

1 it wasn't really a concern in terms of her not turning  
2 in work and not participating anymore because she was  
3 there. And I recall Ms. McCluskey mentioning that if  
4 she were to do those rating scales again, it would be a  
5 much different result based on how she was performing  
6 in-person, the same concerns and same behaviors weren't  
7 seen.

8 MR. RATNER: That's a hearsay comment, as  
9 clearly as I've heard one.

10 THE HEARING OFFICER: What did you say?

11 MR. RATNER: I have a hearsay objection. She  
12 just said what Ms. McCluskey said and offered it  
13 for the truth of the matter asserted.

14 THE HEARING OFFICER: Any response? I was  
15 writing. I didn't know you were talking over  
16 there. I didn't mean to be rude.

17 MR. ANDRIANO: I asked her who they were and  
18 she said the IEP team, the teachers of the IEP  
19 team.

20 MR. RATNER: And then she made a very specific  
21 comment --

22 THE HEARING OFFICER: About the rating scales  
23 and the rating scales would be different if they  
24 were completed today?

25 MR. ANDRIANO: I'll rephrase the question.

1 MR. RATNER: It's not the question. It's the  
2 answer.

3 THE HEARING OFFICER: Sustained.

4 BY MR. ANDRIANO:

5 Q What was the discussion about how REDACTED 's  
6 progress was going at this IEP meeting -- during this  
7 IEP meeting?

8 A Her teachers, Ms. McCluskey and Ms. Houston,  
9 shared that they did not have the same concerns as they  
10 had --

11 MR. RATNER: Same objection.

12 MR. ANDRIANO: Just say what was the  
13 discussion.

14 THE WITNESS: The behavior had improved within  
15 the virtual -- returning from virtual into  
16 in-person school five days a week, REDACTED was  
17 showing --

18 MR. RATNER: Ms. Freeman.

19 THE WITNESS: REDACTED was showing --

20 MR. ANDRIANO: Hold on a second.

21 MR. RATNER: Just by not saying Ms. McCluskey  
22 said doesn't make it not hearsay. She's just  
23 recounting what these other people said in the  
24 meeting.

25 MR. ANDRIANO: She was part of the team.

1 MR. RATNER: Exactly. We've had this debate  
2 throughout the hearing, and I think the rulings on  
3 it have gone -- well, you are just going to have to  
4 decide.

5 THE HEARING OFFICER: Okay. I think that she  
6 just stated from her own information that the  
7 behavior had improved.

8 THE WITNESS: Yes. She was turning in --

9 THE HEARING OFFICER: That's what will go down  
10 on the record. Sustained.

11 MR. RATNER: But she's not her teacher, so  
12 she's not having work turned in to her.

13 THE HEARING OFFICER: No, but she's an expert  
14 witness and wrote the psychological and all of this  
15 information is included in the psychological, the  
16 rating scales, all that sort of thing.

17 And did you take note personally that there  
18 was improvement, or is this just information that  
19 you received from the teachers?

20 THE WITNESS: It was information that was  
21 discussed with the IEP team.

22 THE HEARING OFFICER: And did you discuss it?

23 THE WITNESS: Yes, when we were talking about  
24 her --

25 THE HEARING OFFICER: Okay. Don't tell me

1 the -- okay. So I think it's okay.

2 MR. RATNER: Just one last point to make sure  
3 we're all talking about the same thing, this  
4 meeting was at least a month after she completed  
5 the report and after the eligibility.

6 THE HEARING OFFICER: She just said I  
7 discussed it with the teachers. I don't see why  
8 the time frame would color that.

9 MR. RATNER: Well, because you had said if  
10 this was all included in her report --

11 THE HEARING OFFICER: In the report, no. I'm  
12 saying in her report to us today.

13 MR. RATNER: I got it.

14 THE HEARING OFFICER: You remember this from  
15 the discussions you had personally and that was  
16 your receipt of the information?

17 THE WITNESS: Yes. Because it was relevant to  
18 the information that I was asked to share at the  
19 IEP meeting.

20 THE HEARING OFFICER: I think Mr. Ratner is  
21 probably right; that there is an element of hearsay  
22 to this. But the other aspect of her testimony is  
23 that she's obviously a qualified expert witness.  
24 So I'm going to take that as her opinion as well.  
25 Okay. Technically, I'm sustaining you. All right.

1 Go ahead.

2 BY MR. ANDRIANO:

3 Q Ms. McCarthy, you had mentioned social/coping  
4 skills goal.

5 Was there any discussion among team members  
6 about that goal?

7 A Yes.

8 Q And what was that discussion?

9 THE HEARING OFFICER: What was that about the  
10 coping skill?

11 THE WITNESS: Yes, on page 166 --

12 BY MR. ANDRIANO:

13 Q Let me ask this before we get there.

14 Was there -- you had previously mentioned  
15 that as part of the reevaluation that a functional  
16 behavior assessment was being conducted.

17 Was that discussed at the IEP meeting?

18 A Yes, a functional behavior assessment had  
19 been done to address her work avoidance and work --  
20 difficulty with work completion and avoidance within  
21 the virtual learning format, and we discussed that she  
22 was returning -- returning in person was improving  
23 those behaviors and making that irrelevant because she  
24 was in person and she was able to engage and receive  
25 the assistance as they engaged.

1 Q Okay. As part of that, was the social/coping  
2 skills goal referenced?

3 A Yes.

4 Q And was it discussed by the team?

5 A Yes.

6 Q Okay. And what was the discussion regarding  
7 the social/coping skills goal?

8 A There was -- I remember that there was  
9 discussion that the Parents didn't feel that her social  
10 skills were a deficit and that the team wanted to keep  
11 the social/coping skill as the goal because she needed  
12 to -- she needed that help to stay engaged with  
13 learning. So the coping skill goal was left in there  
14 in terms of supporting REDACTED's participation and work  
15 completion within the school setting.

16 Q Was there any -- did Mrs. REDACTED ask the team  
17 to remove the social/coping skills goal?

18 A There was discussion that her social skills  
19 were good; that REDACTED didn't have any trouble with  
20 social skills, and debate over whether the  
21 social/coping goal was necessary in order for her to --

22 THE HEARING OFFICER: May I interrupt for just  
23 a minute? I'm having trouble understanding who  
24 asked for social skills if she scored average on  
25 most of your rating scales, I believe. I'm not

1 going back to that exhibit.

2 THE WITNESS: It's the coping part.

3 THE HEARING OFFICER: I don't see any deficits  
4 really in social/coping skills.

5 THE WITNESS: The coping skills had to do with  
6 the anxiety and frustration tolerance that she had  
7 from the virtual learning.

8 THE HEARING OFFICER: From the virtual  
9 learning? But when she came back -- did you -- did  
10 anybody -- did any of the teachers perceive that  
11 there was anxiety and -- I think you mentioned that  
12 before, but I'm having a hard time understanding  
13 where the anxiety piece, the social/coping skills,  
14 all of that, where -- what is the piece that  
15 suggests that in her educational plan?

16 THE WITNESS: That she was having difficulty  
17 with work completion and persisting through those  
18 difficult tasks, especially in the virtual format.

19 THE HEARING OFFICER: In the virtual world.

20 THE WITNESS: Yes.

21 THE HEARING OFFICER: But not in-person?

22 THE WITNESS: Right. And in order to sustain  
23 that support, we left the study skills and coping  
24 skills goals in there to address her executive  
25 functioning and her coping skills so that she would

1 continue to receive that support as she was  
2 transitioning back into the -- into school.

3 THE HEARING OFFICER: As she was  
4 transitioning. But did you personally feel that  
5 she needed social/coping skills and study skills  
6 moving forward as you saw her progress in person?

7 THE WITNESS: In person, the way they were  
8 supporting the study skills and coping skills are  
9 that if she was frustrated with a task, they could  
10 move to the smaller group setting and provide that  
11 support in terms of how to encourage her and  
12 persist through that. I don't think that the  
13 concerns were the same when she was in person than  
14 when she was virtual.

15 We also, again, didn't know at this point in  
16 time if we are going to stay in person, go back to  
17 virtual or any of that, so -- and being in person  
18 was still relatively new. It was just elementary  
19 school that had returned at this point in time.  
20 And so, therefore, I think it was appropriate to  
21 have study skills and coping skills goals in there  
22 to continue to support REDACTED with her frustration,  
23 her work completion, her executive functioning so  
24 that she could maintain progress.

25 THE HEARING OFFICER: Those -- the



1 frustration, the anxiety and the coping skills that  
2 were required were mainly seen in the virtual  
3 world?

4 THE WITNESS: Yes. Returning in person really  
5 helped alleviate a lot of those concerns.

6 THE HEARING OFFICER: I understand. Thank  
7 you.

8 BY MR. ANDRIANO:

9 Q What observations have you made following her  
10 school performance following the IEP meeting?

11 A I'm sorry?

12 Q What observations, if any, have you made  
13 regarding REDACTED's school performance following the IEP  
14 meeting?

15 A I did not do any observations of REDACTED after  
16 our IEP meeting.

17 Q Have you reviewed her record?

18 A Yes.

19 Q And what observations, if any, did you glean  
20 from that?

21 A She was more successful once she returned in  
22 person. Her grades improved. All the different  
23 curriculum-based measures that they used to measure  
24 progress showed improvement throughout the whole spring  
25 through the end of the year, whether that be the MAPs

1 assessments, her grades, her report cards, the DRA, all  
2 improved and showed progress, as well as the SOL.

3 MR. ANDRIANO: Okay. Thank you, Ms. McCarthy.  
4 That's all I have at this point.

5 THE HEARING OFFICER: Any cross-exam?

6 MR. RATNER: There is. And if I could have  
7 five or ten minutes to organize because she covered  
8 a lot of stuff that I intended to cover so  
9 hopefully I can streamline.

10 THE HEARING OFFICER: It's 2:20 -- I'm sorry  
11 it's 2:40.

12 THE COURT REPORTER: I think it's 1:40. I  
13 might be wrong.

14 MR. RATNER: No, you're right. It's about  
15 1:43 by my watch. So come back maybe at 1:50; is  
16 that okay?

17 THE HEARING OFFICER: Yes, that's fine.

18  
19 (Break taken.)

20  
21 THE HEARING OFFICER: Are we ready to go on?

22 MR. RATNER: I think so, yes.

23 THE HEARING OFFICER: All right. Go ahead. I  
24 believe when we broke you were beginning your  
25 cross-examination of Ms. McCarthy.

1 MR. RATNER: Great. Thank you. I guess  
2 before I start with the questioning, is there  
3 another witness waiting? I want to be mindful of  
4 that.

5 THE HEARING OFFICER: I don't know. Is there  
6 somebody else out there?

7 MR. ANDRIANO: No.

8 MR. RATNER: So do we have the rest of the day  
9 with her? I don't plan to take it.

10 MR. ANDRIANO: Well, I think we need to see  
11 where we are.

12 MR. RATNER: Okay. Very good. Thank you.

13 THE HEARING OFFICER: If I'm getting this  
14 correct, I believe it's ten of 2:00.

15

16 CROSS-EXAMINATION

17 BY MR. RATNER:

18 Q Ms. McCarthy, my name is Todd Ratner. I'm  
19 one of the lawyers representing the family, along with  
20 my wife and colleague.

21 I'm going to apologize in advance because we  
22 just had Christine McCluskey, now we've got Cynthia  
23 McCarthy. I apologize if I mess up your name. I've  
24 been doing it all week. No disrespect intended.

25 A None taken.

1 Q We spent a lot of time, or you and  
2 Mr. Andriano did, talking about School Board 30, which  
3 was the confidential psychological report. And I'm  
4 going to just ask you a few questions about that.

5 But I was curious as to whether or not you  
6 also participated in the preparation of School Board  
7 29, the functional behavior assessment?

8 A My information was considered in the  
9 development of the functional behavior assessment.

10 Q Okay. And when you say your information was  
11 considered, that goes along with everybody else's name  
12 on page 127, all of those people's information was  
13 considered?

14 A I believe so.

15 Q Okay. Well, I'm asking it in a not very  
16 artful way.

17 Did you actually prepare this document?

18 A I did not.

19 Q Okay. Do you know who did?

20 A Ms. Pettaway is the one that was  
21 consolidating the information.

22 Q Got it. And I'm not trying to trick you. I  
23 just don't know who prepared it. And you're not sure?

24 A Functional behavior assessments are not  
25 conducted by one person. It's a team, and I was -- my

1 information and observations were involved.

2 Q Let me ask you this then, go to tab 28.

3 THE HEARING OFFICER: 28?

4 MR. RATNER: Yes, ma'am.

5 BY MR. RATNER:

6 Q Is this document part of the functional  
7 behavior assessment?

8 A This is one element that they collect  
9 information from.

10 Q Yes. Okay. You didn't prepare this, right?

11 A No.

12 Q Okay. Did you, in your personal interactions  
13 with REDACTED, ever observe any dishonest behavior on  
14 her part?

15 A Any dishonest behavior?

16 Q Yes.

17 A In one of the classroom observations, I did.  
18 She was asked if she was writing down the key words,  
19 and she said she was, but she didn't have a pencil.

20 Q She didn't have a pencil. Right. Do you  
21 remember, and you can certainly look at that document,  
22 was that when she was with the full class or the small  
23 group?

24 A I believe it was the small group. When they  
25 broke it into small groups.

1 Q And can you recall, when you say "small  
2 group," is that less than five students, less than ten?

3 A I would say less than ten.

4 Q Okay. So there were plenty --

5 A It was not a special education small group.  
6 It was the general education.

7 Q Understood. And that would be Ms. Houston's  
8 class?

9 A Yes.

10 Q And would a reasonable estimate of the number  
11 of students in that class be somewhere around 22 to 26  
12 or something like that?

13 A I'm not sure how many, and I'm not sure how  
14 many were present that day.

15 Q Understood.

16 A I didn't take notes on that.

17 Q But it certainly wasn't a one-on-one comment;  
18 right? REDACTED was being called out in front of her  
19 peers?

20 A No, she was not being called out in front of  
21 her peers. They were all being asked if they were  
22 keeping -- she asked if she had been writing down the  
23 words, if she was keeping up with the pace. And REDACTED  
24 said that she was, but she didn't have a pencil.

25 Q Well, maybe "called out" was the wrong thing.

1 But did Ms. Houston specifically ask REDACTED or  
2 did she ask the whole class?

3 A At this point in time she asked REDACTED. That  
4 does not mean that REDACTED was the only one that was asked  
5 if she was --

6 Q No, no, no. Understood. But she was asking  
7 REDACTED directly in front of her peers, right?

8 A If she was able to write down the words and  
9 was keeping up.

10 Q Right. And one of the things you observed  
11 with REDACTED, I think, was that how she did compared to  
12 her peers was something that caused her some anxiety;  
13 is that correct?

14 A Yes.

15 Q So, for example, her saying in front of her  
16 peers, no, I'm not able to keep up would be difficult  
17 for her, correct?

18 A This was a small group. She nodded yes. The  
19 third time she was asked, she did get a pencil and  
20 write them down.

21 Q So let's go to tab 30, the confidential  
22 psychological report, please. Is that what you're  
23 looking at?

24 A Yes.

25 Q So there are a few dates of evaluation on

1 there. The earliest one is December 15, 2020.

2 Was that the first time you ever actually  
3 encountered REDACTED?

4 A That was the date of one of the observations.

5 Q Right. And what I'm asking is, had you ever  
6 met REDACTED prior to that?

7 A I had not met REDACTED.

8 Q So that was the earliest time you had met  
9 her?

10 A Yes. But I didn't meet her on that date.  
11 That was the observation. So it was the 17th when REDACTED  
12 and I met.

13 Q Okay. So you didn't -- and was the 15th the  
14 observation that you didn't actually get to observe?

15 A The morning time. In the afternoon, she  
16 turned her -- she logged in but didn't turn her camera  
17 on.

18 Q Do you know -- and, again, if you don't know,  
19 I'm not drawing any inferences. I'm just trying to  
20 understand.

21 Did Chesterfield County Public Schools have  
22 any policy in effect during virtual school about  
23 students having cameras on?

24 A It wasn't necessarily required at the time.  
25 It was encouraged in this lesson because they were



1 doing math and they were going to be writing problems  
2 on their whiteboard.

3 I think more of what was of concern was that  
4 she wouldn't respond verbally when she was addressed to  
5 make sure that she was able to open the document. That  
6 was something they were asking -- Ms. Houston was  
7 asking all of the students, were they able to access  
8 the document, were they ready for the lesson. She was  
9 asked to turn her camera on. The remainder of the  
10 class did have their camera on.

11 Q Sure. That's kind of what I'm trying to  
12 understand. When you say that was of a concern, it was  
13 a concern of Ms. Houston or it was a concern to you as  
14 the observer?

15 A I would say both because she was not engaged  
16 in the lesson.

17 Q Okay. And you could tell that because the  
18 camera wasn't on?

19 A And she wasn't responding to any of the  
20 questions that were asked of her, and by not engaging  
21 in the lesson and she's not responding, even if she was  
22 there watching, she was not participating and engaging  
23 in the activity.

24 Q Okay. And I guess what I'm trying to better  
25 understand is that seems very different than the

1 experience you had with REDACTED when you met with her  
2 one-on-one on December 17th. Is that fair to say?

3 A Yes. A much different situation one-on-one,  
4 in-person versus virtual learning.

5 Q Right. And that's what I'm trying to better  
6 understand.

7 Were you surprised by that difference from  
8 what you had heard from teachers when you met REDACTED?

9 A That she was engaged when I was working with  
10 her?

11 Q Yes.

12 A No, I was not surprised. She was very  
13 personable. She was easy to connect with. She was  
14 engaging. She loved conversation. I wasn't surprised  
15 by any of that.

16 Q Well, so, for example, looking on the first  
17 page when you're talking about reason for referral and  
18 background information, you indicate that both her  
19 general education and special education teachers had  
20 commented that she had exhibited work avoidance,  
21 correct?

22 A Yes, that's what I stated here.

23 Q I mean, do you recall that independent of  
24 reading it on the page?

25 A That was part of the referral concern, yes,

1 work avoidance.

2 Q And did you observe that either on 12/15 or  
3 1/8/2021 when you observed?

4 A Yes. On 12/15 she was avoiding the work.  
5 She did not participate in the lesson.

6 Q Okay. And then when you met with her in  
7 person, did you notice any quote-unquote work  
8 avoidance?

9 A On the punctuation -- not punctuation.  
10 Excuse me. The abbreviation task when she had to write  
11 the words, she was trying to avoid writing and became  
12 very frustrated and put her pencil down.

13 Q That struck me as very interesting. I think  
14 you're the first person I've had a chance to question  
15 about this, so if you'll indulge me. Just like  
16 Mr. Andriano, I'm not a school psychologist, so I'm  
17 relying upon you to help me better understand.

18 But I thought what I heard from you was on  
19 other tasks that didn't present challenges to her, she  
20 actually seemed to enjoy it, she enjoyed the academic  
21 rigor, she liked testing herself. It was only on a  
22 test where she had a significant deficit that you saw  
23 her demeanor and behavior change; is that fair to say?

24 A On one of the tasks where she had to write,  
25 she did become frustrated. She did not become

1 frustrated on any of the other tasks that required  
2 writing.

3 Q And that was the abbreviations, right?

4 A Correct.

5 Q And I believe you said she exhibited behavior  
6 that looked like she felt defeated, right?

7 A Yes. She slumped down in her chair. She  
8 groaned. She was trying to take deep breaths. She  
9 asked for help. She put her pencil down.

10 Q So let me ask it this way, would you say work  
11 avoidance or she was struggling with the work that was  
12 presented to her?

13 A She avoided the task because it was a  
14 struggle.

15 Q But it wasn't like --

16 A She put her pencil down and said, I'm not  
17 doing it.

18 Q So refused or whatever it was, but it was  
19 because it was difficult for her, not because she just  
20 simply told you, I'm not doing what you tell me to do;  
21 is that fair to say?

22 A She avoided what was difficult, yes.

23 Q Because have you ever observed -- have you  
24 ever evaluated students who would just say, I'm not  
25 doing this, I don't have to do what you tell me?

1           A     Fortunately, I work at an elementary level  
2     and I work pretty hard to connect with the kids so I  
3     can make it fun or take a break and come back. I think  
4     that's a strength that I bring to the table. Yes,  
5     fortunately, because I work with elementary school  
6     kids, I rarely get refusal.

7           Q     Understood. That's a great way to answer the  
8     question, but I think you understood what I was getting  
9     at, right, with my question?

10          A     Can you repeat it?

11          Q     A student with a different set of issues  
12     might say, you know, if they had authority issues, they  
13     might say, I'm not doing this, right?

14          A     Sure.

15          Q     And that was not what you saw with REDACTED ?

16          A     No.

17          Q     So let's talk about the anxiety piece, and,  
18     again, specifically the BASC results. And I understand  
19     the questions may not have said does REDACTED appear  
20     anxious, but can you describe for Ms. Freeman, to the  
21     extent you know sitting here today, what are some of  
22     the questions that feed into that anxiety score?

23          A     The ones that I listed in the narrative of my  
24     report are the ones that were relevant to REDACTED that  
25     were seen across multiple rating scales.

1 Q Could you point me to those? That would be  
2 helpful.

3 A On page 136. And these were behaviors that  
4 were reported by Mrs. REDACTED, by Ms. Houston and  
5 Ms. McCluskey to be seen across raters, across --  
6 usually anything I put into the body of a report has to  
7 do with multiple pieces of evidence and not just an  
8 outlier of information. So these were some of the  
9 areas that -- some of the behaviors that were elevating  
10 the anxiety: Withdrawal, adaptability scales where she  
11 worries about what others think of her, she does show  
12 some behaviors stemming from worry and nervousness,  
13 difficulty adjusting to change, recovering -- taking  
14 longer to recover from setbacks, avoiding participating  
15 in group activities and displaying inappropriate  
16 feelings of behavior under normal circumstances that  
17 would have to do with the frustration tolerance.

18 Q Sure. So if Ms. McCluskey's responses to the  
19 BASC -- and you can flip through it, I'm on 141 if you  
20 want. I'm not trying to stump you or trick you. But  
21 if her response to that was clinically significant for  
22 anxiety -- yeah, there it is, 141.

23 So she would have answered that, yes, she  
24 understood that REDACTED worried about how she was  
25 perceived by her peers and things like that? Just help

1 me understand.

2 A That would mean that she was avoiding things  
3 that were anxiety producing, that she needed  
4 reassurance, not necessarily -- not always associated  
5 with just anxiety.

6 Q Understood.

7 A A specific learning disability does exhibit  
8 more frustration with some of these academic tasks.

9 Q And I think you said at the outset to  
10 Mr. Andriano you were responsible for two schools; is  
11 that right? And one of those is Old Hundred, correct?

12 A Correct.

13 Q And that was a brand new school when REDACTED  
14 started fourth grade, correct?

15 A Correct.

16 Q So I assume it was new to you as well?

17 A Yes.

18 Q Had you collaborated with Ms. McCluskey with  
19 respect to any other students prior to REDACTED ?

20 MR. ANDRIANO: Objection. Relevancy.

21 MR. RATNER: I'll connect it up.

22 THE HEARING OFFICER: I think she referred --  
23 you referred in your question to other students at  
24 Old Hundred.

25 MR. RATNER: All I'm asking if she had worked

1 with Ms. McCluskey before with other students. I'm  
2 not going to ask about other students.

3 THE HEARING OFFICER: I'll allow it for now.  
4 Go ahead. Just don't go into other students.

5 MR. RATNER: No, ma'am.

6 THE HEARING OFFICER: All right. Go ahead.

7 THE WITNESS: Are you talking about prior to  
8 Old Hundred opening?

9 BY MR. RATNER:

10 Q Either way. As of this assessment, had you  
11 collaborated with Ms. McCluskey either prior to Old  
12 Hundred or with other students at Old Hundred?

13 A With other students at Old Hundred.

14 Q I don't want to know anything about those  
15 other students. I want to make that very clear.

16 Had you come to think that Ms. McCluskey  
17 understood the BASC, knew the purpose of it and was  
18 familiar with your role on the IEP team?

19 A I do. And I think that she is also familiar  
20 with the expectations of the rating scale; that the  
21 behaviors needed to be rated based on recent behavior  
22 and in the last month, which was within the virtual  
23 learning environment, and not to be pulled from what  
24 she knew about REDACTED prior to those last few weeks.

25 Q Right. So based on what you know about



1 Ms. McCluskey, would it surprise you to hear that she  
2 testified in this hearing that she never saw any  
3 anxiety with REDACTED?

4 A I think that's a different question whether  
5 or not you see anxiety or whether or not you see work  
6 avoidance, you see the need for reassurance. Anxiety  
7 presents differently, and in terms of that general term  
8 that most of us think, you know, she's sitting in the  
9 back, is she trembling, is she nervous, is she saying  
10 I'm worried is different from some of the behaviors  
11 that were noted to occur within that virtual learning  
12 situation. You might not seem anxious, but that  
13 doesn't mean that work avoidance and frustration  
14 tolerance isn't coming out of that and that's what  
15 would lead to the elevated scale.

16 Q Understood. And maybe I didn't ask the right  
17 questions.

18 If I could ask you to flip to page 143. I  
19 believe it's still part of the report, and that will be  
20 my first question.

21 Is this bar chart part of the report?

22 A It's a part of my psychological evaluation,  
23 yes.

24 Q So can you just explain for me what this part  
25 of the evaluation is meant to show?

1           A     Sure.  When we're doing eligibility decisions  
2     for specific learning disabilities, we follow patterns  
3     of strengths and weaknesses model.  These are all the  
4     different standardized scores across the different  
5     areas of processing that were --

6           THE HEARING OFFICER:  What page?

7           THE WITNESS:  It's on page 143.

8           MR. RATNER:  You're there, I think.

9           THE WITNESS:  It's a bar chart.

10          THE HEARING OFFICER:  Okay.

11          THE WITNESS:  These were REDACTED 's scores across  
12     the processing assessments in my evaluation.  Where  
13     there's a line at 90, which indicates anything to  
14     the right of that is scored to being above 90 is an  
15     area of strength.  The other line in the mid-80s  
16     approximately, supposed to be at 84, anything below  
17     that is considered a weakness in terms of her  
18     special education eligibility.  So she had  
19     weaknesses in orthographic processing and retrieval  
20     fluency.  Strengths in all the other areas.

21     BY MR. RATNER:

22           Q     And I think you said this is a standardized  
23     test, is that right, or standardized set of  
24     information?

25           A     The scores are from standardized assessments.

1 Q So would it be appropriate to ask what is the  
2 standard deviation, or is there a standard deviation  
3 for each one of these?

4 A There's a standard deviation for each one.

5 Q I can't look at these together and assume  
6 they are on the same scale; is that right?

7 A Correct. It's not always give or take five  
8 points. It's very dependent not just on the test, but  
9 the age, the performance, it varies.

10 Q So let me ask you this then, and, again, this  
11 is purely to understand. I'm not suggesting one way or  
12 the other.

13 If they are all different scales, how can you  
14 have a consistent 84 being a cutoff for weaknesses?

15 A That's a different statistical --

16 Q Could you help me understand that, please.

17 A So standard error of measure, the confidence  
18 interval that you're talking about, has to do with each  
19 test.

20 Q Okay.

21 A And it gives a range. So if you're looking  
22 at a 95 percent confidence interval, that would mean if  
23 you're looking at her comprehension knowledge, the  
24 first one on here, her verbal skills fall into the  
25 superior range. There be a range -- I don't have --

1 actually, it probably is in the chart.

2 Q Are you looking for 129? Would that be the  
3 score you're looking for?

4 A So the 121 was the verbal assessment with the  
5 confidence interval of 113 to 127; that's -- that would  
6 be an example of a confidence interval. 95 percent of  
7 the time -- if REDACTED were to take this test a hundred  
8 times, the understanding would be that 95 percent of  
9 the time her score would fall in the range of 113 to  
10 127.

11 Q Okay. And just if I could stop you right  
12 there. And, again, I don't want to get into a  
13 statistical debate.

14 But you mentioned outlier earlier in your  
15 testimony. You used that word. So would those five  
16 not within the confidence interval be considered the  
17 outliers?

18 A No. You're --

19 Q I'm mixing apples and oranges?

20 A Yes. The confidence interval has to do with  
21 a specific subtest, a specific index.

22 Q Okay.

23 A When I said outlier with the retrieval  
24 fluency, is that what you're referring to?

25 Q Yes.

1           A    The -- it wasn't an outlier to me in terms of  
2    I wasn't surprised that she would have difficulty with  
3    this long-term retrieval test where she had to pull  
4    back information she knew and she had to identify  
5    letters, identify numbers and she's timed. You know,  
6    it takes 20 seconds. So she was wearing a mask, and  
7    that can slow you down when you're trying to speak  
8    quickly on this 20-second test. So I have -- and,  
9    again, speaking through estimates because of the mask,  
10   changing the procedure, she showed a weakness.  
11   However, I can't say that's -- she was wearing a mask,  
12   so I can't say that that didn't slow her down. But  
13   within the range of what it was, I think that that  
14   weakness also explains some of her difficulty with  
15   reading fluency.

16           Q    Okay.

17           A    So to me there was a connection with this  
18    weakness and how she was struggling academically.

19           Q    And that's -- you're talking about the rapid  
20    naming retrieval fluency, correct?

21           A    Yes.

22           Q    And would that include math facts, for  
23    example?

24           A    Yes.

25           Q    Nine times nine is eighty-one?

1           A     Yeah, the basic math calculations, there's a  
2     connection with orthographic processing and retrieval  
3     fluency, two basic math skills.

4           Q     Then when you get to the orthographic  
5     processing, I mean, was that good enough that you  
6     didn't have even any concerns about the mask or the  
7     mask just didn't come into that at all?

8           A     That task, because it's writing, she's having  
9     to write her answers, it didn't slow her down.  
10    Orthographic processing is a significant weakness for  
11    REDACTED. It does impact, again, those basic academic --

12          Q     Yeah, and I hate to -- you've probably  
13    already explained this. I still don't think -- if  
14    somebody asked me how to define what orthographic  
15    processing means, I couldn't do it.

16                   THE HEARING OFFICER: Thank you.

17    BY MR. RATNER:

18          Q     Can you explain it as succinctly as you can,  
19    recognizing there are probably entire books on it?

20          A     When you think about learning to read and  
21    spell, orthographic processing has more to do with the  
22    visual recognition of what the words look like, the  
23    order of the letters, the visual memory of what she's  
24    reading. So it slows down a reader. If she is having  
25    difficulty, she has to stop and think at times. It

1 impacts her ability to remember what that word looks  
2 like when it's spelled out.

3 Q Okay. So this just might help me better  
4 understand.

5 MR. ANDRIANO: I'm sorry --

6 THE WITNESS: Hold on. I wasn't --

7 MR. RATNER: You're not finished. I'm sorry.  
8 I'm sorry.

9 THE WITNESS: It impacts sight word  
10 recognition. It impacts reading fluency. It  
11 impacts spelling and writing, letter formation and  
12 basic math skills. Commonly students that have  
13 orthographic processing deficits, you see very  
14 strong comprehension, you see very strong reasoning  
15 skills, they are understanding of math concepts and  
16 understanding what reading passages are trying to  
17 tell her and her verbal skills are very well  
18 defined and much more developed than her ability to  
19 really recognize print efficiently, if that makes  
20 sense. It's more of the visual component of  
21 reading and writing as opposed to she has good  
22 foundation on the sounds that go into how to spell  
23 words, how to read words.

24 THE HEARING OFFICER: Is that something that  
25 could be confused, say, with dyslexia?

1 THE WITNESS: It's an element of dyslexia, the  
2 visual component, making letter reversals. In the  
3 school system, that falls under a specific learning  
4 disability with reading and writing.

5 BY MR. RATNER:

6 Q That's what I was going to ask. There's no  
7 specific eligibility category for dyslexia, is there?

8 A It falls under specific learning disability.  
9 I think what's important to note for REDACTED is that  
10 dyslexia, dysgraphia, I don't think any of those have  
11 been specifically identified for REDACTED. Not all  
12 students that have those disorders are eligible for  
13 special education. REDACTED is eligible for special  
14 education because her deficits in these areas are so  
15 weak that she's eligible for special education.

16 Q Right. So because she's eligible,  
17 irrespective of whether or not she has a diagnosis of  
18 dyslexia, she is entitled to services, accommodations,  
19 specialized instructions to try to address those  
20 deficits, correct?

21 A She is eligible as a student with a specific  
22 learning disability.

23 Q Got it. So sticking on this bar chart on  
24 page 143, would you agree with me that this is a  
25 profile of a fairly complex student?



1           A    She shows a lot of strengths.  She has a lot  
2 of thinking and reasoning abilities and significant  
3 deficit with the orthographic processing.

4           Q    Have you ever heard the term twice  
5 exceptional?

6           A    I have.

7           Q    And not getting into whether or not you agree  
8 that REDACTED is twice exceptional, but is this a profile  
9 of a student who might be considered twice exceptional?

10          A    It could be, yes.

11          Q    And isn't it true that this sort of profile  
12 presents unique challenges in the classroom?

13          A    I think, yes, and it's one of those areas in  
14 the general education classroom that the accommodations  
15 come into play.  She's accommodated in a general  
16 education classroom for her deficits so that she can  
17 still be exposed to the general curriculum and show her  
18 abilities in the areas that she's not deficient in.  
19 The basic reading and writing skills, the basic math,  
20 she can understand the information.

21          Q    Do I recall correctly that you observed that  
22 she did better in small groups, for example?

23          A    The observation day that I was -- that I  
24 watched, yes.

25          Q    And in the general education curriculum, you

1 don't always get to work in small groups, correct?

2 A [REDACTED] was in a collaborative setting, so even  
3 within the general ed setting when -- general education  
4 setting when it was the whole class, there are two  
5 teachers most of the time working with groups of  
6 students within the general education classroom, and  
7 she received pull-out instruction, again, in that small  
8 group setting to work on her needs while also being in  
9 the general education setting to be exposed to the  
10 curriculum and be able to show her abilities there.

