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

- - -
ISSA, et al., : 5:16-cv-03881-EGS
Plaintiffs, : ALLENTOWN, PA
vs. :
THE SCHOOL DISTRICT OF : Afternoon session
LANCASTER, : August 22, 2016
Defendant. : 12:27 p.m.

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

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(Whereupon, other matters were had but not transcribed herein.)

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AURA HEISEY,
having been previously sworn, was
examined and testified as follows:

- - -

CROSS-EXAMINATION

- - -

BY MR. WALCZAK:
Q. Are you on tab 86 there?
A. I am.
Q. Okay. And at the top, it says, Interscholastic Athletic Opportunities Disclosure Form 15.6.
Did I read that correctly?
A. Yes.
Q. Okay. And this is for the 2014/'15 school year, correct?
A. Yes.
Q. Okay. Do you know what this form is?
A. I've never seen this form before.
Q. If you'll look down with me, it says, LEA name there. Do you see that row? It's the top row under LEA and school information. Do you see where it

1 says, Lancaster SD?

2 A. Yes.

3 Q. Okay. So LEA name, Lancaster School
4 District --

5 A. Yes, I do see that.

6 Q. -- correct?

7 Okay. And do you see, where it says, school
8 name, it says, Phoenix Academy; is that correct?

9 A. Yes.

10 Q. And there's an address below that. Is that the
11 address for Phoenix Academy?

12 A. Yes.

13 Q. Now, towards the bottom, it says, does this
14 school sponsor any interscholastic athletic teams?
15 Do you see that?

16 A. Yes.

17 Q. Okay. And then next to that, it says, no.
18 Do you see that?

19 A. Yes.

20 Q. Okay. And if you'll turn the page, it asks for
21 total number of participants in a whole range of
22 sporting activities.

23 Do you see that?

24 A. Yes.

25 Q. Okay. Are there any sports in which this

1 indicates that Phoenix students participate in?

2 A. It wouldn't be included under Phoenix because
3 they participate with McCaskey.

4 Q. Okay. Now, if you'll come back to the first
5 page of Exhibit 86, at the very bottom, it says,
6 stop.

7 Do you see that?

8 A. Yes.

9 Q. Okay. And -- and, indeed, it says at the very
10 top, if your answer to the above question -- which is
11 whether you have any inter- -- interscholastic
12 athletic teams -- it says, stop, right? And so it
13 says, no, and so, obviously, stop, correct?

14 A. Yes.

15 Q. Okay. And then below that, it says, if you
16 have athletes playing for another school, please
17 explain on page 4.

18 Did I read that correctly?

19 A. Yes.

20 Q. Okay. Now, if you'll turn to -- the
21 second-to-last page of the exhibit is probably the
22 easiest way to --

23 Okay. And near the top -- are you with me?

24 Okay. Near the top there, it should say, page 4,
25 section 1, comments.

1 A. Yes.

2 Q. You see that?

3 So the first page referred to where you are
4 supposed to explain students playing at another
5 school on page 4, correct?

6 A. Yes.

7 Q. Okay. So this is now page 4, section 1. It
8 says, comments, correct?

9 A. Yes.

10 Q. Okay. There's nothing answered there under
11 comments, is there?

12 A. No, there's not.

13 Q. Let's come back to Plaintiffs' Exhibit 21. And
14 if you'll turn to page 11, please.

15 A. Okay.

16 Q. So we're looking at the 2015/'16 curriculum
17 guide. And you see about halfway down, it
18 says there's an international school.

19 Do you see that?

20 A. Yes.

21 Q. Okay. That's one of the programs that's
22 available at McCaskey, correct?

23 A. Yes.

24 Q. Okay. Now, Phoenix does not have an
25 international school, correct?

1 A. We do not. We offer the international ESL
2 course.

3 Q. But you don't have some -- a separate program
4 called The International School, correct?

5 A. No.

6 Q. Now, I want to talk about ESL instruction at
7 Phoenix. Well, actually, let me back up.

8 Let's go back to page 11, under the
9 international school.

10 Okay. It says, the international school is
11 normally a one-year transition program designed to
12 address the needs of students who are new to the
13 country or the district and who have limited English
14 proficiency.

15 Did I read that correctly?

16 A. Yes.

17 Q. The goal of the program is to prepare students
18 as much as possible in one year for effective
19 participation in mainstream classes.

20 Correct?

21 A. Yes.

22 Q. Okay. And students attend mathematics,
23 science, social studies, and technology classes. And
24 then it says, sheltered content.

25 Correct?

1 A. Yes.

2 Q. Okay. And so sheltered content means that the
3 students are in classes with similar level ELLs,
4 correct?

5 A. That's what I have learned, yes.

6 Q. Okay. And you don't dispute that?

7 A. Don't dispute what?

8 Q. That the students at the international school
9 are grouped with just similar level ELLs in the
10 classes.

11 A. I don't dispute it. That's what it says here.
12 However, I don't know that for myself because I
13 haven't seen it in practice.

14 Q. Right.

15 And then it says next to that, and take two
16 courses of ESL, English as a second language, at one
17 of two proficiency levels determined by international
18 school staff.

19 Correct?

20 A. Yes.

21 Q. Okay. So it says they take two courses of ESL,
22 correct?

23 A. Yes.

24 Q. Okay. Now, at the international school -- I'm
25 sorry.

1 At Phoenix, students get one class of ESL,
2 correct?

3 A. It would depend on their schedule.

4 Q. Okay. If they -- if a student is given -- is
5 assigned to an ESL class, that would be reflected on
6 his or her marking period, correct?

7 A. Yes.

8 Q. Okay. It would say, ESL class or
9 international --

10 A. Right, international ESL, yes.

11 Q. Right.

12 A. And then there's also the CA class that is
13 taught by a highly qualified teacher, as I talked
14 about before.

15 Q. Okay. Let's -- let's -- let's -- let's --
16 let's keep these things separate. We will -- we will
17 unpack these.

18 So is it your testimony that students at
19 Phoenix get more than one period of ESL, just
20 straight ESL?

21 A. Yes. If we're counting that other class, then
22 yes.

23 Q. All right. Now, as part of your principal
24 certification, you indicated that you were -- had to
25 learn the laws, correct?

1 A. Yes.

2 Q. You have some familiarity with the law.

3 If you could, turn to Exhibit 74. And if you
4 could, turn to the --

5 Well, first of all, let me ask you, do you
6 recognize this document?

7 A. I'm not familiar with this document until now,
8 no.

9 Q. Okay. Do you know what a -- what a BEC is?

10 A. The BEC? I've heard of that.

11 Q. And this one is about educating students with
12 limited English proficiency and English language
13 learners --

14 A. Yes.

15 Q. -- correct?

16 And the purpose -- under purpose there, it
17 says, the purpose of this circular is to provide
18 local education agencies, LEAs, with the requirements
19 and interpretations of the legal mandates governing
20 the education of students with limited English
21 proficiency, LEP, also known as English language
22 learners, ELLs.

23 Correct?

24 A. I don't see where you're reading from.

25 Q. I'm sorry.

1 A. The last paragraph there?

2 Q. The first paragraph, under purpose, on the
3 first page.

4 A. I'm looking at the exit criteria. I don't
5 have --

6 Q. All right. Do we have --

7 A. That's not the document that I --

8 Q. Is this a different --

9 A. Oh, this document?

10 MR. WALCZAK: May I approach, Your
11 Honor?

12 THE COURT: Certainly, Counselor.

13 THE WITNESS: This document?

14 BY MR. WALCZAK:

15 Q. Yes.

16 A. Under purpose?

17 Q. Yes.

18 A. Okay.

19 Q. Do you see where I read --

20 A. Yes.

21 Q. -- the purpose of the circular?

22 Okay. You agree with me I read that correctly?

23 A. Yes.

24 Q. Now, if you would, turn to the third page of
25 this exhibit. Okay. And if you look under Planned

1 Instruction for English Language Acquisition -- you
2 see that heading in bold?

3 MS. O'DONNELL: Your Honor, I'm going to
4 object to this line of testimony. The witness
5 indicated she was not familiar with this document,
6 and all he's doing is having her read portions of it
7 into the record.

8 THE COURT: Counselor?

9 MR. WALCZAK: It's cross-examination,
10 Your Honor.

11 THE COURT: But if it's a document she
12 has no familiarity with, why would she be the witness
13 to be --

14 MR. WALCZAK: Your Honor, this is --
15 this is --

16 THE COURT: -- questioned about it?

17 MR. WALCZAK: It's put out. I mean,
18 there's been testimony about it. It's put out by the
19 Pennsylvania Department of Education.

20 The witness has testified that it is
21 okay to count, as I understand it, ESL credits for
22 classes where you're teaching other content, and I'm
23 going to ask her about the law, point out the law to
24 her, and whether she knows that. I think that's fair
25 game for cross-examination.

1 THE COURT: Counselor?

2 MS. O'DONNELL: This is a -- a basic
3 educational circular that's put out -- that is a --
4 is a -- a tool for LEAs to understand some of the
5 laws better, but it's not read by everyone. It's --
6 it's not been proven that it's been circulated to
7 this witness. And it's not an accurate reflection of
8 the law. It's an interpretation of the law by
9 somebody we don't know.

10 THE COURT: Would you like to respond
11 any further?

12 MR. WALCZAK: Your Honor, I'm going to
13 ask her if she recognizes a couple of passages that
14 are in here that relate directly to her testimony,
15 and she can either say she knows that or she doesn't.

16 THE COURT: It is a preliminary
17 injunction hearing. The Rules of Evidence, as they
18 relate to these documents, are relaxed. Everyone's
19 stipulated that they are authentic documents, and as
20 long as you're not going to take this too far, I'll
21 permit you to ask the question.

22 MR. WALCZAK: Okay. Thank you, Your
23 Honor.

24 BY MR. WALCZAK:

25 Q. So if you look under the bold heading, Planned

1 Instruction for English Language Acquisition, ESL,
2 Classes, do you see that?

3 A. Yes.

4 Q. Okay. And then the first bullet under that, do
5 you see that? It reads, direct English language
6 instruction may not take place during other content
7 classes which are required under -- and then there's
8 a cite to the code.

9 Did I read that correctly?

10 A. Yes.

11 Q. Okay. Are you -- are you familiar with that
12 interpretation of Pennsylvania law by the
13 Pennsylvania Department of Education?

14 A. Like I said, I'm not familiar with this
15 document.

16 Q. Okay. So you're not familiar with the fact
17 that it is -- you cannot count as an ESL class a
18 content class where you may have an ESL-certified
19 teacher?

20 A. For their instructional hours?

21 Q. Yes.

22 A. No.

23 Q. You're not -- you're not aware of that?

24 A. (No audible response.)

25 - - -

1 (Pause)

2 - - -

3 BY MR. WALCZAK:

4 Q. So you're not -- you're not familiar with that?

5 A. I was not familiar with this document.

6 Q. Okay. And you're not familiar with the -- the
7 directive from the Pennsylvania Department of
8 Education that you cannot count content classes, even
9 if there's an ESL-certified teacher, as an ESL
10 instructional class?

11 MS. O'DONNELL: I'm going to object to
12 the form. There's nothing about this document that
13 suggests it's a directive from anyone. It's an
14 educational tool that explains why someone -- what
15 they believe the law to be.

16 THE COURT: Counselor?

17 MR. WALCZAK: I'll rephrase the
18 question.

19 THE COURT: Very well. You may proceed.

20 BY MR. WALCZAK:

21 Q. So you're not familiar with this guidance from
22 the Pennsylvania Department of Education, saying that
23 it -- you cannot count as an ESL class a course where
24 content is being taught?

25 A. I'm not familiar with this document.

1 Q. If you'll look down a little bit further, on
2 the sixth -- fifth bullet point, it says, guidelines
3 to consider when planning direct instruction of ESL.

4 Correct?

5 A. Yes.

6 Q. Okay. It says, entering level and, then,
7 beginning level students, and it says, two hours.

8 Is that correct?

9 A. Yes.

10 Q. Okay. Have you not seen that before?

11 A. No, I have seen the hours before.

12 Q. Okay. So you're aware that entering level
13 students in Pennsylvania are supposed to get two to
14 three hours of direct ESL?

15 A. Yes.

16 Q. And Phoenix -- and is it your testimony that
17 students at Phoenix get more than one 80-minute
18 period of direct ESL instruction?

19 A. I was modeling, yes, what I thought that was
20 appropriate for that instruction.

21 Q. Wait. I'm sorry. You were modeling?

22 A. So when I've been talking about the CA class
23 that is taught by a highly qualified teacher that is
24 also CA and ESL certified, which is what I believe is
25 the same classes that were testified this week

1 students have when they're at the international
2 school, that was what I was including in that time.

3 Q. Okay. So you are including as an additional
4 hour of ESL a class that is communication arts
5 because it's taught by a certified ESL teacher?

6 A. Well, those ESL strategies are imbedded in
7 what's being taught in that course.

8 Q. Okay. Does Phoenix actually count that CA
9 class as an ESL class?

10 A. It's -- it's both. It's a CA credit, and it's
11 taught by an ESL teacher.

12 Q. So does that student get credit for
13 communication arts if they take that class?

14 A. Yes. And the student at the international
15 school would get credit for that course as well.

16 Q. And I thought you didn't know a whole lot about
17 how the international school operates at McCaskey.

18 A. So at Phoenix, when we first started receiving
19 an influx of these refugee students, I reached out to
20 the school district and said, I need to know how to
21 schedule these students; this is what I'm going to be
22 providing for them; is this within the best practice
23 of what is happening at the campus?

24 And this was the guidance that was provided to
25 me. So that is what I know when I'm talking about

1 what I know about the international school.

2 Q. So these students that participate in this
3 communication arts class that may be taught by an
4 ESL-certified teacher, you're saying that counts as
5 both a communication arts and an ESL --

6 A. ESL, their support, yes.

7 Q. And an ESL class?

8 A. It is -- it goes in as a CA credit.

9 Q. Right. And -- and are you saying that it's
10 also counted as a second hour of ESL for the student?

11 THE COURT: And, Counselor, you keep
12 saying "hour," but you mean 80 minutes, correct?

13 MR. WALCZAK: Yeah. I'm sorry.

14 THE COURT: Okay.

15 BY MR. WALCZAK:

16 Q. Another 80 minutes of ESL direct instruction
17 for the student?

18 A. Right. And that -- it was my understanding
19 that that was the best practice that was being
20 communicated from the school district when I was
21 scheduling these students, that it's the same
22 support.

23 Q. Let's talk about ESL teachers at Phoenix. So
24 were you here for Ms. Hilt's testimony yesterday?

25 A. Yes.

1 Q. And I believe she testified that there are
2 ESL -- there are three ESL teachers at Phoenix.

3 Is that right?

4 A. Last year, yes.

5 Q. Is that your recollection?

6 A. Yes.

7 Q. Okay. You said, "last year." Are there -- do
8 you know if there's a different number this upcoming
9 year?

10 A. I wouldn't know that because I wasn't involved
11 in the summer hiring process because of my new
12 position.

13 Q. Okay. So let's stick with what you do know,
14 and that's last year. So you say there were three
15 ESL teachers at Phoenix?

16 A. Yes.

17 Q. Okay. And now, in fact, there were three
18 teachers who have ESL certification, correct?

19 A. Yes.

20 Q. Okay. And so one would be Ms. Ortiz, correct?

21 A. Yes.

22 Q. One --

23 A. She was considered our ESL lead teacher. She
24 was really looked at as the head of the department,
25 and she was the one who delivered the professional

1 development that we've been talking about this week.

2 Q. Okay. And a second teacher would be

3 Ms. Weathers, correct?

4 A. Yes.

5 Q. Okay. And then a third teacher would be

6 Mr. Kelleher, correct?

7 A. Yes.

8 Q. Okay. So those are the three teachers at

9 Phoenix who have ESL certification, correct?

10 A. Yes.

11 Q. Okay. And Ms. Weathers and Mr. Kelleher would

12 have a dual certification in either communication

13 arts or social studies, respectively, correct?

14 A. Yes.

15 Q. So Ms. Weathers is a communication arts teacher

16 with an ESL certification, correct?

17 A. Yes.

18 Q. And Mr. Kelleher is a social studies teacher

19 with an ESL certification, correct?

20 A. Yes.

21 Q. Okay. Mr. Kelleher does not teach any ESL

22 classes, does he?

23 A. He formally did not teach any ESL classes. He

24 supported in the assessments, the data collection,

25 the providing ESL best strategies when he was

1 teaching in his classroom. That was his role as a
2 member of that team.

3 Q. Okay. Mr. Kelleher does not teach any direct
4 ESL classes, does he?

5 A. No.

6 Q. Okay. And Ms. Weathers teaches communication
7 arts classes, correct?

8 A. Yes. And she also provided (indiscernible)
9 support.

10 Q. Okay. She also teaches some direct ESL
11 classes, correct?

12 A. Those are those blended CA courses that I was
13 talking to you with -- about.

14 Q. So she doesn't teach any courses that are just
15 ESL?

16 A. No.

17 Q. Okay. And Ms. Ortiz is a full-time ESL
18 instructor, correct?

19 A. Correct.

20 Q. Okay. So she teaches what? Four ESL classes
21 every day?

22 A. She taught three formal ESL classes in the
23 morning, and then she had a sixth period that was her
24 more pull-out period or resource period, where
25 students could bring their work to her.

1 Q. So in terms of teachers at Phoenix who actually
2 teach just direct ESL, there's only one, correct?

3 Ms. Ortiz?

4 A. Yes.

5 Q. And -- and, in fact, Ms. Ortiz is leaving the
6 district or has left the district, correct?

7 A. I believe so, yes.

8 Q. Okay. And you would agree with me that she has
9 been an excellent teacher at Phoenix?

10 A. She was a great resource, yes.

11 Q. Has -- do you know whether Camelot has hired a
12 replacement for Ms. Ortiz?

13 A. They did.

14 Q. Now, I want to understand the ESL classes,
15 focusing on ESL, not content classes at Phoenix. The
16 ESL classes mix entering and emergent level students,
17 correct? They're -- they're grouped together?

