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UNITED STATES DISTRICT COURT
DENVER, COLORADO

JUL 7 1999

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CONGRESS OF HISPANIC EDUCATORS,

Plaintiff,

vs.

SCHOOL DISTRICT NO. 1, DENVER,
COLORADO,

Defendant.

JAMES R. MANSPEAKER
CLERK

BY _____ DEP. CLERK

95 M 2313

FAIRNESS HEARING
TRANSCRIPT OF PROCEEDINGS

Proceedings held before the HONORABLE RICHARD P. MATSCH, U. S. District Judge for the District of Colorado, beginning at 1:30 p.m. on the 3rd day of June, 1999, in Courtroom C-204, United States Courthouse, Denver, Colorado.

APPEARANCES

For the Plaintiff:

Peter Roos, Esq.
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785 Market Street, #420
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For Padres Unidos:

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Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

Congress Hispanic Ed v. Sch. District No. 1



OT-CO-001-011

APPEARANCES: (Continued)

For the Intervenor:

Jeremiah Glassman, Esq.
601 D Street, N.W.
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For the Defendant:

Michael Hodges Jackson, Esq.
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P R O C E E D I N G S

(At 1:30 p.m. on June 3, 1999, in the United States District Court at Denver, Colorado, before the HONORABLE RICHARD P. MATSCH, U. S. District Judge, with counsel for the parties present, the following proceedings were had:)

THE COURT: Be seated, please.

We're here in 95 M 2313, Congress of Hispanic Educators, Plaintiff, United States, Intervenor, and School District Number 1, Denver, Colorado, Defendant, pursuant to an order entered April 21st setting this hearing and directing notice under Rule 23(e) of the submission of proposal to settle class action filed April 20, 1999.

And there's also a special appearance with the request for permission to be heard on objections by Padres Unidos, Incorporated.

So we have Mr. Roos for the plaintiff, Congress of Hispanic Educators. Mr. Glassman for the intervenor. Mr. Jackson for the defendant. And do we have the--

MS. BENAVIDEZ: Yes, Your Honor. Adrienne Benavidez.

THE COURT: All right, Ms. Benavidez for the Padres.

So I guess I need to make sure that there has been compliance with the requirements of notice here. Mr. Jackson, were you going to take care of that?

MR. JACKSON: Yes, Your Honor.

THE COURT: All right.

1 MR. JACKSON: I can do it one of two ways. I can report
2 to the Court, or I can call a witness to do--

3 THE COURT: No, you could report as to what notice was
4 provided, and so forth.

5 MR. JACKSON: All right.

6 THE COURT: We have of course in the order, I directed
7 that you proceed with the forms of notice attached as
8 Exhibits 1 and 2, and so forth. We need to make a record
9 that that was done, if it was. I hope it was.

10 MR. JACKSON: It was indeed.

11 First, Your Honor, with respect to Exhibit 1, that
12 was sent out to the approximately 14,000 of the parents or
13 guardians of the 14,000 plus students in the Denver Public
14 Schools who are English language learners.

15 In addition, the notice as required by the order
16 was translated into Spanish, which was Exhibit 2, and was
17 published for a period of four weeks in Navos and El
18 Seminario, as required by the order. We have filed with the
19 Clerk's office today the affidavits of the publishers,
20 together with the form of the notice, indicating that it was
21 published for the required period of time.

22 In addition, we have--

23 THE COURT: Are those papers filed downstairs?

24 MR. JACKSON: Filed downstairs. I have copies here if
25 you'd like copies now?

1 THE COURT: Yeah, I would. Yes, I would.

2 All right. And here are the publishers'
3 affidavits.

4 MR. JACKSON: Yes.

5 THE COURT: Okay.

6 MR. JACKSON: As noted on the affidavits, Your Honor, we
7 did secure a post office box for the receipt of objections,
8 as called for in the order, and that post office box is noted
9 on the form of notice that was published. I have been
10 advised by the clerk, the deputy clerk, Mr. Ehrlich, that no
11 objections or letters or submissions of any sort were
12 received in that post office box, which was checked weekly by
13 the Clerk's office.

14 THE COURT: That's the P.O. Box 993?

15 MR. JACKSON: Okay.

16 THE COURT: Okay.

17 MR. JACKSON: In addition, Your Honor, I would report
18 that I received no response pursuant to that notice. I'm
19 advised by counsel for the United States and for the
20 plaintiffs that, likewise, they received no correspondence,
21 save for the copy of the special appearance and request that
22 was filed by Padres Unidos.

23 In addition, the copy of the plan in Spanish and in
24 English was placed in each school within the school district,
25 and in accordance with the submission to you, copies were

1 available at the administration building, again in Spanish
2 and in English. Lists of translators for Khamur, Vietnamese
3 and Russian were provided, and provision was made for those
4 who wish to purchase a copy of the plan were announced, and
5 those copies were available in the office of the school
6 administration building at a cost of \$3.00. No one appeared
7 requesting to buy a copy of the plan.

8 Now, the documents that were submitted to the
9 schools and were in place for view included the joint Exhibit
10 A, which was the plan itself which was submitted to the
11 Court, and joint Exhibit B, which was the section relating to
12 monitoring. Exhibit B also contained the vitae of the
13 proposed monitor, Dr. House.

14 So with respect to the technical aspect, if you
15 will, Your Honor, of the procedures required for the notice,
16 we believe we have complied.

17 THE COURT: Okay.

18 MR. JACKSON: All right.

19 THE COURT: All right, Mr. Roos for the plaintiff here,
20 I take it you're prepared to confirm Mr. Jackson's statement
21 that you didn't receive any objections, other than the one
22 that is represented here?

23 MR. ROOS: That is correct. And in addition, we have
24 received no information that would contradict anything that
25 Mr. Jackson said concerning the placement of the plan in the

1 schools, and the like.

2 THE COURT: All right.

3 MR. ROOS: So as far as our knowledge is concerned,
4 everything was done correctly.

5 THE COURT: So we have a procedural compliance.

6 MR. ROOS: That is correct, Your Honor.

7 THE COURT: And are prepared to consider this matter on
8 its merits.

9 MR. ROOS: Yes.

10 THE COURT: You received, I presume, the written
11 objections regarding the proposed settlement filed by counsel
12 on behalf of what's identified here as Padres Unidos?

13 MR. ROOS: Yes, sir.

14 THE COURT: And I don't know whether any discussion was
15 had with representatives of that group and the plaintiffs, or
16 what has happened, or whether we're going to consider them in
17 detail here, or what.

18 MR. ROOS: I believe that--I mean, we have spoken to
19 them and we've dealt with them over the course of time. I
20 think they do want to present their--some testimony, or
21 present in person their concerns, and we think that that's--
22 it seems appropriate to us. The community obviously should
23 be heard.

24 We would suggest, and again I don't know how the
25 Court regularly handles these, and maybe they proceed first,

1 and then I know that the District--and rather than have us
2 get up and sort of give an overview of what we have done, but
3 have them go first. And then I know the District feels a
4 need to present some witnesses.

5 THE COURT: Sure. I want to hear from the District with
6 respect to their readiness to implement this plan, and maybe
7 also some summary.

8 MR. ROOS: Right.

9 THE COURT: I of course read the proposed decree here
10 and Exhibit 1 and Exhibit 2. So I'm familiar with it, but we
11 have people in the courtroom who may not be.

12 Mr. Jackson, how do you wish to proceed? And I
13 don't know to what extent you may have discussed with or
14 considered the objections.

15 MR. JACKSON: I have certainly considered them. I have
16 not spoken with counsel about them. I would join with Mr.
17 Roos in the suggestion that they be permitted to state their
18 objections initially.

19 THE COURT: Okay.

20 MR. JACKSON: And as the Court noted, we are prepared to
21 present witnesses from the school district that will talk not
22 only about the development of the plan, but will provide an
23 overview for the Court's benefit as to what they believe to
24 be the significant, not only changes, but components of the
25 plan, and then deal specifically with the issues of

1 implementation.

2 THE COURT: And will they be in a position to address
3 any of these objections?

4 MR. JACKSON: To the extent that they are truly
5 objections, they will be, Your Honor. As I view them, I
6 believe that many of them, although perhaps titled as
7 objections, really are concerns about implementation.

8 THE COURT: Well, that's right, and there are some
9 concerns about the way in which the \$3.00 plan was available,
10 and so forth, and I'll hear from counsel about that. But it
11 strikes me that it's most efficient, if this is agreeable to
12 counsel for the objections, to hear from her first, and then
13 to the extent that some of these things might be addressed in
14 any of the--by any of the witnesses you call, we can deal
15 with it without having to recall them.

16 MR. JACKSON: Fine.

17 THE COURT: Okay. So, let me ask Ms. Benavidez to
18 proceed.

19 MS. BENAVIDEZ: Thank you, Your Honor.

20 As we stated in our request to submit these
21 objections and comments, as well as testimony, Dr. Kathy
22 Escamilla, who is a board member of Padres Unidos, is here
23 with me to provide that testimony, and we're ready to proceed
24 in whatever manner you'd suggest.

25 THE COURT: Well, I don't know whether you want to make

1 a statement about these objections and then hear from him, or
2 however you want to proceed is all right with me.

3 MS. BENAVIDEZ: She can provide the testimony. She's
4 ready.

5 THE COURT: Okay.

6 MS. BENAVIDEZ: Would you like her to come up here or--

7 THE COURT: Yes. Come on up and be sworn, please.

8 KATHY ESCAMILLA

9 called as a witness herein, having been first duly sworn, was
10 examined and testified as follows:

11 THE CLERK: Would you state your full name for the
12 record, and spell your last name?

13 THE WITNESS: Yes. Kathy Escamilla, E-s-c-a-m-i-l-l-a.

14 THE CLERK: Thank you.

15 THE COURT: Do you wish to proceed?

16 DIRECT EXAMINATION

17 BY MS. BENAVIDEZ:

18 Q Dr. Escamilla you wanted to summarize the objections
19 and comments and make additional statements?

20 A Yes.

21 Q Go ahead.

22 A Good afternoon, Your Honor.

23 It is important we believe that any plan that's
24 mandated by a court and accepted by a school district be
25 implemented in its entirety. I believe that all parties

1 concerned here today would agree that an issue with the
2 current court order is not in its failure to service
3 children, but rather in its failure to be fully implemented.

4 Given the likelihood that some version of the
5 proposed plan is going to be implemented and approved by you,
6 it is important to state that our purpose here today is not
7 to derail a train that appears to be moving down the tracks,
8 but rather to ensure that all of the wheels on the train are
9 fully operational.

10 It's critical that if this plan is approved, all
11 aspects of the plan be implemented in their entirety. To
12 that end, it's important to acknowledge the role of the
13 monitor in the new plan, and to state that this is a
14 significant addition and one that we support.

15 That said, however, I think it's important to look
16 at five key elements of the plan and ways to better assure
17 that they are implemented in their entirety. As they are
18 stated in the proposed plan, we feel that they pose potential
19 obstacles to full implementation. Padres Unidos has proposed
20 additional language that we feel would help to ensure full
21 implementation. We feel that these are reasonable and
22 legitimate considerations, and we ask you to consider them
23 seriously.

24 The five major issues relate to parent permission,
25 a parent's right to appeal decisions that are made for their

1 children, parents and teachers having access to the monitor,
2 and anonymity related to having access to the monitor, the
3 plan's exit criteria and administrator training. The Court
4 has a copy of the written comments, and my intention is to
5 just summarize them.

6 The first issue about parents is that parents need
7 real information. We are concerned that the school district
8 proposes to charge a fee of \$3.00 for parents who want
9 information about the program in Spanish, while English
10 copies are free. We're concerned about that. We're
11 concerned that non-English speaking parents may not be
12 literate in their native language, and even if they have
13 information in their native language, this doesn't provide
14 real access.

15 The plan does provide provisions for an oral
16 interpreter in cases where more than 100 students speak the
17 same language, but parents have to request the services. How
18 do I know that I have a right to request an interpreter if
19 I'm not given information in my own language?

20 We are particularly concerned that school
21 secretaries, as competent as they are, may not be the best
22 people to give parents information about the program. So we
23 would like to suggest that parents have real information, and
24 one of our suggestions would be that the parents have a bill
25 of rights that's available to them in English and Spanish,

1 and that the District, in collaboration with others in the
2 community, develop a video tape about the program that is
3 available to all schools for parents to--

4 THE COURT: Let me interrupt there. When you say bill
5 of rights, are you talking about their rights under the plan?

6 THE WITNESS: Yes.

7 THE COURT: Okay. You're not talking about some
8 separate--

9 THE WITNESS: No, no. No, we're talking about that they
10 have the right to refuse the program if they want to, that
11 they have a right to file an appeal.

12 THE COURT: Yeah, okay.

13 THE WITNESS: Currently, on Pages 13 to 16 of the
14 program, parents have no right of appeal. They have a right
15 to say that they don't want the program for their child, but
16 once their children are in the program, once the District has
17 made the decision to exit them from the program, they do not
18 have a right to say I want my child to stay in the program
19 for a longer period of time.

20 There is language about parents being able to go
21 and say I disagree with this decision, but as the plan
22 currently states, the parents can file an objection, but the
23 objection goes in a file. There's no language how
24 procedurally parent objections are going to be handled, or
25 how long it will take for parents to get satisfaction to

1 objections. So we're concerned about that.

2 We are concerned about, again, parents knowing that
3 they have access to the monitor. We want to be sure that the
4 monitor has access to schools and to teachers. We're further
5 concerned that teachers who may provide information to
6 monitors fear retaliation, and so we would like for teachers
7 to be able to provide information that they feel is critical
8 to program implementation in a way that they are anonymous.

9 We have a major concern about the standards of exit
10 being too low, and I would like to address two specific
11 issues. One is that Number 2 on the proposed exit criteria
12 says that a student may be exited from the program if they
13 score between the 20th percentile on a Norm reference test.
14 This places students in the lower quartile, and in some
15 schools in some school districts, students in the lowest
16 quartile are considered to be poor readers, and yet the
17 standards for exit would identify children who read like this
18 who are English language learners as being proficient in
19 English. And so there seems to be a major discrepancy
20 between the definition of what constitutes being proficient
21 in English.

22 We have already begun to see aspects of the plan
23 being implemented that give us cause for concern. There are
24 42 school that have been identified as ELAP program schools,
25 these are schools that would be priority schools, as a result

1 the third grade CSAP, and I want to differentiate between the
2 CSAP and the Iowa Test of Basic Skills.

3 In the District Board notes of May 28, 1999, the
4 District said that the ITBS results that were reported in the
5 paper as proving that the District is making positive gains
6 in literacy did not include students who are just learning
7 English, but the CSAP does. So the CSAP is probably the very
8 best way to look at how well potential English language
9 learners are doing in the program.

10 With regard to CSAP results, approximately 42
11 schools that have been identified as ELAP schools reported
12 their results in May. 29 of these schools, or 69 per cent of
13 them, had fewer students passing the third grade CSAP this
14 year than in 1998. Ten or more of the schools had 10 per
15 cent of the students failing the CSAP. One school posted the
16 same results and only 13 had any significant improvement to
17 report.

18 And so we are concerned that the standards for exit
19 are too low and will result in students being exited to
20 failure instead of provided a meaningful opportunity to
21 participate in an all English classroom.

22 We are concerned about Number 4 of the exit
23 criteria, which basically provides loopholes for Numbers 1
24 through 3, and would suggest that Number 4 be eliminated if
25 the Court decides to accept Numbers 1 through 3.

1 The last concern is with regard to--

2 THE COURT: Let me just stop you there. I'm not right
3 there at the moment. Let me get to that chapter, because I
4 don't remember what Number 4 is.

5 THE WITNESS: I'm sorry?

6 THE COURT: I don't remember what Number 4 is on the
7 exit. That's Chapter 5?

8 THE WITNESS: It's Pages 13 to 16 of the plan.

9 THE COURT: Okay. Hold on.

10 THE WITNESS: And there are four suggested criteria, and
11 Numbers 1 through 3 outline criteria that include both oral
12 language and reading and writing, and Number 4 is a way of
13 saying if students become orally proficient but they haven't
14 yet met reading and writing criteria, they could be exited
15 based on, and then there's a series of if this, then this.
16 If they're getting good grades, then maybe they can be
17 exited, if they don't meet the writing criteria and they
18 score a Number 2 under some circumstances. That presents a
19 series of loopholes that provide a significant concern about
20 full implementation.

21 THE COURT: Okay, thanks.

22 THE WITNESS: Finally, we have a concern that there is
23 no administrator training provided as a part of the plan.
24 Administrators, particularly school principals, have the
25 lion's share of the responsibility for implementation of this

1 plan. They have to lead schools. As we know, they're the
2 ones who get transferred if schools don't make significant
3 progress on things like reading and writing measures. They
4 are going to be responsible for convening the ICA teams in
5 their school, and the ICA teams in the schools are the teams
6 who are going to exit kids out of the program.

