

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF PENNSYLVANIA

3 KHADIDJA ISSA, ET AL) 5:16-cv-03881-EGS
4) AM SESSION ONLY
5 VS.) Philadelphia, PA
6) August 16, 2016
7 ANTITRUST LITIGATION) 9:44 a.m.-12:16 p.m.

8 HEARING ON PRELIMINARY INJUNCTION
9 BEFORE THE HONORABLE EDWARD G. SMITH,
10 UNITED STATES DISTRICT JUDGE

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1 PROCEEDINGS
 2 THE CLERK: All rise.
 3 (Call to Court)
 4 THE COURT: You may be seated, thank
 5 you.
 6 The Court is called to order in the
 7 matter of Issa, et al versus the School District of
 8 Lancaster. This is Civil Action No. 16-3881.
 9 The Court convenes today for purposes
 10 of a hearing with respect to the -- motion for a
 11 preliminary objection has been filed by the
 12 plaintiffs. Counsel, would you all please identify
 13 yourselves for the record?
 14 MR. ROTHSCHILD: Good morning, Your
 15 Honor, Eric Rothschild on behalf of the plaintiffs.
 16 MS. MCINERNEY: Maura McInerney on
 17 behalf of the plaintiffs.
 18 MR. WALCZAK: Good morning, Your Honor.
 19 THE COURT: Good morning, sir.
 20 MR. WALCZAK: Witold Walczak also for
 21 the plaintiffs.
 22 MR. ROTHSCHILD: Your Honor, we have
 23 three other counsel who may -- some who will present
 24 witnesses and argument during the course of the
 25 proceeding if you'd like to introduce them.

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1 THE COURT: Certainly.
 2 MR. ROTHSCHILD: Kathy Mullen.
 3 MS. MULLEN: Good morning, Your Honor.
 4 THE COURT: Good morning.
 5 MR. ROTHSCHILD: Molly Tack-Hooper.
 6 MS. HOOPER: Good morning, Your Honor.
 7 THE COURT: Good morning, Counsel.
 8 MR. ROTHSCHILD: And Kristina Moon.
 9 MS. MOON: Good morning.
 10 THE COURT: Good morning.
 11 MR. ROTHSCHILD: Thank you, Your Honor.
 12 THE COURT: Thank you very much. And
 13 from the defense?
 14 MS. O'DONNELL: Sharon O'Donnell for
 15 the Defendant, School District of Lancaster.
 16 THE COURT: Good morning, Counselor.
 17 MS. O'DONNELL: Good morning.
 18 MS. HILT: Amber Hilt, School District
 19 of Lancaster.
 20 THE COURT: Good morning.
 21 MS. HEISEY: Aura Heisey, School
 22 District of Lancaster.
 23 THE COURT: Good morning. And I have
 24 received the exhibit binders and have reviewed all the
 25 documents that have been submitted.

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1 From the plaintiff's standpoint, Mr.
2 Rothschild, would you like to make a brief opening to
3 kind of explain where you see this case going today
4 and over the course of -- how long do you anticipate
5 the preliminary hearing to take.
6 MR. ROTHSCHILD: I think we anticipate
7 that it will certainly take full four days that you've
8 allotted this week. I hope that's the full four days
9 that needs to be allotted, but depending on how many
10 witnesses the District chooses to call, could take a
11 little longer.
12 THE COURT: Very well.
13 MR. ROTHSCHILD: If I could just take a
14 minute to explain what's in the binders now --
15 THE COURT: Certainly.
16 MR. ROTHSCHILD: -- because it's not
17 everything that you'll eventually see.
18 What we have -- the binder you have
19 today will include all of the exhibits that will be
20 used with witnesses today. It also includes exhibits
21 that were used by plaintiffs in depositions of school
22 district representatives, much of which will be
23 entered through their designated testimony, and we
24 have provided the designated testimony to Ms.
25 O'Donnell. It's a fairly substantial amount and we're

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1 all working on a very accelerated pace, so she hasn't
2 had a chance to review that and identify counter
3 designations or objections.
4 So not necessarily everything you have
5 will be used today or we will move for admission
6 today, but that's basically got all the plaintiff's
7 deposition exhibits, as well as additional exhibits
8 that will be used with witnesses today. The answer to
9 the complaint which contains some admissions that we
10 will, you know, argue are evidence in this case.
11 So -- and then we will supplement, I
12 think, probably with additional binders particularly
13 for our expert witness who will be testifying
14 tomorrow.
15 THE COURT: Okay.
16 MR. ROTHSCHILD: In terms of the
17 presentation of witnesses, we have a number of live
18 witnesses today. I'm happy to let you know who they
19 are, but the designated testimony is our intention,
20 unless the Court wishes otherwise that we would enter
21 into the record after we've gone through the process
22 with opposing counsel. And then -- and not read it
23 into the record, because I think that will add
24 significantly to the time. We may be able to actually
25 cut it back once we've had the opportunity to cross-

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1 examine.
2 THE COURT: Attorney O'Donnell, is
3 there any objection to that procedure?
4 MS. O'DONNELL: No.
5 MR. ROTHSCHILD: We do want to play as
6 soon as technology allows us a short video of one
7 witness whose trial deposition was taken last week.
8 She was a case worker who testified about facts
9 relevant to our clients who will be testifying today.
10 THE COURT: Very well.
11 MS. O'DONNELL: Your Honor, I only have
12 one objection to that, and this is a witness that is
13 not unavailable. She's employed in Lancaster, and I
14 had objected to her video deposition. She works part-
15 time, or one job at a service in Lancaster, and
16 another job at Dutch Wonderland, which is much less
17 than a hundred miles away, and she's not physically
18 disabled or any reason why she couldn't be here, other
19 than she's working. So I did put that objection on
20 the record and you obviously can rule on that.
21 THE COURT: Mr. Rothschild, would you
22 like to respond to that?
23 MR. ROTHSCHILD: Yeah. Your Honor,
24 Counsel is right is that she is within the subpoena
25 power of this Court. We did give notice to counsel

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1 that we intended, because she actually has two jobs,
2 as Counsel acknowledged, that it's a very difficult
3 burden for her to appear here.
4 So the deposition was taken with full
5 notice of our intention to use it. Ms. O'Donnell had
6 an opportunity to cross-examine, and I understand the
7 technical rules around subpoenas. I think for this
8 preliminary injunction hearing, we have -- both sides
9 had sufficient opportunity to examine her so that she
10 should be treated as functionally unavailable. And
11 there's really no reason to inconvenience her by
12 forcing her to come up here again and testify to the
13 same facts that both counsel had an opportunity to
14 question her on.
15 THE COURT: And, Attorney O'Donnell,
16 you were present at this video deposition?
17 MS. O'DONNELL: I was, yes, Your Honor.
18 THE COURT: And are you concerned at
19 that time you did not have an adequate opportunity to
20 cross-examine the witness, and that if she were
21 brought here, more might be brought out or that it
22 might be benefit me somehow to see her testify live?
23 MS. O'DONNELL: Yes, Your Honor.
24 THE COURT: Okay. Why don't we do it
25 this way. I want to minimize throughout these

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1 proceedings the cost and expense to both the
 2 plaintiffs and the defense. And I'm sure Counsel are
 3 also interested in that and also the burden to the
 4 individual witnesses who are going to be called.
 5 So, in the first instance, I'll hear
 6 the videotape deposition. If it appears after we've
 7 seen it in the context of the presentation of the
 8 plaintiff's case that, in fact, there is an issue,
 9 we'll readdress that issue, and decide whether we
 10 actually have to inconvenience this witness in the
 11 interest of making sure all that evidence is
 12 presented.
 13 MS. O'DONNELL: Thank you, Your Honor.
 14 THE COURT: Certainly.
 15 MR. ROTHSCHILD: Thank you, Your Honor.
 16 Would you like me to do opening statement from the
 17 lectern or here?
 18 THE COURT: Wherever you are most
 19 comfortable, sir.
 20 MR. ROTHSCHILD: All right, the
 21 lectern.
 22 Your Honor, during the course of this
 23 opening, I'm going to refer you to three things that
 24 are in your binder. At the beginning of the binder
 25 before the numbered exhibits you'll see some

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1 photographs and I'll refer to them during the course
 2 of my opening. I also have two exhibits that I'm
 3 going to briefly refer to. They are Nos. 8 and 25.
 4 If you would like loose copies of those just for ease
 5 of reference, let me know; otherwise, you've got them
 6 in your notebook.
 7 THE COURT: Very well.
 8 MR. ROTHSCHILD: Thank you, Your Honor.
 9 Good morning, Your Honor, Eric
 10 Rothschild on behalf of the plaintiffs. First of all,
 11 I would like to say our clients and counsel appreciate
 12 the Court setting this hearing on such an expedited
 13 basis, so that you can make a determination about
 14 where our clients and class members should start the
 15 school year.
 16 And I really do want to extend my
 17 appreciation to counsel for the school district and
 18 the personnel at the school district for participating
 19 in what was incredibly rapid discovery especially last
 20 week. We've all been working very hard and I think
 21 largely cooperatively together and I really appreciate
 22 that.
 23 I've already introduced the counsel who
 24 will be presenting today or during the course of the
 25 proceeding. But I'd like to just introduce our

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1 clients who are in the courtroom and have them stand
 2 up and say hello to you.
 3 First, Khadidja Issa.
 4 THE COURT: Good morning.
 5 MS. ISSA: Good morning.
 6 THE COURT: Good morning, ma'am.
 7 MR. ROTHSCHILD: Quasin Hassan.
 8 MR. HASSAN.: Gracious.
 9 THE COURT: Good morning.
 10 MR. ROTHSCHILD: Quasin -- sorry. Van
 11 Ni Lang.
 12 THE COURT: Good morning.
 13 MR. ROTHSCHILD: And Sui Hnem Sung.
 14 THE COURT: Good morning.
 15 MR. ROTHSCHILD: Your Honor, each of
 16 these young people came to this country with his or
 17 her family as a refugee pursuant to United States
 18 Refugee Convention to escape war, strife, persecution
 19 in their native country.
 20 And in addition to the freedom and
 21 safety that this country provides, each one of them is
 22 seeking education. They want to be educated so that
 23 they can create a better life for themselves and their
 24 families in America. And to do that, they need a
 25 meaningful education.

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1 These four clients that you've met and
 2 two more that you'll meet tomorrow, Anyemu Dunia and
 3 Alembe Dunia all sought enrollment in the School
 4 District of Lancaster. Five of them were eventually
 5 enrolled and all five of them were sent to Phoenix,
 6 which is an alternative school run by a private
 7 company called Camelot, not McCaskey which is the high
 8 school which they're geographically assigned to.
 9 You're going to hear over the next few
 10 days from all six of these named plaintiffs. No
 11 student anywhere has identical school experiences, so
 12 their experiences at Phoenix are not going to be
 13 identical. They're six different kids, different
 14 backgrounds, abilities and personalities. And, of
 15 course, they can only tell you what their experiences
 16 are and not what they're missing by not being at the
 17 McCaskey High School that we're arguing they should
 18 have been placed in.
 19 And what they're missing is what this
 20 case is all about. So our intention is to present
 21 evidence that will allow you to make basically two
 22 important legal findings. One is that the class
 23 that's been proposed in our complaint should be
 24 certified because the students are receiving common
 25 treatment and their claims are typical of the class.

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1 And the commonality really comes first
 2 and foremost from the means by which they're placed in
 3 the school district. It's undisputed in the answer,
 4 in the testimony of school district representatives
 5 who have already been deposed, who you'll hear
 6 designated testimony, that the only criteria for
 7 placement at Phoenix is age, grade and credit status.
 8 Not their language proficiency, not their ability to
 9 access the accelerated curriculum at Phoenix that will
 10 --

11 THE COURT: I apologize for
 12 interrupting you during opening statement, but I am
 13 concerned about this class designation issue.

14 Here, you've identified six children.

15 MR. ROTHSCHILD: Right.

16 THE COURT: You've even indicated each
 17 one is an independent different experience than the
 18 others. Their English proficiency is probably going
 19 to be different, et cetera, that's obviously not large
 20 enough to be a class in any case.

21 Is the purpose of getting class
 22 designation to address ills that have already
 23 occurred, or is the purpose to further support
 24 injunctive relief with respect to future students?

25 MR. ROTHSCHILD: So we anticipate that

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1 there are students at Phoenix right now who have been
 2 placed for this next school year, or who have been --
 3 who are about to start at Phoenix through the same
 4 placement process that our clients have been through,
 5 and likely some that will come during the course of
 6 the year, they often come in the middle of the year,
 7 who are in the same circumstance of being -- having
 8 their educational placement judged solely by what
 9 their credit status is, relative to their age.

10 And the school district is very
 11 emphatic that that is the proper thing to do, and I
 12 think you'll hear their rationale for that. It's our
 13 contention that each time that's done, when it's done
 14 without regard for their English proficiency and other
 15 academic aptitudes that that violates, at a minimum,
 16 the Equal Education Opportunity Act, perhaps some of
 17 the other claims as well.

18 So while it's true then, their
 19 individual needs if Your Honor, you know, determined
 20 yes they should go to McCaskey, they're not identical
 21 and what they exactly need educationally would be
 22 different.

23 But the case law authority that we
 24 cited in our class certification brief I think
 25 supports that -- these kind of general determinations

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1 can be made even when they're going to -- as with
 2 every student, individual placement decisions.

3 THE COURT: Now, is there any overlap
 4 in any of these individual placement decisions between
 5 refugee children with potential English learning
 6 disability or difficulties and immigrant children, or
 7 even non-immigrant or non-refugee children who also
 8 have English proficiency issues?

9 MR. ROTHSCHILD: So our class is
 10 comprised of -- is broader that refugees. It's
 11 immigrant students with English language learning
 12 needs, who are at this age where they are being -- you
 13 know, so the 13-year old, this is not an issue at
 14 least for this case, but the older kid, 17 to 21 who
 15 are refugees or immigrants who are coming into the
 16 school district, we think it comprised of a class.

17 As you can tell, and it's probably
 18 because the refugee agencies have, you know,
 19 communicated with counsel, we have refugee sheltering,
 20 and so you will hear a lot about that, but our class
 21 is broader.

22 THE COURT: Okay. Thank you very much,
 23 sir.

24 MR. ROTHSCHILD: All right. So, you
 25 know, just to briefly summarize as you'll hear, the

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1 placement aspect of this by itself we think creates
 2 the commonality and typicality that will support a
 3 class and, you know, briefly in terms of numerosity,
 4 we think the district's admission that there are 18
 5 students in Phoenix right now is sufficient, and
 6 that's just refugees, so there likely other immigrant
 7 children.

