

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 2022-CP-32-02339

Nancy Arellano, as parent and natural guardian
Of Minor Z.A.,

Respondent,

v.

School District No. Two of Lexington
County, State of South Carolina,

Appellant.

RECORD ON APPEAL
(Volume I)

By: s/ Dylan A. Crossland

Andrea E. White (S.C. Bar # 11891)
Dylan A. Crossland (SC Bar #105736)
P.O. Box 7036
Columbia, SC 29202
T: 803.814.0993
awhite@sodacitylaw.com
dcrossland@sodacitylaw.com

Attorneys for Appellant

December 22, 2025
Columbia, South Carolina

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STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Nancy Arellano, as parent and natural guardian
of minor ZA,

Plaintiff,

School District No. Two of Lexington County,
State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
IN THE ELEVENTH JUDICIAL
CIRCUIT

C/A No. 2022CP3202339

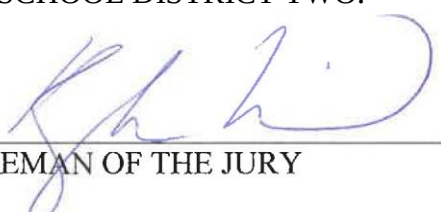
VERDICT FORM

WE, THE JURY, UNANIMOUSLY FIND:

] FOR THE PLAINTIFF, z.A., IN THE AMOUNT OF
\$ 245,000 ACTUAL DAMAGES

OR

] FOR THE DEFENDANT, SCHOOL DISTRICT TWO.



FOREMAN OF THE JURY

October 10, 2024

Judge: William P. Keesley

Court Reporter: Digital — Melinda D. Jones

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Nancy Arellano, as Parent and Natural
Guardian of Minor Z.A.,

Plaintiffs,

vs.

School District No. Two of Lexington County,
State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Civil Action No. 2022CP3202339

ORDER ON POST-TRIAL MOTIONS

Heard: February 7, 2025 via Webex Virtual Courtroom

Plaintiff's Attorney:

Defense Attorney:

Court Reporter: None – Webex Recording Procedure

Post-trial motions were filed by the defendant following a jury verdict¹ that awarded the plaintiff \$245,000, actual damages. The defendant moves for judgment notwithstanding the verdict (JNOV), a new trial absolute, a new trial nisi additur, and a new trial under the Thirteenth Juror Doctrine. The motions are respectfully denied.

This lawsuit was brought by the mother of a young child on behalf of herself and her daughter concerning an incident that occurred at Cayce Elementary School on May 25, 2022. The case was submitted to the jury only as it related to the minor's claim. The child was attending school as a 5-K student (6 years of age) and in a classroom with a teacher and a teaching assistant while a movie was being shown. A male student left his seat, walked over to the child, and assaulted her. The Complaint alleged that the male student pulled down her pants, touched her private parts, held her forcibly, and kissed her, inserting his tongue into her mouth. Another young

¹ The trial was conducted October 7 through October 10, 2024.

student promptly went to the teacher and reported what had taken place, though the teacher testified that the student who reported the incident never said that the male student touched Z.A. This lawsuit was based on allegations of gross negligence concerning what the school officials did and failed to do during and after the incident.

Essentially, there was an evidentiary dispute where the school officials claimed that they would have seen such an incident take place, that they did not, and that they indicated to the child that the event had not happened. The plaintiff also raised a claim that school officials were grossly negligent in determining that the events described by the child raised concerns about whether she had suffered sexual abuse from others, possibly at home, and that these concerns had to be reported to the South Carolina Department of Social Services. The child resided with an older male sibling, and there was an investigation which was ended without a finding of impropriety at the home. A directed verdict was granted on this issue, and the jury was instructed that they could not find for the plaintiff concerning the reporting to DSS or the investigation due to mandatory reporting laws.

The child testified, without objection to her qualifications as a witness. She is a very emotional child who cries easily and cried repeatedly while testifying. Her teacher testified that she began crying loudly immediately after the teacher was advised of the incident. The plaintiff's claim is that she suffered and continues to suffer emotional trauma and mental anguish. The child's sister and mother testified, in addition to her brother, and they were permitted to tell the jury many things that were not based on firsthand knowledge – things that the child had indicated to them – without objection. Essentially, the plaintiff's position is that the child was traumatized by school officials not properly supervising the classroom and calling her a "liar." Testimony was elicited that the child has nightmares where she screams out, has panic attacks where she cannot breathe, that her demeanor changed, that she developed issues dealing with boys, and that she began stuttering, which she had never done before.

A Licensed Professional Counselor testified for the plaintiff. She stated that she is certified in treatment and assessment of trauma and assists children aged 2 through 18 years. She is also certified in play therapy and positive parenting. She has a masters degree in professional counseling and testified that she is halfway through courses to complete her doctorate. She diagnosed this child as having an adjustment disorder with symptoms of depression and anxiety. She indicated that the child is permanently affected by the incidents. She said that the child is still having panic attacks and may be diagnosed with post-traumatic stress disorder.

The child was moved to another school after the incident. It was reported that her grades had declined and that she misses her friends from Cayce Elementary. The expert testified that there is no way to know exactly how many treatment sessions might be required for the child to recover.

ERROR IN FAILING TO CHARGE JURY: The defendant's first argument was that the court erred in failing to charge the jury on a provision of the South Carolina Tort Claims Act granting protection of governmental entities from criminal acts of third parties. While the court acknowledges that some of the alleged misconduct concerned the action of a very young child in perpetrating a sexual assault and that others may view the charge appropriate, the criminal act alleged was committed by a 6-year-old child, so it is doubtful that that child could be considered to fall within the protections afforded by the Tort Claims Act because of his age. Perhaps more significantly, the Complaint seeks recovery for the acts and omissions of school officials in failing to supervise, but also with the way they handled the aftermath. The child's major source of trauma was asserted to be how she was treated by school officials. The motion for a new trial on the failure to charge the exemption is denied.

STANDARDS FOR NEW TRIAL ABSOLUTE, JNOV, and NISI REMITTITUR: A new trial absolute is permitted when "the amount of the verdict is so grossly inadequate or excessive that it shocks the conscience of the court and clearly indicates the amount was the

result of passion, caprice, prejudice, partiality, corruption or some other improper motives.”

Waring v. Johnson, 341 S.C. 248 at 257, 533 S.E.2d 906 (Ct.App. 2000). Judges may to grant a new trial upon finding that justice has not prevailed. *See, Todd v. Owen Indus. Prods., Inc.*, 315 S.C. 34, 431 S.E.2d 596 (Ct.App. 1993). A judge may also grant a new trial if the verdict reflects juror confusion. However, a jury verdict should be upheld when it is possible to do so and carry into effect the jury’s clear intention. *See, Johnson v. Parker*, 279 S.C. 132, 303 S.E.2d 95 (1983).

In *Riley v. Ford Motor Company*, 414 S.C. 185, 777 S.E.2d 824 (2015), our Supreme Court stated:

"When a party moves for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice." *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 530–31, 431 S.E.2d 557, 558 (1993) (citing *Easler v. Hejaz Temple*, 285 S.C. 348, 356, 329 S.E.2d 753, 758 (1985)). "When the verdict indicates that the jury was unduly liberal or conservative in its view of the damages, the trial judge *alone* has the power to [alter] the verdict by the granting of a new trial *nisi*." *Id.* at 531, 431 S.E.2d at 558 (citing *O'Neal v. Bowles*, 314 S.C. 525, 527, 431 S.E.2d 555, 556 (1993)). "However, when the verdict is so grossly excessive or inadequate that the amount awarded is so shockingly disproportionate to the injuries as to indicate that the jury was moved or actuated by passion, caprice, prejudice, or other considerations not found in the evidence, it becomes the duty of the trial judge and this Court to set aside the verdict absolutely." *Id.* (citing *Easler*, 285 S.C. at 356, 329 S.E.2d at 758).

"Motions for a new trial on the ground of either excessiveness or inadequacy are addressed to the sound discretion of the trial judge." *Graham v. Whitaker*, 282 S.C. 393, 401, 321 S.E.2d 40, 45 (1984) (quoting *Toole v. Toole*, 260 S.C. 235, 195 S.E.2d 389 (1973)). "His exercise of such discretion, however, is not absolute and it is the duty of this Court in a proper case to review and determine whether there has been an abuse of discretion amounting to error of law." *Id.* at 401–02, 321 S.E.2d at 45. "Compelling reasons" must be given to justify the trial court invading the jury's province in this manner. *Bailey v. Peacock*, 318 S.C. 13, 14, 455 S.E.2d 690, 691 (1995) (citing *Pelican Bldg. Ctrs. v. Dutton*, 311 S.C. 56, 61, 427 S.E.2d 673, 676 (1993)).

In *Stevens v. Allen*, 336 S.C. 625, 520 S.E.2d 625, 629 (Ct.App.1999, *affirmed* 342 S.C. 47, 536 S.E.2d 663 (2000), the Court of Appeals wrote:

The trial judge alone has the power to grant a new trial nisi when he finds the amount of the verdict to be merely inadequate or excessive. Compelling reasons, however, must be given to justify invading the jury's province in this manner. While the trial judge may impose his will on a party by substituting his judgment for that of the jury, he may give the party an option in the way of additur or remittitur, or, in the alternative, an new trial.

DISCUSSION ON NEW TRIAL ABSOLUTE: The verdict was higher than the court anticipated, but after reviewing the notes taken at trial and having considered the arguments and submissions of counsel, the court finds that there was evidence in the record sufficient to support the award reached. The verdict could have been rendered in favor of the defendant, but that is not what the jury chose to do. The verdict and the amount awarded are entitled to deference so long as the jury acted within its prerogative. There is no indication that it improperly exceeded the proper exercise of its powers.

The verdict does not shock the conscience of the court. There has been no showing that the amount was the result of passion, caprice, prejudice, partiality, corruption, or other improper motives. No compelling reasons have been shown justifying a determination that the verdict was founded on improper considerations. The motion for a new trial absolute is respectfully denied.

DISCUSSION ON NISI REMITTITUR: Again, the court acknowledges that the verdict was higher than anticipated. It was liberal in the court's estimation, but the court cannot find that it was "unduly" liberal. After review, the court finds that there was evidence in the record sufficient to support the award reached and there are no compelling reasons justifying a determination that the verdict was founded on improper considerations. Recognizing that a jury's verdict is to be given deference, the motion for a new trial, *nisi remittitur*, is respectfully denied.

DISCUSSION ON JNOV: Likewise, the court does not find the verdict to be "so grossly excessive" or "shockingly disproportionate to the injuries as to indicate that the jury was moved or actuated by passion, caprice, prejudice, or other considerations not found in the evidence."

Riley, supra. It is not enough for a judge to feel that a lower award or no award at all would have been justified.

The court evaluated whether this small child, presenting herself in such an emotional state, caused the jury to be motivated by improper considerations such as passion or undue sympathy. It seems clear that she is a highly emotional child by nature. Her presentation at trial supported many of the assertions that substantial damages are appropriate for this particular plaintiff because her emotions are so easily triggered, and she seems unable to get over the trauma that she perceived.

The jury was charged on how to evaluate proximate cause, including the element of foreseeability.² Tortfeasors must take their “victims” as they are. Jurors are permitted to consider the demeanor of witnesses. Plaintiff’s counsel asked for an award of one million dollars in his summation, without objection. The jury deliberated for hours. There is no indication of a rush to judgment, nor is there any evidence from which this court can find that the jury’s province should be invaded by granting JNOV. The motion is respectfully denied.

THIRTEENTH JUROR DOCTRINE: Regarding the thirteenth juror doctrine, in *Howard v. Roberson*, 376 S.C. 143 (S.C. Ct. App. 2007), our Court of Appeals discussed the applicable law.

The seminal case stating the "thirteenth juror" doctrine is *Worrell v. South Carolina Power Co.*, [186 S.C. 306](#), [195 S.E. 638](#) (1938). Worrell states:
 . . . As has often been said, the trial judge is the thirteenth juror, possessing the veto power to the Nth degree, and, it must be presumed, recognizes and appreciates his responsibility, and exercises the discretion vested in him with fairness and impartiality. *Worrell*, [186 S.C. at 313-14](#), [195 S.E. at 641](#).
 . . .

² The jury was charged: “PROOF OF PROXIMATE CAUSE REQUIRES PROVING CAUSATION IN FACT. THIS INVOLVES PROOF THAT THE INJURY WOULD NOT HAVE OCCURRED BUT FOR THE GROSS NEGLIGENCE OF THE DISTRICT. PROXIMATE CAUSE ALSO REQUIRES PROVING LEGAL CAUSE. LEGAL CAUSE IS PROVEN BY SHOWING THAT IT WAS FORESEEABLE THAT INJURY WOULD FLOW FROM THE GROSS NEGLIGENCE IN QUESTION. THIS MEANS THAT THE INJURY MUST HAVE OCCURRED AS A NATURAL AND PROBABLE CONSEQUENCE OF THE GROSS NEGLIGENCE. PROVING FORESEEABILITY DOES NOT REQUIRE PROOF THAT THE PARTICULAR INJURY THAT OCCURRED WAS FORESEEABLE. HOWEVER, A WRONGDOER CANNOT BE HELD RESPONSIBLE FOR THINGS THAT COULD NOT BE EXPECTED TO RESULT FROM THAT PARTY’S MISCONDUCT.”

In *Norton v. North S. Ry. Co.*, [350 S.C. 473, 478](#), [567 S.E.2d 851, 854](#) (2002), the South Carolina Supreme Court explained, "the thirteenth juror doctrine is so named because it entitles a trial court to sit, in essence, as the thirteenth juror when [it] finds 'the evidence does not justify the verdict,' and then to grant a new trial based solely 'upon the facts.'" (citing *Folkens v. Hunt*, [300 S.C. 251](#), [387 S.E.2d 265](#) (1990)). The supreme court further held, "[T]he result of the 'thirteenth juror' vote by the judge is a new trial rather than an adjustment to the verdict. . . ." *Norton*, [350 S.C. at 478](#), [567 S.E.2d at 854](#). In essence, the judge, as the thirteenth juror, can hang the jury and start the trial anew.

...

"The 'thirteenth juror' doctrine is not used when the trial judge has found the verdict was inadequate or unduly liberal and, therefore, is not a vehicle to grant a new trial nisi additur." *Bailey v. Peacock*, [318 S.C. 13, 14-15](#), [455 S.E.2d 690, 692](#) (1995); see also *Pinckney v. Winn-Dixie Stores, Inc.*, [311 S.C. 1, 4-5](#), [426 S.E.2d 327, 329](#) (Ct.App. 1992). [Emphasis added.]

In *Roberson*, the trial judge was presented with a post-trial motion for a new trial nisi *additur*. Without ruling on that motion, the judge determined to award a new trial under the thirteenth juror doctrine. Ruling in what it described as a procedural conundrum, the Court of Appeals remanded the case to the trial court to rule on the *additur* motion, writing, "The thirteenth juror doctrine is not the proper vehicle for ordering a new trial on a singular issue such as damages."

Roberson reflects the need to distinguish between the types of post-trial motions and the need to analyze the entirety of the proceedings, including the amount of the verdict. While this court understands that it has the authority to grant a new trial under the thirteenth juror doctrine without stating a reason, upon analyzing the entire proceeding and the verdict reached, and applying the deference required towards the jury's verdict, the court does not find this case to be one for judicial intervention and declines to exercise its power as the thirteenth juror.

THEREFORE, IT IS ORDERED that the post-trial motions filed by the defendant are respectfully denied, and the verdict of the jury is upheld.

AND IT IS SO ORDERED.

[Judge's electronic signature follows on separate page]



Lexington Common Pleas

Case Caption: Nancy Arellano VS School District No. Two Of Lexington County

Case Number: 2022CP3202339

Type: Order/Confirm

Circuit Judge (Code #2050)

s/ William P. Keesley

Electronically signed on 2025-03-05 11:49:49 page 8 of 8

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	CASE#
Nancy Arellano individually and as parent and natural guardian of minor ZA,	
Plaintiffs,	
v.	SUMMONS
School District No. Two of Lexington County, State of South Carolina,	
Defendant,	

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer on the subscriber at The Eddy Law Firm, LLC, 1522 Lady Street Columbia, SC 29201, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Date: 7/12/2022

/s Trevor P. Eddy
Trevor P. Eddy, Esq. (100069)
The Eddy Law Firm, LLC
1522 Lady Street
Columbia, SC 29201
Attorney for Plaintiff

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	CASE#
Nancy Arellano individually and as parent and natural guardian of minor Z.A.,	
Plaintiffs,	
v.	COMPLAINT (jury trial demanded)
School District No. Two of Lexington County, State of South Carolina,	
Defendant,	

The Plaintiffs, complaining of the Defendant herein, respectfully allege as follows:

PARTIES

1. Plaintiff Nancy Arellano are residents and citizens of the County of Lexington, State of South Carolina. They are the parents and natural guardians of Z.A., a minor. They bring this action individually and on behalf of Z.A.
2. Defendant School District No. Two of Lexington County, State of South Carolina ("School District") is a political subdivision of the State of South Carolina and, at all times relevant to the allegations of this Complaint, was performing its governmental functions in Lexington County, South Carolina.

JURISDICTION AND VENUE

3. The court has jurisdiction of this matter pursuant to Article V of the South Carolina Constitution and the South Carolina Tort Claims Act, S.C. Code Ann. §§ 15-78-10, et seq. (2015) ("TCA"). Venue is proper in Lexington County pursuant to Section 15-78-100(b) of the TCA in that the act or omission giving rise to the claim occurred in said county. This action is brought within two years after the loss was discovered.

GENERAL ALLEGATIONS

4. Cayce Elementary School ("Cayce") is a public school organized and operated under the

authority and supervision of the School District. The School District is under a duty to operate Cayce in a professional manner such that students are safe from physical harm, harassment, bullying, and fear when in the care and custody of School District personnel. The School District is under a duty to supervise students while in the care and custody of School District personnel to prevent physical harm to, harassment of, and bullying of students.

5. On May 25, 2022, Z.A. was a student at Cayce Elementary School. Z.A. went to class and during class Z.A. and classmates were watching a movie with the lights off. While in class, a male classmate pulled Z.A. pants and underwear down, put his hand inside of her underwear and touched Z.A. private areas. Z.A. attempted to stop the assault and pulled her shirt down. However, the male classmate then pulled Z.A. by her legs and stated, "don't go" and Z.A. was then held forcibly by the male classmate. The male classmate then kissed Z.A. on the mouth and stuck his tongue in her mouth. Z.A. then returned to her desk and began completing her classwork until her teacher instructed her to leave the classroom.
6. Further, the school, teachers and administration of Cayce downplayed the assault and then blamed the assault on Z.A. causing her further indignity, humiliation and trauma.
7. As a direct and proximate result of the absence of supervision Z.A. suffered bodily injury, including traumatic injury, posttraumatic stress disorder, and significant emotional and mental injury.

**FOR A FIRST CAUSE OF ACTION FOR Z.A. AGAINST DEFENDANT SCHOOL
DISTRICT**

(Gross Negligence)

8. The allegations of the Paragraphs above of this Complaint are incorporated herein by reference.
9. The School District is a governmental entity within the meaning of the TCA. In addition, all employees of the School District at the times alleged herein were acting in and about the official business of the School District and performing official duties.

10. At the time Z.A. was a student at Cayce the School District was under a duty to operate the school in a professional manner such that students were safe from physical harm, harassment, sexual assault, and fear when in the care and custody of School District personnel. The School District was under a duty to supervise students while in the care and custody of School District personnel to prevent physical harm to, harassment of, and sexual assault of students.
11. Plaintiffs are informed and believe that Defendant School District, through its employees, was grossly negligent and careless at the time and place herein above mentioned in the following particulars:
- a. in failing to properly supervise the students;
 - b. in failing to provide any supervision of the students;
 - c. in failing to provide a safe environment for the students;
 - d. in failing to adopt policies and procedures to protect Z.A.;
 - e. in failing to implement adequate policies and procedures to prevent bullying;
 - f. in failing to take appropriate action to address the bullying of Z.A.;
 - g. in failing to take proper action to adequately investigate incidents of bullying of Z.A.;
 - h. in failing to adequately respond to incidents of bullying of Z.A., including increased supervision and discipline of the bullies;
 - i. in failing to have adequate policies, procedures, and personnel to reasonably prevent the foregoing failures at Cayce;
 - j. in generally failing to use even a slight degree of care and caution that a reasonably prudent person or organization would have used under the same or similar circumstances; and
 - k. in such other particulars as may be ascertained through discovery procedures undertaken pursuant to the South Carolina Rules of Civil Procedure or proved at trial.
12. As a direct and proximate result of the gross negligence and carelessness of Defendant School District as aforesaid, Z.A. suffered and continues to suffer a loss within the meaning of the

TCA, for which the School District would be liable if a private person, including bodily injury, traumatic injury, posttraumatic stress disorder, and significant emotional and mental injury. Z.A. suffered and will continue to suffer great pain and mental and emotional anguish in the future and will be required to expend monies for future medical care. Further, Z.A. has suffered permanent impairment and loss of enjoyment of life.

13. Plaintiffs are informed and believe that they are entitled to a judgment against Defendant School District in an amount to be proved at trial together with the costs of this action.

**FOR A FIRST CAUSE OF ACTION FOR NANCY ARELLANO AGAINST
DEFENDANT SCHOOL DISTRICT**

(Gross Negligence)

14. The allegations of Paragraphs above of this Complaint are incorporated herein by reference.
15. Nancy Arellano, as parent of Z.A., is responsible for and liable for expenses, including medical expenses, which have been incurred and will be incurred in the future as a result of the injuries and other damages suffered by Z.A.
16. In addition, Nancy Arellano IS responsible for the care, custody, and rearing of Z.A.
17. As a direct and proximate result of the gross negligence and carelessness of Defendant School District as aforesaid, Nancy Arellano have suffered and continue to suffer a loss within the meaning of the TCA, for which the School District would be liable if a private person, including injuries to Z.A. which have required them to expend monies for hospitalization, doctors= care, and other medical necessities. Z.A. suffered and will continue to suffer great pain and mental and emotional anguish in the future and his parents and he will be required to expend further monies for future medical care, including mental health care, and will be required to devote additional time and care to the rearing of Z.A.
18. Plaintiffs are informed and believe that they are entitled to judgments against Defendant School District in amounts to be proved at trial together with the costs of this action.
- WHEREFORE, Plaintiffs pray for judgments against Defendant School District for actual

damages in amounts to be determined by the jury at the trial of this action, for the costs and disbursements of this action, and for such other and further relief as the Court may deem just and proper.

Date: 7/12/2022

/s Trevor P. Eddy

Trevor P. Eddy, Esq. (100069)

The Eddy Law Firm, LLC

1522 Lady Street

Columbia, SC 29201

Attorney for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Nancy Arellano individually and as parent and
natural guardian of minor ZA,

Plaintiffs,

v.

School District No. Two of Lexington County,
State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

C/A No.: 2022-CP-32-02339

**ANSWER AND AFFIRMATIVE
DEFENSES BY DEFENDANT
LEXINGTON COUNTY SCHOOL
DISTRICT TWO**

Defendant Lexington County School District Two (hereinafter “the District”), by and through its undersigned counsel, hereby responds to the Complaint of Nancy Arellano (“Plaintiff”) Individually and as Parent and Natural Guardian for ZA., a minor child (hereinafter “Minor Plaintiff”) (collectively “Plaintiffs”) in accordance with the numbered paragraphs thereof, as follows:

PARTIES

1. Admitted upon information and belief.
2. Denied as stated. The District admits only that it is a political subdivision of the State of South Carolina, that it operates public k-12 schools in Lexington County, and that it is afforded various protections pursuant to the S.C. Tort Claims Act (“SCTCA”).

JURISDICTION AND VENUE

3. Admitted.

GENERAL ALLEGATIONS

4. Denied as stated. The District admits only that it operates Cayce Elementary School (“Cayce”) and that it is responsible for supervising its students, with its duties in that regard being specifically defined by the SCTCA. The District denies that it breached any of its duties and responsibilities.

5. Denied as stated. The District admits only that Z.A. was a student at Cayce Elementary School and was in attendance on May 25, 2022, and that Z.A. complained of alleged sexual assault. All remaining allegations of Paragraph 5 are denied.

6. Denied.

7. Denied.

FIRST CAUSE OF ACTION FOR Z.A. AGAINST DEFENDANT **(Gross Negligence)**

8. The District incorporates by reference herein its responses to the preceding paragraphs of Plaintiffs’ Complaint.

9. Denied as stated. The District admits only that it has a duty related to the supervision, education, and training of employees and staff, as defined and set forth in the SCTCA and case law interpreting the SCTCA.

10. Denied as stated. The District admits only that it has a duty related to the supervision and protection of all students, as defined and set forth in the SCTCA and case law interpreting the SCTCA.

11. The District denies all allegations set forth in Paragraph 11, including subparts a – k.

12. Denied.

13. Plaintiff's statement constitutes a demand for relief to which no responsive pleading is required. To the extent a responsive pleading is required, the District denies that Plaintiff is entitled to the relief she seeks.

FIRST CAUSE OF ACTION FOR NANCY ARELLANO AGAINST DEFENDANT
(Gross Negligence)

14. The District incorporates by reference herein its responses to the preceding paragraphs of Plaintiff's Complaint.

15. Admitted upon information and belief.

16. Admitted upon information and belief.

17. Denied.

18. Plaintiff's statement constitutes a demand for relief to which no responsive pleading is required. To the extent a responsive pleading is required, the District denies that Plaintiff is entitled to the relief she seeks.

DEMAND FOR JUDGMENT

Plaintiff's "WHEREFORE" statement, constitutes a demand for relief to which no responsive pleading is required. To the extent that a responsive pleading is required, the District denies Plaintiff is entitled to the relief she seeks.

FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

Plaintiff fails to state facts sufficient to constitute a cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE
(No Liability for Acts of Others)

The injuries complained of were caused in whole or in part by the actions of other persons or entities other than the District, for which the District is not liable.

THIRD AFFIRMATIVE DEFENSE
(Tort Claims Act)

The District is a governmental entity within the provisions of the S.C. Tort Claims Act, S.C. Code Ann. §§ 15-78-10, *et seq.*, and is entitled to all of the protections provided by the Act.

FOURTH AFFIRMATIVE DEFENSE
(Immunity Under the Tort Claims Act)

The District is not liable for the damages, injuries, and losses claimed by Plaintiffs to the extent such damages, injuries, and losses resulted from one or more of the following actions, which the District affirmatively alleges were not done in a grossly negligent manner:

- a. the District's administrative action or inaction of a legislative, judicial, or quasi-judicial nature (S.C. Code Ann. § 15-78-60(1));
- b. the District's adoption, enforcement, or compliance with any policy or procedure or its failure to adopt, enforce, or comply with its policies or procedures (S.C. Code Ann. § 15-78-60(4));
- c. the exercise or discretion of judgment by the District or employee or the performance or failure to perform any act or service, which is in the discretion or judgment of the District or employee (S.C. Code Ann. § 15-78-60(5));
- d. employee conduct outside the course and scope of his/her official duties or that which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude (S.C. Code Ann. § 15-78-60(17));

e. an act or omission of a person other than an employee including but not limited to the criminal actions of third persons (S.C. Code Ann. § 15-78-60(20)); and

f. the District's responsibility or duty regarding supervision, protection, control, confinement, or custody of a student, and the District was not grossly negligent in exercising that responsibility or duty (S.C. Code Ann. § 15-78-60(25)).

FIFTH AFFIRMATIVE DEFENSE
(Lack of Proximate Cause)

The District's actions and/or actions were not the proximate cause of the losses, damages, or injuries allegedly sustained by Plaintiff.

SIXTH AFFIRMATIVE DEFENSE
(Reliance on Other Defenses)

The District hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery or investigation, and it reserves its right to amend its Answer to assert any such defenses.

WHEREFORE, having fully answered Plaintiff's Complaint, the District prays and respectfully requests that the same be dismissed with prejudice, together with the costs and disbursements of this action, and for such relief as this Court deems proper.

(SIGNATURE BLOCK ON THE FOLLOWING PAGE)

Respectfully submitted by:

WHITE & STORY, LLC

By: s/ Andrea E. White

Andrea E. White (SC BAR No. 11891)

Michael D. Davidson (SC BAR No. 104114)

P.O. Box 7036 (29202)

3614 Landmark Drive, Suite EF

Columbia, SC 29204

T: 803.814.0993

F: 803.814.1183

awhite@sodacitylaw.com

mdavidson@sodacitylaw.com

***Attorneys for Defendant Lexington County School
District Two***

September 1, 2022

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Nancy Arellano individually and as parent
and natural guardian of minor ZA,

Plaintiffs,

v.

School District No. Two of Lexington
County, State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
IN THE ELEVENTH JUDICIAL CIRCUIT

C/A No.: 2022-CP-32-02339

**DEFENDANT’S MOTION FOR
JUDGMENT NOTWITHSTANDING
THE VERDICT OR, IN THE
ALTERNATIVE, FOR A NEW TRIAL
ABSOLUTE OR NEW TRIAL NISI
REMITTITUR**

Defendant Lexington County School District Two (“the District”) submits the following Motion for Judgment Notwithstanding the Verdict, Motion for a New Trial Absolute, and/or New Trial *Nisi Remittitur* pursuant to Rule 50(b) and Rule 59 of the South Carolina Rules of Civil Procedure.

BACKGROUND

The trial of this case began case on October 7, 2024, and ended on October 10, 2024, when the jury returned a verdict of Two Hundred Forty-Five Thousand Dollars (\$245,000) for the Minor Plaintiff. At the conclusion of Plaintiffs’ case, the District moved for a directed verdict on the following grounds: (1) that the District is entitled to judgment as a matter of law pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq* (“SCTCA”), because Plaintiffs did not present any evidence from which a reasonable jury could conclude that the District failed to exercise at least slight care in supervising and protecting the Minor Plaintiff and the male student who inappropriately touched her and/or in responding to the incident; (2) that Plaintiff Nancy Arellano failed to present any evidence to support her claim that she sustained damages as a result of the incident; and (3) that the District was entitled to judgment as a matter of law regarding Plaintiffs’ claim that the District was grossly negligent in contacting the South Carolina

Department of Social Services (“DSS”) following the incident. After consideration, the Court denied the District’s Motion as to the question of gross negligence.

Before closing arguments, the Court conducted a jury charge conference with the parties, during which the District requested that the Court charge the jury that the District could not be liable under the SCTCA for “acts or omissions of a person other than an employee, including but not limited to the criminal actions of third persons.” S.C. Code Ann. § 15-78-60(20).¹The Court refused to charge that provision of the SCTCA, stating he did not believe it was applicable as a child of six years of age could not legally commit a crime. The District renewed its request that the provision be submitted to the jury after the Court delivered its charge to the jury.

STANDARDS OF REVIEW

I. The legal standard for a Motion for Judgment Notwithstanding the Verdict pursuant to S.C. Rules of Civ. P. 50(b).

In ruling on a motion for judgment notwithstanding the verdict, such a motion may be granted “if no reasonable jury could have reached the challenged verdict.” *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998). The trial court must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party. *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004). However, this standard does not authorize the submission of speculative, theoretical, and hypothetical views. *Hanahan v. Simpson*, 326 S.C. 140, 149, 485 S.E.2d 903, 908 (1997); *Small v. Pioneer Mach., Inc.*, 329 S.C. 448, 461, 494 S.E.2d 835, 841 (Ct. App. 1997). In essence, the court must determine whether a verdict for the opposing party “would be reasonably possible under the facts as liberally construed in his favor.” *Bultman v. Barber*, 277 S.C. 5, 281 S.E. 2d 791, 792 (1981).

¹ The District included SC Code Section 15-78-60(20) as an affirmative defense in its Answer to Plaintiffs’ Complaint.

The same rule further specifies that “[a] motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. Rule 50, SCRCP.

II. The legal standard for a Motion for New Trial Absolute and New Trial Nisi Remittitur pursuant to S.C. Rules of Civ. P. 59(a).

If the amount of the verdict is so grossly excessive that it indicates it was the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial court must grant a new trial absolute. *Sanders v. Prince*, 304 S.C. 236, 238, 403 S.E.2d 640, 642 (1991). “When a verdict is grossly excessive and the amount awarded is so shockingly disproportionate to the injuries as to indicate that the jury acted out of passion, caprice, prejudice, or other consideration not founded on the evidence, it becomes the duty of this Court, as well as the trial court, to set aside the verdict.” *Small v. Springs Indus.*, 292 S.C. 481, 487, 357 S.E.2d 452, 455 (1987).

Alternatively, a motion for a new trial *nisi remittitur* asks the trial court to reduce the verdict because the verdict is merely excessive. *James v. Horace Mann Ins. Co.*, 371 S.C. 187, 638 S.E.2d 667 (2006). The consideration for a motion for a new trial *nisi remittitur* requires the trial judge to consider the adequacy of the verdict in light of the evidence presented. *Vinson v. Hartley*, 324 S.C. at 405, 477 S.E.2d at 723 (1996).

ARGUMENT

1. Motion for Judgment Notwithstanding the Verdict

For the Minor Plaintiff to recover, she must prove that school officials failed to exercise slight care in reference to her claim that school officials did not properly supervise the classroom and her claim that the District did not appropriately handle its investigation into the incident. *Vinson v. Hartley*, 324 S.C. 389, 477 S.E.2d 715 (Ct. App. 1996). Gross negligence involves an intentional, conscious failure to do something that a party is obligated to do. *Etheredge v. Richland Sch. Dist. One*, 341 S.C. 307, 534 S.E.2d 275 (2000); *Clyburn v. Sumter County School District 17*, 451 S.E.2d 885 (S.C. 1994); *Moore v. Berkeley County Sch. Dist.*, 486 S.E.2d 9 (Ct. App. 1998).

Put another way, it is the intentional doing of a thing that one ought not to do. *Id.* Gross negligence involves conduct that shows an utter disregard of caution amounting to a complete neglect of the safety of another. *Id.* It is wanton conduct done with conscious or reckless disregard for the safety of others. *Id.* As long as school officials make some effort to take precautions to protect students from foreseeable harm, they will have exercised at least slight care; just because a school district could have done more does not mean that the district did not exercise slight care. *Id.* The District is not the guarantor or insurer of a student's safety; the mere fact that a student may have been harmed while at school does not necessarily entitle that student to monetary recovery. *See Burns v. South Carolina Comm'n for the Blind*, 323 S.C. 77, 448 S.E.2d 589 (Ct. App. 1994); *Lilley v. Elk Grove Unified Sch. Dist.*, 80 Cal. Rptr.2d 638, 642 (Cal. Ct. App. 1998).

a. The Undisputed Facts and Evidence Demonstrate That The District Exercised At Least Slight Care.

First, the District exercised slight care by staffing the kindergarten classroom of twenty-four (24) students with two professionals, both of whom were trained on student supervision. As Principal Andrew Drozdak testified, this student-to-teacher ratio complies with the relevant South Carolina Department of Education Regulation regarding staffing requirements. One of those individuals, Teacher Assistant Kimberly Long, had significant experience in supervising young children, having worked as a teacher assistant for at least four years and also working in a daycare setting for many years, where she supervised young students. Furthermore, as testified to by Principal Drozdak and Assistant Principal Annette Ariail, they had received no complaints about these professionals' supervision of the classroom prior to the incident.

Second, the undisputed evidence shows both these professionals were present and actively monitoring the class during the relevant time period. The classroom teacher, Sadie Ray, testified she was moving around the classroom monitoring students immediately before the incident. She testified she had just returned to her desk when a student approached her and made her aware of

the incident. Furthermore, the teaching assistant, Ms. Long, testified she was present in the classroom and actively interacting with and monitoring students at the time of the alleged incident. Both professionals actively monitoring and supervising the classroom demonstrates more than slight care, particularly as Plaintiff did not present any evidence whatsoever to contradict these facts.

Third, the classroom was designed with student supervision and safety in mind. Ms. Ray and Ms. Long testified that the classroom did not have any blind spots that could create supervision or safety concerns. Rather, Ms. Ray specifically set up her classroom to prevent such blind spots. Furthermore, the classroom was designed so Ms. Ray would have a clear and full view of the classroom from her desk, which was located at the front of the classroom, and from Ms. Long's desk, which was located at the back of the classroom. Ms. Ray also testified that, on the day of the incident, the blinds were open; the lights were on with only minimal dimming, and there were lamps on throughout the room.

Fourth, the District had policies in place relating to student supervision, sexual harassment/assault, and investigating and responding to student discipline. Principal Drozdak testified that staff was made aware of and expected to follow these District policies.

Fifth, as further evidence of school officials' exercise of slight care, Catherine Prizer, the school counselor, testified she had recently conducted a "Safe Touch" lesson to Ms. Ray's class. This lesson provides students with information about the difference between appropriate and inappropriate touching of their private parts by both adults and other students.

Sixth, Ms. Ray and Ms. Long both testified that, prior to the touching incident, the male student ("Student K") had not engaged in any similar behavior which would indicate a need for closer monitoring or supervision. Again, Plaintiff presented no evidence to contradict this fact.

Lastly, as it relates to the District's response to the incident, the undisputed facts presented to the jury demonstrate that school officials acted with at least slight care. Ms. Ray immediately notified Assistant Principal Ariail, who began an investigation into the incident. The investigation included talking with the student witness and both students involved in the touching. These interviews were conducted in a manner appropriate to their age and the incident in question, with no testimony or documentary evidence presented by Plaintiff to indicate otherwise. At the conclusion of the investigation and based on the determination that Student K had touched the Minor Plaintiff in an inappropriate manner, school officials notified law enforcement and also referred Student K for a disciplinary hearing in compliance with applicable District policy. Again, Plaintiff did not present any evidence to counter this testimony. Based on these undisputed facts, as a matter of law, the District exercised at least slight care in responding to the touching incident and is entitled to judgment notwithstanding the verdict.

b. As A Matter Of Law, S.C. Code Ann. § 15-78-60(20) Provides The District With Immunity For Actions Of A Person Other Than An Employee.

The District asserts it was an error of law for the Court to refuse to charge one of its affirmative defenses to the jury. Under the SCTCA, the District "is not liable for a loss resulting from an act or omission of a person other than an employee including but not limited to the criminal actions of the third persons." S.C. Code Ann. § 15-78-60(20). It is undisputed that it was Student K who inappropriately touched the Minor Plaintiff. Student K is not an employee of the District; thus, the inappropriate touching did not involve District officials but rather a "person other than an employee." As such, S.C. Code Ann. § 15-78-60(20) is undoubtedly applicable and provides additional protections for the District. It should be noted that the SCTCA states that, "the provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State." S.C. Code Ann. § 15-78-20(f).

Plaintiff's alleged damages all relate to the acts of Student K, which as a matter of law, the District is not liable for unless Plaintiff produces evidence from which a reasonable jury could conclude that the District was grossly negligent in supervising the students at the time of Student K's act. Here, Plaintiff presented no evidence to the jury that the class was not supervised; that the teachers were distracted; and/or that the classroom was designed in a way to increase the likelihood of the incident happening. In fact, the opposite is true. As explained *supra*, Ms. Ray designed her classroom so she could properly supervise students from any part of the classroom and so that there were no blind spots. The evidence presented by the District at trial undisputedly shows that the classroom had four (4) large windows, several lamps throughout the classroom, and that the overhead lights were on (slightly dimmed). Furthermore, District officials testified that the Minor Plaintiff and Student K never had any other issues with each other. In fact, testimony presented by school officials indicates the two were friends. Ms. Ray testified that neither student had any major discipline issues at any point during the school year. Furthermore, neither the classroom professionals nor members of the administration were aware of any issues or complaints of harassment or inappropriate touching involving Student K. Without evidence that Plaintiff's injury was the natural and probable consequence of the District's alleged gross negligence and/or evidence that a change in the District's actions would have prevented her injury, the District is not liable for third party acts and the District should have received the benefits of that provision of the SCTCA being charged to the jury². *See Greenville Memorial Auditorium v. Martin*, 201 S.C. 242, 247, 391 S.E.2d 546, 547 (1990).

² The District also asserts that because counsel for the District referenced the applicability of this immunity provision in her opening statement to the jury, the jury could have held that fact against the District when the Court failed to include that provision in his charge to the jury.

c. Plaintiff Failed To Produce Any Evidence From Which the Jury Could Conclude That The District Was Grossly Negligent.

During the trial, Plaintiff failed to elicit any testimony either through her own witnesses or from the District's witnesses to contradict the District's testimony demonstrating that school officials were not grossly negligent in supervising, protecting, and/or controlling students. Instead, Plaintiff relies solely on her counsel's insinuations that school officials must have failed to exercise at least slight care simply because the incident occurred. Specifically, during his examination of Ms. Ray, Plaintiff's counsel insinuated that Ms. Ray must have been distracted at the time of the incident because it was the end of the school year and there was paperwork to be completed. However, Ms. Ray adamantly denied she was distracted and testified she was supervising and monitoring the class, stating that the incident could have occurred within a matter of "one or two seconds" as she was walking to her desk. Plaintiff presented no evidence to counter this testimony.

In his closing to the jury, counsel for Plaintiff, with no facts upon which to base this statement, argued to the jury that the incident could not possibly have happened in "one or two seconds" clapping his hands to indicate the amount of time and ignoring that Ms. Ray's statement about the amount of time was a figure of speech, ie, it happened very quickly. Such an argument constitutes mere speculation and hypothesis, which may not be considered by a jury in making its decision. *See Hanahan v. Simpson*, 326 S.C. 140, 149, 485 S.E.2d 903, 908 (1997).

d. Plaintiff failed to prove future damages to a reasonable certainty.

Proof of damages sufficient to support a jury verdict must pass the realm of conjecture, speculation, or opinion not founded on facts, and must consist of actual facts from which a reasonably accurate conclusion regarding the cause and the amount of the loss can be logically and rationally drawn. *See Proctor v. Dep't of Health & Envtl. Control*, 368 S.C. 279, 628 S.E.2d 496 (Ct. App. 2006). Here, Plaintiff presented no evidence of any monetary loss, instead relying solely on the testimony of Narumi Amador, a licensed professional counselor who treated the Minor

Plaintiff on less than ten occasions, that the Minor Plaintiff **may** need ongoing counseling in the future. This testimony is not sufficient to support the jury's verdict, as it relies on mere speculation and conjecture. In fact, on cross-examination, Ms. Amador admitted she is not currently treating the Minor Plaintiff, having not seen her since November 2023. She further testified she is not aware of the Minor Plaintiff seeing any other counselor since November 2023. Furthermore, Ms. Amador admitted that she is not certain that the Minor Plaintiff will need ongoing treatment and even admitted that the contention that she will need further counseling is pure speculation.

2. Motion For A New Trial Absolute And/Or New Trial Nisi Remittitur

a. The Thirteenth Juror Doctrine

The Thirteenth Juror Doctrine is a vehicle by which the trial court may take its own view of the evidence and grant a new trial if it disagrees with the jury's verdict. *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 334, 732 S.E.2d 166, 172 (2012). This doctrine "entitles the judge to sit, in essence, as the thirteenth juror when he finds 'the evidence does not justify the verdict,' and then to grant a new trial based solely 'upon the facts.'" *Norton v. Norfolk Southern Railway Co.*, 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002), citing *Folkens v. Hunt*, 300 S.C. 251, 387 S.E.2d 265 (1990). As the thirteenth juror, the trial judge can hang the jury by refusing to agree to the jury's otherwise unanimous verdict. *Id.* Where the court finds that the evidence is so outweighed by the countervailing evidence, it is within the court's discretion to set aside the verdict under the thirteenth juror doctrine, but the trial court is not compelled to state the reasons for its ruling on such a motion. *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 334, 732 S.E.2d 166, 172 (2012).

Here, the undisputed evidence in this case clearly shows as a matter of law that the District exercised slight care, if not an abundance of care, and did not act in a grossly negligent manner. The District draws the Court's attention to the numerous specific examples of the District's slight

care explained *supra*. Throughout the proceedings, the Court was very attentive to the evidence proffered through testimony and/or exhibits and appeared to seriously consider granting the District's Motion for a Directed Verdict. More specifically, when ruling on the District's Motion for a Directed Verdict after the presentation of Plaintiff's case, the Court stated that there was "substantial evidence" for the jury to return a verdict for the District before the Court dismissed some of the Plaintiff's remaining claims. As a part of that ruling, the Court explained that when considering a Motion for Directed Verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. *State v. Burdette*, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999).

However, the Thirteenth Juror Doctrine "entitles the judge to sit, in essence, as the thirteenth juror when he finds 'the evidence does not justify the verdict,' and then to grant a new trial based solely 'upon the facts.'" *Norton v. Norfolk Southern Railway Co.*, 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002), citing *Folkens v. Hunt*, 300 S.C. 251, 387 S.E.2d 265 (1990) (emphasis added). Therefore, at this stage, the Court is able to consider/weigh the facts and grant a new trial. As it has already been noted, the "substantial" evidence of the District's slight care substantially outweighs the scarce, if any, evidence that the Plaintiff proffers. Yet, not only did the Jury return a verdict for Plaintiff, but the verdict was for \$245,000.00. This unreasonable and grossly excessive verdict indicates that the jury failed to properly consider and follow the instructions of the Court in its deliberations. The Thirteenth Juror Doctrine provides this Court with a vehicle to disagree with the jury's verdict and afford the District a reasonable and impartial jury. Accordingly, the exercise of judicial discretion and the awarding of a new trial to the District is not only appropriate but is absolutely necessary.

b. The Jury's Verdict Is So Grossly Excessive So As To Be The Result Of Passion, Prejudice, Or Some Other Influence Outside The Evidence.

If the amount of a jury verdict is so grossly excessive that it must be the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial court must grant a new trial absolute. *See Sanders v. Prince*, 304 S.C. 236, 238, 403 S.E.2d 640, 642 (1991). Without question, the \$245,000.00 verdict is grossly excessive and unsupported by the evidence (or lack thereof). As explained *supra*, Plaintiff failed to produce a shred of evidence or any bills/expenses as they relate to the Minor Plaintiff's damages. Instead, the jury was left with mere speculation as to any damages. Furthermore, Plaintiff failed to produce any evidence of the costs of future treatments. In fact, Plaintiff's counsel asked the jury to use their own judgment when determining the costs of any future treatments in an attempt to fill this major void. The \$245,000.00 verdict does not have any evidentiary support for it, is grossly excessive, and therefore must be the result of passion, prejudice, or some other influence outside of the evidence.

First and foremost, the jury disregarded or overlooked the applicable law/requirements for gross negligence since there are no facts to support that the District intentionally or consciously failed to do something that it is obligated to do. Rather, the undisputed evidence clearly indicates that the District exercised slight care and did not act in a grossly negligent manner. The disparity between the award and lack of damages goes beyond a merely liberal award and suggests that the jurors were motivated by improper considerations. *See Dillon v. Frazer*, 383 S.C. 59, 678 S.E.2d 251 (2009).

Next, turning to the issue of passion, the inappropriate touching or "sexual assault" as described by Plaintiff's Counsel, of a young child is a sensitive and highly emotional subject, and it would be easy and natural for a jury to return a verdict based on passion. The entire proceeding was hard on all of the parties and emotions ran high throughout the entire trial. Specifically, the Minor Plaintiff, who is an eight-year-old girl, had several emotional outbursts throughout the trial

and during jury selection. Specifically, during the jury selection process, the Minor Plaintiff was instructed by the Court to stand up and face the juror pool; she immediately began sobbing and had to be comforted by her mother/others (all in front of the juror pool/jury). Moving forward and throughout the trial, the Minor Plaintiff was visibly upset and had multiple emotional outbursts.³ The longest/largest emotional outburst occurred when Plaintiff's Counsel called her to testify, Z.A. was immediately overcome by her emotions in front of the jury. This emotional outburst lasted for over fifteen (15) minutes and the Court had to excuse the Jury several times to allow the Minor Plaintiff to calm down. At one point when the Minor Plaintiff was on the stand, she broke down again and the jury had to be removed once again. The trial/her testimony naturally brought out emotions from Z.A. that elevated the emotion/sense of attachment of everyone present for the trial.

As further support for the verdict being the result of passion or other improper influence, the District draws the Court's attention to the graphic and explicit language that was used throughout the trial. The Minor Plaintiff's description of the alleged incident had drastically changed from right after the incident until now.⁴ Initially, her description of what occurred included "oral sex", "white sticky stuff", and "French kissing". As such, during the District officials' testimony, they had no choice but to relay the same graphic/explicit language even though Plaintiff's allegations no longer included those actions. Those same descriptions are what made District officials concerned and obligated them to make a DSS report. Such knowledge by a very young child also could have led to an emotional response by the jury in reaching its verdict.

³ Plaintiff is prevented from recovering any monetary damages as it relates to litigation-induced stress/emotional distress. *See Knussman v. Maryland*, 272 F.3d 625, 640 (4th Cir. 2001) ("Generally speaking, litigation-induced emotional distress is never a compensable element of damages").

⁴ Plaintiff and/or her Counsel have not proffered any reason/support for the change in her Z.A.'s description of the alleged incident.

Additionally, much testimony by Plaintiff was presented to the jury regarding the DSS investigation, the seven (7) visits by DSS to the Arellano household, and DSS's response to the report. Though Plaintiffs' claim regarding DSS ultimately was dismissed by the Court, that testimony could have improperly influenced the jury's verdict.

Further, based on the amount of the verdict, the jury must have intended to punish or make an example out of the District because of this incident. However, under the SCTCA, no award for damages shall include punitive or exemplary damages, and the limitations on and exemptions of liability must be liberally construed in favor of limiting liability. S.C. Code Ann. § 15-78-120(b); and S.C. Code Ann. § 15-78-20(f).

Further, the grossly excessive award must be the result of prejudice against the District for several reasons. First, the general public's opinion of traditional public schools across the state of South Carolina is drastically lowering as more and more parents seek out charter schools, private schools, and homeschool options to educate their children. As of 2023, approximately seventeen percent (17%) of all South Carolina students were enrolled in a homeschool program, charter school, or private school, which is a substantial increase from prior years.

For the reasons explained *supra*, the District asks this Court to grant its Motion for a New Trial Absolute pursuant to the Thirteenth Juror Doctrine. Additionally, the District asks this Court to grant its Motion for a New Trial Absolute because the verdict is grossly excessive and must be the result of passion, prejudice, partiality, or some other improper motive(s). In the alternative, the District asks this Court to grant its Motion for a New Trial *Nisi Remittitur* with a substantial reduction in the amount of the verdict based on the lack of evidence to support a verdict of Two Hundred Forty-Five Thousand Dollars (\$245,000).

CONCLUSION

For the reasons explained *supra*, the District prays for an Order granting its Motion for Judgment Notwithstanding the Verdict; in the alternative, the District prays for an order granting a New Trial Absolute or a New Trial *Nisi Remittitur*.

Respectfully Submitted:

WHITE & STORY, LLC

By: s/Andrea E. White

Andrea E. White (SC Bar No. 11891)
Dylan A. Crossland (SC Bar No. 105736)
3614 Landmark Dr., Suite EF
P.O. Box 7036 (29202)
Columbia, SC 29204
T: 803.814.0993
F: 803.814.1183
awhite@sodacitylaw.com
dcrossland@sodacitylaw.com

***Attorneys for Defendant Lexington School District
Two***

October 21, 2024
Columbia, South Carolina

STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT 11
COUNTY OF LEXINGTON) DOCKET No. 2022-CP-32-02339

NANCY ARELLANO	)
	)
Plaintiff,	)
versus	)
	)
SCHOOL DISTRICT 2,	)
	)
Defendant.	)

H E A R I N G
BEFORE THE HONORABLE WILLIAM P. KEESLEY

DATE: October 7-10, 2024.
TIME: 11:54 A.M.
LOCATION: South Carolina Circuit Court 11
TRANSCRIBED BY: Latasha Jefferson

LEGAL EAGLE
Post Office Box 5682
Greenville, South Carolina 29606
864-467-1373
depos@legaleagleinc.com

1 APPEARANCES:

2 TREVOR PENROSE EDDY, ESQUIRE

3 The Eddy Law Firm, LLC

4 1516 Richland Street, Suite B

5 Columbia, South Carolina 29201

6 Attorney for the Plaintiff,

7

8 ANDREA WHITE, ESQUIRE

9 DYLAN CROSSLAND, ESQUIRE

10 White & Story, LLC

11 3614 Landmark Drive, Suite EF

12 Columbia, South Carolina 29204

13 Attorney for the Defendant.

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2 THE COURT: You got the oath, Madam Clerk. You want to
3 do the oath now or wait till --

4 THE CLERK: (Inaudible).

5 THE COURT: You want to do the oath now or you want to
6 wait till -- Ladies and gentlemen, the next thing I need is
7 to place you under the oath of a trial jury. I need for you
8 -- well, let's see. Let's wait till they select the foreman.
9 I think I'm going to wait till they select the foreman. All
10 right. Ladies and gentlemen, I need to give you some
11 instructions, and then I'm going to let you go for lunch.
12 You'll be on your own for lunch. We'll start the case when
13 you come back after lunch. At that time, I'll have you sworn
14 in as a trial jury, and you'll -- you'll hear the opening
15 statements of the attorneys. I want to go through a few
16 things with you before I let you go, what I'm required to.
17 The first of -- first of these, I've already mentioned to
18 you, but we're down here on a different record now, so I want
19 to make sure it's covered.

20 When you take the oath, you're going to be promising us
21 that you'll base the case on your decision on the evidence
22 presented in the courtroom and the law that I tell to you.
23 And it's really important that you not discuss the case until
24 you've heard all the evidence and you know what law applies
25 to the case. So please, folks, don't discuss this case among

1 yourselves until the very end of the trial when I tell you
2 to. Also, this case is expected to last multiple days. So
3 you're going to be going home, you're going to be interacting
4 with friends, spouses, employers, folks like that. It's okay
5 for you to tell them you're on a jury, but you cannot tell
6 them what the case is about, who's involved in it or anything
7 like that until the week is over, and you've been discharged
8 from the jury.

9 Do not do any independent investigation. As I
10 mentioned to you right before you came down here, don't talk
11 about -- excuse me, don't look up anything on the internet.
12 In the old days, we used to tell people, "Don't go to the law
13 library," but now we have to expand that out a good bit.
14 Don't look up the law, don't look up anything related to
15 names, or events, or anything at all that might relate to
16 this case in any way whatsoever.

17 When you come back, you will not come into the
18 courtroom and (inaudible). The bailiff is going to show you
19 where to report and he'll bring you back to this jury room
20 where you will be until we send for you. While you're back
21 there, without discussing the case, I want you to select the
22 person that you choose to be your foreperson. All of you are
23 perfectly qualified to do the job. It cannot be
24 Ms. Laughridge or Mr. Holley, that's who I've got as the
25 alternate. That's you two folks there, right? So you keep

1 that -- those two seats throughout the trial. The foreman is
2 going to sit in the seat on the end of the first row
3 throughout the trial. The rest of you can sit anywhere you
4 like during the trial, but when you come back, I want you to
5 please select your foreperson. Bailiff will give you a piece
6 of paper and a pen -- a pencil, and just write the name and
7 the juror number of foreperson, and they'll give it back to
8 the bailiff, and they'll give it to me, and we'll make it
9 part of the record. I think that's all I have to tell you at
10 this point.

11 In fairness, I should probably tell you how we normally
12 operate in courts. That's something I would generally have
13 done had I been qualifying you upstairs. We usually start
14 with the jury at 9:30 or 10:00. I -- I -- I'll tell you
15 honestly, folks, I -- we still don't have power at our house.
16 My wife has cancer, and so there may be times when we start a
17 little late just because -- and I hope you understand and I
18 hope things get squared away. But Edgefiled was really
19 devastated and -- we -- we don't have power. So we may start
20 at 10:00 instead of 9:30, and I'll have the case (inaudible).

21 We usually break for lunch about 1:00. So we're
22 breaking a little bit earlier than we normally do. And
23 normally I give you an hour to an hour and a half for lunch.
24 But an hour and a half sounds like a long time, but by the
25 time you get out of here and get in your car and go

1 somewhere. I -- I want to give you a reasonable time to come
2 back. So we typically start back with you between 2:00 and
3 2:30 and we normally break for the day between 5:00 and 5:30.
4 We may be breaking around closer to 5:00 as long as we don't
5 have power at home. So I can shut up now, I think, and let
6 you go. If you'll follow the bailiff. I look to see you
7 folks at let's say 1:15, okay? 1:15. Thank you.

8 (Jury exits room at 12:00 p.m.)

9 THE COURT: This is something I say in every case, so
10 please don't think I'm trying to single anybody out. I have
11 no reason to. When the jury leaves, they go back in the
12 secured area, but they funnel right back into the common
13 area. They're using the same elevators you use, the same
14 parking lots you use, same lobby. Everything is going to be
15 where you are. So I usually tell folks if they're involved
16 in the case in any way that they give the jury a -- a little
17 while to clear out before they -- they leave. I don't insist
18 on it, but I think it's wiser.

19 When you go to a restaurant, please check around and
20 make sure you're not within earshot of a juror so that --
21 that we make certain that they don't have any kind of contact
22 with you or overhear anything that might in any way relate to
23 the case or anybody in it. So just please be careful. If
24 something happens and there's some interaction with the jury,
25 even is -- if it's completely innocent, I've got to shut down

1 everything we're doing and I got to go through an inquiry and
2 that's just going to make everything drag out longer. So an
3 ounce of prevention is worth a pound of cure. I look forward
4 to seeing you folks at 1:15. Thank you.

5 (Off the record at 12:02 p.m.)

6 (On the record at 1:21 p.m.)

7 THE COURT: The jury has sent a note that Juror Number
8 162, Spencer K. Lewis, is the foreman. Is the Plaintiff
9 ready for the jury?

10 MR. EDDY: The Plaintiff is ready, your Honor.

11 THE COURT: The Defense?

12 MS. WHITE: Yes, your Honor.

13 THE COURT: Bring the jury please. Oh, there you go.

14 (Jury enters room at 1:23 p.m.)

15 THE COURT: Are you Mr. Lewis?

16 JUROR 162: Yes.

17 THE COURT: The note from the jury indicated you're
18 going to be the foreman, so if you'll keep that seat
19 throughout the trial. Madam Clerk, swear the jury, please.

20 (Jury sworn at 1:24 p.m.)

21 THE COURT: All right. Ladies and gentlemen, I have to
22 give you some instructions, and then I'll turn it over to the
23 attorneys. I want to tell you how I expect the case to
24 begin, and then some of the steps we'll go through as we
25 present the case to you. The first thing that's going to

1 happen is that you're going to hear the opening statements of
2 the attorneys. In these opening statements, the attorneys
3 are not permitted to engage in what we refer to as
4 "argument." An opening statement is an introduction, an
5 outline and overview. They teach us in law school, basically
6 the opening statements should be what the attorney believes
7 the evidence will show. Once the opening statements are
8 finished, then I'll call upon the Plaintiff to present her
9 case. The Plaintiff brought this lawsuit, and the Plaintiff
10 has the burden of proof, and I'm going to explain the burden
11 of proof to you at the end of the trial.

12 So I'll recognize Plaintiff's Counsel to present
13 evidence in an attempt to meet that burden. Once the
14 Plaintiff rests, I have to send you out of the courtroom. I
15 have to discuss some legal issues with the attorney, and then
16 I'll bring you back out. And the Defense is given the
17 opportunity to present evidence for you to consider. If the
18 Defense does present evidence, then the Plaintiff can reply,
19 can't go back through the whole case, but can reply to
20 whatever the Defense may have brought out. At that point
21 when all the evidence is in, I once again have to send you
22 out of the courtroom and discuss legal issues with the
23 attorneys, and then I'll bring you back out here and you'll
24 hear the closing arguments of the attorneys, and then you'll
25 hear the charge. The charge is what we call the part where I

1 tell you the law that applies to the case. So those are the
2 benchmarks you can look for, the landmarks you can look for
3 as we go along through the trial.

4 Now it's really important that you understand some
5 things. First, there are two judges in the courtroom. I'm
6 the judge of the law. It's my job to decide what law applies
7 to the case and to tell it to the jury at the end of the
8 trial. It's also my job to rule on legal matters, legal
9 issues as they come up. The other judge is the jury. So
10 that's you, and you are the only judge of the facts. What I
11 mean by that is only you get to decide the issues of fact.
12 Only you get to decide what evidence is believable. Only you
13 get to -- to decide what weight -- if any, should be placed
14 upon evidence. Those things are entirely your prerogative.
15 And -- and I'm not going to invade your privacy.

16 You've also promised to us that you're going to decide
17 the case based on the evidence and the law. So you need to
18 know where those things come from. The evidence comes from
19 the sworn testimony of the witness. It may also come in the
20 form of exhibits. The exhibit can be anything tangible
21 marked in the record. It could be a photograph, a map, a
22 chart, a bill, anything that's marked into the record. If
23 something is marked as an exhibit, you will have it with you
24 in the jury room when you decide the case. So if you don't
25 get to look at it as much as you'd like during the trial now

1 here in the courtroom, it will be back there with you when
2 you decide the case.

3 Now what the lawyers say is not evidence. I want you
4 to pay close attention to what they say because they
5 facilitate the introduction of the evidence. But what comes
6 out of their mouths is not evidence. The evidence comes from
7 the witnesses and the exhibits. There is one exception to
8 that rule about what the lawyers saying not being evidence.
9 If it happens in this case, I'll tell you about it, otherwise
10 I won't burden you.

11 Now while you've promised us that you're going to
12 decide the case based on the evidence and the law, and you
13 must do that, I'm not telling you to leave your common sense
14 at home. We want you to use your common sense. We want you
15 to use your sense of logic and reason and your good judgment.
16 And it just makes good common sense as you keep an open mind
17 about the case, and you don't make up your mind until you've
18 heard all the evidence. And you know what law that applies
19 to the case. So that rule that I've discussed with you
20 several times is really important. And that is: Don't
21 discuss the case among yourselves until I tell you to. Once
22 again, I know this is redundant, but don't discuss the case
23 with family members, friends, anybody else until the week is
24 completely over and you've been discharged from jury duty.

25 Also, ladies and gentlemen, don't do any independent

1 investigation. I've mentioned to you that those things would
2 include looking up words and word searches on your phone,
3 looking up the law, trying to find out anything that might
4 have ever been posted about this case. Don't do any of that.
5 You promise us you're going to decide the case based on the
6 evidence and the law. And I don't know if you find anything,
7 if you look for it, you find law. But the problem is that
8 the law is something that has so many caveats, so many
9 different things. That's why they put me here to decide what
10 particular law applies what to a particular case. So please
11 don't try to look up law.

12 All right. The last thing I'm going to tell you is I
13 want (inaudible). I'm not going to sit up here and say,
14 "Repeat it." That doesn't mean that I'm many less sincere
15 about it. I'm very sincere about it. I know that you have
16 other places to be and other things to do. I also know if
17 this trial is like every other trial I've done, there'll be
18 some hurry up and wait. But all I can promise you is this:
19 If you're waiting on us, we're working. There will not be a
20 situation where we're out here goofing off and you're back
21 there waiting on us. That's not going to happen. So I'll do
22 everything I can to move the case of law. My wife called me
23 10 minutes ago and said, "We got power." She can't
24 understand why she can't watch the television, but I've tried
25 to explain that to her. But we do at least have -- have that

1 going for us now. But I will do everything in -- in my power
2 not to waste your time. If we come upon something that looks
3 like it's going to take a long time to work through, I'll
4 send word to you. If it's a really long time, I'll try to
5 let you get out of that jury room so you can get out and get
6 some fresh air or something. So to honor my commitment to
7 you, I'm going to shut up again, and I'm going to invite your
8 close attention as you hear the attorney's opening statement.
9 Plaintiff's Counsel, you're recognized.

10 MR. EDDY: Permission, your Honor.

11 THE COURT: Yes, sir.

12 MR. EDDY: Good afternoon, folks. My name is Trevor.
13 I'm an attorney. I have a small law firm, for all I do, all
14 day every day, is help the victims. I have victims like
15 Arellano and I want to thank you guys for your service, your
16 attendance. Not that you have a lot of choice, but still
17 without your help -- without your help, your attention
18 (inaudible), I couldn't do my job. I couldn't do my job
19 trying to help the victims.

20 Now in preparing for this trial, I struggled quite a
21 bit how to present this case. See, lawyers are taught lots
22 of different complicated legal strategies, trial strategies,
23 things of (inaudible), we employ jury consultants, trial
24 consultants. There's even some folks who will do whole mock
25 problem (inaudible). But when I was preparing for this case,

1 given the context, given little (inaudible) in fact I'll be
2 frank (inaudible), how do I present this case? My wife sat
3 me down and she said, "Trevor, just tell Zoe's story," and
4 that's what I'm going to work on this week. Zoe was six
5 years old getting ready to wrap up the end of the school.
6 You all remember the end of a school year when you were a
7 kid, you felt like you were sliding downhill, having the
8 summer. It's the best time of year. Get ready to go do
9 summer fun, spend more time with your family, friends, go
10 traveling, see your grandparents.

11 You're going to hear how Zoe was two days away from the
12 end of the school year. This is May 2022. You're going to
13 hear how there are two teachers in that classroom, a teacher
14 and a teacher's assistant. And you're going to hear how
15 there's a (inaudible) movie, they dimmed the lights and
16 you're going to hear how the kids are supposed to be working
17 on scrapbook. And you'll hear how another student, whose
18 name we're not going to use, (inaudible) "Student K" --

19 You're going to hear how K is sitting very close to
20 Zoe. You're going to hear how he took advantage of this
21 situation. You're going to hear how he took the time to
22 grab, grope, and assault Zoe in that classroom. You're going
23 hear how he pulled her pants open, put her hands -- his hands
24 on her genitals.

25 You're going to hear how another student, whose name

1 we're also not going to use (inaudible). You're going to
2 hear how S was the one who noticed -- thank God for
3 tattletales. You're going to hear how S was the one who
4 brought this to the attention of the teacher. You're going
5 to hear how a teacher in charge of that classroom was at her
6 desk working on some paperwork, and it was S that brought
7 this to her attention, and that's when everything was made
8 much, much worse.

9 You're going to hear how Zoe was subjected to
10 interrogation, and interrogation, and interrogation by the
11 school. She was questioned by her teacher, administrators,
12 guidance counselors, faculty administrators, the social
13 worker, faculty counselors again, and again, and again. The
14 victim of the assault was questioned again, and again, and
15 again.

16 You're going to hear how Zoe was blamed. You're going
17 to hear how she was called a liar. And you're going to hear
18 how the school makes DSS report, which is 100 percent
19 appropriate when you got a sexual assault going on in a
20 classroom. And then DSS contacted Zoe and her family.
21 You're going to hear how no DSS (inaudible) was filed against
22 K, the perpetrator of the assault. You're going to hear how
23 the school (inaudible) have stress and anxiety having to deal
24 with investigation.

25 You're going to hear how (inaudible) cleared

1 (inaudible) DSS. You're going to hear a lot of testimony
2 about how this occurred. You're going to hear how Zoe, who
3 is now seven -- you're going to hear how Zoe still to this
4 day struggles with the memory and the nightmares of her
5 experience.

6 You're going to hear how Nancy, the mother, Ferrey,
7 Isis, brother and sister -- how this whole family has tried
8 to cope with multiple problems they received as a result of
9 this. You see, it's really two things that the family is
10 pursuing here. First, gross negligence on behalf of school's
11 failure to protect Zoe. There is no excuse.

12 The second part of this case is the school's gross
13 negligence in their investigation into the assault, how they
14 handled it, what they did, how they treated Zoe, okay?
15 You're going to hear how this investigation was not
16 undertaken in good faith, the information was poor. The
17 school was first negligent in handling the investigation,
18 blaming the little Zoe.

19 I need to beg your indulgence a little bit. I've got a
20 six-year-old and a four-year-old and I take them out and even
21 if I give them enough tablets, all Coca-Cola and whatever
22 snacks they want, they still (inaudible). Zoe is amazing, I
23 should say. There's going to be times during this trial
24 where she needs to take a break, where her family need to
25 take her out of the courtroom, let her just go around and

1 play. Please don't interpret that Zoe (inaudible) it's
2 anything other than a child (inaudible). Please don't think
3 that she doesn't know how to (inaudible).

4 You're going to hear testimony commencing. You're
5 going to see a bunch of documents. That's the evidence in
6 this case. Ultimately, you're going to have to answer a
7 bunch of questions at the end of this trial. Was the school
8 grossly negligent in allowing Zoe to be assaulted? Was the
9 school grossly negligent in their investigation?

10 You're going to have to judge credibility of the
11 testimony on that stand. You'll have to decide: is this
12 person totally lying? Is this person wrong? You have to use
13 all of your (inaudible) understanding people (inaudible) all
14 your life, but you'll also need to rely on the documents --
15 rely on the evidence. Does this person's testimony line up
16 with the evidence presented in this case? I know this will
17 not be pleasant. I take no joy in presenting this case, but
18 it's so important. I need your help to find the truth. To
19 find the truth of what happened to Zoe at school. You can
20 help to find the truth. Zoe's truth. Thank you.

21 THE COURT: Thank you, Mr. Eddy. Which ones of you are
22 going to -- Ms. White, you're recognized for your opening
23 statement.

24 MS. WHITE: May it please the Court?

25 THE COURT: Yes, ma'am.

1 MS. WHITE: Good afternoon, everybody. (Inaudible),
2 but let's just tell you a little bit about myself. My name
3 is Andrea White, and assisting me in this case is Dylan
4 Crossland, and we're with the firm of White & Story, located
5 in Columbia. And we represent school districts all around
6 the State of South Carolina. And Lexington School District
7 Two is the school district in this case sued by the
8 Arellanos. And Lexington County actually has five school
9 districts, which is -- it's unusual. I think there's only
10 one other district in the state -- Spartanburg District
11 actually has (inaudible) school districts. Lexington Two is
12 located in the West Columbia safety area of (inaudible). And
13 this lawsuit involves Cayce Elementary School, which is a
14 pretty large elementary school. They've got about 1100
15 students in the school. And Andrew Drozdak, that you heard
16 earlier when the jury was qualified, was principal of Cayce
17 Elementary School during the school year in which this
18 incident happened.

19 So the first thing that -- that I want to say to you is
20 to echo something that Judge Keesley said, and that is for
21 you as jurors to use your common sense in the hearing all of
22 the testimony in this case. And in particular, could the
23 incident as Zoe will describe to you -- could that possibly
24 have occurred in this particular classroom with a teacher,
25 Sadie Ray Schmidt, who's here in the courtroom, and Kimberly

1 Long, the teacher assistant, with 24 students in the
2 classroom, with the lights not out, with nothing blocking
3 their views, and with the teacher circulating around the
4 classroom while students were working on their end of year
5 scrapbook?

6 We'll hear testimony from Ms. Long and Ms. Schmidt as
7 to what was going on in the classroom before Student S came
8 off to alert Ms. Schmidt that he had observed Zoe pull her
9 pants out and tell Student K to look and to touch. Now is
10 that something appropriate that should be going on in the
11 classroom? I think we would all agree, "No, that's -- that's
12 not appropriate." But you will hear testimony from
13 Ms. Schmidt and from Ms. Long, in fact from the -- one of the
14 guidance counselors at the school, Catherine Prizer, and
15 Lexington School District Two is actually fortunate enough to
16 have social workers in the school. That's unusual, to have a
17 social worker who actually is employed by the school
18 district.

19 So those four individuals: Ms. Prizer, Mr. Snyder,
20 Ms. Long, and Ms. Schmidt, will tell you that is
21 developmentally normal behavior with young children. Some of
22 you who have children, they might (inaudible) or you might
23 have grandchildren, might have had situations where -- you
24 know, children are curious about each other's body.
25 Particularly (inaudible) some of you may have actually

1 experienced that yourself.

2 So Student K (sic) comes up and tells Ms. Schmidt,
3 "Here's what -- here's what I saw at the table." And so Ms.
4 Schmidt will tell you what does she do in response to that.
5 Does she tell Student S, "Just go sit down and don't worry
6 about this"? No, she's going to tell you that she called
7 Student -- she first called Zoe up and asked -- I'm sorry,
8 she first called Student K up, the male student, and asked
9 him what happened. He immediately began to cry and he shared
10 with her, "She" -- "she pulled her pants out and asked me to
11 look, and I did."

12 And so then she called Zoe up. And when Ms. Schmidt
13 first asked Zoe what had happened, Zoe really was not able to
14 express a whole lot, Zoe just started crying. So did
15 Ms. Schmidt then say, "Well, I'm just going to leave this
16 alone"? No. Ms. Schmidt is going to testify that she sought
17 -- she sought the assistance of an administrator because it
18 was important that the school (inaudible) what is that might
19 have happened in the classroom. So she did. She will
20 testify to you that she went and got Ms. Ariail, the
21 assistant principal at the school.

22 Mr. Drozdak is going to testify that on that day, he
23 wasn't on the campus during the time that this occurred. So
24 she went and got Ms. Ariail, the assistant principal. Ms.
25 Ariail then got the guidance counselor, Ms. Prizer, involved

1 and got the social worker, Mr. Snyder, involved. And the
2 students -- the two students, Student K and Zoe, were
3 separately questioned. The female guidance counselor
4 questioned Zoe, the male guidance -- the male social worker
5 questioned Student K.

6 And you will hear testimony from Ms. Prizer, and from
7 Ms. Ariail, and from Ms. Schmidt that Zoe's version of what
8 had occurred started to rapidly escalate into a situation
9 where Zoe was actually claiming that this male student --
10 we're talking about a five- to six-year-old student, that
11 this student pulled her over to the area of the classroom,
12 pulled her pants down, that there was sticky stuff, and his
13 tongue was in her mouth, all in this classroom with the
14 teacher and the teacher assistant who were circulating
15 throughout the room.

16 The -- not -- I'm sorry, the social worker, Mr. Snyder,
17 will testify that Student K, the young student, his story
18 never changed. "She pulled away her pants (inaudible) she --
19 she told me to look, she told me to touch, I touched her on
20 the outside of her underwear." The male student's story
21 never changed. On the other hand -- as I said a minute ago,
22 Zoe -- Zoe's story started off one way and it snowballed into
23 a situation where Ms. Schmidt and the guidance counselor felt
24 like they had to complain, they had to call DSS.

25 You will hear testimony from Mr. Snyder, and from

1 Ms. Schmidt, and Ms. Prizer that they have a statutory duty.
2 There is a state law statute that requires school officials
3 to notify DSS whenever there is a potential of assault, abuse
4 and neglect. So what was the concern here that the school
5 had? Why did they feel the need to call DSS? They will
6 testify to you that because of the language that Zoe was
7 using to describe an incident that could not possibly have
8 occurred in the classroom, they were concerned that either
9 Zoe herself might have been the victim of abuse or that she
10 had access to materials and information that she should not
11 have, and that her -- her knowledge of -- of sexual activity
12 was not appropriate for a student of five or six years old.
13 So the district has a statutory duty to notify DSS of the
14 matter, which they did.

15 You will hear testimony that DSS came in, and that it
16 was an unfounded report, meaning that they found no evidence
17 that there was any (inaudible), which is a good thing. So we
18 believe -- and we ask you to keep an open mind as you listen
19 to all of this testimony, because you are the ones who are
20 going to have to decide what happened -- what happened in
21 that classroom.

22 And the next thing you're going to have to decide,
23 Mr. Eddy mentioned gross negligence to you. And I know when
24 I first started practicing law (inaudible) years ago
25 (inaudible) that when I heard that term "gross negligence,"

1 what is -- what does that mean? Gross negligence -- and the
2 judge, he told you he's the one who will charge you with the
3 law. He will tell you what the law is (inaudible) before you
4 go back and deliberate. But basically, gross negligence
5 means the absence of slight care. For example, if the
6 teacher and the teacher assistant had turned off all the
7 lights in the classroom and said, "You all go watch whatever
8 you plan." You'll hear testimony about whether it was Little
9 Mermaid or an educational -- an educational video that they
10 were watching. That could be considered gross negligence.

11 They just let those children in the room by themselves to do
12 whatever the kids wanted to do. That is not what happened.

13 So that -- they have to prove that the district is
14 grossly negligent both in supervising the classroom at the
15 time and then also in how they handled the investigation and
16 then the action that they took (inaudible) investigation.
17 And use your common sense here.

18 You will -- you will have the opportunity to see the
19 photos of the classroom. You will have the opportunity to
20 see a video of the classroom where the tables with the
21 students were set up, where the teacher and teacher assistant
22 were sitting, and where the students were. And so when you
23 see those videos and you see those photos, ask yourself, "Is
24 it possible that what Zoe Arellano described, could that
25 possibly have happened in the classroom?" Because I can tell

1 you if what she described in that classroom had actually
2 occurred, we would not be here in the courtroom today. This
3 matter would have been resolved back in 2022, but it simply
4 did not happen. Thank you so much for your jury service and
5 I look forward to meeting you all in the next couple of days.

6 THE COURT: Thank you, Ms. White. Call your first
7 witness, please.

8 MR. EDDY: Thank you, your Honor. The Plaintiff calls
9 Nancy Arellano.

10 THE COURT: And she speaks Spanish. So ladies and
11 gentlemen, you're going to hear her testimony through an
12 interpreter.

13 THE CLERK: Raise your right and put your left hand on
14 the Bible.

15 NANCY ARELLANO,
16 being duly sworn, testified as follows:

17 THE CLERK: You can have a seat.

18 DIRECT EXAMINATION

19 BY MR. EDDY:

20 Q. Good afternoon, Ms. Arellano.

21 A. Good afternoon.

22 Q. Can you please introduce yourself to the jury?

23 A. My name is Nancy Arellano Montez. I sell dresses
24 and accessories at a flea market, I do flower arrangements,
25 and I clean homes.

1 Q. Can you use a big voice, please? Where do you
2 live, Ms. Arellano?

3 A. I currently live in North Augusta.

4 Q. I heard the judge say he's got his power back this
5 afternoon. Do you know if your power is turned back on yet?

6 A. I don't know. I haven't been home yet.

7 Q. Fingers crossed for your return. Are you married,
8 Ms. Arellano?

9 A. No.

10 Q. Do you have any children?

11 A. Three.

12 Q. What are their names?

13 A. Isis Urrutia Arellano, Ferrey Ramses Ramirez
14 Arellano, Zoe Isabella Arellano.

15 Q. Is Isis --

16 THE COURT: Hold on. This courtroom uses a digital
17 recording system. These things don't amplify anybody's
18 voice. So that's why they're moving the microphone.

19 BY MR. EDDY:

20 Q. Is Isis your oldest?

21 A. Yes, she's my oldest daughter.

22 Q. How old is Isis?

23 A. 20.

24 Q. Is she still in school?

25 A. No, not right now.

1 Q. How about Ferrey? How old is he?

2 A. 17.

3 Q. Is he still in school?

4 A. He is in high school.

5 Q. And where does Ferrey study?

6 A. Fox Creek.

7 Q. How old is Zoe?

8 A. She is eight.

9 Q. Where is she in school?

10 A. Merriwether Elementary.

11 Q. What grade is she in?

12 A. Third grade.

13 Q. How long have you lived in North Augusta?

14 A. In September, we've been there a year.

15 Q. Where did you live before North Augusta?

16 A. In West Columbia.

17 Q. How long did you live in West Columbia?

18 A. Almost 19 years.

19 Q. When you were living in West Columbia, was there
20 anyone else that lived in your house?

21 A. Approximately -- before that -- approximately 12
22 years. Before that, it was my ex and my mother.

23 Q. Does your mother still live with you?

24 A. My mother does live with me, but due to work
25 reasons she's here.

1 Q. How old is your mother?

2 A. 62.

3 Q. Is it her health still -- still good?

4 A. Yes.

5 Q. Okay. Do you go to church, Ms. Arellano?

6 A. Not currently because I moved to North Augusta.

7 Q. You mentioned a little bit, but let's work
8 through. What do you do for work primarily these days?

9 A. I sell clothes, accessories, cosmetics.

10 Q. And this is at a flea market in North Augusta?

11 A. In the flea market here Metro one.

12 Q. And you got your own stall where you sell these
13 things?

14 A. Yes, I have a space there.

15 Q. Besides operating the flea market stall, what else
16 do you do for an income?

17 A. I do flower arrangements and also clean one --
18 first day of the month I clean someone's home.

19 Q. For the flower arrangements, do you work for a
20 company or do you run your own business for that as well?

21 A. I do it on my own.

22 Q. And then you do some house cleaning as well?

23 A. Yes.

24 Q. Besides those three jobs, do you have any other
25 jobs?

1 A. Sometimes I go to clean more houses with a friend
2 -- a Cuban friend.

3 Q. Your youngest daughter, Zoe. Was there anything
4 challenging about your pregnancy with Zoe?

5 A. No. Everything was good.

6 Q. What was she like as a baby?

7 A. She was very calm and happy and always singing and
8 playing.

9 Q. What kind of stuff did she like to sing?

10 A. A song called "Johnny Johnny."

11 Q. I think I know the song. Growing up from one to
12 two to three to four, was she hitting her developmental
13 milestones at appropriate times?

14 A. Yes.

15 Q. Did she do daycare before she went to regular
16 school?

17 A. I always took care of her.

18 Q. What was the first school that she went to when
19 she was old enough to do so?

20 A. Cayce Elementary, but she only went once. She
21 didn't want to go back to school because she said the teacher
22 wasn't nice to her.

23 Q. So her 5K year at Cayce Elementary was her first
24 year there?

25 A. Yes. That was her first year, and she did not

1 finish.

2 Q. Leading up to this incident, before this incident,
3 did she have any complaints or any problems with school?

4 A. She didn't want to go back right after she went to
5 school. She didn't want to go back. She couldn't explain
6 why.

7 Q. Besides her hesitation to go back to school when
8 she first started the 5K, did she have other problems during
9 the school year?

10 A. She had -- she had not had a problem before that.

11 Q. Was Zoe doing any after-school activities during
12 that school year?

13 A. No.

14 Q. Did you have any complaints from her teachers
15 about academic or behavior issues during the school year?

16 A. No. None. She -- and her -- the feedback from
17 her teachers had said she was a great child and -- and great
18 example for others to follow.

19 Q. Did it seem like she had any trouble making
20 friends in 5K?

21 A. No. No problem at all.

22 Q. During that school year, what kind of things would
23 she like to do when she got back home from school?

24 A. She liked to play with her dolls and feed them and
25 dress them. Also a show I'm not sure. A children's show.

1 Q. How did you first become aware of this incident?

2 A. The day I was called.

3 Q. Who called you?

4 A. An interpreter from the school called. And she
5 told me that my child had told another child...

6 THE COURT: Hold on just a moment. Yes, ma'am.

7 MS. WHITE: Hearsay.

8 MR. EDDY: Your Honor, these are conversations with
9 school district employees, including the translators of the
10 school district. If it is hearsay, then it is exception as
11 it is a statement made by the -- that -- that representatives
12 and employees of the school district itself.

13 THE COURT: Ms. White?

14 MS. WHITE: I'm not aware of any exception to the
15 hearsay rule that says (inaudible) employees of the school
16 district, then hearsay can be offered. He has the
17 opportunity to (inaudible).

18 MR. EDDY: Your Honor, statement against interest is a
19 hearsay exception that includes employees of the Defendant.

20 THE COURT: Object, ma'am?

21 MS. WHITE: Not a statement against interest, your
22 Honor.

23 THE COURT: Well, I'm going to have to send you folks
24 out of the courtroom. Don't discuss the case.

25 (Jury exits room at 2:08 p.m.)

1 MR. EDDY: I am sorry.

2 THE COURT: You elicited her answer, please. Get her
3 to answer.

4 BY MR. EDDY:

5 Q. What did they tell you on the phone call?

6 A. You have to come to the school because your
7 daughter told another child to -- to look at her private
8 parts. That she lowered her pants.

9 THE COURT: You all need to put anything else on the
10 record?

11 MR. EDDY: No, your Honor.

12 THE COURT: Anything else?

13 MS. WHITE: No, your Honor. I -- I -- it's my position
14 that she can testify that she was called by an interpreter.
15 Interpreter told her about an incident, but getting into the
16 details of what she said would be hearsay.

17 MR. EDDY: And, your Honor, I'm not eliciting this
18 testimony necessarily to get in this information for the
19 truth of matter asserted, merely to help to construct the
20 timeline of when she became aware of this and what she did in
21 response.

22 THE COURT: I -- I'm ready to rule on the hearsay, but
23 if your only purpose is to get in when she got notified, then
24 there's no need to go into that.

25 MS. WHITE: Right.

1 THE COURT: Is that your only purpose?

2 MR. EDDY: Yes. To find out what she was told,
3 obviously.

4 THE COURT: Well, that's a different purpose.

5 MS. WHITE: Right.

6 THE COURT: The objection is overruled. Bring the jury
7 back.

8 THE BAILIFF: The jury has got an issue, he's writing
9 it out (inaudible).

10 THE COURT: I am told the juror has an issue and that
11 he's writing it out. Will be at ease. Would you tell her
12 she can step down, but she cannot discuss her testimony with
13 anyone during the break.

14 (Off the record at 2:11 p.m.)

15 (On the record at 2:16 p.m.)

16 THE COURT: All right. I shared with the lawyers that
17 I received a note from Juror Number 284, which I'm
18 interpreting as meaning that the juror has claustrophobia,
19 and cannot sit in the courtroom. I can bring the juror out
20 and question him about it. I can just excuse the juror.
21 I'll hear from the attorneys.

22 MR. EDDY: The Plaintiff, your Honor, if the Court have
23 an issue like this in any of the case, it's only going to
24 worse than that. So I would be -- excuse this juror.

25 MS. WHITE: We're okay with that, your Honor.

1 THE COURT: Thank you. All right. If I'm recalling
2 correctly in civil cases when we set somebody aside, we just
3 go to the first alternate that was chosen, unlike criminal
4 cases where you have to jumble them together and pick one.
5 So any disagreement about that?

6 MR. EDDY: No objections to that, your Honor.

7 THE COURT: Okay.

8 MS. WHITE: We're fine with that, your Honor.

9 THE COURT: So the next one would be Elizabeth
10 Laughridge. Bring in Mr. Watson, please. All right.
11 Mr. Watson, I got your note and you're -- you're free to go.

12 JUROR 284: Sir, I'm sorry about that.

13 THE COURT: You need any kind of slip for work or
14 anything?

15 JUROR 284: No, sir, I'm fine. Thank you.

16 THE COURT: Okay.

17 JUROR 284: Sorry about that.

18 THE COURT: Good luck. Wayne, I just want the rest of
19 the jury back. Tell them -- tell Ms. Laughridge that she's
20 one of 12, or have the bailiff do. I need her back up here
21 please.

22 (Jury enters room at 2:20 p.m.)

23 THE COURT: All right. Ladies and gentlemen of the
24 jury, I have excused Mr. Watson from the trial of the case.
25 So we go to the first alternate, Elizabeth G. Laughridge.

1 Move to that chair right there. Oh, you're okay. You're
2 okay. I got a bailiff sitting there. All right. You're all
3 right. You may continue, Mr. Eddy.

4 BY MR. EDDY:

5 Q. So you received the phone call from the school.
6 What was told to you on the phone call?

7 A. I was told that my daughter had asked someone to
8 touch her private parts, and to lower her pants, and that she
9 couldn't be at the school.

10 Q. Who is it that you were on the phone with? Who do
11 you understand that that was?

12 A. It was a worker who was an interpreter.

13 Q. Was there anyone else on the phone call, a teacher
14 administrator, or anything?

15 A. She communicated like she was the person that was
16 calling. She mentioned Ms. Ariail.

17 Q. And what did she say about Ms. Ariail?

18 A. That she had said that I had to go pick up Zoe. I
19 just couldn't imagine that they -- I would get a call back
20 because she wasn't raised like that to tell someone to touch
21 her. My daughter was a child. And she just -- and I just
22 said, "Huh?" And I went to go get her.

23 Q. Was there anyone else that went with you to the
24 school?

25 A. My mother. She drove us there.

1 Q. What happened when you got to the school?

2 A. When I got there, I waited outside to get Zoe.

3 And someone else called me, this time it was a man, and "No,
4 you can bring her back to school. She's not in trouble."

