

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 Friday, March 19, 2010, 10:23 a.m.

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9 HENRY E. BOCKELMAN, President
10 RICK SMITH, Member
11 DOROTHY SIROLLI, Member

12 JEFFREY D. LITTS, ESQ., Solicitor

12 - - -

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1305

P R O C E E D I N G S

Friday, March 19, 2010

- - -

MR. LITTS: We are convening the Friday, March 19th, 2010 hearing regarding the proposed revocation of the Pocono Mountain Charter School charter.

I neglected to identify, for purposes of the record, the two board members present for the entirety of yesterday's hearing session and they are here again. So,

10 if those two board members would please identify themselves
11 for the record.

12 MR. BOCKELMAN: Henry Bockelman.

13 MR. SMITH: Rick Smith.

14 MR. LITTS: Thank you, gentleman. The charter
15 school, case in chief. Mr. Fennick, are you prepared to
16 call your first witness today?

17 MR. FENNIC K: Yes.

18 MS. SCHURDAK: Before he does, I don't think
19 the microphones are on.

20 MR. BOCKELMAN: Yeah, they're on.

21 MR. LITTS: You may call your first witness.

22 MR. FENNIC K: I call Olivia Thorne.

23 - - -

24 OLIVIA THORNE, having been duly sworn according
25 to law, testified as follows:

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1 DIRECT EXAMINATION BY MR. FENNIC K:

2 Q Can you give us your name, please?

3 A Olivia Thorne.

4 Q All right. And are you employed at the present
5 time?

6 A Yes.

7 Q By whom are you employed?

8 A Pocono Mountain Charter.

9 MS. SCHURDAK: I'm sorry, but I'm going to
10 interrupt. There may be a little switch to turn on the
11 microphone because I'm having a hard time hearing.

12 (Off record.)

13 Q So, I was asking you what you do for the
14 Pocono Mountain Charter School.

15 A Director of Operations.
16 MR. FENNICK: Can you hear her?
17 MS. SCHURDAK: Maybe you can move closer to the
18 microphone.
19 A I can hear you.
20 MR. LITTS: You speak very softly.
21 A I'll try to bring it up.
22 MR. LITTS: Thank you very much.
23 Q Can you give us an idea of what your job
24 functions are?

25 A Day-to-day operations, overseeing the school
Thorne - Direct 1307
1 administration.

2 Q And what do you supervise? Is there any
3 particular area you concentrate on?

4 A Special Education other than personal services,
5 administration -- administrative.

6 Q Would that include record transfers?

7 A From time to time, yes.

8 Q Give the board some idea of your background in
9 the world of education. Where have you been and what have
10 you done?

11 A I recently retired from the New York City
12 Department of Education where I was employed for 22 years
13 starting as an assistant district business manager for a
14 school district.

15 I later became a classroom teacher starting out
16 as a resource room teacher, then a classroom teacher in
17 Special Education, general education, a staff developer and
18 trainer for Special Education, Special Education supervisor,
19 director and coordinator for a project, Right To Read, under
20 the No Child Left Behind initiative.

21 I retired as a Special Education supervisor of
22 an elementary school.

23 Q You mentioned assistant business manager.
24 What -- how many schools were you the business manager for?

25 A School District 5 had 20 schools, three of
Thorne - Direct 1308
1 which were large capacity special needs schools.

2 Q And did you handle the business affairs for all
3 20 of those schools?

4 A Yes, all Special Education and other than
5 personal services.

6 Q Now, when did you start working for the
7 Pocono Mountain Charter School?

8 A The Fall of the 2008 school year, I believe.

9 Q Now, I want to start by asking you about a
10 particular student who we have identified earlier as
11 Student No. 21. Do you know who I'm talking about?

12 A Yes.

13 Q Without, hopefully, referencing the student's
14 sex or name or age can you tell us how you first became
15 involved with this?

16 A I believe the student was brought to my
17 attention via a busing issue.

18 MS. SCHURDAK: Are you talking about Student
19 No. 21 or 22, Mr. Fennick?

20 MR. FENNICK: Well, let me make sure we have it
21 right.

22 Mr. Litts, I'm informed that this is
23 Student No. 22, not 21.

24 MR. LITTS: Why don't you talk to your witness
25 to make sure that we're all on the same page?

1 MR. FENNICK: That's ... I'll just show her one
2 document to make sure she knows this is the person we're
3 talking about.

4 A Okay.

5 Q Now, from the involvement that you've had do
6 you know where this student was attending school the year
7 before the student began with the Pocono Mountain Charter
8 School?

9 A I believe that he attended or -- I believe the
10 student attended an academy in East Stroudsburg.

11 Q All right. And who was doing the
12 transportation for this student the year before the student
13 started at the Pocono Mountain Charter School?

14 A I believe it was Pocono Mountain School
15 District transportation.

16 Q So, please remember to keep your voice up a
17 little bit. Now, we have learned that the student had some
18 issues where the student needed some help. At the time that
19 the student enrolled with the Pocono Mountain Charter School
20 did the district advise the charter school of any needs that
21 this particular student had?

22 MS. SCHURDAK: Can we clarify which district
23 because we've had some references to --

24 Q Pocono Mountain School District.

25 A Not that I'm aware of.

1 Q And did the student's parents advise you at the
2 time of registration that the student had issues that the
3 student needed help with?

4 A No.

5 Q When was the first time and how did you find
Page 6

6 out that there were issues that needed to be addressed?

7 A I received a bus conduct report.

8 Q From whom?

9 A From Transportation, from the supervisor,
10 Mr. Aul.

11 Q And is he the supervisor of transportation for
12 the Pocono Mountain School District?

13 A I believe so.

14 Q Well, has he always portrayed himself as the
15 supervisor?

16 A Yes.

17 Q What did you learn from -- again, without being
18 specific what did you learn from Mr. Aul about this student?

19 A That the student had a previous history and
20 that -- I learned this when I questioned the child being
21 suspended from busing for a period of time and I was advised
22 that the child had a previous history and that upon
23 returning in this school year --

24 MS. SCHURDAK: I'm going to object based upon
25 hearsay. Mr. Aul is not here and has not testified.

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1 MR. LITTS: Overruled.

2 MS. SCHURDAK: Note my continuing objection.

3 MR. LITTS: It's noted.

4 Q You may continue. And remember to keep your
5 voice up.

6 A That the child was suspended from the bus for a
7 period of time and that the hope was that we at the school
8 would be able to try to ameliorate that situation.

9 MS. SCHURDAK: Tried to what?

10 A Tried to take care of that situation, the

11 child's behavior.

12 Q When did you first have contact with the
13 parents?

14 A I first had contact with the parent -- I
15 believe it was late September.

16 Q Tell us how that happened.

17 A I went to a meeting with an employee of the
18 school and the parent was there to pick up the child who had
19 been removed from busing for a period of time.

20 Q And were you -- what action did you take with
21 regard to the parents then?

22 A I accepted the parents' evaluation of the child
23 from an outside provider.

24 MR. FENNICK: Now, I'm going to ask -- Miss
25 Schurdak, I know we have referred to this document. I don't

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1 believe it's part of the record.

2 MS. SCHURDAK: No, actually, it isn't. That's
3 part of --

4 MR. FENNICK: So, we're starting today like
5 every other day. Well, I'll just go ahead and

6 Q I'm just going to show you a document. We're
7 not going to identify it. Is that the report from the
8 outside provider that you referred to?

9 A Yes.

10 Q And just give us the date of the evaluation.

11 A August 29th of 2009.

12 Q So, when you got this from the parents --

13 MR. LITTS: Mr. Fennick, I apologize. I just
14 want to make sure. The date of the evaluation, ma'am, was
15 August 29th of 2009. Did I hear you correctly?

16 A Yes.

17 MR. LITTS: Thank you.

18 Q So, when you got this evaluation what did you
19 do next?

20 A I took it under advisement and advised the
21 parent that I would refer that to our Special Ed. people in
22 the school and contact our evaluator, Dr.

23 Q Dr. Who?

24 A Janice Wingo, I believe?

25 Q Wargo?

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1 A Wargo, yes.

2 Q Based on your many years working in Special
3 Education in New York would it have been possible to
4 classify this student as a student in need of Special
5 Education services based solely on this document?

6 MS. SCHURDAK: Objection. This is now an
7 expert opinion. This witness has not been qualified as an
8 expert, I've not been given notice that she would be an
9 expert witness, and I have not been given an expert report.

10 MR. LITTS: Mr. Fennick?

11 MR. FENNICK: I believe that an employee of the
12 school in the Special Education area is entitled to testify
13 regarding her information and her belief and her policies
14 regarding Special Education without being qualified as an
15 expert as, for example, Dr. Pfennig did on a great many
16 things without being qualified as an expert. These aren't
17 matters that are really open to serious debate and Attorney
18 Schurdak knows that very well.

19 MR. LITTS: Well, hold up for one second
20 because I do want to go off the record.

21 (Off record.)

22 MR. LITTS: Back on the record. I'm going to
23 sustain the objection for purposes -- if it's expert
24 testimony, fine, then I think the objection is sustained.
25 If this witness is going to offer testimony with regards to

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1 how this particular matter involving Student 22 was handled
2 and explain the rationale, that's fine, that is factual, and
3 just for clarity of the record we are discussing Student 22
4 in the context of the current school year, 2009-2010.

5 MR. FENNICKE: That's correct.

6 MS. SCHURDAK: Correct.

7 MR. LITTS: So, you may ask another question,
8 Mr. Fennick.

9 Q Based on what you believe to be the Special
10 Education Laws, rightly or wrongly, can -- did you believe
11 that you could classify this student as in need of Special
12 Education services based solely on this evaluation of
13 August 29th, '09?

14 A No.

15 Q So, what did you do?

16 A I explained the process for evaluation of
17 students in need of special services to the parent and the
18 parent was reluctant at that time to accept.

19 MS. SCHURDAK: I'm going to object.

20 A My explanation --

21 MS. SCHURDAK: Without the proper foundation of
22 how this witness knows the parent's reaction and, again,
23 without hearsay. The parents are reluctant.

24 MR. LITTS: Well, you'll have cross
25 examination. She spoke to the parent and I'm going to

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1 overrule your objection.

2 Q Did you schedule a meeting with the parents?

3 A Yes.

4 Q When the parents came in what concerns did they
5 express, just in general terms, about their child?

6 MS. SCHURDAK: Objecti on. Hearsay.

7 MR. LITTS: And, again, I'm going to overrule
8 hearsay. Part of the responsibility is to communicate with
9 parents. We had Dr. Gustafson talking about communications
10 with parents as well and I allowed that testimony and I'm
11 going to allow this testimony. So, overruled.

12 MS. SCHURDAK: For the purposes of the record,
13 the difference was Dr. Gustafson was an expert witness.

14 MR. FENNICK: And that makes absolutely no
15 difference and these are not statements that are introduced
16 for the truth of the matter and I guess we'll be here for a
17 really long time.

18 MR. LITTS: Ask your next question.

19 Q So, you were saying that the parents were
20 telling you about some concerns.

21 A The parent had concerns around their child
22 being labeled in need of special services.

23 Q But did they express that they wanted some
24 services for this child?

25 A Yes, they wanted services that would ensure

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1 that their child would be able to partake in bus
2 transportation to and from school.

3 Q So, what did you do at the conclusion of that
4 meeting?

5 A I expressed that we could start the evaluation
6 process to determine whether or not the child had needs for

7 special assistance in that area.

8 Q Did you refer them to any other agencies?

9 A I believe the child -- the parent was referred
10 to IU20 for services and the parent left with that
11 information.

12 Q What happened next?

13 A The parent contacted the school saying that
14 they had contacted IU20 and that they were made aware that
15 their child would, during the evaluation process, be labeled
16 as a special needs child and that they did not want their
17 child labeled, they only wanted additional services for
18 busing.

19 Q So, when you got this information what did you
20 do or what did you have the charter school do next regarding
21 this student?

22 A We sent the documentation to start the process
23 and the parent notified this school that they had not
24 received it. Then we sent a personal copy, I personally
25 sent a personal copy home with the child in his bookbag and

Thorne - Direct 1317

1 the parent notified the school that they had received it.

2 Q Now, what document are you talking about?

3 A Permission to Evaluate.

4 Q And -- well, I guess we can say this because
5 Dr. Gustafson has already testified to it. Is that the
6 document that parents must sign before a school can begin
7 an evaluation?

8 A Yes.

9 Q Do you know when this was sent the first time?

10 A I believe it may have been late September or
11 early October.

12 Q Now, did you personally send the first one or

13 did you ask someone else to do it?

14 A I asked our Special Ed. person, Miss Schneider.

15 Q So, you heard from the parents and the parents
16 said they hadn't yet gotten it, is that what you just told
17 us, and that's when you sent another one?

18 A Yes.

19 Q Now, I'm going to show you an e-mail ... which
20 is dated October 16th of 2009. Is that an e-mail from the
21 parents to Ms. Schneider-Sable?

22 A Yes.

23 Q And are you copied on that e-mail?

24 A Yes.

25 Q Does that e-mail refer to a date that they had
Thorne - Direct 1318

1 received the Permission to Evaluate? In the very first
2 sentence.

3 A Yes.

4 Q So, does this tell us that they had a second
5 Permission to Evaluate by October 15th?

6 A Yes.

7 Q So, what were you doing once you got this
8 e-mail? Oh, well, let me -- I'm trying to decide whether we
9 should make this part of the record. Let's make this part
10 of the record.

11 MR. FENNICK: I believe this would be 13.

12 MR. LITTS: That's correct.

13 (E-MAIL DATED 10-16-09 marked for
14 identification as Charter School Exhibit No. 13.)

15 Q So, after you got the e-mail that's been
16 identified as CS-13 what did you do next?

17 A I believe I had additional phone conversations

18 with the parent around the evaluation process and behavioral
19 issues of the student in question.

20 Q Were you speaking with Mr. Aul during this
21 period of time?

22 A I don't recall speaking to him around this
23 particular e-mail.

24 Q My question is more general. While you were
25 having this back and forth with the parents were you and he

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1 keeping each other advised?

2 A Oh, yes, we have a working relationship.

3 Q Okay. How often would you say you were talking
4 with him about Student 22?

5 A Whenever I received a bus report on that
6 particular student and Transportation was finally able to
7 find a situation that addressed his needs somewhat, but we
8 still needed to bring more clarity to the situation around
9 504.

10 Q So, would you -- how would you describe your
11 relationship with Mr. Aul?

12 A It was a collaborative relationship. We've
13 always had one.

14 Q Now, I want to take you to October 21st and
15 I'll show you another e-mail.

16 MR. FENNICK: We'll make this Cs-13.

17 MR. LITTS: 14.

18 MR. FENNICK: Thank you.

19 (E-MAIL DATED 10-21-09 marked for
20 identification as Charter School Exhibit No. 14.)

21 Q And this is an e-mail dated October 21st, 2009.
22 Did you receive that from this student's parents?

23 A Yes.

24 Q And according to this e-mail had they yet
25 returned this signed Permission to Evaluate? Look at the
Thorne - Direct 1320

1 first sentence.

2 A No.

3 Q No, meaning they hadn't?

4 A No, they had not returned it.

5 Q And what does this e-mail state about whether
6 they want Special Education services for their child?

7 A They're not looking for a full-blown IEP
8 service, merely bus transportation remedies.

9 Q At any time that you were speaking with Mr. Aul
10 did he advise you that the school district had taken any
11 action with regard to this student?

12 A Yes.

13 Q What did he tell you?

14 A They had placed him on a different bus where
15 the situation seemed to have calmed down and it seemed to be
16 working for Transportation, other children, as well as the
17 parents because we had not received any information from the
18 parent otherwise.

19 Q Now, we're not going to make this an exhibit,
20 I'm just showing you some reports regarding this student and
21 I'm going to ask you to look at the dates.

22 MS. SCHURDAK: What reports?

23 Q So, does this report -- and I'm directing you
24 to where it says Date of Incident. Does this reflect the
25 last incident being October 26th?

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1 A Yes.

2 Q So, was it after that that Mr. Aul told you

3 that they had made a change?

4 A Yes.

5 Q At this point in time whose responsibility did
6 the charter school believe it was to make any special --
7 additional special arrangements regarding helping this
8 student out with transportation?

9 MS. SCHURDAK: I'm going to object because the
10 witness's belief is not relevant. What's relevant here is
11 what the law requires.

12 MR. LITTS: Well -- and in trying to ascertain
13 the facts we need to understand what both sides understood
14 the situation to be and the steps they took. So, I'll
15 overrule the objection.

16 Q Do you remember the question?

17 A What was the question?

18 Q The question was at this point in time who did
19 you believe had the responsibility for making any
20 arrangements that needed to be made regarding this student's
21 transportation?

22 A Busing. Bus transportation.

23 Q You mean at the school district?

24 A Yes.

25 Q And did you direct Ms. Schneider-Sable to send

Thorne - Direct 1322

1 anything to the school district?

2 A Yes.

3 (SCHNEIDER-SABLE/AUL LETTER marked for
4 identification as Charter School Exhibit No. 15.)

5 Q I'm showing you what we have identified as
6 CS-15. Is that the letter that you instructed
7 Miss Schneider-Sable to send to the school district?

8 A Yes.

♀

9 Q And what -- who is this addressed to?
10 A To Mr. Aul, Director of Transportation.
11 Q Does the letter tell us that she enclosed some
12 documents along with it?

13 A Yes.

14 MS. SCHURDAK: If I may, just for continued
15 confidentiality reasons I'd ask that -- in the first
16 sentence it refers to the grade the student is in. I think
17 that should be redacted and, Mr. Litts, I'm asking you --
18 and the bus number.

19 MR. LITTS: Mr. Fennick, do you have any
20 objection to that type of redaction?

21 MR. FENNICK: Not at all.

22 MR. LITTS: So, for purposes of the record,
23 Charter School 15, it's a letter and we'll be redacting the
24 grade level of the student and the bus number.

25 MS. SCHURDAK: Thank you.

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1 Q So, after this letter was sent what happened?

2 A I received a call from Mr. Aul and someone from
3 Special Education in the Pocono Mountain School District
4 around this busing situation and the 504 we needed to
5 provide that additional service. We had a conversation with
6 the gentleman, I cannot recall his name at this time,
7 advising me --

8 MS. SCHURDAK: I'm going to object. She
9 doesn't even know who she spoke to and this is now hearsay.

10 A Kevin was on the phone and I was advised
11 that --

12 MS. SCHURDAK: Objection.

13 MR. LITTS: Well, overruled.

14 Q Go ahead.

15 A I was advised that Pocono Mountain Charter
16 School was responsible for a 504 for the student before
17 additional bus services could be provided. I at that time
18 requested whether or not Pocono Mountain Charter School had
19 a formulation of a 504 --

20 Q Hang on. You said Pocono Mountain Charter
21 School. Did you mean to say --

22 A Pocono Mountain School District had a 504
23 format that we could use as a form and I was advised that
24 they would have to get permission to share the information.
25 I said, "Because we have a 504 and my concern is who is

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1 responsible for payment for the service provided," and, I
2 don't know, I guess I was a little naive in believing that
3 the Pocono Mountain School District would be more helpful in
4 sharing of information, but that was not forthcoming.

5 Q So, you asked them for help.

6 A Yes.

7 Q And the people on this call were Mr. Aul and
8 someone from the Special Education department, a gentleman,
9 but you just don't remember his name.

