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Volume I (to S.R. p 460)

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes III, Master in Equity and Special Circuit Court Judge

APPELLATE CASE NO. 2016-000955

John Alden Bauer, III

Appellant

v

Beaufort County
School District

Respondent

SUPPLEMENTAL RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

John Alden Bauer, III,

Appellant,

v.

Beaufort County School District,

Respondent.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C.A. No.: 2015-CP-07-1343

AMENDED ANSWER AND RETURN OF
RESPONDENT

2015 NOV -5 PM 2:51
JEREL ANN SEBEAU
BEAUFORT COUNTY S.C.
CLERK OF COURT

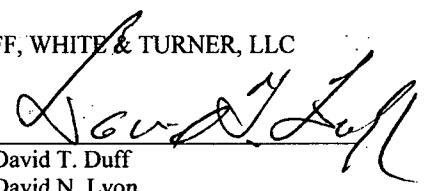
The Respondent, Beaufort County School District, responding to the Second Amended Civil Appeal of Appellant Bauer, *pro se*, would respectfully show unto the Court:

The Respondent denies each and every allegation and asserted ground of the appeal of the Appellant herein.

WHEREFORE, the Respondent, having fully answered the appeal of the Appellant, prays that the same be dismissed with costs.

Respectfully Submitted,

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1 State of South Carolina) Court of Common Pleas
) 14th Judicial Circuit
 2 County of Beaufort) No.: 2015-CP-07-1343

3

4

John Alden Bauer, III,)
)
 5 Appellant,)
) HEARING
 6 vs.)
)

7

Beaufort County School)
 8 District,)
) January 19, 2016
 9 Respondent.)

_____)
 10

11 Hearing reported by Deborah S. Thomas,
 12 Certified Verbatim Reporter and Notary Public in and
 13 for the State of South Carolina; said hearing held
 14 before the Honorable Marvin H. Dukes, III, Beaufort
 15 County Master in Equity and Special Circuit Court
 16 Judge in accordance with the South Carolina Rules of
 17 Civil Procedure, at the Beaufort County Courthouse,
 18 102 Ribaut Road, Room 212, Beaufort, South Carolina,
 19 on January 19, 2016, at the hour of 1:26 p.m.

20

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(803) 206-7390

Appearances

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Pro Se

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2 Exhibits: Marked at Page

3 (None were proffered.)

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1 This hearing is taken in accordance
2 with the South Carolina Rules of Civil Procedure.
3 JUDGE DUKES: Good afternoon. It's
4 2015-CP-07-1343 is the case number. This is Bauer
5 versus Beaufort County School District. We have on
6 our motions roster this afternoon several motions.
7 Not the first filed, but the first I've decided to

8 take up is Mr. Bauer's motion to disqualify Mr. Duff
9 as Respondent's counsel. And I'm happy to hear from
10 you, Mr. Bauer.

11 MR. BAUER: Okay. The South Carolina
12 Rules for Professional Conduct, the American Bar
13 Association, and the South Carolina Bar Association
14 are all clear on the subject that a lawyer must not
15 represent anyone in connection with a matter in
16 which the lawyer participated personally and
17 substantially as a judge, et cetera, or other
18 third-party neutral unless all parties give informed
19 consent confirmed in writing.

20 Again, all parties to this proceeding must
21 give informed consent confirmed in writing. I was
22 never asked and I do not consent. Duff -- Mr. Duff
23 was hired on July the 7th, 2015. Mr. Duff in an
24 e-mail to Lauren Martel, my former lawyer before I
25 became pro se on July the 13th, 2015, stated,

6

1 Lauren, thank you for our call this morning in which
2 you mentioned that perhaps I should consider
3 possible legal ethics issues in regard to the recent

4 decision that I will be representing the School
5 Board or District in your appeal to Circuit of the
6 Board's decision to dismiss Mr. Bauer. I gave
7 advice to the Chair or the Board in regard to
8 necessary rulings on procedural matters or
9 objections that did not make myself -- did not
10 myself make rulings or decisions.

11 Again, all parties to the proceeding must
12 give informed consent confirmed in writing. And I
13 was never asked and I do not consent. I would think
14 that this would be enough to disqualify him for
15 that, but I want to make a couple more points here.

16 According to Rule 1.12 if informed consent
17 was not given and the lawyer is disqualified, the
18 lawyer's firm cannot knowingly begin to continue
19 representation.

20 In an e-mail Mr. Duff detailed his role as
21 merely legal counsel to the Board in connection with
22 the hearing. He says he has -- I have no authority
23 to make decisions on rulings. My involvement
24 prehearing with the parties and/or their attorneys
25 is to answer questions primarily procedural in

1 nature and to facilitate discussions in the hopes of
2 resolving disagreements that may exist.

3 Duff then acted as advocate for the
4 District at the hearing including giving false
5 information concerning the withheld e-mail evidence.

6 Between April 29th and May 2nd, Mr. David Duff
7 participated personally and substantially in my
8 School Board hearing. He made countless
9 recommendations to the Judicial Officer Bill Evans
10 on the admissibility or relevance of evidence.

11 Bill Evans stated in the hearing that he
12 spoke with Mr. David Duff regarding the motion in
13 limine two days before the hearing. Even though
14 this motion in limine was provided to me only 23
15 hours before the hearing Mr. Duff allowed it in, but
16 now says it was not admitted, but he invoked it
17 repeatedly during the hearing.

18 The law states that a motion in limine
19 cannot be filed less than 10 days before a hearing
20 and cannot be presented in front of the jury, and in
21 this case it was the School Board. Both
22 requirements were violated.

23 As far as the grade book, which has been a

24 big controversy in this case, a false grade book.

25 Mr. Duff recommended to the judicial officer to

8

1 allow it into evidence after my repeated objections

2 during the hearing.

3 An empty grade -- an empty false grade

4 book that the -- that Childs & Halligan used that

5 the opposing counsel Childs & Halligan submitted

6 even after Mr. Duff and Childs & Halligan were made

7 aware on five different occasions that this was not

8 the correct grade book.

9 The real grade book had been confiscated

10 on February 11th, 2014, by principal Jill McGadden

11 and Chief Administrative and Human Resources Officer

12 Alice Walton. The grade book then was inexplicitly

13 sent to my father on July the 2nd, 2015, along with

14 a set of Beaufort County School District master

15 keys, Beaufort County School District's own computer

16 accessories which I have here today --

17 JUDGE DUKES: Now let me ask you

18 this, Mr. Bauer. You seem to be getting a little

19 off topic. Are we still on the --

20 MR. BAUER: Yes.

21 JUDGE DUKES: Okay. All right. Go
22 ahead.

23 MR. BAUER: Yes. Yes. This is just
24 part of this.

25 JUDGE DUKES: All right. Go ahead.

9

1 MR. BAUER: And I'm almost done.

2 JUDGE DUKES: Okay. Take your time.

3 MR. BAUER: And student confidential
4 forms which is a violation of the Family Educational
5 Rights and Privacy Act. I know it's a little off
6 topic here, but -- Mr. Duff was obligated to know
7 and investigate the truth, yet he chose not to and
8 then allowed the false grade book into evidence.

9 And finally, December 10th -- this is the
10 letter that allegedly Ms. McGadden wrote. Mr. Duff
11 recommended to the judicial officer to allow into
12 evidence a questionable December 10th, 1013, the
13 spelling incorrect or, yeah. Letter from McGadden.

14 I've asked that the letter be subjected to
15 forensic computer analysis. And Mr. Duff said that
16 it could be asked -- that it could be asked at the

17 hearing. When I asked Ms. McGadden at the hearing
18 if she would allow for analysis I was interrupted
19 and not allowed to continue.

20 The validity of this letter was even
21 questioned by a School Board member during the
22 hearing. Mr. Duff allowed it into evidence.

23 And last comment here. Mr. Duff stated to
24 me on May 1st, 2014, during a break -- I tell you
25 what. I'm going to go ahead and -- I'll conclude

10

1 that right now since we are getting a little off
2 topic here, but that is my argument for motion to
3 disqualify.

4 JUDGE DUKES: All right. Now, when
5 you -- you stated several times Mr. Duff allowed
6 something into evidence. Now, I haven't read
7 everything you've got in front of me; but did Mr.
8 Duff make that ruling or did Mr. Evans make that
9 ruling?

10 MR. BAUER: He made -- he made
11 several rulings. In fact, and I have them with me.
12 He, in fact, even testified at one point stating

13 that the School District had provided me with all of
14 the evidence. He even admits in his letter from
15 October 28th that he made recommendations on rulings
16 and objections. This is clearly a third-party
17 neutral person that had -- in fact, he even stated
18 that he was in the School Board during their
19 deliberations. He was present during deliberations
20 of my School Board hearing.

21 I don't think that it would be -- it would
22 definitely be a conflict of interest for Mr. Duff to
23 continue.

24 JUDGE DUKES: All right. Thank you,
25 sir. Happy to hear from you.

11

1 MR. DUFF: Your Honor, first of all.
2 in opposition to the motion to disqualify, these
3 documents have been forwarded but have not been
4 filed, yet. There is my affidavit and the affidavit
5 of the two Childs & Halligan attorneys who
6 represented the administration in the School Board
7 hearing during which I sat as advice counsel to the
8 School Board.

9 And there -- as was made clear in both

10 affidavits, both prior to the hearing, during the
11 hearing, and subsequent to the hearing, I acted
12 solely as advice counsel to the School Board. I was
13 never involved in any way with the administration or
14 its preparation of the case or presentation of the
15 case.

16 And every discussion I had prehearing at
17 times with Mr. Bauer when he was pro se, at an
18 earlier point in time with his then attorney Lauren
19 Martel, and the Childs & Halligan attorneys I
20 addressed numerous procedural matters. Never made
21 any ruling whatsoever at the hearing.

22 And made it very clear to both Mr. Bauer,
23 Lauren Martel, and the Childs & Halligan attorneys
24 that I had no authority to make rulings. That I was
25 there to facilitate any discussion they wanted to

12

1 have with me when they were having various disputes
2 over procedural matters, a deposition de bene esse.

3 Mr. Bauer when he was pro se didn't really
4 understand how the hearing works. It was all
5 procedural, and I made that very clear to the

6 parties. Now, the rule -- Rule 1.12 only requires
7 consent of the parties if the individual is serving
8 as an adjudicative officer, an arbitrator, a
9 mediator or other third-party neutral who
10 essentially is in the role of a mediator.

11 And we all -- those of us who are
12 attorneys know what mediation is. I never -- I
13 never served, and the affidavits confirm, and you
14 can look at various e-mails that are attached to my
15 affidavit, the affidavits confirm that I never
16 stepped outside of the role and function of advice
17 counsel to the School Board.

18 And now that this appeal is essentially a
19 challenge to the School Board's ruling back in May
20 of 2015, obviously it is logical that I now am
21 counsel to the District or the Board in this appeal.

22 I mean, Your Honor, I don't know whether
23 you are familiar with the Department of Labor
24 Licensing, and Regulation and all of the various
25 administrative boards that are within that agency

13

1 and the fact that advice counsel, you know, sit with
2 the Board that oversees doctors, dentists,

3 contractors, builders, nurses. The advice counsel
4 is always present in those LLR -- LLR proceedings.

5 And, you know, again, this is a lay School
6 Board of trustees, none of whom are attorneys who
7 during the hearing need certain guidance on what the
8 law is, what certain evidentiary rules are. And
9 what I did more than anything at the hearing was try
10 to assist Mr. Bauer who was pro se to proceed in a
11 way that would be helpful to him and which was in
12 compliance with the fairly loose rules of evidence
13 and procedure that exist.

14 One of the most important things, and this
15 is going to come up when we talk -- when we discuss
16 the other motions. I practically begged Mr. Bauer
17 to take the stand on his own behalf so that he could
18 testify and that he could seek to introduce several
19 notebooks of documents to put on a case in his own
20 defense.

21 And it's clear in the transcript. You
22 know, I can -- I can point you immediately to Pages
23 18 on the attachment.

24 JUDGE DUKES: Let me see. It starts
25 with 19 on --

1 MR. BAUER: Yeah. This is completely
2 irrelevant.

3 MR. DUFF: Well, no, because it
4 absolutely confirms the fact that I was dealing with
5 procedural matters and that I was -- as advice
6 counsel to the Board I was assisting Mr. Bauer in
7 every way I could.

8 If you will look at Page 19 and the next
9 several pages, I said, Mr. Bauer, if you choose not
10 to testify and be sworn, there will be no
11 testimonial evidence in support of your case. And
12 you will not be able to introduce any documents that
13 you've not -- beyond those that you were able to
14 introduce during your cross examination of the
15 administration's witnesses.

16 And you will see in the transcript Mr.
17 Bauer steadfastly refused to testify. Now, he has
18 some explanation that he wanted his father to be
19 able to examine witnesses while he prepared for his
20 own testimony. You know, this is a case that he
21 complains had gone on for many, many months.

22 And Lauren Bacall had dropped out of the

23 picture --

24 MR. BAUER: Martel.

25 MR. DUFF: -- a full month -- Lauren

15

1 Martel had dropped out of the picture a full month

2 earlier. So -- and along with the Board Chair, we

3 literally begged Mr. Bauer to take the stand. We

4 took a lunch break to let him think about that.

5 When we came back I said, Mr. Bauer, you

6 read an opening statement. And he had it all

7 scripted out. He read it verbatim. I said, if you

8 do nothing else, Mr. Bauer, take the stand, be sworn

9 in, and reread your opening statement. At least at

10 that point your statements will be sworn testimony

11 and they can be considered by the Board.

12 He refused. And consequently, Your Honor,

13 these -- there is no testimony in the record in this

14 case by Mr. Bauer. There is only testimony by the

15 administration's witnesses. And you will see where

16 he agreed that the -- this is the entire record that

17 has been admitted on Mr. Bauer's behalf, these few

18 documents, all of which were entered during cross

19 examination by him of administrative witnesses.

20 So, again, confining myself to the motion
21 to disqualify, there is nothing in the record that
22 establishes that I stepped out of my role as advice
23 counsel to the Board. I certainly wasn't an
24 adjudicative officer. I wasn't an arbitrator. I
25 wasn't a mediator. The only term that even

16

1 arguably applies is a third-party neutral. And
2 that, I believe, is virtually synonymous with
3 mediator, someone who tries to resolve the case as a
4 mediator does.

5 I never -- that was never my role or
6 function. I never even suggested to the parties
7 that they should settle this case before the Board
8 hearing. So I don't fall within the rule of 1.12 in
9 any way. And the motion needs to be denied.

10 MR. BAUER: Can I say something?

11 JUDGE DUKES: Yeah, go ahead.

12 MR. BAUER: What about Page 247 where
13 you actually testified on Line 8. Your actual quote
14 was --

15 MR. DUFF: Am I on the stand being
16 sworn in?

17 MR. BAUER: I don't know. Am I
18 allowed to do that?

19 JUDGE DUKES: Well, no.

20 MR. BAUER: Okay.

21 JUDGE DUKES: And you can --

22 MR. DUFF: You know I wasn't.

23 MR. BAUER: He stated it wasn't
24 withheld -- evidence was not withheld. That to me
25 is testifying.

17

1 MR. BAUER, SR.: When it was.

2 MR. BAUER: When it was withheld, but
3 I -- all of those comments he made I do go into in
4 my summary judgment.

5 MR. DUFF: And they are responded to
6 in the affidavits.

7 JUDGE DUKES: I'm just not seeing
8 that Mr. Duff's conduct falls within 1.12. I mean,
9 it's -- he was not a judge. He was not an
10 adjudicating officer. He wasn't a law clerk. He
11 wasn't an arbitrator. He wasn't a mediator. And I

12 agree that the definition of third-party neutral is
13 synonymous with mediator.

14 I haven't heard anything that would lead
15 me to believe that this rule would cause me to have
16 to issue an order taking him out of the case. So,
17 Mr. Bauer, I appreciate the motion, but I'll deny
18 that one.

19 MR. BAUER: Okay.

20 JUDGE DUKES: So what is next? Your
21 motion for summary judgment; is that correct?

22 MR. BAUER: Yes.

23 JUDGE DUKES: All right.

24 MR. BAUER: Okay. I've actually cut
25 this down quite a bit. For my motion for summary

1 Dr. Moss confirmed on June 16th that I was
2 terminated in an e-mail. He said, you are no longer
3 an employee of the School District. And this was
4 ratified by the Board. A personnel ratification
5 report was placed online September 1st, 2014, and
6 was online for five and a half months before it was
7 taken down.

8 And Ms. Walton in her deposition stated
9 that was illegal. She admitted that it was illegal.
10 When we notified her of that, when Ms. Martel did,
11 they finally removed it a week later. And it
12 said -- there is my name. It says, John Bauer,
13 terminated. And this was before a hearing.

14 So you've got the School Board terminating
15 me. Alice Walton says that he can terminate without
16 a hearing. She stated that in her deposition. Then
17 the Board goes back and changes the wording
18 retroactively. I just think this is completely
19 outrageous.

20 I was not given a chance for improvement.
21 It says that you have to have a -- you know, I had

22 never been in trouble before, never. Masters of
23 Arts in Teaching, a Masters Degree. I am a
24 nationally Board certified teacher. Not one black
25 mark. Every professional -- all of my improvement

32

1 plans or -- not improvement plans. All of my
2 evaluations perfect. And then one incident and then
3 I'm terminated without a hearing and without an
4 improvement plan.

5 I completed an improvement plan, turned it
6 in. Never heard any more about it. And I believe
7 the law states that I have to be given a chance to
8 improve, you know, whatever it is they think I need
9 to improve with.

10 Unfitness was never claimed. That is a
11 big part of this -- the law. And every teacher,
12 every witness stated I was an excellent teacher. So
13 it just does not make sense.

14 Let's see. I think Brown versus James is
15 a big part of this. And Mr. Duff knows this
16 personally. He was involved with that case. And he
17 will say that it was non-renewal, I mean, and mine
18 was termination, but I signed a contract. It was a

19 signed contract for the next year, for the 2014-2015

20 school year.

21 And Dr. Moss basically was terminating

22 that contract, non-renewed it. I mean, that is

23 basically the same thing, right? Yeah. You know,

24 that is non-renewal. That is Brown versus James.

25 So I guess that pretty much covers my

33

1 motion for summary judgment.

2 JUDGE DUKES: All right. Thank you

3 very much.

4 MR. BAUER: Okay.

5 JUDGE DUKES: Happy to hear from you,

6 sir.

7 MR. DUFF: Your Honor, first of all

8 every assertion that Mr. Bauer just made about

9 procedure, reasons for termination, what section of

10 the statute this case falls under is as you pointed

11 out is disputed factually and legally.

12 I will -- just to clarify a couple of

13 points, Mr. Bauer was terminated for failure to

14 supervise a student in this incident at the swimming

15 pool. And then for his -- what the administration
16 considered to be his insubordinate recalcitrant
17 behavior in the aftermath of that incident when the
18 District was attempting to work with him and he
19 threw up one roadblock after another when the
20 District was attempting to hear from him, talk to
21 him, and hopefully put him back to work. And this
22 went on for months and months.

23 But -- and the grade book is completely
24 irrelevant to the reasons for termination. And by
25 the same token, an improvement -- this case arises

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1 under 59-25-430 which is the section before
2 59-25-440. 440 deals with nonperformance,
3 unsatisfactory performance and it does require an
4 opportunity to improve before the teacher is
5 terminated.

6 This case does not fall under Section 440,
7 but rather under 430. And that is clear from the
8 School Board's order. So the grade book and the
9 lack of an improvement plan is completely irrelevant
10 to the reasons for the dismissal, but more
11 fundamentally as Your Honor has pointed out a motion

12 for summary judgment in an administrative appeal on
13 the record is just procedurally wrong.

14 A motion for summary judgment under
15 Rule 59 is a pretrial motion before a trial takes
16 place seeking to remove a case from the jury's
17 consideration allowing the court before the case
18 ever gets to the jury to make a ruling based on
19 undisputed facts. And that is not at all applicable
20 to an appeal from an administrative determination
21 with a record already created.

22 The trial in this case took place back on
23 April the 30th and May 1 and 2 when Mr. Bauer was
24 afforded a full evidentiary hearing before the
25 School Board which is the way that the Teacher

35

1 Employment Dismissal Act sets up the procedure.

2 So we are here in -- and this is what Mr.
3 Bauer just refuses to recognize. This is not a
4 trial de novo. This is not an original action when
5 Rule 59 or Rule 12.B might apply. This is an appeal
6 on the record where as we've said many times the
7 court's review -- scope of review is limited to

8 determining whether there is substantial evidence in
9 the record to support the administrative decision.

10 We are not here in a trial de novo. And
11 we've been over and over this in his first and his
12 second amended notices of appeal. We've tried to
13 make this clear. The court's orders, two orders in
14 September and October, made it clear that this is an
15 appeal on the record. So a summary judgment motion
16 is just procedurally incorrect.

17 Whatever arguments he's attempting to make
18 in support of a motion for summary judgment are the
19 arguments that he will make when the court hears
20 this case as part of its review of an already
21 existing record. And it's a record as I said at the
22 outset that is devoid of evidence on behalf of Mr.
23 Bauer.

24 He presented no witnesses. He refused to
25 take the stand on his own behalf which completely

36

1 eliminated his opportunity to seek to introduce any
2 of the documents. He brought two or three notebooks
3 of documents. He couldn't introduce any of them
4 because he never created a foundation through his

5 own taking of the stand to admit those documents.

6 So the record in this case is almost

7 entirely the evidence that was put in by the

8 administration. And if you read those excerpts that

9 are attached to the affidavit you will see that the

10 Board Chair and I begged Mr. Bauer to take the stand

11 and be sworn in and at least get something in the

12 record in his defense. And he just steadfastly

13 refused to do it, but the main point here is you

14 don't even have to reach the disputed facts or

15 whether there are or are not disputed facts.

16 This is a procedurally incorrect motion.

17 We are not in an original action here. This is not

18 a case going to a jury. It's an administrative

19 appeal to the court based on an existing record. We

20 would ask that the motion be denied for those

21 reasons.

22 MR. BAUER: May I do a quick respond?

23 JUDGE DUKES: Two minutes. Go ahead.

24 MR. BAUER: Okay. I just want to

25 remind Mr. Duff that Dr. Folley of Childs & Halligan

1 stated this matter is not before a court of law. A
2 summary judgment -- I would not have been able to
3 file a summary judgment before my School Board
4 hearing. This is the first time I'm allowed -- I
5 can file a summary judgment.

6 This is the first place to do it. You
7 can't do it before a School Board hearing. There is
8 no judge. There is no -- there is a judicial
9 officer but there isn't a judge to file it with.
10 I'm going to remind Mr. Duff that when he talks
11 about neglect it states in the Employment and
12 Dismissal Act persistent neglect. This is one case.

13 I want to remind Mr. Duff also that when
14 he talks about begging me to take the stand and
15 present all this evidence, all the evidence was
16 denied. There was no point in me taking the stand
17 or self-testifying because all the evidence I was
18 going to use was not allowed in.

19 I tried to ask Ms. McGadden questions
20 about the grade book and about her letter that is I
21 think completely fake, and they said you can bring
22 this up during your self-testimony. Well, how am I
23 going to ask her questions about it in my own, what

24 do you call it, the self-testimony:

25 All the evidence I intended to use was not
38

1 allowed in. So I don't -- if it wasn't allowed in,
2 how is it going to be allowed in during my
3 self-testimony.

4 MR. DUFF: It was never offered
5 because you never took the stand.

6 JUDGE DUKES: Let's do this --

7 MR. BAUER: It was, all of the --

8 JUDGE DUKES: Hold on a second. Mr.
9 Bauer, the summary judgment is not an appropriate
10 filing at this stage, but even if it were your
11 entire argument had to do with levels of proof with
12 people who didn't tell the truth allegedly, that
13 sort of thing. I mean, the whole thing is full of
14 factual disputes.

15 And so even if a summary judgment motion
16 were an appropriate thing to file in an
17 administrative appeal such as this one, I would have
18 denied it anyway. So I appreciate the motion, but
19 I'm going to deny that.

20 So I think that moves us to the motion to

21 dismiss or strike pretrial brief and second amended.

22 MR. BAUER: Correct.

23 MR. DUFF: And that's our motion,

24 Your Honor.

25 JUDGE DUKES: Let me see if I can
39.

1 find where that might be.

2 MR. BAUER: It's right here.

3 MR. DUFF: That is the second amended
4 appeal and the pretrial brief which is now the
5 subject of our renewed motion to dismiss and strike.

6 And, Your Honor, if you will notice the
7 second amended appeal itself arguably at least
8 complies with the court's earlier two orders in this
9 case, one in September and one in October. And they
10 are here.

11 JUDGE DUKES: Thank you.

12 MR. DUFF: Unfortunately for Mr.
13 Bauer, the pretrial brief is in no way consistent
14 with the notice of second amended appeal. It, in
15 fact, reverts right back to the same original causes
16 of action, alligate new allegations based on

17 evidence that was never admitted. The same problems
18 that we found in the original notice of appeal and
19 in the first amended notice of appeal.

20 And this is -- that is the problem again.

21 Mr. Bauer just refuses to recognize that this is an
22 appeal under 59-25-480 based on a record that was
23 created before the School Board. And it's a record
24 that by his own choice is devoid of any evidence on
25 his behalf despite the fact that the Chair and I

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1 implored him to take the stand and at least put
2 something in, something.

3 And, Your Honor, so we are at a point here
4 where we have spent countless hours and many
5 resources of the District to say nothing of the
6 hours that Your Honor has spent dealing with now a
7 third effort to expand an appeal on the record into
8 some original action which has everything but the
9 kitchen sink thrown into it.

10 In this pretrial brief you will see once
11 again, references to Title 7 of the Civil Rights
12 Act, to the Americans With Disabilities Act, to the
13 Equal Pay Act. If you look on Page 9 you will see

14 that he just continuous to treat this as an original
15 action which it is not.

16 And I point out in your September order,
17 Your Honor, you said that any memorandum -- when you
18 gave Mr. Bauer a chance to refile his notice that
19 any memorandum should bear in mind the scope of an
20 appeal under 480.

21 And then he filed again and he did not
22 correct the problems. And then we moved on. We
23 filed another motion to dismiss which resulted in
24 your October 16 order in which you say, and I'm
25 quoting from the order, if the second amended appeal

41

1 fails to comply in any manner with the court's prior
2 directives upon motion by Respondent, the appeal
3 will be dismissed with prejudice and without further
4 hearing.

5 You go on to say, quote, Appellant is
6 again admonished that any memorandum as well as the
7 further notice of appeal may only address issues
8 properly raised before the Respondent Board and
9 preserved for review.

10 So Mr. Bauer -- and I know he's pro se.
11 And I know the court gives pro se litigants ample
12 leeway and doesn't hold them to every specific of
13 every procedural rule, but this is the third attempt
14 by Mr. Bauer to file a proper appeal under section
15 480.

16 And while his most recent notice perhaps
17 complies with your September and October orders, the
18 pretrial brief reverts right back to the original in
19 the first amendment appeal by bringing up all of the
20 FOIA, Title 7, and all of these claims and issues
21 that were never presented, never preserved for
22 review, and which are outside the scope of 480.

23 And we keep going around and around with
24 Mr. Bauer. And based on your orders in September
25 and October, Your Honor, we are at a point where you

42

1 are completely within your discretion to dismiss
2 this appeal with prejudice.

3 If Mr. Bauer wants to sue under Title 7 or
4 the Americans With Disabilities Act, he can pursue
5 those claims in an original action that he persists
6 in trying to bring into this appeal of an

7 administrative ruling based on a regard that has
8 already been created.

9 And it's time to stop the expenditure of
10 resources and time on the part of the Respondent as
11 well as Mr. Bauer and as well as the court and
12 dismiss this appeal which clearly is contemplated by
13 a further failure of Mr. Bauer in the second amended
14 appeal to comply with the court's earlier two
15 orders.

16 So we ask that this appeal be dismissed
17 with prejudice. Let him go on and file his other
18 original causes of action in whatever court he feels
19 he's entitled to file them in, but this case should
20 be ended.

21 JUDGE DUKES: All right. Mr. Bauer,
22 happy to hear from you, sir.

23 MR. BAUER: Okay. I believe Mr. Duff
24 did say that the second amended appeal was arguably
25 in compliance, correct?

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

John Alden Bauer, III,

Appellant,

v.

Beaufort County School District,

Respondent.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C.A. No.: 2015-CP-07-1343

ORDER

2016 FEB 19 AM 10:56

These matters came before the Court for hearing on January 19, 2016. The pending motions were: Appellant's Motion to Disqualify David Duff as Respondent's Counsel; Appellant's Motion for Summary Judgement; Appellant's Motion to Preserve Claim of Error; and Respondent's Motion to Dismiss/Strike Appellant's Pre-Trial Brief and His Second Amended Civil Appeal. Based on the written submission by the parties or counsel and the arguments considered by the Court at the hearing, all motions were denied for the following reasons.

Appellant's Motion to Disqualify David Duff was denied, based on the submissions and argument, because it was clear to the Court that Mr. Duff did not participate in the matter before the School Board as a judge or other adjudicative officer, or as an arbitrator, mediator, or other third-party neutral within the meaning of Rule 1.12 of South Carolina Rules of Professional Conduct. He served as advice counsel to the School Board before, during, and after the hearing before the Board, but did not act in any capacity proscribed by Rule 1.12.

The Motion for Summary Judgement was denied for two reasons. First, the Court concluded that a summary judgement motion is procedurally improper in an appeal, such as the present action, of a determination by an administrative tribunal in which a court reviews that

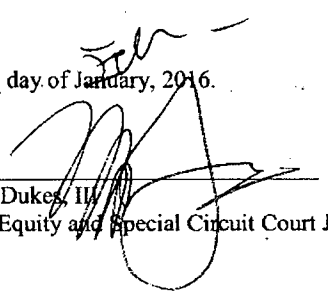
determination based on the substantial evidence standard of review. Second, based on the presentation by Appellant, it was apparent to the Court that Appellant's argument was based on assertions which clearly are in dispute, if not resolved against Appellant in the Board's written decision.

Appellant's Motion to Preserve a Claim of Error was denied because it addressed a matter that was unrelated to the reasons for the Board's decision regarding Appellant's employment.

Lastly, although the Court denied Respondent's motion to dismiss Appellant's second amended appeal, the Court made it clear to the parties that in rendering its decision on the merits of the appeal, the Court will only address the question whether substantial evidence exists in the record from the Board hearing to uphold the Board's decision. Furthermore, the Court will only consider contentions by Appellant that were presented to the Board and preserved for review, and which are supported by evidence found in the record that has been filed with the Court.

The final merits hearing in this appeal is set for March 4, 2016, at 9 AM, unless that schedule is altered by the Court.

AND IT IS SO ORDERED this 18 day of January, 2016.


Marvin H. Dukes, III
Master-In-Equity and Special Circuit Court Judge

Beaufort, South Carolina

1 State of South Carolina) Court of Common Pleas
) 14th Judicial Circuit
 2 County of Beaufort) No.: 2015-CP-07-1343

 3 John Alden Bauer, III,)
)
 4 Appellant,)
) HEARING
 5 vs.)
)
 6 Beaufort County School)
 District,)
 7) February 29, 2016
 Respondent.)
 8 _____)
 9
 10 Hearing reported by Deborah S. Thomas,
 11 Certified Verbatim Reporter and Notary Public in and
 12 for the State of South Carolina; said hearing held
 13 before the Honorable Marvin H. Dukes, III, Beaufort
 14 County Master in Equity and Special Circuit Court
 15 Judge in accordance with the South Carolina Rules of
 16 Civil Procedure; at the Beaufort County Courthouse,
 17 102 Ribaut Road, Room 212, Beaufort, South Carolina,
 18 on February 29, 2016, at the hour of 9:26 a.m.
 19

 20 THOMAS REPORTING SERVICES
 156 Argent Way
 Bluffton, South Carolina 29909
 21 (803) 206-7390

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Pro Se

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Representing Defendant Beaufort County School
District:

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1 **EXHIBIT INDEX**

2 Exhibits: Marked at Page

3 (None were proffered.)

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1 This hearing is taken in accordance
2 with the South Carolina Rules of Civil Procedure.
3 JUDGE DUKES: Good morning. We are
4 here in 15-CP-07-1343 which is Bauer versus Beaufort
5 County School District. Today is leap day, the 29th
6 of February. And we have the final hearing on this
7 matter scheduled for this coming Friday, but before

8 that Mr. Bauer has filed three motions to compel. I
9 understand they have to do with a forensic analysis,
10 security cam footage, and telephone caller I.D.
11 information.

12 And, Mr. Bauer, happy to take them up in
13 any order you would like to be heard, sir.

14 MR. BAUER: Okay. And I will try not
15 to take too much time on each one here. The first
16 one I would like to address is the motion to
17 compel -- I'm sorry. Motion to compel forensic
18 analysis of a December the 10th, 2013, letter that
19 was typed wrong.

20 Do you want a copy of the motion?

21 JUDGE DUKES: Is this the result of
22 some interrogatories or --

23 MR. BAUER: I did submit --

24 JUDGE DUKES: -- request to produce
25 or what?

6

1 MR. BAUER: I did submit an
2 interrogatory as well, but it has not been responded
3 to.

4 JUDGE DUKES: All right. And these

5 are -- rather than me open up this enormous blue

6 file, you have a clocked copy of the request?

7 MR. BAUER: I have copies, but I

8 don't believe they are clocked.

9 JUDGE DUKES: Okay. All right.

10 MR. BAUER: But they were or at least

11 the first two were.

12 JUDGE DUKES: All right. Well, tell

13 me the question.

14 MR. BAUER: Okay.

15 JUDGE DUKES: What was it you had

16 sought and --

17 MR. BAUER: All right. A letter was

18 written by principal Jill McAdden at some point I

19 believe after I was placed on administrative leave.

20 I did not receive this letter.

21 JUDGE DUKES: The letter was written

22 to you you say?

23 MR. BAUER: Supposedly written to me.

24 It was dated December 10th. And it's an

25 in correction -- I mean an incorrect date here, but

1 she put 1013. It should be 2013. That is, what,
2 almost three months before I was placed on leave.

3 Here is a copy. Do I hand this to her?

4 JUDGE DUKES: Copy of what? I'm
5 sorry.

6 MR. BAUER: Of the actual letter.
7 Should I submit it? Is that okay?

8 JUDGE DUKES: But, I mean you've got
9 the letter then? I guess I'm confused. Tell me
10 real quick --

11 MR. BAUER: Okay. I'll get right to
12 it. I believe this document is falsified and here
13 is why I think that. Jill McAdden, the principal,
14 testified that she wrote the letter on an office
15 computer. And that is in the Board hearing. She
16 was not in the office that day. I have an e-mail
17 from December 10th where that states that she is not
18 there that day that she claims to have written it.

19 McAdden claims the letter was delivered.
20 It was not delivered. In this letter she makes some
21 accusations. Ms. Brockway testified that I never
22 had a problem with 504s in her deposition, yet --

23 JUDGE DUKES: I don't know what a 504

24 is.

25 MR. BAUER: Special education needs

8

1 forms.

2 JUDGE DUKES: Let me ask you this.

3 So this is a motion to compel to produce to the

4 other side -- have the other side produce to you

5 this letter, but you've got the letter.

6 MR. BAUER: I've got the letter. I

7 want to find out when it was written. And I would

8 like to have the computer analyst come in and look

9 at her computer because I think it was not written

10 on the date she claims it was.

11 It was never delivered to me. I've never

12 seen it in my life. And then suddenly --

13 JUDGE DUKES: Well, I mean, where did

14 you get the copy you've now?

15 MR. BAUER: This I got after I was

16 placed on leave. It was provided to me by the law

17 firm of Childs & Halligan sometime in July of 2014.

18 JUDGE DUKES: Okay. Now so that is

19 what you wanted to make an exhibit a moment ago; is

20 that right?

21 MR. BAUER: This is an exhibit that
22 has actually been admitted into the School Board
23 hearing. It was admitted.

24 JUDGE DUKES: Okay. And you wanted
25 to make it an exhibit today; is that -- do you have

9

1 more than one copy?

2 MR. BAUER: Well, I don't really need
3 to make it, yes, an exhibit. All I ask is for
4 someone to come in and look at her computer and
5 prove to me or prove that she faked this. That this
6 was false evidence that was knowingly admitted into
7 the School Board hearing by the attorneys, by the
8 superintendent, by the principal. I do not believe
9 this was written on December 10th.

10 JUDGE DUKES: Okay. So what you
11 purport to be an error is the date?

12 MR. BAUER: I think it was -- yes. I
13 think she faked it.

14 JUDGE DUKES: All right. And so your
15 request in your interrogatories is -- and request to
16 produce, I mean, that actually -- well, I'll tell

17 you what, I'll allow other counsel to respond but
18 anyway, can you read for me exactly what you
19 requested in your request?

20 MR. BAUER: Oh, in the actual motion
21 to compel?

22 JUDGE DUKES: Well, no.

23 MR. BAUER: In the interrogatory?

24 JUDGE DUKES: Yes.

25 MR. BAUER: And by the way all of
10

1 these requests were done before my hearing also.
2 And it's just been ignored by the attorneys, but
3 this is what I submitted to them about a week or two
4 ago.

5 When did Ms. McAdden write the subject
6 letter? Why was the letter not delivered until
7 July 10th, 2014?

8 JUDGE DUKES: Wait a minute. You
9 submitted these a week ago?

10 MR. BAUER: Well, this interrogatory
11 to them, yes.

12 JUDGE DUKES: Okay. But I mean the
13 things that you are here today complaining about

14 that you haven't received were submitted a week or
15 so ago?

16 MR. BAUER: The interrogatory, yes.

17 They won't -- they will not respond to the
18 interrogatory, correct. And this is just the 20th
19 time or whatever that I've asked -- actually asked
20 these questions. Since February 5th, 2014, I've
21 been asking them to just go look at her computer and
22 see if she wrote this on the actual date. I don't
23 believe it. I think she faked it. She wrote it in
24 July, six months down the road I think and backdated
25 it retroactively.

11

1 JUDGE DUKES: Let's do this. I'm
2 going to get back to you to respond to whatever they
3 have to say.

4 MR. BAUER: Right.

5 JUDGE DUKES: I think I'm starting to
6 figure a little bit of it out, so don't worry. I'm
7 not cutting you off. I'm just going to let them
8 have their two cents and then we will get back to
9 you. And again we are discussing only the first

10 motion or at least the first one that was listed to
11 me and that is the motion to compel forensic
12 analysis. And apparently it has to do with this
13 letter and when it may have been typed. So I'm
14 happy to hear any response. Mr. Duff?

15 MR. DUFF: Yes, Judge. First of all,
16 this letter is in the record before the School Board
17 and is in the record of the hearing that has now
18 been filed with the court. It happens to be
19 Complainant's Exhibit 17.

20 And my understanding of what Mr. Bauer is
21 seeking here is an order that he be allowed to
22 conduct a forensic computer analysis of the
23 principal's computer to see when this letter was
24 written. The fact of the matter -- a couple things,
25 Your Honor.

12

1 First of all, you know, we are -- here we
2 are four days before the merits hearing in this
3 appeal action that has been filed for nine months
4 and which is supposed to be a case that you will
5 decide on the record. And we have, you know,
6 Mr. Bauer attempting to engage in discovery four

7 days before the merits hearing in a matter that he
8 filed nine months ago.

9 So, you know, even here at the 11th hour
10 in this appeal on the record Mr. Bauer continues to
11 treat this as an original action. And he is seeking
12 more evidence. And, you know, as we've said
13 numerous times in prior hearings, you know, all of
14 this is occurring after Mr. Bauer refused -- he
15 virtually refused to put up any evidence at all in
16 the School Board hearing, even refusing to take the
17 stand himself.

18 So now having foreclosed his -- himself
19 from presenting a case and introducing evidence, now
20 in this appeal on the record he wants to engage in
21 discovery. And for that reason alone all three of
22 these motions should be denied, but turning back to
23 this December 10, 2013, letter which he has, what he
24 wants to do is now engage in a forensic computer
25 analysis, presumably by hiring some I.T. expert to

13

1 go through the principal's computer to see if it can
2 be determined when, in fact, this letter was

3 written.

4 Well, the important point is that this
5 letter has absolutely no relevance to the issues in
6 this case. Mr. Bauer was terminated for failure to
7 properly supervise students and for his behavior
8 following the incidence that occurred involving the
9 failure to supervise.

10 This letter talked about 504 plans and not
11 looking -- not responding to Outlook invitations.
12 So it has absolutely no bearing on the issues in
13 this case. It doesn't matter -- Ms. McAdden's
14 testified that she wrote the letter on or about the
15 date that is found on the letter.

16 Mr. Bauer's big argument was, well, it's
17 not on District letterhead so how do I know that it
18 really officially written or written on the date,
19 but again it makes no difference because it has no
20 relevance to the reasons why Mr. Bauer was
21 dismissed.

22 MR. BAUER: Now can I respond to
23 that?

24 JUDGE DUKES: Sure. Go ahead,
25 Mr. Bauer.

1 MR. BAUER: Okay. First of all,
2 these motions to compel are ongoing discovery
3 because there are uninvolved issues. These were all
4 raised before my School Board hearing during the
5 discovery phase. One, two, three, four, five, six,
6 seven times ignored.

7 The items that I cite are in the record
8 and were included in what was ruled admissible by
9 Chairman Evans. This letter was introduced by the
10 opposing counsel, therefore it had a bearing on the
11 decision and deliberation of the School Board. So
12 it had a major effect.

13 It was portrayed that I had lost 504
14 plans, these education plans for those children,
15 that they were confidential forms that I lost them.
16 Ms. Brockway testified that I never lost a 504.
17 This had a bearing on their decision. They go,
18 well, they get it in their mind this guy loses
19 things and whatever else that was in that letter.

20 She made several accusations that are all
21 untrue. And he speaks of letterhead. Well, I
22 didn't bring up the subject of letterhead. I wish I

23 had. That was actually Michael Rivers, one of the
24 School Board members asked her, it's just curious
25 that it's not on letterhead.

15

1 If this was in my personnel file, I was
2 never made aware of it and I had never seen it. I
3 had never seen it until months after I was put on
4 leave. And it was introduced by the opposing
5 counsel as evidence against me. So I think it's
6 definitely -- you know, has to do with this case big
7 time. It is relevant.

8 I'm not looking for any new evidence. I'm
9 looking for evidence that was requested seven times
10 before the hearing and ignored by the opposing
11 counsel.

12 JUDGE DUKES: Well, now you are not
13 looking for evidence. You are looking for the
14 ability to hire your own forensic expert and go in
15 and look at a computer and determine a date, right?

16 MR. BAUER: That is all I want.

17 JUDGE DUKES: Do you have a forensic
18 expert?

19 MR. BAUER: No. But I'm willing to
20 pay for it. And if this were to prove that she
21 wrote this letter not on that date, but after I was
22 put on leave, that is -- I don't know what the word
23 is, but that is just creating false evidence. And
24 then letting the District know ahead of time that
25 this is what I think and they still allow it to be

16

1 admitted, this would be really, really something.

2 JUDGE DUKES: Just out of curiosity,
3 why didn't you bring this before the hearing before
4 the School Board? Why are you bringing this --

5 MR. BAUER: I did.

6 JUDGE DUKES: -- motion to compel
7 now?

8 MR. BAUER: I absolutely did. I
9 brought it up and it was objected to by Mr. Williams
10 that this is not relevant. You can't ask her this.
11 I actually asked her, I said, would you be willing
12 to submit to a computer forensic analysis. And
13 immediately objection. I couldn't proceed.

14 JUDGE DUKES: What were the -- I'm
15 sorry. I can pull the order out I guess in this

16 giant stack here, but what were the specific
17 findings when the School Board ruled? Did it have
18 to do with this letter?

19 MR. DUFF: No, Your Honor.

20 MR. BAUER: Not specifically, but I
21 do -- since it was brought up by them and they spent
22 a lot of time trying to portray me as evident
23 unfitness or, yeah. Evident unfitness for teaching,
24 I think that went towards -- the letter went towards
25 their decision or in the written Board stating that

17

1 it was, you know, all of these reasons for evident
2 unfitness for teaching were brought up. I think
3 that was part it.

4 It doesn't really give specifics of why I
5 was not fit for teaching, but I think that is part
6 of it, that December 10th letter. I mean, it
7 certainly had a bearing. I mean, they are listening
8 this guy loses things. He misses meetings. He's
9 just in competent and not fit to teach.

10 JUDGE DUKES: But, I mean, at some
11 point they came up with their reasoning as to why

12 they did it.

13 MR. BAUER: Yeah.

14 JUDGE DUKES: And they had the
15 opportunity, of course, to list, you know, as many
16 things as they had heard or to list those things
17 that they specifically found. And I think what you
18 are saying is they didn't list these things you are
19 talking about right now. They listed other things?

20 MR. BAUER: Yeah. I mean, it was --

21 MR. DUFF: That's correct, Your
22 Honor.

23 MR. BAUER: I'm sorry. Go ahead, Mr.
24 Duff.

25 JUDGE DUKES: He was just agreeing

18

1 with the premise of the question.

2 MR. BAUER: Just generally, you know:
3 I'm sorry?

4 MR. DUFF: The Board's decision makes
5 no reference whatsoever to this letter because this
6 letter has nothing to do with supervision of
7 students or Mr. Bauer's behavior in the aftermath of
8 the incidents that gave rise to a further reason

9 which was his insubordinate, uncooperative conduct
10 when the District was trying to address the
11 incident. So this letter -- the content of this
12 letter is totally irrelevant to the reasons for the
13 termination.

14 MR. BAUER: Well, I just don't know
15 why the -- you know, why the opposing counsel even
16 brought it up then at the School Board hearing.

17 JUDGE DUKES: Well, let me tell you a
18 concern. Even if I thought this were relevant, and
19 I'm starting to think maybe this isn't relevant
20 based on what everyone is telling me, let's
21 assume -- it sounds like you don't really have an
22 I.T. person on standby waiting right now. I mean,
23 ordinarily someone would walk into a motion like
24 with their C.V. and their qualifications and all of
25 that. And then of course we would have to probably

1 basically. And then I find out that is not -- that
2 is not going to be considered or was not under oath.
3 Okay.

4 MR. DUFF: Your Honor, he presumes
5 that the District would have not allowed him to
6 properly and fairly put on a case. And that is a
7 totally unfounded assumption on his part. Simply
8 because there were objections to what he was
9 attempting to do during cross examination of the
10 District's witnesses, objections that were
11 sustained, certainly does not mean that the School
12 Board was not willing, in fact was anxious to hear
13 from him.

14 And all of these -- all of these factual
15 responses that Mr. Bauer has made this morning, he
16 could have made at the hearing and maybe it would
17 have had some impact. So he clearly knowingly chose
18 not to put up any case.

19 And now he's trying to engage in discovery
20 four days before the merits hearing related to
21 testimony that he never gave. And, I mean, the

22 motions are -- if this were -- and, once again, he
23 thinks this is an original action where he can file
24 discovery as opposed to an appeal on the record.

25 But even if this were an original action

45

1 where discovery was permissible, no court would
2 allow the Plaintiff or the Defendant to seek to
3 engage in discovery four days before the trial.
4 This case was filed by Mr. Bauer on May 29 of 2014.
5 He's had nine months. When I filed the record with
6 the court of the hearing he didn't object that the
7 record was incomplete or that he had been denied
8 opportunities. He could have attacked the record
9 that we filed many, many months ago.

10 Now he's trying to say that the record is
11 incomplete nine months later and four days before
12 the merits hearing.

13 MR. BAUER: I just want to make --
14 I'm sorry.

15 JUDGE DUKES: Go ahead.

16 MR. BAUER: Oh, I thought you were
17 going to say something. Make a point about this.
18 Mr. Duff may be right. It probably was a critical

19 mistake for me not to have testified. At the time
20 it seemed like it would not help me. It could only
21 hurt me, but I'm not trying to introduce any new
22 evidence.

23 What I'm trying to point out is that the
24 evidence that they introduced is false and the
25 testimony by their witnesses was false as well. And

46

1 basically -- for example, things that Ms. Brockway
2 said, Ms. McAdden said, and Ms. McAdden's
3 associates -- the grade book. This is the grade
4 book I looked at. He had nothing in it.

5 And then all of a sudden here comes this
6 grade book that is full, the one that I gave her,
7 she accidentally sends to my father and a whole
8 package of stuff. That was evidence I could have a
9 used if I had it, right? And would have given to
10 them, but it was withheld knowingly or not, but this
11 written order, it takes awhile to really go through
12 it. I mean, it's not that long, but you come up
13 with ideas. I'm not a trained lawyer, you know.
14 I'm pro se. And then I learn things along the way.

15 So, yes, I could have complained about
16 this written order a week later, but I was just
17 trying to make the point that the evidence that they
18 introduced was false. And if I could just get the
19 evidence to prove it's false it would reverse the
20 decision I'm sure. And it's all based -- my
21 requests are all based on the evidence that was
22 admitted.

23 And I respect your decision. And that is
24 just my view, you know.

25 JUDGE DUKES: All right. Well, let's

47

1 do this then. We are dealing of course with the
2 third motion today which was the caller I.D. And
3 what is requested is whether or not one or possibly
4 two calls occurred 27 months ago on a large
5 commercial style phone system, right? I mean, that
6 is kind of what you are looking for?

7 MR. BAUER: Yes. And in fact I
8 would -- I respect what Mr. Davis said. I believe
9 him. You have a new phone system and I'm guessing
10 that telephone is probably no longer in existence.
11 So I would not press this issue unless he knows it

12 exists. And somebody could just like look at the
13 screen and see if they could find a call.

14 JUDGE DUKES: And I don't know
15 whether these things are held within the phone,
16 within a separate computer or at the phone company.
17 Who the heck knows, but --

18 MR. BAUER: I doubt that.

19 JUDGE DUKES: Because I've scrolled
20 back personally through phones I've had looking for
21 caller I.D. --

22 MR. BAUER: No, it's usually gone
23 by --

24 JUDGE DUKES: Yeah. I mean it's 30
25 or 40 as Mr. Davis said. I guess I can look right

48

1 now. I can't without cutting Mr. Duff off, but I
2 don't think it goes back that far, certainly not 27
3 months on one that probably gets a call every couple
4 of minutes.

5 MR. BAUER: No.

6 JUDGE DUKES: So -- and also for the
7 reasons of relevance that Mr. Duff stated, I'm going

8 to deny that one as well. So let's do this. What
9 time -- we've got set -- what time are we starting?

10 MR. BAUER: I think 9:00. On
11 Wednesday or Friday? Friday.

12 JUDGE DUKES: Friday? Okay.

13 MR. BAUER: I believe it's Friday.

14 JUDGE DUKES: Okay. While we are a
15 here together on the record is there anything else
16 we need to take up or deal with prior to beginning
17 this appeal on Friday?

18 MR. DUFF: Correct, 9:00 o'clock.

19 JUDGE DUKES: 9:00 o'clock.

20 MR. DUFF: All right, Judge. The
21 hearing starts at 9:00, or the merits hearing?

22 JUDGE DUKES: That is what everyone
23 was just saying. That sounds good to me, I guess.

24 MR. DUFF: All right.

25 JUDGE DUKES: I don't know if I could

1 State of South Carolina) Court of Common Pleas
) 14th Judicial Circuit
 2 County of Beaufort) No.: 2015-CP-07-1343
 3 John Alden Bauer, III,)
) HEARING
 4 Appellant,)
)
 5 vs.)
) March 4, 2016
 6 Beaufort County School)
 District,)
 7)
 Respondent.)
 8 _____)
 9
 10 Hearing reported by Deborah S. Thomas,
 11 Certified Verbatim Reporter and Notary Public in and
 12 for the State of South Carolina; said hearing held
 13 before the Honorable Marvin H. Dukes, III, Beaufort
 14 County Master in Equity and Special Circuit Court
 15 Judge in accordance with the South Carolina Rules of
 16 Civil Procedure, at the Beaufort County Courthouse,
 17 102 Ribaut Road, Room 212, Beaufort, South Carolina,
 18 on March 4, 2016, at the hour of 9:01 a.m.
 19
 20 _____

21 THOMAS REPORTING SERVICES
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23 (803) 206-7390

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25

2

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EXHIBIT INDEX

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Exhibits: Marked at Page

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(None were proffered.)

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1 This hearing is taken in accordance
2 with the South Carolina Rules of Civil Procedure.

3 JUDGE DUKES: Good morning. We are
4 here in 15-CP-07-1343. This is Bauer versus
5 Beaufort County School District. This is Mr.
6 Bauer's appeal to a decision of dismissal by the
7 Beaufort County School District.

8 Is there anything we need to take up prior
9 to allowing Mr. Bauer to begin his case? All right.

10 MR. DUFF: Nothing from the
11 Respondent, Your Honor.

12 JUDGE DUKES: Okay. All right.

13 MR. DUFF: No, sir.

14 JUDGE DUKES: All right. Mr. Bauer,
15 I'm happy to hear from you then, sir.

16 MR. BAUER: Okay. I am going to try
17 to keep this very short and simple the best I can.
18 Now, I believe Mr. Duff is going to focus his
19 efforts today on two primary subjects. He's going
20 to say that I did not testify and that he begged me
21 and pleaded with me to testify, yet he knows that he
22 led me to believe that I might not be allowed to
23 testify which I'll cover later.

24 Number 2, he's going to say that that
25 appeal is only about what was allowed into evidence

6

1 and reflected in the Board order which happens to be
2 incomplete and full of errors. This to me does not
3 sound like a strong argument.

4 I believe his strategy -- this is his

5 strategy because he has no other viable choice.
6 From what I believe during an appeal the judge has
7 discretion, has at his discretion, in considering
8 new evidence based on content.

9 And if I understand this correctly, it's
10 based on South Carolina Rule 12(b) as amended, South
11 Carolina Rule 402, Singleton versus Wolf, and South
12 Carolina Rule 56(c)(4).

13 This is why I believe -- this is why he
14 does not want to consider anything other than the
15 Board order. For example, there was no preservation
16 of evidence.

17 JUDGE DUKES: Let me ask you this,
18 Mr. Bauer.

19 MR. BAUER: Yes, sir.

20 JUDGE DUKES: You had -- you sort of
21 launched into how the other side is going to present
22 their case. And you opened with they are going to
23 say that you didn't testify.

24 MR. BAUER: Correct.

25 JUDGE DUKES: Now, as I know, I've

1 heard several of the pretrial motions in this case.

2 And isn't it undisputed that you didn't testify?

3 MR. BAUER: That is undisputed.

4 JUDGE DUKES: Okay. I just wanted to
5 make that clear for the record and anybody reviewing
6 the record after the fact.

7 MR. BAUER: Yes, sir.

8 JUDGE DUKES: I mean, there is no --
9 there is no testimony. Now, I think what you were
10 stating is there was a reason for that. And -- but
11 before we got too far from that comment I just
12 wanted to make that clear for the record and make
13 sure that it was undisputed and clear in the record
14 that you did not testify. So anyway sorry for the
15 interruption. Go ahead, sir.

16 MR. BAUER: There was no preservation
17 of technological evidence. Evidence was withheld.
18 Evidence was falsified. The hearing was delayed
19 illegally. Discovery evidence did not meet
20 deadlines. Witnesses testified falsely. Policy HRS
21 16 was illegally used. And there are many, many
22 more. And I believe Mr. Duff knew all of this
23 before April 29th, 2015.

24 I've had people ask me why this School
25 District would go to this amount of trouble to get

8

1 rid of a 17-year veteran teacher with a Master of
2 Arts in Teaching, with Master Board Certification, a
3 perfect track record, and superior evaluations.

4 And here are just a couple comments from
5 people who asked me this, some of their theories. I
6 make too much money and they are trying to get
7 somebody who is younger at half the price.

8 Number 2, administrators resented that I
9 defended students that an administrator unfairly and
10 belittled my students for not following class
11 procedures or for -- I'm sorry. Or for following
12 class procedures.

13 Number 3, administrators resented my
14 frequent e-mails and work orders recording possible
15 vandalism for the condition of the gym.

16 There are two more. Administrators
17 realizing their knee-jerk reaction attempted to
18 cover themselves with fabricated evidence to protect
19 their job security.

20 And then the last one I heard is the

21 administrators are hypersensitized or hypersensitive
22 to the reputation of these -- some over-controlling
23 Hilton Head parents.

24 And I don't think -- I do not believe any
25 one single event is what triggered this. I believe

9

1 it could be a combination of all five theories that

2 I've heard.

3 Now, I ask three final questions. Would a
4 guilty person ask for evidence to prove he's guilty?

5 I've been asking for evidence for two and a half
6 years. Well, two -- over two years.

7 If the School District was convinced I was
8 guilty, wouldn't they have gone the extra mile to
9 preserve that evidence?

10 And number three, they made me see a
11 psychiatrist. And I actually went to one. And a
12 lot of people said, I wouldn't have done that, but I
13 wanted to follow protocol and do what I was told. I
14 got a perfect evaluation. Would they? I wonder.

15 If this is all grounds for psychiatric
16 evaluation, then I plead guilty today, Your Honor.

17 All I'm asking is this, put me back to work in the
18 job that I love so we can end this travesty. I'm
19 not asking for any damages. Just backpay and go
20 back to work because this is my life and I love it.
21 And that is -- I'm finished with -- can I continue
22 with the actual case?

23 JUDGE DUKES: Yeah. This is your
24 time to present whatever you would like to present?

25 MR. BAUER: I'm sorry. I am very
10

1 naive on this protocol. All right. What I wanted
2 to do is go through just bit by bit on the
3 original -- I'm going to focus only on the original.

4 JUDGE DUKES: All right. I have it
5 in front of me.

6 MR. BAUER: Okay. Great. Now, the
7 first thing I would like to look at is on Page 1
8 where they refer to me not testifying, which is
9 true. I did not testify. In the written order
10 basically Mr. Duff says that he urged me to testify.
11 True.

