

1 POCONO MOUNTAIN SCHOOL DISTRICT BOARD OF DIRECTORS

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3 In re: Pocono Mountain Charter School

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5 Transcript of proceedings held in the
6 above-captioned matter before the Pocono Mountain School
7 District Board of Directors, Administration Building,
8 Swiftwater, PA on Monday, February 8, 2010, 10:08 a.m.

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10 HENRY E. BOCKELMAN, President
11 RICK SMITH, Member
12 WILLIAM FORTE, Member
13 RANDY POLINSKI, Member
14 MEG DILGER, Member
15 DOROTHY SIROLLI, Member
16 JEFFREY D. LITTS, ESQ., Solicitor

17 - - -

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1 PROCEEDINGS

2 Monday, February 8, 2010

3 - - -

4 MR. LITTS: Let's go on the record. Good

5 morning. Today's Monday, February 8th. We are reconvening

6 this hearing with regards to the proposed revocation of the

7 Pocono Mountain Charter School charter. If I could start

8 from my immediate right, we can identify school board

9 members that are present.

10 MR. POLINSKI: Randy Polinski.

11 MR. FORTE: Bill Forte.

12 MR. BOCKELMAN: Henry Bockelman.

13 MR. SMITH: Rick Smith.

14 MR. LITTS: Prior to convening today, Counsel
15 and myself met at the conclusion of the last hearing session
16 to discuss presentation of Special Education records and
17 we've worked out a system whereby we won't be referring to
18 students by numbers and trying to avoid personally
19 identifying information to the extent possible to try to
20 protect the privacy of those students and I commend Counsel
21 for engaging in that process.

22 So, with that, the administration can reconvene
23 the direct examination of Dr. Gustafson.

24 MS. SCHURDAK: Thank you.

25

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Gustafson - Direct 898

1 DR. MARY BETH GUSTAFSON, having been duly sworn
2 according to law, testified as follows:

3 DIRECT EXAMINATION BY MS. SCHURDAK:

4 Q Dr. Gustafson, good morning. You're still
5 under oath from a week ago Tuesday and I believe you had
6 already been qualified as an expert and we were starting to
7 get into some testimony.

8 I'm going to ask you to start with Student No.
9 1 and tell me, first of all, what records have you reviewed?

10 A I reviewed records that we received from the
11 charter school. This particular student actually had been
12 in our district quite a few years, since '02, and I had
13 reviewed the records from our district as well as the
14 current records that we received from the charter school on
15 this student.

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16 Q I'm going to stop you for a moment just for
17 clarification. Student No. 1 attended the school district
18 and then went to the charter school.

19 A Yes.

20 Q Okay. Proceed.

21 A This student was found eligible for Special
22 Education services, specifically in the area of math, back
23 in 2002, had a discipline incident at the charter school,
24 and withdrew from the charter school in the Fall of '07,
25 and enrolled in the Pocono Mountain School District in the

Gustafson - Direct

899

1 Fall of '07 at the same time.

2 Q Okay. And can you describe the process in
3 obtaining records from the charter school?

4 A Actually, this was the first student that
5 really alerted me that we may be having some difficulty
6 receiving records from the charter school and upon -- it's a
7 requirement by law that any student transferring from one
8 public agency to another public agency, that those records
9 are transferred, the educational records are transferred,
10 including any Special Education record, within 10 days of
11 the school notification that that child is going to another
12 school district or another public agency, and the school
13 notified me through the process of speaking with this child
14 that there had been a discipline incident at the charter
15 school and was I aware, did I know anything about this
16 student, so I called the charter school. At that time we
17 didn't have any discipline records, the Special Ed. records
18 were minimal, and we did not receive a complete file; there
19 weren't discipline records in there.

20 So, I called the charter school and I spoke

21 with Mr. Severs, who was the principal at the time, and
22 inquired about the student and Mr. Severs indicated that
23 basically the student was a follower and not a leader and I
24 further asked more questions about the student, were there
25 any discipline concerns.

Gustafson - Direct

900

1 In addition to my contact with the charter
2 school our counselor had made contact and basically received
3 the same information.

4 MR. FENNICKE: I'm going to object to. That's
5 double hearsay, I believe. I think it's a little beyond the
6 scope of an administrative hearing.

7 MR. LITTS: Overruled.

8 MS. SCHURDAK: Thank you.

9 Q You may proceed.

10 A So, having received the same information,
11 that the student was really a follower and not a leader,
12 and that's about all we had gotten. So, I probed further,
13 asked a little bit further, and did get more information.

14 In the meantime, I said, "We're really
15 concerned about this student. I'll come up and pick up
16 records. Could you please gather those records?" So, I
17 personally actually went to the charter school after not
18 receiving records from them and picked up a packet from
19 Mr. Severs and he said, "This is everything," and I went on
20 my way.

21 When I reviewed the records I noticed that the
22 student was actually exited from Special Education and found
23 to no longer need Special Education services. Interestingly
24 enough, the reevaluation report indicated that the student
25 no longer received these services at the same time this

Gustafson - Direct
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901

1 discipline issue took place.

2 Q I want to stop you for a moment and break this
3 down a little bit. First of all, are discipline records
4 normally part of educational records?

5 A Yes.

6 Q And did you send any written correspondence to
7 anyone at the charter school regarding Student No. 1?

8 A I did. I also spoke with a parent.

9 MR. FENNICK: Objection. This is
10 non-responsive. The answer was yes.

11 MR. LITTS: Overruled.

12 Q Let's deal with written communication first and
13 if you point -- I'm sorry, I'm going to have to give you the
14 tab number. Joint Exhibit 14 in the record which I believe
15 is Tab No. 20.

16 MR. LITTS: Correct, it is Tab 20.

17 Q Do you recognize this document, Dr. Gustafson?

18 A I do.

19 Q And what is it?

20 A This is a letter that I wrote to Mr. Severs and
21 I hope I'm saying his name correctly.

22 MR. FENNICK: Severs, actually.

23 MS. SCHURDAK: We were unsure.

24 A Thank you. Mr. Severs. Just summing up our
25 conversation that we had on the phone and to notify him of

Gustafson - Direct 902

1 some concerns I had about the records after I had reviewed
2 them. I did note that I picked up the records personally,
3 also.

4 Mr. Severs did indicate on the telephone that
5 the student was validated out and then he said the student

6 was decertified and no longer a Special Education student.
7 So, I just summarized that conversation with Mr. Severs and
8 then I also went in to talk about some concerns I had with
9 the information.

10 In the job that I do it's very difficult for me
11 to remember everything, so I write a lot of summary letters
12 whether it's to parents of meetings, phone conversations,
13 just so that I can keep track of information that I have
14 discussed with people and so that there's no
15 miscommunication in terms of what's said or what transpired.
16 So, this letter serves a multitude of reasons of why I wrote
17 it.

18 Q In terms of the process in exiting a child from
19 Special Education services, before getting into particulars,
20 can you tell me what the law requires about the process?

21 A If you're going to change a child's placement,
22 and that would be considered a change of placement when
23 you're thinking of exiting the child or dismissing or
24 finding the child no longer eligible for Special Education
25 services because you're going from a placement of Special

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Gustafson - Direct 903

1 Education to regular education programming, that requires a
2 very extensive reevaluation process.

3 During that reevaluation process all the
4 information that is generated is compiled into a
5 reevaluation report. Part of that process, if you're
6 looking at determining a student's eligible for Special
7 Education services, there are 10 questions that have to be
8 answered at the end or you can incorporate within your
9 report. That would include are there any physical
10 disabilities, medical disabilities, what about vision,
11 hearing, how did the student respond to any kind of

12 interventions, how does the student do on standardized
13 testing, how does the student do with curriculum-based
14 assessment, what's that student's progress towards any
15 annual goals in that student's IEP.

16 So, you're looking -- is there an observation
17 conducted in the learning environment. So, you're looking
18 at -- language proficiency. So, the reevaluation process
19 encompasses quite a bit. Specifically, is that child making
20 progress and is that progress towards that child's annual
21 goals as outlined in the IEP, the current IEP. Teacher
22 input, parent input, sometimes the child will require a new
23 cognitive test to determine the IQ of the child. Certainly,
24 updated achievement testing.

25 Q And with Student No. 1 was this done?

Gustafson - Direct

904

1 A There were parts of that evaluation that were
2 not included in there. Specifically for this child, the
3 concern was in reviewing the records that we did get the
4 inconsistency in grades. The child had failed certain
5 subjects; specifically, math, science.

6 Q And what does that indicate to you if there's
7 failing grades in one or two subject areas?

8 A Then they're not making progress on grade level
9 standards and within the grade level curriculum. Does it
10 always mean that the child isn't putting forth effort? I
11 mean, there are other factors, certainly, that you look at,
12 but that's why you're observing in the classroom and you're
13 talking to teachers and you're talking to parents. So,
14 it's not a single measure. It's not a single measure in
15 achievement tests, it's not a single -- you're looking at a
16 multitude of instruments to look at if that child is making

17 progress or not making progress.

18 So, certainly that was a concern when I looked
19 at the grades and saw that the child was actually exited
20 from Special Education services.

21 Q Does the law require any kind of progress
22 reports?

23 A Yes.

24 Q Tell me what progress reports are.

25 A There's progress reporting and there's progress

Gustafson - Direct

905

1 monitoring.

2 Q What's the difference?

3 A Progress monitoring with the outline in the
4 student's IEP in terms of how often, at what intervals
5 you're going to determine progress of the student.

6 Let's take reading fluency, okay? We measure
7 reading fluency, and most school districts do, using a test
8 called the DIBELS test, diagnostic test of basic skills, so
9 we would look at the reading fluency of the child.

10 If a child's baseline, the IEP goal -- we
11 determine the baseline to be 52 words per minute and we want
12 the child's goal to be 152 words per minute, and I'm not
13 sure, I don't have the chart with me to determine what that
14 is at grade level, but you are checking that child at
15 intervals and checking that child's fluency level as you're
16 teaching the skills on fluency and decoding and you're
17 measuring that based on their progress towards those goals.

18 So, that's progress monitoring. Some students
19 may require it every two years, some -- I mean, every two
20 weeks, some students may require it once a month. It
21 depends on the individual student.

22 So, the law requires that you take that

23 information and report that information to parents at least
24 the same amount of time that you would report it for a
25 regular ed. student. Typically it's during report card,

Gustafson - Direct 906

1 every quarter, districts will send out their progress
2 monitoring reports to the parents. It actually is outlined
3 in an IEP what you're going to do, how often you're going to
4 monitor that progress, your method of reporting it to the
5 parents, and the results of that progress monitoring.

6 Q With Student No. 1 was there an IEP for the
7 student in the file that was transmitted to you?

8 A No, I did not see an IEP.

9 Q Are there any requirements for what I would
10 call a receiving public entity regarding the continuing
11 level of services? And I don't know if I'm clear, so let me
12 give you an example.

13 With Student No. 1 I think you had testified
14 Student 1 had attended the district, went to the charter
15 school, had been identified by the district as having and
16 qualifying for Special Education services. Is there any
17 requirement about what the receiving public entity should
18 do under those circumstances?

19 A Right. The law requires that when a student
20 comes into Special Education services that the district
21 provide a comparable program.

22 Q Is that true of charter schools as well?

23 A Yes.

24 Q Okay.

25 A So, the district would come in -- the student

Gustafson - Direct 907

1 would come in with indications of Special Education

2 services, a current IEP, an evaluation report. We look to
 3 see what that student's educational placement was or is in
 4 that there's -- it's outlined in the IEP that Student was
 5 receiving Special Education services by the Learning Support
 6 teacher in the area of math, Student was receiving Special
 7 Education services in a regular education classroom with
 8 support from the Learning Support teacher in the area of
 9 Reading and Language Arts. So, it's clearly outlined what
 10 that support would be.

11 Now, for a public schools, districts, the --
 12 we go by itinerant, supplemental, part-time programming.
 13 For charter schools they're not held to the caseload or
 14 those classification. So, you have to put the child in a
 15 comparable program.

16 Q Did the charter school do that for Student No.
 17 1?

18 MR. FENNICK: I'm going to object. She left
 19 the charter school and came to the school district. The
 20 question presumes facts that are not in evidence.

21 MR. LITTS: There was testimony earlier that
 22 the student was enrolled in Pocono Mountain School District
 23 in 2002 and at some point in time enrolled in the charter
 24 school. So, there are facts in evidence.

25 MR. FENNICK: Well, I'm sorry, maybe I

Gustafson - Direct

908

1 misunderstood the question. Can you just rephrase the
 2 question? Because I thought you were asking did the charter
 3 school after she arrived at the district.

4 MS. SCHURDAK: No, no.

5 Q I'm saying when Student 1 was enrolled in the
 6 charter school did Student No. 1 receive services?

7 A It's hard to determine because I didn't see an
 Page 11

8 IEP. I did see an evaluation report that the student was
9 receiving Special Education services. Therefore, they were
10 considering exiting or looking at that program again to see
11 if that child still required those services.

12 Q And the evaluation report, can you define that
13 for everyone in the room? What is an evaluation report in
14 general?

15 A That's what I explained about all those
16 components that you need.

17 Q Okay.

18 A Or reevaluation, depending.

19 Q All right. You mentioned that there's
20 participation in the reevaluation by many different people.
21 What about parents? What role, if any, do they have in this
22 process?

23 A The parents are part of the multi-disciplinary
24 evaluation team. They are also part of the IEP team. The
25 law requires them to be a part of the team and to have a

Gustafson - Direct 909

1 part in making educational decisions regarding services and
2 programming for the student.

3 The document that determines whether they agree
4 or disagree with the recommendations and the results of the
5 evaluation is the Notice of Recommended Educational
6 Placement or the NOREP, we call it. That is the document
7 that signifies the signature of the parent that they agree
8 or they don't agree to the program or to a change in
9 placement or to an educational placement.

10 Q And in this case with Student No. 1 was there a
11 NOREP signed?

12 A No. Oh, yes. I'm sorry, there was.

13 Q As part of your review of the student did you
14 have conversations with Student 1's mother?

15 A I did. After I had spoke with Mr. Severs I had
16 called the mom.

17 MR. FENNICK: I'm going to object. If the mom
18 has something to say that's critical the mom should be here
19 if we're going to talk about services received or not
20 received.

21 MS. SCHURDAK: As an expert witness expert
22 witnesses can rely on hearsay testimony when they give
23 testimony.

24 Additionally, Counsel had decided they were not
25 going to be calling parents because of the confidentiality

Gustafson - Direct 910

1 issues surrounding the students.

2 MR. LITTS: Well, I'm going to overrule the
3 objection and we'll have the testimony.

4 Q You may answer.

5 A I did speak with the student's mother. I did
6 have concerns. Again, after talking with Mr. Severs it
7 wasn't clear to me how the process of exiting her
8 actually --

9 Q Exiting the student.

10 A Yes, and the key to that was the Notice of
11 Recommended Educational Placement that I explained, the date
12 of that was -- well, actually the mom's signature was before
13 the date that that Notice of Recommended Educational
14 Placement was issued. So, I wasn't quite sure.

15 In speaking with the mom, she felt she did not
16 agree with the placement and the recommendation. However,
17 at the time she was concerned with the discipline issues and
18 decided to withdraw her student and go to Pocono Mountain

19 School District.

20 She indicated to me that there wasn't a school
21 psychologist --

22 MR. FENNICK: Can I at least get a date,
23 please, when these conversations had taken place?

24 Q Do you need to review some records,
25 Dr. Gustafson, to refresh your recollection as to the date?

Gustafson - Direct 911

1 A I spoke with Mr. Severs on January 4th, based
2 on my letter, and it was probably right after that or
3 shortly after that I called --

4 Q Within a week?

5 A At least, definitely.

6 MR. FENNICK: I'm sorry, I don't know what
7 conversation -- I was asking about a date for the
8 conversation with the student's mother.

9 A Right, and I referred to January 4th as my
10 conversation with Mr. Severs and shortly after that I called
11 the mom.

12 MR. FENNICK: Thank you.

13 Q Within a week's time frame I think is what the
14 testimony was.

15 A Definitely within a couple days.

16 Q Okay. So, there's an issue over the date of
17 the form.

18 A Right.

19 Q Anything else?

20 A Mom -- in addition to her concerns about the
21 student, she did share concerns about the charter school in
22 general. So, specifically, she felt that students were
23 disciplined differently --

24 MR. FENNICK: I'm going to object. Mr. Litts,
25 we have to put some limit on this. We don't -- now we're

Gustafson - Direct 912

1 talking about other students. We don't know how she knows
2 about those students. This -- there's got to be a limit as
3 to how much testimony she can give based on double, triple
4 hearsay.

5 MS. SCHURDAK: I don't know why it's double,
6 triple.

7 MR. FENNICK: Well --

8 MS. SCHURDAK: But this is an expert witness
9 who is basing her testimony upon a number of different
10 sources, one of which is talking to a parent. One is
11 document review.

12 MR. LITTS: I'm going to overrule the
13 objection. It's a Local Agency hearing. We are permitted
14 to receive hearsay testimony whether it's from an expert or
15 a fact witness.

16 That being said, the board will, obviously,
17 have to review all evidence, whether it be direct or
18 hearsay, and I will be cautioning the board as to the value
19 or weight that we give to anything that constitutes hearsay
20 testimony and we've heard hearsay from both sides and I
21 suspect we'll hear some from the charter school, I should
22 say, and we'll proceed accordingly with caution.

23 So, your objection is overruled.

24 Q Dr. Gustafson, you may continue.

25 A The theme of the conversation was discipline.

Gustafson - Direct 913

1 So, in discussing discipline of her daughter, of the child
2 it was reported to me by Mom that she had concerns about the
3 way students were disciplined; specifically, whether they

4 belonged to the church versus not.

5 MR. FENNICK: Mr. Litts, I'm going to object
6 again. The standard for experts relying on hearsay is
7 whether they customarily rely on that information in forming
8 their opinions. What this witness is doing is saying, "I
9 spoke to one mother who spoke to another mother who was not
10 happy about discipline." There is not a competent expert in
11 the world that is going to judge a school's Special
12 Education performance or discipline of Special Education
13 children by making the assumptions that this witness is
14 making and relying on statements that this witness is
15 relying on.

16 MS. SCHURDAK: At this point in time this
17 witness is only testifying as to Student No. 1. This --
18 wait a second. I did not interrupt you and I will
19 anticipate the same courtesy.

20 This witness right now is only talking about
21 Student No. 1 and has made no global generalizations which
22 will happen, quite frankly, at the conclusion of her
23 testimony, hopefully, today.

24 The board is free to give whatever weight they
25 want to this testimony. This is one avenue that this

Gustafson - Direct 914

1 witness explored in obtaining information as it relates to
2 Student No. 1 for today.

3 MR. FENNICK: It certainly seemed clear to me
4 that she was generalizing. She's talking about what this
5 parent said other parents said to her about discipline of
6 other children.

7 MR. LITTS: Well, Mr. Fennick, I didn't hear it
8 that way. I heard this witness testifying with regard to a

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9 conversation she had with a parent. I didn't hear the rest
10 of it.

11 So, again, I'm going to overrule your
12 objection. That being said, at the end of the day the board
13 has to weigh this evidence and, obviously, in weighing
14 evidence preference, most likely, will be given to direct
15 testimony and the further it gets away into the realm of
16 hearsay Counsel both are aware of the law about the perils
17 of trying to make findings of fact exclusively on hearsay
18 testimony.

19 So, we'll take it under advisement at the time
20 we deliberate with regards to the facts, but I will allow
21 it.

22 MS. SCHURDAK: Thank you.

23 A I do want to be clear in that in this
24 conversation with the parent she only referenced her
25 experience with her child. I did not say anything about a

Gustafson - Direct

915

1 conversation with another parent, she never referenced
2 another parent. This was strictly about her child and her
3 experience related to discipline related to her child.

4 Q And what did she relate to you? I think you
5 were testifying to that when you were cut off with an
6 objection.

7 A She questioned the discipline of students as to
8 members versus non-members.

9 MR. FENNICK: Mr. Litts, the use of the
10 plural --

11 MR. LITTS: Your objection is noted for the
12 record and it's been noted for the record and I have ruled.

13 Q Dr. Gustafson, are there particular issues
14 that need to be addressed when -- I'm sorry, the camera is

15 distracting me behind me.

16 Does the law require anything special to be
17 done in the case of disciplining a student if the student is
18 labeled Special Education eligible?

19 A There's a whole process you have to go through
20 for a student related to discipline of Special Needs
21 students.

22 Q Can you tell me about what the law requires?

23 A Well, it depends on -- if the child has been
24 suspended there's timeline requirements for suspension of
25 students with disabilities. There are manifestation

Gustafson - Direct 916

1 determinations that may -- that need to be held.

2 Q I'm going to stop you there. What is that?
3 What is a manifestation determination?

4 A The team of professionals and the team, IEP
5 team, would reconvene to look at the discipline incident and
6 determine whether that incident was a manifestation of that
7 child's disability. There's two questions that need to be
8 answered relating to was the IEP followed and did this --
9 did the incident have a substantial affect on -- due to the
10 disability of the student.

11 Q Can a public entity take a discipline measure
12 against a student who is Special Ed. and it's determined
13 that the conduct was a result of that student's special
14 needs?

15 A If a manifestation disability is held, meeting
16 is held, and the student is -- it's found that that
17 discipline incident was a manifestation of that student's
18 disability then the IEP team needs to reconvene, look at a
19 behavior plan, perhaps conduct a Functional Behavior

20 Assessment. There's steps to follow. You certainly can't
21 just arbitrarily excel a child or remove a child if it's a
22 manifestation of that child's disability except for weapons,
23 serious bodily injury or drugs.

24 So, if that is not a manifestation -- the
25 incident was not a manifestation of that child's disability

Gustafson - Direct

917

1 then the student can be disciplined in a manner in which you
2 would discipline a regular education student.

3 Q Was there any manifestation determination made
4 with respect to this student?

5 A No, not in the records that I could see,
6 observe, review.

7 Q I think you mentioned that the student
8 ultimately re-enrolled in this school district.

9 A Mm-hmm.

10 Q What did the district do in terms of services,
11 if anything?

12 A The dilemma that we face when students enter
13 into a district, transfer to our district from another
14 district, from a charter school, from another public agency
15 is because the law requires that you place the student in a
16 program that is comparable or comparable to the program the
17 student came from, if we don't have the documentation to
18 support what that program is it's difficult to do that.

19 Mom indicated that she did not agree. However,
20 there was a NOREP signifying that she agreed. And, she
21 subsequently signed a Permission to Evaluate or reevaluate
22 because she wanted the child reevaluated to determine if
23 what the charter school had found was truly warranted, the
24 child taken from Special Education services.

25 So, we issued the permission, got her

1 permission, and we did a complete evaluation on the student.

