

1 Q. Plus the fourteen absences.

2 A. To amend what I shared earlier, I think there  
3 was also a significant illness that would have been  
4 several days in that twelve.

5 Q. I didn't ask about an illness. I'm asking  
6 about the number of instructional days that she's  
7 missed.

8 That's not concerning to you?

9 A. In REDACTED's case, no.

10 Q. You had mentioned that Ms. REDACTED had reached  
11 out to you about some -- I believe you used the term  
12 "peer conflict."

13 A. I did.

14 Q. In fact, did Ms. REDACTED reach out to you about  
15 what she perceived as bullying?

16 A. Yes.

17 Q. Didn't she call The New Community School a  
18 toxic learning environment?

19 A. Without something in front of me, I can't  
20 specifically say she did.

21 Q. Let me ask you this, Ms. Oliver. Hasn't this  
22 been going on all year long, since REDACTED started there?

23 MR. RATNER: Objection. I think that assumes  
24 facts not in evidence. That's not what the testimony  
25 has been. But she said no, so that's fine.

1 HEARING OFFICER: Sustained.

2 BY MR. ANDRIANO:

3 Q. Let's go through it. Do you recall Ms. REDACTED  
4 reaching out to you in September, where she --  
5 actually, you reached out to Ms. REDACTED in response to  
6 an em-mail, where you said you're sorry to hear that  
7 she's struggling?

8 MS. RATNER: Ms. Freeman, we continue our  
9 objection to use of these documents that are not in  
10 evidence and have not been provided to us.

11 Yesterday, there was a long discussion about  
12 how we wanted to be able to use a transcript, recording  
13 of a meeting, and that was excluded, to even be  
14 referenced in talking to the witnesses because it was  
15 not disclosed -- well, I won't get into the dispute.  
16 It was stated it had not been in the exhibit book.

17 So we would ask that the same rule be applied  
18 to these e-mails that are not in the exhibit books and  
19 we don't have.

20 HEARING OFFICER: Any response to that?

21 MR. ANDRIANO: I do. The transcript that was  
22 Ms. Ratner is talking about, if you'll recall, is a  
23 transcript that she, as the parents' attorney, created.

24 What I'm asking Ms. Oliver about are e-mails  
25 between her and Ms. REDACTED. These are -- I'm not asking

1 to have them admitted into evidence, but she either  
2 recalls creating the e-mail and having the e-mail  
3 communication back and forth or not. If she doesn't  
4 recall, I will refresh her recollection so she can do  
5 it --

6 MS. RATNER: I would object also on the  
7 best-evidence rule that was applied earlier when  
8 Ms. Oliver was not permitted to testify about her  
9 recollection of absences in third quarter, because that  
10 was not the best evidence because there were documents.

11 The best evidence of what occurred in e-mail  
12 correspondence would be the e-mail correspondence. And  
13 that e-mail correspondence is not part of the exhibit  
14 books that was provided to us.

15 HEARING OFFICER: I'm going to ask that the  
16 court reporter take down that I'm noting your exception  
17 to the ruling.

18 However, it appears that these documents are  
19 being utilized -- and correct me if I'm wrong -- to  
20 test the witness' memory of the correspondence that was  
21 provided to -- do you have a question?

22 THE WITNESS: No. I'm listening.

23 HEARING OFFICER: That there was an exchange  
24 of correspondence between the witness or an employee of  
25 The New Community School. I don't believe that these

1 documents are being requested to be admitted to record.

2 So they're being used strictly for impeachment  
3 purposes. That's the ruling.

4 So go ahead.

5 MR. ANDRIANO: One other point, Ms. Freeman.  
6 I am happy to move these into evidence if Ms. Ratner  
7 would prefer.

8 HEARING OFFICER: Do you want those --

9 MS. RATNER: No.

10 MR. ANDRIANO: I don't disagree with her that  
11 these are the best evidence.

12 MS. RATNER: No. We object to that just -- I  
13 mean, we have lots of things that we can't -- they're  
14 not allowed as evidence and they can't be discussed  
15 with the witness because of a particular reason. So we  
16 just -- our objection's noted already.

17 HEARING OFFICER: Yeah, it's noted. I  
18 understand and I appreciate your objection, but right  
19 now, I think we're going to move on in the cross.

20 MR. ANDRIANO: Let the record reflect I'm  
21 showing Mr. Ratner an e-mail. It's dated  
22 September 17, 2021 at 8:07 a.m. from J. Oliver at  
23 TNCS.org.

24 MR. RATNER: If I may have a moment to look at  
25 it, please?

1 HEARING OFFICER: Yes.

2 MR. RATNER: I agree that the e-mail is what  
3 he represents, but I have no idea what preceded it or  
4 went after it.

5 HEARING OFFICER: Okay. Thank you. Your  
6 remark is on the record.

7 BY MR. ANDRIANO:

8 Q. I'm showing you an e-mail dated  
9 September 17, 2021 at 8:07.

10 Can you take a look at it and see if it  
11 refreshes your memory?

12 HEARING OFFICER: I don't know if you did this  
13 before, but can you identify what that document is that  
14 you've given her?

15 MR. ANDRIANO: I wanted her to look it over  
16 first.

17 THE WITNESS: I'm good.

18 BY MR. ANDRIANO:

19 Q. It's an e-mail dated September 17, 2021 at  
20 8:07 a.m from J. Oliver at TNCS.org to Ms. REDACTED ;  
21 correct?

22 A. Correct.

23 Q. I want to make sure I'm reading it correctly:  
24 I'm so sorry to hear that REDACTED is struggling.

25 A. Correct.

1 Q. You wrote that to Ms. REDACTED?

2 A. I did.

3 Q. Thank you. Ms. Oliver, in October, do you  
4 recall Ms. REDACTED sending you an e-mail where she said,  
5 REDACTED is hurting and I can't fix it by rescuing her from  
6 school?

7 A. Yes.

8 Q. You do recall that?

9 A. I do.

10 Q. Then also in October, Ms. REDACTED sent you an  
11 e-mail message which said, Girls continue to bully her.

12 Do you remember that message?

13 A. Yes.

14 Q. Then in November, she sent an e-mail where she  
15 referenced the continuing bullying and called The New  
16 Community School a toxic environment.

17 Do you recall that?

18 A. I don't recall the specific line, but there  
19 was quite a bit of correspondence. Yes.

20 Q. Does that sound familiar to you?

21 A. Relatively, yes.

22 Q. Then in November -- also in November she wrote  
23 to you and said that REDACTED is riddled with depression  
24 and anxiety. Do you recall that?

25 A. Yes.

1 Q. Also in November, she e-mailed you and said  
2 that REDACTED is suffering from a panic attack and couldn't  
3 get out of the car, so Ms. REDACTED had to drive her back  
4 home.

5 Do you recall that?

6 A. Yes.

7 Q. On November 27th, she sent you an e-mail which  
8 said, My heart aches for her because the torment seems  
9 inescapable.

10 Do you recall that message?

11 A. Yes.

12 Q. Then in February, just last month, she  
13 e-mailed you and said, REDACTED did not come to school  
14 today because of extreme anxiety.

15 Do you recall that message?

16 A. Yes.

17 Q. Over the course of this school year,  
18 Ms. Oliver, haven't you changed REDACTED's classes several  
19 times?

20 A. I made an advisory switch and one schedule  
21 change.

22 Q. And the schedule change was the math class?

23 A. And the science class.

24 Q. You changed the math and the science class?

25 A. Flipped them. Yes.

1 Q. Was that as a result of these concerns raised  
2 by Ms. REDACTED?

3 A. Yes.

4 HEARING OFFICER: By the way, do you have any  
5 reason or do you want him to give you those documents,  
6 so you can further look at them if you want to follow  
7 up, so you know what he's talking about?

8 MR. RATNER: I appreciate that very much. I  
9 think, since Ms. Oliver -- yes. I think maybe, when he  
10 finishes, we could take a short break?

11 HEARING OFFICER: That sounds fine. Then I'll  
12 let you examine.

13 MR. ANDRIANO: I would ask for the record, our  
14 position is those e-mails should have been turned over  
15 by the parents, pursuant to the school board subpoena,  
16 but they weren't.

17 We clearly asked for records between the  
18 parents and The New Community School, and they weren't  
19 provided.

20 MS. RATNER: I'll go back and look.

21 HEARING OFFICER: I'm going to note that for  
22 the record, but I will just note for my own purposes  
23 that if documents are not in the subpoenaed parents' or  
24 the school's exhibits, they're not there.

25 So I don't know what your reason was, but



1 if -- I'm not going to ask any questions about that.  
2 But I did note that for the record, that they weren't  
3 turned over.

4 If you choose to clarify that, you can.

5 MR. RATNER: I think she's just looking at the  
6 subpoena.

7 MR. ANDRIANO: I'm sorry, Ms. Freeman. I  
8 apologize, Ms. Oliver. I don't have any further  
9 questions at this point.

10 HEARING OFFICER: So you want to look over  
11 those and further ask her some follow-up?

12 MR. RATNER: Yes, ma'am.

13 HEARING OFFICER: Would you give those to  
14 Mr. Ratner?

15 MS. RATNER: I will say that I do not  
16 interpret the document subpoena to Mr. and Ms. REDACTED as  
17 including any e-mail correspondence.

18 MR. ANDRIANO: It said all correspondence.

19 MS. RATNER: I don't see anything in these  
20 listed categories that would include --

21 MR. ANDRIANO: It said including, but not  
22 limited to; right?

23 MS. RATNER: There's a listing -- and this  
24 will be for Ms. Freeman to look at. I still don't  
25 read, in its entirety, the subpoena as --

1 HEARING OFFICER: "Including"?

2 MS. RATNER: Correct. So you can, at your  
3 leisure, look at the document subpoena and see what you  
4 think, in all your spare time.

5 HEARING OFFICER: Actually, I've read quite a  
6 bit of this.

7 (A recess was taken between 12:55 and  
8 1:02 p.m.)

9 HEARING OFFICER: Go ahead.

10 MR. ANDRIANO: I'm sorry. There is one other  
11 thing that I neglected to ask her about. We were  
12 talking about that IMPACT math class.

13 BY MR. ANDRIANO:

14 Q. Did I hear you say it was self-paced?

15 A. Yes.

16 Q. And online, is that what you said?

17 A. So it is on paper and online. "Online"  
18 meaning that we use technology for it.

19 Q. What does that mean? Can you help me  
20 understand?

21 A. Sure. So we use different applications so  
22 that they can do it on their iPad, or some students can  
23 do it on their math books. But there's a live teacher  
24 giving one-on-one instruction for mediation.

25 Q. So it's online?

1 A. It's on the computer.

2 Q. How is that different than online?

3 A. I think "online" assumes that it's with  
4 somebody in a different place.

5 Q. But it's on -- I'm trying to figure it out.  
6 It's on the computer; right?

7 A. Yes. But it can also be on paper.

8 Q. And she's done well with that?

9 A. Yes.

10 MR. ANDRIANO: Okay. Thank you.

11 Now I am finished.

12 MR. RATNER: Thank you.

13 REDIRECT EXAMINATION

14 BY MR. RATNER:

15 Q. Just staying on that, so I don't lose my train  
16 of thought, if REDACTED did have trouble with something on  
17 her iPad, there is a live teacher in the room to assist  
18 her immediately?

19 A. Yes.

20 Q. That would be different from a virtual  
21 setting, in which it was over Zoom or something like  
22 that; correct?

23 A. Correct.

24 Q. So I'd like to just follow up a little bit on  
25 the questioning related to your communications with

1 Ms. REDACTED as it relates to REDACTED. I'll start with the  
2 absences.

3 Your testimony -- and I don't want to  
4 mischaracterize it, but I believe you said that the  
5 number of absences for REDACTED specifically was not of a  
6 concern to you. Is that your testimony?

7 A. That's what I said.

8 Q. Could you just explain why these absences are  
9 not a concern for you in terms of her ability to make  
10 appropriate academic progress?

11 A. Yes. So individual basis, REDACTED missed for a  
12 number of reasons, all of which we were very much aware  
13 of. And she --

14 Q. Let me stop you there. It has already been  
15 divulged that she had covid. So don't feel like you  
16 can't say that. So continue?

17 A. And upon return, REDACTED has managed to make up  
18 and to continue making progress.

19 Q. Do the progress reports that's at 79 -- you  
20 don't need to look at them, but you can -- do those  
21 reflect progress through The New Community School  
22 curriculum?

23 A. Yes.

24 Q. So for example, she started somewhere in  
25 IMPACT Math 1; is that right?

1 A. Yes.

2 Q. I guess, is that an example of go as fast as  
3 you can, but as slow as you must?

4 A. That's a perfect example. Yes.

5 Q. Explain that?

6 A. So yeah. Our math is set up specifically --  
7 I'm talking math in this example -- is that she can  
8 progress through the curriculum and the skills as fast  
9 as she is able to show mastery. Or, in other  
10 situations with other students, as slow as she would  
11 need to to demonstrate mastery. There is not a  
12 mandated pacing to it. She not bound to the mastery  
13 and pace of her classmates.

14 Q. In your experience as a public-school teacher,  
15 is that pacing issue different?

16 MR. ANDRIANO: Objection. I think now he's  
17 crossing over into opinion testimony.

18 HEARING OFFICER: So you believe that's beyond  
19 the scope?

20 MR. RATNER: I think he's saying it was an  
21 expert question.

22 HEARING OFFICER: Oh, sorry. I was writing.

23 BY MR. RATNER:

24 Q. To restate, she just described how REDACTED could  
25 move at her own pace. And I wanted to ask her if that

1 was different from her experience as a public-school  
2 teacher. I don't see anything expert about that.

3 HEARING OFFICER: It does sound like an  
4 opinion, but I'll let it go for now.

5 THE WITNESS: So is that scenario different  
6 from my experience when I taught public school?

7 BY MR. RATNER:

8 Q. Yes.

9 A. Yes.

10 Q. How so?

11 A. In my experience in public school, there's not  
12 that level of individualization possible. There are  
13 things that do dictate pacing.

14 Q. Are some of those things state assessments,  
15 for example?

16 A. Yes.

17 Q. If a student's falling behind, is there a  
18 possibility, in your experience in public school, to  
19 slow down the whole class?

20 MR. ANDRIANO: Objection. I don't think she  
21 can speak to --

22 HEARING OFFICER: Yeah. I think we're getting  
23 beyond permissible area.

24 MR. RATNER: I'll move on.

25 HEARING OFFICER: Thank you. Sustained.

1 BY MR. RATNER:

2 Q. Back to parent communication. Did you ever  
3 encourage the REDACTED to bring concerns to your  
4 attention or others attention at The New Community  
5 School?

6 A. Yes.

7 Q. Is that -- just tell Ms. Freeman about that  
8 encouragement, or however you would character it?

9 A. Sure. That is to the REDACTED's -- and any other  
10 middle-school family, we rely on that partnership to  
11 know the whole picture of what's happening with the  
12 child.

13 Q. Based on the communications that Mr. Andriano  
14 described to you, do you have any concerns, sitting  
15 here today, about the appropriateness of the  
16 environment at The New Community School or REDACTED?

17 A. Do I have any concerns?

18 Q. Yes.

19 A. I do not.

20 Q. You mentioned an acronym, going way back to  
21 the beginning of your cross, VCPE.

22 A. Yes.

23 Q. What is VCPE?

24 A. Virginia Counsel for Private Education.

25 HEARING OFFICER: Let me get that. Virginia,

1 VCPE --

2 THE WITNESS: Counsel, private, education.

3 HEARING OFFICER: Okay.

4 BY MR. RATNER:

5 Q. What is the Virginia Counsel for Private  
6 Education?

7 A. I don't -- semantics. I'm afraid of saying  
8 something --

9 Q. What's your best understanding on that?

10 A. It's kind of the overarching -- I don't know  
11 if it's monitoring because we're accredited through  
12 other things.

13 Q. If you don't know, don't --

14 A. I can't.

15 Q. That's fine. I withdraw the question.

16 Is The New Community School accredited by the  
17 VCPE?

18 A. I don't know if we're accredited by them, but  
19 we're accredited through approved associations.

20 Q. Explain that to Ms. Freeman, please?

21 A. Sure. So we are accredited by the Virginia  
22 Association for Independent Schools, as well as the  
23 Southern Association For Independent Schools.

24 Q. If I said the term "umbrella" organization,  
25 would you understand what I mean by that?



1 A. Yes.

2 Q. I just want to make sure we're communicating  
3 clearly.

4 Is VCPE an umbrella organization for those  
5 other two organizations you just mentioned or are those  
6 members of the VCPE?

7 A. I don't know about SAIS.

8 Q. How about the other one?

9 A. I imagine the AIS is.

10 MR. ANDRIANO: Objection; calls for --

11 BY MR. RATNER:

12 Q. If you're not sure, just say that.

13 A. Sure. I'm not sure.

14 MR. RATNER: I'll withdraw the question.

15 HEARING OFFICER: All right. Thank you. He  
16 withdrew the question.

17 MR. ANDRIANO: I'll stipulate that they're  
18 accredited by these agencies. The point was, they're  
19 not licensed by the Virginia Board of Education.

20 HEARING OFFICER: Let me get the stipulation,  
21 then. The stipulation is that --

22 MR. ANDRIANO: They're accredited.

23 HEARING OFFICER: -- TNCS is accredited by the  
24 VAIS and the SAIS, under the umbrella of the Virginia  
25 Counsel for Private Education. However --

1 I think we're just doing a stipulation, but  
2 I'm going to go through this so I get it down properly.  
3 The stipulates is that although we are state-licensed  
4 and accredited by those organizations that I just  
5 mentioned --

6 MR. ANDRIANO: Not "licensed"; accredited.

7 HEARING OFFICER: Did I say "licensed"?

8 Accredited by those organizations, but not  
9 licensed -- and there's a stipulation to that effect --  
10 by the Virginia Department of Education, the VDoE.

11 MR. RATNER: We don't stipulate to that. I'm  
12 sorry. I thought we did.

13 MR. ANDRIANO: So no stipulation.

14 HEARING OFFICER: It's accredited and licensed  
15 not by VDoE; right? Not accredited, not licensed.

16 MR. ANDRIANO: I don't think there's a  
17 dispute; maybe there is. They're not licensed by  
18 the --

19 MS. RATNER: We just have a semantics.

20 MR. ANDRIANO: I don't want to take up  
21 Ms. Oliver's time.

22 HEARING OFFICER: What do you want me to say?  
23 "Licensed"?

24 MR. RATNER: I think you could just say a  
25 stipulation will be forthcoming later.

1 HEARING OFFICER: Fine. Let's go ahead.

2 I think everyone wants to break for lunch.

3 And we're about an hour and ten minutes past when I  
4 thought we were going to break.

5 All right. Let's go.

6 BY MR. RATNER:

7 Q. Mr. Andriano asked you some questions about  
8 documents in School Board Exhibit 1 that reflected -- I  
9 don't think you need to look at them -- reflected  
10 communications between the Virginia Department of  
11 Education and The New Community School.

12 Does The New Community School still  
13 communicate with the Virginia Department of Education?

14 A. I'm not sure.

15 Q. Let me direct your attention to Page 7, school  
16 board book, Volume 1, Page 7.

17 I'll ask you before you read that, do you have  
18 an understanding as to whether or not The New Community  
19 School is able to accept students who have been placed  
20 there by a student's IEP team?

21 MR. ANDRIANO: Objection. That's beyond the  
22 scope of my -- I don't believe I asked Ms. Oliver  
23 anything about that.

24 HEARING OFFICER: I don't recall him asking  
25 that.

1 MR. RATNER: I'll move on.

2 HEARING OFFICER: Thank you. Sustained.

3 BY MR. RATNER:

4 Q. When REDACTED is absent from school, do you  
5 communicate with Ms. REDACTED about it?

6 A. It wouldn't necessarily be me. It may be an  
7 advisor.

8 Q. Have there been times when you have  
9 communicated with Ms. REDACTED about absence?

10 A. Yes.

11 Q. The school board attorney, Mr. Andriano,  
12 showed you a fairly thick document. I'm just leafing  
13 through the book to find it. It was a list that I  
14 wasn't exactly sure what it was.

15 MR. ANDRIANO: 76, I believe it was.

16 MR. RATNER: Thank you.

17 BY MR. RATNER:

18 Q. Do you have that in front of you?

19 A. I do.

20 Q. Did you prepare this document?

21 A. No.

22 Q. Did you prepare the document that Mr. Andriano  
23 identified for you as School Board Exhibit 76?

24 A. No.

25 Q. Do you know where it came from?

1 A. I assume the VDoE.

2 Q. Do you know that?

3 A. No.

4 Q. Do you know if what's in this document is  
5 accurate?

6 A. I guess I don't.

7 Q. For example, on Page 2, this document reflects  
8 that Bear Creek Academy is on a list of licensed  
9 private schools for students with disabilities.

10 Do you know that, sitting here today?

11 Do you have personal knowledge as to whether  
12 Bear Creek Academy is licensed by --

13 A. I don't.

14 Q. As of today, does REDACTED still have significant  
15 deficits in her educational profile, if I'm saying at  
16 that correctly?

17 MR. ANDRIANO: Objection. He's talking about  
18 today. The best evidence would be her records today if  
19 we're going to talk about her deficits.

20 HEARING OFFICER: And also, it goes to her  
21 opinion. I think it's primarily an opinion question.

22 So your response?

23 MR. RATNER: I'll note my exception.

24 HEARING OFFICER: Okay. Sustained. And  
25 please note the parents' counsel's exception to my

1 ruling.

2 Go ahead.

3 BY MR. RATNER:

4 Q. To the extent anyone at The New Community  
5 School identifies areas of weakness for REDACTED, will they  
6 always work on remediating those?

7 MR. ANDRIANO: Objection; calls for --

8 HEARING OFFICER: You're going to have to  
9 repeat that question. I couldn't hear you in part of  
10 it.

11 BY MR. RATNER:

12 Q. Is part of The New Community School's approach  
13 to try to remediate any deficits that REDACTED has?

14 A. Part of, yes.

15 Q. And is that done across the entire curriculum?

16 A. No.

17 Q. It's done primarily in language fundamentals?

18 A. In REDACTED's case, yes.

19 Q. In REDACTED's case, her deficits are addressed in  
20 the language-fundamentals class?

21 A. Yes.

22 Q. And there's two people in that class?

23 A. Two students.

24 Q. How long is that class?

25 A. Sixty minutes.

1 Q. Every day?

2 A. Not every day.

3 Q. How often?

4 A. We have a rotating schedule. So I think she  
5 would meet four times a week on a given week, depending  
6 on how the rotation falls.

7 Q. Could there ever be less than four days a  
8 week, potentially?

9 A. Potentially, especially if the school week is  
10 shortened.

11 Q. I was a little confused about the  
12 accommodations. No accommodations of language  
13 fundamentals, but in the other classes, she would  
14 receive accommodations?

15 A. Yes.

16 MR. RATNER: Ms. Freeman, I think I'm  
17 finished. If I could just have a moment to consult?

18 HEARING OFFICER: Go ahead.

19 MR. RATNER: That's it for the parents.

20 HEARING OFFICER: Thank you. Do you have any  
21 additional questions?

22 CROSS EXAMINATION

23 BY MR. ANDRIANO:

24 Q. I have one last question. I just want to make  
25 sure.

1           You were talking about the pacing, but you're  
2 not familiar about Chesterfield County Public Schools'  
3 pacing; correct?

4           A.     I am not.

5           MR. ANDRIANO:   Ma'am, thank you for your time  
6 today.

7           HEARING OFFICER:   Thank you.   You may be  
8 excused.

9           MR. RATNER:   So I'm not -- was Ms. Oliver on  
10 your witness list?   So I don't believe there's any  
11 issue of a recall.   Ms. Oliver was only our witness.

12          HEARING OFFICER:   And we're done, so we're  
13 ready for lunch break and then come back at 2:20.   Or  
14 do you want 2:30?

15          MR. RATNER:   I would love that, if that's  
16 okay.

17          HEARING OFFICER:   We're off the record.

18          (A lunch recess was taken between 1:16 and  
19 2:36 p.m.)

20          HEARING OFFICER:   So let's move forward, then.  
21 What were you going to tell me, Ms. Owens?

22          MS. OWENS:   The school board objects to  
23 Ms. Capone.   I'm unclear as to whether it's "Capone" or  
24 "Capone."   In any event, the school board objects to  
25 Ms. Capone's testimony on two bases.



1           One, it has to do with relevancy, as this  
2 witness at least hasn't been disclosed to the school  
3 board, has not evaluated this student, has not attended  
4 any IEP meetings regarding this student, hasn't  
5 observed this student within a CCPS-classroom setting.

6           In addition to that, we object on the basis  
7 that any recommendations or evaluation that Ms. Capone  
8 would like to discuss today have not been disclosed to  
9 the school board as part of the five-business-day  
10 disclosure.

11           In accordance with 8VAC20-81-210-P-2, a  
12 hearing officer has the authority to bar any party from  
13 introducing evaluations and recommendations at the  
14 hearing that have not been disclosed to all other  
15 parties at least five business days prior to the  
16 hearing, without the consent of the other party.

17           The school board does not give consent for  
18 such testimony to be offered today.

19           In addition, under 8VAC20-81-210-K-2, at least  
20 five business days prior to the hearing, each party  
21 shall disclose to all other parties all evaluations  
22 completed by that date and recommendations made on the  
23 offering party's evaluations that the party intends to  
24 use at the hearing.

25           I could go on. 8VAC20-81-210-09 states that

1 the hearing officer shall receive a list of witnesses  
2 and documentary evidence for the hearing, including all  
3 evaluations and related recommendations that each party  
4 intends to use at the hearing no later --

5 MR. RATNER: We can just clarify this --

6 MS. OWENS: -- than five business --

7 MR. RATNER: We don't have -- this is one of  
8 the issues. There's objections to something that  
9 hasn't been offered. We're not offering any  
10 evaluations.

11 MS. OWENS: They're offering her as an expert  
12 witness. Because they're offering her as an expert  
13 witness, you have to have an -- she's presumably going  
14 to be providing opinion testimony, recommendations, or  
15 evaluations.

16 So the school board objects to this witness  
17 offering any expert testimony, to the extent that no  
18 such opinions have been fully disclosed to the school  
19 board in advance, in accordance with the  
20 five-business-day rule.

21 HEARING OFFICER: Thank you. You're done with  
22 that; right?

23 MS. OWENS: Yes, ma'am.

24 HEARING OFFICER: Or were you looking over  
25 your list.

1 MS. OWENS: Yes, ma'am, I'm done.

2 HEARING OFFICER: Response?

3 MR. RATNER: Yes. So I'll take the second  
4 point first. Her first point was relevancy. I'll put  
5 that off to the side.

6 Ms. Capone has reviewed the school board's  
7 records, the school board's exhibits, other exhibits  
8 that we have provided her in the books. And I should  
9 have said -- and we'll get to this -- she has a full  
10 set of the binders with her.

11 She's going to be offering her opinions on,  
12 for example, the adequacy of the IEP.

13 It sounds to me like what Ms. Owens is saying  
14 is that she believes there was a requirement of a  
15 written expert report in this case that needed to be  
16 disclosed in advance. There is no such requirement in  
17 anything that Ms. Owens just read to you.

18 She is offering her testimony based on her  
19 expertise. And again, we have to qualify her as an  
20 expert. I don't believe we'll have any trouble doing  
21 that, but we understand we need to do that. Once she  
22 has been qualified, my understanding, from what you've  
23 been saying, is, an expert would be qualified to offer  
24 their opinion on scores.

25 When Julie Oliver --

1 HEARING OFFICER: If she's qualified.

2 MR. RATNER: Yes, ma'am.

3 So Julie Oliver, we asked, and you decided she  
4 wasn't qualified -- and I'm not arguing that, but there  
5 was no discussion of Julie Oliver didn't give us a  
6 report, so she couldn't answer that.

7 This is a new thing that they -- again, I  
8 would briefly say that you very clearly said in your  
9 order that all challenges to experts should be made in  
10 advance, before the hearing. I've raised that with you  
11 at least two times on the prehearing calls in the  
12 beginning.

13 And now here we are on Friday at 2:40, and  
14 Ms. Owens decides to spring this new objection that our  
15 expert should be barred.

16 So we would strenuously disagree to that.

17 MS. OWENS: We disagree. In fact, during the  
18 last prehearing conference call, it was clear that the  
19 school board would have an objection to Ms. Capone.

20 HEARING OFFICER: I do think I remember the  
21 school board telling me that they agreed to something,  
22 but that they were going to reserve the right to object  
23 to the qualifications of the expert, because there were  
24 two, at least from what I recall, different issues with  
25 this witness. One of them was whether or not she could

1 testify remotely, and the other one was whether or not  
2 she's qualified.

3 So I took care of the first one. The second  
4 one being the qualifications. So --

5 MS. OWENS: Mr. Ratner was aware that this was  
6 a concern because the school board has --

7 MR. RATNER: I'm sorry. I wasn't done. I  
8 still had the floor, I believe.

9 HEARING OFFICER: Go ahead.

10 MR. RATNER: Thank you so much.

11 So your memory is consistent with mine. There  
12 were two issues, whether she was qualified as an  
13 expert, which we're just about get to, and if she can  
14 testify remotely.

15 Ms. Owens has now added a third objection,  
16 which is we didn't file a written expert report. That  
17 was never raised. And it seems to be an issue of,  
18 Let's hide the ball from the parents --

19 HEARING OFFICER: Okay. Editorial remarks --

20 MR. RATNER: That was my own impression.

21 Please strike that from the record.

22 HEARING OFFICER: Go ahead.

23 MR. RATNER: It seems to be, I'm surprised by  
24 that. I was not prepared for this. I was expecting a  
25 challenge to her qualifications, which I'm fully

1 prepared to address. I don't have any problem with  
2 that.

3 HEARING OFFICER: All right. I'm going to --  
4 on the fact that she isn't providing evaluations, and  
5 all of the other things you said that she's supposed to  
6 do --

7 MS. OWENS: If I may, Ms. Freeman?

8 HEARING OFFICER: Yes.

9 MS. OWENS: During the previous prehearing  
10 conference call, there was a discussion that the school  
11 board would have concerns about Ms. Capone testifying  
12 as an expert witness, so much so that Mr. Ratner  
13 indicated that he may not even offer her as an expert,  
14 that perhaps he would offer her as a fact witness --

15 MS. RATNER: No, ma'am. I'm sorry. That was  
16 me saying that. I just want to clarify because maybe I  
17 wasn't clear.

18 We were just saying that the remote-testimony  
19 issue would not be resolved by a resolution, not that  
20 we are a hundred-percent offering her as an expert,  
21 only if that was denied will we say she still would be  
22 testifying.

23 So there still was going to be -- this was the  
24 issue of the reasonable accommodation for disability.  
25 So in case I was not clear about that, I was not

1 saying, at all, that we wished to offer her as a fact  
2 witness, only if she is rejected as an expert, we still  
3 think she has --

4 HEARING OFFICER: So let's -- go ahead.

5 MS. OWENS: That statement by Ms. Ratner  
6 clearly indicates that they were aware that the school  
7 board had a concern about this witness testifying as an  
8 expert witness. So today is not the first day in which  
9 that concern was raised.

10 In addition to that, the school board would  
11 continue to have objections to the extent that no  
12 evaluation report has been provided. The regulations  
13 are clear that, to the extent that the parents intend  
14 to have this witness provide any recommendations at  
15 this hearing, such recommendations have not been  
16 disclosed at least five business days ahead of time, in  
17 accordance with the five-business-day rule, we would  
18 object to that testimony being offered by this witness.

19 MR. RATNER: If I may just briefly?

20 HEARING OFFICER: Yes.

21 MR. RATNER: We're talking past each other a  
22 little, so I apologize.

23 Ms. Owens continues to say we were aware that  
24 there were concerns. We were very aware that there  
25 were concerns about her qualifications as an expert.

1 We are very prepared to address those today.

2 She's again coming back to this  
3 written-recommendation issue, which was never raised  
4 until just now. I don't know that she has any,  
5 quote/unquote, recommendations.

6 HEARING OFFICER: Written recommendations.

7 MR. RATNER: She doesn't have any written  
8 recommendations. If Ms. Owens' position is some  
9 testimony would constitute an oral recommendation that  
10 has to be stricken, you can rule on that when we get to  
11 it.

12 But again, there's nothing in the regulations,  
13 that I see, that would require an expert report, which  
14 is what Ms. Owens is essentially arguing she should  
15 have had at the five-day exchange.

16 HEARING OFFICER: Do you have any --

17 MS. RATNER: Right. And that has very serious  
18 implicates for families because it already is very  
19 expensive to hire an expert just to testify. If there  
20 was a requirement that an expert -- in addition to  
21 being qualified at an expert and testifying, that  
22 person also must prepare an expert-witness report,  
23 that's a pretty onerous requirement.

24 So there's no secret evaluation document that  
25 hasn't been given. There's no recommendation, there's



1 no evaluation. She has opinions that she is an expert  
2 to state.

3 MS. OWENS: May I respond?

4 HEARING OFFICER: Go ahead.

5 MS. OWENS: The school board has the right,  
6 has the fundamental right to fully examine a witness.  
7 To the extent that Ms. Capone is going to be testifying  
8 without having provided any written documentation of  
9 the areas in which they even intend to cover with  
10 Ms. Capone, the fact that she has not -- it's not as  
11 though the school board has heard from her during the  
12 course of even an IEP meeting or the eligibility  
13 meeting for the student.

14 So any opinions that she's going to be  
15 offering today are opinions that the school board will,  
16 for the very first time, here today. That is a serious  
17 concern, that the school division has not been afforded  
18 a fair and full opportunity to examine this witness and  
19 the basis for the conclusions or opinions that she may  
20 attempt to draw today.

21 HEARING OFFICER: Okay. Is everybody done?

22 MR. RATNER: Yes.

23 HEARING OFFICER: If she, Ms. Capone, is going  
24 to testify as an expert, there is an opinion that she  
25 has, to which the school system was entitled to learn,

1 to explore, to observe, to read, to be prepared to  
2 defend on behalf of the school system.

3 The second issue is the -- so I'm inclined to  
4 agree with the school system on the -- it's not just a  
5 written evaluation. But typically, a witness, an  
6 expert witness writes an opinion and it's given over to  
7 the other side.

8 Now, your objection about the fact that all of  
9 this should have been brought up within five days, I do  
10 distinctly remember that they reserved their ability to  
11 object to the expert witness. And I think, in all  
12 fairness, we were crunched for time. I think that  
13 prehearing conference went on for about an hour, but  
14 the one prior to that, I don't know if we discussed  
15 expert-witness testimony at that point. But I remember  
16 that was very, very lengthy, that prehearing  
17 conference.

18 It seems to me that that's the one where the  
19 issue was reserved to the school system. So how much  
20 of a reservation there was, I couldn't tell you. I  
21 just remember that there was a separation between the  
22 question of whether or not Ms. Capone would testify  
23 remotely or whether or not Ms. Capone was qualified to  
24 testify in the first place.

25 Perhaps I was remiss in not asking you to

1 qualify the expert before we even discussed the remote  
2 testimony. As you mentioned, the fact that the parents  
3 have spent a considerable amount of time with this  
4 witness, but at this point, we can't relax the rules so  
5 much that this process is not meaningful.

6 It has to be fair to both sides --

7 MS. REDACTED: I'm taking a break. This is  
8 ridiculous.

9 HEARING OFFICER: If you're leaving --

10 MS. REDACTED: I'm just taking a break.

11 HEARING OFFICER: As far as expert witness  
12 goes, I think you're prepared to --

13 Let the record reflect that the parent -- I  
14 don't know if there was any inference to the fact that  
15 she walked out while I was giving my response to the  
16 motion. However, let the record note that the parent  
17 did walk out.

18 MS. RATNER: I think she's very sad and  
19 disappointed because she spent a lot of money on an  
20 expert who's testified in at least --

21 HEARING OFFICER: I understand. Thank you.

22 MS. RATNER: And I think she will be prepared  
23 to say that she has not ever been required to submit a  
24 written report in other --

25 HEARING OFFICER: Again, thank you for your

1 remark.

2 MS. RATNER: I just think we can empathize  
3 with Mom for being sad.

4 HEARING OFFICER: I can, too, but the  
5 procedure is the procedure. I can't change it. I'm  
6 here to enforce it as much as to uphold the parents'  
7 right, the child's right, and the school's right to due  
8 process. That's what this is all about. REDACTED is the  
9 subject of this due-process hearing.

10 So I just cannot agree with you that the  
11 school system has no ability to know what an expert  
12 opinion, if she is an expert, is. There's no  
13 opportunity to examine it prior to being here today.

14 Now, your next issue is whether or not she's  
15 qualified to testify. I think there was some  
16 preliminary questions about that.

17 MR. RATNER: There are. So what I would  
18 suggest, I guess, because if your ruling is that even  
19 if she is qualified, you're not going to hear her  
20 testimony.

21 HEARING OFFICER: No. As Ms. Ratner pointed  
22 out the other day, an expert witness can give lay  
23 testimony about factual information. I would suggest  
24 that if there is any resolution to this, that we maybe  
25 perhaps consider doing that, to permit her to testify

1 as much as she can about whatever input.

2 Is that fair?

3 MR. RATNER: So I guess what you're suggesting  
4 is we would try to qualify her --

5 HEARING OFFICER: Let them say what they want  
6 on the record. Go ahead.

7 MR. RATNER: I'm just trying to make sure I  
8 understand what you're proposing.

9 HEARING OFFICER: I have not heard her  
10 qualifications yet. She may qualify as an expert. She  
11 may not.

12 But the point right now is, let's go over her  
13 qualifications to testify as an expert, which means  
14 we've got to go back to the typical questions, where  
15 did you go to school, what is your licensure. I think  
16 we've already gone past the issue of whether or not she  
17 can offer an expert opinion, because the opinion has  
18 not been shared with the other side.

19 I don't really know the -- I don't know the  
20 answer, at this point, about sharing an opinion because  
21 there's been no written or oral report to the other  
22 side. I don't know that the expert opinion would have  
23 to be written down.

24 I mean, I guess it's conceivable that an  
25 expert can give an oral opinion about what the opinion

1 is going to say, from the expert. But typically,  
2 opinions are written down and shared.

3 MR. RATNER: Well, I understand what you're  
4 saying, if that's typical, but Ms. Owens is saying it's  
5 required, and because we didn't do it --

6 HEARING OFFICER: I'm looking it as typical,  
7 whether or not I would elevate that to the hierarchy of  
8 always required. There are certainly deviations from  
9 that, but generally, that's the rule, that the opinion  
10 is shared.

11 MS. RATNER: I would like to add that a number  
12 of -- in fact, most of the witnesses that were  
13 designated as experts for the school board have not  
14 provided us any written opinion. We had no notice of  
15 what their opinion was going to be in this hearing,  
16 either.

17 HEARING OFFICER: Well, I've noted your  
18 objection, if that's what it is, on the record.

19 So let's go forward, then. The next event  
20 would be introduce her, I think, and attempt to qualify  
21 her.

22 MR. RATNER: That sounds very good.

23 HEARING OFFICER: If she can't qualify as an  
24 expert, then go back to factual testimony. I don't  
25 know what else to do.

1 MR. RATNER: That sounds fine. I guess my  
2 question to you, before we bring her back into the  
3 room, would you like to handle the preparatory remarks  
4 or would you like me to turn her over --

5 HEARING OFFICER: You can go ahead and do  
6 that. You're in her direct line, anyway.

7 MR. RATNER: Ms. Freeman, are you ready for  
8 her to come back? I don't think she's on yet.

9 HEARING OFFICER: Elizabeth Capone, can you  
10 hear me?

11 THE WITNESS: Yes, I can. Thank you.

12 HEARING OFFICER: I'm the hearing officer.  
13 This is the case of REDACTED. Her parents are here.  
14 I think you've met Mr. and Ms. Ratner.

15 Have you met school counsel? LaRana Owens and  
16 Patrick Andriano are to my right. Can you see them?

17 THE WITNESS: I can see part of somebody and I  
18 can see two other people.

19 MR. RATNER: So Liz, if you can hear me,  
20 there's a remote-controlled camera. Someone's  
21 controlling it and he's going to try to move it  
22 appropriately. Obviously, he can't do it on a dime.

23 HEARING OFFICER: Mr. Jones is going to be  
24 handling your testimony technologically. And  
25 Mr. Ratner is going to be asking you questions.

1 I'm going to ask you to raise your right hand  
2 now?

3 (The witness was here sworn by the Hearing  
4 Officer.)

5 HEARING OFFICER: All right. Thank you. You  
6 may lower your hand. Answer any questions Mr. Ratner  
7 asks, please.

8 ELIZABETH CAPONE,  
9 called as a witness by and on behalf of Parents, after  
10 having been duly sworn, was examined and testified as  
11 follows:

12 DIRECT EXAMINATION

13 BY MR. RATNER:

14 Q. Good afternoon, Ms. Capone. Can you hear me  
15 okay?

16 A. Yes. Good afternoon, Mr. Ratner. I can hear  
17 you. Thank you.

18 Q. Where are you physically located right now?

19 A. I'm in Reisterstown, Maryland, which is north  
20 of Baltimore, almost up by the Pennsylvania border.

21 HEARING OFFICER: Can you spell that?

22 Yes, I can. It's R-e-i-s-t-e-r-t-o-w-n,  
23 Maryland.

24 HEARING OFFICER: Thanks.

25



1 BY MR. RATNER:

2 Q. But are you in your house? Are you alone?

3 Just let Ms. Freeman know who is around you,  
4 things like that.

5 A. Sure. This is our current residence. It is a  
6 rental cabin. And my daughter is in another room in  
7 the cabin.

8 Q. Is the door closed?

9 A. Yes, the door is closed. I've turned off my  
10 phone. My phone is in another room. Yes.

11 Q. Do you have the exhibit books in front of you?

12 A. Yes. That's the only thing, other than a  
13 heater. I cleared out -- this is a storage room.  
14 Everything else was cleared out.

15 Q. Just to make sure we all are literally on the  
16 same page, you should have Parents' Volumes 1 through  
17 4, and one notebook that is the school board's  
18 exhibits.

19 A. Yes. And I have the indexes here also.

20 Q. So in other words, the exhibit lists?

21 A. Yes. That's correct.

22 Q. Thank you. So I would like you to turn in  
23 Parents' Volume 3, Tab 76. This is your curriculum  
24 vitae. And I know they're cumbersome, so I imagine it  
25 will take you a moment to get to it.

1           A.    I just happen to have it here.  I'm not sure  
2 why, but I have it here.

3           HEARING OFFICER:  Which one?

4           MR. RATNER:  Volume 3, 76.

5           THE WITNESS:  I have it.

6           MR. RATNER:  We're just waiting for everybody  
7 else.

8           THE WITNESS:  Oh, sure.  Thank you.

9           BY MR. RATNER:

10          Q.    Let me ask you, let's start with your  
11 educational background after high school.  Please tell  
12 Ms. Freeman what that is?

13          A.    Yes.  Hi.  I earned a bachelor's degree from  
14 the College of Wooster in Wooster, Ohio.  It was a  
15 self-designed major, which included core courses  
16 available at a different school.  And I completed that  
17 degree in four years.

18          Q.    You said it was a bachelor's?

19          A.    Yes.  That's correct.

20          Q.    Hold on just one second.

21          HEARING OFFICER:  Was there a question over  
22 there?

23          MR. ANDRIANO:  No.

24

25

1 BY MR. RATNER:

2 Q. After you graduated college, did you go on to  
3 any further education?

4 A. Yes. I took courses later towards a master's  
5 degree. And I also completed courses later after that,  
6 that I did not include on my résumé, for teacher  
7 re-certification later on.

8 Q. Did you actually earn a master's degree?

9 A. Yes. I earned it from Johns Hopkins  
10 University.

11 Q. What was the subject matter, or your major? I  
12 don't know what it's called for a master's.

13 A. In special education, which also included  
14 teacher certification at the same time.

15 Q. And Johns Hopkins University is located in  
16 Maryland; correct?

17 A. Yes.

18 Q. So the teacher certification was in Maryland;  
19 is that right?

20 A. That's correct.

21 Q. Have you ever been certified as a teacher in  
22 Virginia?

23 A. Yes. I'm currently certified as a teacher in  
24 Virginia.

25 Q. Have you ever taught in Virginia public

1 schools?

2 A. I taught virtually for Fairfax County Public  
3 Schools last school year.

4 Q. So the 2020/2021 academic year?

5 A. That's correct. I started in October. They  
6 had a late posting. So I was there through the end of  
7 that school year. It was a one-year appointment.

8 Q. What did you teach that year for Fairfax  
9 County Public Schools?

10 A. Middle school, English, English-language arts  
11 for eighth-graders, both self-contained and co-taught  
12 classes.

