

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

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KHADIDJA ISSA, ET AL) 5:16-cv-03881-EGS
) AM SESSION
VS.)
) August 19, 2016
THE SCHOOL DISTRICT OF) Allentown, PA
LANCASTER) 9:32 a.m.-12:19 p.m.

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

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
AMBER HILT	10	80		

E X H I B I T S

NO.	PAGE
Plaintiff's:	
15, 23, 27, 34, 46-48, 50, 64, 66, 74, 78, and 82	5
49 and 51	5
6, 22, 61-62 and 92	6
89 and 93	6
59-60, 63, 65, 67, 79-80, 84 and 85	8
91	8

1 P R O C E E D I N G S

2 THE CLERK: All rise.

3 (Call to Court)

4 THE COURT: You may be seated, thank
5 you and good morning.

6 The Court is called to order. All
7 parties previously present are once again present.
8 The plaintiffs were at the point of some housekeeping
9 and then they were going to rest I believe; is that
10 correct?

11 MR. WALCZAK: Potentially, Your Honor,
12 that's how -- first of all let's -- if we could take
13 care of the documents. There are a number of
14 documents that were introduced through Ms. Marshall
15 that have not been moved, so I'd move those into
16 evidence and let me go through the numbers here.

17 15, 23, 27, 34, 46, 47, 48, 50, 64, 66,
18 74, 78, and 82. Those are the Dr. Marshall exhibits.
19 I have some others.

20 THE COURT: Attorney O'Donnell, do you
21 have any objection to the admission of these
22 documents?

23 MS. O'DONNELL: I do not.

24 THE COURT: Very well, without
25 objection, Plaintiff's Exhibits 15, 23, 27, 34, 46,

1 47, 48, 50, 64, 66, 74, 78, and 82 are admitted into
2 evidence.

3 (Plaintiff's Exhibit Nos. 15, 23, 27, 34, 46, 47,
4 48, 50, 64, 66, 74, 78, and 82 received)

5 MR. WALCZAK: We then have two
6 exhibits, Your Honor, that are Plaintiff student
7 records that are not yet in evidence. One is Exhibit
8 49, which is a document that Ms. O'Donnell produced a
9 little bit later, not with the first records. It
10 involves Mr. Hassan so that's Exhibit 49. And the
11 other is the school records for Alembe Dunia, which is
12 really just the enrollment denial, it's a very small
13 file.

14 So 49 and 51, we would move into
15 evidence.

16 THE COURT: Attorney O'Donnell, is
17 there any objection to Plaintiff's Exhibits 49 and 51?

18 MS. O'DONNELL: No.

19 THE COURT: Very well. Without
20 objection, Plaintiff's Exhibits 49 and 51 are admitted
21 into evidence.

22 (Plaintiff's Exhibit Nos. 49 and 51 received)

23 MR. WALCZAK: Okay. Then we have --
24 there's a number of School District of Lancaster
25 policy documents which are not yet in evidence. So

1 they are 6, 22, 61, 62 and 92 and I'm happy to discuss
2 if there's any disagreement.

3 THE COURT: Attorney O'Donnell, is
4 there any objection to Plaintiff's Exhibit 6, 22, 61,
5 62 and 92?

6 MS. O'DONNELL: No.

7 THE COURT: Without objection, those
8 exhibits are admitted into evidence.

9 (Plaintiff's Exhibit Nos. 6, 22, 61-62 and 92
10 received)

11 MR. WALCZAK: Okay. And then we've got
12 two more -- three more groupings. So there's -- we
13 have Exhibits 89 and 93 which are screen shots of
14 content. One is of a Camelot website and one is a
15 School District of Lancaster website.

16 THE COURT: Attorney O'Donnell, is
17 there any objection to Plaintiff's Exhibits 89 and 93?

18 MS. O'DONNELL: No.

19 THE COURT: Without objection,
20 Plaintiff's Exhibits 89 and 93 are admitted into
21 evidence.

22 (Plaintiff's Exhibit Nos. 89 and 93 received)

23 MR. WALCZAK: And then there's a number
24 of exhibits that were not introduced by Dr. Marshall
25 but were -- they were discussed or relied upon by her.

1 They are all part of her document list in her report.
2 Those are 59, 60, 63, 65, 67, 79, 84, 85 and 80 also
3 her CV.

4 THE COURT: And that was 80?

5 MR. WALCZAK: 80, yeah.

6 THE COURT: Attorney O'Donnell, is
7 there any objection to these exhibits?

8 MS. O'DONNELL: I don't have an
9 objection to No. 80, but I don't know what the other
10 exhibits are that he's referring to. Maybe if he just
11 describes them for the record, I can make a
12 determination as to whether those documents are
13 objectionable.

14 THE COURT: Certainly.

15 MR. WALCZAK: So 59 is data analysis of
16 the access or I guess it's the district analysis of
17 the access test. 60 is ELL grade 6 through 12
18 monitoring. 63 is the ESL department's internal
19 review. 65 is the ESL department's internal review.
20 67 is ESL instructional visit form. 79 is teacher
21 Natalie's Swackhammer's (ph) 9-12 ESL matrix. 84 is
22 Camelot list of accredited schools. And 85 are the
23 SMI/SRI test scores for Anyemu Dunia and that
24 (indiscernible).

25 THE COURT: Okay. Attorney O'Donnell,

1 any objection to these exhibits?

2 MS. O'DONNELL: No.

3 THE COURT: Very well. Without
4 objection, Plaintiff's Exhibits 59, 60, 63, 65, 67,
5 79, 84, 85 and 80 are admitted into evidence.

6 (Plaintiff's Exhibit Nos. 59-60, 63, 65, 67, 79-
7 80, 84 and 85 received)

8 MR. WALCZAK: One last exhibit is the
9 Heisey recommendation for Ms. Rivera that was
10 testified to yesterday regarding that. That's Exhibit
11 No. 91.

12 THE COURT: Very well. Attorney
13 O'Donnell, do you have any objection to Exhibit 91?

14 MS. O'DONNELL: No.

15 THE COURT: Without objection, Exhibit
16 91 is admitted into evidence.

17 (Plaintiff's Exhibit No. 91 received)

18 MR. WALCZAK: Your Honor, with that we
19 are able to rest because all of our exhibits are, in
20 fact, in and it's --

21 THE COURT: Very well, thank you.

22 MR. WALCZAK: And then the only other
23 housekeeping issue we would raise is that we have not
24 got -- I don't believe we've gotten definitive order
25 for the witnesses today, so I'm wondering if we might

1 get that. It'd be extremely helpful.

2 THE COURT: Attorney O'Donnell, do you
3 have the schedule of your witnesses?

4 MS. O'DONNELL: I sent that e-mail to
5 Eric Rothschild this morning, but I guess if they need
6 to hear it again. Amber Hilt, Damaris Rau, Jeff
7 Blackman, Aura Heisey, Megan Misnik, Arthur
8 (indiscernible).

9 THE COURT: Okay.

10 MR. WALCZAK: I appreciate that, thank
11 you, Your Honor.

12 THE COURT: Certainly. And the
13 plaintiff having rested, is the defense prepared to
14 proceed?

15 MS. O'DONNELL: We are.

16 THE COURT: Very well, Counselor, you
17 may call your first witness.

18 MS. O'DONNELL: Your Honor, I'd like to
19 call my first witness, Amber Hilt.

20 THE CLERK: Please remain standing and
21 raise your right hand.

22 AMBER HILT, WITNESS, SWORN

23 THE COURT: Thank you very much, ma'am,
24 you may be seated. And good morning.

25 THE WITNESS: Good morning.

1 THE COURT: And you may -- would you
2 please state your full name, spelling your last name
3 for the record.

4 THE WITNESS: Sure, it's Amber R. Hilt,
5 H-i-l-t.

6 THE COURT: Thank you very much, ma'am.
7 Counselor, you may proceed.

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

9 DIRECT EXAMINATION

10 BY MS. O'DONNELL:

11 Q. Good morning, Ms. Hilt.

12 A. Good morning.

13 Q. Why don't we start your testimony by
14 identifying yourself relative to the School District
15 of Lancaster. Are you employed?

16 A. Yes, I am employed.

17 Q. In what capacity?

18 A. Currently I'm the coordinator of K through
19 12 ESL and world language.

20 Q. And what does that mean?

21 A. That means that I oversee ESL for our scope
22 in sequence which is K through 12 and the world
23 language departments which traditionally were called
24 foreign languages.

25 Q. So what's the difference between ESL and

1 world language?

2 A. So ESL is when a student who speaks a
3 language other than English comes into our schools.
4 And world language is when an English speaking student
5 is learning another language, such as many of us may
6 have learned Spanish or French in middle school or
7 high school.

8 Q. Thank you. Would you give us a brief
9 description of your educational background?

10 A. Sure. So I started at Malijeleh University
11 (ph). I have a bachelors in communication arts 7
12 through 12, and I have also my ESL from Millersville
13 as well as a certificate in urban education.

14 Q. Okay. Do you have a master's?

15 A. Yes, I do. I have a master's from Karena
16 College (ph) in education. I have some time in the
17 reading specialist program, but then I transferred
18 into a principal certification program.

19 Q. Okay. So did you ever -- were you ever
20 employed as a principal?

21 A. I was employed as the coordinator of ESL and
22 world language at the McCaskey campus for about three
23 and a half years, where I acted as an assistant
24 principal in many of my duties.

25 Q. What were your duties as an assistant

1 principal or acting as an assistant principal at
2 McCaskey?

3 A. Yeah. So we would meet the students every
4 morning as they walked in, say hello, meet with
5 parents. We would have assigned duties such as lunch
6 duty, other duties around the school. We would handle
7 discipline, also meeting with parents, and then
8 providing professional development and observing
9 teachers.

10 Q. Let's just right into discipline.

11 A. Yes.

12 Q. How were you involved in that?

13 A. I was involved in the day-to-day, so we have
14 referrals from teachers that would come, but then I
15 was also involved in anything that may have been an
16 urgent matter.

17 Q. Okay. And so can you give me an example of
18 an urgent matter?

19 A. Sure. So one time we had an individual
20 student who was having a situation where he was cause
21 of harm to self or others.

22 Q. Okay.

23 A. And we actually had to stop the flow of
24 traffic because it happened between classes, and it
25 took our SRO and two hall monitors to physically

1 restrain that student until he was able to be escorted
2 out in a police car.

3 Q. And what does the physical restraint
4 involve?

5 A. It involves, you know, hands on. At that
6 time, it was face to the ground, body on the ground,
7 one person had the knees or the legs, the other person
8 had the upper torso, and the cop was there also
9 managing.

10 Q. Okay. What is an SRO?

11 A. It's a school resource officer, they're
12 employed by the city, the City of Lancaster, and we
13 have one in each building.

14 Q. So when we say school resource officer, are
15 they actually police officers?

16 A. Yes, they're actually police officers for
17 the Lancaster City Police.

18 Q. Don't you just use hall monitors?

19 A. No. We do have hall monitors. We have
20 about four or five in each building, and they assist
21 with transition, and they assist if students need to
22 be taken out of class and in the lunchroom, but we do
23 have an SRO in both buildings at either time.

24 Q. Okay. So what are the difference in
25 responsibility levels between a hall monitor and an

1 SRO?

2 A. So a hall monitor is there to assist with
3 maybe any de-escalation, build relationships with the
4 students, so that if there is maybe just a situation
5 that could turn into something that would escalate,
6 they could talk with them and try to escort them into
7 a safer place. But if there is again an urgent need,
8 they would restrain if needed.

9 Q. And then as far as the SRO, what's the scope
10 of their authority? It's a police officer walking
11 around a public school building.

12 A. Correct, so they can cite and arrest.

13 Q. And are they armed?

14 A. Yes.

15 Q. With what?

16 A. The same as a police officer, tasers, guns,
17 a baton.

18 Q. Okay. And have you -- to your knowledge,
19 have they ever had to use one of those weapons?

20 A. Yes, they used a taser.

21 Q. How recently?

22 A. I believe within the last school year.

23 Q. Okay. Is that the same type of de-
24 escalation techniques that are used at the Phoenix
25 Academy?

1 A. No, they do not have SROs.

2 Q. They don't have SROs?

3 A. Correct.

4 Q. Tell me a little bit about yourself. Are
5 you a member of any committees or groups, community
6 groups in your role as the coordinator K to 12 with
7 ESL and world language?

8 A. Sure. So I'm a member of CAL, sometimes
9 pronounced CALI, it's the Center for Applied
10 Linguistics. I also subscribe to an administrative
11 membership that I'm forgetting the name of right now,
12 but it's for principals K through 12. And there is a
13 -- the Bridging Youth, which is a monthly update and
14 the MPI, which is a Migration Policy Update that I
15 review monthly.

16 We have an internal refugee working group
17 where we have teachers that teach ESL and schools that
18 have high populations of refugee students, as well as
19 some student service members, nurses, grant writers,
20 et cetera, we meet monthly just to discuss how we can
21 further support the refugees and their families coming
22 in our school.

23 I'm active with the refugee community
24 center, which if you're not familiar, is at our
25 Reynolds Middle School. And it has access for all

1 families that are refugees that might need health
2 services, but they also provide ESL on site, they
3 provide counseling, they might review documents with
4 families or give case management.

5 Q. Is that just for students?

6 A. No. That's for families as well.

7 Q. So are students welcome to come as well as
8 their parents and siblings?

9 A. Yes, yes.

10 Q. Does it matter whether or not the siblings
11 are enrolled in school?

12 A. No.

13 Q. So when you say you give ESL support through
14 the refugee center, does that mean you give ESL
15 support to students who are not enrolled through the
16 refugee center?

17 A. Primarily it's adult ESL support, but there
18 is an after school cohort that supports ESL students
19 as well.

20 Q. Okay. So you're actually teaching, you're
21 actually providing a basis to teach English to adults,
22 adult refugees that come into the city --

23 A. Correct.

24 Q. -- through the refugee center.

25 A. Uh-huh.

1 Q. Okay. I understand.

2 Have you been given any awards or other
3 types of accolades for your work at the district?

4 A. Sure. I was asked to come back and present
5 at the Philadelphia Urban seminar as a success story
6 because I went through their program. And I also
7 received the Unsung Hero award from the School
8 District of Lancaster.

9 Q. Why is that?

10 A. Because I went above and beyond my call of
11 duty when I was an ESL teacher at Hand Middle School,
12 and unfortunately I wasn't there to receive it because
13 I was providing professional development for others,
14 but I heard it was just a great accolade, I was happy
15 to receive it.

16 Q. Have you been involved in other
17 administrative projects, such as grant writing?

18 A. Yes.

19 Q. Okay. And are you a primary grant writer or
20 do you assist?

21 A. I assist.

22 Q. And with respect to the grants that are --
23 the grant monies that are received by the district for
24 funds -- pardon me.

25 A. Uh-huh.

1 Q. With respect to the funds that are received
2 from the grants applicable to the ESL programs and the
3 refugee programs, can you tell me whether you were
4 involved in any of those?

5 A. Yes. I am directly involved in those.

6 Q. Okay. And then any other administrative
7 projects that we didn't cover that are relevant to
8 these refugees or the ESL program?

9 A. I was working closely with Pam Smith and
10 forgive me, I'm not sure of her title, but she worked
11 in community partnership. She has moved on to another
12 job. But as part of that, we were working with
13 quarterly refugee meetings that happened involving the
14 local refugee agencies and other initiatives around
15 refugees.

16 Q. So when you talk about the community
17 partnerships with the refugee agencies, were you
18 attending meetings with the folks that have testified
19 here in this case?

20 A. Yes.

21 Q. Okay. So that would include Sheila Mastro
22 Pietro?

23 A. Yes.

24 Q. And Elyse Chesson?

25 A. Yes.

1 Q. Anyone else from those organizations? Megan
2 Brown?

3 A. Yes. I've been in meetings with Megan
4 Brown, Tim Purcell, they're from Lutheran. I've also
5 been in meetings with Madap and Willis (ph) from
6 Lutheran. And a Laura and her last name escapes me,
7 it starts with a P, she was from Lutheran. And I've
8 also been in meetings with Valentina Ross from Church
9 World Service and Stephanie Gromick (ph). We -- she's
10 from Church World Service, we actually presented
11 together on May 4th at the CAIU on refugees.

12 Q. So is it true that you generally have a
13 collaborative relationship with your community
14 partners in a particular refugee settlement agency
15 workers?

16 A. Yes.

17 Q. Okay. So what happens here, why are we in
18 court?

19 A. I believe that there were some communication
20 concerns that just, in my opinion, they -- my
21 understanding is that we said we were going to look
22 into it and get back and have a discussion, and
23 certain individuals didn't wait for us, even though
24 they confirmed that that would be okay.

25 Q. Okay. So I guess we'll get to that --

1 A. Yeah.

2 Q. -- more in-depth.

3 Tell us what the beginning of school year
4 looks like with refugee students. How does the
5 district handle the influx?

6 A. So we do our very best at enrollment to make
7 sure all of these students have a scheduled time for
8 their WAC, which is their assessment from WEDA. And
9 from there, we provide that information in our
10 electronic kum (ph) folders as well as to their direct
11 teacher at their school.

12 Q. Okay.

13 A. And on the first day of school, just like
14 any student, we're out there, we're welcoming, we're
15 getting students on and off the bus especially at the
16 elementary ages, because that's such a unique
17 experience for them. But unfortunately we do have
18 sometimes refugee students who maybe take the wrong
19 bus, or maybe shouldn't have gone on the bus at all.

20 We had a young 3 or 4-year old who got on
21 the bus this year and had no identification, and so we
22 spent multiple hours with the police and with our
23 local partners trying to find out where this young
24 kiddo belonged and we did.

