

VIRGINIA DEPARTMENT OF EDUCATION

DUE PROCESS HEARING

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

Petitioner,

vs.

VDOE Case No. 22-84

CHESTERFIELD COUNTY SCHOOL BOARD,

Respondent.

DAY 6

TRANSCRIPT OF PROCEEDINGS

BEFORE SARAH S. FREEMAN, ESQ., HEARING OFFICER

March 28, 2022

9:04 a.m. - 4:07 p.m.

Midlothian, Virginia

Job No. 47230

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25

1 ALSO PRESENT:

2 April Lennox, CCPS Dyslexia Specialist

3 **REDACTED**, Parent

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EXHIBITS

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1 (9:04 a.m.)

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3

P R O C E E D I N G S

4

5

(Court reporter previously sworn.)

6

7

THE HEARING OFFICER: This is the sixth day of
8 the due process hearing for REDACTED. Her parent
9 is here, Mrs. REDACTED. I assume Mr. REDACTED is not
10 going to be here today.

11

MRS. REDACTED: He is not going to be here today.

12

THE HEARING OFFICER: We will miss him, but we
13 are happy to have you here. The parents are
14 represented by Sarah Ratner and Todd Ratner, and
15 they're here. I'm the hearing officer.
16 Ms. Boeding is the court reporter.

17

Do you recall that you were placed under oath
18 at the beginning of the hearing?

19

THE COURT REPORTER: Yes, ma'am.

20

THE HEARING OFFICER: Mr. Andriano is here to
21 represent the school system. Ms. Owens is not here
22 at this second, but she's here. I have seen here.
23 We have two observers out in the audience -- the
24 observer section. I don't know if it's proper to
25 call it the audience. Let's see. And then we have

1 Ms. Lennox, who is the representative, and I don't
2 know if I introduced you that way at the
3 initiation. I'm so sorry if I didn't. But she is
4 the -- you are going to have spell your name.

5 MS. LENNOX: A-P-R-I-L L-E-N-N-O-X, the LEA.

6 THE HEARING OFFICER: She is the
7 representative.

8 We are getting ready to have Stephanie Smith,
9 I believe, is the first witness, and if you'll ask
10 her to come in, I will swear her in.

11 Any motions before we do that? I'm sorry.

12 MR. RATNER: I don't think it's a motion
13 specifically.

14 THE HEARING OFFICER: Anything to discuss so
15 we can save time?

16 MR. RATNER: Sure. So I think School Board is
17 still kind of working out the order of witnesses
18 perhaps, and that's certainly their prerogative,
19 but to the extent we can get at least an idea of
20 the order of today, it just would help me be a
21 little bit prepared and that, I think, would save
22 some time. Otherwise, I have to fumble around a
23 little.

24 THE HEARING OFFICER: Mr. Andriano, I know
25 Ms. Smith is going to be first, and I don't know to

1 what extent you-all spoke about the witness order
2 on your side or the other side, but if you could
3 fill us in, that would be great.

4 MR. ANDRIANO: So Ms. Smith will go first. I
5 think this was sent last night.

6 MR. RATNER: I saw it, but there was a lot of
7 "mays" and not --

8 MR. ANDRIANO: Because we had to get coverage.
9 Ms. Pettitway will be second, Ms. McCluskey will be
10 third, and Ms. McCarthy will be probably our final
11 witness for today.

12 MR. RATNER: Okay. Thank you.

13 THE HEARING OFFICER: Can you go over that
14 again? I'm sorry.

15 MR. ANDRIANO: Stephanie Smith. I'm sorry.
16 I'm not feeling well, if I lose my voice, but I
17 will try my best. Stephanie Smith, Kim Pettitway,
18 Christine McCluskey.

19 THE HEARING OFFICER: Christine --

20 MR. ANDRIANO: McCluskey. And then Cynthia
21 McCarthy.

22 THE HEARING OFFICER: All right.

23 MR. ANDRIANO: And then we will just have to
24 see, but that should be it. I imagine that will
25 get us through today.

1 THE HEARING OFFICER: Good morning. We are
2 waiting for Ms. Owens.

3 MR. ANDRIANO: No, I'm sorry. She's got a
4 prehearing conference call.

5 THE HEARING OFFICER: Oh, really? Okay. Let
6 the record reflect then that Ms. Owens is occupied
7 with another hearing, and Mr. Andriano will move
8 ahead for the school system, and at a later time
9 this morning, Ms. Owens will join us.

10 And in the meantime, when you have a chance to
11 organize over there, Ms. Smith, would you raise
12 your right hand, please. It's Stephanie Smith,
13 correct?

14 THE WITNESS: Correct.

15
16 (Witness sworn.)

17
18 THE HEARING OFFICER: Thank you. Answer any
19 questions from school counsel first, who will -- to
20 his initial examination, and then there will be
21 follow-up questions/cross-examination by Mr. Ratner
22 or Ms. Ratner. I might have a question or two, but
23 I try to wait until you're done or they're done and
24 not interrupt their flow of questioning, unless
25 something occurs to me that I don't understand,

1 then I may jump in. But that's generally it. And
2 there might be some more follow-up after they do
3 their initial examinations.

4 Go ahead.

5

6 STEPHANIE SMITH,

7 having been duly sworn, testified as follows:

8

9 DIRECT EXAMINATION

10 BY MR. ANDRIANO:

11 Q Good morning, Ms. Smith. How are you?

12 A I'm good. Good morning.

13 Q I'm losing my voice so just ask me to repeat
14 a question, please, if you can't hear it -- if you
15 can't hear me.

16 Now, Ms. Smith, you were REDACTED's fourth
17 grade special education teacher, correct?

18 A Yes.

19 Q And were you also her case manager?

20 A Yes, for her fourth grade year.

21 Q For the fourth grade year, which would have
22 been --

23 A 2019-2020.

24 Q Right, 2019-2020. Thank you.

25 Ms. Smith, can you briefly describe your

1 educational background to Ms. Freeman, the hearing
2 officer.

3 A Yes, I have a bachelor's of psychology from
4 Longwood College. I have a master's of special
5 education also from Longwood College.

6 THE HEARING OFFICER: What was the master's?
7 I'm sorry.

8 THE WITNESS: Longwood. Special ed. Sorry.
9 Now university.

10 BY MR. ANDRIANO:

11 Q And that master's was in special education?

12 A Special education.

13 Q Do you hold a teaching license in Virginia?

14 A Yes, I have a current teaching license in the
15 state of Virginia, and I have an endorsement in
16 specific learning disabilities, I have an endorsement
17 in emotional disabilities, and I have an endorsement in
18 intellectual disabilities.

19 THE HEARING OFFICER: You are probably going
20 to have to speak up so we can all hear. The most
21 important person in the room to hear you is the
22 court reporter.

23 THE WITNESS: I'll repeat. I have a current
24 license in the state of Virginia, and it is for
25 specific learning disabilities, emotional

1 disabilities and intellectual disabilities, and it
2 is current.

3 THE HEARING OFFICER: Let me get the last one.

4 THE WITNESS: Intellectual disabilities.

5 BY MR. ANDRIANO:

6 Q Ms. Smith, how long have you been employed at
7 Chesterfield County Public Schools?

8 A I've been a teacher in Chesterfield County
9 for 23 years.

10 Q In those 23 years, have you always been a
11 special education teacher?

12 A No. Two years of that I was a coordinator of
13 special education.

14 Q And what's a coordinator of special
15 education?

16 A It is a person that is in the school to
17 coordinate all of the special education services for
18 all the students with disabilities in that school.

19 Q Can you explain your role as a special
20 education teacher?

21 A Yes. So as a special education teacher, I
22 receive a caseload of students that I am responsible
23 for implementing their IEPs, crafting lessons to make
24 sure that their goals are being met, and tracking their
25 progress to make sure that they are succeeding.

1 Q And you also had mentioned that you are a
2 special education case manager?

3 A Yes.

4 Q What does that entail?

5 A So as a special education case manager, it is
6 important that I collaborate with all of the other
7 special education teachers who are possibly working
8 with that student, collaborate with their general
9 education teachers to make sure that they are making
10 progress and that all of the parts of their IEP are
11 being implemented, and then I coordinate and facilitate
12 their IEP meetings.

13 Q What does that mean to facilitate an IEP
14 meeting?

15 A It essentially means I run the meeting. I'm
16 in charge of making sure that everyone is there, that
17 everyone of the IEP team has had input into the IEP,
18 and make sure that the IEP is a good reflection of what
19 the student can do and what are the goals for that
20 student and then conclude the meeting and making sure
21 that we have a consensus on the plan going forward.

22 Q Is this something you had -- is this
23 something you did for REDACTED as well?

24 A Yes.

25 Q Do you provide services to a particular

1 category of students?

2 A Yes. I currently, and have in the past,
3 taught students who have specific learning
4 disabilities, who have other health impairments, who
5 have autism.

6 Q Okay. And in addition to that extensive
7 background in special education, do you have any
8 additional type of trainings?

9 A Yes, I have received specific training in
10 reading instruction while I've been a teacher at
11 Chesterfield County. I had 40 hours of professional
12 development in reading by the Institute of Multisensory
13 Education, and I've had another 40 hours of
14 professional development from the Virginia Department
15 of Education on multisensory language education and
16 implementation through their pilot program that they
17 had in 2019.

18 Q Are you able to carry that training over into
19 your duties as a special education teacher?

20 A Yes. They were both very beneficial, and
21 I've used all of them in my instruction.

22 Q Okay. Now, you said you've been teaching for
23 23 years, correct?

24 A (Nods head.)

25 Q If you had to guess, how many special

1 education students have you caught in those 23 years?

2 A Oh, hundreds of students. My caseload every
3 year could be anywhere from 15 to 22, 23 kids, just
4 depending, so multiply that over 23 years, hundreds of
5 students.

6 Q How about specifically students with specific
7 learning disabilities?

8 A Hundreds of those. It makes up the majority
9 of my year each year.

10 Q And you had mentioned part of your duties is
11 attending IEP meetings?

12 A Yes.

13 Q I know it's going to be hard, but if you had
14 to guess, how many have you attended?

15 A Three or four hundred. At least one per
16 child every year as a case manager, if not more, and
17 then 23 years of teaching, so hundreds of meetings.

18 Q What about facilitating -- you mention that
19 you facilitate IEP meetings as well. If you had to
20 guess --

21 A Hundreds of those.

22 Q Hundreds of facilitating IEP meetings?

23 A Yes.

24 Q Great. And the other thing you had mentioned
25 is the reporting or the monitoring of progress. How

1 many students would you say you have had to report
2 progress or monitor progress on?

3 A The same estimate. It's been hundreds of
4 students over the 23 years that I've been teaching;
5 those that I've had on my caseload as their case
6 manager, plus those that I've had to collaborate with
7 other case managers in giving services.

8 MR. ANDRIANO: Mr. Freeman, just in the
9 interest of time, I would just direct the Hearing
10 Officer's attention, which is already in evidence,
11 School Board Exhibit 71, which is Ms. Smith's
12 resume.

13 THE HEARING OFFICER: Okay. 71. And are you
14 proffering this witness as an expert witness?

15 MR. ANDRIANO: Yes, we are.

16 THE HEARING OFFICER: Objection?

17 MR. RATNER: I would just like one point of
18 clarification.

19 THE HEARING OFFICER: Sure.

20 MR. RATNER: If I could just ask her just one
21 question.

22 THE HEARING OFFICER: Go ahead.

23 MR. RATNER: You mentioned a VDOE pilot
24 program for multisensory in 2019.

25 Do you remember -- can you be more specific

1 within the year when that was?

2 THE WITNESS: It was over the summer of 2019.
3 It was in July, I believe.

4 MR. RATNER: Okay. So that would have been
5 immediately prior to working with REDACTED in the
6 2019-2020 school year?

7 THE WITNESS: Yes, it would.

8 MR. RATNER: So, Ms. Freeman, no objection to
9 her qualifications, but we do have an objection
10 based on a lack of written report of
11 recommendations, et cetera. I'm not aware of any
12 written report being received by us during -- on
13 the 5-day witness exchange. So it's the same issue
14 that the School Board raised with respect to
15 Ms. Capone.

16 MR. ANDRIANO: I'm happy to address that. If
17 you look at that regulation in
18 8 VAC 20-80-210(P)[sic], I believe it's 2, talks
19 about the parties.

20 Ms. Smith is a representative of the School
21 Board, and we're getting ready to highlight her
22 evaluations and recommendations.

23 THE HEARING OFFICER: What page is that
24 evaluation on? 11? Or exhibit, I mean.

25 MR. ANDRIANO: What we're going to be talking

1 about are her progress reports of REDACTED a, her grade
2 reports of REDACTED, and the IEPs that she would be --
3 that she was a part of.

4 THE HEARING OFFICER: Let me just review
5 those. What exhibits? Do you remember what they
6 are?

7 MR. ANDRIANO: Oh, you want the numbers?

8 THE HEARING OFFICER: Yeah, let me just write
9 down what those exhibits are because Mr. Ratner
10 objected to whether or not there's a written
11 notification to the Parent about what these reports
12 are.

13 MR. ANDRIANO: These are reports that are in
14 the student's record that have been in there for
15 years. Again, no surprise.

16 I think the distinction that we're drawing is
17 what Ms. Capone was trying to do was basically
18 provide an evaluation or her recommendation,
19 program recommendations, which the School Board was
20 entitled to know about five days in advance.

21 What Ms. Smith is going to be talking about is
22 what the IEP team, that she was a member of,
23 proposed for REDACTED, what her evaluation of REDACTED's
24 progress was --

25 THE HEARING OFFICER: Where is that -- is that

1 number 11, Exhibit 11?

2 MR. ANDRIANO: I don't know. Ms. Smith --

3 THE HEARING OFFICER: Is she going to direct
4 us?

5 MR. ANDRIANO: So we will start off --

6 THE HEARING OFFICER: If you could just list
7 the exhibits that there are that provide Parents
8 notice of what those written opinions are, if you
9 know. If you don't, then we can just look at that
10 record. So I can put that in my notes. Go ahead.

11 MR. ANDRIANO: School Board Exhibit 3, 16,
12 14 --

13 THE HEARING OFFICER: 14.

14 MR. ANDRIANO: 13.

15 THE HEARING OFFICER: Was that 13?

16 MR. ANDRIANO: Yes, ma'am. And I'm sorry I'm
17 going out of order, but that's how I plan to cover
18 them.

19 THE HEARING OFFICER: That's okay.

20 MR. ANDRIANO: And then 16.

21 THE HEARING OFFICER: 16.

22 MR. ANDRIANO: I think I have -- I think I
23 probably have some messed up here. Let me see.
24 Ms. Freeman, I misspoke, the first one is
25 Exhibit 6.

1 MR. RATNER: So no 3 at all or 3 also?

2 MR. ANDRIANO: You're right, Todd. We'll
3 start with 3. Then we will go to 6.

4 MR. RATNER: 13, 14, 16, correct?

5 MR. ANDRIANO: Correct.

6 MS. RATNER: Ms. Freeman, I would like to note
7 that we object to characterizing any of these
8 documents as an opinion of the expert. These are
9 documents that are part of REDACTED's file. For
10 example, anyone involved in them could have thought
11 something was hypothetically appropriate at the
12 time, but that doesn't mean they now believe that.

13 And I would also like to say, if these
14 constitute notice of expert opinions, then we would
15 argue that our due process complaint is the same,
16 because all the conclusions/opinions stated in that
17 document would have been what our expert would have
18 testified to. The argument made on Friday was that
19 we had a duty under the particular regulation cited
20 to provide a particular expert evaluation or
21 report. And we think the parties are in the exact
22 same position on that as to neither provided a
23 report and now it's too late for our expert.

24 THE HEARING OFFICER: If I recall correctly, I
25 did give the Parents latitude to examine pretty

1 widely, I thought, without qualifying her as an
2 expert. I think we're, again, talking about apples
3 and oranges here. I understand that you believe
4 that your proffer in your due process request gave
5 the school system notice and that there could be
6 conceivably some difference, some controversy about
7 what the witness might be saying now. But as far
8 as giving you notice as far as the exhibits go, I
9 haven't -- I've read them, but I have not directed
10 my attention to them right now.

11 But I'm going to keep your recommendation in
12 mind -- I'm sorry, your objection in mind, and
13 if -- I'm going to ask the witness, is there --
14 does your documentation differ from your opinion
15 this morning?

16 THE WITNESS: No, ma'am.

17 THE HEARING OFFICER: And if there is any
18 controversy between what you're saying and what
19 these records show, I know you're both going to
20 probably tell me about it. But as far as giving
21 notice, these records are the notice. That was the
22 issue with the -- with Ms. Capone; that there was
23 no notice.

24 Your squinching your eyes.

25 MR. RATNER: I'm just listening.

1 MS. RATNER: That's just how his face looks.

2 THE HEARING OFFICER: The hearing officer will
3 take notice of that, that you don't always have a
4 question when you squinch your eyes.

5 But having said that, I'm going to let the
6 school system -- I'll note your exception to the
7 record. And I think that, as far as written
8 opinion, I understand where you're going with that
9 and I understand why you think it may be tilted one
10 way because one side has been chastised -- I don't
11 know if I would use the word chastised. But one
12 side is being permitted to move forward with
13 written evidence that's part of the record;
14 whereas, your witness, the one -- if it's the one
15 I'm thinking about now, Ms. Capone, there was no --
16 and correct me if I'm wrong, both of you, all of
17 you. I don't recall seeing any -- other than in
18 the due process request, which is basically an
19 assertion, it's not substantive matter that shows
20 the other side what the opinion is going to be, and
21 that's the problem with it. There's no -- if she
22 had maybe submitted some documentation, that would
23 have provided notice, but I just don't recall
24 anything written other than the due process
25 request, which you, of course, noted to me,

1 Ms. Ratner. I'm going to note your exception to
2 the ruling. And let's move forward. Overrule the
3 objection. So go ahead.