2 Q And what was the conclusion of that evaluation?

3 A She was found eligible as a student with a
4 specific learning disability, specifically in the area of
5 math.

6 MR. FENNICK: In the area of what?

7 A Math.

8 MR. FENNICK: Math.

9 Q You've heard testimony from witnesses -- well,
10 strike that. Have you been sitting listening to the
11 testimony of witnesses prior to today?

12 A Yes.

13 Q You've heard some testimony regarding class
14 size and the affect on disabilities for children. First of
15 all, do you believe there's a correlation, per se?

16 A No, and there's nothing in the law that
17 indicates class size to be a criteria for whether a student
18 is eligible for Special Education services or not eligible
19 for the Special Education services.

20 Q And my other question is are the types of
21 disabilities that Student 1 suffers from the type that one
22 would grow out of, that would warrant an exiting and no
23 longer a need for Special Ed. services?

24 A Students with Special Education services are
25 provided specially designed instruction. Those are the

1 accommodations, the modifications, the strategies, the
2 interventions that we give students to work with their
3 disability, to compensate for their disability, to
4 understand their disability including self-advocacy.

5 So, does the student grow out of having a
6 disability? Not necessarily. Do they learn to work with
7 the disability? Yes. I can't say that we haven't exited
8 students from Special Education if that evaluation is
9 comprehensive enough. If it contains all the information
10 and that student is making progress certainly that's
11 possible, especially in the area of speech and language
12 because that's an impairment, not necessarily a disability,
13 and then a lot of times when we're looking for at
14 reevaluating a student because the law requires that you
15 provide a continuum of services to the student, that could
16 be anywhere from a student being eligible for Special
17 Education services and maybe is just monitored by their case
18 manager in regular ed. The student checks in periodically,
19 they do the progress monitoring probes, and they are
20 monitoring that student's progress in the general education
21 environment.

22 School districts have co-teaching as a method
23 of services delivery; two teachers in that classroom, a
24 Special Ed. teacher, a regular ed. teacher responsible for
25 evaluating that student, providing the instruction, working

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1 with that student, working with other teachers. That's a
2 service that districts provide.

3 Districts also provide pullout services where
4 the student's in a class of maybe eight to 10 students with
5 just the Special Education teacher in that class delivering
6 the services; maybe for reading, maybe for math, maybe for
7 both, maybe for all subjects.

8 Of course the law requires that students are
9 placed in a least restrictive environment and work their way
10 up to a more restrictive environment if the student

11 definitely needs that and these continuum of services can
12 work all the way up to a residential placement if the
13 student has mental health issues or any kind of issues that
14 would require mental health therapy or counseling services.

15 So, there's a continuum of services that need
16 to be provided.

17 So, again, back to my original statement that
18 it's difficult to program for a student if you don't have
19 all the records that you need. Consequently, the pattern
20 for districts is to reevaluate them coming in if there's a
21 question about the services that have been provided or not
22 receiving the records or whatever the case may be.

23 Q Did you ever receive a response from the
24 principal with respect to your letter that you wrote
25 regarding Student No. 1?

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1 A I did. Mr. Severs did respond back to me.

2 Q And is that Joint Exhibit No. 16, I think Tab
3 22, in the book in front of you?

4 A Yes.

5 Q Did you conclude after reviewing what records
6 that were in your possession regarding Student No. 1 whether
7 or not the charter school complied with the mandates of law
8 with respect to providing services to Student 1?

9 MR. FENNICK: Objection. I know we've been
10 over it, Mr. Litts, I know what your ruling is, but I want
11 to make sure it's on the record that we object to the school
12 district being able to make assessments of the -- of another
13 school's performance in the Special Education area.

14 MS. SCHURDAK: And, for the record, again,
15 refer to the party's charter as well as in re Einstein

16 Academy Charter School, Docket No. CAB-2002-6.

17 MR. LITTS: The objection's noted, but
18 overruled.

19 Q You may answer.

20 A Could you repeat the question?

21 Q Did you make any -- have you reached any
22 opinions as to whether or not the charter school complied
23 with the mandates of the law with respect to Special Ed.
24 services for Student No. 1?

25 A Well, at the time that this student entered our
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1 district it was just prior to the laws for charter schools
2 changing and the laws changing right around July of 2008.
3 So, at that time some of the laws under Chapter 14 didn't
4 apply to charter schools. So, you know, I did want to note
5 that, but I did point out some concerns that I had. There
6 were some proposed guidelines coming out related to the --
7 what I reviewed in the charter school records and I noted
8 that for Mr. Severs specifically -- in the records I
9 received, we received, it didn't indicate a school
10 psychologist.

11 Now, the law requires that there's a qualified
12 team of professionals, the psychologist being the
13 chairperson of the MDE team that can interpret the results
14 of any evaluations that were given, that could explain it to
15 the parents.

16 So, I was concerned who that person was that --
17 in addition, it didn't indicate that in the records that I
18 saw, who any person was that did the evaluation or gave the
19 assessments. So, that was a concern.

20 Q And was there any requirement -- strike that.
21 What about with respect to the production of educational

22 records to the district?

23 A I noted that it was difficult getting the
24 records, I believe, in the first letter to Mr. Severs.
25 Also, the inconsistency in the grades, I did note that.

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1 The long and, I guess, short of it was that
2 Mr. Severs, or Severs, said that we were not obligated to
3 oversee their charter and stop giving my opinions ...
4 actually, just stop.

5 MR. FENNICK: I'm going to object. The letter
6 speaks for itself.

7 MR. LITTS: The witness already answered the
8 question.

9 Q Dr. Gustafson, I want to direct your attention
10 to Student No. 2. First of all, how did you become familiar
11 with Student No. 2?

12 A As I think I explained in my last testimony,
13 and I should have explained this in the beginning, there are
14 many people that are involved in the registration process
15 for students in our district; specifically, the attendance
16 secretary, registration secretary, guidance counselor.
17 We have educational consultants, school psychologists. So,
18 there's a lot of people that are involved in that
19 registration process.

20 The students that we're talking about came to
21 my attention because of the difficulty receiving records.
22 When the guidance counselor has tried numerous times, when
23 the secretary has tried numerous times --

24 MR. FENNICK: Objection. There was no
25 testimony as to this and it is not responsive to the

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1 question which was "How did Student No. 2 come to your
2 attention?"

3 MS. SCHURDAK: I will ask -- this is
4 background, so let me give some more background information.

5 Q Generally speaking, when is it that students,
6 individual students, will come to your attention in your
7 role as assistant superintendent?

8 A Well, for several reasons. One may be they
9 have -- the person inquiring hasn't gotten results from the
10 person that they -- for example, if a guidance counselor is
11 trying to get records from a charter school or another
12 district and they've tried numerous times and they've talked
13 to the Special Ed. supervisor and that's not getting any
14 results then they may come to me and see if they can elicit
15 my help in securing records.

16 If a child's having a discipline problem and,
17 again, it may be a parent calling not getting results, not
18 getting results that the student might come to my attention.

19 So, for these particular students it was
20 difficult getting records and then making sense of what we
21 did acquire.

22 Q For all the students you're testifying about.

23 A Right. This particular student came to my
24 attention --

25 Q Student No. 2.

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1 A Student No. 2 for the reasons I gave above;
2 difficulty getting records -- specifically, this student had
3 a physical -- some physical concerns that were noted,
4 actually, by the principal.

5 Q And for confidentiality reasons I don't want
6 you to get into specifics, but these physical impairments,

7 is this something that a layperson would be able to observe
8 or is this something that you would need to have a trained
9 eye to observe with Student No. 2?

10 A They were obvious physical concerns due to the
11 ability to manage personal belongings, access the
12 environment appropriately. So, pretty obvious.

13 Q Okay. And I may have asked this and if I have
14 I apologize. Is there any legal requirement in terms of
15 timelines of when educational records should be transmitted
16 from one public entity or agency to another?

17 A Generally within 10 days of that agency
18 awareness that the student has transferred to another public
19 agency.

20 Q With Student No. 1 did the district receive the
21 educational records within 10 days?

22 A I can't say if it was within 10 days. What we
23 did receive after several attempts was minimal.

24 Q With Student No. 2?

25 A I'm sorry, I thought you were referring to
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1 No. 2.

2 Q Okay. I for a moment went back to Student No.
3 1.

4 A I'm sorry. In Student No. 1 after going to --
5 personally going to the charter school myself we did receive
6 probably three-quarters of what seemed to be there. Again,
7 no discipline records, there was some things missing.

8 Q With Student No. 2 did you receive the
9 educational records within the 10 calendar days?

10 A I can't say if it's within the 10 calendar
11 days, but what we did receive was minimal.

12 Q And in terms of what you did receive, was there
13 anything to indicate or alert as to this physical
14 impairment?

15 A What we did receive from the charter school
16 was an evaluation report, reevaluation report, that found
17 the student no longer -- was no longer eligible for Special
18 Education services as to do with the specific learning
19 disability.

20 The student did have services in another
21 district going back to, actually, '06 and transferred to the
22 charter school and then subsequently transferred to our
23 school district. So, upon review of those records there was
24 nothing in that evaluation report, not even in the sections
25 where it's required, that indicated any physical concerns.

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1 There was an occupational therapy report in
2 there and it really didn't indicate what the physical needs
3 were. The child was found not to be exceptional for a
4 student with a specific learning disability.

5 Upon entering our school district we did
6 provide that student with a one-on-one assistance because of
7 the concerns that were observed to assist that student and,
8 in the meantime, requested a complete reevaluation of that
9 student's programming and of the student to determine what
10 services that student would need.

11 MS. SCHURDAK: Mr. Litts, if you could ask the
12 audience not to be on the phone during testimony. I find it
13 very, very distracting to hear the talking.

14 MR. LITTS: Who's on the phone?

15 MS. SCHURDAK: Pastor Bloom had been on the
16 phone just now.

17 MR. LITTS: Just as a common courtesy, if you

18 need to take a phone call please step outside. Thank you.

19 MS. SCHURDAK: Thank you.

20 Q You mentioned that Student No. 2 was given, I
21 think, a one-to-one aide. Under what branch of the law was
22 that given?

23 A I'm sorry?

24 Q Under what branch of the law?

25 A That's -- under the special -- related

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1 services, specially designed instruction. Specifically,
2 the related service for a student, a paraprofessional would
3 be indicated.

4 Q And are you familiar with what I'm going to
5 term 504 accommodations?

6 A Yes.

7 Q And what are they?

8 A A student is eligible for a 504 service plan
9 or Section 504 services if the student has a medical or
10 physical disability that would substantially limit them from
11 a major life activity; walking, breathing, learning,
12 accessing their environment.

13 Q And in your professional opinion did Student
14 No. 2 meet the definitional term of requiring a 504
15 accommodation?

16 A Well, through the evaluation process the MDE
17 team -- she was not eligible for Special Education as a
18 student with a specific learning disability. That was found
19 to be true. However, the MDE team was going to recommend an
20 evaluation under Section 504 to determine what services that
21 student may need under a Section 504 service plan.

22 Unfortunately, that student transferred out of

23 the district. That report was completed, but the meeting
24 was not able to be held; the parent had transferred. So,
25 those records were sent to the school that the student was

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1 transferring to.

2 Q In the records you reviewed for the charter
3 school was there anything to indicate that Student No. 2
4 received the 504 accommodation?

5 A I did not see anything in the records.

6 Q Do 504 accommodations -- strike that. Does the
7 504 law apply to charter schools?

8 A Yes.

9 Q Student No. 3. Can you tell the board what
10 records, first of all, you reviewed? With respect to
11 Student No. 3.

12 A I reviewed the registration form and the
13 educational records that we received. There was an IEP.
14 Initially, it was incomplete, we were missing some pages,
15 but then we were able to secure the complete IEP for that
16 student. However, that student was only receiving speech
17 and language services. In a prior district that student was
18 eligible for Special Education services as a student with a
19 specific learning disability.

20 Q Let me stop you there for a moment. When
21 Student No. 3 transferred from the public school into the
22 charter school, from the records you reviewed did the
23 charter school provide services for the learning disability?

24 A Not from what I could see in the records that
25 we received.

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1 Q And what does the law require regarding that
2 transfer and level of services?

♀

♀

3 A That the district either adopt the current IEP
4 or revise it and review it or reevaluate that student to see
5 if that student -- put that student in a comparable program.

6 Q And does that apply to charter schools as well
7 as the district? I just want to be clear.

8 A Yes.

9 Q And did the charter school comply with the law
10 from the records you reviewed?

11 A From the records that I reviewed. Yes, from
12 the records -- did not or did?

13 Q That's my question. Did they? Did it?

14 A From the records that I reviewed it does not
15 appear that that student was receiving the services that
16 they were receiving from the other district other than the
17 speech and language.

18 Q And tell me what else the record showed with
19 respect to Student No. 3 that you reviewed.

20 A There was a Notice of Recommended Educational
21 Placement in there that indicated speech and language
22 services. I'm not sure what happened to the learning
23 disability classification, it wasn't indicated in the
24 records. I didn't see a reevaluation, just qualifying that
25 student for speech and language only as a primary category.

♀

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1 So, I'm not quite sure. The district did reevaluate the
2 student because the student was --

3 Q The student then enrolled here?

4 A Right. Because of the prior history and then
5 it being questionable whether that student should receive
6 learning support or not receive learning support and was
7 found eligible for Special Education services as a student

8 with a specific learning disability in reading and a
 9 secondary disability in the area of speech and language
 10 impairment. There was a fairly large discrepancy between
 11 that child's ability, which was average, and their
 12 achievement in the area of reading. So, there was a
 13 discrepancy there and --

14 Q What does that mean when you have a discrepancy
 15 like that that you described?

16 A It depends on if you're going with a
 17 discrepancy model.

18 Q What's a discrepancy model?

19 A Okay. There are -- the law changed in allowing
 20 school districts and public agencies to look at two ways of
 21 classifying a student for Special Education services. You
 22 can use a discrepancy model, meaning is there a discrepancy
 23 between that child's ability and that child's achievement,
 24 but not necessarily achievement on one test, an achievement
 25 test alone. You're looking at the achievement in the

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1 classroom, you're looking at overall achievement with
 2 multiple levels of evaluation, various levels; curriculum
 3 based assessment, standardized testing, PSSA scores, any
 4 kind of local assessment that you do.

5 Or you could -- the district could look at a
 6 response to intervention model where is the student
 7 responding to certain interventions. Our district looks at
 8 response to intervention at our primary grades mostly
 9 because we can look at those students early, intervene
 10 early, provide scientifically-based interventions to that
 11 student to see if we can lessen the gap that may result in
 12 not providing services early enough.

13 So, the report that a school psychologist does

14 needs to indicate on that report whether you're looking at a
15 response to intervention model or whether you're looking at
16 the discrepancy model and how is that determined.

17 Q Do the records produced from the charter school
18 indicate what model was used?

19 A I see a pattern that this is not identified in
20 the evaluation reports. You could either answer -- there's
21 10 questions in the back and it says right at the top of the
22 report that if you're looking at specific learning
23 disabilities these questions must be answered.

24 Q And are they answered?

25 A Typically --

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1 MR. FENNICK: Objection. Is there a specific
2 document that is being referred to for this particular
3 student?

4 MR. LITTS: I don't understand this question to
5 being limited to this specific student.

6 MS. SCHURDAK: This is a general question.
7 She's talking about patterns and practices that she's
8 observed after reviewing --

9 MR. FENNICK: Well, then this would have to be
10 one of the 28 or a number of the 28 that have been
11 identified.

12 MS. SCHURDAK: Not necessarily.

13 MR. FENNICK: Well, my understanding, my memory
14 of our discussion, was that these kinds of questions were
15 going to be limited to the students that have been
16 identified to us and that Dr. Gustafson was not going to
17 make global generalizations that apply to other students.

18 MR. LITTS: I don't understand that was the

19 discussion or the agreement, but let's do this. Miss
20 Schurdak, you're going to rephrase your question because it
21 is a little bit difficult to jump back and forth. We're
22 talking about Student 3 and then we're going into general
23 discussions and --

24 MS. SCHURDAK: I agree.

25 MR. LITTS: So, why don't you rephrase the
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1 question?

2 MS. SCHURDAK: Sure.

3 Q Let's step back for a moment away from
4 Student No. 3. Before testifying here today, and you've
5 heard Attorney Fennick say there's been about 22 students
6 referenced, what did you review with respect to those 22
7 students? Before testifying today.

8 A Their educational records specifically. It
9 would depend on what was in them. Sometimes we receive an
10 IEP, but no evaluation report that should precede that IEP,
11 sometimes we receive an evaluation report, but not
12 necessarily the IEP that follows. Sometimes we -- it was an
13 evaluation report -- I mean, I could specifically, probably,
14 look through the documents and tell you what's missing, but
15 I think I clearly outlined that in some of the letters to
16 Mr. Severs.

17 Q And besides those 22 students, were there other
18 records that you reviewed relating to students receiving
19 Special Ed. services at the charter school?

20 A Yes.

21 Q Briefly, can you tell the board what those
22 records are that you reviewed?

23 MR. FENNICK: Mr. Litts, I'm hoping your memory
24 is jogged. We specifically had the conversation about

25 testimony regarding other students who were not identified
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1 because then the charter school would be unable to review
2 the records and determine whether Dr. Gustafson was correct.
3 Attorney Schurdak told us that the only statements that
4 would be made about Special Education practices concerned
5 these 22 students.

6 MS. SCHURDAK: That is not what I said and,
7 in fact, why would I limit myself to only these 22 students
8 when the charter school has not shown me the courtesy of
9 giving me educational records from any Special Ed. student
10 or any student?

11 I also refer everyone to my November 4th, 2009,
12 correspondence and she's going to testify as to Special
13 Education regulations, compliance with the charter school.

14 MR. LITTS: Miss Schurdak, why don't you have a
15 seat?

16 MS. SCHURDAK: Hmm?

17 MR. LITTS: Have a seat. Mr. Fennick has a
18 point in one narrow respect. It was my understanding that
19 our discussion of last Tuesday was to achieve two purposes.

20 First, to the extent that the parties would be
21 referring to specific students and whether or not what the
22 students did or didn't receive or how they were treated may
23 be relevant for these proceedings, a manner in which that
24 testimony and evidence can be presented, and it seems like
25 everyone's okay with that.

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1 There was a second discussion on more general
2 points that if a witness, in this case, Dr. Gustafson, was
3 going to review student records and then potentially testify

4 as to certain trends or observations, that type of
5 testimony, I believe I communicated, and if I didn't
6 communicate this accurately enough, is permissible.

7 That being said, in fairness to the charter
8 school, there should be some discussion or testimony and,
9 if necessary, if we have to go off the record, discussions
10 between counsel as to what that witness is relying upon for
11 making those general observations.

12 So, I will allow Dr. Gustafson to testify as to
13 general observations of records that she reviewed and
14 received about charter school students. However, I would
15 expect the witness to be able to identify what records she's
16 relying upon to support that testimony.

17 So, for example, we've identified -- I have to
18 refer back to my notes -- 22 individual students that we've
19 had by name. If this witness had said, "Well, gee, the
20 students that we've identified 1 through 22, I'm relying
21 upon a review of their records exclusively to support these
22 things," I'm fine with that and I'm assuming Mr. Fennick
23 would be fine with that as well and I see him nodding his
24 head.

25 Conversely, if Dr. Gustafson would be relying

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1 upon additional records then I think it is appropriate that
2 that be pointed out and it very well may be that this
3 witness can identify what those records are or, Miss
4 Schurdak, you can speak with Mr. Fennick to identify what
5 those records are. For example, "Well, with the records we
6 produced pursuant to my correspondence dated such and such,"
7 because, you know, then we do have this difficulty of that.

8 So, I would expect the witness to put some type
9 of parameters or some type of explanation as to precisely --

♀

10 or more precisely, I should say, identify what she reviewed
11 in order to reach the conclusion that she did just so that
12 there is some basis, factual basis, to support that and that
13 way we can avoid a whole litany of objections and hearing
14 speeches from both sides about the relevance of the question
15 and the testimony.

16 So, if we need to take a very brief break we
17 can do that if that would be helpful for the counsel.

18 MS. SCHURDAK: I think so, yes, because I don't
19 want this witness to inadvertently use student names.

20 MR. LITTS: Why don't you and Mr. Fennick talk
21 and we'll go off the record for five minutes? Thanks.

22 (Recess from 11:12 a.m. to 11:18 a.m.)

23 MR. LITTS: It's my understanding that Miss
24 Schurdak and Mr. Fennick had a discussion off the record and
25 clarified the scope of this testimony. So, with that,

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1 Miss Schurdak, you can proceed with your direct examination.

2 MS. SCHURDAK: Sure. I believe it just may be
3 easier, if counsel will permit this, that with respect to
4 any general opinion testimony that this witness testifies to
5 today it is the specific understanding she's basing it upon
6 the review of the previously identified 22 students and
7 making conclusions based on that.

8 MR. FENNICKE: That's great. Thank you.

9 MR. LITTS: And there may be times I may just
10 interject a question if I get confused just to make sure
11 we're all on the same page. So, you may proceed with your
12 direct.

13 MS. SCHURDAK: I'm not quite sure where I left
14 off and I don't want to put the court report into a panic.

15 Q Dr. Gustafson, I think I was asking you in
16 general terms with respect to the 22 students whether or not
17 you noticed any pattern or practice with respect to the
18 supplying of educational records to the district within the
19 10 day period.

20 A The pattern is the difficulty in getting
21 records; specifically, having to go personally myself to the
22 school to get records, the difficulty in what the counselors
23 have expressed to me when they come to me in helping and
24 assisting them in securing records, conversations that
25 they've had with staff at the charter school, my secretary's

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1 difficulty in getting records. Basically -- if you're
2 talking about records, it's the difficulty getting the
3 records.

4 When we do get the records specifically in some
5 of the cases that I observed and reviewed the records
6 sometimes they're incomplete, the second page is not there,
7 they've been faxed upsidedown. In one case we had another
8 student's records in with that record. Eliciting the
9 support of parents to get records in one of the cases.
10 Just difficulty in general.

11 Q Now, I want to direct your attention back to
12 Student No. 3, what the parties have all agreed to identify
13 as Student No. 3. Was there any -- were there -- was there
14 anything missing from the records that you received from the
15 charter school with respect to Student No. 3?

16 A Initially, the first couple of attempts
17 produced some pages of an IEP for speech and language.
18 Subsequently, when asked again we eventually did get the
19 complete IEP for the speech and language services. I did
20 not see an evaluation report or anything determining what

21 happened to those services that were under the eligibility
22 category of Special Education for a specific learning
23 disability, but the child was receiving speech and language
24 services per their IEP.

25 Q And in terms of the learning -- strike that.

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1 Were there progress monitoring reports in the records you
2 reviewed?