10 A Yes.

11 Q Did you know his name at the time?

12 A He told me his name. I have people coming --
13 it was a very busy time that evening that I spoke to them.

14 Q All right. So, did you hear back from either
15 of these people with assistance on drafting the 504 plan?

16 A No, I did not. What I did hear was a request
17 by the principal to come and share the letter that he had
18 received from the school district, from the Director of
19 Special Education, around this situation.

20 (PMSD TO PMCS LETTER marked for identification
21 as Charter School Exhibit No. 16.)

22 Q I'm showing you what I have identified as CS-16
23 and ask you if that is the letter that the charter school
24 received from the Pocono Mountain School District.

25 A Yes.

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1 Q Does this letter -- is this from Dr. Gustafson?

2 A Yes.

3 Q And does she -- does advise you that she
4 believes that the charter school had the responsibility for
5 providing transportation?

6 MS. SCHURDAK: Objection. First of all, it's
7 leading. B, the letter speaks for itself. It's been marked
8 as an exhibit, it's going to be introduced into evidence.
9 That's the best evidence.

10 MR. LITTS: Well, I'll sustain the objection.
11 The letter speaks for it.

12 MR. FENNICK: Well, I have to say I think I
13 made this objection 15 or 20 times during their case and it
14 was never sustained. I am -- I was just trying to highlight
15 a couple things.

16 MR. LITTS: Well, Mr. Fennick, with all due
17 respect, I have no problem with you asking questions of this
18 witness of how they interpreted the letter, what meaning
19 they gave to the letter, but you asked this witness to
20 characterize what Dr. Gustafson said, which is slightly
21 different. So, that's the reason I sustained the objection.
22 You may ask your questions.

23 Q So, what did you do in response to this letter?

24 A I'm not sure what I did at this point.

25 Q Well, let me ask you a different question.

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1 Did you get back a signed Permission to Evaluate from the
2 parents at any point?

3 A Yes.

4 Q Do you remember when?

5 A It may have been late October, early November,
6 I'm not sure.

7 Q But are you sure it was in that range?

8 A Yes.

9 Q And when you got the signed Permission to
10 Evaluate what did you do next?

11 A I believe Miss Schneider scheduled the
12 evaluation and -- but the parents sent another e-mail
13 stating that they signed it, but they didn't want the child
14 evaluated.

15 Q Were any meetings scheduled with the parents
16 during that period of time?

17 A Yes. We tried to contact the parents several
18 times by both e-mail and phone calls and the parent did not
19 respond.

20 Q At a certain point in time did someone else
21 take over the role of seeing that this plan got developed
22 for this student?

23 A Yes.

24 Q And who was that?

25 A That would be Miss Kelly. I had to leave the

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1 school for restoration of health.

2 Q So, let's go back to the letter that we've
3 identified as CS-16. On the second page there is a cc to
4 Ellen Schurdak. Do you see that?

5 A Yes.

6 Q Had you contacted the charter school attorneys
7 about this situation at this point?

8 A I believe so.

9 Q Okay. In terms of the relationships between
10 the parties, between you and Mr. Aul, anybody else at the
11 Pocono Mountain School District, did you believe that you
12 were moving forward in a cooperative manner initially?

13 A Yes. As I stated before, my working with the
14 charter school and Pocono Mountain School District,
15 Transportation, has always been one of a collaborative
16 nature.

17 Q Did you -- do you believe that relationship --
18 do you feel that relationship changed with regard to this
19 student at any point?

20 A I believe that this situation could have been
21 handled differently. That's my personal opinion based on my
22 prior experience with bus transportation for the Pocono
23 Mountain School District.

24 Q How do you think it could have been handled
25 differently?

‡

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1 A I just don't understand how it got to be so
2 blown up. I don't know any other way to put it other than
3 to say how it became blown up. I've worked in Special Ed.,
4 busing, for many, many years. It may have been another
5 state, but I've just never come across situations like this
6 that have escalated to this level.

7 Q I want to refer you to the letter, the second
8 page.

9 MR. LITTS: Which letter, Mr. Fennick?

10 MR. FENNICK: I'm sorry, CS-16.

11 MR. LITTS: Thank you.

12 Q The last paragraph starts with "If I can be of
13 any further assistance in this case, please feel free to
14 contact me." Was Dr. Gustafson of any assistance in this
15 case?

16 A No.

17 Q And was there assistance from the district when
18 the district did not tell you that this student had had bus
19 conduct issues the year before?

20 MS. SCHURDAK: Objection. We have not
21 established that there were bus incident issues the year
22 before.

23 MR. LITTS: Well, I believe this witness
24 testified earlier in direct that she was under that
25 impression. So, I'm going to overrule the objection.

Thorne - Direct

1329

1 Q Miss Thorne, I'm going to show you some bus
2 conduct incidents from the 2008-2009 school year. Were
3 these provided to you by the Pocono Mountain School
4 District?

5 A No.

6 Q How did you get these?

7 A I believe the -- this is my first time seeing
8 these. They may have been made -- brought to the attention
9 of the school, to Miss Kelly's attention, but I personally
10 have not seen these.

11 Q All right. Do they -- does the form look
12 identical to the --

13 A Yes, it is the standard bus conduct report that
14 the Pocono Mountain School District provides for students
15 who are having behavioral issues while being transported by

16 transportation.

17 Q And does it show that there were incidents in
18 the 2008-2009 school year?

19 A Yes.

20 Q All right. In fact, does it show that there
21 were

22 MS. SCHURDAK: I would object to the leading --
23 continual leading questions.

24 MR. FENNICK: Well, I'm counting.

25 MR. LITTS: Well, Mr. Fennick, if you want to

Thorne - Direct 1330

1 count that's fine, but let's watch any leading questions on
2 direct.

3 Q With the hope that I can lead, are there 11
4 separate incidents?

5 A I'll have to take your word. I didn't count
6 them.

7 Q I'm sure Miss Schurdak can cross examine you
8 or me if I got that wrong. So, let me go back to the
9 previous question which was was it helpful for the school
10 district not to disclose these previous issues to you?
11 Does that help you, not knowing about these previous issues?

12 A No. I think --

13 MS. SCHURDAK: I'm going to object because
14 that's a mischaracterization. The date of these
15 incidents . . . never mind. I'll hold -- I'll withdraw that
16 for now. Let me hear the full question. I apologize.

17 MR. LITTS: I'm going to interrupt. What I
18 understand Mr. Fennick's question to be, ma'am, is would it
19 have been helpful to you to have in your possession these
20 bus incident records when this student was enrolled in the

♀

21 charter school?

22 A Yes, very much so.

23 MR. LITTS: Okay.

24 MR. FENNIC: Thank you once again for asking
25 it the right way, Mr. Litts.

Thorne - Direct

1331

1 Q Would it have been helpful to you to know that
2 Mr. Aul had transferred this student to another bus where
3 there was help for the student? You said earlier, I think,
4 that at some point you learned that the student had been
5 transferred.

6 A Yes, I did, I learned this information from
7 Kevin Aul in Transportation.

8 Q Now, do you know what the ultimate disposition
9 of this issue was? In other words, what actually was done
10 for this student so that the student could ride the bus
11 successfully?

12 A You mean now? I believe that that child is now
13 on a bus with the proper assistance that's needed for him to
14 ride safely to and from school.

15 Q And, if you know, maybe you don't, is that the
16 same bus with the same help that Mr. Aul transferred the
17 student to at the end of October?

18 A I believe so, but --

19 Q All right, if you don't know I'll ask someone
20 else.

21 And would it have been helpful to you if the
22 gentleman from Dr. Gustafson's staff had called you back
23 with assistance on the 504 plan?

24 MS. SCHURDAK: Objection.

25 MR. LITTS: It's been asked and answered.

Thorne - Direct

1332

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1 Let's move on to something else.

2 Q All right. Let's move on to something else.
3 Tell us what your role is with the charter school regarding
4 record transfers between the charter school and the school
5 district.

6 A There is someone responsible for that and I
7 would be the supervisor over those individuals.

8 Q In general terms, when you first got to the
9 charter school describe how that system works. And this is
10 from the beginning of the '08 school year, I think you told
11 us.

12 A From my previous work experience I really had
13 concerns and issues with the way that process was handled by
14 the charter school.

15 Q And did you have concerns and issues about the
16 way that the Pocono Mountain School District was sending
17 records to the charter school?

18 A I had concerns both -- on both sides.

19 Q Did you take any steps to try and correct that?

20 A At the charter school, yes.

21 Q What did you do?

22 A Implemented a process by which records and
23 documentation would be and should be signed for upon receipt
24 of picking up or dropping off. In some instances that
25 worked. The Pocono Mountain School District was not always

Thorne - Direct

1333

1 open to signing receipts for receipt of information.
2 However, my documentation that I forwarded to
3 Transportation, to Mr. Aul, I was able to ascertain and
4 receive signed receipts from bus transportation for those
5 documents.

6 Q All right. Was there anything else that you
7 did in order to try and improve the exchange of records
8 between the school district and the charter school?

9 A I have to say that in my short term there with
10 knowledge of the movement of documentation to and from the
11 school I was a little concerned with the fact that you would
12 send stuff to the charter school -- to the Pocono Mountain
13 School District, they would say they didn't get it, you
14 would send it again, they would say they didn't get it.
15 They would send us stuff; we didn't get it. I just found it
16 all -- just a bit much. We're not talking about a lot of
17 records, we're not talking about excessive amounts of
18 records. I just did not understand why there was so much
19 back and forth with the giving and receiving of
20 documentation that -- I don't know. I just found it to be
21 a concern for me coming from a school system that was many,
22 many times the size of that particular school district in
23 question.

24 I just had concerns with it, I really did.
25 There were times when I felt that the charter school

Thorne - Direct

1334

1 should -- could have done a better job in expediting,
2 getting records to the school district, but I found the same
3 situation in reverse. You would send them, they said they
4 didn't get them, we said we didn't get them. I was just not
5 understanding the whole relationship. I felt it to be
6 adversarial. I didn't know any other language to use or to
7 understand why there was so much miscommunication around
8 documentation.

9 Q Has it improved since September of '08?

10 MS. SCHURDAK: In her opinion.

11 A It would have to be my opinion.

12 Q It's a factual statement, so it doesn't have to
13 be her opinion, but go ahead, tell us what you think.

14 A I do not work firsthand close with the transfer
15 of documents to and from the school or any other institution
16 other than -- and including Pocono Mountain School District.
17 It's gotten better to my knowledge in this new semester
18 because additional procedures have been put in place and
19 safeguards. I can only say that I would hope that it has
20 gotten better. I feel that it's gotten better, but that
21 lies open to the people who are receiving communications.

22 Q Now, I gave you an exhibit which was the letter
23 that Ms. Schneider-Sable sent to the Pocono Mountain School
24 District. Do you have that?

25 A Yes.

Thorne - Direct

1335

1 Q What --

2 MR. LITTS: Are we talking about Charter School
3 15?

4 A Yes.

5 Q On No. 15 is there a date that this letter was
6 sent to the school district?

7 A No, this letter does not have a date and it
8 just disturbs me that it does not have a date. I brought it
9 to the attention of Miss Schneider's office when I
10 discovered it had gone out without a date. However, I was
11 able to put in my chronology of events around this student
12 the date that it was sent out because I got a receipt from
13 Transportation personnel when they picked it up.

14 Q There's a stamp on the bottom right that says
15 November 24th, 2009. Is that the school district's Received
16 stamp?

17 A I have no way of knowing whose stamp that is.
18 It's not a stamp from the Pocono Mountain Charter School,
19 so I have no way of knowing whose stamp that is.

20 Q How was this letter, CS-15, and the
21 accompanying documents transferred to the school district?

22 A They were hand delivered to bus personnel or
23 the Director of Transportation from the charter school and
24 signed for.

25 Q Why were they hand delivered to the driver?

Thorne - Direct

1336

1 A Because that's the arrangement that Mr. Aul and
2 the charter school had around documentation that needed to
3 be transported.

4 MR. LITTS: I have to interrupt, Mr. Fennick.
5 I apologize. Ma'am, who were the documents -- Charter
6 School 15, the accompanying documents, who were they given
7 to?

8 A They were given to bus personnel.

9 MR. LITTS: When you say bus personnel is that
10 the school bus driver --

11 A School bus driver.

12 MR. LITTS: Thanks.

13 (RECEIPT marked for identification as
14 Charter School Exhibit No. 17.)

15 Q Now, I am showing you what we have identified
16 as CS-17. Is that the receipt that you told us you obtained
17 from the bus driver?

18 MS. SCHURDAK: I'm going to object --

19 A Yes.

20 MS. SCHURDAK: -- on a number of grounds.

21 No. 1. I have never been given CS-17 before right now.

22 There was an agreement that all exhibits would be exchanged

2 clarifi cation is needed for purposes of the record regarding
3 that.

4 So, that is my ruling with regards to Charter
5 School 17 and with that, Mr. Fennick

6 MS. SCHURDAK: Note my conti nuing objecti on for
7 the record.

8 MR. LITTS: As wi th all objecti ons, I have
9 noted a conti nuing nature; they're on the record. So, Mr.
10 Fennick, if you have further questi ons wi th regards to thi s
11 wi tness about Charter School 17 -- I understood thi s wi tness
12 testi mony to be, however, that they made arrangements to
13 deli ver certain records regarding Student 22 to the school
14 di strict and the means of deli very was to personally give
15 that to a school bus driver. But, if you have other
16 questi ons you may ask them.

17 Q Ms. Thorne, you are aware that the school
18 di strict is to advise the charter school on educati onal
19 i ssues according to the Charter School Law?

20 A Yes.

21 Q Are you aware, as Di rector of Operations in the
22 last year and a hal f, of any advice that has come from the
23 school di strict regarding compli ance wi th educati on laws?

24 A No.

25 Q Has the school di strict, to your knowl edge,

Thorne - Di rect 1339

1 offered to set up any meeti ngs wi th the charter school to
2 try and talk about i ssues of concern to the school and to
3 the di strict?

4 A No.

5 Q Has the school di strict offered to do any
6 trai ning of personnel at the charter school ?

7 A No.

♀

8 Q Do you believe that in the manner in which the
9 district is acting towards the charter school that the
10 children in the charter school are being served?

11 A No.

12 Q Dr. Pfennig in his testimony a few months ago
13 expressed what he called a concern that the charter school
14 was declassifying too many Special Education students. Do
15 you believe that to be true?

16 A No.

17 Q And what do you base that on?

18 A In that my belief is that Special Education is
19 a service, it is not a place. It is a service that is
20 provided to students that have deficits or disabilities and
21 that the goal of the service is to move the child back
22 toward mainstream education. Oftentimes children are
23 decertified or, as they use in this state, the terminology
24 dismissed and sometimes parents or others feel that those
25 students still are in need of additional support in various

♀

Thorne - Direct

1340

1 areas.

2 The charter school provides additional services
3 and supports for those students, but I -- my belief firmly
4 is that Special Education is a service, it is not a place,
5 and the goal is to return, whenever possible, the child back
6 to mainstream education.

7 Q In the year and a half that you have been
8 working with the charter school if you saw that people at
9 the charter school were trying to improperly declassify a
10 student would you speak up?

11 A Yes, and I have.

12 Q And were you listened to?

13 A Yes.

14 Q That's your job?

15 A Yes.

16 MR. FENNIC K: Cross exami nati on.

17 MS. SCHURDAK: May we take a five minute or two
18 minute restroom break, please?

19 MR. LITTS: We can do that and before we do
20 that is there any objecti on to Charter School Exhibi ts 13
21 through 17?

22 MS. SCHURDAK: Well, 17 I vehemently --

23 MR. LITTS: Well, yeah, your vehemence has been
24 noted. Anythi ng el se?

25 MS. SCHURDAK: No.

Thorne - Cross

1341

1 MR. LITTS: Charter School 13 through 17 is
2 admitted and we'll take a 2 minute faci l i t i e s break.

3 MS. SCHURDAK: Thank you.

4 (Recess from 11:07 a.m. to 11:15 a.m.)

5 MR. LITTS: Cross exami nati on.

6 MS. SCHURDAK: Thank you, Mr. Li tts.

7 - - -

8 BY MS. SCHURDAK:

9 Q Good morni ng, Mi ss Thorne. My name is
10 E l l e n Schurdak.

11 A Good morni ng.

12 Q You were hi red i ni ti a l l y by the charter school
13 to be the Di rector of Speci al Ed., correct?

14 A Operations.

15 Q That's what your ori gi na l j ob ti t l e was?

16 A Yes.

17 Q If you could -- and, I'm sorry, I don't know
18 what tab number it is -- turn to School Di strict 33.

♀

19 MS. SCHURDAK: And, Mr. Litts, I'll ask for
20 your assistance with what tab number that is.

21 Q Did you find SD-33? Did you find School
22 District 33?

23 A Yes.

24 Q And it states, does it not, that you were hired
25 as Supervisor of Special Education for the 2008-2009

Thorne - Cross 1342

1 academi c year?

2 A Yes.

3 Q It does not use Director of Operations in your
4 employment agreement, does it?

5 A That was my employment agreement for 2008-2009.
6 For the current school year it was Director of Operations.

7 Q But that wasn't my question. My question was
8 what was your job title when you were initially hired by the
9 charter school.

10 A Supervisor of Special Ed.

11 Q And what certifications did you hold from
12 Pennsylvania with respect to Special Education back in the
13 Fall of 2008?

14 MR. FENNIC K: Objecti on.

15 MS. SCHURDAK: Basis?

16 MR. FENNIC K: Yeah, I understand that comes
17 next. No. 1 is beyond the scope of direct.

18 No. 2, if the district is trying to show that
19 the charter school is deficient in some way in its
20 certifications that should be part of the district's case in
21 chief, not something that is raised on cross of a witness
22 who didn't testify about anything concerning it.

23 MR. LITTS: Well, I'm going to overrule the

24 objection. She did testify about her background and
 25 experience and whether the information is relevant, I'll let

Thorne - Cross

1343

1 the question be asked. So, the objection is overruled.

2 MS. SCHURDAK: Thank you.

3 Q You may answer it.

4 A I believe I did.

5 Q Do you know?

6 MR. BOCKELMAN: She did answer.

7 Q I believe. So, you didn't have any
 8 certification from Pennsylvania.

9 MR. LITTS: Miss Thorne, do you hold any
 10 certifications from the Pennsylvania Department of --

11 A The answer was no.

12 MR. LITTS: Thank you, ma'am.

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

14 Q And the New York laws are different than
 15 Pennsylvania when it comes to Special Ed., aren't they?

16 A I would say that they're not that much
 17 different.

18 Q But there are differences.

19 A I would think so.

20 Q You said when -- on your direct that you had
 21 some concerns when you first were hired at the charter
 22 school about the charter school's Special Education
 23 department and I'm paraphrasing, but do you remember
 24 saying something --

25 MR. FENNICK: I'm objecting. That's more than

Thorne - Cross

1344

1 paraphrasing. I believe she had concerns about the records.

2 MR. LITTS: Why don't we withdraw the question
 3 and ask it differently?

4 Q On direct you testified you had concerns about
5 how the educational records of the Pocono Mountain Charter
6 School were being addressed or dealt with. Do you recall
7 that testimony?

