

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF PENNSYLVANIA

3 KHADIDJA ISSA, ET AL) 5:16-cv-03881-EGS
4) AM SESSION AND
5 VS.) PARTIAL PM SESSION
6) August 18, 2016
7 THE SCHOOL DISTRICT OF) Allentown, PA
8 LANCASTER) 9:42 a.m.-2:11 p.m.

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

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
JANDY RIVERA	10	36	45	50
HELAINÉ MARSHALL	57			

E X H I B I T S

NO.	PAGE
Plaintiff's:	
4-5, 7-10, 18-21, 25, 28-31, 33, 35-39 and 41	5

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

2 THE CLERK: All rise.

3 (Call to Court)

4 THE COURT: Good morning. You may be
5 seated.

6 ALL: Good morning, Your Honor.

7 THE COURT: The Court is called to
8 order. All parties previously present are once again
9 present. The plaintiff's may continue with their
10 case.

11 MR. ROTHSCHILD: Good morning, Your
12 Honor. Just a few preliminaries, Eric Rothschild for
13 the record.

14 THE COURT: Yes, sir.

15 MR. ROTHSCHILD: We have handed to
16 Jaime the booklet of deposition designations, which
17 defense counsel said she's not objecting to. And in
18 that is a video for Megan Brown, which we have talked
19 about here, but after having chambers, and we have her
20 deposition transcript in the binder as well, the
21 entire deposition transcript for the other witnesses,
22 the designations are marked in yellow, you have the
23 whole transcript, but we are putting in evidence in
24 our case in chief is marked in yellow.

25 THE COURT: Okay. So the two of you

1 have agreed that I will review the videotape
2 deposition outside of the courtroom?

3 MS. O'DONNELL: That's correct, Your
4 Honor.

5 THE COURT: Very well, thank you.

6 MR. ROTHSCHILD: We are going to move
7 into evidence now a group of exhibits that were used
8 in the designated testimony. The numbers are 4, 5, 7,
9 8, 9, 10, 18, 19, 20, 21, 25, 28, 29, 30, 31, 33, 35,
10 36, 37, 38, 39 and 41.

11 THE COURT: And, Attorney O'Donnell, is
12 there any objection to these stated exhibits?

13 MS. O'DONNELL: No objection, Your
14 Honor.

15 THE COURT: Very well. Without
16 objection Exhibits 4, 5, 7, 8, 9, 10, 18, 19, 20, 21,
17 25, 28, 29, 30, 31, 33, 35, 36, 37, 38, 39, and 41
18 moved in by the plaintiffs are admitted into evidence
19 without objection.

20 (Plaintiff's Exhibit Nos. 4-5, 7-10, 18-21, 25,
21 28-31, 33, 35-39 and 41 received)

22 MR. ROTHSCHILD: Thank you, Your Honor.
23 The next item is we requested from defense counsel
24 that she tell us the order of witnesses for today,
25 just so that we can make sure we're fully prepared as

1 the first witness comes on for the defense. So we're
2 just still waiting for a response to that.

3 THE COURT: Certainly. Attorney
4 O'Donnell, do you know which witnesses you're going to
5 be calling today?

6 MS. O'DONNELL: The lady sitting next
7 to me, it's going to be either one of them, and more
8 likely Ms. (indiscernible).

9 THE COURT: How much time do you
10 believe your case will take today, sir?

11 MR. ROTHSCHILD: So Ms. Rivera less
12 than an hour to put her on and obviously, you know,
13 cross. And then our expert, Dr. Marshall I'm going to
14 estimate and I'm not the one putting him on, but two,
15 two and a half hours, is that fair? And obviously
16 cross for her.

17 THE COURT: Right.

18 MR. ROTHSCHILD: So I'm sure we'll fill
19 --

20 THE COURT: A lot of the day.

21 MR. ROTHSCHILD: We'll get to lunch
22 with those witnesses and probably after lunch. And so
23 I would expect we would get to one defense witnesses
24 today, we'll see how that goes. So knowing which one
25 is going first is helpful.

1 THE COURT: And in terms, do you know
2 which of the two that have sat here through the trial
3 will be testifying first?

4 MS. O'DONNELL: Here's -- logistically,
5 I think Ms. Hilt will be longer and Ms. Heisey will be
6 much shorter, so depending on where we end for the day
7 for their case, I'll put on a witness that can finish
8 the day and not have to interrupt the testimony by
9 taking a break and recess until tomorrow morning.

10 THE COURT: Okay.

11 MS. O'DONNELL: Okay. Because I'd like
12 to consult with my witnesses at least in the evening,
13 and if they're under oath, you know my understanding
14 is, there's no consultation. So I don't want to allow
15 that to happen. I'd rather have Ms. Heisey testify
16 first then.

17 THE COURT: And so if there's very
18 little time, you would have Ms. Heisey testify?

19 MS. O'DONNELL: Correct.

20 THE COURT: If there's a lot of time,
21 you may call Ms. Hilt.

22 MS. O'DONNELL: That's correct.

23 THE COURT: So it sounds like it's
24 probably going to be Ms. Heisey given the amount of
25 evidence that the plaintiffs still intends to

1 introduce today.

2 MS. O'DONNELL: And if we're not
3 finished even with cross of the expert, I may just
4 defer until tomorrow morning anyway.

5 THE COURT: And you have no objection
6 to the deposition designations.

7 MS. O'DONNELL: I don't.

8 THE COURT: Very well.

9 MR. ROTHSCHILD: And then the last item
10 on my list is there are certain legal pleadings that
11 are -- that -- to which we have deadlines. Now, there
12 was a response to our motion for class certification.
13 I believe it was filed on Monday and that would make
14 our reply deadline this coming Monday. There's also -
15 - so a motion to dismiss filed for which our deadline
16 is Friday.

17 I just made a proposal to Ms. O'Donnell
18 so I -- you know, she hasn't that much time to think
19 about or respond to it, but that I'm going to propose
20 that those deadlines be -- I'll make a pleading,
21 definitely suspend it. Because I think what Your
22 Honor needs to decide for this proceeding is maybe a
23 bit narrower and certainly will be addressed in our
24 post trial pleadings.

25 Whatever Your Honor decides and however

1 the case proceeds after that, we could all do that
2 brief and easily reschedule.

3 THE COURT: Attorney O'Donnell, would
4 you like to be heard on that issue?

5 MS. O'DONNELL: I guess since counsel's
6 put it that way, I don't have an objection.

7 THE COURT: Yeah, my concern is that
8 everybody be focused on this preliminary objection.
9 We have school starting in -- what is the actual date
10 that school starts?

11 MS. O'DONNELL: August 29th.

12 THE COURT: The 29th, okay. So I would
13 suggest that all of counsels' energies and focus be on
14 the preliminary injunction, and then we can address
15 the other issues as you said at counsel's leisure. In
16 particular, the whole idea of this being a class
17 action with such a small class, and when six of the
18 class members have already been named as parties, and
19 the exact relief that you're seeking, other than what
20 you have set forth in your addendum clause to the
21 complaint.

22 Very well. Anything else we can
23 address now?

24 MR. ROTHSCHILD: We're ready to call
25 our next witness.

1 THE COURT: Mr. Rothschild, you may
2 call your next witness.

3 MS. O'DONNELL: Thank you, Your Honor.

4 THE COURT: Thank you, Counselor.

5 MS. MOON: Kristina Moon, good morning,
6 Your Honor.

7 THE COURT: Good morning, Counsel.

8 MS. MOON: Plaintiffs call Ms. Jandy
9 Rivera.

10 THE COURT: Good morning, ma'am.

11 JANDY RIVERA, WITNESS, SWORN

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

14 THE WITNESS: Thank you.

15 THE COURT: And, ma'am, would you
16 please state your full name, spelling your last name
17 for the record.

18 THE WITNESS: Yes. My name is Jandy
19 Rivera, R-i-v-e-r-a.

20 THE COURT: Thank you very much.
21 Counsel, you may proceed.

22 DIRECT EXAMINATION

23 BY MS. MOON:

24 Q. Morning.

25 A. Morning.

1 Q. Ms. Rivera, where do you live?

2 A. I live in Lancaster, Pennsylvania.

3 Q. And what is your educational background?

4 A. I have a bachelors and Master's degree in
5 English education.

6 Q. And where did you receive that bachelor's
7 degree?

8 A. I received both my bachelor's and Master's
9 degree from Milledgeville University.

10 Q. Okay. Do you hold any specialized
11 certifications?

12 A. I do not.

13 Q. And are you familiar with Phoenix Academy?

14 A. I am.

15 Q. How are you familiar?

16 A. I taught there from 2011 until 2013, a year
17 and a half.

18 Q. Okay. Who was your employer during that
19 time?

20 A. Camelot Schools LLC.

21 Q. And what entity managed the school on a day-
22 to-day basis?

23 A. The school is managed by Camelot Schools and
24 it's contracted by the School District of Lancaster.

25 Q. What was your position at Phoenix?

1 A. I was the ninth and tenth grade
2 communication arts teacher, the English teacher at the
3 school.

4 Q. English and literature?

5 A. Yes.

6 Q. Okay. And what were your duties and
7 responsibilities in that capacity?

8 A. I had two ninth grade classes and two tenth
9 grade classes.

10 Q. How did you come to work at Phoenix?

11 A. I was looking for a full time position and I
12 was searching on line. I saw that Camelot had a
13 school in Lancaster, and so I applied for the
14 position.

15 Q. Did you have any prior teaching experience
16 before teaching at Phoenix?

17 A. I did. Right after grad school I worked as
18 an alternative education communication arts teacher at
19 Lampeter Strasburg School District for middle school
20 and high school students.

21 And after that, I taught at Thaddeus Stevens
22 College of Technology in Lancaster. I taught reading
23 and writing and success strategies to the incoming
24 freshman. And at the same time that I was there, I
25 was also an adjunct faculty member at ITT Technical

1 Institute in Harrisburg. I taught composition I to
2 the students there and I also tutored and I held the
3 position of first quarter ombudsman, which served to
4 welcome incoming students and help them to become
5 familiar with the policies and help them fill out
6 forms, and also walk them to classes the first day if
7 they weren't familiar with the plan of the school.

8 Q. Okay. And are you currently employed?

9 A. I'm not. My last job ended a month ago so
10 I'm looking.

11 Q. Okay. Now, turning your attention to your
12 experience teaching at Phoenix.

13 A. Uh-huh.

14 Q. What type of school program does Phoenix
15 offer?

16 A. It's an accelerated program.

17 Q. Okay. And what does it mean that Phoenix is
18 an accelerated program?

19 A. It means that students can accrue credits
20 faster than they can in a regular school environment.

21 Q. And is the regular school environment in
22 Lancaster McCaskey High School?

23 A. Yes.

24 Q. Okay. So in practice what does it look like
25 to move faster toward credit recovery?

1 A. When Phoenix started as under the umbrella
2 of Camelot, we teachers went through a professional
3 development at McCaskey, and we were given the School
4 District of Lancaster's school year at a glance, which
5 is the curriculum for the entire school year. And we
6 were basically told, you need to teach this double
7 time.

8 Q. So can you give me an example, you know,
9 when McCaskey was at X point, Phoenix should be at
10 what point?

11 A. Right. So basically if by the end of the
12 first semester if McCaskey was at this point, we
13 needed to be at that exact same point, but at the end
14 of the first quarter.

15 Q. First quarter or half of the year?

16 A. We needed to be at the first quarter when
17 McCaskey was at the end of the semester.

18 Q. Okay. And so to compare a full year at
19 McCaskey, how much time did you have to cover that
20 material at Phoenix?

21 A. The first semester.

22 Q. Okay. And what type of student is an
23 accelerated program designed for?

24 A. It's designed for a student whose fallen
25 behind for a various number of reasons and needs to

1 accrue credits in order to graduate.

2 Q. How long are class periods at Phoenix?

3 A. 80 minutes.

4 Q. And how many class periods are in the day?

5 A. The students have five classes.

6 Q. Okay. So how long is the school day, what
7 time did you start and what time did regular classes
8 end?

9 A. Students had to be in school 8 o'clock,
10 approximately 8:05, something like that, and the
11 school day ended around 3 o'clock.

12 Q. So what curriculum did you follow at
13 Phoenix?

14 A. We followed the School District of
15 Lancaster's curriculum, and we were a middle school
16 and high school. So it would be the middle school
17 curriculum and then McCaskey's curriculum.

18 Q. And how many students were in your class at
19 Phoenix?

20 A. It depended upon the class, but I know
21 somewhere between upper 20s to over 40.

22 Q. So can you explain how you covered a year's
23 worth of district curriculum material in half the year
24 at Phoenix?

25 A. I couldn't. It was impossible.

1 Q. Can you explain to your mind why that was
2 impossible?

3 A. There were various reasons why. I had large
4 class sizes. I had students with varying needs. I
5 had students who came in far below grade level with
6 reading, they were high school students, but they were
7 reading at an elementary school level. And then I had
8 students who were above grade level with reading.
9 Students with significant behavioral issues, and then
10 I had refugee students who were coming in who had no
11 English background whatsoever.

12 So trying to meet each and every one of
13 their needs while teaching the curriculum at an
14 accelerated pace was impossible.

15 Q. Were students permitted to bring books home
16 from school?

17 A. No. Students were not permitted to bring
18 textbooks home, and in my class that included the fact
19 that they were not allowed to take the novels or the
20 short stories that we were working home either, which
21 was definitely a detriment.

22 Q. Explain what you mean by it was a detriment.

23 A. Well, in an English class, in a
24 communication arts class when you're teaching a novel,
25 in a regular classroom, regular communication arts

1 classroom, a teacher would often assign a certain
2 number of chapters to read at home, and then you'd go
3 over that material the next day.

4 What did you read last night, what did you
5 learn. But if students are not able to take the book
6 home, then we need to spend a significant amount of
7 class time reading the material, which means a
8 significant amount of time is being used to review the
9 material and go over a lot of what you would do if you
10 weren't spending class time reading.

11 So, yeah, that's -- it didn't work that
12 well.

13 Q. Did you receive any guidance from Phoenix
14 Academy about adapting the district curriculum to its
15 accelerated model?

16 A. No, I did not.

17 Q. How did the administrators, if at all,
18 verify how much of the district curriculum is covered
19 in your classes?

20 A. They didn't.

21 Q. And in reality, did your students master the
22 material in Phoenix' accelerated model?

23 A. Those who were either on grade level, as far
24 as their reading ability, or those who were above
25 grade level with their reading ability, they were able

1 to master the material. Those who were below grade
2 level and certainly my refugee students, they were not
3 able to master the material.

4 At the fast pace and the atmosphere at
5 Phoenix, they were not able to learn or they weren't
6 able to master the material. They would've needed a
7 regularly paced atmosphere, or perhaps even an
8 extended learning atmosphere in order to master the
9 material.

10 Q. So in your experience, how well did this
11 accelerated program work for a newly specifically
12 arrived English language learners?

13 A. In my experience it didn't work.

14 Q. So you've said that you did have English
15 language learners in your class, right?

16 A. I did.

17 Q. What range of English proficiency levels
18 were in your classes?

19 A. All ranges.

20 Q. And in those classes, were there also
21 students that were English proficient?

22 A. Yes.

23 Q. In your experience, did refugee students
24 have particular or unique educational needs?

25 A. Definitely. For the incoming refugee

1 students, there were some who had no formal education
2 -- excuse me, background at all. There were some who
3 were coming in, who had been born in the refugee
4 camps. So their educational needs I felt were very
5 unique, it wasn't just about putting a pencil and a
6 piece of paper in front of them and here's the English
7 alphabet.

8 It was about figuring out a way to somehow
9 try to slow down the educational process enough for
10 them to learn some of the material, but it was also
11 about here's this school, here's how we come in in the
12 morning, here's the cafeteria, it was a brand new
13 atmosphere, a brand new country, trying to help them
14 feel welcome and safe in an atmosphere. And for some
15 of them, their very first school experience was
16 Phoenix Academy where it was often loud and chaotic
17 and violent sometimes.

18 There was one instance where we had a young
19 man from an African country come in, and he spoke no
20 English, and I was in the entranceway in the morning,
21 and he was standing by the restrooms. And I noticed
22 he just kept standing there, and I wondered what was
23 he doing. And I realized he didn't know which was the
24 boys room and which was the girls room, because we
25 didn't have a sign that showed an image of a boy or a

1 girl. We just had the word, girl and boy.

2 And I thought oh, my gosh, this poor young
3 man, he didn't know which restroom to go in. So I
4 walked over and I patted him on the back, and I just
5 pointed to the, you know, young men's room and then I
6 ran upstairs and I printed out pictures, clip art of a
7 boy and a girl to put on the restrooms on our three
8 floors.

9 So our refugee students, I know this is a
10 long answer, but our refugee students had unique
11 educational needs because it wasn't just the education
12 of ABC's, but it was a cultural education as well, and
13 how to make them feel comfortable and help them to
14 assimilate some to a brand new world, a brand new
15 home.

16 Q. Were you ESL, English as a Second Language
17 certified when you worked at Phoenix?

18 A. No, I was not.

19 Q. And do you know how many Phoenix teachers
20 were ESL certified while you taught there?

21 A. While I was there, we had one ESL certified
22 teacher, that was Maryann Ortiz.

23 Q. While you were teaching at Phoenix, did you
24 receive any professional development trainings about
25 working with English language learners or refugees?

1 A. Not about refugees. I recall one training
2 that Maryann Ortiz gave to all of the staff members
3 about working with the ESL students.

4 Q. Okay. What time period was that, to your
5 knowledge?

6 A. That would've been my first year, the
7 2011/2012 school year.

8 Q. And about how long was that presentation?

9 A. It was approximately 20 minutes.

10 Q. And did that presentation cover any material
11 about how to work with ELLs, English Language
12 Learners, or language access instruction in an
13 accelerated model?

14 A. No.

15 Q. And were there any other trainings about
16 working with English language learners during your
17 time at Phoenix?

18 A. Not that I recall.

19 Q. Turning now to student policies at Phoenix
20 Academy. You've told us that the curriculum is from
21 the district. Tell us who sets the behavior policies
22 at Phoenix, student behavior that is.

23 A. The student behavioral policies are set in
24 place by Camelot Schools.

25 Q. And if you know, are the student policies

1 directed by Camelot at Phoenix unique to Phoenix
2 Academy?

3 A. No. As far as I know, those policies are
4 pretty much a standard at most Camelot schools.

5 Q. So how did you first learn about the school
6 policies at Phoenix?

7 A. At Phoenix Academy we have approximately --
8 we had, past tense, approximately a week of
9 orientation before the school year began. We were
10 given instruction on behavioral management, student
11 policy, employee policy, and we were also given an
12 employee handbook.

13 Q. And I'm sorry, I missed it. Did you say who
14 provided that training?

15 A. As far as the behavioral management, it was
16 a person, the actual model is called handle with care,
17 and then there was a representative from the company
18 handle with care, who came in and gave the training to
19 all the employees.

20 Q. So can you briefly describe that behavior
21 management model, handle with care?

22 A. Uh-huh. Handle with care involves seven
23 levels of intervention when a student is being non-
24 compliant for one reason or another. And the first
25 level is basically a non-verbal friendly way to tell a

1 student that he or she is not complying with the
2 rules. And the levels are to be done in order all the
3 way up to number seven if a student is potentially
4 harming or becoming a harm to him or herself, a peer
5 or another staff member and that level, that level 7
6 is a physical restraint of a student.

7 Q. Can you describe how the staff at Phoenix
8 implemented this behavior management model?

9 A. We were trained that we needed to go through
10 the seven levels before we were to get to level 7 with
11 a student unless there were suddenly a fight that
12 broke out, which of course, then a staff member was to
13 separate the children, and obviously you would have to
14 restrain a student, and not suddenly say, you know, go
15 through all of the seven levels.

16 However, I often saw staff members escalate
17 to a level 7 without going through the other levels.
18 Times when that happened that there was no infraction
19 whatsoever. Staff members would suddenly pick up a
20 child for no reason, slam a child against a wall, slam
21 a child against a door, scream at a child, yell at a
22 child, curse at a child. So I -- more often than not
23 saw these seven levels not handled properly, but
24 handled improperly.

25 Q. And I want to clarify when we're speaking

1 about staff. Is this teachers or another role at
2 Phoenix?

3 A. Camelot and then my experience at Phoenix
4 hires behavioral staff specialists to monitor the
5 hallways, to monitor the classrooms, to make sure that
6 students are aware they're supposed to be, to escort
7 students from one class to another and things like
8 that.

9 So all staff are trained in the handle with
10 care protocol, but it's the behavioral staff
11 management who were the ones who carried out the more
12 physical actions, even though there were teachers who
13 did that as well.

14 Q. Okay. And how did students respond to this
15 staff of behavior that you've characterized as
16 inappropriate, escalation from behavior staff?

17 A. A lot of students were wary, fearful, tense
18 that something might happen, even though they hadn't
19 done anything. Because there were feelings that a
20 staff member might fly off the handle even though a
21 student may not have said or done anything, because
22 there were staff members who would provoke students
23 with words or with their hands, even though students
24 hadn't done anything to provoke such action.

25 Q. And were you ever in a position to discuss

1 physical intervention with the students?

2 A. Yes. There was one occasion where a student
3 was physically managed and he came into school with
4 his mother afterwards, and he had very visible bruises
5 on his face and on his neck.

6 And most of the students saw him, and I saw
7 him as well, and the class after that, students were
8 questioning and a bit fearful as to whether it had
9 been handled properly, and were questioning me as to
10 what they should do if they were hurt during a
11 physical management.

12 And I encouraged them that if they were ever
13 hurt at the school or anywhere, that they should talk
14 to their parents about it, and their parents should
15 file a report with the police.

16 Q. Is there a student peer-to-peer component to
17 behavior management at Phoenix?

18 A. Yes. There's a student leadership that
19 happens in the Camelot schools. There's an incentive
20 for students to kind of climb the ranks, and they get
21 to wear a different colored shirt, they get to wear
22 jewelry, they get to possibly go on field trips and
23 things like that.

24 And they have to fill out paperwork, they
25 have to be doing well in their grades, and be behaving

1 well. And one of the specific components of that, is
2 they have to be confronting their peers for their
3 peers' negative behavior. So that's a big part of it.
4 Are you confronting, are you confronting, and that's a
5 big portion.

6 Q. And can you describe in your observation how
7 the students, you know, would confront their peers?

8 A. There were times when I saw some positive
9 confrontation, but oftentimes we're talking about
10 teenagers. So oftentimes I saw students negatively
11 confront, you know, if they saw something in the
12 hallway, yo, shut up, you know, stop talking.

13 I saw -- I definitely saw more negative
14 confrontation than I saw positive confrontation. And
15 it was not always addressed by staff members. Because
16 if it was confrontation, it was confrontation, so it
17 was kind of a check, okay, you're confronting, that's
18 a positive thing.

19 Q. Okay. And can we walk through the structure
20 and schedule of the day at Phoenix when students first
21 arrived at school, what was the first step?

22 A. As soon as students came into the building,
23 they needed to be pat down and searched.

24 Q. And can you describe that pat down for us?

25 A. Sure. Boys would go to one side, girls

1 would go to the other. The boys would be individually
2 searched by a male staff member, girls would be
3 individually searched by a female staff member. All
4 the teachers took turns doing that, so I had my
5 specific day of the week that I needed to search my
6 ninth and tenth grade students.

7 Girls would, you know, if they had a jacket
8 on, they'd have to take a jacket off, you can't bring
9 that, you know, inside the school or wear it. So we
10 would touch, you know, all the way down here, down
11 through here, turn around touch down the legs.

12 Q. For reference for the record, you're
13 gesturing on your body, can you explain in words where
14 the pat downs, where you had to touch on the pat
15 downs?

16 A. All the way down the side of the body by
17 the, you know, the arm pit, make sure that girls
18 aren't hiding anything inside of their bra, because
19 girls would sometimes try to hide a cell phone or
20 something else inside of the bra. Touch the bra strap
21 in the middle, you know, down the legs, up to -- I
22 tried not to touch up too high on the thighs to make
23 the girls uncomfortable. And then have them
24 turnaround and then touched again, you know, down the
25 back, and touched down the legs on the back.

1 Q. Okay. And your observations, how did those
2 without English language proficiency and refugees in
3 particular respond to having to be pat down?

4 A. The first few times that we had to pat down
5 the refugee kids because they didn't understand the
6 language, they would stiffen immediately would you'd
7 touched. I mean, I would do the same thing if a
8 stranger touched me, and I didn't understand.

9 I mean, our English language students we
10 would, you know, explain, you know, we have to do pat
11 downs and searches, and you have to take your shoes
12 off and shake them upside down, to make sure you're
13 not hiding anything in your shoes.

14 But, yeah, the first few times, I mean as
15 soon as I would, I would say, okay, you know, it's
16 okay, but they would stiffen right away because
17 someone's -- someone I don't know is touching me.

18 I believe, you know, I couldn't ask, because
19 I didn't speak their language, but it certainly seemed
20 as though they felt uncomfortable by being touched.

21 Q. And what is the Phoenix policy about
22 personal belongings in school?

23 A. There are no personal belongings allowed
24 inside of the school, other than if a young lady it's
25 her time of the month, she can carry a sanitary napkin

1 or a tampon in her pocket around for the day. That's
2 about it.

3 Q. Okay. After the pat down, how did students
4 proceed with the day?

5 A. After the pat down then the students would
6 move a little bit further along, and they would have
7 to take their shoes off and hold their shoes upside
8 down and shake them, to make sure there is nothing
9 inside of their shoes.

10 Then they'd put their shoes on, and they'd
11 go into the cafeteria, grab their breakfast, and sit
12 down for what's called townhouse.

13 Q. And can you explain the purpose then and
14 practice of townhouse?

15 A. Townhouse we were instructed when we first
16 came on board was a -- it's a Camelot thing, like it
17 was supposed to be like a positive way to start the
18 day, the director was to be there, to give kind of a
19 little motivational speech for the day. Our word of
20 the day was supposed to be up on the wall. All of the
21 teachers are supposed to be kind of circled around the
22 cafeteria, or around the students to say this is what
23 we're going to learn in class today, to just start the
24 day off on a positive note for the students. Get them
25 motivated, get them ready to learn.

1 Q. And in practice, what was your observation
2 of how townhouse actually worked?

3 A. Yeah, unfortunately I felt like oftentimes
4 townhouse in the morning became sort of a venting
5 session for teachers who were frustrated about a
6 specific class that hadn't gone well the day before.
7 Perhaps there had been a few disruptive students, or
8 if the director did come in, he often wasn't there,
9 but if he did come in, it was to say you know, this
10 happened after school yesterday, and I'm really
11 disappointed in your behavior, and these sorts of
12 things can't happen.

13 So he may have come in yelling, or there was
14 a specific teacher who more often than not stood in
15 the back of townhouse, so the students couldn't see
16 him, because they were facing the front and he stood
17 in the back. And he would go on for extended periods
18 of time yelling, screaming, cursing at the kids for
19 what had happened in one of his classes the day
20 before. Often saying things like, you know, you guys
21 can't do this, you're not going to accomplish
22 anything, you're not going to learn, very you know,
23 down putting awful things to say to these kids.

24 Q. Do you recall the name of that teacher?

25 A. His name is Mr. Kelleher.

1 Q. Okay. And were there interpreters at
2 townhouse so that students that didn't understand
3 English could follow along?

4 A. No, there weren't.

5 Q. What observations, if any, did you make
6 about how English learners, those who were not
7 proficient in English reacted to townhouse?

8 A. It was awful. I mean, I always stood in the
9 front so I could observe -- I observed all of the
10 students. And it was awful to see all of the students
11 faces in the -- they're there in the morning. They're
12 there at school, they showed up for the day. This is
13 an awful way to start their day, you know, being
14 berated for something maybe three or four students had
15 done, you know, the day before.

16 And there are refugee kids sitting in a
17 group together, always in a group together, sometimes
18 they didn't even speak the same language, but they
19 were always there together huddled, and they didn't
20 probably even understand what this teacher was yelling
21 or screaming about.

22 But they sat there, hunched over, heads
23 down, eyes on the floor, shoulders forward, and they
24 appeared to be terrified.

25 Q. And I think you've already described after

1 townhouse how many classes would a student have in a
2 day?

3 A. Five.

4 Q. Okay. Now, your employment with Camelot at
5 Phoenix ended in January 2013.

6 A. Yes, that's right.

7 Q. Why did you leave?

8 A. I had been unhappy there for a while. I
9 didn't agree with a lot of things that were going on
10 at the school. I stayed there because I needed a job
11 and because I loved the kids so much. I did have an
12 interview with another place earlier, and I did have a
13 job offer but I also had the sense that I might be
14 losing my job there.

15 Q. And what are you referring to there by that?

16 A. There was an incident that took place and I
17 don't think that Phoenix was happy with the way that I
18 responded to a student regarding something.

19 Q. Are you referring to the incident you
20 already described about counseling students about
21 behavior management by staff?

22 A. Yes.

23 Q. And so where did you work after leaving
24 Phoenix?

25 A. I worked for the Pennsylvania migrant

1 education program.

2 Q. And what services does that program provide?

3 A. The program is funded by the state, and it
4 provides services in the home, in the community, and
5 in the school to any student who's labeled either
6 migrant or refugee ages 3 to 21.

7 Q. So what was your role with that
8 organization?

9 A. I was a student support specialist and I was
10 given several schools throughout the School District
11 of Lancaster, and any students who were migrant or
12 refugee within those schools, and that included
13 Phoenix Academy.

14 Q. You were assigned to Phoenix Academy?

15 A. I was.

16 Q. How long did you serve in that role?

17 A. I served in that role for a year.

18 Q. And why did you leave that role?

19 A. I was experiencing some health issues.

20 Q. Okay. So in this role, how often did you
21 visit the refugee and migrant students at Phoenix?

22 A. Approximately once per month, sometimes a
23 little more often if I had to update students on
24 upcoming events, things that were going on with the
25 program.

1 Q. And what were your responsibilities on those
2 school visits?

3 A. I was checking on their grades, or checking
4 with the ESL teacher to see how they were going or
5 looking in on their class.

6 Q. So during that time while you were working
7 with the migrant education program during 2013, how
8 many ESL teachers did Phoenix have?

9 A. As far as I know, there was Ms. Ortiz.

10 Q. Were any other ESL teachers ever identified
11 to you to meet with?

12 A. No. I was just given Ms. Ortiz as a point
13 person.

14 Q. Okay. And did you have another role with
15 the PA migrant education program?

16 A. Yes. Over the summer, I taught at the
17 program's summer school, which was located at
18 McCaskey.

19 Q. What did you teach?

20 A. I taught communication arts.

21 Q. So was -- what was the student population of
22 those classes?

23 A. We had again any student who was labeled as
24 refugee or migrant, excuse me, and we had some
25 students from Phoenix who attended, and then we had

1 some students from McCaskey who attended, and they
2 were all English language learners.

3 Q. Can you describe your experience teaching
4 English language learners in that program?

5 A. Yeah. It was a really great opportunity,
6 and I was able to kind of form the curriculum as I saw
7 fit for the students who were in my class. And I had
8 a curriculum that I'd made for the summer. And I
9 think probably by week two I realized that I was not
10 going to get to the end of my curriculum by the end of
11 the weeks and the summer because I needed to slow it
12 down significantly, probably like half the time.

13 But that was fine, because there was no
14 deadline, it was let's get as much material learned as
15 we can. But students had tons of questions about
16 specific words in English. They, you know, what does
17 word mean. I looked this up in the dictionary, in the
18 English dictionary, and this word means this, but
19 yesterday I heard it used in this context, so does it
20 actually mean something different. Why do we
21 pronounce it this way in English, but you can
22 pronounce it this way also.

23 And I only had I think 12 students, 12
24 students in my high school class. Whereas in my other
25 teaching experience at Phoenix I had lots of students

1 in my class.

2 So it was a unique experience, and I learned
3 that if I slowed down the pace significantly, allowed
4 tons of time for conversation, questions, let's look
5 this up, where does this word come from, what are all
6 the different meanings, and how we can use them. What
7 is this word in slang, so that they could understand,
8 so they felt like they fit into the culture. They
9 learned a lot.

10 Q. Okay. And to your knowledge, while working
11 with refugee and migrant students at Phoenix during
12 that year of 2013, was there any material change in
13 the accelerated model or student behavior policies
14 compared to when you worked there as a teacher?

15 A. None that I knew of.

16 MS. MOON: Okay. No further questions,
17 Your Honor.

18 THE COURT: Thank you very much,
19 Counselor. Attorney O'Donnell, you may cross-examine
20 the witness.

21 MS. O'DONNELL: Thank you.

22 CROSS-EXAMINATION

23 BY MS. O'DONNELL:

24 Q. Good morning, Ms. Rivera.

25 A. Good morning.

1 Q. My name is Sharon O'Donnell. I represent
2 the School District of Lancaster, and I just had a few
3 follow-up questions for you.

4 I think you indicated that you're no longer
5 working, or you're not working at the present time?

6 A. Yes.

7 Q. Okay. What was your last job?

8 A. My last job was at Franklin and Marshall
9 College, I was a program assistant.

10 Q. Okay. And what does that involve?

11 A. I worked with a program called Quash Aces
12 (ph) that is a mentorship program between Franklin and
13 Marshall College and the School District of Lancaster.

14 Q. Okay. And how long was that program? Did
15 you work as a program assistant?

16 A. For a year. It was a temporary position, it
17 only lasted one year.

18 Q. So that was over in July of 2016?

19 A. Yes.

20 Q. And when did it begin?

21 A. It begin in August of 2015.

22 Q. And then what did you do before that?

23 A. I was at home with my son.

24 Q. Okay. And so when did you finish working
25 for the migrant education program following your

1 teaching position at Phoenix?

2 A. December of 2013.

3 Q. So there was a period of time from 2013 to
4 2015 when you did not work at all; is that correct?

5 A. Yes, that's correct.

6 Q. Okay. And so your knowledge of Phoenix that
7 you gave us today, your recollection is -- essentially
8 ends in 2013; is that correct?

9 A. That's correct.

10 Q. So you have no idea what they're doing
11 presently?

12 A. My only knowledge of what they're doing
13 presently is through people I know who are still
14 working at the school.

15 Q. Okay. But you don't have any direct
16 observation --

17 A. No, I do not.

18 Q. -- in terms of what's going on at the school
19 presently, right?

20 A. Correct.

21 Q. Okay. And then you talked a little bit
22 about how it was impossible for you to work with the
23 class sizes that you had at Phoenix. I believe your
24 testimony was that the students had various needs,
25 some were far below grade level, some were on grade

1 level, some were above grade level, and some were
2 refugees; is that correct?

3 A. Uh-huh. Yes.

4 Q. And then how did you -- well, strike that.
5 Do you understand the concept of
6 differentiated teaching?

7 A. Yes.

8 Q. Okay. And what does that mean for the rest
9 of us?

10 A. It means that different students are coming
11 in with different needs, and I need to modify or
12 change the curriculum based on each student's
13 individual needs.

14 Q. And did you find that to be impossible with
15 the group that you had?

16 A. Yes, I did.

17 Q. Okay. And did you ask for any assistance
18 from your superiors in terms of how to deliver that
19 differentiated instruction to your group of students?

20 A. I spoke with an ESL teacher.

21 Q. Okay. And was there anyone else that you
22 spoke with to assist you with that?

23 A. I spoke with the academic coordinator.

24 Q. Okay. And who was that?

25 A. Rachel Ratick (ph).

1 Q. Okay. And at some point, were you placed on
2 a performance improvement plan to assist you with your
3 work there with the academy, with Phoenix Academy?

4 A. I was.

5 Q. Okay. And towards the end of that
6 performance improvement plan, did you -- is that when
7 you decided to maybe look for something else?

8 A. I was already looking for something else.

9 Q. Okay. Now, when we talked a little bit
10 about -- when you talked earlier about the students
11 not being able to bring their personal belongings, was
12 that rule made for just one particular group or class
13 of students at Phoenix?

14 A. No.

15 Q. It applied to everyone equally?

16 A. Yes.

17 Q. Okay. And then what about the pat downs and
18 searches, was that designed for one particular class
19 or group of people?