18 A. I don't know all the levels.

19 Q. Okay. You don't know whether there's more than
20 one level of student on the six-level scale that
21 Dr. Marshall talked about?

22 A. It would have been the -- the earlier levels
23 that were in those international ESL classes. And
24 then I believe each period in the morning was
25 scheduled to have them grouped according to their

1 level, but I would have to look at that information.

2 Q. Okay. So were they, perhaps, grouped as
3 begin -- all the beginning ESL students were
4 together?

5 A. I believe they should have been as much as
6 possible, but, again, I would need to look at that.

7 Q. Okay. So there may have been beginning
8 students who are not in with other beginning students
9 in their ESL class, correct?

10 A. I -- I would need to look at that.

11 Q. Okay. And when -- were you here for
12 Dr. Marshall's testimony?

13 A. Yes.

14 Q. Okay. And you heard her say that beginning
15 level classes are now kind of divided under a new
16 scale, where it's emerging and -- I'm sorry --
17 entering and emergent, correct?

18 A. I --

19 Q. Do you recall that?

20 A. -- do not remember that. I'm sorry. That was
21 very long --

22 Q. Okay. So you don't know whether emergent and
23 entering levels are mixed in the ESL classes at
24 Phoenix?

25 A. I would have to look at that -- student

1 schedules to know that information.

2 Q. Okay. Now, let's talk about the content
3 classes. So this is all of the classes besides the
4 direct ESL class. Follow me?

5 A. Okay.

6 Q. Okay. So the students in those classes are
7 immersed, correct? It's a structured immersion
8 program that Phoenix provides, correct?

9 A. I'm -- can you re-ask that, please?

10 Q. I can.

11 Do you know what level -- do you know -- do you
12 know what instructional model -- I'm sorry. Strike
13 that.

14 If you could, turn to Exhibit 8, please. Okay.
15 At the top, it says, School District of Lancaster
16 services for English language learners, correct?

17 A. Yes.

18 Q. Okay. And at the bottom -- very bottom
19 left-hand corner, it has a date of 06-20, 2016,
20 correct?

21 A. Yes.

22 Q. Okay. Have you seen this document before?

23 A. The first time I saw this document was at my
24 deposition.

25 Q. Okay. You've seen this document, correct?

1 A. That was the first time that I saw this
2 document.

3 Q. And you were asked questions about this
4 document at the deposition, correct?

5 A. Yes, I was.

6 Q. Okay. If you could, turn to the third page.

7 MR. WALCZAK: Correct?

8 BY MR. WALCZAK:

9 Q. Okay. At the -- there's a chart there at the
10 bottom of the page that says, LSD 267.

11 Correct? Are we on the same --

12 A. Yes.

13 Q. Okay. You see the chart?

14 A. Yes, I do.

15 Q. Okay. At the very bottom, the last two rows,
16 the first of those says, McCaskey campus.

17 Do you see that?

18 A. Yes.

19 Q. Okay. And then next to that, it says,
20 sheltered English instruction.

21 Correct?

22 A. Yes.

23 Q. Okay. And then below that, in the last row in
24 the chart, is alternative ed., cyber, dash, Camelot.

25 Do you see that?

1 A. Yes.

2 Q. Okay. Do you recognize that Camelot refers to
3 Phoenix?

4 A. Yes.

5 Q. Okay. And then next to that, it says,
6 structured English immersion, pull-out ESL.

7 Do you see that?

8 A. Yes.

9 Q. Okay. So is it true that Phoenix, in fact,
10 uses a structured English immersion program to teach
11 students?

12 A. Yes.

13 Q. Okay. So structured immersion means -- or let
14 me ask you, do you agree with me structured immersion
15 means that you have all different levels of English
16 speakers, including native English speakers, and
17 everybody is mixed together, including the ELLs?

18 And the idea is that they learn by interaction
19 with the other students, correct?

20 A. Yes, but then we provided the supports in the
21 classroom, and we tried to schedule the students as
22 much as we could in cohorts that rotated together.

23 Q. Okay. So --

24 A. I'm just --

25 Q. One -- one step --

1 A. -- giving the (indiscernible) information.

2 Q. -- at a time.

3 So -- but the -- the non-ESL classes, you apply
4 the model of structured immersion, correct?

5 A. Yes, unless it's that CA dually-certified
6 teacher.

7 Q. Okay. So are you saying that in the CA class,
8 there are only ELLs in that class?

9 A. Yes.

10 Q. Okay. In the other content classes, there are
11 a mix of ELLs with native speakers, correct?

12 A. Correct.

13 Q. Okay. And that starts from your very first day
14 at Phoenix, correct?

15 A. Yes.

16 MR. WALCZAK: Your Honor, I've got a
17 little bit left to go. It might be a good time for a
18 lunch break.

19 THE COURT: Certainly.

20 Attorney O'Donnell, do you have any
21 objection?

22 MS. O'DONNELL: I don't, but if there's
23 only a little bit more to go, perhaps we should
24 finish --

25 MR. WALCZAK: Well, maybe like 20 --

1 20 minutes to a half hour.

2 THE WITNESS: I'm okay.

3 MS. O'DONNELL: That's not a little bit.
4 We'll break for lunch.

5 THE COURT: Very well. It's now almost
6 one o'clock. We'll stand in recess until two
7 o'clock.

8 ESR OPERATOR: All rise.

9 - - -

10 (Whereupon, a recess was had between
11 12:54 p.m. and 2:00 p.m.)

12 - - -

13 ESR OPERATOR: All rise. The United
14 States District Court is again in session. The
15 Honorable Edward G. Smith presiding.

16 THE COURT: You may be seated. Thank
17 you.

18 The court is called to order. All
19 parties previously present are once again present.
20 The witness is on the witness stand.

21 Sir, you may continue with your
22 cross-examination.

23 MR. WALCZAK: Thank you, Your Honor.

24 BY MR. WALCZAK:

25 Q. Ms. Heisey, I want to circle back to one area

1 that we covered before lunch just very briefly. You
2 recall I was asking you questions about that circular
3 involving English language learners --

4 A. Yes.

5 Q. -- the one you said you weren't familiar with,
6 correct?

7 A. Yes.

8 Q. Okay. You remember that?

9 A. Yes.

10 Q. Okay. And I asked you whether or not it was
11 permissible under those guidelines to mix content and
12 direct ESL classes. Do you recall that?

13 A. Yes.

14 Q. Okay. And -- and your answer was that it was,
15 and it was best practices, and somebody had -- at
16 McCaskey had informed you of that. Do you recall
17 that?

18 A. Yes, that I reached out to the district about
19 scheduling the students.

20 Q. Okay. And who -- who was it that told you that
21 from McCaskey?

22 A. It would have been Ms. Hilt.

23 Q. Ms. Hilt told you that. Okay.

24 And so I -- I went back and looked at the
25 transcript from Ms. Hilt's testimony last week, and

1 her testimony was that you cannot combine both of
2 those.

3 Would you disagree with her interpretation of
4 that guidance?

5 A. Again, I didn't see this guideline, but -- so I
6 wouldn't be able to speak to that.

7 Q. Okay. And as we talked about earlier, you're
8 not an ESL teacher or --

9 A. No.

10 Q. And no specialized knowledge of that, correct?

11 A. Correct.

12 Q. And -- and she does have some specialized
13 knowledge in ESL?

14 A. Yes.

15 Q. Okay.

16 A. That's why I reached out.

17 Q. All right. And would you defer to her
18 interpretation of that guideline?

19 A. Yes, I would.

20 Q. Okay. Prior to July 13, 2016 -- and on that
21 day, there was a meeting that has been testified to
22 in this court between district officials, including
23 Superintendent Rau, and representatives from Church
24 World Services.

25 Were you in court for that meeting -- I'm

1 sorry -- for that testimony?

2 A. Yes, I -- I was in court all week. So --

3 Q. Okay. You were --

4 A. I can't think of the exact example that you're
5 providing.

6 Q. Okay. Sort of poorly phrased question,
7 post-lunch blahs.

8 So it's your understanding there was a meeting
9 between Secretary Rau -- I'm sorry -- Superintendent
10 Rau, some other school officials, and the leader of
11 Church World Services, correct?

12 A. Yes. I don't remember when they said that
13 meeting took place. I remember them talking about
14 several meetings.

15 Q. Okay. Did -- did you meet with Dr. Rau or
16 anybody else from the school district in preparation
17 for that meeting?

18 A. I don't know because I don't remember when that
19 meeting was.

20 Q. And you did not attend that meeting?

21 A. I did not, no.

22 Q. Did you ever tell Superintendent Rau that
23 Phoenix does not do hands-on pat-down searches of all
24 students when they come in in the morning?

25 A. I never talked about that type of programming

1 with Dr. Rau at Phoenix. That would be -- that
2 wasn't my specialty. That would be the executive
3 director that would have spoken about those things.

4 Q. Okay. And as far as you know, the hands-on
5 pat-down search of all students as they come in,
6 that's a -- that's a Camelot requirement; is that
7 right?

8 A. I believe that's part of the Camelot model,
9 yes.

10 Q. Okay. And as you sit here today, are you aware
11 of any suggestion being made or any discussion about
12 actually changing that hands-on pat-down of students
13 in the morning?

14 A. I have not been privy to those conversations
15 since I left.

16 Q. Sure.

17 If you could, look at Plaintiffs' Exhibit -- I
18 believe it's 26. Do you recognize this document?

19 A. Yes.

20 Q. And you are, in fact, one of the three people
21 identified as a recipient of this letter?

22 A. Yes. I was surprised by that because, though I
23 am the academic instructional lead at Phoenix
24 Academy, the leader of that building is the executive
25 director.

1 Q. Okay. And that would be Ms. Misnik?

2 A. Ms. Misnik, yes.

3 Q. Okay.

4 A. In the Camelot model, there's an executive
5 director that acts mostly as the principal as far as
6 the hiring, the building management. They're the
7 overseer of all of that.

8 And then I'm a member of the resource team,
9 which includes four other individuals. That's a
10 subordinate to that role.

11 Q. But you, in fact, recall receiving that letter,
12 correct?

13 A. Yes, I did receive this letter.

14 Q. Okay. Did you have discussions about that
15 letter with anybody?

16 A. Other than the -- the people that are on this
17 letter and just wondering what this was inquiring
18 about, no.

19 Q. Okay. So did -- did you have a discussion with
20 Superintendent Rau about Qassim?

21 A. No, I've never talked with her directly about
22 the student.

23 Q. Okay. Have you ever talked to Superintendent
24 Rau directly about anything?

25 A. I have talked to her.

1 Q. Okay. But you -- so Superintendent Rau never
2 reached out to you to ask what had happened with
3 Qassim?

4 A. No.

5 Q. Have you had any discussions with
6 Superintendent Rau about making changes in the way
7 Phoenix -- let's start with operates sort of in terms
8 of security.

9 A. Because I am no longer there, I have not.

10 Q. Okay. In the time period between, say, March
11 17th of this year and when you left Phoenix, have you
12 had discussions with any, say, top level School
13 District of Lancaster officials, conversations about
14 changing how Phoenix teaches ELLs?

15 A. I was not included in those conversations.

16 Q. And you are the -- as the principal, as I
17 understand the Camelot model, you're the -- the
18 person who's actually in charge of curriculum and
19 instruction and teaching and anything related to
20 that. Correct?

21 A. Not curriculum. I'm in charge of making sure
22 the district curriculum is being implemented, but
23 things related to teaching and learning, yes.

24 Q. Okay. And -- and so nobody from school
25 district level officials has reached out to you to

1 discuss making changes in how students at Phoenix
2 are -- ELL students at Phoenix are taught?

3 A. No, not to me.

4 Q. Now, are you aware that the Pennsylvania
5 Department of Education measures the performance of
6 public schools in Pennsylvania every year?

7 A. Yes.

8 Q. Okay. And the school district -- all school
9 districts are required to submit data to the
10 Pennsylvania Department of Education, correct?

11 A. Yes.

12 Q. And -- and they have to submit data on each
13 separate school within the district, correct?

14 A. Yes.

15 Q. Okay. And Phoenix, even though it's run by
16 Camelot, would be required to submit data, correct?

17 A. Yes. It has a School Performance Profile.

18 Q. And are you -- were you involved in submitting
19 data on behalf of Phoenix to PDE, as short for
20 Pennsylvania Department of Education?

21 A. Right. No, I don't submit direct -- data
22 directly to them. My understanding is that's all
23 done through the PIMS, our information management
24 system.

25 Q. Okay. But you are aware that data is submitted

1 by Phoenix to PDE for the purposes of creating a
2 school profile, correct?

3 A. Yes.

4 Q. Okay. And is it your understanding that any
5 data that would be submitted would be accurate?

6 A. Yes.

7 MR. WALCZAK: Your Honor, may I approach
8 the witness?

9 THE COURT: Certainly, Counselor.

10 Thank you, sir.

11 - - -

12 (Whereupon, there was a brief discussion
13 held off the record.)

14 - - -

15 MR. WALCZAK: Your Honor, I -- this has
16 not in its entirety been shared with the school
17 district's attorney prior to now, but we -- if we can
18 mark it Plaintiffs' Exhibit 94?

19 And if I may explain to the court
20 exactly what this is? Because it's a publically
21 available document.

22 So what -- what we've done is, we went
23 yesterday online to the Pennsylvania Department of
24 Education and pulled down the school profile that
25 Ms. Heisey was just talking about for Phoenix and for

1 McCaskey. And we did it yesterday to make sure we
2 had whatever -- the most up-to-date information that
3 they have.

4 The -- the fourth and fifth -- I think
5 four, five, six, seven pages -- fourth, fifth, sixth,
6 and seventh pages of this have been identified
7 previously to the school district, and those would
8 be, I think, in Exhibit 86. I'm sorry. 87.

9 So the -- the pages in the front are
10 just -- and those are for year 2013/'14. So what we
11 have are 2014/'15 here. So we've just got one year
12 more up to date.

13 THE COURT: Okay.

14 MR. WALCZAK: And so I would like to be
15 able to question Ms. Heisey about this data.

16 THE COURT: Very well.

17 Is there any objection?

18 MS. O'DONNELL: I would have objection
19 because, Your Honor, there -- there was a discovery
20 deadline, and we're -- we're really not honoring
21 those deadlines if we're going to continue to allow
22 new evidence in at the spur of the moment at the --
23 at the hearing. So for that reason, I would object.

24 THE COURT: It is a very good argument.

25 Counselor?

1 MR. WALCZAK: Your Honor, it is
2 publically available information about the school
3 here that's in question in this litigation, and, in
4 fact, we have -- some of this data is already in
5 there and was identified previously, but, otherwise,
6 this is a public record.

7 THE COURT: Well, since the data was
8 actually provided by the school district --
9 Is that correct?

10 MR. WALCZAK: Correct.

11 THE COURT: All right. I'll allow you
12 to proceed with your line of questioning.

13 - - -

14 (Whereupon, Plaintiffs' Exhibit Number
15 94 was marked for identification.)

16 - - -

17 BY MR. WALCZAK:

18 Q. Ms. Heisey, if you could, look at what's been
19 marked as Plaintiffs' Exhibit 94. Okay? You
20 mentioned yes- -- yesterday -- a few minutes ago that
21 the schools submit data to PDE in order to create
22 a -- a performance profile.

23 Does this appear to be a performance profile of
24 Phoenix Academy?

25 A. Yes. This is the fast fax for the SPP.

1 Q. Okay. I'm sorry. Fast fax for --

2 A. The SPP, the School Performance Profile.

3 Q. Okay. And if you look at the top left-hand
4 corner, it says, 08-21, 2016?

5 A. Yes.

6 Q. You see that?

7 And that was yesterday's date, correct?

8 A. Yes.

9 Q. Okay. And then -- so looking down that first
10 page, it says, Phoenix Academy, correct?

11 A. Yes.

12 Q. Okay. And then coming down that first column
13 on your left, on the reader's left, just skipping
14 down, for instance, it says, number of advanced
15 placement courses offered. It says, zero.

16 A. Yes.

17 Q. Do you see that?

18 Is that -- is -- that's accurate, as you
19 testified earlier, correct?

20 A. Yes.

21 Q. Okay. And then a few rows down below that, it
22 says, percent of classes taught by highly qualified
23 teachers. And it says zero there.

24 Do you see that?

25 A. Yes.

1 Q. Okay. Is that accurate?

2 A. That is not accurate.

3 Q. That's not accurate? How is that not accurate?

4 A. So as I stated, I'm not the one that personally
5 submits this data to the State. That's done through
6 our information management system.

7 And I have brought up this before with the
8 district, that these -- these numbers were not
9 accurate with our staff. I don't know if it has
10 something to do with the fact that our teachers'
11 information is kept with Camelot and not with the
12 school district, but that's why the number reads as
13 zero.

14 Q. Okay. And do you have any idea what that
15 number should say? And it says, percent of classes
16 taught by highly qualified teachers.

17 A. Because I don't oversee staffing, I don't know
18 what that number would be. That would be something
19 the director would know.

20 Q. Okay. And below that, it says, school
21 enrollment, 323.

22 Is that right?

23 A. I wouldn't be able to say if that is correct.

24 Q. Okay.

25 A. There are other errors on this document as

1 well.

2 Q. Okay. We'll get to those.

3 So -- and then it has a dropout rate of 12.5
4 percent.

5 Is that right?

6 A. That's what it says, yes.

7 Q. Okay. And do you dispute that -- that rate?

8 A. I wouldn't be able to say what that was, not
9 having access to that information.

10 Q. Okay. Now, if you'll turn eight pages into
11 this exhibit. And at the top, it should say,
12 McCaskey campus.

13 A. Yes.

14 Q. Okay. Would you agree with me that other than
15 the formatting, that this would be the counterpart
16 School Performance Profile for McCaskey?

17 A. Yes.

18 Q. And if -- whereas -- if you look down that
19 first column, whereas Phoenix said that there were no
20 advanced placement courses, at McCaskey, there are
21 ten?

