

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

- - -

KHADIDJA ISSA,	:	5:16-cv-03881-EGS
Plaintiff,	:	PHILADELPHIA, PA
vs.	:	
	:	
THE SCHOOL DISTRICT OF	:	
LANCASTER,	:	August 18, 2016
Defendant.	:	2:11 p.m.

TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING
BEFORE THE HONORABLE EDWARD G. SMITH
UNITED STATES DISTRICT JUDGE

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I N D E X

Page

1
2
3
4
5
6
7
8
9
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11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WITNESS: Helaine W. Marshall	
Direct Examination by Ms. McInerney	4
Cross-Examination by Ms. O'Donnell	60
Redirect Examination by Ms. McInerney	122

PROCEEDINGS

- - -

EXAMINATION OF HELAINE W. MARSHALL CONTINUES

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1
2
3
4 A. So at McCaskey they interact with students on the
5 soccer fiend. They interact with them at, you know, at other
6 times during the day and they interact in meaningful ways. So
7 -- so in terms of what we know people need to -- to learn a
8 language which is exposure and interaction I feel as though --
9 I know that at Phoenix the exposure and interaction was not
10 effective whereas at McCaskey it would be.

11 Q. So in part it it's that they haven't grouped the
12 population alone by them -- by themselves to learn and in
13 addition the particular model that they're using in terms of
14 teaching content is in your opinion not correct?

15 A. That's right.

16 Q. Okay. In your professional opinion is the program, the
17 Phoenix Program informed by an educational theory recognized
18 as sound by experts in the field or a legitimate experimental
19 strategy?

20 A. No. It was not.

21 Q. And you -- and why is that?

22 A. Because for this population, now accelerated I am not
23 speaking to accelerated credit recovery per se, I'm saying for
24 SLIFE [ph] right? So for SLIFE it is -- it is
25 contraindicated. It is the opposite of what they need. They

1 need a slow start and it's interesting, because I was hearing
2 yesterday about a possibility of bridge mentioned -- people
3 mentioned bridging from the Phoenix and then go to McCaskey
4 actually that doesn't make sense to me --

5 Q. And why -- why would that not be appropriate?

6 A. Because they need to start with the -- with the slower,
7 the foundation, get the foundation set and then after
8 they're -- after they're comfortable with English and they've
9 caught up with the content then if you want to try and
10 accelerate, put them in summer school, put them in extended,
11 you know, add more, add more to their program and really move
12 them through. I think they have a good shot, but it
13 doesn't -- the reverse doesn't make -- doesn't sound like a
14 plan to me. I just wanted to add that, because I did hear
15 that yesterday.

16 Q. And as part of your assessment did you consider whether
17 the program and practices at Phoenix are reasonably calculated
18 to effectively implement their chosen program?

19 A. Okay. I'm sorry, I'm -- I'm -- [indiscernible].

20 Q. Take your time?

21 A. Sorry everyone. Okay. So let's say you have a
22 program, you know, you've got it, it's on paper, I get it,
23 that's just the program, but you have to make sure that the
24 way you're implementing the program is -- is strong enough to
25 give it every possibility of working; right. So I did not

1 find that in the case of the program at Phoenix.

2 Q. I'd like to --

3 THE COURT: Can I interrupt? But you did find
4 it in the program at the international school at McCaskey?

5 THE WITNESS: At McCaskey -- at McCaskey? Yeah.
6 McCaskey, but -- yeah.

7 THE COURT: And you said only good things about
8 the program McCaskey?

9 THE WITNESS: Yes.

10 THE COURT: If they're doing it right?

11 THE WITNESS: Yes.

12 THE COURT: Okay. I'm sorry. You may proceed.

13 THE WITNESS: Yes. Yes. I -- I do have
14 information on McCaskey and how they're implementing their
15 program.

16 THE COURT: It sounds to me like you're very
17 impressed with the program the School District has
18 establishes.

19 THE WITNESS: Yes. Yes. Yes. Yes.

20 BY MS. MCINERNEY:

21 Q. If we could turn to -- to exhibit 74 which is in day
22 two.

23 A. You've got me -- you just want my arms to be stronger.

24 MS. MCINERNEY: May I approach, Your Honor?

25 THE COURT: Certainly counselor.

1 THE WITNESS: Okay. 72. All right. I'm there.

2 BY MS. MCINERNEY:

3 Q. Okay. It's 74?

4 A. Oh, 74.

5 Q. I apologize if I said 72?

6 THE COURT: No, you said 74.

7 MS. MCINERNEY: Okay.

8 BY MS. MCINERNEY:

9 Q. What is this?

10 A. Right. This is Pennsylvania.

11 Q. I'm sorry. It is educating students with limited
12 English proficiency and English language learners.

13 A. Yes.

14 Q. Do you know what this is?

15 A. Yes, this is the guidance -- this is the guidance from
16 the State of Pennsylvania.

17 Q. And if we could turn to the forth page of the document
18 where it references planned instruction and academic content
19 areas.

20 A. The pages aren't numbered, but okay.

21 Q. Yes. I know.

22 A. All right.

23 Q. It --

24 A. Got it.

25 Q. It mentions here that an instructional program must

1 provide English language learners with meaningful
2 comprehensible access to instruction in all content areas
3 required by Pennsylvania Academic Standards. And it also
4 references what those academic standards are. Is that fairly
5 standard in other states as well that you would look at the
6 ability of a language instruction program to support students
7 to access whatever the academic requirements are in that
8 particular state?

9 A. Yes, because they're in school, they're not -- they're
10 not in a language school they're in school and they need --
11 they need the content areas, yes.

12 Q. And on the page previous to that if you could just flip
13 that over, it also mentions under planned instruction for
14 English language acquisition classes, it says the direct
15 English language instruction may not take place during other
16 content classes. What -- what does that mean?

17 A. All right. So direct English instruction means that
18 you're focused on the language, the grammar, the pronunciation
19 and vocabulary, you're -- you're not necessarily teaching one
20 of the content areas. So the reverse is true as well. When
21 you're teaching a content you're teaching a content area
22 although you bring the language in to support it, it's what I
23 was saying when I was saying sheltered, it's primarily a
24 content course and you are using language to help access the
25 content as opposed to per se teach the language. That's what

1 they're trying to get at there.

2 Q. And in evaluating the practices that were used at
3 Phoenix to implement its program, what kinds of documents did
4 you look at that were provided by the School District?

5 A. Okay.

6 Q. And you can refer, if it's helpful to --

7 A. It's helpful.

8 Q. -- exhibit 82 which lists --

9 A. I looked is at so many documents.

10 Q. Okay.

11 A. Okay. And so the list of documents is somewhere here.

12 I'm sorry, is that okay.

13 MS. MCINERNEY: May I approach?

14 THE WITNESS: I looked at.

15 THE COURT: I'm [indiscernible].

16 THE WITNESS: I looked at many, many, many
17 documents. Right. There we go. Okay.

18 BY MS. MCINERNEY:

19 Q. So what types of documents did you look at in order to
20 assess what the practices were at Phoenix?

21 A. Well, I looked at the instructional services matrix
22 that we talked about. I looked at the -- I looked at the --
23 the -- I'm trying to see what exactly you're trying to see
24 here.

25 Q. And if you just want to reference documents relating to

1 their instruction program.

2 A. I mean, I look at the -- I looked at the Phoenix
3 student handbook certainly. I mean, that told me about what
4 was going on at Phoenix. I looked at the grant proposal that
5 they wrote, the extended day program that they wrote. And
6 then in addition to those there were some other forms and
7 documents that I looked at that I only saw as blank forms, but
8 not filled in later, but I don't know if they actually used
9 those forms, so.

10 Q. Okay. Could you tell us what you found when you were
11 assessing the program to determine what practices they're
12 utilizing and whether it's effective to support their chosen
13 instructional model?

14 A. Okay. So what I looked at was when -- what -- when you
15 want to see if a program is supported you start with staffing.
16 So I looked at staff.

17 Q. And what did that disclose?

18 A. Well, the first was to see how many highly qualified
19 ESL teachers they had, okay. So when I -- when I was first
20 introduced to the documents there was an indication there was
21 one ESL teacher, Ms. Ortiz who is certified ESL and I found
22 that there were 90 ESL students.

23 Q. ELL. English language learners?

24 A. English language learners, right. Subsequently there
25 was information provided in a survey which I believe must be

1 on this -- on this list that indicated that there were
2 additional certified ESL teachers, okay. So I looked at the
3 -- the staffing and then I had to look at their -- their case
4 load and how they were spending their time, because when you
5 see an ESL teacher listed, this is an ESL teacher you want to
6 know, well, you know, okay. They're -- that means they have
7 ESL certification, but are they spending their day teaching
8 direct ESL? Or how are they spend their -- their actual day?
9 So -- so I was able to determine first of all one of the --
10 one of the teachers listed as ESL is a Spanish teacher.

11 Q. A Spanish teacher.

12 A. Yes. And Spanish is a foreign language, world language
13 see it's possible that person was certified in ESL also, I
14 mean, I'm certified in as you know from before in language and
15 ESL, but I -- it was not clear whether that person was
16 teaching ESL or teaching Spanish.

17 Q. Okay.

18 A. So that was one little -- and the other person listed
19 was listed as a Social Studies teacher, so again I'm -- I'm --
20 I'm thinking that that person teaches Social Studies as at
21 least part of their load not necessarily just direct
22 instruction and the other than was another teacher whose name
23 was listed and then later on transcripts I saw that that
24 person teaching communication arts which is I think we've
25 talked about that the other -- or earlier today is the English

1 class, not ESL, so it said to me that as far as full-time ESL
2 that's all I'm teaching this is my job there still is only one
3 and that the others may be teaching ESL but I didn't know
4 how -- how many hours of their schedule it was. So it was --
5 so staffing became -- became a question, you know, in my mind
6 in terms of that.

7 Q. Were you concerned that there was insufficient staffing
8 for the number of English language learners at Phoenix?

9 A. Yes. When you consider the support that would be
10 needed for structured English emersion, yes.

11 Q. And why is that?

12 A. Because these students were placed in with native
13 speakers in a classroom being taught by someone without an ESL
14 credential.

15 Q. And how do you know that? How do you know that they
16 were in classes taught by someone who did not have ESL
17 certification?

18 A. Because we were given a list of the -- of the teacher
19 who did have ESL certification.

20 Q. Did you review student records that were --

21 A. Yes, I did.

22 Q. And were those student records of the particular
23 plaintiffs in this case?

24 A. Yes.

25 Q. Okay. And what else did you review?

1 A. Okay. Also in addition to that I took a look at
2 [indiscernible] and there's something else in terms of
3 staffing that I wanted -- before we move on I'm trying to
4 think if I -- if I wanted to talk about something besides.

5 MS. O'DONNELL: Your Honor, I'm going to object
6 to the witnesses.

7 THE COURT: Yes, counselor.

8 MS. O'DONNELL: I'm going to object to this
9 answer. I'm not even sure that it's really an answer, but she
10 seems to be up there pondering what her next subject matter
11 might be.

12 THE COURT: I'll sustain the objection.

13 MS. MCINERNEY: Yeah. I will ask another
14 question.

15 THE WITNESS: Okay. Sorry. Okay.

16 BY MS. MCINERNEY:

17 Q. Did you consider any intake practices? How they assess
18 students when they first arrive?

19 A. Yes. Yes. You want to -- you want to make sure that
20 you're intake procedures are comprehensive and cover all of
21 the bases in terms of assessing the students as they come in.

22 Q. And what did you find?

23 A. What I found was that they were given the Wisconsin
24 aptitude test and that they all scored at a -- at an entry
25 level, but that I would've expected that there would've been

1 more of a systematic analysis of their prior education so that
2 we would know exactly what -- what their gaps might have been
3 and what they might have needed and instead I saw some brief
4 comments I believe for Khadidja, I saw seems to have no formal
5 education [indiscernible].

6 Q. The documents that seems?

7 A. Yeah.

8 Q. Okay.

9 A. And then it -- for Qasin no computational skills, but
10 it was more of -- of a -- it seemed like it was not -- there
11 was not a particular form that was being filled out or a
12 particular assessments that were being given it was more of an
13 informal understanding of their background.

14 Q. And looking at exhibit 19 which is in tab one can you
15 identify what that is?

16 A. Yeah, this is the -- this is the Phoenix Handbook.

17 Q. Can you speak into the microphone?

18 A. This is the Phoenix Handbook.

19 Q. So did you review the Phoenix Handbook when you
20 considered the policies that are in place at the school?

21 A. Yes, I did, yeah.

22 Q. And what was your conclusion with respect to various
23 policies in place at Phoenix and how that might impact the
24 implementation of the instruction model?

25 A. Could you -- can you repeat the question? When you say

1 the instructional model are you speaking of the accelerated
2 recovery model?

3 Q. Yes. I'm speaking about all of it, yes?

4 A. Okay. Well, it seemed -- it seemed to me when I read
5 this what struck me was that the school is designed for second
6 chance students, students who have been through the system, I
7 heard this morning someone, I think it was one of the
8 witnesses mentioning falling behind, needing more credit and
9 trying to recover credit and it's important to perform with
10 SLIFE they're not falling behind, it's not as if they've been
11 in this country all these years and they haven't accumulated
12 credits, we're not remediating, we're teaching them for the
13 first time and so it seems to me this approach is -- is not
14 designed -- it's not designed for this type of student.

15 The other thing that struck me was that the goals in
16 addition to credit recovery had to do with behavior and there
17 was an underlying assumption that students who attended this
18 school were in some way antisocial or needed behavior
19 adjustment and these are newcomers, they -- they may not be
20 refugees and they may or may not have had, you know, stress
21 and trauma, but they are brand new to the country and for them
22 from day one to be put in a situation where there made to feel
23 that they need to adjust their behavior, I mean, they do in a
24 way, because it's a new country and what we consider polite
25 other cultures consider rude and, you know, there's a lot of

1 cultural negotiating that goes on.

2 Q. Right.

3 A. But -- but in any case this was -- this did not seem
4 appropriate to me.

5 Q. Looking at page 14 of the document that discusses the
6 seven levels of redirection it talks about positive group
7 pressure, learning rules or negative, can you talk to us about
8 how that would impact students who are SLIFE and if in any way
9 that would impact learning?

10 A. Well, I think what -- what -- what it encouraged was
11 for them to feel marginalized in a sense. They already don't
12 completely fit in and then to have these different levels of
13 discipline make them feel kind of defensive and nervous not
14 because of that as a personality thing of theirs, but simply
15 because of the environment, they're put in --

16 Q. Does that have any impact on their academics or their
17 ability to learn?

18 A. Yes, because culture -- how you acculturate to your new
19 culture is tied very closely to your language acquisition.

20 Q. In what way?

21 A. Yes. So that what we have is that if you're being made
22 to feel marginalized, discriminated against you're kind of
23 forced to have a -- you make a choice, either you reject the
24 new culture and just go into yourself with your own native
25 language and culture where you're safe or you abandon your

1 original culture and say, oh, I'm just going to give it all up
2 and become, you know, like these -- these people and
3 Americanized, but what really works well and what the
4 literature says about bicultural is that people who can
5 maintain they culture, not assimilate completely, maintain
6 their culture, become acculturated, become bicultural, learn
7 English better and do better in school in general.

8 We're not in the days of assimilation, the melting pot,
9 everybody's going to blend and be the same, this is a diverse
10 society now and we value other cultures, so.

11 Q. And how do the policies at Phoenix particularly impact
12 students who are SLIFE?

13 A. Well, I think that they -- I think that they -- they
14 make them feel that they're not -- that they're not going to
15 be accepted, that they're going to be, you know, the business
16 about the shirts and the different colored shirts, I mean,
17 that kind of thing seemed to bother them that that the other
18 students were going to be treating them a certain way because
19 of the -- the shirt that they were wearing and that sort of
20 thing and what we have to do is we have to look at the context
21 they came from, I mean, they came from very, very stressful
22 situations and here they are being put in another situation
23 where they're trying to figure out this system and where do
24 they fit in it and what are they doing wrong or not, you know,
25 what is it that their place and a sense of belonging, bet back

1 again to the hierarchy of needs, they need to feel that they
2 belong and if you feel that you don't fit in for starters it's
3 much harder for you to focus and pay attention to your
4 learning and learn a brand new language and learn all the
5 content that they need to learn.

6 Q. And as you reviewed the policies at Phoenix did -- were
7 you aware of the no homework practice?

8 A. Yeah I, yeah. See, to me, if I had to pick, I mean, I
9 -- I do feel strongly about the --

10 MS. O'DONNELL: I'm going to object again to
11 the --

12 THE COURT: Yes counselor.

13 MS. O'DONNELL: -- I'm going to object to the
14 witness' answer. There -- there really wasn't a question and
15 the answer that she's giving is not responsive to the
16 question.

17 THE COURT: Counselor response.

18 MS. O'DONNELL: If there was a question.

19 THE WITNESS: I'm sorry.

20 THE COURT: Your response.

21 MS. MCINERNEY: Your Honor, I do believe that
22 she was going to give an answer that would be responsive to
23 the question.

24 THE COURT: Very well. The objection is
25 overruled. You can raise it again if the answer is not

1 responsive.

2 THE WITNESS: Okay. If I were going to pick one
3 of the most important parts of Phoenix that -- that I reacted
4 to when I first learned about Phoenix it would be the no
5 homework policy.

6 BY MS. MCINERNEY:

7 Q. And why is that?

8 A. I spoke earlier about exposure. In order to learn a
9 language you need maximum exposure to that language. It has
10 to be meaningful exposure; right. These students as they
11 mentioned use English during the school day. When they're
12 leaving the school, they're going home, they're using their
13 native language. They're new to the country. If they have to
14 leave English at the door of the school they're not going to
15 be reinforcing what they had learned that day and they're not
16 going to be furthering their English. And it's very important
17 for them to be able to take work home to be able to revisit
18 what they've learned especially in a situation where they
19 weren't sure of what it was that they were learning, but even
20 if it was, say at a school like McCaskey they would still need
21 to go home and revisit the material, make sure they
22 understand --

23 Q. And why is that important?

24 A. Well, it's important because we want them to learn
25 faster and I -- actually it seems to me that Phoenix is

1 slowing them down by not giving them homework. It's retarding
2 their progress by not giving them homework because they could
3 learn faster if they could take work home, because that helps
4 them remember, you know, you come back the next day, you have
5 to remember what did we do yesterday and two steps back to one
6 step forward, so it's really retarding their progress to not
7 give them homework, not accelerating their progress, so
8 they're not even meeting their own need by the no homework
9 policy. Yes.

10 Q. And when you interviewing students and you had
11 mentioned that you also had interviewed a parent, were there
12 any other practices that were -- that were something that you
13 assessed and you considered in whether they were implementing
14 the program appropriately?

15 A. Okay. So when we talk about implementing the program
16 it's also very important that parents be involved in
17 decision-making and it seemed -- when I -- when I talked to
18 the parents they express the fact that they -- they didn't
19 understand completely what they were being -- what the options
20 were that there were different programs that were possible for
21 their students and for their children, rather and that it
22 wasn't clear to them and I think it's very important that they
23 participate in these -- I understand that they were told, but
24 still they need to be able to participate in a conversation
25 about where their child will be placed and understand the

1 implications of that decision and why that decision was being
2 made and there were reasons why that decision was being made,
3 but apparently they were not clear on why that decision was
4 made to put them in Phoenix.

5 Q. What did you -- what did you learn that indicated that
6 they weren't -- that they didn't know -- that they didn't
7 learn why their children were being placed in a program?

8 A. Well, we -- we asked them, you know, do you -- do you
9 know why --

10 Q. Did you learn any information regarding interpretation
11 or translation services?

12 A. That they were -- they were not given -- they were
13 given appropriate interpretation services.

14 Q. And what about did you learn anything with regard to
15 the students that you interviewed relating to that topic?

16 A. Sometime -- in some cases I can't recall exactly which
17 students right now, but in some cases the students also had to
18 provide their own interpreter there was no school interpreter
19 it's my understanding that the school is to provide an
20 interpreter or a phone interpreter that you can call.

21 Q. And as part of your assessment did you consider any
22 grading policies? Did you look at student records?

23 A. Yes, I looked at the -- I looked at the transcripts of
24 the students, yes.

25 Q. And what were your conclusions based on that review?

1 A. Well, it was -- it was a case by case. I looked very
2 carefully at each student. I looked at their grade, each
3 semester in each subject and I found -- well, I found, I had
4 about an overall conclusion, but then each student is in a
5 different situation.

6 Q. What was your overall conclusion?

7 A. The overall conclusion and I did, I heard the testimony
8 here in court, but I also interviewed each student and I'm an
9 ESL teacher, I've been an ESL teacher for many years and I --
10 I was interacting with the students and each one of them
11 need -- really did need an interpreter and it was -- it was my
12 impression when I looked at the transcripts that the grades on
13 the transcripts and the students that I met it didn't appear
14 to me that those transcripts would be a reflection of mastery
15 of the classes that were taught double time with mainstream
16 teachers and mainstream students. So that was overall.

17 Q. I'd like to direct your attention to day one exhibit
18 15.

19 A. Okay. Yes.

20 Q. Now, you said in your report that you were concerned
21 that students were being promoted and graduated without
22 ensuring mastery of both the language and the content.

23 A. Right.

24 Q. Can you look at LSD35 which is the student's transcript
25 of the student Khadidja Issa?

1 A. Yes.

2 Q. And what if anything did you learn by reviewing that
3 transcript?

4 A. Okay. Now, I need to be back to the word access. This
5 is -- this is very interesting because this is the meaning of
6 access in that she was not being placed in content courses.
7 So if we look here she did have communication arts, but then
8 she -- she had her ESL class, she has international school ESL
9 it says and then she has skills prep, general art, fitness,
10 counseling all right. She was not given content area classes.
11 That's the first thing I noticed before I even look at the
12 grades.

13 Q. So her one content class would've been communication
14 arts?

15 A. Yes.

16 Q. Are you familiar with what Skills Prep is?

17 A. My understanding and this has been a little difficult
18 to nail down exactly, but my understanding is that Skills Prep
19 is a computer-based class that -- that students go through
20 during school to develop skills in a content such as math.

21 Q. And did any of the students tell you any information
22 about that class?

23 A. They had that they walked in and they sat at the
24 computer and did exercises.

25 Q. Okay.

1 A. I believe it's adaptive, it's one of those programs
2 whereas you go through you can go through faster or slower
3 depending on how well you answer questions is, you know, but
4 it was not an ESL version?

5 Q. And why is that a problem?

6 A. Well, they need -- they need interaction. Again,
7 second language acquisition depends upon interaction. If
8 they're going to be sitting at a computer it shouldn't be
9 during the school day. That's precious school day time. They
10 need to interact with people during that time. That's very
11 important for them.

12 Q. Does that increase their ability to access information
13 to learn content?

14 A. Yes. Interaction is an important part as I said
15 getting back to the oral transmission, they learn best from
16 people not by sitting at a computer doing exercises.

17 Q. So what else did you note about her transcript?

18 A. Well, what really struck me was after I looked at what
19 she was in then I looked at the grades. Now these are the --
20 these are the final grades so she has these 5.5 credits which
21 is what she was awarded and I looked and saw that except for
22 counseling an anomaly on the transcript which was a C the
23 other grades are all A and A-, A and A-.

24 Q. And what was her class rank?

25 A. I'm sorry, what?

1 Q. Her class rank.

2 A. Her class rank. Yes, that's her rank is 1 out of 84
3 students which I assume means she was first in her class.

4 Q. And directing your attention to LSD339 in that same
5 tab, tab 15, exhibit 15 what if anything did you learn from
6 this? First of all, what is it?

7 A. This is a worksheet. Reading A to Z. This is a
8 worksheet designed for young children who are native speakers
9 of English. This is -- this is a worksheet to see if you can
10 identify the words that begin with H, so it has pictures of
11 objects and some begin with H and some don't. What strikes me
12 about this and there are several things, but one thing that
13 strikes me about it is first of all it's drawings and we know
14 and in fact the ESL materials that are used at -- at the
15 School District, you know, I did look at those, you want
16 photographs for SLIFE, because photographs are ambiguous.
17 Everyone knows when you see a photograph, you know what you're
18 looking at. Drawings can be misinterpreted and they're not
19 universal and that's a huge issue for SLIFE so I'm saying
20 that, but the biggest one is the one in the middle, because
21 the one in the middle I realize that everyone isn't seeing it
22 right now, but it's a picture of a number of people and a dog
23 and hearts and the word that it's supposed to be illustrating
24 is the word hug, but if you don't know the word hug that pitch
25 picture doesn't necessarily convey to you hug. So that's just

1 an example.

2 Q. You mentioned these materials are attended for native
3 English speakers?

4 A. Yeah.

5 Q. Why is that a problem?

6 A. It's a problem because they're culturally embedded and
7 so the content -- the content assumes a familiarity so for
8 example the word hat has a picture of a very particular kind
9 of hat that is not the same kind of hat that would be a hat
10 from the students that we met yesterday. It's a conventional
11 man's, you know, formal hat with the band, that's -- that's a
12 western, that's our kind of hat.

13 Q. And are there resources available that are specifically
14 tailored to English language learners?

15 A. Every year we have a convention, the [indiscernible]
16 convention meets every year and we have -- we meet at a
17 convention center, we have a huge ballroom of materials, ESL
18 materials for all ages, all types of LSLIFE [ph] Non-SLIFE,
19 you know, all different types of Ls [ph] many different types
20 of materials all designed for ESL and there's no reason to
21 ever for any reason, even the simple worksheet to use
22 something that's not for ESL.

23 Q. And looking as LSD40.

24 A. Yeah.

25 Q. Is there any information that --

1 A. Yes.

2 Q. -- you gained from this?

3 A. Yeah, now, this one is interesting because what we're
4 looking at here if you remember when I said the three legs of
5 the stool it's not just language and content, but it's all the
6 kinds of way we ask people to answer questions and the types
7 of questions we ask and the way we expect them to think in our
8 system, our western style system so this is a matching
9 activity. What you're supposed to do is one side has
10 sentences and the other side all mixed up in a different order
11 has pictures. Well, if you're not used to school certainly
12 not used to western style school matching is not a familiar
13 activity. Now, you can teach someone, say, okay, this is
14 called matching and just do it, you know, draw the lines, but
15 it's interesting that yesterday, I believe Khadidja was shown
16 this and she was asked did you know what you had to do on this
17 sheet and I believe again that she said something to the order
18 of underline, underline the word, underline a word and I -- I
19 -- I don't believe that she fully comprehended although the
20 lines are here. So I wasn't in the room at the time and I
21 don't know how she got those lines, but she did also testify
22 that if she didn't know answers that people would help her
23 with answers, I, you know, I don't know if that's
24 [indiscernible].

25 Q. Can you look at LSD359?

1 A. Okay. Three --

2 Q. Yes, it starts with the words compare and contrast.

3 It's 359. It's in the same exhibit 15.

4 A. I'm getting there, yes. Yes, 359.

5 Q. And this appears to be a narrative that was authored by
6 Khadidja?

7 A. Right. The issue here is that we have to understand
8 what reading is, so obviously she wrote it, it's her
9 handwriting; okay. But -- but if she's asked to read it
10 either she can't read it which I believe yesterday she was
11 asked if she could read it and I believe, I'm trying to
12 recall, but I think that she said that she could not, but even
13 if someone can read out loud, that's called decoding, you --
14 it's possible for you very easily to copy -- copy something
15 that's -- copy something from the board which she said she had
16 done and actually read it and not understand it and so in
17 order to know if someone understands something you do not ask
18 them to read it aloud, because you can read aloud, if you know
19 the sound letter correspondences in a language you can
20 actually read something out loud and sound pretty good and
21 have no idea what you're saying. I've seen it in 100
22 classrooms, in ESL classrooms and they sound perfect and then
23 you turn to them and say, oh, tell us about what you just read
24 and they're like, oh, that's different. Reading must be, what
25 we call top down processing, meaning related, not bottom up

1 which is just calling the words and you know, that's the issue
2 that's going on here. She -- she doesn't have the
3 comprehension of it, yeah.