5 But then I was told to wait because I had to sign some
6 paperwork. The children -- the parents of the other child
7 would be there, and I never went in to school. I only picked
8 up my child. There's already a form -- the man said there's
9 already a form signed. I didn't sign it.

10 Q. What happened once you got Zoe back?

11 A. When I picked her up, I asked her what happened.
12 She speaks English better than Spanish. Her mind was
13 confused, and I asked her, and she said, "It's all a lie.
14 The boy touched me."

15 MS. WHITE: Objection.

16 THE COURT: Yes, ma'am.

17 MS. WHITE: Same objection. Hearsay.

18 MR. EDDY: Your Honor, this is a conversation with Zoe,
19 who's also Plaintiff, who's going to be able to testify and
20 can be subject to cross-examination when she gets on the
21 stand.

22 THE COURT: Anything else?

23 MR. EDDY: No.

24 MS. WHITE: Doesn't change the fact that she cannot
25 testify as to what Zoe said. Zoe can testify.

1 THE COURT: There is -- there's an exception to the
2 hearsay rule, but there's no foundation used at this point.
3 So the fact that she's another witness is not dispositive,
4 the objection is sustained. Disregard what the witness had
5 said that the child said.

6 BY MR. EDDY:

7 Q. What did you do next after picking up Zoe?

8 A. We went home. She was very nervous. My oldest
9 daughter came from school, and I told her what happened at
10 school. My daughter asked her in English what had happened,
11 and then Zoe told her story.

12 Q. What is your understanding that happened at
13 school?

14 A. My daughter was sitting, watching TV. And she was
15 nice to the boy, and he -- and the child was inappropriate
16 with her. And that there were two teachers there. Your
17 children are in school, you cannot take care of them, but at
18 your home you can, but not somewhere else. And if there were
19 two teachers there, how did this happen?

20 Q. I know this is difficult. Do you need to take a
21 break?

22 A. No.

23 Q. What is your understanding of what that boy did to
24 Zoe at school?

25 A. He took her trust. He took her joy. My daughter

1 said she wanted to die, because this world is too hard and
2 too difficult. And no one believed her when she tried to
3 tell the truth.

4 Q. Is it your understanding that K, the young man,
5 touched your daughter?

6 A. Yes.

7 Q. Where on her body do you understand that K touched
8 her?

9 A. In her private parts.

10 Q. I need you to be specific because this is a
11 specific case.

12 A. In her front.

13 Q. Are we referring to her vagina?

14 A. Yes.

15 Q. Is it your understanding that the young man did
16 anything else to her physically?

17 A. He put her tongue in her mouth.

18 Q. Did you mean his tongue in her mouth?

19 A. Yes.

20 Q. Is it your understanding that he did anything else
21 physically to her in that classroom at that time?

22 A. At that time, she said he had put her tongue in
23 her vagina.

24 Q. What is your understanding of what happened after
25 that?

1 A. Another child saw them and the child went to the
2 teacher and told her what was happening.

3 Q. And what is your understanding that it happened
4 after that?

5 A. They had him in a place. They held him.
6 Ms. Ariail and someone else.

7 Q. And what is your understanding that they did with
8 Zoe?

9 A. They didn't let her say her truth.

10 Q. What do you mean by that?

11 A. She wanted to defend herself and they told her she
12 was at fault because she asked him to touch her.

13 Q. What is your understanding, if anything else that
14 happened with the school after that conversation with Zoe?

15 A. After that, I never sent her back to school
16 because I was afraid they were going to bully -- bully her or
17 say something. I didn't know what to do. I didn't know
18 where to go. I couldn't tell what had happened. I don't
19 speak English. I don't know anyone. I looked on the
20 internet one day and I found a lawyer. And that's how I
21 connected with him.

22 Q. After you picked up Zoe from school that day, did
23 you hear from the school district again?

24 A. No one did. DSS came to my home. I didn't know
25 why. The lady said that the school said I had problems at

1 home. That possibly I had men coming to my house. And that
2 this is why my daughter knew, or that I had taught her.

3 Q. When was the first time that you were contacted by
4 DSS?

5 A. Approximately a week later.

6 Q. How were you first contacted by them?

7 A. A call.

8 Q. And did they set up an appointment or ask you to
9 come in?

10 A. She said she would come to my house.

11 Q. And did someone come to your house?

12 A. Yes, they came to my house.

13 Q. What kind of things did she do when she got to
14 your house?

15 A. I told her to come inside. I had nothing to hide
16 and I didn't anything wrong.

17 Q. Did she interview you or anyone else in the house
18 that first day?

19 A. First she interviewed Zoe, and then me, my
20 daughter, my mother, and finally went to my son.

21 Q. Besides the interviews that first day, did they do
22 anything else?

23 A. The second time someone else came with a helper,
24 came into my bedroom and she spoke with Zoe and made me
25 leave. And she spoke with her I don't know about what.

1 Q. Let's talk briefly about your home at the time of
2 this incident. How many people were living at your house?

3 A. My son, my older daughter, Zoe, my mom and myself.

4 Q. How many bedrooms were in this house?

5 A. Three.

6 Q. Did you share a bedroom with anyone else?

7 A. With Zoe.

8 Q. Is there anyone else that slept in that bedroom?

9 A. No.

10 Q. Did she have her own bed?

11 A. Yes.

12 Q. And then where did the other people sleep?

13 A. Isis and Ferrey shared a room, and my mom in the
14 third room.

15 Q. Were there any other people that regularly slept
16 over at that house?

17 A. No. No one.

18 Q. Did your ex or Zoe's father ever come over to the
19 house?

20 A. Zoe's father actually just got out of prison. She
21 has seen him twice.

22 THE COURT: "She" who? "She" who?

23 BY MR. EDDY:

24 Q. Was that Zoe that saw him twice?

25 A. Yes, but not at home.

1 Q. How did Zoe respond emotionally to these first two
2 visits from DSS?

3 A. She was very nervous, a lot very scared, very sad.

4 Q. Were there more visits by DSS?

5 A. After those visits, they referred us to some kind
6 of counseling and we went. But Zoe wouldn't speak to the
7 psychologist. She just shut down. I looked for a
8 psychologist by the internet. Her name is Narumi Amador and
9 Zoe has been able to speak with her and has a relationship
10 with her.

11 Q. Going back to the DSS investigation, how many more
12 times did they visit your house?

13 A. Later, a -- a lady returned and she came back and
14 did more interviews, and was able to interview my son who has
15 severe apnea. And he was awake that day. And she
16 interviewed him. In the next appointment, she didn't see any
17 problems -- she stated she didn't see any problems at the
18 home. And that based on -- from DSS, the case was closed.

19 Q. In total, how many times did DSS come to your
20 house, interview you and your family?

21 A. About four times.

22 Q. What was it like for you to be the subject of a
23 DSS investigation?

24 A. Very difficult because I didn't do anything. I
25 didn't know why they were asking things that had no point,

1 but there was nothing.

2 Q. What was it like for Zoe this summer with all the
3 DSS investigations?

4 A. She just kept asking, "Why do I have to see these
5 people? How many times more do I have to see these people?"

6 Q. Did Zoe start treating with Ms. Amador?

7 A. Yes.

8 Q. And where is Ms. Amador located?

9 A. She's in downtown. I'm not sure about the
10 address.

11 Q. That would be downtown Columbia?

12 A. Yes.

13 Q. Did you ever meet with Ms. Amador?

14 A. Yes.

15 Q. Did Zoe like her?

16 A. Yes, very much so.

17 Q. How many times did Zoe meet with Ms. Amador?

18 A. About 10 times.

19 Q. Do you think treating with the counselor helped
20 her at all?

21 A. Yes, very much so.

22 Q. Do you think Zoe would benefit from more
23 counseling in the future?

24 A. Yes.

25 Q. Where is Zoe in school now?

1 A. Merriwether.

2 Q. Where is that located?

3 A. In North Augusta.

4 Q. Why did you switch her schools?

5 A. Because I moved.

6 Q. How is Zoe doing in school now?

7 A. She has anxiety attacks.

8 Q. Tell me more about that.

9 A. She feels like she's drowning and she's afraid to
10 meet teachers and other children.

11 Q. How frequently does she have these anxiety
12 attacks?

13 A. Maybe three times a month.

14 Q. Did Zoe have anxiety attacks before this incident?

15 A. Never.

16 Q. Does Zoe have problems with nightmares or night
17 terrors now?

18 A. Yes.

19 Q. Please tell the jury more about that.

20 A. At nights, sometimes she's sleeping peacefully and
21 just suddenly screams.

22 Q. What is your understanding of the cause of her
23 nightmares?

24 A. She says it's because people didn't believe her
25 and the boy hurt her. She describes it as when you see a

1 spider and you feel a lot of fear. "That's what I felt when
2 the boy got near me." That's how she described.

3 Q. Has Zoe ever discussed self harm with you?

4 A. She just said she doesn't want to be in this
5 world.

6 Q. Does she say why she feels that way?

7 A. Because people at the school did not believe her.
8 And left her as a liar.

9 Q. Besides Zoe's nightmares, anxiety attacks,
10 suicidal thoughts, are there other ways that she has changed
11 after this incident?

12 A. She doesn't play. She doesn't approach other
13 children. She was at a store and a child came up to her and
14 asked to play with her, and she just went behind me and got
15 very nervous.

16 Q. Nancy, how has this incident affected you?

17 A. I felt like my soul was broken. I cannot explain.
18 You expect bad things to happen to you, but not to your
19 children.

20 Q. Do you feel like the school, Cayce Elementary, has
21 let down your daughter?

22 A. Yes.

23 Q. Why is that?

24 A. It wasn't investigated. She was just pointed at.
25 It was easier to blame her than to take responsibility as an

1 adult. She was six years old; she couldn't defend herself.

2 Q. As a dad with a six-year-old, I know when my
3 six-year-old is lying to me, he can't get a fit past me. Do
4 you understand -- do you have an ability to tell when your
5 daughter's not telling you the 100 percent truth?

6 A. Yes.

7 Q. Do you believe your daughter was fondled by that
8 other student at school that day?

9 A. Yes.

10 Q. Did you believe that she resisted his advances?

11 A. She wanted to defend herself, but he was bigger
12 than her.

13 Q. Do you believe that she told him "No"?

14 A. Yes.

15 MR. EDDY: One moment, your Honor.

16 THE COURT: Yes, sir.

17 BY MR. EDDY:

18 Q. Ms. Arellano, is there anything else you think
19 this jury needs to hear about in order to decide what really
20 happened that day to Zoe?

21 A. I just want to repeat what I told the DSS worker.
22 Today, they're blaming my daughter, but they left a child
23 that's going to hurt other children because they blamed my
24 daughter. I just know that she was not guilty of this.

25 Q. Is there anything else you think the jury needs to

1 hear about how this incident has affected Zoe?

2 A. Just that -- that he hurt her and he has changed
3 her life forever.

4 Q. Is there anything else you think the jury needs to
5 hear about -- about how this incident and the school's
6 handling the incident has affected you and your family?

7 A. Oh, when all this happened, I did not want to be
8 here. I just wanted an apology because they destroyed her
9 confidence, in Zoe. It's been very difficult -- difficult
10 for her to laugh and to play again.

11 MR. EDDY: Thank you, Ms. Arellano. Please stay. The
12 Defense Attorney's going to ask you some questions now.
13 Please answer their questions to the best of your ability.

14 THE COURT: We're going to take a 10-minute break,
15 ladies and gentlemen, don't discuss the case. Follow the
16 bailiff, please.

17 (Jury exits room at 2:54 p.m.)

18 THE COURT: Tell her stay right there.

19 THE INTERPRETER: Oh, she stays. Okay.

20 THE COURT: Ms. Arellano, I just have to tell you that
21 you can step down, but you cannot discuss your testimony.
22 Thank you. We're at ease for 10 minutes.

23 (Off the record at 2:55 p.m.)

24 (On the record at 3:08 p.m.)

25 THE COURT: Okay. Before I do this, you need to pull

1 the docket up for that week and see what I got or some --
2 what they put on the docket. You know what I'm talking --
3 you know which week I'm talking about? Is that the one that
4 we're asking about? All right. Cross-examination.

5 MS. WHITE: May it please the Court?

6 CROSS-EXAMINATION

7 BY MS. WHITE:

8 Q. Hey, Ms. Arellano, how are you this afternoon?

9 A. Good, thank you.

10 Q. Thank you. I believe you testified earlier that
11 Zoe is going to school in North Augusta, is that correct?

12 A. Yes.

13 Q. Is she making good grades?

14 A. Yes.

15 Q. And has she gotten into any trouble at school at
16 all?

17 A. None.

18 Q. And has no discipline issues, no academic issues?

19 A. None.

20 Q. Is she seeing a counselor in North Augusta?

21 A. So she's only seeing Ms. Amador.

22 Q. And I believe the last time she saw Ms. Amador was
23 in November of last year, is that correct?

24 A. Yes, that is correct.

25 Q. Now when Zoe was in kindergarten, she had a

1 tablet, is that right?

2 A. Yes.

3 Q. Did she have one at school and then another one at
4 home?

5 A. An old phone.

6 Q. Sorry, was there something else you were going to
7 say?

8 A. A tablet -- an old phone and a tablet.

9 Q. So she had both a cell phone and a tablet when she
10 was in kindergarten?

11 A. Yes.

12 Q. So I believe you testified earlier, in response to
13 your attorney's questions, that after you learned of the
14 incident at school, from the telephone call from the
15 interpreter, that you did some research on the internet to
16 find an attorney, is that correct?

17 A. Yes. I found an attorney through the internet.

18 Q. Prior to calling an attorney, did you reach out to
19 Zoe's pediatrician, Dr. Barnes?

20 A. As I mentioned before, I didn't know what to do,
21 so I call -- I tried to find an attorney.

22 Q. Did you ever mention the incident to Dr. Barnes?

23 A. I didn't mention it to the pediatrician because I
24 know since it had happened at the school, I knew the school
25 had a nurse.

1 Q. Did you ever have a conversation with the school
2 nurse about the incident?

3 A. No, I didn't speak to anyone there.

4 Q. Did you talk to Mr. Drozdak?

5 A. I don't know who that is.

6 Q. You didn't know that Mr. Drozdak was the principal
7 at Cayce Elementary School?

8 A. I didn't know him, and I -- I didn't know anyone
9 because no one else contacted me.

10 Q. Did you contact anybody else with the school?

11 A. No.

12 Q. Had you met Ms. Schmidt -- and at the time, she
13 was Ms. Ray -- Sadie Ray, she's now Schmidt because she got
14 married. Did you ever meet her?

15 A. No. No one.

16 Q. So you never met Zoe's teacher all during the
17 school year?

18 A. Yes. During the school year, but not after the
19 incident.

20 Q. How many times did you visit the school prior to
21 the incident?

22 A. I only went the times when the parents were asked
23 to come. Two or three times.

24 Q. How about Ms. Prizer, the guidance counselor? Did
25 you ever reach out to her to talk to her about the incident?

1 A. No, no one contacted me and I didn't contact them
2 because I didn't really know who to contact.

3 Q. So you made no contact with the school whatsoever,
4 is that correct?

5 A. No.

6 Q. Did you ever -- I'm sorry.

7 A. No. No one.

8 Q. Did you ever go to see the classroom where this
9 supposedly occurred?

10 A. Twice.

11 Q. After the incident occurred, did you ask to go see
12 the classroom?

13 A. Before the incident.

14 Q. But after the incident, you didn't ask to go up to
15 the school to see the classroom?

16 A. No, I didn't go to school. I didn't have any
17 contact with the school after that.

18 Q. Didn't you think it would be important for you to
19 talk to Ms. Ray and/or Ms. Long about the incident?

20 A. No, I didn't think it was important because they
21 didn't believe my child.

22 Q. But you did not talk to them, correct?

23 A. No.

24 Q. Now I think you testified earlier that Zoe mostly
25 speaks English, is that correct?

1 A. Yes. Better than in Spanish.

2 Q. So how do the two of you communicate? She's
3 better in English and -- and your English is limited, as I
4 understand it. How are the two of you all able to
5 communicate?

6 A. She does speak Spanish well. She just doesn't
7 know certain words.

8 Q. So the two of you are able to talk together as
9 mother and daughter?

10 A. Yes.

11 Q. And at the time of the incident, back in 2022, how
12 old was Isis?

13 A. She was 19.

14 Q. And how old was Ferrey?

15 A. 16.

16 Q. So he was -- he was 16 and she was 19?

17 A. Yes.

18 Q. And did you say they were sharing a bedroom
19 together at the time?

20 A. No. Isis -- Isis was 18 and Ferrey was 15.

21 Q. Okay. And -- and they shared a room, Zoe stayed
22 in your room and then your mother had a room, is that
23 correct?

24 A. Yes.

25 Q. Did Isis have a tablet and the cell phone?

1 A. Isis has a phone.

2 Q. But no tablet?

3 A. No.

4 Q. How about Ferrey? Did he have a cell phone and a
5 tablet?

6 A. He does have -- he has a tablet, but he never uses
7 it because he's usually grounded.

8 Q. Back -- back in 2022, did he have a tablet back
9 then as well?

10 A. He did, but she took it away from him because he
11 had an issue with a teacher.

12 Q. Did -- I -- I believe you testified that you sell
13 -- you have a stall at the flea market. And is that
14 generally on Saturdays?

15 A. Saturdays and Sundays.

16 Q. And when you go to the flea market, who else --
17 who else goes with you?

18 A. Isis and Ferrey go. And my mom would drive us.
19 Well, her pickup truck is not working.

20 Q. So where -- where would Zoe stay while the rest of
21 you are at the flea market?

22 A. Zoe is always with me.

23 Q. So Zoe goes with you to the flea market, is --
24 your whole family basically goes, is that correct?

25 A. Yes.

1 Q. Were there ever occasions when either Ferrey or
2 Isis or both of them would take care of Zoe, like while you
3 went to the grocery store or delivering flowers or anything,
4 would there ever be a time when it would just be Zoe, Isis,
5 and Ferrey?

6 A. Never.

7 Q. So Zoe is always with you?

8 A. She is always with me.

9 Q. And do you have a cell phone and a tablet?

10 A. Only cell phone.

11 MS. WHITE: I beg the court's indulgence for one
12 moment.

13 THE COURT: Yes.

14 BY MS. WHITE:

15 Q. Did you -- did you know Student K, Ms. Arellano,
16 the student that Zoe accused?

17 A. Yes. Because the teacher would take pictures.

18 Q. So other than knowing him through -- through
19 pictures, had you ever met that child?

20 A. No. Never.

21 Q. Did Zoe -- prior to the alleged incident, did Zoe
22 ever talk about Student K?

23 A. Yes.

24 Q. And I understand that the two of them were
25 friendly at school, is that correct?

1 A. Yes, they were friends.

2 Q. They were friends? And Ms. Ray, the teacher, did
3 you ever have any concerns about her prior to the incident?

4 A. No. She never commented about the teacher.

5 Q. Zoe did not comment about the teacher one way or
6 the other?

7 A. She was saying she was a good teacher and then she
8 liked her.

9 Q. She enjoyed being in her classroom?

10 A. Yes, she did like.

11 MS. WHITE: Those are all the questions I have, your
12 Honor.

13 THE COURT: Re-direct?

14 RE-DIRECT EXAMINATION

15 BY MR. EDDY:

16 Q. Ms. Arellano, why didn't you go down to school the
17 next day -- the day after, sometime that week to go confront
18 them about the accusations?

19 A. Because since they accused my daughter, what could
20 I do? They -- I -- I was afraid they would make me sign some
21 paperwork or accuse me of some other things.

22 Q. Did you think it would be a waste of time?

23 A. I thought that everything that had happened, it
24 would just represent a bigger problem. And I wasn't wrong
25 because DSS showed up at my house.

1 Q. Did you think the school had already made up their
2 mind by that point?

3 A. I felt that something bigger was coming after the
4 call.

5 MR. EDDY: Thank you, Ms. Arellano. I got no more
6 questions.

7 THE COURT: Re-cross?

8 MS. WHITE: Just briefly.

9 RE-CROSS EXAMINATION

10 BY MS. WHITE:

11 Q. Ms. Arellano, do you understand that the
12 Department of Social Services and Lexington County School
13 District Two are two entirely separate entities?

14 A. Yes, I understand. But the school sent DSS to my
15 home.

16 MS. WHITE: No other question.

17 THE COURT: Thank you, ma'am. You step down. Who's
18 your next witness?

19 MR. EDDY: The Plaintiff intends to call Ms. Zoe
20 Arellano. I can go out in the hallway and grab her.

21 THE COURT: You need a break?

22 JUROR 162: Yeah.

23 THE COURT: All right. Ladies and gentlemen, please
24 step back in the jury room, don't discuss the case.

25 (Jury exits room at 3:24 p.m.)

1 THE COURT: All right. In criminal court and cases
2 like this, they -- where the accusations such as these, they
3 usually take the child around, familiarize her with the
4 courtroom, do things like that. If you all want to take a
5 little while to try to do that, that's fine. Just let me
6 know. See if we can get through this.

7 MR. EDDY: Thank you, your Honor.

8 THE COURT: We're at ease.

9 (Off the record at 3:25 p.m.)

10 (On the record at 3:40 p.m.)

11 THE COURT: You can see me now. Do you know the
12 difference between telling the truth and not telling the
13 truth? Can you speak your answer and say "Yes," or "No"?

14 MR. EDDY: Zoe, the judge needs to hear you say yes.

15 THE COURT: Do you all need to go through a colloquy
16 about whether she understands the difference between truth
17 and lie?

18 MR. EDDY: I apologize, your Honor.

19 THE COURT: I'm sorry?

20 MR. EDDY: Do you want me to ask her direct questions
21 on the truth and a lie?

22 THE COURT: I'm asking -- I'm asking if you all think
23 we need that or not.

24 MS. WHITE: I think we need that, your Honor.

25 THE COURT: Okay. In the presence of the jury or

1 outside the presence of jury?

2 MS. WHITE: I'm okay with any.

3 THE COURT: Okay. I think the oath that we generally
4 give children -- and I'll have to try to look it up, is: Do
5 you promise to tell us the truth? You promise to tell us, I
6 believe the truth, but the colloquy I'm talking about is --
7 you know, is different, just what happens if you tell a lie
8 and things like that. Okay. Zoe, you just sit tight right
9 there, okay? You going to bring those? Oh, I'm sorry. You
10 can sit outside.

11 MS. WHITE: I -- I'm fine with outside.

12 MR. EDDY: Same.

13 THE COURT: Okay. He's going to ask you some questions
14 and I need you to talk, okay? So that lady down there, she's
15 taking down the notes she needs -- what we say. All right.
16 Thank you.

17 MR. EDDY: Hi, Zoe. When I ask you any questions, I
18 need you to speak into the microphone, okay? Can you say
19 "Yes"? I need you to say "Yes."

20 MS. ARELLANO: Uh-huh.

21 MR. EDDY: Okay. Just remember that microphone. This
22 is what's keeping all your words, okay? Yes? I don't need a
23 nod. I need a "Yes," or a "No," okay? Is that a "Yes"?

24 MS. ARELLANO: Yes.

25 MR. EDDY: Okay. Now do you know what a lie is?

1 MS. ARELLANO: Something that's not true.

2 MR. EDDY: Exactly. Like if I said I was red, would
3 that be true or a lie?

4 MS. ARELLANO: A lie.

5 MR. EDDY: Exactly. If I said I could fly to the sun
6 and back, would that be truth or a lie?

7 MS. ARELLANO: A lie.

8 MR. EDDY: If I said I was wearing a blue suit with a
9 yellow tie, would that be the truth or a lie?

10 MS. ARELLANO: (Inaudible).

11 MR. EDDY: Okay. Now when you're in court talking to
12 the judge and to me and to the other lawyer, do you want to
13 say true things or lies?

14 MS. ARELLANO: The truth.

15 MR. EDDY: Okay. Is it a good thing or a bad thing to
16 tell a lie?

17 MS. ARELLANO: Bad thing.

18 MR. EDDY: It's a bad thing. Why is it a bad thing to
19 tell a lie?

20 MS. ARELLANO: Because they won't trust you and they'll
21 send you to jail.

22 MR. EDDY: Because people won't trust you? Is that a
23 "Yes"?

24 MS. ARELLANO: Yes.

25 MR. EDDY: Thank you. Thank you, your Honor.

1 THE COURT: Can you put (inaudible). You all give me
2 just a minute, okay? Okay. Zoe, I'm going to bring those up
3 people, okay? And (inaudible) speak up so that they can hear
4 you. All right. And if you need to stop, you let me know,
5 all right? I'm going to have to sit here and you got to sit
6 right here, okay? Bring them in.

7 (Jury enters room at 3:45 p.m.)

8 THE COURT: Defense Counsel indicated they were
9 satisfied. I am not stopping you from repeating anything so
10 the jury to understand. Zoe, will you look at me just a
11 minute? You promise to tell us the truth? Speak your
12 answer, okay? Say "Yes," or "No." You promise to tell us
13 the truth? I'm sorry if I scared you. You need to stop --
14 step outside, please. Is that okay now? Would you rather
15 for that lady to ask you the questions?

16 MR. EDDY: Zoe, the judge here -- the judge here, he
17 just wants to know if you can promise to tell the truth,
18 okay? You can say "Yes," or you can say "No." Judge here is
19 a nice guy. All he wants to know is if you can tell the
20 truth. That's all he wants to know. (Inaudible) a copy.

21 THE COURT: You can give them if they want. Okay.
22 Zoe.

23 ZOE ARELLANO,

24 being duly sworn, testified as follows:

25 THE COURT: Okay. Thank you. Your witness.

1 DIRECT EXAMINATION

2 BY MR. EDDY:

3 Q. Hi, Zoe. How are you doing today, darling?

4 A. Good.

5 Q. Good. Remember you got that microphone right in
6 front of you. You got to use some big words, okay? To make
7 sure that microphone captures all the words, all right?

8 A. Yes.

9 Q. Good. Now remember, we need to have at least a
10 "Yes," or a "No" to all the questions because the court
11 reporter here, she's writing down every single word that I'm
12 saying and that you're saying, but she can't write down this,
13 or this, okay? So we got to keep it at least a "Yes," or a
14 "No". All right? Okay. Now I see we got a little dolly up
15 there with you. Is that a little Hello Kitty Dolly, is that
16 your favorite dolly?

17 A. I don't know.

18 Q. One of your favorites. Does -- does she spend the
19 night with you?

20 A. Sometimes.

21 Q. Sometimes?

22 A. Uh-huh.

23 Q. Okay. How old are you, Zoe?

24 A. Eight.

25 Q. When's your birthday? Do you remember?

1 A. May 21.

2 Q. Sorry.

3 A. May the 21st.

4 Q. Okay. And what -- what kind of things do you like
5 to do at home?

6 A. Play with dollies, watch TV.

7 Q. Can I get a little louder, please?

8 A. Play with dollies and watch TV.

9 Q. Play with dollies and watch TV? What kind of
10 dollies do you like to play with?

11 A. Maybe Alive.

12 Q. I'm sorry.

13 A. Maybe Alive.

14 Q. Okay. What do you like to watch on the TV?

15 A. Maybe Alive.

16 Q. Can you give me a little louder, darling?

17 A. Maybe Alive dolls.

18 Q. I'm very far away from you. I can't hear this.
19 And if I can't hear it, our jury over here can't hear it
20 either, okay?

21 A. Maybe Alive dolls.

22 Q. Okay. Do you have any brothers and sisters?

23 A. Yes.

24 Q. What -- who are your brothers and sister?

25 A. Ferrey.

1 Q. Ferrey?

2 A. And Isis.

3 Q. And Isis?

4 A. Uh-huh.

5 Q. Okay. Are they fun?

6 A. Sometimes.

7 Q. That's pretty accurate. Now Zoe, do you know the
8 difference between the truth and a lie?

9 A. Uh-huh.

10 Q. That's a "Yes"?

11 A. Yes.

12 Q. Okay. So if I said that I'm blue, would that be
13 true or a lie?

14 A. A lie.

15 Q. That be a lie? I'm not believing. What if I said
16 I could fly to outer space, would that be the truth or a lie?

17 A. A lie.

18 Q. That would be a lie? What if I said I was
19 standing in a courtroom right now?

20 A. That's the truth.

21 Q. That is the truth? What if I said you had a dolly
22 on your desk would that be truth or a lie?

23 A. True.

24 Q. Would that be true? Okay. Now you just took a
25 promise to that judge to tell the truth, is that right? Are

1 you going to do your best to tell the truth for all of us
2 today?

3 A. Yes.

4 Q. Good. Good. Do you remember back when you were
5 in 5K at Cayce Elementary?

6 A. I do.

7 Q. Okay. Did you have any cool friends in that
8 school?

9 A. One.

10 Q. Okay. Did you like to play with them?

11 MR. EDDY: Permission to approach, your Honor? Just
12 going to tilt your microphone down a little bit. Just
13 remember all the words got to go into there, okay?

14 THE COURT: It's not going to have to (inaudible).

15 MR. EDDY: Do we have a mechanism for that?

16 THE COURT: No.

17 MR. EDDY: Okay.

18 THE COURT: No comment would be my best.

19 BY MR. EDDY:

20 Q. Zoe, do you remember what happened near the end of
21 school 5K with the student named K. We're calling him K
22 today, okay? Do you remember what happened with K?

23 A. I do remember some parts.

24 Q. Okay. That's fine. Not everyone has a perfect
25 memory of everything. That's okay. Can you please tell us

1 what you remember happened with K?

2 A. We were watching the Little Mermaid at our desk
3 and Ms. Ray and I don't know who the other teacher was named,
4 for some reason. We were just watching the Little Mermaid
5 and we were doing a paper thingy. And I -- and there's like
6 no space of -- in the table, so I said, "You can -- you can
7 sit here," and -- and so then he sit here, and I was sitting
8 there just watching the Little Mermaid. And then I felt
9 something like you -- like you see a spider. Everybody is
10 scared of spiders, but like you felt a spider on -- on you.
11 I felt like that.

12 Q. So you're watching the Little Mermaid? Do you
13 like the Little Mermaid? Who's your favorite character in
14 the movie?

15 A. Flounder.

16 Q. Flounder? Good choice. Now you're sitting at
17 your desks? Were the lights really bright like this or were
18 they all the way off or were they in between?

19 A. In between.

20 Q. So it was a little dark, little bright? Okay.
21 And you said that -- that there was some paperwork or project
22 you all were working on?

23 A. Yeah.

24 Q. What was the project?

25 A. I know when -- that you had to finish the crayons.

1 Q. Doing some stuff with crayons?

2 A. It had little colors on it.

3 Q. Okay. And you said you asked him to come sit next
4 to you. Was that -- was that K?

5 A. Yeah.

6 Q. The other boy?

7 A. Yeah.

8 Q. Okay. Or you said you let him sit by you? Did he
9 come up and ask you if he could sit there?

10 A. No, I did -- there was no room in there. And the
11 -- and I told him to sit, like, not next to me, but like all
12 the way up there.

13 Q. And then you said you felt a touch on your body?
14 Where on your body? You're pointing at your dolly?

15 A. Uh-huh.

16 Q. You're pointing at the skirt area of your dolly?

17 A. Uh-huh.

18 Q. Are you trying to say he touched your pants, or
19 are you trying to say he touched under your pants?

20 A. Under.

21 Q. Do you remember what kind of pants you were
22 wearing that day?

23 A. (Inaudible).

24 Q. Do you remember if they were stretchy or loose or
25 if it was a skirt?

1 A. No, I don't remember what I was wearing.

2 Q. When he touched you, did -- did you pull open your
3 pants?

4 A. Uh-uh.

5 Q. Did you tell him, "Touch me under there"?

6 A. No.

7 Q. Did he touch you under your pants?

8 A. Uh-huh.

9 Q. Did you tell him to touch you under your pants?

10 A. No.

11 Q. Did you tell him to stop?

12 A. Yes.

13 Q. Did you tell him "No"?

14 A. Yes.

15 Q. And what did he do?

16 A. Kept on doing it.

17 Q. What happened after that, Zoe?

18 A. Student named S went to -- what noticed --

19 Q. Can you -- can you move your hand a little bit?

20 We can't hear you when you got your hand in the -- in the
21 way.

22 A. Student named S noticed, and he told the teacher.

23 Q. So there was another student who we're calling S?

24 A. Huh?

25 Q. And he saw what was happening?

1 A. He noticed.

2 Q. He noticed? And he went and told the teachers?

3 A. Yeah.

4 Q. What happened after that, Zoe?

5 A. Teacher called number -- student named number K.

6 Q. The teacher talked with K? What happened after
7 that?

8 A. K told a lie, and then -- and then K went to sit
9 down, then -- then teacher called me up to talk to her and I
10 don't remember what I said.

11 Q. Did you -- could you hear what K and your teacher
12 were talking about?

13 A. No.

14 Q. So how do you know it was a lie?

15 A. Teacher told -- I don't remember what the teacher
16 told me, but I think I know why. I don't know.

17 Q. So then you talked with the teacher afterwards?

18 A. Yeah.

19 Q. And what did you and the teacher talk about?

20 A. I don't remember.

21 Q. Did you tell the teacher that he touched you?

22 A. Uh-huh.

23 Q. Did you tell the teacher that he touched you under
24 your pants?

25 A. Uh-huh.

1 Q. Did you tell the teacher that you did not want to
2 be touched there?

3 A. Uh-huh.

4 Q. What did your teacher do after that?

5 A. I don't remember.

6 Q. Did you talk to some other grownups or teachers at
7 the school?

8 A. Uh-huh.

9 Q. Do you remember what teachers you spoke with?

10 A. Uh-uh.

11 Q. Do you know if it was a principal, or assistant
12 principal, or somebody else?

13 A. One I know it was the principal.

14 Q. And what did you talk with them about?

15 A. I don't remember.

16 Q. Did you talk with a counselor or somebody like
17 that?

18 A. Yes.

19 Q. Did you tell them about what happened?

20 A. Yes.

21 Q. Did you tell them that he touched you?

22 A. Yes.

23 Q. Did you tell them that he touched you under your
24 pants?

25 A. Yes.

1 Q. Did you tell them that you didn't want to be
2 touched there?

3 A. Yes.

4 Q. What did they say when you told them this?

5 A. He said -- what did he say?

6 Q. Did the grownups you were talking to, did they
7 believe you?

8 A. No.

9 Q. You don't remember?

10 A. No.

11 Q. Do you know how many grownups you talked to that
12 afternoon?

13 A. Uh-huh.

14 Q. You're holding up three fingers?

15 A. Uh-huh.

16 Q. You think it was around three teachers?

17 A. Yes.

18 Q. Did you tell them all the same things?

19 A. I don't remember.

20 Q. What happened after you talked with the teachers?

21 A. They called my mom.

22 Q. Why did they call your mom?

23 A. Because of what happened.

24 Q. When you were talking with the teachers, were you
25 really sad?

- 1 A. I don't know.
- 2 Q. You don't remember?
- 3 A. Yes.
- 4 Q. Were you crying?
- 5 A. Uh-huh. Yeah.
- 6 Q. You think you were crying?
- 7 A. Yeah.
- 8 Q. Why were you crying, Zoe?
- 9 A. I thought I was in big trouble.
- 10 Q. Why did you think you were in big trouble?
- 11 A. Because the school said that I -- that I -- that I
- 12 was a bad girl.
- 13 Q. Why did they say you were a bad girl?
- 14 A. They thought my mommy taught me those stuff.
- 15 Q. I'm sorry, can you say that again?
- 16 A. They think that my mommy taught her -- thought --
- 17 taught me those stuff, but she didn't.
- 18 Q. They thought that -- that your mom taught you
- 19 those bad words?
- 20 A. Those bad stuff.
- 21 Q. The bad stuff?
- 22 A. Yeah.
- 23 Q. What happened when your mom got to school?
- 24 A. She picked me up.
- 25 Q. Did your mom ask you about what happened?

1 A. Yeah.

2 Q. And did you tell her what you're telling all of
3 us?

4 A. Yeah.

5 Q. What did your mom say?

6 A. I don't really remember.

7 Q. Did you go back home after that?

8 A. Yes.

9 Q. Did Isis come home after that?

10 A. I don't remember.

11 Q. Do you remember if you had a conversation with
12 Isis again that day about what happened?

13 A. Yes.

14 Q. Do you remember telling Isis about what happened
15 with K?

16 A. Yes.

17 Q. Did you tell Isis that he touched you?

18 A. Yes.

19 Q. Did you tell Isis that he touched you under your
20 pants?

21 A. Yes.

22 Q. Did you tell Isis that he pulled your pants away
23 from your body?

24 A. Yes.

25 Q. Did you tell Isis that you didn't say "Yes" to

1 this?

2 A. Huh?

3 Q. Did you tell Isis that you did not ask K to do
4 this?

5 A. Yes.

6 Q. Did you tell Isis you did not want to be touched
7 like this?

8 A. Yes.

9 Q. Did you go back to school afterwards?

10 A. No.

11 Q. Do you know why you didn't go back to school?

12 A. No.

13 Q. When you were talking with the teachers after K
14 touched you, did any of the teachers say that you were lying?

15 A. I don't remember.

16 Q. Did the teachers say they didn't believe you?

17 A. I don't remember.

18 Q. Do you remember that some people visited your
19 house again to ask you about what happened?

20 A. Yeah.

21 Q. Was that a lady, or...?

22 A. A lady.

23 Q. It was a lady. Okay. And did she talk to you
24 about what happened?

25 A. Yes.

1 Q. And did you tell her about getting touched?

2 A. Yes.

3 Q. Did you tell her about getting touched under your
4 clothes?

5 A. Yes.

6 Q. Did you tell her that you did not ask to be
7 touched?

8 A. Yes.

9 Q. Did you tell her that you said "No" and did not
10 want to be touched?

11 A. Can you repeat that?

12 Q. Did you tell her that you said no when K was
13 touching you?

14 A. Yes.

15 Q. Did she ask you other questions?

16 A. I don't remember.

17 Q. Did she ask you about your house?

18 A. I don't remember.

19 Q. Did she ask you about other people in your house?

20 A. I don't remember.

21 Q. Did she talk with other people at your house?

22 A. Yes.

23 Q. Did she talk with your mother?

24 A. Uh-huh.

25 Q. Did she talk with your brother or your sister?

1 A. Uh-huh.

2 Q. How about your grandma? Did that lady ever come
3 back?

4 A. I don't know.

5 Q. Were there other people that came to your house to
6 talk to you?

7 A. Uh-uh. Only that lady.

8 Q. Did you ever go to other places to talk to people?

9 A. (Inaudible).

10 Q. Do you remember who you spoke with outside of the
11 house?

12 A. Not outside in another place.

13 Q. I'm sorry.

14 A. Not outside, in another place.

15 Q. Okay. What was the other place, do you know?

16 A. I don't remember the building, but I do remember
17 what I talked about.

18 Q. What did you talk about at the other place?

19 A. About what happened.

20 Q. You told them about K touching you?

21 A. Uh-huh.

22 Q. You told them about K touching you under your
23 clothes?

24 A. Yeah.

25 Q. You told them that you didn't ask to be touched

1 under your clothes?

2 A. Uh-huh.

3 Q. Do you remember seeing Ms. Amador or Narumi?

4 A. Yes.

5 Q. Do you remember going to see a counselor named
6 "Narumi Amador"? Maybe you called her Ms. Narumi. Was she
7 nice?

8 A. Yes.

9 Q. Did you see her a few times or only one time?

10 A. Sometimes.

11 Q. Did you talk with her?

12 A. Yes.

13 Q. Did you play games with her?

14 A. Yes.

15 Q. What kind of games did you play with Ms. Narumi?

16 A. I don't know.

17 Q. Did you ever talk to Ms. Narumi about what
18 happened at school?

19 A. Yeah.

20 Q. Did you ever tell her how it made you feel?

21 A. I don't know.

22 Q. You sleep in the same bedroom as your mommy,
23 right?

24 A. Yeah.

25 Q. Do you -- you've got your own bed?

1 A. Uh-huh.

2 Q. Does it have lots of stuffed animals on it?

3 A. Uh-huh.

4 Q. Pink sheets, unicorn sheets, star sheets?

5 A. Ballerina.

6 Q. Ballerina sheets. Do you want to be a ballerina?

7 A. Uh-huh.

8 Q. I would make a very bad ballerina. When you go to
9 bed, do you sometimes have nightmares?

10 A. I will -- I sometimes wake up in the middle of the
11 night and tell mommy to hug me.

12 Q. Now sometimes we have nightmares because of
13 vampires, or bats, or things, but do you ever have nightmares
14 about what happened with K at the school?

15 A. I don't know.

16 Q. Do you ever get sometimes where you get really --
17 really upset and sad because of what you think about with the
18 school?

19 A. Yeah.

20 Q. Can you tell us what that feels like?

21 A. It makes me feel sad and anger because of school
22 bad -- calling me a bad girl, and I don't know why.

23 Q. Do you feel that every day or every week or just
24 every once in a while?

25 A. Once in a while.

1 Q. Does it make you sad to think about what happened
2 at the school? Does it make you sad to think about how the
3 school treated you?

4 A. Yes.

5 Q. Do you still think about these things or is it
6 only back in the day?

7 A. I still think about it because you take -- because
8 Mom takes me there, and it still makes me think about it.

9 Q. So you still think about it?

10 A. Yes.

11 Q. It still makes you sad?

12 A. And angry.

13 Q. And angry?

14 A. Yeah.

15 Q. Why do you get angry, Zoe?

16 A. I don't know.

17 Q. Now your mom said that sometimes you don't like
18 playing with other kids, is that true?

19 A. Yes.

20 Q. Is it other girls or other boys that you don't
21 like to be around?

22 A. Boys.

23 Q. Why is that?

24 A. It makes me -- sometimes the boys are nice and do
25 stuff, but if -- but if they're like the -- but if they're

1 like the boy K, it sometimes reminds me of the thing -- what
2 happened.

3 Q. I understand. Zoe, have you told us the truth
4 today?

5 A. Yes.

6 Q. You wouldn't lie to all these nice people about
7 this, would you?

8 A. No.

9 Q. You only want them to know the truth about what
10 happened to you, don't you?

11 A. Yeah.

12 Q. And you've told them nothing but the truth right
13 now, right?

14 A. Uh-huh.

15 MR. EDDY: Thank you. I got no more questions for this
16 witness.

17 THE COURT: You wish to question the witness?

18 MS. WHITE: We have no questions.

19 THE COURT: All right. You all want to help her get
20 down? You have another witness?

21 MR. EDDY: I do, your Honor, it might take us a little
22 past 5:00. Would you prefer to start now so (inaudible) or
23 we can wait until morning.

24 THE COURT: Who's your next witness?

25 MR. EDDY: It's Zoe's sister, Isis. I'm sorry --

1 actually Ferrey. I probably can question Ferrey.

2 THE COURT: All right. Let's go ahead and call the
3 next witness.

4 MR. EDDY: Thank you, your Honor. The Plaintiff calls
5 Ferrey.

6 THE CLERK: Raise you right hand and place the left on
7 the Bible.

8 FERREY RAMSES RAMIREZ ARELLANO,
9 being duly sworn, testified as follows:

10 THE CLERK: If you can have a seat and state your name
11 for the record.

12 THE WITNESS: Hi, my name is Ferrey Ramses Ramirez
13 Arellano, I'm 17 and I run my own business at Number One Flea
14 Market. I have my own stall.

15 MR. EDDY: Thank you, Ferrey.

16 DIRECT EXAMINATION

17 BY MR. EDDY:

18 Q. Do you mind if I call you "Ferrey"?

19 A. Yeah.

20 Q. Good. How do you know the Plaintiff Zoe?

21 A. She's my younger sister.

22 Q. And how old are you, Ferrey?

23 A. 17.

24 Q. When's your birthday?

25 A. June 11th.

- 1 Q. Are you still in school?
- 2 A. Yes.
- 3 Q. You got a girlfriend?
- 4 A. No.
- 5 Q. You got a boyfriend?
- 6 A. No.
- 7 Q. What do you like to study in school?
- 8 A. Let's see, probably history.
- 9 Q. Are we talking world history, South Carolina
- 10 history? What do you like to study?
- 11 A. Anything interesting in history, like World War II
- 12 or civil war, stuff like that.
- 13 Q. What is your least favorite subject to study in
- 14 school?
- 15 A. English.
- 16 Q. Imagine you have pretty good grades in Spanish?
- 17 A. Decent.
- 18 Q. Do you play any sports?
- 19 A. No.
- 20 Q. What do you do outside of school?
- 21 A. On my free time, I play video games.
- 22 Q. What kind of games do you like to play?
- 23 A. Call of Duty.
- 24 Q. Do you play on a...?
- 25 A. I play on my play station.

1 Q. Okay. And is that in your bedroom or in the TV
2 room?

3 A. That's in my room.

4 Q. Zoe ever play at your play station?

5 A. No.

6 Q. Someone mentioned earlier that you've got sleep
7 apnea.

8 A. That's correct.

9 Q. How does that affect you?

10 A. Sometimes I come from school extremely sleepy. I
11 don't get my hours in, so I can sleep like for -- let's say
12 like I can get my nine hours of sleep in and I'm still tired.

13 Q. So mostly just affects you being really sleepy and
14 taking long -- sleeping for a long time?

15 A. Yes.

16 Q. Okay. Who do you share a bedroom with?

17 A. I used to share a bedroom with -- bedroom with my
18 older sister.

19 Q. That used to. Right? At the time of this
20 incident, who did you share a bedroom with?

21 A. Isis.

22 Q. What's it like sharing a bedroom with your older
23 sister? Strike that. You don't need to answer. Are you
24 happy having your own bedroom now?

25 A. Yes.

1 Q. Now outside of video games and school, you said
2 that you run your own business?

3 A. Yes, sir.

4 Q. And what kind of business is that?

5 A. I sell toys, markers, pencils, walkie-talkies.

6 Q. That's cool. And you said you sell them at the
7 flea market?

8 A. Yes, sir.

9 Q. That's the same flea market where your mom works?

10 A. Yes.

11 Q. So you do that on Saturdays and Sundays?

12 A. Yes.

13 Q. All right. What else do you sell besides markers
14 and --

15 A. I also sell sodas.

16 Q. Okay. Do you make any money doing these?

17 A. Yes.

18 Q. And what do you do with your money?

19 A. I save half of it, and invest on more things that
20 I need.

21 Q. Invest back in your business?

22 A. Yes.

23 Q. Okay. And before this incident, when Zoe was in
24 5K, can you describe to the jury what Zoe was like before
25 this happened?

1 A. A happy child, always smiling, always happy,
2 missed -- missed us whenever we went to school.

3 Q. There'd be a little family drama when you and Isis
4 would go off to school when she'd have to stay at home?

5 A. Yeah, she would sometimes hug us when we came back
6 from school because she missed us a lot.

7 Q. I understand. Would -- would you describe your
8 relationship as a close one?

9 A. I would describe it as any normal sibling
10 relationship.

11 Q. Would you say she was closer with you or with
12 Isis?

13 A. She's closer with both of us.

14 Q. How did you first become aware of this incident?

15 A. Let's see. Probably on -- probably one of the --
16 when the first DSS officer came to -- came to the house.

17 Q. That's the DSS folks?

18 A. Yes. Yeah.

19 Q. Okay. Did you get interviewed by the DSS folks?

20 A. No, sir. I was asleep when that happened. I was
21 aware afterwards that they came.

22 Q. And that was the first time you found out about
23 the incident?

24 A. Yes.

25 Q. What's your understanding of what happened to Zoe

1 in that classroom?

2 A. My understanding was that she trusted a kid to sit
3 right beside her, and that she was attacked. Something that
4 she didn't ask for. And on that day, her innocence was taken
5 away from her. And from that experience, from talking to the
6 teachers and the interrogations they did on her, it
7 traumatized her.

8 Q. What do you mean by that?

9 A. I said -- I meant by that was she had nightmares
10 afterwards.

11 Q. How were you aware of her nightmares?

12 A. You can hear kids screaming from -- from -- even
13 if you're from the other side of the house.

14 Q. So her screams were so loud, you could hear them
15 --

16 A. Yes.

17 Q. -- from across the house? How frequently does she
18 have her nightmares?

19 A. I don't know. I really couldn't tell that much.

20 Q. Is she still the same bright, happy, bubbly child
21 she was before this incident?

22 A. Yes. But she's now more like irritable.

23 Q. She's quicker to anger?

24 A. Yes.

25 Q. Have you seen her have problems interact with

1 other children?

2 A. She's more trustworthy towards girls instead of
3 boys.

4 Q. So you've seen her have problems around being
5 scared of other boys?

6 A. Yes.

7 Q. How many times did the DSS folks come to your
8 house?

9 A. I really could not tell you that because half of
10 the time I was asleep and by the time they came, I was
11 probably -- I probably woke up by the time they left.

12 Q. Did they ever interview you?

13 A. Once, and that was when I was awake.

14 Q. What kind of questions did they ask you?

15 A. Did we share a room, and was I ever left alone
16 with her.

17 Q. What was it like to be asked those questions?

18 A. Horrifying because I for a fact would never do
19 something like that. I don't know where they get off trying
20 to accuse me of something like that.

21 Q. Made you feel awful?

22 A. It made me feel awful and it made me feel sad to
23 know that some people think like that way and are twisted
24 minded like that.

25 Q. When was the last time you had one of those DSS

1 interviews?

2 A. I couldn't remember the last time, but I know it
3 was the fourth time probably.

4 Q. The fourth time is when you were interviewed?

5 A. Yes.

6 Q. What is your understanding of the outcome of the
7 DSS investigation?

8 A. That they found nothing at the house that could be
9 related to it. So the -- on their part, the investigation
10 ended.

11 Q. You ever seen Zoe at the house on a tablet or a
12 device accessing anything inappropriate?

13 A. No, sir.

14 Q. Can you please explain to the jury how this
15 incident and the investigation has affected your family?

16 A. It's affected us in many ways, like investigation.
17 I could tell that it left like (inaudible). Well, like it
18 was adding salt to the wound. It was more like making my mom
19 sad because, like -- and my sister too, because she kept
20 asking, like, "Why would they come, why would they ask her
21 these questions? Why would they make her relive the horrible
22 moment?"

23 Q. So you think this investigation made all of this
24 worse on Zoe and your family?

25 A. Yes, sir.

1 Q. Have you noticed -- can you tell the jury about
2 any changes in your mother after this incident?

3 A. She -- she's always keeping an eye on her. She --
4 well, to begin with, she never let us take care of her, so
5 that's one good part of it. But she -- I feel like she's sad
6 about it. I guess at the end of the day we didn't get an
7 apology from the school and honestly, I don't know how the
8 school, or what right -- or authority give -- is given to
9 them to accuse somebody like that. Tell a young kid who's
10 six years old -- not six years old, who's -- you were five at
11 the time? Was five.

12 THE COURT: You can't ask her.

13 THE WITNESS: To tell a young kid at that age that
14 they're lying after you intensively interrogated them over
15 and over. And of course as a kid, you're going to change
16 your story up because you're going to be like, "Why are these
17 people asking me this question again and again? I just want
18 it to be over with."

19 Q. Thank you, Ferrey.

20 A. You're welcome.

21 Q. Is there anything else that you think the jury
22 needs to hear about how this incident has affected you, your
23 mother or Zoe?

24 A. This incident affected -- affects me more because
25 it makes me angry towards the fact that, again, they're

1 accusing a child of lying when I very well know that she
2 would never lie on that. And the fact is that being
3 interrogated would traumatize any kid. Like, I remember when
4 I was little, like, we were traumatized of like our parents
5 getting pulled over or my dad getting pulled over because he
6 was driving.

7 Q. And getting investigated by the DSS folks, did
8 that feel like when the police were talking to your dad?

9 A. Yes, and like when they would like deport him or
10 take him away from us. That's how sad we felt. That's how I
11 felt. It reminded me of bad times.

12 MR. EDDY: Thank you, Ferrey. I got no more questions
13 for this witness.

14 THE COURT: Cross?

15 CROSS-EXAMINATION

16 BY MR. CROSSLAND:

17 Q. Hey, Ferrey, how are you doing?

18 A. Fine. And you?

19 Q. Doing all right. Did you ever speak to any
20 district officials after the incident?

21 A. Can you define "district official"?

22 Q. Did you talk to Ms. -- Ms. Sadie Ray, Ms. Schmidt
23 Zoe's kindergarten teacher?

24 A. Never in my life.

25 Q. Did you talk to Ms. Kimberly Long, the teacher's

1 assistant?

2 A. No, sir.

3 Q. Did you talk to the principal about the incident?

4 A. No.

5 Q. You ever talked to any district official?

6 A. I never talked to any district official from the
7 school. No.

8 Q. So how do you know that they accused your family
9 of anything?

10 A. Hearsay. I mean, clearly, I can tell when my
11 younger sister is lying. I could clearly tell when somebody
12 in my family is lying or not, and I believe her, and she
13 wasn't lying.

14 Q. So when you are -- when you're at home, you said
15 that you play video games. Does Zoe play video games with
16 you?

17 A. No.

18 Q. Do you guys -- do you watch TV?

19 A. The only time she ever is allowed to play video
20 games is when I bring this game out, and that used to be when
21 we used to play Martcart, and that was all of us.

22 Q. So do you watch TV?

23 A. No.

24 Q. You don't watch TV at all?

25 A. No.

1 Q. You don't have a favorite movie?

2 A. No.

3 Q. Does Zoe watch TV?

4 A. She does, but we monitor her.

5 Q. What does Zoe watch?

6 A. She usually watches videos on Baby Alive, and
7 that's about it.

8 Q. So you said you and Zoe are pretty close?

9 A. No, it's a normal -- just a regular sibling
10 relationship.

11 Q. So when you're hang -- do you ever hang out with
12 Zoe?

13 A. Not really.

14 Q. No? So when -- when you're with Zoe, what do you
15 guys do?

16 A. Just play a board game, and that's it.

17 Q. Play board games? Anyone -- anyone in particular?

18 A. See, just Sorry.

19 Q. Sorry. Are you good at Sorry?

20 A. A little bit.

21 Q. Is Zoe good at Sorry?

22 A. Yeah.

23 Q. So no watching TV with Zoe?

24 A. No.

25 Q. Does Zoe have a tablet?

1 A. Yes, sir.

2 Q. Does it -- can it access the internet?

3 A. No.

4 Q. Do you have a tablet?

5 A. Yes.

6 Q. Can it access the internet?

7 A. No.

8 Q. Do you have a cell phone?

9 A. Yes.

10 Q. Can it go on the internet?

11 A. Unfortunately, I'm grounded from both my tablet,

12 my cell phone and my TV, so...

13 Q. What'd you do to get grounded?

14 A. I haven't gotten my grades up.

15 Q. You did what now?

16 A. I have bad grades.

17 Q. Bad grades? Okay. Do you ever get in trouble at

18 school?

19 A. No.

20 Q. Never in trouble at school?

21 A. No, sir.

22 Q. So what do you do on your tablet?

23 A. I just play Block Blast.

24 Q. What does Zoe do on her tablet?

25 A. Play games that we already installed and talked

1 about them.

2 Q. You said Zoe has a cell phone?

3 A. No, she doesn't have a cell phone. She does, but
4 it's borrowed. It's not hers. It's old cell phone.

5 Q. So nobody uses it anymore?

6 A. No.

7 Q. You said DSS came to your house?

8 A. Yes.

9 Q. How many times did you speak with them?

10 A. I only spoke once.

11 Q. And did any district officials come to your -- to
12 your house?

13 A. No.

14 Q. No district officials ever to your house?

15 A. No, sir.

16 MR. CROSSLAND: One moment.

17 BY MR. CROSSLAND:

18 Q. Do you remember getting in trouble at school for
19 accessing something on your tablet?

20 A. No. We don't have tablets at school.

21 Q. On your computer or -- or ThinkPad?

22 A. No, unless it's a crime to play on block games.

23 Q. Okay.

24 A. But that's about it.

25 Q. So you -- you don't ever hang out with Zoe, but

1 yet you -- you've seen that -- you testified earlier that
2 you've seen a change in Zoe?

3 A. Yes.

4 Q. So how did you see that change?

5 A. You know how siblings annoy their siblings? Yeah.

6 Q. That's how. So she annoys you?

7 A. No, other way around.

8 Q. You annoy her?

9 A. Yes.

10 Q. So she doesn't want to hang around you?

11 A. No.

12 Q. What do you mean by that?

13 A. So -- you know, like, when you're like doing
14 something like your sibling comes and annoys you, that's all
15 it is.

16 MR. CROSSLAND: Okay. No further questions.

17 THE COURT: Re-direct?

18 MR. EDDY: None from the Plaintiff.

19 THE COURT: Thank you, sir. You may step down. So
20 your next witness will be how long?

21 MR. EDDY: I think right around 30 to 45 minutes.

22 THE COURT: That's direct?

23 MR. EDDY: Correct.

24 THE COURT: You all plan to cross the next witness?

25 MR. CROSSLAND: Yes, sir. We would anticipate the same

1 amount of time.

2 THE COURT: All right, folks, it sounds like this is
3 the place to stop for today. I mentioned to you earlier and
4 I did not completely say what I was supposed to say about
5 discussing the case. If anybody does attempt to contact you
6 and discuss the case, report that to me so I can deal with
7 it. If the -- I don't expect media coverage of the trial,
8 but if there is any, get away from it and report to me what
9 you may have seen, heard, or read through the media. If any
10 of you are having issues related to the storm, give me a note
11 and I'll try to accommodate what I can. I -- I do appreciate
12 you all being here in very difficult circumstances. We'll
13 start tomorrow at 9:30 unless there's a problem. All right.
14 I need you to please be in the jury room at 9:30, come back
15 the same way you did at lunch, and I hope you have a very
16 pleasant evening, free to go. Thank you.

17 (Jury exits room at 4:33 p.m.)

18 THE COURT: I want to talk to you all just a minute
19 before, and that'll give us some time for the jury to clear
20 out. I'm thrilled that we have power at home. We're not
21 going to have internet for a long time. The courthouse in
22 Edgefield is the same way. They don't have any internet. I
23 don't know where I can go to access the internet because our
24 cell signal is so sporadic over there right now. So if you
25 all have request to charge, I would very much appreciate you

1 all sending them to me as quickly as you can so that I can
2 get them when I'm here. I usually work on the charges at
3 night, and I don't know how much I'll be able to do at night,
4 so it's going to delay us some. So if you all have request
5 to charge, let me know. I -- I do have some questions about
6 some things. You all sit down, please. All right. The
7 lawsuit is captioned as the mother individually and as
8 guardian ad litem for the child. So she is seeking damages
9 under what theory?

10 MR. EDDY: Nancy or Zoe?

11 THE COURT: Nancy. I understand Zoe.

12 MR. EDDY: So Nancy is seeking coverage based off of
13 their gross negligence, breaching their duty in good faith in
14 the investigation. How it injured the family, specifically
15 triggering the DSS investigation.

16 THE COURT: I'm sorry, what legal theory there for her
17 to get damages. I -- I'm -- it -- it's like -- I'm -- I --
18 I'm asking out of ignorance now. I'm not saying anything and
19 you all don't hesitate to tell me that I'm ignorant. How is
20 this different than a bystander liability situation?

21 MR. EDDY: As the bystanders weren't blamed for the
22 incident and didn't trigger a DSS investigation of the
23 bystanders. The reasons that you'll see as we get further
24 into our direct testimony, your Honor, I do not believe that
25 there was good faith basis for the triggering the DSS

1 investigation, which caused continued and further damage to
2 the family.

3 THE COURT: All right. And the family, I got more
4 problems with. You just asked him a whole bunch of questions
5 about how it affected him.

6 MR. EDDY: You're right. It's just Nancy, I misspoke.

7 THE COURT: And there's no objection, and I -- I --
8 that concerns me is that you all going into this stuff about
9 how it's affecting the brother, how it's affecting the sister
10 and that's not in this lawsuit.

11 MR. EDDY: You're right. I misspoke.

12 THE COURT: Okay. Well, just give some thought to that
13 because I'm going to have some questions and I appreciate
14 everybody being so accommodating today. And I look to see
15 you, folks, good Lord willing at 9:30 in the morning.

16 MR. EDDY: Thank you.

17 MS. WHITE: Your Honor, we've got our request to charge
18 if you want them now.

19 THE COURT: Sure. I'd read them.

20 MS. WHITE: Thank you.

21 THE COURT: Send them to me so I can check them. Thank
22 you. All right. Everybody, hope you have a good evening.

23

24 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT

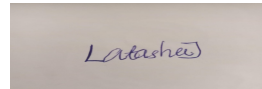
25 4:37 P.M.)

CERTIFICATE OF TRANSCRIBER

I, LATASHA JEFFERSON, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had, and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 11 of Lexington County, South Carolina, on October 7, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 18, 2025.

A rectangular box containing a handwritten signature in blue ink that reads "Latasha".

LATASHA JEFFERSON

Transcriber

1 CONTINUATION OF PROCEEDINGS - OCTOBER 8, 2024.

2 THE COURT: Good morning, ladies and gentlemen, we will
3 now continue with the Plaintiff's case. Your next witness,
4 please.

5 MR. EDDY: Thank you, your Honor. Plaintiff calls Isis
6 Arellano.

7 ISIS URRUTIA ARELLANO,
8 being duly sworn, testified as follows:

9 THE CLERK: State your name and spell your last name
10 for the record, please.

11 THE COURT: Hold on. Go ahead and have a seat.

12 THE CLERK: Sorry, I'm getting some feedback in this
13 one.

14 MR. EDDY: Does that sound better?

15 THE COURT: Are you okay?

16 THE CLERK: Yes, thank you.

17 THE COURT: State your name please, ma'am.

18 THE WITNESS: My name is Isis. My last name is Urrutia
19 Arellano, U-R-R-U-T-I-A, and the second one is
20 A-R-E-L-L-A-N-O.

21 DIRECT EXAMINATION

22 BY MR. EDDY:

23 Q. Good morning -- Pardon me. Pardon my throat.
24 Morning, Isis. How are you doing?

25 A. Good morning. Good. How are you?

1 Q. Am I saying your first name correct?

2 A. Yes.

3 Q. Isis or Isis?

4 A. It can be Isis, in Spanish it's Isis.

5 Q. Okay.

6 A. So yes.

7 Q. I'll do my best. Please forgive me, okay?

8 A. Uh-huh.

9 Q. Can you please let the jury know where you live?

10 A. I live in North Augusta, South Carolina.

11 Q. Did you get your power back?

12 A. No, not yet.

13 Q. Sorry to hear that. Are you related to Zoe and
14 Nancy?

15 A. Yes. That's my mom and my sister.

16 Q. Do you have any other siblings?

17 A. My brother, Ferrey.

18 Q. Are you currently in school?

19 A. No.

20 Q. What was the highest level of education you've
21 completed?

22 A. 12th grade high school. I graduated.

23 Q. Where did you graduate?

24 A. Brookland Cayce High School.

25 Q. How'd you like school?

1 A. I liked it. I liked it a lot.

2 Q. What did you like studying?

3 A. I liked English.

4 Q. What was your least favorite subject to study?

5 A. Arts and science.

6 Q. I was never very good at that either. Did you
7 play any sports?

8 A. In high school? No.

9 Q. What about outdoors? I need you to use big voice.

10 A. In high school? No.

11 Q. Outside of high school, did you play any sports?

12 A. No.

13 Q. How about these days? What do -- what do you do
14 to keep yourself occupied?

15 A. I work. When I don't work, I just help my mom
16 with her floral arrangements.

17 Q. What do you do for work?

18 A. I sell cosmetics and Hello Kitty products.

19 Q. Do you sell those at the flea market with Nancy
20 and Ferrey?

21 A. Yeah. And online.

22 Q. Did you got your own website?

23 A. No, I just post it on Facebook marketplace.

24 Q. Hello Kitty stuff? Where do you get your -- your
25 products?

1 A. From wholesale vendors online.

2 Q. Do you make any money selling this stuff?

3 A. Yes.

4 Q. You use that to help out the family?

5 A. Yes.

6 Q. Who all lives with you at home?

7 A. My grandma, my brother, my sister, and my mom and
8 me.

9 Q. And do we have your grandma joining you in the
10 courtroom today?

11 A. Yes.

12 Q. How old were you when Zoe was born?

13 A. 12.

14 Q. What was Zoe like as a baby?

15 A. She was very joyful, very playful. I don't know.
16 Like, she was a very bouncy kid. Yeah.

17 Q. Now your mother doesn't speak a lot of English,
18 right?

19 A. Yeah. Correct.

20 Q. So have you found yourself in a quasi adult role
21 in your family?

22 A. Yes.

23 Q. Do you find yourself working as the interpreter or
24 the liaison for the family?

25 A. Yes, since I was little.

1 Q. Can you give the jury some examples of what that's
2 like?

3 A. It can be stressful because I don't know a lot of
4 English words to the max. I don't know the whole vocabulary,
5 so I -- I'm not able to translate things as it's supposed to
6 be, so it's just very stressful, especially as a younger kid.

7 Q. So Zoe was a -- a bubbly baby when you were
8 growing up?

9 A. Yes.

10 Q. Did you play with her a lot when she was a kid?

11 A. Yeah.

12 Q. Can you give me a "Yes," or "No"?

13 A. Yes.

14 Q. Okay. What kind of things did you do when you
15 were hanging out with Zoe?

16 A. We would sing to her, like, her favorite nursery
17 songs. That's about it. When she was little just -- you
18 know, like, hand -- hand games -- you know, like patty cakes,
19 stuff like that. It not -- not something big.

20 Q. Was she big into Baby Shark?

21 A. Yeah, she loved Baby Shark. She would always
22 dance and sing it all the time.

23 Q. Before this incident, when she was five or so,
24 that she become an annoying bratty child at that point.

25 A. No.

1 Q. Or was she still a sweet kid to hang out with?

2 A. She was still a sweet kid.

3 Q. And what was she like to hang out with when she
4 was five?

5 A. She was very calm. She never gave any trouble.
6 Like she wasn't hyper, she was always calm, very -- still
7 very joyful at the time. She never caused any issues.

8 Q. Did you guys -- you and Zoe personally, did you
9 all hang out a lot at home or outside of the home when she
10 was five?

11 A. No. It was never alone. It was always with my
12 mom around.

13 Q. And when you guys were doing family things outside
14 of the house, would you go to museums or dinner or movies or
15 --

16 A. Yes.

17 Q. -- usually hang out at home?

18 A. We would go outside to parks. Zoe loves to play
19 at parks, so...

20 Q. What does she like to do at the parks?

21 A. She likes to run around, play with kids, get on
22 the slides. She loves the swings.

23 Q. Back when she was five before this incident, did
24 she have problems hanging out with other kids?

25 A. No, she never did.

1 Q. Did she have problems making new friends?

2 A. No.

3 Q. She was a friendly kid?

4 A. Yeah.

5 Q. How did you first become aware of this incident?

6 A. I was coming back from school. I ride the bus so
7 I was getting home from there, and the atmosphere didn't feel
8 normal and everything seemed very sad, so I asked my mom,
9 "What happened? What's -- what's going on?" I asked Zoe the
10 same thing, "What -- what's -- what's happening?" And they
11 were just crying and she told me what happened -- my mom told
12 me what happened, and I was like, "Wow. How -- who -- who
13 told you this?" And she said, "Zoe did, and the school."

14 Q. So help me set the scene. You come home from
15 school. What time of day is this?

16 A. Around 4:00 p.m.

17 Q. And your mom and Zoe, where are they in the house?

18 A. If I can recall, my mom was in the room and Zoe
19 was too.

20 Q. This was a living room, kitchen, bedroom?

21 A. No. Her bedroom.

22 Q. Zoe's bedroom?

23 A. Yes, she shares with my mom.

24 Q. And you said they were both crying?

25 A. Yes.

1 Q. What was your understanding -- what is your
2 understanding that happened with Zoe that day at school?

3 A. That a kid touched her without her permission.
4 She tried to pull away from him, but he held her by both arms
5 and didn't let her go, wouldn't let her go until a kid
6 witnessed what happened and told the teacher.

7 Q. Is it your understanding that he touched her below
8 the waist?

9 A. Yes.

10 Q. Is it your understanding that he touched her under
11 her pants?

12 A. Yes.

13 Q. Is it your understanding that he had touched her
14 vagina?

15 A. Yes.

16 Q. Is it your understanding that Zoe asked him to do
17 these things?

18 A. What the school said was that, yes, that happened,
19 but Zoe said that, no, and I believe Zoe.

20 Q. Is it your understanding that Zoe did not consent
21 to this contact?

22 A. Yes.

23 Q. How did Zoe appear to you that afternoon?

24 A. She was very sad. She was very quiet. She was
25 struggling with her words. That's when she first began

1 stuttering. She -- she never stuttered before that, but she
2 couldn't seem to say everything at first until I tried to
3 calm her down for her to speak, but she was very scared
4 because they called her a liar. Everyone called her a liar,
5 and she thought that we were going to call her a liar too.

6 Q. How do you think Zoe felt about being called a
7 liar (inaudible)?

8 A. She was devastated.

9 MR. CROSSLAND: Objection, your Honor.

10 THE COURT: Yes.

11 MR. CROSSLAND: Hearsay.

12 THE COURT: You want to be heard?

13 MR. EDDY: Your Honor, I'm asking for her observed
14 opinions of how the Plaintiff, Zoe, appeared to be acting in
15 her emotional response.

16 THE COURT: If -- if she testifies as to what she saw
17 or heard, one of her five senses, she's allowed to do that.
18 She's not allowed to say what was in somebody else's mind.
19 So the -- the answer violates the rule. So disregard the
20 answer of the witness, ladies and gentlemen, you may repose
21 your question.

22 BY MR. EDDY:

23 Q. How did Zoe appear to be responding to being
24 accused of lying about herself?

25 A. She appeared very sad and very betrayed. That's

1 how I saw it. It was something that I feel like she -- she
2 never felt that way. She's never -- she's never been in a
3 situation like this.

4 Q. What happened next that evening?

5 A. I asked her to tell me the story from the very
6 beginning. I -- I sat down with my mom. We talked to her.
7 Her -- her English -- her Spanish at the time, and still
8 being is not good. So I talked to her in English, so she
9 would tell me everything. Which she did. That was all. We
10 just asked her what happened and just cried with her, hugged
11 her.

12 Q. Did Zoe go to school the next day?

13 A. No.

14 Q. Do you know why not?

15 A. We -- my mom told me that the school said she was
16 indiscipline. So --

17 MR. CROSSLAND: Objection, your Honor.

18 THE COURT: Hold on just a moment. Yes, sir.

19 MR. CROSSLAND: Hearsay.

20 THE COURT: You want to be heard?

21 MR. EDDY: No, your Honor. I'll move on.

22 THE COURT: It's hearsay. Sustained.

23 BY MR. EDDY:

24 Q. Without telling me what the -- what -- what your
25 mother said, what is your understanding for why Zoe did not

1 go to school?

2 A. The school said she was indisciplined.

3 MR. CROSSLAND: Objection, your Honor. Hearsay.

4 MR. EDDY: I'll rephrase, your Honor.

5 THE COURT: You wish to be heard?

6 MR. EDDY: I'll rephrase.

7 THE COURT: Disregard the response of the witness.

8 It's hearsay, ladies and gentlemen.

9 BY MR. EDDY:

10 Q. How was Zoe the next day after this incident?

11 A. She was still sad. She was -- she seemed worried
12 of what -- what else could happen. What -- what was going to
13 happen.

14 Q. She was worried about the consequences to her?

15 A. Yes.

16 Q. Do you know if the school ever reached out that
17 next day or afterwards?

18 A. Yes.

19 Q. When is your understanding that the school reached
20 out to your family?

21 A. To say that --

22 Q. No. When?

23 A. Oh, when? Maybe the day after, I think.

24 Q. When did you become aware that there was a DSS
25 report and investigation?

1 A. When a call was received.

2 Q. Were you with your mother?

3 A. Yes.

4 Q. And did the DSS investigators come to your house?

5 A. Yes, they did.

6 Q. How soon after the incident did the DSS
7 investigators show up?

8 A. Maybe four -- four days a week after.

9 Q. What did they do when they got to your house?

10 A. They immediately sat down and -- well, first they
11 explained to us what was going to happen, which was they were
12 going to talk to Zoe and ask her what happened -- again, from
13 the -- from the beginning.

14 Q. Were you with Zoe when she was doing these
15 interviews?

16 A. I was near, yes.

17 Q. At least the first interview?

18 A. Yes.

19 Q. Was her story that she gave to the DSS
20 investigator largely the same as what she discussed with you
21 that same day?

22 A. It was the same, yes.

23 THE COURT: I really need you to keep your voice up.

24 BY MR. EDDY:

25 Q. We got to use our big voice.

1 A. Okay.

2 Q. Okay?

3 A. Yes.

4 Q. There's no amplification on that microphone, so to
5 make sure that everyone hears you in the courtroom. Use a
6 big voice, okay?

7 A. Okay.

8 Q. Did you get interviewed by the DSS investigator?

9 A. No-- no. No, I -- I don't think so. No.

10 Q. How did Zoe appear to you after the first DSS
11 investigation?

12 A. Drained. Because she had to tell the story once
13 again.

14 Q. Did the DSS investigators come back to the house
15 for any more interviews?

16 A. Yes.

17 Q. About how many more times do you think they came
18 back?

19 A. Maybe five, six times, something like that.

20 Q. So if these investigations started around the end
21 of May, when do you think the last visit was from DSS?

22 A. Before the next school year happened. So around
23 July.

24 Q. Were you ever interviewed in any of those
25 subsequent five or six investigations?

1 A. No, I was not.

2 Q. Was anyone else in your household interviewed?

3 A. I can't say "interviewed," but wanted to be seen.
4 It was my brother. They -- they wanted to -- to talk to him.

5 Q. Did Zoe get re-interviewed every time that the DSS
6 investigators came back?

7 A. Yes.

8 Q. So she had to relive the assault...?

9 MR. CROSSLAND: Objection, your Honor.

10 THE COURT: Yes, sir.

11 MR. CROSSLAND: It's leading in the -- leading the
12 witness.

13 THE COURT: You want to be heard?

14 MR. EDDY: No, your Honor. I'll rephrase.

15 THE COURT: It's a leading question. You may pose to
16 the next question.

17 BY MR. EDDY:

18 Q. Were you present during most of these DSS
19 interviews?

20 A. Yes.

21 Q. Did Zoe have to recite what happened in her
22 assault in these DSS interviews?

23 A. Yes.

24 Q. You said after the first DSS interview, it was
25 hard for Zoe, is that right?

1 A. Correct.

2 Q. What was it like for her on the subsequent
3 interviews?

4 MR. CROSSLAND: Objection, your Honor. She's -- he's
5 asking her to testify on behalf of Zoe, what's in Zoe's mind,
6 what her thinking is.

7 MR. EDDY: I'll Rephrase, your Honor.

8 THE COURT: She can say what she saw -- saw or heard,
9 the five senses. That's what I -- I know we went far afield
10 of that yesterday, but that's what she can testify.

11 BY MR. EDDY:

12 Q. Please -- can you please tell the jury how Zoe
13 appeared to emotionally respond after every single subsequent
14 DSS investigator came and interviewed her?

15 A. With all of them, she was -- she seemed very sad,
16 very upset that she had to say the same thing over and over
17 again to all of these people just so somebody could believe
18 her.

19 Q. What is your understanding of the outcome of the
20 DSS?

21 A. They said nothing was wrong at home. I would also
22 like to add on that they said that her story never changed.

23 MR. CROSSLAND: Objection, your Honor. Hearsay.

24 THE COURT: Sustained.

25 BY MR. EDDY:

1 Q. You described your sister before this incident as
2 happy and a bubbly kid. How do you think she changed after
3 her assault at the school?

4 A. I think she changed in the forms that she's not as
5 playful anymore. She doesn't get along -- not get along, but
6 she doesn't want to make -- she struggles making friends.
7 She's very to herself now. She's very skeptical on who to
8 trust with anyone. It doesn't matter if it's a person she's
9 known for very long -- for long. She's just very different.

10 Q. Are you aware of her nightmares after this
11 incident?

12 A. Yes.

13 Q. Can you hear when she has her nightmares in the
14 house?

15 A. Yes, my room is right beside.

16 Q. What does it sound like?

17 A. It's horrible.

18 Q. Can you tell the jury what it sounds like?

19 A. She won't stop crying for very long periods of
20 time. Sad. And she gets to the point that she feels like
21 she can't breathe.

22 Q. Outside of her nightmare, have you seen any Zoe's
23 anxiety or panic attacks?

24 A. Yes.

25 Q. What does that -- what does that look like?

1 A. It's still bad. She -- like I said, the main one
2 is that she feels like she can't breathe. She -- she always
3 just starts panicking and crying and telling everybody she
4 can't breathe. And even though we give her water, she still
5 feels the same way.

6 Q. This incident happened back in May of 2022?

7 A. Yes.

8 Q. As we sit here today in this courtroom, Zoe still
9 have these nightmares?

10 A. Yes.

11 Q. As we sit here today, does Zoe still have these
12 anxiety and panic attacks?

13 A. Yes.

14 Q. As we sit here today, have you seen Zoe still have
15 problems playing with other kids and relating to other
16 children?

17 A. Yes.

18 Q. When you see Zoe having problems with new
19 children, making friends with children, boys and girls?

20 A. Yes, but it's boys mainly.

21 Q. Is Nancy a good mom?

22 A. She is a good mom.

23 Q. Can you tell the jury a bit about what Nancy was
24 like as a mother before this incident?

25 MR. CROSSLAND: Objection, your Honor. Relevance.

1 THE COURT: Answer what -- you want to be heard on
2 this?

3 MR. EDDY: Can we approach, your Honor?

4 THE COURT: Sure. It won't be on the record, but you
5 can approach.

6 (Bench conference at 9:54 a.m.)

7 THE COURT: All right. Ladies and gentlemen, I'm going
8 to ask you to step in the jury room. Don't discuss the case.

9 (Jury exits room at 9:55 a.m.)

10 THE COURT: Mr. Eddy?

11 MR. EDDY: Your Honor, I agree that the emotional
12 issues, the emotional injuries and trauma to Nancy are not
13 specifically pled in her individual cause of action against
14 the school district for this incident, for their subsequent
15 investigation. There is a private cause of action related to
16 bad faith reporting in a DSS claim, that if we need to amend
17 the pleadings to add that cause of action.

18 As of now, I have not elicited testimony to support the
19 bad faith cause of action. So I think it might be premature
20 for us to argue this specific issue until we have the
21 testimony brought forth by the school district and school
22 district employees, so we can discuss whether sufficient
23 evidence has been brought forward to add this individual
24 specific claim to Nancy's individual cause of action.

25 THE COURT: Thank you. Yes, sir.

1 MR. CROSSLAND: Yes, sir. I mean, like you said in the
2 complaint, it's specifically for her medical expenses, which
3 she has incurred. I mean, as he admits that he didn't in
4 claim the other damages that he's seeking. I'm not aware of
5 Nancy being able to recover those strictly on the way that
6 his pledge, he's only allowed to recover for these medical
7 expenses. As of now, we haven't heard any testimony about
8 these medical expenses. Additionally, as Plaintiff's Counsel
9 just admitted that we haven't heard any evidence to support
10 bad faith of the DSS report, and throughout discovery, we
11 haven't uncovered any reasons for bad faith for this DSS
12 report to be made. On the intention of amending the -- the
13 complaint -- I mean, we're too late in the game for that.
14 We're -- we're at trial on the second day of trial, and still
15 haven't heard a -- a good faith reason for this amendment.

16 THE COURT: You want to heard any further?

17 MR. EDDY: Yes, your Honor. If the Court determines
18 that if an amendment of the complaint is necessary to add in
19 a claim for Nancy's emotional injuries in addition to -- or
20 in lieu of the medical bills complaint in the complaint.
21 South Carolina law is very clear that the -- the Plaintiff's
22 right to amend the complaint is to be construed very
23 liberally. And there are even instances where the complaint
24 is allowed to be amended even after a judgment has been
25 entered, verdict has been entered to conform with the

1 verdict. So if we need to replace medical damages and
2 medical bills with emotional injury and emotional damages,
3 then I think that that falls well within the liberal
4 interpretation. The Plaintiff is allowed to amend the
5 complaint at any time during the case.

6 THE COURT: Anything else from the Defense?

7 MR. CROSSLAND: We would disagree with that
8 interpretation that it -- I mean, like we said, we're on the
9 second day of trial. To amend it now, to go through this,
10 would be prejudice to the school district. And that -- you
11 know, throughout the discovery process -- I mean, this case
12 is two and a half years old that we -- there was nothing
13 uncovered on this -- on -- on this.

14 THE COURT: Yesterday after we let the jury go, I
15 indicated to you all I was going to have questions because --
16 you know, I read the file before we started the trial, and I
17 saw what the pleading contained. And what I was hearing in
18 the courtroom was far different than what I was expecting in
19 many ways, not in all ways. My recollection is that there
20 was abundant testimony yesterday about the impact had upon
21 the mother of the child. I'm not sure how a bad faith claim
22 comes about at all. You all can educate me on that.

23 MR. CROSSLAND: Well, in the -- the mandated reporting
24 statute, there is a presumption that it is made in good
25 faith. And -- and Plaintiff's Counsel would have to

1 demonstrate that -- override that presumption. As far as
2 specific -- you know, example, once we get to our district
3 witnesses, you'll hear directly from them why that they made
4 these claims. I believe that some of the testimony here has
5 alluded to why that they made these claims and absolutely
6 nothing was made in bad faith. They were made as to the
7 protection and the safety of Zoe. These witnesses have no --
8 had no prior -- prior interactions with Arellanos to have any
9 bad faith reasoning to -- you know, submit this on -- on --
10 in -- in bad faith.

11 THE COURT: Okay. I understand you're talking about
12 bad faith under the statute to overcome -- you know, I'm
13 talking about a bad faith claim, like an insurance bad claim.

14 MR. EDDY: Correct, your Honor. Good faith is a
15 defense to the private cause of action for false reporting to
16 DSS.

17 THE COURT: Anything else before I rule?

18 MR. EDDY: Nothing from the Plaintiff, your Honor.

19 MS. WHITE: Nothing, your Honor.

20 MR. CROSSLAND: No, sir.

21 THE COURT: All right. I -- I'll be -- I -- I -- I
22 feel like I'm in a box because yesterday there was -- all
23 this elicited and brought out before the jury, and I think
24 that the law requires me to allow an oral amendment to assert
25 emotional damages and -- upon the mother of the child related

1 to the DSS investigation. Now after I hear the whole case,
2 you all can motions and I don't know how I'll rule, I don't
3 know what motions would be made as a matter of law if -- if I
4 rule that there is no basis to go forward with a claim
5 related to the reporting. Well, we'll cross that bridge
6 then. But all this stuff came out yesterday. Now your
7 question, I think was: What kind of mother she is now? And
8 --

9 MR. EDDY: I can certainly rephrase that question.

10 THE COURT: All right. I note your objection. Again,
11 it's not what I expected, but it's -- it's where I think we
12 are. Bring the jury. Well, wait a second, we're going to
13 switch interpreter.

14 MR. EDDY: Our backup interpreter is here to spell.

15 THE COURT: Well, I got to put some stuff on the
16 record.

17 MR. EDDY: Okay.

18 THE COURT: Yeah, it won't take long. Raise your right
19 hand.

20 (Interpreter sworn at 10:04 a.m.)

21 THE COURT: All right. State your name for the record.

22 THE INTERPRETER: Britt Hunt, your Honor. B-R-I-T-T
23 H-U-N-T.

24 THE COURT: Mr. Hunt, you've appeared in circuit court
25 many times as a translator, interpreter, correct?

1 THE INTERPRETER: That's your correct.

2 THE COURT: Certified by court administration?

3 THE INTERPRETER: Yes, your Honor.

4 THE COURT: Do you have any interest in this lawsuit
5 aside from interpreting or translating?

6 THE INTERPRETER: No, your Honor.

7 THE COURT: Do you all have the oath up here, Crystal,
8 the oath?

9 THE CLERK: Yeah, if you'll please raise your right
10 hand?

11 THE COURT: Hold on a minute. I think they changed the
12 oath. All right. Mr. Hunt, raise your right hand again.

13 (Interpreter sworn at 10:05 a.m.)

14 THE COURT: Thank you. All right. He's qualified.
15 He's -- he's served many times. If you all want to put
16 anything on the record about qualifications, I'd be happy to
17 hear you.

18 MR. EDDY: We're fine.

19 MS. WHITE: We're fine.

20 THE COURT: Bring them in.

21 (Jury enters room at 10:07 a.m.)

22 THE COURT: All right. Thank you. Ladies and
23 gentlemen, the question was withdrawn and will be rephrased.
24 You may continue, Mr. Eddy.

25 BY MR. EDDY:

1 Q. Isis, can you please describe to the jury how your
2 mother changed -- if at all, after the incident with Zoe and
3 the DSS took place?

4 A. My mom was -- my mom was very depressed, very
5 worried. She's just always seems very stressed. She has
6 definitely grown up bigger connection to God. She's always
7 praying, always reading the Bible. The bigger reason she's
8 changed is that she's just always very -- very worried.

9 Q. Does your mother seems more sad or depressed or
10 anxious after this incident?

11 A. All three. Yes.

12 Q. Have you seen your -- your mother be more prone to
13 crying or over acts of depression after this incident?

14 A. Yes.

15 Q. Is it getting better?

16 A. No. Honestly, no.

17 Q. So as you sit here today, you've still recently
18 seen your mother being sad or anxious?

19 A. Yes -- yes.

20 Q. Cry and being depressed?

21 A. Yes.

22 Q. Okay. Is there anything else you think this jury
23 needs to hear about how this incident has affected Zoe?

24 A. Just that she's not the same kid she was before.
25 She is definitely very -- very sensitive now to anything. It

1 could be her getting in trouble or something that's -- maybe
2 she -- she threw something, and she gets in trouble for that.
3 She's very sensitive to anything. It -- it can be the
4 smallest raise of voice.

5 Q. Is there anything else you think the jury needs to
6 hear about how this incident has affected Nancy?

7 A. My mom is always crying, and just very sad very --
8 she -- she always seems worried, and when I try to talk to
9 her -- she does -- she tells me not to worry, but I always
10 see her worried. I always know something is wrong with her.

11 MR. EDDY: Thank you, Isis. Turn you over to the
12 Defense Attorney. I don't have some questions for you.
13 Please answer them as the best of your ability, okay?

14 THE WITNESS: Okay.

15 THE COURT: Cross?

16 MR. CROSSLAND: Thank you, your Honor. May it please
17 the Court?

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. CROSSLAND:

21 Q. Good morning, Isis. How are you?

22 A. Not good.

23 Q. Take us back to May 25, 2022, the day of this
24 incident. You said that you came home and how did you learn
25 about the incident?