11 Q So after you complete one of these reports,  
12 and you've testified already, then comes an eligibility  
13 meeting, and you participated in the eligibility  
14 meeting for [REDACTED], correct?

15 A I did.

16 Q Was there ever any question -- she had  
17 previously been identified as a student with a specific  
18 learning disability, right?

19 A Correct.

20 Q Was there ever any question in your mind  
21 after you completed this that she might not be eligible  
22 for special education at all?

23 A After completing the evaluation?

24 Q Yeah.

25 A No, I did not have any question that she

1 would be eligible for special education based on this  
2 information.

3 Q Sure. So then based on some of the elevated  
4 responses on the BASC, the team also decided to look at  
5 whether or not REDACTED qualified as having an emotional  
6 disability, correct?

7 A We did not consider emotional disability  
8 because of the BASC.

9 Q Okay.

10 A The BASC was included as a part of the  
11 evaluation in order to rule out any sort of attention,  
12 social, emotional concerns that were present when the  
13 IEP team was concerned about her progress in the  
14 virtual learning format.

15 Q I think what the team basically decided -- I  
16 don't want to put words in your mouth. There could be  
17 other things going on, but her primary issue is  
18 specific learning disability?

19 A She was not eligible as a student with an  
20 emotional disability or other health impairment.

21 Q And OHI, other health impairment, is  
22 typically where you would put ADHD; is that right?

23 A Most commonly.

24 Q So where you say there's not enough evidence  
25 for REDACTED to be identified as a student with

1 attention-deficit hyperactivity disorder, that wouldn't  
2 really affect what services she got; she needs to get  
3 services that are unique to her based on an individual  
4 student with a disability, correct?

5 A I'm not sure I understand your question.

6 Q Sure. So she was eligible for special  
7 education services period, right, regardless of what  
8 her designation was; you agree with that?

9 A She is eligible as a student with a specific  
10 learning disability.

11 Q Right. But regardless of what category she  
12 was found eligible in, her IEP has to be individual to  
13 her, right? It's not driven by the label, correct?

14 A Correct. Support the function -- where she's  
15 functioning is where she needs the support.

16 Q Staying on that same page of 137 where REDACTED  
17 explained to you --

18 A 137, you said?

19 Q Yes. That's where I was talking about the  
20 ADHD.

21 THE HEARING OFFICER: You said she doesn't  
22 have ADHD.

23 MR. RATNER: Right. I was just putting here  
24 there --

25 THE HEARING OFFICER: Where are you? 137?

1 MR. RATNER: Yes, ma'am.

2 BY MR. RATNER:

3 Q And it's probably about two-thirds of the way  
4 down the page, after that quote you read about "I don't  
5 worry at all" and she explained that virtual school  
6 makes it harder for her to pay attention, just can you  
7 tell Ms. Freeman what you recall about that discussion  
8 with REDACTED and the significance of it to you when you  
9 made your recommendations to the team?

10 A In regards to her attention skills?

11 Q Correct.

12 A She did not meet the criteria of a student  
13 with ADHD. It's not just whether paying attention or  
14 feeling like it's difficult to pay attention, it's not  
15 all that goes into ADHD. There's 18 different  
16 characteristics of -- that fall under the ADHD criteria  
17 for inattention or hyperactivity disorder. So she did  
18 not show the characteristics of ADHD to a significant  
19 degree that would indicate an identification. So that  
20 does not mean that she doesn't have some concerns for  
21 attention; it's just not related to an  
22 attention-deficit disorder. It would be more related  
23 to another situation at that moment, being able to  
24 ignore distraction, also related with a learning  
25 disability in an educational setting.

1 Q That's not what I was getting at. I'm off of  
2 ADHD. I just used that to put you in place.

3 Was there an issue about it was harder for  
4 her in virtual than in person to attend?

5 A Yes.

6 Q And did you feel, as the psychologist, that  
7 just going back to in person was going to be enough to  
8 remedy all these deficits shown on this chart on  
9 page 143?

10 A To remedy all the deficits that -- I think  
11 that would be extreme to think that that would be the  
12 only thing. But I think returning in person was very  
13 beneficial, not just to REDACTED but all students. Being  
14 in-person and having that interaction and seeing that  
15 everyone is getting help, in REDACTED's words, is  
16 beneficial.

17 Q Right. You mentioned a couple of times in  
18 your testimony -- and I see it a couple of times in the  
19 report -- specific recommendations related to sight  
20 word identification and automaticity.

21 A Yes.

22 Q Just explain for Ms. Freeman what you mean by  
23 sight word identification and automaticity.

24 A Word identification, basic reading that she  
25 can read through. Automaticity has to do with the

1 reading fluency.

2 Q What are sight words?

3 A Sight words for REDACTED specifically would be  
4 words that she can recognize by sight.

5 Q So not sounding them out necessarily; is that  
6 what you mean?

7 A Yes.

8 Q And that, again, is in your summary on page  
9 138. Due to orthographic weaknesses, multisensory  
10 activities to increase sight word identification and  
11 automaticity should be included in REDACTED's reading  
12 instruction. Was that a recommendation you made to the  
13 team?

14 A Yes.

15 Q Okay. Do you recall at the conclusion of the  
16 functional behavior assessment if there was a  
17 recommendation for a behavior intervention plan?

18 A Which --

19 Q I believe that's tab 29.

20 A It was a recommendation that we discuss it  
21 for work completion, engagement, work avoidance.

22 Q Okay. And you're looking on page 130?

23 A Yes.

24 Q Okay. Did the team discuss a behavior  
25 intervention plan?

1           A     In the IEP meeting, we added -- made sure  
2     that the social skills, coping, the study skills goals  
3     were including some of this. We did not develop an  
4     additional plan specific just for the positive behavior  
5     intervention plan. These needs were being addressed,  
6     one, because when she returned in person, this  
7     disengagement and work avoidance, escape behaviors that  
8     were being seen in the virtual setting were not  
9     relevant within the in-person learning. So we left the  
10    study skills and coping skills goal in order to support  
11    her in person. And, again, we didn't know at that time  
12    do we get to stay in person or return virtual.  
13    However, a lot of work avoidance and disengagement was  
14    no longer relevant while she was in person.

15           Q     Okay. And you said you never followed up  
16    with Ms. McCluskey after that last IEP meeting to see  
17    if there was more work avoidance since then; is that  
18    accurate?

19           A     Not specifically, no.

20           Q     Okay. So you don't need to look at this  
21    page, but you would agree with me that part of what you  
22    did in preparing your Confidential Psychological Report  
23    was a record review for REDACTED ?

24           A     Sure.

25           Q     And would that include the IEP that she was



1 working on at the time that you were going to evaluate  
2 her?

3 A One of the many pieces of information.

4 Q Right. Could you look at tab 20 for me,  
5 please, and tell me when you have that in front of you.

6 A Uh-huh.

7 Q You've got it?

8 A Yep.

9 Q This is an IEP Amendment dated 11/4/2020.  
10 Did I read that correctly?

11 A I'm not a part of this IEP, but that is  
12 the --

13 Q Right. And that was going to be my next  
14 question.

15 You didn't know REDACTED at this time, correct?

16 A I did not.

17 Q So could we look at the goals quickly, and  
18 would you agree with me that at this point before you  
19 got involved, she already had a study skills goal and  
20 social/coping skills goal?

21 MR. ANDRIANO: I'm going to object,  
22 Ms. Freeman. It's beyond the scope of my direct  
23 examination. We didn't talk about a November 2020  
24 IEP meeting.

25 MR. RATNER: We talked a lot about --

1 THE HEARING OFFICER: I don't remember talking  
2 about this IEP. I would have remembered 20. Go  
3 ahead.

4 MR. RATNER: So we talked a lot about the  
5 social and coping skills specifically, and my  
6 understanding was that Ms. McCarthy was saying it  
7 had been added because of the concerns that the  
8 Parents had raised. What I would like to show is  
9 that it was already a part of REDACTED 's IEP.

10 THE HEARING OFFICER: All right. I'll  
11 overrule at this point. Go ahead.

12 MR. RATNER: Thank you.

13 BY MR. RATNER:

14 Q So on page 87, do you see that REDACTED already  
15 has social/coping skills goal before you got involved,  
16 correct?

17 A Yes.

18 Q And I know you said you don't regularly  
19 attend IEP meetings, but I think you said you maybe did  
20 two or three times a year; is that fair to say?

21 A Yes.

22 Q Since 2005?

23 A Yes, generally speaking.

24 Q So at least 20 you've been to in that period?

25 A Yeah.

1 Q Okay. You understand that goals are supposed  
2 to be measurable, correct?

3 A Sure.

4 Q Could you explain to me how this goal that  
5 REDACTED will improve her social/coping skills in four out  
6 of five documented situations by June 2021 is  
7 measurable?

8 MR. ANDRIANO: Objection, Ms. Freeman. Again,  
9 she wasn't at this particular IEP meeting.

10 THE HEARING OFFICER: She wasn't at this  
11 meeting?

12 MR. RATNER: She's an expert witness. She  
13 just said she understands goals are meant to be  
14 measurable. She's participated in IEP meetings,  
15 and I'm just asking her about this goal.

16 THE HEARING OFFICER: She participated in that  
17 last -- the one we were talking about before. I  
18 don't recall the specific date. But I don't recall  
19 that this witness was qualified in IEP development,  
20 implementation, and all those other items that the  
21 educational experts were qualified in. So I don't  
22 think she's -- we need to move on to another topic.  
23 Sustained.

24 Go ahead.

25 MR. RATNER: Fair enough. Thank you.

1 BY MR. RATNER:

2 Q Back to the evaluation and then the IEP  
3 meeting in February, you did participate in that one,  
4 correct, February 2021?

5 THE HEARING OFFICER: Could you give me the  
6 date?

7 MR. RATNER: It was February 19, 2021.

8 THE HEARING OFFICER: That's right, my  
9 daughter's birthday.

10 THE WITNESS: Which tab is that?

11 MR. RATNER: That's 37.

12 THE HEARING OFFICER: 37.

13 BY MR. RATNER:

14 Q This is going to tie back into the  
15 assessment. You talked about the theory VMI  
16 assessment, right?

17 A Uh-huh.

18 Q I'm sorry, for the court reporter can you  
19 give a verbal --

20 A Yes, I gave the verbal -- sorry. I gave the  
21 visual motor integration scale.

22 Q Do I understand right that that could be part  
23 of an OT assessment, but that's not only thing?

24 A Correct.

25 Q And did I understand you correctly to say

1 that you observed her -- let me ask a better question.

2 Did you observe any issues with REDACTED copying  
3 those things that would indicate a fine motor problem?

4 A On the visual motor integration scale, she  
5 showed average skills. She was able to draw the  
6 designs and figures that were there. When she was  
7 doing letter formation, that was more difficult for  
8 her.

9 THE HEARING OFFICER: Letter formation was  
10 difficult?

11 THE WITNESS: Yes. Not on the VMI but on the  
12 orthographic test.

13 THE HEARING OFFICER: Oh, okay.

14 THE WITNESS: Part of that test has to do with  
15 the writing, her letter formation, which is  
16 associated with an orthographic deficit.

17 BY MR. RATNER:

18 Q Right. And not necessarily an OT,  
19 occupational therapy, or fine motor deficit, correct?

20 A An occupational therapist looks more at the  
21 motor and muscle aspects of writing. Stamina was also  
22 a concern. And in this IEP meeting, I remember there  
23 being concerns for her handwriting brought up multiple  
24 times. So the team, we usually operate from a "leave  
25 no stone unturned" situation, and that we wanted to

1 delve further into her occupational therapy -- have an  
2 occupational therapist look more into her skills to see  
3 if there were other concerns that were impacting her  
4 handwriting.

5 Q Sure. But so you do recall a discussion  
6 about the handwriting and whether an occupational  
7 therapy assessment would be appropriate, correct?

8 A The team recommended an occupational therapy  
9 evaluation because of the repeated concerns for  
10 handwriting.

11 Q And, again, I'm asking you, do you  
12 specifically remember that discussion, as you sit here  
13 today?

14 A I do. Because I also shared that part of  
15 those concerns would be related to her orthographic  
16 deficit along with that, but I'm not an occupational  
17 therapist. They approach those tasks -- observe those  
18 tasks and assess those skills in a different way that  
19 it -- the team thought it would be beneficial if we  
20 collected occupational therapy evaluation and  
21 observation that there might be support for  
22 recommendations that could be made to support her  
23 through those tasks.

24 Q Sure. But what I'm asking you is what you  
25 recall of your input into that discussion.

1                   Isn't it true that you commented for the  
2 team, number one, REDACTED 's an artist; do you remember  
3 telling them that?

4                   A     She does enjoy art, yes.

5                   Q     And she had performed well on recreating the  
6 3D images/representations from the VMI, correct?

7                   A     Yes.

8                   Q     And that that would not be suggestive of a  
9 fine motor problem, correct, the fact that she was able  
10 to do that?

11                  A     On those tasks. So when I give the VMI, when  
12 I give a visual motor integration test, I'm looking at  
13 the hand-eye coordination that goes along with that.  
14 Can she look at what's there and can she draw and do  
15 that.

16                  An occupational therapist then looks at grip  
17 and muscle control and stamina and hand strength and  
18 comes up with ways that we can help a student persist  
19 through those tasks that might be exhausting. It looks  
20 at things from a different angle.

21                  So, yes, orthographic elements impact letter  
22 formation. But on the visual motor integration test,  
23 she had the ability to copy those designs. Like I  
24 said, from an element of the handwriting concerns  
25 persisted and continued to be brought up and discussed

1 in that meeting, that the team felt, well, let's get  
2 more information to make sure that we're not missing  
3 anything, we're not leaving anything out that could be  
4 a support to REDACTED.

5 Q When you say "the team felt," do you recall  
6 that the Parents weren't particularly interested in an  
7 OT assessment?

8 A I don't recall them being against it, and I  
9 believe they gave permission.

10 Q Right. I was asking a different question. I  
11 think you said you don't remember, right? You don't  
12 remember them being against it is what your testimony  
13 is?

14 A I don't recall them -- there being an  
15 objection to collecting that information.

16 Q Sure. But was it a concern of theirs, OT, in  
17 that meeting?

18 A Handwriting was a concern.

19 Q Right. I'm asking a different question  
20 because Mr. Andriano asked you, well, did the Parents  
21 complain. Did the Parents say, we think REDACTED needs an  
22 occupational therapy assessment?

23 A No, they did not. The IEP team felt that it  
24 would be beneficial to make sure we cover all areas  
25 that might impact her handwriting and letter formation.



1 Q Right. And that's the IEP team's role; it's  
2 not just up to the Parents to bring concerns to the IEP  
3 team, correct?

4 A They are a member of the IEP team.

5 Q Right. But certainly other members of the  
6 team have obligations to identify areas of weakness,  
7 for example; would you agree with that?

8 A I'm not sure I understand.

9 Q Well, for example, you noted math facts and  
10 math fluency as an issue, right? Did you ever consider  
11 whether a calculator might be a good accommodation for  
12 REDACTED because of that weakness with math fluency?

13 A I wasn't involved in that discussion, I don't  
14 think, about a calculator.

15 Q Well, you were a part of the three-hour IEP  
16 meeting where you went through the entire IEP, right?

17 A Right.

18 Q Did you ever say, hey, team, let's consider a  
19 calculator for this student?

20 A I did not say that, no.

21 MR. RATNER: Ms. Freeman, if I could have just  
22 a moment, I think I might be finished.

23 I have just one more area of inquiry.

24 THE HEARING OFFICER: Okay. Go ahead.

25

1 BY MR. RATNER:

2 Q I think, Ms. McCarthy, I think I have so far  
3 managed not to mess up your name. I'm going to try not  
4 to say any names for the rest of the time to make it.

5 You mentioned the collaborative setting that  
6 REDACTED was in. That's a co-taught class by Ms. Houston  
7 and Ms. McCluskey, correct?

8 A Yes.

9 Q Did Ms. McCluskey have her own room?

10 A Yes.

11 Q Okay. Did anyone ever communicate to you, as  
12 a member of the team, that when REDACTED would become  
13 frustrated she liked to go to Ms. McCluskey's room?

14 A I did not have that conversation.

15 Q Would that information have been relevant to  
16 your assessment of REDACTED?

17 A Whether or not she --

18 THE HEARING OFFICER: What information?

19 MR. ANDRIANO: Objection.

20 MR. RATNER: The question I just asked her  
21 about whether or not anyone told her that REDACTED  
22 would go to Ms. McCluskey's room when she became  
23 frustrated.

24 MR. ANDRIANO: I don't understand the  
25 relevancy of that question.

1 MR. RATNER: We've had a lot of discussion  
2 about whether she had anxiety or didn't have  
3 anxiety and who was anxious and who wasn't, and I'm  
4 just curious if that additional piece of  
5 information might have been useful to her.

6 THE HEARING OFFICER: He can ask the question,  
7 and I'll -- you said you didn't really consider  
8 that?

9 THE WITNESS: My involvement with the  
10 evaluation was done in a virtual -- when virtual  
11 learning was occurring. I wouldn't have had an  
12 opportunity to observe that -- what you're talking  
13 about, whether or not [REDACTED] went to a special  
14 education classroom for --

15 MR. RATNER: Sure.

16 THE WITNESS: It's just a different format  
17 with virtual learning.

18 MR. RATNER: Understood. That's all I have.

19 THE HEARING OFFICER: That's all you have.  
20 Okay.

21 Do you have any redirect?

22 MR. ANDRIANO: One second, Ms. Freeman, if I  
23 may.

24 THE HEARING OFFICER: Go ahead. Did you want  
25 a break or anything?

1 MR. ANDRIANO: If we could take a break.

2 THE HEARING OFFICER: Five-minute break.

3 Quarter of 3.

4

5 (Break taken.)

6

7 THE HEARING OFFICER: Are you ready?

8 MR. RATNER: Yes. And I will just say,  
9 Ms. Freeman, Ms. Ratner has been very clear she  
10 does not mind if we go ahead.

11 THE HEARING OFFICER: There she is.

12 Go ahead.

13

14 REDIRECT EXAMINATION

15 BY MR. ANDRIANO:

16 Q Hi, Ms. McCarthy, I just have a few follow-up  
17 questions for you.

18 Now, you attended the February 19, 2021, IEP  
19 meeting, correct?

20 A Yes.

21 Q And do you remember Mrs. REDACTED being there?

22 A Yes.

23 Q Was she by herself or was she with others?

24 A She had -- the attorney was there.

25 Q She had an attorney with her?

1 MR. RATNER: Objection. Asked and answered  
2 and relevance. I don't see how it's relevant.

3 THE HEARING OFFICER: I don't remember -- yes,  
4 I do. She did have -- she testified -- so, yes,  
5 sustained.

6 MR. ANDRIANO: Thank you.

7 BY MR. ANDRIANO:

8 Q Mr. Ratner asked you about whether at that  
9 particular IEP meeting a math, I think you said, math  
10 calculator, whether that was discussed?

11 A I don't recall that discussion.

12 Q Do you recall that Mrs. REDACTED requested that  
13 the team consider it?

14 A I don't recall a calculator discussion or it  
15 being brought up.

16 Q You had -- Mr. Ratner asked you about -- I'm  
17 paraphrasing, but could dyslexia be part of a specific  
18 learning disability.

19 You had testified that your test results  
20 revealed orthographic processing deficit?

21 A Yes.

22 Q Based on your experience, can a student have  
23 orthographic processing deficits and not have dyslexia?

24 MR. RATNER: Objection. Relevance. There's  
25 never been a claim that she has dyslexia.

1 THE HEARING OFFICER: Okay. I think I opened  
2 that door. There is a stipulation that there's --

3 MR. RATNER: Right. We have a stipulation.

4 THE HEARING OFFICER: That there's no mention  
5 of dyslexia.

6 MR. RATNER: No medical diagnosis.

7 MS. RATNER: The stipulation is that what  
8 Ms. McCarthy's psychological evaluation found  
9 accurately describes REDACTED's specific learning  
10 disability, whatever that label is.

11 MR. ANDRIANO: Okay. But someone opened the  
12 door and I thought it was --

13 THE HEARING OFFICER: No, I'm sorry, I did it.  
14 My question was whether or not ortho -- I hope I'm  
15 saying it correctly.

16 THE WITNESS: Orthographic.

17 THE HEARING OFFICER: Whether or not an  
18 orthographic issue or deficit could be confused  
19 with dyslexia. I didn't understand that -- or I  
20 should have -- that orthographic -- an orthographic  
21 deficit is inclusive in a lot of the aspects of  
22 dyslexia. And that's where the confusion is. I  
23 was asking her if it was confused with it.

24 MR. RATNER: I'll withdraw my objection.

25 THE HEARING OFFICER: I'm sorry. I'm so sorry

1 I brought it up.

2 MR. RATNER: That's okay.

3 MR. ANDRIANO: I'll just withdraw the question  
4 based on that.

5 BY MR. ANDRIANO:

6 Q Let's see. Ms. McCarthy, Mr. Ratner asked  
7 you -- he said -- he was asking about have you ever  
8 encountered other students who, quote, refused to do  
9 work. Do you remember that discussion?

10 A Yes.

11 Q Have you ever encountered other students who  
12 performed better in a one-to-one setting?

13 A Have I ever encountered students that work  
14 better one-on-one than in the classroom?

15 Q Yes.

16 A Yes.

17 Q Don't most students work better in a  
18 one-on-one setting?

19 A Yes.

20 MR. RATNER: Objection. Calls for  
21 speculation.

22 THE HEARING OFFICER: Sustained. Go ahead.

23 BY MR. ANDRIANO:

24 Q Based on your review of REDACTED's records and  
25 your attendance at the IEP meeting, is it your opinion

1 that REDACTED is successful in the general education  
2 setting?

3 A Yes. With the accommodations that are  
4 provided for her in the general education setting, she  
5 was successful.

6 MR. RATNER: Ms. Freeman, if I could again  
7 just be heard briefly. This has been one of the  
8 real challenges that I've struggled to get my mind  
9 around and ask the appropriate questions of the  
10 appropriate witnesses. I tried to ask her a  
11 question about an IEP goal, and he said that's not  
12 this witness because she doesn't really do IEPs.  
13 Now he's asking her generally about making progress  
14 on the curriculum. That's not what she --

15 THE HEARING OFFICER: Okay. Did you -- part  
16 of her job, though, is to review the IEPs.

17 MR. RATNER: Exactly. Which was why I asked  
18 her about the goal.

19 THE WITNESS: To review those curriculum-based  
20 progress.

21 THE HEARING OFFICER: Isn't your job to see if  
22 it incorporates your expertise into what the  
23 recommendations and the goals and all those things  
24 are?

25 THE WITNESS: Usually my part is done in



1 eligibility and then we discuss how that might be  
2 relevant to IEP development and make those  
3 suggestions. And for REDACTED, I was in the IEP  
4 meeting, and we did discuss what my recommendations  
5 are in the development of the IEP.

6 THE HEARING OFFICER: Which you testified  
7 about earlier?

8 THE WITNESS: Yes.

9 THE HEARING OFFICER: All right. I don't  
10 remember what the question was.

11 MR. RATNER: Maybe either Patrick can reask it  
12 or -- because there is an objection pending.

13 BY MR. ANDRIANO:

14 Q My question was in response to Mr. Ratner's  
15 questions about one-to-one and small group, and my  
16 question was, based on your review of her records and  
17 your attendance at the IEP meeting and your evaluation,  
18 is it your opinion that she can be -- she can be  
19 successful in the general education setting?

20 A Yes.

21 MR. RATNER: Right. So there was an objection  
22 to that question.

23 THE HEARING OFFICER: Well, in the sense that  
24 she has to draw a conclusion about the IEP, I don't  
25 have a problem with that question. Whether or not

1 she agrees that the IEP expresses her thoughts,  
2 basically.

3 MR. RATNER: Sure. So you could just make a  
4 clear ruling, and we will move on. I think it  
5 would be overruled.

6 THE HEARING OFFICER: Overruled. Sorry.

7 BY MR. ANDRIANO:

8 Q Did you answer that question?

9 A Yes, I do think it was appropriate. She was  
10 making progress.

11 MR. ANDRIANO: Thank you, Ms. McCarthy. I  
12 have no further questions.

13 THE HEARING OFFICER: Okay.

14 MR. RATNER: I think we're finished with this  
15 witness.

16 THE HEARING OFFICER: Okay. And you don't  
17 have any other -- thank you very much for being  
18 here, and you are dismissed and can go about your  
19 business.

20 THE WITNESS: Thank you.

21 MR. RATNER: Thank you for being here.

22 THE HEARING OFFICER: So I don't think we have  
23 any more witnesses. It's almost 3:00. Is there  
24 anything else that you want to take the time up  
25 today to do, or do you want to dismiss today and

1 bring your other witnesses in tomorrow?

2 MR. RATNER: I guess I'm trying to figure out  
3 what's left, and that will help us figure it out.

4 MR. ANDRIANO: If we can just have a few  
5 minutes, I'll be able to come back and tell you.

6 MR. RATNER: Yeah, that would be great.

7 THE HEARING OFFICER: Okay.

8

9 (Break taken.)

10

11 MS. OWENS: Patrick indicated that we could  
12 proceed.

13 THE HEARING OFFICER: He said what?

14 MS. OWENS: We could proceed.

15 THE HEARING OFFICER: All right. Who do we  
16 have next?

17 MS. OWENS: At this point the School Board  
18 rests its case. We have no further witnesses.

19 THE HEARING OFFICER: So are there any other  
20 matters you want to take up? Do we want to wait  
21 until Mr. Andriano gets in here?

22 MR. RATNER: It's fine for me to go ahead. I  
23 thought Ms. Owens indicated he's comfortable with  
24 us going forward, but it's really up to you.

25 THE HEARING OFFICER: Yes, I don't --

1 MR. RATNER: I don't have any motions. If  
2 there's a concern, we can wait, but what I was  
3 going to say is we are contemplating calling  
4 Mrs. REDACTED back briefly for some rebuttal.

5 THE HEARING OFFICER: Oh, that's right. I  
6 recall that.

7 MR. RATNER: And what I'd like to do is plan  
8 on doing that tomorrow at 9 a.m. I don't think it  
9 will be particularly long. Then I think we can  
10 move to closings, if that's okay. What's your  
11 preference on that?

12 THE HEARING OFFICER: Well, it's really  
13 Mrs. REDACTED's preference.

14 Would you feel better doing it in the morning  
15 or today? You can get it over with today, or you  
16 can think about it tonight and figure out what you  
17 want to talk about.

18 MRS. REDACTED: In the morning works best.

19 THE HEARING OFFICER: So let's meet then in  
20 the morning. Let the record reflect then the  
21 school system has rested and we're going to hear  
22 from -- as we indicated earlier, there was an  
23 agreement that Mrs. REDACTED would go back on the  
24 stand and give testimony pursuant to counsel's  
25 request.

1 MR. RATNER: Yes. And that would be standard  
2 rebuttal testimony. I would like one more thing on  
3 the record, which is, are we going to do closing  
4 arguments? And if so, will there be time limits?  
5 Just so I can be prepared.

6 MS. OWENS: The School Board would request  
7 written closing.

8 THE HEARING OFFICER: School Board requests  
9 written closing.

10 MR. RATNER: That's absolutely fine with us.

11 MS. OWENS: When would you like to have those  
12 by?

13 THE HEARING OFFICER: Well, I would like to  
14 have them at least a week before I have to submit  
15 my decision just to give me a chance to finish the  
16 decision.

17 MS. RATNER: So the 9th? 8th?

18 MS. RATNER: We'll figure it out.

19 THE HEARING OFFICER: The other variable is  
20 the -- I think we should go over the transcripts  
21 now.

22 MR. RATNER: Sure.

23 THE HEARING OFFICER: Unless we're all pretty  
24 clear on how that's going to happen. I believe it  
25 was explained that every day for last week will be

1 given ten days from the date of. Then for this  
2 week we're getting expedited, so I think all of the  
3 transcripts should be in your possession all at the  
4 same time. I think there was a question about  
5 that. I can't imagine a hearing where the school  
6 system is -- would get the transcript and then --  
7 there has always been allegations about that, but I  
8 personally have never experienced it. So everybody  
9 gets it, to my knowledge, I get it, school system  
10 gets it, you get it, and sometimes it's expedited.  
11 In this case a mixture of ten days and the  
12 expedited.

13 MR. RATNER: One last question for you to at  
14 least consider, you don't need to make a decision  
15 on the spot, but it may be your standard practice.

16 THE HEARING OFFICER: To do what?

17 MR. RATNER: Are these written closings  
18 submitted simultaneously, or do we submit something  
19 and they respond?

20 THE HEARING OFFICER: It depends on how much  
21 time we have left. Usually I'll get a chance for  
22 rebuttal, if there's enough time left. In this  
23 particular case, I don't think there is.

24 MS. RATNER: That's fine. I would rather  
25 just --

1 MR. RATNER: Do it simultaneously.

2 MS. RATNER: Simultaneously.

3 THE HEARING OFFICER: Yeah, you're going to  
4 have to do it simultaneously because unfortunately  
5 there's not enough time left for all that.

6 MR. RATNER: That makes total sense.

7 THE HEARING OFFICER: All right. And the  
8 other thing is, in order to do it justice, I need  
9 to have enough time to read it. There is a  
10 limitation, I believe, in there. You-all can just  
11 review all of that, and that any cases you're  
12 relying on need to be included and indexed to do  
13 that. The reason for that is because if I don't  
14 ask for that, I spend maybe 50 percent of my time  
15 just looking up cases.

16 MS. RATNER: Right. For sure.

17 THE HEARING OFFICER: And I think in the past  
18 I thought it was an inconvenience to ask you-all to  
19 do that, but from experience, I think it is more  
20 reasonable and fairer to the child if I have  
21 everything right in front of me.

22 MR. RATNER: And to be very clear, we've got  
23 them because we're quoting them.

24 MS. RATNER: It's easy. That would be  
25 standard for us to do that.

1 THE HEARING OFFICER: Okay. All right.

2 That's great practice then.

3 So now do you need me to go over everything  
4 that we talked about?

5 MR. ANDRIANO: No.

6 THE HEARING OFFICER: So we are going to meet  
7 tomorrow --

8 MS. OWENS: Ms. Freeman, what about page  
9 limits for closing argument?

10 THE HEARING OFFICER: That's in the last  
11 prehearing report.

12 MS. RATNER: I think it was 20 pages.

13 THE HEARING OFFICER: I think it was 20 pages.  
14 Single spaced.

15 MS. OWENS: Thank you.

16 THE HEARING OFFICER: I'm sorry, double  
17 spaced.

18 MS. OWENS: Single spaced?

19 THE HEARING OFFICER: Not single spaced.  
20 Please not single spaced.

21 MR. RATNER: So tomorrow at 9:00?

22 THE HEARING OFFICER: Tomorrow at 9:00.

23 MR. RATNER: Great. And I guess, if for some  
24 reason tonight I decide we are not going to call  
25 Mrs. REDACTED, then I think there wouldn't be any



1 reason to come back, and I can email everybody.

2 THE HEARING OFFICER: You're not under any  
3 obligation to do that, Mrs. REDACTED. If you want  
4 to -- if you feel that you adequately testified and  
5 you do not feel that it's necessary to come back --  
6 because that's got to be painful every time you do  
7 it --

8 MR. RATNER: We're going to talk about it.

9 MRS. REDACTED: Currently I feel like, yes, I  
10 would like to do that.

11 THE HEARING OFFICER: Whatever you want to do  
12 is fine.

13  
14 (Hearing adjourned at 3:12 p.m.)  
15  
16  
17  
18  
19  
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21  
22  
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25

1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

2 I, Lori A. Boeding, CCR, Notary Public in and for  
3 the Commonwealth of Virginia at Large, and whose  
4 commission expires August 31, 2024, do certify that I  
5 was the court reporter at the aforementioned  
6 proceedings and that the foregoing is a true, correct,  
7 and full transcript to the best of my knowledge and  
8 ability of the proceedings herein.

