapped children,  
23 including the mentally retarded.

24 Under this program parents become increasingly active  
25 participants in the screening, in the evaluation and in the

1 placement of children.

2 The plan gives the parent at every step along the  
3 way, the right to provide information, the right to be  
4 involved in the placement process, and the right to appeal  
5 any decision which the parent feels is not in the best  
6 interests of his or her children. Written parental consent  
7 is required, both for the evaluation of the child and the  
8 placement in any special education program.

9 The provisions of this act, also further extend and  
10 we think make complete, equal opportunity and educational  
11 programs and allows a wide range of services to meet the  
12 specific needs of each youngster.

13 The plan further coordinates or calls for the coor-  
14 dination of all school and community resources for the  
15 handicapped. Such school services include the Early Child-  
16 hood program, the bilingual-bicultural program, the career  
17 education, vocational education program, and the new program  
18 which will come from the effort to -- that's called the  
19 reform of intermediate and secondary education.

20 We believe that the California Master Plan for  
21 Special Education is based upon the known best current  
22 practices, and will allow an orderly change from current  
23 programs to programs even more carefully tailored to meet  
24 the personalized needs of the learner.

25 Now, parallel to this development of a total change

1 in special education, there have been efforts by the state  
2 department of education to deal with charges which have  
3 arisen regarding program practices in the area of the  
4 mentally retarded. This department has responded to the  
5 issues raised with regard to the program for the mentally  
6 retarded, and has taken steps to bring to school districts'  
7 attention, the ever-present need for careful evaluation  
8 and careful placement procedures for such children.

9 Specific **efforts** have been made to reduce what  
10 were disproportionate placement of pupils which existed  
11 in programs for the mentally retarded. And the department  
12 recognizes a need to assist schools in maintaining vigilance  
13 in this area.

14 It is also concerned about the educational needs  
15 who have learning problems due to intellectual retardation,  
16 we're interested that the needs of these children for  
17 special services be protected and that the best possible  
18 educational provisions for them are maintained.

19 Now, in addition to the department's efforts to  
20 establish a state master plan, and our **efforts** to see that  
21 the needs of intellectually retarded children are most  
22 appropriately met, I would like you to know that the joint  
23 federal-state goal to identify and serve all handicapped  
24 children from early age and thus assure equal opportunity  
25 for every child in California, is underway. Under a new

1 amended state plan for the education of the handicapped  
2 which will go to the board this July 10th or 11th, the  
3 department proposes to establish a major search and  
4 serve project, a two-year project, to identify and to serve  
5 all unserved, basically out of school children in the  
6 state. That is out of school, handicapped youngsters.

7 In order to accomplish this heavy responsibility  
8 we propose to reserve up to six million dollars of newly-  
9 available federal moneys to be used through June 30, 1977,  
10 to search and find the handicapped, and up to 8.7 million  
11 dollars to be used through that same period of time to  
12 establish local school programs for unserved children and  
13 for those inadequately served.

14 And as a part of this new amended plan we have pro-  
15 posed new sections which will be available to you for re-  
16 view once the state board has adopted it in July, which  
17 spell out assurances of due process, along the way, for  
18 handicapped children.

19 Included also in the plan are new sections on the,  
20 what's called the least restrictive alternative, which, in  
21 essence, means trying to look at a particular given child's  
22 needs, and to try to make his program as close to the  
23 normal school situation as possible and still provide what  
24 he needs in terms of the deficits which he may have in terms  
25 of his ability to learn at that given moment.



1           Now, if I could take a little, a few moments, I'd  
2 like to run through some of the major provisions within  
3 the due process guarantees that are being proposed to  
4 the board in the new federal-state plan for education of  
5 the handicapped.

6           THE CHAIR: Dr. Brinegar, we'd appreciate a very  
7 brief summary because our committee people have questions  
8 they'd like to ask you and if it's already written down  
9 perhaps you could submit to us a copy of this document.

10          A     Well, we can do this in a couple of weeks or so,  
11 after the board -- I wanted to attempt to summarize some  
12 of the items. I can wait, perhaps --

13          THE CHAIR: Perhaps that would be best and then if  
14 there are any questions from our committee, we could get  
15 those questions and we could expect, then, a copy of this  
16 from you?

17          A     Okay, I'll summarize very quickly then, thank you.

18                To conclude, I wish to emphasize that the already-  
19 elected master plan for special education going into effect  
20 in the first series of schools this fall, and the pro-  
21 posed new amendment to the **Federal** Education of the Handi-  
22 capped Act, together provide opportunity to us to accom-  
23 plish true restructuring and reform of special education  
24 in this state.

25                At the same time, we should be able to meet the

1 constitutional obligations of full service for all of the  
2 handicapped. This move by the department of education with  
3 the help of several thousand California citizens during the  
4 past four years, to restructure special education, was  
5 made with the full recognition that there were many areas  
6 of services to children which could be improved upon.

7 At the same time, acknowledgement was and is given  
8 to the good, pioneering work of California citizens, both  
9 parents and professionals, who, piece by piece, over a  
10 period of several years, have put together a growing program  
11 of special education.

12 I appreciate the opportunity to make this opening  
13 statement which took a few more moments than I thought  
14 that it would when I put it together.

15 Thank you.

16 THE CHAIR: Thank you.

17 Dr. Share?

18 Q (By Dr. Share) Dr. Brinegar, would you give the  
19 policy position of the state department of education on  
20 servicing the special education needs of ethnic minority  
21 students in California?

22 A I'll try to -- try to respond to that by saying I  
23 don't know that we have a specific policy other than those  
24 -- other than the attempt to follow the specific provisions  
25 that relate to these children in the -- in the total group

1 of EMR-like or possible EMR children which are set forth  
2 in education code section 6802 and its several sub-sections,  
3 which, when we peruse that, one automatically sees that  
4 there are many provisions in there that were intended  
5 for ethnic minority children, such as the concerns that  
6 are related about speaking to the parent or having materials  
7 written in the common language used in the home. References  
8 or implications on nondiscriminatory testing, the procedures  
9 for making sure that parents understand the program and  
10 written assurances, written permission to evaluate and  
11 to place the youngster in the program, a number of these  
12 things relate to that. Now --

13 Q (By the Chair) I'm a little bit unclear, are you  
14 saying, then, that ~~these~~ written forms, these application  
15 forms or written permission forms and explanations are  
16 available only in English?

17 A No. No, the -- the provisions in the code speci-  
18 fically indicate that we're to do this in the -- the  
19 language of the home, the primary language of the home.

20 Q The code says that, are you doing it?

21 A I think we are. Now let me respond to that in this  
22 way. You have to recognize that we don't do that as a  
23 department, so I have to make it -- when you say we, you're  
24 probably referring to the schools, which actually directly  
25 operate programs for children where our responsibilities are

1 a somewhat higher level, and to the best of my knowledge,  
2 schools are doing this. It's a difficult process, it's  
3 a learning process.

4 Q You don't have a standard consent form, for example?

5 A Yes.

6 Q (By Dr. Share) The question really relates to the  
7 **monitoring** process, does the state department monitor  
8 the various school districts throughout the state to in-  
9 sure that this is being done?

10 A Dr. Share, I'm sure that you -- with your knowledge  
11 about the special education program and about the depart-  
12 ment and the numbers of our people, I know that you know  
13 that we do not, with the many, many school districts, get  
14 into those, each of those every year.

15 I might add, however, that beginning this fall, in  
16 September, we will be involved in a special project, which  
17 will be a monitoring and auditing kind of a review process  
18 with a special team of people in which we will be getting  
19 into the schools on a -- on a pretty consistent basis.

20 Q (By the Chair) But at this point you don't know  
21 if this is being done, if the written consent form, for  
22 example --

23 A I can't tell you honestly that it's being done in  
24 perfection in every one --

25 Q We're not asking for perfection, I was just curious to

1 see if your written consent forms, if they are standardized  
2 and you say they are, right?

3 A Yes.

4 Q If they are available in Spanish, for example --

5 A Well, the department has not provided, at this stage,  
6 materials translated into all of the various languages.

7 Q Into any language? Translated it into any language?

8 A No, I don't believe we have, as a department this  
9 is not a binding obligation upon the department, it's an  
10 -- it's an obligation upon schools.

11 Q (By Mr. Griffin) As I understood the question, is  
12 there a policy, yes or no, you know, do you have a policy  
13 at this stage?

14 A The policy is to follow the -- the code sections and  
15 the regulation sections that relate to the evaluation,  
16 the assessment and placement of youngsters in EMR programs.  
17 In as much as those policies do have or those regulations  
18 and those statutes do have what can be implied as very  
19 specific provisions for ethnic minority groups, the answer  
20 is yes, we do.

21 Q (By Dr. Share) If I may, this educable mentally  
22 retarded component included in the consolidated application?  
23 And if not, why?

24 A No, it is not. Should I explain?

25 Q Please.

1       A     There are no special education programs that are  
2     currently included in the large consolidated application  
3     form that was put together within the past two years,  
4     basically to try to provide for federal categorical aid  
5     programs, since then we've added other categorical state  
6     programs like Title -- well, Senate Bill 90, which has a  
7     provision for the disadvantaged, is included in that.

8             We didn't -- it did not seem reasonable and realistic  
9     to try to put the special education programs in it at  
10    the time, we may -- basically that was because we were  
11    trying to move toward preparing this document, which --  
12    which, as you know, provides for combinations of many  
13    school districts, it would have been very complicated to  
14    try to move along in the written comprehensive plan and  
15    also to move into the consolidated application.

16            We chose to, not to include special education at  
17    the time, we may in the future, as we move further along  
18    with this. But there are no special ed. programs included  
19    in it.

20       Q     Do school districts generally fully comply with  
21    state department directives on special education? And  
22    perhaps we should -- please respond specifically to the  
23    EMR.

24       A     I would have to give you very strong impression that  
25    they do. Now, as has already been indicated in terms of the

1 monitoring we're not fully staffed and equipped to do  
2 consistent monitoring of school districts. We will be  
3 going into it in a heavy fashion this particular fall.

4 But my impression is, and the -- that they do, that  
5 school districts do, one can note by the reductions in  
6 numbers of children, the -- the rather massive reduction  
7 in numbers of children in the program that the, **basic law**  
8 to reevaluate and remove from the programs those children  
9 which were at a certain level or below a certain -- or  
10 above a certain level, since that has been done, you have  
11 one -- one concludes that there has been a consistent  
12 adhering to the regulations disseminated by the department.

13 Q What does the department do to insure school dis-  
14 trict compliance with the department's directives or the  
15 laws that relate to the EMR specifically?

16 A Well, maybe I can answer that, Dr. Share, by kind of  
17 telling you what we do. We, first of all we don't con-  
18 sistently monitor at this point.

19 Number two, when we have an indication that there's  
20 a problem, somebody complains or we get a letter or tele-  
21 phone call whether it be from a parent or teacher or what-  
22 haveyou, we will, we tend to try to find out by telephone  
23 more information about that.

24 If it appears to be a very serious problem we can't  
25 resolve, we'll send a person into that school district to

1 review the situation. And if we find that there are  
2 very clearcut kinds of deviations, then we will -- we will  
3 point that out and ask for correction to take place.

4 Now, I might add, in my opinion, there are some  
5 things that are very clearcut. And some things that are  
6 very controversial, very questionable in terms of devia-  
7 tions. There may be differences of opinion as to inter-  
8 pretation of what the law really says, you know, there are --

9 Q Could you give me some examples of that?

10 A Well, as an example, if we -- and I may not be able  
11 to relate it to the issue of ethnic minorities right now  
12 but if we were to go into a school district and the one  
13 that comes to my mind is in an EH program in which we have  
14 several openings of service and we find that in their plan  
15 of service, they say they're going to operate home and  
16 hospital programs, which means the kid is so severely  
17 involved that he's -- he has to be served for that time  
18 period in a hospital clinic or home situation, we find  
19 out he's really in a -- being served within a school  
20 building, you know, in sort of like an EH learning disability  
21 grouping that's very clear non -- just no wiggle room in  
22 terms of deciphering a deviation.

23 We point that out and we ask them to make a correc-  
24 tion to it. And I can't recall an instance where we've  
25 had any difficulty once this clearcut kind of a thing is



1 made known.

2 Q Can you relate this to any EMR programs or --

3 A The EMR program is -- is a little bit different  
4 in that it tends to be a program of one particular nature,  
5 a special class or -- although major feature of the program  
6 is an integrated special class program, where they're two  
7 separate things, as you know.

8 The kids are either -- they're either in the program  
9 or they're not in that particular instance.

10 Q Let me ask you, then, what does a department do,  
11 then, if a school district, say is found in noncompliance  
12 with department directives and/or the law?

13 In other words, what pressure or pressures are brought  
14 on such districts to make sure it complies?

15 A Well, if it's a -- if it's a noncompliance that we  
16 believe really is a noncompliance, we'll point out the area  
17 that we believe is not in conformance with what the code  
18 says or the regulation says and we'll ask them to correct  
19 that thing.

20 And to my -- I have had no experience in which we  
21 have not been able to get that corrected.

22 We may not be able to do it immediately, we may,  
23 you know, there may be personnel things that are involved.  
24 We may tell them we will expect to have that completed by  
25 a reasonable time period.

1 Q (By the Chair) What's a reasonable time period?

2 A I can't answer that because it would depend upon --

3 Q A week, two months, a year?

4 A It depends upon, I would think no more than a year.

5 But the only reason I said that I think there's, sometimes  
6 there are problems involved in the question of immediacy  
7 in terms of employment of people, that you can not really,  
8 you know, dismiss a person that precipitously, that you  
9 may have to make those changes at a reasonable period of  
10 time.

11 Q (By Dr. Share) But in your words, you indicated  
12 that you ask the school district and if the school district  
13 should still fail to comply, what other steps do you have  
14 left or do you have any?

15 A I -- I would suspect that we -- that if that even-  
16 tuality occurred, that while we might be upon somewhat  
17 thin ice because I don't know that we have the statutory to  
18 do this, we could possibly withhold funds, if there is a  
19 definite, clearcut deviation from the -- from the law.

20 Now, I think there is -- it's probably a legal  
21 kind of a question. Now, I'm not -- it's just my impres-  
22 sion that I've not been able to see any code section which  
23 definitively gives the department the authority by statute  
24 to do that sort of thing.

25 Q (By the Chair) How long have you been in charge of

1 the special education support unit?

2 A Approximately four years and six or seven months.

3 Q During that period, how many noncompliance cases  
4 have you dealt with?

5 A I can only recall two specifically, there may have  
6 been others that -- but I can recall right at this moment,  
7 about two.

8 Q How long did it take for these two cases to be  
9 adequately solved?

10 A Well, we're in process of one right now.

11 Q How long was that?

12 A I suspect, you know, at the close of the year.

13 Q It's taken them a year?

14 A Oh, there's -- there really are three, I've forgotten  
15 -- I'm thinking of three that --

16 Q And it's taken approximately a year for these?

17 A It takes approximately a year because of the diffi-  
18 culties of changeover, there are a lot of very complicated  
19 situations there.

20 THE CHAIR: Thank you.

21 Q (By Dr. Share) Does the special education support  
22 unit have responsibility for transitional EMR programs  
23 in California?

24 A Well, the transition program now is passed, that  
25 expired last June 30th, but the department -- the unit did

1 have responsibility for that program which was -- which  
2 existed from about 1970, I guess, through June of 1974.

3 Q Were evaluations of these programs required? And  
4 if so, how often were they conducted and how were they  
5 conducted?

6 A Yes. A piece of legislation by Senator Bergener (Phonetic),  
7 I believe, in 1972, I forget the name of that code, did  
8 require the department to do an evaluation.

9 The first go-around did not, but I think the  
10 second bill required an evaluation which we subcontracted  
11 or we contracted through the -- through UCLA, the special  
12 education research program, which they have -- which  
13 they have concluded and disseminated the results along  
14 about December of 1974. It was done during the 1973-74  
15 school year.

16 We had done a previous sampling evaluation of the  
17 program by Dr. Alex Britton, who we contracted with, using  
18 about five districts. There is currently very extensive  
19 evaluation taking -- taking place, I believe it's finished  
20 and I believe that the results are forthcoming, done by  
21 people at USC, under which they've had a grant from the  
22 federal government.

23 I think it will be much more extensive and much more  
24 complete than the other two that we have conducted.

25 Q Are you acquainted with the gist of the evaluations?

1       A     The gist, yes. Not intimately at this point.

2       Q     Could you comment on that?

3       A     The two evaluations that we did or that we con-  
4     tracted to do were basically one-year kinds of things.  
5     Often the -- they did samplings of opinions of persons  
6     who administered the program or teachers who were  
7     operating programs, sometimes I think parents who had  
8     children involved. And the -- the outcomes are kind of --  
9     leave a lot to be desired from that kind of approach.

10            There were some samplings of achievement results  
11     and my impression, of both of the studies, was, or is,  
12     that no startlingly great achievement increments were, or  
13     resulted from the studies, that's what I would have ex-  
14     pected, I think.

15            I think we would have needed a much longer period  
16     of time to have evaluated those. I think the impressions  
17     generally was a kind of a positive thing from the standpoint  
18     of persons that the attitudes of youngsters in general  
19     seems to be good, by other kinds of programs, sometimes  
20     by placement in regular class programs with additional  
21     supplemental assistance.

22            Some negative feelings of people were expressed,  
23     I think in both of those studies. Generally, somewhat  
24     positive is the gist of it.

25       Q     Does the federal government provide funds to

1 California EMR programs?

2 A The federal government does not provide funds  
3 specifically for EMR children. It provides moneys through  
4 several programs for handicapped children generally.

5 There's a Title VIB, aid to the handicapped, what's  
6 called the Education of Handicapped Act, which provides  
7 somewhat around nine, will provide about 9.3 million  
8 dollars next year. Through the California department,  
9 to schools for all of the handicapped, and we have used  
10 that as a competitive grant application because the moneys  
11 were not extensive enough to, you know, freely express  
12 or throw -- flow through the schools.

13 Vocational education provides a 10% set-aside of the  
14 moneys that go into each state for the handicapped and  
15 that's somewhere around 1.6 million, I believe, for next  
16 year. I may be a little low on that.

17 Title I has a special component part for state hos-  
18 pitals and state-operated schools, it's the public law  
19 89-313 program, and that provides somewhere in the neigh-  
20 borhood of close to two million dollars for next year,  
21 for children in state hospitals, and the state residential  
22 schools for the deaf and blind.

23 Title III of the Elementary and Secondary Education  
24 Act, which is a program to provide grants to school people,  
25 of an innovative nature, has a 15% set-aside for the handi-

1 capped. I believe that --

2 Q Do any of these programs look for alternatives of  
3 placement of educable mentally retarded?

4 A Not specifically, although I would -- I think that  
5 Title III provides that -- provides the opportunities for  
6 schools to try to come up with different types of programs  
7 that are outside the current provisions of state law for  
8 program types.

9 Now, under the new federal act, Dr. Share, there  
10 is a very strong emphasis upon mainstreaming of handi-  
11 capped children. One of the primary emphases within that,  
12 which will cause, I think, schools to look very seriously  
13 at ways to provide services to children while they're as  
14 close to the regular class program as possible.

15 So, I think with that new emphasis, which is new for  
16 this coming year, that we will be looking to see many of  
17 those things take place.

18 Now, we provide, in the proposed new state plan,  
19 provisions to do that -- that thing, and we can, I think it  
20 would -- committee members may wish to have copies of that,  
21 we can't provide it to you now but we will be pleased to  
22 do that as soon as the board deals with it on July 10th  
23 or 11th, whichever date they do it and will express some  
24 of these things.

25 THE CHAIR: Thank you, we'll accept that.

1 Q (By Dr. Share) Now, again how is this federal  
2 money distributed?

3 A Two ways, generally. Some of it is by direct  
4 entitlement based upon a percentage of a school's popu-  
5 lation to the state as a whole. Others are based upon  
6 project applications. The major part -- well, let me give  
7 you an example.

8 The first one, the vocational ed. program, dis-  
9 tributes that money to the schools on a percentage of their  
10 population of the total, where Title VIB, the program we  
11 operate, directly provides a grant application process. .  
12 And those are the two general modes.

13 Now, some moneys also go directly from the USOE to  
14 schools based upon, again, applications, and an example  
15 of that is a Handicapped Children's Early Education  
16 Assistance Act, which I did not mention a while ago, it  
17 slipped by me, and the commissioner himself makes these  
18 grants directly to schools.

