

## VIRGINIA DEPARTMENT OF EDUCATION

## DUE PROCESS HEARING

\*\*\*\*\*

REDACTED, by and through \*

her next friends, her parents, \*

REDACTED, \*

Petitioners, \*

v. \*VDOE Case No. 22-84

CHESTERFIELD COUNTY PUBLIC SCHOOLS, \*

Respondents. \*

\*\*\*\*\*

## TRANSCRIPT OF PROCEEDINGS BEFORE

SARAH S. FREEMAN, ESQUIRE

ADMINISTRATIVE HEARING OFFICER

March 23, 2022

9:05 a.m. - 5:17 p.m.

\* \* \* Day 3 of 8 \* \* \*

Job No. 47227

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17 On behalf of the REDACTED

18

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21

22

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25

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8 LARANA J. OWENS, ESQUIRE

9 On Behalf of Chesterfield County School Board

10

11 ALSO PRESENT:

12 REDACTED, Parent

13 REDACTED, Parent

14 APRIL LENNOX,

15 CCPS, Dyslexia Specialist

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1 (9:05 a.m., March 23, 2022)

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P R O C E E D I N G S

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THE HEARING OFFICER: So who's going to be  
6 our -- did you all converse about --

7

MR. ANDRIANO: I have a preliminary matter  
8 I need to address with the Hearing Officer before  
9 we begin.

10

THE HEARING OFFICER: Okay. Let's hear it.  
11 We're on the record now.

12

MR. ANDRIANO: Ms. Freeman, it's just been  
13 brought to my attention that the Hearing Officer  
14 in this case, as you know, has made an order that  
15 nothing about this case is to be posted on social  
16 media.

17

It's just been brought to my attention that  
18 Ms. REDACTED, last night, was posting about this case  
19 on social media. I'll show Mr. Ratner and you the  
20 posts.

21

It's our position it's a clear attempt at  
22 witness intimidation. And as a result, we are  
23 going to ask the Hearing Officer to move this case  
24 to conclusion based on a violation of the Hearing  
25 Officer's order.

1                   Alternatively, it's our position that Ms.  
2                   REDACTED has violated the Hearing Officer's order and  
3                   this hearing, if it's not dismissed, ought to be  
4                   immediately moved to closed status as a result of  
5                   this violation.

6                   THE HEARING OFFICER:   Does that go on the  
7                   record, my "hmm"?  Let's see what you're talking  
8                   about.

9                   MR. RATNER:    Yes; I'm not going to offer  
10                  any commentary on it.  I'll let you take a look.

11                  THE HEARING OFFICER:   I'm going to give you  
12                  a chance to read it first.

13                  MR. RATNER:    Oh, no; I read it.

14                  THE HEARING OFFICER:   Oh, you did?  Oh,  
15                  okay, all right.

16                  MR. RATNER:    I did.  It's short.  It's very  
17                  short.  Would you like me to take it to her?

18                  MR. ANDRIANO:   Yes, please.

19                  MR. RATNER:    And once you've looked at it  
20                  -- I mean, obviously, we disagree.

21                  THE HEARING OFFICER:   I know; yeah.

22                  MR. RATNER:    So I don't think I need to say  
23                  any more.

24                  THE HEARING OFFICER:   No; probably not.

25                  MR. RATNER:    I'm happy to.

1 THE HEARING OFFICER: You know what the  
2 order said. Everyone knew what the order said.  
3 And --

4 MS. RATNER: I do just -- I would like to  
5 state an objection for the record. And we tried  
6 to pick our battles.

7 THE HEARING OFFICER: Before I read this,  
8 let me hear your objection.

9 MS. RATNER: Yeah; but pick our battles.  
10 We do believe that the social media aspect of the  
11 order is a prior restraint on speech. We think  
12 that if this was brought to a court, it would be  
13 enjoined.

14 That being said, I don't know what the post  
15 is. But I don't --

16 THE HEARING OFFICER: I don't, either. I  
17 haven't read it.

18 MS. RATNER: We just want that objection  
19 noted. And while there -- we are respectful of  
20 it, we've told everybody what it says and don't  
21 want anything to be reflected on --

22 THE HEARING OFFICER: You don't want me to  
23 conclude the hearing, I would assume, over this.

24 MS. RATNER: Correct. And I -- especially  
25 over something that we respectfully believe is a

1 prior restraint of speech in a government public  
2 hearing, and is not Constitutional.

3 THE HEARING OFFICER: All right.

4 MS. RATNER: Thank you.

5 THE HEARING OFFICER: The first thing I'm  
6 going to say in response is I respect your motion,  
7 because I think it's well-grounded. There was an  
8 order that I put out there. I don't believe that  
9 it was particularly artfully written, because I  
10 wrote it in a hurry.

11 However, I -- and I don't recall the exact  
12 details of what I said. However, I do believe  
13 that I addressed the social media aspect. So I  
14 want to --

15 I'm not -- first of all, I'm not going to  
16 read this, because my order said that I'm not  
17 going to include social media posts. So if  
18 counsel asserts to me that it's derogatory, and  
19 Mr. Ratner and Ms. Ratner had a chance to read it,  
20 I'm going to assume it's about this hearing.

21 And I don't know if there's information  
22 about me, and I really don't -- I don't have any  
23 response to that.

24 MR. RATNER: Not at all. I mean --

25 THE HEARING OFFICER: Well, I don't know.



1 MR. RATNER: I mean, I'd rather you read it  
2 than draw that --

3 THE HEARING OFFICER: I never --

4 MS. RATNER: No; we'd like you to read it.

5 THE HEARING OFFICER: I don't know. I  
6 don't care.

7 MS. RATNER: We would like you to read it,  
8 for sure.

9 THE HEARING OFFICER: All right. If you  
10 want me to read it --

11 MS. RATNER: I don't think that there is a  
12 basis for --

13 THE HEARING OFFICER: Okay. It looks to me  
14 like she's inviting people to come into the  
15 hearing room.

16 So regarding your social media violation of  
17 the First Amendment, first of all, I'm not the  
18 keeper of the First Amendment here. I'm a Special  
19 Education Hearing Officer. I'm not going to claim  
20 to know all of the Constitutional law or recall  
21 all of those issues today.

22 But I don't necessarily believe that it's my  
23 function to assert the observers' right to have --  
24 to come into the hearing over the right of the  
25 child to privacy.

1           And I haven't specified any of this to the  
2           observers, because it just did not seem wise to me  
3           to go into particular issues that the child has.  
4           But there are some pronounced issues in this case  
5           that make me believe that there is an interest in  
6           protecting or confining what we say here to this  
7           room, and not to expound -- not to give the entire  
8           issue out to the public to determine, or to  
9           affect, or to come into our confines here.

10           If there is curiosity, and the observers  
11           feel as if they have an interest in maybe  
12           following along what goes on at a special ed  
13           hearing, that's -- that is, to me, a legitimate  
14           reason to come in and listen.

15           But at any rate, let me go on and rule on  
16           this motion. You did have the order in place not  
17           to make posts on social media. This is a  
18           violation of the order.

19           MS. REDACTED: Can I say something?

20           MR. RATNER: Give her --

21           THE HEARING OFFICER: Hold on.

22           MS. REDACTED: Oh, sorry.

23           THE HEARING OFFICER: This is a violation  
24           of the order, in my opinion. And I would order  
25           you not to do that anymore. And if it does happen

1 again, I'm going to reserve counsel's motion now,  
2 and if --

3 And, again, I'm facing -- I wouldn't take it  
4 personally, anyway. Understand that you feel the  
5 need to express yourself as a mom. And I regard  
6 the First Amendment pretty dearly.

7 And so my interest in protecting the child  
8 here has to be paramount to that.

9 MS. RATNER: May mom --

10 THE HEARING OFFICER: If you disagree in  
11 have case law --

12 MS. RATNER: We do. We do. May mom --

13 THE HEARING OFFICER: Okay. I'll note your  
14 exception to that.

15 MS. RATNER: May mom speak, too?

16 THE HEARING OFFICER: Sure; go ahead.

17 MS. RATNER: Because she has a right, under  
18 the statute, to a public hearing.

19 THE HEARING OFFICER: I know. I read it;  
20 yeah.

21 MS. RATNER: And inviting -- you know, she  
22 -- you have something to speak to about the best  
23 interests of the child?

24 MS. REDACTED: Yeah; well, I --

25 THE HEARING OFFICER: If you want to take

1 this up on appeal, that's fine.

2 MS. REDACTED: No; I just have a --

3 MS. RATNER: Yes, yes; and so part of it is  
4 just preserving the record of a future appeal.

5 MR. ANDRIANO: Ms. Freeman, we object to  
6 the mother providing any explanation.

7 THE HEARING OFFICER: Yeah; okay. Well,  
8 let's go -- let's cut this off. I don't mean --  
9 we have a finite amount of time here. And, again,  
10 I've considered all of the issues that are weighty  
11 and are, I think, to be regarded in this case.

12 Again, I go back to my obligation, which is  
13 to protect the child who has these special  
14 education issues, which I do not regard to be  
15 frivolous and to be my guiding force here.

16 So that's where I'm coming from. If,  
17 however, you appeal the -- that I'm not giving you  
18 the absolute right to post on social media and  
19 have social media invited into our hearing room,  
20 then you can take that up on appeal --

21 MS. RATNER: Thank you.

22 THE HEARING OFFICER: -- through Circuit  
23 Court or Federal Court, however you choose to do  
24 it.

25 But, anyway, for now, I'm going to reserve

1 counsel's motion. If it happens again, however --

2 MS. RATNER: Sure.

3 THE HEARING OFFICER: -- I'm going to move  
4 the hearing to a conclusion swiftly. And what  
5 that means is that the hearing doesn't end at that  
6 point.

7 What I would do, because, of course, we've  
8 had motions to dismiss before on the oral portion  
9 of the hearing as it -- well, there are lots of  
10 different reasons, but -- that that could occur  
11 and has occurred in the past.

12 But what I normally do is, if the hearing  
13 does get moved to a conclusion for the oral  
14 portion, I still go back and look over everything  
15 that's been submitted on the written record, and  
16 all of your exhibits, and all of that, if you  
17 submit them.

18 MR. RATNER: Thank you very much.

19 THE HEARING OFFICER: Anyway, so let's move  
20 ahead.

21 MS. REDACTED: I just want to offer my --

22 MR. ANDRIANO: Ms. Freeman, this is --

23 THE HEARING OFFICER: Probably, you need to  
24 speak to Mr. Ratner at this point.

25 MR. RATNER: Great.

1 THE HEARING OFFICER: Or Ms. Ratner; I'm  
2 sorry, Ms. Ratner.

3 MS. RATNER: No problem.

4 MR. RATNER: Have we concluded with Mr.  
5 Andriano's motion?

6 THE HEARING OFFICER: Yeah; we're reserved.

7 MR. RATNER: I don't want to --

8 THE HEARING OFFICER: Yeah.

9 MR. RATNER: So I'm not speaking to that.  
10 I'm not attempting to prolong that.

11 THE HEARING OFFICER: And I also know that  
12 you don't have any -- you don't have -- you did  
13 not -- I'm not presuming that you encouraged her  
14 to post on social media.

15 MR. RATNER: No; and I appreciate that very  
16 much.

17 THE HEARING OFFICER: Yeah; or invited --  
18 the other day, I think you mentioned that you did  
19 not invite --

20 MR. RATNER: Ms. Lucas.

21 THE HEARING OFFICER: Yeah.

22 MR. RATNER: That's right. And so there  
23 was one point of clarification I just wanted to  
24 make.

25 THE HEARING OFFICER: Sure; go ahead.

1 MR. RATNER: Which is your -- what you  
2 stated today about reserving the right if it  
3 happens again, that applies to the parents, who  
4 are within our control; correct?

5 Not if there's a post by some -- an  
6 observer.

7 THE HEARING OFFICER: Oh, no; of course  
8 not. Yeah; I'm sorry I didn't make that clear.

9 MR. RATNER: No; I appreciate that.

10 THE HEARING OFFICER: Okay.

11 MR. RATNER: So that concludes that issue.

12 THE HEARING OFFICER: Yeah; that concludes  
13 that issue. But it's on the record, if it happens  
14 again --

15 MR. RATNER: Yes, ma'am.

16 MS. RATNER: I'm so sorry.

17 THE HEARING OFFICER: Go ahead.

18 MS. RATNER: Just to preserve for the  
19 appeal, can we -- can that be read into it,  
20 because --

21 THE HEARING OFFICER: If you want me to.

22 MS. RATNER: I haven't seen it. She said  
23 it was just an invitation to people to come.

24 THE HEARING OFFICER: Well, that's what it  
25 looks like.

1 MR. ANDRIANO: We have no objection to  
2 having the entire --

3 THE HEARING OFFICER: Yeah; but I think --  
4 I'm sorry.

5 MR. ANDRIANO: -- message read into the  
6 record.

7 THE HEARING OFFICER: Okay. You don't have  
8 any objection to my reading it into the record?

9 MR. ANDRIANO: Nope.

10 THE HEARING OFFICER: I'm not going to make  
11 it an exhibit or anything. So I think the --

12 MR. RATNER: Oh, could Ms. Ratner see it  
13 first? I'm sorry; I should have shown it to her  
14 first.

15 MS. RATNER: Thank you.

16 I think it -- you know, is it like, "We hate  
17 the" -- you know.

18 MR. ANDRIANO: She already asked to have it  
19 read into the record.

20 THE HEARING OFFICER: I'm just kind of  
21 curious about Ethiopian Epiphany.

22 MR. RATNER: That's actually Ms. Lucas.

23 MS. RATNER: Yeah.

24 THE HEARING OFFICER: That's her book?

25 MR. RATNER: Ethiopian Epiphany is Ms.



1 Lucas.

2 THE HEARING OFFICER: Oh, I see.

3 MS. RATNER: Please, please --

4 MS. OWENS: But the post is the parent's  
5 post.

6 MS. RATNER: -- just actually read it.

7 THE HEARING OFFICER: Okay. I don't need  
8 to hear all that.

9 MS. RATNER: No; but you may -- please do  
10 read it, because --

11 MR. ANDRIANO: Here's Ms. REDACTED's original  
12 post.

13 THE HEARING OFFICER: Thank you.

14 MS. RATNER: We think that -- right.

15 MR. RATNER: Well, I'd like to see that, as  
16 well.

17 THE HEARING OFFICER: Oh, okay. So I  
18 should read this one. This is the one -- okay.

19 MR. RATNER: Could I see that one?

20 THE HEARING OFFICER: Sure.

21 MR. RATNER: Thank you.

22 MS. RATNER: We think it's within her First  
23 Amendment right, and her rights under the IDEA to  
24 state -- to have a public hearing, and to state  
25 her opinions as to the fairness of the process so

1 far.

2 And everybody may disagree and draw their  
3 own conclusions. But we think it's squarely  
4 within the parent's rights to do that. So we  
5 would object.

6 I --

7 MR. ANDRIANO: Ms. Freeman, may I be heard?

8 THE HEARING OFFICER: Yes.

9 MR. RATNER: I think she's not finished.

10 THE HEARING OFFICER: Excuse me.

11 MS. RATNER: No; that's fine. But I would  
12 like --

13 THE HEARING OFFICER: You're not finished  
14 yet?

15 MS. RATNER: I think this should be read --

16 THE HEARING OFFICER: Read onto the record.

17 MS. RATNER: Yes.

18 THE HEARING OFFICER: Sure; okay.

19 Now, you want to respond.

20 MR. ANDRIANO: Ms. Freeman --

21 THE HEARING OFFICER: Yes.

22 MR. ANDRIANO: -- we agree that under the  
23 IDEA parents do have the right to a public  
24 hearing. But also under the IDEA there's a  
25 regulation right on point that says the parties

1 must comply with the Hearing Officer's orders.

2 This Hearing Officer made an express order  
3 that nothing was to be posted on social media.  
4 She disregarded that order. That's a direct  
5 violation of the Hearing Officer's order.

6 As the Hearing Officer also knows, the  
7 intimidation factor on witnesses has to be  
8 considered, as well. And if witnesses weren't  
9 affected by that, they would not have brought it  
10 to me this morning.

11 So Mr. Ratner can laugh and think it's  
12 funny, but clearly witnesses were impacted by that  
13 post.

14 MS. RATNER: Please read it.

15 THE HEARING OFFICER: Would everyone mind  
16 if I read it?

17 MS. RATNER: On its face, it's not  
18 intimidating.

19 THE HEARING OFFICER: Okay. Tell me about  
20 the witness intimidation aspect. That's  
21 important.

22 MR. ANDRIANO: Okay. Why don't we --

23 MS. RATNER: Can you read it?

24 MR. RATNER: Yeah; would you read it first,  
25 please.

1 THE HEARING OFFICER: Yeah; let me read it.  
2 Let me get my glasses out.

3 MR. RATNER: And I'm so sorry I laughed.

4 THE HEARING OFFICER: I'm a natural  
5 laugher, too. I understand. I laugh  
6 inappropriately --

7 MR. RATNER: It's a little bit  
8 uncomfortable, but --

9 THE HEARING OFFICER: -- as well, so I'm  
10 not going to hold it against you. All right.

11 MR. RATNER: But I would like, after you  
12 read it and when it's my turn, I do have a couple  
13 of things.

14 THE HEARING OFFICER: Okay. This is --  
15 let's see. Epiphany is Ms. Lucas. And this one  
16 is Ms. REDACTED that says "REDACTED" on it.

17 MS. REDACTED: Correct.

18 THE HEARING OFFICER: Okay. Let the record  
19 reflect then that I'm looking at a post that I'm  
20 holding that school counsel has provided to me  
21 this morning on the basis that there is a motion  
22 to conclude the hearing swiftly and to consider  
23 the post as in violation of the Hearing Officer's  
24 prior order requiring that there be no social  
25 media posting, and requesting that, based on

1 violation of the Hearing Officer's order to that  
2 effect and a few other items, I believe, were in  
3 the order, that have already been addressed on a  
4 prior day.

5 But today would mark the actual issue we're  
6 dealing with, which is were the witnesses  
7 intimidated by this post. So I'm going to read  
8 it. I'm the Hearing Officer.

9 And counsel have had a chance -- all counsel  
10 have had a chance to read this. So I'm going to  
11 read it now. Oh, I'm going to read it into the  
12 record.

13 "Post permissions for this event have been  
14 turned off for guests. The posts you see were  
15 made by the host or were posted before the  
16 permissions changed."

17 I'm not exactly certain what that means.  
18 But, anyway, I'll go on. And this was at 11:52 --  
19 I don't see a date on it.

20 Is it your assertion then, Mr. Andriano,  
21 that this occurred last night?

22 MR. ANDRIANO: Yes.

23 THE HEARING OFFICER: Okay. So last night  
24 was the 22nd. Is it your recollection it was last  
25 night? Well, is it --

1 MR. RATNER: I don't know.

2 THE HEARING OFFICER: All right. Well,  
3 last night was --

4 MR. RATNER: Last night was the 22nd.

5 THE HEARING OFFICER: Yeah; last night was  
6 the 22nd.

7 MR. ANDRIANO: We can put Ms. REDACTED on the  
8 witness stand, and we can find out when we posted  
9 it, if we need to.

10 MR. RATNER: I mean, Ms. REDACTED attempted to  
11 speak to it, and Mr. Andriano said it wasn't  
12 appropriate. So now we're going to have to have  
13 testimony on this?

14 THE HEARING OFFICER: I don't think I need  
15 to hear from Ms. REDACTED. I think she's been under  
16 enough pressure during this hearing. And I think  
17 I want to take that into consideration, too, that  
18 --

19 Anyway, "REDACTED," who is the mother in  
20 this case. and this is the body of the posting,  
21 "You would not believe it if I told you. Please  
22 come witness it for yourself. You must see what  
23 is taking place.

24 "Tomorrow's witnesses, hypen, Chesterfield's  
25 director of special education and virtual --

1 Virginia director of" -- and that's V-A --  
2 "director of special education."

3 There was one comment and one share. And I  
4 can't -- I believe that's the end of it, or that's  
5 the -- is there any portion of this that you want  
6 me to interpret or --

7 Because, honestly, I'm not a social media  
8 expert, and I don't know exact -- I know that she  
9 shared it, and that sounds like it went to --

10 MR. ANDRIANO: Neither am I, Ms. Freeman.  
11 But, again, it was brought to my attention by  
12 witnesses that --

13 THE HEARING OFFICER: Now, you said that  
14 witnesses were intimidated by this post. Why is  
15 that your assertion?

16 MR. ANDRIANO: Read the first part of it.  
17 "You won't believe what's happening in this case."  
18 I'm paraphrasing. I don't have it in front of me.

19 THE HEARING OFFICER: Well, I mean, it  
20 obviously has a negative tone to it. But I don't  
21 see anything real specific.

22 MR. ANDRIANO: Ms. Freeman, my --

23 THE HEARING OFFICER: It's generally an  
24 invitation. And I understand that, yeah, this  
25 could have a chilling effect on witnesses that --

1 to me, if I'm a witness and I read this, I'm going  
2 to -- I'm probably not going to want to testify.

3 Because everything I say -- and this is the  
4 reason why you try to prevent having -- to me,  
5 just for my own opinion, that's why you try to  
6 avoid having posts on social media about a  
7 particular case.

8 Because there -- and I think I mentioned  
9 this at the last pre-hearing conference or the one  
10 before that, that there is a danger that witnesses  
11 -- potential witnesses can see this, and feel one  
12 way or the other.

13 But, certainly, possibly take it all in and  
14 go, "Well, I have -- they know where my address  
15 is. They know where my -- they know who my  
16 children are."

17 It's just also an invitation to others to  
18 look into who these witnesses are find out  
19 personal details. We all know that we live in an  
20 extremely volatile world now.

21 And that's the other reason why I try to  
22 contain what we're doing here, because -- because  
23 of those outside dangers, and the fact that we  
24 can't control what other -- how other people react  
25 to different posts on social media.



1           Anyway, having said that, I'm going to  
2           reserve the motion. No more social media posting,  
3           at least during the pendency of the case. And I  
4           will go back to my office and make a  
5           determination.

6           But if it does happen again, I'm going to  
7           renew the -- I'm going to rule on the motion and  
8           conclude the hearing. Are there any questions?

9           MS. RATNER: No; I think our objection has  
10          been stated already.

11          THE HEARING OFFICER: Yes; okay.

12          MS. RATNER: Thank you.

13          THE HEARING OFFICER: All right, all right.  
14          Anything else you want to say, your side? No?  
15          Okay.

16          MS. OWENS: Well, I will add this. That I  
17          understand that -- what you've indicated about the  
18          parent being stressed about the situation. But,  
19          certainly, there are school board witnesses, as  
20          well, who have never gone through this process  
21          before.

22          And so, you know, being the subject of, you  
23          know, of a media post, and inviting people to come  
24          in, can be intimidating for them, as well, who  
25          have been called into this process and are

1 required to testify here today.

2 THE HEARING OFFICER: That's absolutely  
3 true. And just building on what you just said,  
4 that is -- I think you just hit on -- and I hope I  
5 approached that rationale, that it's the danger  
6 that we don't see.

7 It's the whole world out there. That's the  
8 problem. And I absolutely believe in the First  
9 Amendment and our right to free speech. But there  
10 are reasons why that becomes dangerous,  
11 unfortunately, in this world.

12 And that's the other reason. And when I  
13 talked about the witnesses' addresses becoming  
14 known, their names becoming known, that opens our  
15 hearing up to danger. And that's my problem with  
16 it.

17 MR. RATNER: And I very much understand and  
18 appreciate that. I think that's why we have armed  
19 security here outside.

20 THE HEARING OFFICER: Yeah; that was the  
21 other.

22 MR. RATNER: But I --

23 THE HEARING OFFICER: I didn't want you to  
24 think that that was because of you all. It's --

25 MR. RATNER: No, no.

1 THE HEARING OFFICER: -- the reaction --

2 MR. RATNER: But I --

3 MS. RATNER: Well, we did, kind of. A lot  
4 of people did.

5 MR. RATNER: Right; a lot of people did  
6 feel that way.

7 MS. RATNER: So -- yes, they did feel that  
8 way.

9 MR. RATNER: And it's intimidating to the  
10 public who would like to observe.

11 MS. RATNER: Yes.

12 MR. RATNER: But I would just --

13 THE HEARING OFFICER: We've all heard about  
14 the schools --

15 MR. RATNER: No; I understand. But I just  
16 wanted to speak to Ms. Owens's point briefly. And  
17 then I hope we can move on to other things.

