

VIRGINIA DEPARTMENT OF EDUCATION

DUE PROCESS HEARING

REDACTED, by and through her
Next Friends, her Parents, REDACTED

Petitioner,

vs.

VDOE Case No. 22-84

CHESTERFIELD COUNTY SCHOOL BOARD,

Respondent.

DAY 2

TRANSCRIPT OF PROCEEDINGS

BEFORE SARAH S. FREEMAN, ESQ., HEARING OFFICER

March 22, 2022

9:08 a.m. - 5:03 p.m.

Job No. 47230

REPORTED BY: LORI A. BOEDING, CCR

1 APPEARANCES OF COUNSEL:

2

3

4

RATNER LAW

5

7201 Glen Forest Drive, Suite 102

6

Richmond, Virginia 23226

7

804.665.1040

8

todd.ratner@ratnerplc.com

9

BY: TODD RATNER, ESQ.

10

SARAH RATNER, ESQ.

11

Counsel for the Petitioner

12

13

14

SANDS ANDERSON, PC

15

1111 East Main Street, Suite 2400

16

Richmond, Virginia 23219

17

804.648.1636

18

pandriano@sandsanderson.com

19

lowens@sandsanderson.com

20

BY: PATRICK T. ANDRIANO, ESQ.

21

LARANA J. OWENS, ESQ.

22

Counsel for the Respondent

23

24

25

1 ALSO PRESENT:

2 Brian Miller, VDOE Observer

3 April Lennox, CCPS Dyslexia Specialist

4 **REDACTED**, Parents

5

6 --

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

WITNESS

CHRISTINE MCCLUSKEY

Cross-Examination by Ms. Owens	349
Redirect Examination by Mr. Ratner	358
Recross-Examination by Ms. Owens	384

DAVID LAWSON

Direct Examination by Mr. Ratner	393
Cross-Examination by Mr. Andriano	407
Redirect Examination by Mr. Ratner	411
Recross-Examination by Mr. Andriano	413
Further Redirect Examination by Mr. Ratner	413

ELIZABETH HOUSTON

Direct Examination by Mr. Ratner	417
Cross-Examination by Ms. Owens	475
Redirect Examination by Mr. Ratner	484
Recross-Examination by Ms. Owens	508

KIMALA PETTIWAY

Direct Examination by Mr. Ratner	510
Cross-Examination by Ms. Owens	611
Redirect Examination by Mr. Ratner	632
Recross-Examination by Ms. Owens	640

--

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

School Board	Admitted
SB No. 3	436
SB No. 6	541
SB No. 10	541
SB No. 14	373
SB No. 16	357
SB No. 34	374
SB No. 40	621
SB No. 41	621
SB No. 43	624
SB No. 46	377
SB No. 47	628
SB No. 48	629
SB No. 69	614

--

1 (9:08 a.m.)

2

3

P R O C E E D I N G S

4

5

(Court reporter sworn.)

6

7

THE HEARING OFFICER: You are still testifying
under oath, so let's begin with the cross-exam of
Ms. McCluskey.

8

9

10

And which one of you two is nominated to do
that?

11

12

MS. OWENS: I will be doing that, Ms. Freeman.
Before we get started, I just wanted to say that
Ms. McCluskey is a joint witness.

13

14

15

THE HEARING OFFICER: I didn't know that.

16

17

18

MS. OWENS: We will do the cross-examination,
but we will reserve the right to call her back in
the School Board's case in chief.

19

20

CROSS-EXAMINATION

21

BY MS. OWENS:

22

23

24

Q First, Ms. McCluskey, Mr. Ratner asked
questions about a progress report, School Board
Exhibit 14 in the School Board's binder.

25

A Yes.

1 Q And would you agree that this is a progress
2 report from the 2019-2020 school year?

3 A Yes.

4 Q You testified yesterday that you were
5 responsible for the writing goal for this --

6 A Yes, ma'am.

7 Q And is that on page 3 of that exhibit?

8 A Yes.

9 Q And is it fair to say that this is a
10 reporting on the student's progress on an annual IEP
11 goal?

12 A Yes.

13 Q And do you recall which IEP you were
14 implementing at that time?

15 A The 2019 IEP?

16 Q Yes.

17 A Yes, from June.

18 Q And did you have a full year to implement
19 that -- the goal on that IEP?

20 A We did not, due to school closure on
21 March 16th.

22 Q And based on -- you were asked questions
23 about the numbers, the fact that you scored REDACTED with
24 a 3 for that annual goal?

25 A Yes.

1 Q Is it your opinion that REDACTED made appropriate
2 progress during the course of the 2019-2020 school
3 year?

4 A She did.

5 Q And why do you say that?

6 A Her -- it was with 75 percent accuracy over
7 the course for annually, and if you look at the scores,
8 her first nine weeks prompt, she did have a 76 percent,
9 and then she had an 85 percent. And then we did not
10 have an opportunity to do the last writing prompt due
11 to school closure.

12 Q You were also asked questions about an FBA
13 that was conducted and you provided an interview for
14 purposes of that FBA, correct?

15 A Yes.

16 Q How would you describe your overall
17 relationship with REDACTED?

18 A It was a good relationship. We spent a lot
19 of time together. She is very open and likes to chat,
20 and we had a very good rapport together. She liked to
21 share things she would do at home and on the weekends.
22 She's a delightful young lady. We met for a walk once
23 and had a lovely conversation outside of school. So we
24 had a good rapport.

25 Q With regard to that FBA that was conducted

1 and the interview that you gave, Exhibit Number 28 in
2 the School Board's binder, would you agree that this --
3 that the purpose of the FBA was to assess REDACTED's
4 behaviors during the virtual instructional period?

5 A Yes.

6 Q Okay. And did there come a time during the
7 2019-2020 -- actually, I'm sorry, the 2020-2021 school
8 year that REDACTED returned to in-person returning?

9 A She did. She returned for the hybrid and
10 then for full in-person in February.

11 Q How would you describe the difference between
12 REDACTED's academic instruction for virtual instruction
13 versus when she was present for in-person learning?

14 A Significantly different. She definitely
15 worked better in person. She had stated on occasion
16 that she didn't care for the virtual, didn't like the
17 computer and preferred the in-person with other
18 students and face to face.

19 Q How did she do academically?

20 A She did well. I don't have her report card
21 on me, but she did very well. Her grades, A's and B's,
22 I believe. The fourth nine weeks, straight A's, and I
23 believe A/B honor roll the third nine weeks, if I
24 recall.

25 Q Could you describe some of the behaviors that

1 REDACTED exhibited during virtual learning?

2 A Virtual, she had difficulty logging on. She
3 would not necessarily remain on the entire meet. She
4 didn't necessarily come for entire day. Sometimes she
5 would come for portions of the day. Sometimes she
6 would not respond even when we asked her verbally or
7 even in the chat. Some children were more comfortable
8 in the chat than verbally. She did do better in the
9 small group with me for the pull-out sessions. So I
10 saw her both in the full classroom and in my time with
11 her.

12 Q During virtual instruction, would she always
13 have her camera on or would she always have her camera
14 off; how would you describe it?

15 A It depended on the day. It wasn't on all the
16 time.

17 Q And could you describe some of the behaviors
18 that you may have observed during virtual instruction
19 when the camera was on?

20 A Sometimes she wouldn't look at the screen,
21 and sometimes it would appear she was drawing or she
22 was looking elsewhere. You could tell there was a
23 glare on her face. Maybe she was watching something
24 else on the computer or maybe a television. It's
25 difficult to tell on virtual, but I didn't have full

1 eye contact all the time.

2 Q Was she always willing to participate in the
3 academic instruction that was being presented through
4 virtual instruction?

5 A She did not.

6 Q Did you have those same concerns with REDACTED
7 when she returned for in-person learning?

8 A In the beginning just for the transition, but
9 then she was great and would finish up her work during
10 study skills and she was on top of all her assignments
11 in person.

12 Q And would you say that she made progress
13 during the 2020-2021 school year as well?

14 A Yes, she did.

15 Q And how would you describe that progress?

16 A In what subject? Overall or --

17 Q You were -- to back up a little bit, you were
18 REDACTED's case manager?

19 A Yes.

20 Q For the 2020-2021 school year?

21 A Correct.

22 Q Could you describe, as her case manager, how
23 she made progress during the school year?

24 A She made progress as far as just that year, I
25 mean, she was willing to participate. She completed

1 her work. She became more independent as the year went
2 on, which was wonderful, across all academic areas. Of
3 course, I just saw her for the multisensory, the
4 written expression and the math academically.

5 Q Now, with regard to -- switching gears a bit,
6 you were also asked questions about an April 2020 IEP?

7 A Yes.

8 Q Do you recall being asked questions about
9 that yesterday?

10 A Yes.

11 Q So first you were asked questions, I believe,
12 about an IEP draft from April 2020. And if you could
13 turn to Parents' Exhibit Number 79 under tab 8.

14 THE HEARING OFFICER: Which volume is that?

15 MR. RATNER: It's Volume 1.

16 MS. OWENS: Tab number 8.

17 MR. RATNER: And then page 79.

18 THE HEARING OFFICER: Page 79. Gotcha.

19 BY MS. OWENS:

20 Q Would you agree with me, Ms. McCluskey, that
21 a draft IEP is just that, a draft of the IEP before
22 it's proposed?

23 A Yes, it is.

24 Q And with regard to Exhibit Number -- Parents'
25 Exhibit Number 79, would you agree that the handwritten

1 changes -- or the handwritten notes, rather, on this
2 document are not part of the draft from CCPS?

3 A Correct.

4 Q And then do you recall participating in that
5 IEP meeting from April of 2020?

6 A Yes. I believe it was a phone conference.

7 Q And if I could direct your attention to
8 School Board exhibit now, Exhibit 6.

9 Is this the -- I'll give you time to take a
10 look at it, but is this the IEP that was proposed for
11 REDACTED? And it's dated April 20 of 2020, correct?

12 A Yes.

13 Q And was this the IEP that was proposed for
14 REDACTED?

15 A Yes, it was.

16 Q And did the parent give consent to that IEP?

17 A She did not.

18 Q And what's the date that the parent did not
19 give consent to that IEP?

20 A 8/25/20.

21 Q So it was proposed in April, but the parent
22 rejected that IEP in August?

23 A Yes.

24 Q And after that did the -- do you recall
25 whether the IEP team reconvened?

1 A We did.

2 Q To refresh your recollection, I'll refer you
3 to School Board Exhibit Number 16.

4 A Thank you.

5 THE HEARING OFFICER: School Board 16?

6 MS. OWENS: Yes, ma'am.

7 THE WITNESS: On that same date, 8/25/2020.

8 BY MS. OWENS:

9 Q Okay. And did the parent give consent to the
10 implementation of that IEP from August 25, 2020?

11 A Yes. On 9/25/2020.

12 MS. OWENS: The School Board moves to
13 introduce School Board Exhibit Number 16 into
14 evidence.

15 THE HEARING OFFICER: Any objection?

16 MR. RATNER: No, no objection.

17 THE HEARING OFFICER: All right. So admitted.
18 That was School Board 16?

19 MS. OWENS: Yes, ma'am.

20 THE HEARING OFFICER: All right. Thank you.

21

22 (School Board Exhibit No. 16 admitted.)

23

24 MS. OWENS: I think I have no further
25 questions.

1 THE HEARING OFFICER: Thank you.

2 Any redirect? Or cross, if this is a joint
3 witness?

4 MS. OWENS: When I say "joint," I mean that
5 she's jointly on both --

6 THE HEARING OFFICER: On both witness lists.
7 So do you want to examine her?

8 MR. RATNER: I would like to ask a few
9 follow-up questions, please.

10 THE HEARING OFFICER: We'll go with follow-up
11 then.

12

13 REDIRECT EXAMINATION

14 BY MR. RATNER:

15 Q Ms. McCluskey, after you left last night, did
16 you discuss your testimony with anybody?

17 A Like friends or just like -- I mean, I spoke
18 with the lawyer.

19 Q You did?

20 A Uh-huh.

21 Q About your testimony?

22 A No, no, just that I was coming in today
23 because we had to work around my docket.

24 Q Did you do anything to prepare for your
25 testimony? Let me put it that way.

1 A No.

2 Q It's an innocent question. I'm not trying to
3 trip you up.

4 So yesterday, I think, when I asked you about
5 the April 20 IEP, you really weren't sure if you
6 attended.

7 How did you have your recollection refreshed
8 about that meeting?

9 A Well, I just thought about it. I was a
10 little nervous yesterday.

11 Q Understood. So you do remember now
12 participating in a phone IEP meeting --

13 A Yes.

14 Q -- on or about April 20? And that's
15 reflected in School Board Exhibit Number 6; is that
16 right?

17 A Yes.

18 Q Okay. So the Parents did not participate in
19 that meeting; is that correct?

20 A Correct.

21 Q Do you remember that they weren't there?

22 A Well, I think that's why I couldn't remember
23 it initially, but, yes.

24 Q So it would be hard for them to sign off on
25 it if they didn't participate in the meeting, right?

1 A Well, it gets sent home.

2 Q Sure. Right. And then school was out,
3 correct? It was virtual at this point; that's why you
4 met by phone, right?

5 A Yes.

6 Q And eventually Mrs. REDACTED refused that IEP,
7 correct?

8 A Yes.

9 Q Okay. Before the next school year started,
10 correct?

11 A Yes.

12 Q It was in August?

13 A Yes, August.

14 Q So that would mean then that as the school
15 year started the last IEP would remain in effect; is
16 that correct?

17 A Yes.

18 Q And I believe that IEP, which was REDACTED's
19 original IEP, is tab number 3. Could you take a look
20 at that?

21 THE HEARING OFFICER: Is that in your book?

22 MR. RATNER: No. That's School Board
23 Exhibit 3.

24 MS. OWENS: Ms. Freeman, I believe this is the
25 beyond the scope of my cross.

1 THE HEARING OFFICER: She asked primarily
2 questions about the paperwork and now we're getting
3 into --

4 MR. RATNER: The paperwork.

5 THE HEARING OFFICER: -- an email.

6 MR. RATNER: No. I'm talking about an IEP.

7 THE HEARING OFFICER: It's still about the
8 IEP. What kind of questions are you going to ask?
9 Because you get to ask only from her examination.

10 MR. RATNER: Ms. Owens tried to make a point
11 that the Parents apparently were tardy in
12 consenting to an IEP.

13 MS. OWENS: That wasn't the point. You asked
14 questions about the draft IEP, and I wanted to
15 point out that that was just the draft IEP and that
16 there was actually an IEP meeting proposal and what
17 happened after that. But not to make a point that
18 the Parents were tardy. Parents can reject an IEP
19 if they want. It's their discretion.

20 MR. RATNER: Sure. And all I was trying to
21 say was when the Parents rejected, this IEP would
22 remain in place, and I think that's important
23 because that brings us right into --

24 THE HEARING OFFICER: Do you have a witness to
25 say that?

1 MR. RATNER: She just said it.

2 THE HEARING OFFICER: That the IEP stayed in
3 place after the Parent refused to sign it?

4 MR. RATNER: When the Parent refused to sign
5 tab 6, that would mean that tab 3, which was the
6 last consented-to IEP, remained in place. That's
7 the point.

8 THE HEARING OFFICER: Oh, the last consented
9 that remained in place. Yes. All right.

10 MR. RATNER: So that's all I was trying to
11 establish, and I thought that was important.

12 THE HEARING OFFICER: All right. So answer
13 that question, if you would, please.

14 THE WITNESS: Could you repeat the question?

15 BY MR. RATNER:

16 Q Yes. If the Parents refused the proposed
17 IEP, isn't it true that the last consented-to IEP,
18 which is School Board 3, would remain in place?

19 MS. OWENS: Asked and answered.

20 THE WITNESS: Yeah, I answered that. Yes, it
21 is.

22 THE HEARING OFFICER: All right. Sustained.

23 BY MR. RATNER:

24 Q Okay. And that called for extended school
25 year services, correct?

1 MS. OWENS: Objection. Beyond the scope.

2 BY MR. RATNER:

3 Q That's on page 17.

4 THE HEARING OFFICER: There was an objection.

5 MS. OWENS: Beyond the scope of my
6 cross-examination.

7 THE HEARING OFFICER: Let me hear exactly what
8 your question was.

9 MR. RATNER: That the last IEP consented to
10 that would be in effect called for extended school
11 year.

12 THE HEARING OFFICER: I have to go back to
13 that. I don't remember her asking in her
14 examination anything about extended school year.

15 MR. RATNER: She asked very broadly about
16 progress and how she did, and extended school year
17 is certainly relevant to progress.

18 MS. OWENS: And Mr. Ratner did not bring up
19 the issue of extended school year services during
20 his --

21 THE HEARING OFFICER: I'm going to sustain the
22 objection.

23 MR. RATNER: Okay. I just want to be very
24 clear that I have a continuing objection. Thank
25 you so much.

1 THE HEARING OFFICER: That -- Mr. Ratner does
2 have a continuing objection. So let's put that on
3 the record. That was left over from yesterday, I
4 believe.

5 MR. RATNER: Yes. Thank you.

6 BY MR. RATNER:

7 Q What are the proposed goals with Exhibit 6 --

8 MR. RATNER: And just before we get into a
9 digression here, this is a document Ms. Owens asked
10 her about extensively. May I please ask some
11 follow-up about that?

12 THE HEARING OFFICER: Direct me to the
13 exhibit, though.

14 MR. RATNER: Exhibit 6.

15 THE HEARING OFFICER: Is this in the School
16 Board?

17 MR. RATNER: Correct. She didn't ask about
18 any in my book.

19 THE HEARING OFFICER: All right. Go ahead.

20 BY MR. RATNER:

21 Q Which goals on this were you responsible for?

22 MS. OWENS: I'm going to object. This is
23 beyond the scope of my examination of the witness.
24 I asked -- Mr. Ratner asked questions about a draft
25 IEP yesterday. I was merely bringing that up to

1 show that that was just a draft that he brought up
2 to the Parent yesterday, and that this IEP -- that
3 Exhibit Number 6 is the proposed IEP and that the
4 Parent rejected it. That was -- that was the scope
5 of my examination.

6 THE HEARING OFFICER: They rejected --

7 MS. RATNER: I just -- I'm sorry.

8 THE HEARING OFFICER: Go ahead.

9 MS. RATNER: I just want to explain more
10 generally what a problem with the way this is set
11 up is causing. Ms. McCluskey is a really important
12 witness and has personal knowledge about a lot of
13 issues in dispute. The time limits on the direct
14 testimony yesterday made it really difficult to get
15 into the many issues. And so now, yes, we're
16 limited, but we're not sure how else we can get to
17 all the important issues from -- Ms. McCluskey was
18 a special ed teacher for REDACTED for two years, and
19 there's just so much --

20 THE HEARING OFFICER: How much more time do
21 you think you need to examine her?

22 MR. RATNER: Fifteen minutes. And it's hard
23 because the objections have made it --

24 THE HEARING OFFICER: This is the thing that
25 we ran into yesterday. The time frame. Everyone

1 needed to be out of here by 5:00, and it coincided
2 with Mr. Ratner basically concluding. If you feel
3 that you concluded too quickly, then I'm going to
4 let them have the 15 minutes. But you'll have the
5 exact same amount of time to cross-examine her.

6 MR. ANDRIANO: May I be heard in response?

7 THE HEARING OFFICER: Yes.

8 MR. ANDRIANO: If you recall, Ms. McCluskey
9 was supposed to speak or testify for 30 minute for
10 the Parents' side and we would have 30 minutes.
11 Just so we're clear, she testified all afternoon
12 yesterday, well beyond Mr. Ratner --

13 THE HEARING OFFICER: I think she started
14 about 4:00, didn't she --

15 MR. RATNER: That's right.

16 THE HEARING OFFICER: -- if I recall
17 correctly.

18 MR. ANDRIANO: At least an hour and a half
19 yesterday.

20 THE HEARING OFFICER: I want them to have
21 adequate opportunity to examine the witness, and if
22 they feel as this is one of their most important --
23 or I think you said the most important witness --

24 MS. RATNER: I think she's a very important
25 witness, and we are trying our best to be --

1 THE HEARING OFFICER: I know you are.

2 MS. OWENS: Ms. Freeman, this is very unusual
3 that after cross-examination of a witness to go
4 back into a direct examination of the witness.

5 THE HEARING OFFICER: I know.

6 MS. OWENS: In addition --

7 MS. RATNER: We are trying to comply with the
8 restrictions. I'm sorry.

9 MS. OWENS: No, problem. I just want to make
10 another point. In addition to it being highly
11 unusual, secondly, after the -- after Mr. Ratner
12 concluded yesterday, it wasn't as though he said,
13 okay, we are leaving at 5:00 but we want to have --
14 we have some additional questions for
15 Ms. McCluskey. He indicated yesterday that he was
16 finished with his examination with the witness.

17 THE HEARING OFFICER: I know he did.

18 MS. OWENS: I'll also point out, Ms. Freeman,
19 that you indicated that Mr. Ratner was not limited
20 to 30 minutes; that he could have the time that he
21 needed --

22 THE HEARING OFFICER: I did.

23 MS. OWENS: -- in order to examine the
24 witness. So I just --

25 THE HEARING OFFICER: Can we compromise here

1 and give either one of you -- I hate to say seven
2 and a half minutes -- let's say ten minutes.

3 MR. RATNER: Well, let me --

4 THE HEARING OFFICER: Is that enough time?

5 MR. RATNER: It's fine but not if there's an
6 objection to every question about beyond --

7 MS. OWENS: We are going to preserve the
8 record.

9 THE HEARING OFFICER: I'm going to take a
10 continuing objection for you. Let him examine for
11 ten more minutes so they have their adequate
12 opportunity to express all of the concerns and
13 elicit testimony from this witness who taught REDACTED
14 for two and a half -- two years.

15 MS. OWENS: I would also -- you indicated a
16 continuing objection, Ms. Freeman, and I hear you
17 and I respect that ruling.

18 THE HEARING OFFICER: But you want to object
19 as well?

20 MS. OWENS: Well, to the extent that we have
21 an objection, that we would ask you to rule on it
22 before the witness responds. Then, of course, we
23 reserve the right to continue with an objection
24 that we believe is appropriate under the
25 circumstances.

1 THE HEARING OFFICER: All right. So you have
2 an objection that you want me -- do you want me to
3 rule on that now?

4 MS. OWENS: No, ma'am. I just want to make
5 sure that your ruling with regard to a continuing
6 objection -- because Mr. Ratner is indicating that
7 we are somehow interjecting too frequently. But if
8 it's something that we need you to rule on before
9 the witness answers, then we can't agree that --

10 THE HEARING OFFICER: Okay. I am going to
11 note the continuing objection, but that does not
12 mean that you cannot object as you normally would.

13 Let's move forward then. Let's not spend all
14 of our time arguing about what we can do and can't
15 do. My main objective is to get enough information
16 about REDACTED that I can make a competent decision.

17 So if this witness has information and you
18 feel that you were cut off yesterday, I certainly
19 don't want to be responsible for doing that. So I
20 know it's unusual. You have ten more minutes with
21 this witness.