12 But in the previous e-mails he did not
13 urge me to testify. And this will lead up to what

14 I'm getting to. I asked him. I sent him an e-mail
15 asking how do I call myself as a witness? Do I ask
16 myself questions? Do I do a solo narrative? His
17 response was there is the matter of your failure to
18 list yourself as a witness. He says, I don't know
19 what the administration's position is on your
20 testifying. Probably I would advice the Board that
21 you should be permitted to testify even though you
22 did not list yourself.

23 So at that point I thought testifying
24 might seem iffy. So my plan was I would try to get
25 the evidence in elsewhere. Then during the hearing

11

1 Mr. Evans says I can consider evidence that is not
2 entered. He actually says, we are not saying this
3 can't be entered. He is saying, we are saying that
4 it's more appropriate that it come in under your
5 testimony or summation.

6 I say, I understand. Absolutely. Yes, I
7 can. Then Chairman Evans says, or just request for
8 us to consider it when we go into deliberations.
9 And I say, I understand that. So my strategy to

10 prepare for this was to get in evidence elsewhere.

11 And I was under the assumption, based on these

12 comments, that my summation was under oath and that

13 is where I could get my -- that would basically be

14 myself testifying. All right.

15 JUDGE DUKES: Were you placed under

16 oath at any time during the hearing?

17 MR. BAUER: I don't believe I

18 actually was, no.

19 JUDGE DUKES: Okay.

20 MR. BAUER: Well, I mean, I believe

21 we all placed under oath. We all had to raise our

22 hand, but I didn't self-testify if that is what you

23 mean.

24 JUDGE DUKES: Okay.

25 MR. BAUER: Put myself under cross

12

1 examination.

2 JUDGE DUKES: All right.

3 MR. BAUER: I believe it was all

4 under oath except the opening and the closing which

5 they claim was not under oath. So I'm -- you know,

6 it's a little confusing.

7 JUDGE DUKES: Okay. Go ahead,
8 please.

9 MR. BAUER: On Page 2, delay. Now,
10 they state that there was some -- that there was
11 some thought that there was some type of delay, but
12 I didn't present any evidence apparently to point
13 that fact out. I just want to put these comments
14 here that Dr. Moss in an e-mail to me on July 3rd,
15 2014, stated that my attorney had requested an
16 extension from the deadline. Four days later he
17 says my attorney agreed to wave the 15 deadline --
18 15-day deadline.

19 Two, Mr. McMaster sending an e-mail to Mr.
20 Duff stating he never agreed or requested anything.
21 In fact, I was not even practicing law at that time.
22 He denied it. So it goes from we requested it to we
23 agreed to now we never agreed to anything. Never
24 requested anything.

25 So them stating that -- you know, that it

13

1 was our fault that there was delays is crazy. Now,
2 with the charges on that same page, the charges.

3 According to the Teacher Employment Dismissal Act,
4 if I understand that correctly, those charges are
5 supposed to be in a formal written form and it's
6 actually supposed to come from the Board.

7 I never got any charges. And I referred
8 to it as charges, but it was from an e-mail from Dr.
9 Moss. And he actually calls it bases. And he lists
10 two, but I never got a formal list of charges.

11 Now, on that same page regarding 504
12 plans, I think this is just outrageous and
13 offensive. The Board order says negligence in
14 supervising students particularly a Section 504
15 disabled student who was left by Mr. Bauer
16 unattended off campus.

17 First of all, it's not students plural.
18 It's one student. That is what we are talking
19 about. He was not disabled. And he was gifted and
20 talented. That was not pointed out. I did have a
21 504 plan which is a special needs type of form or
22 program for children who may have a learning
23 disability or something like that, but this child
24 was not disabled. And I would think that his mother
25 would take offense to that term, being called

1 disabled.

2 Now, I did not leave him. I did accept
3 responsibility. It says here (inaudible) left a
4 child. I took responsibility because that is a
5 teacher's responsibility for supervising students,
6 however I did not leave him there. All I know is
7 that he did not come with the class and he did not
8 leave with the class, but I had 23 students with me
9 when I went out there and I brought 23 back. And we
10 still don't know exactly how this child got over
11 there, when he got there, and why he stayed behind.
12 So I just wanted to make that point clear.

13 Now, he was really not off campus. The
14 Island Rec Center, the land is owned by the Beaufort
15 County School District. It's just 22 yards across
16 the street. And it's a big cluster. So really I
17 would consider that not -- that is
18 misrepresentative. That makes it sound like I had
19 taken a long trip down the road with this group.
20 No. It's not true.

21 Now, insubordination. It says in the
22 Board order, and that would be on Page -- I believe

23 Page 3 is the topic. The claim is that I was
24 insubordinate to Dr. Moss and other District
25 officials for refusing to meet with them and

15

1 refusing to get a second opinion from another
2 psychiatrist. I never refused. And there is not
3 one document they can show me where I refused to
4 meet with them.

5 I agreed, but it got to the point where
6 you are like, okay. Do everything they want me to
7 do. I've gone to the psychiatrist already. She
8 gave me a superior evaluation. I'm ready to go back
9 to work. Now they want a second opinion? I
10 thought, wait. I don't understand this. So I asked
11 them may I bring a friend of mine, he's actually an
12 attorney but I haven't hired him yet. May I have an
13 attorney with me? They refused. Said no.

14 I'm like wow. Could I have a witness?
15 And Dr. Moss said, yes, you can bring anyone you
16 want. I went, oh, really? But I guess not an
17 attorney. And so I asked -- I wanted to make sure I
18 understood this correctly. I also wanted to know

19 why -- why were they asking for a second opinion
20 from a different psychiatrist. I asked that
21 question. And all think told me was we are allowed
22 to do this based on School District policy H.R.S.
23 16.

24 I went to that. And it says sick leave.
25 It basically says the superintendent has the right
16

1 to ask an employee who has been on sick leave before
2 they return to go to a medical doctor or
3 psychiatrist -- or, you know, just to verify that
4 they can return to work. I was not on sick leave.
5 So I didn't understand it. I asked questions.

6 And then after a few more days he -- Dr.
7 Moss recommended my termination based on
8 insubordination, refusing to meet. And I never
9 refused.

10 Now, finally -- let me add two more. The
11 psychiatric evaluation. It says that I was late --
12 let me see if I can find the page. I believe it's
13 Page 8. Yes. Mr. Bauer missed -- I'm sorry. Do
14 you --

15 JUDGE DUKES: I'm on Page 8.

16 MR. BAUER: Great. Mr. Bauer missed
17 the deadline he was given for submitting the
18 physician's statement, more importantly the
19 statement from the psychiatrist who had seen
20 Dr. Bauer. That is actually Mr. Indicated in a
21 rather gentle manner only -- only that Mr. Bauer is
22 capable of performing the essential functions of his
23 job. Adding that he be return to his duties as soon
24 as possible. And Ms. Walton considered the
25 psychiatrist's statement insufficient and

17

1 provided -- in providing adequate assurance that Mr.
2 Bauer appreciated more and so on -- now,
3 Dr. Bloom -- Dr. Laura Rosenthal-Bloom, she -- I was
4 never late on this. She was responsible for faxing
5 it over to the School District immediately.

6 I saw her three days before the deadline.
7 She attempted to fax it that day. And a bizarre
8 sequence of events happened. Her office secretary
9 broke her leg that day. They had to get a temporary
10 office worker who did not know what they were doing.
11 And Dr. Laura Rosenthal-Bloom apparently had some

12 problem with the faxes. And I have faxes shown that
13 it was busy. She kept getting busy signals.

14 I communicated this immediately with
15 Ms. Alice Walton. I have all the e-mails to prove
16 it explaining to her that I saw Dr. Bloom today.
17 It's coming, but there is a problem with her fax.
18 She is attempting and attempting. Eventually it
19 gets there April 7th, but there is tons of evidence
20 that Ms. Walton knew exactly what was going on, that
21 I explained to her the problems faxing it over.

22 And I said, if you have not received this
23 psychiatric proforma by the end of the day on
24 March 31st, which was the deadline, contact me
25 immediately. I never heard from her, so I assumed

18

1 it was okay. And now it says that I was late on
2 that.

3 Now, here is what is really bizarre.
4 Ms. Walton, and she's the chief administrator of
5 Human Resources Manager, as the witness stated, she
6 is the one that requested me see the psychiatrist.
7 She sent me an e-mail with an attached job
8 description. And she states exactly the same thing,

9 it says in the word (inaudible). Make sure that
10 your position -- let's see. Let me get it real
11 quick. Here we go.

12 She asked me to give this to the
13 psychiatrist, the job description, saying -- asking
14 her that I could perform -- if she agrees that I can
15 perform the duties and responsibilities of my job to
16 be returned. The Board order criticizes that saying
17 that she only stated in a rather general sense that
18 he could perform the essential functions of his job.
19 That is exactly what Ms. Walton asked for. They
20 thought that was insufficient, yet you see she
21 actually says, make sure he can do the job, you
22 know, the duties and responsibilities. It just
23 don't make any sense to me. So that is totally
24 incorrect.

25 And that really covers a lot of it. Yes,

19

1 and about seeing a second psychiatrist. I never was
2 given a reason for this. And I never refused to
3 meet with them. I absolutely would never be
4 insubordinate. And there is no place -- I mean, I

5 guarantee it. There is not one e-mail showing I
6 won't do what they ask. And they won't let me have
7 a way there after going through all of this, putting
8 together a professional improvement plan, like they
9 requested. It just does not make any sense to me.
10 So I think I'll conclude with that. Thank you.

11 JUDGE DUKES: All right. Thank you
12 very much, sir. Happy to hear from you, sir.

13 MR. DUFF: Thank you, Your Honor.
14 You've just heard a terribly distorted version of
15 the record and the facts -- the underlying facts of
16 this case. You've also heard in effect testimony by
17 Mr. Bauer, testimony that he never gave at the
18 School Board hearing even though several people,
19 including myself when I was serving as advice
20 counsel during that proceeding -- both I as advice
21 counsel and Mr. Evans as the chairman of the Board
22 repeatedly asked, implored Mr. Bauer to take the
23 stand in his own defense.

24 We explained to him that his opening
25 statement was not under oath and that there was

20

1 virtually no evidence in the record that supported

2 his version of the facts or that supported his

3 explanation for his actions.

4 And at one point I even said to him as I

5 recall, if you do nothing else, Mr. Bauer, be sworn

6 in and reread your opening statement. I said,

7 please, the Board could at least consider the very

8 same opening statement you made at the beginning of

9 the case if he will be sworn in, take the witness

10 stand, and reread at least at that point it would be

11 considered testimony. And the Board during it's

12 deliberations could take into account everything

13 that you've said because at that point it is

14 evidence.

15 And he even refused to do that. He said

16 he was exhausted. He asked if his father, you know,

17 could ask questions. His father was sitting with

18 him at the table. That was by agreement of the

19 parties. And it could not have been easier for him

20 to simply be sworn in and reread what he had written

21 out word for word and which he read during his

22 opening statement.

23 And if you like, Your Honor, I submitted a

24 record appendix just to try to provide the key

25 portions of the record. I have an extra copy if

21

1 it's not handy.

2 JUDGE DUKES: I think I -- I've got

3 the entire record here, the 587-page record is in

4 folder three of the court file.

5 MR. DUFF: Here is another copy of

6 the record appendix.

7 JUDGE DUKES: All right.

8 MR. DUFF: I just want to refer to a

9 couple of pages.

10 JUDGE DUKES: Thank you. Was this

11 already filed at some point?

12 MR. DUFF: Yes. It was -- it's

13 been --

14 JUDGE DUKES: Okay. So this is just

15 another copy?

16 MR. DUFF: It's been forwarded. It's

17 just another copy.

18 JUDGE DUKES: Got you. And, Mr.

19 Bauer, you have this as well I assume; is that

20 correct?

21 MR. BAUER: Yes.

22 JUDGE DUKES: Okay. All right. Go
23 ahead, sir, please.

24 MR. DUFF: And, Your Honor, if you
25 will look I think particularly on pages -- if you

22

1 look at the bottom -- you need to look at the bottom
2 of the page, the lower right-hand corner where it
3 says RA. If you will look at Page 81, this is where
4 I was attempting to explain to Mr. Bauer, I think
5 Mr. Evans as well, that he had -- he didn't testify.
6 He didn't call any witnesses to testify.

7 All that Mr. Bauer had done by the time
8 the administration rested its case was to cross
9 examine the four or five witnesses that the
10 administration had put forward; the principal, the
11 assistant principal, Ms. Walton the H.R. director,
12 Dr. Moss the superintendent.

13 And what he constantly attempted to do
14 during cross examination was put his own case in by
15 asking witnesses, for example, didn't you say at
16 your deposition. And he would attempt to enter the
17 deposition of the witness rather than just ask the

18 witness questions while the witness was live and in
19 person on the stand.

20 He would attempt to introduce exhibits
21 that the witness on the stand did not author and had
22 no knowledge of. And he was told by Mr. Evans and
23 by me, we said, Mr. Bauer, you will have a full
24 opportunity once the administration rests to take
25 the stand, to call a witness, to testify on your own

23

1 behalf, and to ask that these documents be
2 introduced as exhibits in support of your case.

3 And so if you look on Page 81, Ms. Folly,
4 who was one of the attorneys for the administration,
5 says that other than the very few documents that Mr.
6 Bauer entered or attempted to enter during cross
7 examination which we did not object to, this is
8 Ms. Folly or Mr. Williams, there is no foundation
9 because Mr. Bauer has not taken the stand, there is
10 no foundation to enter any other exhibits.

11 And Mr. Bauer said at the bottom of the
12 page on Page 81, that is agreeable.

13 JUDGE DUKES: And 81, just for this

14 record, is 564 and 587 in the transcript; is that

15 correct?

16 MR. DUFF: Correct. Correct. And

17 then I -- if you look at the next page, RA 82 this

18 is me, and again serving as advice counsel. I'm not

19 prosecuting. I'm the advice counsel. And I ended

20 up giving much more advice to Mr. Bauer than I did

21 to the School Board. I was trying to help him. I

22 was trying to, you know, indicate to him what he

23 could do to put up a case.

24 This lawyer who has been in and out of

25 this case twice, Ms. Martel, attempted at the very

24

1 beginning of the case to argue some motion. And the

2 Board said to her, Ms. Martel, if you want to

3 re-enter the case fully, you are welcome to do so

4 even though she had withdrawn about a month earlier,

5 but what you can't do, Ms. Martel, is argue a motion

6 that you want to make here at the outset of the

7 hearing and then step away. You are either in the

8 case or you are not in the case. So she marched out

9 of the hearing room in a huff. And Mr. Bauer and

10 his father proceeded on for two and a half days of

11 evidence taking.

12 So I say here on 82, and I say -- if you
13 look at the top, Line 3, and, again, because I
14 already made this point a couple times, you know,
15 Mr. Bauer, if you waive your testimony then the only
16 testimonial evidence in support of your position
17 will be whatever concessions you were able to get on
18 cross examination.

19 Mr. Bauer responds, I understand. And
20 that is agreeable. So this attempt on his part to
21 say that I discouraged him from testifying is
22 absurd. And the e-mail that he wrote prior to the
23 hearing when he was unrepresented he was contacting
24 me quite frequently by e-mail. And I was again as I
25 had said to both parties for several months, I'm

25

1 advice counsel. I'm happy to talk to the parties or
2 to their attorneys. I cannot make any decisions.
3 If you have a dispute over something and you want me
4 to, you know, suggest how you might resolve it I'm
5 available. Contact me.

6 And toward the end after Ms. Martel

7 withdrew Mr. Bauer was contacting me quite
8 frequently. And as he read from that e-mail at the
9 beginning of today's proceedings, he said, how do I
10 testify or can I testify. And I said -- I said
11 essentially, well, you haven't put yourself on your
12 witness list. There was a final exchange of witness
13 lists. He didn't include himself on his witness
14 list. He had lots of other witnesses.

15 And I said that I would recommend to the
16 Board that they hear you even though you never
17 listed yourself because as a party it's pretty well
18 understood that you are going to testify. And
19 certainly no one is going to be surprised. And, you
20 know, I'm going to recommend to the Board. And that
21 would even have been if the attorneys for the
22 administration had objected because he hadn't listed
23 himself as a witness, I would have recommended that
24 the Board allow him to testify.

25 And clearly by the end of the

26

1 administration's case, as you can see on Pages 81
2 and 82, I made it clear to him if he failed to
3 testify there would be almost nothing in the record

4 that would support his version of what took place
5 going all the way back to the day that the child was
6 left in that rec center.

7 And on that point it's interesting that
8 Mr. Bauer started out this hearing as saying that
9 maybe they were motivated to fire me because I
10 defended students.

11 Well, when this occurred Mr. Bauer, one
12 thing he said to the administration, which is in the
13 record, I don't believe it's in the record appendix,
14 he thought the child should be punished, disciplined
15 for failing to follow the rules and however Mr.
16 Bauer believed the child got over to the rec center.

17 So he -- and Mr. Bauer -- one of the big
18 problems and the reason why the District wanted some
19 clear medical or psychological opinion was that Mr.
20 Bauer in this instance and in a prior instance that
21 occurred a few months earlier involving a child who
22 was outside the gym in his pajamas.

23 Mr. Bauer repeatedly said, there is
24 testimony by several witnesses, this is ridiculous.
25 This is silly. This is an innocent mistake. This

1 child is to blame. He snuck over here, hid himself
2 in the locker room. I'm not responsible.

3 And he wouldn't -- you know, he argued
4 against even meeting with his superiors to give his
5 explanation. He said, can't we do this on the
6 phone. I've got something to do after school today.
7 This is ridiculous. This is silly. On and on and
8 on.

9 And Ms. Walton and his principal,
10 Ms. McAdden, they began to wonder does this
11 teacher -- we've had two incidents now in which he
12 has disclaimed responsibility and blamed it on
13 somebody else including the child. Does this
14 teacher understand the seriousness of the failure to
15 supervise students at all times?

16 Had Mr. Bauer had a different response to
17 what occurred, I doubt that a fitness for duty
18 request would even have been made. And on the -- if
19 you look at the record appendix, Page 121, this is
20 this opinion by Dr. Rosenbalm-Bloom or
21 Rosenthal-Bloom. And what concerned Ms. Walton was
22 that she -- it's a very general couple sentences.

23 And she says, he takes his job very
24 seriously and is very conscientious. Well, that is
25 exactly opposite to what the principal and the

28

1 assistant principal were seeing from Mr. Bauer. He
2 was not taking his job seriously. And he was
3 anything but conscientious when it comes to
4 supervising kids.

5 So they wanted -- they did not feel that
6 this was an adequate fitness for duty statement by
7 Dr. Rosenbalm-Bloom. And they wanted -- the
8 District has -- uses another psychologist or
9 psychiatrist and attempted to schedule a further
10 appointment for Mr. Bauer at the District's expense,
11 of course.

12 And for one reason or another that never
13 happened. Mr. Bauer begged off of a couple of
14 meetings. He -- an appointment was made that he
15 didn't keep. At one point he said, I want to come
16 with my lawyer, who I think was this George McMaster
17 who is an attorney in Columbia who has had his own
18 problems.

19 And it was one little excuse and delay

20 after another. And finally Ms. Walton and Dr. Moss
21 said this teacher just -- he doesn't get it. He's
22 not responding. He's really being insubordinate in
23 our efforts to find a way to bring him back -- to
24 bring him back.

25 And, by the way, he was on pay this entire
29

1 time. He was placed on administrative leave after
2 the incident on February the 2nd. That was the pool
3 incident. And he was on pay. And the District told
4 him, you are on administrative leave with pay. And
5 just like if you were in your school, in your gym,
6 you have to be responsive to our reasonable requests
7 to meet with you to talk with you. You are being
8 paid.

9 And he -- I mean the testimony, if you
10 look at it, just repeatedly by several witnesses, he
11 just was completely recalcitrant. And he was not
12 exhibiting the kind of emotional mental stability
13 and understanding of his responsibility to supervise
14 these young children.

15 So as time went on the District got

16 increasingly concerned about -- about his fitness to
17 be a teacher. It was -- it started out with some
18 negligent failure to supervise, but then it became a
19 much bigger concern because of Mr. Bauer's behavior
20 and his conduct.

21 And on the George McMaster, the
22 attorney -- you know, the delay in holding the
23 hearing, well, a couple points there. Close to the
24 beginning of the hearing, two weeks beforehand, I
25 got an e-mail from George McMaster saying, Dave, I

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1 never agreed to waive the 15-day limit. And I
2 emailed back to George, I said, George, you know,
3 whether you did or whether you didn't, this email --
4 I can't do anything with this email. This is not
5 evidence.

6 Somehow the evidence of your supposed
7 never agreeing to waive the 15 days has to come into
8 the case. McMaster could have come to the hearing
9 and testified, I never agreed to this. Ms. Folly is
10 mistaken. Mr. Bauer could have even -- it might
11 have been hearsay, but it would have been allowed.
12 Mr. Bauer could have said, I was told by my attorney

13 at the time, George McMaster, that he never agreed,
14 but Mr. Bauer did not take the stand, Your Honor, so
15 we never heard that.

16 So and the -- most of the delay, quite
17 frankly, was due to Ms. Martel. She wanted to call
18 some sort of an expert from Texas on No Child Left
19 Behind. And there were weeks of an attempt to try
20 to arrange for a telephonic deposition of some lady
21 in Texas who we never did -- the attorneys never did
22 understand what the relevance was to talk about No
23 Child Left Behind.

24 We don't know whether they -- the District
25 was going to be accused of failing to achieve

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1 student -- you know, failing to meet its
2 requirements under N.C.L.B. I mean, it was bizarre.
3 And so a lot of the delay was due to Ms. Martel
4 before she punted the first time. Of course, this
5 is the same Martel who filed the original appeal in
6 this case which reads like a complaint in an
7 original action alleging the A.D.A., alleging
8 Title 7 discrimination, and all of these claims that

9 we've spent umpteen hours and thousands of dollars
10 in the pretrial motions in this case to try to get
11 it back to what it should be which is an appeal on
12 the record.

13 And I know I'm jumping around. The boy
14 who was left at the pool, yes, he was gifted and
15 talented. And, yes, as Mr. Bauer has admitted, he
16 had a 504 plan. Well, if you have a 504 plan you
17 are disabled under Section 504 of the Rehab Act.

18 And it's not uncommon for a young child to
19 be gifted -- intellectually gifted and qualify for
20 the programs for gifted and talented kids and also
21 have A.D.H.D. meaning they are distractable, they
22 are inattentive, they lack focus. So they have a
23 504 plan which assists them in the classroom because
24 they wander. They get off task.

25 And it's precisely what this boy had. He.

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1 was gifted, but he was also 504 disabled because of
2 A.D.H.D. And this child on a prior occasion was
3 somewhere in this pool area and was -- was subjected
4 to naked old men in the pool area or in the locker
5 room. The parent had complained about it. My

6 child --

7 MR. BAUER: I object to this.

8 MR. DUFF: You can't object to this.

9 You were all over the place.

10 JUDGE DUKES: Well, let him finish.

11 MR. BAUER: That is not the written

12 order.

13 JUDGE DUKES: Okay. Overruled. Go

14 ahead.

15 MR. DUFF: So, you know, this --

16 there was a context to the concern that Mr. Bauer

17 was not supervising, the prior incident a few months

18 earlier in the gym which you heard about I think in

19 the earlier motion. So, you know, there is an

20 enormous distortion -- it's not even a distortion of

21 the record. It's that he's now trying to create a

22 record on appeal.

23 So the two points, you know -- the

24 overriding considerations in this case which Mr.

25 Bauer still doesn't get is that this is an appeal on

33

1 the record, on the administrative record. And that

2 the record is virtually devoid of any evidence
3 regarding his position on the facts.

4 The record contains only the evidence that
5 the administration submitted which is essentially
6 un rebutted because Mr. Bauer refused to put up a
7 case, plain and simple. So really the only -- the
8 only issue under the substantial evidence standard
9 of review there is more than enough evidence to
10 support the findings of the Board that he was
11 derelict, that he was negligent, that he was
12 recalcitrant, that he didn't understand the
13 seriousness of the situation. That he was in
14 subordinate.

15 There is no evidence that rebuts that at
16 all. These versions of the facts never came into
17 the case. So, Your Honor, the only question before
18 the court is whether based on the evidence and the
19 finishings, factual type findings, do they satisfy
20 the legal standard in the statute.

21 And there are two statutes. One is
22 59-19-90 which says that a teacher can be terminated
23 for good and sufficient reasons. The other statute
24 is in the Employment and Dismissal Act. It's

25 59-25-430 which says that a teacher can be

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1 terminated at any time for behavior that manifests
2 an unfitness to teach, not necessarily academic
3 teaching, but teaching in the sense of performing
4 the complete job of instructing, supervising,
5 guiding, you know, ensuring the welfare, the
6 well-being of the students you are charged with
7 protecting.

8 And I don't think there can be any doubt
9 that the findings, the factual findings, meet the
10 statutory standard of unfitness and good and
11 sufficient reasons. Mr. Bauer says he didn't
12 understand the charges. Well, if you will look
13 again on the record you can look now or whenever,
14 Your Honor, there is -- the letter of dismissal --
15 recommending dismissal, again subject to the Board's
16 review, if a review by the Board is requested, it's
17 Page RA 103.

18 And it -- this is from Dr. Moss. And it
19 says the bases for this recommendation include the
20 ground provided to you in my email dated May 29.
21 Well, the email May 29 is RA 102. And it

22 specifically says the February 5 incident for
23 leaving a special needs child unattended off campus,
24 negligence and insubordination.

25 So there -- he really -- I mean, his
35

1 argument that he didn't know what the charges were
2 is pretty silly. He knew exactly what the reasons
3 why the administration was proceeding against him.

4 And the -- the point being that he did not
5 come to the hearing in the dark about what the
6 allegations were. There had been extensive
7 prehearing depositions. I mean, it was very clear
8 why the District was proceeding.

9 The improvement plan that has been thrown
10 out here, I mean the -- there is another section
11 right behind the one I just cited, 59-25-430 is the
12 one that this case is based upon. The next section
13 is 29-25-440 which is another section of the
14 Employment Dismissal Act typically arises in the
15 nonrenewal. At the end of a year a teacher is
16 non-renewed for the subsequent year.

17 And that we -- in this area we refer to

18 440 as a nonperformance case and 430 as a conduct
19 case. And it is true that the statute -- the 440
20 section does require the District to identify
21 performance deficiencies to give assistance to the
22 teacher and to allow enough time for the teacher to
23 improve their performance in the classroom be it
24 academic instruction or classroom management, but --
25 so an improvement plan can come into play. It's not

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1 called that, but that is, in effect, what it is, in
2 a 440 case, but this is a 430 case where because of
3 conduct and behavior the District believed finally
4 that Mr. Bauer was just not fit to teach. And that
5 is why it initiated the termination proceedings.

6 And, you know, Mr. Bauer wouldn't --
7 probably doesn't believe or understand this, but the
8 effort really was by Ms. Walton and the principal
9 and ultimately Dr. Moss to take some steps, to
10 follow a process that would have allowed them to
11 bring Mr. Bauer back once they had some reasonable
12 assurance that he understood what was happening and
13 that he internalized what he needed to do to be a
14 teacher at that elementary school.

15 There was absolutely no motive to --
16 initially to terminate Mr. Bauer. It was just the
17 opposite. It was a process that they hoped would
18 allow them to bring him off paid administrative
19 leave and restore him to his job.

20 And unfortunately I think that it finally
21 dawned on Mr. Bauer during this appeal that he
22 simply did not put up a case. He didn't enter any
23 evidence in his own defense. So what we've seen in
24 the course of this judicial appeal is constant
25 efforts to re-litigate, to introduce evidence that

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1 he could have introduced previously.

2 He could have called Dr. Rosenbalm-Bloom
3 at the hearing. And she could have said to the
4 Board, I believe he's fit to be a teacher in your
5 District. At least the Board would have had to deal
6 with that just like he could have called George
7 McMaster. Or he could have just got on the stand
8 himself and testified to that effect, but he did not
9 do that.

10 So, Your Honor, I know I'm probably

11 belaboring the point, but I wanted to respond to
12 some of the things that Mr. Bauer said which of
13 course are not of record, but I think I've presented
14 our case and I'll rest at this point.

15 JUDGE DUKES: All right. Thank you
16 so much. Mr. Bauer, briefly back to you. I've got
17 of course your filed brief. And I have a copy of
18 the entire transcript, which of course is 587 pages,
19 but I've got it right here. And I've looked at your
20 opening which is Pages 26 to 44 in the transcript.
21 I've looked at your closing which is Pages 569 to
22 571 in the transcript. Both of those I think we've
23 established at this point were not under oath.

24 What -- I think we've already established
25 it's undisputed but that you didn't take the stand

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1 and put on a case. I think you agree with that and
2 have acknowledged that. I note in your opening that
3 you continually say I would show. I will -- I
4 think -- I don't know how -- I didn't count how many
5 times, but I will show this, I will show that in the
6 case that you more or less in opening sort of
7 promised the Board that you would put on, but then

8 it just never happened I guess.

9 I wanted to ask you that between -- other
10 than the Page 26 to 44 opening and the page -- I
11 think I'm getting these pages right. Feel free to
12 correct me if I'm wrong. The 569 to 571 closing,
13 what else in there specifically did you want me to
14 consider with regard to this appeal?

15 MR. BAUER: Yes, sir. Just really
16 just four items here that are --

17 JUDGE DUKES: Page and line numbers
18 if you've got it.

19 MR. BAUER: Oh, I'm sorry. No, I
20 don't have page and line numbers. No, sir.

21 JUDGE DUKES: Okay. There is not
22 anything specific other than what you had already
23 referenced which was the opening that I had -- 26 to
24 I think it's 44?

25 MR. BAUER: Correct.

39

1 JUDGE DUKES: And the closing, 569 to
2 571, there is nothing in the transcript other than
3 those two things that you wanted me to consider; is

4 that correct.

5 MR. BAUER: No, sir.

6 JUDGE DUKES: All right. Anything
7 else?

8 MR. DUFF: No, Your Honor.

9 MR. BAUER: I'm sorry.

10 JUDGE DUKES: Well, go ahead.

11 MR. BAUER: I just wanted to just
12 quickly just for the record just respond to just a
13 couple of items that he --

14 JUDGE DUKES: Go ahead, sir.

15 MR. BAUER: Thank you, sir. I just
16 wanted to make the point that when he's referring to
17 the incident of the child in his pajamas outside
18 which is -- a teacher saw and apparently it was
19 considered the first incident of my lack of
20 supervision or negligence.

21 I just wanted to point out that this
22 document that was written by the assistant principal
23 was not written as a reprimand. It was written as
24 a -- just a documentation of an investigation. And
25 I did sign for it. And it states on there that --

1 it doesn't mean you agree with it. It just means
2 that you are getting a copying. You are signing it.
3 You are getting a copy.

4 It basically doesn't say it's going into
5 your personnel file. It just says that we agree to
6 disagree because I -- I told her the child had done
7 nothing wrong. He was doing what I told him. And I
8 upset her because I was defending the child in front
9 of him after she was scolding him harshly, but the
10 main point I'm saying is this did not go into my
11 personnel file until February 6th. It was not a
12 reprimand until one day after the pool event. That
13 is when it became a reprimand. And I believe it's
14 three months. It took three months for it to get to
15 Human Resources.

16 So I'm just trying to make the point that
17 it really was not a reprimand and it is not written
18 that way, but it became one after this pool event to
19 I think show a pattern of negligence.

20 Regarding Dr. Rosenbalm-Bloom's inadequate
21 evaluation, I just wonder if they found it
22 inadequate why no one contacted her. No one called
23 her, anything. I would think they would just say

24 hay, this isn't really what we were looking for.

25 Could you tell us about his mental state or

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1 something like that. And they never did that, so

2 that just makes me curious.

3 He brought up the naked old man incident.

4 I just want to correct one thing. There was

5 something about a naked old man in the locker room,

6 but he said that the same child who was involved in

7 the February 5th incident, he says it was the same

8 child that saw this naked old man. That is

9 incorrect. This was actually a third grade child

10 who told his parents that there was an old naked

11 hairy man dressing in the locker room with them.

12 And he thought it was kind of funny.

13 And the parents understandably were

14 concerned. They were under the impression that

15 adults were not supposed to be in there dressing

16 with them, which is probably -- I mean, if I'm a

17 parent -- was a parent I would probably be

18 concerned, too, but it was a public facility and I

19 had parents there with me including the P.T.A.

20 president with me there as volunteers. So we were
21 always in that area.

22 And not one boy ever complained about it.

23 It was just this one boy that went home and told his
24 parents. And I got written statements from those
25 two parents, including the P.T.A. president stating

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1 Mr. Bauer -- I've got it here with me today, but
2 it's not good for the evidence because it was not
3 admitted or I did not submit it, but actually I was
4 going to attempt to do that until a motion in limine
5 was suddenly sprung up out of the blue, 23 hours
6 before the hearing, stating that I probably would
7 not be able to get that stuff in there.

8 And then when I attempted to get this
9 stuff in there it was always rejected because -- I
10 don't even remember why, but I have statements
11 stating that this never happened.

12 And finally Dr. Bloom,
13 Dr. Rosenbalm-Bloom, he made a statement that I
14 could have called her as a witness. Yes, that might
15 have been good. Unfortunately, on March 18th,
16 Dr. Folly and Mr. Williams objected to her

17 testifying. And the reason for that is because her
18 husband, who she donated a kidney to by the way a
19 few years earlier, her husband developed some
20 complications and was going to miss her deposition
21 on March the 26th I believe it was suppose to be of
22 2015. It was an emergency and she had to get to
23 Emory, I believe, Atlanta.

24 So she was not going to be available for a
25 deposition. The deadline for discovery was, you

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1 know, basically over by the time she would be able
2 to get back. And nobody wanted to just delay this
3 thing. So we just wanted to go ahead and get this
4 thing going, I mean get it over with because the
5 next month was the hearing. And we didn't know when
6 we were going to get her deposition.

7 So they objected to me calling her as a
8 witness because she -- we weren't going to be able
9 to do a deposition. And Ms. Martel at the time and
10 then a few weeks later me agreed. I at that point
11 didn't see -- I mean there is her own words. I
12 didn't see any benefit in me calling her as a

13 witness. So I agreed.

14 And that is basically it. So I believe
15 that is all I have as far as the response to Mr.

16 Duff. Thank you.

17 JUDGE DUKES: Thank you. All right.

18 Well, I'll look over these things. Mr. Bauer, you
19 probably know as you probably gathered since sort of
20 the beginning of this case it was probably incumbent
21 upon you, and I understand you are not a
22 professional, but to put on some sort of a case.

23 And I've heard you tell the story of what
24 happened several times. And I don't want to regret
25 not putting it on too much, but I mean I could see

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1 how reasonable minds in some situations may or may
2 not have differed on this, but without the tools to
3 do it it's not just the substantial evidence, the
4 only evidence was that in favor of the School Board.

5 And so from an appellate standpoint I
6 almost don't have any choice. I mean there is
7 simply -- of course there was substantial evidence.
8 There was no contrary evidence. And so, you know,
9 I'm not going to write up a written order today or

10 request one necessarily today, but I'll be honest
11 with you that is probably the direction I'm leaning
12 because I know this case a little better than
13 ordinarily I would know it because of our pretrial
14 motions. And I've had an opportunity to look
15 through the transcript. I've, of course, looked at
16 the excerpts that you asked me to look at.

17 And based on the undisputed facts that you
18 didn't put a case on, and, again, no one expected
19 you to be an attorney, but unfortunately, of course,
20 you had already consulted with at least two
21 attorneys if not hired them and understood the
22 import of this.

23 And so I think what I will do -- I tell
24 you what I actually will do is I'll ask the School
25 Board's counsel to draft an order for me that I will

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1 not execute yet until I look at it and look over a
2 few things affirming the decision of the School
3 Board.

4 And I'll take a look at a couple of
5 things. I'll read the opening and closing again and

6 look at some of the thing that you all have asked me
7 to look at, but, realistically, I don't want you to
8 walk out of here, Mr. Bauer, with the thought
9 that -- the most likely, 99.9 percent chance I am
10 most likely going to affirm that.

11 And I do wish you the best of luck. You
12 are obviously passionate about what you believe in
13 and teaching children. And I am sure that you will
14 find your place if not in the Beaufort County School
15 District, but somewhere to continue on with your
16 chosen profession.

17 MR. BAUER: Okay. Fair enough.

18 JUDGE DUKES: Anything else for this
19 record?

20 MR. DUFF: Nothing from us, Your
21 Honor.

22 MR. BAUER: Thank you. Appreciate
23 it.

24 (Whereupon, the hearing was concluded
25 at 10:04 a.m.)

3

4 I, Deborah S. Thomas, Certified Verbatim
Reporter and Notary Public in and for the State of
5 South Carolina, do hereby certify that I reported
the hearing of Bauer vs. Beaufort County, on the 4th
6 day of March, 2016: and that the foregoing 45 pages
constitute a true and correct transcription of the
7 said hearing.

8

9 I further certify that I am neither
attorney nor counsel for, nor related to or employed
10 by, any of the parties connected with this action,
nor am I financially interested in said cause.

11

12 I further certify that the original of
said transcript shall be hereafter delivered to
13 Mr. John Bauer, 109 Ashton Hill Drive, Columbia,
South Carolina 29229.

14

15

In witness whereof I set my hand and seal
16 this 18th day of March, 2016.

17

18

19

20 Deborah S. Thomas, CVRM
My Commission and Notary Public for the
expires 1/4/18 State of South Carolina

21

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

JEFFREY C. MOSS, Ed.D.,)
)
Petitioner,)
-versus-)
JOHN ALDEN BAUER, III,)
Respondent.)
_____)

S.C. Code of Laws 59-25-470
Hearing

Hearing before the Beaufort County
School District Board of Trustees held April 30th
through May 2nd, 2015, at the Main Offices of the
Beaufort County School District, 2900 Mink Point
Boulevard, Beaufort, South Carolina, commencing
at approximately 4:35 p.m.

Bettye Anderson & Associates

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Evva Anderson
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Pro Se Respondent

Also present: John Alden Bauer, Jr.
(Referred to herein as
"MR. JOHN BAUER")

Reported by: Matthew Hazen Anderson
Notary Public/Court Reporter

oOo

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Appearances

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** REPORTER'S NOTE **

All exhibits marked prior to going on the record.

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<u>Number</u>	<u>Description</u>
1	Documentation regarding 11/1/13 incident
2	Photographs of gym
3	Acknowledgment of receipt of documentation regarding 11/1/13 incident
4	IS-2, teacher expectations and accountability policy
5	HRS-4, staff conduct policy
6	SS-1, student goals and objectives policy
7	Email from Brockway to Walton 2/5/14
8	Email from Brockway to McAden 2/13/14
9	Email chain between Clendaniel and Bauer dated 1/28/14
10	Note from Clendaniel 2/4/14
11	Emails from Brammer to Bauer 2/5/14
12	Email from Clendaniel to McAden and Brockway dated 2/5/14
13	Email from Clendaniel to Bauer 2/5/14
14	Outlook invitation from Clendaniel to Bauer 2/5/14

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REPORTER'S INDEX TO PETITIONER'S EXHIBITS

<u>Number</u>	<u>Description</u>
15	Notes from Clendaniel following 2/5/14 conference with Bauer
16	Memo from Clendaniel to Bauer dated 2/5/14 with Bauer acknowledgment of receipt
17	Letter from McAden to Bauer 12/10/13
18	Email from McAden to Walton 2/6/14
19	Email from McAden to Walton 2/6/14 and 3/19/14
20	Email from McAden to Bauer 3/17/14
21	Email from McAden to Bauer 6/9/14
22	Master Scheduled 2013-14
23	Letter from Moss to Bauer 2/2/14 with contract
24	Email from Moss to Bauer and Walton 4/28/14 at 6:45 p.m.
25	Email from Moss to Bauer 4/28/14 at 8:24 p.m.
26	Email from Bauer to Moss 4/28/14 at 8:31 p.m.
27	Email from Moss to Bauer 4/28/14 at 8:48 p.m.
28	Letter from McMaster to Walton 5/21/14
29	Email from Moss to Bauer 5/22/14 at 9:07 a.m.
30	Email from Moss to Bauer 5/22/14 at 3:07 p.m.
31	Email from Bauer to Moss 5/22/14 at 4:35 p.m.
32	Email from Moss to Bauer 5/22/14 at 4:54 p.m.

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Number	Description
33	Email from Bauer to Moss 5/25/14
34	Email from Bauer to McAden 5/27/14
35	Email from Moss to Bauer 5/28/14 at 5:29 p.m.
36	Email from Bauer to Moss 5/28/14 at 6:47 p.m.
37	Email from Moss to Bauer 5/28/14
38	Email from Bauer to Moss 5/28/14 at 7:22 p.m.
39	Email from Bauer to Moss 5/28/14 at 7:36 p.m.
40	Email from Moss to Bauer 5/29/14
41	Letter from Moss to Bauer 6/6/14

Number	Walton De Bene Esse
1	IS-2, teacher expectations and accountability policy
2	Roll book
3	Letter from Walton to Bauer 2/7/14
4	Email from Walton to Bauer 3/25/14
5	Email from Walton to Bauer 4/1/14
6	Letters from Dr. Rosenbaum-Bloom to Bauer 3/27 and 3/28 of 2014

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Number	Walton De Bene Esse
7	HRS-16, staff leaves and absences
8	Email from Bauer to Walton 4/24/14
9	Email string between Walton, Bauer, and Moss 4/28/14
10	Letter from Walton to Bauer 4/29/14
11	Email from Walton to Bauer 5/8/14
12	Letter from Walton to Bauer 5/29/14

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REPORTER'S INDEX TO RESPONDENT'S EXHIBITS

<u>Number</u>	<u>Description</u>
2	Clendaniel summary dated 2/4/14 with attached email
19	11/1/13 acknowledgment of receipt of document
19-A	11/1/13 Brockway documentation of incident
42-A	Printout of SC Code 59-25-430 to 59-25-530
45	Printout of McAden letter dated 12/10/13
47	Rosenbaum-Bloom's letter dated 3/28/14
49	Email from Bauer to Walton & Moss dated 4/30
51	HRS-16, Staff Leaves and Absences
59	Printout of Brown v. James decision
94	Timeline of events and emails between Walton and Bauer concerning Rosenbaum-Bloom
98	Letter from Walton to Bauer dated 5/29/14
118	Email from Thune to Bauer dated 12/12/14
121	Email from McAden to Bauer dated 2/4/14
121-P	Collection of emails between McAden and Bauer
148	Collection of testimonials
170	Email string ending 9/18/14 at 2:06 p.m. between Bauer and L. Arnold at Island Rec Center
225	Document entitled "Assumed Charges" with attached emails from Moss to Bauer

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REPORTER'S INDEX TO RESPONDENT'S EXHIBITS

<u>Number</u>	<u>Description</u>
262	Collection of emails concerning cameras
265	Collection of emails concerning the Bauer truck
266	Collection of emails concerning radio transmissions
267	Printout of gym work orders
269	String of correspondence between Bauer and Walton, ending 4/2/15, concerning benefits
272	Collection of emails concerning substitute teachers
275	Certified mail receipt of shipment to Walton postmarked 4/3/15
276	Printout of job posting for PE position entitled "Job Description"
S-1	Supplemental exhibit: email from Bauer to Clendaniel, Owen, and McAden 5/15/13

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Thursday, April 30, 2015

4:35 p.m.

SCHOOL BOARD HEARING

CHAIRMAN EVANS: Good afternoon, everybody. I call this meeting of the Beaufort County Board of Education to order. We need a motion to approve the agenda.

MR. PAYNE: So moved.

MR. CAMPBELL: Seconded.

CHAIRMAN EVANS: Moved by Mr. Payne, seconded by Mr. Campbell. Do we have any discussion?

THE BOARD: (No response.)

CHAIRMAN EVANS: All those in favor?

THE BOARD: (Members indicate.)

CHAIRMAN EVANS: Eight-oh. Thank you. Would you please stand for the Pledge of Allegiance? Then we'll have an invocation by Mr. Rivers.

(WHEREUPON, the Pledge of Allegiance and invocation were held.)

CHAIRMAN EVANS: The media has been notified about this special-called meeting, and with that, I've got an opening statement.

Good afternoon. This is Thursday, April the 30th, at approximately 4:40 p.m. My name is Bill Evans. I am Chairman of the Board of Trustees of Beaufort County School District. I would like to make the following statement.

Opening
Preliminary Statement
by Chairman Evans

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1 As Board Chair, I will serve on behalf of the
2 Board of Trustees as the presiding officer in this hearing,
3 subject, as necessary, to further review and decision by a
4 majority of the Board members present. This matter is
5 entitled Jeffrey C. Moss, complainant, versus John Alden
6 Bauer III, respondent. At the request of the respondent,
7 it is our understanding that these proceedings are open to
8 the public. Is that correct, Mr. Bauer?

9 MR. BAUER: Yes, sir.

10 CHAIRMAN EVANS: In addition to the Board members
11 present, I would like to identify for the record the other
12 participants who are present. Dr. Moss, superintendent, is
13 present and is represented by Ms. Shirley Fawley and Mr.
14 Vernie Williams of the firm of Childs & Halligan.

15 The respondent is Mr. Alden Bauer. Mr. Bauer is
16 representing himself in this hearing. He will be assisted
17 by his father, Mr. John Bauer, consistent with what I
18 understand to be the parties' agreement concerning that
19 assistance, which, as I understand it, is limited to
20 assistance with documents and for brief and limited
21 consultation, but Mr. Alden Bauer, and not Mr. John Bauer,
22 will be conducting all questioning of witnesses.

23 Mr. David Duff of the firm of Duff, White &
24 Turner is serving as advice counsel to the Board of
25 Trustees. Mr. Drew Davis, general counsel to the school

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Preliminary Statement
by Chairman Evans

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1 district, will observe the proceedings, including the
2 Board's deliberation, but will not be advising the Board in
3 any matter concerning this hearing.

4 This hearing is being conducted under the South
5 Carolina Teacher Employment and Dismissal Act. The case on
6 behalf of the petitioner, Dr. Moss, will be presented
7 first, by and through his counsel, followed by the case on
8 behalf of the respondent, Mr. Bauer, presenting himself.
9 Each side, of course, has the right to cross-examine any
10 witness presented. It is our understanding that the
11 testimony of one witness will be presented by the playing
12 of a video deposition taken earlier. All witnesses other
13 than the parties themselves will be sequestered outside the
14 hearing room until they are called to give their testimony.

15 Rules of procedure and evidence applicable to an
16 administrative hearing will be followed. Objections to the
17 introduction of evidence may be made at the appropriate
18 time, and rulings by me or the Board will be made regarding
19 those objections.

20 It is my further understanding that parties may
21 wish to raise and have the Board rule upon objections to
22 certain proposed exhibits prior to the beginning of the
23 evidence presentation. Counsel or a party should be
24 prepared to present their arguments for and against the
25 introduction of such exhibits. Mr. Duff may assist the

1 Board in making any rulings concerning those objections and
2 advising me and the Board on all procedural matters that
3 may arise during these proceedings.

4 At the outset of the hearing, each party will be
5 permitted to make an opening statement to the Board. At
6 the conclusion of the evidence presentation, counsel or the
7 party also will be permitted to make closing arguments or
8 summations.

9 I ask at this time that all witnesses other than
10 the parties themselves leave the hearing room. I think
11 that's the case. We don't have any witnesses in the room
12 at this time?

13 GENERAL PUBLIC: (No response.)

14 CHAIRMAN EVANS: Are there any questions or other
15 matters to come before the Board before we begin the
16 opening statements?

17 MR. WILLIAMS: Mr. Chair, there was one
18 preliminary matter that the administration wanted to
19 discuss prior to --

20 CHAIRMAN EVANS: Mr. Williams, if you'd come to
21 the microphone, please?

22 MR. WILLIAMS: Thank you. Mr. Chair, members of
23 the Board, Mr. Duff, on the administration's behalf, we
24 submitted to Mr. Duff what's referred to as a "motion in
25 limine," and we are raising it at this point, Mr. Chair,

1 because sometimes parties in their opening statements will
2 refer to certain pieces of evidence. If that was going to
3 be the case, there is one teach -- one document that was
4 being offered that we had an objection to, and so we didn't
5 want there to be a reference to it in opening statements
6 without a ruling by the Board regarding its admissibility.
7 There are other documents, as well, but we think it
8 probably best to object to those as they come up.

9 The specific document that we're talking about
10 relates to a misdemeanor offense on a person's record that
11 we assume is going to be offered for purposes of what's
12 referred to as "impeaching the witness." So, in other
13 words, the witness testifies, and then you ask them, you
14 know, "Were you convicted of this misdemeanor offense?"

15 The rules of evidence are fairly strict on the
16 types of offenses you can ask questions of a witnesses
17 about. It basically says the offense needs to be something
18 that's punishable by at least a year, or something that
19 deals with honesty, and it needs to be within a -- within a
20 ten-year period of time. The particular offense we're
21 talking about is a traffic-related offense for which the
22 punishment is a maximum of 30 days, and the offense
23 occurred in 2000, which was about 15 years ago.

24 So, while there's some disagreement about whether
25 or not the rules of evidence strictly apply in these type

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1 proceedings, we think whether they strictly apply or not,
2 just the general principles are good principles to abide
3 by, and the principles there are, if it's in a minor
4 offense and has nothing to do with honesty and it's old,
5 then that's not the kind of offense that a witness should
6 be questioned about as it relates to their honesty on the
7 witness stand.

8 And so, again, there are other exhibits to which
9 we would object, and we would -- if it's the Board's
10 desire, we can object as those exhibits are sought to be
11 introduced. But as it relates to the record of the
12 misdemeanor offense, we would want to make our objection to
13 that be known for reasons that I just stated. I'd be happy
14 to respond to any questions about that.

15 CHAIRMAN EVANS: Okay. Go ahead.

16 MR. DUFF: Mr. Bauer, you heard that the motion
17 in limine has now been limited to one item. You've heard
18 Mr. Williams discuss that one item. Do you have a response
19 to the complainant's request that that item be excluded and
20 that any ref -- I don't know who the witness is, but that
21 any -- and if you're going to respond, Mr. Bauer, do not
22 use the name of this witness. So do you have a response to
23 the request to exclude some document that apparently
24 characterizes or represents a dated misdemeanor traffic
25 offense?

1 MR. BAUER: If you could give me just one minute
2 to look over something, I'd appreciate it.

3 CHAIRMAN EVANS: Certainly. Go right ahead.

4 MR. BAUER: (Examines file.) Yes, as far as --

5 MR. DUFF: Mr. Bauer, again, please do not use
6 the name of the witness.

7 MR. BAUER: I will not.

8 MR. DUFF: Okay.

9 MR. BAUER: As far as the motion in limine, there
10 were some other items that they objected to. Are they now
11 no longer objecting to those items? Or are you saying that
12 you'll bring them up at the time?

13 MR. WILLIAMS: I'm saying we're objecting to
14 those items, but because of the number of documents
15 involved, in terms of the ease of proceeding, it might be
16 most efficient just to object as those documents are sought
17 to be introduced.

18 MR. BAUER: Should I make a defense of those
19 documents that he will object to now, or should I --

20 CHAIRMAN EVANS: No, the proper thing, Mr. Bauer,
21 is, as he objects to them, we will then give you the
22 opportunity --

23 MR. BAUER: All right.

24 CHAIRMAN EVANS: -- at any of those objections to
25 bring up your arguments that oppose his objection.

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1 MR. BAUER: Okay.

2 CHAIRMAN EVANS: But the subject at hand -- and,
3 again, I would remind you, as Mr. Duff asked, to please
4 make sure you don't mention the name --

5 MR. BAUER: I understand.

6 CHAIRMAN EVANS: -- whether this particular issue
7 is of relevance to the hearing.

8 MR. BAUER: I believe with this, if it's the one
9 I'm thinking of, I think perjury is possibly grounds for a
10 reversal in this matter, but I'm not really sure exactly
11 what -- which document they're referring to. So I guess,
12 when it comes up, we can decide then.

13 CHAIRMAN EVANS: Okay. My understanding is that
14 they are referring specifically to a piece that you have to
15 offer on a traffic citation that took place 15 years ago
16 with one of the witnesses and that that might have some
17 bearing on their ability to testify, and I guess I want to
18 hear from you about why you think that's relevant to the
19 case.

20 MR. BAUER: I think that perjury is grounds for
21 reversal. I'd like to hear an answer and to find out if
22 she's telling the truth. I think that's part of it,
23 telling the truth, as far as --

24 CHAIRMAN EVANS: The issue is the traffic
25 citation. To my knowledge, there was nothing of a

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1 fraudulent nature.

2 MR. BAUER: It's more than that. It's more than
3 an actual traffic violation.

4 MR. WILLIAMS: Well, just so Mr. Bauer knows, he
5 refers to it in his proposed exhibits to us as Exhibit 244
6 and 244-A, so we're all on the same page in terms of what
7 the -- what we're talking about, in terms of --

8 MR. JOHN BAUER: I can't hear him.

9 MR. WILLIAMS: In terms of what the offense is.

10 CHAIRMAN EVANS: Mr. Williams said that this
11 refers, he believes, to documents 244 and 244-A.

12 MR. WILLIAMS: Correct. Yes.

13 CHAIRMAN EVANS: Is that correct, Mr. Williams?

14 MR. WILLIAMS: Correct. In Mr. Bauer's proposed
15 exhibits, it's 244 and 244-A.

16 CHAIRMAN EVANS: And I guess the question that we
17 have is, are those the documents you're talking about, Mr.
18 Bauer?

19 MR. BAUER: I believe so. I can omit those.
20 That will -- that will be fine.

21 CHAIRMAN EVANS: Okay.

22 MR. BAUER: I'll be willing to omit them.

23 CHAIRMAN EVANS: Thank you. That will --

24 MR. BAUER: Okay.

25 CHAIRMAN EVANS: That will save us from making a

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1 ruling on it.

2 MR. WILLIAMS: And just so we're clear, we would
3 omit the documents, as well as any reference to the
4 substance contained in the documents?

5 CHAIRMAN EVANS: That's it, as we understand it,
6 and if it comes up, then I will -- I will rule it as
7 inadmissible at that time, because I think we have an
8 agreement now that the document is -- is taken out of any
9 discussion or evidence.

10 MR. WILLIAMS: Thank you.

11 MR. DUFF: Mr. Bauer, do you understand that,
12 that since the document has been excluded, any testimony
13 related to the document also cannot -- any questioning can
14 also not be asked?

15 MR. BAUER: I understand. Yes, sir.

16 MR. DUFF: Okay.

17 CHAIRMAN EVANS: Are there any other motions,
18 pre-hearing motions, that anyone would like to make, either
19 of the parties?

20 MR. WILLIAMS: None from the administration.

21 CHAIRMAN EVANS: Okay. Thank you, Mr. Williams.
22 Mr. Bauer, anything?

23 MR. BAUER: No. No, sir.

24 CHAIRMAN EVANS: Okay. If that is the case,
25 then, we will start with opening statements and go with the

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1 administration first, and then, Mr. Bauer, you'll have an
2 opportunity to comment.

3 MS. FAWLEY: Good afternoon. As the Board is
4 well aware, your superintendent has recommended that John
5 Alden Bauer, III, be dismissed from employment. The
6 purpose of an opening statement by each party is to provide
7 a brief explanation of the law that's applicable in this
8 case and to provide an overview of each party's situation.
9 Vernie Williams and I are here as Dr. Moss's legal
10 representatives, and on his behalf, we refer you to two
11 statutes.

12 The first is a general provision which states
13 that local boards of trustees have the power to employ and
14 to discharge teachers whenever there are good and
15 sufficient reasons for doing so. The administration's
16 position is that, beginning today, you will hear
17 overwhelming evidence that Dr. Moss has good and sufficient
18 reasons for asking that Mr. Bauer be dismissed.

19 Second, the other statute applicable is one that
20 Mr. Evans mentioned in his opening remarks, and that is the
21 Teacher Employment and Dismissal Act. The statute at
22 reference is 59-25-430, which states that a teacher may be
23 dismissed at any time who fails to provide instruction in
24 accord with the directions of the superintendent or who
25 demonstrates an evident unfitness for teaching.

1 You will hear that Mr. Bauer failed to carry out
2 his instructional responsibilities up to the standards of
3 Dr. Moss and his administration, and you will also hear
4 that he demonstrated evident unfitness for teaching by his
5 misconduct. You will hear testimony that Mr. Bauer was
6 negligent in his supervision of elementary students while
7 acting as a PE teacher at Hilton Head Island Elementary
8 School, and you will hear that he was insubordinate, both
9 through his comments and his actions, when he refused to
10 comply with the reasonable directives of the chief human
11 resources officer and of the superintendent.

12 The evidence will show that the Hilton Head
13 Island Elementary School administration had a very
14 reasonable expectation of its teachers, including Mr.
15 Bauer, that at all times, they should be aware of the
16 students who are present in their classroom, and at all
17 times, they should supervise and see those children.

18 Assistant principal Michelle Brockway will share
19 how, in November of 2013, she investigated a report that a
20 child was hiding outside the gymnasium without any apparent
21 supervision. Ms. Brockway will explain that, when she went
22 down to the gym to investigate, Mr. Bauer was unaware that
23 a child had been missing or hiding or outside of his line
24 of sight. When this assistant principal was able to
25 identify which child the other teacher had seen hiding as

1 she looked out her window and to speak with him about what
2 happened, she quickly realized that it would have been
3 impossible for Mr. Bauer to monitor the second-grade class
4 when they were at stations both inside and outside the gym
5 and on the opposite side of the gym, on the other side of a
6 wall.