18 THE HEARING OFFICER: Yeah; let's move on.

19 MR. RATNER: But --

20 THE HEARING OFFICER: I agree with you.

21 MR. RATNER: And I appreciate the need for  
22 security. You're absolutely right. It is a  
23 volatile world. But I did just want to note these  
24 are public employees, paid by the taxpayers, and  
25 this is as public hearing that people have a right

1 to come see how their public officials are  
2 testifying, so --

3 THE HEARING OFFICER: I just happened to  
4 see something out of the corner of my eye. One of  
5 my observers --

6 MR. REDACTED: Sorry. That's my dad. Is he  
7 not allowed to do that?

8 THE HEARING OFFICER: Oh, he's your dad?

9 MR. REDACTED: Yes.

10 THE HEARING OFFICER: Oh, okay.

11 MR. REDACTED: You can tell by how tall and  
12 good-looking he is.

13 THE HEARING OFFICER: Yeah; I can see the  
14 resemblance.

15 MR. REDACTED: Is he not allowed to pass me a  
16 note? Is that what you're referring to?

17 THE HEARING OFFICER: Yeah; I did see --  
18 just -- we don't --

19 MR. REDACTED: I honestly didn't know that.

20 THE HEARING OFFICER: I'm going to ask that  
21 you send the note back. Because we -- I think one  
22 aspect of the order was also that there would be  
23 no editorial commentary being made by the  
24 observers.

25 So we're going to observe that rule, as

1 well, moving forward. But let's hope, having said  
2 that, let's move on.

3 First witness.

4 MR. RATNER: So I had --

5 THE HEARING OFFICER: Are there any motions  
6 this morning? I'm sorry. Besides that.

7 MR. RATNER: Well, it's a preliminary  
8 issue.

9 THE HEARING OFFICER: Yeah; okay.

10 MR. RATNER: I don't know that I would  
11 specifically call it a motion. Since Mr. Andriano  
12 went first, I'll just see if the school board has  
13 anything else, and then --

14 THE HEARING OFFICER: Okay.

15 MR. ANDRIANO: Nothing at this time.

16 THE HEARING OFFICER: Okay. So --

17 MR. RATNER: Great. So I would like to  
18 address something with you, if I may --

19 THE HEARING OFFICER: Go ahead.

20 MR. RATNER: -- before we call our first  
21 witness.

22 THE HEARING OFFICER: Okay. Go ahead.

23 MR. RATNER: Thank you. So you heard Ms.

24 REDACTED indicate a moment ago she was hoping to  
25 address you this morning, irrespective of the

1 post. Mr. REDACTED was also hoping to address you.  
2 If it is your -- I'd like them to have the  
3 opportunity to do so.

4 If -- they'll be brief. If it is your  
5 preference, I will relay their concerns.

6 THE HEARING OFFICER: Well, it's going to  
7 take up your time. And I think I've already  
8 ruled. And, but if you feel the -- can they do it  
9 briefly?

10 MR. RATNER: Very briefly.

11 THE HEARING OFFICER: Okay.

12 MR. RATNER: Absolutely.

13 THE HEARING OFFICER: All right.

14 All right. Go ahead.

15 MS. REDACTED: I just wanted to request a book  
16 for myself of the school board's exhibits. Not at  
17 our expense, honestly, because it's --

18 THE HEARING OFFICER: What book?

19 MS. REDACTED: If you all could just provide  
20 like the exhibits so that I can just follow along.  
21 I know Mr. Ratner has one.

22 THE HEARING OFFICER: Oh, I thought --

23 MS. REDACTED: But --

24 MR. RATNER: No; we made hard copies for  
25 the other side. They sent us electronic. And so

1 I printed it out myself, but I didn't print one  
2 for Ms. REDACTED, unfortunately, because I was  
3 expecting there would be hard copies.

4 THE HEARING OFFICER: If there's an extra  
5 book, that's fine.

6 MR. ANDRIANO: Yeah; we have an extra copy.

7 THE HEARING OFFICER: Yeah.

8 MS. REDACTED: Okay. That's easy.

9 THE HEARING OFFICER: Of course you can. I  
10 apologize. I didn't realize you didn't have one.

11 MR. RATNER: That's my fault.

12 THE HEARING OFFICER: All right.

13 MS. REDACTED: I wanted to requested that  
14 observed be allowed in the room when they arrive,  
15 versus -- if they're safe. Because we have had --

16 THE HEARING OFFICER: Yeah; they're invited  
17 in.

18 MS. REDACTED: But currently, they're being  
19 put in this room. And I know some of them are  
20 hard of hearing.

21 THE HEARING OFFICER: Oh, no; they can be  
22 in this room.

23 MR. RATNER: They've been waiting for a  
24 break.

25 THE HEARING OFFICER: Did you think that

1           they --

2           MS. REDACTED:    No; they've been --

3           THE HEARING OFFICER:    Oh, no; they can come  
4           in here.

5           [Unintelligible crosstalk.]

6           MS. REDACTED:    Right; and I was going to say,  
7           I mean, I know --

8           THE HEARING OFFICER:    But remind them of  
9           the social media --

10          MS. REDACTED:    -- person and, obviously, you  
11          use that discretion --

12          THE HEARING OFFICER:    I believe they -- I'm  
13          sorry to interrupt you.  You go ahead.

14          MS. REDACTED:    Oh, no.  I was just going to  
15          say if there's an issue once they're in here,  
16          absolutely, you use your discretion to ask them to  
17          leave.

18          Like it's just we have people that want to  
19          observe in person.

20          THE HEARING OFFICER:    Yes.

21          MS. REDACTED:    Yes.

22          THE HEARING OFFICER:    Who did or didn't?

23          MR. RATNER:    They've been put in an  
24          overflow room.

25          MS. REDACTED:    That did.  They want to come



1 in.

2 THE HEARING OFFICER: Oh, they want to come

3 --

4 MR. RATNER: And because we weren't on a  
5 break --

6 THE HEARING OFFICER: Yeah; the overflow  
7 room is in case we have more observers than are in  
8 here. I didn't mean for them to have to be in  
9 there.

10 MR. RATNER: And just to clarify.

11 THE HEARING OFFICER: Yeah.

12 MR. RATNER: And I don't think anyone had  
13 bad intent. I think the people out front thought,  
14 "Oh, we don't want people walking in and out. It  
15 will be disruptive. So go into the overflow room  
16 until a break."

17 THE HEARING OFFICER: Oh, okay. No; you  
18 can --

19 MR. RATNER: And what -- and she'd just  
20 like them to be able to come in and out freely.

21 THE HEARING OFFICER: Yeah; sure, yeah.  
22 And they can take breaks whenever we do.

23 MS. REDACTED: And then one more thing. I can  
24 respect the -- your intentions with not allowing  
25 this to be public, as public as we had hoped. And

1 I know that part of your concern was my daughter's  
2 anxiety.

3 But I'm her mother. And we've been very  
4 public for a reason. And so I just -- I would  
5 like you to reconsider at least allowing them to  
6 access this Google -- whatever it's called, the  
7 Google Meet by invitation.

8 MR. RATNER: Which that's what's being  
9 streamed into overflow.

10 MR. ANDRIANO: Ms. Freeman --

11 THE HEARING OFFICER: Okay. That's above  
12 my job description.

13 MS. REDACTED: It was just an ask.

14 THE HEARING OFFICER: Wait a minute. You  
15 want me to reconsider the live stream motion? Is  
16 that what you're asking?

17 MS. REDACTED: Correct. I'm just speaking  
18 freely as a mom that wishes I could have resolved  
19 this before. But I am just speaking freely in the  
20 sense that we requested a public hearing.

21 THE HEARING OFFICER: I know.

22 MS. REDACTED: I understood your concern to be  
23 my child's anxiety. My child --

24 THE HEARING OFFICER: That's a main  
25 concern; yeah.

1 MS. REDACTED: She's my responsibility. And  
2 so that's where I -- I would just ask that you  
3 reconsider.

4 THE HEARING OFFICER: Okay. I reconsidered  
5 that a lot.

6 MS. REDACTED: Okay.

7 THE HEARING OFFICER: I honestly did think  
8 about this a long time.

9 MS. REDACTED: Thank you.

10 THE HEARING OFFICER: And I do think that  
11 it's wise to keep the information we're discussing  
12 within the confines of the room, and with the  
13 observers, and have controls on the process, to  
14 preserve the integrity of it.

15 Anyway, so overruled at this time. But I'll  
16 keep reconsidering, if that makes you feel better.  
17 And did you say there was --

18 MR. RATNER: Mr. REDACTED also wanted --

19 THE HEARING OFFICER: Okay.

20 MR. RATNER: And he'll be shorter, I think,  
21 even that Ms. REDACTED.

22 THE HEARING OFFICER: Okay. Mr. REDACTED, is  
23 there something that I didn't address?

24 MR. REDACTED: No; I just wanted to make the  
25 point that I'm very taken back at this process. I

1 was under the impression that how this worked was  
2 we provide evidence, they have an opportunity to  
3 dispute the evidence, and then there's a ruling on  
4 the evidence.

5 And this has been, in my opinion, a bit of a  
6 circus act. We can't even get out evidence out  
7 there without an overwhelming amount of  
8 objections.

9 I just wanted to make it clear that I'm very  
10 taken back at how hard the county is trying to  
11 bury all of this. Very surprising to someone  
12 who's never been a part of this.

13 In a matter of minutes, Ms. Owens was able  
14 to ask Ms. Pettitway a dozen questions. In two  
15 hours, we hardly got her to answer a few. That's  
16 wrong.

17 MR. ANDRIANO: Objection, Ms. Freeman.  
18 That's not accurate at all.

19 MR. REDACTED: That's not how this should --  
20 that's not how this should be. Thank you.

21 MR. ANDRIANO: Ms. Freeman --

22 THE HEARING OFFICER: We have an objection  
23 on the school's -- from school counsel. And I  
24 think -- I appreciate your remarks, and I respect  
25 your opinion.

1           And I will -- when I go back and consider  
2           all of these -- all the information all of you all  
3           have provided, then I will come to a conclusion.

4           However, the right to due process means that  
5           one side presents their case. There is case law  
6           on which side presents the case in these cases.  
7           And there's -- the school system has a right to  
8           cross-examine.

9           And that's the way it works. It may seem  
10          complicated, I know that, to parents. And that is  
11          probably why parents do feel somewhat intimidated  
12          at hearings, because it's all new.

13          And you -- as you indicated, it probably  
14          does seem a little difficult and overwhelming,  
15          probably. And I have children. I know how it  
16          feels to be emotionally involved in your child's  
17          education. And we all are.

18          So having said that, this is the process.  
19          And sometimes processes change. And sometimes we  
20          just have to live with the procedure we're given.  
21          But the procedure we have is called due process,  
22          and that's the way it works.

23          So, anyway, let's --

24          MR. REDACTED: May I have one final comment?

25          THE HEARING OFFICER: I don't want to take

1 up a lot of your time with my comments, so --

2 MR. REDACTED: So my final comment is -- and  
3 that's why we wanted this public. Because to the  
4 average person, to watch the shenanigans --

5 MR. ANDRIANO: Objection, Ms. Freeman. I  
6 mean, seriously --

7 THE HEARING OFFICER: Okay. Let's --

8 MR. REDACTED: I shouldn't have used the word  
9 "shenanigans."

10 MS. OWENS: We ask that we be able to move  
11 forward into the hearing, because --

12 THE HEARING OFFICER: Yeah; let's move --  
13 all right. Thank you for your remarks.

14 MR. REDACTED: Thank you for allowing me to  
15 speak.

16 MS. OWENS: There was an opportunity for --

17 THE HEARING OFFICER: I do want to give you  
18 the opportunity to do that.

19 MS. REDACTED: I appreciate that.

20 MS. OWENS: Ms. Freeman, there was an  
21 opportunity for the parents to identify who they  
22 wanted to add to the witness list. And,  
23 certainly, that would have been an opportunity for  
24 parents to talk.

25 However, now that they -- both sides are

1 represented by attorneys. Mr. Ratner can --  
2 excuse me. However, including commentary from  
3 parents who are, for lack of a better word,  
4 speaking negatively about this process is not  
5 helpful to the adjudication of the issues here  
6 today.

7 So we would just ask that we be able to move  
8 forward and to the testimony, rather than  
9 continuing to --

10 THE HEARING OFFICER: Okay. I agree. And  
11 I'm going to cut off the commentary. And, but  
12 thank you for expressing your opinions. And I'll  
13 certainly consider all of -- everything you all  
14 have said.

15 So let's have --

16 MR. RATNER: I'm so sorry.

17 THE HEARING OFFICER: What? Go ahead.

18 MR. RATNER: I still just had one  
19 preliminary issue to address --

20 THE HEARING OFFICER: Okay. Go ahead.

21 MR. RATNER: -- before we call the  
22 witnesses.

23 THE HEARING OFFICER: What's that?

24 MR. RATNER: So thank you again for  
25 allowing the parents to speak.

1 I will take full ownership for their  
2 frustration. I have been frustrated over the last  
3 two days at my own performance, my own inability  
4 to navigate the system as smoothly as I would have  
5 liked.

6 It may have been, shall we say,  
7 miscalculation or a poor tactical decision to rely  
8 on so many of the school witnesses, who obviously  
9 are -- don't mean anything pejorative, they're  
10 adverse witnesses, and so it can be difficult to  
11 examine them. And I understand that.

12 I appreciate very much the feedback you gave  
13 me yesterday. I took it to heart. I went against  
14 my usual practice. I have typed out examinations  
15 for all of the witnesses.

16 I've got clear references to each exhibit.  
17 Hopefully there won't be quite as much fumbling  
18 around. I understand I am -- can be an emotional  
19 person. Not everybody's cup of tea.

20 But I assure you, to the extent any  
21 frustration has spilled out on my face, it is  
22 frustration at my own performance. I am going to  
23 move forward.

24 I've got one page for each witness. I hope  
25 it will be enough time. But I do just want,



1 again, to think that this is an administrative  
2 hearing in which the rules of evidence don't  
3 apply.

4 And what -- and, again, this is just from  
5 where I sit. The school board -- and, again, it  
6 is their right to make as many objections as they  
7 want. They have treated it more strictly than any  
8 court I've ever participated in.

9 I am going to do my best to lay foundation  
10 and all of those things, so we can move this  
11 along, hopefully without as many interruptions.  
12 But I don't know --

13 And, again, this is where I've gotten a  
14 little bit confused or tripped up. These are all  
15 -- every single person we've called so far has  
16 been a member of REDACTED's IEP team.

17 And so I don't know how much more foundation  
18 I need to lay about their knowledge related to  
19 this case to be able to ask them questions about  
20 an IEP, an IEP meeting, things like that.

21 So I'm going to do my best. And, obviously,  
22 they can continue to object, and I will do my best  
23 to respond succinctly. But I just want you to  
24 know I took everything that you said to heart. I  
25 appreciated the feedback very much.

1                   And so the last thing I wanted to hand up,  
2                   if I may -- and I'll show it to the other side  
3                   first. These are --

4                   THE HEARING OFFICER: Did you happen to get  
5                   with school counsel about the -- you had issues  
6                   with the witness list.

7                   MR. RATNER: We did. I should say that  
8                   right on the record.

9                   THE HEARING OFFICER: Okay.

10                  MR. RATNER: Mr. Andriano was very  
11                  accommodating. We had a great conversation.

12                  THE HEARING OFFICER: Okay.

13                  MR. RATNER: I think we've got that all --

14                  THE HEARING OFFICER: All right; great.

15                  MR. RATNER: -- all resolved.

16                  THE HEARING OFFICER: All right; yeah.

17                  MR. RATNER: So I appreciate that.

18                  MS. OWENS: Thank you.

19                  MR. RATNER: You're welcome. And just let  
20                  me know when you're ready before I hand it to Ms.  
21                  Freeman.

22                  MS. OWENS: One moment.

23                  THE HEARING OFFICER: Okay.

24                  (Discussion off the record.)

25                  THE HEARING OFFICER: Did you tell your

1 observers that they can come in here?

2 MS. REDACTED: I just let the ladies know that  
3 are sitting there that you said it was okay.

4 THE HEARING OFFICER: Yes; of course.

5 MR. RATNER: May I hand these up, or are  
6 you still reading them?

7 THE HEARING OFFICER: Let me just say for  
8 the record I appreciate your remarks. And I was  
9 not -- I was just doing what I normally do.

10 MR. RATNER: No; I thought you offered me  
11 very constructive feedback.

12 THE HEARING OFFICER: I didn't know you  
13 were taking it so --

14 MR. RATNER: It was very helpful.

15 THE HEARING OFFICER: Okay.

16 MR. ANDRIANO: Ms. Freeman, this is the  
17 exact motion that Ms. Ratner made yesterday.  
18 We've already gone over this.

19 MR. RATNER: Right; and I just wanted to  
20 hand -- she cited --

21 THE HEARING OFFICER: What is it?

22 MR. RATNER: This has to do with --

23 MR. ANDRIANO: It's the rules of evidence.

24 MR. RATNER: -- opinion testimony. And I  
25 just wanted to hand you the two statutes she

1 referenced, so you would have it.

2 THE HEARING OFFICER: Oh, okay. Was that  
3 the reference to whether or not to qualify --

4 MR. RATNER: That's right.

5 THE HEARING OFFICER: And you found a  
6 deviation from that?

7 MR. RATNER: Well, right; so this is --

8 THE HEARING OFFICER: And I researched that  
9 a little bit last night, and I'm still on target  
10 about qualifying experts, I believe, at a special  
11 education hearing.

12 Is that what you were going to assert this  
13 morning, that experts are not automatically  
14 experts, that they're -- that they do require  
15 qualification as a witness?

16 MR. RATNER: We don't disagree with that at  
17 all. What we -- we have rules --

18 THE HEARING OFFICER: Maybe I misunderstood  
19 then.

20 MR. RATNER: Yes. So we have Rule 2:701 of  
21 the Virginia Supreme Court, Opinion Testimony by  
22 Lay Witness.

23 "Opinion testimony by a lay witness is  
24 admissible if it is reasonably based upon the  
25 personal experience or observations of the

1 witness" --

2 THE HEARING OFFICER: Personal  
3 observations.

4 MR. RATNER: Yes.

5 THE HEARING OFFICER: Yes; okay.

6 MR. RATNER: Yes; okay.

7 THE HEARING OFFICER: That's right.

8 MR. RATNER: So for example, we will be  
9 calling Ms. -- excuse me -- Dr. Dragone. I  
10 apologize.

11 THE HEARING OFFICER: That's okay.

12 MR. RATNER: The first witness. I believe  
13 the school considers her an expert witness. We  
14 don't necessarily disagree.

15 THE HEARING OFFICER: Yes.

16 MR. RATNER: But I'm going to be asking  
17 opinions that may not be, quote/unquote, expert  
18 testimony.

19 THE HEARING OFFICER: Oh, is that all you  
20 meant?

21 MR. RATNER: And so Ms. Owens will then  
22 say, "Well, we can just stipulate that she's an  
23 expert." And I'm not sure I --

24 THE HEARING OFFICER: Why don't we just  
25 stipulate that she's an expert now --

1 MR. RATNER: Well --

2 THE HEARING OFFICER: -- if that's what the  
3 school system wants to do?

4 MS. OWENS: So -- I'm sorry.

5 THE HEARING OFFICER: Do you -- I'm sorry.  
6 Go ahead.

7 MS. OWENS: I cut across you, Ms. Freeman.

8 THE HEARING OFFICER: That's okay.

9 MS. OWENS: I want you to be able to finish  
10 your point first. The concern that the school  
11 board has -- well, first, I want to comment on  
12 statements about the process.

13 I mean, there is, of course -- there is, of  
14 course, a formality to this process. That's why  
15 we have a court reporter here.

16 And, of course, this case can be appealed to  
17 Federal Court. And then we're going to have  
18 Judges looking at the transcript in this matter.  
19 And therefore it is important that the school  
20 board, as well as when the school board puts on  
21 its case the parents' attorneys, will have an  
22 opportunity to preserve the record.

23 And so they will have an opportunity to  
24 present objections to questions that they believe  
25 were not properly asked of a particular witness.

1 That is merely what the school board is doing in  
2 this case.

3 And so with regard to comments that have  
4 been made that the school board has been overly  
5 objecting, the school board is making objections  
6 that it believes are necessary in order to  
7 preserve its objections and to preserve its  
8 arguments on appeal in this case if we need to  
9 appeal this case.

10 Also, with regard to Mr. Ratner's comments  
11 about expert witnesses, one of the -- merely  
12 because an individual has been identified as an  
13 expert witness does not mean that they are expert  
14 in all things.

15 You may be able to ask about whether an IEP  
16 committee considered an OT evaluation, but you  
17 can't expect a teacher to testify as an  
18 occupational therapist.

19 I'm just using this as an example.

20 THE HEARING OFFICER: I know.

21 MS. OWENS: Merely because they were a part  
22 of a committee. And that's not -- and that is why  
23 the entire -- there's an IEP process in place  
24 where we have -- where IEP teams have input from  
25 various individuals with variant expertise.

1                   And so to ask a witness a question that is  
2                   outside of their area of expertise is not an app  
3                   way to use that expert's testimony. And so to the  
4                   extent that that occurs in the future, as it has  
5                   -- in the school board's opinion, it has occurred  
6                   in the past, then, of course, we're going to  
7                   continue to object.

8                   MR. RATNER:     Right, right. So --

9                   MS. RATNER:     That doesn't have anything to  
10                  do with --

11                  MR. RATNER:     Right; that doesn't have  
12                  anything to do with our motion. And it, again,  
13                  just feels like it's attempting to run into our  
14                  time.

15                  THE HEARING OFFICER:     Well, I think she was  
16                  going back to --

17                  MR. RATNER:     Okay.

18                  THE HEARING OFFICER:     -- your statement  
19                  about the process.

20                  MR. RATNER:     Understood. No; and I  
21                  appreciate that.

22                  THE HEARING OFFICER:     Yes.

23                  MR. RATNER:     So if I could just respond  
24                  briefly, and then we can move --

25                  THE HEARING OFFICER:     Sure; go ahead.



1 MR. RATNER: So, again, we -- again, Mr.  
2 Andriano and I have worked cooperatively to  
3 establish an order of witnesses that, you know,  
4 again, respects the school board.

5 So, for example, Ms. Rubino, who prepared  
6 one of the reports as an educational  
7 diagnostician, will be coming in later. And so  
8 to --

9 She will be able to authenticate her report  
10 and all these things. So to say I can't ask Dr.  
11 Dragone about a report that will be coming into  
12 evidence through the appropriate witness when I  
13 have an opportunity to connect it up, I think is  
14 unfair.

15 And that's the last thing I'll say about  
16 that.

17 THE HEARING OFFICER: All right. Any  
18 response, or do you just want to leave it on the  
19 record?

20 MR. ANDRIANO: Well, Ms. Freeman, one thing  
21 I would just say in response to Mr. Ratner's claim  
22 that the rules of evidence do not apply, that's  
23 not accurate.

24 The rules of evidence are relaxed in  
25 administrative hearings, but they certainly apply,

1 or else this wouldn't be an administrative due  
2 process hearing.

3 MR. RATNER: Well, I'm sorry. I was just  
4 going by what you had said --

5 THE HEARING OFFICER: Yeah; I have said  
6 that. That's not his fault. That's mine.

7 MR. RATNER: So I'm a little --

8 THE HEARING OFFICER: And I will amend,  
9 from here on out, what I say. That's true. The  
10 rules of evidence are relaxed, not --

11 MR. RATNER: Understood.

12 THE HEARING OFFICER: Yeah; not -- didn't  
13 mean to misdirect you.

14 MR. RATNER: No, no, no; and I understood  
15 that. I was saying it in shorthand.

16 THE HEARING OFFICER: Yeah.

17 MR. RATNER: So I apologize.

18 MS. OWENS: And Mr. Ratner indicated that I  
19 had not responded to his question about lay  
20 testimony. It was my understanding that I  
21 responded to both the issue about the formality of  
22 this proceeding as well as his use of -- or  
23 attempted use of experts during the proceeding.

24 So I'm not sure what other issues -- if  
25 there is another issue that the school board needs

1 to respond to, I'd be happy to do so.

2 MS. RATNER: Yes, there is. And I think  
3 that it was preserved for the record. The rules  
4 of evidence and the Virginia Code do not exclude  
5 opinion testimony by either a lay witness or an  
6 expert as to an ultimate issue of fact.

7 And so there was an opinion expressed by a  
8 witness yesterday. And my recollection is it was  
9 determined that that was not admissible, or to be  
10 stricken, because that person had not been  
11 qualified as an expert.

12 And so I think that's a -- that violates the  
13 Virginia law and rules of evidence. I think that,  
14 certainly, the Hearing Officer's entitled so  
15 afford more weight to a person qualified as an  
16 expert.

17 But there is -- I don't think a teacher  
18 needs to be qualified as an expert to have an  
19 opinion about, really, anything that's a fact.  
20 Not a legal issue, but a fact.