4 Q. And now I direct your attention to exhibit 48, again,
5 another student record.

6 A. 48.

7 THE COURT: I'm sorry, counselor, which one?

8 MS. MCINERNEY: Exhibit 48, I believe it's in
9 day two.

10 BY MS. MCINERNEY:

11 Q. Looking at what's marked LSD72.

12 A. Oh, I'm sorry, I went to -- to the wrong, I apologize.
13 That's the tab 48.

14 Q. Yes.

15 A. Exhibit.

16 Q. Exhibit tab 48, it's LSD72, it's the student transcript
17 of Qasin Muhammad Hasan.

18 A. Oh, yes.

19 Q. And what did you learn from looking at this particular
20 record?

21 A. Well, what I learn is again, this is similar to what I
22 said about Khadidja and I do have a point to make about both
23 of them. He is in -- he isn't in the communication arts like
24 she was, but he's in something called intensive reading which
25 tells me right away that that there was an awareness that he

1 needed help with reading. And he is in the ESL, the one
2 period of ESL.

3 Q. And was that true of all the student records that you
4 reviewed that all of them had one period of ESL?

5 A. Yes, they all had that one period of ESL in common.
6 He's in that school, the school's prep, Skills Prep, he's in
7 the general art and the fitness and counseling. So here
8 again, I would say is someone who was not getting access to
9 content. And what I notice from this transcript and from
10 Khadidja's that struck me was that what they really needed was
11 not provided if they're trying to accelerate instruction they
12 would put them in math, science and social studies, but they
13 must have felt that they couldn't handle it and that's why
14 McCaskey they wouldn't have been wasting their --

15 Q. I'm sorry.

16 A. I -- I was going to say that they wouldn't be spending
17 time precious time not being in content classes. In McCaskey
18 they would be in content classes from the very beginning.

19 Q. From an ESL perspective why is it problematic that he
20 did not have content classes?

21 A. Because they have limited time to graduate and if
22 they're trying to take high school and get through it they
23 need as soon as possible to get started on content area and
24 here is a whole time period where there's no progress
25 happening in the content area and so that's going to hold them

1 back in terms of getting their work done in math, science and
2 social studies and language arts for that matter, because in
3 his case he doesn't have communication arts.

4 Q. Okay.

5 A. Okay.

6 Q. And if I can turn your attention to exhibit tab 46.

7 A. Exhibit 46.

8 Q. Drawing your attention to LSD186 student transcript of
9 Van Ni Lang?

10 A. Van Ni, yeah. All right. And which number in 46?

11 Q. This would be 186. This is her student transcript.

12 A. Yes.

13 Q. And in this case was she taking content classes?

14 A. Yes, in this case she was in the science class. She
15 was in the geometry class and she was in Modern United States
16 History.

17 Q. Okay. And if you were to look at LSD318 it says essay
18 questions.

19 A. What -- oh, I see there's a green sheet. Okay. All
20 right. What number again? Sorry.

21 Q. It's 318.

22 A. Yes.

23 Q. And this is appears to be a narrative, an essay.

24 A. Right.

25 Q. In reviewing this what did it disclose in light of

1 other records that you reviewed at first?

2 A. Yes, I know. In interviewing Van Ni Lang and in
3 hearing her testimony and with my background in language and
4 ESL I would find it highly unlikely that she would be able
5 to write this material on her own and produce it on her own.
6 I mean, it's -- it could be her handwriting as I said before,
7 you know, she can write it down, but, you know, we have here,
8 you know, the earth surface relatively low temperatures and
9 pressures and prime -- pressures primarily and metaphoric rock
10 from -- it's just, yeah, very complex.

11 Q. So this appears to be a sample from a science class and
12 is --

13 A. Yes, science.

14 Q. -- her science class with someone who is trained in ESL
15 based on your review of staffing at the school?

16 A. The science class, no. The science teacher did not
17 have ESL certification according to the information I was
18 provided.

19 Q. So in order to communicate this kind of information
20 what would -- what would the teacher have to do?

21 A. This material here which is on geology so it would have
22 to be with visuals and videos. There's a lot of wonderful
23 video material and you can even turn off the sound and you can
24 have the teacher narrate the video specially with geology it
25 would be great, because they're talking about, you know, the

1 -- the interaction of the rocks over time and the layers that
2 form and so you can -- you can modify, that's a typical way to
3 modify is to use a video and then the instructor modifies
4 language use, so that would be an example.

5 Q. And would you anticipate that in the McCaskey model
6 that the science teacher too would be able to provide
7 support --

8 A. Oh, I would fully expect that.

9 Q. -- with the student?

10 A. Yes.

11 Q. Okay. And looking at LSD192, what does this indicate?
12 It's dated January 1, 2016?

13 A. Okay. All right. So -- all right. What we're looking
14 at is a cartoon picture of people at a picnic and there's a
15 word bank with words for them to choose from and then
16 directions as to using the words and answering questions. And
17 this is 6-1-16 and so this means that's -- it's June so she's
18 been in school for sometime and she came in as entering, all
19 right.

20 So what I notice here is that these sentences are very
21 rudimentary, well, compared to totally different from what we
22 just looked at actually. And so she says they are doing
23 picnic, the family is doing it, they are eating sandwich and
24 watermelon, they are doing on grass. Okay. What I notice
25 right away, I mean, we can talk a lot about this, but what I

1 notice right away is doing is used three out of the four times
2 that is in the prompt, what are they doing, who is doing it,
3 so she's doing as opposed to using real verbs that describe,
4 she's just using doing. And the eating which is a verb that
5 is descriptive is also in the prompt, what are they eating.
6 They are eating sandwich and watermelon, so -- so she's
7 clearly dependent upon the prompt to construct the sentences
8 and their -- and their very basic sentences.

9 I'd also like to add on that same point about the
10 matching, this is a very complex task and there were two other
11 students underneath this task nothing was written except did
12 not understand, could not write anything, did not understand
13 and I would like to also add that that's not just about
14 language, what they might not have understood is what were
15 they supposed to do? There's a picture. There are some words
16 written. There are some questions and you know, in our system
17 we learn how to negotiate this type of task, but it's really
18 quite complicated for someone who's coming new to the country
19 and is used to repeating and reciting.

20 Q. And could you look at exhibit tab 47 also in day two?
21 And this would be the transcript --

22 A. Sui Hnem.

23 Q. Sui Hnem?

24 A. Yes. Which number, please?

25 Q. Forty-seven.

1 A. Well, I'm in 47, what number?

2 Q. Looking at LSD247.

3 A. All right, her transcript. Okay.

4 Q. And what did you learn from reviewing this transcript?

5 A. Well, similarly she's in a mix. She's got science,
6 she's got geometry, she's got history. Her -- well, actually,
7 you know, looking at the grades what I recall striking to me
8 was that her, if we put history aside which might be a
9 separate issue we might want to talk about, but -- but let's
10 look at her ESL class, B+, she he has a B+ with her ESL
11 teacher.

12 Q. And why is that significant?

13 A. Well, anyone can get a B+ h but the reason is -- okay.
14 The reason it's significant is her other grades are A and A-
15 so you wouldn't, I mean, you wouldn't expect her to be getting
16 an A in science and an A in geometry, I mean, art, maybe,
17 although Khadidja last -- yesterday showed extensive writing
18 answer from an art class, so art isn't just we think of art as
19 not writing, but they do read and write in art, but in any
20 case, most of this is A and A- and how can that be, she got a
21 B+ in ESL, it doesn't make, it doesn't make sense to me.

22 Q. And under transcript it reflects that she's taking a
23 geometry class?

24 A. Yes.

25 Q. Is that a particular class that's difficult for student

1 who are --

2 A. Well, you know --

3 Q. -- entering?

4 A. -- people -- see, here's the thing, there's a common --
5 a common sense that math, oh, ESL, they do math, it's numbers
6 blah, blah, blah, but you know what and I have a whole
7 training -- math is language, because first of all there are a
8 lot of word problems. Second of all, you always have to not
9 just show your work, but explain your work. You have to say,
10 how did you get your answer? I mean, some students don't like
11 that too much that they to do it, they just want to give their
12 answer; all right. But language is intimately tied to math
13 today. It didn't used to be decades ago, but today it is, so
14 people don't realize how much language is in math class.

15 MS. MCINERNEY: Your Honor, could we take a
16 break?

17 THE COURT: Certainly. I notice this child
18 ranked number 3 out of 84. The last child we didn't mention
19 was number 1 out of 56. Every one of these children seemed to
20 be in the very top of their class if the transcript is
21 accurate.

22 THE WITNESS: Yes, Khadidja was 1 out of 84 and
23 Sui Hnem is 3 out of 84.

24 THE COURT: We will stand in recess for 15
25 minutes.

1 DEPUTY CLERK: All rise.

2 - - -

3 (Whereupon, there was a recess in the proceeding from
4 3:02 p.m. to 3:17 p.m.)

5 - - -

6 DEPUTY CLERK: All rise. United States District
7 Court is again in session. The Honorable Edward G. Smith
8 presiding.

9 THE COURT: You may be seated. Thank you. The
10 Court is called to order. All part -- are you okay?

11 THE WITNESS: Yeah.

12 THE COURT: The Court is called to order. All
13 parties previously present are once again present. The
14 witness is on the witness stand. Counselor you may proceed
15 with your direct examination.

16 MS. MCINERNEY: Thank you, Your Honor.

17 BY MS. MCINERNEY:

18 Q. Turning to exhibit tab 50, we're going to look at just
19 one last group of student records. These concern the student
20 Anyem Dunia. And I'd like to draw your attention --

21 A. Whoa, whoa, whoa, whoa. Yes.

22 Q. -- to LSD118. And could you tell us what this document
23 is?

24 A. This is an access test result.

25 Q. And could you tell us what the Access Test is?

1 A. All right. The -- WEDA gives two different tests, one
2 is for placement and -- and this is similar into other
3 companies, they gave an Access Test for placement and one for
4 achievement, so this is the achievement one.

5 Q. And what does it measure?

6 A. It measures achievement in the four domains, listening,
7 speaking, reading -- listening, speaking, reading and writing.
8 It does it individually and overall.

9 Q. And I draw your attention to the date on this document.
10 The date of February 5, 2015?

11 A. Yes.

12 Q. Which was I believe around to time that this particular
13 student was enrolled, started school. What can you tells,
14 what does this information disclose with regard to his English
15 proficiency levels?

16 A. This actually struck me when I first saw it. This
17 pattern is not unusual for ESL students overall, but unusual
18 for SLIFE.

19 Q. And why is that?

20 A. Because his listening and speaking is a high level one
21 and his reading is midlevel two. And his writing is an
22 admitted level three. So --

23 Q. And what is unusual about that?

24 A. Well, usually as we've discussed literacy is a weak
25 area for SLIFE, so their reading and writing is usually lower

1 than their listening and speaking.

2 Q. And would this student still be considered an entering
3 level student?

4 A. Well, his overall is a 2.4 and so that does put him in
5 the level two emergent, okay. But he's still, you know, one
6 of the first two levels.

7 Q. Would he still be considered SLIFE a student with
8 limited and why is that?

9 A. Yes.

10 Q. And why is that?

11 A. Yes, because -- yes, SLIFE is not a level. SLIFE is
12 based on your -- your grade, two grades behind -- we went
13 through the definition of SLIFE, so it's not a level, you can
14 be a level two and be a SLIFE.

15 Q. And would in your opinion, what is your opinion with
16 regard to what type of instructional program he should
17 receive?

18 A. I think that for a student like this entering for the
19 first time even though his reading and writing would be
20 stronger than the others his listening and speaking is quite
21 low. He needed -- he would have benefited, I believe from the
22 international school at the get-go when he first arrived.

23 Q. And looking at his transcript at LSD115, oh, by the
24 way, did you review the placement test for this particular
25 student? Was there a placement test in his file?

1 A. There was a -- there was one page that indicated there
2 was a placement but there was no name on it.

3 Q. Okay. So he may have been given the Access Test
4 instead of the placement test?

5 A. Yes, it did not appear that he was given the placement
6 test.

7 Q. And is that important in any way?

8 A. Well, he's required -- he -- he should've received the
9 placement test on arrival.

10 Q. Would it have disclosed more information?

11 A. It's difficult to know what it would have disclosed.
12 We cannot say that, because --

13 Q. Okay.

14 A. -- it wasn't administered.

15 Q. So looking at LSD115. We have discussed this
16 previously in court with respect to the timeframe in which the
17 student graduated from the Phoenix Academy, but if you -- did
18 this particular document indicate anything to you with regard
19 to his acquisition of content relating to his classes? And I
20 draw your attention to the 12th grade year.

21 A. Yes. What struck me is his grades were -- went
22 [indiscernible] precipitously down the 12th grade is down in
23 his grades are largely C- he even has a D+. He has some Bs,
24 but his Bs are in his ESL class. And he said, I believe that
25 he testified that he does like science and so he really wanted

1 to understand the science, but it looks as though he did not
2 do well in biology or chemistry at all or in communication
3 arts which is language based and the geometry was a D+ so.

4 Q. And what did your interview of him disclose with regard
5 to his experience in school?

6 A. Well, it was a very strange thing that he said, because
7 when I asked him what was school -- what was it like going to
8 school and what was he learning in his class -- classes, he
9 said well, every day is the same. And I don't usually hear
10 that, so that was -- that struck me as unusual. And I -- the
11 only thing, I mean, I can't be sure exactly, because I wasn't
12 in the room with him, but what I'm wondering is how much he
13 understood because sometimes you tend to say, well, it's the
14 same if -- of course, it wasn't the same, the teacher's
15 teaching different things every day, so when someone says it's
16 the same that gives you pause as to whether they were really
17 following what was going on and then I see the grades.

18 Q. And looking at LSD360 --

19 THE COURT: Can I interrupt you for just a
20 moment, counselor?

21 MS. MCINERNEY: Oh, I'm sorry.

22 THE COURT: Ma'am, on this student transcript it
23 shows that Anyem is ranked 6 out of 107 and it shows transfer
24 English and transfer math as 9th grade, do you know what that
25 means, transfer English and transfer math?

1 THE WITNESS: I read an explanation of that just
2 last night.

3 THE COURT: Well, if you don't that's fine. I'm
4 sure someone from the school will know. And if you turn to
5 LSD088 on the same document.

6 THE WITNESS: Yes.

7 THE COURT: Did he discuss with you these
8 absences?

9 THE WITNESS: Yes, he talked about not going to
10 school, yeah.

11 THE COURT: So he did not go to school all of
12 these days which must be, I don't -- count them --

13 THE WITNESS: Right.

14 THE COURT: -- there must be 30 absences there.

15 THE WITNESS: Yeah.

16 THE COURT: And yet he still graduated number 6
17 out of 107 in June even though he didn't even go to school?
18 Well, in May, alone there's one, two, three, four, five, six,
19 seven --

20 THE WITNESS: Well, that's cumulative, right?
21 And look at his 9th grade. So that's pulling him up.

22 THE COURT: Okay.

23 THE WITNESS: I'm guessing.

24 THE COURT: That's a good guess. All right.

25 Excuse my interruption counselor, you may proceed.

1 THE WITNESS: But I understand what you're
2 saying, yes.

3 BY MS. MCINERNEY:

4 Q. I'm finished with that document.

5 A. Okay.

6 Q. And with this student's records. However, there is one
7 indictment related -- in his file that relates to a
8 standardized test that he took. And if you look at 364, 365,
9 it's actually difficult to read those, but I believe we have
10 another document which is actually exhibit tab 85 and that
11 would be in the day two binder.

12 A. I need an assistant.

13 Q. And this was in response to, this is some standardized
14 test scores.

15 A. All right. So you're -- you're directing me to tab 85.

16 Q. Eighty-five.

17 A. Oh, yes.

18 Q. And what if anything did you learn from reviewing this
19 particular document?

20 A. Well, this -- this document although it isn't labelled
21 as far as what it refers to, it refers to math and reading
22 assessments, standardized assessments, is that what we're
23 looking?

24 Q. Yes.

25 A. What number, 363?

1 Q. It's 363, yes.

2 A. Yes. Okay. So if we're looking at -- are we looking
3 at him Adon [ph] or everybody.

4 Q. Yes, just in general.

5 A. Just in general. Okay. These are standardized tests
6 that were given at two points in time a score one, score two
7 and then the grade level that that score equated to and the
8 academic level it equated it and the amount of growth and it
9 was done for math and it was done for reading.

10 Q. And in general where were the students scoring?

11 A. Well, in general if we look at grade level we're saying
12 K which is kindergarten, Qasin did score to third grade in
13 math and we see a 6th grade in math, the second score session
14 for Sui Hnem. We also see no scores at all for two of the
15 students that were no scores at all entered NA, assuming NA is
16 not a score.

17 Q. And with respect to Anyem, there was one other document
18 that did reveal some standardized test scoring for him that I
19 thought was contained here, but it's not. If you could go to
20 tab 50 --

21 A. That's the Keystone --

22 Q. -- one last time and to LSD117?

23 A. Okay. So, again the tab is?

24 Q. It's tab 50, exhibit 50?

25 A. Tab 50 and the --

1 Q. LSD is 117. And up at the top it says test history, it
2 has the student's name?

3 A. Yes, this is the Keystone in -- but I believe he took
4 it in biology, this is [indiscernible] it should be --

5 Q. And what did it reveal about his level in general, how
6 he scored on this? It noted -- I -- and a below basic?

7 A. All right. I'm just looking to see -- right, because
8 the algebra has nothing, because you can take -- he only took
9 the biology on coming down here, okay.

10 Q. So where it says administrative performance level,
11 name, on the right-hand side?

12 A. Yes I'm -- I'm not in a position to interpret these
13 numbers.

14 Q. Okay. Okay. But you concede that that's at least the
15 level that was noted? So Dr. Marshall, can we turn now to
16 your assessment of the Phoenix Program. Did you consider
17 whether the program is producing results indicating that
18 language barriers confronting older immigrant students are
19 actually being overcome by Phoenix? Did you consider that
20 issue?

21 A. Yes, I did.

22 Q. And what was your conclusion?

23 A. My conclusion is that the program at Phoenix is not
24 overcoming the language barriers for this population.

25 Q. And what is the basis of your conclusion in that

1 regard?

2 A. Well, the fact that they are -- that they are still at
3 lower levels of English and the transcript are telling us that
4 they're not understanding what's going on in class.

5 Q. When you evaluated programs in the past looking at
6 school language instruction ESL programming what kinds of
7 factors do you consider? What do you analyze? What do you
8 look at?

9 A. Well, normally when you assess a program you first take
10 a look at how well the students are doing. So you want to
11 look at their performance, right. So -- so I did look at the
12 measures of performance that I could see.

13 Q. And what measures of performance would you normally
14 look at to assess --

15 A. I would normally --

16 Q. -- a program?

17 A. I would look at -- I would look at the access scores
18 and I would try to find out whether there was growth, how
19 they're moving through the levels, how quickly they're moving
20 through the levels based on where they started and where
21 they're headed. And what -- what kind of distribution there
22 is within the levels in terms of the four skills and how far
23 they're progressing in their four skills. And I would take a
24 look at how they're doing after they exit the ESL Program and
25 I would take a look at how they're fairing in the mainstream

1 classes once their mainstreamed. And -- and just get a
2 general picture of their English achievement, that would be
3 the most important, but then when you -- okay.

4 Q. So in large measure you would be relying on
5 quantifiable data --

6 A. Yes.

7 Q. -- that is specific to that program that you're
8 assessing?

9 A. Yes, absolutely.

10 Q. And did you have that kind of data to look at in this
11 case?

12 A. Well, I did my best. What happened was I was given --
13 I was given Access scores very detailed and giving variables
14 stretching, but they were not disaggregated by unfortunately,
15 they were not disaggregated by Phoenix versus McCaskey. So
16 there was actually a field that said Phoenix or McCaskey in
17 the raw data.

18 Q. And how long was that the raw data that was available?

19 A. You mean how many pages?

20 Q. Yes.

21 A. Well, 924 pages.

22 Q. And had there been any analysis by the School District
23 of that data?

24 A. Yes. Yes. There was an analysis that was presented in
25 a PowerPoint that had been prepared and the -- I looked

1 through -- I looked through that analysis looking for Phoenix
2 McCaskey and I didn't find it. I found that it was -- the
3 data was broken down by as far as it was grade level they had
4 9th grade, 10th grade, you know, you could look by grade level
5 across the district. It was -- it was very robust in that
6 respect that they really did look at Access and it was
7 over time, it was more data than I was given data from 2013
8 and 2015, the PowerPoint was based on 2010, 11, 12, 13, 14,
9 15, so -- so they, the -- the PowerPoint was based on more
10 years, but again, it didn't have Phoenix and McCaskey
11 separated.

12 Q. So there was no disaggregated data that they had
13 provided --

14 A. No.

15 Q. -- regarding the program at Phoenix?

16 A. No, none.

17 Q. Okay. And what other measures would you look at?

18 A. Will, okay. Yeah. In addition to looking at the
19 Access data and the student performance I would look at
20 teacher effectiveness.

21 Q. And how would you evaluate that?

22 A. Well, it's very important not to have just people who
23 are ESL certified, but to observe them periodically and have a
24 tool to do so, you need -- you need some kind of an
25 observation tool and you need to do that regularly and meet

1 with them and debrief with them and make sure that they are
2 using the appropriate methodology for the model that you're
3 using in your program.

4 Q. Was there any information or data provided by the
5 School District relating to teacher performance or observation
6 or accountability?

7 A. I did find as I mentioned before there were -- there
8 were a number of documents provided in as, you know, forms and
9 then I looked for versions of those that had been filled out.
10 In the case -- there was an observation checklist of
11 visitation checklist, it was -- it was rather brief, but it
12 was a -- it was an observation sheet, but I couldn't find any
13 that had been filled out. That was not provided to me. I
14 don't know that they exist or not.

15 Q. You did -- you didn't have anything relating to
16 Phoenix?

17 A. No.

18 Q. So looking at exhibit tab 78?

19 THE COURT: Are your arms getting tired yet?
20 Are your arming getting tired [indiscernible]?

21 THE WITNESS: Yes, I recognize this document.

22 BY MS. MCINERNEY:

23 Q. And did you find any documents produced that related to
24 McCaskey of this nature?

25 A. Yes. This is an example of one of the documents that

1 arrived after I had submitted my -- my -- my report.

2 Q. And what is this?

3 A. So -- all right. So the -- the way -- the way it works
4 at -- at -- at Lancaster is that there are these checklists
5 that the teachers fill out -- is there a problem?

6 MS. O'DONNELL: Your Honor, I'd like to make an
7 objection to the documents --

8 THE COURT: Yes, counselor --

9 MS. O'DONNELL: -- that she's testifying that
10 were not included in her report. This would be new
11 information to us as defense -- to me as defense counsel and
12 to my clients and so obviously we haven't had an opportunity
13 to prepare --

14 THE WITNESS: You gave it to us.

15 MS. O'DONNELL: -- to cross-examine her on that
16 on this.

17 THE COURT: Counselor.

18 MS. MCINERNEY: Your Honor, this is information
19 that we requested repeatedly from the School District and they
20 belatedly produced this supplemental information after
21 deposition testimony had disclosed that it existed.

22 THE COURT: And can you make an offer of proof
23 as to what you expect the witness to testify regarding this
24 information?

25 MS. MCINERNEY: Yes. I anticipate that the

1 witness will testify that this is the single piece, the only
2 page that was provided relating to accountability measures
3 undertaken at Phoenix with regard to their ESL Program. There
4 are many documents produced relating to McCaskey they are
5 similar in nature, but this is the sole document that was
6 produced that related to the ESL Program at Phoenix with
7 regard to what was done to evaluate the program, what was done
8 to provide observation.

9 THE COURT: Very well. The document was
10 provided by the defense, was in the possession of the defense,
11 the -- it does not appear as though there is going to be any
12 unfair surprise with respect to this only because this goes
13 right to the heart of what we've been talking about and is
14 something that the defense had in its possession and it
15 apparently was addressed during depositions?

16 MS. MCINERNEY: Yes.

17 MS. O'DONNELL: Your Honor, this is -- this is
18 at tab, I believe it's the document that we're talking -- when
19 we just reviewed --

20 THE COURT: ELL second marking period checklist,
21 am I at the right page?

22 MS. MCINERNEY: It's one page and it's tab 78.

23 MS. O'DONNELL: Tab 78? And it was just a
24 matter of you're not --

25 THE COURT: Oh, I might be in the wrong binder

1 then. It's not day it two binder?

2 MS. MCINERNEY: It's day two, oh, yes. Four --

3 THE COURT: And I have 78, it's titled ELL
4 second marking --

5 THE WITNESS: That's the one.

6 THE COURT: Second marking period checklist.

7 MS. MCINERNEY: That's correct.

8 THE WITNESS: 441. 441.

9 THE COURT: Okay. And you are familiar with
10 this document?

11 THE WITNESS: Yes, I am.

12 THE COURT: And how did you become familiar,
13 ma'am.

14 THE WITNESS: It arrived.

15 THE COURT: As one of the documents --

16 THE WITNESS: It was provided --

17 THE COURT: -- that came after the --

18 THE WITNESS: -- to me.

19 THE COURT: -- after your report was prepared?

20 THE WITNESS: Yeah.

21 THE COURT: All right. I'm going to --

22 MS. O'DONNELL: Your Honor, our -- our tabs have
23 the -- it says ESL instruction, so this is matrix.

24 THE COURT: Oh okay. So we're on the different
25 page.

1 MS. MCINERNEY: Can I provide it to counsel?

2 THE COURT: Can we make sure that Attorney
3 O'Donnell has this ELL Second Marking Period Checklist.

4 THE WITNESS: Okay. Oh, boy. Okay.

5 THE COURT: And that -- you're familiar with
6 that document, counselor.

7 MS. O'DONNELL: I am.

8 THE COURT: Okay. Very well, the objection is
9 overruled. You may proceed.

10 THE WITNESS: So in the original documents
11 provided by the School District of Lancaster there were blank
12 copies of the marking period checklist. First marking period,
13 second, third and final. And I didn't have any examples of
14 them in their filled out form until as I said subsequent. So
15 what I received was quite a number of checklists by teachers
16 and I looked through each one and I saw McCaskey and I was
17 looking for Phoenix and I did find one from Phoenix and it's
18 filled out by Ms. Ortiz. It's for the second marking period
19 1-13-14.

20 BY MS. MCINERNEY:

21 Q. And turning to exhibit 63, I'm sorry, it is --

22 A. Tabs.

23 Q. -- 64. Again that is in the day two binder and it's
24 tab 64.

25 A. Okay.

1 Q. It is ESL Department Internal Review.

2 A. Yes.

3 Q. And it says Phoenix 2014-15.

4 A. Yes.

5 Q. And if you go to what is marked LSD296 this appears to
6 be some kind of an internal review of the program at Phoenix,
7 the ESL Program at Phoenix. And going to LSD296 what does it
8 say about caseload?

9 A. It says we have a total of four ESL teachers. Read the
10 whole -- read it?

11 Q. Mm-hmm.

12 A. One is the social studies teacher, the other is the
13 Spanish teacher -- a -- a Spanish teacher, Ms. Weathers and
14 myself and myself refers to Ms. Ortiz, because she was the one
15 who filled that out.

16 Q. So we're not going to go through the information in all
17 of these documents --

18 A. Okay.

19 Q. -- I just have a few questions for you. Did you
20 believe that this document was an effective evaluation of the
21 Phoenix Program and whether it is successful in overcoming
22 language barriers?