13 Q. You were a special-education teacher?

14 A. That's correct.

15 Q. What other teaching experience do you have in  
16 special-education classrooms?

17 A. Sure. I've actually taught in general  
18 education, in resource, in self-contained public,  
19 self-contained private, residential treatment center,  
20 and acute hospital settings. I've taught all grade  
21 levels. And I've taught every disability category  
22 except deaf/blindness, every child in a category except  
23 deaf/blindness.

24 Q. Have you ever --

25 MR. RATNER: And again, please stop me if you

1 think this is going beyond the appropriate scope,  
2 Ms. Freeman.

3 BY MR. RATNER:

4 Q. -- taught a child with some of the deficits  
5 you've seen that REDACTED has?

6 A. Yes.

7 Q. Just elaborate on that, on your experience  
8 teaching a student with those deficits.

9 A. Yes. Children who are considered twice  
10 exceptional are children who have been found to be  
11 eligible under one of the special-education-disability  
12 categories, under IDA, and that are also found to have  
13 high-skill areas or high-cognitive functioning. And  
14 that's the term "twice exceptional."

15 My first experience with that was in 1998,  
16 with a young lady who was in fourth grade, who ended up  
17 going to a separate public placement for gifted and --  
18 for children who are gifted and have a learning  
19 disability.

20 Q. Have you had other, similar experiences like  
21 that since 1998?

22 MS. OWENS: I'm going to object to the extent  
23 that we're talking about students other than

24 REDACTED .

25 MR. RATNER: This is about her qualifications.

1 HEARING OFFICER: Would you ask her to please  
2 confine her remarks to this student?

3 MR. RATNER: I thought we were talking about  
4 her qualifications. We're not even getting to her  
5 testimony yet.

6 HEARING OFFICER: No, but she's going off into  
7 other students. That's what I heard, anyway, and there  
8 was an objection.

9 MR. RATNER: Right, because her qualifications  
10 as an expert have to do with her experience as a  
11 teacher.

12 HEARING OFFICER: I'm going to allow it just  
13 for the purpose of that. Go ahead.

14 MR. RATNER: Thank you.

15 BY MR. RATNER:

16 Q. So have you taught other students since 1998  
17 with similar profiles?

18 A. Yes.

19 Q. Great. Have you ever been in an IEP meeting  
20 as a special educator?

21 A. Yes. As a special educator, as an IEP  
22 coordinator, as a special-ed coordinator, and as a  
23 special-education team leader.

24 HEARING OFFICER: Can you go through that  
25 again, please?

1 BY MR. RATNER:

2 Q. Take it one at a time, please, and explain  
3 what your role in the IEP meeting was in each of those  
4 roles?

5 A. Okay. When I've been a case manager for a  
6 student in an IEP meeting, it's typically a student I'm  
7 teaching at the time. So I'm responsible for crafting  
8 the IEP and presenting the IEP. At the IEP meeting,  
9 typically I may or may not be chairing that meeting.  
10 Also, it depends on the structure of the school at that  
11 time.

12 Q. Approximately how many times have you  
13 participated in an IEP meeting as a case manager?

14 A. Hundreds of times.

15 Q. What was the next category? I think you were  
16 including a special-ed coordinator and some others.

17 A. Sure. I was an IEP coordinator at a  
18 residential treatment center in Rockville, Maryland.  
19 In that capacity, I was responsible for every IEP that  
20 was, you know, at that school at that time.

21 We had students from four different states,  
22 including Virginia. So I interacted with the local  
23 education-agency representatives to ensure that the  
24 IEPs were in compliance with their specific policies  
25 and procedures. And I insured that all of the data was

1 collected in advance of the IEP meeting. I chaired  
2 every one of those meetings.

3 Q. Any other roles in an IEP meeting?

4 A. Yes. I was a middle-school resource teacher  
5 and special education, Montgomery County Schools, which  
6 is the de facto team leader. And I chaired every  
7 meeting, every meeting at that school, that school  
8 year.

9 We had over a hundred children who were  
10 receiving special-education services and I had children  
11 coming into the school. We had children from a hundred  
12 different elementary schools who could attend that  
13 middle school. I didn't go to a hundred different  
14 elementary schools for their fifth-grade exiting IEP,  
15 but I went to several dozen.

16 By the same token, I went to many meetings for  
17 children who were in eighth grade, who were  
18 transitioning to high school, and attended as that  
19 school rep.

20 I was also a special-ed coordinator at a  
21 charter school in DC. And I chaired every meeting  
22 there and was responsible for every IEP meeting there.  
23 And then other teaching experiences since then, any  
24 student that's been on my case load, I would, of  
25 course, be responsible for writing their IEP and



1 attending those meetings.

2 Q. Do you have any experience writing a  
3 functional-behavior analysis or a  
4 behavioral-intervention plan?

5 A. Yes.

6 Q. Please describe that experience for  
7 Ms. Freeman?

8 A. Sure. I was tasked at my second job to attend  
9 county-wide training on functional-behavior assessments  
10 and behavioral-intervention plans, and then trained the  
11 teachers in my building, as the sole special educator  
12 in that building.

13 And I was responsible for conducting  
14 functional-behavior assessments and  
15 behavior-intervention plans in that building, as well.  
16 And the forum I developed at that time was used in that  
17 county for a few years, probably around five years. I  
18 think in the -- for whatever reason, the different form  
19 was used.

20 I've also done functional-behavior assessments  
21 and behavior-intervention plans in other schools by  
22 being one of the people who is tasked with doing that  
23 job when no one else is able to do it or trained to do  
24 it.

25 Q. Can you put a number on approximately how many

1 times you've conducted an FBA?

2 A. Over thirty.

3 Q. How many times do you think you've written a  
4 behavioral-intervention plan?

5 A. Over twenty-five.

6 Q. Are you qualified to administer the  
7 Woodcock-Johnson test?

8 A. Yes. I've been giving that test since I was  
9 trained at Johns Hopkins in my graduate program. And  
10 also, the publisher has updated it through the years,  
11 so whatever county you work for typically sends  
12 teachers to those trainings for any updates. The last  
13 update was done in, I believe 2014, and I was  
14 administering it through 2017 -- I'm sorry. Through  
15 the end of the 2017 school year.

16 Q. Are you, then, capable of interpreting the  
17 results of the Woodcock-Johnson test?

18 A. Yes.

19 Q. Have you ever been qualified to give expert  
20 testimony in a special-education, due-process hearing?

21 A. Yes.

22 Q. Approximately how many times?

23 A. I was qualified by a DC Public Schools hearing  
24 officer, Herbert Smith. When you were qualified in DC,  
25 once that qualification is given, they do not

1 re-qualify you. That stands.

2 That is my understanding at the time and  
3 that's what I was told. It is once and you're done.  
4 And then every time you appear after that, you do not  
5 have to be re-qualified.

6 Q. So have you testified as an expert?

7 A. Yes.

8 Q. Approximately how many times?

9 A. Over sixty.

10 Q. Have you ever been attempted to be qualified  
11 as an expert, but not accepted as an expert, in a  
12 due-process, special-education hearing?

13 A. No.

14 MR. RATNER: At this point, I imagine there  
15 will be some voir dire, but I think we've pretty  
16 effectively established her qualifications as an expert  
17 witness in the area of IEPs, functional-behavior  
18 assessments, and behavioral-intervention plans,  
19 educational diagnostician at least as it applies to the  
20 Woodcock-Johnson test.

21 HEARING OFFICER: She administered the  
22 Woodcock-Johnson.

23 MR. RATNER: I'd be happy to ask her how many  
24 times.

25 HEARING OFFICER: How many times did you say

1 you had administered the Woodcock-Johnson?

2 THE WITNESS: Since it -- since I started all  
3 through the years?

4 HEARING OFFICER: Yes.

5 THE WITNESS: Over a hundred.

6 HEARING OFFICER: Okay. Any questions?

7 MS. OWENS: I do.

8 VOIR DIRE EXAMINATION

9 BY MS. OWENS:

10 Q. Ms. Capone, good afternoon. I'm, again,  
11 LaRana Owens and I'm one of the attorneys representing  
12 the school board.

13 A. Good afternoon.

14 Q. Ms. Capone, you're licensed to teach in the  
15 State of Virginia and in Maryland, but you don't have  
16 any special-education endorsements in the area of  
17 specific learning disabilities; correct?

18 A. No. It was not required in Virginia at that  
19 time, for me to teach students with learning  
20 disabilities, to obtain that certification.

21 Q. You do not have any endorsements to serve as a  
22 reading specialist; correct?

23 A. I actually -- on my Maryland teaching  
24 certificate, it does have reading as a -- I took a  
25 Praxis test for reading. And I also took a number of

1 graduate credits for reading during my  
2 re-certification. So there's a reading endorsement on  
3 my Maryland certificate.

4 Q. You don't have an endorsement for reading in  
5 the Commonwealth of Virginia; correct?

6 A. That is correct.

7 Q. And you're not currently licensed as a school  
8 psychologist; are you?

9 A. No, I am not.

10 Q. You also testified that you developed  
11 functional-behavioral assessments and  
12 behavioral-intervention plans.

13 Would you agree that the development of a  
14 behavioral-intervention plan is generally a team  
15 process, and not a document that's prepared and  
16 implemented by one person?

17 A. That is correct. However, at some schools  
18 I've been in, there were no other people available and  
19 I was tasked with that responsibility, unfortunately.

20 MS. OWENS: I don't have any further questions  
21 for Ms. Capone.

22 MR. RATNER: No further questions.

23 Again, we would like Ms. Capone to be  
24 qualified as an expert in the areas of IEP drafting,  
25 adequacy of an IEP, a student's progress on IEP goals,

1 the functional-behavior assessments and  
2 behavior-intervention plans, as well as the  
3 Woodcock-Johnson test that was administered to REDACTED by  
4 Chesterfield County Public Schools.

5 HEARING OFFICER: Your objection?

6 MS. OWENS: I understand Ms. Capone's  
7 qualifications. However, she has not -- she's  
8 indicated that she's taught in the Commonwealth of  
9 Virginia for probably about a year in virtual setting.

10 There's been no testimony yet that she has  
11 delivered any in-person instruction to students within  
12 the Commonwealth of Virginia, that she's conducted any  
13 functional-behavior assessments or  
14 behavioral-intervention plans in person here in the  
15 Commonwealth of Virginia, or that she has administered  
16 any of these batteries of tests to any student in  
17 person in the Commonwealth of Virginia.

18 So with that caveat, the school board would  
19 have concerns.

20 MR. RATNER: If you find -- and I don't know  
21 the answer to this. I'm happy to ask Ms. Capone. But  
22 whether or not she's taught students in person in  
23 Virginia, that has absolutely no bearing on her  
24 qualifications as an expert witness in this case, and  
25 especially in this case where a good portion of REDACTED's

1 instruction was, in fact, virtual.

2 HEARING OFFICER: Well, as you know, you need  
3 to have certain licenses in order to testify as an  
4 expert witness in Virginia, at least in school cases.

5 MR. RATNER: Which licenses is she missing?

6 HEARING OFFICER: Virginia licensure? She's  
7 licensed as a special-education teacher.

8 MR. RATNER: She taught special education.

9 HEARING OFFICER: For one year.

10 MR. RATNER: Right, and about twenty years in  
11 various jurisdictions.

12 HEARING OFFICER: But that's not Virginia.

13 MR. RATNER: Again, I just would note that the  
14 IDEA is a federal statute.

15 HEARING OFFICER: But this is again -- yeah,  
16 that's right. It's a federal statute.

17 So what I'm going to do, I think, to  
18 compromise this, because I know the parents are  
19 extremely upset about not being able to qualify her, so  
20 what I think I might do is have her testify as an  
21 expert witness -- I'm sorry -- as a lay witness, but  
22 I'm going to give you a little latitude, as much as I  
23 can.

24 But if we get deeply into analysis, opinions  
25 that should have been provided to the school system or

1 that she's just not qualified to talk about, then I'm  
2 probably going to cut you off, and just going to have  
3 to get through this and figure out where those  
4 objections are.

5 I know the school system is probably going to  
6 object to her testimony, but I'm going to try to listen  
7 to it as much as I can. But I'm not qualifying her --

8 MR. RATNER: That's what I wanted to make  
9 sure. I interpreted you. I'm sorry. Would you say it  
10 clearly for the record?

11 HEARING OFFICER: Yes. What we're going to do  
12 is compromise. I know that this witness has an extreme  
13 amount of expertise. Whether or not it qualifies  
14 technically as special-education expertise in Virginia,  
15 to the extent that I'm going to qualify her as an  
16 expert witness in this case is probably not  
17 appropriate.

18 What I'm going to do, as a compromise, is  
19 allow the witness to testify as a factual witness as  
20 much as possible. And I'm going to relax the  
21 guideline, the distinction, I would say, between what  
22 is factual and what is opinion evidence.

23 If I determine, as we move on, that there are  
24 opinions that should have been shared with the school  
25 system, as we earlier discussed, I am going to cut off



1 the testimony of the expert witness.

2 But I appreciate the fact that she's  
3 qualified, but it doesn't rise -- what was that?

4 MR. RATNER: I think Ms. Capone has a  
5 question.

6 HEARING OFFICER: Her qualifications, having  
7 worked in Virginia for one year as a special-education  
8 teacher, I don't think that qualifies, by the books,  
9 enough for her to testify as an expert, fully as an  
10 expert witness.

11 I honestly have never done this before, but I  
12 appreciate the fact that the parents, this is their  
13 expert. I'm going to try to exercise latitude as much  
14 as I possibly can. All right.

15 MR. RATNER: We appreciate that very much. I  
16 would like to note our exception to your decision. We  
17 appreciate the latitude you're giving us, but I would  
18 like to reiterate that we feel strongly that Ms. Capone  
19 is quite qualified.

20 HEARING OFFICER: Your exception is noted.  
21 And the school system's, if you think I'm absolutely  
22 incorrect in compromising and allowing her to give some  
23 opinion evidence, but not fully, fully amplify her  
24 professional opinions.

25 So let's go ahead. We'll just have to get

1 through this, your objections as they come up.

2 MR. RATNER: I think Ms. Capone maybe has a  
3 question for you.

4 HEARING OFFICER: Okay. Go ahead.

5 THE WITNESS: Yes. Thank you. I appreciate  
6 the opportunity to supplement my comments on my Fairfax  
7 County Public Schools virtual teaching.

8 As an eighth-grade, English language arts  
9 teacher at the school I was at last year, I also was  
10 qualified because I passed the Praxis middle-school  
11 English test. And I would like to add that I was the  
12 only person in the eighth grade, of any case manager,  
13 to write reading/language-arts goals for the entire  
14 grade level.

15 So the other case managers, which is often  
16 done in other school systems, would write their own  
17 goals. I was responsible for fifty-five children's  
18 reading- and language-arts goals because they all said  
19 I was more qualified than they were, all of the  
20 teachers that had been working there, for several years  
21 in Virginia.

22 I just wanted to supplement my comment so that  
23 people knew I was turned to as the person, the only  
24 person in that grade level who was qualified for that.  
25 So I wrote that portion of every eighth-grader who was

1 on an IEP in that building. I wrote their English  
2 language-arts program levels, and their goals, and I  
3 did their progress reports for fifty-five students.  
4 Thank you.

5 HEARING OFFICER: Thank you. Go ahead.

6 DIRECT EXAMINATION, continued

7 BY MR. RATNER:

8 Q. Ms. Capone, can you hear me okay?

9 A. Yes. Thank you.

10 Q. So let me just start with, have you reviewed  
11 REDACTED 's IEPs?

12 A. Yes.

13 Q. Have you reviewed the functional-behavior  
14 assessment that was conducted for her in the late  
15 winter, early spring of 2021?

16 A. Yes.

17 Q. Have you reviewed the written work that was  
18 submitted, both by the school board in their exhibit  
19 books, and the written work that was submitted by the  
20 parents in their exhibit books?

21 A. Yes, I have.

22 Q. Other relevant documents in the exhibit books  
23 that you've reviewed that you'd like Ms. Freeman to  
24 know about, before I start asking you specific  
25 questions?

1 A. Sure. The educational evaluation, which is  
2 comprised of the Woodcock-Johnson, the one dated  
3 12/14/20, which is School System's Exhibit 24. That  
4 was also an additional document that I looked at.

5 Q. Great. So let's start with that document, the  
6 educational evaluation, please. I believe you said  
7 it's School Board 24; is that correct? It sounds like  
8 you know where they are better than me.

9 A. That is where that document is, yes.

10 Q. Thank you. Let me know when you have it in  
11 front of you?

12 A. I have it in front of me.

13 Q. This is a confidential educational evaluation  
14 for REDACTED, with an evaluation date of 12/14/2020.  
15 It is pages School Board Exhibit 000104 through 000111.

16 Are there any other evaluations in this report  
17 other than the Woodcock-Johnson Tests of Achievement  
18 IV?

19 A. The only thing referenced is a review of  
20 records.

21 Q. Is there any -- is the Woodcock-Johnson Test  
22 of Achievement IV a Virginia-specific exam?

23 A. No. Riverside Publishing is the -- was the  
24 original, you know, publisher for it. And it's given  
25 nationally.

1 Q. How many times have you said you've  
2 administered this test?

3 A. I've administered this test over a hundred  
4 times. Now, it was updated in 2014. I haven't done  
5 it, obviously, a hundred times since 2014, but I  
6 started doing it in 1998.

7 Q. Thank you. I'd like to ask you to -- let's  
8 start factually with, what are the results of this  
9 test?

10 What are the factual results reported in this  
11 educational evaluation, conducted by Kirsten Rubino as  
12 it relates to REDACTED?

13 A. There are standard scores given, which show  
14 the ranges she's performing as compared to her same-age  
15 peers. And she is demonstrating performance in the low  
16 range in more than one -- on more than one subtest, in  
17 more than one academic area. Actually, in some, she  
18 was performing in the very low range.

19 Q. Where are you looking specifically in the  
20 document to get this information?

21 A. The school board exhibit page number is  
22 000107, which, in the educational evaluation, comes out  
23 at Page 4, where there is a table of scores at the top  
24 of the page.

25 Q. So are you -- are there different tests on

1 this for reading, for written language, and for  
2 mathematics?

3 A. Yes. There are subtests in those areas,  
4 uh-huh.

5 Q. Let's start on the reading test. What is  
6 tested for basic reading skills?

7 A. The letter-word identification subtest is a  
8 test where the words increase in difficulty. And they  
9 start off, you know, at a, for lack of a better word,  
10 at an easier level and they get more difficult. Those  
11 are actual words.

12 There also is a subtest called Word Attack,  
13 which is typically more nonsense, for lack of a better  
14 word, syllables. There's also passage comprehension,  
15 where the student looks at a passage, reads the  
16 passage, and then provides an accurate word to go in a  
17 blank that would make the passage make sense.

18 There's also a short, timed subtest where the  
19 student needs to reads sentences and answer if it's  
20 true or false. And that is a timed test. Any time you  
21 see fluency on the Woodcock-Johnson, it is a timed  
22 subtest.

23 Q. Let's talk a little bit about the scaled  
24 scores. What is a scaled score on the Woodcock-Johnson  
25 test?

1 A. Do you mean standard score?

2 Q. Yes, ma'am. Thank you for correcting me. A  
3 standard score.

4 A. That's okay. The bottom of Page 2 lists the  
5 standard-score range and then what -- the description  
6 of that range. So for example, if a student scores --  
7 and again, I'm looking at School Board Exhibit 000105.  
8 If a student scores between 121 and 130, they are  
9 performing, on that subtest, for that day, in the  
10 superior range as compared to their same-age peers.

11 Q. So for a student like REDACTED, who is in the  
12 low-average range on the basic reading skills, what  
13 does that mean she has trouble with?

14 What are the areas that that is identifying or  
15 testing?

16 A. It's looking at a few things, as I said. It's  
17 looking at her ability to pronounce or decode words out  
18 loud, in isolation. When we say "in isolation," we  
19 mean in a list. So it wouldn't be in a passage where  
20 she had seen a word before and would know by guessing  
21 what the word is.

22 The letter/word-ID subtest, you know, is not  
23 in context, is not in paragraphs, is not in sentences.  
24 It's on a list.

25 The passage comprehension, not a timed

1 subtest. That is where she can use context clues, and  
2 things like that, to determine a missing word.

3 Q. Let me stop you right there. It looks to  
4 me -- and I'm not an expert on this -- that she  
5 basically scored average on the reading comprehension  
6 and reading comprehension extended.

7 Am I reading that correctly?

8 A. Yes. If I look at the subtest scores below  
9 that, that's what I'm looking at. I'm looking at the  
10 passage comprehension. So I'm looking at it subtest by  
11 subtest.

12 Then the oral reading, that's when it is --  
13 again, that's one of her -- that seems like that's one  
14 of her need areas. That is in the low range. And of  
15 course, this report goes into extensive detail,  
16 describing each of those subtests.

17 Q. So having reviewed this, can you give  
18 Ms. Freeman a profile of REDACTED's strengths and  
19 weaknesses?

20 A. Well, I mean, I think the report does a -- you  
21 know, gives us many clues in terms of her strengths and  
22 weaknesses. If we go to School Board Exhibit 000109,  
23 the third bullet from the top, if they're alluding to  
24 her fluency challenges, where it says repeated reading  
25 may help increase REDACTED's reading fluency.



1 Q. So as someone who has chaired hundreds of IEP  
2 meetings, how would you incorporate this information  
3 into an IEP for REDACTED ?

4 A. Well, often, but not all of the time. When  
5 there is a subtest on the Woodcock-Johnson, sometimes  
6 there is an error analysis, where the examiner can  
7 provide some information about the types of errors that  
8 the student has made, without compromising the  
9 confidentiality of the protocol or the test. That  
10 seems to be almost county by county, state by state.

11 But based on the recommendations that are  
12 listed, we can make inference that fluency is a need  
13 area, that -- if we go to the next page, School Board  
14 Exhibit 000100, where the recommendation is for her to  
15 review long and -- I'm sorry -- review short and long  
16 vowels daily, we would infer that that is a need area  
17 for her, or it wouldn't be included. Also plural  
18 endings.

19 And at the top of that page before that,  
20 School Board Exhibit 000109, there is a recommendation  
21 for a mnemonic, for a word-decoding strategy. So that  
22 would imply that word decoding a need area.

23 Q. Let's now take a look at school board exhibit,  
24 Tab 37. Tell me when you have that in front of you,  
25 Ms. Capone?

1 A. I have it.

2 Q. What is this document?

3 A. Individualized education program, dated  
4 2/19/2021.

5 Q. You've reviewed that before today? Before  
6 giving your testimony I should say.

7 A. Yes.

8 Q. Could you explain for Ms. Freeman where the  
9 deficiencies, that are noted in the Woodcock-Johnson,  
10 are discussed in this IEP?

11 A. Sure. We typically go to the present level of  
12 academic- and functional-performance area to locate the  
13 information that is then used to write the goals,  
14 determine services, and determine accommodations.

15 So in the present level of academic and  
16 functional performance, at the top of the Page 3, where  
17 it says functional performance --

18 Q. Let me get there, please.

19 A. Sure.

20 Q. So that's Page 000162. And feel free to refer  
21 to just Page 3, whatever's easier for you.

22 You're at the very top of that page; is that  
23 right?

24 A. Right. Because typically, in the present  
25 level of performance, you're citing where you're

1 getting the data, whether it's a classroom teacher, a  
2 work sample, the Woodcock-Johnson. You're usually  
3 saying, according to, based on, using the data from.  
4 So that sentence starts that way.

5 In speaking with REDACTED's fifth-grade teacher,  
6 she states that decoding remains difficult for REDACTED.

7 Q. So what is the significance of that?

8 MS. OWENS: Objection.

9 THE WITNESS: The significance of that would  
10 mean that we would --

11 MR. RATNER: Hold on a second, Ms. Capone.  
12 There's an objection.

13 MS. OWENS: Mr. Ratner is asking that this  
14 witness provide an opinion. I think the hearing  
15 officer has --

16 HEARING OFFICER: About the functional  
17 performance, isn't that where we are?

18 MR. RATNER: We are on the functional  
19 performance.

20 HEARING OFFICER: And you're asking her to  
21 provide an opinion?

22 MR. RATNER: I didn't intend to.

23 HEARING OFFICER: It sounded -- I don't  
24 remember the exact words, but it sounded like you were  
25 getting ready to ask her to elicit an opinion on the

1 school board exhibit, which is the present level of  
2 performance or the PLoP.

3 MR. RATNER: Yes. Again, one of the  
4 challenges is when there are objections before a  
5 question is answered. But I very much understand that  
6 I'm not to ask her opinions. You've made that very  
7 clear.

8 So I'm going to continue my examination, but  
9 there was an objection. So I'd like you to rule on it  
10 first.

11 HEARING OFFICER: All right. So you  
12 understand that, so go ahead.

13 MR. RATNER: Yes. Trust me when I say I have  
14 no intention of trying to get her to blurt something  
15 out.

16 HEARING OFFICER: I didn't think you were.  
17 Okay.

18 BY MR. RATNER:

19 Q. Ms. Capone, just walk through this document  
20 for me so I better understand how the deficiencies,  
21 that are identified in the Woodcock-Johnson evaluation,  
22 are being addressed in this IEP?

23 Where are they trying to work on these issues?

24 MS. OWENS: Ms. Freeman, I think that we  
25 still --

1 THE WITNESS: So it's referenced --

2 MS. OWENS: -- have the same concerns.

3 HEARING OFFICER: Can you instruct the witness  
4 to just -- we're going to have an objection.

5 MR. RATNER: I think she's got it.

6 MS. OWENS: So Mr. Ratner is asking this  
7 witness to testify about her opinion with regard to --  
8 about the deficiencies with the --

9 HEARING OFFICER: He's shaking his head no.

10 MS. OWENS: With the IEP or her opinion about  
11 how the Woodcock-Johnson data is reported in the IEP.  
12 That is beyond facts and it's beyond a reasonable  
13 inference from this witness to make.

14 HEARING OFFICER: Any response?

15 MR. RATNER: Only that I disagree with  
16 Ms. Owens' characterization, but I will --

17 HEARING OFFICER: How would you change her  
18 characterization?

19 MR. RATNER: I'm trying to get through the  
20 facts reported in this.

21 HEARING OFFICER: I'm going to sustain now  
22 because it does sound like we're leading to the deeper  
23 area of -- that would require an expert opinion.

24 So let's move on.

25 MR. RATNER: Are you saying I have to move off

1 the IEP entirely or just move on to a new subject?

2 HEARING OFFICER: I'd say move on to another  
3 subject. The next question is going to be about --

4 MR. RATNER: The goals.

5 HEARING OFFICER: Is that your next subject?

6 MR. RATNER: The goals in this IEP.

7 HEARING OFFICER: So this is the problem.  
8 They don't have any notice about her opinion about  
9 goals and how they're different than possibly the ones  
10 that --

11 MR. RATNER: I don't intend to ask her if she  
12 would have drafted different goals. I'm going to ask  
13 her what these goals work on. Does that make sense?

14 HEARING OFFICER: All right. That sounds  
15 factual. Go ahead, even though she didn't, obviously,  
16 write this.

17 MR. RATNER: That's right. But she's an  
18 expert, we contend, in IEP drafting. If she  
19 understands what this is telling her to do.

20 HEARING OFFICER: All right. Go ahead.

21 BY MR. RATNER:

22 Q. Ms. Capone, let's skip ahead to the measurable  
23 annual goals. I'm going to ask you some questions  
24 about that. To the extent you need to refer back to  
25 other information that's listed in this document, by

1 all means, please do.

2 First of all, what does it mean for an IEP to  
3 have measurable annual goals?

4 A. It means that there are specific -- that you  
5 can collect data on them, and they're achievable within  
6 one year, and they're individualized for that specific  
7 child based on that need area.

8 Q. How many goals are in this IEP for REDACTED  
9 as of February 19, 2021?

10 A. It appears that there are five. And actually,  
11 I think there are five areas and also are short-term  
12 objectives. Let me just count again.

13 Q. Yes. Take your time.

14 A. It appears to be -- there are six goals in  
15 five different need areas.

16 Q. Let's start with the first goal for reading  
17 phonemic awareness. What's phonemic awareness?

18 A. Phonemic awareness is basically one of the  
19 early behaviors you see in children. Sometimes it's  
20 seen even in pre-reading, where a child is aware of the  
21 letters and what sounds they produce, and sounds and  
22 what letters represent those sounds.

23 So it's kind of a two-way street. So a child  
24 would know, if they see a picture of a frog and they're  
25 asked, what does "frog" start with, they can both say

1 the sound and the letter. They're aware of sort of the  
2 pre-reading rules of phonics.

3 Q. Looking at this goal as it's written in REDACTED's  
4 IEP, what is REDACTED supposed to be working on with this  
5 goal?

6 A. With the first reading goal, she'll be able to  
7 use learned decoding strategies to decode and encode  
8 unfamiliar, multi-syllabic words, containing all  
9 syllable types learned in and out of context, with  
10 seventy-five-percent accuracy by February 2022. There  
11 are two objectives that are under there.

12 Q. So do I understand the short-term objectives  
13 correctly, that those are sort of stepping stones to  
14 achieving the annual goal? Is that a fair statement?

15 A. I think they're a subcategory. So it's like  
16 if you have that goal, what are those objectives or  
17 benchmarks? Benchmarks are like, how are they getting  
18 to that goal.

19 Q. Let me ask you this, looking at the second  
20 short-term objective and benchmark, about decoding and  
21 encoding two-syllable words, are you familiar with the  
22 different types of words that are described here? Or  
23 are those words being described?

24 What is being described there, starting with  
25 short and long vowels, vowel digraphs, consonant



1 blends, et cetera?

2 A. Right. Those are different syllable patterns  
3 that you would see. For example, if you have a  
4 consonant-vowel-consonant word, like pet or sat or met,  
5 it's going to follow a rule most of the time, where  
6 it's a short vowel.

7 So looking at those different syllable types,  
8 vowel digraphs are two vowels together. Like if you  
9 have "O" and "I," it can be "oi." Just like a  
10 consonant digraph, you know, is like "P" and "H" makes  
11 a new sound, "f."

12 Consonant blend is where consonants keep their  
13 own sounds. Like in the word "vest," the "S" and the  
14 "T" retain their own sound.

15 VCV is, for all essential purposes, the same  
16 thing as short vowels. Then VCVE would be like cake or  
17 mate, where the vowel says its own name, for lack of a  
18 better word. Those are different types of syllables.

19 When we say "decode," we mean reading. And  
20 when we say "encode," we mean writing or spelling.

21 Q. Is it possible to work on decoding and  
22 encoding at the same time?

23 MS. OWENS: I'm going to object to the extent  
24 that this is asking the -- that Mr. Ratner is asking  
25 the witness an opinion.

1 MR. RATNER: I disagree that it's an opinion.  
2 It's facts about teaching.

3 HEARING OFFICER: I'm going to overrule it at  
4 this point, but that does not mean I'm going to let you  
5 go on.

6 MR. RATNER: Fair enough.

7 BY MR. RATNER:

8 Q. Let me move on, Ms. Capone, because I don't  
9 want to run out of time. I want to be mindful that  
10 we've got to be done with you by 5:00, and the other  
11 side will need to have a fair amount of time to  
12 cross-examine.

13 HEARING OFFICER: How long do you --

14 MR. RATNER: I'd say fifteen more minutes. So  
15 they'd have an hour, if that's okay.

16 HEARING OFFICER: Okay.

17 BY MR. RATNER:

18 Q. Let's go back to Parents' Book Volume 1,  
19 Tab 1, Page 10, please? This has already been admitted  
20 into evidence. It has been identified as work REDACTED  
21 performed. And it's got a date on it.

22 A. Since that's two pages, are you also going to  
23 be referring to 11, or no?

24 Q. Yes, ma'am. Thank you. I appreciate you  
25 clarifying that.

1 Is this a document you've reviewed?

2 A. Yes, it is.

3 Q. Do you see, what types of words are they  
4 working on, if I'm even making sense? I'm not sure if  
5 I asked that correctly.

6 For example, it looks like, in the second one,  
7 REDACTED got something wrong. The answer was where,  
8 w-h-e-r-e, and she wrote, w-a-r-e. Do you see that?

9 A. Yes, I do.

10 Q. What is that an example of? What kind of  
11 error is that?

12 A. The words on here, except for, I believe one  
13 or possibly two, are traditionally sight words that  
14 don't fit into any syllable patterns per se.

15 Q. Were sight words addressed in that IEP that we  
16 were just discussing?

17 A. I will go back and check, but I did not  
18 believe I saw that.

19 Q. I may be pronouncing this wrong, but is there  
20 something called a Dolch, D-o-l-c-h, word? Is that a  
21 concept you're familiar with in your experience as a  
22 special-education teacher?

23 A. Yes.

24 Q. What is a Dolch word?

25 A. Dolch words are frequent -- high-frequency

1 words. They're typically sorted by grade level as to  
2 how often a student would see those words when they're  
3 first beginning to read. And there are also some  
4 non-sight words, Dolch words, but Dolch words are  
5 primarily considered sight words.

6 Q. That's named after a Mr. Dolch; correct?

7 A. I believe so. I am not a hundred percent  
8 sure.

9 Q. Is it a matter of opinion as to whether or not  
10 something is a Dolch word or would you say that's a  
11 fact?

12 A. It would be more of a matter of opinion if  
13 something is a -- I mean, it's a list that's been  
14 around for years and years and years. Those are the --  
15 the list doesn't change.

16 Q. Okay. Great. Let's go to Tab 71 in parents'  
17 book, please?

18 A. What binder is that in?

19 Q. The same one that your CV was in. It's  
20 Volume 3.

21 A. Thank you. What is the number?

22 Q. 71. I'm just waiting for Ms. Freeman to get  
23 there, and for you to get there.

24 A. I'm here.

25 Q. Is this a document you prepared?

1 A. This is from the Internet.

2 MR. RATNER: Let me -- I will represent to  
3 you, Ms. Freeman, I downloaded this document. You can  
4 see it's from a website called Dolchword.net. You've  
5 mentioned your familiarity with Dolch words.

6 Are these the Dolch words as you understand  
7 them.

8 A. Yes. Starting with pre-primer, uh-huh.

9 Q. This isn't your categorization, pre-primer,  
10 primer, first grade, second grade, and third grade;  
11 correct?

12 That's the Dolch characterization; is that  
13 right?

14 A. That is correct, yes.

15 Q. Do you see REDACTED, in her written work, making  
16 errors with these Dolch words consistently?

17 MS. OWENS: Objection; calls for this witness  
18 to provide opinion testimony, drawing or extrapolating  
19 conclusions based on her review of REDACTED's work and  
20 errors with Dolch words.

21 MR. RATNER: If I could be heard just briefly?

22 HEARING OFFICER: Sure. Go ahead.

23 MR. RATNER: I don't see how that could be any  
24 more factual. We've just had testimony these Dolch  
25 words are a fact.

1           She has reviewed the work. So for example,  
2 where, you can see for yourself, w-a-r-e is spelled  
3 wrong, and I'm asking her if she's seen errors of these  
4 words in the work. I don't see what is an opinion in  
5 that.

6           HEARING OFFICER: You would probably have to  
7 be an expert to apply the logic of Dolch words to  
8 understanding --

9           MR. RATNER: Well, may I ask a couple more  
10 questions?

11          HEARING OFFICER: If Ms. --

12          MS. REDACTED: It just doesn't make sense. I'm  
13 sorry.

14          MR. RATNER: Don't worry about that.

15                 For example, if you're spelling "out," o-u-t,  
16 wrong, that's a primer-level Dolch word. What I'm  
17 asking her, has she seen examples where REDACTED is  
18 spelling these words on this list wrong.

19                 I don't know what requires opinion about that.  
20 I mean, yes, it's an opinion if it's spelled wrong, but  
21 I think you and I can --

22          HEARING OFFICER: I'm going to allow her to  
23 identify the words she's seen. But as far as  
24 interpreting results from that --

25          MR. RATNER: No, no, no. That's why I'm

1 trying to be as factual as I can.

2 HEARING OFFICER: Unless she starts  
3 interpreting.

4 BY MR. RATNER:

5 Q. Can you give examples to Ms. Freeman, please,  
6 of misspelled Dolch words that you've seen within the  
7 exhibit binders?

8 A. I can look at this document we're looking at  
9 right now, the fill-in-the-blank where I just said --  
10 you asked me what word that was for Question 2. So  
11 this is -- actually, the majority of the words on this  
12 list are found on the Dolch word list.

13 Q. Just point them out for Ms. Freeman, please?

14 A. Oh, sure. Sure. Number 2, where the correct  
15 answer is "where," where are you going to travel during  
16 spring break, if we look at pre-primer, alphabetically,  
17 Column 2, it's the third word from the bottom.

18 Q. Continue, please?

19 HEARING OFFICER: Now she's going back to her  
20 work, though.

21 MR. RATNER: Right, that she's misspelled that  
22 word.

23 HEARING OFFICER: Where is that word  
24 misspelled?

25 MR. RATNER: I'm sorry. I went quickly.

1 That's Volume 1, Page 10.

2 So you can keep them side by side , if you  
3 want. You might want to keep the Dolch word list out,  
4 so you can hold them side by side. That was 71.

5 Is that easier for you? I can use that.

6 HEARING OFFICER: Yeah, probably, because  
7 it's --

8 MR. RATNER: I understand. Yes. It's only  
9 taken me five days to figure that one out. Sorry.

10 HEARING OFFICER: I know one thing. They're  
11 all heavy.

12 MR. RATNER: Yes, ma'am. So Page 160.

13 HEARING OFFICER: Okay. I have the Dolch word  
14 list.

15 MR. RATNER: Do you have Pages 10 and 11 from  
16 Volume 1 in front of you, Ms. Freeman?

17 HEARING OFFICER: Now I'm going to Volume 1,  
18 wherever it is. I'm going to go back to -- where is  
19 the actual list again? Is it the first --

20 MR. RATNER: It's Tab 1, Pages 10 and 11.

21 HEARING OFFICER: All right. I'm there.

22 BY MR. RATNER:

23 Q. So at Number 2, Ms. Capone, you indicated that

24 REDACTED misspelled the word "where," w-h-e-r-e.

25 Is that on the Dolch word list?



1 A. Yes.

2 Q. Where is that on the Dolch word list?

3 A. In the pre-primer list of words on Column 2,  
4 the third word from the bottom.

5 Q. Thank you. Continue through this document,  
6 pointing out where there are errors in spelling of  
7 Dolch words, please?

8 A. Question 3: The car is parked in their  
9 driveway because the garage is full. "Their" is also  
10 on the Dolch word list.

11 Q. Where is that?

12 A. It's on the second-grade list, in Column 2,  
13 about ten from the top. It's alphabetical.

14 Q. I see it. Thank you. Continue, please?

15 A. Question 6: Our teacher said that it was too  
16 windy to go outside. Said is on the list.

17 Q. Where is that one?

18 A. It's on the -- it's in the pre-primer list,  
19 and it is in Column 2. Again it's alphabetical.

20 Q. Yes, ma'am. Continue?

21 A. In addition to that, that same sentence,  
22 Sentence 6, the second part of it, "too" windy, if you  
23 look at the primer list, Column 2, again alphabetical,  
24 about halfway down, there is the word "too."

25 If we flip to Page 2 on this assignment, we go

1 to the last question and we look at the last word that  
2 is listed, which is -- again, that is on the  
3 first-grade list, it is the second word.

4 There is also another word in Question 11 that  
5 is not marked wrong that actually is wrong.

6 Q. Which one is that?

7 A. It appears that it should read: Do you want  
8 that same Pepsi again, and "want," although it is not  
9 marked incorrect, is also on the Dolch word list.

10 Q. Where is that?

11 A. It's on the Primer Column 2, about halfway  
12 down.

13 Q. Got it. Thank you. If you could, please  
14 turn, in Tab 1, to the very next page, which is  
15 Parents' 12. It is the sugar -- actually, it's called  
16 the -- one final point.

17 What was the date on the handwritten worksheet  
18 that we were just talking about?

19 A. It was 4/1/21. And it does say that it was  
20 read to her.

21 Q. So the teacher had to actually read this to  
22 REDACTED?

23 A. I'm just reading the directions. That would  
24 be my inference, yes.

25 Q. Let's turn to the next page, Page 12. Do you

1 see, at the upper right, it says "at home song," 12/20?

2 A. Yes.

3 Q. 12/2020. Do you see any Dolch words on this  
4 document that are misspelled? For example, I see  
5 "witch" at the top, w-i-c-h (sic).

6 Is that a Dolch word?

7 A. Yes. It is second-grade. It is about halfway  
8 down the second column. Yes.

9 Q. Any others?

10 A. Let me see.

11 Q. How about "nice," n-i-c-e, do we see that one?

12 A. N-i-c-e, yeah.

13 Often words that you can sound out, that  
14 follow the rules of phonics, often those are not on the  
15 Dolch word list. So that would be a soft-C-for-S  
16 error. I do see some other errors, but again, those  
17 may not be Dolch-word errors per se.

18 Q. I think, to close out the Dolch-word issue,  
19 was there any goal in REDACTED's IEP in effect, as of  
20 4/1/21 when she was writing this worksheet, to be  
21 addressing what appears to be a deficiency in Dolch  
22 words?

23 MS. OWENS: Objection; calls for this witness  
24 to make an opinion.

25 HEARING OFFICER: Your response?

1 MR. RATNER: I'm asking her if there's  
2 factually a goal in the IEP to work on sight words or  
3 Dolch words.

4 MS. OWENS: Ms. Freeman, he's asking the  
5 witness to draw a conclusion about whether or not the  
6 IEP includes within it that the student would be  
7 working on certain types of words. So to the extent  
8 that that is being requested, he's asking the witness  
9 to draw a conclusion.

10 HEARING OFFICER: Any response, more?

11 MR. RATNER: Yes. When we looked at the  
12 goals, it was very clear what she was supposed to be  
13 working on, VCV, these other types of digraphs, and  
14 there was no mention of sight words or Dolch words.

15 HEARING OFFICER: Are you getting her to go  
16 through another list? Is that what you're doing?

17 MR. RATNER: No, sight words. "Dolch" is  
18 another word for "sight words," is my understanding.

19 BY MR. RATNER:

20 Q. Is that correct, Ms. Capone?

21 A. Many of the words on the Dolch list are sight  
22 words. They are high-frequency words. They are the  
23 words that students see the most as they get through  
24 each grade level.

25 HEARING OFFICER: What exactly is she going to

1 tell me about the goals, though, in relation to site  
2 words?

3 MR. RATNER: If there was any goal to address  
4 a problem with Dolch words or sight words.

5 HEARING OFFICER: She can tell me if she saw  
6 that, but not interpret --

7 MR. RATNER: Exactly. Yes, ma'am.

8 HEARING OFFICER: Overrule for now, but no  
9 opinions.

10 BY MR. RATNER:

11 Q. Did you see any goals to address Dolch words  
12 in that IEP? And again, it's Tab 37 --

13 A. I did not see any reference to sight words or  
14 Dolch words per se.

15 MR. RATNER: I don't want to get into  
16 interpretations, so I think that's a perfect place to  
17 leave it, if that's okay with you, Ms. Freeman?

18 HEARING OFFICER: Of course.

19 MR. RATNER: I know I'm a little bit past  
20 where I said, but I'm close to finished.

21 HEARING OFFICER: Okay. Good.

22 BY MR. RATNER:

23 Q. Did you review the FBA for REDACTED or the  
24 documents related to it?

25 A. I reviewed the -- this is School Board

1 Exhibits 28 and 29. Those were the only two that I  
2 knew of that related to the FBA per se.

3 MR. RATNER: Before I go on, it sounded like  
4 there might be an objection.

5 HEARING OFFICER: Is it Tab 28?

6 MR. RATNER: Yes, in the school board book.

7 BY MR. RATNER:

8 Q. Ms. Capone, what is the document that's at  
9 Tab 28, as you understand it? I'm not asking for your  
10 opinion about it.

11 A. Sure. It's labeled on the indexes, under  
12 document description, it's labeled parent, dash,  
13 teacher FBA interview. But it is -- on the actual  
14 document, it says relevant background information. The  
15 document, itself, did not say parent/teacher FBA  
16 interview. I think it's more of a teacher interview.

17 Q. Is this a form that your generally familiar  
18 with?

19 When you've conducted FBAs, do you need to  
20 interview people to conduct an FBA?

21 A. Typically, we would collect data from various  
22 instructional staff who interact with the child. I  
23 know different counties, different states do FBAs and  
24 BIPs slightly differently, but there are -- there is  
25 more than one vehicle to collect data when you are

1 concerned about a student's behavior.

2 Q. Do you see any examples of factual data in  
3 this interview question, like she's done this behavior,  
4 this many times?

5 A. I want to clarify the question. Are you  
6 asking me if I see quantitative data, in terms of  
7 numerical data? Is that your question? I just want  
8 clarify.

9 Q. That's my first question. And it could be yes  
10 or no, or you could elaborate, if necessary.

11 MS. OWENS: Objection. Calls for this witness  
12 to make an opinion with regard to the appropriateness  
13 of the FBA.

