

VIRGINIA DEPARTMENT OF EDUCATION

DUE PROCESS HEARING

REDACTED, by and through her *

next friends, her parents, *

REDACTED, *

Petitioners, *

v. *VDOE Case No. 22-84

CHESTERFIELD COUNTY PUBLIC SCHOOLS *

Respondent. *

TRANSCRIPT OF PROCEEDINGS BEFORE

SARAH S. FREEMAN, ESQUIRE

ADMINISTRATIVE HEARING OFFICER

March 21, 2022

9:04 a.m. - 5:04 p.m.

* * * Day 1 of 8 * * *

Job No. 47225

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17 On behalf of the REDACTED

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9 On Behalf of Chesterfield County School Board

10

11 ALSO PRESENT:

12 REDACTED, Parent

13 REDACTED, Parent

14 APRIL LENNOX, CCPS, Dyslexia Specialist

15 BRIAN MILLER, ESQUIRE, VDOE Observer

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C O N T E N T S

WITNESS	PAGE
---------	------

REDACTED

Direct Examination by Mr. Ratner	43
----------------------------------	----

Cross-Examination by Mr. Andriano	195
-----------------------------------	-----

Re-Direct Examination by Mr. Ratner	244
-------------------------------------	-----

CHRISTINE McCLUSKEY

Direct Examination by Mr. Ratner	268
----------------------------------	-----

* * * * *

E X H I B I T S

RECEIVED

Parents' Exhibit 4	158
--------------------	-----

Parents' Exhibit 16	106
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Parents' Exhibits 59-62	83
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1 (9:04 a.m., March 21, 2022)

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P R O C E E D I N G S

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THE HEARING OFFICER: Let's go on the
record now. Today is the 21st of March, 2022. To
my left is Todd Ratner. And then just go ahead
and introduce yourself for the record; okay?

9

MS. RATNER: Sarah Ratner.

10

MS. REDACTED: REDACTED.

11

MR. REDACTED: REDACTED.

12

MS. LENNOX: April Lennox.

13

14

MR. ANDRIANO: Patrick Andriano for the
school board.

15

16

17

THE HEARING OFFICER: Now are there any
witnesses out -- I believe everyone identified
herself or himself as an observer.

18

19

20

21

22

23

Did you all see the sign-up sheet for -- And
those are guidelines. They're not necessarily
strictly enforced. But as long as you've
acknowledged and you've signed off and give -- I
think you have to give identification to even get
in the building now in any school system.

24

25

But has everyone acknowledged and signed off
on the sheet? Any questions?

1 (No response.)

2 All right. So let's proceed then. So we
3 had a motion this morning about the exhibits. And
4 we discussed the exhibits. And I believe that
5 Parent's counsel, Mr. Ratner, had suggested that
6 we go through -- and I believe Mr. Andriano
7 concurred that that would be acceptable to the
8 school system, that we go through the exhibits as
9 they're offered for introduction, and that if
10 there are any objections to the exhibits, Mr.
11 Andriano will voice his objection and then I'll
12 make a ruling.

13 And depending on the ruling, the document
14 will either be admitted or whatever it is, a video
15 -- I haven't gone through what the exhibits were.
16 But whatever the exhibit is will be rejected. And
17 there will be a list of rejected exhibits, if
18 that's okay with you Mr. Ratner and Ms. Ratner.

19 MR. RATNER: Absolutely.

20 THE HEARING OFFICER: And by the way, if we
21 move to first names that's fine, too. But for the
22 record I just identify everyone as Mr., Ms., all
23 of that.

24 So is that acceptable to you then, Mr.
25 Andriano, on the record, that we're proffering the

1 exhibit, that you would object to it or not?

2 MR. ANDRIANO: Yes.

3 THE HEARING OFFICER: Okay. All right.

4 MR. ANDRIANO: That's my understanding.

5 THE HEARING OFFICER: So let's move

6 forward. Do we have an opening statement?

7 MR. RATNER: Yes. Before we get to that a
8 couple of preliminary matters.

9 THE HEARING OFFICER: Go ahead.

10 MR. RATNER: One was that the school board,
11 I believe, has a motion to challenge the
12 qualifications of our expert witness that I think
13 we had deferred. And maybe you already denied it.
14 We talked about --

15 THE HEARING OFFICER: No, no.

16 MR. RATNER: -- remote testimony.

17 THE HEARING OFFICER: The remote -- I
18 recall -- I don't know if you were there that day,
19 Mr. Andriano, but at the last conference the
20 parents' motion to have the expert -- the
21 proffered expert witness testify was going to be
22 heard this morning about her qualifications.

23 I don't recall the lady's name.

24 MR. RATNER: It's Elizabeth Capone.

25 THE HEARING OFFICER: Ms. Capone. And I

1 have gone over her resume in cursory fashion, but
2 not in a detailed way. So I'm going to rely on
3 you to point out if there are any -- with
4 specificity if there are any objections to her
5 testimony.

6 That's what we reserved for today. But as
7 far as if she is qualified as an expert witness --
8 And I think Mr. Ratner proffered the last time we
9 spoke at a pre-hearing conference that the witness
10 had -- also could testify as a lay witness if
11 she's not qualified, because -- If I recall, she's
12 actually had experience with a child? She's --

13 MR. RATNER: She's been a teacher for over
14 twenty years.

15 THE HEARING OFFICER: Yeah. But with the
16 child.

17 MR. RATNER: Oh, yeah, she knows the --
18 she's met the child.

19 THE HEARING OFFICER: She knows the actual
20 witness; right?

21 MR. RATNER: Yes. Correct.

22 THE HEARING OFFICER: Okay. So let's move
23 ahead and let's talk about -- So what he's -- what
24 Mr. Ratner is referring to now are her
25 qualifications. So we haven't qualified or not

1 qualified her.

2 MR. ANDRIANO: Ms. Freeman, I think I'd be
3 fine waiting until --

4 THE HEARING OFFICER: Okay. All right.

5 MR. ANDRIANO: -- it's time for her to
6 testify.

7 THE HEARING OFFICER: Is that all right?

8 MR. ANDRIANO: Then I can hear what --

9 THE HEARING OFFICER: Or were you given --

10 MR. ANDRIANO: I don't know what they're
11 trying to qualify her as. So my recommendation
12 would be let's just wait until she is proffered as
13 an expert.

14 THE HEARING OFFICER: When were you going
15 to -- Yeah, thank you.

16 MR. ANDRIANO: I'll conduct the voir dire
17 if I need to.

18 THE HEARING OFFICER: Okay. Is that
19 acceptable?

20 MR. RATNER: Absolutely. I had understood
21 your preference was to address it beforehand.
22 That was the only reason I raised it.

23 THE HEARING OFFICER: I think it's six of
24 one, half dozen -- whatever.

25 MR. RATNER: I think that what Mr.

1 Andriano's recommending makes sense.

2 THE HEARING OFFICER: Okay.

3 MR. ANDRIANO: We most likely will call her
4 Friday.

5 THE HEARING OFFICER: Friday. All right.
6 So we'll reserve the argument then. But I do want
7 to let you have a chance to qualify her, if you
8 want to, or object to her qualifications if you
9 want to.

10 So let's have our opening -- Or are there
11 any other motions? I'm so sorry.

12 MR. RATNER: It's not a motion, but just
13 sort of a preliminary matter. Mr. REDACTED, who
14 you've met, REDACTED's father, is here. He'll be in
15 attendance to the best of his scheduling
16 abilities.

17 He's not on anybody's -- either sides'
18 witness list.

19 THE HEARING OFFICER: Okay.

20 MR. RATNER: He is a small business owner.
21 And for him to be out of work for eight days I
22 think would potentially be an undue hardship. And
23 so we'd ask that, you know, he be excused from
24 attending if there's anything he needs to attend
25 to.

1 THE HEARING OFFICER: Of course.

2 Is that acceptable to you, Mr. REDACTED?

3 MR. REDACTED: I anticipate being here. But I
4 also want to have the opportunity to --

5 THE HEARING OFFICER: Testify if you want
6 to. The other thing is I wasn't going to say, if
7 you want to exit, just feel free to do so. Just
8 come in and out. You don't have to announce that
9 you're leaving or coming back.

10 All right. So are there any more
11 preliminary --

12 MR. RATNER: No. That was the last thing I
13 was going to ask about.

14 THE HEARING OFFICER: All right. So do you
15 have any preliminary motions?

16 MR. ANDRIANO: No, Ms. Freeman.

17 THE HEARING OFFICER: All right. So let's
18 have -- Are the -- Well, we don't have any
19 witnesses here. I was going to swear the
20 witnesses in one at a time, or --

21 MR. ANDRIANO: Ms. Freeman, some people did
22 walk in.

23 THE HEARING OFFICER: Oh, good morning.
24 I'm Sarah Freeman, I'm the Hearing Officer. Are
25 you all observers or witnesses?

1 AN OBSERVER: Observers.

2 THE HEARING OFFICER: Okay. And did you
3 see the sign-in sheet and all of that?

4 AN OBSERVER: Yes. We've already gone
5 through that process.

6 THE HEARING OFFICER: All right. So now I
7 guess we need to have our witnesses in. Are you
8 going to bring the witnesses in?

9 MR. ANDRIANO: I think Ms. REDACTED's the only
10 witness at this point.

11 THE HEARING OFFICER: Are you going to do
12 your opening statement first?

13 MR. RATNER: Yes.

14 THE HEARING OFFICER: All right. So let's
15 go ahead.

16 MR. RATNER: Great. I'm comfortable just
17 staying seated, if that's okay with you.

18 THE HEARING OFFICER: That's fine. Yeah,
19 go ahead.

20 MR. RATNER: Great. Well, thank you very
21 much, Ms. Freeman. We very much appreciate the
22 opportunity to be here today. This represents the
23 culmination of a years long effort by the REDACTED
24 to secure a free appropriate public education for
25 their daughter, REDACTED.

1 During I think it was the third pre-hearing
2 conference, you used a word that struck a cord
3 with me, and that was illusory. And I've been
4 thinking about that for a while since you said it.

5 THE HEARING OFFICER: I said it?

6 MR. RATNER: Yes. You said the word
7 "illusory." Nothing pejorative.

8 THE HEARING OFFICER: Oh, okay. All right.

9 MR. RATNER: I think you just said "That
10 connection seem illusory," and it just jogged a --

11 THE HEARING OFFICER: All right. Well, go
12 ahead. I'll listen to the rest.

13 MR. RATNER: Sorry, I didn't mean to throw
14 you off there.

15 THE HEARING OFFICER: Oh, no, no, no. I
16 just didn't -- I did not know that I had used that
17 word. And I was trying to recall in what context
18 it was. So go ahead.

19 MR. RATNER: But in any event --

20 THE HEARING OFFICER: And sorry for
21 interrupting.

22 MR. RATNER: Oh, that's quite all right.
23 As I'm sure you're aware, and I'm not going to
24 digress into a long history lesson, but this is a
25 civil rights issue; right? This is an outcrop of

1 the civil rights movement that dates back to the
2 1950s and 60s, having to do with equal access to
3 education for all citizens of this country.

4 And it took until 1973 for Congress to
5 finally do something about children with
6 disabilities. And when the IDEA, the Individuals
7 with Disabilities Education Act, was finally
8 passed, it was a big moment for families with
9 children with disabilities, as you know.

10 Oh, let me move that for you. I'm so sorry.

11 THE HEARING OFFICER: No, no, no. You're
12 fine. Is this my exhibit?

13 MR. RATNER: It is.

14 THE HEARING OFFICER: Oh, okay.

15 MR. RATNER: It's set one through four.
16 And that's volume one in the front.

17 THE HEARING OFFICER: Okay. Go ahead.

18 MR. RATNER: So it was a big moment for
19 families -- Here, let me move this, so it's not
20 blocking your view -- because it gave children a
21 very important right. And that is the right to a
22 free and appropriate public education.

23 That is the importance of education in our
24 society. There's a great quote from Brown vs.
25 Board of Education just about how important

1 education is and the access to education for every
2 child to fulfill sort of the intent and the
3 promise of this great country of ours in the
4 United States and equality and equal access and
5 all of those things.

6 And what we've seen throughout this process
7 and what the REDACTED's have experienced,
8 unfortunately, is that although the right to a
9 free appropriate public education is a very
10 powerful thing, if this is what it takes to
11 actually secure that right and to protect that
12 right, it seems like that right may be illusory
13 for a lot of families.

14 There has been a long -- year's long
15 struggle that this family has had to secure, first
16 of all, the proper identification as a student
17 with a disability, then to secure the proper
18 specialized instruction and related services for
19 REDACTED. And that is a year's long struggle.

20 We put together a very long complaint, over
21 150 pages. And we did that not just to pat
22 ourselves on the back or to read our own writing.
23 And I know you're read it. And I hope you'll have
24 a chance to read it again before you issue the
25 decision, because there's a lot of information in

1 there.

2 We drafted that to give everybody fair
3 notice of what exactly were the issues that the
4 REDACTED were complaining about. And to be
5 perfectly candid, we were and remain prepared to
6 offer evidence, testimony, documents,
7 substantiating every single allegation in that
8 complaint. That will take a very, very, long
9 time, which is why we reserved five days for this
10 hearing. And we appreciate that.

11 You have, I think prudently, made clear,
12 "Look, there's a lot to cover. We're going to set
13 some limits on things. I don't want repetitive
14 testimony. I don't want redundant statements."

15 We respect that. We've heard your orders.
16 And we are going to do everything we can to keep
17 this moving forward. We cut down our witness
18 list. We're trying to be very efficient and
19 effective.

20 But I do want you to understand that I think
21 there is no way that we could possibly offer all
22 of the testimony and documentary support for the
23 allegations that we wanted within the limitations
24 that you correctly imposed.

25 We think that -- We respect that. We will

1 abide by that. And we appreciate you helping us
2 streamline what you think is important. Because
3 obviously we want to address the issues that are
4 of most concern to you.

5 But we do hope that you understand that
6 every allegation that we've made, there's a
7 document in one of these books that supports it.
8 And whether or not we have ample time for a
9 witness to review it in detail, we've put it in
10 the book for you to review. And that's well
11 within your discretion. And we hope you'll give
12 that every due consideration that it deserves.

13 There are a few things that I think are
14 critically important to this case. One is how
15 difficult things have been for the REDACTED. And
16 you will hear from Ms. REDACTED specifically about
17 all of her concerns for her daughter and for her
18 daughter's educating dating back all the way to
19 kindergarten.

20 And, again, you've made very clear you're
21 most interested in what happened during the two
22 years that are prior to our due process complaint.
23 So that would date back to February 1st, 2020.
24 That puts us into the spring of fourth grade.

25 But just for one example as to why some of

1 the prior information would be important to you,
2 relevant to you, more likely than not to help the
3 trier of fact make a determination that is
4 important in this case; when REDACTED was finally
5 evaluated in third grade, so that was in 2019, a
6 year before, she had a full battery of
7 evaluations.

8 Those evaluations are certainly outside the
9 two years. She was then evaluated in the winter
10 of 2020/2021, December/January of that time frame.
11 Those are clearly -- That was during fifth grade,
12 and those are clearly right in the time period we
13 are talking about.

14 Those second evaluations show significant
15 regression. Her scores in a lot of important
16 categories went down. These are the Woodcock
17 Johnson tests, for example, a nationally normed
18 test that is routinely relied upon to determine
19 whether a student is eligible for special
20 education services, unlike some of these reading
21 assessments like the DRA, the Fountas and Pinnell,
22 which are some of the things that the school board
23 is relying upon to show progress.

24 We'll present testimony to show those things
25 are used in the classroom. They're not typically

1 a standard measure of performance like the
2 Woodcock Johnson.

3 But the important point that I am sure you
4 appreciate is we can't show that regression,
5 right, the comparison between how she did on the
6 third grade evaluations to how she did on the
7 fifth grade evaluations unless you receive into
8 evidence and hear testimony about those third
9 grade evaluations.

10 So that's just one example of the type of
11 evidence that we will seek leave to introduce
12 during the hearing about things that may be
13 outside of the two year time frame.

14 And obviously it's to your discretion. But
15 I just want to give a preview of our understanding
16 of how something outside the two year time line
17 might be relevant. And I hope you will give that
18 due consideration.

19 The other point that I want to make is a
20 really important one. In the third pre-hearing
21 order or report there was a statement about
22 presuming that everybody has approached the issues
23 in this case in good faith. And we understand
24 your presumption. And we understand your concerns
25 about that. You've admonished me, and I

1 understand your instructions. I will observe full
2 decorum.

3 I will attempt to present this case and
4 argue this case as dispassionately and as
5 professionally and legally, and all of those sorts
6 of things, as I can.

7 But I think what you have observed through
8 the pre-hearing calls is I do feel strongly about
9 this, I do feel passionately about this. I do
10 think and the REDACTED think that the way the school
11 board treated them was not correct, was not in
12 compliance with the law.

13 And, again, we've made serious allegations
14 in the complaint that some of these actions were
15 not taken in good faith. And so while I
16 appreciate we don't make those allegations
17 lightly, we hope we have the opportunity to
18 present those -- to present that evidence, and for
19 you to keep an open mind as to why they draw those
20 conclusions and ask you to draw those conclusions.

21 And I just want to give a few examples of
22 some of the evidence that we will be presenting.
23 There are a few things that we are very concerned
24 about in this case, starting with the issue
25 related to services during COVID and the pandemic.

1 There is an issue, there was a long
2 discussion in the complaint about what happened in
3 April of 2020, and how Chesterfield County Public
4 Schools unilaterally changed the IEP for REDACTED
5 without the parents' consent.

6 They reduced it to one goal. The one goal
7 was that she would be able to follow a writing
8 prompt with a beginning, middle, and end. This is
9 a student with an extremely high IQ, in the
10 superior range, a student who Chesterfield County
11 Public Schools, by their own assessments,
12 identified as a gifted student.

13 Yet you've seen some of her work. You will
14 see more. As of fifth grade she was really
15 struggling to write basic sight words. She was
16 really struggling to read.

17 And we see inconsistent information from
18 Chesterfield County Public Schools. If she's able
19 to read on grade level, as they assert, and that's
20 why they claim she's receiving a free appropriate
21 public education; why does she need her tests read
22 aloud to her? That's inconsistent. Either she
23 can read on grade level or she can't. They agree
24 she needed those accommodations.

25 So those are fact issues that we think that

1 you need to consider. But in terms of what
2 happened during COVID, again, we think that's just
3 flatly contrary to the statute. There is an IEP
4 team that makes decisions about changes to
5 services. This was done unilaterally. That's one
6 issue.

7 A second issue that causes the family a lot
8 of concern about the good faith with which
9 Chesterfield County Public Schools has approached
10 this case are the serial IEPs and the meetings
11 that they've had before, during, and after the
12 family requested private placement. That request
13 was denied. They then provided their ten day
14 notice letter about they will be unilaterally
15 enrolling REDACTED at the New Community School.

16 And yet there were still at least two more
17 IEP meetings that the school represented were
18 mandatory under the statute. One thing we've seen
19 is when the school board doesn't want to have a
20 meeting, such as during COVID, they clearly say in
21 the letter, you know, "The statute says we can
22 waive a meeting. We can make a change without a
23 meeting."

24 You will hear testimony from Ms. REDACTED, and
25 you will see emails back and forth with her

1 pleading, "Can't we please just waive this
2 meeting? We don't see any point. We didn't ask
3 for this OT evaluation. We don't think this
4 meeting is necessary. Nobody's recommending
5 occupational therapy for REDACTED. Why is this
6 meeting necessary?"

7 Well, the reason that we contend CCPS wanted
8 to hold this meeting was to try to improve the IEP
9 that they had presented before, because they knew
10 the parents were intending to challenge it as not
11 providing FAPE.

12 You will see evidence, you may -- et cetera,
13 of CCPS personnel scrambling behind the scenes to
14 have another IEP meeting in February of 2022,
15 after REDACTED's already been out of school for six
16 months, to have yet another one, another IEP
17 meeting when they understood that REDACTED was about -
18 - or the REDACTED were about to file their due
19 process complaint.

20 And why do we know this is wrong? It's not
21 just me saying, oh, the statute allows for
22 meetings to be waived and the parents asked that
23 it be waived. This was addressed in the Rowley
24 case forty years ago.

25 The Supreme Court said if you, school

1 district --

2 MR. ANDRIANO: Ms. Freeman, I'm going to
3 object. I think we're getting into legal
4 arguments. I mean, instructing on the law. I
5 mean, that's not really the purpose of an opening
6 statement.

7 THE HEARING OFFICER: How far were you
8 going to go into explaining Rowley to me?

9 MR. RATNER: I just wanted to make one
10 point --

11 THE HEARING OFFICER: Make a reference to
12 it?

13 MR. RATNER: -- about how -- And, again, I
14 think we're talking about what our evidence is
15 going to show --

16 THE HEARING OFFICER: All right. Go ahead.

17 MR. RATNER: -- is what opening statement
18 is.

19 THE HEARING OFFICER: Just for that limited
20 purpose then.

21 MR. RATNER: Yeah.

22 THE HEARING OFFICER: So sustained, but
23 cautionary.

24 MR. RATNER: Absolutely.

25 THE HEARING OFFICER: Okay. Go ahead.

1 MR. RATNER: And I understand. So, again,
2 what Rowley says is specifically on that issue.
3 You can't, as a school district, keep proposing
4 serial IEPs, because that creates an issue that is
5 capable of repetition, but evading --

6 There's also a second circuit case that
7 talks about when a parent makes a difficult
8 decision to pull their child and unilaterally
9 place them in a private school, they have to be
10 able to rely on what that IEP says.

11 So that's why we think CCPS knows that what
12 they were doing is wrong. And that's why we're
13 going to ask you to keep an open mind as to
14 whether or not they were acting in good faith on
15 that issue.

16 THE HEARING OFFICER: I will keep an open
17 mind, I promise I will. But let's stay off of the
18 legal reasoning until you do your oral or written
19 conclusion.

20 MR. RATNER: Absolutely.

21 THE HEARING OFFICER: Okay.

22 MR. RATNER: I thought I was talking about
23 the evidence we're going to present.

24 THE HEARING OFFICER: Yeah, all right.

25 What was the second circuit case you were talking

1 about, do you remember?

2 MR. RATNER: I will give you that citation
3 in our closing.

4 THE HEARING OFFICER: Oh, all right. Yeah,
5 but just -- All right. That's fine. Go ahead.
6 Any more?

7 MR. RATNER: Yes, thank you.

8 THE HEARING OFFICER: Okay. Go ahead. I
9 didn't know if you finished or not.

10 MR. RATNER: No. So a third issue that --
11 Again, this is evidentiary. I want to be very
12 clear. There is a legal argument from
13 Chesterfield County Public Schools that the New
14 Community School where REDACTED has been placed, that
15 Chesterfield County Public Schools says, "We can't
16 place students there. We're legally prohibited
17 from placing them there."

18 That is not what the law says. It is not
19 what the evidence that they have presented shows.
20 And it is not what the witness that they have
21 identified to speak to this issue, we don't
22 believe that's what he will say.

23 This is evidence that we will show that
24 clearly says students may be placed at the New
25 Community School at public expense as long as the

1 IEP team says the New Community School is the
2 school where they can have their needs met.

3 That's contrary to the representations that
4 CCPS's lawyers have made to you in this case.
5 They have said, "We can't do it." We don't think
6 that sort of statement -- at best we think it's
7 misleading.

8 And how else do we know that students can be
9 placed at Chesterfield County -- excuse me -- at
10 the New Community School? There's a CCPS bus
11 dropping kids off at New Community School every
12 day.

13 So for Chesterfield County Public Schools'
14 lawyers to say on the one hand, "We can't place
15 students there," on the other hand --

16 MR. ANDRIANO: Ms. Freeman, again I think
17 we're getting into argument here rather than --

18 MR. RATNER: I'm so sorry. I'm talking
19 about the evidence of -- We intend to show that
20 Chesterfield County --

21 THE HEARING OFFICER: You're going to show
22 --

23 MR. RATNER: -- places students there.

24 THE HEARING OFFICER: -- that a bus comes
25 there?

1 MR. RATNER: We are going to show that
2 Chesterfield --

3 THE HEARING OFFICER: How are you going to
4 show that?

5 MR. RATNER: By asking their witnesses --

6 THE HEARING OFFICER: All right.

7 MR. RATNER: Asking a witness from the New
8 Community School.

9 THE HEARING OFFICER: All right. Remember,
10 this is opening though. We're not going to go
11 into --

12 MR. RATNER: I'm so sorry. I think I'm
13 getting a little bit confused. The opening
14 statement usually tries to show what our evidence
15 is going to show.