3 A No.

4 Q And what does the law require with respect to
5 progress monitoring reports?

6 MR. FENNICKE: Objection. Asked and answered.

7 MR. LITTS: Sustained.

8 Q There were no progress monitoring reports for
9 this student.

10 A For this student or any of the other students
11 that I -- of the records I went through. There were
12 progress monitoring -- I believe it's the progress
13 monitoring that's sent out to all the students that the
14 teachers fill out, progress towards their -- what's
15 happening in the classroom. I did not see any progress
16 monitoring towards the annual goal in a student's IEP or
17 reference to an annual goal in a student's IEP if I had the
18 IEP in any of the records.

19 Q With respect to Student No. 3, was there
20 anything in the records produced from the charter school to
21 identify a learning disability for the student?

22 A Just the records from the previous school
23 indicating that the student was identified and was receiving
24 services.

25 Q And I'm not sure if I asked this because we've

1 taken some breaks. When Student No. 3 enrolled in Pocono
2 Mountain School District was it determined whether or not
3 the student was eligible to receive services based on a
4 learning disability?

5 A We did reevaluate the student, found that
6 student eligible, as I indicated, to receive Special
7 Education services, a student with a specific learning
8 disability in the area of reading, as well as a secondary
9 disability in the area of math. I mean, speech and
10 language. I'm sorry.

11 Q Is there anything else relevant to today
12 regarding Student No. 3 that we haven't already covered?

13 A Other than that particular student, also the
14 family moved, the meeting was not held, so the evaluation
15 report was complete. However, the team was unable to meet
16 with the parent because the parent withdrew the student and
17 they subsequently moved to another district and that
18 information was forwarded.

19 Q With respect to Student No. 4, what documents
20 were you able to review, first of all, with respect to
21 Student No. 4?

22 A There were some -- well, actually, this was a
23 difficult case because it was hard to determine -- the
24 student transferred in from New Jersey to the charter school
25 and at that time there was an IEP that was current.

♀

1 Q From out of state.

2 A Yes. So, I reviewed the current -- that
3 information.

4 Q When you say the current information I just
5 want the record to be clear. Did you review the out-of-

6 state educational records for Student No. 4?

7 A Yes.

8 Q Okay.

9 A There was an initial evaluation that was
10 conducted in '05 that identified the student. When the
11 student enrolled in our district as a transfer student we
12 subsequently reevaluated the student because the records
13 just weren't clear, we didn't get enough information on this
14 particular student.

15 Q What did you get from the charter school
16 relating to what, if any, services were provided to Student
17 No. 4 while enrolled --

18 A It appears that this particular student was not
19 in the charter school for long. It indicated that the
20 student was there in April of '08, but then transferred to
21 our district, actually, in the summer.

22 MR. FENNICK: Mr. Litts, I'm going to have to
23 ask for clarification. We have no records that this student
24 was ever a student in our school and I do not believe that
25 any records were sent to us by the school district

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1 indicating that this student was ever a student in the
2 charter school.

3 Now, maybe they are in here, but I haven't seen
4 them and if the student does not appear in the charter
5 school's enrollment records we shouldn't be talking about
6 him if he was never even a student at the charter school.

7 MR. LITTS: Mr. Fennick, it strikes me as
8 questions for purposes of cross examination. So, I'm going
9 to overrule the objection, but with what you have placed on
10 the record I'm sure Miss Schurdak will follow up with some

11 questions here.

12 Q Did Student No. 4 -- first of all, what did you
13 look at to determine whether or not Student No. 4 attended
14 the charter school?

15 A I'd have to refer back to the record.

16 Q Sure. Do you want me --

17 MS. SCHURDAK: May I approach?

18 MR. LITTS: Yes, you may.

19 MS. SCHURDAK: Dan, I'm just going to show

20 MR. FENNIC K: Presumably it's the same.

21 MS. SCHURDAK: It should be.

22 MR. LITTS: While the witness is reviewing
23 those documents, Miss Schurdak, I'm assuming the question
24 you'll be asking is what records did this witness rely upon
25 to form the belief that the student, No. 4, was enrolled in

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1 the charter school. Is that correct?

2 MS. SCHURDAK: Right. That's the reason she's
3 reviewing the records right now, Mr. Litts.

4 A There was a reevaluation report that was
5 conducted in our school district in '08 that indicated that
6 the program for this student was General Education at the
7 Pocono Mountain Charter School. However, this student came
8 from another school district before enrolling in the charter
9 school. So, we knew that student had some type of services,
10 but this evaluation report indicates that the --

11 MR. FENNIC K: I just want to see what you're
12 looking at.

13 A Sure.

14 MR. LITTS: Let's go back to the record. If I
15 recall, the witness was specifically referring to a
16 reevaluation report for Student No. 4 saying that the

17 student came from the Pocono Mountain Charter School.
18 That's where we left off. Do we have a question?

19 MR. FENNICK: I just want to -- before we
20 discuss this student, I just want to make sure that the
21 district understands that we do not know this student,
22 he was never enrolled in the charter school, and this refers
23 to the fact that the public school in Jersey sent records to
24 the charter school. That doesn't mean that he attended
25 there.

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1 MR. LITTS: Well, the other thing, Mr. Fennick,
2 we specifically spoke about Student No. 4 last Tuesday in
3 identifying folks. I don't recall anything in my notes
4 where this issue was raised and I hope that would have been
5 the time place and place for it.

6 Now, that being said, the school district can
7 present evidence it was relied upon, to my understanding,
8 a statement that was contained in an reevaluation report and
9 maybe there's additional stuff or not, but you'll have the
10 opportunity to present testimony and ask questions to rebut
11 that statement or allegation being made by the school
12 district. So, you may proceed with your direct examination.

13 MS. SCHURDAK: Thank you, Mr. Litts.

14 Q Dr. Gustafson, I think you were testifying that
15 you reviewed -- what was it, a reevaluation?

16 A Yes. Oftentimes if a student comes into our
17 district and upon review of records we -- a school
18 psychologist -- whoever the team the district has
19 formulates -- that would look at educational records and
20 Special Education records, and, for our district, the school
21 psychologist and our educational consultant, not all

22 districts have educational consultants, so we review these
23 records and we look at the services the student had or
24 didn't have and any evaluation reports.

25 If the team feels there's a need for additional

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1 data then that will be reflected in the evaluation report
2 that indicates the review of records. In this particular
3 case of this student this team did review the records of the
4 student and determined that there was need for additional
5 data because there wasn't anything from the charter school,
6 there was a lapse in -- there was a few years that went by
7 without current data in terms of achievement, in terms of
8 grade levels, in terms of teacher input. So, the team said,
9 "Well, let's ask for additional data and do a full-blown
10 reevaluation on this student," and, so, that's what this
11 particular team did and that's the document I was referring
12 to.

13 Q Is there anything in the document you're
14 referencing today with respect to Student No. 4 to indicate
15 whether or not the charter school had informed the district
16 that No. 4 was never their student?

17 A I'm sorry. Could you repeat that?

18 Q Is there any correspondence from the charter
19 school --

20 MR. FENNICK: There's probably a hundred
21 million students in the United States who were never a
22 student of the charter school. Why would we inform the
23 district of that?

24 MR. LITTS: Hold up. I'm going to take over
25 the examination for a second just to get to the heart of

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1 this thing. This is real easy, guys. You can -- during the

2 Lunch break you can confer and check and hopefully you can
3 work it out. The kid was there or not.

4 Dr. Gustafson, did someone from the Pocono
5 Mountain School District make any inquiry or ask for records
6 for Student No. 4 to the best of your knowledge? At any
7 point in time.

8 A Based on the review of this reevaluation report
9 when the district reviewed the records, and this was
10 conducted by one of our school psychologists, and the
11 statement that says, "Educational program prior to the
12 transfer," where it says, "General Ed., Pocono Mountain
13 Charter School, no services provided, no reason provided,
14 self-contained program for speech and language service --"
15 Well, under the Other Demographic Area, our data, it says
16 the student enrolled at Pocono Mountain School District from
17 Pocono Mountain Charter School earlier this year. So

18 MR. LITTS: And, specifically, my question
19 is -- I understand the reevaluation report references the
20 student being enrolled at the charter school. Is there any
21 specific document or information that the team relied upon
22 in making that factual conclusion? Is there an enrollment
23 form from the charter school, an IEP from the charter
24 school, anything from the charter school as far as a paper
25 record or evidence of a discussion or statement from a

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1 parent, the student? What is it that you're relying upon to
2 make the conclusion that the student was at the charter
3 school?

4 A I'm not sure, but generally it's part of the
5 review of records. There's an enrollment form, registration
6 form, and a discussion with the parent.

7 MR. LITTS: And the review of records that
8 you're alluding to, am I correct in assuming the review of
9 records would encompass a review of charter school records
10 that you received for Student No. 4?

11 A Yes.

12 MR. LITTS: Okay. Did the charter school
13 provide any records for Student No. 4?

14 A Not that I'm aware of.

15 MR. LITTS: So, again, I realize you weren't
16 necessarily involved personally with the multi-disciplinary
17 evaluation for this student, but, if I'm understanding your
18 testimony correctly, you're relying upon that report for the
19 statement that the kid was at the charter school.

20 A Yes, and these are just the Special Education
21 records. I'd have to look at the other ones, too.

22 MR. LITTS: What I would suggest --

23 MS. SCHURDAK: Hold on. If I may, Mr. Litts?
24 I would like to show something to opposing counsel and I
25 think this will clarify the issue.

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1 MR. FENNICK: We stand by our position that he
2 never attended the school. He may have -- maybe his parents
3 planned on having him attend, but he did not.

4 Q I'm going to show a document to this witness.
5 Again, I don't want you to reveal any confidential
6 information, but can you tell me what this document is?

7 A It's a withdrawal form from the Pocono Mountain
8 Charter School.

9 Q It's their notification?

10 A That a student has withdrawn.

11 Q From?

12 A Their school.

13 MR. LITTS: And is this --

14 Q And does this relate to the student that we've
15 now identified as Student No. 4?

16 A Yes.

17 Q And what is the date that is on this form?

18 A Date of the withdrawal is 7-7-08.

19 Q And are there any signatures on there from any
20 school officials associated with the charter school or is
21 there any indication of any phone numbers or transmittal
22 sheets?

23 A Well, it clearly has the charter school's name
24 on it and address. The parent signed.

25 Q Is there a facsimile number on the document?

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1 A Pocono Mountain CS.

2 Q What's the phone number contained next to that
3 Pocono Mountain CS designation?

4 A 894-2793.

5 Q Area code 570?

6 A Yes.

7 Q To the best of your knowledge, is that the fax
8 number for the Pocono Mountain Charter School?

9 MR. FENNICK: Mr. Litts, we'll agree that the
10 form is our form. My point is that this student was never a
11 student in our school and I -- additionally, I'm looking
12 through the documents that I was given by Attorney Schurdak
13 regarding this student. I don't see that particular
14 document. If I had, I might have been able to clarify this
15 ahead of time. As I said, I suspect, perhaps, he was
16 planning to come and that's why the elementary school from
17 the other state sent records, but he never came.

18 MR. LITTS: Well, hold up, guys. We have a
19 form the school district submits to support their conclusion
20 that -- I shouldn't say conclusion, supports their argument
21 that the student was enrolled in the charter school for some
22 period of time.

23 I understand your client may oppose that.
24 That's appropriate for cross examination, and, obviously,
25 there will be an opportunity now in light of this

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1 information for you to check back with your client to fully
2 develop that on cross examination and possibly direct
3 examination in your case in chief.

4 So, again, I suspect both sides could check on
5 this. This really isn't that hard and, so, let's move on to
6 something else.

7 MR. FENNICK: May I be given a copy of that?

8 MS. SCHURDAK: At our lunchtime break I will
9 ensure opposing counsel gets a copy. For the record, it's
10 not an educational record, but I would, nonetheless, ask
11 that that be maintained confidentially.

12 MR. LITTS: And it may be helpful for purposes
13 of the record -- I'll let you guys talking about heavily
14 redacting that so we have something in the record. But,
15 you guys can talk about that at the lunchtime. You can
16 proceed with your direct.

17 Q If you know, how did the district obtain the
18 student records for Student No. 4 from the out-of-state
19 school district?

20 A I don't know.

21 Q Is there anything else regarding Student No. 4
22 that we haven't covered here today this morning?

23 A Just that through that reevaluation process

24 when the additional data was collected the student was found
25 to be eligible for Special Education services, specifically

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1 in the area of reading and written expression and math and a
2 secondary disability in the area of speech and language.

3 Q Let's move on to Student No. 5. Regarding
4 Student No. 5, what records did you review?

5 A I referenced and reviewed past records. This
6 student was a student in the Pocono Mountain School District
7 for several years. So, there were records from our school
8 district. The student was eligible for Special Education
9 services in kindergarten from the previous district and had
10 a secondary disorder identified.

11 Q Did the student receive services then when
12 transferring into the school district? Originally.

13 A Yes.

14 Q At some point in time did the student transfer
15 into the charter school?

16 A Yes.

17 Q And what did the records reflect?

18 A That this student was dismissed from Special
19 Education services at the charter school. This is also
20 another case where there was no Notice of Recommended
21 Educational Placement which agreed or disagreed with the
22 placement by the parent.

23 Q Is that unusual?

24 MR. FENNICK: Sorry. Is what unusual?

25 Q Whether or not there's any indication whether a

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1 parent agrees or disagrees with NOREP?

2 A I will say that it's -- sometimes it can be

3 di ffi cul t securi ng the si gnature. Parents don' t come to
4 meeti ngs or i t' s di ffi cul t getti ng parents to come to
5 meeti ngs. The law has changed i n that when you are looki ng
6 at an annual IEP completed for a special needs student and
7 the parent doesn' t respond to the Notice of Recommended
8 Educati onal Placeme nt the public agency is allowed to
9 conti nue the programmi ng for the student. I t' s when the
10 parent di sagrees that you have to make sure that you attend
11 to thei r di sagreeme nt or what the di spute is about.

12 So -- but when you' re looki ng at existi ng a
13 student from Special Educati on servi ces and you don' t have
14 the parent' s approval or di sapproval that' s signifi cant.

15 Q What does the law require?

16 A That they' re part of the team, that they
17 approve or di sapprove. If they di sapprove, they have that
18 right, then they have to i ndicate a method of di spute
19 resoluti on to i denti fy what the concerns are, why they
20 di sagree, and how we can resolve that di spute.

21 Q What is a public agency to do if the public
22 agency is recommendi ng the existi ng of Special Ed. and cannot
23 get the parent to sign off?

24 A First, when we' re havi ng di ffi cul ty securi ng
25 the si gnature of a parent, havi ng them come to a meeti ng,

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1 havi ng them parti cipate as a member of the team we have done
2 everythi ng from sendi ng the home school visi tor over there,
3 mul ti ple -- documenti ng mul ti ple attempts to secure the
4 parent' s approval or di sapproval. We have mailed the
5 documents certi fi ed, called the parent. So, generally after
6 three or four attempts -- if i t' s a change of placeme nt we
7 keep the student i n the program ' til we can get ahold of the
8 parents or the district coul d fi le -- or the public agency

9 could file for due process.

10 Q Is there anything in the records produced by
11 the charter school to reference what, if any, attempts were
12 made to get the parent to sign off?

13 A Not for this particular student. I know that
14 in Miss Sotack's report she did indicate that the charter
15 school did indicate to her that they do sometimes have
16 difficulty and I believe they were to develop some type of
17 procedure in getting those records secured so that the
18 signatures are there.

19 Q And in terms of the educational records that
20 you reviewed was the law followed with respect to this
21 exiting from Special Ed.?

22 A This particular student -- because the student
23 was in our district for several years, the file's extensive.
24 The student had disciplinary concerns, a couple of different
25 eligibility categories, and, again, when reviewing the

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1 records the team felt that additional data was needed,
2 updated rating scales and additional information that wasn't
3 there in the records when the record review was done. So,
4 upon reviewing the records additional data was asked for and
5 a reevaluation was completely done on the student and the
6 student was found to be exceptional.

7 MR. FENNICK: Objection. That is not
8 responsive and I move to strike.

9 MS. SCHURDAK: It's a little late. There
10 should have been an objection probably five minutes ago or
11 two minutes ago.

12 MR. LITTS: It wasn't responsive, but I'll
13 overrule the objection.

14 MR. FENNICK: I'll object immediately from now
15 on if it looks like the witness is on the wrong track.

16 MR. LITTS: Next question.

17 MS. SCHURDAK: Well, in order to --

18 MR. LITTS: Next question.

19 MS. SCHURDAK: Well, I think I'm going to have
20 to ask the same --

21 Q In order to resolve this issue now for the
22 record, what did you conclude -- what did the -- did you
23 conclude after the review of the records with respect to
24 Student No. 5 being eligible for Special Education
25 services?

♀

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1 A That the student was found to be exceptional
2 and a student with a specific learning disability.

3 Q Was there anything in the records that you
4 reviewed to indicate whether or not the charter school was
5 offering Student No. 5 comparable services that had been
6 given to Student No. 5 at the district at the time Student
7 No. 5 enrolled in the charter school?

8 A I would have to review the records because --
9 if it's possible. I just want to check one

10 Q Sure.

11 MS. SCHURDAK: Attorney Fennick, the
12 educational records for 5 which have been previously
13 produced to you.

14 A What I was specifically looking for was the IEP
15 from -- if there was an IEP from the charter school and I do
16 not see it in here. I just wanted to make sure I was
17 correct. There was extensive IEP's from our district.
18 I did not see one for the charter school.

19 Q And what does that indicate to you?

20 A I'm not sure if the child was receiving
21 services or not.

22 Q But the child, upon re-entry to the school
23 district did receive services.

24 A Yes, was found to be an exceptional student
25 through the reevaluation process.

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1 Q Is there anything else that we haven't already
2 covered with respect to Student No. 5 that you feel is
3 important for the board to hear today?

4 A I don't think so.

5 Q Okay, let's move on to Student No. 6. Are you
6 familiar with Student No. 6?

7 A Student No. 6 is another student that was in
8 our district for a number of years. I'm particularly
9 familiar with this student because I knew the student in the
10 various roles I had within the district and the various
11 positions I held. I knew the student as an educational
12 consultant, I knew the student as that student's assistant
13 principal at one time, I knew the student as the Director of
14 Special Ed., as the assistant superintendent. So, because
15 of the student's history in the district and the diffi-
16 culties that student had I was very familiar with the
17 student.

18 Q And was the student, when the student was
19 originally attending the school district, receiving any
20 services as an exceptional student?

21 A Yes, that student was in Special Education for
22 pretty much all the years that that student attended here.

23 Q And in terms of the records that you were able
24 to review from the charter school, what, if any, level of

25 services did Student No. 6 receive?

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♀
1 A Well, that's questionable because when this
2 student left and enrolled in the charter school that student
3 had a current IEP. I was concerned because in reviewing the
4 registration form for the charter school that wasn't
5 indicated on the form. It almost appeared like it was
6 whited out.

7 MR. FENNICK: Objection. That's ...
8 speculating and I would like to see the form that she's
9 referring to.

10 MS. SCHURDAK: Well, we can certainly find the
11 form and then that may support her conclusion that it
12 appears to be whited out. So, be careful, Attorney Fennick.

13 MR. LITTS: We'll note for the record that the
14 educational record for Student 6 has been provided to the
15 witness assuming, Mr. Fennick, you have an identical set of
16 those records.

17 MR. FENNICK: Well, I should.

18 MS. SCHURDAK: Attorney Fennick has already
19 been provided --

20 MR. LITTS: Let's go off the record for a
21 second.

22 (Off record.)

23 MR. LITTS: Let's come back at 1 o'clock and
24 that will give counsel ample opportunity to work that out.
25 We'll recess until 1 o'clock.

♀
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1 (Recess from 11:56 a.m. to 1:30 p.m.)

2 MR. LITTS: We're going back on the record.
3 We had a discussion with counsel prior to reconvening the
4 hearing. I will note for the record that Meg Dilger was

5 here for the morning session; she walked in at approximately
6 a half hour to 45 minutes late, but was here for the
7 duration of the morning session. We also have one other
8 board member. Ma'am, could you identify yourself for the
9 record?

10 MS. SIROLLI: Dorothy Sirolli.

11 MR. LITTS: Okay. And Dr. Gustafson was
12 testifying on direct and she can take the stand again and
13 she's already been sworn and she's still under oath. Miss
14 Schurdak, you can continue your direct examination.

15 - - -

16 CONTINUED DIRECT EXAMINATION BY MS. SCHURDAK:

17 Q Dr. Gustafson, I think before lunch there were
18 questions regarding a form and your characterization of a
19 form with respect to Student No. 6.

20 A Yes.

21 Q And I have provided counsel with copies of
22 this, but we've agreed not to put individual educational
23 records into the record because of confidentiality issues.
24 So, if you could, would you describe the body of the
25 document? And what is the document? Let's start with that.

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1 What have I handed you?

2 A The document is an enrollment form from the
3 Pocono Mountain Charter School.

4 Q And who is -- with respect to Student No. what?

5 A 6.

6 Q And is this document legible?

7 A It is up until the bottom.

8 Q And can you describe the bottom?

9 A The last two sentences -- the one says, "Was

10 your child receiving Special Education services based on an
 11 IEP," and then it says, "If yes, do you have the child
 12 Special Education records (IEP)?" And then --

13 Q Let me stop you. What's the answer with
 14 respect to the first question, "Was your child receiving
 15 Special Education services based on an IEP?"

16 A It's checked No.

17 Q Okay. For the next question that you read is
 18 anything checked?

19 A No. No, nothing's checked.

20 Q Thank you. Is there anything else with respect
 21 to this form in terms of legibility?

22 A It just looks like it was altered somewhat.

23 MR. FENNICK: I'm going to object.

24 MR. LITTS: I'll sustain the objection. For
 25 purposes of the record the hearing officer made an

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1 independent evaluation of the document. I will agree with
 2 the characterization of the witness that there appears to be
 3 some handwritten notes that were made at the bottom of the
 4 first page of the form. It is illegible, but absent any
 5 type of direct evidence as to why it isn't legible I just
 6 think it's more accurately described for the record as not
 7 legible.

8 MS. SCHURDAK: And, if you could, just for
 9 purposes of record, Mr. Litts, the box that's contained in
 10 that bottom line is missing.

11 MR. LITTS: Yes. I mean, the form is framed
 12 with a continuous line in a rectangular fashion with the
 13 contents of preprinted questions contained within that
 14 rectangular line. The handwritten notation at the bottom
 15 appeared to be on the line -- or above or below that line on

16 the bottom of the page and there is a break in that line and
17 you can see some handwriting that appears to be blurred.
18 How that is blurred, we don't have any direct testimony.
19 So, we'll just characterize it as such.

20 But, Dr. Gustafson, could you -- just for
21 purposes of the record could you read to me the question
22 that is immediately above that handwriting that's difficult
23 or impossible to read that you just described?

24 A "If yes, do you have the child's Special
25 Education records," and in parentheses it says IEP,

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1 question mark.