22 Do you see that?

23 A. That's what it says.

24 Q. Do you have any reason to dispute that?

25 A. I don't, because I don't know.

1 Q. Okay. And then here, it says, percent of
2 classes taught by highly qualified teachers. It has
3 92 percent.

4 Do you see that?

5 A. Yes.

6 Q. Okay. And that's the one where Phoenix says
7 zero, correct?

8 A. Yes.

9 Q. Okay. But you claim that that's wrong, but
10 you're not sure what the number is, correct?

11 A. That is what I claim, yes.

12 Q. Okay. And then the dropout rate for McCaskey
13 is 1.22 percent.

14 You see that?

15 A. Yes.

16 Q. Okay. And Phoenix is 12.5 percent, correct?

17 A. I don't think it was 12.5. I don't remember
18 what it was.

19 Oh, it says 12.5, yes.

20 Q. Yeah.

21 And if you could sort of hang onto both pages,
22 because I want to go back and -- a little bit here.

23 And on English language learners at Phoenix
24 Academy, on the first page, it says, 28.17 -- do you
25 see that -- percent?

1 A. Yes.

2 Q. Okay. Do you dispute that number?

3 A. No. I would say that would be an accurate
4 estimate, but again, I don't have that specific
5 information anymore.

6 Q. Okay. And then if you go to the McCaskey page,
7 it says that there's 19.46 percent English language
8 learners, correct?

9 A. That's what it says.

10 Q. Okay. So there's -- there's about 9 percent
11 more ELLs at Phoenix than there is at McCaskey,
12 correct?

13 A. According to this document.

14 Q. All right. Okay. And -- and to your
15 knowledge, the information in this document is
16 submitted by the school district itself?

17 A. For McCaskey?

18 Q. For both --

19 A. For both?

20 Q. -- McCaskey and Phoenix.

21 A. Yes.

22 Q. Okay. And -- and there's an obligation to
23 submit accurate information, correct?

24 A. I would say that would be correct.

25 Q. And, in fact, there's -- there may be

1 consequences for the school if they were to submit,
2 say, false information, correct?

3 A. Well, as I stated before, I don't think the
4 schools submit this information. It's done through
5 the district management system.

6 Q. Okay. And if you could, turn to the second
7 page of the exhibit. Is this also -- it says,
8 Phoenix Academy in the upper left?

9 A. Yes.

10 Q. And this is also part of the Phoenix School
11 Performance Profile, correct?

12 A. Yes.

13 Q. And then when you look at the chart in the kind
14 of right-hand side of the page, you see a number
15 of -- kind of looks like upside-down red triangles.
16 You see that?

17 A. Yes.

18 Q. Okay. And that indicates, essentially, a
19 failing grade for the school; is that your
20 understanding?

21 A. For the performance measures, yes, it means
22 that you're not meeting them.

23 Q. Right. So when you look at the performance
24 measures for Phoenix Academy for 2014/'15, almost all
25 of them, except attendance rate, have a failing

1 designation there; is that right?

2 A. That's correct.

3 Q. And then I would direct you -- in the first set
4 of rows near the top of that chart, there's --
5 there's one that -- SAT/ACT college-ready benchmark.

6 You see that?

7 A. Yes.

8 Q. Okay. And that says zero for Phoenix --

9 A. Yes.

10 Q. -- is that correct?

11 A. That's what it says.

12 Q. And then when you go down about three-quarters
13 of the way down the page, it has, cohort graduation
14 rate.

15 Do you see that?

16 A. Yes.

17 Q. Okay. It says 53.75; is that correct?

18 A. Yes, students graduating within their four-year
19 cohort.

20 Q. Okay. So that's a -- so it's important for
21 the -- for the school to try to graduate students
22 on -- not just graduate, but graduate them on time
23 with their peers, correct?

24 A. Yes, that's correct.

25 Q. So that's something that the State actually

1 measures, correct?

2 A. Yes, they do.

3 Q. So if you had a student who was a little bit
4 slowed and graduated at age 19 instead of 17 or 18,
5 that would show up somehow on these performance
6 measures, correct?

7 A. It wouldn't be based on age. It would be based
8 on the date that they started ninth grade.

9 Q. And if you could, turn to two pages after the
10 last McCaskey page you looked at, which I believe is
11 the tenth page of the exhibit.

12 It says, McCaskey campus in the upper left?

13 A. Yes.

14 Q. Would you recognize this as sort of the
15 counterpart pages of the School Performance Profile
16 for McCaskey compared to the one we just showed for
17 Phoenix? Is that right?

18 A. Yes.

19 Q. Okay. Now, there's a -- a number in the upper
20 left-hand corner that says, 60.4. Do you know what
21 that means?

22 A. That's our overall building level score --

23 Q. Okay. And --

24 A. -- based on all the measures that are listed
25 here.

1 Q. Okay. And is it better to be higher or lower?

2 A. It's better to be higher.

3 Q. Okay. And so the number for McCaskey is 60.4;
4 is that correct?

5 A. Yes.

6 Q. Okay. And the number for Phoenix on that
7 previous page was 30.3; is that correct?

8 Sorry. That -- that would be the second page
9 of the exhibit for Phoenix.

10 A. Yes, 30.3.

11 Q. Yep.

12 And so McCaskey fares, would you say,
13 significantly better than Phoenix on their
14 performance scores?

15 A. According to these measures, yes.

16 Q. And when you look at -- I mean -- and -- and to
17 be fair, McCaskey has a good number of those
18 upside-down red triangles as well, correct?

19 A. Yes, they do.

20 Q. But not as many as Phoenix, correct?

21 A. No.

22 Q. And if you look at the SAT/ACT college-ready
23 benchmark -- you see that?

24 A. Yes.

25 Q. Okay. It says, 82.88.

1 Did I read that correctly?

2 A. Yes.

3 Q. Okay. And the -- the corresponding measure for
4 Phoenix was zero; is that right?

5 A. Right. But it's my understanding that
6 information is not entirely correct.

7 Q. Okay. But in these forms, the one for Phoenix
8 that may be automatically generated -- you're not
9 quite sure how it gets in there -- is zero, correct?

10 A. For the SAT/ACT college-ready benchmark?

11 Q. Yes.

12 A. Yes, that's what it says.

13 Q. And then for McCaskey, it's 82.88, correct?

14 A. Yes.

15 Q. And the graduation cohort, which would be on
16 that next McCaskey page, is 86.51; is that right?

17 A. Yes.

18 Q. Okay. And the corresponding row for Phoenix is
19 53.75, correct?

20 A. Yes.

21 Q. Okay. So the -- so the graduation rate for the
22 cohort is about 32, 33 percent higher for McCaskey;
23 is that right?

24 A. Yes, because these students transfer to Phoenix
25 many times in order to meet their cohort.

1 Q. Okay. But despite transferring to meet their
2 cohort, they're still -- Phoenix is still graduating
3 them at a lower rate within their cohort than is
4 McCaskey, correct?

5 A. Yes.

6 Q. Now, if you could, just turn to the fourth page
7 of the exhibit. And this is a Phoenix Academic
8 Performance 2013/2014; is that right?

9 A. Yes.

10 Q. And near the bottom, there is a -- there's a
11 different row that I didn't recall seeing on the
12 2014/'15, which is PSAT plan participation.

13 You see that?

14 A. Yes.

15 Q. Do you know what that means?

16 A. I don't.

17 Q. Okay. Would -- would that have something to do
18 with the PSAT?

19 A. I would think that it would. That would be
20 something that our student services director would
21 know.

22 Q. Okay. And the PSAT is a test that students
23 take to prepare for the SAT?

24 A. A practice, yes.

25 Q. It's a practice test. Okay.

1 And the number next to that for Phoenix in
2 2013/'14 is zero percent; is that correct?

3 A. That is the number that it states here on this
4 document.

5 Q. Okay.

6 A. But, again, I don't know if that information is
7 entirely correct.

8 Q. Okay. Now, you -- you would agree with me that
9 students have a right under Pennsylvania law to
10 attend school until the year in which they turn 21,
11 correct?

12 A. Yes.

13 Q. Okay. So if somebody turns 21 on September the
14 1st this year, they are entitled to go to school
15 until the end of this academic year, correct?

16 A. If that would be their wish, yes.

17 Q. Absolutely, right. We're not about forcing
18 people to going to school if they don't want to and
19 they're over the age of -- of 17.

20 So let's take Anyema Dunia. You're familiar
21 with him?

22 A. Yes, I am.

23 Q. And -- and do you know that his birth date is
24 September 18, 1997?

25 A. I know that it's coming up soon. I don't know

1 his exact birth date.

2 Q. Okay. And so, in fact, right now, he is 18
3 years of old -- 18 years of age, correct?

4 A. Yes.

5 Q. Okay. So he started in February of 2015. So
6 he actually would have been 17 years of age, correct?

7 A. Yes.

8 Q. Okay. So if he started at age 17, he would
9 have gone that half year, right? So it's kind of the
10 spring semester, correct?

11 A. Yes, but I don't know how that would have
12 worked with him earning his credits.

13 Q. He --

14 A. What are -- when are you saying? I'm sorry.
15 Could you rephrase your question.

16 Q. Yeah. Sure, yeah. Don't -- don't want to
17 confuse anybody here.

18 So he started school at age 17 in February?

19 A. In 2015.

20 Q. In 2015 --

21 A. Yes --

22 Q. -- correct?

23 A. -- that's correct.

24 Q. So he went the spring semester, correct?

25 A. Yes.

1 Q. And he got credits for completing ninth grade
2 in that spring semester, correct?

3 A. Yes. I don't know if it would have been ninth
4 grade completion, but he would have earned credits in
5 his ninth grade year.

6 Q. Okay. So when this past school year rolled
7 around, he still would have been 17 when the school
8 year started, correct?

9 A. In the fall, yes.

10 Q. Okay. Because he turned 18 last September?

11 A. Yes.

12 Q. Okay. So he's entitled to go this whole last
13 year. So that's a year and a half, correct?

14 A. That he's been in school so far?

15 Q. That he -- that he was in school -- let me
16 strike that.

17 So he was in school for 16 months, correct?

18 A. Yes.

19 Q. And -- and he completed four years' of
20 schooling in that time, correct?

21 A. It might have been more than 16 months if you
22 include the summer program.

23 Q. Okay. 17 months, correct?

24 A. Well, the summer program is two months.

25 Q. Okay. It goes from June 2nd to July 18th; is

1 that correct?

2 A. July 28th.

3 Q. July 28th. Okay. So it goes two months.

4 So 18 months, he completed four years, correct?

5 A. Yes.

6 Q. Okay. And he's now still only 18, correct?

7 A. Yes.

8 Q. And he's gone a year and a half to school,

9 correct?

10 A. Yes --

11 Q. Okay.

12 A. -- because he chose to attend the summer

13 program.

14 Q. So he could actually go to school for three
15 more years before he turns 21, correct?

16 A. If that was his intention.

17 Q. Right. If -- if he wanted to, he could go to
18 school this upcoming year, the year after, and even
19 the year after, correct?

20 A. Yes, which I laid out with him in his academic
21 plan.

22 Q. And is that academic plan -- in what language?

23 A. It's in English.

24 Q. Okay. And did you have a translator at that
25 meeting?

1 A. No, because I speak to him in English
2 frequently.

3 Q. Okay. And do you know that he understands what
4 you're saying?

5 A. I would say that he does, if we're
6 communicating.

7 Q. Okay. You would say. Do you know that he
8 understands?

9 A. Yes, I do know that he understands.

10 Q. Okay. So he could have actually gone to school
11 for four and a half years in The School District of
12 Lancaster and gotten a free public education before
13 he aged out, correct?

14 A. Yes.

15 Q. And Khadidja -- Khadidja Issa, Qassim Hassan,
16 and Van Ne Yang (ph) also were all 17 when they first
17 started in school; is that correct?

18 A. I don't know what all of their exact ages were
19 when they started.

20 Q. Okay. If they were 17 when they started school
21 and they would have started this past year, they,
22 too, were eligible to go to school for four and a
23 half years before they age out, correct?

24 A. Yes.

25 Q. So, in fact, all four of these students could

1 have started at McCaskey and gotten the requisite 24
2 credits to graduate, correct?

3 MS. O'DONNELL: I'm going to object to
4 the form of the question. This is to the wrong --
5 the question is -- is directed to the wrong witness.
6 We've had testimony by -- by Jacques Blackman, who
7 testified to the contrary, and this witness is not in
8 a position to determine which schools students should
9 be placed in.

10 THE COURT: Counselor?

11 MR. WALCZAK: I'm not asking her whether
12 these students should have been placed at McCaskey.
13 I'm asking her to respond to the question whether, in
14 four and a half years, they could have -- she --
15 these students could have gotten 24 credits at
16 McCaskey based on her prior testimony of how many
17 credits they award at respective schools.

18 THE COURT: And Attorney O'Donnell,
19 based on that, does your objection still have effect?

20 MS. O'DONNELL: No.

21 THE COURT: Okay. Very well.

22 You may answer the question.

23 THE WITNESS: Could you repeat your
24 question, please?

25 BY MR. WALCZAK:

1 Q. Yes.

2 So assuming that all four of the plaintiff
3 students who started at age 17 -- Anyema, Van
4 Ne (ph), Qassim, and Khadidja -- they were eligible
5 to go to school for four and a half or, if they
6 started in the fall, five years of a free public
7 education at The School District of Lancaster,
8 correct?

9 A. Yes.

10 Q. Okay. And your testimony earlier was that
11 students could go to McCaskey and graduate in four
12 years, correct?

13 A. Yes.

14 Q. Okay. And, in fact, as we've discussed, they
15 could graduate in three years, and all they would
16 have to do is attend one refugee program summer
17 school and get three additional credits, correct?

18 A. Yes.

19 Q. So are these students really overaged and
20 undercredited?

21 A. I do not determine school placement or what
22 constitutes as being overaged and undercredited.

23 MR. WALCZAK: Okay. One minute, Your
24 Honor.

25 THE COURT: Certainly, Counselor.

1 - - -

2 (Pause)

3 - - -

4 MR. WALCZAK: That's all, Your Honor.
5 Thank you.

6 THE COURT: Thank you very much, sir.
7 Attorney O'Donnell, do you have any
8 redirect of this witness?

9 MS. O'DONNELL: Just a few questions.

10 THE COURT: Certainly. You may proceed.

11 - - -

12 REDIRECT EXAMINATION

13 - - -

14 BY MS. O'DONNELL:

15 Q. Hi, Ms. Heisey.

16 A. Hi.

17 Q. How are you doing?

18 A. Good.

19 Q. Okay. So the curriculum at McCaskey, that --
20 the high school that you're going to be working in --

21 A. Yes.

22 Q. -- or the high school complex that you're going
23 to be working in, is designed for students of what
24 ages?

25 A. Traditional high school age.

1 Q. And what would they be?

2 A. So starting ninth grade at 13 or 14 and then
3 graduating at 17 or 18.

4 Q. Okay. So perhaps you -- you mentioned this
5 already, but I'm not sure that you did.

6 How many students are you aware of, if you
7 are -- of students who are between the ages of 17 to
8 21 who are currently in -- in that high school
9 campus?

10 A. My understanding is that there are not many
11 because they attend school at Phoenix.

12 Q. Okay. And is that -- does that have anything
13 to do with their refugee or immigrant status?

14 A. No. It has solely to do with their credits
15 that they need to graduate high school within their
16 four-year cohort.

17 Q. Okay. Does it have anything to do with their
18 language barriers?

19 A. No.

20 Q. Okay. One last thing. If you would, turn --
21 turn back to Issa-19 in the -- in that booklet. That
22 was the Camelot student handbook for 2015 and 2016.
23 And if you would --

24 A. Yes.

25 Q. -- turn to page 1, again, under program goals.

1 Remember you covered that on cross-examination
2 with --

3 A. Yes.

4 Q. -- Mr. Walczak?

5 And the first point of the -- the first -- the
6 first item, if you will, of the program goals was to
7 recover credits needed for graduation.

8 Do you see that?

9 A. Yes, I do.

10 Q. Is -- is recovering credits for graduation an
11 academic goal?

12 A. It has to be academic because you have to learn
13 in your classes in order to achieve that credit.

14 Q. Okay. And with respect to the last exhibit
15 that we -- we marked, I believe, as 94, do you know
16 whether or not those -- those values that you
17 discussed with Mr. Walczak were current values for
18 the school years that are indicated there?

19 For example, the '12/'13 school year, would
20 they be those values for that school year or the year
21 before?

22 A. They're for the year before.

23 Q. Okay. And would the same hold true for the
24 McCaskey campus as well --

25 A. Yes.

1 Q. -- those values?

2 A. Yes.

3 Q. Okay. Thank you.

4 MS. O'DONNELL: Those are all the
5 questions I have.

6 THE COURT: Thank you very much,
7 Counselor.

8 Mr. Walczak, do you have anything?

9 MR. WALCZAK: No further questions.

10 THE COURT: Very well.

11 And, ma'am, I'm just curious. Why did
12 you end up going from being a Camelot employee to
13 being a school district employee?

14 THE WITNESS: So I worked for Camelot
15 for the past six years, as I, you know, testified
16 earlier today, and over that time, I've built many
17 partnerships and had the opportunity this year to
18 move on to McCaskey campus.

19 And I felt like, after six years of
20 strong experience, it was my time to have a new
21 challenge over there and still get to work with our
22 kids in our city. So it just felt like it was the
23 right time.

24 THE COURT: So the school district stole
25 you away?

1 THE WITNESS: They did. I didn't want
2 to say that, but --

3 THE COURT: Okay. It seems as though
4 both of these schools have significant challenges
5 with respect to special ed. children, with respect to
6 English language learners, economically disadvantaged
7 children.

8 Obviously, the percentages are higher
9 for all of those categories at Phoenix rather than
10 at --

11 THE WITNESS: Yes.

12 THE COURT: -- McCaskey --

13 THE WITNESS: Yes.

14 THE COURT: -- but both schools seem to
15 have significant challenges.

16 THE WITNESS: They absolutely do.

17 THE COURT: The -- Phoenix was referred
18 to as the school of last resort during certain
19 testimony.

20 Is it true that most people that go to
21 Phoenix -- or at McCaskey and had troubles, and
22 that's why they ended up at Phoenix?