16 THE HEARING OFFICER: Okay.

17 MR. RATNER: Am I not doing that?

18 THE HEARING OFFICER: No, no. But you just
19 told me that there's a bus that shows up.

20 MR. RATNER: Right.

21 THE HEARING OFFICER: You said you have a
22 witness. So let's move on from there. I think
23 we're going to allow thirty minutes --

24 MR. RATNER: That's right.

25 THE HEARING OFFICER: Okay. So I'm going

1 to overrule you at this time. But --

2 MR. RATNER: Okay. Could I --

3 THE HEARING OFFICER: Overruled, Mr.
4 Andriano. Go ahead.

5 MR. RATNER: Yeah.

6 (Pause.)

7 THE HEARING OFFICER: You were on number --

8 MR. RATNER: Yeah, I know. I just need a
9 second, if you don't mind.

10 THE HEARING OFFICER: All right.

11 MR. RATNER: I don't usually get
12 interrupted this often during an opening. So I
13 apologize.

14 But anyway, there are multiple issues that
15 we believe demonstrate that CCPS, at a minimum, is
16 not presenting to you the true information about

17 REDACTED .

18 What you will see, and what we have evidence
19 of, what we have documents to show and witnesses
20 to testify to, are that these grades that they
21 suddenly relied upon just simply don't add up to -
22 - We can't figure out the calculations as to how -
23 - where these grades come from.

24 And I think it's really important for you to
25 understand --

1 THE HEARING OFFICER: Did you say grades?

2 MR. RATNER: Grades, scores, assessments --

3 THE HEARING OFFICER: Oh, I see. Okay.

4 MR. RATNER: As in --

5 THE HEARING OFFICER: Sorry to interrupt
6 you again.

7 MR. RATNER: No. That is absolutely okay.
8 So in other words, what we expect to hear from
9 Chesterfield County Public Schools is that look at
10 these great grades. REDACTED made all A's at the end
11 of fifth grade. Surely she's making adequate
12 progress.

13 What they don't tell you is at the end of
14 the first and second marking periods she had F's
15 and D's in reading and writing. And miraculously
16 after the parents asked for private placement,
17 suddenly her grades improved materially, and Ms.
18 REDACTED requested to see the underlying data.

19 The documentation, because it was
20 inconsistent with the homework, the writing, the
21 reading that she was seeing at home. And you will
22 hear testimony about how difficult it was to get.

23 And then the most significant thing that I
24 want you to focus on is when she finally did get
25 that data, that documentation from Chesterfield

1 County Public Schools, what she discovered was
2 there were significant alterations to the service
3 logs. And we will go through that in great
4 detail.

5 So she received service logs. And I'm sure
6 you're familiar with what the service logs are.
7 This is where the specialized instruction that
8 REDACTED received is documented by the school.

9 They made her go through a FOIA request and
10 charged her a bunch of money to get the documents
11 related to her daughter. And in the summer of
12 2021 we received the service logs.

13 In the context of this proceeding, just a
14 week or two ago, we received the service logs
15 again. When you compare those two sets of
16 documents they are significantly different.

17 And, again, the question for you will be, if
18 there was nothing wrong with what was being done
19 for REDACTED, why was it necessary to change the
20 service logs? Just like as I was talking about
21 with the serial IEPs. If the IEP that was offered
22 for REDACTED in February of 2021, when the parents
23 were supposed to be discussing private placement,
24 if that IEP provided REDACTED with a free appropriate
25 public education, why did CCPS feel the need to

1 amend it again in June of 2021 and February 2022?
2 We would submit that that is evidence of
3 inappropriateness of the operative IEP.

4 So those are the points that I hope you will
5 consider, among others, as we present our
6 evidence. REDACTED, as you know, has been at the New
7 Community School since the fall. She's doing well
8 there. You will hear testimony about that.

9 And as you know, I think we will hear a lot
10 of information about least restrictive
11 environment. We will address that during closing
12 argument. I won't get into any of the legal
13 issues on that now.

14 But, again, we feel very strongly that that
15 is the appropriate environment for REDACTED. And the
16 thing that's really interesting, and perhaps a
17 little bit disappointing about this case is we --
18 the REDACTED very much understand that educating a
19 child with REDACTED's unique profile, someone who has
20 superior intellect, but very real and very
21 significant learning disabilities, is very, very,
22 challenging. There's no question about it.

23 It is difficult to make sure a student as
24 bright as her can access the curriculum, can get
25 the training, get the specialized instruction that

1 she needs.

2 But also when everything is reading and
3 writing, and that's where your deficits are, it
4 can be very hard to keep up with your peers. And
5 that's what REDACTED experienced during her career at
6 Chesterfield County Public Schools.

7 You will hear from Jennifer Williams, the
8 special education coordinator at Tomahawk Creek
9 Middle School, who -- that's the school where REDACTED
10 would be attending now had she been in public
11 school. That was the proposed placement for her.

12 Ms. Williams very candidly said during the
13 IEP meeting, we can do accommodations for students
14 very well. What becomes more challenging for a
15 student like REDACTED is providing that specialized
16 instruction to allow her to take those honors
17 classes that her teachers recommended her to be;
18 that is very difficult for a public school with
19 twenty-eight students per class, or whatever it
20 is.

21 And I'm not trying to -- It's up over twenty
22 students per class to do. Because they have a
23 curriculum to follow. They have material they
24 must get through. And what REDACTED needs is for
25 things to be slowed down, to be able to go at her

1 own pace.

2 So aren't we fortunate that we have in this
3 community a resource available to students just
4 like [REDACTED], who fit her profile and who can learn
5 with smaller classes with individualized
6 instruction, and all the things that [REDACTED] needs to
7 make progress, and to fulfill the IDEA's goals of
8 preparing her for further education and
9 independence and employment?

10 That is what the [REDACTED] have been attempting
11 to do for years. We are here now to ask you to
12 conclude that, yes, the New Community School is
13 the appropriate placement for her, that they
14 should be reimbursed for the expenses that they
15 have paid for this past year, and that CCPS, at
16 the public expense, continue to place [REDACTED] there
17 going forward.

18 And any other relief we've also asked for in
19 our complaint, we will be making that at the
20 conclusion of our case. So thank you very much.

21 THE HEARING OFFICER: Thank you. I just
22 wanted to respond to one -- one assertion you made
23 and explain. When I said good faith, I wasn't
24 talking about -- I didn't mean to infer that you
25 weren't -- you and Ms. Ratner were not -- or the

1 parents, were not acting in good faith.

2 I think I was referring to there was a
3 sentence in, I believe, your -- one of your
4 motions that I was addressing. And it related to
5 an inference that there was some sort of bad faith
6 on the part of the school system to do something.
7 That's what it was I believe.

8 But I was not inferring that anyone on the
9 parents' side was acting in bad faith.

10 MR. RATNER: No. And I didn't take it that
11 way.

12 THE HEARING OFFICER: Oh, good. All right.

13 MR. RATNER: What I was trying to say was
14 that I understand -- I understood what you were
15 saying, that you didn't want there to be these
16 allegations of improper actions by the school
17 board. But the parents unfortunately feel that
18 their evidence -- that there is some basis.

19 THE HEARING OFFICER: Oh, yes, I understand
20 that.

21 MR. RATNER: And they want to be able to
22 present --

23 THE HEARING OFFICER: Yeah. But I don't
24 want you or the parents to think that I was
25 inferring that your side was acting in bad faith -

1 -

2 MR. RATNER: Not at all. But I appreciate
3 you clarifying that.

4 THE HEARING OFFICER: So, Mr. Andriano,
5 would you like to give your opening statement now,
6 or wait until later?

7 MR. ANDRIANO: I'll give a short one now.

8 THE HEARING OFFICER: All right. Go ahead.

9 MR. ANDRIANO: Ms. Freeman, good morning.

10 THE HEARING OFFICER: Good morning.

11 MR. ANDRIANO: This is a case about an
12 elementary school student who attended Old Hundred
13 Elementary School here in Chesterfield County
14 Public Schools during the 2019/2020 and 2020/2021
15 school year.

16 This child met and exceeded all grade level
17 expectations. She achieved passing marks. She
18 advanced grade to grade. She made progress in the
19 general education curriculum.

20 Despite that the parents in this case
21 unilaterally withdrew her from Chesterfield County
22 Public Schools. They placed that child in a
23 college preparatory school, one that's not
24 approved by the Virginia Department of Education
25 to serve special education students. And they're

1 asking Chesterfield County Public Schools to now
2 pay for that private placement.

3 REDACTED was first found eligible for special
4 education and related services under the IDEA in
5 March 2019 as a third grade student.

6 The eligibility team determined that she was
7 eligible as a student with a specific learning
8 disability, particularly in the area of reading
9 fluency and written expression.

10 She was re-evaluated in January of 2021,
11 where she was once again found eligible as a
12 student with a specific learning disability in
13 those same areas, reading fluency, written
14 expression, but also mathematic calculations.

15 While attending Old Hundred Elementary
16 School she excelled both academically and
17 functionally. As I previously indicated, she
18 achieved passing grades. Indeed, she was on the
19 honor roll each quarter during the 2019/2020
20 school year.

21 She earned straight A's for the 2020/2021
22 school year. She passed both the reading and the
23 mathematics standards of learning assessments for
24 the fifth grade. That's, again, the curriculum
25 that's based on the state's academic content

1 standards. She also made excellent progress on
2 division-wide assessments, which her teachers will
3 tell you about today.

4 In addition to hearing about her excellent
5 academic and functional progress in Chesterfield
6 County Public Schools, you'll hear testimony from
7 REDACTED's teachers about how the proposed IEPs that
8 were in place provided the smaller classes and the
9 individualized instruction that Mr. Ratner was
10 referencing. You'll also hear testimony from them
11 about how those IEPs were fully implemented.

12 At the conclusion of this case we will ask
13 you to find in favor of the school board and
14 dismiss the parents' complaint. We don't believe
15 there's any merit to it, and we expect that the
16 evidence will show such.

17 THE HEARING OFFICER: Thank you. You're
18 done; right?

19 MR. ANDRIANO: Yes.

20 THE HEARING OFFICER: Okay. Thank you very
21 much.

22 So let's -- Are the witnesses in the
23 building? And I'd like to get as many in to swear
24 them in as possible.

25 MR. ANDRIANO: So correct me if I'm wrong,

1 I believe the schedule that was worked out was Ms.
2 REDACTED was going this morning. Then there's
3 potentially one or two school board --

4 THE HEARING OFFICER: Okay. So we're just
5 having then -- I'm sorry. I didn't look at the
6 schedule beforehand.

7 But the schedule is for the REDACTED,
8 specifically Ms. REDACTED, to go first this morning?

9 MR. RATNER: That's correct. She's ready
10 to go forward.

11 THE HEARING OFFICER: Okay.

12 MR. RATNER: And, you know, I think between
13 direct and cross, that should take us through
14 lunch.

15 THE HEARING OFFICER: Okay. Is Mr. -- I'm
16 sorry. Is Mr. REDACTED going to testify or not?

17 MR. RATNER: We do not intend for him to
18 testify.

19 THE HEARING OFFICER: All right. Go ahead.

20 MR. RATNER: Would you like Ms. REDACTED in
21 the --

22 THE HEARING OFFICER: I'll go ahead and
23 swear -- It's up to you. Would you feel more
24 comfortable there or over here?

25 I will say the court reporter needs to be

1 able to take down everything you say. So it might
2 be better to sit over here so I can hear
3 everything.

4 If that's what you're comfortable with. If
5 you're not --

6 MS. REDACTED: Yeah, that's fine.

7 THE HEARING OFFICER: -- then you can just
8 stay right there.

9 MR. RATNER: Why don't you, before you
10 bring that up with you, you can show that to Mr.
11 Andriano.

12 MS. REDACTED: Sure.

13 MR. RATNER: She's just got some notes she
14 wanted to bring with her.

15 THE HEARING OFFICER: Oh, okay. Sure. Let
16 the record reflect that Ms. REDACTED has notes, and
17 she's passing the notes about her testimony to Mr.
18 Andriano.

19 And if you have any objection, Mr. Andriano,
20 just tell me when you're finished reading.

21 (Pause.)

22 MR. ANDRIANO: I guess I'm just -- What is
23 this, just notes you're going to refer to during
24 your testimony?

25 MS. REDACTED: Yeah. It's what I woke up at 3

1 o'clock, 2 o'clock this morning, and jotted stuff
2 down.

3 MR. ANDRIANO: I mean, I assume Mr.
4 Ratner's going to ask her questions.

5 MS. REDACTED: Yeah. No. He's --

6 THE HEARING OFFICER: All right. So no
7 objection. And you're going to full examine --
8 cross-examine her; correct?

9 MR. ANDRIANO: Yes.

10 THE HEARING OFFICER: All right. Go ahead.
11 (The witness was sworn.)

12 THE HEARING OFFICER: Answer any questions
13 you attorney has for you, either one of them.

14 And I don't believe there was a motion that
15 one of you speak, unless Mr. Andriano has an
16 objection to that.

17 MR. ANDRIANO: Yeah. I mean, I --

18 THE HEARING OFFICER: You generally think -
19 -

20 MR. ANDRIANO: Yeah. I expect the same
21 attorney who's going to handle it.

22 THE HEARING OFFICER: All right. So it's
23 okay.

24 MR. RATNER: I intend to handle the
25 questioning of Ms. REDACTED.

1 THE HEARING OFFICER: Okay. That's fine.

2 MR. RATNER: And I think what Mr. Andriano
3 was saying, just to make sure we're on the same
4 page, is that if Ms. Ratner wants to examine a
5 different witness, she'll handle the entirety of
6 that witness.

7 THE HEARING OFFICER: Sure.

8 MR. RATNER: As long as that's okay with
9 him.

10 MR. ANDRIANO: Yes.

11 THE HEARING OFFICER: All right. Go ahead
12 then. Answer any questions your attorney has, to
13 be followed up by cross-examination by Mr.
14 Andriano. And there may be some followup after
15 that.

16 MS. REDACTED: Sure.

17 THE HEARING OFFICER: All right. Go ahead.

18 MR. RATNER: I would encourage you, Ms.
19 Freeman, if you have questions, by all means,
20 interrupt --

21 THE HEARING OFFICER: I usually do, one or
22 two.

23 MR. RATNER: Whatever works best for you.

24 THE HEARING OFFICER: Yeah. But don't draw
25 any conclusions if I don't have any questions. So

1 go ahead.

2 MR. RATNER: Thank you.

3 THE HEARING OFFICER: And I'll ask my
4 questions at the end usually. I don't like to
5 interrupt you unless I am afraid I'm going to
6 forget whatever it was.

7 All right. Go ahead.

8

9 REDACTED

10 having been duly sworn,

11 was examined and testified as follows:

12 D I R E C T E X A M I N A T I O N

13 BY MR. RATNER:

14 Q Very good. Ms. REDACTED, just before we get
15 started, spell your full name, and give you residential
16 address.

17 A My name is REDACTED, REDACTED.
18 My address is REDACTED, that's REDACTED,
19 REDACTED.

20 Q And you're married to REDACTED; is
21 that correct?

22 A Yes.

23 Q And you have children together?

24 A Yes. I'm married to REDACTED, and
25 we have two children, REDACTED and REDACTED.

1 Q And until fall of the 2021/2022 academic
2 school year, where did REDACTED and REDACTED attend school?

3 A They both attended Swift Creek Elementary
4 until Old Hundred opened. REDACTED never attended Old
5 Hundred. He went from Swift Creek Elementary into
6 Tomahawk Creek Middle School.

7 Old Hundred opened the year after -- or that
8 year he was going into sixth grade. And so REDACTED
9 attended there for fourth and fifth grade.

10 Q Okay. And those are all Chesterfield County
11 public schools; correct?

12 A Correct.

13 Q And where is REDACTED current attending?

14 A She's at the New Community School, which is
15 a school serving students with dyslexia.

16 Q When did you and Mr. REDACTEDn make the decision
17 to enroll REDACTED at The New Community School?

18 A We made the official decision in the spring
19 of 2021, as far as we signed contracts and whatnot.

20 Q Okay. And that's why we're here, is to talk
21 about what led up to that decision. So explain
22 succinctly, if you can, and then I'll expand on that
23 with specific questions; what led you to decide to
24 place REDACTED there?

25 A For six years we've asked Chesterfield

1 County to provide REDACTED with an appropriate education.
2 For six years we've been denied access to that. Really
3 it started out with an emotional struggle. People in
4 the schools acknowledged that there's a problem,
5 acknowledged that because of her intellect she would
6 not pass, which is why I continued to pursue.

7 Because the emotional toll it was taking on
8 our child was detrimental to our entire family. And
9 the only emotional issues she had was surrounding
10 getting to school.

11 Q So let's unpack that a little bit. But
12 before we get into issues with school attendance, just
13 tell the Hearing Officer a little bit about REDACTED as a
14 person and a student.

15 A I'd love to. REDACTED is brilliant. She thinks
16 on a much different level than her peers. She's one of
17 those that has always been able to speak to adults, I
18 mean even at a very young age.

19 She loves connecting with people. She loves
20 showing her strengths. I mean, even back in preschool
21 they talk about how she loves to say, "This is my
22 strength," to kind of pull away from deficits.

23 But just she wants so much to learn. She
24 loves to learn at home. And she's always doing stuff,
25 you know. So she's one of those that she's watching

1 T.V., but she's also crafting and she's writing. She
2 loves to write stories. She writes novels like from an
3 early age. Again, like she's so creative and
4 articulate.

5 Unfortunately she can't express that through
6 reading and writing very well, and she would love to.
7 She is a beautiful artist, painting and drawing. She
8 sings. She plays the piano. She has so many gifts to
9 offer.

10 And we've seen that change. She was a big
11 ball of anxiety for so long. And so we've just seen
12 that change, you know, in the past year into a much
13 more confident individual, wanting to show her gifts
14 and being able to.

15 Q When did she start kindergarten? And for
16 Ms. Freeman's benefit, again, we're just going to
17 briefly touch on the period until we get up to the
18 evaluations in third grade.

19 But when did she start kindergarten, as in
20 the math test. Yeah, feel free to count that.

21 A 2015. I believe that's right.

22 Q Okay. 2015. And she was on grade -- I
23 mean, she started at the appropriate age and all of
24 that?

25 A Yes. With a March birthday she started at

1 the appropriate age.

2 Q Okay. And how did kindergarten go for her?
3 Just give a three sentence overview if you can.

4 A It started exciting day one, and quickly
5 declined to not wanting to go to school, running away
6 from the bus, being pulled out of cars. It quickly
7 turned bad.

8 Q And what was she, REDACTED, telling you about
9 that experience?

10 MR. ANDRIANO: Objection. I just want to
11 make sure it's clear the school board's not
12 waiving the statute of limitations argument that's
13 already been ruled on in this case.

14 We're now going back to kindergarten --

15 THE HEARING OFFICER: I'm going to give her
16 leeway on that. However, let's try to focus. But
17 I appreciate you going back to day one so that I
18 can draw a mental history when I'm going back to
19 examine the whole record.

20 But we understand that we're focusing on the
21 two years.

22 MS. REDACTED: Absolutely.

23 THE HEARING OFFICER: I fully appreciate
24 that you want me to hear from day one when she
25 entered kindergarten, and that's important.

1 MS. REDACTED: I think it's important for you
2 to know kind of the whole child.

3 THE HEARING OFFICER: I agree.

4 MS. REDACTED: Yeah. We're just going to
5 briefly --

6 THE HEARING OFFICER: Yeah, okay. All
7 right.

8 MS. REDACTED: I just want to introduce who
9 she is as a person.

10 THE HEARING OFFICER: All right. So
11 overruled for now. So let's move on.

12 BY MR. RATNER:

13 Q So just in general, did you ask REDACTED, "Why
14 are you behaving this way"? Had you ever seen her
15 behave that way before, first of all?

16 A No. She in kindergarten couldn't articulate
17 what was going on. It was behavioral. And, no, she
18 had never, never, behaved like that before.

19 Q Okay. And did she tell you she didn't like
20 school?

21 A Yeah. She didn't want to go.

22 Q Okay. Did you talk to the teachers and
23 administrators about it?

24 A Yes.

25 Q Okay. Did they have any thoughts or ideas

1 for you about that?

2 A The school principal became pretty involved
3 in trying to help REDACTED transition to school.

4 Q Okay. And did that help?

5 A No. Things continued to decline. But we
6 got her there. And I felt like she was safe. And it
7 just got to a -- I mean, I had a job and I had to go.
8 And I was really just at a loss for what to do.

9 Q Was she reading in kindergarten?

10 A No.

11 Q Was she writing?

12 A She was trying.

13 Q Did she get promoted to first grade?

14 A Yes.

15 Q What happened in first grade?

16 A They specifically put her in a class with a
17 teacher that was their best reading teacher, because
18 they acknowledged the deficit.

19 Q Could you just elaborate very briefly on
20 that? When you say "they acknowledged the deficit,"
21 what do you mean by that?

22 A The assistant principal and the principal
23 worked directly with me, because I had inquired about
24 getting an evaluation.

25 Q Okay. And was she evaluated for special

1 education at that time?

2 A No. She was not failing.

3 Q Okay. So it was your understanding at that
4 time that as long as she was passing she didn't qualify
5 to even be evaluated.

6 A That's what I was told.

7 MR. ANDRIANO: Objection, calls for
8 speculation. I mean, how --

9 MR. RATNER: I asked what her understanding
10 was. And we can certainly explore how she came to
11 that understanding.

12 THE HEARING OFFICER: I'm going to strike
13 that, because there are other witnesses who can
14 testify about that.

15 BY MR. RATNER:

16 Q Okay. Did anybody tell you that from
17 Chesterfield County Public Schools?

18 A Yes.

19 MR. ANDRIANO: Objection, hearsay.

20 MS. REDACTED: Jennifer Booker.

21 THE HEARING OFFICER: Hearsay.

22 MR. RATNER: I'm sorry. I'm not offering
23 it for the truth of the matter asserted. I'm
24 offering it for effect on listener and a myriad of
25 other reasons, and --

1 THE HEARING OFFICER: All right. I'll
2 allow that for now. But let's try -- I know we
3 don't have the rules of evidence and all of that
4 with us today.

5 However, let's try to focus on not repeating
6 what was said to you, but just what you know from
7 your experience.

8 MS. REDACTED: So my understanding was that --

9 MR. RATNER: We can move on.

10 THE HEARING OFFICER: Yeah, we can move on.
11 Thank you.

12 BY MR. RATNER:

13 Q Did REDACTED continue to have behavioral issues
14 related to school and first grade?

15 A Yes.

16 Q Explain those just briefly for the Hearing
17 Officer, please.

18 A As she got older she was stronger. And, you
19 know, summer she was fine. And then it began. We had
20 been in therapy with her. It began again, the
21 resistance.

22 Peggy Ennis [ph] was the principal at the
23 time. She was wonderful at working with me. I would
24 get her out of the car. She would meet me at the
25 front.

1 And then it progressed to -- because [REDACTED]
2 became a runner, she would get out of the car and run.
3 And so then it progressed to Peggy Ennis would
4 physically remove her from the vehicle every day.

5 Q And now you mentioned therapy. That was
6 therapy for [REDACTED]?

7 A Yes.

8 Q What kind of therapy?

9 A At the time it was just behavioral therapy.

10 Q Like talk therapy and that kind of thing?

11 A Yes, yes, yes, yes.

12 Q Okay. And was it for the whole family, or
13 just for [REDACTED]?

14 A Just for [REDACTED].

15 Q Okay. Were you ever part of those sessions?

16 A Yes.

17 Q Okay. Did the therapist or [REDACTED] tell you
18 why she was behaving this way?

19 MR. ANDRIANO: Objection, hearsay.

20 THE HEARING OFFICER: Sustained.

21 MR. RATNER: Just for the record, if I may,
22 you've already made it clear twice that the rules
23 of evidence don't apply.