2 MR. LITTS: Thank you.

3 Q Dr. Gustafson, what did you do, if anything,
4 after receiving and reviewing the form that you've just
5 described?

6 A I had testified that I was very familiar with
7 this particular student and I testified as to the reasons
8 why. I wasn't sure where the student had gone prior to the
9 charter school, but when we did receive the enrollment
10 notification I was concerned because it was noted on the
11 enrollment form that the child was not receiving Special
12 Education services based on an IEP.

13 I was also concerned because it was not legible
14 as to whatever was on the bottom of this and there was no
15 box checked and being as familiar with this student and
16 aware that this student did have a current IEP that was
17 active I notified the charter school via letter to Mrs. --
18 Miss Loletta Roberts? I'm not sure if I'm saying the first
19 name right.

20 Q Robertson?

21 A Robertson?

22 Q And, again, we're not going to put letters and
23 things like that in the record. What did you request, if
24 anything, from Miss Robertson?

25 A I notified her that this child did, in fact,
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1 have an active, current IEP that was actually due to have an
2 annual review in October of '08 and that I was concerned
3 because the enrollment form didn't indicate that on the
4 enrollment form.

5 I did note that there was a legible [sic] area,
6 although I'm not sure how I specifically said it, and I do
7 remember that the secretary that got the form was concerned.
8 That's why she brought it to my attention.

9 We did ask if another form could be faxed.
10 The form was sent again or -- to see if it was more legible
11 and it basically looked the same and I said, "If you need
12 additional information about the student feel free to
13 contact me and I'll -- we'll send the records upon release
14 from the parent."

15 Q And did you hear back from anyone at the
16 charter school regarding Student No. 6?

17 A I did not.

18 Q Regarding that form that you described earlier
19 in your testimony, does it evidence any signatures from
20 anyone at the charter school?

21 A It does not, but I'm not sure that there's
22 another page. But, from what I'm seeing on here, not on
23 this first page.

24 Q It was a two-page document and, perhaps, you
25 only have the first page with you.

1 A I do.

2 Q Sorry.

3 A That's okay. I see the mom's signature and the
4 signature of the charter school representative, Loletta --
5 I don't know if that's an initial or what, but the first
6 name is there.

7 Q Now, I think ultimately you testified that
8 Student No. 6 returned to the district. At some point in
9 time.

10 A Yes.

11 Q Can you describe the process of obtaining the
12 educational records for Student No. 6 upon Student No. 6
13 re-entering into the district?

14 A The student was at the charter school from the
15 '07-'08 school year and enrolled in our district for the
16 '08-'09 school year. Mom withdrew in the summer and
17 enrolled in the summer.

18 Because I remember sending the letter saying
19 that the student had an active IEP and it was due for
20 revision I was looking for that IEP that would be from the
21 '08 -- from 10-08 to 10-09. That was not in the -- that was
22 not in the records that I reviewed.

23 Q Are there any legal requirements in how often
24 IEP's need to be updated?

25 MR. FENNICK: Mr. Litts, it appears that the
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1 witness is testifying from notes. I would like her to put
2 the notes down and not need them unless they're necessary.

3 MS. SCHURDAK: I would object to that
4 characterization. I think the witness has from time to time
5 referred to a document, but most of the time she's been

6 making eye contact with me. There's a lot of dates here and
7 I think if the notes assist this witness that's exactly what
8 notes are meant to do.

9 MR. LITTS: Well, the parties agreed last week
10 to identify the students using the numerical system and I
11 was under the impression that -- based on the statements
12 from counsel that they both were in possession of the
13 relevant records that would be the subject of testimony.
14 If the witness wants to refer to that, that's fine. If the
15 witness wants to refer to other documents then we'll have to
16 make those available to Mr. Fennick. So, your choice,
17 Counsel.

18 MS. SCHURDAK: I believe that, again, under the
19 Rules of Evidence, and I understand they're not necessarily
20 applied strictly to this forum, opposing counsel can look at
21 the notes, but there is no entitlement to a copy of those
22 notes.

23 MR. FENNICK: So, may I see the notes? If they
24 are his records I don't need -- that's all I need to know,
25 but if this is ... well, this is a narrative of her

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1 testimony and if she -- she should be testifying without a
2 narrative.

3 MS. SCHURDAK: It is not as though this witness
4 has been just looking down at a document and reading. That
5 is absolutely not what has been going on here. She's been
6 referring to it from time to time, glancing down, and my
7 guess is if you asked her she would say, "Yes, I'm
8 refreshing my recollection as to specific dates." But,
9 in order to resolve this, if Counsel wants, I will simply
10 give the witness the educational records. It will take more
11 time because she'll have to go through the records, but we

12 can certainly do that and perhaps that's the easier
 13 resolution since Counsel does have my set of records that
 14 are in my possession.

15 MR. LITTS: Well, however Counsel wants to
 16 resolve this. I mean, I will caution the witness, and I
 17 wouldn't characterize her testimony as such, but you can't
 18 read from your notes. If you want to refer to something,
 19 you're welcome to refer to something, but, again, opposing
 20 counsel will have the opportunity to at least inspect that
 21 document. So, if it's student records, they have already
 22 been provided; if it's personal notes, we'll have to make
 23 them available.

24 MS. SCHURDAK: And Counsel has already just
 25 looked at the notes.

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1 MR. LITTS: And Mr. Fennick did on that last
 2 one, but, Dr. Gustafson, if you can refrain from looking at
 3 your personal notes wherever possible, that would be
 4 appreciated.

5 Q I'm sorry, I lost track, actually, of where we
 6 were in the questioning. I believe we were talking about
 7 Student No. 6 returning to the district. What was the
 8 process in terms of obtaining educational records for
 9 Student No. 6?

10 A It was our usual Mom enrolls, they -- the
 11 parent goes through the registration process, guidance
 12 counselor is notified. The records are then sent to the
 13 school. We look at what's been sent. Another case of
 14 incomplete records.

15 Q When you say incomplete records what was
 16 missing?

17 A Missing an IEP that I had indicated was due for
18 an annual revision or annual review.

19 Q When you say an annual review, is that mandated
20 by law?

21 A Yes, that the IEP is reviewed periodically,
22 but no less than a year.

23 Q Anything else that you said was -- you said the
24 IEP was missing. Anything else that was missing?

25 A The progress monitoring reports indicating

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1 whether that student made progress or lack thereof towards
2 goals to an IEP. There were no discipline records.

3 MR. FENNICK: I'm going to object. I don't
4 think this witness has testified that this student was a
5 Special Education student at the charter school, in which
6 case none of these records would be necessary.

7 MR. LITTS: Well, Mr. Fennick, I'm not aware of
8 any testimony to that, but that being said, she has
9 testified the student was previously identified as eligible
10 for Special Education services by the school district and
11 that she did not receive the following. Now, if -- you will
12 have the opportunity to cross examine the witness, so
13 there's a time and place for that. But, that fact hasn't
14 been established.

15 Q Go ahead.

16 A The -- specifically looking for any discipline
17 records. There was also inconsistency in the reporting of
18 grades. There was an evaluation report in there that
19 declassified or exited the student from Special Education
20 services.

21 Q Was that by the charter school?

22 A Yes. Found the student not eligible. However,

23 prior to that -- I'm trying to make sense of the whole
 24 process. It looked like from letters that the mom had
 25 written to the charter school that she was requesting a

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1 reevaluation at one point. I didn't see a permission to
 2 reevaluate. I didn't see a report. That was, I believe,
 3 in November. I didn't see a report that would follow that
 4 permission, if there was a permission out there. The
 5 student was -- the parent did sign for a reevaluation in
 6 early spring of that year. A reevaluation was conducted and
 7 found the student not to be eligible for Special Education
 8 services.

9 The report, again, didn't identify some key
 10 areas that need to be identified when you're looking at
 11 eligibility such as standardized testing scores, such as the
 12 child's progress toward grade level curriculum, any
 13 interventions and strategies, an observation that is
 14 actually physically done in the classroom. I do see that
 15 quite a bit with the evaluation reports where the
 16 observation is just based on what teachers have said.
 17 The observation should be done by a person and it should be
 18 identified who did it, where they did it, when they did it,
 19 actually in the learning environment that the student is in.

20 There were some failing grades. In addition,
 21 to that Mom had indicated in a letter in March of '09 that
 22 she wanted to reconvene the IEP team. She had some
 23 concerns. There was another letter in April that she had
 24 some concerns. But, the report indicated that they couldn't
 25 get ahold of the parent, that they had no parent input. So,

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1 I wasn't quite sure where the communication broke down

2 there.

3 Mom said that the child was -- in this letter
4 that the child was failing academically, failing
5 emotionally, that she was concerned and would like to
6 reconvene the IEP team. I did not see any documentation
7 that showed that that team actually met.

8 There also was not that Notice of Recommended
9 Educational Placement in the file that indicated whether Mom
10 agreed or disagreed to the educational placement of the
11 student.

12 Q And is that required?

13 A Yes.

14 MR. FENNICK: Objection. Asked and answered.
15 We went through this with another student.

16 MS. SCHURDAK: As long as there'll be notice
17 that's required in every case, I agree.

18 MR. LITTS: Let's move on.

19 A The --

20 MR. LITTS: Well, there's no question. Ask
21 another question.

22 MS. SCHURDAK: I think the witness was cut off.
23 She was explaining things that were missing.

24 MR. LITTS: Well, no, there was a question
25 about whether it's required. Mr. Fennick conceded that the

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1 law does require those things. You agreed. Another
2 question. Let's move on.

3 Q After review of the records provided to you by
4 the charter school is there -- were there any other
5 omissions that you felt existed?

6 A No, just that that whole process didn't appear
7 to be finalized.

8 Q Tell me what you mean by what process. First
9 of all --

10 A There was the process of looking at eligibility
11 for Special Education services through the reevaluation
12 process. There didn't -- there was an invite to a meeting
13 for April 16th, but there was no indication that a meeting
14 actually took place.

15 Upon Mom's enrollment of the student into the
16 school district she said that there -- she indicated there
17 wasn't a meeting, she didn't receive any documents. I was
18 concerned again with the student -- the ability to not get
19 complete records. I did write a letter to Mr. Severs
20 explaining that and my concerns with the records.

21 Q Did you receive a response?

22 A No.

23 MR. FENNICK: Objection. This has all been
24 covered.

25 A No.

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1 MR. LITTS: You have the answer. Let's keep
2 it moving onto new stuff.

3 Q Is there anything else with respect to --
4 once Student No. 6 reenrolled in the district what, if
5 anything, did the district provide in terms of services?

6 A Well, as I stated before, when we go through
7 the records and the team reviews the records if they feel
8 additional data is needed they will request that and do a
9 complete reevaluation.

10 This particular student left for a period of
11 time, has since returned, and the reevaluation is pending.
12 The student just returned. So, I don't know what the

13 recommendations will be or are from this evaluation report.
14 I know it's still in process.

15 Q Okay. Moving on, then, is there anything else
16 relevant to Student No. 6 that we haven't covered yet today?

17 A I don't think so.

18 Q Student No. 7.

19 MS. SCHURDAK: For the record, to make this go
20 a little more smoothly, I am handing the witness two
21 documents. Both have been provided to opposing counsel.
22 One is the unredacted chart of Student 7 through, I believe,
23 22, is it, and the next document is the numbering system
24 Counsel agreed to last week. I think that will facilitate
25 this witness's testimony.

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1 MR. LITTS: May I have a copy of the chart?

2 MS. SCHURDAK: The numeric chart?

3 MR. LITTS: Yup.

4 MS. SCHURDAK: You may have two copies,
5 Mr. Litts, hole punched.

6 MR. LITTS: Before we go onto this line of
7 questioning, the numeric chart that I asked for a copy of,
8 and I wanted to make sure, it's Student numbers 7 through
9 19, and then it refers to some other things and I know
10 Counsel's been provided with this. Is there any reason why
11 this shouldn't be marked as an exhibit?

12 MR. FENNICK: Can you just hold up which one
13 you're looking at? Okay.

14 MR. LITTS: Is there any reason this shouldn't
15 be marked as an exhibit?

16 MR. FENNICK: Well, subject to all the
17 confidentiality objections, but, beyond that, there is no
18 reason.

19 MR. LITTS: Well, just for the record, there is
20 nothing in this document that identifies a student by name.
21 It refers to a student number, it refers to a grade, an
22 enrollment date, an SE status, a NOREP date, and a parent
23 signature date. So, I don't know what other basis that
24 we're disclosing identifiable information of a student,
25 but --

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1 MR. FENNICKE: Okay. What number?

2 MS. SCHURDAK: I think it's School District 45
3 and if you have an exhibit tab -- is that correct according
4 to your notes as well, Mr. Litts?

5 MR. LITTS: School district 45 and that will be
6 under Tab 87.

7 ("PMCS STUDENTS EXISTING SPECIAL EDUCATION"
8 marked for identification as School District Exhibit 45.)

9 Q Can you first identify, what is been now marked
10 School District 45?

11 A The top of the form says Pocono Mountain
12 Charter School Students Existing Special Education, June
13 Invoice.

14 Q And what does this chart show?

15 A Well, there are quite a few students, I would
16 say almost all of them with the exception of two, that
17 enrolled in the charter school in September of 2008. It
18 looks like it's actually, probably, the first day of school.

19 They came into the school district with an IEP.
20 There's a Notice of Recommended Educational Placement that
21 is a date of November, anywhere from November 18th,
22 November 30th, just about all of them with the exception of
23 one and one that has a question mark, the Notice of

24 Recommended Educational Placement, which, to me, indicates
25 that it was developed at that time, is November.

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1 Q And I think you just said there's really two
2 dates used here. Is that unusual?

3 A Well, in reviewing this I have a few questions,
4 red flags I guess you could say. Students enrolled in
5 September and then were exited from Special Education in
6 November.

7 MR. FENNICK: Mr. Litts, I'm looking at this
8 document and I have an objection. We're hearing about a
9 resolution that was passed by the school board on May 21st,
10 2008. All of this information, all the action complained of
11 on School District 45 happened after that date. So, it
12 could not have been the basis for the revocation motion in
13 May of '08.

14 MR. LITTS: Your objection is noted and
15 overruled.

16 MS. SCHURDAK: And just for purposes of the
17 record, Mr. Litts, I would note that under the terms of the
18 charter, the charter school had 60 days to resolve any and
19 all issues and the fact that they haven't resolved issues
20 after being given notice thereof is relevant to this
21 proceeding.

22 Q But, Dr. Gustafson, you may proceed.

23 MR. LITTS: And, Counsel, those are all
24 arguments for a later point in time. Your objection is
25 noted, your argument is noted. Let's move on to a question

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1 and an answer.

2 Q I think you were talking about the
3 September 2008 date and the November 2008 dates. And I

4 think you used the term red flag. So, tell me,
5 Dr. Gustafson --

6 A The other -- what would be concerning, I guess,
7 would be that the NOREP date, the Notice of Recommended
8 Educational Placement, indicating that the student would be
9 exited from Special Education is in November, but the
10 parent's signature date varied, two, three months later.

11 Q I'd like to break this down, if I can. Can we
12 start with the enrollment date and, if you will, compare
13 that with the NOREP date. You said there was some
14 concern --

15 A Well, the enrollment date into the charter
16 school is September of '08.

17 Q And for Student No. 8, I'll use them as an
18 example, then the next NOREP date is 11-18-2008. Do you see
19 that on the chart?

20 A Are you talking -- I'm sorry, what number?

21 Q Student No. 8.

22 MR. FENNICK: Mr. Litts, the document speaks
23 for itself. We're not objecting to its admission at this
24 point. The dates are on there.

25 MR. LITTS: Again, as a fact finder, I've urged
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1 Counsel in rather strong language off the record to
2 expedite, to the extent possible, the presentation of
3 evidence. I think the board can take note of what the table
4 reflects. Mr. Fennick, apparently, has no objection to the
5 admission of the record, the enrollment date for each
6 student, the date listed on the NOREP, and when the parent's
7 actual signature was placed on the NOREP, so we don't need
8 to go through every single one. We can read the dates and

9 we're all familiar with the calendar, so --

10 MS. SCHURDAK: I agree, Mr. Litts, but I'm not
11 sure if it's in the board's understanding what you normally
12 expect with respect to time frames relating to enrollment
13 date and NOREP date.

14 MR. LITTS: That question you can ask the
15 witness.

16 Q That's the question. What kind of time frames
17 would you normally see with respect to enrollment dates,
18 student enrollment, and then the NOREP date?

19 A That's concerning because you're looking at
20 September, October, November, three months that the student
21 was in the charter school to determine progress, to
22 determine levels, to determine progress towards an IEP,
23 to implement an IEP, to provide the service that's required
24 by law to a student transferring in a school district with
25 Special Education services. To exit them from receiving

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1 those services in that period of time would be very
2 concerning.

3 Q And what is the significance, then, of the
4 parent signature date?

5 A Without reviewing every single educational
6 record on here, I did review a couple of the students

7 Q Tell me about the ones you did review.

8 A I reviewed No. 12 because that student actually
9 came to my attention when the student enrolled into our
10 school district over the summer from the charter school.
11 A guidance counselor notified me that the district -- that
12 he was having difficulty obtaining the educational records
13 of the student. Mom was not sure if the child was in
14 Special Education or receiving services. She did mark that

‡

15 the child was receiving support in either Reading or Math,
16 I don't recall.

17 So, the guidance counselor asked if I could
18 assist in getting those records because, specifically, the
19 guidance counselor reported to me that when he called the
20 charter school to ask that those records be forwarded Mr.
21 Severs told him to go through his assistant superintendent
22 to get the records. So, he called me to get those records.
23 That is not the usual practice.

24 Q You're not typically called upon?

25 A No. No. So, he did what he was told and he

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1 asked if I would be able to secure those records.

2 Q And were you able to secure the records for --

3 A We did get some of those records. The student
4 was exited from Special Education services and, again, the
5 report was missing components, there was some inconsistency
6 with grades, the student had some failing grades.
7 Specifically, there -- one achievement score indicated one
8 thing, one achievement score indicated another, and I would
9 have to look in the records to tell you exactly, but, in
10 essence, the report, the content of the report typically
11 didn't support exiting from Special Education services under
12 the criteria. That student is now in our district and
13 they're monitoring her progress at this point in time.

14 Q And that's Student No. 13, is that what you
15 said?

16 A Student No.

17 MR. LITTS: 12.

18 Q Excuse me. Student No. 12.

19 A I'm sorry, it's 13. I was wrong.

20 Q Student No. 13. Any other issues other than
21 what you've testified to regarding SD-45?

22 A In reviewing these particular students I
23 noticed that there are a set of twins and a sibling that
24 also were all exited from Special Education services
25 actually around the same time in November. To me, that's --

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1 the chances of all three children being exited is of a
2 concern. However, I have not -- I have seen that pattern
3 with the charter school and other siblings.

4 Q So, I just want to be clear because I don't
5 want you to identify these particular students by their
6 numbers. Are you saying that the enrollment date is the
7 same for all three of these?

8 A The enrollment date is the same.

9 Q NOREP date?

10 A Same.

11 Q Parent signature date?

12 A Yes.

13 Q Have I missed anything else regarding SD-45 in
14 terms of importance?

15 A There may be a typo in Student No. 7 in the
16 NOREP date. I believe that should say '08 instead of '09.

17 Q I believe you are correct.

18 MS. SCHURDAK: Do you agree with that, Mr.
19 Fennick?

20 MR. FENNICKE: I have not checked and I am
21 wondering who -- that comment leads me to ask who prepared
22 this exhibit.

23 MS. SCHURDAK: After our meeting last week I
24 asked my assistant, Ms. Taylor, to extrapolate from the
25 unredacted SD-45 and come up with a coding system and she

1 did and it was forwarded, I believe, to yourself,
2 Mr. Anders, and Mr. Litts either Thursday afternoon or
3 Friday morning.

4 MR. FENNICK: Well, the original document says
5 '09, it doesn't say '08.

6 MS. SCHURDAK: No, no, this is the original
7 document.

8 (Off record.)

9 MR. FENNICK: That's correct.

10 MS. SCHURDAK: So, Mr. Litts, if it's all
11 right, I'll have the witness pencil in the correct date in
12 SD-45 on your copies.

13 MR. LITTS: That's fine.

14 MS. SCHURDAK: I only see one here marked.

15 MR. FENNICK: We will not be taking a negative
16 inference from the fact that data was changed.

17 MR. LITTS: Miss Schurdak?

18 MS. SCHURDAK: I am showing opposing counsel
19 SD-45 that I have changed and then the other

20 Q Anything else, Dr. Gustafson, with respect to
21 SD-45?

22 A I don't think so.

23 Q Now, were there any issues with respect --
24 strike that. Did you review some records relating to
25 Student No. 20?

1 A Yes.

2 Q And what records did you review?

3 A The educational records for a student that
4 enrolled in our district in the Fall of 2009.

5 Q And were the records, the educational records,
6 complete?

7 A No, they were missing a current IEP.

8 Q And where did the records come from?

9 A The charter school.

10 Q Had Student No. 20 attended the school district
11 prior to going to the charter school?

12 A Yes.

13 Q Did Student No. 20 receive services as an
14 exceptional student prior to going to the charter school?

15 A Yes.

16 Q Is there anything in the records to indicate
17 whether or not the child continued to receive those
18 services?

19 A There was a reevaluation report finding the
20 student not eligible for Special Education services, no
21 agreement with the parents, no Notice of Recommended
22 Educational Placement, and I think that's it.

23 Q When you say no agreement by the parent,
24 could you clarify for the record, did the parent check a box
25 saying, "I don't agree," or there was no comment from the

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1 parent?

2 A There was no signatures. No signatures on the
3 report, no signatures saying that there was a meeting.
4 Again, another document that wasn't finalized or complete
5 or processed, was not complete.

6 Q And was there anything in the records provided
7 to you with respect to Student No. 20 on whether -- on what
8 steps the charter school may have taken to obtain the
9 parental involvement?

10 A Well, I -- no. In speaking with the parent,

11 because I personally spoke with the parent, they indicated
12 that they were not in agreement, that they weren't even
13 aware that the child was going to be exited, and that's --
14 it was very difficult getting this student's records, very,
15 very difficult, because I was personally involved. I had to
16 finally call the parent myself and say, "Is there anything
17 you can do to help us obtain these records?" The parent was
18 at the school where the child was enrolled, the parent
19 called the charter school, and upon that --

20 MR. FENNICK: Objection. There's no
21 foundation.

22 MR. LITTS: Overruled.

23 Q Go ahead.

24 A I was on the phone with the parent when it was
25 going on. Actually called the school and asked that those

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1 records please be faxed to the school so that the school
2 could review them and move forward to plan for programming
3 and provide services, and a free appropriate public
4 education, FAPE, as we're required to do. So, the parent
5 was very instrumental in finally getting the records.

6 Q Were those records then sent to you?

7 A Yes. I have to tell you, there was a couple of
8 attempts to get the records. I sent a letter to Mr. Severs
9 saying what I requested, I faxed a letter saying I would be
10 there the next day to pick up the records.