23 A. No, I don't. It looks more to me like a -- the
24 starting outline of what would be a report and it also doesn't
25 provide quantitative data on the progress of students or an

1 analysis of that data.

2 Q. And with regard to its evaluation of caseload and ESL
3 teachers, I think we've talk about the fact that the -- a
4 Spanish teacher would be world language teacher rather than
5 ESL, it's not an ESL instructor?

6 A. Yes.

7 Q. Okay.

8 A. Also and --

9 Q. And what else did you think was missing from this type
10 of evaluation?

11 A. Right. Well, it's -- it's professional -- if you look
12 under professional development there should be -- there should
13 actually be a more mapped out formalized presentation of the
14 professional development that is offered and to whom it's
15 offered and when it's offered and what the topics are.
16 Instead it talks about tips on how to meet the needs of our Ls
17 and it says that all members -- all staff members are
18 encouraged to contact me or Ms. Weathers in reference to
19 questions and -- and I would expect something more in that
20 section for sure.

21 Also it really doesn't indicate culturally
22 responsiveness. We haven't talked much about that, but the
23 question on page -- on page -- on 296 under demographics
24 actually number five there was a question on the form, the
25 question is missing here, but it was on the form, the prior

1 form, this, what are we looking at? Which year? Because the
2 other year actually the -- the -- the following year they had
3 that question listed as to what are they doing to make their
4 program culturally responsive and the answer here is very
5 minimal and it doesn't really address in a substantive way
6 what it means to be culturally responsive and that's extremely
7 important for SLIFE as one of the main areas that SLIFE need
8 is culturally responsive environment.

9 Q. And drawing your attention to exhibit tab 65, there's
10 another, not 65, I apologize. It is 66. It looks like this
11 is the following year and there was another review that was
12 conducted?

13 A. Yes.

14 Q. Can you -- can you just tell us having reviewed all of
15 these documents whether this particular way of assessing a
16 language program is consistent with what you have seen in
17 either school districts?

18 A. No. It -- it -- it has the categories, but the
19 information in each category is suggestive and broad brush and
20 is not -- is not robust it doesn't really tell enough about
21 the program to know whether it's being effective.

22 Q. And does it provide -- does it rely on any -- and it
23 doesn't provide quantifiable data?

24 A. No. No. The main -- well, yes. It -- as we said with
25 the Access scores there's no -- there's no real breakdown here

1 of the Access scores and how the students are doing.

2 Q. Now I understand that you didn't have the opportunity
3 that the School District itself does not disaggregate the data
4 with regard to Phoenix that would be an impossible task to do.
5 Were you able to glean anything in looking at -- in just
6 looking more broadly trying to see a little piece of how the
7 Phoenix students were doing? Were you able to discern any
8 information?

9 A. Yes. When I --

10 Q. And what was that?

11 A. Well, when I received the data I -- I thought this
12 would be a great opportunity to find out how Phoenix was doing
13 because the data did have a field that indicated McCaskey and
14 Phoenix and so I was able to take the data, a piece of it.

15 Q. When you say a piece of it, a piece of the data would
16 it be for a particular year?

17 A. Yes. It was --

18 Q. And what was that year?

19 A. 2015.

20 Q. Thank you.

21 A. So I took a snapshot, I don't mean a snapshot, I mean,
22 you know, I took, okay. I took a look at the 2015 data for
23 McCaskey and Phoenix and compared them. And I --

24 Q. And what did you learn?

25 A. Well, I looked at them on several different measures.

1 It's very difficult to draw conclusions on a snapshot of data,
2 because you're not really looking at growth over time and I
3 would have wanted to do that and of course, it wasn't provided
4 by the District. But I was able to take a look. I looked at
5 the four -- the four skills, I -- I -- I looked at overall
6 proficiency. First I looked at overall proficiency, Phoenix
7 and overall proficiency at McCaskey and I looked at the levels
8 of the students, so how many were at level one through six,
9 okay.

10 Q. And what did your snapshot look disclose?

11 A. Well, the way -- the way it looked like -- the way it
12 played out was if you just looked at the two schools and of
13 course they're not the same, they're going to be some
14 differences, it didn't look that different when you looked at
15 the overall distribution of levels although I would say there
16 were -- there were generally speaking upper-level students at
17 McCaskey than at Phoenix, but I'm not going to draw
18 conclusions from that, but when I separated out only literacy
19 which includes two skills, reading and writing, so taking out
20 the listening and speaking looking only at the reading and
21 writing I saw a glaring difference jump and the difference was
22 that at Phoenix compared with listening and speaking the
23 students are at much lower levels in reading and writing so
24 even though overall it looks similar, when you just look at
25 reading and writing McCaskey is clearly doing a much better

1 job of getting them through the levels in the reading and the
2 writing and that meant a lot as far as I was concerned with
3 respect to how SLIFE would do in that -- in a school with
4 track record and again, it's difficult because it is just a
5 snapshot.

6 Q. And this was not information provided that -- that
7 analysis that was done by the School District?

8 A. No. I -- I did that analysis.

9 Q. So in your professional opinion has the School District
10 produced evidence that the program produces results indicating
11 that language barriers confronting these particular students
12 are actually being overcome?

13 A. Well, not only that it's -- it's not that they're not
14 producing evidence that they're not overcoming them, it seems
15 to me that the evidence -- the evidence shows that what
16 they're doing is almost holding them back from making progress
17 in the language, you know, it's detrimental what they're
18 doing, I feel, you know, that -- that they're not overcoming
19 their language barriers and they are holding them back from
20 progress they could be making in language.

21 Q. In your opinion could all of the students in this case
22 and similarly situated students benefit from being placed at
23 McCaskey?

24 A. Absolutely. That -- it's very clear that that is where
25 these students would thrive.

1 Q. Thank you.

2 MS. MCINERNEY: That's all I have for this
3 witness.

4 THE COURT: Thank you very much, counselor.
5 Attorney O'Donnell, you may cross-examine the witness.

6 - - -

7 CROSS-EXAMINATION

8 - - -

9 BY MS. O'DONNELL:

10 Q. Good afternoon.

11 A. Hi.

12 Q. Hi. So I just, I want to follow up on that last case
13 that Attorney McInerney discussed with you and when you
14 were -- when you were looks for disaggregated data what areas
15 were you looking specifically? Not so much in terms of the
16 date, bought if we use that as a starting point what were some
17 of the areas you looked at?

18 A. I looked at length of time in the program. I looked at
19 level, overall composite level and I looked at the literacy
20 break out.

21 Q. Okay. Did you -- did you use time in the ESL Program
22 as a -- as a data point?

23 A. I looked at it, I didn't use it for what I just talked
24 about, no.

25 Q. Did you use special education designation as data

1 point?

2 A. No. No. I stayed away from that.

3 Q. Did you use U.S. enrollment data as a data point?

4 A. I did not.

5 Q. Okay. And are you aware that these are areas that are
6 considered when -- when the School District of Lancaster looks
7 at data for their ELLs?

8 A. Yes.

9 Q. Okay. Let me take you -- let me take you back to the
10 beginning of your testimony. You said that you reviewed
11 documents is that correct in preparing your report for this --
12 this trial or this case?

13 A. Yes.

14 Q. Yes?

15 A. Yes.

16 Q. And you've referred to a list of documents that were
17 provided to you; is that correct?

18 A. Yes.

19 Q. And through your -- your testimony you said that they
20 were provided by the School District of Lancaster; didn't you?

21 A. Some of -- some of them were, yes.

22 Q. Okay. So not all of the documents were provided to
23 you; right?

24 A. Right.

25 Q. [Indiscernible] School District -- well, strike that.

1 What do you mean by some of the documents were provided by the
2 School District of Lancaster? What does that mean?

3 A. Well, I also looked at WIDA [ph] documents, State of
4 Pennsylvania documents.

5 Q. Anything else?

6 A. Federal regulations.

7 Q. Okay. And when you say State of Pennsylvania documents
8 what State of Pennsylvania documents did you read?

9 A. I looked at parental consent, I looked at --

10 Q. Parental consent?

11 A. The -- okay, hang on. Hang on. Hang on.

12 Q. I'm --

13 A. I looked at --

14 Q. For clarification I'm not hearing you, that's why I --

15 A. Oh, okay.

16 Q. -- [indiscernible] that?

17 A. I looked at the -- oh, okay. Oh, I looked at the
18 guidelines document that we looked at earlier here. I looked
19 at the -- I looked at the accommodations allowable for English
20 learners. I looked at the parental -- parental consent
21 document.

22 Q. And how were you --

23 A. Yeah.

24 Q. -- provided with that information?

25 A. I went to the website.

1 Q. Whose website?

2 A. Pennsylvania Department of Education website.

3 Q. So you pulled -- you did some independent research,
4 pulled from their website the document that you felt would be
5 useful to you?

6 A. Yeah.

7 Q. Okay.

8 A. Yes.

9 Q. And you relied on the content of that document and your
10 own review in assisting you to prepare your report for today?

11 A. Yes.

12 Q. Okay. And also in preparing your report where did you
13 obtain -- other than the -- the Pennsylvania Department of
14 State website where else did you obtain information?

15 A. I obtained information from interviews.

16 Q. Okay, but I'm talking about documents for right now.

17 A. Okay.

18 Q. So could we just stay with that?

19 A. Okay.

20 Q. Okay. So where -- where else did you obtain documents?

21 A. Most of the documents oh, the WIDA. I -- I went to the
22 WIDA site and got WIDA documents there.

23 Q. WIDA site. You went to the WIDA sites. Are you a
24 member of WIDA?

25 A. Am I a member of WIDA?

1 Q. Yes, ma'am, are you a member of WIDA?

2 A. You mean as an individual?

3 Q. Yes, ma'am, as an individual.

4 A. No. No. No.

5 Q. Okay. So I did hear your testimony on direct that you
6 acknowledged WIDA as being a national consortium that was --
7 one of the reasons why it's -- it's in existence is to provide
8 guidance to educators?

9 A. It's -- it's a state membership. States join WIDA.

10 Q. And so in order for -- so for example if either in
11 Massachusetts or New York have you joined have you joined WIDA
12 as a member through the state?

13 A. New York is not a WIDA state --

14 Q. New York --

15 A. -- by choice. Massachusetts is a WIDA state.

16 Q. So do you have access to WIDA through membership with
17 Massachusetts?

18 A. You don't need -- you don't need access. WIDA is
19 freely available to anyone.

20 Q. It's -- okay. So you used their website for
21 information that you're using to prepare your report?

22 A. Yes.

23 Q. Is that correct? Okay. Where else did you obtain
24 documents?

25 A. I looked at the federal -- some federal documents --

1 Q. Okay.

2 A. -- also on line.

3 Q. Okay. And what website did you use for looking at your
4 [indiscernible] documents?

5 A. USDOE.

6 Q. That was the -- the U.S. Department of Education?

7 A. Yes. U.S. Department of Education.

8 Q. Okay. And any other source that you used to obtain
9 documents?

10 A. Documents.

11 Q. Documents.

12 A. I think that's it.

13 Q. Okay. Where did you get the documents that are
14 marked -- that are bate stamped, unfortunately LSD in this --
15 in this litigation? Where did you get those documents?

16 A. I don't understand. Where did I get the documents?

17 Q. From whom did you get the documents?

18 A. The attorneys.

19 Q. Which attorneys?

20 A. My -- those attorney -- that -- I'm not.

21 Q. Can you name one of them?

22 A. I don't --

23 Q. Can you name one of them that helped, that provided you
24 with the documents?

25 A. Yes. Primarily Maura McInerney sent me the documents,

1 I think they almost always came from her directly.

2 Q. Okay. Okay. So in order to prepare your report you
3 relied on documents that were provided to you by Attorney
4 McInerney and the websites of WIDA, the U.S. DOE and the
5 Pennsylvania Department of Education as well. Did I miss
6 anything?

7 A. Unless we both missed it, no.

8 Q. Okay. Did you go to the Phoenix website and pull any
9 documents from Phoenix Academy?

10 A. You know, I did look at the -- okay. Are we talking
11 about documents that I printed and used or websites I went to
12 to look at?

13 Q. I am asking for document --

14 A. Okay.

15 Q. -- that you used in preparing your report --

16 A. No.

17 Q. -- so it doesn't matter to me --

18 A. No. No.

19 Q. -- if you printed --

20 A. Okay.

21 Q. -- them or not?

22 A. All right. No. I understand. I'm just thinking of --
23 I did go to other websites to look, but I did not print. I
24 did not use the documents, no.

25 Q. So is that -- so did you go to the Phoenix Academy

1 website at all? Let's start with that question.

2 A. Phoenix Academy website, yes.

3 Q. You did? And did you print anything or read anything,
4 any documents or any information on that website? You're
5 shaking your head no. Is that a no?

6 A. No. No. That's a no.

7 Q. Okay. So you didn't -- you didn't look at the Phoenix
8 Academy website? Do we -- do we agree on that?

9 A. I looked at the website. I didn't use the material in
10 the report.

11 Q. Okay. And then what about any documents from the,
12 pardon me. Did you look at the School District of Lancaster
13 website?

14 A. Yes, I did.

15 Q. Okay. And did you read or print any documents from
16 that website?

17 A. I read, but didn't print and didn't use.

18 Q. Okay. Other than the documents provided by Attorney
19 McInerney did you rely on any documents concerning either the
20 program at Phoenix Academy or the school of District of
21 Lancaster's International School?

22 A. Other than the ones provided --

23 Q. Yes, ma'am.

24 A. -- no.

25 Q. Okay. Now, in terms of the interviews, let's talk

1 about the people you spoke with?

2 A. Okay.

3 Q. To prepare this report.

4 A. Okay.

5 Q. Who were they?

6 A. Who did I talk to?

7 Q. Yes, ma'am.

8 A. Khadidja Issa.

9 Q. Okay.

10 A. Qasin Hasan.

11 Q. Okay.

12 A. I spoke with Sui Hnem. I spoke with Van Ni Lang. I
13 spoke with Alembe -- Alembe Dunia and Anyem Dunia, those are
14 the students you just wanted to students; right?

15 Q. I want -- I want you to name anyone that you
16 interviewed to prepare your report.

17 A. And I spoke with Phiza Abdulla [ph] who was a parent
18 and Marquee [ph] who was a parent and did you want the other
19 interviews?

20 Q. Yes, ma'am.

21 A. Megan Brown and Sheila Mastro -- I can't remember
22 exactly her last name [indiscernible].

23 Q. Okay. But you did -- you did referred her -- refer to
24 her earlier as --

25 A. Yes.

1 Q. -- the woman who testified here in court --

2 A. Yes, that was her.

3 Q. -- on Monday; is that correct?

4 A. Sheila, yes.

5 Q. Was she the first witness?

6 A. Yes.

7 Q. And her last name I believe was Mastropietro [ph]?

8 A. Thank you.

9 Q. Is that correct?

10 A. Probably, yeah.

11 Q. Probably?

12 A. Yeah.

13 Q. Anyone else, ma'am?

14 A. Yes. I -- I interviewed Jandy Rivera.

15 Q. Jandy Rivera? Okay. Was there anyone else that you
16 can think of that interviewed to prepare this report and for
17 your testimony today?

18 A. Is it okay if I -- I look at the list to see if I
19 missed anybody?

20 Q. Absolutely.

21 A. Okay. Does that reflect on me if I have to look at the
22 [indiscernible] Mastropietro? Yes.

23 Q. Okay. So we --

24 A. That's --

25 Q. -- agree on that name?

1 A. One, two, three, four, five, six, seven, eight, that's
2 it. Those are the interviews.

3 Q. Okay. How did you interview the children? When whom
4 did you interview the children?

5 A. I interviewed them with an interpreter or a land line
6 or a language line.

7 Q. Okay. And where were those interviews held?

8 A. I'm -- I don't remember the name of the exact
9 organization, but it was a -- a social services organization
10 in Lancaster.

11 Q. Okay. Would that have been at Church World Services?

12 A. [Indiscernible] I -- I -- I'm -- I'm -- I apologize.

13 Q. You can't testify to where you -- you --

14 A. Because --

15 Q. Let me finish my question, ma'am.

16 A. Okay.

17 Q. You -- are you able to testify about where you met the
18 plaintiffs to prepare -- interview -- to -- to conduct
19 interviews in preparation for your report and your testimony?
20 It's simply a yes or no. Do you --

21 A. Yeah. I -- I --

22 Q. Are you able to testify to that or not?

23 A. I -- I don't trust my memory to remember the exact name
24 of the organization. I can picture the building in my mind
25 and I went there two days in a row and spent all day in the

1 building interviewing these folks; okay.

2 Q. Interviewing the children?

3 A. Yes.

4 Q. And their parents?

5 A. Yes.

6 Q. Okay. You just don't know what building you were in?

7 A. Well, okay. The -- the Lutheran one is the one that
8 closed. It's probably the church -- well, she was at Church
9 World Service.

10 MS. MCINERNEY: Objection [indiscernible].

11 THE WITNESS: Wait, Lutheran Children and Family
12 Service.

13 THE COURT: One -- one moment, ma'am.

14 THE WITNESS: I --

15 THE COURT: Is there an objection? No? The
16 objection is withdrawn?

17 MS. MCINERNEY: Yes.

18 THE COURT: Very well, you may proceed.

19 BY MS. O'DONNELL:

20 Q. I'm sorry, ma'am?

21 A. Lutheran Children -- I do have it -- I have it written
22 here. So --

23 Q. What do you have written?

24 A. Lutheran Children and Family Service.

25 Q. Okay. And is that a different organization than the

1 one that closed?

2 A. Than the one that closed. I know that there was one
3 organization that closed and another organization was taking
4 over its services.

5 Q. And how do you know that information?

6 A. From a conversation that was held informally explaining
7 how we had set up the interviews. I --

8 Q. Were you also present for the -- the testimony of
9 Aleese Chessin [ph]?

10 A. No.

11 Q. You were not here that day in court to hear Aleese
12 Chessin testify?

13 A. No. I was not.

14 Q. Okay. So the best of your recollection is you had an
15 informal conversation with someone about the name of the
16 organization where you were going to be interviewing these
17 children and to the best of your recollection as you sit here
18 today you don't know what that is?

19 A. If I had known it was important I would've made sure
20 that I knew it. I was focused on my interviews. I was
21 focused on the information. I was not focused on what
22 building I was in or the particular organization that had made
23 the arrangement s for the interviews. I -- I put my attention
24 on my work and my expertise in my field and I didn't feel
25 although in retrospect if I had known it was important I

1 would've made a point of it, but I didn't feel that those
2 details were important for me to hold in my head and then I
3 didn't hold them in my head and I'm --

4 Q. Okay.

5 A. -- that's about all I can say on that matter.

6 Q. Thank you. Thank you. Other than the children who --
7 who else attended those interviews with you?

8 A. Wait, hold on one second.

9 Q. Take your time. Dr. Marshall would you like a break?

10 A. No. I just need a little more water.

11 THE COURT: Actually the problem is I told you
12 this was all going to easy, was I right?

13 THE WITNESS: I'm sorry?

14 THE COURT: I told you this was all going to be
15 easy.

16 THE WITNESS: You -- you devil. Okay. All
17 right.

18 THE COURT: Are you ready to go. Go ahead.

19 MS. O'DONNELL: Okay.

20 THE COURT: Counselor you may proceed.

21 THE WITNESS: Go ahead.

22 BY MS. O'DONNELL:

23 Q. Thank you. So my question, I'll repeat it.

24 A. Yeah.

25 Q. Was who other than the children and their parents

1 attended the interviews with you?

2 A. With me.

3 Q. Yes, ma'am.

4 A. Okay. The -- the attorneys were in the room but they
5 did not -- it -- it was an -- it was my interview.

6 Q. Okay.

7 A. Does that make sense?

8 Q. Well, let's see.

9 A. Okay.

10 Q. Let's test that, shall we.

11 A. They -- they were off doing their own thing. They
12 weren't -- they were off doing their own thing. I was the one
13 doing the interviews with the interpreter.

14 Q. Okay. So let me give you an instruction so that when
15 you're -- you're testifying it might help to relax. Do your
16 best.

17 A. Okay.

18 Q. If my questions are --

19 A. Thank you.

20 Q. -- are awkwardly phrased or confusing --

21 A. Okay.

22 Q. -- please tell me --

23 A. Okay.

24 Q. -- and I'll do my best to rephrase or repeat them so
25 that you're more comfortable and you're able to respond as

1 fully and completely as you can.

2 A. Okay.

3 Q. Okay?

4 A. Sure.

5 Q. Okay. If you want to move the mic closer to your mouth
6 so that you can sit back in your chair that would be -- that
7 would be good -- as far as I'm concerned and if that's what
8 makes you more comfortable than let's do that; okay?

9 A. Yes.

10 Q. All right. All right. Now, when you interviewed --
11 can you tell me the order in which you interviewed the
12 children?

13 A. Is that important? The order.

14 Q. The older Dunia boy?

15 A. No. Just hang on, because I -- I did -- I did review
16 this, but --

17 MS. MCINERNEY: Objection. Relevance.

18 THE COURT: Counselor what's the relevance of
19 the order that she interviewed the children?

20 MS. O'DONNELL: Well, it goes to her
21 recollection of what the -- what the interviews -- I'd like to
22 know who, I mean, she did say who she interviewed, but I'd
23 like to press that a little further and see what the order
24 was.

25 MS. MCINERNEY: I don't see how the order is

1 relevant to her memory -- to her memory of what they said.

2 THE COURT: Well, ma'am --

3 MS. MCINERNEY: Or that the order matters.

4 THE COURT: Ma'am did you take notes with -- at
5 each one of these interviews?

6 THE WITNESS: I -- yeah, I had a schedule. I
7 was given a schedule. I was given a schedule of when -- of
8 each -- of the interviews.

9 BY MS. O'DONNELL:

10 Q. And who --

11 A. -- but I don't have that schedule with me.

12 Q. Okay. And who --

13 A. And I followed a schedule --

14 Q. All right.

15 A. And the students appeared and it was how do you do?

16 Let's start your interview.

17 Q. Do you recall how many students you interviewed per
18 day?

19 A. I interviewed I think four, one, two, three, four,
20 well, there were six. I think I interviewed two, four, three,
21 I think four on one day and the other two -- because there was
22 someone who was going to show up and didn't show -- and show
23 up the next day. This is very difficult believe it or not.
24 See, Issa, Issa and the Dunia brothers and then Qasin. I
25 think it was like three and three.

1 Q. Okay. Okay. Other than the children.

2 A. Yes.

3 Q. You testified that you -- you did a telephone interview
4 I believe you said with Ms. Rivera?

5 A. Yes. That was by phone, yes.

6 Q. Okay. And how long did that interview last?

7 A. About an hour.

8 Q. Okay. And what information if at all did you use to
9 prepare your report that you obtained from Ms. Rivera?

10 A. A good bit of it, yes.

11 Q. Okay. And -- and you did not provide notes of -- of
12 the interview with Ms. Rivera to your attorneys to -- to
13 disclose to us with that report; is that correct?

14 A. No. I didn't provide anything to them about that --
15 that interview.

16 Q. Okay.

17 A. I did the interview.

18 Q. Okay. And when you say you used most of it, can you
19 tell me what she said you have a recollection of what you
20 heard from Jandy Rivera?

21 A. Yes, actually I was here this morning and I heard
22 things this morning that were similar to what I had heard when
23 I interviewed her. Do you want me to be specific or there's
24 quite a bit?

25 Q. How about if we -- we approach it this way. Was there

1 anything different that you heard in the telephone
2 conversation that you didn't hear in her testimony this
3 morning?

4 A. No. It was amazingly what I had heard, yes.

5 Q. Okay. All right. Did you say amazingly what I had
6 heard? I'm sorry. I couldn't --

7 A. No. I just meant that it was very -- it was -- I kept
8 hearing, oh yes, I remember it reminded me, yeah, I remember
9 her saying that. I remember her saying that, that's all I
10 meant by that.

11 Q. Oh, okay. I'm just -- I wasn't sure that I heard you
12 properly.

13 A. Yeah. No, I didn't mean I was surprised.

14 Q. Okay. So you reviewed documents. You did some
15 interviews, the children, Ms. Rivera and was that it? I'm
16 sorry. Was that all -- was that -- not that -- that -- that
17 to minimize the number of people you spoke with was, but was
18 that it?

19 A. Mm-hmm.

20 Q. Yes? Is that a yes?

21 A. Yes.

22 Q. This is being recorded by and transcribed --

23 A. I understand. Right.

24 Q. -- by a court reporter.

25 A. Right.

1 Q. So you need to try not to speak over me and you need to
2 answer in words that can be spelled; okay.

3 A. Yes, I understand.

4 Q. All right. Thank you very much. Thank you, very much.
5 Did you speak to anyone at all at the Phoenix Academy?

6 A. From the Phoenix Academy?

7 Q. Yes, ma'am.

8 A. No.

9 Q. Okay. And when you were on the website did you look to
10 see whether or not there was an executive director running
11 that program?

12 A. Yes.

13 Q. Do you know who the executive director running that
14 program is?

15 A. Ms. Misnik. Yeah.

16 Q. Yes. And did you -- in order to prepare a
17 comprehensive report did you think about speaking with Ms.
18 Misnik to understand more about the Phoenix Academy's program?

19 A. I did not -- this is the first time I've done this and
20 I did not know that it was appropriate or expected for me to
21 do that. I didn't know that was something that would be
22 possible to do.

23 Q. Okay.

24 A. Would it? Oh, I -- you ask questions, I don't. Sorry.

25 Q. You got it. You got this down. Okay. So along the

1 same line would your answer be the same if I asked whether or
2 not it might have occurred to you to speak to the principal at
3 the Phoenix Academy the person who works and supervises other
4 teachers and -- and --

5 A. Same --

6 Q. -- over the curriculum?

7 A. Same thing. I did not know that that was something
8 that was available to me, possible for me to do as part of
9 this.

10 Q. Okay. And what about the -- the administration at
11 School District of Lancaster? Did -- did you look on the
12 website to see the identity of the superintendent of schools?

13 A. Yes, I did.

14 Q. Okay. And do you know who that person is?

15 A. Demaris Rowel [ph].

16 Q. And had you ever speaking to Demaris Rowel regarding the
17 curriculum and education available to all students?

18 A. Same answer. As for the other two administrators, the
19 same thing. I did not know that that would be appropriate or
20 possible for me to do.

21 Q. If you had known that it was appropriate and possible
22 would you have asked to interview those folks?

23 A. I think so. Why not? Or I -- I think so.

24 Q. Okay. Well, I tend to agree with you. Now, without --
25 without rubbing this in too much, I know we've heard a lot --

1 we've heard the -- that the acronym SLIFE used all day today,
2 but for our -- the purposes of our discussion I'd like to use
3 the terminology students with limited or interrupted education
4 is that -- is that a fair description of -- of the acronym;
5 ma'am?

6 A. Yeah, the only difference would be the word formal,
7 because there are different types of education. There's
8 informal education and there's formal education.

9 Q. Okay. And you would consider would you not public
10 school education to constitute formal education?

11 A. Yes, I would.

12 Q. Okay. And how broad does that definition go? Does
13 it -- does it reach to home schooling?

14 A. I'd have to think more about that because that's not my
15 area of expertise, home schooling. I know that they follow,
16 I'm just speaking as almost -- they -- the home schooling
17 needs to follow those school curriculum.

18 Q. Okay.

19 A. So to that extent, but I really could not feel
20 confident answering anything about home schooling.

21 Q. Okay. And then what about cyber-schooling? Do you
22 feel comfortable testifying about whether or not
23 cyber-schooling is formal education, formal public school
24 education?

25 A. Cyber-schooling I'm not even familiar with the term

1 cyber-schooling.