21 THE HEARING OFFICER: That was my  
22 misinterpretation about what --

23 MS. RATNER: Yes.

24 THE HEARING OFFICER: -- you were saying.  
25 I think, if I recall correctly -- and then we need

1 to wind this up.

2 MS. RATNER: Yes.

3 THE HEARING OFFICER: But I misunderstood  
4 what you said. Of course -- and I hope I don't  
5 misguide you here about what I said yesterday or  
6 what I believe.

7 But I thought you meant that expert  
8 witnesses, to give an expert opinion, did not have  
9 to be qualified.

10 MS. RATNER: Oh, no.

11 THE HEARING OFFICER: And that was wrong.

12 MS. RATNER: I'm very sorry.

13 THE HEARING OFFICER: And that was -- no;  
14 that was my misinterpretation. I'm reading the  
15 statute now. It's -- yes; of course, as to  
16 factual evidence, lay witnesses and expert  
17 witnesses can testify as to facts.

18 MS. RATNER: And their opinions.

19 MR. RATNER: And opinions. That's what --

20 THE HEARING OFFICER: Yeah; their opinions  
21 about factual information.

22 MS. RATNER: So that was all --

23 THE HEARING OFFICER: Underlying all of  
24 this, everything we're saying is our opinion.

25 MS. RATNER: Exactly.

1 THE HEARING OFFICER: If you think about  
2 it.

3 MS. RATNER: Correct.

4 MR. ANDRIANO: Ms. Freeman, if I could be  
5 heard, please.

6 THE HEARING OFFICER: Yeah; okay. So let  
7 me hear from school counsel.

8 MR. ANDRIANO: It was my understanding that  
9 Mr. Ratner was asking a -- Ms. Pettitway, I believe  
10 it was, about a VMI. Well, she's not -- she can't  
11 interpret the VMI. She's not qualified --

12 THE HEARING OFFICER: Right.

13 MR. ANDRIANO: -- to make an opinion about  
14 the results or the application of a VMI. And that  
15 was the point.

16 THE HEARING OFFICER: Yes.

17 MR. RATNER: I'm so sorry if I -- just  
18 because --

19 THE HEARING OFFICER: And I think I'm --  
20 I'm sorry. Go ahead.

21 MR. RATNER: So this will be helpful.  
22 Because, again, they objected. And we never even  
23 got to the question. What I wanted to ask Ms.  
24 Pettitway was, was she in a meeting where a VMI,  
25 which is an OT evaluation, was discussed.

1                   That's it. That's a fact. Is that  
2                   appropriate then? Because we never got to that.

3                   THE HEARING OFFICER: Because I think the  
4                   questioning was cut off --

5                   MR. RATNER: Right; that's right.

6                   THE HEARING OFFICER: -- based on Mr. --

7                   MS. OWENS: I do --

8                   THE HEARING OFFICER: Because of an  
9                   objection of the school --

10                  MR. RATNER: That's right.

11                  THE HEARING OFFICER: -- because there was  
12                  probably the hesitation that you were going into  
13                  an area that did not concern her area of  
14                  expertise.

15                  MR. RATNER: That's exactly right.

16                  THE HEARING OFFICER: Yeah.

17                  MR. RATNER: But so if I could get some  
18                  guidance again. Would that question -- I think  
19                  that absolutely is a fact question. You might say  
20                  it's irrelevant, but --

21                  MS. OWENS: Ms. Freeman --

22                  THE HEARING OFFICER: Well, it was really  
23                  the area that I think that you were getting --

24                  Yes. Go ahead, Ms. Owens.

25                  MS. OWENS: I just want to -- I want to

1 point out that that -- if that question had been  
2 asked of a witness, that would not constitute  
3 necessarily a basis for an objection.

4 I know I certainly didn't object if --

5 THE HEARING OFFICER: I don't recall --

6 MS. OWENS: -- it's, "Was the VMI discussed  
7 during an IEP meeting?" Well, of course, that  
8 answer can be provided.

9 THE HEARING OFFICER: I don't recall the  
10 exact question.

11 MS. OWENS: However, if the question is,  
12 "Well, didn't the VMI provide for this? And  
13 doesn't this mean that?", we cannot -- that's when  
14 we start entering into testimony of other  
15 witnesses.

16 And I'll give you an example. There were  
17 questions asked of Ms. Pettitway about the  
18 developmental reading assessment, the DRA, and the  
19 DRA scores.

20 And so to the extent that -- and then there  
21 were questions about whether Ms. Pettitway had  
22 administered the DRA. But she didn't administer  
23 the DRA to REDACTED.

24 And so to the extent that testimony was  
25 being elicited --

1 THE HEARING OFFICER: Yes.

2 MS. OWENS: -- in areas that were not within  
3 that particular witness's expertise -- because she  
4 had not administered that assessment to REDACTED

5 REDACTED

6 And so to ask her questions to interpret the  
7 results, to interpret the results of another  
8 evaluator, that becomes the area in which the  
9 school board objects.

10 MS. RATNER: None of this relates to my  
11 objection. And I'm asking to please move on.  
12 When we get the transcript, I'll show you exactly  
13 what I'm referencing.

14 It had nothing to do with Ms. Pettitway. It  
15 was a statement that only an expert, only a  
16 qualified expert can render an opinion. And --

17 THE HEARING OFFICER: Yeah; and I don't  
18 remember the -- I'm sorry to interrupt you.

19 MS. RATNER: Right.

20 THE HEARING OFFICER: I just --

21 MS. RATNER: And I, frankly, don't remember  
22 exactly what it is.

23 THE HEARING OFFICER: I don't remember what  
24 the question is.

25 MS. RATNER: But I know it was not what



1           they're saying.

2           MR. RATNER:     It wasn't during Ms. Pettaway.

3           That's --

4           THE HEARING OFFICER:     Oh --

5           MS. RATNER:     And so now we're on the same

6           page.   And so it's good that we can move on.

7           Let's --

8           THE HEARING OFFICER:     I'm just going to  
9           give you that, to insert into the record.   I don't  
10          think I called them exhibits.

11          THE COURT REPORTER:     Attachments?

12          THE HEARING OFFICER:     Yes; just attach it.

13          THE COURT REPORTER:     Yes, ma'am.

14          THE HEARING OFFICER:     Okay.

15          MR. RATNER:     So I'm really embarrassed to  
16          do this.   But if we start doing a witness right  
17          now, it's going to be a quick break.

18          So maybe while she's getting ready, we take  
19          a break.

20          THE HEARING OFFICER:     Let's all take a  
21          quick break.   And we've taken about -- almost an  
22          hour.   So come back at 10:00.   And make sure that  
23          all the observers that want to be here can be in  
24          here, instead of in that room.

25          (Brief recess.)

1 THE HEARING OFFICER: Okay. I believe  
2 we're ready to go on the record for today with the  
3 hearing. We had some motions. I believe we're  
4 done. Is everyone done with motions?

5 MR. RATNER: Parents are finished. Thank  
6 you.

7 THE HEARING OFFICER: Okay. Thank you.  
8 And does the school have any more motions?

9 MR. ANDRIANO: Not at this time, Ms.  
10 Freeman.

11 THE HEARING OFFICER: Okay. So we have Ms.  
12 Elizabeth -- is it --

13 DR. DRAGONE: Dragone.

14 THE HEARING OFFICER: I don't want to -- is  
15 it Doctor?

16 DR. DRAGONE: It is Doctor.

17 THE HEARING OFFICER: That's what I  
18 thought. Okay. I remember that. Dr. Elizabeth  
19 Dragone.

20 (The witness was sworn.)

21 THE HEARING OFFICER: Answer questions from  
22 parents' counsel, to be followed up by questions  
23 from the school counsel.

24 MR. RATNER: May I proceed?

25 THE HEARING OFFICER: Yes; go ahead.

1 MR. RATNER: Thank you.

2

3 ELIZABETH DRAGONE, Ph.D.,

4 having been duly sworn,

5 was examined and testified as follows:

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

7 BY MR. RATNER:

8 Q Good morning, Dr. Dragone. Again, my name  
9 is Todd Ratner. I am counsel for the REDACTED family. We  
10 have REDACTED and REDACTED here. Their daughter, REDACTED,  
11 was formerly a student at Chesterfield County Public  
12 Schools.

13 Have you ever met REDACTED before?

14 A I have not.

15 Q Okay. So a couple of things. Number one,  
16 you're going to need to keep your voice up so everybody  
17 can hear you and the court reporter can get you down --  
18 get down what you're saying.

19 Second, and this tends to be my fault so I  
20 will apologize in advance, I can ask questions quickly,  
21 I can jump in before you're finished. I will give you  
22 every opportunity to speak.

23 For clarity of the record, even though you  
24 probably know what I'm going to ask, let me finish my  
25 question so Kurt can get it down.

1 Does that all make sense?

2 A Yes.

3 Q Okay; great. Thank you.

4 Let's just start with spelling your name for  
5 the court reporter and what your current job title is  
6 with Chesterfield County Public Schools.

7 A Sure; it's Elizabeth, E-l-i-z-a-b-e-t-h,  
8 Dragone, D-r-a-g-o-n-e. And I'm currently the  
9 coordinator of special education at the Virtual  
10 Learning Academy.

11 Q Okay. And is that -- the Virtual Learning  
12 Academy, is that a new program in Chesterfield County?

13 A Yes.

14 Q Okay. During the relevant time period in  
15 this case, which I will represent to you is -- or I  
16 should say the statutory period is from February 1 of  
17 2020 to February 1, 2022.

18 Were you in that same position?

19 A No.

20 Q Okay. What was your position at that time?

21 A Well, part-time. Up until -- I began at the  
22 Virtual Learning Academy on August 5th this year.  
23 Prior to that, I was the coordinator of special  
24 education administrative services.

25 Q Okay.

1 THE HEARING OFFICER: In what? You're  
2 going to have to speak up a little, too.

3 THE WITNESS: The coordinator of special  
4 education administrative services.

5 BY MR. RATNER:

6 Q Could you -- and I'm not trying to put  
7 limits on you -- but as briefly and succinctly as you  
8 can, just describe what that position -- your  
9 responsibilities as -- was it the coordinator of  
10 special education administrative services? Do I have  
11 that correct?

12 A I coord -- yes; I coordinated services for  
13 students in private day schools. I worked -- I oversaw  
14 our -- what was then Synergy, which is now Virginia  
15 IEP, the technology piece of our IEP programs here.

16 And then I supported schools with  
17 compliance.

18 Q Okay. So when -- you mentioned private day  
19 schools. Would you be aware of any student who is  
20 placed at a private day school by Chesterfield County  
21 Public Schools when you were in that position?

22 A Yes.

23 Q Okay. During the period when you were in  
24 that role, has Chesterfield County Public Schools ever  
25 placed a student at The New Community School?

1 A Well, I would --

2 MR. ANDRIANO: Objection, relevancy.

3 MR. RATNER: I think it should be obvious  
4 by now our contention is that, in fact, they have  
5 and do place students there. And when they  
6 continue to insist that they're legally prohibited  
7 from doing so, it of course is relevant whether or  
8 not they have done and continue to place students  
9 there.

10 MR. ANDRIANO: Well, first of all, Ms.  
11 Freeman, we've heard testimony that the IEP team  
12 said the student didn't require a private  
13 placement, first of all.

14 Second of all, whether other students are  
15 placed anywhere is irrelevant to this matter.

16 MR. RATNER: Again, Ms. Freeman, if I  
17 could, in the prior written notice they represent  
18 that one of the reasons the request was denied is  
19 that the school was not approved.

20 This, at a minimum, tests the veracity of  
21 their legal position that they are legally  
22 prohibited from placing students there. And the  
23 fact that they are fighting so hard for you to  
24 hear that students are there should -- I mean, you  
25 could take an adverse inference from it, if you

1 don't want to hear.

2 But this person has direct knowledge about  
3 it, and it is clearly relevant to this case.

4 THE HEARING OFFICER: Why don't you take  
5 the "other students" aspect out of your  
6 questioning, and direct your questioning to REDACTED.

7 MR. RATNER: Well, but that's my point. We  
8 know --

9 THE HEARING OFFICER: So just rephrase the  
10 question.

11 MR. RATNER: Well, we know REDACTED has never  
12 been placed there by Chesterfield County Public  
13 Schools.

14 THE HEARING OFFICER: No; but it seems to  
15 me you could characterize your questions by asking  
16 if it would be possible to find out if REDACTED could  
17 be placed there.

18 MR. RATNER: Okay. Well, I appreciate that  
19 guidance.

20 THE HEARING OFFICER: But I don't know if  
21 that's going to get to --

22 MR. RATNER: Sure.

23 THE HEARING OFFICER: -- response you want,  
24 but --

25 /

1 BY MR. RATNER:

2 Q Okay. Are you familiar with the  
3 Chesterfield County Public Schools online checkbook?

4 THE HEARING OFFICER: So sustained, but --  
5 so he's rephrasing the question.

6 Go ahead.

7 THE WITNESS: No.

8 BY MR. RATNER:

9 Q No; okay.

10 THE HEARING OFFICER: Say that -- I'm  
11 sorry. I was talking to the court reporter. What  
12 was the answer to that --

13 THE WITNESS: No.

14 THE HEARING OFFICER: What was --

15 MR. RATNER: The question was about the  
16 Chesterfield County Public Schools online  
17 checkbook. And her response was she's not  
18 familiar with it.

19 THE HEARING OFFICER: Oh, okay.

20 BY MR. RATNER:

21 Q Okay. You were in a meeting -- multiple IEP  
22 meetings about REDACTED; correct?

23 A Yes; I attended.

24 Q Okay. Was The New Community School ever  
25 discussed in those meetings as a potential placement



1 for REDACTED ?

2 A The parents notified us that they were  
3 intending to place their student there. We did not  
4 discuss it as a potential placement. First, our office  
5 assigns students to private.

6 Chesterfield, we don't place students. We  
7 assign students. But no one on the IEP team ever  
8 stated that REDACTED was -- that they were even considering  
9 proposing a private day student --

10 Q I understand that.

11 A -- private day placement for REDACTED .

12 Q But you do understand that in the prior  
13 written notice it was stated that The New Community  
14 School is not an approved school. And that was given  
15 as a reason why the IEP team would not consider that;  
16 is that correct?

17 MR. ANDRIANO: Objection. Objection,  
18 mischaracterizes the evidence.

19 THE HEARING OFFICER: First of all, that's  
20 a compound question. And second of all, it's --  
21 I'm sorry. What was your objection?

22 MR. ANDRIANO: It mischaracterizes the  
23 evidence. He's -- Mr. Ratner's trying to make it  
24 sound like that's the -- because the New Community  
25 School's not an approved school, that's why

1 Chesterfield didn't, quote, place the student  
2 there.

3 THE HEARING OFFICER: Yeah; because I  
4 thought you said, "We assign students, but we --  
5 no one proposed that placement for REDACTED because it  
6 wasn't considered," or something.

7 THE WITNESS: The IEP team was not proposing  
8 --

9 THE HEARING OFFICER: I didn't write the  
10 last --

11 THE WITNESS: The IEP team was not proposing  
12 a private day placement.

13 THE HEARING OFFICER: The IEP team was not  
14 proposing it, so you didn't discuss it.

15 MR. RATNER: Okay.

16 THE HEARING OFFICER: Right?

17 MR. RATNER: I'm so sorry.

18 THE HEARING OFFICER: That's okay. Go  
19 ahead.

20 BY MR. RATNER:

21 Q If I could continue.

22 I mean, the parents --

23 THE HEARING OFFICER: Sustained.

24 BY MR. RATNER:

25 Q -- are part of the IEP team; correct?

1 A They are.

2 Q And the parents asked that the rest of the  
3 IEP team consider placement at The New Community School  
4 for REDACTED; correct?

5 A Yes.

6 Q Okay. And isn't it in fact true that  
7 Chesterfield County Public Schools, if the IEP team had  
8 determined that The New Community School was the only  
9 place at which REDACTED could receive a free appropriate  
10 public education, Chesterfield County Public Schools  
11 does in fact have the authority to place REDACTED there?

12 MR. ANDRIANO: Objection. I'm sorry, Ms.  
13 Freeman.

14 THE HEARING OFFICER: I can't even follow  
15 that question.

16 MR. ANDRIANO: That's a vague question.

17 MR. RATNER: I'm so sorry.

18 THE HEARING OFFICER: I'm sorry.

19 MR. RATNER: Maybe I need to slow down.

20 THE HEARING OFFICER: It had a lot of  
21 different parts to it.

22 What was your objection? What was that?

23 MR. ANDRIANO: It was a vague question. I  
24 couldn't even follow.

25 MR. RATNER: Okay. It must be me, and I

1 really apologize.

2 THE HEARING OFFICER: No; it's not you.  
3 It's me. I can't understand all of the questions  
4 that were within the one question. So if you want  
5 to break it down --

6 MR. RATNER: I'm going to do my best to  
7 break it down.

8 THE HEARING OFFICER: Yeah; that would be  
9 great.

10 MR. RATNER: Okay.

11 THE HEARING OFFICER: Thank you.

12 BY MR. RATNER:

13 Q You agree that the parents did request that  
14 the IEP team consider placement at The New Community  
15 School?

16 A Yes.

17 Q Okay. And isn't it a fact that the IEP team  
18 has the authority to assign a student to The New  
19 Community School, such as REDACTED, if they make a  
20 determination that that particular school is the only  
21 place that can provide her with a free appropriate  
22 public education?

23 And before you answer --

24 You're still not following me? I'm so  
25 sorry.

1 THE HEARING OFFICER: No, I'm following  
2 you. But I don't know --

3 Do you have an objection?

4 MR. ANDRIANO: I'll withdraw it.

5 THE HEARING OFFICER: All right. Go ahead.

6 THE WITNESS: I cannot state that that's a  
7 fact. I am not aware of that.

8 BY MR. RATNER:

9 Q Okay. Let me show you a couple of documents  
10 in the school board's exhibit book then, and we'll go  
11 from there. Okay?

12 THE HEARING OFFICER: Which -- Oh, I'm  
13 sorry.

14 MR. RATNER: I haven't gotten there yet.

15 THE HEARING OFFICER: That's the school  
16 board's. Got it.

17 BY MR. RATNER:

18 Q So do you see -- There's a bunch of books in  
19 front of you. There's one that's the school board's.  
20 Okay. So tab 1.

21 I would like you to flip to the page marked  
22 School Board 000007. Do you have that in front of you?

23 A I do.

24 Q Okay. Do you know who Hank -- excuse me --  
25 Henry J. Millward is?

1 A I do.

2 Q Have you ever spoken to Mr. Millward?

3 A No.

4 Q No. Okay. How do you know him?

5 A I have attended trainings that he has  
6 presented.

7 Q Okay. And do you know what his role is?

8 A It says here he's a special education  
9 facilities and family engagement director.

10 Q Okay. Is this a letter that you have ever  
11 seen before in your capacity as the coordinator of  
12 special education administrative services at  
13 Chesterfield County Public Schools?

14 A No.

15 MR. RATNER: Okay. So, Ms. Freeman --

16 THE HEARING OFFICER: Yes.

17 MR. RATNER: I would like to offer this  
18 into evidence right now. And, again, these are  
19 some of the procedural roadblocks we keep running  
20 into.

21 The school board is asserting a legal  
22 position that this letter clearly shows is not  
23 true. And then they want to say that this witness  
24 can't testify to it, or that witness can't testify  
25 to it.

1                   And I will direct your attention  
2                   specifically to the statement by Mr. Millward in  
3                   the VDOE, the Virginia Department of Education,  
4                   who is on their witness list, and I will hopefully  
5                   have a chance to examine him about this, says  
6                   that, "Because the primary source of funding is  
7                   private funds, and you will no longer accept  
8                   students whose enrollment is provided through  
9                   public funding, unless a student's IEP has  
10                  specifically identified The New Community School  
11                  as being the only school which can provide the  
12                  student with a free appropriate public education,  
13                  as was determined by the child's IEP team."

14                THE HEARING OFFICER:    Okay.  I see Mr.  
15                Millward being addressed by Ms. Foy.

16                MR. RATNER:     Well, actually --

17                THE HEARING OFFICER:    You're talking about  
18                the letter dated December 21st, 2018?

19                MR. RATNER:     No, ma'am.  I was talking  
20                specifically about page 7.

21                THE HEARING OFFICER:    Oh, okay.  I'm on the  
22                wrong --

23                MR. RATNER:     It's a May 7th, 2019, letter  
24                from Mr. Millward to Ms. Foy at The New Community  
25                School.  And this was a document, it's in the

1 school board's exhibit book.

2 THE HEARING OFFICER: Got it.

3 MR. RATNER: So I can't understand what  
4 possible objection they could have to it.

5 MR. ANDRIANO: May I respond, Ms. Freeman?

6 THE HEARING OFFICER: Yes, go ahead.

7 MR. ANDRIANO: We have no objection to  
8 moving School Board Exhibit 1 into evidence. I  
9 mean, that's -- We put it in the evidence book.

10 THE HEARING OFFICER: Okay. So School  
11 Board Number 1 is in.

12 (School Board Exhibit 1  
13 received into evidence.)

14 MR. ANDRIANO: But Mr. Ratner wouldn't  
15 agree to put the school board's exhibits into  
16 evidence at the beginning of the hearing, and  
17 that's why it was decided we would go through each  
18 one, one by one --

19 MS. REDACTED: No, that's not true.

20 MR. RATNER: We would -- We'd be delighted  
21 to offer every single one of both sides' exhibits.

22 MR. ANDRIANO: But we couldn't agree to  
23 that because we have lots of objections to their  
24 exhibits. So that's why it was --

25 MS. RATNER: We didn't ever say -



1 MR. RATNER: Yeah, we never said we  
2 objected to your exhibits.

3 MS. RATNER: -- we objected to your  
4 exhibits.

5 MR. ANDRIANO: So we can move the school  
6 board --

7 MS. RATNER: Yes.

8 THE HEARING OFFICER: I thought at the  
9 beginning you --

10 MS. RATNER: No.

11 THE HEARING OFFICER: -- both agreed that  
12 the school board would have probably all the  
13 information that would be included about her  
14 record way back --

15 MR. RATNER: That's absolutely correct.

16 THE HEARING OFFICER: -- at the first  
17 hearing, that this would be kind of considered a  
18 joint exhibit book.

19 MS. RATNER: We did not agree it was joint.  
20 But we don't have --

21 THE HEARING OFFICER: No, you're right. I  
22 don't remember that it was joint.

23 MS. RATNER: We don't have objections to  
24 any of those. The issue is they have objections  
25 to our exhibits, at least some of them. So we'll

1 need to go through those.

2 THE HEARING OFFICER: Okay.

3 MS. RATNER: We didn't -- I don't recall  
4 anybody asking us. But we don't object. These  
5 are all admissible --

6 THE HEARING OFFICER: Okay. So we don't  
7 need to go through --

8 MS. RATNER: -- records. Exactly.

9 THE HEARING OFFICER: -- and waste a lot of  
10 time is what you're saying.

11 MS. RATNER: Right. Yes.

12 THE HEARING OFFICER: Not that it's a waste  
13 of time. But do we want to just admit all of the  
14 school board exhibits?

15 MS. RATNER: That sounds great.

16 MR. RATNER: We'd love to.

17 THE HEARING OFFICER: All right. So we  
18 don't have to waste time on that.

19 MR. RATNER: But does then that mean -- I  
20 mean, are there still going to be objections when  
21 I want to talk to something that's in evidence?

22 THE HEARING OFFICER: I don't know. Is  
23 that contingent on them accepting all of your  
24 exhibits?

25 MR. RATNER: No.

1 MS. RATNER: No, it's not contingent on  
2 anything.

3 THE HEARING OFFICER: All right. Do you  
4 want to enter all of your exhibits?

5 MR. ANDRIANO: Yes, please.

6 THE HEARING OFFICER: All right. So --

7 MR. RATNER: My question was slightly  
8 different.

9 THE HEARING OFFICER: What?

10 MR. RATNER: Which is, these are all in  
11 evidence now.

12 THE HEARING OFFICER: Okay. So you don't  
13 have to do all of the --

14 MR. RATNER: And I'd like to ask witnesses  
15 questions about them. If she hasn't seen it, she  
16 hasn't seen it. But it's in evidence.

17 THE HEARING OFFICER: All right. Yeah.  
18 All right.

19 Go ahead.

20 MR. ANDRIANO: In response to Mr. Ratner's  
21 -- Yes, I agree. But the witness still has to  
22 have firsthand knowledge. They can't just be  
23 asked about a document that they've never seen or  
24 had any participation --

25 MR. RATNER: No. That's -- I mean, I can

1 ask if she's seen it. And if she's says she  
2 hasn't seen it, then I'm moving on.