8 And this is clearly -- it's also
 9 admitted by the district, the refugee population which
 10 this -- which this school district is serving is
 11 growing, and we're going to have this as an ongoing
 12 issue. So, you know, we can make out the numerosity
 13 as well.

14 And then the second thing we're asking
 15 obviously is both for these plaintiffs in the class is
 16 to issue a preliminary injunction and I'll at the end
 17 just talk a little bit about the relief we're seeking.
 18 But we anticipate that we will be able to present
 19 evidence that shows we have a substantial likelihood
 20 on the merits.

21 I'm going to focus in this presentation
 22 on the Equal Education Opportunity Act, although we
 23 think we can make out other claims as well, but I'm
 24 going to focus on that just so --

25 THE COURT: But you would concede

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1 that's probably your strongest claim of the claims
 2 that you've brought.
 3 MR. ROTHSCHILD: I think for the
 4 students that are being placed in Phoenix, and then
 5 being educated there, that's almost certainly the
 6 case.
 7 There are issues with enrollment which
 8 I'll touch on in which the other claims, the Title VI
 9 and the equal protection, we would still have the EEOA
 10 claims there but the Title VI and particularly the
 11 Equal Protection would be in play there.
 12 We will explain -- we will present
 13 through both the students' testimony and our experts'
 14 testimony and other witnesses why the education
 15 they're getting in the few years that they have to be
 16 educated in Lancaster Schools constitutes irreparable
 17 harm.
 18 And this -- you know, this is not a
 19 greater burden on the school district than on our
 20 students because as we'll discuss, they have an
 21 approach and programs at the high school we think the
 22 students belong at, at the regular high school at
 23 McCaskey.
 24 So the evidence that matters in this
 25 case falls into two ways that students' education is

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1 determined in Lancaster School District, or these
 2 students. One is the enrollment and placement
 3 process, and the other is the education at Phoenix for
 4 all of those students that are placed there.
 5 I'm going to start with enrollment, and
 6 to do that, I'm just going to briefly describe the
 7 schools in this case. So McCaskey is like what we
 8 kind of typically would see on TV as your regular high
 9 school, you know, what you expect of an American high
 10 school with maybe one somewhat difference. And if you
 11 could turn to the photos behind the index, they're not
 12 behind a number. You'll see two pictures -- are you
 13 there, Your Honor?
 14 THE COURT: Yes, sir.
 15 MR. ROTHSCHILD: So there's two
 16 pictures there, because there's actually two campuses,
 17 two buildings or one campus, sorry, two buildings. A
 18 very beautiful campus that has -- where they teach
 19 students at McCaskey.
 20 The first one you're looking at is
 21 McCaskey East, the second is J.P. McCaskey. And
 22 McCaskey East is the building where the international
 23 school resides.
 24 So -- and this high school not only
 25 looks really nice, but has, you know, other attributes

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1 you would expect of an American high school. It's got
 2 a full course selection, AP courses, international
 3 baccalaureate courses, lots of electives, extra
 4 curriculars. They have -- you know, you can't see it
 5 here, but they have beautiful sports fields and all
 6 the other extra-curricular offerings.
 7 Phoenix where five of our six clients
 8 have been sent you can see depicted in the next photo.
 9 And Phoenix is run by a for profit company called
 10 Camelot, pursuant to a contract with the school
 11 district.
 12 Camelot also runs Burghley Academy,
 13 that's the school district's alternative education for
 14 disruptive youth school.
 15 So Camelot on its webpage describes --
 16 they have three types of schools. One is called
 17 therapeutic, that's not really relevant here. But in
 18 terms of what they do for Lancaster School District,
 19 there's really two programs, accelerated programs or
 20 transitional programs. And on the website, some
 21 schools have been described as both.
 22 An accelerated program, according to
 23 their website, targets overage and under-credited
 24 students that are at risk of dropping out of school.
 25 Transitional programs are tailored to provide services

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1 to students who need a temporary placement due to
 2 behavioral infractions.
 3 Camelot describes Burghley as a
 4 transitional school on its website. And as late as
 5 August 5th, Camelot described Phoenix as both an
 6 accelerated and transitional school, and that's
 7 reflected on the exhibit that was used at depositions,
 8 Exhibit 18.
 9 Now, at her deposition, the executive
 10 director for Camelot, Megan Misnik disputed that
 11 Phoenix was a transitional school, and as of
 12 yesterday, the website had actually been changed and
 13 no longer calls Phoenix a transitional program or
 14 school.
 15 But regardless of what Camelot labels
 16 Phoenix, it is undisputed that it treats Phoenix
 17 students the way it treats students at transitional
 18 schools like Burghley.
 19 Everyday these students come down --
 20 come in and they have to take off their shoes, their
 21 shoes are searched. They are patted down by hand, by
 22 an employee of their same gender. They can't bring in
 23 personal belongings like bags or backpacks.
 24 And one of the consequence of that or
 25 at least one related aspect is they don't bring books

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1 home from school and that's relevant to their
 2 learning. It is almost vanishingly aware that they
 3 are sent home with homework.
 4 There is in the Phoenix handbook,
 5 there's an escalating restraint system that Phoenix
 6 employees can use for these students, which you know,
 7 reach the level of physical restraint. There's a
 8 dress code, but it's not the same for everybody.
 9 There are a lot of schools that have dress codes, and
 10 that's, you know, been accepted as being helpful in
 11 some situations. But this one actually gives students
 12 different tiers and gives students authority over each
 13 other based on their school dress code. And students
 14 are encourage to confront each other and assert peer
 15 pressure to influence behavior on each other.
 16 This is not the way students are
 17 treated at McCaskey or most high schools. But that's
 18 happens in Phoenix. And Phoenix lacks the array of
 19 course selections and extra-curriculars that McCaskey
 20 has.
 21 And the schools also teach very
 22 differently, which I'll describe in a minute, but now
 23 I want to turn to enrollment.
 24 So the evidence will show at trial, the
 25 school district is doing two things when students

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1 attempt to enroll that bear on their claims. One is
 2 when they seek enrollment, and this is something that
 3 we see with our sort of refugee children has happened
 4 pretty prevalently with the clients that we represent,
 5 is they're either denied enrollment, discouraged from
 6 enrollment, or delayed from enrolling.
 7 And then the second thing is that those
 8 who are successfully enrolled are being placed at
 9 Phoenix based on criteria that disserves the needs and
 10 rights they have under the Equal Education Opportunity
 11 Act.
 12 So in terms of what happens in
 13 enrollment where kids are not getting right into
 14 school, the school district has already admitted in
 15 its answer at paragraph 136, that it refused to enroll
 16 Alembe Dunia, who is a plaintiff that you'll meet
 17 tomorrow because it had concluded that he could not
 18 acquire all the credits he would need to graduate
 19 before he turned age 21, and was aged out of the
 20 school.
 21 For Qasin Hassan, Mr. Blackman (ph)
 22 admitted that the district did not enroll him because
 23 at the meeting he had with him, which lasted,
 24 depending on who is giving the account, a few minutes,
 25 maybe 20 minutes, that he exhibited a bad attitude.

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1 And so he was not enrolled and encouraged to go
 2 elsewhere, such as literacy council. And it took
 3 persistence by Qasin's case workers to get him
 4 enrolled.
 5 And for several of our clients, their
 6 enrollment with the school occurred many weeks, even
 7 months before they actually started. Everything I
 8 just described violates the law, so that's very
 9 problematic.
 10 Then you get to what's happening across
 11 the board, and you know, this isn't in some ways the
 12 simplest part of the case because the school district
 13 embraces this as their policy, and I think, you know,
 14 as I said, we'll argue that this is inappropriate
 15 policy.
 16 They determine what these -- where
 17 these students will go to school. They simply, on
 18 their credit status, relative to their age. And if
 19 their credit status is such that they could not
 20 graduate at the normal pace that a McCaskey student
 21 acquires credits, they go to Phoenix.
 22 There is no consideration to whether --
 23 what their language proficiency is, what their
 24 aptitudes are, whether they will be able, given those
 25 language challenges, to be educated on the accelerated

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1 basis that defines what Phoenix is doing.
 2 THE COURT: Now, I do believe I'm going
 3 to hear from, and again I apologize because I know
 4 this is opening statement, not argument.
 5 MR. ROTHSCHILD: Yeah.
 6 THE COURT: But I suspect Attorney
 7 O'Donnell to suggest that this Phoenix program is a
 8 bridge over to McCaskey. That is to get the person,
 9 the individual student in a position that they can now
 10 be transferred, as opposed to educational dead-end,
 11 where they're placed in this alternative program, that
 12 is in all essence, an educational dead-end, as opposed
 13 to a legitimate transitional bridge to get them over.
 14 Is this the appropriate time to address that?
 15 MR. ROTHSCHILD: I don't have all the
 16 testimony the district witnesses memorized, but I
 17 think it's fair to say that is a theoretical
 18 possibility. I think it has been argued in the
 19 briefs, but I think the testimony is that doesn't
 20 happen. You know, or if it happens, it's so
 21 vanishingly rare that it's not -- doesn't really
 22 change -- it doesn't change our case.
 23 And more importantly as I'm going to
 24 get into in a minute, it doesn't change how these
 25 students' education is started, which is actually the

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1 most crucial aspect of this. Because this is when,
 2 especially for the students who have really, you know,
 3 English language learning challenges based on their
 4 prior history of education and exposure to English,
 5 that's start.
 6 The idea that you want to start by
 7 speeding them up, and then sending where they can slow
 8 down and our expert will talk more about this, but
 9 these students actually need to start slow and build
 10 up. Our expert whose name is Helaine Marshall will be
 11 much better explaining that than I will. But in --
 12 THE COURT: I'm also curious as to the
 13 relationship between getting that piece of paper known
 14 as a diploma, and actually truly educating someone,
 15 such that they can be a productive member of our
 16 society.
 17 MR. ROTHSCHILD: Yeah, and that's going
 18 to be a crucial part of your case -- of our case, Your
 19 Honor. The school district -- you know, I think the
 20 centerpiece of their defense is that we are just
 21 pursuing that goal, and it is -- you know, it matters
 22 of getting them to a diploma and not how Your Honor
 23 phrased it, as actually educating them, so that they
 24 can access all of their education and be productive
 25 members of society.

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1 And, you know, and -- well, that -- I
 2 think Your Honor put it better than I did, so I'll
 3 pause there.
 4 So Your Honor has anticipated one of
 5 the ways that I think the district's counsel will
 6 present her defense, which is that their diploma is
 7 central. And as, you know, we will present in our
 8 conclusions of law, that's not what the Equal
 9 Education Opportunity Act requires.
 10 And so, you know, the requirements are
 11 that they improve their language proficiency and
 12 access grade level content consistent with state
 13 standards. And, you know, I think as Your Honor is
 14 anticipating, this makes perfect sense because the
 15 diploma without a meaningful education is really not
 16 going to be that useful to them.
 17 It's not meaningless, and I don't want
 18 to, you know, downplay that diplomas matter in our
 19 society, but education is really what matters, and
 20 consequently it's what the law matters. And you will
 21 hear from our clients that being educated is their
 22 priority.
 23 I think you'll also hear that this --
 24 that this is not a treatment of students, this age
 25 grade credits placement criteria is not unique to

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1 students based on their national origin.
 2 And, you know, from the testimony, I
 3 understand there are some students who come new into
 4 the district who are not -- don't have English
 5 learning needs, who also are placed without a choice
 6 in Phoenix.
 7 But the same treatment for extremely
 8 differently situated students does not satisfy the
 9 Equal Education Opportunity Act, which actually
 10 creates a specific commitment to the students about
 11 how they'll be educated. This just puts them in a
 12 different posture than the students who don't have
 13 English language learning needs.
 14 And, you know, the schools indifference
 15 to those English language learning needs, as we think
 16 we'll be able to demonstrate really does not satisfy
 17 the Equal Education Opportunity Act.
 18 And then the third thing, and this is
 19 kind of the last big topic here, and I appreciate Your
 20 Honor indulging me so that I can, you know, fully
 21 outline what we expect to present --
 22 THE COURT: That's fine.
 23 MR. ROTHSCHILD: -- is they're going to
 24 argue that they are providing a meaningful education
 25 to the students at Phoenix that meets their legal

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1 obligations under their EEOA and the evidence will
 2 present -- that we'll present will demonstrate that it
 3 doesn't.
 4 So as Your Honor has seen in our motion
 5 papers, the leading case for evaluating EEO claims is
 6 the Castenada (ph) case out of the Fifth Circuit, the
 7 district didn't disagree with that in its opposition
 8 to its motion for preliminary injunction.
 9 And that's a test that the district has
 10 to satisfy to comply with the EEOA. And there's
 11 really three aspects and they are in the
 12 disjunctive/conjunctive, they have to satisfy them
 13 all.
 14 THE COURT: Right.
 15 MR. ROTHSCHILD: And so one is whether
 16 a school system is pursuing a program be formed by an
 17 educational theory, recognizes sound by experts in the
 18 field, or deemed a legitimate experimental strategy,
 19 whether the programs and -- number two, whether the
 20 programs and practices and I'm going to paraphrase
 21 here are being implemented effectively; and third,
 22 whether the program once employed for a sufficient
 23 period of time to give the plan a legitimate trial has
 24 demonstrated results.
 25 So there's -- and this is -- there's a

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1 lot of expertise and literature that's been developed
 2 in this area for these students. And as you know from
 3 the Castenada test that I just described, the
 4 expertise actually matters here. And we're going to
 5 call one of the leading experts in the country to
 6 describe an expert in teaching ESL, Helaine Marshall
 7 who's a professor of education and Director and
 8 Language, Education Program at Long Island University.
 9 And she -- and so she's going to address these issues
 10 much better than me, but I'll just give a quick
 11 preview.
 12 So the education theory that Phoenix
 13 has been applying now for, you know, at least -- or
 14 Camelot has been applying at Phoenix, and that Phoenix
 15 as an accelerated school was applying even before
 16 Camelot became involved, is acceleration. That is the
 17 core of what Phoenix does. They accelerate students.
 18 And that's an offering that students
 19 throughout the country who may, you know, have
 20 struggled within their normal high school and they
 21 just want to get that diploma and get out may benefit
 22 from. That's not really what this case is about, but
 23 these are students who have gone through the American
 24 education system, have had much -- you know, either
 25 are native English language speakers or have much more