7 They carry the responsibility, and it doesn't seem
8 quite fair that a lot of them are--have this responsibility
9 but don't have any formal preparation for carrying it out.

10 THE COURT: Well, what do you mean with training here?
11 What would the training be?

12 THE WITNESS: I think that they at least should know
13 what aspects of the program are. They're responsible for
14 identifying--

15 THE COURT: They ought to know the plan?

16 THE WITNESS: Yes.

17 THE COURT: Okay. Well, you're not talking about some
18 special language training or--

19 THE WITNESS: No, no, I'm talking about that they need
20 to know the plan.

21 THE COURT: The rules.

22 THE WITNESS: Yes.

23 THE COURT: Okay.

24 THE WITNESS: Okay, I'd like to close by saying that you
25 do have a written copy of all of this concern and that, you

1 know, our commitment is to help language minority students.

2 THE COURT: Sure.

3 THE WITNESS: And not to get in the way of what has
4 potential to help them. I'd be happy to answer questions.

5 THE COURT: Do you know the monitor who is suggested
6 here?

7 THE WITNESS: I know him, but I don't know him well.

8 THE COURT: Well, you know his background?

9 THE WITNESS: Yes.

10 THE COURT: His CV, and so forth. Do you have any
11 objection to him becoming the monitor?

12 THE WITNESS: None.

13 THE COURT: Which is a rather significant role here.

14 THE WITNESS: Uh-huh. No objection.

15 THE COURT: Okay.

16 MS. BENAVIDEZ: If I could ask Dr. Escamilla a couple of
17 questions?

18 THE COURT: Certainly.

19 Q (by Ms. Benavidez) Dr. Escamilla, one of the other
20 areas that we--that Padres has raised a concern was with
21 materials that I'm not sure you completely addressed. Would
22 you like to comment on that?

23 A Yeah, a comment. At issue again, which there did not
24 seem to be any disagreement on either side was that schools
25 need materials in order to be effectively--be able to

1 effectively teach kids, and that schools have not had all the
2 materials that they need.

3 While the new plan calls for making standards to
4 adopt materials, it doesn't specifically say that schools
5 should have materials to teach, for example, English as a
6 second language, or to teach reading to second language
7 learners of English.

8 Q Dr. Escamilla, you also described in the information on
9 access in the video presentation, the bill of rights. We had
10 attached some proposed language, and I think the Court asked
11 you a question on those bill of rights. Is that what Padres
12 is proposing be included in the presentation?

13 A Yes.

14 Q And I failed to ask you to maybe for the Court's
15 information, to give a little background information on
16 Padres Unidos and yourself.

17 A Okay. Padres Unidos first?

18 Q Sure.

19 A Okay. Padres Unidos was formed the beginning of the
20 1990s as an advocacy and issues group for children in the
21 Denver Public Schools. My involvement with Padres began two
22 years ago, and I serve in an advisory capacity on the board
23 of Padres Unidos. I am a professor at the University of
24 Colorado at Boulder, and my area is bilingual education. So
25 I'm very interested in these issues.

1 THE COURT: Well, are the people in the organization
2 principally parents--

3 THE WITNESS: Yes.

4 THE COURT: --or are they teachers or--

5 THE WITNESS: Yes. And Padres has an advisory board
6 that's made up of professionals in the community who they can
7 call on around various issues, medical issues, legal issues,
8 educational issues.

9 THE COURT: And have you participated in the advisory
10 group? I can't remember the name of the advisory group.

11 MS. BENAVIDEZ: HEAC. The Hispanic Education Advisory
12 Committee for DPS.

13 THE WITNESS: No, I have not.

14 THE COURT: Okay.

15 Q (by Ms. Benavidez) Maybe you could describe a little
16 more fully some of the activities that Padres does and their
17 membership, the parents?

18 A Well, the membership is composed of parents who are
19 parents of children in the Denver Public Schools, and it's an
20 advocacy organization around educational issues, but there
21 are other issues, too, health issues, legal issues, and I
22 would--I don't know what you want me to say or what I should
23 say other than they advocate for particularly when people
24 have concerns about how their children are being treated,
25 whether or not their children should have access to

1 particular kinds of programs.

2 Q And perhaps their involvement with bilingual education
3 in particular, with the filing of--their involvement with the
4 filing of the OCR complaint?

5 A Yes. Padres Unidos has been very involved with
6 bilingual education in the school district, working since the
7 early 1990s with the Latino Education Coalition. As a matter
8 of fact, it's my recollection that about 1994, Padres, in
9 conjunction with CHE and the Latino Education Coalition, did
10 enter into a memorandum of understanding with the school
11 district outlining seven goals for the education of Latino
12 children, and Number 7 of that goal specifically related to
13 bilingual education.

14 MS. BENAVIDEZ: Unless you have other comments, Dr.
15 Escamilla--

16 THE COURT: Well, Mr. Roos, do you have any questions?

17 MR. ROOS: No cross-examination. I'd like to comment on
18 some of the points made--

19 THE COURT: Well, sure, we'll give you that opportunity.

20 MR. ROOS: No, I have no cross-examination.

21 THE COURT: How about Mr. Glassman?

22 MR. GLASSMAN: No questions, Your Honor.

23 THE COURT: Mr. Jackson?

24 MR. JACKSON: I do have just a couple that I think would
25 be helpful in terms of clarification.

1 THE COURT: All right. Proceed.

2 CROSS-EXAMINATION

3 BY MR. JACKSON:

4 Q Is it Dr. Escamilla?

5 A - Uh-huh.

6 Q Dr. Escamilla, do you have a copy of the plan before
7 you?

8 A I left it over on the desk over there.

9 THE COURT: Well, we'll get it for you. Dr. you have
10 it, Ms. Benavidez?

11 THE WITNESS: Okay, now I do.

12 Q (by Mr. Jackson) Okay. Just a few questions. First,
13 the concern that you had--I believe your testimony was that
14 your understanding was that someone would have to pay \$3.00
15 if they wanted a copy of the plan in Spanish, but if it was
16 in English it was free?

17 A Right.

18 Q In fact, isn't it true, Dr. Escamilla, that anyone can
19 look at a copy of the plan in either English or in Spanish,
20 but if they want to purchase a copy of the plan in English or
21 in Spanish, it's \$3.00?

22 A Are you saying that it's available for purchase in
23 English also if one wants to take it?

24 Q Yes. Did you have a chance to look at the exhibits that
25 reflected that there was--

1 A I have that. Uh-huh.

2 Q --available for purchase in English or in Spanish for
3 \$3.00?

4 A No. I mean, yes, I have the plan. No, I was not aware
5 that both in English and Spanish had to--

6 Q All right. Were you aware of that section of the plan
7 that said that at the time students register in school, or
8 that parents bring students to register in the school
9 district, that they are to be provided with information about
10 the specific program elements that are available at that
11 school?

12 A Yes. Uh-huh. Yes. It's not the elements of the
13 program that are a cause for concern; it's who is going to be
14 providing the parent information and whether or not the
15 people who are going to be providing parents information have
16 sufficient information themselves to help parents make
17 informed decisions.

18 Q Okay. So you recognize that the plan does call for
19 fairly extensive information to the parents?

20 A Right. The issue is, and I want to state again, that if
21 we have school secretaries providing the information to
22 parents and parents have questions, that those people won't
23 necessarily have all the information they need to provide
24 parents the opportunity to make an informed decision.

25 Q So, in reality, we're talking about implementation

1 concerns as opposed to plan objection concerns; is that fair?

2 A No. Well, I don't think so, because I would like to see
3 it specifically stated in the plan that beyond the--this is
4 going to be available at a school, to be delivered by a
5 secretary, or someone else, that if parents have questions,
6 that there will be other resources at the school for people
7 like school secretaries to draw on.

8 Q You realize--

9 A And a video tape would be very helpful in that regard.

10 Q You realize that the plan calls for information to be
11 provided, provides opportunities for parents to designate the
12 language that they prefer communications to be in?

13 A Yes, I understand all of that.

14 Q All right.

15 A This is in addition to what's proposed in the plan and
16 not instead of.

17 Q And you understand those provisions of the plan that
18 talk about this being something that is the subject of
19 reports by the school district as a part of the
20 accountability process, and is something that the monitor
21 will be looking at?

22 A Yes.

23 Q Now, speaking of the monitor, you did have the
24 opportunity to read the section--the joint Exhibit B on the
25 monitor, did you?

1 A Uh-huh.

2 Q And do you recall the section of that that discusses the
3 fact that the monitor specifically will have the authority to
4 receive information in confidence and he may make requests of
5 the schools for information?

6 A Yes, I understand that very well. I would like to raise
7 an additional concern, however. This being the very first
8 year of what we call I would guess a preliminary or a pilot
9 example of the program implementation, we do have anecdotal
10 reports from teachers in schools that when they raise
11 objections to kids being exited from the program, or when
12 they raise concerns about program implementation, that they
13 have been retaliated against.

14 Q That relates to this plan?

15 A Yes, absolutely that it relates to this plan. It was
16 about A and B kids who were being exited out of the program
17 without meeting any exit criteria, and when a teacher called
18 and reported her concern, and there's no official monitor, so
19 we had to call whoever was available to her, in fact she has
20 been retaliated against the rest of the year.

21 Q This plan hasn't been implemented yet, has it? The
22 Court has not authorized this plan to be implemented.

23 A Well, I would think that everyone here would agree that
24 versions of the plan have indeed been implemented this year,
25 and as a matter of fact, I think we have newspaper reports of

1 officials from the district saying that they have begun
2 implementation, particularly at several schools that have
3 volunteered to do early implementation. Yes, sir, I believe
4 that it has been implemented, not at every school, not fully
5 implemented.

6 Q And your source for that is the newspaper?

7 A One source for that is the newspaper. Other sources are
8 anecdotal reports from teachers, and we do have their names,
9 and they were most willing to have their names be used in
10 court, and the schools that they teach at.

11 Q When you stated that there were no opportunities for the
12 parents to appeal decisions regarding--

13 A There are multiple opportunities for parents to appeal.
14 What is not clear in the plan is what will be done with
15 parents' appeals. They can file an appeal, and I believe
16 what the plan says is that the appeal will be put on file in
17 the director's office. And I don't think that anyone would
18 consider that to be an appropriate response to a parent who
19 says I want my child to continue in this program.

20 The appeal process, as a matter of fact, is so
21 lengthy that a child could be out of the program in a year or
22 two before anyone gets around to telling them we made a
23 mistake.

24 Q What part of the process is lengthy?

25 A Could we look at the specific pages?

1 Q Well, I'd--

2 A Which are Page 13 to 16. Okay, the letter C on the top
3 of page 14, "The students, parents and the student, if in
4 grades 9 through 12, are informed whenever it is determined
5 by the Department of English Language Acquisition that the
6 student should be exited from the program, and are given
7 opportunity to request that the decision be reviewed by the
8 executive director of the Department of English Language
9 Acquisition." I guess I'd like to remind you that there are
10 over 15,000 students that are in some way going to be
11 impacted. It may take a while to get from a particular
12 school site to the executive director of the Department of
13 English Language Acquisition, assuming that all he is doing
14 is looking at parent requests for appeal.

15 "A record of each request and its disposition is
16 maintained for two years." All it says is that this is going
17 to--a record is going to be kept of parent objections. It
18 doesn't say that parents are going to be informed in any way
19 if, for example, their request is denied, accepted, to have
20 their kids stay in programs.

21 Q Would you just turn to Page 15. Do you see the
22 provisions there for monitoring students who are exited from
23 the program?

24 A Uh-huh.

25 Q And do you see within that, contact is maintained with

1 the parents with respect to students that are exited?

2 A And what happens if a mistake was made and a year has
3 gone by?

4 Q The point is they are advised throughout this process.
5 It is not a whole year that goes by. They're advised at nine
6 week intervals and with report cards and for others; right?

7 A Advisement isn't the same thing as having a parent say I
8 want my child to continue in the program, and the District
9 saying you can let us know that you don't want your child to
10 be in the program, but we're not going to do anything about
11 it, and a year later, we're maybe going to say--

12 Q Well, there's nothing in the plan that says that, is
13 there?

14 A There's nothing in the plan that guarantees that a
15 parent who says I would like my child to stay in this program
16 one more year or two more years can do that.

17 THE COURT: Well, are you suggesting that there ought to
18 be some body to adjudicate the difference of opinion between
19 the school people and parents?

20 THE WITNESS: I'm suggesting that parents' concerns be
21 legitimate, and that if a parent can take their child out of
22 the program, they ought to have the right to say I think that
23 this is the best place for them. This is not unusual in what
24 most educational programs require. Parents have to say that
25 they want their kids in Title I or in Special Education.

1 They have to say if they don't want them there. This is not-
2 -

3 THE COURT: Well, I know, but you're talking about an
4 appeal, which to me means a process leading to an
5 adjudication of a dispute. Are you talking about that?

6 THE WITNESS: Well, what we would like to see is that
7 parents who have objections to their children being removed
8 from the program--

9 THE COURT: Okay.

10 THE WITNESS: --that there's more than simply a
11 paperwork function that says, hey, we got your request and
12 we're going to keep it on file, that there's--yes, that
13 within the school, perhaps through the ICA team, that there
14 is some way to say this parent has a legitimate request.
15 We'd like to leave the child in the program. As it is now,
16 the only thing that happens is someone keeps the parent
17 objection on file.

18 THE COURT: Well, are you talking about like a situation
19 where it's determined that these exit criteria have been met?

20 THE WITNESS: Uh-huh.

21 THE COURT: And I realize you're objecting to the exit
22 criteria themselves because they're too low. But, you know,
23 you have test scores, except for this D-1, which is
24 exceptional circumstances. Let's leave that out for the
25 moment.

1 THE WITNESS: Okay.

2 THE COURT: You've got the test scores, and so forth,
3 but the parent says no, I want them left in; right?

4 THE WITNESS: Uh-huh.

5 THE COURT: So now we have a dispute. Now, what would
6 you do with that?

7 THE WITNESS: What would I do with that?

8 THE COURT: Yes.

9 THE WITNESS: I would do what most other educational
10 programs are required to do, and that is to respect the
11 rights of the parents to advocate for their own children.

12 THE COURT: So is it your suggestion that the plan
13 provide that the parent's choice overrides the exit criteria?

14 THE WITNESS: Yes.

15 THE COURT: Okay.

16 Q (by Mr. Jackson) Would you turn to Page 50, please, Dr.
17 Escamilla? Do you see under the Roman III, the section
18 entitled Review Procedures?

19 A Uh-huh.

20 Q Did you read that section?

21 A Yes, I did.

22 Q What does that section provide?

23 A It says that the parents discuss and attempt to reach a
24 satisfactory resolution. In the event that they don't, we
25 still don't see any language that says that--other than we'll

1 keep a copy of your complaint on file. It is my hope that
2 schools would work with parents to reach--

3 Q Well, Paragraph 2 says if you don't reach resolution
4 with the principal, you can go to the Department of English
5 Language Acquisition and request that they investigate it,
6 does it not?

7 A I would like to raise once again the issue of 15,000
8 kids and one director of the Department of English Language
9 Acquisition.

10 Q Is that what--

11 A And that, you know, in school districts the size of
12 Denver, the lapse in time between when schools request
13 something and the requests actually get to the district
14 office.

15 Q Is that what the plan provides?

16 A Does the plan provide--

17 Q That the department will investigate it?

18 A The plan provides that.

19 Q All right.

20 A The objection is that the amount of time--

21 Q And it further provides--

22 A --that it would take--

23 THE COURT: Well, let me just interrupt here, because I
24 think you're talking about the capacity to do what is
25 involved here.

1 THE WITNESS: Uh-huh.

2 THE COURT: But not the plan itself. How would you
3 change this provision?

4 THE WITNESS: Again, exactly what you suggested a while
5 ago, that parents who object, that do not want their children
6 removed from the program even though they have met the exit
7 criteria, that the children would be allowed to continue in
8 the program.

9 THE COURT: Okay.

10 Q (by Mr. Jackson) Do you know that Paragraph 2 says that
11 the department will respond orally and in writing to the
12 parents?

13 A Yes.

14 Q And Paragraph B says that if the parents are still not
15 satisfied after they've talked to the principal and then to
16 the department, that the matter may be further reviewed and
17 referred to the appropriate assistant superintendent. It
18 provides for further review and appeals, does it not?

19 A If you recall my first statement, this is a very lengthy
20 process. Any one of us who has ever taken a request of any
21 kind from a principal to a director to an assistant
22 superintendent to a school board, knows that school years can
23 pass and kids don't get justice.

