

VIRGINIA DEPARTMENT OF EDUCATION

DUE PROCESS HEARING

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

Petitioner,

vs.

VDOE Case No. 22-84

CHESTERFIELD COUNTY SCHOOL BOARD,

Respondent.

DAY 4

TRANSCRIPT OF PROCEEDINGS

BEFORE SARAH S. FREEMAN, ESQ., HEARING OFFICER

March 24, 2022

9:09 a.m. - 4:11 p.m.

Midlothian, Virginia

Job No. 47228

REPORTED BY: LORI A. BOEDING, CCR

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1 ALSO PRESENT:

2 April Lennox, CCPS Dyslexia Specialist

3 **REDACTED**, Parents

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1 (9:09 a.m.)

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P R O C E E D I N G S

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(Court reporter previously sworn.)

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THE HEARING OFFICER: Let's go on the record.

8

This is day 4. The day is March 24, 2022.

9

And I believe yesterday we ended at 5:00

10

because the ending hour came while Mr. Ratner was

11

directly examining Jennifer Williams, who is the

12

special ed coordinator from Tomahawk -- yeah,

13

special education coordinator from Tomahawk Creek

14

elementary school.

15

MR. ANDRIANO: Middle.

16

THE HEARING OFFICER: Middle School. I had

17

that written down, but I said it incorrectly.

18

So we are about to begin now, and we are

19

waiting for Ms. Williams to come in and testify to

20

finish up the Parents' direct examination.

21

The question about -- we might as well take it

22

up until she gets in here. You want to be able to

23

show the IEP meeting. Which IEP meeting?

24

MR. RATNER: Correct. It's the February 19,

25

2021, IEP meeting.

1 THE HEARING OFFICER: February 19 --

2 MR. RATNER: 2021.

3 THE HEARING OFFICER: Okay.

4 MR. RATNER: IEP meeting. This was the
5 meeting I was discussing with Ms. Williams
6 yesterday.

7 THE HEARING OFFICER: Is it the whole meeting?

8 MR. RATNER: It is the whole meeting with the
9 exception of the very beginning when the meeting --
10 when the recording did not get turned on because
11 there was a misunderstanding between the school
12 versus the Parents as to who was going to record
13 it. And once the Parents realized the school was
14 not recording it, they recorded it. They shared it
15 with the school.

16 MS. RATNER: No, no, the school was recording
17 it the whole time, and it was mister -- made a
18 mistake, mister --

19 MR. RATNER: Mueller.

20 MS. RATNER: He just forgot to start it.

21 MR. RATNER: So we never got the school's?

22 MS. RATNER: Correct.

23 MR. RATNER: So the school has the full
24 recording, but we never got that.

25 THE HEARING OFFICER: Oh. Response? Is that

1 correct?

2 MS. OWENS: This is the first that I'm hearing
3 of an assertion that the Parents did not receive a
4 full copy of the recording.

5 MR. ANDRIANO: It's -- it's not an exhibit, so
6 I don't know how it could be used.

7 THE HEARING OFFICER: It is not an exhibit?

8 MR. RATNER: It is an exhibit.

9 MS. RATNER: The tape recording was an
10 exhibit.

11 THE HEARING OFFICER: Have you-all seen it?

12 MR. RATNER: Yes. We produced it, and it's in
13 the book. I can't obviously put an audio file in
14 the book, but I put a page.

15 THE HEARING OFFICER: You listed it?

16 MR. RATNER: Yes, I listed it, and there's a
17 tab in the book that has it with a transcript.

18 THE HEARING OFFICER: What tab is it?

19 MR. RATNER: I believe it's 33, and I'll find
20 it to confirm that.

21 MS. RATNER: Do you want me to find where it
22 was sent?

23 MR. RATNER: Volume 1, tab 33.

24 THE HEARING OFFICER: Do the Parents have a
25 book -- I know yesterday there was a question about

1 whether or not you have --

2 MS. REDACTED: We have one, yes. Ms. Lennox
3 worked over lunch to get it.

4 THE HEARING OFFICER: What tab am I --

5 MR. RATNER: 33 in the first book.

6 THE HEARING OFFICER: I have a question. If I
7 have the entire transcript, does the school
8 system -- have you had a chance to review the
9 transcript?

10 MR. ANDRIANO: It's not a transcript.

11 THE HEARING OFFICER: It's not a transcript?

12 MS. OWENS: It's not a true transcript. It
13 appears to have been something that was transcribed
14 by the Parent, so the School Division would object
15 to that.

16 THE HEARING OFFICER: So we can't say that
17 this is an accurate --

18 MS. RATNER: I will state, I wrote this to the
19 best of my ability listening to the recording
20 multiple times. It took me maybe seven hours. I'm
21 not as skilled and -- but we have the recording
22 itself, and so if there's any question that
23 something is inaccurate, we can listen to it. The
24 transcript was more to be just an aid and --

25 THE HEARING OFFICER: I was just wondering if

1 I could substitute the transcript for --

2 MS. RATNER: Well, they are going to object to
3 that, but we did produce the recording itself in
4 the exhibit electronically.

5 MR. RATNER: And you can see on tab 33 it says
6 when we produced it, and it's been in the book
7 since then. The Parent sent it to the school well
8 before the production in this case.

9 THE HEARING OFFICER: Aside from the
10 transcript, which I know you -- this is not an
11 assertion of your acuity or your skill on taking
12 down, taking down the information from the
13 recording and turning it into type, but it's not --
14 it's not a transcript from a court reporter, a
15 licensed court reporter.

16 MS. RATNER: Sure. We just wanted --

17 THE HEARING OFFICER: So I can't rely on this
18 transcript.

19 MS. RATNER: He wants to just play portions.

20 THE HEARING OFFICER: The IEP meeting?

21 MS. RATNER: Yes.

22 THE HEARING OFFICER: Is there an objection to
23 that?

24 MR. ANDRIANO: Yes.

25 THE HEARING OFFICER: There is an objection to

1 playing the --

2 MR. ANDRIANO: The recordings weren't
3 disclosed.

4 THE HEARING OFFICER: No, no, the video. Is
5 there an objection to the video?

6 MR. RATNER: It's at 33.

7 MS. RATNER: You can't put a recording on a
8 piece of paper.

9 THE HEARING OFFICER: But you can't take a
10 recording that's not by a court --

11 (Simultaneous speaking.)

12 MS. RATNER: -- you and LaRana on the day the
13 exhibits were exchanged.

14 MR. RATNER: You are saying you didn't receive
15 the audio file? I don't know what to say. We
16 produced it to them.

17 THE HEARING OFFICER: Where did you put it on
18 your list, though?

19 MR. RATNER: 33.

20 THE HEARING OFFICER: Where does it say that
21 there's a video?

22 MR. RATNER: No video. A Parents' recording.

23 THE HEARING OFFICER: Oh, I was thinking you
24 were going to put a video.

25 MR. RATNER: Audio. Just the audio.

1 THE HEARING OFFICER: Oh, the audio. Okay.
2 Sorry. I told you, I'm not technologically -- I
3 don't have any technological expertise.

4 So do you object to him playing the audio?

5 Is that what you were getting ready to do?

6 MS. RATNER: We produced the audio, and I'm
7 going to find it because I am really shocked that
8 they are saying we didn't and --

9 MS. OWENS: It's the School Board's position
10 that any documents or materials such as audio
11 recordings that the Parents intended to utilize at
12 this hearing are required to be disclosed in
13 accordance with the five business day --

14 MS. RATNER: It was disclosed.

15 (Simultaneous speaking.)

16 THE HEARING OFFICER: Hold on. Let's not
17 speak over each other. Let me listen --

18 MR. RATNER: Please. And then I will respond.

19 THE HEARING OFFICER: -- to what Ms. Owens has
20 to say.

21 I think if I understood correctly, you are
22 objecting on the basis that you didn't know about
23 the audio being brought in as an exhibit; is that
24 right?

25 MR. ANDRIANO: How could we?

1 THE HEARING OFFICER: As far as this goes,
2 it's not a transcript that's certified by a
3 licensed court reporter, so that's a problem.

4 MS. OWENS: That's correct. And I will also
5 say in previous hearings, if someone wants to use
6 an audio recording, they will provide --

7 THE HEARING OFFICER: The audio recording.

8 MS. RATNER: We provided it. If you give me a
9 moment, I'm going to the email that shows the
10 recording being produced to them on March 4th as
11 part of our -- and it's in the exhibit list.

12 THE HEARING OFFICER: Is it in the list of
13 exhibits?

14 MR. RATNER: Yes, it is.

15 THE HEARING OFFICER: But you keep pointing to
16 this.

17 MR. RATNER: How can I put an audio -- it's a
18 digital file. It says on the list, meeting
19 recording and transcript.

20 THE HEARING OFFICER: Okay.

21 MR. RATNER: I don't know how else --

22 THE HEARING OFFICER: 33?

23 MR. RATNER: 33, yes, ma'am. I don't know how
24 much clearer I could disclose it. I mean, did you
25 somehow want me to figure out how to put an audio

1 file in a book?

2 THE HEARING OFFICER: You do say IEP meeting
3 recording and transcript. The transcript is a
4 problem, but you did put on here the meeting
5 recording.

6 MR. RATNER: Yes, ma'am.

7 THE HEARING OFFICER: And it's what? An hour?

8 MR. RATNER: It's like three hours. I didn't
9 think you would want to play the whole thing. So I
10 would like to ask Ms. Williams about a few portions
11 of it of her discussion.

12 THE HEARING OFFICER: You want me to just hear
13 portions? Because I would have to listen to the
14 whole --

15 MR. RATNER: Exactly. And you're free to do
16 that on your own time. We would like to play the
17 whole thing, but I know you don't want to do that.

18 MR. ANDRIANO: Mr. Ratner has also indicated
19 it's not a full recording of the whole meeting.

20 THE HEARING OFFICER: It's not a full
21 recording?

22 MS. RATNER: Well, you guys didn't give us
23 your recording, and we requested it. So we are
24 doing --

25 MR. ANDRIANO: How do you know the School

1 Division recorded it?

2 MS. RATNER: Because it was discussed and the
3 recording light was on the virtual format.

4 Mrs. REDACTED can testify to that. We requested it.
5 It wasn't provided. What we have is -- it's very
6 important evidence. It's people --

7 MR. ANDRIANO: Every evidence is important.

8 MS. RATNER: We provided it to them. And now
9 it's taking me a long time because I never
10 dreamed --

11 MR. RATNER: We will find the email. But if I
12 could just back up for a moment.

13 THE HEARING OFFICER: Okay. Back up for a
14 moment.

15 MR. RATNER: We've spent the last three
16 days -- we are on the fourth day now -- talking
17 about what happened at an IEP meeting.

18 THE HEARING OFFICER: And you want me to
19 listen to the IEP meeting?

20 MR. RATNER: I don't understand why people
21 wouldn't want to hear an audio recording of what
22 happened at the meeting. You can take it for what
23 it's worth.

24 THE HEARING OFFICER: Well, the problem is it
25 doesn't sound like it's complete. Is that

1 accurate?

2 MS. RATNER: May I approach, please. This
3 shows the audio being sent to -- I have this right
4 here (indicating).

5 THE HEARING OFFICER: Let me see.

6 MS. RATNER: This was an email dated March 3.

7 THE HEARING OFFICER: Show it to them first.

8 MS. RATNER: From Virginia Cary, who was here
9 yesterday, who is the paralegal for the law firm,
10 and I can print it if you have somebody -- but a
11 printing still isn't going to show you. So this is
12 the first -- and if you weren't on it, I apologize.
13 This was -- we weren't -- didn't know you were
14 involved in this yet.

15 MR. RATNER: We can also show it being
16 downloaded by them, if that's necessary. You
17 remember you got a link.

18 MS. RATNER: So there's four IEP meeting
19 recordings. Then the -- do you have where it's
20 downloaded?

21 MR. RATNER: I can show you that.

22 MS. RATNER: If somebody can help me here
23 print this, then I can provide it to everybody.
24 May I ask someone to print --

25 THE HEARING OFFICER: Okay. Is there an

1 objection to the audio recording -- my listening
2 then to the audio recording or not?

3 MR. ANDRIANO: Yes.

4 THE HEARING OFFICER: And the objection is
5 that it's not complete or that you didn't receive
6 it or both?

7 MR. ANDRIANO: Correct. And there's already a
8 document that's already been admitted into evidence
9 that clearly indicates that the School Board did
10 not record the meeting. Go ahead and --

11 MR. RATNER: There's a disagreement about
12 that.

13 MS. OWENS: This is Exhibit Number 42, School
14 Board Exhibit Number 42, and there's a statement
15 that the School Board did not record the
16 February 2021 IEP meeting.

17 MR. RATNER: That's hearsay, ma'am.

18 MS. OWENS: And that in the future if a
19 parent --

20 MR. RATNER: I'm sorry, you don't understand
21 how reading a document is hearsay to accept it as
22 proof that they didn't record the meeting?

23 MR. ANDRIANO: Ms. Freeman, can we be heard?
24 I thought we were talking over here.

25 THE HEARING OFFICER: I need to listen to one

1 person at a time. This is getting really confusing
2 because we have about 15 different issues here.

3 The first response, I would say, is that if
4 any item that is in the evidentiary record is not
5 exchanged, fully exchanged, then I can't review it.

6 Number two, if there is a transcript or
7 alleged to be transcript, the transcript needs to
8 be transcribed by a court reporter.

9 This is the first I've heard of an audio
10 recording of the -- what was it? The February 19,
11 2021?

12 MS. RATNER: No, ma'am.

13 THE HEARING OFFICER: Do I got the date wrong?

14 MR. RATNER: No, ma'am. You've got the date
15 exactly right. You might want to go back and check
16 when you downloaded our exhibits. Did you download
17 our exhibits? We sent you the link, remember?

18 THE HEARING OFFICER: Honestly, I don't
19 remember.

20 MR. RATNER: But you could see -- well, you
21 could ask your assistant. It's in the download. I
22 will show you where people downloaded it.

23 THE HEARING OFFICER: This is getting really
24 confusing.

25 MR. RATNER: Which part?

1 THE HEARING OFFICER: I think we need to
2 simplify all of this. If they say they didn't
3 receive the --

4 MS. RATNER: It shows them downloading the
5 audio recording. He has evidence.

6 MR. ANDRIANO: It shows us downloading the
7 document production.

8 MS. RATNER: No. No. An audio recording. An
9 audio recording. It was produced on March 4th, and
10 it was downloaded.

11 THE HEARING OFFICER: Who took the audio
12 recording?

13 MR. RATNER: The Parents.

14 MR. ANDRIANO: The School Board did not record
15 the meeting.

16 MR. RATNER: Again, we can have testimony
17 about all that. If I could just be heard --

18 THE HEARING OFFICER: Hold on a minute. Was
19 the School Board aware that the meeting was being
20 recorded?

21 MS. OWENS: No, ma'am.

22 MR. ANDRIANO: I will direct your attention to
23 that letter, School Board 42.

24 THE HEARING OFFICER: School Board 42.

25 MR. ANDRIANO: Third to the last paragraph.

1 THE HEARING OFFICER: See, this is a problem
2 when you take recordings and you don't announce it
3 and it's a problem later because there can be
4 manipulation.

5 MR. RATNER: Let me know when I can respond.

6 THE HEARING OFFICER: I don't know a lot about
7 technology, but I do know that technology can be
8 manipulated. It can be -- items can be removed,
9 conversations can be changed.

10 MS. RATNER: We're happy for a forensics --

11 THE HEARING OFFICER: We're not going there.
12 There are certain ways that you can record legally,
13 which is to tell the school system that that's what
14 you're doing.

15 MS. RATNER: She did tell them.

16 MR. RATNER: We can call Mrs. REDACTED, and we
17 can address this all under oath.

18 THE HEARING OFFICER: But you also said that
19 the recording is not the complete recording.

20 MS. RATNER: But it's not manipulated.

21 THE HEARING OFFICER: I don't want to even go
22 there. It's either acceptable or it's not.

23 MR. RATNER: Correct.

24 THE HEARING OFFICER: And at this point, it
25 does not sound as if it was acceptable.

1 MR. RATNER: Then we'd like to call

2 Mrs. REDACTED

3 THE HEARING OFFICER: For what?

4 MR. RATNER: To explain the recording.

5 THE HEARING OFFICER: It's not going to make
6 it complete, is it?

7 MS. RATNER: We would like to note our
8 objection.

9 MR. RATNER: We strongly object.

10 MS. OWENS: Virginia law is a one party state.
11 That is Virginia Code 19 --

12 THE HEARING OFFICER: I have heard -- go ahead
13 and get that statute on the record.

14 MS. RATNER: And also it's part of the
15 procedures. Virginia Code 19.2-62. Thus, even if
16 she hadn't told them, which she did, she still has
17 a right to record.

18 Number two, the Virginia regulations for
19 special education 8 VAC 20-81-170(J), Audio and
20 Video Recording: The local educational agency
21 shall permit the use of audio recording devices at
22 meetings convened to determine a child's
23 eligibility under 8 VAC 20-81-80; to develop,
24 review, or revise a child's IEP under
25 8 VAC 20-81-110(F); and to review discipline

1 matters under 8 VAC 20-81-160(D). The parent shall
2 inform the local educational agency before the
3 meeting in writing, unless the parents cannot write
4 in English, that they will be audio recording the
5 meeting. If the parent does not inform the local
6 education agency, the parent shall provide the
7 local educational agency with a copy of the audio
8 recording.

9 MR. RATNER: And further, if I may -- and I
10 know technology is not your forte. I'm going to
11 show this to Mr. Andriano first, if I may.

12 THE HEARING OFFICER: Go ahead.

13 MR. RATNER: This is the March 4 production.

14 MR. ANDRIANO: You're talking about the
15 subpoena production?

16 MR. RATNER: No -- yeah, our response to your
17 subpoena.

18 MR. ANDRIANO: That's different than the 5-day
19 disclosure.

20 MR. RATNER: Right. Did you look on the
21 exhibit list?

22 MR. ANDRIANO: Yes.

23 MR. RATNER: Where it says recording?

24 MR. ANDRIANO: Where's the recording? You did
25 not provide a recording.

1 MR. RATNER: So do you understand what his
2 objection is now? That we didn't provide an audio
3 file on the 5-day. We provided it in advance, and
4 we wrote on the list -- I'll show it to you. And
5 we wrote on the list, recording. So is that clear?

6 THE HEARING OFFICER: Yes.

7 MR. RATNER: Okay. May I show him that he
8 downloaded the recording?

9 THE HEARING OFFICER: Sure.

10 MR. RATNER: Will that influence you at all?

11 THE HEARING OFFICER: Well, I'm going to wait
12 to see if they object or not.

13 MR. RATNER: Okay. Great. Because this is
14 really -- if I could again just take a step back.

15 THE HEARING OFFICER: I don't know why you're
16 taking a step back. Am I scary or something?

17 MR. RATNER: No, the opposite. I don't want
18 to be --

19 THE HEARING OFFICER: Okay.

20 MR. RATNER: Just to -- I don't -- again,
21 there's no jury here. What we've had -- all these
22 objections about what's coming into evidence, you
23 understand better that --

24 THE HEARING OFFICER: I was just going to say,
25 you did have it on your list and you gave him the

1 opportunity, or that side, to download.

2 MR. RATNER: Right. He downloaded it. It
3 says right here, Patrick Andriano at Sands
4 Anderson, excuse me, PAndriano@sandsanderson.com,
5 one download. He downloaded it.

6 THE HEARING OFFICER: Let me see that.

7 MR. RATNER: So there's folders 1 and 2 zip.
8 PAndriano@sandsanderson.com, one download. Can you
9 read that?

10 THE HEARING OFFICER: Yes.

11 MR. RATNER: And I'll be happy to show you
12 what was downloaded. It will take me just another
13 minute to show exactly what was part of the
14 download, if you would like to see that.

15 THE HEARING OFFICER: What's your response?
16 He says he downloaded it to you --

17 MR. ANDRIANO: My office downloaded documents.
18 I've just checked them. There was no audio
19 recording with the 5-day --

20 MR. RATNER: May I show you?

21 MR. ANDRIANO: -- with the 5-day disclosure.

22 THE HEARING OFFICER: I don't know what to do.
23 He said he --

24 MR. RATNER: What he's saying now --

25 THE HEARING OFFICER: Is it the complete

1 audio?

2 MR. RATNER: It is. What he's saying now,
3 just to be clear, on March 4th, he downloaded the
4 audio. We sent the list on -- what was the day?
5 The 14th, I believe. That said there will be a
6 recording as an exhibit, but we didn't send the
7 recording audio file again.

8 THE HEARING OFFICER: I keep telling you, it's
9 not on the exhibit list.

10 MR. RATNER: It is on the exhibit list.

11 THE HEARING OFFICER: But you said you didn't
12 send the recording; that you sent the recording on
13 -- I forgot your date.

14 MR. RATNER: March 4, ten days prior.

15 THE HEARING OFFICER: Was that March 4th of
16 this year?

17 MR. RATNER: Correct. In response to their
18 subpoena.

19 THE HEARING OFFICER: I think I'll listen to
20 it over the objection of the school system.

21 But my question is, do I need to -- do I need
22 to listen to it here? Didn't you say it's three
23 hours long?

24 MR. RATNER: It is three hours long. So what
25 we thought we would do, and the reason we prepared

1 the transcript -- actually, I should say, the typed
2 version of it, and I recognize --

3 THE HEARING OFFICER: But I'm excluding that.

4 MR. RATNER: That's fine.

5 THE HEARING OFFICER: It's not your skill in
6 transcribing; it's --

7 MR. RATNER: No, ma'am, not at all. So,
8 again, the Parents didn't have the resources to do
9 that. That's neither here nor there.

10 THE HEARING OFFICER: I appreciate that.

11 MR. RATNER: We prepared it as what I would
12 say is a demonstrative exhibit rather than you
13 listening to three hours and seeing --

14 THE HEARING OFFICER: I don't want to hear
15 things that are pulled out.

16 MR. RATNER: Exactly.

17 THE HEARING OFFICER: I want to hear the whole
18 thing.

19 MR. RATNER: So you might want to perhaps,
20 after you listen to it, say, that was interesting,
21 and then read through and say, oh, I remember where
22 that was. We put time stamps in there. Then
23 actually listen to it and hear what was said.

24 That's what I don't understand is why would
25 the School Board object to you hearing -- there's

1 no jury. There's no worry of impartial -- or,
2 excuse me, improper prejudice.

3 THE HEARING OFFICER: I have listened to
4 plenty of IEP meetings before.

5 MR. RATNER: Exactly. Right. So that's why I
6 don't understand the resistance to it. This is a
7 recording of what happened. We are supposed to be
8 here to find the truth, right? We've had a lot of
9 discussions about what happened and, well, it's
10 hard to know which team member said what. Why
11 don't you listen to who said what.

12 THE HEARING OFFICER: All right. That's fine.

13 MR. ANDRIANO: May I be heard, Ms. Freeman?

14 THE HEARING OFFICER: Go ahead.

15 MR. ANDRIANO: Again, this was not produced as
16 part of their 5-day disclosure, so it's not an
17 exhibit in this case.

18 THE HEARING OFFICER: What about the fact that
19 he said he produced it on the 4th?

20 MR. ANDRIANO: How do I know that's the same
21 recording that they are going to play today without
22 having it produced in the 5-day disclosure?

23 THE HEARING OFFICER: I want you both -- I
24 think this is going to be contingent on them
25 looking at the audio recording to make certain that

1 there isn't anything missing out of it. I'm going
2 to give you an opportunity to do that. If there's
3 any objection after that, then just tell me and
4 I'll look -- I'll revisit this. At this point it
5 does sound to me like he sent it over.