19 Q Does the state monitor and evaluate applications  
20 made for these funds by California school districts?

21 A Yes, sir.

22 Q And if so, how is this done then?

23 A We do. Again various ways. The best -- the best  
24 and most familiar example to me is the Title VIB program  
25 in which we utilize a review, it's really called a project



1       audit review team process, which usually, consisting of  
2       one department member and two outside members who go into  
3       the school districts, sometime during the year, usually  
4       toward the close of the year. And examine the application  
5       itself and relate that to what's really going on. They  
6       look at the fiscal, how the moneys are being expended and  
7       they also look at the programmatic components.

8               They have an entry interview and exit interview,  
9       they make a written report, that report comes to our unit.

10              And Title III, I don't think -- it doesn't use as  
11       complicated a system, they do something similar to that.

12       Q       You're implying, then, or stating, that the govern-  
13       ment does require reports from the state annually or  
14       otherwise?

15       A       Yes, there are annual --

16       Q       But I should say, if so, then how are these reports  
17       made and to whom do they go?

18       A       There are special forms which the USOE provides  
19       for that, there are annual reports, they're put together  
20       within our unit for the Title VIB program. The other,  
21       the voc. ed. program, their shop would put these together,  
22       and, you know, whoever has the operating responsibilities.  
23       Its form's provided by the USOE, the data is aggregated by  
24       the department, placed on the forms and submitted at the  
25       called-for time, usually close of the year reports to the

1 bureau of education for handicapped children or the bureau  
2 for vocational ed., whichever case might be, in the United  
3 States Office of Education.

4 Q What is the department's responsibility under state  
5 and federal requirements which require an ethnic breakdown  
6 of students of EMR classes?

7 A Now -- okay. I -- I'm going to -- I have a little  
8 -- I'm going to have to refresh myself sometime on the  
9 federal requirement. It's my understanding, however, that  
10 the federal requirement is to do it and to have the data  
11 available. I didn't realize, if -- if there is an annual  
12 report on that, that must be done by a different unit  
13 in the department. However, we do do an annual ethnic  
14 survey of the EMR program.

15 And as a matter of fact, we're making a report for  
16 the '73-'74 year this July, to the state board of education.  
17 And it's -- it's my understanding that we go considerably  
18 far beyond the federal -- federal regulation there.

19 Q (By the Chair) Will you provide our staff with a  
20 copy of that report?

21 A We certainly will, yes.

22 Now I, again, I'll have to ask to delay giving you  
23 that report until the board receives it. We can do that  
24 for previous years, we can provide that to you immediately.

25 THE CHAIR: Thank you.

1 Q (By Dr. Share) Would you also tell us what statistics  
2 are available under these requirements?

3 A Yes. The survey will include a listing of every  
4 school district, which has children, numbers of children  
5 which appear to -- or which exceed the -- the 15% variance  
6 figure that's provided in the code. And by -- by the --  
7 by various ethnic breakdowns, and then there's some  
8 additional data that are provided that meets the -- our  
9 obligation under a current court case that's been pending  
10 for some time.

11 So, we have the information by numbers of children,  
12 by school district, by category of -- of ethnic breakdown.

13 Q Would you please explain the reasons for the -- what  
14 appears to be the significant increase in educationally  
15 handicapped enrollments, why there has been apparently a  
16 simultaneous decrease in educable mentally retarded en-  
17 rollments?

18 A Well, I -- the -- my feeling with regard to the EH  
19 program and it's a rather rapid increase during the past  
20 several years, is the fact, first of all it's a relatively  
21 new program, only being 12 or 13 years of age, which  
22 started with one or two districts which were on a pilot  
23 basis, and has been kind of growing each year.

24 As a matter of fact, more than kind of growing, it's  
25 growing very rapidly.

1 Q It might help, Mr. Brinegar, referring to the chart  
2 there which was drawn by data from your department, to  
3 show --

4 A Is that -- yes. Okay. Is the top -- is the right-  
5 most line beginning of the '71-'70 year? What's that, is  
6 that --

7 MS. GODOY: This is '70-'71 is EH and this blue  
8 line is EMR.

9 A All right. Okay. I think that probably if you had  
10 extended the line further, you would have seen that sort  
11 of a slope, probably all the way through. I'm not sure  
12 of that, but I don't know, I'd have to see it all the way  
13 through down through about '67-'68. I really believe  
14 that you would find the slope that proceeds along about  
15 that same way all along the line.

16 Q (By Ms. Godoy) You say going down this way?

17 A Yes. I think so.

18 Q Like this?

19 A Yes, that's my guess, now I couldn't -- the reason  
20 is that I have watched the EH program since I've been in  
21 this state, since 1970, and it has definitely grown, but  
22 it was growing pretty rapidly at the time. We've had a  
23 fairly sizeable number of kids in it at that particular  
24 year, and I -- my assumption was that, you know, it started  
25 12, 13 years ago. People have gotten more and more familiar

1 with it all along, more and more school districts move  
2 into it each year, and it's just, that's just the way the  
3 programs tend to grow.

4 Q (By Dr. Share) Why the dramatic drop in the EMR at  
5 that same point?

6 A The EMR program, of course, dropped radically during  
7 that particular year, because in the '69-'70, '70-'71  
8 school years we had the legislation which required the  
9 retesting of every youngster in the program, and that same  
10 legislation established a cutoff in terms, basically of  
11 a -- basically of an IQ score, so before that time we had  
12 kids in there who were -- who had scores which were higher  
13 than two standard deviations below the normal.

14 We had that cutoff established along about that  
15 time, all of the schools retested all of their youngsters,  
16 reevaluated every youngster, and they removed all of the  
17 children who were above that cutoff, and that's where  
18 that, why that takes place along about '69-'70, and then  
19 a -- hit a real rapid drop there until '71-'72, still is  
20 decreasing fairly rapidly but seems to be slowing down.

21 I believe it was, definitely has to be the legis-  
22 lation that created this pretty solid cutoff mark, that  
23 did that.

24 Q Staying with the EH for a bit more, do you maintain  
25 ethnic distribution records on EH enrollment?

1       A     Yes, we tend to do it on an ADA basis, and the  
2       moneys are paid on that particular basis and that's kind  
3       of the way that we do it. I do believe we have enrollment  
4       data, they're a little bit difficult to achieve because  
5       the forms come in a little different way.

6       Q     But you do keep them?

7       A     Yes.

8       Q     How long have they been kept?

9       A     I'd have to defer to somebody on that. I would  
10      presume since the initiation of the program. Now, the --  
11      if you're asking about the ethnic breakdowns, I don't think  
12      we did that until about 1970 or '71. Is that right, Allan?  
13      Along about that -- I believe '70-'71 is when we began  
14      to accumulate that kind of information.

15      Q     (By the Chair) Have you kept a check on what hap-  
16      pened to these EMR students who were taken out of the  
17      classes, what happened to them, did they go back into the  
18      normal classes or were they placed in other special  
19      education classes?

20      A     Well, that question relates to, of those other ones  
21      that relate to evaluation, and the data is -- is obscure,  
22      if it's there at all, incompleteness, because we have not  
23      been able to follow through, haven't had the moneys --

24      Q     Have you tried to follow through? Have you tried  
25      to follow through?

1           A     Within the capabilities of staff and money. See --

2           Q     What does that mean, within the capabilities of  
3 staff and money?

4           A     Well, here's what it means. So often the things  
5 that you'd like to do you really can't, because you have  
6 no way.

7           Q     So you haven't done it?

8           A     As I say, in the completeness, as I mentioned in my  
9 first remark, no, we haven't. We haven't been able to do  
10 it very completely. We have some --

11          Q     So you have no idea whether these EMR, former EMR  
12 students have been placed back into EH categories or what's  
13 happened to them?

14          A     We can make some estimates based upon samplings,  
15 but if your question is have we followed up, have we --  
16 have the schools developed systems and have we monitored  
17 those systems to follow each child who'd been transitioned  
18 out, the answer is no, we do not have the information.  
19 We can --

20          Q     (By Dr. Share) Have you ever received Department  
21 of Health, Education and Welfare, Office for Civil Rights'  
22 data on EMR and EH placement?

23          A     I don't know, I'm sorry.

24                   Have we ever received any?

25          Q     Are you aware that it is available?

1 MR. FERGUSON: May I ask a question there? Are you  
2 talking about your commissions?

3 DR. SHARE: No. We're talking about Department of  
4 Health, Welfare, Office for Civil Rights' data, etcetera,  
5 on EMR and EH placements.

6 A I'm not.

7 Q (By Dr. Share) Will your unit be affected by the  
8 department's reorganization, scheduled for July 1, 1975?

9 A Our unit, not -- we'll be affected in some way  
10 because we are part of the new reorganized program services  
11 support unit division, along with compensatory education  
12 and others. I don't think that we will be markedly affected  
13 by it. We'll have a new leader, but we'll be doing the --  
14 basically the same things. Under this system at this --  
15 as we know it and understand it at this point.

16 Q What, if any, formal relationship does your unit  
17 have, say with the state regional centers, your mentioning  
18 ~~earlier on the~~ research and serve plan, is this done in a formal  
19 manner with some of the existing agencies?

20 A It will be and our state plan does call for the  
21 interaction with, the interphase with all of the other  
22 systems for finding and identifying youngsters.

23 We have met with, one of our first meetings was to  
24 pull together representatives of the department of health,  
25 which you know has some responsibilities for funding



1 regional centers. We have not, at this time, met actually  
2 with the directors of the regional centers or the area  
3 board persons, but that is in our -- in our schedule, which  
4 we will be doing during the summer and they will be in-  
5 volved in putting together the overview of what the search  
6 and serve system is going to be.

7 That's very definitely necessary to do that, be-  
8 cause the only way we'll ever be able to do it is to  
9 tap in on the data that exists.

10 Q Does the department have a policy and/or a plan  
11 to arrange, say, or assist or guide EMR graduates after  
12 leaving the schools to some forms of rehabilitation ser-  
13 vices?

14 And if so, what is the plan?

15 A The department encourages the involvement of local  
16 school programs with these service agencies, there are  
17 a number of joint programs between rehabilitation,  
18 various school districts and the department of education,  
19 you know, that get into work study or work preparation  
20 programs.

21 Some of this, these -- what we've done has been  
22 merely in the form of suggested guidelines for some of the  
23 curriculum projects and materials and publications that  
24 have been developed. We're working toward that.

25 And we're trying to work in conjunction with the

1 schools and ourselves is basically a -- a -- trying to  
2 assist and help in getting these groups together who are  
3 actually performing the service.

4 Q Finally, I would like to ask, what relationship,  
5 if any, does your unit have with the probation department's  
6 special schools? In following and tracking some of the  
7 youngsters we've been talking about?

8 A No real formal relationship, but our staff is in --  
9 in pretty constant contact with, and particularly our  
10 EH staff consultants, with these agencies at the state  
11 level. We don't have a real formal working relationship,  
12 but we do these things on an informal basis.

13 Q Without paraphrasing you, is this suggesting that  
14 youngsters entering the probation system are lost, then,  
15 to special education because of no formal type of tie  
16 with the programs on a probation level?

17 A Are you -- are you thinking about things like  
18 juvenile court schools and --

19 Q Special schools in the county probation departments  
20 run by the county school districts.

21 A Yes. I think they call those juvenile court schools.  
22 We're exploring that, you know, through the commis-  
23 sion on special education, advisory to the state board of  
24 education. We have had representatives from the court  
25 schools, or the juvenile court schools, and we have done

1 some exploration with county school superintendents who  
2 operate those. They're sort of out by themselves at this  
3 point, you know, the court schools themselves.

4 And they have no -- they're really not a part of  
5 special education nor are they a part of any other unit  
6 or -- of responsibility within the department. It's a  
7 matter of exploring and trying to define where these kids  
8 are.

9 Q Should they be part of your department, do you  
10 think?

11 A I really hesitate to guess. You know, I really  
12 don't know at this point. I -- I have -- I have some --  
13 I have some questions as to whether the youngsters are  
14 really special education youngsters.

15 I know that some would be. And whether it would be  
16 proper for all of those to be under the special education  
17 umbrella, is speculative at this point.

18 Q Proper? I'm sorry, I don't understand.

19 A I guess when I say proper I'm referring to youngsters  
20 who have learning problems which relate to physical or  
21 sensory or intellectual or emotional or perceptual diffi-  
22 culties, and whether or not all of the clients, all of the  
23 students in the juvenile court schools would fit those, is  
24 questionable. I really just have a -- have some serious  
25 doubts as to whether they really fit what I think is the

1 responsibility of special education.

2 I know that some would be but I don't know whether  
3 they would all be.

4 Q You say should it be demonstrated that close to 90%  
5 of the juveniles fall into your definition, that you just  
6 gave, then would this be a responsibility of your unit,  
7 department?

8 A I think if it were demonstrated that we have such  
9 a -- that there is such a preponderance of youngsters that  
10 would give us some reason to begin to move in that direc-  
11 tion. I have a feeling that there ought to be a much  
12 closer connection with the department of education, and  
13 we should be -- that is the department as a whole should  
14 have, or take a greater possible responsibility for advo-  
15 cating for those youngsters' needs.

16 Now, I have some questions as to where it should  
17 go within the department.

18 Q Will the department be an advocate in an area like  
19 this, for example, to maybe provide a subcommittee that  
20 would look into this to decide should this be an area  
21 and will it be an area of concern, if there is such a  
22 large group of youngsters who have these serious academic  
23 deficiencies and happen to reside at this particular point  
24 in a detention camp?

25 A Well, let me put it this way, the commission on

1 special education is very interested in this, they advise  
2 the state board, and this group, which meets regularly,  
3 which has a concern for the needs of all the handicapped,  
4 has been receiving input from persons connected with the  
5 juvenile or -- juvenile hall schools or -- and will be  
6 moving to explore that in greater detail. And if it  
7 appears from the -- from that study that special education  
8 should be the primary advocate, then we would look toward  
9 making that kind of recommendation to the -- the commission  
10 would, to the board.

11 We, myself as staff person to that, would be inter-  
12 rested in making similar recommendation to the department  
13 as a whole.

14 Q And could you finally provide the commission, then,  
15 with the names of this committee and what their own time-  
16 table is?

17 A This committee?

18 Q I'm referring now to the committee looking into the  
19 possibility of the detention camp youngsters being special  
20 education wards also, perhaps. So we have some concrete --

21 A I would be pleased to do that, and if, as an indi-  
22 vidual, you would be interested in making some input to  
23 that commission, at one of their regular meetings, I'd  
24 like to, afterwards, we can maybe work out -- because  
25 obviously you have some, you know, I think some valuable

1 input that would give some different insight to them.

2 THE CHAIR: Thank you. Does the committee member --  
3 Jayne?

4 Q (By Ms. Ruiz) Is your department going to get an  
5 increase in the budget for this coming year?

6 A Our department?

7 Q Yes.

8 A Now, may I ask if you're thinking about this unit  
9 within the department of education -- this special education  
10 program?

11 Q Well, I think what I'm trying to ask is, your  
12 reasons for not doing some of the things that I feel that  
13 your department should be responsible for, is the fact  
14 that you don't have the staff to do it and I was wondering  
15 if, in your budget, you have let the powers that be know  
16 that you can't do an adequate job without sufficient help.

17 And that's why I'm asking if you're going to be  
18 budgeted for more money the coming year?

19 A Well, we're -- I would say that we're pretty --  
20 pretty loud and we're pretty diligent in expressing what  
21 the needs are to the department, and then to the other  
22 agencies and finally to the legislature.

23 We're going to have to look toward, I think this  
24 upcoming year, federal dollars for any increases. We will  
25 add approximately -- we will add one person to the staff

1 from state moneys this coming year, that one will be for  
2 the specific program of autistic children which was newly  
3 mandated by the last session of the legislature.

4         However, we've -- we will be utilizing some addi-  
5 tional people, not through state sources of moneys but  
6 through -- through some of the federal sources to do this  
7 pretty intensive monitoring of the EMR program during this  
8 upcoming year.

9         There are -- there are needs across the department  
10 totally, for additional staff, in my opinion, it gets to  
11 a question as to which -- which program this particular  
12 year, you know, has the greatest needs. And of course, I  
13 think that our unit has the greatest needs, but other  
14 managers of other programs think similarly about theirs,  
15 and then, when you -- so you work these out and then finally  
16 the legislature and the governor actually decides who  
17 gets the increases.

18         Q     Well, if you should get the increase, would you  
19 then utilize these people to perhaps coordinate this pro-  
20 gram a little better in keeping track of some of the  
21 children that go out of the program, what happens to them,  
22 if they're referred by your group to some other program?  
23 Would you feel that it would be important to find some  
24 kind of placement, then, for these handicapped children if  
25 you have the staff to follow this through?

1       A     Well, within the limits of what we're going to have,  
2     we are going to be interested in doing that. Now, the  
3     big -- the most difficult problem probably is in terms of  
4     following up youngsters is not the staff at the department  
5     of education, probably basically it gets down to local  
6     school staff. You know, which is going to -- you know,  
7     the increase in dollars is going to be in terms of appor-  
8     tionments for special education purposes.

9           Now, I don't have time and you don't want to go --  
10    me to go into an exposition on the problems that special  
11    education faces in the schools due to these serious financial  
12    problems they face, because sometimes lowered enrollments  
13    and maintenance of the same level of state support where  
14    inflation has gone very rapidly, the big problem is going  
15    to be having people in the systems there.

16           But we're going to point these things out, you know,  
17    these needs, and we're going to hope that there is in-  
18    creases in their support, so they will have some staff who  
19    could get onto these. It means a diversion, of course, from  
20    what they're doing now. So we can handle the data if all  
21    of those school districts can actually do the work.

22           THE CHAIR: Our staff may pursue this question with  
23    you. Thank you.

24           Vernon?

25       Q     (By Mr. Yoshioka) Yes, I had a question regarding



1 to the statement you made that you were unable to or you  
2 didn't have the statistics on what happened to the students  
3 removed from the EMR, due to this legislation, the re-  
4 duction. But you said there were estimates based on samp-  
5 ling. What kind of results did those samplings show?

6 A I -- I can only give you gists of things, you know,  
7 the gist of my impressions, I can not at this moment give  
8 you a detailing.

9 We will be able to do this -- we could pull these  
10 together to provide you at a later date, unfortunately  
11 I didn't pull together, you know, the precise figures  
12 on the very small samplings that we have. I think the --  
13 the USC study which was pretty heavily funded and which  
14 is coming, I understood yesterday that it's on its way,  
15 we haven't received the actual material yet. But I really  
16 believe that they will have gone into a much broader  
17 sampling and much more depth and I believe that that will  
18 reveal to us some kinds of indications as to what happens  
19 to the youngsters.

20 We did have indications that a number of kids did  
21 drop out of school. Now, the unfortunate part, that doesn't  
22 really mean anything in and of itself until you have some  
23 kind of way of evaluating another group of kids who stayed  
24 in, you know, special education. Because, as you know, a  
25 lot of our youngsters drop out of school whether they're

1 special ed. or not. We still have a heavy dropout thing  
2 and you have to compare these in some way and the studies  
3 that we have, the little things that we had didn't really  
4 do that job.

5 THE CHAIR: Staff, then, will contact you for  
6 a copy of these estimates.

7 A Okay, we'll be happy to work with you on that.

8 Q (By the Chair) What kind of deadline can we anti-  
9 cipate in terms of -- in terms of these estimates?

10 A It shouldn't take long.

11 Q Next week?

12 A Next week maybe? I doubt it, but give us a little  
13 more time than that.

14 Q Two weeks?

15 A Three or four weeks, probably.

16 MR. FERGUSON: May I interject there, please?

17 We're not sure, at least I'm not sure that the  
18 federal study that he's talking about on the follow through  
19 of these kids being mainstreamed and what happens to them  
20 is completed. If it is completed of now and we could get  
21 a copy, then we could provide your committee with that  
22 copy.

23 THE CHAIR: We're not talking about a federal  
24 study, I think we're talking about a study that you did.

25 MR. FERGUSON: No, but there is an even greater, more

1 detailed.

2 A The one I was referring to is on California's  
3 population.

4 Q (By the Chair) We would like the federal study,  
5 we would also like the study that you're doing.

6 A We haven't seen that yet, but we understand it's  
7 on its way or it's about to be on its way, whatever.

8 Q Fine, the federal study is one thing, but I think  
9 your efforts should be documented for the record so we'd  
10 like a copy of your estimates.

11 A It would be no difficulty.

12 Q It would be unfair, I think, not to ask you for this  
13 input from the work that you've done.

14 A We'd be happy to do that.

15 THE CHAIR: Dr. Share first?

16 Q (By Dr. Share) Thank you.

17 I was going to ask Mr. Brinegar, does the unit have,  
18 at this time, appropriate powers to monitor and mandate  
19 schools to comply? And if not, would you invite greater  
20 clout, police powers, whathaveyou, within your unit in  
21 order to effect the kind of quality education that you,  
22 as a professional, feels perhaps some school districts  
23 should be moving into more aggressively than they have?