11 Q And did you go the next day?

12 A And the reason why -- the reason why we were
13 in a rush to get the records is because the students were
14 starting that -- within a few days and we wanted to make
15 sure we had -- were going to plan appropriate for the

16 students. They have to be scheduled and they have to be in
17 the appropriate classes.

18 So, there was a meeting, actually, with the
19 parent during another matter and -- let me backtrack and I
20 apologize.

21 Q That's okay.

22 A Because I'm going by memory. So, at that
23 meeting the parent released the records and at that point I
24 sent -- signed a release of records. At this point I sent
25 that released, I faxed it right to the charter school. My

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1 secretary called and said they never received the release,
2 so I faxed it again. I also sent a letter. I said I would
3 come to the charter school to pick it up. My supervisor --
4 one of the supervisors of Special Ed. actually went for me
5 because I was unable to go the next day, about 2:30. There
6 was nobody at the charter school to pick up the records.
7 So, it was very, very difficult to get the records for the
8 students.

9 In any case, I -- there was a message that was
10 left to say that -- when my secretary called she forwarded
11 me a message that was left on the machine that basically
12 said that per Mr. Severs that no one from the Pocono
13 Mountain School District is to come on the charter school
14 property and that they would mail the records. We never
15 received them.

16 By Friday we didn't receive the records.
17 That's when I elicited the assistance of the parent and upon
18 calling the charter school the records were faxed.

19 When we did receive them, however, they were
20 upsidown, mixed up, but we made sense of them.

21 Q And once this student then enrolled was it

22 determined whether or not the student qualified as an
23 exceptional student requiring services?

24 A I'm sorry?

25 Q Once Student No. 20 enrolled in the school

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1 district was there a determination whether or not Student
2 No. 20 qualified as an exceptional student eligible for
3 services?

4 A We continued with the program and right now
5 the child is being monitored because the parents were not in
6 agreement with exiting the child from Special Education
7 services. So, we're in the process of continuing Special
8 Education and monitoring the student in Special Education.

9 Q In terms of Student No. 21, are you familiar
10 with Student No. 21?

11 A Yes.

12 Q And did Student No. 21 attend the charter
13 school?

14 A Yes.

15 Q Did Student No. 21 attend the district at any
16 time?

17 A Yes.

18 Q Did Student No. 21 attend the district prior to
19 enrolling in the charter school?

20 A Yes.

21 Q And was Student No. 21 identified as being
22 exceptional prior to enrollment in the charter school?

23 A Yes.

24 Q Have you reviewed records from the charter
25 school relative to Student No. 21?

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1 A Yes. This student also did not have a current
2 IEP. We did not receive a current IEP. Upon enrolling,
3 the IEP was reviewed, the records were reviewed, and an IEP,
4 current IEP was developed.

5 Q What about a progress monitoring report for
6 Student No. 21? Were those sent to you?

7 A No. No progress monitoring on either 20 or 21.

8 Q And I think you testified, I just want to be
9 clear, 21 is currently receiving services?

10 A Yes.

11 Q What services did Student No. 21 receive at the
12 charter school? What areas generically, not specifically.

13 A I'm not quite sure.

14 Q Not without the record?

15 A Yes.

16 Q Student No. 22, are you familiar with Student
17 No. 22?

18 A Oh, yes.

19 Q And I'll back up for a moment and I
20 apologize. For Student No. 21, did you -- were you able to
21 obtain the educational records without difficulty from the
22 charter school? For Student No. 21.

23 A The same difficult scenario as the one I just
24 reported.

25 Q As Student No. 20.

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1 A Yes. I do want to correct something because
2 I'm not quite sure if the fax -- I might be getting confused
3 with the kids in terms of the fax and the records for the
4 student. I actually believe the fax was for Student No. 6.
5 I'd have to look at the records again, but I did notify --
6 I did send a letter to Mr. Severs regarding the records and

7 my attempts at getting them.

8 Q And perhaps this would help refresh your
9 recollection. And, again --

10 A I just remembered, I think I may be confusing
11 the faxes that I sent and who --

12 MS. SCHURDAK: I sent them to Counsel before
13 today and again --

14 MR. FENNICK: Are you introducing this?

15 MS. SCHURDAK: No, no, I'm using it as a means
16 to refresh my witness's recollection, but, no, we have
17 agreed that we were not to use this type of material as
18 exhibits.

19 Q Does this help refresh your recollection?

20 A It does. I did send a fax, yes, but I was
21 confused on the student where I actually went to pick up the
22 records. This is not the student. They were sent by the
23 assistance of the parent.

24 Q Okay. When you went to school to pick up the
25 records, that was regarding Student No. 6. Is that the

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1 clarifi cation you wanted to make?

2 A When I sent our supervisor.

3 Q I'm sorry, yes, relating to Student No. 6.

4 A Yes.

5 Q Anything else relating to Students No. 20 or
6 21? I know we sort of lumped them together in your
7 testimony.

8 A I believe that's it.

9 Q Student No. 22, what did you review with
10 respect to Student No. 22?

11 A [Deleted testimony].

12 MR. FENNICK: Objection. I don't know if it's
13 an objection, but that was the first slipup. She's done
14 great and we may want to correct the record on that.

15 MR. LITTS: We'll ask the stenographer to
16 strike the answer that was given by the witness and Ms.
17 Schurdak is going to reask the question of this witness.

18 Q How did Student No. -- why did Student No. 22
19 come to your attention and keep in mind, and you have done a
20 great job today --

21 A I'll sit on my hands.

22 Q Yes. The attorneys and hearing officer know
23 who we're talking about, but don't give any specifics
24 because we're concerned you could be identifying the
25 student's name.

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1 A That will be tough with this case, but I'll do
2 my best.

3 Q So, was an issue -- did an issue come to your
4 attention regarding -- and I think the code we came up with
5 last week was a behavioral issue regarding --

6 MR. FENNICK: The student needed an aide.

7 Q All right. Those are the code words.

8 A [Deleted testimony.]

9 MR. FENNICK: Can we fix that as well, please?

10 MR. LITTS: Strike the answer. Strike the
11 answer. The agreement that was reached -- and I think,
12 Dr. Gustafson, you have done a fantastic job today thus far.
13 Attorney Fennick, Attorney Schurdak, and myself are
14 intimately familiar with this based on our discussion last
15 Tuesday. It's my understanding you're aware of this
16 particular student because there was some issues that
17 personally were brought to your attention and specifically

18 as to services this child may need for an aide, correct?

19 A Correct.

20 MR. LITTS: You may proceed with your direct
21 examination.

22 MS. SCHURDAK: Thank you, Mr. Litts.

23 Q Was the aide issue resolved with the charter
24 school?

25 A I don't know. I know the issue was who is
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1 responsible for securing the aide and I received
2 notification of the situation and, actually, I sent a letter
3 because some information came through the whole process.
4 I was privy to some information that was sent to our school
5 district that I felt I needed to address with the charter
6 school and I did. I sent a letter to Mr. Severs
7 addressing -- actually giving a suggestion about the student
8 and the needs and I actually received a phone call from the
9 charter school, a person -- and I don't remember her name.
10 She identified herself as Director of Operations, I believe,
11 asking about the situation, but when I returned the phone
12 call that day it had already been rectified, so

13 Q Other than an aide, were there -- was there
14 anything supplied to you that would indicate whether or not
15 Student No. 22 would require additional assistance?

16 A There was an evaluation report in there, an
17 independent evaluation report.

18 Q And I don't want you to indicate the specifics,
19 please.

20 A Right.

21 MR. FENNICKE: Can we just put on the record
22 that when Dr. Gustafson says independent evaluation report

23 she is not talking about an ER in the Special Education
 24 sense? Can we just say that there was a report from a
 25 service provider regarding this student?

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1 MR. LITTS: Let's refer to it as an IE.

2 MR. FENNICK: But it wasn't.

3 MR. LITTS: Well, then, she can explain what
 4 type of a report she was referring to.

5 A It was an evaluation report that was not done
 6 through a public agency or school system, charter school.

7 Q Privately done.

8 A Privately done.

9 Q And, again, opposing counsel has that report.
 10 Did the report make a conclusion as to whether or not
 11 Student No. 22 qualified for services as an exceptional
 12 student?

13 A There was a diagnosis. However, the reason why
 14 I notified the charter school and gave them the suggestion,
 15 what possibly they want to consider --

16 MR. FENNICK: Objection. I'm making it on a
 17 more timely basis. This is not responsive.

18 MR. LITTS: The question was, was there a
 19 determination made as to eligibility for Special Ed. I
 20 heard the witness say that it included a diagnosis report.
 21 I think that is responsive to the question. Miss Schurdak,
 22 do you have another question?

23 MS. SCHURDAK: I'm sorry, two people were
 24 talking to me at once.

25 Q With respect to Student No. 22, what did you do
 after receiving this information from an independent service
 provider?

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3 A I notified the school.

4 Q The charter school?

5 A Yes, the charter school. Also in the
6 information I received there was some information from the
7 parent, written information. So, putting everything
8 together it really would fall under a Child Find law.

9 Q And what is Child Find?

10 A Child Find is a school district, public agency
11 is responsible for developing policies and procedures for --
12 and procedural safeguard notification to parents for
13 students that may be thought to be exceptional so that the
14 public agency is responsible for developing screening
15 procedures, evaluation procedures, identification
16 procedures, placement procedures so that students that are
17 thought to be exceptional are found and given services.

18 So, anybody could raise a concern about a
19 student related to Child Find; it could be a parent, it
20 could be a guidance counselor, it could be a service
21 provider. And, then, when these concerns are presented or
22 brought to somebody's attention generally you issue a
23 permission to evaluate or you review the report and get a
24 group together of professionals to review, acknowledge the
25 report, and see if the child does, indeed, qualify or if

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1 you're going on for a full evaluation.

2 So, it was information that was concerning
3 that -- because the information from the parent, I believe,
4 was in September and I just received the information
5 probably January or so. So, I was concerned as to whether
6 that child was getting services or not. So, I just brought
7 it to their attention through a letter to Mr. Severs.

8 Q And have you heard back anything from the
9 charter school with respect to Student No. 22 after sending
10 that letter with the exception of resolving the aide issue?

11 A I'm not sure if a letter was sent back to the
12 district. I don't recall at this point.

13 Q Okay. Were you in the room when Miss Sotack
14 testified --

15 A Yes.

16 Q -- during this proceeding? You heard Miss
17 Sotack -- what, if anything, did Miss Sotack testify to with
18 respect to class size and qualifying as an exceptional
19 student?

20 A She indicated --

21 MR. LITTS: Hold up. We don't need to relive
22 Miss Sotack's testimony. If this witness has -- we have the
23 transcript. We can look at it. If the witness has
24 questions about -- if she disagrees with it, let's move on.

25 MS. SCHURDAK: I just didn't want an objection
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1 from opposing counsel.

2 MR. LITTS: Mr. Fennick is -- was here as well.
3 He heard Miss Sotack's testimony. If this witness agrees or
4 disagrees with it she can express her opinion.

5 MR. FENNICK: She already testified about the
6 relationship or lack thereof to class size and Special
7 Education. If that's where it's going, we don't need to go
8 there.

9 MR. LITTS: And I would agree with that as
10 well.

11 MS. SCHURDAK: As long as we take note that
12 that's on a global level and not to each particular student,
13 1 through 6.

14 MR. LITTS: Yes. When there's global questions
15 then we assume there's global answers.

16 MS. SCHURDAK: Thank you, Mr. Litts.

17 Q In terms of the testimony -- strike that.
18 Other than Miss Sotack's correlation between class size and
19 qualifying as an exceptional student, did you have any other
20 areas that you disagreed with her testimony?

21 A Um

22 Q There was some reference --

23 MR. FENNICK: Objection.

24 MR. LITTS: Hold up. There's a question and I
25 heard an um. I don't know if there's an answer to it.

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1 A I guess I had some concerns with her testimony,
2 one being the class size reference, what's procedural,
3 what's sub

4 Q Substantive?

5 A Substantive information. I had a concern over
6 her interpretation of what the complaint was from Dr.
7 Pfennig and what actually was the complaint.

8 Q Can you clarify?

9 A Well, she indicated that we were looking at
10 grades and --

11 MR. FENNICK: I'm going to object. If the
12 complaints are not yet in evidence, and I know some of them
13 are, but we're going to put the rest of them in evidence,
14 redacted where necessary, and they will speak for
15 themselves.

16 MR. LITTS: This witness can testify if the
17 school district is of the opinion that Miss Sotack
18 misconstrued what the school district was trying to bring

19 to her or the Department's attention. She can clarify that
20 as well as disagreements or agreements she may have with any
21 conclusions reached by Miss Sotack in her testimony. So,
22 I will allow it.

23 Q You may proceed, Dr. Gustafson.

24 A The district was concerned with the number and
25 frequency of students that were found not to be eligible for

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1 Special Education services when they were already eligible
2 from a prior district, from a prior time so that the exiting
3 of students from Special Education services -- I don't feel
4 that it was completely addressed through that complaint.

5 Q What about in terms of -- Miss Sotack at one
6 point testified as to efforts made by the charter school to
7 secure records from the school district. Were you in the
8 room when she testified to that?

9 A She did. Her testimony about that was
10 concerning to me as Assistant Superintendent for Special Ed.
11 for the district. Although there was a little discrepancy,
12 she -- it was referred to as heroic. She said it was
13 extraordinary in her findings that -- and right away I sent
14 an e-mail out to the staff, all the people that I indicated
15 to you are responsible for educational records and reviewing
16 records, the guidance counselors, the secretary, the --

17 MR. FENNICK: Objection. This is
18 non-responsive.

19 MS. SCHURDAK: Yes, it is.

20 MR. FENNICK: And irrelevant.

21 MS. SCHURDAK: It is responsive. She is saying
22 what she did after hearing Miss Sotack's testimony.

23 MR. FENNICK: Then it's completely irrelevant.
24 We don't care whether she sent an e-mail to the staff.

25

MR. LITTS: I would agree with Mr. Fennick.

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1 If this is an e-mail that was sent after the testimony in
2 this proceeding, I don't believe it is relevant. Let's move
3 on to something else.

4 MS. SCHURDAK: I would note for the record that
5 it is being offered to specifically rebut what was brought
6 out by Mr. Fennick on his direct examination of Miss Sotack.

7 MR. LITTS: The issue, to the extent I recall
8 Miss Sotack's testimony accurately, to the extent she was
9 critical of the school district, and I don't have a specific
10 recollection one way or the other without looking at the
11 transcript, that would have been for a time and place before
12 these proceedings were commenced.

13 Now, if this witness wants to testify as to
14 information that was developed at that time and talk about
15 the practices at the school and that, that's fine. If she's
16 simply going to say, "Well, after she -- Miss Sotack
17 testified under oath this is what I did," then I don't think
18 the board needs to hear that and I would tend to agree with
19 Mr. Fennick. You can offer it. I don't know how much
20 weight, if any, we're going to give it. It's just simply
21 not relevant to the issues.

22 MS. SCHURDAK: I'm glad because I think I had
23 objected when she testified to it and was overruled.

24 MR. LITTS: Let's move on.

25 MS. SCHURDAK: I'm glad that you are

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1 reconsi deri ng.

2 Q I don't want to --

3 MS. SCHURDAK: If Mr. Anders could stop saying,

4 Jesus Christ," it might be --

5 MR. FENNICK: He did not say that.

6 MR. LITTS: Counsel, I realize things are
7 getting testy, but let's move on -- let's move on.

8 MR. ANDERS: I didn't say anything about Jesus
9 Christ. I don't like things being made up.

10 MR. LITTS: Look, I understand this thing is
11 getting heated. I didn't say you made any comments or not,
12 I'm just saying let's move on. Okay?

13 Q Anything else that I haven't covered here yet
14 this morning or this afternoon?

15 A No, not that I'm aware.

16 MS. SCHURDAK: I am moving, and I don't believe
17 there is any opposition to SD-45 into evidence, and with
18 that I have no further questions for this witness.

19 MR. LITTS: Hearing no objection, SD-45, it is
20 admitted. You're done with the direct of this witness?

21 MS. SCHURDAK: Yes.

22 MR. FENNICK: I know I've said this ad nauseam.
23 We have a jurisdictional objection. Can we just assume it's
24 an objection to all Special Ed. exhibits, testimony --

25 MR. LITTS: Mr. Fennick, as I stated earlier,

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1 I know you have made a number of objections and I said they
2 were noted for the record. They are still noted for the
3 record and I assume both parties will make arguments at the
4 appropriate time as to the relevance of any of these
5 testimonies or exhibits that had been placed into evidence.

6 MS. SCHURDAK: And you'll note my continuing
7 argument in response and, if I could, I just want to get the
8 educational records that I had given this witness to refresh
9 her recollection and may this witness have a three minute

10 break, please?

11 MR. LITTS: Five minutes.

12 (Recess from 2:35 p.m. to 2:42 p.m.)

13 MR. LITTS: Mr. Fennick, you may proceed with
14 cross examination.

15 - - -

16 CROSS EXAMINATION BY MR. FENNICK:

17 Q Dr. Gustafson, let's see if there's a few
18 things we can agree on before we disagree. Would you agree
19 with me that before a district can commence an evaluation of
20 a student the district has to receive a signed Permission to
21 Evaluate form from the parents?

22 A For reeval or initial eval?

23 Q Any evaluation.

24 A For an initial eval, yes, and for a reeval,
25 yes.

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1 Q And if a parent, even in writing, sends you a
2 letter saying, "I want my student evaluated," you can't do
3 that until you send the parent the permission to evaluate
4 form, they sign it, and return it to you, correct?

5 A Correct.

6 Q So, if a parent doesn't give your district a
7 signed Permission to Evaluate you can't do the evaluation.
8 Is that right?

9 A Unless the reevaluation is waived. The parent
10 has the right to waive the reevaluation process.

11 Q And then you're not doing an evaluation. You
12 can't actually do the evaluation unless you have the signed
13 Permission to Evaluate. Is that right?

14 A Correct.

15 Q And has it ever happened that you have sent
16 parents a Permission to Evaluate form and they have failed
17 to send it back to you?

18 A Yes.

19 Q I think earlier you said that it also happens
20 from time to time that a school district will send a parent
21 a NOREP and never get it back. Is that true?

22 MS. SCHURDAK: Asked and answered.

23 A Yes.

24 Q I think the witness answered the question.

25 MR. LITTS: She can answer the question.

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1 MR. FENNICK: She did. She said, "Yes."

2 MR. LITTS: All right, let's move on.

3 Q Now, you've been talking about evaluations that
4 you feel should have been done in certain cases and records
5 that should have been kept in a certain way in certain
6 cases. Is it your testimony that that's the way your
7 district does it?

8 MS. SCHURDAK: Objection. Relevancy.

9 MR. FENNICK: Well, we have --

10 MR. LITTS: Well, to the extent this witness
11 did testify as an expert as to the manner in which she
12 believed evaluations should be done, I do believe it has
13 some relevance. So, I will allow the question to be asked
14 and answered.

15 Q Some of your testimony concerned the charter
16 school -- your concern that the charter school does not have
17 a full continuum of services. Did I hear you correctly?

18 A No. My testimony was that public agencies need
19 to provide a continuum of services. Based on the records
20 that I reviewed from charter school -- the charter school

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21 it's not clear what services -- to me what they are
22 providing.

23 Q Would you agree with me that the Pennsylvania
24 Department of Education in compliance monitoring determined
25 that your district does not provide the full spectrum of

Gustafson - Cross

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1 services that it is required to provide?

2 A I'd have to see the document that you're
3 referring to.

4 MS. SCHURDAK: Objection. First of all,
5 I'm not even sure this is procedural or substantive and this
6 witness really focused her testimony on the substantive.

7 Secondly, the school district here and its
8 delivery of Special Ed. services is not the issue for the
9 board to decide, the issue for the board to decide is
10 whether or not there has been sufficient testimony as to the
11 charter school providing those services.

12 MR. LITTS: I would agree with you, Miss
13 Schurdak, that the school district's delivery of Special
14 Ed., whether it be good, bad or indifferent, is not the
15 purpose of this hearing. I want to give Mr. Fennick some
16 amount of latitude, but I've addressed this issue previously
17 and I'm sure Mr. Fennick is aware of it and continues to be
18 aware of it.

19 So, with that in mind, Mr. Fennick, I'll let
20 you engage in cross examination, but, again, the school
21 district's delivery of services is not an issue for this
22 board to decide.

23 MR. FENNICK: And I'm not introducing it for
24 that reason.

25 MR. LITTS: That's what I'm saying. I'll give

1 you some latitude, so

2 MR. FENNICK: Do we have -- what exhibit would
3 we be up to for the charter school?

4 (2008-2009 SPECIAL ED. EXECUTIVE SUMMARY marked
5 for identification as Charter School Exhibit No. 8.)

6 Q So, Dr. Gustafson, I have shown you what we
7 have marked as Charter School Exhibit No. 8. Is that the
8 executive summary for 2007-2008 of the school district's
9 Special Education compliance in certain areas?

10 A Yes. I am familiar with it.

11 Q And you have seen this before, correct?

12 A Yes. You're talking about two different
13 things, though. You're talking about a continuum of
14 services versus least restrictive environment.

15 Q And you've been found non-compliant in both of
16 those areas, haven't you?

17 MS. SCHURDAK: Objection.

18 MR. LITTS: Mr. Fennick, where are we going?

19 MR. FENNICK: We are going a couple of places.
20 No. 1, we're, again, at the qualifications issue which you
21 told me to defer because there is a question, No. 1, if this
22 witness --

23 MR. LITTS: First off, I didn't say anything
24 about deferring qualifications. I cut you off because you
25 weren't sticking to the appropriate scope. So, there's

1 nothing about qualifications at this point.

2 MR. FENNICK: May I continue?

3 MR. LITTS: Just correcting your
4 characterization of my statements.

5 MR. FENNICK: I understand. May I continue?

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6 MR. LITTS: Yes, you may.

7 MR. FENNICK: I apologize if I characterized
8 our discussion from last week improperly. The point -- and
9 this is just one of the justifications -- is that if this
10 person is an expert who can tell us how the charter school
11 should be fulfilling its duties under the Special Education
12 laws we need to be able to look at how well any school
13 districts that she is in charge of have fulfilled their
14 duties under the Special Education laws because if they have
15 not then how can she be an expert on what is the right way
16 of doing to do things and what is not? Now, that's just
17 No. 1, so please don't stop me yet.

18 And the analogy I came up with is if you're
19 going to get an expert to evaluate somebody's ability to
20 shoot free throws you don't get Shaquille O'Neal, you get
21 Larry Bird, and we may have Shaquille O'Neal because this
22 expert's own district does haven't a good record.

23 The second reason that this is relevant,
24 particularly with regard to least restrictive alternatives
25 and classification, is that this district may overclassify

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1 students and may segregate students unnecessarily and when
2 they get to the charter school they are declassified and it
3 comes back to the district as a concern that too many
4 students are being declassified, which is something that she
5 testified to.