22 But you can -- you have the opportunity to
23 cross-examine, either one of you, for ten more
24 minutes.

25 MR. RATNER: Do I have any latitude on scope?

1 This is what I was trying to get at.

2 THE HEARING OFFICER: Well, this will be
3 direct --

4 MR. RATNER: So, yes?

5 THE HEARING OFFICER: Yes.

6 MR. RATNER: Because to be clear because I
7 asked you at the beginning yesterday about the 30
8 minutes, and you said, that was just a guideline
9 and then --

10 THE HEARING OFFICER: It is a guideline, but
11 let's try to stick to the guideline for the rest of
12 the witnesses.

13 MR. RATNER: I'm trying -- I'm really trying
14 the best I can.

15 THE HEARING OFFICER: All right. Let's not
16 argue.

17 MR. RATNER: I'm not arguing. I'm trying to
18 get guidance from you because I keep getting
19 conflicting information. It's just a guideline but
20 then I did feel rushed at the end of the day and I
21 don't want to argue with you about that. So I need
22 to understand what my --

23 THE HEARING OFFICER: You have ten minutes.
24 It's direct.

25 MR. RATNER: Thank you.

1 MS. RATNER: Is he permitted to finish the
2 cross first?

3 THE HEARING OFFICER: Yes, go ahead.

4 MS. RATNER: Thank you.

5 MS. OWENS: I wanted to make sure, does he
6 have ten minutes or does he have more than ten
7 minutes?

8 THE HEARING OFFICER: He has ten minutes. You
9 can treat it however you like.

10 MS. OWENS: Okay.

11 MR. RATNER: Great. Thank you so much.

12 MS. RATNER: We just want to chat just a
13 second.

14 THE HEARING OFFICER: But we're not going to
15 do this with all the witnesses. When you're done,
16 the next --

17 MS. RATNER: No, we understand, but we do
18 have --

19 THE HEARING OFFICER: I understand with this
20 witness.

21 MS. RATNER: With the limits, we are trying
22 our best, but then --

23 THE HEARING OFFICER: I know.

24 BY MR. RATNER:

25 Q Could we talk a little bit about REDACTED's

1 progress. That was something Ms. Owens asked you about
2 directly.

3 Your testimony was that she made appropriate
4 progress, right?

5 A Yes.

6 Q Did she ever in any of the time you were
7 teaching her master a goal?

8 A I would have to look at all my progress
9 reports.

10 Q Please do.

11 A What number and what binder?

12 Q All of your progress reports?

13 A Yes.

14 Q They are in the School Board's book. You
15 were looking at one of them, right?

16 We can start with tab 14.

17 MR. RATNER: And so now my time is going to be
18 limited because she has to review all of her notes?

19 THE HEARING OFFICER: You have until quarter
20 of.

21 MR. RATNER: While she's reviewing the notes?

22 THE HEARING OFFICER: Quarter of is quarter
23 of.

24 MS. OWENS: If you can point the witness to a
25 particular exhibit --

1 MR. RATNER: I just said, Exhibit 14.

2 MS. OWENS: Of course, it's going to take her
3 time to locate the exhibit. Give her a moment to
4 do that. That's a reasonable expectation.

5 Mr. Ratner, are you moving this into evidence?

6 MR. RATNER: Exhibit 14? She hasn't answered
7 any questions about it yet. I can't -- I'm happy
8 to, yes, I'll offer it into evidence.

9 THE HEARING OFFICER: Any objection from the
10 School Board?

11 MS. OWENS: No, ma'am.

12 THE HEARING OFFICER: All right. Thank you.

13 MR. RATNER: Ms. Freeman, again, yesterday the
14 issue was I'm not supposed to ask -- it's not
15 supposed to come into evidence until witnesses talk
16 about it. Today I can't ask questions about it
17 until it's into evidence. So I'm --

18 THE HEARING OFFICER: I just admitted it so
19 it's a moot point.

20

21 (School Board Exhibit No. 14 admitted.)

22

23 BY MR. RATNER:

24 Q Did she make any progress on the goals you
25 were -- did she master any of the goals you were

1 responsible for in fourth grade?

2 A No.

3 Q Please go to tab 34 in the same book. What's
4 this document?

5 A Progress report dated 1/29/21.

6 MR. RATNER: I'd like to move this into
7 evidence, please, School Board Exhibit 34.

8 THE HEARING OFFICER: What was that?

9 MR. RATNER: School Board Exhibit 34.

10 THE HEARING OFFICER: Oh, 34. Okay.

11

12 (School Board Exhibit No. 34 admitted.)

13

14 BY MR. RATNER:

15 Q Ms. McCluskey, you were a case manager at
16 this time?

17 A Yes.

18 Q Which of the goals on here were you
19 responsible for?

20 A All of them.

21 Q All of them. Okay. In terms of teaching
22 her?

23 A Yes.

24 Q Okay. Did she master any of them on this
25 progress report?

1 A No.

2 Q Okay. Let's go to 46, please, same book.

3 A Okay.

4 Q What's this document?

5 A This is a different progress report from a
6 different IEP from June 17, 2021.

7 Q This is a different IEP entirely?

8 A Yes, because we met after the re-eval. So
9 this is a different one because there's only a semester
10 on here.

11 Q Which goals were you responsible for?

12 A All of them.

13 Q Did she master any of them on this IEP -- on
14 this progress report?

15 A No. It wasn't a full year IEP, so, no.

16 Q Was she making quote-unquote sufficient
17 progress towards achieving this goal within the
18 duration of this IEP on any of them?

19 A She made sufficient, yes.

20 Q Which ones were those?

21 A For her study skills.

22 Q Okay. So for reading she did not make
23 sufficient progress to master a goal within the year;
24 am I reading that correctly?

25 A She demonstrated some progress, correct.

1 Q Same for social/coping skills, right?

2 A Yes.

3 Q And then math?

4 A Also agree.

5 Q And writing?

6 A Also agree.

7 Q Isn't it true that when you draft IEP goals
8 they are supposed to be attainable within one year?

9 A Yes. This was only a semester, though.

10 Q Right. But there's a score to say she's on
11 track to meet it in a year, right, that's score 4?

12 A Yes.

13 Q And she didn't attain that in except the
14 study skills category; is that right?

15 A In this semester, yes.

16 MS. OWENS: Is that admitted into evidence,
17 Mr. Ratner?

18 MR. RATNER: Ma'am, I'm so sorry, I would like
19 to --

20 THE HEARING OFFICER: 34?

21 MR. RATNER: No, we're on 46. And I would
22 like to admit it.

23 This is not my standard practice. I'd like
24 to, when I rest my case, to admit all of my
25 exhibits. But if this is what Ms. Owens would

1 like, I'm happy to do it. I'm just asking for some
2 guidance as we go through.

3 THE HEARING OFFICER: Any objection to it?
4 Well, this is your exhibit, so.

5 MS. OWENS: There's no objection from the
6 School Division.

7 MR. RATNER: Right. So what's the issue?

8 MS. OWENS: There isn't one. I wanted to know
9 whether you're admitting it or not so we can keep
10 track of what's being admitted.

11 THE HEARING OFFICER: So 45 -- it was 45,
12 right?

13 MR. RATNER: It's 46.

14 MS. OWENS: 46.

15 THE HEARING OFFICER: I'm sorry. 46 is
16 admitted.

17 MR. RATNER: Thank you.

18
19 (School Board Exhibit No. 46 admitted.)
20

21 BY MR. RATNER:

22 Q I'd like you to switch volumes now, please,
23 to the Parents' Volume 2, tab 66.

24 THE HEARING OFFICER: Volume 1?

25 MR. RATNER: Volume 2, tab 66.

1 BY MR. RATNER:

2 Q Ms. McCluskey, do you have that in front of
3 you?

4 A I do.

5 Q And so I apologize, I can't remember your
6 testimony from yesterday.

7 Was this the one that you made or that the
8 administration made?

9 A This is mine.

10 Q This is yours. Okay. Thank you. So let's
11 look on 413, this first page.

12 Do you remember making this note in the last
13 column?

14 A In the note section, yes.

15 Q Could you read that for Ms. Freeman.

16 A Sure. REDACTED stopped her MAPs at 1:15. She
17 was just done and not paying attention. She told me
18 she wanted a break. She took the rest after lunch in
19 the commons areas at 2 p.m.

20 Q Okay. So on the MAPs, she was struggling a
21 little bit in the --

22 A Paying attention and --

23 (Simultaneous speaking.)

24 MS. OWENS: I'm sorry. Allow the witness to
25 answer the question.

1 THE WITNESS: I believe she's allowed breaks.

2 MR. RATNER: Ms. Freeman, I think it might be
3 better if the lawyers address their comments to you
4 instead of Ms. Owens keep directing her comments to
5 me directly to tell me how I'm supposed conduct my
6 examination.

7 THE HEARING OFFICER: I'm not going to tell
8 Ms. Owens exactly where to look when she's making
9 her comments or --

10 MR. RATNER: I'm not asking about where to
11 look. If your instructions are it's appropriate
12 for her to tell me in the middle of my examination
13 what I should be doing, then I will follow that.

14 MS. OWENS: Mr. Ratner, you and I both know as
15 attorneys that it is not appropriate to talk over a
16 witness while the witness is testifying because it
17 interferes with the transcription. So the extent
18 that I'm asking you to just allow the witness to
19 answer the question, that's a reasonable request
20 and expected of every attorney who is examining a
21 witness.

22 MR. RATNER: Ms. Owens, you and I both know
23 that I asked her a "yes" or "no" question and she's
24 elaborating when I have very limited time. So I'm
25 trying to observe some control over this witness.

1 THE HEARING OFFICER: Most importantly, you're
2 almost expired on your time period.

3 MR. RATNER: No, I appreciate that. You've
4 made it very clear that you are not going to give
5 me the appropriate time, so ...

6 THE HEARING OFFICER: Excuse me? What did you
7 just say?

8 MS. OWENS: I object, Ms. Freeman. That
9 was --

10 THE HEARING OFFICER: What did you just say?
11 Will you repeat that for the record? Let's leave
12 that on the record right now.

13 MR. RATNER: Absolutely. I said, you have
14 made it very clear that you are not going to give
15 me appropriate time.

16 MS. OWENS: I would also point out,
17 Ms. Freeman, that you made it very clear yesterday
18 that Mr. Ratner had the time that he needed to
19 examine the witness.

20 THE HEARING OFFICER: I'm sorry you feel that
21 I have not given you the appropriate time, but I
22 think we just had a prior discussion, lengthy
23 discussion about how I was giving you more time,
24 but apparently that's not enough when I did
25 something highly unusual, which was reopen for you

1 for this witness because I was extremely empathetic
2 with Ms. Ratner's suggestion that probably you-all
3 discussed the case and you came to the conclusion
4 that you needed more time last night, with your
5 co-counsel. So that's why I did that.

6 However, we don't need to make editorial
7 comments to each other. We need to use
8 professional language here, and we don't need to
9 make commentary on each other.

10 So let's move forward. And I'll give you
11 couple more minutes because I think we -- is there
12 a question you have?

13 MR. RATNER: No.

14 THE HEARING OFFICER: Okay. Go ahead.

15 BY MR. RATNER:

16 Q So regarding this entry that we were talking
17 about, this is when she's back in person, right?

18 A Yes.

19 Q April?

20 A Yes.

21 Q Still having some difficulty attending?

22 A Well, for a MAPs test. It's lengthy.

23 Q Yes. Is it fair to say that during the
24 virtual period REDACTED had difficulty accessing the
25 curriculum?

1 A In what manner?

2 Q In the manner that she didn't attend class,
3 for example.

4 A She had every opportunity to get on. I mean,
5 I guess she had difficulty getting on. I mean, the
6 opportunity was there.

7 Q Sure. Did you do anything to try to mitigate
8 the problems she was -- did you ever ask her why aren't
9 you getting on, for example?

10 A I in-boxed her on Canvas messaging, I believe
11 we spoke in emails, and we had some one-on-one time,
12 REDACTED and I, during -- I'd have to go back to my log for
13 virtual.

14 Q Did you ever talk to Mrs. REDACTED about that?

15 A I'm sure I did.

16 Q Okay. Did she express to you that it wasn't
17 because REDACTED wasn't trying her best but because she had
18 anxiety related to being behind her peers?

19 A I think so, yes.

20 Q And did you do anything to address that?

21 A Well, we changed the IEP for study skills and
22 gave her extra time, and that's when social skills and
23 all that was done.

24 Q But that didn't help her reading and writing,
25 did it?

1 A I mean, there's a direct correlation. I
2 mean, I don't know how to answer that question.

3 Q That's fine. Let me just ask one last
4 question, if I could.

5 Please go to tab 1 in the Parents' book,
6 Volume 1, tab 1.

7 MR. ANDRIANO: Mr. Ratner, which tab?

8 MR. RATNER: Tab 1, Volume 1.

9 MR. ANDRIANO: Thank you.

10 BY MR. RATNER:

11 Q Tell me when you're there.

12 A Yes, sir.

13 Q Okay. Take a look as much as you want. My
14 question is going to be, sitting here today under oath,
15 is it your testimony that this is a work for a fifth
16 grader at Old Hundred Elementary School who is getting
17 ready to go into honors classes at Tomahawk Creek?

18 A She's a student with a specific learning
19 disability in spelling. So I meet her at her needs
20 academically in spelling. I don't -- there's no, like,
21 fifth grade list or anything like that.

22 Q But I thought you testified she got all A's
23 in fifth grade?

24 A She did, from her general education.

25 Q Is this a work --

1 A Some of it is, but -- this is my IEP stuff,
2 not grades.

3 Q Okay.

4 A It's different. This is based on the IEP
5 goals.

6 Q Right.

7 A Not grades in the general education
8 curriculum setting.

9 Q And if REDACTED was performing at this level, how
10 would she access the curriculum at Tomahawk Creek
11 Middle School?

12 A Well, her IEP follows her to Tomahawk Creek
13 Middle School with similar goals -- actually, the same,
14 because it was written in February.

15 MR. RATNER: That's all I have.

16 THE HEARING OFFICER: Thank you.

17 Cross-exam?

18 MS. OWENS: Yes.

19

20 RECROSS-EXAMINATION

21 BY MS. OWENS:

22 Q So you were asked various questions,
23 Ms. McCluskey, about REDACTED's IEP progress reports.

24 A Yes.

25 Q And if I could again direct your attention to

1 School Board Exhibit Number 14.

2 A Yes.

3 Q You testified previously that you were not --
4 that this progress report was not -- it was for
5 progress on an annual IEP goal, correct?

6 A Yes.

7 Q And you were responsible for implementing the
8 third -- the IEP goal for writing?

9 A Yes.

10 MR. RATNER: Asked and answered. Objection.
11 Asked and answered.

12 THE HEARING OFFICER: Um ...

13 MS. OWENS: I did ask that question, but I'm
14 trying to redirect the witness to what --

15 THE HEARING OFFICER: All right. Overruled.
16 Go ahead.

17 MR. RATNER: So just to be clear, when she
18 makes --

19 THE HEARING OFFICER: Let's move ahead,
20 please.

21 MR. RATNER: I'm talking.

22 THE HEARING OFFICER: I do not -- I am not
23 required to respond to explain every ruling.

24 MR. RATNER: I'm not asking you to explain it.

25 THE HEARING OFFICER: So let's move ahead.

1 MR. RATNER: I'm trying to make a record --

2 THE HEARING OFFICER: Let's move ahead.

3 MR. RATNER: I'm making a record.

4 MS. OWENS: Sounds to me that he's arguing
5 with the Hearing Officer.

6 THE HEARING OFFICER: Yeah, it sure does.

7 Let's move ahead. Because we are trying to
8 get this done within the five days that you're
9 allotted, and if you argue with me or counsel for
10 the school system and we spend our time that way,
11 we are not going to get this done. And my most
12 important mission here is to get this done so that
13 REDACTED has a decision, timely decision.

14 All right. Let's move ahead. I'll note your
15 objection.

16 BY MS. OWENS:

17 Q Mr. Ratner asked questions about the rating
18 of a 3 on this IEP progress report.

19 A Yes.

20 Q Although she received a 3, does that indicate
21 that REDACTED was not making appropriate progress towards
22 that IEP goal?

23 A She was making progress.

24 Q And is it fair to say that because of the
25 COVID-19 pandemic that closed schools that you were

1 unable to continue working with her on that goal?

2 A Yes.

3 Q Would you say that that progress that she
4 made was appropriate in light of her circumstances of a
5 student with a disability?

6 A Yes, ma'am.

7 Q Now turning to Exhibit Number 34, you were
8 asked questions about the -- about REDACTED's progress
9 towards her IEP goals and whether she mastered the
10 goals.

11 Is mastery an indication that the student did
12 not make appropriate progress towards the IEP goal?

13 A I'm sorry, could you repeat that? Is
14 mastery --

15 Q Sure. I apologize. That was not a
16 well-worded question.

17 If a student does not master each and every
18 goal, does that mean that that student is not making
19 appropriate progress toward meeting that goal?

20 A Not at all.

21 Q Did REDACTED make appropriate progress towards
22 meeting her IEP goals?

23 A She did.

24 Q And why do you say that?

25 A If you will look at the beginning in October,

1 she had scored a 2, and then in January, she had made
2 progress and scored a 3 in reading and writing and did
3 well with a 4 in study skills and with coping skills a
4 3. It was just for a semester. It wasn't for an
5 entire year.

6 Q Did REDACTED make appropriate progress in light
7 of her circumstances?

8 A Yes, she did.

9 Q Now turning to School Board Exhibit Number
10 46 --

11 THE HEARING OFFICER: Was that 36?

12 MS. OWENS: 46.

13 THE HEARING OFFICER: 46. Okay.

14 BY MS. OWENS:

15 Q And this is REDACTED's progress report for the
16 2020-2021 school year, correct?

17 A Yes.

18 Q And what is this IEP -- do you recall which
19 IEP this progress report was reporting progress on?

20 A This was from February of '21.

21 Q So it's fair to say that there were two
22 marking periods for which you reported progress?

23 A Yes.

24 Q In an annual goal, approximately how many
25 marking periods are there to report progress on?

1 A Four.

2 Q So you only had two marking periods for this
3 progress report, correct?

4 A I did.

5 Q And it would have been expected that if REDACTED
6 would have had an opportunity to remain with
7 Chesterfield County Public Schools, she would have
8 continued to work on progress --

9 MR. RATNER: Objection. Calls for
10 speculation.

11 (Court reporter requested clarification.)

12 BY MS. OWENS:

13 Q If the parent had not had -- if this IEP had
14 not been revised or otherwise modified, she would have
15 continued to work on the goals in this IEP; is that
16 accurate?

17 A Correct.

18 THE HEARING OFFICER: I'm going to sustain
19 that objection. I don't think she qualified as an
20 expert witness, so -- at least I don't think there
21 was any qualification of her as an expert, was
22 there? Was there?

23 (No response.)

24 THE HEARING OFFICER: All right. Go ahead.

25 MR. RATNER: I don't believe there was.

1 BY MS. OWENS:

2 Q So with regard to this IEP progress report,
3 did [REDACTED] make appropriate progress in light of her
4 circumstances towards meeting that -- those IEP goals?

5 A Yes, she did.

6 Q You were also asked questions about virtual
7 instruction.

8 Would you say that [REDACTED] refused to
9 participate in virtual instruction?

10 A At times, yes.

11 Q And why do you say she refused to
12 participate?

13 A She would either not have her camera on or
14 she would not come to the session.

15 Q Did you ever observe [REDACTED] engaging in other
16 activities rather than the instruction that was being
17 delivered?

18 A Yes.

19 Q Could you give examples?

20 A She would be drawing or on other site like on
21 the computer.

22 Q And if her camera were off, did you ever try
23 to get [REDACTED]'s attention?

24 A Yes, we would talk in the chat or we would
25 say her name.

1 Q And occasionally -- well, would she respond
2 to you when you put messages?

3 A Not usually.

4 THE HEARING OFFICER: Did you say she would
5 not respond when you sent her messages?

6 THE WITNESS: Yes.

7 MS. OWENS: I have no further questions for
8 the witness.

9 THE HEARING OFFICER: Any follow-up?

10 MR. RATNER: No, thank you.

11 THE HEARING OFFICER: Okay. So are you
12 done -- is everyone done with this witness?

13 MS. OWENS: As I mentioned earlier,
14 Ms. Freeman, we do reserve the right to recall
15 Ms. McCluskey.

16 THE HEARING OFFICER: All right. Thank you
17 very much. There's been a reservation to recall
18 you, if necessary. So I don't know exactly what
19 the procedure has been for doing that, but I
20 usually just say keep in touch with counsel -- I
21 think you were a joint witness. So whoever wants
22 to recall you, if you will just leave your
23 telephone number so they can get ahold of you a day
24 before or something, if you think you need it.

25 THE WITNESS: A day before would be nice.

1 THE HEARING OFFICER: Day before if either
2 side tries to call you.

3 THE WITNESS: That would be good.

4 MR. RATNER: Let me be clear for
5 Ms. McCluskey. I will not be contacting her
6 directly. If I have any questions, I will go
7 through their lawyers.

8 THE HEARING OFFICER: That sounds great. So
9 the school system counsel will call you.

10 THE WITNESS: Okay.

11 THE HEARING OFFICER: Or email you or get
12 ahold of you somehow if they need you. Otherwise,
13 you're dismissed with that reservation.

14 THE WITNESS: Thank you.

15 MR. ANDRIANO: Thank you.

16 MS. OWENS: Thank you.

17 MR. RATNER: Thank you, Ms. McCluskey.

18 Could we take a short break before the next
19 witness?

20 THE HEARING OFFICER: Yeah. It's not quite
21 10:00 yet. 10 after 10:00.

22

23 (Break taken.)

24

25 THE HEARING OFFICER: Who is the next witness?

1 MS. OWENS: Mr. Lawson.

2 THE HEARING OFFICER: Is this a joint as well?

3 MR. RATNER: Yes, we would like to call
4 Mr. Lawson, who is a CCPS employee.

5 MS. OWENS: But he is not on the School
6 Board's witness list.

7 THE HEARING OFFICER: Oh, all right.

8 You may come in. Would you raise your right
9 hand, please.

10

11 (Witness sworn.)

12

13 THE HEARING OFFICER: Answer counsel's
14 questions, Parents' counsel's questions to be
15 followed up by cross-examination by the school
16 system.

17 Go ahead, Mr. Ratner.

18 MR. RATNER: Thank you very much.

19

20 DAVID LAWSON,

21 having been duly sworn, testified as follows:

22

23 DIRECT EXAMINATION

24 BY MR. RATNER:

25 Q Mr. Lawson, my name is Todd Ratner. I'm a

1 lawyer for REDACTED and her family. Thank you for
2 being here today.

3 Could you just start off by spelling your
4 name for the court reporter and stating your
5 professional affiliation.

6 A David Lawson. Master of supervision and
7 education, Chesterfield County fifth grade teacher, Old
8 Hundred Elementary School.

9 Q So still in the same position you were in
10 when you taught REDACTED?

11 A Correct.

12 Q What school year was that, if you recall?

13 A It was 20 -- the first virtual after COVID.

14 Q So was that the 2021 school year, right?

15 A Correct.

16 Q So one academic year prior to where we were
17 now?

18 A Correct.

19 Q Had you been at Old Hundred the year before?

20 A Yes. Since it opened.

21 Q And where were you working prior to that?

22 A Swift Creek Elementary School.

23 Q Did you know REDACTED from Swift Creek by any
24 chance?

25 A Yes.

1 Q Oh, you did?

2 A Yes.

3 Q I'm going to ask you some kind of specific
4 questions, and then if you're not able to give
5 specifics, I'll broaden it out to a little bit more
6 general to see if we can get the answer.

7 A Okay.

8 Q So directing your attention specifically to
9 the start of that 2020-2021 year, do you recall when
10 you learned that REDACTED would be in your math
11 class? And I don't need a specific date, but is it
12 like the week before school, a month, a day?

13 A It was before school started, yes.

14 Q How does that information come to you as a
15 teacher?

16 A We get it on our Synergy report.

17 Q And is it just a class roster?

18 A Correct.

19 Q Is there any indication on that Synergy
20 report that she's a student with an IEP identified for
21 special education services?