14 HEARING OFFICER: I believe the last word you  
15 had in that question was to "elaborate."

16 MR. RATNER: I can say yes or no and leave  
17 "elaborate" out.

18 BY MR. RATNER:

19 Q. Do you see a collection of quantitative data  
20 in this document?

21 A. We're talking about just Tab 28; correct?

22 Q. That's right?

23 A. No, I did not.

24 Q. Where you see, for example, what are the  
25 problem behaviors, do you see a description of a

1 behavior REDACTED engaged in?

2 Do you see that? It's the first interview  
3 question.

4 A. I do see that, yes.

5 Q. What is described by Christine McCluskey as  
6 the problem behavior?

7 A. The first line or the second, because they're  
8 both -- actually, the first three are all talking about  
9 problem behaviors.

10 So which line do you want me to focus on.

11 Q. Start on the first line, please?

12 A. I'll just read it word for word --

13 Q. Let me stop you there. Ms. Freeman is capable  
14 of reading it. I don't need you to read it for her,  
15 but as --

16 HEARING OFFICER: Direct her to whatever part  
17 of it you want her to actually tell me about.

18 MR. RATNER: I guess this is conceivably an  
19 opinion question, so I'm going to warn you before I ask  
20 it.

21 HEARING OFFICER: I'm sure the school system  
22 will chime in.

23 BY MR. RATNER:

24 Q. Is it possible for you, as a teacher, to know  
25 if a student is, quote/unquote, lying instead of doing



1 her work?

2 How would a teacher know that?

3 MS. OWENS: I'm going to object. That does  
4 call for this witness to provide an opinion.

5 HEARING OFFICER: Yeah. Any response?

6 MR. RATNER: Yes. I'm just trying to figure  
7 out how Ms. McCluskey could possibly know that REDACTED  
8 would lie instead of doing her work.

9 HEARING OFFICER: Do you think that may be a  
10 question for Ms. McCluskey?

11 MR. RATNER: It might be, but I thought it  
12 might also be a question for someone who has conducted  
13 hundreds of FBAs.

14 MS. OWENS: She's not an expert.

15 MR. RATNER: Actually, I think she --

16 HEARING OFFICER: I'm going to sustain the  
17 objection on that one.

18 MR. RATNER: Understood. Thank you.

19 Ms. Freeman, if I could have just a few  
20 moments to look everything over? I think I'm ready to  
21 wrap up with Ms. Capone.

22 HEARING OFFICER: Go ahead. Yes.

23 THE WITNESS: Mr. Ratner, I have not done  
24 hundreds of FBAs. I wanted to clarify that. I had not  
25 said that earlier, either. Sorry.

1 BY MR. RATNER:

2 Q. I think you said thirty, and then twenty-five  
3 BIPs; is that right?

4 A. Yes.

5 Q. Thank you for correcting that. My apologies.

6 HEARING OFFICER: Did she say whether or not  
7 they were Virginia or Maryland?

8 MR. RATNER: I don't think she did.

9 HEARING OFFICER: Can you ask her that?

10 BY MR. RATNER:

11 Q. Have you ever done an FBA in Virginia?

12 A. I was part of a team last year where I  
13 recommended one to be done for a student. And then the  
14 team did gather and one was done at my recommendation.

15 HEARING OFFICER: That's in Virginia; right?

16 THE WITNESS: Yes, that's correct.

17 HEARING OFFICER: Thank you.

18 MR. RATNER: So what I would like to do at  
19 this point, with your permission, I don't have any more  
20 questions, but I'd like to make a proffer as to what  
21 Ms. Capone would have said, was prepared to say so  
22 there's a record of it.

23 HEARING OFFICER: Is there an objection or  
24 not? You don't know what he's going to say because  
25 he --

1 MR. RATNER: Right, but you've already said  
2 she can't say it. So it's not evidence.

3 HEARING OFFICER: But why would -- you just  
4 want to proffer what she would have said?

5 MR. RATNER: Right, so there's a clear record  
6 of it.

7 MS. OWENS: Ms. Freeman, I don't think a  
8 proffer at this point would be appropriate for  
9 Mr. Ratner to make on behalf of the witness.

10 HEARING OFFICER: I think the proffer would  
11 have been before we started.

12 MR. RATNER: I respectfully disagree, but I  
13 understand your ruling.

14 HEARING OFFICER: All right. Let's move on.  
15 Is there any more testimony you want to ask of this  
16 witness?

17 MR. RATNER: I think I have one last question.

18 BY MR. RATNER:

19 Q. Ms. Capone, any other factual information that  
20 you have reviewed -- actually, two more questions.

21 Did you see a consistent pattern in the  
22 written work that you reviewed, of beyond just the two  
23 documents we reviewed where sight words were  
24 misspelled?

25 A. Could you repeat the question, please?

1 Q. Beyond the two documents that I reviewed with  
2 you, did you see other examples in REDACTED 's written work  
3 of sight words being misspelled, over time?

4 A. I saw examples of various types of words being  
5 misspelled, including sight words. So  
6 phonetically-regular words and sight words.

7 Q. Dolch words are a subset of sight words or  
8 sight words are a subset of Dolch words? That's where  
9 I'm getting confused.

10 A. Sight words are words that are typically -- a  
11 student needs to know them by sight because they don't  
12 necessarily follow the patterns of phonetics.

13 So the word "said," s-a-i-d, it is not  
14 pronounced "say-id," which a student would be taught.  
15 You know, that's how -- the "A" and the "I." And it's  
16 not pronounced "say-d." It's a sight word. It's  
17 pronounced different.

18 Like the word "been," b-e-e-n or the word  
19 "the." It doesn't follow the rules of phonics. So  
20 they can't learn them based on the rules of phonetics.  
21 They have to learn them by sight.

22 Q. Are Dolch words sight words, I guess is what  
23 I'm getting at?

24 A. Most of them are. Not all of them. There  
25 also is another list below the high-frequency Dolch

1 words that some people refer to as, like, Dolch-phonics  
2 words. I've seen that, too.

3 MR. RATNER: Ms. Capone, thank you very much.  
4 You've been very patient. I think we might be taking a  
5 break now.

6 HEARING OFFICER: Yes.

7 MR. RATNER: Would it be acceptable that  
8 Ms. Capone also take a break?

9 HEARING OFFICER: Of course. Lets' take a  
10 break for ten minutes and come back at 20 after 4.

11 (A recess was taken between 4:12 and  
12 4:24 p.m.)

13 HEARING OFFICER: Let's move ahead. I believe  
14 we're at the point of cross-examination of Ms. Capone.

15 MR. RATNER: Can you hear us?

16 THE WITNESS: Yes, I can. Thank you.

17 MR. RATNER: I think we're ready. Ms. Freeman  
18 will give you your next instructions.

19 HEARING OFFICER: Do you recall that you were  
20 sworn?

21 THE WITNESS: Yes.

22 HEARING OFFICER: All right.

23 Cross-examination?  
24  
25

1 CROSS EXAMINATION

2 BY MS. OWENS:

3 Q. You've never been an employee of  
4 Chesterfield County Public Schools; correct?

5 A. That is correct.

6 Q. So you don't have any direct knowledge of  
7 CCPS's special-education practices or procedures;  
8 correct?

9 A. That is correct.

10 Q. You've never attended an eligibility meeting,  
11 IEP meeting, or other special-education meeting in  
12 Chesterfield County Public Schools; is that accurate?

13 A. Yes, that is accurate.

14 I didn't get to say good afternoon. Sorry.

15 Q. Is it fair to say that you have no direct  
16 knowledge of CCPS's programming for students with  
17 learning disabilities; correct?

18 A. That is correct.

19 Q. Have you ever met REDACTED ?

20 A. Virtually, yes.

21 Q. When did that occur?

22 A. That was about a week ago.

23 Q. How long was that interaction?

24 A. It was about sixty minutes.

25 Q. It's fair to say you've never served as

1 REDACTED 's teacher?

2 A. That's correct.

3 Q. Never provided any academic instruction of any  
4 kind to REDACTED ?

5 A. That is correct.

6 Q. You've never evaluated REDACTED ?

7 A. No, I have never evaluated REDACTED .

8 Q. Never observed her in the school setting?

9 A. That is correct.

10 Q. You never attended an IEP meeting regarding  
11 REDACTED ; correct?

12 A. That is correct.

13 Q. You never attended a meeting where REDACTED 's  
14 functional/behavioral assessment was discussed or  
15 considered?

16 A. That is correct.

17 Q. You haven't spoken to any of REDACTED 's former  
18 teachers with Chesterfield County Public Schools;  
19 correct?

20 A. That is correct.

21 Q. And you've never spoken to any of REDACTED 's  
22 former administrators with CCPS; is that accurate?

23 A. That is also accurate, yes.

24 Q. So you've never shared any -- strike that.

25 MR. RATNER: I think a lot of this is beyond

1 the scope, Ms. Freeman, because I didn't ask her about  
2 any of they stuff because of the limitations you put on  
3 me.

4 HEARING OFFICER: That was for testimony. I  
5 think you went into an extensive list of  
6 qualifications. So she gets to --

7 MR. RATNER: Right. But I mean, she had voir  
8 dire and I think we've already established that. Go  
9 ahead.

10 HEARING OFFICER: She's cross-examining now,  
11 though.

12 MR. RATNER: Right, but there's a scope. She  
13 didn't offer any expert opinions, so I don't know why  
14 she -- then, I guess I object to relevance.

15 HEARING OFFICER: Well, I'll let Ms. Owens  
16 tell you that, the relevance of asking --

17 Aren't you cross-examining the witness?

18 MS. OWENS: Yes, ma'am. And the witness  
19 provided testimony with regard to an IEP, with regard  
20 to the FBA -- or an interview of the FBA. He also  
21 asked questions about --

22 HEARING OFFICER: I remember the FBA. I  
23 remember all of these things generally.

24 MR. RATNER: Yes. Well, just note my  
25 exception? Thank you.



1 HEARING OFFICER: Okay. Note Counsel's  
2 exception, please?

3 Go ahead.

4 BY MS. OWENS:

5 Q. Ms. Capone, could you tell us what do you have  
6 in front of you? Do you have records in front of you?

7 A. You mean right at this moment?

8 Q. Yes, ma'am.

9 A. I have the binders that were sent to me by  
10 Mr. Ratner and my bottle of water. And I do not have a  
11 pen. I do not have anything written down. I have no  
12 notes. I have the binders. If you would like to see  
13 it, I'd be happy to show everybody.

14 Q. The binders that you have in front of you were  
15 binders or documents provided to you by Mr. Ratner;  
16 correct?

17 A. Yes, that's correct. Yes.

18 MR. RATNER: If there's a question, if there's  
19 a suggestion that somehow I altered them, I just want  
20 to say I sent our documents, exactly the binders  
21 everyone got. We made a copy of their documents and  
22 sent them to her.

23 MS. RATNER: Just the exhibit binders.

24 MR. RATNER: The exhibit binders, yes, ma'am.

25 HEARING OFFICER: So she has the same four

1 that we have from you?

2 MR. RATNER: Yes. And I thought I covered all  
3 that with her.

4 HEARING OFFICER: Minus a couple of things  
5 that I think we added.

6 MR. RATNER: That's right.

7 THE WITNESS: I don't think I have the  
8 additions.

9 MR. RATNER: You don't.

10 THE WITNESS: No, I don't have any additions.

11 HEARING OFFICER: Does she have the school  
12 system's binder?

13 MR. RATNER: She does. I made her a copy of  
14 it.

15 HEARING OFFICER: Okay.

16 BY MS. OWENS:

17 Q. Let's turn to -- you were asked some questions  
18 by Mr. Ratner, in Parents' Exhibit Binder 1, Tab 1.

19 A. Yes. That's correct.

20 Q. You would agree, as a teacher, that this would  
21 not constitute all of a student's work; correct?

22 A. I'm sorry. Could you repeat that?

23 Did you say that would not constitute all of  
24 her work?

25 Q. All the student's work; correct?

1 MS. RATNER: Objection. That calls for an  
2 opinion.

3 HEARING OFFICER: How would she know if that's  
4 all the student's work, though?

5 MS. OWENS: Because Mr. Ratner provided her  
6 with binders and then asked her questions about  
7 various, selected pieces of work.

8 BY MS. OWENS:

9 Q. I'm just saying, as a teacher, would you agree  
10 that you would expect the student to have more work  
11 than what you've seen in the binder?

12 MS. RATNER: Same objection. And a ruling,  
13 please?

14 HEARING OFFICER: It seems to me that it  
15 should be rephrased, do you know if this is all of her  
16 work.

17 MS. OWENS: Sure.

18 BY MS. OWENS:

19 Q. Ms. Capone, do you know whether --

20 HEARING OFFICER: So sustained.

21 And you're doing it over, rephrasing, so go  
22 ahead.

23 BY MS. OWENS:

24 Q. Do you know whether the work in the binders  
25 provided to you by Mr. Ratner constitutes all of REDACTED's

1 work?

2 A. Could you please specify a time period that  
3 you're speaking of?

4 Q. Within the binders, do you think that this is  
5 all of REDACTED 's work?

6 MR. RATNER: We will stipulate that this was  
7 the things we put in our book. I wasn't trying to hide  
8 that, if that's helpful.

9 HEARING OFFICER: What are you stipulating?

10 MR. RATNER: That this is not everything REDACTED  
11 worked on. We don't think we actually got everything  
12 REDACTED worked on. This is certainly not everything REDACTED  
13 worked on during the two-year period.

14 HEARING OFFICER: Does the school system agree  
15 to that stipulation?

16 MS. OWENS: That this is not all of REDACTED 's  
17 work, then yes, we will stipulate to that.

18 HEARING OFFICER: So I'm going to write down  
19 the stipulation was that the work that's in the binder  
20 is not all of REDACTED work.

21 MS. OWENS: No further questions for the  
22 witness.

23 HEARING OFFICER: Any follow-up?

24 MR. RATNER: I thought I had one. It flew out  
25 of my head, so I was going to take a second and see if

1 I can recall it.

2 HEARING OFFICER: Okay.

3 MR. RATNER: I cannot. So no further  
4 questions.

5 We would ask that Ms. Capone be dismissed,  
6 unless you had any questions.

7 HEARING OFFICER: I can't think of anything  
8 right now. I always think of questions after I go back  
9 and look over my notes. All right.

10 So Ms. Capone, you can be dismissed now.  
11 Thank you very much for your testimony.

12 THE WITNESS: Thank you.

13 HEARING OFFICER: And I hope you're feeling  
14 better and your daughter continues to do well.

15 THE WITNESS: Thank you. Should I sign off,  
16 then?

17 MR. JONES: I'll take care of it.

18 THE WITNESS: Thank you, Mr. Jones. Thank you  
19 everybody.

20 MR. JONES: I'm going to reconnect the other  
21 room real quickly.

22 HEARING OFFICER: Okay.

23 MR. RATNER: So where we are, Ms. Freeman, in  
24 our case, we've got about twenty-five minutes left  
25 before it's 5. There are a few items, that were

1 addressed by witnesses after Mr. REDACTED testified, that  
2 I would like to recall Ms. REDACTED to address, a few  
3 items. There should be three discreet items to make  
4 sure documents are in the record.

5 HEARING OFFICER: You were going to present  
6 whether or not the school system has an objection to  
7 her re-testifying?

8 MR. RATNER: I'm not sure what the basis would  
9 be. It's basically rebuttal. I think it would be  
10 rebuttal to what some of her --

11 MR. ANDRIANO: It can't be rebuttal.

12 MR. RATNER: Why? Because it's still our  
13 case? I mean, we called your witnesses.

14 MR. ANDRIANO: But we didn't have the  
15 opportunity --

16 MR. RATNER: So let me put it this way, then.  
17 Unless the school board intends -- when I say we've  
18 completed our case in chief, if the school board does  
19 not intend to make some kind of motion to dismiss, we  
20 believe we could get some additional documents in the  
21 record.

22 I'm happy to save that for what would be  
23 traditional rebuttal, as long as there's not going to  
24 be some kind of inference when we say we've rested.  
25 Does that make sense?

1 HEARING OFFICER: It does to me. It sounds  
2 like you would have an opportunity to go over  
3 everything that was said for the last five days and the  
4 items that school counsel brought up.

5 I think that's what you said you wanted to  
6 address; correct?

7 MR. RATNER: They might be able to address it  
8 in their case, then I wouldn't need to recall  
9 Ms. REDACTED.

10 HEARING OFFICER: You want me to keep in mind  
11 that you want to reserve an opportunity for -- I'm  
12 presuming that it's Ms. REDACTED to rebut anything that  
13 she was to --

14 MR. RATNER: Yes. It's two different things.  
15 I think we would definitely have a right to make  
16 rebuttal after they rest.

17 As long as there's not going to be some sort  
18 of dispositive motion the second I say I rest, Well,  
19 they didn't offer this, so your case is dismissed, then  
20 I'm fine saying, Great, we will reserve it for --

21 HEARING OFFICER: I'll reserve that motion.

22 MR. RATNER: Great. Then we got through  
23 everything we wanted to do today, and we have a whole  
24 twenty-two minutes to spare.

25 HEARING OFFICER: Are there any motions from

1 the school system?

2 MR. ANDRIANO: No, not at this point.

3 HEARING OFFICER: So do you wish to rest,  
4 then?

5 MR. RATNER: Yes, just with the caveat I made.

6 HEARING OFFICER: Yes. And then the rebuttal.  
7 Is that understood, though?

8 MR. ANDRIANO: It's understood.

9 HEARING OFFICER: All right. Thank you very  
10 much for everyone's patience. I'll see you on Monday  
11 at 9:00 in the morning.

12 MR. RATNER: Is that still good for everybody?  
13 It works for us.

14 MR. ANDRIANO: We could start later.

15 MR. RATNER: I like 9.

16 HEARING OFFICER: We can start earlier, if you  
17 want.

18 MR. ANDRIANO: I don't like earlier.

19 MR. RATNER: Let's stay at 9.

20 HEARING OFFICER: All right. Stay at 9.  
21 Thank you very much.

22

23 (Proceedings adjourned at 4:38 p.m.)

24

25

\* \* \* \* \*



1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

2 I, Gwendolyn O. Sugrue, Notary Public in and  
3 for the Commonwealth of Virginia at large, whose  
4 commission expires October 31, 2023, do certify that I  
5 was the court reporter at the aforementioned  
6 proceedings, and that the foregoing is a true, correct,  
7 and full transcript of the proceedings herein.

8 I further certify that I am neither related to  
9 nor otherwise associated with any counsel or party to  
10 the proceeding, nor otherwise interested in the event  
11 thereof.

12 Given under my hand and notarial seal at  
13 Charlottesville, Virginia this 6th day of April, 2021.

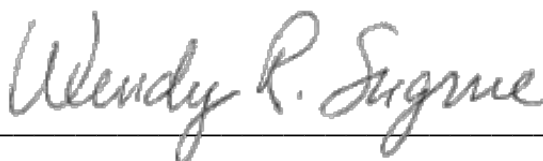
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<u>WORD</u> <u>INDEX</u>					
< 0 >	1513:18	1414:14	1481:4	28 1501:1, 5,	5 1291:13
000005	1:02 1425:8	1497:15, 25	2:20 1439:13	9 1502:21	1294:14
1396:11	1:16 1439:18	12/14/20	2:30 1439:14	29 1501:1	1299:19
000040	10 1300:20	1475:3	2:36 1439:19	29th 1380:25	1389:5
1333:13	1489:19	12/14/2020	2:40 1443:13		1394:18
000100	1495:1, 15, 20	1475:14	20 1508:10	< 3 >	1397:6, 7, 9,
1480:14	10:43 1347:6	12/20 1498:1	2009 1324:18	3 1293:20, 21,	10 1516:25
000104	10:50 1347:5	12/2020	2014 1465:13	22 1297:15,	5:00 1489:10
1475:15	10:51 1347:7	1498:3	1476:4, 5	16 1317:20,	5-0 1340:17
000105 1478:7	102 1292:7	12:03 1389:3	2015 1323:14	23 1333:4	
000107	109 1301:19,	12:55 1425:7	1325:16, 19	1341:23	< 6 >
1476:22	21, 23	121 1478:8	2017 1410:21	1344:25	6 1306:20
000109	1302:15	124 1395:19	1465:14, 15	1345:1	1324:4
1479:22	1303:23, 24	13 1297:9, 14,	2019 1397:15,	1347:16	1414:13
1480:20	1304:4, 6, 12	16 1314:8, 15	19	1348:5	1496:15, 22
000111	1341:23	1317:16	2019/2020	1351:11	6th 1520:13
1475:15	1098 1341:25	130 1478:8	1315:12	1367:16	
000162	1342:1	1322 1293:4	2020 1314:12,	1373:4	< 7 >
000359	1345:1, 11	1351 1293:20	25 1315:8	1385:21	7 1414:14
1394:25	1099 1345:16	1373 1293:21	1325:24	1396:10	1434:15, 16
001098	11 1297:16	1385 1293:22	1328:7	1397:8	71 1491:16,
1333:16	1347:3	1389 1293:5	1329:2	1414:6, 14	22 1495:4
001103 1412:7	1397:15, 19	14 1310:15	1356:16	1456:23	7201 1292:7
001104	1489:23	1426 1293:6	1411:14, 23	1457:4	73 1347:20, 21
1373:10	1495:15, 20	1438 1293:7	2020/2021	1481:16, 21	7339814
001108	1497:4	1455 1293:10	1459:4	1491:20	1520:21
1414:23	11:53 1389:2	1467 1293:11	2021 1330:13	1496:8	757.821.2931
00113 1300:21	1101 1345:16	1474 1293:12	1356:11, 16	3.2 1369:18	1292:4
00356 1394:25	1377:25	148 1315:17	1411:18	3.9 1369:18	76 1392:23
	1104 1374:13,	15 1301:18,	1419:22	3/31 1382:20	1393:7, 14
	18, 23	20 1310:14	1420:9, 19	31 1520:4	1435:15, 23
	1375:15	1509 1293:13	1474:15	31st 1381:6	1456:23
	1376:16	16 1315:8	1486:9	355 1396:9	1457:4
	1105 1367:23	160 1495:12	1520:13	356 1394:22	77 1293:20
	1386:5	16th 1314:23	2021/2022	359 1394:23	1333:4
< 1 >	1107 1367:23	17 1419:22	1360:18	37 1480:24	1341:23
1 1297:8, 14,	1108 1370:19,	1420:9, 19	1361:23	1500:12	1343:22
16, 22 1298:1,	20 1378:1, 2	19 1297:21	2022 1291:17		1344:19
18, 20	1379:12	1298:2, 25	1294:1	< 4 >	1345:1
1300:19	1385:6, 17	1299:12, 13	1299:20	4 1408:20	1347:15, 22,
1301:2, 17, 20	1110 1370:19	1486:9	1318:12	1409:7, 11, 12	23 1348:5
1303:21	1111 1292:12	1998 1460:15,	1371:8	1410:16	1349:23
1304:10, 23,	1371:9	21 1461:16	1487:10	1456:17	1351:11, 13
25 1305:2, 3	1112 1370:20	1476:6	2023 1520:4	1476:23	1371:9
1311:13	1371:9		21 1300:25	1508:10	1407:21, 24
1312:4	1378:2	< 2 >	1301:1	4/1/21	1408:9
1314:2, 9	1385:7, 17	2 1305:1	1318:12	1497:19	78 1293:21
1349:12, 23	1386:6	1317:22	21st 1397:14	1498:20	1371:20
1361:17	1113 1318:2	1318:25	22-84 1291:9	4:12 1508:11	1372:24, 25
1388:16	1116 1318:21	1388:17	23219 1292:13	4:24 1508:12	1373:3, 4, 5,
1394:12	1118 1318:2	1394:17	23226 1292:8	4:38 1291:18	16 1411:7
1396:7	112 1302:15	1413:16, 18,	23452 1292:3	1519:23	780 1292:3
1397:4	1303:24	25 1414:13,	24 1475:3, 7	400 1292:3	79 1293:22
1413:16	1304:6, 13	18, 24 1436:7	2400 1292:12	41 1312:8	1367:15, 18
1414:11, 13	113 1304:4, 7	1478:4	24th 1380:25	47229	1378:6
1427:25	117 1318:15	1494:10, 14,	25 1291:17	1291:24	1385:22, 23
1434:8, 16	12 1324:3	17 1495:23	1294:1	1520:23	1407:12
1456:16	1326:9	1496:3, 12, 19,	1299:20	4th 1381:9	1414:5
1489:18, 19	1361:9	23, 25 1497:11	27 1305:2, 3		1427:19
1495:1, 16, 17,	1389:1	2/19/2021	2701 1335:9	< 5 >	
20 1497:14			27th 1422:7		

<p>&lt; 8 &gt;  <b>8</b> 1317:25  <b>8:07</b> 1419:22              1420:9, 20  <b>80</b> 1317:20  <b>8-0</b> 1318:1  <b>804.648.1636</b>              1292:13  <b>804.665.1040</b>              1292:8  <b>85</b> 1297:15,              16 1317:19  <b>8VAC20-81-210-09</b>              1440:25  <b>8VAC20-81-210-K-2</b>              1440:19  <b>8VAC20-81-210-P-2</b>              1440:11</p> <p>&lt; 9 &gt;  <b>9</b> 1312:2, 4              1519:15, 19, 20  <b>9:00</b> 1519:11  <b>9:04</b> 1291:18              1294:1  <b>9:12</b> 1299:16  <b>9:25</b> 1299:15  <b>9:33</b> 1299:17</p> <p>&lt; A &gt;  <b>a m</b> 1291:18              1294:1              1299:17              1347:7              1389:2              1419:22              1420:20  <b>abilities</b>              1329:18              1359:21  <b>ability</b> 1328:4              1329:22              1331:9              1353:6              1359:11, 18              1380:4              1401:2, 5              1427:9              1449:10              1451:11              1478:17  <b>able</b> 1317:2              1327:5              1341:10              1342:3, 7              1344:11              1350:5              1366:6</p>	<p>1380:20              1386:24              1387:3, 24              1388:7              1417:12              1428:9              1434:19              1464:23              1470:19              1487:6 1518:7  <b>above-average</b>              1353:5  <b>absence</b>              1379:9 1435:9  <b>absences</b>              1378:19              1379:14              1380:8, 13              1381:12, 17              1384:4, 13, 18              1414:23              1415:1, 7              1416:1              1418:9              1427:2, 5, 8  <b>absent</b> 1435:4  <b>absolute</b>              1296:6  <b>absolutely</b>              1341:20              1469:23              1472:21  <b>academic</b>              1361:23              1362:6, 7              1366:10              1371:23              1412:20              1427:10              1459:4              1476:17              1481:12, 15              1510:3  <b>academically</b>              1367:10  <b>academics</b>              1370:2  <b>Academy</b>              1395:20              1436:8, 12  <b>accept</b> 1330:1              1348:7              1434:19  <b>acceptable</b>              1307:20              1320:14              1359:1 1508:7  <b>acceptance</b>              1330:10              1332:9</p>	<p><b>accepted</b>              1330:7, 18              1466:11  <b>accepting</b>              1349:19  <b>accepts</b>              1389:20  <b>access</b>              1346:10              1364:7  <b>accident</b>              1313:24  <b>accommodatio</b>  <b>n</b> 1445:24  <b>accommodatio</b>  <b>ns</b> 1368:23              1370:4              1371:19              1372:21              1412:8              1438:12, 14              1481:14  <b>accreditation</b>              1393:11  <b>accredited</b>              1392:9              1431:11, 16,              18, 19, 21              1432:18, 22,              23 1433:4, 6,              8, 14, 15  <b>accuracy</b>              1487:10  <b>accurate</b>              1356:17              1391:15              1401:3              1404:16, 17              1436:5              1477:16              1509:12, 13              1510:22, 23  <b>accurately</b>              1341:13  <b>aches</b> 1422:8  <b>achievable</b>              1486:5  <b>Achievement</b>              1327:11              1340:9, 15              1341:4              1410:12, 16              1475:17, 22  <b>achieving</b>              1487:14  <b>acknowledge</b>              1337:11  <b>acronym</b>              1356:4              1387:1</p>	<p>1410:19              1430:20  <b>acronyms</b>              1327:12  <b>across-the-</b>  <b>board</b> 1331:5  <b>actual</b> 1321:9              1380:11              1384:18, 21              1477:11              1495:19              1501:13  <b>acute</b> 1459:20  <b>add</b> 1310:7              1346:25              1353:20              1373:7              1403:7              1453:11              1473:11  <b>added</b>              1444:15              1513:5  <b>adding</b> 1403:9  <b>addition</b>              1415:7              1440:6, 19              1446:10              1447:20              1496:21  <b>additional</b>              1317:7              1321:1              1350:16              1354:1              1399:3              1407:17              1438:21              1475:4              1517:20  <b>additionally</b>              1326:3              1353:6              1372:19              1379:22              1387:10  <b>additions</b>              1513:8, 10  <b>address</b>              1296:8              1356:23              1375:18              1401:11              1445:1              1447:1              1500:3, 11              1517:2              1518:6, 7  <b>addressed</b>              1295:9              1325:12</p>	<p>1437:19              1483:22              1490:15              1517:1  <b>addressing</b>              1364:5              1498:21  <b>adequacy</b>              1442:12              1468:25  <b>adjourned</b>              1519:23  <b>administer</b>              1326:23              1327:18, 19              1334:5              1339:14              1340:11, 12,              13 1465:6  <b>administered</b>              1327:2, 8, 9              1340:15              1466:21              1467:1              1469:3, 15              1476:2, 3  <b>administering</b>              1465:14  <b>administers</b>              1326:16              1339:4  <b>administrator</b>              1415:21  <b>administrators</b>              1375:24              1510:22  <b>admission</b>              1329:9, 12, 16              1331:16              1332:20              1340:4              1341:14              1344:7, 20              1348:8              1391:8              1408:14              1411:21  <b>admissions</b>              1329:3, 4, 15              1331:14              1332:22              1333:25              1334:3, 7, 9,              13 1340:3, 19,              20 1341:5              1345:10              1347:11              1348:4, 15              1350:8, 15, 23              1351:16, 23              1352:2, 5, 16,</p>	<p>25 1356:15              1357:2, 4              1359:9              1390:5, 14, 18              1399:25              1400:1, 4              1406:21, 24,              25 1408:19              1409:3  <b>admission's</b>              1404:10  <b>admissions-</b>  <b>summary</b>              1407:5  <b>admission-</b>  <b>summary</b>              1407:3  <b>admit</b> 1345:11  <b>ADMITTED</b>              1293:19              1299:23              1316:17              1351:12, 14              1353:19              1373:6              1376:13              1385:22, 24              1393:25              1400:1              1418:1              1419:1              1489:19  <b>Adobe</b>              1301:25              1302:1 1309:3  <b>advance</b>              1320:22              1337:14              1342:8              1441:19              1442:16              1443:10              1463:1  <b>advisor</b>              1435:7  <b>advisory</b>              1422:20  <b>afforded</b>              1448:17  <b>aforementione</b>  <b>d</b> 1520:5  <b>afraid</b> 1431:7  <b>afternoon</b>              1389:13              1455:14, 16              1467:10, 13              1509:14  <b>age</b> 1323:16  <b>agencies</b>              1432:18</p>
---	---	--	---	--	--

<b>ago</b> 1299:20 1330:15 1351:20 1509:22	1446:4, 16 1448:4 1452:6 1454:5	1296:2 1298:11, 23 1299:2, 7 1300:5	1403:1, 9, 16, 24 1404:8, 18, 23 1405:7 1406:9, 14, 19, 20 1407:14, 16, 23 1408:1, 4, 8, 11 1409:12, 15 1414:8 1415:10, 15, 17 1417:2, 21 1419:5, 10, 20 1420:7, 15, 18 1423:13 1424:7, 18, 21 1425:10, 13 1426:10 1428:16 1429:20 1430:13 1432:10, 17, 22 1433:6, 13, 16, 20 1434:7, 21 1435:11, 15, 22 1436:17 1437:7 1438:23 1439:5 1454:16 1457:23 1517:11, 14 1519:2, 8, 14, 18	1330:3, 18, 24 1331:3, 4, 17 1332:3, 10 1334:10 1340:13, 24 1341:9 1352:11, 17, 23, 24 1353:3, 6 1354:8 1355:25 1357:5, 10 1358:16 1359:4, 15, 18, 23 1360:10, 15, 17 1362:6 1363:5, 13, 25 1364:1, 11 1365:8, 23 1366:10 1367:9, 11 1369:2, 22, 23 1370:10 1371:8, 10, 22 1372:14 1378:9 1379:5 1386:12, 20 1387:23 1388:9, 11, 13, 16 1389:24 1390:4, 7, 9, 25 1400:4 1401:24 1402:7, 21, 24 1403:6 1404:5 1406:23 1409:2, 18, 22 1410:1 1411:16 1413:3, 12 1414:23 1416:22 1420:24 1421:5, 23 1422:2, 13 1426:16 1427:1, 5, 11, 17 1428:24 1430:16 1435:4 1436:14 1437:5, 13 1451:8 1454:13 1460:5, 24 1469:3 1475:14 1476:12 1478:11 1480:3	1482:6 1486:8 1487:4 1489:20 1490:7 1492:15 1493:17 1495:24 1497:22 1500:23 1503:1 1504:7 1509:19 1510:1, 4, 6, 7, 11 1515:10, 12 <b>REDACTED</b> 1298:3, 22 1301:14 1305:14 1306:2, 16 1307:7, 10 1315:24 1316:16 1318:4 1320:10 1355:8 1361:22, 25 1363:2 1365:18 1366:22 1367:1, 7 1368:8, 16 1369:17 1374:12, 16 1378:12, 13 1382:10 1383:22 1385:7 1390:15 1400:24 1401:24 1410:23 1416:9 1422:18 1437:18, 19 1469:25 1474:11 1479:18, 25 1482:5 1487:3 1492:19 1498:19 1507:2 1510:13, 17, 21 1514:25 1515:5, 16, 20 <b>annual</b> 1485:23 1486:3 1487:14
<b>agree</b> 1309:4 1325:25 1350:7, 8 1354:25 1401:21 1403:16, 18, 22, 24 1404:1, 3, 4 1405:12, 16 1420:2 1449:4 1451:10 1468:13 1513:20 1514:9 1515:14	1461:13 1472:25 1473:4 1474:5 1483:12 1485:15, 20, 22 1492:22 1504:22 1508:13 1511:9 1512:3 1514:22	1301:23 1302:3, 14, 21, 24 1304:1, 4, 8, 17, 22 1305:13, 25 1306:15 1307:21 1308:1, 9, 20 1311:14, 16, 24 1314:5, 14 1316:3, 5, 11, 15, 21 1319:7, 13, 16, 20 1320:1, 4, 17 1321:1, 15, 25 1334:19 1338:4, 21 1339:19 1344:18 1345:4, 18 1346:1, 19, 23 1347:1, 23 1348:10 1349:9, 12 1350:14 1351:9 1353:9 1354:2 1355:23 1356:1, 6, 9 1358:24 1360:20 1361:4, 7, 11, 13 1364:12, 14, 15 1368:2, 5 1373:2, 7, 9 1374:21 1375:20 1376:5, 14 1380:10 1381:20 1383:1, 4, 9 1385:18, 20, 25 1386:3 1388:21, 24 1389:12, 13 1392:19, 23 1393:1, 6, 20, 25 1394:10, 24 1395:1, 23 1396:5, 10, 12 1397:7, 10, 12, 15, 23 1398:20 1399:5, 9, 15 1400:7 1401:3, 12	1403:1, 9, 16, 24 1404:8, 18, 23 1405:7 1406:9, 14, 19, 20 1407:14, 16, 23 1408:1, 4, 8, 11 1409:12, 15 1414:8 1415:10, 15, 17 1417:2, 21 1419:5, 10, 20 1420:7, 15, 18 1423:13 1424:7, 18, 21 1425:10, 13 1426:10 1428:16 1429:20 1430:13 1432:10, 17, 22 1433:6, 13, 16, 20 1434:7, 21 1435:11, 15, 22 1436:17 1437:7 1438:23 1439:5 1454:16 1457:23 1517:11, 14 1519:2, 8, 14, 18	1330:3, 18, 24 1331:3, 4, 17 1332:3, 10 1334:10 1340:13, 24 1341:9 1352:11, 17, 23, 24 1353:3, 6 1354:8 1355:25 1357:5, 10 1358:16 1359:4, 15, 18, 23 1360:10, 15, 17 1362:6 1363:5, 13, 25 1364:1, 11 1365:8, 23 1366:10 1367:9, 11 1369:2, 22, 23 1370:10 1371:8, 10, 22 1372:14 1378:9 1379:5 1386:12, 20 1387:23 1388:9, 11, 13, 16 1389:24 1390:4, 7, 9, 25 1400:4 1401:24 1402:7, 21, 24 1403:6 1404:5 1406:23 1409:2, 18, 22 1410:1 1411:16 1413:3, 12 1414:23 1416:22 1420:24 1421:5, 23 1422:2, 13 1426:16 1427:1, 5, 11, 17 1428:24 1430:16 1435:4 1436:14 1437:5, 13 1451:8 1454:13 1460:5, 24 1469:3 1475:14 1476:12 1478:11 1480:3	1482:6 1486:8 1487:4 1489:20 1490:7 1492:15 1493:17 1495:24 1497:22 1500:23 1503:1 1504:7 1509:19 1510:1, 4, 6, 7, 11 1515:10, 12 <b>REDACTED</b> 1298:3, 22 1301:14 1305:14 1306:2, 16 1307:7, 10 1315:24 1316:16 1318:4 1320:10 1355:8 1361:22, 25 1363:2 1365:18 1366:22 1367:1, 7 1368:8, 16 1369:17 1374:12, 16 1378:12, 13 1382:10 1383:22 1385:7 1390:15 1400:24 1401:24 1410:23 1416:9 1422:18 1437:18, 19 1469:25 1474:11 1479:18, 25 1482:5 1487:3 1492:19 1498:19 1507:2 1510:13, 17, 21 1514:25 1515:5, 16, 20 <b>annual</b> 1485:23 1486:3 1487:14
<b>agreed</b> 1309:16 1376:7, 8 1404:21 1405:8 1443:21	<b>AIS</b> 1432:9	1334:19 1338:4, 21 1339:19 1344:18 1345:4, 18 1346:1, 19, 23 1347:1, 23 1348:10 1349:9, 12 1350:14 1351:9 1353:9 1354:2 1355:23 1356:1, 6, 9 1358:24 1360:20 1361:4, 7, 11, 13 1364:12, 14, 15 1368:2, 5 1373:2, 7, 9 1374:21 1375:20 1376:5, 14 1380:10 1381:20 1383:1, 4, 9 1385:18, 20, 25 1386:3 1388:21, 24 1389:12, 13 1392:19, 23 1393:1, 6, 20, 25 1394:10, 24 1395:1, 23 1396:5, 10, 12 1397:7, 10, 12, 15, 23 1398:20 1399:5, 9, 15 1400:7 1401:3, 12	1403:1, 9, 16, 24 1404:8, 18, 23 1405:7 1406:9, 14, 19, 20 1407:14, 16, 23 1408:1, 4, 8, 11 1409:12, 15 1414:8 1415:10, 15, 17 1417:2, 21 1419:5, 10, 20 1420:7, 15, 18 1423:13 1424:7, 18, 21 1425:10, 13 1426:10 1428:16 1429:20 1430:13 1432:10, 17, 22 1433:6, 13, 16, 20 1434:7, 21 1435:11, 15, 22 1436:17 1437:7 1438:23 1439:5 1454:16 1457:23 1517:11, 14 1519:2, 8, 14, 18	1330:3, 18, 24 1331:3, 4, 17 1332:3, 10 1334:10 1340:13, 24 1341:9 1352:11, 17, 23, 24 1353:3, 6 1354:8 1355:25 1357:5, 10 1358:16 1359:4, 15, 18, 23 1360:10, 15, 17 1362:6 1363:5, 13, 25 1364:1, 11 1365:8, 23 1366:10 1367:9, 11 1369:2, 22, 23 1370:10 1371:8, 10, 22 1372:14 1378:9 1379:5 1386:12, 20 1387:23 1388:9, 11, 13, 16 1389:24 1390:4, 7, 9, 25 1400:4 1401:24 1402:7, 21, 24 1403:6 1404:5 1406:23 1409:2, 18, 22 1410:1 1411:16 1413:3, 12 1414:23 1416:22 1420:24 1421:5, 23 1422:2, 13 1426:16 1427:1, 5, 11, 17 1428:24 1430:16 1435:4 1436:14 1437:5, 13 1451:8 1454:13 1460:5, 24 1469:3 1475:14 1476:12 1478:11 1480:3	1482:6 1486:8 1487:4 1489:20 1490:7 1492:15 1493:17 1495:24 1497:22 1500:23 1503:1 1504:7 1509:19 1510:1, 4, 6, 7, 11 1515:10, 12 <b>REDACTED</b> 1298:3, 22 1301:14 1305:14 1306:2, 16 1307:7, 10 1315:24 1316:16 1318:4 1320:10 1355:8 1361:22, 25 1363:2 1365:18 1366:22 1367:1, 7 1368:8, 16 1369:17 1374:12, 16 1378:12, 13 1382:10 1383:22 1385:7 1390:15 1400:24 1401:24 1410:23 1416:9 1422:18 1437:18, 19 1469:25 1474:11 1479:18, 25 1482:5 1487:3 1492:19 1498:19 1507:2 1510:13, 17, 21 1514:25 1515:5, 16, 20 <b>annual</b> 1485:23 1486:3 1487:14
<b>agreeing</b> 1316:21	<b>Algebra</b> 1388:16, 17 1414:19	1334:19 1338:4, 21 1339:19 1344:18 1345:4, 18 1346:1, 19, 23 1347:1, 23 1348:10 1349:9, 12 1350:14 1351:9 1353:9 1354:2 1355:23 1356:1, 6, 9 1358:24 1360:20 1361:4, 7, 11, 13 1364:12, 14, 15 1368:2, 5 1373:2, 7, 9 1374:21 1375:20 1376:5, 14 1380:10 1381:20 1383:1, 4, 9 1385:18, 20, 25 1386:3 1388:21, 24 1389:12, 13 1392:19, 23 1393:1, 6, 20, 25 1394:10, 24 1395:1, 23 1396:5, 10, 12 1397:7, 10, 12, 15, 23 1398:20 1399:5, 9, 15 1400:7 1401:3, 12	1403:1, 9, 16, 24 1404:8, 18, 23 1405:7 1406:9, 14, 19, 20 1407:14, 16, 23 1408:1, 4, 8, 11 1409:12, 15 1414:8 1415:10, 15, 17 1417:2, 21 1419:5, 10, 20 1420:7, 15, 18 1423:13 1424:7, 18, 21 1425:10, 13 1426:10 1428:16 1429:20 1430:13 1432:10, 17, 22 1433:6, 13, 16, 20 1434:7, 21 1435:11, 15, 22 1436:17 1437:7 1438:23 1439:5 1454:16 1457:23 1517:11, 14 1519:2, 8, 14, 18	1330:3, 18, 24 1331:3, 4, 17 1332:3, 10 1334:10 1340:13, 24 1341:9 1352:11, 17, 23, 24 1353:3, 6 1354:8 1355:25 1357:5, 10 1358:16 1359:4, 15, 18, 23 1360:10, 15, 17 1362:6 1363:5, 13, 25 1364:1, 11 1365:8, 23 1366:10 1367:9, 11 1369:2, 22, 23 1370:10 1371:8, 10, 22 1372:14 1378:9 1379:5 1386:12, 20 1387:23 1388:9, 11, 13, 16 1389:24 1390:4, 7, 9, 25 1400:4 1401:24 1402:7, 21, 24 1403:6 1404:5 1406:23 1409:2, 18, 22 1410:1 1411:16 1413:3, 12 1414:23 1416:22 1420:24 1421:5, 23 1422:2, 13 1426:16 1427:1, 5, 11, 17 1428:24 1430:16 1435:4 1436:14 1437:5, 13 1451:8 1454:13 1460:5, 24 1469:3 1475:14 1476:12 1478:11 1480:3	1482:6 1486:8 1487:4 1489:20 1490:7 1492:15 1493:17 1495:24 1497:22 1500:23 1503:1 1504:7 1509:19 1510:1, 4, 6, 7, 11 1515:10, 12 <b>REDACTED</b> 1298:3, 22 1301:14 1305:14 1306:2, 16 1307:7, 10 1315:24 1316:16 1318:4 1320:10 1355:8 1361:22, 25 1363:2 1365:18 1366:22 1367:1, 7 1368:8, 16 1369:17 1374:12, 16 1378:12, 13 1382:10 1383:22 1385:7 1390:15 1400:24 1401:24 1410:23 1416:9 1422:18 1437:18, 19 1469:25 1474:11 1479:18, 25 1482:5 1487:3 1492:19 1498:19 1507:2 1510:13, 17, 21 1514:25 1515:5, 16, 20 <b>annual</b> 1485:23 1486:3 1487:14
<b>agreed</b> 1309:16 1376:7, 8 1404:21 1405:8 1443:21	<b>Algebra-1</b> 1413:19, 20	1334:19 1338:4, 21 1339:19 1344:18 1345:4, 18 1346:1, 19, 23 1347:1, 23 1348:10 1349:9, 12 1350:14 1351:9 1353:9 1354:2 1355:23 1356:1, 6, 9 1358:24 1360:20 1361:4, 7, 11, 13 1364:12, 14, 15 1368:2, 5 1373:2, 7, 9 1374:21 1375:20 1376:5, 14 1380:10 1381:20 1383:1, 4, 9 1385:18, 20, 25 1386:3 1388:21, 24 1389:12, 13 1392:19, 23 1393:1, 6, 20, 25 1394:10, 24 1395:1, 23 1396:5, 10, 12 1397:7, 10, 12, 15, 23 1398:20 1399:5, 9, 15 1400:7 1401:3, 12	1403:1, 9, 16, 24 1404:8, 18, 23 1405:7 1406:9, 14, 19, 20 1407:14, 16, 23 1408:1, 4, 8, 11 1409:12, 15 1414:8 1415:10, 15, 17 1417:2, 21 1419:5, 10, 20 1420:7, 15, 18 1423:13 1424:7, 18, 21 1425:10, 13 1426:10 1428:16 1429:20 1430:13 1432:10, 17, 22 1433:6, 13, 16, 20 1434:7, 21 1435:11, 15, 22 1436:17 1437:7 1438:23 1439:5 1454:16 1457:23 1517:11, 14 1519:2, 8, 14, 18	1330:3, 18, 24 1331:3, 4, 17 1332:3, 10 1334:10 1340:13, 24 1341:9 1352:11, 17, 23, 24 1353:3, 6 1354:8 1355:25 1357:5, 10 1358:16 1359:4, 15, 18, 23 1360:10, 15, 17 1362:6 1363:5, 13, 25 1364:1, 11 1365:8, 23 1366:10 1367:9, 11 1369:2, 22, 23 1370:10 1371:8, 10, 22 1372:14 1378:9 1379:5 1386:12, 20 1387:23 1388:9, 11, 13, 16 1389:24 1390:4, 7, 9, 25 1400:4 1401:24 1402:7, 21, 24 1403:6 1404:5 1406:23 1409:2, 18, 22 1410:1 1411:16 1413:3, 12 1414:23 1416:22 1420:24 1421:5, 23 1422:2, 13 1426:16 1427:1, 5, 11, 17 1428:24 1430:16 1435:4 1436:14 1437:5, 13 1451:8 1454:13 1460:5, 24 1469:3 1475:14 1476:12 1478:11 1480:3	1482:6 1486:8 1487:4 1489:20 1490:7 1492:15 1493:17 1495:24 1497:22 1500:23 1503:1 1504:7 1509:19 1510:1, 4, 6, 7, 11 1515:10, 12 <b>REDACTED</b> 1298:3, 22 1301:14 1305:14 1306:2, 16 1307:7, 10 1315:24 1316:16 1318:4 1320:10 1355:8 1361:22, 25 1363:2 1365:18 1366:22 1367:1, 7 1368:8, 16 1369:17 1374:12, 16 1378:12, 13 1382:10 1383:22 1385:7 1390:15 1400:24 1401:24 1410:23 1416:9 1422:18 1437:18, 19 1469:25 1474:11 1479:18, 25 1482:5 1487:3 1492:19 1498:19 1507:2 1510:13, 17, 21 1514:25 1515:5, 16, 20 <b>annual</b> 1485:23 1486:3 1487:14
<b>agreed</b> 1309:16 1376:7, 8 1404:21 1405:8 1443:21	<b>allow</b> 1337:9 1461:12 1471:19 1493:22	1334:19 1338:4, 21 1339:19 1344:18 1345:4, 18 1346:1, 19, 23 1347:1, 23 1348:10 1349:9, 12 1350:14 1351:9 1353:9 1354:2 1355:23 1356:1, 6, 9 1358:24 1360:20 1361:4, 7, 11, 13 1364:12, 14, 15 1368:2, 5 1373:2, 7, 9 1374:21 1375:20 1376:5, 14 1380:10 1381:20 1383:1, 4, 9 1385:18, 20, 25 1386:3 1388:21, 24 1389:12, 13 1392:19, 23 1393:1, 6, 20, 25 1394:10, 24 1395:1, 23 1396:5, 10, 12 1397:7, 10, 12, 15, 23 1398:20 1399:5, 9, 15 1400:7 1401:3, 12	1403:1, 9, 16, 24 1404:8, 18, 23 1405:7 1406:9, 14, 19, 20 1407:14, 16, 23 1408:1, 4, 8, 11 1409:12, 15 1414:8 1415:10, 15, 17 1417:2, 21 1419:5, 10, 20 1420:7, 15, 18 1423:13 1424:7, 18, 21 1425:10, 13 1426:10 1428:16 1429:20 1430:13 1432:10,		

