

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF PENNSYLVANIA

3 KHADIDJA ISSA, ET AL ) 5:16-cv-03881-EGS  
4 ) PM SESSION  
5 VS. )  
6 ) August 22, 2016  
7 THE SCHOOL DISTRICT OF ) Allentown, PA  
8 LANCASTER ) 4:13 p.m.-5:45 p.m.

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

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Dr. Arthur Abrom				
by Ms. O'Donnell	5			
by Ms. McInerney		25		
by Ms. O'Donnell			37	
Marianne Ortiz				
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P R O C E E D I N G S

THE CLERK: All rise. The United States District Court is again in session. The Honorable Edward G. Smith presiding.

THE COURT: You may be seated. Thank you.

The Court is called to order. All parties previously present are once again present.

Attorney O'Donnell, you may call your next witness.

MS. O'DONNELL: Thank you, Your Honor. We'll call as our last witness Dr. Arthur Abrom.

THE COURT: Good afternoon, sir.

DR. ABROM: Good afternoon.

THE CLERK: Please raise your right hand.

DR. ARTHUR ABROM, WITNESS, SWORN

THE COURT: Thank you very much, sir. You may be seated.

THE WITNESS: Thank you.

THE COURT: And, sir, would you please state your full name, spelling your full name for the record.

THE WITNESS: It's Arthur Abrom, last name is spelled A-B-R-O-M.

1 THE COURT: Thank you very much.

2 THE WITNESS: Sure.

3 THE COURT: Counsel, you may proceed.

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

5 DIRECT EXAMINATION

6 BY MS. O'DONNELL:

7 Q. Dr. Abrom, would you give us a brief  
8 description of your educational background?

9 A. Sure. I graduated from Susquehanna  
10 University with a music education degree, taught music  
11 for several years. I then became a principal at a  
12 place not connected to this which is known as the  
13 Phoenix Academy, but a place called the Phoenix Center  
14 which was in New Jersey.

15 After that in 1998 I moved to Pennsylvania,  
16 Lancaster, Pennsylvania where I became the principal  
17 at Lafayette Elementary School. I was there through  
18 December of 2007, after which I became the coordinator  
19 for federal programs and school improvement for the  
20 entire district. And then in 2011-2012 I was asked to  
21 be the director of student services. I remained in  
22 that position until July of 2015, which was last  
23 summer.

24 At that point we had some shifting. I was  
25 also named the acting director for elementary

1 education. So beginning this last year I was not only  
2 the people services director, but the acting director  
3 for elementary. So I had 13 reports in my people  
4 services world and I had 12 elementary principals.

5 December 18th we lost our Special Ed  
6 coordinator. I then became the Special Ed coordinator  
7 of gifted and 504 plans. Luckily, we found someone to  
8 fill that position and this past July I'm no longer  
9 the people services director. I'm now the acting  
10 people services director as I've been pointed the  
11 elementary director full-time.

12 I have my bachelors, as I said, from  
13 Susquehanna --

14 Q. Right.

15 A. -- in music. I have my masters degree from  
16 Arizona State. I have my principal's cert from Temple  
17 University. I have my doctorate from Widener  
18 University and I have my superintendents -- I'm sorry  
19 -- I have my superintendent's letter of eligibility  
20 from Temple. I got my principal certification while I  
21 was in Arizona.

22 Q. Thank you.

23 Dr. Abrom, as the overseer of 13 or 14  
24 different directors now would Jack Blackman be one of  
25 your subordinates?

1           A.    Jack was this past year as well as since  
2    2011.  Once we hired a new student services director  
3    Mr. Blackman would report to that person.

4           Q.    Okay.  So enrollment is or was one of the  
5    departments that you oversee?

6           A.    Yeah.  Enrollment, same situation.  Once we  
7    hire someone new, that department would also report to  
8    someone else.  But Marsha Riddick would be my direct  
9    contact.  She's in charge of child accounting.

10          Q.    Have you had any conversations with Dr. Rau  
11    since she's come aboard in terms of her mission?

12          A.    Yes.  Truly her heart's passion is to ensure  
13    that all children graduate ready for either the  
14    workforce, the military or college.  So she wants to  
15    make sure that we are enabling kids to have that  
16    choice.

17          Q.    And to your knowledge or do you have  
18    knowledge in terms of what the general purpose of  
19    public education is?

20          A.    To ensure students receive a high school  
21    diploma.

22          Q.    Okay.  Any challenges specifically to you or  
23    your school district and carrying out that mission?

24          A.    Well, specifically, one of the things we've  
25    been talking about here are ELL students as well as

1     refugee students. I believe we currently have 39  
2     different languages represented across our district.  
3     That's a unique challenge. Our poverty rate for the  
4     district is 87 to 90 percent depending on what  
5     building you're in. So that also brings a certain set  
6     of difficulties that we need to work through.

7             Q.     And what about this subset of refugees that  
8     are ages 17 to 21, any particular challenges with that  
9     group?

10            A.     The fact that they come to us either, one,  
11     not having any credits at all; two, maybe not having  
12     any school experience as well; and then, three, really  
13     just trying to determine as we look at them, you know,  
14     what's the best route for them. You know, as we've  
15     heard today and other days, you know, do we send them  
16     to the Phoenix Academy because they have the best  
17     chance to maintain -- to obtain those credits to  
18     graduate; do we send them to the regular middle  
19     school, where do they fall. Because enrollment falls  
20     to me we also have the same problems with is a student  
21     six and do we put him in first grade or do we put him  
22     in kindergarten or do we put him in second grade.

23                    So we see that gamut across the entire range  
24     from kindergarten through twelfth when they're coming  
25     to us with very limited paperwork.



1 Q. And are we placing them in first or second  
2 grade or ninth or tenth grade based upon their ability  
3 to speak English?

4 A. No.

5 Q. Are we placing them on the basis of where  
6 they come from, their national origin?

7 A. No.

8 Q. How are we placing them?

9 A. We're trying to place them with -- let's go  
10 to the younger grades, so their age appropriate peers.  
11 And that's the best way that we know. Research says  
12 to put them in classes with their age appropriate  
13 peers.

14 When it comes to the 17 through 21 year  
15 olds, it's -- again, it's a transcript review. That  
16 transcript review is done by Mr. Blackman and he'll  
17 make that assignment decision after he reviews all the  
18 documents.

19 Q. And is that because there are very little or  
20 no age appropriate peers for this group?

21 A. Correct.

22 Q. Okay. You've heard a little bit of a  
23 discussion today about the disparity and maturity  
24 levels of students that are between the ages of 17 and  
25 21 and those students that are between the ages of 13

1 and 17, did you not?

2 A. I did hear that. Yes.

3 Q. And do you have, from your experience  
4 working with this School District and those particular  
5 challenges any observations that are relevant to this  
6 proceeding in terms of putting together in a cohort or  
7 otherwise those students who have that disparity in  
8 maturity?

9 A. So I think Mr. Blackman spoke to it well as  
10 being a counselor. You know, kids are in different  
11 developmental stages if you look at Piaget's theory.  
12 So where they are in -- as an eight-year old is very  
13 different than where they are as an eighteen-year old.  
14 So there's that developmental process.

15 The other process he talked about is where  
16 are they in life. Many of our 17 through 21 year  
17 olds, as you've heard, are coming in. They may be the  
18 only breadwinner that's in the family. They may have  
19 a student who is pregnant. They also have arranged  
20 marriages at times. So all of those things play into  
21 the difficulties of them being able to fully  
22 concentrate on school.

23 Q. And so what -- what's the general practice  
24 in terms of greeting a student who is older, between  
25 the ages of 17 and 21 who is a refugee, who doesn't

1 speak the English language? How do we decide what the  
2 best placement for that person is?

3 A. So you want me to kind of like walk through  
4 the enrollment process?

5 Q. Yes.

6 A. Okay.

7 Q. Because -- and, again, from your perspective  
8 on your place in the stratosphere. You don't need to  
9 go through the --

10 A. Well, it's -- I'm just sitting here  
11 thinking. I mean, we enroll over 2,500 kids a year  
12 when you think of kindergarten and K3 and K4 and the  
13 amount of kids that come through our system. So I'm -  
14 - at this level I get involved when some of those  
15 situations come to me.

16 But specifically in this area the student  
17 would be brought through the enrollment center.  
18 That's -- Ms. Riddick is in charge and there's five  
19 clerks there that they would bring the paperwork to.  
20 Once they had all that paperwork in placement, if  
21 we're speaking specifically about a high school  
22 student, whether the student was a refugee student or  
23 not, the transcripts and that information would be  
24 sent to Jack. Mr. Blackman would review that and make  
25 a decision as to would they be assigned to either

1 Phoenix or McCaskey.

2 If the student is also a refugee student  
3 that's where Ms. Hilt would be involved because Ms.  
4 Hilt brings a different area of expertise than Mr.  
5 Blackman brings. So that's kind of the process that  
6 we've set forth.

7 Q. And what's the difference in -- to your  
8 observation of the education and ESL supports, if any,  
9 to these refugee students regardless of their age?  
10 For example, a fifteen-year old being placed at  
11 McCaskey or a seventeen-year old being placed at  
12 Phoenix, what are the differences?

13 A. So my understanding -- again, I'm not in  
14 charge of curriculum at all. I'm in charge of process  
15 and those type of things that would fall really to our  
16 assistant director, assistant superintendent who Amber  
17 reports to.

18 But my understanding is that they're very  
19 similar in the sense of not only the time, the  
20 minutes, but also the processes, the curriculum, all  
21 of those types of things are similar.

22 Q. So the curriculum is the same; is that  
23 correct?

24 A. Correct.

25 Q. But the actual time --

1           A.    Might be slightly different depending on how  
2   it's worked out.  One of the building was on a -- as  
3   we heard a semester based schedule.  The other  
4   building was based on a year-long schedule.

5           Q.    Now is socialization and English language,  
6   are they important -- are they more important to a  
7   particular student coming in than the actual content  
8   -- core curriculum that is taught and offered.

9           A.    Well, again, our goal to graduate students  
10  is how are we going to get them to those credits that  
11  they need to accumulate.  So, yes, learning English is  
12  important.  Yes, socialization is important.  But they  
13  can be socialized in other areas such as whether they  
14  be a part of a team or part of a club or part of an  
15  after school.  They don't get a credit for that.  So  
16  it's important for us that we make sure they're in  
17  classes that they're going to obtain credits.

18                   So for me the primary one is making sure  
19  they're in classes when they can obtain credits.

20           Q.    Are you familiar with -- personally with any  
21  of the plaintiffs in this case?

22           A.    I have never met any of the six students.

23           Q.    What about their resettlement agents?

24           A.    I have met with Elyse Chesson from Lutheran  
25  Refugee Services and I have met with Sheila and I

1 always say her last name wrong --

2 Q. Masterpiecho (ph).

3 A. Masterpiecho as well as Valentina Ross.

4 Q. And what conversations did you have with  
5 these three ladies?

6 A. So I became aware that Ms. Chesson requested  
7 a meeting and the -- in that meeting was MR. Blackman,  
8 Ms. Hilt, myself, Ms. Chesson, Madap (ph) and there  
9 was someone else there and I don't remember their  
10 name. But we met at Reynolds Middle School. You've  
11 heard us talk about that.