7 You will also learn of Ms. Brockway's concern
8 with Mr. Bauer's attitude and with his violation of school
9 policy by leaving the exterior doors to the gym open --
10 which, as you well know, is a safety concern -- and his
11 failure to supervise all of the children in his class;
12 again, a violation of district policy.

13 Next you will hear from Cy Clendaniel, another
14 assistant principal, and he will testify as to his
15 interactions with Mr. Bauer in February 2014, and he has
16 continued concerns with Mr. Bauer's attitude, with his poor
17 judgment, and failure to supervise properly.

18 Mr. Clendaniel will share with the Board about
19 the complaint of some parents regarding their third-grade
20 child, along with some his classmates, being exposed to an
21 unclothed, male adult while changing clothes after swimming
22 class. Not only were the parents upset about the incident,
23 but they expressed great concern about what they described
24 as Mr. Bauer's flippant attitude when the mother reported
25 the concerns.

1 Assistant principal Clendaniel will also describe
2 another lack-of-supervision issue, and that was when he had
3 to investigate why Mr. Bauer left behind, after swimming
4 class, an 11-year-old child with a 504 plan at the Island
5 Rec Center for 30 minutes, unsupervised. Thankfully, the
6 child finally worked up the courage to approach an adult
7 and tell an adult what happened, and the Island Rec Center
8 employee brought him back to Hilton Head Island Elementary.

9 Mr. Clendaniel will also testify as to Mr.
10 Bauer's poor attitude when the matter was brought to his
11 attention and will explain, quite frankly, his shock by Mr.
12 Bauer's continued complaint that the situation was
13 ridiculous and that he had made a simple little mistake
14 which was being blown out of proportion.

15 Because of Mr. Bauer's lack of understanding and
16 judgment, as well as his defensiveness, you will hear from
17 Principal Jill McAden of her involvement. Ms. McAden will
18 testify as to how she attempted to permit Mr. Bauer to
19 explain his perspective on the issues and then how she
20 decided to ask for assistance from the chief human
21 resources officer, Alice Walton, because Mr. Bauer did not
22 seem to understand the seriousness of what he had done and
23 to help obtain assurance that, should he be allowed to
24 return to his duties as a physical education teacher, such
25 a situation would never arise in the future.

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**Opening Statement
by Fawley**

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1 You will also hear from this principal as to her
2 dismay and her shock at the manner in which Mr. Bauer
3 reacted to both Ms. Walton's and her concerns. He
4 continued to express that the administration was making too
5 big a deal of him leaving a child at an off-campus
6 facility.

7 Next, Ms. Walton will testify as to her direct
8 interactions with Mr. Bauer and her grave concern with his
9 poor judgment and confusion about the expectation of the
10 district administration. Unfortunately, as Ms. Bauer (sic)
11 continued to interact with Mr. Bauer -- as Ms. Walton
12 continued to interact with Mr. Bauer, he became
13 increasingly disrespectful and insubordinate. Despite
14 numerous efforts to have Mr. Bauer provide a second medical
15 opinion regarding his fitness for teaching, not only did he
16 refuse to cooperate, but he refused on multiple occasions
17 to come in and meet with Ms. Walton.

18 Ms. Walton will describe how this personnel
19 matter came to the attention of the superintendent, Jeff
20 Moss, and despite Jeff Moss's direct attempts to make
21 certain Mr. Bauer understood that he expects teachers to
22 adhere to the reasonable instructions of their supervisors
23 which were in accord with district policy -- Mr. Bauer was
24 to submit the second medical opinion, he was to meet with
25 Ms. Walton -- Mr. Bauer refused.

1 You will hear from Dr. Moss as to how Mr. Bauer
2 showed a propensity for demanding that things be done his
3 way or no way. Your superintendent will explain that,
4 after providing this teacher many opportunities to
5 cooperate, he finally informed Mr. Bauer that, if he failed
6 to show up to the meeting with Ms. Walton, per her
7 instructions, it would be considered insubordination. You
8 will hear testimony that Mr. Bauer failed again to attend
9 the conference.

10 As a result of Mr. Bauer's negligent supervision
11 of children and his insubordinate conduct, all of which are
12 in violation of district policies and of the Board's and
13 superintendent's expectations for professional staff, Dr.
14 Moss recommended to you that Mr. Bauer be dismissed from
15 employment.

16 Lastly, over the course of the hearing, you may
17 hear Mr. Bauer ask questions about other employees. We
18 request that the Board always keep in mind that this
19 hearing is solely about Mr. Bauer and no one else.

20 In short, under South Carolina statutes, the
21 burden is on the superintendent to show good and sufficient
22 reasons for recommending the dismissal of a teacher, and
23 Dr. Moss accepts that burden and is prepared to meet it.
24 Once he has met it, the superintendent respectfully asks
25 that this Board affirm the determination and dismiss Mr.

1 Bauer from employment. Thank you.

2 CHAIRMAN EVANS: Mr. Bauer?

3 MR. BAUER: Yes. What I have just heard, I would
4 fire that teacher, too, but I am not that teacher. In the
5 past few weeks, we have had many depositions. The
6 transcripts will show administration from Hilton Head
7 Island Elementary and from the district describe me as,
8 quote, an excellent teacher, good coach, excellent mentor,
9 friendly, courteous, and quick to volunteer. Again the
10 transcripts will show at the administration said in their
11 depositions they are willing to work with me again. Ms.
12 Walton said in her deposition that I had a reputation for
13 being an excellent teacher. I think that means if you
14 decide to return me to my job that it should not cause a
15 disruption. That was the good news.

16 I'm now pro se. So I can legitimately claim to
17 be an excellent teacher, but I am not a lawyer, excellent
18 or otherwise. How I wish that I had expert representation
19 at the moment, but fate decreed otherwise, and I must act
20 as my own attorney for this hearing, something which is
21 called "pro se." I just have to have faith that, in spite
22 of my legal knowledge, the merits will win the day. As
23 much as I dislike the role, I have worked hard to prepare.

24 I ask the Chairman to give me some freedom to
25 pursue the truth in my opening, since legal formalism can

1 be used as a disruptive weapon. I only want the truth to
2 be heard, and I ask you to give me a fair chance.

3 You should have notebooks in front of you, but I
4 do not see them. Do we have the notebooks? You will be
5 provided notebooks of evidence. These notebooks are a
6 little bit more awkward to manipulate than I had hoped. I
7 have divided them, but it's not ideal, in my opinion. In
8 the notebook is a list of likely files to be used for each
9 witness. That way, you can find -- or that way, you can
10 find your way a little easier, I hope.

11 On top of the notebooks is an introduction to the
12 files. That will reveal what I think are compelling
13 considerations for due process as they relate to the merits
14 that will be raised, and there will be more due process in
15 a moment.

16 But I'd like to give you a very brief resume to
17 introduce myself. I have a degree in business
18 administration cum laude with honors. I also have a
19 master's of arts in teaching degree cum laude with honors.
20 I was National Board certified, an achievement attained by
21 10 percent of the teaching profession. I accomplished
22 National Board certification on my first try, a reputed
23 rare accomplishment. I have taught seventeen years, and
24 I've been at Hilton Head Elementary for twelve and a half
25 years.

1 I will submit evidence of years of administrative
2 praise, up to and including the week that I was put on
3 leave. You will see lengthy testimonials from parents that
4 Dr. Moss dismissed as being solicited. When you see the
5 testimonials, you will conclude that writing 600 to 1,000
6 words is -- when you see the testimonials, will you
7 conclude that writing 600 to 1,000 words is spontaneous and
8 sincere?

9 Now, this is how to read my words. You will see
10 my words used against me, but words can be distorted by the
11 reading. For example, here are two of my words: please
12 reschedule. They will call it a demand, as you probably
13 heard just previously, as an example. But I meant to
14 please reschedule, as in pleading. If you want to see my
15 style while under great stress, take a look at the emails
16 in file 146, which will be in your notebooks.

17 Some strange things are about to happen. I will
18 show you that I had concerns about my gym and how the gym
19 was being misused before and after school. I will show how
20 I wrote about it and that, one day before I was sent home
21 on administrative leave, I sent pictures to the
22 administration, showing the mess and the vandalism. I will
23 show how, after I was sent home, the administration also
24 took pictures, but now blame me. So we will have a dueling
25 gym mess.

1 I will demonstrate through evidence that some of
2 the evidence that the opposing counsel will use is
3 misrepresented. Pay particular attention to what they
4 claim is my class record book.

5 But we are here for a reason, and it all started
6 with the pool event of Wednesday, February 5th, 2014.
7 There are charges against me, and I wonder if the School
8 Board has even seen the exact charges. Many of the facts
9 in this catalyst event are not in dispute.

10 Here's what you will learn about the pool event.
11 The charges are negligence and insubordination. Alden
12 Bauer, a PE teacher at Hilton Head Island Elementary,
13 escorted his fifth-grade class on Wednesday, February 5th,
14 2014, at 12:00 p.m., to the pool at the nearby Island
15 Recreation Center. Mr. Bauer arrived to the rec center --
16 and forgive me for speaking in third person, but it's kind
17 of how I wrote it.

18 Mr. Bauer arrived to the rec center with 23
19 students. I will show that Mr. Bauer conducted a formal
20 attendance, calling -- a call-out using PowerSchool
21 printouts, as students removed outer-layer clothing while
22 on the bleachers. Twenty-three students. The student in
23 question was marked absent. I will show that a student,
24 who happens to be the student in question, that was, quote,
25 left at the rec center, arrived to school at some time

1 during the day with an unexcused tardy.

2 I will show that a changed practice of the school
3 to allow tardy students to arrive late to a swimming class,
4 which is a safety-intense class, where the teacher may be
5 intent on a Red Cross checklist or some other demanding
6 procedure. I will show that the claim of a changed
7 practice or policy was never challenged by any of the
8 administration.

9 Mr. Bauer was in the pool and did not enter the
10 student in his roll book.

11 I will show that, before the class returned to
12 the school, Mr. Bauer conducted his protocol of checking
13 the locker rooms. A female student went through the
14 women's area, and Mr. Bauer went through and called out in
15 the men's locker room. I will show that there was no
16 answer and no one appeared in the locker room.

17 I will show that the tardy student then avoided
18 rejoining his class. I will show that he was not
19 questioned as to if he was hiding, where he was hiding, nor
20 why, so his motives are unknown.

21 I will show that Mr. Bauer returned with 23
22 students, the exact matching number he took to the pool. I
23 will show that surveillance footage has never been viewed,
24 nor has the administration asked for it. I will show that
25 the missing student's classroom teacher, who had not taken

1 roll that morning and did not submit an attendance report,
2 did not notice that, when I returned to class, her student
3 was missing. She was not reprimanded.

4 I will show that the superintendent charged
5 insubordination based on the pool event. Mr. Clendaniel,
6 who documented the event, testified there was no
7 insubordination, and that was the catalyst event to this
8 whole deal here. I will show through evidence that Ms.
9 Walton then accused me of leaving the child willfully, or
10 on purpose. I will show through evidence that the willful
11 part was never charged. As you will see, not being charged
12 does not matter. I do not believe that anyone believes
13 that I left the child behind on purpose, but because Ms.
14 Walton claims that it was a willful act, you will see that
15 it opened many avenues of legal loopholes and punishments.

16 As a theory in this case, I wish to advance the
17 thought that the administration reacted incorrectly. To do
18 that, I will ask you what you, as an imagined principal,
19 would have done. Would you have sat the teacher down and
20 explored what had happened? Would you have learned that,
21 at one time, the policy was that tardy students could not
22 come late to a safety-intense class? In the discussion,
23 would you have tried to determine where the student had
24 hidden? If there were no easy answers, would you have
25 checked surveillance footage?

1 In the end, would you have expressed concern for
2 the event and told the teacher that, due to his 17 years of
3 excellent service in the profession and 12 years of
4 exemplary service to Hilton Head Island Elementary, you
5 would give him a warning and return him to class? Would
6 you consider exploring the policy and how it may have
7 contributed to the event? Was the administrative reaction
8 a group-think, an overreaction? I thought it was an
9 overreaction.

10 Evidence of overreaction. Do you remember the
11 fourth grader at Hilton Head Island Elementary who was
12 suspended for having a broken pencil sharpener that made
13 national news -- and this was at Hilton Head Island
14 Elementary -- or in North Carolina in 2010, under Dr. Moss,
15 when a young, intelligent soccer star lost her senior year
16 because she picked up her father's matching lunch satchel
17 that had a paring knife in it?

18 I will ask if I was targeted, with reasons for
19 thinking I was targeted. If targeted, why? Due to long
20 service, credentials, et cetera, my salary could hire two
21 first-year PE teachers, according to Beaufort salary
22 schedules. But why spend hundreds of thousands of dollars
23 on lawyers to save thousands from one salary? I will
24 provide evidence that Hilton Head Island Elementary will
25 combine classes to illegal sizes to avoid using

1 substitutes. Is that to save money, I wonder.

2 One explanation that will be offered is that
3 salaries and legal fees in some districts are separate
4 budgets. The attorneys' budget in some places come from an
5 insured trust fund, so no cap. Should that be public
6 knowledge? To explore the possibility, I will -- that I
7 could show you separate funds, I got the budgets from
8 Richland County School District II and Beaufort County. I
9 used Richland II because that is where I went to school.
10 Richland II has more schools, a smaller budget, spends less
11 per student, has more student -- and has more students on
12 the assisted lunch program. The Richland II budget is six
13 pages for 26,000 students, and the Beaufort budget -- by
14 the way, here they are -- just hold up -- this is Beaufort.
15 This is Richland II. Six pages, 168 pages. And that's
16 Ricland II, six pages for 26,000; Beaufort, 168 pages for a
17 hundred an -- I'm sorry, 21,000 students.

18 I was stunned when I read in their evidence
19 notebook, Dr. Fawley and Mr. Williams' evidence notebook,
20 that they intend to show that I had not taken the pool
21 event seriously, and I think I understand why they thought
22 I did not take it seriously. You will see that, after 17
23 years, I had left a child, and I felt like a storm cloud
24 surrounded me. I could not comprehend it. The documents
25 will show that I was looking for support, but did not get

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1 it, and I tried to defend myself. That is true. As you
2 will see, they accused me of being defensive, and I was
3 defensive. The tension made -- I'm sorry.

4 They also wrote that I was slouched in the chair
5 when I was speaking with them. That is not a normal
6 reaction for someone who feels remorse. They thought and
7 wrote that I was unremorseful. The truth is, I had extreme
8 remorse. I admitted my wrongdoing. I had left a student
9 behind. And that was not on purpose. As you will see,
10 they'll call it willful.

11 I'd like the Board to consider five things here.
12 There are really only five things for the Board to
13 consider: the four charges against me, and due process.

14 Charge number one, the first charge, was
15 negligence. A child was left behind. I was responsible
16 for that, and it bothered me a lot. It bothered me a lot.
17 Can one event be called persistent? Section 430 of the
18 Teacher Employment and Dismissal Act specifies persistent
19 negligence. For charge one, I can only pray for
20 forgiveness and plead that it was an isolated event.

21 The second charge was insubordination during the
22 pool event. Mr. Clendaniel, who wrote the pool
23 documentation, testified that there was no insubordination.
24 Those first two charges are what thrust this case forward.
25 I will show that, if you decide those two charges were not

1 egregious or willful, the case should end here.

2 The third charge was, you will request -- you
3 were requested to have an examination from a psychiatrist
4 and report back. You will see documentation that I
5 complied with that request in March. You will see a highly
6 positive evaluation. Ms. Walton rejected that evaluation
7 but gave no reason.

8 I will show that websites such as ada.gov, which
9 is part of the United States Department of Justice Civil
10 Rights Division, indicate that merely requesting a
11 psychiatric evaluation activates the American Disabilities
12 Act (sic). I will show that websites such as ada.gov
13 indicate that the ADA requires a choice of three unbiased
14 doctors. Also, I will show that I asked Ms. Walton and Dr.
15 Moss for clarification but got no response.

16 Sorry. (Retrieves water.) I'm not used to
17 talking this much.

18 After Ms. Walton required -- sorry. After Ms.
19 Walton required that I have a second evaluation, I will
20 show that I asked if I could have a choice of doctors. You
21 will see that Dr. Moss and Ms. Walton cited HRS-16 as the
22 authority for demanding a second psychiatric evaluation,
23 but they cited the sick leave section of HRS-16. I was not
24 on sick leave. I asked Ms. Walton and Dr. Moss for
25 clarification, received no response.

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1 If HRS-16's requirement is to go to a doctor --
2 singular, not plural -- why should they think that
3 additional evaluations were authorized? I will show that,
4 at Dr. Moss's deposition, he admitted that administrative
5 leave and sick leave are different.

6 And the fourth charge is a refusal to attend a
7 meeting scheduled for April 25th to discuss the psychiatric
8 report. The April 25th meeting was actually to have been
9 held on April 29th. They refused to tell me the purpose of
10 the meeting.

11 I will indicate that, after already having met
12 with Ms. Walton for four meetings, I was stressed by her
13 hostility. I think that you will see that it bothered me
14 that she took so much pleasure in my pain.

15 I wanted someone to witness that. I wanted to
16 have a witness. I will show the letter that ordered that I
17 was not allowed to approach parents or teachers to find a
18 witness, after they had told me I could have someone there
19 later on. You will see in Ms. Walton's testimony that,
20 even on camera while somewhat restrained, that her attitude
21 toward me seemed disrespectful.

22 I will indicate that it seems strange that, in
23 the United States of America, you cannot have an attorney
24 at a meeting where you anticipate being abused, threatened,
25 or fired. I will show that Mr. George McMaster, the

1 attorney who was assisting me at the time -- he was not my
2 attorney, I was pro se at the time, but he was assisting me
3 -- made himself available later that day, but Ms. Walton
4 refused to speak to him about rescheduling. He happened to
5 be in Rock Hill on a case at the time -- to drive all the
6 way down here that day.

7 Ms. Walton testified that she does not like
8 communicating by email, that she prefers to meet one on
9 one, without witnesses or a written record. Ms. Walton
10 frequently said and wrote and will testify that, if she was
11 paying me, I was to be on call. That was not an issue with
12 me. I only wanted a witness, especially one with legal
13 knowledge. I will show that, the night before the meeting,
14 Dr. Moss wrote that I could bring anyone I wanted, anyone I
15 wished. Was he unaware that Ms. Walton had said that I
16 could not bring anyone?

17 I will show that Dr. Moss wrote that the purpose
18 of the meeting was to find a time to return to work. I
19 will show that Ms. Walton said that reinstatement was not
20 the purpose of the meeting.

21 Due process. At the front of your notebooks is a
22 document called "Introduction to the Case for John Alden
23 Bauer, III" -- and I see you still don't have that, so
24 we'll skip this part.

25 The deadline. This hearing was to have been the

1 weekend of July the 4th. Compelling is the November 4th,
2 2014, decision in Charleston County School District -- I'm
3 sorry, is Charleston County School District versus Shana
4 Washington-Middleton, that the Teacher Employment &
5 Dismissal Act statutes guarantee continuing contract
6 teachers with specific rights, including, number one,
7 written notice of reasons for dismissal from the school
8 board; and number two, the right to a hearing; and number
9 three, procedural due process, including the right to be
10 heard with 15 days.

11 You will see that Dr. Fawley, on June 26th,
12 incorrectly wrote that I had waived the 15-day legal
13 deadline. I was willing to do that, but only to avoid the
14 holiday and only if requested. Informally would've been
15 fine, if they were worried about technicalities; but I was
16 willing to do that. Nothing will indicate that a delay was
17 ever suggested, informally or otherwise. You will see that
18 Dr. Moss, on July the 3rd, wrote that Mr. McMaster
19 requested a delay in my name. Mr. McMaster denies that.
20 Dr. Moss offered no evidence. I will show you evidence to
21 the contrary, though. When the district learned that I had
22 not agreed to an extension, why not have the hearing soon,
23 or with 15 days, or a month, or at least a discussion of
24 dates?

25 You will learn that I was acting pro se, and yet

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1 the attorneys would not consult with me. I will show that,
2 based on the imposed delay, a motion to reinstate was
3 submitted to me by the School Board on July the 7th, 2014.
4 I did not receive a response. I will show that, by October
5 21st, I was frustrated with no responses and again
6 petitioned the School Board. This petition asked to
7 restart the 15-day calendar.

8 I will show that the charges were not given by
9 the Board. They were written in prose form, everyday
10 language, in an email by Dr. Moss on May 29th. I will show
11 that his email -- in his email, Dr. Moss did not use the
12 word "charges." He used the word "bases." Dr. Moss's
13 attorney wrote on July the 22nd, "Neither the
14 superintendent nor you have the authority to establish the
15 Board's agenda." So why did the charges or bases come from
16 the superintendent and not the School Board?

17 Alice Walton, on May 29th -- informed me on May
18 29th in an email -- I'm sorry, not in an email -- in a
19 letter, that I was to be charged, no matter if I complied
20 with a June 2nd deadline, which you will hear more about
21 during the hearing. You'll also -- I will also show that
22 she said that Dr. Moss had already emailed the charges to
23 me. She said in her letter, "Once you present this
24 documentation, we will inform you of all the charges
25 against you." Contradictory.

1 On February 5th -- I will show that on February
2 5th, Mr. Bauer's personal belongings in his office were
3 confiscated. According to Amendment Four, the right of the
4 people to be secure in their papers and effects against
5 unreasonable seizures shall not be violated, and no warrant
6 shall issue -- and no warrant shall issue but upon probable
7 cause, particularly describing the place to be and the
8 things to be seized. Mr. Bauer was not allowed access to
9 his office files, which contained items for his defense.
10 My computer -- his -- his computer -- home computer, sorry,
11 was blocked from retrieving the entirety of his work emails
12 needed for his defense, delayed for 412 days, until I
13 finally got some emails for my defense.

14 I will show evidence that, beginning on August
15 11th, after 193 days of denying access to emails, the
16 district suddenly began supplying some emails, but only for
17 the past year; whereas, Mr. Bauer was required to defend
18 himself at the deposition for the preceding years. A
19 calendar will show that, if the hearing had been in July, I
20 would have had five months to prepare the evidence for my
21 defense.

22 I'm almost done. But I will show through
23 evidence that a majority of my school emails to be used for
24 my defense were withheld until March the 21st, 2015. So,
25 instead of five months, I had five weeks to prepare.

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1 Now, imagine this. Discovery ended on March
2 16th, 2015. On March 24th, 2015, eight days after the
3 discovery deadline, I received 1,018 emails that I had
4 asked for during discovery. That calendar will also show
5 that the emails arrived after 412 days, after my first need
6 for them, and they arrived too late to use in the
7 depositions.

8 This is a quote from districtadministration.com:
9 Failure to produce important email when prompted in the
10 discovery process, known legally as "e-discovery," could
11 mean an immediate loss of a case or a forced out-of-court
12 settlement.

13 You will see Ms. Walton's email informing me,
14 Alden Bauer, on June the 10th, 2014, that he could drive to
15 Beaufort and retrieve emails by making an appointment with
16 Ms. Lopatka. I contacted Ms. Lopatka on August the 3rd for
17 an appointment and got no response. You will hear Ms.
18 Walton's de bene esse testimony in the video where she says
19 that I had not contacted Ms. Lopatka soon enough, so access
20 was denied.

21 You will learn that I made a freedom of
22 information request on June the 18th, 2014. I received no
23 response. I will show you evidence that, by law, a
24 response is required within 15 working days. According to
25 one of my files, it will say no exact deadline is specified

1 by the law, but the law requires a timely response. When
2 the public body gets your FOIA request, it has 15 working
3 days to respond as to whether it will comply or claim an
4 exemption. I got neither.

5 You will hear about Brown vs. James. This is a
6 case very similar to mine, in Cherokee County, South
7 Carolina. Under this case, it was a due process issue. No
8 teacher shall be dismissed unless written notice specifying
9 the cause of dismissal is first given to the teacher by the
10 district board of trustees and an opportunity for a hearing
11 has been afforded the teacher.

12 I will show through evidence that the Board's
13 June the 5th meeting used the word "terminate." I will
14 show through evidence that Dr. Moss wrote on June the 16th,
15 "You are currently no longer an employee of the Beaufort
16 County School District." I will show through evidence that
17 the termination was ratified by the Board on September 2nd,
18 2014, and I will show through evidence that this
19 ratification was made public. I will show through evidence
20 that no opportunity for a hearing had been afforded.

21 I will show through evidence that the Cherokee
22 County School District made that same mistake, and it
23 resulted in the defeat for the district in Brown vs. James.
24 Specifically, in Brown vs. James, it stated, when an agency
25 has completed the process for reaching an initial decision

1 that has immediate legal effects on the petitioner, the
2 initial decision will be considered a final decision, even
3 though the original decision-maker may consider its
4 decision or the initial decision is subject to review
5 within the agency. And this is from Mr. David Duff's
6 website.

7 As a result of the court's decision in Brown vs.
8 James, it is clear that school boards may no longer make
9 initial decisions to accept or reject a superintendent's
10 nonrenewal recommendation prior to an evidentiary hearing,
11 if such a hearing is requested. What is not clear is
12 whether hearings must be conducted prior to April 15th or
13 simply the notice of non -- of the non-renewal
14 recommendation, and that the opportunity for a hearing is
15 to be given prior to April 15th.

16 I have watched Mr. Williams and Dr. Fawley
17 question witnesses, and they are excellent. They are
18 really good. But instead of waging warfare, they're going
19 to wage law-fare, until the witness gets brain paralysis.
20 When asked to describe something ineffable, I will probably
21 lose focus sooner than most, because it's not my nature to
22 be combative. I will leave it to you to know whether or
23 not the style is properly probative.

24 I can read the law, but after this experience, I
25 think lawyers read loopholes. No matter which law you want

1 to avoid, there seems to be a loophole. In the Teacher
2 Employment and Dismissal Act 450, an improvement
3 opportunity is required. I didn't get one. You will see
4 the loophole in the Teacher Employment and Dismissal Act
5 450, which only needs an opinion by the superintendent.

6 Do we defeat the meaning of law by using too many
7 words, or will we see the logic to defeat logic? Do people
8 gather the facts and reach a conclusion, or do they reach a
9 conclusion and select supporting facts? I ask the Board to
10 look at any cited loopholes with a bit of skepticism and
11 look at the intent of the law. Thank you.

12 CHAIRMAN EVANS: Okay. We'd like to begin the
13 presentation of the witnesses, if we could, and we'll start
14 with the administration.

15 MR. WILLIAMS: The administration's first witness
16 will be Michelle Brockway. Dr. Fawley is going to get her
17 now.

18 While she's going to get Ms. Brockway, both sides
19 have referred to exhibit notebooks in their presentations.
20 We have prepared an exhibit notebook, as we typically do in
21 cases of this nature, that includes all the documents we
22 intend to question witnesses about. And, additionally, at
23 the end of our exhibit notebook are the exhibits that Alice
24 Walton, who participated in a video deposition, was
25 questioned about. So the first 40 or so exhibits are for

1 this hearing, and the next 12 or so are for Ms. Walton's
2 hearing. For ease of the Board in terms of being able to
3 flip through exhibits as a witness is testifying, it would
4 be our desire to introduce our exhibit notebook, if there's
5 no objection from Mr. Bauer.

6 MR. DUFF: I'm sorry. For the record, Mr. Bauer,
7 what --

8 MR. BAUER: Oh, no. No objection.

9 MR. WILLIAMS: That being said, I would like to
10 pass out the notebooks to the Board members at this time,
11 and I've also provided a copy to Mr. Bauer.

12 MR. BAUER: Mr. Chairman, when you're ready, I do
13 have one question.

14 CHAIRMAN EVANS: Sure. Let's get these
15 distributed, Mr. Bauer, and then, certainly, you can -- do
16 you have a question about these?

17 MR. BAUER: About the upcoming testimony, or
18 cross. A question about the charges, actually. Can I have
19 a clarification of the exact charges of my case?

20 MR. DUFF: Mr. Bauer, I think that the
21 administration, as it presents its case, will identify and
22 clarify the charges. I'm sure there -- those charges must
23 be in the documentation in the proposed exhibits.

24 MR. JOHN BAUER: Charge document.

25 MR. BAUER: Yeah, can I get a copy of the charge

1 document before we begin?

2 MR. WILLIAMS: They're in --

3 MR. BAUER: I thought -- I'm sorry.

4 MR. WILLIAMS: I can tell you that all documents
5 that we intend to use have been provided to Mr. Bauer in
6 advance of this hearing.

7 MR. BAUER: I just want a list of the actual
8 formal charges, just the charges, not exhibits.

9 MR. DUFF: Mr. Williams, are the charges
10 contained within the exhibits that you intend to introduce?

11 MR. WILLIAMS: Yes, sir, they are. As the
12 questioning continues, various witnesses will be asked
13 about documents, including -- Mr. Bauer used the term
14 "charging documents" -- the documents that put him on
15 notice as to why the recommendation that he be terminated
16 was being made.

17 MR. DUFF: So, Mr. Bauer, you will -- as the
18 documents are admitted, it will be -- I think it will
19 become clear to you what the administration's reasons are.
20 And, of course, on cross-examination and with -- and with
21 other documents that you may have, you may challenge any
22 aspect of the stated charges or reasons.

23 CHAIRMAN EVANS: Are we ready, Mr. Williams?

24 MR. BAUER: Sir, I have to object, I mean, to
25 this. I'm sorry. The documents should be clear before the

1 hearing, I think. I don't believe that Ms. Brockway's
2 testimony are part of the charges (sic), and I do not have
3 a clear record -- I do not have a clear list of the exact
4 charges, so --

5 MR. WILLIAMS: My response would be, as has been
6 stated by both sides, including Mr. Bauer, the issues
7 involved were negligent supervision as well as
8 insubordination, and it would be our position that the
9 testimony that Ms. Brockway is going to offer, such as on
10 both of those issues, but particularly the negligent
11 supervision issues -- that she was involved in meetings in
12 which she discussed with Mr. Bauer her concerns about his
13 supervision.

14 MR. BAUER: The incident -- I'm sorry. The
15 incident regarding Ms. Brockway was not listed in Dr.
16 Moss's email as part of the charges. He specifically
17 refers to the pool event. He doesn't say anything about
18 November 4th -- or 1st as part of the charges.

19 CHAIRMAN EVANS: Mr. Bauer, as I understood from
20 listening to both the opening statements, both the
21 administration and yourself clearly listed the charges of
22 negligence in supervising students and in insubordination.

23 MR. BAUER: For the pool event only.

24 MR. WILLIAMS: That's not -- the statement was
25 negligence, not specific to the pool event.

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1 MR. BAUER: I have -- I have to object to that.

2 CHAIRMAN EVANS: Well, we will note --

3 MR. BAUER: Those were not the charges.

4 CHAIRMAN EVANS: We will note your objection and
5 move forward, but it's my understanding that any of the
6 witnesses we will hear will support either the
7 administration's point about where there was negligence or
8 insubordination, or your point about where there was not.
9 Okay? So let's move on with listening. We need to have
10 Ms. Brockway sworn in.

11 (WHEREUPON, MICHELLE BROCKWAY, having been first
12 duly sworn, was examined and testified as follows:)

13 MR. WILLIAMS: Mr. Chair, and I don't want to
14 turn this proceeding into -- the short version is, at one
15 point, Mr. Bauer was represented by counsel. That counsel,
16 at some point, resigned prior to the hearing, and --

17 CHAIRMAN EVANS: I understand that and was about
18 to raise that question.

19 MR. WILLIAMS: And it appears that there's some
20 consultation going on from counsel at this point. I mean,
21 I don't want to be difficult --

22 CHAIRMAN EVANS: Yeah.

23 MR. WILLIAMS: -- but either he's represented by
24 counsel, or he's not represented by counsel, and I think
25 the back-and-forth is disruptive and distracting.

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1 CHAIRMAN EVANS: Yeah, I would -- I would like --
2 I'm not sure. I think I know who this person is, but I'm
3 not positive, and I believe it was someone --

4 MR. BAUER: I agree.

5 CHAIRMAN EVANS: -- who was representing you at
6 one time, and --

7 MR. BAUER: She is here --

8 CHAIRMAN EVANS: -- our point --

9 MR. BAUER: -- in a supporting role right now,
10 but not -- just a supporting fan section, but she --

11 CHAIRMAN EVANS: No.

12 MR. BAUER: You're correct.

13 CHAIRMAN EVANS: She --

14 MR. BAUER: She's not here -- no, you're right.

15 CHAIRMAN EVANS: She's not here as part of your
16 representation and defense or --

17 MS. MARTEL: I can speak to that.

18 CHAIRMAN EVANS: -- she's not --

19 MS. MARTEL: I'm just here as a spectator right
20 now, but it just upsets me when I see due process of law
21 not flowing the way it should --

22 CHAIRMAN EVANS: Well --

23 MS. MARTEL: -- so I just wanted to make sure. A
24 lot has happened --

25 CHAIRMAN EVANS: Ms. Martel --

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1 MS. MARTEL: -- here today.

2 CHAIRMAN EVANS: Ms. Martel, excuse me.

3 MS. MARTEL: Yes.

4 CHAIRMAN EVANS: If you're not part of the
5 defense, then I would ask you not to interfere with the
6 hearing. And I appreciate your position about due process,
7 but I believe that we are proceeding properly.

8 MS. MARTEL: As an officer of the court, I just
9 feel that when such -- something such as this --

10 MR. WILLIAMS: Mr. Chair, I'm --

11 MS. MARTEL: -- is so important that --

12 MR. WILLIAMS: -- going to object --

13 CHAIRMAN EVANS: Yeah. I --

14 MR. WILLIAMS: -- to any counsel being offered.

15 CHAIRMAN EVANS: I would ask, please, that --

16 MR. WILLIAMS: She's not a witness, and she's not
17 his attorney. Therefore, she does not have a role in this
18 proceeding. I don't mean -- I'm not trying to be rude or
19 difficult, but --

20 CHAIRMAN EVANS: I will --

21 MR. WILLIAMS: -- that would be our position.

22 CHAIRMAN EVANS: I agree with your objection, Mr.
23 Williams. Ms. Martel, I would ask you, please, no more
24 comments and no more consultation with the defendant -- or
25 with the respondent, please.

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DIRECT EXAMINATION

BY MR. WILLIAMS:

Q Please state your full name for the record.

A Michelle Marie Brockway.

Q And Ms. Brockway, what position do you currently hold in the Beaufort County School District?

A I am an assistant principal at Hilton Head Island Elementary School.

Q All right. And how many years have you served as an assistant principal at Hilton Head Island Elementary School?

A This is my second year.

Q And if you could pull the microphone a little bit closer to you, I want to make sure the Board can hear you. Ms. Brockway, what previous positions have you held in education, before being employed as an assistant principal?

A I taught in Beaufort County School District for 13 years prior to becoming assistant principal.

Q And I'm sorry. Could you repeat how many years you've served in education and what positions?

A Thirteen years in Beaufort County School District as a fourth-grade teacher and a gifted-and-talented teacher.

Q And what educational degrees do you hold?

A I hold an undergraduate degree in criminal

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1 justice from USC Columbia. I hold a master's of arts in
2 elementary education from USC Columbia. I hold a master's
3 of education in gifted education from Converse College, and
4 I also hold a master's of education in educational
5 leadership from USC Columbia.

6 Q As an assistant principal at Hilton Head Island
7 Elementary School, what are your overall job
8 responsibilities?

9 A First and foremost, I see myself as an
10 instructional leader. Other responsibilities include 504
11 coordinator, response to intervention team coordinator,
12 safety evaluator. I serve as an LEA in special-education
13 meetings. Other responsibilities include providing support
14 to the assessment committee, the science fair committee,
15 and the positive behavior intervention support committee.

16 Q All right. And do you know John Alden Bauer?

17 A I do.

18 Q And please explain to the Board how you came to
19 know Mr. Bauer.

20 A We met at the beginning of my career in the early
21 2000s at Hilton Head Elementary School.

22 Q Okay. During the time that you and Mr. Bauer
23 were colleagues and fellow teachers at Hilton Head Island
24 Elementary School, how would you characterize your
25 relationship with him?

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1 A It was good.

2 Q And when did you become an assistant principal at
3 Hilton Head Island Elementary School?

4 A In July of 2013.

5 Q Is one of your responsibilities as an assistant
6 principal also the supervision of staff?

7 A It is.

8 Q And since the time you became an assistant
9 principal, have you been involved in investigating any
10 matters related to Mr. Bauer?

11 A I was involved in investigating an incident that
12 occurred on November 1st, 2013.

13 Q All right. And please describe for the Board the
14 circumstances that led to your investigating the November
15 1st, 2013, incident involving Mr. Bauer.

16 A A fourth-grade teacher had called the front
17 office and reported a child in his pajamas that appeared to
18 be hiding outside of the gym. When she did not see any
19 other students or adults in his presence, she called the
20 front office, and at that point, I was designated to go
21 down to the gym and investigate the situation.

22 Q All right. In front of you is a black notebook
23 that has a list of exhibits. If you could turn to what's
24 labeled as Exhibit Number 1 and identify that document for
25 the Board?

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1 A This is my documentation from the incident that
2 occurred on November 1st, 2013.

3 Q All right. And looking at that document -- you
4 can use it for your recollection, if you need to -- if you
5 could explain to the Board the steps you took to
6 investigate the November 1st, 2013, incident?

7 A After the phone call came in and I was designated
8 to investigate the situation, the first thing I did was
9 determine which classroom was having pajama day. I was
10 able to determine that a particular second-grade class was
11 having pajama day. I then confirmed the number of students
12 that should be present in the class before I headed to the
13 gym.

14 Upon my arrival at the gym, I asked Mr. Bauer how
15 many students were in his presence. He was unable to give
16 me a number at the time, so I performed a headcount. As I
17 was counting, another second-grade student let me know that
18 a child was at the nurse's office. So I knew Ms. Br -- I
19 knew the second-grade teacher's class had 21 students and
20 that one student was absent, so I was looking for 20
21 students. I counted 19, and I was able to account for the
22 other student at the nurse's office, thanks to one of the
23 second-grade students that was in the gym.

24 At that time, I explained to Mr. Bauer that a
25 call had come in, reporting that a child appeared to be

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1 hiding outside, in his pajamas. Mr. Bauer stated that he
2 was not aware of anyone hiding or missing from his class.

3 We then walked outside together to look to see if
4 any students were outside, and at this time, the teacher
5 that had made the phone call was standing at her classroom
6 window, and she was able to point to me the student that
7 she had seen, and he was with us, in our presence.

8 I then pulled the student aside to speak to him
9 to find out what had happened. He told me he got upset at
10 his PE station and left, and he showed me where he was
11 standing, around the corner from where he was supposed to
12 be. I asked the student if anyone knew that he was there.
13 He said no. I said, "Was there a teacher or any other
14 students around you?" And he shared that there was another
15 student that wasn't feeling well, sitting in a chair in the
16 doorway.

17 As I was talking to the student and explaining to
18 the student that, if this happened again, that it wasn't
19 just safe to just take off by yourself -- that the adults
20 in charge needed to know where he was -- Mr. Bauer
21 interrupted and said that the student did nothing wrong and
22 that I didn't understand how his class worked. And I
23 explained to Mr. Bauer that the student wasn't in trouble.
24 I just wanted to make sure it didn't happen again, because
25 it was a safety concern that this child was around the

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1 corner, away from his station.

2 He did -- Mr. Bauer did go on to say that he knew
3 the student was there, but I reminded Mr. Bauer that he did
4 not share that with me when I first got to the gym and
5 reported that a student was hiding. He had said that he
6 was not aware of anyone hiding or missing from his class.

7 Q All right. Did you have any concern about Mr.
8 Bauer leaving the door open, as far as his class?

9 A Yes, I did address that in the final paragraph of
10 my documentation. I wanted to make sure that he did
11 understand that, from here on out, that stations needed to
12 be either set up inside the gym or outside of the gym,
13 because it would be impossible for an adult to be able to
14 supervise and monitor students that are inside and outside
15 at the same time. So the paragraph says that, from now on,
16 stations should be indoor or outdoors, that the door does
17 need to be -- remain closed, and that if he was going to
18 take his students outside, to let the office know.

19 Q If you would please turn to Complainant's Exhibit
20 Number 2 and identify those documents for the Board?

21 A The first picture is a picture of the gymnasium.
22 Mr. Bauer had stations set up inside the gymnasium and then
23 outside that far door on the right. Can I take it out of
24 the --

25 Q Do whatever you -- the Board has copies of what

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1 you have, so you can use those exhibits to demonstrate to
2 the Board your conversations with Mr. Bauer and what you
3 determined about how his class was being conducted.

4 A So this is inside the gymnasium. There's a door
5 here. This is the door where that child was sitting that
6 wasn't feeling well, according to the student that I was
7 speaking with, and then here's another outside door. Both
8 these doors were open, and there were stations -- he
9 explained that there were stations set up inside and
10 outside of the gymnasium.

11 This next picture shows you outside of that far
12 door, and then over here is where that other door was,
13 where the child was sitting. The student that was hiding
14 was at a station here. When he got upset, he left, came
15 around the corner, and was hiding behind this wall. And
16 here's the window of the classroom teacher that had made
17 the phone call to the front office, across the way here.

18 This is just another picture that shows you the
19 two doorways that were open. This is where the student was
20 standing when he left his station. The other student was
21 sitting in this doorway, and later in the conversation, Mr.
22 Bauer explained that he was standing in this doorway. The
23 student says that there was just another classmate sitting
24 in that doorway.

25 So, if Mr. Bauer was standing here, he had kids

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1 over here, outside this wall, and then inside the
2 gymnasium, making it very hard to see all students at all
3 times.

4 Q Based on your investigation of the November 1st
5 incident that you just described, did you reach any
6 conclusions about whether Mr. Bauer would be able to
7 monitor all the students, based on what he told you?

8 A I do not believe he was able to monitor all the
9 students, the way the class was set up that day, stations
10 inside and outside the gym.

11 Q How would you characterize Mr. Bauer's demeanor
12 when you were discussing your concerns with him?

13 A He was argumentative, agitated, and
14 uncooperative.

15 Q Did you ever share your documentation with Mr.
16 Bauer, and if so, how did you do that?

17 A I did. I provided him documentation of the
18 incident in an envelope, and he signed off that he received
19 it.

20 Q All right. And please identify Complainant's
21 Exhibit Number 3 for the Board.

22 A This is documentation that Ald -- that Mr. Bauer
23 signed after receiving my documentation of the incident on
24 November 1st, 2013.

25 Q All right. If you could next turn to

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1 Complainant's Exhibit Number 4 and identify that document
2 for the Board?

3 A This is IS-2, district policy, teacher
4 expectations and accountability.

5 Q Do you have -- did you have any concerns
6 regarding Mr. Bauer's conduct as it relates to IS-2 based
7 on the November 1st incident?

8 A If you look at bulleted item 10, it clearly
9 states that school district employees are to supervise
10 students in their charge throughout the day and at all
11 times, and like I said, I did not believe that Mr. Bauer
12 was able to supervise students inside and outside at the
13 same time.

14 Q All right. If you would please turn to
15 Complainant's Exhibit Number 5 and identify that document
16 for the Board?

17 A This is HRS-4 policy regarding staff conduct.

18 Q Do you have any concerns regarding Mr. Bauer's
19 conduct as it relates to HRS-4, and if so, what were your
20 concerns?

21 A I do. If you look at the first line, it says one
22 of the best methods of instruction is that of setting a
23 good example for your students, and I did not believe he
24 set a good example when he interrupted me when I was
25 speaking with the student, trying to get across what would

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1 be a better way to handle a situation when the child is
2 upset. I was trying to address the safety concern and make
3 sure the student knew what to do if this was to happen
4 again, what would be a better choice for him.

5 Q All right. If you would please turn to
6 Complainant's Exhibit Number 6 and identify that document
7 for the Board?

8 A This is SS-1, student goals and priority
9 objectives, and it states that the Board's vision -- one of
10 the goals is to attend vigorously to matters of student
11 safety, health, and welfare.

12 Q And did you reach any conclusions as to whether
13 or not Mr. Bauer complied with that policy?

14 A And, again, that there was a safety concern on
15 November 1st, and Mr. Bauer did not see that. He refused
16 to see that. He said, "I didn't understand what was going
17 on," and that was how he ran his class, nothing had been
18 wrong. He didn't see that it was a safety concern.

19 Q Okay. Other than the November 1st, 2013,
20 incident that you just described, were you involved in any
21 other incidents during the 2013-14 school year regarding
22 concerns with Mr. Bauer's supervision?

23 A I also took part in a meeting that occurred on
24 February 5th, 2014.

25 Q And what did you understand the purpose of the

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1 February 5th, 2013, meeting to be?

2 A It was twofold: to discuss the supervision of
3 locker rooms, and to discuss an incident that had occurred
4 that day when a student was left unsupervised at the Island
5 Recreation Center across the street from our school.

6 Q And who was involved in the February 5th meeting
7 to which you just referred?

8 A Mr. Clendaniel, Mr. Bauer, and myself were
9 present at that meeting.

10 Q How would you describe Mr. Bauer's response to
11 the administration's concerns about the student being left
12 at the Island Recreation Center?

13 A He was argumentative. He thought it was
14 ridiculous, that we were making a big deal out of a silly
15 mistake.

16 Q Did you actually hear Mr. Bauer use the term
17 "ridiculous"?

18 A I did.

19 Q Following your February 5th meeting, did you
20 communicate any concerns with Ms. Walton, the chief human
21 resources officer?

22 A I did.

23 Q Will you please turn to Complainant's Exhibit
24 Number 7 and identify that document for the Board?

25 A This is email documentation I sent to Ms. Walton

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1 on February 5th, after Mr. Clendaniel and I met with Mr.
2 Bauer, regarding the student that had been left behind at
3 the Island Rec Center and the lack of supervision in the
4 locker rooms at the rec center during swim lessons.

5 Q Were you ever called on to discuss with Ms.
6 Walton the November 1st incident, as well?

7 A Yes, I was.

8 Q And do you recall when that would have been?

9 A I'm sorry. Can you -- can you repeat the
10 question?

11 Q Sure. Do you recall when you would have
12 discussed with Ms. Walton the November 1st incident?
13 You've testified about the February 5th one. How about the
14 November 1st incident?

15 A Sorry. Yes, I -- that was on February 6th.

16 Q And do you recall who else was present in that
17 meeting?

18 A Ms. McAden, Mr. Clendaniel, Mr. Bauer, Ms.
19 Walton, and myself.

20 Q Okay. Did you share with Ms. Walton what you
21 have shared with the Board today as far as the November 1st
22 incident?

23 A I did.

24 Q And after the February 6th meeting that you've
25 testified about, did you provide any additional information

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1 to Ms. McAden regarding Mr. Bauer?

2 A I did provide additional information.

3 Q All right. And if you could identify
4 Complainant's Exhibit Number 8 for the Board?

5 A This is email documentation I sent to Ms. McAden
6 on Thursday, February 13th. After further reflection of
7 the incident that had occurred on November 1st, there were
8 some details that I had not gotten across at the meeting on
9 February 6th and wanted her to be aware.

10 Specifically, I shared that, when I was speaking
11 with the child that had decided to go off and -- and leave
12 his station, that Mr. Bauer kept interrupting, saying he
13 did nothing wrong. I tried to explain to Mr. Bauer that a
14 child cannot go off and hide when he's feeling upset or
15 frustrated, that the child always needs to be visible to
16 the teacher. As I tried to discuss this with Mr. Bauer and
17 the child, he continued to say, "He did nothing wrong.
18 He's allowed to do that. You don't understand my class,"
19 and I just wanted to make sure that I got that information
20 across.

21 Q Okay. Were you involved in the recommendation
22 that Mr. Bauer be terminated?

23 A I was not.

24 MR. WILLIAMS: Ms. Brockway, thank you for
25 answering my questions. Please respond to any

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1 questions that Mr. Bauer might have.

2 MR. BAUER: First, we're going to distribute
3 the notebooks of evidence and set up the easel. Where
4 do we want to put this? Will this let the Board see
5 it? Yeah, it should. It'll be easier.

6 MR. WILLIAMS: And just so it's clear, I
7 don't have an objection to Mr. Bauer presenting you
8 with the notebook, but as I stated prior to opening
9 statements, there may be individual exhibits that he
10 would seek to question a witness about that I would
11 object to. I don't have a -- again, for efficiency's
12 sake, I don't have a problem with you being provided
13 copies of the -- of his notebook, but I would ask that
14 you not look at any particular item until we get to
15 that item to allow me the opportunity to object.

16 CHAIRMAN EVANS: We understand, and I would
17 direct the Board, please, to only refer to documents
18 as they come up in the testimony or as part of the
19 hearing.

20 MR. BAUER: Now, while we distribute the
21 notebooks, you will see that the November 1st, 2013,
22 event was not one of the charges. Negligence was only
23 charged for the pool event.

24 MR. WILLIAMS: And, again, I understand this
25 is a little awkward when someone is pro se. I

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1 certainly have no objection to Mr. Bauer testifying at
2 the appropriate time, but to the extent he's
3 cross-examining a witness, I would ask that he ask the
4 witness a question, as opposed to providing testimony
5 himself.

6 CHAIRMAN EVANS: Mr. Bauer, do you
7 understand that?

8 MR. BAUER: Yes, sir.

9 CHAIRMAN EVANS: It's our expectation --

10 MR. BAUER: I understand.

11 CHAIRMAN EVANS: -- that you will have an
12 opportunity to testify and present your own set of
13 events and how you felt that they unfolded, and that
14 you also have an opportunity during your summation to
15 make comments; okay?

16 MR. BAUER: Yes, sir. Now --

17 CHAIRMAN EVANS: Can you wait just a second
18 until we make sure that everybody has their books?

19 MR. BAUER: Yes.

20 CHAIRMAN EVANS: Is Ms. Brockway going to
21 need a copy for reference or not?

22 MR. BAUER: Yes. As we go -- as I ask
23 questions, we'll provide her with each file. Okay.
24 Now, can I begin?

25 CHAIRMAN EVANS: Yes, sir.

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1 MR. BAUER: Well, first of all, this is a
2 little easier to see, but it doesn't look as good as I
3 hoped it would. But it sort of shows exactly what
4 they were saying, which -- and before I ask questions,
5 I just wanted to set the scene, and this is not really
6 working.

7 Okay. As Ms. Brockway stated, this is the
8 gym. I was in this doorway, or, at least, I claim.
9 The boy was here. Ms. Sampson's -- Ms. Sampson's
10 room, her window is there. This a doorway. So as I
11 ask questions, we'll be referring to these pictures.

12 CROSS-EXAMINATION

13 BY MR. BAUER:

14 Q Okay. Ms. Brockway, is the policy for the doors,
15 in the gym or anywhere, actually, to be closed at all
16 times?

17 A Yes, exterior -- exterior doors should be closed.
18 at all times.

19 Q And were the doors closed?

20 A They were not.

21 Q And why not?

22 A There were two doors that were open when I
23 arrived at the gym.

24 Q Do you know why they were open?

25 A I do not.

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1 Q And did you ask?

2 A I did not ask why the doors were open at the
3 time. During the -- during our conversation, you explained
4 that you had students that were inside and outside at
5 various stations and that you stood in the doorway to
6 monitor those students that were inside and outside of the
7 gym.

8 Q So that's all you know about, that just the doors
9 were open and that I had stations; is that correct?

10 A Yes.

11 Q Had -- and I'm going to refer to myself sometimes
12 in third person. I apologize. That's awkward. But had
13 Mr. Bauer called the office and spoken to Ms. Jorgensen to
14 ask to open the doors? Are you aware of that?

15 A I am not aware of that.

16 Q And did you ask anyone about that?

17 A I did not ask about the doors when I first
18 arrived at the gym. My focus at that time was to make sure
19 that all students were accounted for and safe.

20 Q Okay. So do you agree that this -- that a phone
21 call from Mr. Bauer to the office to ask to open the doors
22 is not in your document of November 1st? Is that correct?

23 A That is correct.

24 Q Had Mr. Bauer called in sick and asked Ms.
25 Jorgensen for a substitute before this incident?

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1 A I'm not aware of that.

2 Q And did you ask anyone about this, or is that in
3 the document?

4 A Is what in the document?

5 Q Is there any record of Mr. Bauer calling for a
6 substitute? Did you ask anyone if maybe this could have
7 happened?

8 A No, my documentation that I wrote for the
9 incident that happened on November 1st is regarding the
10 student, student safety, and stations needing to be either
11 inside or outside.

12 Q Okay. Had two children become sick? Are you
13 aware of two children being sick at the gym that day during
14 that class?

15 A I learned from another second-grade student that
16 was in my presence that a child was at the nurse, and I
17 also learned from another second-grade student that there
18 was a child that wasn't feeling well sitting in the
19 doorway.

20 Q And had two children gone to the nurse's stations
21 and one had -- what you're saying is, two children had gone
22 to the nurse's station, but one had returned, and one was
23 still at the nurse; is that correct?

24 A I do not know all those details. What I know is
25 that it was reported to me by another child that there was

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1 a classmate at the nurse, and then it was reported to me by
2 another child that there was a classmate that wasn't
3 feeling well, sitting in a chair, because that was --
4 according to the child, that was the only person that saw
5 him around the corner from the station.

6 Q Were you aware that Mr. Bauer asked the child
7 that had returned from the nurse's station to sit in the
8 doorway, while he's standing in the doorway with her, where
9 he could watch her and that both could get fresh air?

10 A I was not aware of that. Once again, that wasn't
11 my focus when I arrived at the gym.

12 Q Were you aware of the temperature outside?

13 A I do not remember what the temperature was on
14 November 1st, 2013.

15 Q Do you remember from your deposition that it was
16 in the 80s on a November day?

17 A I do remember that being shared at my deposition,
18 but once again, I don't remember that detail.

19 Q Before the doors were opened, what was the
20 temperature inside the gym? Are you aware of that?

21 A I was -- I am -- I was not aware of the
22 temperature inside the gym at that time.

23 Q Would you please look at file 267 in your
24 notebooks?

25 A I don't have a notebook.

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1 Q And I'll give it to you.

2 A Oh.

3 MS. BUSH: Which notebook?

4 CHAIRMAN EVANS: I believe it was 267.

5 MS. BUSH: The big one, the small one, or --

6 MR. BAUER: Okay. You know what? I don't
7 think we have it. I think that's --

8 MR. JOHN BAUER: It's in the notebooks.

9 MR. BAUER: Oh, it is in the notebook?

10 MR. JOHN BAUER: It is in the notebooks.

11 MR. BAUER: Oh, okay.

12 CHAIRMAN EVANS: Did you say 267?

13 MR. BAUER: Two sixty-seven. It should be a
14 work order.

15 CHAIRMAN EVANS: It's in the small notebook.

16 MS. ANDERSON: In the small notebook.

17 MR. RIVERS: Small notebook.

18 CHAIRMAN EVANS: Probably past halfway.

19 THE WITNESS: Thank you.

20 CHAIRMAN EVANS: I think we have it. Go
21 ahead, Mr. Bauer.

22 MR. BAUER: Okay. Great.

23 BY MR. BAUER:

24 Q When was this work order, date-wise? Or is --

25 A Which one are you --

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1 Q I'm sorry. It's down to four. Count down to
2 four, or count down four.

3 A Are you referring to the one dated October 31st?

4 Q Yes.

5 A 2013?

6 Q Yes. All right. What was the work order for?

7 A Too hot in gym and no airflow in office. Steve
8 was here on another matter, and I sent him to the yellow
9 gym to check it out. This work order is for tracking
10 purposes only, as job has been handled.

11 Q Great. Do you have a time on that?

12 A Sorry, I'm not familiar with this document. I'm
13 not sure where the time would be listed.

14 Q I believe it lists an actual time.

15 A I don't see a time.

16 Q Okay. Maybe, maybe not. But would you agree
17 that this was probably a day before November 1st, if it's
18 October 31st?

19 A Yes, October 31st is the day before November 1st.

20 Q Correct. Okay. Now, if you look down two more,
21 when was this work order?

22 A The date is December 3rd, 2013.

23 Q And what was this work order for?

24 A No airflow, heat or cool air. Air is stagnant.
25 Mr. Bauer tried pushing the override button and no luck.

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1 Found the supply air breaker to be off. Reset the breaker
2 and checked the amp draw and wiring. No other problems
3 found at this time.

4 Q Thank you. Now, were you asked -- concerning the
5 November 1st event, were you asked to investigate a call
6 from Ms. Sampson?

7 A I received a call from Ms. Sampson. The office
8 received a call from Ms. Sampson, a fourth-grade teacher,
9 who saw a child unattended in his pajamas outside of the
10 gym.

11 Q Was the same call investigated before you arrived
12 by Lakeisha Lofton?

13 A I am not aware of Ms. Lofton investigating that
14 incident. I was designated to go down there and
15 investigate.

16 Q Okay. So, obviously, then, you have no record of
17 Ms. Lofton reporting that nothing was amiss in the gym?

18 A I'm not aware of Ms. Lofton being made aware that
19 there was a child that appeared to be hiding outside of the
20 gym.

21 Q Do you know what a rest wall is; in the PE field
22 of teaching, what's called a "rest wall"?

23 A I know what a rest wall is. I'm not aware of you
24 having a rest wall.

25 Q Is the rest wall considered an assigned place for

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1 a student who's feeling ill or is upset with another
2 student? Would you assume that to be, probably, what it
3 would be, maybe? Or if they just needed to rest?

4 A I would assume that a rest wall -- rest wall is a
5 place to rest. I would assume that there are procedures
6 that are put in place between the teacher and the students
7 as to when to visit the rest wall and how that works.

8 Q So is the rest wall, do you believe, a technique
9 for allowing students -- do you think -- I'm sorry. Let me
10 rephrase that. Do you think it's possible that a rest wall
11 is a technique for allowing students to move to an assigned
12 place without interrupting the class to get permission?