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1 time, and so those -- you know, this is not to say
 2 that there's no version of this, but it doesn't help
 3 some students.
 4 But what Ms. -- Dr. Marshall will say
 5 is that the community that she's part of, the experts
 6 in teaching ESL consistently state that accelerated
 7 academic instruction for this group of students, these
 8 new students to the school system is a -- is misguided
 9 and will backfire, and that they actually need, as we
 10 just discussed a moment ago, they need the exact
 11 opposite. They need to have a slow start, building in
 12 the basics, so that they can really understand English
 13 and then access the curriculum.
 14 And here's the important thing, the
 15 school district knows this, and they've known it long
 16 before we filed this lawsuit.
 17 If you could turn, Your Honor, to
 18 Exhibit 25 in your binder. So that you'll see it's
 19 25, it's an e-mail from somebody named Barbara
 20 Lombardi, who Ms. Hilt who's here today, testified at
 21 her deposition prepares grant applications, and that's
 22 what this document that we're looking at, that's what
 23 this is. This is giving information about the school
 24 district in pursuit of a grant application to help
 25 with, you know, this important need of helping educate

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1 refugee students.
 2 If you look on the first page of the
 3 abstract it's got a right-hand corner page 2, and then
 4 Bates stamp 2749. It says in the bottom paragraph,
 5 "When our high school refugee students first arrive,
 6 they're enrolled in our international school at
 7 McCaskey East, where they receive academic supports to
 8 obtain English fluency and maintain their grades."
 9 And then it talks about what will happen after they go
 10 through that.
 11 So that's what was included in this
 12 grant application in describing it, but that's not
 13 actually what's happening for all of the students.
 14 For students like our clients who are
 15 coming and being determined to be under credited for
 16 their age, they don't get this.
 17 If you could turn to Exhibit 8, and you
 18 see this is a document that describes how the School
 19 District of Lancaster serves English language
 20 learners. It's a pretty sophisticated document that
 21 goes through the various theories for how students
 22 will be educated, and how different schools -- what
 23 kind of ESL means of delivering ESL the school uses at
 24 different schools.
 25 And again, you see on the first page

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1 under services, they describe that international
 2 school as a one year program primarily for entering
 3 students. It describes what it does, why it's
 4 important, and you know, we'll hear more about that
 5 from witnesses, including Dr. Marshall.
 6 And what you see on the fourth line
 7 down it says "students participate in ESL," so they
 8 all have ESL classes. Then it says "sheltered
 9 instruction, science, math, social studies, and
 10 enrichment subjects." And Dr. Marshall will describe
 11 why sheltered instruction is an effective way of
 12 teaching students in our classes, these new classes
 13 who are just accessing this American schools'
 14 curriculum.
 15 And if you just turn to the last page,
 16 you'll see that -- and this is a document that's --
 17 that was prepared a month before the lawsuit was
 18 filed, June of 2016, says "The McCaskey campus has
 19 sheltered English instruction," as indicated on that
 20 first page and the schools below it which are
 21 alternatives, and they include the Camelot schools,
 22 they don't. And you'll hear more about the various
 23 other theories from Dr. Marshall, and I expect from
 24 school district --
 25 THE COURT: Now, and again I apologize

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1 for interrupting.

2 MR. ROTHSCHILD: Yes.

3 THE COURT: But none of this has

4 anything to do with IUP or anything along those lines.

5 MR. ROTHSCHILD: Correct, that's right.

6 THE COURT: Okay.

7 MR. ROTHSCHILD: So, you know, what Dr.

8 Marshall is going to explain and this is really the

9 key, is that these students cannot doing this on an

10 accelerated basis cannot be effective for them, and

11 then she can talk more about exactly what's happened,

12 and we'll address as will our students like sort of

13 what's actually happened, that's kind of the second

14 prong, how's it actually being implemented. And

15 you'll get an idea from hearing from the students what

16 their education is exactly like and the challenges

17 they're facing.

18 And finally they also have to show that

19 results indicating -- they must show results

20 indicating that the language barrier confronting

21 students are actually being overcome. And Phoenix, as

22 we understand the testimony of witnesses to date, and

23 what they've produced to us, they have data available

24 to do that assessment, but that data has not been

25 evaluated in terms of is the delivery of education to

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1 these ELLs, English language learners, on the

2 accelerated basis, is it working. They have not

3 analyzed that --

4 THE COURT: Well, I assume there is

5 standardized tests at the beginning and different

6 points along the way.

7 MR. ROTHSCHILD: There are a test --

8 there's a test that they take at the beginning, and

9 then there's something called access tests that are

10 taken I think around February of each year.

11 The February -- the ones that were

12 taken by our clients, my understanding is they would

13 be -- the school district would have them by June. We

14 haven't seen them yet, that's an issue that, you know,

15 we're working out with counsel, and I'm not casting

16 aspersions about it, but it's -- you know, with the

17 pace that we're working at. But that is information

18 that we're interested. And that would tell you

19 something about how these students are progressing.

20 But in terms of this third prong, we

21 also need to be assessing how the program is working,

22 and it's a legal requirement, and it's our position

23 that they cannot meet that and you could rule on that

24 basis alone that they have not satisfied the Castenada

25 test.

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1 We're going to present evidence that

2 they haven't -- can't meet any of their prongs, but

3 that's one that just kind of -- we just don't have any

4 evidence of that assessment, and this program, if you

5 go back to the beginning of the Camelot contract is

6 2011. If you go back to the entire existence of

7 Phoenix, even longer.

8 So, Your Honor, and I really do

9 appreciate your indulging maybe a longer presentation

10 than I expected. So at the end of this proceeding,

11 after you've heard the evidence, we're going to ask

12 you to enter an order. We -- obviously part of this

13 is certifying the class, which I think you'll have to

14 evaluate as we go through the presentation of evidence

15 and ask for an order that prohibits the school

16 district from denying students who have a legal

17 entitlement to education, or delaying their beginning

18 of their education when they come to enroll in the

19 school district and they have satisfied the, you know,

20 kind of paper requirements that you need, proof of

21 vaccinations, immunizations and residence, that that

22 not be delayed as we are observing for some of our

23 clients.

24 And an order that prohibits them from

25 forcing these students into an accelerated program at

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1 Phoenix that does not provide them a meaningful

2 education where the regular high school we believe

3 could. Thank you, Your Honor.

4 THE COURT: And just one last question

5 before you go, sir. The Department of Education, the

6 Attorney General's Office they are not involved in

7 this at all, and they're taking no position with

8 respect to this?

9 MR. ROTHSCHILD: They have not entered

10 an appearance. I don't think we have any public input

11 from them, think -- yeah, that's a great question.

12 Thank you, Your Honor.

13 THE COURT: Very well, thank you, sir.

14 Attorney O'Donnell, would you like to

15 open on behalf of the defendant?

16 MS. O'DONNELL: Sure. Thank you, Your

17 Honor.

18 THE COURT: Certainly.

19 MS. O'DONNELL: May it please the Court

20 and Counsel. I'm Sharon O'Donnell and I represent the

21 School District of Lancaster in this proceeding. I am

22 not going to take anywhere near the amount of time

23 that my colleague has taken to present their case.

24 This really boils down to a couple of

25 issues, and one is whether or not this Court is going

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1 to act as a Super Board of Education and tell this
 2 Board of Education where some of its students should
 3 be educated and the pretty high school or in the
 4 Phoenix Academy where they are receiving their
 5 accelerated education.
 6 One thing you did point out during Mr.
 7 Rothschild's opening was that the Phoenix does act as
 8 a bridge to the other high school, if those students
 9 choose to go. Many of them, the testimony will show,
 10 don't make that choice to transfer over to McCaskey
 11 because they're able to get their accelerated
 12 education at a pace they're comfortable with.
 13 Actually there's one student who's not
 14 here today, but who will -- is anticipated to, present
 15 testimony tomorrow. His name is Alenio Anyemu Dunia
 16 (ph) who will graduate today, this evening, and he was
 17 very successful in the accelerated program.
 18 So there are some students who do very
 19 well, and some students who may not do very well, but
 20 we don't have statistics that show that kids don't
 21 drop out of McCaskey either.
 22 One important point of our enrollment
 23 process is that we have appointed the -- the school
 24 district had appointed the coordinator of a drop-out
 25 prevention to assess some of the older kids that are

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1 coming in for enrollment, to make a determination
 2 where they're best suited to graduate and -- pardon
 3 me, be educated and graduate.
 4 So some of the kids who come in at age
 5 18 don't even wish to participate in a high school
 6 program, and that's their right. They don't have to
 7 come to be educated. But once they show up at our
 8 door and they request enrollment, then the idea is to
 9 assess them for where they could best be educated and
 10 receive their diplomas.
 11 Students are diverted either to
 12 McCaskey High School or Phoenix High School not based
 13 on their language proficiency, but where they are in
 14 terms of their age and their ability to graduate.
 15 Because again a public school district at least in
 16 Pennsylvania has a mission as directed by the
 17 Pennsylvania Department of Education to educate and
 18 graduate.
 19 And so a child has an ability to stay
 20 in school up to the age of 21. But the idea is to get
 21 them educated on time and on task with their similarly
 22 situated peers and so that's the goal.
 23 THE COURT: And not to interrupt you
 24 and I apologize just --
 25 MS. O'DONNELL: Sure.

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1 THE COURT: -- like I did to Mr.
 2 Rothschild. So suppose somebody comes in, they're 20
 3 years old, they've come from a very difficult life, et
 4 cetera, they've arrived here, and they know that
 5 there's no way that they can earn a diploma by the age
 6 of 21 or the end of the year when they turn 21, but
 7 they're not going to stop there, they know they don't
 8 have a right to a public education any longer, but
 9 they can go to a GED or other alternative after they
 10 turn 21. And those credits they would obtain in that
 11 proficiency, they would obtain in that brief period of
 12 time where they are entitled to a public education,
 13 would aid in that direction.
 14 Is there any focus on getting them what
 15 you can do in that limited period of time recognizing
 16 that if somebody's just come in and they can't speak
 17 any English and you know you only have a year before
 18 they're going to turn 21 and term out, to just get
 19 what you can do for them, as opposed to not enrolling
 20 them at all, or enrolling them and say, let's try to
 21 put a whole four years of high school into a year?
 22 MS. O'DONNELL: So that's a very good
 23 question, Your Honor, and we have a witness whose name
 24 is Jack Blackman who's the Director of Enrollment and
 25 also Drop-Out Prevention, who will talk and speak to

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1 those issues.
 2 But my understanding of what his
 3 testimony is going to be is that the five credits that
 4 a student may earn at the Phoenix Academy isn't
 5 transferrable to a GED. So it's --
 6 THE COURT: It's not transferrable?
 7 MS. O'DONNELL: No. So the idea here
 8 is to refer that child as you'll hear one of them, the
 9 Alembe Dunia came in for enrollment at age 20, could
 10 not possibly earn the number of credits even on an
 11 accelerated basis that he would need for a diploma.
 12 So he was encouraged to go to the
 13 Literacy Council so that he can get his English
 14 learning or his English language instruction, apply
 15 for the GED, take the test, and then a year later, he
 16 can exchange that at the School District of Lancaster
 17 for one of their own diplomas.
 18 So that helps him on his way to get
 19 into college, to a community college or to a four year
 20 degree, or whatever it is that he thinks he needs, the
 21 School District of Lancaster is willing to help him on
 22 his way to get there. But they can't give him five
 23 credits of education that will amount to nothing more
 24 than five credits of education towards nothing else.
 25 And the -- again, the mission, the goal

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1 here is to get them educated and graduated. That's
 2 what the funding is all about, that's why public
 3 schools are in business to graduate kids.
 4 THE COURT: Do you think the law
 5 provides either Pennsylvania law or the Equal
 6 Education Opportunity Act provides that if someone
 7 cannot get enough credits to graduate but they're
 8 under 21, that you have the right to not enroll them?
 9 MS. O'DONNELL: Actually I think that
 10 because the Equal Education Opportunity Act applies to
 11 students that are similarly situated and being
 12 educated. These people, regardless of whether they're
 13 coming from a refugee status, or what their political
 14 status, if they come from Southern Catatonia and they
 15 don't speak any English and they want an American
 16 education are going to have trouble at age 20 getting
 17 enrolled.
 18 THE COURT: Right.
 19 MS. O'DONNELL: Because it's a dead-end
 20 for them, and we're trying to prevent that dead-end.
 21 We're trying to get them on their way to something
 22 better.
 23 And so any child, even if it was a
 24 child, an American child, and I doubt you'd find one,
 25 but perhaps there is one who's age 20 and has never

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1 been to a public school and has never had a minute of
 2 education would not be enrolled.
 3 THE COURT: And I apologize for
 4 interrupting again. I'm going to stop this. But
 5 suppose you have an American child who speaks English
 6 and they're in tenth grade and they keep failing tenth
 7 grade. Can you -- so now they're in tenth grade but
 8 now they're 20. Can you say, we're not going to allow
 9 you back to school even if they're only 20 and
 10 Pennsylvania law says you're entitled to education
 11 until you're 21, because we've now made the
 12 determination that your inability to move forward in
 13 your credits would prohibit you, so you draw a line at
 14 21, but you draw the line earlier, when you make the
 15 determination that this person no longer can possibly
 16 graduate.
 17 MS. O'DONNELL: That's not likely to
 18 happen and here's why. Because at that point, that
 19 child has a right to continue his education until the
 20 last semester of the year he turns 21. The district
 21 is going to throw him out, but they're probably going
 22 to have a meeting with him at some point, and you
 23 know, and say, tenth grade isn't your career, and so
 24 if you choose -- you're 20 years old, if you want
 25 tenth grade with the 14-year olds or 15-year olds, you

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1 know, that's your choice, but you're only here for
 2 another year and then we're going to have to part
 3 ways.
 4 Now, I don't want this Court to get the
 5 impression that the School District of Lancaster isn't
 6 providing the level of English language instruction
 7 and support that each individual child needs. But
 8 again, English language proficiency is assessed only
 9 to determine whether or not and how much English
 10 language they speak coming in. Because regardless of
 11 whether they're placed at McCaskey at age 15 or 16 or
 12 at Phoenix at age 18 or 19, they're going to at that
 13 point then be assigned counselors, and the counselors
 14 are going to develop a curriculum for them in either
 15 school to help them along their way to learn in
 16 English.
 17 Because again, they're coming here,
 18 right -- well, any student who's a non-American is
 19 coming here to learn the English language in order to
 20 graduate with an American diploma.
 21 THE COURT: Right. So who goes to
 22 Phoenix? Is it based solely on the age of the -- how
 23 do you get to Phoenix?
 24 MS. O'DONNELL: Yes. Well --
 25 THE COURT: Like why are some people in

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1 McCaskey and the others at Phoenix?
 2 MS. O'DONNELL: So the idea is to be
 3 able to graduate on time before the child finishes the
 4 semester in which they turn 21. So when a child
 5 presents for enrollment and age is assessed and a
 6 prior education, a transcript perhaps and some of them
 7 do come in with transcripts --
 8 THE COURT: Sometimes it's even hard to
 9 tell what their true age is.
 10 MS. O'DONNELL: Right. So we do the
 11 best we can and put them in the program where we think
 12 they'll be the most successful towards getting that
 13 diploma.
 14 And so if a child comes in at age 18 or
 15 19, again depending on where they are, they could
 16 either be assigned to Phoenix, and again it's not the
 17 prison some people would make it out to be, I mean,
 18 there's a total of 350 students, there's 36 employees
 19 that work there, they're actually getting a more
 20 focused instruction away from the distraction of the
 21 larger high school at McCaskey which enrolls thousands
 22 of children.
 23 THE COURT: I said I wasn't going to
 24 keep interrupting, I apologize.
 25 MS. O'DONNELL: Oh, I don't mind.