1 A. I was told the incident.

2 Q. And who -- who told you about the incident?

3 A. My mom and my sister.

4 Q. At the same time?

5 A. Yes.

6 Q. Okay. So how -- what did your -- how did you
7 communicate with your mother?

8 A. By talking.

9 Q. And how did you communicate with Zoe?

10 A. By talking.

11 Q. In both in English or both in Spanish?

12 A. In both languages.

13 Q. Okay. So there was testimony earlier that Zoe is
14 predominant in English more than in Spanish?

15 A. Yes.

16 Q. And that Nancy is more proficient in Spanish?

17 A. Yes.

18 Q. So you were relayed -- how did Mom understand what
19 was going on through Zoe they weren't able to communicate?

20 A. They are able to communicate.

21 Q. Well?

22 A. Zoe talks Spanish and English.

23 Q. So both of them at the same time told you what
24 happened?

25 A. Yes.

1 Q. Did you have any interactions with the district
2 staff?

3 A. No.

4 Q. Before the incident?

5 A. No.

6 Q. After the incident?

7 A. No.

8 Q. Are you aware of your -- if your mother had any
9 communication with the district staff?

10 A. No.

11 Q. None at all?

12 A. No.

13 Q. You testified that DSS came to your house, is that
14 correct?

15 A. Yes.

16 Q. They never spoke with you?

17 A. Not in question terms.

18 Q. Say that again?

19 A. Not in question terms, being interviewed terms.

20 No.

21 Q. Who did they speak with?

22 A. Zoe.

23 Q. Just Zoe?

24 A. Yes.

25 Q. Did they ever talk with Ferrey?

1 A. No.

2 Q. No. You said that they -- how many times did DSS
3 come to your house?

4 A. About five to six times.

5 Q. And you know why they kept coming back?

6 A. For the same reason.

7 Q. And what was that reason?

8 A. To ask.

9 Q. To ask what?

10 A. To interview her.

11 Q. To interview her?

12 A. Yeah.

13 THE COURT: The interpreter can't hear you. And I'm
14 having a hard time hearing. I'm five feet from...

15 MR. CROSSLAND: Sorry.

16 THE COURT: You really have to speak louder, okay?

17 THE WITNESS: To interview her.

18 BY MR. CROSSLAND:

19 Q. So they didn't ask to speak to Ferrey?

20 A. No.

21 Q. Earlier you testified that DSS kept coming back so
22 that they could speak to Ferrey?

23 A. No.

24 Q. That's not what you said earlier.

25 A. That's not what I said.

1 Q. So they never spoke with Ferrey?

2 A. No.

3 Q. You know why they wanted to speak with Ferrey?

4 A. They didn't asked to speak to Ferrey.

5 Q. So when you're translating between Mom and Zoe,
6 are you saying exactly what Zoe is saying?

7 A. Yes.

8 Q. Is there any paraphrasing?

9 A. What does that mean?

10 Q. You know lost in translation, I guess is the exact
11 word for word what Zoe's saying to Mom.

12 A. In Spanish there's very different words that can
13 mean the same thing, so no.

14 Q. Okay. So when you're talking with Zoe and Mom,
15 did her story ever change?

16 A. No.

17 Q. It was consistent?

18 A. Yes.

19 Q. And what was her story?

20 A. Do I have to tell you?

21 Q. Yes, please.

22 A. Well, it was the same thing always that a boy
23 touched her inappropriately without her permission.

24 Q. And that was it? No other events?

25 A. Do you want me to go into detail about it?

1 Q. Was there any other additional events?

2 A. No.

3 Q. Did Zoe's ever talk -- tell you that she talked
4 with district officials about the event?

5 A. Who would those be?

6 Q. Ms. Sadie Ray, her teacher.

7 A. Yes.

8 Q. Did she tell you that she spoke with Ms. Ariail,
9 the assistant principal?

10 A. Yes.

11 Q. Did she tell you what date -- what she
12 communicated to them?

13 A. Yes.

14 Q. And it was the same that she told you?

15 A. Yes.

16 Q. So if we have testimony in (inaudible) story
17 change, what would that mean?

18 A. I think if you have kids or if you know anything
19 to do with kids, or just as a regular person, your story's
20 going to change. It's going to develop if you're telling the
21 truth, and her story develops, it went into detail.

22 Q. So if her description of what happened became more
23 and more sexual, something that a kindergartner shouldn't
24 know that would be -- that would be in line with what
25 kindergartner would do?

1 A. She as a kindergartner and as a kid does not know
2 any sexual things. No one has taught her sexual things.

3 Q. So what she relayed to the staff, that was --
4 where did she get that from?

5 A. What happened, happened. She described what
6 happened. She didn't go into saying that -- something like
7 he effed her or something like that.

8 Q. I'm just confused because you said it was simply
9 that she -- your story was very short. So we have testimony
10 in the future that it kept evolving and adding more and more
11 to it as --

12 MR. EDDY: Objection, your Honor.

13 THE COURT: What's your objection?

14 MR. EDDY: Objection as to testifying testimony
15 (inaudible).

16 THE COURT: Do you wish to be heard?

17 MR. CROSSLAND: I'll rephrase.

18 THE COURT: Rephrase your question.

19 BY MR. CROSSLAND:

20 Q. So you testified as Zoe -- have you ever hang out
21 with Zoe?

22 A. Not alone.

23 Q. Not alone? Never alone with Zoe?

24 A. No.

25 Q. Who is around? You said not alone (inaudible)?

1 A. My mom.

2 Q. Mom always around. She never go to grocery store
3 and leaves with you with her?

4 A. No.

5 Q. Why is your mom always around Zoe?

6 A. That's her mom.

7 Q. So when you're hanging out with Zoe, what -- what
8 do you guys do?

9 A. Well, we're with my mom, so I don't know.

10 THE COURT: You got to keep your voice up.

11 THE WITNESS: We're with my mom, so well, can -- I
12 don't know, play games, on board games or we just talk or we
13 watch TV together.

14 BY MR. CROSSLAND:

15 Q. So you watch TV. What's your favorite TV show?

16 A. I don't have one.

17 Q. Favorite movie?

18 A. I don't have one.

19 Q. Do you have a cell phone?

20 A. Yes.

21 Q. What kind of phone do you have?

22 A. An iPhone.

23 Q. iPhone. You can go on the internet?

24 A. Yeah.

25 Q. Does Zoe ever get your phone?

1 A. No.

2 Q. Does Zoe have her own phone?

3 A. No. Not -- not her own phone. No.

4 Q. Not her own phone, but access to a phone?

5 A. It's an old phone, so -- but she's...

6 Q. What phone is it?

7 A. I don't know.

8 Q. It's a flip phone?

9 A. It's an old phone. It's a regular old phone.

10 Q. Smart phone?

11 A. No.

12 Q. You don't know?

13 A. I said no.

14 Q. What about tablets? Does she have a tablet?

15 A. Yeah.

16 Q. What does she do on her tablet?

17 A. She plays games.

18 Q. What kind of games?

19 A. Dress up games.

20 Q. She downloads those games from the internet, from

21 the app store?

22 A. She asks us if she can, and we say "Yes," or "No."

23 Q. But she's capable of going on the internet then to

24 download these games?

25 A. Well, if my mom allows it, correct. Yes.

1 Q. So are you guys always watching what Zoe's doing
2 on her tablet?

3 A. Yes.

4 Q. At all times?

5 A. Yes.

6 Q. She's never alone?

7 A. No.

8 Q. What about Ferrey, do you and Ferrey and Zoe hang
9 out?

10 A. No.

11 Q. Never together?

12 A. With my mom, again.

13 Q. Always with your mom. Do you guys watch TV
14 together?

15 A. With my mom.

16 Q. Does Ferrey watch TV?

17 A. With my mom.

18 Q. Does he watch movies?

19 A. He's not interested in TV like a lot.

20 Q. Okay. Does Ferrey play more video games?

21 A. Yeah.

22 Q. What kind of video games are those?

23 A. Call of Duty.

24 Q. What -- what is -- can you explain what Call of
25 Duty is?

1 A. Like an army game.

2 Q. A war game?

3 A. Well, yeah, an army game.

4 MR. CROSSLAND: Okay. I beg the Court's indulgence.

5 THE COURT: Yes, sir. I don't want to keep harping on
6 you, but you really need to speak up. That doesn't help.

7 THE WITNESS: Okay.

8 BY MR. CROSSLAND:

9 Q. So earlier you testified that Zoe doesn't like to
10 -- you know, interact with other kids her age. Where does
11 she interact with these kids at?

12 A. School.

13 Q. At school? You go to school with Zoe?

14 A. No.

15 Q. How do you know what she does at school?

16 A. Because what does a kid do at school?

17 Q. How do you know if she's making friends or not if
18 you're not there?

19 A. Well, she tells me.

20 Q. She tells you what?

21 A. When she interacts with kids.

22 Q. She comes home and so by interacting and such and
23 such for --

24 A. Yes. Correct.

25 Q. -- how long.

1 A. Yes.

2 Q. Do you got -- do you talk with her new teacher?

3 A. To meet her. Yes.

4 Q. Okay. But on this update of Zoe doing good in
5 school?

6 A. Yes, she is.

7 Q. Does she have any discipline issues?

8 A. No.

9 Q. And again, you're not with Zoe when she's at
10 school, whether -- and you don't know how she's interacting
11 with the other kids?

12 A. Well, no one is. I don't think a -- a parent is
13 allowed to go to school with her kid.

14 Q. Has your mom interacted with the teacher?

15 A. Yes.

16 Q. Asked her those questions?

17 A. Ask her what questions?

18 Q. How Zoe's interacting with the other kids in
19 school.

20 A. The teacher gives an update.

21 Q. And what was the update?

22 A. That she's a good kid.

23 Q. And she's interacting with the other kids?

24 A. Yes.

25 Q. You just said that she wasn't interacting with the

1 kids.

2 A. I didn't say that.

3 Q. What did you say?

4 A. I said she's interacting with the kids.

5 Q. You said that she wasn't able to make friends. Is
6 that not interacting with friends, but --

7 A. I didn't say with everybody.

8 Q. So what -- what is your --

9 A. I said with boys.

10 Q. With boys? Only boys?

11 A. Yeah.

12 Q. Have you heard any -- anything from Zoe about
13 having a -- a friend that's a boy at her school?

14 A. No.

15 Q. Again, you're not at the school with her?

16 A. Yeah.

17 MR. CROSSLAND: No other questions, your Honor.

18 THE COURT: Re-direct?

19 MR. EDDY: Nothing from the Plaintiff, your Honor.

20 THE COURT: Thank you, ma'am. You may step down. Call
21 your next witness.

22 MR. EDDY: The Plaintiff calls Ms. Sadie Ray.

23 THE COURT: You can come forward please, ma'am.

24 SADIE RAY SCHMIDT,

25 being duly sworn, testified as follows:

1 THE CLERK: please be seated in the witness seat. Once
2 you seat, please state your name, spelling your last name for
3 the record.

4 THE WITNESS: Sorry. My name is Sadie Ray Schmidt,
5 S-C-H-M-I-D-T.

6 DIRECT EXAMINATION

7 BY MR. EDDY:

8 Q. Morning, Ms. Schmidt.

9 A. Morning.

10 Q. What do you do for work?

11 A. I'm a teacher. I teach first grade right now.

12 Q. Where do you work?

13 A. Riverbank Elementary.

14 Q. So you've switched schools?

15 A. Yes. I took a year off to have a baby.

16 Q. Back in May of 2022 -- congratulations. How's the
17 baby?

18 A. Great.

19 Q. How old is he or she now?

20 A. One.

21 Q. Back in May of 2022, where were you working?

22 A. Cayce Elementary.

23 Q. That's Cayce Elementary?

24 THE COURT: I'll have to ask you to speak up.

25 THE WITNESS: Cayce Elementary. Sorry.

1 BY MR. EDDY:

2 Q. There's no amplification on these mics. So we got
3 to use our -- our teacher voices. So back in May of 2022,
4 where were you working?

5 A. Cayce Elementary.

6 Q. What was your position there?

7 A. I was a kindergarten teacher.

8 Q. How long had you been working there?

9 A. I taught there -- that was my first-year teaching
10 and I student taught there also.

11 Q. What does student teaching mean?

12 A. It's like you -- when you're in college, you have
13 to go practice a lot out of school.

14 Q. So kind of like intern work, or?

15 A. Basically -- I mean, you -- you are in the room
16 with another teacher who's been teaching and you write lesson
17 plans that go along with her plans and you teach the kids.

18 Q. Where did you go to school?

19 A. Columbia College.

20 Q. What did you study there?

21 A. Early childhood education.

22 Q. And early childhood education -- dumb question,
23 that covers kindergartner's, 5K-ish area?

24 A. That covers birth to 11 years old.

25 Q. Pretty broad range?

1 A. Yes.

2 Q. Okay.

3 A. Indicating development class.

4 Q. In between college and starting at Cayce, did you
5 have any further studies or any work in between or did you go
6 right from one to the other?

7 A. I went right from college teaching.

8 Q. And by large, how did your first year of teaching
9 go?

10 A. Other than the end of the year, it went really
11 great.

12 Q. How many students did you have in that classroom?

13 A. I think I had 24 or 25 the first year.

14 Q. Did you have any assistant or support staff with
15 you?

16 A. There was a teacher assistant in the room as there
17 is with all kindergarten classrooms.

18 Q. What does the teacher's assistant do for you?

19 A. They're kind of like -- I mean, it's like a second
20 teacher in the classroom, but I would be the main teacher.
21 Right. So I would write the plans and implement them and do
22 all that. She would help with monitoring kids or walking
23 around and checking in, making copies, laminating, all the
24 other stuff that you need to do.

25 Q. Who -- did you have just one assistant throughout

1 the school year?

2 A. Yes, sir.

3 Q. Didn't change that the school year?

4 A. No.

5 Q. What was her -- his or her name?

6 A. Ms. Long.

7 Q. That's Kimberly Long?

8 A. Yes, sir.

9 Q. Okay. Just loosely describe the layout of your
10 classroom. Is this one of those fancy rooms that doesn't
11 have walls and all the kids are just kind of blended together
12 different classrooms or?

13 A. No, we have -- it's about pretty close to this
14 size, I guess a little bit smaller. So I have like -- a
15 teacher says there's a big rug where the kids can look at the
16 board if I'm teaching, doing slides and stuff like that. And
17 then there were maybe four table groups. And then Ms. Long
18 has a teacher table at the back and then there's a sink in
19 the back and a bathroom.

20 Q. Desks for you and Ms. Long, are they -- did you
21 describe them on opposite sides of the classroom?

22 A. Yes.

23 Q. So we've got a -- a whiteboard. Did you say you
24 had a whiteboard on one side?

25 A. Yes, sir.

1 Q. Okay. Relative to the whiteboard, are you on the
2 same side as the whiteboard, or is your desk looking
3 somewhere else?

4 A. Yes. So, like, if the whiteboard is on a wall
5 over here, my desk would be -- you know, near it I guess.
6 And then Ms. Long's desk would be in the back of the room so
7 she can see from the opposite direction.

8 Q. So if we were to call the whiteboard wall "the
9 front of the room," your desk would be located in the front
10 of the room?

11 A. Yes.

12 Q. And Ms. Long's would be in the back?

13 A. Yes.

14 Q. So the students are?

15 A. In the middle.

16 Q. In the middle?

17 A. Yes.

18 Q. How are their desks set up or -- let me rephrase.
19 Back in 2022 for the 21/22 school year, when you were a 5K
20 teacher, how were the desks set up then?

21 A. They were in circle table groups.

22 Q. So is it one single circular desk for 24 kids?

23 A. For four table groups.

24 Q. Okay. So we've got four circle tables of six
25 kids?

1 A. Yes, sir.

2 Q. And do the kids assigned one spot for the school
3 year or do they --

4 A. The kids had assigned seats, but they moved
5 frequently depending on how the kids were interacting with
6 people at their table.

7 Q. So if there's distractions or problems --

8 A. I moved them.

9 Q. -- you move them?

10 A. But they knew, like, they -- the expectation is
11 that they stay in their assigned seat.

12 Q. Do these desks have lids or is it just a flat
13 table?

14 A. It's just a table.

15 Q. Do the kids have backpacks or anything on the back
16 of their chairs?

17 A. No, sir. They stay in their cubbies.

18 Q. Do they have lunch in the rooms?

19 A. No.

20 Q. Before the end of May of 2022, what was Zoe like
21 as a student?

22 A. Zoe was always a good student. There were no
23 major disruptions, no major issues. She was nice. She was
24 sweet, talkative. But other than that, there were nothing --
25 there was nothing big that happened.

1 Q. Was there anything small that happened during that
2 school year?

3 A. I mean, normal five-year-old things -- you know,
4 talking too much or not on task, things like that, that you
5 constantly correct during the day for any kid.

6 Q. But no large-scale problematic issues with her?

7 A. I wouldn't say "large scale," but I mean she --
8 she got in trouble as much as any five-year-old gets in
9 trouble and then that's it.

10 Q. Nothing age inappropriate?

11 A. I wouldn't say "age inappropriate," no.

12 Q. How about the other child we are referring to as
13 K, how was he as a student that year?

14 A. The same. I mean, he was well behaved, he was
15 quiet. They weren't -- neither of them were one way or the
16 other as far as behavior goes in the classroom.

17 Q. Were they assigned to the same -- what did you
18 call it? Desk group?

19 A. Table group desk group. It doesn't matter.

20 Q. Were they assigned to the same table?

21 A. Not at that time, no. They had been at the same
22 table before and I had separated them because they talked too
23 much.

24 Q. How long before this incident had you separated?

25 A. I don't recall.

1 Q. Was it relatively recent or beginning of the year?

2 A. I -- like I said, we moved seats all year
3 depending on behavior, so I don't know.

4 Q. Sure. So this incident, end of May, it was the --
5 it was around the middle of the week. Does that sound
6 correct?

7 A. I'm pretty sure it was one of the last half days
8 of school. So it was most likely a Tuesday or a Wednesday.
9 I don't know.

10 Q. The school year, was it going to end on a Thursday
11 or Friday?

12 A. I cannot say for sure. I can take a guess that it
13 was a Wednesday, but I -- I don't know.

14 Q. Do you remember how much time was left in the
15 school year?

16 A. Like, a couple of days. I -- I really think it
17 happened on the second to last day of school.

18 Q. And this was a half day?

19 A. I think so.

20 Q. What would loosely have been the schedule on a
21 half day in your class?

22 A. At the end of the year -- I mean, it just depends.
23 We were working on an art project scrapbooks to wrap up a
24 kindergarten year.

25 Q. What time would --

1 A. They had lunch, but not yet. So I don't know.

2 Q. What time would school start on a half day?

3 A. At normal start time, I think around 7:00 -- kids
4 could come in at 7:00 that year. The late bell probably rang
5 around 7:35 or 7:25, I can't say for sure.

6 Q. And then half day release, what time would school
7 be over?

8 A. 11:30.

9 Q. When did you first become aware of the incident?

10 A. A student ran up to my desk to tell me what
11 happened.

12 Q. And we're referring to that gentleman as S. What
13 time of day between 7:00 and 11:30 did this occur?

14 A. I don't know. Like I said, we hadn't had lunch
15 yet. If it's a half day, we probably would've had lunch
16 around maybe 10:30. I cannot say for sure the schedule
17 changes each year, honestly, but we hadn't been there long.
18 They're working on their scrapbook. I had just circled my
19 table and sat down, and S ran up to me and told me what
20 happened.

21 Q. What was going on in the classroom before you
22 heard from S?

23 A. I was walking around looking at the kids' table
24 books.

25 Q. What were they doing with these table books?

1 A. Each kid was on a different page, so they were
2 going to put them all together and we were going to laminate
3 them and send them home. So it just depended on what step
4 each kid were on, whether they were writing or drawing or
5 coloring, depending on what the prompt was on the page.

6 Q. And what was Ms. Long doing at that time?

7 A. She was at her desk while I was circling. And I
8 think kids would come up to her as they needed like another
9 page. Or if they didn't have a crayon in their box, they
10 would go get it from her box.

11 Q. What would she have been doing at her desk?

12 A. She would've been helping the kids that came up to
13 her.

14 Q. So she wouldn't have been doing any work, any
15 paperwork? She wouldn't have been working on her computer?

16 A. No. I had the pages laid out on her desk. So she
17 was -- and she didn't have her own computer.

18 Q. 100 percent of her focus would've been on the
19 children?

20 A. Yes.

21 Q. Was there -- there any movie, or video, or
22 anything playing on the smart board?

23 A. I did have a documentary on, but it was an ocean
24 documentary because it was the end of the year. And we were
25 talking about ocean animals.

1 Q. You remember the name of the documentary?

2 A. No.

3 Q. Remember about how long it was?

4 A. No.

5 Q. You remember how long it had been playing?

6 A. I don't think we were in school for more than an
7 hour at that point.

8 Q. The -- did you dim the lights in the room while
9 you were playing the documentary?

10 A. I never kept the lights to full fluorescent
11 brightness in the classroom ever. They were about like this,
12 but there's a whole wall of windows in the classroom.

13 Q. So did you dim the lights specifically so the kids
14 could have a better visibility of the document?

15 A. No.

16 Q. So the lights were on the same strength that they
17 always were?

18 A. That I kept them on every day, yes. And I also
19 have lamps in my classroom.

20 Q. And how long had they been working on the
21 scrapbook?

22 A. If we had been in school for about an hour, they
23 would've had breakfast and done centers. So maybe 20
24 minutes.

25 Q. So there was around 20 minutes where the kids were

1 working out at their desks --

2 A. Yeah.

3 Q. -- on the assignments? But the kids were allowed
4 to get up and walk around the room to go to Ms. Long or to
5 Ms. -- or to you?

6 A. They could go to Ms. Long. I was circling with
7 them and they could go get water, but there's no other reason
8 they would've been up.

9 Q. Had you observed any interactions between Zoe and
10 K before you sat down at your desk?

11 A. No, I would've addressed it.

12 Q. How far away were their seats their assigned
13 seats?

14 A. From each other?

15 Q. Correct.

16 A. I don't know for sure. I know that K was one of
17 my back tables closest to Ms. Long, but I can't remember
18 specifically where I had Zoe sitting.

19 Q. Were they right across from circles -- table
20 circles to each other?

21 A. I don't know.

22 Q. So you're at your desk, what are you doing at your
23 desk?

24 A. I had just sat at my desk and I had files out to
25 work on getting their literacy stuff put away for the year.

1 And I don't even think I had time to get started. Like --
2 like, my butt hit -- sorry, my bottom hit my chair and S ran
3 up to me.

4 Q. What kind of files are we dealing with?

5 A. Like, a file folder and they have names on them
6 and I had to put papers in them.

7 Q. Is this something to submit to the school or to
8 the school district?

9 A. Yes, they're called "literacy folders." It's just
10 something that Cayce did that has like a writing sample for
11 each kid in it basically.

12 Q. Was this a weekly task for you or was this an end
13 of the year task?

14 A. No, it was something that you kind of put a sample
15 in from each unit. So throughout the year you touch on them
16 and then at the end of the year you just double check, make
17 sure everything is in order for each kid.

18 Q. So these files are part of the end of the year
19 reporting to Cayce Elementary?

20 A. Yeah, I would just go put them away.

21 Q. And then as you're going through these files, what
22 -- what is your -- what are you doing with these files? Are
23 you taking notes in them? Are you doing anything?

24 A. I'm -- I'm putting a piece of paper in a file with
25 the kid's name on it. But again, I had just sat down, so I

1 don't know that I really got started.

2 Q. Can you describe what your desk looked like?

3 A. My desk was like a horseshoe shape so that kids
4 could sit around it.

5 Q. So S comes up to you, what does S say to you?

6 A. He was doing a lot of gesturing and he was kind of
7 tapping at me and saying, "Ms. Ray -- Ms. Ray." And he was
8 pointing and saying Zoe and K's name, and he explained to me
9 in shorter words because he could not -- he was not
10 proficient in English, but he could string words together
11 like phrases. He said that Zoe pulled her pants open and
12 Karter looked -- sorry, K looked. And I stood up and told
13 him to go sit down, thank you. And called K over.

14 Q. So your recollection is that S tells you Zoe
15 pulled her pants off?

16 A. Yes and said, "Look" and not down she -- she
17 opened the waistband of her pants and he -- I mean, he was
18 gesturing and showing me.

19 Q. Did you observe any of this yourself?

20 A. No.

21 Q. So S says something is happening, you look up,
22 where are Karter and Zoe when you look up?

23 A. They were at their own seats, like -- like they
24 were nowhere -- they weren't next to each other. Karter was
25 at his desk.

1 Q. What do you do next?

2 A. I called Karter over to -- I'm sorry, K over to
3 me. And I asked him what happened, and he started crying and
4 I said, "Did you look in Zoe's pants?" And he said, "Yes,
5 she told me to," and he was tearing up and I was like, "Okay,
6 go sit down." And I called Zoe over to me and I asked her
7 what happened and she just started crying. I mean -- like,
8 ballistically hysterically crying. And I'm like, "What
9 happened?" She -- I don't remember her really saying any
10 words to me. And I was like, "Okay. Go to Ms. Long and I'm
11 going to figure out what to do," kind of thing. So I went to
12 the phone. I tried to call the front office because
13 typically if you need admin, you call and tell somebody you
14 need admin. The front office didn't answer. I tried to call
15 guidance and they didn't answer, which could just mean that
16 they're in a -- they're in an appointment or whatever.

17 So I told Ms. Long that I'd be right back and I was
18 like, I'm just going to find somebody, like I'm just going to
19 run into somebody in the hallway. And I did, I ran into
20 Ariail, but she had kids with her, so I was like, I need you
21 or someone to come to my room right now or as soon as
22 possible. So it, I mean, a couple minutes passed, not long.
23 And she showed up at my door and I explained to her in the
24 hallway what happened. And then the kids were lining up for
25 special area at that point. So Ms. Long was getting them

1 ready to go out of the classroom anyways so, and I don't
2 remember if -- if Ariail took Karter first or Zoe first, or
3 -- I don't remember how that part happened, but I know she
4 asked me to keep S and take his statement. So I had him
5 repeat to me what he said and I just tried to write down like
6 what he was saying to me verbatim.

7 Q. So backing up a little bit, you mentioned earlier
8 that from time to time during the school year, Zoe would do
9 something wrong and you would need to correct her for that?

10 A. Yeah.

11 Q. Is that fair to say?

12 A. Yes.

13 Q. Okay. So when you would correct her on things,
14 you said talking too much sometimes.

15 A. Yeah. I mean, normal five-year-old things like,
16 yeah.

17 Q. When you confronted her about bad behavior
18 throughout the school year, did she ordinarily burst out in
19 ballistic tears?

20 A. Yes.

21 Q. Every time?

22 A. Yes. She cried a lot. There were other instances
23 where she just -- she cried a lot.

24 Q. Did you write down the statement that S gave you?

25 A. Yes, I did.

1 Q. Do you remember what S told you in that statement?

2 A. Vaguely. Like I said, I tried to write it to the
3 best of my ability. I don't remember exactly what -- what I
4 wrote down.

5 Q. Why did you find it important to write down S's
6 statement?

7 A. Because I was told to.

8 Q. Was S's statement that you wrote down the same as
9 what he told you at the desk?

10 A. I feel like there were a little bit of different
11 wording, but I could be wrong.

12 Q. But you think by -- in large, it was the same as
13 what he told you at your desk?

14 A. Yes.

15 Q. Because you would've noticed, oh, that's totally
16 different from what you said at the desk?

17 A. I would think so.

18 MR. EDDY: Permission to approach, Judge?

19 THE COURT: Yes.

20 BY MR. EDDY:

21 Q. Have you seen that document before?

22 A. Yes.

23 Q. What is that document?

24 A. This is his -- I got -- this is what he told me
25 the second time.

1 Q. Did you write it down?

2 A. Yes.

3 MR. EDDY: At this point, the Plaintiff moves -- for
4 entry into evidence, what is marked as -- that is defense
5 000005, has it marked as Plaintiff's 1.

6 THE COURT: Any objection?

7 MR. CROSSLAND: No, sir.

8 THE COURT: Madam Court Reporter, mark exhibit in
9 evidence.

10 THE REPORTER: Okay.

11 (Plaintiff's Exhibit Number 1 admitted into evidence.)

12 THE COURT: Mr. Eddy, when you get to a good stopping
13 point, let me know so we can take a break.

14 MR. EDDY: Now is a fine time.

15 THE COURT: You sure?

16 MR. EDDY: Yep.

17 THE COURT: Okay. Ladies and gentlemen, we'll take a
18 10-minute break. We've been out here about an hour and 15
19 minutes. Don't discuss the case. You need to stay there.

20 (Jury exits room at 10:42 a.m.)

21 THE COURT: Ms. Schmidt, I have to tell you that during
22 the break you may step down, but you're not permitted to
23 discuss your testimony with anymore, okay?

24 THE WITNESS: Can I just get my water?

25 THE COURT: You -- you can drink water or you -- you

1 can do anything you want except don't talk about your
2 testimony. We're at ease for 10 minutes.

3 (Off the record at 10:42 a.m.)

4 (On the record at 10:55 a.m.)

5 THE COURT: You may continue, Mr. Eddy.

6 BY MR. EDDY:

7 Q. Before the break we were talking about your
8 written version of S's statement to you, is that right?

9 A. Yes.

10 Q. And this was taken within 10 minutes, 20 minutes
11 after the incident?

12 A. Probably.

13 Q. Okay. Great. Can you please read to the jury the
14 first quotation section of that statement?

15 A. "K opened the pants of" -- blank. "I see him."

16 Q. Is it your understanding that K is the gentleman
17 that we're talking about, the assailant in this case, and
18 that the blank is a redacted version of Zoe?

19 A. Yes.

20 Q. Okay. So you just told us, told this jury that S
21 told you Zoe pulled open her pants, and yet S's written
22 statement says the exact opposite of what you just told this
23 jury?

24 A. Yes, because he was five. So he told me one thing
25 and then he told me a very -- very similar version, and I

1 wrote verbatim what he said the second time.

2 Q. Very similar as in Karter pulls open the pants or
3 Zoe pulls open the pants. Those are similar to you?

4 A. Yes. Someone opened someone's pants.

5 Q. So either someone else is opening someone else's
6 pants or someone's opening their own pants. And those have
7 no difference to you whatsoever?

8 A. I didn't say there was no difference. I said they
9 were similar. I said I remember him saying, this and the
10 second time he told me, this is what he said.

11 Q. You already told this jury you would have noticed
12 if there was a difference between what he told you at the
13 desk and between what you wrote down mere minutes later in
14 his statement.

15 A. No, I think you said if it was a large difference,
16 this is not a big difference. Regardless, I took the steps
17 because of this statement and did what I was supposed to do.
18 Whether Zoe opened the pants or K opened the pants, I did
19 what I was supposed to do.

20 MR. EDDY: Permission to approach, your Honor?

21 THE COURT: Yes.

22 BY MR. EDDY:

23 Q. Can you please highlight that first quoted
24 section?

25 A. No. I'm sorry.

1 Q. Can you please read to the jury the next quotation
2 section?

3 A. "I see him, he touched her pants, but him not
4 touch her anymore."

5 Q. Is that different from what K told you happened?

6 A. I don't remember what K told me happened.

7 Q. You already testified to the jury what K said?

8 A. Right. He agreed to me that it happened, and I
9 told him to go sit down.

10 Q. Did K tell you, "I opened her pants"?

11 A. I don't remember. I know I wrote it in my
12 statement. I don't know. I don't remember him speaking to
13 me like detailed word for word. I remember Steven -- sorry,
14 S speaking to me because he ran up and was frantic. I
15 remember calling Karter up and asking him what happened and
16 him admitting that something happened, and I said, "Go sit
17 down."

18 Q. As you sit here today, you can't tell the jury
19 what K told you that day?

20 A. I remember him nodding and tearing up and rubbing
21 his face and saying "Yes," but I cannot tell you word for
22 word what he said three years ago.

23 Q. Did K tell you he opened her pants?

24 A. I'm not certain.

25 Q. Did K tell you that he looked in her pants?

1 A. Yes.

2 Q. Did K tell you that he touched her under her
3 pants?

4 A. I'm not certain. I asked him if what Steven -- S
5 said happened happened, and he told me "Yes." I said, "Did
6 you look?" And he said, "Yes." And I said, "Go sit down."

7 Q. So if S tells you in his written statement, "K
8 pulled open her pants, K touched her," and if K said, "I
9 didn't touch her, I didn't pull on her pants" then K is
10 lying, right?

11 A. He didn't -- he didn't say anything happened.

12 Q. Let me finish my question. Start over. If S says
13 to you in his written statement, "K pulled open Zoe's pants,
14 K touched Zoe," and if K tells you "I didn't do those things.
15 I didn't open her pants, I didn't touch her," then K is
16 lying, correct?

17 A. If that happened, yes, but that's not what
18 happened.

19 Q. How do you know?

20 A. Because I spoke to Karter before I wrote this
21 statement. Karter -- me and -- K, and me, and Zoe, and me,
22 and S, after I took this statement, I didn't speak to any of
23 the kids about this again. By that point, both Zoe and
24 Karter were with admin, or with guidance counselors, or
25 social workers where they should have been.

1 Q. So what...

2 A. So I cannot say for certain that K was lying. I
3 cannot say that. He told me "Yes," he looked.

4 Q. You think S was lying?

5 A. No.

6 Q. So if S says, "K opened her pants," and K says, "I
7 didn't touch her pants," those both can't be true?

8 A. But K didn't say that. I said, "What happened?
9 Did you look?" He said, "Yes." I've said that like four
10 times.

11 Q. Did K tell you anything about touching her?

12 A. I don't remember.

13 MR. EDDY: Permission to approach, your Honor?

14 THE COURT: Yes, sir.

15 BY MR. EDDY:

16 Q. I just presented you with what is bates stamped as
17 Defendant's 6. Are you familiar with this document?

18 A. Yes.

19 Q. What is this document?

20 A. This is my statement.

21 Q. When did you write this?

22 A. I want to say after I wrote S's statement and took
23 him to special area with the rest of the class. I came back
24 to my room at some point and wrote it that day.

25 MR. EDDY: Plaintiff moves for Ms. Sadie Ray's

1 statement admission into evidence as Plaintiff's 2.

2 THE COURT: Any objection?

3 MS. WHITE: No objection.

4 THE COURT: Madam Court Reporter, mark Exhibit 2 in
5 evidence.

6 (Plaintiff's Exhibit Number 2 admitted into evidence.)

7 THE COURT: Wait a second. Yeah.

8 THE WITNESS: Oh, I'm sorry.

9 BY MR. EDDY:

10 Q. Can you read to the jury starting at "I called K"?

11 A. "I called K over to ask what happened. He started
12 crying. I said, "Did you look inside Zoe's pants?" He
13 nodded "Yes." And said, "She told me to." I asked if he
14 only looked. He said "Yes."

15 Q. So if he said that he only looked in her pants,
16 but the witness says, "He pulled open her pants and he
17 touched her," then the statement, "I only looked in her
18 pants" is a lie, correct?

19 A. Yes. But the -- again, the -- the statement
20 changed from the witness because they're kids and he could
21 barely speak English.

22 Q. So K lied to you when he responded "I only
23 looked"?

24 A. Okay.

25 Q. That's a "Yes"?

1 A. Yes.

2 Q. All right. So now we've got S says in his
3 statement that K pulled open Zoe's pants, that K touched Zoe.
4 We know that K has lied to you about --

5 MR. CROSSLAND: Objection, your Honor.

6 THE COURT: Hold on. Yes.

7 MR. CROSSLAND: He's testifying.

8 THE COURT: Yes.

9 MR. EDDY: Information of the -- the conversation so
10 far. I'll withdraw.

11 THE COURT: All right. Pose your question differently.

12 BY MR. EDDY:

13 Q. What happened next?

14 A. I'm -- I'm so sorry. What happened after what?

15 Q. All right. So in our timeline, the last thing
16 that we've gotten to --

17 A. I took S's statement.

18 Q. S's statement.

19 A. Okay. I took S to special area to join the rest
20 of the class, and I walked through the school. I went by
21 guidance to check in on Zoe. I did not go in guidance, but
22 Ms. Prizer, the guidance counselor, was in the hallway and I
23 said, "Hey, what is going on? Is she okay?" That is when
24 Prizer told me that she was --

25 Q. Hold up. I don't want you tell me anything that

1 Prizer told you.

2 A. Okay.

3 Q. You check on her at the guidance counselor?

4 A. Uh-huh.

5 Q. What happens after that?

6 A. After I checked on her and talked to Ms. Prizer, I
7 went back to my classroom.

8 Q. So after S, the next conversation you have is with
9 Ms. Prizer?

10 A. Yes.

11 Q. Who else did you discuss this situation with that
12 afternoon?

13 A. When I got back to the room, I spoke with
14 Ms. Long, just to update her on everything. I probably spoke
15 to Ariail that day to ask her if there's anything else I
16 needed to do. And I don't remember if I spoke to Drozdak the
17 next day or when we talked about it. I know I went to his
18 office at some point.

19 Q. So at the least that day you spoke with
20 Ms. Ariail? What's her position?

21 A. She was the assistant principal.

22 Q. Ms. Prizer, what's her position?

23 A. She's the guidance counselor.

24 Q. And Ms. Long?

25 A. Yes.

1 Q. And you discussed this situation with Zoe and K?

2 A. The -- when it happened, yes. But after that,
3 never again.

4 Q. Did you discuss with Ms. Prizer, or Ms. Ariaail, or
5 Ms. Long what S had told you about what happened?

6 A. I did with Ms. Long, but I don't remember -- I
7 don't remember telling anyone what S told me, except -- I
8 want to say that I told Zoe when I went to see him, but I
9 don't even think that was in the same time period. I think
10 that was closer to when we found out about the court case,
11 but I'm not sure.

12 Q. So S tells you that K pulls open Zoe's pants, that
13 K touches her?

14 A. No S told me that Zoe pulled open her pants the
15 first time.

16 Q. Okay.

17 A. The first time.

18 Q. To the best of your memory?

19 A. Uh-huh.

20 Q. So S says in his written statement to you that Zoe
21 had her pants pulled open by K, and was touched by K, and you
22 don't let Ms. Prizer or Ms. Ariaail know about that?

23 A. What? I let Ms. Ariaail know, I already told you
24 that way a long time ago. And then Ariaail took the kids
25 where they needed to be to Prizer and to the social worker.

1 Q. So you let them know about the contents of S's
2 written statement?

3 A. When I turned the statement in, probably.

4 Q. When did you turn the statement in?

5 A. It would had to be that day. I don't remember who
6 or to what, like this is three years ago at this point.

7 Q. I only ask you to testify to the best of your
8 recollection.

9 A. I don't remember when I turned it in other than it
10 being that day.

11 Q. Would it have been to Ms. Prizer?

12 A. I don't remember.

13 Q. Would it have been to Mr. Drozdak?

14 A. I -- I do not remember who I turned it into.

15 Q. Would've been to Ms. Ariail?

16 A. I do not remember who I turned it into.

17 Q. Do you remember discussing the contents of S's
18 statement with Ms. Ariail?

19 A. No. I -- I think, I believe I told her and anyone
20 else, I would've had to tell what happened in the classroom
21 to the best of my ability, which is exactly what I wrote with
22 my statement.

23 Q. Would you have discussed S's statement with
24 Ms. Prizer?

25 A. If I would've had to.

1 Q. When we're referring to Mr. Drozdak, what is his
2 position?

3 A. He was the principal.

4 Q. So that day, you're pretty sure you gave S's
5 written statement to somebody?

6 A. Yes.

7 Q. But you're not sure who?

8 A. No.

9 Q. What happens after that?

10 A. After I turned the statement in or what -- what do
11 you mean?

12 Q. Yes. After you turned the state in, did anything
13 else happen relevant to Zoe's assault that afternoon?

14 A. Yes. Me and Ms. Prizer had a conversation about
15 things that Zoe had said. She specifically said things that
16 -- this is gross, related to sticky white stuff and something
17 wet being in her vagina. Now I had just circled the room and
18 sat down. So me as a teacher who has known this child and
19 knew my classroom, I knew that that did not just happen. So
20 then, I'm incredibly concerned not just about what just
21 happened, but that she has intense vocab and knowledge that
22 were not appropriate for her to have. So at that point in
23 the day, I told Ms. Prizer, "I would like to do a DSS
24 report."

25 Q. Did Zoe describe any of these adult things to you?

1 A. No, but as her teacher, I thought it was
2 appropriate to report it because that's my job. I am a
3 mandated reporter.

4 Q. So you've got no firsthand knowledge...

5 A. No, but me and Ms. Prizer --

6 Q. No, let me finish the question. You've got no
7 firsthand knowledge whatsoever of Zoe using any adult
8 language to describe her sexual assault?

9 A. She did not say it to me, but she said it to other
10 adults in the school. And as her teacher, I would need to be
11 on the DSS statement with the counselor.

12 Q. Is that a "Yes," or a "No"?

13 A. Yes.

14 Q. So you do have firsthand knowledge?

15 A. Sorry, I misunderstood. She did not say the words
16 to me, but she said the worst to somebody.

17 Q. You do -- do not -- can you tell the jury right
18 now, do you have firsthand knowledge of Zoe using -- hold on,
19 let me finish asking the question.

20 A. She did not say the words to me.

21 MR. CROSSLAND: Objection, your Honor. He's asking and
22 answering. And he's badgering the witness.

23 THE COURT: Ma'am, you have to wait until he finishes
24 his question.

25 THE WITNESS: Okay.

1 THE COURT: Because the court reporter can't take down
2 the same -- if both of you are talking at the same time, it
3 messes everything up.

4 THE WITNESS: Yes, sir.

5 THE COURT: Your objection is what?

6 MR. CROSSLAND: That he's asking and answering the
7 question. And it's repetitious. He's already asked this
8 over and over. He is badgering the witness.

9 MR. EDDY: I haven't gotten a straight answer.

10 THE COURT: Well, I'm not ruling on that whether you
11 got a straight answer or not, but the objection is overruled.
12 Pose your question.

13 BY MR. EDDY:

14 Q. This is a tough case for everybody in this room
15 and I understand -- I apologize if I get over emotionally
16 invested. Please forgive me. The question I was asking is,
17 can you tell the jury "Yes," or "No," do you have any direct
18 knowledge of Zoe using adult language to describe her
19 assault?

20 A. She did not say the words to me, but it's still my
21 job to report them if I'm concerned about a child.

22 Q. Is that a "Yes," or a "No"?

23 A. No. She did not say the words to me.

24 Q. Okay. So you've got no direct knowledge of her
25 using adult language?

1 A. No.

2 Q. Okay. Now who did you discuss -- with whom did
3 you discuss filing a DSS report?

4 A. With Ms. Prizer.

5 Q. Besides Ms. Prizer telling you about the adult
6 language, did you have any other grounds for filing the DSS
7 report?

8 A. No, but as a mandated reporter in training, they
9 tell you that it doesn't matter if you have multiple means
10 for grounds. If you have any concern -- if something had
11 happened to her and I didn't report it, I would've lost my
12 job. So it -- I did my job. It doesn't matter if I had
13 other grounds of concern.

14 Q. Why didn't we report Karter -- K?

15 A. I specifically reported Zoe because of the
16 language that I heard that she was using. That's what
17 worried me. If all Karter -- if all Karter did was look in
18 her pants or open her pants, if he did it -- I -- I've been a
19 teacher to five-year-olds. I've had my own kids, I've been
20 in daycares. Kids are really curious and no one said that he
21 hurt her. Nobody. They were both upset. They were both --
22 they knew they were in trouble. Both of them. I did not
23 have any means or grounds to think that he did something
24 aggressive or -- or inappropriate for his age other than look
25 at a little girl's pants. And unfortunately, kids do that.

1 If they have not had conversations at home that say, "Hey,
2 don't do that," then they are likely to do it. Even if they
3 have, sometimes they still do.

4 Q. According to S's statement, Karter pulled her
5 pants open and Karter touched her, that's right?

6 A. Okay.

7 Q. The duty as a mandated reporter for enforcement of
8 DSS, you err on the side of caution with that, don't you?

9 A. Yeah.

10 Q. Because you don't want to let something bad go by,
11 right?

12 A. Right.

13 Q. So if we've got a witness statement that says, "K
14 opened her pants and K touched her," how does that not hit
15 the threshold --

16 A. From --

17 Q. -- or making a report to DSS?

18 A. -- from my perspective as the teacher, it was like
19 an innocent, like, "Look at my pants." It was not someone
20 attacking someone as has been described. It wasn't like
21 that. They were two little kids. I did not think that he
22 did anything, or said anything, or came off in any sort of
23 way that he was trying to cause harm. And I didn't think she
24 did either in any way.

25 Q. Besides Ms. Prizer, did you have conversations

1 with anybody else about making the DSS report?

2 A. I don't remember if I told Ariail. I know that at
3 some point -- I -- I really want to say when I found out
4 about the lawsuit that I asked Ms. -- Mr. Drozdak, if he knew
5 that I had done a DSS report, my assumption would be that he
6 knew. I don't know how all of it works when it gets up
7 there, that's not my business. We're not allowed to, like,
8 check in on the DSS report or find out what happened or
9 anything like that as far as I know. So I don't recall
10 specifically talking to anybody else about it.

11 Q. Mechanically, how does one go about making a DSS
12 report?

13 A. You call them on the phone and you tell them you
14 have to make a report.

15 Q. Is there, like, a hotline or 800 number?

16 A. I don't know. I'm sure there's a DSS phone number
17 on the website and then there's probably a button you press
18 if you're a mandated reporter.

19 Q. Was it just you on the phone or was there anyone
20 else assisting you in the call?

21 A. No, me and Ms. Prizer made the report together.

22 Q. From her office, your office?

23 A. From her office.

24 Q. Were you doing the talking? Was she doing the
25 talking?

1 A. I don't remember. I think it was a little bit of
2 both of us, but I want to say it was mainly her because the
3 words had been said to her.

4 Q. As part of the DSS report, at that time, at Cayce
5 Elementary, was it a practice to also complete some sort of
6 report or form for the district or the school?

7 A. I think that's a district -- at the time, I don't
8 know. I -- I mean like I know now that as a district policy
9 because I've been given one, but like, I don't know for sure
10 if that's how they did it back then. Policies like that
11 change, I wouldn't know. I just report it and that's my part
12 of the job.

13 Q. Did you complete a form report to the school or
14 the district regarding your DSS?

15 A. I did not.

16 MR. EDDY: Permission to approach, your Honor?

17 THE COURT: Yes, sir.

18 BY MR. EDDY:

19 Q. Have you ever seen this form before?

20 A. I've seen it.

21 Q. When did you see this form last?

22 A. During this trial or case, I guess.

23 Q. Your attorney showed it to you?

24 A. Uh-huh.

25 Q. Did you ever see this form before the lawsuit?

1 A. I don't remember seeing it before the lawsuit.

2 Q. Would you have prepared this form?

3 A. I don't remember doing this form. I don't think
4 this would've been -- I don't think that I would've been one
5 -- the one to complete it, but I don't know.

6 Q. Do you have any idea who would have completed this
7 form?

8 A. No, I don't know whose job it is.

9 Q. The -- the testimony you gave said that the
10 reason, and the sole reason, why you felt motivated to report
11 Zoe and her family to DSS was because the adult language that
12 she used, correct?

13 A. Yes.

14 Q. Okay. To yourself, can you review the paragraph
15 with the black square -- black rectangle.

16 A. "Displays knowledge" --

17 Q. No, no, no, no. Without reading it out loud,
18 sorry.

19 A. Oh, sorry. Okay.

20 Q. Does that refresh your recollection that there
21 were any other grounds on which you relied to report Zoe and
22 her family to DSS?

23 A. Yes. So these are all things that Zoe said, I
24 assume. I was told she said these things, and I said that if
25 she is saying all that, shouldn't we do a DSS report? It

1 wasn't -- I don't know. Never mind.

2 Q. Do you believe that Zoe pulled open her pants?

3 A. I have no way of knowing for sure. I think that
4 because that is what everyone said first, that's most likely
5 what happened.

6 Q. Do you have any knowledge of Zoe opening her own
7 pants?

8 A. No.

9 Q. Do you have any evidence to present to the jury
10 that Zoe opened her own pants?

11 A. No.

12 Q. Do you believe that as a teacher you owe a duty to
13 your students to look after them?

14 A. Yes, and that's what I did.

15 Q. Do you believe that as a teacher you owe a duty to
16 your students to protect them?

17 A. Yes.

18 Q. Do you believe that that protection would include
19 unwanted touching from other students?

20 A. Yes.

21 Q. Do you believe that that would include unwanted
22 touching of a sexual nature from other students?

23 A. Yes.

24 Q. If Zoe was touched sexually by another student
25 without invitation, do you feel like you failed in that duty?

1 A. No, because I don't know that that happened, and I
2 reported to the people that I'm supposed to report to, that I
3 was told this happened. This is what the student saw. I had
4 just sat down. Whatever happened, happened in two seconds.
5 If that -- I mean like fast. So I didn't think that anyone
6 was sexually assaulted.

7 Q. You don't know how far apart K and Zoe were
8 sitting, right?

9 A. Not for certain. I know they weren't assigned at
10 the same seat.

11 Q. So you are saying to the jury that K would have to
12 get up from somewhere in the room, walk all the way over to
13 Zoe's desk, pull open her pants and touch her, and he'd have
14 to do that in one to two seconds?

15 A. It would have to have been really fast because
16 when I looked -- when S ran up to me, he was in his seat.
17 And so was Zoe.

18 Q. Don't you think it's more likely that you just
19 missed this, that you weren't paying attention?

20 A. No.

21 Q. Don't you think it's more likely that you were
22 distracted by dealing with other students?

23 A. No.

24 Q. Don't you think it's more likely that it's the end
25 of the year, we got some documentary on I'm just going to sit

1 down and do my paperwork and get this done before the end of
2 the year?

3 A. No, I do not.

4 Q. But you expect the jury to believe that in one to
5 two seconds, he comes at a dead sprint through the classroom,
6 coerces her, pulls open her pants and touches her genitals in
7 one to two seconds. Is that what you expect the jury to
8 believe?

9 A. I don't even believe that he touched her genitals,
10 for the record.

11 Q. You think S is lying?

12 A. He didn't say that he touched her. He did not say
13 to me the first time in person that he touched her under her
14 panties. That was never ever said. I do not believe someone
15 was sexually assaulted. I believe that two little kids did
16 something really quick that they should not have done. I
17 don't know who initiated it. I didn't see that part. You
18 cannot see 24 kids every single second. I turned my head and
19 sat down, and immediately was approached. No one else in the
20 classroom saw that happen either. If it was -- if it
21 happened the way that multiple people testified that it
22 supposedly happened, many students would've seen that happen.
23 No one did. The other adult in the room did not either.

24 Q. S and Zoe both say that K opened up Zoe's pants,
25 right?

1 A. Okay. The second time, yes.

2 Q. And you've already told the jury that K lied to
3 you. So we've got a liar on one side, and we have Zoe and S
4 on the other side. Why on earth are you expecting the jury
5 to believe the liar?

6 A. I'm -- I'm not. I didn't say that Karter lied. I
7 didn't say Zoe lied. I didn't say Steven lied. I've not
8 used that word. When a kid gets caught doing something
9 they're not supposed to do, do they every single time say,
10 "Oh, yep, I did it"? No. Do you think that When I called
11 Zoe up to my desk and I said, "Did you open your pants?" Do
12 you think that she said, "Yes, I opened my pants"? No, she
13 started bawling out crying.

14 So I did what I could do in this situation. I can't
15 say for sure if Karter opened them or Zoe opened them. I
16 said that multiple times. But I know that the other things
17 that were described, the other things that Zoe said, and then
18 changed and then said something else, I know that that didn't
19 happen because I was in that classroom.

20 Q. But you didn't even see this event happen at all,
21 correct?

22 A. Right. Because it happened so quick. The other
23 things would've been long and drawn out and impossible. So
24 then I'm concerned that her story is wild.

25 Q. That was not my question.

1 A. Okay.

2 Q. Forgive me, but when we were discussing K's
3 statement earlier, you actually did agree and say "Yes" that
4 K was lying to you when he described the scope of what he had
5 done to Zoe.

6 A. I said, "If he actually did that, then he was
7 lying."

8 Q. You said, "Yes, he lied to me." Remember that?

9 A. Okay.

10 Q. If Zoe was assaulted in that classroom -- I get
11 that you don't think it happened, okay? But if Zoe was
12 assaulted in that classroom, if K did pull up her pants and
13 touch her genitals, then going back to your duty as a teacher
14 to protect your students, you would've failed in that duty.

15 A. I did not fail as a teacher.

16 Q. This is just a hypothetical. Just a hypothetical.

17 A. If I answer your hypothetical question, you're
18 going to go back and say I said "Yes." Because you already
19 did that to me. No, I did not fail as a teacher. I did
20 everything that I was supposed to do as a professional.

21 Q. If K did touch her genitals, did pull her pants
22 back, against her permission, against her consent, would you
23 have failed in your duty as a teacher?

24 A. If that happened so quickly, how would I have
25 prevented it? No, I did not fail. I monitored my kids the

1 best that I absolutely could, and I do a good job. And then
2 I sat down and was told that something happened really really
3 quick. And I don't know what happened, but I don't believe I
4 failed as a teacher because I did my job. That DSS report
5 and going to admin and going to the counselor, that was my
6 job.

7 Q. One, two, that's one to two seconds. You were
8 still expecting the jury to believe that this whole event
9 only took place in one to two seconds?

10 A. A child opening someone's pants? That -- yes, you
11 can open your own pants in one to two seconds.

12 Q. From his table?

13 A. If they got up and walked across the room. And I
14 didn't immediately see it. Like, we've all been in school
15 before. You know how fast you can do something, when the
16 teacher isn't looking for two seconds, five seconds. I
17 can't. I did not time it and say it's been two seconds, but
18 it was quick. Because I had just sat down. I had just been
19 walking in circles around the tables, and I know that.

20 MR. EDDY: Thank you. One moment, your Honor.

21 THE COURT: Yes, sir.

22 MR. EDDY: Thank you. I've got no further questions
23 for this witness.

24 THE COURT: You want to question the witness now?

25 MR. CROSSLAND: Yeah, it is probably going to take an

1 hour or so. So I'll leave that up to the Court.

2 THE COURT: I wasn't asking you about the time. I'm --
3 I'm asking you, do you want to question her now or at a later
4 stage of the trial?

5 MR. CROSSLAND: We want to question her now, your
6 Honor.

7 THE COURT: Go ahead, please.

8 CROSS-EXAMINATION

9 BY MR. CROSSLAND:

10 Q. Good morning, Ms. Ray. How are you?

11 A. Good morning.

12 Q. I want to go back before the incident or when you
13 went to college, when you were growing up, did you always
14 want to be a teacher?

15 A. Yes -- yes.

16 Q. And where are you from originally?

17 A. I'm from here. I went -- I lived around
18 Lexington. I went to school in Lex2 for a long time.

19 Q. And then, so you were in Lexington Two, going
20 through school. Where did you go to college at?

21 A. Columbia College.

22 Q. And what was your major there?

23 A. Early childhood education.

24 Q. And that's to become a teacher?

25 A. Yes.

1 Q. As a part of your time in college, did you take
2 classes on how to manage a classroom?

3 A. Yes, I took two or three courses in classroom
4 management.

5 Q. So as a part of your college education, are you in
6 classes with children actively supervising and working with
7 them?

8 A. Yes, sure.

9 Q. How long do you think you -- or how many different
10 times have you been in -- in and out of schools as part of
11 just your education?

12 A. You student teach three times at least, the third
13 time is a full semester that you're in the classroom every
14 single day with the teacher.

15 Q. So for that full semester, how long is the
16 semester?

17 A. Half the school year.

18 Q. And when you're doing your student teaching,
19 you're actively acting as if you're the head teacher?

20 A. Yes.

21 Q. You are supervising the students?

22 A. Yes, sir.

23 Q. You are drawing lesson plans?

24 A. Yes.

25 Q. You are responding to any discipline issues?

1 A. Yes.

2 Q. Reporting any discipline issues up to
3 administration?

4 A. Yes.

5 Q. So once you get through your education, you went
6 back to your hometown in Lexington Two to become a teacher?

7 A. Yes, I did.

8 Q. That was at Cayce Elementary?

9 A. Yes.

10 Q. And what grade did you teach there?

11 A. Kindergarten.

12 Q. Did you always want to teach kindergarten? Did
13 you have preferred grade level?

14 A. Actually, I wasn't sure. And then I student
15 taught in kindergarten, and I just loved it.

16 Q. When you student taught were you in the same
17 classroom that you were in or -- or near?

18 A. No, I was actually right next to it.

19 Q. Classroom high there?

20 A. Uh-huh.

21 Q. Were you familiar with the staff at Cayce
22 Elementary?

23 A. Yes.

24 Q. Specifically teachers around you?

25 A. Yes.

1 Q. In other classrooms?

2 A. Yes.

3 Q. What about administration?

4 A. I had talked to Ariail a couple times. I think I
5 -- I think while I was still in college, towards the end,
6 they do like a -- almost like a job fair, and the admin can
7 actually interview you. I want to say -- I want to say that
8 Ariail and a different admin interviewed me too.

9 Q. So again, while you were student teaching, if any
10 discipline issues would've came up, you would refer them to
11 --

12 A. Yes.

13 Q. -- the proper administration?

14 A. Yes.

15 Q. Did you ever have any interactions with any
16 guidance counselor at school counselors?

17 A. I knew who Ms. Prizer was. I don't know that I
18 specifically -- I watched her do some guidance lessons if she
19 would come to the classroom, but other than that, I don't
20 know.

21 Q. What about the -- the school social workers?

22 A. No, not when I was student teaching.

23 Q. Okay. So now we're in -- in the classroom your
24 first year back in 2022 or 2021 to 2022, how did your first
25 year go?

1 A. Oh, I mean, it was a really -- it was a good year
2 for a first year, I think.

3 Q. Did you enjoy it?

4 A. Yes, I did enjoy it. I came back.

5 Q. The kids learned a lot?

6 A. Yes.

7 Q. Did you have any major discipline issues in your
8 classroom?

9 A. No, I don't think we had anything major.

10 Q. And when we say -- you know, "minor discipline,"
11 just kids talking out of turn or?

12 A. Kids talking. I -- I did have one boy that kind
13 of threw stuff sometimes and he ended up leaving the school.
14 Talking if you're not doing your work when you're supposed
15 to, and like I said, just normal five-year-old things, you
16 have to redirect them and redirect them a lot.

17 Q. And when you were in school, did you learn about
18 -- I think you testified earlier that you learned about
19 developmental practices for young children?

20 A. Yes, specifically one of my classes was on birth
21 to age 11. How they develop, how their brains develop, how
22 they learn.

23 Q. So through your experience, through your training,
24 working with these kindergartners, is it typical for them to
25 be curious about one another?

1 A. Yes.

2 Q. All right. Is it typical for them to be curious
3 as to the differences between males and females?

4 A. Yeah, it's really normal.

5 Q. While is it normal, is it still inappropriate?

6 A. Yeah, it definitely shouldn't happen in the
7 classroom, but that really goes back to conversations that
8 should have already been had with those kids.

9 Q. Throughout the school year, does -- do your
10 students receive any education on proper touching or safe
11 touch?

12 A. I think that guidance does a lesson on that at
13 some point. I do not do that lesson.

14 Q. So a school counselor comes into the classroom and
15 they put on a -- a lesson or how does that work?

16 A. It just depends how the -- they might read a book
17 and do slides and talk about it and talk about safe language
18 to use and stuff like that. I -- I can't say for sure.

19 Q. Gives the students the knowledge and --

20 A. Yes.

21 Q. -- and the way to report if anything happens.

22 A. Yes.

23 Q. So going back to your school back at in
24 kindergarten at Cayce Elementary, did you have any other
25 district professionals in your classroom with you?

1 A. The teacher's assistant, Ms. Long, was in there.

2 Q. Ms. Long. And was she with you from the beginning
3 of the year?

4 A. Yes, she was.

5 Q. Do you know of Ms. Long's previous experience
6 specifically working with children?

7 A. Ms. Long had been in the school for a couple
8 years. I can't say for sure how many years. She'd been
9 there for a couple years. And I don't know if that was the
10 first school she'd been in or not, but it had been a couple
11 years. And she also has kids. She has like four kids.

12 Q. She raised her own kids?

13 A. Yes, she did.

14 Q. Throughout that whole year -- back in May, May
15 towards the -- the end of the school year --

16 A. Uh-huh.

17 Q. -- have you had any concerns with Ms. Long's
18 interaction with the students?

19 A. No. Never.

20 Q. Have you had any concerns with her supervision of
21 the students?

22 A. No. Never.

23 Q. Did you ever receive any complaints from parents
24 about supervision?

25 A. No.

1 Q. Lack of supervision?

2 A. No, sir. Never.

3 Q. Did you have any concerns yourself?

4 A. No.

5 Q. -- about any students --

6 A. No.

7 Q. -- relay any concerns?

8 A. No.

9 Q. Was there any concerns specifically about you and
10 your supervision of the students?

11 A. No, not that I had ever been told.

12 Q. Any parents relay any concerns about that to you?

13 A. No, sir.

14 Q. Switching gears to the students that were involved
15 in this. Zoe, how was Zoe in your class?

16 A. She was for the most part, well behaved. She was
17 sweet. She was pretty much middle as far as academics. It
18 -- but like I said earlier, if she got upset, she cried a
19 lot. So if I said stop talking or I said -- you know,
20 "You're not reading, I need you to read your book," or
21 "You're going to have to read outside," or whatever the
22 consequence was, she would cry a lot. If her and a friend
23 got in trouble, she would cry and say, "Well, it wasn't my
24 idea" kind -- you know, like it was. And five-year-olds do
25 that. Like, it's not necessarily developmentally wrong.

1 Some of them just do it.

2 Q. Did you say that she was an emotional child?

3 A. Yes.

4 Q. More emotional than -- than other students?

5 A. She definitely cried than more of my -- all the
6 other students.

7 Q. Do you have any specific examples of that?

8 A. One time, we -- we were at recess and her shoes
9 got dirty and -- like a little bit like mud and she was
10 hysterical. Like, we -- we couldn't get the mud out and she
11 was bawling her eyes out and she was saying that she needed
12 new shoes and she couldn't wear those shoes. And I remember
13 trying to call Mom and I couldn't get anybody. And there's
14 like a room in the school for kids who need things, clothes
15 and things. And I want to say we were able to find a pair of
16 shoes to put on her for the day or something like that.

17 There was another time when we were -- we were walking
18 to the cafeteria and there was a smell, like whatever the
19 food was that day, and she did not like the smell. And
20 again, it was like hysteric, like big -- big tears and crying
21 and she stopped and would not go in the cafeteria.

22 Q. But nothing -- you know, concerning? That's just
23 how she was.

24 A. That's just how she was. Yeah.

25 Q. Moving to the Student K. Was Student K in your

1 classroom for the entire year?

2 A. Yes, he was.

3 Q. Can you explain -- explain -- describe him as a
4 student?

5 A. He was also a sweet kid. No -- no behavior issues
6 other than like, again, typical. Sometimes he talked too
7 much. Sometimes he didn't want to do his work.
8 Academically, he was okay too. I didn't have any major
9 concerns. He was sweet. He gave me hugs every morning,
10 which so did Zoe. So, I mean, nothing major.

11 Q. Any major discipline issues?

12 A. No.

13 Q. Was he known to randomly attack any other
14 students?

15 A. No.

16 Q. Is there any other allegations of him
17 inappropriately touching any other students?

18 A. No, never.

19 Q. Did he had any complaints in your classroom about
20 anybody inappropriately touching other students?

21 A. No. Never. No

22 Q. Have -- has he ever -- did he ever be untruthful
23 to you?

24 A. No.

25 Q. I forgot to ask you about Zoe. Is Zoe ever

1 untruthful to you?

2 A. I -- I wouldn't say "untruthful," but like, if --
3 if she got in trouble, she was more to like blame -- she had
4 a best friend, and they were together all the time, and she
5 was just more likely to blame the other little girl.

6 Q. What about Karter and Zoe, did you observe any
7 interactions between them?

8 A. They were friends. I mean, they were really good
9 friends.

10 Q. Sorry, Student K.

11 A. Sorry. They were really good friends. Like, they
12 played together a lot. It was -- I want to say that me and
13 Ms. Long had had to separate them from being -- not from
14 being friends, but like during teaching time, they couldn't
15 sit in each -- near each other on the rug. They couldn't
16 line up together because they talked a lot.

17 Q. Not paying attention in the classroom?

18 A. Yeah. Yeah.

19 Q. Did you ever receive any reports of Student K
20 harassing Zoe?

21 A. No, I did not.

22 Q. What about bullying Zoe?

23 A. No, I did not.

24 Q. Moving to Student S. Can you describe Student S
25 as how he was as a student and --

1 A. He was again, really -- really sweet. I don't say
2 that by all my kids, I promise. But he was really sweet.
3 And he was a happy kid. He -- I think had a hard home life.
4 I don't know for sure. He didn't speak a -- he didn't speak
5 any English when school started, by the end of the year, he
6 was more proficient. Academically, he was lower because his
7 English, it -- it made it really hard for him. But he was a
8 good kid. I didn't have major discipline issues ever.

9 Q. Did he have friends in -- in the classroom?

10 A. Yeah. He had.

11 Q. Did he interact with the other students?

12 A. Yes.

13 Q. Was he friends with Student K or Zoe?

14 A. I don't know for sure if him and Student K like
15 played together, but like I said, they were all friends with
16 each other. They were just -- it was a good class. I do
17 know that him and Zoe would talk because he could speak
18 Spanish predominantly. So most of my kids who could speak
19 Spanish were together on the playground and stuff like that.

20 Q. Since Zoe could speak Spanish, they would speak
21 Spanish?

22 A. Yes.

23 Q. Okay. You never ever known him to be untruthful?

24 A. No.

25 Q. Moving to interactions with Mom, Nancy Arellano,

1 do you remember her coming to the school?

2 A. I don't remember her -- I -- she dropped off snack
3 one time, but it was like -- like she dropped off in the
4 office. I don't remember seeing her face-to-face. I don't
5 remember ever seeing her in the classroom.

6 Q. Would you keep her up to -- you know, up to date
7 on what was going in the classroom?

8 A. Yes. We did have -- we had student conferences at
9 one point, so I had an interpreter and it was a video
10 conference.

11 Q. And you talked with Nancy?

12 A. Yes.

13 Q. Was anybody else present?

14 A. I don't remember. I think there were people in
15 the background, but I didn't talk to anybody else.

16 Q. As far as sending -- you know, classroom
17 newsletters or updates, did you do that as well?

18 A. Yes, I sent home, like, a behavior folder every
19 day. I -- I'd post a newsletter every week and then if there
20 was something more specific, I would Dojo message or
21 whatever. And because Dojo can translate everything.

22 Q. When you say "Dojo," can you explain what that is?

23 A. It's an app that some schools use. It's -- it's
24 almost like it's -- it's just a way you can talk to parents.
25 It's a messaging app, but it also has a feed called like a

1 story almost -- almost like social media where I can post,
2 like, pictures of the kids or my newsletter or whatever it is
3 so they can just scroll through and click on what they need.

4 Q. Okay. There were some testimony or earlier that
5 going back to Student K and Zoe, can you describe their
6 physical, their size? Are they near the same size?

7 A. They were about the same size. K was a small boy,
8 like, really skinny, not like -- he just wasn't a big
9 kindergartner.

10 Q. So he wasn't bigger than Zoe?

11 A. No, I wouldn't even say he was average honestly.

12 Q. And the jury has seen Zoe. So any interactions
13 with Nancy after the incident?

14 A. No. I did message her on Dojo, and I asked her,
15 "Hey, is Zoe okay? We still have her" -- me -- me and
16 Ms. Long make gift bags, like, to send home with the kids.
17 And so their scrapbook would've gone in the gift bag and
18 bubbles and candy and whatever. We were sending home that
19 year, I let her know that the stuff was still up here, so
20 she'd come pick it up. She never responded to the message
21 and no one ever came, and picked up the bag because we had it
22 when the next year started.

23 Q. Did you have any interactions with any of her
24 other family members?

25 A. No. Never.

1 Q. Were you curious as to why she didn't come back?

2 A. I mean, yes, I assumed they were just upset, but I
3 didn't know for sure.

4 Q. Did you have any interactions with Student K after
5 the incident?

6 A. I'm pretty sure he came back to school, but I
7 don't know. I don't know.

8 Q. Student K?

9 A. Yeah, but I'm not sure.

10 Q. Okay. What are interactions with this Student K's
11 parents?

12 A. I did -- I messaged his mom also to check in and I
13 told her that his bag was up at the school if they wanted to
14 come get it. Someone must've come and got -- we -- I think
15 we put them in the front office and someone came and got his.

16 Q. And then with Student S again, did you ever speak
17 about the incident?

18 A. No.

19 Q. With him afterwards?

20 A. No, I did not.

21 Q. After you took the statement?

22 A. Right.

23 Q. Moving to your classroom when you were in college,
24 were you trained as to how to set up your classroom?

25 A. Yes.

1 Q. Can you walk the jury about some of that -- you
2 know, your knowledge on how to set it up?

3 A. Basically you just want to do the best of your
4 ability to make sure that nothing is blocking your view if
5 you are sitting at your desk. There are no big things in the
6 way of your student's tables or where spots they could be
7 during the day, especially in kindergarten where you have
8 like centers almost, like, reading and math, just little
9 centers we would have set up in the room. And then the table
10 groups were always pretty central in any classroom just
11 because you want to see everybody.

12 Q. So are there's any huge blind spots or
13 obstructions from seeing everywhere in the classroom?

14 A. No. Which was the nice thing about having another
15 teacher is that, if my desk is facing this way, hers is
16 facing the opposite. So that if there's one corner that
17 maybe I can't see, she can see that corner.

18 Q. Do you remember how your classroom was set up at
19 back in May of 2022?

20 A. Yes.

21 Q. If you see some pictures, you'd be able to
22 identify those and say whether it was an accurate portrayal
23 of how it was set up?

24 A. Yes.

25 MR. CROSSLAND: Your Honor, can I approach?

1 THE COURT: Certainly.

2 BY MR. CROSSLAND:

3 Q. Look at these and see if you remember these as
4 accurate portrayal of your classroom.

5 A. Yes.

6 Q. It is accurate?

7 A. Yes.

8 Q. Okay. I have some larger copies of these just to
9 make it easy for the jury and everybody to see. I'd like to
10 move to include these I believe six pictures into evidence as
11 Defendant's exhibit.

12 THE COURT: Any objection?

13 MR. EDDY: Just a clarification, your Honor. We've got
14 no date on these, nor has there been testimony to the date
15 these pictures were taken.

16 THE COURT: You want to lay a foundation on that?

17 MR. CROSSLAND: Yes, sir.

18 BY MR. CROSSLAND:

19 Q. Ms. Ray, do you remember going back to the
20 classroom afterwards, after this lawsuit was filed to
21 recreate your classroom?

22 A. Yes.

23 Q. And do you remember when that was?

24 A. Over the summer. Last summer.

25 Q. And who -- who went with you?

1 A. You did.

2 Q. And was anybody else with me?

3 A. The guy taking the pictures.

4 Q. So we went to -- to the classroom based on your
5 instructions, arranged the room?

6 A. Yes.

7 Q. The way you remembered it?

8 A. Yes.

9 Q. Was it on the same hallway as your classroom?

10 A. Yes, it was. Yes.

11 Q. Any major differences in -- in the classrooms?

12 A. No. I mean, they're almost identical.

13 MR. EDDY: I will object to the admission of these
14 pictures, your Honor. These pictures were not taken in any
15 way contemporaneous to the incident at hand, and therefore
16 they cannot accurately represent the condition of the setup
17 of this room. I think she's fully fair to describe her
18 recollection of how the room was set up, but I don't think we
19 can rely on these pictures of just her memory of what it was
20 like a year or so before.

21 THE COURT: Mr. Crossland?

22 MR. CROSSLAND: She just -- you know, testified that it
23 was accurate and -- I mean, Plaintiff's Counsel's entire
24 crossing of her is -- her back to her memory when it
25 happened. So you can't -- you know, argue both ways that she

1 doesn't remember and that now that she can't remember when
2 she does remember. She said that they're accurate. It's
3 accurate portrayal. It is essentially a diagram of the
4 classroom and its contents on the day of the incident.

5 THE COURT: Anything else?

6 MR. EDDY: No, it's not a diagram of the classroom.
7 She had drawn a picture of her recollection how the classroom
8 was laid out. That'd be a different thing. But this is a
9 classroom that's been run by a different teacher, by
10 different teaching assistant, basically different
11 administration, and has been rearranged to the best of
12 recollection, but that's not sufficient for us to use this as
13 a demonstrative how the classroom looked on the date of the
14 incident.

15 THE COURT: That -- that's a jury issue and an issue
16 for cross-examination and argument. The objection is
17 overruled. Mark those photographs into evidence, please,
18 Madam Court Reporter.

19 (Defendant's Exhibit Number 1 admitted into evidence.)

20 BY MR. CROSSLAND:

21 Q. Are you able to see that, Ms. Ray?

22 A. Yes.

23 Q. Jury, you guys can see that. So can you walk
24 through the jury what -- what we're seeing here?

25 A. So from this -- this is from the front door. You

1 can see the rug and then you can see almost all the table
2 groups and my desk directly beside the rug.

3 Q. And what is this here?

4 A. That's a promethean, the smart board.

5 Q. And then this would be your desk?

6 A. Yes.

7 Q. From your desk, you have a good view of the
8 classroom?

9 A. Yes.

10 Q. How large would you say the classroom is?

11 A. Like, about the size of this room. Like, I don't
12 know, 25 by, like, 40 feet. I don't know.

13 Q. Okay. When you say "student," you said table
14 groups?

15 A. Uh-huh. Yes.

16 Q. These would be the students where the students
17 would be sitting?

18 A. Yes.

19 Q. And these are -- about how tall are these tables?
20 Your tables and the student table?

21 A. Probably to somebody's -- my knee because I'm
22 short, but like right above -- right above somebody's knee
23 maybe.

24 Q. They are designed --

25 A. They're small. They're -- they're for

1 five-year-olds. Yes.

2 Q. They're smaller than your typical table --

3 A. Yes.

4 Q. -- there?

5 A. Yes.

6 Q. Over here, what is this?

7 A. That's the windows.

8 Q. And do they let in a lot of light into the
9 classroom?

10 A. Yes.

11 Q. Do you have, like, shades that you can bring down?

12 A. We do, but we usually don't bring them down.

13 Q. What about the lights in the classroom? Can you
14 describe the lighting in there?

15 A. They -- I mean, they -- they get really -- really
16 bright and we don't keep them at full brightness. I would
17 say that's about what I would've had them at. Maybe a tiny
18 bit lower because I do have lamps and stuff.

19 Q. And throughout -- you guys just have lamps
20 throughout the classroom?

21 A. Yeah, I keep them -- yeah, I keep them around.

22 Q. They're always on?

23 A. Uh-huh.

24 Q. Anything else that you would like to point out to
25 the jury in this picture about the set up?

1 A. I don't think so. I mean, I can see all the kids'
2 tables, and so can Ms. Long.

3 Q. So this here, what -- what vantage point is this?

4 A. From my desk.

5 Q. So this is from your desk here?

6 A. Uh-huh.

7 Q. You testified that it's a like a horseshoe.

8 A. Uh-huh.

9 Q. Kids come around?

10 A. Yes.

11 Q. Did you keep a lot of stuff on your desk files to
12 -- or obstructions on your desk?

13 A. No, nothing that would block me from seeing them.

14 Q. And then what is this right here?

15 A. That's Ms. Long's desk.

16 Q. This area back here, what -- what is this?

17 A. That's an office, but the kids can't go in it.

18 Q. It's always closed?

19 A. Yes.

20 Q. Over here, what is -- what is this area over here?

21 A. It's the charging station and the cubbies.

22 Q. And then these are the student --

23 A. The student tables.

24 Q. -- desks?

25 A. Uh-huh.

1 Q. Do you remember where part of Student K sat?

2 A. He would've been in the far -- yeah, right there
3 closest to Ms. Long.

4 Q. And how far would you say that is from Student K's
5 desk to Ms. Long's desk?

6 A. Maybe two -- two feet, maybe.

7 Q. So from -- from me to you?

8 A. Yeah.

9 Q. Very close?

10 A. Yeah.

11 Q. Where would Zoe's desk at?

12 A. I -- I'm really not certain where her desk was. I
13 feel like it was the desk in -- in front. Yeah. Like, I
14 feel like it was one of those, but I'm not for sure.

15 Q. Right. Possibly right beside your desk?

16 A. Yeah.

17 Q. But for sure that they weren't at the same table.

18 A. Yes, I'm positive they were.

19 Q. How far would it have been from -- you know,
20 Student K's table to -- to Zoe's table?

21 A. Maybe a couple steps.

22 Q. A couple steps?

23 A. Yeah.

24 Q. So not this long where you'd have to sprint to get
25 over there?

1 A. No.

2 Q. He could take two steps and -- and be over?

3 A. Probably. Yeah.

4 Q. And again, how far would -- I know I've asked you
5 about Ms. Long's desk. How far is it from Student K's table
6 to -- to your desk?

7 A. Maybe five -- five feet, six feet.

8 Q. So from -- from me to you?

9 A. Yes.

10 Q. What about from Zoe's table to your desk?

11 A. Probably two feet.

12 Q. And what is this area back over here in the
13 corner?

14 A. There's, like -- there's a sink back there and
15 there's a tiny little block station for centers. That's it.

16 Q. Do you remember where you were at your desk when
17 Student S approached you?

18 A. Uh-huh.

19 Q. When you looked up, did you see where Student K
20 was?

21 A. He was in a seat.

22 Q. So over here?

23 A. Yes.

24 Q. What about Zoe?

25 A. I'm pretty sure she was in her seat too. She

1 wasn't there with him.

2 Q. And again, not -- how -- how -- how much distance
3 between the two?

4 A. Maybe a couple, two to three steps like not.

5 Q. And how long do you think it would take to walk
6 from Zoe's seat the Student K's seat?

7 A. I don't -- I really don't know. A couple seconds,
8 like, three steps.

9 Q. Anything else that you'd like to point out in this
10 picture for the jury?

11 A. No, not really.

12 Q. Again -- I mean, you can see the entire classroom?

13 A. Yeah, I can see everything. I mean, and I had
14 just walked around all of them and sat down.

15 Q. Did you have a certain way that you would -- you
16 know, walk around the classroom and supervise the students?

17 A. I usually started -- I think, furthest away from
18 me.

19 Q. Over here?

20 A. Yeah. And kind of -- basically I would loop a
21 table and go to the next closest table and loop a table and
22 go to the next one.

23 Q. So when you're -- you know, looping the table as
24 you said, are you locked in on each student, or are you
25 constantly looking around making (inaudible)?

1 A. No, I'm constantly looking. I don't like sit with
2 the kids because that would take too long. You kind of just
3 like, "Where are you at? What are you doing? Do you need
4 this, do you need that?" Like, it's a quick check and then
5 you go on to the next kid.

6 Q. So if you -- you know, you're looping around the
7 tables, interacting with the children, if you looked up and
8 seen a student in the wrong area, what would you have done?

9 A. I would've told them to go to their seat.

10 Q. That happen -- would that happen often?

11 A. Yes.

12 Q. Kids were up and moving?

13 A. I mean -- you know, they're five. They don't like
14 to sit forever. I'm -- they get up and go get water or they
15 get up and, "I want to show you this." "Well, raise your
16 hand instead." Like, it -- it happens constantly.

17 Q. You were constantly redirecting them?

18 A. Yes.

19 Q. So we start over here, loop around here, move to
20 the next table?

21 A. Yes.

22 Q. And then come over to number three and number
23 four?

24 A. Yeah.

25 Q. Okay. And what is the -- the vantage point of

1 this?

2 A. From my desk again, just like over more.

3 Q. A little bit more?

4 A. Yeah.

5 Q. And this would be the -- the front door?

6 A. Yes.

7 Q. How far do you think the -- the front door is from
8 your desk?

9 A. Maybe 20, 25, 30 feet-ish.

10 Q. And then again, this was the promethean board
11 here?

12 A. Uh-huh.

13 Q. Was this -- this would've been where the
14 documentary was playing?

15 A. Yes.

16 Q. Again, no obstructions to see --

17 A. No.

18 Q. -- the cord, the door? What about the charging
19 station?

20 A. It's that -- that gray box right there. So I can
21 see it.

22 Q. Easily see it?

23 A. Yes.

24 Q. What is the charging station for?

25 A. Their -- their iPads go in there. So like all the

1 chargers are in there and they just -- they plug them in.

2 Q. Anything else you'd like to point about the room
3 to the jury?

4 A. No.

5 Q. So another picture here. Can you explain this
6 vantage point?

7 A. This is from the front door.

8 Q. And again, this is Ms. Long's?

9 A. Uh-huh.

10 Q. Is there anything -- you know, throughout these
11 pictures anywhere in the room that we haven't covered?

12 A. No.

13 Q. Pretty small classroom?

14 A. I mean -- yeah.

15 Q. (Inaudible) classroom?

16 A. Yes.

17 Q. On there, you said there are iPads?

18 A. Yes.

19 Q. How would the students use those iPads?

20 A. If I gave them assignments on -- we used an app
21 called Seesaw where I can make digital assignments and they
22 can do them and turn them in and I can see it and send it
23 back. There were different apps that were district approved
24 that they would use. Like, DreamBox or just any -- any. We
25 have reading apps with books on them. Now we wouldn't have

1 been using those the last two weeks of school because they
2 take up iPads.

3 Q. So it's not free range?

4 A. No, it's not.

5 Q. For the students to be on the iPad?

6 A. No.

7 Q. They have to be have -- doing a certain task.

8 A. Yes.

9 Q. Is they're monitoring on the iPads?

10 A. Yes. The -- I mean, the district has -- they're
11 like locked down. Like there are only approved things that
12 they can access at all times.

13 Q. They couldn't access inappropriate material?

14 A. No.

15 Q. On iPad?

16 A. No. And our kids didn't even take them. They
17 didn't take them home.

18 Q. It was only in the classroom.

19 A. Uh-huh.

20 THE COURT: Try to say "Yes," "No," ma'am.

21 THE WITNESS: Sorry. Yes -- yes.

22 BY MR. CROSSLAND:

23 Q. And then what vantage point is this?

24 A. It would be from Ms. Long's desk.

25 Q. And again, this is your desk over here?

1 A. Uh-huh.

2 Q. This would've been Zoe's table?

3 A. Yes.

4 Q. Again, the promethean board's up here? Any
5 obstacles in here to obstruct their view?

6 A. No.

7 Q. Then again, this is from Ms. Long's desk as well?

8 A. Yes.

9 Q. Provider view --

10 A. Yes.

11 Q. -- of the front door? So on the day of the
12 incident, what were -- what were your class doing?

13 A. We were making kindergarten scrapbooks or memory
14 books.

15 Q. Can you explain what -- what -- what goes in the
16 scrapbook, what that means?

17 A. Each page was something different. I don't
18 remember specifically what this one had in it, but it would
19 be like, they would draw a picture of themselves at the end
20 of kindergarten or they would write their favorite thing from
21 kindergarten. Had a list in there where each kid had written
22 their name and had copied it and put it in each child's book
23 so they could take home and -- you know, those are their
24 kindergarten friends forever kind of thing.

25 Q. Were you guys working on that for one day,

1 multiple days?

2 A. We had been doing it for multiple days and that's
3 why some of the kids were at different places, and that's why
4 all the papers were on Ms. Long's desk.

5 Q. Okay. So if one student was on page 3.

6 A. Uh-huh.

7 Q. Another student was on page 4?

8 A. Yes -- yes.

9 Q. While they're working on this, are they just up
10 running around the classroom?

11 A. No.

12 Q. Chaos?

13 A. No.

14 Q. If you've seen a student that was up -- you know,
15 not in the right area, would you redirect to them?

16 A. Yes, I would say go sit down.

17 Q. So your class was well managed?

18 A. Yes.

19 Q. Quarterly?

20 A. Yes.

21 Q. Just how your training was?

22 A. Yes.

23 Q. What about the lights on the day of the incident,
24 how were they?

25 A. They were maybe a little bit dimmer than the

1 picture, but not by much. And like I said, I had my lamps
2 on, the blinds were open, so it's really is like a little bit
3 brighter than this room because you have all the windows.

4 Q. Was there anything on the promethean board?

5 A. I do think I had an ocean documentary on,
6 specifically because it was the end of the year. We're
7 talking about oceans animals, but it was there -- there
8 wasn't like talking in it, like, I think it was just showing
9 animals.

10 Q. And when the students were doing -- you know, work
11 at their desk, was it customary to either play music from the
12 promethean board, or show other -- you know, something to
13 just keep them on task on the promethean board?

14 A. Yes. I would play music almost every day.

15 Q. Did you guys ever watch Little Mermaid?

16 A. I don't remember ever doing Little Mermaid. And
17 if I ever would've shown a movie, I filled out the paper.
18 Like, you have to request it and you have to align it to
19 standards, and you have to explain on the paper why you're
20 aligning it to these standards, and why it's appropriate and
21 turn it into the principal, which I did with other things
22 before.

23 Q. But you didn't do it for Little Mermaid?

24 A. No, I did not.

25 Q. And it had to be educational?

1 A. Yes.

2 Q. And that's why you were watching the documentary?

3 A. Yes.

4 Q. On the ocean you just finished that unit?

5 A. Yes.

6 Q. So take us back. You said you were up walking
7 around in the classroom?

8 A. Yes.

9 Q. Were you doing your -- your standard loop around
10 the classroom?

11 A. Yes.

12 Q. And where was Ms. Long at?

13 A. She was -- I want to -- she was walking around
14 with me for a little bit and then she was sitting down at her
15 desk because kids kept coming up to her desk to get the
16 papers or to get different colors and whatever they needed
17 from her.

18 Q. You're up walking around supervising. Is she also
19 supervising the children?

20 A. Yes -- yes.

21 Q. Even if she was at her desk sitting down with some
22 students around her, would she have been just focused on them
23 or she would've been up feet with her head moving around
24 monitoring the students?

25 A. I mean, she's looking down at the kids and then

1 looking up and seeing what's going on. Just like I would do
2 if I was sitting.

3 Q. So as soon as you make your lap, boom, your butt
4 touches the seat, what happens next?

5 A. Steven ran up -- S I'm so sorry, ran up to me.
6 And I mean, he was like frantic, like he was like, "Ms. Ray
7 -- Ms. Ray" like pointing and gesturing and I was like,
8 "What?" Like, "What's wrong?" And then he told me what he
9 saw and I told Karter to come up to me.

10 Q. Was -- was Karter upset?

11 A. He seemed nervous when I called him up and I said,
12 "Did you look in Zoe's pants?" And then he starts tearing up
13 and kind of like just -- I remember him rubbing his --
14 rubbing his face and --

15 Q. Did he say anything?

16 A. I asked him if he did look in Zoe's pants, and if
17 he did, and he said, "Yes." And I said, "Okay. Go sit
18 down." And then I called Zoe up.

19 Q. Did he say that -- that he asked to do it or -- or
20 anything? How -- how did that come up?

21 A. He -- he said, "She told me to," and I said,
22 "Okay." I mean, yeah, there wasn't much else for me to say
23 to him. Like, I just had to tell him to go sit down.

24 Q. You send Karter back to his desk, and then what do
25 you do next?

1 A. I called Zoe over.

2 Q. And do you remember talking with Zoe?

3 A. I don't -- I remember asking her what happened and
4 if it was true, and I remember her just -- just crying.
5 Like, I don't remember getting intelligible words out of her,
6 and I did not want to stress her out anymore. So I did not
7 keep pressing.

8 Q. And again, how long ago was this incident?

9 A. Like a -- like a -- at this point so I talked to
10 them maybe a minute, not long. So I just asked --

11 Q. I mean, until -- from today --

12 A. Oh.

13 Q. -- since before how long ago was that?

14 A. Almost three years ago.

15 Q. You don't -- I mean, actually you don't remember.
16 Have a perfect memory of what happened three years ago.

17 A. No.

18 Q. Do you have any issues with the statements that --
19 that were produced to you?

20 A. The --

21 Q. A Student S's statement?

22 A. No -- no. I just think that he said one thing
23 first and the second time he said something different and --

24 Q. So with Student S's English or lack of English
25 skills, was it hard to understand him?

1 A. I wouldn't say it was hard. You just -- I had
2 been with him all year, so I feel like I could catch on and I
3 just wrote word for word what he said, but he could string
4 three or four words together. Like, it made sense.

5 Q. Your first interaction with Student S when he came
6 up to you, was he -- he was excited?

7 A. Yeah, he was worried.

8 Q. Worried?

9 A. Like, he was --

10 Q. How long do you think that interaction lasted?

11 A. Maybe 30 seconds. Because I think I asked him a
12 question or two questions and -- and told him to sit down.

13 Q. And then you called Student K out?

14 A. Yes.

15 Q. How long do you think that interaction went?

16 A. About the same time. They -- they were real quick
17 conversations because I had to figure out what to go do.

18 Q. What about with Zoe that interaction?

19 A. That wasn't long either, just because she didn't
20 tell me much at all.

21 Q. So you're made aware of this incident -- based on
22 your training and your years of school, what are you supposed
23 to do when an incident like this happened?