24 A We've addressed that question, through this plan.  
25 Now, we anticipated, I anticipate, I've worked in state

1 departments of education for a number of years, and I  
2 only had to do it for about one year to realize that  
3 there were certain kinds of improbabilities. And that  
4 the state department of education would never have enough  
5 of us ants, a-n-t-s, you know, to go marching out of this  
6 hive into all the school districts of California and to --  
7 you know, to examine all their practices and procedures.

8 I've realized that after one year on the job, that  
9 that re-- realistics of finances, you know, what people  
10 are willing to pay for, probably would never permit that.  
11 So I've always tried to figure out how can we creatively  
12 find a way to do it. I think that --

13 Q Begging the manpower concern at the moment, what is  
14 your feeling in relation to the state having greater power?

15 A I feel that that's probably one that the California  
16 Legislature is going to have to decide for us. I think  
17 that we ought to have the responsibility and the authority  
18 to do what the codes say.

19 They -- if they give us a job to do, I really be-  
20 lieve that we ought to have the personnel and we ought to  
21 have the ability to carry out those provisions, and --

22 Q Now, I guess the question really addresses itself  
23 to the issue, do you feel the school districts throughout  
24 the state already are operating in a very effective manner,  
25 and if they are not, and I'm referring to total, the entire

1 state, would greater power in your unit help insure better  
2 quality education in some of the areas we've been talking  
3 about this morning?

4 A Questionable without the mechanics in order to deal  
5 with that. If that makes sense. Now, whether or not we  
6 have the authority now in my own mind, is questionable,  
7 but without the mechanisms whereby we could effect that,  
8 it doesn't really make that much difference, perhaps.

9 I feel that there are ways to deal with it, and  
10 I -- I'm relying upon the -- the mechanisms that are set  
11 forth in the master plan for special education. And which  
12 we have set up in there, first of all, the comprehensive  
13 written plan for services, that's a new concept, not --  
14 new, generally in education, but new to special education,  
15 as you know. And it calls for long-range.....study  
16 or analysis and a complete needs assessment and a setting  
17 forth of things that they're going to do. And it also  
18 provides, the mechanism that I mentioned, provides for  
19 an auditing process, an on-site kind of visitation and  
20 auditing, partially by our office, but also with -- with  
21 other persons from outside that school district, which go  
22 into there and they look at that plan and they observe  
23 practices in a very intensive way.

24 I believe that's a mechanism that can help us do the  
25 kinds of things that you're talking about. And I believe

1 it's a reasonable way to go. And I think it will work.

2 I may have skirted too much, the question, but --

3 Q (By Mr. Griffin) I would just like to ask, what is  
4 your total yearly budget for your support unit, what has it  
5 been in the past and has -- is your budget supplied totally  
6 by the state? And if not, what percentage of it is sup-  
7 plied by the state and what percentage is supplied by  
8 federal funds?

9 A That's sort of an embarrassing question because  
10 I'm not going to be able to give you those dollar figures.  
11 I can -- it's mostly a state-funded operation. We have  
12 approximately 36 professional staff members in the unit,  
13 and --

14 Q (By the Chair) How many of your staff members are  
15 bilingual, of the 36? How many are minority people?

16 A Not many.

17 Q One, two, three?

18 A We have about three, I guess.

19 Q How many are women?

20 A Eighteen to 20.

21 Q Eighteen to 20 staff people?

22 A Eighteen to 20, maybe -- somewhere in that area.

23 Maybe I'm a little high, maybe 15 to 16 women.

24 Q These are staff people, not secretaries?

25 A Right.

1 Q (By Mr. Griffin) And you have no idea what your  
2 total budget is?

3 A I can't give you the figure?

4 Q Approximate figure?

5 A That's available to me on five minutes notice, you  
6 know, but I -- I can get that to you.

7 Q Do you receive a certain amount of federal funds  
8 to supplement your state funds?

9 A We receive some federal dollars to staff the little  
10 unit that administers the Education of the Handicapped  
11 Act, Title VIB program. That's what its purpose is,  
12 and we have some other federally funded persons like we  
13 administer several state regional deaf-blind center program  
14 which is -- which is funded by the federal government.

15 The majority of our staff is -- are state funded  
16 positions.

17 Q Could we also impose upon you to provide us with  
18 that information at some later time?

19 A Yes, I certainly will.

20 THE CHAIR: Mr. Rogers, one burning question.

21 Q (By Mr. Rogers) Yes, one very quick question,  
22 Mr. Brinegar. My concern is with the juvenile justice  
23 system and I'm speaking specifically to the probation  
24 department and also California Youth Authority. Now, does  
25 your department of the state department of education and

1 specifically your department, have any responsibility for  
2 reviewing or monitoring any of the educational programs  
3 within either system?

4 A It does not.

5 Q If so, why not?

6 A Well, because it's -- those departments are set  
7 up under a different unit of state government other than  
8 the department of education.

9 Q I see. The department of education has no responsi-  
10 bility whatsoever for the dispensation of funds or -- and/or  
11 reviewing of programs?

12 A No, that's generally right. However, some of those  
13 programs do have money such as Title I moneys which do  
14 flow through the department of education to those programs  
15 and we do have the responsibility for monitoring those.

16 But the educational programs per se, that are  
17 operated by those agencies, that's their responsibility,  
18 the state board of education has no authority to deal with  
19 those. We have served them and -- like a few years back  
20 at the request of, you know, some groups, a number of our  
21 staff members did some very intensive analyses of the  
22 California Youth Authority Schools, but that was at the  
23 request of -- of that agency and an outside body which  
24 was interested in having somebody else look at the edu-  
25 cational programs. But --



1       Q     You only provide technical assistance at the request  
2 of the agency, is that what you're saying?

3       A     We don't really have authority to do that. We --  
4 it would have to be done by agreement between the state  
5 superintendent and the director of that program. It  
6 would be possible under interagency agreement for us to  
7 do it but ordinarily we would have no authority nor any  
8 responsibility to provide those services.

9       Q     Well, do you feel that that responsibility should be  
10 inherent in your office, that you should take that re-  
11 sponsibility or at least work out some sort of an agreement,  
12 some cooperative agreement with the particular agencies  
13 involved and providing them with that assistance and help?

14            I'm bringing this up specifically because there's  
15 a tremendous gap there, there's a tremendous problem there  
16 within that system. And I'd like to know what is your  
17 professional opinion on that.

18       A     Well, as a -- as a person, and if I can wear my  
19 own hat for a while, which it's awfully difficult to do,  
20 of course, I have some feelings that there ought to be  
21 some closer articulation between those kinds of services.  
22 And what the department of education does, and the programs  
23 in the schools, because of the -- because if nothing else,  
24 for the one reason that the youngsters in those programs  
25 and the youngsters in the state hospital for the mentally

1 retarded programs may, at some time or other, and we hope  
2 they will be, a part of the, you know, of the community.  
3 And the neighborhood school system. And therefore, in  
4 order to ease any kinds of those transitions of kids,  
5 it would seem to be helpful.

6 THE CHAIR: Mr. Brinegar, thank you.

7 For the record, all of your previous statements  
8 then were made as representative of the department, you  
9 were speaking on behalf of the department, is that correct?

10 A Yes, I've looked at myself in that way, yes.

11 Q (By the Chair) Fine. I have a few summary ques-  
12 tions to ask you.

13 Will you provide our staff, then, with a list of  
14 specific staff breakdown in terms of ethnicity, sex, and  
15 whether they have bilingual-bicultural capabilities and  
16 training?

17 A Yes.

18 Q For the record also, you mentioned the fact that  
19 parents have certain rights with respect to identifying  
20 EMR and EH students and that they were involved in placement.

21 What do you mean by involved in placement?

22 A Well, I was referring to the provisions of the new  
23 master plan for special education. I've also alluded to  
24 that in the current program as well, I think, but primarily  
25 when I made the statement that parents would be more actively

1 involved all the way, each step along the way in the  
2 process of assessment and analysis and program determina-  
3 tion and placement, I really meant that when a child is  
4 referred by somebody as possibly needing some special  
5 education service, the parent's going to need to be informed  
6 of that, and then is going to have to be involved in  
7 terms of, do you want us to try to do some analyses, you  
8 know, of this -- of the --

9 Q You said would be involved. Have they been in-  
10 volved? Before?

11 A Involved in the sense that they've been consulted  
12 with, and they have had -- it has been necessary before  
13 any child has been placed in an EMR program for the parent  
14 to provide written consent for placement.

15 There has been mandatory conferencing between the  
16 two, and in that sense, there has been this involvement.  
17 Now, the state plan that I mentioned earlier that's going  
18 to the board, has very explicit steps along the way  
19 describing that.

20 Q (By the Chair) These are things that will happen  
21 in the future, that you are talking about?

22 A Some are things -- the things that happen in the  
23 future will be much more specific and explicit and much  
24 more thorough and -- but there are many things that happen  
25 now.

1 Q Have you provided the parents with a list of their  
2 rights?

3 A Have we provided parents a list of their rights?

4 Q Right. You spoke with some pride about parental  
5 involvement here, of parents' rights. Do you make the  
6 parents aware of their rights?

7 A In the past, probably not. In the -- in the  
8 current time, very much so.

9 Q Finally, will you do this in other languages if the  
10 parents' primary language is not English?

11 A Yes.

12 Q You will be able to do that, fine.

13 In terms of the reevaluation process that we dis-  
14 cussed, is there provision for periodic scheduled reevalua-  
15 tion of EH and EMR students?

16 A Yes, there is an annual reevaluation of the EH  
17 program, I mean excuse me, the EMR program, these things  
18 will become part of the total system of special education.

19 Q They will become, they have not yet?

20 A We have an annual reevaluation of every youngster  
21 in the EMR program.

22 Q This has been going on --

23 A We do not require this, it is not required by law,  
24 in all of the separate special education programs at this  
25 point. Now, I would like to also quickly mention, you know,

1 in reference to the previous question, that special edu-  
2 cation for handicapped kids has relied as long as it's  
3 ever existed, to close parental, professional involvement.  
4 I think probably much moreso than any other program  
5 of education, because we're dealing with kids who have --  
6 have real problems that extend far beyond the schoolday,  
7 and it's been necessary.

8 We've -- we recognize that there have been diffi-  
9 culties, that we don't have perfect instruments, we don't  
10 do a perfect job, that's why we built this thing, that's  
11 why we had to develop it, but --.

12 Q I find that statement interesting.

13 A We've had very close interactions between parents  
14 and teachers. Some places not as much as others. There  
15 have been problems but generally it's been heavy --

16 Q I find that interesting in light of the fact you  
17 don't know how many bilingual people you have on the staff.

18 Also for the record, you mentioned that there were  
19 three school districts --

20 A I mentioned, I told you we had three --

21 Q You had three bilingual people on your staff, is  
22 that what you said?

23 A What is a bilingual person?

24 Q Somebody who --

25 A Somebody who speaks -- or -- well, you mean by that

1 a person who has, uses two or more languages?

2 Q At least.

3 A Well, I don't know. There may be a dozen. You  
4 know, that meets that criteria, but if you're talking  
5 about ethnic minority, I would -- we have three persons  
6 that are on the staff.

7 Q You also spoke of three school districts that had  
8 successfully resolved their problems, in one sentence,  
9 for the record again, so that it will be public and since  
10 you have done this successfully, I think we should have  
11 it in the public record, what were the issues involved  
12 in these three successful resolutions?

13 Since we have resolved the three that were brought  
14 up to you, are we talking about plans, a compliance issue?

15 A Briefly, in one case it was a youngster who was in  
16 a development center program for handicapped minorities.

17 Q Okay.

18 A It's a severely and profoundly involved youngster.  
19 And the issue was whether he was eligible or not for the  
20 program.

21 In another case that I was thinking about, we dealt  
22 with an EH, the educationally handicapped program, which  
23 there were allegations made by the citizens in the com-  
24 munity that moneys were being unjustly or improperly spent.

25 Q And in the third case? In the third case?

1       A     The third case had to do with issues that related  
2 to whether or not all of the procedures had been followed  
3 in terms of EMR children's placement in the program.

4       THE CHAIR:   Fine, our staff will follow up these  
5 three cases with you at a later date.

6       All right.   One quick question.

7       Q     (By Mr. Griffin)   Good, I'd like to get back to  
8 bilingual-bicultural personnel on your staff.   If they were  
9 bilingual-biculturally qualified, then they would be a  
10 member of a minority.   they would be a member of a minority.  
11 I would say --

12      A     Yes.

13      Q     -- you have 36 people, you only have three that you  
14 know that speak another language other than English?

15      A     Yep.

16      Q     Then how -- the closeness that you referred to, the  
17 closeness of working with parents of these children,  
18 especially in special education, how do you qualitatively  
19 evaluate it when, you know, how do they communicate?

20      A     You've got to realize that our staff, first of  
21 all doesn't work directly with -- with the pupil clients,  
22 schools do that.   That's their part of the total responsi-  
23 bility of special education.   Our responsibility is a --  
24 at a different level which we can only deal with the --

25      Q     Evaluation?

1       A     -- county school offices and the district people,  
2     and I recognize your -- your concern and your question,  
3     and we're working on it. And I appreciate it.

4       Q     (By the Chair) Do you have an affirmative action  
5     plan?

6       A     Yes, we do.

7       Q     May we have a copy of that?

8       A     You may.

9           THE CHAIR: Sally James, a quickie.

10      Q     (By Ms. James) Just very quick, you mentioned you  
11     do an annual ethnic survey of the EMR kids?

12      A     Yes.

13      Q     Is this survey coordinated with any of the other  
14     state department surveys? I mean do you all get together  
15     and all see that you're asking similar information or  
16     do your -- your unit does your own thing?

17      A     It's my belief, now I think I would like to defer  
18     that question, maybe to one of the other persons. I think  
19     another unit really does it for us. With our involvement.  
20     We put it together, however, I think the -- but when Clif  
21     Shryock is here, I think if you wouldn't mind, let me  
22     sidestep that one, let him answer that question.

23           THE CHAIR: Thank you very much.

24           On behalf of the committee, we appreciate the time  
25     here.



1       A     I would like to distribute to the -- to the com-  
2 mission or the committee, a couple little brochures.  
3 They look the same but they're different. Which describes  
4 the California Master Plan.

5             One is called, What's in it for Me? And that was  
6 put together from the standpoint of the child and the  
7 teacher, and one is, What's Happening with the California  
8 Master Plan? I thought you just might be interested.

9       THE CHAIR: Are these produced in Spanish or any  
10 other languages?

11       A     Not at this point, but we're working on that, too.

12       Q     (By Ms. Jones-Booker) Mr. Brinegar, before you  
13 leave I just wanted to be sure that we have on the record  
14 that we would like a copy of the statistics on EH students  
15 dating back to 1970 as you've indicated.

16       A     All right.

17       Q     Thank you.

18       A     Thank you.

19       THE CHAIR: We are going to deviate from our schedule  
20 this morning a little bit. Virna Canson has to leave  
21 and she is scheduled to appear at 10:15, so we will juggle  
22 our schedule around and have her come forth early.

23             We apologize for the delay.

24       MS. CANSON: That's okay.

25       THE CHAIR: Thank you, Mr. Ferguson.

1 MR. FERGUSON: Thank you.

2 THE CHAIR: For the record, would you please  
3 state your name?  
4

5  
6 MS. VIRNA CANSON

7 A (By Ms. Canson) Yes, Chairperson, my name is  
8 Virna Canson, I'm the regional director of the NAACP, and  
9 I certainly do appreciate your putting me on at this time.

10 The primary reason is that I am very fortunate to  
11 have here, giving me moral support, representatives from  
12 several of our NAACP units. They have to go back to their  
13 home cities and we have to have a summary meeting.

14 For the record I would like to state that there are  
15 representatives from San Jose, San Bernadino, San Francisco,  
16 Richmond, Sacramento, Barstow, Santa Cruz, Fresno, and the  
17 northern area conference of chapters, which comprises about  
18 30.

19 I have had a number of other chores in the last  
20 couple of days so the appearance of my manuscript is a  
21 little bit -- not as I would like it, but I will -- I  
22 would like to read it.

23 THE CHAIR: Do you have a brief statement for the  
24 committee?

25 A Well, I don't know how brief it is, but I think

1 perhaps hopefully, the committee might benefit from some  
2 more broader -- some broader, excuse me, I didn't get my  
3 English right, some broader concepts and that's the thrust  
4 of what I'm going to do and I will be prepared to respond  
5 to any questions.

6 THE CHAIR: Fine.

7 A I have already identified myself, which is what I  
8 was going to do in the first paragraph.

9 You have set, as a focus of this hearing, the moni-  
10 toring of educable mentally retarded and bilingual-bicultural  
11 programs by state and federal agencies.

12 It is my understanding that you will submit your  
13 findings to the U.S. Civil Rights Commission. I believe it  
14 will be helpful to first put into context these recent  
15 court decisions in the pursuance of equal educational  
16 opportunities.

17 I have in mind Diana P., Larry P., and of course,  
18 even the Lau decision, these decisions bear upon the sub-  
19 jects of your hearing. Diana P., and Larry P., are actions  
20 brought by certain public interest lawyers. They are  
21 directed toward bringing relief for children who are  
22 classified as educable mentally retarded and placed in  
23 special situations in the public schools.

24 The chief measurement is a test which the plaintiffs  
25 believe to be biased.

1           The Lau decision is devoted toward bringing relief  
2 to approximately 1,800 children of Chinese ancestry who do  
3 not speak English in the San Francisco area. The commis-  
4 sion has acknowledged and carefully examined the liti-  
5 gation which is the cornerstone for these more recent  
6 cases. This case to which I refer, of course is Brown  
7 versus Topeka. This decision marked a significant  
8 turning point in that it clearly established that a  
9 separate can not be equal.

10           Your commission has scrutinized our progress in its  
11 document 20 years after Brown. We commend your efforts, we  
12 are particularly pleased at your liberal interpretation  
13 of the concepts in Brown, which really bear on almost every  
14 problem of the oppressed.

15           It is my belief that legal action which has come  
16 since that time, that this, the intent was to extend, not  
17 supplant nor contradict the concepts of equal educational  
18 opportunities. Whether at the federal or the state --  
19 or the local level, the subsequent actions fall within the  
20 framework of a liberal interpretation of Brown.

21           Of those whose pursuits in the special areas have  
22 come after ours, began to build on this foundation, and  
23 of course, we in the NAACP take great pride in Brown, we  
24 believe that our major educational resources lie within  
25 the public education. We believe this because we embrace

1 the concept that public education at its best should offer  
2 the kind of opportunity which produces well educated  
3 Americans.

4 These Americans should come out of public education  
5 prepared to participate in all phases of American life on  
6 an equal footing. We do not accept the premise that the  
7 primary mission of the public school is the preservation of  
8 any particular culture, be it Irish, Japanese, Swedish,  
9 African or whatever.

10 On the other hand, we adamantly oppose any efforts  
11 to destroy or demean cultures which appear to be different  
12 from White Protestant cultures. We believe the thrust of  
13 bilingual-bicultural education must be educationally  
14 sound and geared toward remediation for learning dis-  
15 advantages. This means full and comprehensive assessment  
16 of needs and services commensurate with the needs.

17 The patterns and performances of too many educators  
18 leave us to seriously question their will to really meet  
19 the needs of Blacks, Browns, other minorities, and yes,  
20 even the poor.

21 The various methods of eliminating children from  
22 public educational institutions are little short of criminal.  
23 Among the several methods of the involuntary removals.  
24 Referrals to the so-called opportunity schools and continua-  
25 tion schools, unwarranted placement of children in EMR

1 programs is perhaps the most insidious form of removal.  
2 We are presently experiencing still another more sophis-  
3 ticated form of removal and administrative copout and  
4 it's under the misleading nomenclature of lowering the  
5 compulsory attendance age.

6 I cite the background and the problems because I  
7 believe effective monitoring of programs for the educable  
8 mentally retarded or bilingual-bicultural programs can not  
9 be achieved without understanding and acceptance that  
10 these program role, what these programs' role is in the  
11 total concept of the pursuance of equal educational oppor-  
12 tunities.

13 We are appalled at those in high places who wilfully  
14 set out to pit bilingual-bicultural education against  
15 integrated education. The San Francisco Board of Supervisors  
16 member acted in a manner which clearly demonstrates his  
17 intent to divide and conquer. One -- on one occasion he  
18 publicly advocated that certain parents should have the  
19 right to withhold their children from the public schools.  
20 Even though the children were below the maximum compulsory  
21 attendance age.

22 This member of the board of supervisors had some  
23 difficulty answering the question posed to him, is it that  
24 you do not believe in compulsory education? If you do, how  
25 do you justify the exceptions which you make?