3 MR. ANDRIANO: Correct.

4 THE HEARING OFFICER: Okay. Let's do that.  
5 All right.

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

7 THE HEARING OFFICER: But for the record,  
8 for the court reporter's record, the school board  
9 exhibits, everyone agrees, are admitted.

10 (All School Board Exhibits  
11 received into evidence.)

12 BY MR. RATNER:

13 Q So tab 20, please, in that same book. Now  
14 before you get to that, and I'm not trying to trip you  
15 up; do you have that in front of you?

16 A I do.

17 Q And I don't know if -- Is there anything on  
18 this particular documents, which is an individualized  
19 education program amendment, that indicates when REDACTED  
20 was first found eligible for special education  
21 services?

22 A I will have to look through.

23 Q Sure. And if you know, that's just fine.  
24 That's what I'd like to know, if you know when she  
25 became eligible.

1 A 4/10/2019.

2 Q Okay. And would you agree with me she was  
3 in the third grade at Swift Creek Elementary at that  
4 time?

5 A If that is what you're telling me. If  
6 you're telling me. But I don't know that.

7 Q If you don't know, if it's beyond your  
8 knowledge --

9 A Okay. I don't know that for a fact.

10 Q That's absolutely fine.

11 A Okay.

12 Q Do you know that at the time of this meeting  
13 she was attending Old Hundred Elementary?

14 A Yes.

15 Q Okay. And you know that was a brand new  
16 school as of the school year that we were in, the 2020  
17 -- I'm sorry -- yeah, the 2020/2021 school year; is  
18 that right? Or was it opened in '19?

19 A It opened in '19.

20 Q Okay. Thank you. So prior to the fall of  
21 2019, you would know REDACTED was not attending Old  
22 Hundred, because it didn't exist; is that correct?

23 A Yes.

24 Q Okay. And so you mentioned specifically you  
25 attended two meetings for -

1 A I changed it to three.

2 Q Oh, okay. Thank you. Was this the first  
3 one that is shown on tab 20?

4 A Yes.

5 Q Okay. What was the date of that meeting?

6 A 11/4/2020.

7 Q Okay. So is it fair to say that if she was  
8 found eligible in 2019, there had been IEP meetings  
9 prior to the first meeting you were invited to attend?

10 A Yes.

11 Q Okay. And, in fact, this is an amendment  
12 indicating that there already was an IEP in place  
13 before you were involved; correct?

14 A Correct.

15 Q So do you know, sitting here today, why you  
16 were invited to participate in the 11/4/2020 meeting,  
17 when you hadn't been invited previously?

18 A Yes. I was invited for multiple reasons,  
19 but to provide support to the school. And the parents  
20 had reached out -- they had reached out to our office  
21 to express concerns about her progress in the virtual  
22 environment.

23 Q Okay. Could you elaborate on that, the  
24 concerns that were expressed to you? By whom were  
25 those concerns expressed?

1           A       I don't have the letter in front of me. But  
2 I do know that when I attended the meeting, the parents  
3 shared that the virtual learning platform had been  
4 difficult for REDACTED to exist, that her self-esteem had  
5 been reduced, and that were seeing some anxiety and  
6 some issues coping.

7                   She was making progress in light of the  
8 circumstances of COVID. But they were concerned about  
9 her basically self-esteem and ability to access the  
10 virtual instruction.

11           Q       Sure. And you mentioned her circumstances.  
12 One of her circumstances would include her IQ; correct?

13           A       I was referring more to the circumstances  
14 surrounding COVID and the fact that a lot of her and a  
15 lot of other students were struggling with making the  
16 transition. They'd been out of school. They'd been  
17 away from their peers. And they were struggling with  
18 the virtual learning.

19           Q       And I very much understand that. But I'd  
20 like to focus on REDACTED and her individualized education  
21 program.

22                   One of the circumstances for REDACTED's  
23 individual education -- I'm so sorry -- individualized  
24 education program would be her academic aptitude? That  
25 should be considered by the IEP team; do you agree with

1 that?

2 A I do agree with that.

3 Q And is that reflected, her aptitude  
4 reflected anywhere in here? Or did that come later?

5 A It does -- This IEP talks to her strength  
6 and her abilities. Yes.

7 Q Okay. She has very superior abilities and  
8 fluid reasoning; correct? Is that what it says on page  
9 82 in the first --

10 A Yes.

11 Q Okay. And actually we've heard some -- or  
12 we heard some discussion before you came in here about  
13 who's qualified to talk about the Wechsler Intelligence  
14 Scale.

15 I was looking at your CV. I noticed you've  
16 got an NCED designation. Can you tell Ms. Freeman what  
17 that means?

18 A I'm a Nationally Certified Educational  
19 Diagnostician.

20 Q Okay. And what do you have to do to obtain  
21 that certification?

22 A You have to have a number of years of  
23 experience and pass a national board test.

24 Q And does that include familiarity with the  
25 Wechsler Intelligence Scale for Children?



1           A       It includes familiarity with knowing what it  
2   is and how it relates to educational performance. But  
3   I am not a certified psychologist. And I'm not  
4   qualified to administer that test.

5           Q       Understood. How about the Woodcock-Johnson  
6   Test, are you certified to administer that one?

7           A       Yes, I am.

8           Q       Okay. And, in fact, you said on your CV,  
9   which I'm happy to direct you to, you had completed  
10  some recent training on that; right?

11          A       Yes. Correct.

12          Q       So is a national certified educational  
13  diagnostician qualified to administer the Woodcock-  
14  Johnson test? What do these scores tell you about  
15  REDACTED?

16          A       They tell me that she has strengths in the  
17  areas listed when compared to students who took that  
18  test, compared her standard scores.

19                   Compared to all the students in the norming  
20  sample of that age at the time of the norming, she was  
21  performing in the upper level compared to same-age  
22  students.

23          Q       Sure. That was on the WISC; right, the  
24  Wechsler Intelligence Scale?

25          A       Yes, that's what you were referring to.

1 Q And I may have confused you. I was actually  
2 talking about the Woodcock-Johnson that you're  
3 certified to administer. What did those scores show?

4 A I need to find her --

5 Q They're in that same paragraph.

6 A So on that same thing though, they are  
7 standardized scores. Compared to students of the same  
8 age in the norming sample, she performed in the above-  
9 average to superior range on the bell curve.

10 Q Okay. But you don't get an IEP because of  
11 your strengths; right? It's to address your  
12 weaknesses.

13 A Correct.

14 Q Okay.

15 A But we take in the whole --

16 Q Yeah, absolutely. But this Woodcock-Johnson  
17 score shows significant weaknesses, does it not, for  
18 REDACTED?

19 A Not in the paragraph you just pointed out.

20 Q Oh, I may be misreading it. I'm looking at  
21 the last sentence, REDACTED scored in the average range  
22 for basic reading skills, reading comprehension, and  
23 reading fluency, and low-average scores in word attack  
24 and oral reading.

25 She scored in the low-average range for

1 written expression and the low range for spelling. Did  
2 I read that correctly?

3 A You did read that correctly.

4 Q And that's the Woodcock-Johnson that was  
5 administered while she was in third grade; correct?

6 A In February of 2019. Yes.

7 Q And she was in third grade then; correct?

8 A Yes.

9 Q We can go look at tab 16, but I think you've  
10 already answered this. But if there was a prior IEP  
11 meeting to this, you didn't participate.

12 A No.

13 Q Correct?

14 A Correct.

15 Q So you said you were called in to support  
16 the school. What does that mean?

17 A I went in and I helped them review the  
18 records. I shared with them the concerns that had been  
19 sent to our office, the parents' concern.

20 And the purpose of this meeting was we were  
21 phasing back in through cohorts in the County. And  
22 there was concerns that the allotted two days, concerns  
23 from parents were not going to be enough to meeting  
24 REDACTED needs.

25 They wanted her to receive more instruction

1 than the allotted two days for her cohort. And I was  
2 there to help support the team and answer questions  
3 about the cohort and to --

4 THE HEARING OFFICER: Two days for -- I  
5 heard the first part --

6 THE WITNESS: During cohort -- During COVID  
7 the students were phased back in in cohorts.

8 THE HEARING OFFICER: Cohorts.

9 THE WITNESS: Cohorts, yes. Due to COVID  
10 distance requirements, not all students could come  
11 back at the same time.

12 THE HEARING OFFICER: Oh.

13 THE WITNESS: So half our students at a  
14 certain date came back Monday/Tuesday. And the  
15 other half came back Thursday/Friday.

16 THE HEARING OFFICER: Oh, okay. So they  
17 divided it up to keep the students --

18 THE WITNESS: Because you just couldn't  
19 have everybody in the same building. Students  
20 received hybrid instruction during that time. But  
21 two days were in-person and two days were virtual.

22 THE HEARING OFFICER: Okay. Two days in-  
23 person and two days virtual? Three days virtual?

24 THE WITNESS: Virtual and asynchronous  
25 combination. Yes.

1 THE HEARING OFFICER: What was the rest of  
2 the time, two days or three days?

3 THE WITNESS: Wednesday was the day for  
4 case managers to touch base with students. And  
5 also facilities needed that day in the middle to  
6 clean and sanitize before the next group came in.

7 THE HEARING OFFICER: And then the two days  
8 for the rest of the students. Okay.

9 THE WITNESS: So I don't know what the  
10 exact alphabet split. But it was like students A  
11 through M came two days. And then the rest of the  
12 alphabet came Thursday/Friday.

13 BY MR. RATNER:

14 Q And so two things about that. I'm not a  
15 Chesterfield resident. I've heard the term "Wellness  
16 Wednesdays," for that day. Was that terminology  
17 Chesterfield used?

18 A I have not heard that term.

19 Q Okay. No, that's fine. But that -- Was  
20 there any direct instruction on Wednesdays during that  
21 period?

22 A Teachers touched base with students. And  
23 I'm not sure exactly how much direct instruction was  
24 provided.

25 Q Okay.

1           A       But I do know that there was expectation to  
2       --

3           Q       Sure. And I had a child in school during  
4       that time, so I learned what asynchronous work meant.  
5       Could you just explain to Ms. Freeman what that means  
6       briefly?

7           A       Asynchronous work is when teachers provided  
8       more or less packets of information, here's what we  
9       taught about Monday/Tuesday. Please work on this to  
10      reenforce your skills.

11                 Some teachers did a flipped classroom where  
12      they had videos for students to watch on this is how  
13      you would solve these problems, work through it, get  
14      your work done. And then when you come back on your  
15      two days we will monitor how well you're doing, and  
16      split into groups to help who was struggling and who  
17      had already grasped the concept.

18           Q       Okay. So was it discussed during this  
19      meeting that REDACTED was having difficulties with the  
20      asynchronous work?

21           A       Yes.

22           Q       Okay. As well as accessing the video time;  
23      correct?

24           A       Correct.

25           Q       Okay. And, again, there's been a little bit

1 of testimony about this, and it's not a memory test.  
2 At the start of that school year, 2020/2021, all  
3 instruction was virtual; is that right?

4 A Yes.

5 Q Okay. And then we're now on November 4th,  
6 2020. Was there any in-person learning going on at  
7 that point?

8 A There was.

9 Q Okay. And did that include REDACTED going in-  
10 person?

11 A I am not clear on the exact dates which the  
12 cohorts came back.

13 Q Sure. So maybe you could just explain that  
14 just briefly. How many different cohorts were there;  
15 one, two, three?

16 A There were four.

17 Q And so what were each of those?

18 A I do not have the list in front of me.

19 Q Okay. Who was the highest priority to come  
20 back first?

21 A The first cohort were students that were  
22 working on the Aligned Standards of Learning, our  
23 students with the most significant disabilities who  
24 were unable to access any virtual learning at all for -  
25 - so they came back first to have their needs met.

1                   And I do believe -- Again, I do not have the  
2 sheet in front of me. But I do believe that our  
3 students that were in our autism day program, and our  
4 intensive day program, both students with emotional  
5 disabilities and students with autism, if they were in  
6 that self-contained environment and had --

7           Q       And I'm not trying to --

8                   MR. ANDRIANO:    So let her finish the  
9 question -- answer it, please.

10                  BY MR. RATNER:

11           Q       Yeah. I was just going to say, I'm not  
12 asking you to tell Ms. Freeman about other students.  
13 Answer as much as you want.

14                  THE HEARING OFFICER:    Sustained. But,  
15 yeah. You rephrased it.

16                  THE WITNESS:    Those were the students that  
17 came back in cohort one.

18                  BY MR. RATNER:

19           Q       Yes. Right. And no personal information.  
20 That's all I was trying to say.

21                  THE HEARING OFFICER:    Okay. So we've got  
22 the most significant disabilities -- I don't  
23 remember what those were --

24                  THE WITNESS:    Are students working on the  
25 Aligned Standards of Learning, or students that



1 are in intensive day programs.

2 THE HEARING OFFICER: Oh, okay.

3 BY MR. RATNER:

4 Q And was that -- was REDACTED in cohort one?

5 A No.

6 Q Okay. Was she in cohort two?

7 A I do not believe so.

8 Q Okay.

9 A But, again, I don't have the itinerary in  
10 front of me.

11 Q No, no. I understand. Just to the best of  
12 your recollection, what was cohort two?

13 A To the best of my recollection, I believe  
14 students in grades K through two were coming back in  
15 addition to cohort one.

16 But again, please be clear, I don't have  
17 that in front of me.

18 THE HEARING OFFICER: If you're not  
19 comfortable providing that information, then --

20 MR. RATNER: We'll move on.

21 THE HEARING OFFICER: No one wants you to  
22 speculate. Just for curiosity, do you know what  
23 cohort REDACTED was in?

24 THE WITNESS: I do not.

25 THE HEARING OFFICER: Oh, you might have

1 answered that already. Go ahead.

2 BY MR. RATNER:

3 Q Okay. But I thought you said, I'm not  
4 trying to put words in your mouth, that you were pretty  
5 sure she wasn't in one or two.

6 A Correct.

7 Q So that she would have either been in three  
8 or four.

9 A Correct.

10 Q Okay. So the virtual learning and the four  
11 days a week wasn't the only thing discussed at that  
12 meeting, was it?

13 A No.

14 Q Okay. There was a discussion of evaluations  
15 for REDACTED?

16 A Correct.

17 Q Okay. So who brought that up?

18 A Listening to the parent concerns about her  
19 increased anxiety, her coping, the team determined that  
20 they were concerned there was something else going on,  
21 and they wanted to get updated information to determine  
22 if there was an additional disability.

23 Q Okay. But isn't it true that a lot of the  
24 evaluations that were ordered after that meeting had  
25 just been conducted in 2019?

1 We just talked about that; right?

2 A Yes. But they would have been more than a  
3 calendar year old.

4 Q Yes. Right. But they at least can be  
5 relied upon for three years under the IDEA; correct?

6 MR. ANDRIANO: Objection, calls for a legal  
7 conclusion.

8 BY MR. RATNER:

9 Q Are you aware of the triennial review  
10 process?

11 THE HEARING OFFICER: Sustained. What was  
12 the legal conclusion?

13 MR. ANDRIANO: He was asking her whether --

14 MR. RATNER: I'm rephrasing the question.

15 THE HEARING OFFICER: Oh, all right. Yeah.  
16 I was getting my pad. Sorry.

17 MR. RATNER: No, I'm sorry.

18 THE HEARING OFFICER: Okay.

19 MR. RATNER: So I'm going to rephrase the  
20 question. May I?

21 THE HEARING OFFICER: Yes, okay. Go ahead.

22 BY MR. RATNER:

23 Q Thank you.

24 As the, and I'm so sorry if I mess up your  
25 title, but as the coordinator of special education

1 administrative services of Chesterfield County Public  
2 Schools, are you familiar with the, quote/unquote,  
3 triennial requirement of the IDEA?

4 A Yes.

5 Q Explain to Ms. Freeman what that is.

6 A Every three years a team must convene to  
7 determine if any additional information is required or  
8 if current data -- that the team has enough current  
9 data to determine if the student remains eligible as a  
10 student with a disability.

11 Q Okay. So let me --

12 THE HEARING OFFICER: When did her  
13 triennial happen, or was it scheduled to happen?

14 THE WITNESS: Well, if she was just found  
15 eligible in Feb -- or April, I don't have the --  
16 Let me look at this exact date.

17 Her re-eval date would not be due again  
18 until April 9th of 2022.

19 THE HEARING OFFICER: Oh, okay.

20 BY MR. RATNER:

21 Q So it was more than a year in advance of  
22 that date; correct?

23 A It was.

24 Q Thank you. And, again, I have not -- Oh,  
25 these are all in evidence. I don't even have to worry

1 about that.

2 THE HEARING OFFICER: Yeah, that's right.

3 MR. RATNER: What a pleasant surprise.

4 THE HEARING OFFICER: Yes.

5 BY MR. RATNER:

6 Q Thank you.

7 May we flip to tab 21, please? What's this  
8 document?

9 A Parental consent for evaluation.

10 Q Okay. Which tests were the IEP team  
11 recommending this time?

12 A They were recommending an educational  
13 assessment, a psychological assessment, a sociological  
14 assessment, an observation, and a functional behavioral  
15 assessment.

16 Q Okay. Are you able to tell from looking at  
17 tab 20, which ones of these REDACTED had previously had?

18 A Not by just this document. No.

19 Q Okay. That's fine. Had she had the  
20 psychological assessment do you know?

21 A Yes.

22 Q Had she had the educational assessment?

23 A Yes. Just not within the current calendar  
24 year.

25 Q Right. How about the functional behavioral

1 assessment?

2 A I do not know if she had one prior to that  
3 date.

4 Q Okay. I noticed there's an occupational  
5 therapy assessment option on this form. Was that  
6 recommended at that time?

7 A No.

8 Q Okay. Had anyone considered that during the  
9 meeting?

10 A Not that I'm aware of.

11 Q Okay. Do you have a pretty good  
12 recollection of the meeting? I know it was a while  
13 ago.

14 A It's a while go. But not that I am aware.

15 Q Okay. And Ms. REDACTED, on page 3 of 3,  
16 consented to this; correct?

17 A Correct.

18 Q And those -- all of those evaluations on  
19 that form were conducted by qualified personnel of  
20 Chesterfield County Public Schools; correct?

21 A Correct.

22 Q Do you remember when the team reconvened to  
23 discuss those?

24 A I do not.

25 Q Okay. We'll get to that. And, again, it's

1 not trying to be a memory test.

2 A Okay.

3 Q But let's talk about the prior written  
4 notice that followed the November 4th, 2020, meeting.  
5 That's going to be tab 22.

6 And forgive my naivete, as someone who's  
7 lived through this system for many years, I've always  
8 found it a little bit confusing as to why it's prior,  
9 because it comes after the meeting.

10 But what is the prior written notice?

11 A It is essentially a summary of what is being  
12 proposed that is given to the parent prior to them  
13 giving consent, so that they can understand the  
14 proposal made.

15 Q That's the best explanation I've ever  
16 gotten. So thank you. So there's a proposal in the  
17 meeting. Then before they sign off on it they should  
18 get this; is that correct?

19 A Before they give consent. Yes.

20 Q Yes.

21 A They're welcome to give consent prior.

22 Q Of course.

23 A But it is, yes.

24 Q Of course. Okay. Thank you so much. So  
25 did you have any involvement in drafting this document,

1 the prior written notice?

2 A Yes.

3 Q Okay. Is that typical in your role as the  
4 coordinator of special education administrative  
5 services of Chesterfield County Public Schools?

6 And I think everybody understands that was  
7 her position. I'm going to stop saying that, if it's  
8 okay. I just --

9 THE HEARING OFFICER: Yeah, that's fine.

10 THE WITNESS: Yes, it is.

11 BY MR. RATNER:

12 Q Okay. Do you remember what you did with  
13 respect to this document, what your role was?

14 A Not with respect to this exact document.

15 Q Okay. Who is Kimala Pettaway? Do you know  
16 her?

17 A Yep. She's the coordinator of special  
18 education.

19 Q For Old Hundred?

20 A For Old Hundred. Yes.

21 Q Was she part of REDACTED's IEP team?

22 A Yes.

23 Q Was she at the 11/4 meeting?

24 A Yes.

25 Q Okay. Is that typically her job to prepare



1 the prior written notice?

2 A It can be the job of any IEP team member.

3 Q Okay. But this one says it was prepared by  
4 her; correct, on page 101?

5 A Yes.

6 Q Okay. So let's take a look at -- And you  
7 can keep that in front of you. The rest of the books  
8 on the table are the parents' books. And there's a lot  
9 of them, so I apologize.

10 But volume two, if you have that one in  
11 front of you, and if you don't, it might be in the box.

12 A I have it.

13 Q Okay. So tab 54 please. And so I will  
14 represent to you that this was a document that the  
15 REDACTED received in response to a FOIA request to  
16 Chesterfield County Public Schools.

17 And so what I'm interested in right now is  
18 the pages -- And there's two numbers on it. But I'm  
19 looking at the bottom one. Those go consecutively.

20 So PARENTS 730 through PARENTS 734.

21 A Okay.

22 Q And let me ask you to just flip through and  
23 let me know if you recognize this as an email chain in  
24 which you participated.

25 A It is an email chain in which I

1 participated. I am not sure that the entire chain is  
2 here.

3 Q Okay.

4 A Or if it was taken out of context. But I  
5 obviously did participate in this. Yes.

6 Q Okay. But, again, this is how it was  
7 produced to us. And the first page has all the from  
8 and to information; correct?

9 A Correct.

10 Q And then do you see these lines going down  
11 the side starting there's one line at the bottom of the  
12 first page, then it goes to two lines, and then three  
13 lines and four lines. Do you see all of that?

14 A I do.

15 Q Are you familiar with that sort of marking  
16 system on CCPS's email system?

17 A No.

18 Q You're not.

19 MR. ANDRIANO: Objection, relevancy.

20 MR. RATNER: Because I'm -- she said she  
21 doesn't know if it goes together. I'm just trying  
22 to see if that -- if she understands that these do  
23 in fact go together, and that's what those lines  
24 indicate.

25 THE HEARING OFFICER: I'm still -- Do you

1 mean the three lines on the lefthand side?

2 MR. RATNER: Correct. Yes.

3 THE HEARING OFFICER: On page 732?

4 MR. RATNER: Well, it starts with one line  
5 on 730. And then when you get to the second  
6 response there's two lines on 731. And then when  
7 you get to the third response there's three lines.  
8 Then you get to the fourth response there's four  
9 lines.

10 THE HEARING OFFICER: Is there any  
11 significance to the lines?

12 MR. RATNER: Yes. That they are showing,  
13 my understanding is, that these are all part of a  
14 running conversation.

15 Because one of the problems is there's no to  
16 and from, except at the very top. And this was  
17 produced by the school board. I mean they can  
18 certainly stipulate that this is the document that  
19 we received.

20 MR. ANDRIANO: Yeah. I guess, Mr. Freeman  
21 -- I thought the question was whether there was  
22 significance to these lines on the side of the  
23 page. But --

24 THE HEARING OFFICER: Well do you know if  
25 there's any significance?

1 THE WITNESS: Not off the top of my -- I  
2 don't.

3 THE HEARING OFFICER: You don't know that.

4 THE WITNESS: No.

5 THE HEARING OFFICER: All right. So strike  
6 the question.

7 MR. RATNER: I'm sorry. I thought the  
8 question would be appropriate. And her answer is  
9 no.

10 THE HEARING OFFICER: Yeah. All right.

11 MR. RATNER: I don't know why it would need  
12 to be stricken.

13 THE HEARING OFFICER: Yeah. All right.  
14 She doesn't know. So we'll leave that on the  
15 record.

16 BY MR. RATNER:

17 Q Thank you.

18 Do you agree, this appears to reflect  
19 communications between you and Ms. Pettitway about this  
20 prior written notice, which is School Board 22, which  
21 has already been offered into evidence?

22 A I do.

23 Q Okay. So let's -- And you understand -- I  
24 had some trouble with this with Ms. Pettitway, so I want  
25 to make sure I'm clear.

1 Do you understand that the earliest email in  
2 the thread is on 734. And then as they go up and  
3 backwards they're coming later in time; correct?

4 MR. ANDRIANO: Ms. Freeman, I'm just going  
5 to object to relevancy. I don't understand the  
6 relevancy. And --

7 THE HEARING OFFICER: It just seems like  
8 we're spending a lot of time on --

9 MS. RATNER: Because they're going to  
10 object --

11 THE HEARING OFFICER: -- authenticating --

12 MR. RATNER: Right. They're going to  
13 object.

14 MS. RATNER: We want to introduce their  
15 emails into evidence. And --

16 MR. RATNER: Right -- going to object.

17 MS. RATNER: -- they're going to object  
18 that it's not an email chain. And we want to --

19 MR. RATNER: We want to question the  
20 witness about it.

21 MS. RATNER: Right.

22 MR. ANDRIANO: Question her about the prior  
23 written notice that you're asking about, not about  
24 lines on an email.