4 Hold on just a minute. For my own
5 clarification for later, it was -- you're relying
6 on exhibit, School Board Exhibit 3, 6, 13, 14 and
7 16? Is that it pretty much?

8 MR. ANDRIANO: Yes.

9 THE HEARING OFFICER: Why am I thinking 11? I
10 saw something in here, that's why. Exhibit 11, you
11 prepared Exhibit 11, too, though, didn't you? Or
12 you had some part in it?

13 THE WITNESS: Yes, I did.

14 THE HEARING OFFICER: But you may ask her
15 questions about her qualifications; although, I
16 think you said you don't have any objection.

17 MR. RATNER: I do not have any objection to
18 her qualifications. I did have just very brief two
19 points of elaboration to what Ms. Ratner was
20 saying.

21 THE HEARING OFFICER: Go ahead.

22 MR. RATNER: One is we do not agree with the
23 School Board's assertion that the regulations state
24 that a written report is required, and I believe
25 you even stated that, well, maybe it's typical but

1 not required.

2 And then the second point I just would like to
3 make is I very much appreciate your point about
4 interpreting the results of evaluations of
5 psychologists and things like that. I don't
6 believe Ms. Smith did any such thing. It's just
7 what's in the IEP. And as you've said many times,
8 you're very capable of reading it.

9 THE HEARING OFFICER: I can read it.

10 MR. RATNER: Right.

11 THE HEARING OFFICER: And thanks for reminding
12 me of that.

13 MR. ANDRIANO: Ms. Freeman, may I add one
14 point?

15 THE HEARING OFFICER: Yes. Go ahead.

16 MR. ANDRIANO: Just to respond to Mr. Ratner's
17 point, the regulation talks about evaluations or
18 program recommendations. And I think it would
19 be -- I think it would be a different situation if
20 Ms. Capone had attended an IEP meeting and had
21 offered recommendations, that would, you know, be
22 included in the documentation. But it just
23 appeared to us that she was going to be making
24 recommendations that had not been disclosed and
25 that, you know, that's trial by ambush, really.

1 That's what that regulation is permitted to
2 prevent.

3 MR. RATNER: So just briefly, again, I think
4 one of two issues: We agree that there has been
5 some trial by ambush here and it's been difficult
6 to respond to.

7 THE HEARING OFFICER: Well, he's saying he
8 feels as if it was.

9 MR. RATNER: Right.

10 THE HEARING OFFICER: So you're saying you
11 feel trial by ambush?

12 MR. RATNER: Yes, ma'am.

13 And second, one of the issues was, as he said
14 again, we thought she was going to do X. We never
15 even got to that point because you ruled that she
16 couldn't offer quote-unquote programming
17 recommendations when we never said she was going
18 to. Anytime she was about to offer a quote-unquote
19 opinion, it was stopped. And then you wouldn't
20 accept a proffer of what it was. So we really
21 don't know what recommendations --

22 THE HEARING OFFICER: I honestly don't
23 remember all of those details. However, I'm sure
24 they are in the record and if -- whatever I said on
25 Friday, which was the 25th of March, was the way

1 that it was ruled. And that the motion was ruled
2 and you can take it up on appeal, if you want to,
3 if you think I was incorrect.

4 But let's move forward now.

5 MR. RATNER: Yes, ma'am.

6 THE HEARING OFFICER: And I'll note all of
7 your exceptions. And your remarks, Mr. Andriano.

8 So let's move forward with this witness.

9 BY MR. ANDRIANO:

10 Q Ms. Smith, I just would like to spend a few
11 minutes, if you could, I want to describe the time that
12 you were REDACTED's teacher.

13 A Okay.

14 Q When did you first become acquainted with
15 REDACTED?

16 A I became acquainted with REDACTED when she
17 started attending Old Hundred Elementary School in the
18 fall of 2019.

19 Q And so that was her fourth grade year?

20 A Yes.

21 Q And were you her teacher for the entire
22 fourth grade?

23 A Yes, I was. I provided her reading services
24 to her for her fourth grade year.

25 Q And how often did you provide those reading

1 services to her?

2 A It was five hours every two weeks, so it was
3 30 minutes a day. So I saw [REDACTED] every day for reading
4 instruction in a small group setting.

5 Q Can you please describe to Ms. Freeman [REDACTED]
6 as a student. How was she?

7 A Okay. [REDACTED] was a delight. [REDACTED] was a great
8 student. I had a really great relationship with [REDACTED].
9 [REDACTED] really thrived off of adult relationships and
10 adult conversations. So she was always really eager to
11 come to class. She wanted to know what we were
12 learning that day in reading group. She would tell me
13 where she had used things that we had gone over in
14 class and different strategies that we learned. She
15 would come and she would be like, I saw that in a book
16 I was doing and I used it. She was -- strived a lot on
17 verbal praise and prompts. So she was great. She was
18 always attentive. She actually would prompt other
19 students and try to help them in our small group
20 setting. Many times she had recess right after the
21 time that she was with me. So she would stay a little
22 bit and want to talk about things and show me things
23 and tell me what she was reading at home. So she was a
24 delight. And she really took in what was being given
25 and used it. It was really good. I enjoyed being her

1 teacher.

2 Q Thank you. Did you have any issues with
3 school avoidance with REDACTED?

4 A No. REDACTED was always ready to come to my
5 class. REDACTED would run down the hallway to get to my
6 room and make sure that everybody was in tow.

7 THE HEARING OFFICER: What's the last thing
8 that you said?

9 THE WITNESS: To make sure everyone was in
10 tow. She made sure all -- it was a couple of other
11 boys that would come also, and she made sure to
12 round them up and get them there. And she was
13 always excited. If she knew something, I would let
14 her, like, show the rest of them with the document
15 camera, and that make her feel really important.
16 There was no anxiety to the fact that she actually
17 probably wanted to teach the class.

18 BY MR. ANDRIANO:

19 Q Okay. Great. Thank you for sharing that.
20 If I could direct your attention, Ms. Smith, to School
21 Board Exhibit 3.

22 A Okay.

23 Q Do you recognize that document, Ms. Smith?

24 A Yes, I do.

25 Q What is it?

1 A This is the IEP Amendment from October 14,
2 2019, and it was amending the IEP that had been written
3 at Swift Creek Elementary School, which is the prior
4 school she had before coming to Old Hundred, and we
5 were amending it to update her Developmental Reading
6 Assessment scores, accommodations and writing
7 objectives.

8 Q And you had mentioned the previous IEP. Do
9 you know whether the previous IEP was, quote, her
10 initial IEP?

11 A Yes. The previous one was her initial IEP
12 where she had just been found eligible prior -- at
13 Swift Creek Elementary School prior to coming to Old
14 Hundred.

15 Q Great. If you could take a look at page 13
16 of School Board 3.

17 THE HEARING OFFICER: School Board 3?

18 MR. ANDRIANO: School Board 3, page --

19 MR. RATNER: Looks to me like it goes through
20 12. Sorry.

21 MR. ANDRIANO: You know, this is --

22 Ms. Freeman, just an off-the-record comment.

23

24 (Discussion off the record.)

25

1 THE HEARING OFFICER: So we don't look at --
2 what page number?

3 MR. ANDRIANO: I'm looking at Bates number 13.

4 MR. RATNER: Sorry about that.

5 BY MR. ANDRIANO:

6 Q Ms. Smith, what I'd like is if you could
7 explain to Ms. Freeman what were you responsible for
8 implementing in this particular IEP? And if we look at
9 page 13, Bates number 13, these are, what, the annual
10 goals, correct?

11 A Yes.

12 Q Were you responsible for implementation of
13 each of these goals?

14 A I was responsible for giving instruction and
15 implementing the two reading goals, which were the
16 first and the second.

17 Q And can you just briefly describe what the
18 purpose of these two reading goals were designed to
19 address?

20 A Yes. So at her previous school, these were
21 the goals that they had proposed and this was the
22 assigned IEP for that time. The first goal was a
23 reading goal for her fluency, which wanted her within a
24 year's progress to be able to do 80 words per minute at
25 her instructional level and with an accuracy of 90

1 percent or more. And it had a benchmark for her to be
2 able to read at 70 percent. So they were trying to
3 scaffold her achievement for that. I was in charge of
4 that.

5 Q Can I just stop you right there for a second?

6 When you use the term "scaffold," can you
7 help me understand what that means?

8 A It means to give benchmarks to where she
9 would be. So they were expecting her to be up to 70
10 words per minute by, it says, December of '05[sic], and
11 then by the end of the goal, for it to be up to 80
12 words per minute. Scaffolding means a lot of times we
13 start with some heavy interventions and a lot of
14 support, and then we start to scaffold or remove those
15 supports as we go to help them be less dependent on the
16 interaction and use the strategies more at an
17 independent level.

18 MR. RATNER: Ms. Freeman, I hate to interrupt,
19 but I'm afraid this is going to be unclear later.
20 I think she said December '05, and I don't believe
21 that's what she meant.

22 THE WITNESS: No, I'm sorry. You're right.
23 It's December 5th of 2019.

24 THE HEARING OFFICER: Thank you for pointing
25 that out. You're paying very close attention.

1 THE WITNESS: So that's what it would have
2 been for that first goal.

3 BY MR. ANDRIANO:

4 Q And then you had a second reading goal?

5 A Yes. So the second reading goal talked about
6 decoding and encoding vowel pairs and then being able
7 to use information from syllable types to be able to
8 apply that to her written expression in the general
9 education classroom, and then it broke it down into
10 objectives for specific vowel types and syllable types
11 that she needed to be instructed on.

12 Q So you were responsible for those two
13 particular goals?

14 A Yes.

15 Q Now I see a third goal here, a writing goal.
16 Were you responsible for implementation of that
17 particular goal?

18 A No, I was not. That was Ms. McCluskey. I
19 was in charge of the reading that was taking place in
20 the special education setting, so the pull-out setting.
21 Ms. McCluskey was the collaborating teacher with REDACTED's
22 fourth grade teacher, and they provided that
23 instruction in the general education classroom.

24 Q Can you just describe when you say
25 "collaborative," what does that mean?

1 A Collaborative means that there's two teachers
2 in the classroom; that there is a special education
3 teacher and a general education teacher, and the two of
4 them co-teach that class together, and the class is
5 made up of students who have disabilities and students
6 who do not.

7 Q And that is Ms. McCluskey co-teaching with a
8 general education teacher?

9 A Yes, it was.

10 Q Could you please take a look at page 15 of
11 this IEP.

12 Do you recognize that page?

13 A Yes. This is her accommodations page.

14 Q And what were you responsible for
15 implementation on this particular page?

16 A I was responsible, as her case manager, to
17 make sure that these accommodations were being given to
18 REDACTED. Yes, all of those were the accommodations that
19 we gave her that school year.

20 Q What was the purpose of these accommodations?

21 A Accommodations are there to help students --

22 Q Well, how were -- for REDACTED --

23 A Oh, her accommodations?

24 Q Yes, why were these accommodations in place
25 for REDACTED?

1 A These were the accommodations that she needed
2 in order to be successful in the general education
3 curriculum. So these were the supports that she needed
4 at that time.

5 Q Okay. And there's also services at the
6 bottom of this particular page, correct?

7 A Correct.

8 Q And what were you responsible for in terms of
9 service time?

10 A I gave her the reading five hours every two
11 weeks in the special education setting.

12 Q Okay. Great. Now, Ms. Smith, I want to fast
13 forward, because we're dealing with a relevant time
14 period beginning February 1st of 2020.

15 Can you please describe when the school year
16 ended for the 2019-2020 school year?

17 A At that time on March 13, school was closed
18 for a teacher workday because of the global pandemic,
19 and we were given a workday to prepare for what was
20 going to happen. And then as of that following Monday,
21 the 16th, school was closed due to a global pandemic.

22 Q Is that March 16, 2020?

23 A Yes.

24 Q Okay. So sticking with that time period,
25 February 1st, 2020, to March 16, 2020, can you please

1 describe to Ms. Freeman how you implemented REDACTED's IEP
2 services with respect to reading and phonemic
3 awareness?

4 A Sure. I'm going to go back and reference
5 those goals, if that's okay.

6 So I taught REDACTED in a special education
7 classroom for 30 minutes a day to give her specialized
8 reading instruction. In that time, I used a
9 multisensory approach that was very systematic. I had
10 a scope and sequence of how I was going to, and I did,
11 introduce different phonics concepts and then different
12 syllabication rules and then how to decode and encode
13 those lessons that I taught her. That's how I
14 implemented her IEP at that time as in relation to the
15 two goals.

16 And then I kept data on those goals and gave
17 her diagnostic[sic] reading assessments to make sure
18 that she could apply them independently when given a
19 passage that was new to her and could assess what I had
20 taught her and was she able to use it to increase her
21 reading ability.

22 Q Thank you. Now, you used the term
23 multisensory instruction. I am not a teacher. So
24 please teach us what that means, multisensory
25 instruction.

1 A Multisensory instruction means that you are
2 instructing a student using a multitude of
3 instructional techniques that elicit different senses
4 for the student in order to be able to retain the
5 information and to store it in their long-term memory
6 and then apply it later on independently when they
7 read.

8 So I would use body motion, head motion,
9 mnemonic devices for different rules. We would clap
10 out different rules. We would have chants to different
11 rules.

12 Q And what does all that do?

13 A All of that initiates different parts of a
14 student's brain to be able to take the information and
15 store it more easily. So if a student is only getting
16 information auditorily with a teacher teaching, then
17 they may not be able to understand that. But when you
18 start teaching a child and you show them color-coded
19 syllables and you start labeling things with very
20 specific, distinct instruction and you are being very
21 systematic about how you introduce it and how you
22 enforce it, that helps them to be able to read.

23 Students without disabilities make
24 generalizations just from being told or being taught
25 one time certain things. Students with a learning

1 disability, especially in reading, need it repetitive
2 and need it introduced in a multitude of ways for them
3 to be able to then generalize it.

4 Q And is that what you implemented with REDACTED
5 during the fourth grade school year?

6 A Yes, I did.

7 Q Ms. Smith, I want to direct your attention,
8 please, to School Board Exhibit 16 -- I'm sorry. I've
9 got these out of order. School Board 6.

10 A Okay.

11 Q Do you recognize this document?

12 A Yes, I do.

13 Q What is it?

14 A It is REDACTED's IEP that was proposed on
15 April 20, 2020.

16 Q And why was this IEP proposed?

17 A REDACTED's annual IEP was up for her annual
18 review.

19 Q Did you participate in this meeting?

20 A Yes, I did.

21 Q If I could direct your attention to page 25
22 of this document --

23 A Okay.

24 Q -- under the Functional Performance section.

25 A Uh-huh.

1 Q If you need to take a moment to review that
2 section, that's fine, but are you familiar with this
3 section of the IEP?

4 A Yes.

5 Q What is it?

6 A This shows how she made her reading progress,
7 and it gives data to show where she started that school
8 year and where she was in February of that school year.

9 Q And can you describe to the Hearing Officer
10 the data that you reported within this particular
11 section of the IEP.

12 A Yes. This data I put in for comparison data.
13 I listed October 2019. At the request of Mrs. REDACTED,
14 we had the reading specialist give her the diagnostic
15 reading assessment, and we gave --

16 Q Can I stop you right there? What is the
17 diagnostic reading assessment?

18 A The diagnostic reading assessment is the
19 reading passage that students read. They are leveled
20 based on grade level, and they read a passage. It's an
21 unknown passage, so they haven't seen the passage
22 before. The teacher marks different miscues, which are
23 mistakes that the student makes, and makes notes of
24 those. At this level of a 24, it would also be timed
25 to see what their words per minute were. Then the

1 child is asked comprehension questions to see if they
2 comprehend the passage and what they read. Then that
3 determines for us what level the child is reading on
4 and determines whether or not they are making progress.

5 Q Okay. And it's called a diagnostic reading
6 assessment?

7 A Yes.

8 Q Is it also referred to by its acronym the
9 DRA?

10 A Yes.

11 Q Thank you. What did you report here in terms
12 of your findings?

13 A When she was given -- I'm sorry, I said
14 diagnostic. Can I go back? It's developmental. I'm
15 so sorry. I mix those two up a lot. It's
16 Developmental Reading Assessment.

17 Yeah, she was given the Developmental Reading
18 Assessment in October of 2019. At that time she was
19 reading independently a Level 24. She had -- a Level
20 24 would be approximately mid second grade, and the
21 second grade -- so the 20s kind of go through the
22 second grade, the 30s kind of go through the third
23 grade, the 40 levels go on and on from there.

24 The comprehension was noted to be at a great
25 level, 17 out of 24. She had made improvements on her

1 words per minute. She was up to 72. And her accuracy
2 was 99 percent. The reading specialist had tried to
3 give her --

4 MR. RATNER: Could I interject for just a
5 moment? I got distracted when I was trying to find
6 something else. So I apologize.

7 MR. ANDRIANO: We're on page --

8 MR. RATNER: I'm on the page, but I couldn't
9 tell -- there was a question about whether the
10 reading specialist gave the DRA or if Ms. Smith
11 did. And, again, certainly you can read this, but
12 it's just not clear to me if she's talking about
13 things she administered.

14 THE WITNESS: So during the school year -- can
15 I answer that?

16 BY MR. ANDRIANO:

17 Q Hold on. Let me ask you. You mentioned a
18 reading specialist. Did the reading specialist assist
19 with this DRA?

20 A With the October one, yes.

21 Q And did you subsequently conduct the DRA?

22 A Yes.

23 Q And what did you determine?

24 A I did the one throughout the school year and
25 the one that was the data for the next paragraph, the

1 February 2020, I administered that.

2 Q And what was the results of that DRA?

3 A The results of that DRA showed great
4 improvement. She was able to read a Level 38 with
5 97 percent accuracy, and she had made great
6 improvement. So she had gone from a Level 24 to a
7 Level 38 just between October and February of that
8 year. So she made more than a year's growth in just
9 the month.