12 The meeting started off a little non-  
13 amicable as we worked through that mistake, the  
14 inadvertent e-mail that Mr. Blackman talked about.

15 Q. Okay. That was what drove the first  
16 conversation?

17 A. That's where we kind of started. I think we  
18 had to get that out of the way to kind of clear the  
19 air. Ms. Chesson, though, really spoke about the need  
20 to get the students, all of the students into school  
21 because it impacted their TANF dollars --

22 Q. Okay.

23 A. -- and that was the funding that they needed  
24 access to to ensure that the families would get their  
25 needs met.

1 Q. And that's a family decision. That's not a  
2 School District decision?

3 A. Correct. I'm not involved with that at all.

4 Q. Okay.

5 A. It then moved to the two specific students,  
6 which were Kason (ph) as well as Khadidja.

7 Q. Okay.

8 A. We left that meeting and that was the thing  
9 -- those were some of the things that when Jack and I  
10 went out -- and you heard Jack say we kind of talk  
11 every day. We began to work on those things and we  
12 were able to get them back in school.

13 Q. And you were worried that there was delays  
14 with their immunization records?

15 A. Not until I got at that meeting that day

16 Q. Okay.

17 A. There was another meeting. I know the  
18 letter that Ms. Chesson brought to the meeting was  
19 February 17th. It was soon after that. Ms. Chesson,  
20 Sheila, Valentina myself and Dr. Rau, and that's when  
21 we met and we began to listen to some of their  
22 concerns that extended beyond just what I heard from  
23 that meeting.

24 Q. Okay.

25 A. In that meeting we talked about what are

1 some of the steps that we would take, but the big  
2 thing was Ms. Chesson was fairly -- I don't want to  
3 say confrontational, but just continued to push and  
4 continued to push and Dr. Rau was really new and she  
5 was just trying to learn, you know, what was working  
6 and what was not working. So we made them the promise  
7 that we would get back to them by year's end. And  
8 that's how we ended that meeting.

9 In between that meeting and the meeting  
10 which we held, I think it was July 13th that we've  
11 referenced --

12 Q. Uh-huh.

13 A. -- I met with Dr. Rau and Angel Colon who is  
14 the executive director and we discussed what were some  
15 of those changes and what would they look like. Dr.  
16 Rau shared some of them. Some of them we talked down  
17 changing the pat down, the entrance intake process.  
18 We talked about the orientation process. We talked  
19 about the homework concern. We talked about the  
20 backpack concern, cell phones.

21 So there was a variety of things. And with  
22 working with Mr. Colon we talked about having those  
23 things in place for the following -- this coming  
24 school year. And then we got back together with the  
25 resettlement agency, though, Elyse wasn't there



1 because at the time, July 13th, the agency was no  
2 longer an agency. So we only met with Sheila and  
3 Valentina.

4 Q. Okay.

5 A. Also in that meeting was Amber Hilt to help  
6 address the ESL concerns because, again, those aren't  
7 -- that's not my area of expertise, and Dr. Powell,  
8 our assistant superintendent also joined us for that  
9 meeting.

10 Q. Okay. And was the fact that some of these  
11 students are between the ages of 17 and 21 and should  
12 be treated with a little bit more sensitivity to their  
13 age?

14 A. Yeah. I think that was --

15 Q. And, in fact, that they're not children?

16 A. Uh-huh.

17 Q. Is that yes?

18 A. Yes.

19 Q. Okay.

20 A. Sorry.

21 Q. Other than the TANF dollars, was there  
22 anything else that Ms. Chesson raised as being  
23 significant issues in order to place the children?

24 A. So not necessarily in that first Reynolds  
25 meeting. Again, that was really focused on that and

1 the two students.

2 Q. Right.

3 A. But as it began to move forward I was  
4 contacted again. There was going to be another  
5 meeting specifically to discuss Kason and that meeting  
6 was between Mr. Blackman, Ms. Hilt, Aura Heisey and  
7 Elyse, Kason and his mother. I did not attend that  
8 meeting. But they reported back to me that it was  
9 surprising to them that now there was this bullying  
10 concern.

11 Q. Because they hadn't heard about that before?

12 A. Yeah. I don't know what the heard. I had  
13 not heard about that from the first meeting that we  
14 had to that second time that they contacted me.

15 Q. All right.

16 A. I then got involved and provided some  
17 responses after I asked Mr. Colon to conduct an  
18 investigation. And he spoke to me. He interviewed  
19 nine different teachers in the building, spoke to a  
20 variety of people. I then responded to Ms. Chesson  
21 that based on our investigation the bullying -- and at  
22 the time there were two things: One, that he had his  
23 hair pulled and, two, someone knocked on the bathroom  
24 door while he was in the restroom. Those were the two  
25 things that were discussed at that meeting as it was

1 related to me.

2 So I responded and told them based on that,  
3 we described what bullying is. I mean, it's ongoing.  
4 It's persistent. It's not, you know, one or two type  
5 of things. I sent that letter to Ms. Chesson,  
6 encouraged her to encourage her student to get back to  
7 school. And she ended that last correspondence with  
8 me talking about how he was going to seek counsel at  
9 that point.

10 Q. Counseling?

11 A. No. Counsel as if lawyer counsel, not  
12 counseling.

13 Q. Oh, legal counsel. So was the issue of  
14 transferring to McCaskey also raised?

15 A. Yeah. They -- she expressed that, you know,  
16 he might do better, for example, if he was able to  
17 enroll in McCaskey. We explained that where he was  
18 with his credits at that time, that Phoenix would give  
19 him the best chance to graduate, and that he had the  
20 option if he spent some time at Phoenix to be able to  
21 then at some point, you know, recover enough credits  
22 to move back to McCaskey to get back on track with his  
23 age appropriate peers.

24 Q. So that I'm not misunderstanding your  
25 testimony. The first meeting that you attended in

1 February did not address bullying and did not address  
2 a transfer to McCaskey?

3 A. So that was the meeting with Dr. Rau. The  
4 first meeting that I had with her was over at  
5 Reynolds.

6 Q. Okay.

7 A. So I'm referring to that meeting at  
8 Reynolds.

9 Q. Okay.

10 A. In the meeting at -- with Dr. Rau, no,  
11 bullying was not an issue. Yes, we would like our  
12 students to go to McCaskey was brought up.

13 Q. Okay. So at each one of these meetings was  
14 there a common theme of we would like Kason to go to  
15 McCaskey?

16 A. No names were mentioned at the meeting with  
17 Dr. Rau. It was more just kind of in general that  
18 that one of the feelings or one of the concerns that  
19 both agencies had.

20 Q. So they --

21 A. The April meeting was then with Kason at  
22 Phoenix.

23 Q. So they wanted any refugee that was a member  
24 of their or a client of their resettlement agencies to  
25 be placed in McCaskey --

1 A. McCaskey. They were --

2 Q. -- as opposed to Phoenix.

3 A. They were advocating for that at the time.

4 Q. Okay. And had they done any personal walk  
5 arounds or observations of either school?

6 A. In the meeting back in February when Elyse  
7 handed us that paperwork she had said in that  
8 paperwork that she had attended an orientation. When  
9 we asked Sheila had she ever been in the building she  
10 had said no. Valentina also has a daughter who  
11 attends McCaskey so, yes, she's probably been in the  
12 building under the guise of a parent, but not  
13 necessarily as someone from Church World Services.

14 Q. Okay. And when did -- when was the first  
15 time you heard that Elyse Chesson or any of her  
16 coworkers, whether -- you know, regardless of which  
17 agency they were with, when did they start talking  
18 about the value of an education as opposed to bullying  
19 or TANF dollars or something else?

20 A. Probably in the meeting with Dr. Rau, but it  
21 wasn't really about that. They really just wanted to  
22 list their concerns and Elyse just kept going, this is  
23 a concern, this is a concern, and she wasn't allowing  
24 us to have time to respond which is why we had to end  
25 the meeting and schedule another meeting.

1 Q. Did you hear as a result of any of those  
2 discussions in any of the meetings these students  
3 referred to as SLIFE students?

4 A. No.

5 Q. Did anyone bring up the fact that -- well,  
6 let me just ask you this. Do you know if there's any  
7 federal regulations specifics to the education of a  
8 SLIFE student?

9 A. I don't believe there are.

10 Q. Do you know whether or not there are any  
11 federal or state mandates for language development  
12 instructional strategies?

13 A. Not that I'm aware.

14 Q. DO you know whether or not there's any  
15 federal or state mandates for the time for an L or an  
16 immigrant or a SLIFE student?

17 A. So we know we have the beck, which we've  
18 talked about earlier today and that provides us some  
19 recommendations or guidelines.

20 Q. Okay. Is that it?

21 A. That's what I'm aware of.

22 Q. Okay. Are there any state recommendations  
23 for the education of L's, immigrants or SLIFE  
24 students?

25 A. So we want to make sure that there are

1 certain things that, you know, they have equal, you  
2 know, opportunities --

3 Q. Okay

4 A. -- no matter, you know, where they are. We  
5 want to make sure they have equitable staff like high  
6 quality teaching staff. We want to make sure they  
7 have exposure to core curriculum standards, and we  
8 want to make sure they have the same graduation  
9 requirements.

10 Q. And is that something that the state  
11 requires or they allow it at a local level, like allow  
12 the decisions for those things to be made at the local  
13 level?

14 A. I would say beyond graduation requirements  
15 itself, everything is more allowable at the local  
16 decision level.

17 Q. Okay. Do you know whether or not Phoenix  
18 has been identified by PDE as an alternative school or  
19 a magnet school?

20 A. So I was actually part of that whole  
21 conversation probably three years ago and it was  
22 determined -- we were working with Steve Fisher who  
23 was in charge of student services up at PDE and was  
24 determined that they would be called a magnet school  
25 because they didn't quite fit into, which would be a

1 total separate school. So -- but it still makes the  
2 most sense because they get their own SPP, which we've  
3 talked about today, which is the student performance  
4 profile.

5 Q. And is it -- do you know whether or not,  
6 based on your conversations with those folks if it's  
7 permissible to educate English language learners at  
8 the magnet school?