6 MR. ANDRIANO: I would like to make a few
7 other points.

8 MR. RATNER: We still have a logistical issue.

9 THE HEARING OFFICER: Hold on with that.

10 MR. RATNER: Yes, ma'am.

11 MR. ANDRIANO: First of all, we don't know
12 that that's the document that was produced --

13 THE HEARING OFFICER: Are you talking about
14 the transcript?

15 MR. ANDRIANO: No. I'm talking about the
16 recording that he claims they produced back on
17 March 4 as part of the subpoena.

18 THE HEARING OFFICER: That's why I want you to
19 listen to it.

20 MR. ANDRIANO: That was not disclosed as part
21 of their 5-day disclosure, number one.

22 Number two, Exhibit -- School Board Exhibit
23 42, third to the last paragraph, I'll point your
24 attention to it --

25 THE HEARING OFFICER: School Board 42.

1 MR. ANDRIANO: -- indicates that the School
2 Board was not recording this meeting. So this is a
3 Parents' recording. It's not the School Board's
4 recording. So it's not a business record. There's
5 no way of getting around it. It's not a business
6 record.

7 Number three, Mr. Ratner has already said it's
8 not a complete copy or recording of the said
9 meeting.

10 THE HEARING OFFICER: Well, I don't want to
11 listen to pieces. If I'm going to listen --

12 MR. RATNER: It's not.

13 MR. ANDRIANO: Hold on. I got one other
14 point.

15 THE HEARING OFFICER: Go ahead.

16 MR. ANDRIANO: Ms. Ratner pointed you to the
17 Virginia Code. She didn't point you to the
18 Virginia Code Section 8.01-420.2, which says that
19 surreptitious recordings cannot be used in civil
20 proceedings as evidence.

21 MR. RATNER: Again, this is not a civil
22 proceeding. It's an administrative proceeding.
23 We've had a lot of discussion about that, and the
24 rules are relaxed.

25 But, again, there are so many different issues

1 again which is what is making your job challenging.

2 42 is a letter that's --

3 THE HEARING OFFICER: Let me pull it.

4 MR. RATNER: Sure.

5 MR. ANDRIANO: Page 2 of that letter, third to
6 the last paragraph.

7 THE HEARING OFFICER: Are we talking about
8 then the November 4, 2020, IEP meeting?

9 MR. RATNER: No, we're talking about the --

10 MR. ANDRIANO: It covers several meetings.

11 THE HEARING OFFICER: I'm following you. I
12 didn't read the whole thing. Sorry.

13 So what was the point of the Parents recording
14 the meeting and not asking the school system to
15 record the meeting?

16 MR. RATNER: I'll show you Mr. Mueller's
17 letter. We're can have testimony about this
18 because we're going to get into hearsay.

19 You recall from the testimony there was a
20 meeting in November and then it was continued. Do
21 you remember that? And they followed up in
22 February.

23 THE HEARING OFFICER: I don't recall that
24 aspect of it, but if you say so, I believe you.

25 MR. RATNER: Okay.

1 MS. RATNER: It's 115.

2 MR. RATNER: Okay. 115. So in any event, in
3 advance of that meeting -- just let me look at a
4 document and then --

5 THE HEARING OFFICER: Okay. Go ahead.

6 Does the school system have a recording of
7 that meeting, the IEP meeting that he's talking
8 about, November[sic] 19, 2021, I think it was?

9 MR. ANDRIANO: The School Board did not record
10 that meeting.

11 THE HEARING OFFICER: Oh.

12 MR. RATNER: Okay. If you look again -- I'm
13 sorry to make you get another book.

14 THE HEARING OFFICER: That's okay. What's the
15 other book?

16 MR. RATNER: It's Volume 3. And my point
17 again was they have a letter saying they didn't
18 record it. We have a letter saying we believe they
19 did record it. So I don't know how you're going to
20 determine that.

21 THE HEARING OFFICER: Where is the letter? In
22 here?

23 MR. RATNER: It is, correct.

24 THE HEARING OFFICER: What volume did you say?

25 MR. RATNER: Volume 3. Again, this was in our

1 exhibit list.

2 MR. ANDRIANO: What page?

3 MR. RATNER: 115. It's the second page, 1905.

4 And I'm sorry to take up --

5 MS. OWENS: Could you tell me the tab number
6 again.

7 MR. RATNER: 115.

8 THE HEARING OFFICER: Mine goes to 104.

9 MR. RATNER: There's some real thick ones.
10 May I help you?

11 THE HEARING OFFICER: Sure. Go ahead.

12 MR. RATNER: Maybe it's Volume 4 then. It's
13 probably my fault. Yes, Volume 4. My apologies.

14 MR. ANDRIANO: Same exhibit number?

15 MR. RATNER: Yep.

16 THE HEARING OFFICER: Okay. Now, what is it
17 you want me to get out of this letter?

18 MR. RATNER: Kevin Mueller was representing
19 the family at that time. He emailed Ms. Owens
20 about the recording.

21 MS. OWENS: When you say "the recording,"
22 let's be clear that there was no discussion about
23 recording of the February 2021 IEP meeting.
24 This -- the email that Mr. Ratner is referencing
25 clearly refers to an IEP meeting that was supposed

1 to occur on or about in October or November of
2 2020, and we all know that there was an IEP meeting
3 that was held in November of 2020. There is no
4 reference to any subsequent recordings of IEP
5 meetings in Parents' Exhibit Number 1904.

6 MR. RATNER: No. I said, 1905, actually.

7 Ms. Owens is --

8 MS. OWENS: And now with regard to 1905, you
9 can also see that this is an email from Mr. Mueller
10 to me after the IEP meeting occurred. There is no
11 indication that Mr. Mueller informed the School
12 Division in advance that that IEP meeting was going
13 to be recorded.

14 THE HEARING OFFICER: That he wanted a
15 recording on the IEP meeting on what date? 2/19?

16 MS. OWENS: 2/19, yes, ma'am.

17 THE HEARING OFFICER: So the Parents took it
18 anyway?

19 MR. RATNER: No, that is incorrect. Again,
20 what Ms. Owens is saying is for the earlier
21 meeting, Mr. Mueller said, I'd like to record all
22 meetings -- that's on 1904 -- because it's hard for
23 me to take notes.

24 THE HEARING OFFICER: And the school system
25 said?

1 MR. RATNER: Said, Yes.

2 THE HEARING OFFICER: And they let him?

3 MR. RATNER: No. They said, we will record
4 it. They recorded 11/4/2020. Then there was a
5 continuation.

6 THE HEARING OFFICER: Okay.

7 MR. RATNER: Mr. Mueller showed up -- the
8 REDACTED will testify. Mr. Mueller will testify. We
9 saw the red light on the Zoom or Google Meet or
10 whatever it is saying recording. Then there was a
11 discussion that I better record it myself just in
12 case. And that's what Mr. Mueller is saying here,
13 we'd like a copy of that recording. Then they
14 said, oh, we didn't record it. And then we told
15 you --

16 THE HEARING OFFICER: Because the Parents
17 didn't ask.

18 MR. RATNER: They did ask. If you read, it
19 says, we would like to record all meetings. That's
20 one page back.

21 MS. OWENS: Where are you referring to?
22 Because when you pointed -- you pointed the Hearing
23 Officer to Parents' Exhibit 1904.

24 MR. RATNER: Right.

25 MS. OWENS: Then there's an email in this

1 chain from Mr. Mueller to Jason Ballum, who is an
2 attorney in our office. Mr. Mueller indicates the
3 dates on which the Parent would be available for an
4 IEP meeting to occur in October or November of
5 2020. And if you would also look further down, it
6 says, We also plan on recording the meeting when it
7 is held. There is no reference here to subsequent
8 IEP meeting recordings.

9 MR. RATNER: Except for it is world's easier
10 for me to record and take notes down from the
11 recording than to constantly be writing.

12 And so the suggestion that they didn't
13 understand that he wanted to record the next
14 meeting is simply not true.

15 MS. OWENS: There is no indication here that
16 would put the School Board on alert that the Parent
17 intended to record subsequent IEP meetings after
18 November -- after the November 2020 IEP meeting.

19 Mr. Ratner is asserting that somehow the
20 November IEP meeting was a continuation -- excuse
21 me, that the February IEP meeting was a
22 continuation of the November IEP meeting. That's
23 inaccurate.

24 THE HEARING OFFICER: You're saying there was
25 not a continuation from November to --

1 MS. OWENS: No, ma'am.

2 THE HEARING OFFICER: Those were separate
3 IEP --

4 (Simultaneous speaking.)

5 THE HEARING OFFICER: Normally they aren't
6 continued that far apart.

7 MS. OWENS: The November IEP meeting was an
8 IEP amendment meeting. The February 2021 IEP
9 meeting was an annual IEP meeting.

10 THE HEARING OFFICER: Okay.

11 MR. RATNER: So let me just ask --

12 MS. OWENS: To the extent that Mr. Ratner is
13 asserting that somehow it's now implied that
14 Mr. Mueller intended to record subsequent IEP
15 meetings is not consistent with the face of this
16 document, which says that he intended to record
17 "the meeting."

18 THE HEARING OFFICER: Which was --

19 MS. OWENS: The November 2020 IEP meeting.

20 THE HEARING OFFICER: November? What was that
21 date?

22 MS. OWENS: November 2020.

23 MR. RATNER: Then Mr. Mueller writes after the
24 February 19th meeting, which is the one that we're
25 talking about, we would like a copy of the

1 recording of the most recent IEP meeting.

2 Then the School Board says, oh, sorry, we
3 didn't record that.

4 MS. OWENS: Because -- the School Board
5 recorded the November 2020 IEP meeting because it
6 was understood that the Parent was recording that
7 meeting. The School Board did not record the
8 February 2021 IEP meeting because it was not
9 understood that the Parent would be recording that
10 meeting.

11 MR. RATNER: Again, the statutes are clear, as
12 long as it's disclosed afterwards, it is
13 permissible -- it's within your discretion,
14 obviously; we understand that. But this is, again,
15 I think the last point because I don't think
16 argument is going to make this any clearer for you.

17 They've had the recording. If they believe
18 it's been altered, they can certainly make that
19 point.

20 THE HEARING OFFICER: I go back to my original
21 point -- I'm sorry to cut you off, but I think we
22 need to go forward with this witness.

23 Back to what I originally said, I think that
24 I'm going to give the school system a chance to
25 listen to the audio recording. If there are

1 questions about it, then they -- the school system
2 can tell me. I think we're talking about an
3 abstract concept right now because the school
4 system has not seen it. I know you say that they
5 should have, but I'm going to give them an
6 opportunity to check. They're in a better position
7 than I to ascertain the veracity of the audio
8 recording. If they say it's not -- there are
9 problems with it, then I'm gonna listen to their
10 objection. That's the final ruling.

11 MR. RATNER: Could I just ask one further
12 point then?

13 THE HEARING OFFICER: Sure. Go ahead.

14 MR. RATNER: Because the recording is three
15 hours long, as we said, so we are not going to be
16 able to --

17 THE HEARING OFFICER: To do that now.

18 MR. RATNER: Right.

19 THE HEARING OFFICER: I don't mind doing that
20 at some other time. We've got to meet next week
21 anyway. So just tell me what the final -- what
22 your final assessment is about the recording that
23 they are going to turn over to you and give you the
24 opportunity to look over. I don't think we can
25 really argue about it unless you know exactly

1 what's on that audio.

2 MR. RATNER: Right. But, I guess --

3 THE HEARING OFFICER: If it's not
4 objectionable, then I will just listen to it out of
5 the hearing. And if it is, then just tell me why
6 and we'll talk about it at that time.

7 MR. RATNER: Right. So next week, if we work
8 this out, we --

9 THE HEARING OFFICER: We are going to meet
10 three days next week anyway.

11 MR. RATNER: Yes, ma'am.

12 THE HEARING OFFICER: So let's move forward
13 with this witness.

14 Does everyone understand what the ruling is?

15 MS. OWENS: Yes, ma'am, that it would not be
16 heard today; that we would come back and --

17 MR. RATNER: Great. I'm just going to remove
18 this then so it's not -- this was just a speaker.

19 THE HEARING OFFICER: One question is, how are
20 you going to -- you wanted me to just listen to the
21 recording then? If I'm able to listen to it, then
22 you just want me to listen to the recording?

23 MR. RATNER: That was not my intention.

24 THE HEARING OFFICER: What's your intention?

25 MR. RATNER: Because it's -- my intention was

1 to ask Ms. Williams about some of the statements
2 she made in the meeting.

3 THE HEARING OFFICER: Well, just ask her.

4 MR. RATNER: Then she will say, I don't
5 remember.

6 And I don't understand why people wouldn't
7 want to hear the --

8 THE HEARING OFFICER: Isn't she gonna be
9 called next week or not?

10 MR. ANDRIANO: Huh-uh.

11 THE HEARING OFFICER: No? This was a
12 potential placement anyway, which the Parents --
13 oh, okay.

14 So let's move forward with Ms. Williams'
15 testimony. And we'll consider all the
16 ramifications of whether or not you're able to
17 question her fully after the school system has a
18 chance to listen to the audio recording.

19 Is that understood?

20 MR. RATNER: It is. The recording that has
21 been in their possession since March 4.

22 And we would like our exception noted for the
23 record, please.

24 THE HEARING OFFICER: Yes. Okay. Note his
25 exception.

1 MR. RATNER: If I could just have one moment
2 to get organized.

3 THE HEARING OFFICER: Ms. Williams, while he's
4 doing that, do you recall that you're under oath?

5 THE WITNESS: Yes, ma'am.

6
7 JENNIFER WILLIAMS,
8 having been previously sworn,
9 testified further as follows:

10
11 CONTINUED DIRECT EXAMINATION

12 BY MR. RATNER:

13 Q Ms. Williams, I believe we finished off
14 yesterday going through some emails, right?

15 A Uh-huh.

16 Q I'd like to go back -- and I'm sorry you just
17 had to listen to all that.

18 I'd like to go back to the February 19, 2021,
19 IEP meeting that you attended. And is that pretty
20 clear in your mind? We went through the meeting notice
21 and stuff like that yesterday, but I think we
22 established yesterday that was the first time you
23 participated in a meeting for this student, correct?

24 A Yes.

25 Q Sitting here today, a little over a year

1 later, how's your recollection of that meeting?

2 A I mean, I feel like I have a fairly good
3 recollection of the primary things that, you know, I
4 was engaged in in conversation. I obviously can't say
5 that I recall every word that came out of my mouth.

6 Q I understand. And Ms. Freeman is right. I
7 would rather talk about what you remember, and if you
8 don't, that's fine, too. That's why we may have to get
9 to the recording at a later time. But today we are
10 going to be talking about what you remember.

11 A Okay.

12 Q Let me just get to the meeting notice for
13 that. So we will be in the Parents' book -- I'm so
14 sorry -- in the School Board's book, and let's actually
15 go to the IEP itself. It's tab 37. This is already in
16 evidence.

17 In your role as a special education
18 coordinator, are you familiar with the Woodcock-Johnson
19 test?

20 A I am.

21 Q And that was one of the tests that was
22 discussed at this meeting as it pertained to being
23 given to REDACTED; is that consistent with your
24 recollection?

25 A Yes, I recall that being discussed, as I

1 think I mentioned yesterday. Also, I recall that the
2 educational diagnostician was there and the school
3 psychologist.

4 Q Was that Ms. Rubino was the diagnostician?

5 A Yes.

6 Q And one thing that struck me when I listened
7 to the recording, is it fair to say that you -- you
8 have a decent understanding of the mechanics of the
9 Woodcock-Johnson? I recalled -- let me -- go ahead and
10 just answer that.

11 A The Woodcock-Johnson Test of Achievement.

12 Q Is that the one that's being discussed here?

13 A I would have to refresh my memory. Because
14 there's a cognitive battery as well. But, yes, the
15 Woodcock-Johnson Test of Achievement is referenced.

16 Q So what's your familiarity with the
17 Woodcock-Johnson Test of Achievement?

18 A It's a test that assesses a student's level
19 and a variety of skills, reading, written language,
20 mathematics, that compares the student to same-age
21 peers and provides standard scores for review.

22 Q Was it something -- well, I guess you weren't
23 part of the IEP -- excuse me, the special education
24 eligibility determination for REDACTED, right?

25 A No, I was not.

1 Q In general terms, if you are able to answer
2 this, you have participated in eligibility meetings
3 before, correct?

4 A Yes, I have.

5 Q And the Woodcock-Johnson Test of Achievement
6 is something that Chesterfield County Public Schools
7 considers to be relevant to identifying students with a
8 disability and a pattern of strengths and weaknesses?

9 A Yes, if we're looking at potentially whether
10 or not a student qualifies for a specific learning
11 disability.

12 Q And based on the information you see for
13 REDACTED's scores, did you agree that she has a specific
14 learning disability?

15 MS. OWENS: I am going object to relevancy.
16 This witness was not even present at the
17 eligibility meeting. So to ask her if she agrees
18 with an eligibility determination that she had no
19 part in is not an appropriate question for this
20 witness.

21 THE HEARING OFFICER: Sustained.

22 MR. RATNER: Yes, ma'am.

23 BY MR. RATNER:

24 Q You're on the IEP team, right?

25 A Yes.

1 Q At the meeting, did you ever think, I wonder
2 why we're offering services for this student; she seems
3 to be going great?

4 MS. OWENS: I'm going to object to relevancy.

5 MR. RATNER: We're talking about the services
6 proposed for REDACTED .

7 THE HEARING OFFICER: I think it sounds like
8 you need to lay a foundation for whatever those
9 services were that were going to be provided and,
10 in particular, by Tomahawk.

11 MR. RATNER: That's what I'm trying to do.

12 THE HEARING OFFICER: Sustained.

13 Back up and if you would ask her questions
14 about what services were going to be provided.

15 MR. RATNER: Right. But before they get to
16 services being provided, they need to determine if
17 they are even necessary.

18 BY MR. RATNER:

19 Q So did you --

20 THE HEARING OFFICER: Well, it's special
21 education. She has an SLD, so -- I believe that's
22 what it is.

23 BY MR. RATNER:

24 Q Did you agree with the IEP team with the
25 proposed services for REDACTED ?

1 A I did.

2 Q Did you express any concerns in that
3 February 19, 2021, meeting about how REDACTED's needs
4 specifically might be addressed at Tomahawk Creek
5 Middle School, to the best of your recollection?

6 A I recall that we discussed a variety of the
7 ways that the services could be implemented and
8 considered the Parents' concerns about some of those
9 options that were considered. But the ultimate
10 proposal was to incorporate that service time in a
11 way -- in a manner that would not impact the student's
12 ability to participate in an elective or a PE class.
13 And, no, I wasn't concerned about that by the time we
14 processed through that conversation considering all the
15 factors.

16 Q So you do remember the Parents' concerns
17 about the electives?

18 A I do.

19 Q Could you explain that -- what you recall
20 about that for Ms. Freeman?

21 A Sure. When we -- Ms. Freeman, when we got to
22 the point of that meeting where we were talking about
23 services for the 2021-'22 school year if REDACTED had
24 transitioned to Tomahawk, we discussed her need for
25 specialized reading instruction, specialized

1 multisensory instruction and what that would look like
2 at the middle school level.

3 At the elementary school level, my
4 recollection was that was provided within the special
5 education setting, in a small group setting
6 incorporated at some point during the day.

7 At the middle school level, the first option
8 that I presented was REDACTED's participation in a
9 specialized reading elective that we offer at the
10 secondary level. At the time that elective was called
11 Focused Reading. It is now called Essential Reading.
12 But that's initially what we spoke about.

13 My recollection was that Mr. and Mrs. REREDACTED
14 felt very strongly about REDACTED being able to participate
15 in an elective of her choice because participation in
16 the specialized reading elective would prevent the
17 student from being able to then participate in an
18 elective of her choice. Because at the middle school
19 level -- at the middle school level, you have PE and an
20 elective block. If a student participates in the
21 specialized reading elective, that takes the place of
22 the student's individual elective options. So if the
23 student wanted to take chorus, the specialized reading
24 elective is in place, of course.

25 THE HEARING OFFICER: So let me get that part

1 straight. The reading elective -- and this was the
2 Parents' concern -- that the reading -- say that
3 again.

4 THE WITNESS: The reading elective would
5 prevent REDACTED from being able to participate in an
6 elective of her choice, like chorus or band or
7 something like that.

8 THE HEARING OFFICER: Oh, okay.

9 THE WITNESS: Does that make sense?

10 THE HEARING OFFICER: Yeah.

11 MR. RATNER: Could I --

12 MS. OWENS: She wasn't finished. I think
13 Ms. Freeman had a question for the witness, so if
14 you would allow her to finish her answer.

15 MR. RATNER: Sure.

16 THE HEARING OFFICER: It would prevent her
17 from participating in something she might enjoy
18 like band or --

19 THE WITNESS: Yes, ma'am.

20 THE HEARING OFFICER: Art, is that considered
21 an elective?

22 THE WITNESS: It would be.

23 THE HEARING OFFICER: And she is extremely
24 artistic, I hear.

25 So were there any other electives that the

1 Parents wanted her to participate in?

2 THE WITNESS: I don't recall if we
3 specifically discussed what elective REDACTED was
4 hoping to participate in, but just whatever that
5 choice would have been, they felt very strongly
6 about her being able to participate in that.

7 So in consideration of that, I believe I
8 recall that one of the Old Hundred school team
9 members proposed or brought up if she could
10 participate in an elective and perhaps that we
11 could replace PE with --

12 THE HEARING OFFICER: I remember seeing that.

13 THE WITNESS: -- with the reading elective.
14 And again, you know, Mr. and Mrs. REDACTED felt
15 strongly about REDACTED being able to participate in
16 PE.

17 So then we discussed, okay, well, then what
18 would that look like at the middle school level.
19 And I talked about how we would have to find the
20 time during the day from other class periods to
21 carve out the necessary block of time to provide
22 that instruction.

23 Someone on the team asked about our -- and
24 bear with me for a second because you are probably
25 going to look at me with a puzzled expression, but

1 I believe someone at the team inquired about our
2 HOWL time. We are the Timberwolves and HOWL --

3 THE HEARING OFFICER: Is that H-O-W-L?

4 THE WITNESS: Yes, ma'am. Our HOWL block, it
5 stands for honest, organized, well-rounded
6 learners. Our HOWL block is a half-an-hour block
7 that is built into the school day.

8 THE HEARING OFFICER: Is it like a study --

9 THE WITNESS: The purpose is for remediation.
10 For some students, it becomes a study hall of
11 sorts. It was really incorporated into the school
12 day to allow the students to have a block of time
13 to receive extra help.

14 So someone on the team suggested that
15 potentially that could be a time that we could
16 provide that service. And I noted that given the
17 amount of time and the frequency of what we were
18 looking at that REDACTED needed, which was going to be
19 daily sessions, the problem with relying on the
20 HOWL block is that the HOWL block is not always
21 consistently implemented.

22 For example, during SOL testing season, the
23 school administration, our schedule is adjusted and
24 that block of time is eliminated for multiple days.
25 Or when we have delayed starts or early closures

1 due to weather events, that block is eliminated.
2 So there are a variety of times during the year,
3 you know, weather, of course, is unpredictable, but
4 primarily where standardized measures in the school
5 impact that time.

6 So my concern there was that we needed to
7 establish a schedule from the get-go and be able to
8 implement that with fidelity and that our HOWL time
9 would present some challenges there.

10 So what I commented on is that we would carve
11 that block of time from REDACTED's language arts
12 period. I believe I noted that the process in most
13 middle school language arts classes is to devote a
14 period of time for what they call silent sustained
15 reading. It's a brief period of time where
16 students just read silently, you know, book of
17 their choice. So, you know, there's some
18 flexibility there. You don't have to worry about a
19 student missing instruction. And that we would
20 carve that period of time for her pull-out
21 multisensory intensive instruction during that
22 period at the start of class when other students
23 would be engaged in silent sustained reading. And
24 that we would determine a schedule that would
25 provide REDACTED the opportunity to participate in an

1 elective and PE as everybody else and find other
2 time during the day carved, you know, strategically
3 from her classes, most likely the language arts
4 class, to provide that pull-out instruction.