20 A. No.

21 Q. That was also applied to everyone uniformly
22 and evenly?

23 A. Yes.

24 Q. Okay. And then what about the handle with
25 care policy, was that performed with respect to one

1 particular group or the other?

2 A. No.

3 Q. That was also performed on everyone equally?

4 A. Yes.

5 Q. Okay. You also indicated that sometimes
6 Phoenix became chaotic and loud and there were fights;
7 is that correct?

8 A. Yes.

9 Q. Okay. Are you aware of whether or not
10 regular high schools, for example, McCaskey, either
11 East or JP ever get chaotic and have fights there?

12 A. I know they do.

13 Q. You know they do?

14 A. Yes, ma'am.

15 Q. Okay. And you indicated that there was
16 either a teacher or a security guard that you observed
17 pushing a kid into a wall or something. Was that --
18 did you just happen to come upon that observation? In
19 other words, did you just happen to walk around a
20 corner and see this happen?

21 A. It happened more than once.

22 Q. Okay. Well, just identify in your one mind.

23 A. Uh-huh.

24 Q. Okay. How did you observe that? Did you
25 just happen to come upon it?

1 A. One occasion it happened in my classroom.

2 Q. Okay. And what about the other occasions?

3 Are these -- were they your -- what I'm trying to
4 discern were you part of it to begin with, or did you
5 just happen to observe it from a distance?

6 A. Both.

7 Q. Okay. So sometimes you were part of it, and
8 sometimes you were just an observer?

9 A. I'm not sure what you mean by a part of it.

10 Q. Well, I'm trying to understand that from
11 you. So when you're telling us about the handle with
12 care implementation and some of the things that you
13 didn't like, I'm trying to discern from your testimony
14 --

15 A. Yes.

16 Q. -- what it was that you didn't like about
17 it, and to understand that, I need to know whether you
18 were part of it, or whether you just observed it from
19 a distance.

20 A. I never had the opportunity to use the
21 handle with care model myself.

22 Q. So at all times, you were an observer.

23 A. Yes.

24 Q. Okay. Every single time that you can think
25 of in your own mind, you were observing and not

1 participating; is that correct?

2 A. All but -- yes, all but -- there was one
3 occasion.

4 Q. Okay. There was one occasion when you
5 participated?

6 A. Yes.

7 Q. Okay. On the scale of 1 to 7, 1 being the
8 least intrusive, let's just say with the glance or
9 some sort of gesture up to number 7 being, you know,
10 grabbing them by the elbow and wrist and doing the
11 maneuver, where were you on that statute?

12 A. 7.

13 Q. Okay. So you were part of a full on
14 physical restraint?

15 A. Yes.

16 Q. Okay. And you wouldn't have been able to do
17 that unless you were trained; is that correct?

18 A. Not necessarily.

19 Q. What does that mean?

20 A. I was attempting to break up an assault on a
21 student, so I don't believe that I would've needed the
22 training in order to do that.

23 Q. Do you know the purpose of the training, do
24 you understand what the purpose is for the training?

25 A. Yes, I do.

1 Q. And what is that?

2 A. In order to de-escalate a student in order
3 to keep the student and a staff member and the rest of
4 the students safe.

5 Q. So the reason for the instruction is to keep
6 you, as a staff member, and the student --

7 A. Uh-huh.

8 Q. -- safe during the process; is that correct?

9 A. Uh-huh. Yes.

10 Q. And you think without that training, you
11 believe you would've stayed safe at a 7 de-escalation
12 technique?

13 A. Yes, I think so.

14 Q. Did you have any training before you worked
15 at Phoenix?

16 A. Yes, I did.

17 Q. Okay. And where did you have that training?

18 A. A friend.

19 Q. Okay. And I believe that you -- well, did
20 you testify that you had no trainings in professional
21 development regarding ESL and the refugees?

22 A. I had no trainings on refugees.

23 Q. Okay. Do you know whether the trainings
24 were held maybe on the days that you were not there?

25 A. It's possible.

1 Q. Okay.

2 MS. O'DONNELL: Those are all the
3 questions I have, thank you so much.

4 THE COURT: Thank you very much,
5 Counselor. Attorney Moon, you may redirect the
6 witness.

7 MS. MOON: If I could have one moment.

8 THE COURT: Certainly, Counselor.

9 (Pause)

10 MS. MOON: I have a document I'm going
11 to show Counsel. May I approach for the Court?

12 THE COURT: Certainly, Counselor.
13 Thank you very much.

14 REDIRECT EXAMINATION

15 BY MS. MOON:

16 Q. Ms. Rivera, do you recognize this document?

17 A. Yes, I do.

18 Q. What is it?

19 A. It is a letter of recommendation written to
20 me.

21 Q. And who's the signatory at the bottom?

22 A. Aura Heisey.

23 Q. Do you -- there's no date on the document.
24 Do you recall when you received this recommendation
25 letter?

1 A. I believe it was in March of this year.

2 Q. And can I direct you to the second
3 paragraph, third sentence, "She exceled." Can you
4 read that and then tell me what it's referring to?

5 A. Sure. "She exceled in building strong
6 relationships with her students and developing student
7 interest driven instructional activities."

8 Q. And the next sentence.

9 A. "She sought out administration in order to
10 bring additional novels and other curricular materials
11 into our classroom in order to make learning relevant
12 for her students."

13 Q. Okay. And this is a recommendation that you
14 received from Ms. Heisey on behalf of Camelot and
15 Phoenix?

16 A. Correct.

17 Q. Okay. How is Phoenix different than
18 McCaskey to your knowledge with regard to handling
19 student behavior?

20 A. As far as I am aware, there are no
21 behavioral staff specialists at McCaskey. Parents do
22 not sign a piece of paper saying that staff are
23 permitted to put their hands on students for physical
24 restraints at McCaskey.

25 I do know that there are police officers at

1 McCaskey who carry Tasers in case they are necessary.
2 I believe there are two officers at McCaskey.
3 McCaskey is a very large campus, there are two
4 buildings.

5 At Phoenix Academy, I believe there are two
6 to three behavioral staff specialists on each floor.
7 There's also a team leader for each leader, so that
8 would be three team leaders.

9 When I was there, there were also the person
10 in charge of all of the behavioral staff specialists.
11 That's a lot of people.

12 Q. And to be sure I understand, to your
13 knowledge, is handle with care policy in place at
14 McCaskey High School?

15 A. No, it is not.

16 Q. Okay. And are you aware of a reputation in
17 the community between Phoenix Academy and their
18 student management model and McCaskey and their
19 student management model?

20 A. Sure. If you walk down the street in
21 Lancaster and you talk about, you know, where do you
22 go to school. I go to Phoenix. Oh, that's the bad
23 school, that's where the bad kids go, that's where the
24 bad kids are sent.

25 Q. Specifically with regard to how staff manage

1 behavior --

2 A. Uh-huh.

3 Q. -- what's the reputation comparing Phoenix
4 and McCaskey?

5 A. Sure. The reputation is that kids get beat
6 up there, kids get slammed into walls, kids get hurt,
7 and if you file a report even with the police,
8 nothing's going to get done.

9 Q. And you're referring to Phoenix?

10 A. Uh-huh.

11 Q. You've referenced a -- I'm sorry, the
12 District Attorney (sic) asked you about a particular
13 incident where you were involved, and you said it was
14 an assault on a student. Can you describe the context
15 of what happened there?

16 A. Yeah. There were two students who attacked
17 another student in my classroom, and I attempted to
18 restrain the one student who was attempting to stomp
19 on the student being attacked, to stomp on his head.

20 So I was attempting to use what I was
21 trained to do, trying to grab the student from behind
22 under his arm. I wasn't really able to be successful
23 because he was moving around a lot. And I was doing
24 what we had been trained to do, which was to yell for
25 support. And eventually support came in my door, and

1 was able to pull the two boys off of the other boy.

2 Q. Did you have any limited English proficient
3 English language learners in that class during that
4 incident?

5 A. I had -- no.

6 Q. If you remember.

7 A. No, I didn't. They were downstairs at that
8 point.

9 Q. Okay. And we've also talked about an
10 incident in which students came to you with questions
11 about the staff's use of the behavior management model
12 --

13 A. Uh-huh.

14 Q. -- and your conversation with them.
15 Before -- how close in time between that
16 incident and the corrective action that the District
17 Attorney (sic) mentioned --

18 A. Uh-huh.

19 Q. -- how close in time were those two
20 incidents?

21 A. It was approximately two weeks.

22 Q. And before that point, had you ever received
23 any indication of any corrective action needed?

24 A. No.

25 MS. MOON: That's all I have, Your

1 Honor.

2 THE COURT: Thank you, Counselor.
3 Attorney O'Donnell, do you have any further questions?

4 RE-CROSS-EXAMINATION

5 BY MS. O'DONNELL:

6 Q. Ms. Rivera, you testified that Phoenix
7 Academy has a different reputation in the community
8 than McCaskey High School; is that accurate?

9 A. Yes.

10 Q. And you -- and you continued to go back
11 there after you left, right, after you finished your
12 teaching --

13 A. Yes.

14 Q. -- career, to continue to work with those
15 students and come into the building and do what you
16 needed to do to help out those folks, right?

17 A. Yes.

18 Q. And you still maintain some relationships
19 with the people at Phoenix Academy, right?

20 A. Yes.

21 Q. So regardless of what the people on the
22 street think, you don't think that, right?

23 A. I think that about the school, I love the
24 kids.

25 Q. And what do you think about some of the

1 teachers, like when Aura Heisey wrote this letter of
2 recommendation for you this year, obviously you asked
3 her to do that, right?

4 A. Uh-huh.

5 Q. And she was kind enough to put together this
6 lovely letter for you, right?

7 A. Uh-huh.

8 Q. And if you thought that it was such a bad
9 school, would you still have asked Aura for this
10 letter of reference?

11 A. I needed a recommendation.

12 MS. O'DONNELL: Oh, well, all right.
13 Thank you.

14 THE COURT: Attorney Moon, anything
15 further?

16 MS. MOON: Nothing further, Your Honor.

17 THE COURT: And, ma'am, I just have a
18 few questions.

19 THE WITNESS: Sure.

20 THE COURT: Based on your experience,
21 was there any advantage to and we're focusing on
22 refugee students here, was there any advantage to
23 refugee students to being at Phoenix?

24 THE WITNESS: No.

25 THE COURT: In trying to establish

1 their curriculum and trying to establish what the
2 refugee students were going to be taught and how they
3 were going to be taught, was there any effort,
4 recognizing that they often came here older, and they
5 had not had the benefit of many years of schooling --

6 THE WITNESS: Right.

7 THE COURT: -- was there any effort to
8 focus on when they would age out, in other words, you
9 know when the refugee student turns 21 at the end of
10 that term, so trying to maximize the amount of
11 education the child is getting until he ages out?

12 THE WITNESS: I'm not sure I understand
13 your question.

14 THE COURT: Would you take into account
15 in the programs for individual refugee students, and
16 they were only about maybe 5 percent of the students.

17 THE WITNESS: Right.

18 THE COURT: Would the refugee students,
19 would there be a focus on the fact that they're
20 starting school later.

21 THE WITNESS: Yeah.

22 THE COURT: And they only have so much
23 time before they hit 21.

24 THE WITNESS: Sure.

25 THE COURT: So how can we maximize that

1 time that they have to a free public education --

2 THE WITNESS: Sure.

3 THE COURT: -- in establishing their
4 curriculum, or were they just thrown into class just
5 like anyone else?

6 THE WITNESS: No, I think there
7 probably was, however, simply by trying to just fill
8 in the slots that they need, I don't think that that's
9 the best way to have them just check off the boxes
10 that they need in order to graduate. They need a
11 math, they need an English 11, they need an English 9.

12 Like you heard in the testimony on
13 Tuesday, I'd rather not graduate and just learn, you
14 know, by having them go through this material really
15 quickly and then give them an A or B for being there
16 every day doesn't mean that they're actually mastering
17 the material or mastering the English language.

18 THE COURT: And that leads right into
19 this idea of seat time. Were you familiar with the
20 idea of seat time?

21 THE WITNESS: Uh-huh.

22 THE COURT: And would students, refugee
23 students who couldn't speak English sit in a class
24 without any interpreter or any way of understanding
25 what the teacher was teaching them and get a credit

1 just because they were sitting there?

2 THE WITNESS: I can only speak for my
3 specific class. We needed to give participation
4 points, and certainly part of that participation was a
5 student actually showing up to class and sitting
6 there.

7 So, yeah, a portion of the grade was
8 certainly given to actually being there.

9 THE COURT: Was there a lot of effort
10 to focus on the unique challenges that these refugee
11 students had, in particular with their language
12 barriers?

13 THE WITNESS: I didn't see that coming
14 from the top, as far as Phoenix Academy. I only saw
15 that really driven home by our ESL teacher, Ms. Ortiz.
16 She's the one who went above and beyond in trying to
17 meet the unique needs of the refugee students.

18 THE COURT: And based on your
19 experience and your observations while you were there,
20 and I recognize it was a for a relatively short period
21 of time, do you believe that the accelerated program
22 that was utilized at Phoenix produced results
23 indicating that the language barriers confronting the
24 refugee students were actually being overcome?

25 THE WITNESS: Absolutely not.

1 THE COURT: Okay. Thank you very much.
2 Attorney Moon, do you have any
3 questions in light of the Court's questions?

4 MS. MOON: No, Your Honor.

5 THE COURT: Attorney O'Donnell, do you
6 have any questions in light of the Court's questions?

7 RECROSS-EXAMINATION

8 BY MS. O'DONNELL:

9 Q. Ms. Rivera, would you have any knowledge
10 that a student age 17 to 21 if enrolled at McCaskey
11 would overcome those language barriers before he or
12 she finished at age 21? And do you have any personal
13 knowledge that they would?

14 A. Enrolled at age 17?

15 Q. Yes.

16 A. I can't say that I do.

17 MS. O'DONNELL: Thank you.

18 THE COURT: Thank you very much,
19 Counselor. Anything else for this witness before we
20 let her be excused?

21 MS. MOON: Nothing, Your Honor.

22 THE COURT: Ma'am, thank you very much
23 for being here.

24 THE WITNESS: Thank you.

25 THE COURT: You may step down.

1 And, Attorney Moon, would you like ten
2 minutes before you call your next witness, or
3 whoever's calling the next witness? Would you like a
4 ten minute break before you call the next witness?

5 MS. MCINERNEY: We're ready to move
6 forward, Your Honor.

7 THE COURT: Very well. You may call
8 your next witness, Counselor.

9 MS. MCINERNEY: Maura McInerney for the
10 plaintiffs and I call Dr. Helaine Marshall to the
11 stand.

12 THE COURT: Good morning again, ma'am.

13 (Pause)

14 THE CLERK: Please raise your right
15 hand.

16 HELAINÉ MARSHALL, WITNESS, SWORN

17 THE COURT: Thank you very much, ma'am.
18 You may be seated, ma'am. And, ma'am, would you state
19 your full name, spelling your last name for the
20 record.

21 THE WITNESS: Helaine W. Marshall. The
22 spelling is Helaine, H-e-l-a-i-n-e, W, Marshall, M-a-
23 r-s-h-a-l-l.

24 THE COURT: Thank you very much, ma'am.
25 Counselor, you may proceed.

1 MS. MCINERNEY: Thank you so much, Your
2 Honor. Before I get started, I wanted to mention that
3 I'll have a number of documents that will be presented
4 to the witness.

5 What I'd like to do in the interest of
6 time is to have those documents admitted at the end of
7 her testimony, rather than stopping and starting
8 throughout the testimony if that's acceptable.

9 THE COURT: Certainly, that would be
10 fine.

11 MS. MCINERNEY: Thank you so much.

12 DIRECT EXAMINATION

13 BY MS. MCINERNEY:

14 Q. Dr. Marshall, where do you reside?

15 A. In White Plains, New York.

16 Q. And what is your business address?

17 A. My business address is at Long Island
18 University, 735 Anderson Hill Road, Purchase, New
19 York.

20 Q. And who is your current employer?

21 A. Long Island University.

22 Q. And how long have you been in your current
23 position?

24 A. Since January of 2003.

25 Q. And what is your current job title?

1 A. I'm an Associate Professor of Education and
2 I'm Director of Language Education Programs.

3 Q. And is that a faculty position that you
4 hold?

5 A. Faculty position and an administrative
6 position.

7 Q. And what are your duties and
8 responsibilities as a member of the faculty first?

9 A. As a member of the faculty I teach graduate
10 courses, 18 credits a year including the summer.

11 Q. And in what field?

12 A. In TESOL.

13 Q. And what is TESOL?

14 A. Teaching English to Speakers of Other
15 Languages.

16 Q. And what do you do in your job as Director
17 of Language Education Programs?

18 A. In that position, I direct TESOL programs,
19 bilingual education programs and world language
20 programs.

21 Q. And when you say you directed those
22 programs, what do you mean?

23 A. I hire adjunct faculty, I design courses, I
24 update our courses, make sure we're in compliance with
25 New York State. I run any grants that we may have.

1 In general, I interface with other directors to make
2 sure that we're collaborating across disciplines.

3 Q. And that's all within the context of the
4 university, correct?

5 A. Yes.

6 Q. Could you tell us about your educational
7 background?

8 A. I have a Doctorate in TESOL from Teacher's
9 College, Columbia University.

10 Q. And do you have a Master's?

11 A. Yes, I have a Master's from Tufts University
12 and a bachelors also, though it was Jackson College,
13 Tufts University.

14 Q. And where did you attend college?

15 A. That was Tufts University --

16 Q. Oh, I'm sorry.

17 A. That's okay.

18 Q. And what was your majors?

19 A. Major in French and a minor in German.

20 Q. And did you do any research in the context
21 of obtaining your Ph.D., any dissertation?

22 A. Yes, I did.

23 Q. And what was that on?

24 A. Okay. The title of the dissertation was the
25 Colloquy Preliterate versus the Present Perfect, a

1 Social Linguistic Analysis.

2 Q. Okay. We're going to move on.

3 A. Okay.

4 Q. Do you speak any languages?

5 A. I speak fluent French. I speak a little
6 German left over from when it was my minor back in
7 college and a little Spanish here and there.

8 Q. And do you hold any certificates?

9 A. I'm certified to teach ESOL K through 12 in
10 New York State and also to teach French and German.

11 Q. And that's in addition to having a Ph.D. in
12 TSOL, correct?

13 A. Yes.

14 Q. Turning your attention to Exhibit 80 in your
15 binders --

16 MS. MCINERNEY: May I approach the
17 witness?

18 THE COURT: Certainly. And this is the
19 day?

20 MS. MCINERNEY: Day 2, my apologies.

21 THE COURT: That's okay.

22 BY MS. MCINERNEY:

23 Q. Could you tell us what this is?

24 A. That's my resume.

25 Q. And did you create it?

1 A. Yes, I did.

2 Q. Okay. I thought it might be useful to talk
3 about some of your employment history.

4 A. Okay.

5 Q. So tell us, what did you do after obtaining
6 your Ph.D.?

7 A. I taught -- after I completed the doctorate,
8 I taught at the City University of New York and then
9 the State University of New York.

10 Q. And while obtaining your Ph.D. did you also
11 work?

12 A. Yes. While I was a grad student to support
13 myself, I worked part-time. I taught on the faculty
14 of Vassar College in Poughkeepsie in the teacher
15 education department.

16 Q. And after earning your Ph.D., tell us what
17 you did in your position at the City University of New
18 York?

19 A. I taught ESL, English as a -- sorry.

20 Q. And to whom did you teach ESL?

21 A. Okay. I guess everyone knows ESL by now,
22 okay. I taught ESL to community college students.

23 Q. And what did you do after that job?

24 A. I taught at the State University of New York
25 in Purchase.

1 Q. And what were your responsibilities there?

2 A. Also teaching ESL.

3 Q. And did you ever have a faculty appointment
4 after that position?

5 A. Yes.

6 Q. And where was that?

7 A. And that was at the University -- well, I
8 moved to Wisconsin and took a position at the
9 University of Wisconsin, Green Bay.

10 Q. And what was your title there?

11 A. I was a faculty member, full time faculty
12 appointment, assistant professor in the communication
13 processes department.

14 Q. And what time period was that?

15 A. That was '87 to '93.

16 Q. And did you engage in any type of research
17 while you were at the University of Wisconsin?

18 A. Yes, I did.

19 Q. And what was that research?

20 A. Well, when I came to Wisconsin, I had a
21 position teaching in the regular TSOL faculty, TSOL
22 program, and I was teaching methods and linguistics
23 and such. And in my methods course, I just feel like
24 it's important to back up a little to explain --

25 Q. Sure.

1 A. -- the research and why I did it.

2 Q. Yes, that would be great.

3 A. So I was teaching methods as I have had for
4 some time --

5 Q. And could you explain what methods is.

6 A. How to teach ESL in the classroom, so
7 methodologies, strategies, techniques, and the
8 rationale behind them, why they're effective, what's
9 not effective, et cetera.

10 Q. Great, thank you.

11 A. So my students would approach me after
12 class, you know, and they'd say, look, you know, we're
13 in the schools and none of this is working, none of
14 what you're teaching me is working. And I was
15 appalled because, you know, I had been doing this, I
16 thought I knew what I was doing --

17 Q. And specifically who were they talking about
18 when they said this isn't working?

19 A. Well, they were talking about the ESL
20 students in the Green Bay public schools at all grade
21 levels. And so I said to myself, I really need to see
22 what's going on here, something's going on here.

23 And I started to observe the classes, and
24 watch the students, not just the teachers, but the
25 students. And I started to realize we were dealing

1 with a very different population here.

2 Q. And what was that specific population in
3 Green Bay at the public schools there --

4 A. Yeah, uh-huh.

5 Q. -- that you're talking about?

6 A. It was the Mong refugees, who had been
7 welcomed to Wisconsin. And the Mong, if you're not
8 familiar, they had helped us in the Vietnam war and
9 they were resettled many of them in the Midwest. And
10 they were -- Green Bay is a small city but it was very
11 heavily impacted by them, and this particular small
12 city, Green Bay, was not experienced with how to work
13 with them, how to deal with them.

14 Q. Do you know how many students were involved,
15 how many refugees?

16 A. Well, there were 3,000 Mong in Green Bay, so
17 the breakdown I don't know. It was about 80,000 total
18 in Green Bay --

19 Q. Uh-huh.

20 A. -- so you know, that gives you some idea.

21 Q. Uh-huh.

22 A. So that led me to research. And what I did
23 was, I did -- I read everything I did about the Mong,
24 their background, I did a lot of observation, notes
25 and educated myself, and realized that they had a

1 different way of learning, learning paradigm, and they
2 couldn't be taught ESL the way -- I hate to say normal
3 or regular, but ESL students that I had worked with in
4 the past.

5 Q. And what did you learn as a result of your
6 research including observing and talking to faculty?

7 A. What I learned is they are from an oral
8 culture and have very limited literacy and the
9 transition to literacy was a major shift for them.
10 And that they came to us without a lot of formal
11 education, very often none, or if they had education,
12 it had been very limited, it had been in refugee
13 camps.

14 And I also found that just the idea of
15 school and the kinds of activities they were asked to
16 do, they expected to just, I shouldn't say just, I
17 mean, they expected to copy things down and memorize
18 and that wasn't what their teachers wanted.

19 Q. So the strategies that you taught in the
20 classroom for all English language learners had to be
21 different for this population?

22 A. Very different, yes.

23 Q. And did there come a time -- and what was
24 the result of that research when you were in Green
25 Bay? Did there -- was there any time that you

1 published anything --

2 A. Yes, yes, yes.

3 Q. -- concerning that research?

4 A. So because I had done this research, created
5 a bit of excitement in Wisconsin, and I started to
6 present at conferences and be invited to present at
7 conferences and talk about what the Mong needed, and
8 it was well received. And I eventually later, at a
9 later date, started publishing on it.

10 Q. Did there come a time when you left that
11 position in Green Bay?

12 A. Yes.

13 Q. And when was that?

14 A. '93.

15 Q. And where did you go then?

16 A. Boston.

17 Q. And what did you do, what was your
18 employment at that point?

19 A. I was an Associate Professor of ESL at the
20 Franklin Institute of Boston.

21 Q. And what were your responsibilities there?

22 A. I was a combination of director of the
23 program and faculty.

24 Q. And did there come a time when you began to
25 work with school districts? Take your time.

1 A. Sorry. Well, I worked -- when I was at
2 Franklin, I worked with school districts in terms of
3 recruiting students that we felt would be suited to
4 Franklin.

5 We, at Franklin, at Franklin Institute, we
6 did take students who had a lot of difficulty with
7 high school --

8 Q. Uh-huh.

9 A. -- and reminded me very much, although they
10 were from different backgrounds, they weren't Mong,
11 they were Haitian, for example, Vietnamese, and we
12 took them into our program at Franklin, and I was able
13 to adapt instruction there. So I was working with
14 districts in that sense. But I --

15 Q. So you were adapting instruction at that
16 point for these entering students who were from
17 different cultures and were immigrant students --

18 A. Yes, yes.

19 Q. -- is that correct?

20 A. Yes.

21 Q. Okay.

22 A. But later when I really started to work with
23 districts more in-depth was after Boston. That was
24 when I moved to New York.

25 Q. And when was that time period?

1 A. I should say back to New York. And that
2 was, let's see, '93, '96 -- '96.

3 Q. And what were your job responsibilities in
4 that position?

5 A. Okay. This position was --

6 Q. And what was the job title?

7 A. Okay. I was working for the state. It was
8 New York State Department of Education, and I was a
9 resource specialist at BOCES. BOCES is the Board of
10 Cooperative Educational Services and they are
11 regional. So there are a number of them around New
12 York State, and we are the arm of the State to
13 represent ESOL and bilingual programs throughout the
14 state to provide technical assistance to districts, to
15 -- go ahead.

16 Q. So in that position, what was your
17 responsibility with regard to assessing or evaluating
18 school district programming concerning ESL?

19 A. Yeah. Well, we responded to requests, if a
20 district wanted us to come in and take a look at their
21 program, but we were also directed by the state to go
22 into particular districts where there were
23 difficulties based on the reporting that they were
24 doing, and the progress their students were making.
25 And we came in and we reviewed them, and made

1 suggestions and helped them out, provided training.

2 Q. And in that capacity, approximately how many
3 school district programs did you evaluate or assess?

4 A. Well, there were 60 districts total that we
5 were responsible for. But in terms of how many, we
6 actually in-depth worked with, I would have to say --
7 I was there for two years, so about ten.

8 Q. Okay. And did you work with any
9 subpopulations of English language learners in that
10 role?

11 A. Well, the subpopulations of learners
12 depended, you know, on the district. So I can think
13 of one district, for example, that had a lot of
14 Haitian refugees who had come, so we did focus on
15 their specific needs, for example.

16 Q. And in that capacity, did you do any
17 trainings, were you involved in any kind of
18 assessments? What would an assessment involve in
19 looking at an ESL program?

20 A. Well, what we did was we did a lot of
21 observation of classes and debriefing with teachers
22 and then debriefing with the administration. And we
23 also made presentations to the administration, and
24 discussed with them different program models and
25 different approaches they might try. We looked at

1 data from the district.

2 Q. And did you evaluate data in that capacity?

3 A. Yes, to some extent. I would say I was part
4 of a team, and so that when we went in, we went in as
5 a group, as a team, and so I wasn't necessarily
6 singularly responsible for the analysis of the data,
7 so.

8 Q. And did there come a time when you went back
9 to teaching?

10 A. Yes. Well, actually while I was -- during
11 that two year period, I missed the classroom so I did
12 go back and I taught.

13 Q. And where did you go?

14 A. I went back to my alma mater Teacher's
15 College, Columbia, and I taught there in the TSOL
16 program.

17 Q. And what did you do after that position?
18 How long did you hold that position?

19 A. Let me see, okay, so we're up to '96, '98,
20 ah, then I went on to Westchester Community College.

21 Q. And what were your responsibilities there?

22 A. Okay. I had two positions at Westchester
23 Community College, which is part of -- that's part of
24 the State University of New York.

25 Q. Okay.

1 A. So at that institution, I first worked at
2 the educational opportunity center, and I was director
3 of the ESL program there.

4 Q. And what did that mean, being director of
5 the ESL program?

6 A. Well, they were not college -- it was Sunni,
7 but they were not college students. They were
8 community -- adults from the community who had very
9 little English and very little education. And they
10 were studying English at various levels and I directed
11 that program and I also taught in the program.

12 Q. So in that capacity, you had the opportunity
13 to actually teach ESL as well?

14 A. Yes, yes.

15 Q. Okay. And what was -- does that bring us up
16 then to your current position?

17 A. Actually I had a second position at the --

18 Q. Okay.

19 A. So then I moved to the main campus, and the
20 main campus established an ESL department and I was
21 its chair. Prior to that, in our field in the
22 beginning, what we used to call foreign language and
23 ESL were often put together.

24 Q. Uh-huh.

25 A. But today, generally we separate them out

1 because they are a different field, so ESL became its
2 own department at Westchester Community College.

3 Q. So just to clarify, can you explain what ESL
4 is, and what an ESL program includes?

5 A. All right. So if you think about -- you
6 study French, you study Spanish, you study another
7 language, it's one you don't speak. So ESL is like
8 that in some ways, because you still have to learn
9 what we call the four skills, listening, speaking,
10 reading and writing, and you do need to learn
11 something about the culture of whatever it is, Frank a
12 Phone (ph) countries, for example, if it's French.

13 But the difference is with ESL, you are
14 learning it in the community where you're living, so
15 it's not foreign, and you're going to have to learn
16 not just the language itself to get around
17 interpersonally, but you're going to have to learn it
18 to do whatever you're going to do, whether it's school
19 or work, or become a citizen or whatever your goals
20 are, everything is going to be English, so it's very
21 different in that way from foreign language.

22 Q. So it's not only language acquisition when
23 we're talking about ESL?

24 A. Absolutely.

25 Q. So in the school context, what does it

1 entail, if it's not just language acquisition? What
2 is the other piece of component to an ESL program?

3 A. Well, language and culture go hand-in-hand,
4 and when you're teaching an ESL student, you're also
5 teaching the culture of the country. So if they went
6 to England or Australia or if they come to the United
7 States, a very important part of their program would
8 include learning about this country, our school
9 system, and the culture here.

10 Q. In the school context, if I'm a student --

11 A. Okay.

12 Q. -- my objective is to learn.

13 A. Yes.

14 Q. So therefore, what are the components of
15 ESL, what needs to be in a program in order to ensure
16 that I can learn?

17 A. All right. So an ESL program has to include
18 language courses, it also has to include all the
19 content areas so that students can be up to speed in
20 their subject areas.

21 Q. So when you say content areas, do you mean
22 subjects?

23 A. Yes, science, math, social studies and
24 English language arts. English language arts is its
25 own separate.

1 Q. Okay. And after your appointment there,
2 where did you go on to, after we were -- you talked
3 about your position in New York, you were teaching.

4 A. Right.

5 Q. So now we're up to college, State University
6 of New York.

7 A. Okay. We got to me now.

8 Q. Okay.

9 A. So now I'm at Long Island University, yeah.

10 Q. And what are your job responsibilities there
11 in your current position?

12 A. Right. I teach courses, I teach the theory
13 courses, linguistics, second language acquisition,
14 study of grammar and I teach practical courses,
15 methods of literacy teaching of ESOL, content area,
16 teaching of ESL, and I do the supervision of student
17 teachers, both pre-service and in-service.

18 Many of our students are graduate students
19 are already certified, and so I go into their schools
20 and I supervise them in their schools.

21 Q. And when you say your students, do you mean
22 teachers of ESL?

23 A. Yes, my students are teachers.

24 Q. And are they at the graduate level, the
25 undergraduate level?

1 A. All graduate level.

2 Q. They're all at the graduate level, okay.

3 And your current position is associate
4 professor; is that right, is that what you'll be in
5 the fall?

6 A. In the fall? No, actually very soon now I
7 was just promoted to full professor, so I'll be full
8 professor in the fall.

9 Q. And after -- and over the years, have you
10 held adjunct faculty positions at any other
11 universities?

12 A. Yes, throughout the years I taught as an
13 adjunct faculty member at a variety of colleges in the
14 New York area.

15 Q. And you -- have you had the opportunity to
16 supervise ESL teachers?

17 A. Yes. It's interesting, I got an early start
18 on that because when I was a graduate student, there
19 were various ways to be a grad assistant. And the one
20 that I was selected for was supervision. So I would
21 supervise 10 of my fellow graduates who were not as
22 far along as I was in the program, and I would observe
23 them, and you know, debrief with them about their
24 teaching. And that was back in grad school, and I've
25 been doing that ever since, so.

1 Q. Approximately how many ESL teachers have you
2 supervised, just ballpark?

3 A. It sounds like a lot, but I think it is,
4 about 200, because we're talking about my entire
5 career.

6 Q. And on how many occasions have you evaluated
7 or assessed any ESL program, not only in the job that
8 you described, but how many times have you done
9 assessments or evaluations in looking at ESL teaching
10 or ESL programming?

11 A. Yeah, it's hard to put a number on something
12 like that, because there were so many different types
13 of evaluations that are conducted, and some of them
14 are comprehensive, some of them you're going in to
15 look at one particular teacher who's having problems.

16 So it's really hard for me to quantify
17 something like that. I mean, if I had to look back
18 and think about it, maybe 20.

19 Q. And what about consulting work you've done?
20 If you could draw your attention to page 9 of your CV,
21 page 9 and 10. Are those some examples of consulting
22 that you have done in the school districts?

23 A. Yes, I do a lot of consulting.

24 Q. And what does that entail, the consulting
25 work that you do?

1 A. Well, for example, Massachusetts has called
2 me in to help them with -- they're dealing with this
3 population that we're looking at today, these older
4 immigrants and refugees with limited schooling. They
5 have asked me to help them develop guidelines for the
6 state and also to train their teachers in how to deal
7 with this population. So I've done a lot of teacher
8 training and consulting with the State of
9 Massachusetts and with the Massachusetts TSOL
10 organization.

11 Q. And have you done any consulting in New
12 York?

13 A. And also, I'm just going to say, the Boston
14 Public Schools also called me in to help them and work
15 with them.

16 Q. And what was that issue that you were
17 working with in Boston?

18 A. Well, they had a -- I'm not totally -- I'm
19 not a legal person, but they had something called a
20 consent decree.

21 Q. Okay.

22 A. And they needed to comply and they wanted to
23 do a better job.

24 Q. And what is your function in that capacity
25 of looking at the program with regard to the Boston

1 Public Schools?

2 A. Whether they were providing equity for this
3 population and they apparently were not doing that,
4 and we had to ensure what kind of curriculum did they
5 need, what kind of methods did they need in order for
6 these students to learn because they weren't
7 advancing.

8 Q. So in that capacity, you look at the
9 methodology that they're using, the --

10 A. Yes.

11 Q. -- strategies they've been using, policies,
12 practices, is that --

13 A. Yes, all of that, everything, yes, and the
14 qualifications of the teachers, very important.

15 Q. Do you look at the training as well of the
16 teachers?

17 A. Yes.

18 Q. And looking at page 10 of your CV, can you
19 just give us a few highlights with regard to other
20 consulting work that you have done with school
21 districts?

22 A. Well, I like to talk about my work at Lehman
23 High School in the Bronx because I worked with the
24 math department for two years, the entire math
25 department and worked and I did a lot of observations

1 and training and worked with them on how you can teach
2 math and teach language too and how you can be
3 sensitive to the various levels of English in your
4 classroom.

5 And all of the aspects of -- they're math
6 people, they don't think about language, and so that
7 was challenging and a very successful experience for
8 me, and the fact that they had me there for two full
9 years.

10 Q. And during this time have you worked on any
11 grants, federal grants?

12 A. Yes, okay, that is through my position at
13 LIU.

14 Q. Uh-huh.

15 A. They had three federal grants and I ran all
16 three. They were for again we're talking about
17 certified teachers. These are certified teachers who
18 had no background in working with English learners but
19 found them in their classrooms. And so some of them
20 came back for an entire certification --

21 Q. Uh-huh.

22 A. -- which was 22 credits. Others came back
23 just for a few courses that was a different grant,
24 that was 9 credits. And we provided the credits and
25 in the case of those being certified, we visited them

1 and supervised them in their classrooms, and they were
2 all different subject areas. Sorry.