22 A Yes.

23 Q And what do you recall about the IEP?

24 A The IEP at the time, she needed extended time
25 to do assignments and she needed to have -- that is

1 about all I remember that she needed at the time.

2 Q Okay. What specific class were you teaching?

3 A I was teaching accelerated math, which was a
4 fifth and sixth grade course.

5 Q And we heard some testimony so I'm just
6 trying to put this into context. Is that a two-year
7 program?

8 A Yes.

9 Q So just explain just very briefly for
10 Ms. Freeman --

11 A It's a fifth grade and a sixth grade
12 curriculum into one year.

13 Q But I meant, does it start in fourth grade?

14 A If she was in accelerated in fourth grade,
15 correct.

16 Q How does that work?

17 A If she was in accelerated fourth grade, then
18 she comes into fifth grade as an accelerated student as
19 well.

20 Q Right. So it's three years into two, right?

21 A But I only teach two into one.

22 Q Yes. Yes. I'm talking about the entirety,
23 right? So I'm not asking about --

24 A I'm not --

25 Q You don't know?

1 A I do not know.

2 Q So you don't know what she learned the
3 previous year; is that what you're saying?

4 A Correct.

5 Q Got it. Did you ever talk to her math
6 teacher from the previous year before class started?

7 A Yes.

8 Q Who was that?

9 A Ms. Redd and Ms. Tijerina. Correct?

10 Q That sounds right to me. I think Tijerina is
11 a tough one to spell.

12 A Yes. Correct. T-I-J --

13 Q If you can spell it for the court reporter.

14 A I don't know how to spell it.

15 Q Okay. We'll get that to you. Sorry about
16 that.

17 When did you talk to Ms. Tijerina about REDACTED?

18 A It was briefly before school started. I
19 never base my opinions or anything on a teacher's
20 previous year. I make my own --

21 Q Absolutely. And it was virtual that year,
22 correct?

23 A Correct.

24 Q Fair to say that was a challenging teaching
25 environment?

1 A Yes, that's pretty fair.

2 Q Did REDACTED have any difficulties in your class,
3 to your knowledge?

4 A She had difficulty staying online, being
5 present in the class.

6 Q Okay. Could you elaborate on that a little
7 bit?

8 A She was present half the time, maybe not
9 even -- probably about a third of the time.

10 Q Okay. And this isn't a trick question, how
11 are you able to tell that? Can you see on your screen
12 who is --

13 (Simultaneous speaking.)

14 THE WITNESS: I can see her screen with her
15 name on it, correct.

16 BY MR. RATNER:

17 Q I'm sorry, I was taking over you. We've got
18 to give the court reporter a chance to get it down. So
19 my apologies.

20 So you can see if she's logged in or not?

21 A Yes, sir.

22 Q And about -- your testimony is about half the
23 time she wasn't even logged in?

24 A Probably less than that.

25 MR. ANDRIANO: Objection. I think he gave a

1 different answer than that. So that question
2 mischaracterizes what he previously stated.

3 MR. RATNER: Very good.

4 BY MR. RATNER:

5 Q Did CCPS, to your knowledge, have a policy
6 about cameras? Do they have to be on?

7 A At that time no.

8 Q No, there was no policy?

9 A Not that I was aware of, no.

10 Q Did you have a personal policy?

11 A I would love their camera to be on.

12 Q But did you require it?

13 A I don't think at that point we could.

14 Q Okay. Did anybody ever talk to you about
15 difficulties REDACTED was having with your class
16 specifically?

17 A Occasionally.

18 Q Okay. And did you talk to Ms. McCluskey, her
19 case manager?

20 A Yes.

21 Q Do you recall the nature of that
22 conversation?

23 A That she would log in, stay online for 10, 15
24 minutes, and then she would log off.

25 Q And that was all Ms. McCluskey was able to

1 relay to you?

2 A That was about it. And Ms. Houston as well.

3 Q So just she was having trouble attending?

4 A She would have trouble staying online. She
5 would get, I guess, anxious at the time and log off.

6 Q And just to be clear, not internet issues,
7 right? She wasn't getting kicked off; she decided to
8 log off?

9 A Correct.

10 Q But you don't really know anything beyond she
11 was anxious?

12 A Correct.

13 Q Okay. Did anybody ever tell you that the
14 numbers appeared to be floating on the screen?

15 A One time.

16 Q Okay. What -- what do you remember about
17 that?

18 A There was a problem written on the board and
19 it had a background of a beach scene and there was a
20 problem reading it so we changed it.

21 Q And how did you change it?

22 A Did not have a background. It was just black
23 numbers on a white screen.

24 Q Did anybody -- was that your warm-up?

25 A Correct.

1 Q Okay. Was there concerns generally about the
2 warm-up that were expressed to you?

3 A One time.

4 Q That time with the beach scene?

5 A Uh-huh.

6 Q And your response to that was to take the
7 background off?

8 A Correct.

9 Q Okay. Thank you. Did you ever talk to
10 Mrs. REDACTED directly --

11 A No.

12 Q -- about math class?

13 A No.

14 Q And just so there's no surprises, you
15 actually know Mrs. REDACTED from college, right?

16 A Correct.

17 Q You mentioned you weren't sure if REDACTED was in
18 the fourth grade accelerated; did I understand that
19 correctly?

20 A At the time it was my understanding was that
21 she was.

22 Q And is it true that that's based on someone
23 within the school system selecting her?

24 A Correct.

25 Q So the school system determines she had

1 aptitude to be --

2 A It's also a parent choice. A parent can
3 choose that.

4 Q Regardless of aptitude?

5 A Uh-huh.

6 Q Do you know if REDACTED qualified? Is there any
7 kind of criterion that the school applies?

8 A Not at the time, no.

9 Q Okay. Did you form an opinion in your time
10 working with REDACTED if she had --

11 A No, I did not.

12 Q I'm sorry, can I just finish the question?

13 MR. ANDRIANO: Objection. Mr. Lawson can't
14 provide an opinion unless you're going to qualify
15 him as an expert witness.

16 THE HEARING OFFICER: Yeah, he said -- he
17 can't provide an opinion.

18 MR. RATNER: Well, two different issues, I
19 think. I just wanted to finish my question so the
20 record was clear.

21 Mr. Andriano was saying I can't ask for an
22 opinion because I haven't qualified him as an
23 expert, and the statute is very clear that lay
24 witnesses can offer their opinion based on their
25 experience.

1 THE HEARING OFFICER: Well, I will allow it
2 this time. But, actually, lay witnesses really
3 need to be -- in this particular instance, I think
4 we want to distinguish between expert witnesses and
5 lay witnesses for factual information that they're
6 giving, but I understand that he taught her and
7 he's going to have -- he's going to have -- some of
8 this is going to be grounded in opinion. I mean,
9 let's face it, even the factual evidence is really
10 grounded in opinion.

11 But anyway, sustained. I'm sorry. Sustained.
12 But that question is -- that question you can go
13 ahead ask him.

14 BY MR. RATNER:

15 Q Did you get a chance from working with REDACTED
16 to evaluate her aptitude for math?

17 A She -- I never worked with her one on one
18 because she would not stay on the Meet. So I never had
19 a chance to actually have a conversation with her.

20 Q Okay. Did you provide differentiated
21 instruction to REDACTED?

22 A Correct.

23 Q How did you do that?

24 A I would teach it to the whole class, and then
25 I would provide a video that I would put on her -- on

1 the class page after that.

2 Q Okay. And could you elaborate on that a
3 little bit? What do you mean by a video?

4 A I would record myself teaching the same thing
5 that I taught to the whole class, and then I would put
6 that video online so they could use it at a further
7 date.

8 Q When did that -- when did you begin that
9 practice?

10 A 2020 when the class started.

11 Q Right from day one?

12 A Correct.

13 Q There was never any delay with that?

14 A Not at all.

15 Q The Parents didn't have to ask you about
16 that?

17 A Not at all. It was there. If I taught a new
18 subject or a new topic that day, the video was on that
19 afternoon.

20 Q And was it the full lesson?

21 A No. The full lesson was online, and then I
22 would break it down to where it was just myself in
23 front of the board teaching the subject in a 20- to
24 30-minute video.

25 Q Okay. And just to clarify, when you say the

1 full lesson was online, you don't mean you posted the
2 video; you mean, I taught it in the virtual classroom?

3 A Correct.

4 Q And then there was a video that was a summary
5 or --

6 A It was not a summary. It was what I taught
7 that day without student participation, just me and a
8 video.

9 Q Got it. So like a lecture format?

10 A Correct.

11 Q Got it. Anything else you did to provide
12 differentiated instruction to REDACTED?

13 A I mean, there was differentiated materials
14 provided.

15 Q Could you elaborate on that?

16 A I mean, at the time you would provide a few
17 hard problems on a Google slide or you would do a
18 Google form with maybe not as difficult problems so
19 they could have an option of doing either/or. They
20 could stay on the class and ask questions if they
21 needed to. They could have a one-on-one with me if
22 they needed to.

23 MR. RATNER: Can we just have one minute? And

24 I think I just have one question left.

25 THE HEARING OFFICER: Okay. Go ahead.

1 BY MR. RATNER:

2 Q I think this is my last question for you.

3 Famous last words.

4 How many marking periods did you have REDACTED?

5 A I did not have her an entire marking period
6 at all. I had her for six weeks.

7 Q Were you responsible for giving her grades
8 for the first marking period?

9 A Yes.

10 Q What grade did she have in your class?

11 A She didn't have a grade.

12 Q Why not?

13 A She didn't turn any work in.

14 Q And is that the policy that if students don't
15 turn in work, they don't get a grade?

16 A At the time it was a new 2020 school year,
17 and we were attempting to provide the best education
18 that we could so I would not assess at all.

19 Q Understood. Understood. If you had to give
20 her a grade, what would the grade have been?

21 A I can't -- I can't -- I do not know.

22 Q Okay. Well, I'm not saying based on the
23 aptitude, but they were all zeroes, right, if she
24 didn't turn in work?

25 MR. ANDRIANO: Objection. Mischaracterizes --

1 THE HEARING OFFICER: Sustained. Move ahead,
2 please.

3 BY MR. RATNER:

4 Q She didn't turn any assignments in; is that
5 your testimony?

6 A At the time she did not turn any assignments
7 in.

8 Q Okay.

9 A Before this meeting, I went and searched my
10 Google drive and I could not find anything in her name.

11 MR. RATNER: That's all the questions I have.

12 Thank you.

13 THE HEARING OFFICER: Okay. Thank you.

14 Cross-examination?

15

16 CROSS-EXAMINATION

17 BY MR. ANDRIANO:

18 Q Mr. Lawson, this mathematics class you were
19 teaching, was it a special education mathematics class?

20 A No, it was an accelerated math class.

21 Q And did REDACTED have any -- was REDACTED, to your
22 knowledge, eligible in the area of mathematics for
23 special education?

24 A Not at the time, no.

25 Q I just want to make sure we're clear because

1 I think you may have given different answers.

2 Was it your opinion one-third of the time
3 that you think she accessed your class?

4 A Anywhere between one-third and half of the
5 time she would be present. The rest of the time she
6 would sign off.

7 Q Did you have a chance to take breaks during
8 your class period?

9 A I always told them if they were in
10 accelerated math, they were allowed to take breaks on
11 their own if they needed to.

12 Q But did the class ever take a break?

13 A No.

14 Q Okay. Did you give any tests during --

15 A No, I did not.

16 Q You mentioned you posted videos on Canvas.
17 Can you explain to Ms. Freeman what Canvas is.

18 A Canvas is the students --

19 THE HEARING OFFICER: Did you say campus or
20 Canvas?

21 THE WITNESS: Canvas, C-A-N-V-A-S.

22 THE HEARING OFFICER: V-A-S. Okay.

23 THE WITNESS: It was the site that they would
24 go to to login to the Google Meet. It was also
25 used to post assignments. It was also used to post

1 the videos. So they had access to all of that.

2 THE HEARING OFFICER: Okay.

3 BY MR. ANDRIANO:

4 Q And did REDACTED access those videos?

5 A At the time we could not tell if they
6 accessed it or not.

7 Q Okay. And during this virtual instruction,
8 did you ever try to engage REDACTED during your
9 instruction?

10 A Yes.

11 Q And please explain to Ms. Freeman what would
12 happen.

13 A So, you know, you would try to get a child to
14 interact online and answer a problem, and if she was
15 called on, she would either not answer or turn her
16 camera off.

17 Q Did she ever have her camera on?

18 A Very rarely.

19 Q And when she had her camera on, did you try
20 to engage with her?

21 A Yes.

22 Q And what would happen?

23 A I would call -- I wouldn't -- at the time I
24 knew that if I called on her she might turn her camera
25 off, so it was rare that I would. But if I did, it

1 was -- you know, she would wait a second or two and
2 then turn her camera off.

3 Q That would be her response?

4 A Yes. Correct.

5 Q She would turn her camera off?

6 A Yes. Correct. And then a few minutes later
7 you would see that it said REDACTED left the meeting.

8 Q What did that mean? What did that message
9 mean?

10 A She left the class.

11 Q She logged off?

12 A Correct.

13 Q During this approximate six-week period that
14 you had REDACTED in your class, did Mrs. REDACTED ever reach
15 out to you?

16 A Not to me directly, no.

17 Q Did she ever contact you and say I want a
18 parent-teacher conference?

19 A Not with me directly, no.

20 MR. ANDRIANO: No further questions.

21 THE HEARING OFFICER: Any follow-up?

22 MR. RATNER: Yes.

23 THE HEARING OFFICER: Go ahead.

24

25

1 REDIRECT EXAMINATION

2 BY MR. RATNER:

3 Q Mr. Andriano asked you if REDACTED was identified
4 for special education in math, I think was his
5 question.

6 You understand that she was identified as a
7 student with a specific learning disability in reading
8 and writing, correct?

9 A Correct.

10 Q Okay. Is there reading and writing in your
11 class?

12 A There is reading.

13 Q Okay. A lot of reading, right?

14 A No.

15 Q No?

16 A No.

17 Q When it's on Google slides, there's not a lot
18 of reading?

19 A No.

20 Q Did you do anything to assist REDACTED with her
21 reading deficits in your class?

22 A No. I didn't have to. It wasn't stated in
23 her IEP that I had to do anything for that.

24 Q Okay. So you knew she had a specific
25 learning disability but your feeling was, well, I don't

1 have to --

2 MR. ANDRIANO: Objection.

3 MR. RATNER: That was his testimony. He just
4 said, I didn't have to. It wasn't written in her
5 IEP.

6 THE HEARING OFFICER: That was his answer, I
7 don't have to.

8 Let's not argue. All right. Go ahead.
9 Sustained. Go ahead.

10 MR. RATNER: No further questions.

11 THE HEARING OFFICER: Let me ask you
12 something, did -- and it's just my own curiosity.
13 You said that she had this regular pattern where
14 she would turn the -- she would log off. She would
15 not -- I think you said she rarely had the camera
16 on?

17 THE WITNESS: She would rarely -- she would
18 log on to the class, have her camera on, but that
19 was -- at best, that was two to three times a week.
20 And when she would log on, I would be excited. I
21 mean, she's here, let's teach. And then a couple
22 minutes later, you would just see that it said REDACTED
23 REDACTED left the meeting.

24 THE HEARING OFFICER: Did you contact her
25 mother or father?

1 THE WITNESS: I contacted Ms. McCluskey and
2 Ms. Houston.

3 THE HEARING OFFICER: And did you ask that
4 they contact her mother?

5 THE WITNESS: Yes. They said they were in
6 contact with them -- with her the whole time.

7 THE HEARING OFFICER: Thank you.

8 And if I raised any issues, either one of you
9 is welcome --

10 MR. ANDRIANO: I just have one recross
11 question.

12 THE HEARING OFFICER: Go ahead.

13

14 RECROSS-EXAMINATION

15 BY MR. ANDRIANO:

16 Q Mr. Ratner asked you about the IEP
17 accommodations.

18 Were you implementing the IEP accommodations
19 that pertained to your class?

20 A Correct. Yes.

21 THE HEARING OFFICER: Any follow-up?

22

23 FURTHER REDIRECT EXAMINATION

24 BY MR. RATNER:

25 Q Was one of those accommodations read aloud?

1 A No.

2 MR. RATNER: Okay.

3 THE HEARING OFFICER: Anything else?

4 MR. ANDRIANO: No.

5 THE HEARING OFFICER: Okay. Now, does anyone
6 want to reserve this witness for possible rebuttal
7 purposes or not?

8 MS. RATNER: Possibly. It's going to take me
9 awhile to find it. There's just one discrepancy.
10 And I understand this was a long time ago, but
11 there are emails that Mrs. REDACTED sent to Mr. Lawson
12 asking for help. She mostly went through
13 Ms. McCluskey as well, the special ed teacher,
14 rather than reaching out directly. And I believe
15 there was at least one video chat. So I don't know
16 if you need testimony on this. I'm not going to be
17 able to put my hand on this email with any time
18 that was left so that -- to move forward quickly.
19 But Mrs. REDACTED did try very hard with everybody
20 to -- I think --

21 MR. ANDRIANO: Ms. Freeman, that's --

22 MS. RATNER: Maybe she tried too hard.

23 MR. ANDRIANO: That's contrary to the
24 testimony we heard from Mr. Lawson.

25 THE HEARING OFFICER: From what you've just

1 told me, it sounds to me you may want to -- I'm not
2 going to tell you what I think you should do. That
3 would probably not be proper. We already have
4 Ms. McCluskey -- I continue to say it incorrectly.
5 But we already have Ms. McCluskey who can be
6 recalled. She was reserved. It doesn't sound like
7 this witness would be --

8 MS. RATNER: I agree. I mean, I just -- to
9 whatever extent you think it's relevant that Mom --

10 THE HEARING OFFICER: Well, if you think --
11 (Simultaneous speaking.)

12 MS. RATNER: -- instead Mom was mainly dealing
13 with the special ed teachers and that being
14 filtered. It's just if you think it's relevant.

15 THE HEARING OFFICER: You said there was a
16 video chat or something?

17 MS. RATNER: Well, we don't have the video.
18 To the extent that you think it's relevant whether
19 or not Mom --

20 THE HEARING OFFICER: She is reserved for
21 rebuttal. By "she," I mean Ms. McCluskey. So I
22 think you have it covered.

23 MS. RATNER: That sounds great.

24 THE HEARING OFFICER: So there's no need to
25 reserve this witness.

1 So we're going to release you and thank you
2 for testifying.

3 MR. ANDRIANO: Thank you, Mr. Lawson.

4 MR. RATNER: Thank you, Mr. Lawson.

5 THE HEARING OFFICER: Who's next?

6 MR. RATNER: Our next witness would be the
7 Ms. Houston, Elizabeth Houston.

8 THE HEARING OFFICER: I should know what her
9 title is. Is she compliance?

10 MR. RATNER: She was the fifth grade teacher,
11 general education teacher.

12 THE HEARING OFFICER: I got my Elizabeths
13 mixed up.

14 MR. RATNER: There are a lot of Elizabeths in
15 this case.

16 MR. ANDRIANO: Ms. Freeman, may we just take a
17 short break?

18 THE HEARING OFFICER: Yes, go ahead. Let's
19 see. It is 11:40 now, and so let's come back at
20 say 10 of 11:00.

21
22 (Break taken.)

23
24 THE HEARING OFFICER: You are Elizabeth
25 Houston. And would you raise your right hand,

1 please.

2

3

(Witness sworn.)

4

5

THE HEARING OFFICER: Answer any questions

6

that Mr. Ratner has for you and cross-examination

7

by the school system will happen later.

8

THE WITNESS: Okay.

9

THE HEARING OFFICER: Go ahead, Mr. Ratner.

10

MR. RATNER: Thank you.

11

12

ELIZABETH HOUSTON,

13

having been duly sworn, testified as follows:

14

15

DIRECT EXAMINATION

16

BY MR. RATNER:

17

Q Again, Ms. Houston, my name is Todd Ratner.

18

I am a lawyer for the REDACTED. REDACTED, REDACTED

19

REDACTED are here today. REDACTED is their daughter.

20

Did you ever teach REDACTED at Chesterfield

21

County Public Schools?

22

A Yes.

23

Q What school year was that?

24

A The '20-'21 school year.

25

Q What grade was REDACTED in?

1 A Fifth grade.

2 Q And what was your position at that time?

3 A I was the general education teacher.

4 Q Okay.

5 A So I taught all subjects.

6 Q Okay. And I believe we heard testimony that
7 yours was what's called a collaborative class?

8 A Yes.

9 Q Okay. Can you just explain that a little bit
10 for me. I don't have great familiarity with it.

11 A So, basically, Christine McCluskey did
12 pull-out services for the small group individualized
13 instruction, and then I had students that also had
14 other IEPs or 504s that she had to service. We would
15 work together. We had kind of a great situation where
16 she was right next door and she would spend math time
17 in a small group setting and then also join me for
18 whole group as well. That happened in both math,
19 reading, writing, and she would pop in for other
20 subjects as well. So we worked very closely together.

21 Q So it's a co-taught sort of situation with
22 you and Ms. McCluskey; is that accurate or not really?

23 A That's accurate to say.

24 Q Okay.

25 A I would plan -- I did most of the planning

1 for the whole group instruction, and I just told her
2 what we were doing.

3 Q Okay. And did Ms. McCluskey have other
4 classrooms that she was supporting you or other
5 students she was supporting --

6 A Yes.

7 Q -- who were not in your class?

8 A The fifth graders were in my class.

9 Q That's what I'm getting at. So fifth graders
10 in your class were either working with you or
11 Ms. McCluskey?

12 A Not all of them.

13 Q But did they work with anyone else?

14 MS. OWENS: Object to relevancy of that
15 question about other students other than REDACTED.

16 THE HEARING OFFICER: Other students, why
17 would that be relevant?

18 MR. RATNER: I'm just trying to understand how
19 the class worked. REDACTED, for example, had
20 Mr. Lawson.

21 THE HEARING OFFICER: Overruled at this point.
22 But let's not go into other students.

23 BY MR. RATNER:

24 Q So REDACTED didn't have you for math, for
25 example, or did she?

1 A She did have me for math, yes.

2 Q After she came back from Mr. Lawson's class,
3 correct?

4 A Correct.

5 Q Were there any other students in your class
6 who started in Mr. Lawson's class?

7 A No.

8 Q Okay. How many students were in your class?

9 A Total?

10 Q Yes.

11 A Oh, gosh. Can I say 23 or --

12 Q Sure. I don't need an exact.

13 A Okay.

14 Q More than 20?

15 A Actually, I'm going to have to say I can't
16 remember because with -- I'm getting this year's
17 numbers -- math class was different from my whole group
18 setting so I want to make sure I'm accurate in what I'm
19 saying.

20 Q More than 15?

21 A You had the hybrid time in there as well. So
22 when it was hybrid, it was this really special 7 and 8
23 time. I'm going to -- can I say 18 to 21?

24 Q Sure. That's fine.

25 A It's 23 right now. That's why that number

1 was going in my head.

2 Q And again, Ms. Freeman, made a good point. I
3 want to focus on what REDACTED was doing.

4 So you mentioned hybrid time. Is that
5 something REDACTED participated in?

6 A All students.

7 Q So I would just like to better understand
8 what that is.

9 A So we started the year virtually, and then
10 the county decided in October to do hybrid. So we had
11 two days in person and we had two days asynchronous,
12 which did switch to four days altogether, and then we
13 switched back after Thanksgiving to virtual and then to
14 in-person.