24 A. Report to admin.

25 Q. And so what -- what did you do next?

1 A. I went to -- well, I tried to call admin and
2 because I couldn't get anybody I told Ms. Long I'd be back,
3 and I was going to find somebody.

4 Q. Did you tell Ms. Long what -- what had been
5 reported at this point?

6 A. I don't think I did, but I might've went over and
7 whispered to her like vaguely. But I -- I just remember
8 saying I'll be back and leaving the room.

9 Q. And then you go and do what?

10 A. I ran into Ariaail in the hallway.

11 Q. Is this the principal, Ariaail?

12 A. Yes.

13 Q. And was she assigned to kindergarten discipline or
14 issues?

15 A. No. Technically she was an older grade, but I was
16 just worried. And she was the first -- she was the first
17 admin I saw and so I was like, "I need somebody to my room."

18 Q. So you talked with Ms. Ariaail tell her what
19 happens. What does she -- what -- what -- what did she say?

20 A. Well, I told her to come to her room, then she
21 came and talked to me. Because she had to take -- she was
22 with kids. She had to take them back.

23 Q. How -- was there a big gap of time in between?

24 A. No, not at all. It was quick. I think she knew
25 that I was like urgently I needed her.

1 Q. If you had to -- you know, guess how -- how many
2 seconds, minutes, hours?

3 A. Maybe like three minutes, if that -- if that, I
4 don't know.

5 Q. So Ms. Ariail comes to the classroom, what happens
6 next?

7 A. She told me to -- to keep Steven with me. Because
8 Ms. Long was in the middle of lining up kids for special area
9 and to write down what he said and she took -- she took one
10 of them. I don't remember which one she took. I want to say
11 she took Zoe's first, and that maybe Karter went off to
12 special area with the class. But I can't say for sure
13 because I know that all I was doing was talking with Steven
14 and writing down what he told me.

15 Q. So once Student K and Zoe leave, they went with
16 administration or -- or --

17 A. Uh-huh.

18 Q. -- guidance?

19 A. Uh-huh.

20 Q. So they're out of your worries. What -- you take
21 down Student S's statement and you take him back to the
22 special area?

23 A. Yes.

24 Q. Can you explain what special area is?

25 A. That day specifically I think they were in art and

1 I only remember because I remember where I walked to, but so
2 special area -- each day they might go to PE or art or music
3 or computer. I think that's it. That's all we have.

4 Q. They have assigned teacher in the classroom?

5 A. Yes.

6 Q. Typically when they're -- your class is at special
7 area, what do you do?

8 A. Usually that's planning. So I can write my plans
9 or I have meetings to go to.

10 Q. So you drop your class off at special area, what
11 do you do next?

12 A. I stop by guidance to check in on Zoe.

13 Q. Now you have -- do you have Student S's statement
14 with you?

15 A. Probably, I would think -- I would think so.

16 Q. Would've been typical if Ms. Ariail asked you to
17 -- to get a statement of a student to turn it back to
18 Ms. Ariail?

19 A. Yeah, I probably would've taken it right back to
20 her.

21 Q. Do you just don't have a specific --

22 A. I just don't specifically remember it. Yeah.

23 Q. Was that customary to -- if somebody asked you to
24 give a statement to report it back to them?

25 A. Yes.

1 Q. Do you have any issues with -- or any further
2 memory of how that statement would've got to Ms. Ariail?

3 A. No.

4 Q. You think it would've been a day later or that
5 same timeframe?

6 A. I would think it would be the same day.

7 Q. So you're up there, you -- you give the statement
8 to Ms. Ariail, do you talk with anybody else?

9 A. I did talk to Ms. Prizer.

10 Q. And what was your conversation with Ms. Prizer?

11 A. I -- I just kind of asked her what was going on or
12 what was happening, if Zoe was okay. And that is when she
13 said to me that -- you know, that -- she told me what Zoe
14 told her. And I was like, "Whoa, that's not what happened in
15 the classroom."

16 Q. So what was your reason for going to Ms. Prizer?

17 A. To check on Zoe.

18 Q. You were concerned about Zoe?

19 A. Yeah.

20 Q. You wanted an update on as to what had happened?

21 A. Yeah.

22 Q. What their -- you know, interactions with the
23 student had uncovered?

24 A. Yes.

25 Q. So you're talking with Ms. Prizer, and Zoe's story

1 changed?

2 A. Multiple times. Ms. Prizer said that they said
3 they were by --

4 THE COURT: Yes, sir.

5 MR. EDDY: Hearsay.

6 THE COURT: You wish to be heard?

7 MR. CROSSLAND: No, sir. I'll rephrase it.

8 THE COURT: Disregard the last response.

9 BY MR. CROSSLAND:

10 Q. So what was your understanding of what Ms. Prizer
11 had learned about the situation?

12 A. My understanding was that Zoe was sobbing and she
13 couldn't get many words out except for things like they were
14 by the iPad card or they were by the meditation station, the
15 calm-down corner, and that there was sticky white, stuff and
16 something about being licked and -- like, it -- it was
17 horrible. And so I said, "If you think she's saying all
18 these things and I know that they didn't happen, I think we
19 should do a DSS report."

20 Q. So specifically the location of where the event
21 occurred changed?

22 A. Yes. Twice.

23 Q. The details of what happened changed?

24 A. Yes.

25 Q. Drastic changes?

1 A. Yes.

2 Q. Do you remember any specifics?

3 A. I know that she said something about -- about
4 being licked down there, or something -- is how is -- how it
5 was phrased and the word, like sticky white stuff and tongues
6 and stuff. It was -- and something about being held down,
7 like it was really bad and really graphic.

8 Q. When Zoe -- when you called Zoe over to her, how
9 does she appear? Back -- going back to the incident just
10 happened, Student S runs up to you, you talk with Karter, you
11 call Zoe over there instantly, was Zoe fully clothed?

12 A. Yes.

13 Q. Was there any issues with her clothing?

14 A. No.

15 Q. Was there any white sticky stuff?

16 A. No.

17 Q. In correlation between where -- you said that
18 there were allegations that this event occurred over at the
19 charging station?

20 A. Uh-huh.

21 Q. Is this the charging station?

22 A. Yes.

23 Q. Approximately how far from Zoe and Karter's area
24 is that?

25 A. Maybe 20 feet.

1 Q. So the opposite side of the classroom?

2 A. Yes.

3 Q. What -- you -- I think you mentioned the --

4 A. Calm-down corner or meditation station.

5 Q. Where is that at?

6 A. Over by the sink right there.

7 Q. And what -- explain what the calm-down corner is.

8 A. It's like if kids are having a really hard time,
9 like they're angry or they're overly upset and they just
10 can't regulate, then you give them options to go sit in the
11 calm-down area. There's like a timer. They'll set the timer
12 for two minutes, and there are -- I had like posters that
13 were like, they identify how they're feeling. They identify
14 one technique they can use to calm themselves. So they were
15 mostly like different breathing techniques that we had
16 reviewed as a class. And then there were also fidgets, and
17 they could choose to fidget also, whether it was like
18 Play-Doh or whatever.

19 Q. They had to be sent to calm down?

20 A. Yes.

21 Q. Was that a -- a punishment?

22 A. No, it -- it was to help them re-regulate.

23 Q. Was there anybody in the -- the calm-down corner
24 at that point?

25 A. No. My kids did not use it much at all.

1 Q. And if a student was sent to the come-down corner,
2 they were supervised?

3 A. Yes.

4 Q. Especially since they were upset?

5 A. Yes.

6 Q. So at first when you -- when you first came up,
7 did -- did you have an understanding of where the incident
8 had occurred initially?

9 A. I remember Steven staying in the chair that they
10 were in the chair when he saw, but --

11 Q. So presumably either --

12 A. Close.

13 Q. -- Zoe's or Karter's?

14 A. Karter's, yeah.

15 Q. And again, no -- if you would've seen a student
16 over here in the charging station, what would you have done?

17 A. I would've told them to go sit down.

18 Q. What about the calm-down corner?

19 A. I would've asked why they were over there.

20 Q. Would you have seen them up walking around --
21 moving around the room? What -- doing what they were
22 supposed to?

23 A. Yes. Especially if two students were going
24 anywhere together.

25 Q. Did you observe that that day?

1 A. No.

2 Q. Did you observe anybody in the calm-down corner?

3 A. No.

4 Q. Going back to the advanced sexual knowledge and
5 acts that were described by Zoe, why did that concern you?

6 A. Because the things that had been described, I -- I
7 knew that they did not just happen, but it was concerning
8 that she even had those things like in her brain. Like,
9 whether they had happened to her or she had seen them
10 somewhere, whether it -- I don't know. I just knew that she
11 shouldn't even have that. It -- it couldn't happen in the
12 classroom just then. It did not. So she knew something that
13 was bad and she was clearly upset. She was crying
14 hysterically. But was that because she was maybe getting in
15 trouble or was that from my perspective or was it because she
16 had just remembered all of these things and it was awful? I
17 didn't know.

18 Q. So when you initially met with Zoe, and she tells
19 you -- you're asking her what happened, did you ever call her
20 a liar?

21 A. No. Never.

22 Q. Did you ever tell her that she was a bad girl?

23 A. No. Never.

24 Q. You ever told a kindergarten student that -- that
25 they were a liar to their face?

1 A. No. As practice, you don't ever call kids liars
2 or bad, you don't even use the word "bad."

3 Q. Did you ever refer to -- to her as a bad girl?

4 A. No.

5 Q. What about any other student?

6 A. No. Never.

7 Q. Did you say that she was in trouble?

8 A. No, I did not say she was in trouble.

9 Q. You said that she was going to receive a
10 punishment for coming up and talking with you?

11 A. No. Never.

12 Q. What did you -- have you ever told a student that
13 -- when you're trying to figure out what happened, that they
14 were in trouble?

15 A. No.

16 Q. Because at that point you didn't know exactly what
17 had happened.

18 A. Right.

19 Q. You were doing what you were supposed to do,
20 trying to figure out what happened.

21 A. Yes.

22 Q. So you're talking with Ms. Prizer, this advanced
23 sexual knowledge comes out, and immediately, what is your
24 reaction to that?

25 A. That we should report it.

1 Q. And can you explain what you mean by reporting to
2 DSS? Earlier you testified that you are a mandated reporter.

3 A. Yes.

4 Q. Can you explain that to the jury, what that means?

5 A. All teachers are mandated reporters. We take
6 Title IX training on sexual assault and you take training on
7 mandated reporting and when is appropriate to mandate report.
8 And in the training, it does say like, it -- it's not your
9 job to ask more questions. It's not your job to find out if
10 your concern is valid or not. Like -- like, we can't say
11 "When did this happen? Where did you hear that?" We can't
12 do that. If they tell us anything that could possibly be
13 risky or scary or it raises red flags and as their teacher
14 I'm like, this is not good, I have to report it and you
15 should report it. Because if you don't report anything that
16 concerns you and something did happen to that child, like not
17 only could I lose my job, but like something happened to a
18 child because I didn't report it because it wasn't
19 investigated.

20 Q. So are school counselors also mandated reporters?

21 A. Yes.

22 Q. Almost everybody in the school?

23 A. I'm pretty sure everyone in the school is a
24 mandated reporter.

25 Q. So again, we have Zoe with this heightened sexual

1 knowledge. When Karter came up to you, did he say any of
2 these heightened sexual knowledge?

3 A. No.

4 Q. Did he refer to any white sticky stuff?

5 A. No.

6 Q. Did he refer to French kissing?

7 A. No.

8 Q. Did he refer to oral sex?

9 A. No.

10 Q. What about Student S when he came up to you, did
11 he mention any of those?

12 A. No, he did not.

13 Q. No French kissing?

14 A. No.

15 Q. No oral sex?

16 A. No.

17 Q. Simply that? What was your understanding of what
18 he was reporting?

19 A. That Zoe opened her pants and Karter looked.

20 Q. And to you as the teacher responding to this it --
21 not knowing exactly what happened you referred it to
22 administration?

23 A. Yes.

24 Q. Specifically whether Zoe opened her pants or
25 Karter opened her pants, wasn't definite on how you were

1 going to respond to this?

2 A. Right.

3 Q. Regardless of that, you were going to report it to
4 administration?

5 A. Yes.

6 Q. And what does administration do with that?

7 A. I -- I don't know. I mean, they -- if -- if any
8 disciplinary action is needed, then they would take
9 disciplinary action. But mainly I think that they would've
10 recorded it somewhere because it did relate to a slightly
11 sexual nature, and they would have contacted parents and had
12 the kids talk to the guidance counselor.

13 Q. So when Ms. Prizer shares this new -- you know,
14 evolving, ever changing story, you mentioned doing a DSS
15 report?

16 A. Yes, I did.

17 Q. Did Ms. -- was Ms. Prizer opposed to that?

18 A. No, she agreed. I would assume she had already --
19 she probably had already had the thought -- like, I think we
20 were both like, "Yeah, we need to do this." And she asked me
21 if I wanted to do it by myself or if I wanted to do it with
22 her, and I was like, "Can we do it together?"

23 Q. Have you ever made a -- a -- a DSS report before?

24 A. I think that was my first one.

25 Q. But you received training through the district?

1 A. Yes.

2 Q. On how to do that?

3 A. Yes.

4 Q. Yearly?

5 A. Yes. Every year.

6 Q. You receive -- you're still a teacher, right?

7 A. Yes.

8 Q. You received training this year about mandated
9 reporting?

10 A. Yes.

11 Q. So what happens next? You call DSS?

12 A. I -- I think that we must have called them when
13 students were gone, or maybe it was during planning so, but
14 no one was in the room but me and Ms. Prizer, so we called
15 them on the phone.

16 Q. And what did you relay to DSS?

17 A. That we had a student where an incident happened
18 in class, but when she was asked about the incident, that it
19 kept evolving and changing and she was saying words that we
20 were scared of that -- not scared but -- you know, that we
21 were concerned about. And we knew that it didn't happen, so
22 we were worried about where or if it had happened.

23 Q. When you say "it didn't happen," you mean this
24 every evolving --

25 A. Yes.

1 Q. -- escalating story?

2 A. Yes, we told them that we knew that -- you know,
3 maybe her pants were open or maybe she opened her own pants.
4 We told them we knew that. But that she was never held down.
5 There was no sticky white stuff. There was no -- I don't
6 remember all the other things that were said.

7 Q. Did DSS say anything? Do you remember?

8 A. All they told us was that, I mean, they have to
9 look into it and that's all we'll say.

10 Q. Did you report specifically or ask them to -- to
11 look into the Arellano family?

12 A. No.

13 Q. Did you have any bias or prejudice against the
14 Arellano family for making this report?

15 A. No.

16 Q. What was the sole reason that you made this
17 report?

18 A. Because I was concerned about Zoe, and that
19 doesn't even mean that -- she could have been hurt somewhere
20 that had nothing to do with her family. That doesn't mean it
21 was about them.

22 Q. And again, you felt obligated by law to make this
23 report?

24 A. Yes.

25 Q. Did you -- did you make this report in bad faith?

1 A. No.

2 Q. Good faith?

3 A. Yes.

4 Q. Sitting here today testifying, same situation
5 occurred, would you have made that report again?

6 A. Yes.

7 Q. Do you have any issues with the report that was
8 made?

9 A. No. Not at all.

10 Q. Transitioning to Karter, do you know if -- did you
11 make a -- a DSS report on -- on Student K?

12 A. I did not.

13 Q. Why didn't you make a report on him?

14 A. Because -- because my knowledge of the situation
15 and what S had told me, I just didn't think that he did
16 anything that would've called for DSS report. I didn't see
17 it at the time as him assaulting her or trying to hurt her.
18 I genuinely saw it as two little kids doing something they
19 shouldn't have done because they were friends and they were
20 curious and they just shouldn't have.

21 Q. Were you aware of Karter using this heightened
22 sexual knowledge like that?

23 A. No. I was not, no.

24 Q. When you were talking with Ms. Prizer, do you have
25 any reason to question Ms. Prizer's understanding of the

1 situation?

2 A. No.

3 Q. Have you ever known Ms. Prizer to lie about what a
4 -- a student says to her?

5 A. No, I've sent lots of kids to Ms. Prizer.

6 Q. How was Ms. Prizer as a counselor?

7 A. I mean, she was good. She worked with the kids.
8 She would set up small groups. If I had students that were
9 working with her, she'd come by the room and check on them.

10 Q. You -- are you aware if Ms. Prizer had any
11 vendetta or prejudice against the Arellanos?

12 A. I don't think she did.

13 Q. Are you aware of any counter motive to make this
14 report by Ms. Prizer?

15 A. No.

16 Q. Again, what -- what is your understanding of
17 Ms. Prizer's concerns?

18 A. I -- I understood that she was also concerned
19 about the language and the things that were said.

20 Q. And again, about Zoe's safety?

21 A. Yes.

22 Q. Are you aware that a police report was made in
23 this incident?

24 A. I did not know that until we were, like, in the
25 middle of the case.

1 Q. So you had no interactions with law enforcement?

2 A. No.

3 Q. Again, I want to -- you know, just harp on this.

4 I know I've already asked you, but I just want to make it
5 clear to the jury. When Zoe came up to you, did you ever
6 accuse her of lying?

7 A. No. Never.

8 Q. Did you ever accuse her of being a bad girl?

9 A. No.

10 Q. Are you trained to do anything like that?

11 A. No. I would never do anything like that to a kid.

12 Q. Would there ever be a reason to do that?

13 A. No.

14 Q. Do you have any prejudice against Zoe?

15 A. No.

16 Q. What about Nancy?

17 A. No.

18 Q. What about her -- any of her family?

19 A. No.

20 Q. You've had very little interactions with her
21 family?

22 A. Yes.

23 Q. Only interaction you have was with Nancy?

24 A. Yes.

25 Q. And so when you made this report -- once you made

1 the DSS report, do you have any other involvement?

2 A. No. That's it. That's all I can do.

3 Q. So who -- who decides on whether to accept it or
4 to look into it?

5 A. I think the DSS -- I mean, I -- I assume that the
6 person taking the report gives it to somebody else. I don't
7 know though. You know, I don't know how they do that.
8 That's not --

9 Q. Did you ever receive a report as to what had
10 happened?

11 A. No.

12 MR. CROSSLAND: Beg the Court's indulgence?

13 THE COURT: Yes, sir.

14 MR. CROSSLAND: Thank you. No further questions.

15 THE COURT: Re-direct?

16 MR. EDDY: Yes, your Honor.

17 RE-DIRECT EXAMINATION

18 BY MR. EDDY:

19 Q. So I asked you several times: Where was Zoe
20 sitting? And every time I asked you where was Zoe sitting,
21 your answer was, "I don't remember," is that right?

22 A. Right. I don't know for sure what chair she was
23 in.

24 Q. But now when your attorney asks you questions, you
25 remember exactly where Zoe was sitting. She was up here

1 right next to your desk?

2 A. I know she was at that table, but like, I don't
3 know what chair she was sitting in. I know she wasn't with
4 Karter when I looked at them, which I think I did say before.

5 Q. So you don't remember the answer when I'm asking
6 you the questions, but all of a sudden you do remember the
7 answer when the Defense Attorney's asking the questions, is
8 that right?

9 A. I don't know how to respond to that.

10 Q. Ms. Prizer's interview with or interviews with
11 Zoe, were you present in any of those?

12 A. No.

13 Q. Do you have any of your own firsthand knowledge of
14 anything that Zoe said to Ms. Prizer?

15 A. No.

16 Q. Do you know how many times Zoe was questioned,
17 interviewed, or interrogated before she made those statements
18 to Ms. Prizer?

19 MR. CROSSLAND: Objection, your Honor.

20 THE COURT: Yes.

21 MR. CROSSLAND: He's badgering the witness. He's
22 answering, and he's testifying at this point.

23 MR. EDDY: Asking some questions of her knowledge, your
24 Honor.

25 THE COURT: The objection to badgering the witness is

1 overruled is what came -- what I heard was, did you -- and
2 that seemed to be the form of a question.

3 MR. EDDY: Let me rephrase the question, your Honor, to
4 make it make sense.

5 BY MR. EDDY:

6 Q. Are you aware of how many different adults
7 interviewed Zoe before she made those statements to
8 Ms. Prizer?

9 A. No.

10 Q. Are you aware of how many times Ms. Prizer herself
11 interviewed Zoe --

12 A. No.

13 Q. -- before she made those statements?

14 A. No.

15 Q. Do you remember giving a deposition on this case
16 where I interviewed you over videotape?

17 A. Yes.

18 MR. EDDY: I don't know how your Honor prefers to
19 unseal the transcripts.

20 THE COURT: I'm going to let you do it, but wait until
21 I tell the jury. Ladies and gentlemen, the deposition is
22 sworn testimony taken outside of the courtroom, that's taken
23 after notice to the parties. They all assemble in a
24 designated place and time with a certified court reporter and
25 if it's by videotape, a certified videographer, the witness

1 is placed under oath and you should consider anything that's
2 said in a deposition to have been given to under oath. The
3 rules allow for it to be used for various purposes in the
4 trial. You may unseal the deposition.

5 BY MR. EDDY:

6 Q. I assume you haven't had the pleasure of looking
7 at a deposition transcript before, but if you look in the
8 center of that first page, it says -- should say who the
9 deponent was. Does it identify you?

10 A. Yes.

11 Q. I want you to turn to page 11. Earlier when I
12 asked you questions about what was the condition of the
13 lights in the classroom at that time, you said that they had
14 not been dimmed at all?

15 A. No, I said I did not keep them to full brightness
16 ever.

17 Q. Before we go back to this deposition, did you have
18 the lights dimmed for the movie that was going on that time?

19 A. Not dimmer than I would normally have them.

20 Q. Did you lower them specifically for the movie?

21 A. I don't recall making them any darker.

22 Q. All right. I'm going to start with the question.
23 It starts on line 1, page 11. I will -- I will read the
24 question and I would like you to read the answer. Question,
25 "The signs when you all are doing movie time, which I

1 understand happens from time to time, are there any other
2 circumstances in which the lights are turned off or turned
3 down in the classroom quiet time or any other kind of event?"

4 A. "No, the lights are never off. Even during a
5 movie, they're not all the way off."

6 Q. "Okay. Just dimmed?"

7 A. "Yes."

8 Q. "Is there a dimmer or you flick off a few lights
9 independently?"

10 A. "I guess it's a dimmer because you hold the
11 switch, but the blinds are also always open when a movie is
12 on."

13 Q. "So besides movie time, are there any other
14 circumstances in which you would dim the lights in the
15 classroom?"

16 A. "No."

17 Q. Okay. So were the lights dimmed in the classroom
18 during the movie time when this incident happened?

19 A. I don't know how to explain. They were not to
20 full brightness that they can get to in a classroom. I kept
21 them about mid-level every single day, so I would not have
22 lowered them more I don't think for the movie.

23 Q. All right. Please turn to page 18. Let's
24 actually start on page 17. I'll start on line 20 with my
25 question. "So what was the first moment that you became

1 aware of this incident?"

2 A. "When I left the kids desks and sit down, Steven
3 ran up to me to tell me something was wrong."

4 Q. "Is S one of your students? I understand that
5 there's a scale for all the students. Is he one of the
6 students that tends to be more of a tattletale or reporting
7 on his friend's misconduct?"

8 A. "No, he was not usually."

9 Q. "Was he upset?"

10 A. "He wasn't upset, but he was concerned."

11 Q. "And what did he say?"

12 A. "I had to kind of figure out what he was saying
13 because he didn't perfectly speak English. He was also
14 gesturing. He was trying to tell me that Karter looked in
15 Zoe's pants."

16 Q. "How was he gesturing?"

17 A. "He was pointing to Karter and Zoe. He was saying
18 "Karter," then like gesturing towards his pants as if they
19 were being pulled open."

20 Q. Your version that you told today is different than
21 what's in that deposition transcript, isn't that right?

22 A. No, not really. This says that he was gesturing
23 saying that Karter looked in the pants. This doesn't even
24 say "Karter opened the pants." That's not what this says.

25 Q. Where does it say that S said Zoe opened the

1 pants?

2 A. I didn't say that that's what the deposition says.
3 That's what the original statement said. That's not what I
4 just said.

5 Q. You testified to the jury earlier today when I
6 asked you what S initially told you, your statement to the
7 jury was, "S initially told me Zoe was opening her pants."

8 A. Yes.

9 Q. Okay. Is that what you said in the deposition?

10 A. No, I said that Karter was -- or sorry S was
11 gesturing to -- with open pant -- I can't find it. Hold on.
12 "He said he was also gesturing but trying to tell me that
13 Karter looked in Zoe's pants, he was pointing to Karter and
14 Zoe, he was saying Karter and then gesturing towards his
15 pants as if they were being pulled open." He didn't say
16 Karter opened her pants.

17 Q. But he didn't say Zoe opened the pants.

18 A. But you just told me that what I said wasn't true
19 and that's not what I said.

20 Q. In your deposition testimony to me under oath, did
21 you say that S told you Zoe opened her pants?

22 A. Yes, S told me that.

23 Q. Did you say that in your deposition when I asked
24 you what S told you?

25 A. No, that's not how I phrased it.

1 Q. Why do we have a difference between your testimony
2 in your depositions and your testimony today about what S
3 initially told you --

4 A. I remember it --

5 Q. -- about that?

6 A. -- the same way regardless. This is a really hard
7 situation. Even for an adult this is stressful. This was
8 three years ago. I cannot say what anyone said every single
9 word for word, but I'm trying my best to remember. So if
10 there is a teeny tiny slight difference, that's why.

11 Q. That's a pretty big difference, isn't it?

12 A. No it's not. He's gesturing and stringing words
13 together.

14 Q. You're telling the jury right now that S first
15 told you Zoe opened the pants, but you never told me that in
16 your deposition.

17 A. Okay. Well, that's what I wrote in my statement.
18 The deposition was what a year after the statement. I
19 remember Steven speaking to me and gesturing and being
20 freaked out. I remember him saying Zoe and Karter's names,
21 and opening his pants, or showing me opening pants. It was
22 my understanding at the time that he was saying Zoe opened
23 her pants regardless.

24 Q. Do you remember better now or when I took your
25 deposition a year ago?

1 A. I feel like right now it's all in my brain because
2 this is very stressful.

3 Q. So we shouldn't trust your sworn testimony.

4 A. That's not what I said.

5 Q. We shouldn't trust your sworn testimony, your
6 deposition (crosstalk).

7 A. I said there are very slight differences, which is
8 understandable.

9 THE COURT: You all can't talk over each other.

10 THE WITNESS: I said there are very slight differences
11 which are understandable.

12 BY MR. EDDY:

13 Q. So which of these two versions of events should
14 the jury accept either S told you that you're remembering
15 today that Zoe opened her pants or your sworn statement to me
16 in your deposition that S said none of those things?

17 A. Can you ask the question again, please?

18 Q. Sure. Which version of your testimony should the
19 jury accept today? Should they accept your version today --
20 today's version that S told you Zoe opened her pants or
21 should we accept the testimony you gave in your deposition
22 where S did not say that at all?

23 A. I think that I wasn't specific enough in my
24 deposition, and I wish I had been, but I'm not lying about
25 what Steven did or said, and that's why I wrote his statement

1 and that's why I wrote my statement.

2 MR. EDDY: Thank you, your Honor. I've got no more
3 questions.

4 THE COURT: Anything else for the witness?

5 MR. CROSSLAND: Just briefly, your Honor.

6 RE-CROSS EXAMINATION

7 BY MR. CROSSLAND:

8 Q. Ms. Ray?

9 A. Yes.

10 Q. I know I asked you this earlier, but how long ago
11 was this been from event from today?

12 A. I think about three years.

13 Q. Do you remember when you had your deposition
14 taken? When that was, the date?

15 A. No.

16 Q. About April of 2023?

17 A. I know it was over a year ago because I was
18 pregnant.

19 Q. Again, how long from the time of the incident till
20 your deposition was taken?

21 A. Over a year.

22 Q. Do you have -- of the statements that were
23 produced to you -- your statement and Student S's statement,
24 any objections or concerns with those?

25 A. No, I don't think any of them are -- are wrong.

1 Q. Are you lying about what you remember?

2 A. No.

3 Q. Do you have any reason to lie to the jury?

4 A. No.

5 Q. Or as whether or not Student K or Zoe opened her
6 pants, would that have changed your response to this
7 incident?

8 A. No.

9 Q. What would you have done either way?

10 A. I would've done -- I mean, I would've gotten admin
11 and guidance and done exactly what I did before.

12 Q. Contact administration?

13 A. Yes.

14 Q. And allowed them to take the proper channels?

15 A. Yes.

16 Q. To investigate, to handle any discipline?

17 A. Yes.

18 Q. Do you have any input on discipline?

19 A. No. Not at all.

20 Q. Again, no reason to -- to lie about your testimony
21 today?

22 A. No.

23 Q. No reason to lie in your testimony on -- on your
24 deposition?

25 A. No, not at all.

1 Q. Simply the fact that we're here three years from
2 now, and at your deposition two years --

3 A. Yes.

4 Q. -- creates some difficulties remembering?

5 A. Yes.

6 MR. CROSSLAND: No further questions, your Honor.

7 THE COURT: Thank you, ma'am. You may step down. You
8 have another witness?

9 MR. EDDY: Yes, your Honor.

10 THE COURT: How long is that witness expected to take?

11 MR. EDDY: Probably about the same amount of time.

12 THE COURT: Are there any issues with witness
13 unavailability if we break for lunch now?

14 MR. EDDY: Your Honor, we're going to shuffle the --
15 the list a little bit for the scheduling conflict.

16 THE COURT: That's -- I haven't seen the list, so I
17 don't -- it doesn't matter to me. Call who you wish.

18 MR. EDDY: All right. Is Mr. Snyder here?

19 MS. WHITE: Uh-huh.

20 THE COURT: Yes, sir.

21 MR. EDDY: The conflict is resolved compromised at
22 least. So with that, probably is a good time to break for
23 lunch.

24 THE COURT: Okay. Ladies and gentlemen, we'll break
25 for lunch at this point. Don't discuss the case. I need you

1 back here at 2:00. Hope you have a pleasant lunch. Thank
2 you.

3 (Jury exits room at 12:38 p.m.)

4 THE COURT: Those of you who were here yesterday,
5 remember the admonitions about leaving. Be careful you don't
6 have contact with the juror. They're going to be coming back
7 into the same areas that you're going into. Same thing at a
8 restaurant, be careful that you don't have contact in a
9 restaurant or parking lots or anything like that. Court in
10 recess until 2:00 p.m.

11 (Off the record at 12:39 p.m.)

12 (On the record at 2:04 p.m.)

13 THE COURT: Call your next witness, please.

14 MR. EDDY: The Plaintiff calls Ms. Catherine Prizer.

15 THE COURT: Come around please.

16 CATHERINE PRIZER,

17 being duly sworn, testified as follows:

18 THE CLERK: And once you're seated, can you please
19 state your name, and spell your last name the for record,
20 please?

21 THE WITNESS: Catherine Prizer, P-R-I-Z-E-R.

22 DIRECT EXAMINATION

23 BY MR. EDDY:

24 Q. Good afternoon, Ms. Prizer.

25 A. Hi.

1 Q. I don't care if you chew some gum during this, but
2 it want to -- will it affect your ability to answer the
3 questions?

4 A. If it does, I'll spit it out into the napkin.

5 Q. Can you please introduce yourself to the jury?

6 A. I'm Catherine Prizer. I'm school counselor with
7 Lexington Two.

8 Q. How long have you had that position?

9 A. In this district, this is my -- I started in 2018
10 with the district. So that means this is the sixth year.

11 Q. Have you had that same position throughout the
12 past six years with this school district?

13 A. Yes.

14 Q. What was the position again?

15 A. School counselor.

16 Q. And what do you -- what kind of role do you serve
17 as a school counselor?

18 A. I see children individually for whatever issues
19 might arise. I have small groups for kids that have some
20 kind of issue that they all have in common. Something that
21 we can deal with in a small group. And then I also do
22 classroom lessons in every classroom roughly once a month.

23 Q. What kind of classroom lessons do you perform?

24 A. We have standards that we have to adhere to, just
25 like a classroom teacher does. So I adhere to those

1 standards. They relate to growing as learners, growing as
2 student or -- excuse me, growing as, like, just people
3 skills. And I just do a lesson. I can kind of set my own
4 calendar.

5 Q. What was your position before working for the
6 school district?

7 A. I worked at -- in Richland 2, as a school
8 counselor for 11 years.

9 Q. So you did 11 years in Richland?

10 A. Uh-huh.

11 Q. Then came over to Lexington?

12 A. Uh-huh. Yes.

13 Q. Before working at Richland, what was your
14 position?

15 A. I was a graduate student at Winthrop.

16 A. What did you study at Winthrop?

17 A. School counseling.

18 Q. And is that a master's degree?

19 A. Yes.

20 Q. What did you do for college?

21 A. I went to University of North Carolina at
22 Greensboro. I grew up in North Carolina.

23 Q. Everything okay in Greensboro right now?

24 A. Yeah. It's heck of a lot better than the
25 mountains.

1 Q. What did you say you were studying in college?

2 A. My undergrad's in psychology.

3 Q. When you would see kids in your position as a
4 guidance counselor.

5 A. School counselor, please.

6 Q. School counselor at Cayce Elementary? What kind
7 of reasons would a kid need to speak to you?

8 A. I mean, it runs the gamut. It can be something as
9 serious as abuse. It can be something as serious as not
10 having enough food to eat, or it can be something as small as
11 being angry at another friend because she rolled her eyes at
12 you or something. It can -- it runs the gamut.

13 Q. I don't know a ton about your profession, but when
14 you're dealing with individual students, is there a specific
15 system, or method, or practice that you use to help treat --
16 to counsel them?

17 A. Not really, no. There's not really a specific
18 theory that I ascribe to.

19 Q. When you're visiting with -- I'm sorry. When
20 you've got students -- children in your office -- do you have
21 your own office?

22 A. Uh-huh. Yes.

23 Q. How is it set up, your office itself?

24 A. It's -- it's a decent size for a school
25 counselor's office. I have my desk. It hasn't changed much

1 over the years since -- well, this is the third year in this
2 office. And it hasn't really changed since I've moved into
3 this office. So, like, right when you come in the door, you
4 are facing my desk. And then over kind of in the corner, I
5 have, like, a half-moon table where I have small groups. And
6 then over to the side I have two chairs set on a rug, which
7 is where I usually talk to the students. And I have like a
8 box of fidgets because it helps kids to talk when they have
9 fidgets.

10 Q. So when you need to meet with a student to discuss
11 whatever it's, do you typically meet them in your office?

12 A. Almost always, yes.

13 Q. There's no separate treatment or counseling area?

14 A. No.

15 Q. And then when you're meeting with small groups of
16 kids, these are kids with similar challenges?

17 A. One popular group that I do a lot of is
18 self-control, anger management, that kind of thing.

19 Q. Do you interface with like the special needs kids
20 at all in the school?

21 A. I mean, as needed I'm available to them as well.

22 Q. But no direct services for those individuals?

23 A. If they need me.

24 Q. Okay.

25 A. Yeah.

1 Q. Are there other school counselors at Cayce
2 Elementary?

3 A. Yes. I have grades second and below. So I have
4 3K, 4K, kindergarten, first, second. And then the upstairs
5 counselor has third, fourth, and fifth.

6 Q. So the two of you are the counselor?

7 A. Yes.

8 Q. What's the name of the other counselor?

9 A. Morgan Smith.

10 Q. Ms. Prizer, do you recall at all the day where the
11 incident comprised of this lawsuit occurred?

12 A. Only through looking back at my written
13 statements, I don't have a direct memory of it.

14 Q. So you can't testify to your own memory today of
15 what happened that day?

16 A. I can, based on what I wrote, yes. Because I
17 wrote those statements the same day. So they were as
18 accurate as they're going to get.

19 Q. So you are relying on your statements written that
20 day?

21 A. Yes.

22 Q. Not your own individual recollection?

23 A. That's correct.

24 A. Okay.

25 Q. So based off of those statements, what do you

1 remember of that day?

2 A. I remember Ms. Ariaail -- I believe, Ms. Ariaail
3 brought Zoe to my office and gave me kind of a basic of what
4 had happened. And typically I would talk with the student
5 alone, but I think Ms. Ariaail may have been in the office
6 with me when I spoke with her. And then I just spoke to Zoe
7 about what happened, trying to get a good understanding.

8 Q. Do you have any recollection of -- if Ms. Ariaail
9 said anything about what happened before she brought her to
10 your office?

11 A. She would've told me the allegations of the sexual
12 assault.

13 Q. Do you have an understanding if Ms. Ariaail had
14 interviewed Zoe at all before she came to your office?

15 A. My understanding is no.

16 Q. I'm sorry?

17 A. My understanding is that she had not.

18 Q. So Ms. Ariaail's there maybe, maybe not, what is
19 your recollection from your statement of what happened in
20 that first interview?

21 A. I can tell you what I typically do. Because I
22 don't remember specifically talking to her. Whenever they're
23 with an administrator, I always want them to make -- I always
24 want to make sure that they know they are not in trouble with
25 me. You will not come to me if you are in trouble. And I

1 set that forward in my first classroom lesson of the year
2 that "f you're in trouble, you're not coming to me, you may
3 go with someone else and be in trouble, but when you're with
4 me, you are not in trouble." And so I kind of remind the
5 student of that, especially if it's something kind of big
6 like this or if they're upset or seem reticent to talk. And
7 then I just kind of open-ended questions like, "Can you tell
8 me about what happened? What's upsetting you -- what" -- you
9 know, that kind of thing.

10 Q. And what is your recollection of what that first
11 conversation looked like?

12 A. Again, I just know what I wrote. I remember that
13 she said that his hand went down her pants. I believe that
14 her -- I don't know who she said did it, but she said the
15 waistband of her pants was pulled away. And he put his hand
16 -- my understanding was over her underwear, but under her
17 leggings.

18 Q. And that information would've come from Ms. Ariail
19 or from Zoe?

20 A. Zoe.

21 Q. And what would you have done in response?

22 A. Just kind of ask more questions. Just clarifying.
23 So -- you know, "I'm so sorry that happened to you. That's
24 not okay. Your body is your body. People can only touch it
25 when you say it's okay, especially your private areas." We

1 had just done our safe touch talk. And just kind of -- can
2 you -- you know, "What else can you tell me about it? What
3 did you do after, how did Ms. Ray" -- because she was Ms. Ray
4 at the time, "How did Ms. Ray find out?" That kind of thing.

5 Q. From Ms. Ariail or from any other source of
6 information at that time this first interview had you been
7 made aware of any written statements by either S or K?

8 A. No, not to my recollection.

9 Q. Can you just run us real quick through what the --
10 did you say safe touch?

11 A. Yes.

12 Q. Okay. What -- what's the safe touch lecture?
13 Just in short.

14 A. We talk about the -- where your private areas are
15 that for a girl. It's -- it's where your bathing suit
16 covers. So for a girl, it's their chest area. For boys and
17 girls, it's their front privates and their bottoms. And the
18 only time an adult is allowed to touch those is if they're
19 helping you to be clean. Like, if your parent or guardian is
20 helping you in the bath, or a doctor if they have another
21 adult in the room, like a nurse or the person who brought
22 you.

23 Q. So after you would've gone over those things,
24 again with Zoe, what would've happened next?

25 A. You mean in the lesson, in the classroom lesson

1 or?

2 Q. I'm sorry, we're going back to the interview. The
3 first -- what's your recollection about what happened next
4 time?

5 A. I truly don't remember.

6 Q. Did Ms. Ariaail take Zoe, or did you take her back
7 to class? Do you have any recollection?

8 A. I do not.

9 Q. At some point Zoe left your office?

10 A. At some point, yes. She's not there now so... She
11 left at some point. I don't know when that was, though.

12 Q. Are you a lawyer? Did Zoe come back into your
13 office at all that afternoon?

14 A. I'm honestly not sure. I believe she did, but I
15 -- I'm not comfortable, like, really testifying to that
16 because I -- I'm not 100 percent sure no.

17 Q. You just -- you don't remember?

18 A. Right.

19 Q. Okay. Did you have any other interactions with
20 anybody else related to this incident that afternoon at
21 school?

22 A. Yes, I would've talked to Ms. Ariaail -- before I
23 made the DSS report, I would've spoken with her. Ms. Ray
24 obviously. I always kind of like to run those sort of things
25 past other professionals who are familiar with mandated

1 reporting just to make sure that I'm not making a report
2 incorrectly for any reason.

3 Q. Do you remember having those conversations with
4 then Ms. Ray or the principal -- vice-principal, assistant
5 principal?

6 A. Assistant.

7 Q. Assistant principal Ariail?

8 A. Yes. I remember speaking with Zoe at one point.
9 Ms. Ariail was in the room, I do remember that. And her
10 story, Zoe's story was growing to include parts that Ms. Ray
11 alluded to earlier.

12 Q. Okay. Do you remember that out of your own
13 memory?

14 A. I do. When reading the statement, brings some of
15 it back, it jogs my memory. And I remember thinking -- you
16 know, "Oh gosh, this is not what she said the first time."
17 And from my understanding from Ms. Ray in the amount of time
18 that it was where she and Ms. Long were, this doesn't make
19 sense. Like, I can't make logical sense of it. So I
20 would've asked clarifying questions to Zoe trying to make
21 sense of it, but ultimately I remember that the -- what she
22 was saying happened didn't make sense.

23 Q. So you're testifying that in the first interview
24 you didn't know about any written statements of S or K about
25 the incident, is that fair?

1 A. Correct.

2 Q. By the time of this second interview, were you
3 aware of any written statements about S or -- by S or K about
4 the incident?

5 A. I don't believe so. I'm not positive, but I don't
6 believe so.

7 Q. Did anyone ever make you aware of S or K's
8 statements about the incident?

9 A. Not to my knowledge. Not until we -- I saw this
10 lawsuit, and I saw the documents for this lawsuit.

11 Q. So before that, before you got my lawsuit, you had
12 no idea that S had said that he witnessed K open up Zoe's
13 pants?

14 A. With all due respect, that's not relevant at all
15 because it doesn't matter if Zoe opened her own pants or
16 Karter -- excuse me, or K did, because I -- that's not why I
17 made the DSS report because she opened her pants. I did
18 mention on the DSS report that from our understanding in
19 clarifying questions that we believed that Zoe possibly had
20 opened her own, but that did not affect my call to DSS.

21 Q. So in these interviews, is any part of what you're
22 doing trying to find out what happened?

23 A. Within a reasonable amount, but we are instructed
24 not to investigate, so I just want to clarify the story. And
25 I -- I make dozens of DSS reports -- I mean, dozens,

1 unfortunately. And so I know what kinds of questions they're
2 going to ask and so I try to get answers to those questions
3 without leading the child. Because I'm not trained in
4 forensic interviewing, so I try not to lead the child and ask
5 appropriate questions.

6 Q. So how early were you already contemplating that
7 this would need a DSS report?

8 A. Not until the story started changing. And
9 included things like French kissing, oral sex mentions of --
10 I mean, the only thing I could figure that was white would be
11 ejaculate. I don't think that can happen with children this
12 age, but that was my only understanding, the way she was
13 describing it.

14 Q. And how did she describe that white stuff and the
15 way that would make you think it was -- she was referring to
16 ejaculate?

17 A. It was sticky and white and yucky and it tasted
18 funny.

19 Q. Is there any Play-Doh in the classrooms?

20 A. I'm sure, but she wasn't playing Play-Doh.

21 Q. Is there any paint in the classrooms?

22 A. Probably.

23 Q. Is there any glue in the classrooms?

24 A. Sure. Does glue come out of a person?

25 Q. Did she say it came out of a person?

1 A. Yes. She said Karter put it on her. Excuse me K.
2 I'm so sorry, K.

3 Q. So that's not the same thing. Did she say that a
4 white sticky substance came out of K? Because all you said
5 so far was he put it in her mouth.

6 A. Sure. But should a -- yeah, no, she did not. I
7 -- to my recollection, she did not.

8 Q. So there could be plenty of other things in the
9 classroom she could have been referring to when she was
10 talking about white substance?

11 A. Ostensibly, but not logically. Yes.

12 Q. What do you mean by you're trained or told not to
13 investigate?

14 A. The DSS reporters don't want us to taint the
15 child's testimony, especially with something as sticky and
16 hard to investigate as sexual abuse.

17 Q. But that's not what you were doing the second time
18 you interviewed her?

19 A. No, I was trying to clarify the -- her story
20 because it had changed. So I was trying to figure out how it
21 would make sense to go the way that she described it.

22 Q. What's the difference between clarifying a story
23 and investigating a story?

24 A. It's the way you ask the questions. It's the
25 questions that you ask. It -- it's kind of a nebulous line,

1 but there is a difference. And I've been trained on the
2 difference, and I do not investigate.

3 Q. Why did Ms. -- the assistant principal Ariail,
4 bring Zoe back into your office?

5 A. I -- this -- the only thing that I can imagine,
6 this is conjecture, but I would imagine because there was
7 some additional story that she wanted help asking questions
8 about.

9 Q. So does that mean there was probably another set
10 of questions of Zoe after she left your office?

11 A. Sure. I -- I don't know. I wasn't there.

12 Q. So do you have any idea how many different adults
13 were asking Zoe questions about the incident that afternoon?

14 A. I do know that I respect my coworkers, and I do
15 know that they respect the children, and that they are not
16 going to go around saying, "Oh hey, guess what this kid just
17 said something happened. Ask her some questions about it."
18 They're -- they're not going to do that. The people that
19 need to talk to her will talk to her. And then that -- those
20 are the only ones. We also adhere to confidentiality laws.
21 So we are not just going around talking to a whole bunch of
22 people about it.

23 Q. So do you have any understanding of how many
24 different adults Zoe was asked questions by that afternoon?

25 A. Two. Myself and Ms. Ariail, is my understanding.

1 Q. Your understanding is that after the first
2 interview with you, she's taken somewhere else and has a
3 conversation with Ms. Ariail?

4 A. Or she may have just, like, volunteered
5 information. I was not there. I do not know, but I do know
6 there was additional information when she brought her back
7 and asked me to clarify at -- at which point even more, stuff
8 was added.

9 Q. But not investigated?

10 A. No. Clarified.

11 Q. What was Zoe's demeanor during these
12 clarifications?

13 A. I don't remember. I truly do not recall.

14 Q. That's because you don't actually really remember
15 these conversations, right?

16 A. Yes, I do remember these conversations.

17 Q. Oh, okay. Because earlier you said you don't
18 remember.

19 A. I know what you're trying to do. I know full well
20 what you're trying to do. I remember it jogged my memory
21 because I saw the written statements, so I can remember some
22 of those.

23 Q. Some of them?

24 A. Yes. And I don't remember her demeanor.

25 Q. You tell me if I'm wrong, I don't want to

1 misphrase something for you here. You said earlier that it
2 doesn't matter to you if it was Karter or Zoe who opened up
3 her pants?

4 A. Correct. That is not why I made a DSS report.
5 That is normal exploration between six-year-olds. Is it
6 appropriate? No. Is it normal? Yes. Does it need a DSS
7 report? No.

8 Q. Would it make any difference to you if Karter had
9 touched her underneath her pants?

10 A. I would imagine. It depends on how much -- what
11 he did exactly.

12 Q. Would it matter to you if K had pulled open her
13 pants without her consent?

14 A. It matters to me, but it does not matter in
15 relation to the DSS report. Yes.

16 Q. So I don't want to conflate things here. What I'm
17 asking you, do these things matter? I'm asking for you as a
18 professional not necessarily just in regards to the DSS
19 report.

20 A. Of course it matters to me. I'd want the --
21 what's best for the child. I wouldn't do what I do if I
22 didn't.

23 Q. Why didn't you also make a DSS report about
24 Karter?

25 A. Because what he did was normal exploration. What

1 -- even if -- if everything in the original story was
2 completely accurate, and Zoe had no part in asking for -- or
3 opening her pants or anything, putting his hand down her
4 pants over her underwear would be normal exploration. That
5 is not a DSS report.

6 Q. Touching someone under their pants without their
7 consent is normal?

8 A. It -- not -- I know what you're doing. He -- from
9 my understanding -- have you ever heard a playing doctor?
10 Like, that's kind of what he was doing is if everything she
11 said was 100 percent true, nothing anyone else said was true.
12 She and she alone had the truth. That can be playing doctor
13 as they say.

14 Q. It's been a little while since I was a kid. You
15 don't think consent to playing doctor is relevant or
16 important to this conversation?

17 A. Of course it is. But also at five and six years
18 old you don't fully understand consent. Some adult men don't
19 fully understand consent. So he may have thought -- I'm
20 interested in what is -- what this little girl has under her
21 pants. I don't know what little girls have under their pants
22 versus what little boys have.

23 Q. That's appropriate behavior to you?

24 A. I did not say that. I said that's not a red flag
25 of sexual abuse.

1 Q. Is that acceptable behavior at the school for you?

2 A. I'll let you guess on that. Of course not. We do
3 not touch other people's privates.

4 Q. Is it reasonable for the parents of your students
5 to expect that they won't have other students touching their
6 genitals without their consent?

7 A. Yeah.

8 Q. What disciplinary actions, if any, were taken
9 regarding K in this incident?

10 A. I have nothing to do with discipline, and I
11 couldn't speak to that, anyway.

12 Q. You don't know?

13 A. I have nothing to do with discipline.

14 Q. When did you decide to make the DSS report?

15 A. When Zoe was talking about someone licking between
16 her legs, which I don't know what else that can be construed
17 to be, holding her down, yucky, sticky white stuff that he
18 put on her, sticky things in her mouth. That's when.

19 Q. What time of the afternoon was that?

20 A. I don't know. I do not know.

21 Q. It was sometime after the second interview?

22 A. Yes.

23 Q. Did you discuss your decision to make a DSS
24 report?

25 A. Yes, I always do.

1 Q. Who did you discuss that with?

2 A. Ms. Ariaail and Mr. Snyder. Excuse me.

3 Ms. Ariaail and Ms. Ray.

4 Q. Teacher and the assistant principal?

5 A. Uh-huh.

6 Q. What did you give them as the reasons why you
7 thought that needed to be a DSS report?

8 A. The same I just gave you.

9 Q. Did they give you any information in response
10 about statements made by S or K about the incident?

11 A. Not to my recollection, no. They did -- they
12 never -- administrators never tell us not to report. They
13 can say they don't think a report is indicated, but they
14 can't say, "No, you can't report, do not report this." So
15 she could have said that she did not, but it would be
16 plausible that a person could say a report is not indicated,
17 but she did not in this instance.

18 Q. How did you mechanically go about making the DSS
19 report?

20 A. I'm sorry, I don't understand.

21 Q. Is it an email? A fax?

22 A. Phone call.

23 Q. Okay. And you've done this a few times?

24 A. Quite a few.

25 Q. Walk the jury through how that phone call usually

1 goes.

2 A. I dial the phone number, I press the appropriate
3 buttons to get to the right, like, right department because
4 it'll ask if it's an adult or a vulnerable adult or a child.
5 Are you a doctor? Are you law enforcement? Are you at a
6 school? Did the incident take place at, like, a daycare or,
7 like, a -- like, a resident like residence facility? So you
8 have to push the appropriate button so they -- you get to the
9 right person to report, and then the person answers and they
10 take down demographic information and you tell them what
11 happened.

12 Q. Was this done in your office?

13 A. Yes.

14 Q. Or assistant principal Ariail's office?

15 A. No, this would be mine.

16 Q. Okay. Who else was present with you when you made
17 that phone call?

18 A. Ms. Ray.

19 Q. Was this that day? The next day?

20 A. The date on it is the next day, but that is the
21 paperwork. We would've made the report the same day.

22 Q. Okay. That paperwork, do you do that before or
23 after the phone call?

24 A. It varies.

25 Q. If you testified in your deposition that you

1 filled out that form before making the phone call, does that
2 sound like that was right?

3 A. I mean, I would imagine that that was right, but I
4 also had not been given my statement. I had not been given
5 the DSS report. I had nothing. So I was basing my
6 deposition on what I could remember solely from my memory of
7 what had happened well over a year ago -- one and a half
8 years ago. And so I was -- in my deposition, I realized once
9 I saw the written documents, I was confusing several
10 instances because unfortunately we have instances like this
11 often, not often -- well I would not say often, but we have
12 instances like this. This is not the only one. So I
13 confused incidences. So it is possible that I said that.
14 But based on the date on the document, I filled out the
15 document after.

16 Q. After the phone call?

17 A. Yes.

18 Q. Okay. Would that have been several hours, 20
19 minutes, 30 seconds?

20 A. Based on the document, it was the next day.

21 Q. Okay. So you think -- I'm sorry, you think you
22 filled out the document the day after you made the phone
23 call?

24 A. Yes, because we made the -- the phone call on May
25 25th when this happened. We are instructed do not go home

1 without making the phone call. So I would've made that phone
2 call the same day and then realized, "Oh hey, wait a minute.
3 I didn't fill out the paperwork, so I need to finish that."

4 Q. What do you do with the DSS report form once you
5 complete it?

6 A. We provide it to our social workers and any
7 administrators that were involved in the case. So -- because
8 it was sexual abuse, I'll oftentimes give it to one -- more
9 than one administrator. So I sent it via email to
10 Mr. Drozdak, and Ms. Ariail, and our social worker,
11 Mr. Snyder.

12 Q. Did you ever hear anything back from DSS about the
13 situation?

14 A. I always ask to be given a phone call back, but I
15 get one about 60 percent of the time and I don't believe I
16 got one about this.

17 MR. EDDY: Permission to approach, your Honor?

18 THE COURT: Yes, sir.

19 BY MR. EDDY:

20 Q. Ms. Prizer, have you ever seen this document
21 before?

22 A. Yes, sir.

23 Q. Does this document look familiar to you?

24 A. Yes, sir.

25 Q. Can you please tell the jury what this document

1 is?

2 A. This is our district mandated reporter form that
3 they ask us to fill out as documentation. DSS sometimes
4 loses records or says that there was never a phone call made.
5 And so this is proof for us. And it also lets the social
6 workers and administrators know so that they're kind of
7 abreast of current happenings in the school.

8 Q. Do you know who prepared this document?

9 A. I do.

10 MR. EDDY: This time the Plaintiff moves for admission
11 into evidence the document bates labeled Defendant 08.

12 MS. WHITE: No objection.

13 THE COURT: So that will this be Plaintiff's 3, Madam
14 Court Reporter?

15 (Plaintiff's Exhibit Number 3 admitted into evidence.)

16 THE COURT: Would you hand that to the court reporter,
17 please, ma'am?

18 THE WITNESS: Yes, sir. Thank you.

19 BY MR. EDDY:

20 Q. At the top, it's got date of report 5/26/22, and
21 time of report 10:20 a.m., is that correct?

22 A. Yes.

23 Q. That's not the time of the report -- reporting
24 this to DSS, that's the time of this document?

25 A. Yes.

1 Q. Okay. Cool. That was my understanding. Can you
2 please read to the jury the square box at the bottom that
3 describes the nature and description of incident or injury.

4 A. "Displays knowledge that she shouldn't have about
5 sexual activities. For example, she accused a boy of licking
6 under her pants. She also accused the same boy of pulling
7 her pants away from her waist and looking down them, but she
8 had actually pulled the pants down and asked him to look.
9 Her story changed a lot and she also said the boy held her
10 down and wouldn't let her up. She said he held her arms down
11 to keep her from getting away."

12 Q. So part of the reason you wrote down for
13 contacting DSS was that she also accused the same boy of
14 pulling her pants away from her waist and looking down them,
15 but she had actually pulled the pants down and asked him to
16 look, is that fair to say?

17 A. It's written down. Yes, sir.

18 Q. What knowledge -- evidence do you have that Zoe
19 was responsible for pulling her own pants away and asking him
20 to look down?

21 A. Based on the changing story, it -- that -- what
22 she was alleging it could have been that he pulled the pants
23 away, but again, that's not what triggered this DSS report.
24 So I did put that down, but that's not an overly important
25 part of this.

1 Q. So you tell DSS in part, this investigation is
2 either her pulling her pants down and blaming it on somebody
3 else, but you don't think it's important whether she pulled
4 her pants down?

5 A. No, because that's not what triggered it. Of
6 course, it's important for her because it should not have
7 happened. It's whether it was -- it was something that she
8 sought out or not, but it is not the reason that I made a DSS
9 report.

10 Q. But she had actually pulled the pants down and
11 asked him to look. What evidence did you have when you
12 contacted DSS that she was responsible for opening up her
13 pants and asking him to look?

14 A. Based on the changing stories. Based on what the
15 teacher had told me about, like, typical behavior with the
16 students that can be why I put that.

17 Q. So if the witness had already told the teacher
18 that K was responsible for opening her pants, why didn't the
19 teacher discuss that?

20 A. I don't know. This is the smallest of details,
21 and it does not matter in this case.

22 Q. The smallest of details that's so small it is
23 written as a description of the incident and injuries in your
24 DSS report?

25 A. Yes, sir. Why are you not harping on the he

1 wouldn't -- he held her arms down? That's also in here. Why
2 are you not harping on that? It's the same thing. There is
3 more than one sentence. I put all of what I know about the
4 incident in the DSS report. What triggered the DSS report
5 was the licking between her legs. That is not something a
6 five or six-year-old child should have knowledge of.

7 Q. What evidence do you have that he didn't hold her?

8 A. Based on what Ms. Ray and Ms. Long had said, where
9 the classroom was set up, the amount of time that it took,
10 the way where they were when it was brought to their
11 attention. What the children were doing, what I know of the
12 teachers and how they managed their classroom. I mean, I
13 could keep going. There are innumerable reasons.

14 Q. So the teacher, the teacher assistant, did not
15 believe Zoe's description of the incident?

16 A. Not that she was held down. I do believe someone
17 pulled her pants away from her waist. Someone may have put
18 his or her -- his hand down the front of the pants. Again,
19 that is not the reason for the DSS report that was believed.
20 This -- these are itty bitty details and yes, they are
21 important in the life of the child, but they are not
22 important in the fact that I made a DSS report.

23 Q. Do you believe Zoe was touched in that classroom?

24 A. I do not know and I will not make a guess. I will
25 not.

1 Q. Do you have any knowledge of whether or not Zoe
2 was touched in that classroom?

3 A. I do not. I do know what happens when you talk to
4 children.

5 Q. What happens?

6 A. They oftentimes will add things, and I do believe
7 that's what happened with the licking under her pants. The
8 pants were never off as Ms. Ray testified. When she saw
9 them, her -- when she saw Zoe, her clothes were on correctly
10 and all this had taken place in the space of about five
11 seconds. That is not enough time for a six-year-old to take
12 her pants down, have someone lick between her legs and put
13 her pants back.

14 Q. Do you have any idea specifically exactly how long
15 Zoe's assault lasted?

16 A. No, but I trust Ms. Ray and Ms. Long.

17 Q. If you had told DSS -- as this form indicates,
18 that Zoe actually did pull her own pants down, was that a
19 truthful statement?

20 A. At my knowledge at the time, yes. I would not
21 have written it if I didn't believe it at the time.

22 Q. So if the teacher, and maybe the principal --
23 assistant principal, knew that that was a false statement at
24 the time of the DSS report, that'd be an issue, wouldn't it?

25 A. Yeah.

1 Q. If K himself said, "I did touch her, I did pull
2 her pants out," that would be a false statement, right?

3 A. I'm sorry, repeat that, please.

4 Q. If K himself admitted to pulling her pants away
5 from her body, then your statement to DSS that she actually
6 did it herself would be a false statement, isn't that
7 correct?

8 A. Yes, but again, I -- I do not know who pulled her
9 pants away from -- her pants away from her body.

10 Q. Did you ever talk with Karter?

11 A. I did not, no.

12 Q. Why not?

13 A. I was dealing with Zoe, and there were other
14 people talking with him.

15 Q. Who was talking with him?

16 A. Again, I was not there. But my understanding is I
17 believe Ms. Ariail and Mr. Snyder.

18 Q. Did Mr. Snyder ever relate to you at all what
19 Karter had said?

20 A. I don't have recollection of that.

21 Q. Did anyone ever discuss with you the contents of
22 Karter's statement?

23 A. I don't have recollection of that.

24 Q. And you never saw a copy of Karter's statement
25 until the lawsuit?

1 A. This lawsuit.

2 Q. But you don't think that was important for you to
3 know?

4 A. No one -- I didn't know it existed. And when I
5 discussed this with the other professionals at my school
6 about making a report, they could have said, "Well, no, I
7 don't think it needs to be made because of this." And they
8 didn't. And again, I trust them and respect them.

9 Q. So the individuals at your school who you
10 discussed this with, if they had knowledge of K's statement,
11 they could have told you the truth of his statement?

12 A. Yes, sir.

13 Q. But they didn't?

14 A. Yes, that's correct.

15 Q. Is that problematic for you at all?

16 A. No, sir. As -- again, I do not investigate. I
17 have clarifying information and then I report it to DSS and
18 they investigate. So no, I did not need everyone's point of
19 view.

20 Q. After the DSS form here, did you have any more
21 conversations with Ms. Ariail about this case?

22 A. I imagine we would have, but that's conjecture. I
23 don't know.

24 Q. How about the principal, Mr. Drozdak?

25 A. I don't recall that.

1 Q. How about the teacher?

2 A. I don't recall.

3 Q. So is it your understanding that between making
4 the DSS report and hearing about the lawsuit, you don't have
5 a memory of any other conversations with anyone else about
6 this incident?

7 A. Unfortunately, this is all too common. This did
8 not stand out as anything that was different or exceptional
9 to this report in this instance.

10 Q. Since this incident at the end of the 2021/2022
11 school year, have there been other incidents where schools
12 have -- students have been assaulted by other students?

13 A. Unfortunately. I mean, it's not a daily thing,
14 but it happens. Yes, sir.

15 Q. How many other times has that happened?

16 A. I have absolutely no idea and I will not guess.

17 Q. You don't know how many times that you've been
18 made aware of other incidents at the school?

19 A. No, sir. I don't exactly keep count and
20 unfortunately it's enough that I would need to make -- keep
21 count.

22 Q. Do you have any idea how many DSS reports you
23 submitted since this incident?

24 A. Absolutely not. Way too many.

25 Q. More than 10?

1 A. Yes.

2 Q. More than 20?

3 A. Yes.

4 Q. More than 50?

5 A. I -- again, I don't know, and I do not want to
6 guess because you'll twist it against me. I know what you
7 do. I don't know.

8 Q. What is your understanding of your duties as a
9 mandated reporter?

10 A. If I have a reasonable suspicion that a child has
11 been sexually, physically, mentally abused or neglected, I
12 need to make a report and we err on the side of caution
13 because I would much rather make a report where it is not
14 needed than not make a report and allow something to continue
15 in a child's life.

16 Q. So we always should err on the side of caution?

17 A. Yes, sir. And I -- you're going to ask me about
18 Karter. We do not believe that anything happened with
19 Karter. I have stated that, other people have stated that,
20 and I have told you that if he pulled her pants down and put
21 his hand over her underwear, was that appropriate?
22 Absolutely not. Was that something that a kindergartner
23 should expect to happen in a kindergarten classroom?
24 Absolutely not. Is it developmentally appropriate? Yes.

25 Q. So we always want to err on the side of caution?

1 A. Yes, sir. And I stand by my choice not to call
2 for him. I have absolutely no reason to like shelter K and
3 his family. I have absolutely no reason to go out of my way
4 to make things difficult for Zoe and her family. I did not
5 know these people before this.

6 Q. You've already testified you didn't have all the
7 information at the time you made the DSS call?

8 A. You never have all the information. Do you have
9 all the information right now? No. You do not. That's why
10 you have to ask us questions. You do not have all the
11 information. People know things you do not know. So no, I
12 did not. I had a reasonable suspicion. As I said, I do not
13 investigate.

14 Q. If you had the written statements you've been
15 provided by the -- the written -- provided with the written
16 statements of both S and K before you made your DSS call,
17 would you still have made it?

18 A. Yes. Because a kindergarten student said she was
19 licked between her legs. Do you think that's appropriate for
20 a six-year-old?

21 Q. You wouldn't have said the same thing in the DSS
22 form, right?

23 A. I'm sorry, I don't understand.

24 Q. Would you still have said that Zoe lied about
25 opening her pants in the DSS report?

1 A. If I believed it, yes. I'm not going to write
2 fiction on these things. I think -- you see a tiny chink in
3 the armor and you're trying to poke at it. It is not as big
4 a chink as you think. It's not. Is it an -- an important
5 part of her life? Yes. Is it an important part of -- an
6 important part of this? No.

7 MR. EDDY: One moment, your Honor.

8 THE COURT: Yes, sir.

9 THE WITNESS: Oh, goodness. Sorry, you all.

10 MR. EDDY: That ice comes out (inaudible).

11 THE WITNESS: Yes, sir.

12 MR. EDDY: Thank you, your Honor. I've got no more
13 questions.

14 THE COURT: We're going to take a 10-minute break.
15 Don't discuss the case.

16 (Jury exits room at 2:49 p.m.)

17 THE COURT: You may step down if you wish, but you
18 cannot discuss your testimony with anyone.

19 THE WITNESS: Yes, sir.

20 THE COURT: Court is in recess for 10 minutes.

21 (Off the record at 2:50 p.m.)

22 (On the record at 3:00 p.m.)

23 MR. EDDY: Yes, your Honor.

24 MS. WHITE: Your Honor, we do have a matter to take up
25 with the Court before the -- the jury comes in. So can we

1 approach? I don't -- I don't think it needs to be on -- on
2 the record.

3 THE COURT: We're going to be at ease for a little
4 while. Tell the jury it's going to be a little while.

5 (Bench conference at 3:02 p.m.)

6 THE COURT: Well, the social worker can testify without
7 a court order, and thereby risk exposure to the social
8 worker's license.

9 MS. WHITE: That's what I'm understanding.

10 THE COURT: Well, the reason I ask for the law concerns
11 what standard I have to apply because...

12 MS. WHITE: I'm not -- I'm not aware of any legally
13 recognized privilege that applies to -- as far as testifying
14 in court, that applies to a -- a social worker and their --
15 their clients or those who may interview.

16 THE COURT: You know, and which witness is this?

17 MS. WHITE: Mr. Snyder.

18 THE COURT: When is he expected to testify?

19 MS. WHITE: I think you were getting ready to call him?

20 MR. EDDY: Yes. After the conclusion of Ms. Prizer's
21 testimony.

22 THE COURT: And the issue is the statements that were
23 made to Mr. Snyder by K?

24 MR. EDDY: That's correct.

25 THE COURT: K's parents are aware of the lawsuit, but

1 have not been notified about this issue specifically?

2 MS. WHITE: That is correct.

3 THE COURT: Well, if nobody can cite me to a standard,
4 and I don't know one myself, I don't know what to do except
5 tell him to testify.

6 MS. WHITE: And I understand that if he is instructed
7 by the Court to testify that he will testify.

8 THE COURT: There are provisions about sealing parts of
9 records, but we -- we'd have to address that post-trial.
10 You're ready for the jury? It's cross, right? I mean, it --
11 it is your turn, right? Bring the jury in, please.

12 MS. WHITE: It's questioning her. I got ahead of
13 myself.

14 THE COURT: I -- I've just never had that come up, even
15 in criminal cases.

16 MS. WHITE: I've not had that come up in a trial
17 before.

18 (Jury enters room at 3:10 p.m.)

19 THE COURT: All right. You wish to question the
20 witness at this point?

21 MR. CROSSLAND: Yes, your Honor.

22 THE COURT: You may proceed.

23 MR. CROSSLAND: Thank you. May it please the Court?

24 THE COURT: Yes.

25 CROSS-EXAMINATION

1 BY MR. CROSSLAND:

2 Q. Good afternoon, Ms. Prizer. How are you?

3 A. Good afternoon. How are you?

4 Q. Doing all right. A couple questions for you. I
5 just wanted to go back some over your background information
6 and training and education.

7 A. Yes, sir.

8 Q. Did you always -- growing up, did you always want
9 to be a school counselor or work with children?

10 A. I love children, but I wanted to be a veterinarian
11 until I was 16, so...

12 Q. So when you went to -- to college, where'd you go
13 to college at initially?

14 A. UNC, Greensboro.

15 Q. And what was your major there?

16 A. Psychology.

17 Q. Were you working towards being a counselor or at
18 least working with children?

19 A. I wanted to be some sort of therapist or counselor
20 for children. Yes.

21 Q. And then you -- you testified that you have a
22 master's degree as well?

23 A. Yes, sir.

24 Q. And that specifically with -- for counseling?

25 A. Yes, sir.

1 Q. Can you walk the jury through some of your
2 training? Any internships or hours that you were required to
3 get as part of your master's program?

4 A. Yes, sir. We're required to do a 100-hour --
5 what's called a practicum. And I did the 100-hour at a high
6 school near Winthrop. Then we have to do -- oh, gosh, I'm
7 going to get the hours wrong. I believe it's a 300-hour
8 internship. I did one at a middle school. And my final one
9 was at an elementary school. They tell -- you have to do all
10 three levels, and they tell you to end with the level that
11 you want to serve. So I did elementary at the end.

12 Q. So when you're doing these hours, you're
13 interacting with students?

14 A. Yes, sir.

15 Q. Providing the same thing that you do now as a
16 school counselor?

17 A. Yes, sir.

18 Q. And then once you get your master's degree, you go
19 straight into counseling?

20 A. Yes, sir.

21 Q. You said you were at -- what -- what school
22 district first?

23 A. Richland 2.

24 Q. And what school were you in?

25 A. Polo Road Elementary.

1 Q. And how long did you serve there?

2 A. 11 years.

3 Q. And again, interacting and counseling individual
4 students --

5 A. Yes, sir.

6 Q. -- as part of your responsibilities?

7 A. Yes, sir.

8 Q. For 11 years?

9 A. Yes, sir.

10 Q. And then you moved to Cayce Elementary?

11 A. Yes, sir.

12 Q. How long were you at Cayce?

13 A. This is year number six. At the time this was --
14 it was the end of year number three. Wait, year number four.

15 Q. So about what this would be right -- currently
16 your 18th year working with children?

17 A. Yes, sir.

18 Q. Is there any way for you to give us an exact
19 number? How many times you've interviewed or -- or met with
20 individual students or children?

21 A. No, sir.

22 Q. Countless?

23 A. Yes, sir.

24 Q. Doing it on a daily?

25 A. Multiple times a day. Yes, sir.

1 Q. So do you feel qualified to meet with these
2 students?

3 A. Yes.

4 Q. Do you receive ongoing training through the
5 district on how to perform your responsibilities?

6 A. Yes, sir. We have meetings roughly every month as
7 -- all the counselors together. They call it "cohort." And
8 so we -- we talk about different things. And then I -- I
9 seek out additional training in -- in whatever topics I feel
10 like would benefit the children I work with.

11 Q. Specifically you testified in regard to providing
12 the safe touch lesson?

13 A. Yes, sir.

14 Q. Is the district obligated by law to get that?

15 A. Yes, sir. It's Erin's Law.

16 Q. Erin's Law? And I believe you testified earlier
17 that you explained to the children adult -- consent for adult
18 touching them proper. You know, at a -- if you're at a
19 doctor or --

20 A. Yes, sir.

21 Q. -- you know, your parents are bathing you. Is
22 there any part of the lesson dealing with -- you know, school
23 classmates -- you know, kids their age?

24 A. I don't know that there's like an explicit part,
25 but I always will say to the students, like, "No one is

1 allowed to touch your private areas, not children, not
2 adults. No one except for these circumstances: You're
3 allowed to touch your own, they're yours, but no other child
4 or adult may touch them unless they're keeping you clean or
5 healthy."

6 Q. And so you gave this safe touch lesson to
7 Ms. Ray's class?

8 A. Yes, sir.

9 Q. Do you know when that was?

10 A. It would've been roughly the beginning of May.

11 Q. Questions about individual students. Student S;
12 did you have any previous interactions with him?

13 A. Only in classroom lessons. Never in one-on-one.

14 Q. What about Student K?

15 A. No, I -- I didn't know which student in her
16 classroom had that name. Like, I couldn't have picked him
17 out of the classroom.

18 Q. And then what about Zoe? Any interactions with
19 Zoe prior to this incident?

20 A. Classrooms? I -- no, I had never met with her
21 individually either.

22 Q. Would you've picked her out of the classroom?

23 A. I probably could have told you which child was
24 Zoe, but I couldn't have told you anything about her.

25 Q. Did you have any interactions with her mother,

1 Nancy?

2 A. No, sir.

3 Q. What about any other family members?

4 A. No, sir.

5 Q. Did you know anything about her family members?

6 A. No, sir.

7 Q. Going to the -- the date of the incident -- you
8 know, when Zoe comes into you for that first time that you're
9 talking with her, did you have an open mind at that point?

10 A. Of course. Yes, sir.

11 Q. Did you establish rapport with Zoe?

12 A. Yes.

13 Q. How would you go about doing that?

14 A. Tell them that they can get comfortable. They can
15 -- like I said, I have fidgets and so I'll tell them they can
16 play with the fidgets if they'd like. Make sure they know
17 they're not in trouble. Tell them that if they want to sit
18 on the floor, we can sit on the floor. Or I have those two
19 chairs like I mentioned. Just wanting them to be comfortable
20 in any way that I can make it better for them, especially
21 with a difficult topic.

22 Q. When you say "fidgets," are those toys or?

23 A. Yeah. Yes. They're like -- like a fidget
24 spinner, poppets.

25 Q. Do you have dolls?

1 A. I do. Yeah. But that's not part of the fidgets.

2 Q. Just making them comfortable?

3 A. Yeah.

4 Q. Is that part of your -- part of your goal meeting
5 with the kids to make them comfortable??

6 A. Of course.

7 Q. And help them understand what's ever happened?

8 A. Yes, sir.

9 Q. Because -- I mean, most of the time when they come
10 to you, something's happened that they have to deal with, and
11 that's why they're talking.

12 A. Uh-huh. Yes.

13 Q. Do you know how many students are at Cayce
14 Elementary?

15 A. This year, I believe it's around 950. Between 950
16 and 1000.

17 Q. You remember back for what -- 2021/2022.

18 A. I know we always hover right around a thousand.
19 We're actually a little lower this year than normal.

20 Q. Okay. So when you are meeting with Zoe, did you
21 ever call her a liar?

22 A. No, I would not.

23 Q. Did you ever say that she was a bad girl?

24 A. I don't use the word "bad," no. I absolutely
25 would not with children. I just say that was not positive.

1 That was not a positive choice or things like that. Let's
2 think about making a smarter choice, that sort of thing.

3 Q. Would you have known anything about Arellano
4 family at that point?

5 A. No, sir.

6 Q. Would you have communicated to Zoe that she
7 shouldn't know the things that she was saying?

8 A. I'm sorry?

9 Q. When you're meeting with Zoe and her story began
10 to change and become more and more sexual in nature, you
11 became concerned. Would you have relayed that concern to her
12 said that you were concerned that she shouldn't know that, or
13 you just kept asking clarifying questions?

14 A. I would've just asked clarifying questions.

15 Q. And what was the reason for making the DSS report
16 again?

17 A. The licking under her pants was a huge red flag.
18 And then the description of the white sticky stuff that
19 tasted funny. Yes, there are other white sticky substances
20 in a classroom, but the way that she was telling the story,
21 it would not have made sense for it to be glue or Play-Doh or
22 paint.

23 Q. Does -- does the kindergartner know what glue is?

24 A. Yes, sir.

25 Q. Kindergartner know what Play-Doh is?

1 A. Yes, sir.

2 Q. So you would think that if the kindergartner got
3 glue on them, they would say that "I got glue on me"?

4 A. Yes, sir.

5 Q. Did she say that?

6 A. No, sir.

7 Q. Did she say that she was playing with Play-Doh?

8 A. No, sir. And I have --

9 Q. Any other reason that would make you believe that
10 it was something other than -- I believe you testified to
11 ejaculate?

12 A. Yeah. No, she did not say anything. And I have
13 Play-Doh in my office too, for them to play with. So she
14 could have even said like -- you know, it was this.

15 Q. So you had -- you were meeting with her and Zoe
16 relayed these terms to you?

17 A. Yes.

18 Q. Correctly?

19 A. Yes.

20 Q. That you have firsthand knowledge of what Zoe
21 said?

22 A. Yes.

23 Q. And that made you so concerned about her knowledge
24 and where she got this from to make a DSS report?

25 A. Yes, sir.

1 Q. Did you have any ill will to the Arellano when you
2 did this?

3 A. No, sir. I didn't know them at all.

4 Q. Any prejudice?

5 A. No, sir.

6 Q. Just worrying about Zoe's safety?

7 A. Yes, sir.

8 Q. As you're required to do by law?

9 A. Yes, sir. And just me as a decent human being.

10 MR. CROSSLAND: Beg the Court's indulgence?

11 THE COURT: Yes.

12 BY MR. CROSSLAND:

13 Q. So once you make the DSS report to DSS, when
14 you're on the phone with them, how -- how does that process
15 go? Do they ask qualifying or clarifying questions?

16 A. In some cases, yeah.

17 Q. And once you make that report, it's turned over.
18 Do you have any other involvement in that?

19 A. Like I said earlier, they may call and tell me if
20 it was accepted, or they can accept for investigation, refer
21 to community-based services, or reject the report and say
22 that there is no basis for a DSS investigation. And I ask
23 for a return call, but like I said, I get about 60 percent of
24 the time, I have absolutely no say in whether it's
25 investigated or not. And I don't have any involvement in

1 their investigation.

2 Q. So when you're making the report, you're trying to
3 give them as much relevant information that you have as you
4 can?

5 A. Yes, sir.

6 Q. And again, you have no info on whether they accept
7 it, how they go about responding to it?

8 A. No, sir.

9 Q. Anything?

10 A. No, sir.

11 Q. Did you ever have any more interactions with
12 Arellano family after that?

13 A. No, sir.

14 Q. How about Student K's family?

15 A. No, sir.

16 MR. CROSSLAND: No further questions, your Honor.

17 THE COURT: Anything further for the witness?

18 MR. EDDY: Your Honor, I wish to question the
19 Ms. Prizer from the transcript of her deposition.

20 THE COURT: All right. I've already explained to the
21 jury what a deposition is. You may open the deposition.

22 MR. EDDY: Permission to approach, your Honor?

23 THE COURT: Sure.

24 RE-DIRECT EXAMINATION

25 BY MR. EDDY:

1 Q. Ms. Prizer, I just handed you what has been
2 labeled as Court's Exhibit 4. Is that your first name -- or
3 your name on the first page?

4 A. Yes, sir.

5 Q. Do you remember giving a deposition over Zoom
6 video chat?

7 A. Yes.

8 Q. Can you please turn to page 26?

9 A. I'm old. I might need my glasses, but I'll do my
10 best.

11 Q. Do you need to grab your glasses?

12 A. Sorry.

13 Q. Do you need to grab reading glasses?

14 A. I think I can see it.

15 Q. Okay.

16 A. I'll tell you if I can.

17 Q. Okay. So we're starting at line 2 with my
18 question. Question, "In determining the truthfulness of
19 either K or Zoe's statements, or both, do you think it
20 would've been useful to you to have spoken with the
21 eyewitness to this situation?"

22 MS. WHITE: Objection, your Honor.

23 THE COURT: Yes.

24 MS. WHITE: Outside the scope of cross.

25 THE COURT: You wish to be heard?

1 MR. EDDY: I'll withdraw the question.

2 THE COURT: All right. Any other questions?

3 MR. EDDY: None, your Honor.

4 THE COURT: You may step down. Thank you. You all
5 give me one minute.

6 MS. PRIZER: Am I supposed to leave these here?

7 THE COURT: Actually that --

8 MR. PRIZER: Okay.

9 THE COURT: Is there anything, ma'am, published from
10 that deposition? The one she has in her hand? Well, you can
11 give it back to him then.

12 MS. PRIZER: Do I -- what about the DSS report?

13 THE COURT: If it's got a sticker on it, it stays with
14 the court reporter.

15 MS. PRIZER: Yes, so (inaudible). Okay.

16 MR. EDDY: Yes, your Honor. Can we have a moment to
17 switch the translators?

18 THE COURT: Certainly. What is this on there?

19 (Jury exits room at 3:25 p.m.)

20 THE COURT: All right. In the brief time I've had to
21 look at this issue that we discussed, my law clerk has found
22 a code section 40-63-190 of South Carolina Code subsection
23 (6), is under the social workers statutes. And it does
24 provide, disclosure may be made of an order signed by a judge
25 of a court of competent jurisdiction. I was also looking as

1 quickly as I could, related to the Family Educational Rights
2 and Privacy Act, commonly known as FERPA, F-E-R-P-A. And
3 another federal statute, which is known by the acronym IDEA,
4 I-D-E-A. The FERPA regulation seems to state -- I can find
5 my place. All right. I don't want to scroll down too much.
6 I can't give you the exact cite, but it's subsection (9)(1)
7 -- (9)(i), excuse me. The disclosure is to comply with the
8 judicial order or lawfully issued subpoena. And there did
9 appear to be some notice provisions about that under
10 (9)(i)(i), states that there's a reasonable effort to notify
11 the parent of the eligible student or the eligible student of
12 the order or subpoena in advance so that the parent or
13 eligible student may seek a protective action unless the
14 disclosure is compliance -- in compliance with a federal
15 grand jury subpoena.

16 Any other subpoena, an ex parte order the Court
17 obtained by the United States Attorney General or designee
18 not lower, and the Assistant Attorney General concerning
19 investigations of prosecutions of an offense listed in
20 18 U.S.C. 2332b(g)(5) are an act of domestic or international
21 terrorism. All of these things seem to deal with educational
22 records. There's also exceptions that I read about
23 disclosure being permitted. If there -- if the student is an
24 alleged perpetrator of a crime of violence, or a non-forcible
25 sex offense, and the student has committed a violation of the

1 institution's rules and policies, the institution may not
2 disclose the name of the student without the prior consent of
3 the other student. And it says this -- this section only
4 applies the disciplinary proceedings in which the final
5 results were reached on or after October 7, 1998. All right.
6 We're going to be at ease for about 10 more minutes.

7 (Off the record at 3:33 p.m.)

8 (On the record at 3:47 p.m.)

9 THE COURT: Since the State statute provided a signed
10 order, I can't sign or another order authorized to testimony
11 (inaudible).

12 MR. EDDY: Thank you so much.

13 MS. WHITE: We're good, your Honor.

14 THE COURT: You all want to look at this? You all want
15 to see it?

16 MR. CROSSLAND: Nope. I'm good. Thank you.

17 THE COURT: Thank you. Who is going to be the next
18 witness?

19 MR. EDDY: Yes. She is...

20 THE COURT: You all are finished with the...

21 MS. WHITE: We're finished with -- with Ms. Prizer.

22 MR. CROSSLAND: Ms. Prizer is good.

23 MS. WHITE: Everything. Yeah.

24 THE COURT: Okay. I know what her name started with.
25 I couldn't make the rest of it. All right. Bring the jury

1 in.

2 (Jury enters room at 3:49 p.m.)

3 THE COURT: All right. Ladies and gentlemen, I told
4 you at the outset there's always hurry up and waiting cases.
5 We ran across an issue that was not anticipated and took us
6 about 25 minutes to get through it. So I appreciate you
7 waiting on us. We're going to continue now with the
8 Plaintiff's case. Call your next witness.

9 MR. EDDY: Thank you, your Honor. The Plaintiff calls
10 Mr. Joseph Snyder.

11 JOSEPH SNYDER,

12 being duly sworn, testified as follows:

13 THE CLERK: Please be seated. State your name,
14 spelling your last name for the record.

15 THE WITNESS: My name is Joseph Snyder, S-N-Y-D-E-R.

16 DIRECT EXAMINATION

17 BY MR. EDDY:

18 Q. Sorry, not Schneider?

19 A. No. Snyder.

20 Q. Snyder? It's okay.

21 A. It happens all the time.

22 Q. Believe it or not, Eddy gets mispronounced all the
23 time. What do you do for work, Mr. Snyder?

24 Q. I'm a school social worker with Lex 2.

25 A. Are you employed by the school district?

1 A. Yes.

2 Q. Okay. Out of ignorance, what is a social worker?

3 A. So that's a really big question. Because
4 depending on -- you know, where we -- where we are it could
5 look so different. Social work can be therapy -- you know,
6 we can be working under a license to do give one-on-one
7 therapy, group therapy, counseling. We can do things like
8 drug addiction. We work a lot with LRADAC, a lot with
9 alcoholism, resource management, homelessness -- as far as
10 what I'm doing right now resource management, homelessness.
11 We do things like Christmas assistance, Thanksgiving
12 assistance, making sure kids have all the resources like the
13 school -- school bags. Just making sure -- touching base
14 with the families, doing a lot of home visits, attendance,
15 truancy. It's a new -- a new kind of program. You know,
16 social workers are new in the schools, so we're building.

17 Q. Are you still at Cayce Elementary?

18 A. I am, yes.

19 Q. Okay. How long have you been working at Cayce
20 Elementary?

21 A. This will be my fourth year.

22 Q. What were you doing for work before Cayce?

23 A. I was before being a social worker, I was working
24 in the restaurant industry.

25 Q. Working anywhere good?

1 A. What's that?

2 Q. Did you work anywhere good?

3 A. If you think Bubba Gump Shrimp Company is good --
4 you know, before they shut the doors. I also worked at
5 Page's Okra Grill in Charleston, so that was a step up.

6 Q. What kind of education do you need to have to
7 become a social worker?

8 A. So you have to have a master's degree. And then
9 once you do that, you have to study and take a test to
10 qualify to get your license.

11 Q. Okay. And what did you study?

12 A. I studied at USC, social work, master's program.

13 Q. Okay. So you got your master's at USC and your
14 undergrad there too?

15 A. USC Aiken in sociology.

16 Q. Is that kind of a typical course you go from
17 sociology to social work master's degree?

18 A. It doesn't really have a -- a -- a line, per se.
19 My intern right now is a political science major from
20 undergrad going into social work. So it really just depends
21 on like where your heart is after your -- your undergrad.

22 Q. How many -- I'm sorry. Are there other social
23 workers at Cayce Elementary?

24 A. There -- we have two at Cayce. Yes.

25 Q. Like the counselors, do you guys split grade

1 levels or is it just whoever needs help?

2 A. Normally we split the grade levels. I normally
3 work with older kids three through five, but again, it was
4 the first year that we were kind of there, so we were just
5 kind of jumping in where we could, making sure that we were,
6 like, where we needed to be, making sure our presence was
7 known, making sure that everyone knew that we were there for
8 support and to get our -- you know, our job qualifications
9 out there.

10 Q. When you say kids three through five, we mean
11 grades three through five?

12 A. Grades three through five. I'm sorry. Yes, sir.

13 Q. How young -- what's the -- the -- the lowest grade
14 at Cayce Elementary?

15 A. Technically three. Three-year-old. So we have a
16 3K program.

17 Q. And is there some overlap between the social work
18 position and the -- the counselor position?

19 A. Always, yes.

20 Q. Do you generally work in hand with them on some of
21 your cases?

22 A. Yes -- yes.

23 Q. Do you have offices adjacent to the counselors or
24 is it different part of the school?

25 A. It's not adjacent. It's in a different part of

1 the school. I wouldn't say it's too far, though. Because we
2 have -- you know, centralized offices, social workers are in
3 the centralized offices basically on top of each other. You
4 just got to walk up the stairs. And then the school
5 counselors are -- you know, pretty -- pretty close to -- to
6 our offices. Walkable distance.

7 Q. As part of your job as a social worker, do you
8 meet one-on-one individually with students?

9 A. Not as much as the school counselors do, but we
10 do. Yes.

11 Q. When you meet with them, do you have a typical
12 location? Like, do you have a spot in your office or a
13 conference room?

14 A. I normally will go -- take them to my office --
15 you know, depending on the student. Sometimes we'll go walk
16 around the -- walk around the school. Sometimes we'll go to
17 the playground. Just depending on, like -- you know, that
18 student has their activity levels, things like that, where
19 they're most comfortable.

20 Q. Do you remember back to the end of the school year
21 the 2021/2022 school year, when the events that we're
22 discussing here for this lawsuit occurred?