8 A Yes.

9 Q What were your specific concerns?

10 A My concerns were, as I stated, that the school
11 district would request records and claim that they didn't
12 get them, that the charter school would send records and the
13 school district would say they didn't get them, and it was
14 back and forth. So, I had concerns about that.

15 Q Did the charter school maintain records to
16 show -- strike that. Did they have a policy in place when
17 you arrived to show or log when they would send records?

18 A Yes, but it wasn't -- it wasn't kept up to
19 date.

20 Q And when you say it wasn't kept up to date what
21 do you mean by that?

22 A I mean that sometimes it may have been followed
23 through and sometimes it was not.

24 Q So, there wasn't consistency in implementation?

25 A No consistency.

♀

Thorne - Cross

1345

1 Q Now, you also testified on direct that you have
2 been a bit surprised by the adversarial relationship between
3 the charter school and the school district when it comes to
4 Special Ed. issues. Do you recall that?

5 A Yes.

6 Q Do you have -- I direct you -- strike that.
7 Are you aware that in February of 2008 Mr. Severs had sent a
8 letter to the -- to Dr. Gustafson that said, "This is the

9 second misguided attempt you have made to insert your
10 opinions. Please stop."

11 A Did you say February of 2008?

12 Q Yes.

13 A I'm not aware of that.

14 Q Can you turn to Joint Exhibit 16? And that
15 would be --

16 MS. SCHURDAK: Tab number again? I'll ask
17 Mr. Litts to assist because I have kept my records
18 differently and I apologize.

19 MR. LITTS: Joint 16, is that the February 6th,
20 2008, letter?

21 MS. SCHURDAK: Yes.

22 MR. LITTS: That would be Tabernacle 22.

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

24 A I would have no knowledge of this letter.

25 Q Does this put in better perspective as you sit

Thorne - Cross

1346

1 here today that there is this history that you were unaware
2 of that pre-dates your tenure at the charter school?

3 MR. FENNICK: I'm going to object. She said
4 she's not aware of the letter, she hasn't seen it before.

5 MR. LITTS: Sustained.

6 Q Take a moment and read the letter.

7 MR. FENNICK: I -- this is a matter for the
8 board.

9 MR. LITTS: Hold on. I mean, Miss Schurdak,
10 this witness said she has no knowledge of this letter. So,
11 let's keep --

12 MS. SCHURDAK: She also said, "I'm surprised."

13 MR. LITTS: I understand, but let's just keep
14 this very succinct here.

15 Q At any time did you contact Dr. Gustafson since
16 you've come to the charter school?

17 A No.

18 Q Why didn't you contact the Assistant
19 Superintendent for Special Education about your concerns
20 with the transmission of educational records between the
21 parties?

22 A My concerns were not at the level that I felt I
23 needed to contact her.

24 Q Who did you contact?

25 A I did not contact anyone at the Pocono Mountain
Thorne - Cross 1347

1 School District.

2 Q You mentioned that you put procedures and
3 policies in place this school year with respect to Special
4 Education issues. What policies did you implement this
5 year?

6 MR. FENNICK: I'm going to object. I don't
7 think she said that.

8 MS. SCHURDAK: Mm-hmm. She did.

9 MR. FENNICK: Well, maybe we need to ask her.
10 I thought she said it was with regard to records.

11 MR. LITTS: Well, I have to confess. I was
12 conferring with one of the board members at the time, so if
13 you could please withdraw that question and ask it again or
14 a slightly different one.

15 MS. SCHURDAK: Well, it's a broad question.
16 I mean, if it's limited to records she can answer in the
17 area of records.

18 Q What policies did you implement this year with
19 respect to Special Education issues?

20 A That request for records should be handled in
21 an expeditious matter and in a timely fashion which I found
22 was not happening.

23 Q More than 10 days was lapsing from the
24 transmission of records by the charter school to the
25 requested --

Thorne - Cross

1348

1 A I can't attest to the number of days, but I
2 feel like when a request is made they should be handled in a
3 more expeditious manner.

4 Q And when did you implement that change?

5 A Coming into the new semester of the new school
6 year; September.

7 Q September of '09?

8 A Yes. This is '10, so '09.

9 Q And is that a written policy?

10 A This was a cabinet meeting.

11 Q So, is it a written procedure at this point in
12 time?

13 A No, it is not.

14 Q Now, during your testimony at various times you
15 referred to a -- you referred the issue to the Special Ed.
16 team?

17 A I never used the term team.

18 Q Department, Special Ed. department.

19 A I never used the term department.

20 Q When you were talking about Student No. 22
21 when it came to your attention that the child's parents had
22 brought in an independent medical evaluation you said that
23 you referred the issue to your Special Education department.

24 A Person, yes.

25 Q Person. And what person?

1 A I referred it to Miss Schneider to contact
2 Dr. Janine Wargo.

3 Q Why didn't you contact Dr. Wargo directly?

4 A Because that is the procedure at Pocono
5 Mountain Charter School.

6 Q And what is your procedure?

7 A That I would forward that information to Miss
8 Schneider to take care of.

9 Q And Ms. Schneider is -- strike that. Who
10 besides Ms. Schneider and yourself work in the Special
11 Education department?

12 A There are resource room teachers in the
13 Special Ed. department at the charter school.

14 Q To your knowledge does Miss Schneider have any
15 certifications from the Pennsylvania Department of
16 Education?

17 MR. FENNICK: Objection. It's beyond the scope
18 of direct. Miss Schneider will be here. She can ask
19 Miss Schneider.

20 MR. LITTS: I'll sustain the objection based on
21 Mr. Fennick's representation.

22 Q Mr. Fennick had shown you an exhibit which I
23 believe is CS-17. Do you still have it in front of you?

24 A Yes.

25 Q There's some handwriting -- oh, it starts with

1 the word "Spoke with Mr. Auld," A-u-l-d. Is that your
2 handwriting?

3 A No, it is not.

4 Q So, you don't know whether or not this

5 handwritten note accurately reflects any conversation that
6 may or may not have occurred.

7 A What conversation are you referring to?

8 Q Well, the note says, "Spoke with Mr. Auld."

9 A The handwritten note was written by the
10 receptionist at the front desk of Pocono Mountain Charter
11 School.

12 Q So, you don't -- you do not speak with Mr.
13 Auld.

14 A Yes, I did.

15 Q Regarding the transmission of paperwork?

16 A Yes.

17 Q Do you believe that it is a good idea to
18 transmit to a bus driver a child's psychiatric evaluation?

19 A Yes. It was in a sealed envelope and the bus
20 personnel had no knowledge of what was in the envelope.

21 Q Are you aware of FERPA?

22 A Excuse me?

23 Q Are you aware of FERPA?

24 A No.

25 Q With respect to Student No. 22 did the charter
Thorne - Cross 1351

1 school ever start an evaluation -- a 504 evaluation for the
2 student?

3 A 504 is not an evaluation.

4 Q What is your belief the process is called in
5 order to evaluate whether or not a child is in need of 504
6 accommodation?

7 A The complete evaluation process, but I'm not
8 aware that it is called a 504, but the school did start the
9 evaluation process for Child 22.

10 Q Did you start that process?

11 A The school did, yes.
12 Q The charter school did. What date?
13 A I don't have the date.
14 Q Was it ever completed?
15 A I believe you would have to take that up with
16 the person who handles that and that would be
17 Miss Schneider.
18 Q Miss Who?
19 A Schneider.
20 Q Does the charter school have a current Director
21 of Special Ed. ?
22 MR. FENNICK: I'm going to object. This is
23 beyond the scope of direct.
24 MR. LITTS: I'm going to overrule the
25 objection.

♀

Thorne - Cross

1352

1 A In that title, no.
2 Q Do they have a supervisor?
3 A In that title, no.
4 Q Who oversees Miss Schneider currently?
5 A Mrs. Kelly.
6 Q And what is Mrs. Kelly's job title?
7 A She's Director of Operations.
8 MR. FENNICK: Could you please note my
9 continuing objection to all these questions about --
10 MR. LITTS: They are noted.
11 MR. FENNICK: Okay.
12 Q I thought you said that your job title was
13 Director of Operations.
14 A And, if you recall, I also stated that I am on
15 a restoration of health leave.

16 Q When's the last date that you worked at the
17 charter school prior to taking your leave of absence?

18 A December 22nd.

19 Q Of?

20 A 2009.

21 Q I'm going to direct your attention to CS-13 and
22 14. CS-13, the parent starts off in the first sentence by
23 saying, "We have some questions," correct?

24 A Yes.

25 (Dorothy Sirolli entered the hearing room.)

Thorne - Cross

1353

1 Q Did you call the parents sometime after receipt
2 of this e-mail of October 16th, 2009, to discuss with the
3 parent the questions?

4 A Yes.

5 Q What date did you call the parent?

6 A I called the parent that evening when I
7 received the e-mail and again the next morning.

8 Q Were you able to talk substantively with the
9 parent about the parent's concerns or questions?

10 A I believe I spoke with the wife and was
11 informed that I needed to speak with the husband and I
12 received a call later in the day from the husband directing
13 me not to have conversations with the wife, that all
14 conversations should be with him and he was unable to speak
15 with me at that time.

16 Q So, this is the next day, October 17th?

17 A Yeah, I think so.

18 Q So, that would be Saturday?

19 A When I talked to him it would have been Friday.

20 Q The e-mail says that it was sent Friday.

21 A Then it would have been Monday because I spoke

22 to his wife and the parent admonished me, the father, that
23 he did not want conversations with his wife, all
24 conversations should be had with him.

25 Q Did the parent say why he had contacted the
Thorne - Cross 1354

1 Special Education consult line?

2 A Yes.

3 Q Why was that?

4 A He felt that the charter school was not
5 expediting his needs in a more expeditious manner. He felt
6 that things should have been moving along a little more
7 rapidly.

8 Q What day did the school year commence in 2009?
9 Was it August or September?

10 A If I'm not mistaken, I think they come back
11 here in August.

12 Q What had the school done since receiving the
13 initial independent psychiatric evaluation report and
14 October 16th, 2009, with respect to Student No. 22?

15 A What do you mean what happened?

16 Q Well, had you started an evaluation process?

17 A No, I believe I stated that we had not, that
18 the parent at that time was not open to having his child
19 labeled. There were informal observations that were taking
20 place in the classroom and we determined that Student No. 22
21 was not having the same behavioral issues in school that he
22 was having on the bus.

23 Q What about 504 requirements?

24 MR. FENNICK: I object to the question. Can
25 you clarify it, please?

Thorne - Cross 1355

1 MR. LITTS: I'll sustain the objection.
2 Can you rephrase? I'm not sure I understand the question.
3 Q What did the charter school do between August
4 2009 and October 16th, 2009, to meet -- hold on because the
5 court reporter can only take one of us at a time. To meet
6 Student No. 22's needs with respect to a 504 accommodation.
7 A Contact bus transportation.
8 Q And that is the only thing the charter school
9 did to your knowledge?
10 A At that time, yes.
11 Q And in the e-mail with the date of October 21,
12 2009, and I believe that's Charter School 14 -- do you have
13 that in front of you, Miss Thorne?
14 A Yes.
15 Q The e-mail from the parent says, does it not,
16 "As I have told Mrs. Thorne many times in the past,
17 Transportation is looking for documentation from the
18 school." That's correct, isn't it?
19 A Yes, that's his statement.
20 Q And the parent says that this has been
21 requested since September 18th.
22 A Yes.
23 Q Who at the school district did you request a
24 504 form from?
25 A Say that again.

Thorne - Cross

1356

1 Q Mr. Fennick on direct was asking you questions
2 regarding Student No. 22 and you said you had a conversation
3 with someone at the school district and you requested a 504
4 form.
5 A It wasn't a form that I requested and I believe
6 that I stated that when I was talking with Kevin Aul of

7 Transportation and a person who represented themselves as a
8 Special Education supervisor for Pocono Mountain School
9 District I did not get his name and I did not request a
10 form, I asked assistance on developing a 504.

11 Q And why were you asking for assistance?

12 A Because I had the one that we had written and I
13 wanted to see how they lined up. And I expressed that to
14 him.

15 Q So, there was a 504 --

16 A We had a draft, yes.

17 Q You had a draft.

18 A Yes.

19 Q And when was the draft completed?

20 A I believe it was completed in October and
21 forwarded to Transportation, as I stated earlier.

22 Q To whom in Transportation was that given?

23 A It was sent to Kevin Aul's office.

24 Q Was that going through the bus driver?

25 A Yes.

♀

Thorne - Cross

1357

1 Q Did the charter school find that a 504
2 accommodation was needed for Student No. 22, then, in
3 October of '09?

4 A Yes.

5 Q And did the charter school then provide that
6 accommodation in October of 2009?

7 MR. FENNICK: I'll object to the question.

8 It's a compound question.

9 Q Did the charter school --

10 MR. LITTS: Hold up. I'm going to sustain the
11 objection. If you'll ask it differently, please.

12 Q Did the charter school implement the 504 plan
13 in October 2009?

14 A No. I believe at that time the student was
15 still riding the bus without a 504 in place from the charter
16 school.

17 Q Why wasn't the 504 accommodation implemented in
18 October of 2009 by the charter school?

19 A The charter school doesn't implement the 504.
20 The information from my knowledge is forwarded to Transpor-
21 tation and Transportation takes care of that, but the plan
22 is supposed to come from the school.

23 Q Had you seen Dr. Gustafson's letter dated
24 November 30th, 2009, prior to today?

25 A Yes.

Thorne - Cross

1358

1 Q In that letter she suggests that under 34 CFR
2 300.306 that it is the responsibility of the charter school,
3 does she not?

4 A Yes.

5 Q What did you do -- strike that. When do you
6 recall first seeing Dr. Gustafson's letter?

7 A Early December.

8 Q What did you do after seeing this letter?

9 A Met with the cabinet at the charter school and
10 once again brought to their attention that this was and
11 urgent matter that needed to be addressed.

12 Q And who comprises the cabinet at the charter
13 school besides yourself?

14 A The principal and the CEO and business manager.

15 Q The principal is whom?

16 A John Severs.

17 Q The CEO, I believe, is Pastor Bloom.

18 A Yes.

19 Q And the business manager is whom?

20 A Loletta Robertson.

21 Q So, what happened after the cabinet meeting
22 with respect to this issue?

23 A It was determined that the charter school was
24 responsible for the 504.

25 Q What today is the charter school doing to

Thorne - Cross

1359

1 provide this accommodation to Student No. 22?

2 A I believe that accommodation has been dealt
3 with.

4 Q And it was dealt with because the school
5 district, in fact, provided the accommodation, correct?

6 A The -- yes, because they would have to. The
7 Transportation department would have to. 504 requires a bus
8 matron on the bus and that has been taken care of, if I'm
9 not mistaken, in my absence.

10 Q And, in fact, the Pocono Mountain School
11 District provided that accommodation, I think, as you
12 testified earlier, prior to your taking your leave of
13 absence from the school.

14 A The child was placed on a different bus.

15 Q With an aide.

16 A I was not advised when the child was placed on
17 a different bus that the bus had an aide in my conversation
18 with Mr. Aul. It was never mentioned that there was an aide
19 on the bus.

20 Q With a monitor, then, using a different word?

21 A No, that was not mentioned to me, so I can't
22 say one way or the other.

23 Q Now, you also -- you said that you were not
24 surprised by the students at the charter school who were
25 being -- I think the word was decertified or dismissed from

Thorne - Cross

1360

1 Special Ed. Do you recall that?

2 A I believe --

3 MR. LITTS: I believe the term used was
4 declassified.

5 MS. SCHURDAK: I think she used the word
6 dismissed, too.

7 MR. LITTS: Yes, but you used the word
8 decertified.

9 Q Do you recall saying you weren't surprised that
10 students were being dismissed from Special Ed. at the
11 charter school?

12 A I don't know that I said I was surprised that
13 they were being dismissed. I believe the conversation was
14 around them being dismissed from Special Ed. and my
15 thoughts.

16 Q Now, do you think it would be unusual if a
17 student who starts school in September, September of 2008,
18 and comes to the charter school with an IEP is then in
19 November of 2008 dismissed from Special Ed.?

20 MR. FENNICK: Objection.

21 MS. SCHURDAK: Basis?

22 MR. FENNICK: Is she asking questions as an
23 expert?

24 MS. SCHURDAK: No.

25 MR. FENNICK: Well, it sounds like you are.

Thorne - Cross

1361

1 If that's the case then I can go back and ask all my
2 questions again, but I just wanted to be sure.

3 MR. LITTS: We've identified the fact that this
4 witness is not has not been offered as an expert. So, why
5 don't you withdraw the question and ask it a different way.

6 MS. SCHURDAK: Ask it a different way? Sure.

7 Q To be fair to you, I should give you the chart
8 that counsel has been using for student.

9 I have given you two documents that have been
10 previously exchanged among counsel and you'll see that there
11 are student numbers there and I would ask that you only
12 refer to students by numbers and not by name, okay?

13 A Yes.

14 Q I have given you the names just so you're
15 aware.

16 MR. FENNICK: I'm going to object to questions
17 based on a document that Ms. Thorne has not seen that was
18 constructed by personnel at the school district that has
19 various dates for various students. We have no way of --
20 well, I guess if we looked we could tell whether those dates
21 were accurate, but Ms. Thorne certainly hasn't done that,
22 we haven't done it, and Miss Schurdak is asking her to say
23 essentially -- "Assume what we have done is right. Give us
24 some opinions about it."

25 MR. LITTS: Well, I understand your objection.

Thorne - Cross

1362

1 Let me say this. To the extent that Miss Schurdak has
2 provided something that's been put into evidence or shared
3 between the parties for purposes that this witness can
4 reference to, I don't see any problem with that. But,
5 whether that document is helpful or not, the witness is
6 going to tell us that.

7 But I also don't see any problem based on the

8 direct examination testimony about the declassification or
9 removal of Special Education students from that -- those
10 types of services. Based on that testimony on direct she
11 can ask about that.

12 So, if this isn't helpful, fine, and the
13 witness can only do the best she can in trying to answer the
14 questions.

15 So, with that caveat, I am going to allow the
16 questions.

17 MR. FENNICK: Can I just clarify one thing?
18 I don't think either of these are in evidence and I heard
19 what you said, but I want to make sure it's clear.

20 MR. LITTS: I don't believe I said in evidence,
21 I thought that there was an exchange of parties --

22 MR. FENNICK: I know.

23 MR. LITTS: You know, and, again, it's fair
24 game for Miss Schurdak to ask about the declassification
25 issue. Whether this document is helpful in asking those

Thorne - Cross

1363

1 questions, we'll find out.

2 MS. SCHURDAK: Thank you.

3 Q As Director -- excuse me, as Supervisor of
4 Special Education in the Fall of 2008 were you familiar with
5 Student No. 7?

6 A I know the name. I'm not personally familiar
7 with the student.

8 Q Were you aware that the student enrolled in
9 your school in September of 2008?

10 A No.

11 Q Were you aware as the Supervisor of Special
12 Education that the student was found not to be -- to be
13 decertified from Special Ed. in November of 2009?

14 A November of 2009?

15 Q Or 2008. Excuse me.

16 A No, I was not there at the time.

17 Q Well, you were -- Student No. 8, who was in
18 enrolled in your school in -- in September of 2008, are you
19 familiar with that student as Supervisor of Special Ed.?

20 A No.

21 Q As Supervisor of Special Ed. were you aware
22 that the student was decertified in November of 2008?

23 A No. I'm looking at your charter and I'm seeing
24 that enrollment date was November of 2008. I was not
25 employed at that time.