15 Q Understood. I'm so sorry. I didn't catch
16 that reference.

17 So the hybrid time is something unique to the
18 COVID situation?

19 A Yes, sir.

20 Q Okay. Thank you. That helps me.

21 When did you first learn -- and I'm not
22 asking for an exact date, but when would you learn who
23 were going to be the students in your class for that
24 fifth grade year?

25 A Preplanning, I knew I was going to be working

1 with McCluskey, so I knew I was going to be in the
2 collaborative setting. We had done so the first year
3 together, and we worked very well together so I wanted
4 to work with her again. Rosters we maybe really got
5 the week before students arrived is when we really dove
6 into things.

7 Q And do you recall when the first time you
8 ever communicated with Mrs. REDACTED about REDACTED was?

9 A End of August.

10 Q It's not -- before school started; is that
11 fair to say?

12 A Yes.

13 Q Was she being proactive in reaching out to
14 you?

15 A Yes.

16 Q What do you recall about that initial
17 communication? And if you can't remember, you can't
18 remember and that's fine.

19 A I can't remember.

20 Q No problem. It's not a memory test.

21 Now I am going to ask you something that does
22 test your memory. Sorry.

23 A That's okay.

24 Q Do you remember approximately how many
25 students in that class out of the 18 to 21 had IEPs?

1 MS. OWENS: Object to relevancy.

2 THE HEARING OFFICER: That would require that
3 she recall the experience of other students. So
4 sustained.

5 MR. RATNER: Could I just be heard briefly?

6 THE HEARING OFFICER: Yes. Go ahead.

7 MR. RATNER: Thank you. So, again, I'm not
8 asking for any specific information about other
9 students --

10 THE HEARING OFFICER: Just ask her about REDACTED
11 then.

12 MR. RATNER: I'm sorry.

13 THE HEARING OFFICER: Go ahead.

14 MR. RATNER: I think it's important -- one of
15 the issues in this case is the least restrictive
16 environment being educated with general education
17 peers and that most of the students in the
18 collaborative class have an IEP. That's close to a
19 self-contained class. So that's why I'm asking.

20 THE HEARING OFFICER: All right. For that
21 limited purpose, I will allow you to ask that
22 question. But move on and don't ask about other
23 students.

24 MS. OWENS: We don't want to waste a lot of
25 time here talking about legal argument, but I

1 completely disagree with the assertion that the
2 number of -- if there are ten students with a
3 disability in a collaborative classroom that that
4 makes it a self-contained environment. It still
5 remains a collaborative setting. There's other
6 differences other than the number of students who
7 have an IEP in the class that distinguishes a
8 collaborative setting from a self-contained
9 environment. But I don't want to waste a lot of
10 time with that. I understand your ruling,
11 Ms. Freeman, and we can proceed.

12 THE HEARING OFFICER: Let's go back to the
13 question but limited to that question.

14 MR. RATNER: I do intend to ask about the 504
15 plan as well, the same question, if that's okay.

16 THE HEARING OFFICER: I thought we excluded
17 everything about 504.

18 MR. RATNER: Well, it's a disability.

19 MS. OWENS: Again, it's not relevant to the
20 issues.

21 THE HEARING OFFICER: It's not really
22 relevant. What's the purpose of asking about -- to
23 find out if there are other children who -- well,
24 that's -- let me just hear what your question would
25 be about 504 plans.

1 MR. RATNER: It's the same question, just how
2 many students.

3 THE HEARING OFFICER: I'll let him ask how
4 many students have this and how many students have
5 that, but beyond that, let's go into another area.

6 MR. RATNER: Yes, ma'am.

7 BY MR. RATNER:

8 Q Can you recall, to the best of your ability,
9 how many students had an IEP in that class?

10 A I'm going to say less than six.

11 THE HEARING OFFICER: Was that IEP?

12 THE WITNESS: I don't even feel comfortable
13 saying six.

14 THE HEARING OFFICER: If you don't recall,
15 then just say --

16 THE WITNESS: Okay.

17 BY MR. RATNER:

18 Q How about 504 plans?

19 A (Shakes head.)

20 Q You have to say it out loud.

21 A I don't recall. 504s are --

22 Q Let me ask you a slightly different question.

23 To your recollection, were there students
24 without either of those in your class, without an IEP
25 or 504?

1 A Yes.

2 Q Okay. That answers my question. Thank you
3 very much. And I'm moving on.

4 THE HEARING OFFICER: Okay. Go ahead.

5 BY MR. RATNER:

6 Q You were considered -- again, I'm just trying
7 to get my bearings straight -- the general education
8 teacher for REDACTED?

9 A Yes.

10 Q Working with Ms. McCluskey to receive special
11 education services, correct?

12 A Yes.

13 Q But there were certain special education
14 services, accommodations, et cetera that you were
15 required to work with REDACTED on in the general education
16 setting; is that correct?

17 A Yes.

18 Q So I'd like to talk about a little bit of
19 that briefly. You've got all sorts of binders in front
20 of you, and it's a little bit confusing, but there's
21 one says exhibits submitted on behalf of the
22 Chesterfield County School Board.

23 Do you see that one?

24 A Yes.

25 Q I can help you find it. Okay. Great. I'd

1 like you to turn to tab 3. And let me just -- to put
2 this into time for Ms. Freeman, when REDACTED started with
3 you, this was the first time students were returning to
4 school virtually in person, whatever, after the COVID
5 shutdown in the spring immediately prior, correct?

6 A Yes.

7 Q Okay. So do you recall that at the time REDACTED
8 started in your class in, whatever, right after Labor
9 Day or before Labor Day or whatever it is, in the fall
10 of 2020, she did not have a current IEP approved?

11 A Well, we would be going by the last IEP from
12 fourth grade and providing those services.

13 Q Exactly. But in this case it was a third
14 grade IEP that expired, right? Do you recognize tab 3?

15 MS. OWENS: I'm going to object to the form of
16 that question.

17 THE HEARING OFFICER: What exactly do you --

18 THE WITNESS: I need you to show me what I'm
19 looking at.

20 MS. OWENS: My objection is that Mr. Ratner is
21 inserting testimony that an IEP has expired.

22 THE HEARING OFFICER: In that it's no longer
23 active or that there's no operative IEP?

24 MR. RATNER: I'm sorry, what?

25 THE HEARING OFFICER: That there's no

1 operative IEP?

2 MR. RATNER: I just want to make sure this is
3 the IEP that was --

4 THE HEARING OFFICER: Are we talking about the
5 last approved IEP?

6 MR. RATNER: Correct.

7 THE HEARING OFFICER: What was the date of
8 that?

9 MR. RATNER: The Mom signed it on 10/17/19.

10 THE HEARING OFFICER: '19. Does that
11 correspond to when you think? You agree then the
12 last approved IEP was October 17, 2019?

13 MS. OWENS: That's not the last agreed-upon
14 IEP.

15 THE HEARING OFFICER: Isn't that what you just
16 said?

17 MR. RATNER: At the time she started in fifth
18 grade.

19 THE HEARING OFFICER: Oh, at the time she
20 started fifth grade?

21 MR. RATNER: And I may have misspoke. Because
22 this is fourth grade, it wasn't a third grade IEP.

23 THE WITNESS: It says March 24, 2021.

24 MR. RATNER: Where do you see that?

25 THE HEARING OFFICER: That did sound kind of

1 old to me. But if it was fourth grade -- what did
2 you say? The one that you were working on was
3 March 24, 2021, and what's that exhibit? In the
4 School Board, what is it?

5 THE WITNESS: School Board page 40.

6 MR. RATNER: I'm so sorry. I was asking the
7 witness about School Board Exhibit 3.

8 THE HEARING OFFICER: But the last approved
9 IEP she just said -- oh, you were asking about the
10 fourth grade IEP?

11 MR. RATNER: I'm just trying to figure out
12 what was in effect when school started when
13 Ms. Houston was teaching. I assume that would be
14 relevant to you because that's what Ms. Houston
15 would be working on when school started.

16 THE HEARING OFFICER: Okay. Go ahead. Ask
17 that question.

18 THE WITNESS: So Exhibit 3?

19 BY MR. RATNER:

20 Q Yes, please. Do you recognize that?

21 A Do I -- I mean, of course we went through all
22 of this. So, basically, I know there was -- when the
23 school year started, I'm going by what McCluskey
24 presenting me. She's meeting in whole group, but I'm
25 aware of fluency and spelling beginning of that year of

1 what I know that when we're working together, both
2 individually and like in my own small groups, which
3 don't have anything to do with her IEP, that's what I'm
4 servicing her for or working on her with.

5 Q And, again, I'm not trying to trip you up at
6 all.

7 A No.

8 Q There's been a lot of back and forth about
9 the services are dictated by the IEP. So I'm just
10 trying to find out if that's true for you.

11 Did you feel that your educational services
12 to REDACTED were dictated by her IEP?

13 A No, not at all.

14 Q Got it. Did you familiarize yourself with
15 her IEP goals?

16 A Yes.

17 Q So let's talk about what -- the services you
18 did provide her.

19 A Well, again, McCluskey is going to provide
20 the special education services, and all that progress
21 for that IEP would be done by her. My work is whole
22 group setting, but I'm aware, too, of what we need to
23 work on based on fluency, based on spelling. But she's
24 the one in charge of keeping track of the IEP progress,
25 making sure she's hitting those IEP goals and all of

1 that. So I'm just basically a wheelhouse of knowing
2 what she needs to -- needs to be successful. So in
3 that time it was spelling and it was fluency, if I
4 remember. I don't want to, like, say anything wrong
5 here. But, again, McCluskey took charge of that IEP
6 and those goals and progress for that.

7 Q And that's really helpful.

8 A And my planning doesn't -- isn't dictated by
9 anyone's IEP, but there needs to be an awareness and
10 understanding of what your kids need.

11 Q Sure. Would you say you provided
12 differentiated instruction to REDACTED?

13 A I provide differentiated instruction for
14 everybody.

15 Q So including REDACTED?

16 A Sure. Well, differentiation how so? Because
17 in reading group, she didn't really need it and she
18 didn't really need it for science, but I know what she
19 got from me through math. I think she has very high
20 expectations for herself, and we would notice that
21 there would be moments of being flustered. So she
22 would need to like draw her problem or, you know -- I'm
23 trying to give you an example. Like if it was math, if
24 she needs to draw out her division, she would. She
25 would draw 15 and put them in groups. That's making

1 sure you're accommodating your child -- your children's
2 needs for everybody.

3 Q And that was really helpful. I'm just trying
4 to understand. So I appreciate you answering these
5 questions for me.

6 How did you know, for example, she had issues
7 with fluency/with spelling or that she would need this
8 different approach to --

9 A Communicating with McCluskey and knowing her
10 IEP.

11 Q Great. So I'm so sorry, but for the court
12 reporter, you've got to let me finish my question
13 and then --

14 A Sorry.

15 Q It's natural. I totally understand.

16 But so anyway, that's what I wanted to get
17 at. So the information you had about REDACTED came from
18 Ms. McCluskey; is that right?

19 A Well, it also is important to what subject
20 we're talking about.

21 Q Okay.

22 A For reading, I take my own documentation.

23 Q Okay. And you were responsible with her for
24 reading?

25 A For part of the time. She would spend about

1 a half an hour every day with Ms. McCluskey in her
2 small group, and then I guess 45 minutes would be an
3 accurate time during last year spent in whole group and
4 shared reading. It was at independent reading time
5 where she would get her small group study.

6 Q So let me ask you to turn -- we're going to
7 come back to 3 in a second. I just want to make sure
8 this is clear.

9 Turn to tab 16 in that same book.

10 A Okay.

11 Q And I'm going to ask you if you recognize it
12 generally. I'm not going to quiz you about the
13 contents. Is that something you recognize?

14 A I mean, the IEP itself?

15 Q Yes.

16 A Of course.

17 Q Okay. It's not a trick.

18 A I'm just confused. Was there something
19 specific that you --

20 Q We'll get to that. I'm sorry. There's a lot
21 of formalities in these proceedings --

22 A I'm well aware.

23 Q -- that I have to make sure I get in the
24 record.

25 MR. RATNER: So Ms. Freeman, I would like to

1 offer tab 16. It's a School Board exhibit.

2 MR. ANDRIANO: It's already in.

3 THE HEARING OFFICER: It's already in. Yeah,
4 it was admitted.

5 MR. RATNER: Great. Thank you.

6 BY MR. RATNER:

7 Q Yeah, I'm specifically interested in the last
8 page. Do you see it was consented to by Mrs. REDACTED?

9 A Yes.

10 Q Okay. What date is that?

11 A 9/25/2020.

12 Q Okay. And that was after the first day of
13 school, correct?

14 A Yes.

15 Q Okay. So this document became effective
16 after Mom consented to it, right?

17 A Okay.

18 Q I mean, is that true?

19 A Yes.

20 Q Okay. I'm not trying to -- I mean, you can't
21 make changes to an IEP without the parents' consent; is
22 that your understanding?

23 A For what I -- I -- I'm still confused about
24 the changes you're talking about. From the fourth
25 grade?

1 Q I'm just trying to figure out what was in
2 effect the first day of school, and this one, we've
3 established, was not.

4 A Okay.

5 Q Is that right? She signed it after the first
6 day of school?

7 A Yes.

8 Q Is it true that you cannot implement an IEP
9 that the parent --

10 A But she had an IEP in place when she came to
11 us.

12 Q I'm so sorry. I just really need you to let
13 me finish.

14 A I'm sorry.

15 Q That's okay. No, I understand.

16 A I want to make sure I'm answering
17 appropriately.

18 Q She had an earlier IEP in place, right, when
19 she came to you?

20 A Yes.

21 Q And that was tab 3? That's all I'm trying to
22 get at.

23 A Okay.

24 Q And if it's not, it's not. That's my
25 question.

1 Was that the IEP you were working on at the
2 start of the school year? Tab 3.

3 A Exhibit 3. Yes.

4 Q Okay. Thank you so much.

5 MR. RATNER: I'd like to offer that into
6 evidence, please. I don't believe it's been
7 offered.

8 THE HEARING OFFICER: I don't think it has.
9 This is School Board 3?

10 MS. OWENS: Yes, ma'am. No objection.

11 THE HEARING OFFICER: All right. Unless you
12 have an objection. You're offering it. So this is
13 the School Board's exhibit, though, so let's admit
14 then Exhibit 3.

15 MR. RATNER: Thank you.

16

17 (School Board Exhibit No. 3 admitted.)

18

19 BY MR. RATNER:

20 Q So you didn't have the benefit of working on
21 the development of this IEP; is that fair to say?

22 A Correct.

23 Q Okay. And this is just what I'm trying to
24 get clarification on. In the goals that are listed in
25 this IEP, were there any of those that you were

1 directly responsible for working with REDACTED on or was
2 that all Ms. McCluskey?

3 A From the --

4 Q From tab 3.

5 A I was not even in the picture yet.

6 Q Okay. I'm so sorry. This was in effect as
7 of the first day of school that you were teaching?

8 A Right. But you just asked if I was part of
9 planning. I was not. I wasn't there yet.

10 Q I'm talking now about the first day of fifth
11 grade with REDACTED.

12 A Correct. Oh, we implemented that.

13 Q Yes.

14 A I'm sorry. I thought you were asking was I a
15 part of the team that created it. No, I was not.

16 Q I understand that.

17 A Sorry.

18 Q This was what you were, as a teacher, would
19 be following for REDACTED when she was in your class on the
20 first day of fifth grade, correct?

21 A Yes.

22 MS. OWENS: I object to the question because
23 she's already testified that Ms. McCluskey was the
24 special education teacher responsible for it.

25 MR. RATNER: That's all I'm trying to get

1 clarity on. I just couldn't understand if there
2 were specific goals that Ms. Houston was
3 responsible for teaching REDACTED or if it was only
4 Ms. McCluskey.

5 THE HEARING OFFICER: I thought she
6 answered --

7 THE WITNESS: McCluskey is going to follow the
8 IEP and the progress pieces. You as a classroom
9 teacher, me as a classroom teacher, anyone as a
10 classroom teacher has to be aware of it and make
11 sure that testing is done appropriately and all the
12 things of the ins and outs of it will be followed.
13 But the planning, the instruction piece, that is
14 McCluskey.

15 BY MR. RATNER:

16 Q Got it. That's very helpful. Thank you.

17 So now let's go back to 16.

18 A Okay.

19 Q This is an IEP that you did have some input
20 into; is that correct?

21 A Correct.

22 Q Okay. So do you recall -- and, again, it's a
23 long time ago -- why the team came together on or
24 around August 25, 2020?

25 A To make sure we accommodate her and give her

1 what she needs.

2 Q Okay. What do you remember -- do you
3 remember anything about this meeting?

4 A No.

5 Q Okay. Did you have input into goals and
6 accommodations?

7 THE HEARING OFFICER: She just -- are you
8 talking about the same --

9 MR. RATNER: No. We've moved on to tab 16.

10 THE WITNESS: I was part of the team, yes.

11 MR. RATNER: Okay. Thank you.

12 THE WITNESS: But, you know, input at that
13 point is going to be difficult for me because the
14 school year hadn't started, but I was part of the
15 team and listened to the needs of what we needed to
16 do.

17 BY MR. RATNER:

18 Q Right. So that was maybe your first
19 introduction to REDACTED as a student, the full discussion?

20 A That's fair to say.

21 Q Did you review the previous evaluations that
22 were done in her file?

23 A Before the meeting, I don't remember. I'm
24 sure I did.

25 Q What do you remember about -- again, I'm

1 trying to put you in a specific time frame so it may be
2 difficult, but from the first day of school until Mom
3 signed this on 9/25/2020, is that approximately three
4 weeks maybe from the first day of school until then?
5 Is that about right?

6 A Say that again, please. August --

7 Q Do you remember what the first day of school
8 was roughly?

9 A I know it's after Labor Day.

10 Q After Labor Day. Okay. So this is roughly
11 three weeks later, right?

12 MS. OWENS: When you say "this," Mr. Ratner,
13 what are you referring to?

14 THE WITNESS: 8/25.

15 BY MR. RATNER:

16 Q No. When Mom consented to it. I'm so sorry.
17 When Mom consented to it. It's on the last page.

18 A This document was written on 8/25. So it was
19 signed the following month.

20 Q Right. And so what I'm trying to focus your
21 attention on is that period from the first day of
22 school until before this became the operative document
23 for REDACTED

24 A Okay.

25 Q And you agree this did not become the

1 operative document until Mom signed, correct?

2 A On 9/25.

3 Q Right.

4 A Yes.

5 Q So what do you remember for school for REDACTED
6 in that first roughly three-week period?

7 A The first three-week period was virtual and
8 getting participation to happen was very difficult.

9 Q Did you have communications with Mrs. REDACTED
10 about that?

11 A Yes.

12 Q What do you recall about those
13 communications?

14 A We were in frequent communication, turning on
15 camera, getting participation to happen, doing what we
16 could to get her to participate so we could make
17 instruction successful. At first it was very hard to
18 get any participation in during that virtual time.

19 Q Did that ever improve during any part of the
20 virtual instruction?

21 A It did. It did. But it was still difficult.
22 It was still difficult to get work done but --

23 Q Yeah, and let me distinguish between two
24 issues, right?

25 A Okay.

1 Q I'm sure as a teacher teaching 21 students
2 virtually was very difficult. I can imagine.

3 A It was a learning experience, but I enjoyed
4 it. We made it happen. I'm pretty proud of what we
5 did virtually.

6 Q Absolutely. So there's that issue. But I'm
7 speaking more about if it improved for REDACTED, not
8 generally.

9 A At first we had zero participation to getting
10 camera -- to getting logged on, to getting camera
11 involved. So it did improve.

12 Q And how were you able to foster improvement,
13 if you were?

14 A Just trying to keep it positive, trying to
15 get her to want to come, listening to Mom about her
16 needs of what we had to make happen to get her to
17 participate.

18 Q And did you think Mom had a good
19 understanding of what were REDACTED's concerns and issues?

20 A Very much so.

21 Q Okay. You mentioned that your understanding
22 of REDACTED's needs were spelling and fluency. Did I say
23 that correctly?

24 A Yes. And, I mean, it went beyond what we had
25 in the IEP at that time, too. We tried to help her in

1 any way we could. I know at the beginning of the
2 school year it was very social emotional, anxiety and
3 new class situation, new class setting. It was very
4 much what do we need to do to be successful and get
5 participation.

6 Q Was there ever any bullying incidents with
7 REDACTED?

8 A There was one on her birthday a year ago
9 today.

10 Q All right. Well, we will come back to that.
11 But thank you for that.

12 I understand spelling issues. I don't have a
13 great understanding of what you mean by fluency. I'm
14 not trying to trick you or test you. I'm just not an
15 educator.

16 A No, you're fine. Fluency is the rate at
17 which children are reading. McCluskey took charge of
18 monitoring her fluency. So with me, since I have
19 that -- I don't want to say limited time because she
20 did leave her word study to time with McCluskey. My
21 time with her was making sure with reading that we're
22 comprehending and we're comprehending at a deeper
23 level; that's understanding the text and being able to
24 infer what the author has going on.

25 Q So just to make sure I understand, with

1 you -- when you were working with her on reading, could
2 you detect an issue with fluency and it's just that
3 that wasn't your focus?

4 A No. REDACTED tended to, like, get through three
5 sentences and then get a little choppy. But it did
6 improve over time, especially when she got more and
7 more comfortable as well. So I just meant progress
8 monitoring-wise, that was McCluskey.

9 Q Right.

10 A Fluency we worked on through the whole time.

11 Q Right. So you saw it yourself that there was
12 a fluency issue, not just that Ms. McCluskey told you?

13 A Correct. Correct.

14 Q Got it. And then the spelling, was that
15 something she struggled with all year?

16 A You know, with me she was really great at
17 using text to speech, using her spellcheck. So her
18 final copies were always typed, which I know we had
19 gotten in -- like that had come up before. So it
20 didn't impede her structure or creativity or
21 elaboration of her stories within writing and it didn't
22 impede her comprehension in reading and it did not
23 impede with math or with science as well.

24 Q Okay. So now I'm going to ask you to shift
25 gears a little bit. All of the rest of the books up

1 there are Parent books. There's a Volume 1, Volume 2,
2 and Volume 3. Do you see Volume 1?

3 A Yes.

4 Q I'd like you in tab 1 and then all the pages
5 are sequentially numbered at the bottom. Do you see
6 that?

7 A Yes.

8 Q So go to page 21. And it should be a color
9 exhibit so you'll know if you're on the right page.

10 A Yes.

11 THE HEARING OFFICER: Did you say Volume 1?

12 MR. RATNER: Volume 1, tab 1, page 21.

13 BY MR. RATNER:

14 Q Let me know when you have it.

15 A I'm here.

16 Q Do you recognize this document?

17 A This is not mine. This is not from fifth
18 grade.

19 Q I'm so sorry. I think you might be in the
20 wrong spot.

21 MR. RATNER: Do you mind if I help the
22 witness?

23 THE HEARING OFFICER: No.

24 MS. OWENS: Which Bates number is it?

25 MR. RATNER: It's number 21.

1 THE HEARING OFFICER: We're not on tab 1
2 anymore? Are we on tab 1?

3 MR. RATNER: Tab 1, right here. Parents' 21.

4 THE WITNESS: Got it.

5 MR. RATNER: I can help you as well.

6 THE HEARING OFFICER: It's on page 21?

7 MR. RATNER: Page 21, yes, ma'am.

8 Do you guys have it?

9 MS. OWENS: We do.

10 And Ms. Freeman, we would just point out that
11 we are reaching that 30-minute mark.

12 THE HEARING OFFICER: Thank you for pointing
13 that out. I looked at my watch as well. It seems
14 like we're off into five minutes after the 30
15 minutes is up.