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1 THE COURT: But if there are 350
 2 students, do you have the breakdown who is 18 that are
 3 refugee students or how many children are immigrants
 4 have learning or language proficiency issues?
 5 MS. O'DONNELL: So we took -- we did a
 6 data search before we came here and we learned that
 7 there were 18 of this class, the way they're defined
 8 in their class. Right. So there may be kids that
 9 speak Spanish, there may be kids that English, but
 10 they're all there for accelerated education. But in
 11 terms of this class, we determined that there was 18.
 12 THE COURT: Out of the 350.
 13 MS. O'DONNELL: Right. And so, Your
 14 Honor, in terms of the security measures, I know that
 15 they don't like the fact that they're patted down and
 16 that they have to take their shoes off, but I had come
 17 into court this morning and I had to take my shoes off
 18 and run them through the screening process.
 19 And I'm sure that every day this week
 20 I'm going to have to take off my shoes and open my
 21 purse and show everyone what I have or I don't have,
 22 and I understand that's for everyone's safety. And
 23 again the Camelot has similar measures. So I don't
 24 think that's unconstitutional or unlawful.
 25 I believe that Government has a right

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1 to keep the folks in their building safe, and I think
 2 that's what the law encourages as well.
 3 As far as the grant application that
 4 they made referenced to, there's another part of that
 5 grant application that you weren't privy to that talks
 6 about the Phoenix Academy and the accelerated program,
 7 and the fact that all the dollars are being used not
 8 just for the international school over at McCaskey but
 9 also for the Phoenix Academy as well.
 10 And the access scores, I believe would
 11 be significant, and we're working on getting those,
 12 and hopefully we'll have them by the time I have my
 13 case on or maybe before that.
 14 The other thing I'd like this Court to
 15 be cognizant of, Phoenix and School District of
 16 Lancaster regardless of what building the kids are
 17 being educated in are responsible and accountable to
 18 the state.
 19 They have standards and they have
 20 criteria and they have reporting guidelines in terms
 21 of how these kids are doing and whether they're doing
 22 them according to state guidelines.
 23 So while Ms. Marshall may come in and
 24 tell us how she believes our ESL students should be
 25 educated, the fact is Pennsylvania and through its

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1 Department of Education has told us that the magnate
 2 school, Phoenix Academy is just fine.
 3 THE COURT: And that was one of the
 4 reasons I asked the question of whether either the
 5 Attorney General's Office or the Pennsylvania
 6 Department of Education had an interest in this case
 7 or was supporting one side or the other.
 8 MS. O'DONNELL: No, Your Honor, they're
 9 not involved.
 10 So in terms of this preliminary
 11 injunction that they're asking for, I think the two
 12 major elements really are whether or not there's a
 13 likelihood of success on the merits. And as I
 14 understand the merits, they're using all these
 15 theories of liability to show that the children's
 16 national origin had played in some role in the
 17 district's decision to place them at Phoenix Academy
 18 at a substandard and inferior educational environment.
 19 And as I pointed out, there's a
 20 comparable case that came out of Utica, where in fact,
 21 the Attorney General was involved and, in fact, the
 22 folks at that particular public school were funneling
 23 their immigrant students, their LEP students into a
 24 dead-end education where they couldn't even get
 25 credits.

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1 And here, we're working very hard, in
 2 comparison, to get these children up to speed so that
 3 either they can, if they wish, to transfer to McCaskey
 4 or simply graduate, get their diploma and move on to
 5 the next step whatever that is in their lives.
 6 I think another point is that the
 7 children will not suffer irreparable harm if they
 8 don't go to McCaskey. If they don't like the security
 9 measures here, they're definitely not going to like
 10 the security measures at McCaskey, where they have two
 11 full time school resource officers that use more than
 12 just de-escalation techniques with their hands, they
 13 have tasers, and yes, that's lawful, and yes,
 14 sometimes they have to use them.
 15 As far as the international school,
 16 that's one year. So when a kid comes in age 15 or 14,
 17 they go to the international school for a year.
 18 They're given an intensive program similar to that
 19 which is given and offered at Phoenix and then they're
 20 out, they're back into the general curriculum.
 21 At least at Phoenix the kids are
 22 getting, literally spoon fed their ESL, they're
 23 getting the -- for 80 minutes, which is twice the
 24 amount of time that they would be getting at McCaskey,
 25 and they're also getting push-in services, so that in

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1 the even the children need assistance in their core
 2 curriculum classes like history or English or science,
 3 the teachers are pushing in English language
 4 instruction so that they understand better.
 5 Now, if you hear testimony this week
 6 from any of the kids that say, I'm not getting any
 7 help. They're not asking for the help, because it's
 8 there. It's there and it's there in copious amounts
 9 and we make sure that there is.
 10 We're well staffed, they're well
 11 qualified, they're well trained in ESL and they know
 12 what the kids need. And they work with them closely
 13 every single day. You'll hear Megan Misnik talk,
 14 she's the Executive Director at Phoenix Academy,
 15 you'll hear how she hand -- she shakes the hands of
 16 every student every morning. She knows them by face,
 17 she knows them by name, they know her.
 18 Aura Heisey is here. She was the
 19 principal since 2010 or '11. She'll talk about how
 20 she knows the students by name. She will even attend
 21 graduation tonight because one of her students, Anyemu
 22 is graduated and they're a tight family, they're very
 23 proud of the success of these students.
 24 So it really isn't as if they're
 25 getting lost or they're being pushed to the side.

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1 They're actually being attended to and attended to
 2 very well.
 3 And so at the end of this hearing and
 4 perhaps at the end of plaintiff's case in chief, I'm
 5 going to ask you to decide this case in favor of the
 6 Defendant, School District of Lancaster. Thank you.
 7 THE COURT: There's two questions. You
 8 also agree that the Castenada factors are basically
 9 going to form the framework of --
 10 MS. O'DONNELL: Of the ESL delivery, of
 11 the delivery of English language instruction. But
 12 this case is about whether or not the children are
 13 being funneled to a different school because of their
 14 national origin. And language is not synonymous with
 15 national origin as the cases that we've pointed out in
 16 our memorandum of law in opposition to the preliminary
 17 injunction, and also in opposition to the class action
 18 motion.
 19 THE COURT: And do you agree that the
 20 class action is separate and apart from the
 21 injunction, such that the Court could deem that
 22 there's not sufficient evidence to certify class, but
 23 could nevertheless find that there is a violation of
 24 at least an Equal Education Opportunity Act, and
 25 nevertheless impose an injunction with respect to the

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1 case absent the class certification.
 2 MS. O'DONNELL: That's your
 3 prerogative, Your Honor.
 4 THE COURT: Very well.
 5 MS. O'DONNELL: I don't agree with it,
 6 but it's certainly prerogative.
 7 THE COURT: Thank you very much,
 8 Counselor.
 9 All right. Mr. Rothschild, you may
 10 call your first witness.
 11 MR. WALCZAK: Good morning, Your Honor.
 12 THE COURT: Good morning, sir.
 13 MR. WALCZAK: Witold Walczak.
 14 Plaintiffs would call Sheila Maestro Pietro.
 15 THE CLERK: Remain standing.
 16 SHEILA PIETRO, WITNESS, SWORN
 17 THE COURT: Thank you very much, ma'am.
 18 And, ma'am, you may be seated.
 19 THE WITNESS: Thank you.
 20 THE COURT: And, ma'am, would you
 21 please state your full name, spelling your last name
 22 for the record.
 23 THE WITNESS: Uh-huh. My name is
 24 Sheila Mastro Pietro, M-a-s-t-r-o, P-i-e-t-r-o.
 25 THE COURT: Thank you very much, ma'am.

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1 Counsel, you may proceed.
 2 MR. WALCZAK: Thank you, Your Honor.
 3 DIRECT EXAMINATION
 4 BY MR. WALCZAK:
 5 Q. Good morning.
 6 A. Good morning.
 7 Q. Where do you live?
 8 A. Lancaster, Pennsylvania.
 9 Q. How long have you lived there?
 10 A. All my life.
 11 Q. You were born there?
 12 A. I was born in Lancaster.
 13 Q. And what do you do for a living?
 14 A. I'm the Director of the Lancaster Office of
 15 Church World Service, Immigration and Refugee Program.
 16 Q. I'm going to take just a couple of minutes
 17 and go over your educational and professional
 18 background.
 19 Do you have a degree, a college or
 20 university degree?
 21 A. I have a bachelors in philosophy from
 22 Franklin and Marshall College, and a master's in -- a
 23 master of arts in international relations from the
 24 University of Kentucky in Lexington.
 25 Q. And when did you receive your masters in

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1 international relations?
2 A. 1986.
3 Q. And when did you begin your professional
4 career?
5 A. 1987, September.
6 Q. What was your first job?
7 A. My first job was a sponsorship developer for
8 an office called Prime ECR we were -- we was an
9 affiliate of Church World Service in Lancaster, and it
10 was my job to find churches to work with, to sponsor
11 refugee families.
12 Q. Let me take a minute and unpack a term that
13 you used in here. Church World Service, what is that?
14 A. CWS is a non-profit, a global non-profit.
15 Our mission is to eliminate hunger and poverty and
16 work for social justice in the world.
17 Q. And does Church World Service play a
18 particular function in this country and particularly
19 in Lancaster?
20 A. Yeah, I'm sorry, I should've said. Two
21 parts of CWS; one is raising money for development,
22 disaster relief. And the other part is refugee
23 resettlement. So my office is only the refugee
24 resettlement.
25 Q. Okay. And are there other organizations

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1 like Church World Service in the United States that do
2 refugee resettlement?
3 A. Yeah. There are nine altogether. CWS is
4 one of nine agencies that contracts with the
5 Department of State to resettle refugees.
6 Q. Okay. And you're using the term CWS, is
7 that short of Short World Service?
8 A. It is.
9 Q. All right. Let's come back to your -- a
10 little about your professional history.
11 So you started as a sponsorship developer
12 for an organization that contracts with Church World
13 Services; is that correct?
14 A. That's correct, yeah.
15 Q. Tell us a little bit about your
16 responsibilities in that position?
17 A. So I was hired as sponsorship developer, so
18 I would go out and talk to different churches and
19 church judicatories who would -- about what -- about
20 refugee resettlement. But part of my job at the same
21 time was case manager, but when I started in 1987,
22 there were no refugees coming to Lancaster. So I had
23 to first find the churches to sponsor, so we started
24 receiving refugees in '88. So it was a one person
25 office, I was the only one there. So then I became

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1 case manager as well as sponsorship developer.
2 MR. WALCZAK: Your Honor, may I get a
3 glass of water for the witness?
4 THE COURT: Certainly, counselor.
5 (Pause)
6 MR. WALCZAK: May I approach?
7 THE COURT: Certainly. You're welcome.
8 THE WITNESS: Thanks very much.
9 BY MR. WALCZAK:
10 Q. Now, you said you became a case manager once
11 you got clients I assume.
12 A. Correct.
13 Q. Tell us a little bit about the services that
14 a case manager provides.
15 A. Well, under our contract with the Department
16 of State we are mandated to perform certain -- there's
17 certain things that we have to do. For the first 90
18 days after our refugee family arrives, we are required
19 to provide clothing and well, of course, an apartment,
20 furnish an apartment, stay secure, register children
21 in school, find English as a second language, classes
22 for adults, find a job for the family, get a social
23 security card, orientation to the community. The idea
24 of self-sufficiency within three months, three to six
25 months.

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1 So that's our goal. So all of those things
2 that I described are required. And then we do many
3 other things as well.
4 Q. And this begins with you going even picking
5 up the family --
6 A. Picking up --
7 Q. -- from the airport.
8 A. Picking them up from the airport, yes.
9 Q. So are the case workers kind of the initial
10 lifeline for the folks coming into the country?
11 A. Yes, definitely.
12 Q. And I'm sorry, I don't know if you mentioned
13 this, but you're involved in finding them housing as
14 well.
15 A. Right. We have to have a furnished
16 apartment or a house available when they arrive.
17 Q. And just kind of to keep things clear. The
18 services that you just mentioned that you provide as a
19 case manager when you started, are those the same
20 services that Church World Services provides today to
21 its clients?
22 A. Yes, those and more.
23 Q. And you mentioned that the -- you provide
24 services for 90 days, correct?
25 A. That's correct. We go beyond 90 days, we're

Page 58

1 required to do at least 90 days.

2 Q. Okay. And is it unusual that you might have

3 to go beyond the 90 days for individuals?

4 A. No, it's not unusual.

5 Q. And so you started in '87. At some point,

6 did you change positions within the agency?

7 A. It was a very small office, so I was doing

8 everything. I was the case manager, I found the jobs,

9 I found the apartments. We gradually became bigger as

10 we had our arrivals increased, so I continued to do

11 case management I would say until the 2000, early

12 2000s.

13 Q. And at some point did you become the

14 director of the agency?

15 A. I became the coordinator of the office that

16 was called Prime, and then in 2006, CWS took us over,

17 so I now work for CWS, not an affiliate of CWS. So it

18 went over in 2006, and that's when I became director

19 of the Lancaster office.

20 Q. And how many staff do you have now?

21 A. I have about 30 staff right now. I have

22 some temp staff.

23 Q. What types of immigrants, and I'm using that

24 term loosely, not necessarily in the legal sense, what

25 types of immigrants does your agency serve?

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1 A. So we, in our resettlement program, we serve

2 only refugees and it's a very technical term for us.

3 We can resettle refugees who are sent to us from the

4 Department of State, the Department of Homeland

5 Security.

6 Q. And do you settle another type of immigrant

7 that's not a refugee?

8 A. Yeah, we do. In 1996, we began a Cuban

9 Haitian entrant program. So they are not technically,

10 again it's a technical term, they are not refugees,

11 they are entrants, parolees sometimes called.