†

Thorne - Cross

1364

1 Q When were you an employee?

2 A The first week of December.

3 MR. FENNICK: Can we refer the witness to
4 Exhibit 33 which was used by Attorney Schurdak to establish
5 the terms of employment? I'm sure Attorney Schurdak knows
6 exactly when she was employed because it's in the exhibit
7 that she used.

8 MR. LITTS: Well, I mean, if counsel doesn't
9 mind, I mean, I do -- I have questions of the witness and,
10 ma'am, let me just do this. When you first became employed
11 by the Pocono Mountain Charter School what was your title?

12 A Special Ed.

13 MR. LITTS: Special Ed. Director or Director of
14 Special Ed.?

15 A Oversee Special Ed.

16 MR. LITTS: I'll ask it this -- I'll break this
17 down here. When did you -- when was the first day that you
18 showed up to work for the charter school in that capacity?

19 A December -- in December.

20 MR. LITTS: So, that would have been December
21 of 2008?

22 A Yes.

23 MR. LITTS: Did you do anything in a consulting
24 capacity or any other capacity for the charter school prior
25 to December of 2008?

Thorne - Cross

1365

1 A Not that I'm aware of.

2 MR. LITTS: And when was it -- I understand
3 that you started actually reporting to work in December of
4 2008. When were you appointed officially or hired
5 officially?

6 A In December.

7 MR. LITTS: 2008?

8 A Because I came on board and I had a period of
9 getting familiar, doing the needs assessment at the school,
10 so I didn't actually take hands-on operation or any of that
11 until March into January.

12 MR. LITTS: So, if I'm hearing you correctly
13 your hire date and start date all took place in December of
14 2008.

15 A Yeah.

16 MR. LITTS: For the balance of the 2008-2009
17 school year did your position, your employment position,
18 remain the same for the entire school year, meaning were you
19 the Director of Special Education for the entirety of that
20 school year after your start date?

21 A Yes, I was overseeing Special Ed.

22 MR. LITTS: So, that was from December of 2008
23 through, roughly, sometime in June of 2009?

24 A Yes.

25

MR. LITTS: If I understood your testimony

Thorne - Cross

1366

1 correctly earlier at some point in time you became the
2 Director of Operations.

3 A The following school year.

4 MR. LITTS: And when was that that you became
5 the Director of Operations?

6 A The school year 2009-10.

7 MR. LITTS: So, you commenced those duties in
8 late August, early September of 2009.

9 A Yes.

10 MR. LITTS: And you held those duties up until
11 the time you went on leave in December?

12 A Yes.

13 MR. LITTS: Just so I'm clear, during those
14 summer months between the school years were you employed or
15 were you off or --

16 A I worked in the capacity of reorganization.

17 MR. LITTS: And during those summer months what
18 title were you operating under, the Director of Special Ed.
19 or Director of Operations?

20 A It's kind of vague. I think I was doing
21 Director of Operations in my

22 MR. LITTS: Do you know when you were
23 officially appointed or hired as Director of Operations?

24 A I think it was the new school year, 2009-10.

25 MR. LITTS: But can I gather from your

Thorne - Cross

1367

1 statements or maybe you can explain it to me in more
2 detail -- explain to me the transition from -- your
3 transition from the first position of Director of Special

4 Ed. to the new position of Director of Operations.

5 A I think overall I began to deal with more of
6 the general operation of the school as opposed to hands-on
7 with special needs.

8 MR. LITTS: I'll have other questions, but I
9 wanted to sort of get that level of detail just so I
10 understood the chronology of your hiring and your position.
11 Thank you for answering those questions and, Counsel, thank
12 you for allowing me to ask them.

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

14 Q You used the term "I came on board" to the
15 charter school. Can you define what you mean by that?

16 A I wasn't sure whether or not I wanted the
17 position and I came on board and was able to informally
18 observe and do a needs assessment in terms of what was going
19 on at the charter school, how it was being run, that sort of
20 thing, from an operational viewpoint.

21 Q So, prior to signing an employment contract
22 with the charter school you engaged in your own due
23 diligence period.

24 A Mm-hmm.

25 Q Is that a fair statement?

Thorne - Cross

1368

1 A Yeah.

2 Q And when did you start that due diligence at
3 the charter school?

4 A December. I believe -- I first came into the
5 school the week of Thanksgiving, but I was not officially
6 employed at that time. I heard about the school, I came in.

7 Q Well, do you still have your employment
8 contract in front of you that's SD-33? It's a different tab
9 number.

10 A Yeah, I remember.
11 MR. LITTS: It's at the end of the binder.
12 Q Do you need some help?
13 A Yeah, I remember.
14 Q Your employment contract contains the date of
15 November 12th, 2008, doesn't it?
16 A I see that.
17 Q So, do you think you're mistaken about when you
18 started to work as Supervisor of Special Ed.?
19 A That is the date on the contract, but I
20 actually was not full-time working there, no.
21 Q But you were working there part-time.
22 A Yes.
23 Q And I think you testified earlier that even
24 before you signed the contract you were there doing your due
25 diligence.

♀

Thorne - Cross

1369

1 MR. FENNICK: Objection. That's not -- that's
2 not what she testified to.
3 MR. LITTS: I --
4 MR. FENNICK: She said that before she started
5 working --
6 MR. LITTS: Mr. Fennick, I'll sustain your
7 objection and, ma'am, I'm going to take this over. Before
8 you officially began working as an employee can you just
9 explain to me in your words what, if anything, you did to
10 become familiar with the school?
11 A I entered the school and I visited classrooms.
12 I visited the school itself in terms of looking at what
13 their curriculum was, looking at the overall operation of
14 the school, how many teachers they had in the elementary,

15 how many in the middle school, the high school, that sort
16 of thing.

17 MR. LITTS: And in doing that did you first --
18 obviously, with the classrooms you had to be there
19 physically. How many times did you go to the school in
20 person in order to do this -- these activities you just
21 described?

22 A Once -- I think I went in one or two days in a
23 week.

24 MR. LITTS: And do you recall when it is that
25 you did that, the time frame?

Thorne - Cross

1370

1 A In November.

2 MR. LITTS: So, November of 2008 you did this
3 on one or two occasions. Did you have any additional
4 communications with anyone or review any written materials
5 as part of that process?

6 A No, I did not have access to any school
7 records; you know, student materials or such.

8 MR. LITTS: How about any discussions you may
9 have had with school personnel as part of that -- those
10 activities?

11 A I met with elementary school teachers and --
12 around what type of curriculum they were using, how they
13 felt about it, that sort of thing.

14 MR. LITTS: And this was all in this
15 November 2008 time frame you just described?

16 A Right.

17 MR. LITTS: Thank you, ma'am.

18 Q And you didn't receive any payment for those
19 visits in the first two weeks of November, 2008.

20 MR. FENNICKE: Objecti on. Rel evance.

21 MS. SCHURDAK: I just wanted to have when she
22 started work and it seems like it's become rather
23 complicated.

24 MR. LITTS: Well, I think it's been asked and
25 answered. She started work in November of 2008.

Thorne - Cross

1371

1 MR. FENNICK: I suggest that if you directed
2 her to the exhibit before you made this into a memory quiz
3 you would have --

4 MR. LITTS: Well, Mr. Fennick, again, I'll ask
5 counsel -- and I want to applaud Mr. Anders for giving you
6 the suggestion yesterday. We want to give keep this
7 courteous and civil and I understand it gets a little
8 heated, but I think the board understands that this witness
9 started employment in November of 2008 and whether she was
10 getting a paycheck early that month, late that month, the
11 first week in December really isn't material. So, let's --

12 MS. SCHURDAK: And I will move on, but, to be
13 fair, I actually asked this witness to turn to her employ-
14 ment contract and offered assistance to find it in the
15 binder.

16 MR. LITTS: That's fine, but let's move on.

17 Q Do you believe that it is unusual for children
18 in a new school to be declassified from Special Ed. within
19 90 days of enrollment?

20 A In my experience it could be, yes.

21 Q And why is that?

22 A I would have concerns if a child entered my
23 school with an open and active IEP and 90 days later was
24 decertified from needing special needs services. I can
25 recall being faced with something like that and questioning

1 the process by which this happens and looking at the regs
2 for the State of Pennsylvania and not understanding how the
3 child cannot still need the services and looking at the data
4 and the data showing that according to Pennsylvania state
5 law the child no longer meets the guidelines for those
6 services. So, that would have been my concern.

7 Q And did you have that concern at the charter
8 school when you first started there?

9 A In some instances I did.

10 Q And can you give me details about those
11 instances?

12 A I questioned the assessment process.

13 Q And did you feel that -- strike that. Did you
14 believe that it would have been better for the student if
15 there had been a longer period of time to observe the
16 student in his or her new environment?

17 MR. FENNICK: I'll object to the relevance of
18 that question and the fact that it is not tied to a
19 particular student.

20 MR. LITTS: I'm going to overrule the
21 objection.

22 MS. SCHURDAK: Thank you.

23 A My personal opinion and my professional opinion
24 are two different things, okay?

25 Q Well, Mr. Fennick asked you your belief, so

1 that's why --

2 MR. FENNICK: I'm sorry. Can we let her
3 finish?

4 MR. LITTS: Let the witness answer the
5 question.

6 A I'm trying to answer in that environment.
7 Coming from a different state with guidelines that are
8 slightly different, but not altogether extremely different
9 from the State of Pennsylvania, I did have pause and cause
10 to question some of the dismissals from Special Education.

11 However, when I was given the numbers and the
12 data and the assessments that were used and looking at the
13 outcome of that data I had to go -- acquiesce to the data.

14 However, there were instances where I felt that
15 students still needed additional assistance, parents had
16 contacted the school and myself around concerns with
17 children being removed from the service, and that was my
18 take on it.

19 Q And when you decertify a student you get a
20 parent to sign off on that, correct?

21 A That is the process in this state, also.

22 Q And, in fact, when you started at the charter
23 school you found that there were significant delays between
24 stopping the service and having a parent sign off on that.

25 A I did see some of that, yes.

♀

Thorne - Cross

1374

1 Q And when I say significant delays I'm talking
2 about more than six months.

3 A No, I can't say that, yes or no. I know that
4 I did have instances where I questioned not having parental
5 signatures and the question was "Well, what happens to the
6 student services if the parent has not come in and signed
7 off?"

8 Q Well, do you still have the charts in front of
9 you?

10 A Yes.

11 Q I'll refer to them by student number, but you
12 have as a second document with the actual student's name.
13 For Student No. 8 were you concerned that the NOREP was
14 dated 11-2008 and the parent's signature contained a
15 signature of June 2009?

16 A Yes.

17 Q Were you concerned with Student No. 9 that the
18 NOREP date was 11 -- November of 2008 and the parent
19 signature date was April of 2009?

20 A Yes.

21 Q Were you concerned with Student No. 10 that the
22 NOREP date was November of 2008 and the parent signature
23 date was January of 2009?

24 A Yes.

25 Q Were you concerned with Student No. 11 that the

Thorne - Cross

1375

1 NOREP date was November of 2008 and the parent signature
2 date was January 2009?

3 A Say that again.

4 Q It's the same question over and over. I'm
5 sorry. With Student No. 11, the NOREP date was November of
6 2008 and the parent signature date was January of 2009.
7 Were you concerned?

8 A Well, I'm looking at two different sets of
9 dates. That's why I asked you to repeat it again. On one
10 form it's November and on another it's March.

11 Q My question is with Student No. 11, the NOREP
12 date, November 2008, with a parent signature date of
13 January '09.

14 A Yes.

15 Q Thank you. Are you -- what is the NOREP date?

16 A The date of notification for the IEP meeting.

17 Q What does it stand for?

18 A I'm not familiar with the acronym.

19 Q But -- and, I'm sorry, because there was some
20 noise at the audience level and I couldn't hear. Did you
21 say that's the date of the

22 A That the conference convened to review the IEP
23 process that took place for the student.

24 Q It's a team of people?

25 A Yes.

Thorne - Cross

1376

1 Q And who would be on that team?

2 A The principal. I was not on that team.

3 Q Did you later become on the team as January of
4 2009?

5 A I believe I sat on some teams, but not all.
6 The principal did.

7 Q On the ones that you sat in on how long would
8 those meetings be, roughly?

9 MR. FENNICK: Mr. Litts, I have to repeat the
10 objection about this being beyond the scope of direct and
11 we've gone way past that.

12 MR. LITTS: Well, whether -- with regard to the
13 question, how long IEP team meetings are, I don't see the
14 relevance of that type of generic question. So, I'd like to
15 know where you're going.

16 MS. SCHURDAK: Where I'm going is, if you've
17 noticed, I've been reading off dates of when the NOREP --
18 there's a lot being held the same day.

19 MR. LITTS: Well, then, if you want to ask
20 specific questions about specific students then ask them,
21 but that was not a specific question. So ... if the

22 question of the witness is were the IEP team meetings for
 23 the students that you alluded to in your questioning held on
 24 the same date as the NOREP ask the question that way and we
 25 can maybe expedite some of this stuff.

♀

Thorne - Cross

1377

1 MR. FENNICK: I'm going to object unless she
 2 has personal knowledge. She's reading from a document
 3 prepared by the district that -- and she's already pointed
 4 out an error, an inconsistency between the two.

5 MR. LITTS: Dan, I addressed this before and
 6 now I'm getting a little short. If the witness can answer
 7 the question -- if she has knowledge she can answer. If she
 8 doesn't have knowledge, she can say, "I don't know," but she
 9 has the names of the students in front of her. If she's got
 10 personal knowledge with regards to what occurred with that
 11 student she'll testify to that. If she doesn't have
 12 personal knowledge she'll say, "I don't know," and this was
 13 brought up on direct.

14 So, I believe those are fair questions. So,
 15 with that caution in mind I would ask counsel to keep that
 16 in mind and you can ask another question or a different
 17 question.

18 MS. SCHURDAK: And just so the record is clear,
 19 for all the students I'm talking about, pursuant to
 20 stipulation adopted in the order of the Court of Common
 21 Pleas, the educational records were given to counsel.

22 MR. FENNICK: That has --

23 MR. LITTS: And that's totally irrelevant.

24 MS. SCHURDAK: Well, it is and it isn't.

25 MR. LITTS: Ask the question. Ask your

♀

Thorne - Cross

1378

1 question.

2 Q I'll continue on. I think we left off with
3 Student No. 12. Did you have concerns that a NOREP was
4 dated 11-18-2008 and the parent signature date with respect
5 to that document is January 14th, 2009?

6 MR. FENNICK: I'm going to -- whether she has
7 concerns --

8 MR. LITTS: Mr. Fennick, this question has been
9 asked for four other students.

10 MR. FENNICK: I know and I was hoping it would
11 stop, but it hasn't. So, whether she has concerns is not
12 relevant, it's what are the facts with regard to the student
13 and if her concerns, after investigation, went away then.

14 MR. LITTS: This is cross examination. So,
15 you know, I'm overruling your objection. You're the one
16 that opened the door to this area, not --

17 MR. FENNICK: Well, I disagree with that,
18 but --

19 MR. LITTS: Well, it's overruled.

20 Q You can answer it. The two dates in question
21 were 11-18-2008 and January 14th, 2009.

22 A Yes.

23 Q Same question with respect to Student No. 13
24 who has a NOREP dated already 11-30-2008 and a parent
25 signature date of January 10th, 2009. Were you concerned

♀

Thorne - Cross

1379

1 about the?

2 A I don't see Student 13 on this form.

3 Q It says June Invoice on the top. We may be
4 looking at two different documents.

5 A Yes, June Invoice, and I don't see 13.

6 Q See, I'm using this here. Oh, I see what

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(Off record.)

Q With respect to Student No. 13 you don't recognize that name. Is that fair? I just want to clear up on the record what we spoke about quietly at the table. At your table.

A Right.

Q Then let's move on to Student No. 14.

A That's the same issue.

Q Okay. So, with respect to student numbers 8, 9, 10, 11, 12 you were familiar with those students.

A Yes.

Q 13 and 14 you are not familiar with them.

A Right.

Q How about Student No. 15, are you familiar with that student?

A Same issue.

Q Are you familiar with Student No. 17?

A Same issue.

Q Student No. 18, are you familiar with --

Thorne - Cross 1380

A Same issue.

Q Student No. 19, are you familiar with --

A Same issue.

Q Have you seen other documents generated by Dr. Gustafson directed to people at the charter school that had requested timely production of educational documents, records, other than what we've already discussed here today?

A No.

Q Were you aware that Dr. Gustafson had concerns about the timely production -- strike that. Were you aware that Dr. Gustafson had concerns about receiving educational records from the charter school?

♀

13 MR. FENNICK: I'm going to object again.

14 MR. LITTS: And I'll sustain your objection.

15 The witness has already testified she didn't have any
16 personal conversation with Dr. Gustafson. She's already
17 testified with regards to what letters she had personal
18 information on. So, I think we've established that. Let's
19 move on.

20 MS. SCHURDAK: With all due respect, I think my
21 question is a little different. Did she know that
22 Dr. Gustafson had concerns.

23 MR. FENNICK: And my objection is why do we
24 care whether Dr. Gustafson had concerns? It's irrelevant.

25 MR. LITTS: Well, I'm sustaining the objection.

Thorne - Cross

1381

1 Ask something else.

2 Q Did you contact any guidance counselors at
3 Pocono Mountain School District about your concerns about
4 the educational record exchange between the parties?

5 A No.

6 MR. FENNICK: She already testified she did not
7 talk to anyone at the district.

8 MR. LITTS: The question's been asked and
9 answered. Anymore questions, Miss Schurdak?

10 MS. SCHURDAK: If I can just review my notes,
11 please.

12 Q With respect to Student No. 22, and I'm a
13 little confused, did a parent sign a Permission to Evaluate?

14 A Yes, I believe they did.

15 Q Hmm?

16 A I believe they did.

17 Q Did the parent agree to the evaluation?

18 A They signed the evaluation form and they
19 verbally stated that they did not wish to have the child
20 evaluated. So, it was a contradiction in itself. So, I
21 can't explain the parent's motivation.

22 Q Okay. So, they said on paper "Yes, I agree to
23 the evaluation," but said something different.

24 A And in the e-mail -- they said in the e-mail,
25 also.

Thorne - Cross

1382

1 Q Did the parent sign off on the 504?

2 A That you'll have to take up with Miss Kelly and
3 Miss Schneider.

4 Q I'm sorry, initially when Student No. 22 came
5 to your attention you said that you had Miss Schneider
6 contact the IU?

7 MR. FENNICK: No, she didn't say that. Please
8 don't mischaracterize her testimony.

9 MR. LITTS: All right, the question's
10 withdrawn.

11 Q You mentioned in your direct testimony that you
12 suggested that either -- that someone get in contact with
13 the IU20 about Student No. 22.

14 A Yes.

15 Q Who did you suggest contact the IU20?

16 A The parent was seeking additional support for
17 his child's behavioral issues and wanted to know if there
18 were other agencies that he could contact and it was
19 suggested that he could be in touch with IU20 for additional
20 information because he was not trustworthy of our
21 information.

22 Q And did you communicate that to him?

23 A Yes.

24 Q And approximately when?

25 A Sometime in October.

Thorne - Cross

1383

1 MS. SCHURDAK: I have no further questions.

2 MR. LITTS: For purposes of the record, I just
3 want to reflect that we've had another school board member
4 join the hearing at approximately 11:45 a.m. and if she
5 could identify herself for the record.