25 Q. Okay.

1 A. But generally sometimes we have those
2 hiccups.

3 Q. What about the students who are named
4 plaintiffs in this lawsuit, do you know any of them
5 personally?

6 A. I do.

7 Q. Okay. And who are they?

8 A. Qasin Hassan and Khadidja Issa.

9 Q. And what do you know about Qasin, did you
10 have a meeting with Qasin?

11 A. Yes, I've been in a few meetings with Qasin.

12 Q. Okay. Can you just give us a brief
13 chronology of your history with Qasin?

14 A. Sure. So I was in the meeting where he came
15 in with Megan Brown and potentially another case
16 worker, Mr. Blackman, himself, I believe his brother
17 and his mother. And he -- that was the meeting
18 discussed previously that he did not approach the
19 table or engage in conversation.

20 I was in another meeting at Phoenix when we
21 discussed the bullying plan with him, and we asked him
22 to come into a contract where he could identify
23 individuals that he felt safe talking to, and he did,
24 in fact, say he felt very safe talking to his ESL
25 teacher, and we laid forth that plan with he and his

1 mother, and the other representatives in the room.

2 Q. So let's talk about those two meetings. And
3 initially the first meeting you said was attended by a
4 gentleman by the name of Tim Purcell.

5 A. Tim Purcell was his advocate. I don't
6 recall if Tim Purcell was at that meeting. But he was
7 his advocate from the agency that said that he was
8 unable to get TANF and that they were requesting that
9 we would reconsider.

10 Q. So is that the -- was that the first concern
11 that they brought to the district in terms of getting
12 this child enrolled?

13 A. Yes.

14 Q. And when did -- when if ever did the focus
15 change to the value of education?

16 A. At the meeting regarding the bullying at
17 Phoenix.

18 Q. Okay. So the first meeting was all about
19 TANF.

20 A. Correct.

21 Q. Would you explain to us in more detail if
22 you will what that means, and what that meant to you
23 at the time?

24 A. Sure. So my understanding is it's
25 government assistance and that by having Qasin or

1 general in general enrolled in school, that the parent
2 would receive more assistance.

3 Q. Okay. And, in fact, Qasin -- okay. So what
4 was your understanding or what was your interpretation
5 of Qasin's refusal to participate with the group at
6 the table to get him enrolled?

7 A. Uh-huh. My understanding was that he was
8 desiring to not come to school, but that his mother
9 was desiring him to so she could get her benefits.

10 Q. Okay. And at some point that eventually
11 changed so that Qasin then expressed an interest in
12 coming to school?

13 A. Yes, at the meeting at Phoenix a few months
14 later.

15 Q. Okay. What happened between those two
16 meetings? Was Qasin eventually enrolled?

17 A. Yes.

18 Q. And where was he placed?

19 A. At Phoenix.

20 Q. Okay. Do you know why he was placed at
21 Phoenix?

22 A. So that he could attain enough credits for
23 graduation.

24 Q. Okay. Do you know how old he was?

25 A. At that time we did know he was 17, but

1 there was question about the birthdate in months
2 prior.

3 Q. Okay. So at the time he came in and was --
4 reluctant to sit down at the table with all of you,
5 what did you understand his age to be at that time?

6 A. 19.

7 Q. Okay. And did you have an understanding of
8 what his goals were at that time?

9 A. To work.

10 Q. Okay. Did Qasin come to school to your
11 knowledge?

12 A. Once enrolled in Phoenix, he did not have
13 very good attendance.

14 Q. Okay. And then was there a point in time
15 when his attendance became a serious issue?

16 A. Yes, and that was when the meeting was held
17 about the bullying.

18 Q. Do you have -- would it have been under your
19 jurisdiction, if you will, to send out someone to his
20 home to talk to him and his mother about whether his
21 intention was the same in terms of coming back for an
22 education?

23 A. So because of a district, Phoenix is part of
24 our ESL team. They did consult with me. And so while
25 I didn't make that decision, but they did consult with

1 me specifically around how to receive translation, I
2 gave them information for a language line and an
3 access code, because it was a rather kind of quick
4 hey, we're out, and we also need to go see this
5 individual, so I just gave them my code for that day.

6 Q. Okay. And what did they report back to you,
7 what was your understanding of how successful that
8 meeting was?

9 A. So my understanding is the home school
10 visitor, left some documentation, and then received a
11 phone call from Elyse that was rather aggressive.

12 Q. Is that Elyse Chesson?

13 A. Correct.

14 Q. And what was your understanding of
15 aggressive, what did that mean to you?

16 A. To me it would mirror the previous meetings
17 I had with her, where she became very physically, you
18 know, red-faced, kind of rambling, very upset, leaning
19 into the table in an aggressive way. So my frame of
20 reference was that she probably was speaking the same
21 way on the phone.

22 Q. Okay.

23 A. And not willing to hear the other side of
24 the story or an explanation.

25 Q. What was her concern? I mean, why was she

1 upset to your knowledge?

2 A. I believe that she thought we were kicking
3 him out of school.

4 Q. Okay. Was -- do you know whether she knew
5 that he was not attending?

6 A. I do not know. At our meeting in Phoenix --

7 Q. Yes.

8 A. -- she did state that she was attempting to
9 get him to come back, and she did know he was not
10 attending. So likely, I would say yes.

11 Q. She found out eventually.

12 A. Yeah.

13 Q. Did there come a time when you organized a
14 meeting again with the family to discuss his
15 attendance?

16 A. We were -- the meeting at Phoenix --

17 Q. Okay.

18 A. -- we set forth a plan, but Qasin did not
19 come back to school.

20 Q. Tell us the circumstances giving rise to
21 that meeting.

22 A. Okay.

23 Q. So was that to be also at county's
24 assistance or was that meeting just --

25 A. That meeting was just for Qasin and around

1 his bullying.

2 Q. Okay.

3 A. Uh-huh.

4 Q. How did you get the complaint that Qasin
5 felt bullied?

6 A. From Elyse Chesson.

7 Q. Oh, is that when she called and she was
8 upset, and she said that --

9 A. Yes.

10 Q. -- Qasin was being bullied.

11 A. Yes.

12 Q. And so your response was what?

13 A. So we held the meeting with members of the
14 LRS organization, Qasin, Balahl and then it was
15 myself, Ms. Heisey and Mr. Blackman.

16 Q. Okay.

17 A. And we discussed a plan with him. We asked
18 him several questions like, you know, trying to elicit
19 why he didn't let anybody know that things were
20 happening, you know, that's why we were saying who he
21 could go to. We explained that unfortunately
22 sometimes situations happen where maybe we don't
23 understand, but we need to go to someone that he feels
24 that he can talk to.

25 Q. Did you ask him to choose one person?

1 A. We asked him to choose five.

2 Q. Well, what's the point of choosing five
3 people?

4 A. Well, I explained it to him actually in the
5 meeting, because you never know what the circumstances
6 might be, what if you can't find that other person.
7 So my rule of thumb especially when I was at McCaskey
8 as well, I would say you need to choose five, because
9 maybe that teacher is on their lunch and they're not
10 in the building and you have a situation.

11 Q. Okay. So you have back up.

12 A. Correct.

13 Q. And what was your understanding of Qasin's
14 reaction and response to that suggestion?

15 A. He told us that he could talk to anybody,
16 that he felt comfortable.

17 Q. Okay. Is that different than what Elyse
18 conveyed during her telephone conversation?

19 A. Yes.

20 Q. Okay. She felt like he couldn't talk to
21 anyone?

22 A. Correct.

23 Q. Okay. So then what happened? You have a
24 personal commitment to come back, or you had a
25 commitment to come back?

1 A. We had a commitment that he was going to
2 come back and try, and we were going to institute the
3 plan which also included I believe like a buddy or a
4 mentor friend, the five individuals he identified, and
5 then there was some discussion around academics like
6 getting him photocopies so he could take things home
7 and study. I think those were the three main points
8 of the plan.

9 Q. And what about the complaints of bullying?
10 Did anyone look into that?

11 A. Yes.

12 Q. Who did?

13 A. The head behavioral interventionist. I
14 think his name is Scott, but I'm not recalling his
15 last name.

16 Q. Okay. And did you come to learn the results
17 of that investigation?

18 A. Yes.

19 Q. And what did you learn?

20 A. That they were unfounded. He interviewed a
21 lot of students and some teachers, and some other
22 behavioral specialists, and unfortunately there was no
23 findings, and they discussed at the meeting that it
24 was again important that he let us know so we could
25 look into these things in a timely manner.

1 Q. Okay.

2 MR. ROTHSCHILD: Objection, move to
3 strike, hearsay.

4 THE COURT: Overruled.

5 BY MS. O'DONNELL:

6 Q. Once you received the results of that
7 investigation, was that formally communicated to
8 anyone, to your knowledge?

9 A. I believe it was communicated to Ms.
10 Chesson, but it was also communicated to the mother
11 and Qasin.

12 Q. Okay. And is that something that you're
13 aware of, whether the district consulted legal
14 counsel?

15 A. I'm not aware of that, I'm sorry.

16 Q. You don't know, okay, that's fine.

17 What about the other folks that worked for
18 the agencies below and Sheila Mastro Pietro, have you
19 had interactions with those folks?

20 A. Yes.

21 Q. Okay. And generally with respect to Qasin
22 or with other students as well, and again I'm trying
23 to limit it to the folks that are the plaintiffs in
24 this lawsuit.

25 A. Sure. So we had discussions about Qasin,

1 but at the time Sheila, she works for Church World
2 Service, so she was not involved with Qasin's case.
3 So she and I discussed concerns about Phoenix.

4 Q. Okay. And what were her concerns at the
5 time?

6 A. Well, I met with Valentina first.

7 Q. Okay. And who is Valentina?

8 A. Valentina Ross works for Church World
9 Service. And I met with her, because after we met
10 with Lutheran Services and a meeting with Madab and
11 Willis and Elyse and Jack Blackman, myself and Dr.
12 Abram, we felt it was important to reach out to our
13 other partner, Church World Service and just see if
14 they had similar concerns. Just put on the table
15 we're reaching out to discuss.

16 Q. Okay.

17 A. And --

18 Q. What was the response?

19 A. The response was that she thanked me for
20 explaining to her a little further about Phoenix, and
21 I believe she stated that she intended to make herself
22 familiar with, you know, continue familiarizing
23 herself with Phoenix.

24 Q. Okay. So do you have binders in front of
25 you?

1 A. Yes.

2 MR. ROTHSCHILD: Sharon, is this your
3 binder that you're using?

4 MS. O'DONNELL: I'm using your binder.
5 BY MS. O'DONNELL:

6 Q. I'd like you to review some of the student
7 records now and I'd like to start with Qasin's. You
8 want to go to the Plaintiff's day 2 binder and look at
9 tabs 48 and 49, please.

10 Are you there?

11 A. Yes.

12 Q. Okay. What are you looking at presently?

13 A. The first page is something translated that
14 I believe was signed by Qasin and his mother.

15 Q. Okay. And if you'd flip to the third page,
16 are we now looking at enrollment documents?

17 A. Yes. This is what we would call the I-94
18 document, uh-huh.

19 Q. Okay. And is that something you're familiar
20 with?

21 A. Yes.

22 MR. ROTHSCHILD: Your Honor, I
23 apologize for the interruptions. The binder we have
24 doesn't have the pages that -- these are our binders,
25 so I don't want to -- I'm not suggesting Ms. O'Donnell

1 did anything wrong, I just want to make sure we've got
2 --

3 THE COURT: Day 2 binder, index 48.

4 MR. ROTHSCHILD: Day two. Can you just
5 give us the LSD numbers, refer to it, and I've got
6 another copy so then I can --

7 THE WITNESS: It's 056 are the last
8 three.

9 MR. ROTHSCHILD: Thank you. I
10 apologize for the interruption.

11 THE COURT: Not at all. Counselor, you
12 may proceed.

13 BY MR. O'DONNELL:

14 Q. So do you have any involvement in preparing
15 an I-94?

16 A. I do not.

17 Q. Do you know why the district has one of
18 those?

19 A. Yes, they're part of their cumulative files,
20 similar to a birth certificate or social security
21 identification. It's their means of identifying
22 themselves when they enroll.

23 Q. Okay. And who within the district would be
24 the person who receives or requests the I-94?

25 A. The enrollment office through Marsha

1 Riddick.

2 Q. Okay. If you'd turn to the next page and
3 would you just tell me what that is, and your
4 observations.

5 A. Yes, this is from our E-school system, which
6 is our electronic database and it's giving information
7 basically about his demographics.

8 Q. Okay. And is that something -- what is that
9 typically input through the enrollment office?

10 A. Yes.

11 Q. Upon a student's initial arrival.

12 A. Correct.

13 Q. Okay. What's the next document?

14 A. It looks like vaccinations.

15 Q. Okay. Is that also part of enrollment?

16 A. Yes.

17 Q. Okay. The next document?

18 A. Again, dental, that's part of enrollment.

19 Q. Okay. Would you flip to the next document
20 when you would directly be involved that's not
21 enrollment, please?

22 A. Yes, that would be document 60.

23 Q. Okay. Where (indiscernible).

24 A. Yes.

25 Q. What is that document?

1 A. This is our oral language observation.

2 Q. Okay. And why is that significant to you
3 and your role with that?

4 A. Sure. So we need to complete these twice a
5 year, once at the beginning and once at the end of the
6 school year.

7 Q. Okay. And does that happen after or at the
8 time of enrollment?

9 A. It would happen after the school site.

10 Q. And what does it say for Qasin, what are
11 your observations?

12 A. It states that in December he was at an
13 entering level.

14 Q. Okay. And what does that mean to the rest
15 of us? Is that --

16 A. Absolutely. So it means two things. So the
17 entering level is the very first level of ESL as
18 explained yesterday.

19 Q. Okay.

20 A. But I also note that a student just coming
21 in, research shows they have a one to three year
22 period which we commonly call the silent period where
23 they respectfully are allowed to not produce orally.

24 Q. Okay.

25 A. If again, going back to yesterday's

1 testimony that effective filter. If they're feeling
2 at all uncertain and they're allowed to that, they may
3 not produce as much as they cognitively are
4 understanding.

5 Q. So is this a researched based theory that's
6 implemented and accepted by the Pennsylvania
7 Department of Education?

8 A. Yes.

9 Q. Are you allowed to allow them this silent
10 period and not to produce orally?

11 A. Yes. In fact, if you deny them that silent
12 period, that could be detrimental.

13 Q. Okay. Let's move to the next document and
14 tell me whether or not that's significant in your role
15 as the coordinator of ESL.

16 A. It does not look to me like it's important.

17 Q. Okay. What's the next document?

18 A. It is our writing prompt from the beginning
19 and end of the year.

20 Q. What is a writing prompt and why do you need
21 it?

22 A. Sure. So this is actually modeled off of
23 Access and Access has in all four domains, reading,
24 writing, listening, and speaking, pictures that are
25 animated, they're not visual photographs. And it

1 walks students through steps so that they can achieve
2 up to the level that they are able to, meaning at a
3 higher level, for example, expanding, this prompt
4 would have more questions.

5 Q. Okay. Now, stay there.

6 A. Yes.

7 Q. Is that document, and let's -- give me the
8 Bates stamp number.

9 A. 62.

10 Q. 62. Is that document appropriate for a
11 student of Qasin Hassan's age?

12 A. Yes.

13 Q. Okay. And why?

14 A. Well --

15 Q. It's rather childish don't you think?

16 A. Well, no, this is what our Access exams look
17 like. Again, they use drawn pictures, they don't use
18 photographs. And we have a word bank because that's
19 what's appropriate for the level. And there are
20 multiple questions, such as what are they doing, who
21 is doing it, what are they eating, because that is
22 appropriate at the entering and beginning level, it
23 goes back to that basic interpersonal communication
24 skills.

25 So they're able to use very basic, we call

1 them the five W's, who, what, where, when, how, why.

2 Q. Who, what, when, where --

3 A. I threw how in there.

4 Q. Okay.

5 A. Who, what, where, when, why, how.

6 Q. Okay. Very good. Would you turn to the
7 next page of this.

8 A. Yes.

9 Q. And this would be Bates stamped 63.

10 A. Yes.

11 Q. And is this a document that's significant to
12 you in your role as the coordinator of the ESL?

13 A. Yes. This is the WAPT (ph) results.

14 Q. And what does that mean?

15 A. So the WAPT is the placement test that
16 accompanies Access from the WEDA.

17 Q. Okay.

18 A. And it states level upon entering.

19 Q. Okay. So you just said accompanies Access
20 upon WEDA.

21 A. Okay.

22 Q. What does that mean?

23 A. Sure. So WEDA is the organization spoken
24 about yesterday that 41 states are part of the
25 consortium. Pennsylvania is one of those. So WEDA is

1 our state mandated way of assessing ELLs. And we do
2 it in two ways. We do it with the Access, which
3 happens for about six weeks from the end of January to
4 beginning of March, and then we do that with the WAPT,
5 which is upon entrance they must take this exam.

6 Q. Okay. And what does WAPT tell us?

7 A. WAPT tells us their ESL level.

8 Q. There's a level?

9 A. Correct.

10 Q. Okay. And what was Qasin's level in the
11 WAPT?

12 A. It states here that he was entering.

13 Q. Okay. And that's consistent with his
14 Access? You read us a document before that showed
15 that he was entering.

16 A. Well, that's consistent with his internal
17 writing assessment that his teacher gave --

18 Q. Okay. All right.

19 A. -- and his oral assessment.

20 Q. Okay. And the next document that is
21 significant to you in your role as the coordinator?

22 A. Would you like me to --

23 Q. On ESL. Yes, please, turn to the next
24 document and tell us what Bates stamp you're using.

25 A. 67.

1 Q. Okay. And what is that?

2 A. So this is a document that if a student is
3 unable to write in English at all on that prompt we
4 just discussed --

5 Q. Yes.

6 A. -- that they are given the chance to write
7 in their native language. Because of the transfer
8 theory, the transfer theory is like an iceberg. If
9 you think of two icebergs, you would see the tip of
10 the icebergs and if you were driving a boat or a ship,
11 you might say, oh, I can sail right between those two
12 icebergs, right.