6 So, to the extent that she is saying, "I'm
7 measuring what the charter school is doing based on the
8 context that I'm in," which is this district, we need to
9 know what that context is.

10 For example, there's the twins question.

11 You know? How could two twins be exited from Special
12 Education on the same day? Well, if they shouldn't have
13 been qualified as Special Education in the first place then
14 should they certainly could be exited from Special Education
15 on the same day. So, that's why I think this inquiry is
16 relevant.

17 MS. SCHURDAK: My response is first, first of
18 all, this witness has already been qualified as an expert
19 witness. So, qualifications are not an issue at this point
20 in time.

21 In terms of Mr. Fennick's saying, "Look,
22 there's an overclassification or there's a
23 misclassification," if he has evidence of that present that
24 evidence. That's the evidence he should be focusing on,
25 not along the line of inquiry regarding a document, you

Gustafson - Cross

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1 know, as to what the district is doing in '07 and '08 and I
2 would note for the record there was an agreement that
3 counsel would provide each other with any and all exhibits
4 in advance of the hearing. Mr. Fennick has never produced
5 this document to me prior to today.

6 MR. LITTS: All right, have a seat Counsel.
7 And, again, I do respect the rights of Counsel to present
8 evidence and to cross examine, but I just want to be clear
9 for the record, at least as to the how the hearing officer
10 is perceiving this witness's testimony, and I alluded to
11 this off the record with counsel.

12 If I'm understanding the gist of the testimony,
13 it's that this witness has referred to 22 particular
14 students and some issues as to whether or not records were
15 forwarded in a timely manner, records were forwarded in a
16 comprehensive manner that was expected meaning "We received

17 all the documents that you would expect to see," whether or
18 not services were provided to a student who, according to
19 this witness's direct testimony, she believed to be eligible
20 for services and part of that is based upon the fact that in
21 some of these instances the student was previously
22 identified as Special Ed. while at the school district and,
23 subsequently, the kid returned to the school district and
24 was, again, identified as eligible for services.

25 Those are basically the issues as I'm

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1 understanding them from the school district's direct
2 testimony.

3 Now, Mr. Fennick, if you want to ask questions
4 on cross examination as to the students the school district
5 has relied upon, those 22 students, to refute whether or not
6 there's evidence to substantiate records were timely
7 submitted to the school district or not or appropriate
8 records were kept and transmitted to the school district or
9 that one of these 22 students should not have been
10 identified for Special Ed., you're free to do that. But,
11 this stuff goes well beyond the scope of that direct
12 examination.

13 So, I'm not going to allow this if that's the
14 purpose. If you have a concern with regards to, you know,
15 a particular student that is -- picking as an example,
16 Student No. 4, and saying, "Look, I want questions about
17 this, that, and the other thing," you're free to do that.
18 But, just talking in general about the school district and
19 things like that, that's not relevant.

20 MR. FENNICK: Well, Mr. Litts, I respect your
21 decision, I will not ask anymore questions about that, but I

22 need to put on the record what I believe the evidence would
23 show if I was allowed to present it so that the appeal board
24 can know that. And I understand the board will not consider
25 it, but it needs to be part of the record.

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Gustafson - Cross

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1 MR. LITTS: No, the board -- I won't tell you
2 how to -- I think you're assuming a couple of things.
3 You're assuming the outcome of this proceeding, which you
4 shouldn't do --

5 MR. FENNICK: No, I'm not. Not at all.

6 MR. LITTS: But in the event that the board
7 were to make a ruling that we revoke the charter and in the
8 event that an appeal was filed and ended up before CAB, to
9 the extent that there's materials that weren't submitted
10 here and the reason they weren't submitted is because of my
11 ruling that precluded you from doing that, and Miss Schurdak
12 is under the same rules here as well, I think you both have
13 arguments for that assigned hearing officer, under the
14 circumstances, to suggest, "Well, gee, there's a ruling by
15 the hearing officer objecting to this line of questioning.
16 I wasn't able to pursue this or I wanted to submit this
17 stuff." That's fine, you can take that up with the hearing
18 officer.

19 As for submission of evidence, you haven't
20 presented your case yet, Mr. Fennick. You'll have an
21 opportunity to present evidence and we can address it at
22 that point in time.

23 At this point I'm saying that the scope of the
24 cross examination well exceeds what the witness testified as
25 to on her direct. She focused on 22 students and you're

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1 free to focus on those 22 students and raise question as to
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2 identification and all that other good stuff that you said
3 you wanted to pursue. You can do that. You're not doing
4 that with this exhibit.

5 MR. FENNICK: Well, I'm reading from the
6 transcript, Page 868, of our hearing on the 2nd of February
7 and what you said, Mr. Litts, is "Assuming the board does
8 hear Dr. Gustafson's testimony, there will be an opportunity
9 on cross examination to probe knowledge with regards to the
10 law with regards to charter school operations and other
11 things that are relevant that may cast doubt on her
12 knowledge, credibility or the relevancy of her testimony."
13 Of the testimony, excuse me. So, that's what you said.

14 Now, as I said, I don't want to argue with you
15 about it, but I just want to be clear that I want to put on
16 the record certain facts that I think she would concede in
17 her cross exam because I don't want to hear from the Charter
18 Appeal Board that "this evidence was available to you, so we
19 won't let you introduce it now," which is the standard that
20 they use for introducing evidence into the record at that
21 point. So, it will take me 30 seconds.

22 MR. LITTS: Okay.

23 MS. SCHURDAK: I'm sorry, I don't understand
24 exactly what opposing counsel is suggesting. I'm objecting
25 to his characterization of any evidence to CAB. I mean --

Gustafson - Cross

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1 MR. LITTS: I mean, whether the charter
2 school -- excuse me, whether the school district does a good
3 or bad job with Special Ed. is not relevant.

4 MR. FENNICK: I agree, but what this witness
5 knows about Special Education is shown by her school
6 district's performance in the Special Education area because

7 if this district is Shaquille O'Neal then she doesn't know
8 that much about shooting foul shots.

9 MR. LITTS: And I would disagree with that
10 characterization. I'll use a different sports
11 characterization. You could have a wonderful player on a
12 lousy team and that person could be a very skilled athlete,
13 whether a pitcher, hitter, quarterback, punter, but just on
14 a bad team and the fact that that individual's on a bad team
15 doesn't make that person a bad player.

16 So, we can argue this 'til the cows come home,
17 but at the end of the day, you know, the board is being
18 asked to consider the charter school's performance and
19 compliance with the applicable Special Education laws and
20 that's the purpose of the testimony that's being offered
21 and, presumably, why you're cross examining to probe that.
22 We can go on and on and on about whether or not this school
23 district's doing a good or bad job, but it's not relevant.

24 MR. FENNICK: Well, like I said, I respect
25 that.

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1 MR. LITTS: And your objection is noted. So,
2 let's move on to something else.

3 MR. FENNICK: We are still at the point where
4 I want to take 30 seconds to put facts on the record. May I
5 do that or not?

6 MR. LITTS: No. Why don't you do this, Mr.
7 Fennick? Why don't you type that up, you can talk with
8 Miss Schurdak, and put it in the record tomorrow.

9 MR. FENNICK: Okay.

10 MR. LITTS: Thanks.

11 Q Now, Dr. Gustafson, in a number of the students
12 that you testified about today those students were also the

13 subject of investigations by the Department of Education,
14 weren't they?

15 A (No response.)

16 Q I'll refer you to Joint Exhibit 20 which you
17 should have in front of you.

18 MS. SCHURDAK: That would be Tab No. 26.

19 Q I believe the names are -- well, the redacted
20 version is 19, the unredacted version is 20.

21 A I'm sorry?

22 MS. SCHURDAK: Tab No. 26 and 25,
23 Dr. Gustafson, and 25 is the redacted and 26, tab number,
24 is not redacted. That's Joint Nos. 19 and 20. Correct,
25 Attorney Fennick?

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1 MR. FENNICK: Yes.

2 A The letter from Miss Sotack? Or from Dr.
3 Pfennig?

4 Q Yes. That has a list of students names.
5 Do you have that in front of you?

6 A Yes.

7 Q Would you agree with me that this is a list of
8 students who Dr. Pfennig had concerns about? Would you
9 agree?

10 A I don't know which are the 22 that we're
11 referencing here today of this --

12 Q I will help you. Would you agree that this
13 letter dated July 2nd, 2008, contains a list of students
14 that Dr. Pfennig had concerns about?

15 A Yes.

16 Q And is that list of names of the particular
17 students on Page 2 of that letter?

18 A They are redacted.

19 Q Well, there is one that is not redacted, so
20 either go forward an exhibit or back an exhibit.

21 MS. SCHURDAK: If I may, go to Joint 20, which
22 is Tab No. 26. You should find the non-redacted version.

23 A That's what I was -- this is what I have.

24 MS. SCHURDAK: Oh, there's been

25 MR. LITTS: And I'll take the other binder.

Gustafson - Cross

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1 MS. SCHURDAK: I'll switch binders with you.

2 Q Ready?

3 A Yes.

4 Q So, now that you have the unredacted version in
5 front of you, which is Joint Exhibit No. 20, do you see the
6 list of names?

7 A I do.

8 Q And would you agree with me that Dr. Pfennig
9 was asking the Department of Education to investigate the
10 charter school's compliance with Special Education laws
11 regarding these students?

12 A Yes.

13 Q Now, if you go to the list on the second page,
14 the second name there is a student you have testified to
15 today, Student No. 1; is that correct?

16 A Yes.

17 Q And the fourth student is a student that you
18 have testified about today, correct?

19 A Yes.

20 Q What number is he, do you know?

21 A 5.

22 Q And if we go down to the middle section ...
23 I do not see any there. The bottom section. Is the third

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24 name from the bottom one of the students that you talked
25 about today?

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Gustafson - Cross

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1 A Yes.

2 Q And that is Student No. 3; is that correct?

3 A Yes.

4 Q Would you also agree that this letter expresses
5 a concern by Dr. Pfennig that the charter school is exiting
6 too many students from Special Education?

7 A There was a concern about the number of
8 students that were exited, yes.

9 Q And would you agree with me that the
10 Department of Education investigated his complaint and found
11 it to be without merit?

12 A The Department of Ed. investigated procedural
13 issues. Debbie Sotack clearly stated --

14 Q I'm not asking you to characterize their
15 investigation. I'm asking you if they investigated the
16 complaint and found it to be without merit.

17 MS. SCHURDAK: I'm going to object and ask that
18 this witness be allowed to finish her sentence before being
19 interrupted by counsel.

20 MR. LITTS: Well, hold up. I have objections
21 for both sides. And, again, I have a vague recollection of
22 Miss Sotack's testimony. Mr. Fennick, I'm going to let this
23 witness answer the question more than a yes or no answer to
24 put it into some context. So, you can ask the question
25 again and she's permitted to answer as she was beginning to

♀

Gustafson - Cross

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1 do so.

2 A Thank you.

3 Q Well, can you answer it first and then explain?
4 Was the complaint found to be without merit?

5 A The complaint was found to have some procedural
6 concerns that she described as self-corrected or corrected.
7 She -- our concern is the appropriateness of students being
8 exited from Special Education. Miss Sotack said 10 times in
9 her testimony that it's not within her scope of authority to
10 determine whether the program was appropriate and whether
11 the student was exited appropriately.

12 Q And the date of Dr. Pfennig's letter is
13 July 2nd. Would you agree?

14 A Yes.

15 Q Would you agree with me that he submitted other
16 complaints to the Department of Education about the charter
17 school's Special Ed. compliance?

18 A Yes.

19 MR. FENNICK: So, this will be No. 9.

20 (PFENNIG COMPLAINT LETTER marked for
21 identification as Charter School Exhibit No. 9.)

22 Q Dr. Gustafson, do you have Charter School
23 Exhibit No. 9?

24 A Yes, I do.

25 Q And is that a complaint that Dr. Gustafson sent
Gustafson - Cross 1017

1 to the department about the charter school's Special Ed.
2 compliance?

3 A Dr. Pfennig.

4 Q Dr. Pfennig. I'm sorry.

5 A Well, actually there was more to this than
6 three pages.

7 Q Well, there was a letter attached which we just
8 talked about, correct? I didn't want to introduce the

9 letter.

10 A Okay.

11 Q He's referring to his earlier letter of
12 July 2nd, 2008. Is that correct?

13 A Well, there was a series of -- in the process
14 it started out with some concerns, notifying of the
15 concerns, and then it led to a complaint --

16 Q When you say there's a series of letters you
17 mean there was back and forth between your district and the
18 Department of Education.

19 A Yes.

20 Q He essentially wouldn't take no for an answer.
21 He kept sending concerns, the department kept saying, "We
22 don't find them to have merit," and then he would send
23 something else.

24 MS. SCHURDAK: I'm going to object because the
25 best form of evidence are the letters themselves and not

Gustafson - Cross

1018

1 Mr. Fennick's characterization of the letters and I believe,
2 by the way, a lot of these letters have been introduced into
3 evidence as Joint exhibits and they speak for themselves.

4 MR. FENNICK: Some of them have and some have
5 not, but we will introduce them all.

6 Q So, would you agree with me that he kept
7 writing back on matters they had already decided?

8 MS. SCHURDAK: Mr. Litts, I would ask for a
9 ruling on this because I don't want this witness to
10 characterize letters written by the superintendent and by
11 someone at PDE.

12 MR. LITTS: How about we try this? Mr.
13 Fennick, is your question on cross examination "Did the

14 superintendent send multiple letters to the Department of
15 Education complaining about the manner in which Special Ed.
16 services were purportedly being provided at the charter
17 school?"

18 MR. FENNICK: That's fine.

19 Q Can you answer that question?

20 A He sent letters because some of the responses
21 were asking --

22 MR. LITTS: Well, Dr. Gustafson, yes or no.
23 Were multiple letters sent?

24 A Yes.

25 MR. LITTS: Okay. Mr. Fennick, you may

Gustafson - Cross

1019

1 continue.

2 Q Before today did you talk about what your
3 testimony would be with Dr. Pfennig?

4 A I did not.

5 Q So, he didn't have any idea what you were
6 going to say about Student No. 2 or Student No. 6.

7 MS. SCHURDAK: Objection, asked and answered.

8 MR. FENNICK: I am entitled to probe the
9 answer, particularly where it's totally without credibility.

10 MR. LITTS: Well, I'm going to -- Mr. Fennick,
11 before you go castigating someone as to their testimony, the
12 answer was no. I will allow you some follow-up and, again,
13 Counsel, I'll remind you, to the extent possible let's try
14 to maintain a level of civility. So, the follow-up question
15 is what?

16 Q You sent -- you sent a number of letters to the
17 charter school regarding some of these students. Is that
18 correct?

19 A Yes.

20 Q Did you send Dr. Pfennig copies of those
21 letters?

22 A I would have to look to see if he was cc'd on
23 them.

24 Q I'll show them to you. You also sent copies of
25 the letter to the Department of Education, didn't you?

Gustafson - Cross

1020

1 A Yes.

2 Q And did -- why did you send copies to the
3 Department of Education?

4 A To make them aware of our concerns.

5 Q Well, isn't your testimony today that these are
6 all matters that they don't have jurisdiction over?

7 MS. SCHURDAK: I'm going to object as to a
8 mischaracterization. That's not what this witness said.

9 MR. LITTS: If there is a mischaracterization
10 this is the witness's opportunity to clarify that. That's
11 the beauty and the curse of cross examination. There's
12 greater latitude, but she also has greater latitude to
13 answer the question if it presumes facts that aren't quite
14 accurate.

15 A I'll try to explain procedural versus looking
16 at the appropriateness of programming. If a student -- if
17 there's a complaint from a parent, from anyone, that a
18 student is not receiving services, say speech and language,
19 the department would investigate that.

20 The department also -- that's the difference --
21 that's receiving services. They don't -- Miss Sotack
22 testified that she didn't determine whether that service was
23 appropriate or not, whether -- she would look and see was
24 the parent notified? Were there required members of the IEP

25 team? Was the evaluation done in a timely manner? Those

Gustafson - Cross

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1 are procedural issues.

2 Q Were notices signed?

3 A Excuse me?

4 Q Were notices -- was the NOREP signed? Is that
5 a procedural issue?

6 A Yes, and the charter school did get cited for
7 trying --

8 Q Just answer my question. You answered yes.

9 MS. SCHURDAK: I'm going to object. Again,
10 he's interrupting the witness.

11 MR. FENNICK: The witness should answer the
12 question.

13 MR. LITTS: Dr. Gustafson, you have to answer
14 the question asked of you on cross examination. So, let's
15 keep that in mind. Mr. Fennick, ask a question again or ask
16 a different question.

17 Q So, if I'm understanding you correctly, you are
18 saying that the department has jurisdiction over procedural
19 issues, which you have just described. Is that right?

20 A Yes.

21 Q And you are also saying that what you are
22 testifying to are substantive issues such as whether the
23 level of services set forth in an IEP is appropriate for
24 that student's needs. Is that right?

25 A Yes.

Gustafson - Cross

1022

1 Q And is it your testimony that you have
2 consistently maintained that position for the last two
3 years?

4 A I'm sorry, repeat the question.

5 Q Have you consistently maintained that position
6 for the last two years, 2008, 2009?

7 A There's a level to the complaint process.
8 If there's a question about programming and services, that
9 is done through a due process. However, Miss Sotack did say
10 if she would come in and notice that there were concerns she
11 would address them with the school district. Or with the
12 charter school. It depends on what the complaint is, it
13 depends on what the issues are.

14 The department also monitors
15 overclassification, disproportionalities. You indicated that
16 our school district overclassifies. However, we have a
17 report from the state that says that is not the case. So,
18 it monitors those areas as well.

19 Q Can you answer my question now? That was very
20 interesting, but it didn't answer my question. At all.
21 Have you maintained in 2008 and 2009, and now 2010, that you
22 have the ability to decide whether the charter school is
23 complying on substance and the Department of Education has
24 the power to decide whether the charter school is complying
25 on procedure?

♀

Gustafson - Cross

1023

1 MS. SCHURDAK: I'm going to object because it's
2 really asking for three years of position and three years in
3 one question and I'm not sure if the answer is going to vary
4 or not and, again, I don't appreciate being cut off.

5 MR. LITTS: Well, the witness can answer this
6 question and, quite frankly, a lot of gamesmanship going on
7 with both parties. The board is hopefully going to decide
8 what this stuff is.

9 So, Dr. Gustafson, is it your position that

10 the school district gets to decide whether or not the
11 charter school is substantively complying with the Special
12 Education Law and that PDE is supposed to focus on
13 procedural issues? Yes or no?

14 A No, not necessarily.

15 MR. LITTS: All right. You can explain your
16 answer.

17 A The -- under the charter, the school
18 district -- the charter agreed that the school district
19 would oversee the -- well, first of all, the charter agreed
20 to follow the regulations under IDEA and compliance issues.
21 They also agreed that the school district would oversee
22 those compliance issues. We had concerns. They were
23 brought to the department's attention. They sent someone
24 out here to do fact-finding and then to address the
25 complaint. So, it depends on what the specific issues are.

Gustafson - Cross

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1 Q Well, procedural issues, let's go with that.
2 Does the department decide procedural issues?

3 A Yes.

4 Q And any letter that you sent, that you copied
5 the department on, must, therefore, have been a procedural
6 issue, right?

7 A Not necessarily. I have to go through every
8 letter to see what -- in each case.

9 Q You also copied Mr. Freund in some of these
10 letters. Why did you do that?

11 A At the time we were

12 Q Building a case against the charter school.

13 MS. SCHURDAK: Again, the witness was answering
14 and counsel interrupted her. I would ask that the witness
15 be permitted to finish her answer.

16 A One of the concerns of the numerous concerns
17 was that delivery of Special Education services,
18 programming, and evaluation of students. It's important to
19 notify our attorneys that we still have concerns.

20 Q I see. So, any letter that you have sent to
21 any charter school, whether it be Pocono or Evergreen,
22 regarding a Special Education issue is copied to your
23 solicitor. Is that what you're saying?

24 MS. SCHURDAK: Objection. That is not what her
25 testimony was.

Gustafson - Cross

1025

1 MR. FENNICK: Well, let her say it. You are so
2 obstructionist.

3 MR. LITTS: Hold up. Again, Counsel, I'll
4 remind each other as to a certain level of decorum. He has
5 asked the question, you can object to the question. It's an
6 appropriate question and the witness can answer and, as I
7 understood the question of this witness, it's whether or not
8 Dr. Gustafson knows if there's been other letters regarding
9 Special Ed. involving other charter schools, Evergreen, and,
10 if so, whether or not the district solicitor's been copied
11 on those letters, if she knows.

12 A To be honest with you, the intent of my letters
13 were to notify the charter schools of concerns relating to
14 compliance, procedures, whatever they may be in hopes that
15 situations would be addressed, possibly rectified, and
16 changed.

17 MR. FENNICK: Mr. Litts, could you ask --

18 A I also offered to assist if they needed any
19 assistance. "Call me if you have any questions or
20 concerns."

21 MR. FENNICK: Could you direct the witness to
22 answer the question? She's not answering them. When you
23 ask them --

24 MR. LITTS: Dr. Gustafson, have you ever sent
25 any letters to Evergreen Charter School regarding Special

Gustafson - Cross

1026

1 Ed. matters?

2 A No.

3 MR. LITTS: Okay. You may continue, Mr.
4 Fennick.

5 Q Prior to the Fall of 2008 did you send letters
6 to the Pocono Mountain Charter School concerning Special Ed.
7 matters?

8 A The first case that came to my attention
9 regarding trying to get records was Student No. 1 which I
10 believe was '07.

11 Q Did you send a copy of that letter to
12 Mr. Freund?

13 A I don't recall.

14 Q No. Now, let's talk about a particular
15 student, Student No. 22, who had the aide. As you sit here
16 today can you tell these two gentlemen right here whether
17 that student went one day without the aide that he needs?

18 A Considering that the aide was being requested
19 by the parent --

20 Q Can you answer the question? Yes or no?

21 MS. SCHURDAK: That's --

22 Q Did he go one day without an aide?

23 MS. SCHURDAK: That's a different question.

24 Again, Counsel did not permit the witness to answer the
25 question. He changed it now.

1 MR. LITTS: Well, you can answer this question.
2 Do you know whether or not the student went a day with or
3 without -- without an aide while enrolled at the charter
4 school? Yes or no.

5 A It's difficult to answer yes or no because I
6 was contacted by the charter school about securing an aide
7 for the child.

8 MR. LITTS: Okay.

9 A So, to me if they're asking if the child needs
10 an aide I'm assuming that child went without one.

11 MR. LITTS: Okay, you answered the question.
12 Next question.

13 Q You didn't check before you came and testified
14 that the charter school should be revoked partly on the
15 basis of this student. You didn't check, did you?