1           There's an additional dimension to the problem of  
2 divide and conquer and as this practice operates in the  
3 San Francisco area and even in the western region. We  
4 believe the region nine office of education located in  
5 San Francisco offers little or no leadership in offsetting  
6 divisiveness. This kind of open divide and conquer tactic,  
7 the benign neglect approach, combined with the lack of  
8 the will, prevents affirmative monitoring.

9           Our state board of education is guilty of benign  
10 neglect and it's obviously as it's couched in the resolu-  
11 tion, which in effect said unless the courts say speci-  
12 fically which I to dot, which T to cross, we will sit  
13 back and wait. Although we will say that the test must  
14 not be continued, but we will not move from that point,  
15 that's a negative stance.

16           In the area of educable mentally retarded, it appears  
17 that the state department of education has engaged in un-  
18 believably imbalanced actions. We are aware of somewhat  
19 aggressive actions to bring remedy to Chicano children but  
20 stubborn resistance to performance in the same aggressive  
21 manner as it relates to Black children in EMR classes ex-  
22 ceeds far more than others. We seriously question whether  
23 the voices of Black professionals, more specifically the  
24 Black psychologists, are being heard.

25           In preparation for this testimony, I spoke with the

1 president of the Bay Area Association of Psychologists  
2 who expressed an extreme frustration with the lack of  
3 response. He shared with me a statement of concern by  
4 the Bay Area Association of Black Psychologists presented  
5 to the President's Committee on Mental Retardation, and  
6 I submit this and request that you incorporate it into the  
7 official report of the committee.

8 And may I add here that Ms. Laverta Allen (Phonetic)  
9 is here, she works more closely with that group and has --  
10 will have further comments on that.

11 What steps shall we take? I believe it is imperative  
12 that a policy statement be developed which clearly states  
13 a commitment on the part of the federal government to  
14 equal educational opportunities. Such a policy statement  
15 must take account of the needs of specialized supplementary  
16 actions **such** as bilingual-bicultural.

17 I would extend this into the area of school financing  
18 as well. Serano case, while not one of the subjects of  
19 your discussion, is very clearly a critical dimension of  
20 the pursuit of equal education opportunities. A compre-  
21 hensive policy statement would set a tone which would be  
22 a major step toward ending the divisiveness and the com-  
23 petitiveness among the people who have -- who have needs  
24 and certainly it would pull the rug out from under adminis-  
25 trators who are surviving on continuing to pit one group



1 against the other. I believe that the commission should  
2 investigate your federal departments to determine whether  
3 their hiring practices, their operating procedures, their  
4 grants and their other activities, enhance the pursuit  
5 of equal educational opportunities or obstruct it. A  
6 good place to begin would be right in San Francisco in your  
7 region nine office of education.

8 The flow of federal dollars must be and it is the best  
9 indicator of the priorities of the federal government.

10 Senator Hubert Humphrey, during the floor debates on the  
11 Civil Rights Act of 1964, said, simple justice requires  
12 that public funds to which all taxpayers of all races  
13 contribute not be spent in any fashion which encourages or  
14 subsidizes or it results in racial discrimination. Racial  
15 discrimination has historically represented the status quo.

16 Failure to meet the educational needs of non-English-  
17 speaking children enrolled in the public schools repre-  
18 sents the status quo. Measurement of children's ability  
19 through culturally biased tests represents the status quo.  
20 Are the federal dollars being used to maintain the harmful,  
21 destructive status quo or affirmatively, to change the  
22 status quo?

23 You are equipped to determine this. Where the  
24 federal dollars is being misused, it would be -- it should  
25 be withdrawn. I, therefore, recommend that you cause a

1 policy statement to be developed, setting forth a com-  
2 prehensive commitment to the plan -- to a position of  
3 achieving equal educational opportunities.

4 And of course, within this, that you state firmly  
5 a commitment to meaningful, effective bilingual-bicultural  
6 programs and to the elimination of all vestages of placing  
7 children in classes based on culturally biased tests.

8 I suggest further that you audit federal and state  
9 agencies to determine what they are doing to affirmatively  
10 deal with the programs that you talk about. And that you  
11 recommend that there be withholding of funds even at the  
12 federal level.

13 I also suggest that you identify patterns and prac-  
14 tices of administrators in their efforts to pit bilingual-  
15 bicultural against integrated quality education, and that  
16 you recommend sanctions where this exists.

17 And that sanctions be applied against all non-  
18 compliance school districts.

19 Thank you very much.

20 THE CHAIR: Thank you, Ms. Canson, I believe we  
21 will take your recommendations very seriously, in fact  
22 this afternoon we will be taking a look at a region nine  
23 HEW, so if you can remain or members of your group can  
24 remain --

25 A I regret I can't, I'd be happy to be here and

1 witness that.

2 THE CHAIR: Fine, we'll have that in our report.

3 I'd also like members of your group to stand so  
4 that the record may indicate that there were roughly 15  
5 people from your organization here.

6 A Oh, my goodness, I see Mr. Herbert Carter from  
7 Los Angeles, I didn't have him on the list. I would like  
8 also, if you will indulge me, to have the record reflect  
9 that although those people are 15 or 16, they represent  
10 several thousand of NAACP members.

11 THE CHAIR: Thank you. Ms. Canson, there may be  
12 questions from our group, please.

13 A Thank you.

14 THE CHAIR: Mr. Rogers?

15 Q (By Mr. Rogers) Yes, Ms Canson, I think some of the  
16 questions I had in mind to ask you, I think you pretty well  
17 covered in your presentation. But there are, I think one  
18 or two questions I'd like to get your response to.

19 A Okay.

20 Q I know you are aware of community concerns but I'd  
21 like for you to expound on those for the committee's  
22 clarification.

23 What kinds of committee concerns have been raised  
24 related to the administration and implementation of EMR  
25 programs in California?

1       A     Response to that, Mr. Rogers, I would say that for  
2 whatever reason, maybe the fault of NAACP leadership,  
3 state department or whatever, I am not aware that there is  
4 a broad base of knowledge about the problems as it relates  
5 to EMR, and I mean at the parental level, at the student  
6 level, that type of thing.

7           Certainly people like the Black psychologists or  
8 people like educators who are, you know, among our group  
9 today are a number of educators, they are aware and that  
10 type of thing, so I really do not feel that we have a  
11 kind of climate which brings a community pressure to  
12 require the district or the state to move. So, whether  
13 or not this means we move from the point of not having  
14 broad public knowledge to a point of education, I do not  
15 know.

16           But if, and I would believe in those areas where  
17 there is knowledge, certainly there is some minimal action  
18 but if indeed we are unable to have the advice of Black  
19 psychologists, you know, professionals heard in state  
20 administrative levels, if they are ignored, or if there is  
21 no on-going, heavy pressure and advocacy for the people who  
22 really have the competence in the Black community, to  
23 affectuate change, I think we've got a very difficult  
24 situation.

25           I hope that kind of answers you.

1 MR. ROGERS: I think that does.

2 THE CHAIR: Are there any other questions?

3 Q. (By Dr. Rodriguez) Yes, I have two questions.

4 First of all, what do you think of the roles of the  
5 state and the federal government specifically the Depart-  
6 ment of HEW, Office of Civil Rights, what it should be in  
7 terms of the EMR and bilingual-bicultural programs?

8 A. Well, I would first say, and I touched on that in  
9 my testimony, I think the first role would be for them  
10 to examine what they are really supposed to be doing,  
11 and make a commitment to what they are supposed to be  
12 doing. Instead of saying, aha, we now have, you know,  
13 another club to use against the Black folks who want inte-  
14 gration, those who do, or we have another club to say,  
15 you know, to use against the Asians or the -- this group,  
16 they come together and determine that as -- that as  
17 leaders, so-called, in the public sector, in the area of  
18 education, they examine what ought to be the goal of public  
19 education.

20 And that is to -- to perform based on the needs of  
21 those enrolled in public education to such a degree that  
22 they will achieve this. I mean, that rather than just dump  
23 a lot of money out because somebody says bilingual-bicultural,  
24 to say here is a pocket of need and we will put five times  
25 the money in this specific area because this is an educational

1 need and it takes that.

2 We need to saturate this in order to achieve or to  
3 deliver equal educational opportunities to the Chicano  
4 child.

5 The EMR situation, certainly, they need to just  
6 obey the law.

7 It's my understanding that the findings of the courts  
8 say that these tests are culturally biased, and you know,  
9 they should not be used. It seems, you know, that it  
10 ought to be simple for them to want to obey the letter  
11 and the spirit of the law. And I -- I'm really trying to  
12 convey to the -- to the commission, to the committee,  
13 that I sense there is an absence of the will to do this.

14 And we've got to find ways to either -- either  
15 change the attitude of people who are presently in responsi-  
16 ble positions or to eliminate those people.

17 I think the people who don't want to perform, if  
18 they're not committed, if they can't answer questions,  
19 you know, if they can't move, then there are other alter-  
20 natives which are applied seriously to incompetent,  
21 ineffective minority persons.

22 Q As I understand your response, you don't feel that  
23 this has been done effectively at all by the federal and  
24 state governments?

25 A I think that the lack of will begins at the federal

1 level, seeps into the state level and filters down to the  
2 local level.

3 Q Finally, with respect to your concept of divide  
4 and conquer, could you specify more what you are saying?

5 A Yes, I think when a member of the San Francisco  
6 Board of Education wilfully flouts a thing that we can  
7 not do integration this year because we're going to do  
8 bilingual-bicultural, that's utterly ludicrous because  
9 I think that's wilfully done, it's a political move, and  
10 if he can get the Blacks and the Browns screaming and  
11 fighting enough, then they can eliminate more of them out  
12 of schools and there will be more money for White, middle-  
13 class children to be educated.

14 Q (By the Chair) Do you have documentation of this?

15 A I suppose I -- well, okay, this is a feeling, but  
16 what I would like very much to do would be to beg the  
17 committee's indulgence while I go through the San Francisco  
18 Board of Education minutes and submit that. It would be  
19 more helpful in view of the fact that I have nine western  
20 states and two secretaries, if you would direct your staff  
21 to examine the minutes of the Board of Education of San  
22 Francisco School Districts --

23 Q Well, we'll have our staff look at it but we'd also  
24 appreciate any cooperation that you have.

25 A Your staff can expect our cooperation and let me talk

1       bureaucratic now, within the constraints of our staff's  
2       resources.

3       Q     I understand you have some written materials with  
4       you to submit?

5       A     I submitted that, but as I indicated, Ms. Allen is  
6       here and would perhaps be able to discuss that much more  
7       in detail than I'm able to do.

8       Q     Well, perhaps Ms. Allen can wiggle her hand and our  
9       staff can identify her and make a beeline for you during the  
10      break that's coming up, okay?

11            One final question.

12      Q     (By Dr. Share) I just have one question. Really  
13      on the heels of the last one and relating to the Black  
14      psychologist.

15            Do you have now or could you provide to us, perhaps  
16      in the near future, some specifics where the Black profes-  
17      sional psychological group has either been blocked or not  
18      had access in terms of raising some of the issues that  
19      you've already alluded to, to the department of education?

20      A     Dr. Share, I -- you know, I don't want to further  
21      alter your agenda but if, that really is a question which  
22      I would like to suggest that you allow Ms. Allen to answer.

23      Q     (By Ms. James) We can talk to her at the break,  
24      that will be great, we'll include it in the record that way.

25            THE CHAIR: Our staff will talk to her in the break



1 and include that in the record.

2 A The only information I would have to offer in re-  
3 sponse is a verbal conversation between myself and one  
4 of the heads of the -- of the group.

5 THE CHAIR: And since you've made these statements  
6 regarding the San Francisco Board of Education person we  
7 will contact you to get some more specifics so that we can  
8 pinpoint some of these statements for the record.

9 A Oh, yes, but if I may pursue my request to you to  
10 have your staff do a much more in-depth thing than I'm  
11 able to do, an in-depth thing would include perhaps their  
12 examining, going to the morgue of the Examiner and the  
13 Chronicle and finding very dramatic pictures of activities  
14 at San Francisco Board, okay?

15 Q (By Dr. Rodriguez) Can I have one more question?

16 Q (By Mr. Johnson) Ms. Canson, I also wanted to ask  
17 you if you would -- and if you could within the limits of  
18 the staff that you have, continue to advise us of specifics  
19 as they occur and our staff as we go along, so that we  
20 have more evidence of the pitting of the one program  
21 against the other?

22 A Oh, indeed, thank you for that opportunity, Mr.  
23 Johnson, particularly in the presence of my leadership that's  
24 sitting behind me, they'll be more than glad to help us do that.

25 Q (By Dr. Rodriguez) One more question. In your

1 comment about benign neglect, could you relate that to  
2 the EMR program specifically?

3 A Well, let's see if I've got a copy of that state  
4 board resolution, if you'll bear with me. Maybe I don't  
5 have, somewhere it's in the room. But, well, they, in  
6 effect -- just a moment, I think somebody may have it  
7 back there.

8 Whereas on December 13, 1974, a preliminary injunction  
9 was issued in the case of Larry P., et al., versus Wilson  
10 Riles, United States District Court, for the Northern  
11 District Court of California, case number C712270RFP,  
12 and whereas paragraph 12B restricts the state board of  
13 education from listing quotas approved for purposes of  
14 Section 6902.07 of the California Education Code, any  
15 individual intelligence test which does not properly  
16 account for the cultural background and experiences of  
17 Black children, and whereas said order is ambiguous in  
18 that it does not identify which, if any, of the tests  
19 currently approved fail to properly account for the cultural  
20 background and experience of Black children, and whereas  
21 the order is also ambiguous in that it is uncertain as to  
22 whether the measure of compliance with the order is the  
23 test in its printed form or the test as administered to  
24 the child by a psychologist, and whereas the order is also  
25 ambiguous in that it is unclear whether said test may be

1 administered to non-Black children and if so, whether  
2 Black children may be admitted to programs for mentally  
3 retarded children on the basis of different from that  
4 applied to non-Black children, and whereas the order is  
5 also unclear as to whether the said test may be administered  
6 to Black children for purposes other than screening for  
7 classes for the educable mentally retarded, such as pro-  
8 grams for the trainable mentally retarded or the mentally  
9 gifted.

10 Now, therefore be it resolved, one, the list of  
11 verbal and nonverbal individual intelligence tests approved  
12 by the state board of education on March the 13th, 1970, is  
13 hereby disapproved for application to all children -- all  
14 California school children in the identification of such  
15 children for classes for the educable mentally retarded.

16 Two, the approval of such list as to all pupils for  
17 purposes other than identification of children for classes  
18 for the educable mentally retarded is continued, the dis-  
19 approval of such list is pending a disposition of this  
20 matter following the trial on the motion for a permanent  
21 injunction which the board strongly desires be expedited.

22 Now, it would seem to me that this says nothing  
23 except the tests are discontinued. The point I'm trying  
24 to get across, a commitment to achieving the intent of Diana  
25 P., or Larry P., would say, and therefore we will take this

1 step, that step, that step. And we could at least say,  
2 we direct our counsel to do so and so and so and so.

3 It's just a mild, milquetoast statement, saying  
4 that it is desirable that we get the permanent injunction.  
5 And I consider that, you know, benign neglect, because  
6 it sets the tone where the people who have to follow  
7 have no direction.

8 DR. RODRIGUEZ) Thank you.

9 THE CHAIR: Thank you, Ms. Canson.

10 If you or your group have any other materials to  
11 submit to the committee, we'd be very happy to accept it.

12 A I just happened to remember one note that was sent  
13 to me by one of the constituents which I must read into  
14 the record. And that it is -- says that based on, you  
15 know, some of the testimony that we have heard, it seems  
16 to indicate the necessity for making the education code  
17 less permissive and that we need to write more timetables  
18 and we need to write more penalties for noncompliance into  
19 the education code.

20 I would like to read that into the record.

21 THE CHAIR: Thank you very much. We appreciate  
22 your being here.

23 A I appreciate your putting me on at this time and  
24 letting me go back to work.

25 THE CHAIR: We will reconvene at 11:00 o'clock.

1 (Short recess)

2  
3 THE CHAIR: We'd like to resume.

4 Mr. Shryock and Mr. Simmons, please?

5 We'd like to reconvene our hearings; try to keep  
6 on some kind of schedule.

7 MS. RABIN: My name is Joanne Rabin, I'm a deputy  
8 attorney general. I'm counsel to the department of  
9 education on the case of Larry P. versus Wilson Riles,  
10 and although the proceedings --

11 THE CHAIR: Could you sit down and speak into the  
12 microphone?

13 MS. RABIN: Although these proceedings are not  
14 directly on the case of Larry P., as I sit in the audience  
15 I hear that it seems to have come up time and time again,  
16 so I'm here to confer with Mr. Shryock and others.

17 MS. GODOY: As I had discussed it in the hallway,  
18 and I think we should put it on the record, we have not  
19 discussed the merits of the case, we have talked about  
20 board resolutions as a result of the lawsuit. We have  
21 talked about other things surrounding the case but it is  
22 the policy of this state advisory committee not to go into  
23 detail about the merits of any particular case or any  
24 pending legislation.

25 MS. RABIN: I understand, and appreciate that, but

1 what I do think ought to be underscored for the commission  
2 is that the statements made by certain persons who have  
3 testified here have given the impression that Larry P. is  
4 all over, and of course it's not.

5 We've had a preliminary injunction against Wilson  
6 Riles, and we've had the board of education taking tem-  
7 porary action in response to that. We feel constrained  
8 not to comment about it because the case is in litigation.  
9 We do wish that others felt a similar constraint not to  
10 discuss pending cases.

11 THE CHAIR: I think we'll proceed then.

12 Are you Mr. Shryock?

13  
14  
15 MR. CLIF SHRYOCK

16 A (By Mr. Shryock) I'm Clif Shryock, yes, Consultant  
17 in Special Education, and responsible to programs for  
18 mentally retarded in the southern part of the state for  
19 the last nine years.

20 For the last six months I have been redirected to  
21 work on the Impact team, which is the implementation of the  
22 master plan for special education.

23 THE CHAIR: Thank you, now our committee members have  
24 some questions for you.

25 Mr. Johnson?

1       Q       (By Mr. Johnson) Mr. Shryock, as relates to the  
2 California Master Plan for Special Education, what's meant  
3 by the word pilot?

4       A       Pilot became part of that bill and that legislation  
5 rather late. The original plan was to write the legislation  
6 so that the master plan for special education would be  
7 implemented over a five-year period of time, completely.

8               It became a pilot when the legislature determined  
9 that we should evaluate the progress of the districts or  
10 the areas that were going to implement the master plan  
11 after three years. And so, at that point, it became a  
12 pilot for a three-year period of time.

13       Q       What are your specific duties in implementing the  
14 plan?

15       A       As I said, I've been working with the team for the  
16 last six months, I probably will be relieved from that re-  
17 sponsibility rather soon and go back to my previous re-  
18 sponsibility as consultant for mentally retarded.

19               We have been working with the six or the ten -- ten  
20 planners in the writing of the plan, helping and making  
21 a determination, on helping make a determination on who  
22 is chosen to implement it, helping again on choosing the  
23 new planners that are going to continue to administer the  
24 plan.

25       Q       What are the areas that you've chosen for this?

1       A     The six responsible local agencies that will be  
2     implementing the plan, starting actually next month, are  
3     Contra Costa County excluding Richmond and Mt. Diablo  
4     Unified School Districts. Humboldt-Del Norte Counties, as  
5     one joint plan, Sacramento City Unified, Santa Barbara  
6     County, totally, and Santa Monica Unified. And Stanislaus  
7     County.

8       Q     Can you comment on the criteria that was used in  
9     choosing the particular --

10      A     Yes, I'll give you the criteria that went to the  
11     state board of education. Here.

12      Q     (By the Chair) If you could summarize that, Mr.  
13     Shryock --

14      A     Certainly, I will very quickly --

15      Q     -- and submit the copy of that to our staff, we'd  
16     appreciate it.

17      A     Yes. The comprehensive plan itself, as it was  
18     submitted, certainly was a very important factor. The  
19     range and quality of the present programs that were being  
20     conducted within those areas and the need for a variety  
21     of models such as small districts, such as Santa Monica,  
22     to large unified school districts such as Sacramento  
23     City, as well as complete counties such as Stanislaus, and  
24     then the joint county operations, so those things all came  
25     into consideration when -- as criteria for choosing them.



1 Q (By Mr. Johnson) Are you going to expand the  
2 number of --

3 A There are six now, the legislation allows for four  
4 more, to be implemented and we certainly hope that next  
5 year those four will be chosen. Additional money cer-  
6 tainly will be necessary to do that.