12 Q. So in this case doesn't involve none of the

13 plaintiffs in this case are entrants, but could you

14 tell us a little bit about the -- what's -- what are

15 the characteristics of these entrants?

16 A. It's a Cuban Haitian resettlement program

17 that started in '96, but it's called Cuban Haitian.

18 But we received some Haitians back in the mid-'90s but

19 we haven't had any since the earthquake in Haiti in

20 2010.

21 So it's more of a homogenous group, Cuban.

22 There was a lottery that started this and you had to

23 be between the ages of 18 and 55 with a high school

24 degree. So -- and if you were married, you could

25 bring your spouse and your family members, or even a

Page 60

1 common law wife.

2 So it was a pretty homogenous group, in that

3 everyone is Cuban, everyone speaks Spanish, everyone

4 is between those -- well, between 18 and 55 along with

5 children they bring. Mostly blue collar workers, some

6 professionals.

7 Q. Now, I want to focus just on the children of

8 these entrants, and do most of them speak English?

9 A. Very few speak English when they come.

10 Q. And have they had formal education.

11 A. Yes.

12 Q. So the major characteristic is that their

13 English is limited if any.

14 A. Yes. They're -- yes, that's correct.

15 Q. Okay. Let's turn now to refugees. So tell

16 us briefly, what is a refugee?

17 A. So technically a refugee is a person who is

18 outside the boundaries of his or her country, has a

19 fear of -- has been persecuted or has a fear of

20 persecution and therefore cannot return to his

21 country, and he has to have been persecuted because of

22 race, religion, nationality, ethnicity or political

23 opinion or membership in a particular social group.

24 Q. And is this regulated by some kind of

25 convention or body?

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1 A. Yeah. You -- the United States agreed to

2 the 1951 convention for refugees in Geneva.

3 Q. So the U.S. is a signatory to that

4 convention.

5 A. Correct.

6 Q. And so -- and is there kind of rules or laws

7 regulating how this process works?

8 A. How a person gets refugee status, most

9 definitely, yeah.

10 Q. And all of the refugees that you get come

11 through this process.

12 A. Yes, yes, that's the only way. They have

13 been interviewed by the Department of Homeland

14 Security, gone through numerous security checks, have

15 shown their relationship. If they're children, they

16 have to show the relationship to the persecuted party

17 and that's the only way they're allowed to enter the

18 United States.

19 Q. Okay. And what countries do these refugees

20 who come to Lancaster come from?

21 A. So over the almost 30 years that I've been

22 doing this, you know, many, many countries, you know,

23 Vietnamese, Laos, Cambodia, Bosnia, Croatia, former

24 Soviet Union, Sudanese. Right now we're resettling

25 Burmese, Bhutanese, Ethnic Napoli from Bhutan, Somali,

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1 Syrians, other Africans.
 2 Q. And do most of the school age children that
 3 come over, are they part of families?
 4 A. Yes. There is an unaccompanied minor
 5 program, but CWS is not a part of that. So all of the
 6 children that we resettle come with their parents.
 7 Q. And what are the kind of characteristics of
 8 these school age children?
 9 A. Well, they've all gone through some trauma,
 10 just the fact of leaving their -- not only their home,
 11 but their country and their culture. So they come to
 12 us somewhat traumatized because of that.
 13 Depending on where they're from, they've
 14 also been through a civil war or a breakdown in their
 15 country's government where there's chaos or they've
 16 lived in refugee camps where there's not as much order
 17 as in a stable country. Some have lived in those
 18 refugee camps for all of their lives. Some were born
 19 in refugee camps.
 20 The atmosphere for their parents is not good
 21 either, of course, so they're getting -- receiving,
 22 you know, the trauma that their parents suffer as
 23 well.
 24 Q. And I want to focus on the school age
 25 children because that's what we're talking about in

Page 63

1 this lawsuit. And do -- what percentage of them speak
 2 English?
 3 A. It really depends on the nationality and
 4 what they're coming from. The groups that we're
 5 resettling now, I really don't have any groups that I
 6 could say a high number of the kids speak English when
 7 they arrive. Yeah, we don't have any groups that I
 8 could say that.
 9 Q. So most of the children that come over have
 10 no or just limited English.
 11 A. Very limited or no English, yeah.
 12 Q. What about sort of formal education, do any
 13 or many of the kids have that?
 14 A. Yeah, and it depends on where they're from.
 15 The populations we receive -- I guess the last time I
 16 could say -- no, I can't remember anyone who didn't
 17 have a break in their education, whether it's Iraqi or
 18 Syrian or the Somali or the Congolese. There is
 19 education in refugee camps, but it varies from camp to
 20 camp. Often it doesn't go through high school, it's
 21 up to grade 9 or 10.
 22 Q. And what about educational records, to what
 23 extent do these kids come with educational records,
 24 documenting what it is, in fact, that they have
 25 received?

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1 A. Yeah, that's a problem. Often they don't
 2 have it. There are some Bhutanese that I remember
 3 that we were getting some did have records and some
 4 didn't. I don't think very many of the Somali or
 5 Congolese have records when they come.
 6 Q. So a good number of them don't actually have
 7 usable records.
 8 A. That's correct.
 9 Q. What is -- what are the attitudes of the
 10 school age children towards education?
 11 A. Everybody seems to want to go to school.
 12 School age children want to go to school. They expect
 13 to go to school I would say.
 14 Q. Uh-huh. From your description earlier it
 15 sounds like the countries from where refugees come is
 16 sort of episodal in terms of what's going on in the
 17 world. Was there a time when you had many, for
 18 instance, Sudanese students who are coming?
 19 A. Yeah, we had -- it was called -- it was a
 20 population called the Lost Boys of Sudan. We had
 21 about 40 of them that we resettled in Lancaster.
 22 Their story was really tragic.
 23 The northern Sudanese army would come into
 24 southern Sudan and go through the villages and take
 25 young boys, because they could then turn them into

Page 65

1 soldiers. So many of the families sent their boys
 2 away to leave the country.
 3 So a lot of these, like a thousand of the
 4 boys or more banded together and were walking across
 5 Sudan and Ethiopia, Kenya and ended up in refugee
 6 camps. But they walked around Africa for years. It
 7 was during their years when they were young teens,
 8 some as young as nine years old. So they really
 9 missed the whole socialization here, but --
 10 Q. When they came here, did they have much
 11 formal education?
 12 A. They didn't, but they all had -- something
 13 was going around, they all wanted to go to college, so
 14 they wanted to get their diploma and then go on to
 15 college.
 16 Q. And is there some track record of
 17 achievement by those individuals?
 18 A. I don't. I don't have any statistics on
 19 that.
 20 Q. Uh-huh. Do you know whether some of them
 21 went to college?
 22 A. I do. I know some personally who did.
 23 Q. And this litigation concerns older children,
 24 so ages 17 to 21. What is your experience in terms of
 25 whether the older group of students want to attend

Page 66

1 school, or would they prefer to go to work?

2 A. I can think of one population where they

3 wanted to go to work, it was young men who came from

4 the former Soviet Union. It was a different

5 population. They had finished their education, and

6 they came here and parents suggested maybe you could

7 get a diploma from the U.S., that would be meaningful,

8 and that population, the older boys didn't want to,

9 they were 19 and 20. They're the only ones I can

10 think of that sort of rejected the idea of going back

11 to school.

12 Q. So do -- so what's your sense of most of the

13 17 to 21 year olds, they are interested in pursuing an

14 education?

15 A. Yeah, that would be my assumption.

16 Q. Is that your experience?

17 A. And that's my experience too, yeah.

18 Q. And are these students in your experience

19 interested in just learning English?

20 A. No, they want an education.

21 Q. And when you say education, what do you

22 mean?

23 A. They want to learn. I mean, they have

24 aspirations of -- I just remember one who wanted to go

25 into the health field, they want to learn what you

Page 67

1 have to learn to be able to go on to college or to a

2 trade.

3 Q. So it's more than just language acquisition?

4 A. Yes, yes.

5 Q. I want to briefly talk about how your

6 caseloads have changed over the years. So what was

7 your caseloads when you first started in the late

8 '80s?

9 A. The numbers or the different populations?

10 Q. The numbers, yeah.

11 A. The numbers. In the late '80s I had -- one

12 year I could have 80 arrivals, or 40 arrivals, I

13 remember a year 65, and then they would -- it went up

14 and when the former Soviet Union, when that started to

15 break up in '88, '89, the numbers went up. It was

16 mostly Ukrainian, Russian. There were a couple of

17 years in the early '90s where I had 300 or even 400

18 tops.

19 After that, it went back to between 80 to

20 150 to 200 a year. And then really in 2006, when I --

21 what changed, two populations that were -- the two big

22 populations, the Burmese and the Bhutanese started to

23 arrive. And at that time, our numbers went up over

24 200, up to 300. So the highest I probably ever --

25 actually this year is probably the most I ever

Page 68

1 resettled would probably get up to over 400. Last

2 year was 286, prior to that I had 300.

3 Q. And I asked you about the refugees. And do

4 you on top of that get the Cuban Haitian entrants?

5 A. Yeah, the Cuban Haitian entrants. That

6 program has been running since 1996. There were a few

7 years in the very beginning when I resettled close to

8 200 and then those numbers went down. So over the

9 years, the Cuban entrants have been 40, 60, and then

10 it started to go up, 100, 150.

11 So it stayed around 50 to 100 for many

12 years, and last year I received 222. This year is

13 probably also going to go over 200.

14 Q. Uh-huh. So if my math is right, you are

15 resettling a total of about 5 to 700 refugees or

16 entrants in a year?

17 A. Lately, yes.

18 Q. Okay. And that's in the last two years.

19 A. Uh-huh.

20 Q. Is there any projection on whether those

21 numbers are going to stay the same or fall or drop in

22 the next year or two?

23 A. Yes. In 2017, we've been told that we can

24 expect numbers to increase or at least remain the

25 same, but they're not going to be lower.

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1 Q. Is Pennsylvania and potentially central

2 Pennsylvania a place that's hospitable to refugees and

3 migrants?

4 A. Yeah, it really is. Well, Philadelphia a

5 much bigger metropolitan area. We resettle in central

6 Pennsylvania. We resettle almost as many as in

7 Philadelphia. Erie, Pennsylvania has also become an

8 area where a lot of refugees go. But Lancaster is

9 sometimes the highest. Some years we've been the

10 highest number of refugees in the state, the county,

11 and some years Delaware County or Philadelphia is

12 high.

13 Q. And are you familiar with the legal

14 requirements to enroll school age children of the

15 clients that you serve?

16 A. Yes. I know the legal requirements say that

17 you have five business days after the application has

18 been submitted. And in our contract, we're required

19 to enroll students within 30 days of arrival.

20 Q. And when you say contract, who is that

21 contract with?

22 A. That's the Department of State.

23 Q. We're going to now focus on your experience

24 with the Lancaster -- School District of Lancaster.

25 When did you first start seeing some problems with

Page 70

1 enrollment?
 2 A. Enrollment --
 3 MS. O'DONNELL: Object to the form as
 4 leading, Your Honor. The question should be, did you
 5 experience any problems.
 6 THE COURT: I'll overrule the objection
 7 just to move it along. You may proceed, Counselor.
 8 MR. WALCZAK: Thank you, Your Honor.
 9 THE WITNESS: It was in 2010. We had
 10 enrollment issues and I guess enrollment issues
 11 initially and we thought they were -- students were
 12 being sent to Phoenix Academy and at the time we
 13 thought Phoenix Academy was a disciplinary school.
 14 BY MR. WALCZAK:
 15 Q. Okay. Let's unpack those a little bit.
 16 So when you first started seeing enrollment
 17 problems, what was the nature of the problems you were
 18 seeing?
 19 A. That students who were overage, you know,
 20 were -- should have completed high school but hadn't,
 21 they weren't --
 22 Q. Wait, you said should have because of their
 23 age.
 24 A. Simply because of their age.
 25 Q. Right, okay, I'm sorry.

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1 THE COURT: I just want to understand.
 2 Because they were 18 or older and those children who
 3 graduate by 18.
 4 THE WITNESS: Are graduated, yeah.
 5 THE COURT: You may proceed, Counselor.
 6 THE WITNESS: So the school district
 7 discouraged them, actually in some cases told us they
 8 couldn't be enrolled they were too old. So we did
 9 some checking into it and found out that you could
 10 actually go to school until you were 21.
 11 So we had a lot of pushback from the
 12 school district from the counselors, the enrollment
 13 people, I'm not really sure, some were at the school
 14 district level, pushback about enrolling them,
 15 suggesting that they study ESL and get their GED
 16 instead of going to school.
 17 BY MR. WALCZAK:
 18 Q. So were some of these students outright
 19 denied enrollment in the school district?
 20 A. Yeah, but we pushed back on it. They were,
 21 they said, no, they should go to GED.
 22 Q. And so once -- were there delays in getting
 23 even those students who were ultimately accepted into
 24 the schools?
 25 A. Yeah, we definitely had delays. I remember

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1 them, because we had to -- you know, it's on us, and
 2 we -- our case files are monitored, you know, every
 3 year --
 4 Q. By? I'm sorry.
 5 A. By Department of State or by our national
 6 agency and we have to register kids within 30 days,
 7 and if there's a problem, they want to know what it
 8 was. So we keep really good case notes about that.
 9 It seems that the school district would make
 10 an appointment, and then cancel the appointment, or
 11 make an appointment saying they didn't have a time,
 12 and the appointment would be a month or two months out
 13 till they could get -- fit a student in. And that
 14 happened primarily with these students who are older.
 15 Q. And that appointment was something that was
 16 necessary before the child could start school.
 17 A. Yeah, they told us they had to see the
 18 counselor before they could be enrolled.
 19 Q. And were some of the explanations that you
 20 were getting ones for not enrolling or delaying
 21 enrollment that caused you concern?
 22 A. Yeah. Back in 2010, I remember they said --
 23 first they said the kids are older, and we can't put
 24 them in the same grade as say a 16-year old, because -
 25 - especially if it was a boy, they can't be in that