6 MS. SIROLLI: My name is Dorothy Sirolli.

7 MR. LITTS: Thank you, ma'am. I note it's
8 12:23. Miss Thorne, I appreciate your patience. I
9 typically try to take a lunch break. Would that be a
10 problem for you, to come back in the afternoon, if Mr.
11 Fennick or the board has --

12 MR. FENNICK: We had a witness who I promised
13 her to be out of here by 1:00. I see that was silly.
14 Because she has another commitment. So, we're not going to
15 be able to --

16 MR. LITTS: Let's go off the record for a
17 second.

18 (Off record.)

19 MR. LITTS: We'll go back on the record and I
20 appreciate Miss Thorne's cooperation. We'll finish up her
21 examination now and we'll try to work with the other
22 witness.

23 Mr. Fennick, unless you have any objection why
24 don't I ask questions first because that may trigger --

25 MR. FENNICK: That's fine.

Thorne - By Mr. Litts

1384

1 BY MR. LITTS:

2 Q Ma'am, my name is Jeff Litts and I'm the

3 hearing officer running the hearing.

4 With regards to Student 22 there were all sorts
5 of talk about accommodations. Am I correct in my
6 understanding that the issue between the school district and
7 the charter school essentially was who was going to pay for
8 the accommodation? If I'm wrong on that just tell me.

9 A I, in the end, came to that, but I didn't think
10 that that was the main issue. I think my assessment was
11 that the issue was getting the proper bus transportation so
12 that his behavior could be maintained. The 504, once I
13 fully understood Pennsylvania's regs around it, then it
14 became an issue of the charter school or the school
15 district -- who was responsible for providing the matron
16 services. Once that was made clear I think the situation
17 was

18 Q And I appreciate that. The other question I
19 had, and I just want to make sure I understand this, do all
20 the students who attend Pocono Mountain Charter School, are
21 they bused to school or are there any kids who walk or --

22 A All the children are not bused, some children
23 are parental supervision.

24 Q And Student 22, other than the need for the
25 accommodation, would this kid ordinarily ride the school bus

Thorne - By Mr. Litts

1385

1 or be a walker?

2 A Oh, that child would definitely ride the bus
3 because he doesn't live in the area.

4 Q The other issue that -- there are two other
5 questions I have. There was some testimony, I believe, on
6 direct examination, and don't hold me to my words, about
7 your understanding about whether this school district
8 advised or cooperated or offered assistance to the charter

9 school. Do you recall that testimony?

10 A Yes.

11 Q With regards to your understanding, what --
12 I heard you say that the school district is required or,
13 you know, under some obligation to provide that assistance
14 to the charter school. Am I correct?

15 A No, I didn't say that they were required.
16 I assumed that there would have been a more collaborative
17 relationship.

18 Q And that's why I'm asking the question. I want
19 to make sure I understand your testimony.

20 A It was just my

21 Q So, in your mind it wasn't that the school
22 district was legally obligated to do that, but are you
23 saying that you figured there would have been a more
24 collaborative, friendly relationship between the two
25 entities?

♀

Thorne - Bockelman

1386

1 A Yes.

2 MR. LITTS: Any board members have questions?

3 MR. BOCKELMAN: Yeah, I have two.

4 - - -

5 BY MR. BOCKELMAN:

6 Q Prior to Student 22, and I guess that's the bus
7 student we're talking about, he enrolled in 2008, correct,
8 in the charter school in 2008?

9 A No, 2009-10 school year.

10 Q Okay. Did he attend Pocono Mountain the prior
11 year?

12 A He attended an academy in Stroudsburg -- East
13 Stroudsburg or Stroudsburg.

14 Q So, he was not a Pocono Mountain student and he
15 was not in another school district, he was at an alternative
16 school.

17 A I'm not -- I don't know the exact name of the
18 school that he attended, but I know that he received busing.

19 Q From Pocono Mountain?

20 A Yes.

21 MR. BOCKELMAN: Those are the two questions I
22 have. Thank you.

23 MR. SMITH: No questions.

24 MR. LITTS: I think that's all the questions
25 from the board.

Thorne - Redirect

1387

1 REDIRECT EXAMINATION BY MR. FENNICK:

2 Q Miss Thorne, sorry, it has to go on a little
3 bit. As far as the records and when you got to the school
4 and you saw that it wasn't working did you direct that at
5 that point that the records were sent they were sent by some
6 means where a signature would be obtained from the school
7 district?

8 A Yeah, I thought that that should happen, yes.

9 Q Were you interested in figuring out whose fault
10 it was that things weren't working right? Was that what
11 your primary concern was?

12 A I wanted to see things move along in a smooth
13 manner, yes.

14 Q Well, are those two different questions,
15 though? I mean, were you interested in fixing it or were
16 you interested in --

17 A Yes.

18 Q And was assessing responsibility as important
19 to you as just making sure that it worked?

20 A No, responsibility wasn't an issue for me, it
21 wasn't getting it right.

22 Q With regard to the issue of how Student No.
23 22's records were transmitted to the school district, did
24 you at any time attend a meeting with Mr. Aul and Michelle
25 Dezonie to discuss transportation issues?

Thorne - Redirect

1388

1 A Transportation issues around the student?

2 Q Not the student in particular, in general.

3 A Yes, I met with Mr. Aul on several occasions
4 around transportation for the charter school students.

5 Q And at any of those meetings was the issue of
6 getting records to Mr. Aul discussed?

7 A Yes, because we were having some -- there was
8 a breakdown in communication around delivery of bus reports
9 and that sort of thing and we determined that the best way
10 to handle that was he would assign a bus person to pick up
11 those records and sign for them and that way we'd know he
12 got them and when he sent me things and it was handled in
13 the same manner, that a bus person delivered it to the
14 reception area at the school.

15 Q And is that --

16 A This was an understanding between Mr. Aul and
17 the charter school.

18 Q And is that what was done with Student 22?

19 A Yes.

20 Q Now, you went on leave in December of 2009?

21 A Yes.

22 Q And are you officially still on leave?

23 A Yes.

24 Q But do you visit the charter school?

25

A Yes.

Thorne - Redi rect

1389

1

Q How many times a week do you visit the school?

2

A I try not to do it on a regular basis, my

3

health has not allowed it, but I just -- I have a passion

4

for children and teachers, so I do get into the school to

5

consult with the teachers.

6

Q Is that a couple times a week?

7

A At least once.

8

Q Is that against your doctor's orders?

9

A Yes.

10

Q Ms. Schurdak asked you a question about what

11

the charter school did with regard to Student No. 22 between

12

August -- the beginning of school and at some point in

13

October. I want to make sure that when you answered that

14

question you answered it fully. Between August and October

15

you were in communication with the parents?

16

MS. SCHURDAK: Objection, leading. What did

17

she do is the question.

18

MR. FENNICKE: Yes, it is leading, I can see

19

that. I'm trying --

20

MS. SCHURDAK: I think he brought this out on

21

direct, but --

22

MR. LITTS: That's my recollection as well,

23

but I'll -- ma'am -- I'll give some latitude here. Ma'am,

24

can you simply describe again for Student 22 between August

25

and October of 2009 what you did to try to address this --

Thorne - Redi rect

1390

1

the issue you were dealing with on student transportation?

2

A I had conversations with both the parents and

3

Mr. Aul, Transportation, around the behavior issues for that

4

student.

5 Q Did you send the Permission to Evaluate?

6 A Yes.

7 Q And did you meet -- well, you just said you met
8 with the parents. And I think you alluded to this, but how
9 would you describe the parent's degree of cooperation with
10 you and the charter school during this two or three month
11 period?

12 A It wasn't the best. I mean, it was good when
13 he was getting what he wanted, it was bad when he wasn't.
14 He --

15 Q Kind of like the attorneys in this room.

16 A I understand -- I fully understood the parent's
17 needs and concerns around the issues for his child and I was
18 appreciative of his concerns and tried to meet those
19 concerns to the best of the school's ability. They did not
20 always meet his criteria for addressing those needs.

21 Q You might have given a different answer on
22 cross than you did on direct. I just want to make sure we
23 have it answered correctly. You have referred to someone
24 who identified himself as working in the Special Education
25 department at the school district and I think you might have

♀

Thorne - Redirect

1391

1 been inconsistent about whether you knew his name at the
2 time you were speaking to him. Did you know his name?

3 MS. SCHURDAK: This has been asked and answered
4 at least three times.

5 A No.

6 MR. LITTS: And it's been answered again, no.
7 Next question, Mr. Fennick.

8 Q Now we get to talk about your concerns. You
9 were asked a bunch of questions about your concern and asked

10 to look at a document. Do you know sitting here today
11 whether the information in that document is correct?

12 A No, I do not. And my concerns were when I
13 looked at the dates and I did bring those concerns to the
14 people responsible for them and got an understanding as to
15 why the NOREP date and the parent signature dates did not
16 meet. Oftentimes parents do not make the IEP meetings.
17 The number of occasions for the same date is that they are
18 all scheduled when Dr. Wargo is available. All meetings are
19 scheduled around her dates.

20 Q And are you aware whether a school can issue a
21 NOREP and then take action based on the NOREP if the parent
22 doesn't respond within a certain number of days?

23 A Yes.

24 Q Did you also express some concerns because when
25 you got to the school you saw that students had been removed

Thorne - Redirect

1392

1 from Special Education within several months after arriving
2 with an IEP? Were you -- and you investigated that.

3 A Yes.

4 Q And were your concerns ameliorated?

5 A Yes.

6 Q And did you try and shut the charter school
7 down as a result of that?

8 MS. SCHURDAK: Objection.

9 MR. FENNICK: Sorry.

10 MR. LITTS: Sustained. Come on, Mr. Fennick.

11 MR. FENNICK: Well, this concern issue --

12 MR. LITTS: Mr. Fennick, let's just ask
13 relevant questions of this witness. She's giving of her
14 time, so let's be respectful.

15 MR. FENNICK: Nothing further.

16 MR. LITTS: Miss Schurdak, any other questions?

17 MS. SCHURDAK: I have one question.

18 - - -

19 RECROSS EXAMINATION BY MS. SCHURDAK:

20 Q Do you agree with me that there is a difference
21 between bus reports and psychiatric evaluation reports?

22 A Yes.

23 MS. SCHURDAK: Thank you.

24 MR. LITTS: Is there any reason -- I'm assuming
25 all the questions are done? Hearing no objection from

Kelly - Direct 1393

1 counsel, is there any reason why Ms. Thornton can't be
2 excused as a witness? Hearing none, ma'am, I want to thank
3 you for coming in and testifying and you're excused.

4 At this point I note it's about 20 of 1:00.
5 Why don't we take a lunch break and we'll come back at 1:30
6 and I'll ask people to try to be as prompt as possible.

7 MS. SCHURDAK: Miss Kelly is the next witness?

8 MR. LITTS: Talk to Dan.

9 (Recess from 12:39 p.m. to 1:45 p.m.)

10 MR. LITTS: Mr. Fennick, you may call your next
11 witness.

12 - - -

13 MARI ON KELLY, having been duly sworn according
14 to law, testified as follows:

15 DIRECT EXAMINATION BY MR. FENNICK:

16 Q Would you give us your full name, please?

17 A Mari on Kelly.

18 Q And your business address?

19 A 16 Carriage Square, Tobyhanna, Pennsylvania.

20 Q Are you employed by the Pocono Mountain Charter

21 School ?

22 A Yes.

23 Q What do you do?

24 A I'm the current Director of Operation in
25 Ms. Olivia Thorne's absence.

Kelly - Direct

1394

1 Q And can you tell us what you do?

2 A Basically we have a principal, so he is --
3 supervises most of the teachers, he's the rating officer for
4 them, and the professional staff I oversee that as -- you
5 know, he and I work collaboratively in that regard and I
6 also deal with the day-to-day operation of the school in
7 general; maintenance, business manager, Director of Human
8 Resources, and the like, cafeteria and the like.

9 Q Please give the board some idea of what your
10 experience has been in education.

11 A Okay. I've been in education for approximately
12 30 years. In that time I was a general education teacher,
13 I was a Special Education monitor for the chancellor's
14 office in the City of New York. Most of my experience is in
15 New York. I was a principal in New York. I was also a
16 vocational assessment evaluator, which is the Division of
17 Special Ed., and I was a staff developer in General Ed. and
18 Special Ed.

19 And I also have some work experience in
20 Washington, D.C. I was the principal of an educational
21 center in Washington, D.C. which was a K-8 school with a
22 Montessori component.

23 Q How many years total do you have as a
24 principal?

25 A About nine years.

Kelly - Direct
Page 76

1395

1 Q Did you also have some position with regard to
2 Special Ed. transportation?

3 A Yes. I was the director -- actually, it wasn't
4 director. It was Special Education Transportation
5 Coordinator in the division of Special Education, New York
6 City, and basically what I did was troubleshoot for problems
7 that arise over the buses.

8 For example, students who needed special
9 services on the bus or problems that arise going back and
10 forth to school. This is for Special Ed. now. You know,
11 there was an accident, bus accident, some child may have
12 been left on the bus. All those would come to me and it was
13 my charge to, you know, straighten it out and make sure that
14 that type of thing didn't happen again.

15 Q Tell us when you started to work at the charter
16 school.

17 A I started to work at the charter school as a
18 per diem person in late November of 2009.

19 Q And was this as Miss Thorne was preparing to
20 go?

21 A Yes. Miss Thorne was preparing to take her
22 leave for restoration of health and I just sort of followed
23 her, supported her in the day-to-day activities.

24 Q Did you get involved with a student that we are
25 calling Student 22?

Kelly - Direct

1396

1 A Yes, I did.

2 Q And tell the board about your involvement with
3 that student.

4 A Well, during the transitional phase Miss Thorne
5 shared with me some of the things that were -- some of the

6 cases that were in Special Ed. that were troublesome or
7 problematic, one of which was Student No. 22.

8 Apparently, it had been determined that he
9 needed a matron or person to ride the bus with him because
10 he was acting out on the bus and, quite frankly, that was a
11 difficult task to accomplish and she turned it over to me as
12 she was preparing to go out on her leave.

13 Q When you started taking over this case did you
14 see the letter from Ms. Gustafson which is dated
15 November 30th, 2009, Charter School 16?

16 A Yes, I did, but not before I called her.

17 Q You called whom?

18 A Miss Gustafson. I called her to -- because I
19 wasn't clear as to who would have the responsibility for the
20 financial responsibility for the matron that this child
21 needed on the bus. So, I called her because I figured she's
22 the district superintendent for Special Ed., Pocono Mountain
23 School District. I was new to Pocono Mountain Charter
24 School and I'm thinking that we have a -- somewhat of a
25 collaboration, we would have to since we were under them,

Kelly - Direct

1397

1 under the Pocono Mountain School District, so I, very
2 freely, just picked up the phone and I called her and left a
3 message and I said, you know, "I'm calling you to find out
4 who has the -- I know that Student No. 22 needs a matron on
5 the bus. Who would have the financial responsibility for
6 that?"

7 Before she could return my call I saw her
8 letter and she spelled -- okay.

9 Q I have to stop you.

10 A Okay.

11 Q Because what I want to know is that during this

12 period of time do you know what actual arrangements were
13 taking place with regard to the student on the bus?

14 A There was absolutely no -- nothing in any
15 record that said that there was anything that had already
16 been done. It was my understanding that this was still an
17 outstanding problem.

18 Q Okay. And, so, now pick up with your
19 conversation.

20 A Okay. Before she could return my call I saw
21 her letter and it spelled out that it would be Pocono
22 Mountain Charter School to assume the responsibility and to
23 find a matron for this child and she called in some state
24 laws, I believe, regulations in Pennsylvania, and it was
25 very clear and I understood. So, I proceeded to look for a

Kelly - Direct

1398

1 person.

2 Q Okay. And how did that first go?

3 A They were very difficult. In the meantime,
4 Miss Gustafson she did return my call and she wanted to know
5 who I was. I told her I was replacing Miss Thorne and that
6 I will take -- we'd take the responsibility for having to do
7 this.

8 But, it was a lot more than I thought in terms
9 of trying to figure it out. The problem is you have to find
10 someone who is willing to ride the bus with this child
11 and -- you know, in the morning and in the afternoon. So,
12 my first line of attack was to ask my school aides at the
13 school to see if any of them were interested in working in
14 this capacity, we would pay them extra, and I had one who
15 said she might, but, you know, she never really got back to
16 me to confirm that.

17 Q And what happened next?

18 A Okay. I called Kevin Aul, who was a very nice
19 person, and I said, "Help. I can't -- I can't find anyone.
20 I know that this is a troubled case. Is there anything you
21 can do for me to help me? Do you know anybody who works for
22 Pocono Mountain School District that might want to work for
23 us? What can I do here? I'm making lots of efforts and I'm
24 getting no where."

25 Q Before you tell us about the conversation when

Kelly - Direct

1399

1 did you call him?

2 A This would have been sometime in January.

3 Q Okay. Go ahead.

4 A Okay. To my surprise he said to me, "Wait a
5 minute. I think he's on a bus with a matron." I was
6 shocked.

7 Q And what else did he say?

8 A He said he would follow up and he would check
9 to make sure, but he was pretty much that this kid was --
10 that a matron had already been assigned to this child and
11 that he was on the bus with a matron. So, he checked and he
12 got back to me and told me the kid was.

13 Q Now, were you here when Miss Thorne testified
14 that around the end of October, beginning of November Mr.
15 Aul notified her that they had changed this student's bus?

16 A Yes.

17 Q Did you find out from Mr. Aul that in January
18 he was still on the bus he had been placed on in early
19 November?

20 A Yes.

21 Q And what was the solution to the aide issue?
22 How did that get worked out?

23 A Well, what happened was I said to him, "Will we
24 be able to use the same aide," and he said, "Yes, you can.
25 The kid can share the aide with the other kid that was on

Kelly - Direct 1400

1 the bus." So, then, the matter had been resolved and what
2 he needed, though, was for us to do the 504 which we -- I
3 asked Miss Schneider and the two of us -- you know, she's
4 our Special Ed. coordinator and the two of us -- and I knew
5 what the 504s were since I'm from the General Ed.
6 population, that's a General Ed. process, okay, that's not a
7 Special Ed. process, and, so, she and I worked together and
8 we put together the 504.

9 Q When was that finally signed, do you know?

10 A Well, what happened was it was hard to get the
11 father to come in to actually have the meeting. The 504 is
12 really not an evaluation. That may have been not made clear
13 earlier this morning. It's really just a meeting with the
14 parent and everybody sits down and agrees that this is what
15 the child needs and you have supporting documentation such
16 as, maybe, your violations from the bus or whatever and then
17 you put together this 504 plan. It's a plan. So, it's no
18 more than a meeting.

19 Okay. And, so, we did that and the parent --
20 we couldn't get the parent to sign off on it and, so,
21 finally, I think we ended up sending -- Miss Schneider,
22 who will testify, I believe, sent it home with the child.
23 The parent signed off on it and gave it back to us.

24 Q If I'm understanding you correctly, what you're
25 telling us is that as far as the student and this student's

Kelly - Direct 1401

1 need for help, that was resolved in late October, early

2 November.

3 A Yes, I believe so.

4 Q And do you know why -- well, strike that.

5 I take it your call with Dr. Gustafson was a cordial --

6 A It was very cordial. She was very pleasant and
7 I was very pleasant, I hope that she would agree, and I was
8 looking forward to having some sort of collaboration not
9 only with her, but other people in the district as time
10 went on.