23 A. Very -- very vaguely.

24 Q. Do you remember how you became aware of the
25 subject incident?

1 A. Uh-huh. Ms. Ariaail was the one who made me aware
2 of it.

3 Q. Was that by call, email, text message?

4 A. I can't recall. They all -- we all have each
5 other's cell phone numbers, so -- I have an idea in my mind,
6 I don't want to say it for sure though.

7 Q. Only to the best of your recollection.

8 A. I don't know. But like I said, we have each
9 other's contact information so that way if anything happens,
10 we are -- we can immediately get in touch with each other.

11 Q. And what was your understanding of why Ms. Ariaail
12 -- Principal Ariaail was contacting?

13 A. There was -- so initially it was, "Hey, there's a
14 situation, can you come" -- "can you" -- "can you meet me?"
15 I believe it was in her office. And then that's kind of
16 where -- you know, there's a situation. "Okay. I'll meet
17 you there. Be there in a second."

18 Q. Was there anyone else in her office when you got
19 there?

20 A. Not when I got there, no.

21 Q. What happened after that?

22 A. Well, the student was -- K was there.

23 Q. Okay.

24 A. So yeah. Yes.

25 Q. So we've got assistant principal Ariaail, K, anyone

1 else in the room when you got there?

2 A. No, sir.

3 Q. And was it your understanding that they were
4 waiting for you to arrive or that there had already been some
5 conversations on going?

6 A. No, we were -- they were waiting for me to get
7 there. The way we had decided to do it was kind of, because
8 we were -- I was still new. K being a male, kind of wanted a
9 male presence there to maybe see if he'd be -- make him a
10 little more comfortable with -- you know, discussing what
11 happened.

12 Q. Did you then proceed to -- to discuss with K about
13 what happened?

14 A. Yes. Yeah, we -- uh-huh.

15 Q. Was that in Ms. Ariail's office?

16 A. Yes.

17 Q. Did Ms. Ariail leave or was she still present?

18 A. She was still present.

19 Q. Okay. Work me on the layout here. Is there like
20 a conference table off to the side or were you all just
21 sitting in front of her desk?

22 A. For the jury, if you walk into her office to the
23 corner was her desk. Kind of right as you walk in -- you
24 know, if this is the door, there was a -- a round table with
25 some chairs around it. Ms. Ariail was at her desk and K was

1 sitting at the round table, and I sat in the chair kind of
2 next to K at the round table.

3 Q. When you got there, did Ms. Ariail give you any
4 information or overview as to what was alleged to have
5 happened?

6 A. We just kind of -- you know, started talking about
7 what happened and trying to figure out from K's perspective
8 what happened. Like -- you know, we're here so what
9 happened.

10 Q. And what did K tell you about what happened?

11 A. This is where it gets -- you know, tricky. Again,
12 I talk to a lot of kids about things. To the best of my
13 ability, I will say -- you know, the story never changed as
14 far as, "She told me to do it." He was crying a lot. I do
15 remember that. Let me -- he was visibly upset. I don't want
16 to say he was crying because I can't prove that or not. He
17 was visibly upset with what happened. So that's what we're
18 trying to figure out -- you know, "Why are you so upset?
19 What happened? Can you just explain to us" -- you know,
20 there were no leading questions more open-ended.

21 Q. All right. So his story didn't vary on that one
22 issue. Please tell us what else he said.

23 A. To -- to my recollection, the story was the same.
24 You know, "She told me to do it, I stopped, and that was
25 basically it."

1 Q. Were you taking notes during this?

2 A. I was not taking notes, no. I will say I did not
3 come necessarily prepared to take notes or whatnot. However
4 Ms. Ariail was taking notes of what was going on. We always
5 make sure that we -- if I'm not someone else is. There's
6 always a recorder in the room. We never want to -- this is a
7 -- a kind of a big deal. So as far as what we were doing, we
8 wanted to make sure that there was two people in the room, a
9 male and a female.

10 Q. After you got the conversation with K, did you
11 later reduce any of this conversation to writing, or notes,
12 or anything like that?

13 A. No, sir.

14 Q. After this interview with K, did you interview him
15 another time or was this the end?

16 A. This was the end.

17 Q. Did you ever discuss the incident with Zoe?

18 A. No, I've never had any contact with Zoe.

19 Q. Did you ever discuss this incident with the
20 classroom teacher?

21 A. No.

22 Q. Did you ever discuss this incident with the
23 guidance counselor, Ms. Prizer. Counselor -- not guidance
24 counselor?

25 A. School counselor.

1 Q. School counselor. Thank you.

2 A. No worries. I can't tell you "Yes," or "No"
3 exactly. I will say in a normal situation, kind of how we
4 normally do things, we -- at the very end of everything, we
5 may debrief on -- on a bigger case. So it's a possibility
6 that we -- we debriefed at the very end of everything, but
7 that would not have been until we kind of laid it -- the
8 school laid it to rest. As far as at all the moving parts
9 were -- were done.

10 Q. What did K tell you happened in the classroom?

11 A. The only thing we could really get out of him is
12 that "She told me to touch her. I did it. I stopped." Over
13 -- like that was over and over again.

14 Q. So he admitted the contact, admitted to touching
15 her, but nothing else? And his story never changed?

16 A. Never changed. Not once.

17 Q. And that's one of the things that lends
18 credibility? His story didn't change.

19 A. One of the -- it's where it starts. Yes.

20 Q. If his story had changed, then that would raise
21 issues?

22 A. It would raise concern. Yeah. He's telling us a
23 little different story now. Okay. So what -- what -- what
24 actually is going on? Okay. Now you're telling me a
25 different story. Let's see if we can figure out a little bit

1 more. Of course. Again, we're not investigators. I'm not
2 sitting here saying "I'm not going into your house. I'm not"
3 -- "why are you talking like this? Who's teaching you? Hey
4 buddy, can you tell me a little bit more about that? Where'd
5 you hear that from? Did you see that on TV? You didn't?
6 Okay. Where'd you hear that from? You" -- "you don't want
7 to tell me? Okay. Then we'll go forward with something
8 else." But if the story stays the same, and I don't -- I'm
9 not worried about it as -- as far as moving forward to
10 something larger than I would've just -- you know, let it go.
11 Does that make sense?

12 Q. It does.

13 A. Okay.

14 Q. Your conversations with K wherein he admitted to
15 touching Zoe, did you ever discuss that with any of the other
16 teachers or administration outside of that room with
17 Ms. Ariail?

18 A. No. That would not have been something that I
19 would tell.

20 Q. Were you ever aware of an intent to file a DSS
21 report?

22 A. On whom?

23 Q. Zoe.

24 A. I believe, yes. I had the -- the DSS report came
25 through to me so I knew that it was made.

1 Q. That was after the fact?

2 A. Well, yes.

3 Q. Did it -- in between you meeting with K where he
4 admitted to the contact with Zoe, did you have any
5 conversations with anyone outside of that room before you
6 became aware of the DSS report?

7 A. Any contact that I talked about. Anyone...

8 Q. That was a junky question. I can try.

9 A. Can you rephrase that?

10 Q. Yes. All right. So you're sitting in the room
11 with assistant principal Ariail.

12 A. Yep.

13 Q. And you've got K there with you. You're
14 discussing all these issues with K. You're getting some
15 information. Assistant principal Ariail is taking notes. As
16 part of this conversation he does admit to the contact with
17 Zoe --

18 A. Uh-huh.

19 Q. -- then you leave that room.

20 A. Uh-huh.

21 Q. All right. In between leaving assistant principal
22 Ariail's office and learning of the DSS report, as it came
23 across your desk, did you have any conversations with anyone
24 else, any other staff, administrators or teachers about the
25 contents of that conversation?

1 A. At some point, we discussed with Officer Burrows
2 who was our SRO at the time. The law states that if it is
3 some kind of child on child act, we get law enforcement
4 involved. And a law a -- a police report would be written up
5 on that. So as far as it goes, when we -- when we found out
6 that -- you know, he admitted, yes I did. Okay. This is now
7 a child on child act. So it goes to law enforcement. Law
8 enforcement gets involved. I'm sorry to say, I have nothing
9 else to do with it if the cops are involved. Right. So we
10 made that -- I can't exactly pinpoint when, I know that it
11 would've been as soon as we found out.

12 Q. The process of involving law enforcement starts by
13 contacting the SRO?

14 A. Yes, sir.

15 Q. Or at least in this situation?

16 A. In this situation, it would be yes.

17 Q. (Inaudible). Buildings on fire, you're not going
18 to go down and talk to him?

19 A. No. We're going to probably pull the -- pull the
20 fire alarms.

21 Q. So where's the SRO located?

22 A. Right as you -- well, we have two. Cayce is a big
23 school, so right as you walk into the door one of our SROs
24 are there. And then as soon as you walk up the stairs, which
25 are directly in the middle of the school another one of our

1 SROs are there. At the time, we only had one SRO walk right
2 into the building and their offices on the left.

3 Q. What did you say this individual's name was?

4 A. Ms. Burrows.

5 Q. Do you know who notified Ms. Burrows?

6 A. It would've been me or Ms. Ariail. I believe it
7 was us together.

8 Q. So your best recollection is that you both went
9 down to...?

10 A. We would've called the officer into the -- into
11 Ariail's office.

12 Q. I assume K was no longer in the office.

13 A. The SRO was in the office at some point with K.
14 Yes. Was not questioned or anything while I was in there.

15 Q. Do you have any idea what Officer Burrows did
16 after you spoke with her in -- in assistant principal
17 Ariail's office?

18 A. To the best of my knowledge, there was a police
19 report filed, but other than that -- again, once law
20 enforcement is involved, I take a backseat.

21 Q. Do you know if any outside police officers came to
22 the school?

23 A. For this instance? No, sir.

24 Q. Were you ever interviewed...

25 A. I wasn't aware. I'm sorry.

1 Q. You were never interviewed or contacted by any
2 outside police officers?

3 A. No, sir.

4 Q. Are you aware of the conclusion of any of the
5 police investigations into this incident?

6 A. I do not work for law enforcement, so I would not
7 be aware of any of that.

8 Q. When you got the DSS report, or you said it came
9 across your desk, is that like literally someone puts a copy
10 of it on your desk, or you get an email, or something?

11 A. Depending on how they like to do things. Either
12 way is appropriate.

13 Q. Did you review the DSS report in this case?

14 A. I -- I -- I'd review all of our DSS reports, yes.
15 If I don't make them with the teachers.

16 MR. EDDY: Permission to approach, your Honor?

17 THE COURT: Yes, sir.

18 BY MR. EDDY:

19 Q. I've just presented you with -- I believe, what's
20 labeled Plaintiff's Exhibit 3.

21 A. Uh-huh.

22 Q. Have you seen this document before?

23 A. I have.

24 Q. Is this the DSS report that you saw come across
25 your desk?

1 A. It is, yes.

2 Q. So if this incident happened on the 25th, and you
3 interview K on the 25th, about when would this have come
4 across your desk?

5 A. We're seeing that it says the 26th. It would've
6 been the next day. This, however, is only for internal
7 documentation. This has nothing to do with an actual report
8 being made. I could take -- this is just, again, for us to
9 document that this happened. This doesn't necessarily mean
10 if I don't get this, that doesn't mean it wasn't made.

11 Q. Sure. And the summary at the bottom, what is the
12 point of -- of that summary at the bottom?

13 A. "Nature and description of incident or injury
14 could (please tell why you have reasonable cause to believe
15 that a child is being abused or neglected.) Any evidence or
16 information received and history of which you are aware,
17 including persons believed responsible."

18 Q. Is there any information in that summary below
19 that title area that you believe to be inaccurate?

20 A. I trust my professionals. Whatever is written
21 here is what we wrote -- is what was accurate at the time.

22 Q. Show you another document.

23 A. Please.

24 MR. EDDY: Permission to approach?

25 THE COURT: Yes, sir.

1 BY MR. EDDY:

2 Q. Have you ever seen this document before?

3 A. Yes. This is Ms. Ariail's.

4 Q. Did you assist in the preparation of this
5 document?

6 A. I was in the room while she was writing the notes.

7 Q. Have you reviewed this document before today?

8 A. When I've received it in the court summons. Yes.

9 Q. Before this lawsuit, have you ever seen this
10 document?

11 A. I don't review my assistant principal's work so,
12 no. Before this, this was her -- her writing, this is her
13 work.

14 Q. To yourself, without reading it out loud, do you
15 mind just going over the document real quick?

16 A. I'll do it again. Done it plenty of times.

17 Q. Earlier you testified that K's story didn't
18 change.

19 A. Uh-huh.

20 Q. Does reading over Assistant Principal Ariail's
21 notes, refresh your recollection as to whether any aspect of
22 K's story changed?

23 A. Additions and changing aren't the same thing.
24 When this -- this I -- I -- I see where we're going here,
25 right? Didn't tell us this the first time. That's what

1 you're getting at, right? That was the addition.

2 Q. What did he add to his story?

3 A. That he tapped -- that she tapped the bottom.

4 Q. Did he tell you that initially as part of his
5 story?

6 A. Again, I'm not entirely sure why this is relevant.
7 This is on K and not on Zoe, but however, I can't speak
8 "Yes," or "No" to that.

9 Q. Well, if it's in addition, was it part of his
10 first version of events?

11 A. I don't recall.

12 Q. At some point, after giving you his description of
13 the events, did he add additional details?

14 A. I would assume.

15 Q. You don't remember?

16 A. However, the story that he gave us of "she told me
17 to, and I stopped," the addition was he tapped his -- she
18 tapped the bottom. It had nothing to do with the actual act,
19 which again, would not make me question anything, right? As
20 you're talking, things do come up. Again, I'm -- I'm
21 probably going to remember something here, right? That I
22 didn't remember. I've -- I've studied these documents. I --
23 I do not want to lose my license, right? So I've studied
24 these documents.

25 Q. So he added to his story over time?

1 A. Very small. Tapped his bottom, was the only thing
2 that was added.

3 Q. Is there anything else that you're not remembering
4 that he added?

5 A. This happened almost three years ago, sir. There
6 was nothing in this testimony to give me any cause or reason
7 to believe that I needed to do something further. Everything
8 that happened with K in the room with Ms. Ariail, the
9 testimony that I was given, nothing gave me reason to believe
10 or a cause to believe to make a good faith report to DSS, but
11 I did follow the law. We did follow the law, and we got the
12 law enforcement involved, and from there they took over. Now
13 we can talk about how much story changed, everything like
14 that. But what is the outcome here? Right? Tapped his
15 bottom. That doesn't change the story. That just adds in
16 what he -- another aspect of this.

17 MR. EDDY: We have no more questions for this witness.

18 THE COURT: Do you wish to question the witness at this
19 point?

20 MR. CROSSLAND: Yes, your Honor. May it please the
21 Court?

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. CROSSLAND:

25 Q. Good afternoon, Mr. Snyder. How are you?

1 A. I'm well. How are you, sir?

2 Q. Doing all right. Hey, I want to go back to just
3 touch on real briefly your background information and your
4 training. You said that you went to school at USC Aiken?

5 A. Undergrad.

6 Q. Undergrad. And what was your degree there?

7 A. Sociology.

8 Q. Did you always wanted to work with children?

9 A. Always. I did think I was going to be a school
10 counselor for the longest -- high school school counselor,
11 but didn't go that route.

12 Q. Similar to --

13 A. Similar.

14 Q. -- what you do now?

15 A. Yeah.

16 Q. And then after you got your undergraduate degree,
17 you went -- you got your master's?

18 A. I took a -- a sabbatical for about five, six
19 years. Went and moved to Charleston, then got fed up with
20 Charleston and decided I had to do something more with my
21 life. Food and bev was not it.

22 Q. Wanted to get back working with kids?

23 A. With kids. Yeah. Well, like giving balloons at
24 Bubba Gump's was not -- it was not it.

25 Q. So you went back and what -- what master's degree

1 did you get?

2 A. Master's in social work.

3 Q. Yeah. Wanted to deal with kids be a social
4 worker.

5 A. Uh-huh.

6 Q. As a part of that training, do you interact with
7 kids during that?

8 A. Yes.

9 Q. Did you have internships or hours requirements?

10 A. Both. We had to have two internships. And for --
11 for me specifically, so you got to kind of choose what you
12 wanted to do, and both times I had to, like, I didn't have
13 to, but I wanted to choose something working with children.
14 So I did.

15 Q. So a part of that you're interacting with kids,
16 would you -- on a moving back to your first job as a social
17 worker, was that at Cayce Elementary?

18 A. Yes, it was. Yep.

19 Q. And as your job responsibility, as a -- as a
20 social worker at Cayce, did you interview and meet the kids
21 on a daily basis?

22 A. I won't say "daily basis," but frequently. Very
23 frequently, yes.

24 Q. So it was one of your job responsibilities?

25 A. It -- it is, yes.

1 Q. And you received training from the district in
2 three year -- years of school to be able to meet and properly
3 -- you know, interact with these kids?

4 A. And we have to constantly do continuing education
5 over, at -- like, every year we have to reapply for our
6 license. We have to have at least 40 hours of continuing
7 education credits. Yes.

8 Q. So did you have any concerns or -- that you
9 weren't qualified to interact with the students?

10 A. No.

11 Q. Do you -- you said previously you testified that
12 you worked closely with Ms. Prizer and the school counselors?

13 A. Uh-huh.

14 Q. Did you have any concerns about her
15 qualifications?

16 A. Absolutely not.

17 Q. Handling situations with students?

18 A. No.

19 Q. What about -- did you work with administration as
20 well?

21 A. Heavily, very heavily.

22 Q. Specifically Ms. Annette Ariail?

23 A. Yes. Because I believe at the time she was over
24 the high -- the -- the upper grades, which was what I was
25 working with.

1 Q. Okay. Did you have any concerns about her
2 handling them in any situations with students?

3 A. No. I learned a lot from her that first year.

4 Q. Any concerns with her questioning the students?

5 A. None. Sorry, none.

6 Q. When you were made of aware of this incident,
7 that's the basis of this lawsuit, you and Ms. Ariaail met with
8 Student K?

9 A. Uh-huh.

10 Q. Is it your understanding the physical touch
11 happened?

12 A. Uh-huh.

13 Q. Was that over her underpants or below her
14 underpants?

15 A. To my understanding, it happened over the
16 underpants in between the pants and the underwear.

17 Q. So...

18 A. So, yeah, over the underwear.

19 Q. Did -- did Student K's story ever change? Did he
20 ever --

21 A. No.

22 Q. -- say anything about French kissing?

23 A. No.

24 Q. Did he ever say anything about oral sex?

25 A. Nothing like that.

1 Q. Did he ever say anything about white sticky stuff?

2 A. Nothing.

3 Q. Did he say anything about holding her down?

4 A. No.

5 Q. Were you worried that -- that -- that he was lying
6 to you?

7 A. Not at all.

8 Q. Had you had any previous interactions with Karter?

9 A. Not with K, no.

10 Q. Student K. Sorry. Have you had any interactions
11 with Zoe before?

12 A. No.

13 Q. And then what about Student S?

14 A. No. I couldn't pick K or S out in a room of
15 people.

16 Q. So no interactions with the Arellano family?

17 A. No, sir.

18 Q. I believe you testified on mandated reporting as
19 well. Can you explain to the jury what that is?

20 A. So mandated reporting -- everyone in the school
21 building is a mandated reporter by -- by state law.
22 Basically in a nutshell, if we have a reason to believe that
23 there is a student being harmed physically, emotionally,
24 mentally, or if they're being neglected medically,
25 educationally -- there's one more I can't think of it off the

1 top of my head. Then that's when we will -- we would move
2 into a -- a report.

3 Q. You make that report to?

4 A. DSS.

5 Q. And when you make that report, does the district
6 have any other involvement in that report?

7 A. Once that report is made over the hotline to the
8 intake workers, the only thing that we would have after that
9 is the phone call to say if they did or did not accept the
10 case. And again, kind of like Ms. Prizer testified to that's
11 -- if we're lucky enough to get that call back.

12 Q. Did you get a call on this particular DSS report?

13 A. I did not.

14 Q. Are there penalties for a mandated reporter that
15 doesn't make it a report when they have a -- a good faith
16 reason to?

17 A. \$500, up to six months in jail, or both.

18 Q. Does the district give ongoing training about
19 mandated reporting?

20 A. I'm actually the one who does that for Cayce.
21 Yes. The mandated reporting training.

22 Q. Is that every year?

23 A. Every year as well as the vector trainings that
24 every -- every individual in the school has to go through as
25 well. There's two different -- and that's -- we take it

1 seriously, right? So we have a video to where we just sit in
2 front of it and, like -- you know, take our notes, whatever.
3 And then we have the person in front of you giving you
4 examples, going -- walking through at how to do a DSS report
5 -- you know, letting you know we are here for support. So
6 yes, sir.

7 Q. And throughout your career, can you give us
8 approximation of how many DSS reports you've made personally,
9 or been involved with?

10 A. Not accurate -- not 100 percent, but I would say
11 anywhere between, at this point, 50 and 100 DSS reports.

12 Q. And you testified earlier that you received the
13 DSS report that was made in this case?

14 A. Yes.

15 Q. Did you have any concerns with it being made?

16 A. With it being made? No.

17 Q. And you said that far as Student K law enforcement
18 was contacted.

19 A. Uh-huh.

20 Q. Any concerns with that?

21 A. No.

22 Q. You were obligated?

23 A. Right. That was -- it -- it was -- it's state law
24 that child on child -- you know -- I mean, this was kind of
25 an act of -- you know, something a little bit more. Even --

1 even if we wouldn't have believed that there was more to it
2 -- we -- we more than likely would've still gotten law
3 enforcement involved to see, we just -- we just want your
4 eyes on this. What is -- what is your viewpoint, right? We
5 take confidentiality seriously. There are certain people as
6 the -- at the SRO that I would give some details too, to let
7 them know like, "Hey, what do you think is going on here? Is
8 this something that you need to get involved with? And if
9 so, you go ahead and do that."

10 Q. Going back to the DSS report that was made, do you
11 have any concerns about that it was made in bad faith?

12 A. I don't.

13 Q. That there was any prejudice against the
14 Arellanos?

15 A. I don't.

16 Q. That there was malice towards the Arellanos?

17 A. No, sir.

18 MR. CROSSLAND: No further questions, your Honor.

19 THE COURT: Anything else of the witness?

20 MR. EDDY: No re-direct, your Honor.

21 THE COURT: Thank you, sir. You may step back.

22 MR. SNYDER: Thank you.

23 THE COURT: Do you have further witnesses?

24 MR. EDDY: Yes, your Honor. The Plaintiff calls
25 Ms. Annette Ariail.

1 THE COURT: All right. Where is she? Come around,
2 please.

3 ANNETTE ARIAIL,

4 being duly sworn, testified as follows:

5 THE CLERK: You may be seated. If you please state
6 your name, spelling your last for the record.

7 THE WITNESS: Annette Ariail, A-R-I-A-I-L.

8 DIRECT EXAMINATION

9 BY MR. EDDY:

10 Q. Good afternoon, Ms. Ariail.

11 A. Hi.

12 Q. Do you still work for Cayce Elementary?

13 A. I do not.

14 Q. Okay. What's your position now?

15 A. I'm a principal at Springdale Elementary.

16 Q. Springdale Elementary?

17 A. Uh-huh.

18 Q. Where is that?

19 A. It's in Lexington Two. It's off Watling Road,
20 near the airport.

21 Q. Okay. Same school district?

22 A. Yes.

23 Q. Congratulations on promotion.

24 A. Thank you.

25 Q. What did you take that position?

1 A. This is my third year there.

2 Q. What were you doing before working as a principal
3 there?

4 A. I was the assistant principal at Cayce Elementary.

5 Q. How long did you have that position?

6 A. Four years.

7 Q. What were you doing for work before then?

8 A. I was a fifth-grade teacher at Pine View
9 Elementary.

10 Q. You miss teaching kids directly?

11 A. I still teach the kids directly.

12 Q. Okay. So you teach some classes as the assistant
13 principal and principal?

14 A. I do.

15 Q. Okay.

16 A. I go into classes and pull small groups and work
17 with students. I teach lessons and mirror different
18 strategies for the teachers to use. When I was at Cayce one
19 year, we didn't have a fourth-grade teacher, and I taught
20 fourth grade for three months while I was an assistant
21 principal.

22 Q. Before working as a fifth-grade teacher -- where'd
23 you say you were working then?

24 A. Pine View for nine years.

25 Q. Pine View. What were you doing for work before

1 that?

2 A. I was in school and a substitute teacher in
3 Lexington Two mostly at the alternative high school.

4 Q. What's an alternative high school?

5 A. It is for students that have gotten in some sort
6 of trouble and are not in the regular classroom setting. So
7 they go to a different location, if found to have broken some
8 sort of policy with the district.

9 Q. What's your education history?

10 A. I -- how far back am I going? I went to
11 elementary...

12 Q. Do you have a master's or professional degree?

13 A. I do have a master's degree.

14 Q. Okay. And that's in?

15 A. In administration. So I got my undergrad at the
16 University of South Carolina in elementary education. I did
17 a mid-level math add-on certification. And then I have a
18 master's in administration.

19 Q. All from USC?

20 A. Yes. I believe one of the mid-level math courses
21 was an online course. So that wouldn't have been through
22 USC, but everything else? Yes.

23 Q. Do you recall the day of the incident that forms
24 the basis for this lawsuit?

25 A. Yes.

1 Q. When did you first become aware of the incident?

2 A. When Ms. Ray stopped me in the hallway to tell me.

3 Q. What were you doing at the time?

4 A. She said I was with other students, that's very
5 normal. I have a lot of responsibilities as an assistant
6 principal, and if students -- if there's other behavior
7 concerns or things happening, I would have students with me
8 if I was investigating something else.

9 Q. So you had a group of students with you?

10 A. That's what she says. I don't recall, but that's
11 very normal.

12 Q. Okay. But you don't remember specifically?

13 A. No.

14 Q. Okay. Do you remember specifically the
15 conversation you had with her at the time of the incident --
16 the time of stopping you in the hallway?

17 A. Yeah. I could not tell you verbatim the
18 conversation, obviously three years ago, but enough that I
19 knew I needed to get to the room because something had
20 happened with a student in the classroom that I needed to
21 look into.

22 Q. And what did you do after that?

23 A. I went to get the student from the classroom.

24 Q. So you go into the classroom?

25 A. Uh-huh.

1 Q. And which student did you get?

2 A. Zoe.

3 Q. What did you do with Zoe after that?

4 A. We stepped out into the hallway to talk. When
5 students are upset and they're getting questioned by an
6 assistant principal, if I take them to my office, that often
7 causes them to shut down and get more upset. So if I can
8 keep the location central, I do. When she got upset in the
9 hallway, I felt like we needed to move into another location
10 as well as based on what she's telling me, that's not a
11 public conversation. So that was when we went to
12 Ms. Prizer's office.

13 Q. So you talked with her for some amount of time in
14 the hallway, is that right?

15 A. A very short period of time.

16 Q. Okay. Can you tell the jury what happened in that
17 conversation?

18 A. The gist is that she explained that she was
19 touched in between her legs.

20 Q. Did she say by whom?

21 A. I'm sure she did, or the teacher did. Someone had
22 told me.

23 Q. But you don't remember?

24 A. I do not remember.

25 Q. So you took her to where?

1 A. Ms. Prizer's office.

2 Q. And what happened there?

3 A. Ms. Prizer started asking her questions about the
4 situation, what had happened, why she was so upset. We kept
5 communicating to her that she was not in any trouble because
6 she was crying. As she started talking to Ms. Prizer, I
7 realized that pieces of what she was now saying were much
8 more intense than what she had told me originally. So I
9 suggested that we start writing down what she was saying as
10 we're asking these clarifying questions just to be able to
11 keep up with what was being said.

12 Q. Right. Ms. Prizer testified that they were two
13 interviews that she conducted with Zoe. Was it the first one
14 or the second one where there was additional details of what
15 happened?

16 A. I was only in there for the first one, the initial
17 situation because once I'm -- once I get their side of the
18 story and I understand their piece, then it's my job to go
19 get the other student and question them as well.

20 Q. So what did you do after that first interview with
21 Zoe? Were you -- were you -- sorry, let me rephrase. Were
22 you present in the room for that whole first interview with
23 Zoe?

24 A. I don't know how long you were counting as an
25 interview. It was an ongoing conversation. Like, Ms. Prizer

1 says she has a rug and toys and things, and so it was not
2 like -- it was not like this as an interview. It was like a
3 question and then give her an opportunity to calm down some
4 or play with toys and begin to feel more comfortable in the
5 situation. So it's not like a drill -- drill -- drill --
6 drill -- drill. Then we're going to stop, and then we're
7 going to go again. So I was in the room for part of the time
8 that she questioned her, but I couldn't say interview one or
9 two. That's not how that happens.

10 Q. When you left Ms. Prizer's office, did you leave
11 with Zoe or on your own?

12 A. I went on my own to get Student K.

13 Q. What did you do with Student K after that?

14 A. I took Student K to my office.

15 Q. And did you discuss the situation with Student K?

16 A. Once Mr. Snyder was there.

17 Q. Okay. So you waited until Mr. Snyder got there?

18 A. Normally -- and again, three years ago, but I
19 handle all these situations the same. I would be texting him
20 or calling for him on the walkie or somehow getting in touch
21 with him to have him there. So the student and I are not in
22 my office alone and not in my office just awkwardly staring
23 at each other. So it would've been pretty simultaneously
24 that we all got to the same place.

25 Q. So you take Zoe to Ms. Prizer's office --

1 Ms. Prizer's office, and then you go pick up K, take him to
2 your office and ask Mr. Snyder to come to your office?

3 A. Yes.

4 Q. I have that about right?

5 A. Uh-huh.

6 Q. Okay. So what happened once Mr. Snyder got to
7 your office?

8 A. He began asking him what had happened.

9 Q. And what is your understanding of what happened?

10 A. That again, like Mr. Snyder said, the student was
11 adamant that Zoe had told him to. He just kept saying, "But
12 she told me to" -- "but she told me to." We went through
13 similar things of, "Even if someone tells you to, we don't
14 touch in private areas, that's not what we do." I mean, he
15 admitted to touching her in between her legs. So as far as
16 I'm concerned whether she told him to or didn't tell him to,
17 that's irrelevant. He's done it. And then I followed our
18 discipline policy from there.

19 Q. Do you have any documents in front of you?

20 A. I do not. If you're looking for his, it's up here
21 on her table.

22 Q. That's what I was looking for. Thank you.

23 A. Absolutely.

24 MR. EDDY: Permission to approach, your Honor?

25 THE COURT: Yes, sir.

1 BY MR. EDDY:

2 Q. Have you seen this document before, Ms. Prizer?

3 A. I'm Ms. Ariail, but yes, I wrote it.

4 Q. I'm sorry.

5 A. It's okay.

6 Q. It's a long day. Assistant Principal Ariail, have
7 you seen this document before?

8 A. Yes.

9 Q. Did you assist in the preparation of this
10 document?

11 A. I wrote it.

12 Q. When did you write this document?

13 A. As K was talking.

14 Q. So this was kind of contemporaneous notes?

15 A. Yes. That's why they're so sloppy.

16 Q. Okay. Did you write any other more formal report
17 or anything after the interview?

18 A. Yes. After the interview, I typed up kind of a
19 synopsis of the day.

20 Q. Okay. Can you please do me the favor of reading
21 the first paragraph to the jury?

22 A. "When we were in the classroom, student tapped me
23 and then did this" -- demonstrated tapping private area.

24 "Then I was looking at TV and she tapped me again and did
25 this" -- tapped his bottom. "Student told me to look in her

1 pants. And so I did because she told me to. Then witness
2 told on me."

3 Q. So K didn't say witness told on Zoe. He
4 specifically said, "Told on me?"

5 A. Correct.

6 Q. What's the next paragraph?

7 A. "Didn't tell us this first time, he said because
8 he forgot. And that was the tapping of his bottom."

9 Q. So he did make additions. His story over time?

10 A. Very common for students to do. As did Zoe when
11 she testified and you continued to ask her questions.

12 Q. There's also another dash and a note further down.
13 Can you please read that?

14 A. Yes. "He also said he touched her under her pants
15 because she told him to."

16 Q. Now when you're saying "he also said," is this
17 another addition to his story?

18 A. It's just me chicken scratching as we go through a
19 conversation.

20 Q. Was that part of his initial version to you and
21 Mr. Snyder?

22 A. When I'm taking notes during investigations, I'm
23 assuming that they will be used for something later. So
24 anytime there are additions or changes, I note them like I
25 did with the "didn't tell me this the first time." So

1 because that doesn't have anything, then I would say no. It
2 was part of the original conversation.

3 MR. EDDY: Plaintiff moves to have this document
4 admitted into evidence. Plaintiff's Exhibit 4.

5 MS. WHITE: No objection.

6 THE COURT: Plaintiff's 4. Is it 4, Madam Court
7 Reporter?

8 THE REPORTER: It is, yes.

9 THE COURT: Plaintiff's 4 into evidence.

10 (Plaintiff's Exhibit Number 4 admitted into evidence.)

11 BY MR. EDDY:

12 Q. So after K's statement -- while consent and
13 invitation are up for debate, we can all agree that Zoe was
14 touched between her legs in that classroom?

15 A. Yes.

16 Q. Is it fair for the parents of your students to
17 trust that their children will not be touched in a sexual
18 manner by other students at your school?

19 A. That's absolutely everyone's goal and expectation.

20 Q. And it's reasonable for them to expect that?

21 A. Yes. Or for there to be consequences if someone
22 breaks that rule.

23 Q. If the school -- sorry, let me rephrase that. As
24 the assistant principal for your school, do you feel a duty
25 to your students to ensure their safety?

1 A. Yes.

2 Q. Do you feel a duty to your students to see if they
3 are protected while they're at school?

4 A. Yes.

5 Q. Does that include protection from unwanted sexual
6 conduct?

7 A. Yes.

8 Q. If a student is allowed to be contacted without
9 their consent in a sexual manner, would you agree you've
10 breached that duty?

11 MR. CROSSLAND: Objection, your Honor.

12 THE COURT: What?

13 MR. CROSSLAND: He's asking a legal question. Asking
14 her she doesn't have -- she's not a legal expert. She can't
15 give her opinion on that.

16 THE COURT: You want to be heard?

17 MR. EDDY: I'm asking for her belief. She's already
18 established that she believes she owes a duty as
19 administrator for this school to protect the children. And
20 if she feels that she owes a duty, then there has to be
21 consequences for that breach of that duty.

22 THE COURT: What do you say?

23 MR. CROSSLAND: That the law -- I mean, her -- her
24 expectation as a -- as a principal and as she testifies, she
25 goes above and beyond that, and her opinion of that is not

1 the law and what is required.

2 THE COURT: Anything else?

3 MR. EDDY: No, your Honor.

4 THE COURT: Sustained. Next question.

5 MR. EDDY: Permission to approach, your Honor?

6 THE COURT: Yes, sir.

7 THE WITNESS: Thank you.

8 BY MR. EDDY:

9 Q. Ms. Ariail, have you ever seen this document
10 before?

11 A. Yes, sir.

12 Q. Did you assist in the preparation of this
13 document?

14 A. I typed it.

15 Q. This is the follow-up prepared statement that you
16 made after the interview?

17 A. Yes, sir.

18 Q. When would you have made this?

19 A. I try really hard to make them on the same day,
20 just because there is a lot going on all the time and I want
21 my best recollection and memory in front of me, so I would've
22 made it that day, if not the next, as I do with every case
23 that I investigate.

24 Q. When was the last time you reviewed this document?

25 A. About 10 minutes ago on that pew.

1 Q. Is -- is it your position that -- that the
2 statement that you gave, that you typed up that this is still
3 an accurate statement?

4 A. This will be more accurate than my memory today.

5 Q. In this statement, it indicates that you spoke
6 with student and a witness that had their account of the
7 events written down. I assume student here would be K. Did
8 you speak to a witness about the incident?

9 A. So -- again, when I'm investigating situations,
10 depending on the age of the student and the relationship they
11 have with their teacher, sometimes I speak to them
12 personally, sometimes it's more comfortable for them if their
13 teacher does. If the student is not in trouble, if it's
14 nearing the end of the day, there are lots of factors that
15 can play in as to whether I'm having the one-on-one
16 conversation or not.

17 Q. Did you speak with a witness about this incident?

18 A. I do not recall speaking to Steven. I feel like
19 Ms. Ray did all of that and just sent me his statement.

20 Q. So when you said in your formal notes reporting
21 this incident that you spoke to...

22 A. It's not the formal it's really just my
23 recollection of the event.

24 Q. When you wrote --

25 A. It is now formal because we're here.

1 Q. -- in your informal formality notwithstanding --

2 A. Thank you.

3 Q. -- notes of this incident that you spoke with a
4 witness was that correct or incorrect?

5 A. I -- I don't believe I spoke to him. So no, that
6 piece would not be.

7 Q. You see the sentence I'm referring to? It's in
8 the first paragraph, about 10 lines down.

9 A. Hold on. Okay.

10 MR. EDDY: Permission to approach, your Honor?

11 THE COURT: Yes, sir.

12 THE WITNESS: Oh wait, yes. And it's just -- it's -- I
13 mean, it's -- so can I read the whole sentence?

14 BY MR. EDDY:

15 Q. Sure.

16 A. Because then it makes more sense. "I also spoke
17 to the student and a witness and had their account of the
18 event written down." So I spoke to a student and the
19 witness's account was written down. I mean, grammar
20 withstanding not the best sentence, but that's where we are.
21 I also have another typo where I didn't capitalize. I --
22 that's really bothering me.

23 Q. Do you have any idea of what the witness saw in
24 the incident?

25 A. I read a statement.

1 Q. Next paragraph. Can you read the first sentence?

2 A. "Based on the witness confirming that they did see
3 the student pull Z's pants back and touch her. We did follow
4 the discipline policy with the other student."

5 Q. Do you believe it is still correct and truthful
6 that the witness saw K hold Zoe's pants away from her body?

7 A. I don't have to prove that piece when I'm
8 following the discipline policy with the inappropriate touch.
9 I just have that they confirmed that there was an
10 inappropriate touch, that was the same throughout all three.
11 So I followed the discipline policy with the next steps.

12 Q. Do you have any evidence that the witness
13 statement is incorrect?

14 A. No. I wasn't in the room. I don't have evidence
15 one way or another. We're trusting three five-year-olds and
16 their account of it. But since all three admitted there was
17 a touch, I followed the discipline policy.

18 Q. Are you aware of any evidence to contradict that K
19 pulled Zoe's pants away from her body?

20 A. Say -- say that again.

21 Q. Are you aware of any evidence that would
22 contradict the assertion that K pulled Zoe's pants away from
23 her body?

24 A. Two students telling their versions of the story
25 and then a witness confirming that he did it.

1 THE COURT: Can you speak up a little bit?

2 THE WITNESS: Yes. Two students telling their versions
3 of the story and then a witness saying that he saw one of the
4 two versions.

5 BY MR. EDDY:

6 Q. Did Zoe say that K pulled her pants away from her
7 body?

8 A. Yes.

9 Q. Did the witness say that K pulled Zoe's pants --
10 did the witness say that K pulled Zoe's pants away from her
11 body?

12 A. Yes.

13 Q. Further down in that second paragraph, "Neither
14 the witness nor the teacher saw anything other than that the
15 student pull her pants back and touch in between her legs."
16 Did you talk with Ms. Sadie, the teacher?

17 A. Yes.

18 Q. Did she say that she saw K pull Zoe's pants back?

19 A. Where does it say that?

20 THE COURT: I can't hear you.

21 THE WITNESS: Where does it say that?

22 BY MR. EDDY:

23 Q. Can you read that sentence to the jury?

24 A. "Neither the witness nor the teacher saw anything
25 other than the student pull her pants back and touch in

1 between her legs."

2 Q. Did you talk with the teacher, Ms. Sadie, about
3 this incident?

4 A. Yes. It says she didn't see it.

5 Q. Did Ms. Sadie tell you that she saw the incident?

6 A. No. Nor --

7 Q. Did the statement...

8 A. -- she saw anything.

9 Q. The statement "Neither the witness nor the teacher
10 saw anything other than the student pull her pants back"?

11 A. The first version of what Student S told the
12 teacher was that she had pulled her pants back. The second
13 version was the other. Again, I'm trying to summarize,
14 synopsis, all the pieces.

15 Q. Where are you getting the first version of the
16 witness's statement?

17 A. What he had told her when he came up to her at the
18 table.

19 Q. Where did she tell you that?

20 A. In the hallway.

21 Q. So she told you that he had that witness had given
22 two statements?

23 A. No.

24 THE COURT: You -- you really need to keep your voice
25 up.

1 THE WITNESS: No, she did not say he had given two
2 statements. I'm telling you that when I talked to her in the
3 hallway, that was the only conflicting piece of who pulled
4 the pants back and if there was permission or not. Again,
5 none of that is relevant to the discipline policy. If he
6 touched in between her legs, he gets a consequence. It's as
7 simple as that.

8 BY MR. EDDY:

9 Q. What were the consequences for K?

10 A. So inappropriate touching of a sexual nature is
11 considered what the district calls "category 1." Category 1
12 situations are taken to a hearing. A hearing determines
13 which one the school is taking the child up for expulsion.
14 The hearing officer then determines what the outcome is. It
15 can be expulsion, it can be suspension, it can be sent to the
16 alternative school that I mentioned working at previously.
17 He can be sent to a different school. They determine from
18 there, once I determined that she was touched
19 inappropriately, which all three agreed to that piece, then I
20 follow the discipline policy. It goes up for expulsion.

21 Q. And what happened to K after that?

22 THE COURT: Hold on a minute. Can you go into that
23 under the federal law?

24 THE WITNESS: No, I'm not allowed to. No.

25 THE COURT: I -- I'm sorry, I -- I didn't mean to

1 interrupt, but I -- I don't think that's allowed under
2 federal.

3 MS. WHITE: We -- we can't -- under FERPA, we cannot
4 get into what happened with the other child. Only that he
5 was referred for a hearing. Beyond that, we're not able to
6 do that.

7 THE COURT: My apologies. You have another question?

8 MR. EDDY: Yes, your Honor.

9 BY MR. EDDY:

10 Q. What is your understanding of your obligations as
11 a mandated reporter?

12 A. That if I have concerns about the child's well-
13 being through any sort of abuse or anything happening in the
14 home, it's a DSS report. Child with parents or child with
15 adults is a DSS report. Child on child, it's a police
16 report, which is why I did the police report.

17 Q. What section of the mandated reporter statute says
18 that there's an exception for child on child sexual contact?

19 MR. CROSSLAND: Objection, your Honor.

20 THE WITNESS: It's not mandated reporting.

21 THE COURT: What was your objection?

22 MR. CROSSLAND: She's asking for her legal opinion.
23 She's not a legal expert.

24 MR. EDDY: It's not a legal opinion. She's discussing
25 her duties on the statute and she's decided an exception to

1 that duty.

2 MR. CROSSLAND: He just...

3 MR. EDDY: How do you know what that's based?

4 THE COURT: Anything else?

5 MR. CROSSLAND: He asked her to cite the subsection of
6 the statute and that she's referring to.

7 THE COURT: Objection is overruled. The witness may
8 answer it if she is able.

9 THE WITNESS: Perfect. Student on student or child on
10 child is not under mandated reporting or DSS that goes to a
11 police report, which is why I did a police report.

12 BY MR. EDDY:

13 Q. Where are you getting the exception to the
14 mandated reporter statute that child on child sexual contact
15 is not required to be reported?

16 MR. CROSSLAND: Objection, your Honor.

17 THE COURT: Yes?

18 MR. CROSSLAND: Relevance. I -- I -- I don't see where
19 he is going with this. This -- this trial is about Zoe and
20 -- and Nancy. And we're getting into about a DS -- request
21 -- DSS report on the other student.

22 THE COURT: Yes, sir.

23 MR. EDDY: Goes at the heart of guilt -- may we
24 approach, your Honor?

25 THE COURT: Ladies and gentlemen, step in the jury

1 room. Don't discuss the case.

2 (Jury exits room at 4:50 p.m.)

3 THE COURT: Yes, sir.

4 MR. EDDY: Your Honor, it's twofold here, but it goes
5 to the heart of why a DSS report was taken out on Zoe and her
6 family, but not on Karter. In addition, we're dealing with
7 the school's understanding of their obligations under the
8 mandated reporter, and if the assistant principal is basing
9 her decisions off of a misunderstanding or misapplication of
10 law.

11 THE COURT: And what was your specific question?

12 MR. EDDY: Specific question is: What is the basis of
13 her understanding that there is an exception to the duty to
14 report to DSS if and only if the inappropriate sexual contact
15 is between child and child?

16 MS. WHITE: Your Honor, I believe he asked her what --
17 where in the statute the exception is noted.

18 MR. EDDY: That was earlier. Here it was just what is
19 the basis for (inaudible).

20 MR. CROSSLAND: It was specifically about Student K.

21 THE COURT: What law is it you're saying she's
22 misunderstanding?

23 MR. EDDY: A mandated reporter statute, your Honor.

24 THE COURT: Can you -- can you show me where you think
25 she's wrong?

1 MR. CROSSLAND: Your Honor, she also testified that it
2 -- it's something separate. It's a separate statute that's
3 not under the mandated reporter and the difference in between
4 the report to law enforcement as opposed to DSS under the
5 mandated reporter. So I think we're conflating the two here.

6 MS. WHITE: Well, your Honor, we -- the statute at
7 63-7-310(b), and -- and it specifically says that if a person
8 required to report pursuant to subsection (a) is received
9 information in the person's -- professional capacity, which
10 gives the person reason to believe that a child's physical or
11 mental health, their welfare has been or maybe adversely
12 affected by acts or omissions. That would be child abuse or
13 neglect if committed by a parent guardian or other -- other
14 person responsible for the child's welfare. But the reporter
15 believes that the act or omission was committed by a person
16 other than the parent, guardian or other person responsible
17 for the child's welfare. The reporter must make a report to
18 the appropriate law enforcement agency. Which is what she
19 did.

20 MR. EDDY: (Inaudible), your Honor, I withdraw the
21 question.

22 THE COURT: Okay. Bring the jury back, please.

23 (Jury enters room at 4:55 p.m.)

24 THE COURT: Question's withdrawn. You may continue.

25 MR. EDDY: Thank you, your Honor. At this time, the

1 Plaintiff moves for admission into evidence Plaintiff's
2 Exhibit 5, the assistant principal Ariaail's semi-formal
3 second report of notes of statement.

4 THE WITNESS: This says 7.

5 MR. EDDY: State stamped is something different than
6 the --

7 THE WITNESS: Okay.

8 MR. EDDY: -- Plaintiff's exhibit.

9 THE WITNESS: Just making sure.

10 MR. EDDY: Appreciate it.

11 MS. WHITE: No objection.

12 THE COURT: Mark, he said 5?

13 MR. EDDY: Plaintiff's 5.

14 THE COURT: Plaintiff's 5 into evidence, please.

15 (Plaintiff's Exhibit Number 5 admitted into evidence.)

16 MR. EDDY: Thank you, your Honor, at this point, the
17 Plaintiff does not have any more questions for this witness.

18 THE COURT: Any questions to the witness?

19 MR. CROSSLAND: Yes, your Honor. May it please the
20 Court?

21 THE COURT: Yes.

22 CROSS-EXAMINATION

23 BY MR. CROSSLAND:

24 Q. Good afternoon, Ms. Ariaail. How are you?

25 A. Doing great. How are you?

1 Q. Doing all right. I want to start back.

2 Plaintiff's Counsel asked you some questions about your
3 experience and -- and background. How long had you been the
4 assistant principal at Cayce Elementary at the time of this
5 incident?

6 A. That was my fourth year.

7 Q. And prior to being an AP, where did you work at
8 before that?

9 A. I was at Pine View Elementary for nine years.

10 Q. And can you explain to the jury your
11 responsibilities as an assistant principal?

12 A. It's a very long list, but yes. I do anything
13 that deals with instruction for students or for teachers. I
14 do teacher observations, I do teacher evaluations. I'll help
15 model lessons. Like I said, I meet in all data meetings that
16 we have to discuss students and their growth. I handle
17 textbooks, facilities, testing, any state testing that we
18 have to do, anything to deal with behavior situations, any
19 parent involvement or communications. I plan school events.
20 I send out school communications, school social media stuff.
21 A very long list.

22 Q. Interact with children on a daily basis?

23 A. Yes.

24 Q. Specifically questioning students as it relates to
25 -- to discipline issues?

1 A. Yes.

2 Q. Did you receive training whether that be in
3 college or through professional development through the
4 school district that qualified you to -- for your job?

5 A. Yes. So just like when I was a teacher and I had
6 to do student teaching time in the classroom, I had to shadow
7 different administrators when I was getting my master's
8 degree. So I had a certain number of hours. I do not
9 remember the number. It was a lot. I had to take a lot of
10 days off of work to go and shadow principals at other
11 schools. I stayed after to shadow the principal in my own
12 school. Our district does trainings. They talk through the
13 discipline policies and kind of the process if a student
14 breaks one of the different categories, the things we need to
15 do, such as knowing to take witness statements and a synopsis
16 of the day and different pieces like that. We have vector
17 training videos that talk on different statutes of things
18 that we need to know about different laws and things every
19 year.

20 Q. So training on mandated reporters too?

21 A. Yes. Every year.

22 Q. I'm going to put you on the spot here, but you
23 said it was your fourth year as AP at Cayce?

24 A. Yes.

25 Q. Can you give us an estimate or approximation of

1 how many student misconduct or discipline issues you had been
2 involved in or investigated?

3 A. In my four years?

4 Q. Yes.

5 A. So I know each year that they kind of talk to us
6 about our discipline notes. Because it's always a goal to
7 get those numbers down. And then there were three assistant
8 principals, so it would've been split, but as a school we
9 were normally over 700 discipline notes a year. Most years.

10 Q. That ranges from talking out of turn to --

11 A. Yes.

12 Q. -- to category 1?

13 A. So that talking out of turn would be like a
14 category 4, not as big of a deal. Maybe like an attention,
15 detention, all the way to category 1: drugs, inappropriate
16 touching, weapons, things like that.

17 Q. Did you handle other category 1 investigations or
18 responses?

19 A. Yes.

20 Q. I asked you some questions I think you said that
21 in your duties as assistant principal you observe or evaluate
22 some of the teachers?

23 A. Yes.

24 Q. You remember kindergarten teacher Ms. Sadie Ray
25 Schmidt?

1 A. Yes.

2 Q. Did you observe her?

3 A. I did. I was not on her formal evaluation team.
4 Everyone has a formal evaluator that comes in, but I would've
5 done random check-ins with her being a new teacher. I'm over
6 -- we called it "the New Kids on the Block group." And so we
7 did different check-ins and meetings and trainings and so I
8 would've had a lot of different opportunities to interact
9 with her.

10 Q. How was she as a teacher?

11 A. She did a good job.

12 Q. Did you have any concerns about her supervision of
13 the students?

14 A. No. And...

15 Q. Did you ever receive any complaints or concerns
16 from parents about her?

17 A. No.

18 Q. What about students?

19 A. No.

20 Q. What about Ms. Kimberly Long, her teacher's
21 assistant?

22 A. I've known her for a long time. I taught her
23 children at Pine View. She has lots of years of experience
24 working with children. I was on the interview panel for her
25 as well as Ms. Ray when she started working at Cayce.

1 Q. Received any complaints?

2 A. No.

3 Q. Of Ms. Long students?

4 A. No.

5 Q. Parents?

6 A. No.

7 Q. Did you have any concerns yourself about her?

8 A. I did not.

9 Q. What about Ms. Catherine Prizer, the -- the school
10 counselor? Did you work hand-in-hand with her?

11 A. I did.

12 Q. Did you have any concerns with her handling of any
13 issues?

14 A. I do not.

15 Q. Or questioning of students?

16 A. If I had concerns, I would not have gone to her to
17 help me with the situation.

18 Q. What about social workers? Did you work with --
19 hand-in-hand with the social workers?

20 A. I did.

21 Q. Specifically Mr. Snyder?

22 A. I did.

23 Q. Did you have any concerns with his handling of any
24 situations?

25 A. I did not.

1 Q. His questioning of students?

2 A. No, sir.

3 Q. Ever receive any complaints about him?

4 A. No, sir.

5 Q. Moving to the day of the incident. I had a lot of
6 testimony about your involvement in here and your
7 specifically your statement, which I think is Exhibit Number
8 --

9 A. That one, 5, 7. I don't know.

10 Q. -- Number 5, I think. So you wrote this following
11 everything, following your investigation into it?

12 A. Yes. There are certain things if we are taking a
13 situation to a hearing that we have to have in a hearing
14 packet and along with witness statements and notes, which is
15 why we chicken scratch the notes as we're going through. It
16 helps to have kind of an overview of the day.

17 Q. So you wrote this -- like you say, you're handling
18 a bunch of things, a lot going on. Any concerns with what's
19 in -- within this statement?

20 A. No. I mean, there are always things in them when
21 I get to the different discipline hearings where I'm like,
22 "Oh, I should have elaborated here, or I misspelled this," or
23 -- it's not perfect, but it helps me kind of track things in
24 there. And again, since it's just for me, I know how to
25 decipher it.

1 Q. When you're writing this, this isn't -- you know,
2 your proper grammar, like, you're going to turn this in for a
3 -- a college paper or exam or test or anything?

4 A. Not at all.

5 Q. Think you even pointed out one of your small
6 grammar mistakes?

7 A. Yes.

8 Q. So the fact that any plain words, you explained
9 those to how you remember the incident?

10 A. Yes.

11 Q. When Ms. Sadie Ray came to you in the hallway, how
12 quickly did you get to her classroom following that?

13 A. Anytime a teacher seeks me out, I respond as
14 quickly as I can. If I have other students with me that
15 could look like placing them with a different staff member to
16 watch them, that could mean I've finished their
17 investigation, I can send them out to class. That could mean
18 they go to in-school suspension. I mean, there are lots of
19 different things. But if a teacher seeks me out in the
20 hallway or calls for me over the walkie-talkie, I respond as
21 quickly as I can.

22 Q. So a couple minutes?

23 A. Uh-huh.

24 Q. And then who did you meet with first?

25 A. Zoe.

1 Q. Zoe. And then that's when you brought in
2 Ms. Prizer?

3 A. That's when we went to her office.

4 Q. And why would you want Ms. Prizer to be involved?

5 A. Ms. Prizer works with the little kids. Again, we
6 wanted to make sure Zoe understood she was not in trouble.
7 Anytime it deals with physical contact, I know that the
8 counselors do lessons on that so they can continue with the
9 same verbiage that Zoe would've been used to hearing through
10 those lessons. It just kind of helps make it a safer feeling
11 space for students to tell us what's happened.

12 Q. So is Mr. Prizer's office warm welcoming?

13 A. It is.

14 Q. It has toys, fidgets for the kids, typically when
15 kids go in there that they feel -- you know, comforted or
16 safe?

17 A. Yes.

18 Q. It's not a dark dungeon?

19 A. It's not.

20 Q. So you talked with Zoe. What is your
21 understanding of what Zoe communicated with you?

22 A. It was hard to understand with all her crying --
23 and again, asking clarifying questions for stuff. The gist
24 of it was that pants were open and she was touched.

25 Q. Did her story change?

1 A. It did.

2 Q. And -- and how did it change?

3 A. It became more and more sexual as she told pieces.

4 Q. Do you remember any specifics of how it changed?

5 A. She talked about yucky, or icky, or something and
6 we tried to ask clarifying for that. And she ended up
7 pointing to her tongue and then would point to places that
8 his tongue had been. And...

9 Q. Indicating oral sex?

10 A. Yes. And French kissing.

11 Q. You said "French kissing"?

12 A. Uh-huh.

13 Q. Any other things specifics that you remember after
14 that?

15 A. No. Shortly after that, again, I couldn't tell
16 you exactly. We were in the questioning. I went to go get
17 the other student.

18 Q. When you were -- you meet with Student K with
19 Mr. Snyder?

20 A. Yes.

21 Q. Again, you wanted a male presence since -- since
22 Student K was -- was a male. Did Karter's story change?

23 A. No. He just kept sticking to, "She told me to.
24 She told me to. She told me to." And again, we talked
25 about, "That doesn't matter. You can't touch people there."

1 Q. Did he say anything about oral sex?

2 A. No.

3 Q. Did he say anything about French kissing?

4 A. No.

5 Q. Did he say anything about white sticky stuff?

6 A. No.

7 Q. So then we have a statement from Student S, the
8 witness. You met with Ms. Ray to -- or you instructed
9 Ms. Ray to get Student S's statement?

10 A. Yes.

11 Q. And eventually that was relayed to you?

12 A. Yes.

13 Q. So you had that in -- in your presence as well,
14 you making this? Did his statement contain any of those
15 previously mentioned sexual acts?

16 A. No.

17 Q. When you were meeting with Zoe or with Ms. Prizer,
18 do you have an approximation on -- you know, how long the
19 entire it all lasted? Was it 10 minutes, 15 minutes?

20 A. I -- I don't know. Normally...

21 Q. Was it like hours, or?

22 A. No, not hours. For sure not hours. I mean, when
23 her class is going to special areas, if I recall the
24 scheduling correctly, that would've been towards the end of
25 -- closer to end. So I would've been needing to figure out

1 what was happening before anybody leaves the building or any
2 dismissal starts taking place.

3 Q. So what about the -- the interview with Student K?
4 You know how long it lasted?

5 A. No.

6 Q. Hours?

7 A. Normally my conversations with students are around
8 10 to 15 minutes. That's about as long as you're keeping
9 attention span to have conversations anyways. If it goes any
10 longer, it's to console, or they're simply waiting for -- if
11 a discipline situation, their parent has to come get them or
12 something like that.

13 Q. So -- you know, through your conversations with
14 the students, you realized that there was this touching of
15 it. What happened -- what did you do with Student K as
16 regarding the discipline policy?

17 A. So anytime we have a situation that is a category
18 1, I talk to the principal and we reach out to student
19 services. They are separate group from the district that
20 handles disciplinary hearings of any student concerns that
21 can be attendance or zoning or disciplinary hearings. And I
22 explained to them what had happened, and ask them for next
23 steps.

24 Q. When did you reach out to Nancy Arellano?

25 A. I don't remember the exact timeline of the

1 process, but I would've talked to student services first to
2 figure out what the process was before I called the parent.

3 Q. And since Nancy doesn't speak English, you
4 would've used a translator?

5 A. Yes.

6 Q. When you're on the call with Nancy, you're on the
7 call, correct?

8 A. Yes. Whenever we use translators, it is a
9 three-way phone conversation. Sometimes -- what I --
10 sometimes I'm more vocal in those conversations depending on
11 if the parent asks questions or not. I front load with the
12 interpreter what they're doing or what the situation is. So
13 as soon as the parent answers the phone, they do start
14 talking and explaining. But I'm there to clarify if they
15 have any other questions or anything as we go.

16 Q. So when you called Nancy, what did you explain
17 about the incident?

18 A. The same thing I explained to any parents in
19 situations. I tell them what's happened, I tell them what
20 their child is saying. I have to be vague about the other
21 student involved. Just like I can't tell -- I just don't
22 talk about other kids with the parents. I can say I followed
23 the discipline policy. I can say what that looks like, but I
24 don't give specifics with it. I would tell her like, this is
25 what your daughter said. It does conflict with the story of

1 what the other child said. So I'm not really sure where it
2 lies. She is not in any trouble. She can return to school.
3 I do remember telling her she was very upset because she was
4 still with the counselor, and suggesting she come and get
5 her.

6 Q. Would you have told her at that point that her
7 story was changing throughout the -- the process? Did you
8 have any conversations with Student K's family?

9 A. Yes.

10 Q. Same routine?

11 A. Uh-huh. Well, theirs is a little bit more
12 involved if the discipline policy takes it to a hearing
13 because there's -- there's paperwork they have to come and
14 sign. They have to come get the child. Like, it's -- it is
15 a more involved conversation.

16 A. So going back to Zoe. Would Zoe been out of the
17 room when you're talking with Mom? Zoe couldn't hear what --
18 what was being communicated. During your time with Zoe, did
19 you ever call Zoe a liar?

20 A. No.

21 Q. Did you ever call her a bad girl?

22 A. No. I would never say any of those things to
23 students. Even if a story is changing, I simply do what I do
24 with every student and talk through, "Do you know what it
25 means to tell the truth? Do you know what it means if you're

1 not telling me the truth, I need to know the truth so I can
2 help you. Again, you're not in any trouble." And just going
3 through that process with them.

4 Q. You mentioned that you thought that Nancy should
5 come and pick Zoe up?

6 A. Yes.

7 Q. Do you know if she did?

8 A. To my knowledge? No.

9 Q. Would she have been -- would Nancy have been
10 required to complete any paperwork when she came and picked
11 Zoe out?

12 A. No. She was not receiving a discipline note of
13 any kind. She was not in any trouble.

14 Q. Would she had to interact with any other -- of the
15 other students or their family?

16 A. No.

17 Q. And throughout this your interview with Zoe, you
18 -- you said that you clarified that she was not in trouble?

19 A. So I did have to call Mom two different times.
20 When I first called student services and explained the
21 situation to them because I guess of the he said she said, I
22 can only speculate his thinking. He at first said to bring
23 both students to a hearing. So when I first talked to Mom, I
24 said -- again, being vague because she didn't have a
25 discipline note. So I wasn't sure why she would go to a

1 hearing. I just said, "At these discipline hearings, the
2 students get to tell the student services what happened, and
3 then they determine consequences for anyone, if needed."

4 Q. So you're reaching out to Mom just to give her an
5 update as -- as things were developing?

6 A. Yes.

7 Q. And would follow up with her with -- with any
8 substantive --

9 A. Yes.

10 Q. -- changes?

11 A. And I did.

12 Q. Did -- did you ever following this incident, did
13 you ever have any contact with Arellanos?

14 A. So I called her back a second time with a
15 different translator because I couldn't get in touch with the
16 first translator. After I got off the phone with her, I
17 called student services back and I said, "She doesn't have a
18 discipline note. I don't understand why I would bring her to
19 a hearing. It's just the male student that has done the
20 inappropriate touching." And he said, "Thank you for
21 clarifying. She does not come to a hearing." So I called
22 Mom back. I explained, "She's not in any trouble. You don't
23 have to come pick her up, but she is still really upset. I
24 would encourage you to come pick her up."

25 Q. You were still concerned about Zoe's well-being?

1 A. Yes.

2 Q. Following that, did you make a police report on
3 Student K?

4 A. Yes.

5 Q. And did you relay the -- the -- the information
6 that was obtained throughout the investigation?

7 A. Yes.

8 Q. Did the -- did the officer ever talk directly with
9 any of the students?

10 A. I don't recall. Normally they do not, just
11 because -- again, there's a fine line of your SRO in the
12 school and school discipline versus legal discipline and
13 stuff.

14 Q. So SRO, what does that stand for?

15 A. School resource officer.

16 Q. Are they employed by, like, say for instance
17 Lexington County or by the district?

18 A. I think they're employed by whatever agencies they
19 work with.

20 Q. The law enforcement agency?

21 A. Right.

22 Q. So they're not a district employees?

23 A. Not to my knowledge.

24 Q. Did you ever receive any follow-up from Lexington
25 County or any other law enforcement agencies about the

1 report?

2 A. No, I did not.

3 Q. Did you have any other further input with that?

4 A. No, I did not.

5 Q. Did you become aware that a DSS report was made?

6 A. Yes, I did.

7 Q. Did you have any concerns with that DSS report
8 being made?

9 A. No, I did not. I -- my staff come and tell me all
10 the time if DSS reports that are being made. Typically they
11 do that because parents do get very upset when a DSS report
12 is made. And so sometimes that looks like the parent coming
13 up to the school and cussing me out. And sometimes that
14 looks like some not nice phone calls and it varies. So it
15 helps if the staff kind of give me a heads up of what's going
16 on and what's happening. The district does also encourage
17 them to complete that form. So again, kind of a synopsis,
18 that's not a requirement with DSS.

19 MR. CROSSLAND: I beg the Court's indulgence.

20 THE COURT: Yes, sir.

21 BY MR. CROSSLAND:

22 Q. Going back to your interactions with Ms. Sadie
23 Ray, have you been to her classroom before?

24 A. Yes.

25 Q. That's where you would've completed observations?

1 A. Yes.

2 Q. Did you have any concerns with the way that her
3 room was set up?

4 A. No.

5 Q. Was it clearly accessible -- I mean, clear -- no
6 obstructions, clear view of the entire classroom?

7 A. No.

8 Q. Did you ever receive any concerns about her
9 supervision of the students?

10 A. No.

11 Q. And then once you reached out to Nancy, following
12 the incident to give her the update on what was happening, do
13 you know if she ever came and picked her up?

14 A. Not to my knowledge.

15 Q. Did she -- did you ever talk with her?

16 A. I did not.

17 Q. If she would've reached out to you, would you have
18 talked to her?

19 A. Absolutely.

20 Q. Is that common for parents to reach out and ask
21 what happened?

22 A. Yes. It's very common for parents to want to come
23 and meet, to want to talk more, just to want clarification on
24 everything. It's very common. I talk to parents all the
25 time.

1 MR. CROSSLAND: No further questions, your Honor.

2 THE COURT: Thank you. Anything further for the
3 witness?

4 MR. EDDY: Nothing from the Plaintiff, your Honor.

5 THE COURT: Thank you, ma'am. You may step down.
6 Ladies and gentlemen, in order for me to tell you what time
7 to be here tomorrow, I need to find out what we have left.
8 So if you'll step in the jury room, I'll get you back out
9 here very quickly and let you go home. Don't discuss the
10 case.

11 (Jury exits room at 5:17 p.m.)

12 THE COURT: All right. Where are we procedurally?

13 MR. EDDY: I've only got one more witness to call. And
14 that's the counseling therapist for Zoe.

15 THE COURT: Okay. Rough idea about how long that would
16 take?

17 MR. EDDY: I don't anticipate it to take more than a
18 half hour for the direct.

19 THE COURT: And what about the Defense, are you all
20 going to put up any other witnesses?

21 MS. WHITE: Two witnesses, your Honor, but they'll both
22 be fairly brief. The principal, Mr. Drozdak and the teacher
23 assistant, Ms. Long. So I -- I think we could probably
24 finish I -- I would think our cross of Dr. Amador would be
25 about the same as the direct. So I think we could finish all

1 the presentation of evidence by lunch and be prepared to
2 argue motions either before lunch, if your Honor wants to do
3 that after lunch and then have closing.

4 THE COURT: Thank you. Bring the jury in, please.

5 (Jury enters room at 5:19 p.m.)

6 THE COURT: All right. Ladies and gentlemen, I'm --
7 I'm just having to make a judgment call here. I do want to
8 give you a little bit of explanation. As I told you in the
9 outset, in my opening comments to you whenever the Plaintiff
10 rests -- excuse me, I have to discuss legal issues with the
11 attorney. And then when the Defense rests, I have to discuss
12 -- well, I see if the Plaintiff wants to put anything back in
13 reply if they do, you'll hear that. If not, then I'll send
14 you back out and discuss legal issues with the attorney.

15 Based on what they've told me, I think we have about
16 three more witnesses on both sides total. But in fairness to
17 you, I want to explain to you in advance a couple of things.
18 One is there are some legal issues involved in this case that
19 I think are going to take me a while to work with.

20 The -- the second thing is that I normally work on the
21 instructions that I give to the jury at night. So I take my
22 computer at home and I work on them at night. And then we
23 share those with the attorneys and we discuss them as I'm
24 required to do with them and then come out and give you the
25 law. We don't have any internet connection in the Edgefield

1 at all. We're lucky to have power. I don't know how those
2 amazing people put that together in the time they did. I
3 don't know of anywhere in Edgefield that has internet
4 connection unless they're a business connected by -- to a
5 satellite or something.

6 And I put everything I can think of that I put on here
7 on the hard drive. I'm going to take this on tonight and I'm
8 going to work on it. But folks, if I tell you all tomorrow
9 that I got to bring you back the next day, please don't be
10 mad at me. I'll be working my behind off trying to get
11 things ready for you. But I -- I do have some -- some
12 questions, and I'm not going to be able to ask the questions
13 until all the evidence is in, and I'm not going to be able to
14 evaluate until I hear all the evidence and hear the
15 explanations from the lawyers.

16 So with that said, I want you here at 10:00 tomorrow.
17 I think that'll work out where you can probably go to lunch
18 and we can stay here and deal with some of this and then
19 bring you back. And hopefully we can get it to you tomorrow,
20 but it -- it may be the next day. All right. Thank you, all
21 so much. I hope you have a pleasant evening. Remember the
22 admonitions. 10:00 a.m.

23 (Jury exits room at 5:22 p.m.)

24 THE COURT: Please be careful that you don't have
25 contact with the jurors. We're in recess until 10:00 in the

1 morning. Did you have any request to charge?

2 MR. EDDY: Not yet, your Honor, but I'm going to try to
3 get to you soon.

4 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT
5 5:23 P.M.)

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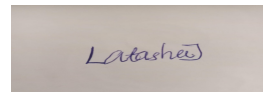
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CERTIFICATE OF TRANSCRIBER

I, LATASHA JEFFERSON, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had, and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 11 of Lexington County, South Carolina, on October 8, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 18, 2025.

A rectangular box containing a handwritten signature in blue ink that reads "Latasha".

LATASHA JEFFERSON

Transcriber

1 CONTINUATION OF PROCEEDINGS - OCTOBER 9, 2024.

2 THE COURT: Is the Plaintiff ready for the jury?

3 MR. EDDY: Yes, your Honor.

4 THE COURT: Defense?

5 MS. WHITE: Yes, your Honor.

6 THE COURT: Bring the jury please, sir.

7 (Jury enters room at 10:05 a.m.)

8 THE COURT: All right. Morning, ladies and gentlemen,
9 we'll continue with the Plaintiff's case. Call your next
10 witness.

11 MR. EDDY: May it please the Court? Plaintiff calls
12 Ms. Narumi Amador.

13 RUTH NARUMI AMADOR,
14 being duly sworn, testified as follows:

15 THE CLERK: State your name, spell your last name for
16 the record.

17 THE WITNESS: My name is Ruth, R-U-T-H, Narumi,
18 N-A-R-U-M-I, Amador, A-M-A-D-O-R.

19 DIRECT EXAMINATION

20 BY MR. EDDY:

21 Q. Good morning, Ms. Amador. How are you doing?

22 A. Good morning. I'm good, thank you.

23 Q. Thank you for being here today. Now I understand
24 that -- you know, we're going to go through your position and
25 background and all that, but I understand there's quite a bit

1 of initials, abbreviations that come after your -- your name.

2 A. Yes.

3 Q. Can you work us through those?

4 A. Yeah. I guess the first one is LPC, which is I'm
5 a licensed professional counselor for the State of South
6 Carolina. I've been licensed since 2014. I -- let see. I
7 have a certification and those are the abbreviations behind
8 my name. Means I have a certification in trauma focus CBT,
9 which is it -- it's a therapy approach to help children ages
10 2 to 18 who have experienced any type of trauma or traumatic
11 events, including sexual trauma. I also have a certification
12 in play therapy, which research shows that when working with
13 children, play therapy is the most appropriate --
14 developmentally appropriate approach when working with
15 children. And -- let me see. And then I also have a
16 certification in PPP, which is a parenting certification.
17 And PPP stands for positive parenting program.

18 Q. So the abbreviation LPC, that's?

19 A. Licensed professional counselor.

20 Q. And then the TTCBT.

21 A. TBCBT is trauma-focused CBT, which is the
22 certification to help children who have experienced trauma.

23 Q. What's your highest level of education?

24 A. My highest level of education, I have a master's
25 degree in professional counseling, and I -- I'm midway

1 through my PhD in childhood developmental psychology.

2 Q. What is involved in a PhD program?

3 A. Well, it's a lot of -- there is a lot of things
4 involved. You have to take classes specific to the type of
5 degree that -- that you're doing. And there is also a
6 portion for a thesis, which is research based.

7 Q. How close are we to finishing that PhD project?

8 A. I'm -- I would say I have about less than half
9 left.

10 Q. Good luck.

11 A. Thank you.

12 Q. So your highest level of completed degree is a
13 master's in professional counseling?

14 A. Yes, sir.

15 Q. Okay. And where did you get that degree?

16 A. I obtained my degree in Liberty University. It's
17 in Lynchburg, Virginia.

18 Q. How about undergraduate? What did you -- where
19 did you study?

20 A. I obtained my bachelor's in social psychology in
21 Park University, which is in Kansas. My husband was
22 stationed in Kansas.

23 Q. Besides the master's degree in professional
24 counseling, are there any other master's degrees?

25 A. No, sir.

1 Q. Okay. Now you worked us through some of your
2 certificates, but more generally in your profession, what
3 exactly is a certificate of certification?

4 A. Well, a certificate is telling -- telling clients
5 that you have specific training and expertise in whatever
6 area the certification is about.

7 Q. And how do you go about obtaining a certificate in
8 your profession?

9 A. Well, typically, people that have certifications
10 is because they have a special interest in a specific area of
11 the field they work in. And -- you know, I did my research
12 as far as -- you know, what entities were the ones that
13 provided the certifications I needed. And based on the
14 population that I -- I'm working with -- well, I make my
15 decision to expand my studies in the specific areas, and also
16 my interest in working with children.

17 Q. So, for example, your certificate -- and tell me
18 if I get the name wrong, trauma-focused child behavior
19 treatment?

20 A. Cognitive behavioral therapy.

21 Q. Cognitive behavior -- sorry, cognitive behavioral
22 therapy?

23 A. Uh-huh.

24 Q. How exactly do you -- do you earn that
25 certificate?

1 A. Well, the way I earn that certificate, first I had
2 to do a cohort with MUSC. And I had to attend, I think it
3 was four days of training, a full-day training. And then
4 from there, you have to attend regularly meetings with
5 supervisors of that specific certification. And in those
6 meetings, you staff some of your cases. And so you explain
7 -- you know, how are you using that approach to help the
8 child with their trauma. And -- you know, there are other
9 people that are getting certified in those meetings, and
10 there are at least one supervisor who guides you through the
11 process. And if you get stuck at any point or you feel like
12 you need some support, they provide that for you.

13 Q. Can you explain to the jury what cognitive
14 behavioral therapy is?

15 A. Yes. Cognitive behavioral therapy is an approach,
16 and it's been very researched as the best approach or -- for
17 patients that have depression, anxiety, substance use
18 disorders. But I would say it's the most research approach,
19 which means there's been a lot of data collected on the
20 outcome of treatment being successful and satisfactory.

21 Q. How about play therapy, what does that mean?

22 A. Play therapy is an approach of therapy that
23 involves child -- children's main language, which is play,
24 especially children under the age of seven. Some children do
25 not have the vocabulary to express what they're feeling and

1 how they're feeling or what's happening, but play gives them
2 the means to show what's going on in their life. And
3 research shows that children tend to play out their inner
4 conflict one way or another. So through that, I'm able to
5 connect with the child in their main language and help them
6 work through whatever issues they are presenting in the play
7 therapy. And it involves certain toys. We have to have
8 weapons. We have to have vehicles, the police cars,
9 ambulances, so that they can play out any traumatic event. A
10 lot of times it involves -- you know, weapons. We have -- we
11 have to have a doll house because when it comes to sexual
12 abuse, typically happens in a home with someone they know.
13 So sometimes children will play out some of their inner
14 conflict on what's happening.

15 Q. Now besides what we've discussed so far, are there
16 any other certificates or credentials that you've earned?

17 A. I -- I have done some training in theraplay, which
18 is not play therapy. It's another approach -- a parenting
19 approach, that has -- that is attached -- attachment based.
20 So with that approach, I help parents connect with their
21 child, especially if they've had previous traumatic events or
22 they've been adopted. Sometimes trauma causes detachment.
23 So through theraplay, we help parents form secure attachments
24 with their children.

25 Q. Now professionally, after you graduated from

1 college, did you go right into the master's program or did
2 you start working in that field?

3 A. I did both. I -- I came to the United States at
4 the age of 24, so -- I had studied in Spain journalism, and
5 when I came here, I just -- I couldn't finish my degree, but
6 I'm (inaudible) had a university, so I transferred to social
7 psychology. And when I graduated I started working in a
8 daycare center, working with toddlers and preschoolers, and I
9 was going to school at the same time trying to get my
10 master's.

11 Q. After that position, what was your first or your
12 next professional position in this area?

13 A. Okay. So after that, I worked -- my husband is
14 military, so we moved every three years. So every time we
15 moved, I had to find a new job. So when we moved, I found a
16 job. I didn't have my master's. I was working towards it,
17 and I worked at a -- a medical health center -- a community
18 health center, which -- you know, we know it -- a lot of the
19 patients are -- patients that are underinsured or uninsured.
20 And I worked with children with what they called "severe
21 emotional disturbances," which had to have a -- a diagnosis,
22 whether it was depression, OCD, oppositional defense
23 disorder, anxiety. They had to have two diagnosis. So they
24 were -- you know, there were problematic children. A lot of
25 them were in the foster care system, and I worked there. I

1 had a dual job. I did part-time parent support, just helping
2 the parents learn how to work with their children that had
3 different diagnosis, and therefore they had behavioral issues
4 most of them. And I also worked as a case manager by -- you
5 know, I would pick up the kids from school a lot of times and
6 work on -- you know, their treatment plan. A lot of times it
7 was just developing social skills. So we would go on in the
8 community and I would just role model for them and practice
9 with them.

10 Q. After that position, what was your next
11 professional position?

12 A. After that -- let me see. After that I worked at
13 a daycare center in Kansas as the lead in the toddler room.

14 Q. After that position, we've another military move?

15 A. After that position, that was in Kansas, then we
16 moved -- from Kansas, we moved here. After that, I had
17 completed my master's degree. However, I had a newborn and
18 my husband stayed in Kansas. And I -- I didn't want to get
19 into the field because I -- I didn't want to leave my newborn
20 -- you know, with people -- I didn't know anyone. I just
21 came here. So I found a job as an assistant director in --
22 for Jackson in one of the daycare centers, specifically the
23 one where the children of the drill sergeants were going,
24 which opened at 4:00 a.m. because they had to be at work at
25 4:00 a.m. So I was the assistant director in that center,

1 and my daughter -- my -- my newborn was there with me.

2 Q. After working as the director for that daycare
3 facility, what was your next professional position?

4 A. At that point, I -- I -- I worked -- I started
5 working at Sistercare, which is an organization based here in
6 Columbia that assists women who have been in domestic
7 violence situations on -- I specifically worked in one of
8 their shelters as -- with the children. So the children were
9 staying in the center, so when they would come from school, I
10 would have -- you know, just therapeutic activities -- group
11 activities prepared for them.

12 Q. How long did you have that position?

13 A. Well, that position, I had it for maybe a year and
14 a half, because at one point I accepted another position at
15 LRADAC, and I was doing both jobs.

16 Q. What is LRADAC?

17 A. LRADAC is an agency here in Columbia that provides
18 inpatient, outpatient -- and outpatient services for adults
19 and adolescents with substance use disorders.

20 Q. After working at LRADAC, what did you do next?

21 A. After working at LRADAC -- oh, I worked at Eau
22 Claire, which is just like the other agency where I
23 previously worked as a case manager with kids. Eau Claire is
24 a community health center, also providing services to
25 underinsured and uninsured patients. And my job there, I was

1 a clinical counselor, and I counseled adults and children. I
2 mean, initially I was hired to be a children's counselor, but
3 in Columbia, there is a shortage of clinicians that speak
4 Spanish. So we got a lot of adult patients coming to the
5 clinic. So I started -- you know, getting more training in
6 working with adults to the point where my caseload was about
7 50/50 working with adults and children.

8 Q. How long were you working at Eau Claire?

9 A. I worked at Eau Claire from 2016 -- let me see. I
10 believe it was from 2016 until the pandemic hit in March of
11 2020, and I lost my job. There were a few clinicians at that
12 point that lost their job, so I was there for four years.

13 Q. What did you do for work when you found your next
14 job after March of 2020?

15 A. Okay. Well, I don't know if you all recall that
16 time where people were losing jobs and there was a lot of
17 panic. We didn't know what was going on with the pandemic.
18 I did apply to several jobs, and the first job to call me was
19 the South Carolina Sexual Violence Predator Program which
20 holds -- I believe, it's 100, I can't remember the name,
21 residents, and those are people that completed their
22 sentences for sexual crime. So after completing their
23 sentences, they would come to us for treatment, and it was --
24 it -- it was like a jail, but we provided treatment.

25 Q. What did you do professionally for work after that

1 position?

2 A. That position, I was a supervisor for the
3 clinicians. So I started supervising there and at Eau Claire
4 as well. So after that -- I think at that point, that's when
5 I -- I -- I'm at the position where I'm at right now, which
6 I'm in private practice and I see clients, both children and
7 adults, in an outpatient setting. And I have a room that
8 offers play therapy.

9 Q. What's the name of your practice now?

10 A. The practice is Columbia Psychological Services.

11 Q. Currently, you treat both children and adults?

12 A. Yes, sir.

13 Q. And it seems like you've got a decent bit of
14 experience with individuals who have experienced trauma?

15 A. Yes, sir.

16 Q. Okay. Does this include victims of sexual trauma?

17 A. Yes.

18 Q. What kind of issues are typical for you to treat
19 with individuals who are victims of sexual trauma?

20 A. So a lot of times victims of sexual trauma, they
21 have -- they are affected psychologically and emotionally.
22 Some of the things that we can see behaviorally are isolation
23 shutdowns, sometimes the opposite. They have, like, very --
24 you know, intense outbursts. We also see them developmental
25 health issues such as depression, anxiety, PTSD is very

1 common with victims of sexual abuse.

2 They also experience -- like I mentioned earlier,
3 detachment. Detachment from different aspects. So they
4 detach from their experience because it's very painful. So
5 sometimes they forget aspects of the trauma. They -- they
6 detach from family members. A lot of times that is due to
7 guilt -- feelings of guilt, shame, anger. They also detach
8 from -- you know, their environment. And that includes
9 teachers, friends, family members. Sometimes -- you know,
10 when it comes to the mental health issues, they develop --
11 they can develop substance use disorders.

12 They also could develop, eventually, personality
13 disorders such as borderline personality disorder, which is a
14 difficult condition to -- to treat. Also they -- their sense
15 of safety and security, it's -- it's impacted because if
16 depending on the situation, whether it's sexual trauma or
17 verbal abuse or physical abuse, their safety has been
18 compromised as a child. And so they do have a lot of
19 difficulty trusting the environment, trusting their main
20 caregivers with -- you know, with safety. They tend to have
21 a lot of trust issues because of that. And that impacts --
22 you know, their ability to socialize and -- you know, have a
23 normal life.

24 Also it impacts their self-esteem because sometimes
25 when there is trauma, depending on the situation, the patient

1 may feel that it's their fault they did something wrong.
2 Especially with sexual trauma, there is a lot of shame
3 involved. They think they're -- a lot of times that they are
4 dirty, or they're not a good person, or God -- a lot of times
5 for people with spiritual beliefs, they think that -- you
6 know, God is not going to allow them to be in heaven.
7 They're going to hell. So there is a lot of distress and
8 trauma going on. A lot of times that distress can also cause
9 health issues. And we know -- you know, how -- how
10 associated stress can be with -- you know, heart conditions,
11 diabetes and things like that.

12 Q. Your patients that you've treated who have been
13 victims of sexual trauma, do they ever experience anxiety or
14 anxiety attacks?

15 A. Yes, it's very common. It's very rare someone who
16 doesn't.

17 Q. Your patients who have been victims of sexual
18 trauma, is it common for them to experience depression?

19 A. Yes. Very common as well.

20 Q. Your patients who have been victim -- victims of
21 sexual trauma, is it common for them to experience nightmares
22 about the trauma?

23 A. Yes. And that is -- that is a lot -- that is very
24 -- very common as well as flashbacks and daydreaming.

25 Q. Your patients who've been victims of -- victims of

1 sexual trauma, is it common for them to have problems
2 associating with members of the opposite sex?

3 A. Yes, they may.

4 Q. Your patients who've been victims of sexual
5 trauma, is it common for them, if they're still young enough,
6 to have problems with academics or schoolwork?

7 A. Absolutely.

8 Q. Your patients who are victims of sexual trauma,
9 what kind of treatment do you provide for them?

10 A. Well again, it -- it depends on the age of the
11 child and how old they were when they -- when the event or
12 the number of events happened. With children -- again, I
13 would choose to do play therapy. And a very important aspect
14 of therapy is creating a safe space where the patient feels
15 accepted, not judged on -- you know, unable to express any
16 type of emotion or any thought that they may feel ashamed to
17 express everywhere else. So again, whether it's an adult or
18 a child, we want to work on the relationship and make sure
19 that the patient feels safe and in a non-judgmental and
20 acceptant environment. And then I start working with
21 identifying their emotions because a lot of times with
22 children what we see is -- again, shut down, outbursts,
23 anger. So giving them the verbiage and the -- the right
24 terms to express what is going on internally is very
25 important.

1 And then once we address the -- you know, emotional
2 part, we also work on their cognition. If -- if the child,
3 for example, says, "God doesn't love me," we challenge those
4 thoughts. So I start questioning the child, well -- you
5 know, we use socratic questioning so the child can come to
6 terms with the understanding that that is not true, so
7 challenging their cognitive distortions or -- or distort --
8 distorted thinking.

9 Q. Have you ever treated patients of sexual trauma
10 who were experiencing self harm or suicidal ideation?

11 A. Yes. It's very typical of teenagers actually to
12 -- to -- you know, experience self harm after a traumatic
13 event. And then at all ages, anyone with any type of trauma
14 can experience suicidal ideations.

15 Q. Are there any unique challenges presented to you
16 as a clinician in treating children specifically who've been
17 victims of sexual trauma?

18 A. Yes, there are challenges, and the challenges are
19 the child -- with young children again, they do not have the
20 right vocabulary to express what's going on internally.
21 Sometimes another challenge is the fact that they tend to
22 avoid talking about the trauma because it brings unwanted
23 memories and feelings of guilt, shame, embarrassment. Again,
24 another -- you know, roadblock it's creating -- promoting
25 trust. You know, children initially will not trust people.

1 If the trauma happens from authority figure, then anybody who
2 is an authority -- in an authority position is going to be a
3 threat to the child. So building trust with the child and
4 make them -- making them feel safe is challenging. And
5 again, sometimes in therapy, our job is not to have the child
6 tell us what happened. It is really just treating the
7 symptoms.

8 So if the child is isolating, my goal is for the child
9 to feel safe and socialize. If the child is feeling
10 depressed, my goal is to address the emotions and the
11 cognition surrounding the trauma -- you know, to make her
12 feel -- you know, motivated and -- and happy again. We as
13 therapists do not investigate. It is not my job as a
14 therapist to have her recount the trauma to me unless she
15 volunteers it, but again, some children can be very open,
16 some children -- and depending on the upbringing on the
17 family values -- you know, they may be more resistant to
18 share. And again, sometimes they just simply don't remember.
19 They blocked it.

20 Q. How many days does it take to cure a child's
21 emotional injuries from an event of sexual trauma?

22 A. There -- there is no say. And cure? I don't
23 think there is a cure for trauma. You can learn to live with
24 the traumatic event that you experienced, and you can learn
25 to view that event from a perspective that no longer cause

1 you to feel shame, to feel -- you know, detached to not trust
2 others. And that happens through a lot of treatment and
3 having -- you know, support in the community, family support
4 and -- you know, any resources that can help her feel
5 validated. But there's -- I would say there is no number of
6 days. Some people that have experienced childhood trauma,
7 the impact continues to affect their lives or daily
8 functioning if they haven't had all of that support.

9 Q. And that could last for?

10 A. A lifetime. And it can be also ongoing. Meaning
11 it's not something you can separate from. So it's always in
12 the forefront of your brain because when a child experiences
13 trauma or an adult, your sense of -- your -- your sense of
14 self is completely -- you know, destroyed. You no longer
15 know who you are. So you need to kind of figure out: Who am
16 I? What do I need? A lot of times their focus is also on --
17 you know, I don't want to cause trauma to anybody around me,
18 so they need to relearn. Who are you outside of not wanting
19 to cause trauma to the people around you.