24 THE HEARING OFFICER: No, that's true.
25 Let's focus on our actual knowledge.

1 MR. RATNER: But how is one going to get
2 knowledge without talking to people?

3 THE HEARING OFFICER: Well, what I mean is
4 that we need to focus on the knowledge that each
5 witness has and to try to avoid relating
6 information that other people have conveyed to
7 her.

8 And I would think that a therapist who's
9 talking to you about your child may -- be possibly
10 those conclusions by the therapist would be
11 subject to being hearsay, I think.

12 MR. RATNER: Well, I mean, I respect your
13 ruling and we're going to move on.

14 THE HEARING OFFICER: Yeah. So let's focus
15 on the information she does know and her
16 understanding, and not say what somebody else told
17 her.

18 MR. RATNER: Okay. But, again, I just want
19 to be clear for the record, I'm not offering this
20 for the truth of the matter asserted.

21 And I'm sure you understand that there are
22 other reasons --

23 THE HEARING OFFICER: Yeah, I understand
24 that. But we're at a special ed hearing and the
25 rules don't apply, I know that. But we are going

1 to try to stay focused today so that we can move
2 through all of the witnesses. And it would be
3 preferable to me if we just hear from Ms. REDACTED
4 regarding what she knows.

5 MR. RATNER: Right. And what's included in
6 someone's knowledge is what they are told; right?

7 THE HEARING OFFICER: I would really prefer
8 to hear what she knows. And if you want to bring
9 the therapist in and have her talk to me or
10 propose her as a witness. I don't know if she's
11 on the witness list or not. But that might be a
12 way to do something like that.

13 But, again, we're back in first grade. And
14 the statute of limitations goes two years back.
15 And so let's not go into areas that are probably
16 going to take up a lot of time, and it's secondary
17 information.

18 So let's move forward.

19 BY MR. RATNER:

20 Q Thank you.

21 So how did first grade end for REDACTED?

22 A It ended with the assistant principal,
23 Kristen Tate, told me that we would either be
24 discussing retention or summer school. So we chose to
25 go to summer school.

1 Q And just to elaborate, retention, in other
2 words she wasn't going to pass first grade?

3 A Right. They were going to hold her back,
4 and she would repeat.

5 Q Okay. Did you ask at that time for a
6 special education evaluation?

7 A Yes. But she wasn't failing.

8 Q Okay.

9 THE HEARING OFFICER: I'm sorry. I didn't
10 get that. She was --

11 MS. REDACTED: She was not failing.

12 THE HEARING OFFICER: Okay.

13 BY MR. RATNER:

14 Q So I just want to be clear for Ms. Freeman's
15 benefit. Even though there was a suggestion that she
16 be retained, repeat first grade, Chesterfield County
17 Public Schools denied a request to evaluate her at that
18 time?

19 A Correct.

20 THE HEARING OFFICER: Who asked her to be
21 retained, the school, or did you ask her to be
22 retained?

23 MS. REDACTED: The assistant principal, in a
24 letter, told me that -- well, and verbally, we had
25 lots of meetings, told me that if I would not send

1 her to summer school, we would be discussing
2 retention.

3 It was her recommendation that she either go
4 to summer school or that she --

5 THE HEARING OFFICER: Be retained.

6 MS. REDACTED: -- repeat -- repeat first
7 grade.

8 THE HEARING OFFICER: All right.

9 BY MR. RATNER:

10 Q Did she go to summer school?

11 A Yes.

12 Q How did that go?

13 A Horrible.

14 Q Okay. Elaborate --

15 A If you imagine a child that is at a home
16 school, and she's struggling to go to that school, now
17 put her in a completely different school, with
18 different administrators that didn't know her history.

19 Shortly after the first couple days, I had
20 to stop taking her. And I had my mother-in-law take
21 her, because the transition was just so terrible.

22 Q How long did summer school last, roughly?
23 Is it the entire summer?

24 A It's -- I don't know -- eight weeks or
25 something like that. I don't remember.

1 Q Sure. But so she had some free time in the
2 summer after summer school?

3 A Yes.

4 MR. ANDRIANO: Object, Ms. Freeman.

5 THE HEARING OFFICER: Yes.

6 MR. ANDRIANO: It's fine; I'll just note a
7 continuing objection to relevancy on all of this,
8 this whole entire line of questioning.

9 THE HEARING OFFICER: I'll accept your
10 continuing objection.

11 And move forward, but I'll caution you to
12 bring this forward to the period during which
13 we're examining.

14 MR. RATNER: Yeah; I think we've been going
15 for about 15 minutes now. We were supposed to
16 have the whole morning.

17 THE HEARING OFFICER: Okay. Well, I think
18 you have all morning --

19 MR. RATNER: Right.

20 THE HEARING OFFICER: -- with this witness.

21 But --

22 MR. RATNER: Right; so --

23 THE HEARING OFFICER: -- let's just move
24 forward. Because it sounds to me like there's
25 going to be a lot of information about those --

1 that two-year period, which is what I'm focusing
2 on, anyway.

3 MR. RATNER: Understood.

4 THE HEARING OFFICER: Okay. So --

5 MR. RATNER: So we are the end of summer
6 school of first grade.

7 THE HEARING OFFICER: First grade. So
8 that's put her in second grade, I believe.

9 MR. RATNER: That's right.

10 THE HEARING OFFICER: Okay.

11 MR. RATNER: Yes.

12 THE HEARING OFFICER: Okay.

13 MR. RATNER: I mean, again, you've said you
14 were going to give us latitude.

15 THE HEARING OFFICER: Yes; go ahead.

16 MR. RATNER: So --

17 THE HEARING OFFICER: So -- but I'm
18 accepting Mr. Andriano's objection to the SOL
19 limitation.

20 MR. RATNER: Right.

21 THE HEARING OFFICER: Go ahead.

22 MR. RATNER: But you do understand, of
23 course, the difference between relevance and
24 statute of limitations.

25 THE HEARING OFFICER: Yeah; I think I do.

1 MR. RATNER: And the relevance has to do
2 with whether it makes the tryer of fact -- it
3 makes something more likely or not for the tryer
4 of fact.

5 So there are a lot of important things,
6 including school avoidance and other things, that
7 there was a long history of. And --

8 THE HEARING OFFICER: Okay. But let's --
9 again, let's focus on the two-year period.

10 MR. RATNER: I just want it to be clear.
11 Are you saying you don't want to hear information
12 about second grade? Third grade?

13 THE HEARING OFFICER: No; I want you to
14 move -- I want to hear what Ms. REDACTED has to say.
15 But let's move forward with this. I think she
16 understands because she's shaking her head.

17 Let the record reflect that the witness is
18 shaking her head affirmatively, that she knows she
19 needs to focus on the two years.

20 MR. RATNER: Well, I would respectfully say
21 she knows that because you're telling her that.
22 And what I'm saying is we think there is relevant
23 information --

24 THE HEARING OFFICER: All right. Go ahead.

25 MR. RATNER: -- that I'm trying to --

1 THE HEARING OFFICER: I'm letting you go
2 ahead, so -- but let's move forward, because I
3 think at 12:00 we're done -- we're done with the
4 testimony.

5 Didn't I give you one whole morning?

6 MR. RATNER: I thought you said three
7 hours, though; right? We had to do procedural
8 things this morning.

9 THE HEARING OFFICER: Actually, I think
10 you're right. But if we had started at 9:00
11 o'clock, it would have been three hours. So let's
12 say until 1:00. So go ahead.

13 MR. RATNER: Thank you.

14 THE HEARING OFFICER: And noting Mr.
15 Andriano's objection.

16 BY MR. RATNER:

17 Q Tell the Hearing Officer briefly about
18 second grade, please, noting her concerns.

19 A Uh --

20 Q Did REDACTED have trouble going to school in
21 second grade?

22 A Yes. They -- so -- not to digress too much,
23 but -- so the school principal was very involved, and
24 she allowed me to kind of hand-pick REDACTED's teachers.
25 So that --

1 THE HEARING OFFICER: Is that Ms. Ennis
2 again?

3 MS. REDACTED: Yes.

4 THE HEARING OFFICER: Sorry.

5 MS. REDACTED: Ms. Ennis. Because she wanted
6 her to feel comfortable coming to school. And so
7 we chose the teacher that my son had had, and that
8 she had worked with over the summer for reading.

9 And so Ms. Fleming was there. And so she
10 went to school willingly, at the beginning. And
11 it quickly fell apart. Ms. Fleming also had a
12 baby.

13 But at that point, then it was more of a --
14 once she would get in the building, she wouldn't
15 go to class. She was too -- she would have panic
16 attacks, and she wouldn't go to class.

17 And Ms. Ennis would let her stay in the
18 office or let her sit in her office.

19 BY MR. RATNER:

20 Q Okay. Was she reading in second grade?

21 A Not at home. I mean, it was a struggle, and
22 it was a huge concern. At home, no; we were still on
23 picture books, where she could kind of guess.

24 Q Okay. Did you ever talk to her teachers
25 about concerns about reading and writing at that time?

1 A Yes; because the spelling -- they started
2 spelling tests. And it was -- she was getting 40s and
3 -- I mean, it was an obvious concern. And that's when
4 I asked if she was getting any help.

5 Q Okay. And what was the response to that?

6 A She was meeting with the PALS teacher every
7 week, which I found out, in first grade -- they hadn't
8 told me, but she had been pulled, so -- yeah.

9 Q And, I'm sorry, I don't know exactly what
10 the acronym PALS is. I believe it stands for Phonemic
11 Awareness Language Skills or something like that. Mr.
12 Andriano will correct me if I've got the acronym wrong.

13 But it's a reading program?

14 A Yeah; so that's when I then found out that
15 she had not passed the PALS previously. And so they
16 were working with her on that.

17 Q So --

18 A She got pulled in a small group.

19 Q Okay. And was there a discussion in second
20 grade about special education evaluations?

21 A Yes.

22 Q Okay.

23 A I spoke with the assistant principal, who
24 was in charge of special education at the time. That
25 changed, later on. They changed who was in charge of

1 it.

2 And she told me to wait until [REDACTED] was
3 eight, because she was too smart to fail.

4 THE HEARING OFFICER: I didn't catch that.

5 MS. [REDACTED]: She said to wait until she was
6 eight years old, because the standards changed.

7 MR. ANDRIANO: I'm going to object to
8 hearsay.

9 MS. [REDACTED]: Well, so they did not evaluate
10 her.

11 THE HEARING OFFICER: Objection --

12 MS. [REDACTED]: They did -- sorry; they didn't
13 evaluate her.

14 THE HEARING OFFICER: I'm sorry.

15 MS. [REDACTED]: They said "no." So they --

16 THE HEARING OFFICER: Who is "they"?

17 MS. [REDACTED]: Sorry; the school principal,
18 and they --

19 THE HEARING OFFICER: Ms. Ennis?

20 MS. [REDACTED]: Mrs. Tate, which is the school
21 assistant principal, who was in charge of special
22 education at the time.

23 THE HEARING OFFICER: All right. And your
24 response to -- I forget what the objection was.
25 What was the objection?

1 MR. ANDRIANO: Hearsay. I mean, it's the
2 same one --

3 THE HEARING OFFICER: To what was her
4 statement, though.

5 MR. ANDRIANO: What she was allegedly told
6 by --

7 THE HEARING OFFICER: Oh, okay.

8 MR. RATNER: Let me ask a different
9 question. I'll withdraw the question.

10 THE HEARING OFFICER: Okay. Go ahead.

11 BY MR. RATNER:

12 Q Was she evaluated --

13 A No.

14 Q -- by Chesterfield County Public Schools?

15 A No, she was not evaluated.

16 Q Okay. Did she pass second grade?

17 A Yes.

18 Q And she was promoted?

19 A Yes.

20 Q Did she have to go to summer school?

21 A No.

22 Q Okay. Let's talk about third grade. When
23 did REDACTED turn eight?

24 A She turned eight in second grade. But that
25 was -- it was -- because they switched to a special

1 education coordinator. So the county went from -- it
2 was the assistant principal, to the special ed
3 coordinator; sorry.

4 Q Okay, okay. So she turned eight in second
5 grade, but she wasn't evaluated.

6 A Correct.

7 Q Was she evaluated in third grade?

8 A Yes.

9 Q Okay. I'd like you to just in a little bit
10 more detail explain to the Hearing Officer what led up
11 to her being evaluated in third grade.

12 A So in third grade, again I hand-picked the
13 teacher, because -- and so I just was consistent with
14 this is somebody that taught her brother, and so at
15 least she knew the name.

16 And so when she got in and she -- we already
17 knew that there was a lot of struggles up to this
18 point. And I met with the teacher pretty immediately,
19 as things were not going well.

20 Ms. Ellingson, well, allowed, you know, me
21 to request or -- she was involved in knowing that REDACTED
22 was struggling, and recommended that we request an
23 evaluation.

24 And so at the evaluation, she brought in
25 what she called REDACTED's true grades for reading and

1 writing. So I'll explain that real quick. With
2 reading and writing, there's a lot of things that go
3 into it that isn't actually like true writing or true
4 reading.

5 You know, so aspects of physically writing,
6 she then graded that. And so that she had a 45 in
7 writing when you looked at her true writing. And so
8 she brought that to the meeting.

9 Q Okay. Did she actually get evaluated?

10 A Yes; but not -- we ran into a lot of delays.
11 It snowed, and then it was just delayed and delayed.
12 And finally in February, I believe, we finished the
13 evaluation, I believe.

14 Q Did you ever have what's called an
15 eligibility meeting to determine whether or not REDACTED
16 qualified as a student with a disability entitled to
17 special education services in Chesterfield County
18 Public Schools during the third grade?

19 A Yes.

20 Q Okay. What happened at that meeting?

21 A During the eligibility meeting, Jennifer
22 Booker was the special education coordinator at the
23 time. They -- through the evaluation, they found her
24 eligible under reading fluency.

25 Written expression was questionable, but

1 after a CNA with Ms. Booker about her aptitude, she
2 agreed that with a -- someone with her IQ, that it was
3 significant enough, you know, to classify it as
4 absolutely a area of weakness.

5 During that meeting, especially during the -
6 - we were having a conversation about the writing,
7 another special education teacher, Gail Kemp, came in.

8 THE HEARING OFFICER: What was her name?

9 MS. REDACTED: Gail Kemp.

10 THE HEARING OFFICER: Okay.

11 MS. REDACTED: And just confirmed.

12 THE HEARING OFFICER: Is that third grade,
13 again?

14 MS. REDACTED: Huh?

15 THE HEARING OFFICER: Third grade, again?

16 MS. REDACTED: Yeah; still third grade,
17 eligibility meeting. And so she was just pulled
18 in by Jennifer Booker, and just asserted that what
19 she saw was very concerning; yeah.

20 BY MR. RATNER:

21 Q Okay.

22 A I lost my --

23 Q That's okay. If I can just have a minute to
24 pass out some exhibit books.

25 THE HEARING OFFICER: Okay.

1 (Discussion off the record.)

2 BY MR. RATNER:

3 Q So Ms. REDACTED, we have next to you --

4 Do you mind if I approach the witness?

5 THE HEARING OFFICER: No; go ahead.

6 BY MR. RATNER:

7 Q We have next to you a set of four binders.

8 Ms. Freeman, you have them, as well.

9 THE HEARING OFFICER: I have -- yeah; and I
10 have my volume one right here. Is that the one
11 you're --

12 MR. RATNER: Nope. We're going to start on
13 volume four, unfortunately.

14 THE HEARING OFFICER: Volume four; okay.

15 MR. RATNER: Tab 110.

16 I've got an extra set if Mr. Miller would
17 like it, as well.

18 THE HEARING OFFICER: He doesn't need it.

19 BY MR. RATNER:

20 Q Okay, all right. Ms. REDACTED, just take a
21 chance and read that over, let me know when you're
22 ready to answer some questions about it.

23 THE HEARING OFFICER: Where do you --

24 MS. REDACTED: I'm ready.

25 THE HEARING OFFICER: Yeah; where do you

1 want me to --

2 MS. REDACTED: 110.

3 MR. RATNER: Tab 110. It's a two-page
4 document labeled PARENTS --

5 THE HEARING OFFICER: Okay. 110; yeah.

6 All right. Let Mr. Andriano look it over.
7 Well, you're not offering it for introduction
8 right now. You just want to have the witness
9 testify about it?

10 MR. RATNER: That's correct.

11 THE HEARING OFFICER: All right. Go ahead.

12 MR. ANDRIANO: Well, I don't know how the
13 witness can testify about it until it's introduced
14 into evidence.

15 THE HEARING OFFICER: Do you want to
16 examine her -- do you want to look at the document
17 before --

18 MR. ANDRIANO: Well, we have an objection
19 to it.

20 THE HEARING OFFICER: All right. Go ahead.

21 MR. ANDRIANO: This is -- first of all,
22 it's irrelevant, it's beyond the scope of the time
23 frame that we're dealing with.

24 Second of all, it contains someone's
25 handwritten notes. It appears to be the mother's.

1 So this is clearly hearsay. I mean, this is --
2 these are the mom's notes, I believe.

3 THE HEARING OFFICER: I thought you said
4 110 in book four.

5 MR. RATNER: 110, book four; that's right.

6 THE HEARING OFFICER: All right. Well, I
7 don't see anything that's handwritten.

8 MR. RATNER: There's a dot, and it says,
9 "Confirmation from Booker received 1/25" --

10 THE HEARING OFFICER: Oh, okay, all right.
11 I am on the right document. Oh, these are the --
12 these are Ms. REDACTED's notes?

13 MR. RATNER: Well, I want to ask her what
14 they are. I believe they are notes of a meeting
15 she participated in.

16 THE HEARING OFFICER: Could you tell me the
17 context in which you took these notes? Did you do
18 it at the time?

19 MS. REDACTED: Yes. These were during the
20 meeting. And I actually emailed this to Jennifer
21 Booker. So when I say "confirmation," it's
22 because she emailed me back, saying --

23 Because I said, "My understanding is this is
24 what we discussed."

25 And she responded saying, "Yes; this is what

1 -- you are correct."

2 THE HEARING OFFICER: All right. Let me
3 just hear from the notes. And I think I'll listen
4 to them. Go ahead. Overruled, at this point.

5 MR. ANDRIANO: On both counts, hearsay and
6 relevance?

7 THE HEARING OFFICER: I don't know how
8 relevant they are at this point. So I think I'm
9 just going to listen to what she has to say, and
10 then look at them later when I examine the entire
11 record.

12 BY MR. RATNER:

13 Q Right. So just to be clear, Ms. REDACTED
14 these are notes you prepared after the meeting to take
15 down your recollection of what was discussed; is that
16 right?

17 A Right. I always took lots of notes during
18 the meeting. And then I would type them up, just so I
19 had, you know --

20 MR. ANDRIANO: See, right there, Ms.
21 Freeman, she typed them up later. They weren't
22 contemporaneous.

23 THE HEARING OFFICER: Not contemporaneous.

24 MR. RATNER: I'm so sorry. Are we just
25 going to object to everything, or am I --

1 THE HEARING OFFICER: He has a continuing
2 objection to anything that's beyond the SOL two-
3 year period. However, in this particular case,
4 these are notes that she did -- she wrote.

5 And I appreciate the fact that you did write
6 them down, and you were, I'm certain, trying to be
7 accurate in taking them down.

8 MS. REDACTED: Absolutely.

9 THE HEARING OFFICER: But this is beyond
10 the statute of limitations period. And I think it
11 would be preferable to hear your testimony about
12 what happened during this time period, rather than
13 read from notes.

14 MR. RATNER: I wasn't asking her to read
15 from notes. You'll notice I haven't asked her to
16 do that yet. And if I could get a chance to ask a
17 question --

18 THE HEARING OFFICER: What is the purpose
19 of this document then?

20 MR. RATNER: To ask if it accurately
21 comports with her recollection of the meeting,
22 which is what I thought you wanted to hear about.

23 THE HEARING OFFICER: All right. Let me
24 hear -- proffer what she's going to say then.

25 /

1 BY MR. RATNER:

2 Q Is this consistent with your recollection,
3 sitting here today, of what happened at the meeting?

4 A Yes.

5 Q Okay. You wrote this down as accurately as
6 you could?

7 A Yes.

8 Q Okay. Without looking at the notes, tell
9 Ms. Freeman what you recall about the meeting,
10 specifically with Ms. Ellingson and the true writing
11 grade.

12 THE HEARING OFFICER: Just for the record,
13 though, I'm going to sustain the objection,
14 because this is beyond the period, and they're not
15 contemporaneous with her recollection. She did it
16 later.

17 MR. RATNER: Okay. Well, I'd like to note
18 my exception then, because --

19 THE HEARING OFFICER: Okay. I'm noting
20 your exception. Go ahead.

21 MR. RATNER: I'd like the record to be
22 clear, again. This goes --

23 THE HEARING OFFICER: Go ahead. Tell the
24 court reporter.

25 MR. RATNER: -- exactly -- that's what I'm

1 --

2 THE HEARING OFFICER: Whatever your
3 exception is, just say it to the court reporter?

4 MR. RATNER: May I now, please?

5 THE HEARING OFFICER: Yes; go ahead.

6 MR. RATNER: This relates directly to the
7 evaluation that we alluded to that will show
8 regression. It also shows evidence of inflated
9 grades, which is an allegation that we have made
10 continuously and through the two-year period.

11 And I think that it tends to show that there
12 may be grade inflation during the two-year period.

13 BY MR. RATNER:

14 Q Go ahead, Ms. REDACTED.

15 MR. ANDRIANO: Is there a question pending?

16 MR. RATNER: Tell her what she recalls
17 about the meeting.

18 THE HEARING OFFICER: Any problem with
19 that?

20 MR. ANDRIANO: No.

21 THE HEARING OFFICER: All right. Go ahead.
22 This is the meeting with -- I forgot.

23 MS. REDACTED: No; I know what meeting it is.
24 I know it well. I hand-wrote these notes during
25 the meeting, and then typed them up after. That's

1 just my process. I like to --

2 THE HEARING OFFICER: Okay.

3 MS. REDACTED: -- keep good records of
4 everything.

5 THE HEARING OFFICER: For now, though, I
6 want to hear your testimony --

7 MS. REDACTED: Yeah; just --

8 THE HEARING OFFICER: -- about the meeting.

9 MS. REDACTED: I'm not going to read it.

10 THE HEARING OFFICER: Okay.

11 BY MR. RATNER:

12 Q Close the book, just so there's no concern.

13 A Okay. At this meeting, the people that were
14 working with REDACTED, including Kim Ellingson and Dianne
15 Connell, presented that she was failing, and that the
16 way the school system is grading that it includes
17 things that aren't her true writing and her true
18 reading, which would be her physical writing. So
19 there's other things that go into those grades.

20 Q Can you just give an example of what might
21 go into a grade that was not --

22 A A worksheet --

23 Q -- the true writing --

24 A -- for writing where you add the commas, or
25 things that are graded just based on reflection. For

1 example, for the reading, it would be -- sometimes they
2 would have a class reading, and you would answer to
3 what you had heard; right?

4 There would be a questionnaire, and you
5 would fill in the bubble for what you heard. That's
6 not actually -- she wasn't doing the reading. The
7 teacher read, and it was based on comprehension; right?
8 So, "What did you hear?" And that would be part of the
9 reading grade.

10 Q Was she --

11 THE HEARING OFFICER: What do you mean by
12 true writing then?

13 MS. REDACTED: True writing -- when -- she
14 felt it was -- Kim Ellingson felt it was important
15 to bring to the table her true writing. So when
16 REDACTED would write a story, she'd go in and grade --
17 she would bring those things, the physical
18 writings, and graded them.

19 And I guess I did see that it was a 57, not
20 a 45, so -- but that's what it says there. But
21 she graded all her true writings, things that she
22 had written, and spelling, and punctuation.

23 And when she graded them --

24 THE HEARING OFFICER: And this is Ms.
25 Booker again?

1 MS. REDACTED: No; this is Kim Ellingson.

2 THE HEARING OFFICER: I'm sorry. Ms.

3 Ellingson.

4 MS. REDACTED: Her teacher; sorry. Ms.

5 Ellingson is her third grade teacher.

6 THE HEARING OFFICER: Okay.

7 MS. REDACTED: So she brought to the table
8 those writings. Went through, kindly enough, and
9 graded them. And REDACTED had a 57 in writing, which
10 is failing.