Page 73

1 class, they can't be in those classes.
 2 And then they begin enrolling -- well, as
 3 soon as we had older students, I know they began --
 4 when they agreed to enroll them, they would put them
 5 in the Phoenix Academy.
 6 Q. Did they have times where they said they
 7 couldn't enroll them because they didn't have records?
 8 A. Yeah, it seemed to start with a certain
 9 population, the Bhutanese who were in refugee camps in
 10 Nepal. And they said if a student came and didn't
 11 have a record of having had an education, they
 12 couldn't enroll the student or the overage students.
 13 Q. And is it common for the Bhutanese to not
 14 have records?
 15 A. Back then it was, yeah.
 16 Q. Were there times where the district refused
 17 enrollment, because they purportedly didn't have
 18 immunizations?
 19 A. They -- yeah, well they refused enrollment.
 20 They said you have to have -- yeah, you have to have
 21 all of your shots before you can be enrolled.
 22 Q. And were there times where there would be a
 23 dispute of whether they had the proper immunizations?
 24 A. Yes, that happens too, yes.
 25 Q. And did sometimes they simply refuse because

Page 74

1 the children were quote too old?
 2 A. Yes, that has happened.
 3 Q. You mentioned they were sending the students
 4 to Phoenix, right, and what was your understanding of
 5 how Phoenix operated?
 6 A. Well, back in 2010, it was first brought to
 7 my attention by a case manager, because by that time I
 8 wasn't doing the enrollment. And the case manager was
 9 concerned that the refugee kids were put in with kids
 10 who needed disciplinary, you know, behavioral
 11 modification and needed extra discipline.
 12 It was a while until -- I mean, no one ever
 13 told us that wasn't the case with the Phoenix Academy.
 14 So for a long time we thought that it was primarily a
 15 school for behavior modification.
 16 Q. Okay. And were you getting feedback from
 17 your clients who were placed at Phoenix about the
 18 education that they were getting there?
 19 A. Yeah, we did. I remember some -- there were
 20 a few Bhutanese and some Burmese who said they weren't
 21 learning English and they were put in classes -- she
 22 said they were often by themselves, they were given
 23 work to do on their own, and they didn't move from one
 24 class to another. And they were pretty -- they were
 25 basically bored. We had some drop out and didn't want

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1 to go back because they weren't learning anything.
 2 They couldn't understand the teachers and they didn't
 3 have enough ESL.
 4 Q. So when you said they were bored, it's bored
 5 because they couldn't understand what was happening?
 6 A. Yes, but I also had -- I remember I had
 7 students who were bored because they could -- they
 8 weren't learning enough. They didn't feel they were
 9 learning anything. These were two young Bhutanese
 10 girls who had friends at McCaskey and felt that they
 11 were learning and getting an education and at Phoenix
 12 Academy they were too much on their own.
 13 Q. And I believe you said that some of these
 14 students, in fact, ended up dropping out because of
 15 these problems.
 16 A. Yes, I know of at least one or two that did.
 17 Q. And you said these complaints started in
 18 2010. How long have they continued?
 19 A. So it wasn't consistent. In 2010, we had an
 20 issue and we tried to resolve it with the School
 21 District of Lancaster and we had some meetings.
 22 Nothing was changed, but we didn't have time to pursue
 23 it. I think at that time, we contacted the -- someone
 24 told us to contact the Pennsylvania Education Law
 25 Center, and we did that, and someone there wrote a

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1 letter to the superintendent. He said maybe that
 2 would help.
 3 And we didn't have problems for a while
 4 after that. I'm not going to say that people were not
 5 enrolled in Phoenix, I just know that case managers
 6 brought anything to me until about 2012, and started
 7 to happen again.
 8 The first case manager who brought those to
 9 me had left by that time, and I --
 10 MS. O'DONNELL: Your Honor, I'm going
 11 to object to this line of questioning. It doesn't
 12 have anything to do with these plaintiffs. It's
 13 irrelevant to their case in terms of placement and any
 14 future class members. I don't know what the 2010 or
 15 '12 Bhutanese people have to do with this case.
 16 THE COURT: Your response, Counselor?
 17 MR. WALCZAK: I'll move on.
 18 THE COURT: Why don't we, and I
 19 apologize for interrupting your direct testimony, but
 20 why don't we take a 15 minute recess. We've been
 21 sitting for quite some time and I'm concerned even
 22 though we're getting close to the lunch hour, I think
 23 a 15 minute recess might be welcome at this time.
 24 MR. WALCZAK: Much appreciated, Your
 25 Honor, thank you.

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1 THE COURT: Certainly.
 2 THE CLERK: All rise.
 3 (Recessed at 11:14 a.m.; reconvened at 11:29
 4 a.m.)
 5 THE CLERK: All rise.
 6 (Call to Court)
 7 THE COURT: You may be seated, thank
 8 you. The Court is called to order, all parties
 9 previously present are once again present, the witness
 10 is on the witness stand. Counselor, you may proceed
 11 with your direct examination.
 12 MR. WALCZAK: Thank you, Your Honor.
 13 BY MR. WALCZAK:
 14 Q. Did the problems with enrollment at the
 15 School District of Lancaster re-emerge in 2015?
 16 A. Yes, they did, yeah, November.
 17 Q. And what were the problems you began seeing
 18 then?
 19 A. It was again the late enrollment, you know,
 20 trying to enroll someone and running into roadblocks
 21 like meetings canceled or meetings set out too far for
 22 us to have a child enrolled within 30 days. And again
 23 being sent to Phoenix Academy and by this time we just
 24 weren't convinced that Phoenix Academy provided the
 25 education that these students needed.

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1 Q. And did you ask your staff to identify
 2 students that had enrollment difficulties at this
 3 time?
 4 A. Yes, I did.
 5 Q. And did you find some examples of students
 6 who had difficulties in enrolling?
 7 A. I did. This was in the end of 2015 in the
 8 winter. I think we only had about four students.
 9 Q. I'm sorry, when you said you had four
 10 students who?
 11 A. Who had problems at that time, yeah.
 12 Q. Okay. And what can you tell us about those?
 13 A. I remember a young Bhutanese man he was 19,
 14 and then there were two girls, sisters, 19 and 17.
 15 The young man wanted to enroll and was told he was too
 16 old I think was the reason given. But then by this
 17 time, our case managers wanted the students -- they
 18 felt that -- not that we have a professional
 19 background, but we did feel that McCaskey, the
 20 international school was preferable.
 21 So when a student was assigned to Phoenix we
 22 wanted a reason why, and usually they would tell us
 23 that it was because they were overage and under
 24 credited.
 25 This particular student that I'm

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1 thinking of --
 2 Q. I'm sorry, this is the 19-year old Bhutanese
 3 student.
 4 A. The 19-year old Bhutanese boy, yeah, he
 5 first was not going to be allowed to enroll and then
 6 the enrollment counselor was kind of flippant, this is
 7 what my case manager told me. And said something
 8 like, I'm feeling good today, I'm going to enroll you.
 9 And then he enrolled him in the Phoenix Academy.
 10 Q. And then you mentioned two students 19 and
 11 17, were those Burmese students?
 12 A. Two Burmese girls, yeah, that are part of
 13 this case.
 14 Q. And what can you tell me about their
 15 enrollment?
 16 A. They were sisters and one was 19 and one was
 17 17, and they didn't have -- I think they had had an
 18 education up to the ninth grade and wanted to --
 19 actually I don't remember a lot about their cases.
 20 They ended up being enrolled in Phoenix Academy. The
 21 older girl, they didn't want to enroll her at all,
 22 that's right. And the younger girl was enrolled in
 23 Phoenix Academy.
 24 The older they didn't want to enroll because
 25 she was too old, suggested I think again that she take

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1 the GED or go to ESL and take the GED. My case
 2 managers persisted and they did enroll her. I think
 3 it wasn't until 2016 that they did in Phoenix Academy.
 4 Q. So with -- so as I understand, the school
 5 district initially refused to enroll the 19-year old?
 6 A. Yes.
 7 Q. Because she was too old?
 8 A. Because she was too old and wouldn't finish
 9 -- wouldn't have time to graduate.
 10 Q. But eventually they did allow both her and
 11 her sister to enroll?
 12 A. They did.
 13 Q. And was there a gap in the time between when
 14 you first tried to enroll them and when they actually
 15 started school?
 16 A. Yeah, as far as I know, they came in
 17 November of 2015, and we started the application in
 18 November. But they didn't enroll until -- it was
 19 after Christmas so I mean for us, that was too long,
 20 it's over 30 days.
 21 Q. Okay. And did you also have an issue with a
 22 Cuban entrant at the -- in the last year?
 23 A. There was a young Cuban man, he was also 19.
 24 He wanted to enroll in school and he was denied, again
 25 they said, no, you're too old.

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1 Q. And when you say denied, who refused to
 2 enroll him?
 3 A. Yeah, I couldn't say -- I couldn't name the
 4 person who did, but when he was taken to enrollment,
 5 and since I don't do it anymore, I know that -- I know
 6 a few names, a counselor I know people have to go to.
 7 Q. What was the reason given for refusing this
 8 Cuban entrant?
 9 A. Him, you know, actually I forget. I forget
 10 if it was that he was too old or he didn't have the
 11 proper transcripts. I don't remember.
 12 Q. And was there a delay in getting him
 13 enrolled?
 14 A. There was, he was another one with a delay.
 15 Again, I believe he came in November and wasn't
 16 registered until after Christmas.
 17 Q. Okay. And did you have a Cuban entrant who
 18 came in March as well?
 19 A. I don't remember that student.
 20 Q. Okay. Now, in early 2016, were you
 21 approached by someone from another refugee agency in
 22 Lancaster?
 23 A. I was, yes.
 24 Q. Okay. And who was that?
 25 A. Alise Che Sung (ph).

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1 Q. And who did Ms. Che Sung work for?
2 A. She worked for Lutheran Resettlement
3 Services in Lancaster.
4 Q. And who is Lutheran Resettlement Services?
5 A. They're actually not in existence anymore,
6 but they were the other resettlement agency in
7 Lancaster at the time.
8 Q. And when you say not in existence, they're
9 not operating in Lancaster anymore?
10 A. Right. This was a branch office of an
11 office in Philadelphia and both of those offices have
12 closed down.
13 Q. And just, because there may be testimony
14 down the road, so right now, Church World Services is
15 operating alone in Lancaster?
16 A. No, there's the Lutheran National Agency
17 opened another office to replace the office that had
18 closed. The office that closed merely closed because
19 their regional support couldn't afford to keep them.
20 Q. Okay. So there will be a new, a second
21 relief agency.
22 A. There is now.
23 Q. And that's Bethany --
24 A. Bethany Christian Services.
25 Q. -- Christian Services.

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1 A. Uh-huh.
2 Q. And what was Alise Che Sung's role at
3 Lutheran Services if you know?
4 A. I'm actually not sure. She was either a
5 case manager or an employment specialist, I'm actually
6 not sure.
7 Q. And when did she approach you?
8 A. February of 2016.
9 Q. Okay. And why did she approach you?
10 A. The Lutheran Agency had resettled a number
11 of refugees in Lancaster, and she had a lot of -- she
12 had a number of overaged kids that she was trying to
13 enroll in the School District of Lancaster, and she
14 was having problems, problems with enrollment. And
15 she or not she, but the agency wanted the students to
16 be enrolled -- well, I think they objected to the
17 Phoenix Academy and so she came to me to see if our
18 students -- if I had any students there, and if they
19 were having -- if I was having similar issues with
20 enrollment and also with the education at the Phoenix
21 Academy.
22 Q. And were the concerns that Ms. Che Sung
23 raised with you, were they similar to the concerns you
24 described for the Court about enrollment in School
25 District of Lancaster?

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1 A. Yeah.
2 MS. O'DONNELL: I'm going to object,
3 Your Honor, on the basis of hearsay. I believe Ms.
4 Che Sung is going to be a witness and I'm sure she can
5 tell us all that she has experienced of her own.
6 THE COURT: Counselor, response?
7 MR. WALCZAK: I simply asked her if she
8 was in agreement with what she heard, which I don't
9 believe is hearsay.
10 THE COURT: There may have been a lot
11 of hearsay prior to that --
12 MR. WALCZAK: Correct.
13 THE COURT: -- but certainly I think
14 that question she's permitted to answer. I'll
15 overrule the objection.
16 THE WITNESS: Yes, we had had some of
17 the same similar problems.
18 BY MR. WALCZAK:
19 Q. And did you propose a course of how to try
20 to address the problems that you perceived with the
21 school district?
22 A. Yeah, I thought we should meet with the
23 school district. I wanted to go to the
24 superintendent.
25 Q. And did you eventually get a meeting with

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1 some leadership in the school district?
2 A. We did through a liaison community liaison
3 person at the school district level who I knew. She
4 was able to get an appointment with Alise and I with
5 the superintendent of the Lancaster School District.
6 Q. And when, because there's now been a series
7 of meetings or contacts. When was the first meeting
8 that you had with school district officials about the
9 issue we've been discussing?
10 A. That was St. Patrick's Day, March 17th.
11 Q. And do you remember who attended that
12 meeting?
13 A. Yeah, I do. One of my staff members, my
14 resettlement coordinator, Valentina Ross, Alise,
15 myself, Dr. Rau and Dr. Abrams.
16 Q. And when you say Alise, that's Ms. Che Sung?
17 A. Ms. Che Sung.
18 Q. And who is Dr. Rau?
19 A. Dr. Rau is the Superintendent of the School
20 District of Lancaster.
21 Q. Okay. And who is Dr. Abram?
22 A. Dr. Abram, I don't know his title, I'm sorry
23 exactly, I don't know his title.
24 Q. But those were the two officials from the
25 Lancaster School District --

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1 A. Yes.

2 Q. -- with whom you met.

3 A. Yes.

4 Q. Okay. And did somebody take the lead for

5 say the non-school district folks in presenting

6 concerns to the district?

7 A. Yes, definitely Alise Che Sung did.

8 Q. And so were concerns presented to Dr. Rau

9 and Dr. Abram?

10 MS. O'DONNELL: I'm going to object

11 again to hearsay. I think that does call for hearsay.

12 THE COURT: Counselor, response?

13 MR. WALCZAK: First I haven't asked her

14 whether -- to produce any hearsay, but in anticipation

15 of where we're going, it's going to go to state of

16 mind and frankly it's not the truth of what's being

17 said, but this is the agenda that was discussed at a

18 meeting, the participants for the school district have

19 provided deposition testimony, we think they're going

20 to testify, so they're fully able to present --

21 THE COURT: And then you were present

22 at this meeting?

23 THE WITNESS: I was.

24 THE COURT: And you observed the

25 concerns being presented to --

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1 THE WITNESS: Yes, I did.

2 THE COURT: -- the school district

3 officials?

4 I'll overrule the objection and allow

5 her to answer.

6 BY MR. WALCZAK:

7 Q. What were the concerns that were raised with

8 Dr. Rau and Dr. Abrams that day?

9 A. So that day it was that -- there wasn't

10 enough ESL given, there wasn't as much ESL at Phoenix

11 Academy as at McCaskey at the international school,

12 that the children at Phoenix Academy had a different

13 experience. The atmosphere at Phoenix Academy was

14 more punitive than it is at McCaskey.