<b>answer</b> 1317:3 1322:2 1351:19 1358:21 1398:21 1414:10 1443:6 1452:20 1455:6 1469:21 1477:19 1490:7 1494:15 <b>answered</b> 1388:18 1404:9 1483:5 <b>anticipate</b> 1414:17 <b>anxiety</b> 1379:6 1380:4 1421:24 1422:14 <b>anybody</b> 1313:16 1314:1 1357:16 1358:17 <b>anyway</b> 1316:25 1403:22 1454:6 1461:7 <b>apologies</b> 1505:5 <b>apologize</b> 1306:7 1313:10 1321:17 1325:12 1331:23 1349:16 1365:4, 12 1413:12 1424:8 1446:22 <b>apparently</b> 1346:7 1347:10 <b>appeal</b> 1336:3 <b>appear</b> 1318:15 1466:4 <b>APPEARANC</b> <b>ES</b> 1292:1 <b>appears</b> 1311:18 1346:19 1372:10 1393:16 1399:12	1418:18 1486:10, 14 1497:7 1498:21 <b>applicants</b> 1331:24 1340:16 <b>application</b> 1332:9, 11, 15, 17 <b>applications</b> 1425:21 <b>applied</b> 1417:17 1418:7 <b>applies</b> 1363:5 1366:4 1466:19 <b>apply</b> 1329:20 1493:7 <b>applying</b> 1329:9 <b>appointment</b> 1459:7 <b>appreciate</b> 1314:4 1320:22 1336:21 1338:19 1377:19 1419:18 1423:8 1472:2, 12, 15, 17 1473:5 1489:24 <b>approach</b> 1333:3, 5 1364:17, 21 1365:2, 7, 14 1378:16 1437:12 <b>appropriate</b> 1359:5 1362:13 1427:10 1460:1 1471:17 1506:8 <b>appropriately</b> 1297:6 1454:22 <b>appropriatenes</b> <b>s</b> 1430:15 1502:12 <b>approved</b> 1431:19 <b>approximately</b> 1330:2, 9, 11 1340:14	1361:6 1462:12 1464:25 1465:22 1466:8 <b>April</b> 1292:21 1332:25 1520:13 <b>area</b> 1325:2 1337:19 1354:20, 23, 24 1429:23 1466:17 1467:16 1476:17 1480:13, 16, 22 1481:12 1484:23 1486:7 <b>areas</b> 1324:22 1359:18 1372:16 1437:5 1448:9 1460:13 1468:24 1477:3 1478:14 1479:14 1486:11, 15 <b>arguing</b> 1443:4 1447:14 <b>arrive</b> 1388:12, 13 <b>arriving</b> 1379:8 <b>art</b> 1362:21 1377:10 <b>articulated</b> 1402:19 <b>arts</b> 1459:10 1473:8 <b>asked</b> 1295:5 1306:23 1331:24 1374:11 1375:12 1377:16 1382:24 1389:16 1394:7 1423:17 1434:7, 22 1443:3 1486:25 1490:5 1494:10 1511:21 1513:17 1514:6	<b>asking</b> 1339:1 1372:7 1382:6 1399:10 1405:3 1408:12 1410:14 1416:5 1417:24, 25 1434:24 1449:25 1454:25 1474:24 1482:13, 20 1484:6 1488:24 1493:3, 17 1499:1, 4, 8 1501:9 1502:6 1511:16 <b>asks</b> 1455:7 <b>aspect</b> 1355:7 <b>aspects</b> 1329:24 1405:22, 25 1408:22 <b>asserted</b> 1400:14 <b>assertion</b> 1337:2 <b>assess</b> 1329:21 1366:4 1370:2 <b>assessed</b> 1364:4 1370:5 <b>assessment</b> 1409:23 1474:14 1510:14 <b>assessments</b> 1411:13 1429:14 1464:9, 14, 20 1466:18 1468:11 1469:1, 13 <b>assignment</b> 1496:25 <b>assignments</b> 1369:15 <b>assist</b> 1392:17 1426:17 <b>associated</b> 1520:9 <b>ASSOCIATES</b> 1292:1 <b>associate's</b> 1363:12 <b>Association</b> 1431:22, 23	<b>associations</b> 1431:19 <b>assume</b> 1339:20 1436:1 <b>assumes</b> 1398:4 1416:23 1426:3 <b>assure</b> 1311:8 <b>assured</b> 1295:7 <b>asterisk</b> 1315:18 <b>attached</b> 1373:21 <b>attack</b> 1422:2 1477:12 <b>attempt</b> 1448:20 1453:20 <b>attempted</b> 1312:7 1466:10 <b>attend</b> 1360:11, 15 1379:7 1463:12 1464:8 <b>attendance</b> 1380:8 1382:7, 10, 23, 25 1383:6, 15, 16, 25 1384:1, 21 <b>attended</b> 1390:11 1440:3 1463:18 1509:10 1510:10, 13 <b>attending</b> 1318:7 1330:3 1464:1 <b>attention</b> 1315:21 1329:5 1394:17 1396:6 1409:16 1410:9 1430:4 1434:15 <b>attorney</b> 1417:23 1435:11 <b>attorneys</b> 1389:14 1467:11 <b>audio</b> 1412:15	<b>auditory</b> 1366:1 <b>August</b> 1380:25 1411:18 <b>authenticate</b> 1300:2, 15 <b>authenticated</b> 1300:1 1393:24 <b>authenticating</b> 1317:11 <b>authentication</b> 1300:17 <b>authority</b> 1440:12 <b>available</b> 1457:16 1468:18 <b>average</b> 1331:8 1356:1 1360:8 1479:5 <b>aware</b> 1328:23 1329:1 1378:20 1390:25 1395:9 1399:23 1400:12 1410:18 1427:12 1444:5 1446:6, 23, 24 1486:20 1487:1 <b>awareness</b> 1354:5, 12, 16 1355:3, 9, 20, 24 1356:2, 23 1486:17, 18  < B > <b>bachelor's</b> 1324:8 1457:13, 18 <b>back</b> 1299:14, 18 1302:25 1305:5 1317:1 1324:16 1328:18 1332:14 1335:22 1346:6 1347:4 1361:17 1368:7 1369:6 1371:20
---	--	---	--	---	---

1372:23	1387:13	<b>behaviors</b>	1332:24	1368:7	1333:4
1380:20	<b>bases</b> 1439:25	1486:19	1352:20	1370:8	1349:10
1381:3	<b>basic</b> 1477:6	1502:25	1380:10	1380:2	1417:16
1384:12	1478:12	1503:9	1381:20	1385:14	1434:16
1398:25	<b>basically</b>	<b>belabor</b>	1382:12	1393:9	1435:13
1407:15	1479:5	1346:5	1384:20	1394:6	1489:18
1414:2	1486:18	<b>believe</b>	1418:10, 11	1421:19	1491:17
1415:12	1517:9	1297:20	1419:11	1425:6	1501:6 1515:7
1418:3	<b>basis</b> 1411:19	1299:24	1431:9	1426:24	<b>books</b> 1297:7
1422:3	1427:11	1302:16, 21	1436:18	1477:23	1333:1
1423:20	1440:6	1329:1	<b>best-evidence</b>	1500:19	1345:17
1430:2, 20	1448:19	1331:7	1418:7	<b>blank</b> 1477:17	1417:18
1439:13	1517:8	1332:4, 11, 19	<b>better</b> 1327:1	<b>blend</b> 1488:12	1418:14
1447:2	<b>Bates</b>	1335:11, 25	1333:22	<b>blends</b> 1488:1	1425:23
1452:14	1308:24	1336:14	1377:19	<b>blurt</b> 1483:14	1442:8
1453:24	1309:5, 7, 10,	1337:1, 7, 15	1379:10	<b>BOARD</b>	1456:11
1454:2, 8	22, 25	1341:17, 20	1384:23	1291:10	1472:8
1485:24	1310:11	1350:6, 11	1475:8	1333:15	1474:19, 20, 22
1489:18	1313:16	1354:2, 17	1477:9, 13	1345:23	<b>border</b>
1490:17	1333:12	1360:2	1483:20	1346:9, 16	1455:20
1494:19	1349:11	1365:1	1488:18	1348:11	<b>bore</b> 1342:18
1495:18	1396:9	1373:10	1516:14	1358:2	<b>botch</b> 1387:16
1508:10	<b>Bates-labeled</b>	1375:1	<b>beyond</b>	1392:5, 10, 16,	<b>bottle</b> 1512:10
1516:8	1394:24	1381:25	1370:20	18, 23 1393:7,	<b>bottom</b>
<b>back-and-</b>	<b>batteries</b>	1391:16	1428:18	14 1394:22,	1349:13
<b>forth</b> 1299:11	1469:16	1400:17	1429:23	24 1396:7, 11	1478:4
<b>back-door-</b>	<b>battery</b>	1402:5	1434:21	1397:4	1494:17
<b>asking</b>	1327:10	1404:12	1460:1	1423:15	1496:4
1323:16	<b>Beach</b> 1292:3	1405:2	1484:12	1432:19	<b>bound</b>
<b>background</b>	<b>Bear</b> 1436:8,	1407:8	1506:22	1434:8, 16	1428:12
1368:21	12	1411:7	1507:1	1435:11, 23	<b>Bowling</b>
1457:11	<b>bearing</b>	1413:18, 22	1510:25	1439:22, 24	1373:13
1501:14	1469:23	1415:15	<b>big</b> 1294:16	1440:3, 9, 17	<b>box</b> 1409:11
<b>ball</b> 1444:18	<b>b-e-e-n</b>	1416:11	1307:2	1441:16, 19	<b>break</b> 1299:8,
<b>Baltimore</b>	1507:18	1418:25	1313:15	1443:19, 21	9, 20, 22
1455:20	<b>beginning</b>	1427:4	<b>biggest</b>	1444:6	1321:12
<b>bar</b> 1440:12	1295:10	1428:18	1317:23	1445:11	1345:15
<b>barred</b>	1314:19	1434:22	1388:3	1446:7, 10	1346:18
1443:15	1411:24	1435:15	<b>bimonthly</b>	1448:5, 11, 15	1347:2
<b>base</b> 1361:14	1414:11	1439:10	1367:2	1453:13	1348:3
1366:25	1430:21	1442:20	<b>binder</b>	1467:12	1349:5
1367:7	1443:12	1444:8	1392:16	1469:18	1350:6
<b>based</b>	1491:3	1465:13	1407:18	1474:18	1361:15
1329:25	<b>behalf</b> 1322:9	1475:6	1491:18	1475:7, 15	1379:23
1334:15	1332:3	1490:12, 18	1513:12, 18	1476:21	1388:22, 24
1338:11	1449:2	1491:7	1514:11	1478:7	1423:10
1352:25	1455:9 1506:9	1502:14	1515:19	1479:22	1434:2, 4
1363:8, 21	<b>behavior</b>	1508:13	<b>binders</b>	1480:13, 20,	1439:13
1369:1, 21	1502:1, 3	1517:20	1442:10	23 1483:1	1450:7, 10
1371:12	1503:1, 6	<b>believes</b>	1494:7	1500:25	1494:16
1386:15	<b>behavioral-</b>	1442:14	1512:9, 12, 14,	1501:6	1508:5, 8, 10
1414:15	<b>intervention</b>	<b>below-average</b>	15, 20, 23, 24	1517:17, 18	<b>breaks</b>
1430:13	1464:4, 10	1359:20	1514:6, 24	<b>board's</b>	1379:22
1442:18	1465:4	<b>benchmark</b>	1515:4	1353:25	1305:7
1480:11	1466:18	1487:20	<b>BIPs</b> 1501:24	1355:22	1323:18
1482:3	1468:12, 14	<b>benchmarks</b>	1505:3	1389:14	1378:1
1486:7	1469:14	1487:17	<b>bit</b> 1302:20	1402:1	1379:3
1492:19	<b>behavior-</b>	<b>benefit</b>	1307:10	1442:6, 7	1382:1
1507:20	<b>intervention</b>	1327:13	1311:6	1456:17	1398:13
<b>baseline</b>	1464:15, 21	<b>best</b> 1330:11,	1328:13	<b>Book</b> 1314:9	1443:8
	1469:2	23 1331:1	1331:20	1317:22, 23	

1446:19	<b>candidate</b>	1410:23	<b>certificate</b>	1325:3, 9	1348:22
1492:21	1359:23	1416:9	1467:24	1331:12	1352:13
<b>bring</b>	<b>capable</b>	1437:18, 19	1468:3	1356:9	1374:20
1321:12, 13	1344:8	1442:15	<b>certification</b>	1386:17	1376:20
1401:4	1465:16	1445:25	1327:5	1390:12	1393:12
1430:3 1454:2	1503:13	1454:13	1458:14, 18	1391:1	1424:4
<b>broad</b> 1405:1	<b>capacity</b>	1462:5, 13	1467:20	1400:17, 25	1441:5
<b>brought</b>	1462:19	1463:24	<b>certified</b>	1439:2	1445:16
1403:11	<b>CAPONE</b>	1469:24, 25	1458:21, 23	1469:4	1502:5, 8
1449:9 1518:4	1293:9	1471:16	<b>certify</b> 1520:4, 8	1509:4, 12	1504:24
<b>building</b>	1343:19, 24	1473:12, 15	<b>cetera</b> 1411:1	1510:18	<b>clarifying</b>
1464:11, 12, 15 1474:1	1360:21	1516:24	1488:1	<b>chief</b> 1358:6	1296:25
<b>bullet</b> 1479:23	1361:9	1517:13, 18	<b>chaired</b>	1517:18	1309:14
<b>bully</b> 1421:11	1439:23, 24	1518:8, 19	1463:1, 6, 21	<b>child</b> 1329:24	1489:25
<b>bullying</b>	1440:7	<b>cases</b> 1470:4	1480:1	1331:4	<b>clarity</b>
1416:15	1442:6	<b>categories</b>	<b>chairing</b>	1400:11	1309:20
1421:15	1443:19	1401:24	1462:9	1402:12, 13	1318:15
<b>bunch</b> 1299:3	1445:11	1424:20	<b>chair's</b>	1406:2, 3	<b>class</b> 1362:11, 20, 25 1363:6, 9, 15 1364:11
<b>bus</b> 1311:15	1448:7, 10, 23	1460:12	1372:11	1430:12	1365:8, 10
<b>business</b>	1449:22, 23	<b>categorization</b>	<b>challenge</b>	1459:22	1388:2, 3, 4
1358:1	1454:9	1492:9	1444:25	1460:4	1412:19, 22, 24, 25
1440:15, 20	1455:8, 14	<b>category</b>	<b>challenges</b>	1486:7, 20, 23	1413:11
1441:6	1467:10, 14	1335:19	1346:4	1501:22	1414:19
1446:16	1468:21, 23	1400:20, 22	1443:9	<b>children</b>	1422:22, 23, 24 1425:12
< C >	1469:21	1402:14	1479:24	1327:24, 25	1429:19
<b>cabin</b> 1456:6, 7	1472:4, 18	1459:21, 22	1483:4	1460:9, 10, 18	1437:20, 22, 24
<b>cake</b> 1488:16	1473:2	1462:15	<b>challenging</b>	1463:9, 10, 11, 17 1486:19	<b>classes</b>
<b>call</b> 1297:2, 18 1298:5	1474:8	<b>cause</b> 1294:20	1342:21	<b>children's</b>	1326:21
1332:21	1480:25	<b>caveat</b>	<b>chance</b>	1473:17	1362:9
1347:3	1482:11	1376:15	1298:8	<b>child's</b> 1451:7	1364:2
1358:5, 7	1483:19	1469:18	1342:17	<b>chime</b> 1503:22	1365:11
1377:11	1485:22	1519:5	1346:14	<b>choir</b> 1337:15	1366:9, 10, 23
1416:17	1489:8	<b>CCPS</b>	<b>change</b>	<b>choose</b> 1424:4	1367:1
1443:18	1495:23	1292:21	1411:3	<b>Christine</b>	1370:3, 6
1445:10	1499:20	1510:22	1422:21, 22	1503:5	1372:20, 21
1504:4	1501:8	<b>CCPS-classroom</b>	1451:5	<b>Christmas</b>	1385:12
<b>called</b> 1322:9	1504:21	1440:5	1484:17	1381:4	1422:18
1346:17	1505:21	<b>CCPS-REDACTED</b>	1491:15	<b>REDACTED</b>	1438:13
1365:1	1506:19	1309:11	<b>changed</b>	1291:7	1459:12
1410:18	1508:3, 8, 14	1310:1	1422:18, 24	1292:20	<b>classmates</b>
1421:15	1512:5	1333:12	<b>character</b>	<b>chronology</b>	1428:13
1455:9	1514:19	1345:23	1430:8	1333:21	<b>classroom</b>
1458:12	1516:5, 10	<b>CCPS's</b>	<b>characterizatio</b>	1356:18	1308:2
1477:12	<b>Capone's</b>	1509:7, 16	<b>n</b> 1484:16, 18	<b>citing</b> 1481:25	1324:10
1490:20	1439:25	<b>center</b>	1492:12	<b>claim</b> 1406:3	1482:1
1492:4	1469:6	1459:19	<b>characterize</b>	<b>clarification</b>	<b>classrooms</b>
1497:15	<b>car</b> 1379:7	1462:18	1301:12	1308:19, 23	1459:16
1517:13	1422:3 1496:8	<b>CEO</b> 1358:3, 6, 11	1302:5	1349:23	<b>clear</b> 1298:3
<b>calls</b> 1432:10	<b>care</b> 1294:19	<b>certain</b>	<b>charge</b>	1358:21	1302:14
1437:7	1444:3	1307:15	1392:12	1374:22	1305:19
1443:11	1516:17	1402:13	1399:16	1380:19	1306:1, 2, 22, 25 1307:3
1492:17	<b>career</b>	1470:3 1499:7	<b>Charlottesville</b>	1398:18	1312:1
1498:23	1362:23	<b>certainly</b>	1520:13	<b>clarified</b>	1315:21
1502:11	<b>Carolina</b>	1343:12	<b>chart</b> 1372:5	1306:6	1319:10, 17
1514:1	1324:1, 2, 11	1382:13	<b>charter</b>	1377:18	1320:13
<b>camera</b>	<b>Case</b> 1291:9	1453:8	1463:21	<b>clarify</b>	1328:5
1454:20	1337:23	1515:12	<b>check</b> 1303:5	1300:25	
	1346:4		1490:17	1306:9	
	1348:13		<b>CHESTERFIE</b>	1311:8	
	1363:22		<b>LD</b> 1291:10	1336:24	
	1403:11				

1330:22	1496:3, 12, 19,	4, 19, 21	1340:5, 16, 21	1381:11	1406:1
1339:16	23 1497:11	1341:5, 14	1346:2, 12, 15,	1440:22	1499:5, 9
1342:6	1498:8	1344:7, 20	17 1348:9, 12,	1457:16	<b>conclusions</b>
1348:10	<b>combined</b>	1345:10	16, 24 1350:9	1458:5	1448:19
1366:11	1325:21	1347:11	1351:2	1517:18	1492:19
1372:2	<b>come</b> 1310:13	1348:4, 8, 16	1352:7, 12	<b>completeness</b>	<b>condition</b>
1375:22	1317:1, 4	1350:8, 15, 16,	1356:7, 13, 19	1345:8	1294:10
1403:12	1329:5	23 1351:17,	1357:5, 22	1415:11	1401:18
1407:19	1338:11	23 1352:3, 5,	1361:23, 25	<b>compliance</b>	<b>conduct</b>
1410:14	1347:4	16, 25 1357:2,	1362:5, 25	1462:24	1399:18
1443:18	1360:9, 14	4 1359:9	1363:24		1501:20
1445:17, 25	1369:6	1390:1, 5	1367:9	<b>comprehension</b>	<b>conducted</b>
1446:13	1376:4	1400:4	1368:15	1370:13	1410:15
1483:7	1381:3	1404:10	1369:22	1477:14	1411:14
1499:12	1399:18	1406:25	1373:12, 22	1478:25	1465:1
1506:5	1406:1	1407:3	1375:24	1479:5, 6, 10	1469:12
<b>cleared</b>	1422:13	1408:14, 19,	1377:10	<b>comprised</b>	1474:14
1456:13, 14	1439:13	22, 24, 25	1378:17	1475:2	1476:11
<b>clearly</b>	1454:8	1409:3, 22, 25	1386:20	<b>compromise</b>	1501:19
1312:9, 25	1473:1	1410:6	1387:17, 23	1470:18	1504:12
1348:1	1508:10	<b>committee's</b>	1389:9, 17, 20,	1471:12, 18	<b>conducting</b>
1349:12	<b>comes</b>	1331:2, 16	25 1390:21,	<b>compromising</b>	1464:13
1364:24	1476:22	1352:22	22 1391:4, 9,	1472:22	<b>conference</b>
1370:9	<b>comfortable</b>	<b>common</b>	12, 17, 23	1480:8	1350:2
1402:19	1338:10	1312:5	1392:8	<b>computer</b>	1406:22
1423:17	<b>coming</b>	1387:14	1394:19	1313:6	1443:18
1432:3	1317:5	1405:18	1395:4	1426:1, 6	1445:10
1443:8	1321:7	<b>Commonwealt</b>	1398:3	<b>conceivable</b>	1449:13, 17
1446:6	1323:21	<b>h</b> 1468:5	1399:11	1452:24	<b>confidential</b>
1471:10	1375:21	1469:8, 12, 15,	1402:6	<b>conceivably</b>	1475:13
<b>close</b> 1300:12	1379:6	17 1520:1, 3,	1410:15, 23	1503:18	<b>confidentiality</b>
1498:18	1405:18	20	1411:16	<b>concept</b>	1480:9
1500:20	1447:2	<b>communicate</b>	1416:17	1490:21	<b>confine</b>
<b>closed</b> 1456:8,	1463:11	1311:23	1418:25	<b>concern</b>	1461:2
9	<b>commensurate</b>	1434:13	1421:16	1294:23	<b>conflict</b>
<b>clues</b> 1479:1,	1331:9 1353:6	1435:5	1423:18	1312:12, 13,	1379:21
21	<b>comment</b>	<b>communicated</b>	1427:21	15 1427:6, 9	1380:1, 3
<b>code</b> 1335:24	1296:10	1358:23	1430:4, 16	1444:6	1416:12
<b>coding</b>	1308:20	1359:14, 17,	1431:16	1446:7, 9	<b>confused</b>
1370:12	1378:11	22 1435:9	1434:11, 12,	1448:17	1305:4
<b>collaborative</b>	1473:22	<b>communicatin</b>	18 1437:4, 12	<b>concerned</b>	1393:10
1324:21	<b>commentary</b>	<b>g</b> 1432:2	<b>compare</b>	1378:22	1400:9
<b>collect</b> 1486:5	1294:22	<b>communicatio</b>	1329:21	1502:1	1438:11
1501:21, 25	1385:13	<b>n</b> 1418:3	1359:8	<b>concerning</b>	1507:9
<b>collected</b>	<b>commenting</b>	1430:2	<b>compared</b>	1415:21	<b>confusing</b>
1463:1	1350:3, 4	<b>communicatio</b>	1351:3	1416:8	1310:10
<b>collection</b>	<b>comments</b>	<b>ns</b> 1426:25	1476:14	<b>concerns</b>	1384:22
1502:19	1300:6	1430:13	1478:10	1423:1	<b>confusion</b>
<b>college</b>	1304:18	1434:10	<b>complaining</b>	1430:3, 14, 17	1365:12
1324:16	1320:25	<b>community</b>	1346:21, 23	1445:11	1371:25
1362:23	1321:1	1295:2	<b>complete</b>	1446:24, 25	<b>connected</b>
1457:14	1385:10	1318:7, 8	1319:8	1469:19	1387:11
1458:2	1408:21	1319:4, 9, 12	1346:1, 22	1484:2	<b>consecutive</b>
<b>college-</b>	1473:6	1321:18	1348:3	<b>concise</b>	1309:9
<b>preparatory</b>	<b>commission</b>	1323:2, 3, 4,	1350:9, 15	1323:23	1333:15
1391:18	1520:4	11, 13	1367:23	<b>conclude</b>	<b>consent</b>
<b>colloquy</b>	<b>committee</b>	1325:16, 23	1393:22	1310:4	1440:16, 17
1415:10	1329:15, 17	1328:2, 19, 25	1409:23	<b>concluding</b>	<b>consented</b>
<b>color</b> 1306:21	1330:17, 20,	1329:13	<b>completed</b>	1299:21	1349:4
<b>Column</b>	25 1334:3, 7,	1330:4, 7	1316:22	<b>conclusion</b>	<b>consider</b>
1494:17	9, 13 1340:3,	1334:16	1319:8	1352:17	1328:19



1408:15	1417:8	1347:17	1487:13	1459:2, 9	1342:17
1451:25	1421:11	1365:18	1490:5	1463:5	1405:17
<b>considerable</b>	1427:16, 18	1367:24	<b>correlate</b>	1464:17	<b>credits</b> 1468:1
1450:3	1446:11	1371:3	1357:25	1465:11	<b>Creek</b> 1436:8, 12
<b>consideration</b>	1483:8	1374:14, 19, 23	1380:21	1469:4	<b>Cross</b> 1293:5, 7, 13
1352:6	1494:18	1377:8	<b>correspondence</b> 1418:12, 13, 20, 24	1473:7	1361:6
<b>considered</b>	1496:5, 14, 20	1379:13	1421:19	1480:10	1389:11
1410:6	<b>continued</b>	1383:9	1424:17, 18	1509:4, 12	1419:19
1460:9	1293:12	1389:18, 19, 22	<b>co-taught</b>	1510:18	1430:21
1491:5	1474:6	1391:18, 25	1362:22	<b>county-wide</b>	1438:22
1510:15	<b>continues</b>	1395:15, 22	1459:11	1464:9	1509:1
<b>considering</b>	1446:23	1399:19	<b>COUNSEL</b>	<b>couple</b>	<b>cross-examination</b>
1329:8	1516:14	1402:21	1292:1, 10, 16	1301:16	1389:7
<b>consistent</b>	<b>continuing</b>	1403:6, 23	1296:9	1313:12	1508:14, 23
1400:17	1353:14	1404:22	1298:7	1315:16	<b>cross-examine</b>
1444:11	1421:15	1410:16	1299:24	1333:11	1489:12
1506:21	<b>controlling</b>	1411:14	1308:14	1336:23	<b>cross-examining</b>
<b>consistently</b>	1454:21	1413:3, 4, 6, 9	1311:8	1373:18	1511:10, 17
1492:16	<b>convenience</b>	1415:8, 19	1321:25	1493:9	<b>crossing</b>
<b>consonant</b>	1321:11	1418:19	1322:4	1513:4	1428:17
1487:25	1347:2	1420:21, 22, 25	1334:24	<b>course</b> 1333:6	<b>crunched</b>
1488:10, 12	<b>conversation</b>	1426:22, 23	1338:10	1388:5	1449:12
<b>consonants</b>	1330:1	1439:3	1339:12	1422:17	<b>CTOPP</b>
1488:12	1359:10	1456:21	1348:2, 3, 14, 18, 21	1448:12	1356:1, 4, 7, 8, 10
<b>consonant-vowel-consonant</b>	1368:11	1457:19	1350:8	1463:25	<b>cumbersome</b>
1488:4	<b>coordinator</b>	1458:16, 20	1389:6	1479:15	1456:24
<b>constitute</b>	1461:22	1459:5, 14	1393:14	1500:18	<b>cumulative</b>
1301:3	1462:16, 17	1467:17, 22	1430:24	1508:9	1310:21, 23
1447:9	<b>copied</b>	1468:5, 6, 17	1431:2, 5	<b>courses</b>	<b>current</b>
1513:21, 23	1407:22	1475:7	1432:25	1412:12, 17	1322:21, 24
<b>constitutes</b>	<b>coping-skills</b>	1491:6	1454:15	1457:15	1328:9, 10
1514:25	1413:7	1492:11, 14	1518:4	1458:4, 5	1331:25
<b>consult</b>	<b>copy</b> 1318:12	1494:14	1520:9	<b>court</b> 1327:13	1360:18
1438:17	1348:3, 25	1499:20	<b>counselor</b>	1335:9	1367:4
<b>contact</b>	1373:25	1502:21	1362:23	1384:11	1371:22
1307:18	1397:17	1505:16	<b>counsel's</b>	1398:25	1456:5
1308:13	1512:21	1509:4, 5, 8, 9, 17, 18	1304:19	1418:16	<b>currently</b>
1311:7	1513:13	1510:2, 5, 9, 11, 12, 16, 19, 20	1316:14	1520:5	1330:3
<b>contacting</b>	<b>core</b> 1457:15	1512:16, 17	1335:17	<b>cover</b>	1380:6
1308:7	<b>core-content</b>	1513:19, 21, 25	1347:20	1394:12	1458:23
<b>contained</b>	1370:5	1518:6	1353:14	1448:9	1468:7
1374:5	<b>corner</b>	1520:6	1436:25	<b>covered</b>	<b>curriculum</b>
<b>containing</b>	1313:17	<b>corrected</b>	1512:1	1415:15	1326:9
1487:8	1315:19	1386:3	<b>count</b>	1513:2	1391:18
<b>contend</b>	<b>Correct</b>	1387:2	1299:13	1314:13	1428:8
1485:18	1295:10, 11, 16	1388:3	1310:14	1315:3	1437:15
<b>content</b>	1300:16	<b>correcting</b>	1486:12	1326:2	1456:23
1324:22	1302:15	1478:2	<b>counties</b>	1427:15	<b>cursive</b>
1364:3, 8	1304:8	1505:5	1501:23	1462:7	1386:13, 18, 21, 24
1366:7	1307:25	<b>correctly</b>	<b>COUNTY</b>	<b>created</b>	1387:4, 10
1385:12	1310:25	1314:14	1291:10	1417:23	<b>cut</b> 1471:2, 25
1388:3	1313:21	1325:17	1325:3, 9	1418:2	<b>CV</b> 1338:15
<b>context</b>	1314:22	1364:9	1331:12	<b>creative</b>	1491:19
1326:1	1316:14	1379:12	1353:2	1362:20	
1478:23	1318:10	1391:4	1356:9	<b>credentials</b>	
1479:1	1319:5	1395:19	1386:17	1334:4	
1487:9	1325:4, 25	1420:23	1390:12	1336:6	
<b>continue</b>	1327:21	1436:16	1391:1	1337:10	
1338:12	1330:4, 5, 7	1479:7	1400:17	1338:8, 9	
1388:14	1334:10		1439:2		

< D >	<b>decide</b> 1300:9 1303:18 1357:4	<b>delivered</b> 1469:11	<b>determines</b> 1406:8	1425:21 1426:2, 4, 20	<b>directions</b> 1497:23
<b>daily</b> 1480:16	<b>decided</b> 1443:3	<b>demonstrate</b> 1366:7 1428:11	<b>developed</b> 1371:11 1464:16	1428:15 1429:1, 5 1443:24	<b>directly</b> 1363:10 1368:8
<b>dash</b> 1501:12	<b>decides</b> 1443:14	<b>demonstrating</b> 1476:15	<b>development</b> 1468:13	1457:16 1462:21 1463:12, 13	1369:2 1372:16 1392:5 1407:2
<b>data</b> 1462:25 1482:1, 3 1484:11 1486:5 1501:21, 25 1502:2, 6, 7, 19	<b>decimals</b> 1414:12	<b>denied</b> 1445:21	<b>deviate</b> 1295:18	1464:18 1476:25 1485:9, 12	<b>director</b> 1323:1 1328:11
<b>date</b> 1309:24 1314:23 1318:23 1381:1, 2 1440:22 1475:14 1489:21 1497:17	<b>decision</b> 1295:18 1330:20 1332:20, 24 1333:25 1356:15 1360:9, 14 1472:16	<b>denominator</b> 1312:8	<b>deviation</b> 1296:11	1487:22 1488:2, 7, 18 1501:23 1507:17 1518:14	1378:23 <b>Directory</b> 1393:2, 15 1394:14
<b>dated</b> 1371:8 1397:14 1419:21 1420:8, 19 1475:2 1481:3	<b>decision-making</b> 1330:24 1331:2, 16 1352:2	<b>DEPARTMEN T</b> 1291:2 1326:17, 19 1391:21, 24 1392:2, 4 1393:19 1396:23 1399:17, 21 1433:10 1434:10, 13	<b>deviations</b> 1453:8	<b>diagnose</b> 1406:3	<b>differentiating</b> 1406:4
<b>dates</b> 1316:7, 14, 17 1318:3 1380:24	<b>decisions</b> 1329:15	<b>depending</b> 1438:5	<b>diagnoses</b> 1405:22	<b>diagnosed</b> 1400:12 1401:23 1402:21 1403:6, 19, 25 1404:5	<b>differentiation</b> 1388:9
<b>daughter</b> 1322:19 1456:6 1516:14	<b>decode</b> 1478:17 1487:7 1488:19	<b>depends</b> 1327:7 1462:10	<b>diagnosis</b> 1400:4, 18, 19 1401:1, 6, 7, 16 1402:5, 7, 16, 17, 25 1403:2, 8, 15, 23 1405:8, 13 1406:11, 16	<b>difficult</b> 1297:11 1312:20 1477:10 1482:6	<b>differently</b> 1303:17 1501:24
<b>Day</b> 1291:13 1294:14, 17 1299:19 1314:24, 25 1315:1, 2 1365:18, 20 1379:7 1383:23 1389:5 1438:1, 2 1446:8 1451:22 1478:9 1520:13	<b>Decoding</b> 1370:12 1480:22 1482:6 1487:7, 20 1488:21	<b>describing</b> 1479:16	<b>diagnostic</b> 1327:18 1341:21, 22 1414:1	<b>difficultly</b> 1477:8	<b>disabilities</b> 1391:25 1392:9 1393:4, 16 1394:15 1395:24 1436:9 1467:17, 20 1509:17
<b>days</b> 1373:18 1386:18 1416:4, 6 1438:7 1440:15, 20 1446:16 1449:9 1495:9 1518:3	<b>deeper</b> 1484:22	<b>describe</b> 1362:4 1464:6	<b>diagnosis</b> 1400:4, 18, 19 1401:1, 6, 7, 16 1402:5, 7, 16, 17, 25 1403:2, 8, 15, 23 1405:8, 13 1406:11, 16	<b>digraph</b> 1488:10	<b>disability</b> 1400:21, 23 1445:24 1459:21 1460:19
<b>DC</b> 1463:21 1465:23, 24	<b>deeply</b> 1470:24	<b>described</b> 1359:16 1428:24 1430:14 1487:22, 23, 24 1503:5	<b>diagnostic</b> 1327:18 1341:21, 22 1414:1	<b>digraphs</b> 1488:10 1487:25 1488:8 1499:13	<b>disagree</b> 1383:18 1419:10 1443:16, 17 1484:15 1489:1 1506:12
<b>de</b> 1463:6 <b>dead</b> 1484:9 <b>deaf/blindness</b> 1459:22, 23 <b>deal</b> 1294:16 <b>December</b> 1397:14	<b>defend</b> 1449:2 <b>deficiencies</b> 1481:9 1483:20 1484:8	<b>describing</b> 1479:16	<b>diagnostician</b> 1334:4 1466:19	<b>dime</b> 1454:22 <b>Dire</b> 1293:11 1466:15 1467:8 1511:8	<b>disagreement</b> 1302:6 <b>disagreements</b> 1300:13 <b>disappointed</b> 1450:19 <b>disclose</b> 1440:21 <b>disclosed</b> 1297:8 1417:15 1440:2, 8, 14 1441:18 1442:16 1446:16 <b>disclosure</b> 1440:10 <b>discreet</b> 1297:3 1517:3 <b>discrepancy</b> 1336:14 1349:8
	<b>deficiency</b> 1498:21	<b>description</b> 1478:5 1501:12 1502:25	<b>dialogue</b> 1342:19	<b>Direct</b> 1293:4, 10, 12 1322:12 1358:13 1363:20 1366:19 1396:6 1409:16 1410:9 1434:15 1454:6 1455:12 1474:6 1503:16 1509:6, 15	
	<b>deficit</b> 1355:25	<b>designate</b> 1337:8 1342:8	<b>dictate</b> 1429:13	<b>directed</b> 1393:14	
	<b>deficits</b> 1368:8, 16, 22 1369:3 1401:10 1402:4, 14 1436:15, 19 1437:13, 19 1460:4, 8	<b>designated</b> 1453:13	<b>differ</b> 1336:19	<b>directing</b> 1317:25	
	<b>definitely</b> 1518:15	<b>designation</b> 1310:11	<b>differences</b> 1323:6 1391:6, 13		
	<b>degree</b> 1457:13, 17 1458:5, 8	<b>determination</b> 1352:22	<b>different</b> 1304:14 1315:19 1324:24 1333:12 1355:2 1364:4, 22 1366:16 1368:4, 22 1379:18 1405:24 1406:5		
		<b>determinations</b> 1401:25	<b>determine</b> 1471:23 1479:2 1481:14		
		<b>determined</b> 1326:20 1330:17			