13 A I'm sorry. Could you rephrase or --

14 Q Sure.

15 A -- say that again, please?

16 Q Does it sound reasonable that maybe a rest wall
17 would be a technique for the teacher to allow students to
18 go to without interrupting the class, if they need a rest,
19 instead of going to the teacher, "I'm tired, Mr. Bauer. I
20 need to rest"? Do you think maybe a rest wall station
21 could be something for the teacher -- a technique for the
22 teacher?

23 A I believe the use of a rest wall is appropriate,
24 but I also believe that the teacher needs to know who is at
25 that rest wall and be able to have their eyes on that

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1 student at all times.

2 Q Okay.

3 A As well as all the other students in the
4 classroom.

5 Q Now, regarding the second grader in his pajamas,
6 could Ms. Sampson see the second grader at the wall?

7 A Ms. Sampson is the one that made the phone call
8 to the office because she was concerned for the safety of
9 the student outside unattended.

10 Q Could Ms. Sampson see the other students, the
11 other stations?

12 A She clearly stated when she made her phone call
13 that she did not see anyone else in the vicinity of the
14 second grader outside.

15 Q So she could only see one student?

16 A Yes, that's what she reported.

17 Q Could Ms. Sampson see the gym doors?

18 A Which gym doors are you --

19 Q Any gym door?

20 A I do not know if she was able to see the gym
21 doors. I was concerned for the safety of the child and
22 where that child was -- was standing at that time. So my
23 investigation was based around that.

24 Q Okay. So I'm assuming -- or how many students
25 were in the class, would you say?

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1 A That class has had 21 students. There were
2 supposed to be 20 under your supervision. However, one was
3 at the nurse that, remember, I learned that from another
4 student. So that left 19 students.

5 Q So Ms. Sampson couldn't see the students that
6 were playing right behind her -- she could not see students
7 playing soccer right behind her gym -- or her classroom; is
8 that correct?

9 A The reason she made the phone call is because she
10 was worried and concerned about the student, and she did
11 not see anyone else in that area, adults or children.

12 Q So you -- are you agreeing, then, that Ms.
13 Sampson's view was extremely limited?

14 A I do not know if Ms. Sampson's view was extremely
15 limited.

16 Q Well, you said she could only see one child, and
17 there are all these students around. Do you agree that it
18 was limited -- you still don't agree --

19 MR. WILLIAMS: I would --

20 MR. BAUER: Okay. That's fine.

21 MR. WILLIAMS: I would object to the extent
22 he's testifying there were "all these" students
23 around. Obviously --

24 MR. BAUER: Okay.

25 MR. WILLIAMS: -- he can ask her a

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1 clarifying question.

2 MR. BAUER: I'll withdraw.

3 BY MR. BAUER:

4 Q Please refer to file 19-A.

5 A Which notebook?

6 MR. JOHN BAUER: This is 19. It's your
7 document.

8 THE WITNESS: Oh, thank you.

9 MS. CUSHINGBERRY: So it's in here, in your
10 notebook.

11 THE WITNESS: Thank you. Thank you.

12 BY MR. BAUER:

13 Q Okay. File 19-A. Please read out loud paragraph
14 1, line 1.

15 A Ms. Sampson, grade-four teacher, called the
16 office and reported a child hiding in his pajamas outside
17 of the school gym.

18 Q Was a child hiding? Is that your -- is that your
19 testimony, that the child was hiding?

20 A I went down to the gym to investigate if there
21 was a child hiding. After investigating, discussing,
22 looking into the situation further, I learned that a child
23 had moved away from his station that he had been assigned
24 to, because he got upset and frustrated, and moved around
25 the corner, out of the supervision --

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1 Q So --

2 A -- of his teacher and other classmates.

3 Q So are you telling me he was hiding or was not
4 hiding? I just want to be clear on this.

5 A Yes, he moved away from his station because he
6 was upset and was hiding around the corner because --

7 Q Okay.

8 A No one could see him.

9 Q So, just because he moved away from his station,
10 that makes him hiding? Is that -- is that your definition?
11 Moving away from the station on his own, is that hiding?

12 A Leaving a station because you're upset and moving
13 around the corner so nobody can see you is my idea of
14 hiding, yes.

15 Q Okay. Well, this exchange is from your
16 deposition, and it's page 36, line 12 from your deposition.
17 The question from my attorney at the time was, "But you
18 concluded in this that you did not find any students
19 hiding?" Your answer was, "Right. Yes."

20 A I'm sorry. What document are you referring to?

21 Q This is from your deposition.

22 A Oh.

23 Q And it's page thirty -- oh, we'll pass it around.

24 A My file 36 does not --

25 Q I'm sorry. It's page 36 in the --

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1 A Oh, okay.

2 Q -- in the deposition, and it's line 12.

3 MR. DUFF: It's not in there.

4 MR. WILLIAMS: There's a --

5 CHAIRMAN EVANS: We don't have that
6 document, do we?

7 MR. WILLIAMS: And you won't have a copy of
8 it. There certainly is a process by which you can
9 question a witness about a deposition, and --

10 MR. BAUER: Okay. Would you --

11 MR. WILLIAMS: -- I'm not sure what purpose
12 he's asking her about the deposition, but I was going
13 to allow him to ask a question to see whether or not
14 it was objectionable.

15 CHAIRMAN EVANS: Go ahead, Mr. Bauer.

16 MR. BAUER: I'm sorry. You do have the
17 document there.

18 BY MR. BAUER:

19 Q Will you please read page 36, line 12?

20 A I'm sorry. I don't know where the page numbers
21 are in this document. I'm not familiar with --

22 MR. JOHN BAUER: This is easier.

23 MR. BAUER: This is all new to me. Sorry.

24 MR. WILLIAMS: He can explain where --

25 MR. JOHN BAUER: Page 36.

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1 MR. WILLIAMS: -- the page is without --

2 MR. JOHN BAUER: Right? And here's what he
3 wants you to read.

4 MR. BAUER: Dr. Bauer, please sit down.

5 THE WITNESS: Okay. I think I have it.

6 MR. WILLIAMS: Where is the actual
7 deposition itself?

8 THE WITNESS: This is what he handed me.

9 MR. BAUER: If the Board would like to
10 follow along, we do have copies.

11 CHAIRMAN EVANS: We'll let Ms. Brockway read
12 it.

13 MS. BUSH: Just read it.

14 MR. BAUER: Okay. All right.

15 CHAIRMAN EVANS: We'll just ask her to
16 identify it.

17 MR. BAUER: Dr. Bauer, take a seat.

18 BY MR. BAUER:

19 Q Would you please read line 12 on page 36?

20 A But you concluded in this that you did not find
21 any students hiding.

22 Q And your answer?

23 A Right. Yes.

24 Q Okay.

25 A Is this -- I'm just looking back, prior to the

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1 question that led up to that questioning.

2 Q Sure.

3 A Because I did not determine that there were any
4 children hiding when I arrived there, because at that time,
5 all children were present. That was eventually figured out
6 after the teacher in the window was able to identify the
7 student that had been hiding.

8 MR. JOHN BAUER: Brockway 1.

9 MR. WILLIAMS: Hold on for a second, Dr.
10 Bauer. Hold on. You're about to offer a document
11 that I don't know what the document is, and you
12 haven't laid any foundation as to why --

13 MR. BAUER: We'll --

14 MR. WILLIAMS: -- hold on for a second --

15 MR. BAUER: Okay.

16 MR. WILLIAMS: -- as to why you're offering
17 the document and what the purpose of offering the
18 document is, so I would -- I would object.

19 MR. BAUER: Would it be okay to give it to
20 you first to review before --

21 MR. DUFF: Mr. Bauer, what you need to do is
22 ask a question and receive the answer, and then if you
23 think there's an inconsistency in the deposition, you
24 can bring forward the deposition. But at this point,
25 you haven't asked a question that may -- that is the

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1 foundation for using the deposition transcript.

2 MR. BAUER: Okay. This document is
3 regarding the student hiding.

4 MR. DUFF: Okay. We've got -- we understand
5 the first question, but now --

6 MR. BAUER: And then it continues.

7 MR. DUFF: -- you have to ask another
8 question.

9 MR. BAUER: This is a continuation.

10 MR. DUFF: Okay. Well, ask a question.

11 BY MR. BAUER:

12 Q Will you please read line --

13 MR. WILLIAMS: I object.

14 MR. BAUER: I can't do that?

15 MR. WILLIAMS: I, again, object. He has the
16 right to ask a question. To the extent he believes
17 she said something that's inconsistent from her
18 deposition, he can cross-examine for impeachment
19 purposes. He can't just randomly say, "Read a line
20 from your deposition."

21 MR. BAUER: Okay.

22 MR. DUFF: That's the point I'm trying to
23 make.

24 MR. BAUER: Okay. I'll ask a question.

25 ///

///

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1 BY MR. BAUER:

2 Q Ms. Brockway, did you find the child at an
3 assigned place?

4 A I did not find the child at an assigned place.

5 Q Was he hiding at a place assigned by the teacher?

6 A I was not made aware that that was an assigned
7 place on November 1st when I was investigating and
8 discussing this matter with Mr. Bauer.

9 Q Was the child missing?

10 A I arrived at the gym to determine if there was a
11 child missing. When I arrived and did my headcount, I was
12 able to determine that all 19 students were present at that
13 time. But as I looked into the situation, I was able to
14 identify the student that apparently had been hiding
15 outside of the gym and was un -- unsupervised.

16 Q Now, based on those questions, would you please
17 read line 6 through 17.

18 MR. WILLIAMS: I would raise the same
19 objection that I previously raised, meaning he can use
20 it for impeachment purposes, to the extent --

21 MR. DUFF: Mr. Bauer --

22 MR. WILLIAMS: -- he believes she has said
23 something inconsistent.

24 MR. BAUER: May I read it?

25 MR. DUFF: Do you believe that what you want

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1 her to read points out an inconsistency?

2 MR. BAUER: Yes, sir. There is a conflict
3 in the statements.

4 MR. DUFF: Well, I think she -- I guess,
5 then, you need to have her read the lines you want
6 read.

7 MR. WILLIAMS: And the only other thing I'd
8 add is, the document that he intended to offer is
9 where he has gone through and pulled certain pages and
10 excerpts, which again I would submit is not a proper
11 document to use for cross-examination purposes. It
12 needs to be -- it really needs to be an official copy
13 of the deposition.

14 MR. DUFF: Well, that's true, but --

15 MR. BAUER: I'll be glad -- do you have a
16 copy of the deposition, her deposition, I can --

17 MR. WILLIAMS: I have a copy of the
18 deposition.

19 MR. BAUER: Okay.

20 MR. WILLIAMS: My concern is that the
21 witness needs to have a copy that's -- and it's not --
22 it's paginated so, when you refer to a particular
23 line, she can know what line you're talking about.

24 BY MR. BAUER:

25 Q It's line 6 through line 17, provided --

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1 A There's a lot of line 6 through 17 on the --

2 Q Of page 36?

3 A Now, that was what initiated the investigation.
4 But after further investigation, did you conclude that the
5 child was hiding? He wasn't. He had left the station and
6 was upset. It was later explained to me that it's a rest
7 wall, which --

8 Q And that --

9 A -- I said it was later explained to me. It was
10 not explained to me on November 1st that it was a rest
11 wall. I had no idea that it was a rest wall on November
12 1st. When I first arrived at the gym, concerned that there
13 was a student that appeared to be hiding outside, I was
14 told that no students had been hiding or missing, to Mr.
15 Bauer's knowledge.

16 Q You're sure of that, that Mr. Bauer did not
17 explain this to you?

18 A I am absolutely sure.

19 Q You are sure of this. Okay.

20 MR. BAUER: Now I'm going to ask some
21 questions based on page 38. Should I give it to Mr.
22 Williams first, before we ask the question, or should
23 I ask the questions first?

24 MR. WILLIAMS: And I will have the same --

25 CHAIRMAN EVANS: Mister --

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1 MR. WILLIAMS: -- same objection.

2 CHAIRMAN EVANS: Excuse me, Mr. Williams.

3 Mr. Bauer, we're trying to be somewhat lenient on the
4 fact that you're representing yourself, but there's --
5 this is the second document, if I understand properly,
6 that you're presenting that has not been presented to
7 the plaintiff's attorneys ahead of time, and it's my
8 understanding that they have a right to see all of the
9 documents that you're going to use to question
10 witnesses with.

11 MR. BAUER: These are part of the
12 transcripts of the depositions that both parties have
13 access to.

14 MR. WILLIAMS: And just so it's clear for
15 the record, Mr. Chair, my concern would be with the
16 way -- is with the way in which he's trying to use the
17 transcript. Again, he should present her with an
18 official copy of the transcript, to -- to the extent
19 he believes she has said something inconsistent with
20 what's in her transcript. He can then cross-examine
21 -- cross-examine her about that.

22 CHAIRMAN EVANS: I think the problem that
23 we're all having is, you're pulling pieces --

24 MR. BAUER: These are the --

25 CHAIRMAN EVANS: -- out of the official

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1 transcript. Do you have a copy of the official
2 transcript?

3 MR. BAUER: In her hands. Those are
4 official transcripts, provided --

5 CHAIRMAN EVANS: But are they -- are they
6 entire transcripts, or are they only --

7 MR. BAUER: They are --

8 CHAIRMAN EVANS: -- selected segments of the
9 transcript?

10 MR. BAUER: They are entire parts of
11 transcripts. I mean, the entire transcripts? I mean,
12 the entire, thick -- yeah. Basically, yes. They are
13 part -- they are official transcripts. Yeah. I mean,
14 she's got the whole thing, really.

15 MR. DUFF: Mr. Bauer, wait. Let me -- let
16 me try to explain it this way. You can't have -- if
17 the witness is live and in person on the witness
18 stand, you can't have -- you can't have the witness
19 read from the witness's deposition.

20 MR. JOHN BAUER: I gave her the whole thing.

21 MR. WILLIAMS: Hold on -- hold on for a
22 second, Dr. Bauer. Mr. Duff, respectfully --

23 MR. BAUER: May I read from it?

24 MR. DUFF: No. No, you can't, because you
25 have the witness live here. So you can't use the

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1 deposition from the past to put in -- put in evidence
2 and testimony.

3 What you can do with the deposition is point
4 out an inconsistency between what she says now and
5 what she may have said at her deposition, but the way
6 you have to set that up is to ask her a question and
7 hear what she says, and then if you think there's an
8 inconsistency from her prior testimony, you could
9 point that out. But you can't just enter -- you can't
10 just read the deposition, because you have her live
11 and in person on the witness stand. You have to deal
12 with inconsistencies between this evening's testimony
13 and what she may have said that you think is different
14 at her deposition. Is that your point?

15 MR. WILLIAMS: That's my point. And the
16 only other thing I would add is, the copy of the
17 deposition that she has does not have page numbers.
18 So to the extent he's saying, "On page 36, you said,"
19 et cetera, the copy that she has in front of her does
20 not have page numbers.

21 MR. DUFF: Do we have two complete copies of
22 the deposition somewhere, the transcript, the bound --

23 MR. BAUER: I have -- yes, I have one. Yes.

24 MR. DUFF: Is there another one?

25 MR. BAUER: We have two, yes. We have two,

1 two copies of her deposition, the official books.

2 MR. DUFF: All right. Well, then --

3 MR. WILLIAMS: So I would say, if he has
4 that, then, if he's asking her a question where he
5 believes there's an inconsistency, she should have the
6 official, bound copy.

7 MR. BAUER: I'll be glad to.

8 MR. DUFF: She needs to have the --

9 MR. BAUER: I've got it.

10 MR. DUFF: -- the bound transcript.

11 MR. BAUER: Do you have it with you here? I
12 mean, the actual book?

13 MR. JOHN BAUER: Use Vernie's.

14 MR. BAUER: He won't want me to. Basically,
15 I have it, and it's out in my truck, and I can get it,
16 if you want to take a break, and I'll bring it in.
17 I'll bring all the depositions in.

18 MR. DUFF: Well, you had them earlier, Mr.
19 Bauer, because you wanted to know if you should bring
20 them out.

21 MR. BAUER: The depositions?

22 MR. DUFF: The red, bound depositions. You
23 showed them to me earlier when you asked could you
24 just pass them out now.

25 MR. JOHN BAUER: The Brockway deposition, I

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1 took off of the internet, because Mr. Nussbaum had not
2 supplied that one. So I went to his website and
3 printed it out. She has the printed copy from his
4 website, and it has all of his identifications in it.
5 It is identical with what Mr. Williams has, if he will
6 share it.

7 MR. DUFF: Does it show pages from the
8 transcript?

9 MR. BAUER: And I have the actual binder
10 that Mr. Nussbaum provided to me, so -- if that would
11 be better.

12 MR. WILLIAMS: Just so it's -- if I may
13 approach, just so I can show you what --

14 CHAIRMAN EVANS: Let me say one thing, and I
15 will -- I will say this, as a layman to a layman, Mr.
16 Bauer, because I'm not a lawyer either; okay? And if
17 I understand Mr. Duff -- and I think I understand him
18 properly -- what he's saying is, as you are
19 questioning any witness, if you ask them a question
20 and you think their response is different from a
21 response they made in their original deposition, then
22 that is the time to bring the deposition in and say,
23 "But, you know, Ms. Witness, you are not saying now
24 what you said then." And I just think maybe we're a
25 little backwards, I mean, that you're coming at it

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1 from the deposition first.

2 MR. BAUER: The -- it's exactly -- you're
3 exactly right. That is exactly what I'm doing. When
4 I ask her to read something from the deposition, it's
5 based on previous questions. What I was asking her,
6 based on the hiding of the child, I asked her the
7 questions first. There was obviously, to me, an
8 inconsistency, and then I asked her to read something
9 from the deposition. That's what I'm trying to do.

10 MR. WILLIAMS: If I may be allowed, I
11 believe she has responded to this -- to his cross-
12 examination about whether or not this child was
13 hiding. And, again, my concern was, there's some
14 parts of the deposition that he has given her that
15 have page numbers at the top. There are others that
16 don't. So, to the extent he says page 36, line 9, you
17 can't determine that based on the copy of the
18 deposition that she has been given.

19 Which brings me back to my original point
20 that, to the extent he's going to ask her questions,
21 it should be the original, bound copy which would be
22 unsealed for the purposes of cross-examination.

23 MR. BAUER: I'll be glad to provide that.
24 I'll just need to go get it.

25 MR. DUFF: So we're going to take a break,

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1 then, to get two copies of the transcript?

2 MR. WILLIAMS: That's fine.

3 CHAIRMAN EVANS: Sure. Yeah. Let's take --
4 is 15 minutes enough time, Mr. Bauer?

5 MR. BAUER: Yes. Yes, sir.

6 CHAIRMAN EVANS: Okay. Let's take a 15-
7 minute break real quick. We're going to expand that
8 to a half an hour so we can grab dinner.

9 (Brief recess.)

10 CHAIRMAN EVANS: Okay. I'd like to
11 reconvene the hearing, and just a piece of business
12 here. We plan to try and end about nine o'clock this
13 evening. Tomorrow will change. We will not start
14 until 9:30 tomorrow. Two of the Board members have
15 some personal things that they have to get completed
16 in the morning, so we will start a little bit later
17 tomorrow morning, and I'll remind everybody of that
18 again. So we were -- you were cross-examining Ms.
19 Brockway, Mr. Bauer?

20 MR. BAUER: We're ready?

21 CHAIRMAN EVANS: Yes.

22 MR. BAUER: Before we begin, though, I would
23 like to place on the record that I received charges
24 from Dr. Moss from the May 29th email specifically
25 omitting the testimony of November 1st, anything

1 regarding November 1.

2 MR. WILLIAMS: And, again, I would object to
3 him testifying at this stage of the proceeding. He
4 has a witness who he has been cross-examining. He can
5 certainly ask her questions, but it would be
6 inappropriate for him to testify.

7 CHAIRMAN EVANS: And as I said, I think,
8 before, Mr. Bauer, that is -- I think that's very
9 appropriate for when you present your own testimony or
10 during your summation, but I would like you to direct
11 your questions to the witness and move forward here..

12 MR. BAUER: I believe that I am entitled to
13 the Teacher Employment and Dismissal Act due process
14 of law, written charges from the Board, which I have
15 not received, and I move to motion for a dismissal and
16 stricken from the record Ms. Brockway's testimony.

17 MR. WILLIAMS: Again, I'd --

18 CHAIRMAN EVANS: You have an objection, Mr.
19 Williams?

20 MR. WILLIAMS: Yeah, I would object to his,
21 again, testifying and making that motion at this stage
22 of the proceeding. He's got a witness. He's started
23 her cross-examination. It was my understanding we
24 took a break for him to get her sealed transcript
25 deposition.

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1 MR. BAUER: Yes.

2 MR. WILLIAMS: I would ask that we reconvene
3 from that point.

4 MR. BAUER: Okay. Now, I want to --

5 CHAIRMAN EVANS: Would you hold on just a
6 minute, please?

7 MR. BAUER: Yes.

8 (Board discussion.)

9 CHAIRMAN EVANS: I think, after -- I want to
10 go back to the motion you just made, Mr. Bauer, and
11 after discussing it with Mr. Duff, we're going to set
12 it aside right now.

13 MR. BAUER: Okay.

14 CHAIRMAN EVANS: We think there might be an
15 appropriate time for you to bring this up later; okay?

16 MR. BAUER: Yes, sir.

17 CHAIRMAN EVANS: But let's proceed with your
18 cross-examination of Ms. Brockway, please.

19 BY MR. BAUER:

20 Q Ms. Brockway, I believe I asked you earlier if
21 you knew what a rest wall was. Did I ask -- is a rest wall
22 -- did I ask you if it was an assigned place? I can't even
23 remember. Do you know anything about a rest wall?

24 A I'm sorry. Can you clarify what you're asking
25 me?

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1 Q Had you ever heard of a rest wall before I told
2 you about it at some point, that you say, after this event?
3 Had --

4 A I have heard of the term "rest wall." I was just
5 not made aware that Mr. Bauer had a rest wall when I was
6 investigating the situation November 1st, 2013.

7 Q Did you -- do you testify -- do you remember
8 testifying that -- earlier, that I interrupted you and said
9 that the child was doing nothing wrong? Do you remember
10 that?

11 A I stated earlier that, during my discussion with
12 the student, Mr. Bauer interrupted me while speaking to the
13 student, claiming I did not know how he ran his class, the
14 child did nothing wrong, when all I wanted to do was avoid
15 this from happening again, because it was a safety concern
16 of mine that the child had left a station and had ventured
17 around the corner, unsupervised, without the teacher's
18 knowledge.

19 Q Now, you stated that I didn't -- you stated that
20 I told you that you didn't know how my class ran. Is it
21 possible that I was trying to explain to you about the rest
22 wall?

23 A I did not know what Mr. Bauer was trying to
24 explain to me, but he never did explain to me at that time
25 what a rest wall was.

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1 Q Okay. Now -- all right. I would like to refer
2 to file 19-A, and was -- okay. Go to -- go back to
3 paragraph 1. You know what? I'm losing my place here.
4 Okay. Here we go. Sorry. Read paragraph 2, the last
5 sentence, of this document.

6 A Paragraph 2, last sentence, states: At the time,
7 Mr. Bauer stated that he was not aware of anyone missing
8 from his class.

9 Q Was someone missing?

10 A At that time, we were not able to determine what
11 had happened. This was at the beginning of the
12 investigation after the report came in that a child
13 appeared to be hiding outside of the gym.

14 Q Appeared to be hiding, but was the child missing?
15 Who was missing?

16 A When I arrived at the gym --

17 CHAIRMAN EVANS: Please don't use any
18 student names, Ms. Brockway.

19 THE WITNESS: Yes. When I arrived at the
20 gym, I was not aware at that time if there was a child
21 missing. My point was to -- to get there, to perform
22 a head count, to make sure all students were accounted
23 for, and then to look into the situation of a child
24 hiding outside the gym.

25 ///

///

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1 BY MR. BAUER:

2 Q Now please go back to paragraph 1, line 4, and
3 please read that sentence.

4 A Due to her concern, she notified the front
5 office. I'm referring to Ms. Sampson refer -- calling the
6 front office because she was concerned that she saw a child
7 unattended outside of her window.

8 Q Through a window for teachers in sight? Is that
9 not on there? Is that -- is that what you said?

10 A Are you asking me to look at line 3? I thought
11 you said line 4.

12 Q Oh, is that line 3? I must have -- that must be
13 a typo here. Yes, all -- yeah, read "through a window."
14 It begins "through a window."

15 A She placed the call after repeatedly checking
16 through a window for any other children or teachers in
17 sight.

18 Q Now, was Ms. Sampson's view limited?

19 A As I said earlier, I did not determine whether
20 Ms. Sampson's view was limited. My main focus was making
21 sure that all children were accounted for and wanted to
22 avoid the situation from happening again.

23 Q But she could only see only the child at the rest
24 wall; is that correct? Or at -- she could only see -- I'm
25 sorry. Go ahead.

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1 A The teacher reported that she saw a child in his
2 pajamas that appeared to be hiding from his class. There
3 were no other students or a teacher that she could see.

4 Q Where was --

5 A She was concerned and wanted us --

6 Q I'm sorry.

7 A -- to look into it.

8 Q Where was the teacher, the PE teacher, at the
9 time of the call?

10 A I do not know where the PE teacher was at the
11 time of the call. When I arrived at the gym and asked if
12 any children had been hiding or missing, at that time, Mr.
13 Bauer said he was not aware of any students hiding or
14 missing from his class. If he had seen the student who had
15 left the station -- his station and moved around the
16 corner, I would have expected him to share that information
17 with me then and cleared it up, that that most likely was
18 the student that the teacher had seen.

19 Q Is it possible that Mr. Bauer was trying to
20 explain that to you when he was interrupting you and --
21 okay. Go ahead.

22 A No, it was never explained to me. All I heard
23 when I was interrupted in speaking with the second-grade
24 child was that I didn't understand anything, or understand
25 how your class -- how Mr. Bauer's class works, and that the

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1 student did nothing wrong.

2 Q Is it possible that you were screaming at the
3 child and he was trying to defend the child?

4 A I was absolutely not screaming at the child.

5 Q Is it not possible that you would not listen to
6 Mr. Bauer when he was interrupting you because you were
7 upset with Mr. Bauer interrupting you?

8 A No, that is not true. I wanted to be able to
9 communicate and have a conversation and to avoid the
10 problem from happening again, but Mr. Bauer did not see
11 anything wrong with the -- with the situation.

12 Q So your testimony today is that you were not --
13 you were not yelling at this child?

14 A No, not at all.

15 Q Okay. Where do you think the teacher was when
16 you were called to go down to the gym? Where do you think
17 the PE teacher could be -- could have been?

18 A I would hope the PE teacher would be supervising
19 his students that are in his care. Like I stated before,
20 there were stations set up inside the gym and outside the
21 gym, making it impossible to watch and supervise all
22 students.

23 Q Now, the PE teacher, as any teacher, needs to be
24 able to monitor all students. Now I want you to look at
25 this poster, and I hope it's not upside down, but it is.

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1 Oops. Now, where would be the best place -- if Mr. Bauer
2 got permission to have stations set up due to the air from
3 the office, where would be the best place for Mr. Bauer to
4 be stationed to monitor all the kids?

5 A I don't believe there is a place where you can
6 monitor and supervise students when you have stations set
7 up inside and outside. You would either need to be -- have
8 all stations outside or inside and be supervising that
9 group.

10 Q Is it possible that the best place for a PE
11 teacher who had permission to open the doors due to the air
12 to be was in the doorway between the gym and the outdoor
13 stations; one eye this way, one eye that way? Is it
14 possible that that would be the best place?

15 A No, I do not believe that's the best place,
16 because you would not be able -- Mr. Bauer would not be
17 able to see all students that were participating in indoor
18 and outdoor stations.

19 Q Okay. Well, what would be the best place? If
20 that's not a good place, do you see any other places that
21 Mr. Bauer --

22 MR. WILLIAMS: I'm going to object to the
23 extent he's already asked that question --

24 MR. BAUER: Okay.

25 MR. WILLIAMS: -- and she's answered it.

1 BY MR. BAUER:

2 Q All right. Is it possible that, while standing
3 in that doorway where it says Bauer, that he could see all
4 students at all times? Is it possible?

5 A No, it is not possible that Mr. Bauer could see
6 all students from that doorway.

7 Q Are there glass doors at the far end here? If
8 Mr. Bauer is here, and the kids are here -- glass doors,
9 one there, and one there -- is it possible that he could
10 see a majority of the kids?

11 A No, I do not believe it's possible. There are
12 two doors at the end of the gym with a wall in between
13 them. The door on the left was open, and there were
14 students behind that area, behind the wall.

15 Q Now, PE is -- would you agree that PE is a class
16 where movement is involved?

17 A I would definitely agree that movement is
18 involved in PE.

19 Q So, if the children are moving at the station
20 behind that wall, isn't it possible that, if they are out
21 of the line of sight, it's only for a few seconds?

22 A I cannot determine how long they would be out of
23 sight, but like you said, move -- there is movement in PE,
24 and there were children at a lacrosse station, moving back
25 and forth. And so, when they were not in front of that

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1 doorway, they were out of the line of sight.

2 Q When teachers are at recess and all these kids
3 are out there, are there moments of a few seconds where a
4 child might be behind a tree or behind equipment, or
5 something like that, where they don't see that child that
6 very second, but they might see him again, maybe, a second
7 later? Is it possible that their line of sight is not
8 always 100 percent?

9 A The expectation is that teachers do spread out on
10 the playground so that all areas of the playground and
11 equipment can be monitored.

12 Q Okay. All right. Thank you. Now, let's see.
13 Now I'm going to ask you this, but you've already told me.
14 Where -- let's see. The question is, where did Mr. Bauer
15 tell the office that he would be? Are you aware of Mr.
16 Bauer telling the office where he would be?

17 A Can you clarify?

18 Q Are you aware that Mr. Bauer called the office to
19 explain where he was going to be located during this class?

20 A No, I was never made aware that a phone call was
21 made to the office.

22 Q And are you aware that Mr. Bauer verified -- or
23 did you verify with Mr. Bauer that he had called the office
24 that morning about air conditioning problems?

25 A I never did verify anything about air

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1 conditioning problems because I was not aware of an air
2 conditioning problem.

3 Q Okay. Now, this was November 1st, 2013, and you
4 signed the document a week later. Do you feel that that
5 was time enough to verify basic facts?

6 A I do feel that it's time to verify basic facts.
7 I felt like I was able to verify a lot in my investigation
8 on that day, on November 1st.

9 Q Did you come to Mr. Bauer and sit down for an
10 interview to ask basic questions, such as did he ask for a
11 sub, et cetera? Did you, at any time?

12 A No, I did not, but I wouldn't, because I was not
13 aware of sub, weather, air conditioning problems, anything
14 of --

15 Q So the only --

16 A -- that nature.

17 Q Okay. Got it. So the only investigation with
18 Mr. Bauer was what Mr. Bauer said or tried to say while he
19 was with a class at that time? There was nothing else, no
20 follow-up; correct?

21 A I'm sorry. Please repeat --

22 Q I'm sorry. So the only investigation was based
23 on what Mr. Bauer said at that moment during that class?

24 A My investigation was to account for all children
25 that were supposed to be under Mr. Bauer's supervision, and

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1 like I explained, it all came from the phone call that was
2 reported that a child was out -- appeared to be hiding and
3 was outside, not in -- not accompanied by other children or
4 an adult.

5 Q When you say that phone call was recorded, do you
6 mean -- you don't mean an audio recording? You're talking
7 just a write-down record of it?

8 A I believe I said "reported."

9 Q Oh, I'm sorry. I thought you said recorded.
10 Reported. Do you have a record? Is there any sort of
11 record of Ms. Sampson calling on November 1st, 2013?

12 A Ms. Sampson confirmed, verbally, that she made a
13 phone call --

14 Q Do you think --

15 A -- on November --

16 Q I'm sorry. Go ahead.

17 A I was just going to say, on November 1st.

18 Q Did you think there would be phone records of
19 that?

20 A There could be.

21 Q Are you aware that I have requested phone records
22 from that day, proving -- I'll rephrase that. Are you
23 aware that I have requested phone records from that day and
24 have been told that they had been destroyed because of a
25 glitch?

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1 A I'm not aware of that.

2 Q Okay. Now, why did it take 15 months for
3 everyone to learn that you asked the child where or if Mr.
4 Bauer was in the doorway, that -- I'm sorry -- that you did
5 not ask the child where or if Mr. Bauer was in the doorway?

6 MR. WILLIAMS: I'm going to object to the
7 extent he's --

8 MR. BAUER: Okay. I'll withdraw it.

9 MR. WILLIAMS: -- testifying as to
10 information that's not in the record.

11 MR. BAUER: I'll withdraw that.

12 CHAIRMAN EVANS: Thank you.

13 BY MR. BAUER:

14 Q What grade was the child?

15 A The student was a grade-two student, second
16 grade.

17 Q What is his first language, or what --

18 A I believe it's Spanish.

19 Q And does he speak fluent English?

20 A I'm not able to -- to answer that. He was able
21 to speak in English to me during our discussion.

22 Q Now, did you ask the student -- I believe you
23 stated that the student said he saw a little girl sitting
24 in a chair in the doorway. Did you ask the student if Mr.
25 Bauer was in the doorway?

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1 A I did. I asked him who saw him or who knew that
2 he was there, and he -- that's when he told me that there
3 was a student that wasn't feeling well, sitting in the
4 chair. He pointed to the chair, and I specifically asked,
5 "Was Mr. Bauer -- was Mr. Bauer there, too? Did he see
6 you?" And he said no.

7 Q Is that in your documentation from November 1st?

8 A Paragraph 4, the student reported he was the only
9 student standing in that area, except for a girl that was
10 sitting in a seat at the doorway.

11 Q But it doesn't say whether the teacher was there
12 or not there?

13 A Well, it does state that the student reported he
14 was the only student standing in that area, except for a
15 girl that was sitting in a seat at the doorway.

16 Q So is it possible he didn't understand, that he
17 thought maybe you were asking about students? I mean, he
18 was the only -- that was the only student near the area.
19 Well, maybe that's what he thought you were thinking. Is
20 that correct?

21 A I'm sorry. What's the question?

22 Q Did you ask specifically if the teacher was
23 nearby?

24 A I did ask specifically.

25 Q Did you ask Mr. Bauer where he was?

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1 A When I first arrived at the gym, you had made it
2 clear that you were not aware of anybody that had been
3 missing or hiding, and then, once we were able to identify
4 the student that the teacher had reported that she saw, you
5 then stated that you knew that he was here all along. And
6 I remember us having the conversation. I said, "Well, you
7 know, why didn't you share that with me when I first
8 appeared here?" Because had you shared with me that there
9 was a child upset, he had left his station, he was standing
10 by himself on the wall, then that would have clarified
11 things, but that was not shared with me at that time.

12 Q Is it possible that, when Mr. Bauer said he was
13 unaware of a child -- that a child was missing, that Mr.
14 Bauer was telling -- is it possible that -- let me rephrase
15 this. When Mr. Bauer speaks of being unaware of a missing
16 child, is it also possible that he saw a child at the rest
17 wall at the same time? Can those two facts be correct at
18 the same time?

19 A I'm sorry. Say that again.

20 Q Can the two facts, unaware of a missing child and
21 being aware of the child at the rest wall -- can those two
22 facts be correct?

23 A Yes, I believe they could be correct. It just
24 wasn't explained to me at the time that there was a child
25 at the rest wall to help clarify the child that was

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1 reportedly hiding.

2 Q I'm just trying to figure out -- okay. I'm just
3 wondering, do you still think the child was hiding and
4 missing?

5 A The child had left a station without an adult's
6 permission and was in an area that no one could see him,
7 and you were not aware of that when I came in and asked you
8 -- or asked -- I'm sorry --

9 Q Did you --

10 A -- asked Mr. Bauer.

11 Q Did you just say that the child left his station
12 without permission?

13 A Yes, he had left his station without permission.

14 Q Did --

15 A You explained to me on November 1st that they are
16 allowed to move from station to station without your
17 permission -- or without Mr. Bauer's permission.

18 Q Correct. Correct. That's right. And you yelled
19 at the child for doing what Mr. Bauer told him to do; is
20 that correct?

21 A No, it's --

22 MR. WILLIAMS: Let me -- hold on. She's
23 already testified she didn't yell at the child.

24 MR. BAUER: All right. Withdrawn. Let me
25 rephrase that.

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1 BY MR. BAUER:

2 Q So you -- Mr. Bauer explained that the children
3 had permission to go from station to station; is that
4 correct?

5 A Yes, Mr. Bauer explained to me that children are
6 allowed to move from one station to another without
7 permission from the teacher.

8 Q So why were you explaining to the child that he
9 did something wrong?

10 A The child had left the station and moved around
11 the corner. He did not move to another station, nor do I
12 agree with moving from one station to another without the
13 teacher being aware.

14 Q So the -- okay. So the child is here
15 (indicating), right there, standing on the corner, and his
16 group is here; right? Do we agree that they were in this
17 station, this lacrosse -- LAX is lacrosse.

18 A I do not agree. I believe the child was around
19 the corner, more so. He was not standing -- we can refer
20 back to the picture I showed earlier exactly where he was
21 standing, and it was around the corner from the lacrosse
22 station, not at the corner.

23 Q Are there cameras, video surveillance cameras, on
24 this side? I believe there's -- is there a surveillance
25 camera somewhere along here and in the gymnasium?

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1 A There are surveillance cameras. There are two
2 cameras, and I was not aware of that at the time of the
3 incident on November 1st.

4 Q Are you aware that Mr. Bauer requested video
5 surveillance on November -- for November 1st, 2014 -- or
6 '13?

7 A I'm sorry. Could you say that again, please?

8 Q Are you aware that Mr. Bauer asked for video
9 surveillance between the times of one forty-five and two --
10 or three o'clock regarding this event?

11 A No, I am not aware that Mr. Bauer requested the
12 video. I never heard from Mr. Bauer again regarding this
13 incident after providing him with a copy of the
14 documentation on November 8th.

15 Q Are you aware that an attorney filed a motion to
16 preserve data, all electronic data?

17 A I am not aware of that.

18 Q All right. Okay. So is it not -- is it possible
19 that Mr. Bauer was where he said he was?

20 A Can you clarify that, please?

21 Q Is it possible that -- I'm sorry. Is it possible
22 that Mr. Bauer said -- that Mr. Bauer was where he said he
23 was, which is in the doorway?

24 A Yes, it is possible that Mr. Bauer could have
25 been standing in the doorway. The student that I spoke

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1 with does not -- or did not say that the teacher, Mr.
2 Bauer, was not in the doorway. However, if Mr. Bauer was
3 standing in that doorway, I would like to say again that it
4 would be impossible to supervise all students that were
5 indoors and outdoors from that doorway.

6 Q Have you ever left a student behind or ever been
7 with a class where you couldn't see, where you sent a child
8 to the bathroom or to go get water? Were they in your line
9 of sight always?

10 A I have never lost a child or have had a child
11 gone missing.

12 Q Have you ever sent a child around the corner to
13 go get a drink of water?

14 A Yes, I've had children leave my classroom, when I
15 was a classroom teacher, to use a restroom, because I did
16 not have one in my classroom. I did have a water fountain
17 that --

18 Q And they were not --

19 A -- they were able to use.

20 Q -- in your line of sight; correct?

21 MR. WILLIAMS: Mr. Bauer --

22 MR. BAUER: Okay.

23 MR. WILLIAMS: -- my objection is, since he
24 asked her a question, he should give her a full
25 opportunity to respond to it.

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1 MR. BAUER: I agree. Thank you.

2 MR. WILLIAMS: And also give --

3 MR. BAUER: Thank you.

4 MR. WILLIAMS: And also give me a full
5 opportunity to state my objection.

6 BY MR. BAUER:

7 Q Okay. All right. I'll move on here. So, as you
8 stated before, you were not aware that Mr. George McMaster,
9 an attorney, requested --

10 MR. WILLIAMS: I'm going to object. To the
11 extent he prefaces a question with "as you've stated
12 before," then the question has been asked and
13 answered.

14 BY MR. BAUER:

15 Q All right. Did anyone come to you -- or did
16 anyone inform you that we need to preserve electronic data?

17 A No, I was never told to preserve electronic data.

18 Q I would like you -- file 165.

19 MS. ANDERSON: File 165?

20 THE WITNESS: Yes, ma'am.

21 MR. WILLIAMS: And my objection here would
22 be, the witness has already testified she is not
23 familiar with this request. This is just
24 documentation of the request that he's already asked
25 the witness if she knew about, and she said no.

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1 CHAIRMAN EVANS: Yeah, I'll sustain that,
2 Mr. Bauer. She's already told you that she has no
3 knowledge of any request to preserve videotapes.

4 MR. BAUER: Okay. That's fine. I just
5 would like her to take a quick look at it.

6 MR. WILLIAMS: Same objection.

7 MR. BAUER: All right. Withdrawn. I would
8 like, please, for her to read -- see file 109. We're
9 going to go to that in a moment.

10 MR. WILLIAMS: One oh nine?

11 MR. BAUER: Yes. That's similar.

12 MR. WILLIAMS: I would object also to the
13 admission of this document, which is a letter from
14 Shirley Fawley to George McMaster. I don't see what
15 relevant information this witness would have as it
16 relates to a letter between Dr. Fawley and Mr.
17 McMaster.

18 CHAIRMAN EVANS: Give me just a second to
19 read it, Mr. Williams.

20 (Board discussion.)

21 CHAIRMAN EVANS: Mr. Bauer, we don't
22 understand the request from Ms. -- she's already told
23 you that she has no knowledge of any of this --

24 MR. BAUER: She says --

25 CHAIRMAN EVANS: -- information.

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1 MR. BAUER: -- that she has no knowledge.
2 Yet, in the letter from Dr. Fawley, it states that,
3 "We have checked with the administration and have been
4 assured that the staff has taken appropriate steps to
5 preserve the data contained on district-owned
6 computers and other electronic devices."

7 MR. WILLIAMS: Again --

8 MR. BAUER: It says that she agreed to it.

9 MR. WILLIAMS: I'm going to object to the
10 extent he's trying to impute that activity to Ms.
11 Brockway. Dr. Fawley made certain assurances on
12 behalf of the staff and the district. That doesn't
13 necessarily mean that Ms. Brockway was told that
14 information, and, again, she has repeatedly said she
15 was not aware of that. So I again would renew my
16 objection to this document.

17 MR. BAUER: When it says the
18 "administration," I assume it means the entire
19 administration, but okay. All right.

20 MR. WILLIAMS: Can I get a ruling on my
21 objection?

22 CHAIRMAN EVANS: Yeah, we sustain it. I --
23 there's --

24 MR. BAUER: Okay.

25 CHAIRMAN EVANS: Saying that the

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1 administration is aware doesn't mean, specifically,
2 that Ms. Brockway was.

3 MR. DUFF: And she said she was not.

4 MR. BAUER: Okay.

5 MR. DUFF: She's testified that she has not.

6 MR. BAUER: Now I'd like to continue with
7 file 19-A, paragraph 5. I'll give you a chance to
8 review it. You know what? I am going to strike that,
9 and I've already covered this, I believe, so I'm going
10 to move on. Covered that. All right. I sort of
11 skipped around, so I'm losing my place. All right. I
12 need Brockway 2. Oh, I need the depositions. All
13 right. Does she have it? Okay. Does she have it?
14 All right. It should be under page 2 -- page 54 in
15 your deposition. Oh.

16 MR. WILLIAMS: Again, I'm going to object.
17 It was my understanding that the reason -- or part of
18 the reason we took a break earlier because -- was
19 because Mr. Bauer indicated he had the sealed
20 transcript in his truck, which he was going to bring
21 in.

22 So, again, to the extent he wants to ask a
23 question about the deposition, one, he needs to lay a
24 foundation, where he's asked her a question he
25 believes she has answered differently than she

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1 answered in her deposition. Two, he needs to provide
2 her with a copy of her -- of the official transcript.

3 CHAIRMAN EVANS: Yeah, I think we discussed
4 this before the break, Mr. Bauer. The appropriate
5 path, I believe, would be to ask Ms. Brockway a
6 question, and if you feel that her answer is different
7 than her deposition, that's where you would bring the
8 deposition back into context, I believe.

9 MR. BAUER: Okay. I always thought it was,
10 during a cross -- this is a past event. The
11 deposition is a past event, and I can ask during a
12 cross, based on her testimony. That's not true?

13 CHAIRMAN EVANS: I believe --

14 MR. BAUER: Okay.

15 CHAIRMAN EVANS: -- that it's appropriate
16 that you ask her a question to show the difference in
17 context between what she's saying now and what she
18 said in her deposition, and I don't believe you've
19 established that yet.

20 BY MR. BAUER:

21 Q Okay. Ms. Brockway, do you remember an extended
22 passage in your deposition concerning three of you being
23 outside -- or three people being outside --

24 A I don't remember --

25 Q -- during the November 1st event?

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1 MR. WILLIAMS: Same objection regarding --

2 CHAIRMAN EVANS: When you --

3 MR. WILLIAMS: -- regarding the use --

4 CHAIRMAN EVANS: I'm going to sustain your
5 objection, Mr. Williams. I --

6 MR. BAUER: All right.

7 CHAIRMAN EVANS: I'm not trying to make this
8 difficult, Mr. Bauer. I'm saying that my
9 understanding is that you've got to establish through
10 a question to Ms. Brockway something that she responds
11 to today that's different than what she had in her
12 deposition, what she said in her deposition.

13 MR. BAUER: Okay. I just want to point out
14 that her attorney asked the questions in the
15 deposition, and now I'm cross-examining. Yeah. I'm
16 sorry. Her attorney asked her questions in the
17 testimony, and now I'm cross-examining.

18 CHAIRMAN EVANS: Okay. But you need -- you
19 need to ask a question first.

20 BY MR. BAUER:

21 Q Ms. Brockway, after about five minutes of
22 arriving at the gym, you determined that no one was hiding
23 -- or did you determine that no one was hiding or
24 unaccounted for?

25 A I was able to determine that no one was missing

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1 after my headcount and accounting for the 19 children that
2 were supposed to be in your -- in Mr. Bauer's presence.

3 Q Was the student at the nurse's station accounted
4 for?

5 A That student would have been the 20th student,
6 and I was informed by a second-grade student that a
7 classmate had been at the nurse's station.

8 Q Okay. Do you remember from your deposition --
9 can I read it? Okay. Strike. This is a pro se. Okay.
10 Ms. Brockway, finally, you investigated a hiding student;
11 but did you investigate a hiding student, who was not
12 hiding, and you found nothing else wrong?

13 A I'm sorry. Could you repeat the question?

14 Q Did you investigate a hiding student, who was not
15 hiding, and then found nothing else wrong?

16 A I investigated a student that appeared to be
17 hiding, and throughout my investigation, I was able to
18 determine that all students were accounted for at the time
19 of my arrival. I was also able to determine that a student
20 had left his station and had moved around the corner from
21 his station.

22 Q At the rest wall?

23 A I was not able to determine that a rest wall was
24 used because a rest wall was never shared with me on
25 November 1st.

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1 Q Okay. Did Mr. Bauer sign the documentation that
2 you wrote about the event?

3 A Yes. As I shared earlier, we do have
4 documentation that Mr. Bauer stated that he received my
5 documentation of the incident on November 1st.

6 Q Was this a documented reprimand?

7 A It was documentation of what happened on November
8 1st, 2013. It was explained that the incident had been
9 documented and that I needed him to sign off that he
10 received the documentation.

11 Q So it wasn't a negative, then, or was it a
12 negative? Was it a bad piece of paper for Mr. Bauer?

13 A Well, it was documentation stating what happened
14 and documentation stating what was expected from here on
15 out to avoid any future problems.

16 Q When a teacher's documented and it's a negative
17 documentation, is that forwarded to human resources?

18 A I am not able to speak to which documents are
19 forwarded to human resources. I do know we keep
20 documentation on file at the school when it's written.

21 Q Okay. So you don't know if -- do you remember if
22 you forwarded it to Ms. Walton or anyone at human
23 resources?

24 A I did not forward my documentation to Ms. Walton.

25 Q Was it placed in Mr. Bauer's personnel file?

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1 A Yes.

2 Q Is it possible that, when Mr. Bauer signed for
3 it, he did not know that, that he thought it was just
4 documentation?

5 A No, I did share that would be filed in his
6 personnel file.

7 Q Does it say that in the documentation?

8 A I do not believe it says that in the
9 documentation. I verbally said it --

10 Q Verbally.

11 A -- when I brought it to you that day.

12 Q And where was Mr. Bauer when he signed it?

13 A We were at the gym door entrance.

14 Q Well, did he have two students with him that he
15 was tutoring?

16 A I do not recall any students being present.

17 Q If there were video surveillance from that gym,
18 from that November 8th, do you think it would show him with
19 two students in the middle of the gym, tutoring?

20 A I do not know what the video surveillance would
21 show. I do not recall there being students present. It
22 was a year and a half ago. I just remember coming down and
23 speaking with you -- or speaking with Mr. Bauer.

24 MR. BAUER: I think that's it. Thank you,
25 Ms. Brockway.

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1 THE WITNESS: Thank you.

2 CHAIRMAN EVANS: Any re-examination?

3 MR. WILLIAMS: Just one.

4 CHAIRMAN EVANS: Go ahead, Mr. Williams.

5 REDIRECT EXAMINATION

6 BY MR. WILLIAMS:

7 Q After you provided Mr. Bauer with a copy of your
8 November 1st documentation, did he ever provide any type of
9 response to that, disagree with what you had said, either
10 orally or in writing?

11 A No, I never did hear from Mr. Bauer again after
12 the documentation was provided to him regarding the
13 November 1st incident.

14 MR. WILLIAMS: That's all I have.

15 MR. BAUER: I have just one more question.

16 RECROSS-EXAMINATION

17 BY MR. BAUER:

18 Q Do you agree that -- do you agree that you did
19 not specify in that document that this was to be placed in
20 Mr. Bauer's personnel file?

21 A Yes, I do not see that I included that in this
22 documentation. I --

23 Q And so --

24 MR. WILLIAMS: I believe -- I believe she's
25 still talking.

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1 BY MR. BAUER:

2 Q I'm sorry.

3 A I just wanted to say that this was my first time
4 documenting an incident and that I did not know to include
5 that, or should include that. But, no, it is not in this
6 documentation.

7 Q Okay. So, since you said this was the first time
8 that you had documented an incident -- is that what you
9 just said?

10 A That is what I just said.

11 Q Okay. So is it possible that Mr. Bauer was -- it
12 was unclear to Mr. Bauer that this was to be placed in his
13 personnel file?

14 A It was never brought to my attention that it was
15 unclear that it was going to be placed in Mr. Bauer's file.
16 It was shared when I handed the documentation to him and
17 then received the written documentation that Mr. Bauer had
18 a copy in his hands.

19 Q So, if it was clear that Mr. Bauer knew that this
20 was to be placed in his personnel file, then it would be
21 reasonable that Mr. Bauer would then come to you? Is that
22 right, or --

23 A I'm sorry. Could you --

24 Q I know. It's --

25 A -- clarify?

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1 Q -- a long day. Is it possible Mr. Bauer was
2 unclear about this and that's the reason why he did not
3 approach you for a rebuttal?

4 A I do not know if Mr. Bauer was unclear about it
5 being placed in his personnel file. I do know that I did
6 state that, that I did provide him with a copy of the
7 documentation, and would have welcomed conversation
8 afterwards if it -- if it was needed.

9 Q Okay. So what you're saying is, it was verbal to
10 Mr. Bauer that it was going in his personnel file; is that
11 correct?

12 A Yes, that's what I said.

13 Q And this was in the gym; right? You said this to
14 him in the gym with two students; is that correct?

15 A No, that is not correct. I stated that I don't
16 recall there being two students present, just Mr. Bauer and
17 myself, at the gym door.

18 MR. BAUER: Thank you, Ms. Brockway.

19 MR. WILLIAMS: We don't have any further
20 questions of Ms. Brockway.

21 CHAIRMAN EVANS: You're excused, Ms.
22 Brockway. Thank you.

23 MS. BROCKWAY: Thank you.

24 CHAIRMAN EVANS: Are you ready for your next
25 witness?

1 MS. FAWLEY: Mr. Chairman, Ms. Brockway was
2 -- her testimony was the shortest of all our intended
3 witnesses, and given the hour, that it's eight
4 o'clock, that Mr. Clendaniel -- that the
5 administration would respectfully request that Mr.
6 Clendaniel's testimony not be stopped and then have
7 cross-examination occur, that, instead, it would be a
8 continuous flow, similar to what just occurred with
9 Ms. Brockway.

10 CHAIRMAN EVANS: Do you believe you'd
11 complete your direct prior to nine o'clock?

12 MS. FAWLEY: We can.

13 MR. DUFF: Ms. Fawley, what -- is your
14 request that the direct and the cross not be separated
15 in time?

16 MS. FAWLEY: That's -- that's exactly my
17 request, Mr. Duff. Thank you for clarifying it.

18 CHAIRMAN EVANS: Give us just a second,
19 please, Ms. Fawley.

20 (Brief recess.)

21 CHAIRMAN EVANS: If we could get everybody
22 back, please? We are going to ask that you go ahead
23 and do the direct.

24 MS. FAWLEY: That's fine.

25 CHAIRMAN EVANS: And then we will break and

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1 do the cross first thing tomorrow morning.

2 MS. FAWLEY: Then we call Cy Clendaniel.

3 (Brief recess.)

4 MR. BAUER: Pardon me. Before we begin, I'd
5 like to make a motion to appoint Lauren Martel as my
6 attorney to make a motion, if acceptable.

7 MS. FAWLEY: The administration objects.

8 Mr. Bauer --

9 MS. BUSH: He doesn't have an attorney.

10 MS. FAWLEY: (Moving to microphone.) The
11 administration objects. Mr. Bauer has made it
12 perfectly clear that he is operating pro se. We
13 object to an attorney coming up to make a motion on
14 his behalf.

15 CHAIRMAN EVANS: We're going to sustain your
16 objection.

17 MR. BAUER: Thank you.

18 CHAIRMAN EVANS: You've asked to represent
19 yourself pro se, and you need to proceed with that.
20 Mr. Clendaniel, we need to swear you in.

21 (WHEREUPON, DONALD CLENDANIEL, having been
22 first duly sworn, was examined and testified as follows:)

23 DIRECT EXAMINATION

24 BY MS. FAWLEY:

25 Q Good evening. Would you please state your full

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1 name for the record?

2 A Yes, ma'am. Donald Otis Clendaniel, III.

3 Q And what position do you hold with Beaufort
4 County schools?

5 A I'm the assistant principal at Hilton Head Island
6 Elementary School.

7 Q Mr. Clendaniel, how many years have you served as
8 assistant principal at the school?

9 A This is my fifth year.

10 Q And what previous positions had you held in
11 education before being employed as an assistant principal?

12 A I was employed with the Savannah-Chatham County
13 Public School System for six years.

14 Q And in what types of positions, please?

15 A I was a teacher there. I was the lead gifted
16 facilitator for the building. I was also the IB
17 coordinator my last two years there.

18 Q And what educational degrees do you hold?

19 A I was, undergrad, bachelor of science from the
20 University of Delaware. I also hold a master's in
21 educational leadership from Nova Southeastern University.

22 Q And as an assistant principal at Hilton Head
23 Island Elementary School, what are your overall job
24 responsibilities?

25 A My overall job responsibilities is, first and

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1 foremost, I'm an instructional leader. I also hold the
2 title of test coordinator for the building. I'm also in
3 charge of our immersion program there, the Chinese and
4 Spanish immersion program.

5 Q And do you know Mr. Alden Bauer?

6 A Yes, I do.

7 Q And how did you come to know Mr. Bauer?

8 A I came to know Mr. Bauer when I was first
9 employed in the summer of 2010.

10 Q If you met Mr. Bauer when you were initially
11 employed as an administrator at Hilton Head Island
12 Elementary, then you've known Mr. Bauer for about four and
13 a half years; is that right?

14 A That's correct.

15 Q During the 2010-11 school year, your first at the
16 school, what was your opinion of Mr. Bauer as a teacher?

17 A Well, he was a good teacher. He seemed to love
18 what he did, love children.

19 Q And did you have any supervisory concerns about
20 Mr. Bauer in the 2010-11 school year?

21 A No, ma'am, no concerns.

22 Q How about in '11-12? Any changes -- any changes
23 from your initial impressions of Mr. Bauer as a teacher?

24 A No changes. We did have a couple of student
25 injuries that took place that year, and I do remember one

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1 of the things that Mr. Bauer told me was that he wished
2 that parents would come to him with any issues they had, as
3 opposed to going directly to administration.

4 Q The next school year, which would be 2012-13, how
5 would you describe any interactions that you had with Mr.
6 Bauer?

7 A The school year what? I'm sorry.

8 Q '12-13.

9 A '12-13, nothing out of the ordinary. I do know
10 that there was one small student injury, and I reminded Mr.
11 Bauer to be proactive and reach out to the parents of that
12 student. Since, you know, he expressed the concern of them
13 always coming to administration, I just wanted him to kind
14 of preemptively reach out to the parents so they knew that
15 there was an issue.

16 That was also the year that we really stepped up
17 our vigilance with our Motorola radios. We had close to 16
18 radios on hand now, and Mr. Bauer would have been one of
19 the staff members that was trained in the use of those
20 radios.

21 Q Mr. Clendaniel, would you please now think about
22 the 2013-14 school year and share with the Board the first
23 thing that you may recall about Mr. Bauer's teaching or
24 conduct?

25 A Sure. One of the first things that I noticed is

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1 Mr. Bauer's inability to adequately relay information via
2 those Motorola radios. As I stated before, we did a lot of
3 training --

4 MR. BAUER: Objection. This is not in the
5 evidence. There is nothing regarding this in the
6 evidence.

7 MS. FAWLEY: This goes to Mister -- this
8 goes to Mr. Bauer's conduct in the year 2013, which is
9 the year in which the lack of supervision and the
10 inability to understand directions and insubordination
11 and disrespect began.