23 THE WITNESS: I would say that that is
24 the majority, but it's how you define those troubles.

25 So recently, too, there have been more

1 students that have moved into the area from New York
2 or from other cities, and the way that they acquire
3 credits is different.

4 So I think the term of "school of last
5 resort," it can refer to, like, many different
6 things, not just, you know, behavioral struggles at
7 McCaskey, which I think is sometimes what people want
8 to jump to right away when they're thinking about the
9 school.

10 THE COURT: And would you agree that
11 counsel was pointing to a lot of programs at McCaskey
12 that a refugee student who cannot speak English could
13 never take advantage of?

14 THE WITNESS: Yes.

15 THE COURT: But at the same time, the
16 focus on English language learning -- McCaskey seemed
17 to be -- I probably shouldn't ask you this, but
18 McCaskey seemed to have a better program or a more
19 effective program than Phoenix did?

20 THE WITNESS: I don't know if I would
21 say more effective.

22 As I stated in my testimony, when I
23 first -- when these students first started coming to
24 Phoenix and we were having an increase in our refugee
25 numbers, I reached out to, you know, someone that was

1 working directly with the international school, and I
2 said, this is what I want to model for scheduling
3 here; what is the best way to do that? And I was
4 advised on how to move forward based on that
5 information.

6 So it was my understanding that what we
7 were scheduling and creating was the same as what was
8 being done there, just with a smaller group and
9 population of students.

10 THE COURT: Yeah. And can you think of
11 any negative to -- if refugee children, aged 17 to
12 21 --

13 THE WITNESS: Um-hmm.

14 THE COURT: -- were given the option of
15 going to McCaskey or going to Phoenix, what would be
16 wrong with that?

17 THE WITNESS: The only negative that I
18 could see with that age group -- and I think this was
19 talked about a little bit earlier, and I have seen it
20 myself -- is, sometimes, when they are older, if
21 they're starting in school and not being given a
22 buffer with any time and something would happen where
23 they would need to take a semester off to work or
24 they would get pregnant or some circumstance would
25 happen, the fear would be, then, that their time

1 would be limited, or it could even lead to, well, I
2 have three years left; you know, I'm never going to
3 make it; I should drop out. And we don't want that
4 to happen for any student.

5 Whereas, when they see that, okay, it's
6 a smaller amount of time, and you're still going to
7 graduate with people that are your age and be able to
8 move forward with a plan and have those supports --
9 that would be the only negative that I could see.

10 THE COURT: Okay. And I do have one
11 other question that what you just said brought up.

12 If I'm a 16-year-old refugee child and
13 I'm placed at McCaskey, is it likely that I will
14 complete my education at McCaskey?

15 THE WITNESS: I -- I would say yes, but
16 we also have a percentage of refugee students that
17 that very case happens for that then end up
18 transferring to Phoenix and asking to transfer for
19 those circumstances that I just spoke to -- with you
20 about.

21 THE COURT: Because they need the
22 accelerated credits now in order to get the diploma?

23 THE WITNESS: Exactly. And they want to
24 graduate with their class, and they know that if they
25 stayed there, they might not. And that's really

COLLOQUY

1 important to them, to have that pride and still be
2 class of 2016, if that's what they were supposed to
3 be from the beginning.

4 THE COURT: Okay. Thank you very much.
5 Attorney O'Donnell, do you have any
6 questions in light of the Court's?

7 MS. O'DONNELL: Nothing further, Your
8 Honor.

9 THE COURT: Mr. Walczak?

10 MR. WALCZAK: No, Your Honor.

11 THE COURT: Very well.

12 Ma'am, thank you very much.

13 THE WITNESS: Thank you.

14 THE COURT: You may step down.

15 - - -

16 (Witness excused.)

17 - - -

18 THE COURT: Attorney O'Donnell, you may
19 call your next witness.

20 MS. O'DONNELL: Thank you. We'd like to
21 call Megan Misnik to the stand, please.

22 - - -

23 (Pause)

24 - - -

25 THE COURT: Good afternoon, ma'am.

1 MS. Misnik: Hi. How are you?

2 THE COURT: Very good. Thank you.

3 ESR OPERATOR: Please remain standing
4 and raise your right hand.

5 - - -

6 (MEGAN MISNIK, SWORN.)

7 - - -

8 THE COURT: Thank you very much, ma'am.
9 You may be seated.

10 And, ma'am, would you please state your
11 full name, spelling your last name for the record.

12 THE WITNESS: Megan Misnik, M-i-s-n-i-k.

13 THE COURT: Thank you very much.

14 Counsel, you may proceed.

15 MS. O'DONNELL: Thank you very much.

16 - - -

17 MEGAN MISNIK,

18 having been first duly sworn, was

19 examined and testified as follows:

20 - - -

21 DIRECT EXAMINATION

22 - - -

23 BY MS. O'DONNELL:

24 Q. Ms. Misnik, would you give us a brief

25 description of your educational background?

1 A. Sure. So I went to Millersville for a year and
2 actually came from -- I'm from Philadelphia -- and I
3 went to Holy Family University.

4 I started out in secondary education for social
5 studies at Millersville and came home and continued
6 that at Holy Family.

7 And when I finished, I went on and got my
8 master's degree in education and a special education
9 certificate.

10 Q. Okay. Are you currently employed?

11 A. I'm sorry. Go ahead.

12 Q. Are you currently employed?

13 A. Yes, I am.

14 Q. Okay. Where are you employed?

15 A. At Camelot.

16 Q. And in what capacity?

17 A. I'm the executive director of Phoenix Academy.

18 Q. Okay. And can you tell us what that position
19 requires of you?

20 A. Sure. So I'm the program manager there. I
21 handle all the daily -- day-to-day operations, hiring
22 staff, working closely with the district. I'm the
23 one that would meet with the district and discuss
24 things outside of academics. Meet with parents.
25 Meet with community members.

1 There's probably more that I'm leaving out,
2 but --

3 Q. Okay. Are you involved with preparing
4 materials for the Camelot website?

5 A. No, I'm not.

6 Q. Who -- who handles that type of information?

7 A. We have a corporate office in Austin who would
8 handle that.

9 Q. Have you, since the commencement of this
10 litigation, reviewed the materials on the website?

11 A. I have.

12 Q. Have you made any recommendations?

13 A. I have.

14 Q. And what would those recommendations be?

15 A. To make sure that Phoenix was correctly
16 identified on the website. And they've since fixed
17 it.

18 Q. Okay. We've heard at least once or twice that
19 Phoenix has been identified by the Pennsylvania
20 Department of Education as a magnet school. Are you
21 familiar with that term?

22 A. Yeah. I was around a couple years ago when
23 they had the conversation with the PDE. It just
24 means that we offer something different than the
25 other high schools in the district.

1 So in Lancaster, there's only one high school,
2 but the accelerated piece is what makes us a magnet
3 school.

4 Q. Okay. And is that something that's sanctioned
5 by PDE?

6 A. Yes.

7 Q. Okay. Now, can you tell me whether or not
8 Phoenix -- strike that -- Camelot has had
9 consultations with experts concerning its curriculum
10 or the structure, the -- the particular theory of --
11 whether it's a theory or not, the accelerated
12 program?

13 A. Sure. So the curriculum for our Camelot
14 schools is aligned to whatever district we are in.
15 So in this case, we are partnered with The School
16 District of Lancaster, so we're aligned with their
17 curriculum, but there are other schools that we have
18 in different areas.

19 And as far as the model, yes, Camelot has
20 used -- I know that they've used research. I'm -- I
21 wasn't a part of designing the model, but it is
22 research based.

23 Q. Okay. And with respect to professional
24 development, what type of services do you provide for
25 the staff, if any?

1 A. So I work with my team for professional
2 development. They're actually going under (sic)
3 professional development right now for the start of
4 the school year. We actually come back a week
5 earlier to go over all things.

6 So we go over, you know, our norms and
7 processes. We talk about -- we go over what the
8 students -- what the expectations are. We go over
9 lesson planning. We go over differentiation. We
10 cover ESL and special education.

11 We actually have our teachers give professional
12 development in areas that they have expertise or if
13 they went to a course or something over the summer
14 that they want to bring back and share.

15 We have people from our corporate level that
16 come in and do professional development. We work
17 with the district for professional development. So
18 it's ongoing throughout the school year.

19 We meet -- the teachers meet every Wednesday
20 morning with the principal or another academic
21 support to go over professional development. Again,
22 teachers deliver that. We use the half-day
23 Wednesdays that we have, so it's -- I mean, there's a
24 ton of professional development throughout the school
25 year.

1 Q. And whether or not the Pennsylvania Department
2 of Education and any of its branches, like, for
3 example, (indiscernible), is involved in any of the
4 professional development (sic)?

5 A. So I've sent people to PDE professional
6 developments. I know myself, when I was working with
7 the after-school grant when we originally have (sic)
8 it, went to something for PDE. I know that the PDE
9 sometimes has come into the district level, and our
10 people participate in that. So yes.

11 Q. And I think we've -- we've discussed this, but
12 if you want to expound whether or not the Phoenix
13 Academy, through Camelot, is accountable to the
14 Pennsylvania Department of Education in terms of its
15 reporting?

16 A. Yes. So all of the grades are entered into
17 eSchool, all of our attendance, if we have any
18 suspensions, which we -- we've only had six in the
19 past year. That's a very low number of incidences in
20 our building. Anything else that goes in is
21 submitted to the State.

22 Q. And is that -- there's been a -- a term that's
23 been used, the Pennsylvania Information Management
24 System.

25 A. Yeah, PIMS.

1 Q. Yes. And what is that?

2 A. PIMS is where the data is entered to the State.
3 So State schools would deal with suspensions.

4 We have one that -- that looks at -- the
5 rollover happens, and I know they have to go back
6 through and check grades.

7 I know that at one point soon, Jacques will
8 probably look at the graduation list and will verify
9 that all of the kids who are on there actually
10 graduated, that there was no mistake in the rollover.

11 I know that PIMS has to constantly be checked
12 to make sure that it's correct, things like that.

13 Q. Okay. Is there a cutoff date for information
14 every year?

15 A. There is. I'm not the person that handles
16 that. I know that I'm on the emails to double check.
17 It's usually, I think, October 1st, but I could be
18 wrong.

19 Q. Okay. Would you talk a little bit about the --
20 the structure of the Phoenix Academy through the
21 Camelot management in terms of what the -- what a
22 daily structure would look like?

23 A. Sure. So I'll just take you through a school
24 day.

25 Q. Okay.

1 A. It starts with myself out front greeting the
2 kids.

3 One thing that we want to ensure and we tell
4 parents and students at orientation, we want them to
5 be safe from the time that they're entering school to
6 the time they go home.

7 So both at arrival and dismissal, we have staff
8 outside making sure that the kids are safe
9 (indiscernible) as they're coming to and from school.

10 So I would greet them, direct them. Phoenix is
11 set up where there's actually a ramp going to the
12 main office and a ramp going down to where the kids
13 go in, so I would kind of direct them into the
14 direction of where they would start school.

15 They'd go in. They go through our intake
16 process, and then they go into the cafeteria to get
17 their breakfast. All students in The School District
18 of Lancaster get their breakfast and their lunch.

19 From there, they go to our Town House, which is
20 our morning town hall meeting. We have that in the
21 morning and in the afternoon. And, actually, our
22 middle school kiddos have that after lunch, too.

23 And then from there, we would go into first
24 period, second period, and so on and so forth. So
25 it's a very structured school day. We take out all

1 the obstacles that kids could face.

2 So something that brings students to our
3 building is, McCaskey is a very large high school,
4 over 2,900 students. And moving from class to class,
5 sometimes kids will leave the building or go to the
6 bathroom and do things that teenagers do and not get
7 to their next class or play at their locker or
8 whatever.

9 So there are students that we get sometimes
10 that are great kids. They just struggled from --
11 getting from point A to point B without somebody
12 being there, saying, hey, you know, you left math;
13 you need to go to social studies; don't get lost.

14 And then our students do have lunch in the
15 middle of the day in the high school. They -- so
16 first, second, and third period are class. Fourth
17 period is our lunch split with our GGI.

18 GGI is guided group interaction. It's where
19 our students have counseling.

20 Oh, I'm sorry.

21 They -- a lot of things are done in GGI. It's
22 really -- I like to call it the class that covers
23 everything that they don't get in the academic
24 instruction piece.

25 So it talks about resume writing. We talk

1 about character building. We discuss topics such as,
2 you know, bullying or -- Facebook is always a topic
3 that we want to talk about, how to act appropriately
4 on the Internet. We look at, I think I said, resume
5 writing. We do college applications. We do job
6 applications.

7 I know we start to look at FAFSA. That's
8 something that it's hard to do with the kids without
9 their parents because of the financial component, but
10 at least getting them familiar with, these are things
11 you're going to need to move on to the next step if
12 college is something that you want to look at.

13 We go over interview skills, what to wear, what
14 not to wear, what to say, what not to say. So that
15 would be a place where they could do mock interviews.

16 It's -- it's really -- there's a lot that goes
17 on during GGI. I'm probably missing some things.

18 It's also where our students would go over
19 their ratings with their team leaders and their
20 teachers. And the rating system is where our
21 teachers -- team of teachers meet every week to go
22 over our kids.

23 So in Phoenix, we have it split down in three
24 teams. We have the middle school team, the ninth and
25 tenth grade team, and the eleventh and twelfth grade

1 team.

2 So every core content teacher, the behavior
3 specialist, and the team leader meet once a week
4 after school to go through every single kid on their
5 team, and they look at how are they doing
6 academically, how are they doing with their behavior,
7 and how are they doing with their attendance. So,
8 essentially, are they coming into school, doing what
9 they're supposed to do, and are they here every day.

10 And, of course, there's varying levels of how
11 students can do on that rating scale. So it would
12 start with a neutral. When students come in, you
13 don't know them, they don't know us. We're going to
14 wait and see how they do.

15 There are students that come in. They get the
16 program right away. They're doing really well. They
17 would become what we call positive. So they are, you
18 know, going around, all the teachers have good things
19 to share about them, and they're given a little plus
20 mark, and they move up the behavior scale.

21 So after a few weeks of going through ratings,
22 we give them what's a -- a pledge status, which means
23 that they are continuously being positive. They're
24 moving in the right direction. They're doing
25 everything that they need to do.

1 And then after they're a pledge status, we
2 would have a pledge log or a conversation with them
3 that would allow them to become of our Firebird Club.

4 Our Firebird Club is like our student
5 government. In a traditional school, the students --
6 it would be, like, a popularity contest. In our
7 school, it's -- the teachers pick it based on the
8 students who are modeling the correct behavior, doing
9 what we expect of them.

10 And they actually are rewarded with a different
11 uniform shirt to kind of designate that, hey, this
12 student is doing everything that is expected of them.

13 And there's perks that go along with that.
14 When we do field trips and we do different
15 activities -- sometimes we will walk them to the
16 (indiscernible) store, which is right around the
17 corner, to go get lunch. They get to wear jewelry.

18 Those are our kids, when we'd have a visitor
19 come in and -- they would give the tour. They're
20 very proud to have that status.

21 And then there's a select group that would be
22 kind of like the -- the -- the top level. They're
23 the executives. So those are kids that are usually
24 more mature for their age. They are the kids that
25 could stand in front of Town House and deliver and

1 actually get their peers to come on board with what
2 they're saying. And they would get a gray Polo
3 shirt. So we usually only have three or four of
4 those in the building.

5 And so those kids would find out all that
6 information in GGI. And it's also a time, in
7 addition with Town House, where they find out about
8 prom, they find out about graduation.

9 This is where they would get a lot of their
10 announcements for their sporting events or their
11 clubs. The district sends those emails or sends over
12 pamphlets, or it's word of mouth, and we share that
13 along to the students. So we announce it in Town
14 House, but that's a big group setting, like this is,
15 so GGI is kind of like a follow-up to reiterate that
16 message.

17 And, then, so the eleventh and twelfth grade
18 would be at lunch. Ninth and tenth would be at GGI.
19 They would switch and then go to fifth and sixth
20 period. And then from sixth period, we would go to
21 Town House.

22 And Town House is a way for us to start and end
23 our school day, kind of slowing down the tempo.
24 They're -- they're eating breakfast, or they're ready
25 to run out the door at the end of the day. It's a

1 way for us to say, good morning; you know, how -- how
2 is everything.

3 We're also -- we're looking at kids, and we're
4 seeing, you know, these two kids always sit together;
5 they're always happy; they're coming in this morning;
6 they don't want to be anywhere near each other.

7 So as an adult, we're going to stay up on that
8 and say, hey, can I talk to you for a second; I want
9 to make sure everything's okay.

10 And that's where we'll notice, you know, did
11 you eat last night; is your electric still on? You
12 know, we find out this information from our kids
13 because we're aware. They realize that, hey,
14 so-and-so cares about me because they cared to pull
15 me aside from the group and find out what's going on.

16 It's another place where, besides myself
17 outside -- refugee students especially, where they'll
18 come in without a coat in the winter. Sometimes it's
19 financial reasons. Sometimes they'll leave, and I
20 guess they don't realize how cold it is going to be.

21 So we'll have that conversation with them, do
22 you have a coat; do you need help getting a coat,
23 because it's 30 degrees outside, and you're in a
24 short-sleeved shirt.

25 Q. Right.

1 A. So a lot of that stuff goes on in our building.
2 We pride ourselves in knowing our students. A lot of
3 talk I've heard in here is about, you know, McCaskey,
4 Phoenix. And Phoenix is a small setting. We have
5 350 kids. I can tell you that I know every single
6 student in that building, and I'm -- I'm able to look
7 at them and know what's going on at home. Or if I
8 don't know the details in depth, I can talk to a team
9 leader, who has an even smaller group of kids that
10 they're responsible for, and they will get me the
11 information.

12 So we're constantly --

13 Q. Let me just stop you there.

14 A. Yeah, go ahead.

15 Q. What's a team leader?

16 A. So a team leader is in charge of those small
17 groups that I explained. So with middle school, we
18 have a team leader and a behavior specialist.