<b>discretion</b> 1320:14	<b>disregard</b> 1308:17	1415:10	<b>doing</b> 1313:5, 10 1331:10	<b>Drive</b> 1292:7	1481:21
<b>discuss</b> 1311:11	1339:17	1420:13	1333:20	1400:19	1495:5
1333:22	<b>distinction</b>	1424:16	1338:23	1422:3	<b>easily</b> 1310:16
1338:15	1471:21	1425:3	1362:3	<b>driveway</b>	<b>East</b> 1292:12
1351:18	<b>distinctly</b>	1435:12, 20,	1367:9, 11	1496:9	<b>Editorial</b>
1406:22	1449:10	22 1436:4, 7	1399:12	<b>driving</b>	1444:19
1409:2, 22, 25	<b>distinguish</b>	1447:24	1407:12	1369:12	<b>EDUCATION</b>
1440:8	1306:21	1468:15	1433:1	<b>DUE</b> 1291:3	1291:2
<b>discussed</b>	1307:8	1475:4, 5, 9	1442:20	1451:7	1310:21, 23
1352:16	1337:17	1476:20	1451:25	<b>due-process</b>	1324:2, 3, 4, 5,
1359:3	1387:24	1481:2	1464:22	1451:9	9 1326:9, 17,
1404:11	<b>distributed</b>	1483:19	1476:6	1465:20	19 1361:25
1407:2	1393:18	1485:25	1499:16	1466:12	1373:21, 25
1408:25	<b>division</b>	1490:1	1503:25	<b>duly</b> 1322:10	1374:12, 17
1419:14	1328:14	1491:25	1504:8	1455:10	1377:12
1449:14	1448:17	1492:3	1514:21	<b>duration</b>	1391:21, 24
1450:1	<b>divulged</b>	1494:8	<b>Dolch</b>	1340:21	1392:2, 4, 6,
1471:25	1427:15	1496:5	1490:20, 24,	<b>Dyslexia</b>	10 1393:19
1481:10	<b>doctor</b>	1498:4	25 1491:4, 6,	1292:21	1396:24
1510:14	1402:13	1501:8, 12, 14,	10 1492:5, 6,	1323:5	1399:17, 22
<b>discussing</b>	1406:7	15 1502:20	12, 16, 20, 24	1363:20	1413:2
1490:16	<b>doctorate</b>	<b>documentary</b>	1493:7, 16	1387:12	1430:24
<b>Discussion</b>	1403:20	1441:2	1494:6, 12	1391:5, 12	1431:2, 6
1296:23	1405:22, 25	<b>documentation</b>	1495:3, 13, 25	1400:5, 12, 13,	1432:19, 25
1297:4	1406:8	1350:5	1496:2, 7, 10	18, 20, 22	1433:10
1320:23	<b>doctor's</b>	1354:20	1497:9	1401:1, 7, 13,	1434:11, 13
1321:20	1405:17	1355:18	1498:3, 6, 15,	17, 24 1402:2,	1458:3, 13
1329:24	<b>document</b>	1448:8	21 1499:3, 14,	7, 22, 25	1459:18
1346:5	1297:5	<b>documents</b>	17, 21 1500:4,	1403:2, 6, 7,	1463:5
1352:21	1301:14	1297:7	11, 14 1507:7,	14, 23, 25	1470:8 1481:3
1359:25	1303:20	1298:2	8, 22, 25	1404:5	<b>education-</b>
1361:19	1308:2	1299:3, 23	<b>D-o-l-c-h</b>	1405:9, 23, 25	<b>agency</b>
1363:22	1333:9, 11	1300:1, 2, 11	1490:20	1406:4, 6, 12,	1462:23
1373:17	1334:2	1304:10, 17,	<b>Dolch-phonics</b>	17	<b>educational</b>
1401:19	1343:21	23, 25 1305:4,	1508:1	< E >	1323:19
1410:3	1345:13	15 1307:21,	<b>Dolch-word</b>	<b>earlier</b>	1326:24
1417:11	1346:8, 11, 21,	23, 24 1309:4,	1498:17, 18	1306:7	1327:2
1443:5	22 1347:9, 15,	21, 25 1310:1,	<b>Dolchword.net</b>	1317:19	1328:3
1445:10	20, 21, 24	3 1316:5, 18	1492:4	1333:13	1334:3
<b>discussions</b>	1348:7, 21	1317:11	<b>door</b> 1456:8, 9	1348:19	1335:2
1378:25	1349:6, 20	1333:1	<b>downloaded</b>	1395:11	1359:7
<b>dismiss</b>	1350:10, 23	1346:17	1492:3	1403:11	1365:18
1321:5	1351:11	1350:17	<b>dozen</b> 1463:15	1412:9	1377:7
1517:19	1352:1	1354:15	<b>draft</b> 1306:14	1416:2	1401:25
<b>dismissed</b>	1367:23	1355:21	<b>drafted</b>	1418:7	1436:15
1516:5, 10	1372:1, 8	1367:21, 22	1485:12	1471:25	1457:11
1518:19	1375:21, 23	1381:14, 22	<b>drafting</b>	1504:25	1466:19
<b>dispositive</b>	1376:22	1383:5	1468:24	1519:16, 18	1475:1, 6, 13
1518:18	1377:2	1401:25	1485:18	<b>early</b> 1330:11	1476:11, 22
<b>dispute</b>	1381:25	1417:9	<b>drama</b>	1332:12, 15	<b>educational-</b>
1354:23	1386:5	1418:10, 18	1362:20	1474:15	<b>skills</b> 1327:19
1355:7, 10, 21,	1393:2	1419:1	<b>draw</b> 1448:20	1486:19	<b>educational-</b>
23 1356:22	1394:12, 20	1423:5, 23	1499:5, 9	<b>earn</b> 1458:8	<b>testing</b>
1400:11	1395:5, 7, 15	1434:8	<b>drawing</b>	<b>earned</b>	1335:21
1404:2, 17	1396:4, 8, 11	1474:22	1301:17	1457:13	<b>educator</b>
1417:15	1397:1	1500:24	1302:18	1458:9	1387:7
1433:17	1398:5	1506:23	1310:13	<b>eases</b> 1387:11	1461:20, 21
<b>disputed</b>	1399:2, 6	1507:1	1492:18	<b>easier</b>	1464:11
1353:21, 22	1407:17	1512:15, 20,	<b>drew</b> 1302:11	1306:21	<b>effect</b>
	1411:10	21 1517:4, 20		1477:10	1387:18

1433:9	<b>ELIZABETH</b>	<b>English</b>	1469:25	1351:8, 14	1354:21
1498:19	1293:9	1326:12, 13	<b>ESQ</b> 1291:15	1353:18	1423:12
<b>effective</b>	1454:9 1455:8	1412:25	<b>ESQUIRE</b>	1354:16	1448:6, 18
1363:20	<b>elucidating</b>	1459:10	1292:4, 9, 10,	1364:15	1451:13
<b>effectively</b>	1310:8	1473:8, 11	14, 15	1372:24	<b>examined</b>
1466:16	<b>e-mail</b> 1418:2,	1474:1	<b>essential</b>	1373:4, 6	1322:10
<b>efficient</b>	11, 12, 13	<b>English-</b>	1488:15	1380:10	1336:6
1320:20	1419:21	<b>language</b>	<b>Essentially</b>	1381:21	1389:6
<b>eight</b> 1326:10,	1420:2, 8, 19	1459:10	1327:18	1382:12	1455:10
12, 14	1421:4, 11, 14	<b>enroll</b> 1360:17	1447:14	1384:20	<b>examiner</b>
1328:20, 22	1422:7	<b>enrolled</b>	<b>established</b>	1385:17, 24	1480:6
1362:17	1424:17	1363:2	1333:13	1394:1	<b>example</b>
<b>eighth</b>	<b>e-mailed</b>	<b>enrollment</b>	1396:25	1398:5, 15	1300:25
1388:18	1422:1, 13	1361:22	1466:16	1400:2	1306:17
1463:17	<b>e-mails</b>	<b>ensure</b>	1511:8	1416:24	1310:12
1473:12	1401:4	1462:23	<b>et</b> 1411:1	1417:10	1312:3, 4, 5
<b>eighth-grade</b>	1417:18, 24	<b>ensuring</b>	1488:1	1418:1, 10, 11	1315:17
1473:8	1423:14	1328:16	<b>evaluated</b>	1419:6, 11, 14	1402:11
<b>eighth-grader</b>	<b>REDACTED</b>	1362:2	1390:9	1436:18	1427:24
1473:25	1291:6	<b>enter</b> 1299:10	1440:3	1441:2	1428:2, 4, 7
<b>eighth-graders</b>	1292:20	<b>entered</b>	1510:6, 7	1471:22	1429:15
1459:11	<b>em-mail</b>	1295:9 1373:3	<b>evaluation</b>	1472:23	1436:7
<b>either</b>	1417:6	<b>entire</b> 1386:5	1359:7	1489:20	1442:12
1301:25	<b>empathize</b>	1437:15	1440:7	1506:2	1478:6
1304:18	1451:2	1473:13	1446:12	<b>evident</b>	1488:3
1308:7	<b>employee</b>	<b>entirely</b>	1447:24	1308:12	1490:6, 10
1327:13	1351:3	1485:1	1448:1	<b>exact</b> 1321:18	1493:1, 15
1330:1	1389:9	<b>entirety</b>	1449:5	1381:2	1498:4
1331:25	1418:24	1314:16	1475:1, 6, 13,	1389:8	1502:24
1376:23	1509:3	1424:25	14 1476:11,	1482:24	<b>examples</b>
1391:5, 12	<b>enables</b>	<b>entitled</b>	22 1483:21	<b>Exactly</b>	1301:5
1406:2	1387:8	1394:14	<b>evaluations</b>	1302:9, 12	1319:24
1413:8	<b>encapsulates</b>	1448:25	1440:13, 21,	1306:17	1320:5
1415:14	1372:15	<b>enumerator</b>	23 1441:3, 10,	1315:1	1493:17
1418:1	<b>encode</b>	1312:8	15 1445:4	1336:20	1494:5
1453:16	1487:7	<b>environment</b>	1475:16	1349:22	1502:2
1504:25	1488:20	1300:23	<b>evaluator</b>	1350:1	1507:2, 4
<b>elaborate</b>	<b>encoding</b>	1312:21	1339:20	1384:14	<b>excellent</b>
1380:2	1487:21	1416:18	<b>event</b> 1313:14	1401:22	1308:25
1460:7	1488:22	1421:16	1439:24	1404:14	<b>exception</b>
1502:10, 15, 17	<b>encourage</b>	1430:16	1453:19	1405:19	1297:21
<b>electives</b>	1430:3	<b>equalities</b>	1520:10	1435:14	1300:20
1362:11, 14, 16	<b>encouragement</b>	1372:6	<b>eventually</b>	1499:25	1335:16
<b>Elementary</b>	1430:8	<b>equivalent</b>	1357:7	1500:7	1343:18
1300:23	<b>ended</b> 1460:16	1342:25	<b>everybody</b>	1512:20	1353:12, 15,
1324:4	<b>endings</b>	<b>equivocated</b>	1320:22	<b>exam</b> 1475:22	16 1355:6
1463:12, 14	1480:18	1375:2	1329:4	<b>Examination</b>	1418:16
<b>elevate</b> 1453:7	<b>endorsed</b>	<b>erased</b>	1354:7	1293:4, 5, 6, 7,	1436:23, 25
<b>eleven</b>	1326:10	1318:21	1410:4	10, 11, 12, 13	1472:16, 20
1324:23	<b>endorsement</b>	<b>error</b> 1323:15	1448:21	1322:12	1511:25
<b>elicit</b> 1482:25	1468:2, 4	1480:6	1457:6	1354:24	1512:2
<b>elicited</b>	<b>endorsements</b>	1490:11	1512:13	1389:11	<b>exceptional</b>
1348:17	1467:16, 21	1498:16	1516:19	1426:13	1460:10, 14
<b>elicits</b> 1342:15	<b>ends</b> 1380:17	<b>errors</b> 1480:7	1519:12	1438:22	<b>exchange</b>
<b>eligibility</b>	1381:2	1492:16, 20	<b>everyone's</b>	1455:12	1418:23
1448:12	1382:18	1493:3	1377:19	1467:8	1447:15
1509:10	<b>enforce</b>	1496:6	1398:18	1474:6	<b>exclude</b>
<b>eligible</b>	1451:6	1498:16, 17	1519:10	1483:8 1509:1	1308:8
1460:11	<b>engaged</b>	<b>especially</b>	<b>evidence</b>	<b>examine</b>	1309:19
	1503:1	1438:9	1343:20, 22	1337:16	1350:11
			1344:13	1338:8	

1375:14	<b>exiting</b>	1468:24	<b>extensive</b>	1494:1	1363:23
1382:15	1463:14	1469:24	1479:15	1502:2	1384:17
<b>excluded</b>	<b>expand</b>	1470:4, 21	1511:5	1506:19	1415:2
1417:13	1378:12	1471:16	<b>extent</b>	<b>factually</b>	1450:11
<b>excluding</b>	<b>expect</b>	1472:1, 9, 10,	1341:19	1476:8 1499:2	1493:23
1374:23	1514:10	13 1479:4	1356:5	<b>faculty</b>	<b>fast</b> 1387:18,
<b>excoriating</b>	<b>expecting</b>	1484:23	1437:4	1323:13	20 1428:2, 8
1349:7	1444:24	1485:18	1441:17	1325:15	<b>fault</b> 1304:3
<b>Excuse</b>	<b>expensive</b>	1493:7	1446:11, 13	1328:15	1365:3
1360:20	1447:19	1504:14	1448:7	<b>fair</b> 1300:3	<b>FBA</b> 1465:1
<b>excused</b>	<b>experience</b>	1511:13	1460:22	1308:9	1500:23
1439:8	1323:19, 21	<b>expertise</b>	1471:15	1343:8	1501:2, 13, 15,
<b>executive</b>	1326:21	1442:19	1485:24	1354:19	20 1502:13
1358:6	1334:15	1471:13, 14	1488:23	1374:15	1505:11
<b>exercise</b>	1337:21	<b>experts</b>	1499:7	1390:3	1511:20, 22
1472:13	1386:15, 19	1336:4	<b>extrapolating</b>	1448:18	<b>FBA</b> s
<b>Exhibit</b>	1388:1	1353:25	1492:18	1450:6	1501:19, 23
1293:20, 21,	1406:7	1443:9	<b>extreme</b>	1452:2	1504:13, 24
22 1303:21	1428:14	1453:13	1422:14	1487:14	<b>February</b>
1304:9	1429:1, 6, 11,	<b>expert-</b>	1471:12	1489:6, 11	1422:12
1349:23	18 1459:15	<b>testimony</b>	<b>extremely</b>	1509:15, 25	1486:9
1351:10, 13	1460:7, 15	1336:18	1470:19	<b>Fairfax</b>	1487:10
1367:17	1461:10	1337:22	< F >	1459:2, 8	<b>federal</b>
1373:5	1464:2, 6	<b>expert-witness</b>	<b>fact</b> 1334:20,	1473:6	1470:14, 16
1385:22, 23	1490:21	1447:22	25 1335:6, 17,	<b>fairly</b> 1307:8	<b>feedback</b>
1392:16	<b>experiences</b>	1449:15	25 1339:2	1435:12	1332:21
1393:13, 14	1387:25	<b>expires</b> 1520:4	1350:4	<b>fairness</b>	1333:20, 23
1394:22	1460:20	<b>explain</b>	1360:17	1449:12	1351:18, 22,
1396:7	1463:23	1323:18	1409:25	<b>fall</b> 1294:19	24 1352:4
1397:4	<b>experiencing</b>	1334:17	1415:10	1359:19	1357:7, 10, 14
1407:14, 18	1385:11	1343:13	1416:14	1369:18	1359:17
1408:9	<b>expert</b>	1356:3	1443:17	1402:14	1360:5, 7, 10
1410:10	1334:19	1363:4	1445:4, 14	<b>falling</b>	<b>feel</b> 1308:11
1417:16, 18	1335:1, 4, 13,	1364:24	1446:1	1429:17	1340:24
1418:13	19, 25 1337:4,	1365:22	1448:10	<b>falls</b> 1438:6	1385:9
1434:8	7, 8, 9, 12, 18	1372:13	1449:8	<b>false</b> 1477:20	1427:15
1435:23	1338:3, 7	1377:24	1450:2, 14	<b>familiar</b>	1472:18
1456:11, 20	1342:8, 16	1379:3	1453:12	1305:21	1481:20
1474:18, 20,	1343:2, 11	1387:22	1470:1	1367:21	<b>feeling</b>
22 1475:3, 15	1372:7	1388:9	1472:2, 12	1395:7, 14	1516:13
1476:21	1428:21	1400:16	1491:11	1421:20	<b>fifteen</b>
1478:7	1429:2	1427:8	1492:25	1439:2	1299:21
1479:22	1441:11, 12,	1428:5	<b>facto</b> 1463:6	1487:21	1310:14
1480:14, 20,	17 1442:15,	1431:20	<b>facts</b> 1334:22	1490:21	1489:14
23 1483:1	20, 23	1462:2 1481:8	1335:10	1501:17	<b>fifteen-minute</b>
1494:7	1443:15, 23	<b>explained</b>	1341:17	<b>familiarity</b>	1299:8
1512:23, 24	1444:13, 16	1364:20	1398:4	1390:4 1492:5	<b>fifth</b> 1303:6
1513:18	1445:12, 13,	1377:1	1416:24	<b>familiarize</b>	1325:20
<b>exhibits</b>	20 1446:2, 8,	<b>explaining</b>	1484:12, 20	1301:9	1326:4
1297:7	25 1447:13,	1381:24	1489:2	<b>families</b>	<b>fifth-grade</b>
1402:1	19, 20, 21	1412:5	<b>factual</b>	1447:18	1411:24
1423:24	1448:1, 24	<b>exploratory</b>	1336:15, 16	<b>family</b>	1463:14
1442:7	1449:6, 11	1362:21	1338:23	1322:15	1482:5
1456:18	1450:1, 11, 20	<b>explore</b>	1383:21	1331:11	<b>Fifty</b> 1340:17,
1501:1	1451:11, 12,	1449:1	1451:23	1402:12	22 1341:3
<b>existence</b>	22 1452:10,	<b>expressed</b>	1453:24	1430:10	<b>fifty-five</b>
1395:9	13, 17, 22, 25	1399:13	1471:19, 22	<b>far</b> 1319:11	1473:17
<b>existing</b>	1453:1, 24	<b>expression</b>	1476:10	1337:4	1474:3
1406:16	1461:10	1305:22	1485:15	1342:1	<b>fight</b> 1307:3
<b>exists</b> 1323:5	1465:19	<b>extended</b>	1492:24	1349:19	<b>figure</b>
	1466:6, 11, 16	1479:6		1354:22	1398:20

1426:5	1408:5	1370:21	1457:17	1371:6	<b>frustrated</b>
1471:3	1409:6, 11, 12	1503:10	1462:21	1376:2	1406:23
1495:9 1504:6	1410:10	<b>focused</b>	1512:25	1377:24	1407:6 1409:2
<b>file</b> 1310:21,	1420:16	1331:22	<b>four-page</b>	1379:4	<b>frustrating</b>
23 1329:17	1442:4	<b>follow</b> 1423:6	1344:21	1387:22	1309:2
1444:16	1444:3	1426:24	1345:3, 4	1392:21	<b>frustration</b>
<b>fill-in-the-</b>	1446:8	1488:5	1346:24	1393:6, 9	1409:8
<b>blank</b> 1494:9	1448:16	1498:14	1347:15, 24	1405:7	<b>full</b> 1329:23
<b>final</b> 1303:19	1449:24	1507:12, 19	1350:23	1407:9	1347:11
1497:16	1460:15	<b>followed</b>	<b>four-syllable</b>	1408:1	1350:9, 23
<b>financial-aid</b>	1483:10	1322:3	1405:20	1415:9	1351:4, 8, 11
1390:1	1486:2, 16	<b>follows</b>	<b>fourteen</b>	1417:8	1442:9
<b>find</b> 1338:15	1487:6	1322:11	1415:1 1416:1	1419:5	1448:18
1392:15	1491:3	1455:11	<b>fourth</b>	1424:7, 24	1496:9 1520:7
1397:2	1492:10	<b>follow-up</b>	1303:14	1430:7	<b>fully</b> 1297:8
1435:13	1495:19	1424:11	1314:20	1431:20	1441:18
1469:20	1502:9	1515:23	1460:16	1438:16	1444:25
<b>finding</b>	1503:2, 7, 8, 11	<b>font</b> 1302:3	<b>fourth-grade</b>	1445:7	1448:6
1409:11	<b>first-grade</b>	<b>force</b> 1369:12	1314:12	1454:7	1472:9, 23
<b>Fine</b> 1320:1	1497:3	<b>foregoing</b>	<b>Foy</b> 1357:17,	1456:3	<b>functional</b>
1358:11	<b>first-quarter</b>	1520:6	18 1396:21	1457:12	1401:2, 5
1361:3	1369:9	<b>Forest</b> 1292:7	1397:13, 19	1460:2	1402:8
1416:25	<b>fit</b> 1329:24	<b>forget</b> 1377:9	1399:10	1464:7	1481:16, 17
1423:11	1490:14	<b>forgotten</b>	<b>F-o-y</b> 1357:17	1474:23	1482:16, 18
1431:15	<b>fits</b> 1353:3	1306:7	<b>Foy's</b> 1397:25	1479:18	<b>functional/beh</b>
1434:1	1359:4	<b>form</b> 1295:12	1398:8, 11	1481:8	<b>avioral</b>
1454:1	<b>five</b> 1323:7	1352:3	<b>fractions</b>	1483:24	1510:14
1518:20	1328:20, 21	1381:13	1414:12	1491:22	<b>functional-</b>
<b>finish</b> 1304:1	1347:4	1464:18	<b>frame</b>	1492:3	<b>behavior</b>
1324:6	1389:1	1501:17	1308:13	1494:5, 13	1464:3, 9, 14,
1337:20	1440:15, 20	<b>former</b>	1313:4	1495:16	20 1466:17
<b>finished</b>	1441:6	1510:17, 22	1316:8, 10, 23	1499:4	1469:1, 13
1324:16	1446:16	<b>forth</b> 1346:6	1380:21	1500:17	1474:13
1426:11	1449:9	1418:3	<b>framework</b>	1503:13	<b>functional-</b>
1438:17	1464:17	<b>forthcoming</b>	1359:15	1504:19	<b>behavioral</b>
1500:20	1486:10, 11,	1433:25	<b>free</b> 1385:9	1506:7	1468:11
<b>finishes</b>	15 1495:9	<b>forty-five</b>	1481:20	1508:17	<b>functional-</b>
1423:10	1518:3	1360:8	<b>FREEMAN</b>	1511:1	<b>performance</b>
<b>first</b> 1295:23	<b>five-business-</b>	<b>forum</b>	1291:15	1516:23	1481:12
1296:17	<b>day</b> 1440:9	1464:16	1292:1, 4	<b>Freeman's</b>	<b>functioning</b>
1298:13	1441:20	<b>forward</b>	1294:5, 15	1333:2	1460:13
1319:18	1446:17	1296:15	1299:7	<b>frequent</b>	<b>fundamental</b>
1321:14	<b>five-day</b>	1321:3	1304:22	1490:25	1448:6
1328:23	1447:15	1338:22	1321:2, 23	<b>Friday</b>	<b>fundamentals</b>
1333:8	<b>fix</b> 1421:5	1389:4, 7	1326:6	1443:13	1362:10, 24
1337:24	<b>flew</b> 1515:24	1398:19	1328:10	<b>Friends</b>	1363:5, 6, 15
1338:2	<b>Flip</b> 1371:20	1439:20	1329:11	1291:6	1364:2, 11
1340:2	1372:3	1453:19	1332:8	<b>frog</b> 1486:24,	1365:8, 10
1349:18	1496:25	<b>found</b>	1334:18	25	1366:12
1367:22	<b>Flipped</b>	1460:10, 12	1338:4	<b>front</b> 1318:25	1370:3, 7, 11,
1369:9, 17	1422:25	1494:12	1339:19	1321:10	22 1371:4, 14
1370:18	<b>floor</b> 1294:20	<b>foundation</b>	1340:23	1333:2	1372:20
1371:1	1444:8	1340:25	1344:18	1384:24	1385:12
1374:7	<b>flow</b> 1387:8	1341:16	1352:20	1407:7	1388:5
1378:14	<b>fluency</b>	1393:23	1354:6	1416:19	1437:17
1379:10, 14,	1477:21	1394:8	1358:20	1435:18	1438:13
18 1380:16,	1479:24, 25	1396:1, 4	1362:4	1456:11	<b>further</b>
24 1386:1, 2,	1480:12	<b>four</b> 1324:24	1363:4	1475:11, 12	1301:15
7, 8 1388:22	<b>focus</b> 1365:9	1349:21, 24	1365:22	1480:24	1320:25
1396:7	1368:1	1366:14, 15	1368:14	1495:16	1336:25
1403:4	1369:13	1438:5, 7	1369:8	1512:6, 14	1338:15

1385:15	1394:5	1353:19	1498:19	1415:12	1469:25
1423:6	1396:3	1356:25	1499:2 1500:3	1416:22	1500:21
1424:8, 11	1397:17	1357:20	<b>goals</b> 1371:13	1418:15	1509:14
1458:3	1411:22	1373:8	1372:15	1419:19	1519:12
1468:20, 22	1423:5	1377:17	1378:10	1423:21	<b>gotten</b>
1515:21	1424:13	1378:1	1413:3, 7	1424:1	1300:12
1516:3 1520:8	1440:17	1380:18, 20	1468:25	1430:20	1320:19
<b>fussing</b>	1443:5	1382:2	1473:13, 17,	1433:2	1332:12, 15
1313:16	1451:22	1386:4	18 1474:2	1434:4	1346:13
1314:1	1452:25	1387:18, 20	1481:13	1436:19	<b>grade</b>
< G >	1465:19	1406:6	1485:4, 6, 9,	1437:8	1301:13
<b>gained</b> 1353:2	1470:22	1407:15	12, 13, 23	1439:21	1303:1, 6
<b>garage</b> 1496:9	1472:22	1408:6	1486:3, 8, 14	1441:13	1307:1
<b>gather</b>	1479:17	1410:1, 10	1499:12	1442:11	1314:21
1505:14	1494:5	1414:2	1500:1, 11	1443:22	1323:7
<b>general</b>	1508:18	1417:3	<b>goes</b> 1302:14,	1445:3, 23	1342:25
1326:9	<b>given</b> 1295:6	1419:4	16 1305:2	1448:7, 14, 23	1362:7
1330:24	1376:6, 9, 17	1423:20	1342:2	1451:19	1368:20, 21
1363:17	1412:20	1425:9	1370:20	1453:1, 15	1369:24
1382:9, 10	1420:14	1428:2	1375:8, 10	1454:21, 23,	1411:12
1384:16, 17	1438:5	1429:4	1385:14	25 1455:1	1459:20
1459:17	1447:25	1433:2	1395:19	1460:1, 17, 22	1460:16
<b>generalize</b>	1449:6	1434:1, 5	1407:3	1461:6, 12	1463:17
1381:19	1465:25	1437:2	1436:20	1470:17, 22	1473:12, 14,
<b>generally</b>	1475:24	1438:18	1450:12	1471:2, 5, 6,	24 1491:1
1386:18	1476:13	1440:25	1479:15	11, 15, 18, 20,	1492:10
1453:9	1520:12	1444:9, 22	<b>going</b> 1294:9,	25 1472:13	1499:24
1468:14	<b>gives</b> 1337:19	1446:4	15 1295:20	1483:8	<b>graded</b>
1501:17	1479:21	1448:4	1296:9	1484:4, 21	1301:4
1511:23	<b>giving</b>	1452:6, 12, 14,	1298:14	1485:3, 12, 23	1305:18, 20
<b>generated</b>	1338:17	15 1453:19,	1299:14, 23	1488:5, 23	1307:5
1370:25	1347:20	24 1454:5	1302:5	1489:3, 4, 22	1308:2, 12
<b>generator</b>	1425:24	1458:2	1309:20	1493:22	1312:7
1372:20	1450:15	1461:13, 24	1323:16	1494:15, 19	1318:5, 15
<b>getting</b>	1465:8	1463:13	1330:22	1495:17, 18	1319:19, 20
1349:4	1472:17	1472:25	1335:15, 16,	1499:25	<b>grader</b>
1353:10	1481:6	1473:4	22 1336:5	1503:19	1387:25
1356:12	<b>Glen</b> 1292:7	1474:5	1337:6	1504:3, 16	1388:18
1369:23	<b>go</b> 1294:19	1477:16	1338:2, 22, 23	1505:24	<b>grades</b>
1429:22	1296:24	1479:22	1339:1, 8, 11,	1515:18, 25	1307:24
1461:4	1297:13	1480:13	16 1342:3, 4,	1516:20	1312:25
1482:1, 25	1299:2, 8, 18	1481:11	7 1343:7, 12	1517:5, 23	1324:22
1487:17	1303:24	1483:12	1344:11	1518:17	1326:10, 11,
1499:15	1304:21, 25	1485:15, 20	1348:7, 23	<b>Goochland</b>	13 1328:21
1507:9, 23	1305:5, 12	1489:5, 18	1349:2, 18	1324:20	1368:18
<b>gifted</b>	1306:19	1490:17	1351:17	1395:12	1369:17, 19,
1460:17, 18	1308:6	1491:16	1352:11	<b>Good</b> 1294:3	23 1370:1
<b>Girls</b> 1421:11	1309:7	1492:22	1353:9, 15	1315:21	<b>grading</b>
<b>give</b> 1297:11	1317:21	1495:18	1354:21	1317:24	1297:23
1304:16	1321:9, 21	1496:16, 25	1360:25	1322:14	1299:1
1305:8	1323:7	1499:15	1361:1, 11	1332:8	1369:13, 14
1311:25	1325:13	1501:3	1374:25	1359:2, 23	<b>graduate</b>
1313:2	1327:5	1504:22	1375:14, 17	1368:15	1324:7
1332:8	1332:22	1511:8	1377:11	1369:19, 23	1465:9 1468:1
1335:1, 2	1337:4, 21	1512:3	1380:9	1378:15	<b>graduated</b>
1337:25	1339:23	1514:21	1383:19, 20	1385:3	1458:2
1356:7	1342:23	1516:8 1518:2	1384:15	1389:13	<b>granted</b>
1361:13	1343:15	<b>goal</b> 1413:5	1385:1	1420:17	1329:16
1369:14	1347:8, 10	1486:16	1388:25	1453:22	<b>great</b> 1342:24
1378:8	1350:13, 20	1487:3, 5, 6,	1389:7, 14	1455:14, 16	1343:9
	1351:6	14, 16, 18	1414:13	1467:10, 13	1361:10

1388:2	1315:22	1398:13	16, 22, 25	1423:4, 11, 21	1503:16, 21
1398:14	1318:16	1400:8	1345:9	1424:10, 13	1504:5, 9, 16,
1461:19	1319:24	1448:11	1346:10	1425:1, 5, 9	22 1505:6, 9,
1475:5	1320:3, 5, 9,	1452:9	1347:2, 8, 12,	1428:18, 22	15, 17, 23
1491:16	10 1370:12	1461:7	16, 19 1348:2,	1429:3, 22, 25	1506:3, 10, 14
1518:20, 22	1386:13, 18, 21	1492:21	14 1349:14,	1430:25	1508:6, 9, 13,
<b>greater</b>	<b>handwritten</b>	<b>HEARING</b>	18 1350:20	1431:3	19, 22 1511:4,
1325:2	1305:24	1291:3, 15	1351:1, 10	1432:15, 20,	10, 15, 22
1388:17	1306:5, 9, 11	1292:5	1353:11, 14,	23 1433:7, 14,	1512:1, 25
<b>green</b> 1306:24	1307:15	1294:3, 6, 8,	22 1354:9, 19	22 1434:1, 24	1513:4, 11, 15
<b>ground</b>	1497:17	22, 25 1295:3,	1355:1, 10, 13,	1435:2	1514:3, 14, 20
1354:14	<b>Hanover</b>	5, 7, 10, 14, 17,	17 1356:3, 8,	1436:20, 24	1515:9, 14, 18,
<b>grounds</b>	1324:20	18, 25 1296:3,	25 1357:18,	1437:8	23 1516:2, 7,
1354:1	1395:12	6, 7, 14, 20, 24	20 1358:5, 9	1438:18, 20	13, 22 1517:5
1382:14	<b>happen</b>	1297:10, 13,	1359:2	1439:7, 12, 17,	1518:1, 10, 21,
<b>guess</b> 1301:3	1457:1	17, 24 1298:6,	1360:23	20 1440:12,	25 1519:3, 6,
1317:13	<b>happened</b>	9, 13 1299:9,	1361:3, 5, 8,	14, 16, 20, 24	9, 16, 20
1327:1	1344:22	14, 18, 19	16, 20	1441:1, 2, 4,	<b>heart</b> 1422:8
1332:24	<b>happening</b>	1300:10, 14	1364:13	21, 24 1442:2	<b>heater</b>
1343:8	1368:19	1301:8	1365:5	1443:1, 10, 20	1456:13
1345:15	1430:11	1302:8, 13, 18,	1367:17	1444:9, 19, 22	<b>heavy</b> 1495:11
1364:25	<b>happens</b>	24 1303:8, 11,	1373:1, 3, 8,	1445:3, 8	<b>help</b> 1332:6
1402:7	1313:15	19, 22	14 1374:22	1446:4, 15, 20	1411:9
1404:15	1377:5 1411:2	1304:12, 16,	1375:1, 7, 10,	1447:6, 16	1425:19
1428:2	<b>happy</b> 1299:2	18, 24 1305:3,	14, 19 1376:5,	1448:4, 21, 23	1479:25
1436:6	1345:7	10, 12 1306:6,	11, 15, 21, 24	1450:9, 11, 21,	<b>helpful</b>
1451:18	1419:6	19 1307:6, 14,	1377:6, 9, 15,	25 1451:4, 9,	1350:12
1452:3, 24	1466:23	22 1308:4, 11,	17 1380:12,	21 1452:5, 9	1371:15
1454:1	1469:21	18, 25 1309:6,	18 1381:3, 23	1453:6, 15, 17,	1376:1 1515:8
1503:18	1512:13	13, 18 1310:6,	1382:2, 16	23 1454:5, 9,	<b>helping</b>
1507:22	1517:22	8, 17, 22, 24	1383:3, 7, 11,	12, 23 1455:3,	1301:9
1511:14	<b>hard</b> 1319:13	1311:5, 15	19 1384:3, 6,	5, 21, 24	<b>helps</b> 1320:7
<b>guessing</b>	<b>harder</b>	1312:6, 13, 17,	9, 15 1385:18,	1457:3, 21	<b>Herbert</b>
1478:20	1313:13	22 1313:18,	21 1386:4, 9	1461:1, 6, 12,	1465:24
<b>guideline</b>	<b>head</b> 1306:12	23 1314:7, 15,	1387:1, 4	24 1465:20,	<b>Hi</b> 1457:13
1471:21	1321:19	18 1315:2, 6,	1388:25	23 1466:12,	<b>hide</b> 1444:18
<b>Gwendolyn</b>	1339:10	9, 14, 23	1389:4	21, 25 1467:4,	1515:7
1291:25	1357:17, 19,	1316:9, 12, 19,	1392:18, 22	6 1469:5	<b>hierarchy</b>
1520:2, 19	22 1384:5	24 1317:8, 15,	1393:8, 12	1470:2, 6, 9,	1453:7
< <b>H</b> >	1390:5	25 1318:8, 11,	1394:5	12, 15	<b>high</b> 1323:20,
<b>half</b> 1361:7	1396:19	18, 20, 25	1395:17	1471:11	25 1324:6
<b>halfway</b>	1515:25	1319:4, 6, 14,	1396:3, 9	1472:6, 20	1457:11
1496:24	<b>health</b>	18 1320:2, 9,	1397:2, 5, 17	1473:4	1463:18
1497:11	1362:19	15, 24 1321:3,	1398:8, 11, 17,	1474:5	<b>high-cognitive</b>
1498:7	<b>hear</b> 1316:6	7, 13, 16, 21,	22 1399:3, 8,	1482:14, 16,	1460:13
<b>hand</b> 1322:5	1325:16	23 1322:6	13 1400:8, 9	20, 23	<b>high-</b>
1347:9, 17	1335:3	1323:19	1401:9, 20	1483:11, 16	<b>frequency</b>
1408:4	1364:13	1325:6, 10, 13	1402:20	1484:3, 9, 14,	1490:25
1455:1, 6	1405:5	1326:13	1403:4, 14, 18	17, 21 1485:2,	1499:22
1520:12	1417:6	1333:6	1404:3, 6, 14,	5, 7, 14, 20	1507:25
<b>handbook</b>	1420:24	1334:21, 24	20, 24 1405:2,	1489:3, 13, 16	<b>highlight</b>
1393:17	1425:14	1335:15	5, 11, 15, 19	1492:22	1385:8
<b>handle</b> 1454:3	1437:9	1336:13, 24	1406:11, 15	1493:6, 11, 22	<b>highlighting</b>
<b>handling</b>	1451:19	1337:13	1407:11, 25	1494:2, 19, 23	1385:10
1454:24	1454:10, 19	1338:6, 17, 20,	1408:6, 10	1495:6, 10, 13,	<b>high-skill</b>
<b>hands-on</b>	1455:14, 16	22 1339:3, 7,	1414:6	17, 21	1460:13
1366:2	1474:8	10, 22 1341:1,	1415:14	1498:25	<b>hire</b> 1447:19
<b>handwriting</b>	1508:15	22 1342:1, 9,	1417:1, 20	1499:10, 15,	<b>history</b>
1305:21	<b>heard</b> 1314:5	13, 15, 23	1418:15, 23	25 1500:5, 8,	1326:11
1307:7	1360:22	1343:4, 12, 18,	1419:8, 17	18, 21 1501:5	<b>hold</b> 1311:20
	1382:1	24 1344:3, 9,	1420:1, 5, 12	1502:14	1312:22



1351:1	<b>idea</b> 1384:17	<b>IIP</b> 1377:17	1380:14	1413:2	<b>initially</b>
1457:20	1420:3	1378:3, 10	1499:6	1427:11	1379:5
1482:11	1470:14	<b>illness</b> 1416:3, 5	<b>including</b>	<b>individualizati</b>	<b>initiated</b>
1495:4	<b>identification</b>		1388:3	<b>on</b> 1429:12	1329:2
<b>holding</b>	1338:7	<b>imagine</b>	1424:17, 21	<b>individualize</b>	<b>initiates</b>
1311:17	1351:14	1377:3	1425:1	1388:7	1329:4
1312:10	1373:6	1432:9	1441:2	<b>individualized</b>	<b>ink</b> 1318:22
<b>home</b>	1385:24	1456:24	1462:16, 22	1371:11, 16	<b>in-person</b>
1324:12	1477:7	1466:14	1507:5	1373:21, 25	1314:24
1422:4 1498:1	<b>identified</b>	<b>immediately</b>	<b>incomplete</b>	1374:5, 12, 17	1469:11
<b>honestly</b>	1297:6	1371:17	1346:8, 21	1377:13	<b>input</b> 1452:1
1472:11	1335:13	1426:18	1349:16	1388:11	<b>instruct</b>
<b>hope</b> 1305:19	1343:21	<b>IMPACT</b>	<b>incorporate</b>	1411:7	1369:2 1484:3
1337:3	1344:2, 6	1413:13, 16, 25 1425:12	1480:2	1481:3 1486:6	<b>instruction</b>
1340:25	1351:4	1427:25	<b>incorrect</b>	<b>individually</b>	1311:20
1349:21	1435:23	<b>I-M-P-A-C-T</b>	1336:2, 21	1391:20	1363:21, 23
1391:3	1483:21	1413:15	1472:22	<b>individuals</b>	1365:10, 20
1395:18	1489:20	<b>impactful</b>	1497:9	1336:5 1406:3	1371:11, 16, 22 1372:9, 14, 17 1374:5
1516:13	<b>identifies</b>	1388:15	<b>increase</b>	<b>indulgence</b>	1377:14
<b>hopefully</b>	1437:5	<b>impacting</b>	1387:9	1314:4	1386:21
1299:22	<b>identify</b>	1368:11	1477:8	<b>inescapable</b>	1388:8
1397:5	1337:11, 13, 24 1347:25	<b>impacts</b>	1479:25	1422:9	1411:6, 8, 20
<b>Hopkins</b>	1371:13	1380:4	<b>incredibly</b>	<b>infer</b> 1480:16	1412:2
1458:9, 15	1420:13	<b>impairments</b>	1363:19	<b>inference</b>	1425:24
1465:9	1493:23	1402:9	<b>independent</b>	1450:14	1469:11
<b>hospital</b>	<b>identifying</b>	<b>impeachment</b>	1323:4, 8	1480:12	1470:1 1510:3
1459:20	1297:19	1419:2	1358:7	1484:13	<b>instructional</b>
<b>hour</b> 1361:7	1336:15	<b>implemented</b>	1431:22, 23	1497:24	1416:6
1434:3	1359:10	1468:16	<b>indexes</b>	1517:24	1501:22
1449:13	1478:14	<b>implicates</b>	1456:19	<b>Informally</b>	<b>instructions</b>
1489:15	<b>IEP</b> 1306:11, 14 1390:11	1447:18	1501:11	1367:2, 7	1416:6
<b>house</b> 1456:2	1434:20	<b>imply</b> 1480:22	<b>indicate</b>	<b>information</b>	1508:18
<b>Houston</b>	1440:4	<b>important</b>	1396:22	1329:18	<b>insured</b>
1301:1, 2	1442:12	1307:18	1400:3	1334:12	1462:25
1302:4, 7, 23, 25	1448:12	1308:11	1409:7, 18	1337:20	<b>Intelligence</b>
<b>Houston's</b>	1461:19, 21	1374:4	1412:11, 14	1340:2	1327:23
1303:16	1462:3, 6, 8, 13, 17, 19	<b>impression</b>	<b>indicated</b>	1341:9, 11, 13	1328:4
<b>humanities</b>	1463:1, 3, 14, 22, 25	1336:16	1294:9	1352:16	1331:5 1353:5
1362:9	1468:24, 25	1444:20	1298:25	1353:1	<b>intend</b> 1297:3
1366:13	1474:1	<b>improved</b>	1299:24	1364:3	1446:13
1412:22, 24	1480:1, 3	1382:25	1383:5	1365:25	1448:9
<b>Hundred</b>	1481:10	1384:13	1391:3	1374:3, 4	1482:22
1300:23	1483:22	<b>inartful</b>	1445:13	1377:1	1485:11
1405:24	1484:10, 11	1377:16	1469:8	1382:20	1517:19
1463:9, 11, 13	1485:1, 6, 18	<b>inclined</b>	1495:23	1383:21	<b>intended</b>
1467:5	1486:2, 8	1449:3	<b>indicates</b>	1393:18	1368:19
1476:3, 5	1487:4	<b>include</b>	1407:5	1408:13	<b>intends</b>
1491:7	1488:2, 8	1335:7	1411:12	1410:7	1440:23
<b>hundred-</b>	1489:15	1345:8	1414:16	1451:23	1441:4
<b>percent</b>	1490:15	1412:19	1446:6	1476:20	1517:17
1445:20	1498:19	1413:2, 5	<b>indication</b>	1480:2, 7	<b>intention</b>
<b>Hundreds</b>	1499:2, 6	1424:20	1313:3	1481:13	1335:6
1462:14	1500:12	1458:6	<b>indicative</b>	1485:25	1483:14
1480:1	1509:11	<b>included</b>	1369:19	1501:14	<b>interact</b>
1504:13, 24	1510:10	1345:5	<b>individual</b>	1506:19	1501:22
<b>hurting</b>	1511:19	1457:15	1363:21	<b>informative</b>	<b>interacted</b>
1421:5	<b>IEPs</b> 1462:24	1458:13	1371:21	1372:18	1462:22
< I >	1466:17	1480:17	1372:9, 14	<b>informed</b>	<b>interaction</b>
<b>IDA</b> 1460:12	1474:11	<b>includes</b>	1411:6, 19	1333:25	1509:23
		1371:18	1412:1	<b>informs</b>	
				1372:16	

<b>interest</b> 1328:24	<b>isolation</b> 1478:18	<b>joined</b> 1323:13	1331:3, 11, 17	<b>REDACTED</b>	1450:14
<b>interested</b> 1320:6	<b>issue</b> 1294:18, 20 1296:8	1325:15	1332:10	<b>underscore-</b>	1451:11
1330:24	1297:1	<b>Jones</b> 1454:23	1334:10	<b>ED</b> 1310:12	1452:19, 22
1520:10	1300:17	1516:17, 18, 20	1340:13	<b>knew</b> 1473:23	1453:25
<b>interjected</b> 1305:8	1301:15, 25	<b>judgment</b> 1323:15	1341:9	1501:2	1456:3, 24
<b>internal</b> 1381:14, 22	1302:1	<b>JULIE</b> 1293:3	1352:11	<b>know</b>	1458:12
1383:5, 14, 16	1346:14	1298:16	1356:11	1294:12, 17,	1462:20
<b>Internally</b> 1373:23	1349:2, 3	1321:15, 21	1358:15, 16	25 1296:7, 22	1469:20
<b>Internet</b> 1492:1	1428:15	1322:8	1371:8, 22	1300:8	1470:2, 18
<b>interpret</b> 1335:1	1439:11	1389:8	1372:14	1306:10	1471:5, 12
1341:7	1444:17	1442:25	1375:17	1307:6	1474:24
1342:3, 7	1445:19, 24	1443:3, 5	1376:12	1308:16, 23	1475:8, 10, 24
1343:5	1447:3	<b>June</b> 1315:13	1378:25	1311:2, 6, 17	1477:9
1344:11	1449:3, 19	1381:9	1389:24	1314:14	1478:20, 22
1424:16	1451:14	<b>jurisdictions</b> 1324:25	1390:4, 25	1315:6, 23	1479:21
1500:6	1452:16	1470:11	1399:25	1316:10, 11,	1486:24
<b>interpretation</b> 1335:20	1498:18	< K >	1400:3	12 1319:7	1488:10
1336:22	<b>issued</b> 1310:2	<b>keep</b> 1294:9	1416:10, 14	1321:17	1493:19
1344:13	1348:13	1384:1	1417:3, 5, 25	1322:17, 19,	1495:10
1375:4	1382:4	1488:12	1420:20	21 1323:22	1500:19
<b>interpretations</b> 1500:16	<b>issues</b> 1311:10	1495:2, 3	1421:1, 4, 10	1328:16	1501:23
<b>interpreted</b> 1403:5 1471:9	1320:8	1518:10	1422:3	1337:4, 14	1503:24
<b>interpreting</b> 1339:12	1408:15	<b>kept</b> 1383:24	1423:2	1338:2	1504:2, 7
1465:16	1441:8	<b>kids</b> 1328:13	1424:16	1339:15	1505:24
1493:24	1443:24	1388:3, 4	1427:1	1340:6	1507:11, 15
1494:3	1483:23	<b>kind</b> 1327:4	1435:5, 9	1343:2, 14	1511:13
<b>interrupt</b> 1309:19	<b>items</b> 1295:8	1329:23	1450:7, 10	1356:4, 6, 13	1514:3, 15, 19, 24
<b>interview</b> 1501:13, 16, 20 1502:3	1408:25	1332:23	1454:13	1362:2, 13, 14	<b>knowledge</b>
1503:2	1516:25	1335:23	1460:24	1364:6	1294:4
1511:20	1517:3 1518:4	1358:1	1475:14	1366:1	1336:15, 17
<b>intimate</b> 1328:13	<b>Its</b> 1365:9	1359:10	1476:12	1368:20	1338:24
<b>intro</b> 1362:21	1377:2	1364:4, 7	1480:3	1370:11	1366:4, 7
<b>introduce</b> 1453:20	1391:17	1368:19, 21	1486:8	1372:18	1369:21
<b>introduced</b> 1319:15	1395:9	1431:10	1493:12	1373:20	1379:19
<b>introducing</b> 1440:13	1415:11	1486:23	1509:19	1374:1	1381:16
<b>invited</b> 1332:20	1424:25	1490:10	1510:4, 11	1375:11	1382:9, 10, 13, 22 1383:18
<b>involvement</b> 1329:12	1488:17	1510:4	1517:1, 2	1380:8	1384:10, 12
<b>iPad</b> 1425:22	<b>IV</b> 1475:18, 22	1517:19, 24	1518:9, 12	1383:22	1394:9
1426:17	< J >	<b>kindly</b> 1407:22	<b>REDACTED</b> ED	1384:3, 14, 19, 22 1387:12	1397:1
	<b>January</b> 1318:12	<b>kinds</b> 1337:21	1300:21	1392:6	1398:7, 12
	1371:8	<b>Kirsten</b> 1476:11	1301:19, 21	1393:21	1436:11
	1381:1, 2	<b>REDACTED</b>	1310:19	1396:1	1509:6, 16
	1397:15, 19	1291:5, 7	<b>REDACTED</b>	1398:6	<b>known</b>
	<b>Job</b> 1291:24	1292:20	1321:24	1399:13	1391:17
	1308:25	1299:19	1332:20	1400:7	< L >
	1313:11	1300:24	1349:4	1402:11	<b>labeled</b>
	1328:14	1306:10	1351:18, 24	1404:9	1370:19
	1464:8, 23	1307:16	1357:8	1405:13	1371:8
	1520:23	1310:20	1359:15, 22,	1407:2, 12	1501:11, 12
	<b>Johns</b> 1458:9, 15 1465:9	1317:2	25 1360:5, 9	1413:21, 23	<b>lack</b> 1415:11
	<b>Johnson</b> 1327:20	1322:15, 17, 19 1328:24	1374:16	1415:12, 14, 22 1420:12	1477:9, 13
		1329:1, 8	1406:23	1423:7, 25	1488:17
			1408:13	1430:11	<b>lady</b> 1460:16
			1430:3	1431:10, 13, 18 1432:7	<b>laid</b> 1396:1
			<b>REDACTED</b>	1435:25	<b>language</b>
			1306:15	1436:2, 4, 10	1335:24
			1315:24	1447:4	1362:10, 24
			1329:12	1449:14	1363:4, 6, 14
			1403:11		
			1430:9 1510:1		