12 MR. BAUER: Insubordination? The radio?

13 MS. FAWLEY: Mr. Bauer, I'm not going to --

14 MR. BAUER: I object.

15 MS. FAWLEY: -- be arguing with you, but
16 I've placed my --

17 CHAIRMAN EVANS: The objection is noted, but
18 we overrule it.

19 MR. BAUER: Yes, sir.

20 BY MS. FAWLEY:

21 Q Mr. Clendaniel, if you would proceed?

22 A Sure. As I was saying, let's see, that was the
23 year that I did notice Mr. Bauer's inability in
24 professional radio etiquette with our radios. In a fleet
25 of 16 radios with a school of just over 900 students, it's

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1 imperative that, you know, our radio-holders, which range
2 from administration down to our nurses, guidance, school
3 social worker, bus duty personnel, multiple exits and
4 entrances -- that the transmissions that are relayed are
5 done so privately, because we could run into a breach of
6 student confidentiality if we -- if we were transmitting
7 student names.

8 And that's one of the issues that I began to
9 notice, is that we would get these transmissions from the
10 office, from Mr. Bauer at bus dismissal, stating, "Office,
11 do you copy? Office, do you copy?" and that was being
12 relayed over all 16 radios. Student names were being, you
13 know, relayed based on whatever the situation was at
14 dismissal. So I had to, you know, remind Mr. Bauer via the
15 radio that these conversations needed to be transmitted
16 privately, and I also leaned on other staff members to
17 assist Mr. Bauer.

18 Q And what happened with the radios? Did Mr. Bauer
19 continue utilizing the radios throughout 2013-14?

20 A No, ma'am. He did eventually go to our office
21 manager, and he basically submitted the radio, said that he
22 couldn't use this radio, was very frustrated when he talked
23 to her, and he also said to the office manager that he
24 didn't want continued face time with administration about
25 further training on how to use the radio properly.

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1 Q What was your response to this refusal by Mr.
2 Bauer to fulfill, satisfactorily, his supervisory
3 responsibilities as a teacher for student safety out at the
4 buses?

5 A I was naturally surprised and shocked that he
6 was, you know, stepping down from a responsibility that was
7 -- that was very important and didn't want any type of, you
8 know, face time with administration to just kind, you know,
9 better understand the capabilities and the importance of --
10 of radio etiquette as it pertains to, you know, student
11 safety and -- and confidentiality, when we're talking about
12 students and relaying information from one person to the
13 next.

14 Q I ask that you turn in that black notebook which
15 has been marked as "Complainant's Exhibits," and would you
16 look at Number 9 and identify these documents for the
17 record?

18 A Sure. Document Number 9 is an email sent from me
19 to the entire Hilton Head Island Elementary staff on
20 Tuesday, January 28th, 2014. The subject line is "Specials
21 rotation," and basically what I was letting the entire
22 staff know is that, since our year was already mapped out
23 as it relates to specials, when we return to school, the
24 specials rotation would continue as if we were here on a
25 day missed. I also cited an example of a teacher to just

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1 kind of give them a visual on what it would look like when
2 we returned to school.

3 Q And would you go to the second email, please, and
4 describe that to the Board?

5 A Sure. This is an email that was sent back to me
6 from Mr. Bauer. The date was Tuesday, January 28th. Mr.
7 Bauer also c.c.-ed Ms. McAden and Ms. Brockway, and the
8 email states, basically, that we've never done it this way
9 before. He stated that his classes that have swimming
10 tomorrow think they're coming on Thursday instead. There
11 may be a lot of problems with kids knowing where to go.

12 Q And would you turn to the third part of that
13 exhibit, and what is that?

14 A Sure. It was sent from myself to Mr. Bauer on
15 Tuesday the 28th of January, 2014. I, too, c.c.-ed Ms.
16 McAden and Ms. Brockway, and I basically said to him my
17 goal in sending the specials rotation email was to
18 eliminate confusion. I'm not sure what students were told,
19 but this is the schedule we will follow. If we return
20 Thursday, further discussion can surround the possibility
21 of making up that missed day.

22 Q Did any of the other 116 Hilton Head Island
23 Elementary School teachers and support staff express any
24 confusion or ask any questions about your original notice
25 regarding the specials schedule?

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1 A No, ma'am. No.

2 Q And did the district close a day or two due to
3 serious weather conditions?

4 A Yes, ma'am, the district was closed one day.

5 Q And when Hilton Head Island Elementary reopened
6 after that one day, were there any problems in terms of
7 students or teachers reporting to special classes on time?

8 A No, ma'am, none that I was aware of.

9 Q After January 2014, were you involved in any
10 matters concerning Mr. Bauer and the fulfillment of his
11 teaching responsibilities, and if so, how many?

12 A Yes, there were. There were two.

13 Q And were the -- what were those two incidents?
14 And, please, because this is a public hearing, if you would
15 refrain from using any student names, identify them, say,
16 as student 1 and student 2, and parents of student 1.

17 A Sure.

18 Q Would you tell us about -- or tell the Board,
19 please, about the first incident?

20 A Sure. The first incident that came to my
21 attention was from a very upset parent regarding his son
22 who had reported to both he and his wife about an unclothed
23 elderly gentleman at the Island Rec Center after swim
24 class, and that was the -- that was the nature of that
25 voice mail.

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1 MR. BAUER: Objection. Not charged.

2 MS. FAWLEY: And, again, this is a part of
3 negligent supervision. We respectfully ask that the
4 witness be able to finish his testimony on this issue.

5 CHAIRMAN EVANS: Your objection is
6 overruled, Mr. Bauer. Go ahead and finish your
7 testimony.

8 BY MS. FAWLEY:

9 Q And Mr. Clendaniel, briefly, what was the second
10 incident?

11 A Sure. The second incident was regarding a fifth-
12 grade student who was left at the Island Rec Center
13 unattended for 30 minutes. That student was a gifted-
14 identified student. He was also a student that had a 504
15 plan.

16 Q Now, when did these incidents occur, these two
17 incidents?

18 A The first incident would've occurred on February
19 4th, and the second would've been February 5th.

20 Q If you would please refer to Complainant's
21 Exhibit 10 and state what this writing is, please?

22 A Sure. This is my document that I drafted,
23 documenting the phone call that I received from the parent.
24 I have to apologize. There is a typo. This parent
25 would've contacted my desk, left a voice mail on my desk

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1 Tuesday, February 4th. I drafted this document Wednesday,
2 February 5th. But I basically just wanted to make sure
3 that I had everything documented on behalf of what he had
4 said.

5 Q Would you please share with the Board the concern
6 expressed by the father of the third-grade child referred
7 to as, let's say, student 1?

8 A Sure. Basically, the dad was stating to me that
9 his son had indicated that, quote, a naked old man was
10 staring at the students after swim class at Island Rec.
11 The dad also told me that his wife had approached Mr. Bauer
12 about this individual, and the dad was really frustrated --
13 more angry than frustrated -- that Mr. Bauer had minimized
14 the incident as, quote, part of the territory, because
15 students attend this public facility where, you know, folks
16 kind of shower and change in the same locker room.

17 And, basically, I -- you know, I assured the dad
18 that this was something that, you know, children shouldn't
19 be exposed to, and I contacted Island Rec just to kind of
20 make sure that the shower curtains were up, partitions were
21 up, and that, you know, they were taking measures to ensure
22 that privacy was also upheld.

23 Q And Mr. Clendaniel, did you ever speak with any
24 students or the regular teacher or Mr. Bauer about the
25 unclothed man incident, and if so, what did you find out?

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1 A I did. What I didn't share with the dad is that,
2 the day before, this particular student's class was in such
3 an uproar that I went down to the classroom to talk to the
4 teacher. I also asked Mr. Bauer to ramp up his vigilance
5 at the pool to kind of make sure that, you know, no
6 individuals were in the throes of moving from shower to
7 locker room so that the students, you know, weren't
8 subjected to that, just to kind of make a sweep of the area
9 before the kids came out of the pool.

10 Q You've already testified that, besides the
11 incident involving student 1, the third grader in the
12 locker room, there was another incident, and we'll call the
13 fifth-grade child student 2. Would you please tell the
14 Board how you came to learn about the incident involving
15 student 2 and what you did upon learning of the situation?

16 A Sure. Well, with student 2, I was -- I was at my
17 desk, and the front office actually buzzed my office to let
18 me know that a student had just been returned from the
19 Island Rec Center with an Island Rec Center employee. This
20 was a fifth-grade student, again, with a 504 plan.

21 I immediately got up from my desk and discovered
22 that a half hour had passed, roughly, when the class had
23 returned from the rec center pool. So 30 minutes had
24 passed. I got a little bit of information from the Island
25 Rec Center staff member that this child had been left

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1 behind.

2 Ironically, at that point, this student's mother
3 was coming in the front door. So I knew I had a lot of
4 work to do to calm what, in my mind, was quite probably a
5 very uncomfortable situation to deal with.

6 Q And what did you do in terms of the mother and
7 the student?

8 A Right. I know I kind of had to quickly spring
9 into action, if you will, and so I seemed glad to see the
10 mom. I whisked her and the student into my office just to
11 kind of debrief with both of them. I applauded the student
12 for his communication. Again, I needed to make sure that I
13 was as positive and upbeat as I -- as I possibly could be,
14 because, again, thinking about myself as a parent, what
15 that information would have done to my disposition, you
16 know, walking in the door to notice that, you know, my son
17 had been left behind 30 minutes.

18 So we met in my office. We talked, and I knew
19 that the student had now missed lunch. So I invited the
20 mom to stay for lunch and just kind of be with her son in
21 my office, and I kind of gave them that privacy and left
22 them in there.

23 Q If you will turn to Complainant's Exhibit 11 and
24 please identify these materials for the Board?

25 A Sure. This is an email from Ms. Allison Brammer,

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1 desk receptionist, to Mr. Bauer and Ms. Baker. The subject
2 line was student's name, rec swimming, and then the
3 student's name was left at rec. The employee brought blank
4 over. Eeks, not good.

5 Q And would you turn to the next page, and what is
6 this?

7 A This is an email from Mr. Bauer, sent the same
8 day, Wednesday, February 5th, 2014, at 1:21, back to Ms.
9 Brammer: Thanks. It was pouring down rain, and we were in
10 a rush to get back.

11 Q Mr. Clendaniel, how did you interpret Ms.
12 Brammer's statement of, "Eeks, not good"?

13 A I think, as a mom herself and someone who was
14 witnessing a child coming back 30 minutes late, and then
15 witnessing the mother, just by happenstance, coming through
16 the front door, she probably thought, "Oh, my heavens.
17 This cannot be a good situation."

18 Q And what is your opinion of Mr. Bauer's response
19 to Ms. Brammer?

20 A I was, and to this day still am, shocked at the
21 response back, that there was no remorse or -- or apology,
22 or, "I'll be right up. How can I help? Let me make this
23 better. Tell me what needs to happen next." It was simply
24 just, "Thanks," and there was an excuse behind it about the
25 rain.

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1 Q Would you now turn to Complainant's Exhibit 12
2 and state what this is?

3 A Sure. This is an email from myself sent
4 Wednesday, February 5th at 1:35, to Ms. McAden and Ms.
5 Brockway. Again, it's forwarding the email, blank, rec
6 center swimming, and I basically wanted to bring both the
7 administrators into the loop, saying, I am -- I'm handling
8 this now. Ironically, this student's mom was coming
9 through the door as this student was coming back from rec
10 with an employee there.

11 Q Please refer to Complainant's Exhibit 13 and
12 identify this document.

13 A This is an email from myself to Mr. Bauer,
14 Wednesday, February 5th, the same date, 1:37, and the
15 subject line was rec center debrief today at 3:45. And I
16 -- the subject -- or the body of the email: Showers, my
17 conversation with rec center employees, and the student's
18 name, my conversation with mom.

19 Q If you will identify Complainant's Exhibit 14?

20 A This is an Outlook invitation, again, sent from
21 myself to Mr. Bauer at 2:10; the same subject line, rec
22 center debrief; and the importance was high. And it was
23 just a formal Outlook invitation.

24 Q And about how many minutes did you anticipate a
25 discussion would take?

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1 A I anticipated about 15 minutes.

2 Q Would you tell the Board why you sent Mr. Bauer
3 both an email and an Outlook invitation?

4 A Sure. I respectfully just wanted to get him a
5 personal email, giving him a heads-up as to what I wanted
6 to discuss today at three forty -- or that day at 3:45,
7 sorry, the rec center debrief, and just kind of outline the
8 two things: my first conversation with rec center employees
9 about the showers, and, second, my conversation with the
10 mom that arrived today.

11 I followed it up by a formal Microsoft Outlook
12 invitation so that it, A, appeared on my calendar so I had
13 record of this, you know, documented meeting that was
14 forthcoming, and to gain some type of a response from Mr.
15 Bauer, be it accept, decline, or tentative.

16 Q Please move to Complainant's Exhibit 15. What is
17 this writing, please?

18 A This is my documentation of the events on
19 Wednesday, February 5th, 2014.

20 Q I would ask that you walk through the description
21 of the issues and the timeline as contained in Exhibit 15.

22 A Sure. This is, basically, as much information as
23 I could remember about, you know, what occurred shortly
24 after that swim class on Wednesday, February 5th, and I
25 outlined, and I put quotes, and I just tried to sit down

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1 and put, pen to paper, as much information as I could
2 remember from the incident, and I just kind of outlined it,
3 step by step. You know, the employee basically said this
4 student was left behind in the locker room. I noted that
5 they arrived on campus at 1:20, which is 30 minutes the
6 student had been unaccounted for. The mother was just
7 happening to come in.

8 The second paragraph states that, you know,
9 during the first-grade specials rotation at 1:36, I sent
10 Mr. Bauer that email that basically said rec center
11 debrief. I followed it up at 2:10 with an Outlook
12 invitation. I did receive a phone call from Mr. Bauer at
13 2:18, while students were in the gymnasium, which meant
14 that he would have had to leave the gym to go to his office
15 to make this phone call. And what he said -- and I quoted
16 -- "Is this something we can talk about over the phone?"
17 He said, "This is ridiculous. I have something after
18 school today. Can't we talk about this over the phone?
19 This is ridiculous. This is absolutely ridiculous." So I
20 basically indicated to him at that point, I stated, "If you
21 think it's so ridiculous, then I'll document that you think
22 so, but I'm asking you to meet me in my office at 3:45 so
23 we can -- so we can discuss this in person."

24 I go on to outline that, after dismissal, Ms.
25 Brockway and I discussed the infractions. I wanted her

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1 there with me for the meeting.

2 I looked for Mr. Bauer at about one -- I did not
3 see him at three fif -- or 3:45. I had received
4 confirmation that he'd left the office without notice. We
5 paged him. There was no response. He did leave campus,
6 and he came back, you know, around 4:00, and that's
7 basically when the meeting started, at 4:00.

8 I noticed that Mr. Bauer's body language, as I
9 stated here, was extreme. He was slumped in the chair.
10 There was no eye contact. His baseball cap was on, and he
11 was red in the face, and he -- he stated again, like he had
12 stated to me in previous years, "This is silly, why these
13 parents still come to you with problems. They need to come
14 to us with their problems. This is unnecessary."

15 I explained that the meeting was twofold, you
16 know, to discuss the two issues that had happened: one with
17 the parent phone call, the other with the student that had
18 returned 30 minutes late. Again, Mr. Bauer's rebuttal was,
19 "This is something students are going to have to deal
20 with." You know, I just wanted to, basically, just
21 explain, you know, the two situations, but, you know, he --
22 you know, he again stated that this whole thing was
23 ridiculous. "I made a simple, little mistake." And he --
24 he also said that this is not something he expected from
25 me, he didn't feel supported, and he didn't feel like it

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1 was something that needed to be documented.

2 I said back to him that my initial intent in
3 meeting this afternoon was just to respectfully discuss
4 these issues, but it took a different turn when I kept
5 getting this rant of, "This is -- this is so ridiculous."
6 So I offered him the written document. He stated he didn't
7 want a copy, it was just going to make him mad, and with
8 that, the meeting concluded. But I did -- I was able to
9 capture his signature that he did -- was -- was offered the
10 document that I had drafted.

11 Q Would you please turn to Complainant's Exhibit
12 Number 16, and what is this?

13 A Sure. This is the document I presented Mr. Bauer
14 on February 5th after our meeting.

15 Q And would you turn to the second page of that
16 exhibit?

17 A Sure. This is the signature that verifies that
18 he had received a copy of that document on February 5th.

19 Q Mr. Clendaniel, what are your thoughts about Mr.
20 Bauer's comments and conduct during both the telephone call
21 that he initiated to you and of the meeting held in your
22 office on the afternoon of February 5th?

23 A Quite honestly, I was -- I was surprised that
24 there wasn't remorse, apology, and I was -- I was troubled
25 that he didn't see the severity in, primarily, at this

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1 point, the safety and well-being of a student that had been
2 left behind for, you know, 30 minutes. That's something I
3 struggled with, as an administrator.

4 Q Do you believe Mr. Bauer acted professionally?

5 A I do not.

6 Q Do you believe he acted respectfully?

7 A I do not.

8 Q I ask that you turn in the exhibits notebook to
9 Complainant's Exhibit Number 6, and this exhibit, SS-1,
10 student goals and priority objectives, has already been
11 introduced on the record. Are you familiar with this
12 policy?

13 A Yes, ma'am, student services dash one, student
14 goals and priority objectives.

15 Q Please read aloud the fifth goal to the Board.

16 A Sure. To attend vigorously to matters of student
17 safety, health, and welfare.

18 Q As to the incidences involving students 1 and 2,
19 do you believe Mr. Bauer lived up to the expectations of
20 the Board's goal in SS-1, in terms of student safety,
21 health, and welfare?

22 A I do not.

23 Q Now, if you would look at Complainant's Exhibit
24 4, this is policy IS-2, teacher expectations and
25 accountability. Again, this policy has previously been

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1 introduced to the Board. Please read aloud the tenth
2 bulleted expectation.

3 A Sure. To supervise students in their charge
4 throughout the day and at all times.

5 Q In your review of the matter involving Mr. Bauer
6 and students 1 and 2, did you reach any conclusions
7 regarding whether Mr. Bauer complied with IS-2?

8 A I do not feel as if he complied with IS-2,
9 instructional services dash two, no.

10 Q After the conference that you called on February
11 5th, 2014, where Ms. Brockway was present, when you spoke
12 with Mr. Bauer about students 1 and 2, did you participate
13 in any other meetings with Mr. Bauer, and if so, when?

14 A I did. I participated in a follow-up meeting
15 that next day.

16 Q And who was at the meeting the next day?

17 A It would've been Ms. McAden, myself, and Ms.
18 Alice Walton.

19 Q And what do you recall regarding that conference
20 on February 6th, 2014?

21 A What I recall is, unfortunately, Mr. Bauer's,
22 again, inability to see, again, the severity of the
23 situation that we were referring to; specifically, leaving
24 a student behind. You know, I would -- I would think, as
25 an educator, after having an evening to reflect on

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1 everything that had taken place, that I would have taken
2 some personal responsibility of what had happened, but I
3 did not see that. I saw the same disposition that I saw
4 the day prior in my office, that this was -- this was
5 silly, blown out of proportion, ridiculous, and that was my
6 takeaway from that meeting.

7 Q Was that the last time you saw Mr. Bauer until
8 the taking of your deposition a couple of months ago?

9 A Yes, ma'am.

10 Q Mr. Clendaniel, in closing, were you ever
11 involved at all in making the decision that Mr. Bauer be
12 dismissed from employment as a teacher in Beaufort County?

13 A No, ma'am.

14 MS. FAWLEY: Thank you. And Mr. Chairman,
15 we have no objections to starting cross-examination,
16 with your permission.

17 CHAIRMAN EVANS: Do you want to go ahead and
18 start, Mr. Bauer, knowing that we're probably going to
19 call it at night at 9:00?

20 MR. BAUER: No, sir. I expect -- sorry.
21 (Moves to microphone.) No, sir. I expect the cross-
22 examination to go well beyond 9:00, if we were to
23 start. So I would prefer to start in the morning, if
24 possible.

25 CHAIRMAN EVANS: We will honor that. I

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1 would tell everybody, please -- Board members, please
2 do not discuss this among yourselves. We will recess
3 until tomorrow at 9:30 a.m., and we will start at that
4 time with cross.

5 MR.. BAUER: Yes, sir.

6 CHAIRMAN EVANS: Thank you. Mr. Clendaniel,
7 you are excused --

8 THE WITNESS: Yes, sir. All right.

9 CHAIRMAN EVANS: -- for the evening. Mr.
10 Clendaniel, we will see you back at 9:30 tomorrow.

11 THE WITNESS: Sure. Thank you.

12 (WHEREUPON, the hearing was adjourned at
13 approximately 8:30 p.m. and reconvened on Friday, May
14 1st, 2015, at approximately 10:05 a.m.)

15 CHAIRMAN EVANS: The media has been properly
16 notified of our meeting, and we left off yesterday at
17 the conclusion of the direct examination of Mr.
18 Clendaniel, and I think we're ready for the cross, so
19 if we could bring Mr. Clendaniel back in?

20 MS. FAWLEY: He's on his way.

21 (Discussion held off the record.)

22 CHAIRMAN EVANS: Mr. Clendaniel, thank you
23 for being here, and I would remind you that you're
24 still under oath, and we will begin with the cross-
25 examination by Mr. Bauer.

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CROSS-EXAMINATION

BY MR. BAUER:

Q Good morning.

A Good morning.

Q Mr. Clendaniel, how many charges are there against Mr. Bauer?

MS. FAWLEY: Objection, Your Honor. Mr. Clendaniel did not bring charges against Mr. Bauer.

CHAIRMAN EVANS: I'll sustain that.

MR. BAUER: May I have him refer to file 225-A, the charges presented by Dr. Moss?

CHAIRMAN EVANS: That's in the smaller binder; right?

MR. BAUER: The second volume.

MS. FAWLEY: Mr. Chairman, the same objection. This is not a document that Mr. Clendaniel prepared, nor was he copied on this document.

CHAIRMAN EVANS: Now that I see it, I'll have to sustain that objection.

MR. DUFF: Mr. Bauer, I'm trying to find that document. You will be permitted to examine the author of that document if the author takes the stand.

MR. BAUER: I understand. Thank you.

BY MR. BAUER:

Q Mr. Clendaniel, have you ever accused Mr. Bauer

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1 of insubordination?

2 A I've never accused Mr. Bauer of insubordination.
3 However, his conduct was that of disrespect, uncooperative.
4 Those are the two terms that come to mind right now.

5 Q Yesterday in your testimony, there was quite a
6 lengthy discussion about my portable radio protocol. Would
7 you please remind the Board what concerns you had with the
8 radio protocol?

9 A Sure. As I said yesterday, we have approximately
10 16 radios at our school, a school of almost 1,000 students,
11 and the issues that I had in 2013 was that transmissions
12 from Mr. Bauer to specific radio-holders were bring
13 broadcast publically, which then jeopardized any other of
14 the 16 radio-holders to use the radio, and so information
15 could not be transmitted from other radio-holders because
16 an all-call broadcast was being -- was being made. It was
17 also concerns of, as I said yesterday, breaches of student
18 confidentiality. Student names were being broadcast over
19 the radio, as well.

20 Q Okay. Please explain specifically what was said
21 by Mr. Bauer on the radio while he was on bus duty.

22 A Multiple bus duties, conversations would come to
23 the radio, "Office, do you copy? Office, do you copy?" So
24 that's, basically, you know, a technical term for, you
25 know, "Can you hear me? Are you listening?" But the

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1 problem was, is that it was broadcast publically, and so,
2 even though the office may copy that transmission, no one
3 else could use the radio at that point.

4 And again, as I said before, there was -- there
5 would also be student names that were, you know, radioed
6 for general information. It could be, you know, "Is a
7 parent picking this student up?" et cetera, but those
8 transmissions need to be held privately, and I -- I take
9 that -- that stance very seriously. As prior military, I
10 understand the etiquette that goes along with having a
11 radio and the privacy features with them.

12 Q Are you aware that Mr. Bauer was speaking to the
13 other assistant principal at the time at Hilton Head Island
14 Elementary?

15 A No, I did not.

16 Q Do you remember an email to you from Mr. Bauer
17 explaining the radio mishap?

18 A No, I do not. No.

19 Q Are you aware that Mr. Bauer and the assistant
20 principal both thought that it was in a private -- it was a
21 private radio conversation?

22 A No, I don't -- I don't have any recollection of
23 that, no.

24 Q Are you aware that an assistant principal at the
25 school for the creative arts told Mr. Bauer, word for word,

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1 what to say over the radio?

2 A I have no knowledge of that, no.

3 Q Did Mr. Bauer accept an invitation to meet with
4 you regarding radio protocol?

5 A I have no recollection of that. All I do know is
6 that I did hold annual meetings with the radio-holders to
7 review radio etiquette. If a new radio was introduced to
8 the fleet, I made sure that that radio-holder understood
9 all the features that were necessary to transmit
10 information, and how to transmit it, and to whom to
11 transmit it, too.

12 Q So are you saying that you don't remember asking
13 Mr. Bauer to meet with you regarding radio protocol?

14 A I don't -- I don't recall that, no.

15 MR. BAUER: Okay. Let's see. Based on Mr.
16 Clendaniel's answers to some of these questions and
17 the surprise testimony from yesterday, I would like to
18 present one piece of evidence regarding his answers
19 that had not previously been submitted.

20 CHAIRMAN EVANS: Has this been shared with
21 the plaintiff's attorneys yet? Are they aware of
22 this?

23 MR. BAUER: No. It just came to light.
24 This is regarding his answers to knowing about the
25 details of the radio -- private radio mishap.

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1 MR. DUFF: I think you need to show the
2 document to counsel for the administration and let
3 them examine it.

4 MR. BAUER: (Tenders document to counsel.)

5 MS. FAWLEY: Mr. Chairman, we have -- we
6 have no issue to the introduction of this email
7 regarding this one incident.

8 CHAIRMAN EVANS: Okay. Thank you. Do you
9 have covers for -- copies for us, Mr. Bauer?

10 MR. BAUER: Yes, I do.

11 MS. FAWLEY: Mr. Bauer, you need to give it
12 to the court reporter so he can give it to the
13 witness.

14 MR. DUFF: Let's mark that Supplemental
15 Exhibit 1.

16 MR. BAUER: Supplemental 1?

17 MR. DUFF: Supplemental Exhibit 1.

18 (WHEREUPON, a document was marked as
19 Supplemental Exhibit Number 1 for Identification.)

20 CHAIRMAN EVANS: Everybody set?

21 MR. BAUER: Yes.

22 CHAIRMAN EVANS: Okay. Go ahead, Mr. Bauer.

23 BY MR. BAUER:

24 Q Mr. Clendaniel, would you please read this email
25 out loud?

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1 A Sure. It's from Mr. Bauer to myself, Ms. Owen,
2 Ms. McAden. FYI, Mr. Deas asks me to call Sarah Owen. I
3 call Sarah and say to stand by, may need to go private,
4 attempt to go private, and ask Sarah if we are private.
5 She says yes. Reggie then tells me a third-grade student
6 punched and grabbed another student. I repeat to Sarah.
7 Someone on airwaves then says we are not private, try
8 again, success. Reggie tells me to tell Sarah that we will
9 take care of in morning, not to come to buses.

10 Q It's pretty brief, I know, but does that sort of
11 -- do you believe that this explains what happened that day
12 that you're referring to?

13 A I've never -- I'm a pretty good record-keeper,
14 and I have never seen this document before. I don't recall
15 ever receiving this email, but --

16 Q Okay. And just for the record, this was received
17 by me from the school administration and the opposing
18 counsel. Now, please refer to file 266. Do you have it?
19 Are we ready? Okay. I'm not sure of the number, but there
20 should be an email dated May 14th, 2013. It's an invite, a
21 Microsoft invite?

22 A Yes.

23 Q Do you have that?

24 A I do. Two sixty-six.

25 Q Is this your invitation to Mr. Bauer to attend a

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12 that you're referring to?

13 A I've never -- I'm a pretty good record-keeper,
14 and I have never seen this document before. I don't recall
15 ever receiving this email, but --

16 Q Okay. And just for the record, this was received
17 by me from the school administration and the opposing
18 counsel. Now, please refer to file 266. Do you have it?
19 Are we ready? Okay. I'm not sure of the number, but there
20 should be an email dated May 14th, 2013. It's an invite, a
21 Microsoft invite?

22 A Yes.

23 Q Do you have that?

24 A I do. Two sixty-six.

25 Q Is this your invitation to Mr. Bauer to attend a

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1 meeting on radio protocol?

2 A File 266 has two documents. One is an email from
3 myself to Mr. Bauer.

4 Q It's the one -- just the invitation. I'm sorry.
5 I --

6 A The invitation on the second page is an
7 invitation with a start time, end time, 5/16/2013.

8 Q Yes. Dated seven -- 7:57 a.m.?

9 A Dated 7:57 a.m. on the back of -- yes.

10 Q Okay. Thank you. Did Mr. Bauer accept this
11 invitation?

12 A It appears as if he accepted this invitation.

13 Q Now please refer to the May 15th, 2013, email,
14 8:27 a.m.

15 A I'm sorry. Which file?

16 Q It's still 266, and it's 8:57 a.m., I believe.
17 Eight twenty-seven. Sorry.

18 CHAIRMAN EVANS: Seven fifty-seven? Is that
19 we're on?

20 MS. ANDERSON: Look back one.

21 MS. BUSH: Two sixty-six.

22 CHAIRMAN EVANS: Got it. Got it. Thank
23 you.

24 BY MR. BAUER:

25 Q Is this a -- did you have to cancel a meeting

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1 with Mr. Bauer due to a last-minute decision?

2 A It appears that the original cancellation was
3 because, the email states, this does not work, as Mr. Bauer
4 has a specials class at 9:00. And then on the back of file
5 266 is an email from Ms. Jorgensen, our office manager, to
6 Mr. Bauer --

7 Q Yes.

8 A -- that I had something at district, last-minute
9 decision to take Ms. McAden's place. I just sent you an
10 invite to reschedule the meeting for Thursday morning.

11 Q Okay. Thank you. And then the last one is May
12 16th, 2013.

13 A I don't --

14 Q This would be subject: canceled, reschedule radio
15 conversation. Do you have that?

16 A I do.

17 Q Thank you. So is it correct that Mr. Bauer could
18 not meet with you due to a -- to a class?

19 A That's what it says on this cancellation, but,
20 again, the organizer would've been Ms. Jorgensen, our
21 office manager.

22 Q So does this bring back any recollection of the
23 series of emails regarding radio protocol?

24 A It does. It also highlights the fact that I
25 needed to speak with you, privately, regarding a crash

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1 course in private radio transmission, as we were having
2 issues leading up to this point.

3 Q But I take it we never actually conducted a
4 sit-down in private regarding protocol?

5 A Not according to these two -- three dates here,
6 but there was a conversation via the radio, reminding to go
7 private. There was also communication from me to other
8 staff members to assist Mr. Bauer in the importance of
9 private radio communication between radio-holders.

10 Q Is it possible that the reason we did not meet
11 was due to the new evidence presented, the new email
12 presented today, with the explanation of what happened?

13 A I'm going to need you to rephrase the question.

14 Q I'm sorry. Even I confuse myself. Is it
15 possible that the email that I sent to you describing what
16 happened is the reason why you made -- we never met, that
17 it -- that it satisfied -- was it a satisfactory
18 explanation?

19 A Can you refer to which email you're referring to?
20 I'm confused.

21 Q Oh. It's the one where I say Mr. Deas asked me
22 to call Sarah Owen, and I called Sarah to explain, you
23 know, the private stuff. Is it possible that this may have
24 -- "Oh, okay. Mr. Bauer -- I really don't need to meet
25 with him. I understand." Is it possible that that's what

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1 could have happened, no need to --

2 A No, I don't believe that's possible. No.

3 Q Okay. Now, do you recall Dr. Fawley stating
4 yesterday that this line of questioning goes to
5 insubordination?

6 A Can you rephrase the question?

7 Q Do you recall yesterday during your testimony
8 regarding radio protocol that Dr. Fawley -- when I
9 objected, Dr. Fawley stated this line of questioning goes
10 to insubordination?

11 MS. FAWLEY: Objection, Mr. Chairman. This
12 has to do with my response to something that Mr. Bauer
13 either attempted to introduce or asked about. It
14 doesn't -- I was not testifying, and it doesn't go to
15 Mr. Clendaniél's testimony.

16 MR. DUFF: Mr. Bauer, why don't you just ask
17 directly whether --

18 MR. BAUER: Okay.

19 MR. DUFF: -- the witness believed you were
20 insubordinate?

21 MR. BAUER: I will do that.

22 BY MR. BAUER:

23 Q Do you see any insubordination in this series of
24 emails?

25 A No, I -- I do not.

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1 Q Thank you. Now, on to February 5th, 2014 -- did
2 Mr. Bauer meet with you on Wednesday, February 5th, 2014?

3 A Yes, Mr. Bauer met with me Wednesday, February
4 5th, 2014.

5 Q What time was the meeting scheduled?

6 A The meeting was scheduled for 3:45.

7 Q Thank you. Was there somebody who told Mr. Bauer
8 that you were on a conference call?

9 A I don't know. I don't know.

10 Q Were you on a conference call at 3:45?

11 A No. I may have been on the telephone, but my
12 door was open, and I was ready to receive Mr. Bauer at
13 3:45.

14 Q What if Ms. Brockway testified that you were on a
15 conference call between 3:45 and 3:50?

16 A I don't know what Ms. Brockway testified to.

17 MR. BAUER: Mr. Chairman, since Ms. Brockway
18 testified that Mr. Clendaniel was indeed on a
19 conference call --

20 MS. FAWLEY: Objection. He's testifying.
21 Ms. Brockway did not testify to that yesterday.

22 CHAIRMAN EVANS: I wrote down pretty
23 thorough notes, I believe. I don't remember Ms.
24 Brockway being asked that or testifying --

25 MR. BAUER: This is --

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1 CHAIRMAN EVANS: -- in regards to that, Mr.
2 Bauer.

3 MR. BAUER: This is from her deposition.

4 MS. FAWLEY: It's an improper --

5 CHAIRMAN EVANS: Well, Mr. Clendaniel would
6 have no knowledge of her deposition. He would not be
7 aware of that. In fact, that is purposely -- I think
8 I'm right in saying that's purposely segregated from
9 the different witnesses. They are not aware of other
10 witnesses' depositions purposely.

11 MS. FAWLEY: Mr. Chairman, for the record,
12 that would be an improper use of the deposition of
13 another person.

14 MR. BAUER: This is a contradiction to a
15 statement by a witness.

16 CHAIRMAN EVANS: Well -- but I --

17 MR. DUFF: Mr. Bauer --

18 CHAIRMAN EVANS: -- what I'll -- go ahead,
19 Mr. Duff.

20 MR. DUFF: Well --

21 MS. FAWLEY: Mr. Chairman, he is attempting
22 to use someone else's deposition, rather than Mr.
23 Clendaniel's deposition.

24 CHAIRMAN EVANS: We understand that. Thank
25 you, Ms. Fawley.

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1 MS. FAWLEY: Okay.

2 CHAIRMAN EVANS: And what I'm saying is that
3 Mr. Clendaniel would have no knowledge of another
4 witness's deposition, and I don't know how he could
5 comment on it.

6 MR. BAUER: Thank you.

7 BY MR. BAUER:

8 Q Now, Mr. Clendaniel, will you please refer to
9 file 2 in the notebook, which is your February 4th, 2014,
10 letter? Oh, I'm sorry. Volume 1. Okay. Hold on a
11 second. Oh, yes.

12 CHAIRMAN EVANS: I'm sorry. Is it Number 2,
13 Mr. Bauer?

14 MR. BAUER: Yes, it should be file 2, I
15 hope.

16 CHAIRMAN EVANS: B-2?

17 MS. BUSH: B-2?

18 MR. DUFF: Is it a letter from Childs &
19 Halligan?

20 MR. BAUER: No, it's February --

21 MR. JOHN BAUER: Not B-2. Two.

22 MR. BAUER: File 2, unless I really goofed.

23 MS. BUSH: No, it's here. Keep going.

24 MR. BAUER: Not B-2, yeah. Sorry.

25 CHAIRMAN EVANS: File 2. Got it.

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1 MR. BAUER: Thank you.

2 BY MR. BAUER:

3 Q Mr. Clendaniel, just take a quick moment when you
4 find it to read over it.

5 A I think I have it here. Is it dated Tuesday,
6 February 4, 2014?

7 Q Yes. Yes. And instead of reading it out loud,
8 if you'd rather skim over it and just let me know when
9 you're ready?

10 A Sure. I'm aware of this documentation, yes.

11 Q Okay. You're ready?

12 A Um-hum.

13 Q Okay. Here's my question. Did you ever send
14 this letter to Mr. Bauer?

15 A No, this would not have been a letter sent to Mr.
16 Bauer. This is simply a document that I would have drafted
17 for my own records. A lot of times, when I receive parent
18 phone calls, especially one that has information such as
19 this, referring to an unclothed old man, his son, his, you
20 know, displeasure in how one of our staff members
21 interacted with his wife, I felt it necessary to document.
22 So, no, this would not be submitted to the -- you know, the
23 teacher or staff member of whom it was referencing. So
24 this would've been for my records.

25 Q Are you the author of this letter?

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1 A I am.

2 Q When did you write this letter?

3 A At the top, it says Tuesday, February 4th. As I
4 said yesterday, when I was asked by Ms. -- by Dr. Fawley,
5 that I did have a misprint on that (sic). The phone call
6 came in Tuesday, February 4. I actually documented this
7 Wednesday, February 5th, and I did acknowledge that typo
8 yesterday.

9 Q Okay. Please read -- let me see. Please read
10 the next-to-last paragraph, starting with, "I, too."

11 A I, too, have been vigilant at Island Rec Center
12 since the 4th of February to ensure consistency is taking
13 place.

14 Q And you said that you documented this on February
15 5th; is that correct?

16 A Correct.

17 Q When was Mr. Bauer placed on administrative
18 leave?

19 A I wouldn't have placed Mr. Bauer on
20 administrative leave.

21 Q But when was Mr. Bauer placed on leave?

22 A Again, I wouldn't have placed Mr. Bauer on
23 administrative leave. I don't remember the exact date on
24 which that would have occurred. I wasn't involved in
25 placing Mr. Bauer on administrative leave.

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1 Q Would you -- would you please read that sentence
2 out loud -- "I, too" -- again?

3 A I, too, have been vigilant at Island Rec Center
4 since the 4th of February to ensure consistency is taking
5 place.

6 Q Does this sentence give the impression that this
7 letter was written more than one day into the future, and
8 not on February 5th, but maybe a week after February 5th,
9 or beyond?

10 CHAIRMAN EVANS: Mr. Bauer, the witness has
11 testified that he wrote it on -- that he made the
12 correction and wrote it on February 5th, not February
13 4th, as it's dated.

14 BY MR. BAUER:

15 Q Why did you write that sentence there?

16 A (No response.)

17 Q All right. Let me rephrase that. If you -- if
18 you were vigilant, if you had been vigilant at the Island
19 Rec Center since February 4th, I don't -- I just don't
20 understand when. When were you at the rec center after
21 February 4th?

22 A After February 4th -- I was vigilant at Island
23 Rec Center prior to, during, and after.

24 Q During swimming?

25 A I was -- I was in and out. I ramped up my

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1 vigilance after hearing the allegations of this unclothed
2 old man, naturally. I even reached out to Island Rec
3 Center staff members to just ensure that those curtains,
4 partitions, were set up, and I just wanted to make sure
5 that, you know, some of these allegations that were coming
6 to my desk -- I wanted to -- I wanted to make sure that the
7 vigilance was there and do my part, administratively, to
8 make sure that, you know, our swim class was, you know, a
9 safe and secure activity.

10 Q Okay. If this was written on February 5th and
11 the incident happened on February 4th, explain how you were
12 vigilant in those 24 hours.

13 MS. FAWLEY: Mr. Chairman, the witness just
14 testified as to how he was vigilant in the past 24
15 hours. This is a repetitive line of questioning.

16 BY MR. BAUER:

17 Q If the Island Rec Center has video cameras, if
18 they were to provide that evidence, would it show you in
19 present -- present at the rec center at any point during
20 that period?

21 A I don't know what the Island Rec Center video
22 surveillance would provide. I'm not privy to that, so I --

23 Q Okay.

24 A I don't know.

25 MR. BAUER: Now, I just need to put this in

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1 order real quick, if we could just take a two-minute
2 break. Is it possible for me to take a two-minute
3 break to reorganize this?

4 CHAIRMAN EVANS: Yes.

5 MR. BAUER: Thank you.

6 CHAIRMAN EVANS: Go right ahead, Mr. Bauer.

7 MR. BAUER: Thank you. I appreciate it.

8 (Pause.) Okay.

9 CHAIRMAN EVANS: Just a second, Mr. Bauer.
10 We're going to need Ms. Anderson to come back.

11 MR. BAUER: Oh.

12 CHAIRMAN EVANS: She went to the restroom,
13 briefly.

14 MR. DUFF: Mr. Bauer, if I -- just to assist
15 you, I just want you to remember and understand that a
16 lot of the version of the facts that you were trying
17 to -- your version of the facts that you're trying to
18 bring out through the witnesses, you will have a full
19 opportunity when you take the stand to give your
20 complete version of what took place and on which
21 points you disagree with the administration's factual
22 position, and that -- that is the most effective way
23 to make your points about what happened, from your
24 perspective. And, you know, we've already said that,
25 you know, you -- you're going to be a witness on your

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1 own behalf when the administration's case concludes,
2 and so, you know, if -- understanding that, you may
3 feel like you can really make your points better when
4 you testify.

5 But you -- you know, you've got to conduct
6 the cross as you see fit, but redundancy and
7 argumentative questions are -- we're just -- we're
8 spending a lot of time on a lot of little tiny points
9 that you, when you testify, can give your complete
10 version of.

11 MR. BAUER: I believe my evidence all goes
12 to judgment of the witness, Federal Rules of Civil
13 Procedure, and the Teacher Employment -- Teacher
14 Employment and Dismissal Act, which says any and all
15 defenses.

16 MR. DUFF: That's true, but that -- that
17 doesn't really relate to evidence.

18 MR. BAUER: I believe -- okay. I believe
19 that the evidence, though, does relate and is relevant
20 to the judgment of the -- of the witness. Thank you.

21 BY MR. BAUER:

22 Q Mr. Clendaniel, did you say that you visited the
23 Island Rec Center on February 5th, even -- oh, I'm sorry.
24 I got mixed up here. Oh. Do you remember accompanying Mr.
25 Bauer to the Island Rec Center on February 5th, based on

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1 Mr. Bauer's request, so that he could call attention to the
2 partitions inside the locker room?

3 A I do not remember going with Mr. Bauer to the rec
4 center on February 5th. I do remember that on February
5 5th, especially after the fifth-grade student was left
6 behind for a half hour, that that did take a good deal of
7 my time, to both calm the mother and child down, document,
8 communicate, et cetera. So I don't -- I don't recall going
9 to the rec center with Mr. Bauer that day.

10 Q But did you visit the rec center to examine the
11 -- that there were partitions in the locker room at any
12 point during that time period between February 4th and
13 February 5th?

14 A As I stated, I would have been -- I would have
15 gone to the rec center in and around this time period.

16 Q Okay. Would you refer back to file 2, which is
17 the February 4th, 2014, letter, and would you please read
18 the second paragraph, first two sentences?

19 A You'd like me to read the first two sentences of
20 paragraph two?

21 Q Of the second paragraph.

22 MS. FAWLEY: Objection. Just for a point of
23 order, Mr. Chairman, in this document, the name of the
24 parent isn't blacked out. So would you instruct the
25 witness to please be very careful with that?

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1 CHAIRMAN EVANS: Yes. Please do that, Mr.
2 Clendaniel.

3 THE WITNESS: Yes, sir.

4 CHAIRMAN EVANS: Please omit any student or
5 parent names.

6 THE WITNESS: Sure. Sure. I contacted a
7 member of the Island Rec Center, expressing the
8 concerns of the dad. I personally suggested that
9 partitions, curtains, be erected for the purpose of
10 separating shower, locker room, and bathroom
11 facilities at Island Rec Center.

12 BY MR. BAUER:

13 Q Okay. Thank you. Now, so what you're saying is
14 -- so, probably, based on that, you're saying that the
15 Island Rec Center did not have curtains or partitions at
16 the time you checked on it; is that correct?

17 A Yes. I would have -- obviously, I contacted this
18 individual at Island Rec and expressed to him the concerns
19 of this parent and made the personal suggestion that these
20 items be, you know, erected for the purpose of privacy.

21 Q Would you please refer to file 170?

22 A Where is that? (Examines notebooks.)

23 Q Mr. Clendaniel, would you please read this email
24 out loud?

25 A Sure. It's from Mr. Bauer dated Thursday,

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1 September 18th, 2014, to an Island Rec Center staff member.
2 It says, "Thanks." And then on Thursday, September 18th at
3 2:06, that staff member wrote, "Sorry. I am not sure of
4 that. We put more curtains up on the shower stall after I
5 spoke with Mr. Clendaniel last year. The curtain between
6 the restroom and the locker room has been up for several
7 years but does get pulled down occasionally."

8 Q In your opinion -- I'm sorry. Let me rephrase
9 that. Is there a contradiction between your statement and
10 her statement?

11 A I don't see any contradiction. It does highlight
12 the fact that those curtains and partitions do get pulled
13 down, thus allowing, you know, students to, unfortunately,
14 view patrons coming in and out of the shower, locker room,
15 et cetera.

16 Q Okay. Now on to my pickup truck. Are you aware
17 of Mr. Bauer ever using his truck for anything that was
18 school-related?

19 A I am not, no.

20 Q Please refer to file 265. Please read this email
21 provided out loud.

22 A The email that is subject line regarding hockey
23 sticks?

24 Q No, it's -- it's dated April -- it's dated -- the
25 subject is "volunteers," April 26th, 2013, at --

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1 CHAIRMAN EVANS: Excuse me, Mr. Bauer.

2 MR. BAUER: Is that incorrect?

3 CHAIRMAN EVANS: The 265 that I'm looking at
4 is a May 21st, 2014, letter --

5 MR. BAUER: Okay.

6 CHAIRMAN EVANS: -- from Tompkins &
7 McMaster.

8 MR. BAUER: Is it volume -- which volume?
9 Two sixty-five.

10 CHAIRMAN EVANS: Okay. Sorry.

11 MR. BAUER: That's okay.

12 CHAIRMAN EVANS: I'm on 165.

13 MR. BAUER: Do you have it, Mr. Clendaniel?
14 It's -- it says "volunteers"?

15 MR. DUFF: Mr. Bauer, this email, as far as
16 I can tell, was not sent by Mr. -- by this witness or
17 to this witness. Normally, we ask a witness about an
18 email that he or she sent or received.

19 MR. BAUER: This email --

20 MS. ANDERSON: Huh-uh. It's from him.

21 MR. BAUER: -- is from Mr. Clendaniel.

22 MR. DUFF: It is?

23 MS. BUSH: It's right here.

24 MS. FAWLEY: I believe there are a couple of
25 265s, so if you flip over a few pages --

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1 MR. BAUER: Oh, I'm sorry. Is it 265-A, or
2 something? Oh, yeah, the date is April 26th, 2013.

3 CHAIRMAN EVANS: Okay. Can we do the first
4 page as 265-A, and the back of that as B, and then the
5 next page as C --

6 MR. BAUER: Yes, that would probably make it
7 easier.

8 CHAIRMAN EVANS: -- and the next one D, and
9 then there will also be an E, it looks like --

10 MS. BUSH: Yes.

11 MR. BAUER: Sure.

12 CHAIRMAN EVANS: -- so that we have a little
13 easier reference. Okay. So you are referring to
14 which of those five documents?

15 MR. BAUER: April 26th, 2013. The subject
16 is volunteers?

17 MS. ORISCHAK: C.

18 CHAIRMAN EVANS: It's C, 265-C. Okay.

19 MR. BAUER: Thank you.

20 BY MR. BAUER:

21 Q Mr. Clendaniel, would you please read that email?

22 A Sure. It is from myself to Ms. Brewer, our
23 bookkeeper. Hey, Sue. My wife and two other volunteers
24 will be here this a.m. I told Kelly to go in -- or, sorry,
25 to go check in with Alli and ask for you. As a reminder,

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1 they will be painting the four tables and utilizing Alden's
2 truck to pick up plants at the high school. Treva, can you
3 gather some paintbrushes for them? Three adults total.

4 Thanks to all.

5 Q Thank you. So would you say that Mr. Bauer used
6 his truck for school purposes, based on this email?

7 A Actually, as I remember, I did -- I did ask, but
8 on the morning of Friday, April 26th, the volunteers that
9 we had increased, and to the best of my knowledge, we never
10 did utilize Mr. Bauer's truck. They used their SUV to pick
11 up the few plants over at the high school, as I remember.

12 Q Do you remember Mr. Bauer picking up a sofa from
13 the Litter Box to deliver to the teachers' lounge?

14 A I do not have any recollection of Mr. Bauer using
15 his truck to pick up a sofa.

16 Q Do you remember asking Mr. Bauer to use his truck
17 to remove old potted plants or old potted plants', you
18 know, pots from behind the gym?

19 A I do not recall that either, no.

20 Q Do you remember asking Mr. Bauer to remove an old
21 basketball metal base that had been sitting behind the gym
22 for a long time?

23 A Yes, I do remember asking Mr. Bauer to remove
24 some items that were behind the gym, unsightly, unused gym
25 equipment, but I did not reference how to get those things

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1 out of there. I remember there being a few hoses left
2 there from water day, perhaps, just some items that needed
3 to be kind of cleaned up. I did ask that he could -- if he
4 would take care of that.

5 Q Did Mr. Bauer ever remove old wooden coffins that
6 were used for the haunted house at fall festival and take
7 them to the --

8 CHAIRMAN EVANS: Mr. Bauer, can we get --

9 MR. BAUER: Okay.

10 CHAIRMAN EVANS: -- some idea of the
11 relevance, how this relates to the charges?

12 MR. BAUER: The relevance is, Mr. Clendaniel
13 said that he does not ever remember me utilizing my
14 truck. It goes to his judgment and credibility.
15 Never using my truck for any use for the school.

16 CHAIRMAN EVANS: And that's relevant --

17 MR. BAUER: It's relevant to a person in
18 authority making judgments on someone's career. Past
19 actions can predict future actions.

20 MS. FAWLEY: And Mr. Chairman, we gave him
21 some leeway. We didn't object. But Mr. Clendaniel
22 never testified about a truck. This has no relevance
23 to the testimony that Mr. Daniel -- Mr. Clendaniel
24 provided.

25 MR. BAUER: They did accuse me of -- and

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1 this will come up in a future witness. They did
2 accuse me of parking my truck behind the gym many
3 times without reason.

4 CHAIRMAN EVANS: Okay. Well --

5 MS. FAWLEY: And, again, that witness --

6 CHAIRMAN EVANS: -- then that needs to be
7 brought up with that other witness.

8 MR. BAUER: All right.

9 BY MR. BAUER:

10 Q Now, do you know the name of the employee that
11 escorted the child back from the pool that day?

12 A I do not, no.

13 Q All right. Now, pull-outs. I'm sorry. Before
14 the class -- we're going to talk about pull-outs and
15 bringing students to class. Before the class -- besides
16 the class that the classroom teacher brings, do other
17 students, such as pull-outs, travel to specials?

18 A Can you rephrase the question? I don't -- I --

19 Q Let's say so-and-so brings their class to PE. Do
20 they bring the entire class with them, always, every
21 student in her class?

22 CHAIRMAN EVANS: Again, Mr. Bauer, we're
23 not -- we're not sure of what the relevance is. I
24 think --

25 MR. BAUER: This --

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1 CHAIRMAN EVANS: -- the Board understands
2 that we have pull-out programs. I'm not sure how this
3 relates to the charges.

4 MR. BAUER: All right.

5 CHAIRMAN EVANS: I mean, if you want to
6 explain that to us --

7 MR. BAUER: I understand. Withdrawn. Thank
8 you.

9 BY MR. BAUER:

10 Q Okay. Mr. Clendaniel, were you told to preserve
11 evidence, especially electronic evidence?

12 A Everything that I document, I save. You know, I
13 keep multiple files, for -- for testing, for discipline, I
14 mean, attendance. I keep documents. I've never -- I've
15 never been told to, quote, archive any -- any documents. I
16 just naturally save things so I can refer back to them, if
17 that's the question.

18 Q Who would be considered the administrative staff
19 at Hilton Head Island Elementary?

20 A The administrative -- the administrative team
21 right now is Ms. McAden, myself, and Ms. Brockway.

22 MR. BAUER: Okay. I think that's all I've
23 got. Thank you.

24 MS. FAWLEY: No questions on redirect.

25 CHAIRMAN EVANS: Mr. Clendaniel, you're

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1 excused. Thank you.

2 MR. CLENDANIEL: Thank you.

3 CHAIRMAN EVANS: I think we're ready to move
4 on with your next witness.

5 MR. WILLIAMS: Our next witness is going to
6 be Ms. McAden. Dr. Fawley is going to get her now.

7 (Brief recess.)

8 CHAIRMAN EVANS: Good morning, Ms. McAden.
9 Thank you for being here.

10 MS. McADEN: Good morning.

11 CHAIRMAN EVANS: We need to have you sworn
12 in by the court reporter.

13 (WHEREUPON, JILL McADEN, having been first
14 duly sworn, was examined and testified as follows:)

15 CHAIRMAN EVANS: Go ahead, Mr. Williams.

16 DIRECT EXAMINATION

17 BY MR. WILLIAMS:

18 Q Please state your full name for the record.

19 A My full name is Jill Matthews McAden.

20 Q And Ms. McAden, what position do you currently
21 hold with the Beaufort County School District?

22 A I'm the principal at Hilton Head Island
23 Elementary. Is this not on?

24 Q It may be off. I'm sorry.

25 A Do you want me to try to push this button?

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1 Q And how long have you been -- that is better, if
2 I do say so myself. How long have you been employed as the
3 principal of Hilton Head Island Elementary School?

4 A I've been the principal at Hilton Head Island
5 Elementary School since 2006.

6 Q All right. And if you could just let the Board
7 know, generally, what are your duties as principal of the
8 school?

9 A My duties as a principal at the school include
10 but are not limited to the day-to-day underpinnings of a
11 large elementary school, overseeing staff, students, their
12 parents, the budget, professional development. I'm an
13 instructional leader, -- professional development, et
14 cetera, et cetera.

15 Q Et cetera, et cetera. And do you know John Alden
16 Bauer?

17 A Yes, I do.

18 Q And explain to the Board how you came to know Mr.
19 Bauer?

20 A Mr. Bauer was the PE teacher when I became the
21 principal in 2006.

22 Q All right. Prior to the 2013-14 school year, did
23 you have any concerns with Mr. Bauer's teaching or conduct?

24 A At that time, no major concerns. There were two
25 situations that caused me to have some reservations.

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1 Q All right. And could you tell the Board what
2 those two situations were?

3 A Yes. The first involved Mr. Bauer parking his
4 truck close to the building. We'd recently had a safety
5 and security audit by a district employee who cited us for
6 not -- parking cars close to the building. He wanted the
7 cars to be parked in parking places. The second involved
8 an exterior door to the gymnasium being propped open, and
9 Mr. Bauer was not in the gym at the time.

10 Q Okay. And did you speak with Mr. Bauer about the
11 truck incident?

12 A I did. I spoke to Mr. Bauer about the truck
13 incident and explained to him what had been explained to me
14 about our new protocol, parking in parking places.

15 Q And what was Mr. Bauer's response to your
16 discussing that matter with him?

17 A His response was that he'd been at the school a
18 long time, that this was ridiculous, that he should not --
19 that it was more convenient for him to park his car close
20 to the gym on the grass, and he felt it was ridiculous.

21 Q All right. Do you know if Mr. Bauer followed the
22 directive not to park his truck in that improper space?

23 A He -- he did. There was one other occasion where
24 his truck was parked in the same place, on the grass close
25 to the school, that I became aware of. I radioed to Mr.

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1 Clendaniel and asked him to please speak to Mr. Bauer once
2 again about where to park his vehicle.

3 Q All right. Did you ever document your concern.
4 with this whole truck-parking situation?

5 A I did not document the truck situation. I felt
6 that handling it verbally would take care of the incident,
7 and had I had ongoing concerns about where he was parking,
8 it would have been documented.

9 Q Okay. Now, again, what was the second issue that
10 you were concerned about prior to 2013-14?

11 A The second issue was, on an instructional
12 walkthrough, an exterior door from the gymnasium to the
13 outside of the building was propped open.

14 Q And did you also discuss your concerns with Mr.
15 Bauer about that incident?

16 A I did. His -- his reaction to this was, there
17 were lots of reasons why he had -- why the door was propped
18 open. Again, it wasn't a big deal. Nothing had happened.
19 It was a silly, silly mistake.

20 Q And what was your concern about the gym door
21 being propped open?

22 A The gym door being propped open was a safety
23 concern. Obviously, he have protocol for when visitors
24 come to the building, how they check in, and my concern was
25 that somebody could have entered the building unbeknownst

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1 to any of us and not be checked in through the front
2 office.

3 Q All right. Did you document your concerns with
4 Mr. Bauer as it relates to the propping open of the gym
5 door?

6 A I did not document this. Again, this was handled
7 verbally, and to the best of my knowledge, it did not occur
8 again.

9 Q All right. Moving to the 2013-14 school year,
10 did you become aware of any concerns with Mr. Bauer's
11 teaching or conduct during that school year?