5 BY MR. RATNER:

6 Q Thank you. There's a -- and your memory is
7 quite good, so I appreciate that very much.

8 I think when you mentioned HOWL, that's the
9 first time I've heard of that. I think the specific
10 reference at the meeting was Mustang Mornings. Is that
11 similar to HOWL time?

12 A You know, most secondary schools have some
13 variation of it, and they all have some catchy name.

14 Q But your recollection is --

15 A I don't remember Mustang Morning, but it
16 sounds like it would be something comparable.

17 Q So I understood, I think, your concern was if
18 we tried to plan during HOWL time, there would be a lot
19 of days where maybe we couldn't do it?

20 A Right.

21 Q Did I summarize that accurately?

22 A Yes.

23 Q And then -- so the School Board didn't end up
24 proposing focused reading or specialized reading?

25 A We did not end up proposing REDACTED -- that REDACTED

1 would receive that specialized reading instruction via
2 the reading elective.

3 Q Right. And so I'd like to focus on just what
4 that would have been so I can better understand it.

5 What exactly at the time, I think will help
6 me, was it the focused or specialized? Or it doesn't
7 really matter?

8 A At that time the course was called Focused
9 Reading, so that's the terminology I would have used.

10 Q And I appreciate that. So what was Focused
11 Reading at that time?

12 A At that time Focused Reading was, again, a
13 specialized reading elective where students -- I mean,
14 the instruction is individualized based on need, which
15 can vary, but it would have been a class where the
16 focus would have been on addressing a student's
17 decoding and encoding deficits if that was the area of
18 struggle. We also had students that participated in
19 that elective at times who had comprehension deficits.

20 The focus of that elective at this point has
21 actually been narrowed and has changed, but that's --
22 but at that point in time, it was -- the application of
23 it was a little bit broader to meet different reading
24 needs.

25 Q So if I understood that correctly, if REDACTED

1 was at Tomahawk Creek today and the team had agreed
2 Focused Reading as it existed in February 2021 was
3 right for her, that might not be available right now;
4 is that what you're saying?

5 A It would be.

6 Q Okay.

7 A It's just called Essential Reading today.

8 Q Got it. Okay.

9 THE HEARING OFFICER: It's called what?

10 THE WITNESS: It's called Essential Reading
11 today. The focus has been narrowed to instruction
12 for students with significant decoding and encoding
13 deficits. It is not -- our focus now is really for
14 students who have more comprehension needs is to
15 provide support in other facets, in other ways.

16 BY MR. RATNER:

17 Q Okay. So you talked about two different
18 things, and, again, I'm not an educator.

19 Did you understand from this meeting that
20 REDACTED had issues or significant issues with decoding and
21 encoding?

22 A I understand that that was -- that REDACTED's
23 identified specific learning disability was in basic
24 reading and reading fluency and written language, and
25 part of the written language deficit was encoding, or

1 spelling.

2 Q And do you recall that the REDACTED actually
3 showed a sample of work at that meeting?

4 A I recall the REDACTED showing something. I
5 can't tell you that I recall what that looked like or
6 what it entailed.

7 Q Understood. But you do remember they held up
8 and do you remember them saying, this is how she's
9 writing, we're concerned, or words to that effect?

10 A I don't recall exactly what Mr. or Mrs. REDACTED
11 said, but I seem to recall them presenting a piece of
12 REDACTED's work.

13 Q Sure. And this was a remote meeting,
14 correct?

15 A It was.

16 Q Virtual or whatever the appropriate word is?

17 A Right.

18 Q During those meetings, the virtual meetings,
19 do IEP team members -- or let me ask you specifically
20 about this meeting.

21 Do you recall IEP team members texting each
22 other or using a chat function to communicate since you
23 weren't all together?

24 A I don't -- I don't recall that.

25 Q I'm just asking.

1 A No.

2 Q Great.

3 A I mean, I -- I wasn't sitting in the room
4 with anybody else, so...

5 Q Right. Which is why you might need to -- if
6 you wanted to get their attention, you might have sent
7 a text, but you're saying you don't recall that
8 happening?

9 A I don't recall.

10 Q Right. So that's all I'm -- I have no reason
11 to think you were. I just was asking.

12 A Okay.

13 Q So you talk about -- is the Focused
14 Reading -- I think there was some discussion about art
15 only being available for nine weeks in sixth grade. Do
16 you remember that?

17 A That is true.

18 Q But the Focused Reading, or whatever it's
19 called now, was a full year?

20 A Well, it could be full year. It ultimately
21 is an IEP team decision.

22 Q Got it.

23 A If the student makes enough progress and the
24 team believes they no longer need that level of
25 specialized intervention, then the team can determine

1 that at any point in time during the year. The student
2 could transition out of that course and participate in
3 something else.

4 Q That makes perfect sense. But if the student
5 needed that class --

6 A It could be --

7 Q -- it could be available?

8 A Yes.

9 Q And do you recall some discussions about
10 pretty significant anxiety that REDACTED was experiencing?

11 A I do recall some discussion related to that.

12 Q So what I was going to say was during the
13 meeting. I mean, the discussion was during the
14 meeting, not that the anxiety was during the meeting?

15 A Right.

16 Q Right. What do you recall about that, the
17 anxiety?

18 A I recall conversation about virtual learning
19 and that that presented some challenges for REDACTED. I
20 can't say that I recall specifics about -- my memory on
21 that piece of things is certainly fuzzier because that
22 wasn't -- I wasn't engaging, I don't believe, in that
23 back and forth.

24 Q Okay. And again, to the best you recall, I
25 understand it was awhile ago, do you recall REDACTED,

1 because of some of the learning disabilities, they
2 reflected she's behind her peers and being recognized
3 as such was causing her anxiety, knowing she was the
4 slowest in the class, for example?

5 MS. OWENS: I'm going to object to that
6 question. He's assuming facts not in evidence,
7 hasn't been testified to, and so it's not a proper
8 question for this witness. There's been no
9 testimony that she's the last in her class or the
10 slowest in her class.

11 THE HEARING OFFICER: I haven't heard anything
12 like that.

13 MS. RATNER: There was.

14 MR. RATNER: So two things on that --

15 THE HEARING OFFICER: Sustained.

16 MR. RATNER: If I may be heard briefly. I
17 don't know why there has to be facts in evidence.
18 She just said she remembered the discussion about
19 it.

20 THE HEARING OFFICER: She remembered somewhat
21 of anxiety.

22 MR. RATNER: Right. And that's what I'd like
23 to explore.

24 THE HEARING OFFICER: There was nothing about
25 her being last in the class.

1 BY MR. RATNER:

2 Q Do you remember any discussion about
3 performing behind her peers?

4 A I seem -- I don't -- I can't say from that
5 meeting I do.

6 Q From another meeting?

7 A I believe when I prepared the IEP for
8 February that I feel like I referenced something in
9 that regard that had been included in the February IEP.

10 Q Okay.

11 THE HEARING OFFICER: About what? I missed
12 what you were referring to.

13 THE WITNESS: May I flip to --

14 MR. RATNER: I'll help you find whatever
15 document.

16 THE WITNESS: Actually, I don't know if that
17 IEP is in evidence.

18 MR. RATNER: Which one?

19 MS. OWENS: February 2022?

20 THE WITNESS: No. The IEP that Tomahawk
21 proposed.

22 MR. RATNER: In 2021?

23 THE WITNESS: I'm sorry. Yes.

24 MS. OWENS: There were two Februaries, so I
25 want to make sure. There's a February 2021 and

1 then there's a February 2022. When you reference
2 the February --

3 THE WITNESS: The February 2022.

4 THE HEARING OFFICER: 2022 IEP.

5 MR. ANDRIANO: School Board 59.

6 THE HEARING OFFICER: Does it make a reference
7 in the IEP to anxiety?

8 THE WITNESS: That's what I'd like to be able
9 to check.

10 MR. RATNER: So it's School Board 59.

11 THE HEARING OFFICER: Let her find it and
12 review it.

13 MR. RATNER: That's what I'm doing. Telling
14 her it's School Board 59 to review.

15 THE HEARING OFFICER: Okay. Let her review
16 it.

17 BY MR. RATNER:

18 Q And just take your time and let me know when
19 you're ready. If you think you might need more than 30
20 seconds, I might take a quick bathroom break.

21 THE HEARING OFFICER: We will take a bathroom
22 break. It's 10:10. Go ahead.

23

24 (Break taken.)

25

1 THE HEARING OFFICER: Everybody here then?

2 MR. RATNER: Yes, ma'am.

3 THE HEARING OFFICER: Let's move forward then.

4 Mr. Ratner was directly examining Ms. Williams.

5 Go ahead.

6 MR. RATNER: Thank you.

7 BY MR. RATNER:

8 Q So Ms. Williams, you asked to take a look at
9 Exhibit 59 in the School Board book. What is that
10 document?

11 A That is an IEP that was prepared and proposed
12 by Tomahawk Creek Middle School in February of this
13 year, February 4th.

14 Q Okay. And that was -- you understood -- were
15 you a part of the drafting process?

16 A Yes.

17 Q Were there meetings for -- an IEP meeting
18 with the team to prepare this?

19 A Yes.

20 Q And Mrs. REDACTED attended one of those
21 meetings, correct?

22 A She did, yes.

23 Q And I'm not trying to -- we can get the exact
24 date, but I believe it was obviously before this came
25 out, right, and it was around the end of January; does

1 that sound right?

2 A I don't recall the exact date.

3 Q That's fine. So what were you looking for in
4 this document?

5 A So on page 5, in the present level, the
6 second to the last paragraph.

7 Q Okay.

8 A Information that was actually included in the
9 February 2021 IEP is referenced, and specifically it
10 says that REDACTED was apologetic when asking for help due
11 to misunderstanding concepts and she engaged in
12 negative self-talk at times when she perceived that her
13 work pace was delayed in comparison to peers.

14 Q So two questions about that: Was that
15 discussed in the 2022 IEP meetings, that anxiety in
16 comparison to peers?

17 A Well, I would assume we discussed it since I
18 specifically referenced it in the IEP.

19 Q So did you draft this document?

20 A Largely.

21 Q Who else had input into it?

22 A I conferred with my special education
23 teacher, who is the multisensory teacher.

24 Q And who was that?

25 A Her name is Davilee Kadrlik. She

1 participated in the IEP meeting.

2 Q I know that's a tough name to spell. So
3 maybe you could help the court reporter with that one.

4 A Sure. Let me double-check myself. Oh, her
5 name is not on the cover. Davilee, D-A-V-I-L-E-E, and
6 her last name is K-A-D-R-L-I-K. I believe I have that
7 correct.

8 Q And I'll confirm that later if -- I know
9 that's just your memory. We will have it written
10 somewhere.

11 So anyway, she had some input into it?

12 A Uh-huh.

13 Q Had she ever met REDACTED?

14 A No.

15 Q Do you know if Mrs. REDACTED ever asked to tour
16 Tomahawk Middle School to see the program that was
17 being proposed for her?

18 A Yes, I'm aware of that.

19 Q Was she allowed to?

20 A My understanding is that she -- a tour was
21 offered but observation of classes was not.

22 Q Okay. Did she ask to observe classes?

23 A That was my understanding, yes.

24 Q But that was not permitted?

25 A From what I know, it was not permitted.

1 Q And these would have been the classes that
2 were proposed; is that what your understanding was?

3 A I assume so. I'm not -- I'm not one hundred
4 percent certain about that.

5 Q So I appreciate you bringing us up to speed
6 on the February 2022 meeting. I'd like to back up a
7 year to back where we were and talk about the
8 February 19, 2021, meeting.

9 I know I'm jumping around. So I apologize if
10 you get confused.

11 A Sure.

12 Q But again --

13 A Could I ask where that is, the IEP, just so I
14 have that in front of me?

15 Q Sure. It's 37 in that same book.

16 A Okay.

17 Q So, again, my questions would be about what
18 you recall about the discussion.

19 Do you recall it was a fairly long meeting?

20 A Yes.

21 Q Okay. Do you recall there being questions
22 about placement that the Parents kept asking, but the
23 team wanted to work through things in a certain order?

24 A Meaning the Parent wanting to interject
25 discussion about placement before we had proceeded

1 through the full IEP and gotten to that point in the
2 traditional manner of the structure of the IEP?

3 Q That's what I mean, and then I'd like to
4 expand on that.

5 Do you recall that?

6 A I don't recall that.

7 Q That's fine. So what do you mean by the
8 traditional structure of the IEP team meeting?

9 A Well, the IEP components are in a certain
10 order.

11 Q Okay.

12 A And the placement is generally the last thing
13 we're talking about.

14 Q Because the prior levels --

15 A Well --

16 Q -- start there; is that right?

17 A The present level --

18 Q The present level. I'm so sorry.

19 A The present levels, the accommodations, the
20 considerations are all things we have to discuss and
21 consider before we can propose services and placement.

22 Q Because those drive it, right?

23 A Yes.

24 Q That's the way the system is meant for; the
25 present levels of performance is what the IEP is

1 supposed to be addressing, right?

2 A Yes.

3 Q Where those deficits are, right?

4 A Uh-huh.

5 Q So we talked about a pattern of strengths and
6 weaknesses.

7 Did REDACTED present in that manner a pattern of
8 strengths and weaknesses?

9 A Yes.

10 Q And have you heard -- are you familiar with
11 the term twice exceptional?

12 A I'm familiar with that term.

13 Q What does it mean to you?

14 A It means someone has been identified as a
15 gifted learner and that at the same time the student
16 has been identified as someone as having some area of
17 weakness that would rise to the level of a disability.

18 Q Okay. And did you agree in February 2021
19 during that IEP meeting that's reflected in Parent --
20 excuse me, School Board 37 that REDACTED was quote-unquote
21 twice exceptional?

22 A I don't recall.

23 Q Okay. Do you remember discussion of her
24 aptitude in advanced math?

25 A I do recall that.

1 Q Okay. And so let me just back up a little
2 bit.

3 Is there anything in the testing or anything
4 in this document that shows her -- I don't know if IQ
5 is the right word. Is there anything in here that
6 shows her IQ score?

7 A I don't see a specific score referenced.

8 Q Where are you looking? Just so I know where
9 it might have been.

10 THE HEARING OFFICER: Are you still on 37?

11 THE WITNESS: Yes, ma'am, 37.

12 THE HEARING OFFICER: Okay.

13 THE WITNESS: Page 2.

14 THE HEARING OFFICER: Okay.

15 THE WITNESS: In the Summary of Test History,
16 the third paragraph.

17 BY MR. RATNER:

18 Q Okay. And the --

19 THE HEARING OFFICER: That's where it would
20 be, isn't it?

21 THE WITNESS: Yes. An IQ score is not
22 included in that data.

23 BY MR. RATNER:

24 Q Would that be part of the Wechsler
25 Abbreviated Scale of Intelligence; is that the IQ?

1 A Yes.

2 Q Okay.

3 A It does note that REDACTED demonstrated superior
4 intellectual abilities.

5 Q And do you remember a discussion of how she
6 had started out fifth grade in advanced math but then
7 moved back to collaborative?

8 A I do recall that.

9 Q Okay. And then do you remember a specific
10 discussion that -- or comments that you made about how
11 she might be able access an advanced math course at
12 Tomahawk Creek and missing instruction and some things
13 like that? Does any of that ring a bell?

14 A I mean, again, like I don't remember
15 specifically what I said, but what I imagine the
16 commentary was, and I believe that we may have touched
17 on this when we met in February of 2022 as well, was
18 that when a student is engaged in comprehensive level
19 math in the fifth grade, whether it's for the full year
20 or part of the year, rather than the advanced --

21 Q And I don't mean to interpret, but what's
22 comprehensive? That's the standard?

23 A Yes. That because of the curriculum
24 alignment there may be curriculum that the student was
25 not exposed to if she then jumps back into the honors

1 level as a sixth grader.

2 Q So we heard some testimony about a program
3 that at least was available at Old Hundred, and my
4 suspicion is it was available countywide, but at least
5 at Old Hundred they had a program wherein fourth and
6 fifth grade students could basically cover three years
7 fourth, fifth and sixth grade math?

8 A Yes.

9 Q Was it your understanding that REDACTED had
10 started performing there and then moved back to
11 comprehensive?

12 A Yes.

13 Q And do you remember from that meeting any of
14 that having to do with anxiety?

15 A I seem to recall some conversation about when
16 she was learning virtually that the -- she was having
17 some more significant struggles with the math content.

18 Q If I say the term pull-out services, is that
19 something you're familiar with?

20 A Uh-huh. Yes.

21 Q Explain for Ms. Freeman what that means
22 succinctly. I don't mean you to give a dissertation.

23 A Sometimes we use that term -- instead of
24 describing services that would be provided in the
25 special educational classroom, pull-out services are

1 services that are provided in the special education
2 setting.

3 Q And was that what was being proposed for
4 REDACTED, pull-out services or --

5 A For what skill?

6 Q Any in this IEP.

7 A In the February of 2021?

8 Q Yes, ma'am.

9 A Let me just double-check myself but --

10 Q Absolutely. And when you find it, let us
11 know where you are, please.

12 A Yes, for reading.

13 Q Okay. What page are you on?

14 A Page 9.

15 Q Page 9. Okay. So you're looking at reading?

16 A Five hours every two weeks in the special
17 education classroom.

18 Q So two questions about this that I always
19 found a little bit confusing, and I think I know the
20 answer, but I'm not a hundred percent sure.

21 Five hours every two weeks, is it accurate to
22 say that equates to 30 minutes a day?

23 A Yes, generally that's what we would do.

24 Q And is the purpose of the two week to say,
25 for example, as you said, if it was supposed to be

1 happening during HOWL time and then there was an
2 assembly, so as long as you get the five hours in two
3 weeks, the Parents can't come in one day and say, hey,
4 I didn't get my 30 minutes today; we got a problem?

5 MS. OWENS: I'm going to object to the
6 question. It sounds to me to be a question
7 assuming facts not in evidence and a compound
8 question. I couldn't follow the entire thing,
9 quite honestly.

10 MR. RATNER: Let me slow down.

11 THE HEARING OFFICER: Sustained. Break it
12 down and slow down.

13 MR. RATNER: Yes, ma'am. I'm a little worried
14 about time because we spent about an hour on the
15 recording.

16 THE HEARING OFFICER: Oh, all right.
17 Ms. Williams needs to be out of here. I think we
18 told her roughly an hour.

19 MR. RATNER: But that was before we had an
20 hour discussion.

21 THE WITNESS: I have a meeting at noon.

22 MS. OWENS: We have been going for an hour.

23 MR. ANDRIANO: We started at 9:48.

24 THE HEARING OFFICER: We've been going for
25 well over an hour.

1 MR. RATNER: I think they just said I started
2 at 9:48. So that's not well over an hour. Am I
3 wrong about that?

4 THE HEARING OFFICER: Close to an hour. I'm
5 sorry.

6 BY MR. RATNER:

7 Q When's your meeting? I want to be mindful of
8 that.

9 A Noon.

10 Q Thank you so much.

11 Do you know -- are you familiar with a
12 program called Lexia?

13 A I'm familiar with it.

14 Q Okay. What is it as you're familiar with it?

15 A It's a supplemental reading intervention. I
16 believe it's more comprehension focused.

17 Q Okay. Did REDACTED, based on anything either
18 that you see in this document or what you heard during
19 the IEP meeting, have an issue with reading
20 comprehension?

21 A No.

22 Q Okay.

23 A I recall that was an area of strength
24 identified when she was assessed through the
25 eligibility process.

1 Q I think there was some discussion -- and I
2 believe this was from you, but I'm not trying to put
3 words in your mouth -- about a program called SPIRE,
4 S-P-I-R-E. Do you recall that discussion during the
5 meeting?

6 A I definitely recall that discussion during
7 the February 2022 meeting.

8 Q Okay.

9 A I don't -- I assume I talked about that. I'm
10 not a hundred percent sure about the February 2021
11 meeting.

12 Q That's more than fair. Based on what you
13 know about REDACTED -- well, first of all, what is SPIRE?

14 A SPIRE is a multisensory reading program
15 that's based on Orton-Gillingham methods. It's
16 systematic data driven. Students progress through
17 eight levels. Each level addresses a variety of skills
18 that tackles phonemic awareness, phonics, word reading,
19 sentence reading, fluency, encoding. It's very data
20 driven. There are a lot of opportunities for skill
21 assessment in short increments and then larger ones
22 throughout the time a student is engaged in that
23 instruction.

24 Q Based on what you know about REDACTED from
25 reading or from this document, are those the types of

1 deficits she has, the ones you just described SPIRE as
2 addressing?

3 A Yes.

4 Q Okay. And SPIRE is offered at Tomahawk Creek
5 Middle School?

6 A It is.

7 Q Does it only start in middle school, SPIRE?

8 A No. I mean, it's one method of multisensory
9 instruction that can be utilized.

10 Q For example, would it be available in fifth
11 grade?

12 A I would think it would be available, yes.

13 Q Do you know if REDACTED ever received SPIRE at
14 Old Hundred Elementary?

15 A I don't know.

16 Q So we talked about pull-out services or
17 serving in the special education setting. That means
18 basically in front of your peers having to walk into a
19 room that's known as the resource room or the special
20 education room, correct?

21 A No.

22 Q No. Okay. Explain that. Is there a
23 resource or special education teacher?

24 A Well, the teacher doesn't have a sign in
25 front of the classroom that says I'm a special

1 education teacher.

2 Q I didn't mean to say that, but is it fair to
3 say that most people know the staff at the school?

4 MS. OWENS: Object to relevancy.

5 THE WITNESS: No.

6 MS. OWENS: Object to relevancy of this line
7 of questioning.

8 MR. RATNER: I'll connect it up. And, again,
9 part of the problem we've had, and we just saw this
10 before, is a lot of objections before questions are
11 even asked.

12 MS. OWENS: I was objecting to the question
13 that you did ask about whether these classes were,
14 you know, for a self-contained student or a student
15 receiving services in the special education setting
16 would be in a class known to be serving students
17 with disabilities. My objection is relevance.

18 MR. RATNER: There is relevance to that if you
19 will allow me to connect it up. It's a
20 foundational question, which --

21 THE HEARING OFFICER: I'll allow it. Go
22 forward. But you said you were going to connect it
23 to something.

24 MR. RATNER: Well, I am if I can go forward.

25 THE HEARING OFFICER: All right.

1 BY MR. RATNER:

2 Q Sitting here today, do you recall any
3 testimony about REDACTED's anxiety of being essentially
4 identified by her peers as someone needing special
5 education help?

6 A I don't remember that.

7 Q Okay.

8 A I mean, obviously I included that information
9 in the present level of the IEP that I developed for --
10 in 2022, but I do not recall at the other meeting in
11 2021 that specific piece of information.

12 Q Okay. So we talked a little bit about
13 pull-out services. Is there also something called
14 push-in services?

15 A Sure.

16 Q So explain that again succinctly for
17 Ms. Freeman.

18 A So that would involve the special education
19 teacher providing services within the general education
20 setting.

21 Q Okay. And how does -- that's -- just
22 briefly, is that collaborative? Or I just don't
23 understand what push-in can look like.

24 A Collaborative is a teaching model.

25 Q Yes.

1 A And the push-in services could be provided
2 through a collaborative teaching model.

3 Q Are there other ways they could be provided?

4 A Sure. The special education teacher could
5 provide those services within the general education
6 setting but not necessarily be in that classroom every
7 day for the full class period.

8 Q Okay. And in that type of situation,
9 students would see another teacher coming in and
10 working with a specific student, correct?

11 A Yes.

12 Q Okay. Do you recall in the February 2021
13 meeting a discussion about, well, these are
14 accommodations and these are services and any
15 accommodation REDACTED needs she can get wherever she is?