1364:1, 11	<b>learned</b>	1391:21, 23	25 1496:2, 3,	1325:22	1424:5
1365:8, 9	1329:7	1392:3	10, 12, 16, 18,	1339:12	1441:24
1366:12	1487:7, 9	1395:21, 23	23 1497:3, 9	1348:10	1453:6
1370:3, 6, 10,	<b>learning</b>	1432:19	1498:15	1351:20	1476:19
21, 22 1371:4,	1323:6	1433:6, 7, 9,	1499:16, 21	1360:5	1478:7, 16, 17
14 1372:15,	1364:5	14, 15, 17, 23	1507:25	1375:21	1479:9, 10
19 1374:7	1391:5, 13	1436:8, 12	1511:5	1379:22	1487:3, 19
1378:10	1400:23	1467:14	<b>listed</b> 1321:15	1397:22	1488:7 1494:8
1385:12	1416:18	1468:7 1470:7	1324:24	1416:22	<b>looks</b> 1315:19
1388:5	1460:18	<b>licenses</b>	1394:19	1417:11	1318:12, 21,
1411:11	1467:17, 19	1337:20	1395:4	1437:24	22, 24
1412:21	1509:17	1470:3, 5	1424:20	1480:15	1339:19
1437:17	<b>leave</b> 1320:14	<b>licensure</b>	1480:12	1487:25	1367:21, 22
1438:12	1337:8	1324:5, 13	1485:25	1489:13	1408:2
1473:8 1477:1	1361:2	1326:16	1497:2	1509:23	1477:15
<b>language-arts</b>	1379:7	1393:11	<b>listen</b> 1299:11	1517:23	1479:3 1490:6
1473:18	1411:5	1396:23	1339:11	1518:17	<b>lose</b> 1426:15
1474:2	1500:17	1399:11	1471:6	<b>look</b> 1306:22	<b>lot</b> 1305:4
<b>language-</b>	1502:16	1452:15	<b>listening</b>	1307:14	1306:8, 20
<b>based</b> 1323:6	<b>leaving</b> 1450:9	1470:6	1418:22	1315:17	1308:23
<b>language-</b>	<b>left</b> 1516:24	<b>licensures</b>	<b>listing</b>	1318:17	1314:19
<b>fundamentals</b>	<b>leisure</b> 1425:3	1326:5	1424:23	1320:13	1327:12
1371:12	<b>lengthy</b>	<b>lie</b> 1504:8	<b>lists</b> 1456:20	1337:19	1333:1
1372:11	1323:23	<b>life</b> 1362:22	1478:4	1342:17	1346:5
1378:8	1449:16	<b>lighter</b>	<b>literally</b>	1345:15	1355:15
1385:14	<b>Lennox</b>	1318:24	1456:15	1354:20	1373:17
1437:20	1292:21	<b>liked</b> 1320:18	<b>little</b> 1302:20	1359:6	1400:10
<b>LaRANA</b>	<b>Lets</b> 1508:9	<b>lime</b> 1356:12	1315:18	1367:20	1401:25
1292:15	<b>letter</b> 1396:13,	<b>limit</b> 1330:23	1330:15	1371:15	1410:2
1309:3	15 1397:3, 11,	1383:20	1331:20	1394:11	1415:9
1454:15	12, 19	<b>limitations</b>	1368:7	1395:17	1450:19
1467:11	1398:14, 16,	1305:17	1370:8	1409:6	1510:25
<b>LARGE</b>	17 1399:7	1511:2	1385:14	1411:6	<b>lots</b> 1419:13
1520:1, 3, 20	1487:1	<b>limited</b>	1393:9	1412:7	<b>loud</b> 1478:18
<b>lasted</b> 1360:6	<b>letter/word-ID</b>	1295:23	1394:6	1414:22	<b>louder</b>
<b>late</b> 1320:19	1478:22	1297:3, 19	1407:10	1419:24	1407:10
1338:16	<b>letters</b>	1310:3	1426:24	1420:10, 15	<b>love</b> 1439:15
1379:8	1327:15, 17	1364:11	1438:11	1423:6, 20	<b>low</b> 1331:8
1459:6	1387:8, 13	1365:7	1446:22	1424:10, 24	1476:15, 18
1474:14	1486:21, 22	1424:22	1470:22	1425:3	1479:14
<b>latitude</b>	<b>letter-word</b>	<b>line</b> 1332:9	1477:23	1427:20	<b>low-average</b>
1340:25	1477:7	1342:4	1500:19	1434:9	1478:12
1470:22	<b>level</b> 1363:12	1351:21	<b>live</b> 1425:23	1479:8	<b>lower</b> 1309:7
1472:13, 17	1369:24	1389:15	1426:17	1480:23	1455:6
<b>LAW</b> 1292:7	1388:8	1421:18	<b>lives</b> 1390:25	1494:8, 16	<b>lunch</b> 1361:1,
<b>lay</b> 1335:7, 8	1413:17	1454:6	<b>Liz</b> 1454:19	1496:23	9, 15 1434:2
1336:15	1429:12	1503:7, 10, 11	<b>load</b> 1463:24	1497:1	1439:13, 18
1340:25	1473:14, 24	<b>lines</b> 1301:8	<b>local</b> 1462:22	1504:20	<b>lying</b> 1503:25
1394:8	1477:10	1374:8	<b>locate</b> 1481:12	1516:9	<b>Lynnhaven</b>
1451:22	1481:11, 15,	<b>list</b> 1295:25	<b>located</b>	<b>looked</b>	1292:3
1470:21	25 1483:1	1338:7	1390:23	1303:1	
<b>leader</b>	1491:1	1395:22	1455:18	1315:14	< M >
1461:23	1499:24	1435:13	1458:15	1379:10	<b>ma'am</b>
1463:6	<b>levels</b> 1374:8	1436:8	<b>location</b>	1475:4	1294:7
<b>leading</b>	1406:6	1439:10	1395:13	1499:11	1296:13
1484:22	1411:11	1441:1, 25	<b>locations</b>	<b>looking</b>	1301:11
<b>leafing</b>	1459:21	1478:19, 24	1324:23	1301:18	1305:11
1435:12	1474:2	1491:13, 15	<b>logic</b> 1493:7	1307:22	1314:16
<b>learn</b> 1448:25	<b>licensed</b>	1493:18	<b>long</b> 1314:3	1333:17	1315:4
1507:20, 21	1324:3	1494:12	1319:16	1377:4	1317:17
	1326:8	1495:3, 14, 19,	1323:11	1411:9	1338:25

1347:14	<b>marked</b>	1331:21	14, 23 1405:8,	1433:5	1302:2
1352:24	1351:13	1343:3, 5	15, 17	1450:2 1492:5	1313:25
1355:12	1373:5	1344:9, 10	1406:11, 16	<b>message</b>	<b>Minus</b> 1513:4
1407:1	1385:23	1345:6	<b>meet</b> 1321:8	1312:21	<b>minute</b>
1408:17	1497:5, 9	1350:7	1329:20	1421:11, 12	1295:19
1414:7, 9	<b>marking</b>	1363:24	1410:2, 5	1422:10, 15	1351:1
1424:12	1380:6	1369:21	1438:5	<b>met</b> 1321:24	1360:25
1439:5	<b>Maryland</b>	1371:4	<b>meeting</b>	1454:14, 15	1380:13
1441:23	1455:19, 23	1376:19	1332:21	1488:4	1390:20
1442:1	1458:16, 18	1386:23	1333:20, 23	1509:19	<b>minutes</b>
1443:2	1462:18	1394:3	1351:18, 22,	<b>methodology</b>	1299:20, 21
1445:15	1467:15, 23	1401:8	24, 25 1352:3,	1364:10, 16,	1347:4
1478:2	1468:3 1505:7	1405:13	4, 15 1357:7,	18, 21 1365:1	1360:8
1489:24	<b>master's</b>	1419:13	10, 14	<b>mid</b> 1315:6	1361:5
1495:12	1406:8	1425:19	1358:17, 19	1414:20	1399:24
1496:20	1458:4, 8, 12	1431:25	1359:3, 6, 17	<b>middle</b>	1434:3
1500:7	<b>mastery</b>	1452:24	1360:5, 7, 10,	1321:19	1437:25
1511:18	1369:14	1478:1, 13, 19	13 1399:25	1323:1	1489:14
1512:8, 24	1388:12, 14	1479:20	1406:25	1326:10, 11	1508:10
<b>Main</b> 1292:12	1428:9, 11, 12	1482:10	1408:14, 22	1328:11, 19,	1509:24
<b>maintain</b>	<b>mate</b> 1488:17	1486:2	1417:13	21 1329:5	1516:24
1335:16	<b>material</b>	1488:19, 20	1448:12, 13	1349:13	1518:24
1353:15	1311:6	1489:4	1461:19	1361:24	<b>mischaracteriz</b>
<b>major</b>	1344:4	1491:13	1462:3, 6, 8, 9,	1378:23	<b>e</b> 1302:10, 23
1457:15	1402:16	1493:20	13 1463:1, 3,	1390:5	1305:6
1458:11	1412:25	1511:7	7, 21, 22	1392:12	1374:11
<b>majored</b>	<b>materials</b>	1512:7	1509:10, 11	1399:16	1427:4
1324:1	1413:16	1517:13	1510:10, 13	1459:10	<b>misinterpretin</b>
<b>majority</b>	<b>math</b> 1331:7	<b>meaning</b>	<b>meetings</b>	1463:13	<b>g</b> 1336:16
1494:11	1362:9	1360:10	1390:11	<b>middle-school</b>	<b>missed</b>
<b>making</b>	1366:13	1376:8	1440:4	1326:1	1299:6
1354:18	1388:4, 10	1425:18	1463:2, 16	1328:14	1415:24
1356:15	1413:3, 11, 13	<b>meaningful</b>	1464:1 1480:2	1362:16	1416:7
1365:24	1422:22, 24	1450:5	<b>member</b>	1370:21, 22	1427:11
1378:5	1425:12, 23	<b>means</b>	1357:2	1372:10	<b>missing</b>
1427:18	1427:25	1333:13	<b>members</b>	1413:10	1369:15
1490:4	1428:6, 7	1342:25	1295:1	1430:10	1470:5 1479:2
1492:15	<b>mathematics</b>	1343:2, 10	1407:4 1432:6	1463:4	<b>mission</b>
<b>managed</b>	1477:2	1362:8	<b>memory</b>	1473:10	1329:25
1427:17	<b>Matheny</b>	1363:13, 23	1332:2	<b>middle-</b>	1359:4
<b>manager</b>	1316:13	1365:22	1362:12	<b>schoolers</b>	<b>misspelled</b>
1462:5, 13	<b>matter</b>	1452:13	1384:18	1363:7	1494:6, 21, 24
1473:12	1322:16	1486:1, 4	1418:20	<b>middle-school-</b>	1495:24
<b>managers</b>	1358:10	<b>meant</b>	1420:11	<b>language-</b>	1498:4
1473:15	1401:2	1319:23	1444:11	<b>fundamentals</b>	1506:24
<b>mandated</b>	1402:3	1344:12	<b>mention</b>	1371:7	1507:3, 5
1428:12	1458:11	<b>measurable</b>	1499:14	1377:23	<b>misspoke</b>
<b>March</b>	1491:9, 12	1485:22	<b>mentioned</b>	<b>Midlothian</b>	1317:19
1291:17	<b>matters</b>	1486:3	1333:19	1291:19	<b>mistake</b>
1294:1	1296:16	<b>media</b>	1340:10	<b>Millward</b>	1345:17, 19
1299:20	1386:12	1295:15	1351:22	1397:11, 12,	1349:17
1314:23	<b>McCluskey</b>	<b>mediate</b>	1362:24	20 1398:2	<b>mixed</b> 1299:4
1315:6, 8	1306:23, 24	1313:11	1363:16	1399:10	<b>modality</b>
1332:25	1311:21	<b>mediation</b>	1366:9	<b>mind</b> 1336:2,	1365:25
1381:6	1503:5	1425:24	1390:3	3 1392:17	<b>modifications</b>
<b>marital</b>	1504:7, 10	<b>medical</b>	1391:20	1518:10	1368:24
1313:11	<b>mean</b>	1294:10	1413:11	<b>mindful</b>	1370:4
1354:14	1304:25	1400:18, 25	1414:23	1489:9	<b>Mom</b> 1315:18
<b>mark</b>	1310:17	1401:7, 16	1416:10	<b>mine</b> 1444:11	1316:18, 19
1307:23	1315:2	1402:5, 7, 15,	1430:20	<b>miniature</b>	1451:3
1376:16	1325:11	17, 24 1403:8,	1432:5		

<b>moment</b> 1419:24 1438:17 1456:25 1512:7	1435:1 1439:20 1454:21 1471:23 1484:24, 25	1435:6 1507:12	1472:11 1509:3, 10, 25 1510:3, 6, 7, 8, 10, 13, 21, 24	<b>n-i-c-e</b> 1498:11, 12	1453:14 1485:8
<b>moments</b> 1504:20	1485:1, 2 1489:8	<b>necessary</b> 1326:20 1502:10	<b>New</b> 1318:7, 8 1319:4, 9, 12 1321:18	<b>night</b> 1320:20 <b>ninety-one</b> 1328:13	<b>noticed</b> 1349:8
<b>Monday</b> 1519:10	1506:14 1508:13	<b>need</b> 1295:23 1298:4	1323:2, 3, 4, 11, 13	<b>Nobody's</b> 1398:5	<b>noting</b> 1418:16
<b>money</b> 1450:19	<b>moved</b> 1324:12, 16 1328:8	1300:2 1311:10 1313:11 1319:24	1325:16, 23 1328:2, 8, 19, 24 1329:13	<b>noise</b> 1360:22 <b>Non-recording</b> 1295:3	<b>November</b> 1421:14, 22 1422:1, 7
<b>monitor</b> 1366:22	<b>moving</b> 1308:21 1378:3	1327:5 1336:6 1340:24 1343:11	1330:4, 7 1334:16 1340:5, 16, 21 1346:2, 12, 15, 17 1348:9, 12, 16, 24 1350:9, 22 1351:2	<b>non-sense</b> 1477:13 <b>non-sight</b> 1491:4	<b>Number</b> 1297:8 1308:24 1309:22 1313:16 1314:2 1317:10 1333:15 1345:19 1349:11 1368:18 1373:4 1381:18 1392:18 1416:6 1427:5, 12 1453:11 1464:25 1467:25 1476:21 1491:21 1494:14 1495:23
<b>monitoring</b> 1328:16 1362:2 1369:1 1399:18 1431:11	<b>multi-sensory</b> 1363:18, 23 1364:10 1365:10, 13, 19	1358:22 1361:7, 12 1363:8 1369:6 1372:17 1376:12 1378:4 1383:11 1387:19 1399:1 1427:20 1428:11 1434:9 1442:21 1470:2 1479:14 1480:12, 16, 22 1485:24 1486:7, 15 1489:11 1501:19 1503:14 1518:8	1352:7, 12 1356:7, 13, 19 1357:5, 22 1361:23, 25 1362:5, 25 1363:24 1367:9 1368:15 1369:22 1373:12, 22 1375:24 1377:10 1378:17 1386:20 1387:17, 23 1389:9, 17, 20, 25 1390:21, 22 1391:4, 9, 11, 17, 23 1392:8 1394:19 1395:4 1398:3 1399:11 1402:6 1410:15, 23 1411:16 1416:17 1418:25 1421:15 1423:18 1427:21 1430:4, 16 1431:16 1434:11, 12, 18 1437:4, 12 1443:7, 14 1485:1 1488:11	<b>norms</b> 1411:1, 3 <b>North</b> 1324:1, 2, 11 1455:19 <b>notarial</b> 1520:12 <b>Notary</b> 1520:2, 19, 21 <b>note</b> 1315:20 1318:15 1335:15 1343:18 1353:12, 14 1354:1 1355:6 1423:21, 22 1424:2 1436:23, 25 1450:16 1470:13 1472:16 1511:24 1512:1	<b>numerical</b> 1502:7
<b>Montgomery</b> 1463:5	<b>multi-syllabic</b> 1487:8	1377:17 1378:4 1383:11 1387:19 1399:1 1427:20 1428:11 1434:9 1442:21 1470:2 1479:14 1480:12, 16, 22 1485:24 1486:7, 15 1489:11 1501:19 1503:14 1518:8	1352:7, 12 1356:7, 13, 19 1357:5, 22 1361:23, 25 1362:5, 25 1363:24 1367:9 1368:15 1369:22 1373:12, 22 1375:24 1377:10 1378:17 1386:20 1387:17, 23 1389:9, 17, 20, 25 1390:21, 22 1391:4, 9, 11, 17, 23 1392:8 1394:19 1395:4 1398:3 1399:11 1402:6 1410:15, 23 1411:16 1416:17 1418:25 1421:15 1423:18 1427:21 1430:4, 16 1431:16 1434:11, 12, 18 1437:4, 12 1443:7, 14 1485:1 1488:11	<b>notary</b> 1520:2, 19, 21 <b>note</b> 1315:20 1318:15 1335:15 1343:18 1353:12, 14 1354:1 1355:6 1423:21, 22 1424:2 1436:23, 25 1450:16 1470:13 1472:16 1511:24 1512:1	<b>numbers</b> 1304:11 1305:9 1310:18 1314:1 1333:12 1343:1, 3 1349:10 1369:11
<b>month</b> 1422:12	<b>music</b> 1362:21	1377:17 1378:4 1383:11 1387:19 1399:1 1427:20 1428:11 1434:9 1442:21 1470:2 1479:14 1480:12, 16, 22 1485:24 1486:7, 15 1489:11 1501:19 1503:14 1518:8	1352:7, 12 1356:7, 13, 19 1357:5, 22 1361:23, 25 1362:5, 25 1363:24 1367:9 1368:15 1369:22 1373:12, 22 1375:24 1377:10 1378:17 1386:20 1387:17, 23 1389:9, 17, 20, 25 1390:21, 22 1391:4, 9, 11, 17, 23 1392:8 1394:19 1395:4 1398:3 1399:11 1402:6 1410:15, 23 1411:16 1416:17 1418:25 1421:15 1423:18 1427:21 1430:4, 16 1431:16 1434:11, 12, 18 1437:4, 12 1443:7, 14 1485:1 1488:11	<b>note</b> 1315:20 1318:15 1335:15 1343:18 1353:12, 14 1354:1 1355:6 1423:21, 22 1424:2 1436:23, 25 1450:16 1470:13 1472:16 1511:24 1512:1	<b>numerical</b> 1502:7
<b>morning</b> 1294:3 1322:14 1519:11	< N > <b>name</b> 1321:14 1322:14 1332:4, 6 1362:18 1372:11 1389:13 1405:20 1488:17	1377:17 1378:4 1383:11 1387:19 1399:1 1427:20 1428:11 1434:9 1442:21 1470:2 1479:14 1480:12, 16, 22 1485:24 1486:7, 15 1489:11 1501:19 1503:14 1518:8	1352:7, 12 1356:7, 13, 19 1357:5, 22 1361:23, 25 1362:5, 25 1363:24 1367:9 1368:15 1369:22 1373:12, 22 1375:24 1377:10 1378:17 1386:20 1387:17, 23 1389:9, 17, 20, 25 1390:21, 22 1391:4, 9, 11, 17, 23 1392:8 1394:19 1395:4 1398:3 1399:11 1402:6 1410:15, 23 1411:16 1416:17 1418:25 1421:15 1423:18 1427:21 1430:4, 16 1431:16 1434:11, 12, 18 1437:4, 12 1443:7, 14 1485:1 1488:11	<b>note</b> 1315:20 1318:15 1335:15 1343:18 1353:12, 14 1354:1 1355:6 1423:21, 22 1424:2 1436:23, 25 1450:16 1470:13 1472:16 1511:24 1512:1	<b>numerical</b> 1502:7
<b>mornings</b> 1379:6	1332:4, 6 1362:18	1377:17 1378:4 1383:11 1387:19 1399:1 1427:20 1428:11 1434:9 1442:21 1470:2 1479:14 1480:12, 16, 22 1485:24 1486:7, 15 1489:11 1501:19 1503:14 1518:8	1352:7, 12 1356:7, 13, 19 1357:5, 22 1361:23, 25 1362:5, 25 1363:24 1367:9 1368:15 1369:22 1373:12, 22 1375:24 1377:10 1378:17 1386:20 1387:17, 23 1389:9, 17, 20, 25 1390:21, 22 1391:4, 9, 11, 17, 23 1392:8 1394:19 1395:4 1398:3 1399:11 1402:6 1410:15, 23 1411:16 1416:17 1418:25 1421:15 1423:18 1427:21 1430:4, 16 1431:16 1434:11, 12, 18 1437:4, 12 1443:7, 14 1485:1 1488:11	<b>note</b> 1315:20 1318:15 1335:15 1343:18 1353:12, 14 1354:1 1355:6 1423:21, 22 1424:2 1436:23, 25 1450:16 1470:13 1472:16 1511:24 1512:1	<b>numerical</b> 1502:7
<b>mother</b> 1410:2	1372:11 1389:13	1377:17 1378:4 1383:11 1387:19 1399:1 1427:20 1428:11 1434:9 1442:21 1470:2 1479:14 1480:12, 16, 22 1485:24 1486:7, 15 1489:11 1501:19 1503:14 1518:8	1352:7, 12 1356:7, 13, 19 1357:5, 22 1361:23, 25 1362:5, 25 1363:24 1367:9 1368:15 1369:22 1373:12, 22 1375:24 1377:10 1378:17 1386:20 1387:17, 23 1389:9, 17, 20, 25 1390:21, 22 1391:4, 9, 11, 17, 23 1392:8 1394:19 1395:4 1398:3 1399:11 1402:6 1410:15, 23 1411:16 1416:17 1418:25 1421:15 1423:18 1427:21 1430:4, 16 1431:16 1434:11, 12, 18 1437:4, 12 1443:7, 14 1485:1 1488:11	<b>note</b> 1315:20 1318:15 1335:15 1343:18 1353:12, 14 1354:1 1355:6 1423:21, 22 1424:2 1436:23, 25 1450:16 1470:13 1472:16 1511:24 1512:1	<b>numerical</b> 1502:7
<b>motion</b> 1329:3 1450:16 1517:19 1518:18, 21	1405:20 1488:17	1377:17 1378:4 1383:11 1387:19 1399:1 1427:20 1428:11 1434:9 1442:21 1470:2 1479:14 1480:12, 16, 22 1485:24 1486:7, 15 1489:11 1501:19 1503:14 1518:8	1352:7, 12 1356:7, 13, 19 1357:5, 22 1361:23, 25 1362:5, 25 1363:24 1367:9 1368:15 1369:22 1373:12, 22 1375:24 1377:10 1378:17 1386:20 1387:17, 23 1389:9, 17, 20, 25 1390:21, 22 1391:4, 9, 11, 17, 23 1392:8 1394:19 1395:4 1398:3 1399:11 1402:6 1410:15, 23 1411:16 1416:17 1418:25 1421:15 1423:18 1427:21 1430:4, 16 1431:16 1434:11, 12, 18 1437:4, 12 1443:7, 14 1485:1 1488:11	<b>note</b> 1315:20 1318:15 1335:15 1343:18 1353:12, 14 1354:1 1355:6 1423:21, 22 1424:2 1436:23, 25 1450:16 1470:13 1472:16 1511:24 1512:1	<b>numerical</b> 1502:7
<b>motions</b> 1518:25	1491:6	1377:17 1378:4 1383:11 1387:19 1399:1 1427:20 1428:11 1434:9 1442:21 1470:2 1479:14 1480:12, 16, 22 1485:24 1486:7, 15 1489:11 1501:19 1503:14 1518:8	1352:7, 12 1356:7, 13, 19 1357:5, 22 1361:23, 25 1362:5, 25 1363:24 1367:9 1368:15 1369:22 1373:12, 22 1375:24 1377:10 1378:17 1386:20 1387:17, 23 1389:9, 17, 20, 25 1390:21, 22 1391:4, 9, 11, 17, 23 1392:8 1394:19 1395:4 1398:3 1399:11 1402:6 1410:15, 23 1411:16 1416:17 1418:25 1421:15 1423:18 1427:21 1430:4, 16 1431:16 1434:11, 12, 18 1437:4, 12 1443:7, 14 1485:1 1488:11	<b>note</b> 1315:20 1318:15 1335:15 1343:18 1353:12, 14 1354:1 1355:6 1423:21, 22 1424:2 1436:23, 25 1450:16 1470:13 1472:16 1511:24 1512:1	<b>numerical</b> 1502:7
<b>motive</b> 1312:18	<b>Nancy</b> 1357:17, 18 1396:21 1397:19	1377:17 1378:4 1383:11 1387:19 1399:1 1427:20 1428:11 1434:9 1442:21 1470:2 1479:14 1480:12, 16, 22 1485:24 1486:7, 15 1489:11 1501:19 1503:14 1518:8	1352:7, 12 1356:7, 13, 19 1357:5, 22 1361:23, 25 1362:5, 25 1363:24 1367:9 1368:15 1369:22 1373:12, 22 1375:24 1377:10 1378:17 1386:20 1387:17, 23 1389:9, 17, 20, 25 1390:21, 22 1391:4, 9, 11, 17, 23 1392:8 1394:19 1395:4 1398:3 1399:11 1402:6 1410:15, 23 1411:16 1416:17 1418:25 1421:15 1423:18 1427:21 1430:4, 16 1431:16 1434:11, 12, 18 1437:4, 12 1443:7, 14 1485:1 1488:11	<b>note</b> 1315:20 1318:15 1335:15 1343:18 1353:12, 14 1354:1 1355:6 1423:21, 22 1424:2 1436:23, 25 1450:16 1470:13 1472:16 1511:24 1512:1	<b>numerical</b> 1502:7
<b>motto</b> 1387:17	1396:21 1397:19	1377:17 1378:4 1383:11 1387:19 1399:1 1427:20 1428:11 1434:9 1442:21 1470:2 1479:14 1480:12, 16, 22 1485:24 1486:7, 15 1489:11 1501:19 1503:14 1518:8	1352:7, 12 1356:7, 13, 19 1357:5, 22 1361:23, 25 1362:5, 25 1363:24 1367:9 1368:15 1369:22 1373:12, 22 1375:24 1377:10 1378:17 1386:20 1387:17, 23 1389:9, 17, 20, 25 1390:21, 22 1391:4, 9, 11, 17, 23 1392:8 1394:19 1395:4 1398:3 1399:11 1402:6 1410:15, 23 1411:16 1416:17 1418:25 1421:15 1423:18 1427:21 1430:4, 16 1431:16 1434:11, 12, 18 1437:4, 12 1443:7, 14 1485:1 1488:11	<b>note</b> 1315:20 1318:15 1335:15 1343:18 1353:12, 14 1354:1 1355:6 1423:21, 22 1424:2 1436:23, 25 1450:16 1470:13 1472:16 1511:24 1512:1	<b>numerical</b> 1502:7
<b>move</b> 1294:14 1296:14 1321:3 1342:14 1343:20 1346:24 1351:8 1356:24 1361:20 1370:14 1377:22 1385:2, 16 1386:9 1389:4, 7 1398:19 1404:7 1414:16 1419:6, 19 1428:25 1429:24	<b>narrative</b> 1378:11 1385:10 1408:21 <b>narratives</b> 1368:18, 23 1370:1 <b>nationally</b> 1475:25 <b>natural</b> 1331:9 <b>nature</b> 1314:11 1365:9 1403:21 <b>necessarily</b> 1376:17 1400:19	1377:17 1378:4 1383:11 1387:19 1399:1 1427:20 1428:11 1434:9 1442:21 1470:2 1479:14 1480:12, 16, 22 1485:24 1486:7, 15 1489:11 1501:19 1503:14 1518:8	1352:7, 12 1356:7, 13, 19 1357:5, 22 1361:23, 25 1362:5, 25 1363:24 1367:9 1368:15 1369:22 1373:12, 22 1375:24 1377:10 1378:17 1386:20 1387:17, 23 1389:9, 17, 20, 25 1390:21, 22 1391:4, 9, 11, 17, 23 1392:8 1394:19 1395:4 1398:3 1399:11 1402:6 1410:15, 23 1411:16 1416:17 1418:25 1421:15 1423:18 1427:21 1430:4, 16 1431:16 1434:11, 12, 18 1437:4, 12 1443:7, 14 1485:1 1488:11	<b>note</b> 1315:20 1318:15 1335:15 1343:18 1353:12, 14 1354:1 1355:6 1423:21, 22 1424:2 1436:23, 25 1450:16 1470:13 1472:16 1511:24 1512:1	<b>numerical</b> 1502:7
		1377:17 1378:4 1383:11 1387:19 1399:1 1427:20 1428:11 1434:9 1442:21 1470:2 1479:14 1480:12, 16, 22 1485:24 1486:7, 15 1489:11 1501:19 1503:14 1518:8	1352:7, 12 1356:7, 13, 19 1357:5, 22 1361:23, 25 1362:5, 25 1363:24 1367:9 1368:15 1369:22 1373:12, 22 1375:24 1377:10 1378:17 1386:20 1387:17, 23 1389:9, 17, 20, 25 1390:21, 22 1391:4, 9, 11, 17, 23 1392:8 1394:19 1395:4 1398:3 1399:11 1402:6 1410:15, 23 1411:16 1416:17 1418:25 1421:15 1423:18 1427:21 1430:4, 16 1431:16 1434:11, 12, 18 1437:4, 12 1443:7, 14 1485:1 1488:11	<b>note</b> 1315:20 1318:15 1335:15 1343:18 1353:12, 14 1354:1 1355:6 1423:21, 22 1424:2 1436:23, 25 1450:16 1470:13 1472:16 1511:24 1512:1	<b>numerical</b> 1502:7
		1377:17 1378:4 1383:11 1387:19 1399:1 1427:20 1428:11 1434:9 1442:21 1470:2 1479:14 1480:12, 16, 22 1485:24 1486:7, 15 1489:11 1501:19 1503:14 1518:8	1352:7, 12 1356:7, 13, 19 1357:5, 22 1361:23, 25 1362:5, 25 1363:24 1367:9 1368:15 1369:22 1373:12, 22 1375:24 1377:10 1378:17 1386:20 1387:17, 23 1389:9, 17, 20, 25 1390:21, 22 1391:4, 9, 11, 17, 23 1392:8 1394:19 1395:4 1398:3 1399:11 1402:6		

1504:3	<b>objectionable</b>	1372:24	7, 13, 16, 21,	22 1399:3, 8,	20, 23
1511:14	1343:7	1442:23	23 1322:7	13 1400:9	1483:11, 16
<b>objected</b>	<b>objections</b>	1445:13, 14	1323:19	1401:9, 20	1484:3, 9, 14,
1404:12	1314:5	1446:1	1325:6, 10, 13	1402:20	17, 21 1485:2,
<b>objecting</b>	1336:10	1452:17	1326:13	1403:4, 14, 18	5, 7, 14, 20
1316:15	1441:8	1511:13	1333:6	1404:3, 6, 14,	1489:3, 13, 16
1317:5	1446:11	1518:19	1334:21, 24	20, 24 1405:2,	1492:22
1319:14, 16	1471:4	<b>offered</b>	1335:15	5, 11, 15, 19	1493:6, 11, 22
1334:24	1473:1 1483:4	1352:7, 12	1336:13, 24	1406:11, 15	1494:2, 19, 23
<b>objection</b>	<b>objection's</b>	1353:18	1337:13	1407:11, 25	1495:6, 10, 13,
1304:19	1419:16	1440:18	1338:6, 17, 20,	1408:6, 10	17, 21
1319:6	<b>objective</b>	1441:9	22 1339:3, 7,	1414:6	1498:25
1320:2	1487:20	1446:18	10, 22 1341:1,	1415:14	1499:10, 15,
1334:19	<b>objectives</b>	<b>offering</b>	22 1342:1, 9,	1417:1, 20	25 1500:5, 8,
1335:17	1486:12	1301:4	13, 15, 23	1418:15, 23	18, 21 1501:5
1336:8	1487:11, 12, 16	1335:12	1343:4, 12, 18,	1419:8, 17	1502:14
1338:12	<b>objects</b>	1337:4	24 1344:3, 9,	1420:1, 5, 12	1503:16, 21
1344:16, 19	1374:25	1383:17	16, 22, 25	1423:4, 11, 21	1504:5, 9, 16,
1348:7, 19, 20,	1439:22, 24	1440:23	1345:9	1424:10, 13	22 1505:6, 9,
23 1351:9, 12	1441:16	1441:9, 11, 12,	1346:10	1425:1, 5, 9	15, 17, 23
1358:24	<b>observe</b>	17 1442:11,	1347:2, 8, 12,	1428:18, 22	1506:3, 10, 14
1364:12, 13,	1449:1	18 1445:20	16, 19 1348:2,	1429:3, 22, 25	1508:6, 9, 13,
14 1373:1, 2	<b>observed</b>	1448:15	14 1349:14,	1430:25	19, 22 1511:4,
1380:10	1408:23	<b>OFFICER</b>	18 1350:20	1431:3	10, 15, 22
1381:20	1440:5 1510:8	1291:15	1351:1, 10	1432:15, 20,	1512:1, 25
1382:11	<b>observers</b>	1292:5	1353:11, 14,	23 1433:7, 14,	1513:4, 11, 15
1383:3	1294:8	1294:3, 6, 8,	22 1354:9, 19	22 1434:1, 24	1514:3, 14, 20
1384:16	<b>obtain</b>	22 1295:1, 3,	1355:1, 10, 13,	1435:2	1515:9, 14, 18,
1385:2, 18, 20	1331:11	7, 14, 17, 25	17 1356:3, 8,	1436:20, 24	23 1516:2, 7,
1396:25	1467:20	1296:3, 7, 14,	25 1357:18,	1437:8	13, 22 1517:5
1398:4, 24	<b>obtained</b>	20, 24	20 1358:5, 6,	1438:18, 20	1518:1, 10, 21,
1400:6	1310:23	1297:10, 13,	9 1359:2	1439:7, 12, 17,	25 1519:3, 6,
1404:18	<b>obtaining</b>	17, 24 1298:6,	1360:23	20 1440:12	9, 16, 20
1405:3	1363:11	9, 13 1299:9,	1361:3, 5, 8,	1441:1, 21, 24	<b>officer's</b>
1415:11	<b>obvious</b>	14, 18	16, 20	1442:2	1295:5
1416:23	1315:25	1300:10, 14	1364:13	1443:1, 20	<b>official</b>
1417:9	1409:8	1301:8	1365:5	1444:9, 19, 22	1381:12
1419:18	<b>Obviously</b>	1302:8, 13, 18,	1367:17	1445:3, 8	1401:16
1428:16	1297:23	25 1303:8, 11,	1373:1, 3, 8,	1446:4, 20	<b>Oh</b> 1304:8
1429:20	1454:22	19, 22	14 1374:22	1447:6, 16	1342:1
1432:10	1476:5	1304:12, 16,	1375:1, 7, 10,	1448:4, 21, 23	1428:22
1434:21	1485:15	18, 24 1305:3,	14, 19 1376:5,	1450:9, 11, 21,	1457:8
1436:17	<b>occur</b> 1509:21	10, 12 1306:6,	11, 15, 21, 24	25 1451:4, 21	1494:14
1437:7	<b>occurred</b>	19 1307:6, 14,	1377:6, 9, 15,	1452:5, 9	<b>Ohio</b> 1457:14
1443:14, 19	1320:19	22 1308:4, 11,	17 1380:12,	1453:6, 17, 23	<b>oi</b> 1488:9
1444:15	1418:11	18, 25 1309:6,	18 1381:3, 23	1454:5, 9, 12,	<b>Okay</b> 1296:3
1449:8	<b>October</b>	13, 18 1310:6,	1382:2, 16	23 1455:4, 5,	1301:23
1453:18	1329:2	8, 17, 22	1383:3, 7, 11,	21, 24 1457:3,	1305:10
1461:8	1332:12, 18	1311:5, 15	19 1384:3, 6,	21 1461:1, 6,	1308:18
1469:5	1356:15	1312:13, 17,	9, 15 1385:18,	12, 24	1310:6
1482:8, 12	1380:25	22 1313:18,	21 1386:4, 9	1465:24	1317:13
1483:9	1411:14, 23	23 1314:7, 15,	1387:1, 4	1466:21, 25	1320:16
1484:4	1421:3, 10	18 1315:2, 6,	1388:25	1467:4, 6	1321:13
1492:17	1459:5 1520:4	9, 14, 23	1389:4	1469:5	1322:4
1498:23	<b>offer</b> 1316:4	1316:9, 12, 19,	1392:18, 22	1470:2, 6, 9,	1325:10
1501:4	1335:6, 23	24 1317:8, 15,	1393:8, 12	12, 15	1342:1
1502:11	1336:5	25 1318:8, 11,	1394:5	1471:11	1347:5
1504:17	1341:21	18, 20, 25	1395:17	1472:6, 20	1351:10
1505:23	1343:22	1319:4, 6, 14,	1396:3, 9	1473:4	1353:12
1514:1, 12	1352:17	18 1320:2, 9,	1397:2, 5, 17	1474:5	1360:23
1517:6	1357:4	15, 24 1321:3,	1398:8, 11, 17,	1482:15, 16,	1361:20

1372:12	1423:9	1491:9, 12	<b>outlined</b>	1515:16, 21	1496:25
1373:3	1424:8	1492:18	1378:10		1497:14, 25
1375:1	1434:22	1493:4, 19, 20	<b>outset</b>	< P >	<b>pages</b>
1376:1	1439:9, 11	1498:24	1294:13	<b>p m</b> 1291:18	1297:19
1377:15	1442:25	1501:10	1296:8	1389:3	1298:17, 20,
1378:3	1443:3, 5	1502:12	<b>outside</b>	1425:8	23 1300:22
1388:23	<b>Oliver's</b>	1503:19	1311:2	1439:19	1304:15, 16
1392:21	1375:22	1504:4 1514:2	1368:20	1508:12	1317:24
1401:10	1433:21	<b>opinions</b>	1370:2	1519:23	1344:23
1407:25	<b>once</b> 1363:8	1341:20, 21	1496:16	<b>pace</b> 1428:13,	1345:7, 15, 24
1420:5	1402:19	1441:18	<b>overall</b> 1362:3	25	1346:25
1426:10	1442:21	1442:11	<b>overarching</b>	<b>pacing</b>	1349:21, 24
1431:3	1465:25	1448:1, 14, 15,	1431:10	1386:25	1367:23
1436:24	1466:3	19 1453:2	<b>overrule</b>	1428:12, 15	1371:9
1439:16	<b>one-on-one</b>	1470:24	1383:20	1429:13	1385:6, 25
1444:19	1425:24	1471:24	1489:3 1500:8	1439:1, 3	1386:2, 7
1448:21	<b>one-page</b>	1472:24	<b>OWENS</b>	<b>packet</b>	1394:17
1455:15	1333:11	1483:6	1292:15	1400:1 1408:2	1395:2
1462:5	<b>onerous</b>	1500:9	1293:11, 13	<b>packets</b>	1475:15
1467:6	1447:23	1511:13	1298:17	1314:10	1489:22
1473:4	<b>ones</b> 1341:23	<b>opportunities</b>	1299:12	<b>Page</b> 1298:2,	1495:15, 20
1474:8	1485:9	1366:2	1300:6	25 1299:12,	<b>pagination</b>
1478:4	<b>one-year</b>	<b>opportunity</b>	1301:22	13 1300:20	1309:1, 10
1483:17	1459:7	1337:10, 24	1320:17	1301:20	<b>pair</b> 1363:13
1489:15, 16	<b>online</b>	1338:1, 8, 18	1322:1	1304:11	<b>pandriano@sa</b>
1491:16	1425:16, 17,	1381:21	1385:19	1305:2, 8	<b>ndsanderson.c</b>
1495:13	25 1426:2, 3	1448:18	1397:4	1306:20	<b>om</b> 1292:14
1500:17, 21	<b>on-the-spot</b>	1451:13	1407:21	1310:14, 15	<b>panic</b> 1422:2
1512:1	1362:18	1473:6	1408:2	1312:1, 2, 4	<b>paper</b>
1513:15	<b>open</b> 1354:24	1517:15	1439:21, 22	1315:17	1312:23
1516:2, 22	<b>operations</b>	1518:2, 11	1441:6, 11, 23	1333:17, 24	1425:17
<b>Old</b> 1300:23	1414:17	<b>opposed</b>	1442:1, 13, 17	1341:23, 25	1426:7
<b>OLIVER</b>	<b>opinion</b>	1358:10	1443:14, 17	1344:20	<b>paragraph</b>
1293:3	1335:8, 12	<b>oral</b> 1447:9	1444:5, 15	1345:19	1366:6
1298:16	1336:5, 18	1452:21, 25	1445:7, 9	1346:24	1409:6, 11, 12,
1321:12, 21	1338:24	1479:12	1446:5, 23	1349:10, 12,	17, 20
1322:8, 14	1342:15	<b>order</b> 1295:1,	1447:8, 14	20, 23 1372:1,	<b>paragraphs</b>
1339:21, 23	1343:6	9 1313:21	1448:3, 5	3, 4, 5 1373:9,	1478:23
1347:18	1353:10, 11,	1372:22	1453:4	15, 16, 20	<b>parent</b>
1350:19	18 1355:2, 11	1406:1	1454:15	1374:3, 7, 13	1373:25
1351:16	1396:2	1414:16	1460:22	1379:12	1374:15
1364:20	1405:15	1443:9 1470:3	1467:7, 9, 11	1394:12	1430:2
1373:10, 20	1410:15	<b>organization</b>	1468:20	1396:10	1450:13, 16
1376:8	1428:17	1431:24	1469:6	1397:6, 7, 8,	1501:12
1383:4, 10, 17	1429:4	1432:4	1482:8, 13	10, 24	<b>parent/teacher</b>
1387:15	1436:21	<b>organizations</b>	1483:24	1407:20, 25	1501:15
1389:5, 6, 8	1441:14	1432:5	1484:2, 6, 10,	1408:20	<b>Parents</b>
1394:11	1442:24	1433:4, 8	16 1488:23	1409:7, 11, 12	1291:6
1396:6, 13	1448:24	<b>original</b>	1492:17	1410:10	1292:20
1402:5	1449:6	1335:22	1498:23	1411:10, 14	1293:20, 21,
1403:10, 13	1451:12	1475:24	1499:4	1434:15, 16	22 1296:10
1406:21	1452:17, 20,	<b>Orton-</b>	1502:11	1436:7	1297:21
1408:12	22, 25 1453:9,	<b>Gillingham</b>	1504:3, 14	1456:16	1299:24
1411:9	14, 15	1363:12, 16	1506:7	1476:21, 23,	1300:25
1416:21	1471:22	1364:10, 16,	1509:2	24 1478:4	1301:1, 18
1417:24	1472:23	25 1365:7, 13	1511:15, 18	1480:13, 19	1309:21
1418:8	1482:14, 21,	<b>ought</b> 1361:16	1512:4	1481:16, 20,	1317:9
1419:22	25 1484:7, 10,	<b>o-u-t</b> 1493:15	1513:16	21, 22	1318:2
1420:20	23 1485:8	<b>outdated</b>	1514:5, 8, 17,	1489:19	1322:9
1421:3	1488:25	1410:21	18, 23	1495:1, 12	1333:4, 16
1422:18	1489:1				1341:23