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

13 Given under my hand and notarial seal at  
14 Richmond, Virginia, this 8th day of April, 2022.

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Lori A. Boeding, CCR  
Notary Registration No. 239861  
Commonwealth of Virginia at Large

<u>WORD</u> <u>INDEX</u>					
<b>&lt; 0 &gt;</b>	1922:24	<b>2020-2021</b>	24, 25 1856:2	1829:11, 15,	<b>63</b> 1855:5
<b>000198</b>	1964:16, 18, 25	1787:22	<b>244</b> 1855:22	17 1850:14	1905:25
1816:14	<b>138</b> 1967:9	1788:11	<b>25</b> 1893:4	<b>400</b> 1807:23	<b>65</b> 1880:9, 10
<b>000223</b>	<b>141</b> 1909:9	1791:1	<b>255</b> 1832:4, 7	1828:23	<b>66</b> 1787:14
1809:17	1950:19, 22	1794:25	<b>26</b> 1942:11	1829:25	1844:15
1810:5, 8, 24	<b>142</b> 1910:5, 23	1795:13	<b>27</b> 1886:5	<b>421</b> 1806:23	1845:17
<b>000225</b>	<b>143</b> 1953:18	1797:22	<b>28</b> 1836:9, 13,	<b>46</b> 1815:13	1847:18
1810:24	1954:7	1800:3	25 1837:7	<b>47</b> 1820:2, 3,	1913:22
<b>000227</b>	1960:24	1801:23	1941:2, 3	18, 23 1825:4,	<b>67</b> 1845:15,
1811:10	1966:9	1802:15	<b>29</b> 1779:15	8 1847:20, 24	16 1869:23
<b>000248</b>	<b>146</b> 1908:1	1815:24	1790:18	<b>47231</b> 1779:24	<b>&lt; 7 &gt;</b>
1809:18	<b>15</b> 1944:1	1871:9	1836:12, 15	<b>49</b> 1806:16,	7 1779:13
<b>000253</b>	<b>15th</b> 1944:13	<b>2021</b> 1800:15,	1849:22	18 1829:3	<b>7201</b> 1780:5
1814:16	<b>16</b> 1855:14	18, 24 1816:2	1940:7	1831:21	<b>7th</b> 1785:4, 6
<b>&lt; 1 &gt;</b>	<b>163</b> 1927:11,	1856:13	1967:19	1832:7	<b>&lt; 5 &gt;</b>
<b>1</b> 1882:17	18	1865:18	<b>29th</b> 1787:11	<b>5</b> 1820:14	<b>5</b> 1820:14
<b>1,786</b> 1782:5	<b>166</b> 1933:11	1869:8, 14, 22	<b>&lt; 3 &gt;</b>	<b>5:00</b> 1823:20	<b>50</b> 1808:7
<b>1,825</b> 1782:5	<b>17</b> 1829:16	1870:8	<b>3</b> 1816:23	1809:14	1810:8
<b>1,868</b> 1782:6	<b>171</b> 1802:22	1878:16	1817:4	1812:25	1813:15
<b>1,873</b> 1782:6	<b>17th</b> 1944:11	1881:23	1818:11, 17,	1848:16	1849:13, 14
<b>1,874</b> 1782:7	1946:2	1886:5	22, 24 1819:2,	1871:4	1872:21
<b>1,877</b> 1782:11	<b>18</b> 1789:10	1891:7	4 1980:3	1873:9, 23	1875:14
<b>1,939</b> 1782:11	1965:15	1915:6	<b>3:00</b> 1986:23	1991:14	<b>51</b> 1833:13
<b>1,980</b> 1782:12	<b>19</b> 1926:14	1925:6	<b>3:12</b> 1779:15	<b>52</b> 1811:15	1835:24
<b>1/8/2021</b>	1972:7	1926:14	1993:14	1814:5, 11	1848:2
1947:3	1980:18	1971:6	<b>30</b> 1812:19	1872:9	<b>52</b> 1811:15
<b>1:20</b> 1922:10	<b>&lt; 2 &gt;</b>	1972:4, 7	1885:23, 25	<b>53</b> 1803:1	1817:15
<b>1:40</b> 1938:12	<b>2</b> 1818:22, 24	1980:18	1892:17, 18	1827:15	1831:18, 24
<b>1:43</b> 1938:15	1833:3, 12	<b>2022</b> 1779:15	1904:7	1870:9	<b>5-minute</b>
<b>1:50</b> 1938:15	1845:15, 19	1789:23	1909:9	1868:1	<b>&lt; 6 &gt;</b>
<b>10</b> 1819:24,	1847:18, 24	1994:14	1910:5	<b>6</b> 1788:21	<b>6</b> 1788:21
25 1820:14	1849:16	<b>2024</b> 1994:4	1940:2	1883:18	1883:18
1833:21	<b>2:00</b> 1939:14	<b>20-second</b>	1943:21	<b>60</b> 1864:18	<b>61</b> 1800:6, 7
1875:11	<b>2:20</b> 1938:10	1957:8	<b>30-minute</b>	1802:3, 5, 6	1856:22
<b>102</b> 1780:5	<b>2:40</b> 1938:11	<b>21</b> 1802:21,	1893:4	1857:7	1857:7
<b>11</b> 1868:5	<b>20</b> 1858:13,	23 1858:13	<b>31</b> 1994:4	1858:5	1858:5
<b>11/4/2020</b>	24 1860:15	1863:19	<b>32</b> 1812:19	1868:18, 19	<b>613</b> 1833:13,
1969:9	1863:18	1865:11	<b>34</b> 1812:19	<b>614</b> 1848:2, 7	17, 18 1835:6
<b>11:00</b> 1875:11	1864:2, 3, 4, 6	1873:8	<b>36</b> 1812:19	1849:8	<b>62</b> 1810:16
<b>11:09</b> 1875:11	1890:8	<b>212</b> 1802:24	<b>37</b> 1925:3	1812:10	1812:10
<b>1111</b> 1780:15	1957:6	<b>22</b> 1789:11	1926:16		
<b>113</b> 1956:5, 9	1969:4	1815:2, 9	1972:11, 12		
<b>12</b> 1813:15	1970:2, 24	1942:11	<b>38</b> 1810:15		
<b>12/15</b> 1947:2,	1992:12, 13	<b>222</b> 1829:8	1811:5, 6, 24		
4	<b>2005</b> 1878:23	1831:23	1812:12, 17		
<b>12:15</b> 1876:14	1970:22	<b>226</b> 1810:25	1813:3, 4		
<b>121</b> 1956:4	<b>2019-2020</b>	1811:1	1850:3		
<b>127</b> 1940:12	1790:23	<b>227</b> 1850:24	<b>390</b> 1806:4, 8		
1956:5, 10	1794:6	1851:13	<b>393</b> 1829:24		
<b>129</b> 1956:2	<b>2020</b> 1794:9	<b>22-84</b> 1779:8	<b>3D</b> 1902:4		
<b>130</b> 1967:22	1813:15	<b>229</b> 1851:17	1975:6		
<b>132</b> 1899:15	1827:7	<b>230</b> 1853:24	<b>&lt; 4 &gt;</b>		
<b>136</b> 1907:22,	1833:21	<b>23219</b> 1780:16	<b>4</b> 1819:7, 11,		
25 1908:2	1878:15, 16	<b>23226</b> 1780:6	12		
1950:3	1880:17	<b>234</b> 1855:9	<b>4/30</b> 1856:11		
<b>137</b> 1907:23,	1881:9, 10	<b>239861</b>	<b>40</b> 1812:14,		
24 1908:2	1882:11, 14	1994:19	18, 20, 21, 22,		
	1944:1	<b>24</b> 1815:2, 9	23 1813:5, 7		
	1969:23	<b>2400</b> 1780:15			
		<b>243</b> 1855:22,			

<b>Abbreviated</b> 1900:5	<b>academics</b> 1880:25	1950:15 1967:10	<b>administered</b> 1802:22	1868:2 1873:14	1886:2 1891:6, 15
<b>abbreviation</b> 1896:14 1947:10	<b>Access</b> 1830:14 1869:2	<b>activity</b> 1851:15 1889:25 1945:23	1830:6 1849:19 1858:24 1862:16 1869:1, 9, 15	1891:8 1911:2 1915:19 1916:11 1922:12	1905:21 1907:23, 25 1908:2, 12 1911:1 1914:24
<b>abbreviations</b> 1896:13 1897:10 1901:1 1948:3	1889:20 1890:6 1945:7 <b>accessing</b> 1841:22	<b>actual</b> 1803:14 1844:21 1894:25	<b>administering</b> 1854:3	1933:1 1938:23 1952:4, 6 1970:3, 11	1915:2 1916:12 1920:3, 18 1922:2, 11, 13
<b>abilities</b> 1904:23 1961:2, 18 1962:10	<b>accommodated</b> 1961:15	<b>adaptability</b> 1908:8, 17 1912:9 1950:10	<b>administers</b> 1830:18	1971:24 1977:24 1979:24 1980:10, 12 1983:22 1987:22	1929:17, 25 1930:4, 12, 20, 25 1933:2, 12 1937:8 1938:3 1939:7, 10 1940:2
<b>ability</b> 1894:3 1898:24 1902:3, 14, 25 1927:16 1959:1, 18 1975:23 1994:8	<b>accommodatio</b> <b>n</b> 1867:4, 7, 13, 20 1870:18 1897:9 1977:11	<b>adaptive</b> 1882:18 <b>add</b> 1798:9 1821:1 1900:24, 25 1901:10 1917:25	<b>admitted</b> 1836:10 1918:24	<b>advance</b> 1939:21	1940:2 1947:16 1951:10, 20 1959:5 1969:21 1971:8 1976:20 1978:19, 24 1979:22 1980:1, 15 1981:6, 7 1982:11 1983:3, 5, 23 1985:13 1986:7, 11 1987:4, 21 1992:5
<b>able</b> 1785:9 1797:5 1801:18 1812:8 1846:14 1859:2 1862:12, 15 1866:9, 15 1887:24 1890:6, 9 1893:23, 24, 25 1897:24 1898:13 1902:16 1910:1 1933:24 1943:8, 16 1945:5, 7 1962:10 1965:23 1973:5 1975:9 1987:5	<b>accommodatio</b> <b>ns</b> 1830:8, 10, 22 1859:2 1861:6 1862:20, 25 1863:10, 11 1868:24 1869:2, 11, 17 1874:18, 19 1960:18 1961:14 1984:3	<b>added</b> 1968:1 1970:7 <b>addition</b> 1794:22 1808:9 1906:3 <b>additional</b> 1839:15 1842:8 1881:1 1914:25 1968:4 1979:4	<b>advocate</b> 1928:3 <b>affect</b> 1964:2 <b>afforded</b> 1852:12 <b>aforementione</b> <b>d</b> 1994:5 <b>afternoon</b> 1876:8 1877:1, 22 1944:15 <b>age</b> 1955:9 <b>ago</b> 1849:11 <b>agree</b> 1792:11 1795:15 1827:20 1861:25 1874:22 1876:13 1911:17 1960:24 1961:7 1964:8 1968:21 1969:18 1977:7 <b>agreed</b> 1797:17 <b>agreement</b> 1841:11 1988:23 <b>agrees</b> 1986:1 <b>ahead</b> 1793:22 1802:7 1819:23 1837:4 1838:25 1849:17 1853:22 1862:6 1867:1	<b>air</b> 1897:22 <b>allegations</b> 1990:7 <b>alleviate</b> 1937:5 <b>allow</b> 1821:23 1897:4 1952:3 <b>allowed</b> 1881:12 <b>aloud</b> 1851:20 1867:4, 6, 12, 20 1870:15 <b>alphabetically</b> 1798:22 <b>alternative</b> 1882:19 <b>amazing</b> 1802:24 <b>Amendment</b> 1969:9 <b>amount</b> 1794:19 1881:17 <b>ANDERSON</b> 1780:14 <b>ANDRIANO</b> 1780:20 1782:11, 12 1784:22 1786:2, 10 1793:10 1806:5 1821:20 1836:12, 15, 19, 20 1841:23 1842:2, 5, 13 1843:9 1875:16, 20 1876:3, 7, 13, 19 1877:10, 21, 23 1880:7, 12 1885:9, 25	<b>angle</b> 1975:20 <b>REDACTED</b> 1779:5 1784:11, 12 1788:15 1790:11, 15 1794:8, 15 1795:6, 23 1796:7, 12 1797:6, 11, 13, 19 1798:5, 23, 25 1799:8, 10, 13, 19 1800:2, 8, 13 1802:14, 21 1803:21 1804:9 1806:21 1807:20 1808:22 1809:21, 24 1811:3 1813:10, 17 1814:13, 17 1815:3 1816:2, 6, 15 1817:21 1819:3
<b>absent</b> 1832:15	<b>accurate</b> 1811:17 1813:13 1817:23 1823:12 1827:9 1968:18	<b>addressed</b> 1799:13 1945:4 1968:5 <b>addressing</b> 1900:1 <b>adequately</b> 1993:4 <b>ADHD</b> 1963:22 1964:20, 22 1965:13, 15, 16, 18 1966:2 <b>adjourned</b> 1993:14 <b>adjudicate</b> 1847:10 <b>adjusting</b> 1950:13 <b>administer</b> 1830:20 1857:18			
<b>absolutely</b> 1832:25 1989:10	<b>accurately</b> 1810:19 1858:16 1982:9				
<b>academic</b> 1797:22 1799:21 1800:2 1801:7, 11 1817:24 1864:21 1879:15 1924:7, 11 1947:20 1951:8 1958:11	<b>achievement</b> 1803:7 1900:17 1924:7, 11 <b>acronym</b> 1860:3 1901:21 <b>activities</b> 1883:19 1909:4 1921:8				
<b>academically</b> 1957:18					

1826:8, 17, 25	1942:18, 23	1954:11	1937:1	<b>approaching</b>	<b>artistic</b>
1827:20	1943:1, 3, 4, 7,	1966:15	1943:12	1899:23	1920:17
1830:21	11 1944:3, 6,	1967:11	1949:17, 22	<b>appropriate</b>	<b>arts</b> 1887:12
1832:19	7, 11 1946:1,	1970:9	1950:10, 22	1816:6, 8	1890:15
1833:6	8 1949:15, 19,	1975:2	1951:3, 5	1865:1, 3	<b>A's</b> 1828:5,
1834:3, 9	24 1950:24	1982:9	1953:3, 5, 6	1871:13, 15	12, 15
1837:19	1951:13, 19	1983:24	1979:2, 3	1900:3	<b>asked</b>
1839:2	1952:24	<b>annual</b>	<b>anxious</b>	1936:20	1785:22
1845:5	1953:3	1817:11	1796:12	1955:1	1821:23
1846:12	1956:7	<b>Answer</b>	1927:16	1974:7	1833:5
1848:4, 12, 20	1958:11	1786:1	1949:20	1984:9, 10	1837:11
1849:24	1960:9, 11, 13	1792:24	1953:12	1986:9	1839:22
1853:3	1961:8	1830:16	1979:3	<b>appropriately</b>	1840:11
1854:4, 21	1962:2, 14	1839:24	<b>anybody</b>	1909:22	1841:19
1857:17, 20	1963:5, 25	1843:14	1872:19	<b>approximately</b>	1846:3
1858:19	1964:16	1844:11, 22	1876:17	1788:25	1847:7
1859:1	1965:8	1851:20	1935:10	1803:20	1859:11
1860:21	1966:13	1852:5, 9, 13,	<b>anymore</b>	1807:20	1860:23, 24
1861:5	1967:3	16 1877:9	1805:6	1875:17	1861:2
1862:12	1968:23	1893:8	1896:23	1954:16	1868:23
1864:25	1969:15	1894:3	1897:3	<b>April</b> 1781:2	1869:20
1865:2, 10, 24	1970:14	1897:5, 14	1898:12	1813:20	1870:20
1867:3	1971:5	1908:22	1929:2	1994:14	1871:3
1869:1, 6	1973:2	1912:13	<b>apart</b> 1883:5	<b>area</b> 1790:20	1878:17
1871:6	1976:4, 21	1917:24	<b>apologize</b>	1791:7	1881:25
1872:12	1977:12	1918:2	1791:22	1808:23	1889:18, 19
1878:12	1978:6, 12, 16,	1930:2	1792:1	1828:1	1891:13
1880:14, 16	21 1979:13	1949:7 1986:8	1798:14	1842:22	1894:11, 14
1882:1, 15, 23	1984:1 1985:3	<b>answered</b>	1807:11	1901:7	1896:17, 25
1883:6	<b>REDACTED</b>	1840:11	1811:1	1902:7	1915:8
1885:12	1790:24	1841:17	1833:1	1904:25	1917:8
1886:22, 25	1794:2	1844:5	1852:19	1905:11	1925:19
1887:7, 25	1795:1, 19	1847:7	1939:21, 23	1915:15	1926:23
1888:10, 11,	1796:25	1922:19	<b>appeal</b> 1824:3	1921:4	1927:23
16, 18, 24	1797:22	1950:23	<b>appear</b>	1954:15	1929:17
1889:15, 18	1798:1	1981:1	1796:7, 12	1977:23	1932:18
1890:13	1801:25	<b>answering</b>	1949:19	<b>areas</b> 1788:19	1934:24
1891:18, 20	1803:3, 11	1839:18	<b>APPEARANC</b>	1793:1, 18	1941:18
1892:25	1807:7, 14	1842:25	<b>ES</b> 1780:1	1799:12	1942:21, 22
1893:17	1811:16	1893:21	<b>appeared</b>	1814:13	1943:3, 4, 19
1894:12, 25	1812:1	1918:7	1796:1, 8	1818:3	1945:9, 20
1895:25	1816:4	<b>answers</b>	1896:4, 20	1901:17	1948:9
1903:2, 12, 16	1817:24	1851:25	<b>appears</b>	1904:24	1958:14
1904:2, 21	1825:20	1897:6	1812:18	1908:11	1976:20
1907:15	1857:20	1898:23	1816:23	1924:10	1978:20
1908:7, 25	1865:17	1958:9	1818:19	1950:9	1981:1, 8, 16
1909:18	1868:23	<b>anxiety</b>	1829:13	1954:5, 20	1983:6
1910:9, 11	1870:20	1796:11, 12	1833:20	1960:14	1984:17
1912:17	1874:16	1833:6	1868:11	1961:13, 18	<b>asking</b>
1914:10	1881:5, 6	1848:4	<b>apples</b>	1976:24	1822:19
1915:14	1882:8	1853:9	1956:19	1977:6	1826:3
1917:8, 14	1884:23	1907:16	<b>apply</b> 1927:13	<b>argument</b>	1834:11
1923:6	1892:25	1908:7, 15, 23,	<b>approach</b>	1992:9	1840:14
1924:4	1895:23	24 1909:6, 7	1927:12	<b>argumentative</b>	1842:5, 24
1927:21	1902:2	1912:7	1974:17	1853:17, 20, 21	1845:2
1928:9	1903:7, 21	1914:12	<b>approached</b>	<b>arguments</b>	1846:7
1930:16, 19	1910:9	1916:18	1896:2	1989:4	1851:7
1934:19	1917:3	1917:6	1900:21	<b>art</b> 1975:4	1859:13, 18
1936:22	1930:5	1918:20	<b>approaches</b>	<b>artful</b> 1940:16	1862:22
1937:15	1934:14	1922:17	1896:2	<b>artist</b> 1975:2	1867:10, 11,
1941:13	1937:13	1935:6, 11, 13			17 1877:24

1892:1, 2	1886:8	<b>Association</b>	1923:2	1967:21	1966:7
1893:7	1893:20	1884:14	1925:2	1968:7, 13, 17	1972:2, 14
1940:15	1894:9, 25	<b>assume</b>	1963:11	<b>avoidance/wor</b>	1987:5
1943:6	1895:19, 24	1879:18	1965:6, 10, 13,	<b>k</b> 1885:13	1988:4, 23
1944:5	1896:16	1880:13	14, 21	<b>avoided</b>	1993:1, 5
1945:6, 7	1897:1	1883:23	<b>attentional</b>	1948:13, 22	<b>background</b>
1951:25	1898:3, 15	1898:3	1914:13	<b>avoiding</b>	1836:16
1971:15	1899:3, 7, 10,	1951:16	<b>attention-</b>	1836:4	1837:1
1974:11, 24	14, 17 1902:9,	1955:5	<b>deficit</b>	1909:4, 20	1838:19
1976:10, 19	21 1906:22	<b>assumed</b>	1922:25	1913:8, 9	1884:20
1982:23	1907:11	1877:13	1923:7	1947:4	1946:18
1983:7	1909:12	1892:13	1964:1	1950:14	<b>bar</b> 1953:21
1984:13	1910:15	<b>assuming</b>	1965:22	1951:2	1954:9
<b>asks</b> 1903:3,	1917:15	1785:13	<b>attentive</b>	<b>Award</b>	1960:23
24	1921:1, 17, 19,	1861:8	1896:3	1789:23	<b>barrier</b>
<b>aspect</b> 1901:8	21 1933:16,	1874:24	1898:24	1790:1, 2, 5	1883:2, 16
1906:22	18 1940:7, 9	<b>assured</b>	<b>attitude</b>	<b>awarded</b>	<b>BASC</b>
1932:22	1941:7	1917:18	1918:15, 16	1790:5	1906:25
<b>aspects</b>	1952:10	<b>asynchronous</b>	<b>attorney</b>	<b>aware</b>	1907:2
1902:24	1956:4	1799:10	1928:1	1803:14, 17	1908:19
1912:14, 15	1967:16	<b>attached</b>	1980:24, 25	1804:3, 5, 10,	1910:18
1917:5	1972:15, 16,	1872:22	<b>attorneys</b>	18 1814:6	1914:3
1973:21	23 1974:7	<b>attempted</b>	1877:23	1830:16	1916:14
1982:21	1976:7, 22	1887:5	1878:19	1848:3	1949:18
<b>asserted</b>	1978:16	<b>attend</b> 1797:8	<b>auditory</b>	1866:2, 4	1950:19
1929:13	<b>assessments</b>	1879:21	1900:9	1870:22	1952:17
<b>assess</b> 1808:9,	1807:25	1880:1, 4	<b>August</b> 1994:4	<b>awesome</b>	1963:4, 8, 10
15 1816:9, 18	1808:4	1924:25	<b>authentication</b>	1790:6	<b>based</b>
1817:10	1809:21	1925:11, 13,	1916:10		1798:21
1974:18	1812:19	15, 18	<b>authority</b>	< B >	1803:3
<b>assessed</b>	1837:22	1927:23	1949:12	<b>back</b> 1793:10	1809:7
1812:11	1848:19	1966:4	<b>automaticity</b>	1797:3	1826:4
1813:10	1854:4	1970:19	1854:19, 22	1798:15	1847:5
1816:10	1859:19	<b>attendance</b>	1966:20, 23,	1799:24	1871:7
1849:25	1879:18, 19,	1832:9	25 1967:11	1800:9, 16, 18	1876:7
1874:2	21 1884:5, 22	1983:25	<b>availability</b>	1815:13	1893:22
<b>assessing</b>	1899:20, 21	1985:17	1889:8	1821:14	1904:2, 6
1809:5, 6	1904:5, 13	<b>attended</b>	<b>available</b>	1822:6, 25	1906:25
1811:16	1921:18	1789:2	1794:15	1831:17, 24	1907:3, 17
1838:7	1938:1	1881:13	<b>avatar</b>	1832:6, 7	1929:5
1871:6 1902:1	1940:24	1980:18	1888:22	1835:24	1952:21, 25
<b>assessment</b>	1954:12, 25	<b>attending</b>	<b>average</b>	1839:16	1963:1, 3
1801:24	<b>assignment</b>	1887:2	1802:25	1844:21	1964:3
1802:12, 15,	1874:16	<b>attention</b>	1803:7	1848:2	1981:22
20 1803:4, 18,	1889:20	1787:13	1864:11, 12	1853:5, 6, 11	1983:4, 24
19 1810:22	1890:7 1894:9	1806:15	1865:11, 18	1868:4, 11	1985:16
1811:9, 12	<b>assignments</b>	1808:6	1906:13, 14	1871:21	<b>basic</b> 1905:18,
1816:11, 15	1814:17	1814:4, 10	1934:24	1876:14	19 1906:17
1834:17	1815:3	1815:12	1973:5	1881:21, 22	1921:6, 11
1837:19	1816:19	1827:4	<b>avoid</b> 1792:8	1887:9	1924:12
1842:19	1873:25	1829:8	1916:20	1892:21	1958:1, 3, 11
1849:21	1874:3	1832:13	1947:11	1897:25	1959:12
1850:12	<b>assistance</b>	1836:21	<b>avoidance</b>	1904:6	1961:19
1854:11	1919:24	1880:8, 23	1834:24	1922:14	1966:24
1868:24, 25	1933:25	1892:4, 6, 20	1835:2, 4, 7	1926:6	<b>basically</b>
1869:5, 9, 21	<b>associated</b>	1894:15	1933:19, 20	1935:1, 9	1841:7, 17
1870:9, 13, 16	1909:7	1909:8	1946:20	1936:2, 16	1963:15
1878:12	1923:10, 18	1917:4	1947:1, 8	1938:15	1986:2
1879:12	1951:4	1918:22	1948:11	1949:3	<b>basing</b>
1883:19	1973:16	1919:2	1953:6, 13	1953:9	1857:20
1885:8, 11	1994:10	1922:24		1957:4	<b>basis</b> 1870:25

<b>bathroom</b> 1852:22, 24, 25 1853:2	1952:21 1953:10 1968:7	1891:1 1918:1, 4, 10 1919:12 1945:24 1946:5 1947:17 1959:3 1961:22 1973:1 1983:12, 14, 17 1988:14	1848:16 1849:13, 15 1858:5 1861:7 1868:18, 20 1871:4 1877:23 1880:9 1881:20 1885:22, 24 1899:15 1907:25 1909:9 1910:5 1925:3 1926:16 1940:2, 6 1987:17 1989:6, 8	<b>breaking</b> 1820:16 <b>breaks</b> 1895:21 <b>breaths</b> 1896:22 1948:8 <b>briefly</b> 1915:18 1984:7 1988:4 <b>bright</b> 1896:19 <b>bring</b> 1821:14 1822:6 1892:21 1949:4 1977:2 1987:1 <b>bringing</b> 1823:22 1913:22 <b>brings</b> 1904:21 <b>broke</b> 1785:3, 7 1892:24 1938:24 1941:25 <b>brother</b> 1920:10, 13 <b>brought</b> 1792:24 1906:16 1973:23 1975:25 1981:15 1983:1 <b>B's</b> 1828:6, 12 <b>building</b> 1826:5 1895:5 <b>buildings</b> 1881:21 1882:17 1887:22 <b>business</b> 1986:19 <b>button</b> 1889:12	1840:19 1911:14 1992:24 <b>called</b> 1797:4, 6 1805:22 1821:12, 16 1830:13 1889:6, 24 1890:2 1893:3, 15, 16, 23 1894:1, 4, 10 1899:17 1942:18, 20, 25 <b>calling</b> 1892:3 1893:19 1988:3 <b>Calls</b> 1864:23 1983:20 <b>calm</b> 1896:3, 22 <b>cam</b> 1888:23 1892:8 <b>camera</b> 1796:3, 6 1888:4, 5, 12, 21, 22 1889:1 1890:16 1891:11 1944:16 1945:9, 10, 18 <b>cameras</b> 1888:1, 7, 20 1944:23 <b>Canvas</b> 1797:5 <b>capitalization</b> 1819:8 <b>capture</b> 1900:3, 6 <b>card</b> 1817:18, 21, 23 1827:14 1831:17, 25 <b>cards</b> 1788:10 1938:1 <b>career</b> 1789:3 <b>Case</b> 1779:8 1788:24 1789:11 1791:3 1795:1 1804:15 1821:13 1822:16 1824:8, 17 1825:22 1826:2, 4 1987:18 1990:11, 23
<b>began</b> 1812:11 1813:3 1814:1	<b>believe</b> 1784:8 1785:5 1786:10 1794:21 1797:16 1800:15, 22 1803:22 1804:12 1813:22 1833:2 1834:20 1837:11 1840:3 1847:20 1885:5, 19 1895:22 1899:6 1916:5 1934:25 1938:24 1939:14 1940:14 1941:24 1948:5 1953:19 1967:19 1976:9 1989:24 1991:10	<b>beyond</b> 1840:12, 15 1846:9 1859:9 1860:5 1863:24 1969:22 <b>big</b> 1855:14 <b>biggest</b> 1921:4 <b>binder</b> 1815:14 <b>biography</b> 1814:22 1872:5 <b>birthday</b> 1972:9 <b>bit</b> 1825:14 1857:12 1858:8 1882:25 1883:5 1897:18, 20 1898:9 1909:2	<b>Board's</b> 1822:16 1859:10 <b>body</b> 1950:6 <b>BOEDING</b> 1779:25 1784:19 1994:2, 18 <b>bonus</b> 1826:18 <b>book</b> 1827:15 1831:24 1833:2, 12 1849:15 1858:5 <b>books</b> 1958:19 <b>bottom</b> 1809:17 1833:14 1855:25 1910:23 <b>brand</b> 1951:13 <b>break</b> 1785:17 1819:21 1820:12, 15 1852:22, 24 1853:3 1868:1, 8 1876:23 1897:16, 21 1898:1, 10 1910:2 1921:25 1922:6 1938:19 1949:3 1979:25 1980:1, 2, 5 1987:9 <b>breakdown</b> 1787:10	<b>believes</b> 1843:2 <b>believing</b> 1845:2 <b>Benched</b> 1810:23 1850:3 <b>benchmark</b> 1818:10, 11 <b>benchmarks</b> 1818:20 <b>beneficial</b> 1966:13, 16 1974:19 1976:24 <b>best</b> 1789:6 1797:25 1800:20 1862:4 1884:15 1988:18 1994:7 <b>better</b> 1799:23 1803:1, 8 1854:15 1869:23 1870:9	<b>black</b> 1838:14 1888:21 1889:2 <b>BOARD</b> 1779:9 1784:13 1785:1 1787:14 1790:6 1800:5 1802:2, 4 1806:16, 18 1808:7 1809:13, 16 1810:4, 24 1814:5, 11, 16 1815:13 1816:14 1817:14 1821:2 1822:15 1827:15 1835:25 1836:9 1837:6 1846:19
<b>behavior</b> 1834:17, 24 1836:4 1837:19, 22 1838:6 1885:16 1903:25 1909:12 1910:15 1930:14 1931:7 1933:16, 18 1940:7, 9, 24 1941:7, 13, 15 1947:23 1948:5 1950:16 1952:21 1967:16, 17, 24 1968:4				<b>business</b> 1986:19 <b>button</b> 1889:12  < C > <b>calculations</b> 1905:19 1921:6 1924:13 1958:1 <b>calculator</b> 1977:11, 14, 19 1981:10, 14 <b>calendar</b> 1785:6 <b>call</b> 1805:17, 21, 25	
<b>behavioral</b> 1879:14 1885:8, 11 1886:10 1902:21, 24 1917:8 1921:19 <b>behaviors</b> 1838:10, 11 1839:7 1903:4 1908:10, 22 1909:5 1910:18, 19 1912:5, 9, 25 1913:12 1914:9 1915:14 1916:20, 23 1917:6 1923:18 1928:23 1929:6 1933:23 1950:3, 9, 12					

<b>caseload</b> 1788:4 1789:9	1915:13 1919:11, 13	1917:15 1991:20	1941:22 1942:8, 11	1990:17	<b>coming</b> 1910:17
<b>cases</b> 1991:11, 15	1947:23 1950:13	<b>children</b> 1879:18	1943:2 1945:10	<b>closure</b> 1864:5	1953:14
<b>categories</b> 1886:19	<b>changed</b> 1825:24	1884:8 1902:22	1962:4 1978:6	<b>co-counsel</b> 1866:18	<b>comment</b> 1821:2
<b>category</b> 1960:7	1846:12 1847:13	1909:13 1919:6	<b>classes</b> 1832:19	<b>codes</b> 1830:21	1836:2
1964:11	<b>Changer</b> 1789:23	<b>children's</b> 1788:8	1920:20	<b>cognitive</b> 1880:25	1889:14
<b>caused</b> 1943:12	1790:2, 5	<b>child's</b> 1902:25	<b>classroom</b> 1788:16	1904:20	1929:8, 21
<b>CCPS</b> 1781:2	<b>changes</b> 1846:1, 4, 7, 14 1884:19	1913:24	1816:20	1905:5, 6	1942:17
<b>CCR</b> 1779:25	14 1884:19	<b>choose</b> 1852:4, 9	1870:2	1906:21	<b>commentary</b> 1862:10
1994:2, 18	<b>changing</b> 1957:10	<b>choosing</b> 1900:2	1889:3, 23	1924:7	<b>commented</b> 1946:20
<b>certain</b> 1792:14	<b>characteristic</b> 1918:23	<b>chose</b> 1821:13	1892:18, 21	<b>collaborate</b> 1788:5, 9	1975:1
1824:4	<b>characteristics</b> 1908:25	<b>chos</b> 1823:2	1894:23	<b>collaborated</b> 1951:18	<b>comments</b> 1823:7, 16
1843:2, 3	1909:7	1900:10	1941:17	1952:11	1824:1, 2
1860:1 1926:7	1913:5	1911:14	1961:12, 14, 16 1962:6	<b>collaboration</b> 1817:20	1838:18
<b>certainly</b> 1821:8	1965:16, 18	<b>chosen</b> 1822:5	1979:14	<b>collaborative</b> 1788:12, 13	<b>commission</b> 1994:4
1838:15	<b>characterize</b> 1796:14	<b>CHRISTINE</b> 1782:4	1983:14	1795:4, 10	<b>common</b> 1896:13
1915:20	1857:7	1784:14	<b>classrooms</b> 1881:15	1815:5, 7	1896:13
1941:21	<b>charge</b> 1788:4	1786:15	<b>clear</b> 1824:18	1816:20	<b>commonly</b> 1923:10, 19
1942:17	<b>chart</b> 1953:21	1787:1	1826:2	1962:2 1978:5	1959:12
1977:5	1954:9	1939:22	1842:14	<b>colleague</b> 1855:19	1963:23
<b>certify</b> 1994:4, 9	1956:1	<b>REDACTED</b> 1779:6 1781:3	1845:25	1939:20	<b>COMMONWE</b> <b>ALTH</b>
<b>cetera</b> 1803:24	1960:23	1779:6 1781:3	1847:1	<b>collect</b> 1843:3	1994:1, 3, 19
<b>chair</b> 1896:20	1966:8	<b>circle</b> 1851:25	1881:2	1880:19, 21, 24 1884:16	<b>communicate</b> 1797:6, 9
1948:7	<b>chat</b> 1796:4	<b>circled</b> 1852:2	1893:9	1886:8	1978:11
<b>challenge</b> 1792:4	<b>check</b> 1808:19	<b>circling</b> 1898:8	1910:22	1905:8 1941:8	<b>communicated</b> 1834:2
<b>challenges</b> 1808:25	<b>checked</b> 1785:5	<b>circumstances</b> 1816:7	1918:13	<b>collected</b> 1974:20	<b>communicatin</b> <b>g</b> 1834:3
1809:1	<b>check-in</b> 1897:22	1817:2	1926:13	1976:15	1852:19
1879:14, 15	<b>checklist</b> 1908:19	1862:5, 10	1952:15	<b>collecting</b> 1976:15	<b>community</b> 1920:5
1896:6	<b>checks</b> 1808:17	1864:22	1980:9	<b>color</b> 1932:8	<b>comp</b> 1851:14
1897:24	<b>cheerful</b> 1896:20	1871:14	1986:4	<b>come</b> 1788:7	<b>company</b> 1830:17
1947:19	1899:8	1882:15	1989:24	1797:15	<b>compared</b> 1857:14
1961:12	<b>CHESTERFIE</b> <b>LD</b> 1779:9	1950:16	1991:22	1800:13	1866:9
1984:8	1784:12	<b>claim</b> 1981:25	<b>clearly</b> 1841:11	1822:25	1943:11
<b>challenging</b> 1909:23	1787:2	<b>clarification</b> 1793:15	1846:13	1853:5, 6	<b>competence</b> 1896:11
<b>chance</b> 1852:15	1796:22	1871:19	1852:19	1868:4	1900:11, 20
1881:16	1815:2	1902:20	1864:1 1929:9	1876:14	1901:9
1947:14	1849:23	<b>clarify</b> 1922:15	<b>clinically</b> 1914:5, 7	1878:18	1917:16
1989:15	1878:1, 22	<b>clarifying</b> 1873:13	1950:21	1895:4	<b>complain</b> 1898:12
1990:21	1879:4, 9	1902:8	<b>close</b> 1807:22	1908:19	1899:9
<b>change</b> 1791:16, 18	1881:8	<b>class</b> 1801:19	1828:24	1910:7	1976:21
1801:10	1904:18	1807:17	1856:14	1938:15	<b>complete</b> 1801:18
1816:25	1944:21	1815:4, 5, 7	1883:17	1949:3	1834:19
1826:1, 4	<b>chief</b> 1822:16	1818:18	<b>closed</b> 1821:20, 21	1952:16	1879:20
1884:1	<b>child</b> 1841:20	1887:6, 8, 10, 21 1888:6, 8	1887:22	1958:7	1886:14
1896:9	1883:24	1889:22	<b>closer</b> 1882:25	1961:15	1917:8, 11
1911:18	1895:25	1891:10, 21	<b>closest</b> 1846:15	1987:5	
1913:13			<b>closing</b> 1989:3, 7, 9	1993:1, 5	
1914:17			1992:9	<b>comes</b> 1962:12	
			<b>closings</b> 1988:10	1975:18	
				<b>comfortable</b> 1987:23	