9 A. It is permissible, but there's certain  
10 things you have to kind of keep in mind. For example,  
11 like we couldn't assign the student there differently  
12 than we would assign other students. We have to treat  
13 all kids the same, whether they be refugee, ELL, so  
14 that's why we just look at transcripts because that's  
15 the cleanest way to make that happen. And, again, we  
16 want to make sure there's equitable opportunities for  
17 the kids when they're assigned there. So --

18 Q. What about the segregation and the cohort?  
19 Is that something PDE cares about?

20 A. Well, yeah. They don't want them to be  
21 segregated completely or segregated for too long.

22 Q. Okay.

23 MS. O'DONNELL: Those are all the  
24 questions I have. Thank you.

25 THE WITNESS: Okay. Thank you.



1 THE COURT: Thank you very much,  
2 Counselor.

3 And, Attorney McInerney, you may cross-  
4 examine the witness.

5 MS. MCINERNEY: Just a few questions.  
6 Thank you.

7 THE COURT: Certainly.

8 THE WITNESS: Good afternoon.

9 CROSS-EXAMINATION

10 BY MS. MCINERNEY:

11 Q. Good afternoon, Dr. Abrom.

12 So you've been in your current position as  
13 director of student services since 2011?

14 A. 2011-2012 year.

15 Q. And you previously testified that Mr.  
16 Blackman made the assignment decisions with regard to  
17 what --

18 A. Correct.

19 Q. -- students go to Phoenix? And you are Mr.  
20 Blackman's direct supervisor?

21 A. Correct.

22 Q. And in that capacity you oversee his  
23 execution of his duties?

24 A. Correct.

25 Q. Okay. So you would be responsible for

1 ensuring that students are promptly enrolled in school  
2 as part of those duties of overseeing Mr. Blackman?

3 A. Both Mr. Blackman and Ms. Riddick. Yes.  
4 They work together.

5 Q. Okay. And were you aware of any problems  
6 with regard to the enrollment of students who were  
7 refugees?

8 A. Not until I was asked to come to that  
9 meeting with Elyse. I was notified by Mr. Blackman  
10 and Ms. Hilt that they wanted to meet.

11 Q. And what month was that?

12 A. Like I said that had to be December.

13 Q. December?

14 A. Was when the -- yeah. I would have to -- I  
15 don't have my calendar, but it was probably December.

16 Q. So December is the first time you became  
17 aware of the --

18 A. Yes.

19 Q. -- this issue?

20 A. Yeah.

21 Q. Had this issue ever been raised before by  
22 anyone with respect to students who were experiencing  
23 delays in being enrolled in school?

24 A. I know that certain students come to  
25 enrollment who don't have all of their paperwork,

1 their immunizations. I've seen students come with  
2 leaving certificates that we then need to examine, are  
3 they a true leaving certificate, is that -- are we  
4 going to qualify that as a diploma or not. So there's  
5 been different things that can cause a delay.

6 In this case, this is the first time I had  
7 heard refugee students had been delayed.

8 Q. Were you aware of a state complaint that was  
9 filed in 2013 regarding a nineteen-year old Napoli  
10 student who was denied enrollment in the School  
11 District of Lancaster beginning in January of 2013?

12 A. Was the name -- I'm going to say it wrong.

13 Q. Nerhanin --

14 A. Butahoki (ph).

15 Q. -- Butahoki.

16 A. Yes. Okay. Thank you. The complaint was  
17 filed through, I want to say Penn Law Center, if I  
18 remember correctly. And the issue was he had a school  
19 leaving certificate.

20 Q. And in that case didn't the district have to  
21 enroll that student and he did end up attending  
22 Phoenix Academy, isn't that right?

23 A. In the end, yes, that was the decision that  
24 we agreed upon.

25 Q. And you stated during your deposition that

1 you met in February concerning the enrollment delay  
2 regarding Khadidja Issa?

3 A. No. I was saying I think I became aware of  
4 that --

5 Q. Oh, December.

6 A. -- at the meeting in December.

7 Q. Okay.

8 A. The meeting in February was with Elyse,  
9 Sheila, Valentina and Dr. Rau. And I know it was  
10 after February 17th because I know that was the letter  
11 that Elyse presented to us and that was when she had  
12 gone through the orientation process at Phoenix. So  
13 it has to be sometime after February 17th.

14 Q. Okay. And that particular meeting concerned  
15 both the enrollment of students and the assignment to  
16 Phoenix, correct?

17 A. There was a variety of things in that  
18 letter.

19 Q. When you were attending that meeting at that  
20 point were you aware that Kason had been enrolled in  
21 November, on November the 2nd, 2015, but he didn't  
22 start attending school until January 20th, 2016?

23 A. So, again, I became aware of that in  
24 December and my instructions were ensuring that we can  
25 get him enrolled as soon as possible.

1 Q. And with respect to Khadidja she had an  
2 enrollment date of November the 18th, but she wasn't  
3 placed into a classroom until February 17th, after  
4 that meeting?

5 A. Right. And, again, the first time I became  
6 aware of it was in December.

7 Q. And were you aware that Sui Hnem had  
8 experienced a similar delay. She was enrolled on  
9 November 18th. She did not start school until  
10 February the 26th, 2016? Were you aware of that at  
11 that time?

12 A. I was not aware of any of the four other  
13 students. In fact, it was a surprise to me that when  
14 we were served the lawsuit that there were four other  
15 students named.

16 Q. And were you surprised that Van Li also  
17 experienced a delay of five weeks?

18 A. Again, I didn't know those things.

19 Q. So what in response did you do in terms of  
20 investigating this issue?

21 A. So part of what we're doing, we started to  
22 talk about what were the changes we were going to make  
23 at Phoenix. I shared some of those. And then Mr.  
24 Blackman and I, as he said, we spoke. We started  
25 talking about developing a new forum and a new process

1 in the enrollment office.

2 Part of this transition has caused me to  
3 kind of step back a little bit in the sense that I'm  
4 now transitioning to a new job and I'm trying to  
5 ensure that the new director of student services can  
6 make some of those decisions. Child accounting,  
7 Marsha Riddick, actually now reports to our new chief  
8 financial officer and that's Matt Perzuarra (ph). So  
9 those are some of the things that I will inform them  
10 of. But they have to work those things out --

11 Q. So --

12 A. -- as I'm no longer their direct supervisor.

13 Q. So you're no longer in this position so you  
14 won't be making any changes at this point? That would  
15 be --

16 A. I'll be supporting whatever changes we  
17 decide to make, but I can't direct those changes. So  
18 some of the last things that Mr. Blackman talked about  
19 is developing that form, trying to move those kids  
20 through faster. We even talked about moving Mr.  
21 Blackman's office directly down to the enrollment  
22 office, trying to speed up that process.

23 Q. And that's essentially with regard to  
24 communication as he testified, not with regard to  
25 changes in written policy; is that correct?

1           A.    Communication is one aspect.  What are you  
2 referring to when you say written policy?

3           Q.    Whether there would be any policies that  
4 would go into effect regarding this issue?  He did not  
5 testify about anything in that regard.

6           A.    I've heard policy used a lot and I'm --  
7 policy can only be written by the board.  We, as  
8 directors, can implement practices.  So, yes, we'll be  
9 implementing different practices, but I can't  
10 institute a policy without having that go through  
11 board approval.

12                   MS. MCINERNEY:  That's all the  
13 questions I have at this time.

14                   THE COURT:  Thank you very much,  
15 Counselor.

16                   Attorney O'Donnell, do you have any  
17 redirect?

18                   MS. O'DONNELL:  Nothing further.

19                   THE COURT:  Very well.

20                   And, sir, were there any efforts to try  
21 to resolve this matter with the refugee organizations  
22 or with the attorneys once the lawsuit was filed or  
23 did it all stop?

24                   THE WITNESS:  So we received -- I'll  
25 address the first part first about the agencies.  It

1 was truly my understanding when we left that meeting  
2 in February that we made a promise -- I was there with  
3 Dr. Rau myself. We will look into these things. We  
4 will institute changes, and at the end of the year  
5 we'll get back to you and let you know what these  
6 changes are.

7 As you heard Dr. Rau say it was  
8 disappointing that we weren't afforded that  
9 opportunity to allow us the time to really look into  
10 it, do some discovery ourselves and then, here are the  
11 suggested changes.

12 But Mr. Colon has been working with us  
13 the whole time, was very open to these changes. We  
14 have a great relationship with the Phoenix Center and  
15 they've always been willing to work on that  
16 relationship with us.

17 Now the second piece when you mentioned  
18 the lawyers, upon receipt of the letter, the -- let me  
19 back up. In March we received an -- I'm going to use  
20 the term an OOR or an OCR complaint. Okay. We then  
21 received a letter on April 26th. That was the letter  
22 that was addressed to Ms. Heisey, Dr. Rau and myself.  
23 At that point inferring where we were heading and in  
24 light of the fact that Ms. Chesson had sent me an e-  
25 mail in April saying, my client is now seeking



1 counsel, meaning legal counsel, once that letter came  
2 to me on April 26th I turned that over to our general  
3 solicitor at the time and he was the person who then  
4 becomes involved. I'm not a lawyer, don't want to be  
5 a lawyer. I've learned a lot about that the last few  
6 days here. But then it becomes lawyer to lawyer  
7 conversation.

8 THE COURT: Yes. And you can  
9 understand why the employees or the case managers of  
10 these refugee organizations are very sensitive to any  
11 signs or indications of discrimination against these  
12 refugees that we are giving asylum to.

13 And so when a refugee caseworker sees  
14 that refugees are not being enrolled in accordance  
15 with Pennsylvania law and in fact there are  
16 significant delays, and then a category of them, those  
17 17 to 21, are being sent to what could possibly be  
18 deemed an alternative school or a magnet school, it's  
19 not even -- it's an academy run by a private  
20 organization that seems to specialize in children that  
21 have challenges, but those challenges generally seem  
22 to be behavioral challenges, emotional challenges, a  
23 lot of IEP issues, things along those sort.

24 THE WITNESS: Yeah, I --

25 THE COURT: And the only reason I say

1 that -- I could be wrong about that, that's --

2 THE WITNESS: Yeah, I disagree --

3 THE COURT: -- what I'm getting to --

4 THE WITNESS: -- with a lot of that,  
5 but that's okay.

6 THE COURT: -- the reason I get that  
7 impression is why would the entrance procedures be so  
8 much different at Phoenix than they are at McCaskey if  
9 the child that you're dealing with you weren't more  
10 concerned that they were going to be a behavioral  
11 problem?

12 THE WITNESS: Well, again, my  
13 perspective being up here --

14 THE COURT: Right.

15 THE WITNESS: -- I learned a lot, I  
16 need to be down a little more in some of the decision  
17 making in those issues; that's my mistake and my  
18 lesson. But to assume that Phoenix is not a good  
19 place for kids when it exists to help kids get  
20 credits, when the goal is to ensure that that student  
21 gets a high school diploma, the key to that is and  
22 you've heard us talk about, more money over their  
23 lifetime: able to do better with healthcare, able to  
24 access college. There's so many things that are  
25 opened up to students once you get that high school

1 diploma.

2 My concern is if you put that 20-year-  
3 old -- I know you've heard from others and different  
4 theories and, you know, researches -- that 20-year-  
5 old, something is going to happen with their life or  
6 they're not going to be able to progress to  
7 graduation. So then you send that student out in the  
8 world, they have to go, what, pursue a GED, which is  
9 now harder than it is to get the high school diploma.  
10 I wouldn't characterize Phoenix as a school for  
11 maladjusted or behavior problems, that's not what they  
12 exist to do. They exist to help students who need to  
13 accumulate credits.

14 THE COURT: Well, what type of student  
15 typically would have fallen so far behind in credits  
16 that they have to go to a school has accelerated  
17 learning to gain credits but these children with  
18 challenges?