11 Q And since December have you formed a view as to
12 the degree of cooperation between the charter school and the
13 district?

14 A Unfortunately, there's very little.

15 Q What needs to happen to improve that?

16 A Well, first of all, we have to get through
17 this process, I would imagine, and, hopefully, that will
18 work out, work itself out successfully, from our
19 perspective, at least, and beyond that if I remain as
20 Director of Operation I will make every effort to have a
21 collaboration with the district because we are under the
22 Pocono Mountain School District and there's no way we can
23 exist effectively in the best interests of our students if
24 there is this hostility going on.

25 Q And do you feel hostility from the district?

Kelly - Direct

1402

1 A Not me personally, but, obviously, if we're in
2 this arena there is hostility.

3 Q Has there been any further contact between you
4 and Mr. Dr. Gustafson regarding any other issues?

5 A No, because when I came on board I found Miss
6 Schneider who I found to be extremely competent, she knows
7 her Special Ed., and I told her that I really want her to

8 pay attention to the details as they come through, to pay
9 attention to the time, turning around, you know, the
10 timeliness from the time the kid is evaluated to the time we
11 have the IEP meeting, that she had -- working very closely
12 with her.

13 Through Pastor Bloom's efforts we established
14 an association with IU20. She and I go to regular Special
15 Education meetings at the IU20 so that we learn the cutting
16 edge stuff in regard to Special Ed.

17 MR. FENNICK: Cross examine.

18 MS. SCHURDAK: Thank you.

19 - - -

20 CROSS EXAMINATION BY MS. SCHURDAK:

21 Q Miss Kelly, thank you for staying. I know --

22 A That's okay, I made other arrangements.

23 Q Did you volunteer at the charter school prior
24 to becoming Director of Operations?

25 A No, I did not.

Kelly - Cross

1403

1 Q Is it fair for me to say that you did not work
2 for the charter school prior to becoming Director of
3 Operations in November of 2009?

4 A Actually, it was the first Monday in December
5 that I really actually started working for them. Initially
6 I was on a per diem basis and Olivia Thorne was the official
7 Director of Operations.

8 Q Do you have any certifications from PDE?

9 A No, I do not, I'm in the process of pursuing
10 that. There's no reciprocity between PDE and New York
11 State, unfortunately. There was between New York and
12 Washington, D.C.

13 Q When you had your conversati on wi th
14 Dr. Gustafson she concluded the phone conversati on, di d she
15 not, by saying, "Please feel free to call me if you have any
16 questi ons or concerns. "

17 A Yes, she di d.

18 Q And you haven' t yourself ini ti ated any further
19 contact since that ti me.

20 A No, I haven' t.

21 Q And I believe you said thi s on cross and I want
22 to make sure that you concluded once you became Di rector of
23 Operations that it was the charter school' s obligati on to
24 provi de Student No. 22 wi th the accommodati on.

25 A Yes, I di d.

Kelly - Cross

1404

1 Q To date the charter school has never provided
2 Student No. 22 wi th that accommodati on, has it?

3 A Well, we di d because the Pocono Mountai n School
4 Di strict assisted us in that by gi vi ng us the matron for the
5 bus, al lowi ng us to pi ggyback on a matron assi gned to
6 another chi ld on the bus.

7 Q So, the school di stri ct is provi di ng the
8 accommodati on.

9 A Yes, they are.

10 Q And the charter school i sn' t rei mbursi ng the
11 school di stri ct.

12 MR. FENNI CK: Obje cti on, un less -- if you know.

13 A I don' t.

14 Q That' s a fai r answer.

15 A Yeah, I don' t know how that works.

16 Q And were you aware that Student No. 22 had
17 started wi th you at the begi nni ng of the school year in
18 2009?

19 A I'm sorry, can you repeat the question?

20 Q Student No. 22 had started with the charter
21 school in the beginning of the school year in 2009.

22 A I wasn't aware of that, but if you say it is,
23 I'll ... I'll concede to that, that it is.

24 Q Now, when you came on board December 1-ish of
25 '09 and you reviewed Student No. 22's file was there a 504

Kelly - Cross

1405

1 plan in that file?

2 A Not at that time.

3 Q Was there a draft of a plan in the file?

4 A Yes, there was a draft, but people were not
5 sure exactly how to do it, it had never been really done at
6 the school before, but when I came on board I knew how to do
7 it and I worked with Miss Schneider and we had it done.

8 Q And don't you have to do an evaluation of the
9 student to help develop a 504 plan?

10 A Yes, you do, but we had enough -- sufficient
11 information in the file because there had been several
12 incidences up to that point on the bus that we were able to
13 use that as supporting evidence that this kid definitely
14 needed some support in riding back and forth to school.

15 Q Why did you have to tell Miss Schneider that
16 she had to pay attention to timelines?

17 A Well, because it had been some -- as you --
18 as was established previously, there had been some gaps in
19 times and stuff, you know, that had happened over the years
20 and I just wanted to make sure that when we move forward we
21 would pay very close attention to that sort of thing so that
22 we would not be in any kind of violation of any procedural
23 activities.

24 Q Were you aware that Dr. Gustafson had actually
25 been asked by Mr. Severs not to step on the property of the

Kelly - Cross

1406

1 Pocono Mountain Charter School?

2 MR. FENNICK: I'm going to object. The letter
3 says what it says. The interpretation that's being given
4 the question does not necessarily follow the letter. The
5 letter was about something completely different.

6 MS. SCHURDAK: I'm not referring to the letter,
7 I'm referring to Dr. Gustafson's testimony in which she said
8 Mr. Severs had left her a phone message that said to stay --
9 from the secretary of the school that said he said to not
10 enter the school.

11 MR. FENNICK: You're asking this witness if she
12 knows --

13 MR. LITTS: I'll overrule the objection.
14 Ma'am, are you aware of any communications by Mr. Severs to
15 Dr. Gustafson about her ability to come on charter school
16 property?

17 A Not at that time.

18 Q Did you subsequently become aware?

19 A I believe I -- at one of the hearings, maybe.
20 I don't remember when -- you guys presented it as an item.

21 MS. SCHURDAK: No further questions.

22 THE WITNESS: Okay, thank you.

23 MR. LITTS: Any board members have questions
24 for --

25 MR. BOCKELMAN: No questions.

Rivera - Direct

1407

1 MR. LITTS: Mr. Fennick, any redirect?

2 MR. FENNICK: No.

3 MR. LITTS: Ma'am, I want to thank you for

4 coming in and your patience and is there any reason why this
5 witness can't be excused?

6 MS. SCHURDAK: I can't think of any.

7 THE WITNESS: Thank you.

8 - - -

9 PATRICIA RIVERA, having been duly sworn
10 according to law, testified as follows:

11 DIRECT EXAMINATION BY MR. FENNICK:

12 Q Can you give us your name, please?

13 A Patricia Rivera.

14 Q What is your business address?

15 A 16 Carriage Square, Tobyhanna, Pennsylvania.

16 Q What do you do?

17 A I am an administrative clerk. I basically do a
18 lot of things and take care of student records and
19 procedures.

20 Q Give the board a little bit of your background.
21 When did you start at the charter school?

22 A September '07.

23 Q Before that, tell us about your life.

24 A Well, I am from New York and previously to that
25 I was a manager of Bank of New York, worked there for 21

♀

Rivera - Direct 1408

1 years, and my husband and I decided to leave New York and
2 come here to raise our daughter.

3 Q When you say a manager what does that mean?

4 A I managed a staff. I was at the Long Island
5 City branch which I managed the teller staff and then from
6 there I was a regional auditor which went around to the --
7 I believe 17 branches in Queens and I audited their
8 operational procedures and just went from there. Basically

9 did a lot of different jobs, mostly operational.

10 Q So, would any of your past experience involve
11 making sure that documents were transferred from one
12 building to another?

13 A Not really transferred from one building to the
14 other, but to make sure that we had the proper documentation
15 on file whenever somebody opened up various accounts.

16 Q And does your responsibility at the charter
17 school include anything regarding transfer of student
18 records?

19 A Definitely. Whenever a request comes in I am
20 responsible for gathering all the information that needs to
21 be transferred to whatever school is requesting it.

22 Q And have you had that responsibility at the
23 charter school since you started?

24 A Not since I'm started, but maybe the past year
25 and a half.

♀

Rivera - Direct

1409

1 Q Tell us what procedures are in place at the
2 present time regarding the transfer of student records.

3 A Okay.

4 MS. SCHURDAK: I'm going to object. Really,
5 the question is what's her understanding of the policies or
6 procedures.

7 MR. FENNICK: Sorry, I didn't catch that.

8 MS. SCHURDAK: What are the procedures?
9 Really, what is her understanding. We don't have any
10 procedures in front of us.

11 MR. FENNICK: She can still say what the
12 procedures are.

13 MR. LITTS: Hold up. I'm going to overrule the
14 objection. If she is aware of procedures that may be in

15 place she can testify to that and then there can be a
16 follow-up question. So, the objection's overruled. Ma'am,
17 you can answer the question or Mr. Fennick can repeat it.

18 Q So, let me make this clear. In your position
19 are you aware of whether there are procedures in place at
20 the charter school regarding transfer of records?

21 A Yes.

22 Q And do you know what those procedures are?

23 A Yes.

24 Q Will you tell us?

25 A Sure. When I get the request from whatever

Rivera - Direct

1410

1 school is asking for the student's records I then gather all
2 the information from the student's file, make copies, get
3 their medical record, any other documentation that's, you
4 know, necessary or pertinent to the student, and make copies
5 and mail them to the school that's requesting it.

6 Q Does the charter school have students that come
7 from districts other than the Pocono Mountain School
8 District?

9 A Yes.

10 Q How many other districts?

11 A I really -- I can't say, I don't know.

12 Q Do you get records requests from other
13 districts?

14 A Definitely.

15 Q And how many different districts have you
16 gotten record requests from?

17 A Oh. I mean, out of state we get requests from,
18 Wayne County, I've done for them, Wallenpaupack. I'm not
19 sure what county that's in. Everyplace, really.

20 Q What about -- I don't know where any of those
21 places are. What about neighboring districts?

22 A Well, Pocono Mountain, Swiftwater, Coolbauagh,
23 everything.

24 Q Are those schools or districts?

25 A They're schools.

Rivera - Direct

1411

1 Q I'm asking about districts.

2 A I don't know the districts, I don't know what
3 districts.

4 Q Now, you have heard over time that there are
5 complaints about the way records are transferred from your
6 school to Pocono Mountain School District.

7 A Yes, I have.

8 Q Have you received complaints from other school
9 districts?

10 A No.

11 MS. SCHURDAK: I'm going to object. Wait a
12 second. That's hearsay. Complaints from other school
13 districts? That's hearsay.

14 MR. LITTS: Well, I'm going to overrule your
15 objection. This witness has knowledge of discussions with
16 other school districts and when I say other school
17 districts, other than Pocono Mountain and the schools that
18 make up Pocono Mountain. She can testify to that. If you
19 don't like the answer you can explore on cross examination.
20 So, the answer stands. Mr. Fennick, you can ask your next
21 question.

22 Q I'm going to ask you -- you just explained the
23 procedures and I specifically said what are the procedures
24 now. The next question is how far back do these procedures
25 go? Have they changed, in other words?

1 A No. As long as I've been doing it I've been
2 doing it the same way.

3 Q Has there been a change in terms of getting a
4 signature from the Pocono Mountain School District when
5 records are sent?

6 A I send everything out certified, so --

7 MS. SCHURDAK: Objecti on. Non-responsi ve.

8 MR. FENNI CK: It is responsi ve.

9 MS. SCHURDAK: He asked what the procedure is
10 and she said, "I," not what the procedure is.

11 MR. FENNI CK: You're serious about this, aren't
12 you?

13 MS. SCHURDAK: I am. What's the procedure, not
14 what she necessarily does. There could be a di fference.

15 MR. FENNI CK: You're exactly right. I
16 apologize to the board for oversteppi ng.

17 Q Pat, tell us how you transmit records to the
18 Pocono Mountain School Di strict.

19 A The records are transmi tted by certi fied mail.

20 Q And are you the one who's responsi ble for that?

21 A Yes.

22 Q How long have you been doing it that way?

23 A I would estimate about a year and a half.

24 Q And why did it -- why did that procedure start?

25 A Because we were getting accused of not sending

1 the records over. So, then, we implemented sending the
2 files certified so that we would have proof of the person
3 receiving them and when they're receiving them.

4 Q Are there cases where you have attempted to

5 hand deliver records, you or someone at your direction?

6 A Not me personally, but, yes.

7 Q And who is that?

8 A Loletta Robertson.

9 Q Was she doing this in response to a request
10 from you?

11 A Yes.

12 Q Are you familiar with the procedure for getting
13 records to Mr. Aul regarding bus issues? I don't know if
14 that's your bailiwick or not.

15 A No.

16 Q That's not. So, let me ask you -- I apologize.
17 I don't know if you were here. Are you aware that we're
18 referring to certain students by number?

19 A No, not really.

20 Q I'm going to show you something and I just want
21 to make sure you know what we're talking about.

22 A Yes.

23 - - -

24 (RECORDS RELEASE CHECKOFF LIST marked for
25 identification as Charter School Exhibit No. 18.)

♀

Rivera - Direct

1414

1 Q First of all, there's no name on here and the
2 rules are that you cannot refer to a student by name. I'm
3 showing you what we're marking as CS-18. Do you know who --

4 A I know what student that's referring to.

5 Q Okay.

6 MS. SCHURDAK: I do not, Mr. Fennick.

7 MR. FENNIC K: Okay.

8 MS. SCHURDAK: Student No. 6 and I want to make
9 sure -- I'm 90 percent sure it's No. 6.

10 MR. LITTS: Before you ask any questions,
Page 92

11 Mr. Fennick, I just want to be clear for the record. We
12 have marked a one-page document as Charter School 18 which
13 is entitled Pocono Mountain Charter School and then it has
14 the address and it says Record Release Checkoff List. I
15 just want to ask the charter school, is there anything --
16 because it's difficult to tell from the copies. Is there
17 anything redacted from this document?

18 MR. FENNICK: Yes, the student name is
19 redacted.

20 MR. LITTS: Anything else other than the
21 student's name that's been redacted?

22 MR. FENNICK: I do not believe so.

23 MR. LITTS: Okay, that answers my question and
24 I think that clarifies it for the record. Thank you. You
25 may proceed with your questioning.

Rivera - Direct

1415

1 MR. FENNICK: And I want to make sure that this
2 is No. 6. Okay.

3 Q Now, take a look at CS-18 and tell us how many
4 people's writing appears on it.

5 A Just mine.

6 Q What about where it says, "Refused to sign --"

7 A That's me. That's mine.

8 Q So, tell us what this document is.

9 A This is what I attach to records when sending
10 them over to a school and this was part of a package that
11 was going to be hand delivered to the guidance office at
12 Pocono Mountain School District.

13 Q And this is regarding Student 6?

14 A If that's -- yeah.

15 Q There's a date of August 18th, '09. Does that

16 date accurately reflect when these records were brought over
17 to the school district?

18 A Yes, it does.

19 Q Now, you didn't bring the records over; is that
20 right?

21 A No, not myself.

22 Q Had you sent the records for this student to
23 the school district before this date?

24 A I believe so.

25 Q And at any time -- well, strike that. Why did

Rivera - Direct 1416

1 you write "Refused to sign."

2 A Because when the representative from Pocono
3 Mountain Charter School went to the district, the guidance
4 office, they wouldn't accept it.

5 MS. SCHURDAK: Objection. Now, this is levels
6 of hearsay. Someone else from the charter school is
7 delivering the records? She has no direct knowledge.

8 MR. LITTS: Hold up. I understand the
9 objection is hearsay in that this witness did not personally
10 participate in the delivery. So, it would be hearsay.

11 Mr. Fennick, are we going to have someone testify to this?

12 MR. FENNICK: Raise your hand, Loretta.

13 MR. LITTS: Then let her testify about that.

14 MR. FENNICK: Well, her answer went a little
15 bit further than -- let me ask it a different way.

16 Q Did you write this because of what you were
17 told by Loretta?

18 A Yes.

19 Q Even after August 18th were you aware that
20 there was still a controversy over this student's records
21 getting to the school district?

22 A I guess I was, yes.

23 Q Okay. What did you do to find out whether the
24 records had ever gotten to the district?

25 A I made a phone call.

Rivera - Direct

1417

1 Q Who did you call?

2 A I would have to go to my notes. It was
3 somebody in the district that I asked them if they got this
4 student's records and they checked and they had said yes to
5 me, that they received everything.

6 Q Now, was this a person in a particular school
7 or in the administration building?

8 A I believe it was in the administration
9 building.

10 Q Okay. Do you know anybody called Cheryl?

11 A That was it.

12 MS. SCHURDAK: Objection, leading. Come on.

13 MR. LITTS: Overruled.

14 Q And do you know who Cheryl is or where she
15 works?

16 A I don't know. I think -- I called the
17 district, that's who I had called, and I believe I spoke
18 to -- I believe she's in Guidance.

19 Q All right. Is this a person you have talked to
20 on other occasions about records?

21 A Not really. If I have I don't remember if I
22 have.

23 Q As far as you're concerned do you think this
24 issue of getting records to the district has been -- to the
25 extent it ever did exist has it been ameliorated?

Rivera - Direct

1418

1 A I think it's ridiculous.
2 Q Well, but do you think there's a problem?
3 A No, not at all.
4 Q When you talked to Cheryl how many times had
5 you sent Student No. 6's records over?
6 A At least twice.
7 Q Now, the time that Loletta brought them over
8 we're assuming for our purposes now that nobody took them.
9 So, how did Cheryl get the records?
10 A Probably from the first time that I had sent it
11 to them.
12 Q So, you believe that this hand delivered
13 request was the second time.
14 A Yes.
15 Q Now, have you requested records from the school
16 district?
17 A Yes.
18 Q And I need to ask you about two students who we
19 have identified as --
20 MS. SCHURDAK: I'm helping Mr. Fennick. Let
21 the record reflect that. No. 20 and 21.
22 (Off record.)
23 - - -
24 (STUDENT RECORD RELEASE FORMS marked for
25 identification as Charter School Exhibit No. 19.)

♀

Rivera - Direct 1419

1 Q Now, I am going to show you what we have marked
2 as No. 19 which is a three-page document. Now, once again,
3 we have to use numbers.
4 MR. LITTS: Mr. Fennick, before you ask your
5 questions I have noticed in this three-page document the
6 first is a fax cover sheet and under the re: line it looks

7 I like someone took a pen and scribbled over to take out a
8 name.

9 Similarly, on Page 2 of the document, a student
10 record release form, there is a similar type of scribbling
11 out under student name and there appears to be some
12 scribbling out on the last page with regards to a telephone
13 number. Am I correct in assuming that the first scribble on
14 Page 1 is a redaction?

15 MR. FENNICK: Yes.

16 MR. LITTS: Am I correct that the scribble on
17 Page 2 under Student Name is also a redaction?

18 MR. FENNICK: Yes.

19 MR. LITTS: And with regards to what I would
20 characterize as a scribble on the last page with regards to
21 the phone number I'm assuming that isn't a redaction, just a
22 correction of the telephone number.