11 BY MR. RATNER:

12 Q Is there, to your understanding -- was their
13 participation a portion of the grade?

14 A Yes.

15 Q That didn't really have anything to do with
16 ability. That was just whether she raised her hand --

17 A Correct.

18 Q -- or spoke, or completed the worksheets?

19 A Correct.

20 Q So did you have, subsequent to the
21 eligibility meeting, an IEP meeting --

22 A Yes.

23 Q -- for REDACTED? That was in third grade; is
24 that right?

25 A Yes.

1 Q Okay. At that point, she was at Swift Creek
2 Elementary School; is that correct?

3 A Yes.

4 Q Okay. Was Old Hundred already under
5 construction at that point?

6 A Yes.

7 Q Okay. Was it slated to open in the fall?

8 A Yes, it was.

9 Q Okay. And were you aware that -- at that
10 time, that -- where was REDACTED zoned to go for school for
11 fourth grade?

12 A At that time, we were unsure, because there
13 was a lot of discussion about where the lines would be
14 drawn. And we were kind of that -- we were right on a
15 line that they were considering; yes.

16 Q So just elaborate on that for Ms. Freeman
17 just a tiny bit. Was Old Hundred a brand new school?

18 A Old Hundred was being built. It would have
19 been -- it was all new teachers, pulled from -- as they
20 do, pulled from different schools. And Swift Creek was
21 her home school, and had been, where she had people
22 that supported her.

23 Q Okay. And when did it become -- when was
24 the decision made about where -- the final decision on
25 zoning for Old Hundred? And it doesn't need to be

1 exact, but it was it still during third grade?

2 A It was during third grade. And we had asked
3 -- so they decided that she would go to the brand-new
4 school, which we did not want her to go to because she
5 had history with Swift Creek.

6 And we asked the principal for a waiver, and
7 he denied it.

8 Q Okay. And just very briefly, just could you
9 explain to the Hearing Officer why you would have
10 preferred REDACTED to stay at Swift Creek, rather than
11 going to Old Hundred?

12 A Because we had such a hard time getting her
13 to school. And in third grade, we had no issues. For
14 the first time, she would go to school willingly, every
15 single day.

16 THE HEARING OFFICER: And which school was
17 that? I'm so sorry.

18 MS. REDACTED: That was at Swift Creek, in
19 third grade.

20 THE HEARING OFFICER: At Swift Creek.

21 MS. REDACTED: With Ms. Ellingson. She would
22 go to school. She had people that she knew. And
23 so we didn't want to -- we were finally in a happy
24 place, and I didn't want to disrupt that.

25 MR. RATNER: Okay. Ms. Freeman, if it is

1 okay with you, I could use a -- we've been going
2 for about 90 minutes. I could use a very brief
3 break.

4 THE HEARING OFFICER: I think that's a
5 wonderful suggestion. It's about 10:30. So come
6 back at 10:40.

7 MR. RATNER: Thank you. If we can go off
8 the record.

9 THE HEARING OFFICER: Yeah; we're off the
10 record. Thanks.

11 (Brief recess.)

12 THE HEARING OFFICER: Ms. LaRana Owens came
13 in. And I don't believe any new individuals came
14 in the room.

15 So let's move forward. We were on the
16 testimony of Ms. REDACTED. And let me ask you
17 question before you being.

18 MS. REDACTED: Sure.

19 THE HEARING OFFICER: You recall that you
20 were under oath. You referred to Swift Creek as
21 your happy place; correct?

22 MS. REDACTED: Yes.

23 THE HEARING OFFICER: All right. And when
24 you said, "I want -- I didn't really want to go to
25 OHES, Old Hundred," you wanted to go to Swift

1 Creek?

2 MS. REDACTED: Right; we wanted to remain at
3 Swift Creek.

4 THE HEARING OFFICER: All right.

5 BY MR. RATNER:

6 Q But that wasn't where you were zoned, and
7 your request for a waiver was denied; is that correct?

8 A Correct.

9 Q So REDACTED was -- did, in fact, attend Old
10 Hundred Elementary School for fourth and fifth grade;
11 correct?

12 A Yes.

13 Q Okay. Before we move on to that, I'd like
14 you to look in volume two, which is in front of you.
15 Starting at tab 59, and then go through 60, 61 --

16 THE HEARING OFFICER: Tab 59?

17 MR. RATNER: Yes.

18 THE HEARING OFFICER: Okay.

19 BY MR. RATNER:

20 Q And all the way through 64.

21 And I'll ask you if you recognize as the
22 evaluation reports that were completed for REDACTED by
23 Chesterfield County Public Schools in third grade.

24 A Not -- 63 was not third grade, I don't
25 believe. No. That was the beginning of fourth.

1 Q Okay. So 59, 60, 61, and 62 were third
2 grade?

3 A Correct.

4 Q And what about 64?

5 A That's correct.

6 MR. RATNER: Okay. We would like to offer
7 those into evidence, please.

8 THE HEARING OFFICER: Any objection?

9 MR. ANDRIANO: We do have an objection.

10 THE HEARING OFFICER: Okay.

11 MR. ANDRIANO: Our objection is relevancy.
12 Again, these are 2019 evaluations, well beyond the
13 scope of the statute of limitations.

14 THE HEARING OFFICER: Any response to that?

15 MR. RATNER: Yes; as I mentioned
16 previously, the fifth grade evaluation shows the,
17 yet again, regression from these. They are the
18 same evaluations.

19 And if we're not able to put these into
20 evidence, there's no baseline from which to
21 demonstrate the regression.

22 THE HEARING OFFICER: I'll overrule at this
23 time. But, again, I caution you to move as you --
24 as she testifies to the relevant period. But for
25 now, I understand the point you're trying to make,

1 so I'm going to allow that over the school's
2 objection.

3 MR. RATNER: Great.

4 (Parents' Exhibits 59, 60, 61, and 62
5 received in evidence.)

6 BY MR. RATNER:

7 Q Roughly when in time did you learn that your
8 request for waiver to -- for REDACTED to remain at Swift
9 Creek Elementary School for fourth and fifth grade was
10 denied? Was it during the school year or after?

11 A During.

12 Q Okay. When did you begin to prepare REDACTED
13 and yourself for her to transition to Old Hundred
14 Elementary School?

15 A In -- I think it was -- yeah; I know it was.
16 We were still at Swift Creek, so it was at the end of
17 third grade when I communicated with Lindsay Mottley,
18 the principal at Old Hundred.

19 Q Okay. And at that point, when you first
20 reached out to Ms. Mottley, the principal at Old
21 Hundred, did REDACTED already have an IEP?

22 A Yes; I believe so.

23 Q Okay.

24 A I think.

25 Q To the best of your recollection?

1 A Yes.

2 Q Okay. So what was the purpose of you
3 reaching out to Ms. Mottley at that time?

4 A To prepare the transition. And the first
5 time I met with Ms. Mottley, we discussed dyslexia, and
6 we discussed REDACTED's school avoidance.

7 Q Okay. Elaborate on that just a little bit
8 for the Hearing Officer, recognizing it is beyond the
9 two years, but it is now moving into fourth grade which
10 is within the two years.

11 A So I met with Ms. Mottley, as I just wanted
12 to give her a history of REDACTED, because we had asked not
13 to transition to Old Hundred. And so my goal was to
14 make it as seamless as possible, knowing that there was
15 potentially going to be a struggle.

16 She communicated that, you know, she -- they
17 would kind of do whatever it took, and REDACTED would get
18 to meet her teachers and tour the school beforehand so
19 she felt comfortable.

20 Q Okay. Was Ms. Mottley able to fulfill that
21 commitment to you?

22 A No.

23 Q Why not?

24 A The school did not open until -- they didn't
25 get their certificate of occupancy until the week of

1 school, the first week.

2 Q Okay.

3 A Week before.

4 Q So to be clear, Ms. Mottley was absolutely
5 willing to accommodate you to come early. It's just
6 the school wasn't ready at that time?

7 MR. ANDRIANO: Objection. I mean, she --

8 MS. REDACTED: Correct.

9 MR. ANDRIANO: -- can't testify to what Ms.
10 Mottley --

11 THE HEARING OFFICER: Yeah; I'm going to
12 overrule. I think she -- I've got the difference.
13 Go ahead.

14 MR. RATNER: Thank you.

15 THE HEARING OFFICER: Go ahead.

16 MR. RATNER: And, again, Ms. Mottley will
17 be here. I'm just trying to get a little bit
18 better understanding. On the one hand, we have
19 these statements that this is an informal
20 proceeding, the rules don't apply. On the other
21 hand, we're getting what I think are, you know,
22 perhaps, you know, a lot of objections.

23 THE HEARING OFFICER: Why don't you just
24 examine. And I'll draw conclusions about the
25 meaning; okay?

1 MR. RATNER: What meaning? I'm so sorry.

2 THE HEARING OFFICER: The meaning of when
3 the exceptions are made, and objections, and the
4 rulings, and all that sort of thing. Let's
5 reserve the commentary on my rulings.

6 MR. RATNER: I'm not talking about your
7 rulings.

8 THE HEARING OFFICER: What are you talking
9 about?

10 MR. RATNER: I'm talking about the
11 objections.

12 THE HEARING OFFICER: Okay. Let's just
13 examine, and not make commentary; all right?

14 MR. RATNER: Well, I'm trying to. But I
15 keep getting --

16 MR. ANDRIANO: Objection, Ms. Freeman. Let
17 the record reflect he's arguing with the Hearing
18 Officer.

19 THE HEARING OFFICER: Thank you. And let
20 the record reflect that.

21 Go ahead.

22 MR. RATNER: Yes; please do let the record
23 reflect that.

24 MR. ANDRIANO: Ms. Freeman, I mean --

25 THE HEARING OFFICER: Again, at these

1 hearings, I try to keep everything collegial. And
2 that's my basic premise that I go into these
3 hearings with.

4 It's not necessarily a formal hearing in
5 court. This is a proceeding under the IDEA. And
6 let's move forward with this witness, and reserve
7 commentary on my objections, on my rulings, on
8 anything I say, for -- perhaps for your
9 conclusion.

10 MR. RATNER: Yes.

11 THE HEARING OFFICER: All right?

12 MR. RATNER: And let -- I would just like
13 to say I'm not commenting anything on you. I have
14 found Mr. Andriano, since the opening statement,
15 to be interrupting.

16 And I thought, if this was going to be
17 informal, right, we could get the examination
18 done. But just I want to be very clear I'm not
19 offering any commentary whatsoever on anything you
20 have done.

21 THE HEARING OFFICER: Well, I think you
22 were admonishing me during your opening about my
23 interruptions. And I apologize for doing that,
24 but sometimes I need to get clarification and I do
25 interrupt.

1 So go ahead with this witness, and reserve
2 your commentary for the conclusion.

3 MR. RATNER: Thank you so much.

4 THE HEARING OFFICER: All right. Go ahead.
5 And I understand what you're saying.

6 MR. RATNER: Thank you.

7 THE HEARING OFFICER: All right.

8 BY MR. RATNER:

9 Q So Ms. REDACTED, did you have frequent
10 communications with Lindsay Mottley, the principal of
11 Old Hundred Elementary School during REDACTED's fourth and
12 fifth grade?

13 A Yes.

14 Q Okay. In general terms, please describe the
15 nature of your communications with Mrs. Mottley as they
16 related to REDACTED's education and special education at
17 Old Hundred Elementary School.

18 A Can you clarify?

19 Q Yes; absolutely.

20 When you spoke to Ms. Mottley, did you talk
21 about REDACTED's deficits, for example?

22 A Yes.

23 Q Explain that for the Hearing Officer.

24 THE HEARING OFFICER: May I refresh my
25 memory a little bit? Ms. Mottley is the fourth

1 grade teacher?

2 MS. REDACTED: She's the principal at Old
3 Hundred Elementary School.

4 THE HEARING OFFICER: I'm so sorry. Okay.
5 She's the principal.

6 Go ahead.

7 MS. REDACTED: So leading up, I made Mrs.
8 Mottley very aware of REDACTED's deficits, and the
9 need -- the new IEP that she had just received,
10 and she had started to receive -- she received
11 ESY, extended school year --

12 THE HEARING OFFICER: Thanks for refreshing
13 --

14 MS. REDACTED: Yeah; I --

15 THE HEARING OFFICER: I couldn't remember
16 what that was.

17 MS. REDACTED: During the summer.

18 THE HEARING OFFICER: Yeah.

19 MS. REDACTED: And so I was just kind of
20 briefing her on what was successful. I really
21 just wanted it to be as seamless as possible.

22 THE HEARING OFFICER: Okay.

23 BY MR. RATNER:

24 Q Okay. And thank you for reminding me about
25 that. When you mentioned ESY, extended school year,

1 who decided that REDACTED was eligible for those services
2 in the summer between third and fourth grade?

3 A Swift Creek, Jennifer Booker, the special
4 education coordinator.

5 Q Okay. That was an IEP team decision?

6 A Correct.

7 Q Okay. And why did they -- what happened
8 during the extended school year for REDACTED?

9 A Because it was -- they felt it was necessary
10 to continue the instruction she had been receiving, so
11 REDACTED was either the only student or worked with one
12 other student with either Jennifer Booker or Gail Kemp,
13 who were both special education teachers.

14 And she was making -- she was comfortable.
15 She was making progress. She would go. Which were all
16 positives.

17 Q Okay. Did either of those two special
18 education teachers that you just mentioned, Ms. Booker
19 or Ms. Kemp, use any particular methodology with REDACTED
20 during the extended school year?

21 A Yes. Gail Kemp had started back in third
22 grade -- she was receiving her certification for Orton-
23 Gillingham, which she needed instruction hours. So she
24 chose REDACTED to do recorded lessons. And so she
25 continued that.

1 And Jennifer Booker, I believe, was -- well,
2 I know was Wilson-certified, which is also a multi-
3 sensory certification, so very similar to Orton-
4 Gillingham.

5 Q And how did REDACTED respond to the Orton-
6 Gillingham instruction, based on your observations of
7 REDACTED's reading over --

8 MR. ANDRIANO: Objection, calls for an
9 opinion.

10 THE HEARING OFFICER: She's not an opinion
11 witness, but she is the mother. And I'm going to
12 listen to what her -- I don't know, her at-home
13 reaction to -- was it the Orton-Gillingham?

14 MS. REDACTED: They used Orton-Gillingham.

15 THE HEARING OFFICER: Was that -- and you
16 said that was -- you felt that that was
17 successful?

18 MS. REDACTED: That was successful, as also
19 noted from Gail Kemp that she made progress, and -
20 -

21 THE HEARING OFFICER: Okay, all right.

22 MR. RATNER: Okay.

23 THE HEARING OFFICER: But Mr. Andriano is
24 correct, that does call for a conclusion, which
25 would mean that she would have to be an expert

1 witness. But I'm going to overrule him at this
2 point, and listen to what you have to say. But --

3 MS. REDACTED: I would -- so --

4 MR. RATNER: Hold on one second.

5 If I could, I just want to better
6 understand, so I don't tread -- I'm just in
7 unusual territory.

8 THE HEARING OFFICER: But --

9 MR. RATNER: But I think the mom has
10 certainly observed her daughter reading.

11 THE HEARING OFFICER: Sure. Yeah; I
12 understand that. And I'm overruling his objection
13 for now.

14 MR. RATNER: Okay.

15 THE HEARING OFFICER: But try to -- well,
16 she's your daughter. And you're the one who's
17 going to tell me what -- more about her probably
18 than anyone knows her today.

19 So I'm going to let you give your opinion
20 about how she reacted to certain kinds of
21 instruction, and certain behavioral methods that
22 were used, and certain methodologies that were
23 used in school.

24 But when I go back and look at all of my
25 evidence, I'll keep in mind that opinion evidence

1 is something that I'm going to primarily get from
2 an expert witness.

3 Having said that, move forward.

4 BY MR. RATNER:

5 Q Let me ask a different question, if I may.
6 Did you work with REDACTED on her reading and
7 writing?

8 A Yes.

9 Q Okay. Did you work on her with her reading
10 and writing during the summer of third grade?

11 A Yes.

12 Q Did you notice any improvement during that
13 time in her reading and writing?

14 A There were improvements in her reading and
15 writing, as in her confidence.

16 Q Okay. And was that something you discussed
17 with Ms. Mottley, about continuing the type of support
18 she had received --

19 A Yes.

20 Q -- during the extended school year?

21 A Yes.

22 Q Okay. Let's jump ahead to fourth grade now.
23 And if I've got the years right, that's the 2019-2020
24 school year; is that correct?

25 A Correct.

1 Q Okay. Who was REDACTED's fourth grade teacher?

2 A Allie Redd was her general education
3 teacher.

4 Q And, now, this was her first full academic
5 year -- first time she started a school year with an
6 IEP; correct?

7 A Correct.

8 Q Did she have a case manager?

9 A She had a case manager of Stephanie Smith.
10 And her advanced math teacher was Taylor Torena.

11 Q Okay. Now, did you request that she be
12 placed in advanced math?

13 A Well, she was recommended for advanced math
14 by her teachers -- her general education teacher in --
15 at Swift Creek in third grade, and the special
16 education teacher, Gail Kemp.

17 Q Okay.

18 A So she received a letter, a formal letter.

19 Q Okay.

20 MR. ANDRIANO: Objection, assuming facts
21 not in evidence.

22 THE HEARING OFFICER: You have a continuing
23 objection. Are you objecting to the SOL
24 violation?

25 MR. ANDRIANO: Yes.

1 THE HEARING OFFICER: All right. Again,
2 general knowledge, listening for historical
3 purposes, and hopefully she'll get to the SOL
4 period. And until she gets there, I'll note your
5 objection.

6 Go ahead.

7 BY MR. RATNER:

8 Q Thank you.

9 So she was enrolled in advanced math.

10 A Correct.

11 Q All right. Had they noted any deficiencies
12 in her math in the evaluation?

13 A No.

14 Q Okay. Did you have concerns about her math?

15 A Not at that time.

16 Q Okay. So let's talk about the fourth grade
17 year. Did she have a special education teacher,
18 separate from Ms. Smith?

19 A Christine McCluskey would work with her
20 some.

21 Q Okay. So explain -- because I'm not
22 entirely clear, I know. And you may not be either,
23 which is fine. But what was Ms. Smith's role as the,
24 quote/unquote, case manager?

25 A She was who I would do my communication

1 through.

2 Q Okay. Did you have regular communication
3 with her?

4 A Yes.

5 Q What were the nature of those
6 communications?

7 A Mostly, how was she doing, and letting her
8 know the difficulties I was having with REDACTED
9 behaviorally and then also with the instruction she was
10 receiving.

11 Q Okay. And how was REDACTED doing in fourth
12 grade?

13 A Again, it started out positive, for about a
14 week. And then it quickly declined.

15 Q Okay. And just what -- from your
16 observations, what did you see as a decline?

17 A Her confidence, and her anxiety increased,
18 and school avoidance behavior, not wanting to go to
19 school, began.

20 Q So that, you, I thought, said had been
21 remedied in third grade. And that problem now returned
22 in fourth grade?

23 A Correct.

24 Q Okay. And I think you said earlier that
25 when REDACTED was in kindergarten, she wasn't able to

1 articulate what was making her anxious. By this point,
2 was she able to explain it to you better?

3 A She thought school was stupid. So she would
4 at least identify that it was school. She thought her
5 teachers were stupid.

6 Q Okay. Was she still struggling to read and
7 write at that time?

8 A Yes; she was very embarrassed.

9 Q Okay. Let's go to volume one. So that's
10 going to be in the box next to you. I'll get it for
11 you.

12 THE HEARING OFFICER: You're on volume one?

13 MR. RATNER: We're going to volume one;
14 that's right.

15 THE HEARING OFFICER: Did you say she was
16 very embarrassed about school?

17 MS. REDACTED: She was embarrassed about her
18 reading and writing.

19 THE HEARING OFFICER: Oh, I see.

20 BY MR. RATNER:

21 Q And let's go to 14, the tab 14, please.

22 So specifically, I'm going to have you be on
23 the very first document in there, which it appears is a
24 six-page document. So it goes from PARENTS 181 through
25 PARENTS 186.

1 Is this a document that you recognize?

2 A Yes.

3 Q Okay. What is it?

4 A This is a DRA, so a reading assessment
5 evaluation for REDACTED.

6 Q Okay. Now, it indicates this is for REDACTED;
7 correct?

8 A Correct; it has her name.

9 Q And then it indicates "Teacher Redd" and
10 then "parentheses Lineweaver." Who is Lineweaver?

11 A She's another teacher. And I apologize, I
12 can't remember what her specific title is.

13 Q Okay. Did she work with REDACTED at Old
14 Hundred?

15 A Not regularly.

16 Q Okay.

17 A I think there was one moment where she was
18 supposed to.

19 Q Okay. Did you ever discuss these sorts of
20 assessments, whether this specific one or not, DRAs,
21 with Ms. Redd or anyone else who worked with REDACTED in
22 fourth grade?

23 A Yes.

24 Q Okay. What did they tell you about how REDACTED
25 was doing on the DRAs in fourth grade?

1 MR. ANDRIANO: Objection, hearsay.

2 THE HEARING OFFICER: Sustained.

3 BY MR. RATNER:

4 Q Was REDACTED on grade level with her reading in
5 fourth grade?

6 MR. ANDRIANO: Objection, competency.

7 THE HEARING OFFICER: Aren't the teachers
8 going to be here to testify about grade level, and
9 the assessments, and the evaluations?

10 So I think the question was to the effect
11 was REDACTED on grade level, and that would require an
12 expert opinion, a teacher, someone who's qualified
13 to tell me whether or not she was on grade level,
14 if there's an objection.

15 MR. RATNER: I think there's an objection.

16 THE HEARING OFFICER: No; I know. But I
17 think in this particular case, I'm going to
18 sustain Mr. Andriano on that.

19 MR. RATNER: Sure; very good. Could we go
20 on to tab 15, please.

21 THE HEARING OFFICER: Where's the next one?

22 MR. RATNER: 15.

23 THE HEARING OFFICER: Oh, go ahead.

24 Still volume one, though?

25 MR. RATNER: Yes; they're all numbered

1 sequentially.

2 THE HEARING OFFICER: Okay.

3 BY MR. RATNER:

4 Q Is this something you recognize?

5 A Only more recently; yes.

6 Q Okay.

7 A Yes; I recognize it.

8 Q Very good. Let's take a look at tab 16, if
9 we could. This is REDACTED's report card for fourth grade;
10 correct?

11 A Correct.

12 Q Okay. Mathematics, which is at the top of
13 the right-hand column. What did she receive in the
14 third grading period in mathematics?

15 A A C.

16 Q Okay. And that was an area in which
17 Chesterfield County Public Schools had identified her
18 as having advanced aptitude?

19 A Correct.

20 Q And she was in the advanced class?

21 MR. ANDRIANO: Objection.

22 THE HEARING OFFICER: Objection?

23 MR. ANDRIANO: Assumes facts not in
24 evidence. We haven't heard anything about
25 Chesterfield County Public Schools recommending

1 her for advanced math classes.

2 MR. RATNER: We just did, and he objected
3 and said there's not a letter for it. And we've
4 got a letter in the books. And we just --

5 MR. ANDRIANO: Well, where's the letter? I
6 haven't seen -- we haven't --

7 THE HEARING OFFICER: Yeah; why don't you
8 lay a foundation about the letter.

9 MR. RATNER: Well, because, obviously, Ms.
10 REDACTED received the letter. She didn't write the
11 letter. So I think then we will have an objection
12 about whether it's hearsay or not.

13 THE HEARING OFFICER: Where is this
14 document? Is this still 17 -- or 16, rather?

15 MR. RATNER: I'll be happy to find it for
16 you at the next break. But we can cover it with
17 the teachers, I mean, if you --

18 THE HEARING OFFICER: All right.

19 MR. RATNER: These are facts that are --

20 THE HEARING OFFICER: Let's cover the
21 actual information about these evaluations, and
22 the grades, and all of that -- she can certainly
23 testify she received the grades.

24 But as far as the substantive aspects of the
25 grades, and the grade level, and her

1 understanding, and all that sort of thing, I think
2 we're going to have to rely on teachers to tell us
3 that; don't you?