19 And the behavior specialist is there to support
20 instruction. So you'll constantly see them in and
21 out of the classroom. Sometimes they join in the
22 lesson.

23 Sometimes they might pop their head in a
24 classroom and see that so-and-so is -- is drawing and
25 is not on the -- with the lesson plan. They might

1 pull them out and again have that conversation of,
2 why aren't you on task with the group; come on, I
3 need you to get back in there and -- and get back on
4 track.

5 Or they notice that they're sleeping. Why are
6 you sleeping in all of your classes? And, again,
7 that leads to, well, I -- I couldn't sleep last
8 night; I was watching my brother and sister while my
9 mom was at work. And these are just examples.

10 So the team leader is an extension of that
11 behavior specialist, but even more so. They have a
12 cell phone. All of the kids are able to call them if
13 they need to.

14 The parents have their number. So if a parent
15 in the middle of the school day wants to know -- hey,
16 you know, last night, we had an issue; I'm just
17 calling to make sure that it's not rolling into
18 today, or, hey, next week, we're going to be out for
19 two days; we have to go to court for something, or I
20 have to go travel out of state because my -- someone
21 passed away, they'll share that information with the
22 team leader, and the team leader will work with the
23 parent to make sure that they're getting their work
24 or whatever it is that they need.

25 So it's -- it's kind of a -- an administration

1 role, but it's a close -- it's a close-knit
2 relationship with those kids.

3 So I'm in charge of the whole building. Kind
4 of look at it as they're in charge of their
5 individual groups of students.

6 Q. Okay. Do you know who the plaintiffs are in
7 this case?

8 A. I -- I do, yes.

9 Q. Okay. Have any of them --

10 And I'm -- I'll just name them for you. It's
11 Qassim Hassan, Sui -- and I don't know -- Sui Hnem --

12 A. Sung, yeah.

13 Q. -- and I don't know her last name, Van Ne (ph),
14 Khadidja Issa, Anyema Dunia, and Alembe Dunia.

15 Are you familiar with any of them?

16 A. I've never met Alembe -- Alembe. The rest of
17 them I -- I do know. Yeah, I've met them in my
18 building.

19 Q. Do they know you by your first name?

20 A. My first name? Probably not --

21 Q. Okay. How would they --

22 A. -- but they probably know my last name.

23 Q. How would they address you?

24 A. Ms. Misnik.

25 Q. Okay. And would they all be able to come up to

1 you and say, good morning, Ms. Misnik?

2 A. Yeah. We work on it. Sometimes, when I first
3 meet students, they may be shy, or they may struggle
4 to -- my name's a little bit of a doozy for people
5 that speak English, so -- they always confuse, is it
6 a Z or is -- an S? I'm not that picky.

7 But as I explained when I had spoken in my
8 deposition, sometimes we fist pump. Sometimes we
9 just wave. Sometimes, it's just a friendly face.

10 And, you know, they're nervous coming into the
11 building, like I would think any student is, so
12 sometimes it's not that first day are they saying,
13 you know, good morning, Ms. Misnik. But it gets
14 there. So it's like anything else. It's --
15 sometimes there's that warm-up period.

16 What I love for our students that don't speak
17 English is somebody being outside, especially those
18 who have never been to a school. They walk kind of
19 up to Phoenix, and it's like that bright-eyed look
20 of, okay, what do I do next?

21 So we'll grab another student, kind of guide
22 them through the intake process, get them to Town
23 House, get them with their team leader so they're not
24 lost in the shuffle of a big building. That's one of
25 the luxuries of having such a small setting at the --

1 they can't get lost.

2 Q. Well, like, for example, I believe -- was
3 there -- well, let me ask you.

4 Has there been any issues with any of these
5 plaintiffs in terms of getting lost?

6 A. Yeah. We actually -- Khadidja ended up in the
7 men's room one day on the third floor, and it was
8 fortunate that I was out there and I was able to go
9 in there, because there was male students that were
10 on bathroom breaks at the time. So I was able to
11 kind of go in and say to her, you know, Sweetheart --

12 And we have visuals up next to the men's room
13 and next to the women's room, so that's kind of a
14 reminder, like, hey, you've got to use this one.

15 And in a big setting, who knows what can happen
16 if she ends up in the men's room in a building where
17 there's no one around.

18 Q. Or of a larger capacity?

19 A. Exactly.

20 Q. What about being able to communicate with your
21 non-English-speaking students, whether or not they're
22 refugee or immigrant? Do you have translators, or
23 how -- how do you communicate with them?

24 A. So we use a variety of different methods. If
25 they speak Spanish, we have a ton of Spanish-speaking

1 staff. Lancaster is a large Spanish community.

2 But we also utilize a buddy system. We do have
3 sometimes where students come in and they're from the
4 same area or they speak the same language. And it's
5 really nice when we have refugees from the same
6 dialect or same area, where maybe one has been with
7 us for a little bit, and they can actually facilitate
8 the transition of, hey, here's where you go, and this
9 is, you know, what you need to do.

10 We use the Google Translate on the iPads. And
11 they're great because they're portable, so kids can
12 carry them around with them.

13 Q. Were you aware that the plaintiffs in this case
14 testified that they never used a Google iPad to
15 communicate with anyone at the school?

16 A. That's upsetting, because we have a bunch of
17 them --

18 Q. Okay.

19 A. -- and I know that they were utilized. So I
20 was actually asked to purchase more. So that's --
21 that is upsetting, but --

22 Q. Okay. What -- what other type of devices, or
23 have we exhausted the list of -- of communication
24 devices or assistive -- assistive devices that you
25 use in order to help communicate with your

1 non-English-speaking students?

2 A. We've used LanguageLine in the past. I know
3 there's another program. I can't think of the name
4 of it.

5 But, essentially, whatever we would need to do
6 to communicate. It's not that we would ever leave
7 someone in the dark.

8 A lot of times, we're fortunate, where students
9 come in with someone who can translate for them, and
10 that's fine.

11 Q. Khadidja, I believe, testified that she feels
12 that she just sits in class all day and doesn't
13 participate because she wouldn't know how to ask for
14 help.

15 Have you made observations of that?

16 A. No. I mean, I make it a point to walk around
17 my building, and one of the things that we pride
18 ourselves on at Phoenix is that, you know, students
19 are not to just come in and fill a seat. So your
20 responsibility, your role as a student, is to be an
21 active, engaged learner.

22 So if a teacher or a behavior specialist -- if
23 any of us are walking around, you know, and it's not
24 anything that -- you know, it's friendly, but, hey,
25 you know, why aren't you on task; what are you doing?

1 Or if they needed help -- I know
2 Ms. Weathers was in and out of a lot of the classes
3 with her. I don't know specifically her schedule.

4 But that wouldn't be a norm in our building, to
5 see a student sitting there doing nothing.

6 Q. Okay. Now, can you talk a little bit about
7 orientation and -- and the demonstrations that go on
8 there?

9 A. Sure. So when all of our students come to our
10 school, there is an orientation where they go. They
11 bring their parent, and one of our school -- it
12 usually was Becky Falcon, who's our student services
13 director.

14 And a lot of times, Ms. Ortiz actually would
15 facilitate for our ESL students to go through our --
16 our school day, kind of like I just did here, explain
17 what you would do.

18 Town House is a little different. Sometimes
19 wearing a uniform -- although other schools in this
20 School District of Lancaster have uniforms, to make
21 sure they understand what they're supposed to wear
22 for ours, we do give them a shirt so they don't have
23 to worry about that. We actually will get them khaki
24 pants if they need those as well and --

25 Q. Do they show up in uniforms? Do they

1 understand?

2 A. Yeah. So, I mean, for the most, we've never
3 had issues where they go to orientation and then come
4 and don't know what's going on. So --

5 Q. Even the -- even the plaintiff in this case --

6 A. Um-hmm.

7 Q. -- understood that they needed to wear certain
8 clothing?

9 A. Yeah. They came in in khakis and a shirt.

10 I actually got Khadidja an extra pair of pants
11 when she started with us, because she only had one,
12 so we just got her an extra pair.

13 They know to tuck it in. There's, you know,
14 usually no confusion about the uniform. It's pretty
15 straightforward.

16 Q. Okay.

17 A. And then we just go over everything they're to
18 expect when they come to our school.

19 Q. Were you told by anyone at the school district
20 that the demonstration of the -- of the restraints
21 was a bit much for some of these refugees?

22 A. So I do know that over the summer, when Dr. Rau
23 met -- actually, I wasn't at the meeting. But
24 Mr. Colon, who I work with closely, he's overseen
25 both schools in Lancaster.

1 So the plan moving forward for this school year
2 was to just ask them if they wanted to see it
3 demonstrated.

4 I do know, when I had mentioned to my staff
5 when we started this school year, there was a mixed
6 answer. Some people were, like, well, we just
7 demonstrated on each other. Some people did use the
8 students.

9 So for, actually, all students moving forward,
10 we're not going to do it unless we ask them. This
11 way, there's no mis- -- you know, unintended
12 confusion there.

13 Q. And might the parents be more interested than
14 the students in terms of what's actually going to
15 happen when you touch their child?

16 A. Yeah. A lot of the kids, as you do it,
17 they're, like, okay, so I need to be focused. And,
18 you know, it's not usually a -- a major deal.

19 Q. Okay. Anything else that goes on in
20 orientation? For example, do you provide
21 interpreters for those that do not speak English?

22 A. If they need it, we would provide it. But like
23 I said, most of the times, our students are coming
24 with someone who can translate for them.

25 I know I shared before that sometimes I'll get

1 a heads-up from the district; hey, so-and-so only
2 speaks this language. And then when -- there's a
3 follow-up email sometimes (indiscernible); oh, well,
4 they're bringing so-and-so with them. So that's
5 fine.

6 Q. Okay.

7 A. But if we would need to, we could use
8 LanguageLine, or we could -- whatever, find a
9 translator, however we would need to.

10 Q. Okay.

11 A. Excuse me.

12 Q. Now, are you aware that English as a second
13 language is a -- an educational theory of sorts?

14 A. Yes.

15 Q. And are you providing that to the students at
16 Phoenix who need English language support?

17 A. Absolutely. We have qualified staff. We have
18 structured our schedule to make sure that we're
19 addressing their needs. And with any student, if
20 they needed something extra, as long as it's
21 presented, we'll do our best to make sure that it
22 happens.

23 Q. Do you think it's working?

24 A. Yeah, absolutely. We have many students who
25 have graduated.

1 I just recently met with students from the
2 class of 2013 that were from Nepal. One student is
3 in his third year at Millersville. Actuarial
4 management I believe is the major. I know it has to
5 do with math. And then the other student is at
6 Hack (ph), his third year in business.

7 So it's great when alumni come in. They share
8 with us their success stories. Oftentimes, they tell
9 us, you know, I wouldn't be in the situation that I'm
10 in right now if it wasn't for your school.

11 Interesting conversation when I met with those
12 students that was also shared with me, that they
13 wouldn't have been in The School District of
14 Lancaster had they not listened to their cousin and
15 leave their school leaving certificate at home.

16 So he did -- he had finished school in Nepal,
17 actually, but the cousin had given him a heads-up not
18 to bring that with him so he can enroll in the
19 district.

20 So it's interesting what you find out when you
21 meet with alumni and hear what's going on.

22 Q. So the school leaving certificate would be the
23 equivalent -- well, what is that?

24 A. I -- I believe -- I'm not involved in the
25 enrollment process, but from what I've been told,

1 what I've heard from alumni and even some current
2 students, is that it's what their grade went up to in
3 their previous country. And so it is looked at as
4 an -- equal to a diploma here.

5 So if they want to come to school in the
6 States, they have to leave that at home and not share
7 that they have that.

8 Q. And -- and was -- are you aware of whether
9 in -- prior to 2013, there was an influx of several
10 hundred Nepalese students that came to The School
11 District of Lancaster all at one time?

12 A. I did not know that, no.

13 Q. Okay.

14 A. I just know that we've always had
15 international -- we've always had refugee students at
16 Phoenix because they're coming in, generally, so old
17 that they would need the support of our program to be
18 successful.

19 Q. Okay. When you say, "so old," what -- what --

20 A. I shouldn't say, "so old." I'm sorry. That
21 sounds really drastic.

22 No, they're older than 17, so --

23 Q. So they -- they would be older than the --
24 the -- the age of the graduating class at the
25 traditional campus --

1 A. Right. So they're older than the grade for
2 their age level, if that makes sense --

3 Q. Now, do you --

4 A. -- their age for their grade level.

5 Q. Do you have any issues with maturity
6 disparities between -- with students who are in the
7 same classroom, if at all, at Phoenix?

8 For example, do you have the 21-year-olds with
9 the 16-years-olds?

10 A. So we have an older group of students, but the
11 way that -- one thing that's good is, our middle
12 school students are on a different floor. So even
13 though they may be older, over age, the 14-, 15-,
14 16-year-old sometimes middle school students are
15 actually on the first floor. That doesn't -- they
16 don't change classes. They don't mix in the high
17 school.

18 And then the high school's actually broken down
19 to ninth and tenth grade and eleventh and twelfth
20 grade. So, generally, those students are in classes
21 together, the ninth and tenth grade group and the
22 eleventh and twelfth grade group.

23 There are some instances where they intermix.
24 I mean, you get a twelfth grader that failed ninth
25 grade English, and they have to take ninth grade

1 English in order to graduate.

2 Q. So they'd go to your school in order to be able
3 to do that?

4 A. Um-hmm.

5 Q. Can you talk a little bit about block
6 scheduling and whether there's a -- a wisdom or a
7 conventional thinking about block scheduling of 80
8 minutes?

9 A. Sure. So the accelerated model with the 80
10 minutes, one of the -- one of the good pieces of it
11 is that the teacher's actually able to get into the
12 depth of knowledge.

13 So they introduce the lesson. They're able to
14 do the introduction piece, where the teacher is
15 giving instruction. Then they're able to give a
16 group or a guided instruction, and then they're able
17 to follow up with that individualized piece.

18 Now, granted, it's not done in that single way
19 every day, but they're able to use that model whether
20 they're doing group work or whether they're doing
21 literacy groups or whatever it is that they're
22 instructing that day. They can break it up and give
23 that slower, in-depth approach to the actual lesson
24 that's being taught, as opposed to, if it's a
25 40-minute class --

1 I -- I taught for a short period of time social
2 studies, and it's -- by the time you get going in
3 your lesson, the bell is ready to ring, and your kids
4 are gone, and you feel like the next day you go back
5 and have to revisit every -- teach concepts and check
6 who was there and who was not there.

7 And so this kind of takes out a lot of those
8 factors in the day-to-day. Now, you still have to go
9 back, obviously, and check for understanding, but
10 that does break down and make it a longer period of
11 time, and you're able to work longer with those
12 students on that one concept instead of having to
13 jump and go back to it later.

14 Q. And then reteach the next day?

15 A. Right.

16 Q. Okay. What about -- I think -- were you here
17 for Ms. Heisey's testimony?

18 A. I was.

19 Q. Okay. So there was some questioning about the
20 credits that a student earns for the class of
21 communication arts. Were you here for that?

22 A. Yes.

23 Q. Okay. Let me just get an assessment of -- what
24 was your take from that? How many credits does a --
25 does a student get for the -- for completing a

1 semester of communication arts?

2 A. One, regardless of if it's the ESL class or if
3 it's the -- the ninth and tenth grade or the eleventh
4 and twelfth grade CA class. It's one credit.

5 Q. So even though there's an ESL-certified teacher
6 teaching communication arts class, the student is not
7 actually earning two credits for that class; is that
8 correct?

9 A. Correct. It's just one.

10 Q. Okay.

11 A. Yeah, you could not be in one class and earn
12 two credits.

13 Q. But they're getting the ESL support --

14 A. Yeah.

15 Q. -- in addition to the communication arts; is
16 that correct?

17 A. Absolutely. And that specific class only had
18 ESL students in it, and that's why it was designated
19 as that class.

20 Q. Okay. So, for example, if the Pennsylvania
21 Department of Education would suggest a guideline of
22 two hours per day of ESL, is that something that can
23 be met at the Phoenix Academy?

24 A. Absolutely.

25 Q. Okay. And just to reiterate --

1 And I apologize to all of those people that --
2 in the room that -- that have already picked up on
3 this, but I want to make sure that -- that we're all
4 on the same page.

5 -- how are they getting at least two hours of
6 ESL per day?

7 A. There's a variety of different ways. I know
8 that they work with Ms. Ortiz in the morning classes,
9 and she had two classes in the morning.

10 We do have the Read 180 classroom, which is a
11 scripted reading program, that takes them through --

12 We actually have the system 44, too, which, for
13 those who aren't familiar with that, it's a phonemic
14 awareness program.

15 Q. It's a --

16 A. Phonemic awareness. So --

17 Q. Phonemic?

18 A. -- if you guys remember the phonics books that
19 we had in elementary school, it breaks down the
20 English language, and it would actually take you
21 through identifying the sounds of letters and moving
22 into actually forming sentences.

23 So System 44 breaks it down even to
24 individualized words --

25 Q. Okay.

1 A. -- which is generally a program for -- with
2 students with a -- special needs, but for -- it has
3 been found to be successful with students who are
4 learning English.

5 And then it -- it takes you through the -- the
6 Read 180 program, which is -- it's not an exact
7 follow-up. There's actually a transition piece in
8 there, but we do utilize that as well.

9 And that class is designed to be where you work
10 independently, whether you're reading -- I know in
11 the System 44 level, they're not reading
12 independently yet, because the -- the vocabulary and
13 the -- the literacy level is low, but they work with
14 the teacher in a small group, and then they work on
15 the computer through a -- a scripted program.

16 And in Phoenix, I mean, that -- that class is
17 only 15 kids at max, so you're looking at a class
18 where there's so much individualized attention there
19 that you're getting through a lot of the obstacles
20 that you would have, say, in maybe a bigger setting.

