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VIRGINIA DEPARTMENT OF EDUCATION  
DUE PROCESS HEARING

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

Petitioner,

vs. VDOE Case No. 22-84

CHESTERFIELD COUNTY SCHOOL BOARD,

Respondent.

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DAY 7

TRANSCRIPT OF PROCEEDINGS

BEFORE SARAH S. FREEMAN, ESQ., HEARING OFFICER

March 29, 2022

9:05 a.m. - 3:12 p.m.

Midlothian, Virginia

Job No. 47231

REPORTED BY: LORI A. BOEDING, CCR

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ALSO PRESENT :

April Lennox, CCPS Dyslexia Specialist

**REDACTED** , Parents

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EXHIBITS

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1 (9:05 a.m.)

2

3

P R O C E E D I N G S

4

5

(Court reporter previously sworn.)

6

7

THE HEARING OFFICER: So let's have our first  
8 witness, if you have her. I believe,  
9 Ms. McCluskey.

10

Good morning, Ms. McCluskey.

11

12

13

14

15

16

We are going to begin the REDACTED hearing  
this morning, REDACTED v. Chesterfield County  
Public Schools or School Board. And we have a  
witness today, Christine McCluskey. I'm going to  
go around the room and identify everyone who is in  
the room.

17

Mr. REDACTED is here, Mrs. REDACTED is here,

18

Ms. Ratner is here, Mr. Ratner. I'm the hearing  
19 officer, obviously, I'm here. Ms. Boeding is here,  
20 and thank you. You recall that you were sworn?

21

THE COURT REPORTER: Yes, ma'am.

22

23

24

THE HEARING OFFICER: And Mr. Andriano and  
Ms. Owens and Ms. Lennox, who is the representative  
for the the school system.

25

Any questions or motions before we begin?

1 MS. OWENS: None from the School Board.

2 MR. RATNER: Nothing from the Parents.

3 THE HEARING OFFICER: When we broke  
4 yesterday -- and this is the 7th day of the  
5 hearing, I believe, and it's -- I haven't checked  
6 my calendar, but it's the 7th day of the hearing.

7 When we broke yesterday, there was a question  
8 about whether or not Ms. McCluskey was going to be  
9 able to testify fully this morning, and it's my  
10 understanding that there was a discussion between  
11 counsel last night regarding Ms. McCluskey's  
12 testimony.

13 Am I correct in assuming that Ms. McCluskey is  
14 going to be here for the duration of --  
15 consecutively for the duration of her direct and  
16 her cross-examination testimony, or does she have  
17 to break?

18 MS. OWENS: She will -- it's my understanding  
19 that she will be here for the duration.

20 THE HEARING OFFICER: Okay. All right. So  
21 the school system is going to be directly examining  
22 Ms. McCluskey and you -- I don't recall if I asked  
23 you, but do you recall being placed under oath at  
24 some point?

25 THE WITNESS: Yes, ma'am.

1 THE HEARING OFFICER: Answer any questions  
2 Mr. Andriano or Ms. Owens has for you. I might  
3 have a question or two, and I will try to wait  
4 until the end. And then Mr. Ratner and Ms. Ratner  
5 may have questions later for their  
6 cross-examination. I recall that we were -- that  
7 you testified before but you were being -- you were  
8 being questioned by the Parents. So now your  
9 direct examination, of course, is going to be done  
10 by the school system. And I believe Mr. Andriano  
11 or Ms. Owens is going to do it.

12 So move forward then.

13 MS. OWENS: Thank you.

14

15 CHRISTINE MCCLUSKEY,  
16 having been previously sworn,  
17 testified further as follows:

18

19 DIRECT EXAMINATION

20 BY MS. OWENS:

21 Q As Ms. Freeman indicated, you testified in  
22 this matter last week, correct?

23 A Yes, ma'am.

24 Q Could you please restate your name for the  
25 record.



1 A Yes. I'm Christine McCluskey.

2 Q And your position with Chesterfield County  
3 Public Schools?

4 A I'm a teacher of students with disabilities  
5 at Old Hundred Elementary.

6 Q And how long have you been in that position?

7 A This is my third year at the school.

8 Q How many years have you taught as a special  
9 education teacher?

10 A Oh, I don't know the breakdown. I also  
11 taught general ed. In total, this is my 29th year. I  
12 know I've taught special ed more than general ed.

13 Q If I could direct your attention to School  
14 Board Exhibit Number 66.

15 A Yes.

16 Q Are you familiar with this document?

17 A Yes.

18 Q And what is it?

19 A This is my resume.

20 Q You indicate on your resume that you were a  
21 teacher of the year for Old Hundred Elementary for the  
22 2020-2021 school year?

23 A I was.

24 Q Congratulations.

25 A Thank you.

1 Q Also, could you describe what your role is as  
2 a special education teacher?

3 A As a special education teacher, I have a  
4 caseload that I'm in charge of, and it varies as far as  
5 how many students I have each year. I collaborate with  
6 the general education teachers where my students are,  
7 their homeroom, and we come up with lesson plans. And  
8 then I work on the children's IEP goals and write  
9 progress reports and collaborate with the teachers on  
10 report cards.

11 Q Okay. During the 2020-2021 school year, you  
12 mentioned a collaborative teacher. Was that  
13 collaborative teacher Elizabeth Houston?

14 A It was.

15 Q And REDACTED was one of your students in that  
16 classroom?

17 A She was.

18 Q So let's also discuss your licensure. Could  
19 you describe your areas of license with the Virginia  
20 Department of Education.

21 A Yes, I am licensed in K through 6 general ed  
22 and K-12 special ed students with learning  
23 disabilities.

24 Q In your role as case manager, could you  
25 describe approximately how many -- well, even as a

1 special education teacher, how many IEP meetings have  
2 you attended?

3 A In my career?

4 Q Yes.

5 A Hundreds.

6 Q To the best of your --

7 A Hundreds.

8 Q Okay. And generally how many students are on  
9 your caseload?

10 A Well, for instance, this year, I have 18 that  
11 I'm case manager for, but I service 22.

12 Q And are you responsible for measuring  
13 progress towards their IEP goals?

14 A I am.

15 Q And you are responsible for reporting to the  
16 parents whether their students are making progress  
17 towards their IEP goals?

18 A I am.

19 Q And developing IEPs for students with  
20 disabilities as well?

21 A Yes.

22 Q You also indicate on your resume the Game  
23 Changer Award, February 2022. Congratulations on that  
24 as well.

25 A Thank you.

1 Q What is that award?

2 A A Game Changer Award is parents or staff  
3 members, teachers, can, I guess, let the county know  
4 that you've done an exceptional job, and then the Game  
5 Changer Award is awarded by Dr. Daugherty and a School  
6 Board representative. It's pretty awesome.

7 THE HEARING OFFICER: That's really good. But  
8 I think we need to stick to her qualifications.  
9 And congratulations.

10 THE WITNESS: Thank you.

11 THE HEARING OFFICER: But this is about REDACTED  
12 and what we did with her. Let's discuss her  
13 licensure qualifications.

14 BY MS. OWENS:

15 Q Let's turn specifically to REDACTED. Could  
16 you also describe -- you mentioned that you are a  
17 special education teacher and that you've been a  
18 teacher for 29 years.

19 Could you describe your work -- you work with  
20 students who have a disability in the area of reading,  
21 correct?

22 A I do, yes.

23 Q And during the 2019-2020 school year, you  
24 were REDACTED's special education teacher?

25 A Yes.

1 Q And then during the 2020-2021 school year,  
2 were you both her special education teacher and her  
3 case manager?

4 A Yes, I was.

5 MS. OWENS: Ms. Freeman, we would like to have  
6 this witness identified as an expert witness in the  
7 area of IEP development and implementation.

8 THE HEARING OFFICER: IEP development -- and I  
9 didn't get to write down the second thing.

10 MS. OWENS: Implementation.

11 THE HEARING OFFICER: Is that the second thing  
12 or just IEP development and implementation?

13 MS. OWENS: Yes, ma'am.

14 THE HEARING OFFICER: Thank you. Any  
15 objection?

16 MS. OWENS: We would like to change that to  
17 education of students -- I'm sorry.

18 THE HEARING OFFICER: Change it to  
19 education --

20 MS. OWENS: No, ma'am. So IEP implementation,  
21 IEP development and education of students with  
22 disabilities. I apologize.

23 THE HEARING OFFICER: Wait a minute. Hold on  
24 just a sec. IEP development and educational --

25 MS. OWENS: I'll say it over again. I

1 apologize. So IEP implementation, IEP development  
2 and education of students with disabilities.

3 THE HEARING OFFICER: Mr. Ratner, do you want  
4 to challenge her credentials?

5 MR. RATNER: I do not. I just would like us  
6 to be on the same page. I think Ms. Owens and I  
7 just use slightly different language, and I want to  
8 avoid later confusion as to whether she's been  
9 identified or qualified. I thought she had been  
10 previously identified in their expert list. They  
11 have now qualified her, I would say, and we agree  
12 with that.

13 THE HEARING OFFICER: Okay. All right. So  
14 let me make certain before I leave this that I have  
15 it down properly. IEP implementation --

16 MS. OWENS: IEP development.

17 THE HEARING OFFICER: And education -- and  
18 this is the one that I didn't get the whole thing,  
19 students with special education disability or  
20 disabilities?

21 MS. OWENS: Students with disabilities.

22 THE HEARING OFFICER: Okay. Just as a  
23 refresher, I think that she was qualified before.  
24 I'm trying to answer what you brought up,  
25 Mr. Ratner. She was qualified before, but I don't

1 recall getting into the specific areas. Maybe I  
2 did.

3 MS. OWENS: She was not previously qualified  
4 as an expert witness.

5 THE HEARING OFFICER: Oh, okay.

6 MS. OWENS: So that's why we wanted to go  
7 through that process today.

8 MR. RATNER: That's consistent with my  
9 recollection.

10 MR. ANDRIANO: I looked back through my notes,  
11 and I didn't see anything.

12 MR. RATNER: But, again, we don't have any  
13 objections.

14 THE HEARING OFFICER: Again, just for my  
15 clarification.

16 So let's move forward then. There's no  
17 objection. She is so qualified in those three  
18 areas. I'm going to go over them again.

19 IEP implementation, education of students with  
20 disabilities and IEP development; is that right?

21 MS. OWENS: Yes, ma'am.

22 THE HEARING OFFICER: All right. Go ahead.

23 MS. OWENS: Thank you.

24 BY MS. OWENS:

25 Q And Ms. McCluskey, when you testified

1 previously, you talked about the fact that you were  
2 REDACTED 's special education teacher during her fourth  
3 grade school year, correct?

4 A Yes.

5 Q And so let's move forward from fourth grade  
6 and start going into after the end of the 2019-2020  
7 school year.

8 Did you work with REDACTED over the summer of  
9 2020 at all?

10 A I did.

11 Q Okay. And could you -- did you provide any  
12 reading instruction over the summer?

13 A I did.

14 Q How many weeks were reading services or  
15 reading instruction made available to REDACTED?

16 A Five weeks.

17 Q And how many days per week?

18 A Four.

19 Q And could you describe the amount of hours  
20 during the course of a school day.

21 A I believe it was four to five hours a day.

22 Q In addition to reading, was she also provided  
23 any instruction in math?

24 A She was.

25 Q And then during the 2020-2021 school year,



1 you became REDACTED a's case manager, correct?

2 A Yes.

3 Q And you testified previously that Ms. Houston  
4 was the collaborative teacher?

5 A Yes, she was.

6 Q So how frequently would you see REDACTED during  
7 the course of the school day?

8 A Oh, every day. I saw her every day.

9 Q And did you work with her within the  
10 collaborative setting for reading and math?

11 A I did.

12 Q So let's talk about the beginning of the  
13 2020-2021 school year and how instruction was delivered  
14 to students.

15 Would you agree that instruction occurred  
16 virtually at the beginning?

17 A At the beginning, yes.

18 Q And could you describe whether -- could you  
19 describe REDACTED's participation in instruction at the  
20 beginning of the school year.

21 A Yes. Can I look at the logs? Do you want  
22 details or just -- I don't have exact dates that she --

23 Q Well, let me ask you this way, did REDACTED  
24 participate regularly in instruction?

25 A Not regularly, no.

1 Q And could you describe whether she appeared  
2 to be engaged in instruction?

3 A Not fully. Sometimes her camera was off or  
4 she wouldn't respond when we spoke to her in the chat  
5 or verbally.

6 Q And when her camera was on, what did it  
7 appear that REDACTED was doing?

8 A At times it appeared that she was following  
9 directions and participating. Other times she was  
10 looking away from the computer screen.

11 Q Did you ever observe any, I guess, anxiety --  
12 did REDACTED appear to be anxious or have anxiety?

13 A No, not from what I saw.

14 Q And so could you characterize her  
15 participation then with regard to that period of  
16 virtual instruction?

17 A I think she had a lack of interest in  
18 participating in the virtual instruction.

19 Q Why were schools virtual at that time?

20 A For the global pandemic. It was how we  
21 started the school year, virtually.

22 Q So Chesterfield County Public Schools  
23 reopened on a virtual model?

24 A Yes, we did.

25 Q With regard to REDACTED's participation, did you

1 ever have a discussion or reach out to Mr. and  
2 Mrs. REDACTED regarding her participation?

3 A I did. We would email back and forth. We  
4 have a platform for our virtual instruction called  
5 Canvas, and on that platform, I am able to directly  
6 communicate with REDACTED through something called an  
7 in-box; it's like our own email. So, you know, if she  
8 didn't attend or she missed something, I would either  
9 communicate with her, it would be through the in-box or  
10 through Mrs. REDACTED. And I had a wonderful opportunity  
11 to meet with REDACTED outside of the school in person. We  
12 went and took a walk at Sunday Park. It was lovely.

13 Q You mentioned that you took a walk with REDACTED?

14 A I did.

15 Q And how did that come about?

16 A I believe it was Mrs. REDACTED's suggestion that  
17 we get together and I agreed. It was a good one, just  
18 to meet face to face. When you're virtual the whole  
19 time, and I've known REDACTED since the year prior, it was  
20 good to see her in person and talk with her.

21 Q Okay. Did the IEP team also reconvene during  
22 the 2020-2021 school year to address REDACTED's academic  
23 performance?

24 A Yes.

25 Q And to the best of your recollection, did the

1 IEP team consider concerns about REDACTED 's performance as  
2 well as Parents' concerns during the meeting?

3 A Yes, we did.

4 Q And do you recall whether the IEP team made  
5 any recommendations with regard to REDACTED returning for  
6 in-person instruction?

7 A Yes, we did.

8 Q And what was that recommendation?

9 A We decided to add some goals to her IEP for  
10 study skills and social/coping skills, things like  
11 that.

12 THE HEARING OFFICER: Can you speak up,  
13 because this side needs to hear you, too.

14 THE WITNESS: I apologize. Then after virtual  
15 we came back hybrid as well, so we discussed what  
16 that would look like.

17 BY MS. OWENS:

18 Q Were other students in the general education  
19 setting returning two days per week or four days per  
20 week?

21 A They returned two days per week based on  
22 their last name alphabetically.

23 Q How many days per week did REDACTED return?

24 A She returned for four.

25 Q And you provided instruction to REDACTED during

1 that time of in-person learning?

2 A Yes.

3 Q And on that -- it's my understanding that the  
4 way the schedule went it was Monday-Tuesday and  
5 Thursday-Friday?

6 A Yes.

7 Q What about on Wednesdays, did you deliver any  
8 instruction to [REDACTED] on Wednesday?

9 A I did. Per her IEP goals, we met every day.  
10 Wednesdays was an asynchronous day, but I met with [REDACTED]  
11 for all five days.

12 Q And could you describe the areas in which you  
13 addressed with [REDACTED] during her specially designed  
14 instructional time?

15 A We worked on work completion for her study  
16 skills. We worked on her word study and fluency. Math  
17 wasn't at that time, yet, so it was just the word  
18 study, fluency, study skills and social skills.

19 Q And when [REDACTED] returned for in-person  
20 learning, did you notice any differences in her overall  
21 performance, academic performance?

22 A Yes. She enjoyed being at school and her  
23 work completion was better and she was happy to be  
24 back.

25 Q Did her grades also improve?

1 A They did. They did.

2 Q Did REDACTED make academic progress during the  
3 course of the 2020-2021 school year?

4 A She did.

5 Q I want to point specifically to School Board  
6 Exhibit Number 61.

7 Before we delve into 61, you mentioned --  
8 your previous testimony was that when REDACTED returned on  
9 hybrid model she came back on Mondays, Tuesdays,  
10 Thursdays and Fridays for in-person learning and  
11 virtual for Wednesdays?

12 A Yes.

13 Q Did there come a time when REDACTED returned five  
14 days a week for in-person instruction?

15 A She did after -- I believe it was in 2021  
16 when we all came back, the county came back.

17 Q Could you say that one more time?

18 A She came back in-person full-time in 2021  
19 when the county resumed in-person learning.

20 Q Sometime in January or February, to the best  
21 of your recollection?

22 A Was it February? I believe, yeah, January or  
23 February.

24 Q Early 2021?

25 A Yes.

1 Q Okay. And so when she returned for in-person  
2 instruction for the five days per week, did you notice  
3 an even greater increase in her performance?

4 A Yes, I did.

5 THE HEARING OFFICER: Greater increase in  
6 what?

7 MS. OWENS: Her performance. Her academic  
8 performance. I'll ask the question over again.

9 BY MS. OWENS:

10 Q Did you notice an increase or a change in her  
11 academic performance when she returned for five days  
12 per week?

13 A I did.

14 Q And could you describe what those -- could  
15 you describe her performance upon her return for five  
16 days per week for in-person learning?

17 A She was more engaged with the in-person  
18 learning, was able to complete her work mostly on time.  
19 She participated in class both in the whole group and  
20 in the small group setting, and she continued to show  
21 progress.