1921:1	<b>concern</b>	1933:16	1963:7	<b>cooperatively</b>	1901:24, 25
1923:22, 23	1921:4	1940:25	1977:10, 18	1822:22	1903:22
1962:11	1929:1	<b>conducting</b>	1979:7	<b>coordination</b>	1907:1
<b>completed</b>	1945:3, 12, 13	1882:14	1981:13	1975:13	1923:24, 25
1814:18	1946:25	1883:24	1990:14	<b>coordinator's</b>	1924:22
1885:4	1973:22	1884:21	<b>considered</b>	1895:12	1926:14
1886:4	1976:16, 18	1887:19	1865:23	<b>coping</b>	1939:14
1903:2, 13, 15, 16, 19	1988:2	1921:17	1880:23	1927:15	1943:13, 17
1929:24	<b>concerned</b>	<b>confer</b>	1884:18	1933:10	1946:21
1932:4	1963:13	1855:19	1926:20	1934:13	1948:4
1962:21	<b>concerns</b>	<b>confidence</b>	1940:8, 11, 13	1935:2, 5, 23, 25	1951:11, 12, 14, 15
<b>completely</b>	1798:1, 2	1955:17, 22	1954:17	1936:8, 21	1955:7
1841:12	1900:1	1956:5, 6, 16, 20	1956:16	1937:1	1957:20
<b>completing</b>	1906:15	<b>confident</b>	1961:9	1968:2, 10	1960:20
1904:1	1914:4, 6, 14	1896:5, 19	<b>considering</b>	1970:5	1962:1, 14, 19
1913:7	1917:13, 21	1897:21, 25	1886:19	<b>copy</b>	1963:6
1962:23	1923:3, 19	1917:15, 18	<b>consistent</b>	1902:3	1964:4, 13, 14
<b>completion</b>	1924:17	<b>confidential</b>	1793:8	1975:23	1965:11
1799:15, 23	1928:5	1940:3	1848:11	<b>copying</b>	1969:15
1885:13	1929:6	1943:21	1955:14	1973:2	1970:16
1923:16	1930:9	1968:22	<b>consistently</b>	<b>corner</b>	1971:2
1928:17	1936:13	<b>confirm</b>	1807:17	1832:10	1972:4, 24
1933:20	1937:5	1819:5, 13	1819:5, 13	1785:13	1973:19
1934:15	1958:6	1849:22	1849:22	1786:22	1974:7
1935:17	1963:12	1850:22	1850:22	1790:21	1975:6, 9
1936:23	1965:20	<b>confused</b>	<b>consolidating</b>	1794:3	1977:3
1967:21	1970:7	1821:4	1940:21	1795:1	1978:7
<b>complex</b>	1973:23	1858:8	<b>consult</b>	1814:14, 15	1980:19
1960:25	1974:3, 9, 15	1959:25	1866:17	1816:3	1994:6
<b>component</b>	1975:24	1982:18, 23	1879:14	1825:20, 21, 24	<b>correctly</b>
1902:13, 16	1977:2	<b>confusing</b>	<b>contact</b>	1827:7	1804:19
1907:11	<b>conclude</b>	1861:16	1883:17	1829:3	1848:18
1959:20	1839:2	1862:3	<b>contemplating</b>	1830:24, 25	1856:4
1960:2	<b>concluded</b>	1914:21	1988:3	1831:7, 15, 16	1894:3
<b>components</b>	1834:23	<b>confusion</b>	<b>content</b>	1834:6, 15	1922:16
1804:5, 11	<b>conclusion</b>	1792:8	1807:8, 18	1836:6	1961:21
<b>composite</b>	1834:8	1982:22	<b>continue</b>	1837:2	1969:10
1911:9 1912:6	1841:20	<b>Congratulations</b>	1840:17	1838:7, 8	1972:25
<b>composites</b>	1967:15	s 1787:24	1894:18	1844:1	1982:15
1910:17	1985:24	1789:23	1897:21	1845:21	<b>correlated</b>
<b>comprehension</b>	<b>conclusions</b>	1790:9	1936:1, 22	1848:5, 6, 21	1924:11
1808:19	1824:13	<b>connect</b>	<b>continued</b>	1850:4, 5, 9, 12	<b>co-taught</b>
1809:2, 3, 8, 11	1825:4 1847:4	1946:13	1801:20	1851:4, 8	1978:6
1811:19	<b>conduct</b>	1949:2	1886:8	1855:3, 6, 9, 16	<b>COUNSEL</b>
1850:17	1807:24	1951:21	1896:18	1858:6	1780:1, 11, 22
1851:16	1822:2, 23	<b>connection</b>	1898:4	1862:17, 24	1785:11
1893:8, 21	1879:18	1837:18	1975:25	1863:15	1820:5
1955:23	1882:1	1957:17	<b>continuing</b>	1865:11, 20, 21, 22, 25	1836:25
1959:14	1886:25	1958:2	1847:5	1870:2, 16, 19	1840:17
<b>comprehensive</b>	1887:13	<b>consecutively</b>	<b>control</b>	1874:20	1842:16
1808:17	1904:13	1785:15	1918:18	1875:18, 19	1845:7
1900:8	<b>conducted</b>	<b>consent</b>	1975:17	1877:15	1877:11
<b>computer</b>	1878:12	1882:3	<b>convenient</b>	1878:2, 13	1994:10
1796:10	1882:5, 7	<b>consider</b>	1823:17	1879:22	<b>counsel's</b>
1830:22	1883:21	1798:1	<b>conventions</b>	1880:6	1988:24
<b>concepts</b>	1884:22	1840:9	1900:25	1882:12	<b>count</b>
1959:15	1885:3, 8, 11	1903:25	1921:12	1883:25	1829:14
	1887:10	1905:10	<b>conversation</b>	1886:5	<b>counted</b>
	1894:21	1906:18	1946:14	1887:14	1829:15
	1899:22	1923:6	1978:14	1891:5	<b>COUNTY</b>
	1902:21	1927:5			1779:9
					1784:12

1787:2	<b>cross-exam</b>	<b>date</b> 1856:10	1886:8	<b>definition</b>	1838:9
1790:3	1938:5	1873:10	1944:1 1946:2	1904:18	1871:10
1796:22	<b>Cross-</b>	1882:2	<b>decide</b> 1931:4	1910:12, 14	1882:23
1800:16, 19	<b>Examination</b>	1886:6	1992:24	1911:12, 23	1949:20
1815:2	1782:5, 11	1890:20, 22	<b>decided</b>	1915:12	<b>described</b>
1849:23	1785:16	1944:4, 10	1798:9	<b>definitions</b>	1812:4
1878:1, 22	1786:6	1971:18	1963:4, 15	1913:17	<b>describes</b>
1879:4, 9	1825:11	1972:6 1990:1	<b>decipher</b>	<b>degree</b>	1927:11
1881:8	1938:25	<b>dated</b> 1886:4	1900:22	1965:19	1982:9
1904:19	1939:16	1969:9	1901:13	<b>delighted</b>	<b>description</b>
1944:21	<b>cross-examine</b>	<b>dates</b> 1795:22	<b>decision</b>	1842:11	1805:16
<b>couple</b>	1819:20	1943:25	1989:15, 16	<b>deliver</b> 1799:7	1907:21
1829:22, 24	1860:25	<b>Daugherty</b>	1990:14	<b>delivered</b>	1927:20
1832:25	<b>crying</b> 1853:4,	1790:5	<b>decisions</b>	1795:13	<b>descriptive</b>
1849:11	10, 15	<b>daughter's</b>	1954:1	<b>delve</b> 1800:7	1913:21
1851:19	<b>cumulative</b>	1972:9	<b>decline</b>	1974:1	<b>descriptors</b>
1871:18	1907:4	<b>DAY</b> 1779:13	1863:19	<b>demands</b>	1818:20
1895:21	<b>curious</b>	1785:4, 6	<b>decode</b>	1896:12, 16	<b>design</b>
1899:19	1940:5 1979:4	1794:20, 21	1900:19	1898:9, 12	1902:19
1966:17, 18	<b>current</b>	1795:7, 8	<b>decoding</b>	<b>demeanor</b>	<b>designation</b>
<b>course</b> 1786:9	1903:22	1799:9, 10	1808:21	1895:23	1964:8
1794:20	<b>currently</b>	1820:22, 23	1901:5	1896:9, 19	<b>designed</b>
1795:7	1928:9 1993:9	1821:8, 17, 23	1927:14	1947:23	1799:13
1800:3	<b>curriculum</b>	1823:18, 20	<b>deep</b> 1896:22	<b>demonstrate</b>	1808:22
1812:1 1871:9	1804:3, 10, 16	1887:13	1948:8	1866:15	1814:13
<b>Court</b> 1784:5,	1807:5	1888:2	<b>defeated</b>	<b>demonstrative</b>	<b>designs</b>
21 1844:20,	1815:10	1919:16, 23	1896:21	1909:9	1902:4
23 1878:5	1874:4	1922:20	1909:24	<b>DEPARTMEN</b>	1973:6
1938:12	1961:17, 25	1939:8	1917:17	<b>T</b> 1779:2	1975:23
1972:18	1962:10	1942:14	1948:6	1788:20	<b>details</b>
1994:5	1984:14	1961:23	<b>deficient</b>	1881:20	1795:22
<b>cover</b> 1938:8	<b>curriculum-</b>	1989:25	1961:18	1884:14	<b>determination</b>
1976:24	<b>based</b>	1994:14	<b>deficit</b>	<b>dependent</b>	1924:2
<b>coverage</b>	1937:23	<b>days</b> 1794:17	1831:15	1955:8	<b>determinations</b>
1876:20	1984:19	1798:19, 21,	1934:10	<b>depends</b>	1879:12
<b>covered</b>	<b>curriculum</b>	23 1799:11	1947:22	1990:20	<b>determine</b>
1839:10	1882:19	1800:14	1961:3	<b>depression</b>	1801:25
1848:15	<b>cut</b> 1824:23	1801:2, 11, 16	1973:16, 19	1918:21	1807:25
1938:7	1825:16	1821:4	1974:16	1922:17	1840:9
<b>COVID</b>	<b>cutoff</b> 1955:14	1824:25	1981:20	<b>depth</b>	1846:14
1887:22	<b>CYNTHIA</b>	1825:1	1982:18, 21	1900:12	1861:23
1920:8, 13	1782:10	1832:15, 21	<b>deficits</b>	1901:16	1879:23
<b>COVID-19</b>	1877:17	1855:8, 14	1831:4	<b>describe</b>	1885:14
1880:21	1939:22	1881:13, 14	1913:6	1788:1, 19, 25	1886:17
1881:16	< D >	1904:7	1921:5	1790:16, 19	1888:9
1883:8, 10	<b>dad</b> 1920:9	1919:14, 15,	1935:3	1794:19	<b>determined</b>
1887:4	<b>data</b> 1817:6	21 1928:12,	1959:13	1795:18, 19	1924:4
<b>created</b>	1830:14	13 1930:16	1960:14, 20	1796:1	<b>determining</b>
1884:13	1840:9	1990:1, 11	1961:16	1799:12	1904:16
<b>creating</b>	1841:19	<b>dealing</b>	1966:8, 10	1801:14, 15	<b>develop</b>
1836:3 1837:2	1842:3	1920:5	1981:23	1802:18, 19	1968:3
<b>creative</b>	1843:3, 4, 5, 6,	<b>debate</b>	<b>define</b>	1807:7, 14	<b>developed</b>
1920:17	7, 16, 18, 23,	1931:1	1893:24	1808:12, 24	1959:18
<b>credentials</b>	24 1844:6, 10,	1934:20	1958:14	1810:11	<b>developing</b>
1792:4	17, 22, 25	1956:13	<b>defined</b>	1811:12	1789:19
<b>crisis</b> 1879:15	1845:3	<b>December</b>	1913:16	1812:4	1817:20
<b>criteria</b>	1849:3	1833:21	1959:18	1813:17	<b>development</b>
1965:12, 16	1863:25	1878:16	<b>defining</b>	1814:24	1791:7, 8, 12,
<b>crossed</b>	1864:7	1881:22	1894:19	1816:6	21, 24 1792:1,
1821:13		1882:4, 11, 14	<b>definitely</b>	1818:9	16 1793:20
1822:6			1896:18	1819:2	

1914:2	1948:19, 22	<b>disabilities</b>	1926:10, 23	<b>distortion</b>	<b>dotted</b>
1940:9	1965:14	1787:4	1928:22	1889:5	1802:24
1971:19	1973:7, 10	1788:23	1931:21	<b>distraction</b>	<b>double</b>
1985:2, 5	<b>difficulties</b>	1789:20	1932:7	1965:24	1992:16
	1900:12	1791:22	1933:17, 21	<b>distractions</b>	<b>double-check</b>
<b>Developmental</b>	1916:10	1792:2, 20, 21	1934:4	1923:16	1813:23
1842:18	1923:1	1793:20	1975:25	<b>disturbance</b>	<b>Dr</b> 1790:5
<b>deviation</b>	<b>difficulty</b>	1879:14	1981:10	1910:13, 16	1877:2
1955:2, 4	1880:19	1880:23	<b>discusses</b>	1911:8, 12	<b>DRA</b> 1808:3,
<b>diagnosis</b>	1885:12	1886:22	1927:13	1913:18	9, 13, 16, 17
1960:17	1909:19	1900:16	<b>discussing</b>	<b>diverted</b>	1809:5
1982:6	1913:6	1923:11, 12	1820:16	1892:5	1810:5, 6, 12,
<b>diagnostician</b>	1923:14	1954:2	<b>discussion</b>	1894:16	22 1811:3
1885:5 1926:2	1933:20	<b>disability</b>	1785:10	<b>document</b>	1812:12, 13,
<b>difference</b>	1935:16	1790:20	1797:1	1787:16	17, 18 1813:4
1808:12, 16	1950:13	1792:19	1845:11	1802:9	1816:10, 11
1946:7	1957:2, 14	1857:16	1892:12	1833:20	1841:6
<b>differences</b>	1958:25	1865:25	1916:13	1837:9	1842:8, 18
1799:20	<b>digging</b>	1886:19, 20,	1928:8, 15	1845:24	1848:17
1845:25	1894:17	21 1904:17	1930:5, 13	1851:4, 7	1854:5, 6
<b>different</b>	<b>diligence</b>	1905:11	1933:5, 8	1861:4	1857:3 1938:1
1792:7	1898:24	1910:12	1934:6, 9, 18	1889:19	<b>DRAs</b>
1828:25	<b>diligent</b>	1911:25	1965:7	1890:6	1809:20
1834:8	1896:4 1899:9	1912:16, 18,	1974:5, 12, 25	1925:4	1849:19, 25
1840:4, 6	<b>Direct</b> 1782:5,	23, 25 1913:2,	1977:13	1940:17	<b>draw</b> 1847:4
1841:12	11 1785:15	17, 19	1979:1	1941:6, 21	1902:6, 14, 16
1855:16	1786:9, 19	1915:13	1981:11, 14	1945:5, 8	1920:23
1900:21	1787:13	1923:20	1983:9	<b>documented</b>	1973:5
1902:24	1806:15	1924:5	<b>discussions</b>	1971:6	1975:14
1903:4	1814:4, 10	1951:7	1932:15	<b>documents</b>	1985:24
1906:8	1815:12	1960:4, 8, 22	<b>disengagement</b>	1847:13	<b>drawing</b>
1908:5, 9, 10,	1820:7	1962:18	1968:7, 13	<b>dog-eared</b>	1824:13
24 1909:11	1821:23	1963:6, 7, 18,	<b>dishonest</b>	1872:11	1825:3, 6
1916:19, 24	1822:2, 12, 23	20 1964:4, 10	1941:13, 15	<b>doing</b> 1796:7	1944:19
1923:17	1829:8	1965:25	<b>dismiss</b>	1821:11	<b>drew</b> 1834:8
1929:5, 23	1840:12	1981:18	1986:25	1826:11	<b>drills</b> 1921:14
1937:22	1846:10	1982:10	<b>dismissed</b>	1839:3	<b>Drive</b> 1780:5
1945:25	1859:10	<b>disagree</b>	1875:4	1840:10	<b>driven</b>
1946:3	1873:18	1847:12	1986:18	1846:17	1964:13
1949:11	1877:20	1865:4, 5	<b>disorder</b>	1848:25	<b>DUE</b> 1779:3
1953:4, 10	1883:19	<b>disagreement</b>	1870:23	1850:15	1823:16
1954:4	1886:7	1822:21	1910:19	1857:14	1967:9
1955:13, 15	1889:18	<b>discrete</b>	1914:16	1862:3	<b>duly</b> 1877:18
1965:15	1909:8	1861:1	1922:25	1877:13	<b>duration</b>
1974:18	1921:11	<b>discuss</b>	1923:7	1879:8	1785:14, 15, 19
1975:20	1922:10, 23	1788:18	1964:1	1883:19	<b>dysgraphia</b>
1976:10, 19	1925:2	1790:12	1965:17, 22	1884:15	1960:10
1979:16	1926:25	1803:23	<b>disorders</b>	1888:2	<b>Dyslexia</b>
<b>differently</b>	1969:22	1842:3	1960:12	1896:8	1781:2
1857:5	<b>directing</b>	1885:20	<b>displaying</b>	1906:17	1959:25
1865:15	1833:4	1886:16	1950:15	1928:9	1960:1, 7, 10,
1953:7	1836:20	1927:2	<b>disrespect</b>	1939:24	18 1981:17,
<b>difficult</b>	<b>directions</b>	1931:22	1939:24	1945:1	23, 25 1982:5,
1857:10, 12	1796:9	1967:20, 24	<b>disruption</b>	1948:17, 20,	19, 22
1862:5, 10	1884:6, 9	1985:1, 4	1889:5	25 1949:13	
1909:21	<b>directly</b>	<b>discussed</b>	<b>distance</b>	1954:1	< E >
1913:9	1785:21	1798:15	1883:18	1973:7	<b>earlier</b>
1914:11	1797:5	1835:8	<b>distant</b> 1883:1	1988:8, 14	1813:10
1919:1	1909:15	1847:15	<b>distinguish</b>	<b>door</b> 1982:2,	1876:5
1935:18	1910:17	1916:4	1901:14, 15	12	1895:15
1943:16	1943:7	1925:5		<b>dot</b> 1860:17	1956:14

1985:7	1935:15	1924:3, 20	1897:19	<b>equipment</b>	<b>evidence</b>
1988:22	1965:25	1928:11	1898:16	1884:11	1835:19
<b>earliest</b>	1971:21	1932:5	1913:10	<b>error</b> 1955:17	1836:10
1944:1, 8	<b>effect</b> 1944:22	1954:1, 18	<b>ended</b> 1813:4	<b>escape</b> 1968:7	1861:9
<b>Early</b>	<b>effectively</b>	1960:7	1814:1	<b>especially</b>	1907:14
1800:24	1861:1	1962:12, 13	1823:18, 20	1824:20	1908:5
1812:22	<b>efficiently</b>	1985:1	<b>engage</b>	1896:6	1917:2
1813:3	1959:19	<b>eligible</b>	1933:24	1935:18	1923:6
<b>East</b> 1780:15	<b>efforts</b> 1894:3	1886:18	<b>engaged</b>	<b>ESQ</b> 1779:15	1950:7
<b>easy</b> 1896:1	1898:23	1960:12, 13,	1796:2	1780:9, 10, 20,	1963:24
1946:13	<b>eight</b> 1888:11	15, 16, 21	1801:17	21	<b>exact</b> 1795:22
1991:24	<b>eighteen</b>	1962:21	1890:17	<b>establish</b>	1882:2
<b>ed</b> 1787:11,	1879:11	1963:1, 19	1892:1, 4	1896:1	<b>exactly</b>
12 1788:21,	<b>eighty-one</b>	1964:6, 9, 12	1893:5	<b>established</b>	1841:24
22 1913:21	1957:25	<b>Elizabeth</b>	1913:11	1846:13	1847:21
1962:3	<b>either</b> 1797:8	1788:13	1933:25	<b>estimate</b>	1859:14
<b>edits</b> 1819:7	1828:5	<b>else's</b> 1940:11	1934:12	1942:10	1931:1
<b>EDUCATION</b>	1888:21	<b>email</b> 1797:3,	1945:15	<b>estimates</b>	1984:17
1779:2	1916:18	7 1833:23	1946:9	1884:19	<b>exam</b> 1828:21
1787:9	1923:5	1835:14	<b>engagement</b>	1957:9	1829:7, 11
1788:2, 3, 6,	1947:2	1993:1	1832:13	<b>et</b> 1803:24	1872:1
20 1789:1	1952:10, 11	<b>emails</b> 1833:1	1928:17	<b>evaluate</b>	<b>Examination</b>
1790:17, 24	1985:11	<b>embarrassed</b>	1967:21	1969:1	1782:5, 6, 11,
1791:2, 17, 19,	<b>elaboration</b>	1834:6	<b>engaging</b>	<b>evaluated</b>	12 1786:9, 19
21 1792:2, 17,	1825:17	<span style="background-color: black; color: white; padding: 2px;">REDACTED</span> 1779:5	1889:25	1948:24	1820:8
19 1793:19	<b>element</b>	1781:3	1895:25	<b>evaluation</b>	1821:24
1794:2	1932:21	<b>emotional</b>	1945:20, 22	1882:3, 5, 8,	1822:2, 12
1798:18	1941:8	1886:21	1946:14	10, 15, 23	1824:18
1815:10	1960:1	1902:24	<b>English</b>	1883:22, 24	1839:11
1818:13	1975:24	1906:24	<b>enhanced</b>	1884:21, 24	1840:12, 23,
1825:20	<b>Elementary</b>	1907:20	1819:9	1885:2, 4, 7,	24 1841:16
1870:1, 5	1787:5, 21	1910:12, 16	1854:18	21 1886:4, 17	1846:10
1874:3	1895:7, 10	1911:8, 12, 25	<b>enjoy</b>	1887:1	1859:10
1879:24	1936:18	1912:18	1947:20	1895:14	1868:15
1884:15	1949:1, 5	1913:17, 19	1975:4	1899:23	1873:21
1886:18	<b>elements</b>	1915:13	<b>enjoyed</b>	1900:13, 14	1877:14, 20
1889:23	1975:21	1963:5, 7, 12,	1799:22	1902:10	1969:23
1893:1	<b>elevate</b>	20	1896:5	1922:15	1980:14
1895:11	1908:10	<b>emotionality</b>	1918:13, 14	1923:22, 23	<b>examine</b>
1903:1	1910:20	1907:16	1947:20	1924:18	1820:18
1904:16	<b>elevated</b>	<b>emotionally</b>	<b>enter</b> 1830:21	1926:6	1823:24
1910:13	1912:4	1912:16	<b>entire</b>	1943:25	1824:6
1942:5, 6	1913:12	<b>emotions</b>	1827:10	1953:22, 25	1842:23
1946:19	1914:6, 10	1880:24	1832:21	1954:12	1915:21
1954:18	1915:15	1907:16	1958:19	1962:23	<b>examined</b>
1960:13, 14,	1953:15	<b>employed</b>	1977:16	1963:11	1827:16
15 1961:14,	1963:3	1878:21	<b>entirety</b>	1972:2	<b>examining</b>
16, 25 1962:3,	<b>elevating</b>	1879:2	1801:23	1974:9, 20	1785:21
6, 9, 22	1950:9	<b>encoding</b>	1831:22	1979:10	<b>example</b>
1963:1	<b>elicited</b>	1927:14	<b>entitled</b>	1982:8	1850:2
1964:7	1804:13	<b>encountered</b>	1810:23	1985:17	1853:9
1979:14	<b>eligibility</b>	1944:3	1814:25	<b>evaluations</b>	1857:23
1984:1, 4	1838:3	1983:8, 11, 13	1850:3	1879:12	1864:15, 19
1985:19	1879:13, 21,	<b>encourage</b>	1960:18	<b>evaluators</b>	1917:25
<b>educational</b>	23 1880:4	1896:18	<b>environment</b>	1923:23	1918:2, 6
1791:24	1886:7, 16	1936:11	1848:12	<b>event</b> 1994:11	1943:15
1885:4	1904:16	<b>encouraged</b>	1862:17	<b>Everybody</b>	1946:16
1895:14	1905:11	1896:24	1904:3	1868:11	1956:6
1921:18	1910:13	1944:25	1908:7	1894:6	1957:23
1923:4	1915:5	<b>encouragement</b>	1917:5	1940:11	1961:22
1926:2	1923:24		1952:23	1990:8 1993:1	1977:7, 9

<p><b>exceeded</b> 1870:4, 12</p> <p><b>exceeds</b> 1819:12</p> <p><b>exceptional</b> 1790:4 1961:5, 8, 9</p> <p><b>excerpt</b> 1871:24</p> <p><b>excuse</b> 1813:3 1893:20 1900:16 1912:12 1947:10</p> <p><b>executive</b> 1912:10 1913:6 1914:14 1917:4 1923:2, 9, 13, 18 1935:24 1936:23</p> <p><b>exercise</b> 1838:2</p> <p><b>exhausting</b> 1975:19</p> <p><b>Exhibit</b> 1787:14 1800:6 1802:3, 4 1806:18 1808:7 1809:14 1810:4, 8, 24 1813:14 1814:5, 16, 25 1815:13, 15 1816:14 1817:14, 17 1833:13 1835:6 1836:8, 9, 25 1837:7 1844:15 1845:16 1847:16, 18 1867:8 1868:18 1871:4, 23 1872:9 1880:9 1885:23, 24 1925:3 1927:19 1935:1 1951:7</p> <p><b>exhibited</b> 1833:6 1909:5 1946:20 1948:5</p>	<p><b>EXHIBITS</b> 1783:1 1868:21</p> <p><b>expand</b> 1917:24</p> <p><b>expect</b> 1857:15</p> <p><b>expectation</b> 1819:13 1870:4, 13</p> <p><b>expectations</b> 1806:25 1819:5 1952:20</p> <p><b>expected</b> 1889:7</p> <p><b>expedited</b> 1990:2, 10, 12</p> <p><b>experience</b> 1821:7 1830:1 1842:24 1913:23 1946:1 1981:22 1991:19</p> <p><b>experienced</b> 1990:8</p> <p><b>experiencing</b> 1848:4</p> <p><b>expert</b> 1791:6 1792:10 1793:4 1822:17, 18 1931:13 1932:23 1971:12</p> <p><b>expertise</b> 1984:22</p> <p><b>experts</b> 1971:21</p> <p><b>expires</b> 1994:4</p> <p><b>Explain</b> 1834:1 1879:6, 22 1899:18 1911:2 1915:4, 10 1918:25 1926:23 1953:24 1958:18 1966:22 1971:4</p> <p><b>explained</b> 1914:21 1915:3, 11 1919:5 1958:13 1964:17</p>	<p>1965:5 1989:25</p> <p><b>explaining</b> 1914:20</p> <p><b>explains</b> 1957:14</p> <p><b>exposed</b> 1961:17 1962:9</p> <p><b>exposure</b> 1881:16</p> <p><b>expresses</b> 1986:1</p> <p><b>expression</b> 1924:13</p> <p><b>extent</b> 1822:7, 15 1839:9 1899:4 1949:21</p> <p><b>Extract</b> 1830:14</p> <p><b>extreme</b> 1966:11</p> <p><b>eyes</b> 1887:24</p> <p>&lt; F &gt;</p> <p><b>face</b> 1797:18 1883:3, 6 1888:23 1892:8</p> <p><b>fact</b> 1794:1 1803:1 1838:7 1869:4 1870:25 1975:9</p> <p><b>facts</b> 1861:8 1957:22 1977:9</p> <p><b>failed</b> 1828:8</p> <p><b>fair</b> 1809:24 1812:22 1817:9 1820:20, 23 1827:9 1830:16 1834:23 1869:23 1946:2 1947:23 1948:21 1970:20 1971:25</p> <p><b>fairer</b> 1991:20</p> <p><b>fairly</b> 1855:14 1860:1 1960:25</p> <p><b>fall</b> 1827:7 1858:12, 24 1860:9, 15</p>	<p>1861:5 1862:13, 22 1863:9 1864:3 1878:14 1880:17 1881:6, 9, 10 1955:24 1956:9 1965:16</p> <p><b>falls</b> 1960:3, 8</p> <p><b>false</b> 1918:3</p> <p><b>familiar</b> 1787:16 1802:9 1804:15, 16 1815:15 1817:17 1829:8 1830:13 1880:13, 14, 16 1952:18, 19</p> <p><b>family</b> 1918:16 1925:11 1939:19</p> <p><b>far</b> 1788:4 1978:2</p> <p><b>favorite</b> 1920:22</p> <p><b>FBA</b> 1834:14, 25 1835:4, 14, 15, 16 1836:3, 15, 21, 23 1837:2</p> <p><b>February</b> 1789:23 1800:20, 22, 23 1816:2 1873:8 1915:6 1925:6 1926:14 1928:12 1972:3, 4, 7 1980:18</p> <p><b>feed</b> 1912:5 1916:24 1949:22</p> <p><b>feel</b> 1824:5 1906:13 1918:21 1919:2 1934:9 1936:4 1966:6 1988:14 1993:4, 5, 9</p> <p><b>feeling</b> 1965:14</p>	<p><b>feelings</b> 1950:16</p> <p><b>feels</b> 1918:16, 18 1919:7</p> <p><b>feet</b> 1883:18</p> <p><b>felt</b> 1824:18 1826:25 1897:21 1909:24 1917:1, 16 1918:3, 17, 20 1919:8 1948:6 1976:1, 5, 23</p> <p><b>fifth</b> 1804:3 1807:3, 6, 9, 15 1809:22 1813:22, 23, 25 1814:2 1817:25 1825:24 1827:5, 21 1828:13, 15 1848:20 1850:8 1854:4 1856:14, 19 1858:12, 17 1860:10, 13 1862:13, 23 1867:3 1870:5, 6 1872:6 1873:24</p> <p><b>figure</b> 1846:8 1866:3 1876:19 1902:18 1987:2, 3 1988:16 1989:18</p> <p><b>figures</b> 1973:6</p> <p><b>file</b> 1830:14 1907:4</p> <p><b>filled</b> 1903:8 1908:14</p> <p><b>filling</b> 1916:16</p> <p><b>final</b> 1818:4, 7</p> <p><b>finally</b> 1871:3</p> <p><b>find</b> 1835:7 1836:1, 8 1839:17 1858:4 1897:17</p> <p><b>findings</b> 1879:23 1907:10</p> <p><b>fine</b> 1820:24 1843:11 1863:14 1867:17</p>	<p>1875:25 1876:10 1918:5, 11 1922:2 1938:17 1973:3, 19 1975:9 1987:22 1989:10 1990:24 1993:12</p> <p><b>finish</b> 1851:15 1898:13 1989:15</p> <p><b>finished</b> 1824:25 1866:16 1959:7 1977:22 1986:14</p> <p><b>first</b> 1784:7 1810:22 1812:17 1813:13 1816:5 1821:16 1827:4, 10, 19, 21 1832:16, 20 1846:21 1847:6 1849:24 1850:3 1858:8 1861:17 1873:16, 17 1887:5, 10 1891:22 1892:4 1900:13, 14 1911:2 1916:3 1919:19 1944:2 1946:16 1947:14 1953:20 1955:24</p> <p><b>Five</b> 1794:16, 21 1799:11 1800:13 1801:2, 11, 15 1819:25 1824:25 1825:1 1868:5 1922:4 1928:12, 13 1930:16 1938:7 1942:2</p>
---	---	---	--	---	---