25 MS. RATNER: Because the email -

1 MR. RATNER: The email talks about the  
2 prior written notice. She has said she worked on  
3 the prior written notice. And it's --

4 THE HEARING OFFICER: Okay. Well where is  
5 --

6 MR. RATNER: -- discussed in this email.

7 THE HEARING OFFICER: -- the prior written  
8 notice? I'm confused. Where is it?

9 MR. RATNER: I'm so sorry. Am I going too  
10 fast?

11 THE HEARING OFFICER: No. No. No.

12 MR. RATNER: Okay. Because I'm trying to  
13 be mindful --

14 THE HEARING OFFICER: I don't have my  
15 glasses on either.

16 MR. RATNER: -- of the time, but I want you  
17 to be following along.

18 THE HEARING OFFICER: Yeah, all right.

19 MR. RATNER: This is really important  
20 testimony.

21 THE HEARING OFFICER: All right. All  
22 right. Okay. So see if this --

23 MR. RATNER: So 22 in the --

24 THE HEARING OFFICER: "PWN makes sense. I  
25 changed two days." So am I following -

1 MR. RATNER: You are, yes.

2 THE HEARING OFFICER: All right.

3 MR. RATNER: And she just acknowledged that  
4 this email is related to the prior written notice  
5 that's tab 22.

6 THE HEARING OFFICER: Okay.

7 MR. RATNER: I think it's --

8 THE HEARING OFFICER: I understood that.

9 MR. RATNER: -- absolutely relevant.

10 THE HEARING OFFICER: Yeah.

11 MR. RATNER: May I continue, please?

12 THE HEARING OFFICER: Yeah. But you were  
13 asking about all of these lines. And I'm just  
14 diverting over all of these lines.

15 MR. RATNER: Then ignore the lines.

16 THE HEARING OFFICER: All right. Good.  
17 Thank you. Let's go on about the prior written  
18 notice then.

19 BY MR. RATNER:

20 Q Thank you so much.

21 Did you understand my question where Mr.  
22 Andriano objected about the order in which these  
23 messages were received?

24 A I did.

25 Q Okay. And you agree that the first message

1 in this chain appears to be from you to someone named  
2 Kim on November 11th, 2020, at 2:27 p.m.

3 A Correct.

4 Q Is that right? Okay. Did you black that  
5 out?

6 A No.

7 Q Okay. Do you have any idea why that would  
8 be blacked out? And if you don't, you don't.

9 A I don't.

10 Q Okay. Would you be talking about another  
11 student in this email thread?

12 A I do not remember.

13 Q Okay. So what happens next in the thread?  
14 Let's go to Ms. Pettaway responds to whatever you  
15 wrote, "Great. Me too. I was just about to email  
16 you." Do you see that?

17 A I do.

18 Q Okay. Then I'd like to direct your  
19 attention to the response to that which is directly  
20 above it from you.

21 Is that an email back to Ms. Pettaway?

22 A It is.

23 Q What's the time on that?

24 A 2:36.

25 Q So what's that, eight minutes later?



1 A Yes.

2 Q Okay. And what do you say?

3 A "If I haven't heard from her by 3:30, I say  
4 we just send it."

5 Q Okay. So first, if you recall, who is  
6 "her"?

7 A I do not recall.

8 Q Okay. What is "it"?

9 A I do not recall.

10 Q Okay. Can you tell from the context of this  
11 email?

12 A No.

13 Q Okay. Keep reading. And let me know when  
14 you finish reading the full chain.

15 (Pause.)

16 A Okay, I read it. Thank you.

17 Q So do you see where you write, "We need to  
18 send it all together"? This is on page 731, at  
19 approximately 2:47 p.m. on the same day.

20 A Yes.

21 Q Does that refresh your recollection as to  
22 what "it" is?

23 A I would assume it's a prior written notice,  
24 but I don't recall.

25 Q Okay. Well do you see an attachment

1 reflected at the very beginning of the chain on page  
2 730?

3 And I know this is tedious, but this is  
4 really important evidence to us, Ms. Freeman, so I  
5 appreciate that.

6 THE HEARING OFFICER: I got it. I  
7 understand that.

8 BY MR. RATNER:

9 Q Do you see that attachment at the very top,  
10 "REDACTED.pdf".

11 THE HEARING OFFICER: What page are you on?

12 THE WITNESS: I do see that, yes.

13 MR. RATNER: 730.

14 THE HEARING OFFICER: Okay.

15 BY MR. RATNER:

16 Q Okay. But what would be all together  
17 besides the PWN?

18 A And IEP and the prior written notice and  
19 parental safeguards if they had not received it.

20 Q Got it. So send all of that at the same  
21 time. And why was the 3:30 time significant to you, if  
22 you recall?

23 A I have -- I really don't know.

24 Q Sure. So back to page 731 where you say "We  
25 need to sent it all together. What we propose is what

1 we propose. Their comments don't influence that." Did  
2 I read that correctly?

3 A You did.

4 Q What did you mean by that?

5 A I don't recall.

6 Q Okay. How about the next sentence?

7 A "I will add verbiage about the four days  
8 now." Without knowing the exact date and timeline, I  
9 do know that we were waiting, because we had proposed  
10 REDACTED come back -- to have two days instead of -

11 Her cohort was coming back two days. We had  
12 talked about only doing half days, because there were  
13 some concerns she would have to be repeating  
14 information. And we had received an email somewhere,  
15 and I don't know if it's on this day or when it is,  
16 from -- our attorney received an email from their  
17 currently attorney at that time stating that the family  
18 was going to send her for a full four days.

19 Q Okay. And you were working on working out  
20 the language for that.

21 A Yes.

22 Q Okay. Thank you.

23 I would like to offer this exhibit into  
24 evidence. It is Parents' 54.

25 THE HEARING OFFICER: Which volume?

1 MR. RATNER: I think you've got it right in  
2 front of you. It's volume two.

3 THE HEARING OFFICER: Oh, okay. I'm sorry.

4 MR. RATNER: The email that we've just been  
5 discussing.

6 THE HEARING OFFICER: I had that as 54.  
7 Did you just say 54?

8 MR. RATNER: That's what meant to say. I'm  
9 sorry if I messed it up.

10 THE HEARING OFFICER: Okay. Any objection?

11 MR. ANDRIANO: Ms. Freeman, the parents'  
12 exhibit contains more emails than what he just  
13 reviewed with Dr. Dragone.

14 So, yes, we do object to admitting this  
15 exhibit into evidence, because it contains more  
16 than what he covered with Dr. Dragone.

17 MR. RATNER: Well, I do intend to cover the  
18 second email with her. But I'd at least like to  
19 cover right now pages 730 through 734 can come  
20 into the record as evidence.

21 THE HEARING OFFICER: Do you have any  
22 objection to 730 to 734?

23 MR. ANDRIANO: The concern is Dr. Dragone  
24 said she doesn't know if this is the complete  
25 chain of emails.

1 MS. RATNER: That's why we were talking --

2 MR. RATNER: That's why we were talking  
3 about the lines and the thread.

4 MS. RATNER: Because that shows it is a  
5 complete thread.

6 MR. ANDRIANO: That's your interpretation  
7 of it. But Dr. Dragone, who these emails --

8 MR. RATNER: And, again, these are school  
9 board documents. She's testified as to what the  
10 document says. If it's incomplete, they can  
11 certainly question her about that. And you can  
12 afford that any weight that you want.

13 But the idea that this document should not  
14 be part of the evidence, I strongly disagree with  
15 that.

16 THE HEARING OFFICER: Okay. I'm going to -  
17 - Let me get this straight. You identified 730  
18 through 7 -- What was it, 734?

19 MR. RATNER: Correct.

20 THE HEARING OFFICER: You recognize those.

21 THE WITNESS: Correct.

22 THE HEARING OFFICER: All right. I'm going  
23 to admit 730 through 34, and rely on you to tie in  
24 --

25 MR. RATNER: Yes, ma'am.

1 THE HEARING OFFICER: -- the rest of it.

2 MR. RATNER: Yes, ma'am. And if I don't  
3 you can rip those out of the book.

4 THE HEARING OFFICER: Okay. I'll rip them  
5 out -- I'll probably undo the --

6 MR. RATNER: However you want to.

7 THE HEARING OFFICER: We won't rip them.

8 MR. RATNER: I didn't mean anything  
9 negative.

10 THE HEARING OFFICER: I have that. I have  
11 that. And I'm capable of removing them. All  
12 right.

13 (PARENTS 730 through 734  
14 received into evidence.)  
15

16 MR. RATNER: All right. I'm ready to move  
17 to the next subject, if that's okay.

18 THE HEARING OFFICER: All right. Let's  
19 move to the next topic then.

20 MR. RATNER: So I'd like you back in the  
21 school board book, please, tab 24. And we will be  
22 coming back to 54, if you want to leave that open.

23 THE HEARING OFFICER: Okay. So we're just  
24 admitting, for my clarification, 730 to 734;  
25 right?

1 MR. RATNER: That's exactly correct.

2 THE HEARING OFFICER: All right.

3 MR. RATNER: And, Ms. Freeman, again, I  
4 don't think the lines are particularly germane  
5 either. I would love to move forward and just be  
6 able to examine that this is about their emails.

7 THE HEARING OFFICER: All right.

8 MR. RATNER: But you saw we got an  
9 objection about it. So that's why I'm trying to -  
10 -

11 THE HEARING OFFICER: I understand. All  
12 right. Let's move forward then.

13 BY MR. RATNER:

14 Q Okay. What is School Board Exhibit 24,  
15 which has already been introduced into evidence?

16 A An educational evaluation completed  
17 12/14/22.

18 THE HEARING OFFICER: What tab are you on?

19 MR. RATNER: It's tab 24 in the school  
20 board's book.

21 THE HEARING OFFICER: Oh, the school board.  
22 Okay.

23 MR. RATNER: So it's already in evidence.  
24 And Mr. Freeman, while you're getting there, I'm  
25 trying to move this -

1 THE HEARING OFFICER: 20 or 24?

2 MR. RATNER: 24.

3 THE HEARING OFFICER: 24, all right.

4 MR. RATNER: I hope this pace is  
5 acceptable. I'm sure I'm going past 30 minutes,  
6 but I hope you understand.

7 THE HEARING OFFICER: I thought you all  
8 worked it out last night.

9 MR. RATNER: I mean, I thought so too.

10 THE HEARING OFFICER: I had a conversation  
11 towards the end of the day with you yesterday  
12 about working it out with school counsel.

13 In addition to that, I told you I was going  
14 to give you leeway. But you, again, I will  
15 reiterate -- that's redundant, I know. However,  
16 by Friday we're done.

17 MR. RATNER: Yes, ma'am.

18 THE HEARING OFFICER: Okay. At 5 o'clock.

19 MR. RATNER: Yes, ma'am.

20 THE HEARING OFFICER: Okay.

21 MR. RATNER: With our case. They still  
22 will have their three days.

23 THE HEARING OFFICER: Yeah. Yeah.

24 BY MR. RATNER:

25 Q So, Ms. Dragone, please identify for Ms.



1 Freeman what this document is.

2 A It's an educational evaluation completed  
3 12/14/20.

4 Q Okay. This was one of the things that the  
5 IEP team recommended in November and Ms. REDACTED  
6 consented to; correct?

7 A Yes.

8 Q Who is Kirsten Rubino?

9 A She is an educational diagnostician.

10 Q And isn't true that you, in fact, were in  
11 that very same role for Chesterfield County Public  
12 Schools for some years?

13 A Yes.

14 Q Did you perform this same type of  
15 educational evaluation when you were in this role?

16 A Yes.

17 Q And this is something that you are qualified  
18 to offer your opinions about as someone who has the  
19 NCBD designation?

20 A I can read what is written. Yes.

21 Q And can you interpret it?

22 A Based on what is in this report, yes.

23 Q Yes. Okay. I'd like to direct your  
24 attention to School Board Exhibit 000108. So I think  
25 that is the -- maybe the fifth page of the document.

1                   And I'm not trying to take it out of  
2                   context. Read anything you need to to help you  
3                   understand it. But I'm particularly interested in the  
4                   summary and what are identified as REDACTED's weaknesses.

5                   Do you have that in front of you?

6           A        I do.

7           Q        Okay. Tell Ms. Freeman which weaknesses  
8                   were identified.

9           A        According to this chart, which is anything  
10                   that she would have had a standard score at or below  
11                   84, she had weaknesses in reading fluency, written  
12                   language and math calculations skills.

13          Q        Okay. And if you look back, I believe it's  
14                   tab 20, the IEP that recommended this evaluation, do  
15                   you see any identification of math calculation skills  
16                   as a problem for REDACTED in the earlier IEP?

17          A        Not in the 11/20.

18          Q        Correct.

19          A        Because this was done after that.

20          Q        Right. That was my point.

21          A        Right. Yes.

22          Q        So Chesterfield County Public Schools had  
23                   not yet identified REDACTED as having a weakness in math  
24                   calculation skills prior to this report; is that  
25                   correct?

1 A Correct.

2 Q Okay. Do you see in here what her scores  
3 were for math calculation?

4 A The composite score was a 75.

5 Q Okay. And I think you said anything below  
6 an 84 was --

7 A It was considered a weakness on a patterns of  
8 strengths and weakness for LD identification. Yes.

9 Q Yes, ma'am. Okay. And I am not a  
10 statistician, so I may regret trying to ask questions  
11 about this. But this is a nationally-normed test; is  
12 that correct?

13 A Correct.

14 Q It compares REDACTED's performance on certain  
15 tests to her peers; correct?

16 A Same age peers.

17 Q Okay. And the average score is 100;  
18 correct?

19 A Average falls 90 to 110.

20 Q On a bell curve; right?

21 A On a bell curve. Yes.

22 Q So 100 would be -- is that the mean then?

23 A Yes.

24 Q Would that be the right statement?

25 A Uh-huh.

1 Q Okay. And what's the standard deviation on  
2 the test?

3 A Fifteen points one way or another.

4 Q Okay. So that means that's why the 84 is  
5 significant?

6 A Correct.

7 Q Okay. And then she was nine more points  
8 below that?

9 A Correct.

10 Q Okay. What's the significance of that?

11 A When you look at her scores on this  
12 particular test on that day and time when this test was  
13 given, she was falling in the low range of scores when  
14 you look at the bell curve, but just on this given day  
15 when this test was given.

16 Q Sure. That's right. Is the -- And I'm  
17 sorry, which test is this, the Woodcock-Johnson?

18 A Yes.

19 Q Okay. Is this something that Chesterfield  
20 County Public Schools relies upon to identify a  
21 student's strengths and weaknesses for learning  
22 disabilities?

23 A Yes.

24 Q Okay. So you consider it accurate  
25 information, even though it's just one point in time;

1 correct?

2 A Correct. Because we looked at the whole  
3 picture of the normed base criteria and reference  
4 classroom performance. We need data points from all  
5 places.

6 Q Sure. So she received the Woodcock-Johnson  
7 less than two years prior to this; correct?

8 A Yes.

9 Q We discussed that earlier.

10 A Uh-huh.

11 Q Was she tested for math in that one?

12 A I do not know.

13 Q Okay. And we can ask Ms. Rubino about that,  
14 right, if she administered it?

15 A Whoever the diagnostician was for that  
16 earlier educational evaluation.

17 Q Sure. And if we had the report you'd be  
18 able to look at it and tell me if she was tested for  
19 math?

20 A Yes.

21 Q Okay. If I could just have a moment to find  
22 that.

23 THE HEARING OFFICER: Sure.

24 MR. RATNER: Give me just a second. And  
25 maybe if everybody's okay, we can just take a five

1 minute break while I find this.

2 THE HEARING OFFICER: Fine with me. Yeah,  
3 take a five minute break.

4 MR. ANDRIANO: Mr. Ratner, can we just get  
5 -- How much longer do you think on this witness?

6 MR. RATNER: Let me see. I am about two-  
7 thirds of the way through. So I haven't been  
8 keeping how much time it's been. But I'm about  
9 two-thirds of the way through.

10 MR. ANDRIANO: It's right at an hour.

11 MR. RATNER: Okay. So I'd say 30 minutes.

12 MR. ANDRIANO: Okay.

13 THE HEARING OFFICER: Five minutes for the  
14 break.

15 (Brief recess.)

16 THE HEARING OFFICER: It's 11:20. Mr.  
17 Ratner has just said that he has approximately a  
18 half hour, 30 minutes with this witness left. And  
19 we'll trying to cross-examine finished up, so that  
20 hopefully Dr. Dragone can get out of here.

21 All right. So more forward then if you  
22 would. Sorry about the dely, we had to move our  
23 cars.

24 MR. RATNER: I understand completely.

25 THE HEARING OFFICER: I don't know if you

1 had heard that or not.

2 MR. RATNER: Yes.

3 THE HEARING OFFICER: Okay.

4 MR. RATNER: Are we on the record? And may  
5 I proceed?

6 THE HEARING OFFICER: Yes, we are. Go  
7 ahead.

8 BY MR. RATNER:

9 Q Great. So when we took a break I was going  
10 to look for the earlier evaluation, and I've found it.  
11 But I'd like to stick on School Board 24 for a minute,  
12 which was the educational evaluation done in fifth  
13 grade, and specifically on page 107, which is the  
14 fourth page of the document.

15 Do you have that in front of you?

16 A I do.

17 Q Okay. So I'm looking at the written  
18 language section.

19 A Okay.

20 Q Yeah, let's wait for Ms. Owens to get there.  
21 But what I'm interested in is that written language  
22 section. And read as much of it to yourself as you  
23 need to to put it into context.

24 But the portion I'm interested in is where  
25 it says students are generally not penalized for

1 errors. Do you see that?

2 A I do.

3 Q Okay. So read as much as you want and let  
4 me know when you're ready to answer questions.

5 THE HEARING OFFICER: Wait a minute.

6 You're on 107? I'm sorry to interrupt.

7 MR. RATNER: Yes, 107.

8 THE HEARING OFFICER: Okay.

9 MR. RATNER: There's a subsection called  
10 "Written Language," right below a table.

11 THE HEARING OFFICER: Yeah, I see that.  
12 Okay.

13 MR. RATNER: And then about two-thirds of  
14 the way down in that paragraph, "Students are  
15 generally not penalized" --

16 THE HEARING OFFICER: Uh-huh.

17 MR. RATNER: That's what I'm going to ask  
18 her about when she's ready.

19 THE HEARING OFFICER: Okay.

20 THE WITNESS: I'm ready.

21 BY MR. RATNER:

22 Q Okay. As someone who is a nationally  
23 certified educational diagnostician and certified to  
24 administer the Woodcock-Johnson, do you agree with that  
25 statement that students are generally not penalized for



1 errors in basic writing skills such as spelling or  
2 punctuation?

3 A I don't know that general is an appropriate  
4 word to use there. There is a scoring manual. And  
5 each item there are requirements. And the older you  
6 get the more advanced as you move up, there are  
7 requirements for some sentences for punctuation,  
8 spelling and grammar. But in the lower ones they're  
9 not.

10 Q Okay. So then I'd like you to read the next  
11 two sentences to yourself and explain to Ms. Freeman  
12 the significance of those statements.

13 A Well, it states here that several of REDACTED's  
14 errors negatively impacted the average adult's ability  
15 to read her responses.

16 I am not sure what the diagnostician,  
17 without looking at the samples and talking with her,  
18 meant by that, if she was just simply saying that her  
19 handwriting wasn't appropriate, but that she could  
20 score them or she could not score them. You would have  
21 to ask her that question.

22 Q That makes sense. Okay. Do you agree with  
23 the statement based on the scores reflected here that  
24 REDACTED's written language skills were measured in the  
25 very low range?

1 A Yes.

2 MR. ANDRIANO: Ms. Freeman, I'm going to  
3 object at this point. I mean, I think now is  
4 you're crossing over into expert testimony.

5 MR. RATNER: I've identified her as a  
6 nationally certified educational diagnostician who  
7 is certified in administering this test.

8 MR. ANDRIANO: I don't have an objection to  
9 certifying her as an expert, if that's the intent.  
10 But if you're asking her to give an opinion, now  
11 we're into specialized knowledge.

12 MR. RATNER: Okay. Let me ask a slightly  
13 different question, if I could.

14 THE HEARING OFFICER: So sustained. And  
15 you're going to rephrase the question.

16 MR. RATNER: I will rephrase it.

17 THE HEARING OFFICER: All right. Thank  
18 you.

19 BY MR. RATNER:

20 Q Do you see in the table below that it  
21 indicates her scaled score for written language was 65?

22 A I do.

23 Q Okay. So is that more than two standard  
24 deviations below the mean on this test?

25 A It is.

1 Q Okay. Close to three?

2 A I'd have to do my math. It would be 45.

3 MR. ANDRIANO: Yeah. Ms. Freeman, same  
4 objection. I mean --

5 THE HEARING OFFICER: Again, are you  
6 qualified to interpret this --

7 MR. RATNER: I'll move on.

8 THE HEARING OFFICER: Yeah. All right.  
9 Thanks. He's withdrawing the question. I assume  
10 by moving on that's what you meant.

11 MR. RATNER: Yes, ma'am.

12 THE HEARING OFFICER: All right.

13 BY MR. RATNER:

14 Q So now if you would indulge me. Parents'  
15 book again, volume two, tab 60. And this is the  
16 psychological report.

17 But actually I want 59, not 60. I made a  
18 mistake. So I apologize for that.

19 A Got it.

20 THE HEARING OFFICER: Okay. You said 40?

21 MR. RATNER: 59.

22 THE HEARING OFFICER: 59.

23 BY MR. RATNER:

24 Q And I will represent to you that this came  
25 from REDACTED cumulative educational file. Would

1 these sorts of reports be required to be maintained in  
2 the student's cumulative education file?

3 A Yes.

4 Q Okay. So is this the same type of  
5 evaluation that we were just looking at in School Board  
6 24?

7 A Yes.

8 Q Okay. And when was this one conducted?

9 A February 11th, 2019.

10 Q Okay. And again they administered the same  
11 Woodcock-Johnson test, perhaps among others?

12 A Correct.

13 Q Can you tell just from looking at this if  
14 REDACTED was evaluated for math at this time?

15 MR. ANDRIANO: Ms. Freeman, on this exhibit  
16 the objection -- we had previously made this  
17 objection that it's outside the statute of  
18 limitations.

19 MR. RATNER: And, again, we've addressed it  
20 very clearly. This is the same test, same  
21 evaluation less than two years apart. And we need  
22 to be able to compare them.

23 MS. RATNER: It shows regression.

24 THE HEARING OFFICER: Okay.

25 MR. ANDRIANO: Objection. It doesn't show

1 regression.

2 THE HEARING OFFICER: It does not show  
3 regression -

4 MR. ANDRIANO: No, it does not show  
5 regression.

6 THE HEARING OFFICER: -- in your opinion.  
7 What happened with this before? Was it  
8 rejected because we were so far back?

9 MR. ANDRIANO: I don't know. A ruling was  
10 made on it.

11 MR. RATNER: We haven't gotten to it  
12 before. I was waiting for the appropriate --

13 THE HEARING OFFICER: Yeah. I believe I  
14 allowed you, on this particular exhibit, to ask  
15 only about the regression that it possibly showed.  
16 But that doesn't necessarily mean that this is the  
17 proper witness to demonstrate regression.

18 MR. RATNER: I'm not -- yet to asking about  
19 regression. The issue, just to make sure you and  
20 I are on the same page --

21 THE HEARING OFFICER: If you want to get  
22 her to present scores or something.

23 MR. RATNER: I don't. I want her to  
24 testify that REDACTED was not tested for math in third  
25 grade and she was in fifth grade.

1 MR. ANDRIANO: But what's the relevancy?

2 THE HEARING OFFICER: She wasn't tested for  
3 math on this; right?

4 MR. RATNER: Correct. That's right.

5 THE HEARING OFFICER: Okay. And was there  
6 --

7 MR. RATNER: It's not in evidence yet. It  
8 speaks for --

9 THE HEARING OFFICER: -- deficit alleged in  
10 math at this point?

11 MR. RATNER: I think the question is  
12 whether the IEP team decided to evaluate her for  
13 math. And they decided not to, and we're not sure  
14 why.

15 MR. ANDRIANO: And that's why it goes to  
16 our relevancy objection, because that was from  
17 third grade.

18 THE HEARING OFFICER: But this is beyond  
19 the statute of limitations. And we're focused on  
20 the two year time frame.