2 Q. Okay.

3 A. I think I can guess what it is but.

4 Q. So when we talk about Students with Limited or
5 Interrupted Formal Education is there a particular demographic
6 that that applies other than the obvious?

7 A. Well, what -- other than the obvious, I'm not sure
8 what --

9 Q. Obvious would be any child who hasn't -- who hasn't
10 attended school, seat time consecutively from kindergarten
11 through 12th grade?

12 A. Well, as I said, there are several characteristics
13 that's only one of them.

14 Q. Okay. And the other characteristics do they -- what --
15 what -- what do they include?

16 A. Limited literacy.

17 Q. Okay.

18 A. Or no literacy; right. Two years behind their grade
19 level.

20 Q. Okay.

21 A. And except with rare exceptions traumatic or stressful
22 experiences in prior to arrival in the country.

23 Q. Okay. But I thought we -- I thought you testified that
24 the stressful and traumatic experiences didn't need to be part
25 of that.

1 A. I said except in rare exceptions.

2 Q. Okay. So there could be an American student who might
3 be SLIFE; is that correct?

4 A. No. These are -- this is a subset of English language
5 learners.

6 Q. So -- so -- so for example, a child coming from South
7 America, Bolivia who doesn't speak any English at all --

8 A. Yes.

9 Q. -- would not be a SLIFE student if that person attended
10 school every year consecutively through the end of that
11 person's education when they transferred to --

12 A. What -- where -- where did they attend school in
13 Bolivia?

14 Q. In Bolivia.

15 A. Well they may or may not be SLIFE. We would need -- we
16 would need to know more about their background.

17 Q. But if they -- but if that person only had those
18 factors that you included, right, the -- the two years behind
19 and whatever the other ones were, all of those factors would
20 have to apply to a student transferring to an American school
21 in order to be considered SLIFE?

22 A. I'm trying to be -- I'm trying to understand what
23 you're asking, but for some reason it's not --

24 Q. It's not -- it's not coming through?

25 A. Well, because limited, the word, you see the key here

1 is limited. So if someone -- we're using Bolivia.

2 Q. Sure.

3 A. If someone were educated their entire life, but limited
4 the people teaching them were not really qualified, the books
5 were out of date, there's conditions in the country did not
6 allow for serious focus on school, because of what was going
7 on, you know, limited covers a lot.

8 Q. Okay.

9 A. So --

10 Q. So stop there. So, by whose standards? By Bolivian
11 standards or by American standards?

12 A. By American standards.

13 Q. Okay. So in Bolivia they may have finished an
14 appropriate amount of education in order to get a certificate
15 to leave school and they be happy and go on their merry way if
16 they decided to come to America we would not accept their
17 credentials, academic credentials we would -- we would
18 consider those folks SLIFE?

19 A. Well, your -- you've talked about an issue that is not
20 within my area of expertise --

21 Q. Okay.

22 A. -- which has to do with the certificate from another
23 country. That's not something that I have become involved in
24 in my work.

25 Q. All right. So I'm just -- I'm -- I'm trying to -- to

1 -- to understand the universe of SLIFE people that can come to
2 America to be educated. Are they only foreign nationals of
3 refugee status that come from war torn countries and have had
4 interrupted education when they come to America for education
5 is -- are they -- are they who we're calling SLIFE?

6 A. Not only refugees. They could be immigrants.

7 Q. Immigrants. But they have -- and they have to be ELLs
8 right? They have to speak no English at all?

9 A. Well, you raise an interesting point which hasn't come
10 up at all it doesn't apply to the School District of
11 Lancaster, but is very interesting in our field which is that
12 you could actually come from an English speaking country and
13 be SLIFE.

14 Q. And how would that work?

15 A. But those -- the problem with them that's a very
16 controversial issue in our field as to what to do with them,
17 because they speak English like Jamaicans. But it doesn't
18 really revolve -- it doesn't have anything to do with what
19 we're doing right now.

20 Q. Well, it certainly doesn't have anything to do with
21 your report; correct?

22 A. Right. I --

23 Q. Right. You did not consider any of that information?

24 A. I didn't -- I didn't consider that, because I was
25 trying to stay with what was relevant and I was trying to work

1 with the -- with the world of those students that I was
2 analyzing.

3 Q. And -- and that segues into my next question. So you
4 -- you -- it was your opinion I believe that the folks at
5 Phoenix or at least these six kids; right?

6 A. Yeah. Yes.

7 Q. Did not receive an equal education opportunity as a
8 result of their accelerated through the Phoenix Academy? Was
9 that your opinion?

10 A. Yes.

11 Q. And so my question is equal with whom?

12 A. The -- the students at McCaskey, their counterparts.

13 Q. So if we have a student let's take Khadidja Issa and
14 she's at Phoenix Academy and she has a younger sister at
15 McCaskey, Norsham Adissa actually, the name is [indiscernible]
16 would -- would -- is it your testimony that Khadidja going
17 through the Phoenix Academy is not getting an equal education
18 with her sister Norsham who -- who -- I'm sorry. I was -- you
19 -- you were distracting me looking back in the courtroom, I
20 thought perhaps something was happening back there. Not
21 getting an equal education to her sister Norsham who attends
22 McCaskey, but in a younger grade. Is that your opinion in
23 this case?

24 A. That was very long and I'm trying to make sure before I
25 say yes or no that I understand what --

1 Q. Okay. Well, thank you for asking --

2 A. -- you said.

3 Q. -- me to clarify or repeat.

4 A. Yes.

5 Q. I'll repeat my question.

6 A. Could -- could you do that.

7 Q. Okay.

8 A. Because equal education there's so many things that go
9 into that, because --

10 Q. Well, explain -- explain that to us.

11 A. -- there are different --

12 Q. Now, I'll ask you again --

13 A. Well, there are different grade levels. There are
14 different people, what does equal mean? I --

15 Q. What does equal mean to you, it was your opinion?

16 A. Well.

17 THE COURT: Counselor, there's an objection?

18 MS. MCINERNEY: Objection. I -- I feel like
19 we're -- that this is really asking for a legal conclusion as
20 to what constitutes an equal educational opportunity.

21 MS. O'DONNELL: I'm only looking for the facts,
22 Your Honor. I'm not looking for her legal opinion at all.

23 THE COURT: I'll overrule the objection and see
24 where it goes.

25 THE WITNESS: All right.

1 BY MS. O'DONNELL:

2 Q. You tell -- you tell me what equal means. Now, I'm not
3 saying legally equal. I'm saying from your perspective as --
4 as a professional educator and scholar and writer what does
5 equal mean to you in terms of your opinion in this case and as
6 applied to these children?

7 A. Her sister went to the -- I need to know more, because
8 did her sister go to the international school?

9 Q. I'll allow you to assume that so when you did your
10 interview you never knew that? You did not discover that
11 information from Khadidja when you spoke with her?

12 A. I'm asking -- I'm asking to make sure you're -- when
13 you say equal, that you want me to say if [indiscernible] if
14 Khadidja had gone to the international school --

15 Q. Okay. Let's -- let's do --

16 A. -- is that what you want to know?

17 Q. Yes, sure.

18 A. Okay.

19 Q. Okay.

20 A. All right. So you're -- you're asking me that --
21 whether if Khadidja went to the international school she
22 would've gotten a better education?

23 Q. No.

24 A. No.

25 Q. That's not my question?

1 A. That's not your question.

2 Q. No.

3 A. Okay.

4 Q. All right. So -- so let's just take it -- let's just
5 take it -- let's break it down and step back a little bit.
6 Are you aware that Khadidja Issa had a sister who is attended
7 McCaskey High School whose name is Norsham who is one year
8 younger than Khadidja?

9 A. Yeah, I didn't know her name, but yes.

10 Q. You knew that? So when you're forming your opinion as
11 applied to these girls are you saying that Khadidja's
12 education through the Phoenix Academy is not an equal
13 opportunity with the education her sister Norsham is getting
14 at the international school?

15 A. Oh, well, yes, absolutely. It's not.

16 Q. Okay. And -- and that -- that's -- what is that based
17 on? Your review of the records?

18 A. That's based on the -- the interview with -- the
19 documents that I reviewed and the interview with Khadidja.

20 Q. Okay. What were the questions you were asking
21 Khadidja? How did you -- what -- what helped you form your
22 opinion through that interview process?

23 A. I asked her to talk about her ESL class and what she
24 was learning and I asked her about her other classes and what
25 she was learning.

1 Q. Okay. And were you here for her testimony?

2 A. Yes, I was.

3 Q. And was the testimony that she gave here substantially
4 the same as the information she provided you during the
5 interview?

6 A. And even more so, yes.

7 Q. Even more so here?

8 A. Mm-hmm.

9 Q. Okay. So she -- is that a yes?

10 A. Yes. Oh, yes.

11 Q. Is it even -- so she gave more information to the Court
12 than she did to you specifically in the interview?

13 A. Yes, because at the time I interviewed her I didn't
14 have her work samples, they came in later.

15 Q. Okay. And did those work samples change your initial
16 opinion at all?

17 A. It reinforced for me --

18 Q. Go ahead. Finish your answer. It reinforced your --
19 it reinforced your opinion.

20 A. It reinforced for me what she had anecdotally told me
21 by giving the actual documentation and her looking at it and
22 saying when she didn't know the answer the answer was given to
23 her.

24 Q. Okay.

25 A. Which I was guessing at, but what -- couldn't actually

1 know until the student work was provided.

2 Q. Now, when you rendered an opinion and I'm just
3 referring to the first page of your report. I'm sorry, page
4 four under Roman III analysis at the very bottom of that first
5 paragraph.

6 A. All right. So what --

7 Q. You said --

8 A. Just one minute, please.

9 Q. Okay. I -- I was just going to read it to you and
10 break it down and ask you some questions.

11 A. Okay.

12 Q. I've got broken down, so I don't --

13 A. Okay.

14 Q. -- think you need to follow along.

15 A. Okay.

16 Q. But if you'd like to you may. Are you there?

17 A. Go ahead.

18 Q. Okay. Ready?

19 A. Yes. Yes.

20 Q. Yes? Okay. So your -- your sentence begins, "The ESL
21 Program and placement of older immigrant ELLs at Phoenix and
22 one not based on sound education theory or legitimate
23 experiment." That's your opinion?

24 A. Yes.

25 Q. And what is that based on? Padagogi [ph] or something

1 else?

2 A. What would -- what would --

3 Q. What -- how did you base your opinion? Upon what did
4 you base that? It's not -- that the program is not based on
5 sound educational theory or legitimate experiment. What
6 particularly were you relying on to form that opinion?

7 A. My background in education of English language
8 learners.

9 Q. And when you say your background is that in teaching
10 teachers how to teach ESL?

11 A. Well, it's in the fact that I have a doctorate in the
12 field and many years of teaching and observing working with
13 districts and knowing about the needs of SLIFE.

14 Q. And does that have anything to do with national -- a
15 child's national origin? Do you consider a child's
16 national -- because I'm sorry, I mean, I'll try to allow you
17 to answer that first question. And if you -- you -- you --
18 you're looking at me and sort of cocking your head to one side
19 and so I don't know if you're hearing me or you don't
20 understand my question, so if you don't understand my
21 question --

22 A. Right.

23 Q. -- please ask me to rephrase it and I'll do that; okay?

24 A. Yes, I -- I -- I okay. Maybe you're talking about does
25 accelerated credit recovery ever work for anybody at all? Is

1 that what you're asking me?

2 Q. No.

3 A. Oh.

4 Q. That wasn't the question.

5 A. Okay. What's -- what's the question?

6 Q. Let me try again. Okay.

7 A. I'm sorry.

8 Q. Whether in formulating your opinion that the program at
9 Phoenix was not based on sound educational theory or
10 legitimate experiment you considered a student's national
11 origin in helping to formulate that opinion. Does it apply to
12 all students across the board or just some students? Or does
13 it have nothing to do with it at all?

14 A. Well, that's what I -- I -- I apologize, I'm trying,
15 I'll really trying to understand you.

16 Q. Okay.

17 A. And you're asking me are there some students for whom
18 that educational theory could work. Is that --

19 Q. I'll take -- okay. I'll take that, yes.

20 A. And I would say it's -- it's possible that that -- that
21 accelerated credit recovery could work for some students.

22 Q. Okay. Now when you say could work for some students
23 who are those students?

24 A. Okay. Now, I would say that my purview is TESOL.

25 Okay. So --

1 Q. And explain -- just -- just let's stop using acronyms,
2 because --

3 A. Okay. I'm sorry. My -- my --

4 Q. -- it gets, long interviews to try to remember them.

5 A. My expertise. Okay. I'm doing my best here. My
6 expertise here. I am here because I am a specialist in TESOL.

7 Q. Which is?

8 A. Okay. Teaching English to Speakers of Other Languages.

9 Q. Okay.

10 A. And so when I talk about whether a theory is
11 educationally sound.

12 Q. Right.

13 A. -- I am talking about whether it is educationally sound
14 for the population of students that I have expertise in which
15 would be English language learners.

16 Q. Regardless of their national origin?

17 A. Regardless of their national origin. Why is that a
18 problem for me to understand what you're saying? What --
19 regardless of their national origin.

20 Q. Right.

21 A. English language learners regardless of your national
22 origin, so meaning if they were born here. Is that what you
23 mean? Like would it apply to a U.S. citizen who's an English
24 learner? Is that what you're asking?

25 Q. That could be, yes, an example. There are many, many

1 examples I could give you --

2 A. Yeah.

3 Q. -- but you do have [indiscernible] do you not?

4 A. Okay. Yeah.

5 Q. I don't think I need to [indiscernible]?

6 A. It's hard for me -- for some reason that is not
7 intuitive to me to understand what it is we're talking about
8 here, but I guess it doesn't matter what their national --
9 national -- why would that -- in terms of my expertise there
10 are a lot of English language learners who were born here.

11 Q. Actually in terms of your opinion, so that's all I want
12 to know whether national origin factors into it at all,
13 because you're right, there could be some Americans in fact
14 some Canadians that don't -- that are English language
15 learners. Do you agree?

16 A. And there are some people -- there -- there are some
17 students from other countries who are not English language
18 learners.

19 Q. That is correct.

20 A. So it's like a --

21 Q. But as far as your opinion goes.

22 A. Yes.

23 Q. Who did you have in mind? All English language
24 learners regardless of their national origin; is that correct?

25 A. Well, no. I have in mind the newcomer Non-English

1 speaking immigrants.

2 Q. So limited to that -- that group?

3 A. Yes --

4 Q. You don't think this accelerated program works limited
5 to this group?

6 A. This group, yes.

7 Q. But it could work for some groups, just not this
8 groups?

9 A. I'm -- yes.

10 Q. Okay. And you say even if supported, this is number
11 two, and even if supported by experts it is not--

12 A. Right.

13 Q. -- effectively implemented. And again, because we're
14 talking about this particular group of people.

15 A. Well, wait a minute, I was still thinking about your
16 former question. I want to go back to that again, because --

17 Q. Do you want to change your testimony?

18 A. No. No. No. I want to --

19 Q. Well, if you don't want to change your testimony we can
20 move on.

21 A. I want to -- I want to make sure I'm understanding.
22 When I said that this program might work for other students I
23 wasn't referring to English language learners.

24 Q. I understand that. We're only talking about
25 Non-English speaking people.

1 A. Okay. Good. Good.

2 Q. So now you're not going to change your opinion?

3 A. No. I wouldn't change --

4 Q. You're confident with where you are?

5 A. I just want.

6 Q. Okay. Good.

7 A. I just want to understand. I want to understand.

8 Q. Okay. I -- and I think you do.

9 A. Okay. Good.

10 Q. [Indiscernible] so even if supported by experts you
11 still don't think that this is a good program for Non-English
12 speaking people? That's your -- that's your opinion; right?
13 It's in your report.

14 A. Well, that's why I -- I really, you know, I know I'm in
15 a court of law, but I'm an academic and I'm -- I'm constantly
16 trying to really think about things, so there's one
17 possibility that --

18 Q. Applicable to this case?

19 A. What? No. It doesn't.

20 Q. Applicable --

21 A. No.

22 Q. Well, I only want to --

23 A. It doesn't apply to these students at all. It has
24 nothing to do with these students.

25 Q. So when we talk about these students we're talking

1 about the universe of students it's not limited to --

2 A. Okay.

3 Q. -- to these six, it's the students at Phoenix Academy;
4 right? And it might be these --

5 A. No.

6 Q. -- students or the students you didn't interview?

7 A. Right. The other members of the class; right. Yeah.

8 Q. Right. Or -- or the ones that are still at Phoenix
9 Academy that you didn't interview; right? Is that a yes? It
10 seems like you're nodding.

11 THE COURT: I don't understand that question
12 counselor.

13 MS. O'DONNELL: Okay.

14 THE COURT: Are you talking about the entire 350
15 people at Phoenix Academy or are you talking about the 18
16 refugees? What are you referring to?

17 MS. O'DONNELL: The 18 refugees.

18 THE COURT: Okay.

19 THE WITNESS: That's what we're talking about
20 then absolutely. Yeah.

21 BY MS. O'DONNELL:

22 Q. Why?

23 A. Does not -- I -- that's my opinion.

24 Q. Now, let's go to the next group. What about the entire
25 group, the -- the other 332 people at Phoenix Academy?

1 A. Okay.

2 Q. What about them?

3 A. Okay. Well I -- this wasn't in -- on my report because
4 I didn't think I was asked to render an opinion.

5 Q. I'm trying to understand your opinion here. So is
6 your -- is your report only with respect to these six
7 plaintiffs?

8 A. [Indiscernible].

9 Q. Or is your opinion only relevant --

10 A. Not the -- not --

11 Q. -- to these six people -- plaintiffs?

12 A. Not the six, the entire class that they belong to.

13 Q. Okay.

14 A. But that doesn't mean all the English language learners
15 at Phoenix. It doesn't mean all.

16 Q. Okay.

17 A. Do -- do -- do you get -- do you follow me? I'm not --

18 Q. So what do you -- what do you understand -- well, okay.
19 I don't -- I don't know yet, but let's see. What is your
20 understanding of the 18 people at Phoenix who constitute the
21 class?

22 A. That they're immigrants and refugees 17 to 21 years
23 old.

24 Q. Okay.

25 A. Okay. Who have arrived -- recently arrived and were

1 placed in Phoenix instead of being given a choice --

2 Q. Okay.

3 A. -- to go to another school. And I'm -- I know there
4 are other students at Phoenix besides that.

5 Q. And so it's -- so that I understand your testimony and
6 I apologize, I know you're getting tired and thirsty, so that
7 I understand your opinion even if the program, the accelerated
8 program was supported by experts these 18 students cannot
9 learn, is that your -- is that what you're saying?

10 A. Yes.

11 Q. Okay. And based on the interviews that you conducted
12 with these six kids and all the documents provided to you by
13 Attorney McInerney and the websites you've looked at it's your
14 opinion that this program even supported with experts is not
15 effective in overcoming language barriers for these 18
16 students?

17 A. Yes.

18 Q. Is that your opinion?

19 A. That is my opinion, yes.

20 Q. Okay. And I'm going to -- I'm going to assume I know
21 the answer to these questions, but I just want to hear you say
22 and I just want to hear your answers and in reaching your
23 conclusions that -- that you gave to do you did not meet with
24 any focus groups of the district consistent with ELL teachers
25 to survey their needs?

1 A. I did not.

2 Q. You did not conduct one or more walk in classroom
3 observations to get a feel for the instruction at Phoenix?

4 A. I requested it. I really would've wanted to observe.
5 That was my regret that I was not able to go into the schools,
6 both schools, take a look, observe classes, talk with
7 teachers, I would've wanted to do that. I -- I wasn't able to
8 do that, because of the schedule, because I was informed that
9 it was the summer and this whole proceeding needed to take
10 place before the beginning of the school year and that there
11 was absolutely no way that I could do that.

12 Q. Did you -- did you ask someone to ask me to do the
13 observations and speak with teachers?

14 A. Ask you?

15 Q. Yes, ma'am. Did you ask your lawyers to get in touch
16 with someone from the School District or me to see if you
17 could come in and make those observations and have those
18 discussions?

19 A. I did ask if I would be able to observe. I asked the
20 attorneys if I was able to observe.

21 Q. And they told you no?

22 A. I believe so. I mean I --

23 Q. They told you no and so therefore you did not do the
24 observations and you did not have the discussions with any
25 focus group teachers or with the administrators; is that

1 correct?

2 A. That's correct.

3 Q. Okay.

4 THE COURT: Now this is August. Was school even
5 in session?

6 MS. O'DONNELL: I'm sorry, Your Honor.

7 THE COURT: Was school even in session in
8 August?

9 MS. O'DONNELL: No.

10 THE WITNESS: Well --

11 THE COURT: So she could not have gone in to
12 observe.

13 MS. O'DONNELL: No. She -- well, there was
14 summer school.

15 THE COURT: If she wanted to, I don't know if
16 there was or not, was there?

17 MS. O'DONNELL: Yes. Well, we know that,
18 because we've heard testimony that there is a summer school
19 program designed specifically for these refugee students held
20 at the Phoenix Academy.

21 THE COURT: We did hear that.

22 MS. O'DONNELL: Yes.

23 THE COURT: But then I noticed that the
24 individual who graduated nights ago had not been in school at
25 all since June even though he did not graduate until August,

1 but maybe that will come up later as to why that was.

2 MS. O'DONNELL: I think his testimony was that
3 the summer school was between June and July and he did go. I
4 think he did go.

5 THE WITNESS: I'm sick of all this.

6 MS. O'DONNELL: Whatever. Okay. We'll -- we'll
7 move beyond that.

8 THE COURT: Doesn't matter.

9 MS. O'DONNELL: I understand.

10 BY MS. O'DONNELL:

11 Q. And again you -- you were unable to meet with
12 administrators or any of their consultants to learn about
13 current programs now being implemented with respect to the ESL
14 instruction; is that a yes?

15 A. Yes.

16 THE COURT: And it's possible, ma'am, that you
17 will be able to supplement your report before the final
18 hearing by actually getting to go in and see the different
19 classes, that's possible.

20 THE WITNESS: Is that possible?

21 THE COURT: I think. I don't know. It seems
22 like it would be.

23 THE WITNESS: Why are we laughing?

24 THE COURT: Unless everybody reaches an
25 agreement as to the resolution.

1 THE WITNESS: Why are both of you laughing?

2 BY MS. O'DONNELL:

3 Q. Well, because --

4 THE COURT: Because it's not that serious, you
5 have to relax. It's not -- you're getting all the information
6 out that you need to get out and you're doing it very
7 effectively.

8 BY MS. O'DONNELL:

9 Q. Are you familiar -- I -- should we break for the night?
10 I -- you look exhausted and I'm -- I'm feeling like maybe if
11 you started fresh in the morning you'd be able to --

12 A. Well, could --

13 Q. -- handle these questions better.

14 A. I know I'm not supposed to --

15 THE COURT: I think counsel --

16 THE WITNESS: I know I'm not supposed to ask you
17 a question, but can I ask you a question?

18 BY MS. O'DONNELL:

19 Q. No. I'm sorry. It's not the way it works.

20 A. I just need to ask you one thing.

21 THE COURT: What is it, ma'am.

22 THE WITNESS: Is this going to --

23 MS. O'DONNELL: Would you ask the Judge?

24 THE COURT: Yeah, what is it?

25 THE WITNESS: I -- I just --

1 MS. O'DONNELL: Ask the Judge.

2 THE WITNESS: I just need to know about how much
3 longer is this -- can anyone estimate how much longer this
4 cross is going to take.

5 THE COURT: That's a great question.

6 MS. O'DONNELL: That's -- it is a good question,
7 but I'm thinking around 5:30 it's going to be a little bit
8 while, just because it seems like we're engaging in more
9 dialogue.

10 THE COURT: Were you planning to return home
11 tonight, ma'am.

12 THE WITNESS: Huh?

13 THE COURT: Were you planning to remain for the
14 rest of the hearing or were you planning to --

15 MS. MCINERNEY: She was if she's able to do so.

16 THE COURT: She was going to remain here or go
17 home?

18 MS. MCINERNEY: She was going to go.

19 THE WITNESS: No, I'm not -- I'm not trying to
20 leave. I'm just --

21 THE COURT: No. No.

22 THE WITNESS: I'm just wanting to know how much
23 longer?

24 MS. O'DONNELL: Well, I'm -- I'm thinking --

25 MS. MCINERNEY: We're fine with staying until

1 5:30.

2 THE COURT: Sure.

3 THE WITNESS: Okay.

4 THE COURT: So that -- 5:30.

5 THE WITNESS: 5:30?

6 MS. O'DONNELL: Okay.

7 BY MS. O'DONNELL:

8 Q. Are you familiar with an educational expert by the name
9 of Sicora Herrera [ph]?

10 A. No.

11 Q. Okay. And again, I'm going to mention this person's
12 name again, are you familiar with an educational expert by the
13 name of Vivian Fialoe [ph]?

14 A. Fialoe?

15 Q. Fialoe?

16 A. No.

17 Q. Yes. And are you aware of whether or not the School
18 District of Lancaster is using the methods that have been
19 published by Dr. Herrera with respect to culturally relevant
20 biography driven instruction?

21 A. Culturally relevant biography driven instruction?

22 Q. Yes, ma'am.

23 A. No, I'm not.

24 Q. Okay. Are you familiar with a person -- have you ever
25 heard the name or did you in your research find the name of

1 Ana De La Pena [ph] who is a person associated with Patan [ph]
2 which is an arm or a program of the Pennsylvania Department of
3 Education?

4 A. No, I'm not.

5 Q. Okay. And would it have been important to you to know
6 whether or not any of these educational consultants and
7 experts are working together with the School District of
8 Lancaster in order to work on their ESL instruction programs?

9 A. It would be important for me to know if they have
10 expertise in the area of limited formally schooled students
11 which is its own special field within a field and is entirely
12 different from basic English language learner program
13 consultation that hundreds of us do.

14 Q. I understand. And if you -- if you had access to those
15 consultants would that have been helpful to you in perform --
16 in preparing your report and for your testimony today?

17 A. I can't have any way of knowing how helpful it would've
18 been, because I don't know there is expertise or their
19 background.

20 Q. Okay. Do you think it's important that the School
21 District of Lancaster has brought in consultants over the last
22 three or four years to assist with the revision and
23 improvements of their English language instruction classes
24 including those at Phoenix Academy?

25 A. I think it's always good to bring in consultants to

1 help you improve your program.

2 Q. Okay. Now, with respect to your opinion concerning the
3 daily homework assignments were you aware that the students
4 start -- are able to come into the building before and stay
5 after school in order to get extra instruction and tutoring?

6 A. Yes, I am aware of that.

7 Q. And were you aware that students were able to ask for
8 photocopies of anything that they looked at during the day in
9 order to take it home and practice if they wished?

10 A. I am aware of that.

11 Q. You are aware of that? And were you -- did you --
12 when -- in during your interviews of any of these students did
13 you ascertain how much time the students take on their own to
14 study additional English language or any of the core
15 curriculum their taught?

16 A. How much time they take? You mean during the before
17 and after school? Or do you mean at home at night.

18 Q. Home at night or on weekends?

19 A. Well, I know that we kid hear about some tutoring.

20 Q. Okay. Did you ask whether the students were taking
21 any -- were making any effort or taking any initiative to do
22 some work on their own in order to be more successful in their
23 classes at Phoenix?

24 A. What would -- what would those, oh, yeah, I can't ask
25 you questions.

1 Q. Right. Did -- what -- so my question is was it --
2 what -- let me rephrase that. Okay. Because you obviously
3 didn't understand what I was asking you, so let's try it this
4 way. Was it -- was it important to you that the students made
5 some effort to learn on their own outside of school?