1955:7	<b>follows</b>	1928:11	1902:3	<b>Further</b>	<b>generic</b>
1956:15	1786:17	1971:5	1942:18, 20	1782:6	1865:1
1971:6	1877:18	<b>fourth</b> 1794:2,	1943:7, 15	1786:17	<b>geometric</b>
<b>Five-minute</b>	<b>follow-up</b>	5 1807:6	1969:5	1817:10	1902:4
1980:2	1980:16	1812:14, 16	1991:21	1818:20	<b>germs</b>
<b>flip</b> 1950:19	<b>foregoing</b>	1813:22	<b>frustrated</b>	1819:16	1883:15
1953:18	1994:6	1825:19	1896:15, 21	1861:23	<b>getting</b>
<b>fluency</b>	<b>Forest</b> 1780:5	1828:13, 16	1936:9	1871:16	1793:1
1799:16, 18	<b>form</b> 1834:20	1856:15	1947:12, 25	1873:21	1834:3, 9
1808:15, 18,	<b>format</b>	1858:20	1948:1	1883:5	1839:18
24, 25 1809:1,	1880:20	1859:18	1978:13, 23	1890:12	1856:14
7, 9 1811:17,	1881:11, 12,	1860:8	<b>frustration</b>	1894:21	1858:2
23 1816:11	22 1882:5, 21	1861:18	1899:10	1919:5	1919:6
1831:3, 11, 15	1885:14	1951:14	1909:24	1974:1	1923:15
1850:11, 18	1892:22	<b>foyer</b> 1895:16	1923:17	1986:12	1939:13
1851:2	1909:19	<b>frame</b>	1927:17	1987:18	1949:8
1854:4, 12, 17,	1913:10	1921:21, 22	1935:6	1994:9	1961:7
18, 23	1914:12	1932:8	1936:22	<b>furthermore</b>	1966:1, 15
1856:24, 25	1919:1, 4, 7, 9	<b>free</b> 1915:20	1937:1	1846:23, 24	1990:2
1857:2	1923:3	<b>FREEMAN</b>	1950:17		<b>gifted</b> 1828:1,
1871:7, 10	1928:24	1779:15	1951:8	< G >	3
1900:10	1933:21	1786:21	1953:13	<b>Game</b>	<b>giggling</b>
1905:16, 19	1935:18	1791:5	<b>frustrations</b>	1789:22	1891:24
1906:7, 14, 16	1963:14	1823:22	1909:22	1790:2, 4	<b>give</b> 1805:9
1921:7, 11	1979:16	1838:12	<b>F's</b> 1827:23	<b>Games</b> 1856:7	1819:15
1924:10, 12	<b>formation</b>	1839:9	<b>full</b> 1896:14	<b>gathered</b>	1836:1
1954:20	1959:11	1841:1	1898:8	1817:6	1842:14
1956:24	1973:7, 9, 15	1842:6	1907:21	<b>geared</b>	1848:25
1957:15, 20	1975:22	1846:21, 25	1941:22	1805:19	1849:5
1958:3	1976:25	1866:20	1994:7	<b>gears</b> 1894:24	1852:15
1959:10	<b>forms</b>	1867:22	<b>full-time</b>	1921:24	1894:7
1967:1	1807:24	1872:9	1800:18	<b>general</b>	1898:19
1977:10, 12	1818:21	1879:6	<b>fully</b> 1785:9	1787:11, 12	1955:7
<b>fluently</b>	<b>forth</b> 1797:3	1880:7	1796:3	1788:6, 21	1972:5, 19
1900:18	<b>Fortunately</b>	1899:21	1847:15	1798:18	1975:11, 12
<b>fluid</b> 1904:23	1949:1, 5	1907:10	1852:16	1815:9	1988:24
<b>focus</b> 1827:3	<b>forward</b>	1914:24	1891:20	1818:13	1989:15
1888:7	1786:12	1915:17	<b>fun</b> 1949:3	1870:1, 5	<b>given</b> 1810:14
1900:18	1793:16	1922:3, 11	<b>function</b>	1874:3	1811:3
<b>focused</b>	1794:5	1930:18	1964:14	1889:22	1813:14, 15
1831:23	1825:5	1949:20	<b>functional</b>	1892:22	1815:6
1892:7, 9	1922:9	1965:7	1834:17	1893:1	1839:13
1896:3	1936:6	1966:22	1837:19, 21,	1894:2	1861:18
<b>focusing</b>	1987:24	1969:22	22 1838:6	1903:1	1869:11, 17
1827:19	<b>found</b>	1971:8	1885:7, 11	1913:21	1871:23
1905:17	1912:17, 20	1977:21	1921:19	1921:21, 22	1872:2, 17, 18
<b>follow</b>	1913:18	1979:22	1933:15, 18	1925:23	1884:6
1904:18	1964:12	1980:9	1940:7, 9, 24	1927:20	1990:1
1954:2	1982:8	1984:6 1992:8	1941:6	1942:6	1994:13
<b>followed</b>	<b>foundation</b>	<b>frequently</b>	1967:16	1946:19	<b>gives</b> 1955:21
1877:11	1803:25	1795:6	<b>functioning</b>	1953:7	<b>giving</b> 1830:1
1968:15	1804:11	1893:3 1903:4	1904:2	1961:14, 15,	1862:20
<b>following</b>	1959:22	<b>fresh</b> 1820:1	1912:10	17, 25 1962:3,	1898:16
1796:8	<b>Fountas</b>	<b>Fridays</b>	1913:6	6, 9 1984:1, 4	1916:3
1811:8	1814:7	1800:10	1914:14	1985:19	<b>glass</b> 1895:13
1816:13	<b>Four</b> 1794:18,	<b>Friends</b>	1917:4	<b>generally</b>	<b>glean</b> 1937:19
1821:22	21 1798:19,	1779:5 1920:2	1923:2, 10, 14,	1789:8	<b>Glen</b> 1780:5
1882:18	24 1809:24	<b>front</b> 1827:17	18 1935:25	1829:25	<b>global</b>
1937:9, 10, 13	1832:15, 19	1837:7	1936:23	1889:2	1796:20
	1853:25	1851:24	1964:15	1970:23	<b>go</b> 1784:15
		1895:12		1984:13	1793:6, 18, 22

1802:7	1933:4, 6	1888:15	1818:4, 6, 7,	1962:8	<b>happening</b>
1810:11	1934:2, 7, 11,	1896:24	20 1825:19,	1985:15	1880:20
1814:6	13, 17, 21	1910:7, 8	24 1827:5, 21	<b>groups</b>	1890:1
1819:23	1968:10	1914:22	1828:14, 15,	1892:24	1892:13
1833:12	1969:19, 20	1921:20, 24	16 1848:20	1941:25	1908:10
1835:12	1970:15	1930:6	1850:6, 8	1961:22	<b>happens</b>
1837:4	1971:4, 15	1931:3	1851:16	1962:1, 5	1908:8
1838:25	1984:11, 18	1932:24	1854:4	<b>growth</b>	1918:19
1839:16	<b>goals</b> 1788:8	1935:1	1856:15, 23,	1802:12	<b>happy</b>
1841:7, 16	1789:13, 17	1936:16	25 1857:1	1803:2	1799:23
1842:23	1798:9	1939:21	1858:12, 17,	1857:20, 23	1822:23
1845:8	1799:9	1940:4	20 1859:18	1859:24	1835:11
1848:16	1808:1	1945:1	1860:8, 10, 13	1864:10, 15,	1866:22
1849:17	1935:24	1952:2	1861:18, 19	18, 25	<b>hard</b> 1878:5
1850:14	1936:21	1960:6	1862:13, 23	<b>guess</b> 1790:3	1896:8
1851:3	1968:2	1963:17	1867:4	1796:11	1898:17, 24
1853:22, 25	1969:17	1966:7	1870:5, 6	1818:6, 19	1920:24
1855:22	1971:1, 13	1969:1, 13, 21	1872:6	1854:13	1935:12
1862:6	1984:23	1972:14	1873:24	1878:14	1949:2
1867:1	<b>goes</b> 1817:12	1978:3	1951:14	1939:1	<b>harder</b>
1868:2, 11	1901:16	1987:24	<b>grades</b>	1945:24	1965:6 1966:3
1871:21	1940:11	1988:3, 21	1799:25	1987:2	<b>hate</b> 1958:12
1873:14, 16,	1965:15	1989:3, 24	1827:22	1992:23	<b>head</b> 1835:9
17 1876:8	1975:13	1991:3	1937:22	<b>guidance</b>	<b>health</b>
1887:8	<b>going</b>	1992:6, 24	1938:1	1881:20	1879:16
1891:8	1784:11, 14	1993:8	<b>grading</b>	1884:13	1881:21
1892:16	1785:8, 14, 21	<b>Good</b>	1815:6	< H >	1886:20
1894:6	1786:9, 11	1784:10	<b>graph</b> 1865:19	<b>half</b> 1817:12	1963:20, 21
1895:4	1793:18	1790:7	<b>graphs</b>	<b>hand</b> 1877:5	<b>hear</b> 198:13
1906:9	1794:6	1797:17, 20	1858:14	1889:11, 13,	1844:9
1911:2	1805:2	1810:18	1859:24, 25	15 1894:13	1878:5
1915:19	1813:23, 25	1826:17	<b>Great</b> 1825:2,	1916:3	1920:11
1916:11	1815:13	1844:12	9 1832:3	1975:17	1922:16
1917:23	1820:6, 20	1847:22	1842:13	1994:13	1953:1
1922:9, 12	1825:15, 16	1875:5	1850:15	<b>hand-eye</b>	1988:21
1925:10	1830:20	1876:12, 16	1861:24	1975:13	<b>heard</b>
1931:9	1831:17, 23	1877:1, 22	1878:17	<b>handle</b>	1843:17
1933:1	1833:1, 2	1891:18	1899:12	1897:24	1848:18
1936:16	1835:24	1894:6	1904:21	<b>handling</b>	1915:18
1938:21, 23	1836:5, 25	1895:17	1910:4	1909:22	1929:9
1941:2	1838:13, 17	1920:22	1918:5, 10	1923:17	1946:8
1943:21	1840:19	1921:25	1923:21	<b>hands</b> 1889:9	1947:18
1952:4, 6	1841:10	1934:19	1939:1	<b>handwriting</b>	1961:4 1984:7
1959:22	1842:22	1939:12	1949:7	1851:10, 11	<b>HEARING</b>
1970:2, 11	1843:1	1958:5	1987:6	1973:23	1779:3, 15
1971:24	1844:16	1959:21	1992:2, 23	1974:4, 6, 10	1784:7, 11, 18,
1977:24	1845:7, 12, 14	1977:11	<b>greater</b>	1975:24	22 1785:3, 5,
1978:13, 22	1847:18	<b>gotten</b>	1801:3, 5	1976:18, 25	6, 20 1786:1
1979:24	1853:16, 20	1871:19	1826:8	<b>happen</b>	1790:7, 11
1980:10, 12	1858:4	<b>grade</b> 1794:3,	<b>grip</b> 1975:16	1812:19	1791:8, 11, 14,
1983:22	1859:5	5 1803:5, 6	<b>groaned</b>	1828:11	18, 23 1792:3,
1986:18	1863:6	1804:3	1948:8	1893:16	13, 17, 22
1987:22	1864:14, 17,	1806:24	<b>group</b>	1909:3	1793:5, 14, 22
1988:23	23 1865:13	1807:2, 3, 6, 9,	1801:19, 20	1916:20	1798:12
1989:20	1868:12	15 1809:10,	1892:23, 25	1989:24	1801:5
1992:3	1875:15, 16	22 1811:7, 20,	1909:4	<b>happened</b>	1802:4, 6
<b>goal</b> 1809:3	1876:19	25 1812:16	1936:10	1888:25	1803:4
1816:5, 15, 16,	1877:13	1813:22	1941:23, 24	1919:15	1804:1, 17, 21,
22, 23	1878:6	1814:2	1942:2, 5	1928:10	23 1805:2, 7,
1854:25	1881:8	1816:12	1943:18		9, 11, 15, 19,
1855:2	1883:17	1817:25	1950:15		24 1806:3, 7,

11, 17 1819:18, 23, 25 1820:4, 9, 14, 25 1821:5, 10, 18, 21 1823:17 1824:1 1825:3 1831:19 1832:1, 4 1834:1 1835:5, 10, 13, 18, 23 1836:2, 7, 11, 16, 20, 24 1837:4 1838:17, 22, 25 1839:4, 16, 24 1840:2, 4, 7, 13, 21, 25 1841:3, 9 1842:9, 16, 21 1843:12, 15, 17 1844:3, 8, 19 1845:1, 7, 18 1847:3, 14, 23 1849:8, 10, 12, 14, 17 1852:15, 20 1853:1, 6, 19 1855:20 1859:6, 14, 21 1860:1, 12, 16, 18, 24 1861:14, 25 1862:6, 9, 23 1863:1, 3 1865:5, 7 1866:19 1867:1, 11, 23 1868:2, 4, 10, 19 1871:17 1872:1, 4, 7, 10, 14, 18, 21 1873:3, 6, 11, 14, 17 1874:7, 10 1875:1, 4, 7, 12, 23 1876:1, 4, 9, 14 1877:1, 4, 9 1879:7 1880:10 1885:1, 24 1886:1 1890:19, 22, 25 1891:3, 8 1899:18 1905:1, 3, 6 1907:19 1908:1, 3 1910:7, 22, 24 1911:4, 10, 15,	19 1912:1, 12, 19, 21, 24 1913:4, 20 1914:19 1915:1, 19 1916:1, 9 1918:8 1919:17 1922:4, 8, 12 1929:10, 14, 22 1930:3 1931:2, 5, 9, 13, 22, 25 1932:6, 11, 14, 20 1933:9 1934:22 1935:3, 8, 19, 21 1936:3, 25 1937:6 1938:5, 10, 17, 21, 23 1939:5, 13 1941:3 1951:22 1952:3, 6 1953:2 1954:6, 10 1958:16 1959:24 1964:21, 25 1970:1, 10 1971:10, 16 1972:5, 8, 12 1973:9, 13 1977:24 1978:18 1979:6, 19, 24 1980:2, 7, 11 1981:3 1982:1, 4, 13, 17, 25 1983:22 1984:15, 21 1985:6, 9, 23 1986:6, 13, 16, 22 1987:7, 13, 15, 19, 25 1988:5, 12, 19 1989:8, 13, 19, 23 1990:5, 16, 20 1991:3, 7, 17 1992:1, 6, 10, 13, 16, 19, 22 1993:2, 11, 14 <b>hearsay</b> 1929:8, 11 1930:22 1932:21 <b>heavy</b> 1911:16 <b>held</b> 1821:8 1891:17	<b>help</b> 1828:10 1872:14, 19 1879:13, 23 1885:17 1887:18 1896:25 1919:3, 6 1934:12 1947:17 1948:9 1950:25 1955:16 1959:3 1966:15 1975:18 1987:3 <b>helped</b> 1937:5 <b>helpful</b> 1824:22 1950:2 <b>hesitate</b> 1824:19 <b>hey</b> 1977:18 <b>Hi</b> 1980:16 <b>high</b> 1803:2 <b>highlight</b> 1818:2 <b>historical</b> 1907:4 <b>history</b> 1917:1 <b>Hold</b> 1791:23 1843:9 1891:13, 16 1930:20 1959:6 <b>holistic</b> 1815:1 <b>home</b> 1882:16 1887:25 1921:15 <b>homeroom</b> 1788:7 <b>homophones</b> 1900:23 1901:15 <b>hope</b> 1982:14 <b>Hopefully</b> 1825:15 1938:9 <b>hour</b> 1820:2, 5, 19 1821:25 1875:18 1876:11 1922:1 <b>hours</b> 1794:19, 21 1895:21, 22 1899:19 <b>Houston</b> 1788:13 1795:3	1817:20 1893:11, 13, 15, 16 1903:20, 21 1930:8 1943:1 1945:6, 13 1950:4 1978:6 <b>Houston's</b> 1942:7 <b>huge</b> 1864:18 <b>Hundred</b> 1787:5, 21 1879:11 1895:5, 7, 10 1951:11, 24 1952:8, 12, 13 1956:7 <b>Hundreds</b> 1789:5, 7 <b>hybrid</b> 1798:15 1800:9 1881:12 <b>hyperactivity</b> 1922:25 1923:7 1964:1 1965:17  < I > <b>icon</b> 1889:13 <b>idea</b> 1854:14 1857:19 1919:25 <b>identification</b> 1965:19 1966:20, 23, 24 1967:10 <b>identified</b> 1791:6 1792:9, 10 1822:18 1960:11 1962:17 1963:25 <b>identify</b> 1784:15 1893:24 1901:1 1906:8 1957:4, 5 1977:6 <b>IEP</b> 1788:8 1789:1, 13, 17 1791:7, 8, 12, 20, 21, 24 1792:1, 15, 16 1793:19, 20 1797:21 1798:1, 4, 9	1799:9 1807:25 1815:18 1816:2, 4, 5, 16 1817:6, 11 1830:9 1854:9, 25 1867:14 1869:2 1870:18, 25 1874:20 1880:1, 17 1881:4, 5, 6, 25 1885:18 1907:5 1915:6 1924:21, 25 1925:5, 10, 24 1926:11, 14, 18 1927:7 1928:10, 15 1929:18 1930:6, 7 1931:21 1932:19 1933:17 1937:10, 13, 16 1952:18 1963:13 1964:12 1968:1, 16, 25 1969:9, 11, 24 1970:2, 9, 19 1971:9, 14, 19 1972:2 1973:22 1976:23 1977:1, 2, 4, 15, 16 1980:18 1981:9 1983:25 1984:11 1985:2, 3, 5, 17, 24 1986:1 <b>IEPs</b> 1789:19 1984:12, 16 <b>ignore</b> 1965:24 <b>ignoring</b> 1923:16 <b>images/representations</b> 1975:6 <b>imagine</b> 1990:5 <b>impact</b> 1884:17 1901:17 1902:25 1910:1	1921:5 1958:11 1975:21 1976:25 <b>impacted</b> 1884:17 <b>impacting</b> 1974:3 <b>impacts</b> 1901:8 1905:18 1959:1, 9, 10, 11 <b>impairment</b> 1886:20 1963:20, 21 <b>implementation</b> 1791:7, 10, 12, 20 1792:1, 15 1793:19 1971:20 <b>implied</b> 1823:10, 21 <b>imply</b> 1822:1 <b>implying</b> 1826:2 <b>important</b> 1824:7, 21 1921:14 1960:9 <b>impose</b> 1824:19 <b>improve</b> 1799:25 1812:1 1897:11, 12 1971:5 <b>improved</b> 1857:8 1897:7 1898:13 1930:14 1931:7 1937:22 1938:2 <b>improvement</b> 1859:12 1897:8 1928:16, 20 1931:18 1937:24 <b>improvements</b> 1928:25 <b>improves</b> 1854:19 <b>improving</b> 1933:22 <b>inappropriate</b> 1950:15 <b>inattention</b> 1965:17
--	---	--	---	--	---



<b>in-box</b> 1797:7, 9	1812:18	1880:18, 19, 22, 24	1797:4	<b>interpretation</b> 1908:20, 21	<b>items</b> 1971:20
<b>include</b> 1807:5	<b>IND</b> 1814:20	1884:16	1798:6, 25	<b>interpreting</b> 1908:19	<b>its</b> 1987:18
1866:7	<b>independent</b> 1814:22	1886:9	1799:8	<b>interrupt</b> 1853:2	< J >
1874:18	1850:19	1893:22	1800:14	1875:22	<b>January</b> 1800:20, 22
1885:6	1872:16, 20	1900:20	1801:2	1934:22	1878:16
1927:7	1874:16	1904:15	1814:13	<b>interrupting</b> 1912:13	1881:23
1957:22	1946:23	1905:8	1854:10, 12	<b>interval</b> 1955:18, 22	1886:5, 9
1968:25	<b>INDEX</b> 1782:1	1907:4, 5, 8, 13	1872:17	1956:5, 6, 16, 20	1890:14, 24
<b>included</b> 1813:14	1910:19	1908:21	1900:24	<b>intervention</b> 1850:13, 19	1891:4
1815:21	1911:7, 18	1909:16, 17	1904:8, 10	1855:6	<b>Job</b> 1779:24
1902:11	1914:18	1916:6, 25	1921:10	1879:15	1790:4
1911:11, 13	1915:14	1917:3, 25	1926:25	1967:17, 25	1804:17
1912:14	1956:21	1931:6, 15, 18, 20	1927:13	1968:5	1866:16
1913:1	<b>indexed</b> 1991:12	1932:16, 18	1962:7	<b>interventions</b> 1921:9	1891:18
1925:24	<b>India</b> 1901:23	1940:8, 10, 12, 21	1967:12	1927:11, 20	1984:16, 21
1927:15	<b>indicate</b> 1787:20	1941:1, 9	<b>instructional</b> 1799:14	1928:23	<b>join</b> 1887:6, 8
1931:15	1789:22	1946:18	1857:3	<b>intentional</b> 1810:20	1888:12
1932:10	1917:21	1950:8	<b>instructions</b> 1842:14	1850:10	<b>joined</b> 1887:15
1963:10	1946:18	1954:24	1872:19	1857:4	1888:11, 18, 19
1967:11	1965:19	1957:4	1960:19	<b>interventions</b> 1921:9	1891:10
1991:12	1973:3	1961:20	<b>integration</b> 1901:18, 20	1927:11, 20	<b>joining</b> 1887:20, 21
<b>includes</b> 1871:1	<b>indicated</b> 1786:21	1963:2	1902:2, 5	1928:23	<b>journal</b> 1891:13
1910:13	1841:4	1969:3	1972:21	<b>interview</b> 1834:20	<b>jump</b> 1855:14
1924:14	1918:12	1976:2, 15	1973:4	1836:14, 19, 23	1888:15
<b>including</b> 1968:3	1924:23	1978:15, 18	1975:12, 22	1839:5, 19	<b>jumping</b> 1835:13
<b>inclusive</b> 1982:21	1925:10	1979:5	<b>Intelligence</b> 1900:6	<b>introduction</b> 1884:10	1861:13, 14
<b>incompetent</b> 1823:19	1927:22	1807:16	<b>intended</b> 1938:8	1884:10	1862:3
<b>incomplete</b> 1849:2	1987:11, 23	<b>in-person</b> 1798:6	1939:24	<b>involved</b> 1941:1	<b>June</b> 1971:6
1851:14	1988:22	1799:1, 19	<b>intent</b> 1823:9	1969:19	<b>justice</b> 1991:8
1859:25	<b>indicates</b> 1954:13	1800:10, 14, 18, 19	1824:14	1970:15	< K >
<b>inconvenience</b> 1823:11	<b>indication</b> 1841:6	1801:1, 16, 17	<b>intentioned</b> 1825:7	1977:13	<b>K-12</b> 1788:22
1991:18	1848:7	1869:1	<b>interaction</b> 1966:14	<b>involvement</b> 1979:9	<b>keep</b> 1803:13
<b>inconvenienced</b> 1822:8	<b>indicative</b> 1826:25	1904:10	<b>interactions</b> 1893:6	<b>IQ</b> 1865:25	1806:8
<b>incorporates</b> 1984:22	<b>individual</b> 1829:19	1918:14	1941:12	1866:4, 7, 10, 11	1824:24
<b>incorrect</b> 1913:22	<b>individually</b> 1829:12	1919:14	<b>interest</b> 1796:17	1870:21	1883:1, 15
<b>increase</b> 1801:3, 5, 10	<b>individuals</b> 1881:25	1929:6	<b>interested</b> 1882:22	1977:13	1892:1, 4
1854:17	<b>indication</b> 1841:6	1930:16	1976:6	<b>irrelevant</b> 1933:23	1893:5
1857:1	1848:7	1935:21	1994:11	1960:17	1896:24
1871:12	<b>indicative</b> 1826:25	1946:4	<b>interesting</b> 1917:23	<b>irrespective</b> 1960:17	1934:10
1881:17	<b>individual</b> 1829:19	1966:14	1947:13	<b>issue</b> 1823:1, 3	1943:16
1921:10	1964:3, 12	1968:9	<b>interfering</b> 1885:16	1847:6	<b>keeping</b> 1942:22, 23
1967:10	<b>individually</b> 1829:12	<b>input</b> 1907:3, 17	<b>interject</b> 1921:23	1963:17	1943:9
<b>increased</b> 1802:23	<b>individually</b> 1881:25	1974:25	<b>internalizing</b> 1852:14	1966:3	<b>kept</b> 1891:23
1871:11	<b>indulge</b> 1947:15	<b>inquiry</b> 1977:23	<b>issues</b> 1847:9	1977:10	1892:10
<b>incremental</b> 1838:20	<b>infer</b> 1824:14	<b>inside</b> 1824:25	1848:9	1982:18	<b>key</b> 1893:24
	<b>inferences</b> 1825:6	<b>insinuating</b> 1823:13	1916:2	<b>issues</b> 1847:9	1894:11, 18
	1944:19	<b>instance</b> 1789:10	1949:11, 12	1973:2	1941:18
	<b>inferring</b> 1821:10	1835:2			<b>kids</b> 1949:2, 6
	<b>information</b> 1824:20	1869:4			<b>kind</b> 1878:5
	1832:24	<b>instructed</b> 1881:18			1891:24
	1837:1, 15	<b>instruction</b> 1794:12, 15, 23			1895:17
	1846:3	1795:13, 15, 19, 24			1898:10, 17
		1796:2, 16, 18			1905:1

1910:2	1867:6	1939:19	1968:9	<b>licensure</b>	<b>logging</b>
1918:5	1872:25	<b>lead</b> 1953:15	1987:3	1788:18	1832:13
1945:11	1878:6	<b>leading</b>	1990:21, 22	1790:13	1887:16
<b>kinds</b> 1805:20	1885:10	1893:12	1991:5	<b>lie</b> 1839:2	<b>logs</b> 1795:21
<b>Kirsten</b>	1891:13	<b>learn</b> 1902:25	<b>length</b>	1840:10	1832:17
1926:1	1892:10	<b>learned</b>	1847:15	<b>light</b> 1816:7	1843:25
<b>REDACTED</b>	1894:6, 11	1845:3	<b>Lennox</b>	1817:1	1844:13, 14
1779:5, 6	1899:19	<b>learner</b>	1781:2	1871:14	1846:12
1781:3	1906:11	1905:9	1784:23	<b>liked</b> 1918:18	1847:2, 5
1784:11, 12,	1909:18	<b>learning</b>	<b>lesson</b> 1788:7	1920:10, 14,	<b>long</b> 1787:6
17 1790:15	1911:13	1788:22	1887:12	16, 23, 25	1824:11
1797:2, 10	1918:1	1799:1, 20	1890:10, 15	1947:21	1825:17
1809:21	1919:11	1800:10, 19	1892:5, 9, 23	1978:13	1831:1, 4, 7
1833:20	1920:6	1801:16, 18	1893:3, 12, 18,	<b>limitation</b>	1878:21
1834:2, 7, 13	1929:15	1805:18	20 1944:25	1991:10	1892:15
1846:12	1936:15	1880:20	1945:8, 16, 21	<b>limited</b>	1895:19
1848:8	1939:5	1881:14, 22	1947:5	1825:14	1919:16, 23,
1863:6	1940:19, 23	1882:16, 20	<b>letter</b> 1898:7	1840:22, 23	25 1920:6
1878:12	1944:18	1885:14	1959:11	1862:2	1988:9
1880:14	1949:12, 21	1886:20	1960:2	<b>limits</b>	<b>longer</b> 1824:9
1903:12, 15	1952:14, 25	1891:10	1973:7, 9, 15	1824:19	1909:2
1916:15	1953:8	1904:17	1975:21	1897:1, 3	1950:14
1920:15	1957:5	1905:11	1976:25	1989:4 1992:9	1968:14
1924:15	1968:11	1907:18	<b>letters</b> 1898:7	<b>line</b> 1802:25	<b>long-term</b>
1925:12	1969:15	1908:7	1900:23	1841:7	1905:15
1927:23	1970:18	1909:18	1901:11, 12,	1954:13, 15	1906:5, 7
1934:16	<b>knowledge</b>	1912:9, 16, 22,	14 1905:17	<b>list</b> 1792:10	1924:9 1957:3
1941:13	1803:25	24 1913:2, 10	1906:9	<b>listed</b> 1829:12	<b>look</b> 1795:21
1950:4	1863:24	1917:5	1957:5	1911:3	1798:16
1951:19	1955:23	1919:1	1958:23	1927:18	1802:2, 24
1980:21	1990:9 1994:7	1920:1, 7	<b>letting</b> 1820:4	1949:23	1809:16
1981:12	<b>known</b>	1923:3, 11, 12,	<b>level</b> 1803:5,	<b>listening</b>	1815:1
1988:4, 18, 23	1797:19	20 1924:5	6 1806:24	1834:13	1827:13, 14
1992:25	<b>knows</b> 1861:4	1927:13	1809:10	<b>literary</b>	1829:3
1993:3, 9		1928:18, 24	1810:15, 20	1805:20	1830:9
<b>REDACTED</b>	< L >	1933:21	1811:3, 20, 22	<b>literature</b>	1832:17, 23,
1878:19	<b>label</b> 1912:2	1934:13	1812:14, 20,	1805:20	25 1838:11
<b>REDACTED</b> 's	1964:13	1935:7, 9	25 1813:3, 4,	<b>little</b> 1821:3	1839:7
1797:16	1982:10	1946:4	6, 7, 11, 19, 21	1825:14	1845:13
1988:13	<b>lack</b> 1796:17	1951:7	1814:1, 2, 7	1826:19	1847:2, 14, 19
<b>knew</b> 1952:17,	<b>landed</b> 1847:1	1952:23	1816:23	1853:2	1857:1, 11
24 1957:4	<b>language</b>	1953:11	1817:4	1857:12	1858:21
<b>know</b>	1792:7	1954:2	1826:4	1858:8	1867:15
1787:10, 12	1805:16	1958:20	1829:18	1875:10	1896:13
1790:3	1887:12	1960:3, 8, 22	1850:3, 10, 14	1882:25	1899:14, 16
1797:7	1890:15	1962:18	1856:18, 23,	1883:5	1902:15, 23
1803:20	1927:12	1963:14, 18	25 1857:1	1888:22	1904:15
1805:15	<b>LARANA</b>	1964:10	1864:25	1889:12, 13	1910:4
1814:9	1780:21	1965:24	1870:21	1897:18, 20	1941:21
1824:16	1823:4	1968:9	1949:1	1898:9	1955:5
1828:18, 19	<b>LARGE</b>	1979:11, 17	<b>levels</b> 1866:7	1909:2 1922:9	1958:22
1829:17, 18,	1994:1, 3, 19	1981:18	<b>liberty</b>	<b>Live</b> 1856:7	1963:4
20, 23 1830:2	<b>late</b> 1812:14,	1982:9	1911:17	<b>log</b> 1832:23	1968:20
1832:15	23 1813:6, 7	<b>leave</b> 1792:14	1913:13	1845:13, 21	1969:4, 17
1834:14	1888:11	1973:24	1914:17	1888:17	1974:2
1844:2	<b>laughing</b>	<b>leaving</b> 1976:3	1915:13	<b>logged</b> 1887:6	1975:14
1847:15	1891:24	<b>led</b> 1836:23	<b>license</b>	1888:16, 24	<b>looked</b>
1854:9	1892:11	1915:15	1788:19	1889:25	1793:10
1857:18	<b>LAW</b> 1780:4	<b>left</b> 1875:14	<b>licensed</b>	1890:15	1900:11, 17
1859:7	<b>lawyers</b>	1934:13	1788:21	1944:16	1902:2
1863:3, 25		1935:23			