16 How much more time do you think you need?

17 MR. RATNER: Quite a bit.

18 THE HEARING OFFICER: How much more?

19 MR. RATNER: I'm not sure.

20 THE HEARING OFFICER: Do you think 15 minutes
21 will do it?

22 MR. RATNER: No.

23 THE HEARING OFFICER: Okay. I'm giving you
24 another 15 minutes.

25 MR. RATNER: Okay. Thank you.

1 THE HEARING OFFICER: Go ahead.

2 BY MR. RATNER:

3 Q Do you recognize this document?

4 A Do I recognize it? Yes.

5 Q It's REDACTED's work, correct?

6 A This is not her work. This is a letter that
7 she gave to all the girls at the end of the school
8 year.

9 THE HEARING OFFICER: Are you still on 21,
10 page 21?

11 MR. RATNER: Page 21. I'm happy to help you
12 get there.

13 THE HEARING OFFICER: Mine goes to 109.

14 MR. RATNER: That has to do with the very
15 small print. You can see this really teeny ones.
16 You can't see them. It's really hard. It's our
17 fault. It didn't work out as well as I would have
18 liked. That's 27. So if you go back a little bit,
19 you'll get to 21.

20 THE HEARING OFFICER: Oh, the colored -- okay.
21 Go ahead. I'm ready.

22 BY MR. RATNER:

23 Q So let me put it differently. I'm not saying
24 this was an assignment.

25 Do you recognize this as REDACTED's work product?

1 A Yes.

2 Q And this was towards the end of the year of
3 your class?

4 A Yes.

5 Q Did she spell your name correctly?

6 A That is so common. Houston is spelled wrong
7 on the daily.

8 Q Okay. By people who have had you as a
9 teacher all year long don't know how to spell your
10 name?

11 A By colleagues. You would be surprised.

12 Q Did you ever try to tell REDACTED when she had
13 trouble spelling it, it's like the city?

14 A You know, it doesn't come up very often.
15 Believe it or not, it doesn't come up very often of
16 spelling my name correctly. They are not ever really
17 writing it. They are not seeing it. It's not part of
18 their everyday spelling. They are not writing Houston
19 at the top of the paper.

20 Q Let me ask a quick question about that. When
21 it was virtual, wouldn't your name be on the screen all
22 the time?

23 A I don't know.

24 Q Okay. How would you rate the spelling of the
25 handwritten text in here? Would you consider that a

1 work for a fifth grader at the end of the year?

2 MS. OWENS: I'm going to object to the extent
3 that this witness has testified that it wasn't work
4 as in a graded assignment. So you're
5 mischaracterizing the testimony that was previously
6 offered.

7 MR. RATNER: I haven't mischaracterized any
8 testimony. I asked her about the spelling in this
9 document.

10 THE HEARING OFFICER: But then you went on to
11 ask her more than that.

12 MS. OWENS: This is not assignment is what
13 Ms. Houston said.

14 MR. RATNER: I understand that.

15 BY MR. RATNER:

16 Q How would you characterize the spelling in
17 this document?

18 MS. OWENS: Object to relevancy.

19 THE HEARING OFFICER: What do you mean by
20 "characterize"?

21 BY MR. RATNER:

22 Q Would you say she's on grade level for
23 spelling with this?

24 A I'm going to look at a letter -- what I
25 grade -- the county rubric is out of 24 points. I look

1 at this and see a very kind letter.

2 Q Do you see somebody who is having trouble
3 with spelling?

4 A I see some vowel blends in here together
5 that -- but it's legible. I can read it.

6 Q Okay.

7 A I don't -- there's no spelling grades in
8 fifth grade that's just solely spelling. So I don't
9 even have a basis to say that on or a scale of how to
10 answer that question because grading is based on a --

11 Q Sure.

12 A -- for all students, a cumulative out of
13 25/24 rubric.

14 Q Right. Did you recommend REDACTED for any
15 advanced classes in middle school; do you remember
16 that?

17 A I don't remember.

18 Q If I said -- and I could find the email, but
19 if I said --

20 THE HEARING OFFICER: She said she doesn't
21 remember.

22 MR. RATNER: I'm trying to refresh her
23 recollection.

24 MR. ANDRIANO: Show her the email.

25 MR. RATNER: Pardon?

1 MR. ANDRIANO: Show her the email.

2 MR. RATNER: I'm working on it. I've got some
3 time limitations here so I'm trying to expedite
4 this.

5 THE HEARING OFFICER: Well, then go ahead and
6 show it to her, please.

7 BY MR. RATNER:

8 Q I'll come back to that.

9 A Okay.

10 Q Tab 16.

11 A Okay.

12 Q Page 6 -- 6 of 11. It's a School Board
13 exhibit.

14 A Tab 16.

15 Q In the School Board book. I'm so sorry.

16 A Okay. And what page, I'm sorry?

17 Q Page 6 of 11. Accommodations --

18 MS. OWENS: You said School Board Exhibit 16?

19 MR. RATNER: School Board Exhibit 16. So this
20 is counting against my time?

21 THE HEARING OFFICER: No.

22 BY MR. RATNER:

23 Q Do you have it there? I would be happy to
24 point you to it.

25 A Do you want 6 of 11? Is that what you're

1 saying? Am I on the right spot?

2 Q Yes.

3 A Okay. Awesome.

4 Q Yes, you are exactly on the right spot, and
5 I'm just asking about this accommodation.

6 A Okay.

7 Q Testing of reading -- reading of test items.
8 I'm sorry. Did I read that correctly?

9 A Yes.

10 Q Okay. And as a member of her IEP team, her
11 being REDACTED, did you agree that that was an appropriate
12 accommodation for her?

13 A This doesn't include reading.

14 MR. RATNER: I'm sorry. Ms. Freeman, I've got
15 a very limited time. It's a "yes" or "no"
16 question.

17 BY MR. RATNER:

18 Q Did you agree it was an appropriate
19 accommodation for her?

20 A Yes.

21 Q Thank you.

22 A But it's not including reading. I just
23 wanted to make sure that was --

24 Q Yes. I mean, the document speaks for itself.

25 A And it says like when audio is not available.

1 Q What does that mean?

2 A So if on her headphones on the -- if it's
3 mastery connect and audio isn't available, for
4 everything other than a reading test, she would -- it
5 would be read to.

6 Q Right. And so audio means she's not reading
7 it herself either, correct?

8 A Correct. But, again, that's on everything
9 except reading assessments.

10 Q So let's talk about the reading assessments.

11 A Okay.

12 Q Did you give her a DRA?

13 A I didn't give DRA's.

14 Q Do you know what a DRA is?

15 A Yes.

16 Q Have you given them before?

17 A Yes.

18 Q Did I understand it correctly that if a
19 student doesn't hit the fluency score of independent
20 you don't move on to the next DRA? Is that an accurate
21 description?

22 A That's an accurate description.

23 MS. OWENS: I want to object because this
24 witness has already testified that she has not
25 administered the DRA with REDACTED. So the question is

1 not relevant as pertains to this witness. If
2 Mr. Ratner has questions about the implementation
3 of the DRA for REDACTED then certainly that would have
4 been a question for Ms. McCluskey.

5 THE HEARING OFFICER: Sustained.

6 MR. RATNER: Okay. Just for the record, DRA's
7 are something that the school is relying upon as
8 progress, and I'm asking her about her knowledge.

9 THE WITNESS: McCluskey administered all the
10 DRA's.

11 BY MR. RATNER:

12 Q Do you recall a time in preparation for a
13 February 20, '21, IEP meeting, so the winter/spring of
14 REDACTED's fifth grade year?

15 A Yes.

16 Q Where Mrs. REDACTED asked for assignments that
17 REDACTED had?

18 A Yes.

19 Q And there was a pretty lengthy email exchange
20 about it? I'm happy to show it to you.

21 A I'm good.

22 Q You remember what I'm talking about?

23 A Yes.

24 Q What do you recall about that?

25 A She had asked for work samples. And, you

1 know, a lot of work had already gone home at this
2 point. So what we had and what I could give her, I
3 gave her.

4 Q Okay. And was there a point where you said,
5 you know, some stuff had been archived essentially?

6 A No. A lot of stuff went home.

7 MS. OWENS: Object to relevancy.

8 MR. RATNER: If I may.

9 THE HEARING OFFICER: If you may what?

10 MR. RATNER: Respond to the objection.

11 THE HEARING OFFICER: Oh, all right. Go
12 ahead.

13 MR. RATNER: The objection has to do with
14 relevancy. I'm trying to establish when the School
15 Board -- for example, she received all A's. The
16 Parents tried very hard to get -- see the work that
17 recommended those A's.

18 THE HEARING OFFICER: Which is why the mother
19 asked for it?

20 MR. RATNER: Right. And what she's saying is
21 she wasn't able to provide it.

22 THE HEARING OFFICER: I just heard her say --

23 THE WITNESS: I provided work --

24 THE HEARING OFFICER: She said she provided
25 work. It was sent home.

1 THE WITNESS: Work goes home for me
2 consistently. And then when she said she wasn't
3 getting it, the work that -- if it was online, that
4 was perfect and I could print it off and then some
5 I did have.

6 THE HEARING OFFICER: What does archived mean
7 anyway?

8 THE WITNESS: Like if it was done on a Google
9 doc, I could print a Google doc. Or if it was a
10 test for check or work was done on the computer, I
11 could print that off, but some of the worksheets
12 and stuff had already gone home.

13 BY MR. RATNER:

14 Q What is Lexia?

15 A Lexia is a program that the students work on
16 in my class. It's done during independent guided
17 reading. So while I'm in guided reading, our students
18 are working on Lexia.

19 Q Was that considered specialized instruction
20 for REDACTED?

21 A REDACTED did not participate in Lexia.

22 Q Oh, okay. Let's talk about the bullying
23 event. What happened on REDACTED's birthday last year?

24 A I didn't know it happened until the day after
25 REDACTED's birthday.

1 MS. OWENS: I'm going to object to relevancy.

2 THE HEARING OFFICER: Yeah, I heard some
3 reference earlier in your testimony about, oh, it
4 was a year ago.

5 THE WITNESS: Year ago today. So I knew about
6 it through Mrs. REDACTED.

7 THE HEARING OFFICER: Knew about what?

8 THE WITNESS: The incident on the playground.

9 MS. OWENS: I'm going to object to relevancy
10 of the question about bullying.

11 MR. RATNER: If I may be heard.

12 THE HEARING OFFICER: All right. What's the
13 relevancy of the incident on the playground, if
14 that's what you were referring to? Is that what
15 you're referring to?

16 MR. RATNER: I'm referring to the bullying
17 incident on the playground. That's right.

18 THE HEARING OFFICER: I heard you say it was a
19 bullying incident, but I didn't hear her say it was
20 a bullying incident. She just referred to her last
21 birthday, which was a year ago.

22 MR. RATNER: I would like to elaborate on what
23 we believe was a bullying incident because, as you
24 recall, Mr. Andriano yesterday --

25 THE HEARING OFFICER: Mentioned a bullying

1 incident.

2 MR. RATNER: Spent an excessive amount of time
3 about bullying.

4 THE HEARING OFFICER: Okay. That's your
5 opinion that it was an excessive time. But I do
6 remember that Mr. Andriano mentioned the bullying
7 incident at -- I'll allow it for the limited
8 purpose of explaining what happened on the
9 playground. If it's relevant at all, I'll make an
10 assessment later. But she did refer to it happened
11 last year, a year ago today. So let's hear what
12 happened a year ago today. Is that permissible?

13 MR. RATNER: Absolutely.

14 THE HEARING OFFICER: All right. Go ahead.
15 But if it doesn't relate to her education or if you
16 don't have any direct knowledge of it -- well, go
17 ahead.

18 MR. RATNER: This is a student with a
19 disability with anxiety related to school and she's
20 being --

21 MS. OWENS: There's been no testimony that --

22 THE HEARING OFFICER: Let's save the testimony
23 for -- I'm sorry, the concluding remarks for later.

24 MR. RATNER: Sure.

25 THE HEARING OFFICER: And let's hear, in

1 brief, exactly what happened on the playground, and
2 I'll decide if it's relevant or not.

3 THE WITNESS: I found out about it through
4 Mrs. REDACTED. I was unaware. It never came to my
5 attention. My girls were pretty close last year.
6 So I really was completely unaware of the
7 situation.

8 Then when Mrs. REDACTED let me know, we addressed
9 it with Mrs. Mottley, Mrs. Burnett. And I had
10 spoken to the girls, and I was told by them that it
11 was a miscommunication.

12 THE HEARING OFFICER: What was the last thing
13 you said?

14 THE WITNESS: It was a miscommunication of
15 what happened. It was -- I remember that someone
16 had said -- or there was claims of someone smelling
17 and falling on the playground and there was mulch
18 on her pants, and it was -- I was just trying to
19 get to the bottom of what happened. As we were
20 walking -- because we have this long stretch of
21 day, we would walk after every subject as a brain
22 break. When we were walking, I was talking to the
23 girls about it, which I should not have done
24 because I put the two together because they -- I
25 was told it was a misunderstanding, so --

1 THE HEARING OFFICER: Who told you it was a
2 misunderstanding?

3 THE WITNESS: REDACTED told me the next day that
4 it was a misunderstanding. But I understand that
5 she was anxious about it or nervous to tell me
6 after talking with Mom. I wanted her to feel
7 comfortable in my classroom, especially with my
8 girls because there was not a ton of them, so
9 just --

10 THE HEARING OFFICER: So you don't have any
11 personal knowledge of the incident other than what
12 you were told; is that correct?

13 THE WITNESS: And then what became of it.
14 Because I put the bully and the victim together, so
15 there was, you know, disciplinary action for
16 putting the victim and the bully together because I
17 was --

18 MS. OWENS: This is again not relevant to the
19 due process hearing.

20 THE HEARING OFFICER: Okay. I don't think I
21 need to hear anymore.

22 MR. RATNER: Fair enough. May I have -- I
23 have one more document to ask about.

24 THE HEARING OFFICER: Yeah, go ahead.

25 MR. RATNER: Great. Thank you.

1 BY MR. RATNER:

2 Q So Parents' Volume 1, tab 32, there's a lot
3 of emails in there, and using those numbers I was
4 referring to before, if you could go to 377. And I'm
5 happy to help you get there if you need. And there's
6 two sets of numbers, but I'm looking at the bottom one.
7 They go in order. So it says Parents 377.

8 Do you have it there?

9 A Yes.

10 Q That looks like a start of an email thread.

11 MR. RATNER: Do you have it, Patrick?

12 MR. ANDRIANO: Tab 32?

13 MR. RATNER: Tab 32.

14 MR. ANDRIANO: I know that there's gaps on the
15 Bates labels.

16 MR. RATNER: I don't think so.

17 MS. RATNER: It's that miniature writing. I'm
18 sorry about that. If you can see --

19 MR. RATNER: Volume 1.

20 MR. ANDRIANO: What page?

21 MS. OWENS: What's the Bates number?

22 MR. RATNER: The Bates number is REDACTED 946,
23 but the consecutive -- and I'm not seeing any small
24 print here -- is 377.

25

1 BY MR. RATNER:

2 Q Do you have that?

3 A I'm right here.

4 Q So I'm going to ask you to go all the way to
5 382, and that's the full thread, and then I will ask
6 you some questions about it.

7 Do you understand what I'm asking?

8 A Okay. So this is the start of the thread,
9 responses --

10 THE HEARING OFFICER: 382?

11 BY MR. RATNER:

12 Q Do you agree that that's the entirety of the
13 thread? Just read it over, and let me know when you're
14 ready to answer a few questions about it.

15 A Just ask the question. Just ask me the
16 question.

17 Q Is this an email chain between you --

18 A Yes.

19 Q -- and Mrs. REDACTED?

20 A Yes, it is.

21 Q And this is referring to her request for
22 REDACTED's work --

23 A Yes.

24 Q -- so they could verify the grades --

25 A Got it.

1 Q -- that she was being told --

2 A Yes.

3 Q -- she received; do you recall that?

4 A Yes.

5 MS. OWENS: I'm sorry. Could you allow him to
6 ask the complete question.

7 THE WITNESS: I'm sorry.

8 MS. OWENS: No problem. I just wanted to make
9 sure the record --

10 MR. RATNER: Ms. Freeman, are you there in
11 your book?

12 THE HEARING OFFICER: I think so. I'm on 382.

13 MR. RATNER: That's the last page of the --

14 THE HEARING OFFICER: And then you want me to
15 move backwards?

16 MR. RATNER: Right. So the entirety of the
17 communication --

18 THE HEARING OFFICER: I follow you.

19 MR. RATNER: -- is 377 to 382. And that's
20 what I'm going to be focusing on.

21 THE HEARING OFFICER: Okay.

22 BY MR. RATNER:

23 Q So on 382 at the top of the page,
24 February 15, 2021, at 10:26 p.m., you were working
25 hard, which I'm sure everybody can appreciate, you

1 wrote: I'm sorry. I am confused what you are asking
2 for. All of her work?

3 Is that right?

4 A Correct.

5 Q And I'm not trying to cut it short. Read it
6 any more that you think is necessary for context, but
7 that's the start of this thread, right?

8 A This looks like the end of the thread.

9 Q Okay. It's going actually beginning to end
10 because it looks like --

11 A The first page -- okay. I see what you're
12 saying.

13 Q So that's the first email and then the
14 response is above it and then above it and then above
15 it.

16 A Got it.

17 Q Do you agree? I mean, if you don't agree,
18 that's fine.

19 A Can I look at this for a second?

20 Q That's what I asked you to do.

21 A I'm sorry. I thought I had it going
22 backwards. Okay. We're good.

23 Q Okay. And then does Mrs. REDACTED indicate to
24 you -- we're now on page 378, 379 --

25 MS. OWENS: So I would like to point out that

1 this exhibit, it has at the bottom -- 374 has the
2 word "packets from," and then on the following
3 page, there's a new email. So it doesn't appear to
4 be an entire chain.

5 MR. RATNER: I'm so sorry. I think we have
6 discretion to arrange our exhibits however we want.

7 MS. OWENS: You're asking the witness whether
8 this is the email chain. I think it's a
9 legitimate --

10 MR. RATNER: Right. I asked her to start --
11 that was the first question I asked, and if
12 everyone could just please take a minute to listen
13 to what I'm saying and review the document.

14 THE HEARING OFFICER: Okay. You're starting
15 at 377?

16 MR. RATNER: I'm starting at 377 to 382.

17 THE HEARING OFFICER: And you want her to
18 acknowledge --

19 MR. RATNER: And I think that's the full
20 chain. That's what I asked her. There are
21 documents before it in this tab that are not part
22 of that chain. That's not what I'm asking about.

23 THE HEARING OFFICER: Okay.

24 MS. OWENS: So you're asking the witness about
25 this February 17, 2021, email, but this is not the

1 complete email.

2 MR. RATNER: What I see starting on page 377
3 is a thread that Mrs. [REDACTED] forwarded to
4 Mr. Mueller. It is a chain from Ms. Houston to
5 Mrs. [REDACTED]. The last communication is February 16,
6 2021. The earliest communication in the thread is
7 February 15, 2021. That is a complete email chain.
8 I don't know how else to say it any clearer.

9 THE HEARING OFFICER: I have Thursday,
10 February 18, and then I have February 16 --

11 MR. RATNER: Right.

12 THE HEARING OFFICER: So that doesn't --

13 MR. RATNER: Right.

14 THE HEARING OFFICER: It's taken out of order,
15 though.

16 MR. RATNER: Well, no. It goes backwards. If
17 you'd start with the last one --

18 THE HEARING OFFICER: Okay. February 16 and
19 then --

20 MR. RATNER: I think Ms. Owens could
21 absolutely ask questions about this but --

22 MS. OWENS: But if you're asking the witness
23 to testify that this is the email chain, which I
24 believe is the question you had pending for
25 Ms. Houston, I'm pointing out that this does not,

1 on its face, appear to be the entire email chain,
2 and we don't know what the entire document is
3 because it's not included here.

4 MR. RATNER: I don't know how to disagree with
5 that more strongly. It is the entire email chain.
6 And if I would have a chance to ask Ms. Houston
7 about it, we could establish that she sent these
8 emails. She already acknowledged she sent the
9 first one.

10 THE HEARING OFFICER: Did you send these
11 emails?

12 THE WITNESS: The ones that say From are
13 definitely from me.

14 BY MR. RATNER:

15 Q And the ones that say they are from
16 Mrs. REDACTED were received you?

17 A No, they are --

18 Q Received by you.

19 A Received by me, yes, and this is my response.

20 Q So this does represent a communication --

21 A Sure.

22 Q -- between you and Mrs. REDACTED --

23 A Yes.

24 Q -- with her asking for grades; is that
25 correct?

1 A Correct.

2 Q Okay.

3 MS. OWENS: Again, Ms. Freeman, our concern
4 with this is that it does not appear to be the
5 entire email chain based on Exhibit 374, which ends
6 with an incomplete sentence there.

7 THE HEARING OFFICER: I'm going to ask
8 Ms. Houston. Do you feel as if this is the
9 complete email chain or not?

10 THE WITNESS: I definitely remember having
11 this email with her.

12 THE HEARING OFFICER: I'm going back to 373.

13 MR. RATNER: 374 is completely unrelated to
14 this document. We put multiple emails in an
15 exhibit --

16 THE HEARING OFFICER: What do you think,
17 Ms. Houston?

18 THE WITNESS: I'm kind of -- I'm confused.
19 I'm sorry.

20 THE HEARING OFFICER: Does it look like
21 what --

22 THE WITNESS: Sure.

23 THE HEARING OFFICER: -- the discourse --

24 THE WITNESS: Absolutely. I don't know if
25 it's the whole thing, but this is definitely a

1 conversation I had with Mrs. REDACTED, yes.

2 THE HEARING OFFICER: When you say "I don't
3 know if it's the whole thing," what is it that's
4 missing?

5 THE WITNESS: I mean, we were just in constant
6 communication. I don't know --

7 THE HEARING OFFICER: If anything preceded or
8 followed it?

9 THE WITNESS: Sure.

10 THE HEARING OFFICER: But for what you're
11 seeing right now, does this appear to be an email
12 that Mrs. REDACTED sent to you, these documents?

13 THE WITNESS: Yes. Absolutely.

14 THE HEARING OFFICER: To which she responded
15 and then you communicated back?

16 THE WITNESS: Yes.

17 THE HEARING OFFICER: All right. Go ahead.

18 MR. RATNER: Thank you.

19 BY MR. RATNER:

20 Q So, again, I was trying to direct your
21 attention to what I would describe as a table, for lack
22 of a better word, that starts at the bottom of page 947
23 and continues on to 948 and 949.

24 Do you see what I'm talking about?

25 A Yes. Sure. Absolutely.

1 Q And this was Mrs. REDACTED indicating she spent
2 time hunting and printing and these were things she was
3 not able to find. Is that what she's stating here?

4 A The email starts with, on the first page you
5 had me turn, was me saying I was confused as to what
6 work she wanted. So I did ask for what she wanted. I
7 wrote down that I pride myself that parents receive
8 feedback that day or within two days. So I didn't know
9 what work we were talking to because I thought we were
10 kind of moving back and forth between work. Then I'm
11 answering the question of Canvas -- because it does get
12 confusing, so obviously there's going to be -- I get
13 it, as a parent -- what was on Canvas and what was on
14 paper during that time. So that's why she made this
15 chart.

16 Q Okay.

17 A And that's clearly stated in the email of
18 understanding what she's looking for because I did not
19 know.

20 Q Right. And this was just her trying to
21 explain it to you, right?

22 A And us communicating.

23 Q Yes. Exactly. I'm not trying to make it
24 anything beyond that.

25 Then we get to what will be the last email

1 that I'm going to ask you about.