4 MR. RATNER: Well, I certainly think a mom
5 who's very involved with the education of her
6 daughter, and has had --

7 THE HEARING OFFICER: That's what we want
8 to hear about then; yeah.

9 MR. RATNER: We're talking about a concern
10 with a poor grade --

11 THE HEARING OFFICER: Okay. Why don't you
12 ask her then what her concern was about the grade.
13 Was it a C that she received?

14 MR. RATNER: Yes; and just to make sure
15 we're all looking at the same thing, it's in
16 mathematics.

17 THE HEARING OFFICER: I hope so. Am I on
18 16 then?

19 MR. RATNER: You're on 16. It's PARENTS
20 211. That's the number in the lower right corner,
21 as you instructed us to --

22 THE HEARING OFFICER: Oh, okay, okay.

23 MR. RATNER: And it's at the --

24 THE HEARING OFFICER: Got it, got it.

25 MR. RATNER: It's at the top --

1 THE HEARING OFFICER: Yes.

2 MR. RATNER: -- of the right-hand column,
3 the mathematics grade. First page.

4 THE HEARING OFFICER: Okay. I've got 211.
5 So I'm on 212.

6 MR. RATNER: This is on 211.

7 THE HEARING OFFICER: Oh, okay.

8 MR. RATNER: Top of the right-hand column,
9 mathematics, third period.

10 THE HEARING OFFICER: Got it; okay.

11 BY MR. RATNER:

12 Q Okay. Did you have concerns about her
13 having a C in mathematics at that time?

14 A Yes.

15 Q Could you explain that to Ms. Freeman,
16 please. Why were you concerned about that?

17 A Because she was in advanced math. And I had
18 concerns, and I had talked to her teacher about those
19 concerns, specifically with the memorization of math
20 facts, so multiplication math facts.

21 Q Was that something that you personally
22 worked with her on in fourth grade?

23 A Extensively, yes.

24 Q Okay. And let me ask you, from your own
25 personal knowledge of having worked with your other son

1 -- or let me ask you. Did you -- did REDACTED, your
2 son, have to learn multiplication facts when he was at
3 Chesterfield County Public Schools?

4 A Yes.

5 MR. ANDRIANO: Objection, relevancy.

6 MR. RATNER: I'm so sorry. I'm trying to
7 lay a foundation for the reason she was concerned
8 for REDACTED's ability to understand math facts.

9 THE HEARING OFFICER: Weren't you asking
10 about her brother, though, if I recall correctly?

11 MR. RATNER: Right; because to compare how
12 her brother learned them vis-a-vis how REDACTED
13 learned them. Because you were questioning
14 whether or not she is appropriate to talk about
15 her concerns with math and her opinions, why she
16 would be concerned.

17 THE HEARING OFFICER: Well, let's ask her
18 about REDACTED, and not her brother.

19 MR. RATNER: Okay.

20 THE HEARING OFFICER: Okay.

21 MR. RATNER: But I was trying to make the
22 point that REDACTED was different than her brother.
23 And I think that's a significant fact. I'm sorry
24 you disagree. I'll move on.

25 THE HEARING OFFICER: All right. Go ahead.

1 MR. RATNER: Thank you.

2 THE HEARING OFFICER: Sustained. Move on.

3 BY MR. RATNER:

4 Q So did you have concerns about REDACTED's
5 ability to memorize her math facts?

6 A Yes; because, unlike her brother, she --
7 unlike her brother, she required a lot of extra help at
8 home. He memorized them at school. She -- we did
9 flash cards, and we tried the app that Chesterfield had
10 recommended. And we just couldn't -- she just never
11 could memorize them, no matter how hard we tried.

12 Q Okay. Did you discuss that with teachers?

13 A Yes.

14 Q Did they share your concerns, to the best of
15 your knowledge?

16 A Yes.

17 Q Okay. And did you ever discuss why REDACTED
18 received a C with her math teacher?

19 A Yes.

20 Q And what did the teacher explain to you
21 about why she got the C?

22 MR. ANDRIANO: Objection.

23 MS. REDACTED: I don't recall.

24 MR. RATNER: Okay. We'd like to offer --

25 THE HEARING OFFICER: Sustained. Go ahead.

1 MR. RATNER: -- Exhibit 16, please.

2 THE HEARING OFFICER: Any objection from
3 the school?

4 MR. ANDRIANO: No objection, Ms. Freeman.

5 THE HEARING OFFICER: Okay. Let's see.
6 What is this? Volume one, Exhibit -- or page 211.
7 And this is Exhibit 16 is introduced into the
8 record.

9 MR. RATNER: Thank you.

10 (Parents' Exhibit 16
11 received in evidence.)

12 MR. RATNER: I'd like you to briefly flip
13 to tab 37 in that same book.

14 MR. ANDRIANO: I apologize. What exhibit
15 number, Mr. Ratner?

16 THE HEARING OFFICER: 37.

17 BY MR. RATNER:

18 Q 37.

19 Is that a document you've seen before?

20 A Yes.

21 Q Okay. And it's a letter from Ms. Mottley
22 about advanced math?

23 A Correct.

24 Q Thank you.

25 For REDACTED?

1 A Correct.

2 Q All right. So staying back now on 16, which
3 is the report card, I notice there are no grades for
4 the fourth marking period.

5 A Correct.

6 Q Okay. What happened in the fourth marking
7 period, which is the spring of 2020?

8 A A pandemic.

9 MR. ANDRIANO: Ms. Freeman, I'd just point
10 -- the date of the letter that Mr. Ratner is
11 referring to is July 2020, which is at the end of
12 that school year.

13 THE HEARING OFFICER: I just don't -- wait
14 a minute.

15 MR. RATNER: It's right in the period. I
16 think --

17 THE HEARING OFFICER: It's right in the
18 period. And what's your objection, Mr. Andriano?

19 MR. ANDRIANO: This references the fifth
20 grade school. He's referencing a fourth grade
21 report card, though.

22 THE HEARING OFFICER: Oh, if I read the
23 letter, it's fourth grade that we're referencing?

24 MR. RATNER: I just was asking her if that
25 was a letter about advanced math.

1 THE HEARING OFFICER: All right. I'm going
2 to overrule at this point. Let me hear what she
3 has to say about --

4 MR. RATNER: We're talking about --

5 THE HEARING OFFICER: -- volume one,
6 Exhibit 37.

7 MR. RATNER: No; we were finished with
8 that.

9 THE HEARING OFFICER: Oh, all right.

10 MR. RATNER: I'm so sorry. We're moving on
11 to the fourth quarter of --

12 THE HEARING OFFICER: All right.

13 MR. RATNER: -- fourth grade, which is now
14 squarely within the two-year limitation period.

15 THE HEARING OFFICER: All right.

16 MR. RATNER: We're now up to March/April
17 2020.

18 THE HEARING OFFICER: All right. Go ahead.

19 BY MR. RATNER:

20 Q So Ms. REDACTED, just to repeat -- and I
21 apologize. Why were there no grades for the fourth
22 grade -- fourth period?

23 A School was closed for a pandemic.

24 Q Okay.

25 A COVID-19.

1 Q Okay. So let's talk about what happened to
2 REDACTED follow the school closure. Did she have any
3 interactions with her teachers?

4 Do you remember what day schools closed,
5 approximately?

6 A Yes; March 13th.

7 Q March 13, 2020?

8 A Correct. That was the last day or that --
9 school was closed. I know that because her birthday
10 party was scheduled for that weekend, and we had to
11 cancel --

12 Q From March 13th, 2020, through the end of
13 that school year, just describe for the Hearing Officer
14 what sort of instruction and services REDACTED received
15 from Chesterfield County Public Schools?

16 A Initially, there was distance learning,
17 which was just links provided by the fourth grade team
18 of teachers from Old Hundred. And then April 14th was
19 scheduled for new instruction to begin. The --

20 Q Now, who told you that there was going to be
21 new instruction?

22 A We received an email. And I apologize, I
23 don't remember who.

24 Q Okay.

25 A Yeah; so we received an email just informing

1 us, after spring break, which was April 14th, that
2 instruction -- new instruction would begin.

3 During that period from March to April --

4 MR. ANDRIANO: Ms. Freeman, best evidence
5 would be the email, not her recollection of the --
6 of some email.

7 THE HEARING OFFICER: Where is the email?

8 MR. RATNER: I'm so sorry. Because when we
9 get a email, we have objections about things being
10 hearsay, I'm just trying to offer what her
11 recollection is as to what happened.

12 THE HEARING OFFICER: Overruled at this
13 point. But I will -- when I go back through this,
14 I'll look for the email.

15 MR. RATNER: And we can --

16 THE HEARING OFFICER: But I understand that
17 she's just stating what she recollects about the
18 pandemic, and how this all started from your
19 perspective.

20 BY MR. RATNER:

21 Q Yes. So did REDACTED receive any instruction
22 after that April 14th approximate date?

23 A No.

24 Q Okay. Explain what happened.

25 A So they had distance learning. They met

1 with the teachers one day a week for kind of a powwow,
2 where all the kids could see each other and talk, on
3 Wednesdays.

4 Then everything else was on -- they sent
5 links through their Canvas page, which was a huge
6 challenge for REDACTED, struggling to read on the screen.
7 Her voice-to-text, because she had the accommodation or
8 -- assistive technology, that's what it's called.

9 She had assistive technology, so -- but it
10 wasn't working for the --

11 THE HEARING OFFICER: What kind of
12 technology?

13 MS. REDACTED: It's assistive technology.

14 THE HEARING OFFICER: Oh, okay.

15 MS. REDACTED: So she had voice-to-text in her
16 IEP. So she could speak, and it would copy what
17 she said. It didn't work in the documents that
18 she was supposed to be using.

19 BY MR. RATNER:

20 Q Let me ask you to back up for a second --

21 A Okay.

22 Q -- with a more fundamental question.

23 Did REDACTED ever actually go back to the school
24 building in -- for the rest of the fourth grade year?

25 A No.

1 Q So any of these interactions were done
2 virtually, by computer; is that right?

3 A Correct; but not with a teacher.

4 Q Okay.

5 A Just through a program.

6 Q Continue. Did she ever talk to teachers on
7 the computer, or on the telephone, or anything?

8 A So their teacher, Ms. Redd, her fourth grade
9 teacher, met with the whole class on Wednesdays. And
10 then later on Wednesday, she had a powwow with the
11 special education teachers.

12 Q Okay. And who were they?

13 A Stephanie Smith and Christine McCluskey.

14 Q And were you working with REDACTED during this
15 time?

16 A I was trying.

17 Q Okay. Just explain to Ms. Freeman what that
18 looked like.

19 A We were having extensive difficulties
20 accessing the curriculum virtually. So I began picking
21 up paper packets that the school provided. A couple
22 weeks in, they started printing things out, because I
23 couldn't print everything.

24 So we were trying to work through the paper
25 packets together. But I got a lot of resistance from

1 [REDACTED].

2 Q Okay. And let me -- again, to be clear, we
3 are now into April/May/June of 2020, squarely within
4 two years prior to you filing your complaint.

5 Did you ever talk to anyone from
6 Chesterfield County Public Schools about [REDACTED] receiving
7 the services that were outlined in her IEP, such as
8 individualized or specialized instruction?

9 A Yes.

10 Q Okay. Tell Ms. Freeman about those
11 conversations.

12 A I communicated with Kim Pettitway, who is the
13 special education coordinator for Old Hundred
14 Elementary; Stephanie Smith, who was her case manager
15 at the time; Christine McCluskey, who was one of her
16 special education teachers; and Allie Redd, her general
17 ed teacher, inquiring when she would receive her
18 special education services.

19 They then told me that they would not be
20 providing any services, and could not provide any
21 services.

22 Q Okay. And let's stay away from what they
23 told you.

24 A Oh, sorry.

25 Q Did they ever -- no, no, no; you're fine.

1 Did they actually provide any of the services that were
2 written in REDACTED's IEP during that time?

3 A No.

4 Q Okay. Let me ask you to flip to tab number
5 8 in that same book. This is a document that is marked
6 "Draft Individualized Education Program." It has a
7 date in the upper right corner of April 20th, 2020.

8 And I'm on the first page, which is labeled
9 PARENTS 79. Do you have that in front of you?

10 A Yes.

11 Q Do you remember receiving this document from
12 Chesterfield County Public Schools?

13 A Yes.

14 Q Okay. When did you receive this,
15 approximately?

16 A During April 2020.

17 Q Okay. And do you remember how you received
18 it, or from whom you received it?

19 A I received it in an email from Kim Pettiway.

20 Q Okay. And she was the special education --

21 A Coordinator.

22 Q -- coordinator; right? Okay.

23 I see some handwriting on some of the pages,
24 for example the second page, which is labeled PARENTS
25 80. Do you recognize that handwriting?

1 A Yes.

2 Q Okay. Tell the Hearing Officer who made it
3 and what it reflects.

4 A I made it as I was reading through the
5 document, and just noting things such as, you know,
6 "arrow down WPM," means decline in words per minute.
7 So I was just comparing the progress.

8 THE HEARING OFFICER: But for my purpose
9 when I go back over these documents, the writing,
10 you're saying --

11 MS. REDACTED: Is mine.

12 THE HEARING OFFICER: -- is yours?

13 MS. REDACTED: It's my handwriting.

14 THE HEARING OFFICER: And I can't read it.

15 MR. RATNER: No, no; I just was identifying
16 it because Mr. Andriano had asked a question about
17 where it came from.

18 THE HEARING OFFICER: I know there was a
19 question about the writing.

20 MR. ANDRIANO: Ms. Freeman, that goes to
21 our objection to this particular Parents' Exhibit.
22 It's got Ms. REDACTED -- it's not a school document.
23 It's been altered by the parent.

24 THE HEARING OFFICER: Any response?

25 MR. RATNER: It's the document she

1 received. And it includes her notes on it. And
2 she's testified as to why she made them. And they
3 are certainly welcome to cross-examine her about
4 it.

5 THE HEARING OFFICER: Well, for one thing,
6 I can't even read the notes, so I wouldn't be able
7 to draw any conclusion from them one way or the
8 other, from the note anyway.

9 Is the rest of this -- how about the
10 checkmarks on page 84?

11 MS. REDACTED: The handwritten -- anything
12 that's handwritten came from me. Anything that's
13 typed came directly from Chesterfield County.

14 THE HEARING OFFICER: Is there another copy
15 of this document that does not have the
16 handwritten notes on it?

17 MR. RATNER: Not that I'm aware of.

18 MR. ANDRIANO: Yes, there is, Ms. Freeman.

19 MR. RATNER: Oh, great.

20 MR. ANDRIANO: It's a School Board Exhibit.

21 THE HEARING OFFICER: All right. I'm going
22 to exclude this one, because it does have the
23 handwritten notes, which is probably not the best
24 example of this document.

25 And -- but I don't have any problem with Ms.

1 REDACTED reading from it and explaining what her
2 interpretation as the mom was.

3 MR. RATNER: I don't think that's
4 necessary. If Mr. Andriano will just be so kind
5 to tell me which exhibit it is.

6 THE HEARING OFFICER: Oh, okay. That's a
7 good idea.

8 MR. RATNER: Then we can deal with that.

9 MR. ANDRIANO: School Board Exhibit 6.

10 THE HEARING OFFICER: Okay. So that's --

11 MR. RATNER: Well, this doesn't say "Draft"
12 on it, for example.

13 THE HEARING OFFICER: Mine says "Draft,"
14 number --

15 MR. RATNER: Right; but School Board
16 Exhibit 6 does not.

17 THE HEARING OFFICER: Oh, okay, all right.
18 So she signed -- or one of the parents signed --

19 MR. RATNER: Right.

20 THE HEARING OFFICER: Okay.

21 MR. RATNER: And so for -- I mean, this is
22 a different document. This is different.

23 THE HEARING OFFICER: Okay. So what was
24 that exhibit you had, the school --

25 MR. ANDRIANO: School Board Exhibit 6 is

1 the final proposed IEP that Ms. REDACTED signed.

2 MR. RATNER: That's right; which is a
3 different document.

4 THE HEARING OFFICER: Okay.

5 MR. RATNER: That I just wanted --

6 THE HEARING OFFICER: Okay. Number 6, did
7 you say it was?

8 MR. ANDRIANO: School Board Exhibit 6; yes.

9 THE HEARING OFFICER: Okay, all right.

10 MR. RATNER: So if I may continue.

11 THE HEARING OFFICER: Yes; go ahead. I'm
12 sorry.

13 MR. RATNER: Thank you. Oh, no problem.

14 BY MR. RATNER:

15 Q So did you ever talk to Ms. Pettitway about
16 this April 20th proposed IEP?

17 A Yes.

18 Q Okay. Let me now ask you to go to tab 7.
19 And I'd like you to start on the first four pages of
20 that PARENTS 38 through PARENTS 41. Just take a quick
21 look at that, and let me know when you're ready to
22 answer some questions about it.

23 THE HEARING OFFICER: I'm confused. Are we
24 on number 7 in volume one or --

25 MR. RATNER: Yes.

1 THE HEARING OFFICER: -- 30 --

2 MR. RATNER: Number 7.

3 THE HEARING OFFICER: Oh, okay, all right.

4 BY MR. RATNER:

5 Q Okay. Tell Ms. Freeman what this -- these
6 first four documents are, first four pages of Exhibit
7 7, Parents' Exhibit 7.

8 A This is the letter received stating that the
9 school is closed. It was also referencing what the
10 next -- the first two is the letter, the second two is
11 a interim IEP that was -- they wanted me to sign for
12 the school closure.

13 Q Okay. And so just to -- you can go back now
14 and take a look, if you need to, the comparison of 7
15 and 8. But did you receive something on or around
16 4/20, and then a subsequent communication from the
17 school on or around 4/27, which is the date of the
18 letter?

19 A Yes; I received 4/20, which was the new IEP.
20 And then I got the letter. And I actually had to call
21 -- it was through a phone conversation I was ask --
22 with Ms. Pettiway, I was asked if I received this
23 document, which I hadn't. And then it was dropped off.

24 Q Okay. And Ms. Pettiway is going to be
25 testifying, so we can cover a lot of this with her.

1 But I'm specifically interested in the third and fourth
2 pages of Exhibit 7, which are PARENTS 40 and 41. This
3 is a document entitled "Chesterfield County Public
4 Schools IEP Amendment and Prior Written Notice During
5 COVID-19 Mandated School Closure."

6 Did you ever review this after you received
7 it?

8 A Yes.

9 Q Okay. And how many goals are on this
10 document for REDACTED?

11 A One.

12 Q One; and that's at the top of the first
13 page, "REDACTED will be able to write to a prompt with a
14 beginning, middle, and end." Did I read that
15 correctly?

16 A Yes.

17 Q Okay. Are there any other goals on there
18 for REDACTED at that time?

19 A No.

20 Q Was that different than what was proposed on
21 4/20 --

22 A Yes.

23 Q -- which is tab 8?

24 Okay. Were there more or less goals in the
25 newer document?

1 A There were less goals in the newer document.

2 Q Okay. And how did -- and were there more or
3 less goals in the newer document from the actual IEP
4 that was in place at that time, that dates back to
5 October 2019?

6 A Yes.

7 Q Okay. There were more or less?

8 A Sorry; there were less goals.

9 Q Okay. Did you ever discuss that with Ms.
10 Pettaway or anyone else from Chesterfield County Public
11 Schools?

12 A Yes.

13 Q Tell Ms. Freeman about that conversation.

14 A I had a lot of concerns on this document.
15 First off, just that when you first look at it, it's
16 completely different than anything I had ever received.
17 I sent a long list of questions on it, so --

18 Q Okay. And what did Ms. Pettaway tell you,
19 or anybody else from Chesterfield County Public
20 Schools?

21 A There was very little communication on it.
22 We received -- you know, in the first letter, it was
23 just kind of encouraging us to sign it, saying that
24 they couldn't implement the IEP until it was signed.

25 Q Okay. Did you ever sign this?

1 A No.

2 Q Okay. And I think what Mr. Andriano was
3 referencing, which was School Board 6, is a document --
4 and do you have the School Board volume --

5 A Yes.

6 Q -- in front of you?

7 A Uh-huh.

8 Q Okay. So that School Board's IEP that Mr.
9 Andriano said was the same as Exhibit 8 is not;
10 correct?

11 A Correct.

12 Q Okay. And then if you get to the last page
13 of that School Board Exhibit 00034, did you consent to
14 this IEP?

15 A No, I did not.

16 Q Okay. So we're going to blow through the
17 summer. Was there anything significant that happened
18 during the summer before fifth grade?

19 A They had recovery of learning for all
20 students.

21 Q Okay.

22 A And we -- I signed her up for that.

23 Q Okay. But the last IEP that was in effect,
24 the last one you signed, had ESY; correct?

25 A Correct.

1 Q Okay. Did anybody ever discuss extended
2 school year services for REDACTED during the summer between
3 fourth and fifth grade?

4 A I asked about it, and they said they were
5 not implementing any ESY.

6 Q Okay.

7 THE HEARING OFFICER: They -- what was the
8 last thing you said?

9 MS. REDACTED: They were not implementing any
10 ESY.

11 BY MR. RATNER:

12 Q Okay. But they did have recovery of
13 learning?

14 A Right; they had recovery of learning, which
15 was optional, for all students.

16 Q Okay. So let's go ahead now, tab 6 in the
17 School Board's book; okay? Why did you not consent to
18 this IEP?

19 A I was told we couldn't move forward with a
20 new IEP until I signed this one.

21 Q Okay. But you didn't agree to it?

22 A Correct. Ms. Pettitway told me that I could
23 just disagree and sign it, so that --

24 Q Okay.

25 A -- before she could move forward.

1 Q Okay. So tell the Hearing Officer what
2 school started out like in fifth grade for REDACTED?

3 A It was virtual, so we weren't in the
4 building.

5 Q Tell Ms. Freeman, to the best of your
6 recollection, what REDACTED's teachers were -- or who
7 REDACTED's teachers were, what her courses were, what her
8 daily schedule would be like.

9 A So she had Elizabeth Houston for her general
10 education. She had David Lawson for advanced math.
11 The first week of school was internet issues. There
12 really wasn't any instruction.

13 Q Okay. So -- and I apologize. I tend to
14 jump around a lot, so I apologize if I'm -- it's
15 difficult to keep up. But if you could go back to
16 Parents' 37, that book; yes.

17 THE HEARING OFFICER: Where did you direct
18 her? I'm sorry.

19 BY MR. RATNER:

20 Q Parents' 37, so that's volume one.

21 Do you have that there?

22 A Yes.

23 Q That's a letter from Ms. Mottley, indicating
24 in the third full paragraph, "Your child, REDACTED,
25 will remain in the accelerated math curriculum for the

1 2020-21 school year." Did I read that correctly?

2 A Yes.

3 Q Okay. So she was not only in it in fifth
4 grade, she was remaining in it, meaning she had been in
5 it in fourth grade; correct?

6 A Correct.

7 Q Okay. And the last grade she got in math,
8 we reviewed her report card, was a C; correct?

9 A Correct.

10 Q But the school still felt that she had the
11 aptitude, or at least they were placing her and said
12 that, "The accelerated mathematics curriculum compacts
13 three years of mathematics content into two. Your
14 student's fourth grade year included study of the
15 fourth grade and most of the fifth grade SOL
16 objectives. And she, REDACTED, will remain in the
17 accelerated --

18 MR. ANDRIANO: Objection. Is there a
19 question?

20 BY MR. RATNER:

21 Q Correct? Did I read that correctly?

22 A Yes.

23 Q And --

24 THE HEARING OFFICER: There was an
25 objection. Rephrase that as a question. It did

1 sound to me, if I recall correctly, as if it was
2 more of a statement than a question.

3 MR. RATNER: Well, right; because I was
4 going to ask her if I read it correctly, and then
5 make sure that she understood it.

6 THE HEARING OFFICER: All right. Overruled
7 at this time.

8 BY MR. RATNER:

9 Q Okay. It was your understanding that
10 Chesterfield County Public Schools was recommending
11 that REDACTED remain in advanced math?

12 A Yes.

13 Q Okay. Tell the Hearing Officer how that
14 went, math specifically.

15 A Early on, REDACTED struggled with math. The
16 teacher, Mr. Lawson, did a time warm-up. The screen
17 was very messy. So it would be, for example, five math
18 questions. You have five minutes. And it would have
19 like a beach scene in the background.