22 Q Now let's talk about the measures of progress  
23 during the entirety of the 2020-2021 school year.

24 Was the MAP assessment one of the measures  
25 used to determine REDACTED 's progress?

1 A Yes, it was.

2 Q And now if you could look at School Board  
3 Exhibit Number 61.

4 THE HEARING OFFICER: School Board exhibit?

5 MS. OWENS: 61.

6 THE HEARING OFFICER: Oh, we're still on 61.

7 Okay. Go ahead.

8 BY MS. OWENS:

9 Q Are you familiar with this document?

10 A I am.

11 Q And what is it?

12 A This is her MAP growth assessment in math and  
13 reading.

14 Q And how many times did REDACTED take the MAP  
15 assessment during the 2020-2021 school year?

16 A For reading, she took it twice, and for math,  
17 she took it three times.

18 Q And could you describe -- looking  
19 specifically at reading, could you describe her  
20 performance on the MAP assessment?

21 A Yes. In the winter of '21, REDACTED scored an  
22 overall score of 171, and then when it was administered  
23 again in the spring of '21, her overall score increased  
24 to a 212, which is amazing. If you look at the dotted  
25 line, that is the national average, and she was just



1 above it. In fact, she scored better than 53 percent  
2 of her peers, which is wonderful, showing high growth.

3 Q What about REDACTED 's reading based on this  
4 assessment, could you tell the Hearing Officer whether  
5 she was reading at grade level at that time?

6 A She is reading at grade level, she is above  
7 the national average of achievement, and she made more  
8 than 99 percent progress, better progress than her  
9 peers.

10 Q Was the SOL also used as one of the measures  
11 of REDACTED 's progress?

12 A Yes, it was.

13 Q And -- well, I don't want to keep talking  
14 about the actual scores, but are you aware of whether  
15 she passed the SOL for reading and math?

16 A She did pass.

17 Q Then with regard to science, are you aware of  
18 whether she passed that assessment?

19 A She did not pass that assessment.

20 Q And do you know approximately how many  
21 questions REDACTED was away from passing the science SOL?

22 MR. RATNER: Objection. I don't believe this  
23 teacher was qualified to discuss a science SOL and  
24 questions on it, et cetera. At least needs a  
25 foundation for her knowledge.

1 THE HEARING OFFICER: Your response?

2 BY MS. OWENS:

3 Q Are you aware of the fifth grade curriculum?

4 A I am.

5 Q Are you aware of the components of the SOL?

6 A I am.

7 Q Okay.

8 MR. RATNER: I renew my objection. She didn't  
9 work with REDACTED on science. I don't think just  
10 saying she's aware of the curriculum and the  
11 components of the SOL is a sufficient foundation  
12 for the testimony that I believe is trying to be  
13 elicited.

14 MS. OWENS: Ms. McCluskey is also the  
15 student's case manager. She's familiar with the  
16 curriculum. She's familiar with the SOL.

17 THE HEARING OFFICER: So it's her job then to  
18 be aware of the math -- the score on -- the math  
19 score on the MAP. Am I saying it correctly?

20 THE WITNESS: MAPs.

21 THE HEARING OFFICER: Is it a P or a T?

22 THE WITNESS: P.

23 THE HEARING OFFICER: P, as in Paul. The MAP  
24 score. Although, did you say you gave it to her or  
25 not?

1 THE WITNESS: I did.

2 THE HEARING OFFICER: Okay. So I'm going to  
3 overrule your objection now.

4 MR. RATNER: Just to make sure we're talking  
5 about the same thing, we're not talking about MAP  
6 anymore.

7 THE HEARING OFFICER: Oh, the SOL. I'm sorry.

8 THE WITNESS: Yes, I did.

9 THE HEARING OFFICER: Did you give her the --

10 THE WITNESS: I did.

11 THE HEARING OFFICER: Okay. She gave her the  
12 SOL as well. And that was just from my notes here,  
13 you gave her the -- what is it? The reading SOL?

14 THE WITNESS: Yes.

15 THE HEARING OFFICER: I don't know if that's  
16 the proper description of the language SOL. What  
17 do they call it?

18 THE WITNESS: Standards of learning, the SOL.

19 THE HEARING OFFICER: But when it's geared to  
20 reading and literature or literary kinds of things,  
21 what do they call that?

22 THE WITNESS: It's still called the reading  
23 SOL.

24 THE HEARING OFFICER: Oh, the reading SOL.

25 Okay. And then on the math, do they call that the

1 math SOL?

2 THE WITNESS: Yes, they do.

3 THE HEARING OFFICER: And wasn't her score  
4 like in the 390 range?

5 MR. ANDRIANO: No.

6 THE WITNESS: She passed the math.

7 THE HEARING OFFICER: Okay. All right. There  
8 was one I keep thinking of that was in the 390  
9 range.

10 THE WITNESS: Science.

11 THE HEARING OFFICER: Oh, that was science.  
12 So she passed both of them.

13 THE WITNESS: Reading and math, yes.

14 BY MS. OWENS:

15 Q If I could direct your attention to School  
16 Board Number 49.

17 THE HEARING OFFICER: Where are we now?

18 MS. OWENS: School Board Exhibit 49.

19 THE WITNESS: Yes.

20 BY MS. OWENS:

21 Q You testified that REDACTED passed the reading  
22 SOL, and what was her score?

23 A Her reading was 421.

24 Q Okay. And does that mean she met grade level  
25 expectations?

1 A She did. She was proficient.

2 Q In what grade?

3 A Fifth grade.

4 Q With regard to science, did the science SOL  
5 include curriculum for one or two school years?

6 A It's for fourth and fifth grade.

7 Q And how would you describe REDACTED's  
8 participation in the math content at the beginning of  
9 the fifth grade school year?

10 A Math or science?

11 Q Science. I apologize.

12 A That's okay. I just wanted to make sure.  
13 Could you repeat it? I'm sorry.

14 Q How would you describe REDACTED's participation  
15 in science during the fifth grade school year?

16 A Because it was virtual initially, she wasn't  
17 consistently at the science class.

18 Q Did she miss content with regard to science?

19 A She did.

20 Q And approximately how many questions was REDACTED  
21 from passing the science SOL?

22 A Very close. One or two questions. A passing  
23 score is 400.

24 Q Did you also conduct other forms to -- other  
25 assessments to determine her progress towards her IEP

1 goals?

2 A I did.

3 Q Okay. And was the DRA one of those  
4 assessments?

5 A It was.

6 Q And if I could turn your attention to School  
7 Board Exhibit Number 50.

8 A Yes.

9 Q In addition to the DRA, did you also assess  
10 her reading using Reading A through Z?

11 A I did.

12 Q And could you describe the difference between  
13 the DRA and the Reading A through Z?

14 A I can. The Reading A through Z passages that  
15 I used was strictly to assess her fluency, and I use  
16 the DRA in the same manner. The only difference with  
17 the DRA is it's more comprehensive. It checks for the  
18 fluency rate and accuracy rate, which is what I was  
19 looking for, but it also does check for comprehension,  
20 sometimes vocabulary and her word reading, her  
21 decoding.

22 Q Okay. [REDACTED] received specially designed  
23 instruction to address the area of reading.

24 Could you describe her reading fluency? Did  
25 she have challenges with regard to her reading fluency?

1 A She did have challenges with reading fluency.

2 Q What about reading comprehension?

3 A Reading comprehension was not a goal I worked  
4 with her on.

5 Q So when you were assessing her using the DRA  
6 and the Reading A through Z, were you assessing her  
7 based on her reading fluency or her reading  
8 comprehension?

9 A Her reading fluency.

10 Q Was she on grade level with regard to her  
11 reading comprehension?

12 A Yes, she was.

13 Q Okay. So now let's talk about School Board  
14 Exhibit Number 50.

15 A Okay.

16 Q If you could take a look at School Board  
17 000223 at the bottom and then all the way through the  
18 very end, 000248.

19 A Yes, I do remember these.

20 Q And are all of these DRAs and Reading A to Z  
21 assessments that you gave to REDACTED during her  
22 fifth grade school year?

23 A Yes.

24 Q And is it fair to say that you gave REDACTED four  
25 Reading A through Zs?

1           A    They might not all be in here.  I didn't save  
2   everything as she was making progress, so what's in  
3   here, yes.

4           Q    So now let's talk about School Board Exhibit  
5   Number 000223.  Is this a DRA or Reading A to Z?

6           A    This is a DRA.

7           MR. RATNER:  I'm sorry, what page?

8           MS. OWENS:  000223 on Exhibit 50.

9           MR. RATNER:  Thank you.

10   BY MS. OWENS:

11           Q    Okay.  Could you go through and describe her  
12   progress using these two measures of the DRA and the  
13   Reading A through Z.

14           A    This was given at the beginning of the year  
15   in September, and I started with a Level 38 where she  
16   had 62 words per minute and 98 percent accuracy.

17           Q    And what does that mean?

18           A    The 98 percent accuracy is good because it  
19   means she's accurately reading.  Her words per minute  
20   is on interventional level for this particular passage,  
21   and it shows her reading rate for the passage.

22           Q    And with regard to this first DRA assessment  
23   entitled Benched, it looks like it runs through School  
24   Board Exhibit Number 000223 through 000225.

25           A    Through 226.



1 Q 226. I apologize.

2 A Yes.

3 Q Okay. What level DRA was REDACTED given at this  
4 time?

5 A This was a 38.

6 Q And what is a 38?

7 A It's the end of third grade.

8 Q So now let's talk about the following  
9 assessment that you gave. Is this a Reading A through  
10 Z at 000227?

11 A Yes.

12 Q And could you describe this assessment.

13 A This is just a running record, and on this  
14 particular passage, she scored with an accuracy of 94  
15 percent but at 52 words per minute.

16 Q And, again, you are assessing REDACTED's reading  
17 fluency; is that accurate?

18 A I am.

19 Q And with regard to her reading comprehension,  
20 she was on grade level?

21 A She was.

22 Q Okay. And what is a Level T with regard to  
23 reading fluency, according to this?

24 A It was also a 38, which is end of third  
25 grade.

1 Q Did [REDACTED]'s scores improve during the course  
2 of the school year?

3 A They did.

4 Q And could you describe where -- you described  
5 where she was at the beginning of the school year.

6 Where was she towards the end of the school  
7 year?

8 A Towards the end, she was able to read at 91  
9 words per minute with 98 percent accuracy. So she went  
10 from 62 to 91.

11 Q So she began the school year, you assessed  
12 her using the DRA 38. Where was she at the end of the  
13 school year with regard to the DRA?

14 A I had her at a late level 40, end of fourth.

15 Q Which is what?

16 A End of fourth grade.

17 Q I noticed that with the first DRA, the 38, it  
18 appears that before 40, the DRA has incremental  
19 assessments like 30, 32, 34, 36. Does that happen  
20 after level 40?

21 A No, it's just 40 and that's it.

22 Q Is it fair to say that there is an early 40,  
23 mid 40 and a late 40?

24 A There is.

25 Q And then after that, there's a level 50?

1 A Yes, ma'am.

2 Q So with regard to the -- you mentioned that  
3 she began at an early Level 38 -- excuse me, at a Level  
4 38, and she ended at what level with regard to the DRA  
5 40?

6 A Late level.

7 Q A late Level 40?

8 A Yes, ma'am.

9 Q Now let's turn to the Reading A through Z.  
10 You mentioned earlier that you assessed REDACTED at a  
11 Level T at the beginning of the school year?

12 A Yes.

13 Q Is it accurate to say that that first Reading  
14 A through Z was given on, that's included as Exhibit  
15 Number 50, was given on October 12, 2020?

16 A Yes, it was.

17 Q And could you describe where REDACTED was  
18 performing by the end of the school year?

19 A Yes. I did have her on a Level Y. That was  
20 in April.

21 Q And what is a Level Y?

22 A I believe it is fifth grade or end of fourth.  
23 I have to double-check. I'm going to say fifth.

24 Q I'm sorry?

25 A I'm going say fifth. Sorry.

1 Q So she began at a Level T and ended at a  
2 Level Y, which was fifth grade?

3 A Yes.

4 Q Now if I could direct your attention to  
5 what's been marked as School Board Exhibit 52.

6 Before we go there, are you aware of whether  
7 the level -- what the Level T is for the Fountas &  
8 Pinnell?

9 A I don't know.

10 Q All right. Let me direct your attention to  
11 School Board Number 52.

12 You testified previously that you provided  
13 specially designed instruction to REDACTED in the areas of  
14 reading and writing, correct?

15 A Correct.

16 Q Is School Board Number Exhibit Number 000253,  
17 is that one of the writing assignments that REDACTED  
18 completed?

19 A Yes, it is.

20 Q And at the top it says her name and then IND  
21 period. What does that mean?

22 A This is her independent biography that she  
23 did on Wilma Rudolph.

24 Q And could you describe her performance on  
25 this exhibit. And it's entitled Wilma Rudolph.

1 A If you look at the holistic writing rubric  
2 from Chesterfield County, she scored a 22 out of 24.

3 Q And is this one of the assignments that REDACTED  
4 would have worked on while in class?

5 A In the collaborative class, yes.

6 Q And is this grading rubric given to all  
7 students who are in that collaborative class?

8 A It is.

9 Q So she scored a 22 out of 24 on general  
10 education curriculum?

11 A Yes, she did.

12 Q Now if I could direct your attention to  
13 School Board Exhibit Number 46, going back in this  
14 binder.

15 Are you familiar with this exhibit?

16 A I am.

17 Q And what is it?

18 A This is her progress report, her IEP progress  
19 report.

20 Q For the -- it has two marking periods  
21 included in this?

22 A It does.

23 Q And these are the last two marking periods  
24 for the 2020-2021 school year?

25 A Yes.

1 Q And does it have two marking periods because  
2 REDACTED had an updated IEP in February of 2021?

3 A Correct.

4 Q Looking specifically at REDACTED's reading IEP  
5 progress, that first -- looking at the first IEP goal,  
6 could you describe whether REDACTED made appropriate  
7 progress in light of her circumstances?

8 A She did make appropriate progress.

9 Q And how did you assess that?

10 A I assessed it through the DRA -- through the  
11 fluency piece of the DRA and her MAP's assessment as  
12 well as her word study grade.

13 Q Now, looking at page -- the following page,  
14 School Board Exhibit 000198, specifically the writing  
15 assessment or the writing goal, did REDACTED make progress  
16 towards that IEP goal?

17 A She did.

18 Q Okay. And how did you assess that?

19 A With her writing assignments in the  
20 collaborative classroom and her quarterly prompts that  
21 we gave her.

22 Q And for both the reading goal and the writing  
23 goal, it appears that you measured her at a Level 3?

24 A I did.

25 Q Okay. And would you -- does that change your

1 opinion about whether she made progress in light of  
2 those circumstances?

3 A She did make progress.

4 Q So why rate her at a Level 3?

5 A She was making -- we had just started this  
6 IEP, so the data that I had gathered for just those two  
7 quarters, she was making progress. It's stated in the  
8 notes the progress that she made.

9 Q So is it fair to say you also wanted to have  
10 an opportunity to further assess her in the last two  
11 marking periods for that annual IEP?

12 A This goes for a year. This is only for half  
13 of the year.

14 Q Now, let's turn to School Board Exhibit  
15 Number 53.

16 A Yes.

17 Q Are you familiar with this exhibit?

18 A I am. It's her report card.

19 Q And did you provide -- did you work in  
20 collaboration with Ms. Houston in developing this  
21 report card for REDACTED?

22 A I did.

23 Q And is this report card an accurate  
24 reflection of REDACTED's academic performance during the  
25 fifth grade school year?

1 A Yes, it is.

2 Q And I just want to highlight her reading and  
3 writing areas, if you would.

4 Under the reading, what was her final grade?

5 A She had an A.

6 Q And underneath the grade, there are, I guess,  
7 smaller objectives under that final grade?

8 A Yes.

9 Q And could you describe what -- under reads on  
10 benchmark?

11 A Yes, so reads on benchmark, she scored a 3.  
12 She meets the standard.

13 Q Is that the standard for general education  
14 students?

15 A It is.

16 Q And what about for writing?

17 A For writing, she had a 3. She got an A.

18 Q She got an A in the class, and then  
19 underneath, there are, I guess, what appears to be  
20 benchmarks or further descriptors of that grade. It  
21 says writes in a variety of forms, and she scored --  
22 she went from a 2 to a 3?

23 A Yes, she did.

24 Q And she had a 2 at the beginning and a 3 at  
25 the end?



1 A Yes.

2 Q And could you describe what the 3 represents  
3 for REDACTED?

4 A The 3 is that she meets the standards and  
5 expectations and produces -- consistently produces  
6 quality work in writing.

7 Q And then she has a 4 for edits writing for  
8 capitalization, spelling, punctuation, sentence  
9 structure, paragraphing and standard English?

10 A Yes.

11 Q And what does a 4 represent?

12 A A 4 is that she exceeds that standard and  
13 expectation. She consistently produces that standard  
14 of work.

15 MS. OWENS: Give me one moment.

16 Thank you. I have no further questions for  
17 Ms. McCluskey.

18 THE HEARING OFFICER: Thank you. I did have  
19 one question, but I will ask it later.

20 Do you want to cross-examine?

21 MR. RATNER: I could use just a short break to  
22 organize everything.

23 THE HEARING OFFICER: Go ahead. All right.

24 MR. RATNER: Maybe 10 minutes.

25 THE HEARING OFFICER: Five after 10 then.

1 MR. RATNER: While it's fresh, I will say they  
2 took about 47 minutes, I think. Do I have an hour,  
3 or do I have 47 minutes?

4 THE HEARING OFFICER: Do you mind letting  
5 counsel have an hour if he wants it? No?

6 MS. OWENS: I'm going to also say that  
7 Ms. McCluskey has already testified twice on direct  
8 examination.

9 THE HEARING OFFICER: Let me -- I don't want  
10 to talk about it without Mr. Ratner in the room.

11  
12 (Break taken.)

13  
14 THE HEARING OFFICER: Okay. It's 5 after 10.  
15 I think we're ready to begin. At the break, right  
16 as we were breaking, we were discussing whether or  
17 not Mr. Ratner and Ms. Ratner have the opportunity  
18 to examine the witness for somewhere between 47  
19 minutes, I think it was, and an hour. And I think  
20 what we're going to do to make it fair, because I  
21 recall this witness was here, that she was here  
22 yesterday and one day last week and then another  
23 day last week, so 47 minutes, I think, is fair.