16 A I don't recall that specific conversation.

17 Q Okay. Is that an accurate statement that
18 accommodations could be provided in a general education
19 setting?

20 A Yes.

21 Q But that's different than the services,
22 right?

23 A Yes.

24 Q So an accommodation might be a student can
25 use a calculator, for example?

1 A Correct.

2 Q Is that an accommodation that was considered
3 for REDACTED?

4 A I would have to refresh my memory.

5 Q Sure. And when would be a time that that
6 would be an appropriate accommodation, a calculator?

7 A Well, in what's available to me here, it was
8 not included as an accommodation.

9 Q Okay. But so my next question was when would
10 a calculator be an appropriate accommodation for a
11 student with a specific learning disability?

12 A Generally, I -- generally, what we're looking
13 at is a student who has significant math calculation
14 deficits that are a couple of standard deviations from
15 the norm. So you're looking at someone whose math
16 calculation performance is falling within the low range
17 of ability.

18 Q And does that meet REDACTED's description? I'm
19 not sure.

20 A I don't believe it does.

21 Q Would it be reflected in here?

22 A I would have to be able to reference the
23 educational evaluation that was completed.

24 Q I'm so sorry, the one that was completed
25 close in time to this meeting?

1 A Yes.

2 Q Sure. Let me find that for you. Bear with
3 me for just one moment, please.

4 I believe that's tab 24 in that book, and if
5 that's wrong, let me know if that's not what you're
6 looking for. Is that the right document?

7 A It is. Wait a minute. 12/20, I assume this
8 is the most recent one.

9 Q Just prior to the February 2021 meeting?

10 A Yeah.

11 Q So let me know if you see anything about her
12 math performance in there, please.

13 A I do.

14 Q And what page are you on?

15 A I can give you the School Board exhibit.

16 Q That would be great.

17 A 108.

18 Q Got it. Okay. Math facts fluency low?

19 A Yes, but we're looking at the calculations of
20 test score.

21 Q She got a 75?

22 A I have that she's got an 80. Oh, you're
23 looking at the -- you're looking at the cluster score.
24 So the math calculation skills cluster score, that's a
25 combination, I believe, of the calculation and

1 number -- yeah, I'm not sure what the cluster score is
2 a combination of other than the math calculation
3 skills.

4 But at any rate, that was a 75, and the
5 calculation subtest in and of itself was an 80. So
6 that would, you know, typically not be -- those scores
7 would not be deficient enough for us to justify
8 calculator use.

9 Q So let me just make sure I understand this.
10 The average range on this particular test, which I
11 believe is the Woodcock-Johnson; is that right?

12 A Yes.

13 Q And that's the one you said you were familiar
14 with?

15 A Uh-huh.

16 Q I believe you offered some commentary during
17 the meeting about how one part of the math test was
18 timed and one wasn't timed. Does that sound right?

19 A The fluency test was timed.

20 Q Right. And you're familiar with that because
21 you've administered it?

22 A Yes.

23 Q And so the standards -- the average range is
24 90 to 100 with 100 being the mean?

25 A Yes.

1 Q And the standard deviation is 15?

2 A Yes, I believe so, off the top of my head. I
3 mean, I would have to check.

4 Q Well, if you look in the weaknesses, standard
5 scores at or below 84, does that help you agree?

6 A It does. Because that's our standard when
7 we're considering a specific learning disability.

8 Q It's one standard deviation, correct?

9 A Uh-huh.

10 Q So this was more than one standard deviation,
11 the calculation, right, but it wasn't more than two; is
12 that what you're saying?

13 A Right.

14 Q Okay. So fluency, would that be -- math
15 fluency, would that be able to say 9 times 9 is 81 with
16 quote-unquote automaticity?

17 A Yes.

18 Q And that's something REDACTED really struggled
19 in; is that right?

20 A Yes, that's what that score would indicate.

21 Q So a calculator wouldn't assist her? She
22 understands what multiplication is, but she just can't
23 remember what 9 times 9 is?

24 A The calculation score would indicate that
25 her -- she has some skill level there, slight deficit,

1 right, but not that she requires the calculator
2 consistently to do, you know, basic calculations. It's
3 hard for me to know because I wasn't the one that gave
4 this test and so I haven't --

5 Q Yes.

6 A -- been privy to what the results were and
7 what mistakes she made.

8 Q Sure. And that's something that can be
9 useful in assessing the actual student, right, the type
10 of mistakes, how they were made and those sorts of
11 things?

12 A Sure.

13 Q Is that information provided in this
14 document?

15 A In this particular document?

16 Q Yes. I'll save you some time. I don't
17 believe it is, but I'm not trying to put words in your
18 mouth. You know it much better than I do.

19 A I don't see a description of the types of
20 calculations that she made errors with.

21 Q But you would have found that information
22 helpful in making a determination as to what was
23 appropriate for REDACTED?

24 A I mean, it could be one piece of data. But
25 it's not a piece of data I would rely on. I would rely

1 on the routine data that's collected in the classroom
2 to make those decisions.

3 Q Yes, ma'am. So I just want to go back to one
4 thing you said a moment ago.

5 I think what you said was she had a slight
6 deficit in her calculation; is that right?

7 A Uh-huh.

8 Q More than one standard deviation from the
9 mean you consider to be a slight deficit?

10 A Well, when we're looking at -- and not just
11 focused on that one subtest, not the cluster score.
12 When we are considering again whether or not a student
13 meets criteria as a student with a specific learning
14 disability in calculation, if I'm just focused on the
15 calculation subtest in and of itself, we're looking for
16 a standard score of an 84 or lower. So that is not
17 significantly different from -- so, in other words, if
18 an 85 is an area where we would not consider that to be
19 a significant weakness, she was just five points below
20 that. In comparison to the fluency, obviously, you
21 know, the calculations skills were more well developed.

22 Q Sure. But let me ask you something if I
23 could, and you may not be able to answer it.

24 But one of the things you look at with a
25 pattern of strengths and weaknesses, right, is a gap of

1 disconnect between her aptitude and these scores,
2 right?

3 MS. OWENS: I'm going to object to this line
4 of questioning with the witness with regard to a
5 pattern of strengths and weaknesses because those
6 were issues that would have been discussed during
7 an eligibility meeting that she didn't attend. So
8 we've drifted from a calculator accommodation to a
9 general discussion about patterns of strengths and
10 weaknesses. So we would object to that line of
11 questioning with this witness who did not
12 participate in that process.

13 MR. RATNER: If I may respond briefly.

14 THE HEARING OFFICER: Yes, go ahead.

15 MR. RATNER: Great. Thank you. So we see
16 here on this report that we are talking about a
17 pattern of strengths and weaknesses --

18 THE HEARING OFFICER: Which paragraph are you?

19 MR. RATNER: I'm on document 24, School Board,
20 108.

21 THE HEARING OFFICER: Pattern of strengths and
22 weaknesses. Is she qualified to talk about
23 strengths and weaknesses?

24 MR. RATNER: That's what I was about to
25 address. And if I may, she just said she

1 administers the Woodcock-Johnson test, and that's
2 where you get the pattern of the strengths and
3 weaknesses.

4 THE HEARING OFFICER: Right. But you need to
5 qualify her as an expert probably to --

6 MR. RATNER: I don't believe I do.

7 THE HEARING OFFICER: I'll note your
8 exception, but for my purposes, you are going to
9 qualify her as an expert if you want to talk about
10 it.

11 BY MR. RATNER:

12 Q Are you qualified to administer the
13 Woodcock-Johnson test?

14 A I have been trained to administer it.

15 Q Okay. And you do it as part of your
16 professional responsibilities for Chesterfield County
17 Public Schools?

18 A I do.

19 Q Okay. And then do you present those results
20 to IEP teams to make decisions based on those
21 evaluations?

22 A Yes.

23 Q And is that the test that establishes a
24 pattern of strengths and weaknesses?

25 A It is one component of that process.

1 MR. RATNER: I would like to offer
2 Ms. Williams as an expert on the pattern of
3 strengths and weaknesses as established by the
4 Woodcock-Johnson test.

5 THE HEARING OFFICER: Any objection from the
6 school system to this witness's qualification as an
7 expert on the pattern of strengths and weaknesses
8 in the Woodcock-Johnson? I don't think she was
9 qualified as an expert before. I think she -- I
10 did remember that she stated that she was qualified
11 to give certain examinations.

12 MS. OWENS: So this witness participated in
13 this process with regard to REDACTED for purposes of
14 educational programming and planning. She did not
15 participate in this process for REDACTED as an
16 eligibility meeting -- as an eligibility meeting
17 participant.

18 So to the extent that Mr. Ratner is attempting
19 to elicit testimony from this witness about pattern
20 of strengths or weaknesses for information that
21 would have been considered for eligibility, it is
22 not relevant to this particular witness who didn't
23 participate in that process.

24 If he has questions regarding -- furthermore,
25 this witness has already testified that the

1 individual who completed this evaluation was
2 present during the IEP meeting. So she was not
3 there to interpret the results of this -- this
4 witness did not interpret the results of this
5 evaluation.

6 THE HEARING OFFICER: Let me ask you a
7 question. Ms. Williams, were you involved in
8 interpreting REDACTED strengths and weaknesses?

9 THE WITNESS: No.

10 THE HEARING OFFICER: From the
11 Woodcock-Johnson?

12 THE WITNESS: No.

13 MR. RATNER: May I ask a follow-up question?

14 THE HEARING OFFICER: Sure.

15 BY MR. RATNER:

16 Q As a member of the IEP team who proposed the
17 IEP, isn't it your responsibility to consider REDACTED
18 strengths and weaknesses?

19 A We consider strengths and weaknesses, but
20 we're not necessarily reviewing an educational
21 evaluation in its entirety.

22 Q That was not my question.

23 Are you supposed to consider the student's
24 strengths and weaknesses in proposing an IEP?

25 A Yes.

1 Q And one of REDACTED strengths was her superior
2 intellect, correct?

3 A I recall that she had a superior level verbal
4 comprehension score, yes.

5 Q And that was -- that was more than two
6 standard deviations above the norm, correct?

7 A Yes.

8 Q Okay. So when you have someone with aptitude
9 more than two standard deviations above the norm and
10 then you've got a math calculation skill more than one
11 standard deviation below the norm, what does that tell
12 you as a member of REDACTED IEP team?

13 A It tells me that she had a weakness in math
14 calculation as established by the eligibility process
15 that I wasn't part in -- a part of.

16 Q Okay. And nothing more?

17 A It tells me that her verbal skills are a
18 significant strength for her.

19 Q Okay. Let me ask you to take a look at
20 Parent 58. So that's going to be Volume 2.

21 MS. OWENS: Ms. Freeman, we will point out
22 that we are at an hour now for this witness.

23 MR. RATNER: Again --

24 THE HEARING OFFICER: I think it's roughly a
25 few minutes away from when you -- 10:48, I believe,

1 is the final hour.

2 MR. RATNER: Again, Ms. Freeman, Mr. Andriano
3 asked me last night about how much I had. I think
4 we've been over this ad infinitum. We have to be
5 finished by Friday.

6 THE HEARING OFFICER: Right.

7 MR. RATNER: She's got a meeting at noon.

8 THE HEARING OFFICER: Right.

9 MR. RATNER: If I finish up in the next 15
10 minutes, will you be okay? They've got questions,
11 too.

12 THE WITNESS: What time is it?

13 THE HEARING OFFICER: She wants to know what
14 time it is, I think.

15 MR. ANDRIANO: 10:50.

16 MR. RATNER: They've got questions for you,
17 too, though.

18 THE WITNESS: Fifteen minutes, sure.

19 MR. ANDRIANO: Sure.

20 MR. RATNER: When time do you need to leave?

21 THE WITNESS: I need to leave in time to be
22 able to attend that meeting at noon, so I would
23 say --

24 THE HEARING OFFICER: So we better finish up
25 pretty soon. I'll give you five more minutes.

1 MR. RATNER: I think Mr. Andriano just said 15
2 was okay.

3 MR. ANDRIANO: With our cross.

4 MR. RATNER: Great. Five more minutes. Thank
5 you so much.

6 MR. ANDRIANO: You said 58, right.

7 THE HEARING OFFICER: Let's just be done by 11
8 with you. I don't have my watch on.

9 MR. RATNER: Great. Thank you.

10 BY MR. RATNER:

11 Q Tab 58, this is a Tomahawk Creek Middle
12 School Student Course Request Profile Form for the
13 Academic Year 2021-2022.

14 A Uh-huh.

15 Q Is that a document you're familiar with?

16 A Yes.

17 Q And this is for REDACTED, correct?

18 A Yes.

19 THE HEARING OFFICER: Are you in the School
20 Board exhibits?

21 MR. RATNER: No. Parents.

22 THE HEARING OFFICER: Parents 1?

23 MR. RATNER: Parents 2.

24 MS. OWENS: Tab 58?

25 MR. RATNER: Yes.

1 MS. OWENS: Our tab 58 has an April 10, 2019,
2 prior written notice.

3 THE HEARING OFFICER: What exhibit were you
4 on?

5 MR. RATNER: I'm on tab 58. Our exhibit list
6 says what it is. You guys printed it out.

7 BY MR. RATNER:

8 Q Do you have that in front of you?

9 A I do.

10 Q Okay. Great. And I think you said you were
11 familiar with this?

12 A I am.

13 Q These were the courses REDACTED was supposed to
14 take at Tomahawk Creek Middle School, correct?

15 A I assume so. I wouldn't -- you know, the
16 elective selection and things like -- well, really,
17 just the elective selection would be -- it's a
18 process -- last year I don't remember if it was
19 digitally or we were still using paper, but the parents
20 and the student usually select classes and then the
21 counselors put the information in that generates this
22 student course request profile.

23 Q And in --

24 THE HEARING OFFICER: I'm sorry. I didn't get
25 the last of your -- you said that generates

1 something.

2 THE WITNESS: The student course request
3 profile, the document we're looking at.

4 THE HEARING OFFICER: Oh, okay.

5 BY MR. RATNER:

6 Q So during the meeting, were you aware of
7 this? During the February 2021 meeting, were you aware
8 that REDACTED had a profile that had honors science and
9 honors social studies?

10 A Yes.

11 Q Okay. And so she would have been able to
12 access that honors curriculum, right?

13 A Yes.

14 Q And do you remember a discussion with
15 Mrs. REDACTED -- and this goes back to what I was
16 discussing before about the distinction between
17 services and accommodations. Do you remember I asked
18 you about that?

19 A Uh-huh.

20 Q And do you remember a discussion with
21 Mrs. REDACTED during the February 2021 meeting about
22 Tomahawk Creek's students typically with IEPs are
23 typically not served historically or routinely in the
24 honors system, in the honors classes?

25 MS. OWENS: I'm going to object to the

1 relevancy of that question as it pertains to
2 **REDACTED**. That question was not related to --

3 MR. RATNER: It was raised specifically during
4 the IEP meeting about **REDACTED** because **REDACTED**
5 would be in honors classes, and Ms. Williams very
6 candidly said, historically, that is not what we
7 have done.

8 THE HEARING OFFICER: Historically what is not
9 she has done?

10 MR. RATNER: Served students with IEPs in
11 honors classes.

12 BY MR. RATNER:

13 Q Do you recall that, Ms. Williams?

14 MS. OWENS: Ms. Freeman, we still have an
15 objection.

16 MR. RATNER: Great.

17 MS. OWENS: Ms. Freeman, that has nothing to
18 do with **REDACTED**. To the extent that Mr. Ratner
19 has questions about the provision of services or
20 the proposed provision of services for **REDACTED**,
21 certainly he can ask those questions. But a
22 general question about students that's not related
23 to this due process proceeding would not be
24 appropriate.

25 THE HEARING OFFICER: Sustained.

1 BY MR. RATNER:

2 Q Was that discussed during the meeting?

3 MS. OWENS: Was what discussed during the
4 meeting? The objection was sustained.

5 MR. RATNER: I understand that. I'm trying to
6 understand how something discussed during an IEP
7 meeting for REDACTED could possibly not be
8 relevant to this proceeding.

9 THE HEARING OFFICER: Because you included
10 other students, which we've gone over. Do
11 students -- I think the question was something to
12 the effect of, and I don't remember it word for
13 word, but is it your experience that other students
14 who were in honors classes have special education
15 accommodations or services provided during the
16 honors class. Wasn't that the question?

17 MR. RATNER: I don't believe so, but I will
18 rephrase.

19 THE HEARING OFFICER: All right.

20 BY MR. RATNER:

21 Q How did you propose to serve REDACTED in
22 honors science at Tomahawk Creek Middle School?

23 A I don't remember the exact description of how
24 that would be provided because in the IEP we don't
25 write services for science and social studies, so I

1 can't refer to that.

2 Q Is there reading in science? Do you read?

3 A There is reading in science and --

4 Q Is there writing in science?

5 MS. OWENS: I'm sorry. Allow the witness to
6 answer the question.

7 MR. RATNER: It's a "yes" or "no" question. I
8 have limited time.

9 BY MR. RATNER:

10 Q Is there reading in science?

11 MS. OWENS: Then you don't --

12 (Simultaneous speaking.)

13 THE HEARING OFFICER: Let's hear one at a
14 time. I think you had the floor. Go ahead.

15 MS. OWENS: Thank you.

16 Mr. Ratner's basis for cutting off the witness
17 is lack of time. That does not give him the right
18 to not afford a witness the opportunity to fully
19 respond to a question, to cut --

20 MR. RATNER: If I ask --

21 THE HEARING OFFICER: Let her fully state her
22 objection.

23 MR. RATNER: I mean, we have not had an
24 opportunity to state --

25 THE HEARING OFFICER: Hold on. Stop talking.

1 Let her finish.

2 MS. OWENS: I have no further argument.

3 THE HEARING OFFICER: All right. Now you can
4 go on.

5 MR. RATNER: I have limited time. I asked a
6 very clear "yes" or "no" question. Is there
7 reading in science? She answered it.

8 I'm moving on.

9 THE HEARING OFFICER: Okay. And I believe she
10 said --

11 MR. RATNER: "Yes."

12 THE HEARING OFFICER: That's what I thought.

13 MR. RATNER: And I'd like to move on, if I
14 may, because my time is short.

15 THE HEARING OFFICER: Go ahead.

16 BY MR. RATNER:

17 Q Yes or no, is there writing in science?

18 A Yes.

19 Q It's across the entire curriculum, correct?

20 A Yes.

21 Q And wasn't that the biggest concern the
22 REDACTED expressed during the IEP meeting in February
23 2021?

24 A Was what the biggest concern?

25 Q How would she be able to keep up with these

1 classes when she is not able to read and write?

2 MS. OWENS: I'm going to object to the form of
3 that question. He said, "when she is not able to
4 read and write." That question in and of itself
5 assumes facts not in evidence.

6 THE HEARING OFFICER: Sustained.

7 MR. RATNER: I'm sorry, I think I need --

8 THE HEARING OFFICER: Facts not in evidence.
9 No one has said she can't read or write.

10 MR. RATNER: Could you explain to me the facts
11 not in evidence?

12 THE HEARING OFFICER: No. Let's move on.

13 MR. RATNER: You don't understand it?

14 THE HEARING OFFICER: No, I understand plenty.
15 And what you're doing right now is inappropriate.
16 You need to ask this witness another question. I
17 just ruled on her objection, which was based on
18 facts not in evidence, which I don't feel the need
19 to explain to you. I'm certain that you, as a
20 lawyer, know what that rule means.

21 MR. RATNER: So you're admonishing me for
22 asking a question?

23 THE HEARING OFFICER: Please go on. Do not
24 question the Hearing Officer's rulings. That takes
25 up a lot of time, and we have to be through by

1 Friday at 5:00.

2 MR. RATNER: Yes, you've made that very clear.

3 Thank you.

4 MS. OWENS: Let the record reflect that
5 Mr. Ratner is arguing with the Hearing Officer.

6 MR. RATNER: Let the record reflect

7 Ms. Owens --

8 THE HEARING OFFICER: Let the record reflect
9 that he's asking the Hearing Officer to explain the
10 rules as if he's going to put me under the guise of
11 a bar exam or something.

12 Go ahead.

13 BY MR. RATNER:

14 Q Do you recall during the February 2021
15 meeting saying words to the effect of: The schedule is
16 the schedule; that's what we have to deal with?

17 A I don't recall what my exact phrasing was
18 from a meeting a year ago.

19 Q Sure. Does that phrase mean anything to you:
20 The schedule is the schedule?

21 A It may have been in reference to our
22 discussion about the flexibility of the middle school
23 schedule.

24 Q And there's not as much because you have
25 different teachers and different classes compared to

1 elementary school, correct?

2 A The structure of the day is not as fluid or
3 flexible.

4 Q Okay. And was that a concern that was
5 expressed during the meeting by the REDACTED or their
6 representatives?

7 A I don't specifically recall.

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

9 THE HEARING OFFICER: Okay. Thank you very
10 much.

11 Respond to questions from school counsel,
12 please, if you would.

13 MS. OWENS: Yes, ma'am. May we have five
14 minutes? It will be very short.

15 THE HEARING OFFICER: I believe it's 11:00.
16 Did you say 15 minutes for examination?

17 MR. ANDRIANO: Shouldn't take longer than
18 that.

19 THE HEARING OFFICER: How long did you say you
20 needed?

21 MR. ANDRIANO: I'm sorry?

22 THE HEARING OFFICER: How long did you say you
23 needed?

24 MR. ANDRIANO: Just five minutes, please.

25 (Break taken.)

1

2

THE HEARING OFFICER: Let's go back on the
record.

3

4

Let the record reflect that Mr. Ratner just
asked me if I had a hearing issue. I have no
hearing issues or sight issues.

6

7

Did you care to elaborate?

8

MR. RATNER: I wasn't sure you heard her.

9

10

THE HEARING OFFICER: Then you asked me if I
had a problem with my hearing.

11

MR. RATNER: I didn't ask you that.

12

13

THE HEARING OFFICER: I must have misheard
you.

14

MR. RATNER: I think you did.

15

16

THE HEARING OFFICER: Anyway, let's move
forward.

17

18

CROSS-EXAMINATION

19

BY MS. OWENS:

20

Q Good morning. Still morning time,

21

Ms. Williams. I'm LaRana Owens. I just have a few
questions for you.

22

23

You testified earlier about the February 2021

24

IEP meeting that you attended, School Board Exhibit

25

Number 37.

1 Would you agree that the IEP does not call
2 for a particular reading methodology to be provided to
3 REDACTED ?

4 A Yes.

5 Q Okay. And with regard to the services that
6 were being proposed for REDACTED to address her areas of
7 weakness, would this be an IEP that could be
8 implemented at the middle school level?

9 A Yes.

10 Q And specifically I want to turn your
11 attention to page 9 of this exhibit.

12 Mr. Ratner asked you questions about how the
13 reading services could be delivered to REDACTED during the
14 course of the school day.

15 A Uh-huh.

16 Q Would REDACTED be able to receive reading
17 services within the course of the school day in
18 accordance with this IEP?

19 A Yes.

20 Q Would she be able to receive writing services
21 in the course of the school day in accordance with this
22 IEP?

23 A Yes.

24 Q Would she be able to receive study skills in
25 accordance with this IEP?

1 A Yes.

2 Q And what about the math services?

3 A Yes.

4 Q And with regard -- there were also questions
5 asked of you about REDACTED's anxiety -- or reports of
6 anxiety.

7 Do you believe that those reports of anxiety
8 were addressed in that IEP?

9 MR. RATNER: Objection. Calls for a legal
10 conclusion. That's an ultimate issue in this case.

11 MS. OWENS: I'm asking the witness her take on
12 it.

13 MR. RATNER: But she's just one IEP team
14 member. We've had this discussion --

15 THE HEARING OFFICER: Overruled. Go on.

16 MR. RATNER: So you're changing your decision
17 from yesterday?

18 THE HEARING OFFICER: Overruled.

19 Please do not comment or made editorial
20 remarks about the rulings.

21 THE WITNESS: Yes.

22 BY MS. OWENS:

23 Q Thank you. You were also asked questions
24 about the IEP team's discussions about during what
25 course of the school day would REDACTED receive reading

1 services. Do you recall that?