19 THE WITNESS: Students with those life  
20 experiences, but that doesn't mean they're discipline  
21 problems. I mean, there's a difference between  
22 Phoenix and Buehrle. Buehrle, which is also run by  
23 Camelot, which we haven't discussed a lot, is an AEDY  
24 program, so Alternative Education for Disruptive  
25 Youth. Students are placed there because they brought

1 a weapon, drugs, second fight, terroristic threats,  
2 all of those type of things. Those students are  
3 placed there because of a discipline issue. We do not  
4 place students at Phoenix because they're a discipline  
5 issue and there's a reason there's the distinction  
6 between the two.

7 THE COURT: Now, the plaintiffs have  
8 introduced evidence to suggest that the opportunities  
9 available at McCaskey are significantly greater than  
10 the opportunities available at Phoenix, or at least  
11 even if they're available at Phoenix, they're really  
12 unattainable because of the difficulties involved in  
13 taking advantage of them.

14 And I think the response from the  
15 defense has been, yes, but they don't have the time to  
16 take advantage of all those opportunities because we  
17 have to get them these accelerated credits to get them  
18 this diploma so that they can move on with their life.  
19 Is that a fair way this is all developing?

20 THE WITNESS: I agree. I think it's a  
21 difficult choice, but again we exist to ensure that  
22 students leave us and leave us with a diploma.

23 THE COURT: Now, wouldn't your -- not  
24 to interrupt you, but wouldn't your goal in achieving  
25 that be a lot easier if you weren't so concerned that

1 they graduate when they're 17 or 18 with their age  
2 peers and were willing to use the state law maximum of  
3 21?

4 THE WITNESS: Well, the state law  
5 maximum of 21 was really put into place originally for  
6 students that had special needs. It was, you know,  
7 for students who had a modified curriculum. So some  
8 of these students, for example, it's not that they  
9 don't need that time, the question is will a 20-year-  
10 old and a 21-year-old want to go to high school every  
11 day when they're working, they're taking care of  
12 babies, and they're in a class with a 13-or-14-year-  
13 old. It's, one, it can be viewed as just not  
14 appropriate, but, two, I mean, all of us have kids  
15 and, you know, we try to put ourselves in the position  
16 and say, if I had a 21-year-old, would I want that 21-  
17 year-old -- would they go to school every day with a  
18 13-year-old? It's too much of an age disparity.

19 THE COURT: Okay, thank you very much.  
20 Attorney O'Donnell, do you have any  
21 questions in light of the Court's questions?

22 MS. O'DONNELL: Just one qualification.

23 REDIRECT EXAMINATION

24 BY MS. O'DONNELL:

25 Q. Is it so much an age disparity as maturity

1     disparity?

2             A.     Yeah, as we talked earlier about the social,  
3     emotional, the development stages where kids are,  
4     they're just in very, very different places.

5             Q.     A 21-year-old is old enough to purchase  
6     alcohol?

7             A.     Purchase alcohol, drive a car --

8             Q.     Eighteen-year-olds are old enough to die for  
9     their country and vote?

10            A.     Well, and can I add something to what we  
11    kind of discussed? I can't force an 18-year-old to  
12    come to school.

13            Q.     Because of the compulsory and --

14            A.     Correct.

15            Q.     -- mandatory --

16            A.     They're their own -- they have their own  
17    FERPA rights at that point. So you can put them  
18    there --

19            Q.     What's a FERPA right?

20            A.     They own their own rights to their own  
21    records. So under -- from 17 down, you have to get  
22    parent permission; from 18 and above, they own their  
23    own rights. So they can even --

24            Q.     You don't send the grades to Mom and Dad?

25            A.     Correct. And believe me, at college I get

1 the bill, but not the grades. So you asked earlier  
2 about an unintended consequence: my concern would be  
3 that you have more kids that wind up dropping out, not  
4 leaving with their diploma, because that's what we've  
5 seen.

6 THE COURT: Thank you very much, sir.  
7 Attorney McInerney, do you have any  
8 questions in light of the Court's questions?

9 MS. MCINERNEY: No, I don't, Your  
10 Honor.

11 THE COURT: Sir, thank you very much.

12 THE WITNESS: Thank you.

13 THE COURT: You may step down.

14 And, Attorney O'Donnell, do you have  
15 any further evidence to present at this time?

16 MS. O'DONNELL: We have no further,  
17 we're going to rest. Thank you.

18 THE COURT: Thank you, Counselor.

19 MR. WALCZAK: Your Honor, we have two  
20 exhibits we would move into evidence.

21 THE COURT: Certainly, sir.

22 MR. WALCZAK: One is actually an  
23 oversight from before. It's Exhibit 1, which is just  
24 a 30(b)(6) notice which sets out the topics for the  
25 witnesses. It's kind of a housekeeping, there

1 shouldn't be an objection to the exhibit.

2 THE COURT: Attorney O'Donnell, is  
3 there any objection?

4 MS. O'DONNELL: No.

5 THE COURT: Very well.

6 MR. WALCZAK: And the other would be  
7 94, which is the Phoenix and McCaskey school profiles  
8 that we viewed with Ms. Heisey.

9 THE COURT: And I know, Attorney  
10 O'Donnell, you raised an issue that those were  
11 downloaded off of the Internet, I guess yesterday?

12 MR. WALCZAK: Just part of it. 2013  
13 and '14 was actually identified as an exhibit, 87. So  
14 it's -- what was added to 94 was data that was  
15 downloaded actually yesterday.

16 THE COURT: Attorney O'Donnell?

17 MS. O'DONNELL: My concern with this  
18 exhibit is that it reflects information, as the  
19 witness testified, as Ms. Heisey testified, that's  
20 from the year prior to what's being reflected in these  
21 reports and I'm not sure if the Court took notice of  
22 that, and apparently was being cross-examined on  
23 information that's not current.

24 So to the extent that it's useful to  
25 you, I have no objection, I just don't think it's



1 useful.

2 THE COURT: It does show in general  
3 terms disparities between the two institutions  
4 certainly.

5 MS. O'DONNELL: Based on these numbers  
6 that don't appear to be correct. But again, if you  
7 find that helpful, that's really up to you as the fact  
8 finder.

9 THE COURT: All right.

10 MS. O'DONNELL: Okay.

11 THE COURT: Then I will without  
12 objection admit both of these exhibits, and that one  
13 was 94, into evidence.

14 (Plaintiffs' Exhibit Nos. 1 and 94 received)

15 THE COURT: So what was the number of  
16 the first, the 30(b)(6) notice, does that have a  
17 number?

18 MR. WALCZAK: 1.

19 THE COURT: That is Plaintiffs' Exhibit  
20 1. Thank you very much.

21 And I understand the plaintiffs do have  
22 a witness in rebuttal.

23 MS. MCINERNEY: Yes, we call Marianne  
24 Ortiz to the stand.

25 THE CLERK: Please remain standing and

1 raise your right hand.

2 MARIANNE ORTIZ, WITNESS, SWORN

3 THE COURT: Thank you very much, ma'am.  
4 Ma'am, please be seated. And, ma'am, would you please  
5 state your full name, spelling your last name for the  
6 record?

7 THE WITNESS: My name is Marianne  
8 Ortiz, last name O-R-T-I-Z.

9 THE COURT: Thank you very much.  
10 Counselor, you may proceed.

11 MS. MCINERNEY: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MS. MCINERNEY:

14 Q. Ms. Ortiz, where do you live?

15 A. I live in Lancaster.

16 Q. And were you subpoenaed to be here today and  
17 to testify?

18 A. Yes, I was.

19 Q. And where do you currently work?

20 A. I'm currently working at the York City  
21 School District.

22 Q. And what is your job title there?

23 A. I am an ESL first grade teacher.

24 Q. And when did you start working in that  
25 position?

1           A.    Last week was the first week -- actually --  
2    yeah, last week was the first week of professional  
3    development.

4           Q.    And prior to your current position, where  
5    did you work?

6           A.    I worked at Phoenix Academy.

7           Q.    And how long were you employed at Phoenix  
8    Academy?

9           A.    I was there for six years.

10          Q.    And who was your employer during those six  
11    years?

12          A.    Phoenix Academy.

13          Q.    What is your educational background?

14          A.    I got my Bachelor's from Millersville  
15    University, elementary education, with an ESL  
16    certification.

17          Q.    So you have a Bachelor's in elementary  
18    education; do you have a Bachelor's in secondary  
19    education?

20          A.    I do not.

21          Q.    Do you have any certification or degree in  
22    secondary education?

23          A.    I do not.

24          Q.    And when you worked at Phoenix, were they  
25    aware of this fact?

1 A. Yes, they were.

2 Q. And do you have any specialized  
3 certifications?

4 A. My ESL certification.

5 Q. How long have you had that?

6 A. I've had that since 2009.

7 Q. And during the time that you worked at  
8 Phoenix, did Camelot manage the school on a day-to-day  
9 basis?

10 A. Yes.

11 Q. And did you have any prior teaching  
12 experience before coming to Phoenix Academy?

13 A. No, I did not. It was a part-time position  
14 at an elementary school as a teacher's aide/ESL  
15 assistant.

16 Q. And so was working at Phoenix as an ESL  
17 teacher your first full-time position?

18 A. Yes, it was.

19 Q. Now, at Phoenix Academy are there any non-  
20 refugee immigrant students who have limited or  
21 interrupted schooling --

22 A. Yes.

23 Q. -- that you're aware of?

24 A. Yes.

25 Q. And what countries would they be from?

1           A.    I believe we had one from Ethiopia, we've  
2 had children from Dominican Republic and Haitian  
3 children.

4           Q.    And those are students who would be at the  
5 entering level of English proficiency?

6           A.    Yes.

7           Q.    And is the ESL program at Phoenix the same  
8 as the ESL program at McCaskey?

9           A.    I don't feel it as the same, that's just my  
10 opinion. I feel that the international school is a  
11 better placement for the entering students.

12          Q.    In what ways are the ESL programs at  
13 McCaskey and at Phoenix different?

14          A.    My understanding of the international school  
15 is that, first of all, they don't have an accelerated  
16 program. Phoenix has an accelerated program --

17          Q.    And McCaskey is not?

18          A.    My understanding, no, it's not. As well as  
19 I was always under the impression that at the  
20 international school the entering students were in  
21 sheltered classes, as opposed to Phoenix they are not  
22 in sheltered-content classes. I also feel that I  
23 always thought that the teachers at the international  
24 school were certified in their content area, as well  
25 as they all had ESL certifications, and at Phoenix

1 there are just a few teachers who have ESL  
2 certifications.

3 Q. And do you know anything about the English  
4 proficiency level of the students in the international  
5 school at McCaskey? Do you know what level they are,  
6 whether they're entering or emergent or developing?

7 A. I'm not quite sure of the levels. I was  
8 always -- I just thought they were all entering and  
9 possibly emerging students, but I'm not 100-percent  
10 sure.

11 Q. Do you have any information about what their  
12 day is like at McCaskey in terms of whether those --  
13 the entering-level students stay together in that  
14 model?

15 A. I always thought it was a little small --  
16 like considered a small learning community and that  
17 they did stay together, which made them feel more  
18 comfortable, that's what I understood.