7 Q Well, there definitely is a specific, there's a  
8 specific intent to expand the program?

9 A Oh, yes.

10 Q To ten allowable?

11 A To ten allowable. We have ten planners now, that  
12 are in the process and out of that ten, four more will be  
13 chosen next year.

14 Q Same criteria you used on the additional four or  
15 information gained from the first six?

16 A Yes, I would hope, certainly this as well as addi-  
17 tional information, and our format and so forth will be  
18 different plans. Plans will be quite different next year  
19 than they are this year.

20 Q Would you describe the responsibilities of the  
21 local agencies in evaluating and auditing special education  
22 programs and specifically educable mentally retarded under  
23 AB4040?

24 A Well, as I'm sure you're aware, that the -- the  
25 new legislation AB4040 does away with labels, that's one of

1 the objectives, and you have one label for all individuals,  
2 exceptional needs and that is the label. The RLA must  
3 have a very extensive evaluation component to their plan.  
4 And that is part of the plan that's evaluated and our unit,  
5 we have two people on the Impact staff that that is their  
6 primary responsibility is to work with them in developing  
7 an evaluation component.

8 Q Who will they report to?

9 A They will report -- they report to Dr. Simmons now.  
10 Who is director of this.

11 Q I see. During the implementation period of three  
12 years in the master plan, how will the school districts  
13 or the local agencies which are not comprehensive plan  
14 implementors be conducting their educable mentally  
15 retarded and other special education programs?

16 A They'll be conducting them under the present laws of  
17 the code and regulations. They will be doing the same  
18 thing that they're doing now.

19 Q How many school districts are there in California,  
20 do you know?

21 A Approximately a 1,000.

22 Q Assembly Bill 4040 retains the separate special  
23 education categories that the original plan as authorized  
24 by the state department of education sought to eliminate,  
25 as you pointed out. What effect do you think retention of

1 these categories for ethnic reporting purposes will have?

2 A It's very difficult what effect it will have. To  
3 determine what effect it will have. We certainly do not  
4 use the categories by name in any of the regulations  
5 we're in the process of writing, we try to refer to the  
6 entitled -- entire group, we would -- and we see nothing  
7 in the plans that would indicate that they are going to  
8 retain this kind of identification.

9 The definition is rather open, to identify individuals  
10 with exceptional needs and give them the appropriate pro-  
11 gram regardless of what they might have been called in the  
12 past, or what they might be determined for reporting  
13 purposes as required.

14 As you're well aware, I'm sure, that that part of  
15 the bill is put in at the very last minute, again it's  
16 a compromise. It was not the intention of the department  
17 or our unit to have that in there. Because we were trying  
18 to get away from that kind of label.

19 We all know that you can't get away from labels  
20 completely.

21 Q But is there, then, some special monitoring process  
22 to insure that the labels start to disappear?

23 A I think the labels have disappeared within those  
24 six RLA's, in the large sense. The only place that a  
25 label might appear, that for identification purposes, cer-

1 tainly is for the educationally retarded, that's -- as it  
2 was required to use those same criteria, that came about  
3 in Senate Bill 33 for the identification and placement of  
4 EMR children through S33, is now required to use that  
5 same criteria with the exception of the individual intelli-  
6 gence test, you've heard earlier that we no longer use,  
7 are allowed to use. And I -- I'd like to clarify just  
8 one point, it will take just a minute or two, but I think  
9 it's rather important because of a couple questions that  
10 were asked earlier about the identification and placement  
11 of EMR children. And I think your question sort of  
12 led to it.

13 What happens in the regular school -- in regular  
14 school districts are not involved with the comprehensive  
15 plan at this time, back in August, 1971, the department,  
16 our bureau, at the time, for mentally exceptional children,  
17 sent this memorandum to the field, that went into great  
18 detail on everything that was required for placement of a  
19 child in a program for the educable mentally retarded,  
20 which included individual case study that had to have an  
21 educational history and school achievement, psychometric  
22 assessment, socioeconomic background of the child, develop-  
23 mental history, his peer relationship, health history,  
24 his psychological adjustment within the program and this  
25 had to be --

1 THE CHAIR: Mr. Shryock, rather than reading all  
2 of that, would you submit a copy of that to our staff?

3 A I certainly will. I think that it is important to  
4 know that the parent, and this came up and I think this  
5 is certainly a concern of yours, the parents' contact by  
6 the school, and the parent had to give written permission  
7 in their language, the primary language of the home,  
8 before any testing could be done.

9 A visit to the home was made by the psychologist  
10 or the nurse, a professional, to -- and then the psycho-  
11 logist's recommendation, whatever his recommendation to the  
12 committee was going to be had to be told to the parent  
13 on a face to face, as well as the meeting after the ad-  
14 missions committee met and made some kind of determination.  
15 Again another visit had to be made --

16 Q (By the Chair) All of this was done, if necessary,  
17 in a -- another language if the parents --

18 A Right, if the language was something other than  
19 English, then that communication and all written communi-  
20 cation had to be done in the language of the parents so  
21 they were well aware of what was going on.

22 Q (By Dr. Share) If I may, Mr. Johnson, on this  
23 point, you're commenting on what should have been done.  
24 The question, I think the concerns of our commission here  
25 is, are, some of the situations where this had not been done?

1 And I think this is documented on some of the court cases.

2 It kind of gets back to our earlier questions we  
3 had of Mr. Brinegar and that is what powers does the state  
4 department have to insure that these things are done?

5 A I think Mr. Brinegar probably answered that question  
6 for you.

7 Q (By Mr. Johnson) You don't have an opinion? Or  
8 thoughts on it?

9 A What powers that -- do we have? I can tell you --

10 Q He wasn't sure what powers they had, so I think  
11 we'd like to ask you that.

12 A Well, if Mr. Brinegar doesn't know what powers we  
13 have, I'm sure that I probably could not --

14 Q For example, he wasn't sure of whether they could  
15 withhold funds.

16 A If -- let me give you an example how I see it; they  
17 might withhold funds. If the procedure that's required  
18 by law was not followed, such as, let's say the parents  
19 did not give permission for a child to be in a program for  
20 EMR, and the child really was not in that program, and if  
21 a child legally was not in that program, they can not  
22 collect state funds for that child and be in that program.

23 So this would be a way, I suppose, it would be  
24 determined that state funds could be withheld. From my  
25 point of view.

1 Q In the same area of completing Mr. Brinegar's  
2 testimony, I assume you were not present for Mr. Brinegar's --

3 A Yes, I was.

4 Q You were, then, you heard him indicate that you  
5 might be in a better position to tell us about the ethnic  
6 survey that's --

7 A Yes. The ethnic survey which is required by edu-  
8 cation code 6902.095, requires that annually the department  
9 collect and make an ethnic survey of those students that  
10 are newly placed in the EMR program by standard procedures  
11 or by the exceptional circumstances of the code, and  
12 which requires unanimous consent of the admissions committee  
13 as well as certain of the parents' agreement. If they  
14 are over 15%, of what the ethnic makeup of the district is,  
15 they must submit to us an explanation of why they feel  
16 that this is the case.

17 Q (By the Chair) You say they must submit --

18 A That's right.

19 Q Have they all submitted?

20 A Yes, they've submitted, if they do not submit it on  
21 their first return, we sent out a letter. And our unit  
22 does make that collection of this data. But as Mr.  
23 Brinegar said, the new report will be going to the state  
24 board and we'll certainly make a copy of that available to  
25 you.

1 THE CHAIR: Are there any other questions?

2 Q (By Mr. Griffin) Yes. Do you have the information  
3 available with you, what percentage in the EMR program,  
4 what percentage of the students are Black, Chicano, Asian-  
5 American?

6 A Percentage?

7 Q Yes.

8 A For last year? The percentage of Spanish-surnamed  
9 students that made up EMR programs was 22.74%. Spanish-  
10 surnamed. Black, 24.56%. Oriental, 1.09. American  
11 Indian, .75. That's for last year. From '69.

12 THE CHAIR: I think we have the statistics up there.

13 A All right, fine.

14 MS. GODOY: We don't have last year's, we have '73.

15 MR. ROGERS: That's '73 statistics.

16 THE CHAIR: The study was going back to '69.

17 A I was going to give a comparison of where it's  
18 changed, that was the only thing I was going to do, but  
19 you can see that.

20 THE CHAIR: I think staff had a question.

21 Q (By Ms. Jones-Booker) Yes, I do have a couple of  
22 questions. First of all I want to make sure that when  
23 you have a copy of the particular report there that you  
24 indicate you would make available to us --

25 A This one here?



1 Q Yes.

2 A Yes.

3 Q And secondly, I'd like for you to correct me if  
4 I'm wrong, but if AB4040 retains a labeling requirement  
5 for ethnic reporting purposes, will not affected school  
6 districts be required to adhere to that requirement?

7 A For reporting purposes only, yes.

8 Q So they will be required to retain the labels for  
9 reporting purposes?

10 A For reporting purposes. They will not be used in  
11 any other manner.

12 Q All right. What steps have you taken or do you  
13 anticipate taking to insure that that is the only purpose  
14 for which those statistics are kept?

15 A In the forms that we have developed, to be used by  
16 school districts, and the way these go into the computer  
17 they're going in by a number or some other code so that  
18 when it comes out there won't be anything that would be  
19 identifiable to an individual or even to a district or a  
20 school, but would be a total RLA reporting that would come  
21 out that this is the percentage and that's the only way  
22 we could do it. We collect it and -- that -- to meet  
23 the law.

24 Q I see. May I ask then, if you feel as a professional  
25 in this field that this retention, even for reporting

1 purposes, of those labels will have any effect on the  
2 children who are in those programs?

3 A It would be very difficult to see how it would have  
4 any effect on them, if the teacher that has the child has  
5 no knowledge whatsoever whether he's been identified as  
6 learning disabled or educationally retarded or behavior  
7 disorder or physically handicapped, if they don't know  
8 that, you might be able to tell if he's physically  
9 handicapped if he only has one leg, I suppose, but that  
10 may not be sufficient to put him in the program anyway.

11 Q But wouldn't the teachers be required to develop  
12 or to pursue a course of education that is designed to  
13 meet the need of the children who fall in those particular  
14 categories?

15 A Not by category but by individuals, the individual's  
16 educational needs that have been determined by the school  
17 assessment team or the -- or the district appraisal, the  
18 larger appraisal team.

19 Q I see. All right, I do have one other additional  
20 question. Just a minute.

21 When the department of education is aware of the 15%  
22 variance in the numbers of school children in the ethnic  
23 minority categories, what does the department do in terms  
24 of the county, the school's responsibility for those par-  
25 ticular children?

1       A     What does the -- special education unit do when we  
2     get a report that X school district has more than 15%  
3     variance?

4       Q     That's correct.

5       A     Well, I suppose the first thing we'd do is to read  
6     and analyze their explanation on why they had larger than  
7     the 15%. If it seems to make -- have some reason, then  
8     that, I suppose, would be the end of it, I suppose, at  
9     that point. We're not required by law to do anything.  
10    They're required to submit it to us.

11    Q     I see, okay, thank you.

12    Q     (By the Chair) Do you simply read and analyze,  
13    is that what you said?

14    A     I said we would read and analyze the information  
15    that they sent us, yes.

16    Q     And then what happens?

17    A     As I said, if it's made sense and there would be  
18    reasons, I suppose, many times, that there might be more  
19    than the 15% variance then what -- I'm not sure what anyone  
20    would expect us to do.

21    Q     You read and analyze and file away the report?

22    A     That might happen, yes.

23    Q     Does it happen?

24    A     Yes. I said it might very well happen, yes.

25    Q     And that is your standard procedure?

1 MS. RABIN: That's what the law requires.

2 A That's what the law requires.

3 MS. RABIN: The law spells out the procedure and it  
4 spells out no additional steps.

5 THE CHAIR: And you follow the law to the very  
6 letter.

7 Thank you.

8 Dr. Share?

9 Q (By Dr. Share) Just a couple of questions on  
10 clarification.

11 As I understand the labeling is going to be dif-  
12 ferent in the master plan certainly --

13 A Yes.

14 Q The master plan, as I understand it, are, I think  
15 it should be made for the record, are six school districts  
16 out of over a 1,000?

17 A Not six school districts, six responsible local  
18 agencies, which encompass over 100 school districts, I  
19 believe, to be honest.

20 Q Okay. Now, the categories of the labels having  
21 been changed or in the process of being changed, are we  
22 encompassing another kind of labeling system categories  
23 by needs, since this is what the master plan's incor-  
24 porating?

25 A The one category is individual exceptional needs, and

1 Q How is this broken down?

2 A It's broken down into four sub-categories, communi-  
3 cation handicap, physically handicapped, learning handicapped  
4 and I missed one. What did I forget? Learning, physically,  
5 severely handicapped.

6 Q Right, so in the severely handicapped we will  
7 probably find most of our moderately, profoundly retarded  
8 youngsters?

9 A In the severely handicapped you'd find now what  
10 we would normally think of the EMR development center.

11 Q The MR, SMR and the multiplihandicapped too, perhaps?

12 A Possibly, yes.

13 Q So, the EMR, where would we find them now?

14 A You'd find the EMR, present EMR kids in the learning  
15 handicapped.

16 Q And knowing this we have another kind of a sophis-  
17 ticated categorical-type system, don't we?

18 A Yes.

19 Q And it's based, again, on needs?

20 A Right.

21 Q So the youngsters could be identified but not as  
22 easily, perhaps, as in the old system, is my point?

23 A True. I suppose you would say many of the children,  
24 maybe most of the children that would be in a resource  
25 specialist program might very well be those children that

1 would be found in the learning handicapped category, but  
2 they're going to have individualized programs developed  
3 for them by the school appraisal teams, school assessment  
4 team.

5 DR. SHARE: Thank you.

6 THE CHAIR: Any other questions?

7 Q (By Mr. Yoshioka) I was wondering, you said you  
8 read and analyzed these reports that show a variance of  
9 more than 15%, and if they're not rational, I was wonder-  
10 ing how many of these reports have -- were not found to  
11 be rational on the first submittal? Is there a record of  
12 this?

13 A No, there isn't.

14 Q (By the Chair) Any idea --

15 A There has been one consultant in the state dealing  
16 with the mentally retarded programs for the last several  
17 months, as I indicated, because I have been redirected,  
18 for the last several years, there have been two in the  
19 state.

20 Q How many have you looked at, any idea in terms of --

21 A How many of these reports that come in? Every one  
22 of those reports have been looked at by one of the con-  
23 sultants.

24 Q I was wondering in terms of total numbers?

25 A I really couldn't tell you how many, we would know

1 on the report that goes to the state board indicates . .  
2 those districts that are over the 15% and all those,  
3 certainly, have submitted the required report on their  
4 rationale and all those have been examined.

5 Q And may we have a copy of that report?

6 A You will have a copy of that report after it goes  
7 to the state board of education.

8 Q And copies of statistics and other material you  
9 indicated this morning?

10 A Yes.

11 THE CHAIR: Thank you very much.

12 Staff?

13 Okay. Our next witness is Dr. Simmons.

14 Dr. Simmons, for the record, will you give us your  
15 name and your position, please?

16  
17  
18 DR. ALLAN SIMMONS

19 A (By Dr. Simmons) Yes, I'm Allan Simmons, Director,  
20 the Implementation of the Master Plan Activities Coordination  
21 Team, Special Education Support Unit of the California  
22 Department of Education.

23 THE CHAIR: Thank you. And I think Mr. Griffin has  
24 some questions for you.

25 Q (By Mr. Griffin) Dr. Simmons, as director of the

1 unit with responsibility for the implementation of the  
2 California Master Plan for Special Education, my first  
3 question would be, would you please briefly describe what  
4 AB4040 and what its objectives are over the next three  
5 years and how will these objectives overcome past  
6 problems as they affect minority educable, you know, EMR  
7 placement?

8 A A great number of questions there. The major thrust  
9 of this is to condense what is a monumental amount of  
10 legislation into a workable program which treats all  
11 exceptional children without getting into the labeling  
12 process. Provide the programs for them.

13 We currently have a great number of laws which  
14 are very detailed, but which do not provide equal oppor-  
15 tunity across the board to all exceptional children. So,  
16 the major thrust of the AB4040 was to give these youngsters  
17 the opportunity to be dealt with in terms of their  
18 specific educational needs.

19 The bill requires that the district seek out, look  
20 for, children who have these needs, to evaluate them  
21 appropriately, provide the kinds of services that the  
22 children require, and to establish advisory committees  
23 at the local level, to have input to the boards of  
24 education, the superintendent. The bill requires the in-  
25 volvement of parents in much stronger ways than has been in



1 the past. This coming out of many of the concerns about  
2 parents being involved in placement considerations and  
3 discussing the background of the youngster and in talking  
4 about the actual kinds of programs, it requires the  
5 parents' written permission, the bill requires an appeal  
6 process of any decision at the local level clear to the  
7 superintendent of public instruction.

8 The bill requires the local districts to evaluate,  
9 totally, their programs and that the department evaluate  
10 the efforts in this first three years. It also requires  
11 the -- an audit process whereby the district's evaluation  
12 will be audited by people from outside the district.

13 These are some of the major features in the bill.

14 Q Now, do you think this bill will overcome some of  
15 the objectives and some of the past problems, rather, that  
16 affect minority EMR children or --

17 A My own opinion, it will do one of the monumental  
18 things and that is it offers an opportunity for the youngster  
19 of any group to be treated in terms of his actual needs.

20 We have built up special education in California  
21 on a piece by piece basis, such that at the present time,  
22 if a youngster is classified as mentally retarded, he  
23 only has a restricted number of openings for his education.

24 Under the master plan he will not be labeled as  
25 such but he has full range of education, this is hard for

1 some people to understand, but he has the same services  
2 of anybody else.

3 It's quite possible that he may have the services  
4 of a teacher of the deaf, if it just turns out that his  
5 needs in language are related to the kind of skills that  
6 that teacher can provide. This has been unheard of in the  
7 way we've approached education of exceptional children in  
8 the past. So we are saying, yes, we now have the oppor-  
9 tunity to assess and provide the most appropriate kind of  
10 services for these children.

11 Q What problems have you encountered so far, if any,  
12 with the implementation of the master plan?

13 A I think the implementation of the master plan has  
14 gone much more smoothly and much more effectively than we  
15 had, you know, thought about. It's a monumental change  
16 to change entire districts and particularly to change the  
17 independent districts working under now a larger group of  
18 administration. In other words, the small districts having  
19 to work together with a county. That has not been without  
20 its problems. Change always creates problems, but it  
21 seems to me that people are talking, are working, quite  
22 enthusiastic about this.

23 You see many solutions to past problems that are  
24 being dealt with now or at least they are in the planning  
25 stage for being dealt with.

1 Q Then, I take it, you don't foresee any problems in  
2 its implementation at all?

3 A We're always alert to problems.

4 Q In your professional opinion, do you feel the  
5 master plan will be successful?

6 A Yes.

7 Q Is the superintendent of public instruction re-  
8 quired to make evaluations of the program under AB4040?

9 A Under AB4040 the responsible local agency is re-  
10 quired to thoroughly evaluate its programs annually, and  
11 it reports certain of these findings to the superintendent  
12 of public instruction.

13 For our purposes in terms of answering to the  
14 legislature, the efficiency, effectiveness of this program,  
15 we must go back to the legislature in three years to demon-  
16 strate to them that the program, by and large, is effective.  
17 It's that kind of evaluation data that the department  
18 collects.

19 Q You said some --

20 A That's correct.

21 Q -- but can you make -- can the superintendent of  
22 public instruction actually make an evaluation with just  
23 some of the data?

24 A Well, you must realize that the local district is  
25 going to evaluate a great number of things which the

1 department has neither the responsibility, the legis-  
2 lative direction, the funding to do, we are not a  
3 research agency. So we do, though, require the local  
4 districts to have the kind of information to make good,  
5 rational judgments on the progress of their programs.

6 We will collect the necessary information that will  
7 allow us to deal with the legislature.

8 Q Dr. Simmons, what auditing requirements exist  
9 under AB4040, and who has responsibility for fulfilling  
10 these requirements?

11 A The law merely requires that an audit be performed  
12 and the state board of education will have to spell out  
13 the very details of that. We're in the process, at the  
14 present time, of developing the regulations. We will  
15 most likely follow a process similar to that which we use  
16 in federal projects where the district provides an  
17 evaluation based on its program, where we go in to see  
18 that their perceptions of their own program are adequate,  
19 where we do question people, look at programs, and provide  
20 the district with recommendations for the improvement of  
21 its program.

22 Q Prior to the enactment of AB4040 were evaluations of  
23 EMR programs required by the superintendent of public  
24 instruction?

25 A Evaluations in the various special education programs

1 differ considerably, and in the EMR program the evaluations  
2 have centered primarily on the placement of youngsters.