2 A Yes.

3 Q Would you agree that REDACTED -- that the
4 services proposed in this IEP would afford REDACTED an
5 opportunity to receive reading services and participate
6 in PE?

7 A Yes.

8 Q She would be able to receive her IEP services
9 and participate in an elective?

10 A Yes.

11 Q And would you also agree that she would be
12 able to receive her IEP services and participate in
13 honors classes?

14 A Yes.

15 Q You also were asked questions about a
16 calculator accommodation.

17 Do you recall if anyone requested that the
18 IEP team consider adding a calculator accommodation?

19 A I don't recall.

20 Q And would you agree that all students get
21 calculators at the secondary level?

22 A Not in sixth grade.

23 Q Okay. In any event, you don't have any
24 recollection of anyone, including the Parents,
25 requesting an accommodation for a calculator during

1 that February 2021 IEP meeting?

2 A I do not recall that conversation.

3 Q And Mr. Ratner also asked you questions about
4 an educational evaluation and the results of that
5 evaluation, particularly as it pertains to math
6 calculations. Do you recall that?

7 A Yes.

8 Q Would you also agree that that's only one
9 data point that would be reviewed or considered by an
10 IEP team?

11 A Yes.

12 Q And you also indicated that the score that
13 she received on math calculations would not be
14 sufficiently deficient for the IEP team to make a
15 recommendation for an IEP accommodation for a
16 calculator.

17 A Yes.

18 Q Would you agree with that?

19 A Yes.

20 Q Mr. Ratner also asked you questions about
21 REDACTED IQ.

22 Would you agree that she has variability in
23 scores in general?

24 A Yes.

25 Q You were asked questions about the Lexia

1 program. I believe that you mentioned reading
2 comprehension as one of the areas for Lexia?

3 A Uh-huh.

4 Q Would you agree that it also covers phonics
5 and phonological awareness?

6 A I am not familiar enough with the program to
7 comment on the specifics.

8 MR. RATNER: That seems to assume facts not in
9 evidence. We haven't heard any testimony about
10 phonics. Now she said doesn't know. So I don't
11 understand how that's any different.

12 THE HEARING OFFICER: Was there anything -- do
13 you recall whether or not phonics was mentioned
14 before? I thought she mentioned reading
15 comprehension.

16 MS. OWENS: The Lexia program was asked about
17 by Mr. Ratner, so I was exploring the Lexia program
18 with this witness. She's testified that she
19 doesn't know the ins and outs of the program.

20 MR. RATNER: Right. And there was no evidence
21 about the Lexia program having phonics.

22 THE HEARING OFFICER: Okay. Sustained.

23 BY MS. OWENS:

24 Q You were also asked questions about SPIRE.
25 Would you also agree that a variety of

1 methodologies can be used by teachers to deliver
2 instructions to students?

3 A Yes.

4 Q And REDACTED having an IEP would not preclude her
5 from participation in any honors classes; would you
6 agree with that?

7 A Absolutely not -- well, yes, I agree with
8 you.

9 Q You testified earlier that you participated
10 in the development of the June -- excuse me, the
11 February 2022 IEP. Do you recall that?

12 A Yes.

13 Q I have a lot of binders in front of me. I
14 apologize. I'm trying to get to the right one. And
15 that's School Board Exhibit Number 59.

16 MR. RATNER: I'm sorry, what are we looking
17 at?

18 MS. OWENS: School Board Exhibit Number 59.
19 That is the February 2022 IEP.

20 MR. RATNER: Yes, ma'am.

21 BY MS. OWENS:

22 Q And you participated in the IEP meetings
23 where this IEP was developed, correct?

24 A Yes.

25 Q In your opinion, are the goals that were

1 proposed in this IEP sufficiently ambitious for
2 REDACTED ?

3 A Yes.

4 Q Could you briefly describe the goals that
5 were proposed for REDACTED ?

6 MR. RATNER: Objection. This is getting well
7 beyond the scope of the direct examination.

8 THE HEARING OFFICER: I had in my notes that
9 you asked about goals and that she referred to
10 goals in both IEPs. So go ahead.

11 THE WITNESS: There were goals proposed to
12 address REDACTED 's decoding weaknesses by using
13 multisensory instructional approaches.

14 There is a goal to address written language,
15 and that would be more focused on written response,
16 the structure of it, you know, varying the
17 beginnings of her sentence.

18 And then there was also a separate goal that
19 addressed encoding/spelling. And then finally --
20 sorry, not finally. There was also a goal to
21 address math calculation and then a goal to address
22 reading fluency.

23 BY MS. OWENS:

24 Q And would you -- in your opinion, are the
25 accommodations that were proposed for REDACTED appropriate

1 to address her educational needs?

2 MR. RATNER: She has not been qualified as an
3 expert to offer her opinion.

4 THE HEARING OFFICER: I believe you did
5 qualify her as an expert, if I remember correctly.

6 MR. RATNER: That was on --

7 THE HEARING OFFICER: So go ahead.

8 MR. RATNER: That was on the Woodcock-Johnson.

9 THE HEARING OFFICER: Please don't comment.
10 If you have an exception, we will note it.

11 MR. RATNER: That was for the Woodcock-Johnson
12 test. Not on the appropriateness of goals.

13 THE HEARING OFFICER: I believe you asked her
14 general questions yesterday about her
15 qualifications. So in my opinion, she's qualified.
16 Move ahead, please. Overruled.

17 THE WITNESS: Yes.

18 BY MS. OWENS:

19 Q And the services that were proposed by the
20 IEP team, do you believe that those were appropriate
21 services for REDACTED ?

22 A Yes.

23 Q Could you describe what those services were?

24 A The services proposed would provide
25 specialized instruction in reading, both in the special

1 education setting and in the general education setting;
2 for writing in the general education setting; and also
3 for math in the general education setting.

4 Q You also testified that the Parents attended
5 one meeting but not the follow-up IEP meeting; is that
6 accurate?

7 A Yes.

8 Q Were the Parents afforded an opportunity to
9 participate in both IEP meetings?

10 A Yes.

11 Q And when the parent did participate in the
12 IEP meeting, would you agree that the IEP team took
13 into consideration the parental concerns?

14 A Yes.

15 Q And did the IEP team take into consideration
16 the input of other experts in their field of study?

17 A Yes.

18 Q Or their field of expertise? I'm sorry.

19 A Yes.

20 Q In your opinion, would Tomahawk Middle School
21 be able to meet REDACTED educational needs?

22 A Yes, I believe so.

23 Q Could you describe for the Hearing Officer
24 why you believe that.

25 A I believe that because I believe we can

1 provide her an appropriate education. I believe we
2 have the skilled staff and the instructional resources
3 to address her areas of identified weakness. I believe
4 that our school provides her the opportunity to engage
5 with nondisabled peers in the least restrictive
6 environment.

7 MS. OWENS: Thank you, Ms. Williams.

8 I have know further questions for the witness.

9 THE HEARING OFFICER: Any follow-up?

10 MR. RATNER: I do have two brief areas if I
11 have time. Do you still -- I have less than five
12 minutes for you.

13 THE HEARING OFFICER: Okay. Go ahead.

14
15 REDIRECT EXAMINATION

16 BY MR. RATNER:

17 Q So with respect to School Board 59, Ms. Owens
18 asked you -- there were at least two meetings before
19 this document was finalized as a draft; is that right?

20 A Yes.

21 Q Okay. And I think Ms. Owens talked about the
22 Parents attending one but not the second; is that
23 correct?

24 A Yes.

25 Q And the second meeting was on February 4th,

1 2022; is that correct?

2 A I don't remember the exact dates of each
3 meeting.

4 Q Sure. Right. So I would direct your
5 attention to the first page of 59, date of IEP meeting
6 2/4/2022. Do you see that?

7 A Uh-huh.

8 Q Any reason to think that's not accurately
9 reflected?

10 A I would assume that would be the date.

11 Q And are you aware that the REDACTED filed this
12 due process request on February 1st, 2022, so they
13 already had sued the school district at that time?

14 A I believe Mrs. REDACTED informed me of that in
15 an email.

16 Q Okay. Would you agree with me that part of
17 REDACTED unique circumstances that a team should
18 consider in proposing an individualized education
19 program is her superior intellect?

20 A Yes, we should take that into consideration
21 because it was, you know, an identified strength for
22 her verbal comprehension.

23 Q Your testimony is that was her only strength,
24 verbal comprehension?

25 A No. She had numerous areas of strength, but

1 that's the area I recall being in the superior range.

2 Q And she had been identified by Chesterfield
3 County Public Schools as gifted in science, correct?

4 A Incorrect.

5 Q Oh, incorrect?

6 A She was monitored for gifted. She was on
7 monitor status, from what I recall.

8 Q Okay. And that's different than being
9 identified; is that what you're saying?

10 A Yes.

11 Q Okay. Thank you.

12 THE HEARING OFFICER: What's monitored status?

13 THE WITNESS: I'm not an expert on the gifted
14 identification process. It's a little bit out of
15 my wheelhouse. But typically some assessment has
16 occurred for suspicion of giftedness. The school
17 can make a referral. The parent can make a
18 referral. The student, following the assessments
19 that are completed, I believe that the student may
20 show some emerging signs in a certain area. How
21 many they have to show, I'm not certain of. But
22 the results can be that they are identified as
23 gifted in one or more areas or that they aren't at
24 all or that there may be some emerging
25 characteristics in one or more areas that puts them

1 on a monitor status. What that typically means is
2 at a later date at some point, and I'm not sure
3 again of the specifics of how, you know, if a
4 certain number of years in between is required, but
5 they will reassess.

6 BY MR. RATNER:

7 Q Are you finished? I don't want to cut you
8 off.

9 THE HEARING OFFICER: Oh, yeah, I'm finished.

10 MR. RATNER: I was asking the witness. I'm
11 sorry. But then I was going to ask you. So you're
12 finished also?

13 THE HEARING OFFICER: Yes, I'm finished.

14 MR. RATNER: I've got one question left, if I
15 may.

16 THE HEARING OFFICER: Go ahead.

17 BY MR. RATNER:

18 Q Were you aware that REDACTED failed her science
19 SOL in the fifth grade?

20 A Yes.

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

22 MS. OWENS: May I ask a follow-up question?

23 THE HEARING OFFICER: Go ahead.

24

25

1 RECROSS-EXAMINATION

2 BY MS. OWENS:

3 Q Were you aware that REDACTED passed her reading
4 SOL?

5 A Yes.

6 Q Were you aware that she passed her math SOL?

7 A Yes.

8 Q For fifth grade?

9 A Yes.

10 THE HEARING OFFICER: Let me get down all the
11 SOLs she passed. I know I read this at some point
12 before we came, but I have forgotten. I know she
13 got a 422 on -- I'm not certain. I remember that
14 score on one.

15 THE WITNESS: She received --

16 THE HEARING OFFICER: I don't remember all the
17 others.

18 THE WITNESS: I can tell you what they are.

19 THE HEARING OFFICER: Okay. Go ahead.

20 THE WITNESS: It's in the IEP that I proposed.

21 THE HEARING OFFICER: Yeah, that's where I saw
22 it.

23 THE WITNESS: She received a 435 on the math
24 for fifth grade, a 421 for the reading in fifth
25 grade and a 393 for the science in fifth grade.

1 THE HEARING OFFICER: Aren't those all passing
2 scores?

3 THE WITNESS: A 400 is a passing score.

4 THE HEARING OFFICER: I thought it was 3, but
5 all right.

6 MS. OWENS: May I continue?

7 THE HEARING OFFICER: Yes, go ahead.

8 BY MS. OWENS:

9 Q Would you agree that with regard to science
10 that REDACTED missed passing that SOL by approximately one
11 or two questions?

12 A Yes.

13 MS. OWENS: Thank you. I have no further
14 questions.

15 THE HEARING OFFICER: Any follow-up?

16 MR. RATNER: No, ma'am.

17 THE HEARING OFFICER: All right. It sounds to
18 me like we've reached the conclusion, and I'm going
19 to let you go.

20 THE WITNESS: Okay.

21 THE HEARING OFFICER: And do you need to
22 reserve her for any follow-up later or do you want
23 to dismiss her entirely?

24 MS. OWENS: We would like to reserve her.

25 THE HEARING OFFICER: What that means is keep

1 in touch with school counsel. I think this case
2 ends on the 30th of March, so just tentatively keep
3 in touch with them, if you would, please.

4 THE WITNESS: Okay.

5 THE HEARING OFFICER: Thanks so much for your
6 testimony.

7 MR. RATNER: Thank you, Ms. Williams.

8 MS. OWENS: Thank you, Ms. Williams.

9 THE HEARING OFFICER: Okay. Who is our next
10 witness? Do we have any motions in between that we
11 can get rid of while we're asking the next witness
12 to come in?

13 MR. RATNER: Our next witness will be
14 Ms. Thomas, and I don't have any outstanding issues
15 except things I need to discuss with counsel but
16 not with you.

17 THE HEARING OFFICER: Okay.

18 Is that Elizabeth Thomas?

19 MR. RATNER: Correct.

20 THE HEARING OFFICER: Good morning,
21 Ms. Thomas.

22 Would you raise your right hand, please.

23

24 (Witness sworn.)

25

1 THE HEARING OFFICER: Answer questions the
2 Parents' counsel has to be followed up by school
3 counsel questioning. And thank you.

4
5 ELIZABETH THOMAS,
6 having been duly sworn, testified as follows:

7
8 DIRECT EXAMINATION

9 BY MR. RATNER:

10 Q Good morning, Ms. Thomas.

11 A Good morning.

12 Q Again, we've met briefly over the course of
13 this proceeding, and I think we may have been on some
14 calls and/or meetings together. But my name is
15 Todd Ratner, and I represent the REDACTED in this case.

16 When did you first become involved with REDACTED
17 REDACTED, the IEP or anything having to do with the
18 student?

19 A I began in this position in mid-August. I
20 don't know a particular date.

21 Q Sure.

22 A Fall of 2021.

23 Q Let me back up. So August 2021 is when you
24 started in your current role?

25 A Yes.

1 Q And what is that role? I probably should
2 have started there.

3 A Compliance specialist.

4 Q A compliance specialist. Is that a central
5 office position or --

6 A Yes.

7 Q -- are you based in a specific school?

8 A Starting in August, I was based at central
9 office.

10 Q What was your -- did you work for
11 Chesterfield County Public Schools prior to becoming a
12 compliance specialist?

13 A Yes.

14 Q Okay. And what was your role prior to
15 becoming a compliance specialist?

16 A I was a coordinator of special education.

17 Q Okay. And that was at a particular school?

18 A Yes.

19 Q Okay. So just to help me make sure I'm
20 keeping everybody straight, Ms. Williams, who was just
21 here, you were in a similar position that she is in?
22 She is a coordinator of special education; did I
23 understand that right?

24 A Yes.

25 Q Okay. So what school were you responsible

1 for?

2 A James River High School.

3 Q Okay. Had you ever been responsible for
4 middle school prior to assuming this position?

5 A I have not worked in a middle school as a
6 coordinator of special education.

7 Q Have you ever worked directly with REDACTED
8 as a student?

9 A No.

10 Q Okay. Are you -- were you ever a classroom
11 teacher?

12 A Yes.

13 Q Okay. When was that?

14 A I became a classroom teacher in 1996, and I
15 became a CSE in 2017.

16 Q Okay. And CSE is the --

17 A Coordinator of special education.

18 Q Okay. Thank you. And all that was at
19 Chesterfield County Public Schools?

20 A No.

21 Q When did you become a Chesterfield County
22 Public Schools employee?

23 A August of 1998.

24 Q Okay. And so you've been a teacher in
25 Chesterfield?

1 A Yes.

2 Q Okay. Where? Which schools?

3 A Thomas Dale High School and James River High
4 School.

5 Q Were those general education positions or
6 special education positions?

7 A Both of those positions were special
8 education positions.

9 Q What is eval school, E-V-A-L school?

10 A Are you referring -- what are you referring
11 to?

12 Q I'm referring to an email that you sent to
13 Heather Crowder on October 4, 2021, subject: AK needs
14 to be in eval, E-V-A-L, school.

15 A So I believe -- well, okay, eval school is
16 where you would put a student if you need to be able to
17 write a document about them such as a meeting notice or
18 a release of information, but they are not currently
19 enrolled as a Chesterfield student.

20 Q Okay. So let's look at the document. Maybe
21 it will help me understand a little better. I know
22 you've got tons of books there. I would be happy to
23 come and turn you to the right page, if that's okay
24 with you. I'm going to be going to Parents 56, which
25 is in Volume 2.

1 Would you like some water, by the way?

2 A No thank you.

3 Q So 56. I think we're going to stay within
4 this tab, but if I say 66, you understand what I mean?

5 A Yes.

6 Q Thank you.

7 MR. ANDRIANO: Which tab?

8 MR. RATNER: Volume 2, 56.

9 BY MR. RATNER:

10 Q And on the very first page, okay, Ms. Thomas,
11 there's actually two sets of numbers on there, and I
12 apologize if that creates any confusion. The lower
13 number that starts with Parents 750 --

14 A Uh-huh.

15 Q -- those are meant to be consecutive. So I
16 might say to go to 761, and that would be 11 pages
17 later.

18 A Uh-huh.

19 Q But I would like to start on 56, which was
20 the email I was asking you about.

21 A Uh-huh.

22 Q Sorry, for the court reporter, it would be
23 better if you say "yes" instead of uh-huh.

24 A Yes.

25 Q I'm not trying to fuss at you.

1 THE HEARING OFFICER: If you have an
2 admonishment to the witness, direct them to me.

3 MR. RATNER: Oh, I would be happy to.

4 THE HEARING OFFICER: I don't know if
5 admonishment is the proper word.

6 MR. RATNER: I certainly didn't mean it.

7 THE HEARING OFFICER: Directions. I think it
8 would be best if I ask her to say "yes" or "no"
9 instead of shaking your head. It's just a little
10 bit difficult, as Mr. Ratner said, for the court
11 reporter to -- I do it, too, so I understand.

12 THE WITNESS: Yes, ma'am.

13 THE HEARING OFFICER: Okay. Thank you.

14 Go ahead.

15 BY MR. RATNER:

16 Q You've got that document in front of you,
17 correct?

18 A Correct.

19 Q So this is an email as of October 4th, 2021,
20 and some of my questions may seem a little basic, but I
21 need to lay a foundation for this document. So pardon
22 me.

23 Was your email address as of October 4th,
24 2021, Elizabeth_Thomas@CCPSnet.net?

25 A Yes.

1 Q And did you on that date send an email to
2 Heather Crowder?

3 A Yes.

4 Q Who is Heather Crowder?

5 A Heather Crowder is the specialist who handles
6 Virginia IEP, our online IEP system.

7 Q Okay. So I'm not a hundred percent familiar
8 with that. And by specialist, let's start there, what
9 do you mean by specialist?

10 A She works in central office in the Department
11 of Special Education in a particular role.

12 Q Okay. And is that like a technology role
13 because she's maintaining an online system? Just
14 explain what she does.

15 A I don't -- I'm not her supervisor, so I don't
16 know that I can speak to specifics.

17 Q Let me ask a different question and see if it
18 helps me better understand.

19 Why did you send her this email saying AK
20 needs to be in eval school?

21 A The email says that I needed a release of
22 information form and the system generates the release
23 of information form.

24 Q So are you saying REDACTED wasn't in the
25 system because she wasn't enrolled in Chesterfield

1 County Public Schools at the time?

2 A She is in our student information system.

3 However, over the summer of 2021, we separated out the
4 system we use electronically for special education from
5 what we had been using previously.

6 Q Okay. And not -- we can look at the
7 documents. I'm not trying to trip you up. But I
8 noticed that the 2022 IEP looked like it had a little
9 bit slightly different format. Is that because you
10 changed systems?

11 A I would have to look at the documents.

12 Q Sure.

13 A But I think it's accurate to say that
14 documents prior to summer 2021 were written in a
15 different system.

16 Q So it's just different software; it doesn't
17 mean there's anything different about the IEP itself?

18 A I'm not --

19 Q It's just how you created it? I'm sorry I
20 talked over you.

21 A I'm not the technology person.

22 Q Okay. That makes sense. And Ms. Crowder
23 was?

24 A Yes.

25 Q Okay. And who told you to contact

1 Ms. Crowder?

2 A I believe Diane Glover and I had talked about
3 that there had been some ongoing communication between
4 Mrs. REDACTED or Mr. and Mrs. REDACTED and she. I didn't
5 know that much about it, but we were working on
6 addressing Mrs. REDACTED concerns.

7 Q Okay. So Ms. Glover told you to put her in
8 eval school?

9 A No.

10 Q So what did you understand Diane Glover to be
11 asking you to do?

12 A That we needed to address this Parent's
13 concerns.

14 Q And what were the Parent's concerns, as you
15 understood them?

16 A Her concerns were with the progress that REDACTED
17 had made at Old Hundred.

18 Q Okay. And how did putting her in eval school
19 help address those concerns?

20 A I wanted to be able to send a release of
21 information form so that we could get updated
22 information on her progress at The New Community
23 School.

24 Q The school that CCPS feels is not accredited,
25 right?

1 A That's not something I can really speak to.

2 Q Okay. But you were prepared to rely on
3 information they provided?

4 A We wanted an update on how she was
5 progressing.

6 Q And did you tell the Parents that?

7 A I would have to reference the letter.

8 Q Okay. But that's what the release form --
9 you would send it to them; is that correct?

10 A We were asking Mr. and Mrs. REDACTED if we could
11 get information from The New Community School.

12 Q So just -- and I don't mean to drill this
13 down, but where you say I just submitted the Google
14 form, did I read that correctly?

15 A Uh-huh.

16 Q Thank you. What does that mean?

17 MS. OWENS: I am going to object to relevancy
18 of this line of questioning. Don't see the
19 relevance of it.

20 MR. RATNER: I think it's directly relevant.

21 THE HEARING OFFICER: The eval school,
22 evaluation school?

23 MR. RATNER: I mean, this is an email directly
24 related to REDACTED educational progress. I
25 don't see what could be more relevant than that.

1 THE HEARING OFFICER: [As read] When you have
2 a chance, I want to touch base with you regarding
3 **REDACTED**. We need to be prepared to hold an IEP
4 meeting on 1/13/2022. Could you please go ahead
5 and set up a meeting and draft an IEP but hold off
6 on sending -- she's in evaluation school.

7 What is the problem with that email that makes
8 you think that asking a question about -- drawing a
9 negative inference from the fact, if that's what
10 you were trying to do, from this email?

11 MR. RATNER: So, first of all, I don't think
12 the page you just read is the page I'm on. So I'm
13 really confused.

14 THE HEARING OFFICER: Okay. What page are you
15 saying you're on?

16 MR. RATNER: What page were you just reading
17 from?

18 THE HEARING OFFICER: I was reading from 753,
19 which is under -- I thought you said -- maybe I
20 pulled the wrong thing up. 56.

21 MR. RATNER: Yes. And we've been on page 750
22 this whole time.

23 THE HEARING OFFICER: I moved forward because
24 I didn't see the information in that.

25 MR. RATNER: We've been reading from it

1 directly.

2 THE HEARING OFFICER: Okay. [As read] I need
3 another student in eval -- I just submitted the --
4 Is that what you're talking about?