3 Q. And during your years of employment and your
4 time in academia, have you had occasion to do any
5 research or to publish any articles or books?

6 A. Yes. I continued my research that I had
7 done with the Mong.

8 Q. In Wisconsin?

9 A. In Wisconsin, yes. And --

10 Q. How did you continue that?

11 A. I continued it by further developing the
12 model that I developed for instruction and finding out
13 by reading and attending conferences that this was not
14 just about the Mong. Originally I had thought I was
15 really focused on the Mong because that was the group
16 Green Bay needed, and the Mong were not in great
17 numbers there, I turned to these other populations, I
18 mentioned the Haitians before.

19 And I found that a lot of what I had
20 researched applied to these other groups, Somalis in
21 Maine and various other populations.

22 Q. And when you say research, what research are
23 you referring to? What is the research that you did?

24 A. Well, what I do is I look at the learning
25 paradigm, this is -- okay, all right. I look at the

1 learning paradigm of the U.S. Western style model of
2 education.

3 Q. Uh-huh.

4 A. And I look at the learning paradigm of
5 students from oral cultures with limited schooling and
6 limited literacy, and I compare the two paradigms, and
7 I see that there is a cultural dissonance going on
8 because the way we're teaching and the way they're
9 learning doesn't match.

10 And then I take -- is this too --

11 Q. And have you had occasion to develop
12 strategies in order to --

13 A. Yes.

14 Q. -- actually make that connection --

15 A. Yes.

16 Q. -- and ensure that student's coming from
17 another -- from an oral culture are able to learn?

18 A. Yes, yes. And so what's important to
19 understand is you can't simply double down on our way
20 of teaching and just go slower. It doesn't work. You
21 have to incorporate some strategies that they feel
22 comfortable with at the same time --

23 Q. Uh-huh.

24 A. -- and so I developed a way to match and
25 bring together the two sides.

1 Q. Okay. We'll talk about that in a minute.

2 A. Okay.

3 Q. I direct your attention to page 2 and 3 of
4 your CV. Have you had occasion to publish any books
5 relating to this subject?

6 A. Yes, yes. The work I'm talking about is
7 readily available in two books that I've published and
8 a number of articles.

9 Q. And what are those, what are the names of
10 the books?

11 A. Breaking New Ground, Teaching Students with
12 Limited or Interrupted Formal Education in U.S.
13 Secondary Schools.

14 Q. And when was that published?

15 A. That was published in 2011. And the second
16 book was Making a Transition, you know, I'm a little
17 nervous, Making the Transition to Classroom Success,
18 Culturally Responsive Teaching for Struggling Language
19 Learners.

20 Q. And have you had occasion to publish any
21 peer reviewed articles relating to the subject matter?

22 A. Yes. Well, the most recent one was in the
23 National Second -- the National Association of
24 Secondary School Principals, NASSP Bulletin, that's
25 their current issue. It's still called the current

1 issue.

2 Q. Approximately how many peer reviewed
3 articles do you have that you authored?

4 A. Five, six, seven -- eight.

5 Q. Okay. And have you had occasion to attend
6 any conferences, give any presentations?

7 A. It sounds -- it's a little --

8 Q. That's okay.

9 A. I've been a plenary speaker at a number of
10 conferences, an invited speaker many times to the
11 academic sessions at TSOL. Next year I'll be doing
12 three of those invited sessions. Prior to that last
13 year, I was invited by two and not always the same
14 ones.

15 Q. So -- and so approximately how many
16 presentations have you done?

17 A. Oh, no, no, I can't, I can't. 500, if you
18 were to count everything. I present regularly,
19 regularly.

20 Q. Okay. And do you have any professional
21 affiliations?

22 A. Well, I'm a member of TSOL.

23 Q. Uh-huh.

24 A. I'm a member of NYSABE which is the New York
25 State Association of Bilingual Education, I'm a member

1 of New York State ESOL, I'm also on the Board of their
2 journal, their professional journal, I review
3 articles. I'm a member of LESLALWA, the Low Educated
4 Second Language Acquisition and Low Literacy
5 Association, it's a long acronym.

6 Q. In light of the articles that you published
7 and the presentations that you have made, are you
8 considered a national expert on the issue of how to
9 educate this particular population of English language
10 learners?

11 A. I am.

12 MS. MCINERNEY: Your Honor, at this
13 time, pursuant to Federal Rule 702, I am tendering Dr.
14 Marshall as a qualified expert in the field of TSOL,
15 ESL programming, and meeting the needs of students
16 with limited or interrupted formal education.

17 I've shown this witness is qualified by
18 virtue of her knowledge, breadth of experience,
19 training, education and research.

20 THE COURT: Attorney O'Donnell, do you
21 have any questions on qualifications?

22 MS. O'DONNELL: I do.

23 THE COURT: Very well, you may proceed.

24 VOIR DIRE EXAMINATION

25 BY MS. O'DONNELL:

1 Q. Good morning, Dr. Marshall.

2 A. Good morning.

3 Q. My name is Sharon O'Donnell, I represent the
4 School District of Lancaster.

5 A. Yes.

6 Q. Are you familiar with the School District of
7 Lancaster?

8 A. From the studies that I've done over the
9 documents that were provided.

10 Q. Have you visited any of the buildings?

11 A. Only from the outside.

12 Q. Have you spoken with any of the
13 administrators?

14 A. The administrators? No.

15 Q. Have you spoken with any teachers?

16 A. Yes.

17 Q. Okay. Which teachers are they?

18 A. Jandy Rivera.

19 Q. Okay. Anyone else?

20 A. I think she's the only teacher.

21 MS. MCINERNEY: Objection.

22 THE WITNESS: Wait, did I --

23 MS. O'DONNELL: I'm asking.

24 THE COURT: There's an objection.

25 MS. MCINERNEY: Your Honor, this is

1 embellished qualifications, I think it's going to be
2 issue or weight to be accorded her particular
3 testimony.

4 THE COURT: You're correct, but I'll
5 allow you some leeway in trying to address how this
6 goes to the qualifications.

7 BY MS. O'DONNELL:

8 Q. Dr. Marshall, have you had any education
9 here in Pennsylvania yourself?

10 A. In Pennsylvania?

11 Q. Yes, ma'am.

12 A. No education in Pennsylvania.

13 Q. Have you done any speaking engagements in
14 the State of Pennsylvania?

15 A. Yes.

16 Q. Okay. Any recent speaking engagements on
17 your -- in your expertise?

18 A. Yes.

19 Q. Okay. And where were they?

20 A. The Literacy Council of Philadelphia invited
21 me to speak.

22 Q. And how recent was that?

23 A. A couple of years ago.

24 Q. Okay. I think you testified that you work
25 in New York, and you have had a lot of experience in

1 New York, and also in the Green Bay area doing some
2 research; is that correct?

3 A. Yes.

4 Q. Yes. Have you done any research at all in
5 Pennsylvania?

6 A. Yes. Oh, yes. I forgot all about -- excuse
7 me. I was thinking of Philadelphia and that part, but
8 Pittsburgh, I'm very involved in Pittsburgh.

9 Q. You're very involved in Pittsburgh?

10 A. Yes.

11 Q. And in what way, ma'am?

12 A. Not the public schools though.

13 Q. Oh. For the -- so would that be Pittsburgh
14 University?

15 A. It would be the Literacy Council, Pittsburgh
16 Literacy Council dealing with the low educated
17 population that comes to the Literacy Council.

18 Q. Okay.

19 A. I've been doing a research project there
20 over a period of about five years.

21 Q. Okay. And in what -- what part of that
22 research project do you have?

23 A. Well, I am the researcher and I work with
24 the practitioners. We publish together and we work
25 together.

1 Q. All right. Very good, thank you.

2 You did indicate that you did some
3 evaluations for New York Public Schools; is that
4 correct? Yes?

5 A. Well, New York City or New York State.
6 Could you ask that question again?

7 Q. Sure. You indicated that you did some
8 evaluations I believe you said ten school districts in
9 all for a period of two years, was that in the New
10 York Public Schools?

11 A. The State of New York not New York City, no.
12 Our districts were not in New York City. Our
13 districts were in other counties.

14 Q. I wasn't limiting my question to New York
15 City.

16 A. Okay.

17 Q. Okay. As I understand it, you did some
18 consulting work for ten public school districts in the
19 State of New York; is that correct?

20 A. It wasn't consulting, it was part of my day
21 job, my regular job.

22 Q. And that was evaluating the education and
23 the delivery of ESL services in the school districts?

24 A. Yes, that was my job, yes.

25 Q. Okay. And you indicated that you did that

1 for about ten school districts?

2 A. It's a long time ago, but I'm guessing we
3 must have visited at least ten.

4 Q. Okay. And you indicated that one of those
5 school districts actually had refugees?

6 A. Yes.

7 Q. Okay. Were there other -- and then what
8 evaluation did you perform for that district that had
9 Haitian refugees?

10 A. Do you want me to name the district?

11 Q. You don't have to.

12 A. Okay.

13 Q. You can just tell us what you did for that
14 particular district, what your role was for that
15 district.

16 A. My role was to observe classes, make
17 recommendations, work with the teachers, talk to the
18 administrators, look at the documentation they
19 submitted to the state, and tried to help them improve
20 their program.

21 Q. Okay. And throughout the course of your
22 career, your very long career, you've never delivered
23 ESL instruction to students K through 12 in any public
24 school; is that correct?

25 A. I have delivered instruction to this age

1 group and I have supervised well over 200 as I said
2 teachers, I'm in and out of schools on a regular
3 basis, and I am observing and supervising teachers,
4 showing them how to do this kind of education.

5 Q. My question was simply limited to teaching.

6 A. No.

7 Q. So you have no experience teaching ESL to
8 those children; is that correct?

9 A. Yes.

10 Q. Okay. And throughout the course of your
11 tenure, how many superintendents have you consulted
12 with in terms of models of teaching, curriculum and
13 budgeting?

14 A. Budgeting, no.

15 Q. Okay. What about have you ever served --

16 A. Wait, I'm sorry, you gave me three, so what
17 were the first two?

18 Q. Have you ever discussed with any
19 superintendent the delivery of instruction models --

20 A. Yes.

21 Q. -- curriculum --

22 A. Yes.

23 Q. -- and budgeting?

24 A. The first two, yes.

25 Q. Okay.

1 A. Absolutely, yes.

2 Q. Okay. And you understand -- okay. So when
3 you make recommendations to superintendents or boards
4 of education, do you also give them recommendations in
5 terms of how they're going to fund your
6 recommendations?

7 A. No, that was not my purview.

8 Q. Okay. So your purview was just to come in,
9 evaluate and give some advice about how they can
10 improve a system; is that correct? For the public
11 schools?

12 A. Well, it was a bit stronger than provide
13 advice. I mean, we had to make sure they were in
14 compliance with the state, and that they were
15 complying with the regulations.

16 Q. Were these schools in distress?

17 A. Yes, that was the idea. That was why we
18 went in.

19 Q. So you've only consulted with schools that
20 were in financial distress?

21 A. No, no, not -- oh, you said financial
22 distress. Okay. I'm trying to clarify what it is
23 that I'm being asked. These --

24 Q. Well, what --

25 A. -- were schools that were under review

1 because their English learners were not achieving
2 appropriately.

3 Q. Okay.

4 A. And we needed to go in and find out what was
5 it about the program that needed to be changed in
6 order for the English learners to be succeeding in
7 those schools.

8 Q. And that would've been limited to the New
9 York Schools?

10 A. This was when I was working for the State of
11 New York.

12 Q. Okay. Fine. So you would take information
13 provided by the schools, the public schools through
14 the reporting --

15 A. Yes.

16 Q. -- because they are accountable --

17 A. Yes.

18 Q. -- to the state.

19 A. Yes.

20 Q. And where you saw weaknesses, then you would
21 go in and --

22 A. Yes.

23 Q. -- perform an audit review and then provide
24 them with instruction on how to become more
25 accountable in their reporting and their numbers; is

1 that accurate?

2 A. Yes.

3 Q. Okay.

4 A. But I'd like to add, I believe you said only
5 schools that were having difficulty, but I was also as
6 part of my position asked to provide training and
7 improvement for schools that were not in trouble but
8 simply to do better. We did a lot of that.

9 Q. Okay. Now, have you ever done that in the
10 State of Pennsylvania?

11 A. Not for public schools.

12 Q. Have you ever had any interaction with the
13 folks at the Pennsylvania Department of Education?

14 A. Pennsylvania Department of Education, no.

15 Q. And are you aware that the School District
16 of Lancaster is accountable through their reporting
17 and compliance to the Pennsylvania Department of
18 Education?

19 A. Yes.

20 Q. And how is your expertise working with
21 school districts in the State of New York, and with
22 the Mong refugees in Green Bay going to help the
23 School District of Lancaster with their accountability
24 and reporting to PADE?

25 A. Because my area is making sure that these

1 students with limited or interrupted formal education,
2 especially the older students, 17 to 21 are being
3 identified and provided with the appropriate services
4 so that they can overcome their language barriers and
5 be taught in an effective manner, and evaluated as
6 such.

7 Q. Okay. Are you familiar with the educational
8 support service consultants group in the Bronx?

9 A. No.

10 Q. Do you know Vivian Feolo (ph) the CEO?

11 A. No.

12 Q. Is that name familiar?

13 A. No.

14 Q. Do you know whether or not Ms. Feolo,
15 through that company, consulted with the School
16 District of Lancaster and specifically with its
17 Superintendent, a Dr. Damaris Rau last year for the
18 very purpose you're here to discuss today?

19 A. No. What is her name?

20 Q. Vivian --

21 THE COURT: Counselor, what does this
22 have to do with her qualifications?

23 MS. O'DONNELL: I'm getting there.

24 THE COURT: Very well.

25 MS. O'DONNELL: Thank you.

1 BY MS. O'DONNELL:

2 Q. So you wouldn't know whether or not she
3 shares a similar expertise with you in these areas?

4 A. I don't know the name, so I --

5 Q. All right.

6 MS. O'DONNELL: I would object to Dr.
7 Marshall being introduced as or allowed to her
8 testimony as an expert in the field of Pennsylvania
9 education or assisting the School District of
10 Lancaster or the Court to be guided accordingly.

11 THE COURT: She wasn't offered in that
12 capacity, Counselor. She was offered as an expert in
13 TSOL, ESL programming and meeting the needs of, and I
14 think it was something of non-speaking English
15 speaking individuals, but could you rephrase the --
16 she's an expert in TSOL, ESL program and meeting the
17 needs of?

18 MS. MCINERNEY: Students with limited
19 or interrupted formal education.

20 THE COURT: And, Counselor, do you have
21 any objection to her as being accepted as an expert in
22 those fields?

23 MS. O'DONNELL: No.

24 THE COURT: Very well. Without
25 objection, she is accepted by the Court as an expert

1 in TSOL, ESL programming, and I'm going to ask you
2 this one more time, and meeting the needs of --

3 MS. MCINERNEY: Students with limited
4 or interrupted formal schooling -- formal education,
5 excuse me.

6 THE COURT: Formal education?

7 MS. MCINERNEY: Yes. And that will
8 become clear after her testimony.

9 THE COURT: And she is accepted as an
10 expert. Counselor, you may proceed.

11 DIRECT EXAMINATION, CONTD.

12 BY MS. MCINERNEY:

13 Q. Dr. Marshall, before we talk about your
14 particular opinions in this case with regard to the
15 issue at hand, could you tell us a little bit more
16 about students with interrupted or limited formal
17 education?

18 A. Yes.

19 Q. What does that term mean?

20 A. Well, the important thing, first of all,
21 originally many, many years ago we looked at English
22 learners simply according to what country are they
23 from, what language do they speak, how much English do
24 they know, but as the field developed, and this is
25 several decades now of research on this, we have --

1 we've noticed that there are different types of
2 English learners that fall into different categories,
3 and that they have to be viewed differently and
4 handled differently in terms of the curriculum and
5 instruction and assessment that we do with them.

6 And one of those categories is the category
7 of what we call SLIFE (ph).

8 Q. SLIFE. We used the term SLIFE.

9 A. Yeah. There are a lot of acronyms in ESL
10 so.

11 Q. And is that a sub population of English
12 language learners?

13 A. Yes, it's a subgroup of English language
14 learners, they're referred to in different ways. They
15 can be called limited -- each different researcher
16 uses a different term but SLIFE is the term that is
17 more generally used nationally now and you can also
18 find limited formally schooled over age or SIFE
19 without the L, truncated, there are various ways to
20 describe them.

21 Q. And what exactly are the characteristics of
22 SLIFE?

23 A. Okay.

24 Q. Of these students.

25 A. All right. So SLIFE are, by definition, at

1 least two years behind in grade level for their age.

2 Q. Uh-huh.

3 A. Okay. They have limited literacy, they may
4 have no literacy.

5 Q. Uh-huh.

6 A. Or limited, it's a continuum. So literacy
7 is a continuum, but their literacy is more limited
8 than you would expect for that -- for their age, okay.

9 Third, they have what we call either
10 interrupted or limited education. So some of them
11 actually have interruptions in their education, so
12 they may have gone to school and for various reasons
13 having to do with the circumstances in the country
14 that they're from, such as interruptions through war
15 or other reasons, and they missed some years of
16 school, so they may actually have been interrupted or
17 limited.

18 Now, limited can mean a lot of things. So
19 limited education might mean they've been to school
20 their whole lives, but in rural areas of their country
21 where they only went for a few hours or there weren't
22 any resources, no books, the teachers weren't trained,
23 this kind of thing.

24 Or alternatively, it might be limited
25 because they were in refugee camps, and there was a

1 lot of stress, and it wasn't really school as we know
2 it.

3 Q. Uh-huh. Are all SLIFE refugees?

4 A. Oh, no, no. Not necessarily. It's just
5 that the ones -- the students that we've been looking
6 at are refugees, but it does not -- refugee is not
7 part of the definition of SLIFE, absolutely not.

8 And the next category that really is to me
9 the first, which is that almost all of them have had
10 stressful experiences in their lives before coming
11 here. They don't come here under the best of
12 circumstances because of experiences in their lives,
13 before they came, they have acculturation issues.
14 They have issues adapting to our culture that other
15 English learners may not have.

16 Q. So these could be immigrant students, not
17 just refugees?

18 A. Immigrants and refugees both.

19 Q. Uh-huh. And what do these students need
20 when they first enter school in the United States,
21 just in broad categories?

22 A. Okay. So the first thing they need is, they
23 need intensive ESL instruction that has a strong basic
24 literacy component. Okay.

25 Q. And what do you mean by that, a strong basic

1 literacy component?

2 A. Well, the way literacy works, the first
3 thing you need to know about them is where they are
4 with their native language literacy, reading and
5 writing. And if they aren't able to read and write in
6 their native language to the level that's age
7 appropriate, now obviously age appropriate, all right,
8 then they're going to need extra work on literacy
9 because they're going to be learning those skills in a
10 new language.

11 What we know about literacy is that once you
12 learn -- you only need to read once in your life.
13 Once you know how to read, the skill of reading
14 transfers to other languages.

15 Now, of course, you know if it's Chinese,
16 you have to learn -- we have an alphabet, they have
17 characters, I know, I can go on for hours and I won't,
18 I promise. But it is important to know because if
19 they can't transfer -- if the skills aren't there to
20 transfer and we have to teach them for the first time
21 how to read in a language that isn't even a language
22 they speak yet, that takes time and expertise and must
23 be built into the ESL component of the program.
24 That's the first thing.

25 Q. So in that component, you're talking about

1 direct ESL instruction?

2 A. Yes, direct --

3 Q. And then for literacy, okay.

4 A. Direct ESL instruction has to include that.

5 Q. Okay. And what else does this particular
6 population of English language learners need --

7 A. Okay. Now --

8 Q. -- with respect to --

9 A. -- the second thing is remember, there are
10 either gaps because of interruption or limitations
11 because of the type of education they had. So they're
12 not at grade level.

13 So the other thing that they need is they
14 need content instruction from day one, you don't avoid
15 that, they need it. But they can't get it at grade
16 level right away, they have to fill in the gaps.

17 So you need to have them take math, science,
18 social studies courses where they're filling in gaps
19 prior to getting into the grade level work, but that
20 depends on each individual student and where they are.

21 Q. So with respect to -- do they still get
22 grade level content? Should they still be taught at
23 for example if they were at high school, should they
24 be looking at a ninth grade or tenth grade curriculum?

25 A. Well, there are ways -- see, the curriculum

1 can be the grade level but it has to -- the lessons
2 have to include building background knowledge that is
3 needed in order for them to access that curriculum.
4 So that has to be part of, if you're a social studies
5 teacher, you can't only teach ninth grade curriculum
6 if they haven't had the prior curriculum.

7 Q. So is it correct to say that you have to
8 recognize the gaps in their learning --

9 A. Yes.

10 Q. -- and try to fill those in as a teacher?

11 A. Yes, you do, and that has to be part of
12 their content instruction.

13 Q. And that's in their content instruction,
14 okay.

15 And what about -- what does it mean to
16 access content, how do you do that for someone who's -
17 -

18 A. Well, it's two -- access is a strange word
19 that way, you know, you take it two different ways.
20 So one way is, they don't have access if it's not on
21 their schedule. So if you don't put them in a math
22 class, they're not getting access, so that's pretty
23 basic, but we say basic things here apparently. So
24 they've got to be in the class, all right, so you want
25 to put them in a math class, absolutely.

1 The second is, once you put them in a math
2 class, they can't necessarily really access the math
3 class if they don't understand what the teacher is
4 saying, if they don't understand the materials in
5 front of them, and if they don't understand the actual
6 mathematical concept because they don't have the
7 underlying especially with math, which is cumulative,
8 you know. So that would be meaning that they don't
9 have access.

10 Q. And are there strategies to accomplish that?
11 Is there a way to teach?

12 A. Well, yes.

13 Q. To ensure that even students with limited or
14 interrupted --

15 A. Yes.

16 Q. -- formal education can access that content?

17 A. Yes.

18 Q. Okay. And what else do they need to know
19 when they first come into this country and they first
20 enter a school, what other pieces are important?

21 A. Okay. So this is very interesting because
22 we think so much about language and content, we think
23 okay, we have to have to learn English and they have
24 to learn the content. But for SLIFE, there's a third,
25 if you think of a three legged stool, there's the

1 third piece, it's so important, it's the most
2 important and people tend to neglect it.

3 Q. And what is that?

4 A. And that has to do with the way we do
5 education in the United States. It is not universal.
6 If you've ever been educated anywhere else in the
7 world you know that.

8 Q. And in what way is it different for a
9 student who's coming into this country for the first
10 time, with respect to how we teach in this country?

11 A. First of all, we teach with what we call
12 decontextualized tasks, so we give people multiple
13 choice, matching, true, false, all of these sorts of
14 exercises are not universal. And students like this
15 look at these kinds of tasks and they think we're
16 trying to confuse them and trick them.

17 I've had students with true/false they say,
18 I'm learning how to read and you have me read
19 something and you then you tell me it might be false.
20 Just tell me what's true, and I'll learn that. And we
21 get later to talk about the students, but some of them
22 would say, you know, no, I learn by memorizing and
23 reciting and this idea that we're trying to trick them
24 is a big problem. So that's one piece.

25 The other is we have different ways of

1 thinking. We ask students, and again gets back to the
2 recitation, memorization we don't do that. We say
3 compare, contrast, analyze, summarize, define, these
4 are called academic ways of thinking. And they're
5 part of the way we teach in Western style education.

6 Now other ELL's come and they may not be
7 totally familiar --

8 Q. And when you say ELL's, you mean English
9 Language Learners.

10 A. English language learners, but these
11 students are completely unaware of any of this, and so
12 that must be a very important component of their
13 program when they come here, a very important
14 component. Because they can't -- here we go with
15 access again, but they can't access the language or
16 content instruction because of the way it's being
17 delivered.

18 Q. Uh-huh.

19 A. Okay.

20 Q. And are there any issues with regard to
21 school environment for these children?

22 A. Yes.

23 Q. And what are they?

24 A. Well, I think that -- you know, you have to
25 go back to your hierarchy of needs, you know, food,

1 clothing and shelter, but then sense of belonging is
2 really important. And for these students, you know,
3 they're coming here, they need to absolutely first to
4 feel that they belong, that they're safe because
5 otherwise there's an affective filter that can
6 interfere with their learning.

7 And the --

8 Q. And what do you mean by affective filter,
9 what does that mean?

10 A. Well, one -- one of our theorists, good ole
11 theorists of ours, Krashan (ph) came up with the
12 notion and we all still use it, it's some years back,
13 but it's still so relevant is that if you're not
14 comfortable in your learning situation, you have any
15 anxiety, you're not going to be a risk taker and your
16 affective -- your feelings are blocking your ability
17 to access learning, and to be motivated and interested
18 and engaged in learning. And you kind of shutdown.

19 Q. So the school environment can impact the
20 ability of these students to learn --

21 A. Absolutely.

22 Q. -- and access?

23 A. Absolutely.

24 Q. Turning your attention to Exhibit 23 in your
25 binder.

1 MS. MCINERNEY: Your Honor, may I
2 approach the witness?

3 THE COURT: Absolutely.

4 THE WITNESS: Okay. There are two
5 binders.

6 BY MS. MCINERNEY:

7 Q. It's day one. Start with day one.

8 A. I'm going to need more water.

9 Q. Okay. Could you tell us what this is, Dr.
10 Marshall?

11 A. Do you mean right here?

12 Q. Yes.

13 A. That's my article.

14 Q. Yes. And did you author this article?

15 A. Yes.

16 Q. Okay. And does this describe the English
17 language learner population that we were discussing,
18 students with limited or interrupted formal education?

19 A. Can you repeat that, please?

20 Q. Does this article summarize some of the
21 information you've just provided with regard to the
22 needs of students who are with --

23 A. Yes, it does.

24 Q. Okay. With limited or interrupted. Now,
25 I'd like to draw your attention to Exhibit 27 in day

1 1. Can you tell us what this is?

2 A. All right. I'm catching up. Yes. This is
3 the -- okay. So what this is a bulletin that came
4 from WEDA (ph), WEDA sends out bulletins that focus on
5 different topics.

6 Q. Could I stop you for a moment?

7 A. Oh.

8 Q. What is WEDA? Can you explain, is that an
9 organization, a consortium, what is WEDA?

10 A. Yes. WEDA is a consortium world class
11 instructional design and assessment.

12 Q. Uh-huh.

13 A. And it's an organization that provides
14 standards for ESL that are not just for language but
15 for all the subject areas.

16 Q. And when you say for ESL, is that for ESL
17 instruction?

18 A. Yes.

19 Q. Okay.

20 A. Yes. And it also provides assessments,
21 placement and achievement, and it also provides
22 training. It's quite comprehensive.

23 Q. And are there certain states that have
24 adopted these standards as their own, those that have
25 been developed --

1 A. Yes.

2 Q. -- by WEDA?

3 A. Yes.

4 Q. And could you tell us what that is, how that
5 works?

6 A. Well, it's a choice.

7 Q. Uh-huh.

8 A. Some states choose to be WEDA states.

9 Q. And at this time, do you know how many WEDA
10 states there are?

11 A. Well, it goes up every year. It's right now
12 at 41.

13 Q. Okay. And is Pennsylvania a WEDA state?

14 A. Yes.

15 Q. And what does that mean to be a WEDA state?

16 A. Well, when you're -- there is a member --
17 you can be a member or not necessarily a member but --

18 Q. To your knowledge is Pennsylvania a member -
19 -

20 A. Yes, they're a member, they're a full
21 member.

22 Q. And what does it mean to be a member of
23 WEDA?

24 A. It means that you agree to administer the
25 WEDA assessments and generally to follow WEDA

1 guidelines, although some of them are not requirement,
2 they're guidelines, but you do follow it.

3 Q. Essentially you adopt the WEDA standards --

4 A. Adopt it --

5 Q. -- that you would follow?

6 A. Adopt is a good word, yes.

7 Q. Okay. So various states have done that, and
8 in fact, you mentioned that 41 states have adopted
9 WEDA standards.

10 A. Yes.

11 Q. And when you spoke about your work beyond --
12 I know you mentioned that in New York State, you had
13 done a really in-depth investigations involving
14 corrective action of some school districts there.

15 In addition to that, you had mentioned
16 providing technical assistance to other school
17 districts and other states, and you had mentioned
18 providing a lot of consultations. Have you worked
19 with other states that are WEDA states?

20 A. Massachusetts, I work extensively with
21 Massachusetts and they're a WEDA state.

22 Q. So you're familiar with the standards of
23 WEDA with respect to ESL instruction; is that fair to
24 say?

25 A. Yes. I was going to go beyond, but.

1 Q. You can, go ahead.

2 A. Well, not only that but WEDA -- okay. Our
3 international association, TSOL --

4 Q. Yes.

5 A. -- was so pleased with what WEDA came up,
6 that they substituted their prior standards and
7 adopted themselves and claims as thanks to WEDA. So
8 the entire profession really embraces WEDA now. And
9 so I am also familiar with it through the fact that
10 it's our standards as professional organizations, and
11 I --

12 Q. So then you're highly familiar with what
13 both those standards are.

14 A. Yeah.

15 Q. Well, directing your attention to Exhibit
16 27, what is this that was apparently published by
17 WEDA?

18 A. This is a bulletin that includes
19 recommendations of what -- who SLIFE are and what they
20 need and what kind of programming would be recommended
21 for them.

22 Q. And can you summarize some of what that
23 information is? First, was this information provided
24 to WEDA member dates? Would that be provided to --

25 A. Yes, it's on -- well, it's available on

1 their website and you get a notice of it. I'm
2 assuming -- that's an assumption, sorry.

3 Q. So we would assume that Pennsylvania
4 received this bulletin, it would be something that
5 would be provided to school districts.

6 Can you summarize what is in this article,
7 sort of what is the message, the overall message with
8 regard to educating students who are SLIFE?

9 A. Well, it talks about factors that influence
10 their performance in school, learning environment is
11 the first one, a welcoming environment is really
12 important. It talks about academic achievement and
13 the importance that when you work with them, you need
14 to collaborate with everybody who works with that
15 population so they all know that they have SLIFE.

16 Q. Uh-huh.

17 A. It talks about their oral background and
18 what that means in terms of teaching them, which --

19 Q. And did it identify any strategies that
20 could be used with respect to educating these
21 students?

22 A. Well, it does identify a list of -- I'm
23 looking for it now, because I know it was here, a list
24 of -- towards the end of the document it lists program
25 strategies.

1 Q. Okay.

2 A. Which -- yeah.

3 Q. Go ahead.

4 A. Well, I was going to say it has a list of
5 what would be appropriate programs for SLIFE.

6 Q. Okay. We'll get into that in a minute.

7 A. Okay.

8 Q. So let's go to your involvement in this
9 case. How did you first become involved in this case?

10 A. I received an e-mail from Vic Walczak saying
11 to me that my name had been recommended to him and
12 that he wanted to talk to me about a situation
13 regarding this population.

14 Q. And what, if anything, were you asked to do
15 to assess the situation?

16 A. I was asked to view a program at a
17 particular high school to determine its likelihood of
18 success in overcoming language barriers for this
19 specific population, which at the time was identified
20 simply as immigrants and refugees between the ages of
21 17 and 21, newly arrived.

22 Q. And could you tell us whether you -- what
23 you did in order to evaluate and assess this
24 particular program at Phoenix?

25 A. Okay. Well, I was given a number of

1 documents and I reviewed these documents. Many of
2 them -- yes?

3 Q. Go ahead.

4 A. Many of them were from the district itself.

5 Q. Okay. Could I turn your attention to
6 Exhibit 82, day 2 and that would be at tab 82? It
7 states information considered for expert report.
8 Perhaps that will refresh your recollection as to some
9 of the documents that you reviewed and things that you
10 considered.

11 Did you conduct any interviews relating to
12 this?

13 A. Yes. In addition to the documents, I
14 conducted a phone interview with a former teacher.

15 Q. And who would that be?

16 A. And that was Jandy Rivera.

17 Q. Uh-huh.

18 A. And then I also spent two days in Lancaster
19 and interviewed two service workers.

20 Q. And when you say service workers, who would
21 that --

22 A. Okay. It was Sheila -- last name, she
23 testified here. And the other one was Megan Brown.

24 Q. And did you interview any students who were
25 involved in this case?

1 A. Yes, I interviewed -- I've interviewed all
2 six students.

3 Q. Uh-huh.

4 A. And --

5 Q. And did you do that in person?

6 A. In person, yes.

7 Q. With an interpreter?

8 A. Yes, with an interpreter.

9 Q. Okay.

10 A. And in addition for the two minor students,
11 I spoke with the mother.

12 Q. Okay. So looking at Exhibit 82, is this a
13 fair and accurate description of the documents that
14 you considered as part of your evaluation of the
15 Phoenix program?

16 A. Here's Sheila's name, yeah, Mastro-Pietro,
17 sorry. Yes.

18 Q. And did you look at any state standards in
19 Pennsylvania? Did you review any guidance that's been
20 issued --

21 A. Yes.

22 Q. -- by the state?

23 A. Yes. Yes.

24 Q. Okay. And did you review any standards that
25 had been established by the WEDA consortium? Did you

1 consult any of those documents?

2 A. Yes.

3 Q. And did you look at School District of
4 Lancaster documents, as well as documents from Camelot
5 and Phoenix Academy?

6 A. Camelot? Yes.

7 Q. All right. We'll go through them as they
8 become pertinent.

9 A. Okay.

10 Q. Okay. So as a result of your review of this
11 case, did you prepare an expert report?

12 A. Yes, I did.

13 MS. MCINERNEY: And I'd like to note
14 for the record that a copy of Dr. Marshall's report
15 was provided to counsel in full compliance with Rule
16 26, that would've been on August the 12th.

17 THE COURT: Thank you very much.
18 Counselor?

19 MS. O'DONNELL: I'll object to that
20 representation. It was provided to me at 5:48 p.m.
21 and it was an unsigned copy.

22 THE COURT: 5:48 p.m.?

23 MS. O'DONNELL: On the day it was due,
24 it -- yes, August 12th, 5:48 p.m. via e-mail and it
25 was unsigned.

1 THE COURT: Okay.

2 MS. MCINERNEY: She'd done an
3 electronic -- an S.

4 THE COURT: Understood. Counselor.
5 BY MS. MCINERNEY:

6 Q. Is there anything that's in that report
7 concerning your opinion today that you would want to
8 change or revise in any way?

9 A. Change, no. Revise, perhaps because the way
10 the timing worked out, I was receiving documents right
11 up until the two days before, the night before, right
12 until it was due, which was new for me, and I
13 incorporated everything I could. But there were also
14 documents that came in after the report had been
15 submitted. And in some cases, they were very
16 interesting valuable documents. But --

17 Q. Would it have changed your opinion?

18 A. But it wouldn't have changed my opinion. In
19 fact, what I found was what came in later in many ways
20 served to confirm what I had put in my report and even
21 in certain case reinforce what I was saying in my
22 report.

23 Q. Okay. And did you reach any conclusions or
24 opinion as a result of your assessment of Phoenix's
25 program?

1 A. Yes. I -- yes, I did.

2 Q. Do you have an opinion as to whether the
3 program at Phoenix is reasonably likely to enable 17
4 to 21 year old immigrant students, some of whom are
5 refugees to overcome language barriers that impede
6 their equal participation in education?

7 A. Yes, I reached a -- yeah.

8 Q. And what was your opinion?

9 A. Opinion, okay.

10 Q. What was your conclusion?

11 A. What I find is that this accelerated credit
12 recovery --

13 Q. I'm sorry, if I may just interrupt you. Can
14 you answer that -- the question --

15 A. Okay.

16 Q. -- as to whether you have found that
17 Phoenix, the program at Phoenix --

18 A. Yes.

19 Q. -- is reasonably likely to enable 17 to 21
20 year old immigrant students to overcome language
21 barriers that impede their equal participation in
22 education?

23 A. It is not.

24 Q. And what is the basis for that opinion in
25 broad strokes?

1 A. Okay. The basis for that opinion is that an
2 accelerated recovery program is totally inappropriate
3 for this population.