1343:22	1372:8	<b>PATRICK</b>	25 1482:17,	1308:14	1468:12
1344:19	1373:11	1292:14	19 1483:2	1311:9	1469:2, 14
1346:11, 13	1375:22	1309:4	<b>performed</b>	1456:10	<b>play</b> 1362:1
1348:3, 4	1377:6	1389:13	1489:21	<b>phonemic</b>	<b>PLC</b> 1292:7
1351:10, 13	1390:1, 4, 14,	1454:16	<b>performing</b>	1486:17, 18	<b>please</b>
1357:11	18 1403:16	<b>pattern</b>	1314:10	<b>Phonetic</b>	1294:22
1359:4	1408:16	1506:21	1476:14, 18	1354:10	1322:5
1371:9	1409:19	<b>patterns</b>	1478:9	<b>phonetically-</b>	1329:11
1372:25	1418:13	1488:2	<b>period</b> 1308:5,	<b>regular</b>	1352:20
1373:4, 5, 10	1437:9, 12, 14	1490:14	12 1315:3	1507:6	1357:13
1375:4, 9, 11,	1440:9	1507:12	1326:2	<b>phonetics</b>	1358:19
12 1376:7, 9,	1454:17	<b>paying</b>	1340:18	1356:5	1362:4
18, 23, 25	1496:22	1315:21	1380:6	1507:12, 20	1364:14
1377:2	1503:16	<b>payments</b>	1515:2, 13	<b>phonics</b>	1367:15
1385:21, 23	1505:12	1389:21, 23	<b>periods</b>	1487:2	1368:2
1389:6, 21	<b>partial</b>	<b>PC</b> 1292:12	1362:11	1498:14	1371:6, 20
1400:24	1345:12	<b>PE</b> 1362:11	<b>permissible</b>	1507:19	1372:13, 24
1406:18	<b>partially</b>	<b>peer</b> 1379:21	1394:9	<b>phonological</b>	1377:24
1407:14, 24	1318:21	1380:1, 3	1429:23	1353:7, 24	1386:10
1408:9	<b>participate</b>	1416:12	<b>permission</b>	1354:5, 12, 16	1394:11
1410:9	1357:10, 13	<b>peers</b> 1476:15	1294:11	1355:3, 8, 20,	1419:25
1411:7	<b>participated</b>	1478:10	1295:6	24 1356:2, 22	1431:20
1412:7	1462:13	<b>pen</b> 1512:11	1300:4	<b>photo</b>	1436:25
1414:5, 22	<b>particular</b>	<b>pencil</b> 1318:13	1333:2	1311:16	1444:21
1417:23	1304:11	<b>Pennsylvania</b>	1505:19	1321:9	1455:7
1423:15, 18,	1337:23	1455:20	<b>permit</b>	<b>physically</b>	1457:11
23 1436:25	1355:7	<b>people</b>	1451:25	1455:18	1459:25
1438:19	1364:17	1323:16	<b>permitted</b>	<b>physician</b>	1461:1, 25
1444:18	1395:14	1387:9	1418:8	1401:23	1462:2
1446:13	1396:10	1437:22	<b>person</b>	<b>picked</b> 1326:3	1464:6
1450:2	1419:15	1454:18	1321:9	<b>picture</b>	1475:6
1451:6	<b>particularly</b>	1464:22	1376:23	1311:14, 15,	1481:18
1454:13	1320:6	1468:18	1377:5	21 1430:11	1486:1
1455:9	1385:13	1473:23	1405:16, 20,	1486:24	1489:19
1456:16, 23	1389:24	1501:20	21, 25 1406:7	<b>piece</b> 1355:19,	1491:17
1470:18	1413:11	1508:1	1447:22	22 1366:3	1494:5, 13, 18
1472:12	1414:22	<b>Pepsi</b> 1497:8	1468:16	<b>pieces</b> 1514:7	1496:7, 14
1474:20	<b>parties</b>	<b>perceived</b>	1469:14, 17,	<b>place</b> 1295:1	1497:13
1489:18	1440:15, 21	1416:15	22 1473:12,	1352:7	1503:11
1491:16	<b>partnership</b>	<b>percent</b>	23, 24	1426:4	1506:25
1497:15	1430:10	1491:7	<b>personal</b>	1449:24	1512:2
1513:18	<b>party</b>	<b>percentile</b>	1381:16	1500:16	1514:13
<b>parked</b> 1496:8	1440:12, 16,	1343:10, 11	1382:10, 13,	<b>placed</b>	1515:2
<b>parking</b>	20, 23 1441:3	<b>percentiles</b>	22 1383:18	1434:19	<b>PLoP</b> 1483:2
1410:2	1520:9	1343:13	1384:12	<b>placement</b>	<b>plural</b>
<b>Parkway</b>	<b>party's</b>	1374:9	1388:1	1460:17	1480:17
1292:3	1440:23	<b>percents</b>	1397:1	<b>plan</b> 1371:11,	<b>plus</b> 1342:9
<b>part</b> 1324:13,	<b>passage</b>	1414:12	1398:7	16, 22 1372:9,	1416:1
15 1328:14,	1477:14, 15,	<b>perfect</b>	1436:11	14 1373:11,	<b>pneumonic</b>
15 1329:14	16, 17	1312:3, 5	<b>personally</b>	21 1374:6, 17	1480:21
1330:17	1478:19, 25	1372:1	1342:24	1375:23	<b>point</b> 1305:23
1331:14, 16	1479:10	1428:4	1384:24	1377:7, 11, 12,	1310:9
1334:7, 9	<b>passed</b>	1500:16	1390:7, 9	14 1411:7, 8,	1319:21
1340:4, 19	1473:10	<b>perfectly</b>	<b>persons</b>	20 1412:2	1323:25
1344:14	<b>pathology</b>	1362:13	1384:22	1413:2	1324:7
1348:12	1403:20	<b>performance</b>	<b>pet</b> 1488:4	1464:4	1325:21
1352:6	<b>patience</b>	1367:4	<b>Petitioner</b>	1465:4	1329:6
1356:10	1357:3	1374:8	1291:8	1468:14	1335:11, 14
1362:19	1377:19	1411:11	1292:10	<b>plans</b> 1464:10,	1336:25
1368:10, 23	1519:10	1476:15	<b>phone</b> 1294:9	15, 21	1343:9
1370:23	<b>patient</b> 1508:4	1481:16, 17,	1295:4	1466:18	1354:14, 17



1389:5	<b>potentially</b>	<b>prerequisite</b>	1331:10	1450:5	1369:20, 22
1411:23	1375:17	1391:8	1354:15	1451:8	1509:16
1419:5	1438:8, 9	<b>Present</b>	1371:17	1468:15	<b>progress</b>
1424:9	<b>Powhatan</b>	1292:19	1390:16	<b>processing</b>	1328:17
1432:18	1324:20	1336:17	1440:15, 20	1353:7, 24	1362:2
1442:4	<b>practice</b>	1337:17	1449:14	<b>produce</b>	1366:23
1449:15	1367:3	1341:4	1451:13	1387:3	1367:1, 3, 5,
1450:4	<b>practices</b>	1481:11, 15,	<b>private</b>	1486:21	12 1368:10,
1452:12, 20	1509:7	24 1483:1	1323:9	<b>produced</b>	13, 17 1369:5,
1466:14	<b>Praxis</b>	1517:5	1393:3, 15	1309:10, 23	7, 10 1370:15,
1489:4	1467:25	<b>presented</b>	1394:15	1310:1	22 1371:5, 7
1494:13	1473:10	1334:2	1430:24	1313:19, 21	1377:23
1497:16	<b>preaching</b>	1341:10	1431:2, 5	1345:24	1378:12, 13
1505:19	1337:15	1365:25	1432:25	1348:21	1382:4
1506:8	<b>preceded</b>	<b>presenting</b>	1436:9	<b>product</b>	1385:7, 15
1508:14	1420:3	1462:8	1459:19	1301:14	1414:2, 21
1519:2	<b>precluded</b>	<b>president</b>	<b>probably</b>	<b>production</b>	1427:10, 18,
<b>pointed</b>	1383:17	1358:8	1307:18	1313:15	19, 21 1428:8
1348:14	<b>prefaced</b>	<b>presumably</b>	1308:18	<b>productive</b>	1468:25
1451:21	1343:4	1441:13	1310:10	1314:4	1474:3
<b>pointing</b>	<b>prefer</b> 1419:7	<b>presume</b>	1343:7	1320:23	<b>prolonged</b>
1496:6	<b>prehearing</b>	1312:9	1345:16	<b>professional</b>	1294:21
<b>points</b> 1304:9	1350:2	<b>presuming</b>	1360:24	1322:21, 25	<b>pronounce</b>
<b>policies</b>	1443:11, 18	1518:12	1361:1, 7	1323:20	1478:17
1399:20	1445:9	<b>presuppose</b>	1405:24	1472:24	<b>pronounced</b>
1462:24	1449:13, 16	1330:6	1414:2, 13, 14	<b>proffer</b>	1507:14, 16, 17
<b>portion</b>	<b>preliminary</b>	<b>pretty</b>	1464:17	1300:4, 21	<b>pronouncing</b>
1469:25	1296:16	1310:16	1469:9	1305:14	1490:19
1473:25	1451:16	1320:13	1471:2, 5, 16	1314:9	<b>proper</b>
<b>position</b>	<b>premise</b>	1447:23	1493:6 1495:6	1316:1, 7	1307:7
1356:21	1335:22	1466:15	<b>problem</b>	1318:4, 19	1333:21
1402:2	<b>prep</b> 1413:19,	<b>previous</b>	1308:10	1319:2	1334:4
1423:14	20	1331:25	1375:21	1335:3	1382:14
1447:8	<b>preparation</b>	1445:9	1445:1	1505:20	1394:3
<b>possession</b>	1415:4	<b>previously</b>	1485:7	1506:4, 8, 10	1398:15
1309:23	<b>preparatory</b>	1310:20	1500:4	<b>proffered</b>	<b>properly</b>
<b>possibility</b>	1454:3	1317:19	1502:25	1336:7	1335:18
1429:18	<b>prepare</b>	1349:6	1503:6, 9	1342:16	1336:6
<b>possible</b>	1297:23	<b>Primarily</b>	<b>problematic</b>	1345:12	1399:14
1323:24	1351:25	1324:20	1379:23	<b>proffering</b>	1401:21
1364:4	1435:20, 22	1413:19	<b>problems</b>	1338:3	1433:2
1429:12	1447:22	1436:21	1382:6	<b>proffers</b>	<b>property</b>
1471:20	<b>prepared</b>	1437:17	<b>procedure</b>	1304:19	1346:13
1488:21	1297:2, 5	1491:5	1336:4 1451:5	1316:16	<b>proposing</b>
1503:24	1301:6, 14	<b>primer</b>	<b>procedures</b>	<b>profile</b>	1452:8
<b>possibly</b>	1444:24	1492:10	1462:25	1436:15	<b>protocol</b>
1300:15	1445:1	1496:23	1509:7	1479:18	1480:9
1337:18	1447:1	1497:11	<b>proceeding</b>	<b>profiles</b>	<b>proven</b>
1383:22	1449:1	<b>primer-level</b>	1295:21	1364:5	1363:19
1472:14	1450:12, 22	1493:16	1520:10	1461:17	<b>provide</b>
1485:9	1468:15	<b>principal</b>	<b>PROCEEDIN</b>	<b>program</b>	1296:21
1490:13	1491:25	1328:12	<b>GS</b> 1291:14	1324:15	1337:10
1504:7	1505:21	1351:4	1519:23	1359:23	1388:8
<b>post</b> 1314:22	<b>pre-primer</b>	1358:10	1520:6, 7	1362:5	1446:14
<b>posting</b>	1492:8, 9	<b>print</b> 1300:20	<b>PROCESS</b>	1374:1, 5, 12	1480:7
1295:15	1494:16	1301:19, 20,	1291:3	1388:11	1482:14, 21
1459:6	1496:3, 18	25 1386:25	1329:3, 5, 6	1413:10	1492:18
<b>potential</b>	<b>pre-reading</b>	<b>prior</b> 1295:9	1331:2, 14, 17	1465:9	1504:4
1301:15	1486:20	1306:13	1352:6	1474:2 1481:3	<b>provided</b>
	1487:2	1310:23	1363:11	<b>programming</b>	1348:25
		1315:12	1390:14, 18	1362:21	1349:12

1374:13	1297:3	1449:23	1351:19	1468:20, 22	1297:12, 14,
1375:3	1298:16	1451:15, 19	1356:18	1474:25	18 1298:1, 8,
1410:11	1312:19	1465:6, 19, 23,	1368:4	1485:23	12, 15, 17, 19,
1417:10	1313:1	24 1466:10	1376:16	1493:10	20, 21, 24
1418:14, 21	1317:11	1468:24	1384:8	1505:20	1299:5, 12
1423:19	1345:11	1471:1	1387:16	1506:20	1300:3, 12, 16
1442:8	1377:11	1472:3, 19	1392:14	1511:21	1301:11, 24
1446:12	1385:1	1473:10, 19, 24	1398:21	1513:17	1302:1, 4, 9,
1448:8	1386:4	<b>qualifies</b>	1399:1, 4	1514:6	16, 20, 22
1453:14	1461:13	1471:13	1401:14	1515:21	1303:2, 10, 13,
1470:25	<b>purposes</b>	1472:8	1404:9	1516:4, 6, 8	16, 18, 21, 24
1510:3	1295:12	<b>qualify</b>	1405:4, 5	<b>quickly</b>	1304:2, 6, 14
1511:19	1297:19	1337:9	1418:21	1494:25	1305:2, 7, 11,
1512:15	1376:2	1442:19	1428:21	1516:21	19 1306:1, 13,
1514:5, 25	1419:3	1450:1	1431:15	<b>quite</b>	17, 20
<b>provides</b>	1423:22	1452:4, 10	1432:14, 16	1300:9	1307:10
1477:16	1488:15	1453:20, 23	1436:21	1311:6	1311:6
<b>providing</b>	<b>pursuant</b>	1470:19	1437:9	1421:19	1421:19
1335:7, 8	1423:15	1471:15	1438:24	1425:5	1425:5
1441:14	<b>pursue</b>	<b>qualifying</b>	1449:22	1472:19	1472:19
1445:4	1331:18	1471:7	1454:2	<b>quote/unquote</b>	1300:9
<b>proving</b>	<b>put</b>	<b>quantitative</b>	1457:21	1301:3	1307:10
1368:24	1295:1	1502:6, 19	1472:5	1369:24	1311:6
<b>psycho-</b>	1319:22	<b>quarter</b>	1473:3	1382:12	1421:19
<b>education</b>	1325:25	1369:18	1483:5	1447:5	1425:5
1359:7	1333:15	1370:18, 24	1485:3	1503:25	1472:19
<b>psycho-</b>	1349:11, 19	1371:2	1494:10		<b>quote/unquote</b>
<b>educational</b>	1362:18	1378:20	1496:8, 15		1301:3
1353:2	1376:15	1379:11, 14,	1497:1, 4		1369:24
<b>psychologist</b>	1442:4	16, 19	1502:3, 5, 7, 9,		1382:12
1468:8	1464:25	1380:17, 24,	15 1503:3, 19		1447:5
<b>Public</b>	1511:2	25 1381:2, 6,	1504:10, 12		1503:25
1325:3,	1515:7	11, 17 1382:4,	1506:17, 25		
9 1331:12	1517:16	5, 8, 18, 19, 21,	1512:18		
1356:9		23, 25 1383:8,	<b>questionable</b>		
1386:15, 17	<b>&lt; Q &gt;</b>	9, 23 1384:4,	1344:4		
1387:25	<b>qualification</b>	10 1414:17,	<b>questioned</b>		
1390:12	1337:18, 22	24 1418:9	1342:12		
1429:6, 11, 18	1465:25	<b>quarterly</b>	<b>questioning</b>		
1439:2	<b>qualifications</b>	1367:3	1312:18		
1458:25	1327:4	<b>quarter-of</b>	1322:3		
1459:2, 9, 18	1335:21	1347:3	1342:5		
1460:17	1336:9	<b>quarters</b>	1426:25		
1465:23	1338:11	1380:19	<b>questions</b>		
1469:4	1443:23	1381:25	1317:3		
1473:7	1444:4, 25	<b>question</b>	1322:2		
1509:4, 12	1446:25	1298:19	1330:23		
1510:18	1452:10, 13	1303:22	1336:23		
1520:2, 19, 21	1460:25	1304:5, 6	1341:18		
<b>public-school</b>	1461:4, 9	1307:9, 17, 23	1360:1		
1324:19	1466:16	1308:6	1388:20, 21		
1428:14	1469:7, 24	1309:24	1389:15		
1429:1	1472:6 1511:6	1316:17	1394:3		
<b>publisher</b>	<b>qualified</b>	1318:20	1424:1, 9		
1465:10	1334:3, 25	1327:1	1434:7		
1475:24	1335:18	1331:22	1438:21		
<b>Publishing</b>	1336:17	1333:8	1451:16		
1475:23	1341:20	1338:8	1452:14		
<b>punitive</b>	1442:22, 23	1339:1, 6, 17	1454:25		
1369:14	1443:1, 4	1341:1, 19	1455:6		
<b>purpose</b>	1444:2, 12	1342:21	1467:6		
1295:23	1447:21				

1353:12, 20, 23 1354:4, 12, 13, 18, 25 1355:4, 5, 12, 15, 19, 24 1356:17 1357:1, 21 1358:6, 12 1359:1, 13 1360:24 1361:10, 14, 18, 21 1364:19, 23 1365:3, 6 1367:18, 19 1368:3, 6 1372:23 1373:16, 19 1374:20, 24 1375:5, 8, 16 1376:1 1377:16, 18, 21 1381:7 1382:1, 3 1383:2, 13 1384:7, 11 1385:3, 5, 16 1386:1, 7, 11 1387:6 1388:20 1389:15 1392:17, 20 1393:9, 21 1394:2, 22 1395:25 1396:25 1397:8, 11, 14, 16, 21 1398:4, 13, 24 1400:6, 14, 16 1401:4, 10, 12, 15, 23 1402:18, 23 1403:7 1404:1, 4, 12, 24 1405:1, 3, 10, 12, 16 1406:10, 13, 18 1407:9, 12, 22, 24 1408:5, 7 1409:10, 14 1414:5, 7 1415:9 1416:23 1417:8, 22 1418:6 1419:6, 9, 12, 21, 24 1420:2 1423:8, 20 1424:5, 12, 14, 15, 19, 23 1425:2	1426:12, 14 1428:20, 23 1429:7, 24 1430:1 1431:4 1432:11, 14 1433:11, 19, 24 1434:6 1435:1, 3, 16, 17 1436:23 1437:3, 11 1438:16, 19 1439:9, 15 1441:5, 7 1442:3 1443:2 1444:5, 7, 10, 20, 23 1445:12, 15 1446:5, 19, 21 1447:7, 17 1448:22 1450:18, 22 1451:2, 17, 21 1452:3, 7 1453:3, 11, 22 1454:1, 7, 14, 19, 25 1455:6, 13, 16 1456:1 1457:4, 6, 9 1458:1 1459:25 1460:3, 25 1461:3, 9, 14, 15 1462:1 1466:14, 23 1468:22 1469:20 1470:5, 8, 10, 13 1471:8 1472:4, 15 1473:2 1474:7 1482:11, 13, 18, 22 1483:3, 13, 18 1484:5, 6, 15, 19, 25 1485:4, 6, 11, 17, 21 1488:24 1489:1, 6, 7, 14, 17 1492:2, 21, 23 1493:9, 14, 25 1494:4, 21, 25 1495:8, 12, 15, 20, 22 1499:1, 11, 17, 19 1500:3, 7, 10, 15, 19, 22 1501:3, 6, 7 1502:16, 18	1503:18, 23 1504:6, 11, 15, 18, 23 1505:1, 8, 10, 18 1506:1, 5, 9, 12, 17, 18 1508:3, 7, 15, 17 1510:25 1511:7, 12, 24 1512:10, 15, 18, 23, 24 1513:2, 6, 9, 13, 18 1514:1, 5, 12, 25 1515:6, 10, 24 1516:3, 23 1517:8, 12, 16 1518:7, 14, 22 1519:5, 12, 15, 19 <b>Ratner's</b> 1305:14 1354:13 <b>reach</b> 1416:14 <b>reached</b> 1300:10 1332:19, 23 1352:17 1416:10 1417:5 <b>reaching</b> 1417:4 <b>read</b> 1306:3 1342:2 1343:23 1344:2, 10, 15 1349:22 1355:18 1381:24 1384:12, 23 1398:14, 17, 18, 25 1399:1, 6, 7 1401:5 1406:15 1407:4 1410:4 1412:14 1424:25 1425:5 1434:17 1442:17 1449:1 1491:3 1497:7, 20, 21 1503:12, 14 <b>reading</b> 1324:21 1331:6 1344:8 1363:9 1379:11	1384:23 1403:4 1412:19, 25 1413:15 1420:23 1467:22, 24, 25 1468:1, 2, 4 1473:18 1477:1, 5, 6 1478:12 1479:5, 6, 7, 12, 24, 25 1486:16 1487:6 1488:19 1497:23 1503:14 <b>reading/langua</b> <b>ge-arts</b> 1473:13 <b>reads</b> 1477:15, 19 <b>ready</b> 1294:4 1321:3 1368:5 1439:13 1454:7 1482:25 1504:20 1508:17 <b>real</b> 1297:22 1305:7 1516:21 <b>reality</b> 1345:4 <b>realize</b> 1296:3 <b>realized</b> 1349:16 <b>really</b> 1301:20 1309:18 1323:22 1388:7 1404:25 1409:18 1452:19 <b>reason</b> 1337:13, 15 1419:15 1423:5, 25 1464:18 <b>reasonable</b> 1445:24 1484:12 <b>reasons</b> 1427:12 <b>re-assess</b> 1369:16 <b>rebut</b> 1518:12 <b>rebuttal</b> 1517:9, 10, 11,	23 1518:16 1519:6 <b>recall</b> 1295:14 1303:2, 3, 4, 6 1317:2 1328:23 1330:2, 9 1332:4, 13 1348:19 1350:1 1352:10 1355:14 1356:4 1358:19, 23 1360:3, 4, 12 1375:17 1404:14 1405:21 1409:4 1417:3, 22 1418:4 1421:4, 8, 17, 18, 24 1422:5, 10, 15 1434:24 1439:11 1443:24 1508:19 1516:1 1517:2 1518:8 <b>recalls</b> 1418:2 <b>receive</b> 1370:3 1374:18 1438:14 1441:1 <b>received</b> 1309:11 1331:15 1333:14 1346:7 1348:11, 25 1349:1, 5, 9 1350:16 1356:19 1401:16 1402:24 <b>receives</b> 1365:19 <b>receiving</b> 1463:10 <b>re-</b> <b>certification</b> 1458:7 1468:2 <b>recess</b> 1299:16 1347:6 1389:2 1425:7	1439:18 1508:11 <b>recognize</b> 1315:22 1333:9 1350:22 1371:21 1375:2 1396:15 1397:24 1398:8 <b>recognized</b> 1375:2 <b>recollection</b> 1331:1 1352:21 1354:7 1404:15 1418:4, 9 <b>recommendati</b> <b>on</b> 1447:9, 25 1480:14, 20 1505:14 <b>recommendati</b> <b>ons</b> 1329:18 1331:19, 21, 25 1332:3 1408:15 1440:7, 13, 22 1441:3, 14 1446:14, 15 1447:5, 6, 8 1480:11 <b>recommended</b> 1505:13 <b>reconnect</b> 1516:20 <b>record</b> 1295:13 1296:23 1298:2 1299:18, 23 1300:7 1301:7 1302:8 1307:12 1311:4, 5, 7 1317:5, 6, 8 1318:1, 17 1321:20 1344:14 1347:19 1348:1, 5, 6, 11, 15 1349:22 1351:2 1361:19 1373:12 1376:2 1384:21, 24 1393:6
---	---	---	--	--	---

1401:19	<b>referring</b>	1500:24	1350:2	1380:11, 12	<b>requests</b>
1407:19	1296:20	1501:2 1520:8	1351:19	1381:1, 12	1373:24, 25
1419:1, 20	1298:18, 21	<b>relates</b>	1355:17	1382:4, 16, 17,	<b>require</b>
1420:6	1489:23	1352:11	1375:7	20 1407:3, 5	1310:18
1423:13, 22	<b>refers</b> 1377:10	1362:6	1381:1	1408:20	1375:4
1424:2	<b>reflect</b>	1363:25	1389:8	1414:2, 15, 21	1383:22
1439:17	1300:22	1364:1	1410:3	1415:2, 3	1447:13
1444:21	1334:18	1382:20	1421:12	1442:15	1484:23
1450:13, 16	1347:20	1387:23	1443:20	1443:6	<b>required</b>
1452:6	1348:15	1427:1	1449:10, 15,	1444:16	1360:12
1453:18	1351:2	1476:12	21 1482:24	1446:12	1450:23
1471:10	1419:20	<b>relation</b>	1511:22, 23	1447:13, 22	1453:5, 8
1505:22	1427:21	1500:1	<b>remiss</b>	1450:24	1467:18
1506:5	1450:13	<b>relatively</b>	1449:25	1452:21	<b>requirement</b>
1517:4, 21	<b>reflected</b>	1331:5	<b>remote</b>	1475:16	1442:14, 16
<b>recording</b>	1334:2, 5, 13	1421:21	1296:19	1479:15, 20	1447:20, 23
1294:11	1341:13	<b>relax</b> 1450:4	1450:1	<b>Reported</b>	<b>requires</b>
1295:8	1367:12	1471:20	<b>remote-</b>	1291:25	1342:16
1417:12	1368:13	<b>release</b>	<b>controlled</b>	1476:10	1402:6
<b>recordings</b>	1372:13	1331:11	1454:20	1484:11, 20	1493:19
1295:2	1377:24	1399:10	<b>remotely</b>	<b>reporter</b>	<b>rescuing</b>
<b>records</b>	1434:8, 9	<b>released</b>	1444:1, 14	1384:11	1421:5
1331:11, 15	<b>reflects</b>	1396:23	1449:23	1398:25	<b>researched-</b>
1349:4	1309:10	1398:3	<b>remote-</b>	1418:16	<b>based</b> 1363:18
1383:11, 13,	1436:7	<b>relevance</b>	<b>testimony</b>	1520:5	<b>reservation</b>
15, 16 1415:5	<b>refresh</b> 1418:4	1400:6	1445:18	<b>reporter's</b>	1449:20
1423:17	<b>refreshes</b>	1511:14, 16	<b>remove</b>	1327:13	<b>reserve</b>
1436:18	1420:11	<b>relevancy</b>	1306:4	<b>reporting</b>	1343:16
1442:7	<b>regard</b>	1440:1 1442:4	<b>rental</b> 1456:6	1381:15	1443:22
1475:20	1484:7	<b>relevant</b>	<b>rep</b> 1463:19	<b>reports</b>	1518:11, 20, 21
1512:6	1502:12	1344:13	<b>repeat</b> 1437:9	1356:19	<b>reserved</b>
<b>recovered</b>	1511:19	1385:7	1506:25	1367:13	1449:10, 19
1335:24	<b>regarding</b>	1400:7, 10	1513:22	1380:21	<b>residence</b>
<b>Redirect</b>	1440:4	1474:22	<b>repeated</b>	1427:19	1456:5
1293:6	1510:10	1501:14	1479:24	1474:3	<b>residential</b>
1426:13	<b>regardless</b>	<b>relies</b> 1389:21	<b>rephrase</b>	<b>represent</b>	1459:19
<b>reduced</b>	1401:6 1402:4	<b>rely</b> 1430:10	1335:20	1322:15	1462:18
1300:2	<b>Registration</b>	<b>relying</b> 1366:6	<b>rephrased</b>	1486:22	<b>resolution</b>
<b>re-evaluation</b>	1520:21	<b>remain</b> 1404:2	1514:15	1492:2	1445:19
1356:10, 16	<b>regs</b> 1296:5	<b>remained</b>	<b>rephrasing</b>	<b>representation</b>	1451:24
<b>refer</b> 1302:24	<b>regulations</b>	1326:1	1514:21	s 1306:3	<b>resolved</b>
1481:20	1446:12	<b>remains</b>	<b>report</b>	<b>representatives</b>	1382:7
1485:24	1447:12	1482:6	1334:13, 17	1462:23	1445:19
1508:1	<b>Reisterstown</b>	1307:7	1340:3	<b>representing</b>	<b>resource</b>
<b>reference</b>	1455:19	1420:6 1451:1	1341:14	1467:11	1459:18
1375:25	<b>R-e-i-s-t-e-r-t-</b>	<b>remarks</b>	1344:7, 20, 21	<b>represents</b>	1463:4
1402:1	<b>o-w-n</b> 1455:22	1444:19	1345:3, 5, 10	1301:13	<b>respect</b>
1500:13	<b>reiterate</b>	1454:3 1461:2	1346:1, 24	1310:22	1301:16
<b>referenced</b>	1472:18	<b>remediate</b>	1347:11	1314:9 1420:3	1331:2 1360:4
1411:13	<b>rejected</b>	1437:13	1348:4, 8, 16	<b>re-qualified</b>	<b>respectfully</b>
1412:8	1446:2	<b>remediated</b>	1350:8, 24	1466:5	1506:12
1417:14	<b>relate</b> 1330:23	1401:6	1351:4, 8, 17,	<b>re-qualify</b>	<b>respond</b>
1421:15	<b>related</b>	<b>remediating</b>	24 1352:5, 10	1466:1	1353:16
1475:19	1326:6	1437:6	1353:1	<b>requested</b>	1386:21
1484:1	1341:11	<b>remember</b>	1359:9	1310:20	1448:3
<b>references</b>	1379:19	1302:11	1368:13, 17	1374:16	<b>responded</b>
1374:8	1382:6	1303:10, 13,	1369:5, 7, 10	1419:1 1499:8	1325:7
1411:11	1391:5, 13	17 1327:14,	1370:15, 22	<b>requesting</b>	<b>Respondent</b>
<b>referred</b>	1426:25	17 1332:2	1371:5, 7	1396:22	1291:11
1314:18	1441:3	1349:25	1377:23	1398:2	1292:16

<b>responding</b> 1378:16	<b>returning</b> 1379:22	1337:19	1313:20	1441:20	<b>saying</b> 1303:4,
<b>response</b> 1308:15	<b>reversals</b> 1387:14	1339:7, 23	<b>rise</b> 1472:3	1446:17	6 1313:23
1309:12, 13	<b>review</b> 1307:12	1341:25	<b>Rivers</b> 1395:20	1447:10	1316:6
1316:4	1311:3, 5	1344:1	<b>Riverside</b> 1475:23	1453:9	1318:5
1333:14	1331:12	1355:1, 19	<b>Rockville</b> 1462:18	1483:9 1488:5	1336:22
1334:21	1334:12	1365:5, 14	<b>role</b> 1322:22,	<b>ruled</b> 1348:20	1339:18
1346:2, 8, 20	1335:1	1370:18, 19	25 1325:19,	<b>rules</b> 1337:3	1345:6
1348:25	1351:8, 25	1373:15	22 1326:2	1411:21	1346:20
1369:19	1367:3	1380:11	1328:1, 8, 10	1450:4	1370:23
1417:5, 20	1475:19	1381:13	1329:14	1487:2	1374:10
1436:22	1480:15	1386:9	1334:16	1498:14	1376:5
1442:2	1492:19	1394:2	1340:20	1507:19, 20	1383:14, 24
1450:15	1500:23	1397:5	1351:3	<b>ruling</b>	1387:17
1484:14	<b>reviewed</b> 1351:23	1405:1, 13	1361:24	1335:16	1428:20
1498:25	1376:23	1408:10	1362:2	1338:11	1431:7
1499:10	1377:4	1410:19	1390:19	1342:22	1436:15
1504:5	1399:20, 21	1411:2	1462:3	1353:15	1442:13, 23
<b>responses</b>	1415:4	1415:5	<b>roles</b> 1462:4	1358:25	1445:16, 18
1329:25	1442:6	1419:18	1463:3	1385:4	1446:1
<b>responsibility</b>	1474:10, 13,	1424:22	<b>room</b> 1360:21	1399:6	1453:4
1366:22	17, 23	1426:6	1361:2, 12	1418:17	1482:3
1468:19	1479:17	1427:25	1426:17	1419:3	1484:25
<b>responsible</b>	1481:5	1432:15	1454:3	1437:1	1514:9
1462:7, 19	1490:1	1433:15	1456:6, 10, 13	1451:18	1518:20
1463:22, 25	1493:1	1434:5	1516:21	1506:13	<b>says</b> 1300:21
1464:13	1500:25	1441:22	<b>rotate</b> 1362:15	1514:12	1301:1, 19
1473:17	1506:20, 22,	1443:22	<b>rotating</b> 1438:4	<b>rulings</b> 1296:10	1302:22
<b>rest</b> 1331:8	23 1507:1	1445:3	<b>rotation</b> 1362:19	<b>run</b> 1489:9	1303:10
1372:18	<b>reviewing</b> 1340:4	1447:17	1438:6	<b>runs</b> 1318:2	1309:5, 11
1386:8	1352:10	1448:5, 6	<b>rowens@sands</b>	< S >	1310:11, 19
1518:16, 18	1368:3	1451:7	<b>anderson.com</b>	<b>sad</b> 1450:18	1312:9
1519:3	<b>reviews</b> 1329:17	1452:12	1292:15	1451:3	1316:13
<b>restate</b>	1368:10	1454:16	<b>Rubino</b> 1476:11	<b>s-a-i-d</b> 1507:13	1339:12
1428:24	1410:4	1455:1, 5, 18	<b>rubric</b> 1297:23	<b>SAIS</b> 1432:7,	1344:19
<b>rested</b>	1369:16	1458:19	1299:1	24	1345:2
1517:24	<b>Richmond</b> 1292:8, 13	1461:9	1300:21	<b>same-age</b> 1476:14	1349:12
<b>result</b> 1423:1	1324:12, 17	1470:10, 16	1302:17	1478:10	1382:9
<b>resulted</b>	1325:2	1472:14	1304:7	<b>sample</b> 1482:2	1384:19
1379:8, 9	1390:23	1479:3	<b>rubrics</b> 1299:4, 5	<b>SANDS</b> 1292:12	1395:19
<b>results</b>	<b>riddled</b> 1421:23	1481:23, 24	<b>Rudolph</b> 1301:17	<b>SARAH</b> 1291:15	1398:16
1339:13	1450:8	1483:11	1302:18	1292:4, 10	1402:20
1341:4	<b>ridiculous</b> 1458:6	1485:14, 17,	1310:13	1321:23	1404:24
1343:6	<b>right</b> 1295:3	20 1488:2	<b>rule</b> 1296:9	<b>sarah.s.freema</b>	1479:24
1345:17	1296:6, 24	1492:13	1335:9	<b>n.esq@gmail.c</b>	1481:17
1465:17	1301:24	1494:9, 21	1336:10	<b>om</b> 1292:5	1488:17
1476:8, 10	1302:13	1495:21	1338:13	<b>sat</b> 1488:4	1498:1
1493:24	1307:11	1498:1	1345:8	<b>satirical</b> 1344:10	1501:14
<b>resume</b>	1314:19	1502:22	1374:25	<b>save</b> 1517:22	<b>Scale</b> 1327:23,
1415:13	1315:14	1505:3, 15	1417:17	<b>saw</b> 1345:9	24
<b>résumé</b>	1318:14, 18	1506:1, 5, 14	1418:7	1490:18	<b>scaled</b> 1357:24
1458:6	1322:5	1508:22	<b>say-d</b> 1507:16	1500:5 1507:4	1477:23, 24
<b>retain</b> 1488:14	1336:20	1511:7, 12	<b>say-id</b> 1507:14	<b>schedule</b> 1422:20, 22	<b>scenario</b> 1429:5
<b>retention</b>		1512:7		<b>saw</b> 1490:18	<b>schedule</b> 1428:4
1364:8		1513:6		1507:5 1507:4	<b>scholarship</b> 1389:25
1387:11		1516:8, 9			<b>SCHOOL</b> 1291:10
<b>re-testifying</b>		1518:15			
1517:7		1519:9, 20			
<b>return</b>		<b>right-hand</b>			
1427:17		1315:18			
		<b>right-side-up</b>			

1298:6	12, 23 1392:9,	23 1483:1	1476:13, 23	1318:16	<b>selected</b>
1300:22, 23	13, 16, 18, 23	1500:25	1477:24	1319:13	1514:7
1308:14	1393:7, 14	1501:6	1478:6, 8	1344:24	<b>selective</b>
1311:8	1394:19, 22,	1503:21	1479:8	1345:2, 23	1319:21
1314:12, 24	24 1395:4, 19,	1510:8	<b>se</b> 1490:14	1349:13	<b>self</b> 1409:8
1315:12	21 1396:7, 11,	1513:11	1498:17	1359:8	<b>self-contained</b>
1316:14	19 1397:4	1515:14	1500:14	1364:6	1324:21
1318:7, 9	1398:3	1517:6, 17, 18	1501:2	1368:25	1459:11, 18, 19
1321:18, 19,	1399:11, 16,	1518:4 1519:1	<b>seal</b> 1520:12	1369:11	<b>self-designed</b>
25 1322:4	18 1402:1, 6	<b>Schools</b>	<b>second</b>	1370:15	1457:15
1323:1, 2, 3, 4,	1403:22	1325:3, 9	1297:11	1374:11	<b>self-paced</b>
5, 8, 9, 12, 14,	1410:15, 23	1331:12	1311:25	1380:11	1388:11
20, 25	1411:17	1337:20	1360:20	1381:21	1425:14
1325:16, 23	1415:1, 23	1356:10	1368:2	1383:7	<b>semantics</b>
1328:2, 11, 19,	1416:17	1358:7	1370:23	1395:2, 17	1431:7
21, 25 1329:5,	1418:25	1386:17	1378:20	1396:13	1433:19
13, 20 1330:4,	1421:6, 16	1390:12	1379:11, 16,	1420:10	<b>semester</b>
7 1332:1	1422:13, 17	1393:3, 16	19 1380:16,	1424:19	1370:25
1333:14	1423:15, 18	1394:15	25 1381:2	1425:3	1378:14
1334:16	1427:21	1400:18	1382:5, 17, 21	1429:2	1382:18
1336:9	1429:6, 11, 18	1431:22, 23	1409:17	1447:13	<b>semester-</b>
1339:12	1430:5, 16	1436:9	1411:10	1454:16, 17,	<b>progress</b>
1340:5, 16	1431:16	1439:2	1414:22	18 1477:21	1378:7
1345:22	1434:8, 11, 12,	1459:1, 3, 9	1442:3	1486:19, 24	1414:15
1346:2, 9, 12,	15, 19 1435:4,	1463:5, 12, 14	1444:3	1488:3	<b>sending</b>
15, 16, 18	11, 23 1437:5	1464:21	1449:3	1490:3, 8	1421:4
1348:2, 9, 11,	1438:9	1465:23	1457:20	1491:2	<b>sends</b> 1465:11
12, 14, 16, 18,	1439:22, 24	1468:17	1464:8	1492:4, 15, 23	<b>sense</b> 1311:23
21, 24	1440:2, 9, 17	1469:4	1482:11	1493:2, 4	1312:5
1349:25	1441:16, 18	1473:7	1487:19	1496:14	1313:9
1350:6, 9	1442:6, 7	1509:4, 12	1490:6	1498:1, 3, 4,	1357:24
1351:3, 5	1443:19, 21	1510:18	1492:10	10, 11, 16	1382:7
1352:8, 12	1444:6	<b>School's</b>	1496:22	1499:23	1477:17
1353:3, 25	1445:10	1391:17	1497:3	1500:11, 13	1485:13
1354:22	1446:6, 10	1423:24	1498:8	1502:2, 6, 19,	1490:4
1355:2, 21	1448:5, 11, 15,	1437:12	1503:7	24, 25 1503:2,	1493:12
1356:7, 8, 13,	17, 25 1449:2,	1451:7	1515:25	4 1506:21	1517:25
19 1357:5, 17,	4, 19 1451:11	<b>science</b>	1518:18	1507:2	<b>sent</b> 1346:20
19, 22, 23	1452:15	1326:4	<b>second-grade</b>	1512:12	1377:2
1359:5	1453:13	1362:10	1496:12	1515:25	1421:10, 14
1360:18	1454:15	1366:13	1498:7	1519:10	1422:7
1361:23, 25	1456:17	1422:23, 24	<b>second-</b>	<b>seeing</b>	1512:9, 20, 22
1362:3, 5, 25	1457:11, 16	<b>scope</b>	<b>quarter</b>	1368:20	<b>sentence</b>
1363:8, 24	1459:3, 7, 10	1428:19	1370:15	1369:3	1409:7, 13, 17,
1364:6	1462:10, 20	1434:22	<b>second-</b>	1378:16	20 1482:4
1367:2, 9	1463:7, 11, 13,	1460:1	<b>semester</b>	<b>seen</b> 1296:18	1496:21, 22
1368:15	18, 19, 21	1511:1, 12	1380:13	1307:7, 10	<b>sentences</b>
1369:22	1465:15	<b>score</b> 1335:11,	<b>secret</b> 1447:24	1344:5	1477:19
1373:22	1467:12	19 1372:5	<b>section</b>	1349:15	1478:23
1375:24	1468:7	1477:24	1326:3	1368:16	<b>separate</b>
1377:10	1469:18	1478:1, 3	1378:11	1460:5	1375:23
1378:17, 23	1470:4, 25	<b>scored</b> 1356:1	1412:8	1478:20	1460:17
1379:6	1471:5, 24	1479:5	1413:19, 20	1486:20	<b>separation</b>
1380:5	1472:21	<b>scores</b> 1334:1,	<b>see</b> 1297:17	1493:3, 17, 23	1449:21
1381:8	1473:9, 16	18, 23 1341:7,	1301:5, 21, 23,	1494:6	<b>September</b>
1386:15, 20	1474:18	17 1342:2, 3	25 1310:15,	1508:2	1325:24
1387:17, 23,	1475:3, 7, 15	1345:13	17 1311:17,	1514:11	1328:7
25 1389:10,	1476:21	1354:3	21, 24 1312:7,	<b>select</b>	1332:13, 17
14, 17, 20, 21,	1478:7	1369:17	9, 25 1314:6	1319:17	1417:4
25 1390:5, 21,	1479:22	1376:6	1316:14	1320:4	1419:22
22 1391:4, 9,	1480:13, 20,	1442:24	1317:11, 15		1420:9, 19