1906:24	1842:2	1789:11	<b>materials</b>	1970:6	1867:17
1948:6	<b>loved</b> 1946:14	1791:3	1890:17	1978:2	1876:3
<b>looking</b>	<b>lovely</b> 1797:12	1795:1	1891:12	1980:16	1877:12
1796:10	<b>lowens@sands</b>	1804:15	1892:3	1983:6	1884:3
1802:18	<b>anderson.com</b>	1824:8	1893:7	1986:11	1891:16
1808:19	1780:19	1825:22	1894:5, 17	<b>McCarthy's</b>	1895:7
1816:4, 5, 13	<b>lower</b>	1826:2	<b>math</b> 1794:23	1880:8 1982:8	1901:3
1825:17	1827:22, 23	<b>managers</b>	1795:10		1914:6
1838:5	1857:9	1826:4	1799:16	<b>MCCLUSKEY</b>	1915:3
1850:18	<b>lunch</b>	<b>manner</b>	1802:12, 16	1782:4	1923:11
1866:6	1875:21	1808:16	1803:15	1784:9, 10, 14	1925:12
1891:23	1876:11	<b>MAP</b> 1801:24	1804:18	1785:8, 13, 22	1929:16
1892:9, 11	<b>lying</b> 1841:20	1802:12, 14,	1805:25	1786:15	1943:4
1894:15	1843:8, 20	20 1804:19,	1806:1, 6, 13	1787:1	1946:23
1902:17	1845:5	23 1805:5	1807:8, 10	1793:25	1951:2
1904:19	1853:12	1857:22, 23	1831:7	1804:14	1953:13
1905:12		1858:6, 20	1848:8	1819:17	1955:22
1907:12	< M >	1859:18	1859:19	1820:7	1958:5
1909:16	<b>ma'am</b>	1860:2, 10, 12	1867:21	1821:16	1965:20
1943:23	1784:21	1861:18	1869:20	1822:17	1966:22
1946:16	1785:25	1865:17	1887:8, 9, 15	1823:11	1967:6
1955:21, 23	1786:23	1868:24, 25	1888:8	1824:6, 7, 21	<b>means</b>
1956:2, 3	1791:13, 20	1869:5, 8, 20	1889:20	1825:13	1810:19
1967:22	1793:21	1870:9 1872:2	1905:19	1837:6	1840:22
1975:12	1813:1, 8	<b>MAPs</b>	1920:21, 22	1841:5	1897:4
1991:15	1833:18	1804:20	1921:5	1842:7	1914:4, 5
<b>looks</b> 1810:23	1842:20	1857:23, 24	1924:13	1845:4	1923:14
1829:13	1849:9	1858:23	1945:1	1860:19	1958:15
1853:25	1867:25	1859:3, 11	1957:22	1861:4	<b>meant</b> 1821:5
1886:4	1868:6, 13, 20	1861:2, 5	1958:1, 3	1862:8	1915:7
1901:20	1874:9	1862:13, 21,	1959:12, 15	1868:17	1953:25
1902:12, 21	1941:4	22 1937:25	1961:19	1875:3	1971:13
1903:11	1952:5 1965:1	<b>MAP's</b>	1977:9, 10, 12	1903:20, 21	<b>measurable</b>
1959:1	<b>Main</b> 1780:15	1816:11	1981:9	1929:3, 12	1971:2, 7, 14
1973:20	1873:3	<b>M-A-P-S</b>	<b>mathematics</b>	1930:8, 21	<b>measure</b>
1975:16, 19	1879:11	1858:1	1863:18	1939:22	1828:11
<b>LORI</b>	<b>maintain</b>	<b>March</b>	<b>matter</b>	1950:5	1937:23
1779:25	1883:18	1779:15	1786:22	1951:18	1955:17
1994:2, 18	1936:24	<b>marked</b>	1929:13	1952:1, 11, 16	<b>measured</b>
<b>lot</b> 1823:17,	<b>making</b>	1814:5	<b>matters</b>	1953:1	1816:23
25 1832:24	1789:16	<b>marking</b>	1987:20	1968:16	<b>measures</b>
1857:11	1810:2	1815:20, 23	<b>MCCARTHY</b>	1978:7, 9	1801:22, 24
1860:4	1817:5, 7	1816:1	1782:10	<b>McCluskey's</b>	1803:10
1896:5	1841:14	1817:11	1876:18	1785:11	1810:12
1909:19	1864:21	1827:10	1877:2, 4, 17,	1950:18	1884:8
1913:10	1871:13, 15	1832:20	22 1878:4, 21	1978:13, 22	1937:23
1926:22	1892:2	1856:15	1880:13	<b>mean</b>	<b>measuring</b>
1937:5	1893:6	<b>mask</b> 1906:11,	1883:20	1806:24	1789:12
1938:8	1933:23	19 1957:6, 9,	1885:20	1810:17	<b>medical</b>
1940:1	1960:2	11 1958:6, 7	1886:3	1814:21	1982:6
1961:1	1984:13	<b>masks</b> 1882:6	1891:6	1821:12	<b>meet</b> 1797:11,
1968:13	1986:10	1883:3, 7	1899:12	1826:8	18 1834:4
1969:25	<b>malicious</b>	1884:11	1901:2	1832:22	1894:25
1970:4	1823:8	1897:18	1910:6, 21	1835:13	1944:10
1979:1	1824:14	1906:10	1916:14	1848:24	1965:12
1982:21	<b>maliciously</b>	<b>mastered</b>	1921:16	1849:3	1988:19
<b>lots</b> 1879:19	1825:6	1855:2	1922:14	1851:3, 14, 22	1992:6
1888:14	<b>managed</b>	<b>material</b>	1925:4	1852:7	<b>meeting</b>
1904:21, 24	1978:3	1828:14, 15	1933:3	1854:8	1798:2
<b>loud</b> 1839:23	<b>manager</b>	1891:17	1938:3, 25	1857:20	1888:18, 19,
	1788:24		1939:18, 23	1864:20	20 1891:10

1915:5, 6, 21, 22 1923:24 1924:15, 20, 21 1925:7, 9, 15, 18 1926:11, 14, 19, 22 1927:23, 24 1928:1, 3, 8, 10, 15 1930:6, 7, 24 1932:4, 19 1933:17 1937:10, 14, 16 1962:13, 14 1968:1, 16 1969:24 1971:9, 11 1972:3 1973:22 1976:1, 17 1977:16 1980:19 1981:9 1983:25 1985:4, 17 <b>meetings</b> 1789:1 1879:21 1880:1, 5 1919:22 1924:25 1925:10 1970:19 1971:14 <b>meets</b> 1818:12 1819:4 <b>member</b> 1977:4 1978:12 <b>members</b> 1790:3 1880:3 1933:5 1977:5 <b>memory</b> 1847:22 1904:24 1958:23 <b>mental</b> 1879:16 <b>mention</b> 1982:4 <b>mentioned</b> 1788:12 1790:16 1797:13 1800:7 1813:2, 10 1871:6 1883:12 1886:24	1890:11 1893:15 1899:1 1901:2 1906:5 1917:7 1921:17 1926:7 1933:3, 14 1935:11 1956:14 1966:17 1978:5 <b>mentioning</b> 1929:3 <b>mess</b> 1939:23 1978:3 <b>met</b> 1799:9, 10 1806:24 1870:12 1944:6, 7, 8, 12 1946:1, 8 1947:6 <b>methodologies</b> 1921:10 <b>mic</b> 1888:13 1889:3 <b>Michael</b> 1901:23 <b>mics</b> 1889:7 <b>mid</b> 1812:23 1881:11 <b>mid-80s</b> 1954:15 <b>middle</b> 1839:20 <b>Midlothian</b> 1779:15 <b>mild</b> 1914:4 <b>mind</b> 1820:4 1848:14 1962:20 1980:10 1984:8 <b>mindful</b> 1899:25 1939:3 <b>minor</b> 1914:15 <b>minute</b> 1791:23 1810:16, 19 1811:15 1812:9 1831:18 1836:1 1855:6, 12 1856:20 1921:24 1934:23	<b>minutes</b> 1819:24 1820:2, 3, 19, 23 1825:4, 8 1849:11 1868:5 1875:14 1888:11 1890:8 1892:17, 18 1922:4 1938:7 1987:5 <b>mischaracteriz ing</b> 1865:14 <b>misname</b> 1842:18 <b>mispronounce d</b> 1860:2 <b>missed</b> 1797:8 1848:8, 9 <b>missing</b> 1976:2 <b>mixing</b> 1956:19 <b>mixture</b> 1990:11 <b>model</b> 1796:23 1800:9 1954:3 <b>Mom</b> 1853:3, 12 1895:16, 17 1897:22 1902:25 <b>moment</b> 1819:15 1827:14 1855:18 1858:4 1866:17 1965:23 1977:22 <b>moments</b> 1898:17 <b>Mom's</b> 1909:13 <b>Monday</b> 1821:18, 19 <b>Mondays</b> 1800:9 <b>Monday- Tuesday</b> 1799:4 <b>monitor</b> 1828:3 <b>month</b> 1903:3, 25 1932:4 1952:22 <b>morning</b> 1784:10, 12 1785:9	1833:21 1887:12 1944:15 1988:14, 18, 20 <b>mother</b> 1844:9 1887:7 1895:16 1897:17, 19 1908:23 <b>motions</b> 1784:25 1988:1 <b>motor</b> 1901:18, 20 1902:2, 5, 13, 14, 16 1972:21 1973:3, 4, 19, 21 1975:9, 12, 22 <b>Mottley</b> 1846:4 <b>mouth</b> 1963:16 <b>move</b> 1786:12 1793:16 1794:5 1825:5 1835:22 1843:13 1845:6, 8 1850:14 1861:21 1862:14 1865:4, 6, 8 1922:8 1936:10 1971:22 1986:4 1988:10 <b>moved</b> 1849:10 <b>moving</b> 1936:6 <b>multiple</b> 1823:5, 23 1907:14 1908:5 1917:2 1949:25 1950:7 1973:23 <b>multisensory</b> 1921:8, 13 1926:24 1927:12 1967:9 <b>muscle</b> 1902:15	1973:21 1975:17 <b>mystery</b> 1846:8  < N > <b>name</b> 1786:24 1798:22 1814:20 1889:24 1890:2 1894:4 1903:18 1911:7, 18 1913:14 1914:17 1915:14 1939:18, 23 1940:11 1978:3 <b>names</b> 1857:12 1910:17 1978:4 <b>Naming</b> 1900:10 1906:8, 14 1957:20 <b>narrative</b> 1949:23 <b>narrow</b> 1825:15 <b>national</b> 1802:25 1803:7 1865:10, 18 1884:13 <b>nature</b> 1825:7 <b>near</b> 1894:13 <b>necessarily</b> 1829:17 1831:14 1848:19 1944:24 1951:4 1967:5 1973:18 <b>necessary</b> 1824:5 1881:1 1911:5 1934:21 1993:5 <b>need</b> 1790:8 1826:4, 9 1836:7 1875:20 1880:8 1894:5 1924:1	1939:10 1953:6 1968:20 1971:22 1990:14 1991:8, 12 1992:3 <b>needed</b> 1842:7 1852:25 1875:17 1880:23 1893:7 1894:8 1896:25 1909:2 1913:10 1919:3 1934:11, 12 1936:5 1951:3 1952:21 <b>needs</b> 1798:13 1803:24 1831:4 1962:8 1964:2, 15 1968:5 1976:21 <b>negative</b> 1907:16 1918:23 <b>negligent</b> 1823:19 <b>neither</b> 1994:9 <b>nervous</b> 1895:14 1953:9 <b>nervousness</b> 1909:5 1950:12 <b>Never</b> 1837:24 1848:14 1853:10, 14 1855:2 1883:21 1888:12 1953:2 1968:15 1981:25 1990:8 <b>new</b> 1859:15, 17 1936:18 1951:13, 16 <b>night</b> 1785:11 1853:25 1855:5 <b>Nine</b> 1957:25
--	---	---	--	---	---

<b>nodded</b> 1943:18	1815:13 1817:15	<b>Observation</b> 1843:6, 7, 16, 18, 24	<b>occurred</b> 1795:15	1862:6, 9, 23 1863:1, 3	1979:6, 19, 24 1980:2, 7, 11																			
<b>noise</b> 1889:5	1868:18	1844:10, 14, 17, 19 1885:5	<b>occurring</b> 1979:11	1865:5, 7 1866:19	1981:3 1982:1, 4, 13, 17, 25																			
<b>nonsense</b> 1900:19 1901:2, 4	1893:2 1942:10 1975:2	1887:5, 11, 14, 19 1888:10	<b>October</b> 1813:15 1881:11	1867:1, 11, 23 1868:2, 4, 10, 19 1871:17	1983:22 1984:15, 21 1985:6, 9, 23 1986:6, 13, 16, 22 1987:7, 13, 15, 19, 25																			
<b>nonverbal</b> 1894:7 1900:7 1904:23	<b>numbers</b> 1833:14 1855:25 1881:14 1905:18 1906:9 1957:5	1889:16 1890:12, 18, 23 1892:15, 23 1908:6 1944:11, 14 1961:23 1974:21	<b>offered</b> 1929:12	1872:1, 4, 7, 10, 14, 18, 21 1873:3, 6, 11, 14, 17 1874:7, 10 1875:1, 4, 7, 12, 23 1876:1, 4, 9, 14 1877:1, 4, 9 1879:7	1988:5, 12, 19 1989:8, 13, 19, 23 1990:16, 20 1991:3, 7, 17 1992:1, 6, 10, 13, 16, 19, 22 1993:2, 11																			
<b>normal</b> 1950:16	<b>numerous</b> 1823:7, 16	<b>observations</b> 1886:7, 9, 24, 25 1887:16	<b>office</b> 1895:12	1880:10 1885:1, 24 1886:1 1890:19, 22, 25 1891:3, 8 1899:18 1905:1, 3, 6 1907:19 1908:1, 3 1910:22, 24 1911:4, 10, 15, 19 1912:1, 12, 19, 21, 24 1913:4, 20 1914:19 1915:1, 19 1916:1, 9 1918:8 1919:17 1922:4, 8, 12 1929:10, 14, 22 1930:3 1931:5, 9, 13, 22, 25 1932:6, 11, 14, 20 1933:9 1934:22 1935:3, 8, 19, 21 1936:3, 25 1937:6 1938:5, 10, 17, 21, 23 1939:5, 13 1941:3 1951:22 1952:3, 6 1954:6, 10 1958:16 1959:24 1964:21, 25 1970:1, 10 1971:10, 16 1972:5, 8, 12 1973:9, 13 1977:24 1978:18	1993:2, 11 <b>Officer's</b> 1836:21 <b>Oh</b> 1787:10 1793:5 1795:8 1802:6 1805:7, 24 1806:11 1829:10 1832:1 1905:6 1911:10 1973:13 1988:5 <b>OHI</b> 1963:21 <b>Okay</b> 1785:20 1788:11 1789:8 1792:13, 22 1793:5 1794:11 1797:21 1801:1 1802:7 1804:7 1805:2, 11, 25 1806:7, 24 1807:12 1808:3, 22 1809:13, 15 1810:11 1811:3, 22 1816:18, 25 1820:14, 25 1826:6 1827:6, 13 1828:1, 4 1830:11, 24 1831:17 1832:1 1833:9, 16 1834:1																			
<b>notarial</b> 1994:13	< O >	1894:21 1907:3, 7 1909:18 1937:9, 12, 15, 19 1941:1, 17 1944:4	<b>OFFICER</b> 1779:15 1784:7, 19, 22 1785:3, 20 1786:1 1790:7, 11 1791:8, 11, 14, 18, 23 1792:3, 13, 17, 22 1793:5, 14, 22 1798:12 1801:5 1802:4, 6 1803:4 1804:1, 17, 21, 23 1805:2, 7, 9, 11, 15, 19, 24 1806:3, 7, 11, 17 1819:18, 23, 25 1820:4, 9, 14, 25 1821:5, 10, 18, 21 1824:1 1825:3 1831:19 1832:1, 4 1834:1 1835:5, 10, 13, 18, 23 1836:2, 7, 11, 16, 24 1837:4 1838:17, 22, 25 1839:4, 16, 24 1840:2, 4, 7, 13, 21, 25 1841:3, 9 1842:10, 16, 21 1843:12, 15, 17 1844:3, 8, 19 1845:1, 7, 18 1847:3, 14, 23 1849:8, 10, 12, 14, 17 1852:15, 20 1853:1, 6, 19 1855:20 1859:6, 14, 21 1860:1, 12, 16, 18, 24 1861:14, 25	<b>OFFICER</b> 1779:15 1784:7, 19, 22 1785:3, 20 1786:1 1790:7, 11 1791:8, 11, 14, 18, 23 1792:3, 13, 17, 22 1793:5, 14, 22 1798:12 1801:5 1802:4, 6 1803:4 1804:1, 17, 21, 23 1805:2, 7, 9, 11, 15, 19, 24 1806:3, 7, 11, 17 1819:18, 23, 25 1820:4, 9, 14, 25 1821:5, 10, 18, 21 1824:1 1825:3 1831:19 1832:1, 4 1834:1 1835:5, 10, 13, 18, 23 1836:2, 7, 11, 16, 24 1837:4 1838:17, 22, 25 1839:4, 16, 24 1840:2, 4, 7, 13, 21, 25 1841:3, 9 1842:10, 16, 21 1843:12, 15, 17 1844:3, 8, 19 1845:1, 7, 18 1847:3, 14, 23 1849:8, 10, 12, 14, 17 1852:15, 20 1853:1, 6, 19 1855:20 1859:6, 14, 21 1860:1, 12, 16, 18, 24 1861:14, 25	<b>Notary</b> 1994:2, 19	<b>oath</b> 1785:23	<b>observer</b> 1888:3 1890:13 1894:21 1907:3, 7 1909:18 1937:9, 12, 15, 19 1941:1, 17 1944:4	<b>observer</b> 1796:11 1887:9, 25 1941:13 1944:14 1947:2 1973:2 1974:17 1979:12	<b>observer</b> 1843:20 1845:4 1890:14 1903:5 1943:10 1947:3 1948:23 1961:21 1973:1	<b>observer</b> 1945:14	<b>observing</b> 1888:8	<b>obviously</b> 1784:19 1932:23	<b>occupational</b> 1902:10, 12 1973:19, 20 1974:1, 2, 6, 8, 16, 20 1975:16 1976:22	<b>occur</b> 1869:4 1953:11	<b>noticed</b> 1812:17 1892:19 1928:24	<b>objected</b> 1838:13 1840:11 1844:16 1853:16 1859:5 1864:23 1865:13 1969:21	<b>object</b> 1838:13 1840:11 1844:16 1853:16 1859:5 1864:23 1865:13 1969:21	<b>objected</b> 1860:11 1861:12	<b>objection</b> 1791:15 1793:17 1803:22 1804:8 1805:3 1840:16 1846:9 1859:7 1861:7, 23 1866:12 1929:11 1930:11 1951:20 1971:8 1976:15 1978:19 1981:1, 24 1982:24 1983:20 1985:12, 21	<b>objections</b> 1793:13 1840:18	<b>objectives</b> 1818:7	<b>obligation</b> 1822:10, 21 1993:3	<b>obligations</b> 1977:6	<b>Oh</b> 1787:10 1793:5 1795:8 1802:6 1805:7, 24 1806:11 1829:10 1832:1 1905:6 1911:10 1973:13 1988:5 <b>OHI</b> 1963:21 <b>Okay</b> 1785:20 1788:11 1789:8 1792:13, 22 1793:5 1794:11 1797:21 1801:1 1802:7 1804:7 1805:2, 11, 25 1806:7, 24 1807:12 1808:3, 22 1809:13, 15 1810:11 1811:3, 22 1816:18, 25 1820:14, 25 1826:6 1827:6, 13 1828:1, 4 1830:11, 24 1831:17 1832:1 1833:9, 16 1834:1
<b>note</b> 1826:19 1847:19 1852:22 1853:20 1884:17 1931:17 1960:9																								
<b>noted</b> 1914:4 1917:13 1924:12 1953:11 1977:9																								
<b>notes</b> 1793:10 1805:12 1817:8 1824:12 1839:17 1844:15 1846:23, 24 1851:12, 19 1942:16																								
<b>notice</b> 1799:20 1801:2, 10 1850:20 1888:17 1947:7																								
<b>noticed</b> 1812:17 1892:19 1928:24																								
<b>November</b> 1969:23																								
<b>Number</b> 1787:14 1800:6 1802:3 1806:16 1808:7 1809:14 1810:5, 24 1813:15 1814:11, 16																								

1835:3, 18	1956:11, 22	1852:13	1956:14, 23	1861:7, 13, 16,	1880:21
1836:7, 22, 24	1957:16	1979:12	1957:1	21 1864:23	1920:6
1837:9, 18	1959:3	<b>opposed</b>	<b>outliers</b>	1865:13	<b>pandriano@sa</b>
1838:5, 25	1963:9	1959:21	1956:17	1866:12	<b>ndsanderson.c</b>
1839:24	1967:15, 22,	<b>opposing</b>	<b>outset</b> 1951:9	1867:8, 25	<b>om</b> 1780:18
1840:2, 7, 25	24 1968:15,	1840:17	<b>outside</b>	1868:3, 6, 13,	<b>paragraphing</b>
1842:13	20 1971:1	<b>oranges</b>	1797:11	16, 20, 22	1819:9
1843:23	1973:13	1956:19	1897:17, 23	1871:16	<b>paraphrasing</b>
1848:7, 11, 22	1977:24	<b>order</b>	1923:4	1872:9	1981:17
1849:14, 24	1978:11	1861:21	<b>overall</b>	1873:15, 19,	<b>Parents</b>
1850:24	1979:20	1880:18	1799:20	22 1874:6, 9	1779:5
1853:14	1982:1, 11	1892:3	1802:22, 23	1875:3	1781:3
1854:2, 10	1983:2	1893:5	<b>overrule</b>	1877:12, 15	1785:2
1855:8	1984:15	1901:6	1805:3	1987:11, 14,	1786:8
1856:5, 20, 23	1986:13, 16	1934:21	1970:11	17, 23 1989:6,	1789:16
1858:23	1987:7	1935:22	<b>overruled</b>	11 1992:8, 15,	1790:2
1859:1	1988:10	1958:23	1986:5, 6	18	1798:2
1861:25	1992:1	1963:11	<b>overwhelmed</b>	< P >	1824:4
1863:14, 17,	<b>Old</b> 1787:5,	1968:10	1927:16	<b>p m</b> 1779:15	1833:2, 12, 13
23 1865:15,	21 1895:5, 7,	1991:8	<b>OWENS</b>	1993:14	1844:15
23 1866:1, 9	9 1951:11, 24	<b>organizational</b>	1780:21	<b>pace</b> 1942:23	1845:15, 16
1872:11, 21	1952:8, 11, 12,	1914:13	1782:5, 6	<b>page</b> 1792:6	1847:16, 18
1874:25	13	<b>organize</b>	1784:23	1810:7	1848:2
1875:1	<b>once</b> 1822:7	1819:22	1785:1, 18	1816:13	1849:16
1876:1, 9	1937:21	1938:7	1786:2, 11, 13,	1831:19	1877:11
1879:20	<b>one-on-one</b>	<b>organizing</b>	20 1790:14	1833:13, 14	1880:2
1880:4, 10	1910:3	1913:7	1791:5, 10, 13,	1848:2, 7	1907:3
1886:1, 11	1923:5	<b>oriented</b>	16, 20, 25	1850:24	1915:9
1887:13	1942:17	1896:7 1898:8	1792:6, 16, 21	1851:3, 13, 17	1916:5
1889:15	1946:2, 3	<b>ortho</b> 1982:14	1793:3, 6, 21,	1853:24	1926:4
1890:4	1983:14, 18	<b>orthographic</b>	23, 24	1855:9	1934:9
1891:3, 8	<b>one-pager</b>	1870:23	1798:17	1856:1	1970:8
1892:15	1851:1	1896:10, 11	1801:7, 9	1860:5	1976:6, 20, 21
1894:21	<b>ones</b> 1848:22	1898:4, 14	1802:5, 8	1899:15, 17	1977:2
1895:2, 18	1949:23, 24	1900:11, 12,	1804:2, 14	1901:12	<b>Park</b> 1797:12
1898:2	<b>one-to-one</b>	15, 16, 17, 20	1806:14, 18,	1909:8	<b>part</b> 1854:8,
1899:6	1983:12	1901:8, 9, 13,	20 1810:8, 10	1910:4, 22	9 1855:1
1904:4, 12	1985:15	17 1905:14,	1819:15	1922:24	1865:23
1906:3, 21	<b>open</b> 1890:6	16, 23 1906:1,	1820:6	1927:11, 18	1872:1
1910:4	1945:5	4 1917:16	1821:15, 19,	1933:11	1874:20
1911:10	<b>opened</b>	1921:3, 5	22 1822:10,	1940:12	1879:17
1912:19	1982:1, 11	1924:9	14 1823:1, 3,	1946:17, 24	1884:12, 23
1916:1, 13	<b>opening</b>	1954:19	5, 10, 13, 21	1950:3	1895:17
1921:1	1889:19	1958:2, 4, 10,	1827:16	1953:18	1907:2, 5
1922:23	1952:8	14, 21	1833:5, 17	1954:6, 7	1909:12
1923:9	<b>operate</b>	1959:13	1838:13	1960:24	1910:14
1924:17	1973:24	1961:3	1839:9	1964:16	1911:20, 21,
1925:15	<b>opinion</b>	1967:9	1840:11	1965:4	22, 23 1912:1
1931:5, 25	1817:1	1973:12, 16	1841:1, 4, 15	1966:9	1915:12
1932:1, 25	1910:10	1974:15	1842:20	1967:8, 22	1921:14
1934:1, 6	1932:24	1975:21	1843:16	1968:21	1925:6, 7, 9,
1938:3, 16	1983:25	1981:20, 23	1844:16	1970:14	19 1930:25
1939:12	1985:18	1982:16, 18, 20	1845:16	1992:8	1933:15
1940:10, 15,	<b>opportunities</b>	<b>OT</b> 1972:23	1846:9, 21	1993:2	1934:1
19 1941:10,	1822:2, 5	1973:18	1847:4, 11	1853:25	1935:2
12 1942:4	1823:6, 23	1976:7, 16	1849:6	1907:25	1941:6, 14
1944:13	<b>opportunity</b>	<b>outgoing</b>	1852:12	1992:12, 13	1946:25
1945:17, 24	1797:10	1918:17	1853:16	<b>painful</b> 1993:6	1953:19, 21,
1947:6	1817:10	<b>outlier</b>	1856:2, 5	<b>pandemic</b>	22, 24
1954:10	1820:17	1906:18	1859:5, 9, 13,	1796:20	1963:10
1955:20	1824:5	1950:8	18 1860:7, 22		1968:21

1969:11	<b>passage</b>	<b>pending</b>	1964:7	<b>Phonological</b>	1873:6
1970:9	1810:20, 21	1985:12	1970:24	1900:8, 9	1881:24
1972:22	1811:14	<b>people</b>	<b>periods</b>	1901:5	1897:2
1973:14	1856:24	1823:18	1815:20, 23	<b>phonological[sic]</b>	1898:3, 5
1974:14	1857:11	1908:14	1816:1	<b>c</b> 1904:25	1915:18
1977:15	1894:20	1916:23	1817:11	<b>picture</b>	1919:24
1981:17	<b>passages</b>	1930:23	<b>permission</b>	1824:22	1923:7
1984:15, 25	1808:14	<b>people's</b>	1976:9	<b>piece</b> 1816:11	1928:14
<b>participants</b>	1855:17	1940:12	<b>permit</b> 1843:1	1906:25	1932:2
1888:20	1893:21	<b>perceive</b>	<b>permitted</b>	1935:13, 14	1936:15, 19
<b>participate</b>	1959:16	1935:10	1842:22	1949:17	1938:4
1795:24	<b>passed</b>	<b>perceived</b>	<b>persist</b>	1979:4	1943:3
1891:20	1803:15, 18	1950:25	1936:12	<b>pieces</b> 1907:7,	1950:1
1913:11	1806:6, 12, 21	<b>percent</b>	1975:18	14 1908:5	1969:18
1947:5 1972:3	<b>passing</b>	1803:1, 8	<b>persisted</b>	1917:2	1970:11
<b>participated</b>	1803:21	1810:16, 18	1975:25	1950:7 1969:3	1987:17
1801:19	1807:21, 22	1811:15	<b>persistence</b>	<b>Pinnell</b> 1814:8	<b>points</b>
1837:22	1831:14	1812:9	1898:13	<b>place</b> 1833:4	1922:14
1940:6	<b>patience</b>	1855:12	<b>persisting</b>	1895:9, 20	1955:8
1962:13	1825:14	1869:23	1923:15	1966:2	<b>policy</b> 1944:22
1971:14, 16	<b>PATRICK</b>	1870:9	1935:17	<b>placed</b>	<b>poor</b> 1905:24
<b>participating</b>	1780:20	1882:17	<b>person</b>	1785:23	<b>popped</b>
1796:9, 18	1877:22	1955:22	1797:11, 20	<b>plan</b> 1935:15	1907:14
1906:20	1985:11	1956:6, 8	1830:20	1939:9	<b>portion</b>
1909:4, 20	1987:11	1991:14	1862:19	1967:17, 25	1894:8
1929:2	<b>pattern</b>	<b>perceptual</b>	1863:15	1968:4, 5	<b>position</b>
1945:22	1850:20	1904:23	1869:15	1988:7	1787:2, 6
1950:14	1904:19	<b>performance</b>	1882:6	<b>plans</b> 1788:7	1841:24
<b>participation</b>	<b>patterns</b>	1797:23	1895:1	<b>platform</b>	1844:21
1795:19	1905:12	1798:1	1903:10	1797:4, 5	<b>positive</b>
1796:15, 25	1924:6 1954:2	1799:21	1919:21	<b>play</b> 1920:9	1893:5
1797:2	<b>Paul</b> 1804:23	1801:3, 7, 8,	1928:12, 13	1961:15	1898:16
1807:8, 14	<b>pay</b> 1919:2	11, 15	1933:22, 24	<b>playing</b>	1899:1, 7
1835:16	1965:6, 14	1802:20	1936:6, 7, 13,	1915:25	1917:19
1934:14	<b>paying</b>	1814:24	16, 17 1937:4,	<b>please</b>	1918:14, 15,
<b>particular</b>	1918:22	1817:24	22 1940:25	1786:24	19 1968:4
1810:20	1965:13	1828:11	1947:7, 14	1829:4	<b>possession</b>
1811:14	<b>PC</b> 1780:14	1863:19	1966:4, 7, 12	1836:1	1990:3
1824:13	<b>Pearson</b>	1884:18	1968:6, 11, 12,	1838:12	<b>possibility</b>
1835:1	1830:14, 17	1885:17	14	1848:2	1913:25
1891:21	<b>peer</b> 1857:15	1897:7, 11	<b>personable</b>	1877:5	<b>possibly</b>
1899:20	<b>peers</b> 1803:2,	1928:17	1896:1	1879:6	1836:3
1915:18	9 1857:15	1937:10, 13	1946:13	1882:13	1837:2
1917:13	1866:6	1955:9	<b>personal</b>	1885:22	1846:20
1920:19	1869:24	<b>performed</b>	1846:24	1907:9	1873:12
1925:22	1870:10	1869:23	1862:9	1943:22	<b>potential</b>
1926:11	1916:22	1870:9	1884:10	1955:16	1883:10
1971:9	1918:18, 21	1975:5	1941:12	1969:5	1886:21
1981:9	1922:18	1983:12	<b>personally</b>	1992:20	<b>powered</b>
1990:23	1942:19, 21	<b>performing</b>	1931:17	<b>plenty</b> 1942:4	1875:13
<b>particularly</b>	1943:7, 12, 16	1813:18	1932:15	<b>plexiglass</b>	<b>PPE</b> 1882:6
1828:4	1950:25	1929:5	1936:4 1990:8	1883:2, 11, 12,	<b>practice</b>
1882:22	<b>pencil</b>	<b>period</b>	<b>pertains</b>	14	1854:12, 17
1885:10	1894:13, 18	1796:15	1860:8	<b>plural</b>	1990:15
1976:6 1988:9	1896:23	1814:21	<b>Petitioner</b>	1857:25	1992:2
<b>parts</b> 1850:16	1941:19, 20	1824:10	1779:7	<b>point</b> 1785:24	<b>practicing</b>
<b>party</b> 1994:10	1942:24	1827:11	1780:11	1800:5	1854:14
<b>pass</b> 1803:16,	1943:19	1832:20	<b>Pettitway</b>	1821:2	<b>praise</b> 1893:6
19 1828:12,	1947:12	1856:15	1846:5, 15, 25	1856:16	1898:16, 19,
21, 23 1850:14	1948:9, 16	1879:1	1940:20	1866:14	21, 22, 25
		1893:4		1868:17	1899:5, 6

<b>praised</b> 1891:11, 16 1894:1, 2	<b>prevent</b> 1883:16	<b>PROCEEDIN</b> <b>GS</b> 1779:14	<b>prompts</b> 1816:20	<b>pulling</b> 1838:15 1906:12	1839:19
<b>praising</b> 1892:3 1893:9 1898:23	<b>prevented</b> 1915:24 1916:7	1994:6, 8	<b>proper</b> 1805:16	<b>pull-out</b> 1962:7	1840:5, 6 1843:1, 13
<b>precaution</b> 1883:8	<b>previous</b> 1800:8 1839:11	<b>PROCESS</b> 1779:3	<b>properly</b> 1792:15 1845:3	<b>punctuation</b> 1819:8 1900:25 1947:9	1844:21, 24 1847:8 1852:13, 16 1853:17
<b>precautions</b> 1887:4	<b>previously</b> 1784:5 1786:16	1884:12 1886:15 1914:2, 23	<b>protective</b> 1884:11	<b>purely</b> 1955:11	1854:13 1859:15
<b>precisely</b> 1822:14	1792:10 1793:3 1794:1 1795:3	<b>processing</b> 1870:23 1880:25 1896:10 1898:5 1900:8, 9, 10, 17 1901:6, 8, 16, 17 1902:7 1904:20, 25 1905:1, 4, 5, 23 1906:4 1921:5 1924:8, 9, 10 1954:5, 12, 19 1958:2, 5, 10, 15, 21	<b>protocol</b> 1911:20, 21	<b>purpose</b> 1821:9 1823:22 1838:1 1883:13 1952:17	1860:8, 22 1861:2, 20, 22 1863:12 1865:1, 2 1866:24 1873:4, 13 1874:10 1889:7, 14 1894:16 1902:8
<b>preference</b> 1988:11, 13	1814:12 1822:18 1831:21 1837:12 1846:22 1924:23 1933:14 1962:17	1906:4 1921:5 1924:8, 9, 10 1954:5, 12, 19 1958:2, 5, 10, 15, 21 1959:13 1961:3 1981:20, 23	<b>provided</b> 1794:22 1798:25 1814:12 1909:17 1984:4	<b>purposes</b> 1909:10	1903:6 1918:2 1929:25 1930:1 1947:14 1949:8, 9 1951:23 1953:4, 20 1962:16, 20, 25 1964:5 1969:14 1973:1
<b>prehearing</b> 1992:11	<b>primary</b> 1963:17	<b>produces</b> 1819:5, 13	<b>providing</b> 1927:17	<b>pursuant</b> 1988:24	1969:14
<b>preparation</b> 1940:6	<b>print</b> 1959:19	<b>producing</b> 1951:3	<b>psychological</b> 1882:8 1884:21 1885:7 1887:1 1931:14, 15 1940:3 1943:22 1953:22 1968:22 1982:8	<b>push</b> 1889:12	1976:10, 19 1978:20, 25 1979:6 1982:14 1983:3 1984:11 1985:10, 14, 16, 22, 25 1986:8 1990:4, 13
<b>prepare</b> 1940:17 1941:10	<b>prior</b> 1797:19 1944:6 1951:19 1952:7, 11, 24	<b>proficient</b> 1807:1	<b>psychologist</b> 1875:18 1878:1, 10 1879:2, 7, 17, 25 1883:21 1895:19 1924:24 1947:16 1966:6	<b>put</b> 1896:22 1911:5 1947:12 1948:9, 16 1950:6 1963:16, 22 1966:2	<b>questioned</b> 1786:8
<b>prepared</b> 1838:22 1843:25 1845:13 1940:23 1989:5	<b>probative</b> 1915:23	<b>profile</b> 1960:25 1961:8, 11	<b>progress</b> 1788:9 1789:13, 16 1800:2 1801:21, 22, 25 1803:8, 11 1807:25 1810:2, 12 1815:18 1816:5, 7, 8, 15 1817:1, 3, 7, 8 1864:21 1871:13, 15 1930:6 1936:6, 24 1937:24 1938:2 1963:13 1984:13, 20 1986:10	<b>putting</b> 1964:23	<b>questioning</b> 1841:8 1843:10 1844:4 1867:24 1874:8 1939:2
<b>prepares</b> 1830:17	<b>problem</b> 1831:11 1838:9, 11 1839:7 1973:3 1975:9 1985:25	<b>public</b> 1784:13 1787:3 1796:22 1878:1, 22 1879:4 1881:9 1944:21 1994:2	<b>psychologist</b> 1875:18 1878:1, 10 1879:2, 7, 17, 25 1883:21 1895:19 1924:24 1947:16 1966:6	<b>quality</b> 1819:6 <b>quarter</b> 1827:4, 19, 21 1832:16 1980:3	<b>questions</b> 1784:25 1786:1, 5 1803:21, 24 1807:20, 22 1819:16 1822:11, 19 1825:15, 18 1828:20 1829:7, 11 1837:11
<b>preparing</b> 1968:22	<b>problems</b> 1832:12 1945:1	<b>publishing</b> 1911:13	<b>psychologist</b> 1875:18 1878:1, 10 1879:2, 7, 17, 25 1883:21 1895:19 1924:24 1947:16 1966:6	<b>quarterly</b> 1816:20 <b>quarters</b> 1817:7	
<b>PRESENT</b> 1781:1 1908:25 1914:1, 9 1927:24 1928:1, 3, 21 1942:14 1947:19 1963:12	<b>procedure</b> 1957:10	<b>project</b> 1872:5	<b>prompt</b> 1872:25	<b>question</b> 1785:7 1786:3 1801:8 1819:19 1828:25 1829:19 1833:6	
<b>presentation</b> 1884:9 1888:5	<b>proceed</b> 1927:17 1987:12, 14				
<b>presented</b> 1900:2, 13 1917:14, 18 1948:12	<b>proceeding</b> 1994:11				
<b>presenting</b> 1822:16 1916:8 1918:6					
<b>presents</b> 1900:20 1905:13 1953:7 1961:12					
<b>pretty</b> 1790:6 1911:15 1918:13 1949:2 1989:23					