4 Q. And is there any other basis for your
5 opinion, beyond the educational theory?

6 A. Yes. I think that the way that the language
7 is delivered, there is insufficient English language
8 instruction --

9 Q. Uh-huh.

10 A. -- for students who are the level they are
11 with the limited literacy that they have.

12 Q. So you have concerns about both the
13 accelerated credit recovery program methodology, as
14 well as the ESL program that is at Phoenix?

15 A. Yes.

16 Q. And is there any other basis for this
17 opinion, your conclusion?

18 A. Yes. That students who are behind
19 academically and can't handle grade level and don't
20 understand English cannot be expected to go faster
21 through content when they haven't reached a threshold
22 of English.

23 The best way to explain that, I believe is
24 like a plane taking off on a -- a plane needs kind of
25 a runway to take off, and so what it seems to me is

1 that the accelerated recovery program at Phoenix is
2 asking them to just (indicating) we're up in the air,
3 and you can't do that with this population.

4 As was stated by the prior witness, it's --
5 you have to go more slowly and build, build the
6 language, build the literacy and reach certain
7 threshold, and then also fill in the gaps. And
8 eventually you will have success.

9 Q. So your testimony is that is not based on a
10 sound educational theory; is that correct?

11 A. That is correct. Uniformly the field in
12 talking about this population talks about going more
13 slowly, building in redundancy, building in
14 repetition, and having them become familiar with
15 material in many different ways in order for them to
16 learn it, and not to go at double time.

17 Q. And do you have an opinion as to the
18 particular policies, practices program as implemented
19 at Phoenix as to whether it's reasonably calculated to
20 implement this educational theory, even if it were
21 sound, even if it were to be accepted?

22 A. Okay. I think unfortunately the program is
23 not being implemented in such a way that it does make
24 it likely to succeed, even if it were. Even if it
25 were going to be the program selected.

1 Q. And having reviewed the School District of
2 Lancaster documents, the Phoenix documents and
3 interviewed everyone and looking at some raw data as
4 well, do you have any evidence that the program is
5 being evaluated to determine whether it produces
6 results indicating that language barriers confronting
7 these students are actually being overcome?

8 A. Absolutely not. I've looked at the way --
9 the evaluation, and I do not see an adequate
10 evaluation to determine whether this accelerated
11 recovery program approach is working. Yeah.

12 Q. Let's start with whether the Phoenix program
13 is informed by sound educational theory. What I'd
14 like to do is unpack the three reasons that you have
15 identified for why you have found that this is not
16 likely to overcome language barriers.

17 So let's start with that, looking at the
18 Phoenix program. Looking at Exhibit 82, which is the
19 list of materials that you considered, what are the
20 factors that you had looked at to evaluate whether
21 this educational theory is sound and is there any
22 research that's been done in this area, looking at
23 accelerated programs, and the extent to which they
24 have been successful in overcoming language barriers,
25 particularly for this population of students?

1 Why don't we start out with the accelerated
2 component of the program? You mentioned something
3 about the airplane taking off, needing more of a
4 basis, more of a grounding.

5 A. Uh-huh.

6 Q. Is there any research that has been produced
7 that addresses this issue at all?

8 A. Yes. Well, I mentioned threshold, and I
9 think that's a key here, that there's -- I think I can
10 give you an example of Browder's (ph) study of actual
11 research.

12 Q. Yes. What was Browder's study, what was
13 that about, what did it --

14 A. Okay. So what -- Browder's study was
15 totally on SLIFE, that was the population he looked at
16 and --

17 Q. So he was looking specifically at the sub
18 population that we're talking about here.

19 A. Yes. About --

20 Q. Students with limited or interrupted formal
21 education.

22 A. Right, right, right. There were about 200
23 students. And what he was in -- and this was in high
24 school. And what he was looking at was --

25 Q. And what is the date of that study?

1 A. The work was conducted in about 2013 and the
2 publication came out in 2015. Okay. Yeah, and what
3 he was looking at was the relationship between
4 language level, language acquisition, and success in
5 content as measured by standardized tests.

6 And you always want to look, when you're
7 looking at the content areas, you always want to look
8 at much as possible something quantitative, as opposed
9 to say grades or something like that. So he did look
10 at standardized tests.

11 Q. And what did he find?

12 A. Well, it was interesting. What he found was
13 that what mattered more, and remember these are SLIFE,
14 so all of them had gaps or limits to their education.

15 Q. Uh-huh.

16 A. They all did. But at various degrees, again
17 we're talking about a continuum with the content just
18 as much as with the language. What he found was that
19 it was more important that they had more language
20 classes than that they spent more time in their
21 content area in order for them to do well on the
22 standardized tests.

23 So the ones who had the most English on
24 their program, their daily program and learned English
25 more, and had higher levels of English, they did

1 better on the tests, regardless of how much they knew
2 when they walked in to the test.

3 Q. So let's back up for a moment. When you say
4 language class, do you mean ESL direct instruction?

5 A. That's what I mean, yes.

6 Q. Okay. You don't mean an English class, just
7 so we're clear.

8 A. No, no, no, ESL, the more ESL classes they
9 had --

10 Q. Uh-huh.

11 A. -- the better they did on the content area,
12 math, science, social studies, class -- standardized
13 tests, that was the way it worked. So it's the
14 language piece that's so important.

15 That shows that it's the language that's
16 blocking them from doing well on some of these
17 standardized assessments.

18 Q. So as you had mentioned earlier, that means
19 that a student needs a significant amount of ESL
20 instruction.

21 A. Significant amount, yes.

22 Q. Okay. And what else did the Browder study
23 disclose that they needed?

24 A. Well, his main -- that was his main -- that
25 was actually his main finding.

1 Q. Uh-huh.

2 A. He'd looked at -- he looked at the overall
3 program and concluded that it was more important for
4 them to be in English classes, even though part of
5 their day might have been spent more in English than
6 in the content, it was still important.

7 Q. It was important to have a significant
8 amount of time in ESL.

9 A. But it was still important for them to learn
10 the content, it doesn't mean, in other words, what he
11 was saying it doesn't mean they spend all day in
12 English.

13 Q. In ESL.

14 A. ESL, sorry. It doesn't mean that they
15 should spend all day in ESL.

16 Q. Right.

17 A. All right. It just means that if they only
18 have one period -- let's just say they have one period
19 of ESL and that's it for the day.

20 Q. Uh-huh.

21 A. Those students did not perform well, whereas
22 the students who had several periods of ESL and the
23 rest of the day, they were in their content areas,
24 they did better.

25 Q. And did his study address in any way the

1 pace at which these children learned, or is there
2 another study that addressed that issue as to the pace
3 at which they're able to learn?

4 A. Right. Well, the particular -- his
5 particular study didn't refer to pace per se, but all
6 of the studies, Gohungl Gohungl and Lazino (ph) and
7 Short and Boison (ph) and the various people who study
8 SLIFE all of them uniformly and I've been looking at
9 this recently, because you know, I've been looking at
10 the report. Again and again they say the key is to
11 take your time, take your time, present it in a
12 variety of ways, make sure they get it and --

13 Q. Why is that important?

14 A. -- nobody is talking about accelerating.
15 Yeah?

16 Q. And why is it important to have it at that
17 slower pace?

18 A. Again, because their language in their own
19 language are weak and because they have so many gaps
20 in their education.

21 Q. And are you familiar with any research that
22 is contrary to that opinion?

23 A. Absolutely none.

24 Q. So this is something that's uniformly
25 accepted?

1 A. Yes.

2 Q. In the field.

3 And is this an issue that was addressed in
4 the WEDA bulletin with regard to the needs of students
5 with limited or interrupted formal education?

6 A. Yes. The WEDA bulletin talks about
7 appropriate models, and it doesn't indicate that for
8 SLIFE because they are behind, that an appropriate
9 approach or appropriate model might to be accelerate
10 their instruction.

11 There's a tendency to think, you know, it's
12 sort of intuitive, they don't have much time, let's go
13 fast, but it backfires, it's misguided.

14 Q. And are there any other components of the
15 program at Phoenix, their use of computer based
16 learning, anything that you were -- also were concerns
17 of yours?

18 A. Yes. My understanding is that there are
19 times of the day when students are at computers
20 working through programs.

21 Q. And why is that a problem?

22 A. Well, actually I think there's a place for
23 instructional technology, and if anyone is familiar
24 with my work, they'll know that I publish in that area
25 also.

1 Q. Uh-huh.

2 A. So I'm actually supportive of computers and
3 what they can do. But it all depends on how it's
4 handled and what kind of computer materials you're
5 using.

6 So first of all, it's very important to use
7 computer assisted language learning materials that are
8 designed for English learners.

9 Q. Are there such things?

10 A. Yes, absolutely. In fact, in our field, you
11 can find whether it's computers or anything else,
12 anything that can be taught in K-12 instruction can be
13 taught specifically for English learners. So that's,
14 you know, something to be aware of. And I -- my
15 understanding is that computer materials were being
16 used that were not specific to ESL.

17 Q. You mentioned that these students come from
18 an oral culture.

19 A. Uh-huh.

20 Q. In what way is that a significant factor?

21 A. Well, this is very interesting about them,
22 is that even they can be taught to read, and I have
23 found as even with those who are totally non-literate,
24 even if they can be taught to read, because their
25 background, you know, our informative years really are

1 important in our lives, and they come from an oral
2 tradition. Which means their most comfortable way of
3 learning is from people, from interaction, not from
4 written material, not from worksheets, or even from
5 the computer.

6 They learn with oral transmission. And if
7 you indulge me one second, just because demonstration
8 helps.

9 So oral transmission would be something
10 like, to give an example that we're familiar with, you
11 know, and the Lord said, let there be light, and there
12 was light, and the Lord separated the light from the
13 darkness. So you see how I'm back looping I'm slowly
14 adding, it's memorable. And this is how they're used
15 to learning. This is how in their cultures, they pass
16 information down from generation to generation, that's
17 why they have such amazing memories. Because what
18 they build into their language is memorable.

19 And that's oral transmission, and that's
20 what they're used to learning. I've had students who
21 read something that I know was in their -- at their
22 instruction level, and they still turned to me and
23 they'd say, will you talk to me about it, will you
24 teach it to me, and you know, so that's their
25 tradition.

1 Q. So is reinforcement important --

2 A. Yes.

3 Q. -- in order for these students to learn?

4 A. Yes. And the way we, in our system, we kind
5 of like -- it's like a speeding train. We talk and
6 just -- well, the courtroom is different. In a
7 classroom teachers talk, and a lot goes by and it just
8 goes by and it goes by, and you know, it's very hard
9 for them to understand even though they're -- it's
10 spoken. So oral transmission doesn't just mean having
11 the teacher speak is what I'm trying to say.

12 Q. So in a grade level curriculum, and a grade
13 level classroom, tenth grade, chemistry, whatever it
14 is, what would that look like for SLIFE, a student who
15 is SLIFE to ensure that they access the curriculum?

16 A. All right.

17 Q. And what happens in the accelerated?

18 A. I'm going to have to give you an example
19 again right. Okay. So let's take something from
20 science, all right.

21 So one of the lessons that science teachers
22 have to teach is about owl pellets. I don't know
23 who's familiar, but owl pellets. So the owl
24 regurgitates the pellet. So let's say you have to
25 teach that, and you have SLIFE in the room, or you

1 have other ELLs too.

2 Q. Uh-huh.

3 A. What you need to do is what we call, cast
4 the net, which means, you need something for all of
5 your levels. They're all going to learn regurgitate
6 because that's the academic word. But they need to
7 learn -- you need to provide something for every
8 level.

9 So first of all, and some of this is
10 intuitive, and anyone could realize that you need a
11 picture. So you get a picture of an owl with the owl
12 pellet. All right. Then also you want to use a
13 gesture, if it's something you can use a gesture for,
14 in this case you can. So apologies, you can
15 (indicating) you can go like that, all right.

16 And then you use basic English, which is
17 English that they would very, very early be learning,
18 and you would just say it comes out of its mouth,
19 that's basic English, and the next level, and this is
20 something very hard for a lot of teachers, the idiom
21 because a lot of us use idioms all the time and we
22 don't even know it.

23 But if I say throw up to a brand new SLIFE,
24 they think up into the air, but of course, this is the
25 idiom throw up, which is different, so -- but that

1 needs to be taught. So you would include that. And
2 then finally regurgitate, which of course you'd put on
3 the board, you'd work on pronouncing it, and you know.

4 But all that has to happen, then you know
5 you've got everyone in the room understanding the
6 concept, it's done. You've accomplished it.

7 Q. And essentially that takes more time in the
8 classroom?

9 A. Well, it does, it does.

10 Q. And has any national organization, any
11 research, any publications regarding the need for
12 SLIFE to have this slower start to have more time in
13 order to access the information in the curriculum? Is
14 that something that's generally accepted?

15 A. Yes, yes. In our professional organization
16 we now have many presentations on SLIFE, school
17 districts are calling for training on SLIFE. In fact,
18 I was just reading recent statistics, and this
19 surprised me actually, is that a full 20 percent of
20 English learners in the United States today are SLIFE.
21 That's a lot. So we need to serve them.

22 Q. Turning now to Phoenix' language instruction
23 program.

24 A. Yeah.

25 Q. Could you tell us a little bit more? Now,

1 are there varying levels of English proficiency?

2 A. All right. Based on the documents that I
3 was given to look at, and also the interviews with the
4 students --

5 Q. Uh-huh.

6 A. -- the Phoenix program places entering --

7 Q. Can you first back up and explain the
8 different levels of English proficiency?

9 A. Yes, okay.

10 Q. You mentioned entering, and I'm not sure
11 what that is.

12 A. I realize I'm the first one to do that, so
13 yeah, we have to do that.

14 So WEDA -- okay, so WEDA has six levels, all
15 right, so it has entering, emergent --

16 Q. What does entering mean? If you're an
17 entering level English language learner, what are you
18 able to do?

19 A. All right. An entering level English
20 language learner first we have to -- and at every
21 level, okay, I'm trying to keep it as simple as
22 possible.

23 Every level, we have to look at listening,
24 speaking, and writing, very important, okay. Then we
25 also have to look at the complexity of their

1 discourse, you know, when they put words together, do
2 they speak in paragraphs, do they speak in sentences,
3 do they speak in individual words, you know, what's
4 their level of discourse.

5 The second is, what kind of constructions
6 are they controlling, can they perform complex
7 sentences, or only -- can they form questions, can
8 they form negatives, okay.

9 And third is the one you're all familiar
10 with which is vocabulary, you know, vocabulary. So we
11 look at those three, and then we look across.

12 And so for each level, it's going to look
13 different. So for entering, they can only put a few
14 words together maybe a very simple sentence, and as
15 far as constructions, they're not really going to put
16 question word order correctly. They might say go now,
17 or something, they wouldn't want to know to say, do
18 you want to go now, a sentence like that.

19 Q. So that would be the entering level, the
20 lowest.

21 A. Entering level. And vocabulary would be no
22 academic vocabulary, just very general, basic
23 interpersonal vocabulary.

24 Q. Okay.

25 A. Maybe a couple of general terms like math,

1 they might say math, you know.

2 Q. And what would be the level above that?

3 A. The level above that is emergent.

4 Q. And is that level 2 of English learning --

5 A. That's level 2, yeah, they're numbered,
6 numbered.

7 Q. Okay.

8 A. Yeah.

9 Q. And what would you expect emergent, what
10 would that mean, what does that mean, what would that
11 level of student be able to mean?

12 A. Emergent, they can put a sentence together,
13 maybe a couple of sentences but not very complex. And
14 they may be able to form questions, but you know, with
15 a very complicated instructions, but they can still
16 put sentences together.

17 They wouldn't be able to use -- if they --
18 sometimes they sound rude at the emergent level
19 because they're really trying to say something but it
20 comes out wrong, like give me that pencil instead of
21 would you please give me that pencil because they
22 don't have that kind of softening language. They're
23 not there yet. So sometimes they come off as rude.

24 And then next, they're starting to get some
25 of that academic vocabulary, building that in a little

1 bit, but very, very little. And -- but they have a
2 lot more basic language than the entering.

3 Q. So that's entering level 1 and then we have
4 level 2 is emergent.

5 A. Yeah.

6 Q. And above that what are the levels, you can
7 just name what they are, you don't have to explain
8 those.

9 A. Developing, expanding, bridging and
10 reaching.

11 Q. Okay. So those are the levels of English
12 proficiency that we look at.

13 A. Uh-huh.

14 Q. And would students be evaluated when they're
15 first coming to a school to determine what level
16 English learner they are?

17 A. Yes. WEDA has an access placement test, the
18 WAPT.

19 Q. So the students in this particular case
20 would have taken that placement test, to determine
21 what level of English learner they were.

22 A. Yes, absolutely.

23 Q. Okay. And what do level 1 entering students
24 need in general?

25 A. What do they --

1 Q. What type of programming would you
2 anticipate for a level 1?

3 A. Okay. A level 1 needs two to three hours of
4 direct ESL instruction.

5 Q. Two to three hours.

6 A. Well, there's a range.

7 Q. Uh-huh. Could you turn to Exhibit tab 37
8 that's in day 1? It's the ESL matrix.

9 THE COURT: I'm sorry, Counselor, that
10 was tab?

11 MS. MCINERNEY: That was tab 37.

12 THE COURT: Thank you.

13 MS. MCINERNEY: I think I might have
14 said the wrong one.

15 BY MS. MCINERNEY:

16 Q. And if you could turn to the last page of
17 this. First, could you identify this document, Dr.
18 Marshall?

19 A. Wait.

20 Q. It says ESL instructional services matrix.

21 MS. MCINERNEY: Your Honor, may I
22 approach the witness?

23 THE COURT: Certainly, Counselor.

24 THE WITNESS: Yeah, I just want to make
25 sure I'm looking at what you want me to look at. This

1 one?

2 MS. MCINERNEY: Yes.

3 THE WITNESS: The last page of it. Got
4 it, thank you.

5 BY MS. MCINERNEY:

6 Q. And if you could direct your attention to
7 the last page of the document.

8 A. Uh-huh.

9 Q. Now, you were just talking about ESL
10 instruction and this is a document -- well, how did
11 you come to see this document by the way, Dr.
12 Marshall?

13 A. It was provided to me as part of the ESL
14 instructional service matrix group of pages.

15 Q. Okay. And that identifies varying levels of
16 English proficiency, there on the fourth page. And
17 could you tell us what it says under entering?

18 A. Two to three hours of ESL instruction per
19 day and support.

20 Q. And where does that standard come from, the
21 two to three hours for the entering level English
22 language learner?

23 A. The federal standard and I believe
24 Pennsylvania also has that standard.

25 Q. And then it appears that beginning level

1 would be less than that; is that right?

2 A. Yeah, beginning, just for terminology sake,
3 I had said emergent earlier or emerging.

4 Q. Uh-huh.

5 A. WEDA changed -- everybody always changing
6 terminology, we have moved from beginning to emergent,
7 but it's the same, it's just two different words.

8 Q. So the amount of ESL direct instruction that
9 needs to be provided is based in large measure on the
10 level of proficiency of the students; is that right?

11 A. Yes, the hours are based on the level of
12 proficiency, correct.

13 Q. Okay. Thank you. I just wanted to
14 understand where that was coming from.

15 A. Okay.

16 Q. Okay. So you've talked about ESL
17 instruction and for entering level students, what do
18 those students need in terms of the instructional
19 model that might be used for the entering level
20 student, and can you explain the different
21 instructional models?

22 A. Okay. The model that is needed for entering
23 level students is a sheltered instruction model.

24 Q. And what are the components of a sheltered
25 instruction model?

1 A. Well, I'm speaking now of the content areas.
2 We've talked about the direct instruction. Okay?

3 Q. Okay. Thanks for that, yeah, that's very
4 helpful.

5 A. So the sheltering -- what the sheltering
6 model does is it gives them instruction in the content
7 areas separately, each content area but --

8 Q. Uh-huh.

9 A. -- the content and the methodology is
10 adapted by a teacher who knows how to teach language
11 as well as content.

12 So it's not just a content teacher teaching
13 a little slower or something like that. It's got to
14 be language instruction also. And you know I
15 mentioned regurgitation, in other words, the teacher
16 was teaching language as well as teaching the concept,
17 they go together, it's integration.

18 Q. Using some kind of accommodation that --

19 A. Yes.

20 Q. -- would ensure that the student is
21 accessing that.

22 A. Yes.

23 Q. Okay. Why don't we go to Exhibit 8 in day 1
24 which is School District of Lancaster services for
25 English language learners? Because I think that this

1 will be very helpful in elucidating what these various
2 instructional models are.

3 A. Yes, I'm familiar with this document.

4 Q. Can you start by reading --

5 MS. MCINERNEY: May I approach the
6 witness?

7 THE COURT: Certainly, Counselor.

8 MS. MCINERNEY: Thank you.

9 MS. O'DONNELL: Your Honor, we don't
10 have an Exhibit 8 for their binder. May we have a
11 copy?

12 THE COURT: It is titled School
13 District of Lancaster services for English language
14 learners.

15 MR. ROTHSCHILD: I can --

16 MS. O'DONNELL: We actually may have a
17 copy in our own binder, if it's the same one.

18 THE COURT: Is that issue resolved?

19 MS. MCINERNEY: We're going to resolve
20 it, thank you.

21 THE COURT: Certainly, Counselor. And
22 I note it's 12:31. I was a Navy judge, when we
23 presided over military court martials, the Marines
24 never wanted to stop, they just wanted to keep going
25 and wanted to go all night long and et cetera, and I'm

1 very impressed with the endurance of everyone here,
2 but you've been sitting for quite some time, would you
3 like to break for lunch, would you like to complete
4 your direct testimony?

5 MS. MCINERNEY: I wouldn't be able to
6 complete the direct testimony before lunch or we'll
7 all die.

8 THE COURT: Is this an appropriate time
9 to break?

10 MS. MCINERNEY: This would be fine,
11 Judge.

12 THE COURT: All right. It's 12:31, why
13 don't we break for an hour, and we'll come back at
14 1:30 and resume with direct testimony.

15 MS. MCINERNEY: Thank you, Your Honor.

16 THE CLERK: All rise.

17 (Recessed at 12:28 p.m.; reconvened at 1:32 p.m.)

18 THE CLERK: All rise.

19 (Call to Court)

20 THE COURT: You may be seated. Thank
21 you. The Court is called to order. All parties
22 previously present are once again present. The
23 witness is on the witness stand. Counselor, you may
24 continue with your direct examination.

25 MS. MCINERNEY: Thank you very much,

1 Your Honor.

2 BY MS. MCINERNEY:

3 Q. Dr. Marshall, so you were explaining that
4 there are various types of English instruction models.
5 And we were looking at Exhibit 8, and have you seen
6 this document before?

7 A. Yes, I have.

8 Q. And in what context?

9 A. It was one of the documents provided by the
10 school district of Lancaster.

11 Q. And did you rely on this document?

12 A. Yes, I did.

13 Q. And could you tell us looking at the first
14 page, it references an international school located at
15 McCaskey.

16 A. Yes.

17 Q. And could you read that paragraph that
18 discusses the international school? Just read the
19 paragraph aloud.

20 Q. The international school located at McCaskey
21 East for grades nine to 12 provides intensive ESL
22 support and content based ESL instruction in a one
23 year program, primarily for entering students. This
24 unique, small, learning community introduces new
25 cultural values and beliefs while respecting the

1 cultural diversity brought by the students. Students
2 participate in ESL, sheltered instruction in science,
3 sheltered instruction in math, sheltered instruction
4 in social studies and enrichment subject. Students
5 develop a beginning level of English proficiency and
6 prepare to enter another small learning community of
7 their choice, based on their personal interest. Key
8 features of the international school include, close
9 communication with families, access to appropriate
10 translation services, and assistance in connecting to
11 community resources. Eligibility for this program is
12 determined through screening conducted at the
13 enrollment center in collaboration with the
14 facilitator of the international school.

15 Q. And Dr. Marshall, the international school
16 as is described in that paragraph, is that an example
17 of a certain type of language instruction?

18 A. Yes, it is.

19 Q. And what is that instruction model?

20 A. Well, this conforms exactly to what is
21 normally referred to as newcomer programs.

22 Q. And what is that?

23 A. A newcomer program is a special school
24 within a school type of thing, exactly as described
25 here. In fact, even the features are exactly as

1 described here for entering students for their first
2 year giving them intensive English and content
3 material from day one, but with language incorporated
4 into the content. And also the idea of having it be a
5 small group of students that work together as a
6 learning community is in there too, and all the other
7 features, yeah.

8 Q. And this, as you've described it, a newcomer
9 program.

10 A. Yeah.

11 Q. Who is it primarily intended for?

12 A. It's intended for English learners,
13 immigrants, refugees of whatever age at the secondary
14 level. And so they even have them for elementary,
15 but, you know, this is obviously a high school one.
16 So it would be for any age student who is arriving and
17 is at the entering level of English.

18 Sometimes it could include someone at the
19 emergent level, depending upon if they have gaps in
20 their schooling or low literacy and they need newcomer
21 also.

22 Q. And what particular features of the program
23 are beneficial for newcomers?

24 A. Well, the cultural piece is so important,
25 because you know, culture shock, so newcomers need

1 that. In fact, all newcomers need that. And newcomer
2 programs have a very strong emphasis on the culture.
3 They also have a strong emphasis on getting them used
4 to school here, which I mentioned earlier is very
5 important. How do we do school in this country? They
6 have to learn that and understand that. And of
7 course, the major is language. They need large doses
8 of English language.

9 Q. And in what way is this particular program,
10 as it's described, addressing that need?

11 A. Well, it says intensive ESL support, so the
12 word intensive says to me that they're really serious
13 about providing English language instruction.

14 Q. And there's a reference here to sheltered
15 instruction science and then sheltered instruction
16 math.

17 A. Yes.

18 Q. What does that mean? What are the features
19 of sheltered instruction?

20 A. So what's interesting about sheltering
21 instruction is that it's not just a matter of, you
22 know, like hand gestures and picture like I said
23 before, but you really need to know linguistics. You
24 need to know English grammar, because you have to
25 provide a version of English that is understandable

1 and yet still teach the content concepts.

2 So you have to be able to teach high school
3 cognitive development level concepts, but with very
4 low level English and it takes skill to do that. It's
5 very difficult. Not to dumb down the content, but not
6 to make the language inaccessible, so that's what
7 sheltered instruction is. And it's 50 percent
8 language, 50 percent content, because they need both
9 at the newcomer level.

10 Q. And is there any particular feature to the
11 program regarding -- you said small cohorts of
12 children.

13 A. Yes.

14 Q. What does it mean in terms of sheltered
15 instruction with regard to the students in that
16 classroom? Would you imagine that it would be a range
17 of English language learners together that are
18 educated together or no?

19 A. Well, ideally a newcomer program, they're
20 going to be entering level students.

21 Q. So all the students in that classroom, in
22 the content classes would be entering level in this
23 particular description?

24 A. If it's a newcomer program, yes. There's
25 also sheltered instruction for higher level students.

1 They get it also, but we're talking about this
2 international school, which is a one year program.

3 Q. So what are the features? If you could turn
4 to the second page where it says "service delivery
5 models," now, it mentions sheltered instruction and my
6 understanding is that the international school is one
7 example of a sheltered instruction program,
8 particularly targeted to newly arrived students?

9 A. Yes.

10 Q. Okay. So can you tell me what the features
11 are of sort of the sheltered instruction program?
12 What happens that's different in a content class with
13 regard to providing sheltered instruction? Are
14 students grouped by language proficiency level?

15 A. Well, the idea is that you can
16 differentiate. I mean, every individual is a
17 different level, so even entering there is a range.

18 Q. Right.

19 A. Right? So I think it was referred to
20 earlier, differentiating instruction. So in sheltered
21 instruction, you're still differentiating in terms of
22 student's language, background, and also in terms of
23 their content background, because some of them will
24 have had more schooling than others. And so there's a
25 lot of differentiation going on in a sheltered class.

1 Q. In the international school, though, you
2 have students who are all grouped by level, they're
3 all entering level students; is that correct?

4 A. Uh-huh.

5 Q. So they're in ESL I'm sorry --

6 A. Uh-huh.

7 Q. -- and they're also in their subject courses
8 --

9 A. Right.

10 Q. -- as a group and it's only entering levels?

11 A. Yes. And what I particularly liked about
12 this model is that they are -- it's a cohort model,
13 which means they form a learning community and they
14 stay with each other during the day and they form a
15 community of learners.

16 Q. And what is the benefit of that feature?

17 A. Well, a big benefit has to do with their
18 teachers, because the teachers share the students and
19 they can compare notes and collaborate, which is
20 really important, because you want to teach
21 thematically when you do this, so if you're working on
22 estimating or something, in every subject area, you
23 need to estimate.

24 So if everyone in all the different subject
25 areas are working on the concept of estimating, then

1 that helps to coordinate the curriculum. And if they
2 all have the same classes and they move together and
3 they have their ESL intensive time together also, it
4 really helps them move more quickly because of their
5 coordination.

6 Q. So the coordination you're saying between
7 the content teacher and the ESL instructor?

8 A. And all the content teachers, because they -
9 - it's a --

10 Q. All of the content teachers.

11 A. -- cohort model.

12 Q. Okay. And does that enable these students
13 to access the curriculum more readily?

14 A. Yes, absolutely.

15 Q. Then the next model they talk about
16 structured English immersion. What is that particular
17 instruction model?

18 A. Well, as you see from the -- three words
19 here, okay. So we're going to start with emersion.
20 So in the immersion model, the idea from the word
21 immersion is that they are being put into classes that
22 are not ESL student classes.

23 They're ESL students, but they're being put
24 in classes, which are not ESL versions of math or
25 science or social studies. They're what we call

1 mainstream classes for regular students. So they're
2 being immersed.

3 Q. So does that mean that they would be with
4 native speakers --

5 A. Exactly.

6 Q. -- in their subject classes, in their
7 content courses?

8 A. That's what immersion is, yes.

9 Q. So that's different than sheltered, because
10 in the sheltered model, you're with English language
11 learners that may be particularly of your level or a
12 closer level in terms of language proficiency. Is
13 that correct?

14 A. Yes. It's correct with one exception is
15 that at upper levels, some programs there is
16 sheltering by very highly skilled teachers for higher
17 level (indiscernible). And there might be native
18 speakers in there, because you kind of want them, at
19 that point to be able to switch over.

20 Q. Sure.

21 A. And I think that I recall that that is done
22 there, but we're only talking about the lower levels.

23 Q. Right. So in the structured English
24 immersion classes, you would anticipate that there
25 would be a whole range of students, including native

1 speakers in a --

2 A. A complete range, it could be anybody in
3 there.

4 MS. O'DONNELL: Your Honor, I'm going
5 to object to the leading nature of counsel's
6 questions. This is her expert. She can certainly ask
7 the questions directly and get the information from
8 the expert that way.

9 THE COURT: I'll sustain that
10 objection.

11 MS. O'DONNELL: Thank you.

12 BY MS. MCINERNEY:

13 Q. Could you explain what pull out ESL is?

14 A. I just -- okay.

15 Q. Yes, go ahead. Did you have another
16 comment?

17 A. Well, I was going to explain the structured
18 English immersion.

19 Q. Okay. Go ahead.

20 A. Yeah. So in structured English immersion
21 the structure is important also, because --

22 Q. In what way?

23 A. Because it's not only -- if it were only
24 what I just said, that would be submersion, not
25 immersion. Submersion is you just put them in there

1 and good luck. Okay. But structured English
2 immersion means that you are, in some way,
3 accommodating the needs of those who are not native
4 speakers of English. So that's why we say structured
5 English immersion.

6 So there would be various ways that you
7 would adjust instruction in a structured English
8 immersion.

9 Q. And what would those ways be? How would you
10 do that?

11 A. Well, there are three different ways. It
12 could be -- well one way is that obviously the teacher
13 would be dually certified, that would be one way. If
14 the teacher is dually certified, the teacher would
15 have had training to adjust their teaching to ELLs or
16 you could have some ESL trained person push in or you
17 could have an ESL trained person pull some students
18 out if they're really not getting it. I just wanted
19 to mention the various ways. There's not one way.
20 All of these programs have many different ways to
21 implement it.

22 Q. And could you explain what you mean by pull
23 out, what is pull out?

24 A. All right. Well, pull out is taking a group
25 of students out of another class that's on their

1 schedule for the day and you take them out and the ESL
2 teacher works with them separately. In some programs,
3 usually that's elementary, it's just straight ESL
4 direct instructions ESL and they pull them out.

5 You can also pull them out of content
6 classes and work with them --

7 Q. How does that work?

8 A. You come, say at the beginning of the
9 period, and you bring them out and you work with them
10 on the content that the mainstream teacher is doing,
11 but you do it by an ESL trained teacher and then you
12 bring them back to class.

13 Q. And is that ESL teacher teaching them what
14 was in the content class?

15 A. Well, it's a little bit difficult in this
16 situation. First of all, there has to be
17 communication between the ESL teacher and the content
18 teacher. Usually I recommend that the ESL teacher
19 have the material ahead of time, know what's going to
20 be taught and really do some pre-teaching as part of
21 the pull out, not just remediation teaching of, oh,
22 you're not getting it, I'm going to help you.
23 So that's a really important part of pull out.

24 And the other is you can't -- you're not
25 going to be covering every single thing that the class

1 would have covered during that same period, because
2 you're modifying it, you're kind of slowing it down to
3 their pace, otherwise they would be in there. So as
4 far as curriculum coverage, it won't quite be the
5 same, but the essence -- the idea is to get the
6 essence of it, the main ideas.

7 Q. And what is push in?

8 A. Push in. Well, push in is having an ESL
9 teacher come into a content class and assist the
10 English learners while the lesson is going on. So
11 sometimes you will have the ESL students at a
12 particular table or section of the room and the ESL
13 teacher might be working with them either while the
14 lesson is going on or if there's group work, would
15 visit that particular group. And that teacher needs
16 to know what it is that the goals of the lesson are
17 and again, we're talking about very close coordination
18 and collaboration. Also this has to be -- it's not
19 supposed to be -- how can I say this? It needs to be
20 formalized. So --

21 Q. What do you mean by formalized?

22 A. So well if it's push in, then that's the
23 model. In other words, the teacher will push into the
24 class on a regular basis and each day when they have
25 science class, they know that their ESL teacher will

1 be pushing in to work with them.

2 Q. And would the ESL teacher stay for the time
3 period of the class? Would they be there?

4 A. Well, that depends on staffing, ideally.

5 Q. And what about, you mentioned pull out,
6 would you anticipate that in pull out there would also
7 be formalized?

8 A. Oh, yes similarly. Similarly if those
9 students are pulled out, they're supposed to expect,
10 yes I know that I get pulled out of science and that's
11 the way I get my science.

12 Q. And the other two models that are mentioned
13 here, one is content based ESL, are you familiar with
14 that?

15 A. Yes. Content based ESL is different from
16 sheltered instructions. This is kind of a fine
17 distinction, but content based ESL can be taught by an
18 ESL teacher who isn't necessarily certified in the
19 subject area, but they know enough about the
20 curriculum in that area to kind of prepare and build
21 and get the students ready for when they're really
22 going to study grade level content in that area. So
23 the focus is more -- if you were doing percentages,
24 it's more like language that's involving a lot of
25 content to help them get ready. Whereas sheltered,

1 it's content instruction and the language is coming
2 into it. It's sort of an emphasis difference and it
3 does have to do with staffing and qualifications also.

4 Q. And the last model that's mentioned here is
5 bilingual, what would that be?

6 A. There are many, many models of bilingual
7 education. Here we have only one of them mentioned,
8 so you wish me to address only --

9 Q. No, that's okay.

10 A. Oh.

11 Q. I just wanted to acknowledge that that was
12 another option.

13 A. Okay, well in general. In general,
14 bilingual education means that -- not the English
15 language piece -- but that the content areas are
16 taught either in two languages at the same time with
17 one teacher or it could be separated. They could be
18 doing one language one day and the other language the
19 other day. There are a lot of different ways, but you
20 are learning content through your first language, in
21 addition to learning English. That's basically the
22 bilingual.

23 Q. So turning to the Phoenix program. You had
24 an opportunity to talk to students; is that correct?

25 A. Yes, I did.

1 Q. Could you tell us your understanding of the
2 model at Phoenix based on your interviews and based on
3 your review of the documentation provided by the
4 school district?