3       There has not been a requirement such as has been  
4 in some of the other programs for curriculum evaluations,  
5 these kinds of things.

6       Q     Could you tell me what kind of budget do you have  
7 for your special unit, how many people do you have in it?

8       A     We have \$300,000.00 for our particular unit.

9       Q     Three hundred thousand dollars?

10      A     Right.

11      Q     How many professionals?

12      A     Three.

13      Q     Under the new master plan, will this be increased?

14      A     We are under the new master plan.

15      Q     And this is what you would have under the new, just  
16 three --

17      A     No, you're asking my, my particular unit is Impact.  
18 We have \$300,000.00 to implement AB4040, which buys three  
19 professional staff. Myself and one -- and two other  
20 people are provided to that unit from the special education  
21 support unit outside of that, we're provided by normal  
22 funds of our particular unit.

23       But in terms of what the legislature has provided  
24 for this implementation, it's a very small amount. Now,  
25 we are in the process, someone asked a question about pilot,

1 we are in what we feel is a phase one. And as we begin  
2 to move and as this begins to be successful, as we feel  
3 that the legislature's atmosphere is that they will be  
4 promoting and supporting this program to go statewide,  
5 then there will be a shift from the people who are in the  
6 support unit to this kind of a program.

7 Obviously, in AB4040, if it becomes a statewide  
8 mandated program, will then entirely replace the current  
9 programs, so there will be a shift of staff from one set  
10 of laws to another.

11 Q And speaking of this set of laws, will there be  
12 any provisions for affirmative action provisions in that  
13 law? And I speak specifically, the question -- I look at  
14 the ethnic breakdown and look at the ethnic breakdown of  
15 the people in the support unit and it appears as though  
16 that -- that I just can't see how you can get, obtain the  
17 kind of information you need to do -- to make your pilot  
18 program work.

19 A I really don't understand your question.

20 Q Well, the thing is, how do you -- you get your  
21 people, I mean you have people from the support program,  
22 the information I had before with EMR's, 22.4% of them  
23 were Chicanos, 24% Black, 1.9 Oriental, 7.5 Indian, and  
24 from what I understand, 100% of them who are involved in  
25 the support program are Anglo Saxon?

1 A Of the three staff? Yes, that's correct.

2 Q Is there any provision to make any changes in this  
3 at all? In the support unit?

4 A The only --

5 Q Under the master plan? I mean you said you're in  
6 stage two now, stage one of the master plan.

7 A We are restricted in our hiring from state personnel  
8 board lists. We have taken, if you're interested, one  
9 action of declaring the list out at this particular point  
10 and going again for massive interviews and attempting to  
11 get other people. And one of the reasons for this is  
12 that we do not have reachable minorities on that list  
13 at this point.

14 Now, all we can do is work, search, help, ask these  
15 people to take these examinations, and make them available  
16 to us by qualifying on the state personnel board list.

17 Q It's a recruiting problem, am I understanding you,  
18 it's more a recruiting problem than a problem of quali-  
19 fication for people you're after, or what?

20 A I would say it's both.

21 MR. GRIFFIN: Thank you. That's all I have.

22 THE CHAIR: Thank you.

23 Dr. Share?

24 Q (By Dr. Share) I have a couple questions. I think  
25 one of the questions was asked by Mr. Griffin, you indicated

1 that you feel the master plan will be successful. Let me  
2 follow it up, if I may, with, why?

3 A I think you've been focusing today on a great number  
4 of questions related to your particular interests. I don't  
5 think it's been brought out that in professional education  
6 there's been a great number of concerns in a broad area.  
7 The master plan is in respect a response to many, many  
8 concerns about the education of children.

9 And I think that it has been developed over four,  
10 five years of very intensive work by broad spectrum of  
11 citizens in California, and relates to many, many con-  
12 cerns we have about the education of handicapped children.  
13 It's the best thinking that we have been able to pull  
14 together, it's had very heavy support, the first phase of  
15 implementation is going very, very well, we think that it  
16 will go a long ways to alleviating a number of the issues  
17 that you're concerned with.

18 We don't see it as any panacea, I don't know of any  
19 panacea. But I think that it has that promise.

20 Q Thank you. Let me follow it up with the question,  
21 then, of the six agencies, districts, I forget the wording  
22 that you provided --

23 A Responsible local agency.

24 Q That were selected, these responsible agencies had  
25 to be cooperative, they had to agree to this, I assume?



1           A     Certainly.

2           Q     So should there be a school district or agency that  
3 would not want to go into this, they may choose not to go  
4 into it?

5           A     That's correct.

6           Q     So again you're dealing with perhaps a success  
7 story at the very beginning and only on the grounds that  
8 these are agencies that are looking for a change and  
9 we're kind of addressing ourselves to here, today, I think  
10 are those agencies that have difficulty in making the  
11 change for quality education.

12          A     But you have to recognize that there is a concept  
13 of an RLA which is a responsible local agency, which may  
14 mean that in the instance in the counties, for example,  
15 where there are 16 or 35 districts, that a few people in  
16 that county felt the county ought to go. They had to work  
17 cooperatively with every other district in that county  
18 in order to come to the point of getting board agreements  
19 from every one of those jurisdictions that they would  
20 join in this plan.

21                 And I think we do have very clearly indicated that  
22 we have districts that had a lot of question about it, who  
23 were concerned about going into this, and still have con-  
24 cerns about going into it, but have felt that it is a good  
25 plan and are moving. I don't think that it is characterized

1 at all by the fact that we have found the best or the  
2 most eager. We have really gotten a fairly good cross  
3 section.

4 Q (By Mr. Griffin) Dr. Simmons, someone in previous  
5 testimony said that Richmond County was left out of the  
6 responsible districts that you're talking about --

7 A Right.

8 Q -- could you tell us why?

9 A Yes. In Contra Costa County, there are two large  
10 school districts who, by themselves, can be a responsible  
11 local agency. The Mt. Diablo Unified School District and  
12 the Richmond School District, they are left out not be-  
13 cause they could not be part of that plan, they could if  
14 they had elected, but the more realistic thing is that  
15 they will become a responsible local agency on their own.  
16 They do have a large enough population to support a full  
17 range of special education programs. Which is one of  
18 the requirements.

19 The other districts, you see, are not large enough  
20 to support all the programs necessary.

21 Q Then it was not because there were any special  
22 problems in that particular county?

23 A Not that I know of.

24 Q I'm from southern California, I don't know too much  
25 about it.

1       A     Right. I'm not aware of any problem of that  
2 nature other than they alone feel they can and --

3       Q     Do it on their own?

4       A     On their own, as the implementation goes statewide --

5       Q     (By Dr. Share) My question really, I think,  
6 addresses itself to, is it feasible that there could be  
7 a few school districts or maybe many, let's say a few,  
8 that have problems in the kind of services they're pro-  
9 viding youngsters as we're, of course, talking about  
10 today and yesterday, that may choose to opt out, or even may  
11 opt out and never get involved in the master plan?

12       A     That depends on what the legislature says. At  
13 this point it's permissible because it's phase one of  
14 a program which we have to prove its sufficiency. If  
15 the legislature believes that this is a better program  
16 than what we currently have, then, according to the  
17 master plan, it would be mandatory.

18       Q     Is there a time schedule on that or when this may  
19 come to some fruition?

20       A     The report to the legislature goes in '78, and we  
21 would expect that session of the legislature to take  
22 decisive action.

23             THE CHAIR: Thank you, then, Dr. Simmons.

24             Would you also provide to our staff a copy of the  
25 affirmative action plan and your recruitment procedures

1 or directives?

2 A I can not provide you ours, I will -- you know,  
3 the department has these, if you want the department's  
4 plan you certainly may get copies.

5 THE CHAIR: The plan under which you operate then.

6 A This is the department of education.

7 THE CHAIR: Fine. Thank you.

8 Q (By Mr. Johnson).....Nadine, I'd suggest that  
9 perhaps we might look at the state personnel board  
10 affirmative action plan which apparently is the bottleneck  
11 here. I assume that prior to this time you've said that  
12 when you looked for qualified candidates for your own staff,,  
13 the state personnel board did not provide any minority  
14 candidates --

15 A No, I did not say that, whatsoever.

16 Q You didn't, then I misunderstood you, what did  
17 you say?

18 A I said that we did not have any minority candidates  
19 who qualified within the range to be -- within the first  
20 three ranks of the state personnel board eligibility lists.

21 Q I see.

22 Q (By the Chair) This is why I was concerned about  
23 getting your recruitment directives, if you have made an  
24 effort as you have said to open it up and re -- rework a  
25 recruitment system on your own or at least seek new

1 candidates I think it should be inserted in the record  
2 to show your efforts here in this aspect.

3 A And if the personnel office of our department  
4 shows the efforts that we did take, and we can show you  
5 memorandum we sent out, particularly to every bilingual  
6 director in the state, asking them to make this information  
7 available to people, that we were having examinations, and  
8 to direct people to take these exams.

9 THE CHAIR: Fine, we'd like a copy of that directive  
10 again, to show your efforts.

11 A Fine.

12 THE CHAIR: Thank you very much.

13 Thank you, Ms. Rabin.

14 Ms. Fraser?

15 For the record, will you please identify yourself?

16  
17  
18 MS. MARGARET FRASER

19 A (By Ms. Fraser) Yes, I am Margaret Fraser, staff  
20 attorney with the California Association for the Retarded.

21 Q (By the Chair) Ms. Fraser, have you assisted in  
22 the implementation of the California Master Plan for  
23 Special Education?

24 A Well, at the present time we have a right to education  
25 lawsuit in which we are the principal named plaintiff.

1           In our efforts to assure that children who are  
2 excluded from education program in California receive  
3 appropriate publicly-supported education programs, we have  
4 worked on the master plan for special education. I think  
5 you have to distinguish the master plan itself from the  
6 pilot legislation that was AB4040, which Dr. Simmons was  
7 discussing, from the actual implementation efforts. There  
8 are some differences between the three.

9           MS. GODOY: I just wanted to caution you not to  
10 talk about the merits of the pending lawsuit, but as long  
11 as you're going to talk about master plan and AB4040,  
12 I'm sure there will be no problem.

13          A     Yes, I won't talk about that, I just wanted to let  
14 you know why we were working on implementation of the  
15 master plan.

16          Q     (By the Chair) What have your efforts been?

17          A     Well, our efforts have been three-fold. First,  
18 when the master plan was being developed, one of the  
19 local executives of a local unit for retarded citizens,  
20 a woman named Sherrie Saffic (Phonetic), who was executive  
21 director of the San Diego Association for Retarded Citizens,  
22 served on the special education commission, which was re-  
23 sponsible in large part for the preliminary drafting of the  
24 master plan for education.

25               In addition, there were many public hearings and data

1 gathering sessions at which representatives of the Cali-  
2 fornia Association for the Retarded and its 76 local  
3 units and chapters appeared to provide input.

4 Then, when the legislation was introduced, that is  
5 AB4040, the pilot program to implement the master plan  
6 for special education, we were particularly concerned  
7 about two areas. First, the identification and outreach  
8 and referral of children who are presently being excluded  
9 from education programs, and we attempted to obtain in  
10 conjunction with the California Rural Legal Assistance  
11 Program, two amendments, first an amendment that would  
12 have required the state to conduct an identification program  
13 to identify where children are located who are out of  
14 school.

15 We know, based on 1974 data, that there are 145,000  
16 children who are presently excluded completely from edu-  
17 cation programs in California. I might add that 20,000 of  
18 them are non-White.

19 Secondly, we attempted to obtain a streamlined due  
20 process hearing procedure, simplified enough so that it  
21 would not be an obstacle to parents, whether they were  
22 concerned either about the appropriateness of recommended  
23 placement, so that children would not be mislabeled and  
24 put into inappropriate special education programs. And also  
25 for those parents of children who were being excluded from

1 programs who were attempting to have their children en-  
2 rolled in the programs. So we worked very hard on both of  
3 those amendments. Unfortunately, neither of them were in-  
4 cluded in AB4040.

5 Our concern was and still is that the children who  
6 are being excluded from education programs are not going  
7 to be enrolled in special education programs for many years,  
8 the way the master plan for special education is presently  
9 being implemented.

10 If I might elaborate on that point just briefly,  
11 local responsible agencies, that is the school districts  
12 who are currently developing the comprehensive plans under  
13 AB4040, are required by law to conduct outreach and  
14 identification programs. The six pilot districts would not  
15 agree to engage in pilot implementation projects unless  
16 the department of education would give them three years to  
17 implement their outreach identification and referral  
18 program.

19 That means that the six school districts who are  
20 doing the comprehensive plans this first year will not be  
21 required to enroll all the children who were excluded in  
22 the district until 1978. So, by 1978 we will have six  
23 school districts in the state who are under an obligation  
24 to have identified and enrolled all handicapped children  
25 in need of a special education program.



1           We are tremendously concerned that it may be 1980  
2 or later before children who need a special education  
3 program will receive the appropriate one.

4           Q     When you say we, has your organization been working  
5 with other organizations?

6           A     Yes, we have worked with the California Rural  
7 Legal Assistance Program, particularly on the issue of  
8 EMR programs. They're concerned about inappropriate  
9 testing procedures and minority children being referred  
10 for enrollment in EMR classes who do not need that type of  
11 a special education program. We're also concerned about  
12 that.

13           Our concern, our major concern, however, is to make  
14 sure that handicapped children receive appropriate services,  
15 so we've worked with CRLA on these issues, we have also  
16 worked with a loosely-constituted coalition of organizations  
17 for the handicapped, which include the Epilepsy Society,  
18 United Cerebral Palsy and several other state level  
19 organizations, in addition we did work somewhat with the  
20 Council on Exceptional Children on some of these matters.

21           Q     Thank you. What particular concerns did you have  
22 about what may be happening to the EMR students in Cali-  
23 fornia as their numbers decline? We have seen charts here --

24           A     Yes. Well, several. I say at the outset I am not  
25 an expert on the efficacy of IQ testing and what appropriate

1 placement procedures should be used for placement of EMR  
2 children in classes. We have a small southern California  
3 office who has conducted -- which has conducted a survey  
4 among our local units to find out what the effect of the  
5 moratorium of -- on IQ testing that was imposed by the  
6 state board of education, how that is actually affecting  
7 local school districts.

8 We are finding that in some local school districts,  
9 it doesn't seem to be a problem. The local district had  
10 other ways for referring a child for further testing,  
11 assessment, whatever, for possible placement in an EMR  
12 class. However, in other school districts, there is a  
13 moratorium that has been placed on new enrollments in EMR  
14 classes. So that a child who is transferring in from  
15 another school district who has been enrolled in an EMR  
16 class, could be placed in that EMR class, but a child who  
17 had never been enrolled in an EMR class would not be able  
18 to be enrolled.

19 We are also seeing an increase in the number of  
20 children in so-called EH classes, those are classes for the  
21 educationally handicapped. And children are also being  
22 transferred from EMR classes to EH classes. There is, of  
23 course, no moratorium in IQ testing for placement in EH  
24 classes. Also, local school districts receive a higher  
25 state apportionment for children enrolled in EH classes than

1 they do for children enrolled in EMR classes.

2 I'm not sure that that's -- that that's a reason,  
3 but we are seeing this happen. Our concern is that a  
4 class for educationally handicapped children may not be  
5 appropriate for a child who has -- suffers from a mild  
6 mental retardation, and consequently that might not be  
7 the appropriate enrollment.

8 We are also very interested in what the results will  
9 be of the transition study which is currently being carried  
10 on by Barbara Kehoe (Phonetic).

11 Q Who has been responsible for this moratorium that  
12 you spoke of a minute ago?

13 A The moratorium in local school districts? Either  
14 the local school board or the superintendent of public  
15 instruction, this would be a memo that would have gone out.  
16 We have information which I could probably supply to the  
17 commission, once again it is our southern California  
18 office who has done this, so I'd have to find out exactly  
19 how much written information we have. But I know we have  
20 some.

21 Q I was going to ask you if your findings or your  
22 southern California office could provide our staff with  
23 the findings and other information that you mentioned this  
24 morning. In the course of these efforts that we've been  
25 discussing, what other specific concerns have materialized

1 about the master plan? Have we covered all of your con-  
2 cerns here regarding the master plan?

3 A Well, I have not been here all morning so I'm not  
4 sure. I would say our primary concerns were the fact  
5 that children will continue to be unserved in education  
6 programs. I think that's our primary concern.

7 In addition, there appears to be a perpetuation of  
8 labels and of course that was one of the things that the --  
9 that these comprehensive plans were supposed to eliminate.  
10 The intent language in the master plan itself talks about  
11 eliminating labels and insuring that handicapped children  
12 in need of a specialized education receive an appropriate  
13 education and we don't have children who aren't able to  
14 fit in the appropriate box being -- falling between the  
15 cracks.

16 I am concerned that this labeling will be perpetuated.  
17 And of course, that children will continue to be unserved.

18 I'm also very concerned about the present due  
19 process hearing procedures that are provided for under the  
20 master plan for special education. California currently  
21 has in process four different due process hearing pro-  
22 cedures for children who would be eligible for special  
23 education programs. That is the hearing procedures that  
24 are provided under AB4040, due process hearing procedures  
25 for development center programs, which are programs for

1 severely handicapped, multiplihandicapped children, due  
2 process hearing procedures provided under HR69, the  
3 Elementary and Secondary Education Act amendments and  
4 also there is a due process hearing provided where a parent  
5 applies for a tuition reimbursement, the Sedgewick Act  
6 program.

7           Wending your way through these, I think is going  
8 to be very difficult, both for the state department of  
9 education, for local school districts and certainly for  
10 parents. I mean it seems to me we want to make it as easy  
11 as possible to assure a child an appropriate education  
12 program.

13       Q     And you think these procedures are too complicated?

14       A     I think that they're very complicated right now and  
15 as I indicated, there are four different types of due  
16 process hearing procedures and I wonder if, for instance,  
17 a child is in a school district which is under the master  
18 plan and which is receiving federal funding from HR69, if  
19 the child goes to apply for a development center program,  
20 which due process hearing procedure will be utilized? I  
21 don't know. Perhaps the state department can answer that  
22 question.

23           I'm also concerned about monitoring. That's my  
24 final thing. I'm not sure who's responsible for what  
25 and I'm not sure what enforcement mechanism will be used

1 where school districts fail to comply, either with the  
2 HR69 state plan requirements or with the master plan re-  
3 quirements.

4 Q I think some of the testimony this morning indicated  
5 that there are a lot of people who aren't sure about that.

6 A Yes, yes.

7 Q Finally, what is the major area of interest of the  
8 association at the present time?

9 A Well, our association, at least in its articles of  
10 incorporation, talks about improving the general welfare  
11 of mentally retarded children and adults wherever they  
12 live. Consequently, we monitor legislation that affects  
13 mentally retarded persons, we also watchdog... adminis-  
14 trative agencies, in the education area I would say our  
15 concerns are primarily the exclusion issues, and I think  
16 that's really what we're about today. So I'll just confine  
17 it to saying we are concerned about special education  
18 programs, both the fact that there aren't enough of them  
19 and also the adequacy of the programs themselves.

20 THE CHAIR: Thank you.

21 Are there any other questions?

22 Q (By Mr. Rogers) Just one very quick question.

23 What steps are the association -- or is the associa-  
24 tion taking to sort of remedy some of the inequities you've  
25 spelled out today?

1       A     We have met with representatives of the department  
2 of education, both during the time that AB4040 was wending  
3 its way through the legislature and we continued to meet  
4 with them on a periodic basis to discuss development  
5 of regulations; also the development of the state plan.

6           So we have met with them at the local level, we  
7 have, as I said, 76 local units and chapters around the  
8 state. They are involved in negotiations and advocacy  
9 efforts with local school districts.

10          We also have volunteers who are fairly active in  
11 the legislative sphere.

12       Q     Did you ask the state department of education who  
13 would be monitoring the AB4040?

14       A     Yes, we have.

15       Q     And what was their response to that?

16       A     Well, the response has always been unclear to me.  
17 Responsibilities are delineated in AB4040, the superintendent  
18 of public instruction has certain responsibilities, the  
19 local school districts have certain responsibilities.  
20 However, the only way that I see that the department --  
21 the state department has of assuring implementation is  
22 cutting the funds back, and of course, that means that  
23 the -- that the students themselves will suffer.

24           I don't see any private type of monitoring effort  
25 being encouraged by the state department of education, and

1 I am not sure what types of compliance they're really  
2 planning on.

3 MR. ROGERS: Thank you.

4 Q (By Dr. Share) My question is already partly covered  
5 by your question, actually. I was just going to speak to  
6 the point that, representing a large, maybe the largest  
7 organization in California for the retarded, consumers,  
8 that is, what kind of formal, and I underline the word  
9 formal, relationship do you have with the state department  
10 of education, say on policy decisions?