20 Q. Adults who were victims of childhood sexual
21 trauma, how does that affect them as adults?

22 A. Like I said earlier, it can impact them in -- in
23 -- in many different ways. Because their sense of self and
24 their self-esteem is so affected, they may have a lot of
25 difficulty connecting with other people, socializing,

1 engaging in -- in normal daily activities. They have
2 difficulty connecting with others and forming attachments,
3 healthy attachments with others. Also people who have
4 experienced trauma there is something that is really sad in
5 trauma that is called victimization, in which the patient in
6 a very unconscious way looks for a similar situation to
7 process the trauma that -- that they had, that they cannot
8 grasp entirely.

9 So it's not uncommon for someone who has been sexually
10 abused to engage in -- you know, sexual activity with
11 different partners who may be abusive. And that -- that is,
12 to me, one of the saddest pieces of trauma.

13 Q. Have you treated the Plaintiff in this case,
14 Ms. Zoe Arellano?

15 A. Yes, I have treated Zoe.

16 Q. When did you first meet Zoe?

17 A. I met Zoe -- I think Mom brought her to me around
18 -- I can't recall the exact date, but I know it was around
19 the summer of 2022. Mom made first contact with me via
20 phone, and she tried to explain to me what was happening, but
21 I couldn't really understand -- I mean, the whole situation.
22 So I told her to bring Zoe to the office. So she brought Zoe
23 to my office and I met her -- you know, in the summer of 2022
24 after Mom made the appointment.

25 Q. That first appointment, was it you and Zoe, or was

1 Nancy also present?

2 A. How I do therapy, I can't treat a child without
3 working with the parents simply because the parent is the --
4 the person that's with the child at all times. So I involve
5 the parents one way or another. Sometimes I have the parent
6 come in session and observe, sometimes I get the parent
7 involved in session with the child, and we do -- you know,
8 bonding activities. Sometimes I don't have the parent in
9 session and I have them come for a parent session separately.
10 So in Zoe's case, I've done both. I've had Zoe's mom be in
11 session with us at times, and then there are other times that
12 I may have had most of the session with her.

13 Q. What was it like treating Zoe?

14 A. I love all the kids that I work with. So I -- I
15 just love the children that come to me for whatever reason.
16 When Zoe first came to me, she was very detached. I had a
17 hard time connecting with Zoe initially. She was very
18 avoidant of discussing the trauma. However, she did disclose
19 many times, you know, "The boy was bad," or "God doesn't like
20 what -- what he did," or that "He doesn't like me." So she
21 had a very negative view of herself, and she was very
22 withdrawn. I would see her kind of like wandering in space.
23 I had to bring her into the session even in play. I had to
24 engage in play with her. She wouldn't even like attempt to
25 -- typically a child comes in a playroom and they go straight

1 to the toys, but she was very withdrawn. She didn't know
2 what to do. I think she very much wanted to do the right
3 thing and be good. So I think that made her -- you know,
4 very cautious when interacting with me. And also very
5 cautious when interacting with the toys in -- in the play
6 therapy room.

7 Q. So your initial observations of Zoe was that she
8 was experiencing detachment, avoidance, some religious shame?

9 A. Yes.

10 Q. Why would a child be experiencing shame as a
11 victim of sexual assault?

12 A. Like I said earlier, children do not understand --
13 I mean, even adults. When -- when -- when something happens
14 to you, they do not understand their role in it. They just
15 know they were part of it. So it took a lot of -- you know,
16 reading books for her to know -- you know, from -- and I had
17 to use her language and -- and -- and her convictions,
18 religious convictions. So we had to do a lot of therapy to
19 help her understand -- you know, that nothing that she did
20 was her fault. And that she's loved by everybody
21 unconditionally. And that what happened to her is not
22 something that she should be ashamed of.

23 Q. What kind of mental health challenges or injuries
24 did -- did Nancy bring her to you to assist with?

25 A. Uh-huh. At home -- in therapy, she was very

1 withdrawn, at home, she did experience some anger. And that
2 is very -- that can be very normal in children. I do believe
3 that, again, because -- you know, being raised in a home
4 where Christian values are instilled and -- you know, good
5 versus wrong, she really tried to mask her discomfort in
6 social situations. So when she would come to me, she tried
7 to pretend she was okay, even though I could see as a -- you
8 know, as an expert in -- in -- in trauma, that a child that's
9 okay with engaging play would have conversations. But when
10 you are masking outside of the home because you are wanting
11 to be good, then in the places that you feel comfortable and
12 where trust exists, they allow all those bottled up emotions
13 and pain come out. So Nancy did disclose that there was
14 anger, sometimes yelling or screaming or crying involved.
15 And that went on for some time.

16 Q. In treating Zoe, did you ever develop any formal
17 diagnoses for any of her challenges?

18 A. Yes. It was difficult to come up with a -- a
19 diagnosis for Zoe. Because Mom -- I -- I -- I had to ask Mom
20 how -- how were these behaviors present before the incident
21 that they explained happened. And Mom said that she didn't
22 experience the anger outbursts and -- you know, the crying
23 and the -- there was a lot of guilt also at home where she
24 said, "I'm bad" -- you know, "I'm not good." So repeat your
25 question. I'm sorry, I got lost in my...

1 Q. That's fine. I was asking you if during the
2 course of your treatment you had developed any formal
3 diagnosis --

4 A. Yes.

5 Q. -- regarding to challenges that Zoe experienced?

6 A. Yes. So I had to consider whether there was any
7 behavioral issues or emotional issues such as sadness -- you
8 know, anger present before that event, because Mom said it
9 wasn't then -- you know, anxiety disorder didn't apply at
10 that point, or depression didn't apply at that point. So
11 what I diagnosed her with is adjustment disorder with
12 symptoms of depression and anxiety, which means that the
13 child has symptoms of depression and -- and symptoms of
14 anxiety, but it is only because of a situational -- you know,
15 event. So the adjustment disorder means it is because of
16 something that is going on in her life that she's
17 experiencing anxiety or depression, which means if that event
18 wasn't -- hadn't happened, she wouldn't have the depression
19 and anxiety diagnosis.

20 Q. So people suffer mental health injuries for a
21 number of different reasons?

22 A. Uh-huh.

23 Q. Some of those could be you're born with chemical
24 imbalance or something like that?

25 A. Yes, sir.

1 Q. Adjustment disorder would not be an appropriate
2 diagnosis for somebody with an organic origin for their
3 challenges?

4 A. No.

5 Q. Okay. What kind of treatment or services -- what
6 did you do with Zoe during your sessions?

7 A. At the beginning, it was just allowing her to
8 share with me whatever she wanted to share -- you know,
9 because she -- like I said, she was very guarded when she
10 came to me. And -- you know, she didn't trust me. So at the
11 beginning of therapy is just allowing her to do or say
12 whatever she wanted to do. And again, she would not initiate
13 anything, so I had to prompt some things like, "Zoe, do you"
14 -- "do you want to play here with the doll house? Do you
15 want to play a game?" So Zoe's thing she's very creative and
16 she likes art. So she -- she engaged in a lot of drawing.
17 We did a lot of music and movement. And again, slowly she --
18 she was able to do, like, movement. At the beginning, it was
19 just drawing, and then we would introduce music, and then I
20 would initiate movement.

21 And then -- you know, it -- as she started gaining
22 trust, she was bringing her guard down and allowing me to see
23 more of her. So we did a lot of book reading, because that
24 would externalize the issues that she was experiencing. And
25 it kind of tricked her, right, to think, "Okay, I can talk

1 about this child. Oh, this child is feeling sad." So she
2 was okay identifying the feelings and emotions of the
3 character in the book. But because again, she had that shame
4 and that guilt it didn't feel good for her to open up to me
5 about her own feelings until later on in therapy, which she
6 -- she ended up opening up.

7 Q. How many sessions, or approximately what duration
8 in terms of months or years did you treat Zoe?

9 A. I treated Zoe more frequently at the beginning.
10 My hours interfere with school. So I'm -- I'm an advocate of
11 -- you know, "Let's do what she really needs, and as she's
12 progressing, let's reduce the number of sessions and the
13 frequency." So she started with weekly sessions, and then we
14 went to -- you know, more far apart sessions as she was
15 improving in treatment.

16 Q. By your last session, was Zoe cured of her
17 adjustment disorder and her other mental health challenges?

18 A. The last time that I saw Zoe was per Zoe's
19 request. I hadn't seen her in -- in a -- in a couple months.
20 And Zoe asked her mom if she could come see me. And Mom had
21 mentioned over the phone that they had moved to Augusta and
22 she was having a little bit of difficulty adjusting to a -- a
23 new school. And not only a new school, a new home, they --
24 they just moved because of housing reasons. And I think Zoe
25 just felt safe in my room and just wanted to come and visit.

1 And she was -- she was doing well. I wouldn't say she was
2 where she was. Of course her trauma didn't disappear, but
3 when she came to see me, I feel she just wanted that sense of
4 security and she had a good time with me. I know that her
5 grace had declined because Mom told me. And Zoe did disclose
6 in that session that she missed her friends from Saluda River
7 Elementary School, and that she only had one friend in her
8 new school.

9 Q. Will Zoe benefit from additional services of
10 therapy?

11 A. Absolutely.

12 Q. How many more services will it take to fully cure
13 Zoe?

14 A. There is no say, especially with childhood trauma.
15 As they grow up, the memories start to fade a little bit. So
16 there's always that -- you know, discomfort and pain and not
17 being able to fully understand what happened. But therapy
18 helps her at least know that she's not her trauma.

19 Q. If Zoe and Nancy testified that Zoe is still
20 experiencing anxiety and anxiety attacks, would that be
21 consistent with adjustment disorder?

22 A. At this point, if she would -- if she -- if she
23 would continue to experience anxiety and panic attacks, I
24 would really be looking at a different diagnosis which is
25 PTSD, post-traumatic stress disorder. Zoe had a lot of those

1 symptoms when she came to see me, but I couldn't diagnose her
2 because anybody experiencing any traumatic event is going to
3 experience those periods right after the trauma. It doesn't
4 become PTSD if after less than six months, those symptoms
5 resolve. So at this point, because it's been many years, she
6 has still experiences the -- those effects, and it's not
7 related to anything, any new traumas, then I would be looking
8 at a diagnosis of PTSD, but of course, I will have to do a
9 formal assessment.

10 Q. If Zoe and Nancy testified that Zoe is still
11 having recurring nightmares and night terrors related to this
12 incident trauma, would that be consistent with PTSD or the
13 adjustment disorder?

14 A. It would be more consistent at this point because
15 of the length of time. With PTSD, that's one of the
16 criteria. It's re-experiencing parts of the event through
17 nightmares, flashbacks, daydreaming. However, it's not the
18 only criteria. There are other criteria that she would need
19 to meet in order to be diagnosed with PTSD. And that -- I
20 mean, just thinking about the criteria, that would be
21 avoidance. So avoiding talking about the trauma, hyper
22 vigilance, which means that she is -- again, that sense of
23 safety and security is -- is constantly being questioned.
24 And she's looking for situations in the environment that can
25 be threatening. A startle response is also one of the

1 criteria of PTSD. So again, the nightmares and the panic
2 attacks is -- is one of the criteria, and I will have to do a
3 full evaluation to see if she would meet criteria for the
4 other criteria for the diagnosis.

5 Q. If Nancy had testified that Zoe was expressing
6 suicidal ideation related to this incident of trauma, would
7 that be consistent with adjustment disorder or PTSD?

8 A. It wouldn't be consistent with adjustment
9 disorder, with -- we're talking about suicidal ideation at
10 this age. At that point, it would either be -- you know,
11 something like major depressive disorder. And when we think
12 about suicidal ideation, it'd be on the moderate or severe.
13 Major depressive disorder has three three different
14 diagnosis: mild, moderate, or severe. People that are
15 experiencing suicidal thoughts or ideation would be in the
16 moderate or severe type of a major depressive disorder, or it
17 -- it would be more consistent with PTSD, post-traumatic
18 stress disorder.

19 Q. What kind of treatment, or therapy, or services
20 would be appropriate for a child who's experiencing major
21 depressive -- it's major depressive disorder?

22 A. Yes.

23 Q. Or PTSD?

24 A. Okay. Well, at that point, when we think about
25 major depressive disorder, we're talking about something that

1 most likely is going to be chronic. Some people are born
2 with chemical imbalance, or some people through trauma, their
3 brain chemistry can be impacted by the trauma to the point
4 where they can then acquire major depressive disorder. So
5 the treatment for Zoe would be -- now again, I will have to
6 do a full evaluation depending on the symptoms. The first
7 thing would be addressing the suicidal thoughts and creating
8 a safety plan with Mom and also with Zoe, and of course, the
9 school will have to also be involved because she spends so
10 much time there. She would require -- she would require an
11 IEP if academically the -- the -- the diagnosis is impacting
12 her academics. If it's not, she could still get a 504 plan,
13 which grants accommodations. So if she's feeling overwhelmed
14 at school, she would be allowed whatever accommodations the
15 school and the parents agree on. And that could be visiting
16 the school counselor, giving her breaks -- you know,
17 sometimes if she feels overwhelmed by homework -- you know,
18 maybe reducing the amount of homework, giving her extra time
19 if she -- depression can affect concentration and memory. So
20 sometimes if a child has a diagnosis of depression or PTSD,
21 the accommodations that could be granted is more time to
22 complete assignments, tests, projects, et cetera.

23 MR. EDDY: Thank you, Ms. Amador. I'll turn you over
24 to the Defense Attorney. Please answer his questions to the
25 best of your ability.

1 THE WITNESS: Thank you.

2 THE COURT: Cross?

3 MR. CROSSLAND: Yes, sir. Thank you, your Honor. May
4 it please the Court?

5 CROSS-EXAMINATION

6 BY MR. CROSSLAND:

7 Q. Good morning, Ms. Amador. How are you?

8 A. Good, how are you? Good morning.

9 Q. Doing all right. What was the last time that you
10 saw -- sorry, that you treated Zoe?

11 A. The last time that I saw Zoe and she was in my
12 office, was the time that Zoe requested to come -- to come
13 see me. And I -- I'm unsure of that date. I'm not sure if
14 it was late 2023.

15 Q. So November 2023?

16 A. Uh-huh.

17 Q. It sounds right?

18 A. Could have been. Uh-huh.

19 Q. Have you talked with Nancy since November of 2023?

20 A. Yes.

21 Q. About Zoe?

22 A. I have -- she -- I -- I did. She came in
23 February. And at that point, she was concerned about
24 Ferrey's emotions and how those were impacting his academics.

25 Q. So it was about Ferrey?

1 A. Uh-huh. I always --

2 Q. Her brother?

3 A. Yes. I always touch base -- you know.

4 Q. But nothing about Zoe?

5 A. She did mention that she was still having trouble
6 at school, just connecting and bonding with other kids.

7 Q. So she brought Zoe to see you as a visit?

8 A. No, that day, Zoe was not present in -- in
9 February.

10 Q. She brought Ferrey?

11 A. Ferrey. Uh-huh.

12 Q. Did she bring Zoe for a follow-up visit as well?

13 A. The last time that -- that she came for a
14 follow-up visit was November of 2023, but I know they -- they
15 have moved to Augusta. So I encouraged Mom last time that I
16 saw Zoe to find a clinician that was closer, because again,
17 my hours overlap with the school hours. And traveling from
18 Augusta would -- you know, mean she had to take a lot of time
19 off from school.

20 Q. Are you aware if Zoe is currently seeing a
21 counselor?

22 A. I haven't had any conversations with Nancy since
23 February, so I'm not aware since then.

24 Q. Since in February, were you aware she was seeing a
25 counselor?

1 A. No.

2 Q. Did you get any requests for records from -- from
3 a new counselor for Zoe?

4 A. Oh, no. I would never do that with a patient,
5 like...

6 Q. You wouldn't share your records with another
7 counselor?

8 A. I mean, if they request it, but I wouldn't ask if
9 -- if -- you know, I'm not seeing her at the moment.

10 Q. So if she was seeing another counselor and they
11 wanted to get her record, she -- that new counselor could
12 reach -- reach out to --

13 A. She could, yes.

14 Q. -- you and get those records?

15 A. Yes, absolutely. Yeah.

16 Q. And that hasn't happened?

17 A. No, I haven't had a -- a request.

18 Q. Do you remember when the first time that you saw
19 Zoe?

20 A. Yeah, I remember.

21 Q. Do you know when that was? I'm sorry.

22 A. That was in the summer of 2022.

23 Q. So July 2022?

24 A. I'm not sure about the exact date.

25 Q. That sounds right, though?

1 A. Maybe. Yes.

2 Q. Do you know when this incident occurred? That the
3 incident the -- that is the basis of this lawsuit?

4 A. Right before it -- it was a couple days before the
5 end of the school year.

6 Q. So May of 2022?

7 A. Yeah. Well, I don't know.

8 Q. That sounds right.

9 A. I know most school -- I don't know. Because some
10 schools end school early May, some late May, some early June.
11 So I couldn't tell you that.

12 Q. So in your -- you met with Zoe in July?

13 A. I would have to look at --

14 Q. At the summer of --

15 A. -- summer. I don't know exactly the date.

16 Q. Were you aware at that point that a lawsuit had
17 been filed against the school district?

18 A. No, I was not aware at that point.

19 Q. So you weren't aware of that -- and on July 12,
20 2022 that the Arellano family filed this lawsuit?

21 A. No.

22 Q. Through your sessions with Zoe, did you ever get
23 Zoe's version of the story?

24 A. Again, she never verbally told me "this is what
25 happened, and this happened and this happened." She did

1 disclose bits and pieces through therapy sessions. And a lot
2 of it was guilt based. Like, "God doesn't love me," or -- or
3 "The boy at the school is bad," or "I don't want to go to
4 school."

5 Q. So -- so how did you learn about the incident that
6 -- at the school?

7 A. Ms. Nancy had -- when she contacted me first, she
8 disclosed what had happened at the school.

9 Q. Did you --

10 A. Per -- per her...

11 Q. Did you receive any information from the school
12 about what happened?

13 A. I did ask Mom to sign a release, and she did sign
14 it, but she -- she didn't enter the school information in the
15 line where she was to, so it took me some time to get her to
16 sign the new release. I did try -- I -- I did call the
17 school, but it was summertime, and -- you know, I couldn't
18 get anybody to talk to me.

19 Q. Did -- you didn't get any records from the school?

20 A. I did -- I tried it, but --

21 Q. You didn't get any?

22 A. No.

23 Q. Did you reach out to DSS to get any records?

24 A. I knew that DSS had contacted Ms. Nancy and they
25 -- this -- this missed the case shortly after.

1 Q. But again, that came from -- all this information
2 is coming from Nancy?

3 A. Yes.

4 Q. Did you -- did Nancy complete any other -- first
5 let me go back. Can you explain what a release of
6 information is?

7 A. Yes. A release of information is a document that
8 someone -- in my case, my patients sign to allow me to
9 disclose information about the child to another agency or
10 entity or person and or receive information from them or
11 both.

12 Q. So you said that there was a release of
13 information completed for the school?

14 A. Yes.

15 Q. Were there any other release of information that
16 were completed?

17 A. Initially, that was it. And then I -- I learned
18 about Ms. Nancy look -- looking for an attorney a couple
19 sessions after we started. And -- and I -- she signed that
20 release for the attorney.

21 Q. So you completed a release of information for an
22 attorney?

23 A. Yes.

24 Q. Do you know when that was the date?

25 A. No, I don't remember. I know it was a couple

1 sessions after I had seen Zoe.

2 Q. On August, potentially?

3 A. I don't know.

4 Q. Is that typical to complete a release to an
5 attorney?

6 A. In some cases, it is, when people experience
7 trauma and --

8 Q. And what kinds of information would you share with
9 the attorney?

10 A. I would share whatever is requested and whatever
11 the patient allows me to share.

12 Q. So again, we never got Zoe's complete story of
13 exactly what happened in the classroom?

14 A. No. And again -- typically, it's -- you don't get
15 it from a child, unless you are a forensic psychologist, and
16 even then, some children never disclose.

17 Q. So as a counselor, are you trying to investigate
18 what happened?

19 A. No, I -- I don't try to investigate, but I do pay
20 attention to the things that the child.

21 Q. But your goal is not to investigate --

22 A. No.

23 Q. -- figure out what happened?

24 A. No.

25 Q. Your goal is to treat Zoe --

1 A. Yes.

2 Q. -- and to -- to get her better?

3 A. Yes.

4 Q. So you said that you first met Zoe in -- in the
5 summertime of 2022. You never knew her before?

6 A. No, I've never.

7 Q. So you wouldn't know how she was before that day?

8 A. No.

9 Q. Before -- how she was before the incident?

10 A. No.

11 Q. Again, Mom was the one that communicated how Zoe
12 was?

13 A. Yes.

14 Q. So through your sessions with Zoe -- how many
15 sessions did you have with her?

16 A. I'm not 100 percent sure. I want to say around 12
17 sessions.

18 Q. 12? And are all the sessions the same or some of
19 them are different?

20 A. Like I said, some of them are Mom and Zoe for a
21 period of time during the session, and then the remainder of
22 the session with Zoe. And some sessions were more with Mom
23 to learn about her progress and how she's doing and help her
24 -- help her connect with Zoe and manage the behavioral issues
25 that she was presenting with at the time.

1 Q. So in your time treating Zoe, did you learn of any
2 new stressors or situations that could have caused her any
3 anxiety? Did you learn that she was -- that she had changed
4 schools?

5 A. Oh, that's what you're referring to? Yes, Zoe did
6 not want to go back to her previous school. As a matter of
7 fact, Zoe didn't want to go to school, period.

8 Q. So she went to -- I believe you said she went to
9 Saluda River?

10 A. Initially, Mom -- I -- I did tell Mom to research
11 other schools in the district, and Mom had registered her in
12 -- in a school from the district, but she -- school was about
13 to start and Zoe was number six in the wait list. So at that
14 point, I told Mom, "You need to find a school that can take
15 her right away."

16 Q. When you say "in the district," that's
17 Lexington...

18 THE COURT: You're kind of -- try not to talk over,
19 okay?

20 MR. CROSSLAND: I'm sorry.

21 THE COURT: Did you finish your answer?

22 THE WITNESS: Well, I was saying that Mom had found a
23 school for Zoe, and Zoe was in the wait -- on the wait --
24 number six on the wait list. And so I encouraged Mom to find
25 other schools. She asked me if I knew of any schools, and

1 the area where she lives was very close to the shelter at
2 Sistercare where a lot of the Hispanic children used to go to
3 Saluda River. So they had a program with a number of kids
4 that were Spanish speaking. So at that point, I said, "You
5 can look at any schools. I know that this specific school."
6 Also had art -- it was art oriented. It had some -- I don't
7 know, it has a -- I'm -- I'm -- I'm not sure of the school
8 terminology, but it had an emphasis in art. Saluda River
9 did. And Zoe like I mentioned earlier, she was creative and
10 she enjoyed art. So she got her registered at Saluda.

11 BY MR. CROSSLAND:

12 Q. And Saluda River, is that in Lexington School
13 District Two?

14 A. I'm not sure.

15 Q. Were you aware that after she went to Saluda River
16 that she then switched schools to when they moved to Augusta?

17 A. I -- I was made aware in one of the sessions that
18 Mom came, yes, I was made aware.

19 Q. Would that be --

20 THE COURT: Talking over. You -- you start before she
21 finishes.

22 MR. CROSSLAND: Yes, sir. I'm sorry. I -- I --

23 THE WITNESS: Okay.

24 MR. CROSSLAND: -- I apologize.

25 THE WITNESS: I was made aware by her mom that she had

1 moved to Augusta in one of the sessions that she brought Zoe,
2 and she express -- she reported that Zoe had made some
3 academic -- academic regression and there was a decline in
4 her grades. And Mom said that it was not as bad as it had
5 previous been it -- it was not as bad of -- of a decline as
6 it had been in the month of April. I think she had to
7 testify or -- or give her testimony to some attorneys. I
8 don't know exactly what the situation was, but Mom mentioned
9 that. So she -- she did -- Mom shared with me -- you know,
10 when she called to make the appointment that she wanted me to
11 see Zoe because of that.

12 BY MR. CROSSLAND:

13 Q. So when a student, or when a kid changes schools
14 several times, would that be a cause of anxiety?

15 A. Yes, sir.

16 Q. Would -- when you change schools, would it be
17 difficult for a child to -- to make new friends?

18 A. For Zoe, it would be difficult, yes. I don't know
19 every child. Not every child experiences -- you know, the
20 same social anxiety, but for her it would be difficult.

21 Q. So are -- depending on the person, somebody can
22 have natural -- different levels of natural anxiety?

23 A. Yes.

24 Q. So one person could be more anxious than -- than
25 another?

1 A. Genetically or also the anxiety can be caused by
2 -- you know, external circumstances or situations. Yes.

3 Q. You're not able to pinpoint what is specifically
4 causing the anxiety?

5 A. It's hard to respond to that question because when
6 there is trauma, I couldn't tell you what traumatic event
7 took place, but there are some behaviors at a -- you know, at
8 a -- at a certain age that are developmentally neurotypical,
9 and then some behaviors that I observed. Like, she was
10 extremely withdrawn, very difficult to -- you know, to -- to
11 take any word really out of her mouth at the beginning of
12 therapy. So at that point, that -- that goes beyond a child
13 being -- you know, like, shy. Whether that is caused
14 naturally -- I mean, I don't know. That type of behavior
15 tells me as an -- as an expert in -- in treating children,
16 that something happened at some point that -- that's causing
17 her to not be able to open up. Now the -- the question,
18 someone can have anxiety because of -- you know, their
19 natural predisposition and their genetics? Yes.

20 Q. Thank you. Through your sessions with Zoe, did --
21 did Nancy inform you that her dad was trying to come back
22 into her life?

23 A. Nancy did call me once, and I can't remember which
24 -- before which session, but it was after a while, so I had
25 already been treating Zoe. And Nancy did call me, and we

1 didn't have a session. I allowed her to just talk to me
2 about what happened. And she said, "Hey, I wonder -- Zoe's
3 dad has reached out and I want to make sure that I'm doing
4 the right thing. I want to know would it be beneficial for
5 her or detrimental for her to see her dad."

6 Q. Was -- was Nancy anxious about her dad reaching
7 out?

8 A. I think so. A little bit. Otherwise she wouldn't
9 have reached out. So a little bit anxious about -- about it.
10 Yes, I would say.

11 Q. Did you talk with -- or -- or treat Zoe about
12 that, about her dad coming back in?

13 A. We did have -- again, with children, we worked
14 through play therapy in a very indirect way, but again, we
15 did talk about -- about it through books. We had -- you
16 know, read books about -- you know, family situations, dad,
17 stepdad, and she did -- she -- she was aware that who her
18 biological father was.

19 Q. Was she anxious about him coming back?

20 A. She was not at all.

21 Q. Was -- but you said Nancy was anxious about it.
22 Did she say why she was anxious?

23 A. Yes. Nancy disclosed that in the past, Zoe's dad
24 had problems with substances. She didn't specify if it was
25 drugs or alcohol, but -- that he -- he had been in treatment

1 and recovered. And Nancy talked to -- she told me that she
2 had gone a step further and called Zoe's father's mother to
3 kind of -- you know, get her version of whether -- you know,
4 he -- he's doing better.

5 Q. So she was pretty anxious and concerned about
6 this?

7 A. She was a little anxious. I -- I do feel like she
8 did not want to say no because of her anxiety and miss on
9 Zoe's opportunity to meet her dad. So she reached out to me.

10 Q. And again, you said that you learned about the --
11 the family moving to Augusta during your sessions as well?

12 A. Well, like I said, a lot of times she would call
13 me to make an appointment, and so she would tell me, "Hey, I
14 would like Zoe to come. This is happening." So in one --
15 before one of our sessions, she called and said -- you know,
16 "Zoe is -- is declining academically. And" -- you know, "I
17 think she's having some trouble with -- with the school that
18 she's attending."

19 Q. And are you currently treating Zoe now?

20 A. I haven't seen her since -- since November of '23.

21 Q. And Zoe was your patient?

22 A. Yes, Zoe was my patient.

23 Q. Was Nancy ever your patient?

24 A. Again, that's a little bit of a tricky question.
25 She -- I'm not treating her anxiety, but Nancy is an

1 important piece of therapy because Nancy's Zoe's mom, and the
2 person that spends most time with her. So even though she
3 was not in my therapy, she was very involved in -- in therapy
4 and she was aware of everything that we were doing. And at
5 times I would just guide her on how to manage certain --
6 certain situations with Zoe.

7 Q. So did you have a -- a separate patient file for
8 Nancy?

9 A. I never do. When I -- when I have a child's
10 patient, the identified patient is the child, and I don't
11 need a different file for the parent.

12 Q. So are you able to treat adults?

13 A. Yes, I am, but she will have to become a patient
14 of mine -- formally become a patient and go through initial
15 evaluation for her to be considered my patient.

16 Q. And she didn't do that?

17 A. No, but I never treated her. I was treating Zoe
18 and utilizing her to help Zoe in her mother's capacity.

19 Q. Are you a mandated reporter?

20 A. Yes, I am a mandated reporter.

21 Q. And what does that mean to you?

22 A. That means that if anybody comes to me and there
23 -- there are different criteria that would make me break
24 confidentiality and report a suspicion of something not being
25 addressed that would involve abuse to a child, abuse to an

1 elderly person or active suicidal or homicidal thoughts with
2 plan and intent, I would have to break confidentiality and
3 report to the authorities.

4 Q. So if a child -- a five or six-year-old, a
5 kindergartner had advanced sexual knowledge of sexual acts,
6 would that be a reason to make a report?

7 A. Again, it -- there are different variables that I
8 would take into account before I make a report, because
9 reporting can be traumatic also -- you know. Once DSS gets
10 involved, it can -- that by itself can be a traumatic event
11 for a child. Seeing people coming in the house, questioning
12 the parents. So Mom had -- I mean, the school was involved,
13 so the school are also mandated reporters and Mom had no
14 issue issuing a release of information to communicate with
15 the school. At no point in time I questioned -- I questioned
16 Mom's -- Mom's reports that -- you know, "This is what
17 happened at school." She -- like I said, she had no issue
18 giving me a -- a -- a release of information.

19 As a matter of fact -- you know, I tried contacting the
20 school in the summer because she was confused about what
21 actually took place because there was no formal meeting with
22 her. But again when you asked me would I report a child that
23 is act -- acting out sexually? If I see it, and it hasn't
24 been reported, and the school is not aware, and DSS is not
25 aware, DSS was involved, and DSS actually contacted me to

1 make sure that Zoe was in therapy because they -- they sent a
2 therapist or a social worker to the house, and Ms. Nancy
3 didn't feel comfortable. At that point, she had already
4 started with me, anyways. But because I knew DSS was
5 involved and DSS had my information and the school also knew
6 of the event, there was no need to double report.

7 Q. And I'm sorry that -- that was a -- I made it
8 confuse you. It's a bad question on my part. I wasn't
9 referring specifically to this situation -- you know, as a
10 counselor, if you learned about a kindergartner with advanced
11 sexual knowledge and knowledge of sexual acts, would that be
12 a reason to make a report?

13 A. Depends. I mean, if -- if a child is acting out
14 -- if -- if a -- if a mom tells me, "My child is exposing
15 themselves in class," I mean, first I would go, "What's going
16 on? Has she watched any inappropriate materials?" I mean,
17 children nowadays -- it's not rare. I mean, honestly, my own
18 child has got ahold of a tablet and seen something that they
19 shouldn't -- you know, for a split second. So that doesn't
20 grant necessarily -- necessarily a report. Now again, it all
21 depends on how frequent that is -- how frequent that's
22 happening. Also by my observation, am I seeing any
23 inappropriate behavior in -- in -- in the therapy room? Am I
24 getting reports from the school that she's acting out?
25 Again, because DSS involvement is traumatic, I'm pretty

1 cautious to get anybody involved, unless I pretty much are --
2 are -- I have very high suspicions that that child needs
3 protection from DSS.

4 Q. So it could be a reason to make a --

5 A. It could be, yes.

6 Q. -- DSS report?

7 A. Yeah.

8 Q. And once you make a DSS report as a mandated
9 reporter, do you have any other involvement in determining
10 what DSS does with the report?

11 A. Sometimes. There are times that I report
12 anonymously, in which I don't know anything. They don't --
13 they don't have to tell me anything. If I make the report
14 not anonymously, which means -- you know, they -- they know I
15 made the report, the family knows I made the report, then
16 supposedly they're supposed to get back to you. I've never
17 had them get back to me for anything, but -- but they should
18 if you don't do it anonymously.

19 Q. But you don't tell DSS whether or not to
20 investigate it or how to investigate it?

21 A. No.

22 Q. Earlier you testified about some -- potentially
23 some ongoing impacts with Zoe.

24 A. Uh-huh.

25 Q. When's the last time you seen Zoe?

1 A. Again -- you know, at the end of 2023.

2 Q. So you don't know how she's currently doing right
3 now?

4 A. No, I don't.

5 Q. And you don't know if she's seeing a counselor
6 currently?

7 A. No, I don't. I did -- last time I saw Zoe --
8 again, I did suggest to Mom to find a counselor in the -- in
9 the area so she didn't have to travel or miss school.

10 Q. So you can't say what impacts it's going to have
11 on Zoe moving forward, since you haven't talked to her in 10
12 months?

13 A. Could you rephrase that question?

14 Q. So you don't know how currently -- how Zoe is
15 currently.

16 A. Uh-huh.

17 Q. So it is speculation for you to say what could
18 happen to Zoe moving in the future, and when she turns into
19 an adult?

20 A. I don't know how she's doing, but I can tell you
21 -- you know, people that have sexual trauma do experience
22 difficulties as an adult to a -- a -- a lesser or -- or
23 higher level.

24 Q. But it's not definite?

25 A. No, nothing is definite.

1 MR. CROSSLAND: Beg the Court's indulgence?

2 THE COURT: Yes, sir.

3 BY MR. CROSSLAND:

4 Q. So previously you testified that Zoe became more
5 anxious -- and I think you said she regressed back in -- was
6 it the spring of 2023 involving some interactions with these
7 -- some attorneys?

8 A. Mom -- that's what Mom said.

9 Q. Would that be back to -- to her deposition?

10 A. I have no idea.

11 Q. Would -- and that caused her some angst or anxiety
12 specifically related to that incident?

13 A. That's what Mom -- Mom relayed it to me.

14 Q. Did you see it in Zoe when you treated her?

15 A. When Zoe came, I think she was just happy to be in
16 my room. I couldn't pinpoint anything. She -- she was doing
17 okay in my room. That doesn't mean she was okay; children
18 mask. And the other thing is Zoe did say that she missed her
19 Saluda River friends, and -- and she only had one friend.

20 Q. During your sessions with Zoe, did she ever share
21 any suicidal thoughts to you?

22 A. I'm trying to think. She did -- I -- I don't -- I
23 -- I can't say she did, but she did say that she was bad, and
24 that God didn't want her to live. She -- she -- she
25 mentioned that.

1 Q. What about self harm? Did she ever say that she
2 was harming herself?

3 A. No.

4 MR. CROSSLAND: No further questions, your Honor.

5 THE COURT: Thank you. All right. It's been an hour
6 and 35 minutes. Do you want --

7 MR. EDDY: I just want to say I don't have any more
8 questions for this witness.

9 THE COURT: Thank you. You may step down.

10 MS. AMADOR: Thank you.

11 THE COURT: All right. Ladies and gentlemen of the
12 jury, we'll take a 10-minute break. Don't discuss the case.

13 (Jury exits room at 11:35 a.m.)

14 THE COURT: The Court is in recess for 10 minutes.

15 (Off the record at 11:36 a.m.)

16 (On the record at 11:50 a.m.)

17 THE COURT: Do you have another witness?

18 MR. EDDY: No, your Honor. The Plaintiff will rest at
19 this point.

20 THE COURT: All right. There are motions?

21 MR. CROSSLAND: Yes, your Honor.

22 THE COURT: Go ahead, please.

23 MS. WHITE: May it please the Court? Your Honor, as
24 the complaint reflects and -- and you noted earlier in the
25 week, we have two claims here. We have Nancy Arellano claim

1 individually against the school district, and then we have
2 her claim on behalf of Zoe for injuries and -- and damages
3 that allegedly were sustained by Zoe.

4 At first, I'd first like to address Nancy Arellano's
5 claim. Initially, in order for Ms. Arellano to recover,
6 there has to be some proof that she actually paid medical
7 bills or incurred other expenses involved with her care and
8 -- and treatment for Zoe. And there is not a scintilla of
9 evidence for this court to indicate that Ms. Nancy Arellano
10 did, in fact, pay any medical bills, sustain any lost wages,
11 incur any mileage as far as transporting Zoe for treatment by
12 Ms. Amador. So she has presented no evidence of -- of
13 damages, and -- and as such, she cannot recover for any of
14 those expenses. And because a -- a claim -- an essential
15 element of a claim, damages are an essential part of that,
16 her claim should be dismissed.

17 Now also, I want to address -- I -- I can't remember if
18 it was yesterday or Monday that Mr. Eddy sought to amend the
19 complaint during trial to also present basically a -- a
20 bystander liability theory of recovery. And initially, this
21 does not meet the standard to indicate a bystander liability
22 claim. Ms. Arellano did not witness the touching of Zoe by
23 K. There's no indication that she had any sort of
24 interactions with school officials that caused her any kind
25 of emotional damage or injury. And even if she had done that

1 -- again, there is absolutely not a scintilla of evidence
2 that she herself sustained any sort of -- of damages. She
3 didn't get treatment for anxiety, she didn't get treatment
4 for depression. She didn't see a counselor, she didn't see a
5 medical doctor. There is simply no evidence that even if --
6 if the Court was to find that she has presented a -- a
7 colorable claim, there's simply no evidence that she
8 sustained any damages. And for those reasons, Nancy
9 Arellano's claim against the school district, both
10 individually to recover medical expenses and other related
11 expenses, as well as any claim that she might be attempting
12 to bring for her own emotional harm, fails with the matter of
13 law, and we would ask that the Court dismiss her claim prior
14 to her claim going to the jury.

15 Now secondly, we move for a directed verdict as to the
16 entirety of Plaintiff's claim against the school district,
17 based on the relevant law under the South Carolina Tort
18 Claims Act. As an initial matter, as your Honor well knows,
19 simple negligence is not sufficient for a school district to
20 be found liable under the Tort Claims Act. This case
21 involves the supervision, protection and/or control of a
22 student. And in order for the case to go to the jury, there
23 has to be some facts to indicate that the district failed to
24 exercise at least slight care under the relevant
25 circumstances. And in this case, through all of the

1 testimony of the school officials who were involved in
2 supervising the classroom, and investigating the incident,
3 and in responding to the incident, that district officials
4 exercise, not only slight care, they exercise abundant care,
5 and there simply are no facts to indicate otherwise.

6 So let's look at what the undisputed facts are in this
7 case as elicited through the testimony of school officials
8 that Plaintiff's called in their case. First of all, with
9 regard to supervision of the classroom, there were two
10 teachers in that classroom supervising 24 students. That's
11 undisputed. It's undisputed that both of those adults were
12 in the classroom when the incident occurred. And the
13 incident itself is what? The incident is that Zoe was
14 touched by Student K over -- between her leggings and her
15 underwear, she was touched. That is the incident itself.

16 And the next thing I want to -- and I'll -- I'll come
17 back to that in a minute, but the next thing I want to
18 mention as far as supervision of the classroom is that it's
19 undisputed that the desks in the classroom were arranged in
20 such a way that there were no blind spots. The teachers
21 could see. One was at the front of the room, one was at the
22 back of the room. So they had a clear view of what was going
23 on in that classroom. And there's no evidence to indicate
24 otherwise. There's no evidence to indicate there was any
25 kind of -- area in the classroom where students could go and

1 get themselves into trouble without the teacher being aware
2 of it.

3 As far as the incident itself, the facts indicate that
4 it happened in -- in -- in basically a very -- very brief
5 period of time. There was testimony from Ms. Ray that the --
6 the actual desks themselves, that the little -- I'll call
7 them a -- a pod, the pod consists of student desk, that it
8 would've taken Student K a matter of seconds to get over to
9 where Zoe was sitting. In fact, Zoe herself testified that
10 she invited K over to where she was sitting. It would take a
11 split second for that touch to occur.

12 And as your Honor knows, there is also a case law out
13 there that says the school districts are not the insurer of
14 student safety. How can they be? We all know that students
15 and kids -- been a parent or a grandparent or even been
16 around children, that something can happen so quickly. But
17 that does not indicate that school officials were not doing
18 what they needed to do to appropriately supervise their
19 students.

20 Was it dark in the classroom? No, it was not dark.
21 The testimony is that the lighting is about what it is in
22 this courtroom. Can we see everything that's going on? Is
23 it so dark that we can't tell what's happening? No, it's
24 not. Were the blinds closed? No, the blinds weren't closed.
25 The blinds were open. And so in addition to the lights,

1 there was light coming in from the outside. There were lamps
2 in the classroom. There -- there is simply nothing to
3 indicate that the way that the classroom was set up somehow
4 indicated a gross negligence, a failure to exercise slight
5 care. And what were the teachers doing here? Was Ms. Long
6 over at Ms. Ray's desk? Were they sitting there looking on
7 the internet or -- or playing a game or just talking about
8 what they were going to do now that the school here was over?
9 No, the undisputed evidence indicates that Ms. Ray was up
10 walking around actively monitoring all those students. And
11 if that's not an exercise of slight care, then I don't know
12 what is. And there's no evidence whatsoever to dispute that.

13 The next thing is -- let's look at the district's
14 response to the incident. The Plaintiff also alleges in
15 their complaint that the district's handling of the
16 investigation of the incident was grossly negligent. What
17 did the district do here? When Student S came and reported
18 to Ms. Ray that there had been some sort of a touching, did
19 Ms. Ray say to Student S "Go sit back down, go work on your
20 scrapbook. We don't have time to deal with this"? No. What
21 did she do? She immediately went and sought the assistance
22 of an administrator to assist her in figuring out, "Okay,
23 what happened? And then what do we need to do about it?" So
24 how did they exercise slight care as far as their
25 investigation of the incident? They interviewed the student

1 separately. Student K was interviewed by Ms. Ariaail and
2 social worker Joe Snyder. So he was given his opportunity to
3 tell his side of the story. And then Zoe -- did Ms. Prizer
4 -- I mean, I'm sorry, Ms. Ariaail, the assistant principal,
5 did she call Zoe into her office and say "Okay, you sit here
6 in this chair, I'm going to sit at my desk and you tell me
7 what happened. If you're a bad girl -- you know, you're a
8 liar. We don't believe anything you say." No, that is not
9 what happened. What did Ms. Ariaail do? She got Catherine
10 Prizer, one of the school counselors involved in questioning
11 Zoe. And what was the testimony about why she did that? The
12 testimony was that she wanted Zoe to feel comfortable in
13 sharing with Ms. Ariaail and Ms. Prizer exactly what had
14 happened. Is that an exercise of at least slight care?
15 Absolutely. In fact, that shows an abundance of care.

16 Did they keep Zoe for hours locked in an office
17 somewhere and keep coming back to her and saying, "Now tell
18 me again. Tell me again what happened? Tell me" -- "tell me
19 all about this. You're a bad girl, you're a liar." Is there
20 any evidence to indicate that? Absolutely not. So again,
21 the undisputed facts in this case indicate as a matter of law
22 that the district exercised at least slight care. And as a
23 result, there simply is under the -- the -- you know, law as
24 established by the Tort Claims Act, there's nothing for the
25 jury to decide here.

1 The next thing that we turn to is in their complaint,
2 Plaintiffs allege that the district following the incident,
3 following the investigation, that the district did not --
4 that the district was grossly negligent in responding to the
5 conclusions of their investigation. So -- so let's look at
6 what the district did. First with regard to the report to
7 the Department of Social Services. Again, there is testimony
8 from school officials that they are mandated reporters. In
9 fact, Plaintiff's own witness -- you know, said that she's a
10 mandated reporter. And under South Carolina state law school
11 officials have a duty. They are mandatory reporters. They
12 have a duty to report to the Department of Social Services,
13 any information that they receive, which indicate that a
14 child has been, or -- or maybe threatened to be a victim of
15 sexual abuse or neglect.

16 Here, we have got a five or six-year-old who is sharing
17 extremely graphic details about sex acts that a five or
18 six-year-old should not have knowledge of. Now was it
19 because she herself was the victim of sexual abuse? Was Zoe
20 the victim of sexual abuse, or did Zoe have access to
21 materials that -- that indicate that -- you know, that's how
22 she picked up that knowledge? As far as the district was
23 concerned that -- that was up to DSS to determine. The
24 district had to report it. And why did they have to report
25 it? Three reasons.

1 Number one, if they don't report it, as Mr. Snyder
2 testified, they are subject to a fine as well as jail time.
3 They are also subject to losing their job. If they don't
4 comply with state law, then they could lose their job. Their
5 contracts clearly state that. But most importantly -- most
6 importantly, and all the school officials who testified
7 talked about their -- their focus, their sole focus is on
8 making sure that students are safe and that students feel
9 secure not only at school, but also in their home
10 environment. So the district here clearly exercised at least
11 slight care in making the decision to report to DSS the
12 possibility that Zoe had either been abused or that Zoe had
13 access to materials that she should not have -- have had
14 access to. Which also could be considered potentially abuse
15 or neglect under the appropriate laws. But again, that's not
16 for school officials to decide. That is for DSS officials to
17 decide.

18 The other point here too, is Mr. -- Mr. Eddy attempts
19 to -- to be making a claim that the district -- the district
20 officials engaged in bad faith when they made this report.
21 And I would submit to the Court, that's not the appropriate
22 standard here. The appropriate standard is whether or not
23 the district exercised at least slight care with regard to
24 the supervision, protection and control of students. While
25 the -- the statute set forth in the children's code related

1 to reports to DSS, they give DSS a right of action to -- if
2 they believe that a reporter has made a report in bad faith,
3 then the statute gives DSS the right to pursue an action
4 against the reporter. There is nothing in the children's
5 code that provides a private right of -- of action for an --
6 an individual who was reported to DSS.

7 And it would be our position that had the legislature
8 intended to do that, that would be set forth in the statute.
9 But let's also not forget here that there is no evidence
10 whatsoever that the report was made in bad faith. So even if
11 your Honor was to -- to find that such an action accusing
12 school officials could -- could proceed to a jury, there's no
13 evidence of that. There is no evidence that any school
14 official or any kind of animosity or hostility towards Zoe or
15 any member of her family, no evidence at all. So there's
16 simply nothing here for the jury to decide.

17 Then with regard to Student K and how the district
18 handled that situation. Once they determined because the
19 child admitted it, he clearly said never changed his story.
20 "Yeah, I touched her. I touched her over her underpants,
21 between her leggings and -- between her leggings in her
22 underwear. I touched her." Did the district just say, "Oh,
23 well, you're a" -- "you're a bad boy" to Student K? Of
24 course they couldn't say that. Because that's not the kind
25 of language they use in dealing with students. What did they

1 do? Again, they complied with the state law that -- that I -
2 - you know, read yesterday to your Honor, that they reported
3 the situation with Student K to law enforcement, to the
4 school resource officer who does not work for the school
5 district. That is an individual employed by -- I don't know
6 in this particular case, if it's city of Cayce Police
7 Department or Lexington County Sheriff's Department, but
8 nonetheless the deputized law enforcement officer. So they
9 complied with the statute and there's no evidence to indicate
10 otherwise. But it didn't stop there. What else did they do?
11 They also took Student K for a disciplinary hearing in
12 accordance with their district policy as testified to by
13 Annette Ariail.

14 So all of those facts indicate that with regard to the
15 district's response to the incident, they exercised not just
16 slight care, but abundant care. In fact, when all this
17 happened, nobody knew this lawsuit was going to come open.
18 This what? Six weeks after the incident occurred. And I've
19 been doing this a long time, and how the school district
20 handled this is one of the best cases I've ever seen as far
21 as how they investigated it and how they responded to it. I
22 can't find anything at all that they did wrong.

23 The other thing I want to point out to your court -- to
24 you, your Honor, is that under the Tort Claims Act, there
25 also is a provision which expressly provides that the school

1 district is not liable as a matter of law for the criminal
2 conduct of third person. So even if the Court assumes that,
3 or concludes that Student K engaged in criminal conduct as a
4 five-year-old with regard to the touching of Zoe, that would
5 be considered criminal conduct for which the district is not
6 liable. The Tort Claims Act specifically says that we can't
7 be liable simply because something happens in school.
8 Because things happen all the time. Just like they happen at
9 home, they happen at work, happen in the courthouse, we are
10 not liable because the incident occurred. We would be liable
11 if we had set a situation where students were allowed to run
12 them up, the lights were off in the classroom, they could do
13 whatever they want. We -- we didn't investigate the
14 incident. Ms. Ray told them to go and sit down and she kept
15 on with -- you know, what she was doing. There is none of
16 that in this case at all. So for all those reasons, your
17 Honor, we would ask that the Court dismiss this action in its
18 entirety as a matter of law.

19 THE COURT: Mr. Eddy?

20 MR. EDDY: Thank you, your Honor. To start with
21 Nancy's individual claims, I see Nancy has not presented
22 evidence as to any economic damages that she has incurred as
23 a result of this greater situation. In addition, your Honor,
24 the Plaintiff agrees that there is -- agrees that Nancy does
25 not have a legally viable claim for her emotional damages

1 that she received as a result of this incident. So the
2 claims that we want to present to the jury from Nancy are
3 only those that are directly flowed through per guardianship
4 as -- as Zoe's parent, okay? We do not intend to ask the
5 jury for direct specific damages to compensate Nancy
6 separately and apart from Zoe's own claim for injuries and
7 damages.

8 THE COURT: All right.

9 MR. EDDY: In terms of Zoe's claims, let's start with
10 first the underlying initial sexual assault at school. It is
11 undisputed that Zoe was touched in that classroom. The
12 teacher has presented evidence that that incident can only
13 take him in the span place -- in the span of one to two
14 seconds. And there is evidence that's been presented to the
15 jury, your Honor, that that is impossible. But there is no
16 way that this incident with Karter getting up from his spot,
17 coming over to Zoe's spot, opening up her pants and putting
18 his hand down her pants, there's insufficient evidence for
19 them to say that that absolutely had to have taken place in
20 one to two seconds.

21 There has been evidence presented to the jury
22 sufficient for them to conclude that the teacher simply
23 wasn't paying attention, distracted by other students,
24 distracted by the end of the school year, distracted by the
25 paperwork on her desk. Gross negligence is not an

1 insurmountable standard. The Court in Holland's -- which I
2 had emailed your Honor about regarding jury charges, said
3 that the absence of care, or the failure to do one --
4 something that one ought to do could be gross negligence.
5 The teachers, administrators would testify that they owe a
6 duty to protect the students and children within their care.
7 And this includes to protect them from sexual contact from
8 other students in the school and the classrooms. The only
9 explanation for how this event could have occurred is if the
10 teachers just weren't paying attention. And the teachers
11 aren't paying attention. They have failed to do what they
12 ought to do in this scenario, which is observe and protect
13 children.

14 The next two issues that the Defense Attorney brings us
15 are with the school's investigation and with the DSS report.
16 I really think those go hand-in-hand. There has been
17 significant testimony as well as documentary evidence that
18 the school made errors in their investigation, that the
19 school relied on known or should -- or evidence that they
20 should have known was false. We have K's conflicting
21 statements to the administrators versus K's conflicting
22 statements with the teacher. We have the eyewitness
23 testimony that says that Zoe was the victim, she was touched.
24 And document after document shows that the administration and
25 the teachers were making errors in their reporting of the

1 evidence. And their -- their conducting of the investigation
2 afterwards. In fact, the DSS report itself, there's only
3 four or five sentences summarized as the reason why they sent
4 this to DSS. And it itself contains a no falsehood, "Zoe
5 accused another boy of opening her pants when in actuality
6 she did it herself." We know that to be false. The school
7 at its very best interpretation of the evidence, made a
8 series of compounding mistakes and errors that culminated in
9 these false statements in the DSS report.

10 How this court again defines gross negligence as the
11 doing of the thing intentionally that one ought not to do.
12 One ought not to conduct an investigation based off of
13 errors, based off of known errors, based off of known lies.
14 One ought not to include known lies and known falsehoods when
15 one is submitting the DSS paperwork, the DSS complaint. The
16 school's negligence in handling the investigation and the
17 subsequent DSS do reach to the grounds in gross negligence
18 because they were all based on falsehoods or lies by the
19 students. Thank you, your Honor.

20 THE COURT: What is your response?

21 MS. WHITE: May it please the Court? I do not recall,
22 your Honor, any evidence presented to the jury that the
23 touching could not have happened that quickly. I believe
24 that Mr. Eddy was insinuating that when he was questioning
25 Ms. Ray, but Ms. Ray vehemently and vigorously denied. She

1 testified that the desks were so close together that the
2 little -- the little pods, that it was in fact possible for
3 Student K to touch Zoe, and that it -- that it happened
4 within -- you know, a few seconds of time. And again, that
5 evidence is undisputed. Whatever Mr. Eddy says that's not
6 evidence. How he tries to construe things and twist things,
7 shat's not evidence. The evidence -- the only evidence from
8 the witness stand is that yes, in fact, it could have
9 happened that quickly.

10 He also, in -- in response to -- to our motion, he
11 argues that there is evidence that Ms. Ray was distracted.
12 There's no evidence that Ms. Ray was distracted. He
13 questioned her about that. And what did Ms. Ray say?
14 "Absolutely not." He tried to -- to get her to say, well,
15 you were so busy putting things in boulders, worried about
16 getting that stuff into the district office. And again, she
17 denied that. She said her bottom had just hit her desk with
18 Student K -- I mean, I'm sorry, Student S came up to her.
19 And before that, she was actively monitoring the students.
20 In fact, she testified that she didn't stop at a pod and lean
21 over and work with the student the whole time she was
22 looking. She was looking to see what was going on in the
23 classroom. That, your Honor, is evidence of at least slight
24 care.

25 With regard to the alleged lies and inconsistencies in

1 the -- in the statement to DSS, the first thing I would point
2 out is that the -- the sheet that Ms. Prizer -- Ms. Prizer
3 completed that was not submitted to DSS. Ms. Prizer
4 testified that is an internal DSS -- I mean, I'm sorry, an
5 internal school district document. That was not submitted to
6 DSS. They made the report to DSS via a phone call, and any
7 inconsistencies -- again, these are red herring, any
8 inconsistencies in the statements from the students had
9 nothing to do -- as Ms. Prizer testified, and Ms. Ray
10 testified had nothing to do, did not factor in to their
11 decision to report this matter to DSS. They reported the
12 matter to DSS -- and again, the testimony is undisputed,
13 because Zoe Arellano displayed knowledge of sexual acts that
14 a five or six-year-old should not have. And that's why they
15 made the report to DSS. So clearly they exercised slight
16 care before they made that report to DSS. So for all those
17 reasons, your Honor, we would ask for directed verdict. And
18 we do appreciate Mr. Eddy's agreement that Ms. Arellano's
19 claim it should not proceed to the jury.

20 THE COURT: Anything else?

21 MR. EDDY: Nothing from the Plaintiff, your Honor.

22 THE COURT: All right. Bear with me. I want to ask a
23 few questions that may or may not be that significant to my
24 inquiry. Is -- is there any evidence in the record about the
25 medical bills, the counseling bills?

1 MR. EDDY: No, your Honor. We do not have those bills.

2 THE COURT: The attorneys -- well, no, I -- I don't get
3 to decide what evidence is believable or not. I do not get
4 to resolve inconsistencies in the evidence. That's not my
5 role, and I'm not permitted to do that. Secondly, I've
6 mentioned this before. I kind of feel like I'm in a box on
7 this. So much was brought out that was hearsay, but it's in
8 the record. So my next question is: Am I correct then that
9 nobody, not the mother, Ms. Nancy the sister, the brother, or
10 the social worker that was hired to counsel Zoe has talked to
11 anybody at school, is that right?

12 MR. EDDY: I believe that is largely correct, your
13 Honor.

14 MS. WHITE: The school testified -- Ms. Ariail
15 testified that she did contact the mother and their
16 translator was present while she had two conversations with
17 the mother, but Mother -- as far as the mother or any members
18 of family reaching out of the school back, the testimony is
19 they did back.

20 THE COURT: So what's the testimony as to the content
21 of the conversation?

22 MS. WHITE: Ms. Ariail testified, your Honor, that --
23 Ms. Ariail testified, your Honor, that she called the mother
24 initially and explained that the district was -- you know,
25 that the incident had occurred, that the district was in the

1 process of investigating the incident, and that she needed to
2 speak with -- with the people at the district level, at the
3 district office to determine what, if any, additional steps
4 would be taken regarding Zoe. And that after she spoke with
5 district level officials, Ms. Ariail's subsequent call to
6 Ms. Arellano -- and again, a translator was involved, was
7 that Zoe was not in any trouble, but that an incident had
8 occurred. She explained to Ms. Arellano what the incident
9 was. She told her that Zoe was very upset and she encouraged
10 Ms. Arellano to come pick Zoe up, but Ms. Arellano did not do
11 that.

12 THE COURT: Was there -- were there specifics about the
13 description of the incident? In other words, were there
14 descriptions to the mother about allegations that Zoe had
15 initiated this or that Zoe pulled down her pants or that
16 she...

17 MR. EDDY: Nancy's testimony, which is different from
18 the opposing party's testimony, that she was told that Zoe
19 had -- had exposed herself to (inaudible).

20 THE COURT: Was told by whom?

21 MR. EDDY: The translator on the day of the incident.

22 THE COURT: I -- the note that I put down is that Nancy
23 first learned of the -- she testified, she first learned of
24 the incident when she was called by an interpreter from the
25 school and was told that she needed to come to school because

1 her daughter had told another child, to take a look at her
2 private parts or to look at her private parts. There was an
3 objection about that, but I -- my recollection is I let that
4 in and the grandmother drove Nancy to the school. Nancy
5 waited outside side, a man called later and said she could
6 bring the child back to school, that Zoe was not in any
7 trouble. There was some discussion about signing paper -- I
8 don't know what this note means, "Told to wait, had to sign
9 paperwork." There's an indication that other parents would
10 be coming. Nancy stated that a form was already signed and
11 she did not sign anything, and that she asks Zoe what
12 happened.

13 All right. Now these notes that I'm going to read to
14 you, I want to note this -- this is what I wrote down when
15 Nancy was testifying. "Her understanding was that a boy
16 touched Zoe's private parts in the front. That he put his
17 tongue in her mouth, that Zoe said that he put his tongue in
18 her vagina and Zoe told the mother that another child saw
19 them and went and told the teacher." And then there's this
20 -- these generalizations about, didn't let Zoe say her truth.
21 Zoe wanted to defend herself. They told her that she was at
22 fault because she told the boy to touch her. Do you all
23 disagree with that that's some of the things that the mother
24 said in testifying.

25 MR. EDDY: I agree, your Honor.

1 MS. WHITE: I agree that's what the mother testified
2 to, but that's not what Zoe testified to.

3 THE COURT: Again, I -- I don't get to resolve issues
4 that are inconsistent and -- and there wasn't an objection to
5 the mother saying all these hearsay things.

6 All right. So if -- if your client says that the
7 school was told that Zoe had been touched in an inappropriate
8 manner that a child had put his tongue in her throat and that
9 -- put his tongue in her vagina, just those things, and I've
10 got follow-ups, just those things you -- you assert Mr. Eddy
11 are not mandatory triggers to report to DSS?

12 MR. EDDY: I can't say whether those by themselves
13 should or should not be grounds to report something to DSS,
14 but I think the investigation itself can't be found to have
15 been done in good faith when it includes incorrect evidence
16 and reliance on known falsehoods, which taints the entire DSS
17 report, in my opinion.

18 THE COURT: What did -- this is a stupid question. Did
19 the DSS come and testify?

20 MR. EDDY: No.

21 THE COURT: Is DSS report in evidence?

22 MR. EDDY: The form that the school kept as their
23 internal records is in evidence.

24 THE COURT: Which she said was not ever given to DSS?

25 MS. WHITE: That was testified to correct.

1 MR. EDDY: Memorialized their conversation, Ms. Prizer
2 and Mr. Ariail's conversation on this incident.

3 MR. CROSSLAND: So when the school made the report, it
4 was over the final and they fought with the intake order that
5 same day.

6 THE COURT: All right. So where is the evidence to
7 counter the statement? Or is there any evidence other than
8 that the child went beyond those descriptions and started
9 talking about white sticky stuff and things like that?

10 MR. EDDY: So the additional expanding scope that's
11 discussed as part of the -- the Defense's case justification
12 for DSS report, the only evidence for that before our jury is
13 Ms. Prizer's direct testimony or conversations with Zoe.

14 THE COURT: All right. So what evidence is there of
15 damage to Zoe from having to talk to the DSS investigators?
16 I -- I know the sister talked about some of that, but what
17 was it -- what evidence is there about mental anguish or
18 emotional distress or anything like that arising from having
19 to talk to the DSS investigator?

20 MR. EDDY: The sole testimony is from the family
21 describing Zoe's emotional response after those -- those
22 meetings at their house, Zoe did not provide any testimony
23 about that.

24 THE COURT: You want to be heard on that?

25 MS. WHITE: Again, your Honor, I think there would need

1 to be testimony from -- from Zoe herself to establish those
2 mental damages and -- and alleged anguish over conversations
3 with the DSS workers. We don't need -- there was
4 inconsistency in testimony from the family members as how
5 many times DSS even came.

6 THE COURT: And who they talked --

7 MS. WHITE: They report it -- seven, I mean.

8 THE COURT: And who they -- who they talked to?

9 MS. WHITE: Yeah. Who did they talk to? We don't
10 know. DSS isn't here.

11 THE COURT: There -- there was inconsistency in who
12 they talked to in -- in the family, if I recall correctly?

13 MS. WHITE: Correct.

14 THE COURT: But again, I don't get to resolve
15 inconsistency. All right. Give me a few minutes. We're at
16 ease. I'm sorry to take so long.

17 (Off the record at 12:47 p.m.)

18 (On the record at 12:58 p.m.)

19 THE COURT: All right. With regard to the motion
20 concerning the claim on Zoe's behalf related to the incident
21 and how it was handled by the school district, I concede
22 there's abundant evidence from which a jury could find in
23 favor of the district. But again, my role at this point is
24 not concerned with the amount of evidence, but with the
25 existence of any evidence. Therefore, the motion for

1 directed verdict as to that cause of action -- I don't know
2 why my Apple watch does this only when I'm doing something in
3 court. I guess it's searching Google or something. I don't
4 -- well, apple might not be --

5 MS. WHITE: That's a secret word somehow.

6 THE COURT: Apple -- apple probably wouldn't be
7 searching Google. But anyway back to the point. The ruling
8 is that the -- that cause of action, the motion for directed
9 verdict is respectfully denied. I can see that I have some
10 difficulty with the other issue about the DSS report, but in
11 my view, the only reasonable construction of the evidence is
12 that the school district officials were under an obligation
13 of mandatory reporting that the information that the child
14 was providing to those school officials required them to
15 report that to the Department of Social Services and to the
16 SRO. And so the motion for directed verdict as to that is
17 granted.

18 With regard to the issue about whether there is a -- a
19 private right of action concerning 66 -- 63-7-390, the good
20 faith issue, that statute mentions both civil and criminal
21 liability. If it is a novel issue in South Carolina, then I
22 believe I'm supposed to let it go to the jury. And so I'm
23 going to -- I plan to charge the standard is gross
24 negligence, but I'm going to have language in there about the
25 good faith exception. I'm sorry, I'm -- I'm -- I'm wrong on

1 that. That -- that relates on to the DSS case. So that's
2 out of the window. I apologize. All right. Bring the jury
3 in and I'm going to send them to lunch and let you all go to
4 lunch. You got two witnesses?

5 MS. WHITE: Yes, your Honor. And they'll both be
6 relatively brief.

7 THE COURT: Okay. Bring them in.

8 (Jury enters room at 1:02 p.m.)

9 THE COURT: All right. Ladies and gentlemen, I
10 explained to you at the outset that when the Plaintiff rests,
11 I had to discuss legal issues with the attorney. So what
12 happened was when I told you we'd have a 10-minute break, I
13 didn't realize we were at the end of the Plaintiff's case.
14 So they have rested and we went ahead and dealt with those
15 legal issues. And I told you at the end of the day yesterday
16 that that might take some time. So I apologize to you for
17 that wait. I was going to -- I gave consideration about
18 letting you go on to lunch at that point, but I was hopeful I
19 could get through it quicker.

20 I know a little bit about waiting myself, my wife and I
21 both go to a lot of doctor's appointments and I have one that
22 regularly waits -- makes me wait a minimum of an hour and a
23 half, and usually two hours before I get in there to see.
24 And she has one that takes at least an hour. So I apologize
25 to you, I empathize with you, but I promise you, we've been

1 working, we hadn't been goofing out.

2 As a result of our conversations about those legal
3 issues, here is what I need to tell you. First of all, the
4 -- you had two claims -- claimants in this case. You got a
5 claim for the child, Zoe, and you got a claim by the mother
6 for her own asserted injuries and damages. So I'm just going
7 to call her Nancy. Nancy has withdrawn her claim. So that's
8 no longer before you. Her claim was based on the DSS report
9 and what she experienced going through the DSS investigation.
10 That's withdrawn. That's not before you on her side.

11 So Zoe has two claims in this lawsuit. She brought two
12 claims in this lawsuit. The -- the first one deals with how
13 the school district dealt with the incident, et cetera, okay?
14 The second one dealt with Zoe's experience going through the
15 DSS investigation. Now I have ruled as a matter of law
16 independent of what the Plaintiff decided, Nancy decided
17 about her case. I ruled as a matter of law that the school
18 district was a mandatory reporter. They had an obligation to
19 report. And under the evidence that has been presented, I --
20 I can't decide issues of fact, but under the evidence has
21 been presented that there is no obligation on the part of the
22 district to pay damages for reporting matter to DSS. So
23 that's not going to be before you here.

24 Unfortunately, a lot of the time I have spent working
25 on the charge last night -- as I told you, I had to wait till

1 all the evidence is in, a lot of what I did is wasted and I
2 got to go in there and take it out. You have two more
3 witnesses to hear from my understanding. And those will be
4 from the Defense. And then, as I told you, the Plaintiff can
5 come back and reply if -- if the Plaintiff wishes to you. So
6 Zoe is the only plaintiff that's left, and you need to
7 understand -- well, I'll -- I'll tell you that in the charge.
8 I -- I'll -- I'll skip that now.

9 So I've got seven minutes after 1:00. I'm going to ask
10 you folks to go to lunch and be back at 2:30. I -- I still
11 don't know that we're going to get the case to you today. I
12 -- I would love to on a personal level as well as, I'm sure
13 you all have many other things to do, but I had a fairly
14 close friend pass away and there's a funeral tomorrow and I
15 would really like to go to it. But -- but I can't let that
16 control things. So I'm going to try my best to get the case
17 to you today. If I can't, you should get it in the morning
18 and have it to decide. So that's a long explanation of what
19 happened in that time you were waiting. I -- I have -- have
20 to ask you to be back please at 2:30 and don't discuss the
21 case. Thank you.

22 (Jury exits room at 1:08 p.m.)

23 THE COURT: You all need to put anything on the record
24 by what I told the jury?

25 MR. EDDY: Your Honor, I just want to clarify one

1 thing. I -- I -- I know this case is complicated, a lot of
2 ins and outs.

3 THE COURT: Okay. What did I miss?

4 MR. EDDY: I had conceived that in total, Zoe had at
5 most three different claims against the school district. One
6 for the underlying assault, one for the response, and one for
7 the DSS report.

8 THE COURT: Okay.

9 MR. EDDY: My understanding was that completely except
10 your ruling on that issue, that you had dropped the issues
11 related to the DSS report, but you left underlying -- Zoe's
12 underlying assaults claims as well as their direct response
13 to those, but not including anything other than the DSS. Was
14 I incorrect about understanding?

15 THE COURT: No, I guess I didn't pick up on the fact
16 that you were trying to collect damages for the assault
17 itself. Of course they made a motion that I hadn't -- didn't
18 rule long about the Tort Claims Act. How old was the child
19 K?

20 MR. EDDY: Six, I think.

21 MS. WHITE: Five -- five or six. They were -- I think
22 they were the same age. I think they both --

23 MR. CROSSLAND: Same age, same class.

24 MS. WHITE: -- were six.

25 THE COURT: I don't know if a five-year-old --

1 MS. WHITE: I think it would be very difficult, but it
2 was reported to law enforcement.

3 THE COURT: I'll straighten that out when --

4 MR. EDDY: Your Honor, I -- I -- I can direct your
5 attention to the Doe v. -- Doe versus Orangeburg County
6 School District. That's another case from -- front of the
7 court of appeals with the student on student sexual assault
8 when the school was ultimately held responsible.

9 THE COURT: Okay. I -- I understand. I -- I didn't
10 speak loudly. I said I'll -- I'll straighten that out when
11 they come.

12 MR. EDDY: Okay. Obviously.

13 THE COURT: I apologize to you. I didn't pick it up on
14 this. Anything else you all need to put on the record?

15 MS. WHITE: Not from us, your Honor.

16 THE COURT: 2:30, please. Be careful. Don't have
17 contact with the jury.

18 (Off the record at 1:10 p.m.)

19 (On the record at 2:21 p.m.)

20 THE COURT: Before I bring the jury in, is there a
21 discretionary immunity claim in here?

22 MS. WHITE: We pled it as an affirmative defense. Yes,
23 your Honor.

24 THE COURT: Okay.

25 MS. WHITE: We pled all the applicable provisions of

1 the Tort Claims Act.

2 THE COURT: One other than the grossly negligence
3 requirement?

4 MS. WHITE: The -- the gross negligence, the
5 discretionary immunity, the failure to adopt or comply with
6 any policy, procedural regulation. And then also the -- and
7 one thing I did want to point out was the -- it's the one
8 that talks about criminal conduct. The exception actually
9 says it's the acts or omissions of -- of a person other than
10 acts or omissions by a third party, including, but not
11 limited to criminal conduct. So it's broader than just
12 criminal conduct.

13 THE COURT: Well, we will have to address those in a
14 minute, whenever the jury's sent back out. Are you ready for
15 the jury, Ms. White?

16 MS. WHITE: We are.

17 THE COURT: Are you ready, Mr. Eddy?

18 MR. EDDY: Yes, your Honor.

19 THE COURT: Bring the jury, please.

20 (Jury enters room at 2:32 p.m.)

21 THE COURT: All right. Ladies and gentlemen, before
22 you went to lunch, I indicated to you the results of the
23 first discussion we had with the attorneys concerning legal
24 issues. And if you remember, I told you I'll have to have
25 another one of those types of discussions at the conclusion

1 of all the evidence when the Defense rests. But I -- I did
2 not completely state what was left in the case at this point.
3 I -- I told you that the matters related to the DSS
4 investigation are -- are no longer before you. And I told
5 you that the claim on behalf of the child related to the
6 response by the district officials to the alleged assault
7 that was still before you.

8 What I did not tell you is that at this point in time,
9 the claim by the child on behalf of the child of not
10 preventing the sexual assault is also before you, and I'll
11 explain all that to you in more detail later. And I
12 generally tell the jury whenever they come back and certain
13 things have been removed from the case, please don't try to
14 speculate on why that is. It does -- doesn't make the
15 remaining claims any stronger, nor does it make them any
16 weaker. It's just as a matter of law, I've made certain
17 determinations and -- and the Plaintiff -- Nancy has decided
18 to withdraw her DSS claim. The Defense has now given the
19 opportunity for you to consider evidence, and for that
20 purpose, Counsel's recognized.

21 MR. CROSSLAND: Yes, your Honor. We call Ms. Kimberly
22 Long.

23 THE COURT: Come around, please.

24 KIMBERLY LONG,

25 being duly sworn, testified as follows:

1 THE CLERK: You can have a seat please ma'am, please
2 state your full name for the record.

3 THE WITNESS: My name is Kimberly Long.

4 DIRECT EXAMINATION

5 BY MR. CROSSLAND:

6 Q. Hey, Ms. Long, how are you doing?

7 A. I'm doing well.

8 Q. Where are you currently employed at?

9 A. Cayce Elementary.

10 Q. What is your position?

11 A. I'm a kindergarten teacher assistant.

12 Q. And how long have you been a teacher's assistant?

13 A. I'm going on my fifth year.

14 Q. Have they all been at Cayce Elementary?

15 A. Yes, sir.

16 Q. Do you have any previous experience working with
17 children before your five years of being a teacher's
18 assistant?

19 A. I do. Before that, I worked at a church
20 preschool, and then before that, I worked at Move Fitness
21 Goals Gym as a kids' care employee for 16 years.

22 Q. And in those jobs, were you responsible for
23 supervising students?

24 A. Oh, yes, sir.

25 Q. Were you -- you feel qualified to supervise

1 students?

2 A. Yes, sir.

3 Q. Back in May of 2022, were you a teacher's
4 assistant at Cayce Elementary?

5 A. Yes, sir.

6 Q. And who was your teacher that was with you?

7 A. In '22? Ms. Ray.

8 Q. What are your thoughts about Ms. Ray as a teacher?

9 A. Oh, she's a wonderful teacher. She's very
10 helpful, very kind. Me and her got along very well. She's
11 very sweet to the students.

12 Q. Did you have any concerns with her supervision of
13 the children?

14 A. Not at all.

15 Q. Did you ever receive any complaints about her
16 supervision of the children?

17 A. Not at all.

18 Q. From parents?

19 A. No, sir.

20 Q. What about students?

21 A. No, sir.

22 Q. Was you and Ms. Ray's class for the entire year?

23 A. Yes, sir.

24 Q. Moving on to some questions about the students
25 that are involved in this incident, do you remember Zoe

1 Arellano?

2 A. Yes, sir.

3 Q. She in your class?

4 A. She was.

5 Q. For the entire year?

6 A. Yes, sir.

7 Q. How was Zoe as a student?

8 A. She was a very sweet student. I believe what she
9 -- when -- first when she got there at school, she was a
10 little shy, but she made friends and was a very sweet,
11 pleasant child.

12 Q. Was she emotional?

13 A. At times. Yeah, she would cry at times. You
14 know, if children get in trouble for whatever reason, maybe
15 talking too much, maybe on the playground doing certain
16 things -- you know, if we had to call them down, she would
17 get -- she would get upset.

18 Q. What about Student K. Do you remember Student K?

19 A. Yes, sir.

20 Q. How was he as a student?

21 A. He was a -- he was a wonderful student as well.

22 Q. Was he a major discipline issue?

23 A. Not at all.

24 Q. Have you ever received any complaints about
25 bullying or harassment about Student K?

1 A. No, sir.

2 Q. Did you have any concerns about Student K's
3 behavior in the classroom?

4 A. No, sir.

5 Q. Do you remember Student S?

6 A. Yes, sir.

7 Q. How was Student S? How was -- describe Student S
8 as a student.

9 A. He had difficulty with the English language. He
10 was an ESOL -- ESOL student, but a very smart student. He
11 did very well in math. I do remember that.

12 Q. What does ESOL mean?

13 A. They get pulled for small groups, and there is a
14 -- a teacher there that speaks Spanish, and I believe they go
15 over some work or certain things with them in Spanish, so
16 they get pulled out in small groups.

17 Q. So English is their second language?

18 A. Yes.

19 Q. How about size comparison between Zoe and Student
20 K?

21 A. There was a little size difference. K was taller.

22 Q. How tall? Was it a drastic difference?

23 A. Maybe a foot taller, maybe.

24 Q. What about Student S?

25 A. Him and -- him and Zoe were about the same height.

1 Q. And all these students in your class were all
2 kindergartners?

3 A. Yes, sir.

4 Q. And they would've been around five or six years
5 old?

6 A. Five or six. Yes, sir.

7 Q. Did you ever receive any complaints from Zoe about
8 Student K?

9 A. No, sir.

10 Q. Did you ever receive any complaints from Student S
11 about Karter -- oh, Student K?

12 A. No, sir.

13 Q. How was -- did you ever observe any interactions
14 between Zoe and Student K? Were they friends?

15 A. Oh, yes, they were.

16 Q. Did you have any interactions with Ms. Arellano
17 throughout the year?

18 A. No, sir.

19 Q. Never talked to her?

20 A. Never.

21 Q. Moving to the date of the incident -- incident,
22 May 25, 2022. Do you remember what the class was doing that
23 day?

24 A. Yes, sir.

25 Q. And what was that?

1 A. Well, it was -- I believe our last full day of
2 kindergarten or school. And we were working on an end of the
3 year booklet trying to get all the kids to finish this
4 booklet. And it kind of showed where they started in school
5 to where they finished in school.

6 Q. So at end of the year scrapbook?

7 A. Yes, sir.

8 Q. How long have you guys been working on that?

9 A. I would say probably four to five days.

10 Q. So the students were at different points in the --

11 A. Oh, yes.

12 Q. -- in the book?

13 A. Oh, yes.

14 Q. And do you remember Student S coming up to
15 Ms. Ray?

16 A. No, sir.

17 Q. You didn't see that?

18 A. No, sir.

19 Q. Shortly after that, do you remember what you were
20 doing while the students were working on the scrapbook?

21 A. I had some students at my table working. And I
22 also -- if the students that were out at the tables by
23 themselves, they would come up to me and get a piece of paper
24 that they still needed to work on. Or -- and if they turned
25 that paper into me, I would give them the next piece of paper

1 they needed to work on.

2 Q. So while you're working with the students at your
3 table, is -- is your head straight down only at supervising
4 the students in front of you?

5 A. No, sir.

6 Q. Are you constantly monitoring the entire room?

7 A. Glancing over the room. Yes, sir.

8 Q. Do you remember what Ms. Ray was doing at that
9 time?

10 A. I remember she was at her table with some
11 paperwork. That's what I remember.

12 Q. So was she up monitoring the students before that?

13 A. Yes, sir.

14 Q. And while she was monitoring the students up and
15 moving around, was she also looking around at the different
16 tables?

17 A. Oh, yes, sir.

18 Q. Based on the -- the setup of your -- of the
19 classroom, were there any major obstructions to your -- to
20 see the students?

21 A. No, sir.

22 Q. And your table was at the -- towards the back of
23 the classroom?

24 A. Yes, sir.

25 Q. So from your table, you could see the entire --

1 where all the student desks were?

2 A. Yes, sir.

3 Q. Do you have any knowledge -- do you remember
4 Ms. Ray coming up to you in the classroom and saying that she
5 needed to go get administration?

6 A. She actually just said, "Ms. Long, I'll be right
7 back. I got to take care of something."

8 Q. Did she say...

9 A. She didn't say what it was. So I just stayed
10 there in the classroom with the other students.

11 Q. And then would the class of transition to special
12 area after that?

13 A. Yes, sir.

14 Q. Would you have walked in the special area?

15 A. Yes, sir.

16 MR. CROSSLAND: No further question, your Honor.

17 THE COURT: Cross-examination?

18 CROSS-EXAMINATION

19 BY MR. EDDY:

20 Q. Hi, Ms. Long?

21 A. Hello.

22 Q. Do you have any direct knowledge whatsoever of
23 what happened in that classroom that day?

24 A. I didn't see anything. No, sir.

25 MR. EDDY: Thank you.

1 THE COURT: Re-direct?

2 MR. CROSSLAND: Nothing, your Honor.

3 THE COURT: Thank you, ma'am. You may step down. Call
4 your next witness.

5 MR. CROSSLAND: Yes. The district calls Principal
6 Andrew Drozdak.

7 THE COURT: Come around, please.

8 THE CLERK: Raise your right hand.

9 ANDREW DROZDAK,

10 being duly sworn, testified as follows:

11 THE CLERK: If you'll have a seat, please and state
12 your full name for the record.

13 THE WITNESS: My name is Andrew Drozdak.

14 DIRECT EXAMINATION

15 BY MR. CROSSLAND:

16 Q. Hey, Principal Drozdak. How are you?

17 A. Doing okay.

18 Q. Back in May of 2022, where were you employed at?

19 A. Lexington School District Two, as the principal of
20 Cayce Elementary School.

21 Q. And how long have you been in that position?

22 A. At that time four years.

23 Q. Can you walk the jury through your
24 responsibilities as a principal?

25 A. Overseeing day-to-day operations of the school,

1 overseeing the instructional work during the day, overseeing
2 student discipline, really hindering and supervising the
3 building, and pretty much all aspects.

4 Q. As a part of your position, are you ensuring that
5 policies and procedures are implemented?

6 A. Yes, sir.

7 Q. So you're pretty familiar with the policies and
8 procedures of the district?

9 A. Fairly, yes, sir.

10 Q. To help with discipline, do you have assistant
11 principals that help you with that?

12 A. Yes, I do.

13 Q. Was one of them Ms. Annette Ariail?

14 A. Yes.

15 Q. Back in May of 2022, was she assigned to the --
16 oversee kindergarten discipline?

17 A. I don't believe she was directly assigned to that,
18 but she would -- they all helped each other out. We had
19 three assistant principals in total, so at times they would
20 help each other in other areas.

21 Q. Did you have any concerns with Ms. Ariail's
22 qualifications or capabilities responding to discipline
23 issues?

24 A. No, I did not.

25 Q. Did you ever receive any complaints about

1 Ms. Ariail?

2 A. No.

3 Q. Did you enjoy working with Ms. Ariail?

4 A. Absolutely.

5 Q. You said as a part of your principal duties, you
6 are to implement the policies and procedures.

7 A. That's correct.

8 Q. Do you -- does the district have a policy that
9 relates about sexual harassment?

10 A. Yes, it does.

11 Q. If you were to see that policy, would you
12 recognize it?

13 A. Yes, I would.

14 MR. CROSSLAND: Your Honor, permission to approach?

15 THE COURT: Yes, sir.

16 BY MR. CROSSLAND:

17 Q. Principal Drozdak, do you recognize that --

18 A. Yes, sir.

19 Q. -- document?

20 A. Yes, I do.

21 Q. What is it?

22 A. It's the school board's policy on sexual
23 harassment and relations between students.

24 MR. CROSSLAND: Your Honor, at this time, I move to
25 have this admitted as Defendant's Exhibit 2.

1 THE COURT: Any objection?

2 MR. EDDY: No objection, your Honor.

3 THE COURT: Mark it into evidence please, ma'am.

4 (Defendant's Exhibit Number 2 admitted into evidence.)

5 BY MR. CROSSLAND:

6 Q. Principle Drozdak, on the first page of the
7 subsection, does -- can you read the last bullet point to the
8 jury?

9 A. Starting with "At any time or place when the
10 behavior can be reasonably expected to materially and
11 subsequently interfere with or disrupt the education" --
12 "educational environment of the school"?

13 Q. I'm sorry, wrong bullet point. I led you to the
14 wrong spot.

15 A. Okay.

16 Q. The first sentence on the first page, I'm sorry.

17 A. The first sentence on the first page, "The
18 district is committed to maintaining a learning environment
19 free from sexual discrimination and harassment."

20 Q. So would this policy been in effect back on May
21 2022?

22 A. Yes, it is.

23 Q. Would the staff ever receive training on the
24 different responses and how to respond to sexual harassment?

25 A. Yes, they would have.

1 Q. Is this policy specifically relating to student
2 sexual harassment?

3 A. Yes.

4 Q. Are you familiar with the district's policy on the
5 staff's rights and responsibilities?

6 A. Yes, I am.

7 Q. If you see it, would -- would you be able to
8 recognize it?

9 A. Yes, I would.

10 Q. Do you recognize this document?

11 A. Yes, I do.

12 Q. What is it?

13 A. It's the Lexington School board policy, GBE staff
14 rights and responsibilities.

15 MR. CROSSLAND: At this time, your Honor, I move to --
16 move to have this entered into evidence as Defendant's
17 Exhibit Number 3.

18 THE COURT: Any objection?

19 MR. EDDY: Yes, your Honor. On the face of the
20 document, it's issued a year after the incident took place.

21 THE COURT: You wish to be heard?

22 MR. CROSSLAND: Yes, sir. The -- the policies are --
23 are constantly updated. It has language for when it was
24 adopted in the law that it applies. So there it was still
25 into effect at -- at the time of the incident.

1 THE COURT: You have to lay a foundation for that.

2 BY MR. CROSSLAND:

3 Q. Principal Drozdak, are you -- at -- back in May 20
4 -- 2022, was there a policy GBE for staff's rights and
5 responsibilities?

6 A. Yes, there was.

7 Q. Would the staff have received training on it?

8 A. Yes, it would've.

9 Q. Do you specifically remember receiving training on
10 this policy?

11 A. Yes, we would've received yearly training on all
12 of our policies.

13 Q. So are policies constantly updated?

14 A. Yes.

15 Q. And when they're updated, they -- can it vary in
16 changes, small changes or big changes?

17 A. Can vary, yes.

18 Q. As a -- a part of the staff's responsibilities,
19 are they expected to supervise children?

20 A. Yes, they are.

21 Q. More specifically, is it one of their main
22 responsibilities?

23 A. Yes.

24 Q. Thank you. This -- the last bullet point on the
25 policy.

1 A. Uh-huh.

2 Q. Can you read that to yourself, please?

3 A. Okay.

4 Q. Would that have been -- would that sentence have
5 been in effect at the time of this incident?

6 A. Yes.

7 MR. CROSSLAND: Your Honor, we move to have this
8 entered as Defendant's Exhibit Number 3, I believe.

9 THE COURT: Any objection?

10 MR. EDDY: Same objection, your Honor.

11 THE COURT: Sustained. Unless you're just entering
12 that one section.

13 MR. CROSSLAND: It -- it is fine, your Honor. We'll --
14 we'll move on.

15 BY MR. CROSSLAND:

16 Q. As a part of your policies and procedures, are
17 they accompanied by administrative rules?

18 A. Yes.

19 Q. Are you familiar with those as well?

20 A. Fairly, yes.

21 Q. In those administrative rules, are they required
22 to -- does it get more specifics on how to supervise the
23 children?

24 A. Yes.

25 Q. Would the staff ever receive training on that?

1 A. Yes. Yearly.

2 Q. Including classroom teachers?

3 A. Absolutely.

4 Q. Classroom teacher's assistants?

5 A. Yes.

6 Q. Did you have any concerns about Ms. Sadie Ray's
7 supervision of the students?

8 A. No.

9 Q. Did you have any concerns about Ms. Kimberly
10 Long's supervision of the students?

11 A. No.

12 Q. Had you ever received any complaints about
13 Ms. Sadie Ray's supervision of the students?

14 A. None.

15 Q. What about Ms. Kimberly Long?

16 A. None.

17 Q. Did you feel that they were fully capable of doing
18 their jobs as a teacher and a teacher's assistant?

19 A. Yes, I did.

20 Q. Moving forward. When there's an incident, a
21 discipline issue at the school would your assistants, the
22 principals, to keep you updated on what was happening?

23 A. Yes, they would.

24 Q. Going back to this specific incident, do you
25 remember Ms. Annette Ariail keeping you up to date on this

1 incident?

2 A. She would've had to have updated me after the
3 incident. I was off campus at that time at one of our high
4 school's graduations.

5 Q. So are you familiar with how the -- the incident
6 was investigated and handled?

7 A. Yes.

8 Q. Do you have any concerns with the way that it was
9 investigated?

10 A. No, I do not.

11 Q. Do you have any concerns with the way that it was
12 -- any other responses that were done?

13 A. No, I felt it was handled appropriately.

14 Q. Had you ever received any calls about this
15 incident from the Arellanos?

16 A. No.

17 Q. If you would've got a call, would you have spoken
18 with them?

19 A. Yes.

20 Q. Have you ever interacted before with Ms. Arellano?

21 A. No.

22 MR. CROSSLAND: Beg the court's indulgence?

23 THE COURT: Yes, sir.

24 MR. CROSSLAND: No further questions. Thank you.

25 THE COURT: Cross?

1 CROSS-EXAMINATION

2 BY MR. EDDY:

3 Q. Good afternoon, Mr. Drozdak.

4 A. Good afternoon.

5 Q. Am I saying that right?

6 A. Correct.

7 Q. Okay, good. Do you have any firsthand knowledge
8 of the allegations of what happened in that classroom to tell
9 it to the jury?