6 A. It was important to me that they be provided with the
7 materials relating to their classes and their curriculum and
8 that they be able to reinforce that material as opposed to
9 going out and getting additional material that was separate
10 and apart from the courses therapy trying to take and pass at
11 Phoenix.

12 Q. Okay. Now, on page 15 of your report actually it
13 starts at the bottom of 14, but actually on my copy it doesn't
14 have a number 14 at the bottom of the page, so I'm going to
15 ask you to make that leap of faith in the inference that it is
16 page 14 and at the very bottom there's a subheading that says
17 McCaskey High School ESL, pardon me, ESOL Programing; do you
18 see that?

19 A. Yes.

20 Q. Okay.

21 A. Yes.

22 Q. Okay. Where did you get all this information to talk
23 about the programming at McCaskey? Was this from the website
24 or from some other place?

25 A. No. Not the website. As it -- as it says this was

1 from the survey, survey review.

2 Q. It says ESL Department Internal Review 2015, but that
3 seems to qualify the first sentence.

4 A. And from the --

5 Q. Do you agree with me that that citation seems to
6 qualify the first sentence?

7 A. Well, when I say there are many features I put the
8 source and then the following paragraph gives details that
9 were found at that source.

10 Q. At that source. So from the district's information you
11 found that level one entering students receive a full three
12 hours of direct ESOL instruction?

13 A. It says so in the survey.

14 Q. And then three hours of sheltered core curriculum
15 provided?

16 A. It says so in the survey.

17 Q. And so you relied exclusively on a survey in order
18 to --

19 A. But this survey was the official, it was the ESL
20 Department's evaluation of their program and that was what I
21 was provided with that was giving me a window to how their
22 program ran and how successful it was.

23 Q. Okay.

24 A. It was an official document from the District.

25 Q. And do you know what date that official document was

1 published?

2 A. Yes, those documents were filled out at the end of the
3 year. The end of the school year 2014-15 and 2015-16.

4 Q. Okay. And then it -- it goes on and I know you said
5 you don't have a -- a strong background in, but you included
6 this in your report so I do want cover it?

7 A. Well, in what?

8 Q. Fifteen, continuing down that paragraph I know you said
9 you didn't have a strong background in this, but it's in your
10 report so I want to cover it. In the last line of that
11 paragraph it said there's a strong -- oh, I see, home school
12 connection, that means -- what does that mean?

13 A. Oh, no. No. No. No. No. Oh, I'm sorry. I
14 apologize. Home schooling, home school, okay. So what I --
15 when I say home school connection, I mean reaching out to
16 families, making them feel connected to the school, parent
17 teacher conferences, that's what home school connection.

18 Q. And do you know whether or not that home school
19 connection is available to the children at Phoenix Academy
20 through their accelerated program?

21 A. What -- home school connection is --

22 Q. I understand, a visit?

23 A. -- a general term.

24 Q. Right.

25 A. It's not a specific --

1 Q. I'm with you. Completely on board with you.

2 A. Okay.

3 Q. So if you have someone coming from the school visiting
4 the student at home, discussing education with the student and
5 their families that would be a home school connection; right?

6 A. That would be a visitation.

7 Q. Okay. And what --

8 A. Home school connection has to do with having families
9 feel connected to the school, comfortable going into the
10 school, comfortable being a part of activities at the school,
11 having activities sponsored by the school that are targeted to
12 the English language learner families that are new to the
13 district. It's having a whole program, a whole array of
14 services that are available to connect the home and the
15 school. It's not simply a matter of visiting the school or
16 having even a parent teacher conference. Those are two very
17 minimal approaches.

18 Q. Nevertheless.

19 A. Okay.

20 Q. Do you know if that home school connection that you've
21 just described --

22 A. Yeah.

23 Q. -- as the whole array of services is available to the
24 students at Phoenix and their families?

25 A. It -- it did not appear that when I -- when I looked at

1 the survey and the answers on the survey from the Phoenix
2 person as opposed to the McCaskey person.

3 Q. Okay. But because you didn't interview anyone from
4 either of those schools you weren't able to ask the question
5 about whether those services were available to the Phoenix
6 kids; right?

7 A. Services. I [indiscernible].

8 Q. The array.

9 A. Yeah.

10 Q. You just talked about; remember?

11 A. Yeah.

12 Q. Okay. Because -- my question is because you weren't
13 able to interview any of the administrators.

14 A. Right.

15 Q. At either building you didn't know whether or not those
16 services were actually available for the kids at Phoenix;
17 right?

18 A. I am relying on the survey and the information provided
19 by the ESL Department as to what was provided.

20 Q. Okay.

21 A. And so even though I didn't talk to the officials
22 you've referred to these official communicated to me via
23 official document. Ah, that's not --

24 Q. Okay. That's fine. I'd like to move on now --

25 A. Okay.

1 Q. -- to page 16.

2 A. Which one?

3 Q. Page 16.

4 A. Okay.

5 Q. And come down to the fourth sentence that begins the
6 instruction is required to be sufficient. Do you see that?

7 A. Not yet. What page again?

8 Q. I'm on page 16 and it's under your subheading in bold
9 three that begins SDO -- SDOL failed. Do you see that?

10 A. Yes. Yes.

11 Q. And if you come down almost to the end of that first
12 paragraph.

13 A. Yes.

14 Q. To the -- to the fourth line down that begins the
15 instruction is required to be sufficient? Do you see that?

16 A. Yes.

17 Q. And then you say in the number of minutes per day for
18 entering level students to progress a minimum of 120 minutes
19 per day and then you cite the Pennsylvania Department of
20 Education 2009.

21 A. Yes.

22 Q. Okay. Is that a standard? I believe you testified in
23 your direct examination that was a standard. Is that how it
24 was identified on the PDE website?

25 A. Is -- standard as opposed to what?

1 Q. Well, that was your testimony, I'm asking you to
2 explain what you meant by standard?

3 A. Well, it says required to be sufficient in the number
4 of minutes, so this is a -- this is a recommendation.

5 Q. More like a guideline?

6 A. Well, stronger than a guideline I think. They expect
7 it.

8 Q. Okay. And then I'd like you to come back or flip over
9 to page 17 and if you come down in the first full paragraph
10 that begins at Phoenix.

11 A. Yes.

12 Q. And you come all the way down almost again to the
13 bottom.

14 A. Yes.

15 Q. You have a citation there interview July 14, 2016.

16 A. Yes.

17 Q. Okay. And the next sentence begins at Phoenix.

18 A. Yes.

19 Q. ESOL instruction is concentrated in a single 80 minute
20 block.

21 A. Yes.

22 Q. Do you see that?

23 A. Yes.

24 Q. Now, this follows apparently your interview of July 14,
25 2016 with Khadidja Issa does it not?

1 A. That's not the citation though. The citation goes to
2 the prior sentence.

3 Q. So the prior sentence says Khadidja reported that she
4 did not understand the English class and said specifically
5 that she was not learning the English language in her ESOL
6 block and then you have in parentheses interview July 14,
7 2016; is that correct?

8 A. Correct. Correct.

9 Q. And then your next sentence reads --

10 A. Yes.

11 Q. At Phoenix ESOL instruction is concentrated in a single
12 80 minute block.

13 A. Yes.

14 Q. And entering level students are students receiving no
15 further direct ESOL instruction for the rest of the school
16 day; is that correct?

17 A. Yes.

18 Q. And my question is where did you get that information?

19 A. The -- the information -- the information on the 80
20 minute block for entering students?

21 Q. Yes, ma'am.

22 A. Okay. Just a second. The 80 minute block, just a
23 minute. And I needed to put the source there. The -- on the
24 transcript they have ESL for one period and my understanding
25 is that that's how long that period is.

1 Q. Okay. And on the transcript and we're talking about
2 the student's grades, the student transcript, the records, you
3 also read those to exclude any further ESL instruction for the
4 balance of the day?

5 A. Direct ESL instruction.

6 Q. And it was based on that document that helped you form
7 this conclusion?

8 A. I'm sorry, say again.

9 Q. Based on the reviews -- your review of the student
10 transcripts you formulated the conclusion that the students
11 only receive one 80 minute block of ESL per day at the Phoenix
12 Academy?

13 A. There was only one entry for ESL for every student. It
14 said ESL only once.

15 Q. And my question to you is -- not -- I'm not disputing
16 what it said, but based on your review of that document, you
17 made an inference that there was only one 80 minute block of
18 ESL instruction per day; is that correct and is that
19 inference --

20 A. Direct ESL instruction. Yes.

21 Q. Memorialized in your report on page 17 that we just
22 reviewed?

23 A. Direct. Yes.

24 Q. Okay.

25 A. Yes. I -- yes.

1 Q. Now, I think I'm going to finish here. I'm going to
2 ask you one more question.

3 A. Okay.

4 Q. Okay. In your opinion if you had a student that comes
5 in, your SLIFE student who comes in as a 17 year old with
6 credits to 11th grade.

7 A. Yes.

8 Q. According to your opinion he should be placed at
9 McCaskey in their one year international school in order that
10 he might graduate; is that correct?

11 A. Well, with wouldn't say in order that he might
12 graduate. I would just take that part off.

13 Q. So we're not really focused on graduate your opinion is
14 not really focused --

15 A. Well, let --

16 Q. -- on graduation?

17 A. Can -- well, did, are you asking a question? Do you
18 want to ask the -- go ahead ask the question. I'm sorry.

19 Q. Are you focusing as an end goal on graduation or not?

20 A. I am focusing on prioritizing overcoming language
21 barriers and accessing the core curriculum. I'm prioritizing
22 that because that is what's mandated for these students. That
23 is the priority.

24 Q. I understand that what is mandated in terms of
25 curriculum. I think we agree on that; okay?

1 A. Okay.

2 Q. But if you have a student who comes in with -- who's 17
3 years with education to 11th grade and wants to graduate on
4 time he would go to the international school for one year and
5 get those credits; right?

6 A. He would -- he would go -- he's 17?

7 Q. Yes and he's not special ed.

8 A. Right. So as opposed to Phoenix; right?

9 Q. Yes.

10 A. Yes. Okay. So what I would say is if I can just have
11 an open answer.

12 Q. Yes, absolutely.

13 A. Instead of a yes or a no, I or I --

14 Q. Just, I'm just trying to -- to --

15 A. Right. So here's --

16 Q. -- elicit whether, you know, you -- you understand that
17 there is a methodology for these students to be able to
18 graduate --

19 A. Yes, I understand that.

20 Q. -- on time.

21 A. And what I -- my opinion and based on everything about
22 this case and I've been living with it, okay. So we all have,
23 it is my conclusion that these students have a better chance
24 of graduating faster by going to McCaskey if we think of
25 graduation as meaningful, not simply grades on a transcript,

1 but really understanding the material and understanding
2 English, because at McCaskey, again, they get the runway, the
3 plane gets the runway, they get a great foundation, they're
4 taking their subject areas right away, they're in a cohort,
5 everything we just -- I don't need to repeat, all the things
6 about the international school, it is so strong and powerful
7 that one year sets them up and then they can light the world
8 on fire. They can go to summer school. They can go extended
9 day. They can do whatever they wish and I think that they
10 have a better chance, actually I think that the Phoenix model
11 the way it exists is retarding their progress.

12 Q. I understand that.

13 A. And that is my view.

14 Q. Okay. It -- would it be true though that if they
15 graduated after that year they would still be a beginner ELL
16 in terms of the -- the WIDA levels? They'd still be at an
17 entrance level or a beginner; wouldn't they?

18 A. Not necessarily, because some of them maybe very good
19 language learners and they may move through the levels faster
20 than you would think, because some -- some students are --
21 every student as an individual as a language learning and we
22 need to give them their best shot if they're in the
23 international school they're getting their best chance,
24 they're getting everything to support them all day, English,
25 homework at night and those who are really good at language

1 learning and who are bright they may go from entering to
2 emerging, they may move through more quickly through the
3 levels of English because of all the support they're getting.

4 Q. And so if -- if we were to convince you that those
5 levels of support can be delivered to the students at Phoenix
6 would you agree with me that the -- the accelerated system is
7 as equally effective as the system at McCaskey?

8 A. Impossible, because the system is the emersion model.
9 They cannot be with native speakers of English. The SLIFE and
10 the native speakers can't be together. They can't -- at the
11 get-go, you can't do that. That -- that's the reason. That's
12 the deal breaker.

13 Q. And -- and is it because -- do you understand that
14 the -- the each class -- you understand that each class at
15 Phoenix is 80 minutes long?

16 A. It doesn't matter the length, it matters, it matters
17 that they're with mainstream students in a mainstream
18 curriculum with a teacher without the ESL training very
19 special training you need to even work with SLIFE even beyond
20 regular ESL. I all to relearn it as you remember when I moved
21 to Green Bay, so Phoenix just isn't going to be able to do
22 that.

23 Q. Okay. All right. Thank you very much.

24 A. Okay.

25 THE COURT: Thank you counselor. Attorney

1 McInerney, do you have any redirect?

2 MS. MCINERNEY: Your Honor, I just had two quick
3 things.

4 THE COURT: Certainly.

5 - - -

6 REDIRECT EXAMINATION

7 - - -

8 BY MS. MCINERNEY:

9 Q. In your testimony you had referenced a document that
10 stated that student receive three hours of ESL instruction as
11 well as three hours of core content. And was this ESL
12 department of Internal Review Survey for McCaskey 2015-2016?
13 Is that the one that you were referring to?

14 A. Well, it could have been either year.

15 Q. Either one.

16 A. I'm not looking. There were two years.

17 Q. Okay. I just have one last question.

18 A. Yes.

19 Q. Did you have sufficient information to evaluate the
20 accelerated program at Phoenix and it's English -- it's
21 emersion language instruction program to determine whether it
22 was educationally sound theory and to look at the policies,
23 practices and resources to determine whether it was being
24 implemented? Did you have sufficient information to do that?

25 A. I believe that I had sufficient information, yes.

1 Q. And did you have sufficient information to determine
2 whether the School District has a program -- is produces
3 results indicating that the barriers are being overcome that
4 the language barriers are being overcome?

5 A. Yeah.

6 Q. Did you have sufficient information?

7 A. I did have sufficient information for a confident
8 opinion, yes.

9 Q. Thank you so much.

10 THE COURT: Thank you counselor. Attorney
11 O'Donnell.

12 MS. O'DONNELL: Nothing further, Your Honor.

13 THE COURT: Very well, thank you counselor. Dr.
14 Marshall, I do want to thank you very much for your testimony
15 here today. I realize this is the first time you've testified
16 as an expert witness. You did an outstanding job.

17 THE WITNESS: Thank you.

18 THE COURT: We appreciate your information and
19 your testimony.

20 THE WITNESS: Thank you.

21 THE COURT: Have a good rest of the night.
22 Counselor is there anything else before we adjourn for the
23 day.

24 MR. ROTHSCHILD: Your Honor. We have exhibits
25 to move into the evidence.

1 THE COURT: And you want to do that before --

2 MR. ROTHSCHILD: Given the hour, I --

3 THE COURT: Oh, you may step down. Oh, yes.

4 You can -- [indiscernible]. Absolutely.

5 MR. ROTHSCHILD: Given the hour I'm happy to do
6 that tomorrow.

7 THE COURT: Actually thanks to Attorney
8 O'Donnell we're done a little earlier than we thought. But it
9 is still late and I -- I think maybe it's best that we address
10 that tomorrow. It's probably not going to be an issue. I
11 don't happen if anything's going to be contested. And then we
12 can finish out the plaintiff's case and that is your last
13 witness; is that correct?

14 MR. ROTHSCHILD: That is our last live witness.
15 So --

16 THE COURT: And then we can begin -- now do you
17 know which witness you're going to have to call first now that
18 both have to testify in the morning?

19 MS. O'DONNELL: I think -- I think yes, Amber
20 [indiscernible] will be first.

21 THE COURT: Very well.

22 MR. ROTHSCHILD: And may I ask what are the
23 other witnesses that will be called tomorrow, because I -- I
24 know we won't get up to all of your witnesses tomorrow?

25 MS. O'DONNELL: Well, definitely [indiscernible]

1 Hisey. And then I'll -- I'll have to advise you.

2 MR. ROTHSCHILD: Okay. If you could advise us,
3 you know, in the next couple hours that would be really
4 helpful. Actually [indiscernible] advise then.

5 MS. O'DONNELL: So [indiscernible].

6 MR. ROTHSCHILD: [Indiscernible].

7 MS. O'DONNELL: Thank you.

8 MR. ROTHSCHILD: All right. Thank you.

9 THE COURT: Counselor if nothing else for
10 tonight we'll stand in recess. Now, I've been starting on
11 9:30 on the assumption that people have to travel a long way
12 to get here. Is 9:30 an appropriate time to start, because we
13 can start much earlier or much later whatever's the most
14 convenient for everyone?

15 MS. O'DONNELL: I actually have people traveling
16 so I -- I [indiscernible] wise to start --

17 THE COURT: 9:30 is the best for you?

18 MS. O'DONNELL: Yes.

19 THE COURT: Very well. We'll keep it at 9:30.

20 MR. ROTHSCHILD: Thank you, Your Honor.

21 MS. O'DONNELL: Okay. Thank you.

22 THE COURT: You're welcome.

23 DEPUTY CLERK: All rise.

24 - - -

25 (Whereupon, the proceeding was concluded

at 5:07 p.m.)

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C E R T I F I C A T E

I do hereby certify that the aforesaid hearing was transcribed by me from an audio recording to the best of my ability; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

WITNESS my hand and official seal this ____ day of ____, 2016.

Janine Thomas
Notary Public

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&	19103 2:15	4	888 2:15
& 2:6	19103-2799 1:11	4 3:2	9
0	19107 1:19	400 1:19	90 10:22
02 1:24	2	412-681-7864 1:16	924 47:21
03881 1:2	2 2:1	441 52:8,8	9:30 125:11,12,17 125:19
1	2.4 39:4	46 31:6,7,10	9th 41:24 42:21 48:4
1 25:2 33:12 36:19 36:22	200 2:3	47 34:20 35:1	a
1-13-14 53:19	2009 114:20	48 29:4,6,8,13,16	abandon 16:25
100 2:2,7 28:21	201 2:7	5	abdulla 68:17
107 41:23 42:17	2010 48:8	5 38:10	ability 8:6 16:17 24:12 127:5
10th 48:4	2013 48:7	5.5 24:20	able 11:9 19:17,17 20:24 32:4 33:6 57:5,7,14 58:4 70:17,22 74:25 101:5,7,19,20 103:17 104:11 105:15 108:4,7 109:8 113:4,13 119:17 121:21
11 48:8	2014-15 54:3 111:3	50 37:18 44:20,24 44:24,25	absences 42:8,14
117 45:1	2015 38:10 48:8 57:19,22 110:2	56 36:19	absolutely 47:9 59:24 69:20 89:15 98:20 101:11 119:12 124:4
1181 2:3	2015-16 111:3	5:07 126:1	academic 7:18 8:3,4 8:7 44:8 84:17 97:15
11th 118:6 119:3	2015-2016 122:12	5:16 1:2	academics 16:16
12 48:8	2016 1:5 33:12 115:15,25 116:7 127:12	5:30 105:7 106:1,4,5	academy 40:17 66:9 66:25 67:2,8,20 79:5,6 80:3 86:8,14 86:17 89:12 98:3,9 98:15,25 102:20 107:24 111:19 117:12
120 114:18	21 99:22	6	academy's 79:18
122 3:3	215-346-6907 1:20	6 41:23 42:16	accelerate 5:10 30:11
12th 40:20,22 82:11	215-592-1513 1:25	6-1-16 33:17	accelerated 4:22,23 15:1 86:8 92:25 93:21 96:4 100:7 111:20 121:6
13 48:8	215-772-3125 1:21	60 3:3	
1315 1:19	215-789-2661 1:20	60173 1:24	
14 16:5 48:8 109:13 109:14,16 115:15 115:24 116:6	215-981-4750 1:12	63 53:21	
15 22:18 25:5,5 28:3 36:24 48:9 109:12	215-981-4813 1:12	64 53:23,24	
15213 1:15	296 55:23	65 56:9,10	
16 114:1,3,8	2:11 1:5	66 56:10	
17 99:22 115:9 117:21 118:5 119:2 119:6	3	6th 44:13	
17011 2:8	3 36:18,23	7	
17108 2:4	30 42:14	717-255-1155 2:4	
18 1:5 98:15,17 99:20 100:8,15	3000 1:11	717-651-3503 2:8	
1800 2:14	313 1:15	72 7:1,5	
1801 2:14	318 31:21	74 6:21 7:3,4,6	
186 31:11	332 98:25	777-6690 2:15	
18th 1:10	350 98:14	78 49:18 51:22,23 52:3	
19 14:14	359 28:3,4	8	
191 1:24	363 43:25 44:1	80 115:19 116:12,19 116:22 117:11,17 121:15	
	364 43:8	82 9:8	
	365 43:8	84 25:2 36:18,22,23	
	3:02 37:4	85 43:10,15	
	3:17 37:4		

<p>122:20 accelerating 20:7 accept 84:16 accepted 17:15 access 8:2,7,24 23:4 23:6 24:12 30:8 37:24,25 38:3 40:3 46:17 47:13 48:6,19 56:25 57:1 64:16,18 107:14 accessing 118:21 accommodations 62:19 accountability 49:6 51:2 acculturate 16:18 acculturated 17:6 accumulated 15:11 accurate 36:21 achievement 38:4,4 38:6 47:2 acknowledged 64:6 aclu 1:14,23 aclupa.org 1:16 2:1 acquisition 8:14 16:19 24:7 40:19 acronym 81:1,4 acronyms 94:1 action 127:6 activities 112:10,11 activity 27:9,13 actual 11:8 90:21 adaptive 24:1 add 5:11,11,14 34:9 34:13 addition 4:13 10:6 13:1 15:16 48:18 additional 11:2 108:14 109:9 address 56:5 124:9 addressed 51:15 adissa 86:15 adjourn 123:22 adjust 15:23</p>	<p>adjustment 15:19 administered 40:14 administration 80:10 administrative 45:10 administrators 80:18 101:25 103:12 113:13 admitted 38:22 adon 44:3 advise 125:1,2,4 aforesaid 127:3 afternoon 60:10 ages 26:18 ago 36:13 102:24 agree 67:8 69:25 80:24 95:15 110:5 118:25 121:6 agreement 103:25 ah 113:23 ahead 73:18,21 90:18 91:17 118:18 aleese 72:9,11 alembe 68:13,13 algebra 45:8 allow 84:6 88:9 92:16 allowable 62:19 aloud 28:18,18 amazingly 78:4,5 amber 124:19 ambiguous 25:16 america 83:7 84:16 85:2,4 american 83:2,20 84:11,12 americanized 17:3 americans 95:13 amount 44:8 84:14 ana 107:1 analysis 14:1 47:22 47:24 48:1 55:1 59:7,8 91:4</p>	<p>analyze 46:7 analyzing 86:2 anecdotally 90:20 anomaly 24:22 answer 13:9,9 18:14 18:15,22,25 24:3 27:6 35:18 36:10,12 56:4 79:2 80:1,18 90:18,22,22 92:17 100:21 119:11 answering 33:16 81:20 answers 27:22,23 100:22 113:1 anticipate 33:5 50:25 antisocial 15:18 anybody 69:19 92:25 anyem 37:20 41:23 44:17 68:13 anything's 124:11 apart 109:10 apologize 7:5 29:12 56:10 70:12 93:14 100:6 111:14 apparently 21:3 51:15 115:24 appear 22:13 40:5 51:11 112:25 appearances 1:8 appeared 76:15 appears 28:5 31:23 32:11 54:5 applicable 97:18,20 applied 88:6 89:11 applies 82:6 apply 83:20 85:10 93:11 94:23 97:23 appreciate 123:18 approach 6:24 9:13 15:13 77:25 approaches 112:17 appropriate 5:5 16:4 21:13 49:2</p>	<p>79:20 80:19,21 84:14 125:12 appropriately 20:14 aptitude 13:24 arch 1:10 area 8:21 23:10 30:23,25 38:25 81:15 84:20 107:10 areas 7:19 8:2,11,20 56:7 60:14,17 61:5 120:4 arm 107:2 arming 49:20 arms 6:23 49:19 arrangement 72:23 array 112:13,23 113:8 arrival 40:9 82:22 arrive 13:18 arrived 39:22 50:1 52:14 99:25,25 art 23:9 30:7 35:16 35:18,18,18,19 arts 11:24 23:7,14 29:23 31:2,3 41:3 ascertain 108:13 aside 35:8 asked 21:8 27:16 28:9,11 41:7 80:1 80:22 89:23,24 99:4 101:19 asking 66:13 83:23 87:1,19 88:12,12,20 89:20 93:1,17 94:24 109:3 115:1 118:17 assess 9:20 13:17 46:9,14 assessed 20:13 assessing 10:11 13:21 47:8 56:15 assessment 5:16 21:21 45:16 assessments 14:12 43:22,22</p>
---	---	---	--

<p>assignments 108:3 assimilate 17:5 assimilation 17:8 assist 107:22 assistant 43:12 assisting 63:10 associated 107:1 assume 25:3 88:9 100:20 assumes 26:7 assuming 44:15 assumption 15:17 125:11 atlantic 2:14 attend 83:12 attended 15:17 26:2 73:7 74:1 82:10 83:9 89:6 attends 86:21 attention 18:3 22:17 25:4 29:4 31:6,8 37:20 38:9 40:20 56:9 72:23 attorney 53:2 60:5 60:13 65:20 66:3 67:18 100:13 121:25 123:10 124:7 attorneys 65:18,19 74:4 77:12 101:20 atwood 1:15 audio 2:10 127:4 august 1:5 102:4,8 102:25 authored 28:5 available 26:13 47:18 64:19 80:8,17 111:19 112:14,23 113:5,16 awarded 24:21 aware 18:7 61:5 89:6 106:17 108:3,6 108:7,10,11 awareness 29:25</p>	<p>awkwardly 74:20</p> <hr/> <p style="text-align: center;">b</p> <hr/> <p>b 35:10,10,13,21 back 17:25 20:4,5 23:4 24:15 31:1 59:16,19 61:9 75:6 86:19,20 89:5 96:16 115:8 background 14:13 32:3 83:16 92:7,9 107:19 111:5,9 balance 117:4 ballroom 26:17 band 26:11 bank 33:15 barriers 45:18,24 54:22 59:11,19 100:15 118:21 123:3,4 base 92:3,4 based 21:25 23:19 32:15 39:12 41:3 46:20 48:8,9 89:16 89:18 91:22,25 92:4 93:9 100:11 117:6,9 117:16 119:21 bases 13:21 basic 34:8 45:6 107:12 basis 45:25 bate 65:14 bay 121:21 beginner 120:15,17 beginning 30:18 61:10 101:10 begins 91:20 114:5 114:9,14 115:10,17 behavior 15:16,18 15:23 belatedly 50:20 believe 10:25 14:4 18:21 24:1 27:15,17 27:19 28:10,11 29:8 38:12 39:21 40:24</p>	<p>43:9 45:3 51:18 54:20 69:7 76:23 77:4 86:4 101:22 114:22 122:25 belong 18:2 99:12 belonging 17:25 benefit 59:22 benefited 39:21 best 24:15 47:12 72:14,17 74:16,24 94:5 120:22,23 124:9 125:17 127:5 bet 17:25 better 17:7,7 58:25 88:22 104:13 119:23 120:10 beyond 103:7 121:19 bicultural 17:4,6 biggest 25:20 binder 43:11 51:25 52:1 53:23 biography 106:20 106:21 biology 41:2 45:4,9 bit 77:10,24 89:5 105:7 blah 36:6,6,6 blank 10:7 53:11 blend 17:9 block 115:20 116:6 116:12,20,22 117:11,17 board 28:15 93:12 112:1 bold 114:8 bolivia 83:7,13,14 84:1,13 bolivian 84:10 books 84:4 born 94:22 95:10 bother 17:17 bottom 28:25 91:4 109:13,14,16 115:13</p>	<p>bought 60:16 box 1:24 2:3 boy 53:4 75:14 brand 15:21 18:4 break 36:16 60:20 73:9 89:5 91:10 104:9 breakdown 56:25 breaker 121:12 bridge 5:2 bridging 5:3 brief 14:3 49:11 bright 121:1 bring 8:22 107:25 broad 56:19 81:12 broadly 57:6 broken 48:3 91:12 brothers 76:24 brought 107:21 brown 68:21 brush 56:19 bs 40:23,24 building 70:24 71:1 71:6 72:22 108:4 113:15 business 17:15</p> <hr/> <p style="text-align: center;">c</p> <hr/> <p>c 24:22 40:23 127:1 127:1 calculated 5:17 call 21:20 28:25 124:17 called 27:14 28:13 29:24 37:10,12 124:23 calling 29:1 85:5 camp 2:8 canadians 95:14 carefully 22:2 cartoon 33:14 case 6:1 11:3 12:23 16:3 22:1,1 31:3,13 31:14 35:20 47:11 49:10 59:21 60:12</p>
--	--	--	--