13 Q. Okay.

14 A. But that's because you don't realize
15 potentially that there's so much underneath. I use
16 that visual because that in research is what they use.
17 That underneath iceberg --

18 Q. Yes.

19 A. -- is actually transfer theory. You can
20 transfer what you know in your native language into
21 your second language, that's why the bottom of the
22 iceberg is so large and so important.

23 Q. Okay.

24 A. In that visual.

25 Q. So using the transfer theory as applied to

1 Qasin, what does this writing sample tell you?

2 A. Well, this tells me he has some ability to
3 write in his native language.

4 Q. Okay. And is he capable of transferring his
5 understanding of how to learn a language to English?

6 A. I would say yes.

7 Q. Okay. And is that based on a transfer
8 theory or something else?

9 A. I would say that's based on transfer theory.

10 Q. Okay. All right. Would you turn to the
11 next significant document?

12 A. There is WAPT, which is the actual test that
13 was given.

14 Q. Okay.

15 A. So there are some pages of that.

16 Q. And are we -- again, are we agreeing that at
17 this point in time, at the time he took it, which
18 would be in the first quarter of 2016, he was still at
19 entering level?

20 MR. ROTHSCHILD: Objection, Your Honor.

21 THE COURT: Mr. Rothschild?

22 MR. ROTHSCHILD: That mischaracterizes
23 the date on this. It says October 23rd, 2015.

24 MS. O'DONNELL: Well, I guess the
25 witness could have corrected me.

1 THE COURT: What Bates number is this?

2 MR. ROTHSCHILD: I'm looking at --
3 looks like 68 and that was true on an earlier page as
4 well, 63.

5 THE COURT: Very well, do we agree that
6 the date is different?

7 MS. O'DONNELL: We all agree.

8 THE COURT: Very well, you may proceed,
9 Counselor.

10 MR. ROTHSCHILD: Thank you, Your Honor.

11 BY MS. O'DONNELL:

12 Q. So as of October of 2015, he was at an
13 entering level?

14 A. Yes.

15 Q. Okay. Very good. The next document that's
16 significant to you in assessment of this student,
17 student record?

18 A. Is number 71.

19 Q. Okay.

20 A. So this is our home language survey we must
21 give to any student enrolling, any student and their
22 family. This home language survey, this indicates to
23 me that he speaks Somali and that that is the primary
24 language of the home

25 Q. Okay. So, for example, if there was going

1 to be a document translated and sent home to his house
2 or his mother, what language would that letter be
3 translated into?

4 A. It would be sent in Somali.

5 Q. And is that because that document says it?

6 A. Correct.

7 Q. Okay. Thank you. Were you also aware that
8 Qasin has some ability to speak another language?

9 A. Yes.

10 Q. Do you know what that other language is?

11 A. Arabic.

12 Q. And do you know which he uses more, Somali
13 or Arabic?

14 A. I believe in speaking with him, he says he
15 uses both.

16 Q. Okay.

17 A. But he can read and write in Arabic.

18 Q. Okay.

19 A. A little bit.

20 Q. Thank you. And again, in your assessment of
21 the student record, can you tell me what the next
22 document is?

23 A. This is a transcript.

24 Q. Okay. And what does that transcript tell
25 you?

1 A. It has grades for Qasin.

2 Q. And what are his grades and classes?

3 A. D's and C's.

4 Q. Okay. And what was the schedule that was
5 prepared for him?

6 A. Sure, it's counseling, fitness, art,
7 international school ESL, intensive reading and skills
8 prep.

9 Q. Okay. And which if any of those classes
10 does he actually earn credit towards graduation?

11 A. All.

12 Q. Even for counseling?

13 A. Yes.

14 Q. Skills prep?

15 A. Yes.

16 Q. Intensive reading?

17 A. Yes.

18 Q. Okay. Are there any content classes there?

19 A. Well, my understanding would be that the
20 international school ESL is an ESL teacher who is
21 providing ESL instruction, so learning English as a
22 second language, but also infusing the content.

23 Q. Okay. Why is that schedule appropriate for
24 a student (indiscernible)?

25 A. Well, it looks like he's receiving two to

1 three hours of literacy support.

2 Q. Okay.

3 A. Because skills prep, intensive reading and
4 international school are all forms of literacy
5 support.

6 Q. Okay. Are you aware of whether or not Qasin
7 came in with any prior education or credits for prior
8 education?

9 A. My understanding is he did not.

10 Q. Okay. And is that schedule appropriate for
11 someone who has no evidence of prior education?

12 A. Yes. One of the things that we do is we
13 look at trying to get some classes where the students
14 will be in emergent, immersed but that are more
15 accessible and sometimes a little more fun.

16 Q. Okay.

17 A. Not as stressful such as art or fitness.

18 Q. Okay. And is -- that's when -- to encourage
19 him one way or another?

20 A. Yes.

21 Q. Okay. And how would that encourage him?

22 A. So some of the students that we speak to
23 would talk a lot about how they like to play sports
24 and soccer and different activities. And also brain
25 research shows that it's really important to reset

1 your brain throughout the day, and one of the ways to
2 do that is through physical exercise.

3 Also part of the credits you need to
4 graduate are art and gym. So it's just a -- I don't -
5 - I'm trying to think of another word other than fun,
6 but a way to get that brain break, get the activity
7 out, switch gears, be immersed with English speaking
8 peers and get the credits you need.

9 Q. Okay. Were you aware that Qasin had
10 testified that he was not encouraged by this schedule
11 and he felt that he wanted to learn and not play
12 basketball? Would that surprise you?

13 A. Yes.

14 Q. What's the next document that's significant
15 to your assessment?

16 A. I believe there's a double document, so I'll
17 skip that. The document 74.

18 Q. Okay. And what is that?

19 A. This is a screen that shows all of excused
20 or unexcused absences.

21 Q. And why is that significant?

22 A. Because it shows that he's had a lot of
23 excused absence, which would cause gaps in his
24 availability to learn and earn credits.

25 Q. Okay. We heard a term used so far this week

1 called seat time. Do you know what refers to?

2 A. So to me that refers to needing to be in
3 class in order to earn your credits that are needed
4 for graduation.

5 Q. Okay. And do you know whether or not just
6 sitting there in the seat is useful to a student in
7 order to earn a credit?

8 A. No, it's certainly not just seat time. It
9 has to be active participation and it has to be, you
10 know, in class assignments, and so on and so forth,
11 engaging in a lesson, but you need to be present to do
12 all of those things.

13 Q. To do those things. Can you tell me based
14 on that attendance record when, if at all, Qasin first
15 started school at the Phoenix Academy?

16 A. I'm not sure it would tell me when he
17 started, but I see the first parent excused is
18 February 4th.

19 Q. Okay. So that means he was obviously
20 enrolled by that February 4th.

21 A. Yes.

22 Q. Okay. And what is the last day on that
23 printout or that screenshot regarding his attendance?

24 A. June 7th.

25 Q. Okay. All right. Thank you.

1 Are you aware of whether or not Qasin
2 expressed an interest in coming back to school as of
3 the last date on that screenshot?

4 A. No.

5 Q. Okay. What would his schedule look like at
6 McCaskey?

7 A. His schedule would look like one period 48
8 minutes of ESL instruction, one period 48 minutes of
9 CA instruction with an ESL teacher, and one period 48
10 minutes of skills prep or it could be an art or a gym,
11 depending on the semester.

12 Q. Okay. And that would be through the
13 international school?

14 A. Yes.

15 Q. And how long would he stay in that setting,
16 in the international school setting?

17 A. He would only stay until he tested as a
18 beginner or one year.

19 Q. Okay. So didn't you say that he was a
20 beginner to start with in that language assessment?

21 A. He was entering.

22 Q. And what's the difference between entering
23 and beginning?

24 A. So entering is your very basic foundation.
25 So there could be one word utterances, or there could

1 be no word utterances. Beginning is where you're
2 starting to form sentences, but they are very basic
3 sentences.

4 Q. So does it mean that after a year if he's
5 able to form a basic sentence, then he's finished with
6 the international school?

7 A. Correct, and it could be before a year. We
8 have students that every marking period transfer out
9 of the international school once they're attaining at
10 that beginning level.

11 Q. So it's only about their ability to speak
12 English at a beginning level that determines when they
13 leave the international school program?

14 A. Correct.

15 Q. And then what happens, are they immersed
16 right back into the regular curriculum?

17 A. So once someone is a beginning level
18 student, they receive two hours, again 48 minutes of
19 ESL and 48 minutes of CA with an ESL teacher, and
20 they're in regular education classes throughout the
21 rest of the day.

22 Q. Okay. And would they also be eligible to
23 get ESL support throughout the regular classes?

24 A. No. We would have support with the ESL
25 teacher, potentially supporting the classroom teachers

1 with just informal discussions, strategies, lesson
2 plans.

3 Q. Okay. Are you aware of whether or not the
4 district had any consultants review the international
5 school program?

6 A. Yes, we had a few consultants during my
7 time. Our most recent was Vivian Feolo (ph) and she's
8 from New York. That was this past year. We had for
9 the prior two years, we had Secora Herrera (ph) who
10 came in and not only consulted with us, but provided
11 professional development for our teachers several
12 times throughout the year --

13 Q. Okay.

14 A. -- on culturally relevant and biography
15 driven instruction. And before that, or actually
16 during that time, we also had Anastams Daley-Pena (ph)
17 who was through Batan (ph). We have advisors from
18 PDE, they're called technical assistance advisors,
19 Paula Zucker is one of those, and we also had
20 assistance from PDE with the migrant and refugee
21 population.

22 Q. Okay. Just taking some of that backwards,
23 when you referenced Batan, what is that, what do you
24 mean by that?

25 A. That's like a subset from PDE that provides

1 mostly professional development and ESL and special
2 education and differentiation.

3 Q. Okay. And what does differentiation mean?

4 A. Differentiation means that you are
5 accommodating all the levels of students within your
6 classroom.

7 Q. Okay. And you mentioned a very long term
8 and I know I said yesterday, but it's not coming to
9 me. Biology --

10 A. Oh, biography, culturally relevant biography
11 driven.

12 Q. What does that mean?

13 A. Sure. So it means that you're using the
14 story of self, you're honoring the story of self, in
15 order to bring that into the English language learning
16 and the content that's being taught.

17 Q. And why is that important?

18 A. That's important because it values the
19 student, and it values their story, and it also helps
20 with that transfer theory because it's a very strong
21 connection. There's connection to world, connection
22 to self, and there's one other connection that I'm
23 forgetting, but it's about those connections, and how
24 that then helps them access content or English.

25 Q. And is that a research based theory?

1 A. Yes, the consultant talked about culturally
2 relevant yesterday.

3 Q. Okay. What about consultants for the
4 Phoenix? Have you -- was the Phoenix program also
5 included within these consultations?

6 A. Yes. Our ESL department is for the entire
7 school district including Phoenix, even including YEK
8 (ph) which is our alternative placement, we have that
9 ESL teacher involved in all of our professional
10 development.

11 Q. And I heard someone refer to Phoenix as a
12 magnate school. What does that mean?

13 A. So a few years ago, maybe two, we had
14 discussions about Phoenix being a magnate school, and
15 it had to do with the way that the state is evaluating
16 schools and our student school performance profile,
17 SPP.

18 Q. I'd like to discuss with you if I can the
19 substance of Dr. Marshall's report. Have you read Dr.
20 Marshall's report?

21 A. Yes.

22 Q. Okay.

23 MS. O'DONNELL: I'm not quite sure,
24 Counsel, what number that is tabbed in your binder.
25 Can you help me with that?

1 MR. ROTHSCHILD: Just a moment.

2 THE WITNESS: It's 81.

3 BY MS. O'DONNELL:

4 Q. 81? Thank you.

5 A. You're welcome.

6 Q. If you would turn to Exhibit 81 in the day 2
7 binder and specifically to page 3.

8 A. Yes.

9 Q. Are you there?

10 A. Yes.

11 Q. Drawing your attention to the Roman numeral
12 heading methodology and information considered, do you
13 see that?

14 A. Yes.

15 Q. Okay. Have you read this paragraph before
16 now?

17 A. Yes.

18 Q. Okay. Are you aware of whether or not
19 personally Dr. Marshall sought to obtain information
20 from the school district administration?

21 A. She did not.

22 Q. What about the school district staff?

23 A. She did not.

24 Q. What about the school district students,
25 other than the students who are plaintiffs in this

1 case?

2 A. She did not.

3 MR. ROTHSCHILD: Objection, calls for
4 speculation.

5 THE COURT: There's an objection.
6 Response?

7 MS. O'DONNELL: I -- the question was
8 to her knowledge.

9 THE COURT: The objection is overruled.
10 I believe Dr. Marshall herself indicated that she did
11 not consult --

12 MS. O'DONNELL: Just confirming that
13 through this witness.

14 THE COURT: You may continue,
15 Counselor.

16 BY MS. O'DONNELL:

17 Q. And with respect to the consultations that
18 you had with Dr. Herrera and others, can you tell me
19 how often you personally, if at all, met with them?

20 A. Each consultant was at least, I'm going to
21 say six to eight times a year.

22 Q. Okay. And what input did you give to those
23 consultants?

24 A. We reviewed our entire program, including
25 materials, including curriculum, including the variety

1 of demographics, our parent involvement.

2 Q. And what's the point of having a consultant
3 come in? Is it to just tell you what a great job
4 you're doing?

5 A. No, it's to -- we use the word glows and
6 grows a lot. So it's to show us our glows what we're
7 doing well, and maybe what we should continue to do or
8 expand upon, and then it's to show where we need to
9 grow.

10 Q. Okay.

11 A. Excuse me, on what we could do better. It's
12 certainly always cyclical, because we need to keep
13 growing, and it's just good to have a set of eyes that
14 bring expertise to the table.

15 Q. And why is it good to be able to -- why do
16 you need to keep growing? What's the driving impetus
17 to growth?

18 A. Sure. Well, the first driving force is the
19 students, but secondly, we need to per PDE.

20 Q. Okay. So what challenges do the students
21 bring to the district, and especially to your group?

22 A. Well, they bring challenges as far as
23 emotional, social, you know, based on their background
24 and then based on trying to acculturate to our
25 community. They bring a variety of needs in that way,

1 and then they bring your basic needs, you know,
2 clothes, shelter, food.

3 Q. And so with respect to language --

4 A. Yes.

5 Q. -- what have your consultants told you about
6 providing like for example, one of those rare students
7 who only speaks Swahili, how do your consultants
8 advise you to handle something like that, something so
9 rare?

10 A. So our consultants would say and PDE would
11 say that within the classroom, you're using best
12 strategies, you're not using a dual immersion approach
13 or translation within the classroom.

14 Q. Stop there and tell us what dual immersion
15 means.

16 A. So there's many methods of dual immersion,
17 that was spoken to yesterday as well, but the most --

18 THE COURT: What is that word?

19 THE WITNESS: Dual immersion, like to
20 be immersed, yes. So the most common method is when
21 you have 50/50, so you have 50 native English
22 speakers, sorry 50 percent, not 50 individuals, 50
23 percent native English speakers, 50 percent non-
24 native, and then you teach in both languages.

25 So, for example, if we were saying

1 Spanish, you would teach in Spanish and you would
2 teach in English.

3 BY MS. O'DONNELL:

4 Q. But you need a 50 percent homogenous group
5 on both sides to have two teachers, right?

6 A. Yes. And --

7 Q. Well, what would happen if you have
8 something like the Phoenix Academy where you have a
9 percentage of students who are native speakers and
10 then a percentage of students that have a mix of other
11 languages?

12 MR. ROTHSCHILD: Objection, Your Honor,
13 lacks foundation, I'm not sure whether she's saying
14 what she thinks or the expert told them, which would
15 make a difference for my next objection.

16 THE COURT: I'll sustain the objection,
17 to the extent you can lay a foundation to in
18 relationship between that question and the prior
19 question and the prior answer.

20 MS. O'DONNELL: I'll do that.

21 BY MS. O'DONNELL:

22 Q. Are you aware of whether or not the Phoenix
23 Academy has classrooms that contain English speakers
24 and speakers of other languages?

25 A. Yes.

1 Q. And would the dual immersion theory be in
2 terms of teaching be appropriate for something of that
3 nature?

4 A. No.

5 Q. Why not?

6 A. Because there are such a variety of
7 languages and some of them only have one or two
8 students, because they're marginal languages, so you
9 could not set up the classroom in a 50/50 setting, and
10 also the resources as well as the certified teachers
11 in both languages would be extremely difficult. And
12 budgetary concerns, the state does not allow you to
13 use funding through Title III to support those
14 programs.

15 Q. So what about interpreters? Are you able to
16 use interpreters for those students that speak the
17 rare languages?

18 A. That's not considered best practice in ESL.

19 Q. According to whose theory?

20 A. So according to a lot of theorists, it's
21 about the strategies you bring into the classroom. So
22 if it's an entering level student, you use visuals,
23 you would use gestures, you might use songs and
24 chants, and that's the way that you access the
25 language, it's not through interpretation of exactly

1 what's going on in the classroom throughout the whole
2 period.