10 MR. RATNER: Objection. Calls for an opinion.
11 She just said she has not reviewed or didn't
12 administer the prior ones that she is now offering
13 a comparison to. I think the best evidence of the
14 prior DRA assessments would be the assessments, not
15 a hearsay statement in a report.

16 THE HEARING OFFICER: Okay.

17 MR. ANDRIANO: Lots to unpack there, but let
18 me start from the top.

19 First of all, she's an expert witness, so she
20 can certainly offer an opinion. Second of all, she
21 did administer the DRA. Third of all, she is the
22 student's case manager so she's responsible for, as
23 we discussed, tracking REDACTED's progress in all these
24 particular areas. And then the hearsay objection,
25 this is a business record, so obviously it's --

1 there's the business record exception. Then
2 finally, the best evidence rule, this is the best
3 evidence.

4 THE HEARING OFFICER: This IEP is the best
5 evidence. So if I recall -- I believe that you
6 proffered this witness as an expert. I don't
7 remember whether or not I actually said the word
8 she's qualified as an expert witness and what
9 topics and all of that.

10 Did you want to go into that for the record?

11 MR. ANDRIANO: I thought we did.

12 THE HEARING OFFICER: I don't remember any
13 discussion about topics, though. That alerts my
14 brain to whether or not she was qualified. She led
15 up to being qualified, but I don't recall you
16 proffering her as an expert. But she is an expert.
17 If you just give me a topic, I'll put it down.

18 MR. ANDRIANO: Sure. We had -- I thought we
19 went through this.

20 THE HEARING OFFICER: That's okay. I think we
21 got into a discussion and then you started again.
22 I was assuming she was qualified, but I don't have
23 anything in my notes about the topics. So I don't
24 think we actually --

25 MR. RATNER: My recollection is the same, but

1 I don't think I had an objection.

2 THE HEARING OFFICER: That's what it was. He
3 said, I have no objection to her qualifications.

4 MR. RATNER: That's correct.

5 THE HEARING OFFICER: So she is accepted as an
6 expert. I just need to know what topic. Reading?

7 MR. ANDRIANO: Move to qualify her as an
8 expert in areas of IEP development, IEP progress
9 monitoring --

10 THE HEARING OFFICER: Wait a minute. I ran
11 out of paper. I'm sorry.

12 MR. RATNER: I've got an extra pad.

13 THE HEARING OFFICER: No, no, I have an extra
14 pad. I just don't want to write over. I have an
15 order that I do, and if I mix up the pads, then
16 it's hard to follow my notes.

17 Okay. I'm ready for you.

18 MR. ANDRIANO: Ms. Freeman, we move to
19 qualify --

20 THE HEARING OFFICER: So you're moving to
21 qualify her and the topic is?

22 MR. ANDRIANO: IEP development, IEP progress
23 monitoring --

24 THE HEARING OFFICER: Okay.

25 MR. ANDRIANO: -- and education of students

1 with specific learning disabilities.

2 THE HEARING OFFICER: Progress monitoring and
3 then I didn't get the last one.

4 MR. ANDRIANO: Education of students with
5 specific learning disabilities.

6 THE HEARING OFFICER: Okay. Now, do you have
7 any -- does your side have any objection to those
8 particular areas of qualification?

9 MS. RATNER: We don't object to her
10 qualification as an expert. We maintain our
11 ongoing objection to the distinction made between
12 the testimony permissible from somebody qualified
13 as an expert versus somebody qualified as a lay
14 witness. We -- it's the same --

15 THE HEARING OFFICER: Which you've noted
16 before.

17 MS. RATNER: Correct.

18 THE HEARING OFFICER: And I'm going to note
19 the Parents' exception to the qualification -- not
20 to the qualifications, but to their earlier request
21 regarding expert witnesses.

22 MS. RATNER: The scope of testimony.

23 THE HEARING OFFICER: The scope of testimony.
24 All right. Thank you for that.

25 So let's move on, and she's -- unless you have

1 any -- I don't think you had any questions about
2 her certification in IEP development, progress
3 monitoring or educational specific learning
4 disabilities.

5 MR. ANDRIANO: Education of students with --

6 THE HEARING OFFICER: Of students with special
7 education learning?

8 MR. ANDRIANO: Specific learning disabilities,
9 or SLD for short.

10 THE HEARING OFFICER: Okay. SLD. So let's
11 move on.

12 BY MR. ANDRIANO:

13 Q Now, Ms. Smith, looking at this page of the
14 IEP, the DRA scores are reported on this page?

15 A Yes.

16 Q Is that standard practice?

17 A Yes, it is.

18 Q And explain to Ms. Freeman why that's
19 standard practice.

20 A Because it is how we report out data on
21 students and whether or not they have made progress on
22 their IEP goals. And the Developmental Reading
23 Assessment, the DRA, is -- was an excellent tool to use
24 at that time. It showed her accuracy of reading, and
25 it showed her comprehension of what she could read. It

1 was -- the concepts that I had taught her were embedded
2 in those passages, and we could assess for them.

3 Q Okay. So you were talking about comparing
4 the October 2019 results with the February results?

5 A Yes.

6 Q And please continue.

7 A Okay. So in February I had administered the
8 DRA to her, and she had read a level of 38 with
9 97 percent accuracy, and so that shows that her reading
10 level had increased from a 24 to a 38 at that time.
11 And that was between --

12 MR. RATNER: Object to the characterization of
13 that. I don't believe that's what this says. We
14 had some discussion about that previously.

15 THE HEARING OFFICER: Level 24 to Level 38,
16 there was an objection. Any response?

17 MR. ANDRIANO: It mischaracterizes what's
18 stated here?

19 MR. RATNER: Correct. It indicates how she
20 did on the 24 and the 28, and then it differently
21 states she was able to read a level 38, which is
22 not the same as scoring at an instructional or
23 independent level.

24 MR. ANDRIANO: Well --

25 MS. RATNER: Also, there's a category that's

1 not being discussed and --

2 MR. ANDRIANO: Are you-all going to gang up on
3 me?

4 MS. RATNER: I'm sorry. I know. If you give
5 me one --

6 MR. ANDRIANO: Sure.

7 MS. RATNER: I haven't talked that much, I
8 don't think.

9 THE HEARING OFFICER: I've been rather lax
10 about that, but I think we'll continue on with our
11 same process.

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

13 MS. RATNER: I just do --

14 THE HEARING OFFICER: Go ahead, Ms. Ratner.

15 MS. RATNER: Thank you. I'm sorry. I do have
16 this DRA assessment, the paper of it, and so we can
17 just go through on cross the -- there are
18 subsections of this document that show her not
19 passing in her areas of weakness, fluency rate, and
20 I think that the discussion of other aspects of it
21 is incomplete. But that can be discussed when it's
22 our turn or we can look at this document now. And
23 I won't interrupt anymore.

24 MR. ANDRIANO: So you-all can bring that up on
25 cross.

1 THE HEARING OFFICER: Yeah, so overruled at
2 this point. But Ms. Ratner was -- would like to
3 reserve the ability to question the witness on the
4 DRA assessment and the meaning of it and the
5 interpretation of it. So for now we will move on
6 with this witness's testimony. And overruled.

7 BY MR. ANDRIANO:

8 Q Ms. Smith, so what's your understanding of
9 what the results of the DRA assessment were?

10 A The results of the DRA showed that she had
11 made significant progress from October to February.

12 Q And why do you say that there was significant
13 progress?

14 A Because of the increase in the level
15 according to her accuracy of being able to read it, and
16 then further on in this document -- in this document on
17 the functional performance, I went ahead and since she
18 had made such great progress, I did an error analysis
19 of the miscues, which are the mistakes that she made
20 when she was reading, and then I summarized them in her
21 IEP. I did say that she used learned knowledge of
22 syllable types and syllable --

23 MR. RATNER: Objection. We've never seen this
24 error analysis.

25 THE HEARING OFFICER: If that's the case, let

1 me just hear a little bit about it, if that's in
2 the exhibits, because Mr. Ratner pointed out that
3 he's never seen this.

4 THE WITNESS: The error analysis would mean
5 that it would just be me looking at the DRA,
6 looking at her miscues, and then I noted in her IEP
7 what types of mistakes she was making.

8 MR. RATNER: That's right.

9 THE HEARING OFFICER: Did you share -- is that
10 in the book, the error analysis?

11 THE WITNESS: No, it was in a separate
12 document.

13 MR. RATNER: Right. And it's not in the book.

14 MS. RATNER: Not produced to us.

15 MR. RATNER: At all.

16 THE HEARING OFFICER: Any objection to
17 overruling it? I'm sorry. Sustaining it? If the
18 document is not in there, I don't see how they
19 would have known about it.

20 Sustained. Let's move on.

21 BY MR. ANDRIANO:

22 Q Ms. Smith, do you maintain all of the
23 underlying records for DRA assessments?

24 A No, I do not.

25 Q Do most teachers maintain --

1 MR. RATNER: Objection to what most teachers
2 do. She said she didn't.

3 THE HEARING OFFICER: Sustained.

4 MR. ANDRIANO: Todd, she supervised -- as she
5 indicated, she mentors and supervises teachers.

6 MR. RATNER: I don't see the relevance of it.
7 But, again, Ms. Freeman, our concern has been, and
8 I wanted to clarify when you said this document is
9 the best evidence, because she wrote something in
10 this document about an error analysis doesn't mean
11 it reasonably and accurately reflects the error
12 analysis.

13 THE HEARING OFFICER: That's true.

14 MR. RATNER: That's why we've been asking to
15 see the error analysis.

16 THE HEARING OFFICER: Now, do you have that
17 error analysis with you today?

18 THE WITNESS: No. When I --

19 THE HEARING OFFICER: Go ahead. That's okay.
20 Go ahead and explain.

21 THE WITNESS: I think there may be a
22 misunderstanding of what I mean by an error
23 analysis. It means that I analyzed her -- analyzed
24 as in I look at the mistakes that she made and I,
25 in my brain, analyzed each of her mistakes and then

1 when I looked at those mistakes, I wrote down in
2 this IEP what those mistakes were to make it clear
3 and even to what the mistakes were that she was
4 making. I did not write it down and write down
5 each one. I have on the DRA the mistakes that she
6 made when I did it. And I just wanted it to be
7 even more clear in her IEP what those mistakes
8 were.

9 MR. RATNER: And we can certainly explore this
10 in cross, but just a minute ago she said there was
11 a separate document that we don't have.

12 THE HEARING OFFICER: Okay. I'll take notice
13 of the fact that you don't have the document, but
14 what she's explaining to me is her process for
15 coming to the conclusion that she did. She's an
16 expert witness. She can tell me that. Although, I
17 would sustain the objection as far as you not
18 producing a document and that they would have been
19 entitled to that document. But you mentioned that
20 you did -- you completed an error analysis and
21 there wasn't necessarily a document that you
22 utilized. I think there's sufficient notice in
23 this IEP to give the Parents' notice of the fact
24 that she did an error analysis and that's the way
25 she arrived at her opinion.

1 MR. RATNER: But I don't know how we are going
2 to cross-examine her on some something we've never
3 seen.

4 THE HEARING OFFICER: The process was
5 mentioned here. Although, if they tried to
6 introduce a document, I would certainly sustain on
7 that. But right now I'm just listening to the
8 mental process she went through to get to the point
9 where she made the recommendation.

10 MR. RATNER: Understood. Yes, thank you.

11 THE HEARING OFFICER: I hope -- I think that
12 sounds reasonable but go ahead.

13 BY MR. ANDRIANO:

14 Q Ms. Smith, just for the record, this
15 information, is this discussed during the IEP team
16 meeting?

17 A Yes. Yes. It's discussed in an open
18 conversation during the IEP team meeting.

19 Q And that information is included in the IEP;
20 is that correct?

21 A Correct.

22 Q Thank you. All right. And just to make
23 sure, you had mentioned something about more than a
24 year's growth. What does that mean?

25 A It means in looking at her growth, when it

1 comes to her reading instruction, that she was making
2 more progress per nine weeks and was making progress on
3 her goals and she was starting to read and make
4 progress that was above what would be expected of a
5 general education peer. She was making progress above
6 what I would have expected from October to February.

7 I made sure to put it down in this IEP
8 meeting, and I wanted to make sure it was very clear in
9 the IEP meeting. Since that was more progress, I
10 wanted to explain what her errors were even at the
11 Level 38 and that -- to show that she was really
12 applying what had been taught to her in the instruction
13 in the special education classroom.

14 Q Thank you. You also, on page 26 of that
15 document, there's a reference to the Phonological
16 Awareness Screening Test?

17 A Yes.

18 Q Or PAST, P-A-S-T. Did you administer that?

19 A Yes, I did.

20 Q And what's the purpose behind the PAST?

21 A It addresses phonological awareness in a
22 student and assesses that. This was a screening test
23 that was used at that time to determine -- it was to
24 determine whether or not the student had such a
25 significant disability with phonemic -- phonological

1 awareness that they would require having standardized
2 reading assessments read to them because they were way
3 above their ability to read them. So I gave her this
4 Phonological Awareness Screening Test. It says
5 February 24 of 2020. And in that, she completed that
6 task with 96 percent accuracy and 75 percent
7 automaticity. So she did not qualify at that time to
8 have any reading assessments read to her.

9 THE HEARING OFFICER: What's meant by
10 automaticity?

11 THE WITNESS: I have to count how fast she
12 responds to --

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

14 THE WITNESS: So on 75 percent of the things
15 that I presented her with, she automatically gave
16 me the correct answer.

17 BY MR. ANDRIANO:

18 Q How about the writing? What was the progress
19 on her writing?

20 A So the progress for her writing shows in her
21 IEP that she was -- in looking at her prompts for each
22 nine weeks, that she was getting passing scores, that
23 she had become comfortable using a Chromebook to take
24 notes. She completed classwork using Google Slides;
25 that she was using writing prompts; and that she had a

1 lot of good voice and she was using spellcheck
2 comfortably and with ease, according to her
3 accommodations.

4 Q How about the interventions and strategies
5 that you-all documented here?

6 A At the bottom we list the successful
7 interventions and strategies that had been used during
8 the course of the IEP.

9 Q And what were some of those?

10 A For reading, the multisensory approach to
11 reading was great. She was responding well to that.
12 She was responding well to the collaborative classroom
13 for the writing instruction. She was making physical
14 progress on her IEP. She was applying the decoding and
15 encoding strategies that I had given her in the small
16 group setting. It showed that she was using voice to
17 text when composing on her Chromebook for her writing
18 prompts. She was comfortable using the technology.
19 She was using the headphones to block out noise and
20 also used it for the voice to text.

21 Q Thank you. If I could direct your attention
22 to page 30 of this document now.

23 Ms. Smith, did the IEP team at this meeting
24 propose reducing writing services from the previous
25 IEP?

1 A Yes, we did.

2 Q Why?

3 A Because she was making great progress and we
4 wanted to, again, like I said before, like scaffold her
5 supports. She was making great progress when it came
6 to Ms. McCluskey's instruction of her, and she wanted
7 to reduce her services to three hours every two weeks
8 instead of five hours every two weeks.

9 Q And did the team propose changing the reading
10 services from a special education classroom to a
11 general education classroom?

12 A Yes.

13 Q Why?

14 A I proposed that the setting be changed but
15 the amount of hours to stay the same.

16 Q Explain what that would look like.

17 A It would look like she would still get the
18 half an hour a day, five hours every two weeks, of
19 reading instruction with a special education teacher,
20 but we were proposing for the setting to change to the
21 general education setting because now she was reading
22 at a higher rate -- at a higher level and she could be
23 put in a small group with peers that do not have
24 disabilities but were also reading at that same level.
25 They were general education peers who were needing

1 instruction on that level as well, and that would be
2 the next best step for her to make sure we were giving
3 her the least restrictive environment at that time.

4 Q Now, the parents didn't provide consent to
5 implementation of that IEP; is that correct?

6 A That is correct.

7 Q I'd like to direct your attention to School
8 Board Exhibit 14.

9 MR. RATNER: If we are going to change
10 documents, can we just take a very quick break?

11 THE HEARING OFFICER: Yes. Okay.

12 MR. RATNER: Thank you.

13 THE HEARING OFFICER: Let's see. It's about
14 10:05. So 10:15, is that okay?

15 MR. RATNER: Thank you. That's plenty.

16

17 (Break taken.)

18

19 THE HEARING OFFICER: All right. Go ahead.

20 BY MR. ANDRIANO:

21 Q Ms. Smith, I was a little premature, if you
22 could go back to Exhibit 20, please -- I'm sorry,
23 School Board Exhibit 6, page 30.

24 A Sure.

25 Q Now, you indicated that neither Mr. nor

1 Mrs. [REDACTED] consented to this IEP, implementation of
2 this IEP?

3 A Correct.

4 Q In your opinion, was that an appropriate IEP
5 for [REDACTED]?

6 A Yes.

7 Q And why was that?

8 A I think it -- we wrote it to best meet the
9 needs that she was exhibiting at that time, and because
10 of the progress that was documented in the IEP, this
11 was the best proposal for her services at that time.

12 Q Okay. Now if I could direct your attention
13 to School Board Exhibit 14.

14 A Okay.

15 Q Do you recognize this document?

16 A Yes. This is the progress report.

17 Q What is -- is it your progress report?

18 A Yes. This is the progress report for [REDACTED]
19 that I was case manager on.

20 Q Can you please explain to Ms. Freeman your
21 assessment of [REDACTED]'s progress on these goals during the
22 2019-2020 school year.

23 A Yes. So for her reading goal, she has
24 documented progress -- the first one, the reading goal
25 has down for her to read 80 words per minute at an

1 instructional level. She had been making progress on
2 that. She had gone -- she started at a -- there wasn't
3 a -- from June, there wasn't anything from Swift Creek,
4 the June of 2019, but the November shows that I had
5 administered her a DRA Level 30, and she had read it at
6 54 words per minute. And then for the following nine
7 weeks, I had given her a Level 38, and she had read it
8 at 65 words per minute. So that did show some progress
9 when it came to that.