5 MR. RATNER: We just had a 5-minute discussion
6 about it.

7 THE HEARING OFFICER: Okay. I was reading
8 ahead perhaps, but if -- all right. Go ahead.

9 MR. RATNER: I'd like to move for the
10 admission of 750, please.

11 THE HEARING OFFICER: All right. I don't see
12 any problem with that, but did you have an
13 objection to that?

14 MS. OWENS: No, ma'am, no objection to 750.

15 THE HEARING OFFICER: All right.

16
17 (Parents' Exhibit No. 56, Page 000750
18 admitted.)
19

20 MR. RATNER: Now I'd like to go to 753. So I
21 guess you read my mind.

22 BY MR. RATNER:

23 Q Could you turn to 753, please.

24 Do you have that in front of you, Ms. Thomas?

25 A Yes, I do.

1 Q So this is a few months later; is that right?
2 Page 750 was in October 4, 2021. What's the date on
3 753?

4 A It looks like I sent this email on Tuesday,
5 December 14, 2021.

6 Q Okay. And what's the subject line?

7 A AK.

8 Q And you would agree that was referencing
9 REDACTED ?

10 A Yes.

11 Q Okay. And to whom did you send it?

12 A Jennifer Williams.

13 Q And, again, she just testified. You know her
14 to be the special educational coordinator for Tomahawk
15 Creek Middle School; is that correct?

16 A Yes.

17 Q And was that the placement that Chesterfield
18 County Public Schools had proposed for REDACTED for
19 fifth grade -- I'm sorry, for sixth grade?

20 A I was not part of the meeting prior to, so I
21 can't really speak to what was proposed in that
22 meeting. If you want to show me a document, I can look
23 at it, but I can't really speak to that.

24 Q That's a very fair answer. It looks like now
25 you were getting ready to propose another IEP; is that

1 correct?

2 A Yes.

3 Q Okay. And would that one be proposed and
4 implemented at Tomahawk Creek Middle School?

5 A REDACTED was zoned to attend Tomahawk Creek, but
6 we certainly don't predetermine a student's placement.

7 Q That makes sense. So if she had remained in
8 Chesterfield County Public Schools and didn't have an
9 IEP, that would be the school she would typically
10 attend; is that what you're saying?

11 A When I looked up her address, it looked, to
12 me, that she was zoned for Tomahawk Middle.

13 Q I don't know what zoned means. I'm sorry.

14 A There's on -- on the CCPS website, you can
15 type in your address and you can see what school a
16 student would typically attend.

17 Q That's what I thought I was asking, and I'm
18 sorry if I wasn't clear.

19 But you understood, based on where REDACTED
20 lived, would it be right to say Tomahawk Creek Middle
21 School would be her home school; is that a fair
22 characterization? And I don't mean school at home.
23 That would be her school she would normally attend?
24 That's all I'm trying to understand.

25 A Yes.

1 Q Thank you. So on December 14, why did you
2 ask Ms. Williams to go ahead and set up an -- set up
3 the meeting and draft an IEP but hold off on sending
4 the notices for now. She is in evaluation school.

5 Why did you write that to Ms. Williams at
6 that time?

7 A Because REDACTED IEP -- annual IEP had been
8 developed in February of 2021, and it's my nature,
9 especially in the wintertime, if an IEP is due in
10 February, you set it up for January because there can
11 be weather. And then the last two weeks of December,
12 schools typically have winter break. So this is the
13 time of year that we would be preparing, gathering data
14 and looking at getting ready for that late winter IEP.

15 Q Sure. But why wouldn't you want to tell the
16 Parents about it?

17 A Because my understanding is that Diane Glover
18 was having correspondence with the Parents. So I was
19 trying to get the school -- it was time to start just
20 drafting the basic parts of an IEP, and then once we
21 were -- had some dates, we were going to propose dates
22 to the Parents.

23 Q So did Ms. Glover tell you to send this email
24 or to contact Jennifer Williams about the contents of
25 this email?

1 A I don't recall specifically, but I believe
2 Diane Glover and I together had discussed how to best
3 meet **REDACTED** needs.

4 Q And one of those determinations was to put
5 her in eval school?

6 MS. OWENS: I'm going to object to relevancy.
7 That question, I'm not sure what --

8 THE HEARING OFFICER: First of all, I have no
9 idea what eval school is. I don't believe that you
10 asked her to explain what eval school is. Well, I
11 can look back in my notes, but I don't see it.

12 MR. RATNER: I'd be more than happy to have
13 Lori read it back. We spent a good two minutes
14 talking about it.

15 THE HEARING OFFICER: Oh, okay. I get your
16 point, but I don't -- I don't think I had read what
17 eval school is.

18 MR. RATNER: That's right. That's why I'm
19 trying to ask the witness about it to understand.
20 I've never heard the term before.

21 MS. OWENS: Mr. Ratner just stated that he
22 spent two minutes talking about it. So then it's
23 asked and answered. It appears this line of
24 questioning is not relevant.

25 THE HEARING OFFICER: What is the significance

1 of eval school?

2 MR. RATNER: I don't know. That's why I'm
3 asking. And you just said you didn't even know if
4 I asked her about it.

5 THE HEARING OFFICER: I was busy writing. I
6 don't recall -- oh, eval school. Yes, it was
7 asked. Eval school is a school the child is not
8 currently attending. Is that what you said?

9 THE WITNESS: Correct.

10 THE HEARING OFFICER: Sorry. I didn't see
11 that in my notes. So sustained.

12 MR. RATNER: I was talking about a different
13 document when I asked her that.

14 THE HEARING OFFICER: All right. Why don't
15 you give me the different document.

16 MR. RATNER: That was 750 when you had been
17 previously looking at 753.

18 THE HEARING OFFICER: Oh, excuse my mistake.
19 They are almost exactly alike. But I was looking
20 at 753. You're correct.

21 So which document of the nearly exact
22 documents are you talking about?

23 MR. RATNER: Okay. So I just want to make
24 sure --

25 THE HEARING OFFICER: 753?

1 MR. RATNER: No. I had been --

2 THE HEARING OFFICER: Are you still curious
3 about my hearing or something?

4 MR. RATNER: No, not at all. I would like to
5 make sure you're following along.

6 THE HEARING OFFICER: Yeah, I generally have
7 for probably since the first of February.

8 And you're making that quizzical look. Is
9 there a question?

10 MR. RATNER: I'm just concentrating on what
11 you're saying. That's how I listen.

12 THE HEARING OFFICER: Is it necessary to
13 squinch your eyes at me when you ask me a question
14 like that?

15 MR. RATNER: Am I bothering you?

16 THE HEARING OFFICER: No, you're not bothering
17 me at all.

18 What page are you on?

19 MR. RATNER: I was on 750.

20 THE HEARING OFFICER: Okay. Thanks. Let's go
21 there.

22 MR. RATNER: Well, we are past it now.

23 THE HEARING OFFICER: Okay. Fine. So let's
24 flip two pages.

25 MR. RATNER: Okay. And just so the record is

1 clear --

2 THE HEARING OFFICER: I think the record is
3 clear, and we don't need any more commentary.

4 The objection was sustained.

5 Move forward, please.

6 MR. RATNER: Great. I would like to offer
7 into evidence 753.

8 THE HEARING OFFICER: Thanks. Any objection?

9 MS. OWENS: No objection, Ms. Freeman.

10 THE HEARING OFFICER: No objection. So
11 admitted, 753.

12
13 (Parents' Exhibit No. 56, Page 000753
14 admitted.)

15
16 THE HEARING OFFICER: And I honestly do not
17 recall if 750 was admitted. I think it was
18 yesterday.

19 MR. RATNER: No, it was just about five
20 minutes ago.

21 MS. OWENS: Yes.

22 MR. ANDRIANO: Yes.

23 THE HEARING OFFICER: I must not have heard it
24 correctly. Go ahead.

25 MR. RATNER: Thank you.

1 BY MR. RATNER:

2 Q Let's flip to 760. So within the same
3 document, same tab, I should say.

4 Do you have that in front of you?
5 Ms. Thomas, do you have page 760 in front of you?

6 A Yes.

7 Q Great. This appears to be an email chain
8 between you and Carolyn Owens. Do you agree with that?

9 A Yes.

10 Q Okay. Who is Carolyn Owens?

11 A I don't know her exact job title, but it
12 looks like she's the home school support specialist,
13 according to this email.

14 Q And was this email about REDACTED ?

15 A Yes.

16 Q Okay. And you start out on January 10, 2022:
17 Hello, Carolyn, I am working with the family.

18 Were you working with the REDACTED in January
19 2022?

20 A Diane Glover had been in communication with
21 Mr. and Mrs. REDACTED. I don't recall if I had emailed
22 directly with Mrs. REDACTED. I didn't have her email
23 address for awhile. So I think I may have mailed
24 something to her.

25 Q And it says that Ms. Owens is the home school

1 support specialist; is that correct?

2 A As far as I know. But, again, I don't know
3 her exact title, but that's what I'm reading here.

4 Q And do you recall why you sent this email to
5 her on January 10, 2022?

6 A At that time I was supporting Tomahawk Creek
7 Middle School in developing an IEP for a student who
8 hadn't attended their school, in a similar vein as we
9 asked for a release of information to get information
10 from what was her current school, and I was just trying
11 to see if maybe the home school office had anything
12 about her. We were just trying to make sure that we
13 had as much data as we could.

14 Q Why wouldn't you just call the Parents about
15 home school?

16 A It didn't occur to me.

17 Q Oh, okay. Because Ms. Haney -- excuse me.
18 Ms. Owens offered to call the Parents, right? Do you
19 see that in response?

20 A Uh-huh.

21 Q And then you said, No, please don't, just 15
22 or so minutes later; is that right?

23 A Yes, I usually answer my email pretty
24 promptly.

25 Q Why didn't you want Ms. Owens to --

1 Ms. Hansinger -- Hansinger may be her maiden name.
2 That's what's throwing me off, I think --

3 MS. OWENS: Ms. Freeman, the School Board
4 continues to object to the relevancy of this line
5 of questioning. There's no dispute here that the
6 Parent was contacted and that an IEP meeting was
7 scheduled and an IEP was held. And so whether --
8 you know, the back and forth in this email chain
9 has no bearing on that issue. It's not relevant.

10 THE HEARING OFFICER: Do you have the email
11 chain in front of you?

12 THE WITNESS: Yes, ma'am.

13 THE HEARING OFFICER: Okay. And what -- I
14 think counsel's question was about why you didn't
15 call the Parents within that time frame instead
16 of -- I forget exactly how many minutes it was.
17 What did you say? 15 or so? I don't -- I thought
18 she had already answered most of the questions
19 about the email chain.

20 MR. RATNER: I had asked her why she seemed to
21 adamantly not want Ms. Owens to call the Parents.
22 She said, No, please don't.

23 MS. OWENS: And that's -- when Mr. Ratner says
24 that she adamantly said not to call the Parents,
25 the email just says, No, please don't. He's

1 putting his own inflexion and belief into this.

2 THE HEARING OFFICER: Let the record reflect
3 that counsel has asked the question: Why didn't
4 you call the Parents? Parents' counsel has put an
5 inflexion on it that gives a negative connotation.

6 As Ms. Owens pointed out, there are other
7 connotations with which you could have said, please
8 don't.

9 MR. RATNER: That's why I wanted to ask --

10 THE HEARING OFFICER: I want to note that for
11 the record because I think you're trying to make a
12 point here that it was a negative response, at
13 least a questionable response. And I'll take note
14 that I'll look over that email chain very carefully
15 when I go over all of this.

16 MR. RATNER: I appreciate that very much, but
17 we've got the witness right here, if Ms. Owens
18 thinks I mischaracterized it. I asked her why she
19 wrote, please don't.

20 THE HEARING OFFICER: I'm going to ask her how
21 did you say -- if this is permissible, how did you
22 say, please don't? And what was your intent by
23 saying, please don't?

24 THE WITNESS: My intent -- I'm sorry.

25 THE HEARING OFFICER: Go ahead.

1 THE WITNESS: My intent was -- I was making a
2 very brief inquiry just to see if they would have
3 had any information. If she had said, yes, then
4 that's probably when I would have reached out to
5 the Parent because it would have been warranted.
6 But if there was no information about the student,
7 I don't see why I would reach out to a Parent when
8 there's nothing there.

9 THE HEARING OFFICER: Okay. So when you
10 reached out and said -- or when you didn't reach
11 out, when you said, please don't, was there the
12 same connotation that Parents' counsel suggested in
13 that remark? Because there are two ways that --
14 two, possibly more than that, ways that you could
15 say please don't. Please don't. Please don't.
16 Just repeat for me how you said please don't.

17 THE WITNESS: No, please don't.

18 THE HEARING OFFICER: Let the record reflect
19 that the witness responded by saying please don't
20 in a different light than Parents' counsel had
21 suggested.

22 But I will go over the entire email chain and
23 see if I come to a different conclusion about the
24 connotation, counsel's connotation -- the Parents'
25 counsel's connotation versus Ms. Thomas's

1 connotation that she reiterated here.

2 I think we need to move forward.

3 MR. RATNER: I agree. I just wanted to say, I
4 didn't know what the connotation was. That's why I
5 was asking.

6 THE HEARING OFFICER: Well, you were asking
7 the question, and it could have been taken two
8 ways, which wouldn't have been reflected on the
9 record.

10 MR. RATNER: Yes, ma'am.

11 THE HEARING OFFICER: Okay. All right. Move
12 ahead.

13 BY MR. RATNER:

14 Q So you continued working on the IEP proposal
15 for REDACTED, correct?

16 A I don't know that I worked directly on the
17 draft of the IEP. I don't recall specifics, but I
18 think it was more coordinating with Tomahawk Creek
19 Middle.

20 Q Just to be clear, just -- we're talking about
21 just a couple months ago, right?

22 A Yes. But I work with over 60 schools.

23 Q I understand that. I just wanted to make
24 sure I was on the same page with you.

25 So are you the only -- I'm really sorry, tell

1 me your position again. Compliance specialist?

2 A Correct.

3 Q And you're the only one in that role in
4 Chesterfield?

5 A Correct.

6 Q Is that the same position that Ben Lewis
7 previously held?

8 A Correct.

9 Q Okay. Thank you. Just helping me
10 understand.

11 THE HEARING OFFICER: Are you done?

12 MR. RATNER: No. Just taking a sip. Sorry.

13 THE HEARING OFFICER: All right.

14 BY MR. RATNER:

15 Q So let's flip ahead then -- and keep that
16 open, but I'd like you to look at a prior written
17 notice, which is going to be in the School Board book.
18 Do you see the one -- there's three from the Parents
19 and one from the school.

20 Do you have that in front of you?

21 A Yes.

22 Q So tab number 60 in that book. Let me know
23 when you have it. Do you have it?

24 A Yes.

25 Q Okay. Thank you. What is that document?

1 A This is a prior written notice.

2 Q For what student?

3 A REDACTED .

4 Q Okay. And does it refer to a meeting that
5 occurred in January 2022? And I can refer you to a
6 specific area. I just didn't want to put any words in
7 your mouth.

8 A It says the IEP was developed in meetings
9 held on January 24, 2022, and February 4, 2022.

10 Q And did you participate in those meetings?

11 A Yes.

12 Q And did Mrs. REDACTED participate in the first
13 meeting, the January 24, 2022, meeting?

14 A Yes.

15 Q Was that a virtual meeting?

16 A Yes.

17 Q Why was it necessary to call a virtual
18 meeting at that time?

19 A I don't know that it was necessary, but it's
20 become more common since the pandemic.

21 Q Absolutely. Is special education still
22 conducting IEP meetings remotely or virtually at this
23 point?

24 A I don't have any data on the prevalence, but
25 I think we all use virtual meetings in our workplace

1 now.

2 Q Got it. Okay. So back to tab 56 in the
3 Parents' book.

4 And let me ask you while you're getting
5 there, what do you recall about the January 24th, 2022,
6 meeting?

7 A I'm sorry, what tab did you want me on?

8 Q You don't have to get there yet. I jumped
9 around. I'm sorry.

10 What do you recall about the January 24,
11 2022, IEP meeting for REDACTED?

12 A It's hard for me to speak to specifics
13 without referencing a document because, like I said, I
14 support over 60 schools. I talk to coordinators of
15 special education in many different buildings, work
16 with different families who have varying needs. I do
17 remember that Mrs. REDACTED was there and that she -- my
18 impression -- that was my first, like, virtual but more
19 conversational -- that she was very forthright, which I
20 appreciate, and very open to the discussion.

21 Q Okay. And, again, if you want to look at a
22 document to refresh your recollection, but I'm just
23 curious about your comment that Mrs. REDACTED was very
24 forthright and open to the discussion. Could you just
25 elaborate on that a little bit?

1 A I would need to look specifically, but I got
2 the sense that she had been frustrated with the school
3 system previously and she seemed very open -- I don't
4 remember her exact words -- just open to what we had to
5 say.

6 Q Okay. And I may not be saying this
7 correctly, but were you able to complete the entirety
8 of the agenda for the January 24, 2022, meeting in a
9 single session?

10 A I don't remember specifically that we had a
11 set agenda. I do remember that Mrs. REDACTED had shared
12 information from The New Community School and we were
13 very appreciative and we tried to express our
14 appreciation that she was sharing this with us. But
15 she shared it shortly before the meeting, so we didn't
16 have time to fully go back and digest how we wanted to
17 put it in the draft. So we had agreed to have an
18 updated draft after that meeting.

19 Q Okay. I appreciate that very much. Just to
20 be clear, I don't know what happened. I'm not drawing
21 any connotations, whatsoever, as to why the meeting --
22 I just didn't know if it was appropriate to say it was
23 continued or you had a new meeting. That's all I'm
24 getting at.

25 So would it be fair to say it was continued

1 or is that considered a new meeting?

2 A We were still developing REDACTED IEP.

3 Q So it was a continuation of the meeting to
4 develop the same IEP that you were working on?

5 A I don't know that we had a specific word for
6 it.

7 Q Okay. Let me -- there was a question about a
8 document yesterday, and it sounds like you might be
9 able to clear it up. If you can't, you can't.

10 MR. RATNER: If you would just bear with me
11 for one moment, Mr. Freeman.

12 THE HEARING OFFICER: Sure. Go ahead.

13 MR. RATNER: It's going to take me one second
14 to find it.

15 BY MR. RATNER:

16 Q I've got it. Tab 57.

17 A And this is in?

18 Q Same binder that you're in. Just go ahead
19 one tab.

20 A The Parents' Exhibits?

21 Q Yes, ma'am.

22 A Tab 57?

23 Q Yes, ma'am.

24 THE HEARING OFFICER: Which volume?

25 MR. RATNER: Volume 2. You should be in tab

1 56, and now we're going to tab 57.

2 BY MR. RATNER:

3 Q Let me know when you have it. And
4 specifically -- you know how I mentioned those Parents
5 numbers at the bottom?

6 A Yes.

7 Q Start, please, if you could at 784, and I
8 just have a few questions about this.

9 Do you have 784 in front of you?

10 A Yes.

11 Q Okay. And this appears to be an email that
12 Jennifer Williams sent to you and April Lennox
13 forwarding some information about REDACTED; is that
14 correct?

15 A Yes.

16 Q Okay. And it references an IIE. Is that an
17 acronym you're familiar with?

18 A I don't see -- oh, in the attachment?

19 Q Yes.

20 A It's not something that we use in
21 Chesterfield, but I believe, as I shared with
22 Mrs. REDACTED at the first meeting, in my previous role, I
23 had reviewed a similar document for another student.

24 Q Okay. And I really apologize. I skip around
25 a little bit. I tend to think of something and have to

1 say it or I'll forget.

2 But I notice the date of this email is
3 February 2nd, 2022. Do you see that?

4 A Yes.

5 Q Do you recall receiving this email from
6 Ms. Williams?

7 A No, not specifically.

8 Q Okay. That is your email address, though,
9 right? We established that already?

10 A Yes.

11 Q Okay. And I think you said that your
12 practice is to promptly review and respond to emails;
13 is that true?

14 A When I can.

15 Q So any reason to think you didn't receive
16 this and open the attachment?

17 A I believe I probably did.

18 Q Okay. And were you aware that as of
19 February 2, 2022, the REDACTED had already filed this due
20 process proceeding?

21 A I believe Mrs. REDACTED mentioned it very
22 briefly, but she made reference to it when we met in
23 January. I don't remember the exact date it was filed,
24 but she --

25 Q Okay. Would you agree with me you've been

1 following along this legal proceeding?

2 MS. OWENS: I'm going to object --

3 THE HEARING OFFICER: What's the --

4 MS. OWENS: -- to the relevancy of the
5 question. And then it's an unclear question as
6 stated. I'm not sure what "following along this
7 legal proceeding" means.

8 MR. RATNER: I'm very happy to clarify.

9 THE HEARING OFFICER: So two parts of that:
10 What do you mean by "following along"? You know
11 she's been listening on the phone most of the time;
12 is that what you meant?

13 MR. RATNER: Yes. Have you participated --

14 THE HEARING OFFICER: We cleared up one
15 problem. What was the second thing?

16 MS. OWENS: My issue was relevancy.

17 THE HEARING OFFICER: Why -- were you leading
18 into something else?

19 MR. RATNER: I just still don't fully
20 understand why after the REDACTED already filed a
21 lawsuit over the appropriateness of the IEP they
22 were still working so hard to prepare a new IEP.
23 So that's what I'm trying to understand.

24 THE HEARING OFFICER: I thought we cleared
25 that up yesterday. But overruled at this time.

1 Let him ask that question. We've cleared up why
2 she was on the phone so ...

3 MR. ANDRIANO: Ms. Freeman, if I could be
4 heard on that.

5 THE HEARING OFFICER: Yes. Go ahead.

6 MR. ANDRIANO: We did discuss this yesterday.
7 Again, Mr. Ratner takes the position that the
8 School Division doesn't have to continue to develop
9 IEPs.

10 THE HEARING OFFICER: I thought we explained
11 that yesterday; that there's a -- I had a little
12 misconception. I didn't realize that when you
13 enter private school if you've never been
14 identified or there's no supporting disability that
15 you've already been in private school that there's
16 no duty on the school system to follow you if
17 you're a resident and you're a child. In other
18 words, if you've never had an association with the
19 public school system.

20 But, however, you explained, I believe, and
21 correct me if I'm wrong, that when you're -- when
22 you're identified, the school -- isn't there a duty
23 on the school system to follow that child and bring
24 up -- am I saying this correctly?

25 MR. ANDRIANO: Yes.

1 THE HEARING OFFICER: Bring up the data and
2 the evaluations and possibly reconsider all of the
3 options if the data has changed?

4 THE WITNESS: Yes.

5 THE HEARING OFFICER: Is that what you were
6 trying to say?

7 MR. RATNER: I think so. I guess I'm still a
8 little bit confused and just two points, if I may.

9 THE HEARING OFFICER: Yeah, go ahead.

10 MR. RATNER: So Mr. Andriano, I mean, he
11 explained it and I understood what he explained,
12 but he's not under oath. This is a witness. I'm
13 trying to get information about all that.

14 THE HEARING OFFICER: I thought we went
15 through that yesterday with --

16 MS. OWENS: With Ms. Glover.

17 THE HEARING OFFICER: Glover.

18 MR. RATNER: Again, I'll connect it up right
19 now, and hopefully this will make it clear.

20 THE HEARING OFFICER: All right.

21 BY MR. RATNER:

22 Q So it's your testimony, sitting here today,
23 that Chesterfield County Public Schools had an ongoing
24 obligation to REDACTED?

25 A Yes.

1 Q So why was it necessary then for you -- when
2 was her last day in Chesterfield County Public Schools?

3 A I don't know the specific date, but my
4 understanding is that she finished fifth grade at Old
5 Hundred Elementary School June of 2021.

6 Q And you were worried about complying with
7 your obligations under the IDEA for REDACTED -- with
8 respect to REDACTED?