<p>61:12 86:23 88:5 97:18 119:22 124:12 caseload 54:8 55:2 cases 21:16,17 categories 56:18 category 56:19 caught 5:9 center 1:18 2:7 26:17 certain 17:18 certainly 6:25 10:3 27:11 36:17 85:20 122:4 certificate 84:14,22 certification 11:7 12:17,19 32:17 certified 10:21 11:2 11:13,14 48:23 certify 127:3 chair 75:6 chance 15:6 119:23 120:10,23 change 90:15 96:17 96:19 97:2,3 characteristics 82:12,14 checklist 49:10,11 51:20 52:6 53:3,12 checklists 50:4 53:15 chemistry 41:2 chessin 72:9,12 child 20:25 36:17,18 82:9 83:6 child's 92:15,15 children 20:21 21:7 25:8 36:19 70:3,4 71:2,11,21,24 72:17 73:6,25 75:12,19 77:1 78:15 88:6 111:19 choice 16:23 64:15 100:1</p>	<p>choose 33:15 chosen 5:18 10:12 church 70:11 71:8,8 citation 110:5 115:15 116:1,1 cite 114:19 citizen 94:23 clarification 62:14 clarify 87:3 class 12:1 23:8,13 23:19,22 24:24 25:1 25:2,3 31:14,15 32:11,14,16 35:10 35:18,23,25 36:14 36:20 40:24 41:8 46:4 89:23 98:7 99:12,21 116:4 121:14,14 classes 8:14,16 12:16 22:15 23:10 30:17,18,20 31:13 40:19 41:8 47:1 89:24 101:6 103:19 107:23 108:23 109:7 classroom 12:13 101:2 classrooms 28:22,22 clear 11:15 20:22 21:3 59:24 clearly 34:7 58:25 clerk 37:1,6 125:23 clients 50:12 closed 71:8 72:1,2,3 closely 16:19 closer 75:5 cocking 92:18 cohort 120:4 coleman 2:6 colored 17:16 come 13:21 20:4 84:16 85:1,3,4,9,12 101:17 103:1 108:4 114:5,11 115:8,9,12</p>	<p>comes 118:4,5 119:2 comfortable 5:8 74:25 75:8 81:22 112:9,10 coming 34:18 45:9 83:6,24 112:3 comments 14:4 common 30:5 36:4,5 communicate 32:19 communicated 113:22 communication 11:24 23:7,13 29:23 31:3 41:2 companies 38:3 company 2:13 compare 28:2 compared 33:21 57:23 58:22 completely 16:12 17:5 20:19 75:1 112:1 complex 32:10 34:10 complicated 34:18 composite 60:19 comprehended 27:19 comprehensible 8:2 comprehension 29:3 comprehensive 13:20 79:17 computational 14:9 computer 23:19,24 24:8,16 concede 45:14 concentrated 115:19 116:11 concern 37:19 concerned 12:7 22:20 59:2 75:7 concerning 67:19 108:2 concluded 125:25</p>	<p>conclusion 14:22 22:4,6,7 45:22,23 45:25 87:19 117:7 117:10 119:23 conclusions 21:25 58:1,18 100:23 conditions 84:5 conduct 70:18 101:2 conducted 56:12 100:11 conference 112:16 conferences 111:17 confident 81:20 97:4 123:7 confronting 45:18 59:11 confusing 74:20 connect 112:14 connected 111:16 112:9 connection 111:12 111:15,17,19,21 112:5,8,20 consecutively 82:10 83:10 consent 62:9,10,20 consider 5:16 12:9 13:17 15:24,25 21:21 45:16,19 46:7 81:9 84:18 85:23,24 92:15 considered 14:20 20:13 39:2,7 61:6 83:21 93:10 consistent 56:16 100:24 consortium 64:6 constantly 97:15 constitute 81:10 99:20 constitutes 87:20 construct 34:7 consultants 103:12 107:6,15,21,25</p>
--	---	--	---

<p>consultation 107:13 contact 55:18 contained 44:19 content 4:14 5:9 7:18 8:2,11,16,20 8:21,21,24,25 18:5 22:22 23:6,10,13,20 24:13 26:7,7 27:5 30:9,17,18,20,23,25 31:13 40:19 63:9 122:11 contested 124:11 context 17:20 continues 4:2 continuing 111:8 contraindicated 4:25 contrast 28:2 controversial 85:16 convenient 125:14 convention 26:15,16 26:17 conventional 26:10 conversation 20:24 72:6,15 78:2 convey 25:25 convince 121:4 copies 53:12 copy 28:14,14,15 109:13 core 108:14 110:14 118:21 122:11 corporate 2:7 correct 4:14 52:7 61:11,17 64:23 69:3 69:9 77:13 83:3 85:21 95:19,24 102:1,2 116:7,8,8 116:16 117:18 118:10 124:13 correspondences 28:19 counsel 50:11 53:1 104:15 127:5</p>	<p>counseling 23:10 24:22 30:7 counselor 6:25 13:7 18:12,17 29:7 37:14 41:20 42:25 50:8,17 53:6 60:4 73:20 75:18 87:17 98:12 121:25 123:10,13 123:22 125:9 count 42:12 counterparts 86:12 countries 85:3 95:17 country 15:11,21,24 19:13 34:18 82:22 84:5,23 85:12 couple 125:3 course 8:24 41:14 58:3,13 courses 23:6 109:10 court 1:1 2:13 6:3,7 6:10,12,16,25 7:6 9:15 13:7,12 18:12 18:17,20,24 22:8 29:7 36:17,24 37:7 37:9,10,12,12 40:16 41:19,22 42:3,7,11 42:14,16,22,24 49:19 50:8,17,22 51:9,20,25 52:3,6,9 52:12,15,17,19,21 52:24 53:2,5,8 60:4 69:1 71:13,15,18 72:11 73:11,14,18 73:20 75:18 76:2,4 78:24 87:17,23 90:11 97:15 98:11 98:14,18 102:4,7,11 102:15,21,23 103:8 103:16,21,24 104:4 104:15,21,24 105:5 105:10,13,16,21 106:2,4 121:25 122:4 123:10,13,18 123:21 124:1,3,7,16 124:21 125:9,17,19</p>	<p>125:22 courtroom 86:19 cover 13:20 111:6 111:10 covers 84:7 credential 12:14 credentials 84:17,17 credit 4:23 15:8,9 15:16 92:25 93:21 credits 15:12 24:20 118:6 119:5 cross 3:3 50:15 60:5 60:7 105:4 cultural 16:1 culturally 26:6 55:21 56:4,6,8 106:19,21 culture 16:18,19,24 16:25 17:1,5,6 cultures 15:25 17:10 cumulative 42:20 current 103:13 curriculum 80:6,17 81:17 108:15 109:7 110:14 118:21,25 121:18 cv 1:2 cyber 81:21,23,25 82:1</p> <hr/> <p style="text-align: center;">d</p> <hr/> <p>d 3:1 40:23 41:3 daily 108:3 dat 47:23 data 47:5,10,17,18 48:3,7,7,12,19 49:4 54:25 55:1 56:23 57:3,11,13,14,15,22 58:1 60:14,22,25 61:3,3,7 date 38:9,10 60:16 84:5 110:25 dated 33:12 day 4:6 6:21 10:5 11:7,8 15:22 19:11</p>	<p>19:15 20:4 22:17 24:9,9 29:9 34:20 41:9,15 43:11 52:1 52:2 53:23 70:25 72:11 76:18,21,23 81:1 108:8 114:17 114:19 116:16 117:4,11,18 120:9 120:24 123:23 127:12 days 17:8 42:12 70:25 de 107:1 deal 121:12 debrief 49:1 decades 36:13 decided 84:16 decision 20:17 21:1 21:1,2,3 decoding 28:13 defendant 1:5 2:6 defense 50:11,11 51:10,10,14 defensive 16:13 definitely 124:25 definition 39:13 81:12 delivered 121:5 demaris 80:15,16 demographic 82:5 demographics 55:23 dennehey 2:6 department 54:1 63:2,13 65:6,7 66:5 107:2 110:2 113:19 114:19 122:12 department's 110:20 dependent 34:7 depending 24:3 depends 24:7 deposition 50:21 depositions 51:15 deputy 37:1,6 125:23</p>
--	---	---	--

<p>describe 34:3 described 112:21 description 81:4 descriptive 34:5 designation 60:25 designed 15:5,14,14 25:8 26:20 102:19 detailed 47:13 details 73:2 110:8 determine 10:11 11:9 122:21,23 123:1 detrimental 59:17 develop 23:20 development 55:12 55:14 devil 73:16 dialogue 105:9 difference 58:21,21 81:6 differences 58:14 different 16:12 17:16 20:20 22:5 26:19,19 27:10 28:24 33:21 38:1 41:15 52:24 57:25 58:14 71:25 78:1 81:7 87:11,13,14 103:18 107:12 difficult 23:17 35:25 40:11 43:9 58:1 59:4 76:23 direct 3:2 8:14,17 11:8,21 22:17 29:4 37:15 64:5 110:12 114:23 116:15 117:5,20,23 directing 25:4 43:15 directions 33:16 directly 66:1 director 79:10,13 disaggregate 57:3 disaggregated 47:14 47:15 48:12 60:14</p>	<p>discern 57:7 discipline 16:13 disclose 10:17 31:25 38:14 41:4 58:10 77:13 disclosed 40:10,11 50:21 discover 88:10 discriminated 16:22 discuss 42:7 discussed 38:24 40:15 60:13 discusses 16:5 discussing 112:4 discussion 81:2 discussions 101:18 101:24 disputing 117:15 distracting 86:19 distribution 46:21 58:15 district 1:1,1,4,7 6:17 9:4 25:15 37:6 47:22 48:5 49:5 50:19 53:11 57:3 58:4 59:7,9 61:6,20 61:25 62:2 67:12,20 80:11 85:10 100:24 101:16 106:18 107:7,21 110:24 112:13 123:2 district's 110:10 districts 56:17 92:13 diverse 17:9 doctorate 92:11 document 7:17 16:5 37:22 38:9 40:18 42:5 43:4,10,19,20 44:17 49:21 51:5,9 51:18 52:10 53:6 54:20 62:18,21 63:4 63:9 66:13 110:24 110:25 113:23 117:6,16 122:9</p>	<p>documentation 90:21 documents 9:3,9,11 9:17,19,25 10:7,20 14:6 49:8,23,25 50:7 51:4 52:15 53:10 54:17 56:15 61:11,16,22 62:1,3 62:4,7,8 63:16,20 63:21,22 64:24,25 65:4,9,10,11,13,15 65:16,17,24,25 66:3 66:9,11,24 67:4,11 67:15,18,19 78:14 89:19 100:12 111:2 doe 66:4 dog 25:22 doing 6:10 17:24 24:16 33:22,23,24 34:1,2,2,3,4 46:10 46:24 56:3 57:1,7 57:12 58:25 59:16 59:18 74:11,12,13 85:19 94:5 104:6 domains 38:6 door 19:14 double 22:15 dr 45:15 73:9 106:19 123:13 draw 27:14 37:20 38:9 40:20 58:1,17 drawing 31:8 56:9 drawings 25:13,18 drive 2:7 driven 106:20,21 dunia 37:20 68:13 68:13 75:14 76:24</p> <hr/> <p style="text-align: center;">e</p> <hr/> <p>e 3:1 127:1,1 earlier 11:25 19:8 62:18 68:24 124:8 125:13 earth 32:8</p>	<p>easily 28:14 eastern 1:1 easy 73:12,15 eating 33:23 34:4,5 34:6 ed 119:7 educated 84:3 85:2 educating 7:11 education 1:18 14:1 14:5 60:25 63:2 65:6,7 66:5 80:17 81:3,7,8,8,10,10,23 81:24 82:5 83:11 84:14 85:4,4 86:7 86:17,21 87:8 88:22 89:12,13 91:22 92:7 107:3 112:4 114:20 119:3 educational 4:17 87:20 92:5 93:9,18 106:8,12 107:6 educationally 94:11 94:13 122:22 educator 88:4 educators 64:8 edward 1:7 37:7 effective 4:10 10:12 54:20 56:21 100:15 121:7 effectively 5:18 96:13 104:7 effectiveness 48:20 effort 108:21 109:5 egs 1:2 eight 70:1 eighty 43:16 either 16:23 28:10 56:17 64:10 67:19 113:4,15 122:14,15 elc 1:21,22 electronic 2:12 elicit 119:16 ell 10:23 51:20 52:3 53:3 100:24 120:15</p>
--	--	--	---

<p>ells 61:7 85:7 91:21 embedded 26:6 emergent 39:5 emerging 121:2 emersion 12:10 121:8 122:21 encouraged 16:10 55:18 engaging 105:8 english 5:8 7:12,12 8:1,14,15,17 10:23 10:24 11:25 12:8,10 17:7 19:11,14,16 25:9 26:3,14 38:14 41:24,25 46:3 47:2 62:19 83:4,7 85:8 85:12,17 92:7 94:8 94:15,21,23 95:10 95:14,17,23,25 96:23,25 97:11 99:14 107:12,23 108:14 112:12 116:4,5 120:2,24 121:3,9 122:20 enrolled 38:13 enrollment 61:3 ensuring 22:22 entered 44:15 entering 33:18 36:3 39:2,18 110:11 114:18 116:14,20 121:1 entire 84:3 98:14,24 99:12 entirely 107:11 entrance 120:17 entry 13:24 117:13 environment 16:15 56:8 equal 86:7,11,17,21 87:8,14,15,20 88:2 88:3,5,13 89:12 equally 121:7 equated 44:7,8</p>	<p>eric 1:9 esl 10:19,21,21,22 11:2,5,5,7,8,10,13 11:15,16 12:1,1,3 12:13,16,19 22:9,9 23:8,8 24:4 25:14 26:17,20,22 28:22 30:1,2,4,5,19 32:4 32:14,17 35:10,10 35:21 36:5 38:17 40:24 46:6,24 48:23 51:3,6 52:23 54:1,7 54:9 55:2,5,5 60:21 89:23 91:20 92:10 103:13 107:8 109:17 110:2,19 113:19 116:24 117:3,5,11,13,14,18 117:20 121:18,20 122:10,11 esol 109:17 110:12 115:19 116:5,11,15 especially 19:18 essay 31:17,23 establishes 6:18 estimate 105:3 evaluate 48:21 51:7 122:19 evaluated 46:5 evaluating 9:2 evaluation 54:20 55:2,10 110:20 everybody 44:3 103:24 everybody's 17:9 evidence 59:10,14 59:15,15 123:25 exact 70:8,23 exactly 9:23 14:2 21:16 23:18 41:11 68:22 examination 3:2,3,3 4:2 37:15 60:7 114:23 122:6</p>	<p>examine 50:15 60:5 example 26:1,8 33:4 49:25 64:10 83:6 94:25 examples 53:13 95:1 exceptions 82:21 83:1 exclude 117:3 exclusively 110:17 excuse 42:25 executive 79:10,13 exercises 23:24 24:16 exhausted 104:10 exhibit 6:21 9:8 14:14 22:17 25:5 28:3 29:4,8,15,16 31:6,7 34:20 37:18 43:10 44:24 49:18 53:21 56:9 exhibits 123:24 exist 49:14 existed 50:21 existence 64:7 exists 120:11 exit 46:24 expect 27:7 33:8 35:15 50:23 55:19 115:6 expected 13:25 79:20 experience 41:5 experiences 82:22 82:24 experiment 91:23 92:5 93:10 experimental 4:18 expert 106:8,12 123:16 expertise 72:24 81:15 84:20 94:5,6 94:14 95:9 107:10 107:18 experts 4:18 96:11 97:10 100:8,14</p>	<p>107:7 explain 36:9 87:10 87:10 94:1 115:2 explaining 72:6 explanation 42:1 exposure 4:8,9 19:8 19:9,10 express 20:18 extended 5:10 10:5 120:8 extensive 35:17 extent 81:19 extra 108:5 extremely 56:6</p> <hr/> <p style="text-align: center;">f</p> <p>f 127:1 fact 20:18 25:14 46:2 55:3 92:11 95:13 factors 46:7 83:18 83:19 95:12 facts 87:21 failed 114:9 fair 81:4 fairing 46:25 fairly 8:4 faith 109:15 falling 15:8,10 familiar 23:16 27:12 52:9,12 53:5 81:25 104:9 106:8,12,24 familiarity 26:7 families 111:16 112:5,8,12,24 family 33:23 71:11 71:24 far 12:1 43:21 46:22 48:3 59:2 75:7 95:21 faster 19:25 20:3 24:2 119:24 120:19 fax 1:12,21 features 110:7</p>
--	--	---	--

february 38:10 federal 62:6 64:25 64:25 feel 4:8 15:22 16:11 16:13,22 17:14 18:1 18:2,9 59:18 72:24 73:1 81:19,22 87:18 101:3 111:16 112:9 feeling 104:10 felt 30:13 63:4 fialoe 106:13,14,15 field 4:18 47:16 57:13 72:24 85:11 85:16 92:12 107:11 107:11 fiend 4:5 fifteen 111:8 figure 17:23 file 39:25 43:7 fill 50:5 filled 10:8 14:11 49:9,13 53:14,18 54:15 111:2 final 24:20 53:13 103:17 find 6:1,3 13:22 32:4 46:18 48:2 49:7,12,23 53:17 57:12 106:25 fine 42:3 105:25 113:24 finish 70:15 90:18 118:1 124:12 finished 43:4 84:13 fire 120:8 first 10:18,19 11:9 13:18 15:13 19:4 23:11 25:3,6,13 32:1 36:7 38:16 39:6,19,22 46:9 53:12 58:6 69:5 79:19 91:3,4 92:17 110:3,6 114:11 115:9 123:15 124:17,20	fit 16:12 17:24 18:2 fitness 23:9 30:7 five 42:18 43:16 55:24 70:1 flip 8:12 115:8 focus 18:3 84:6 100:24 101:25 focused 8:18 72:20 72:21,21 118:13,14 focusing 118:19,20 folks 71:1 80:22 84:18 86:4 follow 60:12 81:15 81:17 91:14 99:17 followed 76:13 following 41:17 56:2 56:11 110:8 follows 115:24 forced 16:23 foreign 11:12 85:2 form 14:11 33:2 53:14 55:24,25 56:1 89:21 92:6 117:6 formal 14:4 26:11 81:6,8,10,23,23 82:5 formalized 55:13 formally 107:10 former 96:16 forming 89:10 forms 10:6,7,9 49:8 formulate 93:11 formulated 117:10 formulating 93:8 forth 7:17 forty 34:25 forward 20:6 found 10:10,21 13:23 22:3,3 48:2 110:9,11 foundation 5:7,7 120:3 four 34:1 38:6 42:18 46:22,23 52:2 54:9 58:5,5 70:1 76:19	76:19,20,21 91:4 107:22 fourth 114:5,14 freely 64:19 fresh 104:11 full 12:1 110:11 115:9 fully 27:19 33:8 75:1 further 75:23 116:15 117:3 123:12 furthering 19:16	glaring 58:21 glean 57:5 go 5:3 9:17 16:24 19:21 23:19 24:2,2 39:22 42:11,17 44:19 54:5,16 66:8 66:23,25 73:18,18 73:21 81:12 84:15 87:8 88:8 90:18 91:17 96:16 98:24 100:3 101:5 103:3,4 103:18 105:16,18 118:18 119:4,6 120:8,8 121:1,11 goal 118:19 goals 15:15 goes 16:1 51:12 75:20 87:24 95:21 111:4 116:1 goggin 2:6 going 10:4 13:5,8 17:1,9,14,15,18 18:10,13,22 19:2,12 19:14,16 24:8 29:2 30:16,25 37:18 41:7 41:17 42:9 46:4 51:11 52:21 54:7,16 58:13,17 72:16 73:12,14 76:22 84:6 86:16 91:9 97:2 100:20,20 104:22 105:4,7,16,18 106:11 109:9,14 112:9 118:1,1 119:24 121:21 124:10,11,17 good 5:12 6:7 28:20 42:24 60:10 75:7 77:10 97:1,1,6,9,11 105:6 107:25 120:18,25 123:21 gotten 88:22 grade 22:2 39:12 40:20,22 41:24 42:21 44:7,11,12,13
g			
		g 1:7 37:7 gained 27:2 gaps 14:2 general 17:7 23:9 30:7 44:4,5,10,11 45:5 47:2 111:23 generally 58:16 geology 32:21,24 geometry 31:15 35:6 35:16,23 41:3 getting 24:15 28:4 30:8 31:1 35:15 49:19,20 59:1 86:17 86:21 89:13 100:6 103:18 104:5 109:9 120:23,24 121:3 girls 89:11 give 5:25 17:1 18:22 20:7 36:11 74:14 95:1 120:22 given 12:18 13:23 14:12 21:12,13 23:10 40:3,5 44:6 47:12,13 48:7 76:7 76:7 90:22 100:1 124:2,5 gives 38:1 41:16 110:8 giving 18:15 20:1,2 47:13 90:21 110:21	

<p>48:3,4,4,4 82:11,18 86:22 87:13 118:6 119:3 grades 22:12 23:12 24:19,20,23 35:7,14 39:12 40:21,23 41:17 117:2 119:25 grading 21:22 graduate 30:21 102:25 118:10,12 118:13 119:3,18 graduated 22:21 40:17 42:16 102:24 120:15 graduating 119:24 graduation 118:16 118:19 119:25 grammar 8:18 grant 10:4 grass 33:24 great 32:25 57:12 105:5 120:3 green 31:19 121:21 group 16:6 37:19 96:2,5,6,14 98:24 98:25 101:25 grouped 4:11 groups 96:7,8 100:24 growth 44:8 46:18 58:2 guess 42:24 82:3 95:8 guessing 42:23 90:25 guidance 7:15,15 64:8 guideline 115:5,6 guidelines 62:18</p>	<p>handbook 10:3 14:16,18,19 handle 30:13 104:13 handwriting 28:9 32:6 hang 62:11,11,11 75:15 happen 124:11 happened 47:12 happening 30:25 86:20 happy 84:15 124:5 hard 95:6 harder 18:3 harrisburg 2:4 hasan 29:17 68:10 hat 26:8,9,9,9,11,12 head 67:5 73:2,3 92:18 headed 46:21 hear 5:14 41:9 64:5 72:11 78:2 100:21 100:22 102:21 108:19 heard 15:7 22:7 77:20,21,22 78:1,4 78:6,11 80:25 81:1 102:18 106:25 hearing 1:6 5:1 32:3 62:14 78:8 92:19 103:18 105:14 127:4 heart 51:13 hearts 25:23 helaine 3:2 4:2 held 70:7 72:6 102:19 help 8:24 27:22 30:1 74:15 108:1 helped 65:23 89:21 117:6 helpful 9:6,7 107:15 107:17 125:4 helping 93:11</p>	<p>helps 20:3 hererra 106:9,19 hi 60:11,12 hierarchy 18:1 high 30:22 38:20 89:7 109:17 highly 10:18 32:4 hill 2:8 hisey 125:1 history 31:16 35:6,8 45:1 hmm 54:11 78:19 90:8 hnem 34:22,23 36:23 44:14 68:12 hold 30:25 73:2,3,8 holding 59:16,19 home 19:12,17,21 20:3 81:13,15,16,20 105:10,17 108:9,17 108:18 111:11,14 111:14,15,17,18,21 112:4,5,8,14,20 homework 18:7 19:5 20:1,2,7,8 108:3 120:25 honor 6:24 13:5 18:21 36:15 37:16 50:6,18 51:17 52:22 87:22 102:6 122:2 123:12,24 125:20 honorable 1:7 37:7 hooper 1:23 2:1 hour 77:7 124:2,5 hours 12:4 110:12 110:14 122:10,11 125:3 hug 25:24,24,25 huge 25:19 26:17 huh 105:12 hundreds 107:13</p>	<p>identified 114:24 identify 14:15 25:10 identity 80:12 iii 91:4 illustrating 25:23 immigrant 45:18 91:21 immigrants 85:6,7 96:1 99:22 impact 14:23 16:8,9 16:16 17:11 implement 5:18 9:3 implementation 14:24 implemented 96:13 103:13 122:24 implementing 5:24 6:14 20:13,15 implications 21:1 important 15:9 19:3 19:16,23,24 20:16 20:22 24:11,14 40:7 47:3 48:22 56:7 72:19,25 73:2 75:13 107:5,9,20 109:4,6 impossible 57:4 121:8 impressed 6:17 impression 22:12 improve 108:1 improvements 107:23 include 82:15 included 50:10 83:18 111:5 includes 58:19 including 107:24 increase 24:12 independent 63:3 indicate 33:11 40:18 55:21 indicated 11:1 21:5 40:1 57:13 indicating 45:17 59:10 123:3</p>
<p>h</p>	<p>h 25:10,11 35:13 hamilton 1:10 2:2 hand 45:11 127:11</p>	<p>i</p>	<p>idea 28:21</p>