3 Q. So has interpretation ever been considered
4 since you've been in your role as a methodology to
5 assist with teaching students of other languages?

6 A. No.

7 Q. Okay. Is it anything that you would ever
8 consider bringing into your programs, interpretation,
9 anything that you would consider bringing into your
10 programs in order to assist the students?

11 A. Not within the classroom setting.

12 Q. Okay.

13 THE COURT: And that is to be
14 distinguished from translation, even if it's through
15 technology the idea that a child speaks one language,
16 can he not use something to translate so that he can
17 understand easier than just trying to figure it out
18 from pictures or otherwise?

19 THE WITNESS: Yes. In fact, we do
20 provide one-to-one dictionaries, I'm sorry, one-to-one
21 meaning word-to-word, so the student could look up,
22 let's say in Swahili the word for bread and then they
23 would see the word in English. We provide them for
24 all students upon enrollment, and then we have those
25 electronic ways as well.

1 THE COURT: Okay. Excuse my
2 interruption, Counselor.

3 MS. O'DONNELL: Oh, not at all, Your
4 Honor.

5 BY MS. O'DONNELL:

6 Q. So what type of electronic devices or
7 technologies are available to the students at both the
8 international school at McCaskey and at the Phoenix
9 Academy to your knowledge?

10 A. Yes. So we have some netbook cards, which
11 are like small computers and we have I-Pads and then
12 we have computer labs.

13 Q. Okay. And have these students that are
14 plaintiffs in this lawsuit had access to all of that
15 technology?

16 A. Yes.

17 Q. And are they shown how to use it?

18 A. Yes.

19 Q. Okay. Do you know whether the students at
20 the McCaskey International School have those, have
21 been shown how to use those devices as well?

22 A. Yes.

23 Q. Okay.

24 MS. O'DONNELL: I may be finished.

25 Q. I'd like to draw your attention to page 9.

1 And I'll set this question in context so it makes
2 sense to the rest of the room. On page 9, Dr.
3 Marshall was talking about the acceleration and credit
4 recovery program at Phoenix. Do you see that?

5 A. Yes.

6 Q. And she says that the entering level ELLs,
7 which is a terminology I think you used as well,
8 that's entering --

9 A. It's English learner -- English language
10 learner is the traditional term. It is now changing
11 to English learner or sometimes DLL, dual language
12 learner.

13 Q. Okay. So "The ELLs are placed in
14 accelerated grade level classes and expected to
15 understand and master the curriculum at twice the
16 normal pace in a program designed for native speaking
17 students who have lived their entire lives or most of
18 it in this country and its school system." Do you see
19 that?

20 A. Uh-huh.

21 Q. Then she says, "this is being done with no
22 evidence of adaptation of content or accommodations,
23 such as instruction by dually certified teachers in
24 the subject area and ESOL in all classes through the
25 use of ESOL versions of materials used for class." Do

1 you see that?

2 A. Yes.

3 Q. Do you agree with that?

4 A. No.

5 Q. Okay. Why not?

6 A. There's a few pieces. So the one piece is
7 we do have teachers that are dually certified. In
8 order to be highly qualified in the State of
9 Pennsylvania, you must in fact, have your CA
10 certification.

11 Q. What does that mean?

12 A. That means communication arts, that is also
13 changing to ELA.

14 Q. Okay.

15 A. But you must have that certification we will
16 say in English and in ESL in order to be highly
17 qualified.

18 Q. Okay. So she says there's -- this is being
19 done with no evidence of adaptation of content. What
20 do you think about that?

21 A. I was never consulted and I don't believe
22 that there is evidence that there's no accommodations,
23 if lesson plans weren't reviewed and class
24 observations were not made.

25 Q. Okay. So do you find that there's no basis

1 for this conclusion?

2 A. Yes.

3 Q. Do you think classroom observations are
4 important to get a feel for what's going on in a
5 classroom?

6 A. Yes.

7 Q. And do you know how long typically
8 observations last?

9 A. The whole period generally.

10 Q. Okay. So a teacher is put on the spot when
11 someone walks in and makes a general observation?

12 A. Yes, we do informal observations daily but a
13 true observation where you're sitting down and looking
14 to get the most feedback about the depth of the lesson
15 planning, the delivery of the lesson, and the student
16 engagement, and then there's other factors as well,
17 you would want to stay the period.

18 Q. Do you from time to time do teacher
19 observations?

20 A. Yes, I do.

21 Q. Have you done any observations at Phoenix?

22 A. I have.

23 Q. Okay. And what did you find in those --
24 well, let me ask you this. Recently?

25 A. Yes, in the summer program I did just

1 recently.

2 Q. Okay. And what goes on during the summer
3 program in class?

4 A. Well, I observed the art class, the math
5 class, and the communication arts class, which is ESL.
6 And the one day the students were doing an art
7 project, but they also learned in context about a
8 culture that that art project had come from.

9 They had a -- actually that day they had a
10 guest artist who was teaching them. So they also did
11 some biography I guess on that guest artist back to
12 that biography driven, why it was important to her to
13 be an artist. They were engaged in the activity and
14 the teacher was walking around facilitating, that was
15 art class.

16 In CA class, there was two teachers and I
17 believe they were working on basic English. I believe
18 maybe verb agreement and there were sentence frames on
19 the board. Again, the teachers were walking around.
20 Some students were working in pairs, some were working
21 in groups, some were individual. That indicated to me
22 that they had a station rotation model, where
23 differentiation could occur. Those are just some
24 examples.

25 Q. Did you happen to notice any of the

1 plaintiffs in this lawsuit at the summer school
2 program?

3 A. Yes.

4 Q. And who were they?

5 A. I believe Sue.

6 Q. Sui?

7 A. Sui, thank you. And Anyemu.

8 Q. Anyemu.

9 A. Thank you, my goodness. And I believe --
10 oh, Khadidja's sister Norsham was there, she was
11 working one-on-one with the teacher.

12 Q. Now, again to speak very briefly of
13 something called sheltered immersion, what does that
14 mean?

15 A. Sheltered immersion?

16 Q. Yes.

17 A. So sheltered immersion is when students are
18 placed in a classroom with English speaking peers, and
19 they're provided the supports through the lesson
20 planning and delivery of the lesson for their ESL
21 needs. So they're immersed in the classroom, but
22 still receiving the ESL support they need.

23 Q. And did any of these plaintiffs have
24 sheltered immersion at Phoenix Academy this past year?

25 A. Yes.

1 Q. Okay. And in what classes specifically are
2 you able to -- do you know off the top of my head?

3 A. No, I would not.

4 Q. For example, is communication arts one class
5 where they would all get sheltered immersion?

6 MR. ROTHSCHILD: Objection. Withdrawn,
7 Your Honor.

8 THE COURT: Objection, withdrawn? You
9 may proceed, Counselor.

10 THE WITNESS: That would not be
11 sheltered immersion.

12 BY MS. O'DONNELL:

13 Q. Okay.

14 A. That would be content because they are with
15 their peers that are of the same English level and
16 they're receiving CA, which is the PDE standards for
17 CA, as well as the ESL ELPS, the English Language
18 Proficiency Standards with a ESL highly qualified
19 teacher.

20 Q. Give me an example of how these plaintiffs
21 could have sheltered immersion, what type of class
22 would that happen in?

23 A. Sure, potentially a math class, or the art
24 class that I described earlier.

25 Q. Okay. What about homework? I know that

1 homework was an issue for -- at least that was brought
2 up this week. Are you aware that students at Phoenix
3 Academy do not bring books home?

4 A. I'm aware.

5 Q. Okay. And is that something that's
6 acceptable to the school district, according to its
7 policies?

8 A. Yes. We have many schools that have their
9 own procedures on books, especially the middle school
10 and high school expensive large textbooks. They stay
11 as a classroom set in the classroom.

12 Q. Is that something that's allowed by the
13 Department of State -- Department of Education?

14 A. It's my understanding, yes.

15 Q. Okay. Do you under -- well, we talked a
16 little bit about the Phoenix Academy classes. Do you
17 know how long the classes are?

18 A. Eighty minutes.

19 Q. Okay. And do you know how long of a class
20 day each of the students have to participate?

21 A. They have extended after school that is an
22 opportunity for them, but I'm going to say same as
23 other schools, it's about 7:30 to 3:30 --

24 Q. Okay.

25 A. -- for secondary schools.

1 Q. And how many classes would the students at
2 Phoenix Academy have per day?

3 A. I have to do math on the spot. I'd say
4 probably five or six and lunch.

5 Q. Okay. And were you here for Dr. Marshall's
6 testimony that she did not feel it was appropriate to
7 teach these English language learners within that time
8 frame?

9 A. Yes.

10 Q. Okay. Do you agree with that?

11 A. No.

12 Q. Why not?

13 A. Because 80 minutes, if you are having
14 multiple classes with an ESL teacher, those minutes
15 accrue to your two to three hours that are needed per
16 the state.

17 Q. Okay. So the state -- according to the
18 Pennsylvania Department of Education, so that I just
19 understand your testimony --

20 A. Yes.

21 Q. -- tells us as a guideline that English
22 language learners should have two to three hours of
23 English instruction a day; is that what you're saying?

24 A. For the entering level, for the beginning
25 level and then developing is one to two, expanding is

1 one or as needed, and then as you continue to move
2 forward, it's as needed.

3 Q. Okay. So even if at the international
4 school, a student was exited from the -- from that
5 program at the beginning level, does that mean they're
6 exited -- at the time of being exited they are no
7 longer receiving two to three hours of instruction?

8 A. If a student leaves the international school
9 because they have attained a beginning level, they
10 will receive two hours of ESL and CA. It's a
11 combination class.

12 Q. Okay. When does that -- and then they have
13 to test out in order to have their English language
14 instruction reduced to one hour; is that correct?

15 A. As they continue to attain on the language
16 proficiency on the access exam, then yes, they would
17 decrease the amount of ESL support they receive until
18 they're able to exit from the programs.

19 Q. Were you here when Dr. Marshall said that
20 she felt like the 80 minute block education format was
21 actually causing student's progress to deteriorate and
22 I believe she used the terminology retard their
23 progress?

24 A. Yes.

25 MR. ROTHSCHILD: Objection, Your Honor,

1 I think that mischaracterizes her testimony.

2 THE COURT: And I remember her using
3 the term retard. I don't remember if it was about the
4 80 minute classes, so it's hard for me to rule on that
5 objection. Counselor, do you recall that was what her
6 testimony was?

7 MS. O'DONNELL: That is my
8 recollection, but I can rephrase it, I would certainly
9 --

10 THE COURT: Certainly, Counselor.

11 MS. O'DONNELL: And again, I'm asking
12 for the witness' recollection.

13 BY MS. O'DONNELL:

14 Q. So do you recall Dr. Marshall's testimony
15 when she stated that she felt that the educational
16 program, the accelerated model, which includes the 80
17 minute block classes actually starts to retard the
18 child's education as opposed to allow it to progress?

19 A. Yes, I do.

20 MR. ROTHSCHILD: Objection, Your Honor.

21 THE COURT: Now I do recall what she
22 said. She said that this idea of trying to get them
23 more credits quickly was exactly opposite of what they
24 needed, they needed slower, the runway, and so it did
25 retard their progress.

1 MS. O'DONNELL: So my question is okay
2 then?

3 THE COURT: I think so. Do you
4 understand the question?

5 THE WITNESS: Yes.

6 BY MS. O'DONNELL:

7 Q. Do you understand the question?

8 A. Yes.

9 Q. Can you answer?

10 A. Yes, I recollect her saying that.

11 Q. Okay. And do you agree with it?

12 A. No.

13 Q. Why not?

14 A. Because in those 80 minutes using best
15 strategies as needed, we call them the can do
16 descriptors, that's per PDE and WEDA. What the
17 student can do at that language level, and then what
18 is the next goal that they have in that candor
19 descriptor, and that is what used for lesson planning
20 for all student that are ELLs within that 80 minutes.

21 So acceleration in discussing it, would
22 include content and curriculum that's appropriate for
23 their language levels. So essentially they're there
24 for 80 minutes if we're just talking about that one
25 class.

1 Q. Right.

2 A. And they would be receiving content and
3 instruction that's appropriate to their language level
4 within those 80 minutes, opposed to McCaskey where
5 they get 48 minutes.

6 Q. Now, does that consider -- now, let's just
7 say that you have a classroom where you have a couple
8 of quick learners.

9 A. Yes.

10 Q. And you have a couple of slow learners.

11 A. Yes.

12 Q. With respect to the differentiated
13 instruction, how does one assess whether a single
14 curriculum over that 80 minutes is appropriate for
15 this class of mixed learners?

16 MR. ROTHSCHILD: Objection, Your Honor,
17 I'm not sure what the terms quick and slow learners
18 mean. If this is referring to Dr. Marshall's
19 testimony, I'm not sure this is a term of art that has
20 any bearing on this case.

21 THE COURT: Response, Counselor?

22 MS. O'DONNELL: Counsel has -- I'm not
23 sure what his problem is? He doesn't understanding
24 what a quick or a slow learner is generally, is that
25 the objection?

1 MR. ROTHSCHILD: I think, Your Honor,
2 throughout this case, we've talked about -- and Ms.
3 Hilt has talked about levels, which is a technical
4 term and during et cetera, and quick and slow, I think
5 could mean something entirely different than the
6 issues in this case.

7 THE COURT: Is it your concern that we
8 not insult the students by suggesting they're slow
9 learners are that they have more challenges in
10 learning because of their background and their lack of
11 language?

12 MR. ROTHSCHILD: I think the terms are
13 vague and the meaning of the answers if we're not
14 precise about terminology is going to create a
15 confusing record. Your concern is also a good one.

16 THE COURT: Thank you. So the term
17 slow learners, Counselor, what do you mean by slow
18 learners?

19 MS. O'DONNELL: Well, how about I allow
20 --

21 THE COURT: Someone who has challenges?

22 MS. O'DONNELL: Well, there's someone
23 who's obviously able to look down and learn from what
24 they're seeing and others may take more time to
25 process.

1 THE COURT: So based on what you
2 suggested of these plaintiffs, some might be slow
3 learners, and some might be fast learners?

4 MS. O'DONNELL: Yes. Yes.

5 THE COURT: Okay. Could you rephrase
6 the question?

7 MS. O'DONNELL: Sure.

8 BY MS. O'DONNELL:

9 Q. When you have a class that needs
10 differentiated instruction, what is the differentiated
11 instruction based upon? What's the need for
12 differentiated instruction?

13 A. It's based upon the -- if it's ESL, the
14 language level would be assessed, but it also could be
15 based on other abilities, for example math abilities,
16 if it was a lesson in math.

17 Q. Okay. Let's take a reading class.

18 A. Okay.

19 Q. Do you find in your -- have you ever taught?

20 A. Yes.

21 Q. Okay. And have you ever taught ESL?

22 A. Yes.

23 Q. Okay. So explain to me how you would go
24 about a differentiated instruction when you have
25 children of various learning abilities?

1 A. So one of the ways is definitely what we
2 call the station rotation model, where students are
3 rotating through groups. Sometimes it could be an
4 electronic, computer based group. Maybe a group where
5 there's some individual work, and then there's always
6 a group with the teacher. So it's instead of doing a
7 whole group lecture, for example, because we don't
8 like that in education, not the way I was taught but
9 now, we know that's not right, so we would have a
10 smaller group where the teacher is instructing the
11 whole group, but to maybe only four students, and so
12 it's a very much one-on-one interaction. That's one
13 way.

14 But within those rotation models, you would
15 have various leveled texts. You may have things like
16 we saw before, like word banks, or visuals, based on
17 the language level of the student, or if it was a
18 student with an IEP need, similar differentiation.

19 Q. Okay. So is it possible that some of these
20 students could be traveling around at Phoenix Academy
21 or at the International School in a cohort, and I say
22 some of these students, I mean the plaintiffs. Is it
23 possible for the same aged students to be in the same
24 cohort?

25 A. Yes.

1 Q. Yes. And is it possible that they could be
2 learning at different speeds or they have different
3 learning abilities?

4 A. Yes.

5 MR. ROTHSCHILD: Same objection, Your
6 Honor. I think we're really getting confused with the
7 terminology here in terms of how the international
8 school students are grouped, Phoenix students grouped,
9 and I don't think it has a lot to do with who's
10 brighter or clearer.

11 THE COURT: It was a pretty general
12 question, pretty general information and it's pretty
13 intuitive, so I'll overrule the objection.

14 MR. ROTHSCHILD: Thank you, Your Honor.

15 BY MS. O'DONNELL:

16 Q. Okay. Did you understand my question?

17 A. Could you repeat?

18 Q. Sure. I'm interested to know whether the
19 individuals in this lawsuit that are the same age, the
20 17-year olds --

21 A. Yes.

22 Q. -- would be traveling in a cohort at either
23 Phoenix or the International School regardless of
24 their ability and pace to learn?

25 A. Yes.

1 Q. Okay. And is that because they are provided
2 with differentiated instruction in each class?

3 A. Yes.

4 Q. Okay. What do you think about the student
5 to teacher ratio at Phoenix? Is it -- in your
6 estimation as the coordinator of ESL for the district,
7 is that an appropriate ratio for those students to be
8 educated appropriately?

9 MR. ROTHSCCHILD: Objection, Your Honor,
10 calls for expert testimony.

11 THE COURT: She sounds pretty much like
12 an expert to me, even though she hasn't been --

13 MS. O'DONNELL: Qualified.

14 THE COURT: -- accepted as one. I'm
15 going to overrule the objection and allow her to
16 testify to that, it goes more to the weight of the
17 evidence whether she's satisfied with the ratio. She
18 actually put this program together to a large extent,
19 correct?