2 Ms. Owens may contend it's not part of the
3 complete thread, and that's for the Hearing Officer to
4 decide.

5 THE HEARING OFFICER: Just ask her the
6 question and no commentary, please. Were you going
7 to ask her a question?

8 MR. RATNER: Yes, I'm trying to.

9 BY MR. RATNER:

10 Q So on February 16, 2021, you wrote: All of
11 REDACTED's work and Google forms have been printed. The
12 reason some were blank on Canvas was they were
13 completed during work study skills with Ms. McCluskey.
14 Copies can be found in her drive if they were printed.

15 Did I read that correctly? So it's 377.

16 A Okay. Okay. 377. On my 377, I have
17 Thursday, February 18.

18 Q And then you look down to the next email --
19 no, same page. Do you see from Elizabeth Houston sent
20 to -- it's right below -- subject F-W --

21 A Yes, I do.

22 Q Do you see that there?

23 A Yes.

24 Q F-W -- do you use email? I mean, if we are
25 going to have trouble about what this thread means, I

1 have to ask her if she understands --

2 A At the top I was seeing from REDACTED and
3 I had the wrong dates.

4 Q But you understand the forward and this was a
5 forward?

6 A Correct. I know what that forward is.

7 Q So you agree you sent this email to
8 Mrs. REDACTED?

9 A Yes.

10 Q And did I read that first paragraph
11 correctly?

12 A All of REDACTED's work and Google forms have been
13 printed.

14 Is that what you're asking?

15 Q Yes, that was my first question.

16 A Yes.

17 Q Then I would like for you to read the second
18 paragraph.

19 A You asked for the true grades --

20 MS. OWENS: I'm sorry, Ms. Freeman, is he
21 asking the witness to read --

22 THE HEARING OFFICER: Just ask her a question,
23 if you would, please. I can read it.

24 MR. RATNER: Okay. Great.

25

1 BY MR. RATNER:

2 Q What does it mean that the true grade on the
3 geography quiz was a 44 and I put it in as a 50?

4 A I believe that got switched after that, as
5 well. But we were not putting in below a 50 when a
6 child failed something to make sure we didn't have a 60
7 point bottom. But if you go back in the grade book
8 now, it is a 44 after we discussed that she wanted her
9 failing grades to be in.

10 Q And I appreciate that, but I just want to
11 make sure I understand that at this time, right, her
12 grade actually would be higher than what she earned?

13 A They were both failing grades. 44 and a 50
14 are both failing grades.

15 MR. RATNER: Ms. Freeman, I'm so sorry, I
16 hadn't finished my question.

17 THE HEARING OFFICER: All right. Go ahead.

18 BY MR. RATNER:

19 Q I understand they are both failing grades,
20 but you do agree that a 50 is higher than a 44,
21 correct? And that would affect her average because
22 it's based on the scores?

23 A A 44 to a 50 isn't going to have -- it's a
24 fail to fail.

25 Q You understand average?

1 A I understand how an average works.

2 MS. OWENS: Asked and answered. We
3 understand --

4 THE HEARING OFFICER: Asked and answered.
5 Sustained. Let's move on.

6 THE WITNESS: Also in the grade book right now
7 it's stated as a 44.

8 THE HEARING OFFICER: A fail is a fail.

9 THE WITNESS: A fail is a fail. It went in as
10 a 44. In the grade book, final grade, it went in
11 as a 44 after having that discussion of this grade,
12 so, yes.

13 MR. RATNER: That is all I have.

14 THE HEARING OFFICER: All right.

15 MS. OWENS: Can we maybe have about a 5-minute
16 break?

17 THE HEARING OFFICER: Let's see, come back at,
18 say, 11:50.

19
20 (Break taken.)

21
22 THE HEARING OFFICER: Mr. Andriano, did you
23 want to do your cross now and get it over with and
24 then we will go to lunch, or do you want to delay
25 until after lunch?

1 MS. OWENS: I guess we can go ahead and finish
2 up with Ms. Houston. I will also say again,
3 Ms. Freeman, that Ms. Houston is a witness that's
4 on both --

5 THE HEARING OFFICER: Joint witness.

6 MS. OWENS: On both witness lists.

7 THE HEARING OFFICER: You get a chance after
8 she's done to ask follow-up questions. I think the
9 best way to handle the joint witness would be to --
10 both of you have the opportunity to do follow-up,
11 but make it brief, if you would, please.

12 MS. OWENS: So we were going to reserve the
13 right to call Ms. Houston back.

14 THE HEARING OFFICER: Oh, okay. All right.
15 As long as that's on the record and you remind me
16 of it, that would be great. So go ahead.

17

18 CROSS-EXAMINATION

19 BY MS. OWENS:

20 Q Ms. Houston, I just have a few follow-up
21 questions from the testimony that -- with regard to the
22 testimony that you previously provided.

23 You mentioned REDACTED's performance during
24 virtual instruction her fifth grade school year.

25 A Uh-huh.

1 Q How participatory was [REDACTED] in virtual
2 instruction?

3 A Not very.

4 Q Now, is it -- would you say that she refused
5 to participate in instruction or would there be another
6 reason?

7 A There was work refusal. Beginning of it was
8 just getting her to participate at all and then it was
9 getting the camera on and then it was what we were
10 doing during that virtual time. I know we had
11 communication that -- it's in a binder -- if there was
12 Play-Doh, if there was another screen, and we were
13 trying to --

14 Q When you say "whether there was Play-Doh,"
15 what does that mean?

16 A She was so creative, very art-driven child,
17 and she would be making a beautiful sculpture.

18 Q And to be clear, the use of the Play-Doh
19 would not have been part of the instruction that was
20 being provided at the time?

21 A No.

22 Q It was her own creative project outside of
23 what was happening at school?

24 A Correct.

25 Q Did you observe any other things that [REDACTED]

1 was doing during instructional time that wasn't related
2 to the instruction that was being provided?

3 A Yes.

4 Q Could you give us examples.

5 A A lot of times in the background, there was
6 something else she was watching, like another iPad or
7 just something else up that was distracting her
8 attention. She would have her camera on and I would
9 ask her something, and she didn't know I was talking
10 because I was muted or she was just distracted by
11 something else.

12 Q And during that time, do you know whether
13 REDACTED's parents were at home doing virtual instruction
14 with her?

15 MR. RATNER: Objection. Relevance.

16 MS. OWENS: I just said does she know.

17 MR. RATNER: I said, relevance. I don't
18 understand the relevance of if her parents were
19 home. That doesn't have anything to do with
20 anything.

21 BY MS. OWENS:

22 Q You mentioned that they were in -- that you
23 were in communication with Mrs. REDACTED. I just wanted
24 to know whether that was because Mrs. REDACTED was present
25 and she -- was she present during the time in which --

1 A I did not see her.

2 MS. OWENS: Okay.

3 THE HEARING OFFICER: I think she changed the
4 question enough that it's fine. All right. So
5 overruled at this point. Go ahead.

6 BY MS. OWENS:

7 Q You indicated that REDACTED would be muted on
8 occasion. Who would -- how would she become muted?

9 A She just -- you can turn down the volume of
10 me or not hear what was -- the session that was
11 happening.

12 Q So it wasn't coming from your end. It was
13 REDACTED 's end?

14 A Correct.

15 Q She was muting?

16 A Correct.

17 Q And would she ever terminate the session that
18 you are aware of?

19 A Yes.

20 Q How would you become aware that REDACTED had
21 terminated the session?

22 A It would just say call ended, and I would
23 in-box her and ask her to jump back on.

24 Q And would you get a response from REDACTED?

25 A At times. She would just say, I'm sorry. Or

1 she would pop back on later.

2 Q And so was she -- when she would terminate
3 the video, how frequently would she rejoin or would she
4 often not rejoin?

5 A I'm going to say more often than not.

6 THE HEARING OFFICER: More often than not to
7 what?

8 THE WITNESS: To not come back on. It did get
9 better, especially when we went back virtual after
10 we had that relationship built, but there was still
11 work refusal and there was still that, you know,
12 distraction piece that was there.

13 BY MS. OWENS:

14 Q Okay. And Mr. Ratner also asked you
15 questions about the DRA, and you indicated that you
16 didn't administer the DRA?

17 A Correct.

18 Q You also indicated that you had your own
19 method for recording progress?

20 A Yes.

21 Q Is that accurate?

22 A That's accurate.

23 Q Could you describe what was your method of
24 recording progress with regard to reading?

25 A Sure. I used Fountas & Pinnell for my

1 informal assessment. I don't turn this in. It doesn't
2 go to Lineweaver. It doesn't go to admin. It's my own
3 personal progress-monitoring tool. And I started using
4 Fountas & Pinnell after training in Florida and I
5 earned the kit. And I prefer it just because I can
6 really monitor not only like comprehension recall, but
7 to go forward you have to be able to read beyond the
8 text as well. So it's my own personal recordkeeping I
9 do for everybody. Everyone starts the beginning of the
10 year with a where to start list, and it's just a word
11 list and that's where I start my testing.

12 Q So you mentioned that you use this Fountas &
13 Pinnell. How else would you measure REDACTED's progress in
14 your class?

15 A Definitely with classwork and with
16 assessments. I kept a lot of anecdotal records on, you
17 know, when it came to other subjects, too, just making
18 sure that they are understanding the text. I'm going
19 to get that with grades earned on classwork and grades
20 earned on assessments and conversations with text and
21 things like that. The Fountas & Pinnell is just one
22 snippet tool.

23 Q Okay. Would you also use her grades as a
24 measure of progress?

25 A Absolutely.

1 Q And if I could direct your attention to
2 what's been marked as School Board Exhibit Number 53.

3 A Okay.

4 Q And what is this document?

5 A This is her report card. End-of-the-year
6 report card.

7 Q And these would have been REDACTED's grades while
8 in your classroom?

9 A Yes, ma'am.

10 Q And based on her academic performance, how
11 did she perform overall in your class?

12 A She did great. She really did great
13 especially when we got in person. You can see the
14 shift from virtual to in-person for sure once that
15 relationship and community was established.

16 Q And there was some discussion during your
17 testimony about REDACTED's -- I guess when she had a 44 on
18 an assignment and was -- and the grade book initially
19 reflected a 50?

20 A Yes.

21 Q Was that part of the county's practice?

22 A The county's practice was nothing below a 50
23 to kind of raise the bottom because you have 60 points
24 to fail something. So the county said 50 percent for a
25 failing grade.

1 Q Was that -- so this was not something unique
2 to REDACTED?

3 A No. It was the whole county.

4 Q And you've also testified that you had
5 communications with Mrs. REDACTED about that grade?

6 A Yes. And also I wanted to make sure her
7 grades reflected what was earned. So in those emails
8 we were looking at earlier, I would put -- I just
9 wouldn't -- if there was work refusal, especially at
10 the beginning of the year, I just -- I didn't count it
11 as a zero and I didn't count it as a 50. It was not
12 averaged in. So her grades were a true reflection of
13 the work done.

14 Q So what about -- when school reopened and for
15 in-person learning --

16 A Okay.

17 Q -- would you say that the grades that REDACTED
18 has is an accurate reflection of how she performed in
19 your classroom?

20 A Yes.

21 MR. RATNER: Ms. Freeman, if I could just
22 briefly, I think this is largely beyond the scope
23 of what I asked. I don't mind giving latitude as
24 long as I --

25 THE HEARING OFFICER: A chance to respond.

1 You were going to have a chance to do follow-up.
2 I'm not exactly certain what it would be, redirect
3 or recross, but you were going to have that
4 opportunity. But it does seem to me that we went
5 into most of these areas with you.

6 MR. RATNER: Okay.

7 THE HEARING OFFICER: All right. Go ahead.

8 MS. RATNER: I mean, we respectfully disagree.
9 We have a lot of documentation and just ran out of
10 time.

11 THE HEARING OFFICER: I'm sorry. Note
12 counsel's objection on the record, please.

13 Go ahead.

14 THE WITNESS: McCluskey's grades never go in
15 my grade book. All of that goes on the IEP
16 progress report. This is solely fifth grade
17 classwork and fifth grade performance.

18 BY MS. OWENS:

19 Q Based on -- would you say it's based on the
20 fifth grade curriculum?

21 A Yes. Same grade book for every student in my
22 class.

23 Q Would you say that REDACTED's grades were
24 inflated?

25 A No.

1 MS. OWENS: Thank you. I have -- one moment.
2 I'm sorry. I just want to make sure.

3 I have no further questions for the witness.
4 Thank you.

5 THE HEARING OFFICER: Go ahead, Mr. Ratner or
6 Ms. Ratner.

7 MR. RATNER: Thank you so much.

8

9 CROSS-EXAMINATION

10 BY MR. RATNER:

11 Q Let's just stay on the report card for a
12 minute. Do you still have that in front of you?

13 A Yes.

14 THE HEARING OFFICER: Is that 53?

15 MR. RATNER: School Board 53.

16 BY MR. RATNER:

17 Q So this is an open-ended question. I just
18 want to understand.

19 Do students get a quote-unquote year-end
20 grade in each of these or is it just quarter by
21 quarter?

22 A Quarter by quarter.

23 Q So at least at the end of the first semester,
24 or first marking period, I should say, first nine
25 weeks, REDACTED was failing multiple classes; is that

1 right?

2 A Yes.

3 Q And then what Mrs. REDACTED was trying to
4 understand in asking to see the work was how the grades
5 had improved so much. Is that your understanding?

6 A Yes.

7 Q Okay. And do you have any examples in any of
8 these books -- like you said, you had your own Fountas
9 & Pinnell -- that show quote-unquote a work?

10 A Absolutely. And also, too, that first
11 quarter, there was a lot of work refusal. That F is
12 because I didn't have -- I know we even had to give an
13 extra week because the county ended a week early before
14 we switched. A lot of it was work refusal. We weren't
15 getting it. So it seems super drastic, but we weren't
16 getting participation at first. Once we got in person,
17 things were rolling. What example -- I don't know how
18 to -- you want like writing or --

19 MS. OWENS: Mr. Ratner, are you referring the
20 witness to a document?

21 MS. RATNER: I'm sorry. We're just trying to
22 figure something out, if you can give us a minute,
23 please.

24 THE HEARING OFFICER: Are we still on 53?

25 MR. RATNER: Yes. I'm sorry.

1 THE WITNESS: You're fine.

2 BY MR. RATNER:

3 Q We'll move on. I had asked you, and if you
4 don't know, I don't expect you to study all these
5 books.

6 MS. OWENS: Which book are you referring to?

7 MR. RATNER: All of the books in front of her.

8 THE WITNESS: I know that we had submitted a
9 writing sample.

10 BY MR. RATNER:

11 Q Who is "we"?

12 A Well, I was asked to give a document like
13 would have been an example of work, and I said, here.
14 It's in the binder. I don't know what binder it's in.

15 Q Do you remember what it was about or
16 anything?

17 A We put Wilma Rudolph in there.

18 Q Oh, Wilma Rudolph.

19 A But not the Wilma Rudolph that you directed
20 me to earlier.

21 MS. OWENS: That's School Board Exhibit Number
22 52.

23 BY MR. RATNER:

24 Q Well, I would like to ask you about in
25 Parents' Exhibit 1 and then we can compare it to School

1 Board Exhibit 52.

2 So the Wilma Rudolph that I'm asking about is
3 at Parents' Exhibit Number 1. And it will just take me
4 a minute to get there so if you will bear with me.

5 So it starts -- again, the numbers are
6 really, really tiny that go consecutive, but it's the
7 number that you can read more easily. You see Parents'
8 114, and then go to the next page and you will see a
9 drawing. I think you're on it right now.

10 MS. OWENS: REDACTED 109?

11 MR. RATNER: REDACTED 109.

12 THE WITNESS: This is not from fifth grade.

13 This one in the binder is not ours. Our final
14 product of this -- this is not my rubric. It's not
15 my planning sheet.

16 BY MR. RATNER:

17 Q Okay. So if I could just ask a few questions
18 about that.

19 A Sure.

20 Q Did she study Wilma Rudolph in fourth grade;
21 do you know?

22 A I let them choose who they wanted from the
23 Influential 44 book from the Undefeated. She got to
24 pick anyone she wanted. I didn't ask if they had
25 researched them before.

1 Q And, again, I'm just trying to understand.

2 In your opinion or what your recollection is,
3 have you ever seen this document?

4 A This is not mine, no.

5 Q I'm not asking if it's yours. I'm asking if
6 you have ever seen it before.

7 A When I had to look at the exhibit binder.

8 Q When was that?

9 A Tuesday.

10 Q Okay. So REDACTED ED 113, which does go in
11 numerical order --

12 THE HEARING OFFICER: 113?

13 THE WITNESS: That's not a rubric I would use.

14 BY MR. RATNER:

15 Q Do you recognize that?

16 A No.

17 Q It was in her educational file, if that helps
18 you.

19 A I only give the county rubric on writing, the
20 final piece of writing. In this work, in particular,
21 she had a video. She put her voice on it. She had a
22 slide show.

23 Q So I'm just trying to make sure I get as
24 clear an understanding of this as I can.

25 A Okay.

1 Q So when you say this isn't mine, you're
2 saying what's at Exhibit 52 in the school book, which
3 is a typewritten thing that's dated 2/25/21?

4 A I'm looking at my rubric on this and, yes,
5 2/25/21.

6 Q Okay. It's the fourth page of that document
7 is the typed --

8 A Yep.

9 Q Now, you're saying this was the example of a
10 work, correct?

11 A Yes.

12 Q Okay. And this is what you're saying is
13 quote-unquote yours?

14 A She got a 22 out of 24 on this.

15 Q Who typed this; do you know?

16 A She did.

17 Q Did you see her type it?

18 A Yes.

19 Q Okay. She did it all in class?

20 A Oh, yeah. And we had writing conferences on
21 it, just like I do with everybody.

22 Q Okay. And you're -- I just want to make sure
23 when you say that the thing in Parents' binder, tab
24 number 1 also about Wilma Rudolph, it's your testimony,
25 I'm just trying to understand, that this has nothing do

1 with this assignment?

2 A Nothing to do with it. I have never given
3 this graphic organizer, would never give it, and I'm
4 only using county rubrics of that year.

5 Q Okay. Thank you for clarifying that. That's
6 very helpful.

7 Let me ask, you mentioned Fountas & Pinnell.

8 A Okay.

9 Q You mentioned before -- and I don't want to
10 get into any communications you had with School Board
11 attorneys, but when you said you presented this Wilma
12 Rudolph, did they ask you about it?

13 A No. To be totally --

14 MS. OWENS: I'm going to object. Relevancy as
15 to what the witness spoke to --

16 THE HEARING OFFICER: You did ask about Wilma
17 Rudolph, I believe, didn't you?

18 MS. OWENS: But to the extent that Mr. Ratner
19 is asking --

20 THE HEARING OFFICER: What was your --

21 (Simultaneous speaking.)

22 MS. OWENS: -- about School Board counsel's
23 conversations --

24 MR. RATNER: No. I just said I didn't want to
25 get into her counsel's conversations. What I'm

1 asking about is the Fountas & Pinnell --

2 THE HEARING OFFICER: I heard you ask about
3 the Fountas & Pinnell.

4 THE WITNESS: I asked for this piece to be in
5 there because I saw -- I saw this on the Facebook
6 post, and I got upset that it wasn't mine.

7 THE HEARING OFFICER: You saw what?

8 THE WITNESS: I saw this piece of writing -- I
9 saw this and I was like --

10 THE HEARING OFFICER: What is "this"?

11 THE WITNESS: The final piece of 110.

12 THE HEARING OFFICER: Oh, okay. Let me go
13 back to that.

14 THE WITNESS: And I wanted to make sure that
15 the fifth grade version was presented.

16 MR. RATNER: I'm ready to ask --

17 THE HEARING OFFICER: And you say she typed
18 this?

19 THE WITNESS: Exhibit 52, yes, she typed it.

20 MR. ANDRIANO: School Board 52.

21 THE WITNESS: School Board 52. And this one I
22 had Lineweaver grading the same rubric, and I think
23 mine was a harder grade than hers was. So this was
24 her final product. We just don't have the video to
25 go with it.

1 BY MR. RATNER:

2 Q Where would that be found?

3 A I can give it to you now.

4 Q No, just I'm curious.

5 A I sent all the parents the presentation, and
6 I also made QR codes and had museum in the hallway.
7 But it's still on my drive. I showed my class this
8 year what they did last year.

9 Q Do you remember -- how would you say REDACTED was
10 as a typer? Did you ever have to say how many words
11 per minute she could type or anything?

12 A She was awesome. She did great. She was a
13 great typer. She did fabulous. I didn't have to help
14 her with typing.

15 Q Do they work on cursive writing in
16 Chesterfield County Public Schools?

17 A It's a second grade standard.

18 MS. OWENS: I object. This is beyond the
19 scope of my cross-examination.

20 THE HEARING OFFICER: It's beyond the scope.
21 Sustained. Go ahead.

22 BY MR. RATNER:

23 Q Did REDACTED use any voice to text on this Wilma
24 Rudolph assignment?

25 A I'm sure she did.

1 Q Please explain to Ms. Freeman what that
2 means. She may have a good understanding of it, but --

3 THE HEARING OFFICER: What is it you're going
4 to be explaining to me?

5 THE WITNESS: Voice to text, text to speech.

6 THE HEARING OFFICER: All right. Go ahead.

7 THE WITNESS: I've heard it called both
8 things.

9 She didn't use it for the entire paper, but if
10 there was something that she wanted to spell out
11 or, you know, type up, she could. But she really
12 was always cognizant of people -- she loved doing
13 things independently, like she really, really did.
14 Her greatest strength, too, and I'll admit this,
15 she knew how to get the word close enough where
16 spell check would help her where spelling was never
17 impeded because we were typing.

18 BY MR. RATNER:

19 Q So back to the Fountas & Pinnell for a
20 second.

21 A Sure.

22 Q Are there written assessments similar to the
23 DRA for Fountas & Pinnell?

24 A It's very, very similar. And the reason I
25 chose to use it was, in order to go the next level, you

1 had to think beyond the text. It was a little bit
2 deeper comprehension because that's what I'm really
3 looking for. My small groups are based on reading
4 skill, but I always want to make sure I'm monitoring
5 that comprehension. So it's my own personal tool.

6 Q Do you have those in a file somewhere for
7 REDACTED?

8 A Somewhere.

9 Q Okay.

10 A But, again, I never turn these in. I
11 never -- it's my own personal "this is where you are
12 small victory."

13 MR. RATNER: No, I understand completely.

14 I would ask if we could get a stipulation that
15 we didn't receive those; they were her personal
16 documents.

17 MR. ANDRIANO: (Indicating.)

18 MS. RATNER: There are other types of leveled
19 readers in there. And Anne Mickey, I have it in an
20 email, she said that they do not have any Fountas &
21 Pinnell.

22 MR. RATNER: That's great. I would love to
23 ask her about that. I've got it in color. It's
24 Parents 73.

25 THE HEARING OFFICER: Is that in Volume 1?

1 MR. RATNER: No, it's in Volume 3. I can help
2 you if you want.

3 THE WITNESS: I didn't hear you.

4 MR. RATNER: 73. Volume 3, which is right
5 here.

6 THE HEARING OFFICER: Thank you.

7 MR. RATNER: You're welcome.

8 BY MR. RATNER:

9 Q This was the only reference to Fountas &
10 Pinnell that I saw. Is this your log?

11 A Yeah. And all the other students would be on
12 the same log. And, again, I would just kind of record
13 keep along the school year to make sure I'm doing what
14 I can for every student. So you'll see that where it
15 starts, it gives you a word list. So I wrote down Q
16 because that's where we started and that was her first
17 assessment.