19 Q. Now, at Phoenix are the students grouped in  
20 -- as entering-level students in their content  
21 classes? Are they only entering students or is it a  
22 range of English -- of --

23 A. No, it's a variety. There are various  
24 levels in their content classes and they're in there  
25 with students who are native speakers.

1 Q. That's in their content classes?

2 A. Yes.

3 Q. And what about in their ESL classes?

4 A. They are pretty much -- as far as what I did  
5 was I would have the entering and emerging students.

6 Q. So you had two levels --

7 A. Yes, I did.

8 Q. -- of students --

9 A. Yes.

10 Q. -- of English language learners at Phoenix.

11 And how much ESL instruction is  
12 provided at Phoenix?

13 A. Well, direct instruction, that would -- I  
14 guess that came from me, obviously; that was basically  
15 80 minutes.

16 Q. Okay. And are there other differences with  
17 respect to staffing or coordination or services  
18 between the ESL program at McCaskey for entering-level  
19 students and the ESL program at Phoenix?

20 A. I think as far as the staffing, I believe at  
21 the international school they have a para-educator on  
22 a regular basis, whereas at Phoenix they would only  
23 have the para-educator once a week.

24 Q. And is there any -- are there any  
25 differences with regard to the coordination of

1 services?

2 A. Well, we don't have a coordinator at  
3 Phoenix.

4 Q. Aren't you the ESL coordinator at Phoenix?

5 A. No. I'm the building contact person. I  
6 simply refer to myself as the ESL teacher, I was not  
7 the coordinator.

8 Q. So you didn't have any supervisory functions  
9 over --

10 A. No.

11 Q. -- the other teachers?

12 A. No, I did not, no.

13 Q. And you weren't responsible in any way for  
14 programming at Phoenix --

15 A. I --

16 Q. -- you were just a teacher?

17 A. I always saw myself as just a teacher. The  
18 School District of Lancaster has building contacts, so  
19 I was the building contact.

20 Q. And what did that mean?

21 A. That pretty much meant that if Amber Hilt  
22 wanted something, if she wanted PINS (ph) report to be  
23 done, that would come to me and it would not go to Ms.  
24 Weathers. I was responsible for doing that, that's  
25 just an example. So she wouldn't send both of us or,



1 if you're counting Kelleher, she would not send  
2 information to all three of us, it would come to me.

3 Q. Okay. And are there any other differences  
4 between McCaskey and Phoenix at schools that would  
5 impact immigrant entering-level students?

6 A. Well, at international school it's less  
7 restrictive because they don't have the pat-down.

8 Q. Okay. Are there any differences in teaching  
9 staff?

10 A. As far as the teaching staff, as I stated, I  
11 believe at the international school all those teachers  
12 are certified in ESL as well as their content area.

13 Q. Are there any other qualifications that they  
14 would have that wouldn't be -- for example, would you  
15 be able to teach at McCaskey?

16 A. No, I would not.

17 Q. And why is that?

18 A. Because I am not -- I do not have a degree  
19 in high school communication arts.

20 Q. And do all the teachers at McCaskey have --  
21 are they certified in secondary education?

22 A. I believe they would have to be, yes, or  
23 they would not be able to be teaching there.

24 Q. Are there any other differences between  
25 McCaskey and Phoenix that would impact this particular

1 group of students with regard to resources or  
2 technology?

3 A. Well, as far as resources, at international  
4 school they would definitely have more resources.  
5 They have laptop carts, which is a lot of laptops on a  
6 cart which can be taken from classroom to classroom,  
7 and at Phoenix Academy they do not have that.

8 Q. And are there small learning communities at  
9 Phoenix?

10 A. No.

11 Q. But there are at McCaskey?

12 A. My understanding, yes.

13 Q. At this past year was there any co-teaching  
14 at Phoenix?

15 A. Not that I -- not that I did, no.

16 Q. You mentioned at the international school is  
17 a sheltered instruction; is that correct?

18 A. That's my understanding, yes.

19 Q. And what would the Phoenix ESL program be if  
20 the students are in with a range of students,  
21 including native speakers, in content classes.

22 A. Well, I do direct instruction.

23 Q. Okay, but what --

24 A. And --

25 Q. -- about -- are they also -- are their

1 content classes sheltered at Phoenix?

2 A. No.

3 Q. Okay. So why don't we talk about your  
4 particular responsibilities?

5 A. Okay.

6 Q. How many ESL classes did you teach at  
7 Phoenix?

8 A. I did two high school classes in the  
9 morning --

10 Q. And what level of English proficiency?

11 A. Entering -- they were entering and emerging  
12 classes.

13 Q. And they were grouped together, both  
14 entering --

15 A. Yes.

16 Q. -- and emergent together --

17 A. Yes.

18 Q. -- in the same class? Okay.

19 A. And my third period consisted of resource  
20 for middle school, but I also did direct instruction  
21 because we were trying to make sure that the middle  
22 school kids were serviced as well, and then sixth  
23 period was a resource.

24 Q. Okay. Can you explain what a resource  
25 period is?

1           A.    Yes.  A resource period for the sixth  
2 period, that was used with -- when there were ESL  
3 students who needed assistance in their classes.  For  
4 instance, if somebody was struggling in science, they  
5 were allowed -- if they had science that period, they  
6 could come to my class and I could try and help them  
7 understand what they had to do.

8           Q.    And so you had one period for high school of  
9 that -- of the resource period, correct?

10          A.    That's correct.

11          Q.    Okay.  And during that period class, did you  
12 coordinate with the content teachers so that you were  
13 teaching them the curriculum -- you know, coordinating  
14 to teach the curriculum of that particular class, or  
15 would they just come to you?

16          A.    They would just come to me, because they  
17 were -- at times I might have a couple students who  
18 needed help in science and maybe I had other students  
19 that might need help in social studies, so they would  
20 just come to me.  It was pretty much just like an  
21 open-door policy for sixth period resource.

22          Q.    Was there any formalized, you know, sort of  
23 protocol with the content teachers so that you would  
24 know what they were teaching that day, was there  
25 anything like that?

1 A. No, no.

2 Q. Okay. And about approximately how many  
3 students would come to you in your high school  
4 resource period?

5 A. It really varied on the semester. The first  
6 semester -- I'm referring to the year that just  
7 finished -- probably sixth period, sometimes seven to  
8 eight students, but then the second semester I  
9 probably would have like one or two. And it really  
10 varied on the day as well.

11 Q. And how would you know how many students you  
12 would have or how would you have those students -- how  
13 would those students be identified to you that would  
14 come to you?

15 A. They would just come. I mean, I didn't have  
16 a sign-in sheet, they would just come.

17 Q. Was there anyone that you contacted to let  
18 them know that you were available?

19 A. Oh, that would be discussed with the team  
20 leader. The team leader would know what period I was  
21 available for resource.

22 Q. And would this be called pull-out, what  
23 you're describing?

24 A. I guess it can be seen as pull-out, yes.

25 Q. And did you provide any push-in?

1 A. I did not, no.

2 Q. Okay.

3 A. I had -- for the first marking period, I  
4 think I was pushing in for math, and then that  
5 switched to my third-period resource and then I was  
6 also teaching. So it really depends on what semester  
7 we are referring to.

8 Q. So you had two periods where you provide  
9 direct ESL instruction and then you had one period  
10 where you were available if students wanted to come to  
11 you?

12 A. Yes, that's correct.

13 Q. Okay. And were there other ESL teachers at  
14 Phoenix?

15 A. Yes.

16 Q. And who were they?

17 A. Ms. Weathers is an ESL teacher and Mr.  
18 Kelleher is also an ESL teacher.

19 Q. Do you know when they were certified?

20 A. I think it was 2013, I think.

21 Q. Both of them?

22 A. I believe -- yes, because I believe they  
23 took classes together.

24 Q. So prior to that you were the only ESL --

25 A. Yes.

1 Q. -- certified person? Okay.

2 And what were their responsibilities?

3 What did Ms. Weathers do?

4 A. Ms. Weathers was -- pretty much she had some  
5 of her own classes that she was teaching and she would  
6 also push into various classes.

7 Q. And what class did she teach?

8 A. She did develop -- primarily she was able to  
9 teach the developing students.

10 Q. When you say developing students --

11 A. That's the third --

12 Q. -- what is that in terms --

13 A. -- level --

14 Q. -- of the levels?

15 A. That would be the third level of students.

16 Q. So that's Level 3?

17 A. Yes.

18 Q. Okay. And did she teach a content course?

19 A. Well, it's -- from what I understand here  
20 today, it's communication arts.

21 Q. Okay. And that would include -- that would  
22 be Level 3 or all different levels?

23 A. No, it was Level 3 one of her periods.

24 Q. And did she also -- did she do any push-in  
25 or pull-out?

1 A. She did push-in.

2 Q. And do you know when she provided that?

3 A. I believe it was her first period, as well  
4 as her fifth period, that she did push-in.

5 Q. And for which students did she provide that,  
6 any level of English language learner?

7 A. Yes.

8 Q. So her first period would have been a period  
9 where you were teaching ESL instruction --

10 A. Yes.

11 Q. -- that you were providing that?

12 A. That's correct.

13 Q. Okay. And how did that work, how did the  
14 push-in work? Did students approach her; was that  
15 formalized?

16 A. Well, it was something that if we would find  
17 out who needed help, there were times that teachers  
18 would speak to me or Ms. Weathers, and then we would  
19 pretty much determine who needed the most help and  
20 that's how Ms. Weathers would go in. For instance,  
21 she was helping out in the math class because there  
22 was a student who wanted to graduate, was going to be  
23 graduating, but he was struggling in math class. So  
24 Ms. Weathers -- that was towards the end, that pretty  
25 much was probably the second semester -- she was



1 helping him on a regular basis.

2 Q. Okay. So she had the two periods as well as  
3 she taught communication arts?

4 A. Yes.

5 Q. Okay. And so with regard to Ms. Weathers,  
6 do you know how many students she provided push-in  
7 for; do you know which classes she covered?

8 A. No, I'm really not sure.

9 Q. And what about Mr. Kelleher?

10 A. Mr. Kelleher was teaching social studies.

11 Q. Did he provide any direct ESL instruction to  
12 students?

13 A. No.

14 Q. Okay. And in his class, was that a range of  
15 students in his class in terms of their level, their  
16 English proficiency level in social studies class?

17 A. Yes, that's my understanding.

18 Q. Okay. And how many English language  
19 learners are at Phoenix this past school year?

20 A. Pretty much it varied from 90 to 101.

21 Q. Okay. And when you talk about a caseload  
22 for English language learners, what was the caseload  
23 ratio of teachers to students at Phoenix?

24 A. I always saw it as 50-50, Ms. Weathers and  
25 I.

1 Q. So 1 to 50?

2 A. Yes --

3 Q. Okay.

4 A. -- yes.

5 Q. And what about the skills prep class, did  
6 you provide services in that skills prep class --

7 A. No.

8 Q. -- at Phoenix?

9 A. I'm not familiar with skills prep.

10 Q. Do you know what it is?

11 A. No.

12 Q. Do you know if it's --

13 A. I think it has to do with math and CA  
14 classes to try and help the students, but I've never  
15 seen the program, so no.