24 MR. RATNER: That's fine.

25 THE HEARING OFFICER: Is that okay?

1 MR. RATNER: Sure. If I could just add one  
2 comment, which is, the School Board made the point  
3 she's already testified twice, and I was a little  
4 confused by that. It was on two days.

5 THE HEARING OFFICER: That's what they meant.

6 MR. RATNER: In trial, at least in my  
7 experience, it is not unusual for a witness to be  
8 held over on a day. I certainly didn't do it on  
9 purpose.

10 THE HEARING OFFICER: No one was inferring  
11 that they were doing that.

12 MR. RATNER: So we called her. I mean, they  
13 could have crossed her in our case. They chose to  
14 bring her back.

15 MS. OWENS: I would like to respond to that.

16 First, Mr. Ratner called Ms. McCluskey as a  
17 witness on day.

18 THE HEARING OFFICER: On Monday.

19 MS. OWENS: Monday or Tuesday.

20 MR. ANDRIANO: Then he closed.

21 THE HEARING OFFICER: He closed, right.

22 MS. OWENS: Then after that, the following  
23 day, he asked you to allow him to reopen the direct  
24 examination with the witness, and then he went on  
25 another hour or so with the witness. So to now

1           imply that somehow he did not have at least two  
2           opportunities to conduct direct examination of the  
3           witness as well as a --

4           MR. RATNER: I wasn't talking about my  
5           opportunities. I was saying they've chosen to  
6           bring her back. They could have crossed her when  
7           she was here once. And so to the extent she's been  
8           inconvenienced by them recalling her, I don't take  
9           responsibility.

10          MS. OWENS: Well, our obligation is to make  
11          sure that the questions that we ask are in response  
12          to what the direct examination of the witness was.

13          MR. RATNER: That's not true.

14          MS. OWENS: That's precisely what the School  
15          Board did. And so to the extent that now it's in  
16          the School Board's case in chief, we are presenting  
17          Ms. McCluskey as an expert witness, as she had not  
18          been previously identified as an expert witness  
19          when Mr. Ratner was asking her questions.

20          MR. RATNER: That's right. There's no  
21          disagreement about that. It is not an obligation.  
22          As you've seen, we've tried to work cooperatively.  
23          I would have been happy to say, conduct your direct  
24          of her while she was here so she didn't have to  
25          come back.

1 MS. OWENS: So what is the issue?

2 MR. RATNER: They chose not to do it.

3 MS. OWENS: So what is the issue?

4 MS. RATNER: LaRana --

5 MS. OWENS: They've already had multiple  
6 opportunities --

7 MS. RATNER: There have been numerous comments  
8 suggesting that we somehow had some malicious  
9 intent to --

10 MS. OWENS: No one implied that.

11 MS. RATNER: -- inconvenience Ms. McCluskey  
12 and have her sit around and that's not accurate.

13 MS. OWENS: Nor was I insinuating that,  
14 Ms. Ratner.

15 MS. RATNER: Well, that's how it has seemed  
16 from numerous comments. We understand that a due  
17 process hearing is not convenient for a lot of  
18 people, and her testimony on one day ended not  
19 because we're negligent or incompetent. It became  
20 5:00 and the day ended.

21 MS. OWENS: Nobody implied that. My whole  
22 purpose, Ms. Freeman, of bringing this up is  
23 there's been multiple opportunities that Mr. Ratner  
24 had to examine the witness, so we would just ask  
25 that not a lot of --

1 THE HEARING OFFICER: All of your comments are  
2 on the record, and you can take those comments up  
3 on appeal, if there is an appeal. But for the  
4 record, I'm trying to make certain that the Parents  
5 have every opportunity that they feel is necessary  
6 to examine Ms. McCluskey. Ms. McCluskey is an  
7 important witness because Ms. McCluskey, I think,  
8 was the case manager for two years. I may -- I may  
9 be suggesting that it was longer. I think it was a  
10 short period when you were a teacher, and then you  
11 turned into a -- and don't ask me how long that was  
12 because I would have to review my notes. So I, in  
13 particular, am not drawing any conclusions. I  
14 don't infer any malicious intent by who has how  
15 much time.

16 I will say, I know it was unusual to let  
17 Mr. Ratner and Ms. Ratner reopen the case, but it  
18 was clear during their examination that they felt  
19 rushed. I hesitate to impose time limits because  
20 all of the information, especially from an  
21 important witness like Ms. McCluskey, is really  
22 helpful for me to understand the whole picture, and  
23 I don't like to cut anyone off really. But we --  
24 and I did keep reminding Mr. Ratner and Ms. Ratner  
25 about the five days, and they finished well inside

1 of the five days. So here we are.

2 MR. RATNER: Great.

3 THE HEARING OFFICER: Again, I'm not drawing  
4 any conclusions. You have 47 minutes because  
5 that's what they had, and let's move forward.  
6 Again, I'm not drawing any inferences maliciously  
7 intentioned or anything of that nature. So  
8 let's -- 47 minutes, and that will be it.

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

10

11

CROSS-EXAMINATION

12

BY MR. RATNER:

13

14

15

16

17

18

Q So, Ms. McCluskey, thank you for your  
patience. Because I have a little bit of limited time,  
I'm going to try to ask narrow questions. Hopefully,  
yes or no. I'm not going to try to cut you off, but  
I'm not looking for a long elaboration. I will try to  
ask questions that are targeted.

19

20

Let's start with fourth grade. You were  
REDACTED's special education teacher, correct?

21

A Correct.

22

Q And Ms. Smith was the case manager?

23

A Yes.

24

Q That changed for fifth grade, correct?

25

A Yes.

1 Q Why was there a change? Why did you become  
2 the case manager? And to be clear, I'm not implying or  
3 suggesting anything, just asking.

4 A Case managers change based on level of need  
5 for students in the building.

6 Q Okay.

7 A So it just --

8 Q So did that mean REDACTED had a greater  
9 need or --

10 A Not at all. Not at all.

11 Q So was it that she wasn't doing well with  
12 Ms. Smith or --

13 A Not at all.

14 Q It's just the way the rules worked out?

15 A Just the way the rules worked out.

16 Q Sure. Would any of it have to do that you  
17 and REDACTED had a good relationship?

18 A That was just a bonus.

19 Q Do you remember that little note we went over  
20 when you were here last time --

21 A Yes, sir.

22 Q -- about she taught you or you taught her so  
23 much?

24 A Yes.

25 Q Was that indicative of how REDACTED felt about



1 you during the time you worked with her?

2 A I like to think so.

3 Q So let's talk -- I'd like to focus your  
4 attention, if we could, during the first quarter of  
5 fifth grade.

6 A Okay.

7 Q So that would be the fall of 2020, correct?

8 A Yes.

9 Q All right. Is it fair to say or accurate to  
10 say that school was virtual that entire first marking  
11 period?

12 A I think it was.

13 Q Okay. Let's look at -- I understand. Let's  
14 look at her report card for just a moment. That's tab  
15 53 in the School Board book. That was something  
16 Ms. Owens examined you about.

17 Do you have that in front of you?

18 A I do.

19 Q I'm again focusing on the first quarter.

20 Would you agree with me that REDACTED was  
21 struggling in the first quarter of fifth grade?

22 A Her grades were lower, yes.

23 Q Not just lower, she had three F's, one D and  
24 then an A in science, right?

25 A Yes.

1 Q Okay. Because that's an area she's gifted  
2 in, right?

3 A I think she's on monitor for gifted.

4 Q Okay. And she went, in science particularly,  
5 she went all the way through the year with either A's  
6 or B's, right?

7 A Yes.

8 Q But then she failed the SOL?

9 A Yes.

10 Q Can you help me understand how that could  
11 happen if the SOL was a measure of her performance, she  
12 got A's and B's, but she couldn't pass the test?

13 A Well, the science SOL is fourth and fifth  
14 grade material.

15 Q So she had A's on fifth grade material but  
16 didn't understand fourth grade?

17 A I can't say that.

18 Q You don't know?

19 A I don't know.

20 Q We talked about how many questions she would  
21 have had to get right to pass the science exam. Do you  
22 remember that testimony?

23 A She had to get a 400 to pass.

24 Q And I think you said she was very close and  
25 maybe just a question or two different; do you recall

1 that testimony?

2 A I do.

3 Q So that's in tab 49, correct? Take a look,  
4 please.

5 A Yes.

6 Q Can you tell from anything in this tab how  
7 many questions were on the science exam? And I'll  
8 direct your attention to 222, but you're more familiar  
9 with this than me.

10 A Oh, this is the science. Yes.

11 Q There's 40 questions on the science exam,  
12 right? They are listed here individually?

13 A It looks that way -- appears that way.

14 Q And you can count them yourself, but I will  
15 represent to you, I counted that there were 40 and she  
16 got 17 wrong.

17 A Well, I don't know if there's 40 necessarily.  
18 Those are the types of level. I don't know if it's  
19 each individual question or just those standards. Do  
20 you know what I'm saying?

21 Q I think so. Then how are you so sure she  
22 only had to get a couple more right when you don't even  
23 know how many are on here?

24 A Well, typically, a 393 is only like a couple  
25 away from 400, generally speaking, just from my

1 experience of giving SOLs.

2 Q But you don't really know what was on this  
3 test, do you?

4 A Well, I didn't read it. She took it.

5 Q Right. That's what I'm saying. You  
6 administered it to her?

7 A Yes, I did.

8 Q What were the accommodations that she had?

9 A Do you have the IEP where I can look at the  
10 accommodations?

11 Q I don't. But that's okay if you don't  
12 recall. I'm not suggesting you didn't do anything.

13 Are you familiar with something called the  
14 Pearson Access Next Student Extract data file?

15 A From -- no.

16 Q That's a fair answer. You're aware that  
17 Pearson is the company that actually prepares the SOL  
18 and administers the SOL?

19 A Sure.

20 Q As the person who is going to administer it  
21 to REDACTED, do you have any responsibility to enter codes  
22 into a computer about accommodations?

23 A No.

24 Q Okay. It's an untimed test, correct?

25 A Correct.

1 Q She could take as long as she wants?

2 A Yes.

3 Q So that wouldn't really test for fluency  
4 deficits, right, because she has as long as she needs?

5 A She does.

6 Q And that would be the same for reading and  
7 math, correct, as long as she wants?

8 A Yes.

9 Q Untimed?

10 A Yes.

11 Q So if the problem is -- fluency has to do  
12 with the rate at which she can do something, right?

13 A Yes.

14 Q So a passing score on this is not necessarily  
15 testing that fluency deficit, correct?

16 A Correct.

17 Q Okay. Going back to the report card for just  
18 a minute, and that's 53, you testified --

19 THE HEARING OFFICER: What page were you  
20 referring her to?

21 MR. RATNER: Previously I was on tab 49, and  
22 the entirety of it we talked about, but I  
23 specifically focused on 222. And now I'm going  
24 back to tab 53 in the school book, which is the  
25 report card.

1 THE HEARING OFFICER: Oh, okay. That's what I  
2 have.

3 MR. RATNER: Great.

4 THE HEARING OFFICER: You were on 255, then,  
5 right?

6 MR. RATNER: Well, I had gone back to the  
7 SOLs, which was 49, and now I'm back at 255.

8 BY MR. RATNER:

9 Q So the attendance, do you see that in the  
10 upper right corner?

11 A I do.

12 Q You had talked about problems with  
13 engagement, attention and logging on?

14 A Yes.

15 Q Do you know what these four days absent for  
16 the first quarter represents?

17 A I would have to look at my logs.

18 Q But sitting here today, do you recall that  
19 there were more than four classes that REDACTED was not  
20 there in the first marking period?

21 A Well, these are entire days.

22 Q That's what I mean.

23 A Right. I would have to look at my log.  
24 That's a lot of information.

25 Q Yes, absolutely. So let's look at a couple

1 of emails if we could. So I apologize, this is going  
2 to require going into the Parents' book, and I believe  
3 it's Volume 2. But before you get that, let me make  
4 sure I'm directing you to the right place.

5 Yeah, so do you remember Ms. Owens asked you  
6 a question about whether REDACTED exhibited any anxiety  
7 when she was with you?

8 A Yes.

9 Q Okay. And I think your testimony was she did  
10 not. Was that your testimony?

11 A Yes.

12 Q So let's go to Parents' book Volume 2,  
13 Exhibit 51, and specifically on page 613, Parents' 613.

14 Do you see those page numbers at the bottom?

15 A Yes.

16 Q Okay.

17 MS. OWENS: 613, Mr. Ratner?

18 MR. RATNER: 613, yes, ma'am.

19 BY MR. RATNER:

20 Q This appears to be a document from Mrs. REDACTED  
21 to you on the morning of December 10, 2020, at  
22 8:51 a.m.

23 Do you recognize this as an email you  
24 received?

25 A Yes.

1 Q Okay. Explain to the Hearing Officer what  
2 Mrs. REDACTED communicated to you at this time.

3 A She's communicating that REDACTED is not getting  
4 on her Meet at 9 a.m.

5 Q And then she writes, I'm not sure if she's  
6 embarrassed or what her resistance is; is that correct?

7 A That's what Mrs. REDACTED wrote.

8 Q But you drew a different conclusion about why  
9 REDACTED wasn't getting on?

10 A May I see my response?

11 Q Well, I'm asking.

12 A She didn't get on, so I'm not sure why. I  
13 was just listening to what Mrs. REDACTED said.

14 Q Well, you recall an -- you know what an FBA  
15 is, correct?

16 A Yes.

17 Q A functional behavior assessment?

18 A Yes.

19 Q And you recall that you had to complete an  
20 interview form for that? I believe we talked about it  
21 last time.

22 A We did.

23 Q And isn't it fair to say that you concluded  
24 this behavior was quote-unquote work avoidance? That's  
25 what the FBA was for, right?



1           A     Well, I wouldn't say this particular work  
2 instance was work avoidance.

3           Q     Okay. What was the quote-unquote work  
4 avoidance that you requested an FBA for?

5           THE HEARING OFFICER: I don't see anything  
6 like that in Exhibit 613.

7           MR. RATNER: I'll find the work avoidance.  
8 We've discussed it already, and I was trying to  
9 head off --

10          THE HEARING OFFICER: Well, show me --

11          MR. RATNER: I will be happy to. I was trying  
12 to go quickly.

13          THE HEARING OFFICER: I mean, I'm jumping from  
14 this email and now we're into the FBA. Are you  
15 referring her to the FBA? Because I'm confused.  
16 Did she have any participation in the FBA?

17          MR. RATNER: She did. She just said she did.

18          THE HEARING OFFICER: Okay. Where's the  
19 evidence?

20          MR. RATNER: I'll get to it. I thought she  
21 was with me, so that's why I was just trying to  
22 move on.

23          THE HEARING OFFICER: It's just that we're  
24 going to another topic, and I'm still back at 51.

25          MR. RATNER: I think it's school board -- I've

1 got to find it. Give me just one minute, please.

2 THE HEARING OFFICER: Is that a comment you  
3 made with regard to possibly creating an FBA to  
4 address the avoiding behavior? Is that where  
5 you're going with that?

6 MR. RATNER: That's correct.

7 THE HEARING OFFICER: Okay. So I just need to  
8 find the exhibit where you're --

9 MS. RATNER: It's School Board Exhibit 28.  
10 It's already been admitted into evidence.

11 THE HEARING OFFICER: All right.

12 MR. ANDRIANO: No, it's 29.

13 MS. RATNER: I'm sorry? No, 28 is the  
14 interview.

15 MR. ANDRIANO: 29 is the FBA.

16 THE HEARING OFFICER: It's background and then  
17 we get to the --

18 MR. RATNER: Are you saying that I can't talk  
19 about the interview, Mr. Andriano?

20 MR. ANDRIANO: If you're directing the Hearing  
21 Officer's attention to the FBA --

22 MR. RATNER: You are? Okay. I'd like to ask  
23 her about this interview which led into the FBA.

24 THE HEARING OFFICER: Sure. Okay. So we're  
25 on Exhibit 28, and counsel is going to ask about

1 the relevant background information that went into  
2 possibly creating an FBA, correct?

3 MR. RATNER: That's my understanding, yes.

4 THE HEARING OFFICER: All right. Go ahead.

5 BY MR. RATNER:

6 Q Ms. McCluskey, do you have School Board  
7 Exhibit 28 in front of you?

8 A I do.

9 Q Okay. Is this a document you recognize?

10 A Yes.

11 Q And I believe I asked you some questions  
12 about it when you were here previously; do you recall  
13 that?

14 A Yes.

15 Q Was this -- did you provide the information  
16 on this sheet?

17 A I did.

18 Q Okay. And this was in connection with a  
19 functional behavior assessment for REDACTED?

20 A Yes.

21 Q So when there is a functional -- have you  
22 participated in functional behavior assessments before?

23 A No.

24 Q Never?

25 A No.

1 Q Did you understand the purpose of this  
2 exercise?

3 A Yes. It was for the eligibility, as I  
4 recall.

5 Q Okay. And if you're looking at quote-unquote  
6 functional behavior, there is a functional behavior  
7 that you are, in fact, assessing, correct?

8 A Correct.

9 Q And how did you describe the problem  
10 behaviors? That's interview questions: What are the  
11 problem behaviors? What do they look like?

12 Could you read that to Ms. Freeman, please.

13 MS. OWENS: I'm going to object to the witness  
14 just reading what's here in black and white. If he  
15 has a question about it, then certainly he can ask  
16 it.

17 THE HEARING OFFICER: I'm going to ask her, do  
18 you have any recollection of the comments you made  
19 in reference to the relevant background  
20 information?

21 THE WITNESS: I do. I read it last time.

22 THE HEARING OFFICER: So you're prepared to  
23 testify about it?

24 THE WITNESS: Right.

25 THE HEARING OFFICER: Okay. Go ahead.

1 BY MR. RATNER:

2 Q How did you conclude that REDACTED will lie  
3 instead of doing her work?

4 THE HEARING OFFICER: Where does it say that?

5 MR. RATNER: It says that under interview  
6 questions, which is about a third of the way down:  
7 What are the problem behaviors? What do they look  
8 like?