5 A. All right. My understanding -- is this also
6 documents or just the interviews?

7 Q. It's all of it.

8 A. Okay. Because I first saw the document, the
9 matrix that we're looking at.

10 Q. Yes. You know what, maybe it would be
11 helpful to go to the next page, which is LSD 267 --

12 A. Yes.

13 Q. -- of that exhibit, and that lists all of
14 the schools in the school district.

15 A. Yes.

16 Q. And under McCaskey campus --

17 A. Yes.

18 Q. -- it mentions sheltered instruction,
19 correct?

20 A. Yes.

21 Q. Okay.

22 A. Okay.

23 Q. And then it mentions structured English
24 immersion and pull out ESL at the Camelot schools.

25 A. Exactly, yes. So my understanding from this

1 document and what I expected to learn from the
2 students when I interviewed them was that they were
3 receiving structured English immersion and pull out
4 ESL.

5 Q. And what would that be?

6 A. As I have just described those two models,
7 okay. But when I spoke to the students, in fact, they
8 explained to me that they were in classes with native
9 speakers of English, but that there were not
10 accommodations being made and they did not have ESL
11 teachers pushing into their class. So that it was --
12 it sounded more like submersion than immersion to me,
13 because I didn't see that ESL support piece that is
14 supposed to be part of an immersion model. Okay.

15 Q. Going back you mentioned that in the
16 structure -- in the sheltered, that the --

17 A. Yeah.

18 Q. -- students would be grouped by English
19 language proficiency.

20 A. Right.

21 Q. For example in the international school it's
22 all entering level --

23 A. Right.

24 Q. -- students. And in the structured English
25 immersion, would you anticipate that English language

1 learners would be grouped together? Would there be,
2 for example -- would there be entering level students
3 and also emergent, a developing -- is there a whole
4 range?

5 A. Well, entering level students should not be
6 combined with the other levels where possible, but in
7 an immersion model, you've already got native
8 speakers. So these students were mixed in with all
9 levels of ESL, including in addition, native speakers
10 of English, so level was not an issue. They were all
11 different levels in there.

12 Q. And in what way does that impact their
13 ability to access content?

14 A. Well, there's differentiated and there's
15 differentiated. So if you're going to try and have
16 newcomers with very little English and we met many of
17 them yesterday, mixed in with fluid English speakers,
18 the result -- what happens, even if you're good at
19 differentiating, what happens is that it becomes
20 overwhelming for the lower level ELLs and it retards
21 the progress of the people who are native speakers if
22 accommodations are being made.

23 If no accommodations are being made, then it
24 doesn't really affect the native speakers, but if
25 someone is trying to accommodate then the native

1 speakers get pulled back. It's just -- it's not, it's
2 too much of a spread for true well construction
3 lessons even with differentiation.

4 Q. And in order to meet the needs of an
5 entering level student, would your ESL instruction be
6 with a range of students or would it just be with the
7 entering level students?

8 A. Well, again if we return to SLIFE (ph),
9 which is think is really important here, I have to
10 stress that, because it's not just a matter of levels.
11 SLIFE is not a level. It's a type of student. And
12 SLIFE who are new to the country do not belong even
13 with regular, quote, unquote, regular level one
14 student. So even if they test in level one, they
15 should not be mixed with regular level one student,
16 because they're SLIFE. So to have SLIFE in a
17 structured immersion program is definitely not
18 appropriate. I don't know if that's relevant here to
19 say that, but I just thought I needed to make that
20 point.

21 Q. So if we could look at Exhibit tab 79,
22 that's in day two. And it is entitled ESL, I think
23 instructional service matrix.

24 A. Bear with me. All right, number please?

25 Q. This would be LSD 445.

1 A. No, I mean, -- okay.

2 Q. 79, I'm sorry.

3 A. Got it.

4 Q. And there is a list of students there.

5 There are three exhibits. What does this tell you
6 about the program that's going on at McCaskey?

7 A. It tells me something very positive is
8 happening at McCaskey.

9 Q. And what is that?

10 A. I see here -- I see here, on the left
11 column, there -- you're looking right

12 THE COURT: Ninety-eight minutes daily
13 of --

14 THE WITNESS: -- all right, I just want
15 to make sure. Okay. So on the left there's a column
16 that says, "Entering limited formal schooling." And
17 if you recall, I said there are many ways to refer to
18 SLIFE. Limited formal schooling is a synonym for
19 SLIFE, different people use different terms.

20 This tells me that this -- yeah, that
21 McCaskey identifies this population and creates a
22 section for them that is just for that group.

23 Q. So all of these students would be entering
24 level and they're grouped together in a small group in
25 that model?

1 A. Yes. It looks to be two groups, which --
2 because alphabetically we start again. So these are
3 two groups, which means it looks like they would be
4 two rosters, which is nice because then you have small
5 group instruction. This is excellent.

6 Q. Okay. Thank you. Now, you had mentioned
7 the pull out model and that is something that was
8 identified as being a program at Phoenix.

9 A. Right.

10 Q. Now, is that a good model for SLIFE students
11 who are SLIFE?

12 A. No. SLIFE need an entire day of instruction
13 that's tailored to them. They need their language
14 class, they need their content classes and there's no
15 reason to be pulling them out of something, because
16 what they're in should be appropriate for them. It's
17 -- there's no need for it.

18 The only time that you would use -- and just
19 to be, you know, fully answering, there are what we
20 call low incidents districts. Remember I said 20
21 percent of ELLs are SLIFE. Not in every district.
22 Some districts have maybe one SLIFE and I've seen
23 districts where they pull out that SLIFE because they
24 can't be in the regular ESL class. So that's the only
25 way I would see it would be a legitimate approach.

1 Q. Okay. So in your opinion, what is this
2 instructional model that's described happening at
3 McCaskey appropriate for SLIFE -- students who are
4 SLIFE?

5 A. As far as I can tell, based on the documents
6 that I've been given and the students that I
7 interviewed and talked with, yes.

8 Q. And at Phoenix, do they break down this sub
9 group or this -- the group are not together in their
10 content classes, do you know about in their ESL
11 classes are they grouped together at the entering
12 level?

13 A. No, it did not -- I did not have any
14 document that showed me that there was a section for
15 limited formally schooled students.

16 Q. Which clearly exists at McCaskey?

17 A. Yes.

18 Q. Okay. And so the two important features of
19 the model are grouping the students together and then
20 providing that sheltered instruction in the content
21 areas?

22 A. And the strong literacy component in the ESL
23 block.

24 Q. In your opinion, how would these students in
25 this particular case benefit from being in the

1 McCaskey program?

2 A. Students in -- case meaning?

3 Q. This case.

4 A. Okay. Okay. Oh this would --

5 Q. Would they benefit? First, would they
6 benefit?

7 A. This is so clearly -- this is very clearly
8 to me where these students needed to have been placed,
9 now that I see it exists, this is where they would be.

10 Q. And why is that? Why would this be
11 beneficial?

12 A. Well, because as I said, SLIFE is a type of
13 student. It's not just about learning English and
14 learning content. They are a particular type of
15 student getting used to school and the way we do
16 school in this country. And a lot of other ELLs don't
17 need that. So for them to all be together, regardless
18 of their age, they're SLIFE, okay, and they belong in
19 a program that's designed specifically for them.

20 And the idea that there was no such program
21 for them at the other school means that yes, they
22 would benefit by being in this tailored program.

23 Q. And would that be true for an older student
24 like Alembe? Would he benefit from this?

25 A. Well, may I talk briefly about him?

1 Q. Absolutely.

2 A. Okay, so he's --

3 MS. O'DONNELL: I'm going to object to
4 the witness' --

5 THE COURT: There's an objection.
6 Excuse me.

7 MS. O'DONNELL: I'm going to object to
8 the witness' question to counsel and the fact that
9 she's asked to deliver a narrative answer. I believe
10 that proper question would have been a direct question
11 and an answer from the witness.

12 THE COURT: And that is not an ill-
13 advised objection, however what the witness is about
14 to say I'm quite certain is going to be extremely
15 helpful to the Court in understanding, in this case at
16 least with respect to one student, exactly how this
17 all comes into play, so I'm going to overrule that
18 objection and allow her to testify in a narrative
19 manner.

20 THE WITNESS: What did you want me
21 to --

22 THE COURT: That means you may say what
23 you want to say about that young man.

24 MS. MCINERNEY: You can answer the
25 question.

1 THE WITNESS: THE COURT: Okay.
2 Alembe, as I understand it was 20. He had one more
3 year before he would be 21, which is -- that's it,
4 game over. So what I would have done with someone
5 like him is I would have said, okay we have the
6 international school. Let's put you there for one
7 year. That's the best use of your time.

8 We have -- you have the right, because
9 you're not 21, and we have a program for limited
10 formally schooled students that's a one year program
11 that will give you a window into math, science, social
12 studies, and intensive English in bringing up your
13 literacy. It would be a wonderful way for you to
14 spend that year and you're entitled to it. And so
15 that's the way I would have handled that particular
16 situation.

17 MS. O'DONNELL: Your Honor, I'm going
18 to object to the legal conclusion drawn by the
19 witness.

20 THE WITNESS: Oh.

21 MS. O'DONNELL: Whether or not a child
22 is entitled to an education the way she's testified is
23 subject to the Court's discretion. For example, under
24 section 13-1301, a student is entitled to an education
25 up to the age of 21 if they're special education.

1 This witness is suggesting that she understands
2 Pennsylvania law, where she has admitted on
3 qualifications she has no expertise.

4 THE COURT: I assume you are assuming
5 that Pennsylvania law provides that every child being
6 a resident of any school district between the ages of
7 6 and 21 may attend public schools of the district,
8 subject to the provisions of this Act?

9 THE WITNESS: That's what I meant.

10 THE COURT: So I think she's just
11 assuming -- I'm not going to draw from that, that that
12 is what the law is, but I understand what she's
13 saying. She's operating under a presumption that the
14 law says what it says, which is up until the age of 21
15 and then until the end of that school term, you're
16 entitled to free public schooling. But if the law is
17 different from the statute that I have before me, I
18 absolutely will hear on that issue.

19 Counsel, you may proceed.

20 MS. MCINERNEY: Thank you, Your Honor.

21 BY MS. MCINERNEY:

22 Q. And by the way, Dr. Marshall, did you review
23 any laws in preparation for assessing this? Did you
24 look at any guidelines from the State of Pennsylvania?

25 A. Yes.

1 Q. Okay.

2 A. Yes, that students are entitled to public
3 education until the age of 21 in the state of
4 Pennsylvania.

5 Q. Okay. That's -- okay. Thank you. And
6 could you turn to Exhibit 25? That would be in day
7 one. And I just want to confirm that this is another
8 document that you reviewed in assessing the program at
9 Phoenix and it is an abstract school district of
10 Lancaster Refugee Student Initiative.

11 A. I have binder -- I have the right binder.
12 Can you tell me --

13 MS. MCINERNEY: Can I approach the
14 witness?

15 THE COURT: Certainly.

16 THE WITNESS: Just tell me what number
17 tab it is now.

18 MS. MCINERNEY: 25.

19 THE WITNESS: 25, okay.

20 BY MS. MCINERNEY:

21 Q. And do you recognize this document?

22 A. Oh, yes. Yes I do, yes.

23 Q. What is it?

24 A. Well, this was a grant proposal for refugee
25 student initiative grant.

1 Q. And was there anything in this proposal
2 relating to the McCaskey International School that
3 you --

4 A. Yes. Yes, actually that was the first time
5 I learned about it was when I read this, yeah.

6 Q. And did that description of the program
7 align with the other documents that you received that
8 described the international school at McCaskey?

9 A. Yes, it appeared to, yes.

10 Q. That's all I have on that document.

11 A. Okay.

12 Q. Okay. Is there any research that supports
13 some of the statements that you have made with regard
14 to what SLIFE would benefit from in terms of being in
15 a sheltered instruction model? Is there any research
16 that supports that?

17 A. Yes, the research --

18 Q. And what is that research?

19 A. Yeah. Well, Short (ph) and Boyson (ph) are
20 well known for talking about this population within
21 the newcomer population, the under schooled --
22 everybody uses slightly different terms, but under
23 schooled immigrants who need to have a different
24 approach and be in a different program from other
25 newcomers. And they even talk about the other

1 learners and issues that they face because they have a
2 shorter time to graduate. That's in the literature as
3 well.

4 Q. And what does it say would be beneficial for
5 these students?

6 A. Well, what it explains -- and I'm just
7 referencing them, but this is throughout the
8 literature, is that the best approach is to lay the
9 foundation slowly because once they have that
10 foundation, then they can join the other English
11 learners and then they can progress. And many of them
12 can progress at the same pace as the other learners,
13 if they're given the proper foundation, even though
14 they were SLIFE originally, but they really need that
15 year long start on their own and then they can
16 achieve. And in fact, there is a school in Boston. I
17 visited the school and it was just highlighted in
18 research. It was a Carnegie foundation out of
19 Stanford, identifying six high schools that had done
20 the best job. It says schools we can learn from. Six
21 schools that had done the best job on measures of
22 success for English learners, getting them graduated
23 meaningfully with scores on a standardized test and
24 such.

25 And one of those schools was the newcomer

1 academy. It's the Boston International School and
2 Newcomer Academy, BINCA they call it, and in their
3 graduation class, I believe it was 2014, full 20
4 percent of the students were SLIFE, had been, they
5 weren't SLIFE when they graduated, but when they were
6 admitted they were SLIFE. And so they can graduate
7 and they can do well.

8 Q. And looking at the Phoenix program model,
9 what would you say are the features of it that are not
10 supportive of SLIFE, that are not supporting their
11 ability to gain an education?

12 A. Well, first and foremost, they're not
13 getting enough language, because they need more direct
14 instruction in English, that's the number one. The
15 other is that I feel like in a way -- I mean, I feel
16 like, that when they're in their content classes with
17 native speakers, and they're not -- as we heard in the
18 testimony yesterday, they're not understanding what's
19 happening, they're really not progressing, they're not
20 moving forward and it's an accelerated model, but in a
21 way it's holding them back.

22 Q. And in what way is it holding them back?

23 A. Because they're not actually learning the
24 material. And so if they had been in McCaskey where
25 they were getting comprehensible material, material

1 that they understood, then they would be moving
2 forward and learning the content. See, I think the
3 key here --

4 Q. Yes.

5 A. Not --

6 (Requested proceedings concluded at 2:09:30 p.m.)

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2
3 I, Sheila G. Orms, certify that the
4 foregoing is a correct transcript from the official
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23
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&	167:2 172:3	35-39 3:11 5:21	8:05 15:10
& 2:3	200 76:4 90:1 122:22	36 3:3 5:10,17	9
0	2003 57:24	37 5:10,17 137:7,11	9 5:9,16 53:11 76:20 76:21 79:24
03881 1:3	201 2:4	38 5:10,17	93 62:15 66:14 68:2
1	2011 11:16 82:15	39 5:10,17	96 68:2,2 70:19
1 43:7,7 108:1 136:3 136:23 137:2,3,8 140:23	2011/2012 21:7	4	98 70:19
1-888-777-6690 1:25 2:25	2013 11:16 32:5 34:7 36:12 38:2,3,8 123:1	4 5:8,16	9:42 1:5
10 3:3 5:9,16 75:21 76:21 78:18	2014 172:3	4-5 3:11 5:20	a
100 2:3	2015 37:21 38:4 123:2	40 15:21	a.m. 1:5
11 53:11	2016 1:4 37:18 174:19	400 1:15	aaert 174:17
12 35:23,23 60:9 89:23 128:12 143:21	20s 15:21	41 3:11 5:10,17,21 109:12 110:8	abc's 20:12
12:28 142:17	21 5:9,16 33:6 52:9 52:23 55:10,12 94:2 113:21 118:4,19 167:3,9,25 168:7,14 169:3	445 161:25	ability 17:24,25 106:16,20 160:13 172:11
12:31 141:22 142:12	22 79:22	45 3:3	able 17:5,25 18:3,5 18:6 35:6 40:11 43:16 48:22 49:1 67:12 81:17 100:5 126:3 133:18 135:11,14,17 142:5 147:2 151:19
12th 116:16,24	23 106:24	5	absolutely 54:25 72:24 91:1 99:7 102:25 106:3,21,23 107:3 121:8 126:23 128:10 136:22 150:14 166:1 168:18
13-1301 167:24	25 3:11 5:9,17,20 169:6,18,19	5 3:11 5:8,16 52:16	abstract 169:9
1315 1:15	26 116:16	50 3:3 147:7,8	academia 80:4
15213 1:21	267 158:11	500 83:17	academic 39:23 83:11 105:4 112:12 131:6 134:22 135:25
17 55:10,14 94:2 113:21 118:3,19	27 107:25 111:16	57 3:4	academically 119:19
17011 2:4	28 5:9,17	5:16 1:3	academy 11:13 17:14 19:16 21:20 22:2,7 33:13,14 40:3,3 47:5,17 50:7 50:19 54:14 116:5 172:1,2
18 1:4 5:9,16 58:10	28-31 3:11 5:21	5:48 116:20,22,24	
18-21 3:11 5:20	29 5:9,17	6	
1800 1:24 2:24	29th 9:11,12	6 168:7	
1801 1:24 2:24	2:09:30 173:6	60 69:4	
18th 1:11	2:11 1:5	60173 1:18	
19 5:9,16 174:19	3	607 174:17	
19102 1:18	3 15:11 33:6 82:3	7	
19103 1:12,22,24 2:24	3,000 64:16	7 5:8,16 23:5,10,17 43:7,9,12 44:11	
19107 1:16	30 5:9,17	7-10 3:11 5:20	
1:30 142:14	3000 1:12	702 84:13	
1:32 142:17	31 5:9,17	735 57:18	
2	313 1:21	79 161:21 162:2	
2 60:20 82:3 114:6 135:4,5 136:4	33 3:11 5:9,17,21	8	
20 5:9,16 21:9 76:18 132:19 163:20	35 5:9,17	8 5:9,16 15:9 140:23 141:10 143:5	
		80 15:3 60:14	
		80,000 64:17	
		82 114:6,6 115:12 121:18	
		87 62:15	

<p>accelerate 127:9</p> <p>accelerated 13:16 13:18 14:23 16:14 17:15,22 18:11 21:13 36:13 54:21 118:11 119:2,13 120:1 121:10,23 122:1 130:17 172:20</p> <p>accelerating 126:14</p> <p>acceptable 57:8</p> <p>accepted 95:21,25 96:9 120:21 126:25 132:14</p> <p>access 21:12 102:3 102:16,18,20,22 103:2,9,16 105:15 105:15 106:17,22 130:15 132:13 136:17 144:9 150:13 160:13</p> <p>accessing 140:21</p> <p>accommodate 160:25</p> <p>accommodating 153:3</p> <p>accommodation 140:18</p> <p>accommodations 159:10 160:22,23</p> <p>accomplish 30:21 103:10</p> <p>accomplished 132:6</p> <p>accorded 86:2</p> <p>account 52:14</p> <p>accountability 93:23</p> <p>accountable 92:16 92:25 93:16</p> <p>accrue 13:19 15:1</p> <p>acculturation 99:13</p> <p>accurate 50:8 93:1 115:13 174:12</p> <p>aces 37:11</p>	<p>achieve 171:16</p> <p>achievement 108:21 112:12</p> <p>achieving 92:1</p> <p>acknowledge 157:11</p> <p>aclu 1:17,20</p> <p>acquisition 72:22 73:1 74:13 84:4 123:4</p> <p>acronym 84:5</p> <p>acronyms 97:9</p> <p>act 168:8</p> <p>action 9:17 24:24 49:16,23 110:14</p> <p>actions 24:12</p> <p>activities 46:7 65:15</p> <p>actual 9:9 22:16 103:5 122:10</p> <p>adapt 67:13</p> <p>adapted 140:10</p> <p>adapting 17:14 67:15 99:14</p> <p>add 93:4</p> <p>addendum 9:20</p> <p>adding 129:14</p> <p>addition 60:11 110:15 114:13 115:10 157:21 160:9</p> <p>additional 46:10</p> <p>address 9:14,23 57:16,17 86:5 125:25 157:8</p> <p>addressed 8:23 26:15 126:2 127:3</p> <p>addresses 122:7</p> <p>addressing 146:10</p> <p>adequate 121:9</p> <p>adjunct 12:25 58:23 75:10,13</p> <p>adjust 153:7,15</p> <p>administer 109:24</p> <p>administration 46:9 69:22,23</p>	<p>administrative 58:5</p> <p>administrators 17:17 85:13,14 89:18</p> <p>admitted 5:18 57:6 168:2 172:6</p> <p>adopt 110:3,4,6</p> <p>adopted 108:24 110:8 111:7</p> <p>adults 71:8</p> <p>advancing 78:7</p> <p>advantage 51:21,22</p> <p>advice 91:9,13</p> <p>advised 166:13</p> <p>affect 160:24</p> <p>affective 106:5,8,16</p> <p>affiliations 83:21</p> <p>african 19:19</p> <p>age 52:8 55:10,12,14 89:25 97:18 98:1,8 100:6,7 145:13,16 165:18 167:25 168:14 169:3</p> <p>ages 33:6 52:11 113:20 168:6</p> <p>ago 13:9 86:23 89:2 96:21</p> <p>agree 32:9 109:24</p> <p>agreed 5:1</p> <p>ah 70:20</p> <p>ahead 68:15 111:1 113:3 114:3 152:15 152:19 154:19</p> <p>air 120:2 131:24</p> <p>airplane 122:3</p> <p>al 1:3</p> <p>alembe 165:24 167:2</p> <p>align 170:7</p> <p>allentown 1:5</p> <p>allow 7:14 86:5 166:18</p> <p>allowed 16:19 28:23 36:3 95:7</p>	<p>alma 70:14</p> <p>aloud 143:19</p> <p>alphabet 19:7 100:16</p> <p>alphabetically 163:2</p> <p>alternative 12:18</p> <p>alternatively 98:24</p> <p>amazing 129:17</p> <p>amount 7:24 17:6,8 52:10 124:19,21 125:8 139:8</p> <p>analysis 60:1 70:6</p> <p>analyze 105:3</p> <p>anderson 57:18</p> <p>answer 20:10 118:14 166:9,11,24</p> <p>answering 163:19</p> <p>anticipate 137:2 151:24 156:6 159:25</p> <p>anxiety 106:15</p> <p>anybody 152:2</p> <p>anyway 8:4</p> <p>apologies 60:20 131:14</p> <p>appalled 63:15</p> <p>apparently 78:3 102:23 111:16</p> <p>appearances 1:9 2:1</p> <p>appeared 31:24 170:9</p> <p>appears 138:25</p> <p>applied 12:13 40:15 40:21 80:20</p> <p>appointment 62:3 62:12 74:1</p> <p>approach 45:11 60:16 63:11 107:2 121:11 127:9 137:22 141:5 163:25 169:13 170:24 171:8</p> <p>approaches 69:25</p>
---	--	--	--

<p>appropriate 94:3 100:7,7 113:5 127:7 127:8,9 142:8 144:9 161:18 163:16 164:3</p> <p>appropriately 92:2</p> <p>approved 174:9</p> <p>approximately 15:10 21:9 22:7,8 33:22 49:21 69:2 76:1 83:2,15</p> <p>arch 1:11</p> <p>area 74:15 75:14 87:1 93:25 121:22 123:21 124:11 127:24 140:7 149:22 156:19,20 156:22</p> <p>areas 73:19,20,21 80:2 95:3 98:20 108:15 123:7 125:23 140:1,7 149:25 157:15 164:21</p> <p>arm 27:17 48:22 68:12</p> <p>arrived 18:12 26:21 113:21 148:8</p> <p>arriving 145:16</p> <p>art 20:6</p> <p>article 107:13,14,20 112:6</p> <p>articles 80:5 82:8,21 83:3 84:3,6</p> <p>arts 12:2,18 16:24 16:25 34:20 73:24 73:24</p> <p>asked 48:12 51:2,9 65:15 77:5 91:23 93:6 113:14,16 166:9</p> <p>asking 85:23 120:2</p> <p>aspects 79:5</p> <p>assault 43:20 48:14</p>	<p>assess 69:3 113:15 113:23</p> <p>assessed 76:7</p> <p>assessing 68:17 168:23 169:8</p> <p>assessment 69:18 97:5 108:11 117:24</p> <p>assessments 69:18 76:9 108:20 109:25 124:17</p> <p>assign 17:1</p> <p>assigned 33:14</p> <p>assimilate 20:14</p> <p>assist 39:22 40:2 155:9</p> <p>assistance 39:17 68:14 110:16 144:10</p> <p>assistant 37:9,15 62:12 75:19</p> <p>assisted 128:7</p> <p>assisting 95:9</p> <p>associate 58:1 66:19 75:3</p> <p>association 82:23 83:25 84:5 111:3</p> <p>assume 112:3 168:4</p> <p>assuming 112:2 168:4,11</p> <p>assumption 112:2</p> <p>atlantic 1:23 2:23</p> <p>atmosphere 18:4,7,8 19:13,14</p> <p>attacked 48:16,19</p> <p>attempted 48:17</p> <p>attempting 43:20 48:18,20</p> <p>attend 59:14 83:5 168:7</p> <p>attended 34:25 35:1</p> <p>attending 80:13</p> <p>attention 13:11 60:14 76:20 82:3 106:24 107:25 111:15 114:5 138:6</p>	<p>attorney 5:11 6:3 9:3 36:19 45:5 48:12 49:17 50:3 51:14 55:2,5 56:1 84:20</p> <p>atwood 1:21</p> <p>audit 92:23</p> <p>august 1:4 9:11 37:21 116:16,24 174:19</p> <p>aura 45:22 51:1,9</p> <p>australia 73:6</p> <p>author 107:14</p> <p>authored 83:3</p> <p>available 82:7 111:25</p> <p>avoid 101:14</p> <p>aware 24:6 41:9 46:20 47:16 93:15 128:14</p> <p>awful 30:23 31:8,10 31:13</p> <hr/> <p style="text-align: center;">b</p> <hr/> <p>b 3:8 53:15</p> <p>bachelor's 11:6,8</p> <p>bachelors 11:4 59:12</p> <p>back 20:4 27:25,25 30:15,17 50:10 60:6 62:24 68:1 70:8,12 70:14 75:24 76:17 79:20,22 105:1,25 106:12 124:3 129:13 133:7 142:13 154:12 159:15 161:1 172:21,22</p> <p>backfires 127:13</p> <p>background 11:3 16:11 19:2 59:7 64:24 79:18 102:2 112:17 128:25 148:22,23</p>	<p>backgrounds 67:10</p> <p>bad 47:22,23,24 51:8</p> <p>ballpark 76:2</p> <p>barriers 54:12,23 55:11 94:4 113:18 118:5,21 121:6,16 121:24</p> <p>based 39:12 51:20 54:18 68:23 120:9 127:15 133:2 139:9 139:11 143:22 144:7 156:13,15,17 158:2,2 164:5</p> <p>basic 99:23,25 102:23,23 131:16 131:19 134:22 136:2</p> <p>basically 14:6,11 22:25 157:21</p> <p>basis 11:22 90:3 118:24 119:1,4,16 122:4 155:24</p> <p>bay 62:9 63:20 64:3 64:10,12,16,18 65:25 66:11 80:16 87:1 93:22</p> <p>bear 161:24</p> <p>beat 48:5</p> <p>becoming 23:4</p> <p>began 22:9 66:24</p> <p>beginning 71:22 138:25 139:2,6 144:5 154:8</p> <p>behalf 46:14</p> <p>behaving 25:25</p> <p>behavior 21:21,22 22:20 23:8 24:15,16 25:17 26:3 30:11 32:21 36:13 46:19 48:1 49:11</p> <p>behavioral 16:9 21:23 22:10,15 24:4 24:10 46:21 47:6,10</p>
--	--	--	--

beliefs 143:25 believe 6:10 8:13 28:18 38:23 43:21 44:11,19 46:1 47:2 47:5 54:21 88:8 93:4 119:23 138:23 166:9 172:3 belong 106:4 161:12 165:18 belonging 106:1 belongings 28:22,23 40:11 beneficial 145:23 165:11 171:4 benefit 52:5 149:16 149:17 164:25 165:5,6,22,24 170:14 berated 31:14 best 53:9 99:11 119:23 167:7 171:8 171:20,21 better 77:23 93:8 124:1,11 125:24 beyond 54:16 110:11,25 119:5 big 26:3,5 104:24 149:17 bilingual 58:19 68:13 83:25 157:5,6 157:14,22 binca 172:2 binder 4:20 106:25 141:10,17 169:11 169:11 binders 60:15 107:5 bit 8:23 25:8 29:6 38:21 40:9 66:5 91:12 96:15 132:25 136:1 154:15 block 164:23 blocking 106:16 124:16 board 29:16 68:9 84:1 132:3	boards 91:3 boces 68:9,9 body 27:13,16 boison 126:7 book 17:5 82:16 booklet 4:16 books 16:15 80:5 82:4,7,10 98:22 born 19:3 boston 66:16,20 67:23 77:13,17,25 171:16 172:1 bottom 45:21 box 1:18 boxes 53:9 boy 19:25 20:1,7 49:1 boys 19:24 26:25 27:1 49:1 boyson 170:19 bra 27:18,20,20 brand 19:12,13 20:14,14 131:23 breadth 84:18 break 7:9 43:20 56:4 142:3,9,13 164:8 breakdown 64:17 breakfast 29:11 breaking 82:11 bridging 136:9 brief 9:2 briefly 22:20 165:25 bring 16:15,17 27:8 40:11 46:10 71:15 81:25 154:9,12 bringing 167:12 broad 99:21 118:25 broke 23:12 bronx 78:23 94:8 brought 144:1 browder 124:22 browder's 122:10 122:12,14	brown 4:18 114:23 bruises 25:4 budgeting 90:13,14 90:23 build 120:5,5,6 129:18 156:20 building 26:22 46:5 50:15 102:2 120:13 120:13 135:25 buildings 47:4 85:10 built 100:23 bulletin 82:24 108:3 111:18 112:4 127:4 127:6 bulletins 108:4 business 57:16,17	capacity 12:7 69:2 69:16 70:2 71:12 77:24 78:8 95:12 care 22:16,18,21,22 24:10 40:25 42:12 42:21 47:13 career 50:14 76:5 89:22,22 carnegie 171:18 carried 24:11 carry 28:25 47:1 case 4:10,24 6:10 7:7 9:1 47:1 79:25 96:14 113:9,9 114:25 116:11 117:21 131:14 136:19 164:25 165:2,3 166:15 cases 117:15 cast 131:3 catching 108:2 categories 97:2,6 99:21 category 97:6 99:8 cell 27:19 center 1:14 2:3 71:2 144:13 ceo 94:10 certain 8:10 17:1 108:23 117:21 120:6 144:17 166:14 certainly 6:3 8:23 18:2 28:19 45:8,12 54:4,8 57:9 60:18 137:23 141:7,21 152:6 169:15 certificates 60:8 certification 8:12 79:20 certifications 11:11 174:1 certified 20:17,20 20:21 60:9 74:19 79:17,17,25 153:13
		c	
		c 4:1 cafeteria 19:12 29:11,22 calculated 120:19 call 4:3 7:21 9:24 10:2,8 56:2,4,7,10 71:22 72:9 97:7 98:9 104:11 131:3 142:19 150:25 163:20 172:2 called 4:7 22:16 29:12 37:11 77:1,14 77:19 82:25 97:15 105:4 142:21 calling 6:5 56:3 132:17 camelot 11:20,23 12:12 14:2 21:24 22:1,4 24:3 25:19 29:16 32:4 46:14 116:4,6 158:24 camp 2:4 camps 19:4 65:13 98:25 campus 47:3 71:19 71:20 158:16	

<p>153:14 156:18 174:17</p> <p>certify 174:3,11</p> <p>cet 174:17</p> <p>cetera 63:9 141:25</p> <p>chair 71:21</p> <p>challenges 54:10</p> <p>challenging 79:7</p> <p>chambers 4:19</p> <p>change 36:12 39:12 117:8,9</p> <p>changed 92:5 117:17,18 139:5</p> <p>changing 139:5</p> <p>chaotic 19:16 41:6 41:11</p> <p>chapter 1:20</p> <p>chapters 17:2</p> <p>characteristics 97:21</p> <p>characterized 24:15</p> <p>characters 100:17</p> <p>charge 47:10</p> <p>check 26:17 53:9</p> <p>checking 34:3,3</p> <p>chemistry 130:13</p> <p>chief 4:24</p> <p>child 23:20,20,21,21 23:22,22 52:11 167:21 168:5</p> <p>children 23:13 90:8 105:21 126:1 147:12</p> <p>chinese 100:15</p> <p>choice 104:13 109:6 144:7</p> <p>choose 109:8</p> <p>circled 29:21</p> <p>circumstances 98:13 99:12</p> <p>citizen 72:19</p> <p>city 61:8,17 64:10 64:12 88:5,11,12,15</p> <p>claims 111:7</p>	<p>clarify 23:25 72:3 91:22</p> <p>class 8:12 9:16,17 9:18 15:2,4,18,20 16:4,18,23,24 17:7 17:10 18:15 24:7 25:7 29:23 30:6 34:5 35:7,24 36:1 38:23 40:12,18 49:3 53:4,23 54:3,5 63:12 102:22,24,25 103:2,3 108:10 124:4,6,12 148:12 148:25 153:25 154:12,14,25 155:9 155:24,25 156:3 159:11 163:14,24 172:3</p> <p>classes 12:9 13:6 15:5,7 17:19 18:18 18:20 30:19 32:1 34:22 63:23 69:21 89:16 123:20 124:8 125:4 147:22 150:2 150:21,22,24 151:1 151:6,24 154:6 159:8 163:14 164:10,11 172:16</p> <p>classroom 16:25 17:1 42:1 46:11 48:17 63:6 65:20 70:11 79:4 82:17 130:7,13 132:8 147:16,21</p> <p>classrooms 24:5 79:19 80:1</p> <p>clause 9:20</p> <p>clear 96:8 124:7</p> <p>clearly 164:16 165:7 165:7</p> <p>clerk 4:2 56:14 142:16,18</p> <p>climb 25:20</p> <p>clip 20:6</p>	<p>close 49:15,19 144:8 155:17</p> <p>closer 151:12</p> <p>clothing 106:1</p> <p>cognitive 147:3</p> <p>cohort 149:12 150:11</p> <p>cohorts 147:11</p> <p>coleman 2:3</p> <p>collaborate 112:14 149:19</p> <p>collaborating 59:2</p> <p>collaboration 144:13 155:18</p> <p>college 12:22 37:9 37:13 59:9,12,14 60:7 61:14,22 70:15 70:20,23 71:6,7 72:2 74:5</p> <p>colleges 75:13</p> <p>colloquy 59:25</p> <p>colored 25:21</p> <p>columbia 59:9 70:15</p> <p>column 162:11,15</p> <p>combination 66:22</p> <p>combined 160:6</p> <p>come 12:10 19:11,19 30:8,9 36:5 41:18 41:25 50:15 65:23 66:10,24 68:20 69:14 70:8 73:6 91:8 99:11 103:19 105:6,13 128:17 129:1 135:23 138:11,20 142:13 154:8 155:9</p> <p>comes 6:1 87:17 131:18 135:20 166:17</p> <p>comfortable 20:13 81:22 106:14 129:2</p> <p>coming 8:14 16:10 19:3 39:10 54:13 81:16 99:10 104:9 106:3 136:15</p>	<p>139:14 157:1</p> <p>comment 152:16</p> <p>communication 12:2,18 16:24,25 34:20 62:12 144:9 154:17</p> <p>community 33:4 47:17 50:7 61:22 70:20,23 71:8,8 72:2,14 143:24 144:6,11 145:6 149:13,15</p> <p>company 1:23 2:23 22:17 94:15</p> <p>compare 14:18 81:6 105:3 149:19</p> <p>compared 36:14</p> <p>comparing 48:3</p> <p>complaint 9:21</p> <p>complete 142:3,6 152:2</p> <p>completed 61:7</p> <p>completely 105:11</p> <p>complex 134:6 135:13</p> <p>complexity 133:25</p> <p>compliance 58:24 91:14 93:17 116:15</p> <p>compliant 22:24</p> <p>complicated 135:15</p> <p>comply 77:22</p> <p>complying 23:1 91:15</p> <p>component 25:16 73:2 99:24 100:1,23 100:25 105:12,14 122:2 164:22</p> <p>components 26:1 73:14 127:14 139:24</p> <p>composition 13:1</p> <p>comprehensible 172:25</p> <p>comprehensive 76:14 108:22</p>
--	--	--	---