20 THE WITNESS: Correct.

21 THE COURT: And obviously she's very
22 proud of the program that she's supervising. I'm
23 going to allow her to testify to that.

24 MR. ROTHSCCHILD: And, Your Honor, the
25 only other thing I'd say is that if she could lay some

1 foundation about what that ratio is, otherwise we're
2 just getting her --

3 THE COURT: And I do agree with that.
4 Lay the foundation about exactly what the ratio is as
5 well as why she believes that's sufficient, how it
6 compares to what they would get at the International
7 School or at McCaskey in general, if she knows.

8 BY MS. O'DONNELL:

9 Q. So do you know the ratio at the Phoenix
10 Academy?

11 A. Yes, I do.

12 Q. And do you know the ratio at McCaskey
13 International School?

14 A. Yes, I do.

15 Q. Okay. Let's talk about the International
16 School first, what is the ratio teacher to student at
17 the International School?

18 A. So if I could talk about McCaskey. The
19 student/teacher ratio for McCaskey in regards to ESL
20 is 13 ESL teachers --

21 Q. Okay.

22 A. -- to about 525 students, which makes it
23 about 40 to 1 --

24 Q. Okay.

25 A. -- as far as their case load.

1 Q. Okay. And what does --

2 THE COURT: 525 ESL students?

3 THE WITNESS: At McCaskey, yes.

4 Q. And at the Phoenix Academy, what is the
5 ratio?

6 A. There's about 90 students that are ESL to 3
7 ESL teachers, so that's about 30 to 1.

8 Q. Okay. Thank you. And you believe that both
9 are appropriate?

10 A. Yes.

11 Q. Okay. I think I'm going to allow you to
12 answer cross-examination questions now. Thank you.

13 A. Okay.

14 THE COURT: Thank you very much,
15 Counselor. Mr. Rothschild, you may cross-examine the
16 witness.

17 (Pause)

18 MR. ROTHSCHILD: Does the witness need
19 a break?

20 THE WITNESS: No.

21 THE COURT: Mr. Rothschild, do you need
22 a break?

23 MR. ROTHSCHILD: I don't mind a break.
24 Sorry.

25 THE COURT: Very well. We'll recess

1 for 15 minutes.

2 THE CLERK: All rise.

3 (Recessed at 10:48 a.m.; reconvened at 11:00
4 a.m.)

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

8 THE COURT: You may be seated. Thank
9 you. The Court is called to order. All parties
10 previously present are once again present. The
11 witness is on the witness stand.

12 Mr. Rothschild, you may proceed with
13 your cross-examination.

14 MR. ROTHSCHILD: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. ROTHSCHILD:

17 Q. Ms. Hilt, you spoke about the example of
18 discipline and restraint that occurred at McCaskey.

19 A. Yes.

20 Q. That isn't demonstrated to the students
21 entering McCaskey for the first time at their
22 orientation; is that right?

23 A. No, they're provided with a handbook that
24 has all of our guidelines and disciplinary procedures.

25 Q. But they don't have to watch a member of the

1 faculty or staff model the restraint on another
2 student including a physical restraint?

3 A. Correct.

4 Q. And students at McCaskey, they aren't patted
5 down every morning; is that right?

6 A. Correct.

7 Q. That just happens at Phoenix?

8 A. Correct.

9 Q. And the demonstration of restraint in
10 orientation I talked about, you know that happens at
11 Phoenix, right?

12 A. Yes.

13 Q. Okay. Was there an interpreter at the
14 meeting with Qasin when his bullying allegations were
15 discussed?

16 A. Yes.

17 Q. Who provided that interpreter?

18 A. We did.

19 Q. Okay. And one of the things you said about
20 that meeting was that District staff was trying to
21 convey that maybe he was misunderstanding some of the
22 behaviors by some of his students maybe because of
23 some cultural differences.

24 A. I don't believe I said that.

25 Q. Okay. Did you tell him that he might have

1 been misunderstanding some of the encounters that he
2 characterized as bullying?

3 A. I don't believe I said that.

4 Q. Okay. You said you did not use interpreters
5 for the education of the students at Phoenix, right?

6 A. Correct.

7 Q. Or McCaskey?

8 A. Correct.

9 Q. Is that true for tests, as well?

10 A. It depends on statewide exams. There are
11 certain regulations but outside of statewide exams,
12 yes, that is true, we do not.

13 Q. Okay. And why is that?

14 A. Because it's not considered best practice
15 for ESL.

16 Q. The consultants you referred to, did they
17 deliver any work product to you that described their
18 glows and what was the other term you used?

19 A. Grows.

20 Q. And grows?

21 A. Yes. Yes, they did.

22 Q. Okay. And is that something you maintain in
23 your files?

24 A. Yes, at the District level in a binder.

25 Q. You were part of the group of District staff

1 that pulled together documents that were requested by
2 counsel both in the right to know request and then in
3 the litigation?

4 A. Correct.

5 Q. Did you produce those documents in that?

6 A. Not that document, I did not.

7 Q. Okay. But you have that in your files?

8 A. Yes.

9 Q. And you talked about observations of
10 teachers, the ESL teachers.

11 A. Yes.

12 Q. You do some?

13 A. Yes.

14 Q. Anybody else do any for your -- of ESL
15 teachers for the District?

16 A. Principals would do observations.

17 Q. And in terms of your observations of Phoenix
18 teachers who are teaching ESL Phoenix, you don't keep
19 any formal record of that, do you?

20 A. Correct. I do not.

21 Q. You talked about the observations you did
22 during the summer program.

23 A. Yes.

24 Q. Summer program is not required for Phoenix
25 or McCaskey students, right?

1 A. Correct, it's not required.

2 Q. And Phoenix and McCaskey students go
3 together --

4 A. Yes.

5 Q. -- for those classes? And that's actually
6 funded by a separate grant different from the
7 budgeting --

8 A. Yes.

9 Q. -- for that district. And I know you're
10 trying to be helpful, but if you could just wait for
11 my questions to finish.

12 A. No problem.

13 Q. I think you've anticipated most of them but
14 it don't --

15 A. No problem.

16 Q. -- make the record easier. You said that --
17 excuse me. You described the ratios of faculty --
18 students to ESL teachers at McCaskey, right, ESL
19 students to ESL teachers?

20 A. Yes.

21 Q. And said it was 40 to 1?

22 A. Yes.

23 Q. That's all ESL teachers who are certified?

24 A. That is the 13 ESL teachers who are hired by
25 the District ESL staff list.

1 Q. And are all of those teachers teaching ESL
2 classes?

3 A. Yes.

4 Q. You don't decide who goes to Phoenix, do
5 you?

6 A. No.

7 Q. That's Mr. Blackman's decision?

8 A. Correct.

9 Q. The last year or so he invited you to
10 participate in his evaluations and meetings with some
11 of the refugee students, right?

12 A. Yes.

13 Q. And what was your understanding of why he
14 did that?

15 A. So I could be there to try and provide a
16 culturally relevant warm demeanor, calm environment
17 with their families and as well as I was working with
18 the resettlement agency so I knew a lot of the case
19 workers that were coming in.

20 Q. And one of the things you've talked about
21 and I think you're aware is that these students come
22 in with -- some having had pretty traumatic
23 experiences.

24 A. Yes.

25 Q. And all of them are coming in having been

1 dislocated from where they were to a new country,
2 right?

3 A. Yes.

4 Q. And most of them with very limited English
5 proficiency; is that right?

6 A. Yes.

7 Q. But Mr. Blackman's decision about whether a
8 student goes to Phoenix is not based on language
9 proficiency, correct?

10 A. Correct.

11 Q. And you don't make any recommendations to
12 him about what's the best school or program for ELLs
13 based on their language proficiency?

14 A. Correct.

15 Q. Since November of 2015 you've had primary
16 responsibility for delivery of ESL services in the
17 District?

18 A. Yes.

19 Q. Okay. And it's a pretty important job.
20 There's a lot of ELLs in the District, right?

21 A. Yes.

22 Q. How many?

23 A. About 18 to 1900.

24 Q. Okay. And how many in high school?

25 A. About 525.

1 Q. And they are at all different levels, right?

2 A. Correct.

3 Q. And when we talk about levels --

4 A. Yes.

5 Q. -- you've used some terms, entering, I think
6 you used beginner, that might be also called emerging.

7 A. Correct.

8 Q. Okay. And then there's higher levels, more
9 proficient levels beyond that.

10 A. Correct.

11 Q. And that's something that's measured right
12 with the WAPT test and the ACCESS test?

13 A. Correct.

14 Q. Okay. And so that's very different than
15 whether a student is smarter or less smart or quicker
16 or slower. This is something that you actually have a
17 rigorous way of accessing.

18 A. Correct.

19 Q. And the strategies for teaching ELLs varies
20 depending on their level; is that right?

21 A. Correct.

22 Q. And a lot of work has been done by experts
23 in teaching ESL to understand the students and their
24 needs and to develop strategies so that they can learn
25 and of course access their subject matter classes,

1 right?

2 A. Correct.

3 Q. Okay. You studied that kind of work at
4 Millersville. I can tell you remember a lot of it.
5 And you've actually continued to read experts in the
6 field so that you're -- you can do your job, right?

7 A. Yes.

8 Q. Did you also have any education specifically
9 on ESL during your Master's at Cabrini?

10 A. Yes.

11 Q. You sat -- as you indicated, you sat through
12 Dr. Marshall's testimony, right?

13 A. Correct.

14 Q. And you would agree she is the kind of
15 expert whose work you studied during your time at
16 Millersville.

17 A. Correct.

18 Q. The kind of expert whose articles you still
19 read today, right?

20 A. Correct.

21 Q. Could you turn to your day one binder,
22 Exhibit 23? Is Exhibit 23 a document that came from
23 your files?

24 A. I am not certain. It may have.

25 Q. You were involved in gathering the documents

1 that were produced to the Plaintiffs in this
2 litigation, right?

3 A. Yes.

4 Q. Okay. And you were -- were you the only ESL
5 staff who did that?

6 A. Yes.

7 Q. And what is this article?

8 A. This is about engaging ELLs with SLIFE
9 concerns.

10 Q. And that's what?

11 A. Limited and interrupted formal schooling.

12 Q. We all know what that is.

13 A. Yes.

14 Q. That's what Dr. Marshall talked about
15 yesterday.

16 A. Yes.

17 Q. That's what she's really an expert in.

18 A. Yes.

19 Q. So this is an example of the kind of
20 articles that come to you and that you try and keep
21 abreast of to do your job?

22 A. Yes.

23 Q. And Exhibit 27 in the same binder, that's a
24 WEDA bulletin on SLIFE students, right?

25 A. Yes, it is.

1 Q. Also from the District's files?

2 A. I believe so.

3 Q. Do you regularly read the WEDA bulletins?

4 A. Yes.

5 Q. So you have a very good understanding of
6 SLIFEs as a distinct group of ELLs?

7 A. Yes.

8 Q. And you listened to Dr. Marshall talk about
9 the various strategies for teaching ELLS, right?

10 A. Uh-huh.

11 Q. And I -- is that a yes?

12 A. Yes. I'm sorry.

13 Q. That's all right. Everybody violates it.

14 A. Sorry.

15 Q. And I know you have disagreements about her
16 opinion specifically about Phoenix but in terms of her
17 description of the various modes of ESL delivery are -
18 - those were all familiar terms to you, right?

19 A. Correct.

20 Q. And she described them accurately?

21 A. Correct.

22 Q. Ms. Hilt, you agree that direct English
23 language -- under Pennsylvania guidelines, direct
24 English language instruction may not take place during
25 other content classes which are required under the

1 Pennsylvania code?

2 A. Yes.

3 Q. So when we're counting how many ESL hours a
4 student receives, that's got to be ESL hours not being
5 taught by an ESL certified teacher in a content class?

6 A. Correct.

7 Q. Could you look in your day one binder at
8 Exhibit 8? This is a document entitled "School
9 District of Lancaster Services for English Language
10 Learners", right?

11 A. Yes.

12 Q. And it's dated June 20th, 2016?

13 A. Yes.

14 Q. So am I correct in understanding that this
15 is the most up to date description of ESL services
16 that Lancaster School District provides?

17 A. Yes.

18 Q. And it's pretty detailed, right? It
19 actually talks about a lot of the models that we heard
20 about from
21 Dr. Marshall and some of which you talked about today,
22 right?

23 A. Yes.

24 Q. And I think I remember you saying at your
25 deposition you didn't create this document.

1 A. Can you repeat that?

2 Q. You didn't create this document, right?

3 A. Did not, correct.

4 Q. So you inherited it in your position?

5 A. Correct.

6 Q. And have had no occasion to change it.

7 A. Correct.

8 Q. So the first paragraph, could you just read
9 that and the first sentence in the first paragraph
10 under services, could you read that into the record?

11 A. Yes. "English language learners receive ESL
12 services to develop English language proficiency to be
13 successful in the core education program and
14 participate in activities of interest. Parent
15 involvement in the school program is a key component
16 to the success of ELLs and is strongly encouraged."

17 Q. You read two sentences but --

18 A. Oh, I'm sorry.

19 Q. That's quite all right. And these are the
20 right objectives for an ESL program, right?

21 A. Correct.

22 Q. And you agree that participation in
23 activities of interest is actually really helpful for
24 a new student, a SLIFE student to become integrated in
25 his or her school community?

1 A. Yes, it's helpful for any student, sure.

2 Q. And including helpful for new immigrant and
3 refugee students.

4 A. Yes.

5 Q. Maybe the best way for them to do that while
6 they're learning the language, right?

7 A. Could you restate that?

8 Q. I said that may be one of the best ways to
9 do it while they're otherwise learning English perhaps
10 in classes just with other ELLs.

11 A. I'm sorry. I'm not following --

12 Q. Sure.

13 A. What is the best way?

14 Q. In terms of a student becoming acclimated to
15 his or her new school, participation in
16 extracurricular activities is actually really one of
17 the best ways that they can become acclimated and
18 integrate with their fellow students while they may be
19 getting instructed in their classes in a group that's
20 just comprised of ELLs.

21 A. Sure.

22 Q. Okay. And you would agree that McCaskey has
23 pretty much all the extracurricular that a student
24 could want?

25 A. Correct.

1 Q. Phoenix does not.

2 A. Any extracurricular at McCaskey is available
3 to Phoenix students.

4 Q. Okay. And to do that they've got to take a
5 bus over, right?

6 A. Correct.

7 Q. And is a bus provided to Phoenix students
8 every day so that they can take part in sports, in
9 plays, in the newspaper, in yearbook?

10 A. I believe so, yes, transportation is.

11 Q. Okay. And do you participate in
12 orientations of new ELLs that are starting at Phoenix?

13 A. No.

14 Q. You don't. All right. The second page of
15 the document describes the service delivery models,
16 right?

17 A. Yes.

18 Q. And this is a pretty good description of
19 what Lancaster School District offers, right?

20 A. Yes.

21 Q. Okay. And it's consistent with kind of the
22 national and state standards for -- what are the
23 understood and accepted methods of ESL delivery?

24 A. Yes.

25 Q. Okay. And there's a description for

1 sheltered instruction program?

2 A. Yes.

3 Q. Okay. And that's indicated it's for ELLs at
4 lower English proficiency levels.

5 A. Correct.

6 Q. And then there's two models down in
7 structure English emersion?

8 A. Yes.

9 Q. You used a term on direct, sheltered English
10 emersion, right?

11 A. Yes.

12 Q. Okay. But that's not a term that's used
13 here?

14 A. Correct. That was probably just a misspoken
15 term.

16 Q. Okay. So there's not actually something
17 called sheltered English emersion?

18 A. Correct.

19 Q. It's structured English emersion.

20 A. Correct.

21 Q. Okay.

22 A. I apologize.

23 Q. That's quite all right. I'm glad we don't
24 have to tussle about that.

25 A. We have lots of acronyms in ESL.

1 Q. Okay. And one of the things that makes a
2 sheltered instruction program sheltered is the
3 students at the same level are in classes together,
4 not grouped with higher level students or English
5 language speakers, right?

6 A. Correct.

7 Q. Okay. And sheltered instruction means that
8 students do their ESL with students of the same level?

9 A. I'm sorry. I believe you said sheltered
10 instruction again. Can you --

11 Q. I am speaking of sheltered instruction.

12 A. Okay. Can you restate that?

13 Q. Yes, sure. Sheltered instruction means that
14 the students do their ESL together with students of
15 the same level?

16 A. Correct.

17 Q. And they do their core subjects with
18 students at the same level.

19 A. Correct.

20 Q. And that is how they -- that's what they do
21 in International School at McCaskey, right?

22 A. Correct.

23 Q. All the entry level students are together
24 all day for their ESL and their core subjects?

25 A. Yes.

1 Q. And there's a reason for that, right? It's
2 hard entering ELLs to access core content if a lot of
3 the teaching is done with a pace and with methods more
4 appropriate for more advanced English speakers or
5 native English speakers.

6 A. Correct.

7 Q. So then we have this other -- we've got the
8 same term now, structured emersion. That's another
9 mode of delivery used by the District, right?

10 A. Yes.

11 Q. And in that model students do their core
12 subjects in mainstream classes with a mixed group of
13 ELL levels and native speakers, right?

14 A. Yes.

15 Q. And at Phoenix, that is what happens in the
16 core subjects, right?

17 A. Yes.

18 Q. Then at the bottom of the page it says
19 "Service Delivery By Site"; do you see that?

20 A. Yes.

21 Q. And site means school, right?

22 A. Correct.

23 Q. And that service delivery models are not the
24 same for each school.

25 A. Correct.

1 Q. Some schools are listed as using structured
2 English emersion and some are not, right?

3 A. Correct.

4 Q. Some sheltered, some not, right?

5 A. Correct.

6 Q. And it looks like in terms of shelter
7 instruction there's actually one school at each level;
8 Washington Elementary, Reynolds Middle School,
9 McCaskey Campus, right?