21 MR. RATNER: Okay. I --

22 THE HEARING OFFICER: I understand your  
23 point about regression. But I don't honestly see  
24 that this proves that --

25 MR. RATNER: Okay.

1 THE HEARING OFFICER: -- or points to that.

2 MR. RATNER: I respect your decision. I  
3 will move on.

4 THE HEARING OFFICER: All right. Go ahead.  
5 Do you want to use another exhibit that you're -

6 MR. RATNER: Not right now.

7 THE HEARING OFFICER: Okay. All right.

8 MR. RATNER: I need just a minute for me to  
9 reorient myself.

10 THE HEARING OFFICER: Okay.

11 BY MR. RATNER:

12 Q School Board 30. So back to the other book.  
13 I'm sorry. And let me be clear. You've already said  
14 you're not a psychologist, and I understand that very  
15 clearly.

16 But in your role as the coordinator of  
17 special education administrative services you've sat in  
18 on maybe countless IEPs in which these sorts of reports  
19 were discussed?

20 A Yes.

21 Q They've been explained to you by people who  
22 understand them?

23 A Yes.

24 Q And is this part of your NCED certification?

25 A It's not part of the certification.

1 Q Okay. Are you familiar with this?

2 A Yes.

3 Q Are you familiar with what's called the BASC

4 -

5 A Yes.

6 Q -- the B-A-S-C? Are you certified to  
7 administer that?

8 A No.

9 Q Okay. It's just a self-administered test;  
10 correct? People answer questions?

11 A It's a rating scale.

12 Q A rating scale. Thank you so much. So it  
13 would be given to the parents and they answer questions  
14 about it.

15 A Correct.

16 Q And teachers well; correct?

17 A Correct.

18 Q Okay. And are those responses reflected in  
19 this report?

20 A Yes.

21 Q Okay. Where are you looking?

22 A I see it referenced on School Board Exhibit  
23 000136.

24 Q Okay. Could I direct your attention to 141,  
25 please?



1 A Yes.

2 Q Do you see --

3 THE HEARING OFFICER: You're directing her  
4 to which --

5 MR. RATNER: It's the same tab, page 141.

6 THE HEARING OFFICER: What was the tab  
7 again?

8 MR. RATNER: It is tab 30.

9 THE HEARING OFFICER: 30. Okay.

10 MR. RATNER: 141.

11 THE HEARING OFFICER: Yeah, yeah. Okay.

12 BY MR. RATNER:

13 Q Okay. Do you have that in front of you, Dr.  
14 Dragone?

15 A I do.

16 Q Do you see the far righthand column,  
17 "Special Education Teacher: Descriptive Range  
18 (Tscore)"?

19 A I do.

20 Q Okay. Those were responses given by  
21 Christina McCluskey; correct?

22 MR. ANDRIANO: Ms. Freeman, objection. I  
23 mean, these are appropriate questions for the  
24 school psychologist who administered this  
25 assessment.

1 MR. RATNER: Again, we strongly disagree.  
2 She's talking about facts she has observed. She's  
3 a special educator. She's sat in numerous IEP  
4 meetings where these results are discussed. She's  
5 familiar with the --

6 THE HEARING OFFICER: But familiar does not  
7 mean she's an expert.

8 MR. RATNER: I'm not asking her expert --

9 THE HEARING OFFICER: She's qualified --

10 MR. RATNER: I'm not asking expert  
11 questions.

12 THE HEARING OFFICER: Well, actually you  
13 are asking her to comment, or whatever the  
14 question was --

15 MR. RATNER: This goes back to 2.701,  
16 Supreme Court Rule 2.701, about lay witnesses and  
17 facts, which we talked about before. This  
18 factually says there are clinically significant --

19 THE HEARING OFFICER: But can read this.

20 MR. RATNER: But it's --

21 THE HEARING OFFICER: I can read this.

22 MR. RATNER: Okay. Well, I want to ask  
23 what her opinion as a member of the IEP team --

24 THE HEARING OFFICER: She's not qualified  
25 as an expert.

1 MR. RATNER: This is not expert testimony,  
2 ma'am, if I could please finish.

3 THE HEARING OFFICER: No. I understand  
4 that. But the actual evidence is the document,  
5 and I can read it.

6 MR. RATNER: Right. Okay. Well, I'd like  
7 to ask her questions about what her response to  
8 this information as a member of the IEP team was.

9 THE HEARING OFFICER: As a member of the  
10 IEP team gets into what went on with all of the  
11 individual members. And she was just a part of  
12 that.

13 MR. RATNER: Right. She's a part. And I'd  
14 like to examine her about that.

15 THE HEARING OFFICER: But you can't pick  
16 apart -- cherry pick responses from various --

17 MR. RATNER: I'm not cherry-picking  
18 anything. I'll ask other witnesses about it, too.  
19 She's the witness in front of me.

20 THE HEARING OFFICER: I just don't see the  
21 relevance of it.

22 MR. RATNER: Okay. I'll move on.

23 THE HEARING OFFICER: Because I can read  
24 the --

25 MR. RATNER: Great.

1 THE HEARING OFFICER: -- report and decide  
2 for myself.

3 MR. RATNER: Right. So I would just like  
4 to --

5 THE HEARING OFFICER: If she's just telling  
6 me a fact that I can read, I don't understand why  
7 I would need to have her explain to me what her  
8 reaction to it was.

9 MR. RATNER: Well, because that's going to  
10 shape the IEP team's decision that, for example,  
11 Christina McCluskey thought that REDACTED was  
12 clinically significant for schizophrenia thought  
13 disorders.

14 THE HEARING OFFICER: Which I can read, and  
15 I have read in here.

16 MR. RATNER: Great.

17 THE HEARING OFFICER: I don't remember  
18 exactly where it was. But I remember reading  
19 that, because it was --

20 MR. RATNER: Probably in the due process  
21 complaint.

22 THE HEARING OFFICER: Well, actually I  
23 think I saw it in one of the -- some of the  
24 school's documentation.

25 MR. RATNER: Great. It's in evidence, so

1 I'll move on.

2 THE HEARING OFFICER: Yeah. All right.

3 BY MR. RATNER:

4 Q Let's go to School Board 37, same book.

5 What's this document?

6 A This is an annual IEP.

7 Q Okay. Did you attend this meeting?

8 A I did.

9 Q Prior to this meeting was there an  
10 eligibility determination for REDACTED?

11 A Yes.

12 Q Okay. And do you remember discussing  
13 whether or not she qualified as a student with an  
14 emotional disability?

15 A I did not attend that.

16 Q Oh okay, fair enough. Thank you for  
17 clarifying. But you did attend this meeting.

18 A I did.

19 Q And you recall that The New Community School  
20 was discussed at that meeting?

21 A Yes.

22 Q Okay. So let's go to 38, please. This is  
23 the prior written notice of that February meeting; is  
24 that correct?

25 A Yes.

1 Q Were you involved in drafting this document?

2 A Yes.

3 Q Okay. Can you tell -- We didn't see any  
4 emails about it, so I can't ask you about that. So  
5 just tell us what you recall.

6 A I don't recall my part in this, other than I  
7 can tell you typically my role would be, as all IEP  
8 team members, to make sure that the entire discussion  
9 was accurately reflected.

10 Q Okay. So if it states in here,  
11 "Furthermore, a change in private placement to a day  
12 school, including The New Community School, which is  
13 not approved by the Virginia Department of Education,  
14 is not educationally necessary," then that was  
15 discussed at the IEP meeting?

16 A Yes.

17 Q So someone in the IEP meeting represented to  
18 the REDACTED that we couldn't place her there because the  
19 school is not approved by the Virginia Department of  
20 Education; is that correct?

21 MR. ANDRIANO: Objection, mischaracterizes  
22 the evidence.

23 THE HEARING OFFICER: Sustained. I believe  
24 it says in -- I believe the witness stated earlier  
25 that the IEP team did not consider that, I don't

1 have the note in front of me, because the issue  
2 did not come up.

3 MR. RATNER: She just said it came up, and  
4 that's why it's in the prior written notice.  
5 That's what I just asked her.

6 THE HEARING OFFICER: Well, the IEP team  
7 did not accept or reject that notion, because it  
8 was not appropriate in REDACTED's case.

9 Again, I'd have to go back to my --

10 MR. RATNER: That's why I'm trying to ask  
11 her about the prior written notice, which she just  
12 testified summarizes the statements at the  
13 meeting. That was her testimony. Did you not  
14 hear that?

15 THE HEARING OFFICER: No.

16 MR. RATNER: Okay.

17 THE HEARING OFFICER: Do you want to --

18 MR. RATNER: Well, may I ask her again  
19 then, please? Or we can have Kurt read it back.

20 THE HEARING OFFICER: All right. Go ahead.  
21 Let's hear the question.

22 BY MR. RATNER:

23 Q I believe your testimony was that your role  
24 in revising this, you can't say specifically, but that  
25 generally everyone on the IEP team wants to make sure

1 that what was discussed in the meeting is included in  
2 the prior written notice. Did I say that correctly?

3 A Yes. It accurately reflects the proposals  
4 made.

5 Q Okay. So let's look at number 5 on page  
6 177. And I want to make sure the Hearing Officer is  
7 there. So we're in tab 38.

8 THE HEARING OFFICER: I'm usually there.  
9 I've been extremely attentive.

10 MR. RATNER: I know. I'm not saying that.

11 THE HEARING OFFICER: What page did you  
12 say?

13 MR. RATNER: 138 -- excuse me -- tab --

14 THE HEARING OFFICER: But I'm having  
15 difficulty following you questions again. What  
16 did you say, 177?

17 MR. RATNER: Correct.

18 THE HEARING OFFICER: All right.

19 MR. RATNER: That's why I want to make sure  
20 you're following me.

21 THE HEARING OFFICER: Okay.

22 MR. RATNER: Because this is a very  
23 important point.

24 THE HEARING OFFICER: I'm generally  
25 following. But I'm having difficulty with the



1 compound questions again.

2 MR. RATNER: What was the compound question  
3 so I can clean it up?

4 THE HEARING OFFICER: I certainly don't  
5 remember all of the details of your compound  
6 question.

7 MR. RATNER: Got it.

8 THE HEARING OFFICER: Do you want me to  
9 have the court reporter read back what that --

10 MR. RATNER: That would be fine. But I'd  
11 rather just move on.

12 THE HEARING OFFICER: -- lengthy question  
13 was that I can't recall?

14 MR. RATNER: Are you on page 177?

15 THE HEARING OFFICER: Let's see.

16 MR. RATNER: We're in tab 38.

17 THE HEARING OFFICER: I'm at -- Oh, thank  
18 you for telling me that.

19 MR. RATNER: I already did.

20 THE HEARING OFFICER: Okay. 177. Got it.

21 MR. RATNER: Thank you.

22 THE HEARING OFFICER: Let me get my glasses  
23 on again so I can read it.

24 MR. RATNER: And I don't mean to belabor  
25 this point. This is the key point to our case.

1 THE HEARING OFFICER: What, this exhibit?

2 MR. RATNER: That the school district  
3 denied the request --

4 THE HEARING OFFICER: All right. I'll give  
5 you --

6 MR. RATNER: -- to place her at The New  
7 Community School.

8 THE HEARING OFFICER: -- two asterisks on  
9 your question here. Let's go.

10 BY MR. RATNER:

11 Q Great. "CCPS proposes placement in the  
12 public school setting." Do you see that at the very  
13 end of paragraph 1?

14 A Yes.

15 Q Okay. Let's skip to paragraph 5.

16 A Okay.

17 Q "CCPS refuses the parents' request to change  
18 the student's placement to a private day setting at The  
19 New Community School." Is that correct?

20 A That is correct.

21 Q Okay. And then if you flip to paragraph 5  
22 on the following page it also references that The New  
23 Community School is not approved by the Virginia  
24 Department of Education; is that correct?

25 MR. ANDRIANO: Objection. If she's going

1 to read -- You've got to read the entire paragraph  
2 of paragraph 5 --

3 MR. RATNER: That's cross-examination.

4 MR. ANDRIANO: -- not one sentence.

5 THE HEARING OFFICER: Don't interrupt.

6 MR. ANDRIANO: Rule of completeness.

7 MR. RATNER: I'm not familiar with the rule  
8 of completeness. I'm sorry.

9 THE HEARING OFFICER: I don't think I  
10 remember what the rule of completeness is. But  
11 let me see.

12 So, again, I can read this document.

13 MR. RATNER: Right. But I thought you just  
14 said you didn't think the not being approved by  
15 the Virginia Department of Education was not  
16 discussed at the IEP meeting. And she just said  
17 it was, that's why it's in the prior written  
18 notice.

19 THE HEARING OFFICER: Okay. Thank you.  
20 Noted.

21 BY MR. RATNER:

22 Q Okay. Do you agree with that, Dr. Dragone?

23 A Yes.

24 Q Okay.

25 MR. ANDRIANO: Ms. Freeman, my point is

1           you've got to read the entire paragraph. You  
2           can't just cherry pick --

3           THE HEARING OFFICER:   And I'll acknowledge  
4           to you --

5           MR. ANDRIANO:   -- one sentence out of that.  
6           You have to read the whole paragraph.

7           THE HEARING OFFICER:   -- I believe I've  
8           read the --

9           MR. ANDRIANO:   And he's skipping over the  
10          main part.

11          THE HEARING OFFICER:   Yeah. I've read the  
12          entire -- Yeah. Let me say, I have read the  
13          entire document. But I am directed to paragraph  
14          5, which Mr. Ratner wants me to be certain that I  
15          address in my deliberations. And I assure you I  
16          will do that.

17          But I will assure you, school counsel, that  
18          I am going to read the whole paragraph in context  
19          with the entire document.

20          MR. RATNER:   I appreciate it very much.

21          THE HEARING OFFICER:   Okay.

22          BY MR. RATNER:

23          Q       Let me ask you, Parents 39, so I hate to do  
24          this to you. It's the very last one in volume one. So  
25          it's a little bit unwieldy, because you've got to turn

1 all of them.

2 So, Ms. Freeman, parents' volume one, tab  
3 39.

4 THE HEARING OFFICER: Okay.

5 MR. RATNER: Let me know when you have that  
6 in front of you.

7 THE HEARING OFFICER: Tab 39.

8 MR. RATNER: Yes, ma'am.

9 THE HEARING OFFICER: All right.

10 BY MR. RATNER:

11 Q What's the date on this document?

12 A May 14th, 2021.

13 Q Could you speak up, please? I'm sorry.

14 A May 14th, 2021.

15 Q Thank you. At that time were you still in  
16 the position of coordinator for special education  
17 administrative services for Chesterfield County Public  
18 Schools?

19 A Yes.

20 Q Do you understand what a written notice of  
21 unilateral placement and intent to seek reimbursement  
22 from school district is?

23 A Yes.

24 Q Okay. Was this brought to your attention  
25 even though it wasn't addressed to you?

1 A Yes.

2 Q Okay. Do you recall roughly when?

3 A I do not recall roughly when.

4 MR. RATNER: Okay. We'd like to move for  
5 the admission of this document, please, Parents  
6 39.

7 THE HEARING OFFICER: Any objection to  
8 Parents 39?

9 MR. ANDRIANO: Yes.

10 THE HEARING OFFICER: Is this their --

11 MR. ANDRIANO: Here's the problem with Mr.  
12 Ratner's exhibits. He dumped a bunch of documents  
13 under each tab, so it's more than the letter he's  
14 referencing.

15 THE HEARING OFFICER: Oh, really?

16 MR. ANDRIANO: So, no, I cannot.

17 MR. RATNER: Actually not in this case.  
18 This is a letter, plus the attachments to the  
19 letter. That's it.

20 THE HEARING OFFICER: Okay. This looks  
21 like a letter to -- I hope I'm saying his name  
22 correctly -- Dr. Daugherty. And I'm seeing the  
23 entire letter.

24 MR. RATNER: Right. And then everything  
25 after that is -

1 THE HEARING OFFICER: And then after that  
2 though --

3 MR. RATNER: -- an attachment. That was  
4 attached to the letter.

5 THE HEARING OFFICER: Those are  
6 attachments. So are you asking me to admit into  
7 evidence the letter with the attachments?

8 MR. RATNER: Yes, please.

9 THE HEARING OFFICER: In other words, the  
10 REDACTED sent this letter. And this is basically  
11 the basis for -- Is that what I'm to assume, that  
12 this is the examples of her work are the basis to  
13 assume why the letter was sent?

14 MR. RATNER: Well, no. Actually, as you're  
15 probably familiar with, and I don't want to --

16 THE HEARING OFFICER: That's okay.

17 MR. RATNER: So as you're well-aware, you  
18 have to give ten days written notice of your  
19 intent to seek reimbursement.

20 THE HEARING OFFICER: Is this the ten day  
21 letter.

22 MR. RATNER: That's what this is.

23 THE HEARING OFFICER: I thought they did it  
24 twice.

25 MR. RATNER: That's why it is the written

1 notice of unilateral placement --

2 THE HEARING OFFICER: Okay. How about  
3 this?

4 MR. RATNER: -- and intent to seek  
5 reimbursement.

6 THE HEARING OFFICER: He attached --

7 MR. RATNER: The attachments are explained  
8 in the letter.

9 THE HEARING OFFICER: The parents attached  
10 the written work of their child. And I don't  
11 know, is this a copy of the same letter or a prior  
12 letter.

13 MR. RATNER: Yes. No, it's the same  
14 letter.

15 THE HEARING OFFICER: Oh, okay.

16 MR. RATNER: Because she emailed it, and  
17 that's how it prints out.

18 THE HEARING OFFICER: I see. But do you --  
19 Is this part of your -- This was part of a letter  
20 that was sent.

21 MR. RATNER: It is. And just to be clear -  
22 -

23 MR. ANDRIANO: But Ms. Freeman --

24 MR. RATNER: -- if I may.

25 THE HEARING OFFICER: Yeah.



1 MR. RATNER: It's Diane Glover, who will be  
2 the next witness.

3 THE HEARING OFFICER: Got it.

4 MR. RATNER: Was cc'd on this letter.

5 THE HEARING OFFICER: Okay.

6 MR. RATNER: So I can ask her to connect it  
7 up.

8 THE HEARING OFFICER: Connect what up?

9 MR. ANDRIANO: But Dr. Dragone wasn't  
10 copied on the letter.

11 MR. RATNER: She just said she was aware of  
12 it.

13 THE HEARING OFFICER: What do you want her  
14 to testify about?

15 MR. RATNER: I want it to be admitted into  
16 evidence.

17 THE HEARING OFFICER: Well, it's the ten  
18 day letter. And of course it's going to be --

19 MR. RATNER: Well he objected to it.

20 THE HEARING OFFICER: -- admitted without -  
21 - without the exhibits -

22 MR. RATNER: Why would that be?

23 THE HEARING OFFICER: -- if there's an  
24 objection. Because those are examples of her  
25 work. That's not the ten day letter.

1 MR. RATNER: It was received by  
2 Chesterfield County Public Schools. They were  
3 sent together.

4 THE HEARING OFFICER: Honestly, I don't see  
5 the significance really. But, you know --

6 MR. RATNER: Okay. Well, we'd like it  
7 admitted, please.

8 THE HEARING OFFICER: How about do you --

9 MR. ANDRIANO: This would have been a  
10 perfect document to introduce with Ms. REDACTED if  
11 this was really her ten day letter.

12 MR. RATNER: If it was really her ten day  
13 letter? I mean, are we now suggesting it's not  
14 her ten day letter?

15 MR. ANDRIANO: How do we know? She said  
16 she -- This letter wasn't addressed to her.

17 MR. RATNER: She said she became aware of  
18 it. And Diane Glover is coming in to testify  
19 about it.

20 MR. ANDRIANO: Then ask Diane about it.  
21 But don't ask Dr. Dragone about a letter she  
22 didn't receive.

23 MR. RATNER: I have to ask her about it,  
24 because the next email shows she did in fact  
25 receive it. So why don't you let me keep moving

1 on?

2 MR. ANDRIANO: You asked to have this  
3 document introduced as evidence before you got to  
4 the email.

5 MR. RATNER: That's a great point, Mr.  
6 Andriano. May I move on, please, and come back to  
7 this?

8 THE HEARING OFFICER: Yeah. Okay.

9 MR. RATNER: Thank you so much.

10 THE HEARING OFFICER: All right. Let me  
11 hear the rest of it. And I don't want to utilize  
12 your time in objections.

13 MR. RATNER: Parents 54. Do you have that  
14 in front of you?

15 THE HEARING OFFICER: Parents 54. Is it  
16 still in volume one?

17 MR. RATNER: It is actually in volume two.

18 THE HEARING OFFICER: Oh, okay.

19 MR. RATNER: And it's going to take me a  
20 second to get there as well. And if you recall,  
21 we already admitted the first -- There's two email  
22 chains in this one. This was the one that had the  
23 lines and things that Mr. Andriano didn't like.

24 THE HEARING OFFICER: Well --

25 MR. ANDRIANO: Well, let's not

1 mischaracterize it. It's not that I didn't like  
2 it. He was trying to say that that proved that it  
3 was a complete email.

4 THE HEARING OFFICER: That it was  
5 consecutive or something. I don't honestly  
6 remember if that proved it.

7 MR. RATNER: So anyway, 730 through 734  
8 have already been admitted into evidence.

9 THE HEARING OFFICER: Okay.

10 MR. RATNER: And now I'm going to ask about  
11 the rest of the document, if I may.

12 THE HEARING OFFICER: Yes.

13 MR. RATNER: So that's 735 to 738.

14 THE HEARING OFFICER: I'm sorry. Let me  
15 get my glasses here. Okay.

16 BY MR. RATNER:

17 Q Okay. Do you recognize this?

18 A Yes.

19 Q What is this document?

20 A It appears to be a chain of emails.

21 Q Okay. From who to whom?

22 A From me to LaRana Owens.

23 Q Okay. And you remember from previously how  
24 we started at the end and worked our way back? That's  
25 what I'd like to do if you'll indulge me.

1 A So starting earlier in the day, June 4th --

2 Q Correct.

3 A -- and moving up to the 7th?

4 Q That's right.

5 A Yes.

6 Q Okay. So who is Bev Bowlus?

7 A Beverly is the administrative assistant to  
8 Diane Glover.

9 Q Okay. And it says "Response letter  
10 attached"; correct?

11 A Yes.

12 Q Okay. And now turn to tab 55, if you could,  
13 please. And the second page of that. This is a June  
14 4th, 2021, response letter; correct? The same date as  
15 Ms. Bowlus' emails?

16 A Yes.

17 Q Okay. And the June 4th letter is from Ms.  
18 Glover, who will be testifying next; correct?

19 MR. ANDRIANO: I don't know that this  
20 witness can testify to who's going to testify  
21 next.

22 MR. RATNER: I will withdraw the question.

23 THE HEARING OFFICER: So you don't want me  
24 to look at --

25 MR. RATNER: I do want you to look at that.

1 I just didn't -- Mr. Andriano --

2 THE HEARING OFFICER: But you want to do it  
3 with somebody else.

4 MR. RATNER: No. I want to do it with her.

5 THE HEARING OFFICER: Oh, okay.

6 MR. RATNER: I'm just withdrawing the part  
7 that Ms. Glover --

8 THE HEARING OFFICER: Okay. Go ahead. All  
9 right.

10 MR. RATNER: -- will be testifying next.

11 THE HEARING OFFICER: All right. Go ahead.

12 BY MR. RATNER:

13 Q Was this the letter, the June 4th letter  
14 that was forwarded to you by Beverly Bowlus on June  
15 4th, 2021, at 1:55 p.m.?

16 A It appears that's what it is. But I can't  
17 say with a hundred percent certainty, because there may  
18 be another letter that she forwarded to me.

19 Q There might be another parent response  
20 letter at the exact same time and same date?

21 A I would doubt it. But I can't say with a  
22 hundred percent certainty.

23 Q That I appreciate very much. And this  
24 letter from Diane Glover is responding to the REDACTED  
25 emails stating that they intend to place their

1 daughter, REDACTED at The New Community School for  
2 the 2021/2022 school year; is that correct?

3 A Yes.

4 Q And the May 14th, 2021, email at tab 39 is  
5 the document by which the REDACTED expressed that to  
6 Chesterfield County Public Schools; correct?

7 A Tab 39?

8 Q Yes, ma'am.

9 MR. ANDRIANO: Objection. I don't know how  
10 she can link up that tab 39, which wasn't to her  
11 again, to somehow her receipt of it.

12 MR. RATNER: Okay. Again, that's for you  
13 to rule on. I think I've laid a very clear  
14 foundation.

15 THE HEARING OFFICER: What is it you want  
16 me to rule on?

17 MR. RATNER: Well, I mean, Mr. Andriano  
18 just made an objection. That's what I'd like you  
19 to rule on.

20 MR. ANDRIANO: Mr. Ratner, may I make a  
21 recommendation? You said she's testifying next.  
22 Ask her.

23 MR. RATNER: I am going to.

24 MR. ANDRIANO: Okay. But why do you need  
25 Dr. Dragone to talk about documents she may or may

1 not have received?