<p>computer 127:15 128:4,7,15 129:5</p> <p>computers 127:19 128:2,11</p> <p>concept 39:5 103:6 132:6 140:16 149:25</p> <p>concepts 147:1,3</p> <p>concern 9:7</p> <p>concerning 66:3 68:18 117:7</p> <p>concerns 119:12 127:16</p> <p>concluded 125:3 173:6</p> <p>conclusion 118:10 119:17 167:18</p> <p>conclusions 117:23</p> <p>conduct 114:11</p> <p>conducted 76:13 114:14 123:1 144:12</p> <p>conferences 66:6,7 80:13 83:6,10</p> <p>confirm 117:20 169:7</p> <p>conforms 144:20</p> <p>confront 26:7,11</p> <p>confrontation 26:9 26:14,14,16,16</p> <p>confronting 26:2,4 26:4,17 54:23 121:6</p> <p>confuse 104:16</p> <p>connecting 144:10</p> <p>connection 81:14</p> <p>consent 77:20</p> <p>considered 84:8 114:7,10 115:14 121:19</p> <p>consortium 108:9 108:10 115:25</p> <p>construction 161:2</p> <p>constructions 134:5 134:15</p>	<p>consult 7:12 116:1</p> <p>consultants 94:8</p> <p>consultation 7:14</p> <p>consultations 110:18</p> <p>consulted 90:11 91:19 94:15</p> <p>consulting 76:19,21 76:23,24 77:8,11 78:20 88:18,20</p> <p>contd 2:1 96:11</p> <p>content 73:19,21 74:15 101:14,22 102:12,13,16 103:16,22,24 105:16 119:21 123:5,7,17,21 124:11 125:6,10,23 140:1,6,7,9,11,12 143:22 145:2,4 147:1,5,8,22 148:12 148:23 150:7,8,10 151:7 154:5,10,14 154:17 155:9 156:13,15,17,22,25 157:1,15,20 160:13 163:14 164:10,20 165:14 172:16 173:2</p> <p>context 35:19 48:14 59:3,20 72:25 73:10 143:8</p> <p>continue 4:9 50:14 80:10 142:24</p> <p>continued 50:10 80:6,11</p> <p>continuum 98:6,7 123:17</p> <p>contracted 11:24</p> <p>contrary 126:22</p> <p>contrast 105:3</p> <p>controlling 134:6</p> <p>conversation 36:4 49:14</p>	<p>cooperative 68:10</p> <p>coordinate 150:1</p> <p>coordination 150:5 150:6 155:17</p> <p>coordinator 39:23</p> <p>copy 65:17 116:14 116:21 141:11,17</p> <p>corner 41:20</p> <p>corporate 2:3</p> <p>correct 5:3 7:19,22 38:4,5,8,9,20 39:2 41:7 43:1,17 44:8 46:16 59:4 60:12 67:19 86:4 87:2 88:4,19 89:24 90:8 91:10 102:7 120:10 120:11 139:12 149:3 151:13,14 157:24 158:19 174:4</p> <p>corrective 49:16,23 110:14</p> <p>correctly 134:16</p> <p>council 86:20 87:15 87:16,17</p> <p>counsel 4:17 5:23 10:7,21 45:11 116:15 166:8 168:19</p> <p>counsel's 9:5,15 152:5</p> <p>counseling 32:20</p> <p>counselor 10:4 36:19 45:5,8,12 50:2 55:19 56:8,25 94:21 95:12,20 96:10 116:18 117:4 137:9,23 141:7,21 142:23</p> <p>counsels 9:13</p> <p>count 83:18</p> <p>counties 88:13</p> <p>countries 72:12</p> <p>country 19:13,19 73:5,8 96:22 98:13</p>	<p>98:20 103:19 104:9 104:10 146:5 161:12 165:16</p> <p>couple 86:23 134:25 135:13</p> <p>course 23:12 62:23 89:21 90:10 100:15 131:24 132:2 146:7</p> <p>courses 58:10,23,24 73:18 74:12,13,14 79:23 101:18 149:7 151:7</p> <p>court 1:1,23 2:23 4:3,4,7,7,14,25 5:5 5:11,15 6:3,9,17,20 7:1,10,17,20,23 8:5 8:8 9:3,7,12 10:1,4 10:7,10,12,15,20 36:18 45:4,8,11,12 50:2 51:14,17,20,25 52:7,14,18,22,25 53:3,18,22 54:9,18 55:1,5,18,22,25 56:7,12,17,24 57:9 60:18,21 84:20,23 85:24 86:4 94:21,24 95:10,11,20,24,25 96:6,9 107:3 116:17 116:22 117:1,4 137:9,12,23 141:7 141:12,18,21,23 142:8,12,19,20,21 152:9 162:12 166:5 166:12,15,22 167:1 168:4,10 169:15</p> <p>court's 55:3,6 167:23</p> <p>courtroom 5:2 130:6</p> <p>cover 14:19 21:10</p> <p>coverage 155:4</p> <p>covered 15:22 17:18 155:1</p> <p>covering 154:25</p>
---	---	---	--

<p>create 60:25 created 66:4 creates 162:21 credit 13:25 53:25 118:11 119:13 credits 13:19 15:1 58:10 79:22,24,24 cross 3:2 6:13,16 8:3 36:19,22 cultural 20:12 81:7 143:25 144:1 145:24 culturally 82:18 culture 36:8 65:8 72:11 73:3,5,9 81:17 99:14 128:18 145:25 146:2 cultures 67:17 81:5 129:15 cumulative 103:7 current 57:20,22,25 71:16 74:11 75:3 82:25,25 currently 13:8 curricular 46:10 curriculum 14:5 15:12,15,17,17,23 16:13 17:14,18 21:20 35:6,8,10 39:12 52:1 53:4 78:4 90:12,21 97:4 101:24,25 102:3,5,6 130:12,15 132:13 150:1,13 155:4 156:20 curse 23:22 cursing 30:18 cv 1:3 76:20 78:18 82:4</p>	<p>darkness 129:13 data 70:1,2,6 121:3 date 9:9 45:23 66:9 122:25 dated 174:19 dates 111:24 day 6:20 7:6,8 11:21 11:22 13:6 15:4,6 15:11 17:3 26:20 27:5 29:1,4,18,19 29:20,24 30:6,19 31:12,13,15 32:2 53:16 60:19,20 88:20 101:14 107:7 107:7,25 114:6 116:23 125:5,11,15 125:19,23 127:19 137:8 138:19 140:23 145:3 149:14 154:1 155:24 157:18,19 161:22 163:12 169:6 days 44:24 114:18 117:11 de 44:2,11 deadline 8:14,15 35:14 deadlines 8:11,20 deal 64:13 77:6 dealing 63:25 77:2 87:16 debrief 75:23 debriefing 69:21,22 decades 96:25 december 38:2 decide 8:22 decided 40:7 decides 8:25 decontextualized 104:12 decree 77:20 defendant 2:2 defense 4:17 5:23 6:1,23</p>	<p>defer 8:4 define 105:3 definitely 8:21 16:21 18:25 26:13 161:17 definition 97:25 99:7 degree 11:4,7,9 degrees 123:16 deliver 39:18 166:9 delivered 89:22,25 105:17 119:7 delivery 88:23 90:19 148:4 demonstration 129:7 dennehey 2:2 department 61:15 62:13 68:8 71:20 72:2 78:24,25 93:13 93:14,17 depended 15:20 69:12 depending 7:6 145:19 depends 101:20 128:3 156:4 deposition 4:16,20 4:21 5:2 8:6 depth 67:23 69:6 110:13 describe 22:20 23:7 26:6,24 35:3 48:14 97:20 107:16 described 31:25 32:20 76:8 144:16 144:24 145:1,8 146:10 159:6 164:2 170:8 description 115:13 147:23 170:6 design 58:23 108:11 designated 5:8 designations 4:16 4:22 8:6</p>	<p>designed 14:23,24 40:18 128:8 165:19 determine 113:17 121:5,10 136:15,20 determined 144:12 detriment 16:21,22 develop 77:5 81:11 144:5 developed 80:12 81:24 96:24 108:25 developing 46:6 80:11 136:9 160:3 development 14:3 20:24 44:21 147:3 dictionary 35:17,18 die 142:7 difference 72:13 157:2 different 25:21 35:20 36:6 39:10,11 46:17 50:7 64:1 65:1,21,22 67:10,17 69:24,25 72:1,21 76:12 79:23 80:2 97:1,2,14,15,16 102:19 104:8,25 108:5 120:15 130:6 131:25 133:8 134:13 139:7,20 148:12,17 149:24 151:9 153:11,20 156:15 157:19 160:11 162:19,19 168:17 170:22,23 170:24 differentiate 148:16 differentiated 39:6 39:19 160:14,15 differentiating 148:20,21 160:19 differentiation 148:25 161:3 differently 97:3,4 difficult 147:5 154:15</p>
d			
<p>d 3:1 4:1 daily 123:24 162:12 damaris 94:17</p>			

difficulties 68:23 difficulty 67:6 93:5 dire 84:24 direct 3:2 10:22 38:15 46:2 57:12 58:18 82:3 96:11 101:1,2,4 124:4 137:4 138:6 139:8 140:2 142:4,6,14,24 154:4 166:10 172:13 directed 22:1 58:21 68:21 71:10 directing 111:15 directly 152:7 director 29:18 30:8 58:2,16 66:22 71:2 71:4 directors 59:1 disappointed 30:11 discern 42:4,13 disciplines 59:2 disclose 124:23 discourse 134:1,4 discretion 167:23 discuss 24:25 94:18 discussed 69:24 90:18 discusses 143:18 discussing 107:17 dismiss 8:15 disruptive 30:7 dissertation 59:21 59:24 dissonance 81:7 distance 42:5,19 distinction 156:17 distress 91:16,20,22 district 1:1,1,5,8 11:24 12:19 14:4 15:14,23 17:14,18 21:21 33:10 37:2,13 48:12 49:16 68:18 68:20 69:3,12,13 70:1 85:4,6 89:8,10	89:14,15 93:15,23 94:16 95:9 114:4 116:3 121:1 140:24 141:13 143:10 158:4,14 163:21 168:6,7 169:9 districts 66:25 67:2 67:14,23 68:14,22 69:4 76:22 78:21 88:8,12,13,18,23 89:1,5 93:21 110:14 110:17 112:5 132:17 163:20,22 163:23 diversity 144:1 doctorate 59:8 61:7 document 45:10,16 45:23 112:24 137:17 138:7,10,11 141:3 143:6,11 158:8 159:1 164:14 169:8,21 170:10 documentation 89:18 158:3 documents 57:3,6 85:9 114:1,1,9,13 115:13 116:1,4,4 117:10,14,16 121:2 121:2 133:2 143:9 158:6 164:5 170:7 doing 19:23 25:25 27:4 38:10,12 43:10 48:23 63:15,16 68:24 75:25 78:3 83:11 87:1,19 124:16 154:10 156:23 157:18 door 23:21 48:25 doses 146:7 double 14:6 81:19 120:16 downs 27:14,15 28:11 40:17 downstairs 49:7	dr 2:3 6:13 56:10 57:14 84:13 85:1 86:8 94:17 95:6 96:13 107:9 116:14 137:17 138:11 143:3 144:15 168:22 draw 76:20 107:25 168:11 drawn 167:18 driven 46:7 54:15 dually 153:13,14 due 116:23 117:12 dumb 147:5 duties 12:6 58:7	103:16 104:5 105:5 107:18 118:6,22 122:21 123:14 126:20 127:5 157:7 157:14 167:22,24 167:25 169:3 172:11 educational 11:3 18:24 19:4,9 20:11 59:6 68:10 71:2 94:7 119:5 120:10 120:20 121:13,21 edward 1:7 effective 63:8,9 94:5 effort 52:3,7 54:9 egs 1:3 eight 83:4 162:12 either 6:7 16:20 17:23 33:5 41:10,16 98:9 101:10 155:13 157:16 elbow 43:10 electronic 117:3 174:5,17 elementary 16:7 145:14 154:3 eligibility 144:11 ell's 105:6,8 ells 21:11 131:1 153:15 160:20 163:21 165:16 elucidating 141:1 embellished 86:1 embraces 111:8 emergent 133:15 135:3,9,12,18 136:4 139:3,6 145:19 160:3 emerging 139:3 emersion 150:19 emphasis 146:2,3 157:2 employed 13:8 employee 22:11,12
		e	
		e 3:1,8 4:1,1 10:19 56:22,22 113:10 116:24 earlier 32:12 40:10 124:18 139:3 146:4 148:20 early 75:17 131:17 earning 61:16 easily 9:2 east 41:11 143:21 eastern 1:1 ecro 2:5 educate 84:9 educated 64:25 84:3 87:16 104:6 147:18 educating 112:8,20 education 1:14 11:5 12:18 19:1 20:11,12 33:1 34:7,15 37:25 52:11 53:1 58:1,2 58:17,19 61:15 65:11,11 68:8 71:9 81:2 82:12 83:25 84:16,19 86:8,12 88:22 90:4 91:4 93:13,14,18 94:1 95:9,19 96:4,6,17 98:10,11,19 101:11	

employees 22:19 employer 11:18 57:20 employment 32:4 61:3 66:18 80:3 enable 118:3,19 150:12 encouraged 25:12 ended 13:9 15:11 32:5 ends 38:8 endurance 142:1 energies 9:13 engage 62:16 engaged 106:18 engagements 86:13 86:16 england 73:6 english 11:5 12:2,4 16:11,23 18:12,14 18:17,21 19:6,20 20:16,25 21:11,16 28:2,9 31:3,6,7 35:2 35:4,16,18,21 49:2 49:3 53:11,11,17,23 58:14 61:19 65:20 69:9 71:9,10 72:20 73:24,24 79:3,18 84:9 92:1,6 95:14 96:21,23 97:2,11,13 99:15 101:6 103:23 105:8,10 107:16 119:7,20,22 123:23 123:24,25 124:6 125:4,5,12 128:8,13 131:16,17,19 132:20 133:1,8,17 133:19 135:4 136:11,16,21 138:16,21 140:25 141:13 143:4 144:5 145:2,12,17 146:8 146:13,24,25 147:4 147:17 150:16 151:10,23 152:18	152:20 153:1,4,5,7 155:10 157:14,21 158:23 159:3,9,18 159:24,25 160:10 160:16,17 165:13 167:12 171:10,22 172:14 enrichment 144:4 enrolled 55:10,14 enrollment 144:13 ensure 73:15 78:4 81:16 103:13 130:15 140:20 entail 73:1 76:24 enter 99:20 103:20 144:6 entering 67:16 133:6,10,15,16,17 133:19 134:13,19 134:21 136:2,3,23 138:17,21 139:17 139:19,22 143:23 145:1,17 147:20,22 148:17 149:3,10 159:22 160:2,5 161:5,7 162:16,23 164:11 entire 4:21 14:5 76:4 78:24 79:20 111:8 163:12 entitled 161:22 167:14,22,24 168:16 169:2 174:6 entity 11:21 entranceway 19:20 environment 13:20 13:21 105:21 106:19 112:10,11 equal 118:6,21 equally 40:15 41:3 equity 78:2 eric 1:10 4:12 escalate 23:16 44:2 escalation 24:16 44:11	escort 24:6 esl 20:16,20,21 21:3 34:4,8,10 39:20 44:21 54:15 61:19 61:20,21,22 62:2 63:6,19 65:2,3 66:19 68:18 69:19 71:3,5,13,20,23 72:1,3,4,7,13,23 73:2,4,15,17 74:16 74:22 75:16 76:1,7 76:9,10 84:15 88:23 89:23 90:7 95:13,16 96:1 97:9 99:23 100:23 101:1,4 108:14,16,16 110:23 119:14 124:4,8,8,19 125:8 125:13,14,15,19,22 128:16 137:4,8,20 138:9,13,18 139:8 139:16 143:21,22 144:2 146:11 149:5 150:3,7,22,23,24 152:13 153:16,17 154:1,3,4,11,13,17 154:18 155:8,11,12 155:25 156:2,13,15 156:17,18 158:24 159:4,10,13 160:9 161:5,22 163:24 164:10,22 esol 60:9 68:13 74:15 84:1 especially 94:2 103:7 esq 1:10,10,13,14,17 1:19 2:2 essence 155:5,6 essentially 38:7 110:3 132:7 establish 51:25 52:1 established 71:20 115:25	establishing 53:3 estimate 6:14 149:23 estimating 149:22 149:25 et 1:3 63:9 141:25 evaluate 69:3 70:2 91:9 113:23 121:20 evaluated 76:6 94:5 121:5 136:14 evaluating 68:17 88:22 evaluation 89:8 115:14 121:9,10 evaluations 76:9,13 88:3,8 evening 7:12 evenly 40:22 events 33:24 eventually 48:25 66:8 120:8 everybody 9:8 112:14 139:5 170:22 evidence 4:23 5:7,18 7:25 121:4 exact 9:19 14:13 exactly 97:21 144:20,24,25 151:5 158:25 166:16 examination 10:22 36:22 45:14 50:4 55:7 57:12 84:24 96:11 142:24 examine 36:19 example 14:8 41:10 67:11 69:13,15 72:12 77:1 101:23 122:10 129:10 130:18 144:16 148:7 159:21 160:2 167:23 examples 76:21 exceled 46:3,5
---	---	---	--

<p>excellent 163:5 exception 151:14 excitement 66:5 excuse 19:2 34:24 87:6 96:5 166:6 excused 55:20 exercises 104:14 exhibit 5:20 60:14 106:24 107:25 111:15 114:6 115:12 121:18 137:7 140:23 141:10 143:5 158:13 161:21 169:6 exhibits 5:7,12,16 162:5 exists 164:16 165:9 expanding 136:9 expect 6:23 98:8 135:9 156:9 expected 65:16,17 119:20 159:1 experience 12:15 13:12 18:10,13,23 19:15 24:3 35:3,25 36:2 51:20 54:19 79:7 84:18 86:25 90:7 experienced 64:12 experiences 99:10 99:12 experiencing 33:19 expert 6:13 8:3 84:8 84:14 95:8,12,16,21 95:25 96:10 114:7 116:11 152:6,8 expertise 86:17 93:20 95:3 100:22 168:3 explain 15:22 16:1 16:22 27:13 28:10 29:13 62:24 63:5 72:3 108:8 119:23 133:7 136:7 139:20</p>	<p>152:13,17 153:22 explained 159:8 explaining 143:3 explains 171:6 extended 18:8 30:17 extensively 110:20 extent 70:3 121:23 extra 100:8 extremely 166:14 eyes 31:23</p> <p style="text-align: center;">f</p> <p>face 25:5 171:1 faces 31:11 facilitator 144:14 facing 30:16 fact 16:18 52:19 79:8 110:8 111:9 117:19 128:10 132:17 144:25 146:1 159:7 166:8 171:16 factor 128:20 factors 112:9 121:20 faculty 12:25 58:3,5 58:8,9,23 61:13 62:3,11,11,21 65:6 66:23 75:10,13 fair 6:15 110:23 115:13 fall 75:5,6,8 97:2 fallen 14:24 false 104:13,17,19 familiar 11:13,15 13:5,7 53:19 64:8 85:6 94:7,12 105:7 110:22 111:9,12 120:14 126:21 127:23 129:10 130:23 134:9 141:3 156:13 families 144:9 far 16:5 17:23 22:3 22:15 34:9 38:25 46:20 54:14 75:22</p>	<p>134:15 155:4 164:5 fast 18:4 127:13 faster 13:20,25 119:20 fearful 24:17 25:8 feature 147:10 149:16 features 144:8,25 145:7,22 146:18 148:3,10 164:18 172:9 federal 79:11,15 84:13 138:23 feel 19:14 20:13 62:23 81:21 106:4 172:15,15 feelings 24:19 106:16 fellow 75:21 felt 19:4 28:20 30:3 36:8 67:3 female 27:3 feolo 94:10,14 field 25:22 58:11 71:21 72:1 84:14 95:8 96:24 120:11 127:2 128:10 fields 95:22 fight 23:11 fight 41:6,11 figuring 19:8 file 25:15 48:7 filed 8:13,15 fill 6:18 13:5 25:24 53:7 101:16 102:10 120:7 filling 101:18 filter 106:5,8 finally 132:2 financial 91:20,21 find 39:14 92:4 97:18 118:11 123:11 128:11 finding 80:12 124:25</p>	<p>fine 35:13 57:10 92:12 142:10 156:16 finish 7:7 37:24 finished 8:3 50:11 55:12 first 6:1,25 7:3,16 13:3,6 14:12,14,15 14:16,21 19:15 21:6 22:5,24 26:20,21 28:4,14 29:15 58:8 71:1 90:17,24 96:20 99:9,20,22 100:2,20 100:24 103:19,19 104:9,11 106:3 111:23 112:11 113:9 128:6 131:9 133:7,12,20 136:15 137:17 143:13 145:1 154:16 157:20 158:8 165:5 170:4 172:12 fit 35:7 36:8 five 15:5 32:3 83:4 87:20 floor 31:23 47:6 floors 20:8 fluent 60:5 fluid 160:17 fly 24:20 focus 9:13 52:8,19 54:10 69:14 108:4 156:23 focused 9:8 80:15 focusing 51:21 folks 50:16 93:13 follow 15:12 31:3 37:3 109:25 110:2,5 followed 15:14 following 37:25 food 105:25 foregoing 174:4,11 foreign 71:22 72:15 72:21</p>
---	--	--	---

foremost 172:12 forgot 87:6 form 35:6 134:7,8 135:14 149:13,14 formal 19:1 65:10 82:12 84:16 94:1 95:19 96:4,4,6,16 103:16 107:18 122:20 127:5 162:16,18 formalized 155:20 155:21 156:7 formally 97:18 164:15 167:10 former 114:14 forms 13:6 forth 9:20 forward 31:23 56:6 172:20 173:2 found 65:14 79:19 80:19 117:19 118:16 121:15 123:12,18 128:23 foundation 171:9,10 171:13,18 four 31:14 72:9 fourth 138:16 frank 72:11 franklin 37:8,12 66:20 67:2,4,5,5,12 free 53:1 168:16 french 59:19 60:5 60:10 72:6,12 freshman 12:24 friday 8:16 friend 44:18 friendly 22:25 front 19:6 30:16 31:9 103:5 frustrated 30:5 full 10:16 12:11 14:18 43:13 56:19 62:11 75:7,7 79:8 109:20 116:15 132:19 172:3	fully 5:25 163:19 function 77:24 fund 91:5 funded 33:3 further 29:6 36:16 50:3 51:15,16 80:11 g g 1:7 4:1 174:3 gain 172:11 game 167:4 gaps 101:10,16,18 102:8 120:7 123:14 126:19 145:19 general 59:1 134:22 134:25 136:24 157:13,13 generally 71:25 97:17 109:25 132:14 generation 129:16 129:16 german 59:19 60:6 60:10 gesture 43:9 131:13 131:13 gestures 146:22 gesturing 27:13 getting 52:11 94:23 101:19 102:22 146:3 153:18 154:22 165:15 171:22 172:13,25 girl 20:1,1,7 girls 19:24 26:25 27:2,7,17,19,23 give 14:8 29:18 53:15 54:3 78:19 83:6 91:4,9 104:12 122:10 129:10 130:18 135:20,21 167:11 given 7:24 14:3 22:10,11 33:10 34:12 54:8 113:25	133:3 164:6 171:13 gives 64:20 140:6 giving 145:2 glance 14:4 43:8 glasses 12:8 go 17:2,9 20:3 23:9 23:14 25:22 26:25 27:1 29:11 30:17 47:22,22,23 50:10 53:14 66:15 68:15 68:21 70:12,13 73:3 74:2,19 81:20 92:4 92:21 100:17 105:14,25 110:25 111:1 113:3,8 114:3 116:7 119:20 120:5 120:16 127:12 131:15 134:16,18 140:17,23 141:25 152:15,19 158:11 goals 72:19 155:16 goes 6:24 86:6 109:11 130:7,8,8 goggin 2:3 gohungl 126:6,6 going 5:6 6:4,7,13 6:25 7:24 8:19 23:17 29:23 30:21 30:22 32:9 33:24 34:4 35:10 38:18 45:10 48:8 52:2,3 60:2 63:22,22 72:15 72:17,18,20 76:14 77:13 81:7 86:1 91:5 93:22 96:1 100:8,9 106:15 107:8 110:25 113:4 120:12,25 130:18 131:5 134:12,15 141:19,24 147:20 148:25 150:19 152:4,17 154:19,22 154:25 155:10,14 156:22 159:15 160:15 162:6 166:3	166:7,14,17 167:17 168:11 good 4:4,6,11 10:5,7 10:10 36:24,25 56:12 85:1,2 88:1 106:10 110:6 153:1 160:18 163:10 gosh 20:2 grab 29:11 48:21 grabbing 43:10 grad 12:17 61:12 75:19,24 grade 12:1,8,9 16:5 16:8 17:23,25 18:1 27:6 38:25,25 39:1 54:7 63:20 98:1 101:12,15,19,22,24 101:24 102:1,5 119:19 130:12,12 130:13 156:22 grades 25:25 34:3 123:9 143:21 graduate 15:1 53:10 53:13 58:9 74:18,24 75:1,2,18 171:2 172:6 graduated 171:22 172:5 graduates 75:21 graduation 172:3 grammar 74:14 146:24 grant 79:23 169:24 169:25 grants 58:25 79:11 79:11,15 great 35:5 63:2,10 80:16 green 62:9 63:20 64:3,10,12,16,18 65:24 66:11 80:16 87:1 93:22 ground 82:11 grounding 122:4
--	---	--	---

<p>group 5:7 31:17,17 39:15,19 40:12,19 41:1 70:5 80:15 90:1 94:8 138:14 145:5 149:10 153:24 155:14,15 162:22,24 163:5 164:9,9</p> <p>grouped 148:14 149:2 159:18 160:1 162:24 164:11</p> <p>grouping 164:19</p> <p>groups 80:20 163:1 163:3</p> <p>guard 41:16</p> <p>guess 9:5 61:21</p> <p>guessing 89:2</p> <p>guidance 17:13 115:19</p> <p>guided 95:10</p> <p>guidelines 77:5 110:1,2 168:24</p> <p>guys 30:20</p>	<p>handling 46:18</p> <p>hands 24:23 46:23</p> <p>happen 7:15 24:18 30:12 41:18,19,20 41:25 42:5 132:4</p> <p>happened 23:18 30:10,19 41:21 42:1 48:15</p> <p>happening 162:8 164:2 172:19</p> <p>happens 25:19 130:17 148:12 160:18,19</p> <p>happy 32:17</p> <p>hard 76:11,16 130:8 131:20</p> <p>harm 23:4</p> <p>harming 23:4</p> <p>harrisburg 13:1</p> <p>hate 65:2</p> <p>head 48:19</p> <p>heads 31:22</p> <p>health 33:19</p> <p>hear 168:18</p> <p>heard 9:4 35:19 53:12 172:17</p> <p>hearing 1:7</p> <p>heavily 64:11</p> <p>heisey 7:5,15,18,24 45:22 46:14 51:1</p> <p>helaine 3:4 56:10,16 56:21,22</p> <p>held 13:2 44:24 75:10</p> <p>help 13:4,5 19:13 20:13 50:16 77:2,5 77:14 89:19 93:22 154:22 156:25</p> <p>helped 64:8 69:1</p> <p>helpful 6:25 140:4 141:1 158:11 166:15</p> <p>helps 129:8 150:1,4</p> <p>hide 27:19</p>	<p>hiding 27:18 28:13</p> <p>hierarchy 105:25</p> <p>high 12:20 13:22 15:16 16:6 27:22 35:24 41:10 47:14 50:8 67:7 78:23 101:23 113:17 122:23 145:15 147:2 171:19</p> <p>higher 123:25 147:25 151:16</p> <p>highlighted 171:17</p> <p>highlights 78:19</p> <p>highly 111:12 151:16</p> <p>hill 2:4 57:18</p> <p>hilt 7:5,21</p> <p>hire 58:23</p> <p>hires 24:4</p> <p>history 61:3</p> <p>hit 52:23</p> <p>hold 11:10 29:7 58:4 60:8 70:18</p> <p>holding 172:21,22</p> <p>home 16:15,18,20 17:2,6 20:15 33:4 37:23 54:15</p> <p>honor 4:6,12 5:4,14 5:22 8:22,25 10:3,6 36:17 50:1 51:16 55:4,21 56:6 57:2 84:12 85:25 107:1 137:21 141:9 142:15 143:1 152:4 167:17 168:20</p> <p>honorable 1:7</p> <p>hooper 1:17</p> <p>hour 6:12 142:13</p> <p>hours 6:15 98:21 100:17 137:3,5 138:18,21 139:11</p> <p>huddled 31:19</p> <p>huh 13:13 22:22 39:3 41:23 44:7,9 48:2,10 49:13,18</p>	<p>51:4,7 53:21 64:4 64:19,21 67:8 71:24 79:14,21 81:3,23 83:23 98:2,5 99:3 99:19 105:18 108:12 109:7 112:16 114:17 115:3 119:9 122:5 123:15 124:10 125:1,20 128:1,19 131:2 133:5 136:13 137:7 138:8 139:4 140:8 149:4,6</p> <p>hunched 31:22</p> <p>hurt 25:10,13 48:6</p>
h		i	
<p>h 3:8 56:22,23</p> <p>haitian 67:11 69:14 89:9</p> <p>haitians 80:18</p> <p>half 6:15 11:17 14:15 15:23 35:12</p> <p>hallway 26:12</p> <p>hallways 24:5</p> <p>hamilton 1:11</p> <p>hand 56:15 73:3,3 96:15 146:22</p> <p>handbook 22:12</p> <p>handed 4:15</p> <p>handle 22:16,18,21 22:22 24:9,20 40:24 42:11,21 47:13 119:19</p> <p>handled 23:23,24 25:9 97:4 128:4 167:15</p>	<p>heard 9:4 35:19 53:12 172:17</p> <p>hearing 1:7</p> <p>heavily 64:11</p> <p>heisey 7:5,15,18,24 45:22 46:14 51:1</p> <p>helaine 3:4 56:10,16 56:21,22</p> <p>held 13:2 44:24 75:10</p> <p>help 13:4,5 19:13 20:13 50:16 77:2,5 77:14 89:19 93:22 154:22 156:25</p> <p>helped 64:8 69:1</p> <p>helpful 6:25 140:4 141:1 158:11 166:15</p> <p>helps 129:8 150:1,4</p> <p>hide 27:19</p>	<p>hit 52:23</p> <p>hold 11:10 29:7 58:4 60:8 70:18</p> <p>holding 172:21,22</p> <p>home 16:15,18,20 17:2,6 20:15 33:4 37:23 54:15</p> <p>honor 4:6,12 5:4,14 5:22 8:22,25 10:3,6 36:17 50:1 51:16 55:4,21 56:6 57:2 84:12 85:25 107:1 137:21 141:9 142:15 143:1 152:4 167:17 168:20</p> <p>honorable 1:7</p> <p>hooper 1:17</p> <p>hour 6:12 142:13</p> <p>hours 6:15 98:21 100:17 137:3,5 138:18,21 139:11</p> <p>huddled 31:19</p> <p>huh 13:13 22:22 39:3 41:23 44:7,9 48:2,10 49:13,18</p>	<p>idea 9:16 38:10 53:19,20 64:20 65:14 91:17 104:23 145:4 148:15 150:20 155:5 165:20</p> <p>ideally 147:19 156:4</p> <p>ideas 155:6</p> <p>identified 34:10 94:3 113:19 121:15 163:8</p> <p>identifies 138:15 162:21</p> <p>identify 41:22 112:19,22 137:17</p> <p>identifying 171:19</p> <p>idiom 131:20,25</p> <p>idioms 131:21</p> <p>image 19:25</p> <p>imagine 147:16</p> <p>immediately 28:6</p> <p>immersed 151:2</p> <p>immersion 150:16 150:20,21 151:8,24 152:18,20,25 153:2 153:5,8 158:24 159:3,12,14,25 160:7 161:17</p>

<p>immigrant 67:17 99:16 118:4,20</p> <p>immigrants 77:4 99:18 113:20 145:13 170:23</p> <p>impact 106:19 160:12</p> <p>impacted 64:11</p> <p>impede 118:5,21</p> <p>implement 120:20 153:21</p> <p>implementation 42:12</p> <p>implemented 23:8 120:18,23</p> <p>importance 112:13</p> <p>important 62:24 73:7 78:14 81:18 96:20 100:18 103:20 104:1,2 105:12,13 106:2 112:12 123:19 124:14 125:3,6,7,9 126:13,16 128:6 129:1 130:1 133:24 145:24 146:5 149:20 152:21 154:23 161:9 164:18</p> <p>impossible 15:25 16:2,14 38:22 39:14</p> <p>impressed 142:1</p> <p>improperly 23:24</p> <p>improve 89:19 91:10</p> <p>improvement 40:2,6 93:7</p> <p>inaccessible 147:6</p> <p>inappropriate 24:16 119:2</p> <p>incentive 25:19</p> <p>incident 32:16,19 48:13 49:4,10,16</p> <p>incidents 49:20 163:20</p>	<p>include 73:8,17,18 101:4 102:2 132:1 144:8 145:18</p> <p>included 16:18 33:12</p> <p>includes 72:4 111:18</p> <p>including 58:10 65:6 151:25 160:9</p> <p>incoming 12:23 13:4 18:25</p> <p>incorporate 81:21</p> <p>incorporated 117:13 145:3</p> <p>indicate 88:2 127:7</p> <p>indicated 37:4 41:5 41:15 88:7,25 89:4</p> <p>indicating 54:23 120:2 121:6 131:15</p> <p>indication 49:23</p> <p>indiscernible 6:8 151:17</p> <p>individual 39:13 52:15 101:20 134:3 148:16</p> <p>individually 27:1,3</p> <p>individuals 95:15</p> <p>indulge 129:7</p> <p>influence 112:9</p> <p>information 92:12 107:21 111:23,23 114:7 129:16 132:13 152:7</p> <p>informative 128:25</p> <p>informed 121:13</p> <p>infraction 23:18</p> <p>initiative 169:10,25</p> <p>injunction 1:7 9:14</p> <p>inside 27:9,18,20 28:24 29:9</p> <p>instance 19:18</p> <p>institute 13:1 66:20 67:5</p> <p>institution 71:1</p>	<p>instructed 29:15</p> <p>instruction 21:12 22:10 39:19 44:5 67:13,15 80:12 89:23,25 90:19 92:24 97:5 99:23 101:1,4,14 102:12 102:13 105:16 108:17 110:23 119:8 124:4,20 127:10 128:12 129:22 132:22 137:4 138:10,18 139:8,17,23,25 140:2,6,14 143:4,22 144:2,3,3,17,19 146:13,15,15,19,21 147:7,15,25 148:5,7 148:11,13,20,21 150:17 153:7 157:1 158:18 161:5 163:5 163:12 164:20 170:15 172:14</p> <p>instructional 46:7 108:11 127:23 137:20 138:14 139:18,21 141:2 161:23 164:2</p> <p>instructions 135:15 154:4 156:16</p> <p>instructor 150:7</p> <p>insufficient 119:7</p> <p>integration 140:17</p> <p>intended 145:11,12</p> <p>intends 7:25</p> <p>intensive 99:23 143:21 145:2 146:11,12 150:3 167:12</p> <p>interaction 93:12 129:3</p> <p>interest 46:7 57:5 144:7</p> <p>interested 106:17</p>	<p>interesting 75:17 103:21 117:16 123:12 128:21 146:20</p> <p>interface 59:1</p> <p>interfere 106:6</p> <p>international 111:3 143:14,18,20 144:8 144:14,15 148:2,6 149:1 159:21 167:6 170:2,8 172:1</p> <p>interpersonal 134:23</p> <p>interpersonally 72:17</p> <p>interpreter 53:24 115:7,8</p> <p>interpreters 31:1</p> <p>interrupt 7:8 118:13</p> <p>interrupted 82:12 84:16 94:1 95:19 96:4,16 98:10,16 103:14 107:18,24 122:20 127:5</p> <p>interruption 101:10</p> <p>interruptions 98:11 98:14</p> <p>intervention 22:23 25:1</p> <p>interview 32:12 114:14,24</p> <p>interviewed 114:19 115:1,1 121:3 159:2 164:7</p> <p>interviews 114:11 133:3 158:2,6</p> <p>introduce 8:1</p> <p>introduced 95:7</p> <p>introduces 143:24</p> <p>intrusive 43:8</p> <p>intuitive 127:12 131:10</p> <p>investigations 110:13</p>
--	--	--	---