24 Q Well, the plan itself provides for appeals; do you
25 agree?

1 A Yes.

2 Q And more than one level of appeal; do you agree?

3 A Yes.

4 MR. JACKSON: I have nothing else, Your Honor.

5 MR. GLASSMAN: May I ask one question to follow up?

6 THE COURT: Sure, Mr. Glassman.

7 MS. GLASSMAN: Something seems to be getting out of
8 context.

9 CROSS-EXAMINATION

10 BY MR. GLASSMAN:

11 Q Dr. Escamilla, you've commented about that the records
12 of appeals are going to be maintained for two years. And
13 you're also aware that the monitor has a right to review
14 these appeals?

15 A Uh-huh.

16 Q And as well as counsel may want to review appeals and
17 whether they've been granted or denied. So you'd agree that
18 it would make some sense just for that purpose to maintain
19 these records for a reasonable period of time so that a
20 pattern of appeal decisions could be reviewed by the parties
21 in the case, or the monitor?

22 A Yes.

23 THE COURT: Or the Court.

24 Q (by Mr. Glassman) Or the Court.

25 A Yes.

1 MR. GLASSMAN: Thank you. I have no other questions,
2 Your Honor.

3 THE COURT: I mean, that is one thing that is an
4 important part of this plan, you understand, that the reports
5 of the monitor come here?

6 THE WITNESS: Yes, I do understand.

7 THE COURT: Okay. Anything further from Dr. Escamilla?

8 REDIRECT EXAMINATION

9 BY MS. BENAVIDEZ:

10 Q Dr. Escamilla, would it be reasonable to propose that if
11 a parent objects to exiting of their student, that they
12 remain in the program at the parent's request while an appeal
13 is pending?

14 A Yes.

15 MS. BENAVIDEZ: No other questions.

16 THE COURT: Okay, thank you. You may step down.

17 All right, we'll hear from the witnesses called by
18 the school district.

19 MR. JACKSON: Call Mr. Irv Moszkowitz.

20 THE COURT: If you'd come forward to be sworn, please?

21 IRVING MOSKOWITZ

22 called as a witness on behalf of the defendant, having been
23 first duly sworn, was examined and testified as follows:

24 THE CLERK: Would you state your full name for the
25 record, and spell your last name?

1 THE WITNESS: Irving Moskowitz, M-o-s-k-o-w-i-t-z.

2 THE CLERK: Thank you.

3 THE COURT: Mr. Jackson?

4 MR. JACKSON: Your Honor, before I proceed, may I hand
5 the clerk and request that a copy of the joint Exhibit A,
6 which is the plan, and joint Exhibit B, which is the
7 monitoring, be placed on the witness stand so that those
8 witnesses who need to refer to the plan may do so?

9 THE COURT: Certainly. And I have my copy here.

10 MR. JACKSON: All right. And I do have a couple extra
11 copies should it be necessary if anyone needs one.

12 THE COURT: Well, I think that you have one there, don't
13 you? I'm talking to Ms. Benavidez?

14 MS. BENAVIDEZ: Yes, we have one.

15 THE COURT: Okay.

16 DIRECT EXAMINATION

17 BY MR. JACKSON:

18 Q Mr. Moskowitz, you are at president superintendent of
19 the Denver Public Schools?

20 A Yes.

21 Q And you've testified before Judge Matsch before, have
22 you not?

23 A Yes.

24 Q I'll not bother then to go through your vitae at this
25 time.

1 Mr. Moskowitz, when you assumed the
2 superintendency, the original plan approved by this Court in
3 1984 was in place, which set forth the program for English--
4 or limited English proficient students. Can you tell us,
5 please, your experience with that plan and any concerns that
6 developed during your superintendency with respect to that
7 plan?

8 A In the early stages of my assuming the role of
9 superintendent, I looked at all programs in the district, or
10 as many as I could that I felt that there might be reason for
11 concern, and this program was one that I looked at carefully
12 with staff, and I found some parts of the program that even
13 though approved years ago, were still effective and still
14 needed to be implemented. However, I found others that were
15 more troublesome, and I found certain practices in the
16 district that gave me concern, among them inconsistency from
17 school to school, which I don't believe had much to do with
18 the plan, but had to do with the operation of the
19 instruction. And I found also that there were parts of the
20 plan as originally written that might have served well in the
21 early years, but as we learn more from our own experiences in
22 the school district, and as well as observing what's going
23 around the country and reading about the plan and seeing
24 about the program, if you will, for English language
25 learners, that there needed to be some changes.

1 Q Were you also at the same time cognizant of the
2 situation with respect to the achievement rate of students
3 within the school district, and also the drop-out rates of
4 students within the district?

5 A Yes.

6 Q What were your concerns there?

7 A Well, the drop-out rate, particularly among Hispanic
8 youngsters, was alarming. Proficiency in reading and
9 literacy was alarming with all groups actually, as far as I
10 was concerned, and there was great concern on my part about
11 the numbers of students who were transitioning from the
12 program into an English based program for study. I found
13 that in my opinion it was alarmingly low.

14 Q Why--or what was alarming low about it?

15 A Well, out of all the kids in a given year who are in the
16 bilingual program, or LEP program, only about 6 per cent were
17 transitioning into an English based program.

18 Q What did you understand to be the goal of that program?

19 A As I understood it, and had that confirmed a number of
20 times, is that it was a transition program to get youngsters
21 into an English based program as quickly, efficiently and
22 sensitively as possible.

23 Q With the expectation that they would be able to
24 participate in the English instructional program?

25 A Yes.

1 Q If that was in fact the goal, it wasn't being met, was
2 it?

3 A Not satisfactorily.

4 Q Did you also have occasion to conduct surveys of
5 materials that were present within the district in support of
6 this program?

7 A Yes. And one concern that surfaced rather quickly was
8 the distribution allocation of materials, and I found that
9 that was in need of repair, and we took some steps rather
10 quickly to do something about that in two different ways,
11 one, in allocating more money on an emergency basis and, two,
12 making sure that we had staff participating in particular
13 book fairs and working with publishers so that we could get
14 more direct contact and expedite the acquisition of
15 materials.

16 Q Did you also provide increased budgetary support for the
17 program?

18 A Yes. As I said, on an emergency basis, we did put in at
19 one point a half a million dollars, and then continued with
20 that.

21 Q Did you take any personnel steps as a part of your
22 review of this program?

23 A Yes. Soon, upon realizing that some changes needed to
24 be made, we appointed a new director of the program, not that
25 the preceding director was in any way deficient, and I want

1 to make that clear, we're looking for particular talents, and
2 the next person coming in I felt would be one with good
3 background, both at elementary and senior high school level,
4 at also site level and at district level, and who, from my
5 opinion anyway, was considered to be a healer, a person who
6 was conciliatory and could work with all groups of people.
7 That means staff as well as community people.

8 Q And has that effort continued to this date?

9 A That effort continued, and then I felt the need, and
10 consulted with the Board of Education, and made the
11 recommendation that we make another change, and that we move
12 toward a person who has more, if you will, recent experience
13 and, again, at all levels, and who I consider to have the
14 experience and the personality to fit the job as it needs to
15 to look into the new era of the program.

16 Q During this time, were you familiar with the efforts
17 nationally with respect to the provision of services to the
18 limited English proficient, or English language learners?

19 A Yes.

20 Q And was there a trend evident nationally in that regard?

21 A There were a number of things going on, in particular,
22 some dramatic activities that were happening in California
23 and in a couple of other states where there was a concern
24 about the tardiness, if you will, of having students emerge
25 in English based programs, and there was a speed-up attempt,

1 actually more of a call for immersion.

2 Q Now, we've heard recently about the three year component
3 of the plan that is being presented to the Court. What does
4 the three year aspect of this plan mean to you, Mr.
5 Moskowitz?

6 A I think that what's been tossed around as far as it
7 being a three year program has been over dramatized. We had
8 taken the position that within three years, we as a district,
9 certainly staff in the district needs to become aware of how
10 each child is doing in this program. And so, in effect, it's
11 a review. It's a stop, look and listen. What is happening
12 with this child? Why is this child still in the program?
13 Why does this child need to continue in the program? Never
14 at any point was it said that three years, and a child is
15 out, never. That was not a consideration. It was a point of
16 saying--it was a statement, if you will, that within three
17 years, we should see significant progress. That actually has
18 been promulgated by the current administration in Washington.
19 Secretary Reilly, Education, has called for a three year
20 program. We believe that a child ought to be in the program
21 until the child is ready to be moved on, and that we ought to
22 be sensitive to all the issues concerning that child.

23 Q When you say stop, look and listen, as you understand
24 the process that's contemplated by the plan, what does that
25 include?

1 A It means that we should in no case let a child who's in
2 that program, regardless of the numbers of kids who are in
3 this program, just continue on in this program without a full
4 comprehensive profile, a good look at the student's progress,
5 and at the potential of the child. I know that it makes all
6 the sense in the world to look at each person as an
7 individual and not as a group, not a part of a group, and I
8 think this helps.

9 Q Is it fair to say that the plan developed by the parties
10 proposes a more personalized education program for children?

11 A Yes, and that was really the number one goal, and really
12 I guess on my part, the number one concern that I've had with
13 the way that we've been following the program. And I might
14 say also that we're not alone, and it's just the notion of in
15 some cases just the arbitrariness of having each child
16 perform as every other child, and that we look at one size
17 fits all remedy for these kids, which we wouldn't do in any
18 program. And I believe that we are on our way, as well as
19 public education in this country, to make sure that each
20 child is looked at in a personal way.

21 Q In your opinion, Mr. Moskowitz, is this a program that
22 will meet the needs of the English language learners in
23 Denver?

24 A Yes. I firmly stand behind it. As a matter of fact,
25 other people around the country have made calls wanting to

1 know more about our program. Our program that's being
2 proposed for consideration by the Court is a rich program.
3 It's a comprehensive program. It speaks to quality at all
4 levels, from recruitment of teachers, to the implementation
5 of all of the curriculum standards in the classroom. It
6 calls for the same curriculum for these youngsters as English
7 speaking youngsters, and above all, we care about this number
8 one issue, is that a child who's in this program learns in
9 the best way how to move forward and become an English
10 language learner, if you will, but then an English speaker.

11 Q So the curriculum in fact is the same?

12 A Absolutely.

13 Q All right. Describe your role in the process leading up
14 to the development of this plan.

15 A I was part of the team, and the team was made up of
16 people who have general administrative experience, governance
17 experience from the Board, and specialty experience, those
18 professionals who know a lot about English language
19 acquisition, and as being part of the team, I'm glad to say
20 that we looked at this whole issue very, very carefully,
21 looked at what was going on. We were not in any mood to toss
22 away what was part of the original plan, or the plan we're
23 operating under now. There was no "just because" kind of
24 thinking. Everything was done carefully, intellectually and
25 sensitively, and we moved on to a new plan for a new era.

1 Q And throughout this process, was the Board of Education
2 kept apprised of both the progress and the provisions of the
3 plan?

4 A Consistently.

5 Q - And, in fact, was this plan then presented to the Board
6 of Education for its approval?

7 A Yes.

8 Q And what action did the Board take?

9 A The Board unanimously approved of this.

10 Q And directed that it be submitted along with the United
11 States and the Plaintiff's to this Court for approval?

12 A Yes.

13 Q Now, Mr. Moskowitz, it is reported that you will soon be
14 leaving the school district?

15 A 20 days, working day, that is.

16 Q And you're not leaving education, as I understand it,
17 but are indeed going to embark on the development of a new
18 program?

19 A Yes.

20 Q Would you describe that for the Court and the counsel,
21 please?

22 A Yes, it's part of University of Northern Colorado, and
23 it's an attempt to start something that is sorely needed, and
24 that is a center for urban education. And I might say that
25 while I made light of the number of days I have, working days

1 in the district, I can tell you that there is a direct
2 commitment on my part and the part of Senator Hank Brown,
3 University of Northern Colorado, that the Denver Public
4 Schools be very much involved and very much the recipient of
5 all the benefits of this center.

6 Q Would you in fact be then sending teachers to this
7 program?

8 A Preparing teachers for this program, as well as for all
9 staff positions in the school district.

10 Q Describe, if you will, as you understand it, Mr.
11 Moskowitz, the commitment of staff in the Denver Public
12 Schools to the full implementation of this program?

13 A I know for a fact that the people who I work with, the
14 lead with the administrators in the district, are all four
15 square behind this. We know that our principals are behind
16 this. We've had no reason to think that anyone couldn't
17 accept a program like this and be content that the Denver
18 Public Schools has moved forward in a very positive way to
19 address an issue that's confronting us across this country.

20 MR. JACKSON: Thank you. I have nothing else, Your
21 Honor.

22 THE COURT: Mr. Roos?

23 MR. ROOS: Just a few questions.
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CROSS-EXAMINATION

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BY MR. ROOS:

Q Mr. Moskowitz, you would agree with me that the proof of the pudding⁷ on this will be the implementation, would you not?-

A Yes.

Q And, indeed, as to the former plan, you referenced a number of implementation problems. There were such problems, were there not?

A Yes.

Q They dealt with lack of materials at one juncture; is that not true?

A I made reference to that.

Q Yes. And they dealt historically with identification and reclassification; there have been problems in that vein also, have there not?

A Yes.

Q And there have been, as you indicated, substantial differences in terms of school sites and their commitment to full implementation; is that not true?

A Inconsistencies, yes.

Q And I would gather from our negotiations and discussion that the addition of a monitor is an important element to try to oversee that these implementation problems and other ones do not reappear; would that be correct?

1 A Agreed with that.

2 MR. ROOS: Thank you.

3 THE COURT: Mr. Glasser?

seems to be in favor of the new plan?

4 MR. GLASSER: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. GLASSER:

7 Q Do you have a copy of the plan in front of you?

8 A Yes.

9 Q Perhaps we can clear up this material item which seems
10 to be an important one, and is obviously one that the
11 children have the appropriate materials to succeed. On Page
12 48, do you have that in front of you, under the
13 accountability section?

14 A I do.

15 Q That requires, does it not, at C, the District to
16 develop standards for the books and materials that should be
17 available in the schools?

18 A Yes.

19 Q And come up with an improvement plan if those materials
20 are not there?

21 A Yes.

22 Q And on Page 49 at the top, does that not carry over that
23 the District is going to identify a staff member to monitor
24 the availability of the materials for programs in the
25 classrooms?

1 A It may not be a member, but it will be staff, and
2 probably plural.

3 Q And on Page 50, under the reporting provisions, is not
4 the District required to report on whether these materials,
5 the standards and whether the materials are indeed available
6 on Number 8 on Page 50?

7 A Yes, that's so.

8 Q Now, of course, it's implicit that when--if there's
9 reporting that the standards are not met, that the goal is
10 going to be to meet the standards. It's not stated there,
11 but obviously it's not just going to be reporting we don't
12 have materials there, and that's the end of it?

13 A No, there's a commitment.

14 MR. GLASSMAN: Right. Thank you. I have no other
15 questions, Your Honor.

16 THE COURT: Let me ask, Mr. Jackson, whether there's
17 going to be another witness to talk about readiness to
18 implement?

19 MR. JACKSON: Yes, in terms of the plan specifics, Your
20 Honor, there will be Dr. Eckerling, who will talk about the
21 process and the significant changes within the plan, and then
22 Mr. Jose Perea, who is the executive director of the
23 department who will talk about specific implementation
24 strategies and timelines.

25 THE COURT: All right. Well, given that representation,

1 I won't ask you those questions.

2 THE WITNESS: Thank you.

3 MR. JACKSON: Oh, I think we ought to keep him around
4 for a while, Your Honor.

5 THE COURT: All right, you may step down. Thank you.

6 Next, please?

7 MR. JACKSON: Call Ms. Rita Montero.

8 THE COURT: If you'll come forward to be sworn?

9 RITA MONTERO

10 called as a witness on behalf of the defendant, having been
11 first duly sworn, was examined and testified as follows:

12 THE CLERK: Would you state your full name for the
13 record, and spell your last name?

14 THE WITNESS: My name is Rita Montero, R-i-t-a, last
15 name, M-o-n-t-e-r-o.

16 THE CLERK: Thank you.

17 DIRECT EXAMINATION

18 BY MR. JACKSON

19 Q Ms. Montero, would you describe your relationship to the
20 Denver Public Schools, please?

21 A I'm a member of the Board of Education, and I am also a
22 parent.

23 Q And within the new scheme of things that the legislature
24 provided for the School District, are you a member of the
25 Board elected at large, or a member of the Board elected from

1 a director district?

2 A I am a member of a director district, which is Direct
3 District Number 5, Northwest Denver.

4 Q And geographic, Northwest Denver?

5 A - Yes.

6 Q All right. How long have you been a member of the
7 Board, Ms. Montero?

8 A Four years and three months, I believe--one month, four
9 years and one month.

10 Q You were present in the courtroom and you heard the
11 testimony of Mr. Moskowitz?

12 A Yes.

13 Q And the description that he provided of the concerns
14 which he had with respect to the program for English language
15 learners over the years?