10 But the ultimate goal of 80 words per minute,
11 I was not -- I felt like I needed more time to teach
12 her to see if she could get to that. Then we had the
13 closure of schools, which prohibited me from continuing
14 that with her. And then we did not give progress
15 reports during the third nine weeks as instructed by
16 administration and Chesterfield County Public Schools
17 because we weren't in school. And then we were
18 instructed to put down a final progress report in June
19 to sum up the year even though we hadn't been in school
20 since March. And so I just re-put down the words per
21 minute, the last one that I had been able to get for
22 her for that.

23 Q And did you -- did you -- is it your opinion
24 that REDACTED was making appropriate progress on this goal?

25 A Yes, REDACTED was making appropriate progress.

1 Q And you didn't have -- how much -- you still
2 had how much longer that you could have provided the
3 instruction on this goal?

4 A Correct, I still had the remainder of March,
5 April, May to be able to continue to monitor her
6 progress on this.

7 Q Now, you documented the number 3. How come
8 you didn't document number 4 or number 5?

9 A I didn't document number 4 or number 5
10 because the wording of the progress goals, I felt like
11 she was making some progress. There was an increase in
12 her words per minute, but I felt that I hadn't taught
13 her long enough that year to have a good idea if she
14 would make it to 80 words per minute.

15 Q Did you anticipate that she would be at a 4
16 or even perhaps a 5 by the end of the school year?

17 MR. RATNER: Objection. Calls for
18 speculation.

19 THE HEARING OFFICER: Response?

20 MR. ANDRIANO: That's the way annual goals
21 work. You still have three months left to work on
22 it.

23 MR. RATNER: I guess I'm a little confused
24 about that because we've got a January goal and
25 then we have a June goal, so I don't know where

1 they are getting that they still had three months
2 to work on something -- or excuse me, a January
3 score and a June score.

4 MR. ANDRIANO: So we can clarify that,
5 Ms. Freeman, if you would like.

6 THE HEARING OFFICER: Yes. Go ahead.

7 BY MR. ANDRIANO:

8 Q So, Ms. Smith, there is -- when you take a
9 look at the third reporting period of January 31st, and
10 then there's a gap all the way to June 1st.

11 Can you please explain to Ms. Freeman what
12 was going on during that period.

13 A So the January 31st date is the end of the --
14 if I get this right -- the second nine weeks. So
15 that's when I reported out that progress. And then the
16 third nine weeks, we did not report out progress
17 because schools were closed.

18 Q Why were schools closed?

19 A COVID-19 global pandemic.

20 MR. RATNER: We've covered all this,
21 Ms. Freeman. What we haven't covered is where this
22 idea that she still had three more months to work
23 with her if their position is schools were closed.

24 MR. ANDRIANO: That's not our position.
25 That's just the fact.

1 BY MR. ANDRIANO:

2 Q Explain for Mr. Ratner's concern how you had
3 three more months to work on this goal.

4 A If I had been able to provide instruction
5 after -- because of school closure, I wasn't able to
6 continue to provide her with instruction. So that's
7 why I would have liked to have provided her with
8 instruction so that she could continue to make
9 progress, but I couldn't because schools were closed
10 because of COVID-19.

11 Q And these goals were -- when they were
12 developed, they were expected to run through what date?

13 A The second week in June. I don't remember
14 the exact last day of school.

15 Q Okay. What about the phonemic awareness
16 goal?

17 A Okay. So that goal is at the bottom of that
18 page, and then the progress is on the next page. So I
19 had given her 3's based on she had been able to show
20 mastery of some of the vowel patterns and syllable
21 types that she had been instructed on. And at that
22 time her accuracy was 87 percent when it came to vowel
23 consonant E words. So I would have given her a 3 there
24 because the accuracy was still below what the goal was,
25 but she -- I did expect her to make progress. She was

1 making it at 90 percent or higher when it came to
2 reading and spelling those words for open-closed and
3 silent E syllables when they were mixed together. So I
4 gave her a 3 for that is what they would have gotten
5 for some progress.

6 And then in January, I gave her the 3 because
7 she had done well learning and applying knowledge of
8 the three out of six syllable types. I had more
9 syllable types to go for instruction. So, again, she
10 was making appropriate progress, but I did -- I wanted
11 to still see, as I progressed with the instruction, to
12 see how she did.

13 From -- January 31st was the end of the
14 second nine weeks, and instruction continued to happen
15 after that date up until March 12 and that included the
16 DRA that I gave her that was explained in the
17 functional assessment, because she had made such great
18 progress on that. And I had down in February that data
19 right here also, I gave her a 4 because I had projected
20 that she would meet that goal if instruction had
21 continued. But we were closed down, schools were
22 closed.

23 Q How did she do on her writing goal?

24 A Her writing goal was for her to have a
25 beginning, middle and an end with 75 percent accuracy,

1 and it was reported out in this progress report by
2 Ms. McCluskey that she had -- let me have a minute to
3 read this, please. So Ms. McCluskey had reported out
4 over the three time periods that she could -- that REDACTED
5 was making progress on her writing goal and that she
6 was making appropriate progress when it came to
7 different forms of writing and that she was able to use
8 the accommodations that she needed.

9 Q Okay. So, Ms. Smith, overall, can you
10 describe to Ms. Freeman whether in your opinion REDACTED
11 made appropriate progress on her IEP goals for the
12 2019-2020 school year?

13 A Yes, I believe REDACTED made appropriate progress
14 on her IEP goals.

15 Q If I could direct your attention to School
16 Board Exhibit 13. Do you recognize this document?

17 A Yes.

18 Q What is it?

19 A This is REDACTED's fourth grade report card.

20 Q And what grade did REDACTED receive for reading?

21 A REDACTED received a B for all three nine weeks.

22 Q How about writing?

23 A For writing she received a B the first nine
24 weeks and A's for the second and third nine weeks.

25 Q What about the writing in variety of forms?

1 A The strand for writing -- the first strand
2 for writing, the writing in a variety of forms, she did
3 receive a 2 the first nine weeks, which says that she
4 was approaching the standard, which means she was a
5 little bit below what the general education standard
6 would have been for that. But then for the second and
7 third nine weeks, she continued to increase her ability
8 in that area of writing for a variety of forms, and the
9 third nine weeks, she got a 4, which means she was
10 exceeding the standard.

11 Q Was REDACTED on the A/B honor roll?

12 A Yes.

13 Q And how did she do in social studies for the
14 last recording period?

15 A She received a B for the third nine weeks.

16 Q And how did she do in mathematics?

17 A She received a C for the third nine weeks.

18 Q And do you know why? It looks from an A to a
19 C. Do you know why that occurred?

20 MR. RATNER: Objection. Calls for
21 speculation. I understand she's her case manager,
22 but I believe she didn't have a math goal at this
23 time. So I'm not aware of how or why Ms. Smith
24 would be involved. Certainly she can answer it,
25 and if she has knowledge, that's great. But this

1 is the way we've been doing it where they haven't
2 had a chance to even --

3 THE HEARING OFFICER: Go ahead.

4 MR. ANDRIANO: She's the student's case
5 manager so she would have obviously consulted
6 with --

7 THE HEARING OFFICER: Were you overseeing her
8 math goal then?

9 THE WITNESS: She didn't have a math goal.

10 THE HEARING OFFICER: If she didn't have a
11 math goal, how did you draw the conclusion that
12 she -- well, let me read it. How did you draw your
13 conclusion about how she was doing in math and
14 whether or not she understood the concepts?

15 THE WITNESS: I regularly spoke to her general
16 education teacher about her progress overall. She
17 never mentioned that they were having any issues
18 with math. I also was making sure when I spoke to
19 the general education teachers -- because she had a
20 different math teacher than -- Ms. Tijerina was her
21 math teacher. Ms. Redd was her general education
22 teacher. To make sure that they, you know, were
23 using the accommodations that were in her IEP; that
24 those are being used and she was being successful.

25 THE HEARING OFFICER: She was being

1 successful, but it says she did go down from an A
2 to a C.

3 THE WITNESS: Correct.

4 THE HEARING OFFICER: So was that a concern?

5 THE WITNESS: It's not a concern that I recall
6 discussing with Ms. Tijerina or Ms. Redd.

7 MR. RATNER: Can we just ask her to spell
8 Tijerina because I know I will have trouble with it
9 later.

10 THE HEARING OFFICER: Spell it if you would.

11 THE WITNESS: I can't.

12 MR. RATNER: I'll find it.

13 THE WITNESS: It's T-J something.

14 MR. RATNER: I will accept responsibility for
15 that. Sorry to put you on the spot.

16 THE WITNESS: I seriously don't know.

17 THE HEARING OFFICER: I think as her case
18 manager, as she explained, she would have spoken to
19 the teacher. I think if Ms. McCluskey wants to
20 testify on that opinion, I think she's coming at
21 some point this afternoon, but it sounds like she
22 has sufficient evidence at this point.

23 MR. RATNER: I don't think she said
24 Ms. McCluskey was the one who she would have talked
25 to about it.

1 THE HEARING OFFICER: I thought Ms. McCluskey
2 was the general education teacher. Who was the
3 math teacher?

4 THE WITNESS: Ms. Tijerina.

5 THE HEARING OFFICER: Did I get something
6 wrong?

7 THE WITNESS: Do you want me to tell you the
8 different teachers?

9 THE HEARING OFFICER: Yes.

10 THE WITNESS: So Ms. McCluskey is the general
11 education teacher, so Ms. McCluskey and myself are
12 both special education teachers, and we both taught
13 her the goals and the service times in her IEP.

14 THE HEARING OFFICER: Okay. And then who was
15 teaching her math?

16 THE WITNESS: And then the math teacher was
17 Ms. Tijerina.

18 THE HEARING OFFICER: Oh, that's right.

19 THE WITNESS: It's a general ed teacher -- a
20 general education teacher that was teaching her
21 math, and then Ms. Redd was her homeroom general
22 education teacher that taught her all the other
23 subjects except for math.

24 THE HEARING OFFICER: Ms. Redd, R-E-D-D?

25 THE WITNESS: Yes, ma'am.

1 THE HEARING OFFICER: And she just basically
2 taught her everything else?

3 THE WITNESS: Yes. So we had conversations
4 between the four of us to make sure that REDACTED was
5 being successful.

6 THE HEARING OFFICER: And what you're saying
7 generally is you're drawing a conclusion from the
8 fact that you don't recall any particular
9 difficulties from your discussions with
10 Ms. Tijerina about math?

11 THE WITNESS: Correct.

12 THE HEARING OFFICER: Although she did go from
13 an A to a C.

14 THE WITNESS: Uh-huh.

15 THE HEARING OFFICER: All right. Go ahead.

16 THE WITNESS: Do you want me to talk about it?

17 MR. ANDRIANO: I'll ask you a question about
18 it.

19 BY MR. ANDRIANO:

20 Q Ms. Smith, wasn't REDACTED involved in an
21 accelerated math curriculum?

22 A Yes, she was.

23 Q Please describe what that means.

24 A REDACTED was involved in accelerated math, which
25 means that she had become eligible to have a math class

1 that was taught at an accelerated pace and combined
2 grade levels over the fourth and fifth grade. The
3 objective of accelerated math is for them to learn all
4 of fourth and part of fifth in their fourth grade year
5 and part of fifth and sixth grade in their fifth grade
6 year. So that's an accelerated math so then they're
7 projected to go on to middle school and be in
8 accelerated math. So fourth grade is where it begins,
9 and REDACTED was in that class.

10 Q And then what was her final grade for
11 science?

12 A Final grade for science was an A.

13 Q Now, Ms. Smith, there's no -- it says N/A, I
14 assume that's not applicable, for all the fourth
15 progress or fourth quarter, I guess, that is.

16 A Uh-huh.

17 Q Why is that?

18 A Grades were not assigned during school
19 closure for the fourth nine weeks.

20 Q Okay. And was that for all students?

21 A It was for all students.

22 Q Was REDACTED promoted to the fifth grade?

23 A Yes, she was.

24 Q Now, during the school closure, Ms. Smith, if
25 we could just talk about that real briefly, did you

1 meet with REDACTED during that period of school closure?

2 A Yes, I did.

3 Q And how did you do that?

4 A We set up Google Meets with REDACTED on a weekly
5 basis to meet with her, and we would coordinate with
6 them so that Ms. Redd and Ms. McCluskey and myself were
7 all -- tried to all be on them together at the same
8 time. And then Ms. Redd had Google Meet classroom
9 meetings that Ms. McCluskey would be a part of to then
10 monitor to make sure that REDACTED was participating in
11 those.

12 Q And did she participate in those meetings?

13 A She participated in -- yes, in most of those
14 meetings. There were times where there was a no show
15 or emails came that we needed to reschedule or things
16 like that, but for the majority of the times, yes, she
17 participated in those.

18 Q And there was -- was there any new
19 instruction going on during that period of time?

20 A No, there was no new instruction after school
21 closure.

22 Q Fast forward to summer 2020, did REDACTED receive
23 any reading services over the summer 2020?

24 A REDACTED received reading services from
25 Ms. McCluskey in the summer of 2020 during summer

1 school.

2 Q All right. If I could direct your attention
3 to School Board 16.

4 Do you recognize this document, Ms. Smith?

5 A Yes, I do.

6 Q What is it?

7 A It is the IEP that was drafted for the
8 8/25/2020 IEP meeting.

9 Q Now, you just testified a little while ago
10 that there was an IEP meeting in April of 2020?

11 A Uh-huh.

12 Q Why was there another IEP meeting just
13 several months later in August?

14 A The Parents didn't sign consent for the April
15 meeting, and in August, we received an email from
16 Mrs. REDACTED asking to reconvene and discuss her concerns
17 and to have another IEP meeting.

18 THE HEARING OFFICER: When was that date --
19 I'm sorry -- that Mrs. REDACTED contacted you and
20 asked for a new IEP meeting to be set up?

21 THE WITNESS: It was in August. I don't know
22 the date.

23 THE HEARING OFFICER: No, no, no, but it was
24 the month of August of '20?

25 THE WITNESS: 2020, yeah. In August of 2020

1 we received an email saying that Mrs. REDACTED wanted
2 to meet and talk about her concerns with the IEP
3 that wasn't signed or consented to in April and
4 that she wanted to reconvene an IEP meeting. So
5 that's what this document is.

6 BY MR. ANDRIANO:

7 Q So this is -- you convened this meeting
8 because Mrs. REDACTED wanted to meet to go over the IEP?

9 A Right. And to discuss her concerns to then
10 come to the consensus of getting a signed IEP to
11 implement for REDACTED.

12 Q Okay. Great. If I could direct your
13 attention to page 67 of that document.

14 Do you recognize that page?

15 A Yes, I do.

16 Q What is it?

17 A It is her goal page where she has a reading
18 goal and a writing goal.

19 Q And can you describe to Ms. Freeman how
20 you-all came to these goals?

21 A Sure. So the reading goal has down for her
22 to be able to decode unfamiliar, multi-syllabic words
23 with all syllable types learned, and that is --

24 Q Help me understand what that means.

25 A Yeah, so when you have -- she was being

1 taught, when I taught her in fourth grade, different
2 syllable types to help her decode larger words, and
3 she -- because of school closure, I couldn't get
4 through all the different syllable types. So I wanted
5 to continue that on into that instruction and make sure
6 that that continued for her to be able to increase her
7 reading level as well as she had been. So that's what
8 this goal is for, and then -- and I expected a 90
9 percent accuracy on that.

10 That goal we had also taken out the words per
11 minute part that was on the previous goal.

12 Q Why did you do that?

13 A Because we noted that -- we noticed that when
14 I tried to instruct REDACTED on increasing her words per
15 minute, she became very frustrated. She became very --
16 she wanted to look at the timer the whole time that I
17 was getting her to read, and I would like -- I would
18 actually put it underneath the table. I didn't want it
19 to stress her out or anything like that. She was very
20 kind of competitive with herself and wanted to make
21 sure that she was getting better and better and better
22 and faster and faster and faster.

23 But because we noted that she was increasing
24 her reading level and being able to maintain
25 comprehension, despite a slower rate of speed, it

1 really wasn't having an impact on her being able to
2 understand the text that she was reading. So
3 accommodating her for extended times and things like
4 that would have been more applicable at that time for
5 her to be able to read.

6 So we took out the words per minute also
7 because at that time it was coming out that words per
8 minute really was not showing to have as much impact as
9 it had in the past on ability to understand and read
10 text. Just because you can read faster doesn't mean
11 you understand it better. So we took that part out.

12 Q In your opinion, does REDACTED's reading fluency
13 get in the way of her reading comprehension?

14 A No, it did not. She was passing grade-level
15 expectation work in her classroom. She was able to
16 read those things with the accommodations and the
17 instruction. And that's why we had also asked for her
18 to change settings to be more inclusive in the general
19 education class at that time.

20 Q Okay. What about the writing goal, what was
21 the thought behind -- the team's thought behind the
22 writing goal?

23 A So the writing goal was a standards-based
24 goal, so it is based on what is expected in the general
25 education classroom at that time.

1 Q Hold on one second. What's a standard-based
2 goal?

3 A The SOLs are the Standards of Learning. So
4 we would take the Standards of Learning for fourth
5 grade math and look to see where she needed support in
6 that for her disability, and that's how that goal is
7 then written. So this goal was written for that. And
8 it goes into being able to generate her ideas
9 specifically using strategies such as graphic
10 organizers and Chromebook, which was excellent for
11 REDACTED. She was using Google Slides and different
12 graphic organizers on the Chromebook to help her
13 organize her thoughts.

14 Q Let me stop you there. Go back to your
15 teacher mode. Teach me about the Google Slides. What
16 is that?

17 A So she would use Google Slides, which is kind
18 of like PowerPoint but for Google. It had a part in
19 the bottom where you can put like presenter notes, and
20 she could voice type into those to get her ideas out.
21 And Ms. McCluskey had some different kind of templates
22 that REDACTED would like to use that Ms. McCluskey -- I
23 remember Ms. McCluskey telling me, oh, she really likes
24 this one and she's really doing great with that. So
25 that's why she specifically put that in the goal

1 because it was really something that helped her
2 facilitate her writing.