11 A I'm not sure that we really have a formal relation-  
12 ship. We are on their mailing lists, we receive notice  
13 when there're going to be hearings on regulations, we  
14 are sometimes asked to comment on regulations and guide-  
15 lines that are being developed.

16 As I indicated, one of the executives of a local  
17 association for retarded individuals is a member of the  
18 special education commission, as such, I think she probably  
19 wields a great deal of power in terms of input on special  
20 education matters. So sometimes we have informal contacts  
21 with HR as well.

22 Q (By Mr. Griffin) Ms. Fraser, what, in your opinion,  
23 what would be the maximum damage to an EMR child if some  
24 type of remedy, if -- if -- denying them an education or  
25 special training for four years, what would happen?



1       A     Well, I'm not an education expert. I can only say  
2     that if you are dealing with any child, depriving a child  
3     of an education program is going to handicap that child.  
4     If you have a child who has some type of a learning handi-  
5     cap, depriving that child of an education is going to be  
6     depriving them doubly, and I would say it would be imposing  
7     a double handicap on them in terms of their future capa-  
8     bilities for living independently, entering into the com-  
9     petitive employment market and so on.

10           I can only speculate, I mean I can't say, you know,  
11     they will lose ten IQ points or whatever, I -- you know,  
12     I really -- couldn't tell you.

13           THE CHAIR: Thank you very much, Ms. Fraser.

14       Q     (By Dr. Rodriguez) Can I ask one?

15           Do you have any ideas about possible enforcement  
16     procedures that don't penalize the children?

17       A     Could you clarify that question?

18       Q     Well, in the sense that withdrawing of funds has  
19     been the only thing that I've been hearing. Is there  
20     other alternatives to enforcement procedures that you can  
21     think of that might be effective?

22       A     Well, first, I would hope that someone would take  
23     responsibility for insuring that children who are out of  
24     school or who need a special education program are iden-  
25     tified as quickly as possible. And then it would seem to me

1 a matter of cooperative efforts, school districts and the  
2 state both are in -- are in a great deal of trouble right  
3 now, as far as funding for education programs. Perhaps  
4 we need some type of -- of different mechanism to fund  
5 school programs, I mean that might be a first step.

6 But also, it seems to me that rather than saying  
7 you are out of compliance, we will cut off your funds,  
8 it would seem to me that perhaps more supervision, a little  
9 more pushing and some kind of decision about how scarce  
10 resources will be allocated would have to be made, both  
11 at the state level and the state working with the local  
12 school district.

13 Q You had mentioned private enforcement, is this what  
14 you mean by it?

15 A Well, there is some legislation -- is it per-  
16 missible for me to talk about legislation? Or not?

17 MS. GODOY: Yes.

18 A There is some legislation that is currently being  
19 carried by Assemblyman Papin (Phonetic), I believe it's  
20 AB2154. What that would do would be permit local private  
21 organizations to be funded to assist parents in getting  
22 through due process hearing procedures. That would be  
23 one way to do sort of a monitoring effort, it would seem  
24 to me that they could take some responsibility for letting  
25 the parents and handicapped people know what their rights

1 are in access to education programs. A lot of people just  
2 don't know that the programs are available.

3 THE CHAIR: One quickie question from Ms. Ruiz?

4 Q (By Ms. Ruiz) Yes, I'm just wondering if anybody  
5 has contemplated fining school districts for noncompliance?  
6 When I think in terms of the state ordering penalties  
7 and interest for nonpayment of income tax, state income  
8 tax and federal income tax, why would it not be legal if  
9 they're using state and federal funds to fine the school  
10 district and to penalize them in that way so that the  
11 children will not be penalized but those taxpayers within  
12 that district would be aware of what the district is  
13 or is not doing?

14 A Yes, once again that would probably take money away  
15 from education programs and that might be a problem in  
16 the end, that children might suffer. It's a possibility,  
17 certainly.

18 THE CHAIR: Thank you very much, Ms. Fraser.

19 A Thank you.

20 THE CHAIR: Our next witness will be Mr. Rothery.

21 Mr. Rothery, for the record, would you give us your  
22 name and your position, please?  
23  
24  
25

1 MR. THOMAS ROTHEY

2 A (By Mr. Rothey) Yes, my name is Tom Rothey, I'm  
3 an administrative analyst with the office of legislative  
4 analyst.

5 THE CHAIR: Thank you.

6 Ms. Ruiz has some questions for you, I believe.

7 Q (By Ms. Ruiz) Yes. Could you outline your major  
8 responsibilities in the office of legislative analyst?

9 A Yes. I -- the legislative analyst, Mr. Geioque,  
10 of course, who was here yesterday, is from the same office  
11 and is in fact my supervisor, but the legislative analyst's  
12 office has a responsibility to oversee the fiscal operation  
13 of the state budget and our major work is doing an analysis  
14 of the budget bill each year.

15 And the office is divided into sections that  
16 comply mainly to the departments in state government.

17 I work in the public education section, there are  
18 four sections, there are four analysts in that section,  
19 and we have different aspects, program aspects of the  
20 department of education's budget that we're responsible  
21 to review. In my case I have all of the special education  
22 programs, all vocational education programs, free textbooks,  
23 pupil transportation, driver education and training,  
24 mentally gifted, year-round schools, instructional tele-  
25 vision and certain aspects of school finance. So it's --

1 I would hope that it would be understood that that's a  
2 broad range of programs and whereas many of the people  
3 that you've talked to this morning are specialists, such  
4 as consultants for retarded or something, I have a whole  
5 waterfront to cover.

6 Q Well, do you feel that the department of education  
7 is following the legislative guidelines?

8 A Specifically with EMR or with special education?  
9 With both?

10 Q With both.

11 A I think that as a general statement, it can be  
12 said that the department of education, the special education  
13 support unit, are fulfilling legislative guidelines and  
14 special education programs. There are situations, however,  
15 where we have disagreements over the way the state depart-  
16 ment of education interprets legislative intent and there  
17 are certain aspects and that mainly is where it comes  
18 to our job is looking at those things and bringing those  
19 to the attention of the legislature.

20 Q Do you bring these to the attention of the school  
21 district?

22 A We -- we deal with districts in gathering informa-  
23 tion with regard to bill analyses or legislation or the  
24 analysis of the budget each year. But our relationship is  
25 more of working directly with the department of education  
than with districts.

1 Q Well, do you then tell them of your concerns if  
2 you feel that they are not complying?

3 A I suppose indirectly as we're out meeting with dis-  
4 tricts, trying to gather data, we will discuss the  
5 concerns that we have about educational programs, but  
6 specifically we have no formal notification procedure  
7 where we go out and notify districts of problems. Our  
8 working relationship is staff to legislature.

9 THE CHAIR: Mr. Rothey, could you be more specific  
10 here in terms of areas of disagreement?

11 A Well, I -- I did write down a couple that I thought  
12 -- one of the areas of concern is in the development center  
13 program. This is a program in the state that is, is  
14 mandated as of September 1, 1978. And we advocated in the  
15 analysis of the budget bill last year that the legislature  
16 appropriate funds to serve those students already in the  
17 program who were not receiving any state support.

18 And the legislature enacted a bill and put in  
19 additional funds and the department chose instead to expand  
20 the enrollments in -- in the development center and leave  
21 those districts that had been making a good, what I  
22 consider a good-faith effort, to serve those development  
23 center pupils in their area. They left them to just con-  
24 tinue supporting those students out of local funds.

25 And while the intent of the department was to expand

1 enrollments to serve more pupils, we just -- I felt that  
2 it was -- it was kind of around the back way of doing it.  
3 I thought that the funds should go to those districts who  
4 had been providing the services.

5 Q How do you communicate your displeasure?

6 A Well, usually it's in the analysis of the budget  
7 bill. It's a large document, about a 1,000-page document,  
8 that we produce every year where we have recommendations  
9 and analyses of the various programs in the department  
10 of education. And it's at that -- in that document,  
11 usually, that we will bring forth problems.

12 Another way is the legislature may ask us,  
13 through either a bill or a resolution, to conduct a study  
14 in a certain area, and that report may contain recommen-  
15 dations.

16 Q But no one monitors the funds that have been allo-  
17 cated formally to the department of education, do you  
18 concede that perhaps they have not been allocated as you  
19 had anticipated the intent of the legislation to be,  
20 but once the money is transferred there is no one who sees  
21 that it is used according to the intent of the legislation?

22 A We do that, that is one of the things that we do  
23 look at, is the -- whether or not legislative intent is  
24 complied with. But as -- only in terms of looking at the  
25 general guidelines of the legislature, we do not fulfill

1 an auditing function, the state controller performs an  
2 audit, but there really isn't, in the state right now,  
3 any kind of an audit procedure that is carried on either  
4 by our office or the state department of education, to  
5 see that there is compliance in the expenditure of funds.

6 The department of finance, division of audits,  
7 oftentimes will take particular program areas and go out  
8 and do audits in different districts. And look at com-  
9 pliance, whether or not the funds were spent in com-  
10 pliance with legislative guidelines. But we would be more  
11 at the program, large dollar amount, just general intent  
12 compliance.

13 Q Do you have other areas of disagreement you'd like  
14 to bring forth?

15 A Well, I -- I wrote down two. The other one is,  
16 I think is a good example, is the allowance for sheltered  
17 workshops. Last year the legislature appropriated funds  
18 for sheltered workshops, and the department of education  
19 sent out a letter to districts that indicated that, kind  
20 of an ambivalence as to whether or not this program was  
21 going to continue.

22 And I think it was -- I think it was perfectly  
23 clear that the program was to continue, the funds were in  
24 the governor's budget that was issued in January, and yet  
25 the department didn't seem to be very clear in guiding



1 districts as to whether or not they would receive reim-  
2 bursements or private agencies who operated these sheltered  
3 workshops.

4 Q Do you have copies of this letter that you're  
5 talking about?

6 A Not with me.

7 Q Would you provide our staff with copies? To docu-  
8 ment these answers? I think that would be important here.

9 A All right.

10 Q (By Mr. Rogers) Also, Mr. Rothey, how much money  
11 is actually allocated for sheltered workshops?

12 A Well, in the governor's budget, I believe this  
13 year there was \$85,000.00 and there was some money carried  
14 over from last year because when the program started, it  
15 just, they weren't able to expend all of the funds, get  
16 the program going.

17 Q I see, how much --

18 A It's about \$170,000.00 that is in the budget for state  
19 reimbursements. That's only money that's going to the  
20 department of education. I believe there are additional  
21 funds that go through the vocational rehabilitation unit  
22 that go to sheltered workshops.

23 MR. ROGERS: Thank you.

24 THE CHAIR: Ms. Ruiz, did you have more questions?

25 Q (By Ms. Ruiz) What would be your principal concerns

1 about what may be happening to the EMR students in Cali-  
2 fornia, as we've been shown by the charts, the numbers  
3 are going down very rapidly?

4 A Yes, they are, and of course, the decline in EMR  
5 enrollments coincides with approximately 1970 when the  
6 legislation, the legislature enacted the bills requiring  
7 retesting and reevaluation. And if you look at the en-  
8 rollments in EMR programs on a straight line projection,  
9 we will no longer have an EMR program in the 1980's. And  
10 I think that there has to be a concern about what is hap-  
11 pening to these students.

12 The department of education funded, with the special  
13 education research moneys, a project review of transition...  
14 programs in California public schools. Barbara Kehoe,  
15 from UCLA, was the principal contractor on that study and  
16 it was recently submitted to the department of education.  
17 And the findings that she has about what's happening  
18 and what the concerns are, it seems to be that no one really  
19 knows for sure what is happening.

20 The administrators who responded in this report that  
21 she had, gave some indications of better adjustment of  
22 the students who were returned to the classroom, but as  
23 far as educational outcome and whether or not they'll do  
24 better, I don't think we know that.

25 Supposedly, under the master plan, with the non-

1 labeling and you serve a person that has an educational  
2 need, maybe EMR's who were reclassified out, maybe there  
3 still is some kind of an educational need that they have,  
4 that because of the categorization that exists in the  
5 funding programs in the state, they're excluded from addi-  
6 tional dollars.

7 But under the master plan I would think that they  
8 perhaps could be -- would be brought back in to receiving  
9 some kind of special services. And additional dollars,  
10 above and beyond the regular foundation program.

11 Q (By Ms. Ruiz) Well, what do you feel can be or  
12 should be done, and by whom, to alleviate these concerns?

13 A Well, when you -- when you look at the decline in  
14 the EMR enrollments, the legislature, at the same time,  
15 established a transition program where they were going  
16 to -- kids, these students that were being reclassified  
17 could have this transitional phase going back into the  
18 regular classroom. It was originally for two years, and  
19 then it was extended till June 30th of '74, it was a four-  
20 year program. And that is now expired, and yet the same  
21 declining rate is still occurring, and I'm not sure in my  
22 mind what the reason is why we can drop that now.

23 Maybe we ought to reestablish that transition  
24 program as long as the rate of decline in EMR enrollments  
25 continues.

1           The other thing that I think needs to be done is  
2           our office has been recommending an in-service training  
3           office in the department of education. As you put all  
4           of these students back into the regular classroom, I'm  
5           sure that there's going to be incapability to handle the  
6           special needs of these students, and we have been advocating  
7           a stronger in-service training role by the department of  
8           education in working with districts. Not just the  
9           regular, random in-service training where you take boat  
10          trips down the Snake River, but where it's planned, con-  
11          trolled, in-service training where you establish objectives  
12          and attempt to reach those objectives.

13           The other thing is I think that there has to be  
14          a stronger evaluation component, and this is kind of  
15          tied into the -- to the whole diagnosis and evaluation.  
16          We've, as you get into the master plan, we've been looking  
17          at it as was mentioned earlier, the legislature is going  
18          to be confronted in 1978 with making a decision, is the  
19          pilot project of the master plan successful and should it  
20          be implemented statewide? And one of the big problems  
21          that we have in the analyst's office in looking at it,  
22          I'm sure many others, is, how strong is the evaluation  
23          component?

24           Just conducting an evaluation, is the master plan  
25          a better way? I think that we've got to treat the students

1 on an individualized basis. You know, looking at the  
2 student as an individual, in the evaluation and diagnosis,  
3 so that we are, you know, better -- have greater tools  
4 and resources to determine the needs of the students  
5 individually.

6 So that these can be -- the plan can be met.

7 I personally feel that the master plan is a move  
8 in the right direction, that it does offer some changes  
9 to the existing categorization structure of the special  
10 education, that may offer greater flexibility in dealing  
11 with the diverse learning needs of students and par-  
12 ticularly EMR students.

13 Q Well, would you feel that perhaps more evaluation,  
14 say two evaluations a year instead of waiting for 12-month  
15 period to pass, would be advantageous?

16 A Let's see if I can -- if I can remember, I believe  
17 in the master plan that there are more stringent evalua-  
18 tion requirements. And as to how often you reevaluate, you  
19 know, the legislature considers everything in terms of  
20 money and that's what -- kind of our thing is, is the money.

21 And, for example, the mentally gifted minors  
22 program, the legislature just recently increased the dollars  
23 available to evaluate a student for enrollment in mentally  
24 gifted minors from \$40.00 to \$50.00. Well, there are many  
25 people who think that it should be \$200.00. And so these

1 kinds of questions, when you tie better evaluation to  
2 increased expenditures, those are going to be hard ques-  
3 tions that the legislature is going to be faced with.

4 Our office and the department of finance, in  
5 looking at the master plan for special education, estimated  
6 over a three hundred million dollar increase in state  
7 expenditures if this plan is implemented statewide.  
8 Well, that compares to slightly over two hundred million  
9 in expenditures right now for special education. So it's  
10 -- those two realities, however you can, you know, bring  
11 them together, of higher quality with increased expenditures,  
12 I think is going to be a difficult problem.

13 Q (By the Chair) Who are those recommendations that  
14 you spoke of made to, or forwarded to?

15 A Our, the analysis of the budget bill goes directly  
16 to the joint legislative budget committee, the legislative  
17 analyst is the staff of the joint legislative budget  
18 committee, but it in fact goes to the legislature, every  
19 legislator receives a copy of the analysis and they review  
20 those. Our work is mainly with the finance committees  
21 of the legislature.

22 Q Have you communicated these recommendations to the  
23 state board of education?

24 A To the state board?

25 Q Yes.

1       A     No.

2       Q     How would you characterize the cooperation that  
3     you have received from the state board of education in  
4     compiling recommendations and findings?

5       A     I really don't -- I think your question would be  
6     more appropriate to ask the state department of education.  
7     We really don't deal with the state board itself, only  
8     in, as an extension of the policy making body of the  
9     department of education. Our work is really associated  
10    more with the department of education, they're usually  
11    cooperative, sometimes evasive, and as Mr. Geioque  
12    mentioned yesterday, it's often the case that they don't  
13    send you any more than what you ask, and that, if you are  
14    persistent, -- I've, on several occasions, have asked for  
15    information and I get the first copy and wanted to be  
16    continually aware of what's happening and the first copy  
17    comes and maybe the second and then it's a desert again.

18           And I have to remind and maybe it starts up again  
19    and it dwindles off. So I mean even the legislative  
20    analyst, who supposedly has all these sharp teeth, has  
21    trouble getting information.

22       Q     I'm just reminded of a characterization we gave  
23    yesterday, of some of the practices. Yesterday the  
24    state department people said that evaluating can't begin  
25    until October or November instead of September because

1 staffing is often not, or is not quite yet complete or  
2 done yet. What do you think about this, do you think that  
3 evaluations should begin earlier, can begin earlier,  
4 rather than waiting until October or November or there  
5 abouts, of a year?

6 A Well, not being an evaluation expert, I think Mr.  
7 Geiogque made that comment yesterday. No, I think that there  
8 are a lot of things that you have to set up in an  
9 evaluation before you actually begin. I think that he  
10 was referring to actual field work and data collection.  
11 But right now the department, on the master plan, for  
12 example, is going through all kinds of preliminary work  
13 in developing the design for the evaluation itself.

14 And so I think there are things that can be done,  
15 and done now, and I think they are occurring with regard  
16 to the master plan at least. And the data collection would  
17 occur, then, in the fall, usually when the programs are  
18 operating.

19 There are some programs that operate longer, such  
20 as the development centers, they usually operate for 200  
21 to 230 days a year. And so those programs, you could,  
22 you know, usually visit those all throughout the year and  
23 find programs still operating and going on. Others are  
24 more closely aligned to the regular school program and,  
25 you know, stop in June and start again in September.



1           I suppose there's something magical about going to  
2 the school and finding the students there, and the  
3 teachers, and they still leave in the summer.

4           THE CHAIR: I know. Thank you. Thank you very  
5 much.

6           Our final schedule witness before lunch, which is  
7 supposed to be now, is Mr. Sierra, are you here?

8           MR. SIERRA: Good morning.

9           THE CHAIR: Will you identify yourself, please,  
10 Mr. Sierra, for the record?

11  
12  
13                           MR. TONY SIERRA

14           A        (By Mr. Sierra) Yes, my name is Tony Sierra, I'm  
15 a member of the state board of education.

16           THE CHAIR: I think Mr. Yoshioka has some questions  
17 for you, Mr. Sierra.

18           Q        (By Mr. Yoshioka) Mr. Sierra, how are the board's  
19 members selected and what is their tenure?

20           A        The board members are appointed by the governor,  
21 and each board member is appointed for a term of four  
22 years. Currently the present board is constituted of  
23 seven members appointed by the former governor and three  
24 appointed recently by Governor Brown.

25           Q        How often does the board meet and what is the

1 format of these meetings?

2 A The board of education meets officially every  
3 month, once a month, except during the month of August.  
4 We meet generally the second week of every month, and  
5 the meetings start -- the board is divided into committees,  
6 it works, generally, through the committees and the com-  
7 mittee meetings start on Wednesday at 7:30 and then on  
8 Thursday the official, full board meeting begins.

9 And on Thursday evening the committee meetings  
10 continue, and we meet again on Friday till we finish the  
11 agenda. Generally around 1:00 o'clock.

12 Q And what is the procedure for board adoption of  
13 regulations?

14 A Well, generally, when an issue comes up that the  
15 board or the department feel calls for regulations or  
16 initially have been mandated through the legislative  
17 channels, then the department requests the board --  
18 excuse me, the board requests the department that they  
19 -- the legislative mandate and the law or if it isn't a  
20 legislative mandate, whatever the issue may be, and re-  
21 quests the department to draw up guidelines and so forth  
22 related to that.

23 Then the department -- excuse me, the board will  
24 hear, in committee sessions, the public, relative to that  
25 issue. And will recommend to the board at the full meeting,

1 the adoption of those guidelines and so forth.