16 A Yes.

17 Q Were your concerns, or did you have concerns about the
18 program that were similar to his?

19 A Yes. Two years prior to having become a board member, I
20 filed a motion with this court to intervene in the Keyes
21 case.

22 Q With respect to these issues?

23 A Yes.

24 Q All right. Now, we've had some discussion about the
25 efforts which the parties to this litigation, the United

1 States, the plaintiffs and the school district, engaged in in
2 developing the plan which has been presented to this Court as
3 joint Exhibit A, which is in front of you there on the
4 witness stand. Did you have a specific role in the
5 development of this program?

6 A I did.

7 Q Would you describe that role for us?

8 A We began in my first year of becoming a board member,
9 began discussions about the revision of the program at that
10 time because it was important to me. It was one of the
11 issues that I ran for the Board of Education on, if not one
12 of the primary issues, and were not able to and available to
13 at that point upon becoming a board member to begin the
14 revision of the program because we then came off of the
15 desegregation order and spent a year planning and beginning
16 the process of bringing kids back to their neighborhood
17 schools. And so it wasn't until my second year on the Board
18 that we had the kind of time that it was going to take for
19 the Board of Education to sit down and take a look at the
20 program as a whole and begin the revision process.

21 Q And were you actually a part of the team that developed
22 this joint Exhibit A, this new plan, if you will?

23 A Yes.

24 Q You participated in all of the--

25 A I participated in all the reviews. I think I have two

1 expandos of plans that were brought to us, all the revisions
2 that we did from day on to the day that it was finally
3 submitted to the public. And so yes, I have participated.

4 Q And as you now view the plan today as it is presented to
5 the Court, do you believe that this is a plan which will
6 truly meet the needs of the District's English language
7 learners?

8 A I do. I had concerns prior to becoming a board member,
9 which I believe have been adequately taken care of, and this
10 plan talks about parent permission, speaks of materials,
11 speaks of supervision, all of the issues that were of concern
12 to me when my child was a part of this program, I believe
13 have been covered adequately in this plan.

14 Q One aspect of the plan that is important is the
15 provision that deals with the accountability, if you will, of
16 the District to provide reports to the Board of Education; is
17 that true?

18 A It is.

19 Q And would you turn, please, to Page 48 of the plan in
20 Exhibit A?

21 A Okay.

22 Q And this is under the heading Accountability. It talks
23 about what the District does in terms of monitoring staff, of
24 reviewing the effectiveness of programs, monitoring children.
25 Do you see all of those?

1 A I do.

2 Q And then particularly under Roman II on Page 49 is a
3 section entitled Reporting. And would you just kind of
4 summarize for us, if you will, the types of reports that the
5 Board will now be receiving on this plan?

6 A Well, as it indicates in the plan, it states that--
7 you're talking about Roman II, Section A?

8 Q Yes, A and B.

9 A Student demographic information will be provided to the
10 Board of Education, grade levels, languages spoken, number of
11 English language learners that are receiving special
12 education services, and how they were placed there, program
13 services, such as student--of each student and the
14 relationship of such services to the last scores and student
15 achievement, teach assignment to the program and their
16 qualifications, which is extremely important to us.

17 And then Section B, we have personnel information,
18 how personnel will be recruited and the planning and hiring
19 of those individuals, which requires 150 hours of training
20 for all teachers. It also requires that teachers be able to
21 speak, read, write and understand the Spanish language
22 adequately, and according to a test that is given to them, so
23 that they are in a classroom of English language learners of
24 which they can communicate with. That was extremely
25 important for us. Entry/exit procedures, those will also be

1 brought to the Board of Education. Number of parents
2 requesting English language program services that are not
3 provided for for their children, program services for each
4 student and the relationship to such services, their scores
5 and student achievement. Curriculum will also be provided to
6 the Board of Education for English language learners.

7 Q So this contemplates a pretty active role in both
8 staff's obligation to provide reports and information to the
9 Board, but also in the Board's monitoring of its own program
10 by itself; right?

11 A Absolutely. I believe we have a very active Board and a
12 very concerned Board that puts in many hours, and that
13 supervision of this program is of the utmost importance to
14 each one of them.

15 Q And then the information, the reports that are mentioned
16 there, these will also be provided to the monitor, will they
17 not?

18 A Yes, to the monitor as well.

19 Q And do you believe that the monitor, as suggested to the
20 Court and whose functions are described in the monitoring
21 piece, joint Exhibit B, do you believe this will be positive
22 in terms of implementation of the plan?

23 A I do. And I also had an opportunity to meet the
24 monitor, and I believe that he will provide the best services
25 that he is--that are possible, and I think that the

1 administration as well as the Board are satisfied with his
2 ability to conduct the monitoring of this plan.

3 MR. JACKSON: Thank you. Nothing further, Your Honor.

4 THE COURT: Mr. Roos?

5 MR. ROOS: No questions, Your Honor.

6 THE COURT: Mr. Glassman?

7 CROSS-EXAMINATION

8 BY MR. GLASSMAN:

9 Q If I could just take this opportunity to highlight one
10 more report that the Board is filing on Page 50, Number 10,
11 which to me is the crux of what we're about. And would you
12 read what Number 10 is on 50?

13 A Yes. 10 at the top of the page?

14 Q Yes.

15 A "The program's effectiveness, including evidence of
16 student progress in acquiring English and levels of student
17 achievements."

18 Q And then on Page 51, Number C, what the District is
19 going to be doing.

20 A Number C indicates that the district monitors progress
21 in schools and classrooms and makes changes as appropriate to
22 support high school achievement--high student achievement.

23 MR. GLASSMAN: No other questions, Your Honor.

24 THE COURT: I have a question, but I don't want to
25 take--

1 THE WITNESS: Hi, Judge. How are you?

2 THE COURT: Hi. I don't want to take unfair advantage
3 of you. If you don't want to answer it, you don't have to.
4 But I'm sure that you have discussed this program a good deal
5 over the years with your constituents, the voters.

6 THE WITNESS: Yes.

7 THE COURT: And differences of opinion there, as there
8 are on almost every issue.

9 THE WITNESS: Absolutely.

10 THE COURT: But I wanted to ask you if you had a comment
11 with respect to Dr. Escamilla's observation that she thinks
12 that parents should have the opportunity to keep their
13 children in the program, that is the special program, even
14 though the children meet the exit criteria under the plan,
15 and would, in the opinion of everybody else, qualify for
16 moving into the mainstream. Do you have a comment about
17 that?

18 THE WITNESS: Yes, Judge. I believe that--you know, we
19 have two kinds of--I think two kinds--well, I break them down
20 as two kinds of folks within the City of Denver. We have
21 those folks who are and do have their children in our
22 program, and sometime back, we did a survey and found that
23 70-some per cent, it was over 75 per cent of our parents,
24 their first priority was to have their children learn English
25 because they wanted their children to be successful. And

1 when we went around the city talking with parents and parents
2 that I met prior to being on the Board of Education, had
3 indicated to me, as well as to other Board members, that that
4 was their first priority and that they felt that it was their
5 obligation to maintain their culture and their language
6 within their home.

7 So I think that we have, again, I've split the
8 community into two groups of people. We have the political
9 culturalists who are folks who maybe are my generation, and
10 we're people who had been denied our language. Our parents
11 thought that it was important for us to learn English because
12 they wanted us to be successful. And so I think that many of
13 us have carried this sort of torment within ourselves that we
14 were denied something that we rightfully should have had, and
15 that was our language.

16 So these are the kinds of folks that go around
17 indicating and telling and talking to immigrants and telling
18 immigrants that it's important for them to maintain their
19 language above and beyond the need for English, yet when you
20 talk to immigrant families and to parents who actually have
21 their kids in this program, that is not their view, the
22 majority of them. They see the importance of learning
23 English and being able to have their kids be competitive and
24 go to college as their utmost responsibility to their
25 children.

1 Recently, I saw an article that was in one of our
2 high schools, West High School, which was an article that was
3 written by students and they surveyed the students at West
4 High school, asking about the new program, and in their
5 statement, they indicated that the majority of the kids who
6 were part of ELAP and at West High School, believe that the
7 program was good, and that as students, their comments were
8 that they wanted to be successful and that they felt that
9 learning English was the most important thing to them,
10 because they wanted to go to college, they wanted to be able
11 to get a job that was going to give them a salary where they
12 could actually support a family.

13 So I support their issues and I support their need
14 to be competitive, and I support their need to be partners in
15 society. Now, we can sit and we can argue about where I was
16 20 years ago as a political activist and what I thought was
17 important, and today as a parent and what I think is
18 important for my child who was an English language learner,
19 because we raised him speaking Spanish, so we have the
20 diverse group of people within our community and we had to
21 struggle with those issues. But I think for the most part,
22 I'm convinced that the majority of the community that is
23 actually going to be a part of this program believe that the
24 most important thing for them and their children is to learn
25 English, and that they feel, and they have said this many

1 times over, it is my responsibility and my family's
2 responsibility to maintain our culture and our language in
3 our home, and to make our kids successful so that if we do
4 believe that language is important and having more than
5 language is important, that's our job and that's our duty,
6 because in this kind of economy if you have two languages, it
7 makes for a better employee out in the world of economics.

8 THE COURT: Okay. Thank you.

9 THE WITNESS: Thank you, Judge.

10 THE COURT: Mr. Roos?

11 MR. ROOS: I actually have a question or two.

12 THE COURT: All right.

13 CROSS-EXAMINATION

14 BY MR. ROOS:

15 Q Ms. Montero, it's true in fact, is it not, that probably
16 100 per cent of the immigrant parents in the Denver Public
17 Schools want their children to learn English and learn it
18 well; is that not true?

19 A Absolutely.

20 Q And, indeed, many of them also believe that--indeed,
21 virtually all of them believe that their children should
22 learn all the other subjects as well; is that not correct?

23 A Yes.

24 Q And many of them believe that delivery of instruction in
25 their own language while a child is learning English is a

1 desirable and useful way of accomplishing that; is that
2 correct?

3 A To that question, I cannot answer you affirmatively. I
4 do know that when we did conduct our survey, that over 75 per
5 cent of our parents stated that their priority was to have
6 their children learn English. They did not indicate whether
7 they felt that learning English, that the vehicle by which
8 you teach children English was through their own language.
9 Now, we do have some parents in our district who have opted
10 out of the program because they believe that the most
11 successful way to learn English is by being placed in an
12 English speaking class. Now, you have some folks who believe
13 that that's the best way for their child, and we have others
14 who may believe another way. We did not ask that specific
15 question.

16 Q You are a participant in the negotiations around this
17 plan, were you not?

18 A Yes, I was.

19 Q And I assume you voted for its approval?

20 A Absolutely.

21 Q And the plan does call for bilingual instruction for
22 Spanish, limited English proficient children; does it not?

23 A No, it calls for instruction in the native language for
24 three years.

25 Q Okay. And it also does permit parents to opt out of the

1 program if they wish?

2 A Yes, it does.

3 Q Now, you are aware, are you not, that there are national
4 programs in which are programs nationally that in fact are
5 not transitional programs that try to enhance the language
6 and culture of--other than English; are you not?

7 A I'm aware that the movement in the country is to teach
8 children in the most expedient way possible, and to get them
9 at a level where they do become English speakers, and that is
10 the trend in the country.

11 Q Okay. Forgetting about the trend, there are programs,
12 there are a number of programs around the country that would
13 be known as two-way bilingual programs, are there not?

14 A Yes, there are.

15 Q And a number of those are designed to build upon the
16 strengths that Spanish speakers and others bring to the
17 schools so that they leave the schools being truly bilingual,
18 both in their native language and in English; is that not
19 correct?

20 A It is correct. And I believe that although Denver
21 Public Schools, their program was not a dual language
22 program, I do believe that those people, in particular at the
23 site, that it was their intention to implement the dual
24 language program, and I believe that because of the results
25 of the particular program that I'm talking about in those

1 years gone, and what has occurred across the country with

2 regard to dual language, which I believe most bilingual

3 programs were attempting to do, people are moving away from

4 that kind of instruction.

5 Q - Maybe that's true or maybe that's not, but there's

6 nothing that would prevent, if indeed there were a

7 substantial body of parents in the Denver Public Schools who
8 wished to develop a dual language program, there's nothing in
9 the program that's being presented to the court today that

10 would prevent the district from doing that either on an

11 experimental basis or otherwise, is there?

12 A Per the order of the court, it's my understanding that

13 it's the court's understanding, and please help me if I'm

14 mistaken here, that this program has always been meant to be

15 a transitional program. Dual language speaks to not

16 transitioning children. Dual language speaks to maintaining

17 a child in a classroom where instruction is given in Spanish

18 and in English, and per this court, it's my understanding

19 that that is not the purpose of this program. It is a

20 transitional program.

21 Q I would certainly agree with that. But the question for

22 you is if there were a substantial body of parents who wished

23 a dual language program, or a program that was more

24 expansive, as we discussed earlier, that could be done, could

25 that not?

1 A Well, I think that with regard--the Board did speak to
2 that kind of an opportunity. I think that the problem that
3 the Board is confronted with is that we have limited
4 resources with regard to personnel, and that we have children
5 today who are living in a part of the city where in the past,
6 there were not English language learners, and I'm speaking
7 more specifically about Northeast Denver, Southeast Denver,
8 Southwest Denver, where when this order for this particular
9 program was initiated, there were not that many language
10 learners in those different parts of the city.

11 And so today, we are struggling with a limited
12 amount of resources regarding teachers and people who do have
13 the skill to implement such a program, and so I believe that
14 it would be difficult at most to provide a dual language
15 program for a group of people who wanted it, simply because
16 of the personnel resources that we have, when today we have
17 children who are in Northeast Denver who are getting an easel
18 program because we don't have enough qualified teachers to
19 provide them native language instruction and/or to even be
20 able to do easel instruction and have fully qualified native
21 language speakers to do easel instruction, because we just
22 don't have them.

23 Now, if you're asking me if I would take resources
24 away from those children who needed more than a child who
25 wants to continue in a program for five years, six years,

1 seven years, I would say absolutely not. I would not take
2 those resources away from that child who still cannot speak
3 English and give it to the child who wants to maintain their
4 language for another five or six years.

5 Q - I think that probably we would all generally agree with
6 that. Ms. Montero, I gather that from what you've just said,
7 that there is an ongoing problem of having enough teachers to
8 deliver a quality bilingual program?

9 A Yes.

10 Q And the district is committed in this plan and otherwise
11 to make certain that there are the teacher resources to
12 implement the plan that's being presented to the Court; is
13 that not correct?

14 A We're attempting to do that. We have put together a
15 very stringent process that is in place to do recruitment.
16 We have had an individual who has gone throughout the country
17 and has also travelled abroad to try and find qualified
18 people who can teach in our program.

19 As you know, Mr. Roos, we are in a difficult
20 position because of the number of English language learners
21 across the country, and so we are competing with umpteen
22 states who have many more English language learners than we
23 do, and so we are at a tug of war with other states for
24 qualified people.

25 Q And the district is committed to maintain and increase

*but
didn't answer
question whether
district can*

1 its efforts to secure a fair share of bilingual teachers?

2 A Absolutely. Absolutely.

3 MR. ROOS: Thank you.

4 THE COURT: Anything further, Mr. Glassman?

5 - MR. GLASSMAN: No, Your Honor.

6 THE COURT: One thing I want to--you know, I don't get
7 the opportunity to speak to a member of the School Board very
8 often, but--

9 THE WITNESS: Do you want to lobby me, Judge, on some
10 other issue?

11 THE COURT: The Court's role in all this, I hope you
12 understand, is to be certain that the School District Number
13 1 complies with federal law.

14 THE WITNESS: Yes.

15 THE COURT: And in this case, we're dealing with
16 statutory requirements of federal law. And the particular
17 statute in question provides that the school district must
18 take appropriate action to overcome any language barriers
19 that impede equal participation in the instructional programs
20 that are available in the public schools.

21 THE WITNESS: Absolutely.

22 THE COURT: So what is the instructional program of the
23 school system is up to the people through their
24 representatives on the Board.

25 THE WITNESS: Absolutely, Judge.

1 THE COURT: And, you know, it could be that it's decided
2 that everybody who goes through the system ought to learn two
3 languages.

4 THE WITNESS: Uh-huh.

5 THE COURT: I mean, you could have a dual language
6 program so that people coming into the program who only speak
7 English, learn to speak Spanish, or whatever language.

8 THE WITNESS: Uh-huh.

9 THE COURT: The important thing is that persons who are
10 not proficient in the language of instruction, generally
11 English, not be--well, as the statute says, that that not be
12 a barrier to their ability to participate in the program, and
13 that's the Court's role.