9 MS. OWENS: During what time period?

10 MR. RATNER: From the time she stopped
11 attending Old Hundred Elementary.

12 THE HEARING OFFICER: In June of -- what was
13 it? 2020?

14 THE WITNESS: 2021.

15 THE HEARING OFFICER: 2021. Sorry.

16 THE WITNESS: Her annual IEP had been held in
17 February 2021.

18 BY MR. RATNER:

19 Q Okay. And so why was she placed in eval
20 school in December if you had an ongoing responsibility
21 for her since June? You're the compliance specialist,
22 correct?

23 A Correct.

24 MS. OWENS: Ms. Freeman, this question has
25 been asked and answered. The witness has testified

1 that she was preparing to reach out to the Parent
2 to schedule an annual IEP meeting because her
3 annual was coming up and that she usually starts
4 that process around December for students who need
5 to be -- need to have their annual IEP meeting at
6 the beginning of the --

7 MR. RATNER: I'll move on. She's answered my
8 question.

9 THE HEARING OFFICER: Thank you for
10 answering -- or reminding me about what she said
11 earlier.

12 MR. RATNER: She's answered my question.

13 THE HEARING OFFICER: It's what I have in my
14 notes, but I don't know if I'm expressing it
15 properly.

16 So let's move on.

17 MR. RATNER: Yeah, she's answered my question.

18 THE HEARING OFFICER: Okay.

19 BY MR. RATNER:

20 Q So now back to -- we were on 784, and your
21 recollection is receiving this email? I'm not trying
22 to put words in your mouth.

23 A Like I said, I receive many emails. I don't
24 remember this one specifically, but I believe it refers
25 to the IEP document from New Community.

1 Q Did you ever, whether it was part of
2 reviewing this email or otherwise, review the IIE
3 document for REDACTED ?

4 A I did, but I don't remember specifics about
5 it.

6 Q So that's what I'd like to ask you about, if
7 I could, which is pages 785 through 790.

8 Do you recognize that document?

9 A I don't know that I recognize page 790.

10 Q Okay. So you recognize 785 through 789, but
11 you're not sure about 790?

12 A Yes.

13 Q Okay. 790, on its face, says it is Standard
14 Score Equivalencies. Am I reading that correctly?

15 A Yes.

16 Q Okay. Are there references to standard
17 scores in the pages you do recognize?

18 A I would have to read through this more
19 carefully.

20 Q Please go ahead and do.

21 MR. RATNER: And while she's doing that,
22 Ms. Freeman, may I have a quick restroom break?

23 THE HEARING OFFICER: Yes. Go ahead. Five
24 minutes.

25

1 (Break taken.)

2

3 THE HEARING OFFICER: Are we ready?

4 MR. RATNER: I'm ready.

5 THE HEARING OFFICER: Go ahead.

6 BY MR. RATNER:

7 Q Ms. Thomas, while we were on the break, did
8 you have an opportunity to take a look at pages 785
9 through 789?

10 A Yes.

11 Q Okay. And my question before the break
12 was -- which you said you wanted to look at, and I
13 don't mean to say it verbatim, but it was something to
14 the effect of did those pages reference standard
15 scores?

16 A I see references to percentile scores on
17 page 786.

18 Q 786. Where are you looking? Oh, far column,
19 far right side?

20 A Yes.

21 Q Thank you. I'm not familiar with the term --
22 is it Stanine?

23 A Stanine.

24 Q S-T-A-N-I-N-E. Stanine is how you pronounce
25 that?

1 A Yes.

2 Q What is that?

3 A It's another way of measuring student
4 progress, but I'm not a diagnostician or a
5 psychologist.

6 Q I'm not going to ask you about it. I just
7 wasn't familiar with the term. And if you're not,
8 that's okay, too, but that's all I wanted to know.

9 So having looked -- seeing the percentile
10 scores in there, does that change your recollection as
11 to whether or not the Standard Score Equivalencies was
12 attached to the rest of these pages and to the email?

13 A I don't recollect this document. I do
14 remember in the first meeting that we were trying to
15 see how REDACTED New Community grades translated over.
16 So I may have looked at this and thought that's what
17 this was.

18 Q Okay. So let me, just to be clear, because
19 you think this wasn't a part of that same attachment or
20 you're just not sure?

21 A I'm not sure.

22 MR. RATNER: Okay. So Ms. Freeman, just
23 briefly. This is what I've been trying to work out
24 with counsel, and hopefully we will work it out.
25 So these are School Board documents that we

1 received.

2 THE HEARING OFFICER: Okay.

3 MR. RATNER: They were produced to us as email
4 extracts, electronic files. One file which was
5 Bates labeled CCPS REDACTED 001153 --

6 THE HEARING OFFICER: Wait a minute. Say that
7 again.

8 MR. RATNER: Yes, ma'am.

9 THE HEARING OFFICER: C --

10 MR. RATNER: CCPS.

11 THE HEARING OFFICER: F, as in Fred?

12 MR. RATNER: Sam. Chesterfield County Public
13 Schools REDACTED underscore 001153.

14 THE HEARING OFFICER: What would you like me
15 to do with it?

16 MR. RATNER: I'm going to tell you. So that's
17 what's marked as 784.

18 THE HEARING OFFICER: Right. Okay.

19 MR. RATNER: That was an email that says it
20 has an attachment. Do you see where it says it has
21 an attachment?

22 THE HEARING OFFICER: Let me get my glasses
23 on.

24 MR. RATNER: Sure. It's at the top.

25 THE HEARING OFFICER: Oh, yeah, okay. So

1 what's --

2 MR. RATNER: If I may.

3 THE HEARING OFFICER: Go ahead.

4 MR. RATNER: So then the next consecutively
5 numbered documents that we received from
6 Chesterfield County Public Schools as a production
7 of their emails was one single file 001154 through
8 001159. Those are the pages that I've labeled 785
9 through 790. And so this is a business record of
10 Chesterfield County Public Schools. And if people
11 just say, well, I don't know if this was attached
12 or not, I don't know how I can otherwise prove it.
13 I don't think it should be the Parents'
14 responsibility to have to prove how they maintained
15 their records.

16 THE HEARING OFFICER: No, it's not. But --

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

18 THE HEARING OFFICER: Yes. Go ahead.

19 MR. ANDRIANO: Would it be okay if I addressed
20 Mr. Ratner?

21 THE HEARING OFFICER: Sure. Go ahead.

22 MR. ANDRIANO: This is the document the second
23 witness who said --

24 THE HEARING OFFICER: Let the record reflect
25 what document you're talking about. I can't see

1 that document from here. Is it the whole document
2 to which he just referred?

3 MR. ANDRIANO: Yes, it is.

4 THE HEARING OFFICER: CCPS numbers --

5 MR. ANDRIANO: Parents' 000784 through
6 Parents' 000789. The document in question is
7 Parents' 000790. And two witnesses now have said,
8 I don't recall if that was part of the email that
9 Mrs. REDACTED had shared with --

10 MR. RATNER: Ms. Williams.

11 MR. ANDRIANO: Ms. Williams. Thank you.

12 MR. RATNER: Sure.

13 MR. ANDRIANO: So Mr. Ratner --

14 THE HEARING OFFICER: And a prior witness --

15 MR. ANDRIANO: Mr. Ratner emailed me this
16 morning because this was the document in question.
17 I said, I'm happy to look into it. But now we have
18 two witnesses who have said they don't recall if
19 that particular document was in the email that
20 Mrs. REDACTED had said. We don't even -- can you tell
21 me where this document came from?

22 MR. RATNER: I told you when I attached it to
23 the email I sent you. That's the point I'm trying
24 to make.

25 MR. ANDRIANO: But --

1 MR. RATNER: If I may. You asked me a
2 question.

3 THE HEARING OFFICER: Let him finish.

4 MR. RATNER: So if I may, the email is the
5 email. Right? We asked for the emails. What was
6 attached is what was attached, whether she
7 remembered it or not --

8 THE HEARING OFFICER: What's the significance
9 of that whether or not the attachment was attached?
10 Just tell me the point you're trying to prove.

11 MR. RATNER: I'd like it in the record.

12 THE HEARING OFFICER: Oh, you just want it in
13 the record?

14 MR. RATNER: They objected to it coming in.
15 That's all.

16 THE HEARING OFFICER: And why do you object to
17 it?

18 MR. ANDRIANO: Because two witnesses have now
19 said they don't recall --

20 THE HEARING OFFICER: Because two witnesses
21 said they don't recall seeing it.

22 MR. ANDRIANO: But, Ms. Freeman, I said, we're
23 happy to look into it and we can try to resolve
24 this. I don't know why it keeps coming up, because
25 I told him --

1 THE HEARING OFFICER: Why don't we reserve
2 that because it's taking up a lot of time?

3 MR. RATNER: I do appreciate that but --

4 THE HEARING OFFICER: I understand what you're
5 saying and sorry for not understanding what you
6 were doing with the numbering between the two, your
7 Parents' exhibit numbering and then the point you
8 were trying to make with the exhibit above that
9 having come from the school system with the
10 numbering being the same and all of that.

11 MR. RATNER: My point would simply be that I
12 don't understand why in the production of emails
13 somebody would take a separate page that wasn't
14 included and combine it into an attachment. All we
15 want is it in the record, whether or not she
16 remembers it.

17 THE HEARING OFFICER: But for my purpose, if
18 we can just have you both discuss that and just
19 tell me what your resolution is. I don't believe
20 she recognized it either. Did you?

21 MR. RATNER: No, she didn't. So
22 Mr. Andriano's point was why did I ask her.
23 Because we haven't worked it out and she's here so
24 I thought I would ask her. But she doesn't
25 remember either, so now we are going to move.

1 THE HEARING OFFICER: Let's move on with
2 Ms. Thomas.

3 MR. RATNER: Thank you so much.

4 THE HEARING OFFICER: I think you were still
5 on your direct. Go ahead.

6 BY MR. RATNER:

7 Q Back to the tab that has your emails, which I
8 believe was 56, so Volume 2, 56 -- and I lost my place
9 a little, so I apologize, but I believe we were on --
10 we were on 770. Does that sound right to you?

11 A I don't know where we were. You had me in
12 another book.

13 Q That's fair. Would you please turn to 770.

14 And if I've already covered this, somebody
15 please stop me.

16 Do you have that in front of you?

17 A Yes.

18 Q Okay. This is an email that you sent to
19 Ms. Williams about REDACTED draft IEP, correct?

20 A Yes.

21 Q Okay. And we looked at it a moment ago.
22 You're welcome to flip back, but that's what keeps --
23 there was an IEP meeting on January 24th, 2022.

24 Do you recall that?

25 A I don't recall the specific date.

1 Q Do you want to look again? And then I would
2 ask you to please try to --

3 A What page am I looking at?

4 MR. RATNER: Could we stipulate to that; that
5 there was an IEP meeting on January 24, 2022?

6 MS. OWENS: Yes, there was an IEP meeting that
7 happened on that day.

8 MR. RATNER: Great.

9 THE HEARING OFFICER: Okay. Let's make the
10 stipulation clearer for the court reporter. You
11 want to say the --

12 MR. RATNER: I will.

13 THE HEARING OFFICER: Okay. Go ahead.

14 MR. RATNER: And if I misstate it, correct me.

15 The parties have stipulated that there was an
16 IEP meeting held for REDACTED on January 24,
17 2022.

18 MS. OWENS: That did not complete.

19 MR. RATNER: Finish then.

20 MS. OWENS: That did not -- the IEP meeting
21 happened on January 24 of 2022 and was continued to
22 February 4, 2022.

23 MR. RATNER: I'm so sorry. I thought you were
24 saying that I did not complete. You were adding
25 that the -- so let me restate it so it's clear.

1 The parties have stipulated that there was an
2 IEP meeting for **REDACTED** on January 24, 2022, and
3 that meeting did not complete.

4 Could we further stipulate that the team
5 reconvened on February 4, 2022?

6 MS. OWENS: Yes.

7 MR. RATNER: Okay. Great.

8 BY MR. RATNER:

9 Q Ms. Thomas, did you hear that we are in
10 agreement that there was a meeting on the 24th and then
11 again on February 4th?

12 A Yes.

13 Q And if those are, in fact, the correct dates,
14 did you participate in both of those meetings?

15 A Yes.

16 Q Okay. Thank you. So back to 770, this is
17 the day after that meeting on January 24, 2022,
18 correct?

19 A Yes.

20 Q Okay. What was the purpose of sending this
21 email to Jennifer Williams?

22 A I don't recall exactly. I send a lot of
23 emails as follow-ups after meetings.

24 Q Was there any particular urgency to getting
25 this draft completed?

1 A We just -- we needed to continue the meeting,
2 so it's just a typical, gentle reminder that -- schools
3 have lots of students and --

4 Q Sure. Forgive my ignorance. This is an
5 honest question. I'm not trying to trick you.

6 When you talk about the annual IEP date, does
7 that -- is that determined by the date the parent
8 approves the IEP?

9 A Typically the date of the IEP is the date
10 that's on the document; however, it would be
11 implemented when the parents sign it.

12 Q But for purposes of proposing a new one, you
13 would go by the date of the document; is that what
14 you're saying?

15 A Yes.

16 Q Okay. And are you aware that the date of the
17 last IEP for Ms. REDACTED -- REDACTED, that is, not
18 Mrs. REDACTED, was February 19th, 2021? I would be happy
19 to point you to it in the book.

20 A I just knew February 2021. And, again, I'm
21 seasoned, I've known for years that we have to close
22 down the School Division for two weeks in January, so
23 we typically move those meetings up.

24 MR. RATNER: Thank you. I would like to move
25 for the admission of 770, Parents' 770.

1 MS. OWENS: No objection.

2 THE HEARING OFFICER: Okay. Parents' 770 --
3 Volume 2, page 770 is admitted.

4
5 (Parents' Exhibit No. 56, Page 000770
6 admitted.)

7

8 BY MR. RATNER:

9 Q Let's flip to 771, please. What is this
10 document?

11 A It looks like emails between Jennifer
12 Williams and me.

13 Q About whom?

14 A REDACTED .

15 Q And what was the nature of the communication?

16 A I don't recall specifically, but this is just
17 a routine email between coordinator of special
18 education, a CSE, and then when I'm involved, just
19 supporting the school, making sure that things get done
20 in a timely manner.

21 Q Was there any urgency to get this meeting
22 scheduled on or before February 1st?

23 A Wanted to have a follow-up meeting and get
24 the IEP written.

25 MR. RATNER: I'd like to move 7 -- Parents'

1 771 into evidence, please.

2 THE HEARING OFFICER: Any objection?

3 MS. OWENS: No objection.

4 THE HEARING OFFICER: Parents Volume 2, 56 at
5 771 is admitted.

6

7 (Parents' Exhibit No. 56, Page 000771
8 admitted.)

9

10 BY MR. RATNER:

11 Q Let's go to 772, please. I know this is a
12 little tedious. I've got about five more pages of
13 this.

14 Do you have that document in front of you?

15 A Yes, I do.

16 Q So that's less than 24 hours from 771. Do
17 you agree with me? You can compare them.

18 A Yes.

19 Q Okay. And you're following up with
20 Ms. Williams again about hearing back from the REDACTED
21 about a meeting on Friday, February 4th.

22 Am I reading that accurately?

23 A I don't know what Friday I'm referencing, but
24 I think we can infer that, yes.

25 Q And, again, was there any urgency as to why

1 you're continuing to follow up?

2 A This is a typical back and forth as far as
3 just making sure that we're in compliance. It's
4 wintertime.

5 Q But you just testified earlier you've got 62
6 other schools; is that right?

7 A Yes.

8 Q How many students have IEPs? I think the
9 testimony was over 8,000.

10 A Yes.

11 Q Were you giving this much attention to -- was
12 there a unique focus on REDACTED during this period?

13 MS. OWENS: I object to the relevancy of that
14 question.

15 THE HEARING OFFICER: Why is it necessary to
16 know if there was a unique reason to be focused on
17 REDACTED on February 2, 2022?

18 MR. RATNER: Because what we see here is a --

19 THE HEARING OFFICER: Well, you were asking
20 that question. Go ahead.

21 MR. RATNER: I'm sorry, which one? I was
22 asking her a question, and I thought you wanted me
23 to answer why --

24 THE HEARING OFFICER: Why is that relevant?

25 MR. RATNER: Right. Because what we see here

1 is the Parents have made it clear that they are
2 about to file due process, and it seems to me a lot
3 of attention is being paid to getting this proposed
4 IEP meeting held. I'm just trying to understand if
5 there was a particular urgency for Chesterfield
6 County Public Schools to do that. I'm not making
7 any inferences. I'm just asking.

8 THE HEARING OFFICER: But didn't she answer
9 that the urgency was about follow up for the
10 proposed IEP -- I hope I'm saying that correctly --
11 that they were getting ready to participate in?

12 MR. RATNER: I guess. There's more emails
13 about it.

14 THE HEARING OFFICER: Isn't that asked and
15 answered?

16 MR. RATNER: I mean, it was about a different
17 email. There's email after email after email about
18 it.

19 THE HEARING OFFICER: Have you seen all these
20 emails that he's talking about?

21 THE WITNESS: Yes, ma'am.

22 THE HEARING OFFICER: Were these emails
23 directed towards the IEP meeting that was coming
24 up? I'm not looking at every single one.

25 MR. RATNER: We were on 772, and I was going

1 to continue with 73, 74, 75 and 76.

2 THE HEARING OFFICER: Is it okay to just sort
3 of include them together, 773 to -- or not?

4 MR. RATNER: It's fine with me. We've gotten
5 so many objections on everything. That's what I
6 was just trying to avoid.

7 MR. ANDRIANO: I --

8 THE HEARING OFFICER: I'm sorry. Go ahead.

9 MR. ANDRIANO: No, it's okay.

10 THE HEARING OFFICER: You are talking all the
11 way to 777?

12 MR. RATNER: 776 would be the last one.

13 THE HEARING OFFICER: 776. All right.

14 MR. RATNER: And there are two in particular.

15 THE HEARING OFFICER: Which are?

16 MR. RATNER: Actually, all four of those are
17 relevant because they introduce a new person into
18 the discussion.

19 THE HEARING OFFICER: Okay.

20 MR. RATNER: So if I could just continue?

21 THE HEARING OFFICER: I'll overrule at this
22 time.

23 Do you have any objection to admitting 773 to
24 776, I believe you said, if I heard you correctly?

25 MR. RATNER: Yes, ma'am.

1 MS. OWENS: My objection to these exhibits,
2 Ms. Freeman, is with regard to relevancy. It's not
3 relevant to any of the issues that are to be --

4 THE HEARING OFFICER: I don't understand the
5 relevancy either. I think your assertion was
6 something to the effect of you wanted to know why
7 there was an urgency.

8 MR. RATNER: And now I'd like to know why --
9 what appears to be for the first time, and I don't
10 know that, so I would like to explore -- why they
11 are bringing April Lennox, the dyslexia specialist,
12 into the discussion. That happens on 773.

13 THE HEARING OFFICER: Well, I guess you could
14 ask her why Ms. Lennox was brought into the
15 discussion, and we haven't admitted those exhibits
16 yet, so I think that's a permissible question.

17 MR. RATNER: That was my intention.

18 THE HEARING OFFICER: Okay. Go ahead.

19 MR. RATNER: So may I refer to 773 even though
20 it's not in evidence yet?

21 THE HEARING OFFICER: Oh, yes.

22 MR. RATNER: Okay. Thank you.

23 BY MR. RATNER:

24 Q Please look at 773. This again is, again,
25 less than 24 hours from the previous email, correct?

1 A I would have to look at the date stamps, but
2 they are all around the same time.

3 Q I mean, it's just one page back. Do you
4 agree --

5 A Yeah, so we had a meeting. We were revising
6 the draft IEP, and we were getting ready for the second
7 meeting.

8 Q Okay. And on February 2nd with subject AK
9 part 2, you're asking Ms. Williams to provide
10 information to April Lennox, correct?

11 A Yes.

12 Q And you cc'd Ms. Lennox on the email,
13 correct?

14 A Yes.

15 Q And you asked for someone at Tomahawk Creek
16 Middle School to scan the evaluations and share them
17 with April Lennox and me.

18 Did I read that correctly?

19 A Yes.

20 Q At that point did you know that April Lennox
21 did not, in fact, have the evaluations? Is that why
22 you were asking them to be shared?

23 A I don't recall the specifics of it.

24 Q Okay. So you don't remember why you asked
25 them to be shared with April Lennox at that time?

1 A The issue that we were having where I wanted
2 April to help me support the school was in writing IEP
3 goals for a student -- and we were appreciative that
4 Mrs. REDACTED had shared the IEP with us.

5 Q Yes.

6 A That was very helpful. And she had shared, I
7 think, the report card with us.

8 Q Okay.

9 A But we wanted to make sure that we were
10 proposing appropriate goals.

11 Q Okay. And had Ms. Lennox, to your knowledge,
12 ever been asked to support the school for the
13 development of an IEP for REDACTED?

14 A Ms. Lennox is in a similar position to me.
15 Like she supports over 60 schools. I think you said 62
16 awhile ago. I think it's actually 64 with one more
17 next year, to make sure I say it right.

18 Q That's great. So there's one dyslexia
19 specialist for the entire county?

20 A There are reading specialists at individual
21 schools.

22 Q But Ms. Lennox is not a reading specialist.
23 She's the dyslexia specialist; is that right?

24 A That's my understanding, yes.

25 Q And she's the only one of her kind in

1 Chesterfield County Public Schools?

2 A Yes.

3 Q Like a tigger, T-I-G-G-E-R, unique and
4 wonderful thing? She's the only one?

5 A Right.

6 Q So your testimony is you don't recall why you
7 sent this email on February 2nd?

8 A I asked April to help me support Tomahawk
9 Creek in developing or revising, getting another set of
10 eyes on the goals.

11 Q Can you tell me about that?

12 THE HEARING OFFICER: Another set of eyes on?

13 THE WITNESS: The goals of the draft IEP.

14 BY MR. RATNER:

15 Q When did you first ask Ms. Lennox to do that?

16 A I don't recall.

17 Q Okay. Can you say if it was months before
18 this email? Days?

19 A Either January 2022 or February 2022.

20 Q Okay. Well, this is February 2.

21 A Right.

22 Q So at the earliest it was just a few days
23 before? That's what I'm trying to understand.

24 A I honestly don't remember. I was supporting
25 Tomahawk Creek in writing an IEP, and Ms. Lennox is

1 very knowledgeable of instruction.

2 MR. RATNER: Okay. So I'd like to move for
3 the admission of 773.

4 THE HEARING OFFICER: Any objection?

5 MS. OWENS: No objection.

6
7 (Parents' Exhibit No. 56, Page 000773
8 admitted.)

9
10 MS. OWENS: I still have an ongoing objection
11 to these documents with regard to relevancy. I
12 don't think that they are relevant to the issues
13 before the hearing officer at all.

14 MR. RATNER: We think they do, and I think
15 you've ruled on --

16 MR. ANDRIANO: But --

17 THE HEARING OFFICER: I can't listen to --

18
19 (Simultaneous speaking.)

20
21 MR. RATNER: I'm so sorry.

22 THE HEARING OFFICER: One at a time.

23 MR. RATNER: If I may.

24 THE HEARING OFFICER: Go ahead.

25 MR. RATNER: I mean, we talked about I could

1 question about why April Lennox was involved, and I
2 thought you overruled their objection on that as it
3 was relevant. So that's why I'm moving it into
4 evidence.

5 THE HEARING OFFICER: Well, she was explaining
6 why she was trying to, but I don't think she
7 remembers specifically a lot of detail. But she
8 did remember that generally she wanted to find out
9 about goals -- clarifying goals and she's an
10 excellent writer of IEPs, I think you said --

11 THE WITNESS: Yes.

12 THE HEARING OFFICER: -- in that category.
13 And you mentioned dyslexia. I have a -- but let me
14 attend to the objection now.