16 A It's not my decision to revoke the charter
17 school, that's the board's decision.

18 Q Right, but you're in here to tell the board
19 about violations of the charter school law and when I asked
20 you if this particular violation had ever actually occurred
21 you don't know.

22 A The concern I had was not whether the student
23 had the aide, the concern was with Child Find, that there
24 was a report out there that was not addressed because of the
25 concerns of the parents and the letters saying that child

Gustafson - Cross

1028

1 needed services.

2 Q Ah. So, all your testimony about whether the
3 student had the aide and the phone call that you had with
4 the charter school about the aide, should we discount all
5 that?

6 MS. SCHURDAK: Objection. That's
7 argumentative.

8 MR. LITTS: Mr. Fennick, can you rephrase the
9 question?

10 Q All right. You said that you got a call from a
11 woman at the charter school identifying herself as the
12 Director of Operations. Do you remember that?

13 A Yes.

14 Q Do you know the date of that that she called?

15 A I do not. I may have it written down in my
16 logbook. I would have to go look.

17 Q You said you didn't talk to her because the
18 problem had been resolved.

19 A I did not say that. I said that she said,
20 "Thank you so much for calling me back. The issue has been
21 resolved." This was after my letter to Mr. Severs. I do
22 know that.

23 Q So, your letter -- are you saying that your
24 letter to Mr. Severs actually helped resolve the problem?

25 A I hope so.

Gustafson - Cross

1029

1 Q So, we shouldn't take any implication, then,
2 from the fact that you didn't get any written response
3 against the charter school. Do you understand my question?

4 A I know there was a response that they --
5 that the packet wasn't included in the -- that I referenced
6 wasn't included in the letter, we sent that, but I don't
7 remember if that response was in a letter -- there was some
8 response back to that document, those documents.

9 Q Attorney Schurdak asked you a number of
10 questions related to letters that you sent the charter
11 school and she always asked you if you got a written

12 response and your answer was always no.

13 A No, I -- we did --

14 Q No, you're right.

15 A We did get a response to one letter.

16 Q I apologize. But, should we, based on what
17 you're saying now, be able to think one way or another about
18 the charter school's response or lack of a response? Should
19 we make any inferences from that?

20 A Do you want my personal inferences?

21 Q Well, sure, that's what I'm asking you.

22 A Outlining the concerns that I have had on
23 several of the students, and not every student had a letter,
24 certainly, that is not the case, I would expect the person
25 receiving the letter, Dr. Severs, maybe contacting saying,

Gustafson - Cross

1030

1 "Wait a minute. You didn't get this document? Here, let me
2 give it to you. Let me send it again. Let me --" or some
3 sort of "Well, thank you for bringing that to my attention.
4 We'll see --" and I would see things change. Up until this
5 past Friday I still have guidance counselors and principals
6 contact me because of the difficulty getting records from
7 the charter school.

8 Q Okay.

9 A I'm not seeing changes.

10 Q Let me ask you, still with regard to Student
11 22, this student has never been a student in your district.
12 Is that right?

13 A Correct.

14 Q Do you have a release signed by the parents
15 allowing the charter school to talk to you about this
16 student?

17 A No, but I believe the documents came from the
18 charter school and were sent to the district. So, I don't
19 know if the district --

20 Q You testified that you got a report from a
21 professional about this student, right?

22 A From the charter school to our transportation
23 department. To the district, excuse me.

24 Q Okay. So, you got this report from the charter
25 school and you're testifying that he sent it back to the

Gustafson - Cross

1031

1 charter school saying, "Enclosed is the report. You ought
2 to do something about this." Is that your testimony?

3 A I gave suggestions on how to handle or how to
4 address independent reports.

5 Q And does the charter school have permission to
6 give you information about what they have done or have not
7 done with that report?

8 A I didn't ask for any information about it.

9 Q So, why are you telling the board that you sent
10 them this report and you have concerns about it? Are you
11 retracting that testimony?

12 A I testified to the student, No. 22, and the
13 questions that were asked of me.

14 Q All right. So, if I'm understanding you
15 correctly, you don't know whether the student was ever
16 without an aide, correct?

17 MS. SCHURDAK: I think the witness already
18 testified as to that issue. I believe her testimony was --

19 MR. LITTS: Well, whether -- she did testify
20 about this and, so, let's move on, Mr. Fennick.

21 Q And you don't know what the charter school did
22 with regard to their report that you sent them, correct?

23 A I can only base it on the other documents that
24 accompanied that, the letter from the parent saying, "My
25 child needs services. My child needs possibly Section 504,

Gustafson - Cross 1032

1 possibly an IEP." So, I'm assuming there was no services
2 provided. I was just offering my assistance in what could
3 be done when and what's required under Child Find.

4 Q Maybe I'm not being clear. I'm not asking you
5 about why you wrote the letter that you wrote, I'm asking
6 you why you're coming in here and testifying about services
7 that were or were not provided to the student when you don't
8 know the answers?

9 A I did testify to what I did know and what I
10 reviewed.

11 Q Now, of course, if Student No. 22 told the
12 charter school that they don't want services for their
13 student in school other than the aide would they have the
14 right to say that?

15 A The parents?

16 Q Yes.

17 A Parents could say they don't want services.
18 However, when evaluations are completed and they see the
19 results sometimes they think differently.

20 Q Okay.

21 A The point of my sending the letter to the
22 charter school, and I will say it again, was to make them
23 aware and to assist in possibly doing something about it.

24 Q Right.

25 A Merely a suggestion.

Gustafson - Cross 1033

1 Q Right, and that's why Mr. Freund was copied and

2 PDE was copied, so they would know you were making --

3 A It was a concern, too, because of the
4 information I reviewed and I testified to that.

5 Q Let's go back to the question I just asked you.
6 Can parents -- I'll be more specific. Can parents refuse
7 services offered under a 504 plan?

8 A Yes.

9 Q And have you spoken with this student's parents
10 in the last six months?

11 A I did not.

12 Q Okay. So, you don't have any idea whether they
13 told the charter school that they didn't want services other
14 than the aide, do you?

15 A Based on the letter they wrote, which I believe
16 indicated they didn't want Special Education services, I'm
17 not -- I don't know.

18 Q Well, let me help you.

19 MS. SCHURDAK: Mr. Fennick, I may want to refer
20 to these in redirect. So, I ask you to continue to make
21 them available.

22 Q Dr. Gustafson, I'm showing you what appear to
23 be two e-mails, one dated October 16th, 2009, regarding
24 Student No. 22, and one dated October 21st, 2009, regarding
25 Student No. 22, both from the student's father directed to

Gustafson - Cross

1034

1 people at the charter school.

2 MS. SCHURDAK: I'm going to object to the
3 characterization. These aren't from, necessarily, the
4 student's father. This is an e-mail, unsigned. I don't
5 know who it's from. It could be from counsel himself.

6 MR. FENNICK: That's -- I confess, I fabricated
7 these exhibits. I -- let the record reflect that that was

8 sarcasti c.

9 MR. LITTS: Sarcasm asi de

10 MR. FENNICK: The word I used was these appear,
11 these appear to be, and we will have testimony authenticat-
12 ing them to satisfy Ms. Schurdak, but I can ask the witness
13 about them without having them authenticated first unless
14 she wants me to call Dr. Gustafson back at the conclusion of
15 our case.

16 MS. SCHURDAK: That wasn't my objecti on. My
17 objection was to the characterization of the e-mails.

18 MR. LITTS: We have the e-mails that are being
19 shown to the witness. I don't know -- I don't have copies,
20 so I can't

21 A Is this the same --

22 MR. LITTS: . . . see how they're characterized,
23 but the witness is reviewing the e-mails. What's the
24 questi on, Mr. Fennick?

25 Q Have you reviewed the e-mail dated

 Gustafson - Cross

 1035

1 October 16th, 2009?

2 A Is this the same e-mail that was in the packet
3 sent --

4 Q I'm not going to answer those questi ons.
5 I'm asking you if you've reviewed thi s e-mail.

6 A It looks fami liar.

7 Q Have you reviewed it just now?

8 A Oh, yes.

9 Q Okay. Does it say, "My wi fe and I are not in
10 favor of our son being given support in the classroom to
11 whi ch he may grow dependent." Have I read that correctly?

12 A Yes.

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Q Thank you.

A However, the issue is --

Q There's no question in front of you.

MS. SCHURDAK: Hearing Officer Litts, there is almost a tug of war going on with a piece of paper here, so I would ask that that not occur.

MR. LITTS: Well, we'll go off the record for two seconds.

(Off record.)

MR. LITTS: Mr. Fennick, you showed some e-mails. The e-mails, presumably, speak for themselves, but do you have questions for this witness with regard to those e-mails?

Gustafson - Cross 1036

MR. FENNICK: Yes, I --

MR. LITTS: Then ask them, please.

MR. FENNICK: I did.

MR. LITTS: So, the e-mail says whether or not this child -- about the level of support and the witness answered, yes, that's what the e-mail said. Okay, next question.

Q One of the students that Dr. Pfennig complained to PDE about, Student No. 21, there was a exhibit, Joint Exhibit No. 27, sent by -- you might have that in front of you -- sent by PDE to Dr. Pfennig. Do you have Joint Exhibit No. 27? It's a January 24th letter.

MR. LITTS: Joint 27 would be under Tab 33.

MR. FENNICK: I'm sorry, I don't use the tab numbering.

A There's -- 30 is an e-mail.

Q Right. 27, it's Exhibit 27. Do you have that one in front of you?

19 A Yes.

20 Q Would you agree that that letter asks Dr.
21 Pfennig to provide the name of Student No. 1?

22 A Yes.

23 Q Would you take a look at Joint Exhibit No. 13
24 which is a letter dated April 2nd?

25 MS. SCHURDAK: I hate to interrupt.

Gustafson - Cross 1037

1 MR. FENNICK: No, you don't, but go ahead.

2 MS. SCHURDAK: Joint 27, what I'm looking at,
3 is a letter from Pocono Mountain School District. I don't
4 understand the question.

5 MR. FENNICK: Well, if that is true then we
6 have a numbering issue.

7 MR. LITTS: No, I don't have a numbering issue.
8 I have maintained the record. What -- when you referred to
9 Joint 27 what --

10 MR. FENNICK: It's a letter dated January 24th
11 to Dr. Pfennig from PDE.

12 A No, that's not what I'm looking at. I'm sorry.

13 MS. SCHURDAK: I have a letter here in Joint 27
14 directed to Miss Sotack dated January 24th, 2008. Are we
15 looking at the same thing? We are. It's directed to Miss
16 Sotack, not from Miss Sotack.

17 Q Would you look to see if you can find Joint 13?

18 MR. LITTS: Joint 13 is under Tab 19. It is an
19 April 2nd, 2008, letter to the Pocono Mountain Charter
20 School from PDE.

21 A Joint 13, Tab ... I'm sorry?

22 MS. SCHURDAK: Tab 19.

23 A Okay, I think have it.

24 MR. LITTS: Actually, I have to correct myself.
25 It's -- the top letter is directed to the school district,
Gustafson - Cross 1038

1 not the charter school.

2 Q Okay. Would you agree that Ms. -- that PDE is
3 looking for the name of that student?

4 A Yes, and it was provided.

5 Q It was provided in July of what year? When was
6 that name provided?

7 A Actually, I was the one who provided it.

8 Q When did you provide it?

9 A To the secretary and I'm not sure how the name
10 got to PDE, but it was --

11 Q When?

12 A I don't recall.

13 Q Could you look at Joint 26? I'm sorry, that
14 should be the

15 MS. SCHURDAK: That's Tab No. 32.

16 A Okay.

17 Q Did you provide the name of this student to PDE
18 shortly after April? Or shortly after the April 2nd letter?

19 A When it was requested. Dr. Pfennig had asked
20 me to provide the name to his secretary and I did that.

21 Q Well, I'll find the letter, but would you agree
22 with me that it was first requested by PDE in January?

23 A I'd have to see the letter.

24 MS. SCHURDAK: The year?

25 MR. FENNICK: '08.

Gustafson - Cross 1039

1 A I'd have to see the letter to refresh my
2 memory.

3 Q How many times have you been to the charter
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4 school in the last two years?

5 A The last two years?

6 Q Well, let's say since the beginning of '08.

7 A I'd have to see when I picked up the records.

8 Q Well, that's not a how many, that's a when.

9 This is a how many.

10 A Once.

11 Q When was the last time you visited the website
12 of the charter school?

13 A It's been probably a couple months.

14 Q Do you know who Janine Wargo is?

15 A Yes.

16 Q Who is she?

17 A She's the school psychologist who the charter
18 school contracts through the IU.

19 Q And she's a certified school psychologist?

20 A Yes.

21 Q And when you said you didn't know who the
22 school psychologist was with regard to some of the students
23 did you look and see if the records referred to Janine
24 Wargo?

25 A Some of the records did. The ones that I

Gustafson - Cross

1040

1 referred to the school psychologist was not listed.

2 Q Do you know who Olivia Thorne is?

3 A Well, if my recollection of the testimony is
4 correct from Pastor Bloom, he indicated that she was the
5 supervisor of Special Ed. and then indicated she was the
6 Director of Operations who I understand is no longer there.
7 So, I'm not quite sure what her title was.

8 Q Have you ever spoken with her?

9 A I have not.

10 Q Who was the person that you were calling -- or
11 who called you with regard to Student No. 22?

12 A Is there a Marion? She was replacing Olivia
13 Thorne and she indicated that when she called, that she was
14 her new -- replacing her.

15 Q Now, look at Joint Exhibit 18. Finally found
16 it. It's a letter dated February 21st, '08.

17 MS. SCHURDAK: That would be Tab No. 24,
18 Dr. Gustafson.

19 A Okay.

20 Q Do you see in the second paragraph she asks him
21 for the name of the student that she was concerned about?

22 A And you asked me this a couple times. All I
23 can tell you is Dr. Pfennig came to me upon the request,
24 asked to submit the name, and I did.

25 Q But it took at least a letter in April before
Gustafson - Cross 1041
1 the name was submitted, right?

2 A I testified that I don't recall when that was.

3 Q Well, do you agree it was after the April 2nd
4 letter?

5 A No, I don't agree.

6 Q But you can find that out for us tonight,
7 couldn't you, and let us know tomorrow.

8 A When I submitted the name?

9 Q Yes.

10 A I could try. I don't know -- I mean, I
11 remember -- I remember physically doing it. I wrote it on a
12 sticky note.

13 Q All right. Now --

14 A And sent it -- and gave it to the secretary.

15 Q Now, back to Exhibit 19, please, or 20. This
16 is the one you looked at before. This is the one with all
17 the names.

18 MR. LITTS: Joint Exhibit 19?

19 MR. FENNICK: Yes.

20 MR. LITTS: That's Tab 25.

21 A This is confusing.

22 MR. FENNICK: No, this is his system. I'm not
23 taking credit for it.

24 MR. LITTS: If you have a better one let me
25 know.

Gustafson - Cross 1042

1 MS. SCHURDAK: But he shared his legend with
2 us.

3 Q Dr. Gustafson, do you see the third paragraph
4 on the first page? It starts, "Firstly, the student name
5 which you stated"

6 A Yes.

7 Q Would you agree that that's where the name was
8 provided? Do you have an unredacted copy?

9 A Yes.

10 Q And that's July 2nd of '08.

11 A Yes.

12 Q So, sitting here today can you tell us that it
13 was provided at any time before July 2nd of '08?

14 A Yes, I know it was provided before that.

15 Q And then Dr. Pfennig just made a mistake by
16 providing it again?

17 A I believe he indicated in one of his --
18 somewhere that the name was provided, but he would provide
19 it again. I would have to read through the documents. I do

20 remember reading that somewhere, though.

21 Q Do you know whether the charter school has
22 applied for Middle States accreditation?

23 A I do not.

24 Q Does it ever happen that a parent will come to
25 you to register a student who is Special Ed. in the previous

Gustafson - Cross

1043

1 district and not tell you that their child is a Special Ed.
2 child?

3 A Yes.

4 Q Okay. And then how do you find out that the
5 student was a Special Ed. child?

6 A Well, there are various ways. Sometimes
7 parents -- and I did indicate that would get confused as to
8 what's reading support, what's math support, and what's an
9 IEP, and I certainly understand that. Our guidance
10 counselors will call the school and actually ask if the
11 student was receiving Special Education services. Sometimes
12 the student says it upon enrolling, that they did get
13 special help. The parent will let us know. In the case
14 where a parent doesn't know -- we just had a recent case
15 from the charter school where we didn't get records as of
16 last week and the student had an IEP and we did not know
17 about that after repeated calls to the school to try to see
18 if the child had Special Education services and it wasn't
19 until that child began struggling did we finally, after
20 numerous attempts, receive the documents. So, sometimes the
21 students start having difficult and we try to investigate a
22 little further to see if that's the case.

23 Q Is it possible for you to answer a question
24 like that without criticizing the charter school?

1 MR. LITTS: Well, it is argumentative, but the
2 answer wasn't necessarily responsive. I think the answer is
3 yes, sometimes parents don't tell school entities about the
4 child's Special Education status. So, if you can, again,
5 just answer the question.

6 Q Now, hypothetically if a student transferred
7 from your school district to the charter school and the
8 parent didn't disclose the Special Education status and you
9 didn't properly send the records you'd be wrong in
10 criticizing the charter school for not providing services
11 right away, wouldn't you?

12 A It would depend on the case. I would have to
13 see the circumstances.

14 Q Well, in any of the cases that you discussed
15 today have you looked at your files to make sure that you
16 promptly transferred Special Education records or the -- all
17 of the student records to the charter school on a timely
18 basis?

19 A Yes, because we, in the records that I
20 reviewed, have packets and information that we did receive
21 from the charter school when they transferred records over
22 with our records in them.

23 Q Okay. So, it's your testimony that I won't be
24 able to find any evidence that it took you three, four
25 months to send the charter school records.

1 MS. SCHURDAK: Objection. That is not the
2 previous question nor the answer. He's mischaracterizing
3 it.

4 MR. LITTS: Well, whether he's

5 mi scharacterizing it or not, he can ask the question and I
6 guess the question of the witness is, Dr. Gustafson -- well,
7 I'll let you rephrase it before I do.

8 Q You have come here and testified about these
9 students and one of the things that you said is that you're
10 concerned that the students did not get Special Education
11 services when they entered the charter school. Is that fair
12 to say?

13 A Yes.

14 Q Would you agree with me that if the parents did
15 not tell the charter school their child was Special
16 Education student and if you didn't promptly send the
17 records the charter school would have no way of knowing
18 that it should be providing services?

19 A Correct.

20 Q Okay. And the next part is are you sure that
21 the school district promptly sent all the records regarding
22 the students that you testified about today?

23 A That was a concern of mine because of Miss
24 Sotack's testimony. I did -- and I wanted to make sure that
25 if I'm asking this of the charter school --

♀

Gustafson - Cross

1046

1 Q All you have to say is yes or no. Are you
2 sure?

3 MS. SCHURDAK: The witness is answering.

4 MR. FENNICK: No, she's not. We'll be here for
5 three weeks. It's a yes or no question.

6 Q Are you sure?

7 MS. SCHURDAK: He keeps interrupting.

8 Q Are you sure or not sure?

9 A I am sure --

10 Q Thank you.

11 A -- that --

12 Q That's all you have to say. It's not --

13 A Can you rephrase the question? I just want to
14 make sure I've answered it correctly.

15 MS. SCHURDAK: Attorney Fennick, did you hear
16 her?

17 MR. FENNICK: Yes.

18 MS. SCHURDAK: Because there seems to be a
19 question in this witness's mind as to what she just answered
20 to and I don't know if you want to make sure we're all
21 clear.

22 Q Okay, I'll ask you again. Are you sure that
23 for the students you testified about today your district
24 promptly sent the students' records to the charter school?

25 A I've never been notified otherwise by the

Gustafson - Cross

1047

1 charter school, so I am not sure.

2 Q Ah, okay.

3 A They haven't notified me to the contrary.

4 Q Now, would you agree that if the charter
5 school's failure to provide services on a timely basis was
6 due to the fact that they didn't know the student was
7 Special Education from the parents or from the district's
8 failure to promptly send records we shouldn't hold the
9 charter school accountable for that?

10 A I would hope the charter school would contact
11 somebody if they did not receive records in a timely manner
12 so they could provide the services. That has not to come to
13 my attention and when asking my supervisors if we are at
14 fault of that they have never been asked, none of the
15 secretaries, none of the guidance counselors. So, it's

16 never been brought to my knowledge, to anybody's attention,
17 like I bring it to Mr. Severs as to the difficulty in
18 receiving records.

19 Q Okay. Has it ever happened that records have
20 been sent from the charter school directly to one of your
21 school buildings rather than to your office?

22 A That's where they should go to, directly to the
23 building.

24 Q So, when you say that the charter school --
25 I'm sorry, the district never got records for Student No. 6

Gustafson - Cross

1048

1 have you checked with your individual schools?

2 A Especially Student No. 6 because they sent me
3 the records they received from the charter school. So, they
4 went directly to the charter school. I asked for everything
5 they received.

6 Q Okay. Do you know, is there anybody named
7 Cheryl working in the school that this student went to?
8 Does that name ring a bell?

9 MS. SCHURDAK: Are you asking at the charter
10 school or at the school district?

11 MR. FENNICK: No, in her district.

12 A We have several Cheryls in the district.

13 Q Would there be one who works in the office that
14 would have gotten the student's records?

15 A Yes, and she's the one that actually assisted
16 in compiling the records to me to see what we had and what
17 we didn't have.

18 Q And is it your testimony that anytime records
19 were brought to this building because you wanted them that
20 there's somebody here to accept them?

21 A If they're here within the school hours, yes.

22 Q So, anyone who said that she brought the
23 records here and the receptionist refused to take them would
24 be mistaken.

25 A It would -- it would be unusual for the
Gustafson - Cross 1049
1 receptionist to refuse to take them.

2 Q I understand. Now, with regard to Student No.
3 1, would you agree that if she was no longer eligible for
4 Special Education at the time she committed the rules
5 violation the charter school would not have to do a
6 manifestation determination?

7 A Yes. Yes.

8 Q You also -- you mentioned in response to a
9 question about can a school discipline a Special Ed. student
10 without going through some process, I can't remember, did
11 you mention that there are offenses for which a school can
12 immediately remove a student?

13 A Yes, I mentioned that.

14 Q And that could be for 45 days, correct?

15 A Correct.

16 Q And did this student transfer from the charter
17 school to your school district within 45 days of committing
18 the offense?

19 A I believe she did.

20 Q Okay. Would you also agree that -- I'm sorry,
21 you're using -- I'm trying to stay away from gender. I
22 think we'll try to do that.

23 MS. SCHURDAK: Well, you were using the she
24 beforehand.

25 Q I'm trying. Would you agree that there are
Gustafson - Cross 1050

1 parents who will withdraw their child from a school rather
2 than have the child be expelled?