14 THE WITNESS: I agree with you, Judge. I think that we
15 all want to see the same thing that I would like to see, you
16 know, our parents and their children, have their children in
17 the future, you know, be in the place of Mr. Roos and be an
18 effective and efficient lawyer who can come and represent
19 their community in any other issues. But to make that
20 individual and that child be effective and a player in our
21 society, they have to be able to speak English, and I think
22 that that's our first objective, to make them players in
23 society. And I do agree that there is an important role for
24 the Court to play.

25 And on a personal note, and this does not reflect

1 the Board of Education at all, I objected with their removal
2 of the oversight in the desegregation order, and I have a
3 very sort of maybe a weird way of looking at things, that I
4 believe that it is paramount to have an outside source to be
5 able to monitor.

6 I'm not going to be in my place forever, and Sue
7 Edwards will not be here forever, and Laura Luckwoods
8 (phonetic), who's a board member, who we're fully committed
9 to this program and understand the need for it to be
10 implemented, as we've said, other people come along and may
11 have different views, but the Court's always there and the
12 Court will always have a record of what was supposed to have
13 been and not been done in terms of a program.

14 And so for that reason, I understand your role. I
15 understand the Court's role, and do believe that oversight on
16 behalf of the federal judicial process is important, because
17 again, we are players that come and go.

18 THE COURT: Yeah, I won't be here forever either.

19 THE WITNESS: I remember you saying that about four
20 years ago, Judge.

21 THE COURT: There may be some who plan on that, but
22 somebody will be. Okay.

23 THE WITNESS: Thank you, Judge.

24 THE COURT: Thank you. You may step down.

25 MR. JACKSON: Your Honor, I'm reminded of a couple of

1 details that I need to provide to the Court. I neglected to
2 say that one of the other requirements of the notice was that
3 the school district send letters to those people--

4 THE COURT: Oh, yes.

5 - MR. JACKSON: --that would be identified by the two
6 advisory counsel, the Hispanic education advisory counsel and
7 the Asian education advisory counsel, and that was also done.

8 THE COURT: Good. Thank you.

9 MR. JACKSON: And I neglected also to indicate to the
10 Court that present with me at counsel table is Peter Lawrence
11 Vanna, who is the new general counsel for the school
12 district, and who filed his entries of appearance with the
13 clerk's office today.

14 THE COURT: All right, Mr. Vanna, welcome.

15 MR. JACKSON: At this time, we'd call Dr. Wayne
16 Eckerling.

17 THE COURT: Okay.

18 WAYNE ECKERLING

19 called as a witness on behalf of the defendant, having been
20 first duly sworn, was examined and testified as follows:

21 THE CLERK: Would you state your full name for the
22 record, and spell your last name?

23 THE WITNESS: Wayne D. Eckerling, E-c-k-e-r-l-i-n-g.

24 THE CLERK: Thank you.

25

DIRECT EXAMINATION

1
2 BY MR. JACKSON:

3 Q Are you the same Dr. Eckerling that has appeared before
4 Judge Matsch and testified before?

5 A I am.

6 Q Dr. Eckerling, what is your present position with the
7 school district?

8 A Assistant Superintendent for Educational Services.

9 Q And give us a brief description of Educational Services.

10 A It includes many of the support departments that work
11 directly with the schools, including Title I program, the
12 English language acquisition program, curriculum assessment,
13 library services, things like that.

14 Q Bearing in mind that we do want to get through the
15 process today, and the Court's question about whether or not
16 some of the specifics of the approach covered by the new plan
17 would be discussed, I want to draw your attention, Dr.
18 Eckerling, to Page 25 of the plan, which is joint Exhibit A.
19 Do you have that?

20 A Yes, I do.

21 Q And I direct your attention to the paragraph under Roman
22 I on that page, and specifically paragraph A, is that a very
23 short, concise definition, if you will, or description of the
24 provisions of the plan?

25 A That is.

1 Q And tell us then what that paragraph tells us about the
2 plan services.

3 A It says that we'll be providing native language
4 instruction in schools that meet a threshold number of
5 students. We'll also be providing an ESL model in schools,
6 most schools that do not--that we, when we look at what's
7 involved in native language instruction, we see three
8 components. We see content instruction in Spanish. We see a
9 student begin to improve their English, what's called
10 sheltered English or supported English, in other words,
11 English for students who don't speak the language fully, are
12 just learning it. And we see ESL, or the specific direct
13 instruction in the acquisition of English, reading, writing,
14 speaking and understanding. And then ESL would include
15 really the second two components, which are sheltered English
16 or supported English, as it's referred to here, and ESL,
17 again, the direct instruction in reading, writing, speaking
18 and understanding English.

19 Q When we speak of native language instruction, are we
20 talking about a single class, a number of classes? What are
21 we talking about?

22 A We are talking about instruction first in Spanish only,
23 because that's the only language that we have a sufficient
24 number of students to be able to practically offer such
25 instruction. And what we're speaking about are classrooms

1 that we would just say are regular classrooms where students
2 get their core subject area instruction, where instruction
3 could be provided in Spanish to students who speak that
4 language.

5 Q - And by core subjects, we speak of?

6 A Reading, writing, math, science and social studies.

7 Q This happens to be a description of the services at the
8 elementary school level, Dr. Eckerling. Does this differ
9 from or is it the same as the service components at the
10 middle school and high school level?

11 A You would find these same programmatic services at all
12 three levels.

13 Q All right. Give us a brief description, if you will, of
14 supported English content instruction, or sheltered English.

15 A That is instruction in English where supports or
16 assistance is provided to help students who don't fully
17 understand the language, to understand and comprehend what's
18 being stated to them. And so you might use visual clues, you
19 might provide additional assistance in vocabulary, so if you
20 use certain words, you might define those that you might not
21 normally define for a native English speaker. You might
22 repeat yourself more than once. You might shorten your
23 sentence structure, all of which are ways to help people who
24 don't fully understand the language to comprehend what you're
25 trying to say to them.

1 Q And then finally, the component of English language
2 development?

3 A That is the specific instruction in English grammar, in
4 oral understanding what's spoken to you, and in speaking
5 English correctly. It is--it's being able to read--teach
6 instruction in reading English and in writing English, so if
7 you come from another language or you speak another language
8 and are literate in another language, the conventions of
9 English, written English, are explained to you and taught to
10 you, as opposed to content instruction where you're really
11 trying to help somebody understand mathematics or social
12 studies.

13 Q And then if you would, looking at the ESL service model,
14 the supported English content instruction and English
15 language development, are they the same as you have just
16 described for the transitional native language instruction?

17 A They are.

18 Q Or the native language instruction. I'm sorry.

19 A That's correct.

20 Q Dr. Eckerling, what is the concept that is developed
21 through this program in terms of the child's movement through
22 the various service opportunities into the regular English
23 instructional classroom?

24 A What's the concept?

25 Q Right. Describe the process that's provided her for

1 that student movement.

2 A Well, if the student speaks Spanish and is in a school
3 that offers native language instruction, that student would
4 start with a heavy dose, if you will, of instruction in
5 Spanish, and as that student--but he would always get regular
6 ESL instruction on a daily basis. And one of the differences
7 in the current plan is at the middle and high school level,
8 it now provides for two periods a day of ESL instruction,
9 because those students need to quickly learn English while
10 they're still in school. And as that student learns more
11 English, they would be placed in supported English classes as
12 their English language skills improve, and then finally begin
13 to transition into mainstream classes, again, as their
14 English language skills improve.

15 Q Now, there's a new concept, if you will, that's present
16 in this plan that had not been with us before, and that's the
17 instructional service advisory team. Tell us about that
18 team, its concept and its responsibilities.

19 A An instructional service advisory team is present at
20 every school that offers services, and it's made up of a
21 principal and two teachers from the school who are English
22 language acquisition teachers. And their role is multi-
23 faceted, but most importantly, they would be reviewing entry
24 and eligibility for program services for students, so if
25 there's a question about whether a student is eligible, they

1 would review data that's supplied by the teacher and from
2 test results, and say our recommendation is that this student
3 should or should not--is or is not eligible for services.

4 They would also make recommendations and review
5 exit data for students and make a recommendation of whether a
6 student ought to be exited from the program, as well as
7 monitor progress through the program, so that students are
8 appropriately placed in classrooms and that progress is made.

9 Q Directing yourself to the entry aspect of their role,
10 have other changes been made with respect to the time at
11 which tests are given and the information supplied to parents
12 with respect to placement in the program?

13 A Well, under the current plan, there's no direct
14 provision for supplying parents with information about the
15 program. So in this plan, it clearly states that information
16 is provided to the parent upon enrollment, if that's
17 appropriate. I mean, if a student comes in and he only
18 speaks another language, of course you would say, gee, we
19 ought to give this parent some information about where this
20 child will likely be placed. And then the child is
21 provisionally placed, based on their answers, the parent's
22 answers to questions on a home language questionnaire, may be
23 provisionally placed in the program. So if a parent says
24 yes, this child speaks another language and the child only
25 speaks this language at home and only understands it, that

1 child would be provisionally placed in a program, and within
2 20 days, school days, would be assessed, unless the teacher
3 says that the provisional placement is incorrect, or has some
4 question about it, in which case we agree to do that in ten
5 school days.

6 Q And do the parents have a role during this 10 or 20 day
7 period?

8 A They certainly can provide information to the teacher,
9 to the principal, and that information would absolutely be
10 considered in the placement process.

11 Q And, in fact, information is provided to the parents
12 about the process?

13 A Absolutely. Upon time of entry, and that's provided in
14 writing, as well as there's other information that could be
15 provided orally or in writing.

16 Q Dr. Eckerling, you've been present in the courtroom
17 today. You've heard the testimony?

18 A I have.

19 Q And you've heard the concerns that were expressed by Dr.
20 Escamilla about the role of the ICA team and the exit
21 criteria, if you will. Do you recall that testimony?

22 A I do.

23 Q Would you describe for the Court the process that is
24 contemplated by this new plan with respect to reviewing the
25 progress of students and exit from the program, what is

1 considered and who considers it?

2 A Well, first, there will be ongoing monitoring of
3 progress. The plan calls for nine week progress reports.
4 Students take assessments. We will be looking at progress on
5 the LAS, which is an oral proficiency measure. We will be
6 looking at progress on achievement tests. We'll also be
7 looking for changes in what's called student profile, which
8 is what a classroom teacher would fill out about a student's
9 behaviors in class, academic behaviors, that indicate whether
10 the student speaks, understands, reads and writes English
11 adequately to participate in a mainstream program.

12 When a teacher feels that a student is ready for
13 exit, they can recommend that student, or a student could
14 meet certain criteria and an ICA team could say we would like
15 to review the data for that student to see whether it's
16 appropriate to consider them for exit. And that data would
17 include test scores, could include writing samples, would
18 absolutely include a student profile, would include other
19 information from the teacher, grades, attendance, anything
20 that would be relevant to that consideration of whether it's
21 appropriate to make that recommendation.

22 The ICA team would then make a recommendation, send
23 that to the Department of English Language Acquisition, which
24 has to review those recommendations. And I would say this is
25 not a rubber stamp process, if you will, Your Honor. This is

1 an absolute process where I've seen and participated and
2 watched these forms go back, and say this is not appropriate.
3 There is not adequate data to make this decision. So it's a
4 real process that we participate in.

5 If that decision is made, then there's what's
6 called the monitoring process after that for one year. And I
7 don't know if you want to go--get into that part of the
8 process.

9 Q Yes.

10 A But there's a one year monitoring period, and this plan
11 says that if a student is exited and they score below the
12 20th percentile on the ITBS, within nine weeks, you have to
13 go to the teacher and say is this student appropriately
14 served in a mainstream program. So we don't wait one year to
15 say was the student successful. We do that immediately--you
16 know, we do that really as soon as is practicable in the
17 school setting. We're going to find out some information.

18 I would also point out to you that the plan also
19 clearly says that at any time, no matter when a student is
20 exited, if that student meets those initial--answers those
21 initial eligibility questions with a yes, that student can be
22 placed back in the program if an exit decision wasn't
23 appropriate. So there are steps throughout that process that
24 let us ensure that we are doing a good job and that we're
25 exiting students appropriately. And in no case have I ever

1 seen a we'll wait a year until we make a decision about
2 whether to consider a parent's appeals. Those are handled in
3 a timely manner.

4 And, in fact, the concept of 15,000 appeals at one
5 time is simply just not true. You don't get that kind of
6 thing, because you don't exit that number of students. You
7 know, you might exit--you might get 15, 20, 30 appeals, and
8 they can be handled fairly quickly, because remember, the
9 real question is can the student meaningfully participate in
10 a mainstream program. Is that student well served there, and
11 have we removed those barriers to the participation in the
12 educational process.

13 Q You heard the previous testimony with respect to the
14 three year concept?

15 A Yes.

16 Q In terms of the stop, look and listen aspect of that,
17 there's a provision in the plan, is there not, for the
18 development of an individualized education plan for those who
19 have not progressed to the point where they can meaningfully
20 participate in the English classroom?

21 A There is.

22 Q Describe that for us, please.

23 A In that what we're going to do is as we find students
24 who have not progressed to a classroom in English, we're
25 going to look at the services that they receive, what their

1 educational needs are, are they still appropriately placed in
2 the program. What are we missing in the educational process?
3 That means a review of their test scores, their grades, their
4 attendance, and to say how do we better serve this student,
5 and that means looking at the whole student. It doesn't just
6 mean looking at a particular aspect of the student. And we
7 actually have a model for that and a literacy plan that's
8 been developed that says, hey, what does this student need.
9 It will be reviewed with the parents, and then we will
10 monitor individually the progress of those students until we
11 can move those students into a classroom where instruction is
12 in English.

13 Q Were you a part of the development of this plan that's
14 presented to the Court, Dr. Eckerling?

15 A Yes.

16 Q As an educator, would you describe for the Court and for
17 counsel what you believe to be the significant changes and/or
18 strengths of this plan?

19 A Yes. I believe that this plan builds on the strengths
20 of the previous plan around ESL or English language
21 development and transitional native language instructions. I
22 believe this plan adds three sources. We've already
23 increased dramatically central resources. We've improved I
24 believe dramatically our training program. We built in para-
25 professional assistance into this plan.

1 We've substantially strengthened teacher training,
2 and we no longer have provisions in a plan, and I think well
3 intended, but one was that if you start in the plan, you had
4 two to three years to learn Spanish, and what that meant is
5 we had teachers in classrooms who had a right to remain there
6 for three years until they acquired Spanish. And then they
7 didn't acquire Spanish, and we started all over again, and we
8 do not do that in this plan.

9 We've been very hard nosed about saying you have to
10 be proficient in Spanish to teach in this program. In a
11 classroom where native language is taught, we've been very
12 hard nosed about saying you have a year to get your
13 requirements met, and we've really tried to streamline that
14 part of the process. And often times we don't give teachers
15 contracts until they'll pass the test. So if they're going
16 to teach there, we want to know that they're qualified.

17 So we've added a lot of resources to the program.
18 Our training budgets are increased dramatically. We've put
19 enormous amounts of money into materials. Our mill levy
20 program provides additional dollars for library books and
21 textbooks, which would mean more library books both in
22 Spanish and in sheltered English for English language
23 learners, as well as other students. We are increasing
24 accountability, and I think you've already talked about that,
25 to the parents through regular reporting, to the Board of

1 Education through biennial reports, and to the Court and the
2 plaintiffs through the Court monitoring process.

3 We have safeguards in this plan. We have a three
4 year stop, look and listen. We have an individual learning
5 plan. We have teacher judgment through student profiles. We
6 have an ICA team review. We have a department review. We
7 have a monitoring period, and we have an opportunity for
8 parents to say wait a second. So we have, I believe, really
9 offered a plan that has tremendous safeguards.

10 And, Your Honor, one thing I think that's important
11 is, as you've been pointed out, I think in the written
12 materials submitted, we've moved from 3,300 LEP students to
13 14,500. In the original plan, we talked about 13 bilingual
14 schools. We have 43 now out of 83 schools that offer native
15 language instruction. And you can no longer limit training
16 to a few teachers who are in a program, if you will. It's
17 not a few, but if you know what I mean, it's still a program.

18 So this plan calls for training not just program
19 teachers, but Title I teachers, special education teachers,
20 and teachers in mainstream classrooms to work with students
21 who are transitioning out of the program. And so it really
22 recognizes that these students make up a substantial portion
23 of our study body, and I think is a tremendous strength.
24 It's not a program any more; it's really an integral part of
25 this district.

1 Q Dr. Eckerling, you mentioned the numbers at the
2 elementary level. Would you give us the numbers at the
3 middle school and high school level as well?