3 Q You had mentioned the Chromebook. What was
4 the purpose behind the use of the Chromebook?

5 A All students have Chromebooks, and they would
6 use it to write, brainstorm, publish writing, access
7 different applications from the county.

8 Q And you said that was, I think you used the
9 term, useful or helpful for REDACTED?

10 A It was very useful and helpful for REDACTED.

11 Q Why?

12 A It seemed to give her that speed and
13 independence that she liked when she used it. She
14 really liked the share feature where she could share
15 things with us back and forth, and we could praise her
16 on it. I know that her and Ms. McCluskey had that
17 relationship when it came to her writing.

18 Q Anything else about the writing goal?

19 A Hold on. I need to read the other objective.
20 Yes, so I remember we specifically put -- the last goal
21 is for the spelling to be incorporated into the writing
22 goal to go along with her being able to capitalize,
23 punctuate and spell, being able to use her Chromebook.
24 Because when I would be able to do the decoding and
25 encoding before in the pull-out setting and she could

1 apply the spelling goals and the reading rules
2 individually and in sentences, but we wanted the
3 instruction on the spelling to be more authentic. So
4 we were addressing that now in the writing goal so that
5 she could then carry over into her writing being able
6 to use what she had learned.

7 Q Okay.

8 A So that's why the spelling was down there.

9 Q In your opinion, are these ambitious goals
10 for REDACTED?

11 A Yes, I think that these are good,
12 appropriate, ambitious goals for REDACTED.

13 Q If I could direct your attention to page 68.

14 A Okay.

15 Q Now, you had mentioned the Chromebook and the
16 Google Slides. Is that -- is this the page that
17 addresses those?

18 A This addresses that she would also -- this
19 addresses she would have word prediction software and
20 text reader software, which was on her Chromebook.

21 Q And then if I could direct your attention to
22 page 69. This is the service page, correct?

23 A Yes, it is.

24 Q What did the team decide about her services?

25 A So when we met as a team, we decided, after

1 discussions with the Parents and the teachers,
2 Mrs. REDACTED had insisted and was really passionate about
3 REDACTED maintaining in the pull-out classroom for the
4 reading services, so we did -- in the spirit of
5 compromise, we agreed to that.

6 Q Why do you say that? What was the previous
7 proposal?

8 A Previous proposal was for her to give the
9 same amount of hours but in the general education
10 classroom. That's where I had suggested that her
11 services be then.

12 Mrs. REDACTED had objected to that and wanted
13 her to stay in the special education classroom for her
14 reading services.

15 Q And did the team agree to that?

16 A Yes, the team agreed that -- to take
17 Mrs. REDACTED's opinion at the time. And in order to be
18 able to continue services for REDACTED, we agreed to her
19 being -- wanting to have her in the special education
20 classroom.

21 Q Why was it important -- you used the term in
22 the spirit of compromise. Why was it important to
23 compromise on that?

24 A We really wanted to make sure that REDACTED
25 continued with an appropriate IEP and have goals and

1 get instruction and be able to continue to make
2 progress. And so in order for that to happen and us to
3 be able to do that with the current IEP, that's why we
4 decided to agree to the setting not be changed.

5 Q Okay. If you could look at page 70, please.
6 What did the team determine about extended school year
7 services?

8 A It says that no, we did not -- the child did
9 not meet the criteria for extended school year
10 services.

11 Q If I could direct your attention to page 72
12 of that document.

13 A Okay.

14 Q Can you describe the placement that the team
15 determined was appropriate.

16 A Yes, so we determined that she would receive
17 five hours every two weeks of reading instruction in
18 the special education setting and that the writing
19 instruction would have been decreased to three hours
20 every two weeks and that was in the special education
21 setting.

22 Q And now if I could just have you jump all the
23 way back to page 63 of that document.

24 Who was present at this particular IEP
25 meeting?

1 A Ms. Pettiway, the coordinator of special ed,
2 Ms. Houston, her general education teacher for fifth
3 grade, Ms. McCluskey and myself as the teachers of
4 students with disabilities, and then Mrs. REDACTED, the
5 mother.

6 Q So in developing this document, did you take
7 into consideration Mrs. REDACTED's views and opinions?

8 A Absolutely.

9 Q And did you-all take into consideration
10 Ms. Pettiway's considerations and opinions?

11 A Yes.

12 Q And how about Ms. Houston -- Ms. Houston --
13 what was Ms. Houston's position?

14 A What was her position? She was the general
15 education teacher, and she agreed with the development
16 of this IEP.

17 Q And then how about Ms. McCluskey, what was
18 her position?

19 A Ms. McCluskey was now, at the beginning of
20 fifth grade, her case manager. So this IEP I was
21 involved in because I had written the previous one that
22 hadn't been signed, and this was the beginning of her
23 fifth grade year. So I was present at this meeting
24 along with Ms. McCluskey. And then once this IEP was
25 signed, Ms. McCluskey became her case manager at that

1 time and all services were given by Ms. McCluskey.
2 Then I was not giving instruction to REDACTED for the fifth
3 grade year.

4 Q Right, because she would be now in
5 Ms. McCluskey --

6 A She had gone to fifth grade.

7 Q Ms. McCluskey would become her case manager
8 at that point?

9 A Yes. And Ms. McCluskey gave her all of her
10 instruction.

11 Q At this meeting, did the team take into
12 consideration REDACTED's progress to that point?

13 A Yes, we did.

14 Q And how did the team take into consideration
15 her potential for growth?

16 A She had shown great potential for growth, as
17 documented before in the previous IEP, and we wrote
18 goals that we thought were appropriate for her and for
19 her to be able to continue that growth and make a
20 year's progress.

21 Q And did Mrs. REDACTED consent to implementation
22 of this IEP?

23 A Yes. Mrs. REDACTED signed this IEP.

24 Q And in your opinion, was this an appropriate
25 IEP -- or was this, because now it's obviously replaced

1 and superseded by other IEPs. But at that time, is it
2 your opinion that this was an appropriate IEP for REDACTED?

3 A Yes, I agree this was appropriate for REDACTED.

4 Q And in your opinion, would it enable REDACTED to
5 be involved in the general curriculum?

6 A Yes, this definitely -- her services
7 definitely were to a point where she spent most of her
8 time in the general education classroom.

9 Q And in your opinion, did it enable her to
10 make progress in the general curriculum?

11 A Absolutely. With these goals, this
12 instruction, these accommodations, she should be able
13 to be a typical member of her general education
14 classroom and be able to access the general education.

15 MR. ANDRIANO: No additional questions at this
16 time.

17 THE HEARING OFFICER: Mr. Ratner or
18 Ms. Ratner?

19 MR. RATNER: Yes, I will be doing the
20 examination. I'm ready to go forward if everybody
21 else is.

22 CROSS-EXAMINATION

23 BY MR. RATNER:

24 Q Ms. Smith, I don't believe we've ever met
25

1 before. My name is Todd Ratner, and I represent the
2 REDACTED family in this case. Thanks for being here
3 today. And, again, just remember my offer, if you need
4 a break at any time, let me know.

5 A Thank you. I appreciate that.

6 Q You're welcome. The other thing, and you've
7 done an excellent job, of letting people finish their
8 questions so the court reporter doesn't have to try to
9 get two people talking at the same time. So I'm
10 usually the worst offender of that, so I will do my
11 best.

12 A Okay.

13 Q So let me, I guess, sort of start where we
14 finished.

15 A Okay.

16 Q Which was that you were talking about the
17 appropriateness of this IEP for REDACTED. By "this," I
18 mean tab 16 in the School Board book.

19 A Thank you. Okay.

20 Q So as a special educator with approximately
21 23 years of experience in Chesterfield County Public
22 Schools, are you familiar with the term Dolch words,
23 D-O-L-C-H?

24 A Yes, I am.

25 Q Okay. And those are a particular type of

1 word that has been identified within educational
2 research and literature? Am I understanding that
3 correctly?

4 A Yes, they are named after the person that
5 came up with them.

6 Q Mr. Dolch?

7 A Mr. Dolch.

8 Q And that was roughly a century ago or so,
9 right?

10 A It was a long time ago. I don't remember how
11 far.

12 Q Is that a well-established concept within the
13 field of reading instruction that students need to know
14 Dolch words?

15 A It's not established that they particularly
16 need just Dolch words.

17 Q Okay. What does it establish then?

18 A Children need to be able to read high
19 frequency words, which are words that are the most
20 frequent in reading, and be able to be automatic at
21 reading them. And then children also need to be able
22 to read sight words, so words that they know by sight
23 or that have irregular spellings that can't be
24 explained through phonics.

25 Q Can I stop you there? I'm not trying to cut

1 you off.

2 A That's fine.

3 Q Dolch words -- and this is what I've been
4 trying to understand, because I'm not an educator --
5 and I think Mr. Andriano did a great job of reminding
6 you to teach us like you're teaching your students.

7 Is it something that's a high frequency word
8 and a sight word? Is it different than both of those
9 concepts? What is a Dolch word?

10 A I would have to go back -- I haven't used
11 specifically Dolch words in awhile, I have to say.
12 Usually Fry phrases, which go along with Dolch words,
13 those --

14 Q Fry phrases, F-R-Y?

15 A Yes.

16 Q I just want to make sure so if I need to look
17 it up.

18 A That's fine. Those are all different
19 methodologies of teaching both sight words and high
20 frequency words. So a lot of times, Dolch sight word
21 lists -- Dolch lists will have sight words and high
22 frequency words, but there definitely is not the same
23 words in each list of each different methodology of
24 teaching them.

25 Q Okay. So Dolch was advocating for a specific

1 methodology; is that what your testimony is?

2 A He had a specific set of words that he
3 thought children needed to know automatically.

4 Q Okay. And let me ask you -- and there's a
5 lot of books in front of you, so I apologize.

6 A That's okay.

7 Q You were in the School Board book. The rest
8 of these are Parents, and there should be a Volume 1, 2
9 and 3. I would like you in Volume 3, tab 71.

10 A Say the tab again.

11 Q 71.

12 A 71. Okay.

13 Q This is something that I printed off the
14 internet as representative of all 220 Dolch words by
15 grade in alphabetical order.

16 A Uh-huh.

17 Q Is this a list that you are generally
18 familiar with?

19 A Yes, it's a list that I'm -- I know of Dolch
20 words. I know that there are lists, yes.

21 Q Okay. And who put -- was Mr. Dolch the
22 person who assigned the pre-primer, primer, first
23 grade, second grade and third grade categories?

24 A I don't know who he worked with and how he
25 came up with it.

1 Q I will represent to you I didn't put this on
2 there.

3 Was this something you reviewed when you were
4 in school when you were learning about Dolch words?

5 A Yes.

6 Q Great. So you learned that there were
7 categorizations of Dolch words by these categories; is
8 that a fair statement?

9 A Yes.

10 Q Great. Okay. So in working with REDACTED -- and
11 am I correct that you worked with her for not quite a
12 full school year because of the pandemic?

13 A Yes.

14 Q Did you notice that she had trouble with
15 Dolch words?

16 A No. I noticed -- in Chesterfield County, we
17 have a high frequency scope and sequence list that
18 Chesterfield County puts together. Then I go by that
19 and look to see if she would have a hard time with
20 those words, and then I would use that as my reference
21 to see whether or not she needed high frequency word or
22 sight word instruction. But in the running records and
23 the DRAs that I was giving her, these were not the
24 words that she was missing.

25 Q The Dolch words weren't?

1 A I wasn't comparing it to Dolch. I was
2 comparing to Chesterfield County, but, yes.

3 Q Well, that's just what I'm trying to get
4 clarification on.

5 A Okay.

6 Q So in your experience in working with REDACTED ,
7 she did not have trouble with high frequency words or
8 sight words?

9 A No.

10 Q It wasn't a trick.

11 A I'm like, no. I mean, I'm sitting here
12 trying to remember like sitting with her. It's been
13 two years. Sitting with her doing that, reading with
14 her. So I remember her having more of a difficulty
15 with multi-syllabic words that she needed to learn
16 decoding for.

17 Q So let me ask you, if I could, to keep that
18 Dolch word list open and move it off to the side.

19 A Okay.

20 Q Then I'd like you in Volume 1, tab 1, pages
21 10 and 11, and just let me know when you're there.

22 A Okay.

23 Q So I will represent to you this was produced
24 to us by the School Board in response to a subpoena
25 requesting REDACTED 's written work. So I don't think

1 there's any question that this is REDACTED's work or that
2 the date of April 1st, 2021, is accurate.

3 I know that would be outside of your
4 knowledge because you weren't working with REDACTED at that
5 time, correct?

6 A No, I wasn't.

7 Q This is the very end of fifth grade, pages 10
8 and 11 in tab 1. But you have been qualified as an
9 expert in reading, correct?

10 A Correct.

11 Q Okay. So where it says here at the top, "As
12 I read each sentence, fill in the correct word study
13 word in the blank," is that -- who is that instruction
14 to, or what does that instruction mean as you read it?

15 A It means the student was to fill in the word
16 study word that goes with the sentence.

17 Q But who is doing the reading? Is the "I"
18 reference to the teacher or the student?

19 A I didn't give this assignment, so I can't
20 say.

21 Q Okay. Would it be appropriate for
22 Ms. McCluskey to be reading this assessment or
23 assignment to REDACTED, based on your knowledge of REDACTED?

24 A It would have depended on what Ms. McCluskey
25 was trying to assess, whether she was assessing reading

1 or she was assessing spelling or she was assessing
2 comprehension.

3 Q Okay.

4 A But I don't know what she was looking to
5 assess with this.

6 Q That's very fair. And I won't ask you to
7 read Ms. McCluskey's mind. I believe she will be
8 coming back, and I can ask her directly.

9 I thought I understood you to say, from your
10 time working with REDACTED, she didn't need the read
11 aloud -- or she had a read aloud accommodation, did she
12 not?

13 A Uh-huh.

14 Q Okay. So that's what I'm trying to
15 understand. Are students who are on grade with reading
16 level typically getting read aloud accommodation?

17 A She was not on grade level with reading.

18 Q Okay.

19 A So in the previous IEP from April, it said
20 that she was reading at a Level 38, which still would
21 have been below grade level.

22 Q Yes, ma'am.

23 A So that's why she was receiving a read aloud
24 accommodation for math and for science and for social
25 studies, but it was not being given for reading

1 assessments.

2 Q So let me ask you this, if I could, and,
3 again, you're the teacher, not me, but I don't see a
4 lot of four and five multi-syllabic words on this
5 worksheet.

6 Could you point to any on here? It's not
7 that long so hopefully that wouldn't be too hard for
8 you to do.

9 A No, there's not many four- or five-syllable
10 words on this sheet.

11 Q There are none, in fact, correct?

12 A Correct.

13 Q But that's where you found she was having
14 difficulty, "she" being REDACTED, correct?

15 A With reading.

16 Q Okay. So why is it that Ms. McCluskey would
17 be reading this worksheet to her?

18 MR. ANDRIANO: I'm going to object. I don't
19 believe there's been any testimony that
20 Ms. McCluskey was actually reading this to her.

21 MR. RATNER: I can rephrase the question.

22 THE HEARING OFFICER: And she said, if I
23 recall correctly, that she didn't give this reading
24 assessment.

25 MR. RATNER: I understand. So I will rephrase

1 the question.

2 THE HEARING OFFICER: Okay. Go ahead.

3 Sustained. Go ahead.

4 MR. RATNER: Thank you.

5 BY MR. RATNER:

6 Q Your understanding was that with reading,
7 REDACTED 's struggles were with four and five multi-syllabic
8 words -- four- and five-syllable words; is that
9 correct?

10 A Yes.

11 Q So there's nothing that you see on this sheet
12 that you understood REDACTED had trouble reading; is that
13 correct?

14 A I would believe that REDACTED would be able to
15 read this.

16 Q Okay.

17 A I'm sitting here and I'm analyzing the
18 different syllable types on this sheet right now and
19 I'm analyzing the irregular spelling, so that's why I'm
20 hesitant.

21 Q Okay.

22 A But looking at this sheet, there are vowel
23 patterns that she had been taught, there are syllable
24 divisions that she would have been able to be taught,
25 but I can't speak to what this sheet was assessing.

1 Q Understood. I'm going to leave it there, and
2 we can return to that with Ms. McCluskey with respect
3 to what it was assessing.

4 But certainly you, and don't take this as
5 insulting your intelligence, I mean, you can see, for
6 example, that in number 2 she's made an error, correct?

7 A Correct.

8 Q So W-A-R-E, is that a word in the English
9 language?

10 A It is a syllable like in software, yes.

11 Q Right. So like Simple Simon the pie man
12 selling his wares, correct?

13 A Yes.

14 Q If you spellcheck this word, it would come up
15 correct, right? It's just out of context.

16 A Yes.

17 Q Okay. Where, W-H-E-R-E, which was the
18 correct word there is on the Dolch list as a pre-primer
19 word, correct? Feel free to look. In each category
20 they go alphabetically, if that helps.

21 A Yes, it is on that list.

22 Q As a pre-primer word, correct?

23 A Correct.

24 Q And what is pre-primer?

25 A It means bases of learning. It means prior

1 to a like preschool level or kindergarten level word.

2 Q Okay. Do you recall REDACTED having difficulty
3 with the word "where" when she worked with you?

4 A I can't recall specifically her reading the
5 word "where" with me.

6 Q Understood.

7 A I'm sorry.

8 Q And that's a perfect time to ask,
9 approximately how many students were you responsible
10 for working with directly during that 2019-2020 school
11 year?