15 So go ahead. I'm sorry, Ms. Owens.

16 MS. OWENS: In addition --

17 THE HEARING OFFICER: You have on ongoing
18 relevancy objection?

19 MS. OWENS: Ongoing objection with regard to
20 relevancy.

21 THE HEARING OFFICER: All right. Go ahead.

22 MS. OWENS: But I believe that Ms. Thomas also
23 testified that Ms. Lennox is in a similar position
24 as she is in supporting schools with writing and
25 developing IEP goals. It's my understanding that

1 Ms. Lennox is also a special education
2 instructional specialist. So she is not just a
3 person who works with students who may have
4 dyslexia. She's a dyslexia adviser, but she's also
5 a special education instructional specialist for
6 the division.

7 MR. RATNER: I definitely did not mean to
8 mischaracterize her title, and I will be happy to
9 refer to her appropriately. I assume she's going
10 to testify and all of that will come in. But I
11 will still stipulate to her titles. If I
12 mischaracterized it, I apologize.

13 THE HEARING OFFICER: Just I'm curious about
14 something. Is there such a thing as a dyslexia
15 specialist? I thought that was all inclusive in
16 reading specialist.

17 THE WITNESS: Again, I'm not Diane Glover, so
18 I don't want to --

19 THE HEARING OFFICER: I understand.

20 THE WITNESS: But it is accurate that April
21 Lennox and I are both considered special education
22 specialists where I specialize in compliance,
23 things like making sure schools do IEPs on time;
24 she focuses on different instructional programs for
25 students with disabilities.

1 THE HEARING OFFICER: Thank you for explaining
2 that. It's more comprehensive.

3 MS. OWENS: I think it's also important that
4 we keep getting into dyslexia, but there's been no
5 evidence introduced that why REDACTED has dyslexia.
6 I'm not sure why we are even engaging in --

7 MR. RATNER: That's my point. Again, I would
8 like a little bit of latitude. One follow-up
9 question to this witness, and then I will move on.

10 THE HEARING OFFICER: I'm going to sustain her
11 objection and allow her to continue with that
12 objection on relevancy grounds.

13 MR. RATNER: Okay. Sure.

14 THE HEARING OFFICER: But you have that extra
15 question that I haven't heard. So go ahead.

16 MR. RATNER: Yes, ma'am.

17 BY MR. RATNER:

18 Q Aren't you aware that the Virginia General
19 Assembly passed a statute requiring every School
20 Division to employ a dyslexia specialist or whatever
21 the title is?

22 A I was not in the central office leadership
23 position when that legislation passed so I can't speak
24 to the specifics.

25 MR. RATNER: Okay. I don't have the statute

1 in front of me. I would be happy to reach a
2 stipulation --

3 MS. OWENS: But it's not relevant.

4 MR. ANDRIANO: What's the relevance? I just
5 don't see the relevance.

6 MR. RATNER: If she doesn't have dyslexia, why
7 are they suddenly consulting the dyslexia
8 specialist?

9 THE HEARING OFFICER: She's also an
10 instructional --

11 MS. OWENS: Special education instructional
12 specialist.

13 MR. RATNER: Well, we haven't heard any
14 testimony like that. We've heard Ms. Owens say
15 that.

16 THE HEARING OFFICER: I'm going to leave open
17 her relevancy objection and permit her to answer
18 the question. I believe she stated -- and she's
19 not a lawyer so she's not --

20 MR. RATNER: Right. If she doesn't know, she
21 doesn't know.

22 THE HEARING OFFICER: Wouldn't it be asking
23 her to give a legal interpretation anyway?

24 MR. RATNER: I don't think so.

25 THE HEARING OFFICER: As her job title -- but

1 I will have to go back to specifically what
2 Ms. Thomas is, but it seems to me that she's aware
3 of the statutory information --

4 MR. RATNER: Yes.

5 THE HEARING OFFICER: -- but not necessarily
6 going to be in a position to explain that.

7 MR. RATNER: And I don't intend to ask her
8 anymore. If she said, yes, I know I was going to
9 follow up.

10 THE HEARING OFFICER: I'll take notice that
11 there has been continuing recent legislation on
12 dyslexic -- the dyslexia category.

13 MR. RATNER: Great.

14 THE HEARING OFFICER: Which I have a question
15 about whether or not that's included in the
16 category of reading specialist.

17 MR. RATNER: Okay.

18 THE HEARING OFFICER: Anyway, go ahead.

19 MR. RATNER: So 773, I think we had offered it
20 and there was an objection.

21 Are you reserving your ruling or it's in or
22 it's out? I'm not sure.

23 THE HEARING OFFICER: We were reserving the
24 ruling she had on relevancy grounds to -- to what?
25 To whether or not the dyslexia specialist and the

1 other kind of testimony around that is relevant.

2 Is that properly explaining what your
3 objection was?

4 MS. OWENS: Yes, ma'am. This entire process
5 is bringing out testimony that is not relevant to
6 the underlying issue.

7 THE HEARING OFFICER: Which is why I'm
8 sustaining your relevancy grounds, but I'm going to
9 give you latitude to ask her questions.

10 MR. RATNER: Great.

11 THE HEARING OFFICER: Because I know that's
12 what the Parents are concerned about.

13 MR. RATNER: Sure. So 773 is not in at the
14 moment? I just want to make sure I'm taking
15 correct notes.

16 THE HEARING OFFICER: I don't think it is.

17 MR. RATNER: That's great. Thank you. May I
18 move on to 774?

19 THE HEARING OFFICER: Yeah, go ahead.

20 MR. ANDRIANO: I'm sorry, Ms. Freeman --

21 THE HEARING OFFICER: Yes, go ahead.

22 MR. ANDRIANO: Just to make sure we're clear
23 for the record, 773 was admitted.

24 THE HEARING OFFICER: Yesterday? Or just a
25 few minutes ago?

1 MR. ANDRIANO: Just a few minutes ago. That's
2 the last one that was admitted.

3 MR. RATNER: Okay. Great. Thank you,
4 Mr. Andriano. I really appreciate that.

5 So 773 is in. I've got three more pages to
6 do.

7 THE HEARING OFFICER: Okay. Go ahead.

8 BY MR. RATNER:

9 Q 774, please.

10 A Yes.

11 Q Do you have that in front of you?

12 A Yes, I do.

13 MS. OWENS: Ms. Freeman, I'm sorry, I just
14 want to -- just in the interest of time, our
15 objection to these documents have been relevancy.
16 I don't have an issue with these documents being
17 admitted into evidence. My objection pertains to
18 going down a line of questioning about, you know,
19 the preparations of emails back and forth about
20 drafting or preparing a draft IEP. That is not
21 relevant to the underlying issue of whether the
22 IEPs are appropriate for REDACTED.

23 So going through this exchange is the issue.
24 We can go ahead and admit these documents into
25 evidence.

1 THE HEARING OFFICER: Let's admit the
2 documents.

3 MR. RATNER: That would be great.

4 MS. OWENS: But we have an objection with
5 regard to, again, continuing --

6 THE HEARING OFFICER: Why do I even need to
7 read them?

8 MS. OWENS: -- discussion for an hour about
9 emails.

10 MR. RATNER: So 774 through 776 are in
11 evidence without objection?

12 THE HEARING OFFICER: Yes.

13
14 (Parents' Exhibit No. 56, Pages 000774
15 through 000776 admitted.)

16
17 MR. RATNER: Great. Then I have just one last
18 area of inquiry, and I think we will done.

19 THE HEARING OFFICER: I did not realize -- is
20 my watch correct? It says quarter of 1:00.

21 THE COURT REPORTER: It is correct.

22 BY MR. RATNER:

23 Q I just have to get there. So I think where
24 I'm trying to go to is in the School Board book 38.
25 I'm going to turn there right now to make sure it's the

1 document we're interested in.

2 Do you have that in front of you or not quite
3 yet?

4 A School Board book Exhibit 38.

5 Q Yes, ma'am. And this is already in evidence.

6 Were you aware that with respect to the last
7 annual IEP meeting, CCPS -- this is on page 178. Bear
8 with me for one second while I find it.

9 The accommodation of consultation services to
10 be provided to the student or staff by the dyslexia
11 specialist is not required for REDACTED to access FAPE.

12 Do you see that language?

13 A I don't see it. Which number is that under?

14 Q It's number 3?

15 A Number 3.

16 Q Did I read that correctly?

17 A Yes.

18 Q And at the time, February 2021, was
19 April Lennox the dyslexia specialist who is being
20 referenced in this document?

21 A Yes.

22 Q Okay. So do I understand correctly that in
23 February of 2021 the Parents asked for consultative
24 services with April Lennox and CCPS refused it; is that
25 right?

1 A I was not part of that meeting.

2 Q But that's what this prior written notice
3 says, correct?

4 MS. OWENS: The document speaks for itself.
5 The witness has testified that she --

6 THE HEARING OFFICER: She doesn't know.

7 BY MR. RATNER:

8 Q Fair enough. And then in preparing for the
9 updated IEP after the REDACTED had already filed for due
10 process, you decided to seek consultative services from
11 Ms. Lennox to prepare the updated draft; is that
12 correct?

13 MS. OWENS: I'm going to object. There is no
14 testimony that's been offered that consultative
15 services were requested from Ms. Lennox. The only
16 thing that you have -- the only thing that the
17 emails indicate is that one coordinator to another
18 requesting help in facilitating an IEP, drafting an
19 IEP.

20 MR. RATNER: Again --

21 MS. OWENS: There is nothing that indicates
22 consultative services were required from
23 Ms. Lennox.

24 MR. RATNER: Right. So this is what I don't
25 understand, Ms. Freeman, and I really apologize.

1 I'm asking a question. If the answer is "no," it's
2 no. But the idea that there hasn't been evidence
3 about it before doesn't make it an improper
4 question.

5 MS. OWENS: My objection is to the fact that
6 you are implying that consultative services were
7 requested from Ms. Lennox.

8 MR. RATNER: Let me rephrase.

9 BY MR. RATNER:

10 Q Did you ask to consult with April Lennox
11 about the goals for REDACTED annual IEP in
12 February 2022?

13 A I was supporting Tomahawk Creek in developing
14 a draft.

15 Q Okay. That wasn't my question.

16 A And I asked April to take a look and give
17 input.

18 Q Did you ever speak with her voice to voice
19 about that?

20 A With Ms. Lennox?

21 Q Yes.

22 A Yes.

23 Q Okay. About REDACTED and developing the
24 goals?

25 A I don't recall a specific conversation, but

1 based on, I think it was 773, it looks like I had asked
2 April to sit down with me for a few minutes and take a
3 look.

4 Q Okay. And to your knowledge, had April
5 Lennox ever reviewed REDACTED IEP or any other
6 information about REDACTED before you asked her to in
7 February of 2022?

8 A I really don't know. We support a lot of
9 schools. I'm not trying to be difficult.

10 Q No. If you don't know, you don't know.
11 That's absolutely fine. I believe Ms. Lennox will
12 testify. I know you're not trying to be difficult. I
13 appreciate that. You've been very patient with me, and
14 that's the end of my questions.

15 THE HEARING OFFICER: Do we want to take a
16 lunch break now, or do we want to move on with
17 cross and let the witness go?

18 MS. OWENS: I only have a few questions, but I
19 would just ask for a few minutes before we get
20 started. And then maybe we can take a lunch break
21 after that.

22 THE HEARING OFFICER: But did you -- you
23 wanted to have the few minutes, if I understand you
24 correctly, and then do cross with her and then take
25 the lunch break; is that what you --

1 MS. OWENS: Yes, ma'am.

2 THE HEARING OFFICER: All right. Five minutes
3 okay?

4 MS. OWENS: That would be perfect.

5 MR. RATNER: Just in terms of planning who we
6 are going to call next after -- this is our last
7 School Board witness. We have -- was it two or
8 three -- we have three more witnesses, Laura
9 Burke --

10 THE HEARING OFFICER: Let me write them down.

11 MR. RATNER: Sure. And they are all on our
12 witness list and we discussed it with Mr. Andriano.

13 THE HEARING OFFICER: And you-all agreed and
14 all that?

15 MR. RATNER: Yes.

16 THE HEARING OFFICER: Okay.

17 MR. RATNER: We have Laura Burke.

18 THE HEARING OFFICER: What is her function?

19 MR. RATNER: She was an advocate. She
20 attended several IEP meetings with the REDACTED.

21 THE HEARING OFFICER: Okay. Next.

22 MR. RATNER: Julia Oliver, who is the director
23 of middle school at The New Community School where
24 REDACTED is currently attending.

25 And then Elizabeth Capone, who is our expert

1 who you have ruled may testify remotely.

2 THE HEARING OFFICER: Okay.

3 MR. RATNER: So I feel very comfortable that
4 we can complete those in the time we have left. My
5 plan was to call Ms. Burke for the rest of today,
6 call Ms. Oliver first thing in the morning and then
7 Ms. Capone.

8 THE HEARING OFFICER: Oh, I was thinking that
9 you were going to get through all those this
10 afternoon.

11 MR. RATNER: No, no, no.

12 THE HEARING OFFICER: I was going to say,
13 that's probably not going to happen.

14 MR. RATNER: That's a little bit ambitious.
15 But what I wanted to say was if you were going to
16 put any time limits on Ms. Burke --

17 THE HEARING OFFICER: These are really the
18 only witnesses you have left?

19 MR. RATNER: Yes, ma'am. I could see if
20 Ms. Oliver could be here, but I would really like
21 to use the time for Ms. Burke, if I could.

22 THE HEARING OFFICER: I mean, it's up to you.

23 MR. RATNER: Okay. Great. That's great.

24 MR. ANDRIANO: By the time we get back from
25 lunch, it's going to be --

1 MR. RATNER: Exactly.

2 THE HEARING OFFICER: Have you-all had time to
3 take your five minutes? I don't think you have.

4 MR. ANDRIANO: No.

5

6 (Break taken.)

7

8 THE HEARING OFFICER: Ms. Thomas, do you
9 recall that you were placed under oath at the
10 beginning of your testimony?

11 THE WITNESS: Yes, ma'am.

12 THE HEARING OFFICER: It's time for you to
13 answer questions from school counsel, and I've been
14 referring to this as cross but if -- aren't most of
15 the, if not all, the school witnesses joint
16 witnesses?

17 MR. RATNER: I don't believe Ms. Thomas was on
18 their list.

19 MS. OWENS: That's correct.

20 THE HEARING OFFICER: Oh, all right. Well,
21 cross or whatever you want to call it, this is your
22 time to ask questions.

23

24 //

25 //

1 CROSS-EXAMINATION

2 BY MS. OWENS:

3 Q Good afternoon, Ms. Thomas. I just have a
4 few questions to ask you with regard to the examination
5 that you provided with Mr. Ratner asking the questions.

6 So first I wanted to start out by asking you
7 to turn to School Board Exhibit Number 58.

8 A Yes, I'm ready for the question.

9 Q Okay. So you testified earlier that the
10 Parent participated in the January 24, 2022, IEP
11 meeting, correct?

12 A The Parent participated in the January 2022
13 IEP meeting, yes.

14 Q And then with regard to School Board Exhibit
15 Number 58, the Parent informed the School Division that
16 she wasn't going to participate in a further follow-up
17 IEP meeting, correct?

18 A Yes.

19 Q So although the Parent received notice of
20 that IEP meeting, she refused to participate in a
21 further meeting with the School Division; is that
22 accurate?

23 A Yes.

24 Q You were also asked questions about
25 Ms. Lennox. Would you agree that REDACTED -- she's

1 been found eligible for special education services as a
2 student with a specific learning disability?

3 A Yes.

4 Q And reading is an area of weakness for
5 REDACTED ?

6 A I believe specific components of reading.

7 Q However, she does not have a diagnosis of
8 dyslexia; do you agree with that?

9 A Yes.

10 MR. RATNER: Assumes facts not in evidence.

11 THE HEARING OFFICER: You brought up dyslexia.

12 MR. RATNER: I mean, that's the objection
13 we've had for the last three days.

14 THE HEARING OFFICER: But she's asking within
15 the scope of what your examination was. You asked
16 questions about dyslexia.

17 MR. RATNER: Right. And she said she doesn't
18 know anything about it.

19 MS. OWENS: So I can rephrase the question.

20 BY MS. OWENS:

21 Q To your knowledge, does REDACTED have a
22 diagnosis of dyslexia?

23 A To my knowledge, no, she does not.

24 Q Have you reviewed REDACTED educational
25 record?

1 A Yes.

2 THE HEARING OFFICER: What was that?

3 MS. OWENS: Have you reviewed REDACTED

4 educational record was my question.

5 BY MS. OWENS:

6 Q Mr. Ratner also asked you questions about
7 emails pertaining to Ms. Lennox.

8 Would you agree that Ms. Lennox supports all
9 staff and has the option of supporting all staff with
10 literacy support for students with disabilities?

11 A Yes. And I believe -- and, again, I'm not
12 Diane Glover -- that her scope is actually larger than
13 just literacy.

14 MS. OWENS: Thank you. No further questions.

15 THE HEARING OFFICER: Whose scope is larger
16 than just literacy? Ms. Lennox?

17 THE WITNESS: Yes, ma'am.

18 MS. OWENS: I do have one follow-up question.

19 THE HEARING OFFICER: Sure.

20 BY MS. OWENS:

21 Q So with regard to the support that you were
22 requesting from Ms. Lennox, would you agree that it
23 wasn't because you have any knowledge of REDACTED
24 having a diagnosis of dyslexia?

25 A I agree. It was to write goals for a student

1 who wasn't currently in Chesterfield.

2 MS. OWENS: I have no further questions.

3 Thank you.

4 THE HEARING OFFICER: Any follow-up?

5 MR. RATNER: Yes, a few very brief ones.

6 THE HEARING OFFICER: Okay.

7

8 REDIRECT EXAMINATION

9 BY MR. RATNER:

10 Q Ms. Thomas, you were aware that REDACTED at
11 that time was enrolled in The New Community School,
12 correct?

13 A Correct.

14 Q And that is a school for students with
15 dyslexia, correct?

16 A I don't know the specifics on The New
17 Community School.

18 Q Fair enough. Ms. Owens asked you about
19 School Board 58.

20 Do you have that in front of you still?

21 A Yes.

22 Q Okay. And I believe you mentioned this
23 earlier, that you recalled that perhaps Mrs. REDACTED had
24 indicated that they had filed a due process claim on
25 February 1st. Do you see that at the bottom of page

1 269?

2 A I see that line from REDACTED , yes.

3 Q And then you agree with me that the response
4 immediately above it is the one that would be the next
5 in the chain, so to speak? Am I reading that
6 correctly?

7 A I can't keep up with which email goes where.
8 I'm being honest.

9 Q It's difficult. But you agree that at
10 7:16 p.m., Ms. Williams responded back to REDACTED
11 and cc'd you?

12 A It appears that way.

13 Q Okay. And I noticed -- this is just a little
14 peculiar to me. I don't know if you know the answer.

15 The entirety of the email is in bold italics.
16 Do you see that? You can see it's very different font
17 from the rest of the emails on that page.

18 A It appears that way.

19 Q Okay. And then do you see it ends abruptly
20 with a Sincerely comma and there's nothing after that?

21 A Yes.

22 Q Okay. Did you have any input into this email
23 message that Ms. Williams sent?

24 A Honestly, I don't recall. I probably did
25 help her draft it.

1 Q How about Ms. Glover?

2 A Honestly, I don't have a good answer to that.

3 Q Okay. But just for comparison sake, if you
4 could go to Parents 56. Then we are going to come
5 back --

6 A A different book?

7 Q Correct. But don't close it because we are
8 going to come back to that page, if you don't mind.

9 A Volume 2?

10 Q Yes, ma'am. And page 754, which is in 56.

11 MR. RATNER: And just to be clear,
12 Ms. Freeman, to try to head off any objections, I
13 don't intend to ask anything about the substance.
14 It's just the format of this communication back and
15 forth between Ms. Williams and Ms. Thomas.

16 THE HEARING OFFICER: Okay. I forgot which
17 one you were talking about.

18 MR. RATNER: Yes, ma'am. 56, page 754, and
19 that's in Parents' Volume 2.

20 BY MR. RATNER:

21 Q You've got it in front of you, right,
22 Ms. Thomas?

23 A 754?

24 Q Yes, ma'am.

25 THE HEARING OFFICER: 754.

1 BY MR. RATNER:

2 Q These are emails between you and
3 Ms. Williams, correct?

4 A Yes.

5 Q Okay. And she ends her emails, Thanks,
6 Jennifer, and then there's a signature block that
7 includes her title, correct?

8 MS. OWENS: I'm going to object. This is not
9 relevant, and it exceeds the scope of
10 cross-examination.

11 MR. RATNER: It is directly relevant to the
12 scope of cross-examination. Ms. Owens --

13 THE HEARING OFFICER: I'll overrule it this
14 time. I will let you try to tie that in. Go
15 ahead.

16 BY MR. RATNER:

17 Q You do see her signature block there,
18 correct?

19 A I see it in one place.

20 Q Okay.

21 A But I don't see it for each exchange.

22 Q Yes, ma'am. This isn't in bold and italics,
23 correct?

24 A Correct.

25 Q Okay. Is it fair to say that Ms. Williams

1 cut and pasted the draft of an email into this message
2 to Mrs. REDACTED, Exhibit 58?

3 MS. OWENS: I object. That calls for
4 speculation.

5 THE HEARING OFFICER: Sustained.

6 MR. RATNER: That's my last question.

7 THE HEARING OFFICER: Go on.

8 MR. RATNER: I said, That was my last
9 question.

10 THE HEARING OFFICER: I'm sorry. All right.
11 I was writing or something.

12 So is there -- is everyone finished with this
13 witness?

14 MR. ANDRIANO: Absolutely.

15 THE HEARING OFFICER: All right. You may be
16 excused unless school counsel wants to reserve you.

17 MS. OWENS: No, ma'am. She's released.

18 THE HEARING OFFICER: All right. Thank you
19 very much.

20 MR. RATNER: So I think we're going to take a
21 lunch break now?

22 THE HEARING OFFICER: That sounds like a good
23 idea to me. 1:10.

24 MR. RATNER: So I had told Ms. Burke to be
25 here at about 3. Is everyone okay if we take a

1 little bit longer break?

2 THE HEARING OFFICER: In other words, are we
3 without a witness?

4 MR. RATNER: Until 3. I mean, I can see if I
5 can get her here sooner.

6 MR. ANDRIANO: That's fine.

7 THE HEARING OFFICER: Well, if she's not going
8 to show up until 3, did you have anything --

9 MR. ANDRIANO: No, that's fine.

10 THE HEARING OFFICER: All right. 3:00.

11 MR. RATNER: I can see if I can get her here
12 by 2:30, if that would be better.

13 MR. ANDRIANO: We're fine with 3:00.

14 MR. RATNER: So if I took an hour with her, do
15 you think we could finish her today? She is
16 available tomorrow morning but --

17 THE HEARING OFFICER: We will see where we
18 get. She is going to be here at 3:00.

19 MR. RATNER: That's right. I was just talking
20 to them.

21 THE COURT REPORTER: Are we off the record?

22 THE HEARING OFFICER: Yes, off the record.

23

24 (Break taken.)

25

1 THE HEARING OFFICER: Back on the record.

2 Ms. Burke, thank you for telling us all about
3 your telephone.

4 Mr. REDACTED told us about all his telephone use.
5 He assured us he checked his phone and he doesn't
6 have the recording device on his phone.

7 What did you do with your phone anyway,
8 Mr. REDACTED?

9 MR. REDACTED (observer): After lunch I left
10 it in the truck.

11 THE HEARING OFFICER: Is your truck locked and
12 everything?

13 MR. REDACTED (observer): Uh-huh. I hope so.

14 THE HEARING OFFICER: Ms. Burke, would you
15 raise your right hand, please.

16

17 (Witness sworn.)

18

19 THE HEARING OFFICER: Thank you. Answer any
20 questions Mr. Ratner has and to be followed up by
21 school counsel.

22

23 LAURA BURKE,

24 having been duly sworn, testified as follows:

25