12 A Yes, I became aware of at least two instances
13 involving supervision of children that my assistant
14 principals and I became aware of.

15 Q All right. And could you tell the Board,
16 initially, about the first incident? And then, after we
17 talk about that, we'll move on to the second incident.

18 A Yes. The first incident occurred in November of
19 2013. It involved a student, a seven-year-old, second-
20 grade student, that was reported left outside of the
21 gymnasium by another teacher, who saw him across the
22 courtyard in his pajamas, in or around -- near bushes. The
23 call came in to the front office. Ms. Brockway, an
24 assistant principal, was dispatched to the area to
25 investigate the matter and to follow up with Mr. Bauer.

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1 Q Did you have any involvement in the investigation
2 of the November 13th -- November 2013 incident?

3 A I did not have involvement in the investigation
4 of the matter. However, after Ms. Brockway spoke to Mr.
5 Bauer, she had some concerns about his demeanor, and she
6 addressed those concerns to me, and I did meet with Mr.
7 Bauer after that, that time.

8 Q All right. And what was the purpose of your
9 meeting with Mr. Bauer after Ms. Brockway had met with him?

10 A The purpose of my meeting with Mr. Bauer, because
11 I had concerns about supervision of children --
12 specifically, he didn't know how many people were in his
13 charge when Ms. Brockway responded to the gymnasium -- was
14 to express to him my concerns about supervision of
15 children. I also wanted to show him how to use technology,
16 which is sent out school-wide, how we account for children
17 in the morning, show him measures so that this would never
18 happen again.

19 Q All right. And do you know if Ms. Brockway
20 documented the November 1st, 2013, incident?

21 A Yes, I am aware that she documented.

22 Q Please identify Complainant's Exhibit Number 17
23 for the Board. There's a notebook in front of you.

24 A Yes.

25 Q Well, there are several notebooks in front of

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1 you. This is ours. I apologize.

2 A This Complainant's Exhibit 17 is a letter. I
3 must apologize. There's a typo. It should be December
4 10th, 2013. It's written to Alden from myself. The
5 purpose of this letter is twofold. The first couple
6 paragraphs are to address the use of Outlook to attend
7 meetings within the school. Mr. Bauer did not come to a
8 meeting, and when I spoke to him about that, he -- he felt
9 that receiving an Outlook invitation was kind of like
10 receiving a birthday invitation. You could either go or
11 not go, but you didn't really need to respond. So I wanted
12 to address that.

13 The second was to explain that Ms. Brockway, my
14 assistant principal, had shared with me that Mr. Bauer had
15 either lost, misplaced, or not returned at least three 504
16 plans. I wanted to stress that these are confidential
17 documents and that they needed to be stored in a secure
18 location.

19 Q The Board has heard some testimony about some
20 incidents involving Mr. Bauer in February of 2014. Were
21 you involved in investigating or addressing those issues?

22 A Yes, I was involved in at least two instances
23 that happened in February of 2014.

24 Q And please share with the Board what those
25 specific incidents were.

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1 A The first incident in February of 2014 involved a
2 class of third-grade students that were at the rec center
3 swimming pool, that entered the dressing room, and they
4 were exposed or saw an unclothed man.

5 Q Okay. And what was the second incident?

6 A The second incident occurred the following day.
7 This involved a fifth-grade student, a student with a 504
8 plan, also GT-identified, who was left across the street at
9 the rec center pool, unsupervised, for approximately 30
10 minutes, across the street from our school.

11 Q All right. Were you on campus at the time the
12 student was left at the Island Recreation Center?

13 A I was not on campus on this particular day. This
14 occurred on a Wednesday, which is district leadership
15 meeting day. So I was sitting here in this room on that
16 day.

17 Q And how did you learn of the incident?

18 A I learned of this incident on February 5th, when
19 Mr. Clendaniel, my assistant principal, phoned me to tell
20 me about the incident and the seriousness of the incident.
21 He called to bring me into the loop and let me know that he
22 was handling it and that he had an appointment to meet with
23 Mr. Bauer after school.

24 Q And what did you do once Mr. Clendaniel shared
25 that information with you?

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1 A Due to the seriousness of the incident and also
2 due to the student and knowing about his family, I called
3 Alice Walton to bring her into the loop to let -- to let
4 her know what had -- what was going on at our school.

5 Q All right. Were you involved in any meetings
6 with Mr. Bauer to discuss the February 2014 incidents?

7 A Yes, I was. That afternoon, when I returned to
8 the school, Mr. Bauer came back to the school to discuss
9 the incident with me and Mr. Clendaniel and Ms. Walton, who
10 was on the phone on a conference call.

11 Q And what was the purpose of your initial meeting
12 with Mr. Bauer?

13 A The purpose of the initial meeting, it had been
14 shared to me by Mr. Clendaniel that Mr. Bauer felt that
15 this was ridiculous, that he actually felt the student
16 should be written up, that he didn't follow directions and
17 line up with his class and return. He felt it was
18 ridiculous. We shouldn't be talking about this. The child
19 was safe. Nothing happened. So the purpose of my meeting
20 with Mr. Bauer was, actually, to hear his perspective and
21 to -- to hear from him what happened.

22 Q All right. And were you subsequently involved in
23 a meeting with Mr. Bauer on February 6th, 2014?

24 A Yes, I was involved with a meeting with Mr. Bauer
25 the following morning, February 6th, in my office, with

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1 Alice Walton.

2 Q So it was Mr. Bauer, Ms. Walton, and yourself?

3 A Yes. That's correct.

4 Q What, if anything, do you recall about Mr.
5 Bauer's reaction and demeanor in that February 6th meeting
6 where you and Ms. Walton were involved?

7 A Yes. In the February 6th meeting with Mr. Bauer
8 and Ms. Walton, his demeanor did not change. He once again
9 felt that this was being blown far out of proportion, the
10 child was safe, that it was ridiculous. I really felt that
11 his demeanor would change overnight; but it did not.

12 Q Did Mr. Bauer's demeanor and reaction to this
13 situation concern you at all, and if so, what were your
14 concerns?

15 A Yes, his reaction and demeanor did concern me
16 because it didn't seem that he was making a connection
17 between the safety of a child and his responsibility to
18 supervise children.

19 Q Did Mr. Bauer provide you and Ms. Walton with any
20 documents as a part of that February 6th meeting?

21 A Yes, he did. He was asked if he had an
22 attendance book or a roll book. He stated he did, that it
23 was in his truck, he thought. He left the meeting and went
24 to his truck, and he returned with a clipboard with a roll
25 book in it.

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1 Q All right. If you could turn to -- and this is a
2 little tricky also. It's Exhibit Number 2 from Ms.
3 Walton's deposition, so it's after the 40-or-so exhibits.

4 A Yes.

5 Q There is a second set of exhibits, and it's
6 labeled Number 2. Do you see that?

7 A Yes.

8 MR. BAUER: I object to this exhibit because
9 this is not the roll book that was provided to Ms.
10 McAden on February the 11th at the meeting.

11 MR. WILLIAMS: We're talking about the
12 February 6th meeting, but we also, obviously, for the
13 purpose that we couldn't make -- we have a photocopy
14 of the roll book, but we also have the actual roll
15 book that Mr. Bauer provided to us through the
16 discovery process, if the Board wishes to see that
17 document, as well.

18 MR. BAUER: The roll book was submitted on
19 February 11th along with a binder with PowerSchool
20 attendance sheets. The roll book that you have in
21 your possession is not the correct grade book. It is
22 one that was submitted to placate the opposing
23 counsel, but Ms. McAden has the official grade book in
24 her possession, or the district does. Therefore, I
25 object to this exhibit.

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1 MR. WILLIAMS: First of all, I'm not sure
2 what it means when he says --

3 CHAIRMAN EVANS: Excuse me.

4 MR. WILLIAMS: Okay.

5 CHAIRMAN EVANS: Excuse me. We just need a
6 little clarification. Okay. There was a meeting on
7 the 6th where --

8 MR. BAUER: I object. There was no meeting
9 on the 6th. It was on February 11th.

10 MR. WILLIAMS: He is free to cross-examine
11 her if he disagrees about the date.

12 MR. BAUER: Okay.

13 CHAIRMAN EVANS: Okay. The witness has
14 testified that there was a meeting on the 6th that
15 involved Mr. Bauer and Ms. Walton and that a grade
16 book was produced at that meeting.

17 MR. WILLIAMS: Correct.

18 CHAIRMAN EVANS: Is this that grade book as
19 it appeared on the 6th?

20 MR. WILLIAMS: It is our belief it is that
21 grade book, and I didn't -- Mr. Bauer has talked about
22 the discovery process, so I can respond further to
23 that. Mr. Bauer presented them with a grade book,
24 which we believe to be that grade book. As part of
25 discovery, we asked Mr. Bauer for a copy of the grade

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1 book that he provided at that meeting, and that is
2 what Mr. Bauer provided us. What is -- what is
3 Exhibit 2 is what Mr. Bauer submitted to us as the
4 grade book.

5 MR. BAUER: Also, I provided communications
6 with the opposing counsel that this was not the grade
7 book, on three different occasions, that I have
8 already submitted the grade book. They kept saying
9 they did not have it, so I submitted one that I'd
10 began because the old grade book was getting wet at
11 the pool, and I just submitted this.

12 But I explained this in three different
13 letters and emails to the opposing counsel, that the
14 official grade book was submitted to Ms. McAden and
15 Alice Walton on February the 11th in a meeting, along
16 with PowerSchool attendance grade books.

17 MR. DUFF: Can you ask the witness --

18 MR. WILLIAMS: If that appears to be the --

19 MR. DUFF: -- whether she recalls a grade
20 book being submitted at the February 6th meeting?

21 BY MR. WILLIAMS:

22 Q Do you recall a grade book being submitted at the
23 February 6th meeting?

24 A I do. I recall it was not in his hands. He --
25 he thought the grade book was in his truck. Ms. Walton

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1 asked him to go to his truck to see, and he returned with a
2 close-type, plastic clipboard, and the grade book was
3 inside of that box-type thing.

4 Q And I'll ask you, too, do you also recall any
5 specifics as to what was included in that grade book? In
6 other words, did it appear to be a daily grade book where
7 he had been taking roll throughout the year?

8 A No, it did not. There were, to the best of my
9 memory, one or two classes in the grade book with no
10 markings in the grade book.

11 Q And did you have any concerns as a principal
12 with that, the manner in which it appeared Mr. Bauer was
13 keeping -- was checking his roll and grades?

14 A Yes, absolutely, I did.

15 Q And what were your concerns?

16 A My concerns was that it was -- it was fairly --
17 it was an empty grade book with a couple of classes of
18 student names, but no marks that were in Feb -- the month
19 of February.

20 MR. BAUER: Mr. Chairman, would you be able
21 to ask the witness if there were names for more than
22 two students -- or more than two classes? Were names
23 presented or listed in the --

24 MR. WILLIAMS: I'll -- I would object to him
25 cross-examining the witness prior to my concluding the

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1 direct.

2 MR. DUFF: Mr. Bauer, you may ask the
3 witness that in the cross-exam.

4 MR. BAUER: Well, I think it would be
5 prejudicial, if she sees this exhibit before I can
6 cross-examine her. I'd like her to explain what
7 exactly the grade book looks like before seeing it.

8 MR. WILLIAMS: And I'd object to him trying
9 to cross-examine her at this time. Again --

10 CHAIRMAN EVANS: There is a time --

11 MR. WILLIAMS: -- there is a process.

12 CHAIRMAN EVANS: -- for you to cross-
13 examine. I would tell you that the document that's
14 been presented to the Board is a grade book with names
15 only, as Ms. McAden is describing right now. So let's
16 go ahead with this. You will have the opportunity to
17 cross and introduce another document, if that's -- if
18 that's the case, Mr. Bauer.

19 BY MR. WILLIAMS:

20 Q Did you communicate your concerns in writing to
21 Ms. Walton about Mr. Bauer and the Island Recreation Center
22 incident?

23 A Yes, I did document my concerns to Alice Walton.

24 Q All right. If you could please identify
25 Complainant's Exhibit Number 18 for the Board?

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1 A This exhibit is an email from myself to Ms.
2 Walton dated February 6th at 10:42 in the morning. I
3 shared with Ms. Walton that Mr. Bauer had been an integral
4 member of the staff for years, and I stated that I was
5 shocked at his lackadaisical behavior.

6 I stated his demeanor was defensive, that he was
7 bothered by this silly mistake, and he acted put off by
8 being spoken to, and did not apologize for leaving a
9 student, left behind across the street in the locker room.
10 He felt he was being treated in a ridiculous manner. I was
11 holding him responsible for accounting for students. I
12 mentioned he was slouched in his chair, sighing, as if it
13 was being blown out of proportion. He was bothered.

14 He was not able to make a connection to the
15 safety of students and his responsibility as a certified
16 teacher. He didn't show remorse, regret. Again, in fact,
17 he stated that the child should be written up. And this --
18 I wanted Ms. Walton to know that this behavior that I was
19 witnessing was also seen early in the year by Ms. Brockway,
20 when the student in his pajamas was left outside of the
21 building.

22 Q After Mr. Bauer was placed on administrative
23 leave, did you have any additional correspondence with Mr.
24 Walton?

25 A Yes, I did.

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1 Q All right. If you could please identify
2 Complainant's Exhibit Number 19?

3 A This is a very brief email to Alice Walton,
4 written February 6th at 3:49 in the afternoon, sharing with
5 Ms. Walton that there were no emergency sub plans left in
6 Mr. Bauer's office. The schedule rotation reflected in the
7 following picture was from the previous school year, and
8 the phone roster that was posted on his bulletin board was
9 from the 2010 school year, trying to illustrate to Ms.
10 Walton that, if a sub came in, it would indicate that we
11 have a different assistant principal, and the schedule was
12 a year old.

13 The next very brief note to Ms. Walton was
14 written on February 6th at 3:59 in the afternoon. When I
15 was trying to find equipment for the substitute teacher to
16 use, I went to the storage closets, and I wanted to share
17 with her that the storage closets and the gym equipment
18 were a total wreck, and I sent a picture of that.

19 And, finally, the last is a note to Alice written
20 on March 19th at 2:13 in the afternoon, stating that I had
21 three 504 plans and four regular education teacher
22 involvement IEP forms, as well as one accommodations
23 modification supplementary aides for students with IEPs
24 that were scattered about Alden's office; all confidential
25 documents, and none were secure.

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1 Q After Mr. Bauer was placed on administrative
2 leave, did you have any correspondence with him directly?

3 A I did. After Mr. Bauer was placed on
4 administrative leave, his directive was to communicate to
5 Alice Walton. So, in any correspondence that I did receive
6 from him, my response back was to please contact Alice
7 Walton, or I forwarded it to Alice Walton.

8 Q All right. If you could please turn to
9 Complainant's Exhibit Number 20 and identify that document
10 for the Board -- or those documents?

11 CHAIRMAN EVANS: Would you hold on just a
12 minute, Mr. Williams?

13 (Board discussion.)

14 CHAIRMAN EVANS: Thank you, Mr. Williams.
15 Please proceed.

16 BY MR. WILLIAMS:

17 Q If you could identify Exhibit 20?

18 A Yes, this is an email that Mr. Bauer sent me
19 Sunday evening, March 16th, at 9:05, with three requests.
20 And as you can see, Monday morning at 9:15, I simply wrote
21 back to Mr. Bauer, letting him know that I was forwarding
22 that request to Alice Walton, per her directive.

23 Q All right. Were you ever made aware of a request
24 from Mr. Bauer regarding video footage from the gym?

25 A I was made aware of that request fairly recently,

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1 asking for -- about video footage of the gymnasium.

2 Q And did you inquire as to how long video footage
3 was maintained in the gymnasium?

4 A I did. Upon that request, I reached out to
5 someone who would have the answer to that and learned that
6 video footage is stored for approximately two weeks.

7 Q All right. If you could please identify
8 Complainant's Exhibit Number 21?

9 A This is -- this appears to be a string of emails
10 that might have been put together, but, basically, I'm
11 asking Mr. Bauer once again to contact Alice Walton for
12 computer and email access. And Mr. Bauer writes back to me
13 he's trying to follow Dr. Moss's instructions.

14 Q All right. Based on your review of the incidents
15 that you've discussed with the Board this morning, did you
16 reach any conclusions about whether or not Mr. Bauer
17 violated district policy?

18 A Yes, I did.

19 Q And if you could please identify Complainant's
20 Exhibit Number 4?

21 A Again at the back?

22 Q Go back, not in Alice's, but in the beginning of
23 the notebook.

24 A Yes.. This is IS-2 as it regards to teacher
25 expectations and accountability.

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1 Q And did you have any concerns with Mr. Bauer's
2 conduct as it relates to policy IS-2?

3 A I did. Based on these instances, I did not feel
4 that Mr. Bauer was supervising students in his charge
5 throughout the day and at all times and -- as well as
6 maintaining strict confidentiality of data, records, and
7 student information.

8 Q All right. If you could please identify
9 Complainant's Exhibit Number 5?

10 A Yes, this is HRS-4, staff conduct.

11 Q And did you have any concern with Mr. Bauer's
12 conduct as it relates to HRS-4?

13 A I did. This states that one of the best methods
14 of instruction is that of setting a good example, and in
15 Mr. Bauer's dialogue with me and assistant principals,
16 being argumentative and defensive, I didn't feel that that
17 was being a role model to students.

18 Q Okay. Please identify Complainant's Exhibit
19 Number 6.

20 A Yes, this is SS-1, student goals and priority
21 objectives.

22 Q Did you have any concern with Mr. Bauer's conduct
23 as it relates to policy SS-1?

24 A Yes, I did. I did not feel that Mr. Bauer
25 attended vigorously to matters of student safety, health,

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1 and welfare when a student was left behind across the
2 street at the rec center for approximately 30 minutes.

3 Q You've testified about your meeting with Mr.
4 Bauer and Ms. Walton on February 6th. Were you involved in
5 any other meetings with Mr. Bauer after February 6th?

6 A Yes, I was.

7 Q And do you recall when those meetings were?

8 A I can't recall the exact dates, but I do recall
9 that they were with Alice Walton, myself, and Mr. Bauer.

10 Q And what would have been the purpose of those
11 subsequent meetings with Mr. Bauer after February 6th?

12 A The purpose of the subsequent meetings would be
13 to, again, hear from Mr. Bauer, if any -- if any of his
14 positions had changed, and also to discuss, if he were to
15 return to work, any assurances he might have for us as to
16 how this would never happen again.

17 Q And what, if anything, do you recall about Mr.
18 Bauer's demeanor in those subsequent meetings that you and
19 Ms. Walton had with him?

20 A Once again, he -- he felt that this was
21 ridiculous that we were talking about this again.

22 Q Did you ever become aware that Mr. Bauer's
23 position was that the student who was left behind had been
24 brought to his class late that day?

25 A I was fairly recently made aware of that

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1 position.

2 Q And what is your response to that position?

3 A My response is, based on school records that we
4 have, that that's not accurate.

5 Q All right. If you could please turn to
6 Complainant's Exhibit Number 22 and identify those
7 documents for the Board?

8 A Yes. The first is the master schedule from the
9 2013-14 school year, which on the far left shows that
10 fifth-grade students, which would be the student that was
11 left behind, went to specials from 12:00 until 12:50.

12 The second would -- is a note that's sent from
13 our data specialist to the teachers. That was sent
14 February 5th at 10:03 a.m. This is showing that -- who's
15 present and who's absent, and if you turn to the last page
16 that appears to be all blacked out, at the bottom, you can
17 see that the student that we're discussing with the
18 initials of E.T. was tardy that day, which is -- the Z
19 means tardy. But he was marked tardy at 10:03 a.m., two
20 hours prior to going to swimming.

21 Q So, based on those records, would he -- does that
22 mean, as of 10:03, he would have been in school?

23 A At 10:03 or before 10:03, he would have been at
24 school.

25 Q After your communications with Ms. Walton in

1 February and March, were you consulted with the
2 recommendation that Mr. Bauer be terminated?

3 A Yes, I was.

4 Q And what, if any, input did you provide as part
5 of that consultation?

6 A I provided input that, based on not only the
7 instances but his reaction to them, that he should be
8 terminated.

9 Q Please answer any questions that Mr. Bauer might
10 have for you. Actually, one other question. Just so it's
11 clear, the roll book, the document that you identified as
12 Exhibit 2 in Ms. Walton's deposition, did that appear to
13 you to be the same roll book that was provided to you back
14 in February of 2014?

15 A Yes, it does.

16 MR. WILLIAMS: That's all the questions I
17 have.

18 CROSS-EXAMINATION

19 BY MR. BAUER:

20 Q Good morning, Ms. McAden. I have some questions
21 regarding the pool event for you. Were you part of the
22 investigating team for the pool incident, specifically?

23 A I was not at school the day that the child was
24 left behind at the swimming pool. I was here in this room
25 at a district leadership meeting. So I was right here. I

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1 was made aware of the incident and was made aware of
2 everything that happened, at the pool and after the pool.

3 MR. BAUER: For the purposes of this line of
4 questioning, I'm going to refer to the student as
5 student E, if that's --

6 CHAIRMAN EVANS: That's fine.

7 BY MR. BAUER:

8 Q Did the student E have an unexcused tardy that
9 morning?

10 A The records reveal that this student was tardy.
11 I can't answer whether the tardy was unexcused or excused.

12 Q Does Z -- does it show Z there, unexcused tardy,
13 or is that blacked out?

14 A Could you direct me to the document you're
15 referring to?

16 Q The letter Z, is that on -- next to his name,
17 next to the blacked out student's name? And that would be
18 file -- I'm not sure which file it is.

19 A The letter Z means that the student is tardy.

20 Q It doesn't say unexcused tardy?

21 A It says Z --

22 Q Okay. Please refer --

23 A -- tardy.

24 Q Please refer to page one evidence in our -- from
25 my notebook. Oh, I'm sorry. It's page 1 of that document.

1 CHAIRMAN EVANS: Okay. It's --

2 THE WITNESS: I'm sorry. I'm --

3 CHAIRMAN EVANS: I was looking at this. I
4 wrote the coding does indicate that Z stands for
5 unexcused tardy.

6 MR. BAUER: Thank you.

7 CHAIRMAN EVANS: There is a separate
8 indication of T, indicating the excused tardy.

9 BY MR. BAUER:

10 Q Okay. So, for the record, Z stands for unexcused
11 tardy. Is that correct?

12 A (No response.)

13 Q Does it seem a little odd that, to you, that one
14 student who has an unexcused tardy is the same student in
15 question for this day?

16 A It does not. The student was often tardy. The
17 student came from Bluffton, and tardiness was an issue with
18 this child.

19 Q Are you aware that this was the only student from
20 that teacher's class that was tardy that day or absent that
21 day?

22 A I would not be aware of that information.

23 Q Are you aware that the teacher was one of only
24 four teachers that either did not take attendance or did
25 not submit their attendance before 10:00 that morning?

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1 A Yes, I am aware that there were four teachers on
2 this day that did not take attendance in time for the phone
3 call system to be kicked into action, which calls all
4 parents to alert them that their children are not at
5 school.

6 Q But are you aware that the teacher of this
7 student was on that list?

8 A Yes, I'm aware that she was one of four teachers
9 that did not -- not tend to attendance by 9:00.

10 Q And how many teachers are at the school, a total
11 number?

12 A The number of teachers that report attendance,
13 I'm guesstimating, in this school year, would be around 43.

14 Q Forty-three?

15 A (Witness nods head; no verbal response.)

16 Q Okay. I'm just wondering if you feel that it is
17 coincidental that one teacher -- the one teacher and the
18 one student are involved -- that are involved in this
19 incident happened to be late on both accounts, submitting
20 attendance and unexcused tardy? Does that seem
21 coincidental to you?

22 A Mis -- could you repeat the question?

23 Q Does it seem coincidental that the student and
24 the teacher involved in this incident both were late with
25 something --

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1 MR. WILLIAMS: Again, I'm not sure of the --
2 I'm not sure of the relevance of that question.

3 MR. BAUER: Okay.

4 CHAIRMAN EVANS: Go ahead. We'll allow it,
5 but --

6 MR. BAUER: Okay.

7 CHAIRMAN EVANS: -- I just want some
8 clarification, or we're hoping to get some
9 clarification.

10 BY MR. BAUER:

11 Q Earlier, you stated that you were not aware until
12 recently that the student -- that there was -- that Mr.
13 Bauer claimed that a student arrived late to his swim
14 class, and I'm asking, does it seem coincidental that this
15 student is listed there?

16 A I -- I was not made aware until fairly recently
17 that Mr. Bauer was alleging that the reason that the child
18 was left behind was that he was tardy to school. I do feel
19 that, if that had been the case, that would have come up
20 the day that the incident occurred, it would have come up
21 the next day when we were meeting with Ms. Walton, and it
22 would have come up in subsequent meetings. This topic of a
23 child being delivered late to swimming did not come up in
24 any of those meetings.

25 Q You stated during your testimony with Dr. Fawley

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1 and Mr. Williams that you had records -- did you state that
2 you had records of student -- whether a student came late
3 to PE that day or not, that they --

4 A Could you repeat the question?

5 Q Would there be a record showing that the student
6 arrived late to PE class, at 12:15, or something like that?

7 A The expectation at the school is that all
8 teachers keep records of student attendance. This -- what
9 -- the document you're looking at is a record of our
10 student attendance from this day.

11 Q Unless I'm -- unless I am mistaken, you stated
12 earlier that your records show otherwise, that there was no
13 student taken to PE late.

14 A This record would indicate that the student Mr.
15 Bauer is referring to as student E was at school on or
16 before 10:00 on this day.

17 MR. BAUER: Could I ask that something be
18 read back?

19 CHAIRMAN EVANS: From what?

20 MR. BAUER: From the stenographer, regarding
21 records showing to the contrary, a student was not
22 delivered to PE late?

23 CHAIRMAN EVANS: Yeah. Go ahead.

24 COURT REPORTER: Give me a bit to --

25 MR. BAUER: Actually, I will withdraw that,

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1 and we'll continue. I don't want to waste any time
2 here.

3 BY MR. BAUER:

4 Q Where was student E when the class started back
5 to school?

6 A Could you be more clear about --

7 Q The student that is in question here from
8 February 5th, where was his location when the class, the
9 rest of the class, was being taken back to school? Was he
10 --

11 A The student's location when the rest of the class
12 was taken back to school was in a dressing room at the
13 Island Rec Center, for approximately 30 minutes. He did
14 get up and go into the rec center and found an adult and
15 shared that he had been left behind, and this adult brought
16 him back to the school.

17 Q And do you know the name of that rec center
18 employee?

19 A I do not know the name of the rec center
20 employee. Coincidentally, this student's mother happened to
21 be in -- arriving at the front office at the same time of
22 the student's return, bringing her son lunch. So the focus
23 shifted gears, if you will, due to the fact that the
24 student was being returned at the same time his mother was
25 in the front office.

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1 Q His mother, was she walking in the door and saw
2 the child being brought back?

3 A I was not at school the day that this incident
4 occurred. It was reported to me that the mother walked
5 into the office at or around the same time that the student
6 was being returned. She was made aware, immediately, that
7 her student was left behind at the rec center.

8 Q Okay. When the class returned, did the classroom
9 teachers notice that student E was missing?

10 A Again, I was not at school on this day. My focus
11 was on the safety of this one student.

12 Q Do you believe that student E was trying to avoid
13 returning to school?

14 A No, I do not believe student E was trying to
15 avoid returning to school.

16 Q Would a good investigation have answered those
17 questions that I have just asked you?

18 A I think that's a subjective question, that --

19 Q If there was difficulty in finding the answers,
20 should you have consulted the surveillance cameras?

21 A There was no difficulty in uncovering answers.
22 The child was left behind, was brought back to the school.
23 In my deposition, I dated -- I stated that I was not aware
24 of cameras in the gym. At the time, that was the case.. I
25 am now aware of cameras in the gym. But I would not have

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1 looked at cameras in the gym. He was returned to the front
2 office.

3 Q Okay. Thank you. My next question is, are there
4 surveillance cameras in the gym?

5 A Again --

6 Q Yes.

7 A -- I now know that there are surveillance cameras
8 in the gym. At the time of my deposition, I was not aware
9 of cameras in the gym.

10 Q Would you please take a look at file 262-A?

11 A Under what tab would I find 262-A?

12 Q Let's see. Which -- oh, I'm sorry. It's --
13 yeah.

14 MS. CUSHINGBERRY: It would be in this
15 notebook.

16 THE WITNESS: Thank you.

17 MR. WILLIAMS: I would -- I would object to
18 what I see as the initial part of 262-A, as it is a,
19 basically, two-line excerpt from Ms. McAden's
20 deposition regarding surveillance cameras. She's
21 already --

22 MR. BAUER: Next page. I'm sorry. Page 2
23 and 3.

24 MR. WILLIAMS: Which page are you talking
25 about?

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1 MR. BAUER: It's the -- turn the page over,
2 and it should be David Earnest, Thursday, May 23rd,
3 2013. And the -- there's actually two pages to this
4 email..

5 BY MR. BAUER:

6 Q Have you had a chance to review this email, Ms.
7 McAden?

8 A I want to make sure I'm looking at the --

9 Q Sure.

10 A -- correct document. I'm looking at a message on
11 December 16th, 2012?

12 Q It's May 23rd. It's 262-A, and it's dated May
13 23rd.

14 MR. WILLIAMS: And I would say part of the
15 problem is there are multiple -- multiple documents
16 with 262-A.

17 MR. BAUER: It's the second page. Which
18 volume is it?

19 MR. JOHN BAUER: Volume 2.

20 MR. BAUER: Volume 2.

21 THE WITNESS: I see -- I see -- the document
22 I'm looking at is a note that I sent to families after
23 the Sandy Hook incident, assuring them that our school
24 was safe.

25 MR. BAUER: All right. We'll just hand it

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1 to you, and let Mr. Williams look -- review it first.

2 MR. JOHN BAUER: It's the same document.

3 MR. BAUER: Yeah, I know, but he just wants
4 to make sure it is...

5 MR. WILLIAMS: Yeah. That's fine.

6 Actually, I can find it in the --

7 THE WITNESS: Okay.

8 MR. WILLIAMS: It's those two pages.

9 THE WITNESS: Okay.

10 MR. WILLIAMS: I've shown her the exhibit.

11 MR. BAUER: Okay. Thanks.

12 MR. JOHN BAUER: Does she have it?

13 MR. BAUER: Yeah, she's just reviewing it.

14 BY MR. BAUER:

15 Q Let me know when you're ready.

16 A So what I'm reviewing here is a message from
17 David Earnest sent May 23rd to myself, copied -- you can
18 see who all he's copied. I guess it's to bring everyone up
19 to date on the work going on in the gymnasium, to include
20 access control, exit alarms, an existing rolled security
21 screen, and video security.

22 Q So, in the second line, does it say cameras --
23 starting with the word "funding" -- for --

24 A Yes, it does.

25 Q And when you look at the next page, you'll see

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1 something regarding video security, and that also talks
2 about -- does that also talk about installing two cameras
3 in the gym?

4 A Yeah. I want to make sure I'm looking at the
5 right document.

6 Q Right.

7 A On the next page --

8 Q Actually, no, that's not it. Oops. Sorry.
9 (Tenders document to witness.) There.

10 A Yes, I -- this is the same document I just
11 identified. I would like to explain to the Board that, at
12 Hilton Head Island Elementary, a number of cameras that we
13 have, it states red door, yellow door, all the exterior
14 doors that we typically look at, and then it goes to blank
15 camera, blank camera, blank -- all -- blank, blank, blank.
16 The gym cameras were underneath -- tucked underneath the
17 blank camera. Ms. Pheiffer, our data specialist, reviews
18 cameras very frequently, if there's any sort of intrusion,
19 and our front office manager reviews cameras at all the
20 major doors, daily.

21 So this document from David Earnest is bringing
22 everybody up to speed on the scope and sequence of work at
23 the school, and I've already shared that I was unaware that
24 there were two cameras that were working in the gymnasium.

25 Q So am I correct in stating that you were made

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1 aware by Mr. Earnest on May 23rd, 2013, that cameras were
2 being installed in the gym?

3 A Yes, this email from David Earnest states that
4 this is bringing everybody up to the scope of the work
5 going on at school.

6 Q Therefore, you were informed; is that correct?

7 A Yes.

8 Q Thank you. All right. Do you agree that this
9 email from Mr. Earnest was sent to you around nine months
10 before the pool event of February 5th and before I was
11 placed on administrative leave?

12 A This email was sent on May 23rd of 2013.

13 Q Okay. Thank you. Now, are you aware that Mr.
14 Bauer's consultant attorney sent a letter on May 21st,
15 2014, to Ms. Alice Walton, stating that all electronic data
16 be preserved?

17 A This was correspondence to Ms. Walton. I have
18 not been made privy to correspondence to Ms. Walton.

19 Q Okay. Did Ms. Walton contact you regarding the
20 preservation of all electronic data?

21 A Ms. Walton asked me to secure Mr. Bauer's laptop
22 and to make sure everything was kept in -- intact for Mr.
23 Bauer upon the time that he went on administrative leave.

24 Q Did she specify anything besides laptop, like
25 computer -- anything electronic besides computers?

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1 A The laptop with his email correspondence, phone
2 messages, everything was to be preserved --

3 Q Okay.

4 A -- that was relating to Mr. Bauer's email address
5 and correspondence.

6 Q Okay. And did you inform Mr. Clendaniel or Ms.
7 Brockway of that?

8 A I don't recall. I don't recall.

9 Q Would you have been the one that informed the
10 opposing counsel that Hilton Head Island Elementary took
11 the appropriate steps to preserve data on computers and
12 other electronic devices?

13 A I'm sorry. Would you repeat the question?

14 Q Yes. Were you the one that informed Dr. Fawley
15 and Mr. Williams that you had preserved all data?

16 A I don't recall.

17 Q If I were to say that -- okay. Sorry. I'll
18 rephrase. Scratch that. All right. Now I'd like to move
19 on to trucks; truck email, specifically. I asked for truck
20 -- I asked for any emails for discovery evidence regarding
21 my truck, and Mr. Williams answered on March 20th, and this
22 is file 261. Please refer to file 261. This is from Mr.
23 Williams.

24 MR. WILLIAMS: To the extent he's asking her
25 about correspondence that I sent to him, we would

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1 object as communications between attorney and --
2 either attorneys or attorneys of pro se parties would
3 not be appropriate cross-examination.

4 MR. BAUER: Okay. I'll withdraw that. I'll
5 just ask a question, then.

6 BY MR. BAUER:

7 Q Ms. McAden, were you the one -- I was provided,
8 God, three -- maybe three, four years' worth of emails on a
9 flash drive, and it was thorough. I'm -- and I really
10 appreciate that. Was the school administration the one
11 that downloaded all these, these emails?

12 A No, school administration did not download
13 emails.

14 Q Oh, okay. All right. If I were to say that --
15 that's going to get objected to. I'm trying to think of a
16 way to say this. Have you been told or did you tell anyone
17 that there were no emails regarding trucks in Mr. Bauer's
18 email account?

19 A Just repeat the question for me, please.

20 Q If I were to say that the opposing counsel said
21 there were no truck emails --

22 MR. WILLIAMS: Again, he can ask her --

23 MR. BAUER: Right.

24 MR. WILLIAMS: -- if she knows anything
25 about truck emails, but to refer to something that

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1 opposing counsel said --

2 MR. BAUER: Withdrawn.

3 MR. WILLIAMS: -- would not be an
4 appropriate question.

5 BY MR. BAUER:

6 Q Do you know who downloaded these emails on the
7 flash drive? Do you have any idea who might have provided
8 the emails to me?

9 A I don't. Once Mr. Bauer was placed on
10 administrative leave, I was -- I was directed to inform all
11 questions to Ms. Walton.

12 Q Okay. Are you aware of any time when my truck
13 was used for the purpose of helping somebody in the school,
14 or where it would have been used for school-related
15 purposes, or anything like that? I mean, do you remember a
16 time where my truck was used for school-related purposes?

17 A I don't. To the best of my knowledge, I believe
18 Mr. Clendaniel asked Mr. Bauer for help when he moved to
19 town, but other than that, I'm -- I'm not aware.

20 Q Are you aware of an email where Mr. Clendaniel
21 asked me to pick up some plants from the high school?

22 A I don't recall.

23 Q And do you remember a time where you asked me to
24 pick up a couch to place in the teacher lounge -- to pick
25 up it up from the Litter Box?

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1 MR. WILLIAMS: I'm going to object to
2 relevance. I know there was testimony about him
3 parking --

4 MR. BAUER: Okay.

5 MR. WILLIAMS: About where he parked the
6 truck. I don't think that whether or not he ever used
7 the truck for school purposes is relevant to the issue
8 of parking the truck.

9 BY MR. BAUER:

10 Q Was there ever a time that I parked my truck
11 right behind the gym for purposes of school-related help?

12 A Did you say school-related help?

13 Q Yeah, for helping. Was there ever a time I
14 parked there to use it for school-related purposes?

15 A Not to my knowledge.

16 Q Do you remember a conversation or a phone message
17 you left on Mr. Bauer's phone, asking Mr. Bauer to please
18 remove his truck from behind the gym, that you were
19 concerned for safety, et cetera? Do you remember that
20 phone message?

21 A I do not remember that specific phone message. I
22 do remember addressing where Mr. Bauer parked his truck.

23 Q Do you remember Mr. Bauer calling you back and
24 stating that Mr. Bauer parked there to remove some potted
25 plants, or some old pots that were used for plants, and

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1 that's -- that's the end of the question.

2 A I don't recall that.

3 Q Do you remember apologizing, that you had had an
4 already bad morning?

5 A I don't.

6 Q Okay.

7 A I don't recall.

8 Q Now, let's go on to, what is -- regarding this
9 naked old man thing, which my former attorney really found
10 offensive-sounding, but what is the policy for children
11 changing clothes in front of adults at the rec center on
12 swim days?

13 A Children come to school in their bathing suits
14 with clothing on top, and the expectation is that they are
15 to be supervised when they're putting on their clothes in
16 the locker room to return back to the school.

17 Q But is there a written policy, an actual written
18 policy, stating that the children may not dress unless it's
19 empty of all adults?

20 A It is -- it is my expectation that teachers in
21 charge of students supervise their children at all times
22 and make professional decisions in light of what's best for
23 children.

24 Q Does --

25 A Mr. Bauer shared with me that that was a part of

1 his practice, to take a peek in the dressing rooms to make
2 sure that they were clear for students to change.

3 Q So there is no written policy? Is that what
4 you're saying? Yes or no?

5 A I am not aware of a written policy regarding
6 students -- how they change in the dressing room. But,
7 again, I would state that it is the expectation of a
8 principal that teachers, certified teachers, are in charge
9 of their students at all times.

10 Q So, if there's no written policy, does that mean
11 it's allowed?

12 A I'm sorry. What is your question?

13 Q If there's no actual written policy, does that
14 mean dressing in front of public -- it's a public facility
15 -- dressing in front of adults is allowed?

16 A Again, I would state that it's my position that a
17 teacher would use his or her best judgment and make a
18 decision in light of what's best for students; in this
19 case, a 10-year-old -- 10-, 11-year-old.

20 Q Are you aware -- I'm sorry. Are you aware that
21 Bluffton Elementary and Bluffton Island Rec Center have a
22 written policy?

23 A I've been at Hilton Head Island Elementary School
24 since 1999, and I'm not aware of policies that are written
25 at other elementary schools.

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1 Q Are you aware on the day in question, regarding
2 the naked old man, that a teacher volunteer was with Mr.
3 Bauer every minute of that lesson?

4 A I would not be aware that there was a volunteer
5 present for every minute of that lesson.

6 Q Please refer to file 118, and make sure that the
7 parent's name is deleted. I believe I did.

8 A I'm sorry. This starts with file 204.

9 MR. WILLIAMS: There's another --

10 MR. BAUER: The next volume.

11 CHAIRMAN EVANS: Did you say 118?

12 MR. BAUER: One -- yes, sir: one one eight.

13 BY MR. BAUER:

14 Q And let me know when you find it.

15 A All right. I have 118.

16 Q Thank you. This email is from a parent who was
17 there that day. Please would you read this email out loud?

18 A This is an email from Alden Bauer to John Bauer
19 dated August 12th, 2014.

20 Q Is that the right one, regarding the --

21 CHAIRMAN EVANS: One one eight.

22 MR. BAUER: Yes. Thank you.

23 BY MR. BAUER:

24 Q Now, down below, would you please read the
25 content of that email?

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1 A And then there's a date of Tuesday, August 12th,
2 2014, from [redacted] --

3 CHAIRMAN EVANS: Please do not read --

4 MR. WILLIAMS: Don't say the name.

5 BY MR. BAUER:

6 Q Yeah.

7 A I'm sorry. This email says: Mr. Bauer, here is
8 my perspective; dot, dot, dot. I was at all of the
9 swimming lessons to monitor my son, and I did not see or
10 hear of anything inappropriate during that time. Mr. Bauer
11 was always very attentive and great with the kids.

12 Q Okay. Thank you. Now -- nah. Okay. Ms.
13 McAden, please examine file 45, four five.

14 A All right. I'm at 45.

15 Q Okay. Ms. McAden, are you aware that the first
16 time that I saw this letter was when Childs & Halligan, Dr.
17 Fawley and Mr. Williams, provided this to me on July the
18 10th, 2014?

19 A I am not aware of that.

20 Q Are you the author of this letter?

21 A I am. I shared this letter earlier with the
22 Board, that there's a typo. It should be dated 2013
23 instead of 1013. From this particular exhibit, my
24 signature is missing, but on the exhibit I have, I have my
25 signature.

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1 Q Okay. When did you actually write this letter?

2 A Again, I did not write it in the year 1013.

3 Q Would it be in 2013?

4 A That -- yes, that's the --

5 Q Yes. Who delivered this to Mr. Bauer?

6 A To the best of my knowledge, Diane Jorgensen,
7 office manager, delivered this letter.

8 Q To Mr. Bauer?

9 A To Mr. Bauer.

10 Q And was this written on a school computer?

11 A Yes.

12 Q And was it -- was this letter placed in my
13 personnel file?

14 A I don't recall.

15 Q Okay. Are you willing to submit this letter to
16 computer forensic analysis to determine the actual date?

17 MR. WILLIAMS: I'm just going to object to
18 the relevance of that type question in this
19 proceeding.

20 CHAIRMAN EVANS: I need some relevance.

21 MR. BAUER: This letter -- well, I have to
22 say that it was never -- I -- the first time I saw
23 this was July the 10th. I had no knowledge of this
24 letter, and I do not believe it was written on this
25 date.

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1 MR. WILLIAMS: As Mr. Duff has said several
2 times, Mr. Bauer will be given an opportunity --
3 MR. BAUER: Okay.
4 MR. WILLIAMS: -- to testify at a --
5 MR. BAUER: And I'll --
6 MR. WILLIAMS: -- at a later point in --
7 MR. BAUER: I'll go on, then.
8 MR. WILLIAMS: -- if you'd let me finish --
9 MR. BAUER: I'm sorry.
10 MR. WILLIAMS: -- at a later point in the
11 hearing. So, if that's his position, he certainly can
12 tell the Board that.
13 MR. BAUER: Withdrawn.
14 BY MR. BAUER:
15 Q Please refer to file one hundred and -- no,
16 that's -- is this it? One hundred --
17 MR. JOHN BAUER: One twenty-one.
18 MR. BAUER: Oh, yeah, that's it. I'm sorry.
19 It's 121-P.
20 CHAIRMAN EVANS: The letter again, Mr.
21 Bauer? One twenty-one --
22 MR. BAUER: One twenty-one P.
23 MR. DUFF: P?
24 MR. BAUER: P. Yes.
25 CHAIRMAN EVANS: As in Peter?

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1 MR. BAUER: As in Peter. That's right. All
2 right.

3 MR. WILLIAMS: I have several pages --

4 MS. BUSH: We -- yeah, which one is it?

5 MR. WILLIAMS: -- several documents under
6 that -- under that numbering.

7 MR. BAUER: Correct. And I'm going to refer
8 to number --

9 CHAIRMAN EVANS: Excuse me just a moment.

10 MR. BAUER: Yes.

11 CHAIRMAN EVANS: We've had a request. I was
12 hoping we might be through this and have lunch. We
13 need to take about a 10-minute break, just for
14 everybody's comfort, please. Okay?

15 MR. BAUER: Sure.

16 CHAIRMAN EVANS: Thank you.

17 (Brief recess.)

18 CHAIRMAN EVANS: Just some housekeeping real
19 quick for everybody. When we're finished with this
20 witness, we will break for lunch. It'll probably be
21 45 minutes, or so, of break at that time. So we were
22 -- you were conducting your cross --

23 MR. BAUER: Yes.

24 CHAIRMAN EVANS: -- of Ms. McAden, and you
25 were on Exhibit 121-P --

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1 MR. BAUER: P, yes. P.

2 CHAIRMAN EVANS: -- as in Peter.

3 MR. BAUER: Yes.

4 CHAIRMAN EVANS: And I think there are
5 several 121-Ps.

6 MR. BAUER: Yes. And I will refer to the
7 page number at the bottom for these questions.

8 CHAIRMAN EVANS: Okay.

9 BY MR. BAUER:

10 Q Now, this series of questions, Ms. McAden, is
11 based on evidence that was provided to me by Dr. Fawley and
12 Mr. Williams in July. Please refer to page four of this
13 document. I'm --

14 CHAIRMAN EVANS: We've got one -- one
15 through three. Are you talking about the page that,
16 at the bottom --

17 MR. BAUER: It's actually the --

18 CHAIRMAN EVANS: -- it says 325?

19 MR. BAUER: The very last page. It should
20 be dated December 10th, 2013.

21 CHAIRMAN EVANS: One oh nine p.m.?

22 MR. BAUER: Yes. Correct.

23 BY MR. BAUER:

24 Q Ms. McAden, are you the author of this email?

25 A I'm sorry. I'm unable to find this email.

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1 Q Oh. I apologize. It should have the number four
2 at the bottom. It's in 121-P.

3 CHAIRMAN EVANS: It's several pages past the
4 one that --

5 MR. BAUER: Yes.

6 CHAIRMAN EVANS: It has number three at the
7 bottom.

8 BY MR. BAUER:

9 Q And I apologize for my organization of this.
10 It's kind of new to me. It's dated December 10th.

11 A Okay. Yes. I found it.

12 Q Are you the author of this email?

13 MR. WILLIAMS: If I'm looking at the right
14 one --

15 MR. BAUER: I'm sorry.

16 MR. WILLIAMS: -- it appears that email is
17 from Mr. Bauer, if I'm --

18 MR. BAUER: I'm sorry.

19 MR. WILLIAMS: If I'm on the right exhibit.

20 MR. BAUER: Was this -- I withdraw that.

21 BY MR. BAUER:

22 Q Did Mr. Bauer send that email to you?

23 A This exhibit dated December 10th, 2013, is an
24 email from Mr. Bauer to Ms. McAden.

25 Q Thank you. Now, the handwritten part, is that

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1 your handwriting?

2 A Yes, this is my handwriting.

3 Q And was this your handwritten count -- account of
4 your email response?

5 A I don't see my email response.

6 Q I -- yeah, that's -- that's actually my question.
7 I didn't see an email response. Who was the handwritten
8 part intended for, or intended --

9 A This is written December 10th, 2013. I could
10 speculate who it's written to. It's a long time ago.

11 Q So what you're saying is, this handwritten part
12 would have been, probably, a typewritten email to someone
13 else? Is that what you're saying?

14 MR. WILLIAMS: Mr. Chair, I'd object on the
15 basis of relevance. I'm not sure where -- how this is
16 connected to the case.

17 CHAIRMAN EVANS: I want to make sure we're
18 looking at the right one. It's 121-P, page four, and
19 at the top, it says title, McAden, SLED check note,
20 December 10th?

21 MR. BAUER: That's -- that part is -- is not
22 her handwriting. That's my handwriting.

23 CHAIRMAN EVANS: Okay. I understand that.
24 And then this appears to be an email from you to Ms.
25 McAden.

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1 MR. BAUER: This was provided to me by the
2 school district's attorneys as part of their evidence.
3 Correct.

4 MS. BUSH: What is the relevance?

5 CHAIRMAN EVANS: Yeah, I'm -- I'm not sure
6 what the relevance is.

7 MR. BAUER: I want to find -- well, this
8 will lead up to it.

9 CHAIRMAN EVANS: I'll give you -- go ahead.
10 We'll give you, certainly, some room here, Mr. Bauer.

11 MR. BAUER: I was just --

12 CHAIRMAN EVANS: Go ahead.

13 BY MR. BAUER:

14 Q -- trying to find out, this handwritten part
15 here, I don't understand what -- is it just a note for
16 yourself, or was it sent? Is it your handwritten account
17 of the email response to me or someone else?

18 A Again, I do not see an email response to you.

19 Q I -- yeah. What I'm asking is, the handwritten
20 part, I don't understand either. I don't see a response,
21 and I'm wondering if the handwritten part was a response
22 that you sent to Ms. Brockway, or someone, regarding this
23 email.

24 A This -- this is my handwriting. I am -- to the
25 best of my knowledge, I'm writing a note, perhaps, to my

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1 office manager, who's in charge of SLED checks. I believe
2 this has to do with a special-education parent who wanted
3 to go to the swim -- to the swim location to oversee her
4 child.

5 Q Okay. Please refer to -- and we're still in
6 121-P, but refer to page one, and that's me to you,
7 February 4th, 2014. Regarding this letter -- do you have
8 it? It's page -- it would have page one at the bottom.

9 A Dated February 4?

10 Q Yes. Is that your handwriting at the bottom?

11 A Yes, this is my handwriting.

12 Q And you state, "Where are grades stored?" Would
13 you -- would that be a note to yourself?

14 A One moment. I'm going to read the email.

15 Q Oh, I'm sorry. You can read it.

16 A This appears to be a document that Mr. Bauer was
17 submitting to me for our school newsletter that goes to
18 parents, informing parents of when the children were going
19 swimming.

20 Q What I'm asking is, the handwritten part, "Where
21 are grades stored?" who is that intended for, that
22 communication?

23 A Again, I could speculate. With new -- with a new
24 assistant principal, if something goes into the newsletter
25 and a parent calls to ask a question about grades, I'm

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1 speculating that I want everyone to know where these grades
2 are stored.

3 Q Okay. So I'm assuming that -- there's only one
4 more here -- that these handwritten notes that I received
5 from Dr. Fawley are probably responses -- are they
6 responses or -- I'm sorry -- handwritten notes that you're
7 going to send to -- in an email format to an assistant
8 principal, if that makes sense?

9 A I believe I've answered, Mr. Bauer, that these
10 are handwritten notes. I -- I don't -- whether they're to
11 myself, to my assistant principal --

12 Q All right.

13 A -- my office manager --

14 Q I understand.

15 MR. WILLIAMS: Let her finish the answer.

16 THE WITNESS: -- I --

17 BY MR. BAUER:

18 Q And the last one here is, please refer to page 2.

19 A Yes.

20 Q And I'm just basically going to ask the same
21 question. Is this your handwriting?

22 A Yes, this is my handwriting.

23 Q And I assume the same answer regarding who the
24 handwritten note was intended for?

25 A To the best of my memory, this is a handwritten

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1 note given to my office manager to ask Alden, Mr. Bauer, to
2 remember to use Outlook when he accepts an invitation, that
3 it's on his calendar.

4 Q Now, I would like you now to please refer --
5 there is actually one more -- page three, regarding poster
6 artwork emails?

7 A This is an email from Mr. Bauer to myself titled
8 "stuff on wall"?

9 Q Yes, that's it. Correct. Would you please --
10 MR. WILLIAMS: Mr. Chair, and, again, I'm
11 trying to give some leeway, but, again, I don't see
12 the relevance of --

13 MR. BAUER: We are --

14 MR. WILLIAMS: Hold on, Mr. Bauer.

15 MR. BAUER: You got it.

16 MR. WILLIAMS: I don't see the relevance in
17 the questioning about posters and artwork.

18 MR. BAUER: This is the relevance, this
19 point right here. That was the lead-up, and this is
20 the culminating event.

21 CHAIRMAN EVANS: Go ahead.

22 MR. BAUER: Thank you.

23 BY MR. BAUER:

24 Q Ms. McAden, would you please read this email out
25 loud?

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1 A It says, Hey, did you add some artwork on the
2 wall? I came in, and suddenly there it was. Thanks if you
3 did.

4 Q And would you please refer to your hand -- or say
5 out loud your handwritten note there?

6 A Yes, I added PYP visual markers in preparation of
7 our site visit.

8 Q Is it possible that you sent this to Mr. Bauer in
9 an email format, that handwritten note?

10 A The question again, Mr. Bauer?

11 Q Did you send -- do you recall sending that
12 handwritten note to Mr. Bauer in an email?

13 A I don't recall sending any handwritten notes in
14 an email. I would type an email.

15 Q Do you recall any response to that in an email,
16 or any response to, "Hey, did you add some artwork?" Do
17 you recall any response?

18 A I do recall a great amount of emails around this
19 topic. I'm thinking that perhaps Mr. Bauer is confusing
20 artwork with PYP visual markers. PYP stands for the
21 "primary years program." We were preparing for our
22 International Baccalaureate site visit. PYP visual markers
23 would be posters that would have vocabulary words that
24 needed to be present in the gymnasium, that Mr. Bauer had
25 failed to do. In addition to this, there were some

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1 students that did some artwork. So I think that there
2 might be some confusion here between artwork and PYP visual
3 markers.

4 Q Would you please refer to -- it's actually page
5 number -- this is the last file in there -- 325. It's in
6 tiny letters. It would probably be the next page over for
7 you. And it's -- the email at the bottom is the same email
8 you just read?

9 A Yes.

10 Q Would you read your response?

11 A Again, same email: Did you add some artwork on
12 the wall? And my response is I wish I could say it was me,
13 and, again, this highlights the difference between the
14 artwork and PYP visual markers.

15 Q What I'm focusing on is -- I'm asking you is, are
16 your answers inconsistent? Is it inconsistent between your
17 handwritten note and your actual email response?

18 MR. WILLIAMS: I think she's already
19 explained, a few times, the difference between PYP
20 visuals and artwork, so I think she's already
21 responded to that question.

22 BY MR. BAUER:

23 Q All right. Ms. McAden, are you familiar with
24 PowerSchool?

25 A Yes, I'm absolutely familiar with PowerSchool.

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1 Q Would you please explain PowerSchool, how it
2 works in the school environment, or how teachers use it?

3 A How teachers use it?

4 Q Sure. Yes. How do teachers use in the school?

5 MR. WILLIAMS: Mr. Chair, I want to be --

6 CHAIRMAN EVANS: What -- what's the
7 relevance?

8 MR. BAUER: This relates to the grade book
9 and to the attendance taking that I have been accused
10 of not doing or not doing properly.

11 CHAIRMAN EVANS: Is this specific to the
12 pool incident?

13 MR. BAUER: This -- exactly. It's all
14 related.

15 CHAIRMAN EVANS: We've had that testimony
16 already, and I think one of the --

17 MR. BAUER: But not regarding PowerSchool
18 and not regarding statements made.

19 CHAIRMAN EVANS: But we did --

20 MR. BAUER: Okay.

21 CHAIRMAN EVANS: We did present you with the
22 opportunity that, during your testimony, you can bring
23 up concerns that you have --

24 MR. BAUER: Okay.

25 CHAIRMAN EVANS: -- about documents that

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1 have been put into evidence around the grade book.

2 MR. BAUER: I'll add that to myself
3 testifying.

4 CHAIRMAN EVANS: Okay. Thank you

5 MR. BAUER: Thank you.

6 BY MR. BAUER:

7 Q Do you remember, Ms. McAden, a meeting that you
8 had with me and Ms. Walton at 9:00 a.m. on Wednesday, March
9 5th, 2014?

10 A I remember a number of meetings I had with Mr.
11 Bauer with Ms. Walton. That particular date, I couldn't --
12 I would have to check my records.

13 Q At that meeting, do you remember you and Ms.
14 Walton asking me to submit to a mental health evaluation?

15 A I remember Ms. Walton making a request.

16 Q Okay. Do you remember stating on March the 5th,
17 or at that meeting, or any other time, that I was being
18 asked to see a psychiatrist because -- I won't say the name
19 of this person -- a certain maintenance person who came to
20 the school had said that I was acting differently to you?

21 A I do remember this.

22 Q Do you remember -- hold on. Did you state in
23 your deposition -- no. Strike that. Did you state in your
24 deposition that you had never asked -- had no knowledge of
25 asking me to see a psychiatrist or psychologist?

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1 CHAIRMAN EVANS: Mr. Bauer, we've been down
2 this road before. If you're going to bring her
3 deposition in, you've got to ask her a question.

4 MR. DUFF: Mr. Bauer, you can ask the same
5 question right now and see if you get a different
6 answer.

7 BY MR. BAUER:

8 Q Did you ever have an occasion to recommend or
9 personally ask Mr. Bauer to see a psychologist?

10 A To the best of my memory, Alice Walton asked Mr.
11 Bauer to see a psychologist; again, to the best of my
12 recollection.

13 Q Okay. Were you ever aware that Mr. Bauer -- were
14 you ever aware that Mr. Bauer was asked to see a
15 psychologist or a psychiatrist?

16 MR. WILLIAMS: I think she just answered
17 that question.

18 CHAIRMAN EVANS: Yes.

19 MR. BAUER: Okay. Is that yes or no?

20 CHAIRMAN EVANS: It's already been --

21 MR. BAUER: Are you aware --

22 CHAIRMAN EVANS: -- asked and answered, Mr.
23 Bauer.

24 MR. BAUER: I'm asking, was she ever aware
25 of me being asked to see a psychiatrist, not that --

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1 not that she asked me, but was she aware that I was
2 asked.