<b>serious</b> 1447:17 1448:16 <b>serve</b> 1323:5 1368:19 1391:24 1392:9 1395:23 1467:21 <b>served</b> 1509:25 <b>serves</b> 1377:3 1391:4 <b>services</b> 1400:20 1463:10 1481:14 <b>set</b> 1428:6 1442:10 <b>setting</b> 1426:21 1440:5 1469:9 1510:8 <b>settings</b> 1332:1 1459:20 <b>settle</b> 1299:10 <b>set-up</b> 1388:15 <b>seven</b> 1388:3, 4 1415:8, 18, 25 <b>seventh</b> 1388:17 <b>seventy-five-</b> <b>percent</b> 1487:10 <b>shaking</b> 1306:12 1484:9 <b>share</b> 1332:22 1346:16 <b>shared</b> 1352:3 1356:11 1358:20 1364:3 1376:24 1408:13, 23 1409:5 1416:2 1452:18 1453:2, 10 1471:24 1510:24 <b>sharing</b> 1452:20 <b>she'll</b> 1487:6 <b>short</b> 1388:24 1423:10	1477:18 1480:15 1487:25 1488:6, 16 <b>shortened</b> 1438:10 <b>short-term</b> 1486:11 1487:12, 20 <b>show</b> 1312:19 1313:3, 20 1319:22 1380:23 1381:12, 14 1383:5 1408:5 1428:9 1476:13 1512:13 <b>showed</b> 1294:10 1435:12 <b>showing</b> 1334:17 1419:21 1420:8 <b>shows</b> 1380:16 <b>shutdown</b> 1314:13 <b>sic</b> 1498:5 <b>side</b> 1321:25 1337:16 1442:5 1449:7 1452:18, 22 1489:11 1495:2, 4 <b>sides</b> 1403:5 1450:6 <b>sight</b> 1490:13, 15 1491:5 1499:2, 14, 17, 18, 21 1500:4, 13 1506:23 1507:3, 5, 6, 7, 8, 10, 11, 16, 21, 22 <b>sign</b> 1516:15 <b>signature</b> 1397:24 1398:9, 11 <b>signed</b> 1295:11 1348:17 <b>significance</b> 1482:7, 9 <b>significant</b> 1353:7, 23 1355:25 1366:5 1388:8	1416:3 1436:14 <b>similar</b> 1320:11 1460:20 1461:17 <b>simply</b> 1319:23 <b>single</b> 1353:17 <b>sir</b> 1347:25 1415:20 <b>sit</b> 1299:2 1361:12 1367:4 <b>site</b> 1500:1 <b>sitting</b> 1349:7 1430:14 1436:10 <b>situation</b> 1379:3 <b>situations</b> 1428:10 <b>six</b> 1324:19 1326:10, 11, 14 1486:14 <b>sixth</b> 1362:7 1369:23 1387:25 <b>sixth-grade</b> 1325:20 1326:4 1412:2 <b>sixth-grade-</b> <b>content</b> 1362:8 <b>sixth-graders</b> 1362:15 <b>Sixty</b> 1437:25 1466:9 1509:24 <b>sizes</b> 1388:2 <b>skills</b> 1328:3 1329:19, 21 1331:6 1353:5 1355:8 1359:12, 19 1362:22 1363:10 1370:5 1428:8 1477:6 1478:12 <b>skills-testing</b> 1327:10 <b>skip</b> 1485:22 <b>SLD</b> 1400:22 1402:14 <b>slight</b> 1349:8 <b>slightly</b> 1310:10 1501:24	<b>slow</b> 1387:19, 20 1428:3, 10 1429:19 <b>small</b> 1299:13 1308:19 <b>Smith</b> 1465:24 <b>social</b> 1295:15 1325:21 1326:11 <b>social-</b> <b>emotional</b> 1362:22 <b>social-skills</b> 1413:5 <b>social-studies-</b> <b>teacher</b> 1326:2 <b>soft-C-for-S</b> 1498:15 <b>sole</b> 1464:11 <b>somebody</b> 1373:24 1426:4 1454:17 <b>Someone's</b> 1454:20 <b>somewhat</b> 1297:11 <b>song</b> 1498:1 <b>sooner</b> 1320:19 <b>sorry</b> 1298:19 1303:2 1305:7 1308:24 1309:19 1313:12 1328:6 1344:24 1397:10 1407:9 1408:19 1409:10 1417:6 1420:24 1424:7 1425:10 1428:22 1433:12 1444:7 1445:15 1465:14 1470:21 1471:9 1480:15 1493:13 1494:25 1495:9 1504:25	1509:14 1513:22 <b>sort</b> 1332:9 1487:1, 13 1518:17 <b>sorted</b> 1491:1 <b>sound</b> 1421:20 1429:3 1484:22 1487:1 1488:11, 14 1498:13 <b>sounded</b> 1482:23, 24 1501:3 <b>sounds</b> 1317:5 1339:11 1359:2 1384:16 1423:11 1442:13 1453:22 1454:1 1475:7 1485:14 1486:21, 22 1488:13 1518:1 <b>Southern</b> 1431:23 <b>spanning</b> 1324:22 <b>spare</b> 1425:4 1518:24 <b>speak</b> 1298:6 1300:17 1385:11 1390:2, 15, 17 1392:11 1398:15 1407:10 1410:22 1429:21 <b>speaking</b> 1482:5 1515:3 <b>speaks</b> 1368:17 1381:25 <b>special</b> 1324:1, 3, 4, 8 1326:9 1458:13 1461:20, 21 1463:5 1464:11 1470:8 <b>special-ed</b> 1461:22	1462:16 1463:20 <b>special-</b> <b>education</b> 1324:19 1395:12 1459:13, 16 1461:23 1463:10 1465:20 1466:12 1467:16 1470:7 1471:14 1472:7 1490:22 1509:7, 11 <b>special-</b> <b>education-</b> <b>disability</b> 1460:11 <b>Specialist</b> 1292:21 1467:22 <b>specific</b> 1298:23 1301:13 1352:10 1360:7 1371:25 1381:18 1385:25 1392:14 1400:23 1410:3 1421:18 1462:24 1467:17 1474:24 1486:4, 6 <b>specifically</b> 1306:23 1330:21 1331:4 1350:1 1359:14 1360:3 1362:5 1363:13 1370:10 1383:6 1385:7 1388:10 1409:4 1413:21 1416:20 1427:5 1428:6 1476:19 <b>specifics</b>
--	--	--	---	--	--

1379:25	<b>start</b> 1300:19	<b>statistician</b>	1479:3	1505:13	<b>submit</b>
<b>specify</b> 1515:2	1322:24	1343:14	1503:13	1507:11, 14	1331:24
<b>speech</b>	1323:6	<b>statute</b>	<b>stopped</b>	1514:10	1450:23
1403:20	1358:22	1305:17	1410:1	<b>students</b>	<b>submitted</b>
<b>speech-</b>	1378:1	1470:14, 16	<b>storage</b>	1323:5	1332:3
<b>language</b>	1387:13	<b>statutory</b>	1456:13	1328:17	1382:17
1403:20	1411:16	1335:23	<b>strategies</b>	1329:16	1399:21
<b>speech-to-text</b>	1414:1, 20	<b>stay</b> 1325:22	1487:7	1340:22	1474:18, 19
1412:11	1427:1	1374:8	<b>strategy</b>	1341:3	<b>subpoena</b>
<b>speed</b> 1387:2	1457:10	1392:20	1480:21	1363:7, 19, 20	1309:12, 14
<b>spell</b> 1455:21	1474:10, 24	1519:19, 20	<b>streamline</b>	1364:7	1310:2, 3
<b>spelled</b>	1475:5	<b>staying</b>	1299:22	1366:1, 5	1333:14
1493:2, 20	1476:8	1410:9	<b>Street</b>	1371:10	1346:2, 8, 15,
<b>spelling</b>	1477:5, 9	1426:15	1292:12	1378:9	20 1348:12,
1331:7	1486:16, 25	<b>steam</b> 1362:20	1486:23	1379:5	17, 23 1349:1,
1363:10	1503:11	<b>s-t-e-a-m</b>	<b>strengths</b>	1380:1	3 1423:15
1488:20	1519:14, 16	1362:20	1479:18, 21	1387:12	1424:6, 16, 25
1493:15, 18	<b>started</b>	<b>step</b> 1328:18	<b>strenuously</b>	1388:12, 13	1425:3
1496:6	1296:17	<b>stepping</b>	1443:16	1391:4, 11, 24	<b>subpoenaed</b>
<b>spelling-rule</b>	1315:1	1487:13	<b>stressing</b>	1392:9	1423:23
1387:11	1324:18	<b>sticking</b>	1409:18	1393:3, 16	<b>subsequent</b>
<b>spend</b>	1413:25	1406:21	<b>stricken</b>	1394:15	1315:11
1390:20	1414:10, 11,	1414:21	1447:10	1395:24	<b>subsequently</b>
1399:24	14 1416:22	<b>stipulate</b>	<b>strictly</b> 1419:2	1425:22	1360:14
<b>spent</b> 1450:3,	1427:24	1305:16, 18	<b>strike</b>	1428:10	<b>subset</b> 1507:7,
19	1459:5	1308:1	1444:21	1434:19	8
<b>Spiritose</b>	1467:2	1376:3	1510:24	1436:9	<b>substance</b>
1395:19	1476:6	1401:13, 15,	<b>strongly</b>	1437:23	1320:6
<b>spoken</b>	1506:11	17 1402:11,	1472:18	1460:23	<b>substitute</b>
1413:10	<b>Starting</b>	16 1403:1	<b>structure</b>	1461:7, 16	1347:15
1510:17, 21	1377:25	1406:18	1462:10	1462:21	<b>substituted</b>
<b>spot</b> 1352:12,	1412:1, 2	1432:17	<b>struggled</b>	1467:19	1350:22
18 1357:5	1487:24	1433:11	1379:7	1469:11, 22	<b>substituting</b>
1397:6	1492:8	1515:6, 17	<b>struggling</b>	1474:3	1347:23
<b>spring</b>	<b>starts</b> 1310:1	<b>stipulated</b>	1417:7	1499:23	<b>subtest</b>
1314:12	1386:5	1404:19	1420:24	1509:16	1476:16
1330:11, 13	1482:4 1494:2	1406:13	<b>student</b>	<b>student's</b>	1477:7, 12, 18,
1349:5	<b>state</b> 1302:10	<b>stipulates</b>	1328:24	1367:4	22 1478:9, 22
1350:6	1304:20	1433:3	1329:8	1429:17	1479:1, 8, 10,
1443:14	1314:13	<b>stipulating</b>	1330:1	1434:20	11 1480:5
1474:15	1352:4	1515:9	1352:7	1468:25	<b>subtests</b>
1494:16	1429:14	<b>stipulation</b>	1353:4	1502:1	1477:3
<b>squabbles</b>	1448:2	1299:25	1359:18, 20	1513:21, 25	1479:16
1313:12	1467:15	1300:9	1363:14	1514:4	<b>success</b>
<b>staff</b> 1501:22	1480:10	1354:9	1368:12	<b>studies</b>	1328:16
<b>stand</b> 1386:3	<b>stated</b> 1417:16	1401:20, 21	1369:13	1325:21	<b>successes</b>
<b>standard</b>	<b>state-licensed</b>	1402:20, 24	1371:13	1326:11	1385:11
1372:5	1433:3	1403:17, 24	1388:6	<b>studying</b>	<b>successful</b>
1476:13	<b>statement</b>	1404:6, 13, 22	1440:3, 4, 5	1414:16	1368:24
1478:1, 3	1298:3	1405:7	1448:13	<b>stuff</b> 1511:2	1372:22
<b>standards</b>	1376:3	1406:9, 16	1460:8	<b>subcategory</b>	<b>suffering</b>
1411:3	1404:5	1432:20, 21	1461:2	1487:15	1422:2
<b>standards-</b>	1446:5	1433:1, 9, 13,	1462:6	<b>subject</b>	<b>sufficient</b>
<b>based</b>	1487:14	25 1515:15, 19	1463:24	1317:7	1334:16
1369:10, 13	<b>states</b>	<b>stones</b>	1469:16	1386:12	1349:21
<b>standard-</b>	1440:25	1487:13	1477:15, 19	1451:9	<b>sugar</b> 1497:15
<b>score</b> 1478:5	1462:21	<b>stop</b> 1324:6	1478:6, 8, 11	1458:11	<b>suggest</b>
<b>stands</b>	1482:6	1358:24	1480:8	1485:1, 3, 5	1451:18, 23
1327:13	1501:23	1427:14	1491:2	<b>subjects</b>	<b>suggested</b>
1400:23	<b>stating</b>	1459:25	1499:6	1369:25	1371:18
1466:1	1305:20		1503:25		



<b>suggesting</b>	1308:15, 16	<b>sustain</b>	1345:21	1425:7	<b>teach</b> 1326:21
1307:1, 5	1309:24	1335:17	1367:15	1439:18	1459:8
1452:3	1313:3, 21	1384:15	1370:17	1495:9	1467:14, 19
<b>suggestion</b>	1326:8	1385:2	1371:9, 17, 20	1508:11	<b>teacher</b>
1512:19	1327:9, 16	1484:21	1372:24	<b>takes</b> 1343:13	1307:16
<b>Sugrue</b>	1328:12	1504:16	1373:3, 16	1362:8, 9	1320:13
1291:25	1329:14	<b>Sustained</b>	1378:6	<b>talk</b> 1390:20	1324:10, 19
1520:2, 19	1332:7	1381:23	1396:7	1399:24	1325:20
<b>Suite</b> 1292:3,	1333:20	1404:13	1397:16	1436:19	1329:18
7, 12	1337:14	1405:2	1456:23	1471:1	1331:19, 21,
<b>summarize</b>	1347:19	1417:1	1480:24	1477:23	24 1332:5
1369:7	1356:11	1429:25	1489:19	<b>talked</b> 1368:7	1363:11
<b>summary</b>	1362:1	1435:2	1491:16	1398:5	1366:16
1332:23	1365:24	1436:24	1495:20	<b>talking</b>	1371:12
1333:24	1366:11	1514:20	1497:14	1304:14	1372:16
1334:13	1368:14	<b>switch</b>	1500:12	1309:6	1378:12
1340:3	1369:8, 9	1422:20	1501:5, 9	1335:25	1385:14
1341:14	1370:9	<b>sworn</b> 1322:6,	1502:21	1338:10	1386:16
1344:7, 20	1372:15	10 1345:9	1513:18	1341:24	1395:12
1345:10, 12	1373:14	1455:3, 10	<b>table</b> 1476:23	1347:13	1425:23
1347:11	1374:17	1508:20	<b>Tabs</b> 1297:8,	1358:25	1426:17
1348:4, 8, 16	1375:6, 7, 8,	<b>syllable</b>	20	1361:22	1428:14
1350:8, 15, 24	13, 19	1487:9	<b>tactile</b> 1366:2	1382:3	1429:2
1351:17, 23	1376:10, 11,	1488:2, 7	<b>take</b> 1294:19	1393:10	1458:6, 14, 18,
1352:5	21 1378:5	1490:14	1295:24	1417:14, 22	21, 23
1353:1	1379:25	<b>syllables</b>	1296:12	1423:7	1459:13
1359:9	1392:15	1477:14	1298:12	1425:12	1461:11
1381:13	1398:15	1488:18	1299:7, 9	1428:7	1463:4
1408:19	1405:19	<b>system</b>	1300:7	1436:17	1470:7
<b>super</b> 1367:21	1407:11, 19	1369:11, 13	1311:21	1439:1	1472:8
	1414:1	1403:22	1312:16	1446:21	1473:9
<b>superintendent</b>	1420:23	1448:25	1315:20	1460:23	1482:1, 5
1357:25	1425:21	1449:2, 4, 19	1317:6	1461:3	1490:22
<b>superior</b>	1430:9	1451:11	1321:10	1497:18	1496:15
1331:5	1431:21	1470:25	1328:18	1502:21	1497:21
1353:4	1432:2, 12, 13	1471:5, 25	1335:13	1503:8	1501:13, 16
1359:19	1434:14	1503:21	1336:3	<b>tardies</b>	1503:24
1478:10	1435:14	1515:14	1359:6	1381:13, 17	1504:2
<b>supervise</b>	1438:25	1517:6 1519:1	1361:4, 9	1415:8, 16, 18,	1510:1
1362:1	1452:7	<b>systems</b>	1363:7	25	1513:20
<b>supervision</b>	1456:5, 15	1473:16	1367:20	<b>target</b>	1514:9
1328:15	1457:1, 8	<b>system's</b>	1388:22, 24,	1372:17	<b>teachers</b>
<b>supervisor</b>	1459:17	1472:21	25 1394:11	1388:16	1362:1
1358:13	1462:17	1475:3	1409:6	<b>targeted</b>	1366:20, 25
1366:19	1464:8	1513:12	1418:16	1363:10	1367:7
<b>supplement</b>	1471:9		1420:10	1370:6	1368:8
1473:6, 22	1475:1	< T >	1423:10	<b>tasked</b> 1464:8,	1369:1
<b>supplemental</b>	1481:11, 19	<b>Tab</b> 1297:14,	1433:20	22 1468:19	1372:18
1408:8	1490:4	15, 22 1298:1,	1442:3	<b>taught</b> 1303:7	1375:23
<b>supplemented</b>	1491:8	18, 20	1456:25	1390:7	1378:8
1407:18, 19	1492:22	1300:19	1462:2	1429:6	1388:5
<b>supposed</b>	1494:14	1301:2, 17, 20	1480:23	1458:25	1390:15, 16,
1312:19	1501:11	1303:25	1486:13	1459:2, 17, 20,	17, 18
1445:5	1503:21	1304:10, 23,	1508:8, 9	21 1460:4	1464:11
1487:4	1514:17	25 1305:3	1515:25	1461:16	1465:12
1499:12	1517:4, 8	1311:13	1516:17	1469:8, 22	1473:20
<b>Supreme</b>	<b>surprised</b>	1312:4	<b>taken</b>	1470:8	1510:18
1335:9	1444:23	1314:8, 15	1299:16	1507:14	<b>teaching</b>
<b>Sure</b> 1297:12	<b>suspicion</b>	1317:16, 19,	1347:6	<b>Taylor</b>	1324:18
1302:16, 22	1296:18	20 1318:1	1389:2	1316:13	1326:6
1307:12, 19		1333:4	1402:12		1363:19

1459:15	1431:24	1384:24	1481:6	1444:10	1513:4
1460:8	1460:14	1403:10	1492:18, 24	1450:21, 25	1515:7
1462:7	<b>terms</b>	1418:8	1506:15	1454:11	1518:14
1463:23	1359:11, 12	1444:1, 14	1511:4, 19	1455:5, 17	<b>think</b> 1294:3
1467:23	1363:17	1447:19	1516:11	1456:22	1300:5, 16
1473:7 1489:2	1378:10	1448:24	<b>testing</b>	1457:8	1301:15
<b>teach's</b>	1380:4	1449:22, 24	1326:24	1461:14	1302:4, 6
1312:10	1381:15	1451:15, 25	1327:2, 19	1473:5	1303:14, 15,
<b>team</b> 1329:23	1386:25	1452:13	1329:19	1474:4, 5, 9	21 1304:20,
1434:20	1414:13	1470:3, 20	1331:10, 18	1475:10	25 1305:23
1461:23	1427:9	1471:19	1332:17	1476:7	1306:1, 22, 23,
1463:6	1479:21	1472:9 1484:7	1333:24	1478:2	25 1307:3
1468:14	1502:6	<b>testifying</b>	1335:3	1489:24	1308:6, 15, 16
1505:12, 14	<b>terrible</b>	1384:18	1353:3	1491:21	1309:3
<b>technically</b>	1313:11	1445:11, 22	1356:14	1496:5, 14	1310:4
1471:14	<b>test</b> 1321:6	1446:7	1359:7	1497:13	1311:12, 21
	1327:7	1447:21	1406:6, 22, 24	1504:18	1312:1, 2, 3, 4,
<b>technologically</b>	1332:2	1448:7	1407:6	1505:5, 17	12 1313:13
1454:24	1339:4, 14	<b>testimony</b>	1409:3, 18	1508:3, 16	1314:2, 3, 22,
<b>technology</b>	1340:6, 8, 9,	1296:19	1410:1	1511:25	25 1315:4, 20,
1425:18	12, 15 1341:4	1302:6	1478:15	1516:11, 12,	21, 25 1316:3,
<b>teeny-tiny</b>	1362:12	1303:5, 17	<b>tests</b> 1327:8,	15, 18 1519:9,	9 1318:14
1301:24	1406:1	1306:8	9, 11 1334:5	21	1320:7, 11, 12,
1310:18	1410:12, 16	1311:3	1340:10	<b>Thanks</b>	23 1321:5, 6,
<b>tell</b> 1299:6	1412:21	1314:11	1341:21, 22	1397:21	19, 23
1306:2	1418:20	1315:7	1406:4	1455:24	1324:24
1326:6	1465:7, 8, 17	1317:7	1412:14, 20	<b>Thanksgiving</b>	1332:14
1327:14	1466:20	1335:8	1469:16	1379:23	1335:2
1328:10	1467:25	1336:1, 5	1475:17	<b>thereof</b>	1336:14, 18,
1329:11	1469:3	1337:2, 4	1476:25	1520:11	20 1338:14,
1331:20	1473:11	1338:23	<b>Thank</b>	<b>thick</b> 1435:12	15 1339:7, 9,
1336:9	1475:21	1343:3	1296:14, 25	<b>thing</b> 1295:23	22 1342:3
1345:17	1476:2, 3, 9	1353:10	1305:25	1317:16	1343:1, 2, 10,
1352:20	1477:5, 8, 20,	1355:22	1309:14	1318:22	13, 15 1344:3,
1354:23	25 1480:9	1356:24	1310:8	1319:18	12 1345:18
1357:13	<b>tested</b> 1331:6	1372:7	1320:17, 24	1325:6	1350:14
1361:2, 11, 14	1332:11	1375:22	1321:7	1353:20, 25	1351:16
1380:22	1477:6	1376:18	1322:4	1380:14	1353:9, 21, 24
1397:3	<b>tester</b> 1340:20	1382:15	1327:25	1425:11	1354:5, 13, 17
1401:22	<b>testified</b>	1392:3	1350:10	1443:7	1355:6, 20
1414:3	1301:1	1400:8	1351:6	1456:12	1356:17, 18
1430:7	1302:5	1410:11	1356:25	1475:19	1357:24
1439:21	1303:1	1416:24	1357:3	1488:16	1358:1, 22
1449:20	1306:10	1427:3, 6	1360:11, 23	1495:10	1361:10
1457:11	1317:4	1428:17	1361:18	<b>things</b> 1301:5	1364:20
1480:24	1319:3	1439:25	1381:24	1308:5	1365:24
1500:1, 5	1322:10	1440:18	1384:6	1314:10	1373:11
1503:17	1343:24	1441:14, 17	1385:16	1316:3	1374:24, 25
1511:16	1353:25	1442:18	1387:15, 22	1320:12	1375:5
1512:5	1354:2, 7	1446:18	1406:14, 19	1327:19	1376:7
<b>telling</b>	1395:11	1447:9	1408:7	1334:1	1380:11
1443:21	1402:5	1449:15	1409:14	1337:21	1382:14
1485:19	1450:20	1450:2	1420:5	1340:24	1383:14, 19
<b>ten</b> 1434:3	1455:10	1451:20, 23	1421:3	1419:13	1386:20
1496:13	1466:6	1453:24	1426:10, 12	1429:13, 14	1387:15
1508:10	1468:10	1454:24	1429:25	1431:12	1388:2, 18, 19
<b>term</b> 1358:2	1517:1	1461:5	1432:15	1445:5	1393:23
1377:9	<b>testify</b> 1317:9,	1465:20	1435:2, 16	1456:4	1400:10
1392:7	10 1335:10	1469:10	1438:20	1478:16	1402:6, 18
1416:11	1339:3	1471:6	1439:5, 7	1479:2	1404:21
	1376:12	1472:1	1441:21	1511:23	1406:9

1412:8	19, 23, 25	1331:6	<b>today</b> 1295:5,	<b>trained</b>	1397:2
1416:2, 23	1383:8, 9, 23	1332:9	23 1296:9	1464:10, 23	1398:20
1419:19	1384:4, 10	1340:18	1297:2	1465:9	1426:5
1423:9	1409:20	1350:6	1321:6	<b>training</b>	1452:7
1424:5	1413:18	1351:20, 21	1323:17, 21	1326:20	1483:14, 23
1425:4	1414:18	1353:17	1359:12	1334:15	1484:19
1426:3	1418:9	1356:12	1367:8	1363:12	1494:1
1428:16, 20	1444:15	1361:13	1384:3	1464:9	1504:6 1515:7
1429:20, 22	1479:23	1367:6	1385:1	<b>trainings</b>	<b>tuition</b>
1433:1, 16, 24	1492:10	1369:15	1392:3	1465:12	1389:20, 23
1434:2, 9	1494:17	1372:2	1413:21		<b>turn</b> 1367:15
1436:21	1496:4	1378:8	1415:4	<b>TRANSCRIPT</b>	1394:17
1438:4, 16	<b>third-grade</b>	1380:21	1422:14	1291:14	1454:4
1443:20	1332:5	1394:6	1430:15	1302:25	1456:22
1446:3	<b>third-to-last</b>	1425:4	1436:10, 14,	1354:6	1497:14, 25
1449:11, 12	1409:17, 20	1433:21	18 1439:6	1417:12, 21,	1513:17
1450:12, 18,	<b>thirty</b> 1465:2	1439:5	1440:8, 18	23 1520:7	<b>turned</b>
22 1451:2, 15	1505:2	1446:16	1446:8	<b>transferred</b>	1311:19
1452:15	<b>thought</b>	1448:16	1447:1	1324:5	1313:20
1453:20	1304:2, 12	1449:12	1448:15, 16,	<b>transitioning</b>	1423:14
1454:8, 14	1315:7	1450:3	20 1451:13	1463:18	1424:3
1460:1	1348:24	1458:14	1481:5	<b>travel</b> 1494:15	1456:9
1462:15	1350:18	1462:2, 7, 11,	1518:23	<b>treading</b>	1473:23
1464:18	1359:23	20 1464:16	<b>TODD</b>	1354:14	<b>twelfth</b> 1323:7
1465:3	1384:7	1466:2, 4	1292:9	<b>treat</b> 1336:4	<b>twelve</b>
1466:15	1392:12	1467:19	1322:15	<b>treated</b>	1378:19
1470:17, 20	1397:8	1477:20	<b>todd.ratner@r</b>	1354:21	1379:17
1472:4, 8, 21	1398:25	1480:4	<b>atnerplc.com</b>	<b>treatment</b>	1384:13
1473:2	1399:5	1486:13	1292:9	1459:19	1414:23
1479:20	1403:19	1488:5, 22	<b>token</b> 1463:16	1462:18	1416:4
1482:14	1404:23	1489:9, 11	<b>told</b> 1466:3	<b>tremendously</b>	<b>twenty</b>
1483:16, 24	1426:16	1507:3 1515:2	<b>top</b> 1318:22,	1388:15	1347:3
1484:5	1433:12	<b>timed</b>	24 1339:10	<b>tried</b> 1362:17	1360:24
1486:11	1434:4	1477:18, 20,	1380:24	1404:13	1361:5
1487:15	1461:3	21 1478:25	1384:5	<b>trouble</b>	1470:10
1493:21	1504:11	<b>times</b> 1311:22	1476:23	1405:18	<b>twenty-five</b>
1498:18	1513:2	1340:14	1479:23	1407:12	1465:5
1500:16	1515:24	1368:22	1480:19	1409:10	1505:2
1501:16	<b>three</b> 1297:6,	1379:7	1481:16, 22	1426:16	1516:24
1504:9, 15, 20	7 1324:22	1422:19	1496:13	1442:20	<b>twenty-two</b>
1505:2, 8	1325:1, 2	1435:8	1498:5	1478:13	1518:24
1506:7, 10, 17	1344:23	1438:5	<b>top-left</b>	<b>true</b> 1355:13	<b>twice</b> 1460:9,
1508:4, 17	1345:7, 15, 24	1443:11	1313:17	1396:1	14
1510:25	1346:25	1462:12, 14	<b>torment</b>	1477:20	<b>two</b> 1296:16
1511:5, 8	1367:23	1465:1, 3, 22	1422:8	1520:6	1302:19
1513:5, 7	1381:5	1466:8, 24, 25	<b>total</b> 1386:2	<b>Trust</b> 1483:13	1303:12
1515:4, 11	1386:2, 7	1476:1, 4, 5	<b>touch</b>	<b>try</b> 1306:21	1309:16
1516:7, 8	1395:20	1502:4	1361:14	1347:25	1310:3, 5
1517:9	1415:23	<b>tiny</b> 1300:20	1366:25	1400:16	1311:2
1518:5, 15	1503:8 1517:3	1301:18, 20	<b>touched</b>	1437:13	1317:10
<b>thinking</b>	<b>Thursday</b>	1310:15	1367:7	1452:4	1354:22
1361:8	1291:17	1380:2	<b>toxic</b> 1416:18	1454:21	1358:15
<b>thinks</b>	1380:17	<b>Tisdell</b>	1421:16	1471:6	1362:10
1364:21	<b>tie</b> 1372:23	1339:20	<b>track</b> 1383:24	1472:13	1379:15
1383:15	<b>time</b> 1298:12	<b>title</b> 1321:18	1384:1	<b>trying</b>	1379:15
<b>third</b> 1297:15	1308:13	1389:9 1393:2	<b>traditional</b>	1301:12	1386:12
1303:1, 14, 15	1313:4, 8	<b>TNCS</b>	1517:23	1305:8	1388:4
1310:11	1314:3	1432:23	<b>traditionally</b>	1339:17	1432:5
1380:6, 17	1316:7, 10, 23	<b>TNCS.org</b>	1490:13	1340:23	1437:22, 23
1381:6, 11, 17	1320:21, 22	1419:23	<b>train</b> 1426:15	1346:24	1439:25
1382:3, 7, 18,	1325:24	1420:20		1358:1	1443:11, 24
					1444:12

1454:18	1314:6	1493:8	<b>vacation</b>	1469:9, 12, 15,	<b>vowels</b>
1487:11	1316:5, 24	1499:18	1381:4	17, 23 1470:4,	1480:16
1488:8		<b>understands</b>	<b>VAIS</b> 1432:24	6, 12 1471:14	1487:25
1489:22	<b>undergraduate</b>	1485:19	<b>variability</b>	1472:7	1488:8, 16
1490:13	1324:14	<b>understood</b>	1354:3, 10, 23	1473:21	<b>vs</b> 1291:9
1501:1	<b>underneath</b>	1296:12	1355:14, 16	1505:7, 11, 15	
1506:20, 22	1392:5	1346:16	1364:5	1520:1, 3, 13,	
1507:1	<b>understand</b>	1376:18	<b>varies</b> 1363:7	20	< W >
1518:14	1328:7	1504:18	<b>variety</b> 1366:8	<b>Virginia-</b>	<b>wait</b> 1380:13
<b>two-point</b>	1335:5	1519:7, 8	<b>various</b>	<b>License</b>	<b>waiting</b>
1302:3	1336:22	<b>unfamiliar</b>	1324:23	1394:14	1360:21
<b>two-syllable</b>	1337:3	1487:8	1372:16	<b>Virginia-</b>	1361:2, 12
1487:21	1341:10	<b>unfortunately</b>	1405:22	<b>Licensed</b>	1388:12, 13
<b>two-way</b>	1342:11, 20	1468:19	1470:11	1393:3, 15	1457:6
1486:23	1349:25	<b>ungraded</b>	1501:21	<b>Virginia-</b>	1491:22
<b>two-year</b>	1355:1	1318:11	1507:4 1514:7	<b>specific</b>	<b>walk</b> 1367:4
1305:16	1358:11	<b>unique</b>	<b>VCPE</b> 1392:1,	1475:22	1371:6
1308:5	1360:4	1362:25	7 1430:21, 23	<b>virtual</b>	1450:17
1313:4	1364:9	<b>units</b> 1414:13	1431:1, 17	1311:20	1483:19
1515:13	1374:4, 10	<b>University</b>	1432:4, 6	1312:21	<b>walked</b>
<b>type</b> 1297:22	1377:3	1324:1	<b>VCV</b> 1488:15	1426:20	1450:15
1305:21	1381:10	1458:10, 15	1499:13	1469:9	<b>want</b> 1298:2,
<b>types</b> 1480:7	1382:11, 16	<b>update</b>	<b>VCVE</b>	1470:1 1473:7	9 1301:11
1487:9, 22	1384:20	1378:9	1488:16	<b>virtually</b>	1302:9, 23
1488:7, 18	1385:3	1465:13	<b>VDOE</b>	1459:2	1303:3
1490:3	1394:6	<b>updated</b>	1291:9	1509:20	1304:1, 11, 20
1499:7, 13	1401:9	1411:3	1433:10, 15	<b>visual</b> 1366:1	1305:4, 5
1507:4	1411:9	1465:10	1436:1	<b>vitae</b> 1456:24	1307:2, 11, 13
<b>typical</b>	1412:4, 6	1476:4	<b>vehicle</b>	<b>VOICE</b>	1309:7
1341:1	1419:18	<b>updates</b>	1501:25	1294:18	1315:23
1452:14	1425:20	1465:12	<b>version</b>	1295:11, 16	1317:9
1453:4, 6	1431:25	<b>updating</b>	1412:15	<b>Voir</b> 1293:11	1318:17
<b>typically</b>	1442:21	1410:25	<b>versus</b>	1466:15	1320:8, 17
1332:25	1450:21	<b>uphold</b> 1451:6	1335:25	1467:8 1511:7	1321:9
1376:6, 8, 22	1452:8	<b>upper</b>	1336:17	<b>Volume</b>	1322:5
1411:2	1453:3	1309:10	1349:21	1293:20, 21,	1330:22
1449:5	1469:6	1315:18	<b>vest</b> 1488:13	22 1297:8, 15,	1333:20
1453:1	1483:5, 12, 20	1363:8 1498:1	<b>video-</b>	16, 24 1298:1	1336:25
1462:6, 9	1487:12	<b>upset</b> 1470:19	<b>streaming</b>	1305:5	1337:17
1465:11	1492:6	<b>upside-down</b>	1295:8	1317:20	1338:12
1477:13	1495:8	1313:17, 21	<b>VIRGINIA</b>	1333:4	1342:6, 18
1481:11, 24	1501:9	<b>use</b> 1316:25	1291:2, 19	1344:25	1344:15
1491:1	1506:13	1327:17	1292:3, 8, 13	1345:1	1346:4
1501:21	<b>understanding</b>	1352:1	1324:5	1348:5	1353:20
1507:10	1334:17	1410:22	1326:8, 16, 17,	1351:11	1366:11
< U >	1342:25	1412:5	19 1390:23	1367:16	1368:14
<b>Uh-huh</b>	1343:9	1417:9, 12	1391:1, 21, 24	1373:4	1374:11
1330:16	1364:17	1425:18, 21	1392:2, 4, 5,	1385:21	1379:25
1477:4 1492:8	1365:19	1440:24	10 1393:19	1414:6	1380:20
<b>umbrella</b>	1368:15	1441:4	1395:24	1434:16	1393:22
1431:24	1369:2	1479:1	1396:23	1456:23	1396:3
1432:4, 24	1370:9	1487:7 1495:5	1399:17, 21	1457:4	1397:17
<b>unclear</b>	1386:16	<b>useful</b> 1305:22	1430:24, 25	1489:18	1407:18
1302:20	1395:18	<b>usually</b>	1431:5, 21	1491:20	1419:8
1439:23	1406:5	1368:10	1432:19, 24	1495:1, 16, 17	1420:23
<b>undated</b>	1410:25	1482:2	1433:10	<b>Volumes</b>	1423:5, 6
1304:17	1431:9	<b>utilized</b>	1434:10, 13	1456:16	1424:10
1305:15	1434:18	1418:19	1458:22, 24,	<b>vowel</b>	1427:3
1307:21, 23	1442:22	< V >	25 1462:22	1487:25	1432:2
1310:25	1466:2		1467:15, 18	1488:6, 8, 17	1433:20, 22
			1468:5		1438:24
					1439:14

1445:16	1366:5	1316:15, 21	<b>whereabouts</b>	1394:4, 5	1477:21, 24
1452:5	1479:19, 22	1319:16	1383:22	1398:10, 12,	1480:5
1489:9	<b>website</b>	1320:6	<b>w-i-c-h</b> 1498:5	15 1407:15	1481:9
1495:3	1492:4	1338:22, 23	<b>Wide</b> 1327:10	1418:20, 22,	1482:2
1497:7, 8	<b>Wechsler</b>	1342:4	1340:9, 15	24 1419:15	1483:21
1500:15	1327:23	1353:10	1341:4	1420:17	1484:11
1502:5, 7	<b>week</b> 1294:17,	1359:5	1410:11, 16, 18	1429:5	<b>Wooster</b>
1503:10, 17	24 1397:22	1366:5	<b>willing</b>	1431:2	1457:14
1506:4, 15	1438:5, 8, 9	1375:14	1305:15, 17	1439:10, 11	<b>word</b> 1323:9
1512:19	1509:22	1378:6	1401:15, 17	1440:2	1343:10
1518:10, 11	<b>weeks</b> 1381:5	1382:3	<b>Wilma</b>	1441:12, 13,	1364:19
1519:17	1415:23	1388:7, 25	1301:17	16 1443:25	1405:13, 21
<b>wanted</b>	<b>weird</b> 1325:24	1389:5, 6	1302:18	1445:12, 14	1477:9, 12, 14,
1294:12	<b>welcome</b>	1392:5	1310:12	1446:2, 7, 8,	16 1478:20,
1310:7	1336:24	1397:9	<b>windy</b>	14 18 1448:6,	21 1479:2
1339:16	<b>well</b> 1294:25	1403:3	1496:16, 22	18 1449:5, 6,	1480:22
1342:11	1304:6	1407:19	<b>winter</b>	11 1450:4, 11	1488:4, 13, 18
1350:5	1308:1	1415:12	1379:23	1451:22	1490:20, 24
1403:12	1313:7	1419:19	1474:15	1454:11, 17	1491:10
1417:12	1343:16	1429:22	<b>WISC</b>	1455:3, 9	1493:16
1420:15	1353:8	1431:11, 18,	1327:20, 21	1457:5, 8	1494:10, 12,
1428:25	1356:14	19 1432:2	<b>W-I-S-C</b>	1466:17	17, 22, 23
1471:8	1367:11	1433:1	1327:21	1467:2, 5	1495:3, 13, 24,
1473:22	1373:24	1434:3	<b>wish</b> 1519:3	1469:24	25 1496:2, 4,
1504:24	1374:24	1436:19	<b>wished</b> 1446:1	1470:4, 21	10, 24 1497:1,
1518:5, 23	1385:12, 25	1439:12, 17	<b>wit</b> 1520:1	1471:12, 16,	3, 4, 9 1498:6,
<b>wants</b> 1434:2	1401:4	1441:9	<b>witch</b> 1498:5	19 1472:1, 10	15 1499:18
<b>w-a-r-e</b>	1411:12	1444:13	<b>withdraw</b>	1473:5	1502:14
1490:8 1493:2	1417:15	1446:21	1401:13	1482:9, 14	1503:12
<b>warn</b> 1503:19	1426:8	1457:6	1431:15	1484:1, 3, 7,	1507:13, 16, 18
<b>watch</b> 1305:10	1431:22	1460:23	1432:14	13 1488:25	<b>word-</b>
<b>water</b> 1512:10	1453:3, 17	1461:4	<b>withdrew</b>	1492:17	<b>decoding</b>
<b>way</b> 1305:22	1464:15	1471:11	1432:16	1498:23	1480:21
1311:22	1469:2	1484:4, 22	<b>witness</b>	1499:5, 8	<b>words</b>
1313:20	1470:2	1494:8	1295:25	1502:11	1387:10
1316:25	1479:20	1502:21	1298:13	1504:4, 23	1405:18
1320:20	1480:4	1508:14, 17	1321:4	1505:16	1456:20
1323:7	1493:9	<b>We've</b>	1322:6, 9	1506:9, 16	1477:8, 11
1330:3	1511:15, 24	1300:12	1325:12	1508:16, 21	1478:17
1331:9	1516:14	1306:8	1326:14	1511:17, 18	1482:24
1342:21	1518:18	1314:11	1327:16	1513:7, 10	1487:8, 21, 22,
1344:10	<b>went</b> 1315:3	1344:5	1334:20, 25	1515:22	23 1490:3, 12,
1363:18	1323:25	1346:4, 5	1335:1, 3, 4, 6,	1516:12, 15, 18	13, 15, 25
1377:3	1352:21	1400:8, 14	7, 9, 18, 19	<b>witnesses</b>	1491:1, 2, 4, 5
1388:9	1379:10	1452:14, 16	1336:7	1355:2	1492:5, 6, 16,
1392:8	1400:25	1466:15	1338:6	1403:12	20, 25 1493:4,
1395:8	1420:4	1489:10	1342:16	1417:14	7, 18, 23
1423:4	1449:13	1492:24	1351:2	1441:1	1494:6, 11
1430:20	1463:15, 16	1511:8	1353:19	1453:12	1496:3, 7
1482:4	1494:25	1516:24	1356:20	1517:1, 13	1498:3, 13, 22
1517:16	1511:5	1517:17, 24	1357:19	<b>Wonderful</b>	1499:2, 3, 7,
<b>ways</b> 1328:12	<b>we're</b> 1294:3	<b>whack</b>	1358:7	1320:9 1321:8	14 17, 18, 21,
1357:25	1296:9	1356:12	1359:3	<b>Woodcock</b>	22, 23 1500:2,
1364:4 1366:8	1299:14, 21,	<b>Whatever's</b>	1375:1, 13	1327:20	4, 11, 13, 14
<b>weakness</b>	23 1301:4, 12,	1303:16	1376:10, 20,	<b>Woodcock-</b>	1506:23
1353:24	19 1302:14	1481:21	22 1377:1, 8,	<b>Johnson</b>	1507:3, 4, 5, 6,
1354:8, 11, 16	1304:13	<b>whatsoever</b>	13 1380:16,	1465:7, 17	7, 8, 10, 22
1356:23	1305:15, 19	1348:23	23 1381:5	1466:20, 22	1508:1, 2
1437:5	1306:25	<b>w-h-e-r-e</b>	1382:13, 24	1467:1	<b>work</b> 1297:20
<b>weaknesses</b>	1307:5, 22	1490:8	1384:1, 5	1469:3	1298:3, 22, 25
1353:7	1311:12	1495:24	1387:2, 5	1475:2, 17, 21	1300:22

1301:3, 10, 12, 14 1305:14, 18, 20 1308:2, 3 1312:10 1314:6, 10, 20 1316:16, 22 1318:5 1319:8, 11, 17, 21 1320:4, 21 1324:14 1389:17 1402:9 1404:13 1437:6 1465:11 1474:17, 19 1482:2 1483:23 1485:13 1488:21 1489:20 1492:15, 19 1493:1, 4 1494:20 1499:2 1504:1, 8 1506:22 1507:2 1513:21, 24, 25 1514:4, 7, 10, 16, 24 1515:1, 5, 17, 19, 20 <b>worked</b> 1320:7 1323:11 1325:3, 8 1377:19 1386:17 1472:7 1515:11, 12, 13 <b>working</b> 1320:18 1350:10 1370:10 1371:14 1372:19 1386:12, 18 1473:20 1487:4 1490:4 1499:7, 13 <b>works</b> 1519:13 <b>worksheet</b> 1497:17 1498:20 <b>worry</b> 1493:14 <b>worst</b> 1302:1	<b>worth</b> 1300:8 1317:7 <b>worthy</b> 1308:7 <b>wrap</b> 1504:21 <b>WRAT</b> 1410:19 <b>WRAT4</b> 1339:2 1340:5 <b>WRAT-4</b> 1410:21, 24 1411:12 <b>WRAT-5</b> 1410:22 <b>write</b> 1366:6 1386:24 1401:5 1405:11 1473:13, 16 1481:13 1485:16 1515:18 <b>writes</b> 1449:6 <b>writing</b> 1299:13 1306:24 1307:10 1315:24 1318:6 1319:3 1362:20 1363:9 1387:4 1398:2, 22 1428:22 1463:25 1464:2 1488:20 1498:20 <b>written</b> 1297:20 1305:22 1306:13 1311:6 1314:20 1318:4 1354:15 1380:12 1396:15, 18 1442:15 1444:16 1447:6, 7 1448:8 1449:5 1450:24 1452:21, 23 1453:2, 14 1465:3 1474:17, 19 1477:1 1487:3 1492:15	1506:22 1507:2 1512:11 <b>written-</b> <b>recommendati</b> <b>on</b> 1447:3 <b>wrong</b> 1314:24 1364:19 1390:23 1402:21 1418:19 1490:7, 19 1493:3, 16, 18, 20 1497:5 <b>wrote</b> 1307:1, 16, 17 1315:10, 18 1316:18, 19, 20 1421:1, 22 1473:25 1474:1 1490:8  < Y > <b>Yeah</b> 1298:12 1304:8 1308:18 1315:9, 25 1330:12 1338:19 1342:10 1375:5 1381:23 1406:10 1419:17 1428:6 1429:22 1470:15 1495:6 1498:12 1504:5 <b>year</b> 1314:13 1315:12 1330:15 1332:25 1360:18 1361:23 1362:6, 7, 16 1369:16 1371:23 1411:24 1412:3 1414:20 1415:2 1416:22 1422:17 1459:3, 4, 7, 8 1463:8 1465:15 1469:9 1470:9	1472:7 1473:9 1486:6 1505:12 <b>years</b> 1302:19 1309:16 1310:4, 5 1311:2 1323:22 1324:19 1354:22 1457:17 1464:17 1465:10 1467:3 1470:10 1473:20 1491:14 <b>yesterday</b> 1294:18 1323:15 1344:4 1417:11 <b>young</b> 1460:16  < Z > <b>zero</b> 1319:1 <b>zeros</b> 1369:15 <b>Zoom</b> 1296:18 1376:23 1426:21
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