10 A. Correct.

11 Q. And is there a reason for that that, you
12 know, you have just one elementary school out of
13 multiple or one middle school out of multiple that --

14 A. Well, as I look at this, this is -- there
15 are some that are not correct on here.

16 Q. Okay. So some --

17 A. There's some terminology that -- it changes
18 every year based on your cohort of kids. Sometimes
19 even in the middle of the year it may change --

20 Q. Okay. And --

21 A. -- based on those incoming students.

22 Q. This is dated June 20th so it's the most up
23 to date --

24 A. I understand that.

25 Q. Fair enough. And in any case, McCaskey

1 (indiscernible) sheltered English instruction, right?

2 A. Correct.

3 Q. And that's done through the International
4 School?

5 A. Correct.

6 Q. And we don't see Phoenix listed here but
7 under alternative ed it says Cyber, Dash, Camelot and
8 sheltered English instruction is not listed.

9 A. Correct.

10 Q. And Camelot, does that refer to both Camelot
11 schools, Burghley and Phoenix?

12 A. That would be my understanding, yes.

13 Q. Okay. And what is Dash?

14 A. Dash is a, my understanding, is a special
15 education placement based on IEP needs.

16 Q. And Cyber?

17 A. Cyber School.

18 Q. Yes. And so that means you're -- just for
19 the -- I want to make sure I understand exactly what
20 that is.

21 A. Sure.

22 Q. I think we all have an intuition but I want
23 to make sure I understand correctly.

24 A. Yes. I'm sorry. What do you -- you want me
25 to explain it?

1 Q. What is a Cyber School? How is --

2 A. Okay.

3 Q. How are students taught in the Cyber School?

4 A. So they're taught on the computer. It's a
5 computer-based -- we do have a location they can come
6 into. We have ESL staff there that can support them
7 in that but basically they do all of their learning
8 online.

9 Q. And that's actually right next to Phoenix,
10 right?

11 A. Correct.

12 Q. And students who are at Phoenix, including
13 the Plaintiffs in this case, they don't do their
14 computer-based learning over there, it's the Cyber
15 School?

16 A. No.

17 Q. And Camelot, we've mentioned the schools but
18 that's the for-profit company that runs Phoenix and
19 Burghley, right?

20 A. Correct.

21 Q. Does it also run the Cyber School?

22 A. No.

23 Q. So the International School is described on
24 page 1 in this document, right?

25 A. Oh, I'm sorry. I was waiting to see if you

1 needed me to -- something further. Yes, it's
2 described on the document.

3 Q. And it's an accurate description?

4 A. May I have a moment to read it one more
5 time?

6 Q. Sure.

7 A. Okay. Yes.

8 Q. And the International School was actually
9 developed to meet the needs of new ELLs, right?

10 A. Correct.

11 Q. Okay. And students whose background is like
12 the Plaintiffs in this case, putting age aside.

13 A. Some, but not all students in the
14 International School are SLIFE.

15 Q. Okay. But all SLIFEs -- fair to say that
16 all SLIFE students that go to McCaskey are placed in
17 the International School?

18 A. Unless they have matriculated through our
19 system and our no longer entering level ELLs that are
20 SLIFE.

21 Q. Okay. They've progressed.

22 A. Correct.

23 Q. International School is good at progressing
24 them.

25 A. Or they may have started before high school.

1 Q. Okay. You would agree the International
2 School is good at progressing SLIFEs?

3 A. Correct.

4 Q. And this is actually a great example of the
5 District adopting best practice recognized nationally
6 for how educate ELLs?

7 A. Yes.

8 Q. If an ELL is enrolled at McCaskey, who
9 decides whether he or she goes to the International
10 School?

11 A. It's based on their language level so their
12 entering level status would put them in the
13 International School.

14 Q. And that's -- is that your decision using
15 the WAPT scores?

16 A. Yes.

17 Q. You're hesitating.

18 A. I did hesitate because I'm no longer there.
19 There was a time when I was physically there and that
20 was my decision.

21 Q. Okay.

22 A. But, yes, it is ESL programming's decision.

23 Q. Okay. And so there was a time when you were
24 directly responsible --

25 A. Correct.

1 Q. -- for placement in the International
2 School?

3 A. Correct.

4 Q. And you were actually responsible for
5 administering -- administering the International
6 School (indiscernible).

7 A. Oh, administering as an assistant principal.

8 Q. Yes.

9 A. Yes. I'm sorry. I thought you meant
10 administering the exam.

11 Q. Pretty proud of your time at the
12 International School?

13 A. Yes.

14 Q. It was successful?

15 A. I would say so.

16 Q. And do your consultants have nice things to
17 say about the International School?

18 A. As a matter of fact, they told me many grows
19 that we needed to look at but of course there are
20 glows, as well.

21 Q. Okay. Good. And the criteria that you used
22 when you were placing students there is based on the
23 level you've determined from their WAPT scores?

24 A. Correct. So a student who came into
25 McCaskey that was an entering level would go to the

1 International School until they reached the beginning
2 level.

3 Q. The second line of that paragraph towards
4 the end of the second line says, "This unique small
5 learning community introduces new cultural values and
6 beliefs while respecting the cultural diversity
7 brought by the students", right?

8 A. Yes.

9 Q. And that's what the International School
10 does, right?

11 A. Yes.

12 Q. And that's best practices, right?

13 A. Yes.

14 Q. Actually incredibly helpful to having the
15 students succeed in learning.

16 A. Yes.

17 Q. Could you turn to Exhibit 65 which is, I
18 assume, in the day two binder.

19 A. Yes.

20 Q. Do you recognize this document?

21 A. Yes, I do.

22 Q. Okay. And this is -- it's titled "ESL
23 Department Internal Review Survey."

24 A. Yes.

25 Q. 2015/'16 for McCaskey, right?

1 A. Yes.

2 Q. So that's the year that just finished?

3 A. Uh-huh.

4 Q. And at the bottom there's a name, Katelyn
5 Bartlett. Who is that?

6 A. That's the previous coordinator so this is
7 just her time and date stamp on the document.

8 Q. What is she doing now?

9 A. She's literacy intervention specialist.

10 Q. For the school district?

11 A. Correct.

12 Q. And when did she leave her -- she was in
13 your current position?

14 A. Yes.

15 Q. And you reported to her?

16 A. Correct.

17 Q. And when did she change from that position
18 to the new --

19 A. August/September.

20 Q. Of 2015?

21 A. Correct.

22 Q. And so this is a survey -- it says 2015/'16
23 in handwriting on the top.

24 A. Yes.

25 Q. Is that -- whose handwriting is that?

1 A. That's mine.

2 Q. Okay. Does that mean this was prepared by
3 Ms. Bartlett?

4 A. No.

5 Q. Okay.

6 A. This was prepared by an ESL teacher or
7 potentially myself, I don't remember because I was in
8 transition, but it represents the 2015/'16 school
9 year.

10 Q. And do you know what time -- when that was
11 done?

12 A. These are done in October.

13 Q. So it would have been October 2015?

14 A. Yes.

15 Q. And right at the top under purpose there is
16 something that makes me happy. It's a citation to a
17 legal case, Castenada v. Pickard, do you know why
18 that's there?

19 A. Yes, because that's one of the two most
20 pertinent laws or cases that reflect in our law in
21 practice in ESL.

22 Q. And so -- I'm sorry. I interrupted.

23 A. In ESL.

24 Q. And even though you're not a lawyer,
25 congratulations, you actually have to make yourself

1 aware of certain laws --

2 A. Yes.

3 Q. -- to do your job?

4 A. correct.

5 Q. And one of the key things that's required by
6 this case and that is reflected here is that there has
7 to be an assessment of the school's programs -- ESL
8 programs to make sure that they're working for the
9 students, right?

10 A. Yes.

11 Q. That's a legal requirement.

12 A. Yes.

13 Q. And regardless of whether you prepared this,
14 you reviewed this, right?

15 A. Yes.

16 Q. And you made sure it was accurate?

17 A. Yes.

18 Q. And if you could look at the bottom of the
19 page and it says, "Sheltered English Instruction".

20 A. Yes.

21 Q. And this is for McCaskey. It says,
22 "Entering and emerging levels are instructed within
23 this model", right?

24 A. Correct.

25 Q. Entering levels use a (indiscernible) base

1 model wherein the student is traveling cohorts to
2 their core classes; science, math, and social studies.

3 Can you explain what that means?

4 A. So those students who are at the entering
5 level, because I must say that it's not emerging
6 levels, it's only entering for the International
7 School, but they travel to math, science, and social
8 studies as a cohort of same language ability with
9 their peers.

10 Q. So it's accurate for the entering level, not
11 for the emerging.

12 A. Correct, yes.

13 Q. And then if you could go to the next page,
14 the second line says that these entering level
15 students, they receive three hours of ESL instruction
16 as well as three hours of core, right?

17 A. Yes.

18 Q. Okay. And that's right also, isn't it?

19 A. Well, the three hours of ESL, one is a
20 skills prep so it's not direct ESL instruction as you
21 mentioned earlier.

22 Q. I'm not sure I mentioned but --

23 A. Oh, I'm sorry. Some --

24 Q. But two -- that's all right.

25 A. Someone mentioned earlier, yes.

1 Q. So two hours of ESL instruction and then an
2 hour of skills prep --

3 A. Correct.

4 Q. -- for each of these entering level
5 students.

6 A. Yes.

7 Q. And that skills prep class is taught by who?

8 A. It's taught by an ESL teacher.

9 Q. Okay. And that is not their, for example,
10 their communications, arts, or English class?

11 A. No.

12 Q. It's a third hour of ESL with a different
13 name?

14 A. Skills prep is a course where students may
15 work on assignments they need support with. They may
16 review grades. Similar to Phoenix's counseling so
17 they might review grades with their teachers and other
18 things like go to the library, et cetera, in that
19 class.

20 Q. But at McCaskey that third hour is with an
21 ESL teacher?

22 A. Correct.

23 Q. Okay. And that's not true for Phoenix, for
24 example, the counseling or skills prep that you just
25 described?

1 A. I don't know about skills prep, but
2 counseling, no, that would be with a counselor.

3 Q. Okay. And then it says emerging ELLs
4 receive three hours of ESL instruction and that's true
5 also, right?

6 A. Emerging ELLs receive two hours of ESL
7 instruction and one hour of skills prep unless they
8 have an elective --

9 Q. Okay.

10 A. -- which could be a semester-based change.

11 Q. Okay. So that's accurate with your caveat
12 that skills prep is included in the ESL hour.

13 A. Correct, and this is for emerging so that's
14 also called beginning --

15 Q. Okay.

16 A. -- and they're out with the rest of their
17 peers during the day.

18 Q. Right. That's your correction from the
19 previous sentence that said that they were with their
20 same level --

21 A. Yes.

22 Q. -- for the core classes.

23 A. Yes.

24 Q. Okay. And would you agree that's the
25 appropriate amount of ESL for the entering students,

1 what's described in this document?

2 A. As long as it's two to three hours, it would
3 be considered appropriate.

4 Q. And part of what you're saying, I think, is
5 that that's meeting state requirements, right?

6 A. Correct. That's state requirements.

7 Q. And I'm also asking, as someone who has
8 working in this field, do you think that's what's
9 appropriate for these students?

10 A. I think two to three hours based on need.
11 As the expert said yesterday, varying levels, even
12 within, for example, the entering level of language
13 ability.

14 Q. But here District makes sure these students
15 get (indiscernible)?

16 A. Yes.

17 Q. Could you turn in the day one binder -- I'm
18 sorry. I'm going to ask you to switch to Exhibit 25.

19 A. Can you repeat that?

20 Q. I'm sorry. Day one binder, Exhibit 25.

21 A. 25. Yes. I'm here.

22 Q. Okay. And this document, it starts with an
23 email from Barbara Lombardo to I think it's Pam, I'm
24 going to mispronounce it probably, Kalaga (ph).

25 A. That's correct.

1 Q. All right. And Barbara Lombardo is somebody
2 who is a grant writer for the District?

3 A. Yes.

4 Q. Is that her whole job?

5 A. Yes.

6 Q. I'm not suggesting that's not a big job, but
7 you help with this, right?

8 A. Yes.

9 Q. And that's because you were one of the
10 District employees who had more expertise in ESL.

11 A. Yes.

12 Q. And so were you the primary writer for all
13 this ESL content or just providing --

14 A. She wrote it. She conferred with me but
15 there was a lot of rollover from year to year. We've
16 had the grant for several years since 2009.

17 Q. Could you turn to the Bates stamped page
18 marked 2749 down in the corner?

19 A. Oh, yes, the first one.

20 Q. And that's page -- it has page 2 in the
21 right-hand corner and entitled "Abstract", right?

22 A. Yes.

23 Q. And it's really a description of the
24 District's refugee student initiative, right?

25 A. Correct.

1 Q. And it describes many ways in which the
2 District serves the refugee population.

3 A. Correct.

4 Q. So on the bottom paragraph it says, "When
5 our high school refugee students first arrive, they're
6 enrolled in our International School at McCaskey East
7 where they receive academic supports to obtain English
8 fluency and maintain their grades", right?

9 A. Yes.

10 Q. And that sentence is not qualified by age,
11 right?

12 A. Correct, that sentence is not.

13 Q. Okay. And it goes on to say the goal is to
14 have these students exit the International School and
15 enter another small learning community on the McCaskey
16 campus or, if they are a certain age, enroll at
17 Phoenix Academy or High School for overage students,
18 right?

19 A. Yes.

20 Q. That's not what happened for the Plaintiffs
21 in this case, right?

22 A. Correct.

23 Q. They didn't start at the International
24 School and then potentially go to Phoenix after they
25 had acquired more English mastery.

1 A. Correct.

2 Q. That's what should have happened, right?

3 A. Based on this document, yes.

4 Q. Okay. Based on this document that you
5 helped prepare?

6 A. Yes.

7 Q. And this was a document submitted to the
8 state in support of a request for funds, right?

9 A. Yes, but as I stated in my deposition, I
10 didn't read it thoroughly before it was submitted.

11 Q. But you did read it?

12 A. Yes, I skimmed it.

13 Q. Okay. And so are you telling the Court that
14 Ms. Lombardo just had the information wrong and it
15 wasn't caught by you?

16 A. Correct.

17 Q. Putting aside what is happening, it's what
18 should happen, isn't it?

19 A. Can you repeat that?

20 Q. Putting aside what is happening in the
21 Lancaster School District, what's described in this
22 paragraph is what should be happening for these new
23 ELLs entering the school district?

24 A. I don't believe so.

25 Q. Which of the Plaintiffs -- I'm sorry. Let

1 me ask you a few more questions about the document.

2 Could you turn to page 13?

3 A. Okay.

4 Q. So in the second -- in the, well, I guess,
5 the first full paragraph, more discussion of the
6 International School, right?

7 A. Yes.

8 Q. Okay. And it says the targets addressed
9 include language acquisition, adapting to new cultural
10 norms, and familiarization with a different education
11 system.

12 A. Correct.

13 Q. Right? And those are all things that new
14 ELLs need when they enter the Lancaster School
15 District, right?

16 A. Correct.

17 Q. And then it says the overarching goal of the
18 International School is to prepare students as much as
19 possible in one year for effective participation in
20 mainstream classes.

21 A. Yes.

22 Q. That's the right goal, right?

23 A. Correct.

24 Q. And it talks about the sheltered instruction
25 model, right? Or the sheltered --

1 A. Yes.

2 Q. -- instruction observation protocol?

3 A. Yes, it does.

4 Q. And it says observation but that is actually
5 the delivery method, right, and it says so.

6 A. Yes.

7 Q. Okay. And it says, you know, this method of
8 delivering education to these new ELLs is aligned with
9 current research and instruction for English language
10 learners, right?

11 A. I'm not following where you are so I don't
12 want to comment yes or no.

13 Q. I apologize for that. So if you could look
14 at the bottom of the page, it talks about the
15 (indiscernible) program. It says this -- it's got
16 components and it's aligned with the current research
17 and instruction for English language learners.

18 A. Yes.

19 Q. And you agree with that?

20 A. Yes.

21 Q. If you could turn to page 14.

22 A. Okay.

23 Q. It says in the middle of the page, really
24 about halfway down, it says older refugee students, 19
25 plus, will be enrolled in Phoenix Academy, a small

1 learning environment for students with specific needs
2 related to credit recovery, right?

3 A. Correct.

4 Q. But that's not fully accurate. This
5 description and statement, that's not fully accurate
6 either, is it? Younger students go to Phoenix.

7 A. I'm not certain of your question.

8 Q. This says older refugee students, 19 or
9 over, will be enrolled in Phoenix Academy.

10 A. Correct.

11 Q. But that doesn't describe the entire
12 population --

13 A. Of Phoenix.

14 Q. Right.

15 A. No.

16 Q. Students as young as 17 are sent to Phoenix.

17 A. Correct.

18 Q. Including some of the Plaintiffs.

19 A. Correct.

20 Q. If you could turn to page 15, and so that
21 statement was not an accurate representation either?

22 A. I'm just not sure I understand the question.
23 So this statement to me would be, yes, that we send
24 students 19 plus to the Phoenix Academy, a small
25 learning environment, et cetera.