3 CHAIRMAN EVANS: No, she testified that Ms.
4 Walton asked you in her presence.

5 BY MR. BAUER:

6 Q So you are aware; is that correct?

7 A Once again, I was present in a meeting with Mr.
8 Bauer and Ms. Walton when she asked him to see a doctor.

9 Q Then, based on that testimony, I would like her
10 -- I would like to read her -- from her deposition, her
11 answer to that exact question.

12 MR. WILLIAMS: And our issue would be the
13 same -- the same format that we discussed last night.
14 He would need to present her with a copy of the
15 deposition so she can read from it.

16 MR. BAUER: I'll be glad to. Okay. I would
17 be glad to. It would be page -- page -- that's
18 actually --

19 MR. DUFF: Mr. Bauer, what you should do at
20 this point is say, "Do you recall giving a different
21 answer to that exact question in your deposition?"

22 BY MR. BAUER:

23 Q Do you recall giving a different answer to that
24 exact question in your deposition?

25 A I don't recall, but it would appear that I did,

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1 based on what's going on right now.

2 MR. WILLIAMS: Well, I would --

3 THE WITNESS: This is -- this has been a
4 long day.

5 MR. WILLIAMS: I would concede that. I
6 would --

7 MR. DUFF: Mr. Bauer, now -- now you can
8 confront her with her prior testimony and her response
9 to that exact same question.

10 BY MR. BAUER:

11 Q Okay. Did you state in your deposition --

12 MR. WILLIAMS: And he would need to present
13 that --

14 CHAIRMAN EVANS: Give her --

15 MR. BAUER: Okay.

16 CHAIRMAN EVANS: -- the deposition.

17 MR. BAUER: Let's make sure. This is a
18 little bit different. Okay. Right here, and then the
19 next down.

20 MR. DUFF: Ask her to read the question and
21 her answer.

22 MR. BAUER: Yes. Please read the question
23 and answer.

24 MR. WILLIAMS: Did he identify -- did you
25 identify a line?

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1 MR. BAUER: Yes. It'd be starting there.

2 THE WITNESS: Okay. The question was --

3 CHAIRMAN EVANS: Hold on, Ms. McAden.

4 THE WITNESS: I'm sorry.

5 CHAIRMAN EVANS: Would you please read that
6 back -- or tell us so we're aware of what she's
7 reading, Mr. Bauer?

8 MR. BAUER: This is regarding the question
9 of whether she was aware of Mr. Bauer being asked to
10 see a psychiatrist or psychologist.

11 MR. WILLIAMS: And if I could note an
12 objection, because I believe the question that he
13 asked -- that was asked at the deposition is slightly
14 different than the question that's being asked now.

15 CHAIRMAN EVANS: Okay. That's why it's
16 important for her --

17 MR. BAUER: Correct.

18 CHAIRMAN EVANS: -- to read the question and
19 her response, please, Ms. McAden.

20 BY MR. BAUER:

21 Q Okay.

22 A Yes. I was asked at the deposition, school board
23 members. Okay. Okay. Well, are you aware that Mr. Bauer
24 did go see this psychologist? And my answer was no.
25 Again, I was aware that he was asked to see -- once he was

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1 placed on administrative leave, Ms. Walton was in charge of
2 -- so my answer is, it's true in my deposition. I was not
3 aware that he saw. I was aware that he was asked.

4 CHAIRMAN EVANS: You do understand, Mr.

5 Bauer --

6 MR. BAUER: Yes.

7 CHAIRMAN EVANS: -- that there seem to be
8 two different questions. The one asked at the
9 deposition --

10 MR. BAUER: Well, I thought I asked that.

11 CHAIRMAN EVANS: -- was aware -- was whether
12 she was aware that you saw somebody, and the question
13 you're asking now is whether she was aware that you
14 were asked to see somebody.

15 MR. BAUER: Yes.

16 BY MR. BAUER:

17 Q Okay. Now -- and -- good. Okay. Regarding the
18 substitute plan that you referred to, that we've been
19 talking about, that's been provided by Dr. Fawley and Mr.
20 Williams, do you remember from a meeting at the school --
21 and, as you say, February 6th, but we're past that. When
22 you questioned me about my substitute plan -- actually,
23 this was not provided by Dr. Fawley. I'm sorry. I was
24 thinking of the date. But do you remember asking me about
25 my sub plan?

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1 A Can you rephrase the question?

2 Q Yes, I sure will. I was confusing. Do you
3 remember the meeting where you and Dr. -- or Ms. Walton
4 questioned me about the appropriateness or the -- just
5 questioned me about my substitute plan?

6 A I remember, with Alice Walton, discussing the
7 date that his substitute plan was written. As I recall, it
8 was about three years old. There was something in his sub
9 plan about a snow day, a snowman's day. I do recall
10 addressing the sub plan and how old it was.

11 Q And do you remember presenting that plan to Mr.
12 Bauer in this meeting?

13 A To the best of my knowledge, I do remember
14 presenting the sub plan -- the old sub plan to Mr. Bauer.

15 Q Do you remember complimenting Mr. Bauer for the
16 medical information included in a plan about certain
17 students?

18 A Absolutely not. To the contrary, I remember
19 stating that the medical plan that was provided in his sub
20 plan was for a present student at our school who, at that
21 time, was in the third grade. However, in his sub plan,
22 the medical information was when the student was in the
23 first grade, which was a concern, being that it was a very
24 serious medical situation.

25 Q Yes. True. So, as you said, you remember

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1 criticizing me for it being outdated; is that correct?

2 A I heard the first question as, do you remember
3 complimenting me on the --

4 Q My next question is, do you remember criticizing
5 me for it being outdated?

6 A Again, I remember bringing this situation to
7 Alice Walton's attention, being that it was a medical
8 concern, a safety concern of a student. The plan and the
9 sub plan was outdated.

10 Q I'm sorry.

11 A Two years outdated.

12 Q I'm sorry. I confused you. I've gone on to the
13 next question.

14 A I do not recall.

15 Q Would this help your memory? Do you recall Mr.
16 Bauer stating that it was a typo?

17 A I do not.

18 Q Do you remember an email that you sent to Alice
19 Walton on February 6th, 2014, at 3:49 p.m., one day after I
20 was placed on leave, regarding my substitute plan?

21 A Yes, I believe we have been over this document.

22 Q Yes. And do you recall from your -- okay.
23 Strike that. Do you recall stating --

24 MR. BAUER: May I have her read from her
25 deposition regarding this? There is an inconsistency

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1 on this.

2 CHAIRMAN EVANS: You've got to establish the
3 inconsistency, then, Mr. Bauer.

4 BY MR. BAUER:

5 Q Okay. Did you state that you went to Mr. Bauer's
6 office -- all right. Hold on. I need to read this. Did
7 you go to Mr. Bauer's office when he was placed on
8 administrative leave to locate his sub plans for a teacher
9 that was coming in the next day, and did you find sub plans
10 that were two years old?

11 A To the best of my memory, I went to Mr. Bauer's
12 office, with Diane Jorgensen with me, after Mr. Bauer was
13 placed on administrative leave. I found a lot of things
14 that were concerning to me. I don't recall if, that
15 particular moment, I found that outdated sub plan. I was
16 looking for a sub plan. So, Mr. Bauer, repeat the question
17 once again?

18 Q Did you -- on the day that I was placed on
19 administrative leave, did you find sub plans in Mr. Bauer's
20 office?

21 A I don't recall the date that I found your sub
22 plans -- his sub plans.

23 MR. BAUER: Okay. Now may I use her
24 statement from her deposition which is contradictory?

25 MR. WILLIAMS: I'm not sure how you

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1 contradict "I don't recall."

2 MR. BAUER: Because she stated something
3 completely different from what she just said.

4 MR. WILLIAMS: Completely different from --

5 MR. BAUER: She stated a fact.

6 CHAIRMAN EVANS: Okay. Hold on, before you
7 go into any facts.

8 MR. WILLIAMS: Again, her testimony here is
9 she --

10 CHAIRMAN EVANS: Right now, what she's
11 testified is that she does not recall.

12 MR. BAUER: And in her deposition, she
13 states something different.

14 CHAIRMAN EVANS: She gave an answer in the
15 deposition? Is that what you're going to try and
16 establish, Mr. Bauer?

17 MR. BAUER: Okay. I'll ask it again.

18 BY MR. BAUER:

19 Q You say you don't recall. Is that -- is that
20 correct? You do not recall when you received my sub plan
21 -- when you found my sub plan?

22 A I don't recall.

23 Q All right.

24 A I know I found Mr. Bauer's sub plans, and what I
25 do recall is that it was outdated. Whether I found it that

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1 afternoon -- I don't recall exactly when I found it.

2 MR. BAUER: All right. What I'm trying to
3 point out here, Mr. Chairman, is that she says -- I
4 don't know if you're going to allow me to say this or
5 not. She says in her deposition she found my sub
6 plan. Then, the next day, she sent an email to Ms.
7 Walton stating there were no sub plans, and I have
8 both those documents, one from the deposition, and her
9 email to Ms. Walton.

10 THE WITNESS: May I -- may I respond?

11 CHAIRMAN EVANS: They need to be presented.
12 I mean, if you want -- if you -- she's just now said
13 that she doesn't recall when she found them; okay?
14 But when she did find them, they were outdated.

15 MR. BAUER: In her deposition, she says,
16 that day, she found sub plans.

17 CHAIRMAN EVANS: Okay. Well, that -- that's
18 fine. Bring the deposition to her and ask the
19 question in the deposition and have her read it.

20 MR. WILLIAMS: Just so it's clear, Mr.
21 Chair, what she has said is not in contradiction to
22 that. What she is saying is, she doesn't recall.
23 It's different to say "I didn't find it" versus "I
24 don't recall when I found it." I just want to be
25 clear on that.

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1 MR. BAUER: She doesn't recall now, but she
2 did recall on December 17th.

3 CHAIRMAN EVANS: Well, that's fine. The
4 point is, is that she did find it. She's not saying
5 she never found it. She's saying that I did find it
6 and that it was outdated. Now, if she's saying here
7 today that she's not sure when she found it, and you
8 have in her deposition --

9 MR. BAUER: Yeah.

10 CHAIRMAN EVANS: -- that she's saying she
11 found it on a specific time, I don't think --

12 MR. BAUER: Um-hum. Yes.

13 CHAIRMAN EVANS: I don't think any of us
14 have a problem with that, Mr. Bauer.

15 MR. BAUER: It's just, the next day, she
16 sent an email to Ms. Walton --

17 THE WITNESS: Can I speak?

18 MR. BAUER: -- stating there were no sub
19 plans and they had to have a sub the next day.

20 MR. DUFF: Mr. Bauer --

21 MR. BAUER: But I -- I will go on. That's
22 fine.

23 MR. WILLIAMS: I think the witness wants to
24 inquire as to clarification. I don't know what she's
25 allowed.

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1 CHAIRMAN EVANS: Well, let me -- let me just
2 -- the point is, you know, whether it's -- did she
3 ever find sub plans. Yes, she said that she found sub
4 plans that were outdated. Okay? So there's no
5 disagreement about finding your sub plans and stuff.

6 MR. BAUER: Well, I have to disagree with
7 that, but I will move on.

8 MR. DUFF: Mr. Bauer, it -- if you can
9 demonstrate that you've asked the same question, the
10 very -- unlike the prior -- remember when we did it a
11 few minutes ago?

12 MR. BAUER: Um-hum.

13 MR. DUFF: The question was different.
14 Therefore, there was no inconsistency in her answers
15 at her deposition and here today. So you have to be
16 able to show that you asked the exact same question
17 and got a different answer. Can you do that with the
18 deposition transcript?

19 MR. BAUER: I'll move -- I'll use it in my
20 own testimony, and I'll -- I'll move on. Thank you.

21 BY MR. BAUER:

22 Q My last question is this, Ms. Walton (sic). Have
23 you ever made a typo error in an email or document before?

24 A This question is directed to Ms. Walton.

25 Q I mean -- Ms. Walton. I'm sorry. Ms. McAden?

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1 A Yes, I've disclosed today that I've made a typo
2 in an email before.

3 Q So it's possible that when you said the sub plans
4 were outdated that Mr. Bauer made a typo?

5 A That -- I did not note any -- a typo, but the
6 entire sub plan was outdated, was unable to be used.

7 Q How can you show that? How was it outdated?

8 A Could you provide me with that sub plan, and --

9 Q I don't --

10 A -- I'd be happy to.

11 Q I don't have it with me now, but what made it
12 look like it was outdated; do you remember?

13 A To the best of my recall, the sub plan was
14 rewritten at least two years prior, to the best of my memory,
15 and it was unable to be used based on, I believe it was, a
16 seasonal activity. It was -- it was out of season, to the
17 best of my memory.

18 Q You mean like summer, winter, fall?

19 A I don't recall. I'd need to see the sub plans.

20 Q Okay. Please -- let's see. Now let's go on,
21 now, to the gym. Let's see. All right. We're going to go
22 on, to the gym. Now back to the gym here. Please look at
23 file 279-P, page one.

24 CHAIRMAN EVANS: This is a multi-page
25 document --

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1 MR. BAUER: Yes.

2 CHAIRMAN EVANS: -- Mr. Bauer? Thank you.

3 MR. BAUER: It is a multi-page document.

4 CHAIRMAN EVANS: I wanted to make sure I had
5 the right one.

6 MR. WILLIAMS: Give us a second.

7 MR. BAUER: Yes.

8 MR. WILLIAMS: The last thing we have is
9 278.

10 CHAIRMAN EVANS: Mr. Williams, our books
11 include 279.

12 MS. FAWLEY: Is that the last exhibit?

13 CHAIRMAN EVANS: It should be --

14 MS. ANDERSON: This one.

15 CHAIRMAN EVANS: Yeah, there is a 280.

16 MS. FAWLEY: We don't have that either.

17 They are not in our exhibit book.

18 THE WITNESS: It's in the smaller notebook.

19 CHAIRMAN EVANS: The last exhibit we have is
20 280, but we do have a 279-P that's -- I haven't
21 counted all the pages, but it's --

22 THE WITNESS: Twenty-two.

23 CHAIRMAN EVANS: It's 22?

24 MR. BAUER: These -- and Mr. Chairman, these
25 emails were provided to us after the discovery

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1 deadline. The discovery deadline was March 26th -- I
2 mean, 16th, and we turned our discovery evidence in.
3 This was provided March 24th -- 20th -- 24th, through
4 a flash drive from Dr. Fawley and Mr. Williams. So we
5 received the evidence after the discovery deadline.

6 MR. WILLIAMS: And I'm not sure what they're
7 talking about there. We provided the information
8 within the agreed-upon time frame.

9 MR. BAUER: Incorrect. March the 16th was
10 the deadline, and we did not receive -- or I did not
11 receive the discovery evidence until March 24th.

12 CHAIRMAN EVANS: Is there any way to
13 establish that, Mr. Bauer?

14 MR. BAUER: Yes, I can provide you -- which
15 I don't have at the moment, but provide you with
16 agreed-upon discovery dates through emails.

17 CHAIRMAN EVANS: Well, the question I'm
18 asking you is, when you received this, if you have
19 anything --

20 MR. BAUER: Yes.

21 CHAIRMAN EVANS: -- that's, like, stamped
22 that said I received this --

23 MR. BAUER: I have actual letters from Dr.
24 Fawley and Mr. Williams, saying, Included are your
25 requests for evidence -- or discovery evidence. Yes,

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1 I can provide that.

2 MR. DUFF: And Mr. Bauer, the question is,
3 assuming for the moment that you received these later
4 than the agreed-upon date, okay, how have you been
5 prejudiced by that?

6 MR. BAUER: Withholding of evidence past the
7 deadline --

8 MR. DUFF: It wasn't withheld. You said --
9 you say you received it a few days late. How has that
10 prejudiced the presentation of your case?

11 MR. BAUER: Yeah.

12 MR. DUFF: And is this --

13 MR. BAUER: It hasn't prejudiced the case.

14 CHAIRMAN EVANS: Okay. Okay.

15 MR. BAUER: It's just --

16 MR. DUFF: Is the material relevant to the
17 issue?

18 MR. BAUER: Absolutely. Yes.

19 MR. DUFF: Okay. What issues is it relevant
20 to?

21 MR. BAUER: The issues are, Ms. McAden has
22 stated today and previously that the gym was a mess,
23 the locker -- the storage room was a wreck, and so on,
24 and there's been a question that I did not take gym
25 conditions seriously. And I was asked by Dr. Fawley

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1 and Mr. Williams to provide emails to them, showing my
2 seriousness and concern for the vandalism and
3 destruction of the gym by outside forces. This will
4 show numerous emails of my concern for the gym
5 condition, going right up to the very day before I was
6 placed on leave, and including pictures I took of the
7 gym vandalism.

8 MR. DUFF: And would this be better
9 presented by you, when you testify?

10 MR. BAUER: I'll be glad to do that.

11 MR. DUFF: I mean, you know, you're trying
12 to put your case in through the cross-examination of
13 the other side's witnesses. It's usually better to do
14 it through your own testimony.

15 MR. BAUER: That's fine. I'll be glad to do
16 that.

17 MR. DUFF: You may proceed, if it -- if Ms.
18 McAden is the author or the recipient of some of this,
19 then you may do it this way, if you think it's
20 relevant.

21 MR. BAUER: Well, I do, but --

22 MR. DUFF: Go ahead, then.

23 MR. BAUER: -- I'll concede on it, and I
24 will --

25 CHAIRMAN EVANS: And I want --

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1 MR. BAUER: Okay.

2 CHAIRMAN EVANS: I want to make sure with
3 opposing counsel. You don't have any objection? You
4 provided Mr. Bauer with these materials?

5 MR. WILLIAMS: Correct. We have no
6 objection, but --

7 CHAIRMAN EVANS: Okay.

8 MR. WILLIAMS: -- I think what Mr. Duff said
9 is instructive. To the extent she's the author or a
10 recipient of the email, then she should -- she can be
11 questioned about it.

12 MR. BAUER: Okay. So what you're saying is,
13 I -- if she is not the author or a recipient -- okay.

14 MR. WILLIAMS: I don't know how she would
15 know about it if she wasn't the author or a recipient.

16 MR. BAUER: How about copied, if she was
17 copied?

18 MR. WILLIAMS: That's fair.

19 MR. BAUER: Okay. All right, then. Then I
20 can't do this one. But I'll -- I'll be able to use
21 the ones I can't use in my own testimony.

22 BY MR. BAUER:

23 Q Would you please refer in 279-P, page 3, at the
24 bottom -- you know what? Strike that. I'm going to move
25 on to -- I think what I'm going to do is, it would -- it

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1 would be very time-consuming, and the School Board would
2 get extremely bored of me standing here, going through,
3 making sure, finding the ones that do not address Ms.
4 McAden. I think, at this point, it would be best if I used
5 all of this on my own testimony.

6 What I do want to ask Ms. McAden is, do you
7 recall any emails sent to you one day before February 5th
8 -- sent on February 4th -- expressing extreme concern for
9 the condition of the gym?

10 A Mr. Bauer, will you repeat the question?

11 Q Do you remember an email that I sent you on
12 December 4th, 2014, expressing extreme concern for the gym?

13 A Is it in this exhibit book?

14 Q I'm just asking. No, you don't have to look. Do
15 you remember offhand? And it had pictures?

16 A The date again?

17 Q February 4th. Do you recall?

18 A I --

19 Q And you can look through -- you --

20 A I would -- I would like to look for the document
21 that he's referring to.

22 Q If you wish, that's fine. And the pictures are
23 attached.

24 MR. WILLIAMS: My objection would be, the
25 information that we have as part of 279-P, I don't see

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1 a February 4th email that has pictures attached. Now,
2 I do see some pictures, but I don't see where -- where
3 it's attached to a February 4th email.

4 MR. BAUER: It did say attachments; right?
5 At the bottom?

6 MS. FAWLEY: This is what you handed us.

7 MR. BAUER: Oh, that's August. It's in the
8 subject line. That's what we handed you?

9 MR. WILLIAMS: I don't know if the Board has
10 something different, but what we have --

11 CHAIRMAN EVANS: No, I -- I'm not sure what
12 page we're on.

13 MR. BAUER: This is probably why it's best --

14 MS. ANDERSON: Is it page 9?

15 MR. BAUER: Did you find it? Page 4. I'm
16 sorry. Page --

17 CHAIRMAN EVANS: It appears to be --

18 MR. BAUER: Oh, yeah, page 9.

19 CHAIRMAN EVANS: -- page 9.

20 MR. BAUER: Page 9. There we go. And it
21 shows attachments. My apologies, scrambling around.

22 BY MR. BAUER:

23 Q Would you read that email for us, please, out
24 loud?

25 A What I -- what I've been able to locate is an

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1 email from Mr. Bauer to myself, copied Ms. Perdue, our IB
2 coordinator, and Mr. Clendaniel, with attachments, stating
3 that the humidity was high in the gym this morning, but I
4 found quite a number of wall hangings down and tons of
5 paint chips on the floor. See pictures. Not if it's rec
6 center (sic), other kids, or just luck. Anyway, just FYI.

7 Q Great. And then do you agree that, the next day,
8 Mr. Bauer was placed on administrative leave? That would
9 be February 5th. Is that correct?

10 A February 5th is the day that the student was left
11 at the rec center, and, yes, after school that day, that
12 would be correct.

13 Q And did you take pictures of the gym, showing a
14 mess, the following day or that same day, or when did you
15 take pictures of the gym?

16 A I did not take pictures of the gym that day.
17 Again, I was not at school that day. I returned to school
18 to have the meeting with Ms. Walton.

19 Q Did someone take pictures of the gym?

20 A Can you clarify the date?

21 Q I don't know the date. I was given pictures from
22 Dr. Fawley and Mr. Williams of the gym, showing the office,
23 a bunch of mess, basically.

24 A These pictures that are --

25 Q The bathroom.

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1 A These pictures here?

2 Q Not the ones that I took. Those are the ones, I
3 believe, I took. It would not be in there. It would be in
4 Dr. Fawley's and Mr. Williams' evidence. But do you recall
5 taking pictures of the bulletin board, showing outdated
6 stuff, 504 plans sitting on Mr. Bauer's desk?

7 A Yes, I do recall taking pictures on my iPad of
8 the condition, not of the walls or the paint chips, but of
9 the closets that took two staff members a half day to clean
10 out and the condition of Mr. Bauer's bathroom and his
11 office.

12 Q Yeah. Exactly. You said you took pictures of
13 the storage closet? I don't remember seeing that, but did
14 you take pictures of the storage closet? I'm sorry.

15 A I took pictures of Mr. Bauer's office, his
16 bathroom, storage equipment -- that could've been outside
17 of the closet, inside of the closet -- supporting the fact
18 that I needed two people for a half day to clean up this
19 mess that I found.

20 CHAIRMAN EVANS: That's -- that was all
21 testimony presented during your direct earlier.

22 BY MR. BAUER:

23 Q So is it safe to say that I had some similar --
24 Mr. Bauer had some similar issues a day before the swim
25 event happened -- or the pool event happened?

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1 A I do not consider the photos I'm seeing here of
2 the paint chips, of the posters falling off the wall, to be
3 consistent with what I found. This is the year that, this
4 summer, we had our air conditioning replaced, and across
5 the building, we were having humidity problems, which is
6 why we were getting a new HVAC system. What I was
7 referring to Alice Walton about was the condition of Mr.
8 Bauer's office, the uncleanliness, what was found in his
9 bathroom, and the condition of the -- of the materials
10 belonging to the school, gym materials, not --

11 Q Do you --

12 A Not paint chips.

13 Q Do you recall on January 17th, 2014 -- I believe
14 it was a half day -- where you made a walkthrough through
15 the gym, where you walked through the gym and did a check-
16 off, in my presence?

17 A I can't confirm that exact day.

18 Q Do you recall sending an email regarding the gym
19 condition from Mr. Bauer's computer?

20 A Yes, what I recall about this was, Mr. Bauer was
21 expressing concern about -- to the best of my memory, it
22 was the way that the gym was being left by the rec center
23 students who were using our gymnasium. I sat down and
24 modeled for Mr. Bauer how to use technology to convey what
25 he was trying to say to the office manager so she could

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1 then take action and put a work order in and address his
2 concerns.

3 He was -- Mr. Bauer was frustrated that the gym
4 was not cleaned, dust, bottles, and I sat down with his
5 computer, and I wrote, I believe, in the subject line,
6 "This is Jill, writing from Mr. Bauer's computer," and I
7 was modeling for Mr. Bauer, similar to what you would do
8 with a student, how to communicate properly to an office
9 manager so swift action could be taken to get the gym
10 clean.

11 Q So you're admitting here that I had concerns for
12 the condition of the gym; is that correct?

13 A You had concerns about the dust and dirt and
14 trash that was left behind by the rec center, but no
15 concerns about the cleanliness of office, bathroom,
16 closets, to my recall.

17 Q Okay. Are you aware that Mr. Bauer sent several
18 emails to Diane Jorgensen, asking for a trash can?

19 A Yes, I was made aware of his request for a trash
20 can.

21 Q Are you aware of an email with a subject line,
22 "Please help," sent from Mr. Bauer to Diane Jorgensen and
23 copied to you, on that day, regarding concern for the gym
24 -- January 17th?

25 A Am I able to see that exhibit?

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1 Q I'm trying to find it.

2 MR. DUFF: Page 11?

3 MR. BAUER: I'm sorry?

4 MR. DUFF: Page 11 of 279-P? I'm asking.

5 Is that it?

6 MR. BAUER: I am checking on it.

7 MR. DUFF: Where it says, "Please help"?

8 MR. BAUER: I will withdraw that, because I
9 don't think we have it with us.

10 BY MR. BAUER:

11 Q All right. Just a couple more questions. Let's
12 see. You stated that -- you stated Mr. Bauer showed
13 concern, but you had to model technology regarding -- did
14 you say work orders, showing Mr. Bauer how to do work
15 orders?

16 A I did not --

17 Q Okay.

18 A I did not.

19 Q What kind of technology are you referring to?

20 A May I refer to an exhibit?

21 Q Sure.

22 A All right. Well, as stated before, on January
23 17th, I was in the gym. Mr. Bauer was expressing concern
24 with the debris left on the floor from the rec center,
25 verbally telling me everything, and I was trying to help

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1 Mr. Bauer understand the necessity to put something in
2 writing to my office manager, who then, in turn, submits
3 work orders. I don't submit work orders. Mr. Bauer
4 doesn't submit work orders. Diane Jorgensen submits work
5 orders. And I was modeling for him how to share with her
6 what he was bothered with so it could be rectified.

7 Q Are you aware that Dr. Fawley and Mr. Williams
8 have provided me with all of the work orders that I
9 submitted for the last, I believe, three years?

10 A I --

11 Q And that there were quite a number -- I mean, are
12 you aware that there were quite a number of work orders
13 that I submitted?

14 A I'm not aware of the number of work orders. I'm
15 aware of the number of work orders submitted in a building
16 of the age of Hilton Head Elementary.

17 Q Are you aware that I submitted a work order on
18 October 31st, 2013, regarding the air conditioning?

19 A Again, I'm not aware of the particular dates of
20 work orders submitted in a building of the size of Hilton
21 Head Elementary.

22 Q And so I take it you're probably not aware that,
23 just a week or so before February 5th, that I submitted a
24 work order concerning the door -- I can't remember what
25 it's called -- the underlays or overlays of the doors, that

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1 ants were coming in, and bugs? Do you -- are you aware of
2 that?

3 MR. WILLIAMS: I'm going to object on the
4 basis of relevance.

5 CHAIRMAN EVANS: I was just about to get to
6 that. The relevance of this line --

7 MR. BAUER: This --

8 CHAIRMAN EVANS: -- we're trying -- we're
9 struggling to understand --

10 MR. BAUER: The relevance --

11 CHAIRMAN EVANS: -- what the relevance is.

12 MR. BAUER: Okay. The relevance here is,
13 she had to model technology so that I could put
14 something in writing to document something regarding
15 gym condition, and, apparently, it's insinuating that
16 I didn't know how to do -- to document these things,
17 to place work orders. And, yet, Dr. Fawley and Mr.
18 Williams provided me with all kinds of work orders.
19 And this goes to show -- showing that this never
20 happened. And I will use this in my testimony, if
21 you'd prefer, but I'm trying to show the
22 inconsistencies of what she's saying and the actual
23 evidence. Okay.

24 MR. WILLIAMS: Again, I'm not sure what his
25 actual question for the witness is. He can certainly

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1 cross-examine her about anything she has done.

2 MR. BAUER: Okay.

3 MR. WILLIAMS: But beyond that, I think he's
4 exceeding the scope of his cross-examination.

5 MR. BAUER: All right. Then I will withdraw
6 that. I think that the rest of it -- I do have more,
7 but I think you will probably wish that I put it into
8 my own testimony, so I will, and I don't want to bore
9 the School Board any more than I have to, so --

10 CHAIRMAN EVANS: Well, it's not about boring
11 us.

12 MR. BAUER: I know.

13 CHAIRMAN EVANS: It's about presenting the
14 case, and I think --

15 MR. BAUER: I agree, and I --

16 CHAIRMAN EVANS: -- Mr. Duff earlier tried
17 to give you --

18 MR. BAUER: I apologize for my lack of legal
19 knowledge on this, and I am doing my best.

20 CHAIRMAN EVANS: And I am trying to give
21 some leeway for that.

22 MR. BAUER: And I really do appreciate that.
23 You have been very fair on that issue. Thank you.
24 But I am finished.

25 CHAIRMAN EVANS: Do you have any redirect?

1 MR. WILLIAMS: One brief thing in follow-up,
2 Mr. Chair.

3 REDIRECT EXAMINATION

4 BY MR. WILLIAMS:

5 Q There were some questions about whether or not
6 the sub plan issue could be -- if there might be a typo
7 that would have caused that. Do you recall Mr. Bauer
8 asking you about that?

9 A I do recall that.

10 Q What was your concern regarding the medical
11 information as it relates to Mr. Bauer's plans, and could
12 that have been a typo?

13 A No, that -- the concern with the medical plan was
14 that, in the sub folder, the medical information on a
15 student with a very serious medical diagnosis was two years
16 old. It was a stapled packet with her -- the student's
17 photograph on the first page, parent contact information,
18 everything that anyone would need to know. It was two
19 years old. So my concern was not a typo. My concern was
20 the age of the document.

21 MR. WILLIAMS: That's all I have.

22 EXAMINATION BY THE BOARD

23 CHAIRMAN EVANS: Just one question for
24 clarification, and it's about access. Mr. Bauer presented
25 us with a number of pictures of the condition of the gym,

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1 and you expressed a concern about the condition of his
2 office and some things. So my question is, would the
3 people who had access to the gym, who may have had trash
4 and stuff around -- did they have access to Mr. Bauer's
5 office?

6 THE WITNESS: No, the rec center participants,
7 if you will, only had access to the gymnasium, not to Mr.
8 Bauer's office or the bathroom in his office. Does that --
9 does that answer your question?

10 CHAIRMAN EVANS: How about the storage closet
11 that you were concerned with?

12 THE WITNESS: They did not have access to the
13 storage closet.

14 CHAIRMAN EVANS: Okay. Thank you. Anything
15 else?

16 MR. WILLIAMS: Nothing further from us.

17 CHAIRMAN EVANS: Mr. Bauer? Anything else for
18 this witness?

19 MR. BAUER: No. And she is correct. They didn't
20 -- I don't know if I'm allowed to say, but, yes, that is
21 correct. They did not have access to those areas.

22 MR. RIVERS: Can I ask her something real quick?

23 CHAIRMAN EVANS: Yeah. Go ahead, Mr. Rivers.

24 MR. RIVERS: Yeah, the reference to Exhibit
25 Number 17 in the district's point of view --

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1 THE WITNESS: This is a question for me?

2 CHAIRMAN EVANS: Yes.

3 THE WITNESS: Okay. I'm sorry.

4 MR. RIVERS: Yes, ma'am. The letter that you
5 were talking about that was dated December 10th that was
6 supposed to be --

7 THE WITNESS: 2013?

8 MR. RIVERS: Yes, ma'am. I was just curious. Do
9 you use scanners at -- I guess my question would be, why
10 wouldn't be on letterhead from you?

11 THE WITNESS: I -- you know, there are many
12 documents in this notebook that are not on letterhead. I
13 don't know if this is the original form. I don't know if
14 it's been scanned. This particular copy, I don't know.

15 MR. RIVERS: Okay. I was just curious, because
16 -- with the letterhead, because without the letterhead,
17 anyone could -- anyone could write it, or it could be post
18 -- post -- I mean, it could be written --

19 THE WITNESS: Right.

20 MR. RIVERS: -- after the time it says it's
21 written, and I was just curious.

22 THE WITNESS: Right. I understand.

23 MR. RIVERS: It's curious.

24 MR. BAUER: I'm sorry. Was he referring to the
25 December 10th -- which -- yes.

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1 CHAIRMAN EVANS: December 10, 2013.

2 MR. RIVERS: It has a signature, but I was used
3 to seeing them with the letterhead from the principal, or
4 something, just to authenticate where it came from.

5 THE WITNESS: Um-hum. Um-hum.

6 MR. RIVERS: Okay. Thank you.

7 CHAIRMAN EVANS: Ms. Anderson?

8 MS. ANDERSON: I just had a question with regard
9 to the medical document and how -- how are the medical
10 documents updated, and whose responsibility is it to
11 provide that packet to the teachers, or is it the teachers'
12 responsibility to make their own medical packets?

13 THE WITNESS: It is not the teachers'
14 responsibility to make their own medical packets. Our
15 school nurse typically makes all medical packets. This
16 particular student, who we cannot name, the parent of this
17 particular student works at our school, and the parents --
18 plural -- like to get together with all the specialists who
19 see their child to update on any changes with the child's
20 diagnosis or treatment plan.

21 The reason that they had a photograph of their
22 daughter on the front -- their child on the front page is
23 so, in the event that a substitute is in the building, they
24 did want substitute teachers to know of that child's
25 condition and diagnosis and how to handle it. Does that

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1 make sense?

2 MS. ANDERSON: Um-hum. And can I ask one
3 follow-up question?

4 CHAIRMAN EVANS: Sure.

5 MS. ANDERSON: Secondly, do you know that an
6 updated packet for that particular school year had been
7 passed out to each of that child's teachers?

8 THE WITNESS: I can't -- I don't -- I wouldn't
9 answer under oath that I know that. I would like to say I
10 would know that. I'd hope so.

11 MS. ANDERSON: Thank you.

12 CHAIRMAN EVANS: Anything else? Okay. Thank
13 you, Ms. McAden. You're excused, and we are going to take
14 a lunch break, a little bit of extended time. Be back at
15 two o'clock, please.

16 (Brief recess.)

17 CHAIRMAN EVANS: Okay. I'd like to have us
18 reconvene. Let me tell you what -- this is kind of
19 housekeeping again. It is our intent to get all the way
20 through the testimony of this next witness today; okay? We
21 understand that the presentation is a little different, as
22 it's by video, but I want to assure both parties that, at
23 any time during the video, if you have a concern about an
24 objection to what's being said, we will honor it as if the
25 person was here and we are taking it live.

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1 So, with that, I think, if everybody's ready --
2 is your -- is your father coming back, or --

3 MR. BAUER: I don't think so.

4 CHAIRMAN EVANS: -- do you want to wait?

5 MR. BAUER: He's 82. It's past his bedtime.

6 CHAIRMAN EVANS: Oh.

7 MR. BAUER: He really needed to go back and take
8 a rest.

9 CHAIRMAN EVANS: Okay.

10 MR. BAUER: So I don't think he'll be back.

11 CHAIRMAN EVANS: Okay. So I'm trusting that the
12 video is going to show that Ms. Walton was sworn in?

13 MR. WILLIAMS: Yes.

14 CHAIRMAN EVANS: Okay.

15 MR. WILLIAMS: Yes, sir, that's all on the video.

16 CHAIRMAN EVANS: Okay. And I --

17 MR. WILLIAMS: And she is going to be our next
18 witness.

19 CHAIRMAN EVANS: I hope that's going to be the
20 first thing or --

21 MR. WILLIAMS: I'm pretty sure.

22 CHAIRMAN EVANS: -- near the very beginning, so
23 let's -- let's go ahead and start this.

24 Ms. Cushingberry, if there's an objection, I
25 would ask you to stop the video immediately, until we

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1 resolve any objection from our motion. Okay? Everybody
2 kind of understand the ground rules here?

3 MR. WILLIAMS: That's fair. And just in the
4 interest of efficiency, I can tell you that, for the most
5 part, even if I object, if Ms. Walton gives a verbal
6 response, I'm really not that concerned about the answer
7 that she gave in terms of -- in terms of the Board seeing
8 whatever her answer was.

9 It's more, if there are documents that she's
10 cross-examined on that I object to on the basis of
11 relevance, I'd want a ruling on the admissibility of the
12 document, not so much whatever verbal response she gave, if
13 that helps.

14 CHAIRMAN EVANS: Mr. Bauer, do you have anything
15 you want to bring up in regards to this testimony that
16 we're about to get?

17 MR. BAUER: No, sir, I don't. I don't believe
18 so.

19 CHAIRMAN EVANS: Okay. Thank you, and let's get
20 Ms. Cushingberry to start the video.

21 (VIDEO testimony begins.

22 WHEREUPON, ALICE WALTON, having been first duly
23 sworn, was examined and testified as follows:)

24 MR. WILLIAMS: In light of Mr. Bauer's
25 statement regarding his desire to place an objection

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1 on the record, do we want to do that prior to
2 beginning direct examination?

3 MR. BAUER: Yes, sir.

4 MR. WILLIAMS: All right. Mr. Bauer?

5 MR. BAUER: Okay. When fate decides that a
6 PE teacher must represent himself, they call that "pro
7 se," and I guess we can be a nuisance to people who
8 actually know arcane procedures. Here is a quote from
9 Stephanie Francis Ward, a legal affairs writer for the
10 ABA Journal. Quote, lawyers often make other lawyers'
11 lives difficult, but the tribulations are nothing
12 compared to what pro se litigants might bring. I feel
13 confident that the opposing counsel for the school
14 district may have some of those feelings.

15 Before we begin, I want to make it clear
16 before the Board of Education that I object to this de
17 bene esse video deposition of Ms. Alice Walton.

18 The district knew, or should have known,
19 that Ms. Walton was not available, since the hearing
20 was scheduled three months after Ms. Walton had
21 enrolled in and made a deposit for the, quote, a taste
22 of Tuscany, the art of eating well, unquote, cooking
23 class on November 13th, 2013. The hearing was
24 scheduled 14 months after I was placed on leave and 10
25 months after I requested an appeal, not to mention

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1 that I never requested a delay. Ms. Walton is
2 traveling from April 25th to May 8th. This is 13 days
3 out of over 300 days it could've been scheduled.

4 The de bene esse testimony was
5 misrepresented as, quote, exactly the same, no
6 difference, the same as, no downside, et cetera. For
7 example, spelled out in his email on April 6th, 2015,
8 to me, as well as verbally informed my attorney at the
9 time, Lauren Martel, on March 26th, 2015, the
10 following while in my presence: by way of info --
11 quote, by way of information, we will be conducting
12 Ms. Walton's direct testimony exactly the way it will
13 be done at a formal hearing before the Board, yet no
14 qualified hearing officer will be present, as would be
15 the case at the hearing beginning April the 30th.

16 Having all five witnesses testify in the
17 same period, April 30th to May 5th, in person, in
18 front of the Board of Education, would, in my opinion,
19 improve consistency and fairness. The dynamic of the
20 video testimony is different from a regular hearing.
21 After an objection is made by either party,
22 inadmissible evidence is allowed to proceed with the
23 video testimony, thereby sapping the energy, stamina,
24 time, and mental focus of all concerned. Then, when
25 the inadmissible evidence is deleted, the Board will

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1 not have seen the effect of the objections on the
2 episode.

3 Finally, on a final note regarding my
4 competence that the legal counsel for the school
5 district feels somewhat the same way as the quote
6 about pro se people as described by Stephanie Francis
7 Ward, here is a quote from Dr. Fawley and Mr. Williams
8 sent to Lauren Martel on March 23rd. Quote, Lauren,
9 although surprised that confirmation of the witness's
10 travel plans were requested last Thursday -- i.e., a
11 copy of her plane ticket, or something, unquote --
12 given our past history of interaction with your client
13 when he was pro se, we understood your request and
14 agree to do so. Thank you.

15 MR. WILLIAMS: Just briefly, to respond to
16 that --

17 (LIVE discussion begins.)

18 CHAIRMAN EVANS: Please stop it.

19 MR. WILLIAMS: No, I --

20 MR. DUFF: Yeah, I'm sorry. I didn't
21 realize your response was -- okay. Go ahead.

22 (VIDEO deposition resumes.)

23 MR. WILLIAMS: -- objection, prior to
24 beginning the deposition, Ms. Martel, to whom you
25 referred in your opening statement, was your attorney

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1 of record at the time that we agreed to proceed with
2 the de bene esse deposition, in light of Ms. Walton's
3 travel arrangements. As your attorney, she had the
4 authority to bind you to certain actions.

5 But subsequent to Ms. Martel's involvement,
6 we also had a conference call with Dave Duff, who is
7 going to be advising the Board at the actual hearing
8 on April 30th, and subsequent days, and at which, at
9 the conclusion of that hearing -- or that telephone
10 conference, it was my understanding that you were in
11 agreement with proceeding forward with the de bene
12 esse deposition.

13 So it would be our position that, again,
14 you're committed to proceed in this fashion. Counsel
15 on your behalf made that commitment. You subsequently
16 ratified that commitment, so to speak, in our
17 conference call. And so, given Ms. Walton's schedule,
18 which has been -- you referred to documentation that's
19 been sent about that -- it'd be our desire to proceed
20 this morning, and we believe it appropriate to do so.

21 (LIVE discussion begins.)

22 CHAIRMAN EVANS: Stop it now, please, Robyn.

23 MR. DUFF: So, at this point, Mr. Evans --

24 CHAIRMAN EVANS: Okay. And my understanding
25 now is that --

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1 MR. DUFF: -- before the Board is to rule on
2 the objection.

3 CHAIRMAN EVANS: Yeah. Yeah. Well, I'm --
4 is the objection that you presented during this
5 examination still your position, Mr. Bauer, or --

6 MR. BAUER: Yes, I believe it is. I just
7 feel that -- I did agree. He is correct. I did agree
8 to the times of the hearing. Unfortunately, I do not
9 believe that I was properly informed that -- I mean,
10 basically, I did not know that a judicial officer was
11 not going to be present. I felt that one should have
12 been. So my opinion is, it was misrepresented, and I
13 could be wrong, but as of now, I still believe that.
14 I still believe what I said.

15 CHAIRMAN EVANS: Misrepresented by who?

16 MR. BAUER: By the opposing legal counsel
17 saying that it was going to be exactly the same way,
18 and it was my impression -- now, Ms. Martel did not
19 tell me that no hearing officer would be there, but,
20 basically, it was told to me in writing from Mr.
21 Williams that it would be exactly the same, and I know
22 that this point is, "exactly," as far as questioning,
23 and so on. And in my mind, when I hear "exactly,"
24 that means a judicial officer is there, someone to
25 make judgments. That was how I viewed it.

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1 CHAIRMAN EVANS: And I will go back, and
2 maybe I need to clarify. What I said at the beginning
3 of this is that we plan to treat this testimony as if
4 Ms. Walton were sitting in that chair.

5 MR. BAUER: Right.

6 CHAIRMAN EVANS: And so, if you have -- even
7 though we understand it's taped, if you have an
8 objection or the opposing counsel has a question,
9 we're going to stop the tape, rule on that objection
10 or --

11 MR. BAUER: All right.

12 CHAIRMAN EVANS: -- at that time, so that we
13 can treat this just as if she was sitting there.

14 MR. BAUER: I understand, and that's fine.

15 CHAIRMAN EVANS: And the same thing goes for
16 any evidence that's -- that is -- that someone wants
17 to submit. If there's an objection to the evidence,
18 then we will deal with it at the time that somebody
19 introduces it. And I understand your concern. It's
20 noted, and --

21 MR. BAUER: Exactly. That's fine.

22 CHAIRMAN EVANS: And so I want you to make
23 sure that you understand that we note your objection.

24 MR. BAUER: Yes. Thank you.

25 CHAIRMAN EVANS: But I would like to go

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1 forward.

2 MR. BAUER: Yes.

3 CHAIRMAN EVANS: Any objection with going
4 forward?

5 MR. BAUER: No.

6 MR. WILLIAMS: None from us, Mr. Evans. You
7 have simply stated what our position is.

8 CHAIRMAN EVANS: Yes, sir.

9 MR. WILLIAMS: As you indicated, if there
10 are objections, the Board can rule on those
11 objections.

12 CHAIRMAN EVANS: And I will instruct -- I
13 will instruct Ms. Cushingberry now that, at the moment
14 that either of you object to something, she should
15 stop the tape. She should not wait for me or Mr. Duff
16 to direct her. Okay, Ms. Cushingberry?

17 MS. CUSHINGBERRY: Um-hum. Yes.

18 CHAIRMAN EVANS: Can everybody hear it
19 properly and see it properly? Okay. Then let's
20 proceed.

21 (VIDEO testimony resumes.)

22 DIRECT EXAMINATION

23 BY MR. WILLIAMS:

24 Q Would you please state your name for the record?

25 A Alice Walton.

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1 Q And Ms. Walton, what position do you currently
2 hold in Beaufort County School District?

3 A Chief administrative and human resource officer.

4 Q And how long have you served as chief
5 administrative and human resource officer?

6 A Three years.

7 Q How many total years have you worked in
8 education, and in what different capacities have you
9 worked?

10 A I've been in education for about 23 years. I've
11 worked as a teacher. I've worked as a mentor, later as a
12 mentor coordinator for the district, also an evaluation
13 coordinator for the district, as well as director of
14 uncertified staff and teacher quality.

15 Q All right. What educational degrees do you hold
16 and from what post-secondary institutions?

17 A I have an undergraduate degree in sociology and
18 psychology from Savannah State University. I have a
19 master's degree in education from Armstrong University, and
20 I have a master's of supervision and administration from
21 Phoenix University.

22 Q All right. In your current position as chief
23 administrative and human resources officer, what are your
24 overall duties and responsibilities?

25 A General overall implementation of personnel

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1 policies to ensure that they are applied across the
2 district for all employees. I am responsible for making
3 sure all federal, state, local laws are followed and
4 adhered to. The management of the personnel office, which
5 would include recruitment, selection, evaluation,
6 placement, discipline, benefits, just overall, day-to-day
7 operations of human resources.

8 Q Okay. And how many employees are there in the
9 Beaufort County School District?

10 A Approximately 1,500 certified employees and then
11 another 800 support staff, or classified employees.

12 Q And do you know John Alden Bauer, who's here
13 today?

14 A I do know Mr. Bauer.

15 Q And how do you know Mr. Bauer?

16 A I know him as a certified teacher in the school
17 district.

18 Q Prior to February of 2014, had you ever had any
19 interactions with Mr. Bauer in your role as chief
20 administrative and human resources officer?

21 A I had not.

22 Q On February 5th of 2014, did you have a reason to
23 become involved in a personnel matter concerning Mr. Bauer?

24 A I did.

25 Q All right. Can you tell us what led to your

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1 involvement in the matter involving Mr. Bauer?

2 A I received a call from Ms. McAden, who's
3 principal of Hilton Head Elementary School, stating that
4 there was a personnel issue at the building level. She was
5 off campus at that point. She was just leaving and -- a
6 meeting at the district office, a leadership meeting at the
7 district office. She had stated that Mr. Clendaniel was
8 dealing with a situation that involved Mr. Bauer and his
9 leaving a student off campus for some time, and Mr.
10 Clendaniel, at that point, asked Mr. Bauer to come to a
11 meeting to discuss what had actually happened at that
12 point.

13 So, after the conversation with Ms. McAden I
14 called Mr. Clendaniel, and he kind of walked me through
15 what the issues were. A student was left unattended at the
16 rec center. He had tried to schedule a meeting with Mr.
17 Bauer to come talk to him about what happened. Mr. Bauer
18 had given some kind of objection or didn't see the need to
19 come to that meeting. So, at that point, I asked Mr.
20 Clendaniel to get me on the phone when Ms. McAden got in
21 the building, and we would talk with the three parties: Mr.
22 Clendaniel, Ms. McAden, and Mr. Bauer.

23 Q Okay. And was that call arranged where you spoke
24 with Mr. Clendaniel, Ms. McAden, and Mr. Bauer?

25 A Yes, it was.

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1 Q And what transpired in that telephone
2 conversation?

3 A Mr. Clendaniel kind of walked back through the
4 situation. Mr. Bauer, at that point, agreed that, yes, he
5 had, indeed, left the student at the rec center, and at
6 that point, I advised Mr. Bauer that I needed to -- because
7 of his behavior with Mr. Clendaniel, refusing or -- I
8 wouldn't say refusing, but complaining about having to come
9 to a meeting was concerning.

10 Q Did you make any decisions regarding Mr. Bauer
11 based on the information you received from Ms. McAden and
12 Mr. Clendaniel?

13 A I did.

14 Q And what was your decision?

15 A I decided to place Mr. Bauer on administrative
16 leave at that point.

17 Q And would that have been February 5th of 2014?

18 A That's correct.

19 Q All right. Following the February 5th, 2014,
20 telephone conversation which you just described, did you
21 subsequently meet with Mr. Bauer?

22 A I did. I met with Mr. Bauer the following day.

23 Q So that would have been February 6th?

24 A February 6th, yes.

25 Q All right. Was anyone present, other than Mr.

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1 Bauer and yourself, in the February 6th meeting?

2 A Yes. Ms. McAden, Mr. Clendaniel, and then later
3 Ms. Brockway joined us.

4 Q Okay. What was the purpose of that February 6th
5 meeting?

6 A To discuss the incident, to get some clarity for
7 me in terms of what had actually transpired, and to get --
8 to hear what Mr. Bauer -- Mr. Bauer's story about what
9 transpired on the 5th.

10 Q Okay. And where was the February 6th meeting
11 held?

12 A Ms. McAden's office.

13 Q Okay. Did -- during that February 6th meeting,
14 did you give Mr. Bauer an opportunity to tell his side of
15 the story?

16 A Yes.

17 Q All right. And what, if anything, do you recall
18 of Mr. Bauer's responses to you during the February 6th
19 meeting?

20 A Mr. Bauer admitted that, yes, he did, indeed,
21 leave the student at the rec center. He also admitted that
22 he did have some issue with Mr. Clendaniel in the meeting
23 because he felt that it was really being blown out of
24 proportion.

25 Q At the point at which you initially placed Mr.

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1 Bauer on administrative leave, do you recall what his
2 response to that was, to being told he was being placed on
3 administrative leave?

4 A I asked Mr. Bauer if he understood why I was
5 placing him on administrative leave, and he said, "No,
6 because I don't really see the big deal in all of this.
7 The student got back to the building. He wasn't hurt. I
8 really don't see why you are blowing this out of
9 proportion."

10 Q Did Mr. Bauer's response concern you in any way?

11 A It did.

12 Q And in what way?

13 A I did not get the sense that Mr. Bauer understood
14 the gravity of leaving a student unattended off campus for
15 any given time, and for me, and my opinion was, it was
16 lackadaisical. "Oh, well, no big deal. The child's back.
17 Why are we going through this."

18 Q Did you discuss any concerns you had with Mr.
19 Bauer's attitude towards the administration as part of that
20 February 6th, 2014, meeting?

21 A We did talk about that.

22 Q And do you recall what Mr. Bauer's response was
23 in relation to those concerns?

24 A Mr. Bauer said he -- he agreed that maybe he
25 shouldn't have said some of those things, but he thought

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1 that he'd built kind of a relationship with his
2 administrators that he could say those things without
3 impunity. I guess what he was -- in my opinion he was
4 trying to relay, "I would not have done that or said those
5 things had I not felt we had that kind of relationship."

6 Q Did Mr. Bauer ever claim during your meetings
7 with him that the child in question who was left behind at
8 the rec center had been brought to the pool late on
9 February 5th of 2014?

10 A No, he did not.

11 Q All right. Did Mr. Bauer produce or did you ask
12 him for any type of documents during your meeting with him
13 on February 6th?

14 A I did. Yes, I did ask him.

15 Q What did you ask him for?

16 A I asked him for his roll book, because I think
17 the conversation was centered around record keeping and his
18 account -- count system for making sure he had all students
19 with him at all times.

20 Q All right. And did --

21 A So I asked him for his roll book.

22 Q And did he share with you his roll book?

23 A He did. He told me it was in his truck and he
24 was going to go out and get it.

25 Q Do you recall what Mr. Bauer told you as far as

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1 his system for accounting for students?

2 A Yes. He said he felt really comfortable asking
3 students, once they all got in the class, who was there,
4 who was not there. He thought he could depend on their
5 responses by doing a visual check. I remember him saying,
6 "I just ask who's absent, and the kids usually raise their
7 hand and say this one's not here or that one's not there."
8 And, at that point, I asked him if he trusted the students
9 to tell him the truth that actually those children were in
10 a classroom, and he said, yeah, they were pretty good about
11 that.

12 Q Okay. Did you have any discussions regarding the
13 use of PowerSchool?

14 A I did. I asked him after I looked in his roll
15 book and there were only two days marked, attendance marked
16 from August to February, and I asked him at that point, "It
17 seems to me that your accountability system here for
18 students has to be done somewhere else because there are no
19 -- there are no absentee marks here for anyone outside of
20 those two days." And then I asked him, "Do you use
21 PowerSchool? Do you use PowerSchool versus your roll
22 book?" And he looked at Ms. McAden and said, "Can I use
23 PowerSchool to do roll? No, I don't use it. I didn't know
24 I could use it."

25 Q And this was in February of the school year?

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1 A Yes.

2 Q Other than the February 5th, 2014, incident
3 involving the Island Recreation Center, did you discuss any
4 other incidents regard Mr. Bauer and supervision concerns?

5 A I did, because there was an incident that Ms.
6 McAden brought up. I wasn't aware of that incident until
7 that meeting.

8 Q Okay.

9 A Ms. McAden brought that up.

10 Q And what did you discuss about the other incident
11 that -- of which you were not aware until that time?

12 A It was another question about Mr. Bauer's
13 supervision of students and leaving students unattended,
14 and I believe we talked about a rest wall that students go
15 to --

16 MR. BAUER: Objection. Sorry. Not charged.

17 (LIVE discussion begins.)

18 CHAIRMAN EVANS: Okay. What is your
19 objection?

20 MR. BAUER: Basically my same point is,
21 November 1st is not, in my opinion, part of the May
22 29th charges provided by Dr. Moss. His charges are
23 based on the February 5th incident, and that's pretty
24 much it. November 1st was never mentioned or charged
25 in the four charges by Dr. Moss.

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1 MR. WILLIAMS: Our response would be, the
2 letter from Dr. Moss referred to the May 29th -- it
3 said something like "included" with the May -- the
4 information contained in the May 29th email didn't say
5 that was the only issues about which he was concerned,
6 and so the other issues, like negligent supervision
7 and the insubordination issues, any evidence that goes
8 to those two points is relevant information.

9 MR. BAUER: I believe it says that it's
10 based -- negligence and insubordination based on the
11 pool event, if I'm not mistaken. We may need to take
12 a look at the May 29th --

13 CHAIRMAN EVANS: Let me suggest that this
14 would be appropriate for you to ask Dr. Moss when he
15 takes the stand --

16 MR. BAUER: Okay.

17 CHAIRMAN EVANS: -- what he based --

18 MR. BAUER: That's fine.

19 CHAIRMAN EVANS: -- his letter on, and,
20 again, I'm presuming that in this array of documents
21 is a copy of his letter?

22 MR. BAUER: Yes. Yes, sir.

23 CHAIRMAN EVANS: Okay. You can continue.
24 Go ahead.

25 (VIDEO testimony resumes.)

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1 MR. WILLIAMS: Okay. And just for the
2 record, what we have agreed to do for the purposes of
3 this video deposition, if either side has an
4 objection, they will make that objection, and then the
5 issue will be ruled on at the hearing. So you are
6 correct to state your objection.

7 MR. BAUER: Thank you.

8 BY MR. WILLIAMS:

9 Q All right. If you could continue describing your
10 discussion about the rest wall incident?

11 A A student -- Mr. Bauer's in class inside of the
12 building. There's a spot outside of the building where
13 students could go if they needed to take a rest, and I'm
14 thinking that was his -- his classroom plan for students
15 who felt that they needed to get away from whatever was
16 going on at that moment. And the concern with Ms. Brockway
17 was, the student was left unattended. No adults had
18 eyeshot of the student, and Mr. Bauer didn't have eyesight
19 on the student, and it was fully documented. At that
20 point, Ms. Brockway was asked to come to the meeting, and
21 that's how she entered the meeting.

22 Q Okay. And was Mr. Bauer allowed to respond to
23 that concern, the earlier concern, as well, as part of your
24 February 6th meeting with him?

25 A Yes, he was.

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1 Q Did you have any discussions with Mr. Bauer in
2 your February 6th meeting just regarding his general
3 classroom management?

4 A Yes, we talked about that, because, again, I was
5 trying to get to a comfort level with understanding Mr.
6 Bauer's ability to maintain and supervise students. So we
7 did talk about several things: his classroom management,
8 how did he manage the kids, if they were out of control,
9 what did he do, and that's when he explained, in depth,
10 what his rest wall was for.

11 We also talked a bit about if he ever had to ask
12 children to leave his classroom, and he said, no, they
13 always went on their own, because they knew that that was
14 the procedure in his room.

15 Q Okay. We have in front of you a notebook in
16 which we have premarked exhibits, again, to approximate the
17 process that the hearing will follow on April 30th.

18 A Okay.

19 Q And if you would turn to what's tab one and
20 identify those policies?

21 A This is IS policy two, teacher expectations and
22 accountability.

23 (LIVE discussion begins.)