20 And so she just -- in REDACTED's words, the
21 numbers were floating.

22 Q Okay.

23 THE HEARING OFFICER: The numbers were
24 what?

25 MS. REDACTED: Floating, moving around.

1 BY MR. RATNER:

2 Q Okay. So she struggled with it.

3 A Yes.

4 Q Were you there to assist her?

5 A As much as I could be; yes.

6 Q Okay. And did you ever communicate with
7 either her case manager or Mr. Lawson about the
8 difficulties she was having in math?

9 A Yes. The case manager changed, too.

10 Q Okay. Who was the case manager?

11 A The case manager was now Christine
12 McCluskey.

13 Q Okay. And she had worked with REDACTED
14 previously; correct?

15 A Yes.

16 Q Okay. And was she continuing to provide
17 instruction to REDACTED in fifth grade?

18 A Yes.

19 Q Okay. So tell the Hearing Officer about
20 discussions you had about REDACTED's difficulties with math
21 with CCPS personnel.

22 A I communicated to Christine McCluskey. She
23 shared my comments with Mr. Lawson. Nothing was
24 changed. And so I continued with Mr. Lawson to ask how
25 we could work through math, basically asking for

1 recorded lessons that they were supposed to be doing.

2 Q Okay. So when you say they were supposed to
3 be doing recorded lessons, how did you come to that
4 understanding?

5 A Chesterfield County, in their return to
6 school presentation, recorded lessons were supposed to
7 be offered by every teacher.

8 Q Okay. And you have, again, another student
9 in Chesterfield County Public Schools. Was he
10 receiving recorded lessons?

11 A Yes.

12 Q Okay. But at Old Hundred, at least in Mr.
13 Lawson's math class, REDACTED was not?

14 A Correct. So there was no way, especially
15 when I was working, to go back and reference the
16 lesson. If she didn't log in, she didn't get it.

17 MR. RATNER: Okay. Ms. Freeman, I could
18 use a really quick restroom break.

19 THE HEARING OFFICER: Oh, of course.

20 MR. RATNER: Yes; thank you.

21 THE HEARING OFFICER: We will take a five-
22 minute break.

23 (Brief recess.)

24 MR. ANDRIANO: Ms. Freeman, we have a
25 preliminary matter we need to discuss.

1 THE HEARING OFFICER: We have a what?

2 MR. ANDRIANO: A matter that we need to
3 discuss.

4 THE HEARING OFFICER: Oh, okay. Which
5 matter?

6 MR. ANDRIANO: There's a woman out here who
7 refuses to sign the social media form that you --

8 THE HEARING OFFICER: Okay. Let's go back
9 -- are we back on the record?

10 THE COURT REPORTER: Yes, ma'am.

11 THE HEARING OFFICER: All right. Let me
12 ask you, is anyone recording, transmitting? I
13 don't see everyone -- to whom were you referring,
14 Mr. Andriano?

15 MR. ANDRIANO: I believe it's Ms. Lucas. I
16 can't recognize her, if that's her or not. But
17 she refused to sign the form that the Hearing
18 Officer wanted everyone to sign.

19 MS. LUCAS: Actually, I did sign it.

20 THE HEARING OFFICER: You're not -- are you
21 recording or not recording? Okay. General
22 question to everyone --

23 MS. LUCAS: I did sign it.

24 THE HEARING OFFICER: You did sign. And is
25 anyone recording, videoing, live streaming? I

1 need an answer from anybody.

2 MS. LUCAS: No; they took all our phones.

3 THE HEARING OFFICER: They took -- okay.

4 Hopefully you can identify your phone when you go
5 back out, though.

6 MS. LUCAS: Well, they stay --

7 THE HEARING OFFICER: They saved them; all
8 right.

9 MS. LUCAS: Yeah; we were robbed of our --

10 THE HEARING OFFICER: All right. So no
11 one's recording. And the reason I set that rule
12 in this particular case is I had read some issues
13 about REDACTED that I thought she needed to protect --
14 we needed to consider her --

15 I think we need to keep it somewhat private,
16 and not have this whole hearing be decided on
17 social media. So that's where I was coming from.
18 And all of you all respected the guidelines, I'm
19 assuming.

20 And I'm getting a "no" from you, Ms. Lucas.

21 MS. LUCAS: No, ma'am; you are not getting
22 a "no" from me.

23 THE HEARING OFFICER: Oh, okay.

24 MS. LUCAS: I said that I have complied
25 with the guideline, specifically, that you

1 overruled the parents' rights --

2 THE HEARING OFFICER: Okay.

3 MR. ANDRIANO: But I don't think she signed
4 the form correctly.

5 THE HEARING OFFICER: She did not sign the
6 form?

7 MS. LUCAS: I did sign the form.

8 MR. ANDRIANO: Well, let's take a look at
9 it.

10 THE HEARING OFFICER: All right. Let's see
11 the form. There's been a question raised. Let's
12 see the form.

13 MS. LUCAS: Go get it.

14 THE HEARING OFFICER: Keep the commentary
15 down, please.

16 MALE OBSERVER: Another question is, is the
17 form enforceable at all?

18 FEMALE OBSERVER: It is not.

19 MALE OBSERVER: It is not, so it's --

20 THE HEARING OFFICER: Okay. I need the
21 observers to be quiet. I'm not going to have
22 dialogue with observers.

23 This is REDACTED's hearing, and we're not going
24 to have a hearing over social media. That's my
25 concern. And it's for the protection of REDACTED and

1 her privacy, and so there.

2 But if there are any outbursts, then -- or
3 any commentary, I'm going to ask you to leave; is
4 that clear? Is that clear?

5 MALE OBSERVER: Yes.

6 THE HEARING OFFICER: Okay.

7 MALE OBSERVER: Aren't we on like an
8 intermission right now?

9 THE HEARING OFFICER: I'm sorry?

10 MALE OBSERVER: The attorney was gone. I
11 thought we were --

12 THE HEARING OFFICER: All right. Let's see
13 if Ms. Lucas signed the form.

14 MR. ANDRIANO: See the alteration in the
15 middle?

16 THE HEARING OFFICER: What's the
17 alteration?

18 Ah, Ms. Lucas, did you mark out "including
19 making social media posts"?

20 MS. LUCAS: I wasn't the only one. Because
21 that's a violation of our First Amendment rights.

22 THE HEARING OFFICER: All right. Whoever
23 signed this form inconclusively and does not agree
24 needs to leave now. Who else didn't sign it as
25 provided?

1 No commentary, Ms. Lucas.

2 MS. LUCAS: I know. But you asked me why -

3 -

4 MR. RATNER: May I -- are we on the record?

5 THE HEARING OFFICER: Yeah; we're on the
6 record. But I'm going to figure this out first.

7 MR. RATNER: No; sure. I just wanted to
8 say a couple things. One is --

9 MS. OWENS: I'm sorry. Mr. Andriano isn't
10 in the room yet.

11 THE HEARING OFFICER: I need no commentary.
12 Yeah; Mr. Andriano is gone.

13 MS. OWENS: So I would just ask that all
14 counsel be present.

15 THE HEARING OFFICER: Yeah.

16 FEMALE OBSERVER: I scribbled my name.

17 MR. ANDRIANO: They're all signed. None of
18 the other ones are altered.

19 THE HEARING OFFICER: Only Ms. Lucas?

20 MR. ANDRIANO: Yes.

21 FEMALE OBSERVER: I scribbled my name, not
22 my signature.

23 THE HEARING OFFICER: I don't care if you
24 scribbled your name. But if you excluded the
25 business about "including making social media

1 posts," I either need you to make that
2 acknowledgment now, in writing, or you're going to
3 have to be excluded.

4 Because every single one of these items
5 needs to be acknowledged and certified by the
6 observers. And that was the ruling beforehand.

7 MS. LUCAS: Are we on the record?

8 THE HEARING OFFICER: Yes; I think we are.

9 MS. LUCAS: Okay. I'm going to go ahead
10 and leave, because my First Amendment rights are
11 being violated. So I'll leave.

12 THE HEARING OFFICER: All right. Thanks.

13 MS. LUCAS: Thank you.

14 THE HEARING OFFICER: All right. I don't
15 recall where we were, but I think you had a
16 question.

17 MR. RATNER: Well, just I want it to be --

18 THE HEARING OFFICER: Or a comment. But we
19 wanted to make certain Mr. Andriano was back in
20 the room.

21 MR. RATNER: Yes, ma'am.

22 THE HEARING OFFICER: All right. Go ahead.

23 MR. RATNER: So I just wanted to note a
24 couple things. Number one, Ms. Lucas, obviously,
25 is known in the community. We did not invite her.

1 And so I just don't want any inferences --

2 THE HEARING OFFICER: I'm not drawing any
3 inferences. I know that there are individuals who
4 have special interest in hearings, special ed
5 hearings.

6 And the only requirement I had is that
7 everyone sign off on my sign-off sheet.

8 MR. RATNER: No; I understand. I would
9 also like to note that the parents did request the
10 hearing being open to the public.

11 THE HEARING OFFICER: Yeah; I believe, on
12 the record, I noted your exception.

13 MR. RATNER: Yep.

14 THE HEARING OFFICER: My exception to the
15 school system's -- I'm sorry. I think I addressed
16 that point in writing.

17 Go ahead.

18 (Observer commentary excluded from the
19 transcript at the direction of the Hearing
20 Officer.)

21 THE HEARING OFFICER: Okay. I've heard
22 enough on this hearing. We need to stop right
23 now. And thank you for your comments, but I'm
24 going to exclude that comment.

25 I asked for no commentary from the

1 observers, and I'm going to respect my own rule,
2 which is no commentary. Thank you.

3 And I believe I addressed that point in
4 writing --

5 MR. RATNER: Yes, ma'am.

6 THE HEARING OFFICER: -- about the Spanish
7 translation.

8 Go ahead.

9 MR. RATNER: Thank you. May I resume the
10 direct examination? And I guess my last point was
11 just, you know, we're working on some time
12 limitations.

13 THE HEARING OFFICER: I know. I know.

14 MR. RATNER: I hope that won't be deducted
15 from our time.

16 THE HEARING OFFICER: I think we went into
17 that discourse for about ten minutes or so. So
18 I'm going to add -- so we need to be shooting
19 towards 1:00, and -- since probably everyone's
20 going to be hungry at that point.

21 MR. RATNER: Yeah; and just to give you a
22 preview, I anticipate finishing prior to that. I
23 anticipate finishing prior to that.

24 THE HEARING OFFICER: Oh, okay, all right;
25 thank you, thank you.

1 MR. RATNER: Yes; you're welcome.

2 BY MR. RATNER:

3 Q So Ms. REDACTED, we were talking about math.
4 Was math the only class that was -- instruction was
5 delivered to REDACTED virtually during the fall of fifth
6 grade?

7 A No; all classes were.

8 Q Okay. How did REDACTED do in the,
9 quote/unquote, virtual environment?

10 A Terrible.

11 Q Okay. Just elaborate on that for Ms.
12 Freeman.

13 A She didn't attend very much, because she
14 couldn't -- she would try every morning, and it was so
15 overwhelming because she couldn't access things.

16 Q And when you talked before, earlier -- and,
17 again, I'm jumping back -- about REDACTED being embarrassed
18 about her difficulties, just to make sure the Hearing
19 Officer understands that, what -- how did you
20 understand that, from what she told you?

21 A She felt very nervous about being outed by
22 her peers, and didn't want anybody to know that she had
23 challenges. Nobody likes to be different. And so
24 being virtual, as well, is kind of being almost exposed
25 to everybody.

1 Not everybody wants to be in front of the
2 entire class. But that's how it was, virtual. Some
3 kids like to sit in the back, or like to be sheltered,
4 and that wasn't an option.

5 Q Okay. And did you try to work with her when
6 you could?

7 A Yes.

8 Q Explain to Ms. Freeman what that was like.

9 A I would -- I tried to rewrite everything
10 that was put -- when I could go to the Canvas page and
11 see what she was doing, I would type it up and rewrite
12 it, because she had a hard time with the computer
13 portion of it.

14 So I was trying to really get her to access
15 the curriculum the best she could.

16 Q And you referenced Canvas. Just explain
17 briefly what that is for Ms. Freeman's benefit.

18 A Yeah; Canvas is the platform that the kids
19 all have an account -- the students have an account.
20 They're assigned classes. And so this is where all of
21 their work comes through.

22 So they can, you know, whether it's a Google
23 doc -- so it's structured like this is your work for
24 today, and click here, click here, click here. And it
25 would take you to either an external link or an actual

1 document. Then they'd do the work, and then they'd
2 submit it.

3 Q Okay. Let me -- we're still on tab 37 in
4 the parents' book. The first page was Ms. Mottley's
5 letter. I'd like you on the second page of that same
6 document, so that's PARENTS 471, if you have that in
7 front of you.

8 A Yes.

9 THE HEARING OFFICER: Did you say that's
10 the fourth volume?

11 MR. RATNER: No; it's the first volume.

12 THE HEARING OFFICER: Oh, okay.

13 MR. RATNER: It's tab 37.

14 THE HEARING OFFICER: Page 471?

15 MR. RATNER: Correct.

16 THE HEARING OFFICER: Oh, it's right in
17 front of me; right.

18 MR. RATNER: The second page of that
19 document.

20 THE HEARING OFFICER: All right. Got it.
21 Thank you.

22 MR. RATNER: You're welcome.

23 BY MR. RATNER:

24 Q Tell Ms. Freeman what this document is.

25 A This is where I -- REDACTED was having such a

1 hard time with the math virtually, and it was just
2 really taking a toll. And even though she was capable,
3 the curriculum wasn't structured accessible to her.
4 And so I had to write a formal letter to Ms. Mottley to
5 pull her out of advanced math, even though she was --
6 her aptitude was strong enough to be there.

7 Q Okay. And so then what was math like for
8 her after November 11th, 2020, which is the date of
9 this letter?

10 A Sorry.

11 Q Do you need a minute?

12 THE HEARING OFFICER: She does. Does
13 anybody have a kleenex?

14 MS. REDACTED: It's okay.

15 THE HEARING OFFICER: Let's take a break on
16 that, in favor of -- and I'll add -- you just take
17 your time.

18 (Discussion off the record.)

19 THE HEARING OFFICER: All right. Go ahead,
20 if you would, please.

21 MS. REDACTED Yeah; I can address that.

22 BY MR. RATNER:

23 Q Yeah; so the question was -- and we can have
24 Kurt read it back if we need to, but I don't think it's
25 necessary. It was, after she was removed from advanced

1 math, what was math like for her?

2 THE HEARING OFFICER: What was the last
3 part of your question?

4 MR. RATNER: What was math like for her,
5 for REDACTED.

6 THE HEARING OFFICER: Oh, what was math
7 like; okay.

8 Was she removed from the higher --

9 MS. REDACTED: Yes.

10 THE HEARING OFFICER: -- higher math?

11 MS. REDACTED: Pulled her out, because --

12 THE HEARING OFFICER: You pulled her out?

13 MS. REDACTED: Yes; we wrote a letter to pull
14 her out of advanced math, not because of her
15 ability, but because the virtual platform was too
16 difficult for her to navigate, and it was creating
17 undue stress.

18 When she was pulled out and put into the
19 regular math class, it makes me emotional because
20 that was almost a total defeat for her. Because
21 when she got into what she thought was going to be
22 easier for her, she -- she still was very behind,
23 as far as turning things in.

24 And she didn't understand why she was so
25 much slower than all these peers in a subject that

1 she always thought was a strength. And so, I
2 mean, I remember so clearly why -- she wanted to
3 know from me why it was --

4 THE HEARING OFFICER: Take your time.

5 MS. REDACTED: -- so much harder for her, and
6 why is the one thing that she's good at so hard.

7 (Pause.)

8 BY MR. RATNER:

9 Q Whenever you're ready, REDACTED.

10 Okay. So before you sent that letter, which
11 was part of Parents' 37, had you asked Mr. Lawson or
12 anybody else from Chesterfield County Public Schools to
13 make accommodations for REDACTED, so she could remain in
14 the accelerated class?

15 A Yes. I asked Mr. Lawson, Christine
16 McCluskey, and Lindsay Mottley for that accommodation.

17 Q And one of those accommodations was the
18 recording of lessons?

19 A Recording of lessons and printed documents.

20 Q Okay. And were those accommodations ever
21 granted?

22 A Eventually, recorded lessons. Not the
23 entire class, but just three or four minutes of
24 instruction were put on Mr. Lawson's link.

25 Q And -- but that was not enough to allow REDACTED

1 to access the curriculum?

2 A Correct. They never provided me with
3 printed documents to work from physically. And, no, at
4 that point it was so delayed in addressing it, it was -
5 - she was already defeated.

6 Q Okay. Did you reach out to anyone about an
7 IEP meeting, or any kind of discussion of how REDACTED was
8 doing around this time?

9 A I don't recall.

10 Q Okay. When do you next recall an IEP
11 meeting with Chesterfield County Public Schools --

12 A There was one prior to this.

13 Q Okay.

14 A Correct? I mean, so I thought -- my
15 recollection was there was one in October.

16 Q Okay. And then let me ask you about this.
17 Do you know someone named Laura Burke?

18 A Yes.

19 Q Who's Laura Burke?

20 A Laura Burke was an advocate that I brought
21 to the table, yeah, with me.

22 Q Okay. Did you ever attend a meeting with
23 Laura Burke?

24 A Yes.

25 Q Okay. When was that?

1 A In October of 2020, and then again in
2 February.

3 Q Okay.

4 A We had one little powwow with the teachers
5 between.

6 Q Okay. So let's talk about each of those.
7 The October/November/fall of 2020, what was the purpose
8 of that meeting?

9 A The purpose of that meeting was to -- I
10 mean, we brought up private placement. And I had an
11 advocate to write a stronger IEP, but also to discuss
12 the difference between what she needed and what she was
13 receiving.

14 Q Okay. So you mentioned another advocate
15 besides Laura Burke. Who was that?

16 A Kevin Mueller.

17 Q Okay. Do you know someone named Robin
18 Hegner?

19 A Yes.

20 Q Okay. Who was she?

21 A I -- she is a -- she's Orton-Gillingham-
22 certified. She's a tutor. She works at Riverside. So
23 I had consulted with her. I met with her, and we
24 discussed REDACTED's file.

25 And she gave me, you know, pointers on how

1 to -- accommodations that would help her within public
2 school.

3 Q Okay. And did you ask for her to attend a
4 meeting, an IEP meeting with you?

5 A Yes.

6 Q Okay. What happened with that meeting?

7 A We were scheduled to meet in the morning.
8 And the day before, I received an email from Kim
9 Pettiway saying we would be limited to 30 minutes for
10 our meeting.

11 So it wasn't worth paying for an advocate,
12 when we were on such a narrow scheduled time. We
13 weren't going to be able to cover everything in 30
14 minutes.

15 Q Okay. So let's now skip ahead to -- you
16 said you had mentioned private placement. When was the
17 first time you asked the IEP team to consider private
18 placement at The New Community School for REDACTED?

19 A In October 2020.

20 Q Okay.

21 A Or it might be November. I don't know the
22 date of the meeting. But it was that meeting.

23 Q Okay. And just tell Ms. Freeman about what
24 happened at that meeting.

25 A I was told that we had to do another battery

1 of evaluations before they could consider private
2 placement.

3 Q Okay. And did you consent to those
4 evaluations?

5 A Yes.

6 Q Bear with me for one second. But while I'm
7 looking for this, tell the Hearing Officer, to the best
8 of your recollection, how REDACTED's grades were during the
9 first two marking periods.

10 A In fifth grade, the first marking period she
11 initially received all NAs, which was not giving her a
12 grade because the -- yeah; the report cards had all
13 NAs.

14 Q So let me ask you this. And it's at tab 30
15 in our book. So the first page, PARENTS 399, appears
16 to be the first quarter marking period --

17 A Correct.

18 Q -- for REDACTED in fifth grade; correct?

19 Now, NA, I assume, meanings not applicable.
20 Was that your understanding?

21 A My understanding was that she had all Fs.

22 Q Okay. But what did you understand NA to
23 mean?

24 A I understood it to mean they didn't want to
25 put all Fs on her report card.

1 Q Okay. Your son, REDACTED, was attending --

2 MR. ANDRIANO: I'm going to -- I mean, Ms.
3 Freeman, that's speculation on her part. I mean,
4 how does she know --

5 THE HEARING OFFICER: I'm going to strike
6 that response. That is speculation.

7 MR. RATNER: Fair enough.

8 THE HEARING OFFICER: All right.

9 BY MR. RATNER:

10 Q Thank you.

11 Your son, REDACTED was attending
12 Chesterfield County Public Schools during the first
13 marking period of the 2020-2021 school year?

14 A Yes.

15 Q Did he receive all NAs, or did he receive
16 grades on his report?

17 A He received --

18 MR. ANDRIANO: Objection, relevancy.

19 MS. REDACTED -- grades.

20 THE HEARING OFFICER: Stop for a minute.
21 I'm going to sustain the objection, unless you can
22 tell me a reason why she's referring to REDACTED's
23 grades.

24 MR. RATNER: Because I think it was unusual
25 for REDACTED to get all NAs, and it certainly wasn't

1 Chesterfield County policy that students during
2 remote school got NA.

3 THE HEARING OFFICER: All right. For that
4 limited purpose, I'll accept the answer. But
5 nothing else about NAs. And I'm only going to
6 consider the evidence about REDACTED's report that
7 says NA.

8 I don't know if I'm calling it a report
9 properly. But the NA, I'm only considering as far
10 as REDACTED goes.

11 BY MR. RATNER:

12 Q Understood.

13 You can flip to the next page in the same
14 tab, PARENTS 340.

15 THE HEARING OFFICER: 340?

16 MR. RATNER: 340; yes, ma'am.

17 THE HEARING OFFICER: Okay.

18 BY MR. RATNER:

19 Q Do you have that in front of you?

20 A Yes, I do.

21 Q Okay. This appears to be her -- REDACTED's
22 grades for the second marking period of fifth grade; is
23 that correct?

24 A Correct.

25 Q Do you recall approximately when the second

1 marking period ends? Is it before or after winter
2 break --

3 A After winter break.

4 Q Okay. So some time in January of 2021, you
5 believe, is when this was issued?

6 A Correct.

7 Q How was REDACTED doing in school at that point?

8 A Not well.

9 Q Okay.

10 A Academically, not well.

11 Q How about emotionally?

12 A It was tough. She didn't want to attend.
13 She -- we had a lot of back and forth with the teachers
14 because I -- especially when I was working, there was
15 no way I could force her to get on when I wasn't there.

16 The subject of school was very -- it was
17 just very touchy with her. It was -- she was very
18 frustrated, but she kept trying. But it was --
19 typically, she would get on and then shut it down
20 quickly when she felt, in her words, stupid.

21 Q Okay. So we're talking about a IEP meeting
22 in the fall of 2020 --

23 A Okay.

24 Q -- that Laura Burke and Kevin Mueller
25 attended with you, to just get you oriented in time.

1 A Okay.

2 Q Prior to that meeting or at that meeting,
3 had you expressed to the IEP team that you would like
4 the team to consider whether REDACTED should be in a
5 private day program, specifically at The New Community
6 School?

7 A I don't recall if I said specifically at The
8 New Community School.

9 Q Okay. How about private day?

10 A It was discussed in a prior meeting.

11 Q Okay. And do you remember, was it discussed
12 in that meeting, the meeting with Laura Burke?

13 A Yes.

14 Q Okay. What was the conclusion from that?

15 A The conclusion was that they wouldn't --
16 they couldn't consider private placement until
17 evaluations were completed.

18 Q Okay. And so that's what we were talking
19 about. Did you actually consent to the evaluations?

20 A Yes.

21 Q Okay. So let me just have you briefly, in
22 the same book, look at tab 25, 26, 27, 28, 29. Do
23 those include the assessments at 25, 26, 27, and 29
24 that were performed?

25 A (Nodding head.)

1 Q You need to answer verbally for Kurt's
2 benefit.

3 A Yes; these were the assessments that they
4 did after that meeting.

5 Q Okay. And then 28 was an eligibility
6 worksheet; correct?

7 A Correct.

8 Q Did you actually have to come back for a
9 second meeting to determine whether REDACTED remained
10 eligible as a child with a specific learning
11 disability?