10 A. I do not.

11 Q. Okay. Do you think it is fair for parents of
12 students in your school to assume that they will be protected
13 at your school?

14 A. Yes.

15 Q. Does that include protection from other students?

16 A. Yes.

17 Q. Does that include protection from other students
18 who may commit sexual contact with them?

19 A. Yes.

20 Q. Do you think that the school owes a duty to the
21 students to supervise and protect them from other students?

22 A. To the best of their ability.

23 MS. WHITE: Objection, your Honor.

24 THE COURT: Yes.

25 MS. WHITE: The duty is established by state law.

1 THE COURT: Want to be heard?

2 MR. EDDY: I think we're both saying the same thing.

3 MS. WHITE: He's asking him, your Honor, to -- to
4 describe to the jury what the duty is as far as protecting
5 students. And again, that duty is set forth from the law,
6 and he's a -- he's a lay person. He's not a lawyer.

7 MR. EDDY: I'll rephrase, your Honor.

8 THE COURT: Okay.

9 BY MR. EDDY:

10 Q. Should the student's administrators and faculty of
11 your school supervise the students to ensure that there's no
12 inappropriate contact?

13 A. As best possible. Yes.

14 Q. And if a student does touch another student, would
15 you agree that the administrators, staff, and the school has
16 breached that -- that duty to supervise the children?

17 MS. WHITE: Objection, your Honor. Same objection.

18 MR. EDDY: I'll withdraw, your Honor.

19 THE COURT: All right.

20 BY MR. EDDY:

21 Q. If students are allowed to engage in
22 non-consensual sexual contact, does that mean that the school
23 has failed their supervision of the students?

24 A. I think it's impossible to -- and to completely
25 supervise anyone 100 percent all of the time.

1 Q. So it's an acceptable risk that children can be
2 molested at the school?

3 A. That's not what I said.

4 MS. WHITE: Objection your Honor, he's testifying.

5 THE COURT: Answer the question. Go ahead.

6 THE WITNESS: That's not what I said.

7 BY MR. EDDY:

8 Q. Okay. Then help me understand. You can't prevent
9 all of it. So the -- we shouldn't find the school liable for
10 failing to supervise these children?

11 A. I think as educators, we do all that we can to
12 follow policies, provide students with expectations, and have
13 those students hold to those expectations. Unfortunately,
14 human actions aren't always accountable for, and when you
15 have students who are young -- particularly five years old,
16 that are trying to understand the world around them
17 themselves and others, they'll make decisions in a second
18 that are not appropriate for a school environment. So I
19 think the -- the inability to prevent that is what I'm
20 referring to. No, it is not appropriate for any student to
21 be touched in a way that they do not want to happen, but I do
22 believe it is impossible to prevent that at all times as in
23 any other environment.

24 Q. There's limitations on what we can protect.

25 A. Correct.

1 Q. We are all human. We can all make mistakes.

2 A. Yes, sir.

3 Q. And if a teacher or administrator makes a mistake
4 and fails to properly supervise the children, what's that?

5 A. If that had happened, which it had not, it would
6 be a situation where there would be a consequence for that
7 adult.

8 Q. But you don't have any direct information to tell
9 the jury about what happened in that classroom?

10 A. Based on what was provided to me by my assistant
11 principal, as well as many other staff members at my school,
12 and throughout this entire process, I have no reason to
13 believe any member of the staff acted mistakenly.

14 Q. So is that a "Yes," or a "No"?

15 A. Ask the question again.

16 Q. You don't have any direct knowledge to tell the
17 jury about what happened in that classroom?

18 A. No.

19 Q. So you don't know, and you can't testify whether
20 there was a failure to supervise in that classroom?

21 A. Not firsthand, no.

22 MR. EDDY: Thank you. No further questions.

23 THE COURT: Re-direct?

24 MR. CROSSLAND: Yes, your Honor.

25 RE-DIRECT EXAMINATION

1 BY MR. CROSSLAND:

2 Q. Mr. Drozdak, how many -- approximately how many
3 classrooms are in -- were in Cayce Elementary at that time?

4 A. Approximately between 80 -- 85.

5 Q. Is it possible for you to be in every classroom
6 and every time?

7 A. No.

8 Q. How quickly can a student -- student discipline
9 issue occur?

10 A. Within moments. Just like any other incident.

11 Q. Moments? Is that seconds, minutes?

12 A. Within -- yes, within a -- within a second. Two
13 seconds.

14 Q. Are you familiar with classroom teacher
15 regulations for student to teacher ratios?

16 A. Yes, I am.

17 Q. Do you know how many students were in Ms. Ray's
18 classroom at the time?

19 A. 24.

20 Q. And what is the regulation -- what is the
21 appropriate student to teacher ratio and the regulations?

22 A. It's at least 25.

23 Q. So we're in -- the district was in compliance with
24 -- with that regulation?

25 A. Yes, it is.

1 MR. CROSSLAND: No further questions, your Honor.

2 THE COURT: Re-cross?

3 MR. EDDY: Nothing from the Plaintiff. Thank you.

4 THE COURT: Thank you, sir. You may step down.

5 Anything further from the Defense?

6 MS. WHITE: No, your Honor.

7 THE COURT: Any reply?

8 MR. EDDY: Nothing from the Plaintiff.

9 THE COURT: Thank you. All right. Ladies and
10 gentlemen, I told you when we reached the stage where all the
11 evidence is in, and I had to discuss legal issues with the
12 attorneys, that's where we are right now. I'm going to have
13 to make a judgment call about how we're going to proceed.
14 The Supreme Court has given us some general guidelines about
15 what time we should start submitting cases to the jury.
16 After a certain point in time, we should not do that. And I
17 can tell you we are running right up against it.

18 I think what I'm going to do is probably have you come
19 back in the morning. I'll stay here with the lawyers and
20 work on things and have them come back in the morning before
21 I have you come back. That's what I think I'm going to do,
22 but I'll know for sure very shortly. So if you'll step in
23 the jury room, not discuss the case, I'll get you back out
24 here as quickly as I can.

25 (Jury exits room at 3:00 p.m.)

1 THE COURT: Motions?

2 MS. WHITE: Yes, your Honor. We would renew -- renew
3 our motion for a directed verdict based on the fact that
4 there are simply no facts from which a jury could determine
5 that the district was grossly negligent in supervising the
6 classroom at the time the incident occurred. And also, as I
7 -- I pointed out earlier, before we brought the jury back in,
8 the discretionary -- I mean, the immunity provision in the
9 South Carolina Tort Claims Act related to the acts or
10 omissions of a third party including but not limited to
11 criminal conduct clearly apply here. In other words, there
12 is no vicarious liability to the district for Student K's
13 inappropriate touching of Zoe in the classroom. The district
14 cannot be found liable. If they wanted to recover for the
15 actual act of touching, they should have sued Student K's
16 family, is what they should have done. They chose not to do
17 that. They chose to come solely after the school district.
18 And so in order to recover, they have to be able to show that
19 the district exercised at least slight care.

20 And I would add here, as far as additional testimony,
21 Principal Drozdak testified that the district has policies
22 related to sexual harassment, student on student sexual
23 harassment. And that those policies have been implemented in
24 the school district. And again, that's another indication of
25 the district's exercise of slight care.

1 Also, in addition to the supervision of the classroom,
2 the district had been proactive. Ms. Prizer testified that
3 -- that she goes into classrooms and she went into Zoe's
4 classroom to teach about safe touching and to let students
5 know that it is not appropriate for an adult or another child
6 to touch you in your private areas. Again, another exercise
7 of slight care. I mean, things happen all the time -- all
8 the time in schools. And if we -- if the district was
9 vicariously liable because out on the playground a student is
10 -- is swinging and -- you know, their -- the student's legs
11 hit another student and that student suffers a concussion,
12 the district is not liable because that occurred. Just like
13 they're not liable here because the act occurred. There has
14 to be some facts from which a jury could find that the
15 district failed to exercise slight care, and that simply does
16 not exist here. And for those reasons, your Honor, we would
17 renew our motion for a directed verdict.

18 THE COURT: Yes, sir.

19 MR. EDDY: Thank you, your Honor. I'm unpersuaded by
20 any additional evidence and testimony that came through in
21 the past half hour by the two witnesses for the Defense. The
22 mere fact there is a policy in place regarding sexual
23 harassment of the students has no direct bearing on whether
24 there was a failure to supervise in that class. Which brings
25 us to this argument by the Defense that the school cannot be

1 held liable for the criminal acts of a third party, whether
2 the student's a third party, whether this incident itself is
3 a criminal act in and itself, put that to the side. This
4 defense does not apply in this case. And the reason is
5 because and I direct the Court to the case of Woodell v.
6 Marion School District One, 414 S.E.2d 794, where they
7 discuss that if the victim or plaintiff is seeking recovery
8 from the school district not based off of the direct criminal
9 acts of the assailant, but instead off of the school
10 district's failure to supervise the student or students, then
11 the claim is perfectly permissible, and is not barred in any
12 way by this third party criminal act defense in the Tort
13 Claims Act.

14 MS. WHITE: Your Honor, if I could respond just
15 briefly, he's saying exactly what we're saying. We -- we
16 cannot -- in fact, 15-78-60 number 20 says "A school district
17 cannot be held" -- of course, it's any political subdivision
18 of the State, "cannot be held liable if the alleged losses,
19 damages, and injuries sustained by a plaintiff arose out of
20 an act or omission of a person other than an employee,
21 including, but not limited to the criminal actions of third
22 persons." Mr. Eddy has been arguing to the jury that we are
23 liable simply because the inappropriate touching occurred.
24 That's not the case. The law explicitly says that the only
25 way we can be found liable is if there are -- or for the --

1 for there to be anything for the jury to decide, is if there
2 are facts in evidence from which the jury could conclude that
3 school officials failed to exercise slight care. We -- we
4 exercise an abundance of care. I don't know what else we
5 could have done, your Honor. What are we supposed to do?
6 Have one adult for each child and walk around holding them by
7 their hand, including when they go to lunch, including when
8 they go in the bathroom, including when they're waiting to go
9 in the car? There's simply nothing here from which a jury
10 could find that we failed to exercise slight care.

11 THE COURT: Anything else?

12 MR. EDDY: I would just ask you to take a peek at that
13 case, your Honor, it's directly on point and interpreting the
14 exact same defense saying that when you're alleging that the
15 failure of the school district is a failure to supervise
16 rather than a direct cause of action for the -- the criminal
17 act itself, this does not apply as a defense in Tort Claims
18 Act.

19 MS. WHITE: But you have to have facts from which the
20 jury could find that they failed to exercise slight care,
21 there are no facts in this case.

22 THE COURT: Let me look at the case.

23 MS. WHITE: Your Honor, may I say something else?

24 THE COURT: Yes, ma'am.

25 MS. WHITE: You're probably already looking at the

1 case, the Woodell case, but that was the -- the trial court
2 granted a 12(b)(6) motion to dismiss, and -- and simply held
3 that you -- you can sue for lack of supervision, but -- but
4 not for the criminal conduct of third person. So that's not
5 dispositive to the issue here, is -- which is whether or not
6 there are facts to indicate that the district was grossly
7 negligent in supervising the case. And again, it was -- you
8 know, the -- the court of appeals reversed the dismissal of
9 the case pursuant to 12(b)(6).

10 THE COURT: All right. So what is the Defense --
11 excuse me, the Plaintiff's position regarding the lack of
12 supervision is based on what facts? The fact that it
13 occurred?

14 MR. EDDY: The fact that it occurred, the fact that we
15 don't know how long it took to take place, the assault. We
16 know that the student stood up from one part of the room,
17 walked over to another part of the room, engaged in sexual
18 contact, including pulling out the pants, putting the hands
19 into the -- in between the legs and onto the underwear of --
20 of another student. And that student then had time to stand
21 up, leave and walked back to his desk. And the school
22 district has attempted to argue that the only way conceivable
23 was for that to have taken place in the blink of an eye, one
24 to two seconds, when we don't even know where Zoe was in this
25 room.

1 When you look at that and the fact that there was other
2 activities going on that Ms. Long was in the back helping
3 students, that Ms. Ray was sitting down at her desk, it
4 leaves room for the jury to decide that the teachers were not
5 paying sufficient proper attention to supervise the class.
6 The only explanation is that they weren't because it couldn't
7 have taken place in one to two seconds. Students don't
8 travel the speed of sound across the room. They didn't
9 engage in this contact. We -- we don't know that it took one
10 to two seconds. There's no evidence that this took one to
11 two seconds.

12 THE COURT: The teacher's assistant testified that she
13 saw nothing?

14 MR. EDDY: Correct.

15 THE COURT: She didn't elaborate on that in any way?

16 MS. WHITE: Your Honor, I believe she said she was
17 working at -- at her desk with students and -- and she is at
18 the back of the classroom. Ms. Ray is at the front of the
19 classroom. And Ms. Ray, if I'm recalling her testimony
20 correctly, is that Zoe was seated at -- towards the front of
21 the room, one of the front pods. She testified that she
22 couldn't say, because in those pictures, it's little like
23 almost half-moon desks pulled together. So she said the
24 table that the little pod where Zoe was, was at the front of
25 the room, very close to her desk. She couldn't testify which

1 of those three seats Zoe was sitting in. But the testimony
2 was is that Zoe was right there, that she had been
3 circulating around the room, monitoring students. She says
4 she walked back to her desk, her bottom hits her chair, and
5 Steven walks right up to her and says this happened. So the
6 only testimony on the record is that that's where -- that's
7 where Zoe was at that little pod right there. And also that
8 it was very close to where her desk was. So she testified
9 that it happened within a matter of seconds because she had
10 only been back at her desk for a matter of seconds. There's
11 no other -- there are no other facts and evidence to indicate
12 that it took any longer than that. There's simply nothing to
13 contradict her testimony.

14 THE COURT: I -- I -- I understand your position, and
15 I've tried to state my role. My role is not to decide if
16 there -- if there are inconsistencies not to decide between
17 the inconsistencies. It's the existence of the evidence.
18 And you keep arguing to me that that's the only evidence.
19 And I understand your argument, and I...

20 MS. WHITE: I get passionate about these things, your
21 Honor, I apologize.

22 THE COURT: Well, good. I -- I -- I don't fault an
23 attorney for being a vigorous advocate. And as I've said
24 earlier, there -- there's a -- an abundance of evidence that
25 the jury could use. The other way, the difficulty I'm having

1 in a practical sense is I can read subsection (20) as an
2 exemption, but I know in practice that there are lawsuits
3 every day about fights on school grounds. There's lawsuits
4 about prisoners hurting other people. And they go through.
5 They -- I do agree with you this is a 12(b)(6) motion on the
6 case of Woodell versus the Marion School District One. And
7 basically what the opinion says is both what -- is what both
8 of you are saying. One is that if the claim is based on the
9 supervision, you shouldn't throw it out on -- at the --

10 MS. WHITE: At the dismissal.

11 THE COURT: -- at the dismissal, on the pleading
12 section, you should let the facts be it developed. And your
13 argument is there aren't any facts now. All right. Here's
14 what I'm going to do. The inclination is to deny the
15 remaining directed verdict motion.

16 It's nearly 20 minutes after 3:00. What I would like
17 to do -- normally what I do is I go home, I finish up the
18 charge, and at some point in the night, I email it to the
19 attorneys. I'm not going to be able to email anything from
20 Edgefield. My -- my cell signal is way too spotty to try to
21 even accomplish anything like that. So what I'm probably
22 going to do is to ask you folks to be here in the morning at
23 9:45, and I'll give you a copy of the charge at that time,
24 and you all can look at it, the draft, and we'll talk about
25 it in a charge conference. I'll have the jury come at 10:30

1 and hopefully by then we'll have everything resolved. I
2 don't know that I'll have a verdict form that. Yes?

3 MR. EDDY: I don't know if this is appropriate, but
4 what time's the funeral tomorrow?

5 THE COURT: I'm not going to the funeral.

6 MS. WHITE: Your Honor, I -- I have a doctor's
7 appointment in the morning. I've contacted my doctor's
8 office about seeing if they could see me later tomorrow
9 afternoon. They cannot.

10 THE COURT: When is your appointment?

11 MS. WHITE: At 9:30, I'll -- I'll be done. He's
12 assured me that he would get me in at 9:30, and then I'll be
13 out at 10:30.

14 THE COURT: All right.

15 MS. WHITE: Any possibility that we could move it
16 forward I would greatly appreciate it.

17 THE COURT: Sure. It's in Columbia?

18 MS. WHITE: It is. It's actually in St. Andrew's. So
19 it -- you know, really close.

20 THE COURT: You think you can be here at 10:45?

21 MS. WHITE: Yes, your Honor.

22 THE COURT: Well, if you're not, don't break your neck.
23 All right. Bring the jury in. We'll need to order them
24 lunch tomorrow.

25 (Jury enters room at 3:20 p.m.)

1 THE COURT: All right. Ladies and gentlemen, it's --
2 what I'm about to tell you is unusual, but I think it's the
3 best way to proceed in this fashion -- in this case. I'm
4 going to ask you folks to be here tomorrow at 11:15. That's
5 late. I know it. We will have your lunch brought in. They
6 usually either get sandwich trays or pizza, but that's what
7 they normally do. And we -- the lawyers are going to meet me
8 sooner than that. And we're going to go over everything and
9 hopefully we'll be ready for you all at 11:15. Again, I'm
10 sorry for that lengthy break, but all things considered,
11 you'd either be sitting back there waiting on us or you'd be
12 home or where you want to be till 11:15, okay? Thank you so
13 much. Don't discuss the case. I look to see you at 11:15
14 tomorrow. Thank you.

15 (Jury exits room at 3:36 p.m.)

16 THE COURT: Let me just say on this third-party action.
17 Something I mentioned earlier when we were just talking about
18 the criminal side, I -- I also think you have to factor in
19 two things. One, you have to read all these statutes and
20 context. And if you read some of them. Even in situations
21 where you know there are cases all the time that come along
22 down the road, if you read the thing literally, it -- it
23 provides absolute immunity. And the other thing is, I'm
24 dealing with five-year-olds, five or six-year-old children.
25 And it seems to be more of a supervision -- right at this

1 moment, it seems to be more of a supervision issue, control
2 and protection than it does and act of a third party. But
3 I'll -- I'll mull all that over tonight and since we're going
4 to be that late, I should be able to get over here and email
5 stuff to you here. So, Mr. Crossland, you can look at it and
6 Mr. Eddy, you can look at it and maybe that'll shortcut it a
7 little bit. All right. Be careful you don't have contact
8 with the jurors, and I apologize to you all for going into
9 the fourth day. Court's in recess until 10:00 -- oh, I
10 didn't tell you what time to be here.

11 MS. WHITE: You said 10:45.

12 MR. EDDY: 10:45.

13 THE COURT: 10:45. Okay.

14 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT
15 3:23 P.M.)

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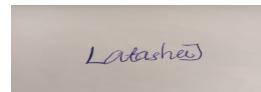
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CERTIFICATE OF TRANSCRIBER

I, LATASHA JEFFERSON, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had, and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 11 of Lexington County, South Carolina, on October 9, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 18, 2025.

A rectangular box containing a handwritten signature in blue ink that reads "Latasha".

LATASHA JEFFERSON

Transcriber

1 CONTINUATION OF PROCEEDINGS - OCTOBER 10, 2024.

2 THE COURT: All right. On the charge conference, I
3 distributed last night a proposed or charge a draft and a
4 proposed verdict form. And my understanding is that both
5 sides have had a chance to go over it. So we'll conduct a
6 charge conference now related to any matters that you think
7 should be excluded or excluded -- included or excluded excuse
8 me. Plaintiff?

9 MR. EDDY: No notes from the Plaintiff on other
10 document, your Honor.

11 THE COURT: Defense?

12 MS. WHITE: Yes, your Honor. Just a couple things.
13 First of all, there wasn't any -- there were no expert
14 witnesses who testified in the case. Dr. Amador testified as
15 a treating physician, and we don't have any issue with it. I
16 just don't think it's applicable to charge about expert
17 witnesses here. More importantly though, we would ask that
18 the Court include our charge number 27, which is the
19 affirmative defense provided in the Tort claims that related
20 to the X-ray omissions of a third party, 15-78-60 number 20.
21 I think that could probably be incorporated into the
22 information on gross negligence.

23 THE COURT: Okay. What's your position about expert
24 witness, Mr. Eddy?

25 MR. EDDY: I'm fine with that section being removed,

1 your Honor.

2 THE COURT: I've given a lot of thought to the question
3 about third party exemption. I put on our listserv to invite
4 input from the other judges -- circuit judges about their
5 thoughts. I -- I've only gotten two responses. One was that
6 he looks at foreseeability, mainly. The other one I think
7 may have missed the point that I was asking about because he
8 -- he was talking about the other part of the claim, but I
9 appreciate them responding. And they -- there may be some
10 more that come in. I fully concede I may be completely wrong
11 about this, but I have decided to deny the motion for
12 directed verdict on the ground of a third-party act. And I
13 am not going to charge it because I guess the essence of what
14 I'm feeling is, this is an exclusion or exemption for acts of
15 a third party. If we looked up definitions in dictionaries
16 about third parties, I don't know exactly what they would
17 say, but the situation in this case is you've got a
18 five-year-old child who is under the care, custody and
19 control of the school. I just don't think that's what the
20 third-party exemption was intending to provide for allowing a
21 school district to avoid -- or any governmental entity to
22 avoid responsibility. So I -- I -- again, concede I may be
23 wrong. I hope I'm not, I don't try to be wrong, but I note
24 your exception and you --

25 MS. WHITE: Yes, your Honor.

1 THE COURT: -- need to raise it after I charge in order
2 to preserve it.

3 MS. WHITE: We will to preserve it because we -- it is
4 an affirmative defense that's available to the school
5 district. We raised it in our answer and I think we're
6 entitled to that charge, but nonetheless, I understand your
7 Honor's ruling. The -- the only other objection that -- that
8 we would have is on page 4 of the proposed charge agency.

9 It's our position that -- and -- and actually the law's
10 pretty clear if you go read all the cases under the Tort
11 Claims Act, that there is not responding its superior. So
12 the district, in fact, is not responsible for acts and
13 omissions of its employees. The district does act through
14 its employees and its officials, but there's not responding
15 its superior liability for a school district. In fact, the
16 Tort claims spells out that in certain instances school
17 officials can be individually liable for their acts and
18 omissions. So we would ask that the second sentence here,
19 which says they are agents of the governmental entity, which
20 is responsible for the acts of -- acts and omissions of its
21 agents be excluded.

22 THE COURT: What's the Plaintiff's position?

23 MR. EDDY: Your Honor, I agree that the -- it's a
24 different employee-employer relationship in terms of the
25 employer's responsibility for employee's actions or failures

1 to act. The -- the issue is Tort claims with exceptions.
2 The one majority of the time you can't name the individual
3 employee. So it does need to be made clear to the jury that
4 at least in this circumstance, if they find that there is a
5 failure to act and omission itself, that the school district
6 is responsible for that.

7 MS. WHITE: Your Honor, could I suggest some
8 alternative wording?

9 THE COURT: Sure.

10 MS. WHITE: What if we said the school district is a
11 governmental entity which acts through its employees and
12 officials. If you find -- if you find that any of those
13 employees or officials were grossly negligent in their acts
14 and omissions, the school district could be held liable for
15 those acts and omissions. It's -- it's -- it's -- it's
16 semantics in a way. But I think it's important because
17 again, there is no -- just like there's no vicarious
18 liability, which is why we believe that 15-78-60 20 should be
19 charged, but we understand your position because there's not
20 responding it superior liability here, I think that needs to
21 be reworded.

22 THE COURT: You want to be heard on that, Mr. Eddy?

23 MR. EDDY: Solely to add on the last clause of her
24 proposed sentence I think that sentence is largely fine. I
25 don't have issues with it except to add or clarify that if

1 the school employees or officials are found within gross
2 negligence, it should be the school district is responsible,
3 not could be or should be.

4 MS. WHITE: I'm okay with that.

5 THE COURT: All right. I'll be honest with you, I
6 think it's a distinction without a difference, but I will
7 yield to greater knowledge in what I present. All right. So
8 I'll make that change. What else?

9 MS. WHITE: Nothing else from the Defense, your Honor.

10 THE COURT: Go see if they got all the jurors. Is the
11 Plaintiff ready for the jury?

12 MR. EDDY: Yes, your Honor.

13 THE COURT: Defense?

14 MS. WHITE: Yes, your Honor.

15 THE COURT: You want to open and close, Mr. Eddy?

16 MR. EDDY: Yes, your Honor.

17 THE COURT: Bring the jury, please.

18 (Jury enters room at 11:16 a.m.)

19 THE COURT: All right. Ladies and gentlemen, good
20 morning. We're going to go to the next stage of the trial,
21 and that's the closing arguments. In my opening remarks to
22 you, I told you that the lawyers were not permitted to engage
23 in what we refer to as argument in their opening statements.
24 I told you that an opening statement is generally an
25 introduction and that we're taught that it's pretty much

1 means that the lawyer gets an opportunity at that early stage
2 to tell you what he or she believes the evidence will show.
3 We now have all the evidence in the case and the attorneys
4 are given the -- the permission to use the art of advocacy to
5 attempt to get you to see things as they would like you to
6 see them on behalf of their respective positions.

7 Now the way that this works is that since the Plaintiff
8 has the initial burden of proof, Plaintiff's Counsel will go
9 first. Mr. Eddy has to close in full when he finishes, then
10 the Defense makes its only closing argument and after that,
11 Plaintiff's Counsel can respond to whatever the Defense
12 counsel brought up. I always take a break between when they
13 finish and when I start giving you the law it looks like
14 based on what I have right now, it's going to take me about
15 22 minutes to explain the law to. Sometimes I take breaks
16 between the arguments. It just depends on how -- how things
17 are going. But I invite your close attention, ladies and
18 gentlemen, and Mr. Eddy, you're recognized for your closing
19 argument.

20 MR. EDDY: Thank you, your Honor. Good morning -- good
21 morning, folks. I want to thank you for your care and
22 (inaudible) this past week. I know this has not been an easy
23 case to listen to. It has not been easy for the attorneys to
24 present. It has not been easy for the witnesses on either
25 side of this court to testify to. But all of us, everyone

1 here is appreciative of your help, appreciative of your
2 service, appreciative of you guys paying attention to the
3 witnesses and paying attention to the documents that you'll
4 be reviewing when you go back into your deliberations.
5 Because when you guys are making your decision today, you
6 guys are weighing the facts, weighing the evidence. Not only
7 will you get to review the testimony, but you'll also get to
8 read over some these documents and I want you to. Those
9 documents are important, we'll get to that in a second.

10 So like the judge said, we can now start talking a
11 little bit about the law. What I tell you right now is not
12 the law. I'm going to summarize what I think you'll be
13 hearing from the judge in a little bit. If there's a
14 difference between what I'm saying and he said go with him.
15 He knows better than me. All right.

16 Now like the judge said, I represent the Plaintiff in
17 this case. The duty is on me to prove things in this case
18 it's called "the burden of proof." What on earth does that
19 mean? Most of us come across this term watching law and
20 order and what do they say in law and order? Beyond a
21 reasonable doubt. That's a pretty high standard. What's
22 important is in criminal cases you're dealing with a very --
23 very important issue and it has to be proved by the
24 government beyond a reasonable doubt. This is a civil case.
25 It is a different burden. The threshold is much lower.

1 You see, we started Monday to scale for justice and
2 they were balanced. The Plaintiff wasn't ahead, the Defense
3 wasn't ahead. We started like this. And now in order to
4 prove a fact or issue to you, I'm required to prove it by a
5 preponderance of the evidence. What does that mean in
6 practice? That, did you see that? You take the scales there
7 at 50/50? (Inaudible). That's it. It just means more
8 likely than not, if we were to put these on percentages, we
9 started at 50/50. If I prove something that 51 percent of
10 your solitude, your understanding, that's it.

11 Preponderance of the evidence, tilt something very
12 slightly towards the Plaintiff. And that's a fact. That is
13 evidence that is true that happened. Because -- the nature
14 of this case, this is a negligence case. The Plaintiff has
15 to prove a few things. We understand now the scale, how we
16 judge those proofs, whether I prove those things. But what
17 do I have to prove to you?

18 Judge is going to teach you about a term called "gross
19 negligence." Gross negligence means the failure to exercise
20 slight care. It's a relative term. The Supreme Court has
21 put it another way. It says that it's the failure to
22 exercise the absence of care that is necessary under the
23 circumstances. The absence of care that is necessary under
24 the circumstances. What care are we talking about? We're
25 talking about the care and the duty just like the teachers

1 and the administrators testified to. The duty to protect,
2 the duty to protect the students and the parents of this
3 State, the parents of this county they trust the school. In
4 return, the school owes them a duty to protect the students.
5 I also have to prove that the Plaintiff was hurt, that the
6 Plaintiff has suffered damages. That's an easier of the two
7 questions.

8 So let's talk about some of the evidence and testimony.
9 What I'm saying right now is not evidence, it's not
10 testimony, but I want to bring your attention back to what I
11 think are some of the important parts of this case. Here's
12 what we know. Second to last day of school, sometime in the
13 morning, 24 students sitting in their desks, we got a teacher
14 in the back, we got a teacher walking around and eventually
15 sitting down at her desk. Students are working on an end of
16 the year project or a scrapbook, and they got a documentary
17 on the TV. Ms. Long, teacher assistant, in the back, she's
18 in charge of helping the kids when they've got issues with
19 the -- with their scrapbooks, they go to her students are not
20 allowed to be standing up. Students are not allowed to be
21 congregated, not allowed to be walking around, not over with
22 the toys, not over at the sinks, they're at their desks
23 unless they need to go to Ms. Long to work on their
24 assignments.

25 The school's position is that the head teacher was only

1 not looking at the class, was only not observing the class
2 for one to two seconds. That's it. That's it. That's the
3 entire time that they claim there was a hole in their
4 observation. For that to be true, here's what has to happen
5 in one to two seconds. Zoe sitting somewhere in the
6 classroom, we don't know where, has to turn around, find
7 Karter, call him, bring him over to her table. "Come sit
8 with me." He has to stand up, walk across the classroom, sit
9 down next to her, open her pants and put his hand on her
10 vagina. K has to do this for long enough that another
11 student notices and report this. K is then able to stand
12 back up, walk back to his desk, sit down.

13 The witness S who's the one that brought this to the
14 teacher's attention. He then has to stand up from his desk
15 having made the decision that he needs to report this. Walks
16 over to the teacher, get her attention and report this. Can
17 that have happened in one to two seconds? Absolutely not.
18 It can't. That is impossible. A teacher had to be distracted
19 for longer than that.

20 Now how do we know that? How do we know that the
21 teacher is wrong about how long she wasn't paying attention?
22 Let's look at her memory. Let's look at her memory of this
23 incident, and judge whether we can trust that her memory is
24 accurate. She testified here under oath, looked you all dead
25 in the eye, and what did she say S told her? She sat right

1 there and she said, "S told me Zoe opened her pants and asked
2 Karter to touch her." S said Zoe opened her pants and asked
3 Karter to touch her. Now when I took that same teacher's
4 deposition, I got to interview her before this. That was
5 sworn, that was under oath. You all heard me ask her about
6 this deposition testimony where she said at that point S he
7 was pointing towards K and Zoe. He was saying K and then
8 like gesturing towards his pants and they were being pulled
9 down. Those are not the same thing.

10 She told you today or this week something totally
11 different than she told me in the deposition. Is she lying?
12 I don't think so. I don't think so. I think she just
13 doesn't remember. I think she just doesn't remember. These
14 details they are important, because if you don't remember big
15 details like this, how on earth can you remember how long you
16 weren't looking at the desks for?

17 As she testified, she also took the witness's statement
18 very shortly after this. And if there was a difference
19 between S's written statement and what he told her at the
20 desk, she would've known, she would've noticed it would've
21 been an issue. Here's that statement. You all will get a
22 chance to read this. "K opened the pants of Zoe. I've seen
23 him." That's the exact opposite of which she claims that the
24 witness told her the exact opposite. That's a difference.
25 She stood up there again and said she didn't. There was no

1 difference between what S told her at the desk and what S put
2 in the written statement. She doesn't remember.

3 "Had you dimmed the lights in the classroom? Had you
4 dimmed the lights in the classroom for the movie? Sat
5 there?" "No, had not dimmed the lights." What did she say
6 in her deposition? We dim the lights for the movie. We
7 don't dim the lights all the time, but for a movie, yes those
8 both can't be true. Is she lying? No, it's just memory.
9 It's not. Her attorney asks her -- her attorney asks her,
10 "What's the size difference of K and Zoe?" You remember what
11 she said? It's the head teacher who is in charge, the one
12 who's supposed to have this perfect recollection. I was only
13 not looking for that long. What did she say? She said
14 they're the same height. She said K and S is the same size.

15 End of the day yesterday Ms. Long gets up, teacher's
16 assistant, and she said nope. No, that's not true. K is a
17 foot taller than Zoe that's a foot -- a foot difference. How
18 you not remember a foot difference? This is a foot. Add
19 that on. That's a big difference. Put that on a
20 five-year-old. How do you not remember that a five-year-old
21 is a foot taller than the other one? Memory wasn't good.
22 Doesn't remember the words. Doesn't remember the importance
23 of those words. Doesn't remember what those kids looked
24 like. And we're supposed to buy that she was only distracted
25 for one to two seconds. Like I said at the beginning, I get

1 it. It's the end of the year. This is not lazy job. It's
2 exhausting, tough job. Beginning of the year, I remember
3 when I was a senior sliding right into summer, I wasn't
4 paying attention to stuff, nor did she. Had end of year
5 school work to get done, all year paperwork to get done. She
6 had to fix up those forms into your reporting.

7 I've sat down at my desk at work, fresh cup of coffee,
8 8:30 in the morning ready to get work done. I blink and it's
9 5:00 and I got to go run to pick up my kids. When you're
10 focused on something, it's easy to lose track of time. When
11 I lose track of time, I respond with email too. When a
12 teacher loses track of time, when a teacher loses focus, when
13 a teacher is not observing and keeping an eye on the kids,
14 what happens? Zoe is assaulted.

15 The absence of care that is appropriate under the
16 circumstances. The failure to exercise slight care. Slight
17 care, watching the kids. I'm not saying you got to chain
18 them to the desks, it's go watch the kids. We know Ms. Long
19 is distracted because she's dealing with the kids who are
20 coming up to her for help to do something. So the moment
21 that the teacher -- the head teacher takes her eyes off the
22 class, nobody has their eyes on the class. And what do the
23 teachers administrators say? "Kids are curious. Kids are
24 going to do things." We know this and that's why you got to
25 keep an eye.

1 The -- the teacher -- teachers in the school broke
2 their duty to protect the students in that classroom. They
3 broke the duty to protect Zoe. All they had to do was this.
4 Open their eyes. That's it. Eyes on the kids. The failure
5 to keep eyes on the kids is gross negligence. It is the
6 failure to exercise the care that is wanted in the classroom.
7 What's the consequence?

8 Wonderful little girl, the Plaintiff, Zoe, was groped,
9 molested and assaulted. I don't know the right word. There
10 is no right word. I never thought professionally I'd have to
11 try to describe the non-consensual contact the young girl had
12 to (inaudible) in broad daylight in front of not one, two
13 teachers should have done better. But it's not over. Zoe's
14 story doesn't end. That's because the school also secondly,
15 separately harmed her all over again (inaudible) know even
16 worse.

17 The school botched the investigation of this incident.
18 Re-victimized, traumatized her all over again. This child
19 without her consent has been made the victim of sexual
20 assault, had to repeat her story again, again, again, again.
21 I lost count of how many times those teachers had to care
22 give. What does that do to the mind of a five-year-old?
23 What does that do to a child? Get questioned again and again
24 and again and again. What's worse when I ask a teacher, the
25 counselor, "Why didn't you find out what K said, what K did?"

1 You'll see the statement of the witness. You'll see the
2 statement of K. K admits to touching her. What did they sit
3 there and tell you? It doesn't matter. They said the word
4 it's irrelevant. It's irrelevant whether you are talking to
5 someone who is just curious, play a doctor versus someone
6 who's a victim of sexual abuse? How is that irrelevant? On
7 one hand, you're talking to a kid who needs some -- some
8 lessons on boundaries and what you can do in class. The
9 other hand, you're trying to help an assault. You think it
10 is appropriate and reasonable proper to repeatedly
11 interrogate a victim of sexual assault? No. No, it can't
12 be. School says, "We did not look. We did not blame her for
13 this." This is a lie. The school is lying. How do we know?
14 Because they put in the (inaudible). Look at this
15 (inaudible) words on this document. "She also accused the
16 same boy of pulling her pants away from her waist and looking
17 down them. But she had actually pulled the pants down and
18 asked him to look." They blamed her. That is their words.
19 I didn't write this document. I didn't put these words in
20 their mouth. They blamed Zoe. They made her feel it was her
21 fault.

22 You may know people, friends, family members you've
23 seen on Facebook something sexual assault victims don't
24 report it. Over all majority of sexual assault victims don't
25 report. Why not? Both (inaudible) don't understand. Don't

1 understand it. Why won't -- they don't report? So these
2 cases has taught -- has taught me the consequences of being a
3 victim. Because you're not a victim once. You can get
4 revictimized again and again and again, and made to feel like
5 you are (inaudible).

6 Was the school grossly negligent in failing to
7 supervise that classroom? Absolutely. It couldn't have --
8 the incident could not have happened in one to two seconds.
9 And we shouldn't even bother these one to two seconds because
10 we know all the different ways that teacher's memory was
11 short. Was the school grossly negligent, interrogating that
12 young girl, that victim again, and again, and again and
13 again? Absolutely. (Inaudible) just a little bit. Who was
14 grossly negligent? Both. Gross negligence is one thing I
15 got to prove over damages.

16 Let's talk about damages. The form you're going to
17 receive, you get a form called "a verdict form." You have
18 one little one and it's not going to have any explanation.
19 There's no equation, there's no calculator, there's no
20 formula. What are the Plaintiff's -- Zoe's actual damages?
21 It may say Z.A. on the form. It says Z.A. because we can't
22 put a minor's name on the public record, okay? So if you see
23 Z or Z.A. on the copy, that is Zoe, right?

24 Damages are difficult. Damages are easier in a car
25 wreck case. If Zoe broke her leg in a car wreck, we got the

1 medical bills, we got physical therapy, orthopedist, hospital
2 bills. And we can say, all right, got X number of bills.
3 We're going to pay suffering on top of that. Good to go.
4 It's got its own challenges, but it's a whole heck of a lot
5 easier that you guys have to decide on to that. And that is
6 what is the -- the value of emotional trauma. It has just as
7 much, if not far more value than a broken bone.

8 So what part has Zoe suffered? We heard from Zoe,
9 Nancy, Ferrey, Ms. Amador about the harms. A bright, sweet,
10 happy -- I don't remember if they said bubbly or bouncy, but
11 they're both pretty good things. And this incident took the
12 like. She now has to deal with anxiety, anxiety attacks,
13 depression, nightmares, and night terrors that she is still
14 coping with. The family all wakes up hearing the screams and
15 cries. So panic attacks feel like (inaudible). Shame. The
16 shame of her sexual assault. "God doesn't want me to live."
17 That's what she told her counselor. She told Ms. Amador,
18 "God doesn't want me to live." No six-year-old should say
19 that. She should be talking about "Bluey, my little pony."
20 She's like a six-year-old. How do you treat that?

21 Going back to a broken bone, we had an orthopedist on
22 the scene instead of the licensed therapist, Ms. Amador, that
23 orthopedist would say, "Yeah, see we got to do a surgery on
24 September. And then some follow-up care MRI, they'll do
25 physical therapy for three months and she will be fine.

1 Done. That's it. Fully recovered." What did Ms. Amador
2 say? There's no cure. This might not ever end. You can't
3 put a bandaid on what this young girl's going through and
4 will continue to go through. Ms. Amador said this could be
5 lifelong. Even if somehow miraculously Zoe returns to
6 baseline as a child, which she still hasn't, even she did.
7 This can come back up later month. What are the long-term
8 consequences Ms. Amador was talking about? (Inaudible)
9 forming relationships, friendships, trust bonding, intimacy,
10 academics, school, jobs, careers, self harm and suicide
11 (inaudible). I asked myself -- I said earlier this week, I
12 have a six-year-old and a four-year-old. What would I want?
13 What value would I propose if it was my child. It's not just
14 emotional trauma, it has injuries. When my child looks at me
15 in the eye and say (inaudible). That's easy. For me that's
16 easy. That's a million dollars. The value of what I would
17 want. That's for my child. But that's not the only aspect
18 that goes into what are her actual damages. It's not just
19 her emotional pain supplement from -- Ms. Amador said that
20 (inaudible). And I like the Arellanos very much. Nancy's a
21 great mom. She's working three jobs to (inaudible) as a
22 single mom, for these kids and she got great kids. Isis and
23 Ferrey working at the flea market to bring some extra money.
24 (Inaudible) this kid needs therapy, likely going to need
25 medication. What does therapy cost? Don't bring in your

1 outside knowledge. You know, counseling and psychological
2 services and medication. 10 bucks a visit or a 100, 150 \$300
3 a visit. What does that look like over a lifetime? Couple
4 times a week, couple times a month for the next 70 years.
5 That's not tens of thousands of dollars. It's hundreds of
6 thousands of dollars.

7 What is it going to cost to help her over (inaudible)
8 her life. She doesn't get to come back here in 70 years and
9 submit a (inaudible). You here right now have to decide.
10 (Inaudible) sign of caution. There's no do overs for her.
11 This is her own shot. A hundred thousand dollars for medical
12 treatment, therapy, counseling, and medication. Well, I
13 don't know what you should put down on that line, but it was
14 somewhere between \$100,000 and \$1,000,000, is what I would
15 do. And what I hope you do. Zoe was failed by her teachers.
16 Zoe was failed by her school. Zoe was failed by the police.
17 This is her last chance. Help me not to have failed Zoe.
18 Help this story. Zoe's story end.

19 THE COURT: Thank you, Mr. Eddy. Which of you is going
20 to do the closing?

21 MS. WHITE: I am, your Honor.

22 THE COURT: You ready, Ms. White?

23 MS. WHITE: Yes, I'm, your Honor. May it please the
24 Court?

25 THE COURT: You're recognized.

1 MS. WHITE: Good morning. I guess it's still morning,
2 I missed lunchtime. First of all, I want to echo Mr. Eddy in
3 thanking each of you for your service as a juror in this case
4 and for your attention to all of these witnesses. I don't
5 know that I've ever seen a jury that was more engaged with
6 all the witnesses who testified here. And I really -- really
7 appreciate that from -- from each and every one of you. This
8 is the fourth day you've been here in a row. Everybody's got
9 things going on in their life, but you all have been a -- a
10 fabulous -- fabulous jury. And on behalf of all of these
11 individuals who are sitting back here, we really do -- we
12 really do appreciate that.

13 The first thing that I want to say is that, quite
14 frankly, I find it offensive that Mr. Eddy is describing what
15 happened to Zoe as a sexual assault. For any of us here in
16 this courtroom, or people out in the world who have been
17 actually been the victim of a sexual assault, I find that
18 offensive. Now was Zoe touched inappropriately? Yes, she
19 was. I don't think anybody disputes that Zoe was touched in
20 a private area where she should not have been touched. And
21 that's not okay. That's not okay. And the school officials
22 told you that was not okay, and that they responded to that
23 by doing what? By referring Student K for a disciplinary
24 hearing. Because you can't go putting your hands on other
25 people in a school environment, but does that happen? We all

1 know that happens. Is the school district automatically
2 liable because one student touches another student in an
3 inappropriate way? No.

4 When the judge tells you about the -- what the law is
5 in this case, one of the things that he is going to tell you
6 is that school districts are not the insurers of student
7 safety. How can they be? Think about -- think about
8 everything that goes on during the school day with students
9 in the lunchroom, in the classroom, out on the playground.
10 And sometimes despite everyone's best efforts, something
11 happens, something happens at school. And if every time that
12 something happened at school where a student was either
13 touched inappropriately or a student got hurt on the
14 playground or a student got hurt in the lunchroom or during
15 athletic practice, if every time that something like that
16 happened, the school district was liable for that, for
17 failing to prevent it, we basically have to shut the schools
18 down because that's all we'd be doing. We'd be in court
19 every single day if we were automatically liable simply
20 because something happens at school.

21 So when is a school district liable? A school district
22 is liable whenever they fail to exercise slight care. Slight
23 care, not ordinary care. And to give you -- just to give you
24 an example that -- we'll -- we'll talk in a little bit more
25 about the example using the classroom. But I like to explain

1 the difference between ordinary negligence and gross
2 negligence in this way. Because we as citizens, we are
3 supposed to conduct ourselves, what, in a reasonable manner,
4 right? We -- we -- we cannot be negligent. And if we are,
5 then what? We face legal responsibility. Legal liability
6 for that. So here's an example. If you are driving your car
7 and you run a stop sign and as a result there is a car
8 accident, what have you done? You have failed to exercise
9 reasonable care. You were negligent because you failed to
10 obey the stop sign. And you are responsible for any accident
11 that might result because of your negligence.

12 On the other hand, if you were driving down the road,
13 the speed limit is 35, you're going 85, you are talking on
14 your cell phone, there's a stop sign. You run that stop sign
15 and there is an accident. You have been grossly negligent.
16 You have failed to exercise slight care. So that's the
17 difference between ordinary negligence and gross negligence.
18 And our general assembly has placed into law that school
19 districts can only be liable if there was gross negligence.

20 So let's take a look at the facts in this case, and
21 talking about whether the school district and school
22 officials, these individuals sitting back here in this
23 courtroom, whether or not they were grossly negligent. Did
24 they fail to exercise slight care in their supervision of Zoe
25 and in their supervision of Student K and the other students

1 in Sadie Schmidt's classroom? So what -- what did the
2 district do to try to prevent something like what happened to
3 Zoe, the inappropriate though developmentally normal touching
4 that happened? First of all, the district has a policy that
5 prohibits sexual harassment in the schools. That's the first
6 step to have a policy that explains to students and employees
7 and parents that we will not and do not tolerate sexual
8 harassment in the schools.

9 And that includes student on student sexual harassment.
10 And if you take a look at that policy, which you will have
11 before you in the jury room, it spells out what that is and
12 how a student or a parent can file a complaint if the student
13 believes that he or she has been the victim of sexual
14 harassment, which would include a sexual assault had one
15 occurred here, which again, it did not in our opinion, but it
16 explains that. So that is one piece of care. We have a
17 policy on sexual harassment.

18 What else do school officials do? They actually send
19 -- at Cayce Elementary School, the school counselor,
20 Catherine Prizer, went into Ms. Sadie Schmidt's classroom to
21 give a lesson to the students on safe touching and explain to
22 all the students, "It is not okay for anyone other than
23 yourself or a doctor or a parent/guardian to touch you in
24 your private areas." Now that's something that ought to be
25 taught at home as well, correct? But the school actually

1 goes in and does that lesson. And in fact, in this case,
2 Ms. Prizer testified that they did that couple of weeks
3 before this accident -- this incident actually happened. So
4 it was fresh in everyone's mind or it should have been
5 talking about five and six-year-olds here though. We're not
6 talking about older elementary school children, middle school
7 kids or high school kids. We're talking about little kids.

8 What else did the district do? What else in particular
9 did Sadie Schmidt and Kimberly Long do? The classroom was
10 set up in a way so that the teacher was at the front of the
11 room. The teacher assistant was at the back of the room so
12 they could observe the students and what was going on with
13 the students. The students' pods -- and you can see in these
14 pictures again, you'll have these back -- back in your
15 classroom (sic). The pods here, there were three students
16 seated at a pod and none of those little pods were very far
17 from the desk of either Ms. Long or Ms. Schmidt. So they set
18 the classroom up and away so they could observe what was
19 going on in the classroom.

20 Did they turn the lights off in the classroom while
21 they were watching this documentary? No, they did not. Did
22 they close the blinds so that it was dark in the classroom?
23 Didn't do that either. Did they turn off the lamps that they
24 were in the classroom? They didn't do that either. They had
25 the classroom set up in such a way on this particular -- for

1 the whole year, but on this particular day so that they could
2 see what was going on with the students. What did
3 Ms. Schmidt testify to? She testified that she was walking
4 around that classroom -- again, about the size of this
5 courtroom. We're not talking about a -- a big huge room.
6 And she was watching these students. 24 students in the
7 room. She was walking around watching what was going on.
8 Ms. Long testified that while she was at her desk in the back
9 of the room, she was not distracted. She was keeping her
10 eyes on the students as well.

11 Ms. Schmidt finishes going around monitoring the
12 students. And what does she say? She goes back to her desk,
13 she goes to sit down. As soon as she sits down, Student S
14 comes up to tell her what has occurred. We all know how
15 quickly something can occur. And here, the touch in question
16 was not what Zoe had initially described. If what Zoe had
17 initially told Ms. Prizer and Ms. Ariail, if what she had
18 initially said that there was oral sex, that there was white
19 sticky stuff, that there was a tongue in her mouth. If all
20 that had occurred, as I told you on Monday, I wouldn't be
21 standing here because this matter would've been resolved.
22 Because if something like that had happened in that
23 classroom, that would've taken some period of time for all
24 that to occur. And so what was the teacher and the teacher
25 assistant doing? But that's not what happened here. It is

1 not what happened here.

2 So then let's -- let's turn to -- after Student S came
3 up to Ms. Schmidt's desk and said, "This is what happened. I
4 saw -- I saw K -- Student K touch Zoe," and is it really
5 material whether Zoe pulled her pants out or Student K pulled
6 -- pulled the pants out. That's really not material. And
7 that's what school officials were telling you. Mr. Eddy was
8 attempting to couch that as well. They're lying about this.
9 The school officials are lying. And again, I find that
10 offensive to say that school officials would come in here and
11 lie to a jury in front of a judge. Do you really believe
12 that they would come in here and lie about that? What they
13 said was, as far as they were concerned, it didn't matter
14 whether Zoe pulled her pants out or Student K pulled the
15 pants out. The fact of the matter was there was an incident
16 involving two students, an inappropriate act by a student.

17 So when Ms. Schmidt learned about that because Student
18 S came off and told her about it, did she say, "Okay, no big
19 deal, go sit back down." Had she done that? Could that have
20 constituted the lack of slight care? Yes, it could because
21 just ignoring it when a student says something is going on
22 with another student, she told Student S, "Just go sit down."
23 And she kept -- you know, right on with the classroom
24 assignment, that maybe could be gross negligence. But what
25 does she do? She calls Student K up, asks him what happened.

1 He tells her -- tells her honestly what happened. "Yeah,
2 well, she told me to," but doesn't matter if she told them to
3 or not. You can't go doing that. And so then what does she
4 do? She called Zoe up and I think she testified that -- that
5 Zoe started crying and -- and -- and was upset. So felt the
6 -- the need to write then go ahead and get an administrator.

7 Now I'm going to tell you what I think happened here as
8 -- as far as how the incident occurred. Ms. Schmidt
9 testified earlier that Zoe was an emotional child before this
10 incident happened. That she would get upset if something
11 happened like I think her shoes got dirty and she went to
12 places and so they -- they weren't able to get in touch with
13 -- with Ms. Arellano. So they went and found another pair of
14 -- of shoes for Zoe to wear that day.

15 She also testified that on -- on a particular day there
16 was some sort of smell in the cafeteria. You know, I'm in
17 and out to schools all the time and sometimes I'm like, "What
18 -- what are they cooking in there?" But in any event, she --
19 she had a smell and she refused to go in the cafeteria. So
20 Zoe was a very emotional child.

21 She also testified that Zoe had a best friend in the
22 class. Well, a female student. And that if Zoe got in
23 trouble for something, if Zoe was talking for instance, that
24 she would tend to deflect to the other student. "Well, it
25 wasn't me, it was -- it was my friend over here." I used to

1 do that too. I was a talker. You know, if you get in
2 trouble, you're like, ooh, it wasn't just me, it was this
3 person too. Or that's who it was. Because I was a talker in
4 school. No, that's hard to imagine. But in any event, so
5 what -- given that, what do I think happened? And you all
6 are going to have to decide yourselves what happened, but
7 what I think happened is it's clear Zoe testified for -- for
8 Student K to come over to the table.

9 I think Zoe probably initiated this. Now does that
10 mean that Zoe did something wrong or that Zoe is a bad girl?
11 No, that's not what that means. Again, children are curious
12 when they're young. These are five and six-year-olds. I
13 think that's what happened. And then what's going to happen?
14 You're going to deflect, you're going to deflect. And in
15 this case, the deflection was not just, "Well, Student K did
16 this. It wasn't me. I didn't invite it." The deflection
17 became a story that was extremely concerning to school
18 officials. How does Zoe have this knowledge? How is she
19 able to describe graphic sexual acts? So because of that,
20 when the questioning began, when -- when Zoe was taken to
21 Catherine Prizer's office -- and let's talk about that for a
22 minute.

23 Was Zoe sent to Annette Ariail's office to an
24 administrator's office or taken into the principal's office?
25 He testified he was off campus that day. But did Ms. Ariail

1 take her in there and say, "You sit here behind the desk and
2 I'm going to sit at the desk and interrogate her?" No, that
3 is not what happened. She was taken to Ms. Prizer's room,
4 which Ms. Prizer testified has fidgets and dolls and -- and
5 toys in there to try to make the child feel comfortable while
6 she shared with Ms. Prizer and Ms. Ariaail what had occurred.
7 Is that slight care, as far as how they handled this
8 incident? I think it's undisputed that that was slight care.

9 And that what does the district do as far as Student K?
10 He is taken to Ms. Ariaail's office with Mr. Snyder so as to
11 have a male presence available. And he is questioned about
12 what occurred. And once the questioning has been finished
13 that the interview of the students, Ms. Prizer and
14 Ms. Schmidt talk about it and they decide, "Look, something
15 isn't right here for this child, this six-year-old child to
16 have this knowledge." And so they respond to that with that
17 knowledge that the child had.

18 I don't know where the child got the knowledge. I
19 don't know that we'll ever know that, but it was information
20 that caused the school officials to be concerned, which is
21 why Ms. Prizer testified -- and Mr. Eddy would have you
22 believe that questioning five or six times. I didn't hear
23 anything about that. What I heard was that Ms. Prizer met
24 with Zoe, Ms. Ariaail goes out for a minute to go check on
25 Student K and what's going on with that. And then she comes

1 back in and they finish questioning Zoe. And why are they
2 doing that? Are they doing that to make Zoe upset or to make
3 Zoe feel like she here is -- has done something wrong? No,
4 they're doing that because they're trying to figure out what
5 is the child -- what is the story that this child is telling
6 so that we can respond appropriately.

7 And then finally, when they finish looking into this
8 matter, did they tell Student K, "Okay, well, you go on back
9 to class, you and Zoe just go on back to class and we'll keep
10 on doing the scrapbooks." No. They send Student K for a
11 disciplinary hearing in accordance with the student --
12 student code of conduct.

13 What else could they have done? What else could they
14 possibly have done to have prevented this and how else could
15 they have followed up on it? I cannot think of anything. Is
16 it going to get to the point where we have to have one adult
17 per student in a classroom? Is that where we're going to get
18 to with this? Because again, if that's what's going to have
19 to happen, are we still going to be able to continue to
20 operate public schools? It's hard right now. I'm sure --
21 you know, you've heard about the teacher shortage all around
22 the country. It's particularly bad in South Carolina. We
23 had two teachers in this classroom with 24 students in there.
24 Simply is no testimony or evidence whatsoever to indicate
25 that they were distracted or that they were not doing their

1 jobs. They were doing their jobs this happened. It's
2 unfortunate. I'm sorry that Zoe was touched by another
3 student, but it is not the district's fault that this
4 happened.

5 So now I'd like to talk to you for a little bit about
6 Ms. Arellano and what she did. She gets a call from the
7 school. Ms. Ariail with the use of an interpreter calls
8 Ms. Arellano to say "This has occurred. Zoe is very upset
9 and I think you ought to come get her." Does Ms. Arellano
10 come to the school? Does she come in the school and say
11 "Well, can I please sit down with Ms. Schmidt and Ms. Ariail,
12 Ms. Prizer, or any school official to try to figure out what
13 happened?" Because I can tell you if my child -- when --
14 when I had young children, if my child told me, or if I heard
15 that my -- my child was saying that a -- a -- "A boy licked
16 me between my legs," licked my child between their legs, put
17 their tongue in their mouth, there was white sticky stuff. I
18 can guarantee you I would've been in that school saying "What
19 in the world, how possibly could that have happened?" And
20 that was Zoe's initial story is that is what had occurred. I
21 would want to go see the classroom, I would want to meet with
22 the principal, I would want to meet with everybody involved
23 to try to figure out what happened. Did Ms. Arellano do
24 that? No. No, she did not. She didn't even come in the
25 school. We're not even sure if she picked her up or if her

1 grandmother picked her up or what. Because Zoe was a bus
2 rider normally. But it is undisputed that she did not go
3 into that school to figure out what happened.

4 The next thing is -- well, what -- what did she do?
5 She somehow, Zoe gets home, Zoe's at home. According to
6 Ms. Arellano, Zoe is crying and hysterical and upset and
7 everybody's upset. Did she call the child's pediatrician to
8 say "Look, my child is telling me that this is what happened
9 at school. That there was" -- because if what Zoe initially
10 described had happened, that would be a sexual assault. Did
11 she call the pediatrician and say "Look, I need to bring my
12 child into you because I am not certain how far this went
13 that my child has described graphic sexual acts and we need
14 to figure out what's going on here." No, she did not do
15 that. She did not contact the child's pediatrician.

16 Did she contact mental health or did she reach out to
17 the school to say "Look I -- I need to find somebody, some
18 therapist to help me with this child. The child is having
19 nightmares. The child is inconsolable, the child is crying
20 hysterically." Nope, didn't do that either. What did she
21 do? What did she do? She got on the internet and she did a
22 search for a lawyer. That's what was important to her at
23 that time, was getting an attorney. Is this really about an
24 apology from the school officials? I don't think so. I
25 don't think that's what this is about. When did Zoe go see a

1 therapist? After an attorney was already involved in the
2 matter.

3 The other thing I'll point out here too is when is the
4 last time that Zoe saw a therapist? Almost a year ago in
5 November of 2023. But yet according to testimony from
6 Ms. Arellano and testimony from Ferrey and Isis, she's
7 continuing to have nightmares and night terrors, and she's
8 scared to be around other children. She and -- and
9 Ms. Amador testifying she's having trouble in school, which
10 is not what Ms. Arellano testified to. She said she's doing
11 fine. But again, if those problems are continuing, why is
12 Zoe not under the care of a therapist now? Why has it been
13 almost a year since she went to see a therapist? But I will
14 say -- I'm glad Zoe went to see a therapist because again,
15 that story that she initially told is concerning. It is
16 concerning to me and I imagine it's concerning to all of you.
17 So I am glad that she saw a therapist and I hope that if she
18 is continuing to have any sort of problems, that she
19 continues to see a therapist because Zoe has had a lot of
20 stressors in her life recently.

21 She's been in three different schools over the last few
22 years. She was at Cayce Elementary School, then she went to
23 Saluda River Academy for the arts, which is also located in
24 Lexington Two. And then the family moved to North Augusta,
25 and she's now in school there. And that's a lot of -- that's

1 a lot of changes for a young child. The family has also
2 moved to a different state. Well, North Augusta is actually
3 in South Carolina, so I'm not sure. I think part of it is in
4 Georgia, and part of it is in South Carolina. But
5 nonetheless, she's in a whole different town. She's in a new
6 house. Her father has recently come back into her life.
7 Those are all stressors for a young child. And so all of
8 those things should be taken into account when you're looking
9 at whether or not, in fact, Zoe is continuing to have
10 problems. And I've been observing Zoe here in the courtroom,
11 and I -- I know that you have too, and so you'll have to
12 judge for yourself. Is -- is Zoe the same child that she was
13 before? Is she continuing to have problems? Use your common
14 sense as far as that is concerned.

15 The judge -- once after we finish our closing
16 arguments, the judge is going to charge you with the law and
17 then he's going to give you a verdict form. Mr. Eddy
18 referred to that a little bit early -- earlier and -- and
19 verdict comes from the Latin word "verdictum." What does
20 that mean? It means to speak the truth. And who is speaking
21 the truth here? I submit to you that it is all of these
22 school officials back here who told you exactly what
23 happened. Did they lie? No, they didn't lie. This has been
24 almost three years ago. And little details about: Is this
25 child taller or is that child taller? What -- what's in this

1 record? Were the lights like they are here in the courtroom
2 or were they lighter? You know, again, have you ever heard
3 of red herrings? That's what Mr. Eddy is doing. All these
4 little things. Well, they must be lying about everything if
5 they can't remember whether the lights were on like they are
6 in here or if they were a little bit dimmer, but none of that
7 is critical. What is critical here is that the district did
8 what they could. Did they exercise slight care? Yes. In
9 fact, they exercised an abundance of care in this matter.

10 And so for all those reasons, we would ask that you
11 return a verdict on behalf of Lexington School District Two,
12 and let these school officials know that they did everything
13 they could to prevent something like this from happening.
14 Thank you.

15 THE COURT: Thank you, Ms. White. Any response,
16 Mr. Eddy?

17 MR. EDDY: Briefly, your Honor. I used to be a defense
18 attorney. I used to defend cases, not dissimilar from this.
19 I used to stand in front of juries and defend folks in
20 lawsuits like this. And I used to come up with a lot of
21 creative arguments. Would never would I ever have tried to
22 gatekeep sexual assault. Never would I ever have tried to
23 reframe the non-consensual groping of someone else's genitals
24 as not sexual assault. It offends the Defense that I'm
25 calling that sexual assault, non-consensual grabbing of

1 someone else's genitals?

2 When I was a defense attorney, it was always very
3 important to apologize to the victim. You can apologize
4 without admitting you did anything wrong. I put my folks on
5 the stand, I teach them to say "I'm sorry." In my opening
6 and my closing, I tell the victim I'm sorry this happened to
7 you. Here's all the reasons why -- even though I'm sorry
8 this unfortunate occurrence happened, here's all the reasons
9 why my folks shouldn't be held responsible. We haven't had
10 one acknowledgment what happened to Zoe. We haven't had one
11 apology from the teacher, administrator, or an attorney.
12 They're not sad that this happened. They're not sad that Zoe
13 got touched. They're sad they got sued. They sure as heck
14 don't like that I did that. I don't like it either. I don't
15 like that this was necessary. This is a shame.

16 I give you a cheat sheet, guys. Whole case -- whole
17 case, everything -- everything down to one teeny tiny
18 question. The Defense gave you nothing to contradict this
19 whatsoever. It's one question. Real simple. Do you believe
20 that the teacher only took her eyes off the class for one to
21 two seconds? Do you believe that? If you do, my case is
22 done, okay? If you believe that it was only one to two
23 seconds that she wasn't looking at those kids, the case is
24 done. Why shouldn't you believe that? The school
25 possibility of the events, teacher's poor recollection,

1 doesn't remember what was said to her, doesn't remember what
2 was written, doesn't remember what she wrote, doesn't
3 remember if the lights were all going on, doesn't remember
4 how tall the darn kid was, doesn't remember where they were
5 sitting. Doesn't remember anything. What does she remember?
6 One thing. There's only one to two seconds. That's it.
7 That's the only concrete detail against the judge -- against
8 instructions and credibility, weighing the credibility of
9 witnesses. What's the way you can judge credibility on
10 someone's perfect recollection of that one thing? Well, how
11 are they on all the other details? Who said what, when?
12 Where were they sitting? Where was everyone sitting? What
13 was going on? What were the details in the classroom? You
14 lose credibility. You can't remember those things. You
15 expect us here to put the whole case on. That's it. I
16 appreciate all your help this week. You all only get some
17 beans or some sandwiches or something. Don't rush this
18 decision, okay? Take your time. Think about this. Read
19 those documents. Thank you, folks.

20 THE COURT: Thank you, Mr. Eddy. All right. Ladies
21 and gentlemen, I told you I always take a brief break between
22 when they finish and when I start so I can get set up out
23 here. You'll be back there maybe five minutes at the most,
24 and I'll bring you out to give you the law. Don't discuss
25 the case yet. Follow the bailiff, please.

1 (Jury exits room at 12:25 p.m.)

2 THE COURT: All right. We'll be at ease for five
3 minutes.

4 (Off the record at 12:26 p.m.)

5 (On the record at 12:34 p.m.)

6 THE COURT: Don't do anything to distract the jury.

7 (Jury enters room at 12:35 p.m.)

8 THE COURT: Members of the jury, all the evidence has
9 been presented and you've heard the arguments of Counsel.
10 It's now time for me to instruct you on the law that applies
11 to this case. Please continue to pay close attention during
12 this next stage of the procedure. At first, we need to cover
13 some basic ground rules. You, the jury members, are the sole
14 judges of the facts. You'll decide all the issues of facts,
15 the truth of the evidence, its effect, its value, and its
16 weight. You alone will judge the credibility of the
17 witnesses. In other words, whether the testimony is
18 believable.

19 In this regard, you may believe all that a witness said
20 or none of it. You may believe part of what a witness said
21 and not believe the balance. You may believe one witness
22 against many or many against one. You may consider any
23 interest, bias or prejudice that you feel that a witness has
24 in the case. You may consider the demeanor and the
25 appearance of the witness and the opportunity for knowledge

1 that the witness had. You may consider whether a witness has
2 been consistent or inconsistent, but you're not to exercise
3 these considerations arbitrarial. You are to use your common
4 sense, your sense of logic and reason and your good judgment.

5 It's not proper for me to give you a charge on the
6 facts of the case. I cannot discuss the facts with you or
7 convey to you an impression that I have any personal opinion
8 about the facts. If during any stage of this trial you
9 develop an impression that I have a personal opinion about
10 the facts, you have to remove that belief totally from your
11 mind. You're the sole judge of the facts. I am the judge of
12 the law that applies to the case. You're bound by your oath
13 to accept and apply the law as I tell it to you. You must
14 abandon any conflicting ideas you might have as to what the
15 law is or what it should be. I give you the law, you apply
16 it to the facts as you determine them to be. And that way,
17 you reach your verdict.

18 It's also my duty to decide what evidence is
19 admissible. If I have ruled something inadmissible, or
20 instructed you to disregard something, you're not to consider
21 those things in arriving at your verdict. Base your verdict
22 on the competent evidence before you consider the testimony
23 from the witnesses and the exhibits admitted.

24 I need to explain that there are two types of evidence
25 generally presented during a trial. There's direct evidence

1 and circumstantial evidence. Direct evidence is the
2 testimony of a person who claims to have actual knowledge of
3 a fact, such as an eyewitness. It is evidence that
4 immediately establishes the main fact to be proof.
5 Circumstantial evidence is proof of a chain. It is proof of
6 a chain of facts and circumstances indicating the existence
7 of a fact. It is evidence that immediately establishes
8 collateral facts from which the main fact may be inferred.

9 Circumstantial evidence is based on inference. It is
10 proof that does not actually establish the fact in question,
11 but that an assert or describes something else from which you
12 may either reasonably infer the truth of the fact, or at
13 least reasonably infer an increase in the probability that
14 the fact is true. For circumstantial evidence to be
15 sufficient to warrant the finding of a fact, the
16 circumstances must lead to that fact with reasonable
17 certainty. The facts and circumstances should be considered
18 in light of ordinary experience and common sense. The
19 existence of a fact cannot be based on speculation, surmise,
20 or conjecture. The law makes absolutely no distinction
21 between the weight or value to be given to either direct or
22 circumstantial evidence. Nor is a greater degree of
23 certainty required for circumstantial evidence and of direct
24 evidence.

25 I need to explain that the school district is a

1 governmental entity which acts through its employees and
2 officials. If you find that any of the school officials or
3 employees were grossly negligent and a minor claim by the
4 plaintiff, the district is responsible for those acts and
5 omissions of its agents.

6 Now let's turn to this specific lawsuit. The party who
7 brings a lawsuit is called "a plaintiff." And here the
8 plaintiff is Zoe. A minor's lawsuit must be brought by an
9 adult representative who is appointed as the guardian ad
10 litem for the child. The party against which a lawsuit is
11 brought is called "the defendant," and Lexington County
12 School District Two is the Defendant. The Plaintiff is
13 claiming two things.

14 First, that the district gross -- was grossly negligent
15 in preventing her from being sexually assaulted by another
16 student. More specifically, the Plaintiff alleges that the
17 district was grossly negligent in failing to properly
18 supervise and control Student K, and in failing to protect
19 Zoe from that alleged assault.

20 Secondly, she claims that the school was grossly
21 negligent in how it responded to the alleged assault. Now
22 the Plaintiff having brought this lawsuit, has the burden of
23 proving her claim. As I'll explain later, the school
24 district has raised an affirmative defense related to
25 discretionary immunity, and the district bears the burden of

1 proof as to that defense. The burden of proof in a civil
2 case is known as "the greater weight," or "the preponderance
3 of the evidence." And the easiest way for me to explain this
4 to you is to ask you to imagine a traditional set of scale.

5 When a party has a burden of proving something, that
6 party must present evidence to tilt those scales in her or
7 his favor as to that issue. So when a case begins, the
8 scales are even after all the evidence has been presented if
9 the scales remain that way, if they remain even, or if they
10 should tilt even slightly in favor of the opposing party,
11 then the party with the burden of proof has failed to meet
12 the burden of proof. If on the other hand, those scales
13 should tilt even slightly in favor of the party bearing the
14 burden of proof, then the burden of proof has been met. And
15 all I'm trying to do with that explanation is to give you a
16 mental picture because weighing evidence is entirely a mental
17 -- mental process, and the evidence to which you should give
18 the most weight is that which convinces you of its truth.

19 In order for Zoe to recover, she must prove by the
20 greater weight or preponderance of the evidence that the
21 district acted in a grossly negligent manner with regard to
22 the particular claim. Public school districts are not
23 guarantors or insurers of a student's safety. The mere fact
24 that a student may have been harmed while at school does not
25 necessarily entitle that student to a monetary recovery.

1 Rather, the school district is liable only if you find that
2 the Plaintiff has proven that the district was grossly
3 negligent and caused her harm.

4 I'm sure you've heard the term "negligence."
5 Negligence is synonymous with being careless, but gross
6 negligence is a higher level of wrongdoing. It is the
7 failure to exercise even slight care under the circumstances.
8 The Plaintiff must prove that the district did not exercise
9 even slight care towards Zoe. Gross negligence involves an
10 intentional conscious failure to do something that a party is
11 obligated to do. Put it another way, it is the intentional
12 doing of a thing that one ought not to do. Gross negligence
13 involves conduct that shows an utter disregard of caution
14 amounting to a complete neglect of the safety of another. It
15 is want and conduct done with conscious or reckless disregard
16 for the safety of others.

17 Another concept I need to explain is "proximate cause."
18 In general terms, even where a party acted with gross
19 negligence, that party is only responsible for those things
20 that the gross negligence cause, either as the sole cause or
21 as a contributing cause. We call that concept "proximate
22 cause." Proximate cause is something that bring -- produces
23 a natural chain of events, which in the end brings about the
24 injury. It is a direct cause. Proximate cause requires
25 proving causation and fact. This involves proof that the

1 injury would not have occurred, but for the gross negligence
2 of the district.

3 Proximate cause also requires proving legal cause.

4 Legal cause is proven by showing that it was foreseeable that
5 injury would flow from the gross negligence in question.

6 This means that the injury must have occurred as a natural
7 and probable consequence of the gross negligence. Proving
8 foreseeability does not require proof that the particular
9 injury that occurred was foreseeable. However, a wrongdoer
10 cannot be held responsible for things that could not be
11 expected to result from that party's misconduct.

12 Proximate cause cannot be left to surmise, speculation
13 or conjecture. The Plaintiff must prove that any injuries or
14 damages sustained were the proximate result of the
15 Defendant's gross negligence, either in supervising or
16 controlling its students or protecting Zoe -- Zoe, or in how
17 it responded to the alleged assault. Where the cause may be
18 as reason -- reasonably attributed to something from which a
19 defendant is not responsible as to something from which the
20 Defendant is responsible, then the burden of proof is
21 proximate cause has not been established.

22 Now when the district received a complaint, it filed an
23 answer. The first defense is known as a qualified general
24 denial, which admits certain things but denies that it failed
25 in its duties towards the students or mishandled the incident

1 or acted inappropriately in any way. The district denies
2 that it is responsible for any injuries or damages claimed by
3 the Plaintiff, and this qualifies general denial places the
4 burden of proof on the Plaintiff to prove her claim.

5 The school district has also raised an affirmative
6 defense concerning governmental immunity. And affirmative
7 defense means that the school district has the burden of
8 proving it by the greater weight of the evidence. As background
9 until the late 1900s, the government could not be sued by a
10 private citizen. This was called "sovereign immunity,"
11 meaning that the sovereign was immune from liability. Under
12 current law, a governmental agency can be sued and held
13 liable. That legislation known as "the Tort Claims Act" has
14 placed limitations on the ability to collect from a
15 governmental entity. These limitations are in the form of
16 exemptions that protect governmental agencies for certain
17 things. If the district proves that an exemption applies,
18 there can be no recovery from the school district. Excuse
19 me. One such immunity is called "discretionary immunity."

20 A governmental entity is given leeway with regard to
21 acts of discretion. It cannot be held liable for the
22 exercise of discretion or judgment by an employee or for the
23 performance or failure to perform any act or service, which
24 is in the discretion or judgment of the governmental entity
25 or employee. To establish discretionary immunity, the

1 district has to prove by the greater weight or preponderance
2 of the evidence that its employees, faced with alternatives,
3 actually weighed competing considerations and made a
4 conscious choice. Furthermore, the district must prove that
5 in weighing the competing considerations and alternatives,
6 the employee used accepted professional standards appropriate
7 to resolve the issue. If the school district proves these
8 things, it cannot be held liable for the Plaintiff's alleged
9 injury.

10 So now we'll turn to the issue of damages. If you find
11 that the Plaintiff has proven that the school district was
12 grossly negligent in a way alleged by the Plaintiff, and that
13 the gross negligence was a proximate cause of physical or
14 mental injury to the Plaintiff, you will then be asked to
15 evaluate the Plaintiff's claims for damages. In this case,
16 you are concerned with actual damages. You are not permitted
17 to award damages to punish the district or to make an example
18 of the Defendant. Punitive damages are not before you, only
19 those actual damages proven to have been suffered by Zoe are
20 permissible.

21 Now actual damages are sometimes called "compensatory
22 damages" because they're designed to compensate the damaged
23 party to put that party in the same position that she
24 would've occupied had the incident not occurred. Actual
25 damages include compensation or such things as pain and

1 suffering, mental anguish, emotional distress, loss of
2 enjoyment of life together with other related losses that are
3 proven to be the proximate result of the Defendant's gross
4 negligence. There is no yardstick that I can give you by
5 which to measure such things as mental anguish, emotional
6 distress, and loss of enjoyment of life. But while they are
7 difficult to measure, they are material elements of actual
8 damages. And if proven to have been suffered due to the
9 gross negligence of the Defendant, they should be assessed
10 and awarded to the Plaintiff.

11 Actual damages include damages that a plaintiff proves
12 to be reasonably certain to occur in the future provided that
13 they are proximate result of the district's gross negligence.
14 The question with future damages is not whether they might be
15 suffered, but whether the Plaintiff has proven with
16 reasonable certainty that the damages probably will
17 materialize. If you award future damages, they must be
18 reduced to the present day value.

19 The Plaintiff has the burden of proving her damages by
20 the greater weight of the evidence. Damages cannot be based
21 on speculation, or conjecture, or mere sympathy, but this
22 does not mean that they must be proven with mathematical
23 precision. Rather, the evidence should be such as to enable
24 you the jury to determine what amount of damages, if any, is
25 fair, just, and reasonable under the circumstances. That's

1 the law.

2 Folks, when you go back to the jury room, you're going
3 to have with you all the exhibits that have been admitted in
4 the trial, and you're going to have this verdict form and I'm
5 going to send back to you one copy of the written
6 instructions that I just read to you. On this verdict form,
7 you're going to tell us your decision, and you'll see when
8 you get it up top is just the caption, the case number and it
9 reads, "We, the jury, unanimously find" -- and you have two
10 options. Don't think I'm trying to suggest one over the
11 other by the order in which I state -- I -- I will state
12 them. One has to be said first, and one has to be said
13 second. The first option is to find for the Plaintiff, Z.A.,
14 in the amount of blank dollars actual damage. So if your
15 verdict is in Zoe's favor, you would check that box and you
16 would fill in the blank as to the amount of money to be paid
17 to her by the Defendant. The other option is that you find
18 for the Defendant, School District Two. If that's your
19 option, you check that response.

20 Mr. Foreman, part of your duties includes filling out
21 this verdict form. I think you'll find it to be
22 self-explanatory. Whatever option the jury chooses, please
23 sign your name at the bottom on the line. Folks, how you go
24 about your deliberations and taking your votes is in your
25 discretion. Subject to this requirement, your verdict must

1 be unanimous. All 12 of you must agree in order for the
2 foreperson to record your verdict.

3 Now when you've reached your verdict, if you'll knock
4 on the door, the bailiff will respond to your knock. I've
5 told you dozens of times over the last few days not to
6 discuss the case until I tell you to. Well, believe it or
7 not, it's not quite time. The law says I have to meet with
8 the attorneys and go over what I just discussed with you.
9 The truth of the matter is that I put this together last
10 night. Miraculously around 8:00, they restored my internet
11 connection. So I emailed it out. We met this morning and
12 discussed it. So we've already been over this. It shouldn't
13 take long, but I'll tell you that I never read the written
14 words verbatim. Sometimes I say things I don't even realize
15 I said. So the lawyers have to be given a chance to point
16 out to me whatever they might disagree with me on.

17 If I'm satisfied with what I told you, here is the
18 signal that you need to look for. I will send in to the jury
19 room, the exhibits, the verdict form, and a copy of the
20 instructions I gave you. I'll bring the alternate out. When
21 it's just the 12 of you in there, and you've got these
22 documents, you don't have to wait one more second, you can
23 start talking about the case, but don't talk about it until
24 then. I told the -- but -- the clerk to have your food here
25 at 1:00. So I made a pretty good guess is done. So whenever

1 the food is brought in they -- they'll bring it to you. It
2 may already be here. And the alternate is certainly welcome
3 to pick up whatever food was ordered. Okay.

4 Folks, I do want to thank you so much. You have been
5 an exemplary jury and I appreciate your respect and the
6 attention you've shown. You may retire to your jury room.

7 (Jury exits room at 12:55 p.m.)

8 THE COURT: Please state for the record any objections,
9 additions or objections -- exceptions, additions or
10 objections to the charge. Plaintiff?

11 MR. EDDY: No exceptions from the Plaintiff. Thank you

12 THE COURT: And the Defense?

13 MS. WHITE: The Defense again would restate its
14 position that under the Tort Claims Act, it's specifically
15 section 15-78-60, numeric 20, that the charge related to acts
16 or omissions of third party, including but not limited to the
17 criminal conduct of the third person should have been
18 included in the charges.

19 THE COURT: Thank you. I'm going to stick with what I
20 did. All right, folks, I appreciate very much your
21 professionalism, the way you've treated me and the respect
22 you've shown for the Court. The jury has the most difficult
23 job in the courthouse and we'll put it in their hands. I
24 want you to check the exhibits and the verdict form has
25 already been supplied to you. Here's what I'm going to do.

1 Since I send back a copy of the instructions, I will mark one
2 as the Court's exhibit, and that one has Zoe's initials. The
3 one that goes back to the jury actually has her name, but
4 it's exactly the same except the initial. Harrison is going
5 to have to go upstairs and print those. But if you'll check
6 the exhibits and check the verdict form, let -- let me know
7 when you're got that done. And as soon as we can get down --
8 back down with the copies of the instruction to send to the
9 jury, and to mark as court exhibit, we'll bring the alternate
10 out. All right. Harrison.

11 THE REPORTER: Did you want to I -- I used to mark the
12 charge too. Do you have it?

13 THE COURT: That --

14 THE REPORTER: Okay.

15 THE COURT: He's going to get it.

16 THE REPORTER: Okay. All right.

17 THE COURT: Is the (inaudible)?

18 THE BAILIFF: Yes, they have.

19 THE COURT: All right. Ms. Holley, we made it through.
20 We only have to use one alternate. So I appreciate you being
21 with us. If you need any kind of certificate, you check
22 downstairs and get it to you at the clerk's office, but they
23 will mail you a check for jury (inaudible) and inside that
24 envelope there will be a certificate if you need that. They
25 -- they tell me unless it takes about 10 days from Friday,

1 you always get a text. So if you need it sooner than that,
2 just check with the clerk she will get you anything, okay?
3 You're welcome to stick around if you want to stick around,
4 but you're discharged from jury service. Thank you. We're
5 at ease pending a verdict.

6 (Off the record at 1:11 p.m.)

7 (On the record at 2:04 p.m.)

8 THE COURT: The jury sent a note and it reads "Zoe's
9 transcripts, Nancy's transcripts, Ms. Schmitz transcripts."
10 I had the bailiff ask what they meant by transcripts, whether
11 they were talking about the trial or the depositions, and
12 they responded they want trial notes. There are no
13 transcripts of the trial and they can't have the depositions.
14 All I can do is tell them that if they want testimony
15 replayed, we can replay it.

16 MR. EDDY: Your Honor, what witnesses was that?

17 THE COURT: Zoe, Nancy and mo -- I guess that's
18 Ms. Schmitz not Mo -- Ms.

19 MR. EDDY: I've never had that come up in a trial
20 before with the -- because the court usually doing
21 (inaudible).

22 THE COURT: I tell them that we -- there are no
23 transcripts that I can give. There are no transcripts that -
24 - all I can do is play back -- have the court reporter play
25 back the audio that was picked up during the testimony. And

1 they need to be specific as to what they want to hear. If
2 they want to hear the entire witness, they can hear the
3 entire witness. If they want to hear about a specific
4 subject, that gets problematic because it might be in
5 different parts of their testimony.

6 MS. WHITE: I think it would have to be the whole --
7 the whole thing, really.

8 MR. EDDY: Doesn't agree with that.

9 THE COURT: Sometimes they want to hear it and
10 sometimes they don't. I -- I tell them, but that's what I
11 intend to do. Bring the clerk -- bring the jury.

12 THE BAILIFF: Bring the jury?

13 THE COURT: Yes, please.

14 (Jury enters room at 2:08 p.m.)

15 THE COURT: All right. Mr. Foreman, I received a note
16 from the jury, which seems to indicate that you're requesting
17 Zoe's transcripts, Nancy's transcripts, and Ms. Schmitz's
18 transcripts. And on clarification, they indicated what
19 you're asking for is transcripts related to their testimony
20 in trial. Is that the request of the jury?

21 JUROR 162: Yes, sir.

22 THE COURT: Ladies and gentlemen, there are no
23 transcripts. Those are prepared over a course of weeks or
24 months after a trial if -- if they're requested. The only
25 thing that can be done is that the court reporter can play

1 back the audios of the witnesses. If you want that done, you
2 just need to send a note out telling me that you want to hear
3 the audio play of whatever witness you want. If you're just
4 looking for certain issues, that gets to be problematic
5 because it may be in different parts of the testimony, and I
6 don't know that we can find all those different parts. So
7 I'm not discouraging you, I'm not encouraging you, I'm just
8 telling you that's the only option we have. We can play back
9 the audio of a witness. And if -- if that's what you want,
10 just send me a second note, and we will get that queued up
11 with the court reporter. All right. You all step back in
12 the jury room, and send me a note if you want to hear that.

13 (Jury exits room at 2:10 p.m.)

14 THE COURT: Exceptions -- addition objections to the
15 instructions from the Plaintiff?

16 MR. EDDY: Nothing from the Plaintiff, your Honor.

17 THE COURT: Defense?

18 MS. WHITE: Nothing, your Honor.

19 THE COURT: Thank you. We're at ease.

20 (Off the record at 2:11 p.m.)

21 (On the record at 8:09 p.m.)

22 THE COURT: I've been informed the jury has a verdict.
23 Obviously, I have no way of knowing what they decided. I say
24 this in every case. Please don't show signs of approval or
25 disapproval with the verdict. Don't show any emotion. Don't

1 nod your head in agreement or disagreement. Just please stay
2 still and stay quiet. Bring the jury in, please.

3 (Jury enters room at 8:10 p.m.)

4 THE COURT: Mr. Foreman, has the jury reached a
5 verdict?

6 JUROR 162: Yes, sir.

7 THE COURT: Would you pass it to the bailiff, please?
8 All right. "State of South Carolina, county of Lexington,
9 Case Number 2022-CP-32-02339, Nancy Arellano versus -- as --
10 as natural guardian for Z.A., versus Lexington School
11 District Two. We, the jury, unanimously find for the
12 Plaintiffs, Z.A., in the amount of \$245,000 actual damages."
13 Ladies and gentlemen, if I've accurately stated your verdict
14 for the Plaintiff, please raise your right hand. All hands
15 are raised. Are there any matters to take up prior to the
16 jury being discharged? From the Plaintiff?

17 MR. EDDY: Not from the Plaintiff, your Honor.

18 THE COURT: From the Defense?

19 MS. WHITE: Not in front of the jury, your Honor.

20 THE COURT: Okay. Thank you. All right. Ladies and
21 gentlemen, thank you very much for your service. They will
22 mail to you your checks, and inside the envelope there'll be
23 a certificate. You can show your employer if you need that.
24 If -- they tell me it takes about 10 days to get to you, if
25 your employer won't wait that long, to check with the clerk's

1 office, they'll get you what you need. You have an exemption
2 from jury duty for 2024/25 and '26 at this level. Won't help
3 you in federal court, magistrate's court, or municipal court.
4 Also since you actually sat on the trial jury, you're
5 disqualified for service for a year. So I thank you very
6 much. You're free to go.

7 (Jury exits room at 8:12 p.m.)

8 THE COURT: You want 10 days for post-trial motion?

9 MS. WHITE: Yes, for post-trial motion.

10 THE COURT: All right. Court grants 10 days for filing
11 post-trial motions. Which of these -- I want to make sure
12 I've got your charge preserved. Do you remember the number?

13 MS. WHITE: (Inaudible) 27. Hold on one second. I
14 think that's right.

15 MR. EDDY: Yeah. 27.

16 MR. CROSSLAND: It was 27.

17 THE COURT: All right. Madam Court Reporter, mark this
18 as a court's exhibit when you get a chance, please. Thank
19 you all very much.

20 MS. WHITE: Thank you, your Honor.

21 THE COURT: Good night.

22 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT
23 8:13 P.M.)

24

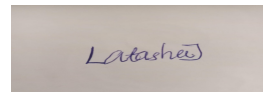
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CERTIFICATE OF TRANSCRIBER

I, LATASHA JEFFERSON, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had, and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 11 of Lexington County, South Carolina, on October 10, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 3, 2025.

A rectangular box containing a handwritten signature in blue ink that reads "Latasha".

LATASHA JEFFERSON

Transcriber

STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT 11
COUNTY OF LEXINGTON) DOCKET No. 2022-CP-32-02339

NANCY ARELLANO	)
	)
Plaintiff,	)
versus	)
	)
SCHOOL DISTRICT 2,	)
	)
Defendant.	)

H E A R I N G
BEFORE THE HONORABLE WILLIAM P. KEESLEY

DATE: February 7, 2025.
TIME: 10:28 A.M.
LOCATION: South Carolina Circuit Court 11
TRANSCRIBED BY: Latasha Jefferson

LEGAL EAGLE
Post Office Box 5682
Greenville, South Carolina 29606
864-467-1373
depos@legaleagleinc.com

1 APPEARANCES:

2 TREVOR PENROSE EDDY, ESQUIRE

3 The Eddy Law Firm, LLC

4 1516 Richland Street, Suite B

5 Columbia, South Carolina 29201

6 Attorney for the Plaintiff,

7

8 ANDREA WHITE, ESQUIRE

9 DYLAN CROSSLAND, ESQUIRE

10 White & Story, LLC

11 3614 Landmark Drive, Suite EF

12 Columbia, South Carolina 29204

13 Attorney for the Defendant.

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6 EXAMINATIONS

7 (None)

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9 EXHIBITS

10 (None Marked)

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24 (THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
25 IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 THE COURT: Okay. Let's go on the record. Nancy
2 Arellano, A-R-E-L-L-A-N-O, individually, and as guardian ad
3 litem for Z.A., a minor, versus School District Two of
4 Lexington County. It's February 7, 2025, at 10:28 a.m. This
5 hearing's been scheduled using the Webex virtual courtroom.
6 Court reporters are not assigned to these hearings. If a
7 transcript is needed once prepared by a transcriptionist
8 using the Webex recording. The rule requires consent of the
9 parties to do this by virtual hearing. I'm going to assume
10 based on the fact that we've scheduled this with the
11 attorneys, that there is no objection unless I hear one.