12 A I don't know exactly how many kids were on my
13 caseload that year.

14 Q I think you said generally you had 15 to 22,
15 23?

16 A Anywhere within those two numbers.

17 Q And that would be somewhere in that range
18 during the '19-'20 year?

19 A Yes.

20 Q Okay. Thank you. And that's close enough
21 for me. I understand what you're saying.

22 A Okay.

23 Q How about the next one, number 3, there's an
24 error there also?

25 A Uh-huh.

1 Q And that again is a second grade Dolch word,
2 T-H-E-I-R; do you see that?

3 A Yes, I do.

4 Q And then number 6, she actually got both
5 words wrong, correct?

6 A Correct.

7 Q And both of those are Dolch words. "Said" is
8 pre-primer, correct?

9 A Correct.

10 Q And too, T-O-O, is primer, correct?

11 A Correct.

12 Q And then 11, number 11, it looks like she
13 might have three errors.

14 How do you read the third word there?

15 A Want.

16 Q Okay. What's the spelling?

17 A W-O-N-T.

18 Q Is that a correct spelling for a word in the
19 English language?

20 A No, it's not. It's for won't with a
21 contraction.

22 Q Right. There would either have to be an
23 apostrophe T for won't -- is that the context here?

24 "Do you won't that same pencil?"

25 MR. ANDRIANO: I'm going to object to this

1 line of questioning. This isn't an assessment that
2 Ms. Smith gave.

3 MR. RATNER: She's an expert. They wanted her
4 qualified as an expert.

5 MR. ANDRIANO: But she doesn't know --

6 THE HEARING OFFICER: She did not give this
7 test.

8 MR. RATNER: But that's what experts do. They
9 look at tests and give their opinions.

10 THE HEARING OFFICER: If she has enough
11 knowledge of the test.

12 Do you feel qualified to comment right now
13 this minute on this test?

14 THE WITNESS: No, ma'am. I didn't give it,
15 and I don't know the context of the assignment or
16 the instruction.

17 THE HEARING OFFICER: That's my answer. So
18 sustained.

19 MR. RATNER: Could we take a quick break then?

20 THE HEARING OFFICER: Sure.

21 MR. RATNER: Thank you so much.

22 THE HEARING OFFICER: We will come back at --
23 do you need like --

24 MR. RATNER: Three minutes.

25 THE HEARING OFFICER: Okay. All right. Come

1 back at 11:10.

2

3

(Break taken.)

4

5

THE HEARING OFFICER: If everybody is ready,

6

we can go ahead.

7

MR. RATNER: Wonderful. Thank you.

8

BY MR. RATNER:

9

Q Ms. Smith, I have a few questions for you

10

that are relevant. So I don't want to say that it's

11

just out of curiosity and make people think you're not

12

here just to chitchat.

13

A Okay.

14

Q But I want to be clear, there's no hidden

15

agenda. I don't know the answers. So I'm not going to

16

try to trap you into something.

17

A Thank you.

18

Q So the first issue is Old Hundred Elementary

19

School just opened at the time REDACTED became a fourth

20

grader there, correct?

21

A Correct.

22

Q So where were you teaching immediately prior

23

to that?

24

A Immediately prior to that, I was the

25

coordinator of special education at Bettie Weaver

1 Elementary School.

2 Q So that's what I was interested in is how did
3 you move from that position into the position at Old
4 Hundred. Was that something you requested? Were you
5 assigned? Just explain that to Ms. Freeman.

6 A Oh, I requested -- I requested it. It's a
7 lateral move in Chesterfield County. A coordinator of
8 special education is of the same pay grade and hours as
9 a teacher of students with disabilities. I had done
10 the coordinator position for two years. I missed
11 teaching children, and I went back to the -- I asked
12 the principal at Weaver -- Mrs. Mottley was opening Old
13 Hundred, and I really liked her leadership, and so I
14 asked if -- I applied to be a teacher at Old Hundred
15 Elementary School to open a brand new school.

16 Q Again, like I said, I think it's relevant,
17 but I wasn't trying to suggest anything negative.

18 A That's fine.

19 Q So that was your decision to come to Old
20 Hundred?

21 A Yes.

22 Q And roughly when did you find out that you
23 would be the fourth grade reading teacher or case --
24 what was your title, I guess?

25 A So the title that we used as teachers on the

1 IEPs is teacher of students with disabilities, and I
2 was informed sometime in August -- I don't particularly
3 remember what day -- what my caseload was and the
4 students that would be on it.

5 Q But sometime within a month prior to school
6 beginning?

7 A I would say within a few weeks prior to
8 school beginning.

9 Q And had you -- were any of the students at
10 Old Hundred former Bettie Weaver students?

11 A No. We did not -- Old Hundred did not give
12 relief to Bettie Weaver Elementary School.

13 Q Right.

14 A There may have been a student that
15 transferred from Weaver.

16 Q Sure.

17 A But it was not -- it was not providing relief
18 to Bettie Weaver.

19 Q Right. And when you say "providing relief,"
20 the reason the school was built is because other
21 schools were getting too crowded, right?

22 A Correct.

23 MR. ANDRIANO: I'm sorry to interrupt. I just
24 don't see the relevancy of this line of
25 questioning.

1 MR. RATNER: Well, I'm trying to connect it up
2 right now.

3 BY MR. ANDRIANO:

4 Q So as of --

5 THE HEARING OFFICER: I will give him leeway
6 to ask the questions, but I think the objection was
7 on relevancy grounds about her reasons to leave one
8 school and go to another one and teaching students
9 and it was a resumed experience for her. But
10 you're going to tie that in to your questioning.
11 So go ahead.

12 MR. RATNER: Correct.

13 BY MR. RATNER:

14 Q So what grades were you responsible for at
15 Old Hundred?

16 A I was responsible for teaching special
17 education pull-out reading services grades 1 through 5.

18 Q Okay. And how about at Bettie Weaver?

19 A At Weaver, I was the coordinator of special
20 education for two years, and then two years prior to
21 that I was a teacher of students with disabilities at
22 Bettie Weaver. So I taught there for two years and
23 became the coordinator for two years.

24 Q Was that across all grade levels as well?

25 A Yes.

1 Q So in your experience as a teacher at Bettie
2 Weaver or previously, would you ever work with a
3 student for more than one year?

4 A Yes.

5 Q Did you find that helpful as a teacher
6 because either you had developed a rapport with the
7 student, you understood their strengths and weaknesses,
8 you understood their likes and dislikes, things likes
9 that?

10 A Yes. I mean, it's always good to know a
11 student from before and be able to do that again.
12 Unfortunately, it's not promised when we have
13 differences in staffing, but --

14 Q That wasn't my question.

15 A Okay.

16 Q As a teacher, you find it helpful?

17 A Yes.

18 Q So to tie it in -- and I know sometimes I
19 make a long loop -- but the 15 to 22 students that you
20 found out were on your caseload a few weeks before the
21 start of school of August 2019 --

22 A Yes.

23 Q -- had you ever worked with any of them
24 before?

25 A No, I had not.

1 Q And is it fair to say that you had a lot to
2 get up to speed on in those last few weeks?

3 A I had to read all of their IEPs and be
4 familiar with them.

5 Q Okay. Thank you.

6 A You're welcome.

7 Q And had you ever worked with Ms. McCluskey
8 before?

9 A No, I had not.

10 Q And is that an important relationship, the
11 one between case manager and the special education
12 teacher?

13 A We all collaborate, and it is important that
14 we collaborate together.

15 Q Sure. And similar question to before, it can
16 take time to build that relationship with other staff
17 members, and, again, not impugning Ms. McCluskey in any
18 way, but you just --

19 MR. ANDRIANO: Ms. Freeman, I'm going to renew
20 my objection.

21 THE HEARING OFFICER: I need to know where --
22 can you please proffer where you're going with
23 this.

24 MR. RATNER: Yes. That I think the change to
25 Old Hundred Elementary School placed REDACTED in a

1 difficult situation where she had a case manager
2 with 15 to 22 brand new students, she was working
3 with a special education teacher with whom she had
4 never worked before, and I think that all of that
5 was, at best, a less than ideal situation for REDACTED
6 REDACTED when she started fourth grade when she had
7 just been identified as a student with a disability
8 needing an IEP a few months earlier.

9 THE HEARING OFFICER: Didn't this witness say
10 that they had a wonderful relationship and she
11 mentioned about ten different aspects of why she
12 thought it was a wonderful relationship. I thought
13 it was pretty particular that she understood REDACTED
14 inside and out. So I don't know exactly where
15 you're going with this. But go ahead and ask a few
16 more questions.

17 MR. RATNER: I'm not in any way impugning her
18 relationship at all. I thought I was asking --

19 THE HEARING OFFICER: Well, you implied that
20 somehow she didn't understand her special education
21 student REDACTED.

22 MR. RATNER: Okay. That's not what I'm saying
23 at all.

24 THE HEARING OFFICER: Oh, okay. Go on. Maybe
25 I misunderstood the point.

1 BY MR. RATNER:

2 Q I'm saying at the start of the school year
3 you didn't know REDACTED at all; is that fair to say?

4 A Actually, no, that's not fair to say. In
5 this instance, it actually was pretty special that
6 Mrs. REDACTED had asked for a meeting prior to the school
7 year starting for us to become acquainted with REDACTED and
8 what she needed. And we actually met with Mrs. REDACTED
9 during teacher -- during the teacher workweek to have a
10 specific meeting just about REDACTED to get to know her and
11 her needs.

12 Q I appreciate that. Thank you for clarifying.
13 When you received the caseload, is it fair to say that
14 you didn't know REDACTED at all?

15 A Yes. When I saw REDACTED on paper for the first
16 time, no, I did not know REDACTED.

17 Q Then you review her file and then you have
18 this meeting?

19 A Yes, we had a meeting with Mrs. REDACTED.

20 Q Okay. Great. Let's move on from there.

21 If you recall, who was in that meeting with
22 Mrs. REDACTED prior to school starting?

23 A I believe it was Mrs. REDACTED, it was myself,
24 it was Allie Redd, and it was Ms. Pettaway.

25 Q And would this have been the 8/25/2020 IEP

1 meeting that's at tab 16? Oh, that's 2020. That's
2 right. I'm so sorry.

3 A Yeah, no.

4 Q I made a mistake.

5 A That's okay.

6 Q Let me back you up then. We talked about
7 that April 2020 IEP that the Parents did not sign,
8 right?

9 A Yes.

10 Q Were you a part of that IEP meeting?

11 A Yes, I was.

12 Q Okay. So that was at the end of fourth
13 grade?

14 A Uh-huh.

15 Q Okay. Got it. So that was after having
16 worked with REDACTED for three-quarters of a year and then
17 school was closed; is that accurate?

18 A Yes.

19 Q Okay. So let's just briefly talk about what
20 happened after school was closed in March of 2020.

21 A Okay.

22 Q In-person instruction was stopped, correct?

23 A Correct.

24 Q Okay. Did anyone in Chesterfield County
25 Public Schools deliver the message, we're not going to

1 be giving new instruction to students from this point
2 forward?

3 A Correct.

4 Q And who delivered that message?

5 A I got that message from my administrator;
6 that it was instructed that we were not to introduce
7 new material.

8 Q Okay. And when you say "my administrator" --

9 A Lindsay Mottley, Guillermo Gonzalez, my
10 administration.

11 Q Okay. Do you remember roughly when that was
12 communicated?

13 A No.

14 Q A few days after the closure, a couple weeks?

15 A I don't recall when it was delivered.

16 Q Well, you mentioned the Google Meets that you
17 would have had with Ms. McCluskey and, was it,
18 Ms. Redd?

19 A Yes.

20 Q And did Mrs. REDACTED, the parent Mrs. REDACTED,
21 participate or was it only with REDACTED?

22 A Mrs. REDACTED would participate in some of them
23 and sometimes it was just REDACTED and sometimes it was
24 both.

25 Q Sure. Do you recall, you know, how quickly

1 it took to get that first weekly meeting on the books?

2 A I don't recall.

3 Q Was it within the month of March, or are we
4 already into April?

5 A I would have to look at the document or
6 whatever.

7 Q I'm not trying to trick you. I will see if I
8 can find a document to put it into time.

9 But I guess the question was, at what point
10 were you able to communicate to the REDACTED that there
11 wouldn't be any new instruction provided for the
12 remainder of the school year?

13 A I would have -- that would have come from
14 administration. Ms. Mottley sent out an explanation of
15 what closure would look like, and then later on,
16 Chesterfield County sent out a document explaining what
17 COVID closure would look like for students with
18 disabilities.

19 Q Got it. So in other words -- I'm not trying
20 to put words in your mouth, but did you feel like that
21 had already been communicated to the parents so it
22 wasn't necessary for you to reiterate we're not going
23 to be able to give new instruction?

24 A Yes, I think that it came from -- it was not
25 my decision not to do new instruction. That came from

1 higher levels than me. And then my meetings with REDACTED
2 and Mrs. REDACTED were about continuity of making sure
3 that she was still engaged in the learning activities
4 that were provided at that time for her to be able to
5 do.

6 Q Sure. As someone who is an expert in IEP
7 preparation, did that decision made by, I think your
8 word was, higher-ups in Chesterfield County Public
9 Schools give you any concern as to how were the
10 students on my caseload going to continue to work on
11 their goals as is required by the Individuals with
12 Disabilities Education Act?

13 MR. ANDRIANO: Objection. Calls for a legal
14 conclusion.

15 THE HEARING OFFICER: Any response?

16 MR. RATNER: Yes. She's an expert witness who
17 has chaired hundreds of IEP meetings. She has
18 developed hundreds of IEPs. I think it's not a
19 legal conclusion to know that the students are
20 supposed to be working on their IEP goals during
21 the school year.

22 THE HEARING OFFICER: Is that the same
23 question you asked, though? Is that the --

24 MR. ANDRIANO: It had to do with the IDEA
25 and --

1 MR. RATNER: I can ask that question.

2 MR. ANDRIANO: Ms. Freeman.

3 THE HEARING OFFICER: Yes.

4 MR. ANDRIANO: We've heard from Ms. Pettaway
5 on this. We've heard from Ms. Glover on this.
6 We've heard from -- I mean, it's just cumulative.
7 I understand Mr. Ratner's position, but the School
8 Division closed on March 16. We've heard this
9 numerous times, and there was no new instruction
10 after that.

11 MR. RATNER: Right. And what I'm asking is we
12 have -- I have not had a chance to ask this
13 witness. We agree that the school was closed.

14 THE HEARING OFFICER: I think we had a
15 stipulation of that.

16 MR. RATNER: Yeah. And we agreed that no new
17 instruction was provided. I'm asking her if she
18 had any concerns, based on her experience with 23
19 years of education, as to whether or not this
20 decision fulfilled the school's responsibilities to
21 their students -- to her students on her caseload.

22 THE HEARING OFFICER: That's asking -- that
23 last part of it -- I agree with you the first part
24 is fine, but the last part of it is where you're
25 asking her to draw a legal conclusion tying this to

1 the demands of the IDEA. That's probably beyond
2 her pay grade, I would think.

3 MR. RATNER: Okay. I will note my exception
4 and move on.

5 THE HEARING OFFICER: All right. Note his
6 exception, not acception[ph] -- acceptance, rather.
7 Let's move on.

8 BY MR. RATNER:

9 Q What book are you currently looking at?

10 A Right now I have the exhibits -- the School
11 Board Exhibits.

12 Q Wonderful. Could you please flip to tab 5 in
13 that book.

14 THE HEARING OFFICER: School Board --

15 MR. RATNER: 5.

16 BY MR. RATNER:

17 Q And let me ask you first -- I am really
18 sorry. It's Parents' Volume 1, Exhibit 5.

19 THE HEARING OFFICER: Parents' Volume 1.

20 BY MR. RATNER:

21 Q Sorry about that, Ms. Smith.

22 A That's okay.

23 Q Do you have that in front of you?

24 A Yes, I do.

25 Q So there are two pages in it, and I'd like to

1 ask you about the second one first, if I may.

2 It's Parents' 34. Do you see that Bates
3 number on there?

4 A Yes.

5 Q Do you recognize that handwriting?

6 A Yeah, that's mine.

7 Q Does it go with the first page, or what is
8 the second page?

9 A These were just my handwritten notes that I
10 would keep. There were -- as a special education
11 teacher and having to work with a lot of different
12 people, there's a lot of times where I'll jot something
13 on a Post-it note when I see a kid do it or I'll put it
14 in my computer real quick next to my lesson plans or
15 whatever, and this was just a piece of paper that I had
16 that I would use to remind myself of REDACTED's goals, and
17 then I would kind of write down notes as the school
18 year went on. Then the second page was --

19 THE HEARING OFFICER: Second page which is?

20 THE WITNESS: 34.

21 MS. RATNER: It's tab 5. I think we had you
22 in the wrong book.

23 THE HEARING OFFICER: You did. I'm in
24 Volume 1 of your book.

25 MS. RATNER: Yes, ma'am. And it's tab 5 that

1 we're asking about.

2 THE HEARING OFFICER: Okay. And where are the
3 notes that --

4 MR. ANDRIANO: Right there. That's it.

5 MS. RATNER: Right there. I'm sorry.

6 THE HEARING OFFICER: All right.

7 THE WITNESS: This was the back of the sheet
8 that I had with this sheet, and this is where I was
9 making mental notes to remind myself of her
10 accommodations. So if I carried this around with
11 me, I would always keep myself notes about making
12 sure that she's getting the accommodations.

13 BY MR. RATNER:

14 Q Yes, and this is another one of these
15 instances where I'm just trying to understand.

16 A Okay.

17 Q So this was actually one single piece of
18 paper?

19 A Right.

20 Q So, in other words, like I know when I go to
21 my dentist, I'm always impressed that they still
22 remember that my wife is Sarah and I have a son Jonah.
23 Then I'm like, they must have that written in a file so
24 they can quickly remember.

25 Is that sort of what this was like for REDACTED ?

1 A Yes, this is what it was for [REDACTED] reminding
2 myself of goals, accommodations, that kind of thing.

3 Q Got it. So let's focus on 33 because this
4 looks like what I had heard described as a data sheet.

5 Would you agree with that characterization?

6 A Yes. This is a sheet that I would write down
7 certain data to remind myself of how she was doing on
8 certain parts of her goals.