9 MS. OWENS: Ms. Freeman, to the extent that  
10 this was already covered during Mr. Ratner's  
11 previous examination of the witness, I'm not quite  
12 sure why we're revisiting testimony that was  
13 already given.

14 MR. RATNER: Because it seems like there's  
15 some additional --

16 THE HEARING OFFICER: I'm sure if I go back to  
17 my notes, I could find it, but just for the sake of  
18 getting there -- do you recall answering questions  
19 about the interview question -- the interview  
20 questions in that middle section of the -- do you  
21 recall that?

22 THE WITNESS: I do. Because he asked me to  
23 read that out loud.

24 THE HEARING OFFICER: Okay. Did you answer  
25 questions about all of that?

1 THE WITNESS: I did.

2 THE HEARING OFFICER: Okay. Well --

3 MR. RATNER: I don't believe --

4 THE HEARING OFFICER: Is there a different  
5 question?

6 MR. RATNER: There is a different question.

7 THE HEARING OFFICER: Okay.

8 BY MR. RATNER:

9 Q What data did you consider to determine that  
10 she will lie instead of doing her work?

11 MS. OWENS: I object. Asked and answered and  
12 beyond the scope of direct examination.

13 THE HEARING OFFICER: I don't recall her  
14 asking anything about that.

15 MR. RATNER: Yes, if I may. The beyond the  
16 scope objection, again, we worked these things out  
17 with opposing counsel, and then we continue to get  
18 objections. You will recall that we said we were  
19 going to call her again. You let us call her  
20 again.

21 THE HEARING OFFICER: I did.

22 MR. RATNER: So that means I'm not limited to  
23 the scope of her examination. If I was limited to  
24 the scope of her examination --

25 THE HEARING OFFICER: Okay. Just ask --

1 MS. OWENS: Ms. Freeman, I would just like to  
2 say for the record --

3 THE HEARING OFFICER: Yes.

4 MS. OWENS: -- one, Mr. Ratner, indicated that  
5 he had questions of Ms. McCluskey with regard to  
6 the DRA. There was no indication that he wanted to  
7 ask basically the -- go down the same line of  
8 questioning.

9 THE HEARING OFFICER: Do it all over again.

10 MS. RATNER: The record is going to very  
11 clearly show an agreement and now something being  
12 stated that's completely different. So it can be  
13 reargued. Every time it is, I think it is just  
14 making our transcript record stronger.

15 MS. OWENS: Again, the witness should not have  
16 to go through the same examination questions  
17 basically that she answered last week during the  
18 two times that Mr. Ratner --

19 MS. RATNER: She was not asked about the data  
20 underlying the conclusion that a child is lying to  
21 get out of work rather than doesn't understand or  
22 is having troubling accessing the work.

23 MR. ANDRIANO: We understand that's your  
24 position, but that's exactly what she testified to  
25 last time.

1 MR. RATNER: What did she say?

2 MR. ANDRIANO: You had her read it out loud.

3 MS. RATNER: What data did she discuss last  
4 time?

5 MR. ANDRIANO: I wasn't asking her the  
6 questions. Mr. Ratner was. You told Ms. Freeman  
7 that you needed to recall Ms. McCluskey because  
8 you, quote, had additional questions about the DRA.  
9 That was what was represented to the Hearing  
10 Officer.

11 MS. RATNER: I will be delighted for the  
12 record to speak for itself on that.

13 MR. ANDRIANO: Okay. Great.

14 MR. RATNER: Just give me clear instructions  
15 of what you want me to do and I will do it.

16 THE HEARING OFFICER: If counsel remembers  
17 that there were questions about the -- I don't want  
18 to misname it, the DRA -- is it Developmental  
19 Reading Assessment?

20 MS. OWENS: Yes, ma'am.

21 THE HEARING OFFICER: And that that was the  
22 area in which you were going to be permitted to  
23 examine -- and I don't want to have this witness go  
24 through the experience of asking -- I'm sorry,  
25 answering questions, the same questions over again.



1           However, I'm going to permit the one question  
2           that Ms. Ratner is certain that -- believes she's  
3           certain about how did you collect data.

4           MS. RATNER: Was there any data? Was there  
5           any data?

6           THE WITNESS: Observation data, yes.

7           MS. RATNER: Observation data was taken on her  
8           lying?

9           MR. ANDRIANO: Hold on a second. Is she  
10          taking over the questioning?

11          MR. RATNER: I'll take it over. That's fine.

12          THE HEARING OFFICER: That's the only  
13          question. Now let's move on.

14          MR. RATNER: She didn't answer it.

15          THE HEARING OFFICER: I thought she did.

16          MS. OWENS: She said, Observation data.

17          THE HEARING OFFICER: That's what I heard.  
18          Observation data.

19          BY MR. RATNER:

20           Q    You observed her lying; is that your  
21          testimony?

22           A    Yes.

23           Q    Okay. And you took data on it?

24           A    My observation data, yes.

25           Q    And that's in the logs that you prepared,

1 correct?

2 A I don't know.

3 THE HEARING OFFICER: That's the end of the  
4 questioning on that topic. I think she's  
5 sufficiently answered it. At least I think I  
6 understand how she took that data.

7 MR. RATNER: Sure.

8 THE HEARING OFFICER: I can understand why her  
9 mother would not want to hear that, but if that's  
10 her observation data and that's what she's  
11 testifying about, that's her answer.

12 MR. RATNER: Very good. I'd like to ask her  
13 about the logs because now she's referenced the  
14 logs. That's where she would make her observation  
15 notes. That's Parents Exhibit 66.

16 MS. OWENS: I'm going to object. She said,  
17 Observation data. There was no testimony that  
18 she --

19 THE HEARING OFFICER: She said, Observation.  
20 Does the court reporter want to -- are you in a  
21 position to read back what the actual question was  
22 about whether or not there was data in her answer?

23 THE COURT REPORTER: Are you requesting the  
24 question from Ms. Ratner or Mr. Ratner? There were  
25 several questions about data.

1 THE HEARING OFFICER: Let's start with  
2 Ms. Ratner asking -- believing that she had -- she  
3 had not properly learned about the data being used  
4 to make the statement that Ms. McCluskey observed  
5 that REDACTED was lying.

6 MR. RATNER: We can move on.

7 THE HEARING OFFICER: Counsel says we're going  
8 to move on and go to another topic rather than go  
9 through all of that.

10 BY MR. RATNER:

11 Q So you remember the discussion from when you  
12 were here last -- and I'm not going to review  
13 testimony -- that you prepared a log? And you can look  
14 at it if you want; I'm not going to quiz you about it,  
15 but it's Parents 67, Volume 2.

16 MS. OWENS: Parents Exhibit 67?

17 MR. RATNER: 66.

18 THE HEARING OFFICER: Which volume are we in?

19 MR. RATNER: Volume 2.

20 BY MR. RATNER:

21 Q You recognize that as your log, correct?

22 A Yes.

23 Q And then do you recall that there was a  
24 similar-looking document and we talked about some  
25 differences, and you were very clear that you did not

1 make those changes; do you recall that?

2 A Yes.

3 Q So for your information, I've asked  
4 Ms. Mottley. She said she didn't make the changes.  
5 Ms. Pettway wasn't sure.

6 Would there be anyone else that I should be  
7 asking who made those changes? I'm just trying to  
8 figure out what seems to be a mystery.

9 MS. OWENS: Objection. Beyond the scope of  
10 direct examination. Relevancy.

11 MR. RATNER: The relevancy is there are  
12 service logs for **REDACTED** that have been changed.  
13 We've clearly established that. We haven't been  
14 able to determine who made those changes. The  
15 closest we got was that Ms. Pettway says she  
16 sometimes does it for students, but she couldn't  
17 remember doing it for this student.

18 So while this witness is here, I'd like to ask  
19 her if there are any other School Board witnesses I  
20 could possibly ask about that.

21 MS. OWENS: First, Ms. Freeman, I think it was  
22 testified to previously that these -- that these  
23 are teacher notes, and furthermore -- these are  
24 teacher's personal notes, but furthermore,  
25 Ms. Freeman, yesterday when Ms. Pettway testified,

1 it was quite clear that where we landed was that  
2 you would take a look at the service logs --

3 THE HEARING OFFICER: That's what I remember.

4 MS. OWENS: -- and draw your own conclusions  
5 based on those service logs. So continuing to  
6 revisit this issue -- first of all, most of these  
7 questions have been asked and answered already, and  
8 second of all, there's a question whether this is  
9 relevant at all to the issues that you have to  
10 adjudicate.

11 MR. RATNER: Right. Well, again, Ms. Owens  
12 and I simply disagree about the relevance and  
13 having documents being changed.

14 THE HEARING OFFICER: I said I would look them  
15 over fully. I know we discussed this at length  
16 yesterday. But I have down it's Parents exhibit --  
17 so that I can actually do this, do what I told you  
18 I was going to do, Parents Volume 2, Exhibit 66 --  
19 and I can look at my note from yesterday, but I  
20 believe it was 47.

21 MS. RATNER: That's exactly right. Thank you.  
22 Good memory.

23 THE HEARING OFFICER: Sometimes. All right.  
24 So Volume 2 at 47. So next topic.

25 MR. RATNER: Thank you.

1 BY MR. RATNER:

2 Q So back in Parents 51, page 614, please.

3 And, again, you testified that you weren't aware of  
4 REDACTED experiencing any anxiety when you were working  
5 with her, correct?

6 A Correct.

7 Q Okay. Do you see on page 614 an indication  
8 from you to Mrs. REDACTED that she missed math all week,  
9 she missed reading and other issues?

10 A Yes.

11 Q Okay. And was that consistent with your time  
12 working with REDACTED in the virtual environment?

13 A Yes.

14 Q And let me just -- never mind. I think we  
15 covered that.

16 Let's go to School Board 50. These are the  
17 DRA and Reading A to Z. And I think you said -- I just  
18 want to make sure I heard you correctly -- these are  
19 not necessarily all of the reading assessments you did  
20 with REDACTED in fifth grade?

21 A Correct.

22 Q Okay. Where would other ones be if you don't  
23 have them?

24 A I'm sure -- this is what I have. I mean, if  
25 she was doing -- this is all I had. I can just give

1 you what I have.

2 Q Sure. But is this incomplete?

3 A I mean, I have data on -- I mean, I -- this  
4 is what I have. This is what I have that I gave you.

5 Q Right. You didn't give it to me; you gave it  
6 to Ms. Owens.

7 A Well, whoever.

8 THE HEARING OFFICER: We're on 614?

9 MR. RATNER: No, ma'am.

10 THE HEARING OFFICER: You just moved?

11 MR. RATNER: A couple of minutes ago, yes.

12 THE HEARING OFFICER: Where are you now?

13 MR. RATNER: School Board 50.

14 THE HEARING OFFICER: Okay. 50.

15 MR. RATNER: In the School Board book. You're  
16 in Parents' Volume 2.

17 THE HEARING OFFICER: All right. Go ahead.

18 BY MR. RATNER:

19 Q So you have administered DRAs before?

20 A Yes.

21 Q Is that an assessment you've used  
22 consistently throughout your 29 years of teaching?

23 A In Chesterfield County, yes.

24 Q Okay. Thank you. So REDACTED wasn't the first  
25 student you assessed with DRAs?

1 A No, sir.

2 Q And you understand, for example, on this  
3 first one, the one entitled Benched, that's a Level 38,  
4 correct?

5 A Correct.

6 Q Third grade, right?

7 A Right.

8 Q She's in fifth grade, right?

9 A Correct.

10 Q And she's on an interventional level?

11 A For fluency, yes.

12 Q Correct. Isn't the way this assessment is  
13 supposed to work when you're on intervention, you don't  
14 pass go, you don't move to level 40 or whatever the  
15 next one is, even if you're doing great on the other  
16 parts of it?

17 A Well, I wasn't using it for comprehension.  
18 So, yes, I was looking at it for fluency, so she was  
19 intervention but then independent on the accuracy.

20 Q Right. And did you notice a pattern of types  
21 of words she would struggle with or anything like that?

22 A There wasn't anything consistently like,  
23 throughout the year, that she would miss.

24 Q Okay. Let's turn to page 227, and I think  
25 that's just a stand-alone Reading A to Z. Could you



1 confirm that for me, just a one-pager?

2 A For the fluency, yes.

3 Q Yes. I mean, the next page does not go with  
4 this document, correct, or does it?

5 A It does.

6 Q Then the third one -- so is it a three-page  
7 document then? I'm just trying to make sure I'm asking  
8 you about the correct --

9 A Yes.

10 Q So there's some handwriting on here. Whose  
11 handwriting is that?

12 A Those are my notes.

13 Q So when it says on the top of page 227,  
14 incomplete comp, what does that mean?

15 A She didn't finish this activity. So I didn't  
16 get a comprehension grade from her.

17 Q And then on page 229 --

18 A Yes.

19 Q -- I see a couple of notes here. She read  
20 aloud. Told me answer.

21 A Yes.

22 Q What does that mean?

23 A Because it's done virtually, so she didn't  
24 have it in front of her. So it was on the screen. So  
25 she read it and told me what answers to circle.

1 Q So, in other words, if you would have been  
2 sitting with her, she would have circled them herself?

3 A She would have done this on her own.

4 Q But you did it with her telling you, choose  
5 answer B, right?

6 A Well, she said --

7 Q I didn't mean you told her --

8 A I did not --

9 Q -- choose answer B. She said --

10 A I --

11 (Simultaneous speaking.)

12 MS. OWENS: The witness hasn't been afforded  
13 an opportunity to answer the question without  
14 Mr. Ratner interjecting.

15 THE HEARING OFFICER: Give her a chance to  
16 fully answer the question before you ask another  
17 one.

18 MR. RATNER: Sure. I thought we were  
19 communicating clearly, so I apologize.

20 THE HEARING OFFICER: Thank you.

21 BY MR. RATNER:

22 Q How about this other note, bathroom break and  
23 then 9:46 to 9:45[sic]? I can't make that out.

24 A She took a bathroom break from 9:46 to 9:55.  
25 She said she needed to use the bathroom.

1 THE HEARING OFFICER: I'm so sorry to  
2 interrupt you. There's a little star. Bathroom  
3 break 9:46 to 9:55. Mom got on and said REDACTED was  
4 crying --

5 THE WITNESS: And wouldn't come back.

6 THE HEARING OFFICER: And wouldn't come back.

7 BY MR. RATNER:

8 Q But it's still your testimony this was not an  
9 example of anxiety?

10 A I didn't see her crying. She just never came  
11 back.

12 Q Did you think Mom was lying?

13 A That's not what I said.

14 Q Okay. You're just saying you never saw her  
15 crying?

16 MS. OWENS: I'm going to object to the  
17 relevancy of that question. That's argumentative  
18 with the witness.

19 THE HEARING OFFICER: That does sound  
20 argumentative. I'm going to note for the record  
21 that it was argumentative with the witness.

22 All right. Go ahead.

23 BY MR. RATNER:

24 Q Let's turn on to page 230, and this is The  
25 Night Sky. It looks like four pages go together.

1 A Yes.

2 Q Okay. And now, let me ask you this, if I  
3 could, how often were you administering these types of  
4 fluency assessments to REDACTED during the fifth grade?

5 A DRA or --

6 Q All these. Reading A to Z, DRA, whatever  
7 you've used.

8 A I mean, as often as I could. It was part of  
9 her, you know, part of her IEP.

10 Q Okay. But is that instruction when she's  
11 reading this or is that an assessment?

12 A Well, fluency practice is instruction.

13 Q But, I guess, that's my question. Was the  
14 idea just by practicing it over and over she would get  
15 better or were there specific things you were working  
16 on?

17 A Yes, for fluency to increase, you practice,  
18 and with repetition, your fluency is enhanced.

19 Q And is that because of automaticity improves?

20 A Yes.

21 Q Did you see that REDACTED was struggling with  
22 that automaticity?

23 A In fluency?

24 Q Yes.

25 A It was an IEP goal that we were working on,

1 so that's part of it.

2 Q Right. And she never mastered that goal,  
3 correct?

4 A Right.

5 Q So on this one, The Night Sky, she got 63  
6 words per minute, intervention, correct?

7 A She did.

8 Q Okay. Sixteen days later she took another  
9 one, correct, page 234?

10 A Yes.

11 Q How did she do on that one?

12 A She did 82 words per minute and 98 percent  
13 accuracy.

14 Q That's a fairly big jump in 16 days, isn't  
15 it?

16 A Correct. But they are two different  
17 passages.

18 MR. RATNER: If I could have just a moment to  
19 confer with my colleague.

20 THE HEARING OFFICER: Uh-huh.

21 BY MR. RATNER:

22 Q So let's go to 243 and 244 within that same  
23 tab.

24 A 243?

25 Q 243. Do you see those numbers at the bottom

1 of the page?

2 MS. OWENS: 243?

3 MR. RATNER: I think that's what it says, if  
4 I'm reading it correctly.

5 MS. OWENS: Okay.

6 BY MR. RATNER:

7 Q It's a Reading A to Z, Live from the X Games.  
8 Do you have that?

9 A I do.

10 Q What's the date on that?

11 A 4/30.

12 Q Of?

13 A 2021.

14 Q So we're getting close to the end of fifth  
15 grade or at least in the fourth marking period at that  
16 point?

17 A Yes.

18 Q And what's Level Y?

19 A Fifth.

20 Q Okay. And what were her words per minute on  
21 that?

22 A 61.

23 Q Okay. Would that be on grade level with  
24 fluency for that passage?

25 A On grade level for fluency? I don't -- I

1 don't look for on grade level. I look for increase in  
2 fluency.

3 Q Well, on the DRA, there's the instructional,  
4 the interventional, stuff like that.

5 A Right. This is set up differently. This  
6 doesn't have that.

7 Q Right. So how would you characterize a 61  
8 other than it improved?

9 A Well, the accuracy rate is lower on this, so  
10 this was more difficult because it had -- you have to  
11 look at the passage that she's reading. This had a lot  
12 of names in it, which is a little bit more difficult to  
13 read than others.