24 MR. WILLIAMS: And just so the Board is
25 clear, what we've done is, the exhibit numbers that we

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1 gave you, the exhibits to Ms. Walton's deposition are
2 at the very back of that. So, when you get through
3 the 40-or-so exhibits, the numbers restart at 1.
4 Okay? So those -- when it restarts at 1, those are
5 the exhibits that Ms. Walton is referring to.

6 CHAIRMAN EVANS: Give us just a minute,
7 please. Everybody there? Okay. Go ahead, Ms.
8 Cushingberry.

9 (VIDEO testimony resumes.)

10 BY MR. WILLIAMS:

11 Q And is there an additional policy, as well?

12 A Yes, HRS-4, staff conduct.

13 Q All right. In your review of the matter
14 involving Mr. Bauer and the student who was left at the
15 recreation center and the subsequent meetings you had with
16 Mr. Bauer, did you reach any conclusions regarding whether
17 Mr. Bauer complied with IS-2 and HRS-4?

18 A I did. And IS-2, teacher expectations and
19 accountability, really was the basis of my discussion with
20 Mr. Bauer, in terms of my gaining a comfort level. It is
21 clearly stated that teachers are expected to supervise
22 students in their charge throughout the day at all times,
23 and Mr. Bauer clearly had not done that on February 5th.
24 And it also states, very clearly, that teachers are to
25 maintain accurate student attendance records, and I could

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1 not find any evidence that that had occurred from August to
2 February 5th.

3 Q Okay. And how about HRS-4?

4 A HRS-4, the intent of staff conduct and the
5 Board's vision is that the best way to set an example for
6 students is to have teachers set those examples by
7 instruction, by the way they behave, by the way they handle
8 themselves with students, and that's what teachers are
9 expected to do, and that will serve as a good role model
10 for students.

11 Q All right. Going back to the February 6th
12 meeting, did you discuss with Mr. Bauer ways that he could
13 improve his supervision of students?

14 A Yes, we did talk about that. In fact, I thought
15 we had a productive conversation. We asked Mr. Bauer if he
16 would be a part of that solution, if he could bring some
17 things to the table that he could do in order to improve
18 his system of management and accountability for students,
19 and Ms. McAden and I at that point agreed that he could go,
20 think about it, and bring some strategies back to us, and
21 we would incorporate that into a plan.

22 Q All right. Now, you've testified about Mr.
23 Bauer's roll book and the roll book that he presented to
24 you. If you could turn to Exhibit Number 2, tab number 2
25 there, and identify that document?

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1 A This is a class record book.

2 Q And is that a copy of the roll book or record
3 book that Mr. Bauer provided to you as part of your
4 February 6th meeting?

5 A Yes, it is.

6 MR. BAUER: Objection. This is not the
7 original roll book.

8 (LIVE discussion begins.)

9 CHAIRMAN EVANS: Stop it. Go ahead, Mr.
10 Bauer.

11 MR. BAUER: And I stand by my objection.
12 That is not the roll book, and I've explained this
13 three times to the attorneys, and they still used it.
14 I turned in a roll book that was the start of a new
15 roll book, based on the wetness, the -- it was tearing
16 up. I started something new. They kept saying that I
17 had a roll book, so I gave them one. I gave them one,
18 but I told them at the time it was not the one that I
19 originally submitted, which I submitted on February
20 the 11th, 2014, to Ms. McAden and Ms. Walton. I also
21 submitted what I was using currently, at the time,
22 which was PowerSchool software, which I will present
23 in my testimony. But that is not the original grade
24 book.

25 CHAIRMAN EVANS: Okay.

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1 MR. BAUER: All right.

2 CHAIRMAN EVANS: All right. Just some
3 clarification. On February 6th, when you were asked
4 for your grade book --

5 MR. BAUER: I object to that.

6 CHAIRMAN EVANS: -- is this something --

7 MR. BAUER: There was no meeting on February
8 6th. There was a meeting on February 5th, February
9 7th, February 11th, and March the 5th. February 6th,
10 I was given one day off, and to go see Ms. Walton on
11 February 7th --

12 CHAIRMAN EVANS: Okay.

13 MR. BAUER: -- personally, at the school
14 district.

15 CHAIRMAN EVANS: This -- this meeting that
16 Ms. Walton is testifying to right now --

17 MR. BAUER: Did not happen. There's no --
18 there was no meeting February 6th. However, what
19 she's testifying to is correct, that on February 11th,
20 I did submit a roll book and a binder, exactly like
21 this, with all of my PowerSchool attendance sheets, to
22 her. They took them out. They left two behind, by
23 the way, which I will have in my evidence to show how
24 I kept records of all the students. And they took a
25 green, handwritten record book that I had used to a

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1 certain point, until we began our swimming lessons.

2 Being at the pool, it became -- we were
3 under the bubble, and the condensation's so bad that
4 it was being ruined. So I began a new roll book and
5 realized, "You know, as soon as I start using this
6 roll book, the same thing is going to happen. I'm
7 going to take it over there, and it's going to get wet
8 again." I decided to start using a binder to keep
9 sheets in, so they didn't get wet, and that's what I
10 turned in, my old grade book and my new way -- my new
11 system, and that's -- and I left it there. I assumed
12 that I -- I thought I had picked it up.

13 And when I went -- Dr. Fawley and Mr.
14 Williams asked me for that, for evidence, and I told
15 them in my deposition, "Yes, I've got it. It's in my
16 red bag. When I go home, I'll turn it in." When I
17 went home, it was not there, and I realized I never
18 picked it up off of Ms. Walton's -- or Ms. McAden's
19 desk. I left it there. So they've got it. And I
20 explained this to them in three different emails or
21 letters --

22 CHAIRMAN EVANS: Okay.

23 MR. BAUER: All right. But you go ahead.

24 CHAIRMAN EVANS: Let me get some
25 clarification, and I don't know where the rest of the

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1 Board is, but I -- I will ask this on their behalf.
2 My understanding from this testimony and other
3 testimony that we've heard is that, on February 5th,
4 sometime late in the day on the 5th, there was a
5 meeting --

6 MR. BAUER: Correct.

7 CHAIRMAN EVANS: -- with you, Mr.
8 Clendaniel, Ms. McAden, Ms. Walton by phone?

9 MR. BAUER: By phone. That is correct.

10 CHAIRMAN EVANS: Okay. And --

11 MR. BAUER: That happened at 4:00.

12 CHAIRMAN EVANS: -- at the conclusion of
13 that meeting, you were put on administrative leave?

14 MR. BAUER: Correct.

15 CHAIRMAN EVANS: Okay. You're saying that
16 there was no meeting the next day.

17 MR. BAUER: Not the next day. The --

18 CHAIRMAN EVANS: When was the next meeting
19 after this meeting that took place that's being
20 testified to here that included you, Mr. Clendaniel,
21 Ms. McAden, and Ms. Walton, in person, rather than on
22 the phone?

23 MR. BAUER: That was Tuesday, February 11th,
24 2013 -- or '14. I did meet with Ms. Walton on Friday,
25 February 7th, here at the school district. So I met

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1 -- I was put on leave February 5th. I didn't do
2 anything February 6th. I went home. February 7th at
3 9:00, I met with Ms. Walton here. February 11th, I
4 met with Ms. Walton, Mr. Clendaniel, Ms. McAden at the
5 school in Hilton Head, and that's what she's referring
6 to. She says it's February 6th, but it wasn't. She's
7 saying everything correctly, the events. It's just
8 the wrong date. It is February the 11th.

9 CHAIRMAN EVANS: Okay. When -- this
10 document that we're being provided right now, when was
11 that presented to Ms. McAden --

12 MR. BAUER: Okay. This --

13 CHAIRMAN EVANS: -- and Ms. Walton?

14 MR. BAUER: This actual document that you
15 have there was presented on -- some -- I believe it
16 was January 2015, so maybe two or three months ago,
17 that that actual document that you have there was.
18 That was two or three months ago, because they kept
19 saying in letters that they didn't have a grade book,
20 so I sent them the only thing I had. But I did
21 explain to them, "Look, this is not what I submitted
22 to Ms. McAden."

23 They claim Ms. McAden says that she doesn't
24 have it, and Ms. Walton says they don't have it, and
25 they may not, and it may have gotten -- maybe it was

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1 left -- it was left on the desk, is what I know
2 happened, and maybe it just got filed away somewhere,
3 or got mixed up. But I never picked it up and took it
4 with me after I had to submit it and show it to them.
5 It was just left on Ms. McAden's desk, and I forgot
6 about it.

7 CHAIRMAN EVANS: Okay.

8 MR. BAUER: But this was not what was
9 submitted. I did submit this to Dr. Fawley and Mr.
10 Williams. That is correct. But I explained that it
11 was not what I showed Ms. McAden and Ms. Walton on
12 February 11th.

13 CHAIRMAN EVANS: I think the point we find
14 confusing about the testimony here and your own
15 comments are, you were asked for a grade book at a
16 meeting, and --

17 MR. BAUER: And I provided it to them.

18 CHAIRMAN EVANS: -- I'm not going to dispute
19 the date of the meeting, but you were asked for a
20 grade book at the meeting.

21 MR. BAUER: That is correct.

22 CHAIRMAN EVANS: And you presented this?

23 MR. BAUER: No, I presented a full grade
24 book with names for 36 classes, I believe, or 32, or
25 something, one page after another; names, dates,

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1 everything. They did state they were looking at some
2 of the classes -- let's see. They were -- I can't
3 remember what they stated. There was something they
4 didn't -- they didn't like about it, but I don't
5 remember exactly what it was. But they had names and
6 dates and everything. That was presented to them.

7 CHAIRMAN EVANS: And my question is, when
8 you, according to what you just told us --

9 MR. BAUER: Sure.

10 CHAIRMAN EVANS: -- in January --

11 MR. BAUER: Yes.

12 CHAIRMAN EVANS: -- submitted a grade book,
13 why did you not submit that material? Why did you
14 submit this piece?

15 MR. BAUER: Why'd I submit that? Because
16 they kept saying that I had a grade book, and I said,
17 "Well, I will send you what I've got, but I told you
18 before that the grade book was already submitted. You
19 have the evidence, or somebody does. But I'll send
20 you the only thing I've got." And I also sent them
21 two PowerSchool sheets that were in a binder that, for
22 some reason, Dr. -- or Ms. Walton and Ms. McAden left,
23 did not take out of this. So I sent them that.

24 CHAIRMAN EVANS: Well, I'm --

25 MR. BAUER: But I explained this --

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1 CHAIRMAN EVANS: I'm still confused.

2 MR. BAUER: Yeah.

3 CHAIRMAN EVANS: Why, in January, did you
4 not submit that packet that you have right there?

5 MR. BAUER: Because it was already
6 submitted. It had been submitted on February 11th. I
7 gave them everything on February 11th. And they kept
8 saying they don't have it, so I said, "Well, look,
9 I'll send you a grade book. It was one that I started
10 to fill out and realized, 'This isn't going to work.'
11 It's the only thing I've got, but I'll give you
12 something." I wanted them to know that I was doing my
13 best to give them something.

14 CHAIRMAN EVANS: No, my point, Mr. Bauer --
15 and here's where the confusion is -- it was not the
16 only thing you had. You had that. Okay?

17 MR. BAUER: This is not -- this is not --
18 this is something else. It was a binder, like this,
19 that I submitted. The same thing. This is not the --
20 this is not PowerSchool. This is just other stuff.

21 CHAIRMAN EVANS: I have to admit, I'm really
22 confused, because there was --

23 MS. ANDERSON: I've got it.

24 CHAIRMAN EVANS: It was my understanding
25 that what you have --

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1 MR. BAUER: Do you understand it?

2 CHAIRMAN EVANS: Wait a second.

3 MR. BAUER: Okay.

4 CHAIRMAN EVANS: What you have there --

5 MR. BAUER: Yeah.

6 CHAIRMAN EVANS: -- is what you submitted,
7 to your account, on February 11th.

8 MR. BAUER: This is a -- this is the twin.
9 This is another one. This is a new one that I bought,
10 but I submitted something exactly like this on
11 February 11th, with a whole bunch of PowerSchool stuff
12 in here.

13 CHAIRMAN EVANS: With the same stuff that's
14 in there?

15 MR. BAUER: No, this is something different.
16 This is a different folder. I'm sorry to be
17 confusing. I thought I was, but it seems unclear.

18 MR. WILLIAMS: Mr. Chair, can I just --

19 CHAIRMAN EVANS: Go ahead, Mr. Williams.

20 MR. WILLIAMS: Clearly there's a dispute
21 about this.

22 MR. BAUER: Okay.

23 MR. WILLIAMS: Can I just suggest that he
24 cover whatever his position is in his direct
25 testimony? We've had witnesses testify that they

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1 believe --

2 MR. BAUER: Sure.

3 MR. WILLIAMS: -- what he submitted was
4 what's in Exhibit 2.

5 MR. BAUER: That's fine. I'll try to be a
6 little more --

7 CHAIRMAN EVANS: Okay. Go ahead, Ms.
8 Cushingberry.

9 (VIDEO testimony resumes.)

10 MR. BAUER: Ms. Walton has that in her
11 possession.

12 MR. WILLIAMS: Okay. Again, we'll proceed
13 with the same --

14 MR. BAUER: Sure.

15 MR. WILLIAMS: -- the same way we have been
16 in the past.

17 BY MR. WILLIAMS:

18 Q Now, you've testified also that you placed Mr.
19 Bauer on administrative leave over the phone. Did you ever
20 document his placement on administrative leave?

21 A I did.

22 Q If you could identify Exhibit Number 3?

23 A This is a letter dated February 7th, 2014, to Mr.
24 Bauer from me, and it is a summary of our discussion of the
25 February 5th conversation where I placed him on

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1 administrative leave.

2 Q And referring to Exhibit 3, what were your
3 reasons for placing Mr. Bauer on administrative leave?

4 A It states this action is being taken because of
5 concerns of negligent actions with a student and
6 unprofessional behavior toward administration at Hilton
7 Head Elementary School.

8 Q What specific actions were you referring to in
9 your February 7th letter when you referenced negligent
10 actions?

11 A Leaving a student unattended at the rec center.

12 Q And to what specific actions were you referring
13 when you listed unprofessional behavior toward
14 administration at Hilton Head Elementary School?

15 A Mr. Bauer's interaction with Mr. Clendaniel
16 during the course of the evening when Mr. Clendaniel tried
17 to get him to attend a meeting to discuss leaving the
18 student at the rec center.

19 Q Following your February 6th conference with Mr.
20 Bauer, did you have any additional meetings with him?

21 A Yes.

22 Q All right. And do you recall when that would
23 have been?

24 A That would have been February 11th, I believe, or
25 somewhere in that area.

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1 Q Okay. And would that meeting have also involved
2 Ms. McAden?

3 A Yes, only Ms. McAden.

4 Q Okay. And what was the purpose of you and Ms.
5 McAden's meeting with Mr. Bauer on February 11th?

6 A We were going to come back together and talk
7 about some strategies. My intention at that meeting was to
8 work through the incident and possibly get Mr. Bauer back
9 in the classroom, but my intentions were to make sure we
10 had plans in place so that he could come back under strict
11 support and understanding of what needed to happen in order
12 for him to move forward.

13 Q Okay. Did anything occur in that February 11th
14 meeting that made you change your mind from what your
15 original intent was?

16 A Yes. At the end of the meeting when Mr. Bauer
17 got ready to leave, he stated, once again, "I still think
18 this is ridiculous. I don't know what all this is about."

19 Q All right. And so did you personally hear Mr.
20 Bauer use the term "ridiculous" in your meeting?

21 A Yes, I did.

22 Q As a result of Mr. Bauer -- the meeting you had
23 with Mr. Bauer on February 11th, then, did you make any
24 decisions regarding the steps Mr. Bauer would need to take
25 in order to return from administrative leave?

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1 A Yes. At that point, I asked Mr. Bauer to go in
2 and have a wellness check from a psychiatrist or
3 psychologist, stating that he was fit to return to work and
4 perform the essential duties of classroom teaching.

5 Q All right. And what was it, specifically, that
6 led you to request that Mr. Bauer get this wellness check
7 to which you just referred?

8 A I go back to his inability to understand the
9 seriousness of leaving a child unsupervised.

10 Q Okay. Did Mr. Bauer agree to have a psychiatric
11 evaluation?

12 A Yes, he did.

13 Q All right.

14 MR. BAUER: Excuse me. I object to the
15 date.

16 (LIVE discussion begins.)

17 CHAIRMAN EVANS: Go ahead, Mr. Bauer.

18 MR. BAUER: Yes. The date that she asked me
19 to go see a psychiatrist was March the 5th, 2014, and
20 I believe she stated a different date. I didn't hear
21 it. I mean, I didn't hear it just now.

22 MR. WILLIAMS: And again, Mr. Chair, might I
23 suggest, for points like that that are factual
24 disputes, it may be best to address --

25 MR. BAUER: All right. And I --

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1 MR. WILLIAMS: -- things like that in his
2 direct testimony.

3 MR. BAUER: And I have no problem with that.

4 CHAIRMAN EVANS: Okay.

5 MR. BAUER: So we can continue.

6 CHAIRMAN EVANS: Let's proceed. Go ahead,
7 Ms. Cushingberry.

8 (VIDEO testimony resumes.)

9 MR. BAUER: -- of the psychiatrist request.
10 Did you -- did she say February 11th?

11 MR. WILLIAMS: She said as part of the
12 February 11th meeting.

13 MR. BAUER: Yeah, I object to that.
14 Incorrect date.

15 MR. WILLIAMS: Okay.

16 MR. BAUER: Okay. March 5th.

17 MR. WILLIAMS: And just for -- you can
18 certainly file a -- can object, to the extent you
19 believe an objection is appropriate. Additionally,
20 once Ms. Walton has concluded her testimony, you will
21 be given a chance to cross-examine her, to the extent
22 you have any disagreement with something that she's
23 said.

24 MR. BAUER: Okay.

25 ///

///

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1 BY MR. WILLIAMS:

2 Q And if you could introduce or please turn to tab
3 4 and introduce that document or identify that document?

4 A This is an email from me dated March 25th, 2015,
5 to Mr. Bauer.

6 Q And what was the purpose of that March 25th
7 email?

8 A It stated, "I'm requesting that you provide your
9 physician a copy of your job description," and I attached
10 it, "and let your doctor review it and submit a written
11 statement to me on or before March 31st, 2014, indicating
12 whether she believes you are presently capable of
13 performing the essential functions of your position, with
14 or without reasonable accommodations."

15 Q Okay. Is Mr. Bauer the only employee you've ever
16 requested receive a psychiatric evaluation?

17 A No, he's not.

18 Q And what are the circumstances that have led you,
19 as the chief human resources and administrative officer of
20 the school system, to request a psychiatric evaluation,
21 generally?

22 A Red flags. An individual needs to show that they
23 understand the situation at hand; show that, if it was
24 egregious, it was egregious and admit that; also, be
25 willing to accept the responsibility of what occurred.

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1 Q Did you subsequently receive information from Mr.
2 Bauer or his physician confirming that he had been
3 evaluated?

4 A Yes, I did.

5 Q And do you recall if it was received on time,
6 which was March 31st -- by March 31st, 2014?

7 A It was not received on time.

8 Q And did you take any action once you had not --
9 once you did not initially receive it on time?

10 A I did. I think I communicated with Mr. Bauer
11 that I had not received documents from his doctor.

12 Q All right. And if you could turn to tab 5 and
13 identify that item?

14 A This is an email from me dated April 1st, 2014,
15 to Mr. Bauer, and it just simply states that, "I did not
16 receive the report from your doctor."

17 Q And subsequent to emailing Mr. Bauer, did you
18 receive the report?

19 A I did.

20 Q All right. If you would turn to tab 6 and
21 identify those items?

22 A This is a fax received at my office on April 7th
23 from Dr. Laura Rosenbaum-Bloom.

24 Q All right. And what was -- what, if anything,
25 was contained in the fax from Dr. Bloom?

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1 A This was her statement of fit for work. She had
2 stated that she had seen Mr. Bauer on April 28th, 2014, and
3 her conclusion --

4 Q April or March?

5 A March. I'm sorry. And her conclusion was that,
6 in her medical opinion, Mr. Bauer is, indeed, capable of
7 performing the essential functions of his job and return to
8 all of his duties as soon as possible.

9 Q All right. Did you make any decisions regarding
10 Mr. Bauer's employment once you received the information
11 from Dr. Rosenbaum-Bloom?

12 A I believe, at that time, I called Mr. Bauer and
13 asked him to come meet with me.

14 Q Okay. And did you ever request a second opinion,
15 so to speak, for Mr. Bauer?

16 A I did.

17 Q And if you could turn to tab 7 and introduce that
18 document?

19 A HRS-16, staff leaves and absences.

20 Q And does HRS-16, staff leave and -- leaves and
21 absences, address the district's ability to request a
22 second medical evaluation of an employee, and if so, where
23 is that addressed in the policy?

24 A On page 2, paragraph 3. The superintendent or
25 the chief administrative and human resource officer can

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1 require any employee to undergo an examination by a doctor
2 or psychologist, psychiatrist selected by the district.
3 The district will pay for the cost of this examination.
4 Failure on the part of the affected employee to carry out
5 said directive is grounds for discipline, up to and
6 including immediate dismissal from employment.

7 Q All right. And does that policy also go on to
8 talk about, under dismissal from employment, what the
9 superintendent may do if it's not complied with?

10 A Yes. The superintendent may recommend the
11 immediate dismissal of any certified staff member or
12 terminate the employment of any classified staff member who
13 fails to comply with the requirements of this policy, who
14 fails to request extended leave as contained herein, who
15 fails to report to work at the expiration of an authorized
16 leave, who fails to obtain an extension of previously
17 approved leave should it become necessary, or who fails to
18 produce requested absence or physician statement.

19 Q All right. And who did the district select to
20 conduct the second evaluation of Mr. Bauer, which could be
21 a district expense?

22 A Dr. Mary St. John Gay.

23 Q All right. Had the district previously used Dr.
24 St. John Gay for this type of evaluation?

25 A Yes, we have.

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1 Q Of the employees that you referred to Dr. St.
2 John Gay for a second evaluation, how often would you say
3 those employees were found to be capable of returning to
4 work and performing the duties and responsibilities of
5 their respective positions?

6 A The percentage of return to work is very high.
7 Between 90, 95 percent of all employees, she returns to
8 work.

9 Q Was your office involved in the scheduling of Mr.
10 Bauer's appointment with Dr. St. John Gay, and if so, what
11 was your role?

12 A We were, because we wanted to -- Dr. Gay is very
13 difficult to get in, and we wanted to make sure that we
14 could do this in a timely manner and that we didn't have
15 Mr. Bauer hanging out there for weeks. So I asked my
16 assistant to call her and make a -- schedule an
17 appointment, or to let her know that Mr. Bauer would be
18 calling her for an appointment, and we wanted to get him in
19 the next week or so, if we could.

20 Q All right. And do you know if the appointment
21 was made?

22 A That appointment was made.

23 Q All right. And did you ever receive confirmation
24 from Dr. St. John Gay's office that the appointment had
25 been made?

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1 A Yes, we did.

2 Q Did you ever receive any confirmation from Mr.
3 Bauer that he had been evaluated by Dr. St. John Gay?

4 A No, I did not.

5 Q Did you ever attempt to meet with Mr. Bauer to
6 discuss the district's directive that he obtain a second
7 medical opinion at district expense?

8 A Yes.

9 Q Do you recall when you were initially scheduled
10 to meet with Mr. Bauer?

11 A I believe it was April 25th.

12 Q And did Mr. Bauer meet with you on April 25th?

13 A He did not.

14 Q All right. If you could identify tab 8?

15 A This is a portion of an email from Mr. Bauer on
16 April 24th to me, at 3:45 p.m. on April 24th, and he says
17 that he's -- that he was sorry to contact me at such a late
18 hour before our scheduled April 25th meeting, but he -- he
19 had an eye condition that had not improved, and he could
20 not make our meeting for the -- on the 25th.

21 Q Okay. Did you accept Mr. Bauer's reason for not
22 meeting with you on April 25th?

23 A I did.

24 Q And did you attempt to reschedule a meeting with
25 Dr. Bauer -- with Mr. Bauer?

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1 A Yes, I did.

2 Q All right. Can you please identify Exhibit 9,
3 which is a series of emails?

4 A This is a series of emails from me to Mr. Bauer,
5 and Dr. Moss is copied on this -- these emails or -- and
6 there are also emails from Dr. Moss, as well.

7 Q All right. If you could review the series of
8 emails from April 28th and explain what was going on in
9 terms of your attempting to schedule a meeting with Mr.
10 Bauer?

11 A The first email at 10:52 a.m. on April 28th, Mr.
12 Bauer communicates to me, and it's to me, that his eye is
13 not much better, and he would like to schedule a meeting for
14 reinstatement if -- and he states, if I would like to
15 schedule a meeting for reinstatement, he would be available
16 any time after today. And then he further states, "If our
17 meeting is for anything other than reinstatement, you will
18 need to contact my attorney, George McMaster."

19 I responded, saying "I will discuss your request
20 below with the superintendent. Please remember that you
21 are on administrative leave with pay. If you would prefer,
22 I will place you on administrative leave without pay. Then
23 we can operate on your schedule and demands."

24 And at that point, Dr. Moss weighs in, and his
25 email to Mr. Bauer at 6:45 p.m. states that, "Ms. Walton is

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1 correct in informing you that, while you're on
2 administrative leave with pay, you are to report as
3 requested." And he states that, "This is our personnel
4 policy and administrative rule. The topic of the meeting
5 is decided by Ms. Walton, not you. If you are requesting
6 to change your leave status, please let me know.
7 Otherwise, I expect you to meet with Ms. Walton at the
8 designated time."

9 Then I responded to the email from Dr. Moss to
10 Mr. Bauer, and I state, "Alden, after reading Dr. Moss'
11 email, can I expect you in my office at 9:00 a.m. in the
12 morning?"

13 Q Okay. And did Mr. Bauer meet with you the
14 following day?

15 A He did not.

16 Q All right. If you could turn to tab 10 and
17 identify that document?

18 A This is a letter to Mr. Bauer from me dated April
19 29th, 2014.

20 Q And what was the purpose of your letter to Mr.
21 Bauer dated April 29th, 2014?

22 A The purpose was to give Mr. Bauer an update on
23 his leave status.

24 Q All right. And what specific areas did you cover
25 regarding Mr. Bauer's leave status and what he needed to do

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1 going forward in your April 29, 2014, letter?

2 A I explained administrative leave with pay. I
3 talked a bit about the meeting with Ms. McAden. I also
4 talked about the scheduled meeting for April 25th. I
5 reviewed that Mr. Bauer couldn't make that meeting because
6 of his eye condition, and then I also stated that I was in
7 receipt of the statement from Dr. Rosenbaum-Bloom, and she
8 states that -- her medical opinion, that you are capable of
9 performing the essential functions of your job. And then I
10 state that I may be willing to return him to his position
11 thus in accordance with HRS-16, leave and absences, and I
12 asked him, at that point, to get a second opinion.

13 Q All right. And did you provide a date by which
14 you expected to receive the second opinion?

15 A Yes. I said, "I'm requesting you to have Dr. Gay
16 submit a written statement to me on or before May 16th,
17 2014."

18 Q All right. Please identify Exhibit Number 11, or
19 tab number 11.

20 A This is an email from Mr. Bauer to me on May 8th.

21 Q And is there also an email from you to Mr. Bauer
22 on that date?

23 A Yes.

24 Q All right. And what was the purpose of your
25 email to Mr. Bauer on May 8th?

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1 A On May 8th at 3:57 p.m., I just simply stated,
2 "Alden, I realize I had given you a May 16th date to get
3 back with me on my request. I am inquiring today to see
4 where you are in this process and ask if you believe
5 there's a possibility for us to bring closure to this
6 matter before May 16th."

7 And Mr. Bauer responded to me at 4:12 p.m. He
8 says, "I responded to your certified letter on April 30th,
9 but I have not received a response from you. Did you
10 receive my email? I -- if not, I will forward the email."

11 Q All right. Did you receive the evaluation from
12 Dr. St. John Gay by May 16th, as had been requested?

13 A I did not...

14 Q All right. Please turn to tab 12 and identify
15 that document?

16 A This is a letter dated May 29th, 2014, from me to
17 Mr. Bauer, and the purpose of the letter was to outline a
18 process, as expected by Dr. Moss, as we move forward with
19 bringing resolution to your suspension.

20 Q All right. And what, if any, directives are
21 contained in your May 29th letter to Mr. Bauer in terms of
22 things he needs to do?

23 A I talked about I'd requested from him a second
24 opinion, and I asked that he have Dr. Gay submit a
25 statement to me on or before the 16th. "Dr. Moss is asking

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1 you to schedule an appointment and present this written
2 report to me in my office by June 2nd, 2014. Once you
3 present this documentation, we will inform you of all
4 charges against you. At that point, we will move to
5 resolve your suspension. If you do not appear for a
6 meeting with me on Monday with your documentation, Dr. Moss
7 will proceed with a recommendation for your termination."

8 Q And in addition to your letter to Mr. Bauer dated
9 May 29th, 2014, do you know if Dr. Moss communicated to Mr.
10 Bauer regarding the directive to meet with you?

11 A If I can remember correctly, he did, yes.

12 Q All right. Ms. Walton, did Mr. Bauer ever meet
13 with you following your February 11th, 2014, meeting?

14 A He did not.

15 Q Did Mr. Bauer --

16 MR. BAUER: I object. Incorrect date.

17 (LIVE discussion begins.)

18 CHAIRMAN EVANS: Go ahead, Mr. Bauer.

19 MR. BAUER: Same -- same argument as before.

20 We met on March the 5th. But I will present the
21 evidence, if you wish, at my own testimony. I have
22 written documents from Ms. Walton referring to the
23 March 5th meeting. So it's just a date thing.

24 CHAIRMAN EVANS: Okay. We'll note the
25 objection --

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1 MR. BAUER: But I -- yes.

2 CHAIRMAN EVANS: -- and renew it again
3 during your testimony.

4 MR. BAUER: That's fine.

5 (VIDEO testimony resumes.)

6 BY MR. WILLIAMS:

7 Q Okay. Did Mr. Bauer ever provide you with
8 evidence that he had been seen and evaluated by Dr. St.
9 John Gay?

10 A He did not.

11 Q Did you ultimately make any recommendations to
12 the superintendent regarding Mr. Bauer's continued
13 employment with the district?

14 A I did.

15 Q And what was your recommendation to the
16 superintendent?

17 A I recommended that Mr. Bauer's employment with
18 Beaufort County School District be terminated.

19 Q What was the basis of that recommendation?

20 A I had two reasons: the incident on February 5th,
21 and Mr. Bauer's inability to understand the severity of it;
22 and then Mr. Bauer's -- secondly, Mr. Bauer's manner in
23 which he handled us trying to resolve his situation,
24 refusing to meet, refusing to provide documentation.

25 Q Okay. Has anything occurred since May 29th that

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1 would change your recommendation?

2 A No.

3 MR. WILLIAMS: All right. Thank you for
4 answering my questions. Please answer any questions
5 that Mr. Bauer might have for you.

6 THE WITNESS: Okay.

7 CROSS-EXAMINATION

8 BY MR. BAUER:

9 Q Okay. During my questioning, please do not say
10 the name of any child, and if anyone does see the name of a
11 child on a document produced, please let me know and
12 obliterate. When this testimony is seen, I think the Board
13 will have already heard my defense of your accusations. I
14 may get to those subjects with you, as well, but I wish to
15 address some other issues.

16 If you knew, Ms. Walton, that my folder of
17 questions for you had been leaked in any way, would you be
18 ethically bound to reveal that?

19 A Your folder of questions?

20 Q Yes. My questions here, if it had been leaked in
21 some way, sent through, accidentally, through an email,
22 would you be ethically bound to reveal that?

23 A I'm not sure I understand the question. I don't
24 -- I don't understand your question.

25 Q Okay. Do you feel that, if my folder of

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1 questions here had been leaked, somehow, if it had gotten
2 out, and you became -- or you came across it, would you be
3 ethically bound to reveal that to us today?

4 A So are you asking -- and this is for
5 clarification.

6 Q Yes.

7 A You're asking me, if someone gave me your folder,
8 would I --

9 Q If you --

10 A -- be ethically bound to tell you --

11 Q Yes.

12 A -- that I have your folder?

13 Q Okay.

14 A I would think, yes.

15 Q A couple of -- before I get to some of the
16 questions that I have written out, prior to this, I want to
17 ask you some questions regarding the questioning from Mr.
18 Williams. Are you sure of the date of February 6th, 2014,
19 that we met?

20 A I would say pretty sure, and I checked, and I
21 verified with my calendar. So, if there is a discrepancy,
22 maybe a day here or there.

23 Q Is it possible that you and I might have met on
24 February 7th at your office?

25 A That is possible.

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1 Q Okay. Just you and me, one on one in your
2 office, on Friday, February 7th?

3 A Yes, that is possible.

4 (WHEREUPON, a document was marked as
5 Defendant's Exhibit Number 2 for Identification to the
6 Walton Deposition.)

7 BY MR. BAUER:

8 Q Okay. Are you sure that this is the roll book
9 that I showed you? It's Exhibit Number 2.

10 A It looks like the roll book, yes.

11 Q Do you remember a plastic binder of computer
12 printouts that I provided to you on February the 11th at a
13 meeting with Ms. McAden?

14 A I remember a plastic binder. I don't remember
15 you providing them to me, because I did not keep them, but
16 I do remember what you got from your truck.

17 Q Do you remember the printouts? Were they
18 computer printouts?

19 A There were -- and I can't specifically recall,
20 but there were documents in that binder.

21 Q Could they have come from PowerSchool?

22 A I don't remember.

23 Q Okay. Did we meet on March 5th -- yeah, March
24 5th, 2014?

25 A I don't remember.

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1 Q Okay. All right. Let's get to some of the
2 questions I had previously written out, prior to the
3 testimony today. On February 5th, 2014, did you give your
4 address as 14 Sea Port or Sea Front Lane, and that you had
5 lived there since 1974?

6 A That is my address. I have lived there since
7 1974.

8 Q Okay. Do you commute to work every day from
9 Hilton Head?

10 A Yes.

11 Q That's a long drive. Have you lived anywhere
12 else since 1974?

13 A No, I have not. Permanently, no.

14 Q Permanently. Okay. But you do receive your --
15 you receive your email or -- yeah, I'm sorry, your mail at
16 Sea Front Lane?

17 A I do not.

18 Q Do you use any other non-working mailing address?

19 A I use a post office box.

20 Q Do you use P.O. Box 5178?

21 A I have used that P.O. box number since 1974,
22 because when I moved to Hilton Head --

23 Q Uh-huh.

24 A -- there was no mail delivery, so I had to have a
25 post office box.

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1 Q Wow. Do you own property at 5 First Street,
2 Burke Beach?

3 A 5 First Street has transformed into 14 Sea Front
4 Lane.

5 Q Ah-hah.

6 A It was first 5 First Avenue, then it was 5 First
7 Street, then it became 14 First Street, and now it's 14 Sea
8 Front Lane.

9 Q Ah, okay. Great. Thank you. Did you list 5
10 Park Street? Is that --

11 A First --

12 Q No -- there's no 52 -- You've never lived at 5 Park
13 Park Street?

14 A No, Mr. Bauer.

15 Q 14 Anchorage Point?

16 A No, Mr. Bauer.

17 (VIDEO portion redacted during
18 LIVE discussion that follows.)

19 CHAIRMAN EVANS: Okay. We'll sustain that.
20 We will -- it will be struck from the record.

21 (Redacted discussion of related exhibits.)

22 CHAIRMAN EVANS: Well, I will say that Mr.
23 Duff and I reviewed these during the break, and I will
24 sustain your objection. They need to be struck.

25 MR. WILLIAMS: Thank you.

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1 (Brief recess to redact exhibits.)

2 CHAIRMAN EVANS: Okay. And we're ready to
3 proceed with the video?

4 MR. WILLIAMS: Yes. Yes, sir.

5 CHAIRMAN EVANS: Mr. Bauer?

6 MR. BAUER: Yes.

7 CHAIRMAN EVANS: Thank you.

8 (VIDEO testimony resumes.)

9 BY MR. BAUER:

10 Q All right. Do you know if school board minutes
11 are public?

12 A They are public.

13 Q Do you know if there's a requirement the board
14 minutes be public --

15 A Yes.

16 Q -- on the website?

17 A Yes.

18 Q And is there a law? Is that the law?

19 A I think it is. Yes, I think it is.

20 Q Now, if the Board removed already published
21 minutes, would this be a violation of the law?

22 A I don't -- I can't answer that question. I don't
23 know for sure.

24 Q Okay. Because I noticed the Board removed the
25 minutes from March 17th, March 25th, March 31st, 2015, from

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1 its April 7th, 2015, meeting.

2 MR. WILLIAMS: Mr. Bauer, I would object.

3 As part of cross-examination --

4 MR. WILLIAMS (LIVE): You can just let it
5 play, Mr. Chair. I think my objection is clearer as
6 you allow the tape to play.

7 CHAIRMAN EVANS (LIVE): Okay. Go ahead.

8 MR. WILLIAMS: -- you may ask questions.
9 You can't make statements. So that -- my objection
10 would be --

11 MR. BAUER: Okay.

12 MR. WILLIAMS: -- you're testifying, as
13 proposed to asking a question.

14 BY MR. BAUER:

15 Q Do you remember that my attorney at the time,
16 Lauren Martel, asked to have your deposition in your
17 building where you would have access to any materials that
18 were asked for?

19 A She did not ask me. I don't remember her asking
20 me.

21 Q Did you decline holding your deposition in
22 Beaufort?

23 A I don't -- I did not schedule my deposition.

24 Q Were you asked to bring your laptop so that you
25 might have access to information?

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1 A She did not ask me to bring my laptop.

2 Q Did your attorneys ask you to bring your laptop?

3 A To bring my laptop? No, my attorneys did not ask
4 me to bring my laptop.

5 Q Do you remember promising to provide certain
6 things during your deposition that you did not have
7 available at the time?

8 A I remember my attorneys saying that they would
9 provide any information that Ms. Martel requested during
10 the deposition.

11 Q Do you remember that you promised to provide the
12 green receipts from your certified mailings?

13 A I don't remember that, specifically.

14 Q Do you know why my attorney asked for those?

15 A No, I don't.

16 Q Okay. Frankly, it mystified me, as well, that
17 she asked. Do you suppose it had possibly something to do
18 with being a contrast to Dr. Moss -- Dr. Moss' method of
19 communicating?

20 MR. WILLIAMS: I would object to the extent
21 you're asking her --

22 CHAIRMAN EVANS (LIVE): Okay.

23 MR. WILLIAMS (LIVE): Again, I'm fine with
24 the tape playing, because I state what my objection
25 is.

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1 CHAIRMAN EVANS (LIVE): Okay. Go right
2 ahead.

3 MR. WILLIAMS: -- essentially, if she knows
4 why your attorney asked a particular question.

5 MR. BAUER: Okay.

6 BY MR. BAUER:

7 Q Okay. Apparently, Dr. Moss had been authorized
8 by the Board to issue charges in this case, but do you
9 believe that he issued the charges at least four days
10 prematurely?

11 A Will you clarify that for me?

12 Q Apparently -- well, Dr. Moss has been authorized
13 by the Board to issue charges in this case. Do you think
14 it's possible that he might have issued the charges four
15 days prematurely?

16 MR. WILLIAMS: And I -- to the extent you're
17 making a statement, I would object. Again, you're
18 free to ask her any question.

19 MR. BAUER: Um-hum.

20 THE WITNESS: I'm still unclear as to what
21 you want me to answer.

22 BY MR. BAUER:

23 Q Okay. We'll go to the next question. Did Dr.
24 Moss send my charges, non-itemized, in prose form, by
25 email?

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1 A Are you referring to a specific email?

2 Q Yes. May 29th.

3 A I would have to look at that email. I can't
4 remember that email.

5 Q Would you have done it that way? Would you have
6 sent charges by email?

7 A I'm -- I'm sorry. I'm not trying to be vague,
8 but I'm really not understanding what you want me to
9 answer.

10 Q Dr. Moss sent the charges of my case to me by
11 email; not certified letter, just email. Would you have
12 done it also that way --

13 A Well --

14 Q -- if you were the superintendent?

15 A Well, first of all, I can't send charges, because
16 that's out of my purview of responsibility. Only the
17 superintendent can list charges.

18 Q Correct. But if you were superintendent, would
19 you do it that way?

20 A I think you're asking me a question that I would
21 have to make a subjection to (sic).

22 Q All right. You said that you would provide
23 specific copies of the policies that authorized the
24 superintendent to terminate continuing contract teachers
25 without a hearing. Did you do that?

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Witness: Walton Beaufort, South Carolina

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1 MR. WILLIAMS: I object to form, but you can
2 answer if you know.

3 THE WITNESS: Okay. I -- honestly, I don't
4 remember. I know that I pulled things together after
5 the deposition, and I cannot tell you specifically
6 what those things were.

7 BY MR. BAUER:

8 Q Okay. Did you provide the names of all teachers
9 in the district that had been put on leave or terminated in
10 the past three years?

11 A Did I provide them to whom? To you?

12 Q Yes.

13 A I provided them to your -- to my attorney.

14 Q You were asked to provide an up-to-date resume,
15 and I don't need to see that. Did you provide that?

16 A I did.

17 Q Okay. You made your plans for your trip back in
18 November. Is that when you informed the district that you
19 would be gone from April 25th to May 8th?

20 MR. WILLIAMS: Objection of relevance, but
21 you can answer.

22 THE WITNESS: I informed the district.

23 BY MR. BAUER:

24 Q When did you inform the district?

25 A I don't recall when.

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1 Q Okay.

2 A But I can't leave for an extended period of time
3 without permission. So, at some point, I informed my
4 supervisor, who would be Dr. Moss.

5 Q When you and the attorneys asked the Board to
6 schedule this hearing, did you tell them about your trip?

7 MR. WILLIAMS: Object. Object again to
8 relevance and to assuming that she, in fact, was
9 involved in asking the Board for a hearing.

10 THE WITNESS: And your question is?

11 MR. JOHN BAUER: And if you could just speak
12 up a little more, it's hard for me to hear.

13 BY MR. BAUER:

14 Q My question is, when you and the attorneys asked
15 the Board to schedule this hearing, did you tell them about
16 your trip?

17 MR. WILLIAMS: Same objection.

18 THE WITNESS: Well -- same objection. I
19 don't schedule hearings for the Board. I'm not a part
20 of their discussion of scheduling hearings. I don't
21 have to inform the Board of any of my trips or
22 absences. I inform Dr. Moss, who is my direct
23 supervisor. I work for Dr. Moss, not the Board.

24 BY MR. BAUER:

25 Q I want to go back to one question I was asking

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1 earlier, and this refers to the premature question. The --
2 all right. I'll tell you what. I'm going to strike that.
3 Okay. The following budget questions all have supported
4 evidence.

5 MR. WILLIAMS: Again, you can ask her any
6 question, but you're starting off by making a
7 statement. So, to the extent you're making a
8 statement, I would object, but you're allowed to ask
9 any question.

10 MR. BAUER: Okay.

11 BY MR. BAUER:

12 Q The following budget questions all have supported
13 support evidence. That evidence will be offered
14 presently in subsequent categories. Number one, do you
15 know how all these legal fees are paid for the school
16 district? Legal fees?

17 MR. WILLIAMS: I'd object on relevance, and
18 also --

19 (LIVE discussion begins.)

20 CHAIRMAN EVANS: I'm going to -- yeah, I
21 need to find out something about the relevance of
22 this, Mr. Bauer.

23 MR. BAUER: Just basically --

24 CHAIRMAN EVANS: About legal fees and such.

25 MR. BAUER: -- I think it's all relevant.

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1 It's all part of this whole process. It has to do
2 with my case.

3 CHAIRMAN EVANS: The paying of legal fees?

4 MR. BAUER: I -- yeah. I really don't have
5 anything else to say. I think it's --

6 CHAIRMAN EVANS: Can you explain to us how
7 it's relevant?

8 MR. BAUER: We'd like to know why it's
9 taking I-don't-know-how-many attorneys to work to try
10 and defeat and remove a pro se PE teacher. Why are --
11 why is the school district spending this kind of
12 money?

13 CHAIRMAN EVANS: Well, I don't know whether
14 that's relevant. That's a decision that we get to
15 make.

16 MR. BAUER: But that's why I was asking, but
17 I don't have anything else to say, so you can sustain
18 it --

19 CHAIRMAN EVANS: Thank you.

20 MR. BAUER: -- if you wish.

21 CHAIRMAN EVANS: Is there part of this that
22 we can possibly speed through in the -- I mean, I
23 don't know how long this section goes on about fees
24 and such.

25 MR. WILLIAMS: I'm not certain either. I

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1 can listen to it, as we did with the criminal
2 situation.

3 MR. BAUER: This -- yeah, this -- this is
4 basically what my point of the objection is, that it
5 would flow a lot better, obviously, if we were all
6 here in person, if she could have been here in person.
7 It's just made it very difficult now, because I don't
8 know how far this goes.

9 MR. WILLIAMS: Well, my memory is, she
10 didn't know very much about it. So I don't think this
11 section is very long.

12 CHAIRMAN EVANS: All right. Ms.
13 Cushingberry, just go ahead. Go ahead and roll it.

14 (VIDEO testimony resumes.)

15 MR. WILLIAMS: Objection again on relevance.

16 THE WITNESS: I think that's -- the
17 district's budget is all public information.

18 BY MR. BAUER:

19 Q So you -- do you know the numbers?

20 A No, I don't.

21 Q Do you know how much in legal fees the school
22 district has spent this year?

23 A I do not.

24 Q Are those figures released to the public?

25 MR. WILLIAMS: And just so it's clear, I

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1 have a continuing objection to this entire line of
2 questioning.

3 CHAIRMAN EVANS (LIVE): Just keep rolling
4 through this, please, Ms. Cushingberry.

5 BY MR. BAUER:

6 Q Okay. I couldn't -- let's see. I could not find
7 legal fees or court fees in the budget in this district,
8 nor in Ridgeland, too. Is it possible that it could be a
9 separate fund?

10 A I'm not sure. I couldn't answer that question
11 because that's not my responsibility in the district.

12 Q Do you believe some districts have a kind of
13 insured trust fund for legal proceedings?

14 A I can't speak for other districts.

15 Q Are you aware that my student-to-teacher ratio
16 was over 900-to-1?

17 A No, I'm not aware.

18 Q Does the law specify that the ratio be no more
19 than 500-to-1?

20 A I'm not certain on the law, but I believe it's
21 between five and six hundred-to-one for a physical
22 education teacher.

23 Q Is it true that, due to my credentials and
24 employment history, that my salary could have hired two
25 teachers, solving the ratio problem without raising the

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1 cost?

2 A Can you clarify that for me?

3 Q My salary, due to my credentials and my
4 employment history, with a master's degree, at one time
5 National Board certified, that my salary could have
6 actually hired two beginning teachers, solving the nine or
7 -- 900-to-1 student-to-teacher ratio without raising the
8 cost?

9 MR. WILLIAMS: To the extent you're making a
10 statement and assuming facts that are not in evidence,
11 I would object to that.

12 MR. BAUER: We will provide evidence later,
13 or I will.

14 THE WITNESS: So your question is, if we
15 took your salary --

16 BY MR. BAUER:

17 Q Um-hum.

18 A -- divided it by two, could we pay for two
19 teachers?

20 Q Two beginning teachers?

21 A Two beginning teachers would be 36 times two.
22 Ever however we use those teachers is left up to the
23 district and the principal.

24 Q Does Hilton Head Island Elementary have a history
25 of combining classes instead of using substitutes?

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1 A I am not aware of that, so therefore I couldn't
2 answer that question.

3 Q When combining classes -- actually, I will submit
4 the evidence at -- in the -- later on, when I discuss the
5 substitute policy. Would combining classes to illegal
6 limits save money?

7 A I can't answer that question.

8 MR. WILLIAMS: Continuing objection on the
9 basis of relevance. I'm not sure what you're asking.
10 BY MR. BAUER:

11 Q I'll go on to the next -- are you aware that Mr.
12 Bauer has been denied unemployment compensation?

13 MR. WILLIAMS: And just for clarification,
14 when you say "Mr. Bauer," you're referring to
15 yourself?

16 MR. BAUER: Yes. I'm sorry. I wrote it
17 down like that.

18 BY MR. BAUER:

19 Q But are you aware that I have been denied
20 unemployment compensation?

21 A Yes.

22 Q Were you aware that --

23 MR. WILLIAMS: Objection on the basis of
24 relevance, but you can continue to ask, and she can
25 answer.

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Cross by Bauer

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1 THE WITNESS: Okay.

2 BY MR. BAUER:

3 Q You were not aware on February 5th, 2015, at your
4 deposition, but you are aware of that now, that I was --

5 A Yes, sir.

6 Q Okay. Two twenty-eight. You were shown file 228
7 at your deposition.

8 MR. WILLIAMS: Are you offering this as an
9 exhibit?

10 MR. BAUER: Yes. Yes.

11 MR. WILLIAMS: Okay. Since it's related --
12 we'll allow the court reporter to mark it, but since
13 it's related to my objection on relevance, I'd object
14 to the document, as well. But we will -- certainly,
15 it will be admitted for purposes of the --

16 (LIVE discussion begins.)

17 MR. WILLIAMS: If I could be heard on this
18 particular document, Mr. Chair?

19 CHAIRMAN EVANS: Go ahead.

20 MR. WILLIAMS: It's -- this document that
21 was being offered through the witness is something
22 that is from the unemployment commission regarding Mr.
23 Bauer's unemployment claim, and that's something about
24 which the district has no control. So I don't know
25 what the relevance of this document being offered in

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1 this hearing or proceeding would be.

2 MR. BAUER: The relevance is -- referred to
3 is where the unemployment office got the information
4 that I was negligent, unprofessional behavior, severe,
5 gross misconduct -- no, you have to be submissive. I
6 was trying to find out who provided this type of
7 information to them, and I assume that possibly Ms.
8 Walton, who's head of human resources, would have
9 provided this information to the department of
10 unemployment.

11 MR. WILLIAMS: And, again, the position
12 would be, the unemployment process and this hearing
13 process are two separate processes altogether. So I
14 don't see what the relevance of asking questions about
15 unemployment compensation would be in this proceeding.

16 MR. BAUER: Okay.

17 (Board converses silently.)

18 CHAIRMAN EVANS: I'm going to sustain your
19 objection. My understanding and, I think, everyone's
20 understanding about this process is, the employer is
21 asked why somebody was separated, and they provide
22 information. It comes from the employer, in a broad
23 sense, not a specific person, and then how the
24 department of employment deals with that is nothing
25 that we -- that the employer controls.

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MR. BAUER: Understood.

CHAIRMAN EVANS: Go ahead, Ms. Cushingberry.

(VIDEO testimony resumes.)

MR. WILLIAMS: -- deposition.

(WHEREUPON, a document was marked as
Defendant's Exhibit Number 1 for Identification to the
Walton Deposition.)

BY MR. BAUER:

Q Would you read the part --

(LIVE discussion begins.)

CHAIRMAN EVANS: Excuse me. Are we going to
pursue this about the decision by employment security?

MR. WILLIAMS: I'd like to fast-forward.

Based on the -- based on the Chair's ruling, the
Board's ruling, I'd like to fast-forward through this
portion.

CHAIRMAN EVANS: If we can.

(Brief recess.)

CHAIRMAN EVANS: Mr. Bauer, I want you to be
-- I want to make sure that, as we resume, that you
don't feel that we've skipped over anything important,
but only the piece that dealt with this specific
issue.

MR. BAUER: Yes. Thank you for asking. If
I feel that something is important, I'll let you know,

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1 but --

2 CHAIRMAN EVANS: Okay. Thank you. Go
3 ahead, Ms. Cushingberry.

4 (VIDEO testimony resumes.)

5 BY MR. BAUER:

6 Q Did you testify on February 5th, 2015, that Mr.
7 Bauer deliberately left a child at the Island Rec Center?

8 MR. WILLIAMS: Objection. Did you say 2015?

9 MR. BAUER: Yes, 2015.

10 MR. WILLIAMS: Okay.

11 BY MR. BAUER:

12 Q Did you testify at your deposition on February
13 5th, 2015, that Mr. Bauer deliberately left a child at the
14 rec center?

15 A Did I say "deliberately," or did I say you left a
16 child at the rec center?

17 Q "Deliberately."

18 A I don't remember "deliberately," but I did say
19 you left a child at the rec center unattended.

20 Q Okay. Actually, here's what you said, or
21 actually, this -- Ms. Martel asked, "Did he willfully
22 violate any rules and regulations?" And your answer was,
23 "I would have to say yes." Then she asked, "So you're
24 telling me that he willfully violated rules?" And your
25 answer was, "Yes. He left a child behind, away from

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1 campus."

2 A Okay.

3 Q Does "willful" mean on purpose or deliberate?

4 A Yes, it does.

5 Q Okay. Because you called it willful, have I lost
6 benefits, including unemployment compensation, and my
7 teaching certificate; and all that that implies?

8 MR. WILLIAMS: Are you done with the
9 question?

10 BY MR. BAUER:

11 Q Because you've called it willful, have I lost
12 benefits, including unemployment compensation, and anything
13 else it implies?

14 MR. WILLIAMS: And I'd object to the
15 question to the extent you're asking her a question
16 that she doesn't control, for an agency that she does
17 not control.

18 BY MR. BAUER:

19 Q When you testified that three years of emails --
20 at your February 5th, 2015, deposition, when you testified
21 that three years of emails would equal 6,000, was that an
22 exaggeration?

23 A I believe that was a guesstimate.

24 Q Okay. Would it surprise you that the actual
25 number was 1,081?

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1 MR. WILLIAMS: Object to relevance, but you
2 can answer.

3 THE WITNESS: No, it wouldn't surprise me.

4 BY MR. BAUER:

5 Q When you testified that 95 percent of teachers
6 you send to a psychiatrist are returned to their jobs and
7 then changed it to more than 95 percent and then gave the
8 example as four out of five, was that an exaggeration?

9 A It was not intended to be an exaggeration.

10 Q Was claiming that Mr. Bauer left a child behind
11 willfully an exaggeration?

12 A No, it was not.

13 Q Has that word, "willfully," caused damage that
14 cannot just be calculated in some dollar figure?

15 MR. WILLIAMS: I'd object to the
16 appropriateness and the relevance of that question.

17 BY MR. BAUER:

18 Q Has that word, "willfully," caused damage that
19 cannot just be calculated in some dollar figure?

20 MR. WILLIAMS: Same objection.

21 THE WITNESS: Do I answer?

22 MR. WILLIAMS: If you know.

23 THE WITNESS: I don't know.

24 BY MR. BAUER:

25 Q Have there been a number of problems this year

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1 with children on wrong buses?

2 A I can't answer that.

3 MR. WILLIAMS: I object to relevance, but if
4 you know --

5 THE WITNESS: Okay. I can't answer that.

6 BY MR. BAUER:

7 Q Was there a highly publicized case of children
8 being left on the bus and the bus driver leaving?

9 A I'm not familiar.

10 MR. WILLIAMS: Same objection.

11 MR. BAUER: Okay. This goes to competence
12 of one of the complainants and equal treatment.

13 BY MR. BAUER:

14 Q All right. Have there been other unpublicized
15 serious cases?

16 A I can't answer that question.

17 Q If one of the deponents described several such
18 events, who would look into that? Bus incidents?

19 A As it relates to Beaufort County?

20 Q Yes. Who would be in charge of looking into
21 those serious accusations by one of the deponents?

22 A Our student services officer.

23 Q Is an assistant principal responsible for bus
24 protocol or -- yeah, in general?

25 MR. WILLIAMS: Same objection on the basis

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1 of relevance, but you may answer if you know.

2 THE WITNESS: At the school level, yes.

3 BY MR. BAUER:

4 Q Who was in -- do you know who was in charge of
5 bus protocol at Hilton Head Island Elementary?

6 A I do not.

7 Q Okay. Going to the employment and dismissal act,
8 are you familiar with the Teacher Employment and Dismissal
9 Act?

10 A Yes.

11 Q On February 5th, 2015, when asked about the
12 Teacher Employment and Dismissal Act, you testified, quote,
13 I am not aware of the teacher act. Was that a
14 misunderstanding?

15 A Yes.

16 Q Okay. Are you now aware of the Teacher
17 Employment and Dismissal Act?

18 A Yes.

19 Q Do you think the members of the School Board know
20 the Teacher Employment and Dismissal Act?

21 A I don't think I could answer for the School
22 Board.

23 Q When district policy conflicts with federal law,
24 which prevails?

25 A Federal law.

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1 Q Here is an exchange that you had at your
2 deposition. The question was, "If policy conflicts with
3 state law, what happens?" Your answer, "I don't know. I
4 don't know." Then you were asked, "Do you think that -- do
5 you think this is something that you should look into
6 pretty quickly to mitigate any damages?" You said, "No,"
7 pause -- and then a pause. Were you asked that, if you
8 found that your policies were in violation of law, would
9 you inform Dr. Moss?

10 A You're asking me if I was asked that question?

11 Q Yeah. Were you asked that, if you found that
12 your policies were in violation of law --

13 A I don't remember.

14 Q -- would you -- do you remember your first
15 question -- answer to that question was, "If I knew that
16 the district was in violation of the law, I would make a
17 recommendation to Dr. Moss. If I knew we were in
18 violation, I would not"?

19 MR. WILLIAMS: And is your question does she
20 recall that?

21 BY MR. BAUER:

22 Q Yes. Do you remember that as being your --

23 A No, I don't.

24 Q It's from page 108, line 8. Are you aware that
25 the Board voted nonrenewal of my contract on April 1st,

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**Witness: Walton
Cross by Bauer**

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