9 Q And did this represent the entirety of the
10 data sheet for [REDACTED] for the year you were working
11 with her?

12 A This was just one. I would keep data notes
13 on the sides of different running records that I had.
14 I would keep data on -- I would note them on different
15 pieces of paper that I had, different instruction
16 materials. If she had an assignment that was written,
17 I would sometimes write a note on that and keep that.
18 Then I would kind of use all of those when it came to
19 coming up with her progress. This is just one piece
20 that I had as a reminder of her goals that I would
21 write notes down on.

22 Q Sure. And I'm terrible about jumping around.
23 So I apologize if I make this complicated. Take your
24 time because, as you see, I don't always direct you to
25 the right place. But I want to go back to the School

1 Board exhibits.

2 A Okay.

3 Q And what I'm looking for is what I believe
4 would be the IEP that you were working on with REDACTED
5 during fourth grade, and I think it's tab 3. So go
6 there, and the question would be, was this something
7 you were working on with REDACTED in fourth grade?

8 A Yes.

9 Q Okay. And were you aware -- so this was an
10 amendment a little bit in the fall of fourth grade; is
11 that correct?

12 A The document 3?

13 Q Yes, ma'am.

14 A Yes, that was an Amendment IEP.

15 Q Okay. And, again, it looks to me, just
16 trying to do some mental math, this would have been in
17 the first quarter, maybe the very beginning of the
18 second quarter; do you agree with that?

19 A I agree. I would have to look at the
20 progress report to see what the end of the first nine
21 weeks was. I can't remember it off the top of my head.

22 Q But I think you said they are usually nine
23 weeks?

24 A Correct.

25 Q And it indicates here -- there's a reason

1 given as to why you were having this meeting. I'm
2 curious, without reading it, do you have an independent
3 recollection of why you had a meeting during the first
4 nine weeks of the school year?

5 A No, I don't recall who called the meeting.

6 Q Okay.

7 A I don't recall whether we called the meeting
8 or Mrs. REDACTED called the meeting.

9 Q Okay. Let me direct your attention -- and,
10 again, I'm going to stay in this tab, but I will jump
11 around a little bit -- to page 9 of 12; it's School
12 Board Exhibit 000017.

13 A Okay.

14 MR. ANDRIANO: Wait. Tab 9?

15 MR. RATNER: Tab 3.

16 MR. ANDRIANO: What page?

17 MR. RATNER: Page 9 of 12, which is also 17.

18 BY MR. RATNER:

19 Q Do you have it in front of you, Ms. Smith?

20 A I do.

21 Q Okay. And are you familiar with extended
22 school year services based on your role as a special
23 education teacher?

24 A Yes.

25 Q Okay. And this IEP was indicating that REDACTED

1 would have qualified for extended school year services,
2 the following summer at least, as the team decided in
3 October of 2019, correct?

4 A No.

5 Q No?

6 A This IEP was written in -- hold on a second.
7 Let me get it straight. So the original IEP date for
8 Exhibit 3 is 4/25/2019.

9 Q Okay.

10 A And that was the end of her third grade year
11 at Swift Creek Elementary School. They had proposed
12 ESY services for the summer of 2019.

13 Q Okay.

14 A That IEP was still in effect when it was
15 amended in October of 2019. So those extended school
16 year services on page 9 of 12, Exhibit 17, have a date
17 of June 2019 to August 2019. So those services were
18 referring to the services for the summer of 2019, not
19 the summer of 2020.

20 Q Understood. I appreciate you clarifying
21 that.

22 Do you recall, had REDACTED participated in
23 extended school year services in that June 2019 period,
24 so just before you started working with her?

25 A I don't recall.

1 Q Very fair answer.

2 A Thanks.

3 Q We'll move past from that.

4 You agree with me, however, that this
5 document, the October 14, 2019, Amendment, was the last
6 signed IEP going into the school closure in March of
7 2020?

8 A Correct.

9 Q Okay. And then I think you testified that
10 there was an effort to have a March -- excuse me, an
11 April 2020 meeting that the Parents didn't sign that
12 IEP; is that correct?

13 A That's correct.

14 Q Okay. So then isn't it true that the school
15 would be responsible for implementing this one until a
16 new IEP was signed?

17 A Yes, this would have been the IEP that --
18 this would have been the stay-put IEP that we would
19 have had to continue to look at for her services at
20 that time.

21 Q Okay. And that would or would not include
22 extended school year? That's where you lost me.

23 A It would not include extended school year
24 services. The dates on this IEP were for the date
25 summer 2019. It is not specifying extended school year

1 services then to 2020.

2 Q Got it. Okay. Let's stick on this document
3 just a little bit more.

4 A Okay.

5 Q Page 2 of 12, which has got a label School
6 Board Exhibit 10.

7 A All right. I'm there.

8 Q Okay. In the strengths of student, REDACTED's
9 full scale IQ is 129, which falls in the superior
10 range. Did I read that correctly?

11 A Yes, you did.

12 Q Have you seen other documentation in REDACTED's
13 cumulative file that substantiates that superior
14 academic or IQ score?

15 A I reviewed her file. I can't remember what
16 the psychological said at that time. I do know that in
17 her -- this was -- her IEP, this was written by Swift
18 Creek. They were the ones that did the evaluations.
19 Then I took it for a fact that they put the correct
20 information in the IEP.

21 Q So are you saying that you don't really know
22 if she has a full scale IQ of 129 sitting here today?

23 A I would have to look at the psychological
24 evaluation. I don't remember her IQ.

25 Q That's fine. Unfortunately, that's outside

1 the statute of limitations period. So I don't want to
2 get into that.

3 A Okay.

4 Q Thank you. So let's talk about the DRAs a
5 little bit. And I'm going to ask a general question,
6 and if you don't remember, feel free to say so. I just
7 couldn't find the document in my book.

8 But I have a recollection of a letter from
9 Swift Creek -- and I know you didn't work at Swift
10 Creek, but it was communicating a countywide directive
11 about we're going away from the DRAs to the MAPs test.

12 Do you remember that as a general
13 communication in the 2018-'19 school year from
14 Chesterfield County Public Schools?

15 A No, I don't. I don't recall saying that we
16 were replacing DRA with MAPs.

17 Q Then I will move on. Thank you.

18 So let's talk a little bit about these DRAs.

19 A Okay.

20 Q So the October 2019 Developmental Reading
21 Assessment, was that administered by you? It's at the
22 beginning of the second to the last paragraph on
23 page 2.

24 A You said October 2019?

25 Q Yes, ma'am.

1 A No, that was not delivered by me.

2 Q Who would have done that?

3 A Lauren Lineweaver, our reading specialist.

4 Mrs. REDACTED had asked that the reading specialist
5 administer a DRA prior to this meeting.

6 Q Okay. And was Ms. Lineweaver at the meeting?
7 Actually, I see her on the attendance list. But do you
8 have independent recollection? And if you don't,
9 that's fine.

10 A I don't have an independent recollection. On
11 the front it says that she was excused at 9:15 from the
12 meeting.

13 Q Okay. What does it mean to say that the DRA
14 scores indicated an independent level?

15 A So an independent level would be that she was
16 able to have a score for the decoding -- the miscues,
17 so she would have a lower percentage of errors and be
18 able to read at a certain speed or rate to be
19 considered in the independent range.

20 Q Okay. And I think you said earlier, but I
21 want to be careful, that a 24 would be considered a
22 second grade level reading?

23 A Correct.

24 Q Okay. And REDACTED was in what grade in October
25 2019?

1 A She was in fourth.

2 Q Okay. And so she was independent on
3 Level 2[sic]. Then there's a discussion of a Level 28.
4 Do you see that later in the paragraph?

5 A Yes, I do.

6 Q First question, did you administer that Level
7 28?

8 A No, I did not.

9 Q Okay. Was it Ms. Lineweaver again, to the
10 best of your knowledge?

11 A Yes, it was.

12 Q And was this discussed at the meeting, to
13 your recollection?

14 A I don't remember if it was discussed at the
15 meeting. I do remember discussing it with
16 Ms. Lineweaver after she administered it.

17 Q Okay. And it indicates here that she scored
18 an instructional level. It's a different word, so I
19 assume it means something different than an independent
20 level; is that correct?

21 A That's correct.

22 Q What is the instructional level?

23 A Because her reading rate was at a speed of 59
24 words per minute, that would have put her in the
25 instructional level for the Level 28. Her accuracy was

1 independent at 98 percent, so her accuracy of reading
2 the words was definitely at an independent level. But
3 because her words per minute speed was 59,
4 Ms. Lineweaver also said she would be at the
5 instructional level, also because her comprehension was
6 recorded as a 12 out of 24. So she was having
7 difficulty comprehending the text also. So that's why
8 she would be considered an instructional, so that would
9 be used for instructional materials to teach her on
10 that level.

11 Q I think you said that 28 was still also a
12 second grade level; is that correct?

13 A That's correct, end of second grade.

14 Q And I believe Mr. Andriano asked you a
15 question about whether or not her fluency had
16 interfered with her comprehension during your work with
17 her.

18 A Correct.

19 Q And your testimony was that you didn't
20 observe that; am I characterizing that correctly?

21 A Correct.

22 Q Okay. And, again, not to belabor this, but
23 is this test that Ms. Lineweaver administered
24 suggesting that she was at below grade level on
25 comprehension for this particular assessment?

1 A She was below grade level for the 28 for
2 comprehension. She was not below grade level for the
3 24 for comprehension. Therefore, Ms. Lineweaver
4 determined that her independent reading level was a
5 Level 24.

6 Q And do you know -- and, again, not to make it
7 a memory test, she got a 12 out of 24 on comprehension.
8 Do you know what would constitute independent on a 28?

9 A So I'd have to look at the rubric.

10 Q Sure.

11 A Because it changes through the 20s and the
12 30s to a 24 scale to a 20 scale, so I would need to
13 look at the rubric to decide.

14 Q And words per minute was noted at 59. So
15 that's roughly a word a second, correct?

16 A Correct.

17 Q If you would indulge me and just read perhaps
18 the first sentence of this paragraph at a rate of one
19 word per second, what that sounds like.

20 MR. ANDRIANO: Objection.

21 THE HEARING OFFICER: You're still on page 10?

22 MR. RATNER: I'm on page 10, yes, ma'am. And
23 we're talking about at the end of the second to the
24 last paragraph that REDACTED 's words per minute was
25 noted at 59. I just wanted to have an audio

1 representation of what that sounds like from a
2 reading specialist, what 59 words per minute sounds
3 like.

4 THE HEARING OFFICER: Didn't she just tell
5 you, or maybe you said, it's about a word per
6 second, right?

7 MR. RATNER: That's right. And when I --
8 well, let me ask this.

9 BY MR. RATNER:

10 Q So that would be: The present level of
11 academic and functional performance. Is that
12 approximately ten words in ten seconds?

13 A I don't have a watch. You did and you gave
14 the presentation.

15 Q Let me ask you this. Is that a fairly slow
16 rate of reading?

17 A Is that a slow rate of reading?

18 Q Fifty-nine words per --

19 A Yes. But it does not indicate that the child
20 read one word per second.

21 Q No. And I understand that. She could have
22 read nine words and then got stuffed, right?

23 A That's right. That's why I wanted to be
24 clear. It wasn't that she read one word per second.
25 It was the overall score.

1 Q So let me ask you to elaborate on that.

2 Do you recall, having worked with REDACTED for
3 almost a year, what her reading behaviors were like
4 when she was reading aloud?

5 A Oh, yes. So that -- so that she would -- she
6 read with expression, that was her personality, and she
7 liked to read with that personality. So the words that
8 she knew -- that she started to know automatically when
9 she read different passages with me, she would read
10 them with expression and phrasing. Then when she would
11 get to a word that she wasn't able to decode
12 automatically, she would then stop, pause, and she
13 would whisper different rules or strategies that she
14 had learned to decode that word, and then she would
15 decode that word. There were instances where when she
16 did decode that word, then she would use the very good
17 strategy that we teach her to go back and reread a
18 couple of words before that to make sure she has the
19 context of it and keep going. So those were the
20 reading behaviors that I observed with REDACTED.

21 Q That's very helpful. Thank you. You're the
22 first person I thought to ask that question of.

23 So -- and, again, apologies. I'm not an
24 expert in reading instruction.

25 But when you talked about decoding strategies

1 for words she didn't know, are there any decoding
2 strategies for the Dolch words or the high frequency
3 words or the sight words?

4 A Okay. So the answer is yes. So some of
5 these Dolch words are decodable words. Most likely
6 they were put in here because they are high frequency
7 words. So like the word "not" on the pre-primer, it's
8 a word that's very frequent in your reading so you want
9 to be automatic when you read it. However, it is a
10 word that can be decoded with typical decoding rules.
11 The students were taught how to tap those sounds out.
12 So she was taught [sounding out each letter N, O, T].
13 However, she would rub her fingers together and say
14 not. So there are different decoding rules for them.

15 Q Sure.

16 A And then for the other words that don't
17 have -- or don't follow typical decoding, so like the
18 word "come," it should be a magic E word, it should
19 make the O long, but it doesn't follow the regular
20 rule. So that's when we would use color coding, bumpy
21 paper writing where she would use her finger to write
22 over the top of it to remember what it looks like,
23 different strategies for learning those, more
24 memorization, mnemonic and more of the multisensory
25 part of it.

1 Q And do you recall -- and we can go back to
2 the page -- that one of the words she missed on that
3 April 2021 worksheet was where, W-H-E-R-E, which is a
4 pre-primer word? Do you remember that?

5 A Yes, it was on the previous.

6 Q So that -- is that a quote-unquote decodable
7 word?

8 A It doesn't follow the typical -- what we tell
9 the kids, they are bossy R rules, R controlled. Air
10 would make an e-a-r or an a-i-r spelling. So when it
11 came to spelling that word and decoding that word, it
12 would be an irregular word that we would use some other
13 type to teach.

14 Q When you talk about automaticity, are these
15 words you just basically need to memorize like 9 times
16 9 is 81 so you don't have to try to sound it out every
17 time?

18 A Some of these words children do sound out
19 every time, but because they are frequent in text, they
20 can become automatic with them.

21 Q But with this one, for example, how do you
22 pronounce H-E-R-E?

23 A Here.

24 Q What happens when you add a "W" to it?

25 A Where.

1 Q So it's different, right?

2 A Yes.

3 Q That can trip kids up, right?

4 A Correct.

5 Q Is it fair to say, in your working with REDACTED ,
6 did you notice her making consistent mistakes with
7 these types of words?

8 A I don't recall which words that she had
9 mistakes with.

10 Q So let's stay on the IEP at tab 3.

11 A Okay.

12 Q Is there anything in this IEP -- we've talked
13 about all these different vowel pairs and syllable
14 types, that's on page 13.

15 A Okay.

16 Q I think it's the second goal, if I'm reading
17 that correctly. Is there anything in this goal to
18 address the word "where," for example, or other words
19 like that?

20 A No, there is not.

21 Q Okay. And then on the goal above it, REDACTED
22 will read 80 words per minute at her instructional
23 level.

24 How did you determine that 80 would be an
25 achievable goal for the year?

1 A I didn't write that goal.

2 Q Do you know who did?

3 A Her previous case manager at Swift Creek. So
4 this was a goal that was written by Swift Creek when
5 she came in, and it had a speed of 80 words per minute.
6 When we met prior -- during workweek, the meeting that
7 Mrs. REDACTED had asked for us so that she could acquaint
8 us with REDACTED, I did mention to her that I thought maybe
9 80 words per minute was not an achievable goal within a
10 year. But we agreed that since it was what was written
11 by Swift Creek we would keep the goal and monitor it.

12 Q Okay. But isn't that what you're supposed to
13 do as a case manager is to propose goals that are
14 achievable within a year?

15 A That's correct.

16 Q So let's look at some of these reading
17 assessments. I think it will be useful for people to
18 understand what we're talking about.

19 A Okay.

20 Q So Volume 3 of the Parents' book, and that's
21 probably the most cumbersome of all of them, so I
22 apologize.

23 A Got it.

24 Q Tab 69.

25 THE HEARING OFFICER: What page? Volume 3 or

1 what exhibit?

2 MR. RATNER: It's tab 69, and I'm going to
3 start on the first page.

4 BY MR. RATNER:

5 Q Okay. Do you have that in front of you,
6 Ms. Smith?

7 A I do.

8 Q Okay. This appears to be a reading
9 assessment given to REDACTED by you on or about
10 October 11, 2019. Is that correct?

11 A That's correct.

12 Q Okay. And so this was just a few days before
13 the IEP meeting. You can flip back if you want, but
14 that document was dated the 14th.

15 A Okay.

16 Q Just, again, trying to put it into context.
17 I notice this is -- again, I'm not trying to trick you.
18 Is a Reading A to Z benchmark passage running record
19 different from a DRA?

20 A Yes, it is.

21 Q Okay. Just explain that for Ms. Freeman.

22 A Okay. So DRA is what we would typically use
23 to culminate a nine weeks. Sometimes we give them
24 multiple times during the nine weeks. DRA passages are
25 long and very cohesive with what -- comprehensive with

1 what they're assessing.

2 In between those, I would use these running
3 records, and this is what would be used as a more
4 informal assessment to have some one-on-one time with
5 REDACTED, listen to her read, make marks as to what she was
6 missing, and these would be to guide my instruction
7 with her when it came to the multisensory instruction
8 for reading. So this -- these Reading A to Z passages
9 are typically shorter and don't require as much
10 comprehension, retelling. It would just be a few
11 questions to make sure she comprehended what it was.
12 And then those were done as needed.

13 Q Okay. And so it's similar testing, the same
14 types of things, but it's prepared by a different
15 company, number one?

16 A Uh-huh.

17 Q And then I don't want to put words in your
18 mouth, but are you saying it's a little bit easier?

19 A It's not easier. It's just more -- it's just
20 a different data source to kind of back up what I'm
21 seeing with what I'm getting somewhere else. I use
22 these to make sure that we're seeing different data
23 sources give me the same information to make sure I'm
24 on the right track.