1838:10	1906:13, 15	13, 19, 20	1941:4, 5	1969:10	1891:12, 19
1839:6, 18, 20,	1913:22	1823:2, 4, 7,	1951:21, 25	1991:9	1894:8
25 1841:5, 16	1955:21, 25	11, 14, 15, 23	1952:5, 9	<b>reader</b>	1896:3
1842:6, 8, 17,	1956:9	1824:17, 24	1954:8, 21	1958:24	1897:20
25 1844:25	1957:13	1825:2, 9, 12	1958:17	<b>reading</b>	1898:11
1847:7	<b>ranges</b>	1831:21	1959:7	1790:20	1922:8
1861:17	1884:19	1832:3, 6, 8	1960:5	1794:12, 14,	1938:21
1864:24	<b>Rapid</b>	1833:17, 18,	1964:23	15, 22	1945:8 1980:7
1868:23	1900:10	19 1835:7, 11,	1965:1, 2	1795:10	<b>real</b> 1901:7
1869:20	1906:7, 14	17, 20, 25	1969:25	1802:13, 16,	1911:6 1984:8
1870:20	1957:19	1836:6, 9, 13,	1970:4, 12, 13	19 1803:3, 5,	<b>realized</b>
1871:3, 16, 18	<b>Rapport</b>	18, 22 1837:3,	1971:12, 25	6, 15 1805:13,	1904:4
1877:10, 11,	1896:1	5 1839:1, 5,	1972:1, 7, 11,	20, 22, 24	<b>really</b> 1790:7
24 1878:19	<b>rarely</b> 1949:6	14 1840:3, 6,	13 1973:17	1806:13, 21,	1824:21, 23
1888:13, 14	<b>rate</b> 1808:18	8, 15, 22	1977:21	23 1808:10,	1830:2
1889:9, 18	1810:21	1841:4, 10, 18,	1978:1, 20	13, 14, 20, 23,	1831:3
1891:13	1817:4	19 1842:1, 3,	1979:1, 15, 18	24, 25 1809:1,	1871:18
1892:2	1831:12	6, 11, 14	1980:8, 9	2, 3, 6, 7, 9, 11,	1892:1
1893:8, 22	1857:9	1843:2, 4, 7,	1981:1, 8, 16,	20, 25 1810:5,	1896:4, 7
1894:3	1906:17	11, 14, 19	24 1982:3, 6,	13, 19, 21	1897:17
1917:20	<b>rated</b> 1952:21	1844:7, 12, 24	7, 24 1983:2,	1811:9, 16, 19,	1898:15
1918:7	<b>rater</b> 1903:3,	1845:2, 6, 10,	6, 20 1984:6,	23 1813:9, 13	1899:8, 9
1925:20	24 1916:15	17, 19, 20	17 1985:11,	1814:14	1900:3
1940:4	<b>raters</b> 1950:5	1846:11	21 1986:3, 14,	1816:4, 22	1901:12
1945:20	<b>rates</b> 1871:10	1847:11, 21,	21 1987:2, 6,	1818:2, 4	1904:1
1949:19, 22	<b>rating</b>	25 1848:1	22 1988:1, 7	1831:6	1907:15
1953:17	1886:10	1849:9, 11, 13,	1989:1, 10, 17,	1838:14	1909:21
1980:17	1902:23	15, 18	18, 22	1842:19	1917:24
1984:9	1903:8, 13, 15,	1852:14, 18,	1990:13, 17,	1848:9, 17, 19	1918:23
1985:15	16, 19, 24	21 1853:7, 23	24 1991:1, 2,	1850:25	1921:9
1986:12	1904:1	1855:18, 21	6, 16, 22, 24	1854:6, 11	1929:1
<b>quick</b>	1906:25	1856:3, 6	1992:12, 21,	1856:4, 7	1935:4
1897:21	1907:2, 6, 12	1859:7, 11, 17,	23 1993:8	1857:11, 16	1937:4
1898:1, 10	1908:5, 9, 14	20, 23 1860:4,	<b>Ratner's</b>	1858:16	1959:19
1921:25	1909:13, 16	9, 14, 17, 19,	1839:10	1863:23	1964:2
<b>quickly</b>	1912:6	25 1861:10,	1985:14	1865:10, 17	1979:7
1835:12	1914:3	11, 20, 24	<b>reach</b> 1797:1	1870:8, 16	1984:12
1906:8, 9	1916:14, 16	1862:2, 7, 11,	1883:4	1871:1, 7	1987:24
1910:2	1917:1, 8, 21,	24 1863:13	<b>reached</b>	1893:19, 20,	1988:12
1957:8	23 1929:4, 22,	1865:4, 6, 9,	1887:7	21 1894:2	<b>reargued</b>
1969:17	23 1931:16	15, 16	<b>read</b> 1812:8	1901:4	1841:13
<b>quite</b> 1839:11	1934:25	1866:14, 22,	1830:4	1905:18, 19	<b>reask</b> 1985:11
1847:1	1949:25	24 1867:2, 10,	1838:12, 21	1906:16, 17	<b>reason</b>
<b>quiz</b> 1845:14	1952:20	13, 16, 22	1839:23	1920:24	1916:5
<b>quote</b> 1842:8	<b>ratio</b> 1879:10	1870:20	1842:2	1921:6, 7, 11	1946:17
1965:4 1983:8	<b>RATNER</b>	1873:12, 16	1844:21	1924:12	1991:13
<b>quote-unquote</b>	1780:4, 9, 10	1874:11, 14,	1851:19, 25	1927:12	1992:24
1834:24	1782:5, 7, 11	25 1875:10,	1857:13	1946:24	1993:1
1835:3	1784:18	19, 25	1867:4, 6, 12,	1957:15	<b>reasonable</b>
1838:5 1947:7	1785:2	1876:10, 16	20 1870:15	1958:24	1942:10
<b>quoting</b>	1786:4	1878:18	1892:2	1959:10, 16,	1991:20
1991:23	1792:3, 5, 25	1915:17, 20	1893:7, 19, 23,	21 1960:4	<b>reasoning</b>
	1793:8, 12	1916:7	25 1894:19	1961:19	1896:7
< R >	1803:22	1921:23	1900:18	1966:24	1900:6, 7
<b>raise</b> 1877:5	1804:8	1929:8, 11, 20	1910:24	1967:1, 11	1904:22, 23
1889:8, 10, 15	1805:4	1930:1, 11, 18,	1927:10	<b>reads</b> 1818:9,	1905:8
1924:17	1810:7, 9	21 1931:1, 11,	1958:20	11	1959:14
1928:5	1819:21, 24	1932:2, 9, 13,	1959:23	<b>ready</b>	1961:2
<b>raised</b> 1970:8	1820:1, 10, 17,	20 1938:6, 14,	1965:4	1820:15	<b>reassurance</b>
<b>range</b> 1806:4,	24 1821:1, 6,	22 1939:1, 8,	1966:25	1868:10	1897:22
9 1905:24	12, 16 1822:4,	12, 17, 18		1890:16	1898:11

1909:2	<b>receiving</b>	<b>records</b>	<b>reflective</b>	<b>relatively</b>	1941:21
1910:3	1884:8	1983:24	1906:15	1936:18	1959:1
1951:4 1953:6	<b>recognition</b>	1985:16	<b>refocus</b>	<b>relevance</b>	1970:1
<b>rebuttal</b>	1905:17	<b>recounting</b>	1927:16	1847:12	1973:22
1988:4	1958:22	1930:23	<b>refresher</b>	1914:9	1974:12
1989:2	1959:10	<b>recover</b>	1792:23	1981:2, 24	1975:2
1990:22	<b>recognize</b>	1909:3	<b>refusal</b> 1949:6	<b>Relevancy</b>	1976:11, 12
<b>recall</b>	1833:23	1910:1	<b>refused</b>	1846:10, 11	1980:21
1784:20	1837:9	1950:14	1896:23	1853:17	1981:3
1785:22, 23	1845:21	<b>recovering</b>	1948:18	1866:12, 15	1983:9
1786:6	1886:11	1950:13	1983:8	1911:6	1985:10
1793:1	1900:23	<b>recreating</b>	<b>refusing</b>	1951:20	<b>remembered</b>
1798:4	1925:4	1975:5	1897:2	1978:25	1970:2
1820:21	1959:19	<b>Recross-</b>	<b>regard</b>	<b>relevant</b>	<b>remembers</b>
1828:25	1967:4	<b>Examination</b>	1796:15, 25	1837:1	1842:16
1830:12	<b>recognized</b>	1782:7	1798:5	1838:19	<b>reminding</b>
1832:18	1897:10	1874:13	1803:17	1847:9	1824:24
1834:14, 19	<b>recognizing</b>	<b>Redirect</b>	1807:4, 18	1865:3	<b>remove</b>
1837:12	1958:19	1782:6, 12	1808:25	1892:12	1934:17
1838:4	<b>recollection</b>	1867:24	1809:10	1916:25	<b>renew</b> 1804:8
1839:18, 21	1793:9	1868:15	1810:22	1917:2	<b>reopen</b>
1840:13, 18	1797:25	1873:21	1811:19, 22	1932:17	1821:23
1842:7	1800:21	1979:21	1812:13	1949:24	1824:17
1845:23	1838:18	1980:14	1813:2, 4	1968:9, 14	<b>reopened</b>
1846:1	1915:21	<b>redirecting</b>	1836:3	1978:15	1796:23
1858:9, 23	<b>recommendati</b>	1868:12	1841:5	1981:2 1985:2	<b>repeat</b>
1859:1, 14	<b>on</b> 1798:8	<b>reduce</b>	1869:5, 22	<b>relying</b>	1807:13
1862:8, 12	1967:12, 17, 20	1881:14, 15	1870:8	1947:17	1949:10
1863:8	<b>recommendati</b>	<b>reducing</b>	<b>regarding</b>	1991:12	<b>repeated</b>
1882:2	<b>ons</b> 1798:5	1883:9 1893:2	1785:11	<b>remain</b>	1894:16
1892:16	1921:2	<b>reevaluation</b>	1797:2	1913:11	1974:9
1916:10	1925:21, 22	1881:3	1888:10	<b>remainder</b>	<b>repetition</b>
1928:21	1926:8, 10, 19,	1882:1	1899:24	1898:6, 14	1854:18
1929:3	24 1927:3	1884:23	1934:6	1899:10	1921:14
1942:1	1928:6	1933:15	1937:13	1917:17	1926:25
1946:23	1965:9	<b>reevaluations</b>	<b>Regardless</b>	1945:9	<b>rephrase</b>
1961:21	1966:19	1880:18	1868:25	<b>remained</b>	1929:25
1965:7	1974:22	<b>reference</b>	1964:7, 11	1899:8	<b>report</b>
1967:15	1984:23	1838:19	<b>regards</b>	<b>remaining</b>	1788:10
1971:18	1985:4	1874:15	1900:9	1909:19	1815:18, 19
1974:5, 25	<b>recommended</b>	<b>referenced</b>	1965:10	<b>remark</b>	1817:18, 21,
1976:5, 8, 14	1883:9 1974:8	1844:13	<b>Registration</b>	1916:23	23 1827:14
1981:11, 12,	<b>reconvene</b>	1923:9 1934:2	1994:19	<b>remedy</b>	1831:17, 25
14 1988:6	1797:21	<b>referencing</b>	<b>regularly</b>	1966:8, 10	1885:21
<b>recalling</b>	<b>record</b>	1909:10	1795:24, 25	<b>remember</b>	1886:6, 12, 13,
1822:8	1786:25	<b>referral</b>	1970:18	1809:19	15, 23 1904:6
<b>receipt</b>	1811:13	1900:1	<b>reinforcement</b>	1826:19	1910:9
1932:16	1824:2, 4	1946:17, 25	1899:2	1828:22	1922:15, 24
<b>receive</b>	1841:2, 10, 14	<b>referrals</b>	<b>reiterate</b>	1833:5	1923:22
1859:2	1842:12	1899:24	1924:8	1845:11	1926:7
1911:24	1853:20	<b>referred</b>	<b>related</b>	1846:17	1928:22
1933:24	1868:11	1951:22, 23	1900:24	1847:3	1932:5, 10, 11,
1936:1	1926:13	<b>referring</b>	1965:21, 22,	1860:2	12 1938:1
<b>received</b>	1931:10	1831:20	24 1966:19	1862:14	1940:3
1808:22	1937:17	1835:15	1974:15	1863:5	1943:22
1833:24	1968:23	1871:22	1994:9	1867:18	1949:24
1931:19	1988:20	1956:24	<b>relationship</b>	1903:18	1950:6
1962:7	1989:3	<b>reflect</b>	1826:17	1920:20	1953:19, 21
<b>receives</b>	<b>recording</b>	1988:20	<b>relationships</b>	1924:2	1966:19
1910:2	1915:22, 25	<b>reflection</b>	1918:16	1932:14	1968:22
	1916:2	1817:24		1934:8	1992:11

<b>REPORTED</b> 1779:25 1912:10 1913:5 1918:20 1950:4 <b>reporter</b> 1784:5, 21 1844:20, 23 1878:6 1938:12 1972:18 1994:5 <b>reporting</b> 1789:15 1908:15, 18 1916:19 <b>reports</b> 1788:9 1886:17 1922:17 1923:24 1924:18 1925:20 1962:11 <b>represent</b> 1819:11 1829:15 <b>representative</b> 1784:23 1790:6 <b>represented</b> 1842:9 1874:16 1896:15 <b>representing</b> 1939:19 <b>represents</b> 1819:2 1832:16 <b>request</b> 1880:2 1925:23 1926:3 1988:25 1989:6 <b>requested</b> 1835:4 1880:17 1881:2 1882:3 1885:6, 18 1925:11, 12 1926:19 1981:12 <b>requesting</b> 1844:23 <b>requests</b> 1989:8 <b>require</b> 1833:2	<b>required</b> 1896:12 1898:6 1937:2 1944:24 1948:1 <b>research-based</b> 1921:9 <b>resistance</b> 1834:6 <b>respect</b> 1951:19 <b>respond</b> 1796:4 1821:15 1888:13 1889:7, 17, 24 1890:9 1917:20 1945:4 1990:19 <b>Respondent</b> 1779:10 1780:22 <b>responding</b> 1945:19, 21 <b>responds</b> 1898:15 <b>response</b> 1804:1 1822:11 1834:10 1859:6 1929:14 1950:21 1985:14 <b>responses</b> 1898:9 1918:12 1950:18 1963:4 <b>responsibility</b> 1822:9 1830:21 <b>responsible</b> 1789:12, 15 1879:8 1951:10 <b>rest</b> 1863:25 1939:8 1978:4 <b>restate</b> 1786:24 <b>rested</b> 1988:21 <b>rests</b> 1987:18 <b>result</b> 1929:5 <b>results</b> 1879:22 1899:13 1914:22	1949:18 1981:19 <b>results/findings</b> 1911:22 <b>resume</b> 1787:19, 20 1789:22 1880:9 <b>resumed</b> 1800:19 <b>Retrieval</b> 1900:10 1905:15 1906:5, 7, 13 1924:10 1954:19 1956:23 1957:3, 20 1958:2 <b>return</b> 1798:23 1801:15 1881:12 1919:13 1968:12 <b>returned</b> 1798:21, 24 1799:19 1800:8, 13 1801:1, 11 1897:24 1928:12 1936:19 1937:21 1968:6 <b>returning</b> 1798:5, 19 1930:15 1933:22 1937:4 1966:12 <b>revealed</b> 1981:20 <b>reversals</b> 1960:2 <b>review</b> 1824:12 1845:12 1968:23 1983:24 1984:16, 19 1985:16 1991:11 <b>reviewed</b> 1937:17 <b>revisit</b> 1847:6 <b>revisiting</b> 1839:12	<b>Richmond</b> 1780:6, 16 1994:14 <b>right</b> 1785:20 1792:13 1793:20, 22 1806:7 1814:10 1819:23 1820:15 1821:21 1822:20 1827:9, 24 1828:2, 6, 21 1829:12, 22 1830:5 1831:4, 12 1832:5, 10, 23 1833:4 1834:25 1836:11 1837:4 1838:24 1847:11, 21, 23 1849:5, 17 1850:6, 7, 8, 20 1852:5 1853:22 1855:2, 4 1857:5, 7, 22 1859:23 1860:4 1861:16 1862:6, 20 1864:12, 15, 18, 20 1865:7 1866:7, 19 1873:11 1875:6, 23 1876:15 1877:5 1880:10 1882:8, 13, 24 1883:20 1894:24 1895:23 1902:1 1904:13 1908:3 1910:21 1912:19, 21 1916:3 1922:12 1923:21 1925:2 1932:21, 25 1935:22 1938:14, 23 1941:10, 20 1942:18 1943:7, 10	1944:5 1946:5 1948:3, 6 1949:9, 13 1951:11 1952:6, 25 1953:16 1954:14, 23 1955:6 1956:11 1960:16 1962:18 1963:22 1964:7, 11, 13, 23 1966:17 1969:4, 13 1970:10 1972:8, 16, 22 1973:18 1976:10, 11, 19 1977:1, 5, 10, 16, 17 1982:3 1985:9, 21 1987:15 1988:5 1991:7, 16, 21 1992:1 <b>rigor</b> 1947:21 <b>risk</b> 1913:15, 22, 23 1914:3, 7, 16 <b>role</b> 1788:1, 24 1879:11 1952:18 1977:1 <b>roll</b> 1890:16 1891:19 1896:3 <b>room</b> 1784:15, 16 1820:10 1878:4 1978:9, 13, 22 <b>roughly</b> 1875:14 <b>Rubino</b> 1926:1, 3 <b>rubric</b> 1815:1, 6 1873:1 <b>rude</b> 1929:16 <b>Rudolph</b> 1814:23, 25 1871:24 1872:4, 8 1873:8, 23 1874:15 <b>rule</b> 1906:19 1922:24 1963:11 <b>rules</b> 1826:14,	15 1921:12 <b>ruling</b> 1986:4 <b>rulings</b> 1931:2 <b>running</b> 1811:13 <b>runs</b> 1810:23 <b>rushed</b> 1824:19  < S > <b>safe</b> 1884:16 <b>safety</b> 1883:8, 9 <b>sake</b> 1839:17 <b>Sam</b> 1858:3 <b>same-age</b> 1865:20 <b>SANDS</b> 1780:14 <b>SARAH</b> 1779:15 1780:10 <b>sat</b> 1882:25 1897:25 <b>save</b> 1810:1 <b>saw</b> 1795:8 1796:13 1853:14 1888:24 1896:9 1909:25 1910:1 1928:19 1936:6 1947:22 1949:15 1953:2 <b>saying</b> 1804:10, 19 1822:5 1829:20 1830:5 1836:18 1853:14 1908:23 1909:6 1911:19 1912:13 1913:1 1930:21 1932:12 1943:15 1953:9 1970:6 1982:15 <b>says</b> 1814:20 1818:21 1839:5 1845:7 1846:15 1851:13
--	--	---	---	---	--

1856:3	1791:1	1924:24	1818:11, 21	1919:6	1881:7
1860:15	1794:3, 7, 20,	1925:3	1905:24	1920:1	1895:13
1868:5	25 1795:7, 13,	1926:16	1934:24	1923:5	1926:18
1888:18	20 1796:21	1930:16	1954:14	1932:7	1949:11
1913:21	1797:11, 22	1934:15	<b>scores</b>	1935:3	1954:23
<b>SB-61</b> 1871:21	1799:22	1936:2, 19	1803:14	1939:10	<b>setbacks</b>
<b>Scale</b> 1900:5	1800:3, 5	1937:10, 13	1812:1	1953:5, 6	1909:3
1902:22	1801:23	1940:2, 6	1863:18	1959:13, 14	1950:14
1903:8, 13, 15,	1802:2, 4, 15	1944:22	1884:18	1966:18	<b>setting</b>
16, 19, 24	1806:15, 18	1947:16	1954:4, 11, 25	1968:16	1795:10
1908:11	1807:5, 9, 15	1949:5	<b>screen</b>	1970:14	1798:19
1909:12, 16	1808:6	1951:13	1796:10	1974:2	1801:20
1910:16	1809:13, 16,	1960:3	1851:24	1981:2	1910:3
1911:18	22 1810:4, 23	1965:5	1888:21	1983:6	1923:4
1912:15	1812:2, 5, 6,	1987:17	1889:2 1892:9	1984:21	1934:15
1913:12, 14,	11, 13	1988:21	<b>scribed</b>	<b>seeing</b> 1909:6	1936:10
24 1916:14,	1813:11, 18	1989:6, 8	1897:15	1928:16, 25	1962:2, 3, 4, 8,
16 1922:19	1814:5, 11, 16	1990:5, 9	<b>seal</b> 1994:13	1966:14	9 1965:25
1952:20	1815:13, 24	<b>Schools</b>	<b>sec</b> 1791:24	<b>seen</b> 1822:22	1968:8
1953:15	1816:14	1784:13	<b>second</b>	1904:7	1978:5
1955:6	1817:14, 25	1787:3	1791:9, 11	1923:4	1983:12, 18
1972:21	1821:2	1796:19, 22	1843:9	1929:7	1984:2, 4
1973:4	1822:14, 16	1878:1, 22	1847:8	1937:2	1985:19
<b>scales</b>	1827:10, 15	1879:4, 10	1890:12, 18,	1949:25	<b>settings</b>
1886:10	1831:24	1881:9	22 1901:19	1950:5 1968:8	1889:3
1902:23	1835:25	1887:3	1908:13	<b>sees</b> 1902:3	<b>Seventeen</b>
1904:1	1836:9	1944:21	1910:23	<b>self-image</b>	1878:23, 25
1907:1, 2, 6,	1837:6	1951:10	1919:17	1918:19	<b>shape</b>
12 1908:6, 9,	1846:19	<b>science</b>	1930:20	<b>self-rating</b>	1902:17, 18
15 1909:11,	1848:16	1803:17, 21,	1979:22	1922:19	<b>Share</b>
14 1910:15	1849:13, 15	23 1804:9	<b>seconds</b>	<b>self-report</b>	1879:22
1912:4, 6	1857:17	1806:10, 11	1957:6	1922:21	1932:18
1914:4, 10	1858:5	1807:4, 10, 11,	<b>section</b>	<b>sense</b> 1875:17	<b>shared</b>
1916:24	1859:10	15, 17, 18, 21	1839:20	1959:20	1920:21, 23
1917:1, 9, 21,	1861:7	1827:24	<b>see</b> 1793:11	1985:23	1930:9
23 1929:4, 22,	1864:5	1828:4, 13, 21	1795:6	1991:6	1974:14
23 1931:16	1868:18, 20	1829:7, 10, 11	1797:20	<b>sent</b> 1881:21	<b>sharing</b>
1934:25	1871:4, 9	1867:21	1832:9	<b>sentence</b>	1928:22
1949:25	1875:18	<b>scope</b>	1833:14	1819:8	<b>sheet</b> 1837:16
1950:10	1876:21	1840:12, 16,	1834:10	<b>sentences</b>	<b>shield</b> 1883:3
1955:13	1877:23, 25	23, 24 1846:9	1835:5	1893:25	1906:10
<b>schedule</b>	1878:10	1859:9	1848:7	<b>separating</b>	<b>shields</b>
1799:4	1879:2, 7, 17,	1860:6	1851:19	1895:15	1883:14
<b>Scheduled</b>	25 1880:9	1863:24	1853:10	<b>September</b>	1884:11
1895:4	1881:11, 19,	1969:22	1854:21	1810:15	<b>shifting</b>
<b>schizophrenia</b>	21 1882:17	<b>score</b> 1802:22,	1855:25	<b>serve</b> 1879:9	1921:24
1910:10, 11,	1883:21	23 1804:18,	1858:14, 21	<b>service</b>	<b>short</b> 1819:21
14, 19 1911:3,	1884:14	19, 24 1806:3,	1860:14	1789:11	1824:10
5, 11, 14, 23,	1885:3, 22, 24	22 1807:23	1871:17	1846:12	1919:22
24 1912:14	1887:2, 22	1831:14	1880:8, 25	1847:2, 5	<b>show</b> 1801:20
1913:15	1895:4, 5, 7,	1865:12, 17	1887:24	<b>services</b>	1835:10
1914:7, 8, 16	10, 12, 18	1869:22	1888:4, 6, 19	1794:14	1841:11
1916:16	1899:15	1905:22, 25	1889:13	1871:1	1859:25
<b>SCHOOL</b>	1907:25	1906:12	1895:17	1879:24	1863:18, 19
1779:9	1909:9, 20	1949:22	1897:6	1886:18	1867:9
1784:13, 24	1910:5	1956:3, 9	1902:6, 14, 17	1904:17	1891:25
1785:1, 21	1918:13, 14,	<b>scored</b>	1903:7	1911:25	1899:9
1786:10	22 1919:11,	1802:21	1908:23, 24	1960:18	1923:5
1787:7, 13, 22	12, 14	1803:1	1909:6	1964:2, 3, 7	1950:11
1788:11	1920:24	1811:14	1913:23	<b>set</b> 1857:5	1953:25
1790:5, 23	1921:15	1815:2, 9	1916:19, 23	1877:25	1961:17

1962:10	<b>Simultaneous</b>	1971:5	16, 18, 23, 24	<b>speaking</b>	1981:17
1965:18	1852:11	1973:5	1806:1, 22	1829:25	1982:9
1970:8		1974:2, 18	1807:4, 21	1852:11	<b>specifically</b>
<b>showed</b>	<b>simultaneously</b>	<b>Sky</b> 1853:25	1828:8, 11, 13	1889:2, 4	1790:15
1917:16	1990:18	1855:5	1830:17, 18	1957:9	1800:5
1923:1	1991:1, 2, 4	<b>slightly</b>	1938:2	1970:23	1802:19
1924:5	<b>sing</b> 1920:23	1792:7	<b>solar</b> 1875:12	<b>special</b>	1816:4, 14
1937:24	<b>singing</b>	1870:12	<b>SOLs</b> 1830:1	1787:8, 12	1831:23
1938:2	1920:10, 14	1895:22	1832:7	1788:2, 3, 22	1833:13
1957:10	<b>Single</b>	<b>slow</b> 1957:7,	<b>somebody</b>	1789:1	1859:23
1973:5	1992:14, 18,	12 1958:9	1888:18	1790:17, 24	1864:24
<b>showing</b>	19, 20	<b>slowed</b>	1889:14	1791:2	1899:16
1803:2	<b>sir</b> 1826:21	1906:11, 19	1939:6	1792:19	1943:1
1859:24	1850:1	<b>slows</b> 1958:24	1958:14	1794:2	1949:18
1891:12	<b>sit</b> 1823:12	<b>slumped</b>	<b>sorry</b> 1791:17	1825:20	1960:11
1908:7	1883:5	1896:20	1805:7	1879:24	1967:3
1909:4, 24	1899:19	1948:7	1807:13	1886:18	1968:19
1914:12	1974:12	<b>small</b> 1801:20	1810:7	1895:11	1970:5
1915:15	<b>sitting</b>	1892:24, 25	1813:24, 25	1903:1	1974:12
1930:17, 19	1832:18	1941:22, 24,	1836:13	1904:16	<b>speculation</b>
<b>shown</b> 1966:8	1852:2	25 1942:1, 5	1842:24	1910:13	1864:24
<b>shows</b>	1949:21	1943:18	1853:1	1942:5	1983:21
1810:21	1953:8	1961:22	1862:2	1946:19	<b>spell</b> 1897:5
1889:13	<b>situation</b>	1962:1, 7	1877:12	1954:18	1900:18
1961:1	1946:3	1985:15	1878:4, 24	1960:13, 15	1958:21
<b>shut</b> 1881:21	1953:12	<b>smaller</b>	1886:11	1962:22	1959:22
1887:3	1965:23	1818:7	1888:14	1963:1	<b>spellcheck</b>
<b>side</b> 1798:13	1973:25	1936:10	1890:20, 21	1964:6	1874:19, 24
1883:15	<b>situations</b>	<b>Smith</b>	1898:19	1979:13	<b>spelled</b>
<b>sight</b> 1921:10	1916:21	1825:22	1905:2	<b>Specialist</b>	1901:15
1959:9	1971:6	1826:12	1908:2	1781:2	1959:2
1966:19, 23	<b>Sixteen</b>	<b>social</b>	1920:11	<b>specialized</b>	<b>spelling</b>
1967:2, 3, 4, 10	1855:8	1799:18	1937:11	1960:19	1819:8
<b>signals</b> 1894:7	<b>skill</b> 1901:13	1867:21	1938:10	<b>specially</b>	1874:23
<b>signed</b> 1882:4	1933:10	1885:3	1959:5, 7, 8	1799:13	1905:20
<b>significance</b>	1934:11, 13	1902:24	1972:18, 20	1808:22	1921:6, 12
1965:8	<b>skills</b> 1798:10	1906:24	1982:13, 25	1814:13	1924:14
<b>significant</b>	1799:16, 18	1907:19	1986:6	<b>specific</b>	1926:25
1870:23	1880:25	1934:9, 18, 20,	1992:16	1793:1	1959:11
1897:8	1896:5	24 1963:12	<b>sort</b> 1892:14	1854:15	<b>spend</b> 1924:1
1905:14, 25	1900:7, 22	1968:2 1970:5	1905:3	1874:15	1991:14
1906:3	1901:5, 10	<b>social/coping</b>	1918:23	1884:6, 7	<b>spent</b> 1860:4
1914:1, 8	1904:20	1798:10	1931:16	1886:20	1940:1
1947:22	1905:16, 18	1933:3	1961:11	1898:21, 25	<b>spoke</b> 1796:4
1950:21	1906:2, 18	1934:1, 7, 11,	1963:11	1904:17	<b>spot</b> 1857:16
1958:10	1924:7	17, 21 1935:4,	<b>sound</b>	1905:10	1990:15
1961:2	1933:4	13 1936:5	1853:19	1912:24	<b>spread</b>
1965:18	1934:2, 7, 10,	1969:20	1889:6 1901:6	1913:1	1883:10, 17
<b>significantly</b>	17, 18, 20, 24	1970:15	<b>sounding</b>	1923:11, 20	<b>spring</b>
1897:11, 12	1935:4, 5, 13,	1971:5	1967:5	1924:5	1802:23
1914:5	23, 24, 25	<b>social/emotion</b>	<b>Sounds</b>	1929:20	1858:13
<b>similar</b>	1936:5, 8, 21	<b>al</b> 1907:10	1876:16	1951:7	1863:8, 11, 14
1866:10	1937:1	1917:3	1959:22	1954:2	1864:3, 4
1900:23	1955:24	<b>sociological</b>	<b>spaced</b>	1956:21	1869:14, 22
1901:10, 14	1958:3	1884:24	1992:14, 17,	1960:3, 7, 8,	1870:8
<b>similar-</b>	1959:12, 15,	1885:1, 2	18, 19, 20	21 1962:17	1937:24
<b>looking</b>	17 1961:19	1921:19	<b>span</b> 1863:20	1963:18	<b>staff</b> 1790:2
1845:24	1965:10	<b>SOL</b> 1803:10,	<b>speak</b>	1964:9	<b>staff/parents</b>
<b>simply</b>	1968:2, 10	15, 21, 23	1798:12	1966:19	1879:13
1847:12	1969:19, 20	1804:5, 11, 16	1842:12	1968:4	
1948:20	1970:5, 15	1805:7, 12, 13,	1957:7	1971:18	