14 Q You talk about how she was doing compared to  
15 her peers. How would you expect a peer without a  
16 reading disability to, who is at the same spot in  
17 school with REDACTED, to do on this?

18 A I didn't administer this to -- I don't know.

19 Q You have no idea?

20 A I mean, I'm basing REDACTED's growth on REDACTED, so  
21 that's how I would --

22 Q Right. So we talked about the MAP as an  
23 example of growth. Is it MAPs or MAP?

24 A MAPs.

25 Q It's plural?

1 A M-A-P-S.

2 Q That's what I'm getting at.

3 A S as in Sam.

4 Q It's going to take me a moment to find that.

5 It's in the School Board book, and it's 61.

6 This is the MAP summary, correct?

7 A Yes.

8 Q So I'm a little bit confused. First of all,  
9 do you recall during the -- do the students typically  
10 take these three times a year?

11 A Yes.

12 Q So in fifth grade, that would be the fall of  
13 '20, the winter of '21 and the spring of '21; do you  
14 see where that's written on these graphs?

15 A Yes.

16 Q Am I accurately reading that that would be  
17 fifth grade?

18 A Uh-huh.

19 Q So why is it that the last time REDACTED took a  
20 MAP was in the winter of fourth grade?

21 A I'd have to look to see why she did not take  
22 those.

23 Q Okay. And do you recall during -- were MAPs  
24 administered in the fall of '20?

25 A Yes.



1 Q Okay. And do you recall that REDACTED was  
2 virtual and was not able to receive the accommodations  
3 she was supposed to get for MAPs testing?

4 A She can get --

5 MS. OWENS: I'm going to object.

6 THE HEARING OFFICER: Response?

7 MR. RATNER: I don't know what the objection  
8 is.

9 MS. OWENS: We are way beyond the scope of the  
10 School Board's direct examination.

11 MS. RATNER: You asked about the MAPs and the  
12 improvement.

13 MS. OWENS: You're not asking about --

14 THE HEARING OFFICER: I don't recall exactly  
15 what the question was, but it did seem like a new  
16 topic.

17 MR. RATNER: A new topic?

18 MS. OWENS: He's asking about fourth grade MAP  
19 assessments for math.

20 MS. RATNER: No, I'm not.

21 THE HEARING OFFICER: And we went into that  
22 before.

23 MR. RATNER: Right. They specifically talked  
24 about these graphs showing growth, and I'm trying  
25 to show that these graphs are incomplete.

1 THE HEARING OFFICER: I'm fairly certain that  
2 I remember the MAP because I mispronounced the  
3 acronym.

4 MR. RATNER: Right. We spent a lot of time on  
5 this page. So I'm not sure why it's beyond the  
6 scope.

7 MS. OWENS: It's my understanding that the  
8 question pertains to fourth grade.

9 MR. RATNER: I'm talking about the fall of  
10 fifth grade where there is no MAP. That's when you  
11 objected.

12 THE HEARING OFFICER: There is no MAP in the  
13 fifth grade?

14 MR. RATNER: No. Do you see on here where it  
15 says fall of '20?

16 THE HEARING OFFICER: Yes.

17 MR. RATNER: And there's no dot there?

18 THE HEARING OFFICER: Yes.

19 MR. RATNER: Ms. McCluskey just testified that  
20 normally they take them three times a year, so I'm  
21 trying to understand why REDACTED did not take it.

22 MS. OWENS: That wasn't -- that question was  
23 not the one that was asked.

24 THE HEARING OFFICER: That was not asked?

25 MS. RATNER: How do we cross-examine a witness

1 effectively when we can only ask the discrete  
2 question that you asked. You asked about the MAPs,  
3 and what he's trying to get at, which I think  
4 Ms. McCluskey knows or is in the document, that  
5 **REDACTED** did not take the MAPs in the fall. She  
6 couldn't. She didn't get her accommodations.

7 MS. OWENS: The School Board has an objection  
8 because they're assuming facts that are not in  
9 evidence.

10 MR. RATNER: We are trying to get that.

11 MS. RATNER: We are trying to get that but you  
12 objected.

13 MS. OWENS: With the jumping --

14 THE HEARING OFFICER: Jumping around on  
15 topics.

16 MS. OWENS: Right. It's confusing to the  
17 witness. It's -- first there were questions about  
18 fourth grade MAP, why it wasn't given during fourth  
19 grade. Now, we're --

20 MS. RATNER: That wasn't ever the question.

21 MS. OWENS: Well, I just -- in order to move  
22 on, they can ask the question and then we can  
23 determine whether there's a further objection.

24 MR. RATNER: That would be great.

25 THE HEARING OFFICER: Okay. So we all agree

1 on that.

2 MR. RATNER: We have limited time. I'm sorry  
3 if me jumping around is confusing. I'm doing the  
4 best that I can under what I think is very  
5 difficult circumstances.

6 THE HEARING OFFICER: All right. Go ahead.

7 BY MR. RATNER:

8 Q Ms. McCluskey, do you recall --

9 THE HEARING OFFICER: Strike that personal  
10 commentary about under difficult circumstances.

11 BY MR. RATNER:

12 Q Do you recall that REDACTED was not able to take  
13 the MAPs in the fall of fifth grade? And if you don't  
14 remember, we will move on.

15 A She did not take them. She was able to take  
16 them. They were administered. She did not take them.

17 Q In a virtual environment, correct?

18 A Yes.

19 Q And if you had been in person, you would be  
20 with her giving her accommodations; is that right?

21 A The winter MAPs was taken virtually.

22 Q I'm asking about the fall MAPs.

23 THE HEARING OFFICER: In fifth grade?

24 MR. RATNER: Correct.

25 THE WITNESS: Her accommodations --

1 THE HEARING OFFICER: She did not take it?

2 THE WITNESS: She did not take it.

3 THE HEARING OFFICER: Do you know why she did  
4 not take it?

5 THE WITNESS: I seem to remember I thought  
6 Mrs. REDACTED said that she wasn't going to or didn't  
7 want to. I gave it to her in the winter, and I  
8 gave it to her in the spring. I do not recall why  
9 she did not take it in the fall. She had her  
10 accommodations in the winter. She had her  
11 accommodations in the spring. So I don't  
12 understand the question.

13 BY MR. RATNER:

14 Q Okay. That's fine. In the spring she was in  
15 person, correct?

16 A Yes.

17 Q Okay. Thank you. I'd like to ask if the  
18 mathematics scores show, between the winter of '20 and  
19 the winter of '21, show a decline in her performance?

20 A Within the span of a year, yes.

21 Q Yes.

22 A Yes.

23 Q Okay. And then on the reading, and, again,  
24 this may be beyond the scope of your knowledge, but do  
25 you know where the rest of the data is?

1 A She clearly did not take them in the winter.

2 Q She didn't take it in the winter of '20, the  
3 spring of '20 or the fall of '20?

4 A We didn't have it in the spring of '20  
5 because of school closure.

6 Q So what about the winter of '20?

7 A She didn't take it. There's no data.

8 Q Were you her teacher then?

9 A Yes.

10 Q And now you're talking about this growth  
11 here, she went from well below the average to the  
12 average, right?

13 A Yes.

14 Q And, again, a student going from an F to a D,  
15 for example, is growth, right?

16 A Yes.

17 Q And that could be going all the way from a  
18 zero to a 60; that could be huge growth, right?

19 A In your example, yes.

20 Q Yes. Right. But that doesn't mean the  
21 student is making academic progress in accordance with  
22 their unique circumstances, does it?

23 MS. OWENS: I'm going to object. Calls for  
24 speculation. If he has questions specifically  
25 about REDACTED and her level of growth, then that

1 question would be appropriate. But a generic  
2 question about any student that's not REDACTED is not  
3 appropriate or relevant.

4 MR. RATNER: I disagree. But I will move on.

5 THE HEARING OFFICER: You disagree but what?

6 MR. RATNER: I will move on.

7 THE HEARING OFFICER: All right. Sustained.

8 Move on.

9 BY MR. RATNER:

10 Q REDACTED was reading well below the national  
11 average in the winter of '21, correct?

12 A Her score --

13 MS. OWENS: I'm going to object to  
14 mischaracterizing the witness's testimony.

15 MR. RATNER: Okay. Let me ask it differently.

16 BY MR. RATNER:

17 Q Was REDACTED's score on the reading MAP test in  
18 the winter of 2021 below the national average?

19 A Yes, per the graph.

20 Q Correct. And that's for same-age students;  
21 is that correct?

22 A Correct.

23 Q Okay. Part of what you considered about  
24 REDACTED, in working with her as a student with a  
25 disability, would be her superior IQ, correct?

1 A Okay. Yes.

2 Q You're aware --

3 A I'm trying to figure out where you are --

4 Q Were you aware that she has a superior IQ?

5 A Yes.

6 Q So when you're looking at her peers, those  
7 include all levels of IQ, right?

8 A Yes.

9 Q Okay. Are you able to say how she compared  
10 to other students with a similar IQ on this test?

11 A I don't understand what IQ has to do with --

12 MS. OWENS: Objection. Relevancy.

13 THE WITNESS: I don't understand.

14 MR. RATNER: I think at this point if I'm not  
15 able to demonstrate the relevancy of that, then I  
16 have not done my job, and I think I'm finished with  
17 that topic. I would like a moment to consult with  
18 my co-counsel.

19 THE HEARING OFFICER: All right. Thank you.

20 THE WITNESS: Ms. Freeman, can I steal a  
21 water?

22 MR. RATNER: I would be happy to get you one.

23 THE WITNESS: Thank you.

24 MR. RATNER: So I do have one last question,  
25 if I could.



1 THE HEARING OFFICER: Go ahead.

2 BY MR. RATNER:

3 Q When you were working with REDACTED in the fifth  
4 grade, did she have a read aloud accommodation?

5 A For what?

6 Q I don't know. Did she have a read aloud  
7 accommodation?

8 MS. OWENS: Do you have an exhibit that you  
9 would like to show the witness?

10 MR. RATNER: No, I don't. I'm asking her.

11 THE HEARING OFFICER: Asking her about her  
12 read aloud --

13 MR. RATNER: Accommodation.

14 THE WITNESS: Do you have the IEP for me to  
15 look at?

16 BY MR. RATNER:

17 Q I mean, that's fine. I'm just asking if you  
18 remember.

19 A Yes.

20 Q Did she have a read aloud accommodation?

21 A For her math and science and social studies.

22 MR. RATNER: That's all I have, Ms. Freeman.

23 THE HEARING OFFICER: Thank you.

24 Do you have any redirect questioning?

25 MS. OWENS: Yes, ma'am. But we would ask for

1 a 5-minute break.

2 THE HEARING OFFICER: Sure. Go ahead.

3 MS. OWENS: Thank you.

4 THE HEARING OFFICER: Just come back, say, at  
5 11 or whatever your watch says for five minutes.

6 MS. OWENS: Yes, ma'am. Thank you.

7

8 (Break taken.)

9

10 THE HEARING OFFICER: I think we're ready to  
11 go back on the record. Everybody appears to be  
12 here. You were going to be redirecting, I think.

13 MS. OWENS: Yes, ma'am.

14

15 REDIRECT EXAMINATION

16 BY MS. OWENS:

17 Q Ms. McCluskey, I'd like to point you to  
18 School Board Exhibit Number 61.

19 THE HEARING OFFICER: 61?

20 MS. OWENS: Yes, ma'am. Of the School Board  
21 exhibits.

22 BY MS. OWENS:

23 Q You were asked questions about REDACTED's  
24 accommodations with the MAP assessment.

25 Regardless of whether the MAP assessment was

1 administered in-person or virtually, would REDACTED have  
2 access to accommodations in accordance with her IEP?

3 A Yes, she would.

4 Q In fact, did that occur in this instance with  
5 regard to the administration of the MAP assessment for  
6 REDACTED?

7 A Yes.

8 Q You testified that the winter 2021 MAP  
9 assessment was administered virtually?

10 A Yes, it was.

11 Q And was she given accommodations during that  
12 time?

13 A She was.

14 Q And then the spring of 2021, they were  
15 administered in person?

16 A Yes.

17 Q And was she given accommodations at that  
18 time?

19 A Yes.

20 Q You were asked questions about the math MAP  
21 assessment.

22 With regard to the spring 2021 score, is it  
23 fair to say that she performed better than 67 percent  
24 of her peers?

25 A Yes.

1 Q And that's within the general education  
2 classroom, correct?

3 A Yes.

4 Q So she exceeded the expectation for students  
5 in the fifth grade -- general education students in the  
6 fifth grade?

7 A Yes, she did.

8 Q And with regard to the spring 2021 reading  
9 MAP assessment, she performed better than 53 percent of  
10 her peers?

11 A Yes, she did.

12 Q So she met and slightly exceeded the  
13 expectation for this assessment?

14 A Yes, she did.

15 Q And she did not have read aloud for the  
16 reading assessment, correct?

17 A She did not.

18 Q And that wasn't an accommodation in her IEP?

19 A Correct.

20 Q Mr. Ratner asked you questions about REDACTED 's  
21 IQ level.

22 Are you also aware that she is a student with  
23 a significant orthographic processing disorder?

24 A Yes, I do.

25 Q In fact, that is the basis for the IEP that

1 includes reading and writing supports and services?

2 A Yes.

3 Q And finally, you were also asked questions  
4 about School Board Exhibit 50.

5 A Yes.

6 Q You mentioned that you were assessing REDACTED  
7 based on her reading fluency?

8 A Yes.

9 Q During the course of the 2020-2021 school  
10 year, could you describe whether her fluency rates and  
11 accuracy increased?

12 A They did increase.

13 Q And was she making appropriate progress in  
14 light of her circumstances?

15 A She was making appropriate progress, yes.

16 MS. OWENS: I have no further questions.

17 THE HEARING OFFICER: Let's see. I have a  
18 couple of questions here, and this is really for my  
19 own clarification. I probably should have gotten  
20 this out of the testimony, but I didn't.

21 Go back to SB-61, I think it is, and  
22 there's -- I think I -- what I was referring to --  
23 and I may have given you the wrong exhibit. There  
24 was an excerpt about Wilma Rudolph.

25 THE WITNESS: Yes.

1 THE HEARING OFFICER: Is that part of an exam  
2 that is given to her through the MAP?

3 THE WITNESS: No.

4 THE HEARING OFFICER: What is Wilma Rudolph?

5 THE WITNESS: That was her biography project  
6 in fifth grade.

7 THE HEARING OFFICER: So she actually wrote  
8 Wilma Rudolph?

9 MS. OWENS: Exhibit 52, Ms. Freeman.

10 THE HEARING OFFICER: Yeah, I had it  
11 dog-eared, but -- okay. So let me get this  
12 straight. This is something that REDACTED wrote?

13 THE WITNESS: Yes.

14 THE HEARING OFFICER: Did she have any help on  
15 that?

16 THE WITNESS: This is her independent. She  
17 was given instruction.

18 THE HEARING OFFICER: She was given  
19 instructions, but did anybody help her write that?

20 THE WITNESS: No. This is her independent.

21 THE HEARING OFFICER: Okay. What about 50  
22 Years From Now? That's also attached to -- what is  
23 that? Is that something she wrote?

24 THE WITNESS: This is something she wrote. I  
25 don't know if -- I don't know what the prompt was.

1 I don't have the rubric with it. But she did write  
2 this, yes.

3 THE HEARING OFFICER: That was my main  
4 question. Did she write these two things?

5 THE WITNESS: Yes, she did.

6 THE HEARING OFFICER: At what point in time  
7 did she write those?

8 THE WITNESS: Wilma Rudolph was February '21.  
9 And I am not sure about 50 Years From Now; there's  
10 no date on that.

11 THE HEARING OFFICER: All right. Thank you.

12 MR. RATNER: Could I possibly ask one  
13 clarifying question about the --

14 THE HEARING OFFICER: Sure. Go ahead.

15 MS. OWENS: I would like to as well.

16 MR. RATNER: You can go first.

17 THE HEARING OFFICER: You can go first  
18 because -- it was your direct, I think.

19 MS. OWENS: Thank you.

20

21 FURTHER REDIRECT EXAMINATION

22 BY MS. OWENS:

23 Q And for the Wilma Rudolph and the 50 Years  
24 From Now, they were both fifth grade writing  
25 assignments?

1 A Yes.

2 Q And she was assessed on those writing  
3 assignments in accordance with the general education  
4 curriculum?

5 A Yes.

6 MS. OWENS: Thank you.

7 THE HEARING OFFICER: Is that the end of your  
8 questioning?

9 MS. OWENS: Yes, ma'am.

10 THE HEARING OFFICER: Your question then.

11 MR. RATNER: Thank you.

12

13 RECROSS-EXAMINATION

14 BY MR. RATNER:

15 Q With specific reference to the Wilma Rudolph  
16 assignment, that represented REDACTED's independent work?

17 A Yes.

18 Q That would include her accommodations such as  
19 voice to text, spellcheck and any other accommodations  
20 that were part of her IEP, correct?

21 A Yes.

22 Q Would you agree with me there are words in  
23 here that she would have trouble spelling on her own?

24 A I'm assuming, yes. She used spellcheck.

25 MR. RATNER: Okay. Thank you.



1 THE HEARING OFFICER: Okay. We're done with  
2 you, and thank you very much.

3 MS. OWENS: Thank you, Ms. McCluskey.

4 THE HEARING OFFICER: You're dismissed.

5 THE WITNESS: Thank you. Like for good,  
6 right?

7 THE HEARING OFFICER: Thank you very much for  
8 your testimony.

9 What time do you have?

10 MR. RATNER: I have that it's a little before  
11 10 after 11:00. 11:09 or something.

12 THE HEARING OFFICER: This watch is solar  
13 powered, so I thought maybe I was wrong on it. So  
14 we have roughly about 50 minutes left.

15 Are we going to take our next witness?

16 MR. ANDRIANO: I was going to ask if it makes  
17 sense to take -- you said you needed approximately  
18 an hour with the school psychologist, correct?

19 MR. RATNER: Correct.

20 MR. ANDRIANO: So I probably need about -- can  
21 we take lunch now and that way we don't have to  
22 interrupt her testimony?