21 Q. What does Read 180 mean? What is that?

22 A. I don't know what it means. It's just a
23 scripted literacy program.

24 Q. Okay. What is the -- the purpose to you of --
25 of this educational model? Is it to warehouse

1 students who are just incorrigible and can't be
2 retrained?

3 A. No, absolutely not.

4 Q. Okay. Well, what -- what's the purpose of it?

5 A. So our purpose in The School District of
6 Lancaster is to support the graduation initiative,
7 but I always say, as far as Phoenix is concerned and
8 something I always share with my staff, graduation is
9 not -- that's not it for us.

10 I mean, if you're not set up for a
11 post-secondary plan or a job or something after high
12 school, then I haven't done my job, because we all
13 know that it's great -- you know, graduation is
14 awesome, you need that diploma, but we want you to be
15 successful, productive citizens.

16 So we want to make sure that if you want to go
17 to Hack (ph), great, we're going to get you set up
18 for Hack (ph); we're going to make sure you have the
19 financial aid; we're going to make sure that you're
20 prepared to go on to live life after high school.

21 It's also there to support students. I think
22 no other school is able to do what we do, like I said
23 earlier, knowing our students.

24 And it's not a knock at other schools. I mean,
25 I know public high schools do the best that they can.

1 But when you have 350 students -- I have 36 staff --
2 we are able to have that personal approach and really
3 work closely with our -- not only our students, but
4 their families as well.

5 So I may know a situation of another student is
6 at -- at an elementary school, and the mom has shared
7 with us what's going on. I'm going to call that
8 elementary school principal and say, hey, listen, I
9 don't know if you're aware; we just learned out --
10 here's the situation.

11 So I feel like we are supporting the community
12 as a whole that you might not be able to do in a big
13 setting because you might not know the students on
14 that level.

15 We're also teaching them life skills. I mean,
16 you know, I'm sure people are familiar with hearing
17 the term that we use norms. We don't -- I don't like
18 to say that we use rules, because rules are meant to
19 be broken. But norms, they're just the expected
20 behavior of the group. So norms are life skills that
21 we all need.

22 I mean, if I walked into this courtroom today
23 in pajamas, I would really hope that someone would
24 turn around and say to me, like, you know, you
25 need -- you need professional attire; go home and

1 change and come back and be ready.

2 So we want our kids to know that for real life,
3 when you go into work, you better be dressed
4 professionally; you better be addressing your boss --

5 And you might be frustrated in a situation,
6 like in a classroom, where they want to, you know,
7 get frustrated and maybe say some choice things. No,
8 that's not how we act in school, and it's definitely
9 not how we act in the real world.

10 So we are -- and that applies to all students.
11 I don't care where you come from, what your
12 background is, whether you've been at McCaskey and
13 come to Phoenix, whether you've been a refugee. You
14 know, you're going to get frustrated as an
15 individual, and we're going to teach you how to
16 handle those behaviors.

17 Q. And speaking of that, there's been some
18 discussion of confrontation techniques that you teach
19 to the students. Is that an aggressive technique?

20 A. No. And confrontation sounds negative, but
21 confrontation is something we do all the time.

22 So I just gave an example about me walking in
23 with pajamas. I would hope that you would confront
24 me or redirect me in a -- in a way to say, hey,
25 Misnik, you need a suit on, so go change your

1 pajamas.

2 But it's something -- in a classroom, you know,
3 if -- if I'm teaching a class and I have two kids who
4 are talking and I'm trying to talk, it is much better
5 if another peer would say to them, hey, around here,
6 we don't talk while Ms. Misnik's talking.

7 That's going to come off a lot better than if
8 I'm, like, excuse me, ladies and gentlemen, and I
9 have to address them in front of the whole group,
10 potentially embarrass them, and then put myself in a
11 situation where --

12 Teenagers like to save face, so that could end
13 up where they're, like, well, I wasn't talking,
14 because we've all heard that line in a classroom.

15 Q. Sure.

16 A. No kid ever likes to admit that they were the
17 one being chatty.

18 But it's just a technique to make everybody
19 accountable, make everybody have ownership.

20 I always say, too, as an adult, if we're
21 working on a group project, I want to make sure that
22 if somebody is not pulling their weight -- I'm going
23 to confront them or say to them, hey, you know, we're
24 trying to do this together; I need you to pull your
25 weight and come on board.

1 I'm not being aggressive. I'm not being over
2 the top. I'm being real with that person and saying,
3 you're on this team with me; let -- let's come on
4 board, and let's do this together.

5 Q. Now, in follow-up in that regard, are you aware
6 that Qassim Hassan had made a complaint earlier this
7 year that he had been bullied at Phoenix?

8 A. Yeah. And it's upsetting that it wasn't shared
9 to us prior to him just deciding not to come back. I
10 do know that -- well, let me back up.

11 When we do bathroom breaks, for example, you
12 know, I gave the example of students getting lost in
13 the shuffle. And it is an accelerated model. Time
14 is precious for them to be in the classroom. So when
15 we do bathrooms, it's two at a time; go quickly, come
16 back.

17 So I don't know what transpired there, but they
18 don't use the bathrooms in large groups. And, also,
19 it's just unfortunate that if that was the case, that
20 it wasn't shared with us.

21 I did take -- I do take bullying very seriously
22 if we hear anything about it, and we do our best to,
23 you know, eliminate whatever the situation is. I've
24 had meetings with parents on both sides of the
25 bullying, if we've needed to. I've met with students

1 individually, talked about different things. I
2 utilize my team leaders to talk about different
3 strategies, ways that they could handle situations
4 better.

5 And, again, going back to those life skills, if
6 you don't know someone or you don't know, maybe, what
7 they're bringing to the classroom or what they're
8 bringing to the school because you're unfamiliar with
9 it, it doesn't give you the right to comment on it
10 or --

11 You know, team leaders, in general, can be a
12 little rough sometimes, so we make sure -- we try
13 to -- we try to hear everything. We try to see
14 everything. But, unfortunately, we're -- we're not
15 able to. So if something happens and it's not
16 brought to our attention, it's -- it's hard to
17 eliminate that.

18 Q. Jandi Rivera (ph), are you familiar with that
19 name?

20 A. I am.

21 Q. And how are you familiar with that name?

22 A. She worked at Phoenix in 2012 school year and
23 part of 2013 school year.

24 Q. And in what capacity?

25 A. She was the CA teacher for the ninth and tenth

1 grade team.

2 Q. Okay. So would she have been dual certified as
3 ESL and CA?

4 A. I don't know if Jandi (ph) was ESL. I wasn't
5 in the admin role at that point, so I couldn't tell
6 you her exact cert.

7 Q. So what -- what type of classroom would she
8 have -- would she have been tasked to -- to teach?

9 A. So she taught the ninth and tenth grade CA, and
10 she actually co-taught with a special education
11 teacher two of those classes.

12 I was the special education director at the
13 time, so I would often be in her classroom doing
14 observations in the -- during the co-taught periods,
15 and there were several occasions where I had to talk
16 to her about differentiating her instruction, being
17 up from behind her desk. I mean, it was a constant,
18 you know, revisiting some of these things with her.

19 Q. Were you aware that she -- she actually was
20 here to testify?

21 A. I was aware, but I wasn't here for her
22 testimony.

23 Q. She -- she told us that there was an incident
24 that she observed where a security person of some
25 sort was physically aggressive with a student and

1 loud.

2 Are you aware of any such types of activities?

3 Is that something that you condone?

4 A. So we don't have security in Phoenix, so I'm

5 not sure what she's referring to. We do have a

6 seven-level intervention system that is in place.

7 It's emergency safety intervention.

8 It starts with a nonverbal. So before I would

9 ever -- or anybody in the building would ever go

10 hands-on with a student, we would give a nonverbal

11 prompt.

12 So say a student is not taking a seat or --

13 yeah, not taking a seat. We'll use that example.

14 So I may point to the chair for them to sit

15 down. I don't have to say anything. They know

16 that -- you know, we're making eye contact. They're

17 aware that I want them to sit in the chair as opposed

18 to wherever they're at.

19 Q. Okay.

20 A. And then it would go to a concerned nonverbal.

21 So I might have done it the first time, you know,

22 with a big smile and gone like this.

23 The second time, I would be, like, you know,

24 giving them a bit more stern of a facial gesture.

25 They can kind of get my tone in my face --

1 Sorry. I talk with my hands.

2 -- that I want them to, you know, take a seat.

3 Q. Okay.

4 A. The next would be a friendly verbal. Excuse
5 me, so-and-so; I've showed you twice to take a seat;
6 please go take a seat.

7 The next thing would be a concerned verbal.
8 I've now shown you twice and asked you a time to go
9 take a seat -- and you kind of see where I'm going
10 with this.

11 Q. Sure.

12 A. It goes up and down -- up.

13 So there's also a piece after that where -- a
14 student staff support. So a student may at that
15 point chime in and say, Ms. Misnik asked you a couple
16 times to take a seat; just take a seat, something
17 like that.

18 Q. Okay.

19 A. And then the -- the next level would be --
20 would -- which, for taking a seat, it wouldn't be
21 relevant, but say there was a -- an issue where two
22 students are arguing and they're escalating and it's
23 gotten to the point where, you know, they're hands-on
24 with each other.

25 We might go in and -- and escort them apart.

1 It's simply just putting your hand on your wrist,
2 hand on your -- on your upper arm, and it's -- it's
3 not something that hurts the student. We're all
4 trained in it. We do training twice a year, and we
5 are shown how to do that.

6 And as soon as we're able to remove them from
7 the situation, it usually -- the -- the showing off
8 piece dies down.

9 So a lot of times, when kids are in front of a
10 group, they'll want to save face, like I said
11 earlier, and maybe take it to that next level, and
12 then you get out in the hallway, and they're, like,
13 I'm sorry; I should have just -- whatever they needed
14 to.

15 If there was a fight, which happens from time
16 to time -- I -- I taught in a public school during my
17 student teaching, and if there was a fight in the
18 hallway, you were told to shut your door and don't
19 get involved; you can call for security.

20 Q. Okay.

21 A. And that could take a half hour. Meanwhile,
22 kids, if they don't want to listen to you, will go
23 out into the hallway. There could be a whole fight
24 going on.

25 So in our building, if a fight would break out,

1 which it very rarely does -- I think last year I had
2 three instances.

3 Q. How did you learn about those incidences?

4 A. Well, we would see them, or we would --

5 Q. We. So -- so as the executive director, are --
6 are -- did you observe them occur?

7 A. Sometimes I -- I could be there. In most of
8 the cases, if I'm not in that section of the
9 building, then, no, I'm not going to see it.

10 Q. So who might report it to you?

11 A. My team leaders are -- are the ones who are in
12 charge of their floor.

13 Q. Had -- did Jandi Rivera (ph) ever report to you
14 that she observed some sort of physical confrontation
15 between an adult male and a student?

16 A. So I wasn't the lead of the building. I wasn't
17 the executive director then. I was just the director
18 of special education.

19 But I would assume that if she saw something --
20 we're all mandated reporters. If she was really
21 concerned about it, she should have reported it.

22 Q. Okay.

23 A. But if not, she should have taken it up with
24 her supervisor. I can't speak for that, though,
25 because I wasn't there.

1 Q. Okay. What does it mean to be a Middle States
2 school?

3 A. Oh, we're Middle States accredited. So it was
4 a whole year of putting together data in binders and
5 going through an extensive interview process that me
6 and Ms. Heisey sat through together, basically,
7 talking about the program. We talk about our campus
8 improvement plan, which is our ongoing document that
9 forces us as a staff to develop goals for ourselves.

10 Obviously, we are not going to be perfect, but
11 there is constant growth and constant revision of
12 goals to make sure that we're always moving in the
13 right direction and always, you know, refocusing on
14 what's the best for kids; what can we do better this
15 year than we've done in years prior?

16 Something recently that we've looked at is, how
17 do we work with the district to get our students into
18 school? Attendance has always been an issue for
19 older students. They want to choose work over
20 school. How do we get them here?

21 So we've recently worked with our home and
22 school visitor. We work closely with the district
23 and have meetings and try to have these -- goal
24 setting with students. And that's something that
25 came out of our compass improvement plan, really

1 making the students accountable for their attendance
2 and their piece in their education. So that's just
3 an example.

4 Q. And how did that work, if at all, with Qassim
5 Hassan coming back to school?

6 A. So the home and school visitor went out. I do
7 believe our ESL teacher went with the home and school
8 visitor, and I think the meeting had come out of --
9 of that home and school visit from --

10 When they went to the house, they had talked to
11 him. He had shared that he wanted to work. They had
12 left the letter explaining for him to come in if they
13 had any questions.

14 And then the -- I know the caseworker -- I
15 don't know her name; I'm sorry -- called, and they
16 set up the meeting, and that's how we first heard
17 about the bullying incident. So before then, it
18 wasn't brought up to our attention.

19 Q. Have any of the plaintiffs in this case
20 requested that they be transferred to the McCaskey
21 High School?

22 A. No. And we do credit checks in GGI, like I
23 shared. And, also, Ms. Falcon, who is my director of
24 student services, also meets with them and goes over,
25 these are the credits -- I think it was shared

1 before. You need four math, four English, and you
2 need the credits to fall in those certain areas.

3 So once students are no longer overaged and
4 undercredited, they would be eligible to go back to
5 McCaskey in the -- this is now our sixth school year
6 there, I believe. We've had maybe five that I can
7 count on one hand that wanted to transfer back. I'm
8 talking about students in general.

9 Once they come to Phoenix and they fall in love
10 with the small environment, the fact that teachers
11 are very closely engaged to knowing what's going on
12 in their lives and having a team leader that they can
13 go to, even parents, that -- they came in, and they
14 originally wanted to get back to McCaskey. That was
15 their goal.

16 Well, their goal then becomes, well, I just
17 want to stay here; I feel comfortable here; I feel
18 safe here.

19 And I think that's a big piece for a lot of our
20 students and their families, that -- safety,
21 especially in this day and age, where they're in a
22 small environment, where we know what's coming in and
23 out of that building every single day.

24 So they can, you know, confidently feel like,
25 my child is in a safe environment, because bullying

1 is a lot of the reasons that kids come to us.
2 They're -- they were bullied at their previous
3 school, and that's, you know, what made them fall
4 behind.

5 Q. So are these -- are these the types of
6 conversations you have with some of your students
7 that are now becoming, quote, unquote, 17, 18, where
8 they're -- they are overaged? You're still telling
9 them, you have an option to go to McCaskey? And are
10 you -- are you saying that they're electing to stay
11 at Phoenix?

12 A. Yeah, absolutely.

13 Q. All right. Those are all the questions I have.
14 Thank you.

15 A. Thanks.

16 THE COURT: Thank you very much,
17 Counselor.

18 You may cross-examine the witness.

19 MS. McINERNEY: Thank you, Your Honor.

20 THE COURT: Certainly.

21 - - -

22 CROSS-EXAMINATION

23 - - -

24 BY MS. McINERNEY:

25 Q. Ms. Misnik, you had mentioned that you're the

1 main contact for the district; is that correct?

2 A. Yes.

3 Q. And so if there were any problems with regard
4 to Phoenix's program or any complaints or concerns
5 from the district, would they be brought to you?

6 A. They would.

7 Q. And who would be your contact with regard to
8 those complaints?

9 A. Well, there's a couple different areas. So for
10 getting new students coming in, I work closely with
11 Mr. Blackman.

12 With regards to anything higher, it would be
13 Dr. Abrams (ph) or Dr. Butterfield, but I'd also work
14 closely with Mr. Colon, who's my supervisor in
15 Lancaster.

16 Q. And are you primarily responsible for
17 implementing the policies at Phoenix?

18 A. Policies in regards to?

19 Q. With regard to, for example, the school
20 environment and school discipline. Are you primarily
21 overseeing the proper implementation --

22 A. Yes.

23 Q. -- of those policies?

24 And are those policies developed by Camelot?

25 A. Well, there are our school district policies

1 that we follow as a partner and as a school in the
2 district. You would have to be specific.

3 Q. With regard to the school policies that are
4 reflected in the Phoenix handbook, are those
5 primarily from the -- from Camelot or --

6 They're different than McCaskey; is that true?

7 A. Right. The Camelot handbook is different,
8 yeah. And that's been updated just recently. So
9 there are some things in there that we worked on and
10 revisited.

11 Q. And are there some academic practices that also
12 come from Camelot with respect to grading policies or
13 the Due Now exercises?

14 A. So there are things that are -- there are --
15 that the district does do now as well. So it would
16 have to be specific that you're asking me. But I
17 know that we align as closely as possible since -- in
18 this case, our school is in The School District of
19 Lancaster, but there are additional things that
20 Camelot has as expectations. I can give an example
21 if you'd like.

22 Q. Okay.

23 A. So all of our teachers have a certain way that
24 they're supposed to set up their classroom, and
25 that's a Camelot, you know, expectation. We have

1 visual word walls. Your lesson objective has to be
2 posted. Your Due Now should be posted. There should
3 be an agenda for the class on the board.

4 Q. Um-hmm.

5 A. I don't know necessarily if those are SDOL
6 policies as well.

7 Q. Okay.

8 A. Does that make sense?

9 Q. Yes.

10 A. Okay.

11 Q. And you've worked at Camelot continuously since
12 you graduated in 2009; is that correct?

13 A. No. I actually worked for the archdiocese for
14 a little bit, too.

15 Q. Okay. And you're primarily a special education
16 teacher and the special education director before
17 becoming executive director?

18 A. Correct.

19 Q. Okay. And have you ever been employed by a
20 public school district?

21 A. I student taught in a public school district.

22 Q. Okay. Now, Dr. Rau had made some statements
23 regarding students who come -- who go to Phoenix and
24 then go back to McCaskey. Is that correct?

25 A. There are very few, but it does happen.

1 Q. And who would the -- would those students be
2 the middle school students that would, perhaps, go
3 from Phoenix and then back to McCaskey?

4 A. They could be middle school, yes, but there
5 are -- have been some high school students that have
6 transitioned as well.

7 Q. Do you recall giving a deposition in this case?

8 A. I do.

9 Q. Okay. And do you recall being asked a question
10 regarding that particular issue of students that
11 transfer from Phoenix to go back to McCaskey?