16 Q. Is that an ESL class?

17 A. Not that I know, no.

18 Q. Is that computer-based?

19 A. I believe so, yes. It is held in the  
20 computer lab, so I would have to say yes.

21 Q. Several students have testified through this  
22 hearing that they were sitting in class with native  
23 speakers, they didn't understand anything that was  
24 going on and they were not receiving accommodations.  
25 Would that surprise you?

1           A.    As far as the accommodations, teachers were  
2 supposed to be doing accommodations. So it really  
3 varies on what type of accommodations we're  
4 discussing. Like exactly what are you referring to as  
5 far as accommodations?

6           Q.    To ensure that the English language  
7 learners, the entering-level students in particular,  
8 were able to access the curriculum and the content?

9           A.    I think it would be difficult at times for  
10 the teachers to remember best ESL practices because  
11 they weren't certified in ESL. So I guess it wouldn't  
12 surprise me.

13          Q.    And do you think it was at all difficult for  
14 the teachers to the accelerated program to make  
15 accommodations for entering-level English language  
16 learners?

17          A.    I think it was difficult for them to  
18 actually remember exactly, you know, an accommodation  
19 isn't speaking louder; that's not an accommodation,  
20 just slow it down. I think there were certain things  
21 that possibly some teachers that aren't familiar with  
22 ESL would forget. There are things that I just do  
23 naturally, I don't even realize that I'm doing them;  
24 it just comes naturally from experience. So I think  
25 it would be difficult for some teachers, yes.

1 Q. Do you have any opinion about providing this  
2 -- these accommodations and providing enough support  
3 for students who are entering-level limited -- who  
4 have limited schooling, these entering-level students  
5 in content classes?

6 A. Do I have an opinion on that?

7 Q. Yes.

8 A. It's difficult. It's difficult to work with  
9 students who have limited formal schooling, it is a  
10 challenge.

11 Q. And do you think it's more difficult in an  
12 accelerated model --

13 A. Yes.

14 Q. -- to provide that?

15 A. Yes.

16 Q. And why is that?

17 A. I think just because it seems to -- I don't  
18 know, possibly you think accelerated, you think, oh,  
19 my gosh, this is going faster, for them you would want  
20 them to be in an extended program and things would  
21 have to be slowed down. That's how I view it. So,  
22 yes, it is difficult.

23 Q. What do you think are the particular needs  
24 of students who are entering-level, limited-schooling  
25 English language learners that we've been talking

1 about here in this court?

2 A. I think they need things. I think they need  
3 more assistance, more time to learn things, possibly  
4 have not just one teacher would be wonderful. There  
5 could be an aide in the classroom as well, and not to  
6 be in with various levels. I think it's so much --  
7 their anxiety level is lower when they're amongst  
8 students that they feel comfortable with.

9 For example, Ms. Heisey spoke earlier  
10 about Anyemu. Anyemu had attended summer school, I  
11 believe the refugee program, I believe it was twice,  
12 but he really did not attend the after-school program;  
13 he had the opportunity, but he did not attend the  
14 after-school program. And it just makes me wonder,  
15 did he not attend the after-school program because he  
16 realized it wasn't just for refugee students? Now,  
17 that's just me wondering. I'm not sure why he didn't  
18 attend the after-school program, but he did always  
19 come to the refugee program. So is it because he felt  
20 more comfortable that he knew it was a refugee program  
21 and he felt that he was like the peers in the refugee  
22 program? I'm not sure, that's just something I  
23 wondered.

24 Q. With respect to ESL instruction, do you  
25 believe that these entering-level students who have

1 limited or interrupted schooling need more support,  
2 need more ESL instruction than 80 minutes?

3 A. Oh, my gosh, yes. Yes, definitely.

4 Q. And why is that?

5 A. Because if they're limited even in their own  
6 language, if they've had interrupted schooling in  
7 their own country, then they haven't developed a  
8 strong foundation in their own language. So it's  
9 going to be that much harder for them to try and  
10 develop a foundation in the English language.

11 Q. And while you were at Phoenix over the six-  
12 year period, did you provide accommodations during  
13 testing of English language learners in their subject  
14 or content classes?

15 A. Only if the teacher would ask if they could  
16 send a student down, but it wasn't always feasible for  
17 me because I did teach classes as well.

18 Q. And were there any accommodation -- any  
19 translation with respect to standardized tests that  
20 you were aware of?

21 A. Yes.

22 Q. And what languages would those be?

23 A. Definitely Spanish and Nepali, and I believe  
24 at one time there was another one, but I'm not quite  
25 sure of what it was.

1 Q. So it would only be limited to those  
2 languages.

3 A. Yes.

4 Q. And --

5 A. That have occurred, yes.

6 Q. And were interpretation and translation  
7 services provided to English language learners at  
8 Phoenix?

9 A. If we have to call the language line, yes.  
10 I've only used the language time -- probably in the  
11 six years I was there, I probably only used it three  
12 times. I made sure that I would call Churchwill (ph)  
13 services when I had the business card if I felt that  
14 they needed translation. And sometimes I used their  
15 peers. And often enough, I did use Google translator.

16 Q. And how often did you use Google Translate?

17 A. I would say I would use it probably every  
18 day. There were times that I wanted to -- for  
19 Khadidja, for example. If I had to communicate with  
20 Khadidja, I would use it on a regular basis with her.

21 Q. Did you use it with every student?

22 A. If I had to, sure. But it wasn't on a  
23 regular basis with every student.

24 Q. How often did other teachers use any of  
25 those resources?

1           A.    I'm not sure.  But I -- I mean, I wasn't in  
2    their classroom, but I remember other teachers  
3    mentioning that they've used it.

4           Q.    And to your knowledge, did the district  
5    translate any documents for English language learners?

6           A.    Yes.  I recall seeing the parent form that  
7    goes home.  That would come to me directly.  And that  
8    was translated in whatever language was needed.

9           Q.    And were report cards translated?  Were  
10   notices about parent activities translated, to your  
11   knowledge?

12          A.    No, not to my knowledge.

13          Q.    And what about electronic dictionaries?  
14   Were they provided in all classes at Phoenix?

15          A.    I'm not familiar about electronic  
16   dictionaries.  I was provided various dictionaries in  
17   various languages but I don't know anything about  
18   electronic dictionaries.

19          Q.    To your knowledge, how often were  
20   communications to parents translated?

21          A.    I've --

22          Q.    Just the notification letter?

23          A.    Yes.  Yeah.  So I'm not quite sure.

24          Q.    Okay.  And were there any other parent  
25   academies, anything that you're aware of that took



1 place at Phoenix?

2 A. Well, at Phoenix, they would have -- they do  
3 hold several functions. I think the beginning of the  
4 school year, they have something called fall fest.  
5 And they've had several other ones. I'm not quite  
6 sure what they were, but, yes, they have held them.

7 Q. And would those documents be provided in a  
8 native language for a parent?

9 A. I don't believe so.

10 Q. And with respect to extracurriculars, based  
11 on your observations, did most immigrant English  
12 language learners who attended Phoenix participate in  
13 any clubs or extracurricular activity?

14 A. No.

15 Q. And why was that?

16 A. I don't think they knew that they could  
17 possibly participate in any activity. So, no, not at  
18 all. If -- I can recall one student who happens to be  
19 an immigrant. He played baseball but that's because  
20 he came to us directly from McCaskey. So he already  
21 knew the system. He knew what his choices were.

22 Q. And with respect to your being an ESL  
23 teacher, was someone in the ESL department overseeing  
24 you? Did --

25 A. Yes.

1 Q. And who would that be?

2 A. Amber Hilt.

3 Q. And how often were you observed by her or by  
4 any member of the ESL department of the school  
5 district of Lancaster? How often in a year were  
6 you --

7 A. Once --

8 Q. -- observed?

9 A. -- by Kaitlin Bartlett and possibly twice in  
10 the summer refugee program by Amber Hilt.

11 Q. When you say once, was that over the six  
12 year period?

13 A. Yes.

14 Q. And that was in 2014?

15 A. Yes. I believe that's when it was.

16 Q. Okay. And did that result in any formal  
17 documentation?

18 A. Yes.

19 Q. She provided you with feedback --

20 A. Yeah. She did.

21 Q. -- concerning her observation?

22 A. She did, yes.

23 Q. And did you receive any other feedback with  
24 regard to classroom observation?

25 A. Other feedback from --

1 Q. From the ESL department?

2 A. No. No.

3 Q. You were reviewed by a Ms. Heisey, right?

4 A. Yes.

5 Q. And all other teachers are?

6 A. Yes.

7 Q. And she's not certified in ESL, is that  
8 correct?

9 A. That's correct.

10 Q. Okay. And you mentioned a summer program?

11 A. Yes.

12 Q. Was that the refugee program --

13 A. Summer program, yes.

14 Q. -- that had a federal grant?

15 A. Yes.

16 Q. Okay. And that was Ms. Hilt?

17 A. Yes.

18 Q. And what year was that?

19 A. I believe that was the year 2015 and 2014.

20 Q. So over the six year period, you were only  
21 observed during the school year on one occasion.

22 A. Yes.

23 Q. Okay. And over the six-year tenure at  
24 Phoenix, did you provide trainings for content  
25 teachers at Phoenix concerning ESL?

1 A. Yes.

2 Q. And what were those trainings?

3 A. The trainings came from the district. So it  
4 pretty much involved best practices, demographics and  
5 a variety of other things.

6 Q. And did you provide those in 2011 when you  
7 first got there?

8 A. No. No, not that I can recall. There  
9 wasn't -- when we first got there, I don't really  
10 remember being guided very well. I think there was a  
11 disconnect between the district and Phoenix. At least  
12 that's my opinion. And I don't remember speaking to  
13 anyone from the ESL department back then.

14 Q. And how long were the trainings that you  
15 provided?

16 A. They really varied. They could range from  
17 20 to 30 minutes.

18 Q. Okay. And who would decide what the content  
19 would be of those trainings? Did you develop a  
20 PowerPoint for --

21 A. No. I did not develop a PowerPoint. That  
22 came to me directly from the district. And I was  
23 allowed to tweak it as I felt the need.

24 Q. And do you --

25 A. And that's something Ms. Weathers and I

1 would work on as well.

2 Q. And did you believe that those trainings  
3 were sufficient to ensure that content teachers were  
4 able to make effective accommodations in the  
5 classroom?

6 A. No, not sufficient because it's difficult  
7 for a content teacher to actually remember best  
8 practices like I stated earlier. For me, best  
9 practices usually -- it just comes naturally. And I  
10 feel that I learn more and more every single year that  
11 I'm teaching and that I'm working with ESL students.

12 Q. And with regard to your particular position,  
13 were you in the content classroom very often? Were  
14 you in -- over the past year, for example, were you in  
15 many of the classes that the children would take who  
16 were entering level students?