23 THE HEARING OFFICER: Is that all right with  
24 you?

25 MR. RATNER: I think that's fine.

1 THE HEARING OFFICER: Is it okay with the  
2 witness?

3 MR. ANDRIANO: Yeah, I mean, she's --

4 THE HEARING OFFICER: She would probably  
5 rather get it done earlier rather than later, I  
6 would think.

7 MR. ANDRIANO: Based on yesterday, we thought  
8 she would go in the afternoon, so ...

9 THE HEARING OFFICER: Okay.

10 MR. RATNER: That's fine. But I think we  
11 should still only take an hour for lunch to make  
12 good use of our time.

13 MR. ANDRIANO: I agree.

14 THE HEARING OFFICER: So come back at 12:15.  
15 Is that all right?

16 MR. RATNER: Sounds good.

17 And then did you have anybody else after  
18 Ms. McCarthy today?

19 MR. ANDRIANO: We are going to have to figure  
20 it out. We are just having trouble with coverage  
21 at the school.

22

23 (Break taken.)

24

25

1 THE HEARING OFFICER: Good afternoon,  
2 Ms. McCarthy. Is it Dr. McCarthy?

3 THE WITNESS: No.

4 THE HEARING OFFICER: Ms. McCarthy, if you  
5 would raise your right hand, please.

6  
7 (Witness sworn.)

8  
9 THE HEARING OFFICER: Thank you. Answer any  
10 questions that Mr. Andriano has for you, to be  
11 followed by questions from Parents' counsel -- or  
12 Ms. Owens, I'm sorry. I didn't mean -- he was  
13 standing up, so I assumed he was going to be doing  
14 the examination.

15 MS. OWENS: You're correct.

16  
17 CYNTHIA MCCARTHY,  
18 having been duly sworn, testified as follows:

19  
20 DIRECT EXAMINATION

21 BY MR. ANDRIANO:

22 Q Good afternoon, Ms. McCarthy. I'm Patrick  
23 Andriano. I'm one of the School Board attorneys. I'll  
24 be asking you some questions today.

25 Just to set the stage, you are a school

1 psychologist for Chesterfield County Public Schools,  
2 correct?

3 A I am, yes.

4 Q And, I'm sorry, Ms. McCarthy, this room is  
5 kind of hard to hear in sometimes, and the court  
6 reporter is going to have to take it down. I know  
7 you're not a teacher. So I would often say use your  
8 teacher voice.

9 A I'll try.

10 Q Use your school psychologist voice, how about  
11 that?

12 So you conducted an assessment of **REDACTED** ?

13 A Correct.

14 Q In the fall -- I guess it was the winter of  
15 2020 or maybe --

16 A December 2020 and January 2021.

17 Q Great. And that's why we've asked you to  
18 come here today. Both Mr. and Ms. Ratner, who are the  
19 **REDACTED** attorneys, as well as I, have some questions  
20 for you.

21 Ms. McCarthy, how long have you been employed  
22 by Chesterfield County Public Schools?

23 A Since 2005. Seventeen years.

24 Q I'm sorry, how many years?

25 A Seventeen years.

1 Q During that period of time, have you always  
2 been employed as a school psychologist?

3 A Yes.

4 Q For Chesterfield County Public Schools?

5 A I have.

6 Q Can you please just explain to Ms. Freeman,  
7 the Hearing Officer, what a school psychologist is  
8 responsible for doing?

9 A Sure. Here in Chesterfield County, I serve  
10 two schools at a ratio of about one to -- me to  
11 eighteen hundred students. My main role is through  
12 assessment, evaluations, determinations for  
13 eligibility, to help staff/parents understand  
14 disabilities, consult through behavioral challenges,  
15 academic challenges, as well as crisis intervention and  
16 some mental health supports as well.

17 Q And as part of being a school psychologist, I  
18 assume you conduct assessments of children?

19 A Yes, lots of assessments.

20 Q Okay. And after you complete those  
21 assessments, do you attend eligibility meetings?

22 A Correct, I do. Share the results, explain  
23 the findings, help the team determine eligibility for  
24 special education services.

25 Q As a school psychologist, do you sometimes or

1 at times attend students' IEP meetings?

2 A Not usually. Just at the request of parents  
3 or team members, maybe about two or three a year.

4 Q Okay. So more so you attend eligibility  
5 meetings?

6 A Correct.

7 MR. ANDRIANO: And Ms. Freeman, just for your  
8 attention, if you need to see Ms. McCarthy's  
9 resume, it's in School Board Exhibit 65.

10 THE HEARING OFFICER: 65. Okay. All right.  
11 I'm on it.

12 BY MR. ANDRIANO:

13 Q Ms. McCarthy, are you familiar -- I assume  
14 you are, but are you familiar with REDACTED?

15 A Sure.

16 Q And how did you become familiar with REDACTED?

17 A In the fall of 2020, the IEP team requested  
18 updated information, updated reevaluations in order to  
19 collect more information. She was having difficulty in  
20 the virtual learning format that was happening because  
21 of the COVID-19 pandemic and to collect more  
22 information to make sure that there weren't other  
23 disabilities that needed to be considered for attention  
24 or emotions and collect updated information on her  
25 cognitive processing skills and academics to see if

1 there were additional supports that might be necessary.

2 Q And just so we're clear, who requested the  
3 reevaluation?

4 A The IEP team.

5 Q REDACTED 's IEP team?

6 A Yes, REDACTED 's IEP team in the fall.

7 Q And could you just set the stage for us in  
8 terms of what was going on here in Chesterfield County  
9 Public Schools during the fall of, what was that, 2020?

10 A Yes. Sure. In the fall of 2020, we started  
11 school in the virtual format and about mid October,  
12 students were allowed to return in a hybrid format  
13 where they attended two days a week and had virtual  
14 learning three days a week to reduce the numbers of  
15 students in the classrooms at the same time, reduce the  
16 chance of exposure for COVID-19, as well as trying to  
17 increase the amount of time that they were being  
18 instructed.

19 And then around Thanksgiving, the School  
20 Board, at the guidance of the Virginia Department of  
21 Health, shut school buildings back down and sent  
22 learning back to virtual format and through December  
23 and January of 2021.

24 Q And is this about the point in time where the  
25 IEP team had asked you, as well as other individuals,

1 to conduct a reevaluation of [REDACTED] ?

2 A Yes. I don't recall the exact date that  
3 they -- that the evaluation was requested. The consent  
4 was signed in December. The students were in a virtual  
5 format at that time. So the evaluation was conducted  
6 in person with PPE, masks --

7 Q Let me ask you about that. So you conducted  
8 [REDACTED]'s psychological evaluation, right?

9 A Yes.

10 Q And this is -- you start this evaluation in  
11 December of 2020?

12 A Correct.

13 Q All right. So could you please take us there  
14 in December of 2020 when you're conducting the  
15 evaluation of [REDACTED] What were the circumstances?

16 A Students were learning virtually at home.  
17 School buildings had 1 percent of students in them that  
18 were students with -- that are following adaptive  
19 curriculums and alternative curriculums. So everyone  
20 was learning -- most everyone was learning in that  
21 virtual format.

22 Q But what I'm particularly interested in is  
23 your evaluation with [REDACTED]. Describe -- was it like  
24 we're talking right now?

25 A We sat a little bit closer together. We



1        tried to keep it as distant as we could. I had a  
2        plexiglass barrier that was in between, and we both  
3        wore masks. I had a face shield as well. And if it  
4        was something that she could reach or we were talking,  
5        then we would sit a little bit further apart.

6            Q     Why were you, as well as REDACTED, wearing face  
7        masks?

8            A     As safety precaution per COVID-19, those were  
9        the recommended safety procedures in terms of reducing  
10       the potential spread of COVID-19.

11           Q     And what about that plexiglass? You  
12       mentioned something about a plexiglass. What was the  
13       purpose of that?

14           A     At the time they thought plexiglass shields  
15       would keep the germs on one side of the table or  
16       another. Just another barrier in between us to prevent  
17       any spread since we were going to be in close contact  
18       and couldn't maintain 6 feet of distance since we were  
19       doing direct activities together, the assessment.

20           Q     All right. Now, Ms. McCarthy, I'm not a  
21       school psychologist. I've never conducted an  
22       evaluation.

23                     But I would assume that is not the typical  
24       way of conducting an evaluation with a child; is that  
25       correct?

1           A    It is a change in the standardization of the  
2    test.

3           Q    Stop there.  What does that mean,  
4    standardization of the test?

5           A    All these standardized assessments have to be  
6    given in a very specific way and the directions state  
7    in a very specific way and all the supports -- they are  
8    standardized measures so all children are receiving the  
9    same directions and the same presentation of the test.

10                   And the introduction of the personal  
11    protective equipment and masks and shields, they were  
12    not a part of the standardization process when these  
13    tests were created.  And guidance through the National  
14    Association of School Psychologists Department of  
15    Education was that we have -- we are doing the best we  
16    can to collect information and stay safe, and that we  
17    have to note that they could be impacted -- impact the  
18    performance and that the scores should be considered as  
19    estimates and ranges because of those changes.

20           Q    Thank you.  And just for background, you were  
21    conducting a psychological evaluation.

22                   Were there other assessments being conducted  
23    as part of REDACTED 's reevaluation?

24           A    Yes, there was a sociological evaluation,  
25    a --

1 THE HEARING OFFICER: Sociological?

2 THE WITNESS: Yes, sociological evaluation  
3 that was conducted by the school social worker, an  
4 educational evaluation completed by our educational  
5 diagnostician. I believe an observation is usually  
6 requested, and then I usually include that in my  
7 psychological evaluation. And then a functional  
8 behavioral assessment was conducted as well.

9 BY MR. ANDRIANO:

10 Q And particularly do you know why the  
11 functional behavioral assessment was being conducted?

12 A She was having -- REDACTED was having difficulty  
13 with work avoidance/work completion in the virtual  
14 learning format, and it was to, again, determine if  
15 there are other ways we could support her and  
16 understand that behavior that was interfering with her  
17 performance to help her be more successful.

18 Q And that was requested by the IEP team?

19 A I believe so, yes.

20 Q Ms. McCarthy, I would now like to discuss  
21 your evaluation report.

22 If you could please turn to School Board  
23 Exhibit 30, three, zero.

24 THE HEARING OFFICER: School Board exhibit?

25 MR. ANDRIANO: Three, zero, 30.

1 THE HEARING OFFICER: Okay.

2 BY MR. ANDRIANO:

3 Q Ms. McCarthy, just for a timeline, you  
4 completed this evaluation, it looks like it's dated  
5 January 27, 2021, correct?

6 A The date of the report, yes, that's the date  
7 of eligibility. I did observations and the direct  
8 assessment in December and continued to collect  
9 information in January with the observations and  
10 behavioral rating scales.

11 Q Okay. I'm sorry. But you do recognize this  
12 as your report?

13 A Yes, this is my report.

14 Q Thank you. And after you complete this  
15 report, what's the next step in the process?

16 A For eligibility, to discuss all of the  
17 evaluation reports to determine if a student is  
18 eligible for special education services, and if so,  
19 which disability categories. We were considering  
20 specific learning disability, other health impairment  
21 and emotional disability as potential suspected  
22 disabilities for REDACTED.

23 Q So let's now talk about your report. You had  
24 mentioned observations.

25 Did you conduct observations of REDACTED during

1 your psychological evaluation?

2 A I did. She was again attending school  
3 virtually because of the schools being shut down for  
4 COVID-19 as precautions.

5 The first observation that I attempted, she  
6 had not logged in to join her class. The teacher  
7 reached out to her mother to say, REDACTED is not in the  
8 class. She did join later during math. So I did go  
9 back to observe math.

10 Q What was the first class you conducted an  
11 observation?

12 A It was a language arts lesson in the morning.

13 Q Okay. So then that same day you conduct  
14 another observation; is that correct?

15 A Yes, I did. I joined for math. I joined  
16 the -- with these virtual observations, I'm logging in  
17 just like the students are.

18 Q So help us understand. So you are where?  
19 Where are you when you're conducting your observation?

20 A I'm in my workplace joining in virtually with  
21 the class, just like the students are joining. Because  
22 of, again, COVID, the school buildings were closed.

23 Q So how would you -- and, again, just trying  
24 to see this through your eyes. How would you be able  
25 to observe REDACTED while she's at home?

1           A    Yeah, well their cameras are usually on. But  
2 this day they were not. But I -- when I'm doing these  
3 virtual observations, I would tag the students so I  
4 could see their camera and I could see the teacher's  
5 presentation or the teacher's camera as well, as well  
6 as a few of the others. You can see the whole class,  
7 their cameras, or you can focus in on one.

8           Q    So now you're in the math class observing,  
9 and what did -- what did you determine from your  
10 observation regarding REDACTED?

11          A    REDACTED joined late, eight minutes late. When  
12 she did join, her camera was off. She never unmuted  
13 her mic to talk or respond to any questions.

14          Q    I'm sorry, I've just got lots of questions so  
15 I'm going to probably jump in.

16                   How could you tell when REDACTED logged on?

17          A    When they log in, there's a notice that  
18 somebody has joined the meeting. So it says, REDACTED has  
19 joined the meeting. And you can see, again, all the  
20 cameras -- all the participants in the meeting. Then  
21 if their camera is on or off, either black screen with  
22 their little avatar, or it's the -- their video camera  
23 that's -- like their web cam on their face.

24          Q    So you saw that REDACTED had logged on and then  
25 what happened?

1           A     Well, she did not turn her camera on, so her  
2     screen was black.  And generally speaking in these --  
3     in these virtual classroom settings, a student's mic is  
4     off, unless they are speaking, so that there's not too  
5     much noise, not too much disruption and distortion of  
6     the sound.  So when students are called on, they are  
7     expected to unmute their mics to respond to a question,  
8     and they also have the availability to virtually raise  
9     their hands to unmute and ask questions.

10           Q     And how does someone virtually raise their  
11     hand?

12           A     A little button that they push and there's a  
13     little hand icon that shows.  The teacher can see that  
14     somebody has a comment to make or a question to ask.

15           Q     Okay.  Did REDACTED raise her hand at any time  
16     during that observation?

17           A     She did not.  She did not respond to any  
18     questions or any direct asked questions of REDACTED.  She  
19     was asked when they were opening up a document to do a  
20     math assignment if she had access to that.

21           Q     Who is they?

22           A     The class.  The students in the general  
23     education classroom, virtual classroom.  But she did  
24     not respond to any time her name was called.  So she  
25     had logged in, but she was not engaging in the activity

1 that was happening.

2 Q And was her name called?

3 A Yes.

4 Q Okay.

5 A To ask if she was there, to ask if she was  
6 able to open the document, if she was able to access  
7 the assignment.

8 I stayed on for about 20 minutes, and she was  
9 not able to -- she did not respond to any of the  
10 lesson.

11 Q Was that the only -- you mentioned that's  
12 your second observation. Did you do any further  
13 observations of REDACTED?

14 A Yes. I observed her again in January,  
15 another language arts lesson. She was logged in,  
16 camera on. She was ready to roll. She had her  
17 materials. She was much more engaged during that  
18 second observation.

19 THE HEARING OFFICER: What did you say the  
20 date was? I'm sorry.

21 THE WITNESS: I'm sorry?

22 THE HEARING OFFICER: The date of the second  
23 observation.

24 THE WITNESS: January 8th.

25 THE HEARING OFFICER: The one where she did



1 much better?

2 THE WITNESS: Yes.

3 THE HEARING OFFICER: Okay. That's  
4 January 8th?

5 THE WITNESS: Correct.

6 MR. ANDRIANO: Of what year, Ms. McCarthy?

7 THE WITNESS: 2021.

8 THE HEARING OFFICER: Okay. Go ahead.

9 THE WITNESS: Students were still in the  
10 virtual learning. She joined the class meeting.  
11 Her camera was on. She was praised for having --  
12 showing her materials were ready. There were  
13 questions asked, you know, hold up your journal,  
14 make sure --

15 BY MR. ANDRIANO:

16 Q Hold on. What do you mean she was praised?

17 A As she held up her material, the teacher  
18 said, thank you, REDACTED. Good job. You have your stuff.  
19 You're ready to roll.

20 Q And was -- did REDACTED fully participate in that  
21 particular class?

22 A At first she was there, but you could tell  
23 that she was watching something else. She kept looking  
24 away and kind of laughing and giggling as if she was  
25 watching a television show. At the beginning, the

1 teacher really tried to keep her engaged by asking her  
2 questions, asking her to read, making sure she had  
3 materials, calling on her, praising her in order to  
4 keep her engaged. But at first her attention was  
5 diverted away from the lesson.

6 Q And how can you tell that her attention was  
7 focused somewhere else?

8 A By the web cam on her face. She's not  
9 focused on the screen, on the lesson. She was looking  
10 off -- I don't know if it was a TV, but she kept  
11 looking off and laughing. And when she was laughing,  
12 it wasn't relevant to the discussion that was  
13 happening. So I assumed she was watching TV or a video  
14 of some sort.

15 Q Okay. And then how long did this observation  
16 go on; do you recall?

17 A I was in there about 30 minutes, in the  
18 virtual classroom about 30 minutes.

19 Q And you -- after you noticed that her  
20 attention was somewhere else, did the teacher do  
21 anything to bring her back into the classroom?

22 A Yes. Yes. The general format of this  
23 observation as well, they were in a whole group lesson,  
24 and then they broke off into small groups. And so

25 REDACTED -- it was REDACTED's turn to be in a small group with

1 her general education teacher at that time. So  
2 reducing the number of students that were in that  
3 lesson. And also the teacher called on her frequently.  
4 I think it was 25 times within that 30-minute period  
5 just in order to keep her engaged. There were positive  
6 interactions, praise for her work, making sure she had  
7 the materials she needed, asking her to read, asking  
8 her to answer comprehension questions.

9 Q And just so we're clear, who was praising  
10 her?

11 A Her teacher. Her teacher Ms. Houston was  
12 leading the lesson.

13 Q So it was Ms. Houston?

14 A Yes.

15 Q And you had mentioned that Ms. Houston called  
16 on her. What would happen when Ms. Houston called on  
17 REDACTED ?