18 Q Okay.

19 A And then --

20 Q Because I just see one line for REDACTED. Am I
21 reading that right?

22 A Well, we deleted the other students.

23 Q Right. That's what I mean. So each student
24 just has one line?

25 A Everyone gets one line. I think even this

1 year, I've already -- I've done it three times.

2 Q So do you write over it then? That's what
3 I'm trying to understand.

4 A I don't write over it. It keeps going to the
5 right. So the beginning -- if you click and drag, you
6 will see, like, the exact dates. So it looks like one
7 was like 10/26 and she ended on -- I first tested her
8 on an S, which is where I would -- I thought what we
9 were, but she even went to a level T.

10 Q So what's a level S?

11 A You're in the fifth grade range.

12 Q And that's on Fountas & Pinnell or Reading A
13 to Z?

14 A That's Fountas & Pinnell. A to Z uses, I
15 think, the same alphabet system. I wasn't leveling
16 their books in guided reading or anything. It was,
17 again, just me making sure I'm -- I'm having another
18 layer of growth.

19 MS. OWENS: Ms. Freeman, we are really
20 exceeding the School Board's cross-examination.

21 THE HEARING OFFICER: Is there any need for me
22 to know Fountas & Pinnell?

23 MS. RATNER: They relied on it in their
24 answer, and we don't have it. And also it sounds
25 like we don't have --

1 MR. ANDRIANO: Don't have what?

2 MS. RATNER: The documentation of the Fountas
3 & Pinnell.

4 MR. ANDRIANO: It's right here.

5 MS. RATNER: May I finish, please.

6 For the reading assessments -- for all of the
7 reading assessments except for these Fountas &
8 Pinnell, there's a file in REDACTED's formal
9 educational, whatever you call it, comprehensive
10 file, and each of the reading assessments is
11 documented in a particular way. And we can show
12 it; it's part of the exhibits. And the absent --
13 it sounds like Ms. Houston is saying she also has
14 that documentation for the Fountas & Pinnell, but
15 we don't have it. And I think that's something, if
16 it exists, we should have it to see if it's
17 administered, you know, similar to the others and
18 the remainder of the file. And also that conflicts
19 with what counsel, neither of these, but Ms. Mickey
20 represented that they do not have the documentation
21 of the Fountas & Pinnell.

22 MS. OWENS: Ms. Freeman --

23 MS. RATNER: I'm sorry, please.

24 A second issue is it sounds like we do not
25 have all the data in this Excel spreadsheet that is

1 exhibit --

2 MR. RATNER: Parents' 73 and School Board 51.

3 MS. RATNER: It sounds like, and correct me if
4 I'm wrong, Ms. Houston --

5 MR. ANDRIANO: You are not asking her
6 questions. You direct your --

7 MR. RATNER: Ms. Freeman --

8 MS. RATNER: I'm just going to say, it sounded
9 as if the testimony was that it -- in an Excel
10 spreadsheet, if you're on the computer, there are
11 things that can be expanded. What we have is a
12 PDF. It doesn't say dates. It sounded from the
13 testimony that there is information in that that is
14 not visible to what was produced to us, and we
15 think that we should have the full Excel.

16 THE HEARING OFFICER: For my purpose, though,
17 first of all, I don't want to respond before they
18 do. So did you want to respond?

19 MS. OWENS: Ms. Houston has already testified
20 that the administration of the Fountas & Pinnell
21 was for her own personal notes.

22 THE HEARING OFFICER: That's what I wrote down
23 in my notes.

24 MS. OWENS: And there's been no testimony
25 offered by Ms. Houston that the Fountas & Pinnell

1 was used beyond it being her personal notes
2 regarding the student's progress. She also
3 testified that the data regarding [REDACTED] is included
4 on the spreadsheet in Exhibit Number 51.

5 I think that Ms. Ratner is -- in School Board
6 Exhibit Number 51, what Ms. Ratner is doing is
7 interjecting her own understanding or belief that
8 hasn't been testified to nor agreed to by the
9 witness. Ms. Ratner is misrepresenting what the
10 witness testified to.

11 What the witness testified to is that the
12 Fountas & Pinnell -- the witness indicated that the
13 results were recorded from left to right on School
14 Board Exhibit Number 51. There's been no testimony
15 that any data other than data related to other
16 students has been extracted from this exhibit.

17 MR. RATNER: If I could respond to that just
18 briefly. She very clearly said, for example, you
19 can't see the full date. It was cut off. She said
20 that very clearly.

21 MS. RATNER: I would just very briefly one
22 last -- if the Fountas & Pinnell was just for
23 personal use of the teacher, then I feel that
24 should not be a basis for the School Board's
25 answer. That was a major basis for the argument

1 that progress was made in reading. We have in the
2 formal file all of these reading assessments that
3 are in REDACTED's file and they are documented and it
4 shows you exactly the date it was administered, the
5 way it was administered, which involves pretty
6 specific instructions, and these are not consistent
7 with a Fountas & Pinnell Level T. And I mean, we
8 need --

9 MS. OWENS: Again, I'm sorry, Ms. Ratner is
10 not an expert witness testifying. She's the --
11 Ms. Houston is the student's -- or was the
12 student's teacher last school year. To the extent
13 there is a concern about the School Board's
14 response, it's not up to counsel for the Parents to
15 determine what belongs in the School Board's
16 response.

17 Furthermore, Mr. Ratner had an opportunity to
18 ask this witness questions about the Fountas &
19 Pinnell. He knew that that was an exhibit in the
20 School Board's binder, and he did not ask her that
21 question. The only reason that the Fountas &
22 Pinnell came up during my examination of the
23 witness is because the witness indicated that
24 someone else addressed the DRA, and I asked her
25 whether she had her own method of determining

1 progress for the Fountas & Pinnell. We did not go
2 into detail about this document, and we also
3 indicated that this witness is a joint witness. So
4 we will calling her back to testify, if necessary
5 in the future. But as far as my examination of the
6 witness, it was limited to the questions that were
7 asked by Mr. Ratner during his initial examination.

8 THE HEARING OFFICER: All right. So let's
9 move on. We are -- in response, my recollection is
10 with this witness and this witness only that the
11 Fountas & Pinnell was utilized by the teacher. Let
12 the record reflect, the teacher, Elizabeth Houston,
13 is explaining that she reviewed the Fountas &
14 Pinnell and used that grading scale for her own
15 purposes and kept it to herself.

16 Is that correct?

17 THE WITNESS: I never turned this in to
18 administration.

19 THE HEARING OFFICER: So it's not part of the
20 school record. Is that your testimony?

21 THE WITNESS: No, it's just my own -- that's
22 how I do my small group.

23 THE HEARING OFFICER: Do you use any --

24 THE WITNESS: Go ahead.

25 THE HEARING OFFICER: So we do not at this

1 point need, although, we will reserve, we will
2 reserve the witness in the event that whoever can
3 explain what the additional exhibit is to which the
4 School Board is referring, and I think you
5 mentioned that Mr. Ratner did not refer to that in
6 his testimony with this witness. I don't recall it
7 being mentioned at all before. So we'll reserve
8 whatever witness you need to explain that.

9 MR. RATNER: Okay.

10 THE HEARING OFFICER: But we haven't talked
11 about it yet.

12 MR. RATNER: She talked about Fountas &
13 Pinnell, and she talked about the document.

14 THE HEARING OFFICER: In reference to this
15 witness?

16 MR. RATNER: Right. Who administered the
17 Fountas & Pinnell.

18 THE HEARING OFFICER: I think we're talking
19 about apples and oranges here. The witness said
20 she has not used Fountas & Pinnell. If there is
21 some separate reason to explore Fountas & Pinnell,
22 then -- are you saying this witness had nothing to
23 do with it?

24 MS. OWENS: I'm saying that the witness --

25 THE HEARING OFFICER: Did not use it.

1 MS. OWENS: She did not use the DRA. She had
2 her own personal system for measuring student's
3 progress, which was the Fountas & Pinnell. The
4 Fountas & Pinnell results are included on School
5 Board Exhibit Number 51. And Mr. Ratner was well
6 aware of the Fountas & Pinnell, but that did not
7 come up at all during his examination of the
8 witness. I never referred to Exhibit Number 51
9 specifically during the examination of the witness.

10 THE HEARING OFFICER: If you refer to that
11 later, then you can --

12 MR. RATNER: I'm so sorry. She brought up
13 Fountas & Pinnell.

14 THE HEARING OFFICER: What exhibit is that
15 again?

16 MR. RATNER: 51.

17 MS. OWENS: She said it's how she measured
18 progress for the student.

19 THE HEARING OFFICER: But she said Fountas &
20 Pinnell?

21 MR. RATNER: Right.

22 THE HEARING OFFICER: So now we're going to
23 51, to School Board's 51, and if I recall
24 correctly, it's this yellow piece of paper that
25 doesn't have a whole lot of information on it.

1 MS. OWENS: Mr. Freeman, to the extent
2 Mr. Ratner has questions about the School Board
3 Exhibit Number 51, that's only one area of the
4 concern.

5 The other area of the concern is that, I
6 believe, that Ms. Ratner has misrepresented certain
7 things that have -- were discussed regarding this
8 document with other counsel. And so if she has
9 questions, I rather that she ask questions about
10 the document rather than implying that someone has
11 not --

12 MS. RATNER: I'm sorry, I didn't mean to imply
13 anything. I may have misheard the testimony. I
14 was just -- that's why I was addressing her, which
15 I didn't mean to. I was trying to -- I didn't
16 understand -- I will gladly provide the email that
17 was stated that they do not have Fountas & Pinnell
18 documentation, which -- and if we want to agree,
19 it's not -- that wasn't how -- that is what the
20 School Board is relying on, Fountas & Pinnell. I
21 think an adverse inference isn't appropriate when
22 you have every other reading assessment in the
23 official file and this one assessment that is
24 stated to be much higher than the assessments that
25 we will be showing you through the evidence and the

1 appropriate witnesses show much lower ability. And
2 these are all documented in the official file, and
3 there is no Fountas & Pinnell Level T. We think
4 certainly the absence of that is relevant in some
5 way, and you can decide the weight of it.

6 THE HEARING OFFICER: You can present whatever
7 questioning through the witnesses and --

8 MS. OWENS: Again, Ms. Freeman, we have no
9 objection to referring to this document, but to the
10 extent --

11 THE HEARING OFFICER: But not through this
12 witness?

13 MR. RATNER: She prepared it.

14 MS. OWENS: To the extent that there's been
15 implications that Ms. Ratner is testifying about
16 items missing from the record or from the --

17 THE HEARING OFFICER: Let the record reflect I
18 don't know of any documents that are missing at
19 this point. However --

20 MS. RATNER: I'm going to get an email for
21 you, and that will say exactly what it is.

22 THE HEARING OFFICER: If you want to bring it
23 up and show her --

24 MS. OWENS: This is his redirect of the
25 witness, and we are now chartering into new

1 territory is what I'm --

2 THE HEARING OFFICER: We're not going to do
3 that. We need to break for lunch.

4 MR. RATNER: I have one last question.

5 THE HEARING OFFICER: Okay. Go ahead.

6 MR. RATNER: Then I will be finished.

7 THE HEARING OFFICER: And if that brings out
8 another area, then I will let you respond.

9 BY MR. RATNER:

10 Q Could you just please turn in Parents' Volume
11 3 to tab 69.

12 THE HEARING OFFICER: Did you say page 69?

13 MR. RATNER: Tab 69.

14 THE HEARING OFFICER: Tab 69. Okay.

15 BY MR. RATNER:

16 Q Do you have that in front of you?

17 MS. OWENS: Ms. Freeman --

18 THE HEARING OFFICER: Yes.

19 MR. RATNER: I'm trying to understand about
20 the Fountas & Pinnell. It will be two questions.

21 MS. OWENS: But Exhibit Number 69 is not
22 Fountas & Pinnell. It's Reading A through Z and
23 DRA --

24 MR. RATNER: That's exactly right.

25 MS. OWENS: -- which the witness testified

1 that she did not --

2 THE HEARING OFFICER: Well, it is a DRA, but
3 you're saying it's not the Fountas & Pinnell?

4 MR. RATNER: What I'm trying to figure out is
5 we believe there are documents like this for the
6 Fountas & Pinnell. These sorts of worksheets.

7 Mr. Andriano has been saying we have Fountas &
8 Pinnell that's on 51. We'd like to see the
9 underlying worksheets, if they exist, and that's
10 what I'm trying to just ask, are there such
11 worksheets are Fountas & Pinnell? Are there
12 worksheets?

13 THE WITNESS: I filled out something very
14 similar to what you would say. Not the A to Z.
15 This looks like from 2019. But a Fountas & Pinnell
16 looks very, very similar to the DRA. And, again,
17 it's just the comprehension piece is a little bit
18 more extensive, and I did fill out this. I haven't
19 found them, but I will see if --

20 BY MR. RATNER:

21 Q No, no, no. I'm just trying to find out if
22 they existed at the time.

23 A At the time this is what I would print out
24 and they're in a file and I give this to everybody.

25 Q How many times roughly do you think you did a

1 Fountas & Pinnell with REDACTED?

2 A Three.

3 MR. RATNER: That's all I have. I appreciate
4 that latitude.

5 THE HEARING OFFICER: Thank you.

6 MS. OWENS: May I ask a follow-up question?

7 THE HEARING OFFICER: Sure. Go ahead.

8

9 RECROSS-EXAMINATION

10 BY MS. OWENS:

11 Q Were REDACTED's scores from the Fountas & Pinnell
12 logged in onto Exhibit Number 51?

13 A Yes.

14 Q And you did the same process for REDACTED as you
15 did for every other --

16 A For every student. I use that same exact
17 document for everybody. I have my little anecdotal
18 notes that are on the side, too, the guideline
19 instruction. It's all on the same piece.

20 MS. OWENS: No further questions.

21 THE HEARING OFFICER: Anything else?

22 MR. RATNER: Not from me.

23 THE HEARING OFFICER: Anything else?

24 MS. OWENS: No, ma'am.

25 THE HEARING OFFICER: So it is about 12:40.

1 Come back about 1:40.

2 Is that all right with everyone?

3 MR. RATNER: Yes.

4

5 (Break taken.)

6

7 THE HEARING OFFICER: Let's see. I think
8 we're ready to go back on the record. Is everyone
9 here? It seems like everyone is here who needs to
10 be here.

11 MR. RATNER: We just need a witness.

12 THE HEARING OFFICER: That would be helpful.

13

14 (Short break to retrieve witness.)

15

16 THE HEARING OFFICER: Would you raise your
17 right hand.

18

19 (Witness sworn.)

20

21 THE HEARING OFFICER: Thank you. You may
22 answer questions Mr. Ratner has, Parents' counsel,
23 to be followed up by School counsel's questioning.
24 Go ahead.

25

1 MR. RATNER: Thank you very much, Ms. Freeman.

2

3

KIMALA PETTIWAY,

4

having been duly sworn, testified as follows:

5

6

DIRECT EXAMINATION

7

BY MR. RATNER:

8

9

10

11

12

13

14

Q Good afternoon, Ms. Pettway. Thank you for being here today. Just a couple of ground rules for the court reporter's benefit: I have a tendency to jump in before you're finished. I'm going to do my best to let you finish your answer before I speak, if you will please wait until I finish my question before you speak.

15

16

17

18

19

And then second part, you're doing great now with the nodding, but when I ask you questions, you're going to have to say "yes" or "no" so she can get it down. I think you're going to have to keep your voice up a little bit so everybody can hear.

20

21

22

So, again, my name is Todd Ratner. I represent the REDACTED family in this case. I believe you know Mrs. REDACTED and her daughter REDACTED?

23

A Yes.

24

25

Q Okay. How do you -- in what context did you first meet REDACTED?

1 A I am the coordinator of special education at
2 Old Hundred Elementary and REDACTED was a student there.

3 Q And when did you assume that role of special
4 education coordinator at Old Hundred Elementary School?

5 A The school year that began with 2019.

6 Q Okay. And that was a brand new position
7 because it was a brand new school at that time,
8 correct?

9 A Correct.

10 Q Where did you work before that? Were you
11 employed by Chesterfield County Public Schools?

12 A Yes, I was.

13 Q Okay. Have you ever been a classroom
14 teacher?

15 A Yes.

16 Q Okay. Was that for special education or
17 general education?

18 A Both.

19 Q What grades or ages for special education?

20 A K through 6.

21 Q Okay. And when you were responsible for
22 working with REDACTED as the special education coordinator,
23 she was in fourth and fifth grade; is that right?

24 A Yes.

25 Q As a special education coordinator, do you

1 work with students directly typically?

2 A No, I do not.

3 Q Did you work with REDACTED directly?

4 A No, I did not.

5 Q Just briefly so I understand what your role
6 was, what does a special education coordinator at Old
7 Hundred Elementary School do?

8 A I facilitate special education in our school
9 building, managing meetings, coordinating meetings,
10 disseminating the special education documents related
11 to our school.

12 THE HEARING OFFICER: A little bit louder.

13 THE WITNESS: Facilitating meetings, managing
14 meetings, disseminating documents. I do some
15 educational evaluations or reevaluations.

16 BY MR. RATNER:

17 Q Were you a part of REDACTED's IEP team at Old
18 Hundred Elementary School?

19 A Yes, I was.

20 Q And as a part of the IEP team, you have input
21 into the IEP including goals, objectives,
22 accommodations and service hours; is that correct?

23 A Yes, I do.

24 Q Okay. So let's -- I'm going to try to go
25 roughly in chronologic order. I've been skipping

1 around in some of the earlier witnesses, and it's
2 caused a little bit of confusion. So I'm going to try
3 my best to go in chronological order. You've got a lot
4 of notebooks in front of you, and I apologize.

5 Do you see the one that's marked as exhibits
6 submitted on behalf of the Chesterfield County school?

7 A Yes.

8 Q If you could turn to tab 40 in that notebook,
9 let me know when you have that in front of you.

10 A I have Exhibit 40 in front of me.

11 Q Exhibit 40? I'm looking at tab number 3.

12 A I thought you said, 40. Sorry.

13 Q I'm so sorry. And it should at the bottom
14 say School Board Exhibit 000009, just so we're on the
15 right document.

16 A Yes.

17 Q What is this document?

18 A This is an Individualized Education Program
19 amendment for REDACTED.

20 Q And what -- what's the date of this?

21 A October 14, 2019.

22 Q Okay. And is that REDACTED's fourth grade year
23 at Old Hundred Elementary?

24 A Yes.

25 Q So after the school year has started but

1 during the fall of fourth grade; is that right?

2 A Yes.

3 Q This seems to reflect that there was a
4 meeting on or around October 14, 2019. Am I reading
5 that correctly?

6 A Correct.

7 Q Okay. And you were in attendance at that
8 meeting, correct?

9 A Correct.

10 Q And in your role as the special education
11 coordinator, did you coordinate the meeting?

12 A Yes.

13 Q Okay. Do you recall -- and I get a little
14 bit confused with the different types of documents.
15 This is an amendment, and there's an indication about
16 the reason for the amendment.

17 Can you just explain for the Hearing Officer
18 why this meeting was called and what was discussed.

19 A The reason for the amendment was to discuss
20 the Developmental Reading Assessment scores, review the
21 accommodations and writing objectives.

22 Q Okay. And if you remember -- and it's
23 absolutely fine if you don't. Do you remember if this
24 was something Mrs. REDACTED requested or if it was
25 something another team member suggested?

1 A I cannot recall.

2 Q That's fine. Thank you.

3 At this point was everyone still meeting in
4 person or was this virtual?

5 A This is in person, I do believe.

6 Q Okay. And would that be at Old Hundred
7 Elementary School?

8 A Correct.

9 Q Okay. So let's just take a look at the
10 second page of this document, Summary of Present Level
11 of Academic Achievement and Functional Performance.

12 What is the purpose of that, this section of
13 the IEP?

14 A The present level provides information on
15 test history, the current progress of the student. It
16 describes their disability and also provides strengths
17 of students.

18 Q And is it -- I don't know if it's a
19 requirement, but in REDACTED's case when she was found
20 eligible for special education, do you know if she
21 underwent any sorts of evaluations for that?

22 MS. OWENS: Ms. Freeman, I'm going to object
23 at this point only to the extent the IEP meeting,
24 what transpired during the meeting, the components,
25 none of this is within the applicable statute of

1 limitations.

2 Now, if Mr. Ratner has questions about
3 implementation of the IEP, then perhaps that could
4 be of issue.

5 THE HEARING OFFICER: What's the date of this
6 amendment? 10/14/19?

7 MR. RATNER: Yes.

8 THE HEARING OFFICER: I'm going to sustain her
9 objection.

10 MR. RATNER: And if I could just respond
11 briefly --

12 THE HEARING OFFICER: Go ahead.

13 MR. RATNER: We are trying to demonstrate
14 regression, and without the information prior to
15 the two-year period, we are not going to have the
16 comparison to --

17 THE HEARING OFFICER: For the limited purpose
18 of demonstrating regression, you can ask her some
19 more questions, but we need to focus on the
20 statutory period.

21 MR. RATNER: Thank you.

22 BY MR. RATNER:

23 Q So what I was going to ask you about is under
24 this summary of test history, REDACTED received
25 psychological testing in -- on 2/27/2019, 3/13/2019,

1 and 3/18/2019.

2 Do you have independent knowledge of that?

3 Have you ever reviewed those?

4 A I cannot recall. These were done at a school
5 previous to our school, so they were in the cumulative
6 file. So at some point I'm sure I have reviewed them.
7 I cannot recall specifics, but we do have a summary.

8 Q Okay. And who would prepare this?

9 A The case manager.

10 Q Okay. And do you remember who the case
11 manager was in fourth grade?

12 A Stephanie Smith.

13 Q Okay. And just to be clear, would you -- if
14 these are listed in the summary, would you actually
15 review the evaluations before a meeting or not
16 necessarily?

17 A Not necessarily each document would I review
18 as I am confident in the professionalism of the case
19 manager.

20 Q Okay. Thank you. So with respect to the
21 time period within the two-year statute of limitations,
22 do you recall that the IEP team recommended additional
23 evaluations for REDACTED in or around November/December
24 2020?

25 A Yes. I'm not sure on the specific dates, but

1 during her time at Old Hundred Elementary, the team did
2 recommend evaluation -- reevaluation.

3 Q If I said it was in fifth grade, would that
4 sound right to you?

5 A Yes.

6 MR. RATNER: Okay. So just to be clear,
7 Ms. Freeman, this is now squarely in the two years.

8 THE HEARING OFFICER: Okay. Give me that
9 date -- oh, November of 2020?

10 MR. RATNER: Correct.

11 THE HEARING OFFICER: All right. Go ahead.

12 MR. RATNER: Thank you.

13 BY MR. RATNER:

14 Q And when you conducted reevaluations, as a
15 special education coordinator, would you compare the
16 performance on those evaluations to the previous
17 evaluations that were in the file?

18 A During a reevaluation meeting, we invite the
19 social worker, school psychologist, educational
20 diagnostician, general education and special education
21 teachers, and each person would review their current
22 data for the student.

23 Q So my question was a little bit different.
24 Is it important to compare the current data to previous
25 data that the school has in their files?

1 MS. OWENS: It's my understanding that this
2 witness has been introduced as a fact witness. So
3 to the extent that Mr. Ratner has factual questions
4 to ask the witness, of course he can ask those.

5 But to the extent that he's requesting that
6 she extrapolate or draw any conclusions or make any
7 opinions, then we would object on the basis that
8 she's not been identified as an expert witness.

9 THE HEARING OFFICER: She's not been qualified
10 as an expert, so she's not qualified at this point
11 to give expert opinions. It sounds like you're --
12 is there a question?