4 A Well, it's 14,500 English language learners currently.

5 Q I don't mean that. I mean the number of schools
6 offering program services.

7 A 14 of 18 schools--well, first, to come back to the
8 elementary, I believe it's over--43 will offer native
9 language instruction next year. Another over--I think it's
10 41 will offer ESL services. Some will offer both, depending
11 on the numbers in the school. 14 of 18 middle schools will
12 offer native language instruction, and five of ten regular
13 high schools will offer native language instruction. So the
14 program from small beginnings has grown dramatically.

15 Q Dr. Eckerling, I want you to now reflect, if you will,
16 on Dr. Escamilla's testimony this morning--or this afternoon
17 with respect to the CSAP results. Did you have occasion to
18 review those materials and to listen to that testimony?

19 A Yes, I listened to the testimony and have had some
20 chance to review her--the written materials.

21 Q First, would you tell the Court and counsel what CSAP
22 signifies?

23 A Colorado Student Assessment Program, and it is a state
24 assessment program that is being phased in, and currently we
25 give a reading test in March of every year to all third

1 graders, and we give a reading and writing test in March of
2 every year to all fourth graders, and this year, we started
3 giving in the same month to seventh graders, and in another
4 year, we will start giving tests to tenth graders. And
5 there's some other tests, but basically, it's a state
6 assessment program.

7 Q Without going into extensive detail, Dr. Eckerling, what
8 did you find as you looked at those figures?

9 A Well, first, there are some errors in the data, in the
10 subtraction. Second, I believe that it's inappropriate to
11 make any conclusion about a program that, first, hasn't been
12 implemented, in 42 schools that have Hispanic percentages,
13 let alone percentages of English language learners, some as
14 low as 22 per cent. So you may have a school where scores
15 drop by 3 percentage points, and only 22 per cent of the
16 students are Hispanic, and an even lower percentage are
17 English language learners. And so to make a statement that
18 this is the result of the implementation of the English
19 language acquisition program I think is way off base.

20 Also, if you just look at scores for Hispanic
21 students in those 42 schools, what you find is scores
22 improved in 15, dropped in 19, and there weren't a sufficient
23 number of Spanish--or Hispanic students in grade three to
24 give results in the others. So in that sense, I think that
25 it's way off.

1 And in addition, as Dr. Escamilla pointed out, the
2 students--there's a question about who's taking the test,
3 because she mentions two schools in particular, Fairmont and
4 Mitchell, and even though Mitchell has 45 per cent of its
5 population are English language learners, those teachers made
6 a decision to give that test to 88 per cent of their third
7 graders. Fairmont, whose English language learner population
8 is 54 per cent, only gave that English test to 49 per cent of
9 its population, and this is the way the state of the law
10 reads, is teachers make those decisions.

11 And so what you see happening is as students--at
12 some schools, the students are transitioning into English,
13 will choose to give them the English version while they're
14 just learning English, and we would encourage that, but of
15 course your result is going to be different than if you
16 continue to test those students in Spanish.

17 So I guess my, you know, the overall conclusion is
18 I don't believe you can draw any inference from these results
19 about this program.

20 Q You mentioned the student profile. Tell us what that is
21 going to include and what it's intended to provide?

22 A It's intended to provide a formal set of information
23 from classroom teachers about a student's reading, writing,
24 speaking and understanding as they've seen it in that
25 classroom, as well as the student's--as well as social and

1 cultural factors that are impacting their behavior in a
2 classroom and that might affect their ability to be
3 successful in a mainstream classroom.

4 Q Is that information that had previously been made
5 available?

6 A No, this was never part of the original--or the '84
7 decree.

8 Q Tell us, if you will, Dr. Eckerling, what efforts have
9 been undertaken or are planned in terms of strengthening of
10 staff available for this program.

11 A Well, besides the 150 hour training program which a
12 teacher can complete in a summer or during a school year, so
13 that these modules have been--are offered extensively to that
14 we can move teachers quickly through training, and by the
15 way, the whole program, Your Honor, has been reorganized into
16 modules that teachers have to complete depending on whether
17 they're going to be an ESL teacher or native language
18 teacher, and it's tailored also to the level, so that a high
19 school teacher would get something a little different, not
20 100 per cent different, than an elementary teacher. There
21 are requirements around attendance. There are going to be
22 new requirements about completing exit proficiencies, and we
23 will be training broadly special education teachers in parts
24 of this--in some modules. We will be training some Title I
25 teachers, and we will be training mainstream teachers.

1 Q Now, you have reviewed the accountability sections of
2 this plan and the reporting requirements that the District
3 has?

4 A Yes.

5 Q And will those reports be your responsibility to ensure
6 that they're provided?

7 A Yes.

8 Q And do you intend to provide those reports?

9 A I do.

10 MR. JACKSON: I have nothing further, Your Honor.

11 THE COURT: I have a few questions before Mr. Roos.

12 MR. ROOS: Go ahead.

13 THE COURT: You know, it's been a number of years since
14 I've had to be concerned about how students are assigned to
15 schools, so I don't know what the current situation is in
16 Denver. But this program is site specific with respect to
17 buildings; right?

18 THE WITNESS: That is correct.

19 THE COURT: Now, what is the opportunity, if there is
20 one, for a student to select a different school from the
21 school of primary assignment?

22 THE WITNESS: I think there's two answers. First, any
23 student who's at a site, and there are only intended to be
24 six next year where there are no program services provided,
25 we'll have transportation to a school where program services

1 are provided.

2 THE COURT: And can select that school?

3 THE WITNESS: Well, they, yes, can select that and we
4 would say, hey, this is an opportunity that you can
5 participate in a program here and we'll take you there.

6 In addition, we have an extensive choice program,
7 and you know a lot of our schools are close together, so if
8 you are at one school and said, you know, I would prefer to
9 be in a school that has a native language program, we would
10 offer and open our arms, wherever there's space, to students
11 coming in and participating. And so we have more than 20 per
12 cent of our students move around to different schools to
13 participate in the programs of their choice.

14 THE COURT: Now, much of the emphasis here is on
15 Spanish, because that's the largest population, I assume, of
16 native language other than English. You know, I can remember
17 back before the 1984 degree and some of the hearings we had
18 and how many languages were involved. And, of course, at
19 that time, there were large numbers of people coming from
20 Southeast Asia, and I remember the Mong people and the
21 Montagnards, and so forth. To what extent are those
22 languages now native languages in this system?

23 THE WITNESS: I suspect that the number of languages
24 hasn't changed a lot. There's over 80 languages still
25 spoken. But, in fact, the percentage of English language

1 learners who are Spanish is increasing dramatically, and the
2 absolute number of other language speakers has declined
3 slightly. So we're really becoming, you know, primarily a
4 Spanish--

5 THE COURT: Primarily Spanish?

6 THE WITNESS: Right.

7 THE COURT: And another problem that I remember was
8 the--how many people are transitory, how many people like the
9 families of agricultural workers who are here only in Denver
10 for a few months. Is that still a major factor here in
11 trying to educate these people who are only going to be with
12 you for a short time?

13 THE WITNESS: Yes. I think if you talk to principals,
14 they would tell you that mobility is still a tremendous
15 problem. And one way that we're--it's not directly mobility,
16 but I don't know if you noticed the section that talked about
17 newcomer centers at middle and high school for students who
18 come into our system and really haven't had much formal
19 education.

20 THE COURT: Yes.

21 THE WITNESS: And one of the things is elementary
22 schools are to learn how to read and write and do math, you
23 know, primarily, and at the middle and high school level,
24 there's a real expectation that kids come in at least with
25 some reading and writing knowledge. And so for students who

1 don't, we wanted a newcomer center so that we could
2 specifically focus on the needs of any students who happen to
3 be truly migratory, and have not had the benefit of formal
4 education. But it's really to say, hey, you can't put a
5 student who's never seen an alphabet into a native language
6 instruction class in Spanish or even into an ESL program with
7 students who are basically literate in their native
8 languages, and so we wanted to make some separate provision
9 because that's become an increasing problem in our district.

10 THE COURT: Okay, thank you. Mr. Roos?

11 MR. ROOS: Just a couple of questions.

12 THE COURT: Okay.

13 MR. ROOS: Sort of more also to address some of the
14 comments by Padres.

15 CROSS-EXAMINATION

16 BY MR. ROOS:

17 Q Could you turn to Chapter 5, please? Chapter 5, I
18 assume you would agree, sets out the criteria for exiting
19 students from a program, does it not?

20 A Yes.

21 Q And I'd like to draw your attention to Roman I, B-3. Do
22 you have that in front of you--

23 A I do.

24 Q --involving 20th and 29th. Now, in order for a student
25 to exit under that criteria, it's true, is it not, that they

1 must first exhibit oral proficiency on the language
2 assessment skill, the LAS test?

3 A Yes.

4 Q And in addition to having a score between the 20th and
5 29th, they must score at least a three on the reading and
6 writing aspects of the matrix; is that not correct?

7 A Yes.

8 Q And the matrix exam is the exam that's attached to the
9 plan, is it not?

10 A Yes.

11 Q And that exam is one that is given by trained bilingual
12 or ESL teachers, is it not?

13 A Yeah, it's given and it's done by a trained classroom
14 teacher who looks and says this is how the student is
15 performing.

16 Q Now, we also spoke about the transition within the
17 program, did we not, in your direct testimony?

18 A Yes.

19 Q And that's really found in--at least the specifics are
20 found in Roman Numeral II of Chapter 5, is it not? .

21 A Yes.

22 Q Page 14 and 15?

23 A Yes.

24 Q And it's true, is it not, that it was agreed that before
25 a student began a movement into sheltered components, if you

1 will, that they would first be assigned to a bilingual
2 classroom, or native language classroom; is that correct?

3 A Depending on their LAS score, but certainly if a student
4 was a LAS one and doesn't speak English, or a LAS two and
5 speaks a little bit, they would first go to a native language
6 class.

7 Q If they were eligible for a native language class, they
8 would first go to the native language class?

9 A Absolutely.

10 Q Is that not correct?

11 A Yes.

12 Q And, indeed, it would be that teacher in the native
13 language class who would be the one who would be assessing
14 whether they are succeeding or whether they can in fact begin
15 to break off into some other classes?

16 A Correct.

17 Q Okay. So those are the protections that we've built in
18 here, are they not, to assure that there is not premature
19 movement out of a native language situation?

20 A That's correct.

21 Q Now, actually I'd like to go back into the exiting with
22 respect to Roman Numeral I, Sub 4. Do you have that in front
23 of you?

24 A Yes.

25 Q That requires that, first of all, for a student to avail

1 themselves of Sub 4, they first have got to have a passing
2 score on the LAS test, is that not correct?

3 A That's correct.

4 Q And that's an oral test; is that not correct?

5 A That is correct.

6 Q Now, 4 requires a student meets criteria A, B and C or
7 D, so they must mean both A and B, and then C or D; is that
8 not correct?

9 A That's correct.

10 Q And so B sets an objective standard, does it not, of a
11 three on a reading component on the student profile, does it
12 not?

13 A That is correct.

14 Q And under D, C and D, there are similarly objective
15 criteria that students must meet in order to--on the student
16 profile in order to be exited; is that not correct?

17 A That's correct.

18 MR. ROOS: Thank you.

19 THE COURT: Do you have any questions, Mr. Glassman?

20 MR. GLASSMAN: Just a few.

21 THE COURT: Okay.

22 CROSS-EXAMINATION

23 BY MR. GLASSMAN:

24 Q Good afternoon, Dr. Eckerling.

25 A Good afternoon.

1 Q I just wanted to follow up on an earlier question of the
2 Court about whether the district is ready to implement this
3 plan, and I would just start with one of the key areas.

4 Would it be fair to state that the gate keepers of who is in
5 and out of a program are the ICA teams?

6 A They're a part of that process, but so is the
7 department. I always want to emphasize that we don't let--an
8 ICA team makes a recommendation. A department reviews that
9 recommendation and makes a decision. But they are a key
10 component, and I would grant you that.

11 Q And in order for them to be effective, that is the ICA
12 teams, they would have to have training, otherwise, their
13 participation wouldn't be very meaningful; would that be
14 fair?

15 A That's correct.

16 Q Have those ICA teams had the requisite training at this
17 point in time, or is it contemplated?

18 A They--we have trained people. We have teachers, program
19 specialists at schools and they work with those teams. So,
20 yes, we have been working with people around exiting for a
21 long time because exiting is also part of the current
22 program.

23 Q And the ICA team members are teachers at the school and
24 perhaps Spanish native language speakers as well as the
25 principal or his or her designee?

1 A That's correct.

2 Q And they, I take it, would need time to make these kinds
3 of careful decisions about whether a student should be in and
4 out of the program?

5 A That's correct.

6 Q And they're given that kind of time to make these kinds
7 of decisions?

8 A Yes, and they work that out and we try to work with them
9 to make sure that it works for them and that they have that
10 time.

11 Q Okay. Another important part of the process now is the
12 student profile, and in particular, the English language
13 development form in which scores are given for reading and
14 writing ability; is that fair?

15 A That's correct.

16 Q And it's important that teachers obtain training to know
17 how to fill out these forms and make these important
18 assessments; is that correct?

19 A That's correct.

20 Q Have the classroom teachers been given instructions in
21 how to fill out these forms and make objective determinations
22 rather than I just feel this person is a two or a three?

23 A They haven't because remember, we're pilot testing that
24 now in accordance with what's in the monitoring, and so once
25 that's completed, that will happen.

1 Q And when is it contemplated that that will take effect?

2 A Before or right at the beginning of the school year it
3 will happen.

4 MR. GLASSMAN: I have no other questions, Your Honor.

5 THE COURT: So if I sign off on this, you're projecting
6 to do the necessary training before, what, the end of August;
7 is that when--

8 THE WITNESS: Right at the beginning of school. We
9 start I think September 7th next year.

10 THE COURT: Oh.

11 THE WITNESS: And, again, remember--

12 THE COURT: This year.

13 THE WITNESS: Of this year, yeah.

14 THE COURT: Calendar year, academic year.

15 THE WITNESS: Yeah.

16 THE COURT: Okay.

17 THE WITNESS: Excuse me, Your Honor.

18 THE COURT: And that would include, I take it, because
19 one of the things that Dr. Escamilla was concerned about is
20 that the administrative people understand this plan. I take
21 it that you contemplate training them and instructing them
22 with respect to what's expected in their building?

23 THE WITNESS: We're already had to start that, Your
24 Honor, because they're already having to staff for schools
25 for next year and think about how they're going to assign

1 teachers. So Mr. Perea has met with every elementary
2 principal who's got a program in a small group, and
3 individually where there was need for followup, met with the
4 middle schools and with the high school people already and
5 given them written information that they need to be thinking
6 about, as well as working with our person in personnel about
7 staffing decisions and hiring decisions. So we've tried to
8 begin that process.

9 THE COURT: Okay. Well, did you have anything else, Mr.
10 Jackson?

11 MR. JACKSON: No, I do not, Your Honor.

12 THE COURT: You may step down. I think we'll take a
13 recess at this point. We'll take a ten minute recess.

14 (3:35 p.m. - Recess accordingly.)

15 (At 3:45 p.m. on June 3, 1999, with counsel for the
16 parties present, the following proceedings were had:)

17 THE COURT: Be seated, please.

18 MR. JACKSON: Call Mr. Jose Perea.

19 THE COURT: All right, if you'll come forward to be
20 sworn, please?

21 JOSE PEREA

22 called as a witness on behalf of the defendant, having been
23 first duly sworn, was examined and testified as follows:

24 THE CLERK: Would you state your full name for the
25 record, and spell your last name?

1 THE WITNESS: Jose J. Perea, P-e-r-e-a.

2 THE CLERK: Thank you.

3 DIRECT EXAMINATION

4 BY MR. JACKSON:

5 Q - Being a witness that Judge Matsch has not had the
6 opportunity to hear before, would you give us a brief sketch
7 of your background, your educational background and
8 employment history, please, with the district?

9 A This is my 27th year with Denver Public Schools. Prior
10 to that time, I worked in Des Moines, Iowa for a couple of
11 years as a teacher. I started out my career at Horace Mann
12 Junior High School as a Spanish teacher and English teacher,
13 and from there, was transferred to North High School in 1975
14 and served as a bilingual resource teacher. After that,
15 assistant principal at North High School, assistant principal
16 at West High School, one tour of duty at the Central Ad.
17 Building in Human Resources, and then principal at Valverde,
18 principal at Valdez, and currently I serve as the Executive
19 Director of the Department of English Language Acquisition.

20 Q Your educational background?

21 A Have a BA degree in Spanish, a master's degree in
22 curriculum and instruction, and administrative certificate
23 from Denver University, numerous hours in various subjects.

24 Q We've heard quite a bit of testimony today about the
25 director of the English Language Acquisition Program, and

1 you're that person, aren't you?