12 A Yes.

13 Q Okay. And during that meeting, did they
14 also discuss whether REDACTED was eligible for any other --

15 A Emotional was one that was brought to the
16 table, and also --

17 Q Okay. And with respect to the emotional, do
18 you remember anything about that discussion?

19 A They wanted to do a functional behavioral
20 assessment.

21 Q Okay. Had there been some alarming things
22 in the psychological report, which is at 26, that
23 caused them to want to look at a different eligibility
24 determination?

25 MR. ANDRIANO: Objection, Ms. Freeman. I

1 mean, his client can't give an opinion on what the
2 psychological --

3 THE HEARING OFFICER: I'm going to sustain.

4 MR. RATNER: Okay.

5 THE HEARING OFFICER: Unless you can give
6 me a good reason why she would have an opinion
7 about that particular evaluation --

8 MR. RATNER: Well, I'm just -- I mean, she
9 --

10 THE HEARING OFFICER: -- expert testimony
11 and all that sort of thing.

12 I'm sorry to interrupt you. Go ahead.

13 MR. RATNER: Oh, no; I was interrupting. I
14 apologize.

15 THE HEARING OFFICER: Okay. Go ahead.

16 MR. RATNER: So she was at the meeting when
17 this was discussed. They reviewed the report with
18 her. They discussed the concerns that they were
19 seeing there.

20 THE HEARING OFFICER: All right. Well, let
21 me hear what Ms. REDACTED --

22 MR. RATNER: Sure.

23 THE HEARING OFFICER: -- without telling me
24 what other witnesses --

25 MR. RATNER: Yeah; absolutely.

1 THE HEARING OFFICER: -- who I believe are
2 going to testify.

3 MR. RATNER: I sure hope so.

4 THE HEARING OFFICER: Okay.

5 MS. REDACTED: So at the meeting, there was
6 nothing about -- there was only positives from the
7 people that evaluated her. They were able to talk
8 to her, communicate with her, thought she was very
9 well-behaved and, you know, complied and did
10 everything that they asked.

11 BY MR. RATNER:

12 Q Okay. Did Ms. McCluskey express any
13 concerns about REDACTED's behavior?

14 A No.

15 Q Okay. Let's move on then.

16 During either the November -- or -- excuse
17 me -- the fall 2020 or the subsequent eligibility
18 meeting that we just talked about, did Chesterfield --
19 did New Community School come up, specifically?

20 A Yes.

21 Q Okay. Do you recall, when was the first
22 time you were told that Chester -- or let me ask you
23 this. Did anyone from Chesterfield ever tell you they
24 couldn't place students at The New Community School?

25 A Their attorney did.

1 Q Their attorney did; okay. And that was
2 during an IEP meeting?

3 A Yes.

4 Q Okay. And you take REDACTED to school at The
5 New Community School?

6 A Yes.

7 Q Okay. And let me ask you to turn to tab 4,
8 if you could.

9 MR. ANDRIANO: What tab?

10 MR. RATNER: 4.

11 MS. REDACTED: 4.

12 MR. RATNER: Volume one, tab 4.

13 THE HEARING OFFICER: Oh, okay.

14 BY MR. RATNER:

15 Q This is a color photograph. It's got --
16 it's PARENTS 32. Do you recognize this photograph?

17 A Yes.

18 Q Who took the photograph?

19 A I did.

20 Q Okay. Explain to the Hearing Officer what
21 it is. What does this photograph depict?

22 A That is a school bus that says "Chesterfield
23 County Public Schools," but it drops off students every
24 day in front of The New Community School, which is
25 where it's parked.

1 Q Okay. And did you --

2 MR. ANDRIANO: Objection, Ms. Freeman.

3 This is just a picture of a school bus parked
4 somewhere. It doesn't -- I mean --

5 MR. RATNER: I mean, that's why she's
6 testifying to it. She's under oath, telling you
7 when she took it.

8 MR. ANDRIANO: Well, we have to know where
9 it is. I mean, you can't -- I mean --

10 THE HEARING OFFICER: I don't see how you
11 can tell where this bus is, though, from the
12 picture.

13 MR. RATNER: She's under oath, telling you
14 where she took it.

15 THE HEARING OFFICER: Well, she is the
16 author -- or the person who took the photograph,
17 so --

18 MR. ANDRIANO: I don't think there's been a
19 proper foundation, number one. Number two,
20 relevance.

21 THE HEARING OFFICER: Oh, let's hear a
22 little bit more about the circumstances when she
23 took the photograph.

24 MR. RATNER: Sure.

25 THE HEARING OFFICER: I mean, it could have

1 been at any point in time. It could --

2 BY MR. RATNER:

3 Q I believe it's time-and-date-stamped. But
4 go ahead and tell them when you took --

5 THE HEARING OFFICER: Oh, I see.

6 MR. RATNER: I might be wrong about that.

7 THE HEARING OFFICER: Oh, I didn't see
8 that. All right.

9 BY MR. RATNER:

10 Q When did you take this photograph,
11 approximately? Was it during this school year?

12 A Yes.

13 Q Okay. And is it your testimony that on
14 multiple occasions at --

15 THE HEARING OFFICER: Don't lead her. Just
16 ask her a question.

17 BY MR. RATNER:

18 Q Sure. You take her every day; right?

19 A I do.

20 Q Do you observe the comings and goings of
21 other students?

22 A Absolutely.

23 Q Do you see this bus or a bus identified as a
24 Chesterfield County Public Schools bus dropping
25 students off at The New Community School?

1 A Every day; yes.

2 MR. RATNER: Okay. We would move for the
3 admission of Parents' 4.

4 THE HEARING OFFICER: Do you have any
5 additional --

6 MR. ANDRIANO: Relevancy, and I don't
7 believe -- again, I mean, if you look at this
8 picture, it could be anywhere. It could be right
9 out here on Hull Street.

10 MR. RATNER: That -- again, if I could just
11 be heard briefly. That's the purpose of swearing
12 an oath. And I think what Mr. Andriano is saying,
13 he doubts the veracity of Ms. REDACTED. And it's
14 certainly appropriate to cross-examine her about
15 that.

16 THE HEARING OFFICER: I'm going to accept
17 the photograph. But Mr. Andriano may certainly
18 cross-examine about the bus when it's your
19 opportunity to cross-examine.

20 But if she says she took this photograph,
21 then this is the photograph she took.

22 Where were you when you --

23 MR. ANDRIANO: That's the thing, Ms.
24 Freeman. You can't tell -- I mean, if you want to
25 --

1 THE HEARING OFFICER: I know. You can't
2 tell.

3 MR. ANDRIANO: -- New Community School in
4 the back. I mean, this could be --

5 THE HEARING OFFICER: Yeah; but she is
6 under oath, and she's testifying she's the person
7 -- the photographer.

8 What did you use to take the photograph?

9 MS. REDACTED: A cell phone.

10 THE HEARING OFFICER: Oh, all right. Was
11 it your cell phone?

12 MS. REDACTED: Yes.

13 THE HEARING OFFICER: I'm going to accept
14 the photograph, subject to Mr. Andriano's cross-
15 examination. And we'll revisit the photograph.

16 (Parents' Exhibit 4
17 received in evidence.)

18 THE HEARING OFFICER: All right. Go ahead.

19 BY MR. RATNER:

20 Q Thank you.

21 So at either of the two meetings we were
22 just discussing, fall of 2020 or the eligibility
23 meeting, did you ever get to a discussion of whether or
24 not the IEP team would consider placing REDACTED at The New
25 Community School?

1 A Yes.

2 Q Okay. And was that in yet a third meeting
3 in February or --

4 A Yes.

5 Q Okay.

6 A That was a third meeting in February.

7 Q All right. So I've just been trying to get
8 the time line down. You had a meeting. Chesterfield
9 County IEP team said they wanted evaluations; correct?

10 A Correct.

11 Q You had to come back for another meeting
12 determine eligibility; correct?

13 A (Nodding head.)

14 Q Then there was a third meeting, right, in
15 February? That's when you were hoping to discuss
16 private placement; correct?

17 A Correct.

18 Q Okay.

19 A And I told them that in an email. I also --
20 so after the evaluations, we came for the last meeting,
21 which also exhibit that, the functional/behavioral
22 assessment, and we -- yes; we discussed it.

23 Q Okay. So just tell Ms. Freeman what
24 happened at that meeting.

25 A Specific to?

1 Q To did they consider --

2 A Okay. No. Ms. Owens told me that they
3 couldn't consider it because it wasn't on some list.

4 MR. ANDRIANO: Objection, hearsay.

5 THE HEARING OFFICER: Ms. Owens could
6 testify -- I think the witness can say what she
7 was told. It doesn't -- I'm going to let you
8 cross-examine the witness later. And I'll allow
9 it for now.

10 BY MR. RATNER:

11 Q Let me ask you this. Was anyone on the team
12 -- and you understood Ms. Owens is not officially a
13 member of the IEP team; correct?

14 MR. ANDRIANO: Objection. That's not
15 accurate.

16 THE HEARING OFFICER: What was the
17 question? I'm sorry.

18 MR. RATNER: I asked her if her
19 understanding was that Ms. Owens was a member of
20 the IEP team.

21 THE HEARING OFFICER: Oh, and there was an
22 objection? Was it -- you want to tell me what
23 your objection is?

24 MR. ANDRIANO: I think, first, he needs to
25 establish that Ms. Owens -- that this alleged

1 conversation happened during an IEP meeting. If
2 Ms. Owens was present in an IEP meeting, she's
3 part of the IEP team.

4 THE HEARING OFFICER: You're saying if she
5 was present, she was part of the IEP --

6 MR. ANDRIANO: Sure. Why else would she --
7 she would be there on behalf of the school board
8 as a --

9 THE HEARING OFFICER: Yeah.

10 MR. RATNER: I actually -- that's different
11 from my understanding. I think that's a legal
12 question for you to determine. I'd always
13 understood --

14 You know, I attended IEP meetings with them.
15 I'm not considered to be a part of the team.

16 MR. ANDRIANO: That's simply not accurate.
17 And Ms. Freeman, in this case, it's my
18 understanding that Ms. REDACTED had Mr. Mueller,
19 who's an attorney, present with her. And he was
20 certainly part of the IEP team, as well.

21 THE HEARING OFFICER: My understanding is
22 that when school counsel goes in at -- to an IEP
23 meeting, that if one side has counsel, the other
24 side has counsel.

25 MR. RATNER: Yeah; and we're not disputing

1 that.

2 THE HEARING OFFICER: But you're not -- but
3 you're not members of the team, per se. But that
4 was my understanding. But I'd have to research
5 that.

6 MR. RATNER: Yeah.

7 THE HEARING OFFICER: I honestly don't
8 know.

9 MR. RATNER: We can move on.

10 THE HEARING OFFICER: Yeah; let's move on.
11 And I'll research that later, if necessary.
12 But --

13 MR. RATNER: That's fine. And, again --

14 THE HEARING OFFICER: But I don't think we
15 should accept that Ms. Owens was part of the IEP
16 team, because I literally do not know the answer
17 to that.

18 MR. RATNER: That was my understanding, as
19 well. But, again, I want to be clear. I'm trying
20 to be respectful of time limitations.

21 THE HEARING OFFICER: Just go ahead.
22 Sorry.

23 MR. RATNER: I didn't think I would need to
24 establish that Ms. Owens was at a meeting she was
25 at.

1 THE HEARING OFFICER: Okay.

2 MR. RATNER: I thought we could accept that
3 as --

4 THE HEARING OFFICER: All right. Why don't
5 you just rephrase it, and say that Ms. Owens was
6 at the meeting.

7 BY MR. RATNER:

8 Q Did Ms. Owens -- did you ever attend any IEP
9 meetings with LaRana Owens, who's counsel for CCPS?

10 A Yes.

11 Q Was she identified as counsel for CCPS in
12 those meetings?

13 A Yes.

14 Q Okay. Was she at the February 2021 meeting?

15 A Yes.

16 Q Okay. During that meeting, were the other
17 members of the IEP team, Ms. McCluskey, Ms. Houston,
18 Ms. Mottley, Ms. Dragone, anybody else, were they
19 polled -- did the team ask, "What do we think about
20 private placement for REDACTED at The New Community
21 School?", to the best of your recollection?

22 A Not until the very end.

23 Q Okay. And did they -- did each person get a
24 chance to say --

25 A Yes.

1 Q -- yes or no? Okay.

2 And the conclusion was that the team did not
3 recommend that; is that right?

4 A Correct.

5 Q Okay. And you noted that you disagreed with
6 the team; is that right?

7 A Correct.

8 Q Okay. So let's go to Exhibit 1, so volume
9 one, first tab.

10 Let me just ask you, in general terms, flip
11 through these, and my question for you is, where did
12 you receive these documents?

13 A These came home with REDACTED?

14 Q Okay.

15 A Well, actually, some of them -- yeah; they
16 came home with REDACTED.

17 Q Okay. Were they -- you might have received
18 them in the course of this due process proceeding?

19 A Yes.

20 Q Okay. And this -- your understanding, based
21 on REDACTED's name being on it and the date, is that this
22 represents her written work during the fifth grade; is
23 that correct?

24 A Correct.

25 Q Okay. And is this consistent with the type

1 of work you saw from her during fifth grade?

2 MR. ANDRIANO: Objection, Ms. Freeman.

3 Some of these documents are from 2020.

4 MR. RATNER: Fifth grade was in 2020. It
5 was 2020-2021.

6 MR. ANDRIANO: We've got fourth grade work.

7 THE HEARING OFFICER: Which document? I'm
8 looking at 3/5/2021. What's the date on this?
9 4/23/21. I thought that was in our two-year
10 period.

11 MR. RATNER: This is all fifth grade work.

12 MS. RATNER: It's all fifth grade.

13 MR. ANDRIANO: It's not.

14 THE HEARING OFFICER: 3/5/2021; 3/19/21.

15 MS. RATNER: What page are you referring
16 to?

17 MR. ANDRIANO: There's a undated document
18 called Wilma Rudolph --

19 THE HEARING OFFICER: What page is that,
20 down at the bottom?

21 MR. RATNER: That's fine. We can have a
22 CCPS witness -- or I can ask Ms. REDACTED if she
23 knows if this was something that was done in fifth
24 grade.

25 THE HEARING OFFICER: I'm just seeing all

1 2021, except for the one where [REDACTED]'s holding -- I
2 guess that's [REDACTED], holding it up. And the
3 numeration is upside down.

4 MR. RATNER: Yeah.

5 Are you waiting for me, or are you looking?

6 THE HEARING OFFICER: I'm waiting for you.

7 MR. RATNER: Oh, I'm so sorry. May she --

8 THE HEARING OFFICER: Yeah; I didn't -- it
9 looks like they're all in the relevant period, so
10 --

11 MR. RATNER: Okay.

12 MR. ANDRIANO: Ms. Freeman, it's just the
13 last four or five pages --

14 THE HEARING OFFICER: The last four or five
15 pages? Let me look at those.

16 MR. ANDRIANO: Starting at 109.

17 THE HEARING OFFICER: Oh, okay, all right.
18 109.

19 MS. [REDACTED]: Wilma Rudolph.

20 THE HEARING OFFICER: Oh, a nice drawing of
21 a lady, Wilma Rudolph. And I don't have any
22 dates.

23 MR. RATNER: Okay. Well --

24 THE HEARING OFFICER: So that's what you're
25 talking about?

1 MR. ANDRIANO: Correct.

2 THE HEARING OFFICER: And the drawing.

3 Do you have any recollection of when those
4 dates were?

5 MS. REDACTED: Yes.

6 THE HEARING OFFICER: Okay. Let's hear
7 what your testimony is about the dates.

8 MS. REDACTED: This was Ms. Houston's -- in
9 Ms. Houston's class in fifth grade.

10 THE HEARING OFFICER: Okay. And what
11 relevant time period was that?

12 MS. REDACTED: That was 2021.

13 THE HEARING OFFICER: Okay, all right. So
14 I'll make a note in my notes that that was 2021
15 for the drawing on page 109. And then we move on
16 to background information, which is undated.

17 MS. REDACTED: So I can explain what it is.

18 MR. RATNER: We'll get to that.

19 THE HEARING OFFICER: Well, we don't have
20 any dates on it, though. So I don't know if it's
21 in the right time frame or not.

22 MR. RATNER: That's fine. We'll ask the
23 teacher about it.

24 THE HEARING OFFICER: So maybe you could
25 ask the teacher.

1 MR. RATNER: Ms. Houston's going to
2 testify. But, again, Ms. REDACTED is under oath,
3 representing to you that this was in fifth grade.

4 THE HEARING OFFICER: All right.

5 MR. RATNER: This was produced in her
6 educational file --

7 THE HEARING OFFICER: And I'll let you, Mr.
8 Andriano --

9 MR. RATNER: -- by Chesterfield County.

10 THE HEARING OFFICER: Thank you.

11 -- Ms. Owens, you may certainly cross-
12 examine about whether or not that's in the
13 relevant time period.

14 But for now, I'm going to listen to what she
15 says. Okay. Go ahead.

16 BY MR. RATNER:

17 Q So just generally, every document that's
18 included here, is that reflective of the type of work
19 REDACTED was doing at the time you requested private
20 placement at The New Community School?

21 A Yes.

22 Q Okay. And I'd like you specifically -- on
23 PARENTS 000008, so the eighth page in this tab, this is
24 just one example. Do you know what this document is?
25 We can generally ask teachers about it.

1 A This is word study. So this is what she
2 does with Ms. McCluskey in her small group, when
3 they're -- because -- so these are the spelling words
4 just the few kids in her small group received.

5 Q Thank you.

6 Do you want to talk about the Wilma Rudolph
7 drawing?

8 A I mean, I was just going to clarify that
9 that was a big project for them. But I'm sure the
10 teacher can --

11 Q Sure.

12 A -- tell you about it.

13 Q So let me just ask you about PARENTS 21, so
14 the 21st page of that tab.

15 THE HEARING OFFICER: Okay. We're on 21.

16 MR. ANDRIANO: Still on the same exhibit,
17 Todd?

18 BY MR. RATNER:

19 Q Yes; number 1, and they're all sequentially
20 numbered.

21 Do you have that in front of you?

22 A Uh-huh.

23 Q Okay. Do you recognize that drawing --

24 A Uh-huh.

25 Q -- and writing? Who made that?

1 A [REDACTED].

2 Q When did she make that?

3 A At the end of fifth grade. It was a letter
4 that she wrote to all -- to the group of girls she was
5 friends with in Ms. Houston's class.

6 Q Okay. Do you know how to spell Ms.
7 Houston's last name?

8 A Yes.

9 Q Okay. Is it spelled correctly on this page?

10 A No.

11 Q Okay. And did [REDACTED] write that?

12 A Yes.

13 Q Okay. Did [REDACTED] write the text below?

14 A Yes.

15 Q Okay. So I think it says, "It has been so
16 much fun learning the dance with you," for example.

17 A Correct.

18 Q Okay. But "been" is misspelled; right?

19 A Yes.

20 Q "Learning" is misspelled?

21 A Yes.

22 Q "Forget" is misspelled?

23 A Yes.

24 Q Do you see other misspellings in there that
25 were concerning you --

1 A Yes.

2 Q -- as she was about to enter middle school?

3 A "Especially, many, memories" -- "like" -- so
4 "like's" spelled correctly, "bucket ball."

5 Q Yeah; I couldn't figure that one out.

6 A I think it's "bucket."

7 "Houston, friends, guys, family."

8 Q Okay. And did I understand --

9 A And "family."

10 Q -- you correctly that this was at the --
11 towards the end of fifth grade?

12 A Yes; this was her letter and drawing to her
13 friends as they graduated fifth grade.

14 Q Okay. So during the February IEP meeting,
15 February 2021, where Ms. Owens was, was this to discuss
16 the transition to middle school?

17 A I didn't think it was. But then the middle
18 school special education person was there.

19 Q Okay.

20 A To tell --

21 Q Did you have concerns about REDACTED
22 transitioning to middle school?

23 A Absolutely.

24 Q Explain what those concerns were.

25 A In middle school, you have six different

1 teachers. She was having a hard enough time connecting
2 with one or two, and they were -- so every year, I've
3 had to kind of recap on how to work a child with
4 dyslexia.

5 And so I knew that was going to be
6 difficult. I also know it would be difficult for her
7 to get rapport with teachers. We already struggled
8 enough with getting services and being -- keeping up
9 with it.

10 In that meeting, we learned of more kind of
11 roadblocks we would be up against, and things that she
12 wouldn't be able to have.

13 Q Okay. Did you discuss what middle school at
14 Tomahawk Creek Middle School would look like for REDACTED
15 if she attended?

16 A Yes.

17 Q Okay. Tell the Hearing Officer what
18 specifically Jennifer Williams, the special education
19 coordinator, told you.

20 A So Jennifer Williams expressed concern with
21 REDACTED's anxiety. But in order to receive what she
22 needed, would be taking a special reading and writing
23 class which would take the place of her elective.

24 So she wouldn't be able to do chorus or --
25 like she wanted to. We also discussed potentially

1 getting rid of gym. She would have pull-out services,
2 so she would be coming in and out of class, which
3 Jennifer Williams expressed concern about because of
4 the anxiety that it would create.

5 She had also expressed to me that they did
6 not service special education students well in honors
7 courses.

8 Q Okay. And had her teachers, such as Ms.
9 Houston, recommended her for honors courses?

10 A Yes; Ms. Houston recommended her for honors
11 science and social studies.

12 Q And let me ask you to go to the very back of
13 volume one, so tab 39. And just take a second to look
14 it over, and let me know when you're ready to answer
15 some questions about it.

16 THE HEARING OFFICER: Which exhibit were
17 you on?

18 MR. RATNER: 39; it's the very last one --

19 THE HEARING OFFICER: Okay.

20 MR. RATNER: -- in volume one.

21 (Pause.)

22 BY MR. RATNER:

23 Q I'm not going to drill you about it. Just
24 you recognize that letter?

25 A Yeah, yes.

1 Q Just tell Ms. Freeman what it is.

2 A It's an email, right, sending our -- my
3 written notice of unilateral placement to seek
4 reimbursement.

5 Q Okay. What's the date on this?

6 A That is May 14th, 2021.

7 Q Okay. And you sent this to Mr. Daugherty --
8 or -- I'm sorry -- Dr. Daugherty?

9 A Yeah.

10 Q Okay. Who's Dr. Daugherty?

11 A He's the Chesterfield County Public Schools
12 superintendent.

13 Q Okay. And did you copy anybody else on that
14 email? And I'll direct your attention to page 500.

15 A Yes; Diane Glover, who is the county's
16 special education coordinator; and Lindsay Mottley, Old
17 Hundred principal.

18 Q Okay. At this point, you had made the
19 decision that REDACTED was going to be attending The New
20 Community School in the fall.

21 A Correct.

22 Q Is that correct? Okay.

23 Were there subsequent IEP meetings after you
24 sent this letter?

25 A Yes.

1 Q Okay. Just tell Ms. Freeman generally what
2 you remember about the request to meet and your
3 response.

4 A They insisted we do an OT evaluation, which
5 was an orthographic -- occupational therapy,
6 occupational therapy evaluation. There was a lot of
7 confusion over what that was.

8 Because they had already -- Cynthia
9 McCarthy, which was one of her evaluators, explained in
10 a meeting that she did not need occupational therapy.
11 But we complied, because I didn't want to appear like I
12 wouldn't comply, I mean.

13 Q So let me be -- just to be clear, during a
14 meeting the team had raised whether or not REDACTED would
15 benefit from an occupational therapy assessment. And
16 you said, "That's fine; go ahead and do an occupational
17 therapy assessment or evaluation"?

18 A During the meeting, it was articulated by --
19 you know, and brought up by LaRana Owens. She asked if
20 that was something that they considered. They had not
21 considered it.

22 Cynthia McCarthy, who is the school -- a
23 school psychologist, explained that she doesn't need
24 occupational therapy, that her writing deficits are
25 specifically from her orthographic processing.

1 Despite that, it was summarized that we
2 needed the evaluation. Ultimately, I said, "Fine."
3 Even though I disagreed, I felt like it was just yet
4 another roadblock.