23 MS. SCHURDAK: Page 3?

24 MR. FENNICK: Yes.

25 MS. SCHURDAK: There is a redaction further

Rivera - Direct 1420

1 down on Page 3, Mr. Litts.

2 MR. LITTS: Okay, and thank you, Miss Schurdak.
3 And whited out -- it's a little bit difficult, but under the
4 handwritten note "Please provide us with a copy of," and
5 then there's a blank which would be the redaction of I'm
6 assuming the student's name.

7 MR. FENNICK: Would it help if I just wrote
8 something like student name in there?

9 MR. LITTS: No, I just wanted to make that
10 clear. So, thank you, Mr. Fennick, for your patience and
11 you may ask your question.

12 Q Now, Ms. Rivera, without saying the names can
13 you tell us who these requests are about? Do you know which
14 students they are?

15 A I do.

16 MS. SCHURDAK: I'm going to object at this
17 point because at this point in time there's an attempt by
18 Mr. Fennick to put the school district on trial and I
19 believe the prior ruling by you, Mr. Litts, is that the
20 school district is not on trial here, the charter school
21 cannot turn this into what did the school district do or
22 didn't do and that's what this exhibit is all about.

23 MR. LITTS: Well, hold up. I'm going to
24 overrule your objection at this point. If this witness has
25 knowledge with regards to this exhibit I guess the first

Rivera - Direct

1421

1 thing is I'd like to hear some testimony about that. I
2 don't know where Mr. Fennick is going with this. You may be
3 correct, you may not be correct, but I think first we have
4 to establish whether this witness has any knowledge of this
5 exhibit and then she can testify what knowledge she has and
6 then I'll see where it goes.

7 MR. FENNICK: So, do you want me to address the
8 other issue or not year yet?

9 MR. LITTS: Yeah.

10 Q So, Pat, what I want you to do is identify for
11 us by page which student is referred to. In other words,
12 on Page 1 is that -- do you know if that's -- what student
13 that is?

14 A Yes.

15 Q And is that Student 20 or 21?

16 A 21.

17 Q And on Page 2 who is referred to?

18 A Well, I didn't make this out, so I don't -- I
19 can't really answer that. It's not my document.

20 Q And what about Page 3?

21 A Well, that's also not my document, so I can't
22 answer for that.

23 Q If we assume that -- do those appear to be
24 documents that are kept in the regular course of business at
25 the school?

Rivera - Direct

1422

1 A Yes.

2 Q And do you know which -- you can't tell which
3 student it is.

4 A I couldn't tell which student it is.

5 MS. SCHURDAK: Which page are we on?

6 MR. FENNICK: Page 2.

7 MR. LITTS: Hold up. I'm going to interrupt
8 here because, again, the document that's been marked as --
9 the three documents that have collectively been marked as
10 Charter School 19, these are -- this is not a single fax,
11 these are unrelated documents?

12 MR. FENNICK: Well, they are relayed in the
13 sense that they all relate to --

14 MR. LITTS: No, no, no, don't -- don't jump the
15 gun. These are not a fax that was sent in total to --

16 MR. FENNICK: That's correct.

17 MR. LITTS: So, this is a compilation of
18 documents for different students.

19 MR. FENNICK: Two students on three pages.

20 MR. LITTS: Thank you.

21 MR. FENNICK: I thought about marking them
22 separately, but I decided to just try it this way. Do you

23 want them marked separately?

24 MR. LITTS: No.

25 Q So, Page 2, do you know which student that

Rivera - Direct

1423

1 request is about?

2 A Yes.

3 Q And which student number is that?

4 A 21.

5 Q And then on Page 3?

6 A I don't know.

7 Q Okay. We'll have to get someone else.

8 A Yeah.

9 Q So, take a look at Page 1. This is about
10 Student No. 21. Can you tell us when this request was sent
11 to the Pocono Mountain School District?

12 A On May 20th.

13 Q Of?

14 A Of '09.

15 Q And what does it say?

16 A Well --

17 MS. SCHURDAK: Objection. This is all about
18 whether or not the school district is transmitting records
19 to the charter school.

20 MR. FENNICK: Yes, over two Special Ed.
21 students that the school district claims the charter school
22 has not acted promptly with regard to and it's clear from
23 these records that the charter school could not have acted
24 promptly because they did not have the records from the
25 school district.

Rivera - Direct

1424

1 MR. LITTS: Well, again, both of you are
2 jumping to all sorts of conclusions and, with all due

3 respect to both counsel, I understand you're being zealous
4 advocates, let's get the facts out. To the extent it is
5 relevant for the charter school's case about when they
6 received records and the receipt of records were necessary
7 in order for them to do things, that's appropriate direct
8 examination.

9 Now, whether this witness is the appropriate
10 individual to provide that testimony, I don't know. So,
11 I'm going to overrule the objection to that extent, but
12 Ms. Schurdak is correct, there needs to be some sort of
13 nexus between the charter school receiving that in order to
14 do x, y, and z for that particular student enrolled in their
15 program. So, with that in mind I'll overrule the objection.

16 Q So, I asked you to read the text of the fax
17 aloud.

18 A "We are missing his second quarter grades.
19 Please fax as soon as possible."

20 Q Now, in your experience working with records at
21 the charter school for the last three years would the
22 charter school be requesting records that the charter school
23 already had in its possession?

24 A No.

25 Q Now, go to Page 2. What is that document?

Rivera - Direct 1425

1 A That's a student record release that we would
2 send to a school when a student enrolls in Pocono Mountain
3 Charter to request their records.

4 Q And, I'm sorry, Page 3 you said you really
5 can't tell us what that one is at all.

6 A No.

7 Q Do you know whose handwriting that is?

♀

8 A The only thing I can say is I know who it's
9 from, so if that's who it's from I would say that's her
10 handwriting.

11 Q Have you heard a statement that you sent
12 records about a -- or that somebody sent 100 pages of
13 records through the fax machine and the records were sent
14 out of order?

15 A Yeah, I've heard something to that nature.

16 Q And are you the person that sent 100 pages of
17 records through a fax machine?

18 A Yes, I am.

19 Q Was it about one of the students listed on that
20 sheet in front of you?

21 A Yes.

22 Q Which student number?

23 A 20.

24 Q And tell us what you remember about this.

25 A Well, the documents were over 100 pages. It

Rivera - Direct

1426

1 was very difficult to fax them because, obviously, a fax
2 machine or our fax machine doesn't have that much memory,
3 so it kept losing the connection, the phone connection, I
4 had to keep redialing, and keep doing it and doing it and it
5 took a very long time to get the documents to go through.

6 Q Why were you doing it by fax to begin with?

7 A Well, we were doing it as a courtesy to get it
8 over as quickly as possible because the students were
9 transferring.

10 Q Did you intentionally mess up the order of the
11 pages?

12 A Not at all.

13 Q Did you intentionally put some of them in

14 upsi dedown?

15 A Not intentionally, no.

16 Q Do you think it might have happened?

17 A It might have happened because I was getting
18 frustrated.

19 Q Did you get a call after the fax was completed
20 complaining about how the papers had gone through?

21 A Not me personally, no.

22 Q Do you know if anyone did?

23 A I really don't know.

24 Q And when was the first time that you heard a
25 complaint about the way this fax was sent?

♀

Rivera - Cross

1427

1 A I believe you told me maybe a month ago.

2 MR. FENNIC K: Cross examine.

3 MS. SCHURDAK: Thank you.

4 - - -

5 CROSS EXAMINATION BY MS. SCHURDAK:

6 Q Good afternoon, Miss Rivera. I'm Ellen
7 Schurdak.

8 A Good afternoon.

9 Q What's the area code here?

10 A You're talking about the area code? Is 570.

11 Q And Pocono Mountain School District is a 570
12 area code, isn't it?

13 A Yes, it is.

14 Q And if you look at CS-19 it was sent to a fax
15 number of 610-881-1866, wasn't it?

16 A Yes, and that's the number that I had received
17 when I was given the fax number from the person I was
18 sending it to. It was a little strange, but I did it

19 anyway.

20 Q Have you ever contacted anyone at Pocono
21 Mountain Charter School [sic] at a 610 area code number?

22 A Well, I wouldn't put the area code in, I would
23 just dial the number, so I don't really know what the area
24 code is.

25 Q And you're familiar with how fax machines work,
Rivera - Cross 1428

1 right?

2 A Of course.

3 Q So, normally when you fax something through
4 there's some lettering at the top and bottom of the page to
5 say that it's been transmitted and the number, right?

6 A Yes.

7 Q Well, I'm looking at CS-19 and I don't see any
8 phone numbers produced by fax machine on this document, do
9 you?

10 A Well, it wouldn't be on this document because
11 this is the document being faxed. It would only be on a
12 document that I would receive. That's where the phone
13 number and the date would be.

14 Q That's your testimony of how fax machines work.

15 A As far as -- if I am faxing this document there
16 should not be any date or phone number that is put on it by
17 the fax machine.

18 Q What about a transmittal sheet at the end of
19 the transmission?

20 A Yes, if you print -- if you print the
21 transmittal sheet, yes, you would have it.

22 Q And there's nothing attached to CS-19 to show
23 that, indeed, this fax was transmitted successfully on or
24 about May 20th, 2009, correct?

♀

25 A Correct.

Rivera - Cross

1429

1 Q Page No. 2 -- strike that. That would be the
2 best evidence, wouldn't it, that it had been successfully
3 transmitted.

4 MR. FENNICKE: Objection. Objection.

5 MR. LITTS: Objection sustained.

6 Q Document No. -- Page 2 within CS-19, there's no
7 date on the upper right-hand corner of that document,
8 correct?

9 A Mm-hmm. Yes.

10 Q And you don't have any personal knowledge on
11 Page 3 of CS-19.

12 A No.

13 Q On Page 2 it says Pocono Mountain School
14 District/Colonial Academy. Colonial Academy is part of the
15 IU; isn't it?

16 A I don't know.

17 Q You don't know?

18 A No.

19 Q So, you don't know whether or not Student No.
20 21 was attending the Colonial Academy as opposed to the
21 Pocono Mountain School District.

22 A I know that a request was made to both schools.

23 Q And --

24 A For documents.

25 Q They are two separate schools, the Colonial

Rivera - Cross

1430

1 Academy --

2 A I'm assuming that.

3 Q Well, you just said, "I know a request was made

4 to both schools."

5 A To both places. How about that? I --

6 Q And when you're transmitting information
7 requests to the Colonial Academy you transmit those requests
8 via facsimile to a 610 area code, don't you?

9 A I don't know.

10 Q Have you ever called anyone at the IU -- I'm
11 sorry, strike that. Have you ever called anyone at the
12 Colonial Academy?

13 A Not to my knowledge.

14 Q Have you received any training in what the law
15 requires in terms of transmission of educational records
16 from one institution to another?

17 A The only training that I got was there from
18 whoever did it before me.

19 Q On direct you -- in response to Attorney
20 Fennick's questions you said, "Well, I transmit --" and you
21 named a couple records and then you said other pertinent
22 records, you used the word pertinent.

23 A Mm-hmm.

24 Q So, do you determine what's pertinent?

25 A No, whatever is in the file.

Rivera - Cross

1431

1 Q Whatever is in the file. Do you have anyone
2 within -- strike that. Does anyone review what you're
3 sending to the requesting institution prior to it leaving
4 your desk?

5 A No.

6 Q When you get a request to send educational
7 records how do you assure confidentiality in those records?

8 A Confidentiality as far as sending them out?

9 Q Yes.

10 A Well, I'm the one who would take copies of the
11 record, nobody else does. So, I'm taking the copies and I'm
12 putting them in the envelope and I'm sending them.

13 Q Do you take any other steps prior to sending
14 them out?

15 A (Shakes head in the negative.)

16 Q Do you make a phone call to make sure that this
17 is a proper request from another educational institution?

18 MR. FENNICKE: Objection. Unless there's a
19 suggestion that somehow there was a mistake and records were
20 sent why would this be relevant? It's not even part of one
21 of the charges of proof by the board in May of '08.

22 MR. LITTS: Well, it may not be ultimately
23 relevant for the board having to do what it has to do, but I
24 believe it is remotely relevant to the scope of the direct
25 examination, so I will allow even though I'm wondering aloud

Rivera - Cross

1432

1 as to its probative value.

2 Q You can answer it?

3 A Can you repeat your question?

4 Q Do you place any calls to -- strike that.

5 Do you take any steps to confirm the appropriateness of
6 releasing educational records?

7 A Do I make any phone calls? No.

8 Q Now, CS-18, do you still have that in front of
9 you?

10 A Yes.

11 Q I believe on direct you said that there had
12 been a request prior to August 18th, 2009. Am I right on
13 that?

14 A Yes.

15 Q What date?

16 A I don't have that in front of me, so I can't
17 tell you.

18 Q Is it fair to say you don't have any written
19 documentation with you today to show that, indeed, a
20 previous request had been made?

21 A I don't have anything, no.

22 Q On CS-18 it says, "Refused to sign." Who,
23 if you know, at the school district refused to sign?

24 MR. FENNICK: I --

25 MS. SCHURDAK: If she knows. It's carefully
Ri vera - Cross 1433

1 worded. If she doesn't know she doesn't know, Mr. Fennick.

2 MR. FENNICK: Fine.

3 A I wasn't the one bringing it to the district so
4 I can't answer that.

5 Q You said you had a conversation with a woman
6 named Cheryl at Central. When you say Central do you mean
7 administration?

8 A I didn't say Central, I don't believe, I said
9 the district or the guidance office. So, I spoke to her to
10 verify that they received the records and they told me yes.

11 Q What's the date of your conversation with
12 Cheryl?

13 A I have it written -- it's not in front of me,
14 but I have it written down on another document.

15 MR. FENNICK: The page that has the numbers,
16 that might

17 A No.

18 MR. FENNICK: May I hand this up to her?

19 MS. SCHURDAK: The whole thing?

20 MR. FENNICK: They're all the same.

21 A I had spoken to two people, so this was for one
22 student and -- Donna was for one student and Cheryl was for
23 the other. So, the one that says Cheryl on it is not here
24 because it was two different students that I checked on.

25 Q Do you know the student number of this student?

Rivera - Cross

1434

1 I don't want you saying any name out loud.

2 MR. FENNICK: She doesn't have any of the
3 student numbers.

4 Q Do you want to write down the student's name
5 and then I'll show it to Attorney Fennick and then we can
6 tell you what number it is.

7 A To be quite honest with you, I don't remember
8 which one was which. I would have to see both of them.

9 MR. FENNICK: Can you hand her that one?

10 A Right. So, I spoke with her about this student
11 and then I spoke to Donna about the other student, about
12 that one.

13 Q Okay.

14 A Okay?

15 Q Okay.

16 MR. FENNICK: We don't have a date on the
17 record. Ellen, we need to put a date -- the question is
18 "What date did you talk to Cheryl --"

19 MS. SCHURDAK: The notes indicated
20 November 23rd, 2009, for Student No. 6.

21 Q Do you know when Student No. 6 reentered the
22 school district? Strike that. When Student No. 6 entered
23 the school district.

24 A No, I don't.

25 Q So, you don't know how many times the school

1 district was requesting educational records with respect to
2 Student No. 6?

3 A When I get a request I send them. So, if I got
4 a request it was sent.

5 Q Is it possible that some requests could have
6 gone to the principal?

7 A I can't answer that. You would have to ask
8 him.

9 Q My question is is it possible.

10 MR. FENNICK: We'll concede that just about
11 anything possible.

12 MS. SCHURDAK: Thank you.

13 MR. LITTS: The witness answered the question.
14 Move on to something else.

15 Q Are there times when the school district has
16 sent personnel on site to the charter school to pick up
17 educational records?

18 A Yes.

19 Q More than once?

20 A Yes.

21 Q Is it your understanding that that is occurring
22 because the school district is not receiving the educational
23 records?

24 A It was my understanding that they were picking
25 them up because they wanted them immediately.

♀

1 Q How do you determine when an educational record
2 is complete?

3 A When we have the report cards, the progress
4 reports, any other documentation that would pertain to the
5 student. Anything that, you know, would pertain to the

6 student.

7 Q Do you have a checklist?

8 A Yes, I do.

9 MR. FENNICK: CS-18.

10 MR. LITTS: Mr. Fennick, you're not testifying.

11 MR. FENNICK: No, but I was trying to be

12 helpful.

13 MR. LITTS: I understand.

14 Q And how long have you been using this form,

15 CS-18?

16 A The past few months.

17 Q All right. We're in March 2010.

18 A Yes.

19 Q So, the past few months. You started using it

20 October 2009?

21 A No, it was before that. Probably from the --

22 maybe the beginning of this school year.

23 Q And why did you start using the form?

24 A To make sure that I was sending the proper

25 documents. Just as a guideline for myself.

♀

Rivera - Cross

1437

1 Q And did you come up with the checklist that's

2 on this document?

3 A Yes.

4 Q Were you responsible for transmitting the

5 records back in 2008?

6 A I started 2007 -- part of 2008, mm-hmm.

7 Q When -- when you say part of 2008?

8 A The end of the school year, probably, 2008.

9 Q Besides the transmittal of educational records

10 your job also encompasses getting other records together,

11 too, doesn't it?

12 A All student records. I don't know what else...

13 Q Right-to-Know requests?

14 A No.

15 Q No?

16 A No.

17 Q Whose responsibility is that?

18 MR. FENNIC K: Objecti on.

19 MR. LITTS: Sustai ned.

20 MS. SCHURDAK: I have nothi ng further.

21 MR. FENNIC K: I have to ask a few more
22 questi ons.

23 MR. LITTS: I'm going to have some questi ons,
24 so

25 MR. FENNIC K: Ei ther way.

Ri vera - Li tts 1438

1 MR. LITTS: It may be better if I go fi rst.

2 That way --

3 - - -

4 BY MR. LITTS:

5 Q Ma'am, I appreciate your patience today. I
6 know you've been waiti ng and some of thi s I thi nk you may
7 have cleared up, but I want to make sure. If I heard you
8 correctly, you began to have responsi biliti es for deali ng
9 with the student education records in -- at the end of the
10 2008 school year. So, June of 2008; is that correct?

11 A Somewhere toward the end. I don't know the
12 exact date.

13 Q Gotcha. Mr. Fenni ck asked you questi ons about
14 procedures and you descri bed in great detail what it is that
15 you do in requesti ng and aski ng for records. Is there
16 anything in writi ng, a writt en document that you refer to,

♀

17 or is it just basically what you've described is what you do
18 and -- if you know.

19 A Basically just what I do, what I know that I'm
20 supposed to do.

21 Q The only reason I ask is lawyers sometimes put
22 meaning into words and I just want to make sure I understand
23 that.

24 You also testified at some point in time you
25 began sending student records when requested by certified

Rivera - Litts

1439

1 mail and can you tell me when you started doing that to the
2 best of your recollection?

3 A It's over a year.

4 Q Would it -- so, it would have been definitely
5 for this school year.

6 A Oh, definitely, yeah.

7 Q Do you know when you would have started that?
8 If you know.

9 A No, I really couldn't say the exact date.

10 Q But once you began sending everything by
11 certified mail is that what you've consistently done?

12 A Yes.

13 Q The other question I have is -- there's been a
14 lot of questions about CS-19. If you could take a look at
15 that. This is why I asked the question earlier of Mr.
16 Fennick and I just want to make sure I understand this.
17 The first page of CS-19 is a fax transmittal sheet; is that
18 correct.