3 A Yes.

4 Q You told us -- I think you may have answered
5 this and I apologize -- that you went to the charter school
6 to get records for Student No. 1. Do you know when?

7 A I'm not sure if it was Student No. 1.

8 Q Well, it was. Well, I'm sorry, I shouldn't put
9 words in your mouth.

10 A Yes, it was, yes.

11 Q Do you know when?

12 A I would have to refer to my letter because it
13 says that in there.

14 Q Well, the letter, I think, is Joint 14; is that
15 right? Can you look at Joint 14 and see if that's the
16 student?

17 VOICE: Tab 20.

18 MS. SCHURDAK: Yes, Tab 20.

19 MR. LITTS: Joint 14 is Tab 20.

20 Q Yeah. Would you agree this is regarding
21 Student No. 1?

22 A Yes.

23 Q So, looking at that letter, which is dated
24 January 21st, does that tell you when you went to get the
25 records?

♀

1 A Yes.

2 Q When did you get them?

3 A On January 9th.

4 Q And did you have the records that you needed by
5 January 21st?

6 A Well, I picked them up, whatever was -- I was

7 told was everything on January 9th.

8 Q Does this letter indicate that you didn't get
9 everything?

10 A There was -- after I reviewed what I did pick
11 up, you're correct, there were some things missing still.

12 Q Is there a requirement in any law or regulation
13 governing child -- charter schools that the name of the
14 certified school psychologist has to be identified in a
15 reevaluation report?

16 A Yes, I believe that they do have to be -- in
17 determining a student with a specific learning disability.

18 Q Do you know -- can you tell me where it says
19 that?

20 A Do you have the laws there?

21 Q What?

22 A Do you have a copy of the law there I can
23 check?

24 Q I'm asking. No, I don't.

25 A I can't specifically cite it.

Gustafson - Cross

1052

1 Q Okay. There is a reference here to -- you had
2 a concern about curriculum, about reports to the parents --
3 what did you call that? That the parents aren't being
4 regularly informed of

5 A Progress monitoring?

6 Q Progress monitoring, right. Would you agree
7 that the Pennsylvania Department of Education investigated a
8 complaint regarding the charter school's alleged lack of
9 progress monitoring?

10 A I don't -- I don't who the complaint was from.

11 Q Well, it was from you.

12 A You mean -- I thought you meant an additional
13 one. Yes.

14 Q Would you agree that the department determined
15 the complaint to be unfounded?

16 MS. SCHURDAK: I think that the determination
17 speaks for itself and I am presuming that's already in
18 evidence and, if not, I would suggest that Counsel put it
19 into evidence.

20 MR. LITTS: The witness can still answer the
21 question.

22 A I'd have to refer to the findings, review the
23 findings.

24 Q Are you saying that -- suppose I'm right. The
25 department found there was no issue with the progress

Gustafson - Cross

1053

1 monitoring. Are you, by testifying about this today,
2 telling us that the department did not do a competent and
3 credible investigation?

4 A I'm not saying that at all.

5 Q So, should we and should the board members --
6 why shouldn't they just go with what PDE determined?

7 A Well, I testified on just a few cases as far as
8 I have not seen any progress monitoring results or reporting
9 in the documents of which I reviewed.

10 Q Okay. And you would agree that -- I'm certain
11 you would agree that PDE has a lot more authority to look at
12 charter school Special Education records than you've been
13 able to get. Would you agree with that?

14 MS. SCHURDAK: I'm going to object because I'm
15 not sure, the level of authority, how that's relevant.

16 MR. LITTS: Well, it isn't and that's something
17 for the board to decide.

18 Q Would you agree that the department can walk
19 into the charter school and have access to all their
20 educational records regarding Special Education students?

21 A Yes.

22 Q And you would agree that we've been very
23 stubborn about not giving you those records, correct?

24 A Giving the records --

25 Q To the district.

Gustafson - Cross

1054

1 A Right, we have not received records.

2 Q So, does it follow that PDE has a better
3 opportunity to learn what services were provided to these
4 students?

5 A It depends on what they are -- what the
6 complaint is and what they're looking for.

7 Q A lot of your complaints are based on
8 assumptions that you are making based on what you do not see
9 in the records. Is that fair to say?

10 A Based on evidence.

11 Q Well, I'm trying to be a little more specific,
12 all right? It's based on a lack of evidence, isn't it?
13 You said, "I don't see an IEP for this student."

14 A True.

15 Q "And it leads me to the conclusion that the
16 student doesn't have an IEP," correct?

17 A (Nods head in affirmative.)

18 Q You have to answer yes or no.

19 A Yes. I'm sorry.

20 Q So, if the charter school was really lousy at
21 keeping records and sending records, but, in fact, had done
22 what they were supposed to do you'd say then, wouldn't you,

23 that they're guilty of being lousy recordkeepers, but not
24 guilty of failing to provide services.

25 A Again, the department looks at procedural

Gustafson - Cross

1055

1 issues --

2 Q I'm not asking about the department. If you
3 don't understand the question just tell me you don't
4 understand.

5 A Could you repeat it?

6 Q It seems to me that you're saying, I think,
7 that with regard to Student 35 that, you know, "I didn't see
8 a NOREP when the student transferred to our district, so
9 from that I'm assuming that this there was no NOREP." Okay?
10 And I'm asking you, if there's a NOREP and you just didn't
11 see it because the charter school threw it out, would the
12 charter school necessarily be guilty of not providing the
13 student with appropriate services?

14 A You can only determine if services are
15 appropriate through -- if there's a due process filed the
16 hearing officer will look at evidence. If the evidence
17 isn't there ... I mean, I could assume that the services
18 weren't provided.

19 Q By the way, have there been any due process
20 hearings against the district for any of the students that
21 you discussed today?

22 MS. SCHURDAK: Objection. Relevancy.

23 MR. FENNICKE: They're relevant because, No. 1,
24 there are matters of credibility of people whose statements
25 have been referred to and, No. 2, if she's testifying as to

Gustafson - Cross

1056

1 certain facts which are contradicted by the record and the
2 due process hearing those facts been become relevant.

3 Also -- I'm sorry.

4 MR. LITTS: Well, you've made -- I disagree.
5 I'll sustain the objection. The issue that could be in
6 the due process hearing the school district may have
7 something to do with what you suggested, may have nothing to
8 do with what you suggested. As I stated before, Mr.
9 Fennick, the issue before the board is not whether or not
10 the school district is doing its job or not -- or isn't
11 doing its job with regard to Special Ed., they're tasked
12 with hearing the evidence regarding the charter school.

13 MR. FENNICK: And I apologize if I haven't been
14 clear in how I've raised this. Let me try to be a little
15 more specific and then maybe you'll revisit this.

16 Q With regard to Students 20 and 21, did you
17 testify that the parents either -- well, that they talked to
18 you about their dissatisfaction with the Special Education
19 services they received at the charter school?

20 A That was not my testimony at all. My testimony
21 was I assisted -- the parents assisted me in obtaining the
22 records.

23 Q So, your testimony is that you were advocating
24 for these parents; is that right?

25 MS. SCHURDAK: Objection. That was not her
Gustafson - Cross 1057
1 characterizati on.

2 MR. LITTS: And I would agree. Sustained.

3 Q You assisted them. Did they come to you for
4 help?

5 A Yes, we had a meeting with the parents.

6 Q No, that's not my question. Did they come to
7 you for help?

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A Yes.

Q Okay. And the meeting wasn't about a disciplinary incident regarding one of these students, was it?

A I have a concern about the confidentiality that we agreed to. I mean, I can certainly get into more testimony, but --

Q Well, you can answer whether there was a disciplinary --

MS. SCHURDAK: I think we have to --

Q -- proceeding, yes or no.

MS. SCHURDAK: -- careful because of what we discussed last week with the hearing officer. There was an agreement reached about how we would deal with Students 20 and 21.

MR. LITTS: Hold up. Let me see -- review my notes with regard to Students 20 and 21. What I have in my notes is that Dr. Gustafson said that the student -- that the parents of these students were instrumental in helping Gustafson - Cross 1058

obtain Special Education records from the charter school. That's what I have in my notes. That's the only thing I have in my notes that Dr. Gustafson testified to on direct.

MR. FENNICK: Well, I'm in some ways comforted, but I think she testified as to more than that and --

MR. LITTS: Well, specifically with regards to the parents vis-a-vis the charter school.

MR. FENNICK: She said that she talked to one of the parents, they didn't want their child exited from Special Education.

Q Did you talk to one of the parents?

A Yes.

Q Which parent, mother or father?

14 A Both.

15 Q At the same time?

16 A The -- I talked to the father first, the father
17 gave the phone to the mother, back and forth.

18 Q And this is when this student, Student No. 20,
19 was a student at the charter school or at the district?

20 A Upon enrolling when we couldn't secure records
21 what I did receive was concerning about the dismissal. I
22 notified the parent because they hadn't agreed to it and
23 said, "Are you aware that the charter school -- there is an
24 evaluation report dismissing your child from Special
25 Education services?"

Gustafson - Cross

1059

1 Q And when was this conversation?

2 A I'd have to look at the weeks between
3 enrollment -- I believe sometime early October. It was in
4 the process of trying to secure records for the student.
5 I'd have to refer back.

6 Q Early October of '08?

7 A I'm not sure if it was early October. It's --
8 I'd have to look at the letter and the records and
9 everything.

10 Q Do you know when the student left your district
11 to go to the charter school?

12 A I'm not sure of the exact time, the exact date.

13 Q How close can you come?

14 A It was -- I know it was the previous school
15 year.

16 Q Would you agree that when the parents left the
17 school district to enroll in the charter school they weren't
18 really happy with the district? Would you agree?

19 MS. SCHURDAK: Objection as to relevancy.

20 MR. FENNICK: You know, Mr. Litts, you can't
21 see it from where you are, but Dr. Gustafson, when she
22 doesn't want to answer a question, looks to Attorney
23 Schurdak for two or three seconds and then Attorney Schurdak
24 makes an objection. I am asking you -- she's looking for
25 help.

Gustafson - Cross

1060

1 MS. SCHURDAK: I was looking through a file and
2 not even looking at the witness. So, that's a complete
3 mischaracterization.

4 MR. LITTS: I'm asking both counsel to sit down
5 and be quiet for a second. Tempers are running high. I
6 have heard both sides characterize each other's behavior and
7 both sides taking exceptions to it, and, again, I'm getting
8 a little weary of it. So, I'll remind everyone yet again as
9 to that.

10 MR. FENNICK: Well, I'd just ask you to ask
11 Dr. Gustafson, whether she's been doing it or not, not to
12 look to Attorney Schurdak.

13 MR. LITTS: I think Dr. Gustafson is well aware
14 that she's supposed to be answering the questions without
15 seeking assistance from anyone and I won't infer that she
16 was doing that previously and I think people should avoid
17 characterizing anyone's behavior. Earlier Mr. Anders was
18 accused of making a comment and I said, "Look --" I didn't
19 conclude that, either. So, I'm trying to take notes and
20 trying to listen.

21 So, the question was do you know whether these
22 students' parents, and referring specifically to Students 20
23 and 21, were they upset at the school district when they
24 left the school district and enrolled in the charter school?

25 Yes or no.

Gustafson - Cross

1061

1 MS. SCHURDAK: And I made an objection.

2 MR. LITTS: And it's overruled. She can answer
3 the question. If you know.

4 A My caution and my reluctance comes from the
5 confidentiality. That's the only --

6 MR. LITTS: It's a very simple question.

7 Were the parents of Student 20 and 21 upset when they left
8 the school district to enroll their children in the charter
9 school? Yes or no.

10 A Yes.

11 MR. LITTS: Mr. Fennick, next question.

12 MR. FENNICK: Thank you.

13 Q Would you agree with me, and I think you will
14 on this one, that no one person can make a determination
15 that a student should be declared eligible for Special
16 Education?

17 A Correct.

18 Q It takes a team, correct?

19 A Correct.

20 Q Now, with regard to the tests that you said the
21 charter school should be doing before they exit a child from
22 Special Education, and you went through a whole litany of
23 things, are you saying that needs to be done in -- every
24 time a school proposes to exit a child from Special
25 Education?

Gustafson - Cross

1062

1 A Specifically when you're determining a --
2 you're looking for various things for various eligibilities,
3 but certainly for learning disabilities, yes, there are 10

4 questions that need to be addressed. One of them is is that
 5 child making -- achieving, making progress, and that could
 6 be determined through an achievement test or curriculum
 7 basis test, progress monitoring results. So, yes, it's not
 8 just one sole factor.

9 Q And do you need a Permission to Evaluate to do
 10 those tests?

11 A It depends on what tests you're giving. If
 12 it's not a test that is given to the general population of
 13 students, yes.

14 Q Okay. So, for a curriculum based assessment
 15 you wouldn't need permission --

16 A No.

17 Q But if the charter school said to parents
 18 "We don't think your child is eligible anymore," or may not
 19 be eligible, "we want to give your child a norm referenced
 20 test, for example, does the charter school need a parent's
 21 permission to do that?

22 A That would be in the Permission to Evaluate,
 23 yes. Or reevaluate.

24 Q So, what do you do if you believe and your team
 25 believes that you have a student in the district who's no

Gustafson - Cross

1063

1 longer eligible and you want the student out of Special Ed.,
 2 but the parent will not sign the Permission to Evaluate?
 3 What do you do?

4 A We reconvene the IEP team, we answer the
 5 parent's questions, we decide as a team -- explain why we
 6 feel the child [sic] and we would base it on all the
 7 evidence that we have right then and there; teacher input,
 8 parent input, any assessments, and the main -- main evidence
 9 is the progress monitoring over time, are they making

10 progress over time. So, we would explain to the parent why
11 we feel --

12 Q But this is the most stubborn parent in the
13 world and this parent insists that their child needs Special
14 Education. Do you exit that child from Special Education?

15 A Not necessarily, no.

16 Q So, what do you do?

17 A The child would continue to receive the
18 services if we really felt that the child -- you could go to
19 due process, take a parent to due process.

20 Q So, you would -- and we're talking about a
21 student that everyone on your team believes doesn't need
22 Special Education services, but the parent doesn't agree and
23 won't allow the testing. You'll continue to provide
24 services; is that right?

25 A Well, let me just ask to clarify. You said --

Gustafson - Cross

1064

1 either they don't allow you to do the testing or won't allow
2 you to reevaluate the child?

3 Q If they say, "I'm letting you do these tests,
4 but my child needs Special Education."

5 A Okay, I can give you an answer. It's based on
6 case by case.

7 Q You could send the parents a NOREP that
8 proposes an exit from Special Education and give the parents
9 10 days to object, couldn't you?

10 A Without issuing any kind of evaluation report?

11 Q No, do the ER as well, but then you send them
12 the NOREP, correct?

13 A Correct.

14 Q And if they don't object in 10 days then you

15 can do the exit as proposed in the NOREP, correct?

16 A That's a change of placement.

17 Q Yeah.

18 A So, you would change their placement without
19 the parent's participation.

20 Q You've done all that. They are at all the
21 meetings, but they won't agree, so you send them a NOREP
22 that says, "Your child will be exited from Special
23 Education." Ten days pass. You don't hear from the parent.
24 Can you then exit that child from Special Education?

25 A I would not recommend doing that.

Gustafson - Cross

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1 Q I'm not asking you for recommendations, I'm
2 asking you about the law.

3 A No.

4 Q You wouldn't. Or you can't, it's illegal to do
5 that.

6 MS. SCHURDAK: That's a different question.
7 That's a different question.

8 Q No, I said -- I specifically said -- I'm asking
9 you about the law.

10 MS. SCHURDAK: And she answered that question.
11 Now he's saying is it illegal. That's a different question.

12 MR. FENNICK: I think it's the same question,
13 but let me ask it again.

14 Q Can you lawfully exit that student from Special
15 Education when you don't get a NOREP back from the parents
16 within 10 days?

17 A My concern would be that the parent would file
18 for due process because they had no idea that their child
19 was exited. So, I would not do that.

20 Q You still haven't answer the question. Can you

21 do it -- I'm not asking what you would do, I'm asking under
22 the law is it permissible?

23 A Not to my knowledge.

24 Q Under Chapter 711 does the charter school have
25 a choice of how to measure learning disability, Response to
Gustafson - Cross 1066

1 Intervention or discrepancy between ability and achievement?

2 A I believe it's one of the questions. They have
3 to decide which model they chose; do they go with the
4 discrepancy model or do they go with response to
5 intervention.

6 Q And they can choose either one?

7 A Yes.

8 Q And is it your testimony that they can choose
9 either one for each student or do they have to pick one and
10 say, "We'll use this for every student."

11 A It depends on if the school district has fully
12 implemented the Response to Intervention model. There's a
13 whole process to that.

14 Q Okay. So, you're saying that the charter
15 school has to make a choice and stick with that choice.

16 A They have to indicate in the report what they
17 did. There's a check -- there's a box.

18 Q What report?

19 A In the evaluation report.

20 Q Which is the student by student report.

21 A Correct.

22 Q And what I'm asking you, if you know, is do
23 they have to use the same method with every single student?

24 A No.

25 Q And is there a requirement in any of the laws

1 and regulations that apply to a charter school that they
2 have to designate what method they've used in any of these
3 reports?

4 A They just have to make sure they have addressed
5 either a discrepancy or the Response to Intervention.

6 Q And is it your testimony that of these 10 --
7 however many we've talked about individually, that you are
8 unable to tell which method they used?

9 A No, I would say -- well, it wasn't identified.

10 Q I'm not asking you that, though. You can tell
11 by what tests they've done, can't you?

12 A Yes, in the sense of whether the child had
13 discrepancy or not. However, it's not just based on one
14 test, it's a multitude of things.

15 Q All right. I'm trying to -- I'm trying to
16 understand. Is your conclusion simply that there's some
17 little check box, checkmark, that they didn't check that
18 says RTI versus discrepancy model or -- let me finish -- or
19 they actually -- you couldn't tell from reading the contents
20 of the report? Are you saying, "They should have checked
21 the box, but if I read the report I'll know what they did."

22 A The 10 questions that follow a reevaluation or
23 an evaluation report, those can be answered imbedded within
24 the report or they can be answered separately.

25 Q And which of the students that you testified

1 about today do not have records that give you a satisfactory
2 answer?

3 A The evaluation report.

4 Q Mm-hmm.

5 A I would have to go through each one and refresh
Page 143

6 my memory. There was a couple of them because either the
7 information to answer those questions wasn't imbedded in the
8 report or it wasn't attached separately to the report.

9 Q Well, maybe when we go through we'll pick them
10 out. You based some of your conclusions on some statements
11 that parents made to you about discipline. I think this was
12 Student No. 1. You said you talked to the student's mother
13 and she made some comment about discipline at the charter
14 school being based on church membership. Do you remember
15 that?

16 A Yes.

17 Q Now, is this something she had been told about
18 by another parent or don't you know?

19 A It was her feeling. She said, "I feel
20 like"

21 Q Okay. And was this her feeling -- do you know,
22 and maybe you don't, was this based on personal observations
23 she had made or was it based on what other parents had told
24 her?

25 A Her experience.

Gustafson - Cross

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1 Q She only has one child, correct?

2 A Yes.

3 Q So, her experience would have to be based on
4 what she had heard about how other students were disciplined
5 under similar circumstances.

6 A I can't speak for what she heard.

7 MS. SCHURDAK: Objection.

8 MR. FENNICKE: What?

9 MS. SCHURDAK: That's not a logical conclusion.
10 She answered the question that it was --

11 MR. LITTS: The witness -- hold up. The
12 witness answered the question that the mother said that was
13 her feeling and she assumed it was based on the mother's
14 experience. That was her answer. If you have a follow-up
15 question --

16 MR. FENNICK: I did.

17 MR. LITTS: What is it?

18 (Reporter read back last question.)

19 MR. LITTS: When the mother referred to as
20 based upon her experience, do you know what the mother was
21 relying upon?

22 MR. FENNICK: That's fine.

23 A The evidence that came to the conclusion, no.

24 Q Are parents always happy with the disciplinary
25 action schools take?

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Gustafson - Cross

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1 A No.

2 Q And they complain about it.

3 A Yes.

4 Q And could they also, possibly, misrepresent
5 that to other people?

6 A Possibly.

7 Q Have you had situations where a parent will try
8 and register a student and later you find out that student
9 was expelled from another school?

10 A Yes.

11 Q Take a look at Joint Exhibit 25. Hopefully I'm
12 right.

13 MS. SCHURDAK: That's Tab 31.

14 Q I found my note. Does -- is this a Complaint
15 Investigation Report regarding the charter school dated
16 January 15th, 2009?

17 A Yes.
18 Q And this is based on a complaint by Dr.
19 Pfennig; is that correct?
20 A Yes.
21 Q Does it address -- Issue No. 1 is on the second
22 page. Do you agree?
23 A Yes.
24 Q And that has three subparts?
25 A I'm sorry, what page?

Gustafson - Cross

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1 Q Page 3 of this report.
2 A Okay.
3 Q I'm just trying to focus on Issue 1. There are
4 three subparts described, correct?
5 A Yes.
6 Q And does the -- is the conclusion that Pocono
7 Mountain Charter School is in compliance with 34 CFR 300.211
8 and, further, that no correction action was needed?
9 A That's what is stated.
10 Q And with regard to Issue 2, Dr. Pfennig had
11 asked them to investigate the accuracy of student grades and
12 they found that's not within their jurisdiction. Is that a
13 fair summary?
14 A Yes.
15 Q Thank you. Now, some of your concerns about
16 Student No. 1 were based on some testing that was done by
17 the charter school in August of '08. Do you have Student
18 1's records with you by any chance?
19 A I don't.
20 MS. SCHURDAK: May we take a five minute
21 restroom break?

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MR. FENNICK: Well

MR. LITTS: Well, what?

MR. ANDERS: What time are we going to --

MR. LITTS: It's about 4:30. Would it make

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sense to call it a day? I do want to talk to counsel about their availability for future hearings. I don't know I don't know, take a bathroom break and then we can --

MR. FENNICK: Can we put some kudos on the record for Mr. Anders being so well behaved today?

MS. SCHURDAK: I will agree that Mr. Anders has shown improvement and, perhaps, his IEP is working.

MR. LITTS: We'll call it a night at this point at 4:30. I'll ask if counsel could stick around.

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(Whereupon, the above adjourned at 4:26 o'clock p.m. on Monday, February 8, 2010.)

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C E R T I F I C A T I O N

I, Donna G. Kenderdine, R. P. R., do hereby certify that the foregoing was taken stenographically by me on February 8, 2010, and that this transcript is a true and correct transcript of the same, fully transcribed under my direction, to the best of my ability and skill.

I further certify that I am not a relative or employee of any of the parties in this action; that I am not a relative or employee of any attorney in this action; and that I am not financially interested in the event of this action.

Donna G. Kenderdine, R. P. R.
Notary Public

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