2 MR. RATNER: Because she just testified she

3 --

4 MR. ANDRIANO: No, she didn't.

5 MR. RATNER: -- did become aware of the ten  
6 day letter. She's being asked to respond to the  
7 response letter to the ten day letter. And I'm  
8 trying to put it into context.

9 THE HEARING OFFICER: Which you said she  
10 saw.

11 MR. RATNER: Right. And I'm trying to put  
12 it into context.

13 THE HEARING OFFICER: Okay. So let's hear  
14 that.

15 MR. RATNER: Well that's what I'm trying to  
16 do.

17 THE HEARING OFFICER: Okay. Go ahead.

18 BY MR. RATNER:

19 Q So what happened after Mr. Bowlus forwarded  
20 to you the June 4th, 2021, response letter?

21 A I do not know.

22 Q Okay. You don't see anything in this thread  
23 from you?

24 MR. ANDRIANO: Objection. Is there a  
25 question?



1 MR. RATNER: Yes, that is a question.

2 THE HEARING OFFICER: Is there anything in  
3 the thread?

4 MR. ANDRIANO: What thread?

5 THE HEARING OFFICER: What thread?

6 MR. RATNER: Oh, my gosh. I'm so sorry.

7 MR. ANDRIANO: Mr. Ratner --

8 MR. RATNER: We are on tab 54.

9 MR. ANDRIANO: -- direct her to the  
10 document -

11 THE HEARING OFFICER: Oh, okay. That's  
12 what I thought.

13 MR. ANDRIANO: -- you want her to look at.

14 MR. RATNER: Right. Tab 54, it's the whole  
15 thread. You've been objecting to saying it's not  
16 the whole thread. So I'm not directing her to  
17 anything specific so she can review it to how she  
18 feels comfortable.

19 THE HEARING OFFICER: Okay. And I thought  
20 we already admitted three pages of this, didn't  
21 we.

22 MR. RATNER: We didn't. We admitted --  
23 Again, this is the point. We admitted 774 through  
24 778.

25 THE HEARING OFFICER: Oh, those were the

1 three pages.

2 MR. RATNER: Right. And now we're on 735  
3 to 738.

4 THE HEARING OFFICER: Okay. 735. Okay.

5 BY MR. RATNER:

6 Q Dr. Dragone, you're following me; yes?

7 THE HEARING OFFICER: It's an email to  
8 Diane. Huh?

9 BY MR. RATNER:

10 Q Is that correct?

11 A Yes.

12 MR. RATNER: It's not to Diane. It's to  
13 her.

14 THE HEARING OFFICER: Oh, from -- Oh, okay.  
15 I don't have my glasses on. Sorry.

16 MR. RATNER: Again, Beverly Bowlus - This  
17 is on page 736. Are we on the same page, Mr.  
18 Andriano?

19 MR. ANDRIANO: We are.

20 BY MR. RATNER:

21 Q Great. Who's Beverly Bowlus again?

22 A She's the administrative assistant to Diane  
23 Glover.

24 MR. ANDRIANO: But why not just ask her if  
25 she received it? Why -- I'm just perplexed. Why

1 not just ask her straight up, "Did you receive the  
2 document? What date did you receive it?"

3 MR. RATNER: I asked her and she said she  
4 wasn't sure.

5 MR. ANDRIANO: Right.

6 MR. RATNER: So now we're going through it.

7 BY MR. RATNER:

8 Q "Thought you'd want to see this." Do you  
9 remember getting that?

10 A I don't remember getting it. But here it is  
11 stated that it was sent to me on June 7th.

12 Q Okay. Thank you. And no reason to think  
13 Beverly Bowlus didn't forward you something on that  
14 date. The email says she did; right?

15 A Yes.

16 Q Okay. Now you forward the message to Diane  
17 Glover; correct?

18 A Correct.

19 Q On page 735.

20 A Correct.

21 Q "Bev forwarded this to me. The school is  
22 addressing the OT question." Did I read that  
23 correctly?

24 A You did.

25 Q Okay. What does that mean? What was the OT

1 question?

2 A I do not know. I would have to look back in  
3 the -- let me re-read the parents' email.

4 Q Yes. And I can direct your attention  
5 specifically to pages 736 and 737. And at the top of  
6 737, regarding the suggestion of another meeting.

7 A All right. So Ms. REDACTED writes, "I continue  
8 to be confused and to receive conflicting explanations  
9 about the purpose for this meeting, whether a meeting  
10 is required or can be waived, why the nature of REDACTED's  
11 OT assessment was changed without notice to me, and  
12 similar questions. Ms. Pettitway said she's working on  
13 providing answers to me."

14 So when I forwarded this to Diane I wanted  
15 her to be aware that the school was addressing the  
16 questions regarding the OT.

17 Q Do you remember if Ms. Pettitway asked you  
18 about the OT assessment in the meeting?

19 A I do not remember.

20 Q Okay. How about anybody else at Old Hundred  
21 Elementary School?

22 A I do not remember.

23 Q Okay. And then why did you forward this  
24 back to Diane?

25 A Because it was a response to the letter that

1 Diane had sent.

2 Q Okay.

3 A It was addressed -- the email was addressed  
4 to Ms. Glover.

5 Q Right. So REDACTED on page 726 emails it  
6 back to Beverly Bowlus and cc's Diane Glover and Kim  
7 Pettaway; correct?

8 A Uh-huh.

9 Q So why did you need to re-sent it to Diane  
10 Glover?

11 A As a director Diane gets hundreds, thousands  
12 of emails. And it was my job at that time to make sure  
13 she was aware of information that was shared with me  
14 that she might need to know about.

15 Q So this was an important email that you  
16 wanted to make sure Diane Glover saw.

17 A I forwarded every email, important or not,  
18 that would have involved Diane at that time to Ms.  
19 Glover. Yes.

20 Q Okay. Was she your direct supervisor?

21 A Yes.

22 MR. RATNER: So I'd again like to move the  
23 second half of tab 54. That's pages 735, 736,  
24 737, and 738, into evidence.

25 THE HEARING OFFICER: Did you say you

1 remembered those emails?

2 THE WITNESS: I did not remember them until  
3 I saw them here.

4 THE HEARING OFFICER: Until you saw them.  
5 But when you saw them you remembered them?

6 THE WITNESS: Yes.

7 THE HEARING OFFICER: Any objection?

8 MR. ANDRIANO: No objection.

9 THE HEARING OFFICER: Okay. Those -- I  
10 believe this is --

11 MR. RATNER: That's the entire exhibit  
12 then.

13 THE HEARING OFFICER: So volume two. Okay.  
14 And what exhibit is that?

15 MR. RATNER: It's 54, and there were two  
16 parts to it. And now both have been admitted.

17 THE HEARING OFFICER: Oh, okay.

18 MR. RATNER: That was where I said you  
19 could rip it out of the book, and you said you  
20 wouldn't rip it.

21 THE HEARING OFFICER: I remember that.  
22 Okay.

23 (PARENTS 735 through 738  
24 received into evidence.)

25 MR. RATNER: So I'm finished with my

1 questioning.

2 THE HEARING OFFICER: Oh, okay.

3 MR. RATNER: And perhaps we could take a  
4 short break before they do the cross.

5 THE HEARING OFFICER: Yes. Five minutes  
6 okay?

7 MR. RATNER: That would be fine for me.

8 THE HEARING OFFICER: All right. Is that  
9 okay with you?

10 (Brief recess.)

11 THE HEARING OFFICER: Okay. Let's go back  
12 on the record. You were finishing up, Mr. Ratner?

13 MR. RATNER: I am finished.

14 THE HEARING OFFICER: Oh, you are.

15 MR. RATNER: Thank you so much.

16 THE HEARING OFFICER: Cross-examination.

17

18 C R O S S E X A M I N A T I O N

19 BY MR. ANDRIANO:

20 Q Dr. Dragone, did you become aware of a  
21 Facebook post from Ms. REDACTED has night?

22 MS. RATNER: Beyond the scope.

23 MR. RATNER: Objection, beyond the scope.

24 THE HEARING OFFICER: Why --

25 MS. RATNER: Beyond the scope of direct.

1 MR. RATNER: I didn't ask her about a  
2 Facebook post. You've ruled on the issue.

3 THE HEARING OFFICER: I don't think she  
4 asked about -- she was asked by them on their  
5 direct about the Facebook post.

6 MR. ANDRIANO: No. But we had a lengthy  
7 explanation from both parents about this process.  
8 Now Dr. Dragone can tell you --

9 THE HEARING OFFICER: Well, did she hear  
10 it? Were you -- I just don't recall that she was  
11 asked anything about Facebook.

12 MR. RATNER: She wasn't.

13 MR. ANDRIANO: She wasn't asked by them.  
14 She's the one who brought the Facebook post to my  
15 attention and said she was intimidated.

16 MS. RATNER: So when they call her on their  
17 case, they can ask her.

18 MR. RATNER: -- case, they can ask.  
19 They've objected to every single --

20 MR. ANDRIANO: She's a witness right now.  
21 She's a witness right now.

22 MS. RATNER: They've objected --

23 MR. RATNER: I'm so sorry, Ms. Freeman. If  
24 I could be heard.

25 MS. RATNER: We have two different sets of



1 rules apply.

2 MR. RATNER: Right. Again --

3 THE HEARING OFFICER: I can only listen to  
4 one at a time.

5 MR. RATNER: Thank you. If I may?

6 THE HEARING OFFICER: Yes.

7 MR. RATNER: So I would love to have the  
8 latitude to ask any of the witnesses here -- I'd  
9 love them not to have to be called back.

10 Every single time I ask something slightly -  
11 - She asked about the DRA's, but not this specific  
12 thing about the DRA's. We got a beyond the scope.

13 I didn't touch Facebook. We had a  
14 discussion about Facebook before you got in here.  
15 You made your ruling. I see no relevance to it,  
16 and it's beyond the scope.

17 THE HEARING OFFICER: I'm going to sustain.  
18 And let's -- I don't -- There probably is an  
19 appropriate time to ask her about that Facebook  
20 post. But I think we're going to maintain the  
21 rule that she's only going to be asked about  
22 whatever he asked on -- "he," meaning Mr. Ratner  
23 asked on direct. Go ahead.

24 BY MR. ANDRIANO:

25 Q Dr. Dragone, you testified that Ms. REDACTED

1 reached out to you or CCPS about concerns about REDACTED's  
2 performance on the virtual platform; is that correct?

3 MR. RATNER: Objection, it mischaracterizes  
4 the testimony. She said she did not speak to Ms.  
5 REDACTED.

6 MR. ANDRIANO: I think Mr. Ratner needs to  
7 listen to the question. I said CCPS.

8 MR. RATNER: He said -- Kurt can read it  
9 back. He said yourself or CCPS. And that's a  
10 compound question on top of -- And we can play  
11 these games all day.

12 MR. ANDRIANO: Dr. --

13 MR. RATNER: I'm still talking.

14 MR. ANDRIANO: I'll rephrase. I'll  
15 rephrase.

16 MR. RATNER: I'm still talking.

17 MR. ANDRIANO: I'll withdraw the question.  
18 I'll rephrase.

19 MR. RATNER: Great. May I please continue?

20 THE HEARING OFFICER: He withdrew the  
21 question.

22 MR. RATNER: Great. I'm still talking, and  
23 I'd like to make a record please.

24 THE HEARING OFFICER: Go ahead.

25 MR. RATNER: Great. I would love for this

1 to continue with a little more civility. I don't  
2 -- I'm fine -- We want the evidence to come in.  
3 We don't want all these extraneous objections.

4 I'm not afraid of anything Dr. Dragone has  
5 to say. And they shouldn't be afraid of anything  
6 either.

7 MR. ANDRIANO: Ms. Freeman, I mean, this  
8 isn't proper. I mean, what --

9 THE HEARING OFFICER: Let's move ahead.

10 BY MR. ANDRIANO:

11 Q Let's move on. Did Mr. Ratner ask you  
12 whether CCPS was contacted by Ms. REDACTED with concerns  
13 about the virtual platform?

14 A I believe so. Yes.

15 Q Yes or no?

16 A Yes.

17 Q Okay. Are you aware that concerns were  
18 brought to CCPS's attention about REDACTED's performance on  
19 the virtual platform?

20 A I am.

21 Q Okay. And what did --

22 THE HEARING OFFICER: Are you saying --  
23 Excuse me -- on personal platform?

24 MR. ANDRIANO: Virtual.

25 THE HEARING OFFICER: I'm sorry.

1 MR. ANDRIANO: Virtual platform.

2 THE HEARING OFFICER: Okay.

3 BY MR. ANDRIANO:

4 Q What did CCPS do in response to those  
5 concerns?

6 A We convened an IEP meeting to discuss the  
7 concerns.

8 Q And do you remember when that IEP meeting  
9 was?

10 A It was in November.

11 Q Okay. And --

12 MR. RATNER: Ms. Freeman, I'm just having a  
13 little trouble hearing.

14 THE WITNESS: It was in November.

15 THE HEARING OFFICER: Were you having  
16 trouble hearing Mr. Andriano or the witness?

17 MR. RATNER: The witness.

18 THE HEARING OFFICER: Oh, okay.

19 THE WITNESS: It was in November.

20 THE HEARING OFFICER: Thank you.

21 THE WITNESS: You're welcome.

22 BY MR. ANDRIANO:

23 Q Okay. And if I could direct your attention  
24 to School Board 37 -- I'm sorry -- actually School  
25 Board 20, two zero.

1 THE HEARING OFFICER: School Board 22.

2 MR. ANDRIANO: 20, two zero.

3 THE HEARING OFFICER: Okay. I'm sorry.

4 BY MR. ANDRIANO:

5 Q Is that the IEP meeting you're referencing?

6 A Yes.

7 Q Okay. And what was discussed about REDACTED's  
8 performance on the virtual platform?

9 A The parents had shared that she was having  
10 difficulty accessing the instruction during the virtual  
11 learning, that the platform was not working for her,  
12 that her anxiety around participating in the virtual  
13 setting had increased.

14 And I can look back exactly through this  
15 document. Under her parent concerns within this  
16 document it says, "Ms. REDACTED indicated concerns with  
17 the virtual learning model for REDACTED" --

18 MR. RATNER: Objection, beyond the scope.  
19 We didn't talk about parental concerns.

20 THE HEARING OFFICER: I can go back to my  
21 notes. But I'm pretty sure that she mentioned, or  
22 read something about parental concerns.

23 MR. ANDRIANO: If I may be heard.

24 THE HEARING OFFICER: Because I thought Ms.  
25 REDACTED was asked -- I believe she was asked about

1           whether or not there was contact with the mother.

2           MR. RATNER:     That's right. But I certainly  
3           didn't ask any questions about the parental  
4           concerns noted in this document. And I think that  
5           just sort of highlights some of the absurdity of  
6           the objections that we had yesterday.

7           MR. ANDRIANO:   Objection.

8           THE HEARING OFFICER:   Okay. Let's keep our  
9           editorial remarks about objections. And we've  
10          already gone through that. It basically just  
11          wastes a lot of time and makes everyone sort of  
12          anxious I think.

13          MR. RATNER:     Yes. And we had a lot of our  
14          time wasted yesterday, and we felt very anxious  
15          about the time constraints you have imposed.

16          MR. ANDRIANO:   Ms. Freeman, I'm --

17          THE HEARING OFFICER:   Okay. Which is why  
18          I've given you until Friday to put -- which is the  
19          date you gave me to finish up.

20          And I don't like to bring in other hearings,  
21          but that's quite a bit of time. And I think it's  
22          plenty adequate. So you do have a lot of  
23          witnesses. I understand you cut down your list of  
24          witnesses to comply with the restriction about the  
25          two year SOL. But that's the two year SOL.

1 MR. RATNER: No. I understand.

2 THE HEARING OFFICER: It is what it is.

3 MR. RATNER: I agree completely. We,  
4 again, disagree --

5 THE HEARING OFFICER: Okay. All right.

6 MR. RATNER: -- with the relevance versus  
7 SOL. But I would really love, and I just don't  
8 see that we're getting any, you know, similar --

9 THE HEARING OFFICER: Not to have  
10 objections?

11 MR. RATNER: When they're not proper.

12 THE HEARING OFFICER: Okay. One thing we  
13 could do is if there is a continuing objection, I  
14 could have that noted so you don't have to object  
15 every time.

16 MR. RATNER: I mean, I'm fine with that.  
17 Ms. Owens has said she's not okay with that.

18 THE HEARING OFFICER: Do you want to make a  
19 continuing objection?

20 MS. OWENS: First of all, I would like to  
21 disagree with what he just stated.

22 THE HEARING OFFICER: Okay. Go ahead, note  
23 your -- Everything is on the record. So whatever  
24 you all feel you need to say, say it.

25 MS. OWENS: Yesterday I believe that the

1           Hearing Officer allowed certain test -- an area of  
2           testimony to be provided by Ms. Pettitway.  
3           Honestly I do not recall the specific area. And  
4           there was a specific -- there was an ongoing  
5           objection with regard to being able to delve into  
6           that area.

7                     But I also reiterated to the Hearing Officer  
8           that if he's also, in addition to delving into the  
9           area, asking the witness questions that she should  
10          not be asked such as questions about a standard  
11          score or the administration --

12                    THE HEARING OFFICER:    Somebody else's --

13                    MS. OWENS:       -- someone else's evaluation,  
14          then I reserve the right to continue to object to  
15          those types of questions.

16                    THE HEARING OFFICER:    All right.

17                    MS. OWENS:       I never stated that we would  
18          not agree to an ongoing objection when  
19          appropriate.

20                    THE HEARING OFFICER:    Do you feel that it's  
21          appropriate to allow Mr. Ratner to make an ongoing  
22          objection?

23                    MR. RATNER:       I don't need to make an  
24          ongoing objection.

25                    THE HEARING OFFICER:    You don't want to do



1           that.

2                   MR. RATNER:     No.

3                   THE HEARING OFFICER:   All right.  Then your  
4                   objection to -- I believe it was compound  
5                   question?

6                   MR. RATNER:     And beyond the scope.

7                   THE HEARING OFFICER:   And beyond the scope.  
8                   Okay.  Can I have your question repeated?

9                   MR. ANDRIANO:    I'm happy to respond, but I  
10                  don't understand where a compound question came  
11                  in.  I thought my question was pretty direct.

12                  THE HEARING OFFICER:   Okay.

13                  BY MR. ANDRIANO:

14                  Q     All right, Dr. Dragone, I'm sorry, getting  
15                  back to the point about the virtual platform.  Was that  
16                  discussed at this IEP meeting?

17                  A     Yes, it was.

18                  Q     And what did the IEP team determine?

19                  A     The IEP team determined that based on parent  
20                  input about her disengagement and the frustration she  
21                  was showing, that even though her cohort was slated to  
22                  only come back two days, that they would develop a plan  
23                  for her to come back for four days.

24                  Q     Help me understand --

25                  A     To the in-person learning environment.

1 Q So she came back as a result of this IEP  
2 team decision four days a week?

3 A Yes.

4 Q When most of her cohort just came back two  
5 days a week?

6 A Correct.

7 Q And was that to address the parents'  
8 concerns about the virtual platform?

9 A That was to address the parent concerns and  
10 also because they had shared that her anxiety,  
11 frustration, disengagement, had increased. They wanted  
12 to be able to provide some additional social coping  
13 skills so that she could be able to work with someone  
14 to address what might be causing her anxiety.

15 And they had shared --

16 Q Hold on one second, Dr. Dragone. I'm sorry.

17 MR. RATNER: I'm sorry. I just wanted to  
18 talk to Ms. REDACTED.

19 THE WITNESS: They wanted -- They had  
20 stated that she was only able to participate, and  
21 I don't remember the exact date --

22 BY MR. ANDRIANO:

23 Q Well, let me stop you there.

24 A Yes.

25 Q Who's "they"?

1           A       The parents had stated she was unable to  
2 complete a lot of her asynchronous work. So they also  
3 proposed additional study skill hours, I believe it was  
4 five hours, so that she could get work when she was  
5 there on the other two days.

6                   So, for example, if her cohort was supposed  
7 to come Monday, Tuesday, she would come Monday, Tuesday  
8 and get the instruction that her peers are getting.  
9 She would also come Thursday, Friday, get some  
10 remediation or some recovery of learning on her -- in  
11 addition to the newly proposed social skill hours and  
12 study skill hours.

13           Q       So help me understand about the coping  
14 social skills. Was that added to the IEP as a goal?

15           A       Yes, it was.

16           Q       And why was that?

17           A       To address the concerns that the family had  
18 brought up regarding that she had become anxious, was  
19 avoiding work.

20                   We wanted to get her -- Again, she was  
21 making progress in light of her circumstances, COVID  
22 being a circumstance. But the teacher had stated she  
23 had a very good relationship with the student. She  
24 wanted to work with her, work through the anxiety, so  
25 that when we transitioned back to full days and having

1 all the students in the building at one time, that REDACTED  
2 would have the appropriate social coping skills to deal  
3 with the returning back to a full day of instruction  
4 five days a week.

5 Q Okay. In addition to adding the social  
6 coping skills, did the IEP team recommend a re-  
7 evaluation of REDACTED?

8 A Yes, they did.

9 Q And why was that?

10 A Due to the concerns brought up about  
11 anxiety, coping. The fact that she was not able to  
12 complete her work, work avoidance, they wanted to rule  
13 out any additional disabilities.

14 They suspected that perhaps she may have an  
15 emotional disability, and they wanted to determine if  
16 she meet that criteria.

17 Q Who again? I'm just going to ask for  
18 clarification.

19 A The IEP team.

20 Q The IEP team made this determination.

21 A Yes.

22 Q And was Ms. REDACTED part of that IEP team  
23 meeting?

24 A Yes.

25 Q Now Mr. Ratner had asked you -

1 MR. RATNER: I'm so sorry to interrupt. I  
2 just noticed something that I may need to correct  
3 for the record.

4 THE HEARING OFFICER: Go ahead.

5 MR. RATNER: So I apologize for that. I'm  
6 looking at -- We printed out the documents as we  
7 received them from --

8 And now I'm looking at their list. And they  
9 just seem like they're in a different order. So I  
10 just may be confused.

11 THE HEARING OFFICER: Are you talking about  
12 the witness list?

13 MR. RATNER: No, the exhibit books.

14 THE HEARING OFFICER: Oh, okay.

15 MR. RATNER: So, for example, what I have  
16 as their exhibit list it says, tab 20 -- Oh, I  
17 truly apologize. I've confused myself.

18 THE HEARING OFFICER: That's okay. I do it  
19 all the time.

20 MR. RATNER: I truly apologize for  
21 interrupting. I just wanted to make sure the  
22 record was clear.

23 THE HEARING OFFICER: Okay.

24 BY MR. ANDRIANO:

25 Q Now, Dr. Dragone, you testified in response

1 to Mr. Ratner's questions about triennial  
2 reevaluations; correct?

3 A Correct.

4 Q And you stated that triennial reevaluations  
5 means that a student has to be reevaluated every three  
6 years.

7 A Correct.

8 Q Is that the only time that a student would  
9 be reevaluated?

10 A A student can be evaluated at any time,  
11 especially if there's a suspicion of an additional  
12 disability.

13 Q Sooner than a three year mark?

14 A Yes.

15 Q And in this case did the members of the IEP  
16 team at that meeting in November suspect a possibility  
17 of an additional disability?

18 A Yes.

19 MR. RATNER: I'm going to object. That  
20 seems to be one of these circumstances in which  
21 the whole team would have to be able to be a part  
22 of that decision. And she's just one piece of it.

23 THE HEARING OFFICER: Sustained.

24 BY MR. ANDRIANO:

25 Q Well, what about you in particular, you were

1 a member of that IEP team?

2 MR. RATNER: Again, I think your comment  
3 before was you -- I had said she's the witness in  
4 front of me.

5 THE HEARING OFFICER: Yes. All right.

6 MR. ANDRIANO: That she can't do what? She  
7 can't talk about her --

8 THE HEARING OFFICER: About her individual  
9 reaction to what the IEP team determined.

10 MR. RATNER: And I'd be happy to --

11 MR. ANDRIANO: I asked her what she -- She  
12 was a member of that IEP team. I asked her what  
13 her position was in response --

14 MR. RATNER: That's exactly right. And  
15 I'd be happy to agree we can both ask those  
16 questions. But it's up to you.

17 THE HEARING OFFICER: Usually there's an  
18 objection to picking out a member to say what went  
19 on and what was interpreted and all of that.