18 A Throughout the whole lesson at times, she was  
19 calling on her to read because it was a reading  
20 assessment, or excuse me, reading lesson. They were  
21 reading passages together and answering comprehension  
22 questions based on the information.

23 When she was called on to read, she was able  
24 to identify key words, she was able to define  
25 vocabulary. She was able to read the sentences when

1 called on. She was praised for those. She was praised  
2 for volunteering in general, praised for reading in her  
3 efforts and her ability to answer questions correctly.  
4 There were other times her name was called, but it was  
5 more of, do you have the materials you need? Do you  
6 know where we are? Is everybody good to go? And she  
7 would give nonverbal signals that she had what she  
8 needed, thumbs up; she was ready for the next portion  
9 of the assessment -- or assignment.

10 There was a time that she was called on and  
11 she was asked, you know, Are you writing down these key  
12 words? And REDACTED said, Yes. But she didn't have a  
13 pencil in her hand. She didn't have a pencil near her.  
14 She was asked again, Are you writing these down? And  
15 she, again, was watching -- looking away, her attention  
16 was diverted. But then when the question was repeated,  
17 she started digging through her materials and got a  
18 pencil out to then continue on with writing the key  
19 words down that they were defining as they read through  
20 a passage.

21 Q Okay. Any further observations conducted by  
22 you?

23 A Not for the classroom.

24 Q All right. Let's now switch gears to your  
25 actual assessment with REDACTED where she came in to meet

1 with you in person?

2 A Okay.

3 Q Tell us about that.

4 A Sure. Scheduled a time to come to school, go  
5 to the Old Hundred school building; that we would be  
6 working together one on one.

7 Q And you mean Old Hundred Elementary School?

8 A Yes.

9 Q And where would this take place at Old  
10 Hundred Elementary School?

11 A We worked in the special education  
12 coordinator's office in the front of the school. I had  
13 a table set up, and there was also a glass window --  
14 she had been nervous during the educational evaluation  
15 earlier that week in terms of separating from her  
16 mother. So her mom was in the foyer, and she could  
17 kind of see where her mom was for a good part of it.

18 Q Okay. So, again, I'm not a school  
19 psychologist. How long does that assessment usually  
20 take place?

21 A We worked for a couple of hours with breaks  
22 throughout. Slightly more than two hours, I believe.

23 Q All right. And what was REDACTED's demeanor  
24 during the assessment?

25 A REDACTED is a very engaging child. She's very

1       personable. Rapport is very easy to establish with  
2       her. She approaches -- she approached most everything  
3       we did very calm, attentive, focused, ready to roll.  
4       She was diligent. She was -- she really appeared very  
5       confident in her skills. She enjoyed a lot of the  
6       challenges, especially if it was something of more  
7       thinking and reasoning oriented. She was really -- she  
8       worked very hard at what we were doing.

9               The only time I saw that demeanor change was  
10       when we were working on orthographic processing  
11       testing, the test of orthographic competence. There  
12       was a task that required more writing demands. So she  
13       had to look at common abbreviations and write out the  
14       full word that was -- that that abbreviation  
15       represented. She became very frustrated with the  
16       writing demands on this assessment. She didn't want to  
17       do it. She asked me to write for her.

18              I continued to encourage her. But definitely  
19       her demeanor, instead of being bright and confident and  
20       cheerful, she slumped down in her chair and appeared  
21       very defeated with the task, very frustrated. She took  
22       deep breaths to try to calm down and then she did put  
23       her pencil down and refused to write anymore on that  
24       task. I encouraged her to keep going, but she said she  
25       was done. She needed help. She asked for my help.

1 She would -- I tested the limits of the assessment at  
2 that point in time because she was refusing to do  
3 anymore, and by that, testing the standardized limits  
4 means that I did allow her to then verbally tell me the  
5 answer and have her spell out the words as she would,  
6 and I wrote down those answers as well just to see if  
7 that would have improved her performance on the task.  
8 But there was no significant improvement with that  
9 accommodation. There were only a few more  
10 abbreviations that she recognized, so it didn't -- it  
11 did not significantly improve her performance.

12 Q It didn't significantly improve when you  
13 tried to do what?

14 A Have her verbally tell me the answer that I  
15 scribed.

16 So we took a break after that. We went  
17 outside and find her mother, really went outside and  
18 took our masks off. Walked around a little bit, talked  
19 to her mother, got some encouragement. Walked around a  
20 little bit more. And then she said she was ready to  
21 continue and felt more confident. That quick break,  
22 that check-in with Mom, the reassurance, the air from  
23 being outside and walking around, she was much more  
24 able to handle the challenges when we returned. She  
25 again sat back up. She was more confident after that

1 quick break.

2 Q Okay. Did you do anything else, because I  
3 assume the assessment didn't stop at that point?

4 A No. We continued with orthographic  
5 processing testing at that point in time. The  
6 remainder of the tasks required less writing, so she  
7 had to write letters, she had to -- it was more letter  
8 oriented than full word oriented. It was circling  
9 responses. So the writing demands were a little bit  
10 less. Just that kind of quick break and the  
11 reassurance, she was ready to tackle -- she didn't  
12 complain anymore about the writing demands. Her  
13 persistence improved. She was able to finish not just  
14 the orthographic testing, but the remainder of the  
15 assessment that we did. She really responds very well  
16 to positive encouragement whether it's giving praise  
17 for working hard and kind of having those moments to  
18 talk and --

19 Q I'm sorry, did you give her praise throughout  
20 the test?

21 A Yes. It's very specific praise when you're  
22 in standardized testing because you can't praise her  
23 answers. It's more praising her efforts, her  
24 diligence, her ability to stay attentive and her hard  
25 work. It's a very specific praise in those ways.



1 Q Same thing, you mentioned positive  
2 reinforcement, is that something you did as well during  
3 your assessment?

4 A To some extent, yes. It's more verbal  
5 praise.

6 Q Okay. You believe that those -- the praise  
7 in the verbal assessment was a positive thing?

8 A It was. And she really remained cheerful and  
9 diligent and didn't -- didn't really complain or show  
10 any frustration with the remainder of the assessment  
11 that we did.

12 Q Great. Thank you. Now, Ms. McCarthy, I  
13 actually want to talk about the results of your  
14 assessment. And if you could just take a look at  
15 School Board page 132.

16 And specifically if you could look up at the  
17 top of that page, there's a title called Assessment  
18 Procedures. Can you explain to the Hearing Officer --  
19 I know you can sit here for a couple of hours and tell  
20 us about these particular assessments, but maybe if you  
21 could just summarize for Ms. Freeman what assessments  
22 you conducted.

23 A Sure. When I'm approaching an evaluation  
24 with any student regarding referrals I get, I try and  
25 be very mindful and thoughtful about the tests I'm

1 using so that we're addressing the referral concerns  
2 that are presented. But I'm also choosing tests that  
3 are appropriate for the student to really capture their  
4 strengths and weaknesses.

5 I did the Wechsler Abbreviated Scale of  
6 Intelligence to capture her thinking and reasoning  
7 skills with verbal and nonverbal reasoning.  
8 Comprehensive Test of Phonological Processing in  
9 regards to her phonological processing and auditory  
10 processing, Rapid Naming Retrieval Fluency. I chose  
11 the Test of Orthographic Competence because it looked  
12 more in depth at the orthographic difficulties that she  
13 had presented on the first evaluation.

14 The first evaluation was, in terms of the  
15 tests of orthographic -- or testing for the  
16 orthographic disabilities or -- excuse me --  
17 orthographic processing looked more at the achievement  
18 focus of can she spell words, can she read fluently,  
19 and can she decode nonsense words. The Test of  
20 Orthographic Competence presents the information in a  
21 different way. So it's -- there's -- it's approached  
22 so that less skills that are taught, can she decipher  
23 similar letters, can she recognize homophones, can she  
24 add -- some of it is related to instruction in terms of  
25 the writing conventions -- can she add punctuation, can

1 she identify abbreviations.

2 Q Ms. McCarthy, you had mentioned nonsense  
3 words. What does that mean?

4 A When you're reading nonsense words, a student  
5 has to use their decoding skills, their phonological  
6 processing in order to sound out what the word would be  
7 if it were a real word. Again, that is an area that  
8 orthographic processing impacts, so it wasn't an aspect  
9 of the test of orthographic competence that I use to  
10 test her skills. She had to add visually similar  
11 letters into words. She had to unscramble words --  
12 letters on a page to make words. It really gets at  
13 does she have that orthographic skill to decipher and  
14 distinguish between visually similar letters and words,  
15 to distinguish homophones and how they are spelled. It  
16 was -- so it goes more in depth into the processing  
17 areas that might impact orthographic processing.

18 The visual motor integration test --

19 Q Let's stop there for one second. Tell me  
20 about the test of visual motor integration; it looks  
21 like it has an acronym, V as in victor --

22 A VMI.

23 Q M, as in Michael, and I, as in India; is that  
24 correct?

25 A Correct.

1 Q All right. What is that assessing?

2 A Visual motor integration looked at REDACTED's  
3 ability to copy what she sees in front of her. It's  
4 more geometric designs, some of which are even 3D.  
5 Does she -- does she have the visual motor integration  
6 that she can see something and she can draw it within  
7 that, so it's more of a processing area.

8 Q Can I just ask you one clarifying question on  
9 that. Is that the same type of assessment as an  
10 occupational therapy evaluation?

11 A It can be included on both, but an  
12 occupational therapist looks at these types of tests  
13 more from a motor component in terms of does the  
14 student have the motor ability to draw what they see.  
15 They look at more at the muscle strength, the stamina,  
16 the motor component of being able to draw and write.  
17 This was more looking at can she see the shape there  
18 and can she figure out how to make the shape that is  
19 there, the design.

20 Q Thank you for that clarification. And it  
21 also looks like you conducted Behavioral Assessment  
22 Scale for Children.

23 A I did. Those are rating scales that look at  
24 different social, emotional and behavioral aspects that  
25 might impact a child's ability to learn. Her mom, her

1 general education teacher and her special education  
2 teacher completed them, as well as REDACTED, and it just  
3 asks the rater to think about over the last month how  
4 many times or how frequently different behaviors were  
5 observed.

6 Q And let me ask you this question, because you  
7 said, let's see, REDACTED's teachers -- two of her teachers  
8 filled out the rating scale?

9 A Yes.

10 Q And who else? Who was the third person?  
11 Because it looks like you have --

12 A Mrs. REDACTED and REDACTED herself did one.

13 Q So two teachers completed the rating scale?

14 A Yes.

15 Q And Mrs. REDACTED completed the rating scale and  
16 REDACTED completed the rating scale?

17 A Yes.

18 Q And do you remember the name of the two  
19 teachers who completed the rating scale?

20 A Ms. Houston and Ms. McCluskey.

21 Q And Ms. Houston and Ms. McCluskey were REDACTED's  
22 current teachers, correct?

23 A Yes.

24 And the rating scale asks that the rater  
25 consider the behavior over the last month. So when

1 they were completing these rating scales, it was really  
2 based on how [REDACTED] had been functioning in the virtual  
3 environment.

4 Q Okay. I don't think I realized that from  
5 your assessments.

6 So their report back to you is based on what  
7 they've seen in the last 30 days, which was during  
8 virtual instruction?

9 A Yes.

10 Q Not when they were in in-person instruction?

11 A No.

12 Q Got it. Okay. Thank you for that. All  
13 right. So you conduct all these assessments. Then  
14 what?

15 A Look at all the information together, and we  
16 were determining her eligibility for special education  
17 services in terms of a specific learning disability.  
18 The definition that we follow here in Chesterfield  
19 County is that we're looking for a pattern of strengths  
20 and weaknesses amongst her cognitive processing skills.  
21 [REDACTED] has lots of great strengths that she brings to the  
22 table. Her thinking and reasoning, her verbal  
23 abilities, her nonverbal perceptual fluid reasoning,  
24 her working memory, lots of strong areas. Her  
25 phonological[sic] processing is also a strength area.

1 THE HEARING OFFICER: What kind of processing?

2 THE WITNESS: I'm sorry?

3 THE HEARING OFFICER: What was that sort of  
4 processing?

5 THE WITNESS: Cognitive processing.

6 THE HEARING OFFICER: Oh, cognitive?

7 THE WITNESS: Yes, the way she's thinking and  
8 reasoning to collect information on what type of  
9 learner she is.

10 So when we are trying to consider a specific  
11 learning disability as an area of eligibility, we  
12 are looking for patterns of strengths and  
13 weaknesses. Many strengths that she presents. She  
14 had significant weaknesses with the orthographic  
15 testing, as well as her long-term retrieval  
16 fluency. The orthographic skills are, again,  
17 focusing on her visual recognition of letters,  
18 symbols and numbers; impacts basic reading skills,  
19 reading fluency, basic math calculations, as well  
20 as spelling and writing.

21 BY MR. ANDRIANO:

22 Q And what did she score on that, on the  
23 orthographic processing?

24 A She scored in the very poor range. It was a  
25 63 on a standard score. So it was a significant

1 weakness for her when she had to use those orthographic  
2 skills.

3 Q Okay. In addition to that significant  
4 weakness in orthographic processing, you had also  
5 mentioned the long-term retrieval, I think, is what you  
6 said?

7 A Her long-term retrieval fluency, the Rapid  
8 Naming Test, she had to quickly identify different  
9 letters or numbers and how quickly can she go through  
10 that. Again, we were wearing masks and I had a shield  
11 as well, but I don't know if the mask slowed her down  
12 any in terms of pulling that score into the below  
13 average range. But I did feel like the retrieval  
14 fluency in rapid naming being in the below average  
15 range was reflective of the concerns that had been  
16 brought to the table in terms of her reading fluency  
17 and the rate at which she was doing those basic reading  
18 skills. I didn't consider it an outlier, but I also  
19 can't rule out that wearing a mask might have slowed  
20 her down as she was participating in that task.

21 Q Okay. Thank you. So that was the cognitive  
22 aspect of your assessment?

23 A Uh-huh.

24 Q Then you looked at the social and emotional  
25 piece as well, and that's based on those BASC rating



1 scales, correct?

2 A BASC rating scales are a part of it. Also  
3 based on observations, input from teachers and parents,  
4 historical information from her cumulative file, all  
5 the information that's a part of that IEP. It's not  
6 just the rating scales that I pull that from. It's  
7 also my observations along with other pieces of  
8 information.

9 Q And could you please summarize for  
10 Ms. Freeman your findings on the social/emotional  
11 component of your assessment?

12 A So looking through all the rating scales and  
13 all the information, there were a few themes that  
14 popped up for me with multiple pieces of evidence from  
15 REDACTED. She was really struggling with more  
16 internalizing emotions, negative emotionality, anxiety,  
17 withdrawal. Again, this is based on the teacher input  
18 during virtual learning.

19 THE HEARING OFFICER: Where are you on social  
20 and emotional?

21 THE WITNESS: I -- the full description is on  
22 136.

23 MR. ANDRIANO: Through 137.

24 THE WITNESS: 137.

25 MR. ANDRIANO: School Board pages 136.

1 THE HEARING OFFICER: What's at 146?

2 MR. ANDRIANO: I'm sorry, 136 through 137.

3 THE HEARING OFFICER: All right.

4 THE WITNESS: Yeah, so the themes, again, had  
5 multiple pieces of evidence across different rating  
6 scales and observation. Within that virtual  
7 learning environment, REDACTED was showing anxiety,  
8 withdrawal, adaptability. What happens with these  
9 rating scales are that as they are rating different  
10 behaviors as it's happening, they elevate different  
11 areas across the scale. So with --

12 BY MR. ANDRIANO:

13 Q Can I just stop you there for one second? So  
14 when you say that the people who filled out the rating  
15 scales were reporting anxiety, withdrawal and something  
16 else --

17 A Adaptability.

18 Q Are they reporting it to you that way, or are  
19 you interpreting the checklist on the BASC and you come  
20 up with that interpretation?

21 A It's an interpretation of the information  
22 that they answer how often behaviors -- so a teacher  
23 isn't saying, I see anxiety. Her mother isn't saying,  
24 I see anxiety. It's that these different  
25 characteristics are present. So for REDACTED it had more

1 to do that she worries about how others think of her.  
2 She needed reassurance. She took a little bit longer  
3 to recover from setbacks when they happen. She was  
4 avoiding participating in group activities. Showing  
5 behaviors that exhibited worry and nervousness. Nobody  
6 was saying, I see anxiety. They were seeing these  
7 characteristics that are often associated with anxiety.

8 Q If I could just direct your attention to page  
9 141 of School Board 30. Just for demonstrative  
10 purposes, is this what you're referencing when you --

11 A Yes, so these are the different scales that  
12 are a part of the Behavior Assessment Scale for  
13 Children across the two teachers and Mom's rating  
14 scales.

15 Again, I don't just take directly the  
16 information from the rating scale. I'm also looking at  
17 information that has been provided as well through  
18 observations. You know, REDACTED in this virtual learning  
19 format was having a lot of difficulty remaining on task  
20 and participating in school. She was avoiding some of  
21 the tasks that were difficult for her as well as really  
22 not handling her frustrations as appropriately as would  
23 have been like with a challenging task. So she was  
24 showing more frustration. She felt defeated when I was  
25 working with her as well. So I saw some of that

1 impact. But I also saw that she was able to recover  
2 quickly when she receives kind of a break and  
3 reassurance in that one-on-one setting.

4 Q Okay. Great. And if you could look at page  
5 142 of School Board 30.

6 Ms. McCarthy, you may be surprised why I'm  
7 going to ask you this, but it's come up in this hearing  
8 so that's why I'm going to ask you.

9 Did any of REDACTED's teachers report that REDACTED,  
10 in their opinion, had schizophrenia?

11 A No, nobody said REDACTED had schizophrenia. The  
12 definition of an emotional disability and emotional  
13 disturbance for special education eligibility includes  
14 schizophrenia as part of the definition.

15 So these scales from the behavior assessment  
16 scale and the emotional disturbance qualification  
17 composites, those names are coming directly from the  
18 BASC in terms of these behaviors. So that's  
19 schizophrenia thought disorder index, the behaviors  
20 that would elevate that --

21 Q Ms. McCarthy, let me stop you right there.  
22 Just so the Hearing Officer is clear, this is on page  
23 142, second from the bottom.