1 Q. Okay. So it's not necessarily comprehensive
2 but it's accurate.

3 A. Correct.

4 Q. Okay. And then if you could turn to page
5 15.

6 A. Yes.

7 Q. Maybe this will help. If you go six lines
8 down, you see there's a sentence that starts
9 "students".

10 A. On page 15?

11 Q. 15, that's right, and six lines down.

12 A. Yes.

13 Q. Students must be at least 18 years old and
14 have earned at least five credits to be enrolled in
15 this program, right?

16 A. Yes.

17 Q. And the program is Phoenix, right?

18 A. That's what it states, yes.

19 Q. And again, that's not comprehensive or even
20 accurate in terms of who is being sent to Phoenix.

21 A. Correct.

22 Q. And this isn't just whether the precise
23 words are accurate, right? This is suggesting that
24 the students should actually have acquired some
25 knowledge and have had some experience in the school

1 before they go to Phoenix, right?

2 A. The way I read this is that the grant writer
3 believed that to be true but it's not accurate.

4 Q. Okay. And then at the bottom of the page
5 there's discussion about translators, do you see that?

6 A. No, I don't see anything on translators.

7 Q. I'm sorry. Not the bottom of the page, I
8 apologize, bottom of the paragraph. It says,
9 "Additionally, translators".

10 A. Yes.

11 Q. And it says that they will be contracted to
12 assist in oral and written communications to aid
13 students in testing, right, and then it goes on.

14 A. Correct.

15 Q. And you just told me at the beginning of my
16 examination that that's not best practices.

17 A. We don't do that unless it's a statewide
18 exam.

19 Q. Okay. So that wouldn't refer to just your
20 regular classes?

21 A. Correct, that would be statewide exams.

22 Q. Fair enough. I think you said that you were
23 familiar with two of the students who are Plaintiffs
24 in this case from --

25 A. Yes.

1 Q. -- from having met with them?

2 A. One of them, yes.

3 Q. Okay. That was Qasin.

4 A. Qasin, yes.

5 Q. Okay. And you mentioned at the beginning of
6 your examination with Ms. O'Donnell that you were
7 familiar with Khadidja but I guess you haven't met
8 her?

9 A. Yes, I don't believe I met her but I was
10 familiar with her file because I was asked by Tim
11 Purcell and I believe Bilahl maybe about Khadidja.
12 That's how I know her file.

13 Q. So before she -- and you know her now,
14 right, and not just because you've seen her in this
15 courtroom? I mean, you know her as someone --

16 A. I know her as a student, more so her sister
17 than she.

18 Q. Okay. Had you ever met her before?

19 A. I don't believe so.

20 Q. Okay. You've never observed a class she was
21 in?

22 A. No, I had not.

23 Q. Never spoken with her or tried to assess how
24 she was doing at school?

25 A. I don't believe so, no.

1 Q. And I understand you may not do that for
2 every student but you were --

3 A. Correct.

4 Q. -- familiar with her. So the only one you
5 interacted with personally was Qasin?

6 A. Yes.

7 Q. And prior to him starting school at Phoenix,
8 that was a meeting in December of 2015, right?

9 A. Yes.

10 Q. That you testified about that on direct?

11 A. Yes.

12 Q. And you did not at any time, and the
13 District did not at any time before Qasin started
14 Phoenix assess his language proficiency, right?

15 A. I believe we would have with the WAPT exam
16 and then his teacher would have upon enrollment with
17 those other writing and oral assessments.

18 Q. Okay. And I appreciate the correction
19 because that was actually that October 23rd, 2015?

20 A. Correct. Yes.

21 Q. And so is that the norm that a student is
22 taking the WAPT test before -- at the time when they
23 first try to enroll or before they're actually put in
24 a school?

25 A. It depends. So it depends on the enrollment

1 specialist who does the testing and if there is time
2 in the schedule. So we do our best to try and
3 coordinate that with the appointment but sometimes it
4 might happen later or it may happen the day of if she
5 has space in her schedule.

6 Q. So October 23rd, 2015, that's basically
7 marking when Qasin and his family were trying to get
8 him enrolled, right?

9 A. Uh-huh.

10 Q. And he didn't get a meeting with Mr.
11 Blackman which I know you also attended until December
12 10th?

13 A. That would be my understanding, yes.

14 Q. So that's waiting approximately six weeks or
15 so when he's not going to school before the decision
16 maker -- before a decision is going to be made about
17 where he's going to go to school?

18 A. My understanding is there was issues with
19 immunization and also with a birth date.

20 Q. And your understanding with the issues with
21 the birth date, what did do to determine whether there
22 actually was an issue with the birth date?

23 A. I believe that Tim Purcell, upon asking for
24 his meeting, said that the birth date was in fact
25 incorrect and then I believe we looked at the I-94 to

1 find the correct birth date.

2 Q. Well, Tim Purcell didn't reach out to the
3 District until after that December 10th meeting,
4 right?

5 A. I don't know. I mean, he and I were in
6 contact about a lot of clients so I'm not sure.

7 Q. Okay. But in any event the District's best
8 resource for the date is not Tim Purcell, right? It's
9 the information that's provided to the District when
10 it enrolls a student, right?

11 A. Correct.

12 Q. Okay. And you talked about looking at the
13 I-94 and if you could return back to that, that's
14 Exhibit 48, right?

15 A. Okay.

16 Q. And that's the document you spent some time
17 talking about with O'Donnell, right?

18 A. Yes.

19 Q. And she showed you the I-94, right?

20 A. I'm sorry. Who is she?

21 Q. Ms. O'Donnell.

22 A. Yes.

23 Q. Okay. And that actually gives a birth date
24 of Qasin of September 1998?

25 A. Yes, it does.

1 Q. And so at the time of that December 2015
2 meeting he -- your records showed that he was 17,
3 right?

4 A. Our records in e-school which was our
5 database that's in here, the very next page, did not
6 indicate that birth date. It indicated a different
7 birth date so that's the record that was used.

8 Q. And so that's the next page, No. 57?

9 A. Correct.

10 Q. And the version I'm looking at says
11 September 1st, 1998, correct?

12 A. Right. That's because I worked with Tim to
13 get it corrected.

14 Q. Okay. So you're saying that the birth date
15 that the school district entered was different than
16 what was on the I-94 that had been provided to the
17 school district when he enrolled?

18 A. Based on my recollection, we believe there
19 was a typo, I think.

20 Q. Okay. And that's a data entry issue by
21 enrollment staff?

22 A. Yes.

23 Q. At that meeting with Qasin and his family,
24 what did you do to clear that up?

25 A. I'm sorry. About the birth date?

1 Q. Yes.

2 A. Not much. We just -- I'm sorry. Can you
3 explain which meeting you're talking about? There's
4 been several.

5 Q. The December 10th meeting, the first time
6 that you met with Qasin in person.

7 A. You are correct that at that meeting we
8 thought the birth date was different. It was after
9 that meeting that then we were able to clean that up.

10 Q. Did you communicate to Qasin and his mother
11 that that was what you thought his birth date was?

12 A. We did discuss age, yes. I'm not sure that
13 we discussed exact birth date --

14 Q. Okay.

15 A. -- but we discussed age.

16 Q. And did you tell -- did you or Mr. Blackman
17 tell Qasin and his mother that he couldn't enroll?

18 A. We didn't discussed going to the literacy
19 council with him.

20 Q. And did you tell him he couldn't enroll?

21 A. I don't recall.

22 Q. And you agree with me that regardless of
23 whether he's age 17 or age 19, that should not have
24 been an impediment to his enrolling in the Lancaster
25 School District and receiving his free education?

1 A. Well, I believe the literacy council is a
2 robust program that supports individuals in learning
3 English. So depending on what his goal was then it
4 could have been a good option for him.

5 Q. But that's not -- that doesn't answer my
6 question about what his --

7 A. Okay.

8 Q. -- legal right was to an education.

9 A. Can you ask it again then, please?

10 Q. Yes. He had a legal right, regardless of
11 whether he was 17 as he actually was at the time or 19
12 as maybe was misapprehended, to go to get a free
13 education in the Lancaster School District?

14 A. Yes.

15 Q. And am I correct in understanding age was
16 not the only issue that caused Mr. Blackman to deny
17 Qasin enrollment?

18 A. Correct, transcripts and credits were
19 evaluated.

20 Q. But those transcripts and credits were not a
21 reason not to enroll him either, right?

22 A. I mean, that's what was looked at and
23 discussed.

24 Q. Right. But even if he had no transcript and
25 no credits and was 19, he was entitled to a free

1 public education --

2 A. Yes.

3 Q. -- at the school district? But that -- the
4 other issue that came up there and one of the reasons
5 that Mr. Blackman refused to enroll him was because of
6 how he was behaving, right?

7 A. Yes. He was not sitting at the table with
8 us and interacting, yes.

9 Q. And did you know at the time what Qasin's
10 background was?

11 A. No, I didn't know much about him.

12 Q. Okay. And did you try to find that out --

13 A. Yes, we did.

14 Q. -- in that meeting?

15 A. Yes.

16 Q. Okay. And did you find out the
17 circumstances of his coming to the United States and
18 where he'd come from and what he'd been through?

19 A. Not much, no.

20 Q. And Qasin was not acting disruptively,
21 right?

22 A. No.

23 Q. He wasn't acting out physically?

24 A. No.

25 Q. He wasn't yelling?

1 A. No.

2 Q. He was pretty silent, right?

3 A. He stood in the corner.

4 Q. And for a student whose had Qasin's
5 experiences, it's not necessarily that surprising that
6 he would act in a way that we might perceive as
7 inappropriate including being standoffish like that?

8 A. Sure. We did our best to invite him to the
9 table and interact and engage him in the conversation.

10 Q. I mean, even some of our own teenagers might
11 act like this, right?

12 A. Certainly.

13 Q. And we wouldn't say that they can't enroll
14 in school for that reason, right?

15 A. Correct.

16 Q. But that is what happened to Qasin, right?

17 A. Well, we presented the literacy council as
18 an option for him as a best pathway based on what we
19 got from the meeting which was that he was
20 disinterested and wanted to work and his mom was more
21 interested in school.

22 Q. So you got from -- his mom was more
23 interested in school; is that right?

24 A. Correct.

25 Q. And Qasin was more interested in work.

1 A. Uh-huh.

2 Q. Even though he was silent?

3 A. He didn't say much but that is what he
4 presented.

5 Q. Isn't the best indication of whether a
6 student whose entitled to free and public education by
7 the Lancaster School District whether they want to
8 attend school that they have actually enrolled to go
9 to school?

10 MS. O'DONNELL: I'm going to object to
11 the form. Could Counsel please repeat the question?

12 MR. ROTHSCHILD: Certainly.

13 BY MR. ROTHSCHILD:

14 Q. Isn't the best indication of whether a
15 student and the student's family wants that student to
16 go to school that he enrolled to go to school?

17 A. My understanding is that it's an obligation
18 of the resettlement agency to do so with the family.

19 Q. And you feel like it's within the District's
20 discretion to override the judgment that is reflected
21 in that enrollment effort and make your own
22 determinations about how he or she can be best
23 educated?

24 A. I don't work in placement but I believe that
25 that's why we have those discussions and try to

1 formulate a plan that the student would be successful
2 at graduation.

3 Q. And does graduation follow from going to
4 literacy council?

5 A. Yes, you can obtain a GED that can be
6 transferred into our diploma.

7 Q. You have to get a GED?

8 A. Uh-huh.

9 Q. If you'd just turn to page 57 of this
10 document, Exhibit 48.

11 A. I'm there.

12 Q. And this is the enrollment form we looked at
13 before and it actually has -- we talked about the WAPT
14 test being October 23rd, 2015 but it actually has
15 District enrollment date, state enrollment date, U.S.
16 enrollment date, right?

17 A. Yes.

18 Q. So that's actually the record of Qasin's
19 official enrollment, right?

20 A. That would be my understanding, yes.

21 Q. That is a reporting, for example, to the
22 state and the Federal Government that we have a
23 student who is now enrolled in our school district.

24 A. Yes.

25 Q. And there's actually money that flows as a

1 result of that, right?

2 A. I don't know much about that but I would
3 assume yes.

4 Q. Okay.

5 MR. ROTHSCHILD: Your Honor, I just
6 want to make sure my watch hasn't stopped and I'm not
7 going too long. I'm fine going on. I just want to
8 make sure I've got the right time.

9 THE COURT: That's fine.

10 MR. ROTHSCHILD: Okay.

11 BY MR. ROTHSCHILD:

12 Q. If Qasin had been placed at McCaskey,
13 enrolled in McCaskey, you would have placed him in
14 International School, right?

15 A. Yes, that's where he would have been sent.
16 I didn't physically place students there but his WAPT
17 exam would have sent him into the International
18 School.

19 THE COURT: Excuse me. How old was he
20 again?

21 MR. ROTHSCHILD: How old was he?

22 THE COURT: Yes.

23 MR. ROTHSCHILD: He was 17. So --

24 THE COURT: I thought the arbitrary
25 line was 17 and above went to Phoenix, 16 and below

1 went to --

2 MR. ROTHSCHILD: I'll ask a better
3 question.

4 THE COURT: Because I'm finding a
5 critical issue here.

6 MR. ROTHSCHILD: Yes.

7 BY MR. ROTHSCHILD:

8 Q. If that line did not exist, there wasn't a -
9 - and you agree with me that there is a policy that
10 the District implements that every new ELL that comes
11 into the District who's age 17 or older who is under
12 credited for their age level is assigned to Phoenix?

13 A. Yes.

14 Q. Okay. And it doesn't matter what their
15 language proficiency is?

16 A. Yes.

17 Q. And if that -- and so I'm giving you a
18 hypothetical here, this 17 year old student, if that
19 rule didn't exist, and I know this wouldn't be your
20 decision, but if the decision was made for whatever
21 reason the student is going to McCaskey, he would have
22 been placed by either you or somebody subordinate to
23 you at the International School to start?

24 A. I just want to make sure I understand. I
25 was trying to follow. So you're saying --

1 Q. It was a lot of words. I hope it was not a
2 word salad but it was a lot of words.

3 A. You're saying a student who is high school
4 age, is your hypothetical you're asking me.

5 Q. Yes.

6 A. A student who is high schooled aged that
7 came in, took the WAPT exam, got an entering level and
8 was going to McCaskey, would they be in the
9 International School, is that your question?

10 Q. Yes.

11 A. Yes.

12 Q. And that would have been true for Qasin
13 absent the age rule, the age credit rule?

14 A. Yes, if he was high school aged, yes.

15 Q. Okay. And we know now he was 17.

16 A. Correct.

17 Q. And then that would be true for all of the
18 Plaintiffs, right, that if age was not a criteria or
19 if they were placed at McCaskey for reasons that you
20 would have nothing to do with, all of them would have
21 started in the International School, right?

22 MS. O'DONNELL: Object as to form.

23 THE COURT: I'm going to overrule
24 because it's a rhetorical question. Obviously the
25 answer is yes.

1 MS. O'DONNELL: (Indiscernible)

2 testimony is that it was age and credits. So --

3 THE COURT: Well, I think the --

4 MS. O'DONNELL: -- the question is
5 (indiscernible).

6 THE COURT: Right. I think the point
7 here is very clear and I want to make sure I have it
8 right. The position of Mr. Rothschild is that these
9 individuals who are beginners when they're tested or
10 entry level, entering, when they're tested, if under
11 normal circumstances, if there was not this arbitrary
12 distinction between 17 and above goes to Phoenix and
13 16 and below goes to the International School, the
14 older children would go to the International School.
15 I think that's the point he's trying to make.

16 I think the point that the school
17 district is trying to make is if they don't have
18 enough credits to graduate they're going to be sent to
19 Phoenix because it's an accelerated program and
20 sending him to the International School would deny
21 them those accelerated credits that would give them
22 the diploma within the period of time before they age
23 out.

24 MS. O'DONNELL: And therefore
25 (indiscernible). However, that was -- I did not hear

1 that that was Counsel's question. So --

2 THE COURT: It probably wasn't.

3 Whatever his question was, it seemed very rhetorical
4 to me. Like the answer was so intuitive and clear
5 that it was easy. The one issue that's going to come
6 up about this whole aging out, and I'll just tell you
7 that because I've heard this, is this idea that
8 somehow when I look at 24 Pennsylvania Statutes
9 Annotated Section 13, Tag 1301, that that age 21 is
10 conditioned on you being special ed, because you've
11 mentioned that, Counselor.

12 I see the law as saying 21 is 21, that
13 you have a right to a public education until your 21.
14 But I see the one boy and I can't remember his name or
15 even if I could, I couldn't pronounce it. He ended up
16 graduating at 19 after 16 months of schooling when --
17 and he was sent to Phoenix to do that when it appears
18 that we had an extra year we could have sent him to
19 the International School, still send him to Phoenix,
20 and he still could have graduated before he aged out
21 with the benefit of the International School as well
22 as the accelerated credits and I'm sure that's going
23 to be explained.

24 MS. O'DONNELL: Well, that definitely
25 will be explained but he also would have had a choice.

1 THE COURT: Would have had a choice to?

2 MS. O'DONNELL: To transfer to
3 McCaskey. Right? Well, he wouldn't have gone to
4 International School. If he transferred -- if he had
5 gone to Phoenix and --

6 THE COURT: But if he's --

7 MS. O'DONNELL: -- acquired those
8 credits and wanted to continue.

9 THE COURT: But if he had started at
10 the International School, which I think is Mr.
11 Rothschild position that he should have started at the
12 -- and then if transferring him over to Phoenix made
13 sense to get those accelerated credits, he still would
14 have done it before he aged out because he ended up
15 graduating this week at the age of 19. He still --

16 MR. ROTHSCHILD: Actually 18, Your
17 Honor. Sorry to interrupt but --

18 THE COURT: So he clearly had many more
19 years that he could have gotten additional schooling
20 including the very first year being in what sounds
21 like a wonderful program at the International School.
22 But I'm saying this only so you all know throughout
23 the whole course --

24 MS. O'DONNELL: Right.

25 THE COURT: -- how I'm interpreting the

1 testimony that I'm hearing.