2 A Yes, I am.

3 Q Describe for us your responsibilities as director. What
4 do you understand your role to be as has been given to you by
5 the Board?

6 A Well, if this plan is approved, of course to implement
7 the plan. I'm responsible for the implementation, including
8 all the components of the plan. That's my responsibility, to
9 make sure that the 100 or so schools where we have children
10 receiving services are in compliance with what this plan
11 says.

12 Q During your tenure with the school district, you've been
13 a part of the educational program for limited English
14 proficient students who are English language learners,
15 haven't you?

16 A Yes, sir.

17 Q And you've also served as an administrator in schools
18 where those programs were in place?

19 A Yes.

20 Q Go ahead.

21 A North High School, where we had the largest number of
22 English language learners, both as a teacher and as an
23 administrator, at West High School, and of course at Valverde
24 and at Valdez, the school with the largest number of English
25 language learners at the elementary level.

1 Q When you were a teacher in the programs, were you a
2 native language instruction teacher?

3 A I taught American History, bilingual American History,
4 and I also taught ESL.

5 Q So you were both native language instruction and an ESL
6 teacher?

7 A Yes.

8 Q Was that at North as well as at Valverde?

9 A That was at North High School. It was during the time
10 the judge mentioned earlier, 1975 when a number of
11 individuals from Southeast Asia arrived and lived at 17th and
12 Federal and were attending North High School. I worked with
13 ESL, those individuals, and also with Spanish speaking
14 students, and then also taught American History.

15 Q So in your teaching and administrative experience within
16 the district, you had direct contact with speakers of many
17 different languages?

18 A Yes, that's correct.

19 Q Including the Asian languages?

20 A Yes.

21 Q You mentioned that if this plan is approved, then you
22 would be prepared to implement it. Describe for the Court
23 what plans you have if it is approved, in terms of how you're
24 going to go about implementing the plan.

25 A Well, I think one of the most important components of

1 the plan in order for it to be successful is the staff, the
2 training. There are a number of different categories of
3 employees in the district who need training, who require
4 training as it relates to this plan, as we've heard from
5 other individuals. That's a very important component,
6 probably one of the most important in terms of how we
7 implement it.

8 The other of course would be to supervise the
9 specialists in our department who serve the schools, making
10 sure that again schools are in compliance and making sure
11 that our teachers on special assignments or our educational
12 specialists are doing the kinds of jobs that they have to do.
13 Providing the reports to the Court, not directly, but are
14 required as a part of this plan, and making sure, again, that
15 the components of this plan, that there's a consistent
16 approach in terms of how this plan is to be implemented, and
17 that in fact there's a philosophy in the district from all
18 individuals, principals down to whoever else in that building
19 has contact with students, not only teachers, but other
20 individuals in the school, that there's a value for this plan
21 and value for teaching the English language learners.

22 Q When were you appointed as the director?

23 A My appointment occurred this last summer, July the 1st
24 was my official date, but I came on board on June the 17th.

25 Q During that--or at that time, negotiations among the

1 parties had already been started, hadn't they?

2 A Yes.

3 Q After your appointment, did you then become a part of
4 the negotiating process?

5 A Yes, I did.

6 Q And continued through to the ultimate development of the
7 plan?

8 A Yes.

9 Q Within the plan, are there any responsibilities that are
10 described as being those of the executive director, or of the
11 department, that you feel cannot be accomplished?

12 A No.

13 Q You're familiar with all of them?

14 A Yes.

15 Q There's a suggestion, Mr. Perea, that in terms of the
16 classification process, and particularly the exiting process,
17 that recommendations are made up to the ICA team, the ICA
18 team then makes recommendations, and then ultimately, your
19 office and your department are the ones that actually make
20 those determinations.

21 A It's actually me.

22 Q Can you deal with the role that is given to you to
23 review all those recommendations for exiting? Is that
24 something that you feel comfortable in assuming and giving it
25 the attention that is needed?

1 A Yes. If I'm responsible for implementing this plan, I
2 want to make sure that I'm the one that's making that
3 decision.

4 Q You mentioned that you have now specialists in your
5 office. Can you describe what their role and duties are?

6 A These are commonly called teachers on special
7 assignment, they're teachers who have served out in the
8 buildings as bilingual teachers, ESL teachers, and who are
9 assigned schools to report to. Part of their responsibility
10 is making sure that, for example, ICA teams or classification
11 teams are meeting at appropriate times, providing training
12 for new teachers, teachers who are brand new to the program,
13 teachers who are new to the district, also providing training
14 for the modules, being presenters actually for modules, as
15 well as providing training for teachers as it relates to, for
16 example, ESL. The main responsibility is to be a support to
17 those schools, support to the students in those schools, and
18 making sure again that we're dealing with compliance in the
19 schools.

20 Q How many are there?

21 A We have seven individuals right now, with additional
22 allocations that will be hired in the fall--or actually over
23 the summer.

24 Q Since last June, July, you had responsibility for
25 ensuring that the current order of the Court has been

1 complied with as well, have you not?

2 A Yes.

3 Q And we've heard testimony that the ICA teams' role in
4 the exiting of students or reclassification of students is
5 not only a part of the new plan, but it was the opinion of
6 those who mentioned it that it was consistent with the
7 provisions of the present plan. Do you feel that the
8 classification or reclassification process that the ICA team
9 has been performing that you have been reviewing and either
10 honoring or sending back for additional information has been
11 consistent with our current plan in terms of delivery of
12 services for limited English proficient students?

13 A Yes, sir.

14 Q The Court mentioned in some questions to Dr. Eckerling
15 about the mobility issue and the extent to which that still
16 presented itself. Can you tell us how that impacted the
17 delivery of the program as you were participating as a
18 teacher and as an administrator, and whether or not you
19 continue to see that type of mobility now that you've been
20 serving as director?

21 A As a teacher, of course, you know, we go back to about
22 1975 when I started as a bilingual resource teacher and ESL
23 teacher. At that time, our numbers were very small, even at
24 North High School. I guess to relate my experience, the best
25 would be working at Valdez Elementary School where we have

1 over 100--about 111 per cent, or we had mobility in the
2 school, where we have students who for one reason or another,
3 Spanish speaking students would return to Mexico, sometimes
4 for a month, sometimes for two months. The effect is that
5 the education is interrupted. A student leaves at a certain
6 time when you're teaching a certain concept, and returns when
7 you've moved on from that concept, and it's very difficult.

8 From a teacher standpoint, you know, you prepare
9 materials, you prepare packets, you attempt to do everything
10 that you can to individualize the instruction so that in fact
11 students can catch up. It's a very difficult problem.

12 There's also issues related to rent increases. You
13 know, we see parts of our city now that are becoming
14 desirable areas for individuals to live in as it relates to
15 being close to LODO, et cetera. I'm talking specifically
16 about Northwest Denver, where individuals no longer can rent
17 in those areas because those homes are now selling for 250,
18 \$280,000. So there's a movement, as we heard earlier, into
19 Northeast Denver as well as into the Montbello area, and it
20 makes it very difficult in terms of providing the services or
21 providing instruction when that mobility occurs. So, yes, it
22 does have an impact.

23 Q We've heard some testimony, but I don't know that we've
24 fully covered the specifics about the newcomer center.
25 Describe that for us and tell us how you plan to implement

1 that.

2 A Well, one of the things that we've found over the years
3 is that many students come into the secondary level who have
4 had interrupting schooling, sporadic schooling, or in some
5 cases, no formal education, or very little formal education.
6 Our belief is that we can establish a center at the middle
7 school and at high school level where students who fit that
8 particular category can attend, receive intensive English
9 instruction as well as content level instruction, and spend a
10 year, a maximum of a year in the school, and then transition
11 either to their neighborhood school or remain in the school
12 where we've planned the newcomer center.

13 And in most situations, we're planning the center
14 to be located in zone schools where there are programs in ESL
15 and native language instruction so that students can progress
16 from the newcomer center into the regular classroom or the
17 regular school, and continue receiving services. It's a way
18 to provide an opportunity for students also to become
19 culturally attuned to a new country, a new--secondary schools
20 are hard, I mean even for individuals who are born and raised
21 in this country to become accustomed to. So there's a
22 process there that we're going to work with in order to help
23 those students make that transition.

24 Q And those centers will be located at Merrill and at
25 South; is that correct?

1 A At Merrill Middle School and at South High School.

2 Q And those are schools that do presently offer program
3 services?

4 A Yes.

5 Q - And are projected to have program services under this
6 plan as well?

7 A Yes.

8 Q There's been some testimony, Mr. Perea, about your
9 working with principals and meeting with principals. Tell us
10 what you have done in terms of beginning to lay the framework
11 for their participation in this plan.

12 A Well, I think one of the very important aspects of these
13 meeting has been to compare and contrast the '84 decree with
14 the present plan, and to have principals take a look at
15 whether in fact they have actually complied with the '84
16 decree. Do you have an ESL component in your native language
17 classes? Do you have a reclassification team, et cetera?
18 But also to provide them information related to what Dr.
19 Eckerling testified as to the new aspects of the plan, the
20 identification, placement, parent permission, exiting,
21 monitoring, the areas that are new with our plan, and to also
22 assist them in terms of looking at how they have to staff
23 their schools as it relates to the number of English language
24 learners that they have, whether they're Spanish speakers,
25 not Spanish speakers, et cetera.

1 We've met with them in small groups, and then I've
2 also gone out to the schools and met with them individually.
3 I've also had someone from my office that's met with them, a
4 designee from the office. So the idea again that in terms of
5 staff development, principals do play a key role in
6 implementing this plan.

7 Q And do you intend to continue to meet with them
8 throughout the summer as you approach the beginning of school
9 in September?

10 A Yes, I do.

11 Q Have you as well, Mr. Perea, been responsible for the
12 development of a draft principal's handbook and training
13 program?

14 A Yes.

15 Q Describe for the Court your efforts in that regard.

16 A As a former principal, you're responsible for so many
17 things in a building, Title I programs, special ed. programs,
18 ELA programs, so one of the first things that I looked at was
19 putting together a handbook for that principal that would
20 describe the different responsibilities that they have as it
21 relates to the implementation of the new plan, as well as
22 looking at the present plan.

23 So what we did is we put together different
24 categories that a principal could look at very quickly with
25 tabs related to their responsibilities, placement for

1 example, identification of students, parent participation,
2 the different components of the plan, in a user-friendly
3 handbook that they could refer to very quickly and answer
4 questions as it relates to the services that they need to
5 provide in the building, as well as answer questions from
6 teachers, again related to the program and services.

7 Q And if this plan is approved for implementation, is it
8 your intent to complete the work on that handbook, and then
9 have training for those administrators prior to the opening
10 of school in the fall?

11 A Yes.

12 Q We've heard about the student profile, both its use in
13 terms of the exiting of students from the program, and also
14 in terms of its being something that is being piloted this
15 spring. Would you tell us about the piloting effort and what
16 has gone on and is going on in that regard?

17 A We've just completed the field testing, oh, maybe two
18 weeks ago, or so, three weeks ago, or so. We've looked at
19 the data that we received. We field tested it with teachers
20 and students and parents. What we have found is positive--

21 THE COURT: Over what period of time was this?

22 THE WITNESS: This occurred over a two to three week
23 period of time. We've had very positive responses. We've
24 had some information from teachers in terms of how we can
25 modify the student profile, and also the social cultural or

1 what we're calling student environment learning guide, I
2 guess we would say.

3 Anyway, so we have that back. We've looked at the
4 data. We've put together that information, and making
5 modifications as it relates to information that we've
6 received from teachers and parents. Parents have been very,
7 very supportive of what we're doing, and one of the things
8 that they've said is that to them, it gives the teacher a
9 better idea, a better look at their student, because parents
10 are filling out information related to their particular child
11 and then comparing that to what the teacher has seen. So
12 it's been very favorable.

13 Q (by Mr. Jackson) Is it fair to say, Mr. Perea, based
14 upon your experiences, that the development of the student
15 profile and the plan itself provide much greater opportunity
16 for informed parent involvement in the English language
17 acquisition program than has been present before?

18 A I believe so.

19 Q And have you found within your experience that the role
20 of the parents is critical in this?

21 A It is. It's the most important role. We can work as a
22 partner with parents in the schools and get them involved in
23 their child's education. It plays a very, very important
24 role.

25 Q And what kind of a commitment do you have to the

1 parental involvement in the implementation of this plan if
2 it's given the go-ahead?

3 A Well, of course one of the things that I've already done
4 is to meet not every month, but almost every month at
5 District B-PAC Meetings with parents, explaining the plan to
6 parents, talking about what this plan speaks to in terms of
7 services to their children. I will continue to do that,
8 continue to work with schools in terms of the forming of B-
9 PACS, bilingual parent advisory committees, and continue to
10 work with parents. I've been called by principals when
11 parents have a question. Sometimes I can respond on the
12 phone. Sometimes I go visit them. So, you know, I'm
13 available to parents and have made visits on Saturdays and
14 even Sundays to parents.

15 Q To what extent have you been involved in updating and/or
16 modifying the training modules and training program that's
17 available for teachers?

18 A We have hired a training specialist for our department,
19 and we have gone through the modules and made some revisions,
20 made some improvements, looked at--Dr. Eckerling spoke
21 earlier about a criteria for the teacher, a standard that
22 they would have to meet in order to pass the module. We want
23 teachers to demonstrate that if they've spent 30 hours in
24 training as it relates to ESL, that they're able to put
25 together an ESL lesson, something that we can look at and say

1 whether in fact--or determine whether in fact they have
2 learned what we are training them on.

3 Q Describe for the Court, if you will, your involvement in
4 ascertaining the presence of materials within the classrooms
5 through the city, and plans for the acquisition of additional
6 materials.

7 A Last year when I served as principal at Valdez, the
8 department had an audit of materials, and then that
9 information was given to us as principals, and we were asked
10 to order those materials. And actually, the department
11 provided support in terms of helping us provide the budget to
12 purchase those materials.

13 We have continued with that endeavor this year
14 because a number of schools, for example, did not purchase
15 sufficient numbers of materials, as well as some schools did
16 not purchase ESL materials. Last year's department
17 recommended a certain program, and some schools did not
18 purchase it. So this year, we assisted in purchasing those
19 materials for them.

20 We've also completed this year a secondary audit,
21 and are looking right now at--or looking at what the needs
22 are as it relates to the standard that we've set in terms of
23 those materials, and we'll be also ordering and assisting
24 schools to provide those materials to their students.

25 Q Mr. Perea, if the Court were to approve this plan and

1 authorize its implementation, are you prepared to do the
2 things necessary to assure that the plan can be implemented
3 starting this fall?

4 A Yes.

5 MR. JACKSON: I have nothing further.

6 THE COURT: Mr. Roos?

7 CROSS-EXAMINATION

8 BY MR. ROOS:

9 Q Just some clarification similar to the questions I had
10 for Mr. Eckerling. Would you turn to Chapter 5, please, on
11 exiting from the program?

12 There's been discussion today about the burden on
13 your office of reviewing exiting criteria; is that true?

14 A It is.

15 Q It is your understanding, is it not, that the objective
16 criteria, i.e. passing the LAS test and meeting the threshold
17 scores on a matrix or the Norm Reference Test that are
18 referenced in Chapter 5 are minimums that must be met before
19 a student is reclassified; is that your understanding?

20 A Yes.

21 Q And with respect to Chapter 4 which deals with initial
22 entry, could you turn to that? That's Page 190. Do you see
23 that?

24 A Yes.

25 Q Is it also your understanding that the objective

1 criteria dealing with the LAS test and the matrix test are
2 bedrock foundational requirements that must be met before--to
3 assure that a child gets into a program; is that not correct?

4 A Yes.

5 MR. ROOS: Thank you.

6 THE COURT: Mr. Glassman?

7 MR. GLASSMAN: I have no questions, Your Honor.

8 THE COURT: Just one thing. In the communication with
9 parents and the importance of the parents' involvement in the
10 education of the children, would I be right that a
11 significant number of the parents are limited in English?

12 THE WITNESS: Yes.

13 THE COURT: So that you have to have a structure so you
14 can communicate in native language there, and principally
15 Spanish in the areas you're talking about?

16 THE WITNESS: Yes.

17 THE COURT: And you contemplate doing that, I take it?

18 THE WITNESS: Yes, we have translators in the department
19 who assist when meetings are held, for example, in schools
20 where they request a translator. Whenever I present, I
21 present in both languages.

22 THE COURT: Well, if a principal who is not fluent in
23 Spanish wants to meet, you know, with parents in that school,
24 then that principal can get a translator for the meeting?