24 THE HEARING OFFICER: Yeah, I read that.

25

1 BY MR. ANDRIANO:

2 Q Go ahead and explain why this is -- first of  
3 all, why is schizophrenia listed on here?

4 THE HEARING OFFICER: Yeah, why is it  
5 necessary to put schizophrenia on there if it has  
6 no real relevancy?

7 THE WITNESS: So that's the name of the index  
8 of this emotional disturbance qualification  
9 composite.

10 THE HEARING OFFICER: Oh, okay.

11 THE WITNESS: Schizophrenia is included in the  
12 definition of an emotional disturbance. That's why  
13 the test publisher included it there. I don't know  
14 why they chose to call it schizophrenia.

15 THE HEARING OFFICER: Because that's a pretty  
16 heavy --

17 THE WITNESS: I agree. I'm not at liberty to  
18 change the name of the index scale.

19 THE HEARING OFFICER: Are you saying it's just  
20 part of the protocol?

21 THE WITNESS: It's part of the protocol. It's  
22 part of the results/findings. Because  
23 schizophrenia is a part of the definition if a  
24 student did have schizophrenia, they could receive  
25 services as an emotional disability.

1 THE HEARING OFFICER: So it's part of that  
2 label?

3 THE WITNESS: Yes. Nobody said that she had  
4 it. While those scales are elevated for the  
5 teacher, the behaviors that feed into that  
6 composite from all these rating scales have to do  
7 with the anxiety, withdrawal from what she was  
8 struggling with, like it would be the virtual  
9 learning of withdrawal behaviors, adaptability and  
10 executive functioning that were all reported in  
11 terms of --

12 THE HEARING OFFICER: Excuse me if I'm  
13 interrupting your answer, but are you saying that  
14 some aspects of having schizophrenia being included  
15 in this scale are also aspects of being  
16 emotionally -- having a learning disability?

17 THE WITNESS: No. So REDACTED was not found to  
18 have an emotional disability --

19 THE HEARING OFFICER: That's right. Okay.

20 THE WITNESS: -- and she was not found --

21 THE HEARING OFFICER: That's right.

22 THE WITNESS: She does have a learning  
23 disability.

24 THE HEARING OFFICER: Specific learning  
25 disability. And are some of these behaviors, is

1 that what you're saying, are included in specific  
2 learning disability?

3 THE WITNESS: She was having at this time --

4 THE HEARING OFFICER: Symptoms.

5 THE WITNESS: -- reported characteristics of  
6 executive functioning deficits, difficulty  
7 organizing, starting and completing tasks, turning  
8 in her work, not -- she was avoiding tasks that  
9 were difficult. She was avoiding the virtual  
10 learning format. She needed a lot of encouragement  
11 to participate and remain engaged. So these are  
12 the behaviors that elevated that scale.

13 And like I said, I wasn't at liberty to change  
14 the name of the scale. Nobody thought she was at  
15 risk for schizophrenia. Nobody said that she had  
16 that. That's just how it is defined within the  
17 definitions of emotional disability, emotional  
18 disturbance. She was not found to have an  
19 emotional disability.

20 THE HEARING OFFICER: What about over here,  
21 though, when it says general ed teacher descriptive  
22 range 66 at risk? Maybe I'm bringing incorrect  
23 experience into it, but if I see "at risk" in the  
24 child's scale, that tells me that there's a  
25 possibility that those symptoms or those traits are

1 present or could be present and significant later;  
2 that it's in the process of development.

3 THE WITNESS: At risk on these BASC rating  
4 scales means that there's mild concerns noted and  
5 clinically significantly means that there's even  
6 more elevated concerns. It doesn't mean she's at  
7 risk for schizophrenia or that she's clinically  
8 significant for schizophrenia.

9 The relevance of behaviors that were present  
10 in REDACTED that elevated those scales had to do with  
11 her withdrawal from what was difficult and her  
12 anxiety that she was showing in that format, as  
13 well as some of the organizational and attentional  
14 concerns with executive functioning. I think those  
15 are very minor in terms of whether or not there was  
16 a thought disorder schizophrenia at risk. Like I  
17 said, I wasn't at liberty to change the name of  
18 that index.

19 THE HEARING OFFICER: I understand. Thank you  
20 for explaining that.

21 THE WITNESS: It's confusing. And I explained  
22 that when we were going over these results again  
23 through the process.

24 MR. ANDRIANO: Ms. Freeman, did you have  
25 anything additional?



1 THE HEARING OFFICER: No.

2 BY MR. ANDRIANO:

3 Q What do you mean you explained it? When did  
4 you explain this?

5 A It came up not in the eligibility meeting,  
6 but in her IEP meeting in February of 2021 in terms of  
7 what this meant. Again, it's in the --

8 Q Who asked you about it?

9 A Her parents.

10 Q And did you explain to them what you just  
11 explained to us?

12 A Yes. That it's a part of the definition of  
13 emotional disability and I'm not at liberty to change  
14 the index name. But the behaviors that REDACTED was  
15 showing that led to that elevated area had to do with  
16 the --

17 MR. RATNER: Ms. Freeman, if I could just be  
18 heard briefly on this particular point.

19 THE HEARING OFFICER: Sure. Go ahead.

20 MR. RATNER: They are certainly free to  
21 examine her recollection of that meeting, but,  
22 again, we have a recording of that meeting. I  
23 think it might be probative of what she actually  
24 said or didn't say, and we've been prevented from  
25 playing that recording.

1 THE HEARING OFFICER: Okay. I think there  
2 were other issues with that recording. But she's  
3 giving me her testimony first hand right now. So  
4 if she tells me that she discussed this with the  
5 Parents, I have every reason to believe her unless  
6 you have some other information.

7 MR. RATNER: I think I do, but you prevented  
8 us from presenting it to you.

9 THE HEARING OFFICER: Again, there were  
10 authentication difficulties with it, if I recall.  
11 Let's go ahead.

12 BY MR. ANDRIANO:

13 Q Okay. Just to wrap up this discussion here  
14 on this BASC rating scale, Ms. McCarthy, when the  
15 rater, the teacher or Mr. REDACTED or Mrs. REDACTED, are  
16 filling out the rating scale, does it say schizophrenia  
17 on there?

18 A No. No. It doesn't say anxiety either.  
19 They are reporting how often they see different  
20 behaviors that happen, whether that's -- does she avoid  
21 situations that are stressful? Does she turn in her  
22 work on time? Does she get along with her peers? So  
23 people remark how often they see behaviors. Then they  
24 feed into the different scales that they could be  
25 relevant. And all this information and all this -- all

1 the rating scales and all her history, what I felt was  
2 relevant, and there were multiple pieces of evidence to  
3 support REDACTED 's social/emotional information had to do  
4 with the executive functioning and the attention  
5 aspects during the virtual learning environment and  
6 more of the internalizing behaviors with anxiety.

7 Q Now, you had mentioned that you had also  
8 asked REDACTED to complete one of these behavioral rating  
9 scales?

10 A Yes.

11 Q Did she complete that?

12 A She did.

13 Q Any concerns noted from her particular --

14 A No. REDACTED presented herself as a very  
15 confident child. During that one assessment with the  
16 orthographic competence, she showed some -- she felt  
17 more defeated during that. The remainder of the time  
18 she was very confident and assured and presented  
19 herself in a very positive way.

20 She did not respond to any questions on the  
21 rating scales to indicate any concerns that she had for  
22 herself. It was -- she's so verbal. It was  
23 interesting to go through those rating scales because  
24 she really -- every answer she gave, she would expand  
25 on the information. I did add one example in here,

1 but, you know, "I try to do better, but I can't" is an  
2 example of the question that she had to answer if it's  
3 true or false or how often she felt that way. And she  
4 said, "I don't have to try better to do better because  
5 I'm already great and what I do is fine." It's kind of  
6 an example of how she was presenting herself while  
7 answering those questions.

8 THE HEARING OFFICER: What did she say?

9 THE WITNESS: "I don't have to try to do  
10 better because I'm already great and what I do is  
11 fine."

12 Like I said, her responses indicated that she  
13 enjoyed school, and she was pretty clear that she  
14 enjoyed in-person school. She has a positive  
15 attitude toward teachers. She has a positive  
16 attitude towards family relationships. She feels  
17 like she's outgoing. She felt like she was well  
18 liked by peers. She feels in control over what  
19 happens with her. She had a positive self-image.  
20 She actually reported she felt less anxiety and  
21 depression than her peers. She did feel that she  
22 had troubling paying attention in school, but that  
23 was really the only negative sort of characteristic  
24 that she admitted to. She actually said she didn't  
25 worry at all. She did explain that the virtual

1 learning format made it even more difficult for her  
2 to pay attention. She didn't feel like she could  
3 get the help she needed when they were in that  
4 virtual format.

5 She further explained at that time that she  
6 can't see other children getting help when they are  
7 in that virtual format so she feels like she's the  
8 only one struggling or she felt like she's the only  
9 one struggling within that format.

10 Another thing I usually ask students, you  
11 know, if you could change school -- if you had  
12 three wishes to make school better for you, what --  
13 how would you change it? She wanted to return to  
14 in-person two days a week and the virtual school  
15 days that happened on the other three would be all  
16 day long virtual --

17 THE HEARING OFFICER: What was her second  
18 wish?

19 THE WITNESS: It was one -- the first wish was  
20 that instead of being all virtual, she would be in  
21 person for two days, and the three days that were  
22 virtual, instead of it being short meetings, that  
23 she would have it all day long so she would get  
24 more assistance. And at that point in time, we had  
25 no idea how long we would be stuck in the virtual

1 learning. She wished that she could see her  
2 friends more often.

3 BY MR. ANDRIANO:

4 Q You said, "We had no." Who is we?

5 A Just as a community dealing with the  
6 pandemic, we didn't know how long we would be in  
7 virtual learning.

8 She also wished that COVID would be gone,  
9 that she had more time to play with her dad and that  
10 her brother liked her singing.

11 Q I'm sorry, I didn't hear that last one. She  
12 wished that what was gone?

13 A That COVID was gone and that her brother  
14 liked her singing.

15 MRS. REDACTED: She wished.

16 THE WITNESS: She wished that he liked it.

17 She's very creative and artistic.

18 BY MR. ANDRIANO:

19 Q Did she say anything about any particular  
20 classes that you remember?

21 A She shared at this time that math was her  
22 least favorite, even though she was good at math. She  
23 shared that she liked to draw and sing and she liked  
24 school. She thought reading and writing were hard, but  
25 she liked it.

1 Q Okay. So after you complete your assessment,  
2 did you make any recommendations?

3 A Sure. I did. With the orthographic  
4 weaknesses being the biggest area of concern,  
5 orthographic processing deficits impact her math  
6 calculations, her spelling, her writing, basic reading  
7 and reading fluency.

8 So I suggested that multisensory activities  
9 are really the research-based interventions and  
10 instruction methodologies to increase her sight word,  
11 basic word reading and her fluency along with direct  
12 teaching of spelling rules, writing conventions within  
13 that, and along with the multisensory strategies,  
14 repetition and drills is an important part, not just in  
15 school but at home, too, for both.

16 Q Thank you. And then Ms. McCarthy, while  
17 you're conducting your assessment, you had mentioned  
18 other assessments like the educational, the  
19 sociological, the functional behavioral assessment.

20 Are those going on at the same time as your  
21 assessment in that general time frame?

22 A In the general time frame, yes.

23 MR. RATNER: Could I interject for just one  
24 minute? If we are going to be shifting gears,  
25 would this be a good time to take a quick break?

1 It's been about an hour.

2 MR. ANDRIANO: That's fine with me,

3 Ms. Freeman.

4 THE HEARING OFFICER: Five minutes.

5

6 (Break taken.)

7

8 THE HEARING OFFICER: Are we ready to move

9 forward? Let's go on then. It's a little after

10 1:20. Were you done with your direct?

11 MR. ANDRIANO: Not yet, Ms. Freeman.

12 THE HEARING OFFICER: All right. Go ahead.

13 BY MR. ANDRIANO:

14 Q Ms. McCarthy, just to back up to two points I

15 want to clarify from your evaluation report.

16 Did I hear you correctly state that you said

17 student reports she has less anxiety and depression

18 than peers?

19 A Yes. When she answered the self-rating scale

20 on that day.

21 Q So that's her self-report to you?

22 A Yes.

23 Q Okay. And then if I could direct your

24 attention to page 137 of your report, did you rule out

25 attention-deficit hyperactivity disorder?



1           A     Yes, I did. She showed some difficulties  
2 with attention and executive functioning, again, in the  
3 virtual learning format. Those same concerns were not  
4 seen outside of the educational setting, and I didn't  
5 see it one-on-one either. She didn't show enough  
6 evidence to consider REDACTED as a student with  
7 attention-deficit hyperactivity disorder at this point  
8 in time.

9           Q     Okay. And then you also referenced executive  
10 functioning weaknesses are commonly associated with  
11 specific learning disabilities. What does that mean?

12           A     Students that have learning disabilities,  
13 it's not uncommon for them -- with executive  
14 functioning, what that means is having difficulty  
15 getting started on task, persisting through to  
16 completion, turning in work, ignoring distractions,  
17 handling frustration. Those are all different  
18 behaviors associated with executive functioning that  
19 are commonly concerns with students that have a  
20 specific learning disability.

21           Q     All right. Great. Thank you.

22                     So after you complete your evaluation report  
23 and the other evaluators complete their evaluation  
24 reports, next is an eligibility meeting, correct?

25           A     Correct.

1 Q We don't need to spend hardly any time on  
2 this, but do you remember what the determination of the  
3 eligibility team was?

4 A Yes, we determined that REDACTED was a student  
5 with a specific learning disability. So showed  
6 patterns of strengths and weaknesses across both her  
7 cognitive skills and her academic achievement skills.  
8 Just, again, to reiterate she had the processing  
9 weaknesses in orthographic processing and long-term  
10 retrieval fluency, and those two processing areas are  
11 correlated with the academic achievement weaknesses  
12 that were noted with basic reading, reading fluency,  
13 math calculations and written expression, which  
14 includes spelling.

15 Q And were Mr. and Mrs. REDACTED at this meeting?

16 A Yes.

17 Q Okay. And did they raise any concerns with  
18 any of the evaluation reports?

19 A No.

20 Q Then after the eligibility meeting, there's  
21 an IEP team meeting?

22 A Correct.

23 Q And you had previously indicated that you  
24 don't, as a school psychologist, you don't typically  
25 attend IEP meetings?

1 A Not typically.

2 Q All right. If I could direct your attention  
3 to School Board Exhibit 37.

4 Do you recognize this document, Ms. McCarthy?

5 A This is the IEP that was discussed in  
6 February 2021 that I was a part of.

7 Q So you were a part of this meeting?

8 A Yes.

9 Q Why? Why were you a part of this meeting?  
10 You just indicated you don't go to IEP meetings.

11 A The family requested that I attend.

12 Q You mean Mr. and Mrs. REDACTED requested that  
13 you attend?

14 A Yes.

15 Q Okay. And did you attend the meeting?

16 A I did.

17 Q And did they tell you why they wanted you to  
18 attend the meeting?

19 A They just asked that I be a part of it so if  
20 they had questions about the reports or  
21 recommendations.

22 Q About your particular recommendations?

23 A I suppose it was a general request that we be  
24 included in the IEP team.

25 Q You said, "we." Who is we?

1           A    I was there, as well as Kirsten Rubino, our  
2 educational diagnostician.

3           Q    Was Ms. Rubino there at the request of the  
4 Parents as well?

5           A    Yes.

6           Q    Now, just thinking back to your evaluation  
7 report, you mentioned you had made certain  
8 recommendations?

9           A    Yes.

10          Q    Were those recommendations discussed at this  
11 particular IEP meeting?

12          A    They were.

13          Q    Just so we're clear for the record, this is  
14 the February 19, 2021, IEP meeting, correct?

15          A    Yes.

16          Q    At School Board 37?

17          A    Yes.

18          Q    So set the stage for us. We're in the IEP  
19 meeting and what? Your recommendations are requested  
20 to be considered?

21          A    It was one of the -- it was almost a  
22 three-hour meeting. There was a lot of things  
23 discussed, but I was asked to explain my  
24 recommendations in terms of multisensory strategies and  
25 repetition and the direct instruction for spelling and

1 writing.

2 Q And did the team discuss those  
3 recommendations?

4 A Yes.

5 Q Did they consider them?

6 A Yes.

7 Q And did they include them in the IEP?

8 A Yes.

9 Q How so?

10 A Well, if you read the successful  
11 interventions and strategies on page 163, it describes  
12 multisensory approach to reading and written language  
13 instruction, it discusses learning how to apply all  
14 those strategies to decoding and encoding words, and we  
15 also included coping strategies for when she becomes  
16 overwhelmed or anxious and the ability to refocus and  
17 proceed with tasks that are providing frustration.

18 Q And these are listed on page 163 of this  
19 exhibit?

20 A Yes, a general description of interventions  
21 and strategies that are successful for REDACTED.

22 Q Now, you had indicated that Mr. and  
23 Mrs. REDACTED had asked you to attend this meeting. Were  
24 they present at the meeting?

25 A Yes.

1 Q Was there attorney present at the meeting?

2 A Yes.

3 Q Was their advocate present at the meeting?

4 A Yes.

5 Q Did any of them raise any concerns with your  
6 recommendations?

7 A No.

8 Q Was there any discussion during this meeting  
9 of how REDACTED was currently doing?

10 A Yes, there was. The IEP meeting happened  
11 about four weeks after our eligibility. Beginning of  
12 February, students returned in person five days a week,  
13 so she had been in person for five days a week for  
14 almost three weeks at this point in time when we had  
15 the IEP meeting. And there was a discussion that they  
16 were already seeing improvement in terms of her work  
17 completion, her performance, her engagement with  
18 learning.

19 Q And who is "they" when you say they saw  
20 improvement?

21 A The teachers, both teachers present, I recall  
22 them sharing. And when we discussed my report at the  
23 time and the interventions and the behaviors that had  
24 been noticed in the virtual learning format, that they  
25 were already seeing improvements with all of that and