<p>indication 10:20 indictment 43:7 indiscernible 5:19 9:15 13:2 14:5 26:15 27:24 40:22 45:4 49:20 61:25 62:16 65:4 68:22 69:22 70:12 71:10 86:15 88:13 95:3,5 97:10 99:8 113:7 124:4,20,25 125:4,5 125:6,16 individual 64:2,3 102:24 120:21 individually 38:8 inference 109:15 117:17,19 informal 14:13 72:15 81:8 informally 72:6 information 6:14 10:25 21:10 23:21 24:12 26:25 32:17 32:19 38:14 40:10 49:4 50:11,18,20,24 54:16 56:19 57:8 59:6 62:24 63:14,15 64:21 67:4 72:5,21 77:8 85:23 88:11 90:4,11 104:5 109:22 110:10 113:18 116:18,19 116:19 122:19,24 122:25 123:1,6,7,18 informed 4:17 101:8 ing 9:23 initial 90:15 initiative 108:21 injunction 1:6 instruction 7:18 8:2 8:6,13,15,17 10:1 11:22 14:24 30:11 46:6 52:23 74:14 101:3 103:14 106:20,21 107:8,23</p>	<p>108:5 110:12 114:6 114:15 115:19 116:11,15 117:3,5 117:18,20 122:10 122:21 instructional 7:25 9:21 10:13 15:1 39:16 instructor 33:3 55:5 insufficient 12:7 intake 13:17,20 intensive 29:24 interact 4:4,5,6 24:10 interacting 22:10 interaction 4:8,9 24:6,7,14 33:1 interested 127:6 interesting 5:1 23:5 27:3,15 85:9,11 internal 54:1,6 110:2 122:12 international 6:4 23:8 39:22 67:21 88:8,14,21 89:14 118:9 119:4 120:6 120:23 interpret 45:12 interpretation 21:10 21:13 interpreter 21:18,18 21:20,20 22:11 70:5 74:13 interrupt 6:3 41:19 interrupted 81:3 82:5 85:4 interruption 42:25 interview 41:4 70:3 70:4,18 74:5 76:16 77:3,6,12,15,17 80:22 88:10 89:18 89:19,22 90:5,12 98:6,9 113:3,13 115:15,24 116:6</p>	<p>interviewed 20:11 21:15 22:8 68:16 69:14,16 70:5 75:10 75:11,19,22 76:17 76:19,20 77:23 90:13 interviewing 20:10 32:2 71:1,2 72:16 interviews 63:15 67:25 68:19 70:2,7 70:19 72:7,20,23 73:7 74:1,13 75:21 76:5,8 78:15 94:4 100:11 108:12 intimately 36:12 introduced 10:20 intuitive 95:7 involved 20:16 84:23 issa 1:2 22:25 68:8 76:24,24 86:13 89:6 115:25 issue 25:19 28:7 29:1 35:9 45:20 84:19 85:16 124:10</p> <p style="text-align: center;">j</p> <p>j 1:9,14 jaime 2:10 jamaicans 85:17 jandy 69:14,15 77:20 janine 2:10 127:14 january 33:12 job 12:2 59:1 123:16 join 64:9 joined 64:11,11 judge 1:7 104:23 105:1 july 103:3 115:15,24 116:6 jump 58:21 june 33:17 42:17 102:25 103:3</p>	<p style="text-align: center;">k</p> <p>k 44:12 kathleen 2:1 keep 125:19 kept 78:7 key 83:25 keystone 44:21 45:3 khadidja 1:2 14:4 22:25 27:15 28:6 29:22 35:17 36:22 68:8 86:13,16 88:11 88:14,21 89:6,8,19 89:21 115:25 116:3 khadidja's 30:10 89:11 kid 108:19 kids 86:5 100:12 113:6,16 kin 127:5 kind 16:13,22 17:17 26:8,9,12 32:19 46:21 47:10 48:24 54:6 kindergarten 44:12 82:10 kinds 9:3 27:6 46:6 kmoon 1:21 knew 72:20 88:10 89:10 know 4:5,7,9 5:11 5:22 7:14,21 10:8 11:6,6,14 12:3,5,15 12:15 14:2 15:20,25 17:2,15,24 20:4 21:6,8,9 24:3 25:13 25:15,17,24 26:11 26:19 27:14,16,21 27:22,23,23 28:17 28:18 29:1 32:2,7,7 32:8,25 34:16 35:7 36:2,6 39:5 40:11 41:24 42:4 48:4 49:8,14 56:21 57:22 59:17,18 66:10 71:6</p>
--	---	---	--

72:2,5,18 75:22 79:13,20,21 80:7,14 80:19,25 81:15 83:16 84:7 88:7,16 89:9 90:22 91:1 92:19 95:12 97:14 97:14 99:19 100:3,6 100:20 102:15,17 103:21 104:14,16 105:2,22 107:5,9,18 108:19 110:25 111:4,8,18 112:20 113:15 119:16 124:17,24 125:3 knowing 92:13 107:17 known 72:19,25 80:21 knows 25:17 kristina 1:17 kulick 2:10	83:4 92:7 94:15,21 95:10,14,17,23 96:23 99:14 100:15 107:12,23 108:14 112:12 116:5 118:20 120:19,21 120:25 122:21 123:4 languages 94:8 large 47:4 largely 40:23 late 124:9 laughing 103:23 104:1 law 1:18 97:15 lawyers 101:15 layers 33:1 leap 109:15 learn 4:7,12 16:17 17:6 18:4,4,5 19:8 19:24 20:3 21:5,7 21:10,14 23:2 24:13 24:15 25:5 29:19,21 34:17 35:4 43:18 57:24 100:9 103:12 109:5 learned 19:4,15,18 learner 94:24 107:12 112:12 learners 7:12 8:1 10:23,24 12:8 26:14 62:20 83:5 92:8 94:15,21 95:10,15 95:18,24 96:23 99:14 120:19 learning 16:7,9 18:4 19:19 41:8 89:24,25 116:5 120:21 121:1 leave 19:14 84:15 105:20 leaving 19:12 legal 87:19,22 legally 88:3 legitimate 4:18 91:22 92:5 93:10	legs 27:4 length 60:18 121:16 letter 28:19 level 13:25 38:20,22 39:3,5,11,13,14 44:7,8,11 45:5,10 45:15 48:3,4 58:8 58:16 60:19,19 82:19 110:11 114:18 116:14 120:17 levels 16:6,12 38:15 39:6 46:3,19,20,22 58:7,15,23 59:1 87:13 120:16,19 121:3,5 life 84:3 light 31:25 120:7 limited 7:11 30:21 39:8 81:3 82:4,16 83:25 84:1,3,7 96:2 96:4 98:1 107:10 line 65:2 70:5,6 80:1 111:10 114:14 lines 27:14,20,21 list 9:11 11:1 12:18 61:16 69:18 listed 11:5,10,18,19 11:23 56:3 listening 38:6,7,20 39:1,20 58:20,22 lists 9:8 literacy 38:24 58:18 60:19 82:16,18 literature 17:4 litigation 65:15 little 11:18 23:17 57:6 73:10 75:23 89:5 105:7 124:8 live 124:14 living 119:22 llp 1:10 2:2 load 11:4,21 logan 1:11	long 47:18 77:6 86:24 94:4 116:25 121:15 125:11 longer 105:3,3,23 look 8:5 9:4,19 10:2 11:3 13:1 17:20 21:22 22:24 23:7,11 25:15 27:25 31:17 34:20 35:10 37:18 42:21 43:8 44:11 46:8,10,11,11,14,17 46:17,24,25 47:10 48:4,6,17,19 55:11 57:22 58:4,10,14,24 66:10,12,23 67:7,12 69:18,21 79:9 80:11 101:6 104:10 122:22 looked 9:9,14,16,21 9:22,22 10:2,4,7,14 10:16 11:2 21:23,23 22:1,2,12 24:18,19 24:21 33:22 47:25 48:1 49:9 53:16 57:25 58:4,5,6,7,11 58:12,14 60:17,18 60:18,19,23 62:3,9 62:9,13,17,17,18,18 62:19,20 64:25 67:9 100:13 108:8 112:25 looking 14:14 16:5 25:18 26:23 27:4 29:11,19 33:11,13 35:2,7 39:23 40:15 41:18 43:23 44:2,2 45:7 46:5 48:1,18 49:18 53:17 56:1 57:5,6 58:2,20 60:15 65:3 86:19 87:21,22 90:21 92:18 122:16 looks 41:1 54:23 56:10 58:24 60:14 61:6
I			
la 107:1 labelled 43:20 lancaster 1:5 50:4 53:11 61:6,20 62:2 67:12 70:10 80:11 85:11 106:18 107:8 107:21 lancaster's 67:21 land 70:5 lang 31:9 32:2 68:12 language 4:8 7:12 8:1,6,10,14,15,18,22 8:24,25 10:23,24 11:12,12,14 12:8 16:19,25 18:4 19:9 19:9,13 22:22 24:7 26:14 27:5 28:19 31:2 32:3 33:4 34:14 36:7,12,14 41:3 45:18,24 46:6 54:22 55:4 56:16 59:11,17,19,20 70:6			

<p>lot 15:25 32:22 33:25 36:8 59:2 80:25 84:7 95:10</p> <p>loud 28:13,20</p> <p>low 32:8 39:21</p> <p>lower 38:25 46:3 58:23</p> <p>ls 26:19 55:16</p> <p>lsd 45:1 65:14</p> <p>lsd088 42:5</p> <p>lsd115 39:23 40:15</p> <p>lsd117 44:22</p> <p>lsd118 37:22</p> <p>lsd186 31:8</p> <p>lsd192 33:11</p> <p>lsd247 35:2</p> <p>lsd296 54:5,7</p> <p>lsd318 31:17</p> <p>lsd339 25:4</p> <p>lsd35 22:24</p> <p>lsd359 27:25</p> <p>lsd360 41:18</p> <p>lsd40 26:23</p> <p>lsd72 29:11,16</p> <p>lslife 26:18</p> <p>lutheran 71:7,11,21 71:24</p>	<p>making 20:17 59:16 59:20 108:21 111:16</p> <p>man's 26:11</p> <p>mandated 118:22 118:24</p> <p>mapped 55:13</p> <p>marginalized 16:11 16:22</p> <p>marked 29:11 54:5 65:14</p> <p>market 2:2,14</p> <p>marking 51:20 52:4 52:6 53:3,12,12,18</p> <p>marquee 68:18</p> <p>marshall 2:6 3:2 4:2 45:15 73:9 123:14</p> <p>massachusetts 64:11,15,17</p> <p>mastery 22:14,22</p> <p>mastro 68:21</p> <p>mastropietro 69:7 69:22</p> <p>matching 27:8,12,14 34:10</p> <p>material 19:21 32:5 32:21,23 67:9 109:8 109:9 120:1</p> <p>materials 25:14 26:2,17,18,20 109:7</p> <p>math 23:20 30:12 31:1 36:5,5,7,12,14 41:24,25 43:21 44:9 44:13,13</p> <p>matrix 9:21 52:23</p> <p>matter 13:10 31:2 51:24 66:17 73:5 95:8 103:8 112:15 121:16</p> <p>matters 76:3 121:16 121:16</p> <p>maura 1:18 65:25</p> <p>maximum 19:9</p> <p>mccaskey 4:4,10 5:3 6:4,5,5,6,8,14 19:20</p>	<p>30:14,17 33:5 47:15 47:16 48:2,10 49:24 51:4 53:16 57:13,23 58:7,17,25 59:23 86:12,15,22 89:7 109:17,23 113:2 118:9 119:24 120:2 121:7 122:12</p> <p>mcinerney 1:18 3:2 3:3 6:20,24 7:2,7,8 9:13,18 13:13,16 18:21 19:6 29:8,10 36:15 37:16,17 41:21 43:3 49:22 50:18,25 51:16,22 52:2,7 53:1,20 60:2 60:13 65:25 66:4 67:19 71:10,17 75:17,25 76:3 87:18 100:13 105:15,18 105:25 122:1,2,8</p> <p>mdwgc.com 2:9</p> <p>mean 8:16 10:2,3 11:14 15:23 17:16 17:21 18:8 32:6 33:25 35:15,16 36:10 41:11 47:19 57:21,21 62:1,2 64:2 75:22 78:13 87:14,15 88:5 92:16 94:23 99:14,15 101:22 108:16,17 111:12,15</p> <p>meaning 23:5 28:25 94:22</p> <p>meaningful 4:6 8:1 19:10 119:25</p> <p>means 8:17 11:6 25:3 33:17 41:25 56:6 88:2 111:12</p> <p>meant 59:2 78:7,10 115:2</p> <p>measure 38:5 47:4</p> <p>measures 38:6 46:12,13 48:17 51:2</p>	<p>57:25</p> <p>meet 26:16 48:25 55:16 100:23 103:11</p> <p>meeting 20:8</p> <p>meets 26:16</p> <p>megan 68:21</p> <p>melting 17:8</p> <p>member 63:24,25 64:1,12</p> <p>members 55:17,17 98:7</p> <p>membership 64:9 64:16</p> <p>memorialized 117:21</p> <p>memory 70:23 76:1 76:1</p> <p>mention 36:18 106:11</p> <p>mentioned 5:2,3 19:11 20:11 26:2 49:7</p> <p>mentioning 15:8</p> <p>mentions 7:25 8:13</p> <p>merry 84:15</p> <p>met 22:13 26:10 70:17</p> <p>metaphoric 32:9</p> <p>methodology 49:2 119:17</p> <p>methods 106:18</p> <p>mic 75:5</p> <p>microphone 14:17</p> <p>mid 2:14</p> <p>middle 25:20,21</p> <p>midlevel 38:21</p> <p>mind 12:5 70:24 95:23,25</p> <p>minimal 56:5 112:17</p> <p>minimize 78:17</p> <p>minimum 114:18</p> <p>minute 91:8 96:15 115:19 116:12,20</p>
m			
<p>m 1:23 2:6</p> <p>ma'am 41:22 52:13 64:1,3 67:23 68:7 68:20 69:13 70:15 71:13,20 74:3 76:2 76:4 79:7 81:5 101:15 103:16 104:21 105:11 106:22 116:21</p> <p>main 56:7,24</p> <p>mainstream 22:15 22:16 46:25 121:17 121:17</p> <p>mainstreamed 47:1</p> <p>maintain 17:5,5</p>			

<p>116:22,23 117:11 117:17 minutes 36:25 114:17,18 115:4 121:15 misinterpreted 25:18 misnik 79:15,18 missed 66:7 69:19 missing 55:9,25 mix 35:5 mixed 27:10 mm 54:11 78:19 90:8 mmcinerney 1:22 model 4:13 10:13 14:24 15:1,2 33:5 49:2 120:10 121:8 modern 31:15 modifies 33:3 modify 33:2,3 molly 1:23 moment 41:20 71:13 monday 69:3 moon 1:17 morning 15:7 77:21 77:22 78:3 104:11 124:18 mouth 75:5 move 5:11 13:3 75:5 96:20 103:7 113:24 120:19 121:2 123:25 moved 121:20 moving 46:19,19 mtack 2:1 muhammad 29:17 mullen 2:1 mullenk 2:5</p>	<p>68:15,22 69:7,25 70:8,23 72:15 86:15 89:7,9 106:8,12,13 106:25,25 narrate 32:24 narrative 28:5 31:23 national 2:13 64:6 92:14,15,16 93:10 94:16,17,19,21 95:8 95:9,12,24 nationals 85:2 native 12:12 16:24 19:13 25:8 26:2 121:9,10 nature 49:24 51:5 necessarily 8:19 11:21 25:25 120:18 need 4:7,25 5:1,6 8:10,11 15:23 18:1 18:5 19:9,20 20:8 20:24 22:11,11 23:4 24:6,6,10 30:23 43:12 48:24,24,25 56:7 64:18,18 73:10 79:1,1 82:24 83:15 83:16 88:7 91:14 95:5 104:6,20 105:2 120:5,22 121:19 needed 12:10 14:3 15:18 30:1,10 39:21 101:9 116:23 needing 15:8 needs 18:1 55:16 81:17 92:13 100:25 negative 16:7 negotiate 34:17 negotiating 16:1 neither 127:5 nervous 16:13 never 88:10 nevertheless 112:18 new 15:21,24 16:18 16:24 18:4 19:13 34:18 50:10 64:11</p>	<p>64:13,14 112:12 newcomer 95:25 newcomers 15:19 ni 31:9,10 32:2 68:12 night 42:2 104:9 108:17,18 120:25 123:21 nights 102:24 nodding 98:10 non 26:18 95:25 96:25 97:11 normally 46:9,13,15 norsham 86:15,18 86:21 89:7,13 notary 2:11 127:14 note 24:17 noted 45:6,15 notes 76:4 77:11 notice 30:9 33:20,24 34:1 36:17 noticed 23:11 102:23 number 12:8 25:22 31:10,20 34:24 35:1 36:18,19 42:16 43:25 49:8 53:15 55:24 78:17 96:10 109:14 114:17 115:3 numbered 7:20 numbers 36:5 45:13</p>	<p>123:11,12 124:8,19 124:25 125:5,7,15 125:18,21 object 13:5,8 18:10 18:13 objection 13:12 18:24 50:7 53:8 71:10,15,16 75:17 87:17,18,23 objects 25:11 observation 48:25 49:5,10,12 51:8 observations 101:3 101:13,17,24 observe 48:23 101:4 101:6,19,20 102:12 observing 92:12 obtain 63:13,14,20 64:23 65:8 obtained 63:15 77:9 obvious 82:6,7,9 obviously 28:8 50:12 109:2 occurred 80:2 offer 50:22 offered 55:14,15,15 official 110:19,24,25 113:22,23 127:11 officials 113:21 oh 7:4 17:1 28:23,24 29:12,18 31:19 33:8 36:5 39:23 41:21 43:17 51:25 52:2,24 53:4 62:15,17,17 63:21 78:8,11 79:24 89:15 90:10 93:3 108:24 111:11,13 111:13 124:3,3 okay 4:16 5:19,21 6:12 7:1,3,7,20 9:5 9:10,11,12,17 10:10 10:14,19 11:2,6,17 12:25 13:1,15,15 14:8 15:4 19:2 20:15 22:19 23:4,25</p>
<p>n</p>		<p>o</p>	
<p>n 3:1 nail 23:18 name 11:22 40:2 45:2,11 65:21,23</p>		<p>o'donnell 2:6 3:3 13:5,8 18:10,13,18 50:6,9,15 51:17,23 52:22 53:3,7 60:5,9 71:19 73:19,22 75:20 76:9 87:21 88:1 98:13,17,21 102:6,9,13,17,22 103:2,6,9,10 104:2 104:8,18,23 105:1,6 105:24 106:6,7</p>	

<p>27:13 28:1,9 31:4,5 31:17,19 33:11,13 33:24 35:3,13 37:10 39:5 40:3,13 42:22 43:5 44:2,5,23 45:9 45:14,14 47:3 48:17 48:18 52:9,24 53:4 53:4,8,25 54:18 55:7 57:22 58:9 60:21 61:5,9,22 62:7,11,15,17 63:7 63:12,16,17,19,20 64:5,20,23 65:1,3,8 65:13 66:2,2,8,10 66:14,20 67:7,11,15 67:18,25 68:2,4,9 68:11,23 69:15,18 69:21,23 70:3,7,11 70:16 71:1,6,7,25 72:14 73:4,16,19 74:4,6,9,14,17,21,23 75:2,3,5,8 76:12 77:1,1,6,8,11,16,18 78:5,11,14 79:2,9 79:23,25 80:10,14 80:24 81:9,12,18,21 82:2,14,17,20,23 83:2 84:8,13,21 87:1,7 88:15,18,19 89:3,16,20 90:1,9 90:15,24 91:9,11,13 91:15,18,20 92:23 92:24 93:5,6,16,19 93:22,24,25 94:3,5 94:8,9 95:4 96:10 97:1,6,8,9 98:2,13 98:18 99:1,3,13,16 99:18,24,25 100:2 100:11,20 102:3 103:6 106:3,6,11,24 107:5,20 108:2,20 109:2,12,20,22 110:23 111:4,14 112:2,7,19 113:3,12 113:20,24,25 114:4</p>	<p>114:22 115:8,17 116:22 117:1,24 118:3,4,25 119:1,10 119:22 120:14 121:23,24 122:17 125:2,21 old 99:23 118:5 older 45:18 75:14 91:21 once 37:13 47:1 117:14 ones 67:22 83:19 98:8 open 119:11 operator 2:10 opinion 4:14,16 39:15,15 59:9,21 86:4,9,22 87:15,22 88:5 89:10,22 90:16 90:19 91:2,23 92:3 92:6 93:8,11 95:11 95:21 97:2,12 98:23 99:4,5,9 100:7,14 100:18,19 108:2 118:4,8,13 119:21 123:8 opportunity 50:12 57:2,12 86:7 87:20 89:13 opposed 8:25 34:3 109:8 113:2 114:25 119:8 opposite 4:25 options 20:19 oral 24:15 order 9:19 19:8 27:10,17 28:17 32:19 37:10,12 64:10 66:2 75:11,13 75:19,23,25 76:3 79:16 83:21 84:14 107:8 108:5,9,22 110:17 118:9,11 organization 70:9,9 70:24 71:25 72:3,3</p>	<p>72:16,22 origin 92:15 93:11 94:16,17,19,22 95:12,24 original 17:1 53:10 ortiz 10:21 53:18 54:14 outcome 127:6 outline 54:24 outside 109:5 outstanding 123:16 overall 22:4,6,7,16 38:8,17 39:4 58:5,6 58:7,15,24 60:19 overcome 45:19 59:12 123:3,4 overcoming 45:24 54:21 59:14,18 100:15 118:20 overrule 87:23 overruled 18:25 53:9</p> <hr/> <p style="text-align: center;">p</p> <hr/> <p>p.m. 1:5 37:4,4 126:1 p.o. 1:24 2:3 pa 1:3,11,15,19,24 2:4,8 pa.org 1:21,22 padagogi 91:25 page 3:1 7:17 8:12 16:5 40:1 51:2,21 51:22 52:25 55:23 55:23 91:3,3 109:12 109:14,16 114:1,3,7 114:8 115:9 117:21 pages 7:20 47:19,21 paper 5:22 paragraph 91:5 110:8 111:8,11 114:12 115:9 pardon 67:12 109:17</p>	<p>parent 20:11 68:17 68:18 111:16 112:16 parental 62:9,10,20 62:20 parentheses 116:6 parents 20:16,18 71:4 73:25 part 4:11 5:16 11:21 21:21 24:14 37:10 80:8 82:24 112:10 118:12 participate 20:23,24 particular 4:13 8:8 12:22 14:11,12 26:8 29:19 35:25 38:12 39:24 40:18 43:19 56:15 57:16 59:11 72:22 82:5 96:14 particularly 17:11 92:6 parties 37:13 parts 19:3 party 127:6 pass 109:10 patan 107:1 pattern 38:17 pause 41:16 pay 18:3 pde 114:24 pena 107:1 pennsylvania 1:1,14 1:23 2:15 7:10,16 8:3 62:4,7,8 63:2,13 66:5 107:2 114:19 people 4:7 5:2 17:2 17:4 24:10,16 25:22 27:6,22 33:14 36:4 36:14 48:22 68:1 78:17 84:4 85:1 87:14 95:16 96:14 96:25 97:12 98:15 98:25 99:11,20 125:11,15</p>
---	---	---	---

<p>pepper 1:10 2:2 pepperlaw.com 1:13 2:5 perfect 28:22 perform 15:9 107:15 performance 45:10 46:11,12,13 48:19 49:5 period 30:2,4,5,24 51:20 52:6 53:3,12 53:12,18 116:24,25 periodically 48:23 person 11:13,15,18 11:20,24 80:3,14 83:9,17 106:24 107:1 113:2,2 person's 83:11 106:11 personality 16:14 perspective 30:19 88:3 ph 4:24 26:18,19 44:3 62:3 68:17,18 69:7 72:9 80:15 91:25 106:9,13 107:1,1 philadelphia 1:3,11 1:19,24 2:15 phiza 68:17 phoenix 4:9,17 5:3 5:17 6:1 9:3,20 10:2 10:4 12:8 14:16,18 14:19,23 17:11 18:6 19:3,4,25 21:4 40:17 45:16,19,23 47:15,16 48:1,10,15 49:16 51:3,6 53:17 53:17 54:3,6,7,21 57:4,7,12,14,23 58:6,17,22 66:8,9 66:25 67:2,7,20 79:5,6,18 80:3 86:5 86:8,14,17 89:12 91:21 93:9 98:3,8</p>	<p>98:15,25 99:15,20 100:1,4 101:3 102:20 107:24 108:23 109:11 111:19 112:24 113:1,5,16 115:10 115:17 116:11 117:11 119:8 120:10 121:5,15,21 122:20 phone 21:20 77:5 photocopies 108:8 photograph 25:17 photographs 25:16 25:16 phrased 74:20 pick 18:8 19:2 picnic 33:14,23 picture 25:22,25 26:8 33:14 34:15 47:2 70:24 pictures 25:10 27:11 piece 51:1 57:6,14 57:15,15 pitch 25:24 pittsburgh 1:15 place 8:15 14:20,23 17:25 101:10 109:24 placed 12:12 20:25 21:7 23:6 59:22 100:1 118:8 placement 38:2,3 39:24,25 40:2,4,5,9 91:21 plaintiff 1:3,9 plaintiff's 124:12 plaintiffs 12:23 70:18 99:7,11 plan 5:14 plane 120:3 planned 7:18 8:13 planning 105:10,13 105:14</p>	<p>played 58:12 please 34:24 74:22 91:8 92:23 point 29:22 34:9 60:16,22 61:1,3 73:1 85:9 points 44:6 policies 14:20,23 17:11 18:6 21:22 122:22 policy 19:5 20:9 polite 15:24 pondering 13:10 population 4:12,22 45:24 94:14 position 45:12 positive 16:6 possession 51:10,14 possibility 5:2,25 97:17 possible 11:13 20:20 28:14 30:23 79:22 80:8,20,21 93:20 103:16,19,20 pot 17:8 powerful 120:6 powerpoint 47:25 48:8,9 practice 18:7 108:9 practices 5:17 9:2 9:20 10:11 13:17 20:12 122:23 precious 24:9 30:17 precipitously 40:22 preliminary 1:6 prep 23:9,16,18 30:6,6 preparation 70:19 prepare 50:13 63:10 64:21 66:2 68:3,16 69:16 70:18 77:9 79:16 prepared 47:25 52:19</p>	<p>preparing 61:11 63:12 66:15 107:16 present 37:13,13 72:8 presentation 55:13 presented 47:24 presiding 37:8 press 75:23 pressure 16:7 pressures 32:9,9 pretty 28:20 previous 8:12 previously 37:13 40:16 primarily 8:23 32:9 65:25 prime 32:9 principal 80:2 print 66:23 67:3,15 67:17 printed 66:11,19 prior 14:1 55:25 82:22 116:2,3 prioritizing 118:20 118:21 priority 118:23 probably 69:10,11 71:8 124:10 problem 24:5 26:5,6 50:5 73:11 85:15 94:18 problematic 30:19 problems 36:8 procedures 13:20 proceed 6:12 37:14 42:25 53:9 71:18 73:20 proceeding 37:3 101:9 125:25 proceedings 2:12 4:1 process 89:22 processing 28:25 produce 32:5</p>
---	---	--	--