17 A. No. I didn't have time, no.

18 Q. Okay. Did you give any homework while you  
19 were at Phoenix?

20 A. No, I did not.

21 Q. Okay. Did you know, did students receive  
22 homework from their content teachers --

23 A. That I'm not sure of.

24 Q. -- (indiscernible) classes? And how was the  
25 ESL program at Phoenix assessed to your knowledge?

1           A.    To my knowledge, I don't know. I don't even  
2 know -- I don't know that it was assessed. I have no  
3 clue. I don't know.

4           Q.    Are you familiar with the ESL department  
5 internal review surveys --

6           A.    Yes, I am --

7           Q.    -- were done? Can you explain what that was  
8 and how that was used?

9           A.    Okay. I think basically that is a form that  
10 I had to fill out and I would put the positive of the  
11 program as well as things that needed to be worked on.

12          Q.    And did you yourself fill that out?

13          A.    Yes.

14          Q.    And how often did you do that?

15          A.    I think that was always at the beginning of  
16 the school year. So it would have been once.

17          Q.    And what did you do in completing that  
18 survey? What did you consider when you sat there to  
19 fill out the survey?

20          A.    I think I pretty much analyzed. I really  
21 reflected and considered the needs overall of the  
22 program. Like, for instance, more staffing. That's  
23 something that I had listed there before. And as well  
24 as technology. Like, we needed more technology.

25          Q.    And what, if anything, happened to the

1 information that you would provide? You did it on an  
2 annual basis beginning in 2011? Did you do it every  
3 year?

4 A. You know, I really don't remember 2011. I'm  
5 not sure if that was ever even provided for me. I'm  
6 not -- I don't remember filling one out.

7 Q. So you don't remember when you started --

8 A. No, I don't.

9 Q. -- doing the surveys.

10 A. I don't.

11 Q. Okay. And in completing the surveys, did  
12 you look at any access scores?

13 A. Yes. I would analyze the access scores  
14 usually at the very beginning because I like to  
15 discuss the scores with the students. I tried -- if  
16 time permitted, I would try to bring in individual  
17 students to quickly show them what their scores were.  
18 I wanted to make them aware, fully aware of their  
19 scores so that they would know what they scored and  
20 what they needed to work on. So it was something as  
21 far as I think when I would look at the scores, as far  
22 as the grows and glows, I pretty -- the internal  
23 review, I pretty much just would always analyze it  
24 as -- like, what would -- if we had a magic wand, what  
25 would Phoenix Academy need to make the program better.

1 And that was pretty much like I already stated was the  
2 technology aspect of it as well as more staffing.  
3 That would have been wonderful.

4 Q. And when you say that you looked at the  
5 access scores, you're saying on an individual basis  
6 for the students? You would look at the 90 -- you  
7 know, at raw data of the access scores?

8 A. Yes. The raw data. I pretty much tried to  
9 -- I would try and call them up during my GGI or my  
10 prep time and show them quickly what the scores were.

11 Q. So you did this on an individual basis --

12 A. Yes. I --

13 Q. -- not on a building basis?

14 A. No. I did it on an individual basis when I  
15 would discuss the scores with the students once I got  
16 the hard copies of them.

17 Q. Okay. And once you completed that survey,  
18 was there a meeting to discuss the review, the survey?

19 A. Yes. I think there was a meeting between  
20 myself, Ms. Hilt and Ms. Heisey.

21 Q. And when would that occur? After you  
22 completed it or --

23 A. I don't know how much after. I think I had  
24 to submit that first thing in October. I don't know  
25 how long it took for us to meet and discuss it. I



1 really don't know. I don't remember.

2 Q. And how long were those meetings?

3 A. I don't remember them being too long. Maybe  
4 20 minutes or so. Not that long.

5 Q. And at that point, did you do any analysis  
6 or talk about building level analysis of access scores  
7 or anything like that?

8 A. I think just pretty much that the writing  
9 scores and reading scores were low. Try and work on  
10 that.

11 Q. And what, if anything, happened as a result  
12 of the annual internal survey that was done, this  
13 process? Did anything change? Was there -- as a  
14 result of the survey, were there ever any changes?

15 A. No, not that I recall, no.

16 Q. And they didn't provide you with any  
17 disaggregated data from the district that -- right?

18 A. No.

19 Q. They just gave you the access scores.

20 A. Access scores. Just the access scores, yes.

21 Q. Okay. Now based on your experience, do you  
22 think that the international school is a better  
23 placement for entering level ELL immigrant students  
24 with limited schooling?

25 A. I do for the reasons that I already stated.

1 But then again, I have never worked at the  
2 international school. This is all based on my  
3 impression and my thought of what the international  
4 school consists of.

5 Q. And where does that impression come from?  
6 How do you know it?

7 A. You know, I think there's some type of  
8 miscommunication. It's very interesting because I've  
9 spoken to teachers to ask is every teacher at the  
10 international school ESL certified. And I've gotten  
11 different responses. So I think there's a  
12 misunderstanding going on as far as the international  
13 school whether every teacher there is ESL certified or  
14 not. I thought they were.

15 Q. Are you clear that the students at the  
16 international school, though, are all entering level  
17 students? Because that's -- are you clear on that --

18 A. I've --

19 Q. -- rather than a range of students?

20 A. Yes. I did -- because I've had students  
21 before and I've asked them were you in the  
22 international school and they'll say, yes, Miss, I was  
23 there. But -- so I thought that they were, yes. I  
24 thought they were all basically one -- level one and  
25 two.

1 Q. And are you clear that they were in  
2 sheltered instruction? Was that also clear? As  
3 opposed to immersion where you had a range of English  
4 language learners in the content classes where you're  
5 in with native speakers?

6 A. Right. That was my understanding that it  
7 was a sheltered instruction type model.

8 Q. And you're familiar -- so that was more of a  
9 sheltered instruction and Phoenix is more the  
10 immersion. Is that right?

11 A. Primarily for content, yes. Except for when  
12 they were working with Mr. Kelleher (ph). But in Mr.  
13 Kelleher's class, there were a variety of levels and  
14 native speakers as well.

15 Q. So it still wasn't sheltered in his class?

16 A. No. Guess not.

17 Q. Okay. Do you think that the program at  
18 Phoenix as you know it where you worked for the last  
19 six years is effective for immigrant students in  
20 ensuring that they can overcome language barriers and  
21 access the curriculum, the subject matter.

22 A. Not the first year students, no. I do not  
23 believe that they should be in there simply because I  
24 feel that if they're in sheltered classes, they would  
25 gain more from them.

1 Q. And do you think that they would benefit  
2 from being only with entering level students rather  
3 than a mix of levels?

4 A. I do, because I feel that their anxiety  
5 level would be lowered when they are with students  
6 that are at their same level at least for the first  
7 year.

8 Q. And do you believe they would benefit from  
9 additional ESL instruction, direct instruction?

10 A. Yes, definitely.

11 MS. MCINERNEY: That's all the  
12 questions that I have at this time.

13 THE COURT: Thank you very much,  
14 counselor.

15 Attorney O'Donnell, you may cross-  
16 examine the witness.

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

18 CROSS-EXAMINATION

19 BY MS. O'DONNELL:

20 Q. Good afternoon. How are you?

21 A. Hello. I'm doing well.

22 Q. I understand you've taken a new job.

23 A. Yes, I have.

24 Q. Where -- and you're in elementary education  
25 now?

1 A. Yes, I am.

2 Q. Are you an ESL teacher?

3 A. It is ESL sheltered. And once again, there  
4 seems to be a miscommunication with sheltered at York  
5 City. My understanding --

6 Q. Well, let's just get there --

7 A. Okay. That's wonderful, yes.

8 Q. -- because --

9 A. That's fine.

10 Q. So you're -- when do you start your York  
11 City employment?

12 A. Today is my first day. My students are  
13 there today.

14 Q. Oh, that's nice. And what grades do you  
15 teach in?

16 A. First.

17 Q. Okay. And then -- just the first grade?

18 A. Yes.

19 Q. Okay. Were you ever asked to get your  
20 secondary certification while you --

21 A. No.

22 Q. -- were at Phoenix?

23 A. I was not. No, I was not.

24 Q. Okay. And just to -- I don't know. I guess  
25 pound a dead horse. You've never taught at McCaskey

1 ever.

2 A. No, I have not.

3 Q. So you have no direct knowledge of anything  
4 that goes on there.

5 A. No.

6 Q. Is that correct?

7 A. That's correct. Other than at McCaskey  
8 itself, I was a student there. My children were  
9 students there.

10 Q. So you don't know whether or not the  
11 teachers there are ESL certified for math --

12 A. That's correct.

13 Q. -- and science --

14 A. I don't know that.

15 Q. -- or social studies?

16 A. Right.

17 Q. Right? You don't any of that. Okay.

18 A. Right.

19 Q. You indicated that in 2013 -- or 2012 and  
20 2013, there were a couple more ESL teachers that were  
21 hired at Phoenix? Or they were applying for the ESL  
22 certification?

23 A. I -- yes. I believe it was 2013.

24 Q. Okay. So before then, you were alone. Two  
25 more came on?

1 A. Yes.

2 Q. Okay. And is that because there was an  
3 influx of students with a need for ESL?

4 A. Probably yes.

5 Q. Okay. And how was your performance rated  
6 over time? Were folks generally happy with the work  
7 that you were doing at Phoenix?

8 A. I believe so, yes.

9 Q. Okay. Was it your job as the ESL lead to  
10 evaluate your students' needs in regard to translation  
11 for standard testing?

12 A. That's something that for standardized  
13 testing Ms. Heisey and I would discuss, yes.

14 Q. Okay. And did you work with Ms. Heisey to  
15 revamp the ESL program each year and try to make it --  
16 to make sure that it met the students' needs?

17 A. Work with her and have -- how? In what  
18 sense?

19 Q. To revamp the ESL --

20 A. No. But work with her how? In what sense?

21 Q. Well, let me -- you tell me. Did you ever  
22 work together with Ms. Heisey?

23 A. I've met with Ms. Heisey several times, yes.

24 Q. Okay. And would you consider your meetings  
25 to be a joint effort to -- at any point to improve the

1 students' needs and, in particular, with respect to  
2 ESL?

3 A. Possibly, yeah. I guess you could say that.

4 Q. Okay. Do you know whether or not co-  
5 teaching at Phoenix is available?

6 A. It has been in years past.

7 Q. And would students necessarily know that  
8 they were being co-taught?

9 A. I can't answer that. I have no idea.

10 Q. Did you explain it to them if you needed to  
11 co-teach with someone?

12 A. I've never co-taught. No. That's something  
13 Ms. Weathers has done. I've never done it.

14 Q. Incidentally, you indicated that your  
15 student to teacher ratio was split with Ms. Weathers?

16 A. Yes.

17 Q. Okay. And that was 50/50?

18 A. Yes.

19 Q. And did you prepare her schedule?

20 A. No.

21 Q. Okay. Did you ever have a occasion to go  
22 out to Kesung's home?

23 A. Yes.

24 Q. Okay. And what did he express to you at  
25 that time, if anything?



1           A.    He said.  These are his words.  "No school.  
2  No school."  And he said "Work.  Work."

3           Q.    All right.

4           A.    That's it.

5           Q.    And then you just walked away?

6           A.    We pretty much gave him the letter.  I went  
7  along with the home visitor.  We gave him the letter  
8  and I told him, "Give this to case worker, Kesung,  
9  your case worker" because we wanted her to call.