25 THE WITNESS: Yes. Yes.

1 THE COURT: Is that done? I mean, has that been going
2 on?

3 THE WITNESS: Yes, it is. As a matter of fact, we had
4 to hire a translator that works a little bit different
5 schedule, coming in afternoons, actually an afternoon
6 schedule, almost a 3:00 to 11:00 shift.

7 THE COURT: Yeah. Well, some of those meetings are
8 after school?

9 THE WITNESS: Most of them are after school, yes.

10 THE COURT: Yeah. Okay, thank you.

11 MR. ROOS: Actually, I have a few other questions, Your
12 Honor, that were sort of prompted by yours.

13 THE COURT: All right, sure.

14 FURTHER CROSS-EXAMINATION

15 BY MR. ROOS:

16 Q There were comments made by Padres concerning problems
17 with respect to secretaries who may not be able to
18 communicate with parents. Do you remember those comments?

19 A Yes.

20 Q You agree that it's important that there be somebody in
21 a school at various levels who can properly inform parents as
22 to their rights, would you not?

23 A Of course.

24 Q And will you be assuring us that if secretaries and
25 front line people who would ordinarily deal with parents do

1 not have those skills, that there will be other people around
2 who can be readily made available to parents?

3 A To the extent that those individuals are available, yes.

4 Q Okay. And it is a commitment of your office to try to
5 make those people available?

6 A Yes.

7 Q And you would agree that informed parent involvement is
8 important, would you not?

9 A Yes.

10 Q And I gather that you would also agree with comments by
11 Padres that a number of parents are in fact are not literate
12 in Spanish, or their own language; that is true, is it not?

13 A That's correct.

14 Q And so it is important that there be contact people in
15 the schools who in fact can communicate with the parents; is
16 that correct?

17 A Yes.

18 Q Comments were made concerning appeal processes, parent
19 appeal rights to the director of the--to you.

20 A Yes.

21 Q Are you familiar with those comments?

22 A Yes.

23 Q There was a suggestion that your office might merely
24 file those appeals. Is that what you would intend to do? Is
25 that what you envision the extent of your obligation is under

1 the decree?

2 A No, absolutely not. My reputation would not allow me to
3 do such a thing. I would listen and make a decision.

4 Q And it is your understanding that if there were an
5 appeal, that it would be up to your office to make an
6 informed professional judgment based upon the parent's
7 petition to you; is that correct?

8 A Yes.

9 Q And that's what you will do; is that correct?

10 A Yes.

11 Q You've heard conversation in this courtroom today about
12 the importance that we all place on the monitor, have you
13 not?

14 A Yes.

15 Q And would you agree with me that it is important that
16 parents have access to the monitor to set forth problems that
17 they might have?

18 A Yes.

19 Q Okay. And does the district, through your office,
20 intend to inform parents of the existence of the monitor and
21 the scope of his responsibilities and their ability to access
22 the monitor?

23 A Yes.

24 MR. ROOS: Nothing further, Your Honor.

25 MR. JACKSON: I have one question, Your Honor.

1 THE COURT: Please.

2 REDIRECT EXAMINATION

3 BY MR. JACKSON:

4 Q Mr. Perea, the plan itself imposes a duty on the
5 district to determine which language the parents prefer to
6 receive communications in, does it not?

7 A That's correct.

8 Q And imposes an obligation on the part of the district to
9 honor that to the extent that it is practicable, and they
10 have the provision in there that it will be done in Spanish
11 and Khamur and Russian and Vietnamese I believe is the other
12 one, and any other language spoken by at least 100 students
13 in the district; is that correct?

14 A That's correct.

15 MR. JACKSON: Thank you.

16 THE COURT: Thank you. You can step down.

17 MR. JACKSON: Call Ms. Sue Edwards.

18 THE COURT: Okay.

19 MR. JACKSON: And this would be my last witness, Your
20 Honor.

21 SUSAN EDWARDS

22 called as a witness on behalf of the defendant, having been
23 first duly sworn, was examined and testified as follows:

24 THE CLERK: Would you state your full name for the
25 record, and spell your last name?

1 THE WITNESS: Susan Gayle Edwards, E-d-w-a-r-d-s.

2 THE CLERK: Thank you.

3 DIRECT EXAMINATION

4 BY MR. JACKSON:

5 Q Ms. Edwards, you're a member of the Board of Education;
6 is that correct?

7 A I am.

8 Q And you hold an office on the Board?

9 A I do.

10 Q What is that office?

11 A I'm the President of the Board of Education.

12 Q How long have you served on the Board?

13 A I've been on the Board of Education since May of 1995,
14 just over four years.

15 Q And how long have you been its president?

16 A I've been president since November of 1996.

17 Q So you were president of the Board during the time that
18 the District entered into negotiations with respect to the
19 English language acquisition program?

20 A Yes.

21 Q During the time of those negotiations, were you and the
22 Board kept apprised of the elements of the negotiations, the
23 progress of it, and what was on the horizon, so to speak?

24 A Absolutely, yes.

25 Q Once the plan was completed, did you have a special

1 meeting at which the plan was presented to the Board and
2 described in some extensive detail in terms of its provisions
3 and programs?

4 A Yes.

5 Q - And at the conclusion of that meeting, did the Board
6 take action with respect to the plan?

7 A Yes, it did.

8 Q And what did it do?

9 A The Board of Education voted unanimously to support and
10 adopt this plan.

11 Q And directed, did it not, its counsel to join with
12 counsel for the United States and for the plaintiffs to
13 submit the plan to the Court for approval and authorization
14 to implement the plan?

15 A That is correct.

16 Q We've heard lots of discussion today, Ms. Edwards, about
17 materials, about personnel, about commitments to the program,
18 about resources necessary to implement the plan. As the
19 president of the Board of Education, please advise the Court
20 the extent to which the Board of Education is committed to
21 implementation of this plan and the processes that will be
22 followed in attending to its implementation.

23 A This Board of Education and the staff of Denver Public
24 Schools are committed to meeting the needs of the children of
25 Denver, and to providing educational opportunities that will

1 allow them to graduate as productive members of our society.
2 One of the needs of some of the children of our district, an
3 ever increasing number of children in our district, is the
4 need for English language acquisition, and the program that's
5 been developed by the staff of the district, in conjunction
6 with the community and in conjunction with families and in
7 conjunction with the plaintiffs, is one that this Board of
8 Education supports wholeheartedly, will commit the resources
9 necessary to fully implement, will direct staff to fully
10 implement, and I have the full confidence that this plan will
11 provide what opportunities we are able to to meet the needs
12 of the students of this district.

13 Q You're familiar with the accountability provisions of
14 the plan and the reports that are required to be given to the
15 Board of Education?

16 A I am.

17 Q Is the Board prepared to both receive and to act upon
18 those reports?

19 A I think those are important distinctions. We will do
20 more than just receive them. If we see problems with the
21 implementation of this plan, staff will be directed to act
22 upon--to make remedy of those situations. So we will not
23 simply be filing those reports away, but they will be an
24 active document to allow us to best meet the needs of the
25 students.

1 Q Have you had similar requirements and definitiveness
2 with respect to the type and frequency of reports before?

3 A One of the goals of this Board of Education has been to
4 review programs within our district to determine the ones
5 that are successful, to determine the ones that are no longer
6 successful, to find means of improving all the programs that
7 are offered for our children, and then to act upon the
8 recommendations that are made and to follow up. So yes,
9 we've had many occasions within this district, in individual
10 programs and district-wide programs, where we have had the
11 opportunity to--where we've asked--accountability is the
12 issue and where we've asked for reporting on the success of
13 the programs, and then taken action to remedy any
14 deficiencies.

15 Q Is it fair to say that the accountability portion of the
16 plan under discussion today provides much greater specificity
17 with the type and manner of reports that must be presented to
18 the Board with respect to the English language acquisition
19 program?

20 A I'd say that's a very fair statement.

21 Q The Board also had before it the monitoring proposal,
22 and the fact that the Court, if it approved the program,
23 would be asked to approve a monitor, an outside person who
24 would be responsible for monitoring your implementation over
25 a period of three years. Is this a function and a process

1 that the Board welcomes and looks forward to?

2 A I think it's a necessary component of this particular
3 plan, given the history of this situation and the, if you
4 will, adversarial setting in which this has all evolved. I
5 think that it is--there are trust factors, there are
6 implementation factors that I think we will be best served by
7 having a monitor, a highly skilled and well respected monitor
8 who will watch over this plan and make sure that we're doing
9 the job that we say that we're going to do to the
10 satisfaction of all parties.

11 MR. JACKSON: Thank you. Nothing further.

12 THE COURT: Now, you understand the monitor reports
13 here, too?

14 THE WITNESS: Yes.

15 THE COURT: And that the process, you referred to the
16 adversarial process, and of course that's what this is, and
17 that the effect of my approval of this plan is that the plan
18 becomes an order of the Court?

19 THE WITNESS: Yes, sir.

20 THE COURT: And can't be changed other than going
21 through this process and seeking a change from the Court?

22 THE WITNESS: That is correct.

23 THE COURT: Okay. Well, sometimes that's an advantage,
24 because I've known over the last 23 years the Board has said,
25 well, we'd all agree with that, but the Court ordered us to

1 do it. So I'm familiar with--

2 THE WITNESS: I know exactly what you're talking about.

3 THE COURT: Okay. Do you have any questions?

4 MR. ROOS: I have no questions, Your Honor.

5 THE COURT: All right.

6 MR. GLASSMAN: None, Your Honor.

7 THE COURT: Thank you. You may step down.

8 Anything else by way of testimony or submissions of
9 documents?

10 MR. JACKSON: No further witnesses. At this time, I
11 would just simply renew the joint submission which has been
12 made on behalf of counsel, and urge the Court's approval of
13 the plan and monitor the process.

14 THE COURT: All right. Mr. Roos?

15 MR. ROOS: We would join in that, Your Honor. We have
16 no witnesses to present. I think that it is important, and I
17 think the Court has gotten a flavor of it from probably all
18 sides actually, and as much from the District as elsewhere,
19 that there have been serious problems over the course of time
20 in terms of implementation, and we're looking forward--

21 THE COURT: Well, sure, I remember you were going to
22 seek contempt.

23 MR. ROOS: I wasn't going to mention it. As I remember,
24 that was to be very down-played. But in any event, we're
25 hoping that this is sort of a--this is a new beginning, and

1 we think we've got in place some of the processes that will
2 hopefully sort of stymie some of the activities that veer off
3 at times from full implementation, and we will be watching
4 very closely. But we think that this is a good plan and a
5 good start, and we join in asking the Court to approve the
6 plan and approving the monitor.

7 THE COURT: Mr. Glassman?

8 MR. GLASSMAN: We join with Mr. Jackson and Mr. Roos.
9 We believe the plan is a fair, reasonable and adequate
10 settlement of the issues that were before all of us. We
11 think we have a good faith beginning in working in
12 cooperation with each other, and if this is fully and fairly
13 implemented, we think it will be successful. So we urge the
14 Court to approve it.

15 THE COURT: All right. Ms. Benavidez, do you have any
16 comment?

17 MS. BENAVIDEZ: Well, Your Honor, we would only add that
18 you consider the recommendations on implementation of the
19 plan that Padres has made.

20 THE COURT: Well, here's where we are under the law.
21 The role of the Court of course, as I mentioned here, is to
22 ensure that the statutory command be implemented, and that is
23 under the Congress, 20 USC ~~1703(f)~~, the Court must be sure
24 that the school district, in the words of the statute, takes
25 appropriate action to overcome language barriers that impede

1 equal participation by students in instructional programs.
 2 It is not, of course, the function of a court to determine
 3 what the people of the school district through their
 4 representatives determine to be the instructional programs
 5 that are going to be in that school system. That's not the
 6 role of the Court obviously.
 7 And so these choices must be made by the people
 8 through their representatives, and it's very important to
 9 understand the different role of the citizens of the
 10 community or the constituencies in their ability to design
 11 programs, and then the role of the Court. Obviously, I'm not
 12 an educator.
 13 As I read through this very--somewhat complex plan,
 14 it became very apparent to me that I'm not an educator
 15 because I almost needed a translator at times to understand
 16 some of the terminology that is involved here. I'm not quite
 17 sure why it is that we've become, and particularly educators,
 18 have become so accustomed to turning nouns into verbs, but
 19 that's the way it is.
 20 And my role today is under the rule that we call
 21 Rule 23(e). This is a class action. The Congress of
 22 Hispanic Educators have been the representative of the class.
 23 And what the rules say is that when the parties in a class
 24 action, a plaintiff, school district as the defendant, here
 25 the government as intervenor, have agreed upon settling the

1 issues, then it's up to the Court to determine whether that
2 is a fair settlement of those issues. And so we call this a
3 fairness hearing, or a hearing to determine whether first of
4 all what is being done meets the requirements of the law and
5 the issues in the case.

6 And, of course, the issues in this case have been,
7 since way back when, whether--and originally it was a
8 constitutional issue--whether there's equal educational
9 opportunity for all of the pupils in Denver served by the
10 program, the institutional program. And then of course when
11 this part of the case was carved out from Keyes, the
12 desegregation part of this case, by my determination that the
13 commands of the Constitution have been met and that there was
14 in place equal educational opportunities in the Denver School
15 System, and closed that part of the case out, this remaining
16 set of issues was considered as a separate case, a statutory
17 case dealing with this statute that I've just addressed.

18 I am satisfied that what is presented here does
19 present a program that will avoid the language barriers
20 becoming an impediment to obtaining the benefit of the
21 instructional programs.

22 Now, obviously whether it works or not is the
23 question, and I am particularly interested in the monitoring
24 part of this plan. And those of you who have been involved
25 with this over the years know that way back in 1974 when

1 Judge Doyle first ordered desegregation through a decree,
2 there was a monitor selected by the court. And then over
3 time, I utilized community education counsel, people
4 appointed by me, again to see what was happening actually in
5 the schools. Now, that's my understanding of the role that
6 this monitor is going to play.

7 And it is important to recognize that people will
8 have the opportunity to address the monitor, including
9 anonymously. That's the provision. And also that the
10 monitor will submit reports to the Court, at least an annual
11 report, and I would expect that I--it is understood that I
12 have the authority to request the monitor to report at any
13 time to me with respect to what's happening, and whether the
14 school district is doing what it says it's going to do.

15 So I--and I'm glad that you've all agreed upon this
16 person who has this I think very difficult task ahead of him
17 so that I didn't have to draft somebody into this role. And
18 certainly I reviewed his qualifications and I've had the
19 assurance from you counsel here that this is a person who
20 will do the job. And through what comes from him, I'm here
21 to make sure that the school district does what they say
22 they'll do.

23 So I'm accepting this plan, and it should now be
24 put into the form of a decree of the Court, consent decree
25 that the plan will be implemented, and the implementation

1 will begin with the beginning of the next academic year,
2 which I understand now to be the first week in September of
3 1999. So counsel will draft an order adopting this plan as a
4 decree of the Court, and directing its implementation.

5 And it is apparent to me, because how long has it
6 been, Mr. Roos, since you came in and were talking about
7 seeking a contempt order here? It's been--

8 MR. ROOS: It was in 1994, I went back. So this is five
9 years later that we're here.

10 THE COURT: Yeah. Well, a lot has gone on, and of
11 course one of the things that--you know, one of the things
12 that is really important I think for me to say publicly, I
13 think I said it back in 1995 when I cut out, so to speak, on
14 the jurisdiction, this school system is a lot different from
15 what it was in 1974. It's a lot different from what it was
16 in 1976 when I had first cut responsibility in this matter.
17 And it is a lot different over time, and one of the big
18 differences is, and I'm so pleased to see it in action, and
19 that is we have gone from a time 20 or more years ago when a
20 court had to protect people who were then considered
21 minority, racially, ethnically, because they couldn't--they
22 didn't have the levers of power to do things for themselves.
23 That's different.

24 Today, as a result of so many changes in our
25 society and in the law governing us, including these civil

1 rights enactments by the Congress of the United States,
2 people have the power to help themselves, and that's what's
3 obviously gone on here, and it is just such an encouraging
4 thing as a citizen, not a judge, to see this in play. And
5 that's what's happened, and of course no one plan is going to
6 be applauded by all people. Choices have to be made. And it
7 is this Court's responsibility again to ensure that as we go
8 forward with this plan, that nobody is going to get left
9 behind.

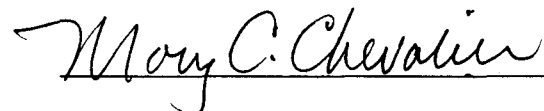
10 So in that spirit, I'm approving this plan, and
11 counsel will draft an appropriate order.

12 Thank you. Court's in recess.

13 (4:40 p.m. - Whereupon, the proceedings were concluded.)
14
15
16

17 I certify that the foregoing is a correct
18 transcript from the record of proceedings in the above-
19 entitled matter.
20

21 July 5, 1999
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I N D E X

<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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