15 That the students were sitting in classes

16 where they weren't understanding or learning anything.

17 That was mainly it. We didn't address the enrollment.

18 Well, I guess we did address the late enrollment, but

19 not as much.

20 It was mostly what goes on at Phoenix

21 Academy and why overage refugee kids are sent there.

22 Q. Okay. Was there some discussion in that

23 meeting about whether these students should be going

24 to school or going to work?

25 A. Yes. The school district brought it up that

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1 some of the kids didn't -- I don't know how they knew,

2 didn't necessarily want to go to school, or that they

3 were older kids, and older than 17 and why wouldn't

4 they go for a GED and go to work, rather than sit in

5 class.

6 Q. Was there any discussion of socialization?

7 A. Yes. Alise Che Sung brought up that the

8 kids that went to the international school, the

9 students at the international school at McCaskey had

10 more of a normal high school experience, and that that

11 socialization was important to their education, and to

12 their orientation to the U.S. And Dr. Abrams said if

13 they -- if it's socialization they wanted, they should

14 go to church.

15 Q. Was there any discussion of student bullying

16 at Phoenix?

17 A. Yes, there was. I -- yes, Alise Che Sung

18 had some examples of student bullying.

19 Q. Okay. And did either Dr. Rau or Dr. Abram

20 respond to any kind of allegations of how individual

21 students were treated?

22 A. I don't recall.

23 Q. Okay. And how did the meeting end? Was

24 there sort of what, next steps or did the district

25 officials tell you what they were going to do or give

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1 you a response?

2 A. Yeah. During that meeting, Alise Che Sung

3 was very aggressive in telling the superintendent and

4 Dr. Abrams her concerns. And Dr. Rau got a little

5 agitated herself and told Alise to calm down and said

6 she didn't want to hear about particular cases as

7 Alise began to talk about certain students.

8 Dr. Rau said she wanted to look into all

9 these allegations, familiarize herself with what was

10 going on at Phoenix Academy. And then she -- we would

11 have another meeting after school ended for the year

12 in June.

13 Q. And was that an acceptable answer for you?

14 A. Yes, it was.

15 Q. Now, at some point did you have that follow-

16 up meeting with the school district officials?

17 A. We did. It was scheduled --

18 Q. Yeah, I'm sorry.

19 A. We did have one.

20 Q. Before you got to that meeting, did you have

21 an opportunity -- did you have a discussion with a

22 School District of Lancaster official?

23 A. I did. It wasn't a set meeting, but I did.

24 Q. And when was that meeting?

25 A. That was on -- that was -- I have a regular

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1 meeting of a coalition that I attend, Refugee Service
2 Providers Coalition. At that meeting, which the
3 school district, a school district official usually
4 attends, and the state refugee coordinator attends the
5 meeting as well.
6 The state refugee coordinator asked if after
7 that meeting we could meet with the school district
8 official and myself and somebody from the Lutheran
9 Refugee office as well. And so that's what we did.
10 That was April 6th.
11 Q. Okay. And who was the School District of
12 Lancaster representative at that meeting?
13 A. It was Amber Hilt.
14 Q. And do you know her title in the school
15 district?
16 A. ESL, I'm not sure, ESL coordinator, I'm not
17 sure.
18 Q. And so you had a meeting after the formal
19 sort of refugee committee meeting; is that correct?
20 A. Yes.
21 Q. And who was in that sort of post agenda
22 meeting?
23 A. It was the state refugee coordinator,
24 Charlotte Frye (ph) and one of her program officers,
25 Jolene Reed, and myself, and Amber Hilt, and I believe

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1 -- there were people milling about other people
2 talking in this big room. And I believe that my
3 resettlement coordinator, Valentina Ross was in and
4 out of the meeting.
5 Q. And was there somebody from Lutheran
6 Services there as well?
7 A. I don't remember that there was at that
8 particular meeting.
9 Q. Okay. And what was the discussion that you
10 had with Ms. Hilt on April the 6th?
11 A. It was actually the state refugee
12 coordinator was asking her -- tell me about Phoenix
13 Academy and who goes -- who do you send to Phoenix
14 Academy.
15 Q. And what was Ms. Hilt's response?
16 A. I believe she said that students who are
17 overage and under credited go to Phoenix Academy.
18 Q. And was there some questioning of Ms. Hilt
19 about kind of what types of kids these were that went
20 to Phoenix?
21 A. Yes. I remember that Jolene Reed was asking
22 her, saying for instance, give me an example of
23 somebody who was underage and under credited. We
24 never did get an example. Ms. Hilt just said overage
25 and under credited.

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1 Q. So -- and did -- so she didn't describe what
2 kind of -- sort of the --
3 A. The -- we wanted to know what are the
4 circumstances where such a child would be put in that
5 school, and she didn't have any examples to give us.
6 Q. And did anyone ask Ms. Hilt whether students
7 went there voluntarily to Phoenix?
8 A. I don't recall if we did at that time.
9 Q. Uh-huh. Was there anything about whether
10 kids have choice?
11 A. That was always on our minds, yes, can kids
12 -- oh, yeah, we did, and Ms. Hilt wasn't sure and said
13 she could look into it and get back to us.
14 Q. So the question of whether going to McCaskey
15 is a choice was discussed with Ms. Hilt at that
16 meeting only if you remember.
17 A. It was just a question that came up, we
18 wanted to know, did kids have a choice whether or not
19 they have a Phoenix Academy and Ms. Hilt wasn't sure,
20 and said she would look into it.
21 Q. And that was April 6th of this year.
22 A. That was in April, that was the meeting,
23 yes.
24 Q. And Ms. Hilt said she wasn't sure whether
25 students had a choice?

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1 A. Uh-huh.
2 Q. Did anything else significant happen at that
3 meeting?
4 A. No, not that I can remember.
5 Q. Did this affect your concerns about the
6 treatment of your clients at all, this meeting?
7 A. It did. The state refugee coordinator and
8 Jolene Reed, her program officer, were concerned.
9 They had some ideas of what Phoenix Academy was, but
10 they didn't have any back-up, anything to back it up,
11 so they had their thoughts on it, but I'm not going to
12 say, I didn't know that it wasn't backed up.
13 Q. And at some point prior to that, did you ask
14 your case manager to maybe explore Phoenix a little
15 bit more?
16 A. Yeah. After that meeting -- well, even
17 after the meeting on March 17th with the school
18 district official, I wanted to -- I had never been to
19 Phoenix Academy so -- and neither had my resettlement
20 coordinator who oversees the case managers. So after
21 that meeting I asked her, and she volunteered, like I
22 said I want to go the next time a student has an
23 orientation, I want to go and be part and sit in on
24 the orientation, and so she made plans to do that.
25 Q. Okay. And after her visit, did you have

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1 additional concerns about how Phoenix operated?

2 A. We did. It wasn't -- as we said it wasn't

3 an orientation, it wasn't a day of school, she was

4 only there for orientation. So the atmosphere at the

5 school, my resettlement coordinator, found to be not

6 as punitive as Alise. She said it was different, her

7 daughter goes to McCaskey, and she said it's certainly

8 different from McCaskey. But she felt that students

9 that she saw walking around the halls didn't seem

10 repressed or any other way different than regular

11 students.

12 Q. Was there a concern about how students enter

13 the building?

14 A. Yes, they are -- they have a pat down when

15 they enter the building, and the big thing, they're

16 not allowed to take anything in with them, they can't

17 take in a backpack, and the girls can't even take in

18 feminine products that they might need during the day.

19 They said everything is supplied in the school. So

20 nothing goes in and then they can't bring anything

21 out.

22 Q. Were there any concerns about homework?

23 A. Homework, they're not allowed to take any

24 books home, so that definitely is an issue and they

25 don't get homework is what the kids tell us, but

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1 that's just what I've heard.

2 Q. And eventually you did have a follow-up

3 meeting with school district officials subsequent to

4 the March 17th meeting; is that correct?

5 A. We did. In July, July 13th.

6 Q. Okay. And who attended that meeting?

7 A. From my office it was me and my resettlement

8 coordinator, Valentina Ross, there was no one from the

9 Lutheran office at that time, because the office had

10 closed, and the new one hadn't reopened.

11 Dr. Rau was there, Dr. Abram, Amber Hilt and

12 the assistant superintendent, Carol Powell I think is

13 her name, assistant superintendent.

14 Q. Okay. And what concerns did you present to

15 the school district officials on that day?

16 A. So the concerns we had at that point is the

17 ESL wasn't adequate, the late enrollment, the students

18 -- the way the students were treated with the pat down

19 and the no homework, and then just the issue of why

20 the kids are sent to Phoenix and not to the

21 international school.

22 Q. And was part of your concern about Phoenix

23 the acceleration?

24 A. And accelerated classes.

25 Q. Uh-huh. Was there any concern expressed,

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1 for instance, about the dress code?

2 A. That's -- I'm trying to understand that

3 issue. As I understand it, as we understood it,

4 students are given a green polo shirt when they first

5 enter the school, and they can earn a black polo

6 shirt, but it seems that your behavior has to -- you

7 have to exhibit the proper behavior to get a black

8 shirt, and the kids who have the black shirt or --

9 some -- have something over the kids with the green

10 shirt.

11 So that didn't sit well with us, yeah, so we

12 questioned that process.

13 Q. Okay. And did district officials have a

14 response to your concerns about less ESL at Phoenix?

15 A. Yes. They said that the kids are given one

16 to two hours of ESL, in fact, I actually don't

17 remember if they said two to three or one to two

18 hours, but they did say that it's not just direct ESL,

19 like an ESL class. They do something called co-

20 teaching where there are two people -- two teachers in

21 the room, so they said that it's not just direct ESL,

22 there are many ways to learn English, and I'm not a

23 professional teacher, so I didn't remember it exactly,

24 but they said that's not the only way, we can't just

25 count those direct ESL hours.

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1 Q. And do you have any independent information

2 about what they actually -- how they actually teach at

3 Phoenix?

4 A. I have never been to Phoenix, but no, it's

5 just what I've heard from students and case managers.

6 Q. And what you understand from students, is

7 that different from two to three or one to two hours

8 of ESL?

9 A. Yes, it is.

10 Q. What's your understanding?

11 A. That they had 80 minutes or less of ESL a

12 day.

13 Q. And was there any discussion at that meeting

14 about the issues you raised on April 6th, about

15 whether students have a choice to go to McCaskey?

16 A. No, we brought that again, but it was never

17 answered. I think the school district's reply was

18 that they make the best placement for the students

19 that could help the student to graduate.

20 Q. Okay. And did you ask the question and get

21 an answer about why students couldn't go to McCaskey?

22 A. We just asked if they had a choice of

23 whether or not they want to go to Phoenix Academy and

24 there was no answer to that question.

25 Q. Okay. And was there some discussion about

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1 late year enrollments?
2 A. Yes. We have had issues with that. We had
3 an issue where a student came in March and wanted to
4 enroll, and they said it was an overage student and he
5 was 19, he was Cuban, and they said it was too late in
6 the year for him to enroll.
7 But when I asked about this, when we asked
8 about this at our meeting of the school district, they
9 said you can definitely enroll up to the end of May.
10 Q. Okay. But the -- your agency had an
11 experience with a student who came I'm sorry in what
12 month?
13 A. I believe he came in the spring. We wanted
14 to -- I remember it was March when we wanted to enroll
15 him and they suggested he wait until the following
16 school year.
17 Q. So he was refused enrollment in the spring
18 and told he could start in September.
19 A. Yes.
20 Q. And was that also at Phoenix?
21 A. He wasn't enrolled, so I don't know that he
22 would've been sent to Phoenix.
23 Q. Was there any discussion about homework at
24 this meeting?
25 A. You know we talked about homework. It did

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1 come out that they don't have -- they're not allowed
2 to take books home, but that the school is open at
3 7:30 in the morning, and the students can come before
4 school and stay after school to study, or I think that
5 was the implication that they could come before or
6 after to do homework.
7 Q. And it was clear that there was no homework
8 assigned to the students.
9 A. They said that there is homework assigned.
10 Q. There is?
11 A. They do assign homework, but when we asked
12 how -- where do they do it, they say they do it on
13 line I think and before and after school at the school
14 property.
15 Q. So there's homework, but it's not done at
16 home.
17 A. Well, they didn't call it homework, they
18 called it assignments.
19 Q. So was it clear that they do not send work
20 for the students to do when they're outside the
21 school?
22 A. That seemed pretty clear.
23 Q. Now, was there any discussion by school
24 district officials of changes in how things worked
25 based on sort of the -- I'll call it advocacy that you

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1 and Ms. Che Sung had been doing.
2 A. Yes. At the second meeting, at the end of
3 the meeting, the school district said or Dr. Rau said
4 that there's something I didn't mention, there's an
5 orientation for all students, and during their
6 orientation, school district staff members demonstrate
7 the seven levels of restraint, and there's one that
8 where the person will put your arms in the back and I
9 don't know, twist you around. And I guess they
10 demonstrated that, and we always thought to the
11 refugee students coming from the background they do
12 that that's sort of intense to see them that they're
13 saying this is something might happen to you in school
14 without understanding everything.
15 So Dr. Rau said that she wanted to make the
16 orientation more comfortable for refugee students, and
17 that she would stop doing a demonstration of -- I
18 believe that was the seventh level, the most intense.
19 Q. So just so I'm clear, Dr. Rau said she would
20 stop doing the demonstration.
21 A. Yes.
22 Q. Not that they would stop using the program.
23 A. No, just demonstrating it at orientation,
24 and she said she would try to make the orientation
25 more comfortable for refugee students.