2 Generally, we introduce issues one month ahead  
3 and give the public a month to contemplate it and dis-  
4 seminate the information and so forth.

5 Q In your opinion, what is the board's relationship  
6 with the state department of education?

7 A Well, I wish I had been here yesterday when the  
8 people from the department were here, I tried to get a  
9 statement, a copy of the statement they presented yes-  
10 terday but I'm afraid the relationship is more foreign  
11 than I would like to see it be.

12 The -- I've heard some comments made here this  
13 morning where that the board has been -- as I mentioned,  
14 is criticized for some issues that are really the province  
15 of the department. And I think that the board just isn't  
16 involved enough in the -- in the workings of the depart-  
17 ment, to my way of thinking, as much as it should be.

18 The board --

19 Q (By the Chair) Could you give us some specific,  
20 excuse me, any of those instances that you just referred  
21 to about where the department's prerogative or the depart-  
22 ment's problem rather than the board's?

23 A Well, let's take, for instance a matter of the  
24 budget, you know, I'm talking about the department budget.  
25 I have felt, as a member of the board of education, that the

1 board should have -- take a look at the budget and see  
2 what the expenditures are going to -- within the depart-  
3 ment, you know, and try to relate the operation of the  
4 department to the policies that the board sets and so  
5 forth, and to the budget.

6 But I've been on the board of education five years  
7 and I have never had an opportunity to see the budget  
8 or comment on the budget of the department of education.

9 Q No opportunity to comment on the budget?

10 A Not at all. And this has been brought up on  
11 several occasions by members who are bolder than I am  
12 and we have been reminded that our body is a policy  
13 making body and not an administrative body.

14 Q Would you characterize your body as a rubber stamp,  
15 in your opinion?

16 A No, no, it really is a very strong, it's a strong  
17 board, particularly now. I'm very happy to say that I --  
18 that the members who have been added to the board re-  
19 cently have added a lot of strength. I think a lot of  
20 stature to the board.

21 Q But you have no influence over the purse strings?

22 A That's correct.

23 Q Which seems to be the only enforcement policy that  
24 we can come up with?

25 A You're correct. And you know, this bothers me a lot,

1 because I'm an old local school board member from way  
2 back, and it goes without saying that we operate the  
3 districts at a local level ourselves, we make up the  
4 budget and so forth, so to come to the state, you know,  
5 at the state level and not have an opportunity to make  
6 any sort of input into the budget, I think it sort of  
7 limits the power of the board.

8 And you asked me about the relationship the board  
9 might have with the department and that's a very  
10 critical area there, you know. I realize that we have to  
11 draw a line between administrative and policy making  
12 issues, but I think that a look at the budget area now and  
13 then is not delving into the administration too much.

14 Q If you don't have any input on the budget, what  
15 specific powers do you have?

16 A Well, the board really has very little power. The  
17 board presumably is charged with the responsibility of  
18 setting the policies for education in California, and we  
19 do set the policies, but, you know, we have no -- the  
20 board has no mechanism, it doesn't have a staff of its  
21 own to make sure that things are followed through and the  
22 things that the board wants, has requested done, are done.

23 We simply have to rely on the good faith of the  
24 department and take a board member like myself, I come up here  
25 once a month, I have very little way of knowing that the

1 things that I, in fact, would like to have done, are done.

2 Q Have you questioned the state board of education?

3 A Well, --

4 Q Have you questioned members who are responsible?

5 A Oh, yes, absolutely, yes.

6 Q And what happens when you're not satisfied with  
7 their response?

8 A Well, in most cases, you know, we get grey area  
9 answers, you know.

10 Q You have not pushed them?

11 A Well, that's correct.

12 Q (By Mr. Rogers) Excuse me, do you have any -- now,  
13 you said something about you not having any influence on  
14 policy --

15 A No, no, no, I didn't say that, I said in the budget.

16 Q In the budget?

17 A Yes.

18 Q Okay. Then let's deal with the policy, I'm kind of  
19 concerned about this, I'm concerned about the master plan  
20 for this upcoming year, the whole reorganization.

21 Did the board have any input whatsoever into the  
22 development of that plan?

23 A Are you talking about the reorganization of the  
24 department?

25 Q Right, the reorganization of the department, do you

1 have any input whatsoever into program development concepts?

2 What I'm trying to -- what I'm trying to establish  
3 is really your relationship with the state department.

4 A All right. I'll answer your first question. You  
5 asked me about if we had any input into the reorganization  
6 of the department --

7 Q Right.

8 A -- and the answer is no. I -- personally, I hap-  
9 pened to hear about the reorganization and the new matrix  
10 and so forth, through other channels other than, you know,  
11 than from the -- direct from the department. Sometimes  
12 from friends that -- within the department or conversation  
13 with other people, but to be notified officially and be  
14 requested to have some input as to the reorganization, the  
15 answer is no.

16 Q Well, do you have any input whatsoever --

17 A Into the --

18 Q -- into program development, policies of the state  
19 department? I'm trying to -- again I'm trying to establish  
20 your relationship with the department.

21 A Yes, yes, I can understand your confusion because  
22 I've been on the board five years and I'm confused myself.

23 The relationship is a very, very, very slim relation-  
24 ship. You know, you come up to the board meetings as I  
25 said before, twice a month, or once a month for two, three

1 days and we -- the agenda is generally so voluminous and  
2 it deals with so many routine matters, you know, approving  
3 guidelines, approving, we're currently involved in the  
4 adoption of textbooks and so forth, it takes so much time  
5 just to do the routine matters that we never get an oppor-  
6 tunity to deal profoundly into the issues of education;  
7 curriculum and program makeup and so forth.

8 Q (By the Chair) Would you characterize your function,  
9 then, as simply approving what is set before you?

10 A That's generally --

11 Q By the state board?

12 A Generally the state board approves items that are  
13 put on the agenda by the department, and we take -- it  
14 takes all our time, practically, to just do that, approve  
15 items that come before us. And most of them are routine  
16 items, you know.

17 It distresses me very much because I would like the  
18 board of education to be able to have long discussions  
19 concerning issues that affect, you know, the education very  
20 profoundly, but we never seem to have the time to do it.

21 Q Have you ever, in your five years on the board,  
22 initiated any policy from your side --

23 A Oh, yes.

24 Q -- down?

25 A Yes. Are you talking about me individually or the



1 board?

2 Q No, the board.

3 A Oh, yes, yes, the board has initiated a lot of  
4 policies, over the five years, on different issues, you  
5 know, and it does, I think it's effective in that respect.  
6 That it does initiate some of the policies, but as I told  
7 you before, the follow through is not there.

8 Q So you don't know how effective your policies are?

9 A That's correct.

10 Q It is not uncommon, I don't believe, in a bureau-  
11 cracy, for the implementors to be able to effect policy  
12 without the policy makers really knowing what's going on.  
13 However, in characterizing the respect and the position  
14 of the board, with other agencies such as the legislative  
15 analyst, are you -- are members of the board considered  
16 more adversaries than they are policy makers? I mean  
17 generally, or --

18 A By whom, by the department?

19 Q By the state board of education.

20 A Is your question, does the department consider the  
21 members of the board adversaries? Is that --

22 Q Yes, I mean in -- from what you said I'm drawing  
23 that conclusion, I'm asking you, is that a true --

24 A Yes, I wouldn't put it as strongly as to say that  
25 it's -- I think they -- I get the feeling that they put up

1 with us as necessary, as a necessity mandated by the con-  
2 stitution. They would rather not have us around, that's  
3 the feeling I get.

4 Q And they go ahead about their business --

5 A That's right.

6 Q -- knowing that you don't have time nor do you  
7 have a staff to follow through on the implementation of  
8 programs --

9 A That's right.

10 Q -- or to actually monitor them?

11 A That's right. One of the weaknesses, and I under-  
12 stand it isn't peculiar only to the board here in Cali-  
13 fornia, but one of the weaknesses is that the individual  
14 board members do not have enough supports themselves and  
15 staff, secretaries and so forth, and it's very difficult  
16 to be a member of a state board and not be able to have  
17 that.

18 I understand that the department will say that  
19 whenever we need help or you need anything just call us,  
20 you know. But you know, if you're down in San Diego,  
21 and you're trying to get something done and they're up in  
22 Sacramento, it's just, it isn't a very good organizational  
23 makeup, it doesn't work, as far as I'm concerned.

24 I hope that you don't think that I'm making a big  
25 issue of trying to -- trying to downgrade the department,

1 because I'm simply trying to tell you that I don't think  
2 there's a very good relationship and it isn't their fault,  
3 it isn't our fault, it's just the fault of the system  
4 as it has developed over the years. It isn't a real good  
5 working relationship.

6 Q Do you have documentation, then, to support these  
7 statements that you have asked the board for, or you have  
8 asked the state department for support services in your  
9 activities and they have refused?

10 A No, I don't have any. What kind of documentation  
11 could I give you?

12 Q A letter, we are going, I am going down to San Diego  
13 and I would like the following kinds of support services,  
14 and a response saying, gee, we're sorry, but we don't have  
15 one on the staff?

16 A No, I don't have that.

17 Q All of this has been done verbally?

18 A That's correct.

19 Q You have no other documentation?

20 A That's right, I don't have any.

21 Q How many instances in your particular situation has  
22 this happened? Have you been turned down after making  
23 a specific request?

24 A Well, it really isn't a matter of being turned down  
25 flat no, you know, it's a matter of -- of the -- when you do

1 get support or information you're looking for, it really  
2 isn't what you want, it's --

3 Q Well, then, have you followed through, have you  
4 demanded, as a board member now, have you demanded a  
5 response, a satisfactory response?

6 A Yes, we have.

7 Q You have demanded a satisfactory response?

8 A We're -- we're currently involved, I mentioned be-  
9 fore, in the adoption of textbooks. A very complicated  
10 process. And there's been a lot of documentation that's  
11 been sent in to the department by citizens concerning  
12 certain things about the textbooks that they don't like.  
13 And many people, not only board members, but other people  
14 have solicited information relative to that, and they  
15 haven't gotten it.

16 Q What happens when a community person brings to you  
17 a complaint, how do you respond?

18 A Individually, you mean?

19 Q The board.

20 A Oh, well, the -- the board very, very seldom gets  
21 any, you know, from the general public. I happen to be  
22 chairman of federal aid committee, which is a committee  
23 that recommends approval of all of the projects in some of  
24 the categories, the late programs and there is where we  
25 get more community concerns expressed than anywhere else.

1 We've had, recently, people from Pittsburg and Richmond  
2 and Los Angeles who have come up before the committee to  
3 express certain concerns about certain categorical aid  
4 programs, and we listen to the people there, you know,  
5 we invite them to come and tell us their concern. And if  
6 somebody, for example, calls me up and tells me that they  
7 are concerned about the operation of a certain program, I  
8 tell them to -- that if they would be kind enough to docu-  
9 ment the thing and come before the committee, and let's  
10 air it out and see what the problem --

11 Q Then what happens once you listen to their concerns  
12 and they have proper documentation?

13 A The committee, then, generally recommends to the  
14 department that they take the necessary steps to correct  
15 what is, you know, what -- the concern that the citizen  
16 might have.

17 Q It is then forwarded to the department?

18 A That's correct.

19 Q Then what happens?

20 A Well, the committee recommends to the department  
21 that they do, take the corrective steps and then report  
22 back to the committee and to the board and insure that  
23 the correct steps have been taken.

24 Q You do get a followup report, then, on those?

25 A On those particular issues we do, yes, because, you

1 know, we're just, we're talking about federal funding and  
2 programs that are very, very -- presumably very carefully  
3 monitored.

4 Q How many complaints, do you have any idea how many  
5 complaints have been brought forth to you during the past  
6 year or can you get more specific?

7 A Not -- we've had probably five or six.

8 Q Five or six, and of these five or six complaints  
9 how many have been successfully resolved?

10 A All but -- but two, two of them are in the process  
11 of being resolved now, I hope.

12 The department is working on two of them that are  
13 very critical. But the other three have been resolved.

14 Q And this is all in the past year?

15 A Yes, within the last -- yes, within the last ten  
16 months actually.

17 Q Can you provide our staff with the specifics of  
18 these five or six cases? Perhaps later on?

19 A Yes, okay.

20 Q We can add that to our report.

21 A Yes.

22 Q (By Mr. Griffin) Madame Chairman?

23 THE CHAIR: Yes.

24 Q (By Mr. Griffin) I would like to ask, members of  
25 the board are appointed by the governor --

1 A That's right.

2 Q -- there is legislation that gives you a mandate  
3 to do certain -- to be the policy makers?

4 A Yes.

5 Q Do you feel as though that mandate is strong enough  
6 as it is now presently constituted or should it be changed  
7 or should, you know --

8 A I think the mandate is quite clear, you know, the  
9 board is -- is a -- is constituted very officially by the  
10 state constitution.

11 One of the problems, I think, is that in many instances  
12 legislators are actually a superboard of education. And  
13 they, when they have particular leanings towards an issue,  
14 they can legislate things which may be contrary to the  
15 way the board wants them, see?

16 Q They can out-lobby --

17 A Oh, yes.

18 Q -- the state board out-lobbies you on particular --

19 A No, no, the legislature.

20 Q Legislature? I'm sorry.

21 A Yes. And you know, sometimes -- sometimes it's  
22 good, but most of the time it isn't.

23 I would like to see the duties of the board outlined  
24 very clearly, and then the board left to function as it  
25 should, and if it doesn't function, then change it, change

1 the ground rules. But it seems that as the years go on  
2 the legislature gets involved more in mandating things to  
3 the board, you know. Other than the duties that were --  
4 that were originally assigned to it, constitutionally,  
5 see? And this, it just isn't a good working relationship.

6 Q (By Mr. Yoshioka) One other question. Has the  
7 board taken any recent action regarding bilingual education  
8 or educable mentally retarded programs?

9 A Well, the board, you heard all the discussion this  
10 morning about the master plan for special education. The  
11 board was very instrumental in developing that particular  
12 plan. We appointed the commissions who developed the  
13 plan and we officially adopted the plan as we are sup-  
14 posed to by law, and we had a lot of input into it. We  
15 had hearings and a couple of the board members worked very  
16 directly with the committee, so we did, we had a great  
17 deal to do with that particular thing.

18 Related to bilingual education, I'm sorry to say  
19 that the board, until maybe a couple of years ago, was  
20 sort of cold on it, you know. And it took -- it took a  
21 lot of, oh, a lot of leg work, a lot of propaganda, a lot  
22 of pressure from many individuals, including myself, to  
23 sell the board of education on the concept of bilingual  
24 education. And to sell them on the idea that it was -- it  
25 was a worthwhile effort. And once we sold them, I think the



1 board has, for a while, remained sort of level on it,  
2 they weren't for it or against it, but now that the  
3 programs, some of the programs have proven -- proven to be  
4 quite successful, the board is more convinced that they --  
5 that it is a good effort and I think that the board is  
6 working very strongly in support of bilingual education.

7 Q I believe that yesterday Dr. Webster said, or one  
8 of the people testified, said that bilingual programs would  
9 be incorporated into the general programs of the depart-  
10 ment rather than as -- rather than as a specialty?

11 A Yes, I understand, you asked me a while ago if we  
12 had any input into the reorganization of the department  
13 and I understand now that this is one of the efforts that's  
14 being made, whereby the bilingual education is going to be  
15 incorporated into total educational program in the State  
16 of California.

17 The department has developed a -- what they call  
18 a matrix of a reorganization to expand the program hori-  
19 zontally to cover all the -- all the areas, all the  
20 academic areas and all the grades and I'm very happy to  
21 see that happen. However, I don't know whether we'll be  
22 able to monitor that, you see, that's the idea that we  
23 have in mind.

24 I mean we in the department, and I'm sure the board,  
25 but whether this is actually going to happen, it's one thing

1 to say it and one thing to see it happen. It's a very  
2 difficult thing to monitor.

3 Some of the school districts, as a matter of fact,  
4 these are some of the complaints that have come before  
5 the committee, some of the school districts in California  
6 are philosophically against, some of the school boards are  
7 philosophically against bilingual education, so they do  
8 everything in their power to discourage the community  
9 from participating in them. Some of them have even  
10 deliberately voted down the acceptance of Title VII funds  
11 for bilingual education and have forced the community to  
12 sue the local boards to institute those programs.

13 I have, in my briefcase, a letter, I wish I had  
14 brought it, from one of the districts of southern California  
15 that is currently being taken to court on those bases,  
16 you see? So all right, so then you turn a program loose  
17 on the school districts that is -- that's supposed to  
18 inject bilingual education to all areas of the school  
19 system. And if the local school board is philosophically  
20 against it, you know, there isn't anything you can do  
21 about it.

22 Q I was wondering, could we get a copy of that letter  
23 that you referred to?

24 A Yes, I brought it, actually to bring to you, but  
25 I -- I forgot the briefcase during my visit this morning.

1           A thing that concerns me and I think the gentleman  
2 from the analyst's office touched on this, thing that  
3 concerns me is that some of the school districts, and  
4 some of the local communities, some of the local people  
5 have been sort of hoodwinked into saying if you don't  
6 conduct a bilingual program or the categorical aid programs  
7 the way we want them, we'd rather not have the money, you  
8 know, just forget about the funding, keep your damned  
9 money and leave us to ourselves. We'd rather do without it.

10           Well, some of the local school boards are dying to  
11 do that, you know, philosophically they don't want the  
12 money so we end up hurting the children in an effort to  
13 satisfy the demand of the parents, you see?

14           THE CHAIR: I think our staff has a question.

15           Q     (By Ms. Godoy) Yes. Mr. Sierra, Bilingual Educa-  
16 tion Act of 1972 required that the board adopt all rules  
17 and regulations for the implementation of that bilingual  
18 act. Several people yesterday commented that the board,  
19 however, did not adopt those regulations until this year.  
20 Would you care to explain the board's delay in complying  
21 with this state law?

22           A     I wish I knew the real answer to that. I was as  
23 concerned as you are, because of the lack of adoption of  
24 these rules, because I know that it was a state mandate,  
25 the state law. And we kept requesting, this is one of those

1 areas where we requested the department to do this, for  
2 certain things, and there's no way that we can pressure  
3 them into doing that. They keep saying, well, they're  
4 coming up next month or they're coming up in two months,  
5 and it just kept going on and on until it finally did  
6 arrive.

7 Q But then, in 1972, around that time, you did request  
8 the department to draft some rules and regulations?

9 A Yes, that's correct.

10 Q And you did not receive them until this year?

11 A Until this year, I can't remember the exact date,  
12 but it was just recently, and we adopted them.

13 Q (By Mr. Griffin) Did it coincide with the arrival  
14 of the Viet Nameese?

15 A Well, the Viet Nameese?

16 Q Yes, at Camp Pendleton?

17 A No, I think this was prior to that. I believe it  
18 was one or two months before that, I can't recall exactly.

19 Q But the new matrix, organizational plan that was  
20 shown to us yesterday, did the board have any input in that  
21 matrix program whatsoever?

22 A No.

23 Q The new reorganization?

24 A None at all. I was brought into it because some  
25 of the people here in California were concerned as to what

1 the reorganization of the department would do to the  
2 bilingual task force within the department, and a lot of  
3 people expressed their concern to me and they thought that  
4 I, being a member of the board, could do something about  
5 it, you know. Which, of course, I couldn't. Because  
6 that's an administrative matter, presumably.

7 At any rate, I was brought into this and I met  
8 with several groups in southern California and up here in  
9 northern California, concerning the reorganization and  
10 where the bilingual task force would fit into this whole  
11 deal, you know.

12 You know, I -- I met with a couple of the assis-  
13 tant superintendents and with the superintendent himself  
14 and discussed this issue, but I understand that the re-  
15 organization went through nonetheless.

16 Q Without the board having any knowledge of it?

17 A Yes. As a matter of fact, I don't know where it  
18 stands now. I may be talking out of turn, maybe it hasn't  
19 -- it isn't a fact yet, but I understand it is.

20 THE CHAIR: If there are no questions, thank you.

21 A I want to say, Madame Chairman, I want to say a  
22 couple of things here. I don't want you to think that  
23 I'm -- that I'm a rebel and that I'm really not -- that  
24 I'm completely disenchanted with the department, because  
25 that isn't the case. I simply want to indicate to you that

1 there's a lot of room for improvement in the relationship  
2 between the board and the department. There are a lot of  
3 good people in the department who exert strong effort for  
4 the children of California, and I don't want you to think  
5 that I'm trying to discredit those people.

6 The superintendent himself probably finds himself  
7 in situations that are beyond his control, you know. And  
8 some of those I'm probably, I have probably made you think  
9 are his fault, which in reality they may not be.

10 THE CHAIR: I appreciate your concerns, thank you.

11 The meeting stands adjourned until 1:45.

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13 (Noon recess)  
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