25 Q Okay. Is there -- it looks like you've tried

1 to convert a Level S. Is there a chart that allows you
2 to make this comparable to the --

3 A Yes.

4 Q And how does one do that?

5 A There is a chart that is available on the
6 Reading A to Z site that gives a correlation between
7 DRA levels, their leveling system. So if I was looking
8 to do this with her, I would make sure that I was
9 correlating it to the other data to make sure that it
10 all focused on the same level.

11 Q How did REDACTED do on the words per minute on
12 this document?

13 A On this document, it would have -- she had 41
14 words per minute.

15 Q So that was considerably slower than what was
16 being discussed at the IEP meeting, correct?

17 A Hold on. I've got to make sure I'm looking
18 at the right thing.

19 Q I'm looking at Level 28 was administered and
20 she got -- words per minute was noted at 59. This was
21 on School Board Exhibit 10.

22 Did I read that correctly?

23 MR. ANDRIANO: Ms. Freeman, I'm just going
24 to -- two things: Can we get a time check? And
25 secondly, this is from October 2019, which is --

1 THE HEARING OFFICER: Isn't this prior to when
2 she made that rapid progress period that went into
3 2020?

4 THE WITNESS: Yes.

5 MR. RATNER: If I could, my understanding was
6 they were talking about the rapid progress at this
7 IEP meeting that occurred three days after this
8 assessment.

9 THE HEARING OFFICER: Oh, okay. Your
10 objection?

11 MR. ANDRIANO: This was October of 2019.

12 MR. RATNER: Right.

13 THE HEARING OFFICER: This is beyond the scope
14 of the two-year period -- oh, wait a minute.

15 MR. RATNER: That is correct. But, again,
16 this has to do with either -- we need a baseline to
17 compare her performance.

18 THE HEARING OFFICER: Just for the baseline, I
19 think that's all right. So overruled right now.
20 But go ahead.

21 THE WITNESS: What was the original question?

22 BY MR. RATNER:

23 Q So the original question was, what you were
24 talking about at the IEP meeting was words per minute
25 at a Level 28 --

1 A Correct.

2 Q -- of 59; do I have that correct?

3 A That's correct. At the IEP meeting for
4 October 14, 2019, that was the updated information that
5 was listed in the reason for the amendment.

6 Q Yes, ma'am. And then -- but what I'm getting
7 at is just a few days prior, you had tried a higher
8 level?

9 A I had tried a much higher level. I had tried
10 a 34 to see what she could do. This was a classroom
11 setting, me giving her an informal just to see if she
12 could do it.

13 Q And she was considerably slower on that
14 level, correct?

15 A Correct, she was considerably slower.

16 Q But that 34 is still below REDACTED's grade level
17 at the time you were giving her that test, correct?

18 A Correct.

19 Q Okay. And when you do a DRA, am I correct
20 that the rubric, if I'm using your words correctly,
21 tells you if you're too slow or your comprehension is
22 not good enough, don't move on to the next level,
23 correct?

24 A Correct.

25 Q So she was instructional on 28, right?

1 A Correct.

2 Q So that would mean let's not move on; is that
3 right? She hasn't --

4 A Correct.

5 Q So why were you giving her the higher level
6 one then?

7 A This was given at the same time that
8 Ms. Lineweaver was also giving her one. I was not
9 aware at the time of the levels that Ms. Lineweaver was
10 assessing her at for the DRA. I didn't know she had
11 gone all the way back down. I was trying to get a
12 baseline for myself within the classroom of what she
13 could do and what she was having trouble with. So I
14 was trying her on a Level 34, but I saw that her words
15 per minute was slow. I looked at her errors that she
16 had had there and that her accuracy was down to
17 91 percent. So then that would just be giving me
18 baseline information. It would not be something that I
19 was reporting out to her IEP.

20 Q Got it. So let's move ahead a year in time
21 because I think this is when we got to the progress
22 that you were talking about earlier at tab 16.

23 MR. ANDRIANO: I'm sorry. Just get a time
24 check just because she's been here almost three
25 hours.

1 MR. RATNER: Yeah, I think I've probably got
2 at least 20 more minutes.

3 THE HEARING OFFICER: How long has he been
4 asking -- how long do you think you took on your --
5 wasn't it about an hour?

6 MR. ANDRIANO: That's probably about right.

7 THE HEARING OFFICER: Then we took a couple of
8 breaks.

9 But you have 20 more minutes of questions?

10 MR. RATNER: Yes, ma'am.

11 THE HEARING OFFICER: Is that well beyond what
12 you did? Is that what you're saying?

13 MR. ANDRIANO: I wouldn't say it's well
14 beyond. He's probably close to an hour right now.

15 MR. RATNER: I wasn't aware -- is that a rule?

16 THE HEARING OFFICER: I apologize. I wasn't
17 keeping close track of the time.

18 MR. ANDRIANO: I thought the rule that we
19 established was one hour for expert witnesses and
20 then what was -- 30 minutes for the cross?

21 THE HEARING OFFICER: Okay. So you're saying
22 we've already been a whole hour on cross-exam.

23 You're pretty close to the end of your hour,
24 so let's wrap it up in about five minutes.

25 MR. RATNER: Okay. And, again, let me --

1 THE HEARING OFFICER: Because, again, all of
2 the witnesses, as you know, are out there and they
3 are somewhat on a schedule. So I don't know if
4 they're coming back after lunch, but if someone
5 could alert them that we're going to go about five
6 more minutes, if you can do that, please.

7 MR. RATNER: I will do my best. So that will
8 be helpful for the next witnesses. I thought we
9 were kind of off of that time constraint, so it's
10 good to know.

11 THE HEARING OFFICER: I was giving you
12 latitude, but if their side wants to stick to the
13 schedule, that's fine, too.

14 MR. RATNER: Okay. I'm moving on.

15 BY MR. RATNER:

16 Q Do you have that in front of you, tab 16?
17 It's page 2 of 11, School Board Exhibit 000064.

18 THE HEARING OFFICER: What did you say? Is
19 that tab 2 in your book or the School Board?

20 MR. ANDRIANO: School Board.

21 MR. RATNER: This is School Board 16.

22 THE WITNESS: So School Board, tab 16?

23 BY MR. RATNER:

24 Q Yes. And Functional Performance at the
25 bottom of the page.

1 A Okay.

2 Q Do you see that?

3 A Yes, I do.

4 Q And it seems to repeat the October
5 information of 2019 about a Level 24 and a Level 28; do
6 you see that?

7 A Yes, I do.

8 Q Then it indicates as of February 2020 REDACTED
9 was able to read a Level 38. Did I read that
10 correctly?

11 A Yes, I did.

12 Q Was that information that you put into the
13 IEP?

14 A Yes, I did.

15 Q Okay. And I notice there's no discussion of
16 her instructional level -- independent, instructional,
17 et cetera.

18 Are you drawing a distinction by the way you
19 wrote that? Are you communicating something there?

20 A Yes. I was -- with the accuracy of
21 97 percent, the 38 was considered to be an independent
22 level for accuracy, and then the words per minute being
23 65, I did not put the distinction of what that was.

24 Q Okay. And just to make sure we're all
25 talking about the same thing, if you could keep that in

1 front of you and go back to the Parents' book 69.

2 A Okay.

3 Q Volume 3, tab 69. And it would be the third
4 page, which is Parents' 001034.

5 A Okay.

6 Q That appears to be a DRA Level 38, Passage 1,
7 correct?

8 A Correct.

9 Q And so this is -- is this the DRA that you're
10 referencing in this meeting?

11 A Yes.

12 Q So that was about six months earlier,
13 correct?

14 A What was six months earlier, sir?

15 Q The assessment appears to have been on
16 February of 2020, right, the assessment, the DRA?

17 A This one that says Twin Sisters?

18 Q Yes.

19 A Yes, it was given February 13.

20 Q And then the IEP was about six months later,
21 correct?

22 A Yes.

23 Q Okay.

24 A But this was the same information that was
25 included in the April IEP.

1 Q Got it. The one that the Parents didn't
2 attend?

3 A Right.

4 Q They didn't attend the meeting, correct?

5 A They didn't attend the meeting. Then because
6 schools were closed, I was not able to give her another
7 DRA level from February of 2020 until this was given --
8 this was the IEP that was then reconvened in August to
9 try to get a consensus.

10 Q Got it. What was REDACTED's instructional level
11 on this Level 38 DRA under the rate category that's on
12 page 1035?

13 A Okay. What was her rate?

14 Q Well, I see intervention, instructional,
15 independent and advanced. Who made these circles?

16 A I did.

17 Q Which one was circled for rate?

18 A Intervention.

19 Q What does that mean?

20 A It means that her words per minute was
21 significantly below what she was able to do on
22 comparison to her independent accuracy.

23 Q Okay.

24 A She was reading at a slow rate of speed.

25 MR. RATNER: Okay. Got it. We would like to

1 move into evidence both the DRA level -- excuse me,
2 the Reading A to Z, which is Parents 1032, as well
3 as the entirety of the Level 38 DRA, which is
4 Parents 1034, 1035, 1036 and 1037.

5 THE HEARING OFFICER: Any objection?

6 MR. ANDRIANO: Ms. Freeman, this is the School
7 Board's case in chief. How is the Parent moving
8 evidence -- exhibits into evidence in our case in
9 chief?

10 MR. RATNER: Well, I haven't rested yet. We
11 had a big discussion about that, and I just asked
12 her about documents.

13 THE HEARING OFFICER: Okay. So you want to --
14 this is in your Volume 3?

15 MR. RATNER: Tab 69. So it would be the first
16 page --

17 THE HEARING OFFICER: So this is your exhibit?

18 MR. RATNER: Right.

19 THE HEARING OFFICER: And you rested.

20 MR. RATNER: No, we didn't rest.

21 THE HEARING OFFICER: Oh, because you have --

22 MR. ANDRIANO: You did rest.

23 MR. RATNER: No, we didn't.

24 MS. RATNER: No. No. There was latitude --
25 it was stated there would be latitude with the

1 witnesses because there was discussion about
2 Ms. McCluskey coming back. And also, I don't --
3 like what rule requires an exhibit to be admitted
4 only on our case in chief. The witness just
5 testified that this is the DRA that's referenced in
6 the IEP. She said it was her DRA. It's certainly
7 relevant to the case. That's what they -- that's
8 what CCPS has said shows this magical progress.
9 And our position, on its face, it doesn't. So why
10 can it not -- what rule precludes something to be
11 admitted in a cross-examination that otherwise
12 satisfies all requirements of it being probative,
13 authenticated --

14 THE HEARING OFFICER: Do you have an objection
15 then?

16 MR. ANDRIANO: Well, I'm just -- I've never
17 moved evidence in in someone else's case in chief
18 but --

19 MS. RATNER: I have with great frequency.

20 THE HEARING OFFICER: It does seem probative
21 of the issue.

22 MR. ANDRIANO: Is there specific pages?

23 THE HEARING OFFICER: I know it's unusual, but
24 I'm going to allow them to admit it.
25

1 (Parents' Exhibit Tab 69, Pages 001032 and
2 001034 through 001037 admitted.)

3
4 MR. RATNER: The specific pages would be the
5 first page of the tab --

6 THE HEARING OFFICER: Okay. 1032, 1034 to
7 1037, those are what you want me to go back to when
8 I'm looking at this entire case?

9 MR. RATNER: Thank you. I have one last
10 topic.

11 MR. ANDRIANO: I'm sorry, which pages?

12 THE HEARING OFFICER: That was five minutes,
13 though. Let's hurry up.

14 MS. RATNER: 1032 and then 1034 through 1037.

15 THE HEARING OFFICER: Okay.

16 BY MR. RATNER:

17 Q You described REDACTED as a delight to teach?

18 A Yes.

19 Q And again not a trick.

20 A I was going to say --

21 Q And it sounded like she was kind of a little
22 bit of a teacher's helper, trying to make sure
23 everybody else got involved?

24 A Absolutely.

25 Q Did you ever experience the work avoidance or

1 school avoidance that other people may have mentioned
2 during an IEP meeting?

3 A No.

4 Q Okay. Did you ever encounter or form an
5 opinion that REDACTED would lie to avoid work?

6 A REDACTED -- in my classroom for the 30 minutes a
7 day, REDACTED did not lie to avoid work.

8 Q When you were -- well, I don't know if this
9 is fair to say. When you're the case manager, would
10 you be supervising Ms. McCluskey?

11 A No.

12 Q You're working with Ms. McCluskey?

13 A Correct.

14 Q And you would have to collaborate with her
15 and communicate with her; is that fair to say?

16 A Correct.

17 Q When you were in that role, did Ms. McCluskey
18 ever communicate to you that she had concerns that REDACTED
19 would lie?

20 A I don't recall her using the word "lie" when
21 it came to REDACTED.

22 Q Last question, if I could, you mentioned you
23 have a certification in ED; is that correct?

24 A Uh-huh. Emotional disabilities.

25 Q Okay. Did you ever suspect during your time

1 working with [REDACTED] that she had an emotional disability?

2 A When I taught her for the school year 2019 to
3 2020, I did not suspect an emotional disability. I
4 didn't know that I was going to be asked to even
5 consider it.

6 Q Okay. But is it your role to -- if you have
7 a suspicion, you should raise it; it's not just up to
8 the parents, correct?

9 A Yes.

10 MR. RATNER: Okay. Ms. Freeman, if I could
11 just have a moment to consult. I think I'm
12 finished.

13 THE HEARING OFFICER: Okay. Great.

14 MR. RATNER: That's it. Thank you so much.

15 THE HEARING OFFICER: So back to the question
16 about lying, who says she doesn't -- you never
17 experienced lying while you were her case manager?

18 THE WITNESS: I don't recall [REDACTED] ever lying
19 in my classroom.

20 THE HEARING OFFICER: And you never
21 experienced any emotional -- I think you said that
22 in your testimony, but let me clarify that.
23 Whatever references, and I don't recall where they
24 were, but I do recall that there was a referral for
25 emotional disability, but didn't the school system

1 say that doesn't apply to her?

2 MR. ANDRIANO: That wasn't Ms. Smith.

3 THE HEARING OFFICER: Oh, never mind. I'm
4 sorry. That's not a proper question for you.

5 But you don't remember her ever lying or
6 telling you a fib or being disingenuous with you?

7 THE WITNESS: No.

8 THE HEARING OFFICER: All right. It sounds
9 like she was a star in the class from what I'm
10 getting.

11 THE WITNESS: She really was. I think she
12 felt safe in my room. Like it was a safe place to
13 make mistakes when you read and to learn from them.

14 THE HEARING OFFICER: When you say "safe," was
15 there a sense that she felt unsafe somewhere else?

16 THE WITNESS: I'm referring more to risk
17 taking. So a lot of students with learning
18 disabilities feel very inhibited about
19 participating in the general education classroom.
20 They are worried about making mistakes, those kinds
21 of things. I'm not saying that REDACTED was that way.
22 I just felt that she took a lot of risks in my
23 classroom when trying to decode and use the
24 strategies that I taught her to really work out
25 what was causing her to have different decoding

1 issues and be able to work with peers and be able
2 to use what she learned to be able to read better.

3 MR. RATNER: Could I ask one follow-up
4 question?

5 THE HEARING OFFICER: Sure. Go ahead.

6 BY MR. RATNER:

7 Q So you just made it clear you weren't opining
8 on REDACTED.

9 Did you ever observe REDACTED experiencing
10 anxiety or inhibition like you just described that
11 other students can?

12 MR. ANDRIANO: Objection.

13 THE WITNESS: She would --

14 THE HEARING OFFICER: There's an objection.

15 MR. ANDRIANO: That was asked and answered
16 earlier.

17 MR. RATNER: I don't recall asking or getting
18 an answer to that.

19 THE HEARING OFFICER: It just -- does anyone
20 mind if I ask a question?

21 Did she seem to experience anxiety at all in
22 your class?

23 THE WITNESS: No, ma'am.

24 THE HEARING OFFICER: All right. Thank you.

25 Go ahead. I think we are done then with this

1 witness. Did you ask your final question?

2 MR. RATNER: I had one more, and I think he
3 has got more after that.

4 MR. ANDRIANO: I don't have much.

5 THE HEARING OFFICER: All right. You have one
6 more, and then we will listen to Mr. Andriano.

7 Because I believe there was quite a bit of
8 follow-up, Mr. Andriano will have the last word.

9 But ask your one question.

10 BY MR. RATNER:

11 Q Was there a discussion of REDACTED's anxiety in
12 any of the IEP meetings you participated in?

13 A Yes.

14 MR. RATNER: Okay. Thank you.

15 THE HEARING OFFICER: Mr. Andriano.

16 MR. ANDRIANO: One second, Ms. Freeman.

17

18 REDIRECT EXAMINATION

19 BY MR. ANDRIANO:

20 Q Ms. Smith, thank you. If you could turn to
21 Parents' Exhibit 1035.

22 A Yes.

23 Q What does Level 38 interventional mean?

24 A It means that she would need interventions
25 with specialized instruction for that. During that

1 time of giving the DRA in Chesterfield County, we were
2 instructed that students with disabilities to not
3 penalize them for their rate of speed when we were
4 looking at whether or not they could accurately read
5 and whether or not they could comprehend what they
6 read. So at that time I did note her speed, but I did
7 not use it to determine her level based on instruction.

8 Q Okay. And did she make progress as described
9 in the IEP Present Level of Performance?

10 A She absolutely made progress as described in
11 the Present Level of Performance.

12 Q And you indicated here she was independent
13 for accuracy?

14 MS. RATNER: Asked and answered.

15 THE HEARING OFFICER: Overruled at this time.
16 Go ahead.

17 THE WITNESS: Yes, she is independent for
18 accuracy at a Level 38, according to this document.

19 BY MR. ANDRIANO:

20 Q And what does that mean?

21 A It means that she can accurately decode a
22 Level 38 passage, which would be considered the end of
23 third grade.

24 Q And she was in what grade at that point in
25 time?