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1 Q. Were there any other changes that school
2 district officials told you they were considering or
3 make?
4 A. Yeah. They would also consider letting the
5 children take a book backpack into the school with
6 them and feminine products.
7 Q. Okay. And when they take the book bag into
8 the school, did it mean take it to class with them, or
9 they could leave when they first came in?
10 A. No, it was my understanding that the kids
11 were going to be able to take it into the school with
12 them.
13 Q. And was that something they were definitely
14 doing or they would consider.
15 A. She would consider.
16 Q. Do you know whether that has been followed
17 through on?
18 A. I don't know.
19 Q. Was there any discussion about the
20 importance of graduation and diplomas at this meeting
21 on July the 13th?
22 A. Yes, Dr. Abrams said that -- a couple of
23 times he said and particularly when he said, you know,
24 our goal, our mission is to get these kids graduated,
25 get them a high school diploma. He emphasized the

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1 importance of having a high school diploma and getting
 2 a job.
 3 Q. And was there any sort of response from you
 4 about whether just getting a diploma was sufficient?
 5 A. Yes, there was. You know, there was a lot
 6 of emphasis on graduation numbers, and getting a
 7 diploma, and the goal of the students, you know, it
 8 came up a number of times from Dr. Abrams about how
 9 hard they try to get a diploma for the kids.
 10 But I was concerned about the education, you
 11 know, are they learning, especially since I didn't
 12 feel that there was enough ESL in the school, if
 13 they're not understanding, if they're not learning
 14 English enough to understand the classes, how are they
 15 going to graduate. Dr. Abrams had some statistics
 16 about the good graduation rate from the school.
 17 Q. Okay. And did you ask Dr. Rau about how
 18 students could get credit in this accelerated program?
 19 A. Yes. And Dr. Abrams in the beginning when
 20 we started this second meeting, he wanted to tell us
 21 that, you know, why the refugee kids who are older are
 22 sent to the accelerated program.
 23 The reasoning is, of course, that they can
 24 earn more credits, the credits that they need to
 25 graduate. So they need like 21 or 28 credits to

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1 graduate. And at McCaskey, they can only earn 7 in a
 2 year. And at the accelerated program, they could earn
 3 more.
 4 They could go through the summer and also
 5 earn -- because it's accelerated they earn more
 6 credits. So I was just concerned, you know, credits
 7 and graduation are one thing but are they learning.
 8 And I said, how do they earn a credit thinking of when
 9 I was in school, you had to have a certain grade in a
 10 certain class, you know, to pass that class and
 11 therefore graduate.
 12 Dr. Rau said that credits are earned by seat
 13 time, I think she called it, seat time. And I didn't
 14 know, I said, what is seat time. And she said, being
 15 present in the class is how you earn credits, which
 16 surprised me. And so I even asked her, just being
 17 there, and she said yeah.
 18 Q. And so I'm clear on the term you're using,
 19 it's seat time?
 20 A. That's what -- they were Dr. Rau's words.
 21 THE COURT: And excuse me, Counselor,
 22 was that distinguished between McCaskey and Phoenix or
 23 you don't know?
 24 THE WITNESS: At the time we were just
 25 talking about Phoenix Academy so I don't know if it

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1 applies to both.
 2 THE COURT: Excuse my interruption,
 3 Counselor, you may proceed.
 4 MR. WALCZAK: By all means, Your Honor.
 5 BY MR. WALCZAK:
 6 Q. Based on your 30 years of experience of
 7 working with refugees, I mean, do you believe that
 8 your clients can learn in an accelerated education
 9 program like Phoenix?
 10 MS. O'DONNELL: I'm going to object to
 11 the form, I don't know -- or to the relevancy and her
 12 qualifications as a case worker and a director of a
 13 refugee resettlement agency, whether she could say her
 14 clients are getting a sufficient education at the
 15 district.
 16 THE COURT: Response, Counselor?
 17 MR. WALCZAK: I asked her based on her
 18 experience whether her clients were able to learn in
 19 that accelerated environment.
 20 THE COURT: She brings a unique
 21 perspective here, and I think your objection is going
 22 to go more to the weight of the opinion that she's
 23 going to render. It's certainly not going to be the
 24 weight that an educational professional, the weight
 25 that would be given to that, but it certainly is a

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1 unique perspective, so I'm going to allow the witness
 2 to answer the question.
 3 THE WITNESS: Well, so I have worked
 4 with a lot of students and I talk to, I mean, a lot of
 5 refugees, and I've talked to a lot of school age kids,
 6 refugee kids. And when they don't understand English
 7 well, I don't know how they could be in an accelerated
 8 class and learn.
 9 So I do have concerns about that, that
 10 they're in an accelerated class and yet, they don't
 11 speak English well.
 12 MR. WALCZAK: Okay. I have no further
 13 questions.
 14 THE COURT: Thank you very much,
 15 Counselor. Attorney O'Donnell, you may cross-examine
 16 the witness.
 17 MS. O'DONNELL: Thank you very much.
 18 THE COURT: Certainly.
 19 CROSS-EXAMINATION
 20 BY MS. O'DONNELL:
 21 Q. Good afternoon, Ms. Mastro Pietro.
 22 A. Good afternoon.
 23 Q. I have a couple of follow-up questions from
 24 the testimony that you just gave us.
 25 So when you heard that school district

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1 officials or the enrollment officer told some of the
 2 19-year olds that they were too old, did you get more
 3 specific information about that conversation or simply
 4 that the kids were too old?
 5 A. Did I get more information from the school
 6 district?
 7 Q. Sure. Not from the school district, from
 8 anyone?
 9 A. No.
 10 Q. Okay. So my understanding of your testimony
 11 is that your case workers attend a meeting or are told
 12 by the students who are 19 years old that they could
 13 not be enrolled at the district because they're too
 14 old; is that accurate?
 15 A. That is accurate.
 16 Q. Okay. And my question is, did you get any
 17 more information about that conversation?
 18 A. Well --
 19 Q. In other words, did you inquire what that
 20 meant?
 21 A. At the school district level?
 22 Q. At any level, ma'am.
 23 A. Back in 2010 when it first started to
 24 happen, that's when I remember my case manager talked
 25 to one of her ESL teachers who referred us to the

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1 Pennsylvania Education Law Center. And they -- we
 2 asked them about how old do you have to be, and that's
 3 when they told us and showed us the regulations.
 4 Q. The Pennsylvania Education Law Center, the
 5 lawyers that are sitting behind me?
 6 A. Yes, the same Center, uh-huh.
 7 Q. Okay. And they talked to --
 8 A. They sent a copy of those Pennsylvania
 9 school regulations and we read it through and it says
 10 that you can go to school until you're 21.
 11 Q. So you're telling me that you read the
 12 Pennsylvania School Code and do you remember which
 13 provision you read?
 14 A. No, this was back in 2010.
 15 Q. Okay. And do you remember what it said, can
 16 you testify about what you read in terms of the School
 17 Code?
 18 A. I think what I just told you.
 19 Q. Okay. Do you know the ages?
 20 A. You can go to school up to 21.
 21 Q. All right. Do you know whether or not the
 22 students were too old to attend McCaskey the preferred
 23 school?
 24 A. I know that they can go until they're 21.
 25 Q. You did indicate in your testimony, did you

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1 not, that McCaskey was the preferred school?
 2 A. Yes.
 3 Q. And do you have an understanding in terms of
 4 whether or not a 19-year old would be able to graduate
 5 from McCaskey if enrolled in that school?
 6 A. Would be able to graduate -- would have -- I
 7 don't understand the question.
 8 Q. Sure. Do you think that a 19-year old has
 9 enough time to graduate from McCaskey, assuming that
 10 person came in without a transcript and without any
 11 credits to graduate from the McCaskey High School?
 12 A. I think it would depend on his prior
 13 education.
 14 Q. Assuming there was no evidence of any prior
 15 education, do you think that person could graduate
 16 from McCaskey High School at age 19?
 17 A. It depends on the education, and by that, I
 18 mean the education that they had. We had some Nepali
 19 students who had an education up to grade 10 but
 20 because they didn't have transcripts, they were not
 21 allowed to enroll in McCaskey.
 22 Q. Did you happen to read in the Pennsylvania
 23 School Code that that's a requirement as well?
 24 A. No.
 25 Q. Okay. Do you know that the Phoenix Academy

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1 semester start the day after Martin Luther King's
 2 birthday?
 3 A. No.
 4 Q. Do you know that if a student is enrolling
 5 late as you've described in your direct testimony
 6 after Christmas, they would still have time to begin
 7 their semester at the Phoenix Academy?
 8 A. No.
 9 Q. Okay. No one told you that from the
 10 Educational Center?
 11 A. No.
 12 Q. When you met with Dr. Rau the first time,
 13 you said that you were satisfied with the outcome of
 14 that meeting?
 15 A. That -- there was no outcome. The outcome
 16 was that -- yeah, I was satisfied.
 17 Q. Okay. And then you came back the second
 18 time around with still more complaints about the fact
 19 that you didn't believe the students were getting
 20 sufficient English language instruction and supports?
 21 A. I was satisfied on the first meeting because
 22 Dr. Rau said she was going to look into the
 23 allegations.
 24 Q. I understand.
 25 A. But I can't say that I was satisfied that

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1 our concerns had been met, they'd been heard.
 2 Q. Well, and I understand that. And when you
 3 came back for your last meeting with Dr. Rau, you
 4 indicated that one of your first concerns was that
 5 they were not getting enough, I believe you called it
 6 ESL.
 7 A. Uh-huh.
 8 Q. You were calling that English as a Second
 9 Language instruction.
 10 A. That's correct.
 11 Q. Right. And you believed that it was
 12 inadequate; is that correct?
 13 A. That's correct.
 14 Q. Okay. And you believed that one full class
 15 of English language instruction at the Phoenix Academy
 16 is insufficient for all students?
 17 A. No, I wouldn't say all students.
 18 Q. Okay. So when you say that English language
 19 instruction of 80 minutes is not sufficient, what are
 20 you talking about?
 21 A. For students who enter -- you know, it
 22 depends on the student's English ability when they
 23 enter the school.
 24 Q. And you would agree with me that many
 25 students can come in, who don't speak any English, and

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1 very successful and make their way through the Phoenix
 2 Academy and graduate with 80 minutes of English
 3 language instruction, wouldn't you?
 4 A. I don't know, I haven't had that experience.
 5 Q. Okay. Now in terms of the searches, what
 6 was your continued complaint or your continued
 7 concern, the second time that you met with Dr. Rau?
 8 A. That the students were patted down and that
 9 doesn't happen at McCaskey at the international
 10 school.
 11 Q. And what do you know specifically about the
 12 international school at McCaskey?
 13 A. I don't know a lot.
 14 Q. Okay. You've not physically been present in
 15 either school to know --
 16 A. That's correct.
 17 Q. -- enough to testify to this Court about the
 18 distinctions; is that correct?
 19 A. I haven't been in either of the schools.
 20 Q. And do you have any clear understanding of
 21 why some students are assigned to Phoenix and other
 22 students are assigned to McCaskey who may be siblings,
 23 who may be refugee siblings?
 24 A. Yeah, my understanding is that overage and
 25 under credited are sent to Phoenix Academy.

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1 Q. Okay. And do you have an understanding of
 2 what over age and under credited means?
 3 A. It means that -- here's how I understand it,
 4 that you don't have the same -- that if you're -- you
 5 don't have the education for your age level in the
 6 United States.
 7 Q. Okay. So if, for example, we have the
 8 Burmese sisters who will testify today, Van Ni and Sui
 9 Hnem, one is 19, one is 17. They are both assigned to
 10 the Phoenix Academy. To your understanding, are they
 11 both over age and under credited?
 12 A. I don't know if that's true. All I know is
 13 why the School District of Lancaster sends children to
 14 the Phoenix Academy, but I can't speak to what the
 15 school district means by over age and under credited.
 16 Q. Okay. Because you didn't ask, you didn't
 17 follow up with Dr. Rau?
 18 A. No, we did. I think Amber Hilt told me what
 19 that meant, and I thought -- that's what I learned.
 20 Q. I thought your testimony on direct was that
 21 she deferred to Dr. Rau for that explanation?
 22 A. No, she deferred to Dr. Rau for the choice.
 23 Q. And -- okay. So you indicated that there
 24 were some bullying going around at Phoenix that you
 25 also --

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1 A. I don't know about the bullying.
 2 Q. You don't know anything about the bullying?
 3 A. No.
 4 Q. Okay.
 5 A. I mean, what I heard from Alise, just some.
 6 Q. Okay. And what about socialization? There
 7 was some preference for McCaskey because the kids
 8 would be socialized better at McCaskey than Phoenix?
 9 A. That came from Alise Che Sung.
 10 Q. Okay. That's not something that you agree
 11 with?
 12 A. I don't know enough to speak to that.
 13 Q. Do you know whether or not at the Phoenix
 14 Academy the students if they wanted to take books
 15 home, leave with photocopies of the assignments that
 16 they wish to read on their own? Are you aware of
 17 that?
 18 A. Nada mentioned, I think maybe Dr. Rau said
 19 that photocopies were allowed. She was unclear about
 20 that. That's right. That happened at our July
 21 meeting. She wasn't sure it was happening, but that
 22 she thought maybe copies were made.
 23 Q. Is it your belief that the children that
 24 you're resettling in Lancaster get an inferior
 25 education at McCaskey as opposed to -- pardon me.

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1 Inferior education at Phoenix than they do at
2 McCaskey?
3 A. I think it depends on the student.
4 Q. Do you also think it depends on the
5 student's effort and initiative to learn?
6 A. It does.
7 MS. O'DONNELL: Those are all the
8 questions I have, thank you very much.
9 THE COURT: Thank you very much,
10 Counselor. Attorney Walczak, do you have any redirect
11 of this witness?
12 MR. WALCZAK: No further questions.
13 THE COURT: Very well. Ma'am, thank
14 you very much, you may step down.
15 And, Counsel, I don't know how long
16 your next witness is going to be. Would this be an
17 appropriate time to take an hour for lunch?
18 MR. WALCZAK: Your Honor, our next
19 witness will be the first student, so that'll probably
20 take some time.
21 THE COURT: And do you anticipate the
22 students are going to be here all day?
23 MR. WALCZAK: We were hoping they
24 wouldn't have to be here all day, because they really
25 are not understanding --

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1 THE COURT: Do you think that might be
2 bored?
3 MR. WALCZAK: That's not a word I would
4 choose to say.
5 THE COURT: Nor would I.
6 MR. WALCZAK: They're not absorbing a
7 lot of this. I think it's difficult and so I think we
8 are going to send the kids who's not testifying out of
9 the courtroom so they're not sitting here. But we
10 hope to put all four of the students on this
11 afternoon.
12 THE COURT: I will make that happen,
13 but they're probably hungry as well. So I wonder if
14 they're all four going to stay here anyway even after
15 they've testified, I think it's best we take an hour
16 for lunch.
17 So why don't we stand in recess. It
18 looks like it's about 20 minutes after. Why don't we
19 come back at 1:30 this afternoon, and we'll begin
20 taking testimony at 1:30.
21 THE CLERK: All rise.
22 (AM proceedings concluded at 12:16 p.m.)
23 * * * * *
24
25

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1 CERTIFICATION
2
3 I, Sheila G. Orms, certify that the
4 foregoing is a correct transcript from the official
5 electronic sound recording of the proceedings in the
6 above-entitled matter.
7
8 _____
9 SHEILA ORMS, APPROVED TRANSCRIPTIONIST
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11 Dated: August 17, 2016
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