2 MS. O'DONNELL: We'll here more
3 testimony directly.

4 THE COURT: And you've put on a very
5 compelling witness here, I will say.

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

7 THE COURT: Mr. Rothschild, you may
8 continue. Excuse me my interruption. I threw you
9 completely off track.

10 BY MR. ROTHSCHILD:

11 Q. So I want to ask you a few follow up
12 questions on Qasin's records.

13 A. Okay. So you spent some time talking about
14 the levels he was at. And so, for example, you looked
15 at page 62 of LSD 62?

16 A. Yes.

17 Q. And this was an exercise given to Qasin
18 right after he started school, right?

19 A. Correct.

20 Q. And, you know, without getting into dispute
21 about whether this is appropriate, the answer was he
22 does not understand?

23 A. Correct.

24 Q. And if you turn to the next page, page 63 it
25 says Qasin has no English skills. He can write in --

1 and I'm not sure what that --

2 A. It's L-1 (phonetic), that's his first
3 language.

4 Q. Oh, thank you. So that's -- and that was
5 understood at that time is Somali or Arabic?

6 A. Well, on our records it shows Somali, by the
7 home language survey, but what he wrote looks to me to
8 be in Arabic.

9 Q. It says he has no concept of computation,
10 right?

11 A. Correct.

12 Q. And this was a student who was at a school
13 district decided should accelerate?

14 A. Correct.

15 Q. And then you looked at his grades. They
16 were very low, right?

17 A. Yes.

18 Q. And we looked at his attendance and it was
19 very --

20 A. Yes.

21 Q. -- spotty. That might be charitable, right?

22 A. Yes.

23 Q. And in fact, most of the end of those
24 unexcused absences were basically he left school after
25 meetings where the bullying situation was not resolved

1 to he and his family's satisfaction?

2 A. Correct.

3 Q. Could you turn to Exhibit 49?

4 A. Yes.

5 Q. Or I'm sorry, Tab 49. It's a little
6 confusing, because it's marked Issa 14. Do you see
7 that?

8 A. Yes.

9 Q. And that indicates that Phoenix -- and tell
10 me if I'm saying it right, Phoenix or the school
11 district, regardless, promoted Qasin from the tenth to
12 the eleventh grade, right?

13 A. Yes.

14 Q. You didn't have any role in developing
15 Phoenix's accelerated model?

16 A. Correct.

17 Q. (Indiscernible) how it was developed, right?

18 A. Correct.

19 Q. You don't know whether that model was
20 developed with ELLs in mind, right?

21 A. Correct.

22 Q. Especially entry level ELLs?

23 A. Correct.

24 Q. Or SLIFEs?

25 A. Correct.

1 Q. And you don't know whether Camelot -- let me
2 withdraw that. You have never recommended to the
3 school district -- you have never recommended in your
4 capacity as ESL coordinator, that SLIFEs in the school
5 district be taught at an accelerated pace, right?

6 A. I've never made any recommendations on SLIFE
7 in my tenure at this point.

8 Q. You've never made the recommendation that
9 entering ELLs be taught at an accelerated pace, right?

10 A. Correct.

11 Q. And that's absolutely not what happens at
12 the International School, right? They're not taught
13 at an accelerated pace?

14 A. I'm thinking, because my understanding of an
15 accelerated is just that 80 minute block semester
16 period or semester based scheduling. So to me, that's
17 -- I think we're talking different acceleration.

18 Q. So it's your understanding that the content
19 isn't coming at these kids faster, they just sit for
20 longer --

21 A. Correct.

22 Q. -- class periods?

23 A. Correct, for a semester based reporting
24 period. Yep.

25 Q. And you certainly never recommended that --

1 and would you agree with me that International School
2 is actually operating at a slower pace, so that these
3 students can acquire English and be able to access
4 their core curriculum?

5 A. I wouldn't say that.

6 Q. You wouldn't say slower? You would agree
7 with me, the metaphor we heard, runway, that Dr.
8 Marshall used, that's a pretty good metaphor for what
9 the International School does, right?

10 A. I think it's a good metaphor for both.

11 Q. You don't know how the acceleration model at
12 Phoenix, how their teaching the ELLs with the time
13 they have in the curriculum they have, do you?

14 A. I know that they -- we provide professional
15 development and I've observed and looked at lesson
16 plans, to know that the curriculum guide, for example
17 if we look at a science curriculum guide. You must
18 teach the standards, but you're using accommodations
19 to teach those standards as well as the
20 (indiscernible) descriptors.

21 Q. So when you said at your deposition, I don't
22 know the acceleration model at Phoenix, I don't know
23 how they're doing that with the time they have in the
24 curriculum they have. Was that --

25 A. I was speaking to an accelerated credit

1 earning accelerated. I wasn't speaking to what
2 they're doing in ESL curriculum.

3 Q. Just back on Qasin for a second, the fact
4 that one of the consequences or benefits of enrolling
5 Qasin in school was that his family could earn TANF
6 benefits. That's not something that should be held
7 against the family in terms of their desire to enroll
8 Qasin in school?

9 A. I don't think TANF plays a role one way or
10 the other in education.

11 Q. That's not inconsistent with also the desire
12 of having him go to school to learn, right?

13 A. Correct.

14 Q. In that meeting, the first meeting with
15 Qasin, the meeting that we've talked about. You talk
16 about Megan Brown?

17 A. Yes.

18 Q. And she's actually -- you may not have seen
19 it, you probably haven't seen it, but she testified
20 that she came a few minutes late to that meeting and
21 it was already over. Do you remember that?

22 A. Correct.

23 Q. And when she said a few in her deposition,
24 she said like a few, like under five. Is that
25 consistent with your recollection?

1 A. I would say yeah, likely.

2 Q. And by that time, everybody was outside of
3 the room in which you'd met and then she actually had
4 an encounter with Mr. Blackman?

5 A. Yeah. We met in another location, all of
6 us, the same parties, yes.

7 Q. Okay, and everybody was there?

8 A. Yeah, my understanding is yep.

9 Q. Would you agree with me that Mr. Blackman
10 felt disrespected by Qasin?

11 A. I don't think so. No.

12 Q. Was Balahl (phonetic) at that meeting also?

13 A. I do not remember who the first case worker
14 was that was there.

15 Q. We looked at Qasin enrolling with the
16 district on November 2nd, 2015, right?

17 A. Yes.

18 Q. Doesn't get a meeting until December 10th,
19 right?

20 A. Yes.

21 Q. And obviously we know how that meeting
22 concluded. And then it took advocacy by his case
23 workers to get him enrolled in school, right?

24 A. Yes.

25 Q. And that's not the only one of the

1 plaintiffs in this case who that's true for, right?

2 A. Correct.

3 Q. You became involved not with meeting her
4 face to face, but you became involved with the
5 enrollment of Khadidja Issa, correct?

6 A. Correct.

7 Q. Okay. Could you look at Exhibit 83 and
8 that's got to be a day two binder based on the number.
9 Do you have that?

10 A. Yes, sorry.

11 Q. And this is a series of e-mails which you
12 participated on regarding Khadidja's enrollment,
13 right?

14 A. Yes.

15 Q. And this is Balahl initiating or reaching
16 out to you because he's trying to get Khadidja in
17 school, right?

18 A. Yes.

19 Q. And he only reached out to you in the first
20 e-mail, right?

21 A. Yes.

22 Q. And do you have a relationship with Balahl
23 that then caused him to do that?

24 A. I mean, the same as many of the organization
25 representatives, yes.

1 Q. He didn't include Mr. Blackman on the e-
2 mail, but you did, because that's his job, right?

3 A. Correct.

4 Q. You're not going to make that decision on
5 your own?

6 A. Correct.

7 Q. And so this e-mail is dated January 21st,
8 2016?

9 A. Yes.

10 Q. And in the e-mail, or I apologize, later in
11 the e-mail chain, and this now goes back to the first
12 page of the document titled Issa 44, you asked a
13 series of questions and one of them is asking about
14 what Balahl means by enrolling her.

15 A. Yes.

16 Q. And he responds November 16th, right? And
17 that's at the bottom of page 44, which is actually the
18 first page of the e-mail chain?

19 A. Yes. Yes.

20 Q. Okay. So you -- he reaches out to you, you
21 include Mr. Blackman, but you very promptly respond
22 with some questions, Balahl responds to the questions?

23 A. Correct.

24 Q. And what he told you is middle of November,
25 right?

1 A. Yes.

2 Q. And you don't have any reason to doubt that,
3 right?

4 A. No.

5 Q. Okay. And you were brought into the meeting
6 with Qasin because of your greater familiarity with
7 refugees, right?

8 A. Correct.

9 Q. And so -- and that regularly happened,
10 right, in the recent years?

11 A. As much as my job duties would allow it to,
12 yes.

13 Q. Okay. And at this point, you know, more
14 than two months after Balahl is representing he's
15 tried to enroll her, you haven't participated in any
16 meeting with Khadidja?

17 A. Not to my recollection, no.

18 Q. Okay. And you don't know that any meeting
19 has occurred?

20 A. I -- yes, well the way I read the e-mail
21 would have been yes, because I believe he states in
22 here, that's why I'm asking about enrollment, like
23 what did he mean by enrollment.

24 Q. And what you say is enrollment -- and if you
25 could go to the top -- you say a student is not

1 enrolled if he/she has produced records to enrollment,
2 right? Is that right?

3 A. Yes.

4 Q. And actually that is enrollment, right, once
5 all the proper papers are in, school district lists
6 the student as enrolled and reports that to the state
7 and federal government?

8 A. So that was my understanding. I'm not in
9 the enrollment department, but that was my
10 understanding. The next part, the next step is
11 meeting with Mr. Blackman, and as you stated --

12 Q. And this is terminology and I understand you
13 just may say ask somebody else, but certainly getting
14 to school required going through Mr. Blackman for this
15 group of students, right?

16 A. Yes.

17 Q. But that's not enrollment, right? That's
18 not being enrolled in the school district?

19 A. I don't know that I can answer that
20 question.

21 Q. Fair enough. But in any event, this is what
22 happened with Qasin, right, there it was the paperwork
23 aspect of enrollment and then there was the meeting
24 with Mr. Blackman and only after that happened, he
25 made a decision, could these students go to school?

1 A. That's my understanding. My understanding
2 of enrollment in the way I wrote it here is that you
3 would provide documents to enrollment, but when you
4 were then assigned a school location, that would be
5 the enrollment. That's what I'm referring to here.

6 Q. And you know, if there was a 14-year old
7 coming from the Philadelphia school district, not an
8 ELL and submitted enrollment papers, he or she
9 wouldn't wait six weeks, eight weeks for a meeting
10 with Mr. Blackman before he or she got to start
11 school, right?

12 A. I don't know that answer.

13 Q. And one of the things we heard testimony
14 about -- and I know you've been sitting through all of
15 it.

16 A. That's okay.

17 Q. A lot of stamina. Is that, you know, these
18 students have a lot of language acquisition and
19 content acquisition that they need, right?

20 A. Many of them, not all, but many.

21 Q. Yeah, and you heard about all the Plaintiffs
22 here and their education and backgrounds differed a
23 bit, but some of them had almost no formal education,
24 some had not -- had been interrupted, but had been
25 more, right?

1 A. Correct.

2 Q. But all of them were -- had interrupted
3 education according to the testimony?

4 A. I believe so, accept maybe not -- I can't
5 say his name, Anyemu.

6 Q. Okay.

7 A. I believe he said he went until ninth.

8 Q. Well, he said he went to school at a refugee
9 camp in Mosanbic (ph), right?

10 A. Uh-huh.

11 Q. Which was a Portuguese speaking country?

12 A. Correct.

13 Q. In any event, they have a lot of English
14 language learning to do, right?

15 A. Yes.

16 Q. They have a lot of credit acquisition to do?

17 A. Yes, they do.

18 Q. They are older, so they -- it varies from
19 student to student, but they don't have all the time
20 in the world to do those things?

21 A. Correct.

22 Q. And so you would agree that any delay in
23 getting them started in school is detrimental to all
24 those objectives?

25 A. Yes.

1 Q. Did you review Khadidja's school records at
2 any time?

3 A. Yes.

4 Q. And maybe make the question more precise,
5 because I know there's academic aspects of it, but did
6 you review her records to determine whether there is
7 any reason that she had to wait from November until at
8 least January to get this enrollment process moving or
9 the placement process moving?

10 A. I looked at her records. That's why I asked
11 Balahl for her full name so I could access it. At
12 that time, I didn't look, but in consulting, I think
13 she had issues with immunization, resulting with the
14 head of enrollment.

15 Q. And so but if she, like, I'll ask the
16 question of a different witness.

17 And you say here in this top of the e-mail,
18 and the next step is a meeting with Mr. Blackman, and
19 then it says, as you stated, enrollment did not occur
20 based on his assessment of the components I listed
21 below.

22 What do you mean by the components?

23 A. Well, I'm not sure because I don't -- at
24 this second, see components I listed below. But
25 talking about credits and transcripts, and then again

1 the conversations that would occur with the case
2 worker about what the goal and aspirations are for
3 that client.

4 Q. But even if she had no transcript and no
5 credits, at age 18, if she had submitted all her
6 proper enrollment papers, then she was entitled to go
7 to school?

8 A. Yes.

9 Q. And there would be no components that would
10 explain why she wasn't going to school?

11 A. Yes.

12 Q. She eventually did enroll in Phoenix, right?

13 A. Correct.

14 Q. That happened pretty quickly after this
15 advocacy by Balahl, right?

16 A. Yes.

17 Q. Okay. And it only happened because of
18 advocacy of Balahl and the other case workers, right?

19 A. Correct.

20 Q. Could you turn in the first day binder to
21 Exhibit 16? And this is a series of e-mails. It's
22 one version of the same series of e-mails that we just
23 looked at, right?

24 A. Yes.

25 Q. And it doesn't have the top e-mail that we

1 just looked at where you talked about meeting with Mr.
2 Blackman and it has just Balahl's answers to your
3 questions?

4 A. Yes.

5 Q. And then it has a statement by Mr. Blackman
6 and it actually went to Balahl, right?

7 A. Correct.

8 Q. And just Blackman to Balahl, nobody else is
9 copied on it?

10 A. Correct.

11 Q. But you saw this e-mail on or around the
12 time it was sent, right?

13 A. I did. And I saw it at the meeting with
14 Madam and LRS.

15 Q. Who showed it to you?

16 A. Madab.

17 Q. Had you not seen it before then?

18 A. Correct, I never --

19 Q. And this is an e-mail by Mr. Blackman that
20 says -- I appreciate that -- I'm sure he did not
21 intend to send it to Balahl, that that was the
22 inadvertent sending, but it's an e-mail he sends after
23 reading the e-mail to you that he was copied on that
24 provides all the information about Khadidja's
25 enrollment process and the fact that she has one what

1 she needs to to get enrolled, right?

2 A. Okay.

3 Q. Is that right?

4 A. Yes.

5 Q. And this e-mail that was sent to Balahl,
6 presumably sent to somebody else, it says, "This guy
7 is nuts, makes me say no" -- N-O in all caps -- "all
8 the time. Decisions are made on a case by case
9 basis." That's what it says, right?

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

11 Q. And you've -- when Madab showed you and
12 other colleagues this, and do you remember when that
13 meeting was?

14 A. January, February, somewhere in there?
15 Winter.

16 Q. Okay. And Madab was angry about it, right?

17 A. Yes, he was upset.

18 Q. And Mr. Blackman apologized to Balahl for
19 what he said?

20 A. He did not apologize to Balahl. He said he
21 apologized, it was unintended for Balahl and he
22 offered to apologize in person, but Madab said that
23 was fine and that he didn't want to think about it
24 anymore. He accepted the apology and wanted to move
25 forward.

1 Q. And this was on an -- this was an
2 inadvertent e-mail. I appreciate that it was said on
3 top of an exchange of e-mails about a student that he
4 actually had said no to, right?

5 A. Correct.

6 Q. Did the school district or anybody in the
7 school district apologize to Khadidja for how long it
8 took to get her to start school?

9 A. I'm not certain of that.

10 MR. ROTHSCHILD: Your Honor, would this
11 be a good time to break for lunch or --

12 THE COURT: How much longer is your
13 cross-examination going to take?

14 MR. ROTHSCHILD: Probably 20 minutes.
15 So if we could also just take a short break if --

16 THE COURT: No, we can break for lunch.
17 I'm sure no one has any objection. And I didn't mean
18 to suggest that your cross-examination was getting
19 laborious or excessive by any means, I truly did not.

20 MR. ROTHSCHILD: Didn't take that.

21 THE COURT: Why don't we --

22 MR. ROTHSCHILD: Now I'm worried.

23 THE COURT: Not at all, sir. Why don't
24 we stand in recess? It's now about 20 minutes after
25 12:00, correct? Why don't we stand in recess until

1 1:30?

2 MR. ROTHSCHILD: Thank you, Your Honor.

3 THE CLERK: All rise.

4 (AM proceedings concluded at 12:19 p.m.)

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We, Sheila G. Orms, Melissa Looney, and
Debra McCostlin certify that the foregoing is a
correct transcript from the official electronic sound
recording of the proceedings in the above-entitled
matter.

SHEILA ORMS, APPROVED TRANSCRIPTIONIST

Melissa Looney
AAERT Certified Electronic Transcriber CET-607

Debra C. McCostlin

Date: August 20, 2016

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