12 A. Yeah -- yes.

13 Q. Okay. And in your deposition testimony, you
14 had explained that with regard to transitions of
15 students, that -- they usually come to us because
16 they're overaged and undercredited, so you'd graduate
17 from Phoenix; there are certain kids where they
18 will -- especially in middle school, if they are
19 overaged and they had failed, that can get back on
20 track, and they go back; I mean, they have the option
21 to go over to McCaskey, but if they are still
22 overaged and undercredited, they stay at Phoenix.

23 A. Correct.

24 Q. Is that correct?

25 A. Um-hmm.

1 Q. That's still correct?

2 A. (No audible response.)

3 Q. Okay. So with regard to your role as executive
4 director, you stated that you oversee the daily
5 operations of the building.

6 A. Yes.

7 Q. And in that capacity, you have been asked
8 questions about the ESL program.

9 A. Yes.

10 Q. And during your deposition testimony, you
11 stated that you have ESL classes in the building.

12 A. Yes.

13 Q. And you specifically stated that you do not
14 have an international school at Phoenix, correct?

15 A. We don't have a -- a separate international
16 school, no.

17 Q. And you've described Ms. Ortiz is -- as the ESL
18 coordinator?

19 A. Yes.

20 Q. Okay.

21 A. She was the lead ESL teacher that worked
22 closely with Ms. Heisey when determining needs for
23 ESL students.

24 Q. And with regard to staffing, Ms. Weathers is
25 also an ESL teacher?

1 A. Yes.

2 Q. And you've described her position as being --
3 teaching English for ESL students; is that right?

4 A. Yes.

5 Q. Okay. Do you have any policies at Phoenix with
6 regard to interpretation and translation services?

7 A. So there's no policy. I'm sure the district
8 has a policy that we follow. I don't know it
9 verbatim, but, I mean, we will translate any
10 materials that need to be translated.

11 Q. And you've testified you --

12 You'll translate any materials? For example,
13 do you -- do you translate grade -- the report cards
14 for the students?

15 A. Report cards are pretty straightforward.

16 Q. So those are not translated?

17 A. I mean, we could translate it, but an A is
18 an -- a grade that you can pretty easily determine.

19 Q. So it's not every document that -- that is
20 translated for parents who might be limited English
21 proficient?

22 A. Right. I mean, we have a ton of languages at
23 Phoenix, so if we would -- if they would request it,
24 absolutely. But a report card is not something that
25 is translated off the bat, no.

1 Q. So is it your position that you will provide
2 translations upon request from limited-English-
3 proficient parents?

4 A. Yeah, I would absolutely translate it.

5 Q. But not unless you were --

6 A. I wouldn't personally translate it, but --

7 Q. Unless it was requested? It would have to be
8 requested by a parent?

9 A. Or a student could ask for it as well.

10 Q. Okay. You testified that you use Google
11 Translate; is that correct?

12 A. Yeah, with the iPads.

13 Q. Do you know how often that's used at Phoenix?

14 A. Every day.

15 Q. Okay. Do you keep any records about that?

16 A. There's an iPad sign-out sheet, but it doesn't
17 mean that that's being used --

18 Q. Sure.

19 A. I don't know what -- you know.

20 Q. And how often do you use LanguageLine at
21 Phoenix?

22 A. It's used whenever needed.

23 Q. Do you keep any records about that?

24 A. Not that I know of, no.

25 Q. Again, with respect to the use of LanguageLine,

1 is that something that would also be requested by a
2 student or by a parent?

3 A. Well, it would be pretty straightforward if we
4 needed to use it, if we couldn't communicate.

5 Q. Okay. You've previously testified that there
6 was no policy about interpreters during orientation
7 because it's not something that's needed to be put
8 into writing; is that right?

9 A. Yeah. We do whatever is needed. So if a
10 student comes in with a -- with someone who can
11 translate for them, I'm not going to not allow that
12 person to do the orientation with them. And if we
13 need an interpreter, we would get one.

14 Q. And, again, do you keep records about that?

15 A. No.

16 Q. Okay. In light of the concerns that were
17 raised by caseworkers, did you do anything
18 differently with regard to providing interpreters at
19 orientations?

20 A. So no concerns were raised with me, so I didn't
21 know.

22 Q. No one raised any concerns about that
23 particular issue?

24 A. No. I mean, there was -- I know there was
25 conversation -- I was not in the loop as far as if

1 there was translation issues. I know there were
2 other concerns that we addressed, but --

3 Q. And with regard to Town House, do all the
4 students participate in that in the morning --

5 A. They come in and fill a seat, so they have to
6 be active listeners.

7 Q. Um-hmm.

8 A. As far as participate, I mean, there's a lot of
9 students that could be in Town House. So they come
10 in. They fill in their seats. They're to be active
11 listeners, like I said. Some students will speak in
12 Town House, but it's not a requirement for students
13 to come in and speak.

14 Q. And are interpreters provided during Town House
15 for the students who are English language learners?

16 A. No. I would have a ton of translators in my
17 Town House if that was the case.

18 Q. Okay. Could you turn to Exhibit 19?

19 A. This binder in front of me or that binder?

20 Q. Yes. It's in day one.

21 MS. McINERNEY: Can I approach the
22 witness?

23 THE COURT: Certainly, Counselor.

24 MS. McINERNEY: Thank you.

25 THE WITNESS: Sorry.

1 BY MS. McINERNEY:
2 Q. (Indiscernible) --
3 A. No, it's okay.
4 Oh, is that --
5 Okay. Now I see it.
6 Q. Okay.
7 A. I'm just going to --
8 Q. You're actually at the right tab.
9 A. I'm going to do that. Thanks. Cool.
10 Q. And is this the Phoenix handbook?
11 A. Yes, it is.
12 Q. And if you could, turn to page 1, I believe it
13 is, of the -- the handbook.
14 A. The first page?
15 Q. Yes.
16 A. The one that says, welcome to Phoenix Academy?
17 Q. Yes.
18 A. Okay.
19 Q. And is that actually a note from you?
20 A. Yeah, it is.
21 Q. Okay. Then if we turn to page -- it's again
22 page 1.
23 A. I know.
24 Q. There are a few page 1s.
25 A. You have to love technology.

1 Q. Okay. So this particular page references the
2 fact that there are three major goals, including
3 recovering credits, changing behavior from antisocial
4 to pro social --

5 A. Hold on. I'm sorry. We're not on the same
6 page here together.

7 Q. Okay.

8 A. Oh, it's -- okay. I've got it. Thank you.

9 Q. Do you see that?

10 A. Yep, program goals and student goals.

11 Q. Would you agree that not every child who needs
12 to recover credits also needs to change their
13 behavior to adjust from antisocial to pro social?

14 A. So this isn't antisocial in the way that
15 they're -- it's -- it's a -- antisocial just means
16 helping them acclimate to the setting, what's going
17 on, again, talking about what I had discussed
18 earlier, making them successful for life after high
19 school.

20 Q. Okay.

21 A. Does that --

22 Q. And also on that page, there's a reference,
23 with respect to student goals, to the Firebird
24 status.

25 A. Um-hmm.

1 Q. And that's called a behavior rating?

2 A. Correct.

3 Q. So do -- are all students subject to a behavior
4 rating?

5 A. Yeah. I explained it earlier, where they're
6 going through, and they're addressing three main
7 areas, so their attendance, their academics, and
8 their behavior. And behavior just means, you know,
9 how are you when you're in school.

10 Q. And could you explain how that relates to the
11 color of the shirt --

12 A. Sure.

13 Q. -- the behavior?

14 A. So I think I already did, but I can reiterate
15 it again.

16 When they're going through this rating process
17 with their team, the teachers are looking at how a
18 student is doing in school. And if they're doing
19 everything that is expected of them, they will move
20 up this rating scale. It's a school-wide positive
21 behavior support system.

22 Q. Yeah. I'm just talking about the particular
23 shirts. Are they different colors? How is it -- do
24 you earn different color shirts? Is that how that
25 works?

1 A. Yeah, I'm explaining it to you.

2 Q. Okay. Thank you.

3 A. Okay. So it's a school-wide positive behavior
4 support system, and it's a reward for students who
5 are doing what they're supposed to. It's -- it's
6 recognizing those students who are, you know, on
7 track and doing what they're supposed to. So they
8 get -- instead of the hunter green Polo that all
9 students have, they have a black Polo.

10 Q. Would it surprise you to learn that the
11 students that are named plaintiffs in this case did
12 not understand the different colors of the shirts and
13 didn't understand how it correlates to behavior?

14 A. It would surprise me. Anyema actually had a
15 Firebird shirt, and he was able to participate in
16 field trips, so that's very surprising.

17 Q. Okay. Could we turn to page 3 --

18 A. Sure.

19 Q. -- of the handbook?

20 And this talks about the fact that all students
21 will be searched every morning upon entrance to the
22 school, and it explains that particular subject, and
23 all -- and also notes that all students are subject
24 to search in an appropriate manner by authorized
25 personnel at any time; is that correct?

1 A. Yeah. So all of our students coming in through
2 intake, it's no different than if you go to a
3 sporting event or any -- you know, the -- the -- with
4 the politics nowadays, with the election coming up,
5 if you notice, any time you go to a Trump or Hillary
6 rally, there are security measures in place. You
7 know, as this day and age, security is a major
8 concern for everyone, but it's also --

9 Like I said earlier, it's something that our
10 students and our parents are actually very
11 comfortable with and very happy that we have that,
12 because then they know, when their student is in the
13 building, we've searched every single student that's
14 come in, and we know exactly what's in our building,
15 and there's no drugs, weapons, anything that could
16 harm them, and they're safe to then focus on the
17 academics in the school day.

18 Q. And you previously testified during your
19 deposition relating to these searches and the
20 pat-downs. There are pat-downs that occur at the --

21 A. There was last year. Moving forward, that's
22 going to be a different process, as discussed with
23 Dr. Rau in a meeting we had over the summer that I
24 actually wasn't in, Mr. Colon was in.

25 But -- we are going to change that process a

1 little bit, but yes, there was a pat-down in the
2 past, and it's not a pat-down like --

3 You know, students are coming in. It's a, good
4 morning; how are you; how was your weekend, and
5 you're -- you're talking to them as you're going
6 through it.

7 So it's not something where our students are
8 concerned about this. They -- they even know to come
9 in. They already are ready. They've taken
10 everything out of their pockets.

11 And students have said to us that they are
12 happy that we do that. They don't have to worry
13 about --

14 Q. Right.

15 A. -- some of the things that are going on out in
16 the streets. They can just come into school and feel
17 safe.

18 Q. Right.

19 A. I personally feel that, you know, students
20 coming from war-torn countries would appreciate the
21 fact that there's no weapons or drugs in their
22 school, that they're able to, again, focus solely on
23 academics and not have to worry about that other
24 component that potentially comes up in public high
25 schools.

1 Q. You previously testified that -- to this very
2 issue, saying that it made the students feel safe and
3 that they --

4 A. Um-hmm.

5 Q. Yes.

6 And would you agree, though, that performing a
7 pat-down for students who are newly arrived
8 immigrants every time they enter the building and at
9 any time during the school day could be a source of
10 stress and anxiety for these students?

11 A. I -- I wouldn't. We did change some of the
12 process for some of our ESL students that were coming
13 in. Specifically, refugees. So those students were
14 treated --

15 Q. Can you explain --

16 A. Do you want me to --

17 Q. -- what the new policy is and when it's going
18 into effect?

19 A. Well, can I finish what I was saying before?

20 Q. Certainly.

21 A. Okay. So there's a new policy. That has to do
22 with this school year.

23 Last school year, there were students that came
24 in who were coming in from certain areas, and they
25 were not necessarily patted down. We started letting

1 them empty their own pockets, easing into, you know,
2 coming into the school day, because there were
3 students that shared with us -- not students.

4 There were concerns that were shared with --
5 shared with us about that, so we addressed it to make
6 them feel more comfortable.

7 Q. Could you tell me when you changed that policy
8 and with respect to what cohort of students?

9 A. What do you mean, "cohort"?

10 Q. Group of -- what -- what students were no
11 longer subject to the pat-down?

12 A. It would have been our new influx of students,
13 so I don't know which specific student that was, but
14 I know that it was talked about. It was discussed.
15 We changed. We made improvements for the better, and
16 we moved on.

17 Q. And when did that occur?

18 A. I don't know.

19 Q. Do you know what month it occurred?

20 A. I don't.

21 Q. Well, is it true that as of -- when is -- when
22 is the time that you spoke to Dr. Rau about the
23 pat-down policy? When did that --

24 A. I didn't specifically speak to her. Mr. Colon
25 did, who's my supervisor in Lancaster.

1 Q. Would it surprise you to know that as of
2 July 13th, Dr. Rau stated that she did not know
3 that -- that students were subject to a pat-down at
4 Phoenix Academy, she had no knowledge of it?

5 A. She's a new superintendent. I don't -- I don't
6 know.

7 Q. Did you ever explain the pat-down process to
8 her in any way?

9 A. I mean, I've talked to her maybe a few times.
10 I don't remember exactly what we talked about every
11 single time that I saw her.

12 Q. Did you explain that all students were subject
13 to that pat-down and that it wasn't just, you know,
14 a -- those who you suspected might have contraband?
15 Was that explained?

16 A. So she was a new superintendent, and we've had
17 this (indiscernible) since the 2011/2012 school year.
18 It was how it had always been done, so there was
19 never a -- there's a new superintendent; we're going
20 to change it up. It would -- just continued how we
21 had been operating.

22 Q. So when you initially met with Dr. Rau when she
23 became the new superintendent, did you explain the
24 policies and procedures at Phoenix Academy and
25 acquaint her with what was going on in the building?

1 A. I -- that wasn't my role. I talked to her
2 about the overall -- what Phoenix was. I didn't get
3 into specifics with her.

4 Q. So you never explained the policy to her?

5 A. I assume that she knew.

6 Q. And did she ever ask you to do an investigation
7 regarding concerns that were raised about practices
8 at Phoenix Academy?

9 A. She met with Mr. Colon.

10 Q. And when did that occur?

11 A. I don't know.

12 Q. And has Phoenix Academy changed its policies
13 with regard to demonstrations at orientation?

14 A. I think I shared that already today, but it --
15 again, it's not a policy. It's just the way that --
16 we are going to ask students if they'd like us to
17 demonstrate the emergency safety intervention or --

18 Q. Can you clarify what you're referring to when
19 we talk about demonstrations at orientation? Is that
20 the demonstration of the use of restraints?

21 A. The hold -- the safety hold? Yes.

22 Q. Okay. Thank you.

23 And when was that policy changed?

24 A. We're going to do that moving forward this
25 school year.

1 Q. And what about being able to bring books home?
2 Is that going to change as well?

3 A. So there's certain books that are in the -- in
4 school. What -- we are going to change the policy
5 with how they're able to bring them home when I meet
6 the team leaders in charge of facilitating that to
7 make sure that the ones that we only have limited
8 sets can get back into school.

9 But we've always made copies. And there have
10 been some books that have gone home, but, again,
11 there are certain sets that we only have a classroom
12 set. So we couldn't send them home and then risk not
13 having them for the class for instruction.

14 Q. So can you clarify what the new policy is with
15 regard to homework?

16 A. Homework or books? Because you're talking
17 about two different things.

18 Q. Both.

19 A. So homework is -- there's never been a -- a no
20 homework policy, but what happens is, for a lot of
21 our students -- you know, we have to focus on English
22 and math remediation across the board.

23 So it's difficult sometimes to assign students
24 work to take home when they're needing all of your
25 attention in the classroom. It's not fair to send

1 work home with a student that they're not going to be
2 able to feasibly do on their own.

3 So a lot of times -- we have the extended day
4 program. Our building's open until six o'clock. So
5 we may assign students to stay in the computer lab
6 and work on a certain topic, or we may assign them --
7 here's, you know, again, a copy of a reading
8 assignment that they can work on and -- and circle
9 and bring back the questions or things that they need
10 help on.

11 So there's no set policy. It's more or less
12 that we try to make the student successful or set
13 them up for success. So sending home work for
14 students that are behind could cause frustration and
15 make them feel not proud or not, you know, confident
16 in their work. So there's no policy against
17 homework.

18 And then as far as the book --

19 Q. But it is more of a practice, that they're --
20 that homework is not provided at Phoenix; is that
21 correct?

22 A. So, again, it's not that it's not homework for
23 them not to do at home. It's just that setting --
24 sending work home for students that aren't going to
25 be able to complete it on their own is almost an

1 unfair practice.

2 Q. Um-hmm. So approximately how many meetings
3 have you had with Dr. Rau regarding the concerns that
4 have been raised in this lawsuit?

5 A. So I didn't have any meeting with Dr. Rau.

6 Q. You've had no meetings at all with her?

7 A. Hm-hmm.

8 Q. And so how was all of this information
9 communicated to you with regard to the change in
10 policies?

11 A. Through Mr. Colon.

12 Q. Okay. And do -- did you receive a -- a letter
13 or review a letter in April regarding concerns that
14 were raised by the ACLU concerning Qassim Hassan?

15 A. I believe it went to Ms. Heisey. I don't think
16 anything was addressed to me, but I -- but I saw it.

17 Q. So you never became aware of that letter at any
18 time?

19 A. No, I saw it as of being in the process of all
20 this.

21 Q. So when did you first become aware of concerns
22 that were raised by any caseworkers concerning the
23 assignment of students who were refugees 17 to 21 at
24 Phoenix?

25 A. So there was a concern about the search process

1 back in some part --

2 Q. When was that raised?

3 A. It must have been some part (sic) in the
4 spring. I don't know exactly what month.

5 And I did get an email to -- I believe it was
6 from Walczak, and that was about not deleting
7 anything. So that's when I knew that I was involved
8 in all of this.

9 But I never got a -- a letter from any
10 caseworker, and no caseworker ever spoke to me about
11 it individually.

12 Q. And you never received that information from
13 the school district?

14 A. What information?

15 Q. Information regarding concerns that had been
16 raised as to the assignment of 17- to
17 21-year-old immigrant students to Phoenix.