5 Like just whatever. I don't know. I --

6 Q Okay.

7 A It was not necessary. But I did it because
8 they -- I felt forced to.

9 Q Go to 38 for a minute, if you could. I'm
10 sorry. I was slightly out of order here.

11 THE HEARING OFFICER: What exhibit are you
12 on then?

13 MR. RATNER: I'm in volume one, parents'
14 volume one, Exhibit 38.

15 THE HEARING OFFICER: Okay.

16 BY MR. RATNER:

17 Q Is this the occupational therapy evaluation
18 that was completed?

19 A Yes.

20 Q Okay. And I'm not sure that the report
21 itself is dated. It might be. I'm not trying to --
22 but can you tell Ms. Freeman the date the observations
23 were done? That's at the top of the first page?

24 A Yeah; April 3rd, 2021; and May 7th, 2021.

25 Q Okay. And just so the record's clear, it's

1 April 30th; right? Not the 3rd. I think you mis-
2 spoke.

3 A Oh, sorry; yes. April 3rd, 2020 -- 30th,
4 2021.

5 Q I know it's not easy doing what you're
6 doing.

7 A I'm sorry.

8 Q But we're getting close to the end, and I
9 appreciate it.

10 And is it fair to say, based on this
11 assessment, that the summary and recommendations from
12 -- at the end of this report, which start on 321, did
13 not think REDACTED required occupational therapy as a
14 related service?

15 A Yes. In the summary and recommendations, it
16 says that it's not recommended.

17 Q Okay. And then CCPS asked you to meet about
18 this evaluation; correct?

19 A They wanted to meet and discuss the
20 evaluation, to which I did not feel it was necessary
21 because they said that she didn't need it, which was
22 what we said in the first place.

23 MR. ANDRIANO: Objection.

24 THE HEARING OFFICER: What's your
25 objection, Mr. Andriano?

1 MR. ANDRIANO: "They." I mean, we're
2 talking about an evaluation, and then she says,
3 "They did not think" --

4 THE HEARING OFFICER: Okay. Do you want to
5 identify whom you're talking about?

6 MR. RATNER: We'll address that with other
7 witnesses.

8 THE HEARING OFFICER: All right. So
9 sustained. And the question is withdrawn?

10 MR. RATNER: Sure.

11 THE HEARING OFFICER: Okay.

12 BY MR. RATNER:

13 Q Okay. Did you end up meeting about the
14 occupational therapy evaluation?

15 A Yes.

16 Q Okay. Were there other things, to your
17 recollection, discussed at that meeting besides the
18 occupational therapy evaluation, such as REDACTED's
19 progress?

20 A I don't recall.

21 Q Okay. Have you had even more meetings, IEP
22 meetings --

23 A Yes.

24 Q -- with the school?

25 A Yes.

1 Q Okay. Just briefly tell the Hearing Officer
2 what they were.

3 A I had an IEP meeting with Jennifer Williams
4 and the team at Tomahawk Creek Elementary -- or Middle
5 School -- excuse me -- Tomahawk Creek Middle School.
6 They reached out, wanting to do an IEP for her
7 attending there, which was after we had already --

8 THE HEARING OFFICER: At Tomahawk?

9 MS. REDACTED: Right.

10 THE HEARING OFFICER: Okay.

11 MS. REDACTED: So I got a notice, and we had a
12 meeting to develop an IEP for Tomahawk Creek,
13 after we had already placed her at The New
14 Community School.

15 THE HEARING OFFICER: I see; okay.

16 BY MR. RATNER:

17 Q Okay. So now --

18 THE HEARING OFFICER: Is there a date or
19 anything when you had that meeting about the
20 prospect of putting her into Tomahawk Middle?

21 MS. REDACTED: I think it was 2/19. It was --
22 February 19th was when we spoke with the team at
23 Old Hundred, and Mrs. Williams told us what middle
24 school would look like.

25 MR. RATNER: I think Ms. Freeman was asking

1 a slightly different question.

2 THE HEARING OFFICER: So I'm just trying to
3 get the timing. When you met, did you -- when you
4 met with the IEP team, had you already made a
5 decision about going to the other school?

6 MS. REDACTED: I had an IEP meeting with
7 Tomahawk Creek this year, in 2022.

8 THE HEARING OFFICER: Oh, I see. Okay;
9 thank you.

10 BY MR. RATNER:

11 Q After you've already -- REDACTED's not enrolled?

12 A REDACTED had been -- correct.

13 Q Right? And the meeting to discuss the OT
14 evaluation was after you sent the letter that was
15 Exhibit 39; correct?

16 A Correct. It was -- my recollection is it
17 was in June or July.

18 THE HEARING OFFICER: Okay.

19 BY MR. RATNER:

20 Q So let's talk about The New Community School
21 a little bit. First of all, is there any kind of
22 application process?

23 A Yes.

24 Q Okay. Just tell Ms. Freeman briefly about
25 it.

1 And Ms. Freeman, for your -- just a preview,
2 we will be bringing in someone from The New Community
3 School. I'm not going to ask her to talk about the
4 assessments and all that.

5 THE HEARING OFFICER: Okay. Is that person
6 on the witness list?

7 MR. RATNER: She is.

8 THE HEARING OFFICER: Okay.

9 MR. RATNER: Julie Oliver.

10 THE HEARING OFFICER: Okay.

11 MS. REDACTED: So you apply, and then they
12 interview the student on multiple occasions. She
13 worked with Carolyn Tisdale at The New Community
14 School, and did evaluations with her.

15 They want to make sure that The New
16 Community School is a appropriate placement for
17 children, because they have such a narrow scope,
18 as far as --

19 You know, they want to make sure that the
20 student will thrive there. So, number one,
21 dyslexia; but also having an aptitude for
22 progress, for --

23 Yeah; I don't know how to say that.

24 BY MR. RATNER:

25 Q That's fine.

1 Was REDACTED ultimate accepted into the program
2 at The New Community School?

3 A Yes. We met about the evaluations, and they
4 reviewed them with us, and she was accepted and -- for
5 enrollment.

6 Q Okay. Did they -- and, again, Ms. Oliver
7 will be here to elaborate on this more. But did they
8 express to you any concerns about her deficits, REDACTED's
9 deficits?

10 A Well, I won't say they were concerned about
11 them. That was kind of a prerequisite. But they
12 explained them, that she had all of -- so here's the
13 average student. She had all these things all the way
14 up here, and then like two things all the way at the
15 bottom, where she was not with her peers.

16 But, you know, in -- through their
17 instruction, they expressed to REDACTED that these --
18 because you have all this here, we'll be able to bring
19 these up.

20 And so, yes, she has significant deficits,
21 which were a reason -- they have to have to go to that
22 school.

23 THE HEARING OFFICER: Let the record
24 reflect -- court reporter, if you would put down
25 in the record that while she was testifying Ms.

1 REDACTED n moved her hand upwards and downwards to
2 indicate directional indications --

3 MS. REDACTED: And I can articulate --

4 THE HEARING OFFICER: -- of grades.

5 MS. REDACTED: I can --

6 BY MR. RATNER:

7 Q Let me see if I can help you with that.

8 Were you trying --

9 THE HEARING OFFICER: Aptitude? Was it
10 aptitude? Directional -- because I don't think I
11 quite understood. Was it -- were you raising and
12 lowering your hand to indicate that she had a
13 certain aptitude, but that her performance was
14 somewhere else?

15 MS. REDACTED: So -- no; I can clarify. So
16 they tested her for several different aspects of
17 learning.

18 THE HEARING OFFICER: Okay. And that's
19 what the other witness --

20 MS. REDACTED: And so --

21 THE HEARING OFFICER: -- is going to
22 testify --

23 MR. RATNER: Correct.

24 THE HEARING OFFICER: Okay.

25 MS. REDACTED Right. And so the average

1 student, she was far superior for several items on
2 the list. She was inferior significantly for
3 reading fluency and writing.

4 THE HEARING OFFICER: Okay.

5 MS. REDACTED: So with the The New Community
6 School, and that being their specialty, the hope
7 was that they can easily bring that up.

8 MR. ANDRIANO: Ms. Freeman --

9 THE HEARING OFFICER: All of which we're
10 going to hear from --

11 MS. REDACTED: Yes.

12 THE HEARING OFFICER: -- the actual witness
13 who will testify and clarify what Ms. REDACTED's
14 statement was.

15 MR. RATNER: That's right. I'm just trying
16 to --

17 THE HEARING OFFICER: I understand.

18 MR. RATNER: -- have you understand --

19 THE HEARING OFFICER: Yeah.

20 MR. RATNER: -- why she felt comfortable
21 sending her there.

22 THE HEARING OFFICER: All right; thank you.

23 BY MR. RATNER:

24 Q And so REDACTED's now enrolled at The New
25 Community School; is that correct?

1 A Yes.

2 Q Okay. And I don't need the exact first day
3 of school. But she started in the fall of this
4 academic year?

5 A Yes.

6 Q Okay. You drive her or Mr. REDACTED drives her
7 there every day?

8 A Yes.

9 Q And pick her up? You provide all the
10 transportation?

11 A Yes.

12 Q Okay. How is school doing? First of all,
13 are you still involved with REDACTED's schoolwork?

14 A No.

15 Q No; okay. Is that a change?

16 A Yes.

17 Q Explain that for the Hearing Officer.

18 A She -- she's very on top of it. She does
19 her work at school, and she knows what her homework is.
20 She comes home and does it. You know, whenever I ask,
21 it's either already done or she definitely doesn't need
22 my help.

23 Q Okay. Do they send report cards?

24 A Yes.

25 Q Okay. Do you recall how she's doing?

1 A She's doing very well.

2 Q Okay. Have you had any parent-teacher
3 conferences or meetings with any of the staff?

4 A Yes.

5 Q Okay. What do they communicate to you about
6 the appropriateness of the program and how REDACTED's
7 fitting in?

8 MR. ANDRIANO: Objection, hearsay.

9 THE HEARING OFFICER: I believe we're going
10 to have a witness from The New Community School
11 testify, so -- all right; move ahead. So
12 sustained, and move ahead, will you, please.

13 BY MR. RATNER:

14 Q Thank you.

15 How is REDACTED's emotional state since
16 attending The New Community School?

17 A It's awesome. She has come out of her
18 shell. Her confidence is -- has skyrocketed. One
19 thing that I have noticed, too, is she's not
20 embarrassed about talking about her struggles.

21 She's connected with a ton of peers, has a
22 strong friend group. She's happy. And, honestly, the
23 entire family dynamic has changed. She and her brother
24 are getting along.

25 And so it's just -- she's just kind of

1 blossomed into her own.

2 Q Okay. Do you know what the annual tuition
3 for The New Community School is?

4 A Roughly.

5 Q Okay.

6 A Like 33 -- 32-to-33,000.

7 Q Okay. And I'll direct your attention to tab
8 81, so that's in volume three. I'm going to get it for
9 you. You can clear the other ones out of the way.
10 Sorry there are so many.

11 A No; you're fine.

12 Q So that's number 81.

13 MR. ANDRIANO: Tab 81; correct?

14 MR. RATNER: Yes, sir; it's in volume --

15 THE HEARING OFFICER: Is it volume one?

16 MR. RATNER: -- three.

17 THE HEARING OFFICER: Oh, volume three;
18 okay.

19 MR. RATNER: And I certainly don't want to
20 prevent anybody from looking at it. They're just
21 the invoices, so I don't know that anybody needs
22 to study them right now.

23 THE HEARING OFFICER: Okay, all right.

24 MR. RATNER: She's just going to identify
25 them for the record.

1 THE HEARING OFFICER: So it's going to show
2 me, though, that it's 32 to 33; correct?

3 MR. RATNER: I think it might be slightly
4 over 33.

5 THE HEARING OFFICER: Okay.

6 MR. RATNER: 33 to 34; but, yes, whatever
7 it shows, it shows.

8 THE HEARING OFFICER: All right.

9 BY MR. RATNER:

10 Q And then tab 82.

11 A Uh-huh.

12 Q What's that document? Just identify it.

13 A This is the enrollment agreement for next
14 year.

15 THE HEARING OFFICER: Are we still volume
16 three?

17 BY MR. RATNER:

18 Q That's correct; tab 82.

19 So you've already -- you had to commit to
20 reserve a spot for her for next year?

21 A Yes; you have to commit and put down a
22 deposit.

23 Q Okay. And then what's tab 83?

24 A 83 is the transportation that -- based on
25 the miles it is from my home, the round-trip total.

1 The 56 cents is the IRS tax rate for 2021. And then
2 the tolls today.

3 So, and I put in there the number of days
4 that school was attended for each month. So, yeah; I
5 calculated the expense for travel.

6 Q Okay. And those are your personal
7 calculations?

8 A Yes; in an Excel spreadsheet.

9 Q Okay.

10 A I used to be a bookkeeper, or I still am.

11 Q Oh, any school supplies that New Community
12 Schools require?

13 A Yes; they don't use a Chromebook, like
14 Chesterfield. They use an iPad for all of their -- in
15 the middle school, they use an iPad. She needed a
16 keyboard. I feel like there was something else. And a
17 pen.

18 Q Can you remember roughly the expense of
19 that?

20 A I want to say it was less than \$2,000.

21 MR. RATNER: Okay. If I could just have
22 one minute to confer with my colleagues.

23 THE HEARING OFFICER: Go ahead.

24 BY MR. RATNER:

25 Q Ms. REDACTED, you've been very patient. I know

1 that it is difficult. And don't read anything into
2 this if you feel like you've had a full opportunity to
3 tell Ms. Freeman what you think she needs to know to
4 decide this case, by all means.

5 But I just want to make sure I didn't leave
6 out any topics that you think you'd like to address
7 with the Hearing Officer.

8 A Yeah; so I'd like to --

9 MR. ANDRIANO: I'm going to object. That
10 calls for a narrative.

11 THE HEARING OFFICER: I think -- I don't
12 know if that's an open-ended question. But I've
13 certainly encountered that at other hearings, that
14 you give the parents a last opportunity to say
15 something that they hadn't said before.

16 And I think, in that sense, it's okay. But
17 -- so I'll allow it for now. But if it goes on,
18 then I'll probably ask you to address it by
19 questions, specific questions; right?

20 MR. RATNER: Understood.

21 THE HEARING OFFICER: So is there any last
22 thought you want to tell me?

23 MS. REDACTED: Yes. This process has been
24 awful. And it should not -- no parent should have
25 to fight this hard for their child to receive an

1 appropriate education. It's been awful.

2 I think -- this isn't about win and lose for
3 my husband and I, because REDACTED's losing. And it
4 has felt very -- it's very aware that Chesterfield
5 County is not -- they forgot that there's a child
6 involved that needs an education.

7 This is about winning for them, it seems
8 like. Every hoop, every evaluation, every
9 meeting, every email, they have tried to run me
10 out of time, patience, and money.

11 We were delayed for the pandemic, yet that's
12 not considered in our statutes. Nothing happened
13 for months. We couldn't even pursue this for
14 months.

15 Yet that is still in our time line. And so
16 we've lost anybody that truly cared about REDACTED and
17 truly made progress with her. They're now outside
18 of it, which --

19 And it was the delay -- I mean, if you look
20 at it from an outsider looking in, maybe not
21 somebody that experienced it, why does it take so
22 long? Why does it drag out so much?

23 It just -- it's disgraceful to think that
24 our school system treats vulnerable parents and
25 vulnerable children like we mean nothing.

1 REDACTED only has so many years in school. So
2 to drag it out for years -- every day matters when
3 you're talking about a kid's education. And to
4 drag it out for years --

5 There are things she will never regain. And
6 the damage that they have caused emotionally to my
7 child, and the trauma she's been through because
8 of their failures and their refusal to evaluate
9 her, and refusal every year, it's not okay.

10 THE HEARING OFFICER: Do you want to give
11 her a kleenex or something?

12 MS. REDACTED: I'm okay.

13 THE HEARING OFFICER: Do you want to take a
14 minute?

15 MS. REDACTED: No.

16 THE HEARING OFFICER:

17 MS. REDACTED: Thank you.

18 It was obvious to me that Chesterfield
19 County was going to do everything possible to
20 refuse. It didn't matter what evidence or data we
21 had.

22 It was obvious that they were going to go
23 with whatever expense it took to deny us. It's a
24 broken system. And that's all. That's what I
25 wanted to say.

1 THE HEARING OFFICER: Thank you. I know
2 that was hard for you. Thank you.

3 Now --

4 MR. RATNER: So that will conclude our --
5 my direct examination.

6 THE HEARING OFFICER: Thank you.

7 MR. RATNER: And we can break for lunch.

8 THE HEARING OFFICER: Now, Mr. REDACTED -- did
9 you want Mr. REDACTED to testify? I don't know if
10 there's a whole lot of time left.

11 MR. RATNER: There's not. But we did not
12 intend to call him. We're ready to break for
13 lunch, if that's --

14 THE HEARING OFFICER: And do you -- I
15 assume you want to postpone your cross-exam for
16 after lunch?

17 MR. ANDRIANO: Yes, I would. Just with the
18 instruction that she's still a witness at this
19 point.

20 THE HEARING OFFICER: Do you want to move
21 forward then now?

22 MR. ANDRIANO: No; we can take lunch.

23 THE HEARING OFFICER: All right, okay. So
24 why don't -- it's ten of 1:00, according to my
25 watch. Do we want to come back at ten of 2:00?

1 Am I giving you too long? Would you rather take a
2 shorter amount of time?

3 MR. RATNER: I think that an hour would be
4 great.

5 THE HEARING OFFICER: Okay. An hour's
6 good. And so I'll see everyone at 1:50.

7 MR. RATNER: Thank you.

8 THE HEARING OFFICER: Thank you.

9 (Hearing recessed, 12:53 p.m. - 2:08 p.m.)

10 THE HEARING OFFICER: All right. So let's
11 have Ms. REDACTED testify again.

12 (Ms. REDACTED resumed the stand.)

13 THE HEARING OFFICER: So you testified
14 earlier -- we're back on the record, of course --
15 prior to taking a lunch break. And I believe you
16 concluded your testimony. Thank you for doing
17 that.

18 And Mr. Andriano -- and I don't know if Ms.
19 Owens is going to examine you, as well --

20 MR. ANDRIANO: No.

21 THE HEARING OFFICER: But I think Mr.
22 Andriano is shaking his head affirmatively that
23 he's going to do it.

24 Okay. So go ahead.

25 MR. ANDRIANO: Thank you, Ms. Freeman.

1 C R O S S - E X A M I N A T I O N

2 BY MR. ANDRIANO:

3 Q Good afternoon, Ms. REDACTED.

4 A Good afternoon.

5 Q I would like to first start my talking about
6 The New Community School.

7 A Okay.

8 Q You filled out an application for enrollment
9 on October 15th, 2020; correct?

10 A I don't recall.

11 Q I'll show this to you.

12 May I approach the witness?

13 THE HEARING OFFICER: Sure. I'll first
14 show Mr. Ratner.

15 MR. RATNER: This looks like an
16 application, but it's not Bates labeled. I
17 imagine --

18 MR. ANDRIANO: I'm just using it for
19 impeachment purposes. She either remembers or she
20 doesn't remember.

21 MR. RATNER: That's fine, if you're not
22 offering it.

23 MR. ANDRIANO: Oh, no, I'm not offering it.

24 BY MR. ANDRIANO:

25 Q Ms. REDACTED, I'm showing you an application.

1 Can you take a look at it, please, and let me know if
2 that's the application you submitted to The New
3 Community School.

4 A (The witness reviewed a document.)

5 Yeah, it appears to be so. I mean, it's got
6 a signature, a date of 10/15/2020.

7 Q October 15, 2020?

8 A Correct.

9 Q Okay. Thank you. Now, Ms. REDACTED, you had
10 spoken about the enrollment application that you filled
11 out after this.

12 A Okay.

13 Q And I don't remember if you gave the date.
14 But was that February 23rd, 2021, when you all -- when
15 you and Mr. REDACTED completed the enrollment application?

16 A I really don't remember. I couldn't tell
17 you a date.

18 MR. ANDRIANO: Ms. Freeman, may I approach
19 again?

20 THE HEARING OFFICER: Sure.

21 BY MR. ANDRIANO:

22 Q Ms. REDACTED, I'm showing you what appears to
23 be an enrollment application. Can you please confirm
24 if that's the application you submitted to The New
25 Community School?

1 A Yeah, it looks like it. Yes.

2 Q And it's dated February 23rd, 2021?

3 A Correct.

4 Q Thank you. If I could direct your attention
5 to your parents' exhibit binder one of three, tab 39.

6 MR. RATNER: Very end, Volume One, the last
7 one in Volume One.

8 THE WITNESS: Sorry. 39 you said?

9 MR. RATNER: I didn't mean to interrupt. I
10 was trying to be helpful.

11 THE HEARING OFFICER: What exhibit did you
12 direct her to?

13 MR. ANDRIANO: It's tab 39, Ms. Freeman in
14 parents' binder one.

15 THE HEARING OFFICER: Oh, the very end.
16 All right.

17 BY MR. ANDRIANO:

18 Q I'm sorry. Are you there?

19 A Oh, yeah, I'm there.

20 Q That's the letter you referenced that was
21 giving your noticed to Chesterfield County Public
22 Schools of your removal?

23 A Correct.

24 Q And that's dated May 14th, 2021?

25 A Yes.

1 Q Thank you. Now, Ms. REDACTED, you had
2 testified when Mr. Ratner asked you how REDACTED is doing
3 at The New Community School, you said it's awesome when
4 you were referencing her emotional state; correct?

5 A Yes.

6 Q Didn't you write to The New Community School
7 a message that said, "REDACTED did not want to come to
8 school this morning and has texted me a couple of times
9 from her iPad saying she wants to come home"?

10 A Yes.

11 Q You also wrote to The New Community School,
12 "I'm not sure what's going on. She's had major anxiety
13 for the past week surrounding school."

14 A Correct.

15 MR. RATNER: Ms. Freeman, if I could be
16 heard just briefly.

17 THE HEARING OFFICER: Sure, go ahead.

18 MR. RATNER: These appear to be documents
19 that the Chesterfield County Public Schools
20 subpoenaed from The New Community School, which
21 again we requested copies of. They refused to
22 share them with us.

23 And now they're reading documents we've
24 never seen before. And I understand they're going
25 to ask her for her recollection. But then I think

1 she should at least be allowed to look at them and
2 we should be allowed to look at them.

3 And if I'm going to do re-direct on it, I
4 certainly need an opportunity to look at them.

5 THE HEARING OFFICER: Yeah. Of course I'm
6 going to give you the opportunity to re-direct.

7 MR. RATNER: Right. But I've never seen
8 these documents before.

9 THE HEARING OFFICER: Did you show the
10 document that -- I didn't know that Mr. Ratner had
11 not seen it at all.

12 MR. ANDRIANO: These are not documents I'm
13 moving into evidence. I'm simply asking Ms. REDACTED
14 if she made those statements.

15 THE HEARING OFFICER: All right.

16 MR. RATNER: Okay. But I'm going to need
17 to see them to re-direct.

18 THE HEARING OFFICER: I think I'd let him
19 see the documents. So I'm going to direct that
20 you give the documents to him.

21 MR. ANDRIANO: When would you like to do
22 that?

23 THE HEARING OFFICER: Is it one document?

24 MR. ANDRIANO: No, no. There's lots of
25 documents, Ms. Freeman.

1 MR. RATNER: Right. And, again, we asked
2 for these and they refused to share them.

3 MR. ANDRIANO: Ms. Freeman, these are
4 mom's. These are Ms. REDACTED's emails. These are
5 not documents. These are emails that she sent to
6 The New Community School.

7 THE HEARING OFFICER: Did you show the
8 documents to her?

9 MR. ANDRIANO: I'm happy to. But she's
10 admitted --

11 THE HEARING OFFICER: I mean, the emails?

12 MR. ANDRIANO: She's admitted to making --
13 I'm also happy to move these into evidence. But,
14 I mean, that wasn't the plan.

15 THE HEARING OFFICER: How is she going to
16 remember what she -- Are you identifying it for
17 her, like by the date so she can --

18 MR. ANDRIANO: I will if she doesn't
19 recall. But if she recalls, why do I have to?
20 These are simply party admissions. I'm not --

21 THE HEARING OFFICER: All right. Let's go
22 forward.

23 MR. ANDRIANO: I'm just not understanding
24 you.

25 THE HEARING OFFICER: I think that if you