19 A Yes.

20 Q And then the second page is a student record
21 release form.

22 A Yes.

23 Q And I think you testified earlier that both
24 Page 1 and Page 2 of this exhibit relate to Student No. 21.

25 A Yes.

Rivera - Litts

1440

1 Q Were these a single fax that you sent out, the
2 first page and the second page, is that the fax that went
3 out?

4 A No, no.

5 MS. SCHURDAK: I hate to correct you, but the
6 first page is not a fax transmission sheet.

7 MR. LITTS: When I say fax transmission sheet
8 what I mean is what someone fills out in order to submit --
9 send a fax.

10 MS. SCHURDAK: A cover sheet, okay. To me a
11 transmission sheet shows the log.

12 MR. LITTS: Thank you. I'm not an expert on
13 office equipment.

14 MS. SCHURDAK: I guess I am.

15 Q I'll be very up front. The reason the board
16 wanted to ask that question is because we were wondering if
17 this was the fax cover sheet for the --

18 A No.

19 Q -- transmission of this records request.

20 A No.

21 Q And the fax number, the phone number listed on
22 that page with the 610 area code, you don't know what that
23 phone number or fax number is for.

24 A That's the number I was given. Maybe that's
25 why I had trouble.

Rivera - Litts

1441

1 Q Do you know who you were given that number by?
Page 114

2 There's a Robin listed --

3 A Yeah, I don't know if she gave it to me or not.

4 MR. LITTS: Any other questions from the board?

5 Q And, again, what we're trying to ascertain is
6 this phone number or fax number listed on Page 1 of Charter
7 School 19, whether or not that may be the phone number or
8 fax number for the Colonial Academy. Do you know?

9 A No, no, because I had nothing to do with that
10 second page.

11 Q And I understand Mr. Fennick sort of piled
12 these documents and he didn't provide us what document was
13 faxed with that, so that's why we're just trying to figure
14 that out. But, maybe we'll figure it out later.

15 Any other questions? That's all the questions
16 the board has.

17 MR. FENNICK: I have a few more.

18 - - -

19 REDIRECT EXAMINATION BY MR. FENNICK:

20 Q I just want to give you back some of the
21 documents that you were just shown. You were shown this
22 document in order to help you remember when you spoke with
23 Cheryl, but I want to ask you about other information on
24 this document. This is regarding Student 6, we agreed on
25 that. Does this -- is this a release of information,

Rivera - Redirect 1442

1 release of records, signed by Student 6's mother, I believe?

2 A Yes.

3 Q And does the document tell us when she signed
4 it?

5 A Well, she has dated July 9th, '09.

6 Q And there's a note here that says, "Sent

♀

7 July 20th, '09." Is that your writing?

8 A Yes, it is.

9 Q So, what does that tell you about when you sent
10 the student's records?

11 A All the documents were sent out July 20th, '09.

12 Q Do you know what the writing is on the top
13 where it says, "Please send ASAP IEP and final grades.
14 Need for registration."

15 A No.

16 Q Do you know whose writing it is?

17 A No.

18 Q There's also writing on the side with a fax
19 number, 894-2788. Do you know what that's about?

20 A That's our fax number, but I don't know who
21 wrote it there. That's the school's fax number.

22 Q The charter school.

23 A Yes.

24 Q I think you also looked at this one because you
25 referred to speaking with somebody named Donna.

Rivera - Redirect

1443

1 A Right.

2 Q And what does this tell you? You said this was
3 with regard to Student 20.

4 A Yes.

5 Q So, can you give us any time frame of when
6 things were signed and when things were sent?

7 A I had written that I faxed it on October 8th,
8 '09.

9 Q And when did you -- when did the parents of
10 Student 20 sign this release?

11 A I don't -- oh, here it is, yes. If that's what
12 they put, it's October 5th. If they wrote that date then it

13 was October 5th.

14 Q So, you got this from the Pocono Mountain
15 School District sometime on the 5th or after and sent the
16 records back on the 8th.

17 A Yes.

18 Q This is just a registration form?

19 A Yes, it is.

20 Q Does this -- do you know which student this is
21 about?

22 MS. SCHURDAK: Have I seen this?

23 MR. FENNICK: I'm not sure.

24 MS. SCHURDAK: What student number?

25 MR. FENNICK: This is, I believe, 20.

Rivera - Redirect

1444

1 Q Is that right?

2 A Yes.

3 Q And this is a registration form?

4 A Yes.

5 Q For the student to register where? Is this the
6 charter school's registration form?

7 A Yes.

8 Q And what does this show as the date of the
9 student's enrollment?

10 A October 27th, '08.

11 MR. FENNICK: That's all I have on redirect.
12 Do you want these?

13 - - -

14 RECROSS EXAMINATION BY MS. SCHURDAK:

15 Q You said you transmitted documents on July 20th
16 in response to Attorney Fennick's questions relating to
17 Student No. 6. You looked at this document to help refresh

18 your recollection.

19 A I sent it on July 20th, yes.

20 Q To whom?

21 A To the address on the form.

22 Q You sent that certified mail?

23 A That one I don't remember if it went certified
24 mail. I would usually write the certified number on the
25 front copy.

‡

1 Q And the phone number on this document,
2 Pocono Mountain School District, is 570-839-7121, is it not?

3 A Well, somebody wrote it there, yes.

4 MS. SCHURDAK: We'll stipulate that on CS-19
5 the fax number of 610-881-1866 belongs to an institution
6 within the IU20 and I'm not sure if we also have a
7 stipulation on Page 2, so let me see if I can get Attorney
8 Fennick to agree with me.

9 (Off record.)

10 MS. SCHURDAK: There's a further stipulation
11 that the Colonial Academy is one of the schools within the
12 umbrella of the Colonial Intermediate Unit 20 and it's
13 located in Wind Gap, Pennsylvania, again with an area code
14 of 610.

15 MR. FENNICK: I will have to ask her another
16 question because of that. I just want to let you know.

17 MS. SCHURDAK: I wouldn't expect anything less.

18 MR. LITTS: Miss Schurdak, any other questions?

19 MS. SCHURDAK: I don't. Thank you.

20 - - -

21 REDIRECT EXAMINATION BY MR. FENNICK:

22 Q I just need to ask you, on Page 2 --

23 MR. LITTS: Of what?

24 MR. FENNICK: Of CS-19.

25 Q Did you testify earlier that you sent records
Rivera - Redirect/Recross 1446

1 to two -- requested two --

2 A This is requesting records.

3 Q And you said that you sent that to two
4 different institutions.

5 A Yes.

6 Q Colonial Academy, part of the Colonial IU we
7 just established, and Pocono Mountain School District.

8 A Yes.

9 MR. FENNICK: That's all.

10 - - -

11 RECROSS EXAMINATION BY MS. SCHURDAK:

12 Q Where on --

13 MS. SCHURDAK: You started it Dan.

14 Q Where on CS-19 does it show that you faxed a
15 document request to Pocono Mountain School District?

16 MR. FENNICK: Now, we've established that the
17 documents are not necessarily related.

18 MR. LITTS: Well, hold up.

19 MR. FENNICK: And that's my mistake and I'll
20 try to clear it up.

21 MR. LITTS: I understand you did that. I think
22 we've beat this like a dead horse here and, Mr. Fennick,
23 quite frankly, you put the exhibit together.

24 MR. FENNICK: Yes, I know .

25 MR. LITTS: If you have a transmittal sheet for
Rivera - Redirect/Recross 1447

1 the school district we'd like to see it. We probably won't
2 see it today, but that was the whole question that the board

3 wanted to ask you because right now -- and I'm giving us the
4 opportunity because we'd like it cleared up is it appeared
5 to us in reading the document that this was possibly a
6 transmittal sheet for a records request to the Colonial
7 Intermediate. It very well may be that a similar fax was
8 sent to the school district and, if so -- for Student 21 --
9 the board would like to see that and you'll have an
10 opportunity between now and the 29th to see if there's some
11 records to that effect. I just wanted to make that clear.
12 That's the question we were asking.

13 MR. FENNICK: I know, and I got the sense from
14 Ms. Rivera that they don't print the confirmation sheet.

15 A No.

16 MR. FENNICK: Are they still in the machine,
17 do you know?

18 A Probably not this long.

19 MR. FENNICK: We'll check.

20 MR. LITTS: So, I mean, that -- I think the
21 documents still speaks for itself. The board will draw
22 whatever conclusion it wishes to draw based on substantial
23 evidence, but that's the question that is sort of lingering
24 out there still.

25 So, Mr. Fennick, do you have any other

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1 questions for this witness?

2 MR. FENNICK: No.

3 MR. LITTS: Miss Schurdak, any other questions?

4 MS. SCHURDAK: No.

5 MR. LITTS: I think the board -- Ms. Rivera,
6 I appreciate your patience today in waiting so patiently to
7 testify. Is there any reason why this witness can't be
8 excused?

9 MS. SCHURDAK: I can't think of any.

10 MR. LITTS: Thank you very much, ma'am. You're
11 excused.

12 MR. FENNICK: Can we take a couple minutes
13 because maybe my next witness can clear this up.

14 (Off record.)

15 MR. LITTS: If we could try to get as much
16 testimony done as we can. Mr. Fennick said he's prepared to
17 call his next witness and he may do so.

18 - - -

19 LOLETTA ROBERTSON, having been duly sworn
20 according to law, testified as follows:

21 DIRECT EXAMINATION BY MR. FENNICK:

22 Q Can you give us your name and business address?

23 A Lolletta Robertson, 16 Carriage Square,
24 Tobyhanna, PA, 18466.

25 Q Are you employed by the Pocono Mountain Charter
Robertson - Direct 1449

1 School?

2 A Yes.

3 Q I want to show you Exhibit CS-18.

4 MR. LITTS: Before you do so, Mr. Fennick.
5 Ma'am, how long have you worked for the charter school?

6 A Five years.

7 Q I'm only going to ask you about one thing.
8 I want to direct your attention to CS-18 and you heard Pat
9 Rivera testify that somebody dropped records to the Pocono
10 Mountain School District. Did you hear that testimony?

11 A Yes.

12 Q Was that you?

13 A Well, I would correct that testimony. It was

14 not Pocono Mountain School District administration, it was
15 Pocono Mountain West High School.

16 Q Tell us what happened.

17 A I attempted to deliver a package to the Pocono
18 Mountain West High School guidance office. I arrived on the
19 premises. I went into the high school. I went directly to
20 the guidance office. I proceeded to try to get into the
21 guidance office. It was locked. I knocked. There was no
22 one there.

23 So, upon leaving Pocono Mountain West High
24 School I stopped into the main office to try to deliver the
25 package there.

Robertson - Direct

1450

♀
1 I walked into the main office. There were two
2 secretaries at the door as you enter in the office, one on
3 the left, one on the right. The one on the right was
4 cordial, the one on the right was the one that actually
5 welcomed me into the office, asked what could she do for me.

6 I told her I was here from Pocono Mountain
7 Charter School, I needed to deliver this package to the
8 guidance office, and then she proceeded to tell me that they
9 were at training.

10 I asked could I leave the package here.
11 Before her answering a gentleman entered into the
12 conversation from my left coming out of his office. I
13 turned around. She informed him of who I was, what I needed
14 to do. He then said that I could not leave the package
15 there and I asked, "Well, when will they be returning?"
16 He said he did not know. I said, "Okay, thank you. Have a
17 good day," and I left with the package.

18 Q Now, before we go on, looking at the exhibit in
19 front of you --

20 A Yes.

21 Q -- or from your own memory, either one, do you
22 know what day this happened?

23 MS. SCHURDAK: Before you answer, I'm going to
24 object to this line of inquiry because, again, it is not the
25 school district on trial here today.

Robertson - Direct

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1 MR. LITTS: Overruled.

2 Q Okay. So, Loretta, my question was do you know
3 what day this was?

4 A Well, it would be the first day on this list
5 which would be August 18th.

6 Q Now, did you come back and report what happened
7 to Pat?

8 A Yes.

9 Q And did Pat write the records words on the
10 bottom there, whatever it says, "Refused to --" something.

11 A Guidance Council at training and refused to
12 sign on 8-18.

13 Q So, when you got back to the Pocono Mountain
14 Charter School did you still have the package with you?

15 A Yes.

16 Q What happened on the 19th?

17 A Well, the 19th I was out doing errands again on
18 that particular day, so I made a second attempt to deliver
19 the package to no avail. When I got to the West high school
20 the guidance office was locked again. I did not proceed to
21 any other office, I took the package and left the district,
22 period.

23 Q And why didn't you go back to the main office
24 as you had done on the 18th?

25 A Because they refused the package on the 18th so
Robertson - Cross 1452

1 I did not go back to the main office on the 19th.

2 Q When you brought the package back to Pat did
3 you tell her that you had been unable to deliver it again?

4 A Yes.

5 Q And does that end your involvement with this
6 incident?

7 A Yes.

8 MR. FENNICKE: Cross examine.

9 - - -

10 CROSS EXAMINATION BY MS. SCHURDAK:

11 Q Good afternoon.

12 A Good afternoon.

13 Q Do you have CS-18 in front of you?

14 A Okay, yes.

15 Q Do you know why it says, "Refused to sign,"
16 One date and then it says 8-19-09?

17 MR. FENNICKE: Objection. She said she didn't
18 write it, she told --

19 MR. LITTS: If she knows. If she knows.

20 A Refused to sign on the 18th is when I initially
21 went to the district and the main office and the assistant
22 principal refused to take the package.

23 Q But this document --

24 A The 18th shows that the -- the 19th shows that
25 I arrived on the second day and I did not deliver the

Robertson - Cross 1453

1 package. So, that's why it was noted there.

2 Q But it isn't because anyone refused to sign for
3 it on the 19th.

4 A That is correct.

5 Q And what are the names of the two people you
6 spoke with on August 18th?

7 A Ma'am, I can't --

8 MR. FENNICK: Loletta, you have to let her
9 finish the question as offensive as it is.

10 A Okay. I cannot give you any names, but I can
11 describe both individuals.

12 Q Okay, if you could do that, please.

13 A So, the receptionist or the assistant, she was
14 a dark-haired Caucasian lady, very nice and pleasant. The
15 assistant principal was very fair haired, put it that way.

16 Q What gender?

17 A Caucasian.

18 Q Gender.

19 A Oh, male. I'm sorry.

20 MS. SCHURDAK: Sometimes people use that term
21 generically.

22 Q Fair hair. Blondish?

23 A No, fair hair white.

24 Q Age?

25 A He had very white hair, very white eyebrows,

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1 very white complexion.

2 Q How did you know he was the assistant
3 principal?

4 A Because when I turned around he came to my
5 left, he came out the assistant principal's office. He did
6 not introduce himself, he did not say who he was.

7 Q So, this individual, just so I'm clear, came
8 out of the office.

9 A Yes, ma'am.

10 Q Did you see any employee I.D. on this
11 individual?

12 A It was hanging, yes.

13 Q And on August 18th of 2009 what time were you
14 at the high school?

15 A Approximately midday.

16 Q What do you mean by --

17 A I'd say 11:30, 12:00, 12:30. Around that time.

18 Q Did you make any call prior to going to the
19 school district to say, "I'm going to be coming over with
20 some educational records."

21 A No, ma'am.

22 Q And did you make any call on the 19th about --

23 A No, ma'am.

24 Q After August 19th, 2009, did you make any calls
25 to anyone at the school district about your difficulty in

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1 delivering educational records?

2 A No, ma'am.

3 Q Ultimately what did you do with the packet of
4 materials that you had?

5 A I returned them back to the records office.

6 Q To any particular individual?

7 A Patricia Rivera.

8 Q Did you keep the educational records in between
9 August 18th and August 19th?

10 A Yes, ma'am.

11 Q Do you have an office within the charter
12 school?

13 A Yes, ma'am.

14 Q Do you lock your door?

15 A Yes, ma'am.

16 Q Every night?
17 A Yes, ma'am.
18 Q Have you seen this form before today? And when
19 I say form, did you hear Miss Rivera testify?
20 A Was I sitting in the room?
21 Q Yes.
22 A Yes.
23 Q She testified, I believe, that at some point in
24 time she came up with this as a form, as a checklist for
25 transmitting records. Did you hear her testify to that?

♀

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1 A Yes.
2 Q Have you seen this form before today?
3 A Yes.
4 Q Roughly how many times?
5 A The one time that I delivered the package.
6 Q And what is it that you -- what's your title at
7 the charter school?
8 A I really don't have a title, but I work in the
9 business office.
10 Q Are you administrative staff in the business
11 office?
12 MR. FENNICK: Objection. She's here as a fact
13 witness as to one incident. We just seem to have endless
14 fishing with every witness.
15 MR. LITTS: Well, let's end the commentary.
16 Objection sustained.
17 MS. SCHURDAK: I have nothing further.
18 MR. LITTS: The board has no questions. Do you
19 have any redirect, Mr. Fennick?
20 MR. FENNICK: No.

21 MR. LITTS: Is there any reason why this
22 witness can't be excused?

23 MS. SCHURDAK: I can think of no reason.

24 MR. LITTS: Ma'am, I thank you for your
25 patience and coming in to testify and you are excused.

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1 THE WITNESS: Thank you.

2 MR. FENNICKE: At this point it just seems
3 convenient that I would move for the admission of CS-14
4 through 19 knowing that we are going to have to explain to
5 the board what the individual papers on Exhibit 19 are all
6 about.

7 MR. LITTS: Any objections to CS-14 through 19?

8 MS. SCHURDAK: Well, there is to CS-19. Again,
9 this is the first time I'm seeing this document as well as
10 CS-18. I did not get these in the course of discovery. I
11 believe, Mr. Litts, you had previously advised the parties
12 to get each other their exhibits in advance. I'm not saying
13 you have to produce them in exhibit format, but you would
14 have had to produce them in some format before today's
15 hearing.

16 MR. LITTS: Well, your objection's noted and
17 it's overruled. Counsel for the school district was able to
18 question the witnesses with regards to those exhibits and
19 they are offered for what they're worth, so they are
20 admitted.

21 All right, it's 3:25. Mr. Fennick, do you have
22 a short witness? Long witness?

23 MR. FENNICKE: I have a long witness. Given how
24 long this morning went, I think she will end up being a long
25 witness.

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1 MR. LITTS: Let's go off the record for a
2 second.

3 (Off record.)

4 MR. LITTS: Mr. Fennick was kind enough to
5 identify who the next witness was and it's going to be a
6 fairly lengthy direct and probably lengthy cross. In light
7 of that fact, it doesn't make sense to start a witness now
8 and only do it for 20 to 30 minutes. So, we are going to
9 recess the hearing for today. We're scheduled to be back
10 here on March 29th at 10 o'clock a.m. and this hearing is
11 recessed until then. Thank you.

12 - - -

13 (Whereupon, the above adjourned at
14 3:25 o'clock p.m. on Friday, March 19, 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 March 19, 2010, and that this transcript is a true and
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6 correct transcript of the same, fully transcribed under my
7 direction, to the best of my ability and skill.

8 I further certify that I am not a relative or
9 employee of any of the parties in this action; that I am not
10 a relative or employee of any attorney in this action; and
11 that I am not financially interested in the event of this
12 action.

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Donna G. Kenderdine, R. P. R.
Notary Public

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