<p>invited 66:6 83:10 83:12,13 86:20 involve 37:10 69:18 involved 48:13 64:14 69:17 87:8,9 113:9 114:25 involvement 113:8 involves 22:22 involving 110:13 156:24 island 57:17,21 74:9 issa 1:3 issue 9:4 77:16 82:25 83:1 84:8 86:2 96:15 122:7 126:2 127:3 141:18 160:10 168:18 issued 115:20 issues 9:15 16:9 33:19 99:13,14 105:20 171:1 item 5:23 8:9 itt 12:25</p>	<p style="text-align: center;">k</p> <p>k 60:9 89:23 128:12 kathleen 1:10 keep 44:3,5 133:21 141:24 kelleher 30:25 kept 19:22 key 122:9 126:10 144:7 173:3 khadidja 1:3 kid 41:17 kids 28:5 30:18,23 31:16 32:11 47:23 47:24 48:5,6,6 50:24 kind 25:20 26:17 29:18,21 35:6 51:5 69:17 78:4,5 90:4 98:23 106:18 111:20 119:24 128:4 130:4 134:5 135:22 140:18 151:18 155:2 156:16,20 kinds 65:15 104:15 knew 36:15 63:16 124:1 know 6:4,12 7:1,13 8:18 14:8 15:20 19:23 20:3,5,9,19 21:25 22:3 23:14 26:7,11,12 27:7,9 27:10,17,21,24 28:10,10,15,17,18 30:9,20,22 31:13,15 34:9 35:16 38:13 41:12,13 42:17 43:9 43:23 44:23 46:25 47:21 52:9 53:14 63:12,12,15 64:14 64:17,20 69:12 75:23 82:16 94:10 94:14 95:2,4 96:24 99:1 100:3,11,13,15</p>	<p>100:17,18 102:19 103:8,18 104:7,22 105:24,25 106:2 109:9 110:12 112:15,23 126:9 127:11,24 128:14 128:25 129:11,21 129:24 130:8,22 131:22 132:3,4 134:1,3,10,17 135:1 135:14 140:14 145:15,25 146:22 146:23,24 154:19 155:16,25 156:10 156:19 158:10 161:18 163:19 164:10 knowing 6:24 knowledge 21:5 36:10 38:6,12 46:18 47:13 55:9,13 84:18 102:2 109:18 known 170:20 knows 61:21 140:10 krashan 106:11 kristina 1:13 10:5 kulick 2:5</p> <p style="text-align: center;">l</p> <p>l 1:14 56:22,23,23 97:19 labeled 33:5 34:23 lady 6:6 28:24 lampeter 12:19 lancaster 1:5 11:2 11:24 12:13,22 13:22 33:11 37:2,13 47:21 85:4,7 93:16 93:23 94:16 95:10 114:18 116:4 121:2 140:24 141:13 143:10 169:10 lancaster's 14:4 15:15</p>	<p>language 18:12,15 20:16,25 21:11,12 21:16 28:2,6,9,19 31:18 35:2,4 49:3 53:17 54:11,23 55:11 58:2,17,19 65:20 69:9 71:22 72:7,16,21,22 73:1 73:3,18,24,24 74:13 79:2,6 82:18 84:4,9 94:4 96:23 97:12,13 100:4,6,10,21,21 101:6 103:22 105:9 105:10,15 107:17 108:14 113:18 118:5,20 119:6,7 120:6 121:6,16,24 123:4,4,18,19 124:4 124:14,15 126:18 126:19 128:7 129:18 132:22 133:17,20 135:22 136:2 138:22 140:10,14,16,25 141:13 144:17 145:3 146:7,8,13 147:6,8,17 148:14 148:22 151:10,12 156:24 157:1,15,18 157:18,20 159:19 159:25 163:13 172:13 languages 58:15 60:4 100:14 157:16 large 16:3 47:3 139:9 146:7 lasted 37:17 law 1:14 168:2,5,12 168:14,16 laws 168:23 lay 171:8 lazino 126:6 leader 47:7,7 leaders 47:8</p>
<p style="text-align: center;">j</p> <p>j 1:10,19 jacket 27:7,8 jackson 59:12 jaime 2:5 4:16 jandy 3:3 10:8,11,18 85:18 114:16 january 32:5 57:24 jewelry 25:22 job 13:9 32:10,13,14 37:7,8 57:25 58:16 61:23 68:3,6 74:10 76:7 77:23 88:21,21 88:24 171:20,21 join 171:10 journal 84:2,2 jp 41:11 judge 1:8 141:22 142:11 july 37:18</p>			

leadership 25:18 leading 152:5 leads 53:18 learn 17:5 18:5 19:10 22:5 29:23,25 30:22 53:13 65:5 72:8,10,15,17 73:12 73:16 78:6 81:17 100:12,16 103:23 103:24 104:20,22 106:20 120:16 125:9 126:3 129:6 130:3 131:5,7 146:6 159:1 171:20 learned 35:14 36:2,9 65:7 123:24 126:1 170:5 learner 107:17 133:17,20 136:16 136:21 138:22 learners 18:12,15 20:25 21:12,16 31:6 35:2,4 49:3 65:20 69:9,11 79:18 82:19 84:10 92:1,6 96:22 97:2,12,14 99:15 101:6 105:9,10 128:8,13 132:20 140:25 141:14 145:12 147:17 149:15 151:11 155:10 160:1 171:1 171:11,12,22 learning 18:8 46:11 65:1,1 72:14 73:8 80:24 81:1,4,9 100:9 102:8 104:18 106:6,14,17,18 112:10 127:16 128:7 129:3,15,20 131:17 135:4 143:24 144:6 145:6 149:13 157:20,21 165:13,14 172:23 173:2	leave 32:7 33:18 leaving 32:23 led 64:22 leeway 86:5 left 50:11 60:6 66:10 162:10,15 legal 8:10 77:19 167:18 legged 103:25 legitimate 163:25 legs 27:11,21,25 lehman 78:22 leisure 9:15 leslalwa 84:3 lesson 155:10,14,16 lessons 102:1 130:21 161:3 letter 45:19,25 51:1 51:6,10 level 16:5,7,8 17:23 17:25 18:2 22:25 23:5,5,10,17 38:25 39:1,1 74:24,25 75:1,2 98:1 100:6 101:12,16,19,22 102:1 119:10,19 123:4 129:22 130:12,13 131:8,19 133:17,19,21,23 134:4,12,19,21 135:2,3,4,5,11,18 136:3,4,15,21,23 137:2,3 138:21,25 139:10,11,17,19,23 144:5 145:14,17,19 147:3,4,9,20,22,25 148:14,17 149:2,3 151:11,12,17 156:22 159:22 160:2,5,10,20 161:5 161:7,11,13,14,15 162:24 164:12 levels 18:17 22:23 23:2,10,15,17,23 63:21 71:10 79:3	123:25 131:5 133:1 133:8,14 136:6,11 138:15 149:10 151:15,22 160:6,9 160:11 161:10 life 100:12 light 55:3,6 84:6 129:11,12,12 liked 149:11 likelihood 113:17 limitations 101:10 limited 49:2 65:8,12 77:4 81:5,6 82:12 84:16 90:5 92:8 94:1 95:18 96:3,16 97:15,18 98:3,6,7 98:10,17,18,19,24 103:13 107:18,24 119:11 122:20 127:5 162:16,18 164:15 167:9 limiting 88:14 limits 123:14 line 12:12 linguistic 60:1 linguistics 62:22 74:13 146:23 list 8:10 112:22,23 113:4 121:19 162:4 listening 72:9 133:23 lists 112:24 158:13 literacy 65:8,9 74:15 81:6 84:4 86:20 87:15,16,17 98:3,4 98:6,7 99:24 100:1 100:2,4,8,11 101:3 119:11 120:6 145:20 164:22 167:13 literate 128:23 literature 12:4 171:2,8 little 7:18 29:6,19 33:23 38:21 40:9	60:5,7 62:24 71:9,9 82:16 83:7 96:15 132:25 135:25 136:1 140:13 154:15 160:16 liu 79:13 live 11:1,2 lives 98:20 99:10,12 129:1 living 72:14 llc 11:20 llp 1:11 located 34:17 143:14,20 logan 1:12 logistically 7:4 long 15:2,6 20:10 21:8 33:16 37:14 57:17,21,22 70:18 74:9 84:5 89:2,22 141:25 171:15 longer 7:5 37:4 look 13:24 36:4 40:7 63:12 68:20 76:15 76:17 78:8,15 80:24 80:25 81:4 89:18 104:15 115:18 116:3 123:6,7,9 130:14 133:3,23,25 134:11,11,12 136:12 137:25 161:21 168:24 looked 35:17 69:25 96:21 121:8,20 122:15 125:2,2 looking 12:11 13:10 34:5 40:8 69:19 76:9 77:3,25 78:18 99:5 101:24 112:23 115:12 121:3,17,18 121:22 122:17,24 123:3,7 126:8,9 137:25 143:5,13 158:9 162:11 172:8
--	--	---	--

looks 163:1,3 looney 174:11,16 looping 129:13 lord 129:11,12 losing 32:14 lot 6:20 7:20 17:9 24:17 32:9 36:9 47:11 48:23 54:9 64:24 65:10 67:6 69:13,20 76:3,23 77:7 78:25 80:19 86:25 93:8 97:9 98:18 99:1 110:18 130:7 131:20,21 132:21 136:2 148:25 156:24 157:19 165:16 lots 35:25 loud 19:16 41:6 love 50:23 loved 32:11 lovely 51:6 low 84:3,4 87:16 145:20 147:4 163:20 lower 151:22 160:20 lowest 134:20 lsd 158:11 161:25 luck 153:1 lunch 6:21,22 142:3 142:6	maintain 50:18 major 59:19 65:9 146:7 majors 59:18 making 68:24 82:16 82:17 93:25 male 27:2 man 19:19 20:3 166:23 manage 47:25 managed 11:21,23 25:3 management 22:10 22:15,21 23:8 24:11 25:11,17 32:21 47:18,19 49:11 maneuver 43:11 manner 94:5 166:19 march 46:1 marines 141:23 marked 4:22,24 market 1:24 2:24 marshall 2:2 3:4 6:13 37:8,13 56:10 56:16,21,22 57:14 84:14 85:1 86:8 95:7 96:13 107:10 137:18 138:12 143:3 144:15 168:22 marshall's 116:14 martials 141:23 maryann 20:22 21:2 massachusetts 77:1 77:9,9 110:20,21 master 17:21 18:1,3 18:6,8 master's 11:4,8 59:10,11 mastering 53:16,17 mastro 115:16 match 81:9,24 matching 104:13 mater 70:14	material 14:20 15:23 17:3,7,9,22 18:1,3,6,9 19:10 21:10 35:14 36:12 53:14,17 120:15 129:4 145:3 154:19 172:24,25,25 materials 46:10 103:4 121:19 128:4 128:7,15 math 53:11 73:23 78:24,24 79:2,5 101:17 102:21,25 103:1,2,7 124:12 134:25 135:1 144:3 146:16 150:24 167:11 mathematical 103:6 matrix 137:8,20 138:14 158:9 161:23 matter 82:21 146:21 161:10 174:6 mattered 123:13 maura 1:14 56:9 maximize 52:10,25 mccaskey 13:22 14:3,9,12,17,19 34:18 35:1 41:10 46:18,21,24 47:1,2 47:3,14,18 48:4 50:8 55:10 143:15 143:20 158:16 162:6,8,21 164:3,16 165:1 170:2,8 172:24 mccaskey's 15:17 mcinerney 1:14 56:5,9,9 57:1,11,13 60:16,20,22 84:12 85:21,25 95:18 96:3 96:7,12 107:1,6 116:13 117:2,5 137:11,13,15,21 138:2,5 141:5,8,19	142:5,10,15,25 143:2 152:12 166:24 168:20,21 169:13,18,20 mean 13:17 16:22 28:7,9,14 31:8 35:17,20 39:8 42:9 43:19 53:16 58:22 65:17 71:4 73:21 74:21 76:17 91:13 96:19 98:18,19 99:25 102:15 105:8 106:8,9 107:11 109:15,22 124:4,5,6 125:10,11,14 130:10 133:16 135:10,10,11 146:18 147:14 148:16 151:3 153:22 155:21 162:1 172:15 meaning 103:8 165:2 meaningfully 171:23 meanings 36:6 means 13:19 17:7 35:18 39:10 109:24 112:18 124:18 125:17 129:2 131:4 149:13 153:2 157:14 163:3 165:21 166:22 meant 168:9 measure 139:9 measured 123:5 measures 171:21 meet 16:12 34:11 54:17 161:4 meeting 84:15 95:13 95:16 96:2 megan 4:18 114:23 melissa 174:11,16 member 12:25 23:5 23:12 24:20 27:2,3
m			
m 1:17 56:22 ma'am 10:10,12,15 41:14 51:17 55:22 56:12,17,18,18,24 86:11 87:11 mail 113:10 116:24 main 71:19,20 124:24,24,25 155:6 maine 80:21 mainstream 151:1 154:10			

44:3,6 58:8,9 62:11 75:13 83:22,24,25 84:3 109:16,17,17 109:18,20,21,22 111:24 members 9:18 21:2 23:16,19 24:22 26:15 memorable 129:14 129:18 memories 129:17 memorization 105:2 memorize 65:17 memorizing 104:22 men's 20:5 mention 57:2 153:19 mentioned 49:17 80:18 110:8,12,15 110:17 122:2,8 124:18 128:17 133:10 140:15 146:4 156:5,12 157:4,7 159:15 163:6 mentions 148:5 158:18,23 mentorship 37:12 message 112:7,7 met 160:16 methodologies 63:7 methodology 78:9 119:13 140:9 methods 62:22,23 63:3,5 74:15 78:5 mid 1:23 2:23 middle 12:19 15:15 15:16 27:21 midwest 64:9 migrant 32:25 33:6 33:11,21 34:7,15,24 36:11 37:25 military 141:23 milledgeville 11:9	mind 16:1 41:22 42:25 minor 59:19 60:6 115:10 minute 56:4 82:1 113:6 minutes 15:3 21:9 56:2 162:12 misguided 127:13 missed 22:13 70:11 98:15 mixed 160:8,17 161:15 model 17:15,22 21:13 22:16,21 23:8 36:13 42:21 47:18 47:19 49:11 80:12 81:1 127:9 139:19 139:22,23,25 140:6 144:19 149:12,12 150:11,15,17,20 151:10 155:23 157:4 158:2 159:14 160:7 162:25 163:7 163:10 164:2,19 170:15 172:8,20 models 69:24 90:12 90:19 127:7 139:21 141:2 143:4 148:5 156:12 157:6 159:6 modify 39:11 modifying 155:2 molly 1:17 moment 45:7 108:6 124:3 monday 8:13,14 mong 64:6,7,16,23 66:7 67:10 80:7,14 80:15,16 93:22 monitor 24:4,5 month 13:9 28:25 33:22 moon 1:13 10:5,5,8 10:23 36:16 45:5,7 45:10,15 49:25	51:14,16 55:2,4,21 56:1 morning 4:4,6,11 7:9 8:4 10:5,7,10,24 10:25 19:12,20 30:4 31:11 36:24,25 56:12 85:1,2 mother 25:4 115:11 motion 8:12,15 motivated 29:25 106:17 motivational 29:19 mouth 131:18 move 5:6 13:25 29:6 56:5 60:2 150:2,4 moved 5:18 62:8 67:24 71:19 139:6 moving 48:23 172:20 173:1 mullen 1:10 multiple 104:12	nature 152:5 navy 141:22 necessarily 43:18 70:5 99:4 103:2 109:17 156:18 necessary 47:1 neck 25:5 need 14:6 17:6 39:11 42:17 53:8,10 53:10,11,11 63:21 72:10 78:5,5 99:19 99:22,23 100:3,8,12 101:6,13,14,15,17 103:18 106:3 107:8 111:20 112:13 131:3,4,6,7,10 132:11,21 136:24 139:18 145:20,25 146:1,7,10,23,24 147:8 149:23 163:12,13,14,17 165:17 170:23 171:14 172:13 needed 14:13,16 18:6 23:9 26:23 27:5 32:10 35:11 43:21 49:23 50:16 51:11 54:3 66:7 77:22 80:16 92:4,5 102:3 124:23 139:22 161:19 165:8 needing 122:3 needs 8:22 14:25 16:4,13 18:24 19:4 20:11 38:24 39:11 39:13 54:17 69:15 73:15 84:15 95:13 95:17 96:2 105:25 107:22 119:24 124:19 127:4 132:1 137:3 139:9 153:3 155:15,19 161:4 negative 26:3,13
		n	
		n 3:1 4:1 56:22 name 10:16,16,18 30:24,25 37:1 56:19 56:19 85:3 89:10 94:12,19 95:4 113:11 114:22 115:16 136:7 named 9:18 names 82:9 napkin 28:25 narrative 166:9,18 narrower 8:23 nassp 82:24 national 1:23 2:23 82:23,23 84:8 132:10 nationally 97:17 native 100:4,6 151:4 151:17,25 153:3 159:8 160:7,9,21,24 160:25 172:17	

<p>negatively 26:10 negatives 134:8 neglect 104:2 nervous 82:17 net 131:4 never 42:20 89:22 141:24 new 19:12,13 20:14 20:14 57:15,18 58:25 60:10 61:8,9 61:17,24 67:24 68:1 68:8,11 70:24 74:3 74:6 75:14 77:11 82:11 83:24 84:1 86:25 87:1 88:3,5,5 88:9,11,11,12,14,19 92:8,11 93:21 100:10 110:12 117:12 131:23 143:24 161:12 newcomer 144:21 144:23 145:8,20 146:1 147:9,19,24 170:21 171:25 172:2 newcomers 145:23 145:25 146:1 160:16 170:25 newly 18:11 113:21 148:8 nice 163:4 night 17:4 117:11 141:25 nine 143:21 ninety 162:12 ninth 12:1,8 27:6 101:24 102:5 non 22:23,25 95:14 128:23 normal 65:2 normally 144:21 nos 5:20 note 29:24 116:13 141:22</p>	<p>notes 64:24 149:19 nothing's 48:8 notice 112:1 noticed 19:21 97:1 notion 106:12 novel 16:24 novels 16:19 46:10 number 14:25 17:2 23:3 43:9 57:3 68:11 76:11 82:8 83:9 113:25 161:24 169:16 172:14 numbered 135:5,6 numbers 5:8 80:17 92:25 nysabe 83:24</p>	<p>observations 28:1 31:5 54:19 78:25 observe 31:9 41:24 42:5 63:23 75:22 89:16 observed 31:9 41:16 42:18 observer 42:8,22 observing 42:25 65:6 90:3 obtaining 59:21 61:5,10 obviously 6:12,15 23:13 51:2 100:7 145:15 153:12 occasion 25:2 42:1 43:3,4 80:4 81:11 82:4,20 83:5 occasions 42:2 76:6 offer 13:15 32:13 offered 95:11,12 officers 46:25 47:2 official 174:4 oftentimes 26:9,10 30:3 oh 20:2 47:22 51:12 59:16 83:17 87:6,13 91:21 99:4 108:7 154:21 156:8 157:10 165:4 167:20 169:22 okay 4:25 7:10,11 9:12 11:10,18 12:6 13:8,11,17,24 14:18 14:22 15:6 21:4 24:14 26:17,19 28:1 28:15,16 29:3 31:1 32:4 33:20 34:14 36:10,16 37:7,10,14 37:24 38:6,15,21 39:8,17,21,24 40:1 40:5,9,17,24 41:5,9 41:15,22,24 42:2,7 42:24 43:4,7,13,16 44:17,19,23 45:1</p>	<p>46:13,17 47:16 49:9 55:1 59:17,24 60:2 60:3,21 61:2,4,21 61:22 67:21 68:5,7 69:8 70:19,22,25 71:15,18 73:11 74:1 74:7,8 75:2 77:21 79:12 80:25 82:1,2 83:5,8,20 85:17,19 86:16,19,24 87:18 87:21 88:16,17,25 89:4,7,12,21 90:10 90:15,25 91:2,2,8 91:22 92:3,12 93:3 93:9 94:7 97:23 98:3,8 99:22,24 101:3,5,7 102:14 103:18,21,23 105:19 107:4,9,16 107:24 108:3,19 109:13 110:7 111:2 113:1,6,7,25 114:5 114:22 115:9,12,24 116:9,10 117:1,23 118:9,15 119:1 120:22 122:14 123:2 124:6,22 130:19 133:9,14,21 133:24 134:8,24 135:7 136:11,23 137:3 138:15 139:13,15,16,22 140:2,3,23 148:10 150:12,19 152:14 152:19 153:1 157:9 157:13 158:8,21,22 159:7,14 162:1,15 163:6 164:1,18 165:4,4,18 166:2 167:1,5 169:1,5,5 169:19 170:11,12 old 118:4,20 older 52:4 77:3 94:2 165:23</p>
<p>o</p>			
		<p>o 1:18 4:1 o'clock 15:9,11 o'donnell 2:2 5:3,11 5:13 6:4,6 7:4,11,19 7:22 8:2,7,17 9:3,5 9:11 10:3 36:19,21 36:23 37:1 45:2 50:3,5 51:12 55:5,8 55:17 84:20,22,25 85:3,23 86:7 94:23 94:25 95:1,6,23 116:19,23 141:9,16 152:4,11 166:3,7 167:17,21 oath 7:13 object 95:6 116:19 152:5 166:3,7 167:18 objecting 4:17 objection 5:12,13,16 5:19 8:5 9:6,8 85:21 85:24 95:21,25 152:10 166:5,13,18 objective 73:12 observation 26:6 30:1 38:16 41:18 64:24 69:21</p>	

<p>ole 106:10 ombudsman 13:3 once 4:8 33:22 41:21 100:11,12,13 103:1 142:22 171:9 ones 24:11 83:14 99:5 123:23 operating 168:13 opinion 117:7,17,18 117:24 118:2,8,9,24 119:1,5,17 120:17 126:22 164:1,24 opinions 96:14 opportunity 35:5 42:20 71:2,12 75:15 157:24 opposed 123:8 option 157:12 oral 65:7 81:5,17 112:17 128:18 129:1,6,9,19 130:10 order 4:8 5:24 15:1 18:8 23:2 43:22 44:2,2 46:9,11 53:10 73:15 78:5 81:12 92:6 102:3 113:23 120:15 123:21 130:3 132:13 134:16 142:21 161:4 organization 33:8 77:10 108:9,13 132:10,15 organizations 111:10 orientation 22:9 originally 80:14 96:21 171:14 orms 174:3,9 ortiz 20:22 21:2 34:9,12 54:15 outside 5:2 85:11 overall 112:7 125:2 overcome 54:24 55:11 94:4 118:5,20</p>	<p>121:7,16 overcoming 113:18 121:24 overrule 166:17 overwhelming 160:20 owl 130:22,23,23 131:11,11</p> <hr/> <p style="text-align: center;">p</p> <hr/> <p>p 1:18 4:1 p.m. 1:5 116:20,22 116:24 142:17,17 173:6 pa 1:5,12,16,18,21 1:22,24 2:4,24 34:15 pace 16:14 18:4 36:3 126:1,2,5,17 155:3 171:12 paced 18:7 pade 93:24 page 3:9 76:20,21 78:18 82:3 137:16 138:3,7,16 143:14 148:4 158:11 pages 138:14 paper 19:6 46:22 paperwork 25:24 paradigm 65:1 80:25 81:1,4 paradigms 81:6 paragraph 46:3 143:17,19 144:16 paragraphs 134:2 parents 25:14,14 46:21 part 26:3 42:4,7,9 42:18 43:13 54:4 61:13 70:3,23,23 73:7 87:7,21 88:20 93:6 99:7 102:4,11 105:5 115:14 125:4 138:13 154:20,23 159:14</p>	<p>partial 1:4 participate 144:2 participated 43:5 participating 43:1 participation 54:3,4 118:6,21 particular 9:16 18:24 28:3 40:12,18 41:1 48:12 54:11 64:11 68:22 76:15 84:9 86:2 89:14 96:14 101:5 113:17 113:24 120:18 126:4,5 136:19 145:22 146:9 147:10,23 150:16 155:12,15 164:25 165:14 167:15 particularly 121:25 148:8 149:11 151:11 parties 4:8 9:18 142:21 pass 129:15 pat 26:23,24 27:14 27:14 28:3,4,10 29:3,5 40:17 patted 20:4 pause 45:9 56:13 peer 23:4 25:16,16 82:21 83:2 peers 26:2,3,7 pellet 130:24 131:12 pellets 130:22,23 pencil 19:5 135:20 135:21 pennsylvania 1:1,17 1:20 11:2 32:25 86:9,10,12,14 87:5 93:10,13,14,17 95:8 109:13,18 112:3 115:19 138:24 168:2,5,24 169:4 people 38:13 40:19 47:11 50:19,21 79:6</p>	<p>104:2,12 126:7 129:3 160:21 162:19 pepper 1:11 percent 52:16 132:19 147:7,8 163:21 172:4 percentages 156:23 perfect 59:25 perform 89:8 92:23 125:21 134:6 performance 40:2,6 112:10 performed 40:25 41:3 period 21:4 38:3 54:20 62:14 67:25 70:11 87:20 88:9 125:18,18 154:9 155:1 156:3 periods 15:2,4 30:17 125:22 permitted 16:15,17 46:23 person 22:16 34:13 47:9 77:19 115:5,6 153:16,17 personal 28:22,23 40:11 55:12 144:7 pertinent 116:8 ph 37:12 39:25 72:12 94:10 97:7 106:11 108:4 122:10 126:6,7 161:8 170:19,19 ph.d. 59:21 60:11 61:6,10,16 philadelphia 1:12 1:16,18,22,24 2:24 86:20 87:7 phoenix 11:13,25 12:10,16 13:12,14 13:17 14:1,9,20 15:2,13,19,24 17:13 17:22 18:5 19:16</p>
--	--	--	--

<p>20:17,19,23 21:17 21:19,22 22:1,1,6,7 23:7 24:2,3 25:17 26:20 28:21 32:5,17 32:24 33:13,14,21 34:8,25 35:25 36:11 38:1,6,23 40:3,13 41:6 44:15 46:15,17 47:5,17,22 48:3,9 50:6,19 51:23 54:14 54:22 113:24 115:15 116:5 118:3 118:17,17 119:14 120:1,19 121:2,12 121:18 127:15 132:22 133:6 157:23 158:2 163:8 164:8 169:9 172:8 phoenix's 117:24 phone 27:19 72:12 114:14 physical 23:6 24:12 25:1,11 43:14 46:23 physically 25:3 pick 23:19 picture 131:11,11 146:22 pictures 20:6 piece 19:6 46:22 73:2 104:1,24 124:14 145:24 157:15 159:13 pieces 103:20 pietro 115:16 pit 27:17 pittsburgh 1:20,21 87:8,8,9,13,15 place 21:24 32:12,16 47:13 127:22 placed 40:1 165:8 placement 108:21 136:17,20 places 133:6 plains 57:15</p>	<p>plaintiff's 3:10 4:9 5:20 plaintiffs 1:10 5:18 7:25 10:8 56:10 plan 13:7 40:2,6 plane 119:24,24 play 166:17 pleading 8:20 pleadings 8:10,24 please 10:16 56:14 107:19 135:21 161:24 pleased 111:5 plenary 83:9 pm 1:4 pocket 29:1 point 14:9,10,12,13 34:12 40:1 49:8,22 66:18 67:16 151:19 161:20 pointed 20:5 points 54:4 police 25:15 46:25 48:7 policies 13:5 21:19 21:21,23,25 22:3,6 36:13 78:11 120:18 policy 22:11,11 28:21 40:25 47:13 poor 20:2 population 34:21 64:1,2 65:21 77:3,7 78:3 84:9 87:17 97:11 101:6 107:17 112:15 113:13,19 119:3 120:3,12 121:25 122:15,18 162:21 170:20,21 populations 80:17 80:21 portion 26:5 54:7 position 11:25 12:11 12:14 13:3 24:25 37:16 38:1 57:23 58:3,5,6,18 61:17</p>	<p>62:4,8,21 66:11 68:4,5,16 70:17,18 71:16,17 74:3,11 75:3 79:12 93:6 positions 70:22 75:10 positive 26:8,14,18 29:17,24 162:7 possible 44:25 123:8 133:22 160:6 possibly 25:22 post 8:24 potentially 23:3 poughkeepsie 61:14 practical 74:14 practice 13:24 29:14 30:1 practices 78:12 120:18 practitioners 87:24 pre 74:17 154:20 preliminaries 4:12 preliminary 1:7 9:8 9:14 preliterate 59:25 preparation 168:23 prepare 116:11 144:6 156:20 prepared 5:25 present 4:8,9 37:5 59:25 66:6,6 83:18 126:11 142:22,22 presentation 21:8 21:10 presentations 69:23 83:6,16 84:7 132:16 presented 57:3 presently 38:11,13 38:19 presided 141:23 presumption 168:13 pretty 22:4 102:22 previously 4:8 142:22</p>	<p>primarily 143:23 145:11 principals 82:24 printed 20:6 prior 12:15 71:21 83:12 101:19 102:6 111:6 120:4 probably 6:22 7:24 31:20 35:9,12 53:7 problem 104:24 127:21 problems 76:15 proceed 10:21 29:4 56:25 84:23 96:10 168:19 proceeding 8:22 proceedings 173:6 174:5,13 proceeds 9:1 process 19:9 44:8 processes 62:13 produced 54:22 122:6 produces 121:5 profession 111:8 professional 14:2 20:24 44:20 83:20 84:2 111:10 132:15 professor 58:1 62:12 66:19 75:4,7 75:8 proficiency 18:17 28:2 133:1,8 136:12 138:16 139:10,12 144:5 148:14 151:12 159:19 proficient 18:21 31:7 49:2 program 13:14,16 13:18 14:23 18:11 33:1,2,3,25 34:7,15 35:4 37:9,11,12,14 37:15,25 54:21 62:22 66:23 67:12 68:21 69:19,24</p>
--	--	---	---

70:16 71:3,5,11,11 72:4 73:2,7,15,17 75:22 76:7 77:25 89:20 92:5 95:16 100:23 105:13 112:24 113:16,24 115:15 117:25 118:3,17 119:2,13 119:14 120:1,18,22 120:25 121:4,11,12 121:18 122:2 123:24,24 125:3 127:15 132:23 133:6 143:23 144:11,23 145:9,22 146:9 147:11,19,24 148:2,7,11 157:23 161:17 162:6 163:8 165:1,19,20,22 167:9,10 169:8 170:6,24 172:8 program's 34:17 programming 68:18 76:10 84:15 95:13 96:1 111:20 137:1 programs 52:15 58:2,17,18,19,20,22 68:13 69:3 113:5 121:23 127:20 144:21 146:2 151:15 153:20 154:2 progress 68:24 160:21 171:11,12 progressing 172:19 project 87:19,22 promise 100:18 promoted 75:7 pronounce 35:21,22 pronouncing 132:3 proper 166:10 171:13 properly 23:23 25:9 proposal 8:17 169:24 170:1	propose 8:19 protocol 24:10 provide 33:2 68:14 91:12 92:23 93:6 131:7 146:25 provided 22:14 69:1 79:24 85:9 92:13 94:3 107:21 111:23 111:24 112:5 116:15,20 138:13 139:9 143:9 158:3 provides 33:4 108:13,20,21 143:21 168:5 providing 78:2 110:16,18 146:13 148:13 164:20 provisions 168:8 provoke 24:22,24 public 53:1 63:20 64:3 77:14 78:1 87:12 88:3,10,18 89:23 91:10 92:13 93:11 168:7,16 169:2 publication 123:2 publications 132:11 publish 80:5 82:4,20 87:24 127:24 published 66:1 82:7 82:14,15 84:6 111:16 publishing 66:9 pull 49:1 152:13 153:17,22,23,24 154:4,5,21,23 156:5 156:6 158:24 159:3 163:7,23 pulled 156:9,10 161:1 pulling 163:15 purchase 57:18 61:25 purpose 29:13 43:23 43:24 94:18	pursuant 84:13 purview 91:7,8 push 153:16 155:7,8 155:8,22,23 pushing 41:17 156:1 159:11 put 6:12 7:7 9:6 20:7 29:10 46:23 51:5 71:23 76:11 102:21,25 103:1 117:20 132:2 134:1 134:13,15 135:12 135:16 150:21,23 152:25 167:6 putting 4:23 6:14 19:5 30:23	r r 4:1 10:19,19 56:23 rachel 39:25 raise 56:14 ran 20:6 79:15 range 18:17 137:6 147:16 148:17 151:25 152:2 160:4 161:6 ranges 18:19 ranks 25:20 ratick 39:25 rationale 63:8 rau 94:17 raw 121:3 reach 117:23 120:6 reached 118:7 119:21 reaching 136:10 reacted 31:7 read 17:2,4 46:4 64:23 100:5,12,13 100:21 104:18,18 128:22,24 129:21 143:17,18 170:5 readily 82:7 150:13 reading 12:22 16:6 16:7,8 17:7,10,24 17:25 72:10 80:13 100:4,13 132:18 141:4 ready 9:24 29:25 56:5 156:21,25 reality 17:21 realize 63:25 131:10 133:12 realized 19:23 35:9 64:25 really 30:10 35:5 48:22 53:14 54:15 63:21 67:22 76:16 80:15 99:1,8 103:2 106:2 110:13 111:8 112:11 128:25
		q qualifications 78:14 84:21 86:1,6 94:22 157:3 168:3 qualified 84:14,17 quantify 76:16 quantitative 123:8 quarter 13:3 14:14 14:15,16 quash 37:11 question 52:13 88:6 88:14 90:5 118:14 134:16 166:8,10,10 166:25 questioning 25:8,9 questions 35:15 36:4,16 37:3 45:3 49:10 50:3 51:18 55:3,3,6,6 84:21 134:7 135:14 152:6 152:7 quickly 53:15 150:4 quite 108:22 142:2 155:4 166:14 quote 161:13	