13 MR. RATNER: Well, yes. She objected. But
14 I'm trying to let you finish so then I can respond.

15 THE HEARING OFFICER: Oh, okay. I was trying
16 to read your facial movements there.

17 So are you going to -- are you going to
18 proffer her as an expert witness or not?

19 MR. RATNER: No. I don't understand that --
20 I'm just trying to get some clarification as to --

21 THE HEARING OFFICER: You're asking her
22 factual information at this point, and if you need
23 to qualify her as an expert in order to continue
24 your questioning, that's going to be up to you to
25 do that.

1 MR. RATNER: I'm trying to ask her factual
2 information about what was in the evaluations.

3 THE HEARING OFFICER: I thought you asked
4 her -- I don't remember specifically the question.
5 I thought there was something you asked her to draw
6 a conclusion about from all of the individuals who
7 participated in the reevaluation, the social
8 worker, all those people you listed.

9 MR. RATNER: Well, no, she volunteered that.
10 What I'm trying to understand is, as a factual
11 matter, she said she's an IEP team member for REDACTED.
12 And what I'm asking is, as an IEP team member when
13 evaluations are done, is it the practice to compare
14 them to the previous evaluations?

15 THE HEARING OFFICER: Wouldn't that require
16 her opinion? I think it would.

17 MS. OWENS: Mr. Ratner -- just to put this
18 into perspective, it's my understanding that
19 Mr. Ratner indicated that the reason he's going
20 into this line of questioning is because he wants
21 to demonstrate regression. That's the word that he
22 used. And so that is a clear indication to me that
23 he's asking -- he's going to ask this witness
24 questions that pertain -- that go beyond what is a
25 factual basis for testimony and delve into more --

1 THE HEARING OFFICER: Regression.

2 MS. OWENS: -- of what her opinions may be.

3 So to that extent, the School Board objects to that
4 line of questioning with the witness.

5 MS. RATNER: This is actually good timing. I
6 wanted to make more of a general objection. The
7 distinction between opinions and facts in the
8 matter of Virginia state law is in the Virginia
9 code -- it's in the Hearing Officer Desk Book on
10 page 13: Quote, by statute, in civil cases, no
11 expert or lay witness should be prohibited from
12 expressing an opinion on the ultimate issue of
13 fact.

14 And so we do not believe that the
15 opinion-versus-fact distinction is appropriate for
16 any of the witnesses. We think that the weight
17 of -- and this is what the statute said -- it's
18 Code Section 8.01-401.3(b). There's also a
19 provision in the Rules of Evidence that's similar
20 that I don't have in front of me, but I can bring
21 it. In our view, it's not a question of whether
22 it's admissible or not admissible but your weight
23 that you afford it. So certainly you --

24 THE HEARING OFFICER: I understand what you're
25 saying, but when I go back to look at the

1 information, I'm going to distinguish between lay
2 witnesses and expert witnesses and the opinions.
3 In these cases, you have to be able to qualify the
4 expert to find out where -- is her or his opinion
5 grounded professionally. And if you're examining a
6 witness who is testifying about factual
7 information, then that's one thing. But when you
8 have an education case and you have a witness who
9 needs to or anticipates presuming an opinion that's
10 a professional opinion, it's been my practice to
11 ask the witness to present their credentials.

12 MS. RATNER: I understand. We just
13 respectfully disagree and don't feel that's what
14 the code -- so that would be an ongoing objection
15 to --

16 THE HEARING OFFICER: I will note your ongoing
17 objection for the record.

18 MS. RATNER: Thank you very much.

19 THE HEARING OFFICER: And you don't need to
20 make that objection every single time, but it's
21 been my practice that expert witnesses are
22 qualified in these cases or not and --

23 MR. RATNER: So if I could just have a little
24 latitude so that I understand what you're --

25 THE HEARING OFFICER: I think I just explained

1 myself, and I don't want to waste a whole lot more
2 time. Ms. Ratner asked the question. So let's
3 move on.

4 MR. RATNER: Thank you so much.

5 BY MR. RATNER:

6 Q Ms. Pettitway, Chesterfield County Board of
7 Education has proffered you as an expert witness on
8 their witness list. I'm going to now ask your
9 qualifications.

10 How many IEP meetings have you participated
11 in in your career?

12 A Too numerous to count. I do not have --

13 Q Hundreds?

14 A That would be safe to say.

15 THE HEARING OFFICER: She just said it's too
16 numerous to count. Now you're asking her if it's
17 hundreds.

18 MR. RATNER: Ms. Freeman, you just asked me to
19 qualify her. Would you like to qualify her?

20 THE HEARING OFFICER: No, I don't normally
21 qualify witnesses. That's for you-all.

22 MR. RATNER: That's what I'm trying to do.

23 THE HEARING OFFICER: If one of you chooses to
24 qualify her, that's fine. If not, we'll move on.

25 MR. RATNER: I'm attempting to qualify her.

1 MS. OWENS: Mr. Ratner, we stipulate that
2 Ms. Pettitway is an expert.

3 MS. RATNER: Okay. Great.

4 MR. RATNER: So then what was that whole
5 rigmarole?

6 MS. OWENS: Because she hadn't been identified
7 as an expert.

8 THE HEARING OFFICER: I don't think we need to
9 ask questions to each other and make editorial
10 comments in order to get through this. So let's
11 keep those editorial comments to ourselves and move
12 forward.

13 There's a stipulation that she's an expert
14 in -- what was the area of expertise that you
15 wanted to qualify her in?

16 MR. RATNER: I wanted to qualify her as an
17 expert in the area of IEP team meetings and the
18 development of IEPs.

19 MS. OWENS: We would also add that she is an
20 expert in the area of special education.

21 THE HEARING OFFICER: Just special education
22 generally?

23 MR. RATNER: No objection.

24 THE HEARING OFFICER: All right.

25 MS. OWENS: But, again, I would also note that

1 it appears that Mr. Ratner is going to questions
2 perhaps about evaluations such as -- if there are
3 questions about psychological evaluations or
4 educational evaluations and whether those
5 evaluations somehow demonstrate regression. The
6 foundation has not been laid for that type of
7 testimony, if that's where he's going. I'm not
8 sure.

9 THE HEARING OFFICER: So what's the final
10 stipulation? That's all I need to know.

11 MS. OWENS: It's my understanding IEP, IEP
12 development and special education.

13 THE HEARING OFFICER: In what aspect of
14 special education? Just special education in
15 general or --

16 MS. OWENS: Special education, IEP
17 development/eligibility.

18 THE HEARING OFFICER: Okay. Anything else?

19 MS. OWENS: No, that was it.

20 THE HEARING OFFICER: Did you have another
21 area that you wanted to --

22 MR. RATNER: I think that covers it.

23 THE HEARING OFFICER: Okay. All right. Let's
24 go ahead. So she's an expert in IEP eligibility.

25 MR. RATNER: And special education.

1 THE HEARING OFFICER: Yeah, I wrote that down.
2 Sorry I didn't say that. Go ahead.

3 MR. RATNER: Thank you.

4 BY MR. RATNER:

5 Q So Ms. Pettitway, as an expert in special
6 education/IEP development, when new evaluations are
7 done, would the IEP team members compare those to the
8 previous evaluations?

9 A Could you repeat?

10 MR. RATNER: Why don't we have the Lori read
11 it back.

12
13 (Record read by the court reporter as
14 follows:

15 "So Ms. Pettitway, as an expert in special
16 education/IEP development, when new
17 evaluations are done, would the IEP team
18 members compare those to the previous
19 evaluations?")

20
21 THE WITNESS: So after an eligibility, there
22 is an IEP meeting and you would discuss -- you
23 would review the score that you previously
24 summarized and discussed in your eligibility
25 meeting.

1 BY MR. RATNER:

2 Q Thank you. When the new evaluations in fifth
3 grade that you discussed were conducted, did you, as a
4 member of the IEP team, compare those scores, as you
5 just said you would do, to the previous evaluations?

6 A Once we have new evaluations or new summary
7 of test history, we would place that new information in
8 there.

9 Q Okay. And would you -- do you look at the --
10 you get information from the scores on those tests?

11 A Correct.

12 Q Okay. Thank you. So at this point on tab 3,
13 we're still talking about, you were relying on
14 evaluations conducted in the third grade, correct?

15 A Correct.

16 MR. RATNER: Okay. I would like to offer
17 those into evidence for the basis of comparison to
18 the current year. And I will be happy to have her
19 go through them in as much detail as you would
20 like.

21 MS. OWENS: I'm not sure that I understand
22 what he's asking to be --

23 MR. RATNER: Great. Then I will just continue
24 going forward.

25 THE HEARING OFFICER: Okay. Can you just tell

1 me what exhibit you're looking for?

2 MR. RATNER: I'm looking for the third grade
3 evaluations.

4 THE HEARING OFFICER: What volume do you think
5 it's in?

6 MR. RATNER: I think it's in 3 or 4. It's in
7 book 2, I apologize, towards the back, 59, 60, 61,
8 62 --

9 THE HEARING OFFICER: Tab 59?

10 MR. RATNER: Correct.

11 THE HEARING OFFICER: Oh, okay.

12 MR. RATNER: So, again, these are the third
13 grade evaluations. I don't intend to ask her a
14 bunch of questions because I haven't gotten to the
15 fifth grade ones yet. But if I am going to be
16 precluded from comparing to these, I'd like to know
17 that now.

18 THE HEARING OFFICER: It's not that you're
19 going to be precluded but -- when did we start back
20 again?

21 MR. ANDRIANO: 1:49.

22 THE HEARING OFFICER: You're already close to
23 a half hour into this. So I thought you might want
24 to focus on the two-year period, but if you want to
25 just ask her a few questions, I'm just warning you

1 that there isn't a whole lot of time left here.

2 Do you think you're going to need more time?

3 MR. RATNER: Yes, I do.

4 THE HEARING OFFICER: How much more time do
5 you think you'll need?

6 MR. RATNER: At least an hour.

7 MS. OWENS: Well, I will start off by saying
8 that the School Board objects to these exhibits
9 being introduced through -- or have this witness
10 testify to evaluations that she didn't participate
11 in preparing, and there's a --

12 THE HEARING OFFICER: She didn't participate
13 in any of these?

14 MS. OWENS: There's a question of relevancy of
15 these exhibits as they pertain to this witness.

16 THE HEARING OFFICER: Well, she is an expert
17 witness.

18 But is there another witness who could speak
19 to these?

20 MR. RATNER: I think that's one of the
21 problems, right? This is a special education
22 coordinator during the period in question. We were
23 limited in calling witnesses not during the period
24 of question. You struck a number of our witnesses
25 that we requested subpoenas for.

1 THE HEARING OFFICER: I don't understand. Are
2 we talking about the SOL or not?

3 MS. OWENS: No, ma'am.

4 THE HEARING OFFICER: So this witness is going
5 to testify because you're alleging that there was
6 regression?

7 MR. RATNER: Correct.

8 THE HEARING OFFICER: And you want to go on
9 for an hour about a period of time that was before
10 the SOL period of two years?

11 MR. RATNER: No, that's not what I said at
12 all. You asked me how much longer I had with this
13 witness.

14 THE HEARING OFFICER: And you said an hour.

15 MR. RATNER: Right. That's not -- that's with
16 this witness.

17 THE HEARING OFFICER: Right.

18 MR. RATNER: That's everything. That's not
19 outside the period. That's number one. Number
20 two, if I can't --

21 THE HEARING OFFICER: They're saying she's not
22 in this period. Didn't you say that?

23 MS. OWENS: Yes, ma'am. She is --

24 Ms. Pettaway did not conduct the educational --

25 MR. RATNER: Could we take a quick break?

1 THE HEARING OFFICER: Sure. Yeah.

2

3 (Break taken.)

4

5 MR. RATNER: I'm ready. So I'm just going to
6 continue on, and when I get to --

7 THE HEARING OFFICER: But I don't think a
8 whole hour is going to be necessary. I'm thinking
9 maybe 45 minutes. Is that okay?

10 MR. RATNER: I'll do the best I can.

11 THE HEARING OFFICER: But if the other side
12 objects because she doesn't have information about
13 the relevant period or regression, then probably we
14 will need to think about cutting her off. But go
15 ahead.

16 MR. RATNER: Thank you.

17 BY MR. RATNER:

18 Q Staying in the School Board exhibit book, you
19 were on tab number 3, correct?

20 A Correct.

21 Q Let's go to tab 5, if I could.

22 THE HEARING OFFICER: Are you still in Volume
23 2?

24 MR. RATNER: We are actually in the School
25 Board's.

1 THE HEARING OFFICER: Oh, all right.

2 BY MR. RATNER:

3 Q Do you recognize this document, Ms. Pettitway?

4 A Yes, a meeting notice for an IEP meeting.

5 Q Okay. What was the date on that?

6 A April 10, 2020.

7 Q Okay. So now we're into the spring of fifth
8 grade; is that right?

9 A Fourth.

10 Q Spring of fourth grade --

11 A No, fifth, you're right.

12 Q Fifth, right?

13 A Yes.

14 Q No, spring of fourth. My wife was correct.

15 I apologize. I've gotten myself confused.

16 Spring of fourth grade, correct?

17 A Correct.

18 Q And were schools already closed due to COVID
19 as of this date?

20 A Yes.

21 Q And do you recall approximately when that
22 closure was?

23 A March 16 of 2020.

24 Q Okay. What was the purpose of this meeting
25 notification?

1 A To develop an annual IEP.

2 Q Okay. And who participated in the
3 development of the annual IEP in April of 2020?

4 A Is there a document to reference?

5 Q Well, I was asking if you remember. If you
6 don't, I will show you a document.

7 A Well, we invited the mother, the father, the
8 coordinator of special education, general education
9 teacher and teacher of students with disabilities.

10 Q Okay. And where were you reading that from?

11 A From --

12 Q Oh, I see it.

13 A On the notice.

14 Q Yes. Thank you. So let's turn to tab 6.
15 Okay. Who actually attended this IEP meeting?

16 A Myself as coordinator of special educational,
17 Allie Redd as the general education teacher, Christine
18 McCluskey as the teacher of students with disabilities,
19 and Stephanie Smith as the teacher of students with
20 disabilities.

21 Q And who decided on the -- so the Parents
22 weren't there; is that correct?

23 A They were not.

24 Q And did you ever discuss that with the
25 Parents as to why they weren't there?

1 A I cannot recall, but I'm sure I did.

2 Q Sure. So I'd like you to look at the
3 services page, if I'm saying the right thing,
4 accommodations, modifications, services and
5 specifically the special education services on page 7
6 of 11, which is School Board Exhibit 00030, that's the
7 page number.

8 Do you have that in front of you?

9 A I do.

10 Q It looks to me as if she -- the IEP team was
11 recommending or proposing five hours of special
12 education every two weeks for reading.

13 Is that accurate? Did I read that correctly?

14 A Correct.

15 Q And the two different times are just to pass
16 over the summer -- is that right? -- to show it will be
17 continuing into the next school year?

18 A Yes.

19 Q Okay. And then for writing, it appears it
20 was reduced from five hours on tab 3 that we were
21 talking about -- and you're welcome to go back and
22 look -- to three hours.

23 So please make that comparison and let me
24 know if that's correct.

25 A That is correct.

1 Q So that proposal was made without the
2 Parents' input; is that right?

3 A Without their input at that meeting in
4 person. I think there is some Parent input on the
5 present level.

6 Q Okay. But at least at that meeting, they
7 weren't there to say we think three hours is an
8 appropriate amount; is that right?

9 A Correct.

10 Q Do you remember who suggested the reduction
11 in services at that time?

12 A It would have been the case managers -- case
13 manager.

14 Q Would have been Stephanie Smith?

15 A Correct.

16 Q Okay. And she scored -- this is now on the
17 present levels on page 2 of this document. She scored
18 in the low average range for written expression and the
19 low range for spelling.

20 Did I read that correctly?

21 A Under what section?

22 Q It is under the Summary of Test History, the
23 very last sentence.

24 A Yes.

25 Q Okay. Is there any goal in this document

1 that addresses her spelling in which she has tested in
2 the low range for spelling on the Woodcock-Johnson Test
3 of Achievement Form A?

4 A In the writing goals, the third short-term
5 objective references spelling.

6 Q I'm sorry, could you say specifically?

7 A REDACTED will be able to utilize a checklist to
8 proofread her written work for correct capitalization,
9 punctuation and spelling by utilizing her Chromebook
10 spellcheck with 80 percent accuracy.

11 Q So she was going to use spellcheck to learn
12 spelling; is that what this says?

13 A She was going to use spellcheck to proofread
14 possibly for final and rough draft.

15 Q Are you familiar with the term encoding?

16 A Yes.

17 Q And decoding?

18 A Yes.

19 Q I'm not an educator, so I tend to get those
20 mixed up. Do I have it correct decoding is reading and
21 encoding is spelling?

22 A Correct.

23 Q Is there an encoding goal in this IEP?

24 A The word encoding is not on the goal.

25 Q But other than what you talked about with a

1 checklist for proofreading, is there any other work on
2 spelling included in this IEP?

3 A Encoding would be a part of the decoding
4 strategies at the top as they would be word lists with
5 similar patterns as part of some of the strategies.

6 Q So as part of reading, she would learn to
7 spell?

8 A Yes. They are part of literacy.

9 Q Sure. But there's a difference between
10 decoding and encoding, right? They are two different
11 skills?

12 A Correct.

13 Q So just briefly comparing to the last IEP,
14 how many goals were in that one at tab 3?

15 A Three annual goals.

16 Q And in the amendment how many were there?

17 A Two.

18 Q Okay. Which one was removed?

19 A Can I -- can I unclip it?

20 Q Absolutely.

21 Ms. Pettitway, I apologize, if I could, I
22 withdraw that question.

23 THE HEARING OFFICER: Sure.

24 BY MR. RATNER:

25 Q Okay. I don't want to waste -- your time is

1 valuable, and I appreciate that.

2 So at the 4/10 meeting that the Parents did
3 not attend, the IEP team proposed to reduce the goals
4 from three to two and reduce writing hours from five
5 every two and a half weeks, which is a half hour a
6 day -- is that right, first of all? Does that equal
7 out to half hour a day, five hours every two weeks?

8 A Yes, approximately.

9 Q Okay. So then to three hours, s.o almost cut
10 in half, not quite, cut it by 40 percent, right?

11 A Correct.

12 Q Okay. And this was when you were an all
13 virtual environment, correct?

14 A Correct.

15 Q Had you heard anything about how REDACTED was
16 doing in the virtual environment at that time?

17 A I cannot recall. I will have to look in the
18 present level to see if there's documentation.

19 Q That's fine. We can move on. I'm just going
20 to put this back; otherwise, my whole exhibit book is
21 going to get messed up. So bear with me for one
22 second.

23 Do you know if the Parents ever consented to
24 that April 20 IEP?

25 A They did not.

1 Q Okay. Let's skip ahead to tab 10, please,
2 and specifically the second page of tab 10, which is
3 School Board Exhibit 47.

4 Do you have that in front of you?

5 A I do.

6 Q What is this document?

7 A IEP amendment and prior written notice during
8 COVID-19 mandated school closure.

9 Q Who prepared this document?

10 A Myself and the case manager at that time.

11 Q Which again was Stephanie Smith; is that
12 correct?

13 A Correct.

14 Q Okay. What's the date on this?

15 A April 23rd, 2020.

16 Q Okay. So just three days after the IEP
17 meeting, you sent out yet another revision?

18 A Correct.

19 Q How many goals were on this revised IEP?

20 A One.

21 Q Okay. Anything about encoding on this?

22 A No.

23 Q Anything about decoding on this?

24 A No.

25 Q Did anybody meet with the Parents before this

1 was sent out?

2 A No. It clearly states that the IEP was
3 amended without a meeting, as allowed by the
4 regulations.

5 Q That's right. And if you go to the third
6 page and the fourth page, if I'm counting correctly,
7 it's actually the fourth and fifth, I apologize, 49 and
8 50, there's a letter from you stating that, correct?

9 A Correct.

10 Q Okay. And in the third paragraph it says
11 that the regulations governing special education
12 programs for children with disabilities in Virginia --
13 or excuse me -- as noted and pursuant to the
14 regulations governing special education programs for
15 children with disabilities in Virginia, a school
16 division and a student's parents may agree to update an
17 IEP without convening an IEP team meeting, correct?

18 A Correct.

19 Q Do you remember a subsequent occasion -- and
20 there's a lot of emails we can get to about it, but I'm
21 just going to ask you if you remember it -- where
22 Mrs. REDACTED asked if they could waive a meeting in May
23 or June of 2021, and you and Ms. Mottley, the principal
24 at Old Hundred, insisted that the meeting had to go
25 forward?

1 A I would have to reference the documents.

2 Q We'll get to that.

3 So let me ask you --

4 MR. RATNER: And, again, we would move for
5 admission of number 10 to the extent --

6 THE HEARING OFFICER: Is that SB-10?

7 MR. RATNER: That's School Board 10, yes.

8 THE HEARING OFFICER: Any objection? It's
9 your exhibit.

10 MS. OWENS: No objection.

11 MR. RATNER: I'm so sorry, SB-10 and also
12 SB-6.

13 MS. OWENS: No objection.

14 THE HEARING OFFICER: Wasn't 6 already
15 admitted?

16 MR. ANDRIANO: 16 was already admitted.

17 THE HEARING OFFICER: 16. Okay. So SB-6 and
18 SB-10 are admitted.

19
20 (School Board Exhibit Nos. 6 and 10
21 admitted.)

22
23 MR. RATNER: And SB-3 if it hasn't been
24 previously.

25 THE HEARING OFFICER: I don't recall. I think

1 it was. Wasn't SB-3 admitted?

2 MR. ANDRIANO: Yes, it was.

3 MS. OWENS: Yes, ma'am.

4 MR. RATNER: Thank you.

5 BY MR. RATNER:

6 Q So Ms. Pettitway, I'd like to turn your
7 attention to, in that same book, tab 11. And the first
8 question is -- I know the print is kind of small.

9 THE HEARING OFFICER: What number are you on?

10 MR. RATNER: I'm on 11.

11 BY MR. RATNER:

12 Q Is this a document you're familiar with?

13 A Yes.

14 Q Okay. Did you have any input into the
15 preparation of this document?

16 A No.

17 Q Have you reviewed this document before?

18 A I'm sure previously I did but not recently.

19 Q Okay. I'd like you -- and this is going to
20 relate to your qualification as an expert witness with
21 respect to IEP team, IEP development and
22 implementation.

23 The general notes on the 5/14/20 entry and
24 specifically -- although, you can read as much as you
25 want, I'm specifically interested in number 3 in the

1 list that says, We explained that the WPM goal -- do
2 you see where I'm talking about? I know it's small
3 print.

4 MS. OWENS: I object to this document being
5 used with this witness because she has already
6 testified this is not her document.

7 MR. RATNER: She's an expert witness in IEPs,
8 and this has to do with how an IEP is implemented.
9 I want to ask her if it's inappropriate to
10 discontinue working on a goal without the Parents'
11 permission.

12 THE HEARING OFFICER: Don't you think you
13 might want to lay a foundation for that before you
14 continue on because that's -- she is qualified to
15 testify about making -- creating IEPs, but then we
16 switched over to this exhibit and it seems to me
17 that you're probably going to have to explain why
18 you're using that exhibit.

19 Do you have a question?

20 MR. RATNER: I'm just listening.

21 THE HEARING OFFICER: Oh, okay. You had your
22 eyes squinched up.

23 MR. RATNER: I was trying to concentrate.

24 THE HEARING OFFICER: Oh, okay. Do you want
25 to lay a foundation?