<b>stage</b> 1877:25 1881:7 1926:18	1934:12 1936:16 1968:12	<b>struggle</b> 1850:21 1948:14	1882:4, 16, 17, 18 1887:17, 21 1888:3	<b>suggesting</b> 1823:8 1824:9 1826:3	1836:24 1839:12, 16 1844:7 1846:5
<b>stamina</b> 1902:15 1973:21 1975:17	<b>stayed</b> 1890:8 <b>Staying</b> 1964:16	<b>struggled</b> 1984:8	1889:6, 22 1891:9 1893:2	1830:12 1955:11	1848:18, 24 1849:2 1851:7
<b>stand</b> 1988:24	<b>steal</b> 1866:20	<b>struggling</b> 1827:21	1919:10 1923:12, 19	<b>suggestion</b> 1797:16	1852:18
<b>stand-alone</b> 1850:25	<b>stemming</b> 1950:12	1854:21 1907:15	1928:12 1942:2, 11	<b>suggestions</b> 1985:3	1860:5 1868:2
<b>standard</b> 1818:12, 13 1819:9, 12, 13 1905:25 1955:2, 4, 17 1989:1 1990:15 1991:25	<b>step</b> 1886:15 <b>stick</b> 1790:8 <b>sticking</b> 1960:23	1912:8 1919:8, 9 1948:11 1957:18	1944:23 1945:7 1948:24 1951:19, 23 1952:1, 2, 4, 12, 13, 15 1959:12 1960:12 1962:6 1966:13	<b>suggestive</b> 1975:8 <b>suggests</b> 1935:15	1873:9, 14 1879:9 1880:15, 22 1881:10 1891:14 1892:2 1893:6 1895:4 1899:23
<b>standardizatio n</b> 1884:1, 4, 12	<b>stipulation</b> 1982:2, 3, 7	<b>stuck</b> 1919:25	1983:8, 11, 13, 17	<b>Suite</b> 1780:5, 15	1899:23 1915:19 1921:3 1932:2 1940:23 1942:13 1945:5, 11 1949:14 1950:18 1954:1 1963:3
<b>standardized</b> 1884:5, 8 1897:3 1898:22 1954:4, 22, 23, 25	<b>stone</b> 1973:25 <b>Stop</b> 1884:3 1898:3 1901:19 1908:13 1910:21 1956:11 1958:25	<b>Student</b> 1830:14 1846:17 1849:25 1864:14, 21 1865:2, 24 1870:22 1886:17 1899:24 1900:3 1901:4 1902:14 1911:24 1922:17 1923:6 1924:4 1949:11 1960:21, 25 1961:9 1962:17 1963:19, 25 1964:4, 9 1965:12 1975:18 1977:19 1981:22	<b>student's</b> 1804:15 1889:3 <b>studies</b> 1867:21 <b>study</b> 1798:10 1799:15, 16, 18 1816:12 1935:23 1936:5, 8, 21 1968:2, 10 1969:19	<b>summarize</b> 1899:21 1907:9 <b>summary</b> 1858:6 1967:8 <b>summer</b> 1794:8, 12 <b>Sunday</b> 1797:12 <b>superior</b> 1865:25 1866:4 1955:25 <b>support</b> 1885:15 1917:3 1935:23 1936:1, 11, 22 1964:14, 15 1968:10 1974:21, 22 1976:4	1968:1, 24 1971:3 1974:5, 24 1976:2, 16, 24 1977:8 1979:15 1986:3 1989:22 1991:16 <b>surprise</b> 1953:1 <b>surprised</b> 1910:6 1946:7, 12, 14 1957:2
<b>Standards</b> 1805:18 1819:4 1829:19	<b>strategies</b> 1921:13 1926:24 1927:11, 14, 15, 21	<b>students</b> 1787:4 1788:5, 6, 15, 22 1789:8, 16, 19 1790:20 1791:17, 21 1792:2, 19, 21 1793:19 1795:14 1798:18 1815:7 1818:14 1826:5 1846:16 1858:9 1865:20 1866:10 1870:4, 5 1879:11 1880:1 1881:12, 15	<b>stump</b> 1950:20 <b>submit</b> 1989:14 1990:18 <b>submitted</b> 1990:18 <b>subtest</b> 1956:21 <b>successful</b> 1885:17 1927:10, 21 1937:21 1984:1, 5 1985:19 <b>succinctly</b> 1958:18 <b>sufficient</b> 1804:11 <b>sufficiently</b> 1844:5 <b>suggested</b> 1921:8	<b>supporting</b> 1934:14 1936:8 <b>supports</b> 1871:1 1879:16 1881:1 1884:7 <b>suppose</b> 1925:23 <b>supposed</b> 1850:13 1859:3 1954:16 1971:1 <b>sure</b> 1805:4 1807:12 1821:1 1822:11 1826:16 1829:21 1830:19 1833:4 1834:5, 12	1964:5, 6 1968:1, 24 1971:3 1974:5, 24 1976:2, 16, 24 1977:8 1979:15 1986:3 1989:22 1991:16 <b>surprise</b> 1953:1 <b>surprised</b> 1910:6 1946:7, 12, 14 1957:2 <b>suspected</b> 1886:21 <b>sustain</b> 1935:22 <b>Sustained</b> 1865:7 1930:3 1931:10 1971:23 1981:5 1983:22 <b>sustaining</b> 1932:25 <b>switch</b> 1894:24
<b>standing</b> 1877:13	<b>streamline</b> 1938:9	<b>Street</b> 1780:15	<b>stuff</b> 1857:4 1891:18 1938:8		
<b>star</b> 1853:2	<b>Street</b> 1780:15				
<b>start</b> 1794:6 1825:19 1845:1 1882:10 1939:2	<b>strength</b> 1902:15 1904:25 1949:4 1954:15 1975:17				
<b>started</b> 1796:21 1810:15 1817:5 1881:10 1894:17 1923:15 1951:14	<b>strengths</b> 1900:4 1904:19, 21 1905:12, 13 1924:6 1954:3, 20 1961:1				
<b>starting</b> 1913:7	<b>stressful</b> 1916:21				
<b>state</b> 1884:6 1922:16	<b>strictly</b> 1808:15				
<b>stated</b> 1817:7 1841:12 1931:6 1946:22	<b>Strike</b> 1862:9				
<b>statement</b> 1845:4	<b>strong</b> 1904:24 1959:14				
<b>statistical</b> 1955:15 1956:13	<b>stronger</b> 1841:14				
<b>stay</b> 1884:16 1898:24	<b>struck</b> 1947:13 <b>structure</b> 1819:9				

sworn 1784:5, 20 1786:16 1877:7, 18 <b>symbols</b> 1905:18 <b>Symptoms</b> 1913:4, 25 <b>system</b> 1784:24 1785:21 1786:10 1960:3 1988:21 1990:6, 9  < T > <b>tab</b> 1827:14 1829:3, 6 1831:21, 24 1855:23 1941:2 1943:21 1967:19 1969:4 1972:10 <b>table</b> 1883:15 1895:13 1904:22 1906:16 1949:4 <b>tackle</b> 1898:11 <b>tag</b> 1888:3 <b>take</b> 1802:14 1809:16 1822:8 1824:2 1829:3 1831:1 1843:11 1847:2 1858:4, 10, 21 1860:20, 21 1861:5 1862:12, 15, 16 1863:1, 2, 4, 9 1864:1, 2, 7 1875:15, 17, 21 1876:11 1878:6 1882:13 1895:9, 20 1899:14 1909:15 1921:25 1931:17 1932:24 1939:9 1942:16 1948:8 1949:3 1955:7	1956:7 1980:1 1986:24 1987:20 <b>taken</b> 1820:12 1843:7 1862:21 1868:8 1876:23 1922:6 1938:19 1939:25 1980:5 1987:9 <b>takes</b> 1957:6 <b>talk</b> 1795:12 1797:20 1801:22 1809:13 1810:4 1811:8 1820:10 1827:3 1836:18 1857:14 1886:23 1888:13 1898:18 1899:13 1949:17 1969:23 1988:17 1993:8 <b>talked</b> 1794:1 1828:20 1831:22 1832:12 1834:20 1845:24 1857:22 1859:23 1897:18 1969:25 1970:4 1972:15 1992:4 <b>talking</b> 1803:13 1805:4, 5 1822:4 1860:9 1864:10 1882:24 1883:4 1929:15 1931:23 1932:3 1940:2 1946:17 1952:7 1955:18	1957:19 1964:19 1970:1 1971:17 1979:12 <b>targeted</b> 1825:18 <b>task</b> 1896:12, 21, 24 1897:7 1906:20 1909:19, 23 1923:15 1936:9 1947:10 1948:13 1958:8 <b>tasks</b> 1898:6 1909:21 1913:7, 8 1927:17 1935:18 1947:19, 24 1948:1 1951:8 1974:17, 18, 23 1975:11, 19 <b>taught</b> 1787:8, 11, 12 1826:22 1900:22 <b>teacher</b> 1787:4, 9, 21 1788:2, 3, 12, 13 1789:1 1790:17, 18, 24 1791:2 1794:2 1795:4 1803:23 1824:10 1825:20 1846:23 1864:8 1878:7, 8 1887:6 1889:13 1891:17 1892:1, 20 1893:1, 3, 11 1903:1, 2 1907:17 1908:22 1912:5 1913:21 1916:15 1931:11 <b>teachers</b> 1788:6, 9 1790:3 1903:7, 13, 19, 22 1907:3	1909:13 1910:9 1918:15 1928:21 1929:18 1930:8 1931:19 1932:7 1935:10 1946:8, 19 1962:5 <b>teacher's</b> 1846:24 1888:4, 5 <b>teaching</b> 1849:22 1921:12 <b>team</b> 1797:21 1798:1, 4 1879:23 1880:3, 17 1881:4, 5, 6, 25 1885:18 1924:3, 21 1925:24 1927:2 1929:18, 19 1930:25 1931:21 1933:5 1934:4, 10, 16 1940:25 1952:18 1963:4, 13, 15 1965:9 1967:13, 24 1973:24 1974:8, 19 1975:2 1976:1, 5, 23 1977:3, 4, 6, 18 1978:12 1981:13 <b>team's</b> 1977:1 <b>Technically</b> 1932:25 <b>television</b> 1891:25 <b>tell</b> 1803:4 1829:6 1888:16 1891:22 1892:6 1895:3 1897:4, 14 1899:19 1901:19 1925:17 1931:25 1945:17 1948:20, 25	1959:17 1965:7 1969:5 1987:5 <b>telling</b> 1852:4 1975:3 <b>tells</b> 1913:24 1916:4 <b>ten</b> 1938:7 1939:14 1942:2, 3 1990:1, 11 <b>term</b> 1953:7 1961:4 <b>terms</b> 1881:8 1883:9 1895:15 1900:14, 24 1902:13 1904:17 1906:12, 16 1910:18 1912:11 1914:15 1915:6 1926:24 1928:16 1929:1 1934:14 1936:11 1953:7 1954:17 1957:1 <b>test</b> 1828:12 1830:3, 24 1831:3 1865:17 1866:10 1884:2, 4, 9 1896:11 1898:20 1900:8, 11, 19 1901:9, 10, 18, 20 1906:8 1911:13 1947:22 1954:23 1955:8, 19 1956:7 1957:3, 8 1973:12, 14 1975:12, 22 1981:19 <b>tested</b> 1897:1 <b>testified</b> 1786:7, 17, 21 1793:25 1795:3 1806:21 1814:12 1820:7 1821:3	1831:18 1841:24 1846:22, 25 1848:3 1860:19 1869:8 1877:18 1953:2 1962:12 1981:4, 19 1985:6 1993:4 <b>testify</b> 1785:9 1838:23 <b>testifying</b> 1844:11 <b>testimony</b> 1785:12, 16 1800:8 1804:12 1823:18 1828:22 1829:1 1833:9, 10 1839:12 1843:21 1844:17 1845:13 1853:8 1865:14 1871:20 1875:8, 22 1916:3 1932:22 1956:15 1966:18 1976:12 1988:24 1989:2 <b>testing</b> 1831:15 1859:3 1896:11 1897:3 1898:5, 14, 22 1900:15 1905:15 1947:21 <b>tests</b> 1884:13 1899:25 1900:2, 15 1902:12 <b>text</b> 1874:19 <b>thank</b> 1784:20 1786:13 1787:25 1789:25 1790:10 1791:14 1793:23 1810:9
--	---	--	---	---	---

1819:16, 18	1972:23	1951:9, 22	1827:23	22, 25 1923:8	1948:20
1825:9, 13	1989:2 1991:8	1952:16, 19	1858:10	1924:1	1978:21
1847:21, 25	<b>things</b>	1953:4, 8	1860:20	1928:14, 23	<b>tolerance</b>
1849:24	1798:10	1954:8, 22	1880:3	1932:8	1935:6
1852:20	1805:20	1957:13	1881:14	1935:12	1950:17
1863:17	1840:16	1958:13, 20,	1885:23, 25	1936:16, 19	1953:14
1866:19, 23	1854:15	25 1960:9, 10	1919:12, 15,	1940:1	<b>tomorrow</b>
1867:23	1873:4	1961:13	21 1928:14	1943:3, 19	1987:1
1868:3, 6	1926:22	1963:15	1970:20	1944:2, 8, 15,	1988:8
1873:11, 19	1943:10	1966:10, 11,	<b>three-hour</b>	24 1956:7, 9	1992:7, 21, 22
1874:6, 11, 25	1950:25	12 1970:19	1926:22	1962:5	<b>tonight</b>
1875:2, 3, 5, 7	1951:2	1971:22	1977:15	1968:11	1988:16
1877:9	1963:17	1976:11, 21	<b>three-page</b>	1969:1, 15	1992:24
1884:20	1973:3	1977:14, 22	1851:6	1978:4	<b>top</b> 1814:20
1886:14	1975:20	1978:2	<b>thumbs</b>	1986:24	1851:13
1891:18	1984:23	1981:9	1894:8	1989:4	1899:17
1899:12	<b>think</b> 1790:8	1982:1	<b>Thursday-</b>	1990:4, 21, 22	<b>topic</b> 1835:24
1902:20	1792:6, 23	1986:4, 9, 14,	<b>Friday</b> 1799:5	1991:5, 9, 14	1844:4
1904:12	1796:17	22 1988:8, 9,	<b>Thursdays</b>	1993:6	1845:8
1906:21	1804:9	16 1989:20	1800:10	<b>timed</b> 1957:5	1847:24
1914:19	1820:2, 15, 19,	1990:2, 4, 23	<b>tie</b> 1972:14	<b>timeline</b>	1859:16, 17
1921:16	23 1824:7, 9	1991:17, 19	<b>time</b> 1796:19	1886:3	1866:17
1923:21	1827:2, 12	1992:12, 13, 25	1797:19	<b>times</b> 1796:8,	1971:22
1937:6	1828:3, 24	<b>thinking</b>	1799:1, 14, 17	9 1802:14, 17	<b>topics</b> 1861:15
1938:3	1829:21	1806:8	1800:13, 17	1841:18	<b>total</b> 1787:11
1939:1, 12	1833:9	1896:7	1801:18	1858:10	1991:6
1958:16	1835:25	1900:6	1803:5	1860:20	<b>traits</b> 1913:25
1970:12	1841:13	1904:22	1811:4	1880:1	
1971:25	1844:4, 5	1905:7	1824:15, 19	1893:4, 18	<b>TRANSCRIPT</b>
1981:6	1846:21	1926:6 1961:2	1825:14	1894:4	1779:14
1986:11, 17,	1848:14, 17	<b>third</b> 1787:7	1826:20	1903:4	1841:14
20, 21 1992:15	1850:24	1811:7, 24	1827:1	1956:8	1990:6 1994:7
<b>Thanksgiving</b>	1853:12	1839:6	1834:2, 21	1957:25	<b>transcripts</b>
1881:19	1856:3	1850:6	1838:21	1958:25	1989:20
<b>theirs</b> 1976:16	1861:3	1851:6	1841:13, 25	1966:17, 18	1990:3
<b>themes</b>	1862:4	1903:10	1842:4	1970:20	<b>transitioning</b>
1907:13	1866:14, 16	1943:19	1848:11	1973:24	1936:2, 4
1908:4	1868:10, 12	<b>thought</b>	1858:19	<b>title</b> 1899:17	<b>trembling</b>
<b>theory</b>	1871:21, 22	1792:9	1860:4	<b>today</b>	1953:9
1972:15	1873:18	1835:20	1862:2	1784:14	<b>trial</b> 1821:6
<b>therapist</b>	1875:25	1843:15	1869:12, 18	1793:7	<b>trick</b> 1940:22
1902:12	1876:6, 10	1852:18	1873:6	1832:18	1950:20
1973:20	1893:4	1863:5	1875:9	1876:18	<b>tried</b> 1822:22
1974:2, 17	1903:3	1875:13	1876:12	1877:24	1883:1
1975:16	1904:4	1876:7	1879:1	1878:18	1892:1
<b>therapy</b>	1906:5	1883:14	1881:15, 17,	1929:24	1897:13
1902:10	1909:1	1910:19	24 1882:5	1932:12	1984:10
1973:19	1914:14	1913:14	1883:14	1949:21	<b>trouble</b>
1974:1, 7, 8,	1915:23	1914:16	1889:15, 24	1974:13	1874:23
20 1976:22	1916:1, 7	1920:24	1893:1	1986:25	1876:20
<b>thereof</b>	1931:2, 5	1947:18	1894:10	1988:15	1934:19, 23
1994:12	1932:1, 20	1974:19	1895:4	<b>TODD</b>	<b>troubling</b>
<b>thing</b> 1791:9,	1935:11	1982:12	1896:9	1780:9	1841:22
11 1792:18	1936:12, 20	1987:23	1897:2	1939:18	1918:22
1805:5	1938:12, 22	1991:18	1898:5	<b>todd ratner@r</b>	<b>true</b> 1822:13
1899:1, 7	1939:10	<b>thoughtful</b>	1913:3	<b>atnerplc.com</b>	1918:3
1919:10	1943:11	1899:25	1916:22	1780:8	1961:11
1931:16	1945:3	<b>thoughts</b>	1917:17	<b>told</b> 1842:6	1975:1 1994:6
1932:3	1947:13	1986:1	1919:5, 24	1847:17	<b>truth</b> 1929:13
1942:25	1949:3, 8	<b>three</b> 1793:17	1920:9, 21	1851:20, 25	<b>try</b> 1786:3
1966:12	1950:11	1802:17	1921:20, 21,	1852:7	1825:15, 16,



17 1878:9	<b>two</b> 1786:3	1828:10, 16	<b>untimed</b>	1994:1, 3, 14,	1958:22, 23
1896:22	1798:19, 21	1838:1	1830:24	19	1959:20
1899:24	1807:5, 22	1841:21, 23	1831:9	<b>virtual</b>	1960:2
1918:1, 4, 9	1810:12	1844:6, 8	<b>unturned</b>	1796:16, 18,	1972:21
1960:19	1815:20, 23	1850:2	1973:25	19, 23 1797:4,	1973:4
1978:3	1816:1	1860:21	<b>unusual</b>	18 1798:14	1975:12, 22
<b>trying</b>	1817:6, 10	1863:12	1821:7	1800:11	<b>visually</b>
1792:24	1821:4	1866:11, 13	1824:16	1807:16	1901:10, 14
1804:12	1822:1	1879:13	<b>updated</b>	1827:10	<b>VMI</b> 1901:22
1824:4	1824:8	1885:16	1816:2	1848:12	1972:15
1835:8, 11, 21	1828:25	1887:18	1880:18, 24	1859:2	1973:11
1846:7	1841:18	1914:19	<b>upper</b> 1832:10	1862:17	1975:6, 11
1851:7	1855:16	1937:6	<b>use</b> 1792:7	1880:20	<b>vocabulary</b>
1859:24	1873:4	1944:20	1808:15	1881:11, 13,	1808:20
1860:21	1879:10	1945:12, 25	1819:21	22 1882:4, 21	1893:25
1861:3, 10, 11	1880:3	1946:6	1852:25	1885:13	<b>voice</b> 1874:19
1866:3	1881:13	1947:17	1876:12	1887:16	1878:8, 10
1881:16	1895:22	1949:18	1878:7, 10	1888:3	<b>Volume</b>
1887:23	1903:7, 13, 18	1951:1	1901:5, 9	1889:3, 23	1833:3, 12
1905:10	1909:13	1955:11, 16	1906:1	1891:10	1845:15, 18,
1940:22	1919:14, 21	1959:4	<b>useful</b> 1979:5	1892:18	19 1847:18,
1944:19	1922:14	1961:20	<b>usually</b>	1904:2, 8	24 1849:16
1945:11, 24	1924:10	1964:5	1880:2	1907:18	<b>volunteering</b>
1946:5	1951:10	1971:1	1885:5, 6	1908:6	1894:2
1947:11	1958:3	1972:22, 25	1888:1	1909:18	<b>vs</b> 1779:8
1948:8	1962:4	1977:8	1895:19	1912:8	
1950:20	1970:20	1978:24	1919:10	1913:9	< W >
1957:7	<b>two-thirds</b>	1982:19	1950:6	1917:5	<b>wait</b> 1786:3
1959:16	1965:3	<b>understanding</b>	1973:24	1918:25	1791:23
1987:2	<b>type</b> 1902:9	1785:10, 18	1984:25	1919:4, 7, 14,	1987:20
<b>Tuesday</b>	1905:8	1799:3	1990:21	16, 20, 22, 25	1988:2
1821:19	<b>types</b> 1829:18	1837:3		1920:7	<b>waiting</b>
<b>Tuesdays</b>	1850:20	1860:7	< V >	1923:3	1939:3
1800:9	1854:3	1934:23	<b>variable</b>	1928:24	<b>walk</b> 1797:12,
<b>turn</b> 1790:15	1902:12	1935:12	1989:19	1930:15	13
1808:6	<b>typical</b>	1956:8	<b>varies</b> 1788:4	1933:21	<b>Walked</b>
1813:9	1883:23	1959:15, 16	1955:9	1935:7, 8, 18,	1897:18, 19
1817:14	<b>typically</b>	1970:6	<b>variety</b>	19 1936:14,	<b>walking</b>
1850:24	1829:24	<b>understands</b>	1818:21	17 1937:2	1897:23
1853:24	1858:9	1971:13	<b>VDOE</b> 1779:8	1944:22	<b>want</b> 1792:3,
1885:22	1924:24	<b>Understood</b>	<b>verbal</b> 1899:4,	1946:4	7 1795:21
1889:1	1925:1	1942:7, 15	7 1900:7	1952:22	1800:5
1892:25	1963:22	1943:6	1904:22	1953:11	1803:13
1916:21		1949:7, 8	1917:22	1963:14	1818:2
1944:16	< U >	1950:24	1955:24	1965:5	1819:20
1945:9	<b>Uh-huh</b>	1951:6	1956:4	1966:4	1820:9
<b>turned</b>	1855:20	1952:17	1959:17	1968:8, 12	1842:15, 17,
1824:11	1858:18	1953:16	1972:19, 20	1979:10, 17	23 1844:9, 20
1931:12	1906:23	1979:18	<b>verbally</b>	<b>virtually</b>	1845:14
1944:16	1969:6	<b>unfortunately</b>	1796:5	1795:16	1848:18
<b>turning</b>	1972:17	1991:4	1897:4, 14	1796:21	1863:7
1913:7	<b>uncommon</b>	<b>unique</b>	1945:4	1851:23	1896:16
1923:16	1923:13	1864:22	<b>versus</b> 1946:4	1862:21	1899:13
1929:1 1931:8	<b>underlying</b>	1961:12	<b>victor</b> 1901:21	1869:1, 9	1922:15
<b>TV</b> 1892:10,	1841:20	1964:3	<b>video</b> 1888:22	1882:16	1939:3
13	<b>underneath</b>	<b>unmute</b>	1892:13	1887:3, 20	1950:20
<b>twice</b> 1802:16	1818:6, 19	1889:7, 9	<b>VIRGINIA</b>	1889:8, 10	1952:14, 15
1820:7	<b>understand</b>	<b>unmuted</b>	1779:2, 15	<b>visual</b>	1956:12
1821:3	1823:16	1888:12	1780:6, 16	1901:18, 20	1963:16
1961:4, 8, 9	1824:22	<b>unscramble</b>	1788:19	1902:2, 5	1979:24
	1827:13	1901:11	1881:20	1905:17	1986:24, 25

1987:20	<b>weaknesses</b>	1840:2	1823:19	<b>wishes</b>	20, 22 1913:3,
1988:17	1900:4	1847:11	1835:14, 23	1919:12	5 1914:3, 21
1993:3, 11	1904:20	1849:7	1836:24	<b>wit</b> 1994:1	1918:9
<b>wanted</b>	1905:13, 14	1850:17	1839:12	<b>withdraw</b>	1919:19
1793:6	1921:4	1852:6	1845:7	1982:24	1920:16
1807:12	1923:10	1854:12	1849:8	1983:3	1930:14, 19
1817:9	1924:6, 9, 11	1857:3, 9	1856:14	<b>withdrawal</b>	1931:8, 14, 20,
1841:6	1954:3, 19	1861:21	1861:19	1907:17	23 1932:17,
1919:13	1955:14	1864:11	1868:10	1908:8, 15	23 1933:11
1925:17	1967:9	1865:10	1875:1	1912:7, 9	1935:2, 5, 16,
1934:10	<b>wearing</b>	1873:15	1881:2	1914:11	20, 22 1936:7
1973:25	1883:6	1878:19	1882:24	1950:10	1937:4
<b>wants</b> 1820:5	1906:10, 19	1879:15, 16	1893:9	<b>WITNESS</b>	1939:3
1831:1, 7	1957:6, 11	1881:16, 25	1900:1	1782:1	1952:7
<b>watch</b> 1868:5	<b>web</b> 1888:23	1883:3, 6	1904:19	1784:8, 14	1954:7, 9, 11
1875:12	1892:8	1885:8	1926:13, 18	1785:25	1959:6, 9
1938:15	<b>Wechsler</b>	1888:1, 5	1932:3	1790:10	1960:1
<b>watched</b>	1900:5	1889:1	1954:1	1791:6	1971:12, 19
1961:24	<b>Wednesday</b>	1892:23	1976:2, 3	1793:4	1972:10
<b>watching</b>	1799:8	1897:6	1986:14	1798:14	1973:11, 14
1891:23, 25	<b>Wednesdays</b>	1898:15	1988:21	1804:20, 22	1979:9, 16
1892:13	1799:7, 10	1899:2	1989:23	1805:1, 8, 10,	1982:16
1894:15	1800:11	1903:2	1990:2	14, 18, 22	1984:12, 19,
1945:22	<b>week</b> 1786:22	1905:15, 19	1991:23	1806:2, 6, 10,	25 1985:8
<b>water</b> 1866:21	1794:17	1906:11, 25	1993:8	13, 19	1986:15, 20
<b>way</b> 1795:23	1798:19, 20,	1909:17, 21,	<b>we've</b>	1820:18, 21	<b>witnesses</b>
1799:4	21, 23	25 1914:13	1822:22	1821:7, 17, 24,	1846:19
1809:17	1800:14	1918:17	1835:8	25 1822:3, 12,	1984:10
1826:14, 15	1801:2, 12, 16	1926:1, 4	1846:13	17, 18	1986:23
1828:5	1820:22, 23	1927:10	1878:17	1823:24	1987:1, 18
1829:13	1841:17	1931:3	1915:24	1824:7, 21	<b>witness's</b>
1839:6	1848:8	1932:9, 24	1931:1	1838:13, 21,	1865:14
1850:12	1881:13, 14	1938:2	1939:22	24 1839:11,	<b>wonderful</b>
1859:9	1895:15	1939:10	1979:1	22 1840:1	1797:10
1864:17	1919:14	1940:15	1991:22	1841:15	1803:2
1875:21	1928:12, 13	1942:25	<b>white</b> 1838:14	1842:23	<b>word</b> 1799:16,
1883:24	1930:16	1946:16	<b>whiteboard</b>	1843:6	17 1808:20
1884:6, 7	1939:24	1951:16	1945:2	1846:18	1816:12
1900:21	1989:14, 25	1959:17	<b>wife</b> 1939:20	1852:12	1896:14
1905:7	1990:2	1975:5	<b>Wilma</b>	1853:5, 18, 21	1898:8
1908:18	<b>weeks</b>	1976:1, 20	1814:23, 25	1860:25	1901:6, 7
1917:19	1794:14, 16	1977:9, 15	1871:24	1861:17	1921:10, 11
1918:3	1928:11, 14	1985:23	1872:4, 8	1862:25	1956:15
1936:7	1952:24	1988:12	1873:8, 23	1863:2, 5	1959:1, 9
1940:16	<b>well</b> 1788:25	1989:13	1874:15	1866:13, 20,	1966:20, 23,
1948:10	1789:10, 20,	<b>went</b> 1797:12	<b>window</b>	23 1867:9, 14	24 1967:10
1949:7	24 1795:23	1799:4	1895:13	1871:25	<b>words</b>
1952:10	1798:2, 15	1812:9	<b>winter</b>	1872:3, 5, 13,	1810:16, 19
1955:11	1803:13	1818:22	1802:21	16, 20, 24	1811:15
1965:3	1805:12	1821:24	1858:13, 20	1873:5, 8	1812:9
1974:18	1816:12	1826:19	1862:21	1875:5, 15	1850:21
<b>ways</b> 1885:15	1822:3, 10	1828:4, 5	1863:7, 10, 18,	1876:2	1852:1
1898:25	1823:15	1837:1	19 1864:1, 2,	1877:3, 7	1855:6, 12
1975:18	1824:25	1859:21	6 1865:11, 18	1885:2	1856:20
<b>weak</b> 1960:15	1826:11	1864:11	1869:8	1890:21, 24	1874:22
<b>weakness</b>	1828:13	1897:16, 17	1878:14	1891:2, 5, 7, 9	1893:24
1906:1, 4	1829:17, 24	1977:16	<b>wish</b> 1919:18,	1905:2, 5, 7	1894:12, 19
1954:17	1830:4	1979:13	19	1907:21, 24	1897:5
1957:10, 14,	1832:6, 21	<b>we're</b> 1802:6	<b>wished</b>	1908:4	1900:18, 19
18 1958:10	1834:11, 14	1805:4, 5	1920:1, 8, 12,	1911:7, 11, 17,	1901:3, 4, 11,
1977:6, 12	1835:1, 10	1820:15, 20	15, 16	21 1912:3, 17,	12, 14

1927:14	<b>worker</b>	1927:1	1813:11, 18
1941:18	1885:3	1929:15	1815:24
1942:23	<b>working</b>	1941:18	1817:12, 13,
1943:8	1848:4, 12	1942:22	25 1828:5
1947:11	1854:15, 25	1945:1	1850:23
1958:22	1865:24	1947:11	1858:10
1959:23	1867:3	1948:2	1860:20
1963:16	1895:6	1958:8	1863:20
1966:15	1896:10	1959:11, 21	1871:10
1967:2, 3, 4	1898:17	1960:4	1880:3
<b>wore</b> 1883:3	1904:24	1961:19	1891:6
<b>work</b> 1788:8	1909:25	1973:15, 21	1937:25
1790:19	1946:9	<b>written</b>	1970:20
1794:8	1962:5 1969:1	1858:14	<b>years</b> 1787:8
1795:9	<b>workplace</b>	1924:13	1790:18
1799:15, 23	1887:20	1927:12	1807:5
1801:18	<b>works</b>	1989:7, 9	1824:8
1804:9	1988:18	1990:17	1849:22
1817:19	<b>world</b>	<b>wrong</b>	1872:22
1819:6, 14	1935:19	1829:16	1873:9, 23
1822:22	1937:3	1871:23	1878:23, 24, 25
1834:24	<b>worried</b>	1875:13	<b>Yep</b> 1969:8
1835:1, 2, 3, 7	1950:24	1938:13	<b>yesterday</b>
1839:3	1953:10	1942:25	1785:4, 7
1840:10	<b>worries</b>	<b>wrote</b> 1834:7	1820:22
1841:21, 22	1909:1	1872:7, 12, 23,	1846:25
1850:13	1950:11	24 1897:6	1847:16, 19
1874:16	<b>worry</b> 1909:5	1931:14	1876:7
1885:13	1918:25		<b>You-all</b>
1893:6	1950:12	< Y >	1991:10, 18
1898:25	1965:5	<b>yeah</b> 1800:22	
1913:8	<b>wrap</b> 1916:13	1833:5	< Z >
1916:22	<b>write</b> 1788:8	1872:10	<b>zero</b> 1864:18
1923:16	1791:9	1876:3	1885:23, 25
1928:16	1872:19	1888:1	<b>Zs</b> 1809:25
1929:2	1873:1, 4, 7	1908:4	
1931:12	1896:13, 17,	1910:24	
1933:19, 20	23 1898:7	1911:4	
1934:14	1902:16	1950:22	
1935:17	1943:8, 20	1958:1, 12	
1936:23	1947:10, 24	1962:24	
1946:20	1958:9	1970:25	
1947:1, 4, 7	<b>writes</b>	1987:6 1991:3	
1948:10, 11	1818:21	<b>year</b> 1787:7,	
1949:1, 2, 5	1834:5	11, 21, 22	
1953:5, 13	<b>writing</b>	1788:5, 11	
1962:1, 8	1814:14, 17	1789:10	
1967:21	1815:1	1790:23	
1968:7, 13, 17	1816:14, 15,	1791:1	
1983:9, 13, 17	19, 22 1818:3,	1794:3, 7, 25	
<b>worked</b>	16, 17 1819:6,	1795:13, 20	
1799:15, 16	7 1871:1	1796:21	
1809:3	1873:24	1797:19, 22	
1815:4	1874:2	1800:3	
1826:14, 15	1894:11, 14,	1801:23	
1827:1	18 1896:12,	1802:15	
1840:16	16 1898:6, 9,	1807:9, 15	
1895:11, 21	12 1900:25	1809:22	
1896:8	1905:20	1810:14	
1951:25	1920:24	1812:2, 5, 7,	
	1921:6, 12	11, 13	