20 MR. RATNER: Right. I don't have an  
21 objection --

22 THE HEARING OFFICER: But if you all want  
23 to agree --

24 MR. RATNER: I don't have an objection to  
25 these questions. But -

1 MR. ANDRIANO: Yeah. I don't understand  
2 the objection. But, I mean, Mr. Ratner was having  
3 her read the prior written notice, parts of the  
4 prior written notice, which is the team's  
5 determination.

6 So I'm happy to have her read out loud the  
7 entire prior written notice.

8 MR. RATNER: I mean, the prior written  
9 notice is in the record. You've said very clearly  
10 that --

11 THE HEARING OFFICER: It is in the record -  
12 -

13 MR. RATNER: -- you would read it.

14 THE HEARING OFFICER: I think we admitted  
15 it.

16 MR. RATNER: And that you would read the  
17 whole thing.

18 THE HEARING OFFICER: All right. I have no  
19 problem with individual members of the IEP team  
20 expressing what the deliberation of the IEP team  
21 determined.

22 I have always thought that it was  
23 objectionable to pick out members of the IEP team,  
24 and to ask each one to determine what was already  
25 determined, or to comment on what was determined



1 at the IEP team meeting without being able to  
2 consult all of the other members of the team  
3 together.

4 MR. RATNER: Yes. And I --

5 THE HEARING OFFICER: Perhaps I'm mistaken.  
6 But that's the way I thought it work.

7 MR. RATNER: Again, I thought Mr. Andriano  
8 raised objections, which is why you ruled on it.

9 THE HEARING OFFICER: Yeah. But, I mean,  
10 it's fine if you want to ask --

11 MR. RATNER: But I think we need to figure  
12 out some kind of agreement, because now he's  
13 saying he doesn't understand what the objection  
14 is.

15 So I don't know how we can reach an  
16 agreement. And I think I'll just stand on my  
17 objection.

18 MS. RATNER: Yeah. And just both sides  
19 should be treated fairly on what can be asked.

20 THE HEARING OFFICER: Well, I was trying to  
21 do that. That's why I was sustaining --

22 MS. RATNER: No. I appreciate it.

23 MR. RATNER: And I think what we could  
24 maybe do is at the lunch break see if we could  
25 work something out.

1 THE HEARING OFFICER: Okay.

2 MR. ANDRIANO: So just so we're clear, Ms.  
3 Freeman, I'm happy to let them keep objecting.  
4 This is his time. He's got until Friday.

5 THE HEARING OFFICER: Okay.

6 MR. ANDRIANO: And as you indicated, Friday  
7 is the time. So we can continue to have these  
8 conversations. I can have Dr. Dragone read the  
9 prior written notice aloud into the record, so  
10 that we can see what the IEP team determined.

11 I'm happy to do all that. But just so we  
12 know. It's now 12:20. And we agreed we'd be on  
13 witness number three already, and here we are  
14 still on the first witness.

15 MR. RATNER: That's not --

16 MR. ANDRIANO: So I'm fine. I mean, Dr.  
17 Dragone will stay here all day and we can have  
18 these objections.

19 MR. RATNER: Ms. Freeman?

20 MS. RATNER: Well, our objection, this is  
21 beyond the scope.

22 MR. ANDRIANO: That's fine. That's fine.  
23 But we'll keep going. Let's go.

24 MR. RATNER: I'm sorry. May I? Again, he  
25 wants to now say this is our time? What about

1           yesterday when they objected all day long? Then  
2           that's their time.

3           THE HEARING OFFICER:    Okay. We could go ad  
4           infinitum with --

5           MR. RATNER:       Exactly. That's right.

6           THE HEARING OFFICER:    -- all of this.

7           MR. RATNER:       So let's set some ground rules  
8           as to how this is going to go -

9           THE HEARING OFFICER:    Okay. I'm going rely  
10          on --

11          MR. RATNER:       -- from hereon out.

12          THE HEARING OFFICER:    -- you all to set  
13          ground rules at the lunch break. But right now I  
14          want to get through this witness.

15          And so back to interpreting --

16          MR. RATNER:       And I would just like to state  
17          there was no agreement that we would be on the  
18          third witness. So that's not true. I identified  
19          four witnesses.

20          MR. ANDRIANO:    That's absolutely true.

21          MR. RATNER:       And I'm going to try to get  
22          through them. Okay.

23          MR. ANDRIANO:    That's absolutely true.

24          THE HEARING OFFICER:    What is absolutely  
25          true?

1 MR. ANDRIANO: We agreed on four witnesses,  
2 and we'd be on Ms. Williams by now, at least  
3 halfway through her testimony.

4 MR. RATNER: Okay. That's fine.

5 MR. ANDRIANO: But here we are, 12:20, and  
6 still on the first witness.

7 MR. RATNER: Right.

8 MS. RATNER: Because you've asked the same  
9 question --

10 MR. RATNER: -- question five times.

11 MS. RATNER: -- to her three times. And  
12 that --

13 MR. ANDRIANO: Oh, so my earlier questions  
14 were not objectionable. But because I said it a  
15 third time, that's what --

16 MS. RATNER: Yes.

17 MR. ANDRIANO: Now it's objectionable?

18 MR. RATNER: No. They were objectionable  
19 before -

20 MS. RATNER: Yes. Asked and answered.

21 MR. RATNER: -- beyond the scope. And now  
22 they're asked and answered.

23 MR. ANDRIANO: Okay. We disagree. But  
24 happy to keep having this discussion, or we can  
25 ask Dr. Dragone what the IEP team determined with

1 regard to the reevaluation.

2 MS. RATNER: She's already testified to  
3 that.

4 MR. RATNER: Right. I would respectfully  
5 request that Ms. Freeman take the opportunity to  
6 exert some control over this, because this --

7 THE HEARING OFFICER: To do what?

8 MR. RATNER: To exert some control and just  
9 tell us what you want to do. Because --

10 THE HEARING OFFICER: I just --

11 MR. RATNER: -- this is not our time right  
12 now.

13 THE HEARING OFFICER: -- did. I said if  
14 you want to agree that --

15 MR. RATNER: But this is not our time right  
16 now.

17 THE HEARING OFFICER: Okay.

18 MR. RATNER: They're examining a witness.

19 THE HEARING OFFICER: Right now we're going  
20 to have a continuing objection to Ms. Dragone's  
21 testimony from your side about issues that are  
22 outside of what the IEP team determined.

23 But I'm going to let her answer right now.  
24 And let's get through this witness.  
25

1 BY MR. ANDRIANO:

2 Q So what did the IEP team determine about the  
3 reevaluation?

4 A The IEP team proposed to conduct a full  
5 evaluation to determine if an additional disability  
6 exists.

7 THE HEARING OFFICER: Louder, a little bit.

8 THE WITNESS: The IEP team determined that  
9 they proposed a full evaluation, because they  
10 suspected an additional disability may exist.

11 THE HEARING OFFICER: Which was the  
12 emotional disability?

13 THE WITNESS: Yes.

14 BY MR. ANDRIANO:

15 Q And following that reevaluation, was an  
16 eligibility meeting held?

17 A Yes.

18 Q And what was the team's determination that  
19 additional suspected disability?

20 A The team determined that REDACTED remained a  
21 student with a specific learning disability, but did  
22 not find her eligible as a student with an emotional  
23 disability.

24 THE HEARING OFFICER: Okay. I think I read  
25 that. But thank you for explaining it, or stating

1           it again rather, I should say.

2                   BY MR. ANDRIANO:

3           Q       Dr. Dragone, Mr. Ratner asked you about some  
4 email communications between you and Ms. Pettaway about  
5 a prior written notice. Do you remember that?

6           A       Yes.

7           Q       Is it your practice to communicate with  
8 other team members about the contents of a prior  
9 written notice before it's sent out?

10          A       Yes.

11          Q       Why is that?

12          A       Again, to make sure -- I was a participant  
13 at that IEP meeting. Make sure that what was proposed,  
14 what was discussed is accurately reflected, everyone's  
15 on the same page, and that all considerations were  
16 incorporated within the document.

17          Q       Thank you. And then Mr. Ratner directed  
18 your attention to School Board 38. This is the prior  
19 written notice from the February 19th, 2021, IEP  
20 meeting; correct?

21          A       Correct.

22          Q       Now at that meeting there was discussion  
23 about whether The New Community School was considered.  
24 Do you remember that?

25          A       Yes.

1 Q Did the IEP team consider whether REDACTED  
2 required a private placement?

3 A They did consider that and determined that  
4 her least restrictive environment was in the public  
5 school setting. She was making progress. Even taking  
6 into account the light of the circumstances through  
7 COVID, her needs could be met in a public school  
8 setting.

9 MR. RATNER: This seems to be one of those  
10 situations where this is a determination of the  
11 entire team, not appropriate for a single witness.

12 THE HEARING OFFICER: And I've noted a  
13 continuing objection. And I really want to get  
14 through this before lunch.

15 MR. RATNER: Okay. But you sustained all  
16 of the objections when he did any, and you didn't  
17 let my witnesses answer the questions.

18 MR. ANDRIANO: That's not accurate at all,  
19 Ms. Freeman. And he cherry-picked that last  
20 sentence of paragraph 5, which I can have her read  
21 the entire paragraph.

22 THE HEARING OFFICER: I don't want to go  
23 back all through that. I noted a continuing  
24 objection. Let's get through this, please.

25 And do you have a lot of questions?



1 MR. ANDRIANO: No, I don't.

2 THE HEARING OFFICER: Okay. All right.

3 Let's get through this witness so she can leave.

4 BY MR. ANDRIANO:

5 Q So just so we're clear, I want to make sure  
6 that -- I don't know that she answered it.

7 Did the IEP team consider whether she  
8 required a private placement?

9 MR. RATNER: That was asked and answered.

10 MS. RATNER: She did answer it.

11 MR. RATNER: And Kurt can read it back.

12 MR. ANDRIANO: I didn't hear it because of  
13 the objection. So please answer it.

14 MR. RATNER: Maybe Kurt could read it back  
15 for you. I mean, this is ridiculous.

16 THE HEARING OFFICER: And again --

17 MR. ANDRIANO: Ms. Freeman, I've got to  
18 object to the commentary and the argumentative --

19 THE HEARING OFFICER: Yeah. No commentary  
20 --

21 MR. ANDRIANO: -- nature, which the Hearing  
22 Officer --

23 THE HEARING OFFICER: -- or no editorial  
24 remarks. I've noted a continuing objection to the  
25 questions, if this is a member of the IEP team

1 giving me particular answers, if it's asked and  
2 answered; all of those possible objections that  
3 I've heard so far are going to be included in your  
4 continuing objection.

5 MR. RATNER: Okay.

6 THE HEARING OFFICER: So I really want --  
7 There are only a few more questions. I will  
8 sustain, if you want to, your continuing  
9 objection. But right now I want to move forward  
10 with this witness.

11 There's only a couple more objections here.

12 MR. ANDRIANO: You mean questions.

13 THE HEARING OFFICER: I'm sorry --  
14 questions here. And I would like to get done with  
15 this witness so we can get on to witness number  
16 two for today.

17 MR. ANDRIANO: This is actually my final  
18 question. I just want to make sure that she  
19 answered it --

20 THE HEARING OFFICER: Okay. Let me hear  
21 your final question.

22 MR. ANDRIANO: -- and I don't think she  
23 did.

24 THE HEARING OFFICER: Perfect. Go ahead.

25 THE WITNESS: The IEP team did consider the

1 parents' request for a private day placement, and  
2 determined that --

3 THE HEARING OFFICER: I didn't hear the  
4 first part. I'm sorry.

5 THE WITNESS: Yeah. The IEP team  
6 considered the parents' request for a private day  
7 placement. And after a review of data and showing  
8 -- indicating she was making progress, determined  
9 her needs can be met in the public school setting.

10 They reviewed classroom data, input from  
11 teachers, input from both special education and  
12 general education teachers, her DRA scores; and  
13 they determined that her needs can be met in a  
14 public school setting.

15 MR. ANDRIANO: Thank you. No further  
16 questions.

17 THE HEARING OFFICER: Isn't that all stated  
18 in that -- at the end of that IEP report, whatever  
19 you call it.

20 MR. ANDRIANO: It's in School Board --

21 THE HEARING OFFICER: What was that, 58?

22 MR. ANDRIANO: 38, three eight.

23 THE HEARING OFFICER: So essentially you're  
24 reading to me what they said.

25 THE WITNESS: Well, I'm telling you what

1           they said. It's also stated here.

2           THE HEARING OFFICER: That was a conclusion  
3           which I can read for myself; right?

4           THE WITNESS: Yes, ma'am.

5           THE HEARING OFFICER: All right. Thank  
6           you. Are there any more --

7           MR. RATNER: There are just very few  
8           followups, if I may.

9           THE HEARING OFFICER: Okay. Go ahead.

10

11           R E - D I R E C T   E X A M I N A T I O N

12           BY MR. RATNER:

13           Q       Just to reorient you back to School Board  
14           20. Was this the IEP amendment where the discussion of  
15           two days versus four days occurred?

16           A       Yes.

17           Q       Okay. And, again, not a memory test. But  
18           at this point was REDACTED already attending two days?  
19           Had school in-person resumed at that point?

20           A       Again, I don't have the chart in front of  
21           me. But I do know she was eligible to return two days  
22           on or about this time.

23           Q       Okay.

24           A       And the team was proposing four days.

25           Q       Understood. And then do you recall that

1 after they started to go back, they had to go back to  
2 all virtual around Thanksgiving, all of Chesterfield  
3 County because there was a COVID surge?

4 A I don't recall that.

5 Q Okay. And then there was winter break?

6 A There was --

7 MR. ANDRIANO: I'm sorry, Ms. Freeman.

8 We're getting comments from the audience.

9 MS. OWENS: Responding to the question.

10 THE HEARING OFFICER: What was that? I'm  
11 sorry. What did you say?

12 MR. ANDRIANO: Someone from the audience is  
13 commenting.

14 THE HEARING OFFICER: Oh, I didn't hear it.  
15 But if there's any commentary -- I'm not saying  
16 there is, because I didn't hear it. But if  
17 they're hearing it over there, just no editorial  
18 remarks. That was part of the instructions. And  
19 thank you.

20 All right. Go ahead.

21 BY MR. RATNER:

22 Q So you don't recall that after students  
23 returned that they were all removed from the buildings  
24 for a period of time in the fall of 2020?

25 A I do not.

1 Q Okay. Do you know -- First of all, if I  
2 understood your testimony correctly, a large focus of  
3 this 11/4 meeting was REDACTED's anxiety; is that correct?

4 A Anxiety and the fact that she was not  
5 engaging with virtual instruction. And we were trying  
6 to get her back in the building so she could receive  
7 instruction.

8 And it was being offered so that she could  
9 access it and receive the supports.

10 Q Understood. And isn't it true that part of  
11 REDACTED's anxiety, as was expressed to you by the parents,  
12 was appearing different from her peers and classmates?

13 A That is what the parents reported. Yes.

14 Q Okay. And isn't it true that by having her  
15 go to school four days a week when all of her peers  
16 were only going two, or perhaps were all virtual, that  
17 would make her appear different from her peers?

18 MR. ANDRIANO: Objection. I mean, she  
19 can't answer that question.

20 MR. RATNER: I think they're -- She's just  
21 said they -- they were so focused on her anxiety.

22 MR. ANDRIANO: Well, hold on a second, Ms.  
23 Freeman. He said that. She said the mom reported  
24 the anxiety. And then the question was, did that  
25 make her look different or make her -

1                   How would she know if that --

2                   THE HEARING OFFICER:   Did she experience  
3                   anxiety because of that or something like that.

4                   MR. ANDRIANO:    Yeah.

5                   THE HEARING OFFICER:   How would she --

6                   BY MR. RATNER:

7           Q       Was that expressed to you in the meeting?

8                   THE HEARING OFFICER:   Sustained.  And move  
9                   on.

10                  BY MR. RATNER:

11           Q       Okay.  Was that expressed to you in the  
12           meeting by the parents?

13                  MR. ANDRIANO:    Object.  I'm sorry, Mr.  
14                  Ratner, you specifically objected to ask whether  
15                  the parents' concerns were considered.  Now you  
16                  want to ask that question?

17                  MR. RATNER:    You were allowed to ask it.  
18                  And so I'm going to follow up.

19                  MR. ANDRIANO:    I wasn't allowed to ask it.

20                  MR. RATNER:    I'm moving on.  Thank you.

21                  THE HEARING OFFICER:   You did what?

22                  MR. RATNER:    I'm moving on.

23                  THE HEARING OFFICER:   Oh, okay.  Go ahead.  
24                  You said you only had a couple of more questions,  
25                  I think.

1 MR. RATNER: That's correct.

2 THE HEARING OFFICER: Okay.

3 BY MR. RATNER:

4 Q Do you know how many days that REDACTED --  
5 So let's assume her cohort was coming back two days a  
6 week for a certain period.

7 Do you know how many, quote/unquote, extra  
8 days she got in the four days before everyone went back  
9 in-person?

10 A I do not.

11 MR. ANDRIANO: Objection, confusing. I  
12 mean, I don't --

13 MR. RATNER: I'll break it down then. You  
14 just asked me to go quickly.

15 THE HEARING OFFICER: Sustained.

16 MR. RATNER: Okay. May I break it down  
17 then, please?

18 THE HEARING OFFICER: Yes.

19 BY MR. RATNER:

20 Q Okay. You understood that the original  
21 proposal was for REDACTED to go back two days a week in-  
22 person; right? Or that was what was going to happen  
23 with her entire cohort; correct?

24 A Correct.

25 Q Did cohort three go back two days a week at



1 some point?

2 A At some point.

3 Q Okay. Do you know how long that lasted?

4 A I do not.

5 Q Okay. And the proposal was for REDACTED to get  
6 two additional days --

7 A Correct.

8 Q -- beyond what her cohort would otherwise  
9 receive; correct?

10 A Correct.

11 Q Do you know how many, quote/unquote,  
12 additional days she actually attended school?

13 A I do not.

14 MR. RATNER: Thank you. And I thought I  
15 had one more question, but it just flew out of my  
16 mind. So if you give me one second, I'll see if I  
17 can think of it. And if not, I'll be finished.

18 THE HEARING OFFICER: Okay.

19 BY MR. RATNER:

20 Q Oh, yes. So for the two day a week plan,  
21 you would split a class into half. Is that how it  
22 worked?

23 A From the best of my recollection, it was --  
24 It went by family last names.

25 Q Okay.

1           A       But if you had families, like multiple, they  
2       had different last names due to blended families --

3           Q       Sure.

4           A       -- they had exceptions to that, too, so all  
5       students could go. But it was based on last names. It  
6       wasn't exactly fifty percent of a class.

7           Q       Oh. And I didn't mean to -- But I think you  
8       said this before, that the teacher would -- was  
9       providing the same instruction to roughly half the  
10      class, and then roughly half the class on the separate  
11      two days blocks; is that right?

12          A       Correct.

13          Q       So when REDACTED had her, quote/unquote, extra  
14      days, she wasn't getting more instruction from Ms.  
15      Houston, for example, her general education teacher.

16               MR. ANDRIANO:    Objection. How would Dr.  
17      Dragone know what Ms. Houston's --

18               MR. RATNER:     Because she proposed the plan  
19      for the IEP team.

20               MR. ANDRIANO:    The IEP team doesn't dictate  
21      what teachers teach.

22               MR. RATNER:     Okay. Again, this --

23               MR. ANDRIANO:    It doesn't identify teachers  
24      in the IEP.

25

1 BY MR. RATNER:

2 Q Was she receiving additional special  
3 education services or general education services?

4 A She was receiving additional special  
5 education services.

6 Q Okay. And who was her special education  
7 teacher?

8 MR. ANDRIANO: Objection, relevancy.

9 THE HEARING OFFICER: Again, you prefaced  
10 some of your questions by saying it's not a memory  
11 test. How would she --

12 MR. RATNER: Right. If she doesn't know,  
13 she doesn't know. But it says right on the form  
14 who her general education teacher and her special  
15 education teacher is.

16 THE HEARING OFFICER: All right. I'll  
17 allow that.

18 BY MR. RATNER:

19 Q Do you know who her special education  
20 teacher was?

21 A The representatives at the IEP meeting were  
22 Ms. McCluskey and Stephanie Smith. I do not know which  
23 of those provided the instruction when she returned in  
24 in-person learning.

25 Q Got it. And you don't even know how many

1 days she returned for that; is that correct?

2 A The proposal was four days. But I do not  
3 know how many days she returned.

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

5 THE HEARING OFFICER: Okay. Any re --

6 MR. ANDRIANO: No thank you.

7 THE HEARING OFFICER: Okay. Now does  
8 anyone wish to recall -- reserve this witness for  
9 recalling her for any other reason?

10 MR. ANDRIANO: We do. The school board  
11 does reserve the right to --

12 THE HEARING OFFICER: You do want to  
13 reserve her. Okay. So she's reserved.

14 MR. RATNER: That's fine.

15 THE HEARING OFFICER: Okay.

16 MR. RATNER: But I think she might want to  
17 know that she's also dismissed.

18 THE HEARING OFFICER: Well, I think you're  
19 right.

20 Yeah, you're dismissed. You can leave. You  
21 can go have lunch, do whatever you need to do.

22 THE WITNESS: I can go back to my job.  
23 Thank you. I appreciate it.

24 (The witness stood aside.)

25 MR. RATNER: Are we going to take a lunch

1 break now?

2 THE HEARING OFFICER: I believe we are  
3 unless there's -- Is there anything anybody wants  
4 to bring up before we go to lunch?

5 MR. ANDRIANO: No.

6 (Brief recess.)

7 THE HEARING OFFICER: And who is our next  
8 witness going to be?

9 MR. RATNER: Diane Glover.

10 THE HEARING OFFICER: Oh, okay.

11 (The witness was sworn.)

12 THE HEARING OFFICER: This is still your  
13 direct, so --

14 MR. RATNER: Yes, ma'am.

15 THE HEARING OFFICER: Yeah; counsel for the  
16 parents will ask you questions, to be followed up  
17 by questions from school counsel.

18 All right. Go ahead.

19 MR. RATNER: Thank you.

20

21

22

23

24

25

1 DIANE GLOVER, M.Ed.,  
2 having been duly sworn,  
3 was examined and testified as follows:

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

5 BY MR. RATNER:

6 Q Is it Ms. Glover? I want to make sure I use  
7 the appropriate title. Do you have --

8 A Yes, yes.

9 Q Thank you.

10 My name's Todd Ratner. I'm a lawyer for the  
11 REDACTED family. Have you ever met either Ms. or Mrs.

12 REDACTED?

13 A No; not that I recollect.

14 MR. ANDRIANO: Mister.

15 BY MR. RATNER:

16 Q I'm sorry. Mr. or Mrs. REDACTED. Thank you,  
17 Mr. Andriano.

18 Have you ever met either of them?

19 A Informally, probably.

20 Q Okay. You're just not sure. It's not a  
21 trick.

22 A In a meeting --

23 THE HEARING OFFICER: You're going to have  
24 to speak up a little bit louder.

25 THE WITNESS: Okay.

1 THE HEARING OFFICER: Thank you.

2 BY MR. RATNER:

3 Q Okay. Have you ever met REDACTED, the  
4 student who's at issue in this case?

5 A Not officially.

6 Q Well, unofficially?

7 A At meetings, board meetings, I've seen her.  
8 We've not spoken to --

9 Q Okay.

10 A Depends on what you call meeting.

11 Q Have you ever provided any instruction to  
12 her?

13 A No.

14 Q Okay. Have you ever attended an IEP meeting  
15 on her behalf?

16 A No.

17 Q Would you consider yourself to be a part of  
18 her IEP team?

19 A I am not.

20 Q Okay. What is your current role at  
21 Chesterfield County Public Schools?

22 A I am the director of special education.

23 Q And is that the highest position within the  
24 department of special education?

25 A Yes.

1 Q Okay. And do you have a, quote/unquote,  
2 direct supervisor?

3 A Yes.

4 Q Who is that?

5 A Dr. Sharon Pope.

6 Q And who is she?

7 MR. ANDRIANO: Objection. I mean, what's  
8 the relevancy? I mean, she's the director of  
9 special education.

10 THE HEARING OFFICER: I didn't get her  
11 name, though, because she -- what was -- I heard  
12 Sherry, but what was --

13 MR. RATNER: I really just -- I keep  
14 getting objections about foundation. I'm just  
15 trying to establish what her role is.

16 MR. ANDRIANO: Well, Ms. Freeman, the  
17 objection was relevancy.

18 THE HEARING OFFICER: In other words, who's  
19 your director --

20 MR. RATNER: I'm just trying to figure out  
21 the hierarchy here.

22 THE HEARING OFFICER: -- your superior?

23 MR. RATNER: Correct.

24 THE HEARING OFFICER: I'll allow it.

25 MR. RATNER: It's fine; I --