18 A. I mean --

19 Q. In the district --

20 A. -- if there was a conversation -- again,
21 Mr. Colon met with the superintendent, so I don't
22 know if that was addressed with him. I wasn't in
23 that meeting.

24 Q. And what is Mr. Colon's position?

25 A. He's the executive director of Lancaster. So

1 he oversees Phoenix and Buehrle and -- there's
2 another program at Buehrle. I can't think of the
3 name.

4 Q. And he's -- is he employed by Camelot?

5 A. Yes, he is.

6 Q. And so he made you aware of these concerns?

7 A. Yes, he did.

8 Q. Okay. So were you aware that these students
9 were told that they had no option to go to McCaskey,
10 that that was not an option for them, when they
11 enrolled in school?

12 A. The only thing that's shared with me is that a
13 student is going to be coming to Phoenix, and we set
14 up the orientation, and we go from there.

15 And like I said earlier, if they are in a place
16 where they've recovered credits and can go back, then
17 that would be addressed then.

18 Q. Could you explain? You said, if they're in a
19 place where they can recover credits and go back.
20 They never came from McCaskey. They started at --

21 A. No, I know. So what I'm saying to you is that
22 we do get students sometimes, although they don't
23 want to go back -- they've come to our school,
24 they've recovered the credits that they need, and
25 they're now on grade level.

1 So they're a 16-year-old sophomore. Is that
2 the correct age you'd be? I think. So it's, you
3 know, something like that, where they would be at the
4 correct age for the correct grade.

5 Q. And that would only be if they were the correct
6 age for the grade based on what you've articulated
7 before and -- and has been testified to in this
8 courtroom as to the age of students in high school --

9 A. Correct.

10 Q. -- age of 14 to 17 or 18; is that correct?

11 A. Say that again. I'm sorry.

12 Q. And so you'd only be able to do that if you
13 fell within the appropriate age for the grade at
14 McCaskey; is that right?

15 A. Right.

16 Q. Okay.

17 A. Because we want them to be able to get a
18 diploma and graduate, and, you know, if you're 17 and
19 you're going back to a traditional high school, you
20 run the risk of not being able to graduate,
21 especially with --

22 A lot of our students have work and other
23 family needs, and as time goes on, it gets more
24 difficult for them. So it's -- it's, oftentimes,
25 better that they are in the accelerated model and are

1 able to work through some of the extra programs that
2 we have to support their graduation.

3 Q. Would you agree that a child that presents at
4 the age of 17 would be able to graduate by the age of
5 21 at McCaskey?

6 A. If you just look at numbers and credits, yes,
7 but if you look at real life and the struggles and
8 the obstacles that a new family coming in --
9 especially our refugee families, and sometimes not
10 even the refugee families, but life happens, and
11 people have to work, and things get in the way,
12 and -- and that does present a challenge for our
13 students and their families.

14 Q. Turning to the accelerated program, would --
15 you've previously testified that "accelerated" means
16 faster and that the program at -- at Phoenix is the
17 same for all students with respect to curriculum and
18 pacing, correct?

19 A. Yeah. The word "accelerated" does mean faster,
20 but it's not -- like I testified earlier, it's not
21 that the class itself is faster. It's the time --
22 you know, the way you can -- you can earn your
23 credits is faster, which works great for our families
24 that -- you know, they need to work, they need to do
25 other things, and they're still able to earn that

1 high school diploma.

2 Q. And you previously testified that English
3 language learners need, quote, intensive help in
4 school --

5 A. They do --

6 Q. -- is that right?

7 A. -- yeah.

8 Q. So would you agree that it's challenging for a
9 student who just entered the country, who's beginning
10 to learn English, to learn about a new system of
11 education and at the same time be in that accelerated
12 program?

13 A. Say that question again.

14 Q. Do you -- would you agree that it's challenging
15 for a student who's just recently entered the country
16 and who's beginning to learn English to both learn
17 about a new system of education and at the same time
18 be in an accelerated program?

19 A. I think any school that they would be in would
20 be challenging, considering they are oftentimes not
21 in a school where they were before. So personally,
22 I -- I -- I think it is -- it's got to be a challenge
23 no matter where they are.

24 I would state that in our program, it's --
25 there's more support for them. It's got to be easier

1 in the sense that there are so many people available
2 to help them, whether it's in that ESL class or it's,
3 you know, in the -- the social studies class that's
4 smaller and has a -- you know, more supports built
5 into the day.

6 And then we, again, have the extended day
7 program and --

8 Q. Um-hmm.

9 A. -- luckily, the refugee program as well in the
10 summer.

11 Q. Could you turn to page 6 of the Phoenix
12 handbook? And that's Exhibit 19 --

13 A. Sure.

14 Q. -- the same exhibit we were looking at.

15 A. Yes.

16 Q. On the bottom of page 6, under behavior
17 management --

18 A. Um-hmm.

19 Q. -- it states, students will also be expected to
20 hold other students accountable and offer support in
21 their efforts to manage behavior.

22 Do you see that sentence there?

23 A. I do.

24 Q. And is this part of the peer confrontation that
25 you mentioned earlier?

1 A. Yeah. So when you hold someone accountable,
2 you just make them identify their behaviors, that
3 they're aware of what they're doing.

4 So the example I gave, if -- if two students
5 are speaking during class or two kids are working on
6 a project, we want to make everybody accountable and
7 pull their own weight.

8 Q. In your experience, has peer confrontation such
9 as this resulted in any negative behavior or negative
10 interactions between students at Phoenix?

11 A. It can. Students sometimes -- and I think I
12 shared this even in my deposition, that part of our
13 goal is to teach students the appropriate way to
14 disagree with another peer.

15 A lot of our students are coming into our
16 program with norms that are not norms that would set
17 them up for success in the real world. So refugee or
18 not sometimes would -- you know, students at that age
19 don't know how to correctly talk to one another. So
20 we would model the expected way to hold another
21 student accountable or to redirect their behavior.

22 So like I explained about the two kids
23 talking -- talking in class, if we heard them not do
24 that correctly, we would repeat what we would expect
25 them to do and model the expected behavior and then

1 follow up with them.

2 Q. Now, during your deposition testimony, you
3 stated that, quote, you should definitely not be
4 cursing, but sometimes kids do that when they're new
5 to it and trying to understand it.

6 Do you think that it's difficult for students
7 who have newly entered this country, who are English
8 language learners, don't know the language, and,
9 particularly, don't know idiomatic expressions, to
10 really understand and implement this peer
11 confrontation policy? Do you think that would be
12 challenging?

13 A. Well, and I explained in my deposition that
14 when we have expectations for all of our students, we
15 make account -- accommodations and we make exceptions
16 for our students that we know have limited English.

17 So I wouldn't expect that a student just
18 starting first day is able to do this, but they're
19 able to as time goes on. We -- we witness it.

20 Q. And would you also agree with the corollary to
21 that, which is that they couldn't understand, if
22 someone was confronting them, not only how to
23 undertake a peer confrontation, but what to do when a
24 peer confronts them and they don't understand what
25 they're saying? Wouldn't that be difficult?

1 A. I'm sure there's things in the regular high
2 school that they don't understand on a day-to-day
3 basis as well.

4 So, again, with having the adult support that
5 we have in the building and the other peer support,
6 we're able to be aware if there is someone who
7 doesn't understand and break it down for them or
8 translate it, if necessary, so that they're not lost
9 in the shuffle, so that we're able to keep them
10 engaged and actively a part of the community at
11 Phoenix.

12 Q. Could you turn to page 15 of the Phoenix
13 handbook?

14 A. Yes.

15 Q. And under what is marked emergency safety
16 intervention, ESI, there is a statement there about
17 redirecting staff.

18 Would that staff be the behavioral specialists,
19 when we talk about redirecting staff, or is that all
20 staff?

21 A. It could be anybody. We're all trained with
22 the handle with care/emergency safety intervention.

23 Q. And how many behavioral specialists are there
24 at Phoenix?

25 A. There are three.

1 Q. Are there any behavioral specialists at
2 McCaskey?

3 A. There are. I believe they have SROs as well.
4 We don't have a need for SROs at Phoenix.

5 Q. Do you have hall monitors in addition to the
6 behavioral staff or just the behavioral staff?

7 A. Just the behavior staff.

8 Q. Okay. Now, here, it says, the redirecting
9 staff will use the least amount of physical restraint
10 necessary to control the situation; restraints shall
11 be -- shall be terminated as soon as the student's
12 behavior indicates that the threat of imminent
13 self-injury or injury to others is absent.

14 And then it goes on to state, any restraint
15 incident resulting in bodily injury to a student
16 shall be reported to school district officials as
17 soon as practically as possible.

18 Now, during your deposition testimony, you were
19 not using the word "restraint." You had used and you
20 had mentioned the emergency safety interventions.

21 A. Um-hmm.

22 Q. Isn't it true that the Phoenix handbook itself
23 acknowledges that these are physical restraints that
24 are being imposed on a student?

25 A. Yes. And it's been since updated.

1 Q. And it's been updated in what way?

2 A. Do you want me to explain updated? I'm not
3 understanding your question.

4 Q. It -- it's still -- this policy with respect to
5 the explanation of use of restraints is still in
6 effect, correct?

7 A. The -- I'm still not understanding you.

8 Q. Do you still have an emergency safety
9 intervention policy?

10 A. Absolutely.

11 Like I had stated earlier, you know, in a
12 regular high school, if two students get into a
13 fight, no one's going to do anything until the
14 security officer gets there.

15 I can tell parents and students, when you come
16 into this building, you're going to be safe. If
17 there's a fight, we're going to get in there and
18 safely separate it, and as quickly as possible, we're
19 going to get those students in a good place, where
20 they're not going to hurt themselves or anyone else.

21 Q. With respect to the orientation, you are no
22 longer demonstrating restraints at orientation?

23 A. We're going to ask first if they'd like to see
24 it demonstrated, but they will still be responsible
25 to understand the process.

1 Q. So you will continue to be demonstrating the
2 use of restraints at orientation; is that correct?

3 A. If the parent would like to see it, yes.

4 Q. And how are you communicating with a limited
5 English -- limited English-proficient parent that
6 would attend that orientation?

7 A. Through a translator.

8 Q. And so that would be upon their request?

9 A. What would be upon their request? Showing the
10 restraint?

11 Q. No. If they request an interpreter, you would
12 provide that for them; is that correct?

13 A. Yes.

14 Q. Okay.

15 A. But sometimes they come in with an interpreter,
16 or like I said, we know ahead of time that an
17 interpreter is needed, so we will get one, if
18 possible. It's very rare that they show up and we
19 need an interpreter that we didn't know about.

20 Q. When you look at the goals for Phoenix, what is
21 the primary objective, the primary goal with respect
22 to your students?

23 A. In regards to our campus improvement plan?

24 Q. With regard to what your overall goal is for
25 Phoenix. You -- we talked in the beginning about,

1 you know, the goal in terms of credit recovery.

2 A. Yeah.

3 Q. What do you see as being the --

4 A. I would say the overarching goal is that every
5 student leaves us planned and successful, ready to
6 take on the real world, whether it's post-secondary
7 schooling, whether it's a job, whether it's the
8 military, because I don't see our job being finished
9 as, you know, high school diploma, that's it.

10 And we always say to our graduates, look, our
11 doors are open; if you, two years down the line,
12 decide that you're at Hack (ph) and you want to go to
13 Millersville, we'll help you with the application
14 process.

15 You know, it's nothing for my staff to hop in a
16 car and take a kid to a visit or to assist them in
17 whatever it is that they need to get them on that
18 right pathway.

19 FAFSA's very difficult for kids to navigate.
20 Oftentimes, it's difficult for our parents. I know,
21 personally, I struggle with my FAFSA form. So that's
22 something that we provide support for, if needed.

23 Q. And with respect to the particular named
24 plaintiffs in this case --

25 And you mentioned that you know several of

1 them.

2 A. Yes.

3 Q. -- you didn't know that they wanted to go to
4 McCaskey over Phoenix? Was that --

5 A. It was never shared -- it was never brought to
6 my attention, so I can't know things that no one
7 tells me.

8 Q. And so it's your testimony that no one ever
9 brought that to your attention?

10 A. No one brought that to my attention.

11 Q. Thank you very much. That's all I have.

12 THE COURT: Thank you.

13 One moment.

14 - - -

15 (Pause)

16 - - -

17 THE COURT: Did you have any further
18 questions?

19 MS. McINERNEY: I did, yes. Thank you.

20 THE COURT: Certainly. You may proceed.

21 BY MS. McINERNEY:

22 Q. Can you state the current pat-down policy
23 that's now in effect for the new school year?

24 A. Starting this school year?

25 Q. Um-hmm.

1 A. So students are going to come in, and they're
2 going to empty their pockets themselves and show us,
3 you know, empty -- you take out what's in there.
4 They're going to take their shoes off. Then they
5 will put their shoes back on and -- and go to
6 class -- will go to Town House. That's where they
7 will go from there.

8 Q. And who made the decision that this new policy
9 would go into effect?

10 A. It was a conversation with the superintendent
11 and, I believe, Mr. Colon.

12 Q. And did Dr. Rau require this change?

13 A. No. It was a conversation between the
14 superintendent, Dr. Rau, and Mr. Colon.

15 Q. And is this policy going to apply to all of the
16 students at Phoenix?

17 A. I believe the plan for the refugee students is
18 to not have them go through searches if there's no
19 suspicion of any drugs or weapons, but I know that
20 we're going to get clarification on that before we
21 start school on Monday.

22 Q. So it hasn't been ironed out yet?

23 A. Well, she's talked about it with Mr. Colon. I
24 know that they're -- that's -- was the conversation.

25 Q. And is this a policy that will be adopted by

MEGAN MISNIK - REDIRECT EXAM BY MS. O'DONNELL

1 all Camelot schools?

2 A. I -- I can't speak for all Camelot schools.

3 Q. Will it change the procedures at Buehrle?

4 A. I can't speak for Buehrle.

5 Q. You mentioned that Phoenix has a half day on
6 Wednesdays.

7 A. No. There's a half day that the district has
8 once a month. I shared that we have that for PD,
9 just like the regular district does.

10 Q. Okay. And that's once a month?

11 A. That's the second Wednesday of the month.

12 Q. Okay. Thank you.

13 THE COURT: Thank you, Counselor.

14 Attorney O'Donnell, do you have any
15 redirect of this witness?

16 MS. O'DONNELL: Just -- just one.

17 THE COURT: Certainly. You may proceed.

18 - - -

19 REDIRECT EXAMINATION

20 - - -

21 BY MS. O'DONNELL:

22 Q. Ms. Misnik, you testified that there was some
23 conversations that were had between the high school
24 administration and -- and some of the folks at
25 Phoenix or Camelot concerning these particular

MEGAN MISNIK - REDIRECT EXAM BY MS. O'DONNELL

1 refugees.

2 A. Say that again.

3 Q. Sure.

4 There was some conversations that you were not
5 privilege to --

6 A. Yes.

7 Q. -- earlier in the year concerning these
8 refugees?

9 A. Yes.

10 Q. Okay. And -- and were you working this school
11 year?

12 A. I did work this school year, but I had twins in
13 May, so --

14 Q. And were you -- were you always in the school
15 right before that delivery?

16 A. Up until a short period before then. So --

17 Q. Was there a period of time when you were on
18 bedrest?

19 A. I was on bedrest, yes.

20 Q. And how many weeks were you on bedrest?

21 A. Oh, from the end of March until May -- well,
22 when I had my twins in May.

23 Q. So were you communicating with -- with anyone
24 at work?

25 A. Yeah. I was communicating with Angel pretty

MEGAN MISNIK - EXAMINATION BY THE COURT

1 much every day. I didn't have too much else to do.

2 Q. Okay. But were you communicating with anyone
3 else from The -- The School District of Lancaster?

4 A. No. I really (sic) much just went through
5 Angel.

6 Q. Were you communicating with anyone from the
7 resettlement agencies?

8 A. No one contacted me.

9 Q. Okay. All right. Thank you.

10 MS. O'DONNELL: Those are all the
11 questions I have.

12 THE COURT: Thank you, Counselor.
13 Attorney McInerney, any recross?

14 MS. McINERNEY: Nothing further.

15 THE COURT: All right.

16 And I just have one question for once.

17 IF the refugee students ages 17 to 21
18 were given the option of choosing either to go to
19 Phoenix or go to McCaskey, would there be any
20 negative consequences to that?

21 THE WITNESS: I think the biggest
22 concern that I personally would have from them in my
23 experience of having refugees at our school is
24 meeting the ones that it was too late for, that they
25 either age out or have to go to work for their

COLLOQUY

1 families because it's been too long since they've
2 come to the United States.

3 So, to me, that's the saddest piece,
4 when a student's not able to move forward and follow
5 through on their -- on their plans and their goals.
6 And, unfortunately, that was a reality for some
7 students.

8 THE COURT: Okay. Thank you very much.

9 THE WITNESS: Thank you.

10 THE COURT: Any questions from counsel
11 in light of the Court's questions?

12 Thank you very much, ma'am.

13 THE WITNESS: Thank you.

14 - - -

15 (Witness excused.)

16 - - -

17 THE COURT: And this might be an
18 appropriate time to take a ten-minute recess.

19 I believe that the school district has
20 one more witness.

21 MS. O'DONNELL: I do.

22 THE COURT: And I believe there was
23 intent -- one more -- one witness on rebuttal.

24 MS. McINERNEY: That's correct.

25 THE COURT: All right. We'll stand in

COLLOQUY

1 recess for ten minutes.

2 MS. O'DONNELL: Thank you.

3 ESR OPERATOR: All rise.

4 - - -

5 (Whereupon, the audio recording
6 concludes at 4:01 p.m.)

7 - - -

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C E R T I F I C A T I O N

I, Judi Y. Olsen, Registered Professional Reporter, do hereby certify that the foregoing is a true and correct transcript from the electronic sound recordings of the proceedings in the above-captioned matter.

August 23, 2016

Date

Judi Y. Olsen, RPR

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