12 The matter before the Court relates to post-trial
13 motions from a trial that's been -- was conducted between
14 October 7 and October 10, 2024, resulting in a verdict of
15 \$245,000. The Defendant has filed post-trial motions for a
16 judgment notwithstanding the verdict. A new trial --
17 absolute a new trial, and that so readmitted to it and under
18 the thirteenth juror doctrine is seeking a new trial. So,
19 Ms. White, are you going to argue this?

20 MS. WHITE: I am, your Honor.

21 THE COURT: Happy to hear from you, please.

22 MS. WHITE: I apologize I had to close the door.

23 THE COURT: That's all right.

24 MS. WHITE: Are you ready for me to proceed, your
25 Honor?

1 THE COURT: Yes, please.

2 MS. WHITE: Yes. May it please the Court? As your
3 Honor noted, we have filed several post-trial motions in
4 response to the verdict that was rendered back in October, in
5 which the jury returned a verdict of \$245,000 against
6 Lexington School District Two. And your Honor just outlined
7 the basis for our post-trial motions. The only thing that I
8 would add is that we also are seeking a new trial on the
9 grounds that we believe the Court's failure to -- to charge a
10 provision of the Tort Claims Act, was error, and that that
11 should entitle us to a new trial. That -- that is folded
12 into the post-trial motions that -- that we filed.

13 So I will start with our motion for a judgment
14 notwithstanding the verdict. All of the evidence -- and of
15 course this was a -- you know, relatively lengthy trial, and
16 it is our position that all of the evidence presented at
17 trial by the School District's numerous witnesses leads to,
18 but one conclusion, and that is that the district exercised
19 at least slight care with regard to the supervision and
20 protection of the minor plaintiff. And because district
21 employees and officials did exercise at least slight care as
22 a matter of law, the district was not grossly negligent. And
23 so before I -- I turn to the evidence that was presented, I
24 first would -- would ask the Court to focus on the line of
25 cases going back to the late 1980s where the term "gross

1 negligence" has been defined by -- by our appellate courts.

2 And basically, what the Court have said, that in order
3 to find a political subdivision, such as the school district,
4 to find that the district was grossly negligent, it must be
5 shown by the plaintiff that the political subdivision -- in
6 this case, Lexington School District Two, failed to exercise
7 at least slight care. And the courts have stated that gross
8 negligence is conduct that shows an utter disregard of
9 caution amounting to a complete neglect of the safety of
10 another. And the courts have continued to state that just
11 because a school district could have done more to prevent
12 some loss that occurred, that doesn't mean that the district
13 failed to exercise at least slight care. And of course,
14 there also is case law stating that school districts are not
15 the insurer of -- of student's safety.

16 So -- so here, I'd like to -- to take a moment to go
17 through what the uncontradicted evidence that was before the
18 jury shows. And initially I think it's important to note
19 that the district not only created policies and procedures
20 relevant to the supervision and protection of students in its
21 classroom, but those policies, procedures, and practices were
22 also fully implemented by the -- the two educators, Ms. Long
23 and Ms. Ray, who were in the classroom at the time. And
24 there was no evidence whatsoever presented by Plaintiff and
25 her witnesses to indicate otherwise.

1 You know, the -- there were two teachers in a classroom
2 of approximately -- I want to say it was about 20 students --
3 20 students in the classroom at the time. The -- the teacher
4 and the aide were in the classroom the entire time. There
5 were lights on in the classroom, the lights were -- were
6 dimmed, that there were open windows and lamps in the
7 classroom. So there was sufficient lighting. Both of these
8 adults were experienced, particularly with regard to
9 Ms. Long, she had significant experience in supervising young
10 children. And Ms. Ray, while she was a new teacher, it's
11 important to note, and again, this evidence was before the
12 jury that she had received significant training while she was
13 in school obtaining her -- her teacher -- her -- her degree
14 to be able to teach on how to supervise students.

15 And there also had been training of students on safe
16 touches within the classroom. There was testimony that
17 Ms. Ray and Ms. Long were -- were not distracted. The only
18 -- there's not any evidence to indicate that they were
19 distracted or that they somehow were not implementing the --
20 the procedures and policies that were in place. And in fact,
21 Mr. Eddy doesn't dispute that that's what the evidence was.
22 He simply argues that -- that the incident occurred. And so
23 because of that, they must have been distracted, without any
24 evidence to indicate that they were in fact distracted.

25 So for -- for all those reasons, it is clear that there

1 was the -- the exercise of at least slight care by the
2 district, you know, by the administrators and officials who
3 set the policies and procedures and by the teacher and
4 teacher assistant in the classroom who were -- who were
5 monitoring -- who were monitoring the class. And so, because
6 of all of those reasons that there was substantial evidence
7 before the jury to indicate that we exercised at least slight
8 care, and that school officials did not utterly disregard the
9 rights of students, we believe that the district is entitled
10 to judgment as a matter of law, and ask the Court to -- to
11 issue a judgment on behalf of the district notwithstanding
12 the -- the jury's verdict. Again, based on the -- the
13 evidence that was -- that was unrefuted, quite frankly, by --
14 by the Plaintiff.

15 So in the event that the Court declines to issue a JNOV
16 we then -- you know, we alternatively believe that the
17 district is entitled to a -- a new trial in this matter. And
18 I'll start as the basis for a new trial with the -- the
19 thirteenth juror doctrine, which allows a -- a trial judge
20 basically to -- to set aside the verdict of the jury based on
21 the Court's -- the Court's view of the fact that -- that were
22 presented in a situation indicating that the jury did not
23 consider the evidence and -- and follow the jury instructions
24 that were provided by the Court.

25 You know, here it's clear. And in fact, as -- as I

1 recall Judge Keesley, you even commented that there was -- I
2 think when I was arguing our motion for a directed verdict,
3 you even commented that there was substantial evidence from
4 which a jury could find for the district in this matter. The
5 -- the amount of the verdict, in fact, indicates that the --
6 that the jury completely disregarded the evidence or lack of
7 evidence that was presented at trial. And so because of
8 that, we ask you to exercise your authority under the
9 thirteenth juror doctrine to weigh in on the facts here and
10 to grant the district a new trial in -- in front of a -- in
11 front of a new jury.

12 Next, I would like to turn to the issue regarding the
13 Court's failure to charge the provisions of the Tort Claims
14 Act, in particular with regard to section 15-78-60(20), in
15 which our General Assembly stated that a school district is
16 not liable for a loss resulting from an act or omission of a
17 third -- of a person other than an employee including, but
18 not limited to, the criminal actions of third persons. And
19 that -- the district should have had the benefit of that
20 provision being charged to the jury, because here there is
21 absolutely no evidence that was presented during the trial,
22 that it was foreseeable to the district, that the -- the male
23 student, Student K, would touch the minor plaintiff in a
24 sexual way. And because there was no evidence indicating the
25 -- the possibility of that being foreseeable, that provision

1 should have been charged. And -- and the facts indicating
2 that there was no foreseeability include that there was no
3 negative history between the minor plaintiff and -- and
4 Student K. In fact, school officials -- and I believe Zoe
5 herself, testified that the two of them were actually
6 friendly. So there was nothing that would've put the
7 district on notice that there might be this -- this touching
8 -- this sexual touching of the minor plaintiff by Student K.

9 Not only that, but there was no -- no history and no
10 evidence presented to the jury indicating that there had been
11 problems with Ms. Long and Ms. Ray's supervision of the
12 classroom. In fact, the principal and assistant principal at
13 the school both testified that both of them had been good
14 employees. There were no history of complaints. They had
15 never had to counsel or reprimand them regarding supervision
16 of students in the classroom.

17 And then finally, there was no evidence -- you know,
18 adduced by Mr. Eddy that the teachers were distracted in the
19 classroom. Mr. Eddy tried to insinuate that -- basically
20 arguing to the jury -- again, with no evidence supporting his
21 argument that, "Well, if this incident occurred where Student
22 K touched the minor plaintiff in a sexual way, that the
23 teachers must have been distracted." And that is
24 impermissible hypothesizing theorizing speculating without
25 any evidence to support that. And so in light of all that,

1 the -- the district was entitled to that -- the -- the judge
2 charging -- the Court charging that provision of the Tort
3 Claims Act. And that's exactly why, in my opinion anyway,
4 that the General Assembly included that as -- as part of the
5 Tort Claims Act. Because I think what happened in this case
6 with the jury is that the -- the jury -- the jury found they
7 appeared to have made their decision based on the fact that
8 the incident itself occurred without regard to the slight
9 care that the district -- that the district exercised.

10 So basically, the incident occurred, the district
11 admitted that the incident occurred, and so in the jury's
12 mind, the district is liable for the actions of Student K
13 with no evidence to indicate that the district failed to
14 exercise at -- at least slight care. So had the jury been
15 charged that the district could not be held liable simply
16 because the incident occurred involving the acts of a third
17 person, it's very likely that the outcome of this trial would
18 have been -- would've been different.

19 So next I'd like to -- to move on to the next two basis
20 for our motion for a new trial. First of all, we believe and
21 contend that the district is entitled to a new trial because
22 the verdict is -- is grossly excessive. And in fact, because
23 of the excessive amount of the verdict, it must be the result
24 of passion, caprice, prejudice or some other influence
25 outside of the evidence that was presented. And here we

1 believe that -- that that is the case for several reasons.
2 First of all, there were no medical bills whatsoever
3 presented by the Plaintiff as evidence to the jury of -- of
4 any costs or damages that have been incurred by the minor
5 plaintiff. Plaintiff relied solely on the testimony of their
6 witness, Narumi Amador, a licensed professional counselor,
7 who testified that she had not even seen the minor plaintiff
8 since November of 2023. So almost a year before this case
9 was tried to a jury.

10 Ms. Amador also testified that there was -- she had no
11 information to indicate that the minor plaintiff was seeing
12 any other medical provider for therapy related to the
13 incident in question. And in fact, in response to -- to
14 questioning, Ms. Amador testified that Zoe may need therapy.
15 She did not testify in fact that Zoe would need therapy or
16 that she -- you know, she intended to continue providing
17 therapy for Zoe, but merely that Zoe may need therapy at some
18 point in the future.

19 And interestingly and significantly, Ms. Amador also
20 testified that she had no -- she had not had any kind of
21 follow-up appointments with -- with the minor plaintiff. And
22 in fact, the last time that she had spoken with Nancy
23 Arellano -- the mother, that was with regard to her son
24 Ferrey -- Ferreys -- Ferrey. And so because of that, there
25 was simply no evidence that would support a jury verdict in

1 the amount of \$245,000. And we contend that the jury must
2 have made their -- their decision based on the fact that this
3 was an emotional subject matter. You know, a -- a
4 five-year-old child being touched in a sexual way by another
5 child. The minor plaintiff actually was crying hysterically
6 at several times in front of the jury, including when the --
7 when the jury pool was qualified, and also potential
8 prejudice against the district here, because there's simply
9 no other basis for that \$245,000 amount. And so because of
10 that, we believe that the verdict, in no way, shape or form,
11 reflects the evidence or lack of evidence that was before the
12 jury. And for that reason, the district is entitled to a --
13 a new trial absolute in front of a -- a new jury.

14 And then finally, if the Court does not see fit to
15 grant a new trial absolute based on the -- you know,
16 excessive and -- and, quite frankly, shocking amount of this
17 verdict, then we would ask the Court to issue a remittitur
18 reducing the amount of the verdict to an amount that is more
19 in keeping with the evidence, or again, lack of evidence that
20 was presented during trial. So to recap, your Honor, we are
21 asking that you issue a JNOV, or in the alternative that the
22 district be granted a -- a new trial in front of a new jury.
23 Thank you, your Honor.

24 THE COURT: Thank you, Ms. White. Mr. Eddy?

25 MR. EDDY: Thank you, your Honor. I'll try to address

1 these in the order in which Ms. Wright -- White addressed
2 them -- raised them. So starting with the JNOV regarding the
3 evidence that the Plaintiff presented, that the Defendant was
4 in fact (inaudible) that there is substantial evidence that
5 was put to -- put forth in the -- at trial about what
6 happened in that classroom. We know from testimony that the
7 victim and the assailant were sitting in different parts of
8 the classroom at different desks. We know from testimony
9 that the assailant stood up and walked across the classroom
10 to the victim. We know that there was a physical altercation
11 and interaction between the victim and the assailant. We
12 know that the victim had her genitals assaulted, molested,
13 touched in some way. We know that the assailant then stood
14 up and walked to the other -- to his desk, another part of
15 the classroom. We know -- again, from testimony that a
16 witness then stood up and walked to -- to the Ms. Ray's desk.
17 Okay. That is all evidence. That is all put forth for the
18 jury to hear, see, and review.

19 The policies and procedures of the school district are
20 relevant, and were presented to the jury. And I think that
21 is an useful and effective defense establishing the
22 preventive measures that were taken in advance of this
23 incident to reduce the chances and likelihoods of
24 inappropriate conduct and contact. However here, the primary
25 defense as to gross negligence of this case is that the

1 teacher had only taken her eyes off the classroom for one to
2 two seconds.

3 And like we said to the jury, if you believe that that
4 teacher only took her eyes off the classroom one to two
5 seconds, then you have to find for the defense. If however,
6 this series of events that we have evidence that happened,
7 you believe that that happened in a longer period of time in
8 one to two seconds, then you know that the school district is
9 responsible because that teacher took her eyes off the class
10 for longer than she remembers, or is telling you.

11 As evidence of the teacher's challenges in memory, we
12 presented evidence that she had misremembered the relative
13 size of the children by a significant amount, that she had
14 given varying statements between her deposition testimony and
15 her trial testimony, and that she had errors in her memory
16 compared to the written statements from that day. So because
17 there was evidence that this incident had to take longer than
18 the -- Ms. Ray had claimed, and because there was evidence
19 presented of memory challenges for Ms. Ray, the Plaintiff
20 believes they put forth sufficient evidence for which the
21 jury could decide that the teachers were in fact distracted
22 and were in fact failing to protect, monitor, and supervise
23 the children in that class. And the teachers were not
24 correct that they'd only taken their eyes off the class for
25 one to two seconds.

1 Turning to the thirteenth juror doctrine and the new
2 trial, which are essentially the same thing that were shot by
3 the amount of the jury verdict -- you know, they -- there's a
4 lot of issues that go into the calculation of a jury verdict
5 here. As your Honor discussed, this is a different kind of
6 injury, and a different kind of damages, and a different kind
7 of award that we'd be dealing with, with broken bones, final
8 injury or something like that. There is no ability to
9 present finite bills and records and treatment for someone's
10 injuries in mental health, and mental injury case like the
11 one that was presented to this jury.

12 Your Honor instructed the jury that dealing with mental
13 health and emotional injuries is very complicated, and
14 there's no set formula for it. And that there's a number of
15 factors that could go into calculating that number. When I
16 was requesting damages from the jury, I had given them a
17 proposed range and reasons for calculating between 100,000
18 and \$1,000,000. I think it's preposterous to say that the
19 jury was overcome with caprice, and bias, and outrage, and
20 not exercising diligence when they were calculating the
21 number because if they were overcome with caprice or
22 prejudice, they would not have given an award for the victim
23 in the bottom third of what I had been requesting in terms of
24 damages. We have seen runaway jury verdicts in other cases
25 before. A \$245,000 verdict in a case where a child was

1 sexually assaulted is not a runaway verdict. If this had a
2 bunch of comments on the tail end, frankly, I'd agree with
3 the -- with the Defense. I -- I'd still frame that judgment
4 on the wall, but I would agree with the Defense that there --
5 that this could have been an award where the jury clearly
6 been overcome with caprice or prejudice in this case. But
7 here, because we're dealing with such a grave situation, and
8 we're dealing with something that is a mental health and
9 emotional injury -- which is nice to calculate, because the
10 jury did not give us anywhere near what I had been asking for
11 in the jury verdict, I think there is no evidence that the
12 jury was overcome with prejudice or caprice, and the -- the
13 judgment should not be -- verdict should not be overturned or
14 the thirteenth juror doctrine, nor should a new trial be
15 ordered because of the excess judgment.

16 I want to turn to the issue with the Tort Claims Act
17 provision with the criminal act defense. I think the Court
18 got it right in declining to charge the jury on this
19 particular defense for the Tort Claims Act as more outlined
20 and more detailed in my memo. The -- the Plaintiff was never
21 seeking direct compensation from the Defendant for the
22 criminal acts of a third party. Here, the claims against the
23 Defendant are the failure to monitor, protect, and supervise.
24 This is very different than trying to hold them directly
25 responsible for the act itself. So that exclusion does not

1 apply. In addition, there is an open question as to whether
2 a -- a five or six-year-old is capable of a criminal act
3 itself. And if a five or six-year-old is not capable of a
4 criminal act, then this -- this exclusion wouldn't apply in
5 the first place.

6 In addition, we have numerous cases stemming from
7 school districts as well as prison systems and other cases
8 where government entities are held responsible for their
9 failure to monitor, supervise, or protect, where a third
10 party caused a criminal act -- perform a criminal act and
11 caused injury. And the courts have routinely upheld cases
12 against government entities for the failure to monitor,
13 supervise, or protect as is the claim in this particular
14 case.

15 And lastly, to briefly address the question of
16 remittitur, this goes a bit back towards the thirteenth juror
17 doctrine, the question in trial, because of the shocking
18 amount. It -- I do not believe that it's possible for the
19 Court to fairly and accurately calculate what a new judgment
20 should be, or verdict amount should be in a case where we're
21 dealing with the mental health emotional shock and trauma to
22 a child for a sexual assault case. And for that reason, I
23 ask the Court uphold the verdict and allow it to stand.
24 Thank you, your Honor.

25 THE COURT: Thank you, sir. Any response? Anything

1 else?

2 MS. WHITE: Just briefly, your Honor. First of all,
3 with regard to our request for a JNOV, the incident -- the
4 incident occurred. We all know that the incident occurred,
5 but just because the incident occurred doesn't mean that the
6 district failed to exercise slight care. And there -- the --
7 the evidence that the district did exercise at least slight
8 care, if not an abundance of care is indicated by the
9 testimony of everything that district officials did, both in
10 terms of developing policies and also implementing those
11 policies and procedures. And with regard to this point about
12 "Well, it had to have taken longer than -- than one to two
13 seconds." What -- what Ms. Ray was testifying to was that it
14 happened so quickly, okay? So even if she took her eyes off
15 of the minor plaintiff, or Student K, for three minutes,
16 okay? That doesn't mean that she and the other adults failed
17 to exercise slight care.

18 So the -- the Plaintiff and the jury -- you know, found
19 that because the incident happened, and that's basically what
20 Mr. Eddy is arguing, the district must have been liable for
21 it. But where -- where is there evidence that the district
22 had a want and disregard for -- for the minor plaintiff, or
23 that where is the complete neglect of care here with regard
24 to the protection and supervision of the students in that
25 classroom? There's not any evidence, and this is a clear-cut

1 case of the incident occurred, so therefore the district must
2 have been liable for that ignoring the uncontroverted
3 evidence that was before the jury.

4 Again, that evidence was not contradicted by any
5 evidence deduced from witnesses by Mr. Eddy. Mr. Eddy is
6 basically arguing the incident occurred, so therefore the
7 teacher must have been distracted, without any evidence that
8 the teacher was distracted, or that's also ignoring the fact
9 that Ms. Long was in the classroom supervising the students.
10 You know, we all know how quickly children can move and --
11 and act, and -- and, you know, run from here to there. It
12 happened in a split, you know, you've heard the phrase "it
13 happened in a split second," right? Is that literal or is
14 that "it happened so quickly that -- that, you know, there
15 was nothing we could have done to have prevented it from
16 happening"? What are we supposed to do, you know, have one
17 adult per -- per one student? I mean, you know, not to be
18 facetious here, but, you know, should Ms. Ray have had eyes
19 in the back of her head? You know, what if a child fell down
20 in the classroom and -- you know, split their lip open? Are
21 we supposed to just leave the child laying there -- you know,
22 or -- or should she run over, take her eyes off of the other
23 student while the teacher's aide watches what's going on in
24 the classroom? So there -- there simply is no evidence that
25 the district failed to exercise at least slight care here.

1 With regard to the range of the verdict, Mr. Eddy's
2 argument to the jury that -- you know, to return a verdict
3 between -- you know, \$100,000 and \$1,000,000 that's not
4 evidence. You know, that's simply his arguing to the jury.
5 So to say that, "Well, they found in the lower quartile of --
6 of that range," doesn't mean that the evidence that was
7 presented during the trial supports the jury's verdict.
8 That's simply Mr. Eddy's argument to the jury, and is not
9 sufficient to support such a shocking amount of -- of the --
10 the jury verdict without any evidence to -- to support it.

11 And then with regard to the -- the Tort Claims Act
12 provision, I -- I would -- first of all, call to the Court's
13 attention that -- the fact that the provision doesn't say
14 "the criminal conduct of a third person," it says "acts or
15 omissions of a third person, including but not limited to the
16 criminal conduct of the third person." You know, here
17 Student K acted, and because he acted, Mr. Eddy and the
18 Plaintiff are attempting to say, "Well, because the act
19 occurred, the district must be responsible," again in the
20 absence of any evidence whatsoever, that it was foreseeable
21 that the accident would occur.

22 And I know we, in our -- in our brief in support of our
23 post-trial motions -- you know, pointed to the case of
24 Greenville Memorial Auditorium, where there was evidence
25 presented that Greenville Memorial Auditorium had a -- a -- a

1 history of -- of things occurring at rock concerts where the
2 bottle was thrown and -- and hit the patron, and the Supreme
3 Court in pointing all that out and finding that the judge was
4 correct in not granting a directed verdict, specifically
5 stated that the Memorial Auditorium did not get the benefit
6 of that provision with regard to the granting of a directed
7 verdict, because there was evidence from which a jury could
8 conclude that the -- I mean, I'm sorry, that the auditorium
9 failed to exercise slight care. That is simply not the case
10 here. So for those reasons, your Honor, we would ask that
11 you either enter a JNOV, or that you grant the district a new
12 trial. Thank you.

13 THE COURT: Anything else?

14 MR. EDDY: Nothing further from the Plaintiff. Thank
15 you, your Honor.

16 THE COURT: Mr. Crossland, you need to chime in?

17 MR. CROSSLAND: I do not. Thank you, sir.

18 THE COURT: All right. Thanks very much. I'll notify
19 you the decision in writing.

20 MS. WHITE: Thank you, your Honor. Have a good
21 weekend.

22 MR. EDDY: Have a great weekend, folks.

23 MR. CROSSLAND: Thank you, your Honor.

24 MS. WHITE: You too, Trevor. Bye.

25 MR. CROSSLAND: Have a good weekend, Trevor. Bye-bye.

1 THE COURT: Hearing is over at 11:02.

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3 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT 11:02

4 A.M.)

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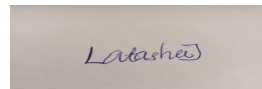
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CERTIFICATE OF TRANSCRIBER

I, LATASHA JEFFERSON, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had, and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 11 of Lexington County, South Carolina, on February 7, 2025.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 4, 2025.

A rectangular box containing a handwritten signature in blue ink that reads "Latasha".

LATASHA JEFFERSON

Transcriber

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Nancy Arellano individually and as parent and
natural guardian of minor ZA,

Plaintiffs,

v.

School District No. Two of Lexington County,
State of South Carolina,

Defendant.

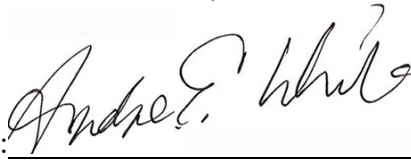
IN THE COURT OF COMMON PLEAS
IN THE ELEVENTH JUDICIAL CIRCUIT

C/A No. 2022-CP-32-02339

**DEFENDANT'S PROPOSED
JURY INSTRUCTIONS**

Defendant Lexington County School District Two ("the District") hereby submits the following proposed written instructions to the jury and reserves the right to supplement, amend, or remove such proposed instructions as may be necessary following the proof at trial.

WHITE & STORY, LLC

By: 

Andrea E. White (SC Bar No. 11891)
Dylan A. Crossland (SC Bar No. 105736)
3614 Landmark Dr., Suite EF
Columbia, SC 29204
P.O. Box 7036 (29202)
T: 803.814.0993
F: 803.814.1183
awhite@sodacitylaw.com
dcrossland@sodacitylaw.com

Attorneys for Lexington County School District Two

October 7, 2024
Columbia, South Carolina

DEFENDANT'S REQUEST TO CHARGE NO. 1

In determining the facts, you are reminded that you took an oath to render judgment impartially and fairly, without prejudice or sympathy and without fear, solely upon the evidence in the case and the applicable law. I know that you will do this and reach a just and true verdict.

Federal Jury Instruction, Instruction 71-10, Matthew Bender & Co., Inc. (Rel. 21 – 8/94 Pub. 485).

DEFENDANT'S REQUEST TO CHARGE NO. 2

Under our constitution and code of laws, you and I have separate and distinct duties. Only you, the jury, can make the findings of fact in the case. I am not permitted to indicate to you how I may feel about the testimony and evidence presented. Throughout the trial I have attempted to be fair and impartial toward all of the parties.

To determine the facts in the case you will have to evaluate the credibility, which means believability, of each witness. In considering whether to believe a witness's testimony about a particular matter, you may consider:

What was the manner and appearance of the witness who testified - was he or she straightforward, or hesitant in answering?

Was the testimony of a witness consistent - or inconsistent?

How did the witness come to know the facts that he or she testified to? - Or what was his or her ability to know these facts?

Is there some reason a witness would want to give testimony which would help - or hurt - one side or the other? In other words, was the witness biased or prejudiced?

And was the testimony of a witness strengthened - or weakened - by other testimony or evidence?

You can believe as much or as little of each witness's testimony as you think proper. You may believe the testimony of a single witness against that of many witnesses, or just the opposite.

Of course, you do not determine the truth merely by counting the number of witnesses presented by each side.

Throughout this process you have but one objective, to seek the truth, regardless of its source.

The same constitution and laws that designate you the finders of the facts also make me the instructor of the law. You must accept the law as I give it to you. If I am wrong, there is

another place and time for that error to be corrected. In this case you must apply the law as I give it to you. This means you should not be concerned with what you may think the law should be, but only with what the law is.

S.C. Requests to Charge - Civil § 1-1.

DEFENDANT'S REQUEST TO CHARGE NO. 3

I charge you that the Plaintiffs have the burden of proof to show, by a preponderance of the evidence, that the District is liable in this case. A “preponderance of the evidence” means that it is more likely than not, or greater than fifty percent more likely, that the District is liable.

See Fowler v. Coca-Cola Bottling Co., 252 S.C. 579, 167 S.E.2d 572 (1969).

DEFENDANT'S PRE-TRIAL REQUEST TO CHARGE NO. 4

You must not consider as evidence any statement of counsel made during the trial; however, if counsel for the parties have stipulated to any fact, or any fact has been admitted by counsel, you will regard that fact as being conclusively proved as to the party or parties making the stipulation or admission.

As to any questions to which an objection was sustained, you must not speculate as to what the answer might have been or as to the reason for the objection.

You must not consider for any purpose any offer of evidence that was rejected, or any evidence that was stricken by the court; such matter is to be treated as though you had never known of it.

You must never speculate to be true any insinuation suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

Ralph King Anderson, Jr., *South Carolina Requests to Charge- Civil*, 2002, §§ 1-8, 1-9, 1-10, 1-11, 1-12.

DEFENDANT'S PRE-TRIAL REQUEST TO CHARGE NO. 5

During the trial of this case, we have had testimony by way of deposition of witnesses taken outside of the courtroom. That witness may or may not appear personally before you. The deposition was taken in the manner prescribed by law and you will consider the testimony from that deposition just as if the witness were here upon the stand testifying. You take this deposition testimony in connection with all other testimony and you assess the credibility of that witness from anything that is in the record that will aid you in doing so. You consider that deposition evidence along with the testimony of the witnesses who have appeared in person and you determine from all the evidence in the case whether by witnesses present or by depositions or whether by exhibits in the case what the truth of this controversy is according to the facts as you find them to be and then apply the law as I give it to you.

Rule 32, SCRPC (regarding the use of depositions in court proceedings). See also Visual Graphics Leasing Corp., Inc. v. Lucia, 311 S.C. 484, 429 S.E.2d 839 (Ct. App. 1993).

DEFENDANT'S REQUEST TO CHARGE NO. 6

Now on the issue of determining whether the District is liable in the case, I charge you that the Plaintiffs must establish by a preponderance of the evidence that the District was grossly negligent and that Plaintiff's injuries were proximately caused by the District's gross negligence.

Vinson v. Hartley, 324 S.C. 389, 477 S.E.2d 715 (Ct. App. 1996).

DEFENDANT'S REQUEST TO CHARGE NO. 7

On the issue of determining whether the District is liable in this case for negligence, I charge you that South Carolina law states that a public school district is liable only if it was grossly negligent in supervising, protecting, or controlling its students and/or its employees.

S.C. Code Ann. § 15-78-60(25) (Supp. 1999).

DEFENDANT'S REQUEST TO CHARGE NO. 8

Public school districts are not guarantors or insurers of students' safety. The fact that a student may have been harmed while at school does not necessarily entitle that student to monetary recovery.

Lilley v. Elk Grove Unified Sch. Dist., 80 Cal. Rptr.2d 638, 642 (Cal. Ct. App. 1998); **Coleman v. Joiner**, 593 So.2d 451 (La. App. 2 Cir. 1992); **Tomlinson v. Board of Education**, 583 N.Y.S.2d 666 (App. Div. 3 Dept. 1992); **Gathright v. Lincoln Ins. Co.**, 688 S.W.2d 931 (Ark. 1985). **See also Burns v. South Carolina Comm'n for the Blind**, 323 S.C. 77, 448 S.E.2d 589 (Ct. App. 1994) (stating in suit under S.C. Tort Claims Act that trial judge erred in refusing to charge jury that Commission for the Blind was not insurer of clients' safety).

DEFENDANT'S REQUEST TO CHARGE NO. 9

Rather, the District is liable only if you find that the District was grossly negligent in supervising, protecting, or controlling its students and/or its employees. Gross negligence is an intentional, conscious failure to do something that a party is obligated to do. Put another way, it is the intentional doing of a thing that one ought not to do. Gross negligence involves conduct that shows an utter disregard of caution amounting to a complete neglect of the safety of another. It is wanton conduct done with conscious or reckless disregard for the safety of others.

Etheredge v. Richland Sch. Dist. One, 341 S.C. 307, 534 S.E.2d 275 (2000); Clyburn v. Sumter County School District 17, 451 S.E.2d 885 (S.C. 1994); Moore v. Berkeley County Sch. Dist., 486 S.E.2d 9 (Ct. App. 1998).

DEFENDANT’S REQUEST TO CHARGE NO. 10

Gross negligence is “the intentional conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do.” Therefore, if a defendant proves it exercised slight care under the circumstances, that defendant cannot be held liable for gross negligence.

Etheredge v. Richland Sch. Dist. One, 341 S.C. 307, 534 S.E.2d 275 (2000); Clyburn v. Sumter County School District 17, 451 S.E.2d 885 (S.C. 1994); Moore v. Berkeley County Sch. Dist., 486 S.E.2d 9 (Ct. App. 1998).

DEFENDANT'S REQUEST TO CHARGE NO. 11

As long as school officials make some effort to take precautions to protect students from foreseeable harm, they will have exercised at least slight care. Just because a school district could have done more does not mean that the district did not exercise slight care.

Etheredge v. Richland Sch. Dist. One, 341 S.C. 307, 534 S.E.2d 275 (2000); Clyburn v. Sumter County School District 17, 451 S.E.2d 885 (S.C. 1994); Richardson v. Hambright, 374 S.E.2d 296 (S.C. 1988).

DEFENDANT'S REQUEST TO CHARGE NO. 12

I charge you that school authorities are accorded substantial latitude and discretion in their handling of school matters.

Kizer v. Dorchester County Vocational Educ. Bd. of Trustees, 287 S.C. 545, 340 S.E.2d 144 (1986).

DEFENDANT'S REQUEST TO CHARGE NO. 13

I charge you that in addition to other provisions required by law or by regulation of the State Board of Education, school administrators must contact law enforcement authorities immediately upon notice that a person is engaging or has engaged in activities on school property or at a school sanctioned or sponsored activity which may result or results in injury or serious threat of injury to the person or to another person or his property as defined in local board policy.

S.C. Code Ann. § 59-24-60

DEFENDANT'S REQUEST TO CHARGE NO. 14

I charge you that school teachers, counselors, principals, assistant principals, and social workers must report, when in such person's professional capacity, they have received information that gives them reason to believe that a child has been or may be abused or neglected. Additionally, persons required or permitted to report under the law that acted in good faith are immune from civil and criminal liability which might otherwise result by reason of these actions. In all such civil or criminal proceedings, good faith is rebuttably presumed.

S.C. Code Ann. § 63-7-310; S.C. Code Ann. § 63-7-390

DEFENDANT'S REQUEST TO CHARGE NO. 15

As I informed you earlier, the Plaintiffs must prove that the District was grossly negligent and that the District's gross negligence was the proximate cause of Plaintiffs' injuries. Proof of proximate cause requires proof of both causation in fact and legal cause. Cause in fact is proved by establishing that the injury complained of would not have occurred "but for" the defendant's gross negligence. Legal cause is proved by establishing that the injury in question occurred as a natural and probable consequence of the defendant's gross negligence.

Rush v. Blanchard, 310 S.C. 375, 379, 426 S.E.2d 802, 804 (1993); Vincent v. Hartley, 324 S.C. 389, 477 S.E.2d 715 (S.C. App. 1996).

DEFENDANT'S REQUEST TO CHARGE NO. 16

I further charge you that even if Plaintiffs provide evidence of gross negligence; Plaintiffs must also establish that the exercise of the slight care would have prevented the injury.

Etheredge v. Richland Sch. Dist. One, 341 S.C. 307, 310, 534 S.E.2d 275, 277 (2000). (finding that even where plaintiff provided evidence of deficiencies in supervision, dismissal was appropriate because there was no evidence that the deficiencies were connected to prevention of the incident)

DEFENDANT'S REQUEST TO CHARGE NO. 17

I charge you that an affirmative defense raised by the District is known as discretionary immunity. Under discretionary immunity, a school district is not liable for damages caused as a result of its employees' good faith performance of discretionary acts which are related to their official duties – that is, acts that require the exercise of deliberation, decision and judgment. In that regard, I charge you that neither a governmental agency nor an employee acting within the scope of his employment is liable for loss resulting from the exercise of discretion or judgment or the performance or failure to perform any act or service which is in the discretion or judgment as a governmental employee.

I charge you that the District bears the burden of establishing discretionary immunity as an affirmative defense. In order to invoke the discretionary immunity defense, the District must prove that its employees, faced with alternatives, actually weighed competing considerations and made a conscious choice. In addition, I charge you that the District must show that in weighing the competing considerations and alternatives, it utilized accepted professional standards appropriate to resolve the issues before it.

Finally, I charge you that discretionary immunity exists because the exercise of discretion includes the right to be wrong. If you find that the District damaged the Plaintiffs as they claim, but that their damage was occasioned by the good faith performance of protected discretionary acts, the Plaintiffs may not recover for that damage.

S.C. Tort Claims Act § 15-78-60(5); Foster v. Department of Highway and Public Transportation, 413 S.E.2d 31 (S.C. 1992).

DEFENDANT'S REQUEST TO CHARGE NO. 18

I charge you that to establish discretionary immunity, a school district must show that it or its employees (1) were faced with alternatives; and (2) weighed competing considerations according to accepted professional standards when choosing between the alternatives. If the school district makes such a showing, it cannot be held liable for Plaintiffs' alleged injuries.

Strange v. S.C. Dept. Of Highways and Public Trans., 314 S.C. 427, 445 S.E.2d 439 (1994).

DEFENDANT'S REQUEST TO CHARGE NO. 19

As I mentioned before, I charge you that in order for Plaintiffs to recover damages, there must be proof not only of damages, but also that the damages were caused by the gross negligence of the defendant.

Hunter v. Dixie Home Stores, 101 S.E.2d 262 (S.C. 1957).

DEFENDANT'S REQUEST TO CHARGE NO. 20

I charge you that the existence or amount of damages cannot be left to conjecture, guesswork, or speculation. Plaintiffs must prove the existence and amount of damages to a reasonable degree of certainty.

Piggie Park Enterprises, Inc. v. Schofield, 251 S.C. 385, 162 S.E.2d 705 (1968).

DEFENDANT'S REQUEST TO CHARGE NO. 21

In personal injury actions, the general rule is that the Plaintiffs may recover for the necessary and reasonable expenses caused by the injury, such as amounts necessarily incurred for medicine, medical services, hospital expense and care, and nursing. A person who suffers personal injuries because of the negligence of another is entitled to recover the reasonable value of medical care and expenses incurred for the treatment of the injuries to the time of trial, as well as the cost of those reasonably certain to be incurred in the future. Accordingly, Plaintiffs may recover amounts incurred for past and future medical care, including hospital, physician, and nursing care costs; medicine; and other out-of-pocket and anticipated expenses, such as vocational, physical and other rehabilitation efforts. Recovery for medical expenses is controlled by what the services rendered were reasonably worth and not by what was actually paid or contracted to be paid.

If you determine from the evidence and under the law as I have instructed you that the Plaintiffs are entitled to recover damages, including medical, hospital, or other health care costs, then the Plaintiffs can only recover such sums as you determine from the evidence to be both reasonable and necessary. While the amount actually charged and incurred may be considered by you, you are not bound by that amount. You must find only such sum as is reasonable and necessary.

To recover for future medical expenses, the Plaintiffs must prove such expenses are reasonably certain to result in the future from the injury giving rise to the lawsuit.

Pearson v. Bridges, 344 S.C. 366, 544 S.E.2d 617 (2001).

DEFENDANT'S REQUEST TO CHARGE NO. 22

Pain and suffering is a material element of damages on which a recovery may be based. The Plaintiffs are entitled to compensation for their pain and suffering directly resulting from the wrongful acts of the defendant.

An award for pain and suffering compensates the injured person for the physical discomfort and the emotional response to the sensation of pain caused by the injury itself. In making an estimate of damages to be awarded for pain and suffering, you may consider:

- (1) the nature and extent of the injuries and the suffering occasioned by them and its duration or prospective duration;
- (2) the age, health, habits, and condition of the injured party before the injury as compared with his condition afterwards;
- (3) the Plaintiffs use of sedatives and other drugs to relieve pain and their effect; and
- (4) any aggravation of pre-existing disorders by the incident in question.

Pain and suffering have no market price. They are not capable of exact measurement, and there is no fixed rule or standard whereby damages for them can be measured.

The amount of damages to be awarded for pain and suffering must be left to the judgment of you, the jury. Additionally, you may include such damage for pain and suffering as it is reasonably certain will of necessity result in the future from the injury. Future pain and suffering on the part of the Plaintiffs in consequence of the injury constitute a proper element of the damages which may be allowed, provided there is the requisite certainty that such pain and suffering will result.

Boan v. Blackwell, 343 S.C. 498, 541 S.E.2d 242 (2001).

DEFENDANT'S REQUEST TO CHARGE NO. 23

I charge you that if you find that damages are appropriate to compensate for pain and suffering, the minor Plaintiff's pain and suffering is the only pain and suffering that you are allowed to consider in determining whether to award such damages and, if so, in what amount.

Kindard v. Augusta Sash & Door Co., 286 S.C. 579, 336 S.E.2d 465 (1985).

DEFENDANT’S REQUEST TO CHARGE NO. 24

I further instruct you that State law does not permit a jury to award damages against the District which are intended to punish—also known as punitive damages.

S.C. Code Ann. § 15-78-120(b) (Supp. 1999); Charleston County Sch. Bd. v. State Budget & Control Bd., 313 S.C. 1, 7, 437 S.E.2d 6, 9 (1993) (reaffirming that “[n]o punitive damages are recoverable under the State Tort Claims Act”).

DEFENDANT'S REQUEST TO CHARGE NO. 25

I charge you that a school district cannot be held liable if you determine that the Plaintiffs' alleged harm resulted from the adoption, enforcement, or compliance with a law or failure to adopt or enforce a law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies.

S.C. Code Ann. § 15-78-60(4)

DEFENDANT'S REQUEST TO CHARGE NO. 26

I further charge you that a school district cannot be held liable for a loss resulting from the exercise of discretion or judgment by the government entity or employee or the performance or the failure to perform any act or service which is in the discretion of judgment of the governmental entity or employee.

S.C. Code Ann. § 15-78-60(5)

DEFENDANT'S REQUEST TO CHARGE NO. 27

I further charge you that a school district cannot be held liable if you find that the alleged losses, damages, and injuries sustained by Plaintiffs arose out of an act or omission of a person other than an employee, including but not limited to the criminal actions of third persons.

S.C. Code Ann. § 15-78-60(20)

DEFENDANT'S REQUEST TO CHARGE NO. 28

I further charge you that a school district is not liable for loss resulting from the responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner.

S.C. Code Ann. § 15-78-60(25)

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"K [REDACTED] opened the pants of
"I see him" "Him touched her pants
but him not touch her anymore."
"Them was sitting at their desk, the
Chair"

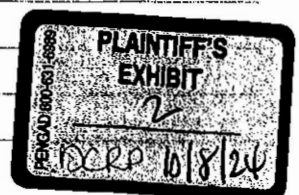
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May 25, 2022

I was walking around to help kids with their books they're making, I sat at my table to put papers in files when Witness [redacted] walked up to tell me he saw K [redacted] look at student pants (Witness gestured to his private area). I called K [redacted] over to ask what happened, he started crying. I said "did you look inside student pants?" He nodded yes and said "She told me to", I asked if he only looked and he said yes. I called student over, she also said K [redacted] looked inside her pants but she said she did not tell him to and that she told him to stop. I told them both to sit down and I told Mrs. Long I was leaving to find guidance or admin.

Sadio Ray





2021-2022 School Year Abuse/Neglect
Mandated Reporter Form

Name of Reporting Line Intake Worker (1-888-227-3487): Brandy Gray

Date of Report 05/26/22 Time of Report: 10:20 am

Name of School Staff Member Making Report Sadie Ray/Catherine Prizer

Student's Name Z W A DOB 16 Race W/Hisp

School Cayce Elem Grade K Phone # 936-5500

Nature of Report:

☐ Physical Abuse ☒ Sexual Abuse ☐ Emotional Abuse ☐ Abandonment

☐ Neglect (Mark type of neglect: ☐ Medical Neglect ☐ Physical Neglect ☐ Educational)

Parent/Caregiver: Nancy Arellano Relationship mom

Other Caregiver(s) in home: Relationship

Address Phone

Place of Employment and address

Phone

Other Children in the home, ages, and schools attending

Older sister - don't know age or name

Nature and description of incident or injury (Please tell why you have reasonable cause to believe that child is being abused or neglected, any evidence or information received and history of which you are aware including person(s) believed responsible.

Displays knowledge that she shouldn't have about sexual activities. For example, she accused a boy of "licking" her under her pants. She also accused the same boy of pulling her pants away from her waist & looking down them, but she had actually pulled the pants down and asked him to look. Her story changed a lot & she also said the boy held her down & wouldn't let her up. She said he held her arms down to keep her from getting away.

Copy of Report Provided to:

☒ School Administrator A. Drozdak, A. Ariail Date 05/26/22

☒ School Social Worker Assigned to School D. Morey, J. Snyder Date 05/26/22

DEFENDANT C



When we were in the classroom student tapped me + then did this (demonstrated tapping private area). Then I was looking at tv + she tapped me again + did this (tapped his bottom). student told me to look in her pants and so I did b/c she told me to.

This witness told us

Didn't tell us this the first time, he said b/c he forgot.

He also said he touched her under her pants b/c she told him to.

W/ Mr. Snyder in the room



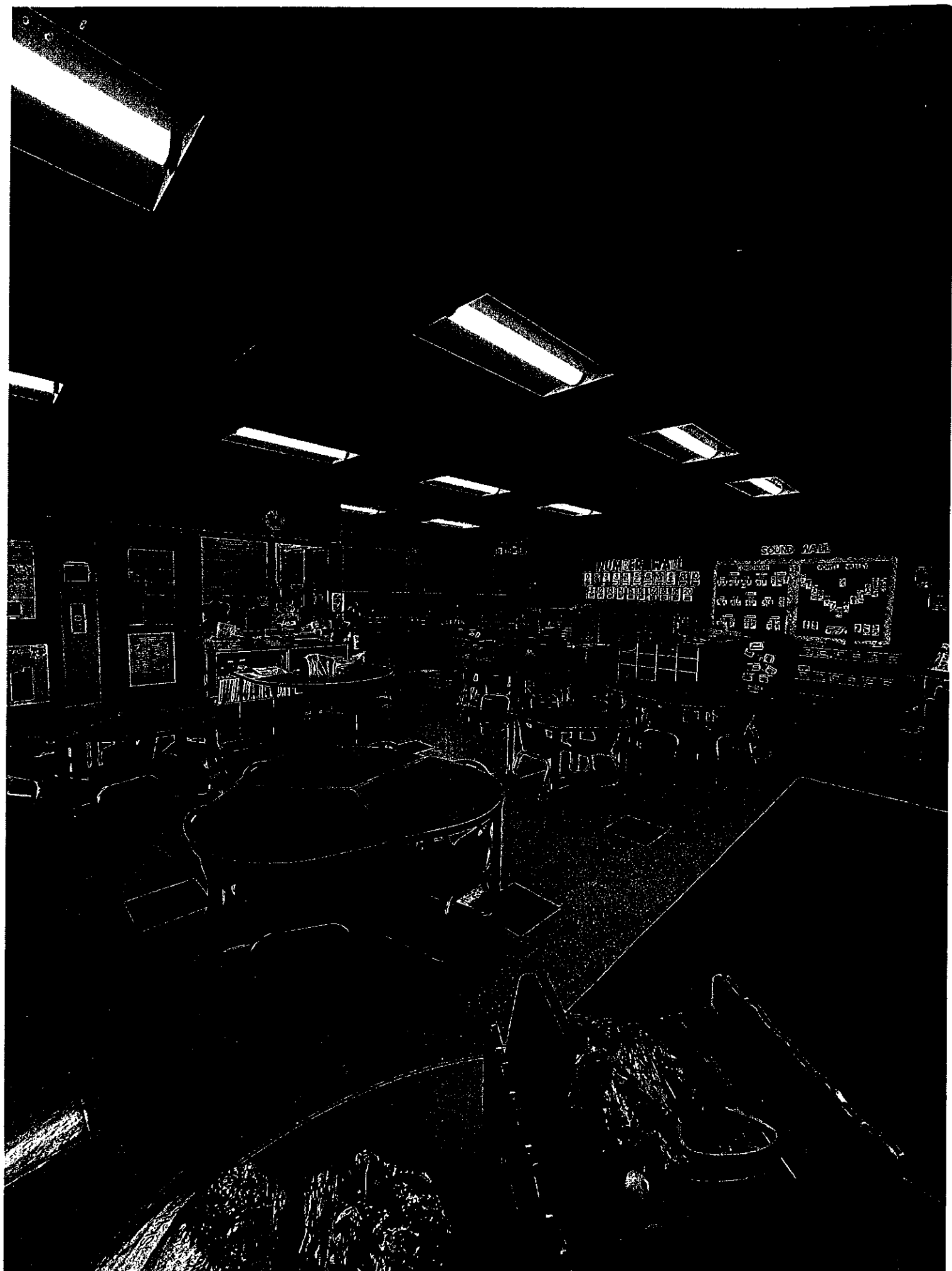
On May 25, 2022, I was made aware of a situation by Ms. Sadie Ray, a kindergarten teacher. She said a situation had occurred in her classroom and asked me to come and talk to the students. When I spoke with Z█ in the hallway she said that a boy had touched her there and pointed in-between her legs. Once she told me this, Z█ and I went to our school counselors so I could get more details about the situation and have another adult present. Z█ told us that they were watching a movie and the other student pulled her by the waist and pulled her pants back and touched her without permission. She was upset by the situation and worried she was in trouble. We explained to her she was not in any trouble, that it's her body and no one can touch her without permission. I also spoke to the student and a witness and had their account of the events written down. The counselor and I spoke to Z█ several different times getting clarifying information and each time we spoke to her, her story would change, at times adding several events taking place that, according to the teacher, would not have had time to take place based on when she saw the students watching the movie and the time where it was reported to her of what happened.

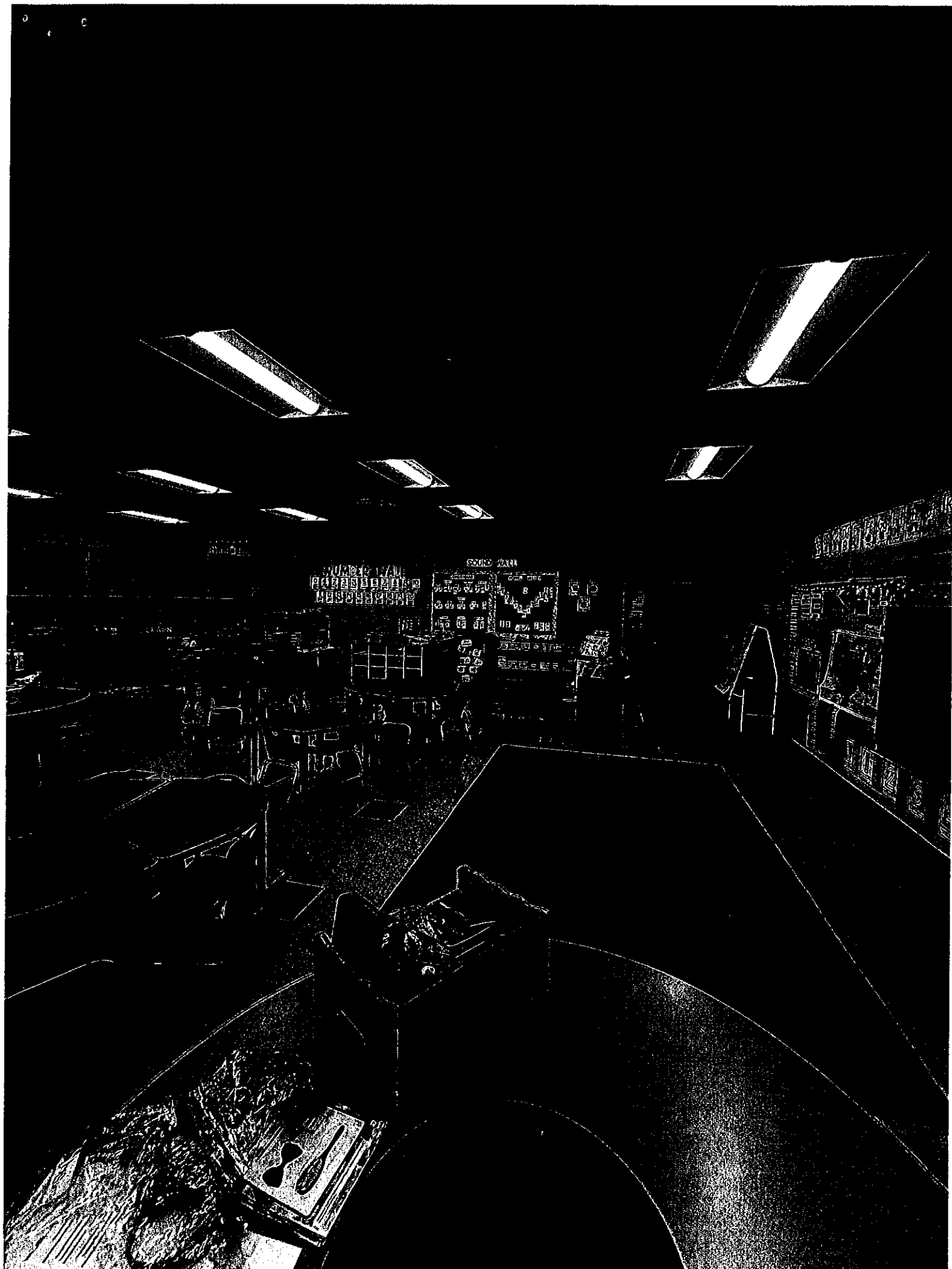
Based on the witness confirming that they did see the student pull Z█ pants back and touch her, we did follow the discipline policy with the other student. I called Z█ mom with a district translator to explain what had happened. The mom's tone did not change during the course of the call, she asked some clarifying questions, I explained Z█ was not in trouble and although I do not recall the exact words, she did tell me that Z█ told her she had a boyfriend in the class. I remember the mom saying some names of what the child's name could be but that she didn't remember exactly. She explained that she had told Z█ not to have a boyfriend. I explained that the counselor had written down what Z█ said happened, by the time the counselor wrote down what happened, her story had changed several times, each time adding more events that she said took place. Neither the witness nor the teacher saw anything other than the student pull her pants back and touch in-between her legs. I told mom that Z█ was with the counselor because she was upset about the situation and I would like for someone to come pick her up instead of sending her home on the bus, since she was still upset. I explained again to mom that Z█ was not in any trouble and could return to school the next day. When I asked the teacher about it the next day, she said Z█ was not at school.

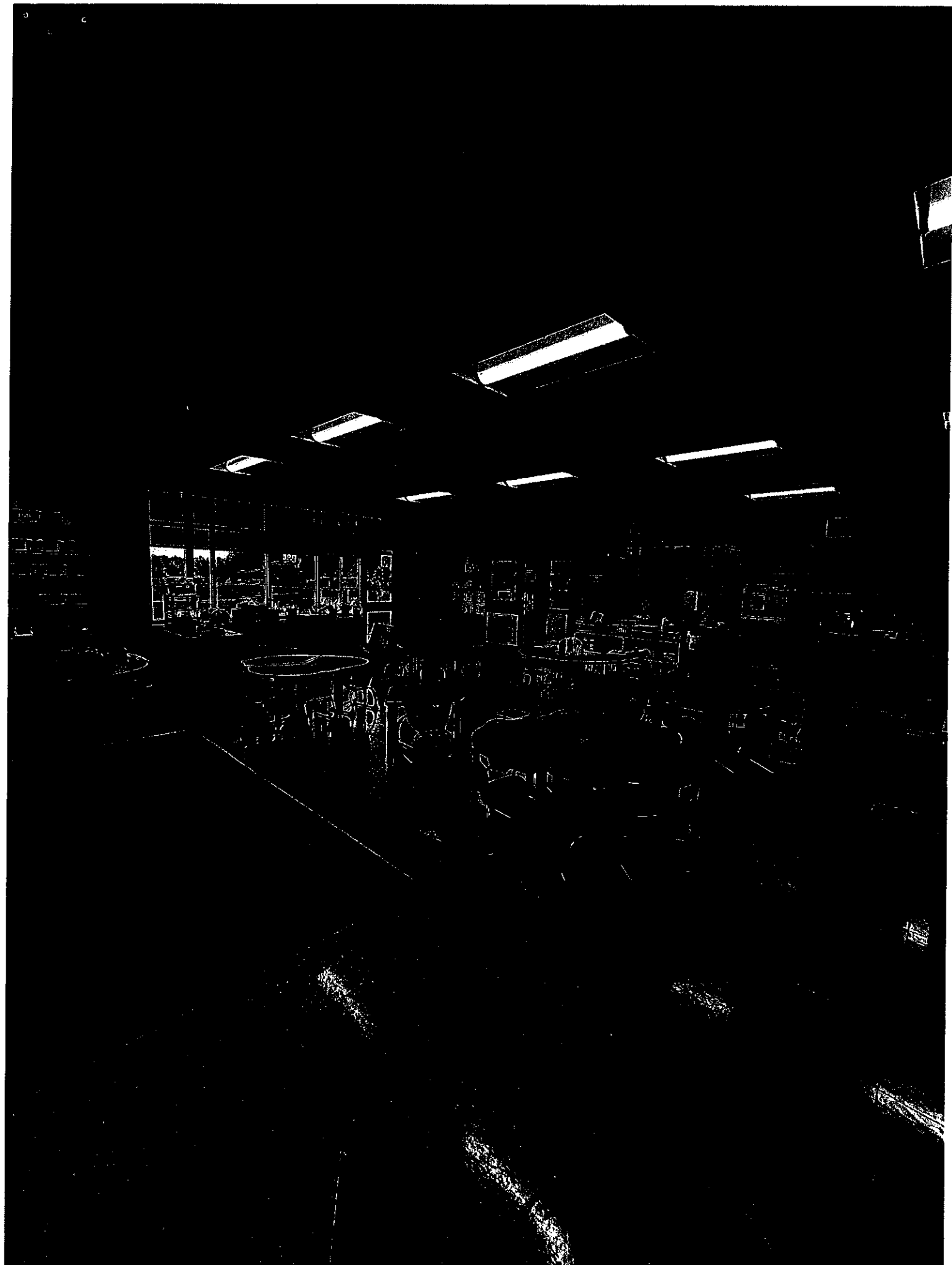
The above was written by Annette Ariail, Assistant Principal at Cayce Elementary, due to Mr. Chatman requesting the details.

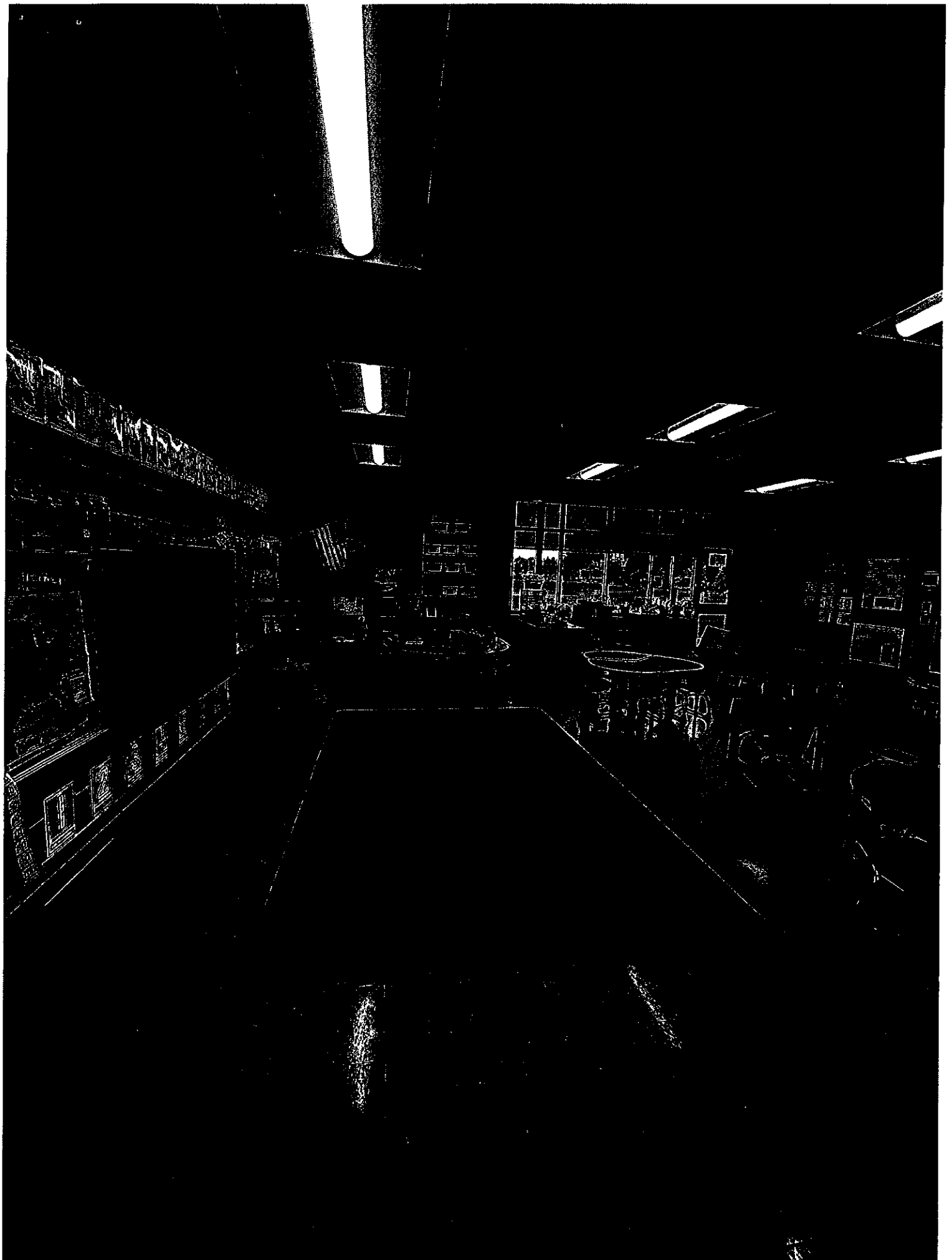


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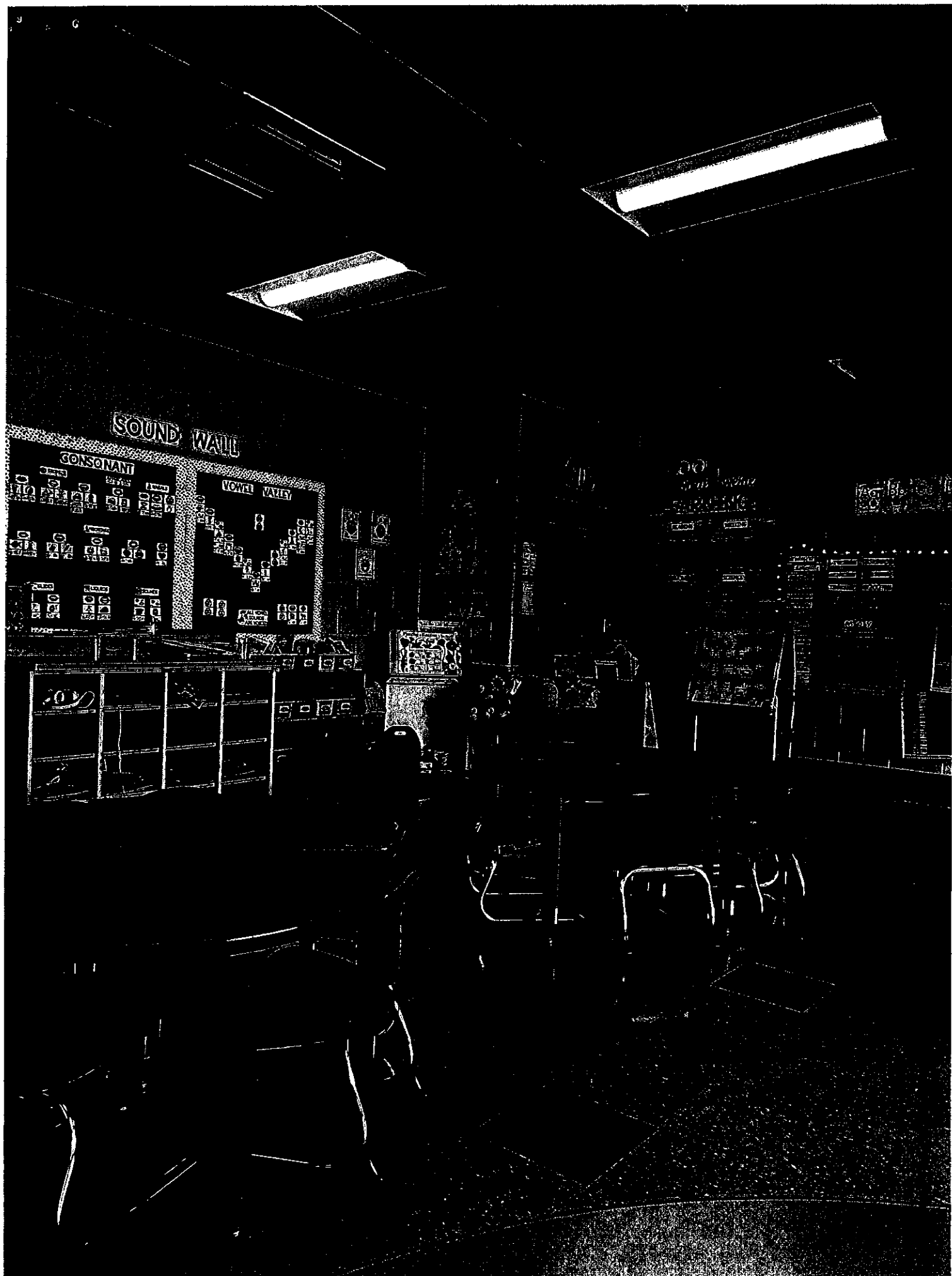






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Policy JIAA Sexual Harassment and Retaliation (Students)

Issued 8/20

The district is committed to maintaining a learning environment free from sexual discrimination and harassment. In keeping with this commitment, the district will not tolerate sexual harassment of students in the education program or any district activity (including admission) by any person, including, but not limited to, other students, staff members, volunteers, or visitors. Further, the district will not tolerate retaliation against a person who has made a report or filed a complaint alleging sexual harassment or who has participated as a witness in a sexual harassment investigation.

This policy applies to behavior that takes place:

- in any school or district building or on any school or district premises before, during, or after school
- on any bus or other vehicle as part of a school activity
- during any school or district-sponsored activity or extracurricular activity
- at any time or place when the student is under the care of district staff
- at any time or place when the behavior can be reasonably expected to materially and substantially interfere with or disrupt the educational environment of the school

It also applies to behavior communicated in writing or electronically through mail, telephones, cell phones, computers, or other telecommunication devices and includes text messaging, instant messaging, and social media. In the situation that the behavior originated from a non-school computer or network, but has been brought to the attention of school officials, the decision for the district to take action in accordance with this policy will be based on whether the conduct is determined to be reasonably expected to materially and substantially interfere with or disrupt the educational environment of the school. While the behavior may not be considered a violation of Title IX, it should be treated as a violation of district policy and the applicable code of conduct.

All students and staff members are responsible for helping to ensure that sexual harassment does not occur. If a student or staff member feels that he/she has experienced or witnessed sexual harassment directed towards a student, he/she will immediately notify a teacher, supervisor, or building-level principal, and/or file a formal complaint with the district's chief administrative officer, who is the Title IX coordinator as outlined in the administrative rule associated with this policy. A staff member who does not promptly report what he/she reasonably believes to be sexual harassment may be subject to disciplinary action.

Reports of sexual harassment may be made anonymously, but formal disciplinary action will not be taken solely on the basis of an anonymous report. The district will investigate all sexual harassment reports impartially, thoroughly, and promptly and will take immediate and proportionate corrective action to end the sexual harassment and prevent the reoccurrence of similar misconduct. Investigations may occur even if the alleged victim does not file a complaint directly or does not wish to see action taken by district or school administration. On an individualized and appropriate basis, interim measures may be taken following receipt of a complaint to minimize the risk of harm to all parties and to prevent continued sexual harassment or retaliation.

Confidentiality

To the fullest extent practicable, while ensuring a thorough and impartial investigation, the district will keep reports and the terms of their resolution confidential, including the names of individuals who submit reports, witnesses who provide information regarding reports, and the individuals named in

such reports. All records generated under the terms of this policy and related administrative procedures will be maintained with utmost confidentiality to the extent permitted by law, specifically the Family Educational Rights and Privacy Act (FERPA). Confidentiality, however, cannot be guaranteed. All complainants proceeding through the complaint process will be advised that their identities will be disclosed to the party being accused of inappropriate conduct.

Parents/Legal guardians of any student making a complaint or against whom any complaint is made will be notified as soon as possible following the filing of the complaint.

Discipline

Students whose behavior is found to be in violation of this policy will be subject to discipline and graduated consequences, up to and including expulsion, consistent with student discipline policies JKAA, High School Student Discipline, and JKAB, Elementary/Middle School Student Discipline.

Staff members found in violation of this policy will be subject to disciplinary action, up to and including termination and may be referred to law enforcement officials, as appropriate, consistent with district policy, including GBEB, *Staff Conduct* and GBEBB, *Staff Conduct with Students*.

Visitors or volunteers found in violation of this policy will be subject to appropriate sanctions and may be referred to law enforcement officials, as appropriate.

Notification

Notice of this policy will be circulated to all district schools and departments and incorporated in student handbooks. At the beginning of each school year, the information in this policy and its associated administrative rule will be provided to staff members, students, and parents/legal guardians. Information provided to students will be presented in a manner appropriate to the student's age, grade, and comprehension level.

Adopted 8/20/20

Legal References:

United States Code of Laws, as amended:

Age Discrimination Act of 1975, 42 U.S.C.A. Section 6101, *et seq.*

Americans with Disabilities Act of 1990, 42 U.S.C.A. Section 12101, *et seq.*

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. Section 701, *et seq.*

Title II of the Americans with Disabilities Act, 42 U.S.C.A. Section 12132.

Title IV of the Civil Rights Act of 1964, 42 U.S.C.A. Section 2000c, *et seq.*

Title VI of the Civil Rights Act of 1964, 42 U.S.C.A. Section 2000d, *et seq.*

Title IX of the Education Amendments of 1972, 20 U.S.C.A. Section 1681, *et seq.*

S.C. Code of Laws, 1976, as amended:

Section 16-3-755 - Sexual battery with a student.

Lexington County School District Two

AR JIAA-R Sexual Harassment and Retaliation (Students)

Issued 10/23

The district has adopted the following procedures to promptly and fairly address reports of sexual harassment and retaliation.

Definitions

Complainant is an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Respondent is an individual who is reported to be the perpetrator of conduct that could constitute sexual harassment.

Sexual harassment means unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct of a sexual nature under any of the following conditions:

- Submission to such conduct is made either expressly or implicitly a term or condition of a student's education regarding aid, benefit, or service.
- Such conduct or communication is so severe, pervasive, and objectively offensive under the reasonable person standard that it effectively denies a person equal access to the education program or activity.
- Sexual assault, dating violence, domestic violence, or stalking as defined in federal law.

Sexual harassment may include, but is not limited to, the following:

- sexually-oriented teasing, name-calling, abuse, or harassment
- unwelcome comments or conduct based on an individual's gender identity or nonconformity with gender stereotypes
- graphic or written statements including, but not limited to, text messages, typed or hand-written notes, derogatory cartoons, drawings, posters, or graffiti
- inquiries into one's sexual experiences or activities
- unwelcome touching including, but not limited to, pinching, patting, constant brushing against another's body, or physical interference with movement or work
- remarks with sexual or demeaning implications
- subtle or direct propositions for sexual favors

Note that such harassment does not have to be of a sexual nature and can include offensive remarks about a person's sex, sexual orientation, and/or gender identity or expression.

Sexual harassment is prohibited against members of the same sex as well as against members of the opposite sex.

Supportive measures are non-disciplinary, non-punitive, individualized services and will be offered to the complainant and the respondent, as appropriate. These measures may include, but are not limited to, the following:

- counseling
- class modifications

- schedule changes
- increased monitoring or supervision

The measures offered to the complainant and the respondent will remain confidential to the extent that maintaining such confidentiality would not impair the ability of the district to provide the supportive measures.

The Title IX coordinator is the district staff member(s) designated to receive and investigate complaints of alleged sexual harassment and retaliation. Additionally, this individual is available during regular work hours to discuss concerns related to sexual harassment and retaliation, as well as to assist students, parents/legal guardians, and others in navigating the complaint resolution process. The Title IX Coordinator may request assistance in investigating complaints from other administrators who have been trained on Title IX and the process of conducting investigations.

Following is information to reach the Title IX coordinator(s) for students for the district:

Title IX Coordinator
114 Hook Avenue
West Columbia, SC 29169
(803) 739-3141
TitleIXStudentCoordinator@lex2.org

Reporting

Members of the district community, including, but not limited to, staff, parents/legal guardians, and students, are encouraged to promptly report incidents of alleged sexual harassment to the Title IX coordinator or building-level principal.

Reports may be made orally or in writing via mail, telephone, electronic mail, or in person meeting at any time, including non-business hours. All reports not made directly to the Title IX coordinator will be memorialized in writing and reported to the Title IX coordinator within two business days.

Reports of prohibited conduct should be made as soon as possible after the alleged act or knowledge of the alleged act. Failure to promptly report may impair the district's ability to investigate and address the prohibited conduct.

Harassing or retaliatory behavior perpetrated against a student by a staff member and/or violations of policy GBEBB, *Staff Conduct with Students*, should be reported immediately to both the district Title IX coordinator and the superintendent. Informal complaint procedures will not be utilized to handle such complaints.

If a complaint involves allegations of child abuse, appropriate notifications to law enforcement and the Department of Social Services will be made in accordance with policy JLF, *Student Welfare*.

The parent/legal guardian of any student subject to sexual harassment or retaliation, or the student himself/herself if over the age of eighteen (18), may seek resolution through either the informal or formal procedures described below except as otherwise prohibited by this policy. When complaints involve two (2) or more students, the parent/legal guardian of each student will be notified of and receive all correspondence related to such complaints.

Grievance Process

Upon learning of an instance of alleged sexual harassment or retaliation, even if no formal complaint is filed, the Title IX coordinator will promptly contact the complainant to discuss the availability of

supportive measures irrespective of the filing of a formal complaint and explain the process for filing a formal complaint.

The district will respect the confidentiality of the complainant and the respondent to the greatest extent possible, and information will only be disclosed to the appropriate individuals as necessary to investigate allegations of harassment and take disciplinary action.

Disciplinary consequences or sanctions will not be initiated against the respondent until the grievance process has been completed. Unless there is an immediate threat to the physical health or safety of any student arising from the allegation of sexual harassment that justifies removal, the respondent's placement will not be changed. The respondent will have the opportunity to challenge the decision immediately following a change in placement. If the respondent is a staff member, he/she may be placed on administrative leave during the pendency of the grievance process.

Formal complaint

The formal complaint process under Title IX does not apply to sexual harassment and retaliation occurring outside of the United States. However, the district will investigate all instances of sexual harassment and retaliation, including those that occur outside of the country (field trips, study abroad, etc.) in accordance with district policy. Should an investigation conclude that such actions took place, the respondent will be subject to discipline.

Forms for initiating a formal complaint may be found online as an exhibit to this administrative rule. Printed copies are available in the principal's office, the district office, and from the Title IX coordinator. All formal complaints must include the following information, to the extent it is available:

- identity of the individual believed to have engaged in harassing conduct (hereinafter "respondent")
- nature of the alleged conduct
- date and location of the alleged violation
- list of potential witnesses
- resolution sought by the complainant
- signature of complainant

The Title IX coordinator can initiate a formal complaint by alleging sexual harassment against a respondent and signing the complaint document. The Title IX coordinator is not the complainant in such circumstances.

Investigation

Upon receipt of a formal complaint, the Title IX coordinator will provide written notice of the grievance process to the parties to include the following information:

- statement of the allegations
- statement that the respondent is presumed not responsible for the allegations until a determination is made
- prohibition against making a false statement or knowingly submitting false information
- right to have an advisor, who may be an attorney, present during any subsequent meetings
- list of supportive measures available to both parties

If the Title IX coordinator dismisses a complaint that does not meet the requirements of Title IX, after

the complaint is withdrawn in writing, when the respondent moves out of the district or is no longer employed with the district, or for any other reason during the investigation process, written notice, including the reasons for dismissal, will be provided to both parties simultaneously. This does not preclude the district from investigating the facts under another district policy JICFAA, *Intimidation, Harassment, or Bullying*, or the student/staff member code of conduct. The dismissal of a formal complaint is subject to appeal.

The investigator is responsible for investigating complaints in an equitable manner that involves an objective evaluation of all relevant evidence; credibility determinations may not be based on an individual's status as a complainant, respondent, or witness. The burden for obtaining evidence sufficient to reach a determination regarding responsibility rests on the school district and not the complainant or respondent.

Once a complaint is received, the investigator will initiate an investigation within, no more than five (5) business days of receipt of the complaint. If an investigation is not initiated within five (5) business days, the investigator will provide the Title IX coordinator with appropriate documentation detailing the reasons why the investigation was not initiated within the required timeframe.

All investigations will be completed within thirty (30) business days from the receipt of the initial complaint. If the investigation is not complete within thirty (30) business days, the investigator will provide the Title IX coordinator with appropriate documentation detailing the reasons why the investigation has not been completed.

Investigations will be conducted in the following manner:

- provide an equal opportunity for the parties to present witnesses and evidence
- not restrict the ability of either party to discuss the allegations under investigation or gather and present relevant evidence
- refrain from requiring, allowing, relying upon, or otherwise using questions or evidence that seek disclosure of information protected under a legally recognized privilege unless such privilege has been waived
- provide the parties with the same opportunities to have others present during any grievance proceeding
- provide to parties whose participation is requested written notice of the date, time, location, participants, and purpose of all investigative interviews, or other meetings, with sufficient time for the party to prepare to participate
- provide both parties an equal opportunity to inspect and review evidence directly related to the allegations in the formal complaint
- result in the creation of an investigative report that fairly summarizes relevant evidence
- prior to the completion of the investigative report, the investigator will send to each party the evidence subject to inspection and review; all parties will have at least ten (10) days to submit a written response which will be taken into consideration in creating the final report

Within the parameters of the Family Educational Rights and Privacy Act (FERPA), the Title IX coordinator will keep the complainant and the respondent informed of the status of the investigation process. At the close of the investigation, a written final report on the investigation will be delivered to the parents/legal guardians of the complainant and the parents/legal guardians of the respondent.

Determination of responsibility

The respondent is presumed to not be responsible for the alleged conduct until a determination

regarding responsibility is made at the conclusion of the grievance process. The clear and convincing evidence standard will be used in making this determination.

The Deputy Superintendent will act as the decision-maker. He/She will receive the final report of the investigation and allow each party ten (10) business days to submit additional questions to be answered by the appropriate party with limited follow-up prior to determining responsibility.

The decision-maker will provide the written determination to the parties simultaneously along with information about how to file an appeal within fourteen (14) business days after the deadline for receiving all information from the parties.

A substantiated complaint against a student may result in corrective or disciplinary action up to and including expulsion. A substantiated complaint against a staff member will result in disciplinary action up to and including termination.

After a determination of responsibility is made, the Title IX coordinator will work with the complainant to determine if further supportive measures are necessary. The Title IX coordinator will also determine whether any other actions are necessary to prevent reoccurrence of the harassment.

Appeals

The Superintendent will hear appeals. If the complainant or respondent is not satisfied with the determination of the decision maker, he/she may request a review by the Superintendent. Additionally, a complainant can request an appeal upon the dismissal of a formal complaint.

To file an appeal, contact the Superintendent's office at (803) 739-8399.

The request for appeal must be made in writing to the Title IX coordinator within ten (10) business days of receipt of the decision maker's determination or dismissal of the complaint. The appeal must include the original complaint form, a copy of the report and determination, and a written statement as to the reason for appeal.

Grounds for appeal include the following factors:

- procedural irregularity that affected the outcome of the case
- new evidence that was not reasonably available when the complaint was dismissed or a determination was made that could affect the outcome of the matter
- district staff member assigned to the matter had a conflict of interest or bias for or against the parties that affected the outcome of the matter

The Superintendent will review the material submitted and provide both parties five (5) business days to submit a written statement outlining their position. Within fourteen (14) business days of the deadline to receive submissions from the parties, a written decision will be issued simultaneously to both parties stating whether the determination of the decision maker will be upheld, modified, or reversed along with the rationale.

The decision of the Superintendent is final.

Informal Complaint Procedure (Mediation)

The district's informal complaint procedure may be initiated after a formal complaint has been made. The informal complaint process is designed to resolve complaints quickly, efficiently, and to the mutual satisfaction of all parties involved. Mediation is a voluntary process intended to allow the parties involved in a complaint to discuss their respective understandings of the incident with each other

through the assistance of a trained mediator. Mediation is designed to encourage each person to be honest and direct with the other and to accept personal responsibility where appropriate. Where circumstances allow, and both parties agree to participate in writing, mediation will be initiated as soon as possible.

Mediation is only available in those circumstances where the district believes that the allegations are appropriate for resolution through an informal process, and both parties voluntarily agree to participate. Mediation is not appropriate in certain cases, such as alleged sexual assaults, even on a voluntary basis.

Participation in mediation does not waive an individual's right to participate in the formal complaint procedure or to pursue other remedies available by law, including the filing of a complaint with state or federal agencies, as appropriate. An individual may request suspension of the informal complaint procedure and initiation of the formal complaint procedure at any time.

Upon the written consent of all parties to the complaint, the Title IX coordinator will seek an outcome through mediation conducted by a qualified district mediator or an external professional engaged by the district. All parties to the complaint must mutually agree upon any resolution reached through the mediation process. The outcome of the mediation will be documented and maintained by the Title IX coordinator.

Retaliation

It is a separate and distinct violation of policy for any member of the district community to retaliate against any student who reports alleged sexual discrimination or harassment or against any student who testifies, assists, or participates in an investigation, proceeding, or hearing relating to such discrimination or harassment. It is possible that an individual may be found to have violated this anti-retaliation provision even if the underlying complaint of sexual harassment is not found to be a violation of district policy. An individual is not allowed to do anything that would discourage a student from resisting or complaining about sexual harassment. Retaliation includes, but is not limited to, any form of intimidation, reprisal, or harassment.

Students found to have engaged in retaliation may be subject to discipline and graduated consequences, up to and including expulsion, consistent with policies JKAA and JKAB.

Staff found to have engaged in retaliation may be subject to disciplinary action, up to and including termination, consistent with district policy, including GBEB, *Staff Conduct* and GBEB, *Staff Conduct with Students*.

False Reports

Because incidents of sexual harassment and retaliation frequently involve interactions between persons that are not witnessed by others, reports of such conduct cannot always be substantiated by additional evidence. Lack of corroborating evidence or "proof" should not discourage individuals from making a report under this policy. However, individuals who make reports that are later found to have been intentionally false or made maliciously without regard for truth may be subject to discipline and graduated consequences, up to and including expulsion consistent with policy JKAA and JKAB. This provision does not apply to reports made in good faith, even if the facts alleged in the report cannot be substantiated by subsequent investigation.

Training

The district will provide training for all staff members serving as the Title IX coordinator, investigator, decision maker, or appellate authority for the informal or formal grievance process. Staff members will

JIAA-R

be trained on the following:

- definition of sexual harassment
- procedures of the grievance process
- impartiality required to prevent prejudgment of facts, conflicts of interest, and bias
- technology necessary for the grievance process
- relevance and summary of evidence
- determination of responsibility report

Materials used for training purposes may not rely on sex stereotypes, will promote impartial investigations and adjudication, and will be posted online.

Recordkeeping

The district must maintain records of complaints, investigations, and appeals for seven years.

Issued 8/20/20; Revised 1/21/21, 8/5/21, 10/24/23

Lexington County School District Two

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable William P. Keesley, Circuit Court Judge

Trial Case No. 2022-CP-32-02339

Nancy Arellano, individually and as parent
and natural guardian of Minor Z.A.,

Respondent.

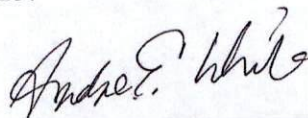
v.

School District No. Two of Lexington
County, State of South Carolina,

Appellant,

NOTICE OF APPEAL

Lexington County School District Two ("the District") hereby appeals the Order of the Honorable William P. Keesley upholding the verdict of a Lexington County Jury entered on October 11, 2025, and his Order denying the District's post-trial Motion for Judgment Notwithstanding the Verdict, filed on March 5, 2025.



Andrea E. White (SC Bar No. 11891)
Dylan A. Crossland (SC Bar No. 105736)
WHITE & STORY, LLC
3614 Landmark Drive, Suite EF
P.O. Box 7036 (29202)
Columbia, South Carolina 29204
T: (803) 814-0993
F: (803) 814-1183
awhite@sodacitylaw.com
dcrossland@sodacitylaw.com
Attorneys for Appellant

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SC Court of Appeals

Other Counsel of Record:

Trevor P. Eddy, Esq. (100069)
The Eddy Law Firm, LLC
1516 Richland Street, Suite B
Columbia, SC 29201
trevor@theeddylawfirm.com
Attorney for Respondent

April 3, 2025
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable William P. Keesley, Circuit Court Judge

Trial Case No. 2022-CP-32-02339

Nancy Arellano, individually and as parent
and natural guardian of Minor Z.A.,

Respondent.

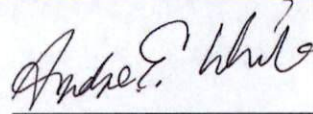
v.

School District No. Two of Lexington
County, State of South Carolina,

Appellant,

PROOF OF SERVICE

I certify that I have served Appellant Lexington County School District Two's *Notice of Appeal*, on Respondent, Nancy Arellano, by depositing a copy in the United States Mail, postage prepaid to the Attorney of Record, Trevor P. Eddy, located at 1516 Richland Street, Suite B, Columbia, SC 29201, and by electronic mail to trevor@theeddylawfirm.com.



Andrea E. White (SC Bar No. 11891)
Dylan A. Crossland (SC Bar No. 105736)
WHITE & STORY, LLC
3614 Landmark Drive, Suite EF
P.O. Box 7036 (29202)
Columbia, South Carolina 29204
T: (803) 814-0993
F: (803) 814-1183
awhite@sodacitylaw.com
dcrossland@sodacitylaw.com
Attorneys for Appellant

April 3, 2025
Columbia, South Carolina

RECEIVED
APR 03 2025
SC Court of Appeals

Andrea E. White
Ashley C. Story
J. Alexander Sherard
Michael D. Davidson
Dylan A. Crossland
Ryan K. Hicks



3614 Landmark Dr. Ste. EF
P.O. Box 7036 (29202)
Columbia, SC 29204
Tel: 803.814.0993
Fax: 803.814.1183
www.sodacitylaw.com

Andrea E. White
awhite@sodacitylaw.com

April 3, 2025

VIA PERSONAL DELIVERY

The Honorable Jenny Abbotts Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED
APR 03 2025
SC Court of Appeals

Re: Nancy Arellano v. School District No. Two of Lexington County
C/A No. 2022-CP-02339

Dear Ms. Kitchings:

Enclosed please find the following for filing with the S.C. Court of Appeals:

- 1) Appellant Lexington County School District Two's Notice of Appeal;
- 2) Appellant's Proof of Service;
- 3) Copies of Order and Judgment to be challenged on Appeal; and
- 4) Filing fee of \$250.00.

Thank you for your assistance in this matter.

Sincere regards,

A handwritten signature in dark ink, appearing to read 'Andrea E. White'. The signature is fluid and cursive, with the first name 'Andrea' and last name 'White' clearly distinguishable.

Andrea E. White

Enclosures

c: Dylan A. Crossland, Esq. (w/o enclosures)
Trevor P. Eddy, Esq., Attorney for Respondent (w/enclosures)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable William P. Keesley, Circuit Court Judge

Trial Court Case No. 2022-CP-32-02339
Appellate Case No. 2025-000647

RECEIVED

Jan 09 2026

SC Court of Appeals

Nancy Arellano, individually and as parent
and natural guardian of Minor Z.A.,

v.

Respondents,

School District No. Two of Lexington County,
State of South Carolina,

Appellant.

CERTIFICATE OF COUNSEL

This is to certify that Appellant Lexington County School District Two's Record on Appeal complies with Rule 240(c), SCACR.



Andrea E. White (SC Bar No. 11891)
Dylan A. Crossland (SC Bar No. 105736)
WHITE & STORY, LLC
3614 Landmark Drive, Suite EF
P.O. Box 7036 (29202)
Columbia, South Carolina 29204
T: (803) 814-0993
F: (803) 814-1183
awhite@sodacitylaw.com
dcrossland@sodacitylaw.com
Attorneys for Appellant

December 22, 2025
Columbia, South Carolina