<p>134:15 135:19 146:12,23 149:20 150:4 153:18 154:20,23 156:21 160:24 161:9 171:14 172:19 reason 22:24 23:20 44:5 163:15 reasonably 118:3,19 120:19 reasons 14:25 16:3 98:12,15 121:14 recall 21:1,18 30:24 45:24 151:21 162:17 receive 11:6 17:13 20:24 received 5:21 11:8 45:24 46:14 49:22 66:8 112:4 113:10 170:7 receiving 117:10 159:3 recess 7:9 recessed 142:17 recitation 105:2 reciting 104:23 recognize 45:16 54:20 102:8 169:21 recognizing 52:4 recollection 38:7 114:8 recommend 154:18 recommendation 45:19,24 46:13 51:2 51:11 recommendations 89:17 91:3,4,6 111:19 recommended 111:20 113:11 reconvened 142:17 record 4:13 10:17 27:12 56:20 116:14 174:12</p>	<p>recording 174:5 recovery 13:25 118:12 119:2,13 120:1 121:11 recross 3:2 50:4 55:7 recruiting 67:3 redirect 3:2 45:5,14 redundancy 120:13 refer 126:5 162:17 reference 27:12 51:10 146:14 referenced 48:11 references 143:14 referencing 171:7 referred 97:14 144:21 148:19 referring 32:15,19 46:4 48:9 80:23 refresh 114:8 refugee 16:10 18:2 18:23,25 19:3 20:9 20:10 28:5 31:16 33:6,12,21 34:24 36:11 51:22,23 52:2 52:9,15,18 53:22 54:10,17,24 65:12 98:25 99:6 169:10 169:24 refugees 20:25 21:1 28:2 39:2 44:21,22 64:6,15 69:14 77:4 89:5,9 93:22 99:3,6 99:17,18 113:20 118:5 145:13 regard 46:18 47:25 68:17 77:25 78:19 96:14 105:20 107:21 112:8 127:4 147:15 148:13 170:13 regarding 32:18 44:21 113:13 132:11 147:11</p>	<p>regardless 50:21 124:1 165:17 region 1:23 2:23 regional 68:11 regular 13:20,21 15:7 16:25,25 41:10 62:21 65:3 88:21 90:2 151:1 155:24 161:13,13,15 163:24 regularly 18:7 83:18 83:19 regulations 91:15 regurgitate 131:5 132:2 regurgitates 130:24 regurgitation 140:15 reinforce 117:21 reinforcement 130:1 relating 82:5,21 114:11 170:2 relationship 123:3 relationships 46:6 50:18 relatively 54:20 relevant 46:11 106:13 161:18 relief 9:19 rely 143:11 remediation 154:21 remember 49:6 101:9 123:13 163:20 reminded 67:9 repeat 107:19 repetition 120:14 rephrase 95:15 reply 8:14 report 25:15 48:7 114:7 116:11,14 117:6,14,20,22 126:10</p>	<p>reporting 1:23 2:23 68:23 92:14,25 93:16,24 represent 37:1 68:13 85:3 representation 116:20 representative 22:17 reputation 47:16 48:3,5 50:7 requested 5:23 173:6 requests 68:19 requirement 110:1 reschedule 9:2 research 59:20 62:16,19 63:1 64:22 65:6,24 66:3,4 80:5 80:6,22,22,23 84:19 87:2,4,19,22 96:25 121:22 122:6,11 126:21 132:11 170:12,15,17,18 171:18 researched 80:20 researcher 87:23 97:15 resettled 64:9 reside 57:14 resident 168:6 resolve 141:19 resolved 141:18 resource 68:9 resources 98:22 144:11 respect 40:25 101:8 101:21 104:10 110:23 112:20 166:16 respecting 143:25 respond 8:19 24:14 28:3 responded 32:18 68:19</p>
---	--	--	---

<p>response 6:2 8:12 responsibilities 12:7 34:1 58:8 62:1 66:21 68:3 70:21 74:10 responsibility 68:17 responsible 69:5 70:6 responsive 82:18 rest 39:8 44:3 125:23 restrain 23:14 48:18 restraint 23:6 43:14 restraints 46:24 restroom 20:3 restrooms 19:21 20:7 result 65:5,24 116:10 117:24 160:18 results 54:22 121:6 resume 60:24 142:14 retards 160:20 return 161:8 review 5:1 17:8 84:2 91:25 92:23 115:19 115:24 116:10 158:3 168:22 reviewed 68:25 82:21 83:2 114:1,9 121:1 169:8 revise 117:8,9 right 6:17 12:17 14:11 18:15 28:16 32:6 38:19 50:11,16 50:19,22 51:3,6,12 52:6,17 53:18 56:14 72:5 73:17 74:4,12 75:4 80:25 88:1 95:5 97:25 100:7 101:16 102:24 107:11 108:2 109:11 116:7 117:10,11 122:22</p>	<p>122:22,22 125:16 125:17 126:4 130:16,19,20 131:12,15 133:2,15 133:19 139:1,10 142:12 148:18,19 149:9 151:23 153:24 158:5 159:20,23 161:24 162:11,14 163:9 167:8 169:11 rise 4:2 142:16,18 risk 106:15 rivera 3:3 6:11 10:9 10:11,19 11:1 36:24 45:16 50:6 55:9 85:18 114:16 road 57:18 role 24:1 33:7,16,17 33:18,20 34:14 69:10 89:14,16 room 19:24,24 20:5 130:25 132:5 155:12 rosters 163:4 rothschild 1:10 4:11 4:12,15 5:6,22 6:11 6:18,21 8:9 9:24 10:1 141:15 rude 135:18,23 rule 40:12 84:13 116:15 rules 23:2 run 58:25 runway 119:25 rural 98:20</p>	<p>saw 12:12 23:16,23 25:6,6 26:8,10,11 26:13,13,14 35:6 54:14 92:20 158:8 saying 30:20 46:22 103:4 113:10 117:21 125:11 150:6 168:13 says 137:20 138:17 146:11,12 148:4 162:16 168:14,14 171:20 scale 43:7 schedule 26:20 102:21 154:1 school 1:5 9:9,10 11:21,23,24 12:3,13 12:17,19,19,20 13:7 13:14,20,21,22 14:3 14:4,5 15:6,9,11,14 15:15,16,16 16:6,7 16:16 19:11,15 21:7 22:5,9 25:3,13 26:21 27:9 28:22,24 30:10 31:12 32:10 33:5,10 34:2,17 35:24 37:2,13 38:14 38:18 47:14,22,23 50:8,23 51:9 52:20 65:15 66:25 67:2,7 68:18 69:3 72:18,25 73:8,10 75:24 76:22 78:20,23 82:24 85:4 85:6 88:8,18,23 89:1,5,24 93:15,21 93:23 94:15 95:9 98:12,16,19 99:1,20 101:23 103:20 105:21 106:19 110:14,16 112:5,10 113:17 116:3 121:1 122:24 132:16 136:15 140:24 141:12 143:10,14 143:18,20 144:8,14</p>	<p>144:15,23,24 145:15 146:4,5 147:2 148:2,6 149:1 158:4,14 159:21 165:15,16,21 167:6 168:6,15 169:9 170:2,8 171:16,17 172:1 schooled 97:18 164:15 167:10 170:21,23 schooling 52:5 77:4 81:5 96:4 145:20 148:24 162:16,18 168:16 schools 11:20,23 21:24 22:4 25:19 33:10,12 41:10 63:13,20 64:3 74:19 74:20 77:14 78:1 82:13 87:12 88:3,10 90:2 91:11,16,19,25 92:7,9,13,13 93:5,7 93:11 158:14,24 168:7 171:19,20,21 171:25 science 73:23 101:17 124:12 130:20,21 144:2 146:15 150:25 155:25 156:10,11 167:11 scores 171:23 scream 23:21 screeching 30:18 31:21 screening 144:12 se 126:5 search 27:5 searched 26:23 27:2 27:3 searches 28:11 40:18 searching 12:12</p>
	<p>s</p>		
	<p>s 3:8 4:1 56:23 117:3 safe 19:14 44:4,8,11 106:4 sake 139:2 sanitary 28:25 sat 7:2 31:22</p>		

seat 53:19,20 seated 4:5 10:13 56:18 142:20 second 20:16 46:2 71:17 74:13 82:15 82:23 84:4 101:9 103:1 129:7 134:5 148:4 secondary 82:13,24 145:13 section 155:12 162:22 164:14 167:24 security 41:16 see 6:24 30:15 31:10 34:4 41:20 54:13 63:21 68:2 70:19 81:7 101:25 121:9 129:13 138:11 150:18 159:13 162:10,10 163:25 165:9 173:2 seeking 9:19 seen 143:5 163:22 selected 75:20 120:25 semester 14:12,17 14:21 sends 108:4 sense 32:13 67:14 106:1 sensitive 79:3 sent 47:24 sentence 46:3,8 134:14,18 135:12 sentences 134:2,7 135:13,16 separate 23:13 71:25 73:25 separated 129:12 157:17 separately 140:7 154:2 serious 146:12	serve 33:16 132:21 served 13:3 33:17 90:15 117:20 service 74:17,17 94:8 114:19,20 138:14 148:4 161:23 services 33:2,4 68:10 88:23 94:3 137:20 140:24 141:13 144:10 session 1:3,4 30:5 sessions 83:11,12 set 9:20 21:23 sets 21:21 seven 22:22 23:3,10 23:15,23 83:4 shake 28:12 29:8 share 149:18 shares 95:3 sharon 2:2 37:1 85:3 she'd 117:2 sheila 114:22 174:3 174:9 sheila's 115:16 shelter 106:1 sheltered 139:23,24 144:2,3,3 146:14,15 146:19 147:7,14,25 148:5,7,11,13,20,25 151:9,10 156:16,25 158:18 159:16 164:20 170:15 sheltering 140:5,5 146:20 151:16 shift 65:9 shirt 25:21 shock 145:25 shoes 28:11,13 29:7 29:7,9,10 short 16:20 54:20 126:7 170:19 shorter 7:6 171:2	shoulders 31:23 show 45:11 showed 19:25 31:12 164:14 showing 54:5 90:4 shown 84:17 shows 124:15 shut 26:12 shutdown 106:18 sic 48:12 49:17 side 26:25 27:16 sides 81:25 sife 97:18 sign 19:25 46:22 signatory 45:21 significant 16:9 17:6 17:8 124:19,21 125:7 128:20 significantly 35:12 36:3 similar 95:3 similarly 156:8,8 simple 133:21 134:14 simply 53:7 81:19 90:5 93:8 96:22 113:20 single 42:24 154:25 singularly 70:6 sir 4:14 6:10 sit 29:11 53:23 sitting 6:6 31:16 54:1,5 142:2 situation 106:14 113:12,15 154:16 167:16 six 9:17 83:4 115:2 133:14 171:19,20 sizes 16:4 38:23 skill 100:13 147:4 skilled 151:16 skills 72:9 100:9,19 slam 23:20,20 slammed 48:6	slang 36:7 slife 97:7,8,8,16,22 97:25 99:3,7 103:24 111:19 112:8,15 113:5 122:15 123:13 126:8 127:8 130:14,15,25 131:23 132:12,16 132:17,20 161:8,11 161:12,16,16 162:18,19 163:10 163:11,12,21,22,23 164:3,4 165:12,18 170:14 171:14 172:4,5,6,10 slightly 170:22 slots 53:8 slow 19:9 35:11 slowed 36:3 slower 81:20 126:17 132:12 140:13 slowing 155:2 slowly 120:5,13 129:13 171:9 small 9:17 64:10,11 143:24 144:6 145:5 147:11 162:24 163:4 smith 1:7 social 60:1 73:23 101:18 102:4 124:12 144:4 150:25 167:11 softening 135:22 somalis 80:20 someone's 28:17 something's 63:22 son 37:23 soon 26:22 28:15 75:6 sorry 22:13 48:11 59:16 61:19 67:1 80:2 90:16 112:2 115:17 118:13 125:14 137:9 149:5
--	--	---	--

<p>162:2 sort 30:4 43:9 112:7 127:12 148:11 157:2 sorts 30:11 104:13 sought 46:9 sound 120:10,21 121:13,21 135:18 174:5 sounded 159:12 sounds 7:23 76:3 83:7 spanish 60:7 72:6 speak 28:19 31:18 53:23 54:2 60:4,5,5 72:7 86:21 96:23 100:22 130:11 134:2,2,3 speaker 83:9,10 speakers 58:14 151:4,18 152:1 153:4 159:9 160:8,9 160:17,21,24 161:1 172:17 speaking 23:25 72:9 86:13,16 95:14,15 133:24 140:1 special 144:23 167:25 specialist 33:9 68:9 specialists 24:4 46:21 47:6,10 specialized 11:10 specific 26:1 27:5 30:6,14 35:16 54:3 64:2 69:15 113:19 128:16 specifically 18:11 47:25 63:17 94:16 122:17 128:13 165:19 speech 29:19 speed 73:19 speeding 130:5</p>	<p>spelling 10:16 56:19 56:22 spend 17:6 125:11 125:15 167:14 spending 17:10 spent 114:18 123:20 125:5 spoke 19:19 39:20 39:22,23 110:11 115:11 159:7 spoken 85:12,15 130:10 spread 161:2 square 1:12 staff 21:2 23:5,7,12 23:16,19 24:1,4,9 24:10,15,16,20,22 26:15 27:2,3 32:21 44:3,6 46:21,22 47:6,10,25 staff's 49:11 staffing 156:4 157:3 stand 56:11 142:23 standard 22:4 138:20,23,24 standardized 123:5 123:10,22 124:12 124:17 171:23 standards 108:14,24 110:3,9,22 111:6,10 111:13 115:18,24 standing 19:21,22 stanford 171:19 start 15:7 29:17,23 31:13 75:17 107:7 121:12,17 122:1 132:12 141:4 150:19 163:2 171:15 started 14:1 57:2 63:23,25 66:5,9 67:22 starting 9:9 52:20 57:7 135:24</p>	<p>starts 9:10 state 10:16 33:3 56:18 58:25 60:10 61:9,24 68:7,8,12 68:12,14,21 70:24 74:5 77:6,8 83:25 84:1 86:14 88:5,11 88:19 89:19 91:14 92:10,18 93:10,21 109:13,15 110:12 110:21 115:18,22 168:24 169:3 stated 5:12 120:4 statements 170:13 states 1:1,8 73:7 99:20 104:5 108:23 109:8,8,10 110:7,8 110:17,19,19 114:7 132:20 statistics 132:18 statute 43:11 168:17 stay 149:14 156:2 stayed 32:10 44:11 step 26:21 55:25 stevens 12:21 stiffen 28:6,16 stomp 48:18,19 stood 30:14,16 31:8 stool 103:25 stop 26:12 108:6 141:24 stopping 57:7 stories 16:20 straight 154:3 strange 102:18 stranger 28:8 strap 27:20 strasburg 12:19 strategies 12:23 63:7 65:19 78:11 81:12,21 103:10 112:19,25 street 1:15,21,24 2:24 47:20 50:22</p>	<p>streets 1:11 stress 99:1 161:10 stressful 99:10 strike 39:4 strokes 118:25 strong 46:5 99:23,25 146:2,3 164:22 stronger 91:12 structure 26:19 152:21 159:16 structured 150:16 151:23 152:17,20 153:1,4,7 158:23 159:3,24 161:17 struggling 82:18 student 14:22,24 21:19,22,23,25 22:10,23 23:1,3,6 23:11,14 24:21 25:2 25:16,18 32:1,18 33:5,9 34:21,23 36:13 43:21 44:2,3 44:6 46:6,19 47:18 47:19 48:14,17,18 48:19,21 52:9 54:5 55:10 61:12 73:4,10 74:16 75:18 101:20 104:9 124:19 130:14 135:11 139:20 140:20 145:16 150:22 161:5,11,14,15 165:13,15,23 166:16 167:24 169:10,25 student's 39:12 81:16 148:22 students 12:20 13:2 13:4,19 15:5,9,18 16:4,5,6,8,9,10,15 16:17 17:5,21 18:2 18:21,23 19:1 20:9 20:10 21:3 24:6,7 24:14,17,22,23 25:1 25:6,7,20 26:7,10</p>
--	---	---	--

26:20,22 27:6 28:9 29:3,5,22,24 30:7 30:15 31:2,10,10,14 32:20 33:11,21,23 34:25 35:1,7,15,23 35:24,25 36:11 38:24 39:10,19 40:10,13 44:4 46:6 46:12,23 48:16 49:10 50:15 51:22 51:23 52:2,15,16,18 53:22,23 54:11,17 54:24 61:22 63:11 63:20,24,25 64:14 65:3 67:3,6,16,17 68:24 71:7 73:19 74:18,18,21,23 78:6 81:5 82:11 84:15 89:23 94:1,2 95:18 96:3,16 97:24 99:5 99:16,19 103:13 104:14,17,21 105:1 105:11 106:2,20 107:18,22 112:8,21 114:24 115:2,10 118:4,20 119:10,18 121:7,25 122:20,23 125:21,22 127:4,19 128:17 129:20 130:3 133:4 136:14 136:19,23 139:10 139:17,18,23 143:23 144:1,1,4 145:1,5 147:15,20 147:21,25 148:8,14 149:2,3,18 150:12 150:23 151:1,25 153:17,25 155:11 156:9,21 157:24 159:2,7,18,24 160:2 160:5,8 161:6,7 162:4,23 163:10 164:3,6,15,19,24 165:2,8 167:10 169:2 171:5 172:4	studies 73:23 85:8 101:18 102:4 124:12 126:6 144:4 150:25 167:12 study 72:6,6,6 74:14 122:10,12,14,25 124:22 125:25 126:2,5,7 156:22 studying 71:10 style 81:1 105:5 sub 97:11 122:17 164:8 subgroup 97:13 subject 73:20 80:2 82:5,21 108:15 144:4 149:7,22,24 151:6 156:19 167:23 168:8 subjects 73:22 submersion 152:24 152:25 159:12 submitted 89:19 117:15 subpopulations 69:9,11 substituted 111:6 succeed 120:24 succeeding 92:6 success 12:23 82:17 113:18 120:8 123:4 171:22 successful 48:22 79:7 121:24 suddenly 23:11,14 23:19 suggest 9:13 suggesting 168:1 suggestions 69:1 suite 1:15,24 2:4,24 suited 67:3 summarize 105:3 107:20 111:22 112:6 summer 34:16,17 35:8,11 58:10	sunni 71:6 superintended 94:17 superintendent 90:19 superintendents 90:11 91:3 superiors 39:18 supervise 74:20 75:16,21 supervised 76:2 80:1 90:1 supervising 90:3 supervision 74:16 75:20 support 33:9 48:25 48:25 61:12 94:8 138:19 143:22 146:11 159:13 supporting 172:10 supportive 128:2 172:10 supports 170:12,16 supposed 24:6 29:17 29:20,21 155:19 156:9 159:14 sure 5:25 6:18 24:5 26:25 27:17 28:12 29:8 42:9 46:5 47:12,20 48:5 51:19 52:12,24 53:2 58:24 59:2 62:25 88:7 91:13 93:25 126:12 133:10 137:25 151:20 162:15 surprised 132:19 suspend 8:21 sustain 152:9 switch 151:19 sworn 10:11 56:16 synonym 162:18 system 73:9 91:10 130:4	t t 3:8 tab 114:6 137:7,10 137:11 161:21 169:17 table 155:12 tack 1:17 tailored 163:13 165:22 take 6:10 16:19 17:5 27:8 28:11 29:7 52:14 66:25 67:6 68:20 81:10 92:12 101:17 102:19 119:25 126:11,11 130:19 154:1 taken 136:20 taker 106:15 takes 100:22 132:7 147:4 talk 25:13 47:21 61:2 66:7 78:22 82:1 89:17 96:13 104:21 113:12 129:23 130:5,7 150:15 157:24 165:25 170:25 talked 4:18 38:21 40:9,10 49:9 74:2 139:16 140:2 164:7 talking 26:9,12 63:17,19 64:5 65:6 72:23 76:4 79:16 82:6 100:25 120:12 122:18 123:17 126:14 138:9 148:1 151:22 155:17 170:20 talks 112:9,12,17 120:12 127:6 tampon 29:1 targeted 148:8 tasers 47:1
--	---	---	--

<p>tasks 104:12,15</p> <p>taught 11:16 12:21 12:22 13:1 20:20 34:16,20 52:2,3 61:7,8,13,19,22,24 65:2,19 70:12,15 71:11 75:12 94:5 101:22 128:12,13 128:22,24 132:1 154:20 156:17 157:16</p> <p>teach 14:6 34:19 58:9 60:9,10 61:20 63:6 71:13 74:12,12 74:14 79:1,2 100:20 102:5 103:11 104:10,11 105:5 129:24 130:22,25 140:10 147:1,2 149:20</p> <p>teacher 12:2,2,18 17:1 20:22 30:14,24 31:20 34:4 36:14 39:20 41:16 53:25 54:15 61:14 76:15 77:7 85:20 102:5,10 103:3 114:14 130:11 140:10,12 140:15 150:7 153:12,14,14 154:2 154:10,11,13,17,18 154:18 155:9,13,15 155:23,25 156:2,18 157:17</p> <p>teacher's 59:8 70:14</p> <p>teachers 14:2 20:19 24:1,12 27:4 29:21 30:5 34:8,10 51:1 63:24 65:18 69:21 74:17,22,23 75:16 76:1 77:6 78:14,16 79:17,17 85:15,17 89:17 90:2,3 98:22 130:7,21 131:20 149:18,18 150:8,10</p>	<p>151:16 159:11</p> <p>teaching 12:15,16 13:12 16:13,24 20:23 35:3,25 38:1 39:6 50:12 53:25 58:14 62:2,21,22 63:3,14 70:9 73:4,5 74:3,15,16 75:24 76:9 81:8,20 82:11 82:18 90:5,7,12 112:18 140:12,16 140:16 153:15 154:13,20,21</p> <p>team 47:7,8 70:4,5</p> <p>technical 12:25 68:14 110:16</p> <p>technique 44:12</p> <p>techniques 63:7</p> <p>technology 12:22 127:23</p> <p>teenagers 26:10</p> <p>tell 5:24 21:21 22:25 46:4 59:6 60:23 61:5,16 89:13 96:15 104:19,20 107:9 108:1 109:4 113:22 132:25 138:17 143:13 148:10 158:1 162:5 164:5 169:12,16</p> <p>telling 42:11</p> <p>tells 162:7,20</p> <p>temporary 37:16</p> <p>ten 56:1,4 69:7 88:8 88:18 89:1,3</p> <p>tend 104:2</p> <p>tendency 127:11</p> <p>tendering 84:13</p> <p>tense 22:8 24:17</p> <p>tenth 12:1,8 27:6 101:24 130:13</p> <p>tenure 90:11</p> <p>term 52:10 96:19 97:8,16,16 168:15</p>	<p>terminology 139:2,6</p> <p>terms 7:1 38:18 39:18 67:2 69:5 90:12 91:5 97:4 112:18 134:25 139:18 147:14 148:21,22 151:12 162:19 170:14,22</p> <p>terrified 31:24</p> <p>tesol 58:12,13,18 59:8</p> <p>test 124:2 136:17,20 161:14 171:23</p> <p>testified 50:6 86:24 114:23 167:22</p> <p>testify 7:15,18 44:20 166:18</p> <p>testifying 7:3</p> <p>testimony 5:8 7:8 38:24 42:13 53:12 57:7,8 86:3 95:8 96:8 120:9 142:4,6 142:14 172:18</p> <p>tests 123:5,10,22 124:1,13</p> <p>textbooks 16:18</p> <p>thaddeus 12:21</p> <p>thank 5:5,22 10:3,4 10:12,14,20 36:18 36:21 45:3,4,13 50:2 51:13 55:1,17 55:18,22,24 56:17 56:24 57:1,11 63:10 88:1 94:25 116:17 137:12 138:4 139:13 141:8,20 142:15,20,25 152:11 163:6 168:20 169:5</p> <p>thanks 111:7 140:3</p> <p>that's 26:3 83:8</p> <p>thematically 149:21</p> <p>theorists 106:10,11</p> <p>theory 74:12 119:5 120:10,20 121:13</p>	<p>121:21</p> <p>thighs 27:22</p> <p>thing 26:18 28:7 29:16 96:20 98:23 99:22 100:3,24 101:9,13 144:24 154:25</p> <p>things 24:7 25:23 30:12,20,23 32:9 33:24 42:12 65:17 98:18 102:23 114:9 128:9</p> <p>think 7:5 8:18,21 31:25 32:17 35:9,23 37:4 42:24 44:10,13 50:22,22,23,25 53:6 53:8 69:12 72:5 76:3,18 79:6 85:20 86:1,24 95:14 103:22,22,25 104:15 105:24 119:6 120:22 122:9 122:9 127:11,22 131:24 137:13 140:25 148:19 151:21 161:9,22 168:10 173:2</p> <p>thinking 87:7 105:1 105:4</p> <p>third 46:3 98:9 103:24 104:1 134:9</p> <p>thought 20:2 51:8 61:2 63:16 80:14 161:19</p> <p>three 20:7 31:14 47:6,8 79:15,16 83:12 90:16 103:25 121:14 134:11 137:3,5 138:18,21 150:18 153:11 162:5</p> <p>threshold 119:21 120:7 122:8</p> <p>throw 131:23,25</p>
--	--	---	---

<p>thrown 53:4 time 6:9 7:18,20 8:18 11:19 12:11,24 14:7,19 15:7,7 17:7 17:8,10 21:4,17 28:25 30:18 34:6 35:12 36:4 37:5 38:3 42:24 49:15,19 52:23 53:1,19,20 54:21 57:6 61:13 62:11,14 63:4 65:23 65:25 66:10,24,25 67:25 70:8 79:10 80:4 81:22 84:13 89:2 96:2 100:20,22 104:10 109:9 113:19 120:16 123:20 125:8 126:11,11 127:12 131:21 132:7,12 142:2,8 150:3 154:19 156:2 157:16 163:18 167:7 170:4 171:2 times 23:18 26:8 28:4,14 42:22 76:8 83:10 127:19 timing 117:10 title 57:25 59:24 62:10 68:6 titled 141:12 today 5:24 6:5,10,24 8:1 29:23 38:7 71:25 77:3 94:18 117:7 132:20 told 14:6 21:20 tomorrow 7:9 8:4 tons 35:15 36:4 top 54:14 topics 108:5 total 64:17 69:4 totally 77:18 105:7 119:2 122:15 128:23</p>	<p>touch 27:10,11,14 27:20,22 touched 27:24,25 28:7,8,20 touching 28:17 townhouse 29:12,14 29:15 30:2,4,15 31:2,7 32:1 tradition 129:2,25 train 77:6 130:5 trained 23:9 24:9 43:17 48:21,24 98:22 153:16,17 154:11 training 21:1 22:14 22:18 43:22,23,24 44:10,14,17 69:1 77:8 78:15 79:1 84:19 93:6 108:22 132:17 153:15 trainings 20:24 21:15 44:20,22,23 69:17 transcriber 174:17 transcript 4:20,21 4:23 174:4,12 transcriptionist 174:9 transfer 100:19,20 transfers 100:14 transition 65:9 82:16,17 translation 144:10 transmission 129:6 129:9,19 130:10 trial 7:2 8:24 trick 104:16,23 tried 27:22 89:19 trips 25:22 trouble 93:7 true 104:13,17,20 161:2 165:23 174:12 truncated 97:19</p>	<p>try 19:9 27:19 69:25 102:10 160:15 trying 16:12 19:13 42:3,10,13 48:21 51:25 52:1,10 53:7 54:16 86:5 91:22 104:16,23 130:11 133:21 135:19 160:25 tsol 60:12 62:21,21 70:15 77:9 83:11,22 84:14 95:13,16 96:1 111:3 tuesday 53:13 tufts 59:11,13,15 turn 27:11 114:5 137:7,16 148:3 169:6 turnaround 27:24 turned 80:17 129:22 turning 13:11 21:19 60:14 106:24 132:22 157:23 turns 27:4 52:9 tutored 13:2 two 1:12 4:25 6:14 6:15 7:2 12:8,8 35:9 47:2,3,5 48:16 49:1 49:19,21 69:7 70:11 70:22 78:24 79:8 81:6,25 82:7 83:13 88:9 90:17,24 98:1 102:18,19 107:4 114:18,19 115:10 117:11 137:3,5 138:18,21 139:7 156:12 157:16 159:6 161:22 163:1 163:3,4 164:18 type 13:14 14:22 62:16 101:11 137:1 144:17,24 161:11 165:12,14 types 76:12 97:1 143:4</p>	<p>u u.s. 81:1 82:12 uh 13:13 22:22 39:3 41:23 44:7,9 48:2 48:10 49:13,18 51:4 51:7 53:21 64:4,19 64:21 67:8 71:24 79:14,21 81:3,23 83:23 98:2,5 99:3 99:19 105:18 108:12 109:7 112:16 114:17 115:3 119:9 122:5 123:15 124:10 125:1,20 128:1,19 131:2 133:5 136:13 137:7 138:8 139:4 140:8 149:4,6 umbrella 14:1 unaware 105:11 uncomfortable 27:23 28:20 undergraduate 74:25 underlying 103:7 understand 28:5,8 31:2,20 36:7 39:5 42:10,17 43:24 47:12 52:12 81:19 88:17 91:2 103:3,4 103:5 119:20 130:9 139:14 146:6 167:2 168:12 understandable 146:25 understanding 7:13 53:24 127:18 128:15 132:5 148:6 158:1,5,25 166:15 172:18 understands 168:1 understood 117:4 173:1</p>
--	--	---	---

<p>unfortunately 30:3 120:22</p> <p>unhappy 32:8</p> <p>uniformly 40:21 120:11 126:8,24</p> <p>unique 18:24 19:5 20:10 22:1 36:2 54:10,17 143:24</p> <p>united 1:1,8 73:6 99:20 104:5 132:20</p> <p>universal 104:5,14</p> <p>universities 75:11</p> <p>university 11:9 57:18,21 59:4,9,11 59:13,15 61:8,9,17 61:24 62:7,9,17 70:24 74:5,9 87:14</p> <p>unpack 121:14</p> <p>unquote 161:13</p> <p>unsigned 116:21,25</p> <p>upcoming 33:24</p> <p>update 33:23 58:24</p> <p>upper 15:21 151:15</p> <p>upside 28:12 29:7</p> <p>upstairs 20:6</p> <p>use 36:6 42:20 48:20 49:11 106:12 127:15 128:6 131:12,13,16,21 135:17 162:19 163:18 167:7</p> <p>useful 61:2</p> <p>uses 97:16 170:22</p> <p>usually 154:3,18</p> <p>utilized 54:22</p>	<p>98:12 110:7 123:16 126:7 141:1 143:4 153:6,19</p> <p>varying 16:4 133:1 138:15</p> <p>vassar 61:14</p> <p>venting 30:4</p> <p>verbal 22:25</p> <p>verify 17:18</p> <p>veritext 1:23 2:23</p> <p>version 146:25</p> <p>versions 150:24</p> <p>versus 59:25</p> <p>vic 113:10</p> <p>video 4:18</p> <p>videotape 5:1</p> <p>vietnam 64:8</p> <p>vietnamese 67:11</p> <p>view 113:16</p> <p>viewed 97:3</p> <p>violent 19:17</p> <p>virtue 84:18</p> <p>visible 25:4</p> <p>visit 33:21 155:15</p> <p>visited 79:25 85:10 89:3 171:17</p> <p>visits 34:2</p> <p>vivian 94:10,20</p> <p>vocabulary 134:10 134:10,21,22,23 135:25</p> <p>voir 84:24</p> <p>vs 1:4</p>	<p>walls 48:6</p> <p>walnut 1:15</p> <p>want 7:14 23:25 89:10 102:24 117:7 123:6,7 131:12 134:17,18 137:24 137:25 149:20 151:18 162:14 166:20,23 169:7</p> <p>wanted 57:2 65:18 68:20 77:22 113:12 139:13 141:24,24 141:25 153:18 157:11</p> <p>wapt 136:18</p> <p>war 64:8 98:14</p> <p>warner 2:3</p> <p>wary 24:17</p> <p>watch 63:24</p> <p>water 107:8</p> <p>way 9:6 19:8 22:25 23:3 27:10,16 29:17 31:13 32:17 35:21 35:22 53:9,24 65:1 65:2 72:21 81:8,8 81:19,24 87:11 100:2 102:19,20 103:11 104:4,8 105:5,16 117:8,9 119:6,23 120:23 121:8 124:13 125:25 128:20 129:2 130:4 138:11 146:9 152:8,22 153:2,12,13,19 156:11 160:12 163:25 165:15 167:13,15,22 168:22 172:15,21 172:22</p> <p>ways 72:8 75:19 97:14,19 101:25 102:19 104:25 105:4 117:19 120:15 126:12</p>	<p>153:6,9,11,19,20 157:19 162:17</p> <p>we've 49:9 97:1 99:5 140:2</p> <p>weak 126:19</p> <p>weaknesses 92:20</p> <p>wear 25:21,21 27:9</p> <p>website 112:1</p> <p>weda 108:4,4,8,9,10 109:2,8,9,13,15,23 109:25,25 110:3,9 110:19,21,23 111:2 111:5,7,8,17,24 115:25 127:4,6 133:14,14 136:17 139:5</p> <p>week 22:8 27:5 35:9</p> <p>weeks 35:11 49:21</p> <p>weight 86:2</p> <p>welcome 13:4 19:14</p> <p>welcomed 64:7</p> <p>welcoming 112:11</p> <p>went 14:2 54:16 70:4,4,8,14,20 73:5 91:18 98:21</p> <p>westchester 70:20 70:22 72:2</p> <p>western 81:1 105:5</p> <p>whatsoever 16:11 23:19</p> <p>white 57:15</p> <p>whoever's 56:3</p> <p>window 167:11</p> <p>wisconsin 62:8,9,17 62:20 64:7 66:5 80:8,9</p> <p>wish 157:8</p> <p>witness 3:2 6:1 7:7 9:25 10:2,11,14,18 36:20 45:6 51:19,24 52:6,12,17,21,24 53:2,6,21 54:2,13 54:25 55:19,24 56:2 56:3,4,8,16,21 57:4 60:17 84:17 85:22</p>
v	w		
<p>v 10:19</p> <p>valuable 117:16</p> <p>values 143:25</p> <p>variety 75:13 126:12</p> <p>various 14:25 16:3 38:24 71:10 75:19 79:3 80:21 97:19</p>	<p>w 56:21,22</p> <p>wait 85:22 90:16 137:19</p> <p>waiting 6:2</p> <p>walczak 1:19 113:10</p> <p>walk 13:6 26:19 41:19 47:20</p> <p>walked 20:4 124:2</p> <p>wall 23:20 29:20 41:17</p>		

<p>107:2,4 120:4 137:22,24 138:3 141:6 142:23,23 162:14 166:4,8,11 166:13,20 167:1,19 167:20 168:1,9 169:14,16,19 witnesses 4:21 5:24 6:4,22,23 7:12 witold 1:19 wondered 19:22 wonderful 167:13 word 20:1 29:19 35:17,18 36:5,7 102:18 110:6 131:6 134:16 146:12 150:20 words 24:23 27:13 35:16 41:19 52:8 125:10 134:1,3,14 139:7 140:15 150:18 155:23 work 12:10 17:11 18:11,13 21:11 32:23 37:15 38:4,22 40:3 50:14 61:11 64:12 66:25 67:22 69:8 72:19 76:19,25 77:14 78:20,22 81:20 82:6 86:24 87:23,24 88:18 89:17 100:8 101:19 110:11,20 112:13 123:1 127:24 132:3 145:5 154:6,7,9 155:14 156:1 worked 12:17 20:17 30:2 32:25 36:14 37:11 44:14 61:13 65:3 67:1,2 69:6 71:1 78:23,25 79:1 79:10 110:18 117:10 124:13 workers 114:19,20</p>	<p>working 16:20 20:25 21:3,16 34:6 36:10 37:5,5,24 38:14 63:13,14,18 67:13 68:7 77:17 79:18 92:10 93:20 121:11 127:20 149:21,25 155:13 works 100:2 109:5 112:14 154:2 worksheets 129:4 world 20:14 58:19 104:7 108:10 worth 15:23 would've 18:6 21:6 43:21 44:11 92:8 116:16 wrist 43:10 write 100:5 writing 12:23 72:10 100:5 133:24 written 45:19 129:4 wrong 135:20 137:14 wrote 51:1</p>	<p>37:16,17 46:1 51:2 58:10 70:11 83:11 83:13 94:17 109:11 118:4,20 143:23 145:2 148:2 167:3,7 167:10,14 171:15 year's 15:22 years 52:5 69:7 75:9 75:12 78:24 79:9 80:3 86:23 87:20 88:9 96:21 98:1,15 106:12 128:25 yell 23:21 48:24 yelling 30:13,18 31:20 yellow 4:22,24 yesterday 30:10 35:19 160:17 172:18 yo 26:12 york 57:15,19 58:25 60:10 61:8,9,18,24 67:24 68:1,8,12 70:24 74:3,6 75:14 77:12 83:24 84:1 86:25 87:1 88:3,5,5 88:10,11,11,12,14 88:19 92:9,11 93:21 110:12 young 19:18 20:2,5 28:24 166:23</p>
	x	
	x 3:1,8 14:9	
	y	
	<p>yeah 9:7 17:11 28:14 30:3 35:5 48:16 52:21 54:7 64:4 68:19 74:9 76:11 97:9 111:14 113:2 115:16 118:7 121:11 123:2 126:15 132:24 133:13 135:5,8 136:5 137:24 139:2 140:3 145:7,10 152:20 159:17 162:20 170:5,19 year 11:16 14:4,5,15 14:18 15:23 21:6,7 22:9 33:17 36:12</p>	