<p>produced 2:12 49:23 50:20 51:4,6 59:10 produces 59:10 123:2 producing 45:17 59:14 professional 4:16 55:11,12,14 59:9 88:4 proficiency 7:12 38:15 58:6,6,7 program 4:16,17 5:11,17,18,22,23,24 6:1,4,8,15,17 7:25 8:6 9:3 10:1,5,11,15 20:14,15 21:7 39:16 45:16,17,23 46:9,16 46:24 47:7 48:15 49:3 51:3,6,7 54:6,7 54:21 56:4,16,21 59:10 60:18,21 67:20 79:11,14,18 91:21 92:4 93:8 96:4,22 97:11 100:7 100:8,14 102:19 107:2,12 108:1 110:20,22 111:20 112:13 122:20,21 123:2</p>	<p>proof 50:22 properly 78:12 proposal 10:4 provide 8:1 21:18 21:19 33:6 51:8 53:1 54:25 56:22,23 64:7 77:11,14 provided 9:4 10:25 30:11 32:18 48:13 49:4,8,13 51:2,10 52:16 53:11 58:3 59:6 61:17,20,22 62:1,24 65:23 66:3 67:18,22 90:4 91:1 100:12 109:6 110:15,21 113:18 113:19 public 2:11 81:9,23 127:14 published 106:19 111:1 pull 66:8 pulled 63:3,4 pulling 42:21 purposes 81:2 purview 93:24 put 5:10,10 15:22 16:15 17:22 21:4 30:12 35:8 39:4 72:23 110:7 116:23</p>	<p>92:21 93:4,5 96:16 98:11 104:17,17 105:5,6 109:1 113:4 113:12 116:18 117:15 118:2,17,18 122:17 questions 24:3 27:6 27:7 31:18 33:16 34:16 54:19 55:19 74:18 79:24 89:20 91:10 100:21 104:13 108:25 quick 122:2 quickly 46:19 121:2 quite 34:18 39:20 53:15 77:24</p>	<p>realize 25:21 36:14 123:15 really 5:11 13:9 17:3 18:14 20:6 22:11 24:18 30:10 34:17 40:25 41:16 48:6 55:21 56:5,20 58:2 81:19 84:4 85:18 87:19 93:15 97:14 97:16 101:4 118:13 118:14 120:1,25 125:3 reason 26:20,21 35:13,14 83:23 95:6 121:11 reasonably 5:17 reasons 21:2 64:7 recall 21:16 28:12 35:7 76:17 receive 39:17 86:7 110:11 117:11 122:10 received 40:8 53:15 57:11 receiving 116:14 recess 36:24 37:3 125:10 reciting 34:19 recognize 49:21 recognized 4:17 recollection 72:14 72:17 75:21 77:19 recommendation 115:4 record 29:5,20 59:4 recorded 2:12 78:22 recording 2:12 127:4 records 12:20,22 21:22 30:3 32:1 37:19 43:6 89:17 117:2 recover 15:9 recovery 4:23 15:2 15:16 92:25 93:21</p>
<p>programing 109:17 programming 46:6 109:23 programs 20:20 24:1 46:5 103:13 107:8 progress 20:2,6,7 30:24 54:25 59:16 59:20 114:18 120:11 progressing 46:23 promoted 22:21 prompt 34:2,5,7 pronunciation 8:18</p>	<p>q qasin 14:9 29:17 44:12 68:10 76:24 qualified 10:18 84:4 qualify 110:3,6 quantifiable 47:5 56:23 quantitative 54:25 question 12:5 13:14 14:25 18:14,16,18 18:23 55:23,24,25 56:3 67:1 70:15 73:23 86:3,11 87:5 88:25 89:1 92:17,20</p>	<p>r r 127:1 raise 18:25 85:9 ran 110:22 rank 24:24 25:1,2,2 ranked 36:18 41:23 rare 82:21 83:1 raw 47:17,18 reach 81:13 reaches 103:24 reaching 100:22 111:15 reacted 19:3 read 15:4 28:9,10,11 28:13,16,18,18,20 28:23 35:19 42:1 43:9 54:9,10 62:8 67:3,15,17 91:9 117:3 reading 25:7 28:8 28:24 29:24 30:1 38:7,7,21,25 39:19 43:21 44:9 58:19,20 58:23,25 59:1 reads 116:9 ready 73:18 91:18 real 34:3 56:25</p>	<p>realize 25:21 36:14 123:15 really 5:11 13:9 17:3 18:14 20:6 22:11 24:18 30:10 34:17 40:25 41:16 48:6 55:21 56:5,20 58:2 81:19 84:4 85:18 87:19 93:15 97:14 97:16 101:4 118:13 118:14 120:1,25 125:3 reason 26:20,21 35:13,14 83:23 95:6 121:11 reasonably 5:17 reasons 21:2 64:7 recall 21:16 28:12 35:7 76:17 receive 39:17 86:7 110:11 117:11 122:10 received 40:8 53:15 57:11 receiving 116:14 recess 36:24 37:3 125:10 reciting 34:19 recognize 49:21 recognized 4:17 recollection 72:14 72:17 75:21 77:19 recommendation 115:4 record 29:5,20 59:4 recorded 2:12 78:22 recording 2:12 127:4 records 12:20,22 21:22 30:3 32:1 37:19 43:6 89:17 117:2 recover 15:9 recovery 4:23 15:2 15:16 92:25 93:21</p>

<p>redirect 3:3 122:1,6 redirection 16:6 refer 9:6 68:23 reference 9:25 55:18 referenced 122:9 references 7:18 8:4 referred 61:16 68:23 113:22 referring 91:3 96:23 98:16 122:13 refers 43:21,21 54:14 reflect 69:21 reflection 22:14 reflects 35:22 refugee 85:3 102:19 refugees 15:20 85:6 98:16,17 99:22 regard 21:14 38:14 39:16 40:18 41:4 46:1 51:3,7 55:2 57:4 regarding 21:10 48:15 50:23 80:16 regardless 94:16,17 94:19,21 95:24 region 2:14 regret 101:5 regular 121:20 regularly 48:25 regulations 62:6 reinforce 109:8 reinforced 90:17,18 90:19,20 reinforcing 19:15 reject 16:23 related 28:25 43:7 49:23 51:6 relates 43:7 relating 9:25 21:15 40:19 49:5,15 51:2 51:4 109:7 relatively 32:8</p>	<p>relax 74:15 104:5 relearn 121:20 relevance 75:17,18 relevant 76:1 85:25 99:9 106:19,21 relied 63:9 66:3 110:17 rely 56:22 67:19 relying 47:4 92:6 113:18 remain 105:13,16 remediating 15:12 remember 20:4,5 27:4 68:21 70:8,23 78:8,8,9 94:4 113:10 121:20 reminded 78:8 render 99:4 rendered 91:2 repeat 14:25 73:23 74:24 87:3,5 120:5 repeatedly 50:19 repeating 34:19 rephrase 74:24 92:23 109:2 report 22:20 50:1,10 52:19 54:24 61:11 63:10,12 64:21 66:2 66:15 67:10 68:3,16 69:16 70:19 77:9,13 79:17 85:21 91:3 97:13 99:3,6 103:17 107:16 109:12 111:6,10 117:21 reported 116:3 reporter 78:24 reporting 2:13 requested 50:19 101:4 required 8:3 40:8 114:6,15 115:3 requirements 8:7 research 63:3 106:25</p>	<p>resolution 103:25 resources 26:13 122:23 respect 14:22 40:16 44:17 48:6 51:12 59:3 99:6 103:13 106:19 108:2 respond 74:25 response 18:17,20 43:13 responsive 18:15,22 19:1 56:4,6,8 responsiveness 55:22 rest 105:14 116:15 123:21 result 37:24 86:8 results 45:17 59:10 123:3 retarding 20:1,6 120:11 retrospect 72:25 return 105:10 reveal 44:18 45:5 reverse 5:13 8:20 review 12:20,25 14:19 21:25 32:15 39:24 54:1,6 56:11 63:10 75:15 89:17 110:1,2 117:9,16 122:12 reviewed 18:6 30:4 32:1 51:19 56:14 61:10 78:14 89:19 117:22 reviewing 23:2 31:25 35:4 43:18 reviews 117:9 revision 107:22 revisit 19:17,21 revolve 85:18 right 4:15,24 5:25 6:10 7:1,10,22 8:17 9:17 10:24 16:2 19:10 21:17 22:23</p>	<p>23:10 25:22 28:7 29:25 31:10,20,24 33:13,13,19,25 34:1 35:3 36:12 38:1 42:13,20,24 43:15 45:7,7,11 46:11 50:3 51:13,21 52:21 55:11 61:23,24 63:16 66:22 68:14 73:12,17 75:10,10 76:14 78:5,23,25 79:4 82:18 83:18 84:25 85:8,19,22,23 86:5 87:25 88:20 89:4 91:6 92:22 94:12,20 95:13 96:12 97:12 98:4,7 98:7,8,9 109:1 111:24 112:5 113:6 113:14,17 119:5,8,8 119:15 120:4 121:23 125:8 rise 37:1,6 125:23 rivera 69:14,15 77:4 77:9,12,20 78:15 robust 48:5 56:20 rock 32:9 rocks 33:1 roman 91:4 room 27:20 41:12 74:4 rothsche 1:13 rothschild 1:9 123:24 124:2,5,14 124:22 125:2,6,8,20 row 70:25 rowel 80:15,16 rubbing 80:25 rude 15:25 rudimentary 33:21 rules 16:7 running 79:10,13 runway 120:2,3</p>
---	---	---	---

s	102:14,18,24 103:3 106:17 107:7,20 108:5,17 109:5,17 111:3,11,14,15,16 111:17,18,21 112:3 112:5,8,9,10,10,11 112:15,15,20 116:15 118:9 119:4 120:6,8,23 123:2	87:23 99:19 101:16 103:18 109:18 111:11 114:6,9,15 115:22 seeing 25:21 seen 28:21 56:16 segues 86:3 semester 22:3 sense 5:4 16:11 17:25 35:21 36:5 74:7 sent 65:25 sentence 91:20 110:3,6 114:5 115:17 116:2,3,9 sentences 27:10 33:20 34:7,8 separate 35:9 109:9 separated 48:11 58:18 serious 84:6 104:4 service 2:12 71:9,12 71:24 services 9:21 21:11 21:13 70:9,11 72:4 112:14,23 113:5,7 113:16 session 37:7 44:13 102:5,7 set 5:7 72:7 sets 120:7 seven 16:6 34:25 42:19 70:1 shaking 67:5 sharon 2:6 sheet 27:17 31:19 49:12 sheila 68:21 69:4 sheltered 8:23 110:14 shirt 17:19 shirts 17:16,16 shot 5:12 120:22 should've 40:8	show 36:9 76:22,22 76:22 showed 35:17 shown 27:15 shows 41:23,23 59:15 sick 103:5 sicora 106:9 side 27:9,10 45:11 92:18 significant 35:12,14 similar 29:21 38:2 51:5 58:24 77:22 similarly 35:5 59:22 simple 26:21 simply 16:14 70:20 112:15 119:25 single 51:1 115:19 116:11 sister 86:14,18,21 88:7,8 89:6,13 sit 72:17 75:6 site 63:22,23 sites 63:23 sitting 24:8,16 situated 59:22 situation 15:22 17:22 19:18 22:5 situations 17:22 six 42:18 58:8 70:1 76:20 86:5 98:3 99:6,11,12 100:12 skills 14:9 23:9,16 23:18,20 30:6 46:22 46:23 58:5,19 slife 4:24,24 15:10 16:8 17:12 25:16,19 26:18 38:18,25 39:7 39:11,11,13,14 56:7 56:7 59:3 81:1 83:3 83:9,15,21 84:18 85:1,5,13 92:13 118:5 121:9,19 slow 5:1
----------	---	---	--

<p>slower 5:6 24:2 slowing 20:1 smith 1:7 37:7 smodonnell 2:9 snapshot 57:21,21 58:1,10 59:5 soccer 4:5 social 11:19,20 30:12 31:2 54:12 70:9 society 17:10 sole 51:5 soon 30:23 sorry 5:19,21 6:12 7:11 9:12 13:15 18:19 24:25 29:7,12 30:15 31:20 41:21 53:21 71:20 73:13 78:6,16 79:24 86:18 91:3 92:16 93:7 94:3 102:6 104:19 111:13 117:8 118:18 sort 17:19 92:18 sound 2:12 4:18 5:13 28:19,20,22 32:23 91:22 92:5 93:9 94:11,13 122:22 sounds 6:16 source 65:8 110:8,9 110:10 116:23 south 83:6 spanish 11:10,11,12 11:16 54:13,13 55:4 speak 14:17 79:1,5 80:2 83:7 85:8,17 101:13 speakers 12:13 25:8 26:3 94:8 121:9,10 speaking 4:23 15:1 15:3 38:7,7,20 39:1 39:20 58:16,20,22 79:17 81:16 85:12 96:1,25 97:12</p>	<p>special 60:25 107:11 119:7 121:19 specialist 94:6 specially 32:24 specific 47:7 77:23 111:25 specifically 26:13 60:15 90:12 102:19 116:4 spelled 79:2 spend 11:8 spending 11:4,7 30:16 spent 70:25 spoke 19:8 68:1,12 68:12,13,17 78:17 88:11 spoking 80:16 sponsored 112:11 square 1:11 staff 10:16 55:17 staffing 10:15 11:3 12:5,7 13:3 32:15 stamped 65:14 stand 36:24 37:14 125:10 standard 8:5 114:22 114:23,25 115:2 standardized 43:8 43:13,22 44:5,18 standards 8:3,4 84:10,11,11,12 start 5:1,6 10:15 67:1 76:16 108:4 125:12,13,16 started 30:23 38:13 46:20 104:11 starters 18:2 starting 54:24 60:16 125:10 starts 28:2 109:13 state 7:16 8:8 62:3,7 62:8 63:14 64:9,12 64:13,15</p>	<p>stated 122:10 states 1:1,7 8:5 31:15 37:6 64:9 status 85:3 stay 63:18 85:25 108:4 stayed 61:2 staying 105:25 step 20:6 89:5 124:3 steps 20:5 stool 27:5 stop 84:10 94:1 strange 41:6 strategy 4:19 street 1:15,19 2:2,14 streets 1:10 stress 15:20 stressful 17:21 82:21,24 stretching 47:14 strike 61:25 strikes 25:11,13 striking 35:7 strong 5:24 111:5,9 111:11 120:6 stronger 6:23 39:20 115:6 strongly 18:9 struck 15:5,15 24:18 30:10 38:16 40:21 41:10 structured 12:10 student 10:3 12:20 12:22 15:14 21:22 22:2,4,8,25 29:5,16 30:3 31:8,11 33:9 35:25 37:19,19 38:13 39:2,3,7,18 39:25 40:17 41:22 48:19 83:2,9,20 86:13 91:1 112:4,4 117:2,9,13 118:4,5 119:2 120:21 122:10</p>	<p>student's 22:24 43:6 45:2 93:10 117:2 students 4:4 7:11 8:6 10:22 12:12 13:18,21 15:6,6,17 16:8 17:12,18 19:10 20:10,21 21:15,17 21:17,24 22:10,13 22:16,21 23:19,21 25:3 26:10 34:11 36:10 38:17 44:10 44:15 45:18 46:10 54:25 57:1,7 58:8 58:16,23 59:11,21 59:22,25 68:14,14 76:15,17 80:17 81:3 82:4 86:1,12 93:12 93:12,17,21,22,23 94:14 95:17 96:22 97:23,24,25 98:1,3 98:6,6 100:4,8,16 102:19 107:10 108:3,7,12,13,20 109:4 110:11 112:24 114:18 116:14,14,20 117:10 118:22 119:17,23 120:20 121:5,17 studies 11:19,20 30:12 31:2 54:12 study 108:14 style 27:8,12 subheading 109:16 114:8 subject 13:10 22:3 120:4 submitted 50:1 subsequent 53:14 subsequently 10:24 subset 83:4 substantially 90:3 substantive 56:5 successful 54:21 108:22 110:22</p>
--	---	---	---

<p>sufficient 114:6,15 115:3 122:19,24,25 123:1,6,7</p> <p>suggestive 56:19</p> <p>sui 34:22,23 36:23 44:14 68:12</p> <p>suite 1:19 2:3,7,14</p> <p>summer 5:10 101:9 102:14,18 103:3 120:8</p> <p>superintendent 80:12</p> <p>supervises 80:3</p> <p>supplement 103:17</p> <p>supplemental 50:20</p> <p>support 8:6,22 10:12 12:9 33:7 120:24 121:3,5</p> <p>supported 10:15 96:10,11 97:10 100:8,14</p> <p>supposed 25:23 27:9 34:15 104:14,16</p> <p>sure 5:23 13:9,19 19:19,21 41:11 42:4 49:1 53:2 55:20 72:19 75:4 78:11 82:7 84:2 86:24 88:12,17 96:21 106:2</p> <p>surface 32:8</p> <p>surprise 51:12</p> <p>surprised 78:13</p> <p>survey 10:25 100:25 110:1,1,13,16,17,19 113:1,1,18 122:12</p> <p>sustain 13:12</p> <p>system 15:6 17:23 27:8,8 34:16 121:6 121:7,8</p> <p>systematic 14:1</p>	<p>tab 14:14 25:5,5 29:13,16 31:6 34:20 37:18 43:10,15 44:20,23,24,25 49:18 51:18,22,23 53:24 56:9</p> <p>tabs 52:22 53:22</p> <p>tack 1:23</p> <p>tailored 26:14</p> <p>take 5:20 8:15 19:17 20:3 30:22 36:15 45:8 46:9,23,25 57:14 58:4 61:9,9 73:9 76:4 86:13 89:4,5 93:19,19 101:6,9 105:4 108:9 108:13,16 109:10 118:12</p> <p>talk 13:4 16:7 20:15 33:25 35:9 55:3 67:25 68:6 82:4 89:23 94:10 97:25 101:6 109:22 113:21</p> <p>talked 9:22 11:25 20:17 42:9 55:22 60:23 84:19 113:10</p> <p>talking 32:25 51:13 51:18 63:16 66:10 92:24 94:13 95:7 96:14,24 97:25 98:14,15,19 117:1</p> <p>talks 16:6 55:16</p> <p>targeted 112:11</p> <p>task 34:10,11,17 57:4</p> <p>taught 12:13,16 22:15 108:15</p> <p>teach 8:25 27:13 92:10</p> <p>teacher 10:21 11:5,5 11:10,11,19,22 12:18 22:9,9 32:16 32:20,24 33:6 35:11 48:20 49:5 54:12,13</p>	<p>54:13 55:4,4 111:17 112:16 121:18</p> <p>teacher's 41:14</p> <p>teachers 10:19 11:2 11:10 22:16 50:5 53:15 54:9 55:3 80:4 92:10 100:24 101:7,13,25</p> <p>teaches 11:20</p> <p>teaching 4:14 8:19 8:21,21 11:7,16,16 11:24 12:2,3 15:12 41:15 84:4 92:9,12 94:8</p> <p>telephone 77:3 78:1</p> <p>tell 10:10 23:21 28:23 37:22,25 56:14,20 74:22 75:11 77:19 88:2,2</p> <p>telling 46:3</p> <p>tells 29:25 38:13</p> <p>temperatures 32:8</p> <p>tend 41:13 80:24</p> <p>term 81:25 111:23</p> <p>terminology 81:3</p> <p>terms 4:7,13 12:6 13:2,21 31:1 46:22 60:15 67:25 88:5 95:9,11 118:24 120:16</p> <p>tesol 93:24 94:6</p> <p>test 13:24 37:24,25 38:3 39:24,25 40:3 40:4,6,9 43:8,14 44:18 45:1 74:10</p> <p>testified 40:25 69:1 77:3 82:23 114:22 123:15</p> <p>testify 27:21 50:23 51:1 70:13,17,22 72:12 124:18</p> <p>testifying 50:9 74:15 81:22</p> <p>testimony 22:7 32:3 50:21 61:10,19 64:5</p>	<p>69:17 70:19 72:8 78:2 86:16 90:1,3 96:17,19 100:5 102:18 103:2 107:16 115:1 122:9 123:14,19</p> <p>tests 38:1 44:5</p> <p>thank 37:9,16 57:20 60:1,4 69:8 73:6,6 73:23 74:19 79:4,4 87:1 121:23,25 123:9,10,13,14,17 123:20 125:7,8,20 125:21</p> <p>thanks 124:7</p> <p>theirs 16:14</p> <p>theory 4:17 91:22 92:5 93:9,18 94:10 122:22</p> <p>therapy 109:10</p> <p>thereof 127:7</p> <p>thing 15:15 16:14 17:17,20 23:11 25:12 36:4 41:6,11 74:11,12 80:7,19 104:20 120:20</p> <p>things 6:7 25:12 41:15 77:22 87:8 97:16 120:5 122:3</p> <p>think 5:12 11:24 13:4 15:7 16:10 17:13,13 20:22 27:7 28:12 35:18 39:18 55:3,9 65:12 66:1 69:16 76:19,20,21 76:25 79:17 80:23 80:23 81:14 82:3 91:14 95:5 96:4 97:8,11,16 99:4 103:2,4,21 104:15 107:20,25 115:6 118:1,25 119:24 120:9,10 124:9,19 124:19</p>
<p>t</p>			
<p>t 127:1,1</p>			

<p>thinking 11:20 66:22 96:15 105:7 105:24 third 44:12 53:13 thirsty 100:6 thomas 2:10 127:14 thought 44:19 57:11 82:23,23 86:20 124:8 three 27:4 28:1 34:1 38:22 42:18 70:1 76:19,20,25,25 107:22 110:11,14 114:9 122:10,11 thrive 59:25 tied 16:19 36:12 time 5:20 11:4 12:1 15:13 22:15 24:9,10 27:20 30:17,17,21 30:24 33:1 38:12 39:19 44:6,22 48:7 58:2 60:18,21 73:9 79:19 82:10 90:13 108:13,16 119:4,20 123:15 125:12 timeframe 40:16 times 4:6 34:1 tips 55:16 tired 49:19,20 100:6 titled 52:3 today 11:25 36:13 36:13 63:10 69:17 72:18 81:1 107:16 123:15 told 10:3 20:23 73:11,14 90:20 101:21,23 tomorrow 124:6,10 124:23,24 tonight 105:11 125:10 tool 48:24,25 top 28:25 36:20 45:1 topic 21:15</p>	<p>topics 55:15 torn 85:3 total 54:9 totally 33:21 touch 101:15 track 59:4 trained 32:14 training 36:7 121:18 121:19 transcribed 78:22 127:4 transcriber 2:10 transcript 1:6 2:12 22:24 23:3 24:17,22 29:16 30:9 31:8,11 34:21 35:3,4,22 36:20 39:23 41:22 46:3 116:24 117:1,2 119:25 transcription 2:12 transcripts 11:23 21:23 22:12,13,14 117:10 transfer 41:23,24,25 41:25 transferred 83:11 transferring 83:20 translation 21:11 transmission 24:15 trauma 15:21 traumatic 82:21,24 travel 125:11 traveling 125:15 treating 17:18 trial 61:12 true 8:20 30:3 120:14 trust 70:23 try 5:9 9:23 46:18 79:1 92:16 93:6 94:4 109:3 trying 9:1,23 13:3 15:9 17:23 28:11 30:11,22 57:6 83:22 83:22 84:25 85:25</p>	<p>85:25 86:24 93:14 93:15 97:16 99:5 105:19 109:10 119:14 turn 6:21 7:17 28:23 31:6 32:23 42:4 45:15 turning 37:18 53:21 tutoring 108:5,19 two 1:11 6:22 20:5 29:9 34:10,20 38:1 38:21 39:5,6,12,14 42:18 43:11 44:6,6 44:14 52:1,2 53:23 58:12,19 70:1,25 76:19,20,21 80:18 82:18 83:18 96:11 112:16 122:2,16 type 15:14 34:17 39:16 55:9 types 9:19 26:18,19 26:19 27:6 81:7 typical 33:2</p> <p style="text-align: center;">u</p> <p>u.s. 61:3 65:6,7 66:4 94:23 unable 103:11 underline 27:18,18 27:18 underlying 15:17 underneath 34:11 understand 19:22 20:19,23,25 28:7,16 34:12,12 41:1 43:1 57:2 65:16 66:22 78:23 79:3,18 83:22 85:1 86:25 92:20,20 93:15 94:18 95:7 96:24 97:7,7 98:11 99:5,18 100:5,7 103:9 107:14 109:3 111:22 116:4 118:24 119:16,19 120:12 121:13,14</p>	<p>understanding 14:13 21:19 23:17 23:18 46:4 96:21 99:20 116:24 120:1 120:1 understands 28:17 understood 34:14 41:13 undertaken 51:3 unfair 51:12 unfortunately 47:14 65:14 united 1:1,7 31:15 37:6 universal 25:19 universe 85:1 98:1 unusual 38:17,17,23 41:10 upper 58:16 usdoe 65:5 use 19:11 26:21 33:3 33:4 60:16,21,23,25 61:3 65:3 66:24 67:9,17 77:8 81:2 useful 63:5 usually 38:24,25 41:9 utilizing 10:12</p> <p style="text-align: center;">v</p> <p>value 17:10 van 31:9,10 32:2 68:12 variables 47:13 various 14:22 verb 34:4 verbs 34:3 veritext 2:13 version 24:4 versions 49:9 versus 47:15 video 32:23,24 33:3 videos 32:22 view 120:13</p>
---	--	--	--

visit 111:22 visitation 49:11 112:6 visiting 112:3,15 visuals 32:22 vivian 106:13 vocabulary 8:19 vs 1:3 wwalczak 1:16	84:15 101:11 104:19 107:17 109:4 115:12 120:11 125:11 ways 4:6 we've 11:24 38:24 51:13 55:3 80:25 81:1 102:18 weak 38:24 wearing 17:19 weathers 54:13 55:18 website 62:25 63:1,2 63:4,14 64:20 65:3 66:8 67:1,2,4,8,9,13 67:16 79:9 80:12 109:23,25 114:24 websites 66:4,11,23 100:13 weda 38:1 weekends 108:18 welcome 125:22 went 29:12 39:12 40:21 62:25 63:21 63:23 66:11 70:25 88:7,21 western 26:12 27:8 27:12 whatever's 125:13 whoa 37:21,21,21 37:21 wida 62:3 63:21,22 63:22,23,23,24,25 64:1,6,9,11,13,15,16 64:18 66:4 120:16 window 110:21 wisconsin 13:23 wise 125:16 wish 120:9 wished 108:9 withdrawn 71:16 witness 3:2 6:5,9,11 6:13,19 7:1 9:14,16 13:15 18:14,19 19:2 36:22 37:11,14,14	42:1,6,9,13,15,20,23 43:1 49:21 50:14,23 51:1 52:5,8,11,14 52:16,18,20 53:4,10 60:3,5 69:5 71:11 71:14 73:13,16,21 76:6 87:25 98:19 102:10 103:5,20,23 104:1,16,22,25 105:2,12,19,22 106:3,5 123:16,17 123:20 124:13,14 124:17 127:11 witnesses 13:6 15:8 124:23,24 witold 1:14 woman 69:1 wonderful 32:22 wondering 41:12 word 23:4 25:23,24 25:24 26:8 27:18,18 33:15 36:8 81:6 83:25 words 25:10 28:2 29:1 33:15,16 34:15 79:2 work 19:17 20:3 31:1 36:9,9 72:24 84:24 85:14,25 90:14,15 91:1 92:25 93:18,21,22 96:7,22 107:8 108:22 121:19 working 5:25 92:12 107:7 works 17:3 50:3 80:3 96:4 104:19 worksheet 25:7,8,9 26:21 world 11:12 55:4 70:11 71:9 86:1 120:7 would've 13:25,25 23:13 72:19 73:1 88:22 101:4,7	107:17 write 32:5,7 34:12 35:19 writer 88:4 writing 35:17,19 38:7,21,25 39:19 58:19,21,23,25 59:2 written 34:11,16 71:21,23 wrong 17:24 29:12 51:25 wrote 10:5,5 28:8
w			x
w 3:2 4:2 wait 71:11 73:8 96:15 walczak 1:14 walk 101:2 walked 23:23 walnut 1:19 want 5:9 6:23 9:25 10:15 11:5 13:19,19 19:24 25:15 35:9 36:11 46:10 60:12 68:15,15,18 75:5 77:23 88:13,16 95:11 96:16,17,18 96:19,21,21 97:5,7 97:7,22 100:21,22 111:6,10 118:18 123:14 124:1 wanted 5:14 13:3,4 40:25 58:3 68:14 101:4,7 102:15 wanting 105:22 wants 119:3 war 85:3 warner 2:6 wasting 30:14 water 73:10 watermelon 33:24 34:6 way 5:24 15:18,24 16:8,20 17:18 27:6 27:7 33:2 39:24 40:7 50:3,3 56:5,15 58:11,11,11 77:25			y
			yeah 6:5,6 13:13 14:7,16,21 18:8,8 26:4,24 27:3 29:3 31:10 32:10 37:11 42:10,15 48:18 52:20 62:23 63:6 69:10,12 70:21 73:24 76:6 78:8,13 79:15 81:6 86:6 89:9 95:2,4 98:7,20 104:24 108:24 112:22 113:9,11 123:5 year 26:15,16 40:20 56:1,2,2,11 57:16 57:18 83:10 89:7 101:10 111:3,3 118:5,9 119:4 120:7 120:15 122:14 years 15:11 22:9 48:10 82:18 83:18 92:12 99:22 107:22 119:3 122:16 yesterday 5:2,15 20:5 26:10 27:15 28:10 35:17 york 64:11,13,14 young 25:8

younger 86:14,22 89:8
z
z 25:7