10          Q.    Right.  Would you say that you were the lead  
11  person deciding ESL hours at Phoenix?

12          A.    Deciding what?  Hours?

13          Q.    Deciding the hours, yes.

14          A.    Deciding the hours?  Of who?

15          Q.    The students.

16          A.    Oh, no.  The counselor pretty much schedule  
17  the students.

18          Q.    Okay.  Did you ever speak with your students  
19  about their opportunity to join clubs and other  
20  activities at McCaskey?

21          A.    No.

22          Q.    Okay.  Why not?

23          A.    Because I wasn't aware of the opportunities.

24          Q.    Had you ever looked at a McCaskey curriculum  
25  guide?

1 A. No.

2 Q. No? Okay. And with respect to the  
3 professional development information that was provided  
4 to you by McCaskey, you said that they were already  
5 prepared lessons, that you just needed to deliver?

6 A. Yes. PowerPoint --

7 Q. And do you have a recollection of whether  
8 they were delivered to you in hour long segments?

9 A. Yes.

10 Q. And you signed off on them that you  
11 delivered --

12 A. Yes.

13 Q. -- the entire hour?

14 A. But once again, it's like I said, I was  
15 allowed to tweak them.

16 Q. So you tweaked them down to 20 minutes?

17 A. We didn't play the games, the Bingo games.  
18 I didn't feel the need. Yes.

19 Q. Okay.

20 MS. O'DONNELL: All right. Thank you.

21 THE WITNESS: You're welcome.

22 THE COURT: Thank you very much,  
23 counselor.

24 Attorney McInerney, do you have any  
25 redirect?

1 MS. MCINERNEY: Two quick questions.

2 REDIRECT EXAMINATION

3 BY MS. MCINERNEY:

4 Q. Ms. Ortiz --

5 A. Yes.

6 Q. -- students would know whether you were in  
7 the classroom, correct?

8 A. Yes. They would know me, yes.

9 Q. And with regard to the international school,  
10 were there experience of any of the siblings of your  
11 students who went to McCaskey so that you knew a  
12 little bit about it --

13 A. Yes.

14 Q. -- because --

15 A. Yes. They had siblings there.

16 MS. MCINERNEY: That's all that I have.  
17 Thank you.

18 THE COURT: Does --

19 MS. O'DONNELL: Nothing further, Your  
20 Honor.

21 THE COURT: And there's been some  
22 representation that if you were walking down the  
23 street in Lancaster and you told somebody you went to  
24 Phoenix Academy, that would be looked down on as  
25 opposed to McCaskey, that there was a general

1 reputation in the community. Is that your  
2 understanding?

3 THE WITNESS: Yes. That would be my  
4 understanding. I think a lot of times people think of  
5 Phoenix and possibly because it used to be -- years  
6 ago, before Camelot came, that's where a lot of the  
7 school district kids who were struggling, pretty much  
8 they went to Phoenix. I think there is a  
9 misunderstanding in the community.

10 THE COURT: So you think it's actually  
11 -- Phoenix school is much better than what the  
12 community believes it to be.

13 THE WITNESS: I think the community  
14 sees it as where a lot of the bad kids tend to go to  
15 even though it's not a burly. But I think the  
16 community does have a misunderstanding of what Phoenix  
17 really is.

18 THE COURT: And how would you describe  
19 what Phoenix really is?

20 THE WITNESS: I think Phoenix is a  
21 place -- there's definitely a place for Phoenix for  
22 students who are overage, under credit, who have tried  
23 McCaskey and it hasn't worked for them, then I think  
24 it's wonderful for them to have an opportunity to try  
25 and catch up on their credits and have a possibility

1 of graduating.

2 THE COURT: Okay. Thank you very much.

3 THE WITNESS: You're welcome.

4 THE COURT: Any questions in light of  
5 the Court's questions?

6 MS. MCINERNEY: No, Your Honor.

7 THE COURT: Attorney O'Donnell?

8 MS. O'DONNELL: Nothing further. Thank  
9 you.

10 THE COURT: All right. Ma'am, thank  
11 you very much. You may step down.

12 THE WITNESS: You're welcome.

13 (Witness excused)

14 THE COURT: Attorney McInerney, does  
15 the defense -- does the plaintiff have any further  
16 rebuttal?

17 MS. MCINERNEY: No, we don't, Your  
18 Honor.

19 THE COURT: And Attorney O'Donnell, any  
20 sur-rebuttal?

21 MS. O'DONNELL: No. No, thank you.

22 THE COURT: Now, counsel, we do need to  
23 address the scheduling issues now. I see, Mr.  
24 Walczak, you're ready to stand up. Do you have a  
25 proposal? We are now at Monday late in the afternoon.

1 School starts Monday a week. And I'm not sure whether  
2 counsel with their written submissions are also going  
3 to want the opportunity to argue. If you do, we could  
4 have the submissions due on -- by Thursday morning and  
5 we could argue this case at 9:30 on Thursday morning.  
6 That's completely up to counsel. I'd be glad to hear  
7 argument together with your submissions. The problem  
8 with that scheduling is I wouldn't have much of an  
9 opportunity to review your submissions before the  
10 argument.

11 MS. O'DONNELL: I -- may I --

12 THE COURT: Certainly.

13 MS. O'DONNELL: So I think I would  
14 prefer to have you have as much time as possible to  
15 review everything you think you need to review in  
16 order to make a most reasoned decision possible. And  
17 if that means skipping oral argument, I'll accept  
18 that.

19 THE COURT: Okay.

20 MR. WALCZAK: Actually, Judge, I didn't  
21 hear what Ms. O'Donnell said. It's our fault but --

22 THE COURT: She does not want the  
23 presentation of oral argument to interfere with me  
24 having sufficient time to review everything that's  
25 been submitted and prepare a reasoned and scholarly

1 and right decision. I'm (indiscernible) humor.

2 MR. WALCZAK: Your Honor, I don't think  
3 we feel like we need argument after the submissions.  
4 But it might be helpful if we could do closings  
5 tonight. And that might be helpful in helping the  
6 Court understand how or at least each side used the  
7 evidence that has (indiscernible).

8 THE COURT: How would that aid me  
9 beyond your written submissions?

10 MR. WALCZAK: Because our written  
11 submissions are not going to come in, I guess, for at  
12 least a few days. And that would give Your Honor a  
13 couple of days to ponder at least how we have used the  
14 evidence.

15 THE COURT: Okay. And how long did you  
16 wish for closing arguments?

17 MR. WALCZAK: Fifteen minutes.

18 THE COURT: Very well. Attorney  
19 O'Donnell?

20 MS. O'DONNELL: I actually don't wish  
21 to present a closing. I'll waive mine because I'd  
22 rather have my argument.

23 THE COURT: But you don't want to give  
24 your 15 minutes over to Mr. Walczak here.

25 MS. O'DONNELL: No. I definitely don't

1 want to give my 15 minutes over to him. Can we  
2 discuss the closings?

3 THE COURT: If he would like -- sir, if  
4 you would like to make closing all around the closing,  
5 you don't need to if you don't want to. And it would  
6 not be held against you in any way.

7 MS. O'DONNELL: Well, yes. Yes.  
8 Really? You have to do 15 more minutes?

9 MR. WALCZAK: I could do a half hour if  
10 you want to give me your 15 minutes.

11 Your Honor, can we just get a moment to  
12 (indiscernible) around for a moment and  
13 (indiscernible) a lot accomplished (indiscernible)?

14 THE COURT: You want a brief recess to  
15 discuss something?

16 MR. WALCZAK: Yes. Is that okay?

17 THE COURT: Sure.

18 MR. WALCZAK: Five minutes should be  
19 fine (indiscernible).

20 THE COURT: Sure. We'll take a five  
21 minute recess.

22 MS. O'DONNELL: Thank you.

23 THE COURT: Thank you.

24 THE CLERK: All rise.

25 (Recessed at 5:38 p.m.; reconvened at 5:43 p.m.)



1 THE CLERK: All rise. The United  
2 States District Court began its session, the Honorable  
3 Edward P. Smith.

4 THE COURT: You may be seated. Thank  
5 you. The Court is called to order. All parties  
6 previously present are once again present.

7 Counsel, I don't know what your  
8 discussion was about but do you wish to make closing  
9 argument?

10 MR. WALCZAK: Your Honor, we, like  
11 college soccer coach used to say that I have a  
12 profound insight into the obvious. And it's quite  
13 obvious to me that (indiscernible). So we will waive  
14 our (indiscernible) closing --

15 THE COURT: Oh, and I didn't mean it to  
16 be that way. But I just assumed that the written  
17 submissions will be so excellent that anything you  
18 might have been able to say orally here will be  
19 forever --

20 UNIDENTIFIED SPEAKER: You may have  
21 been referring to us, Your Honor, as -- of not  
22 discouraging --

23 MR. WALCZAK: So we will waive our  
24 closing today and focus our attention on the written  
25 submissions. We do not believe that we need oral

1 argument but, of course, if Your Honor would find it  
2 helpful, we would certainly be happy to come up here  
3 and present oral argument. Our proposal would be that  
4 we would get you written submissions by 9 o'clock on  
5 Thursday morning. Is that fine?

6 THE COURT: Attorney O'Donnell, do you  
7 believe you can make 9 o'clock Thursday morning?

8 MS. O'DONNELL: Yes. I just -- I have  
9 an issue with transcripts. I need to get them  
10 delivered. But I can order those, I suppose -- I  
11 haven't been getting them on a daily basis. So I'll  
12 need to have that in order --

13 THE COURT: Yes. 'Cause we do know --

14 MS. O'DONNELL: -- that I could --

15 THE COURT: -- they're available.

16 MS. O'DONNELL: -- prepare my  
17 submission, yes.

18 THE COURT: Very well. Yeah. That  
19 shouldn't be any issue at all, correct.

20 All right. Is there anything else  
21 before we adjourn?

22 UNIDENTIFIED SPEAKER: Thank you for  
23 holding this hearing on this expedited schedule.

24 THE COURT: Well, I do want to commend  
25 all of you for an outstanding job. It's a very

1 interesting issue. I look forward to your written  
2 submissions.

3 Have safe trips home and have a good  
4 night.

5 MS. O'DONNELL: Thank you very much,  
6 Your Honor.

7 MS. MCINERNEY: Thank you.

8 MR. WALCZAK: Thank you, Your Honor.

9 THE CLERK: All rise.

10 (Court is adjourned)

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CERTIFICATIONS

We, Sherri L. Breach, Tracey Williams and Lisa Beck, certify that the foregoing transcript is a true and accurate record of the proceedings.

\_\_\_\_\_

Sherri L. Breach

AAERT Certified Electronic Reporter & Transcriber

CERT\*D-397

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TRACEY WILLIAMS

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Lisa Beck (CET\*\*D-486)

AAERT Certified Electronic Transcriber

Date: August 23, 2016

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